State of Michigan

CONSTITUTIONAL CONVENTION

1961

OFFICIAL RECORD

FRED I. CHASE
Secretary of the Convention

AUSTIN C. KNAPP
Editor

LYNN M. NETHAWAY
Associate Editor

State of Michigan

CONSTITUTIONAL CONVENTION

1961

OFFICIAL RECORD

FOREWORD

By formal action of the Convention, the editors of the Official Record were directed to combine the daily action journal and the verbatim proceedings into a single publication in the interests of effective presentation and economy. This directive necessitated certain modifications in the traditional practice of presenting the proceedings and the journal as separate publications.

In compiling, interpolating and editing the material presented herein as the Official Record of the 1961 Constitutional Convention of the State of Michigan it was necessary to establish and follow definite procedures to minimize duplicate printings of documents, clarify and complete convention actions, and insure the inclusion of all essential information as well as provide easy identification of documents, actions and similar information.

Duplicate printings of documents (committee proposals, delegate proposals, exclusion reports and resolutions) have been avoided by the following procedure:

a. Delegate proposals, when introduced, have been included by title only because they were delegate suggestions only and lost their identity upon referral to committee. For the full text of delegate proposals the researcher is referred to the separate file thereof deposited in the archives of the Michigan Historical Commission, with the Michigan State Library and the library of each of the 4-year colleges and universities in Michigan.

b. Resolutions appear in full when they are offered.

c. Committee proposals and exclusion reports (and minority reports thereto), with supporting reasons, appear in full when taken up for detailed consideration.

When documents are read by title only, as on introduction, reference thereto is made as follows:

For Committee Proposal 1, see below, page 197.

When documents have been amended and adopted, they appear in full, including the amendments, at the point they were adopted.

To clarify and complete convention actions, explanations are enclosed in bold-face brackets, as follows:

[Whereupon, at 6:05 o'clock p.m., the convention adjourned until 9:30 o'clock a.m., Tuesday, January 9, 1962.]

Materials 'considered read' and ordered printed in the journal have been interpolated at the appropriate point as follows:

Following is the communication:

Ladies and Gentlemen of the Convention:
Today we are, etc. etc.

All quoted materials, if more than 3 lines in length, have been set off by indentation from each margin.

To assure inclusion of all essential information and provide ease of identification relative to documents and actions, official documents have been identified by generic name and specific number by the use of bold-face type (**Committee Proposal 1, Resolution 4,** etc.), and the several official orders of business also have been set in bold-face type where there has been business taken up thereunder (**Roll call, motions and resolutions,** etc.). For the full list of orders of business, see Rule 42, page 132 below.

The complete Official Record of the 1961 Constitutional Convention of the State of Michigan is presented herein without substantive change.

AUSTIN C. KNAPP
Editor

LYNN M. NETHAWAY
Associate Editor

FOREWORD

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State of Michigan

CONSTITUTIONAL CONVENTION

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DELEGATES

DELEGATES

GLENN S. ALLEN, JR.

Kalamazoo 1st District

Republican of Kalamazoo; Committees on Local Government; Rules and Resolutions. Attorney. Born January 8, 1914 to Glenn S. and Annette Brenner Allen, Sr. in Kalamazoo, Michigan. Graduated, Kalamazoo University High School, 1932; attended Amherst (Massachusetts) College; B.A., Kalamazoo College, 1936; LL.B., Columbia University, New York, New York, 1939. Served as Captain, Judge Advocate General's Department, 94th Infantry Division in Europe; discharged 1945. Kalamazoo City Commission (1941-43; 1959-61); Kalamazoo Vice Mayor (1945-49); Kalamazoo Mayor (1951-59); Kalamazoo County Supervisor (1947-62); Committee on Local Government to the Eisenhower Commission on Intergovernmental Relations (1954-55). President, Michigan Municipal League (1959); President, Child Guidance Clinic (1948); member of the Board, Fruit Belt Area, Boy Scouts of America (1959-61); Vice President, Kalamazoo Bar Association (1962). Recipient, Kiwanis Community Service Award (1961). Member, Kalamazoo Kiwanis Club; Elks; Moose; American Legion; Veterans of Foreign Wars; Torch Club. Member, First Presbyterian Church, Kalamazoo. Married to Virginia Verdier; two children: Holly Ann (1946); and Susan Carpenter (1948).

VERA ANDRUS (MISS)

St. Clair District

Republican of Port Huron; Committees on Education; Public Information. Retired teacher. Born August 21, 1896 to William and Alice Barton Andrus in Reedsburg, Wisconsin. Moved to Michigan in 1901. Graduated, South Haven High School, 1915; B.A., University of Michigan, 1919; M.A., University of Michigan, 1921. Port Huron Mayor's Commission on Changes in the City Charter (1958); Port Huron Mayor's Commission for Civic Improvements (1952-60); Executive Board, Port Huron Citizen's League (1941-61); Executive Board (1938-61) and President (1961), Port Huron League of Women Voters; Executive Board (1925-31) and Vice President (1924), American Association of University Women; Executive Board, Business and Professional Women (1930-42); Executive Board (1928-44) and President (1927-28), Port Huron Michigan Education Association; member, Phi Beta Kappa; Sigma Delta Phi; Citizens for Michigan; Citizens for a Sound Constitution; University of Michigan Alumni Association; American Historical Association. Board of Directors, Christian Science Church.

DELEGATES

CHARLES LEROY ANSPACH

Isabella District

Republican of Mt. Pleasant; Committees on Education (1st Vice Chairman); Emerging Problems. President Emeritus, Central Michigan University. Born March 5, 1895 to Phillip and Amanda Loose Anspach in Fremont, Ohio. Moved to Michigan in 1930. Graduated, Ashland (Ohio) Academy, 1912; attended University of Toledo (Ohio); A.B., Ashland (Ohio) College, 1920; M.A., University of Michigan, 1923; Ph.D., University of Michigan, 1930; LL.D. (honorary), Ashland College, 1944; Litt.D. (honorary), Central Michigan University, 1959; L.H.D. (honorary), Northern Michigan College, 1959; LL.D. (honorary), Ferris Institute, 1959. National Council, Boy Scouts of America (1942-..); President, Michigan Society for Mental Health (1942-45); Board of Directors, Michigan Council on Crime and Delinquency (1958-..); Board of Directors, Alvin M. Bentley Foundation (1961-..); Board of Trustees, Ashland College (1940-..); President, Ohio College Association (1935-37); President, Association of Michigan Colleges (1941); President, Michigan Council of University and College Presidents (1954); Ohio State Y.M.C.A. Committee (1936-39); Michigan State Y.M.C.A. Committee (1940); National Council, Y.M.C.A. (1941-45); Michigan Council of Churches (1942-43). Recipient, King Christian X Liberation Medal (1949); Freedoms Foundation Award (1950); Kappa Delta Pi Distinguished Service Medal (1946); Mt. Pleasant Citizen of the Year Award (1954); Michigan State Fair Association Distinguished Service Award (1959); Michigan Week Frontiersman Award (1958); Northwoods Institute Merit Award (1960). Member, Rotary; Masons; Shrine. President, National Laymen's Association, Church of the Brethren (1930-31); President, Missionary Board, Church of the Brethren (1926-30). Married to Mary Fisher; two daughters: Mrs. Vivian Mardele Boersma (1921); and Mrs. Lillian Katherine Franklin (1925).

RICHARD H. AUSTIN

Wayne 6th District

Democrat of Detroit; Committees on Finance and Taxation (2nd Vice Chairman); Style and Drafting; Emerging Problems. Certified Public Accountant. Born May 6, 1913 to Richard H. and Lelia Hill Austin in Stouts Mountain, Alabama. Moved to Michigan in 1925. Graduated, Detroit Cass Technical High School, 1931; B.C.S., Detroit Institute of Technology, 1937; attended Wayne State University. Wayne County Board of Supervisors (1962); State Board of Equalization (1962-..); Michigan Tax Study Committee (1957-59); Detroit City Income Tax Study Committee (1960-61); Director, Detroit Urban League (1958-..); President, Booker T. Washington Business Association (1961-..); Director, Michigan Association of Certified Public Accountants (1961-..); Director, Southeastern Michigan Metropolitan Community Research Corporation (1962); President, Detroit Council for Political Education (1961-..). Member, Kappa Alpha Psi; American Institute of Certified Public Accountants; Greater Detroit Board of Commerce; Economic Club of Detroit. Married to Ida B. Dawson; one daughter: Hazel I. (1943).

DELEGATES

MARTIN W. BAGINSKI

Wayne 5th District

Democrat of Detroit; Committees on Legislative Powers (2nd Vice Chairman); Local Government. Deputy Probate Register. Born July 28, 1908 to Walter and Katherine Kusniss Baginski in Portland, Michigan. Graduated, Pittsburgh (Pennsylvania) Fifth Avenue High School, 1926. Served as Sergeant, United States Army in Europe; discharged 1945. State Representative (1933-37). Wayne County Deputy Probate Register, Director of Mental Division (1939-..). Member, Allied Veterans' Council; American Veterans of World War II. Our Lady Queen of Heaven Roman Catholic Church. Married to Anne M. Denek.

FRANK ADELBERT BALCER, JR.

Wayne 8th District

Democrat of Detroit; Committees on Education; Public Information. Retired high school teacher. Born December 9, 1889 to Frank and Elizabeth Balcerkiewicz in Little Rock, Arkansas. Moved to Michigan in 1924. Graduated, University Preparatory School, Tonkawa, Oklahoma, 1914; B.A., University of Oklahoma, 1923; M.A., University of Warsaw (Poland), 1929; L.A., Wayne State University, 1958. Served as Captain, United States Army, discharged 1918; served as Major, United States Army in Africa and Italy, discharged 1946. Wayne County Board of Supervisors (1931-32). Precinct Captain (1932-..); 1st Vice Chairman, 16th Congressional District Democratic Committee (1956-58). Member, Polish National Alliance; Roman Catholic Union; Relief for Poland; Westside Polish Democratic Club; American Legion; Polish Legion of American Veterans; Disabled American Veterans; Veterans of Foreign Wars; AFL-CIO Local 231. Recipient, Community Citation (1947); American Legion Citation (1960). Member, St. Lawrence Roman Catholic Church, Detroit. Married to Anna Pascko; two daughters: Kathleen Ann (1942); and Victoria Elizabeth (1948).

DELEGATES

SIDNEY BARTHWELL

Wayne 2nd District

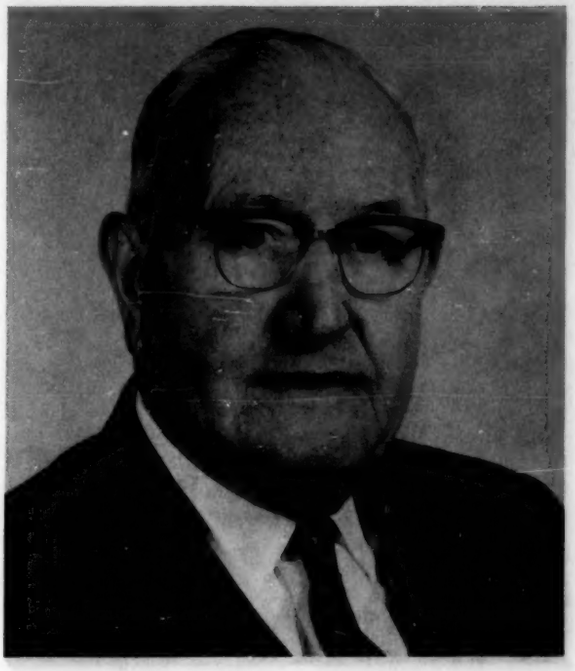
Democrat of Detroit; Committees on Judicial Branch; Education. Pharmacist. Born February 17, 1906 to Jack and Sarah Eubanks Barthwell in Cordele, Georgia. Moved to Michigan in 1922. Graduated, Detroit Cass Technical High School, 1925; B.S., Wayne State University, 1929. Board of Directors, Detroit Urban League; President, Booker T. Washington Business Association; Board of Directors, Wayne State University Alumni Association; Member, Young Men's Christian Association; Kappa Alpha Psi; Sigma Pi Phi; National Business League; Detroit Retail Druggists' Association. Recipient, C. C. Spaulding Award for achievement in business (1943). Member, Plymouth Congregational Church, Detroit. Married to Gladys Marie Whitfield; two children: Mary Jane (1946); and Sidney, Jr. (1947).

DONALD G. BATCHELOR

Genesee 2nd District

Republican of Grand Blanc; Committee on Local Government. Retired teacher, coach and athletic director. Born June 13, 1895 to George and Cora Babb Batchelor in Hicksville, Ohio. Graduated, Hicksville (Ohio) High School, 1913; attended Ohio Northern University, Ada, Ohio; B.S., Grove City (Pennsylvania) College, 1921; attended Michigan State University. Grand Blanc City Assessor (1939-41). Member, Michigan Education Association; Michigan Coaches' Association; Masons. Disciples of Christ Church. Married to Grace F. Dibble; one daughter: Mrs. Donna Joan Kifer (1927).

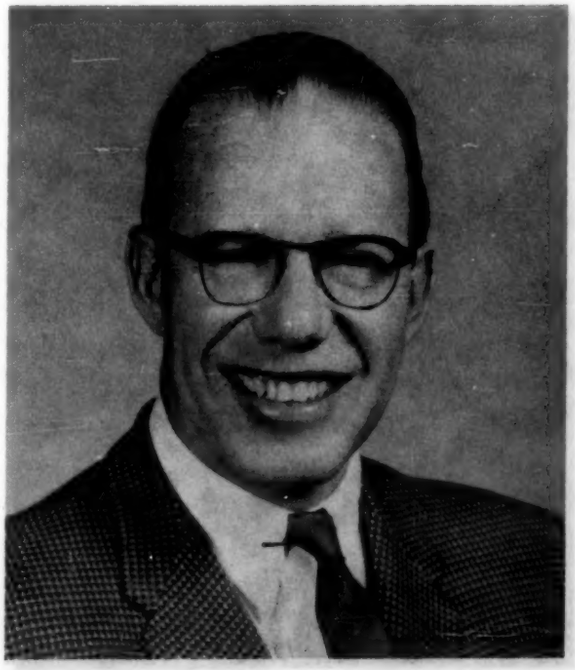
DELEGATES



BERRY NELSON BEAMAN

10th Senatorial District

Republican of Parma; Committees on Declaration of Rights, Suffrage and Elections; Administration. Retired manufacturer. Born August 15, 1890 to Fred and Grace Berry Beaman in Jackson, Michigan. Graduated, Jackson High School, 1909; attended George Washington University, Washington, D.C.; D.B.A. (honorary), Cleary College, 1952. Member, Michigan State Corrections Commission (1942-45); Federal Prison Industries Board (1953-..). Finance Director, Republican State Central Committee (1949-56); Treasurer, Republican State Finance Committee (1956-..). Member, Sigma Chi; Elks. Member, St. Paul's Episcopal Church, Jackson. Married to Lucretia Comstock; two sons: Nelson (1917); and James (1929).



ALVIN MORELL BENTLEY

15th Senatorial District

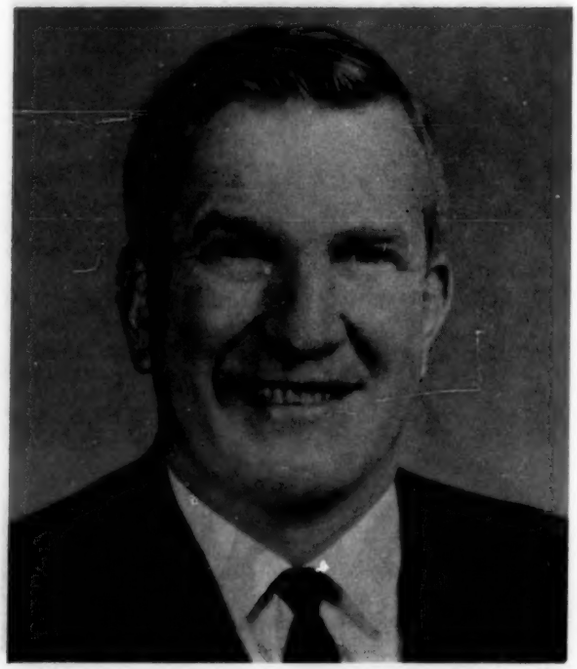
Republican of Owosso; Committees on Education (Chairman); Executive Branch. Born August 30, 1918 to Alvin Morell and Helen Patterson Bentley in Portland, Maine. Graduated, Southern Pines (North Carolina) High School, 1934; graduated, Asheville (North Carolina) School, 1936; A.B., University of Michigan, 1940; attended Turner Diplomatic School, Washington, D.C.; M.Bus.Sci. (honorary), Cleary College, 1951; LL.D. (honorary), Olivet College, 1955; D.Bus.Sci. (honorary), Cleary College, 1959. Representative in Congress (1952-60); United States Foreign Service Officer (1941-50). Recipient, Daughters of the American Revolution Award of Merit (1955); Veterans of Foreign Wars Citizenship Award (1954); Wayne County Allied Veterans' Council Golden Award (1961); City of Owosso Certificate of Commendation (1961). Trustee, Asheville School; Trustee, Cleary College; Trustee, Detroit Institute of Technology; Director, National Citizenship Conference; Trustee, American Good Government Society; Director, Young Men's Christian Association; Director, Salvation Army; Director, Shiawassee County American Red Cross. Member, Owosso Chamber of Commerce; William Penn Fraternal Association; Historical Society of Michigan; Theta Delta Chi Fraternity; Owosso Exchange Club; Owosso Optimist Club; Owosso Rotary Club; Owosso Kiwanis Club. Director International Council of Christian Leadership; Owosso Congregational Church. Married to Arvella Ann Duescher; five children: Alvin Morell, Jr. (1941); Mrs. Helen Dawson (1943); Michael Drummond (1945); Clark Henry (1954); and Ann Marie (1961).

DELEGATES

DONNMI BINKOWSKI

2nd Senatorial District

Democrat of Detroit; Committees on Finance and Taxation; Miscellaneous Provisions and Schedule. Attorney. Born October 26, 1929 to Alex and Helen Wojtowicz Binkowski in Detroit, Michigan. Graduated, Detroit John J. Pershing High School, 1947; A.B., University of Michigan, 1951; attended University of Detroit; attended Detroit College of Law; LL.B., Wayne State University, 1956. Served as Corporal, United States Army in Austria; discharged 1961. Assistant Attorney General (1957-59). Democratic Precinct Delegate (1960); Delegate, State Democratic Concentions (1958-60); Vice Chairman, 1st Congressional District Young Democrats (1960-62). President, Detroit Chapter, Polish Immigration Committee (1959); Secretary, Polish-American Foundation of Michigan (1961-..). Member, American Civil Liberties Union; American Legion; Central Citizens' Committee; Lansing World Affairs Council; Good Will Voters' Club; Veterans of Foreign Wars; Polish Legion of American Veterans; Polish National Alliance; North Detroit Dom Polski; Michigan Bar Association; American Bar Association; Advocates' Club of Detroit; Catholic Lawyers' Society; Delta Theta Phi; Judicature Society. Roman Catholic; Catholic Interracial Council of Detroit; Knights of Columbus; National Council of Catholic Men. Married to Sharon J. Hromek; two daughters: Donna F. (1959); Beth Ann (1960).



ROBERT HEINZ BLANDFORD

Kent 1st District

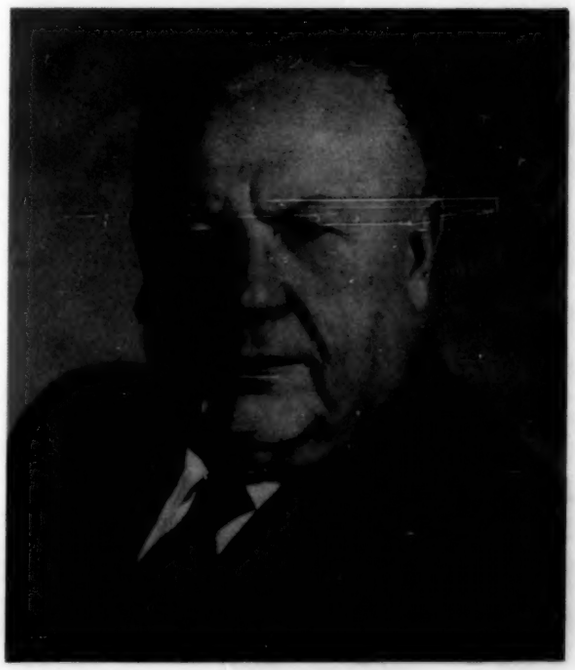
Republican of Grand Rapids; Committees on Legislative Organization; Style and Drafting. Lumber Dealer. Born May 20, 1919 to Glen and Millie Heinz Blandford in Grand Rapids, Michigan. Graduated, Grand Rapids Union High School, 1936; graduated, Grand Rapids Junior College, 1938; B.S., Northwestern University, Evanston, Illinois, 1940; M.A., Northwestern University, 1941. Served as Lieutenant Commander, United States Navy, in the Pacific; discharged 1946. Member, Kent County Board of Supervisors (1953-61); Grand Rapids City Commission (1955-61). Republican Precinct Delegate (1955-61). Member, Grand Rapids Kiwanis Club; American Legion; Masons. Protestant. Married to Shirley Lou Martin; one son: Daniel Martin (1953).

DELEGATES

HAROLD E. BLEDSOE

Wayne 11th District

Democrat of Detroit; Committees on Miscellaneous Provisions and Schedule (2nd Vice Chairman); Judicial Branch. Attorney and farmer. Born August 29, 1896 to William and Mattie Smith Bledsoe in Marshall, Texas. Moved to Michigan in 1918. Graduated, Kansas City (Missouri) Lincoln High School, 1917; B.A., Howard University, Washington, D.C., 1922; LL.B., University of Detroit, 1925. Served as Sergeant, United States Army; discharged 1919. Michigan Assistant Attorney General (1932); Michigan Corrections Commission (1936); Michigan Labor Commission (1941). Delegate at Large, Democratic National Conventions (1932; 1936). President, Omega Phi Fraternity (1929). Member, Michigan State Bar; Detroit Bar Association; Wolverine Bar Association; Michigan Historical Society. Member, Second Baptist Church, Detroit. Married to Mamie Geraldine Neal; three children: Mrs. Cornelia Louise Mills (1925); Mrs. Geraldine Ford (1927); and William F. (1929).



ROSCOE OSMOND BONISTEEL

33rd Senatorial District

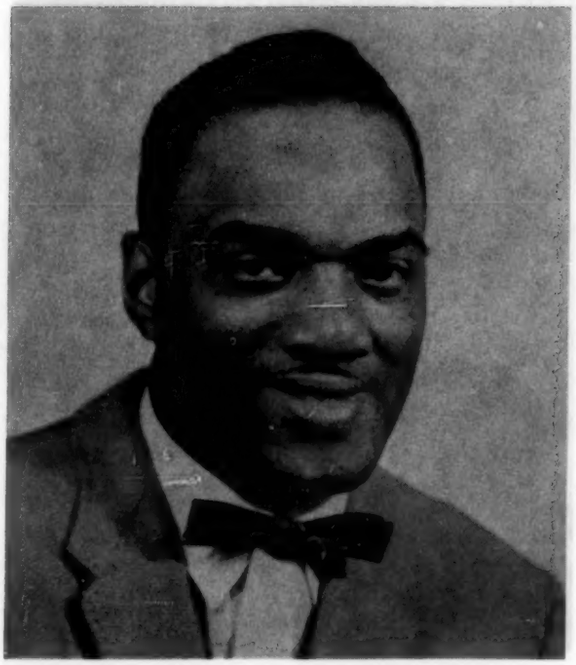
Republican of Ann Arbor; Committees on Emerging Problems (1st Vice Chairman); Education (Chairman Subcommittee on Higher Education); Select Committee To Place New Constitution on November 1962 Ballot. Attorney. Born December 23, 1888 to Milton and Frances Whyte Bonisteel, Sidney Crossing, Ontario. Graduated, Harrisburg (Pennsylvania) High School; LL.B., University of Michigan; LL.D. (honorary), Dickinson College, Carlisle, Pennsylvania, 1952; D.Sc. (honorary), Cleary College. Captain, U.S. Air Service (Area Intelligence), World War I; Discharged 1919. Member War Preparedness Board, World War I, Washtenaw County; Chairman, Appeal Board Selective Service, 2nd Congressional District of Michigan, World War II. Regent, University of Michigan (1946-59); Board of Governors, Wayne State University (1956-59); Honorary Alumnus Wayne State University; Governor William L. Clements Library Associates; Trustee and Chairman Executive Committee, National Music Camp Interlochen and Interlochen Arts Academy; Phi Kappa Sigma; Trustee, Cleary College (1951-..); President, Dickinson College Michigan Club; Azazels (University of Michigan); Delegate to Republican State Conventions; Delegate to Republican National Conventions, (1928) Kansas City, (1944) Chicago; Ann Arbor City Attorney (1921-28); President, State Bar of Michigan (1936-37); House of Delegates, American Bar Association (1936-41); American Law Institute. President, Historical Society of Michigan (1961-62); Rotary, District Governor, Rotary International (1934-35); Judge Advocate, American Legion (1934-35); Grand Master of Masons (1929-30) in Michigan, 33°; State Board of Law Examiners (1945-52); Michigan Society for Crippled Children; Vice President and Director, Michigan Life Insurance Company; honorary member, Kiwanis; member First Presbyterian Church, Ann Arbor. Married to Lillian Coleman Rudolph; five children: Mrs. Jean Ellen Knecht (1915); Mrs. Betty Dame Johnson (1917); Mrs. Frances Coleman Fisher (1919); Mrs. Nancy Ann Calcutt (1921); and Roscoe Osmond, Jr. (1921).

DELEGATES

O. LEE BOOTHBY

7th Senatorial District

Republican of Niles; Committee on Legislative Organization. Attorney. Born March 17, 1933 to Robert and Naomi Gillett Boothby in Bakersfield, California. Moved to Michigan in 1953. Graduated, Takoma (Takoma Park, Maryland) Academy, 1951; attended Emmanuel College, Berrien Springs, Michigan; LL.B., Wayne State University, 1957. Served as Private, United States Army; discharged 1958. Justice of the Peace; Berrien County Chief Assistant Prosecutor; Edwardsburg Village Attorney; Precinct Delegate; Chairman, Berrien County Young Republicans; Berrien County Republican Committee; President, Southwestern Michigan Justices of the Peace Association (1960-61). Member, Lions; Niles Chamber of Commerce; Edwardsburg Chamber of Commerce; American Bar Association; Michigan State Bar; Berrien County Bar Association; Cass County Bar Association; Michigan Justices of the Peace Association; Toastmasters International. Seventh Day Adventist. Married to Carole Maxine Larson; two daughters: Robin Rene (1958); and Denise Diane (1961).



ROBERT BOWENS

Oakland 2nd District (appointed July 11, 1962.)*

Democrat of Pontiac; Committees on Executive Branch; Emerging Problems. Barber. Born March 21, 1922 to Robert and Hattie Hood Bowens, Sr. in Nashville, Tennessee. Moved to Michigan in 1945. Graduated, College Hill High School, Columbia, Tennessee, 1940; attended Industrial Institute, Chicago, Illinois; University of Detroit; graduated, Michigan Barber College, Detroit. Served as Pfc., Quarter Master Corps, Chemical Warfare, United States Army, Pacific Theater, discharged 1945. Precinct Delegate, ten years; Corresponding Secretary, Democrat Executive Board, two years. Assistant Scout Master, Boy Scouts, one year. Junior Warden, Gibraltar Lodge 19, Masons. Member, Macedonia Baptist Church; Deacon Board, two years; Usher Board, seven years; Chairman, Macedonia Church Youth Program, four years. Married to Nellie J. Cooley; one son: Walter Bowens (1944).

***Appointed by Governor Swainson to fill the vacancy created by the resignation of Delegate Raymond L. King of Pontiac.**

DELEGATES

RUSSELL WALLEN BRADLEY

30th Senatorial District (Appointed April 11, 1962)*

Democrat of Menominee; Committees on Rules and Resolutions; Legislative Organization. Attorney. Born August 12, 1921 to Martin and Jennie Wallen Bradley in Hermansville, Michigan. Graduated, Grosse Pointe High School, 1939; B.A., Wayne State University, 1945; LL.B., Wayne State University, 1953; attended University of Michigan; attended Cornell University, Ithaca, New York. Served as T-3, United States Army in China; discharged 1946. Menominee County Prosecuting Attorney (1959-..); Menominee County Public Administrator (1957-58); cochairman, Menominee County Democratic Committee (1962-..) President, Menominee County Democratic Club (1956-58). President, Menominee Advancement Council (1959); member, Chamber of Commerce; Am-Vets; American Red Cross. Ruling Elder, Presbyterian Church (1959-..). Married to Alice Marian Knapp; six children: David Russell (1947); Peter Alan (1949); Robert William (1951); Elizabeth Ann (1952); Karl John (1954); and Richard Walter (1958).

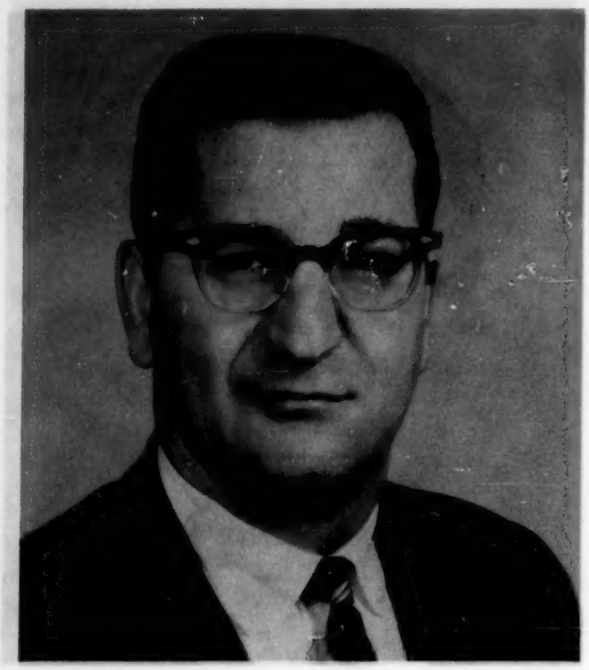
***Appointed by Governor Swainson to fill the vacancy created by the resignation of Delegate Kent Lundgren of Menominee.**

D. HALE BRAKE

25th Senatorial District

Republican of Stanton; Committees on Finance and Taxation (Chairman); Local Government. Attorney and farmer. Born March 5, 1891 to David and Bertha Hale Brake in Caledonia, Michigan. Graduated, Fremont High School, 1911; A.B., Albion College, 1916; J.D., University of Michigan, 1922; J.D. (honorary), Detroit College of Law, 1953; LL.D. (honorary), Hillsdale College, 1960. Prosecuting Attorney, Montcalm County (1927-31); State Senator (1935-42); State Treasurer (1943-54). Founder and President (1943-61), Institute of Local Government; Director, Education Division, State Association of Supervisors (1961-..). Member, Delta Tau Delta; Masons; Rotary. Member, Congregational Church. Married to Marjorie Valentine; three children: Valentine (1918); John (1932); and Donald (1937).

DELEGATES



GARRY ELDRIDGE BROWN

6th Senatorial District

Republican of Schoolcraft; Committee on Legislative Organization. Attorney. Born August 12, 1923 to E. Lakin and Blanche Jackson Brown in Schoolcraft, Michigan. Graduated, Schoolcraft High School, 1941; attended Michigan State University; A.B., Kalamazoo College, 1951; LL.B., George Washington University, Washington, D.C., 1954. Served as 2nd Lieutenant, United States Army in the Pacific; discharged 1947. United States Commissioner (1957-..). President, Kalamazoo County Young Republican Club (1955-57). Chairman of the Board, Schoolcraft Junior Chamber of Commerce (1958). Member, American Legion; Kalamazoo County Bar Association; Michigan Bar Association; American Bar Association; Elks. Protestant. Married to Frances Esther Wilkins; three daughters: Frances Esther (1956); Mollie Earl (1958); and Amelia Logan (1960).

THEODORE S. BROWN

Wayne 20th District

Democrat of Garden City; Committees on Emerging Problems (2nd Vice Chairman); Legislative Organization; Education. Attorney. Born April 23, 1930 to Stanley and Rose Mehalowska Brown in Detroit, Michigan. Graduated, Detroit Northwestern High School, 1947; attended University of Michigan; LL.B., University of Detroit, 1953. Served as 1st Lieutenant, United States Marine Corps; discharged 1958. Vice President, 16th Congressional District Young Democrats (1960-61). Unitarian. Married to Catherine Morgan; three children: Tanya Rose (1954); Lucien Stanley (1956); and Jefferson Charles (1957).

DELEGATES

PETER LAWRENCE BUBACK

Wayne 3rd District

Democrat of Detroit; Committees on Local Government (2nd Vice Chairman); Declaration of Rights, Suffrage and Elections. Chief Deputy County Clerk. Born March 22, 1910 to John and Veronica Mecar Buback in Trindad, Colorado. Moved to Michigan in 1925. Attended Detroit Northern Evening High School; attended Wayne State University. Member, State Fair Commission (1952-62); Governor's Commission on the Recodification of Election Laws (1952-53); Legislative Election Study Commission (1954-55); Secretary of State's Election Procedure Review Commission (1961-62). Chairman, 1st Congressional District Democratic Committee (1944-46); Delegate to State Democratic Conventions (1936-52); President, St. Joseph High School Dad's Club; member, S.S. Cyril and Methodius Roman Catholic Church; St. Raymond's Roman Catholic Church. Married to Mary A. Simon; five children: Mrs. Barbara Ann Walker (1936); Lawrence Peter (1940); Paul A. (1942); Mary Jo (1948); and Kenneth A. (1950).

RUTH GIBSON BUTLER (MRS.)

Houghton District

Republican of Houghton; Committees on Declaration of Rights, Suffrage and Elections; Rules and Resolutions. Homemaker; retired teacher. Born July 11, 1891 to Thomas Henry and Alice Quinn Gibson in Republic, Michigan. Graduated, Houghton High School, 1909; graduated, Ferris Institute, 1912. Second Vice Chairman, Houghton County Republican Committee (1959-..); member, Baraga County Republican Committee (1940); member, Republican State Central Committee (1961-62). Past Upper Peninsula Chairman, Michigan Federation Business and Professional Women; member, League of Women Voters; Michigan Historical Society; Houghton County Museum Association; Hancock Home Study Club; American Cancer Society; Hospital Guild. Recipient, Ruth Huston Whipple Award (1962); Business and Professional Women of Michigan Award (1962). President, Cloverland Association; President, Faculty Womens Club, Michigan College of Mining and Technology; Worthy Matron, Grand Warder, Order of Eastern Star. Member, Trinity Episcopal Church, Houghton; President, Trinity Guild; member, Altar Guild; Chairman, Centennial Committee; Church Historian; Publicity Chairman, United Church Women of Portage Lake. Married to Jesse C. Butler (deceased); three children: F. Gibson Butler; Mrs. Elizabeth Jepson; and Mrs. Nathalie Tschantz.

DELEGATES

ANNE M. CONKLIN (MRS.)

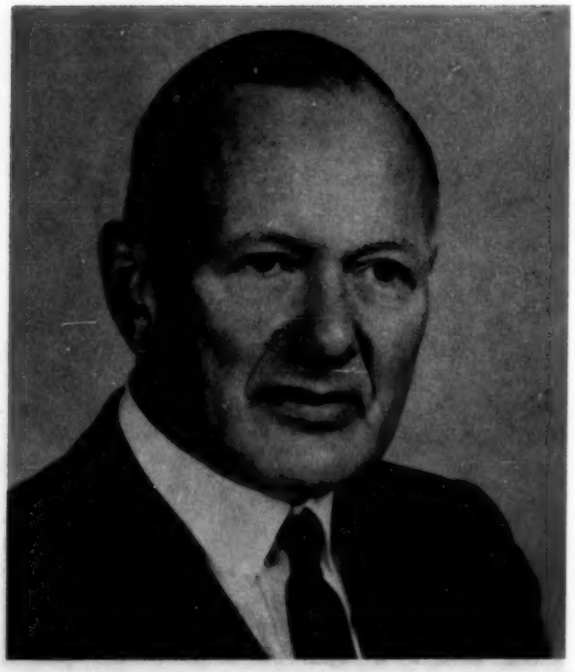
Wayne 21st District

Republican of Livonia; Committees on Education; Public Information. Homemaker. Born January 27, 1925 to Forrest and Anna Desotelle Daniels in Sanford, Maine. Graduated, Framingham (Massachusetts) Academy, 1942. President, Livonia Republican Women's Club (1954-56); member, Republican State Central Committee (1957-59); Secretary, 17th Congressional District Republican Committee (1958-60). Secretary, Livonia Community Council; Board of Education Advisory Committee; member, Livonia Red Cross. Member, St. Paul's Presbyterian Church, Livonia. Married to Arthur Gorton Conklin; three children: Kathleen Anne (1944); Bruce Alan (1947); and Stephen Blaine (1951).

WILLIAM BYRNES CUDLIP

Wayne 13th District

Republican of Grosse Pointe Shores; Committees on Style and Drafting (Chairman); Judicial Branch. Attorney. Born March 4, 1904 to William J. and Luella Byrnes Cudlip in Iron Mountain, Michigan. Graduated, Iron Mountain High School, 1921; attended Swarthmore (Pennsylvania) College; LL.B., University of Michigan, 1926. Commission for the Compilation of Michigan Laws (1948); Commission for the Recodification of Laws Relating to Michigan Financial Institutions (1936). Member, Detroit Council of Foreign Relations; American Bar Association; Michigan Bar Association; Detroit Bar Association. Trustee, Detroit Institute for Economic Education (1951-); 1st Vice President (1951-53) and Director, Detroit Club (1944-53). Member, Phi Kappa Psi; Phi Delta Phi. Roman Catholic. Married to Lynwood Rockwell Bope; five children: Mrs. Mary Luella Jenkins (1929); William John, II (1932); David Rockwell (1933); Mrs. Lynwood Jean Ryan (1936); and Charles Thomas (1940).

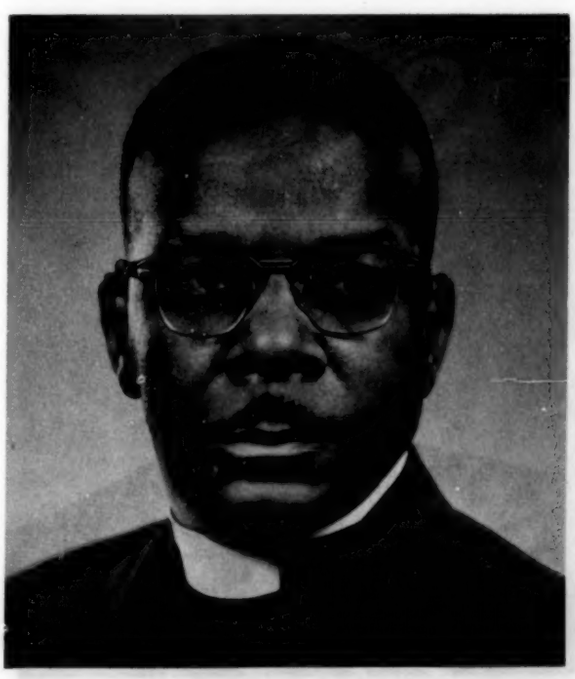


DELEGATES

CATHERINE MOORE CUSHMAN (MRS.)

Wayne 16th District

Democrat of Dearborn; Committees on Local Government; Style and Drafting. Homemaker. Born August 10, 1916 to George Edwin and Gertrude Snow Moore in Detroit, Michigan. Graduated, Dearborn High School, 1933; graduated Bradford (Massachusetts) Academy, 1934; attended Swarthmore (Pennsylvania) College; A.B., University of Michigan, 1938; attended Wayne State University; attended University of Michigan. Member, Dearborn School Millage Committee (1956); Dearborn Civic Committee on School Needs (1959-60); Citizen—Board High School Facilities Advisory Committee (1960-61). President and Board member, Detroit League of Women Voters (1943-49); Board member, Dearborn League of Women Voters (1951-..); Board member, Young Women's Christian Association (1953; 1954; 1957); United Church Women of Dearborn (1959-61); Board member, University of Michigan Alumni Club of Dearborn (1961-..); Dearborn Constitutional Convention Coordinating Committee. Recipient, Girl Scout "Thanks Badge" (1958). Member of the Vestry, Christ Episcopal Church (1956-59); President, Christ Episcopal Church Women (1954-56); President, Thomas Cramner Fellowship, Christ Church (1958). Married to Edward Lowell Cushman; two children: Robert Moore (1942); and Elizabeth Ann (1945).



THE REVEREND CANON MALCOLM GRAY DADE

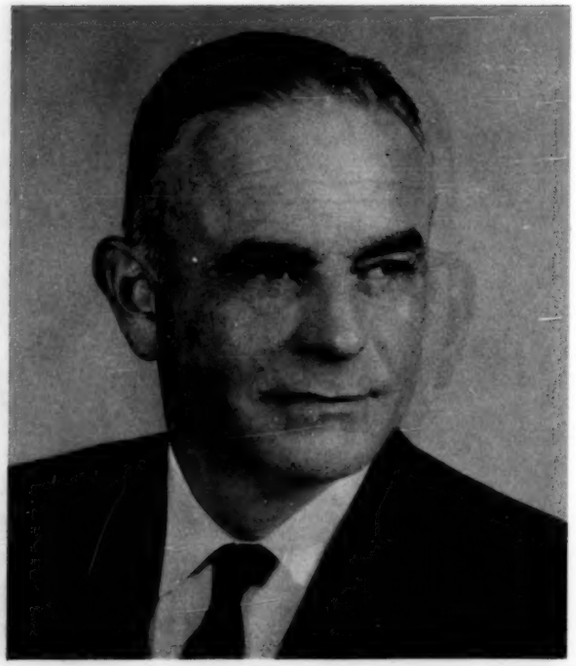
Wayne 4th District

Democrat of Detroit; Committee on Declaration of Rights, Suffrage and Elections. Rector, St. Cyprian's Episcopal Church, Detroit. Born February 27, 1903 to Isiah C. and Margaret Warfield Dade in New Bedford, Massachusetts. Moved to Michigan in 1936. Graduated, Williston Academy, East Hampton Massachusetts, 1924; B.A., Lincoln University, Chester County, Pennsylvania, 1928; attended Episcopal Theological School, Cambridge, Massachusetts; attended Wharton School of Finance, Philadelphia, Pennsylvania. Served as Chaplain to Michigan troops, World War II. President, Wayne County Training School (1952-..); Executive Council, Diocese of Michigan (1943). 1st Interracial Committee, National Association for the Advancement of Colored People (1940); Committee on Urban Renewal (1960); Chaplain, Detroit House of Correction (1960); White House Commission on Children and Youth (1960); Board of Directors, Detroit Good Will Industries (1956); National Conference of Christians and Jews (1942-..); Board of Directors, Detroit American Red Cross (1956-59). Recipient, Honorary Canon, Cathedral Church of St. Paul (1960); Omega Psi Phi Fraternity Award (1959); City of Detroit Historical Society Award (1952); "Canon Dade Day," City of Detroit, (1961). Member, West Side Human Relations Council; City Loyalty Commission; Alpha Phi Alpha Fraternity; Nacirema Club; Masons; National Association for the Advancement of Colored People. Board, World Conference of Brotherhood; World Youth Conference for the Episcopal Church; Bishop's Bi-Racial Subcommittee; Pastors' Union. Married to Bonnie Jean Denham; four children: Malcolm G., Jr. (1931); Dwaine O. (1943); Margaret Jean (1949); and Julie Elaine (1955).

DELEGATES

ROBERT JOHN DANHOF
23rd Senatorial District

Republican of Muskegon; Committee on Judicial Branch (Chairman). Attorney. Born August 24, 1925 to Nicholas J. and Joan Buter Danhof in Grand Rapids, Michigan. Graduated Zeeland High School, 1943; B.A., Hope College, 1947; LL.B., University of Michigan, 1950. Assistant United States Attorney, Western District of Michigan (1960-61). Board of Directors, Junior Chamber of Commerce (1952-53; 1959-60); Secretary, Muskegon County Bar Association (1952); President Muskegon Chapter, Hope College Alumni association (1955); member, State Bar of Michigan; American Bar Association; University of Michigan Alumni Association: Alenside Civic Association. Deacon and Elder, Reformed Church in America (1952-55; 1957-60); Board of Directors and President, Christian Home for the Aged (1954-60). Married to Marguerite DenHerder; three children: William J. (1949); Kenneth R. (1953); and Carol M. (1960).



CHARLES J. DAVIS
Ingham 2nd District (Resigned March 17, 1962)*

Republican of Onondaga; Committees on Finance and Taxation; Administration. Farmer and businessman. Born December 29, 1910 to Charles A. and Mable Jennings Davis in Eaton County, Michigan. Graduated, Mason High School, 1927; attended Olivet College; B.S., Michigan State University, 1931. President, Ingham County Farm Bureau (1945-46); Board of Directors, Ingham County Soil Conservation District (1945-47); Ingham County Board of Education (1947-59); Federal Agricultural Stabilization and Conservation Committee (1957-61). Recipient, Michigan State University Centennial Citation (1955). Member, Knights of Pythias; Phi Kappa Phi. Member, Aurelius Baptist Church. Married to Cecil Lenore Douglas; two children: Jon (1935); and Julie (1938).

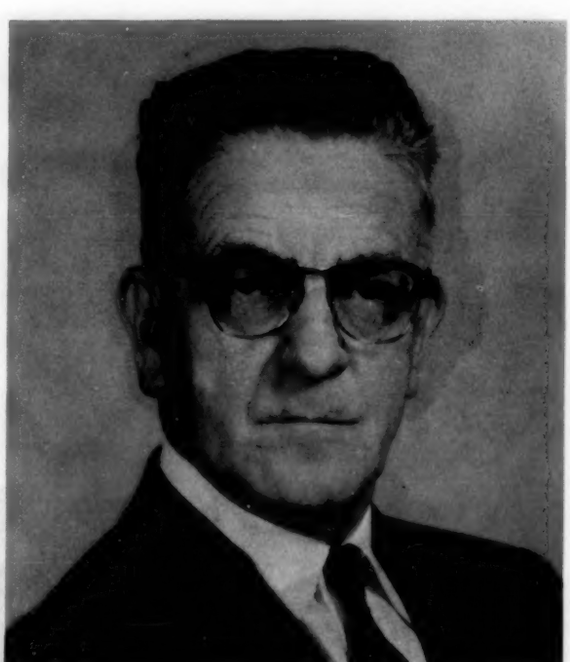
***Resigned to seek election to the Michigan House of Representatives; elected March 19, 1962.**

DELEGATES

HERMAN DEHNKE

Alpena District

Republican of Harrisville; Committees on Legislative Organization (1st Vice Chairman); Style and Drafting. Retired circuit judge. Born November 26, 1887 to Hermann and Katherine Sattler Dehnke in Henry County, Ohio. Attended Napoleon (Ohio) High School; attended Ferris Institute; LL.B., Valparaiso (Indiana) University, 1912. Alcona County Prosecuting Attorney (1915-27); Judge, 23rd Circuit (1927-59); Board of Education (1919-25). Trustee and Past President, Michigan Tuberculosis Association (1942-62); Director, National Tuberculosis Association (1952-60); Secretary, National Tuberculosis Association (1960-62). Member, Grange; Odd Fellows; Masons. Elder, Westminster Presbyterian Church Harrisville. Married to Maude F. Dodge; five children: Mrs. Spray Clack (1914); Mrs. Helen Smith (1922); Theodore H. (1924); Mrs. Grace Ogden (1927); and Carl B. (1930).

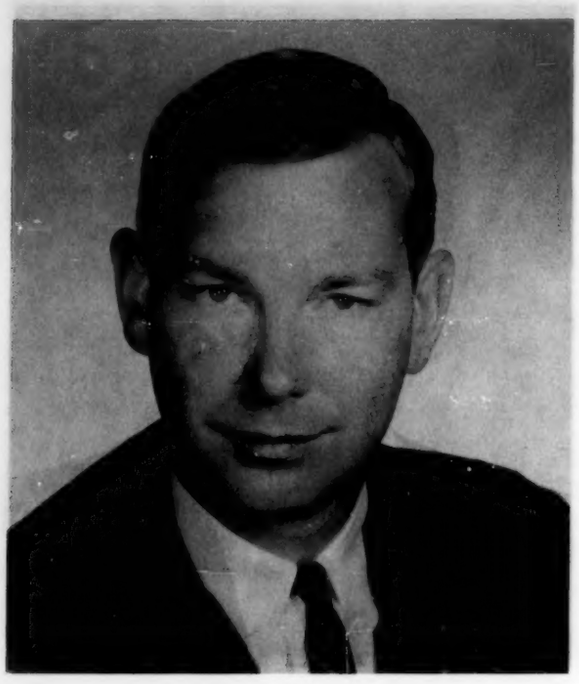


CLARENCE B. DELL

Chippewa District

Republican of St. Ignace; Committee on Local Government. Realtor. Born May 11, 1899 to John and Clarice King Dell in Fibre, Michigan. Attended Ferris Institute. Township Treasurer (1925-26); Township Supervisor (1927-29); Mackinac County Treasurer (1931-55; 1957-62); secretary to Representative Victor A. Knox; Mackinac County Branch Manager for Secretary of State (1935-36; 1939-54); Postmaster, Ozark, Michigan (1922-25). Chairman, Mackinac County Republican Committee (1940-54). Member, Michilimackinac Historical Society; St. Ignace Chamber of Commerce; Masons. Senior Warden and Lay Reader, Church of the Good Shepherd (Episcopal), St. Ignace; Bishop's Vestry Committee, Episcopal Diocese of Northern Michigan (1939-62). Married to Irene A. Davis; two sons: Donald D. (1926); and Richard L. (1931).

DELEGATES



WALTER DALE DeVRIES

Kent 1st District

Republican of Grand Rapids; Committees on Administration (Chairman); Miscellaneous Provisions and Schedule. Assistant Professor of Political Science, Calvin College. Born November 13, 1929 to Martin and Catherine Vander Leek DeVries in Holland, Michigan. Graduated, Holland Christian High School, 1947; attended Holland Business College; B.A., Hope College, 1954; M.A., Michigan State University, 1955; Ph.D., Michigan State University, 1960. Served as Corporal, United States Army in Korea; discharged 1949 and 1951. Administrative Assistant to the Speaker of the House of Representatives (1957-58; 1959-61); member, Governor's Commission on Labor Mediation Dispute (1961); Research Assistant, Flint Metropolitan Area Study (1955); consultant, Grand Rapids Metropolitan Area Study (1956). Delegate, Republican State Conventions (1954; 1958; 1959; 1960; 1961); Assistant Doorkeeper, Republican National Convention (1956); Assistant Sergeant at Arms, Republican National Convention (1960); Republican State Central Committee Constitutional Convention Campaign Planning Committee (1961); Research Advisory Committee, Republican State Central Committee (1959). Member, Calvin Christian Reformed Church, Grand Rapids. Married to Lois Arlene Cook; four sons: Michael Dale (1952); Robert Cook (1953); Steven Richard (1957); and Walter Dann (1962).

ANN ELIZABETH DONNELLY (MISS)

Wayne 15th District

Republican of Highland Park; Committees on Judicial Branch; Miscellaneous Provisions and Schedule. Attorney. Born June 3, 1924 to Dr. Leo and Emma Keightley Donnelly in Detroit, Michigan. Graduated, Highland Park High School, 1942; A.B., University of Michigan, 1946; J.D., Detroit College of Law, 1951. Member, Collegiate Sorosis; Highland Park Business and Professional Women; Detroit Bar Association; State Bar of Michigan; Women Lawyers of Michigan; Women's City Club of Detroit.

DELEGATES

DEAN B. DOTY

Eaton District

Republican of Grand Ledge; Committees on Finance and Taxation; Executive Branch. Florist. Born August 3, 1919 to Mark and Gladys Walsh Doty in Midland, Michigan. Graduated, Grand Ledge High School, 1937. Served as Sergeant, United States Army (32nd Infantry Division) in the Pacific; discharged 1946. Treasurer, Grand Ledge Board of Education (1951-60); Supervisor, City of Grand Ledge 1955-. .). Chairman, Eaton County Republican Committee (1956-60); President, Central Michigan Florists' Association (1947-48). Member, Grand Ledge Chamber of Commerce; Grand Ledge Rotary Club; American Legion; Grand Ledge Merchants' Association; Society of American Florists; Masons; Odd Fellows; Michigan State Florists' Association. Past Vestryman, Trinity Episcopal Church, Grand Ledge. Married to Roberta Boswoth; three children: Joanne C. (1942); Robert Ellis (1947); and Janet Lee (1952).

DONALD D. DOTY

Monroe County District

Republican of Monroe; Committee on Legislative Organization. Farmer. Born November 11, 1923 to Guy and Elsie Reber Doty in Monroe, Michigan. Graduated, Monroe High School, 1941. Township Supervisor (1953-62); Township Clerk (1949-53); Board of Education (1949-55). Chairman, Monroe County Board of Supervisors (1954-56). Member, Masons; Grange; Official Board, St. Paul's Methodist Church (1956-62). Married to Beverly Mae Carr; three children: Pamela Susan (1952); Saundra Louise (1954); and Donald Carr (1956).

DELEGATES

EDWARD LEON DOUGLAS

Wayne 8th District

Democrat of Detroit; Committtees on Public Information (2nd Vice Chairman); Education. Attorney and teacher. Born May 29, 1927 to Levi and Minnie Robinson Douglas in Detroit, Michigan. Graduated, Detroit Northern High School, 1944; B.S., West Virginia State College, Institute, West Virginia, 1948; attended West Virginia University, Morgantown, West Virginia; LL.B., Detroit College of Law, 1960; attended Army Chemical School, Edgewood, Maryland; attended Wayne State University; LaSalle University, Chicago, Illinois. Served as 1st Lieutenant and Captain (Reserve), United States Army in Far East and Korea; separated 1954. Legal Counsel and Executive Secretary, 18th and 20th Wards Democratic Club (1961). President, Fisher Bassett Civic Club (1960); President, West Virginia State College Alumni Association (1959); President, Dependable Investors' Club (1961). Member, Parent-Teacher Association: National Association for the Advancement of Colored People; Detroit Bar Association; State Bar of Michigan; Wolverine Bar Association; Detroit Council of Math Teachers; Detroit Education Association; Detroit Federation of Teachers; Independent Voters of Michigan; Omega Psi Phi Fraternity. Board of Elders, Christian Men's Fellowship, United Christian Church (1961); Church Guidance Council, Urban League (1961). Married to Kathleen Ellis; four children: Kathleen Reneé Louise (1951); Sharon Lynn (1953); Edward Leon, II (1957); and Lawrence Kevin (1959).

TOM DOWNS

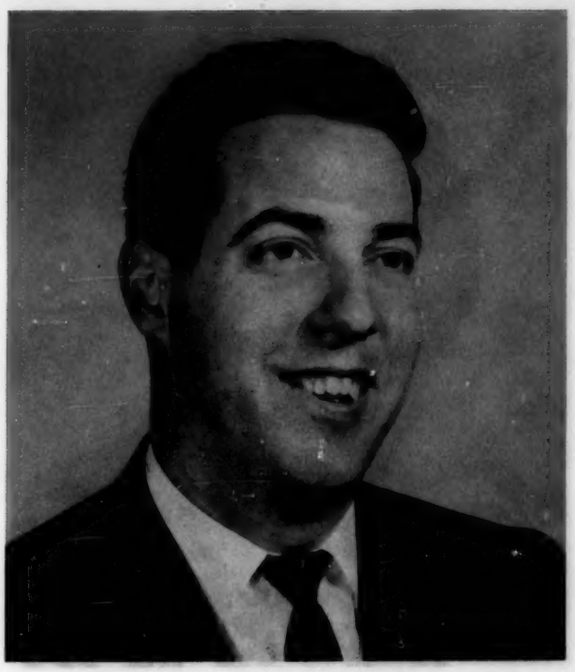
Wayne 4th District

Democrat of Detroit; Vice President; Committees on Emerging Problems; Legislative Powers. Attorney, Michigan AFL-CIO. Born July 11, 1916 to George and Elisabeth Seiling Downs in Spokane, Washington. Moved to Michigan in 1934. Graduated, Spokane (Washington) Lewis and Clark High School, 1933; B.A., University of Michigan, 1938; LL.B., University of Michigan, 1940. Served as Seaman 2/c, United States Navy, World War II; discharged 1944. Member, Michigan Employment Security Commission (1949- . .); Executive Board, Michigan United Fund (1958- . .). Member, Michigan State Bar Association. Member, Unitarian-Universalist Church. Married to Alice Elizabeth Mohrmann; four children: Timothy (1942); Elizabeth Laura (1945); Catherine Alice (1952); and Sarah Georgiana (1954).

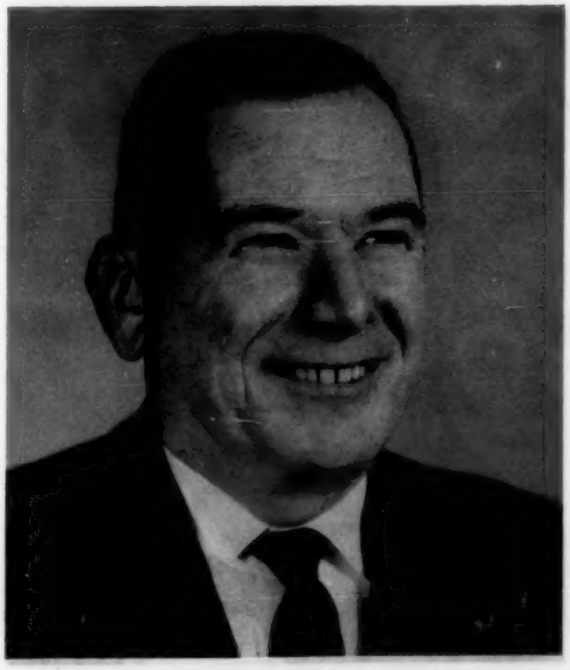
DELEGATES

CLYNE WARD DURST, JR.

Lenawee County District



Republican of Adrian; Committees on Executive Branch; Miscellaneous Provisions and Schedule. Attorney. Born October 27, 1930 to Clyne Ward and Dorothy Bichmann Durst, Sr. in St. Louis, Missouri. Moved to Michigan in 1932. Graduated, Grand Ledge High School, 1948; B.A., University of Michigan, 1952; LL.B., University of Michigan, 1954. Lenawee County Public Administrator (1958-60). Vice Chairman, Adrian Republican Committee (1960-..); Lenawee County Republican Committee (1960-..). President (1959-60) and Chairman of the Board (1960-61), Adrian Junior Chamber of Commerce; Director, Adrian Kiwanis Club (1960); Director, Adrian Young Men's Christian Association (1960); Director, Lenawee County Red Cross Chapter (1960-..); President, Lenawee County Bar Association (1961-..); Director, Lenawee Youth Center; Chairman, United Fund Division (1959). Recipient, Adrian Junior Chamber of Commerce Outstanding Young Man of the Year Award (1961); Michigan Junior Chamber of Commerce Michigan's Five Outstanding Young Men of the Year Award (1962). Member, Elks. Member, Adrian First Methodist Church. Married to Jean M. Luethjohan; three children: Constance Sue (1954); Cynthia Jean (1956); and Charles Frederick (1959).



ARTHUR G. ELLIOTT, JR.

Oakland 5th District

Republican of Pleasant Ridge; Committees on Local Government (Chairman); Legislative Organization. Realtor and businessman. Born October 17, 1916 to Arthur G. and Geraldine Neidlinger Elliott, Sr. in Indianapolis, Indiana. Moved to Michigan in 1919. Graduated Ferndale Lincoln High School, 1933. Attended Highland Park Junior College; attended Michigan State University. Served as Captain, United States Army in the Pacific; discharged 1946. Chairman, Pleasant Ridge Planning Commission (1958-60); member, Board of Supervisors 1959-62. Chairman, Oakland County Republican Committee (1957-61); member, Republican State Central Committee (1955-58). President, Ferndale Rotary Club (1961-62); Vice President, North Woodward Board of Realtors (1960). Member, Royal Oak Chamber of Commerce; Detroit Real Estate Board; Society of Residential Appraisers; Delta Chi. Member, First Church of Christ, Scientist, Birmingham. Married to Elizabeth Ann Vining; three sons: Arthur G., III (1943); Thomas H. (1946); and David C. (1948).

DELEGATES

DAISY ELIZABETH ELLIOTT (MRS.)

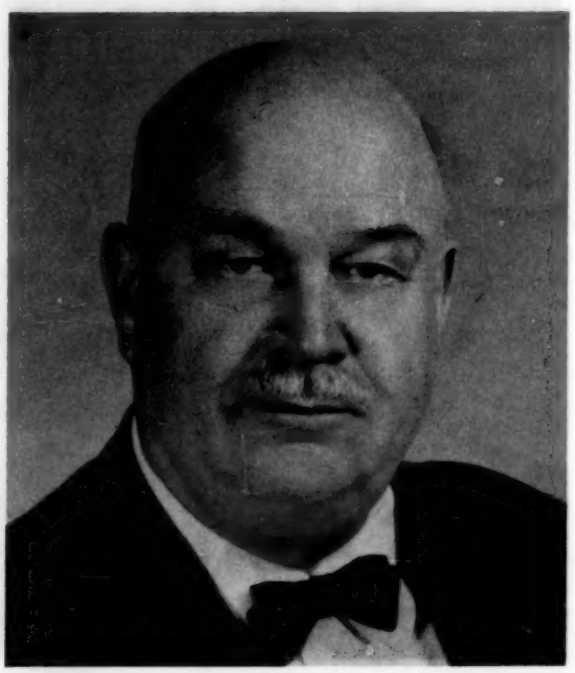
Wayne 4th District

Democrat of Detroit; Committees on Executive Branch; Rules and Resolutions; Emerging Problems. Realtor. Born November 26, 1919 to Robert and Daisy Dorm Lenoir in Filbert, West Virginia. Moved to Michigan in 1941. Graduated, Beckley (West Virginia) Stratton High School, 1936; graduated, Detroit Institute of Commerce, 1945; attended Vallejo (California) College; attended University of Detroit; attended Wayne State University. Notary Public (1959- ..). President, Michigan Federated Democratic Clubs (1958-59); Precinct Delegate (1959). President, Progressive Civic Arts Club (1959-62); Executive Board, Trade Union Leadership Council, Civil Rights Committee (1958). Member, Blanche E. King Foundation for the Deaf; Young Women's Christian Association; Historical Society of Michigan; National Junior League. Recipient, Progressive Civic Arts Community Service Award (1958); Sigma Amis Woman of the Year Award (1955); Green Leaf Plaque, Michigan Federation of Women (1958); North End Social Studies Club Merit Award (1957). Member, Eta Phi Beta Sorority; Sigma Amis. Member, People's Comunity Church, Detroit. Divorced; one daughter, Doris Mae (1938); and one foster son, Robert Simons (1940).

CLAUD ROBERT ERICKSON

Ingham 1st District

Republican of Lansing; Committees on Miscellaneous Provisions and Schedule (Chairman); Emerging Problems. Engineer. Born January 8, 1900 to Carl and Mary Hall Erickson in Manistee, Michigan. Graduated, Traverse City High School, 1918; B.S.E., Michigan State University, 1922; M.E., Michigan State University, 1927; E.E., Michigan State University, 1933; C.E., Michigan State University, 1934. Served as Private, United States Army and 2nd Lieutenant, R.O.T.C. Member, Citizens' Advisory Committee, Little Hoover Commission (1951); Director, Lansing Symphony Association (1962); President, Lansing Engineering Club (1935); President, Michigan Engineering Society (1936); Chairman, Michigan Section, American Water Works Association (1955); National Director, American Water Works Association (1962); Ingham County Chairman, American Red Cross (1941). Recipient, American Water Works Association Publication Award (1961); Honorary Membership, Michigan Engineering Society (1953). Member, Lambda Chi Alpha; Tau Beta Pi; Eta Kappa Num; Pi Tau Sigma; Elks; Eagles; Masons. Married to Thelma Olga Lewis; one daughter: Mary Cecelia (1951).



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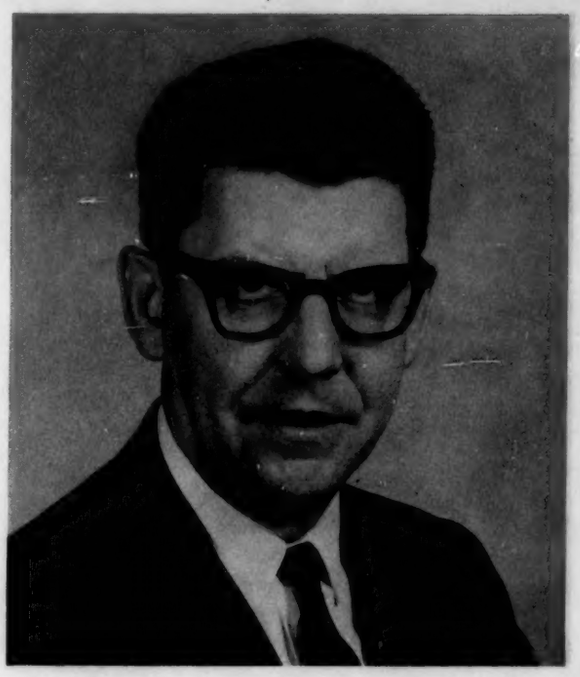


STANLEY EVERETT

Calhoun 2nd District

Republican of Battle Creek; Committee on Judicial Branch. Attorney. Born December 2, 1918 to Arthur and Blanche Stanley Everett in Battle Creek, Michigan. Graduated, Battle Creek Central High School, 1935; attended Michigan State University; LL.B., Detroit College of Law, 1940. Served as 1st Lieutenant, United States Army in Italy; discharged 1945. Assistant Prosecutor (1950-52); City Charter Revision Commission (1960-61). President, Calhoun Community Council (1958); President, Family Counseling Board (1955). Recipient, Battle Creek United Fund Citation for Community Service (1959). President, Calhoun County Bar Association (1956); Member, State Bar of Michigan; AmVets. Roman Catholic. Married to Elizabeth C. Enright; eight children: David L. Vesely (1943); R. Gene Vesely (1945); Sheila (1947); Mary Ellen (1948); Judith Ann (1950); Michael (1951); Martha (1952); and Timothy D. (1955).

JAMES S. FARNSWORTH

Allegan County District

Republican of Allegan; Committees on Local Government; Administration. Auto dealer. Born June 29, 1907 to Lewis and Etta Griffith Farnsworth in Paw Paw, Michigan. Graduated, Paw Paw High School, 1927. Otsego City Commission (1938-39); Mayor of Otsego (1940-41); Allegan County Board of Supervisors (1955-62). Finance Chairman, Allegan County Republican Committee (1960-62). Married to Margery Meyle; two children: Stanley (1932); and Mrs. Diane Crown (1939).

DELEGATES

JACK FAXON

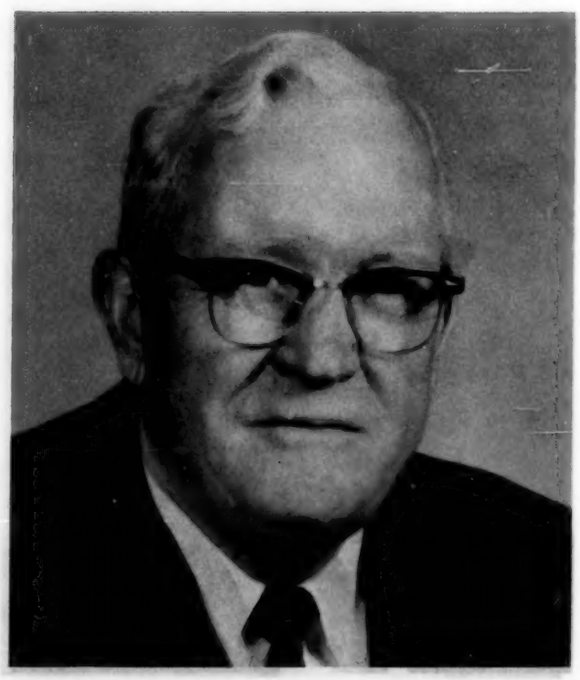
5th Senatorial District

Democrat of Detroit; Committees on Education; Public Information. Teacher. Born June 9, 1936 to Morris and Pauline Krimsky Faxon in Detroit, Michigan. Graduated, Detroit Central High School, 1953; B.S., Wayne State University, 1956; M.Ed., Wayne State University, 1958; attended University of Michigan. Precinct Delegate (1960-62). Director of Public Relations, United Citizens of Southwest Detroit (1960-62). Member, Detroit Metropolitan Social Studies Club; Michigan Schoolmasters; Trade Union Leadership Council; Bagley Community Council; Michigan Historical Society; National Association for the Advancement of Colored People; Detroit Federation of Teachers; Wayne County Central Labor Body AFL-CIO.

CHARLES FIGY

19th Senatorial District

Republican of Morenci; Committees on Local Government (1st Vice Chairman); Emerging Problems. Farmer. Born July 9, 1893 to John and Leah King Figy in Wauseon, Ohio. Moved to Michigan in 1920. Mayor of Morenci (1939-43); Director, Township Board of Education (1925-35). Assistant to the Secretary of Agriculture, United States Department of Agriculture (1953-61); Commissioner, Michigan Department of Agriculture (1943-53); Director, State Farm Security Administration (1940-42); Director, County Farm Security Administration (1938-42). Recipient, National Association of State Departments of Agriculture Outstanding Service Award (1961); Michigan Farm Bureau Outstanding Leadership Award (1961); City of Morenci Outstanding Governmental Service Award (1959); Pomona Grange Outstanding Service Award (1960); Michigan State Grange Outstanding Service in Agriculture Award (1958); Michigan State Soil Conservation Committee Leadership Award (1953). Member, Kiwanis; Grange. Member, Morenci Congregational Church. Married to Adeline G. Newell; one daughter: Mrs. Virginia Scott (1921).



DELEGATES

FRANCIS FINCH

Van Buren County District

Republican of Mattawan; Committees on Local Government; Rules and Resolutions. Farmer. Born June 30, 1917 to Charles and Hettie Palmer Finch in Kalamazoo, Michigan. Graduated, Mattawan High School, 1936; attended Cleary Business College. Township Trustee (1952-..); Justice of the Peace (1950-51); Township Zoning Board of Appeals (1960-..). Delegate to Republican State Convention (1961). President, Van Buren County Farm Bureau (1957-59); Board of Directors, Van Buren County Farm Bureau (1954-59); Michigan Farm Bureau Study Committee (1959-..). Member, Masons. Member, Mattawan Congregational Church. Married to Geraldine Halsted.

CHARLES LOUIS FOLLO

Delta County District

Democrat of Escanaba; Committees on Local Government; Education. Assistant Director, University of Michigan Extension Service. Born April 7, 1905 to Charles Olaf and Mayme Bohmann Follo in Escanaba, Michigan. Graduated, Escanaba High School, 1923; attended Northern Michigan College; A.B., Western Michigan University, 1932; M.A., University of Chicago, 1943. Member, Escanaba Board of Education (1949-61); Escanaba Library Board (1939-..); Escanaba Civil Service Commission (1940-46). President, Historical Society of Michigan (1952-53); President, Delta County Historical Society (1953-55); Second Vice President, Michigan Library Association (1953-54); Trustee, Michigan Adult Education Association (1952-55; 1961-..). Recipient, American Association of State and Local History Award (1959); Honorary Alumnus, University of Michigan (1960). Member, Rotary; Michigan Education Association; American Political Science Association; National University Extension Association; Adult Education Association of U.S.A.; Gladstone Swedish Club. Episcopalian. Married to Iona Bergman Dixon.

DELEGATES

WILLIAM DAVID FORD

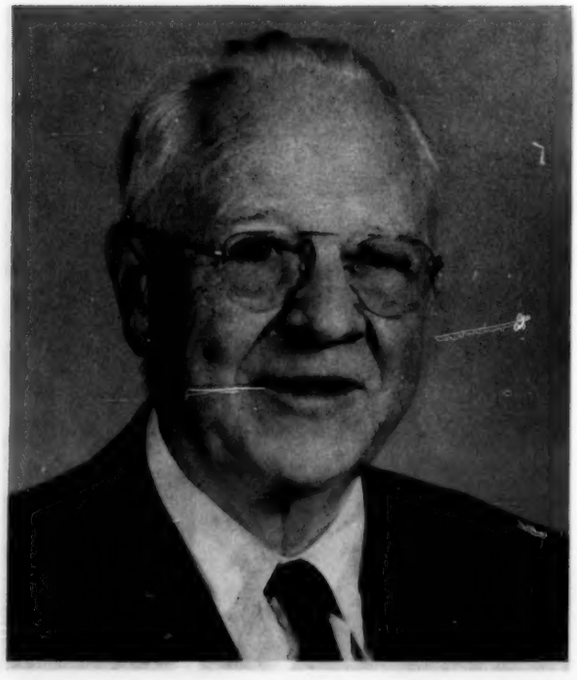
Wayne 19th District

Democrat of Taylor; Committees on Judicial Branch (2nd Vice Chairman); Local Government. Attorney. Born August 6, 1927 to Robert and Jean McGhee Ford in Detroit, Michigan. Graduated, Melvindale High School, 1945; attended Wayne State University; B.S., University of Denver (Colorado), 1949; LL.B., University of Denver, 1951. Served as Aviation Ordinance 3/c, United States Navy, discharged 1946; First Lieutenant, United States Air Force Reserve, discharged 1958. Taylor Township Justice of the Peace (1955-57). Melvindale City Attorney (1957-59); Taylor Township Attorney (1957-62). Precinct Delegate (1957-62); Vice Chairman, Taylor Democratic Club (1957-62); Executive Board Member, 16th Congressional District Democratic Organization (1958-62). President, Taylor Rotary Club (1961-62); President, Down River Bar Association (1961-62). Member, Taylor Township Businessmen's Association; Taylor Parent-Teachers Association; Masons; Moose; Phi Delta Phi; Michigan Bar Association; Detroit Bar Association; American Bar Association; National Institute of Municipal Law Officers. Recepient, Junior Chamber of Commerce Distinguished Service Award (1962). Member, St. Paul United Church of Christ, Taylor. Married to Corrine Helene Sletten; three children: William David, Jr. (1948); Margaret Helene (1949); and John Phillip (1953).

PAUL VICTOR GADOLA

13th Senatorial District

Republican of Flint; Committees on Declaration of Rights, Suffrage and Elections; Style and Drafting. Retired circuit judge. Born February 22, 1887 to Thomas and Ellen Cotter Gadola in Corunna, Michigan. Graduated, Owosso High School, 1906. Attended Metropolitan Business College, Dallas, Texas; LL.B., University of Michigan, 1911. Served as Sgt. 1/c, United States Army; discharged 1919. Genesee County Assistant Prosecuting Attorney (1920-24); 6th Circuit Judge (1930-60). Chairman, Flint Republican Committee (1927). President, Genesee County Bar Association (1931-2). Member, Civitan Club; Optimists Club, Old Newsboys of Flint; American Legion; Elks; Eagles. Member, St. Matthew's Roman Catholic Church, Flint. Married to Ann Elizabeth Murphy; three children: Paul Victor, Jr. (1929); Mrs. Joanne Blake (1931); and Thomas Laurence (1933).



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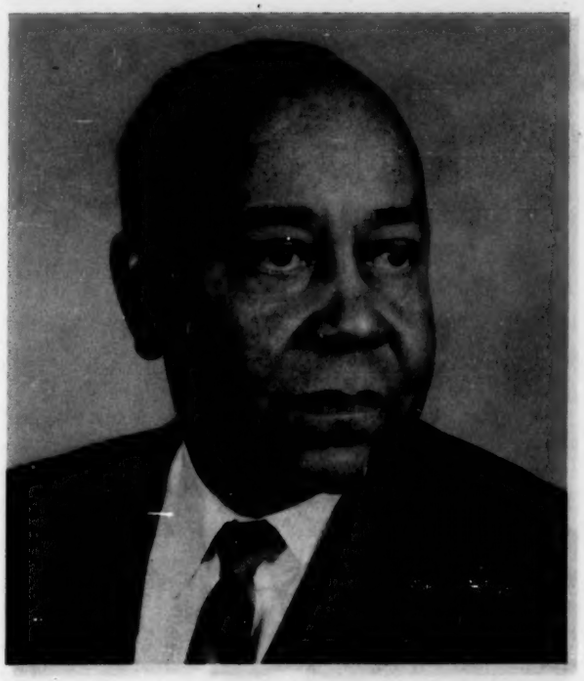
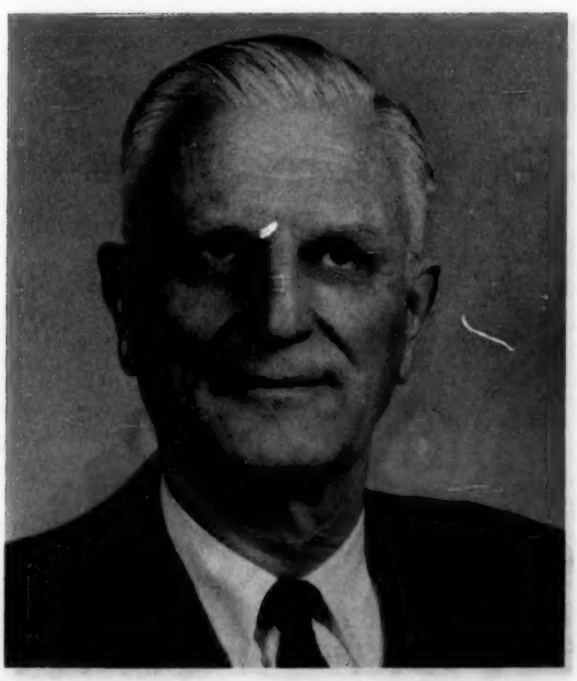


WYNNE C. GARVIN

Wayne 3rd District

Democrat of Detroit; Committees on Judicial Branch; Public Information. Attorney. Born January 28, 1909 to John and Mary Hibaugh Garvin in Francisville, Indiana. Moved to Michigan in 1928. Graduated, Dayton (Ohio) Roosevelt High School, 1927; attended Detroit City College; A.B., Detroit Institute of Technology, 1935; LL.B., Detroit College of Law, 1939. Wayne County Deputy Probate Register (1941-45). Detroit District Executive Board, Boy Scouts of America (1945-55); Detroit Council Executive Board, Boy Scouts of America (1945-55). Recipient, Boy Scouts of America Silver Beaver Award (1946). Member, Elks. Epiphany Episcopal Church, Detroit. Married to Mary Emma Menafee; one son: John Martin (1948).

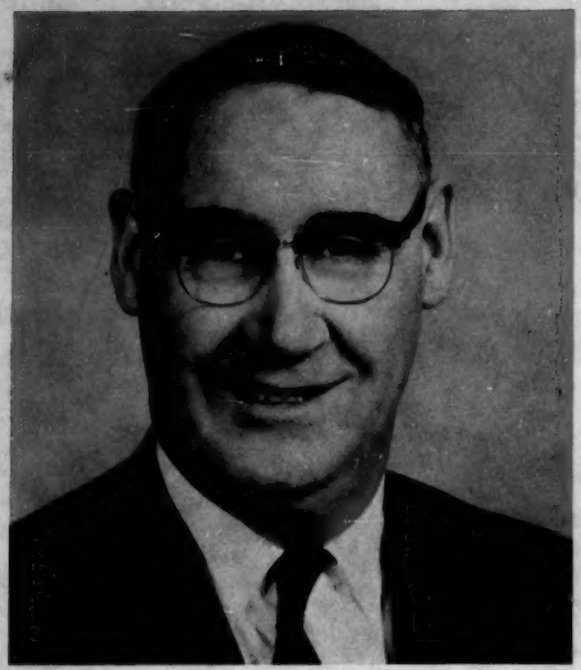


PAUL GORDON GOEBEL

16th Senatorial District

Republican of Grand Rapids; Committees on Finance and Taxation (1st Vice Chairman); Emerging Problems. Businessman. Born May 28, 1901 to Frank and Effie Haftenkamp Goebel in Grand Rapids, Michigan. Graduated, Grand Rapids Central High School, 1918; B.S., University of Michigan, 1923. Served as Quartermaster 2/c, United States Coast Guard, World War I, discharged 1919; served as Lieutenant Commander, United States Navy, World War II aboard U.S.S. Shangri-La and awarded Bronze Star; discharged 1946. Mayor of Grand Rapids (1950-54; 1956-58); Kent County Board of Supervisors (1950-54; 1956-58); Regent, University of Michigan (1962-..). Delegate to County, State and National Republican Conventions. Board of Directors, University of Michigan Alumni Association (1959-62); Director, American Red Cross Board of Kent County (1926-32); Grand Rapids Board of Directors (1935-..), National Council (1950-52), and International Committee (1950-..), Young Men's Christian Association. Member, Rotary; Grand Rapids Chamber of Commerce; past member, Board of Control of Intercollegiate Athletics, University of Michigan; Masons; Peninsular Club of Grand Rapids; Tau Beta Pi; Order of Orange Nassau; Grand Valley Boy Scout Council. Past member, Board of Trustees, East Congregational Church, Grand Rapids. Married to Margaret E. Callam; two children: Mrs. Elizabeth Hutton Hinson (1928); and Paul Gordon, Jr. (1933).

DELEGATES



WILLIAM G. GOVER

Montcalm District

Republican of Sheridan; Committees on Local Government; Rules and Resolutions. Salesman. Born November 26, 1909 to Noel and Myrtle Wood Gover in Crystal Valley, Michigan. Graduated, Mt. Pleasant High School, 1928; attended Central Michigan University. Former Village President; Village Trustee; Township Highway Commissioner; former member, Village Board of Review; Montcalm County Firemen's Association. Delegate to County and State Republican Conventions. Member, Lions Club; Toastmasters' International; Grocers' and Meat Dealers' Association; Masons; Odd Fellows. Member Fenwick Methodist Church. Married to June B. Patterson; two daughters: Mrs. Betty J. Jaquette (1930); and Mrs. Dorothy M. Denslow (1932).

WILLIAM OLIVER RAYMOND GREENE

3rd Senatorial District

Democrat of Detroit; Committees on Executive Branch; Legislative Organization. Deputy Sheriff, Wayne County. Born December 31, 1906 to William and Ethel Glover Greene in Akron, Ohio. Moved to Michigan in 1914. Graduated, Detroit Northeastern High School, 1924. Governor's Americanism Commission; Precinct Delegate; Board of Directors, National Association for the Advancement of Colored People; Board of Directors, Urban League; President, Young Men's Club, Young Men's Christian Association; Board of Directors, Committee on Immigration; President, Community Action Square Club; Board of Directors, Coordinating Council on Human Relations; Board of Directors, Trade Union Leadership Council. Recipient, Wilberforce Citizens' Certificate (1958); Michigan Chronicle Citizen of the Year Award (1955); "Your History," Pittsburgh Courier (1953). Member, Masons. Member, St. Matthew's Episcopal Church, Detroit. Married to Edverta Eunice Motley; one son: William Cowen (1948).

DELEGATES

ROCKWELL T. GUST, JR.

1st Senatorial District

Republican of Grosse Pointe Farms; Committees on Administration (1st Vice Chairman); Executive Branch. Attorney. Born June 23, 1924 to Rockwell T. and Anne Sexton Gust, Sr. in Detroit, Michigan. Graduated, Detroit Country Day School, 1942; B.A., Williams College, Williamstown, Massachusetts, 1946; LL.B., University of Michigan, 1949. Served as seaman, P.T. boat, United States Navy in the Atlantic; discharged 1945. Precinct Delegate (1956-58); Board of Directors, 14th Congressional District Republican Committee (1956-58); Delegate to District and State Conventions, (1956-..); President, Michigan Republican War Veterans (1957-..). Member, Economic Club of Detroit; American Legion; Masons. Member, Grosse Pointe Presbyterian Memorial Church. Married to Anne Baldwin; four children: Ruth E. (1954); Rockwell T., III (1956); Robert C. (1956); and Anne B. (1958).

DONALD M. HABERMEHL

29th Senatorial District

Republican of Alpena; Committees on Legislative Powers; Miscellaneous Provisions and Schedule. Attorney. Born January 20, 1919 to Lawrence and Vernie Smith Habermehl in Herron, Michigan. Graduated, Alpena High School, 1934; attended Alpena County Normal; B.S., Central Michigan University, 1939; LL.B., University of Michigan, 1948. Served as 1st Lieutenant, Army Air Force in the Pacific; discharged 1945. Prosecuting Attorney, Alpena County (1948-54). Chairman, Alpena County Republican Committee (1952-58). Member, Veterans of Foreign Wars. Protestant. Married to Jean May; five children: Donald M., Jr. (1945); Carola Jean (1946); Duane Michael (1952); David Mark (1959); and Lisa Jean (1961).

DELEGATES

WILLIAM FREDERICK HANNA

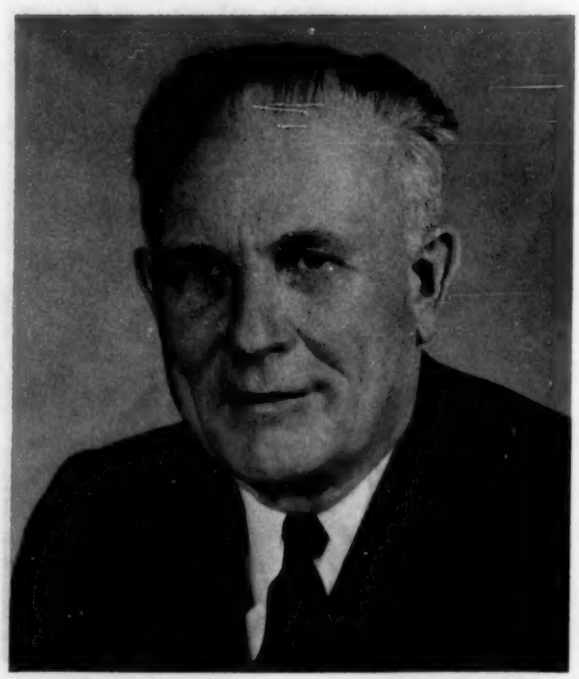
Muskegon 2nd District

Republican of Muskegon; Committees on Legislative Organization; Style and Drafting. Attorney. Born January 12, 1920 to William J. and Mabel Young Hanna in Marne, Michigan. Graduated, Ravenna High School, 1937; B.S., Western Michigan University, 1941; LL.B., University of Michigan, 1948. Served as Lieutenant, United States Navy in the Pacific; discharged 1945. Muskegon County Board of Supervisors (1953-55); Justice of the Peace (1961-..); Muskegon Heights Assistant City Attorney (1949-53). Muskegon County Republican Committee (1949-61). Director and President, Muskegon Junior Chamber of Commerce (1949-51); Director and President, Greater Muskegon Community Fund (1951-53); Director, Muskegon Salvation Army Board (1951-53); Director, Young Men's Christian Association Men's Club (1961-..). Trustee, Lake Harbor Methodist Church (1958-60). Married to Leola M. Ferris; five children: Mary Kay (1952); William Lester (1953); John Robert (1955); Nancy Louise (1956); and Thomas Richard (1961).

JOHN ALFRED HANNAH

14th Senatorial District

Republican of East Lansing; Committees on Legislative Organization (Chairman); Education. President, Michigan State University. Born October 9, 1902 to Wilfred and Mary Malone Hannah in Grand Rapids, Michigan. Graduated, Grand Rapids South High School, 1919; attended Grand Rapids Junior College; attended University of Michigan; B.S., Michigan State University, 1923; D.Agr. (honorary), Michigan State University, 1941; LL.D. (honorary), University of Michigan, 1944; HH.D. (honorary), University of the Ryukyus, 1952; L.H.D. (honorary), University of Florida, 1953; Dr.Sci. (honorary), Michigan College of Mining and Technology, 1953; LL.D. (honorary), University of Rhode Island, 1954; LL.D. (honorary), Central Michigan University, 1955; LL.D. (honorary), Albion College, 1957; Litt.D. (honorary), Northern Michigan College, 1957; Honorary Professor, School of Business, Sao Paulo, Brazil, 1960; Dr.Sci. (honorary), University of Nigeria, 1961. Assistant Secretary of Defense for Manpower and Personnel (1953-54); Chairman, United States Commission on Civil Rights (1956-..); International Development Advisory Board (Point Four) (1950-52); President, Association of State Universities and Land Grant Colleges (1948-49); Director, Michigan United Fund (1955-..); Chairman, Board of Directors, Detroit Branch, Federal Reserve Bank of Chicago (1951-53; 1956-61); Director, Motor Wheel Corporation (1956-..); Director, Michigan Bell Telephone Company (1950-53; 1956-..); Director, American Bank and Trust Company (1961-..); Director, Manufacturers National Bank of Detroit (1961-..); Original Trustee, Education and World Affairs (1962-..). Member, Foundation for European Educational Centers (1960-..); National 4-H Service Committee (1950-..); Board of Trustees, Institute of International Education (1954-57); Rhodes Scholarship Selection Committee (1961); Electoral College Hall of Fame for Great Americans; American Food-for-Peace Council (1961-..); Council of State Governments; American Council on Education; Midwest Universities Research Association; Board of Consultants, National War College (1957-59); Board of Visitors, U.S. Military Academy (1955-58); Board of Visitors, U.S. Air Force Academy (1956-58); Board of Visitors, Air University (1955-57), Chairman (1956-57); Economic Club of Detroit; Cleveland Conference; Newcomen Society; Phi Eta Sigma; Alpha Phi Omega; Phi Kappa Phi; Sigma Delta Chi; Pi Kappa Delta; Alpha Zeta; Masons; Rotary. Recipient, Medal of Freedom (1954); Veterans of Foreign Wars Gold Citizenship Award (1961); American Council on Education Citation of Appreciation (1961). Member, All Saints' Episcopal Church, East Lansing. Married to Sarah May Shaw; four children: Mary Elisabeth (1939); Robert Wilfred (1941); Thomas Arthur (1945); and David Harold (1948).

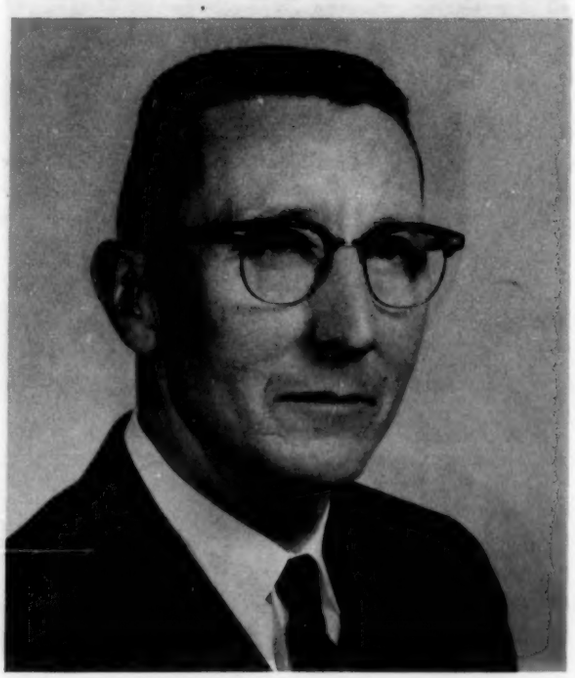


DELEGATES

ADELAIDE JULIA HART (MISS)

Wayne 10th District

Democrat of Detroit; Committees on Education (2nd Vice Chairman); Executive Branch. Teacher. Born April 24, 1900 to Malachi and Margaret Hogan Hart in Saginaw, Michigan. Graduated, Charlotte High School, 1918; Life Teaching Certificate, Western Michigan University, 1923; Ph.B., Marygrove College, Detroit, 1930; M.A., Marygrove College, 1937; attended University of Detroit; attended Wayne State University. Member, Wayne County Board of Supervisors (1948-50); Wayne County Rent Advisory Board (1948-51); State Mental Health Commission (1960-..); White House Conference on Education (1955). Precinct Delegate (1948-..); Executive Board, 17th Congressional District Democratic Committee (1948-..); Vice Chairman, Democratic State Central Committee (1951-61). President, Marygrove College Alumnae Association (1933-37); Vice President, Detroit Federation of Teachers (1946-47); member, League of Catholic Women. Roman Catholic.



ERVIN J. HASKILL

Lapeer County District

Republican of Lapeer; Committee on Finance and Taxation. Farmer. Born August 22, 1906 to William and Minnie Westendoff Haskill in Lapeer County, Michigan. Attended Lapeer High School; attended Wayne State University. Justice of the Peace (1948-53); Lapeer County Welfare Board (1953-58). Delegate to State Republican Convention (1959-60). President, Lapeer County Farm Bureau (1940-42); President, Lepeer County Cooperative (1947-58). Member, Odd Fellows. Methodist. Married to Marion S. McGonegle; two sons: Douglas E. (1932); and William E. (1935).

DELEGATES

HAZEN van den BERG HATCH

Calhoun 1st District

Republican of Marshall; Committees on Executive Branch; Emerging Problems. Attorney. Born January 18, 1932 to Hazen J. and Clare van den Berg Hatch in Battle Creek, Michigan. Graduated, Battle Creek Lakeview High School, 1949; A.B., Dartmouth College, Hanover, New Hampshire, 1953; J.D., University of Michigan, 1956. Captain, United States Army Reserves; active duty (1957-59). City Attorney, Marshall (1962-..); member, Calhoun County Board of Supervisors (1962-..). Member, Sigma Nu; Phi Delta Phi; Society of Barristers; Order of Coif; Rotary. Member, Trinity Episcopal Church, Marshall; former Vestryman, Trinity Episcopal Church, Arlington, Virginia. Married to Mary Louise Holmes; two children: Mary Symons (1957); and David van den Berg (1960).

LILLIAN HATCHER (MRS.)

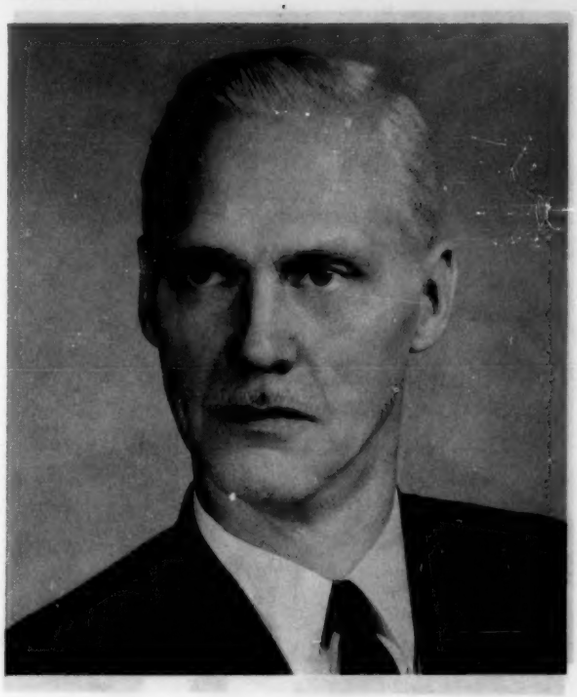
4th Senatorial District

Democrat of Detroit; Committees on Local Government; Declaration of Rights, Suffrage and Elections. U.A.W. International Representative. Born May 30, 1915 to Robert and Jimmie McTryier Cook in Greenville, Alabama. Moved to Michigan in 1917. Graduated, Detroit Northeastern High School, 1931; attended University of Michigan extension, Detroit. Detroit Community Relations Commission (1958); Detroit Subcommittee, Public Housing (1959); Detroit Citizens' Advisory Committee on Police Procedure (1959). Secretary, 13th Congressional District Democratic Committee (1950). Executive Board, National Association for the Advancement of Colored People (1946); Executive Board, Michigan Committee on Civil Rights (1948). Recipient, Prince Hall Mason State Award (1951); Zeta Beta Phi Sorority Award (1951); Current Topic Study Club Woman of the Year Award (1960). Member, Women's International League for Peace and Freedom; Young Women's Christian Association; Current Topic Study Club. Member, St. Philip's Lutheran Church; Dorcas Society; Lutheran Human Relations Association. Married to John Hatcher; three children: Carlene (1932); John (1935); and Gloria (1938).

DELEGATES

BERT R. M. HEIDEMAN

32nd Senatorial District



Republican of Hancock; Committees on Education; Public Information. Attorney and Professor. Born February 5, 1909 to the Reverend Arthur and Lempi Kranck Heideman in Calumet, Michigan. Graduated, Calument High School, 1926; B.A., University of Michigan, 1932; J.D., Detroit College of Law, 1937; attended University of California, Berkeley, California; M.A., University of Michigan, 1942; Ph.D., University of Michigan, 1952; attended Stanford University, Palo Alto, California. Served with the Office of Strategic Services (1943-45). Justice of the Peace (1958-59); Houghton County Draft Board (1960-..). member, Houghton County Republican Committee (1958-..). Instructor, Coast Guard Auxiliary; President, Finlandia Foundation (1960-..); President, Houghton-Hancock University of Michigan Alumni Club (1953-61); President, University of Michigan Upper Peninsula Alumni Clubs (1956-57). Recipient, Commemorative Medal, University of Turku, Finland (1955); Fulbright Lecturer in American History and Government to Finland (1953-54); State Department Consultant on Finland (1955). Member, Phi Kappa Phi; Phi Mu Alpha; Michigan State Bar; Copper Country Bar; American Political Science Association; American Historical Association; Chamber of Commerce; Lions; Elks; Eagles. Lutheran. Married to Katherine Grayson Graham; three sons: Eric Ronald (deceased); Bert Lawrence Karl (1947); and Eric Melville Bert (1953).

MILTON EUGENE HIGGS

Bay County District

Republican of Bay City; Committees on Judicial Branch; Style and Drafting. Attorney. Born November 24, 1925 to Charles and Alice Skinner Higgs in Bay City, Michigan. Graduated, Bay City Central High School, 1943; A.B., University of Michigan, 1949; LL.B., University of Michigan, 1952. Served as Third Engineer Officer, United States Merchant Marine in World War II; discharged 1946. Delegate to the Republican State Convention (1960). Trustee, Bay City Tuberculosis Association (1961-..). Recipient, Bay City Junior Chamber of Commerce Distinguished Service Award for Outstanding Young Man of the Year (1961). Member, Lions; Bay City Junior Chamber of Commerce; Elks; Masons. Member, Madison Avenue Methodist Church, Bay City. Married to Geraldine Tarmichael; four children: Michael Edward (1952); Jay Brent (1953); Holly Lynn (1958); and Heidi Claire (1959).

DELEGATES

ROBERT G. HODGES

Wayne 1st District

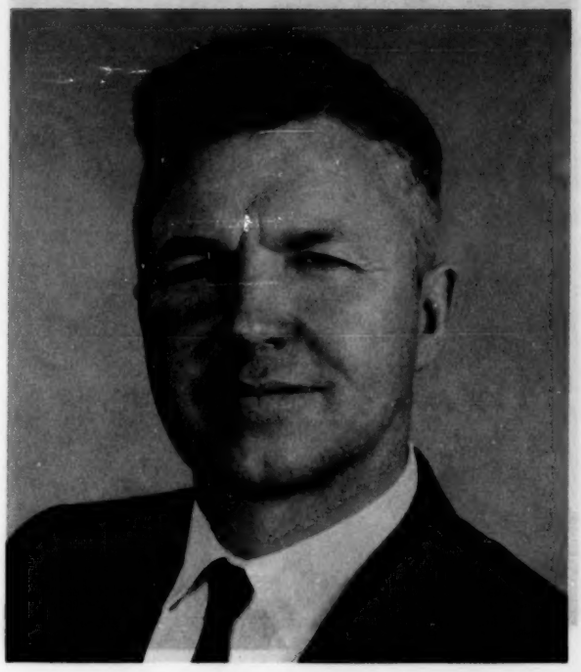
Democrat of Detroit; Committees on Legislative Organization; Declaration of Rights, Suffrage and Elections. Attorney. Born January 26, 1935 to Milton and Viola Gerrie Hodges in Detroit, Michigan. Graduated, Detroit Denby High School, 1953; A.B., Wayne State University, 1957; LL.B., Wayne State University, 1959. Petty Officer, United States Naval Reserve; discharged 1960. Notary Public. Member, Democratic State Central Committee (1959-..); Executive Board, 14th Congressional District Democratic Committee (1959-..); Precinct Delegate. Member, Tau Kappa Epsilon Fraternity; State Bar of Michigan; Detroit Bar Association. Married to Joyce B. Chappell.

MORRIS W. HOOD, SR.

Wayne 2nd District

Democrat of Detroit; Committees on Administration; Miscellaneous Provisions and Schedule. Union official. Born September 22, 1908 to Wheeler and India Benton Hood in LaGrange, Georgia. Graduated, East Depot High School, LaGrange, Georgia, 1922; attended Morehouse College, Atlanta, Georgia. United States State Department Representative in France and Germany (1951). Executive Board, 13th Congressional District Democratic Committee (1949-..); Vice President, Democratic 13th District; Delegate, National Democratic Convention (1956); Presidential Elector (1960). Member, Allied Charities, Inc.; National Association for the Advancement of Colored People; Northend Civic Organization; Workmen's Circle. Married to Ruth E. Stevenson; two sons: Morris W., Jr. (1934); and Raymond W. (1936).

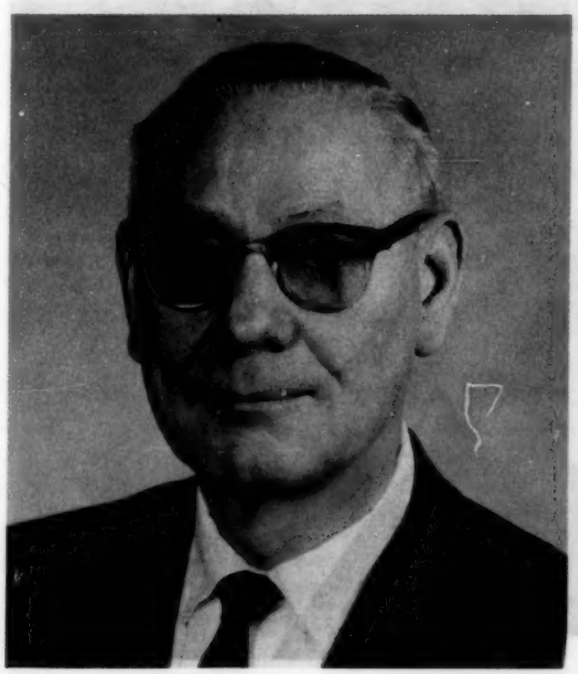
DELEGATES



ROY C. HOWES

Wexford District

Republican of Copemish; Committee on Finance and Taxation. Farmer. Born November 17, 1912 to Carlton and Grace Grossnickle Howes in Copemish, Michigan. Graduated, Copemish High School, 1930; attended Michigan State University. Chairman, Manistee County Board of Supervisors (1958-..); Director, Marilla Board of Education (1939-45). Member, Farm Bureau. Member, Marilla Church of the Brethren. Married to Wilma Pauline Dilling; four children: Donovan Ray (1938); Dennis Lawayne (1941); Diane Denise (1947); and Dixie Lynn (1953).



T. JEFFERSON HOXIE

Gratiot County District

Republican of St. Louis; Committee on Legislative Powers (Chairman). Attorney. Born March 15, 1903 to Walter and Effie Blair Hoxie in Gratiot County, Michigan. Graduated, Normal High School, Ypsilanti, 1922; Life Teaching Certificate, Eastern Michigan University, 1925; LL.B., Detroit College of Law, 1930. Mayor of St. Louis (1941-43); State Representative (1943-57); St. Louis City Attorney (1940-41; 1960-62); Gratiot County Friend of the Court (1935-..); Delegate to the Republican National Convention (1948). President, St. Louis Trade Association (1951); member, Rotary; Lions; St. Louis Chamber of Commerce; St. Louis Library Board; Masons; Knights of Phythias. Methodist. Married to Helen D. Brumm; one daughter: Susan D. (1945).

DELEGATES

LEWIS TAYLOR HUBBS, JR.

28th Senatorial District

Republican of Gladwin; Committees on Legislative Powers; Declaration of Rights, Suffrage and Elections. Businessman. Born September 24, 1923 to Lewis T. and Mary Hainsworth Hubbs, Sr. in North Glenside, Pennsylvania. Moved to Michigan in 1945. Graduated, Elizabethtown (Pennsylvania) Thomas Rankin Patton School, 1943; B.B.A., University of Michigan, 1948. Commissioned Ensign, United States Naval Reserve; discharged 1956. Gladwin City Council (1952); Gladwin City Charter Commission (1959); Board of Review (1960-62). Chairman, Gladwin County Republican Committee (1960-62). President, Gladwin Chamber of Commerce (1957-58); Secretary-Treasurer, Gladwin Rotary (1952-54). Member, St. Paul's Episcopal Church, Gladwin. Married to Dorothy Eloise Ward; two daughters: Priscilla (1954); and Susan (1960).

J. EDWARD HUTCHINSON

8th Senatorial District

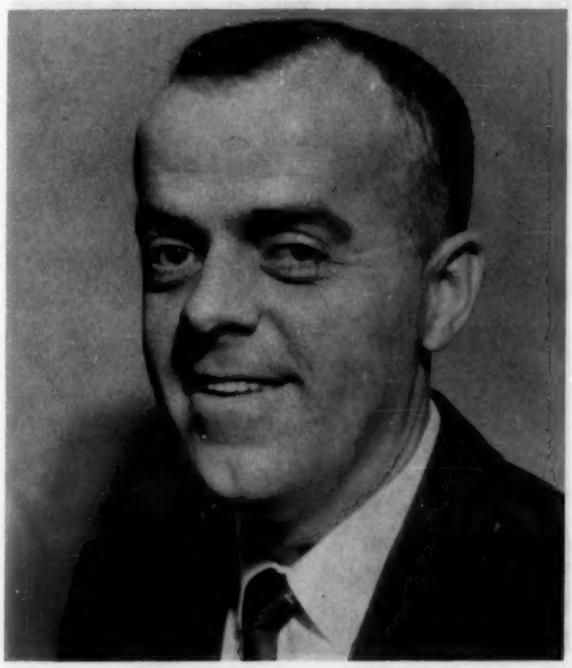
Republican of Fennville; Vice President; Committees on Style and Drafting (1st Vice Chairman); Miscellaneous Provisions and Schedule. Attorney. Born October 13, 1914 to Marc and Wilna Leland Hutchinson in Fennville, Michigan. Graduated, Fennville High School, 1932; A.B., University of Michigan, 1936; LL.B., University of Michigan, 1938. Served as Captain, United States Army; discharged 1946. State Representative (1947-50); State Senator (1951-60). Chairman, Allegan County Republican Committee (1960-61); Chairman, 4th Congressional District Republican Committee (1960-61); Chairman, Republican State Convention (1952); Delegate, Republican National Convention (1948). Member, Masons; American Legion. Married to Janice Caton.

DELEGATES

ARTHUR T. IVERSON

Wayne 10th District

Republican of Detroit; Committee on Judicial Branch. Attorney. Born October 14, 1903 to Anton and Emily Holmberg Iverson in Lake City, Michigan. Graduated, Lake City High School, 1921; attended Davenport-McLachlan Business College. Missaukee County Prosecuting Attorney (1929-34); Assistant Attorney General (1935-36); Deputy Attorney General (1951-54). Chairman, Wayne County Republican Committee (1946-47); Republican State Central Committee (1959-60). Member, Masons; Elks. Member, St. James Methodist Church, Detroit. Married to Helen F. Bulock; two sons: Arthur T., Jr. (1932); and Teddy R. (1934).



HOWARD LYLE JONES

Ingham 2nd District (Appointed March 20, 1962)*

Democrat of Webberville; Committees on Finance and Taxation; Administration; Emerging Problems. Teacher. Born September 19, 1925 to Sherdie and Millicent Hardiek Jones in Champaign, Illinois. Moved to Michigan in 1954. Graduated, Champaign (Illinois) High School, 1943; B.A., University of Illinois, Urbana, Illinois, 1949; M.A., University of Illinois, 1950; attended Michigan State University. Served as Pfc., United States Army in Europe; discharged 1945. President, Webberville Village Council (1960-61). Secretary, Ingham County Democratic Committee (1960-62); Chairman, Township Advisory Council, Democratic State Central Committee (1959-60). Vice Chairman, Lansing Branch, American Civil Liberties Union (1961-62); 2nd Vice Chairman, American Civil Liberties Union of Michigan (1961-62). Member, Unitarian-Universalist Church, Lansing. Married to Dorothy Gertrude Dorch; three children: Russell Howard (1952); Mitchell Clark (1954); and Shirley Marie (1957).

***Appointed by Governor Swainson to fill the vacancy created by the resignation of Delegate Charles Davis of Onondaga.**

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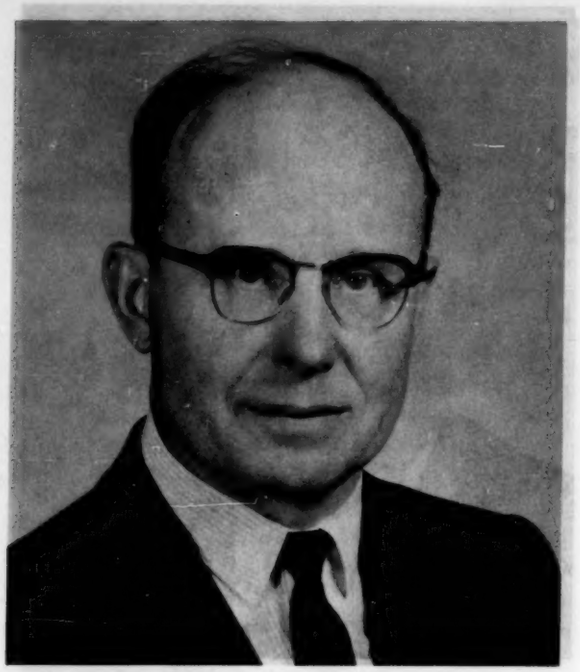

SHUFORD KIRK

Tuscola County District

Republican of Caro; Committee on Legislative Organization. Farmer. Born May 2, 1907 to James and Janie Borland Kirk in Caro, Michigan. Graduated, Caro High School, 1924; B.S., Michigan State University, 1928. Township Supervisor (1951-); Chairman, Board of Supervisors (1958-59); President, 7th District Association of Supervisors (1955-60). Chairman, Tuscola County Republican Committee (1958-62); Delegate Republican National Convention (1960). President, Caro Exchange Club (1953). Presbyterian. Married to Bernice Braun; two daughters: Mrs. Joan Thornburgh (1929); and Mrs. Barbara Gamache (1930).

BLAQUE C. KNIRK

9th Senatorial District

Republican of Quincy; Committee on Legislative Organization. Farmer. Born August 18, 1916 to Frederick and Cora Sprout Knirk in Quincy, Michigan. Graduated, Quincy High School, 1934; attended Western Michigan University; B.S., Michigan State University, 1939. President, Board of Education; Vice President, Michigan Farm Bureau; President, Farm Bureau Mutual Insurance Company; Board of Directors, Michigan Livestock Exchange; Public Relation Representative of Michigan Livestock Exchange (1948-50); Board of Directors, Farm Bureau Services, Inc.; Board of Directors, Farmers Petroleum Company. Member, Rotary. Vice Chairman, Social Service Commission, Quincy Methodist Church. Married to Mae Arlouine Rosendahl; two sons: Jack Wayne (1940); and Dick Ervin (1942).

DELEGATES

ELLA DEMMINK KOEZE (MRS.)

Kent 2nd District

Republican of Grand Rapids; Committees on Public Information (1st Vice Chairman); Legislative Powers. Homemaker. Born July 25, 1905 to Henry and Alieda Hesselink Demmink in Grand Rapids, Michigan. Graduated, Grand Rapids South High School, 1923; attended Davenport Business College, Grand Rapids, Michigan. President, Republican Women's Federation of Michigan (1953-57); Vice Chairman, Republican State Central Committee (1957-60); member, Republican National Committee (1960-..); National Republican Federation Board (1953-57); Chairman, Republican Mid-West Committee and Rocky Mountain Vice Chairman (1958-60); Delegate and Alternate, Republican National Conventions (1948; 1952; 1956; 1960); Vice Chairman, Kent County Republican Committee (1944-50). Board member, Southwest Young Women's Christian Association (1960-..); Board member, Civic Theater of Grand Rapids (1960-..); President, Mary A. Welsh Guild of Blodgett Hospital (1936-..); Board member, Lincoln School Foundation for Spastic Children (1944-48); Board member, Evangeline Home, Salvation Army (1952-58). Member, LaGrave Avenue Christian Reformed Church, Grand Rapids. Married to Albert S. Koeze; five children: Dr. Thomas H. (1934); David S. (1935); Robert P. (1937); Albert S., Jr. (1937); and Mary Beth (1940).

RAYMOND W. KROLIKOWSKI

Wayne 14th District

Democrat of Hamtramck; Committees on Judicial Branch; Style and Drafting. Attorney. Born July 28, 1928 to Walter and Regina Wypijewski Krolikowski in Hamtramck, Michigan. Graduated, Hamtramck St. Ladislaus High School, 1946; Ph.B., University of Detroit, 1950; LL.B., University of Detroit, 1956. Served as Corporal, United States Army; discharged 1954. Member, Rotary; American Bar Association; Judicature Society; State Bar of Michigan; Detroit Bar Association; Hamtramck Bar Association; Advocates Club of Detroit. Member, St. Ladislaus Roman Catholic Church.

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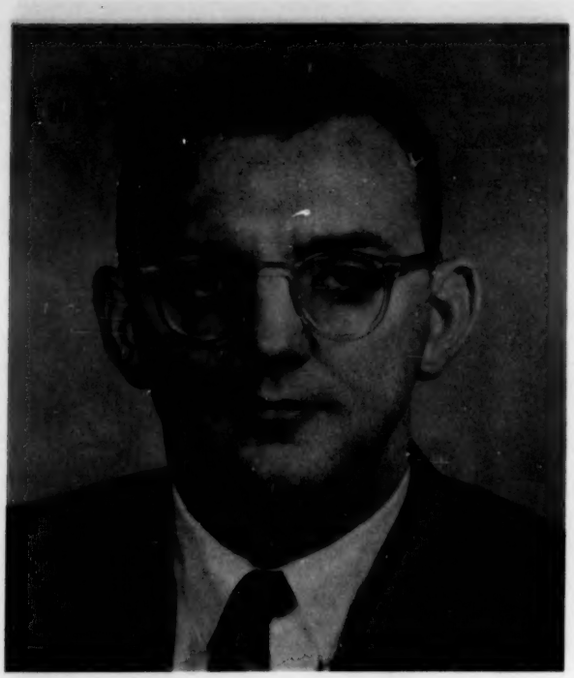
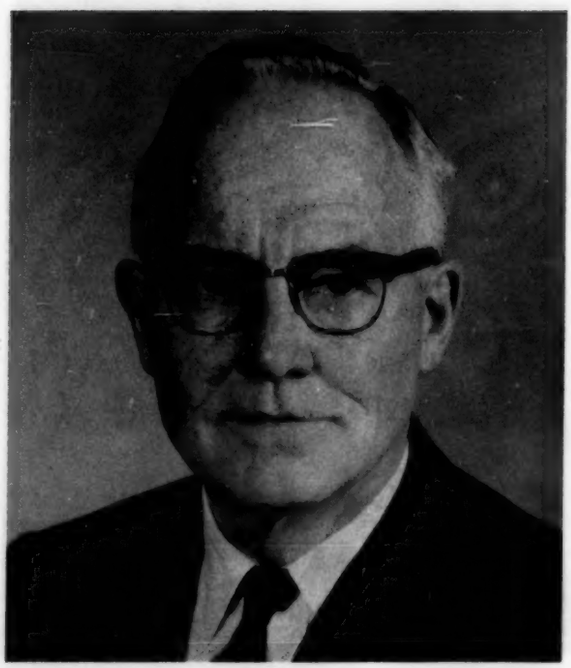


RICHARD DAVID KUHN

Oakland 1st District

Republican of Pontiac; Committees on Legislative Powers; Education. Attorney. Born October 8, 1929 to Charles and Ella Meinke Kuhn in Detroit, Michigan. Graduated, Detroit Northern High School, 1948; attended Albion College; B.A., Michigan State University, 1952; LL.B., Detroit College of Law, 1957. Page, United States Congress (1943-46). Precinct Delegate (1956-62). Director, Kiwanis Club (1959-61). Member, Sigma Nu; Sigma Nu Phi; Pontiac Area Chamber of Commerce. Member, Central Methodist Church, Pontiac. Married to Sally Ann Scupholm; two children: Richard David, Jr. (1960); and Connie Ann (1961).

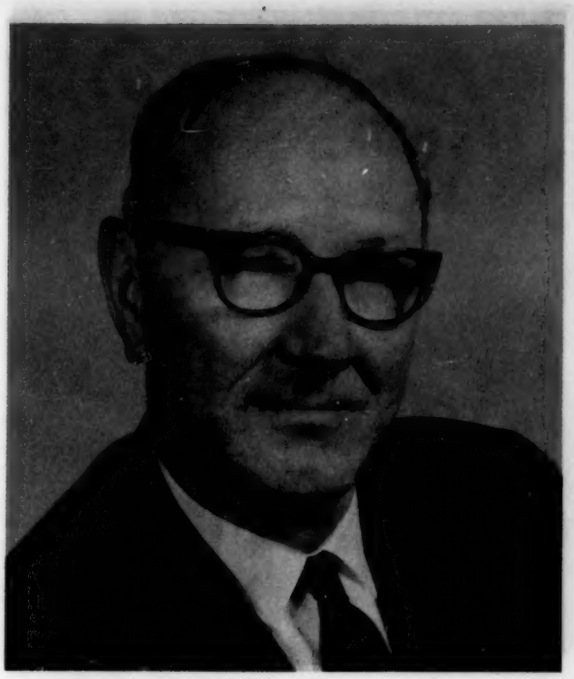


JOSEPH DON LAWRENCE, JR.

Washtenaw 2nd District

Republican of Ypsilanti; Committees on Judicial Branch; Miscellaneous Provisions and Schedule. Attorney. Born June 23, 1904 to Joseph Don and Mabel Oliff Lawrence, Sr. in Ypsilanti, Michigan. Graduated, Ypsilanti Central High School, 1921; attended Eastern Michigan University; A.B., University of Michigan, 1925; LL.B., University of Michigan, 1927. Member, Rotary; Masons; Elks. Member, First Congregational Church, Ypsilanti. Married to Christine Marie Schultz; one son: Joseph Don Lawrence, III (1936).

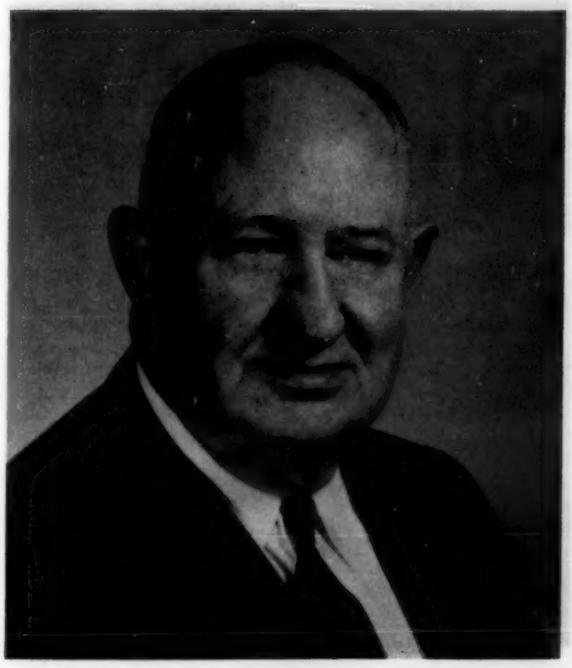
DELEGATES



KARL K. LEIBRAND

24th Senatorial District

Republican of Bay City; Committee on Judicial Branch (1st Vice Chairman). Lawyer. Born October 1, 1902 to G. C. and Minnie Kilburn Leibrand in Isabella County, Michigan. Graduated, Bay City Eastern High School, 1920; attended Bay City Junior College; A.B., University of Michigan, 1928. Admitted to Michigan Bar, 1932. Bay County Circuit Court Commissioner (1935-36); Bay County Prosecuting Attorney (1939-42); Bay County Circuit Judge (1944-53). Trustee and Vice Chairman, Bay City Public Library (1947-62). Member, Phi Beta Kappa; Phi Kappa Phi; American Bar Association; Michigan State Bar; Michigan Judges Association; Torch Club; Michigan Association of the Professions; Michigan State Historical Society; Bay County Historical Society; Masons; Odd Fellows; Grange. Trinity Episcopal Church, Bay City. Married to Shirley L. Hodge; two sons: Karl David (1942); and Charles B. (1945).



WILLIAM JOHN LEPPIEN

22nd Senatorial District

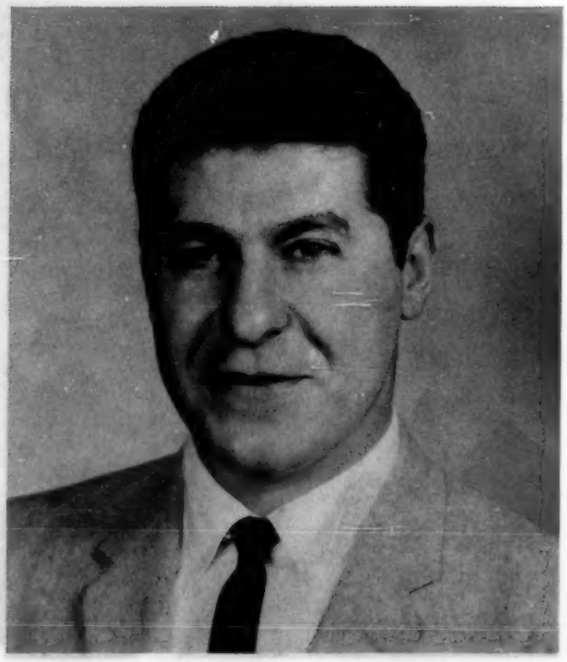
Republican of Saginaw; Committees on Miscellaneous Provisions and Schedule (1st Vice Chairman); Declaration of Rights, Suffrage and Elections. County Clerk. Born October 7, 1894 to John and Dora Gasner Leppien in Saginaw, Michigan. Attended International Business College, Saginaw. Served as Seaman 1/c, United States Navy; discharged 1919. County Clerk, Saginaw County (1946-61). Chairman, March of Dimes (1948-..). Recipient, Saginaw County Council P.T.A. Distinguished Service Award (1960); Veteran of the Year Award (1950). Member, Civitan Club; American Legion; Veterans of Foreign Wars; Germania; Masons; U.C.T.; Moose. Member, Grace Evangelical Lutheran Church, Saginaw. Married to Myrtle V. Sheriff; one son: Earl Raymond Hansen (1921).

DELEGATES

EDMOND LESINSKI

Wayne 5th District

Democrat of Detroit; Committees on Legislative Powers; Public Information. Printer. Born October 14, 1916 to Anthony and Helen Gorski Lesinski in Detroit, Michigan. Graduated, Detroit Cass Technical High School, 1933. Served four and one-half years, United States Army, three years, nine months in Europe; discharged 1945. Trustee, Outer VanDyke Homeowners' Association. Member, Polish National Alliance; Knights of Columbus. Member, St. Louis the King Roman Catholic Church, Detroit. Married to Frances M. Grajek; two children: Roger John (1949); and Kathleen Helen (1951).



RALPH LIBERATO

11th Senatorial District

Democrat of Warren; Committee on Legislative Organization. Experimental mechanic, automotive; union representative. Born December 18, 1923 in Detroit, Michigan. Attended Miller High School; Chrysler Institute of Engineering; Wolverine School of Trades; General Motors Technical Center. Served as Corporal, United States Marine Corps, South Pacific Theater, World War II. Warren Civil Service Commissioner; Member, Mayor's Unemployment Committee (1957-58); Vote Registration Director (1959-60). Member, Democratic Committee; Veterans of Foreign Wars; AmVets. Roman Catholic. Married. Four children.

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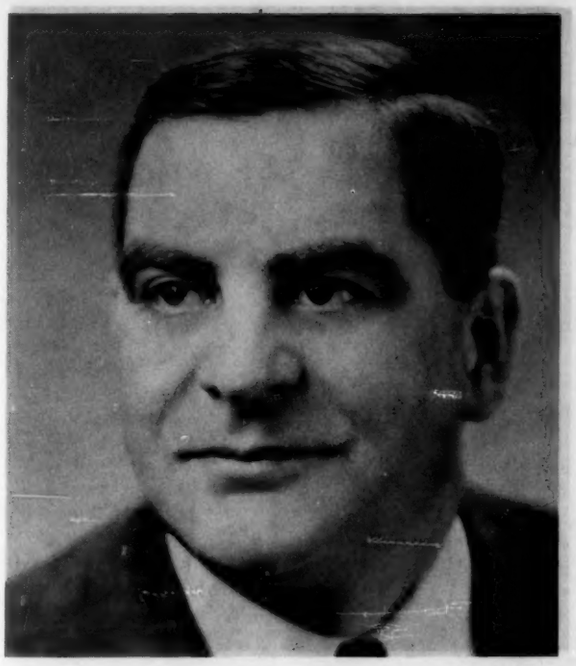
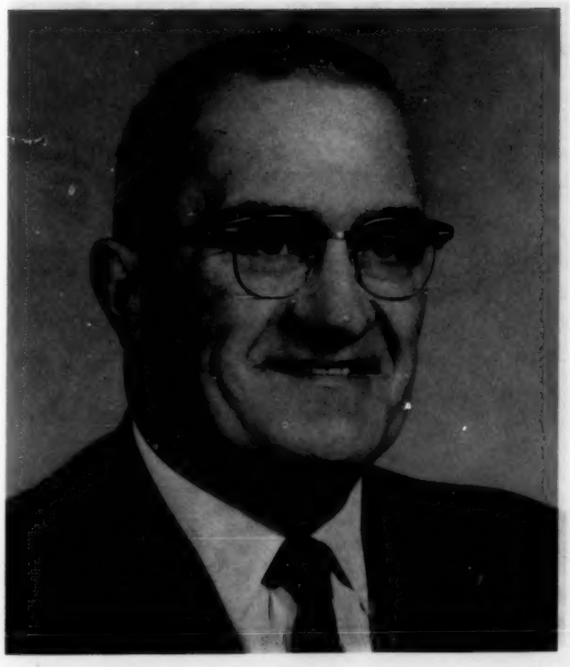


KENT T. LUNDGREN

30th Senatorial District (resigned March 30, 1962)*

Republican of Menominee; Committees on Legislative Organization; Rules and Resolutions. Pharmacist. Born July 7, 1914 to Victor and Olga Olson Lundgren in St. Paul, Minnesota. Moved to Michigan in 1940. Graduated, Marinette (Wisconsin) High School, 1932; B.S., University of Wisconsin, 1940. Served as Captain, United States Army in Europe; discharged with Silver Star in 1946; Major, USAR. Commander, Michigan American Legion (1954-55); President, Upper Michigan Pharmaceutical Association (1941); President, Wisconsin Pharmaceutical Association (1953). Member, Veterans of Foreign Wars; American Legion; Elks. Episcopalian. Married to Mildred Francis New; three sons: Thor Kent (1947); Stewart Lee (1951); and Kurt Eugene (1952).

***Resigned to seek election to the Michigan Senate; elected April 2, 1962.**



ARTHUR J. MADAR

Wayne 1st Distict

Democrat of Detroit; Committees on Local Government; Public Information. Health Inspector. Born May 25, 1905 to Paul and Anna Seman Madar in Hastings, Pennsylvania. Moved to Michigan in 1923. Attended Sykesville (Pennsylvania) High School. Served as 1st Lieutenant, United States Army; discharged 1945. Board of Trustees, Pension System, Detroit City Employees (1961-62); Detroit Rent Control Board (1947); Detroit Food Conservation Commission (1947-49); Michigan Council for National Defense (1948-52); Board of Governors, Detroit Employees Death Benefit Fund (1961-..); Vice President, C.O.P.E., 14th Congressional District (1959-62). President, Community Home Owners Association (1947-48); Post Commander, AmVets; District Commander, AmVets; State Commander (1947-48); National Senior Vice Commander, AmVets (1946-47); Board of Trustees, Mack Avenue Businessmen's Club (1961); President, Harper Civic Association (1947-62); President, East Side Federation of Civic and Businessmen's Associations (1947-62). Recipient, AmVets Merit Award (1948); Outstanding Service Award, Association of Bedding and Furniture (1962). Member, Park Drive Ravendale Association; American Legion; Gratiot Avenue Improvement Association; Holy Name Society; St. Vincent DePaul. Member, St. Matthew's Roman Catholic Church, Detroit. Married to Clara Barbara Dettloff.

DELEGATES

PAUL ROBERT MAHINSKE

Wayne 7th District

Democrat of Detroit; Committees on Administration (2nd Vice Chairman); Miscellaneous Provisions and Schedule. Attorney. Born June 20, 1927 to John and Catherine Dutto Mahinske, Sr. in Detroit, Michigan. Attended Detroit McKenzie High School; attended University of Detroit; attended Wayne State University; LL.B., Wayne State University, 1957. Served as Corporal, United States Marine Corps in Pacific, Central America and China; discharged in 1949 and 1952. Board of Directors, Advocates of Detroit; member, Detroit Bar Association; Michigan Bar Association; American Bar Association. Member, Our Lady Help of Christians Roman Catholic Church. Married to Virginia Irene Kretschmer; three daughters: Clair Ann (1954); Paula Marie (1954); and Mary Jo (1959).

WILLIAM C. MARSHALL

21st Senatorial District

Democrat of Taylor; Committees on Executive Branch (2nd Vice Chairman); Legislative Organization. Executive Vice President, Michigan State AFL-CIO. Born in Mississippi, 1921. Moved to Michigan in 1947. High school graduate; special courses. Taylor Township Water and Sewer Commissioner; member, Michigan Civil Defense Advisory Council; Governor's Constitutional Convention Citizens' Advisory Commission. Vice President, Michigan United Fund; Deputy Vice Chairman, Michigan Red Cross; member, Wayne State University-University of Michigan Institute of Labor Advisory Council; Michigan State University Labor and Industrial Relations Center; Michigan Committee on Farm-City Relations; White House Conferences on Safety and Aging. Episcopalian. Married.

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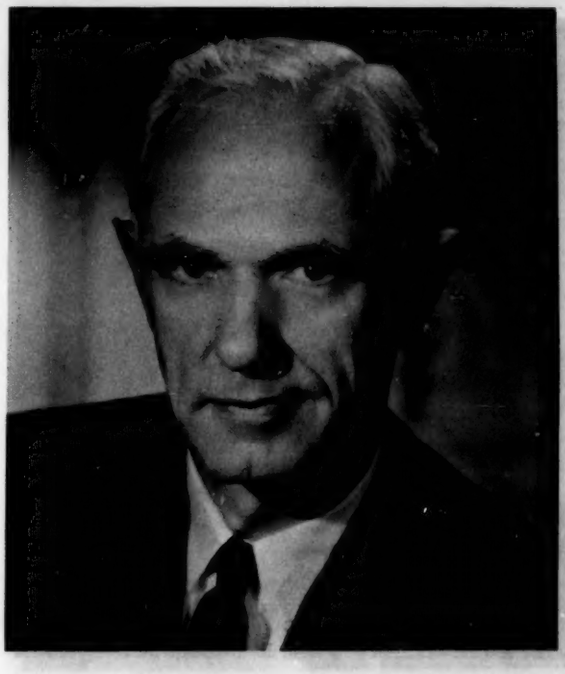

JOHN BUTLIN MARTIN

17th Senatorial District

Republican of Grand Rapids; Committee on Executive Branch (Chairman). Attorney. Born October 3, 1909 to John Butlin and Althea Winchester Martin in Grand Rapids, Michigan. Graduated, Grand Rapids Central High School, 1926; A.B., Dartmouth College, Hanover, New Hampshire, 1931; B.Litt., Oxford (England) University (Rhodes Scholar), 1933; J.D., University of Michigan, 1936. Served in U.S. Naval Reserve, discharged as Lieutenant Commander, 1946. State Senator (1948-50); State Auditor General (1950-54). Deputy Director, National Office of Civil Defense (1942-44); Assistant to Chairman, Securities and Exchange Commission (1936-37); Deputy Director, Ohio Division of Securities (1938-41); Republican National Committee (1957-..). President, Grand Rapids Rotary (1957-58); President, Kent County Mental Health Center (1956-57); Chairman, Michigan Crime and Delinquency Council (1960-..); Vice Chairman, Michigan Commission on Aging (1960-..). Member, American Legion; Veterans of Foreign Wars; AmVets; Grange; Farm Bureau; Phi Beta Kappa; Grand Rapids Bar Association; Michigan State Bar Association; American Bar Association. Trustee, Fountain Street Baptist Church, Grand Rapids (1958-59). Married to Helen Hickam; four children: Mrs. Judith Hartig (1938); Richard H. (1936); Gillian (1941); and Suzanne (1947).

THOMAS R. McALLISTER

Huron County District

Republican of Bad Axe; Committee on Judicial Branch. Attorney. Born August 14, 1905 to Thomas A. and Alice Sparling McAllister in Huron County, Michigan. Graduated, Kinde High School, 1922; LL.B., Detroit College of Law, 1928. Huron County Prosecuting Attorney (1933-40; 1943-46); Huron County Circuit Court Commissioner (1930-32; 1954-62). Special Assistant Attorney General (1947); Chairman, Huron County Civil Defense (1943-46); Chairman, Selective Service Advisory Board (1942-46); City Attorney, Bad Axe (1950-53); Harbor Beach (1946-62); Port Hope (1948-62). Chairman, Huron County Republican Committee (1946-60). Member, Masons; Odd Fellows; Elks. Presbyterian. Married to Ruth M. Lawitzke; four children: Marilyn (1936); Sharon A. (1943); Linda L. (1945); and Nancy A. (1946).

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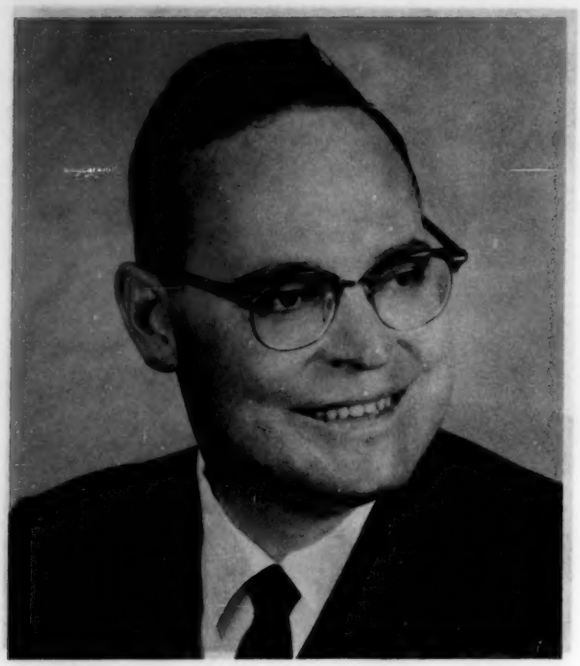


JOHN E. McCAULEY
Wayne 18th District

Democrat of Wyandotte; Committees on Local Government; Rules and Resolutions. Attorney. Born April 28, 1924 to John E. and Fern Gibson McCauley in Delaware, Ohio. Moved to Michigan in 1935. Graduated, Wyandotte Roosevelt High School, 1942; attended Michigan State University; LL.B., Wayne State University, 1949. Served as Sergeant, United States Army in Europe; discharged 1945. Wyandotte City Council (1955-57; 1961-..); Mayor of Wyandotte (1957-61); Wayne County Board of Supervisors (1957-..). Recipient, Wyandotte Junior Chamber of Commerce Outstanding Young Man of the Year Award (1955). Member, Disabled American Veterans; American Legion; Greater Wyandotte Board of Commerce; Veterans of Foreign Wars; Judge Advocate, Military Order of the Purple Heart (1955); Wyandotte Community Theatre; Kiwanis; Eagles. Deacon, First Presbyterian Church, Wyandotte (1950-..). Married to Jeanette E. Poet; one son: Patrick Brian (1947).

MARJORIE FRANCES McGOWAN (MISS)
Wayne 5th District

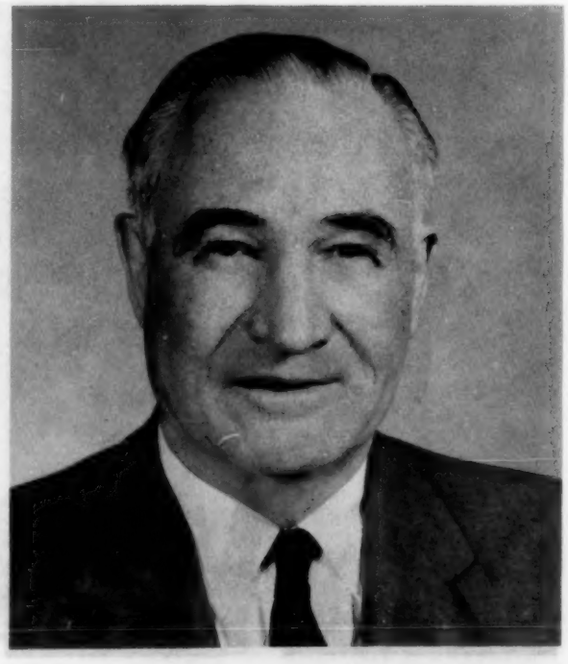
Democrat of Detroit; Committees on Rules and Resolutions (2nd Vice Chairman); Judicial Branch. Attorney. Born February 16, 1930 to Austin and Cassie Durrettee McGowan in Detroit, Michigan. Graduated, Detroit Cass Technical High School, 1945; B.S., Wayne State University, 1949; LL.B., University of Detroit, 1953; LL.M., Wayne State University, 1955. Assistant Prosecuting Attorney, Wayne County. Executive Board, 14th Congressional District Democratic Committee; Precinct Delegate. Member, Most Holy Trinity Legal Clinic; Big Sister Organization, Vista Maria School; Detroit Bar Association; American Bar Association; League of Catholic Women; Catholic Lawyer's Society; Eta Phi Beta Sorority. Recipient, Outstanding Performance Award, United States Air Force (1954); Detroit Outstanding Working Woman (1960). Roman Catholic.

DELEGATES

EDWARD AUSTIN McLOGAN

Genesee 1st District

Republican of Flint; Committee on Local Government. Retail merchant. Born April 2, 1920 to Edwin and Helen Austin McLogan in Flint, Michigan. Graduated, Flint Central High School, 1938; B.A., University of Michigan, 1942. Served as Captain, United States Army, World War II, awarded Bronze Star and Purple Heart; discharged 1946. Chairman of the Board, Boys' Farm (1952-54); Board of Directors, Flint Rotary Club (1948-54); Vice President, Flint Young Men's Christian Association (1952-54); President, Parent-Teacher Association (1960-61); Past President, Phi Kappa Psi; Board of Directors, Genesee County Red Cross (1954-58); member, University of Michigan Club; Flint Chamber of Commerce; Elks. Member, First Presbyterian Church, Flint; Director, Flint Council of Churches (1961-62). Married to Beatrice A. Bouchard; six children: Deborah (1946); Matthew (1948); Martha (1950); Jennifer (1953); Mary (1958); and Elizabeth (1961).



FRANK G. MILLARD

Genesee 1st District

Republican of Flint; Committees on Emerging Problems (Chairman); Legislative Powers (1st Vice Chairman); Executive Branch. Attorney. Born March 1, 1892 to Frank A. and Emma Gurnee Millard in Corunna, Michigan. Graduated, Corunna High School, 1910; A.B., University of Michigan, 1914; LL.B., University of Michigan, 1916; J. D. (honorary), Detroit College of Law, 1952. Brigadier General, J.A.G.C. (Ret.) Michigan Attorney General (1951-55); Flint City Attorney (1927-34); Assistant Attorney General (1947-48); General Counsel of the Army (1927-34). Chairman, Genesee County Republican Committee (1924; 1940); Republican State Central Committee (1946-48). Member, American Legion; Veterans of Foreign Wars; Military Order of Foreign Wars; Kiwanis; Flint College and Cultural Center; Flint Institute of Arts; Masons; Elks; Genesee County Bar Association (President, 1936); State Bar of Michigan; American Bar Association; Federal Bar Association; Delta Theta Phi; Kappa Sigma. Recipient, Army Commendation Medal; United States Army Distinguished Civilian Service Award. Episcopalian. Married to Dorothy E. McCorkell.

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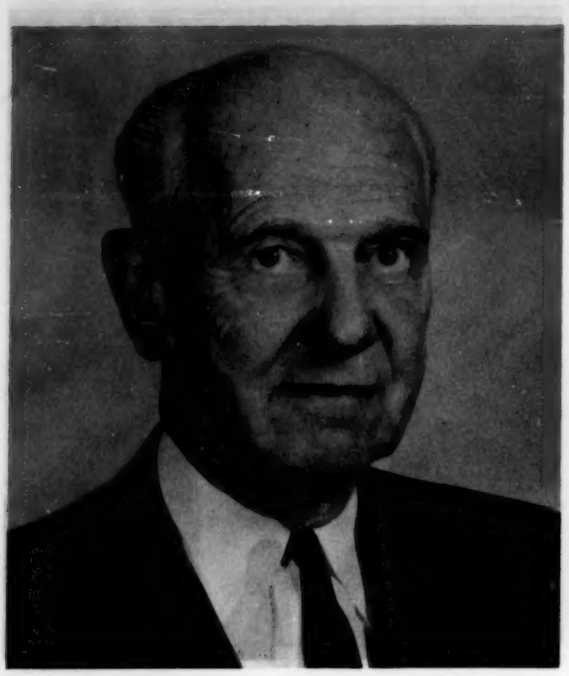
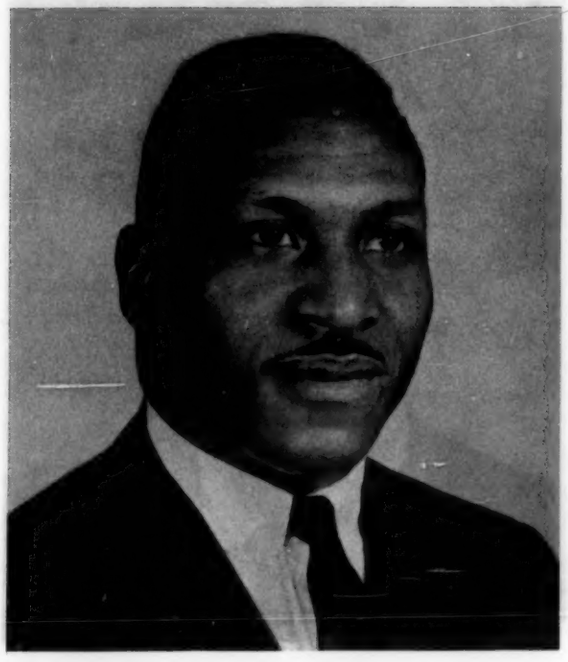


CARL D. MOSIER

St. Joseph District

Republican of Dowagiac; Committee on Judicial Branch. Retired circuit judge. Born October 7, 1887 to William and Myrtice Downing Mosier in Decatur, Michigan. Graduated, Paw Paw High School, 1904; LL.B., University of Michigan, 1910. Cass County Prosecuting Attorney (1917-21); Circuit Judge (1948-60); Dowagiac City Attorney (1912-17). President, Board of Education (1912-17; 1928-37); Deputy Clerk, Van Buren County (1905-08); Assistant Attorney General (1921-27). Van Buren County Republican Committee (1911-14). President Rotary (1929). Member, Masons. Recipient, Elks Man of the Year Award (1959). Member, Federated Church, Dowagiac. Married to Ruth Hendryx; six children: Thomas C. (1913); Mrs. Martha J. Burkett (1917); James H. (1919); John R. (1921); Mrs. Mary A. Ball (1922); and David T. (1928).



RAYMOND M. MURPHY

Wayne 11th District

Democrat of Detroit; Committee on Legislative Powers. Special Assistant, Congressman Diggs, Jr. Born in 1925 to John and Etta Thompkins Murphy in St. Louis, Missouri. Moved to Michigan in 1944. Attended Detroit Institute of Technology. Precinct Delegate; Chairman, 13th Congressional Democratic District Organization (1960); National Committeeman, Young Democratic Clubs of Michigan (1958-60); State Treasurer of the Young Democratic Clubs of Michigan (1954-58). Recipient, Citation of Honor from The Michigan Chronicle (1961); Certificate of Award from the 11th District League of Good Government (1961); Certificate of Award from the 13th District Business and Civic League, Inc. (1961). Protestant. Married to Loretta Blackwell; four children: Krystal Ann (1951); Leslie Susan (1953); Raymond Melvin, Jr. (1955); and Anita Louise (1956).

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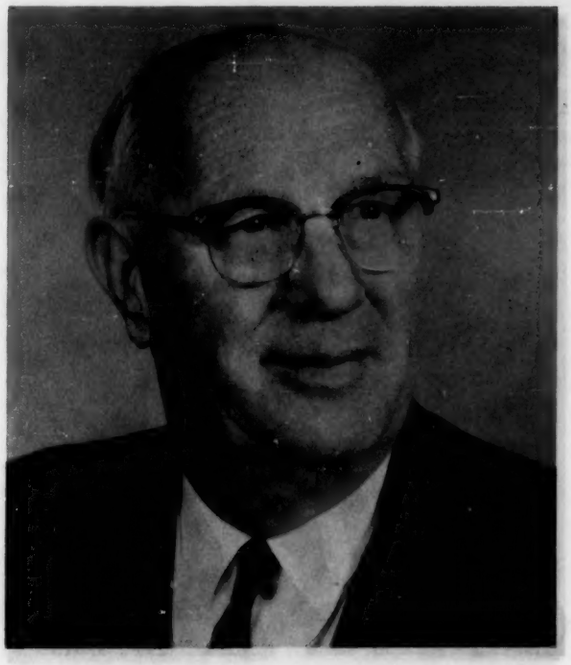


STEPHEN S. NISBET

26th Senatorial District

Republican of Fremont; President. Retired businessman and educator. Born May 28, 1895 to James and Laura Black Nisbet in Tawas City, Michigan. Graduated, Tawas City High School, 1911; B.A., Alma College, 1919; M.A., University of Michigan, 1930; LL.D. (honorary), Alma College, 1950; D.S.B.A. (honorary), Cleary College, 1955; B.S. (honorary) and LL.D. (honorary), Ferris Insitute, 1956 and 1959. Served as seaman, United States Navy; discharged 1918. State Board of Education (1942-61); Fremont City Commission (1950-51); Vice President, Michigan State Chamber of Commerce (1959-61); President, Michigan United Fund (1948); Chairman, Board of Trustees, Alma College (1945-..); President, Fremont Chamber of Commerce (1928). Recipient, Boy Scouts of America Silver Beaver Award (1945); Michigan Education Association Distinguished Service Award (1962); Michigan State University Centennial Citizenship Award (1955); President and Honorary Life Directorship, Michigan Association for Mental Health (1959). Member, Masons; American Legion. Member, Fremont Congregational Church. Married to Dorcas Sammons; three children: Stephan R. (1921); Mrs. Barbara Parkes (1924); and Richard (1930).

MELVIN NORD

Wayne 6th District

Democrat of Detroit; Committees on Legislative Organization (2nd Vice Chairman); Rules and Resolutions; Emerging Problems. Patent attorney. Born August 3, 1918 to Sol and Rose Hertzoff Nord in New York, New York. Moved to Michigan in 1946. Graduated, Newtown (New York) High School, 1931; B.Ch.E., City College of New York, 1939; M.S.E., University of Michigan, 1940; Dr.Eng.Sci., New York University, 1945; LL.B., Wayne State University, 1950. Member, Advisory Board, Detroit Smoke Bureau (1955-..); Consultant to Advisory Board, Trenton (Michigan) Smoke Bureau (1952-..). Precinct Delegate (1956-..); Sergeant at Arms, 15th Congressional District Democratic Committee (1961-..). Executive Board, Anti-Trust Section, Michigan Bar Association (1960-..). Member, American Institute of Chemical Engineers; American Chemical Society; Michigan Society of Professional Engineers; Detroit Engineering Society; Detroit Bar Association; Michigan Bar Association; Michigan Patent Law Association; American Patent Law Association; Tau Epsilon Rho; Sigma Xi. Married to Eleanor Greenbaum; two sons: Donald A. (1944); and Edward A. (1948).

DELEGATES

HAROLD NORRIS

Wayne 6th District

Democrat of Detroit; Committees on Declaration of Rights, Suffrage and Elections (2nd Vice Chairman); Style and Drafting. Attorney; Professor of Law, Detroit College of Law. Born April 7, 1918 to Louis and Jean Richman Norris in Detroit, Michigan. Graduated, Detroit Central High School, 1935; B.A., University of Michigan, 1939; M.A., University of Michigan, 1941; LL.B., Columbia University, New York, New York, 1948. Army Air Forces Statistical School, Harvard Business School, 1943. Served as Captain, Army Air Force in Europe; discharged 1946. Governor's Commission to Study the Problem of the Uninsured Motorist (1957-59); Advisory Committee to Detroit Mayor's Commission on Children and Youth (1960-62). Precinct Delegate; Chairman, Metropolitan Detroit Branch, American Civil Liberties Union (1959-61). Member, Michigan Bar Association; Detroit Bar Association. Recipient, Young Democrats of Michigan Distinguished Service Award (1959). Married to Frances Menacer; two children: Barbara Joan (1947); and Victor Martin (1950).

SAMUEL B. OSTROW

Wayne 2nd District

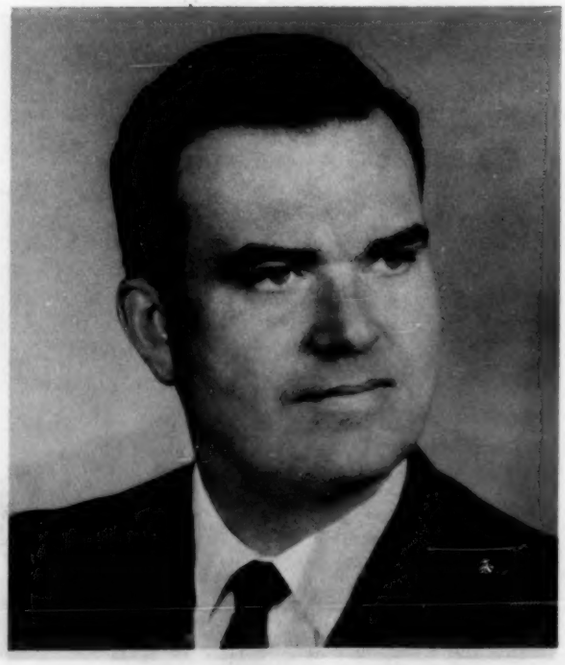
Democrat of Detroit; Committees on Judicial Branch; Finance and Taxation. Attorney. Born January 12, 1900 to Morris and Freda Zitomer Ostrow in the Ukraine. Moved to Michigan in 1905. Graduated, Detroit Central High School, 1918; LL.B., Detroit College of Law, 1924. Secretary, Michigan Department of Labor and Industry (1934); Deputy Commissioner, Michigan Department of Labor and Industry (1933); Chief Assistant Attorney General of Michigan (1937-38); Special Attorney, United States Department of Justice (1939-40); Special Enforcement Attorney, Office of Price Administration (1941); Regional Attorney, National War Labor Board (1942-43); District Counsel, Office of Price Stabilization (1950). Member, Detroit Bar Association; State Bar of Michigan; State Bar of California; Federal Bar Association; Masons; Shrine; B'nai B'rith. Member, Temple Beth El, Detroit. Married to Dorothy Kozlow.

DELEGATES

GEORGE KEYES PAGE

Genesee 1st District

Republican of Flint; Committees on Education; Public Information. Tax Analyst. Born November 10, 1896 to George Keeney and Adella Keyes Page in Perry, New York. Moved to Michigan in 1946. Graduated, Perry (New York) High School, 1913; B. S., Dartmouth College, Hanover, New Hampshire, 1917. Served as 1st Lieutenant, United States Army; resigned 1919. President, Flint Rotary (1954-55). Member, Elks; Flint Chamber of Commerce. Protestant. Married to Frances Marie Adams.



WILLIAM P. PELLOW

31st Senatorial District

Democrat of Bessemer; Committees on Finance and Taxation; Rules and Resolutions. Attorney. Born December 13, 1927 to William F. and Katherine Pellow in Bessemer, Michigan. Graduated, Bessemer A. D. Johnston High School, 1945: B.A., Lawrence College, Appleton, Wisconsin, 1950; LL.B., Detroit College of Law, 1954. Served as Ship Fitter 3/c United States Navy in the Pacific; discharged 1946. Gogebic Prosecuting Attorney (1957-..); Bessemer City Attorney (1955-..); Gogebic Friend of the Court (1957-..). Member, Veterans of Foreign Wars; Elks; American Legion. Member, St. Sebastian Roman Catholic Church. Married to Betty Lou Mattice; three children: Catherine Elaine (1957); William Paul (1959); and Linda Ann (1962).

DELEGATES

FRANK THOMAS PERLICH

Gogebic District

Democrat of Bessemer; Committees on Executive Branch; Administration. Sheriff. Born July 2, 1911 to Frank and Anna Jelich Perlich in Ironwood, Michigan. Graduated, Ironwood High School, 1930; attended Gogebic Junior College. Gogebic County Sheriff (1945-58). Delegate, County, State and National Democratic Conventions (1937-61). Member, March of Dimes; Eagles; Elks; Knights of Columbus; Holy Name Society. Member St. Sebastian Roman Catholic Church, Bessemer. Married to Grace L. McDonald; five children: Patricia Ann (1937); Francis John (1939); Carlyn Rose (1941); Kathleen Marie (1943); and Louise Janet (1945).

CLIFFORD E. PERRAS

Menominee District

Republican of Nadeau; Committees on Legislative Powers; Administration. Hotel owner. Born November 5, 1914 to Hubert and Minnie Gamache Perras in Nadeau, Michigan. Graduated, Stephenson High School, 1933. Served as Sergeant, United States Army in Europe; discharged 1945. Trustee, Board of Education (1950-60). Member, American Legion; Veterans of Foreign Wars; Knights of Columbus. Roman Catholic. Married to Alice M. Frank; two sons: Clifford E., Jr. (1947); and John Joseph (1956).

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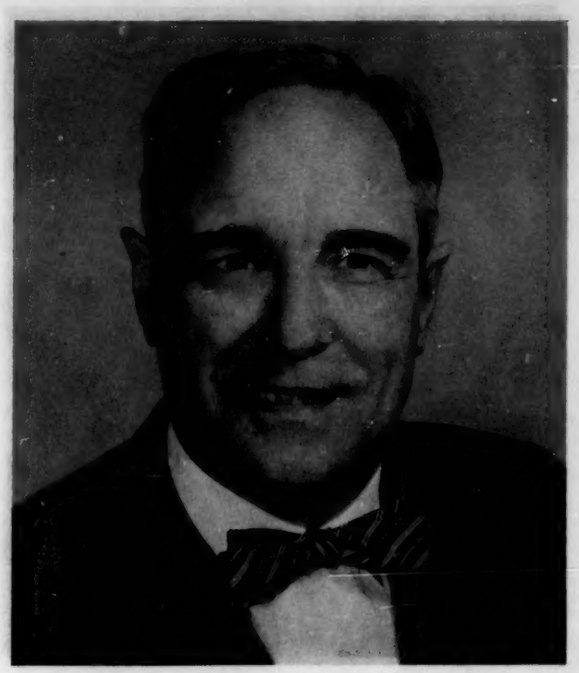


RAYMOND A. PLANK

Mason District

Republican of Ludington; Committees on Legislative Organization; Public Information. Radio broadcaster. Born January 4, 1916 to Ray K. and Pearl McCall Plank in Elsie, Michigan. Graduated, Ithaca High School, 1934; attended Grand Rapids Junior College; attended University of Michigan extension, Grand Rapids; attended First National Television School, Kansas City, Missouri. Served as Seaman 1/c, United States Navy; graduated, Radio Technical Training School; discharged 1945. Chairman, Ludington Planning and Zoning Board (1959-..); Finance Chairman, Mason County Republican Committee (1952-60). President, Ludington Lions (1955-56); President, Mason County Community Chest (1954); Chairman, Mason County Red Cross (1957); President, Ludington Chamber of Commerce (1952). Recipient, Optimist of the Year Award (1952). Member, Elks; Eagles. Trustee (1956-..), Bethany Methodist Church. Married to Mildred Pauline Fink; two children: Sandra Rae (1942); and Thomas Reginald (1944).

JAMES KERR POLLOCK

Washtenaw 1st District

Republican of Ann Arbor; Committees on Rights, Suffrage and Elections (Chairman); Executive Branch. Professor. Born May 25, 1898 to James Kerr and Ella Newton Pollock in New Castle, Pennsylvania. Moved to Michigan in 1925. Graduated, New Castle (Pennsylvania) High School, 1916; A.B., University of Michigan, 1920; A.M., University of Michigan, 1921; Ph.D., Harvard University, Cambridge, Massachusetts, 1925; LL.D. (honorary), University of Pittsburgh, 1957; Litt.D. (honorary), Ohio Northern College, 1960. Served as 1st Sergeant, United Statees Army; discharged 1918. Fellow, Social Science Research Council in Europe (1927-29); Director, Governmental Affairs Institute (1950-..); Chairman, Michigan Civil Service Study Commission (1935-37); Lecturer, Provost Marshall General's School, Fort Custer (1942-43); Special Advisor to Gen. Clay, U. S. Military Government for Germany (1945-48); Special Advisor to U.S. High Commissioner in Germany (1950); Vice-Chairman, Advisory Commission of International Government Elections (1959-61). Member, Michigan Committee on Elections (1930-31); Election Official, Saar Plebiscite (1935); Industry Committees, Wage and Hour Division, Department of Labor (1943); Judge Advocate General's and Civil Affairs Training Schools, Ann Arbor (1943-45); Commission on Organization of the Executive Branch of Govenment (1947-49). Member, American Political Science Association; American Academy of Political and Social Science; International Political Science Association; National Municipal League; Phi Beta Kappa; Delta Sigma Rho; Sigma Delta Kappa; Trigon; Kappa Phi Sigma. Recipient, United States Medal for Merit (1946); West Germany Grand Cross Order of Merit (1956); West Germany Knight Commander's Cross, Order of Merit (1959). Member, St. Andrew's Episcopal Church, Ann Arbor. Married to Agnes Marie Haun (deceased); two children: Robert Newton (1929); and Ann Appleyard (deceased).

DELEGATES

STANLEY MAURICE POWELL

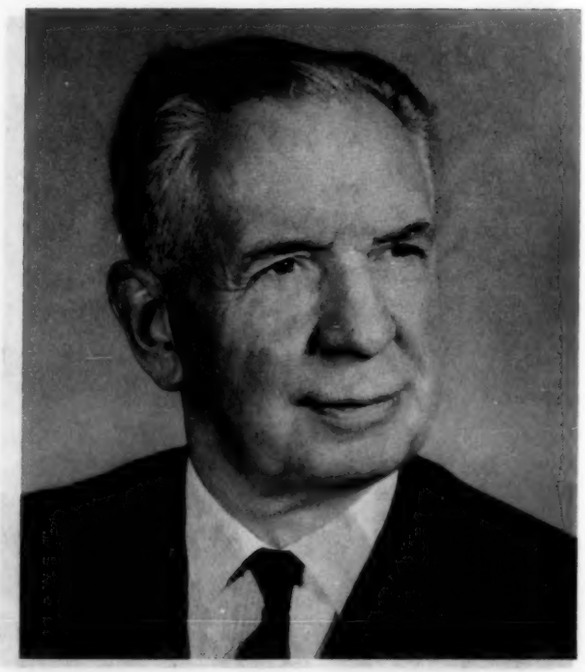
Ionia District

Republican of Ionia; Committees on Legislative Powers; Style and Drafting. Farmer. Born July 7, 1898 to Herbert and Alice Waterbury Powell in Ionia, Michigan. Graduated, Ionia High School, 1916; B.S., Michigan State University, 1920. Served as Private, United States Army; discharged 1918. State Representative (1931-32); Board of Education (1945-57); Delegate to County and State Republican Conventions. Member, Michigan State Fair Commission (1944-..). Former Director and Vice President, St. Johns Production Credit Association (1933-44); Director and President, Michigan Good Roads Federation (1957); Director, Highway Users Conference of Michigan; Past President, Michigan Country Life Association; Director, Michigan Centennial Farmers' Association (1960-62); President, Capitol Club (1954); Management Member, Region IV, Labor-Management Manpower Committee (1951-62). Director, Ionia County Farm Bureau (12 years); Legislative Counsel, Michigan Farm Bureau (1921-27; 1938-61). Recipient, Future Farmers of America Honorary State Farmer Award (1945); Michigan Association of Teachers of Vocational Agriculture Honorary Award (1959); Michigan State University Distinguished Service to Agriculture Award (1957); Michigan State Grange Outstanding Service to Agriculture Award (1956); Michigan Historical Commission Centennial Farm Certificate (1949). Member, Alpha Zeta; Delta Sigma Rho; Pi Kappa Delta; Farm Bureau; Grange. Contributing Editor, *Michigan Farmer* (1921-..). Trustee and Deacon, First Baptist Church of Ionia (1948-62). Married to Eleanor Grace Partridge; four children: Ronald Herbert (1928); Patricia Ann (1934); Larry Burton (1939); and Rex Lynn (1942).

KENNETH G. PRETTIE

Hillsdale District

Republican of Hillsdale; Committees on Rules and Resolutions (1st Vice Chairman); Judicial Branch. Attorney. Born February 12, 1903 to Richard and Cora Stebens Prettie in Worcester, Massachusetts. Moved to Michigan in 1918. Graduated, Detroit Southeastern High School, 1921; A.B., University of Michigan, 1924; LL.B., University of Michigan, 1925. Served as Lt. Colonel, United States Army in the Far East; discharged 1946. Assistant Attorney General (1939-42); Vice Chairman, Hillsdale County Republican Committee (1926-28). President, Hillsdale Rotary (1935-36). Rotary District Governor (1946-47). Member, Hillsdale Chamber of Commerce; Hillsdale Industrial Development Commission; American Legion; Veterans of Foreign Wars; Elks; Masons. Presbyterian. Married to Flora Gerberding; two daughters: Mrs. Portia Anderson (1929); and Mrs. Diane Quirk (1933).



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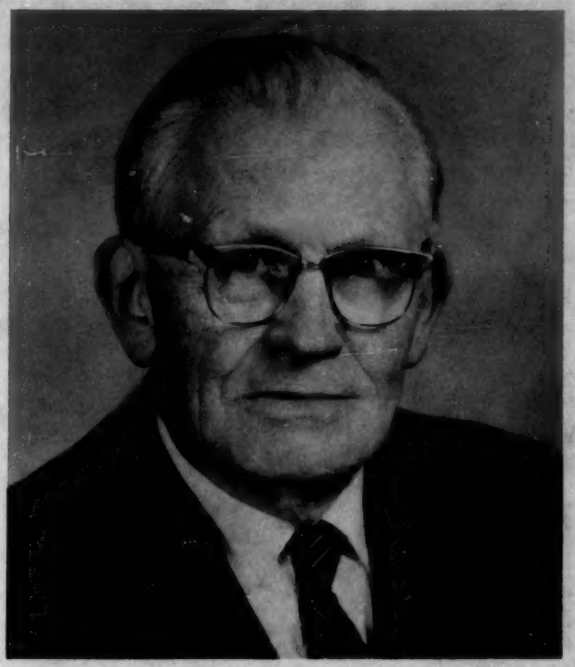

EARL C. PUGSLEY

Newaygo District

Republican of Hart; Committees on Judicial Branch; Emerging Problems. Retired circuit judge. Born April 17, 1885 to Milton and Jennie Cash Pugsley in Paw Paw, Michigan. Graduated, Paw Paw High School, 1903; LL.B., University of Michigan, 1909; LL.D. (honorary), Ferris Institute. Justice of the Peace; Oceana County Prosecuting Attorney; Mayor of Hart; Judge, 27th Judicial Circuit; City Attorney, Hart; Judicial Council of Michigan. Trustee and Vice President, Oceana County Hospital; President, Hart Rotary Club; President, Michigan Judges' Association. Member, Rotary Club; Hart Chamber of Commerce; Masons. Married to Alice E. Hutchins; three children: Mrs. Marion Ruth Diehl (1920); Mrs. Dorothy Jane Landon (1923); and Milton Hutchins (1924).

ELMER L. RADKA

Presque Isle District

Republican of Rogers City; Committees on Local Government; Public Information. Prosecuting Attorney. Born October 13, 1920 to Elmer G. and Anna Trapp Radka in Rogers City, Michigan. Graduated, Rogers City High School, 1938; A.B., University of Michigan, 1942; LL.B., University of Michigan, 1949. Served as Lieutenant, United States Navy in the Atlantic and Pacific; discharged 1946. Presque Isle County Prosecuting Attorney (1953-..); Public Administrator (1953-56). Chairman, Presque Isle County Republican Committee (1957); Vice President (1955); President (1956), Deputy District Governor (1957-58) and District Governor (1959-60), Lions; President, Servicemen's Club (1952); President, 26th Judicial Circuit Bar Association (1960). Member, Veterans of Foreign Wars; Rogers City Chamber of Commerce; Lions; Servicemen's Club; Northeastern Michigan Board of Realtors. Trustee, Westminster Presbyterian Church (1960-61). Married to Margaret E. Krueger.

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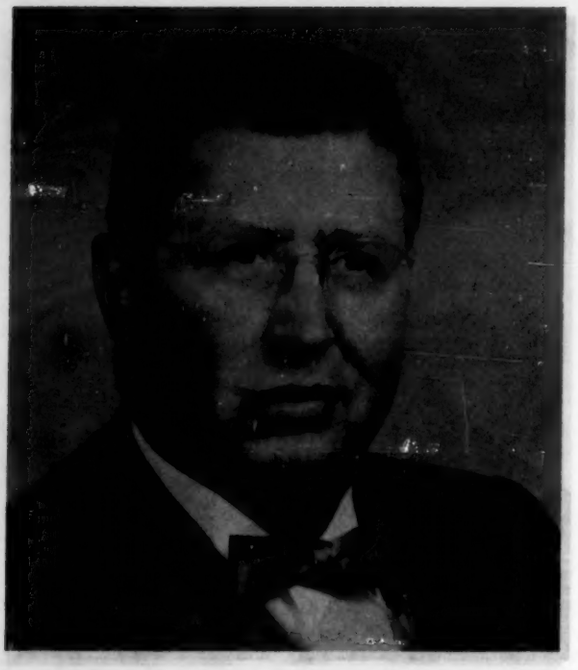


NICK JAMES RAJKOVICH

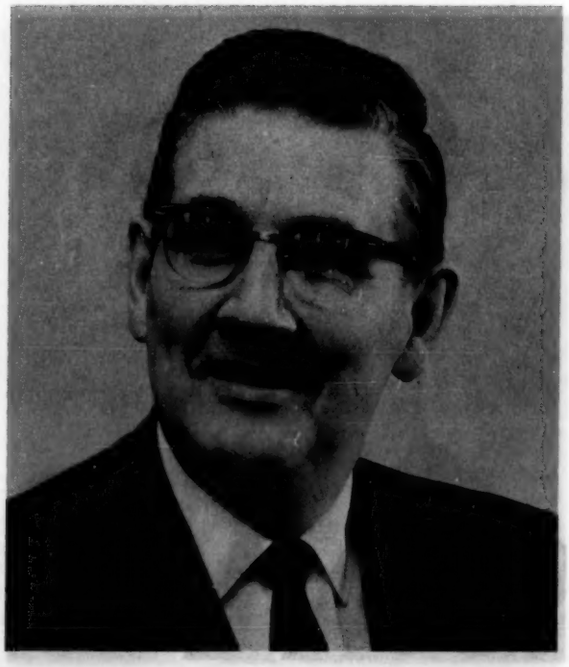
Grand Traverse District

Republican of Traverse City; Committee on Executive Branch. Teacher. Born February 8, 1910 to Andrew and Mary Ticak Rajkovich in Krispolje, Austria. Moved to Michigan in 1921. Graduated, Ironwood High School, 1929; B.A., Michigan State University, 1933; M.A., Michigan State University, 1935; attended University of Michigan. Member, Michigan Academy of Science, Arts and Letters; American Academy of Science, Arts and Letters; Kiwanis. Member, St. Francis Roman Catholic Church. Married to Frances C. Derbyshire; three daughters: Etta Mary (1938); Margarget Ann (1945); and Joan Suzanne (1951).

JAMES BURTON RICHARDS

Berrien 2nd District

Republican of Eau Claire; Committees on Local Government; Administration. Farmer. Born April 17, 1909 to James A. and Ida VanVranken Richards in VanBuren County, Michigan. Graduated, Eau Claire High School, 1926; B.S., Michigan State University, 1930. Served as 1st Lieutenant, Officers Reserve Corps; discharged 1938. Township Clerk (1936-40); Township Trustee (1960-..). Berrien County Republican Committee (1960-..). Founder and President, Berrien County Youth Fair Association (1945-50); Executive Secretary, Berrien County Farm Bureau (1940; 1946; 1949-51); Past President, Berrien County Guernsey Breeders of Michigan; Director, Michigan Blueberry Growers (since 1960); Director, Eau Claire Fruit Exchange; Director, Michigan Farm Bureau (1947-49). Member, Berrien Springs Rotary. Recipient, Berrien County 4-H Leaders Award (1950). Member, Eau Claire Community Church (Congregational). Married to Jane Mosher; one daughter: Mrs. Elizabeth Jane Engel (1934).



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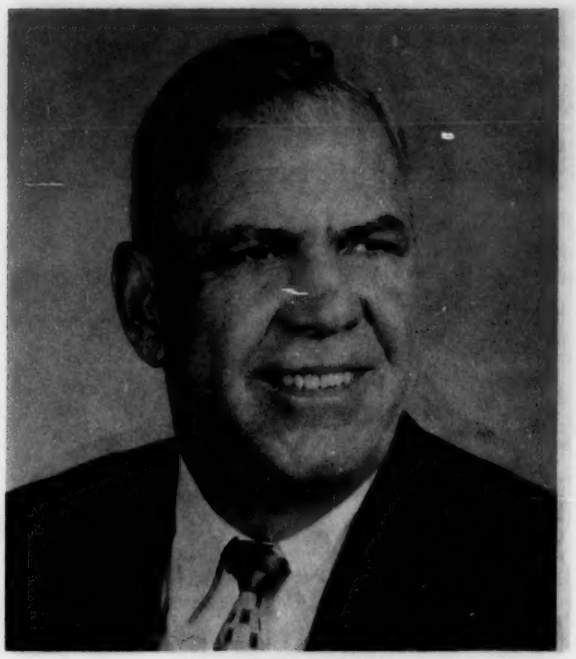


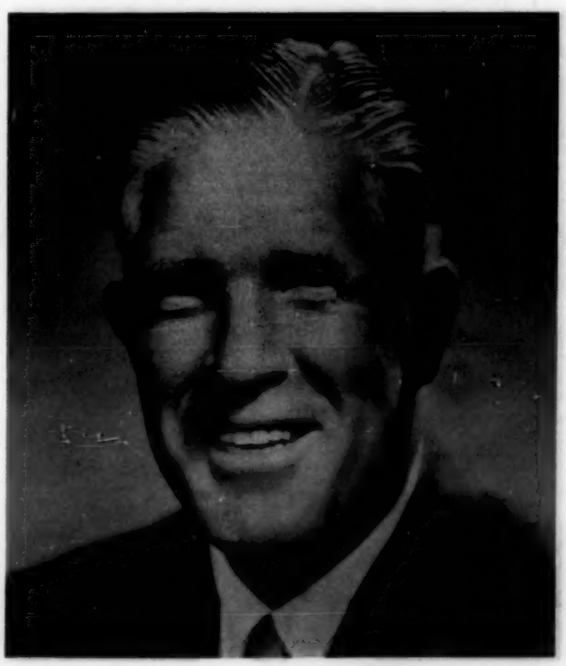
LESLIE WILLIAM RICHARDS
Marquette County District

Republican of Negaunee; Committee on Local Government. Safety Director, Steel Corporation. Born May 8, 1908 to John and Elisabeth Mitchell Richards in Negaunee, Michigan. Graduated, Negaunee High School, 1927. Mayor, City of Negaunee (1938-42); Trustee, Negaunee Board of Education (1943-..); President, Marquette County Board of Education (1948-..); President, Michigan Association of School Boards (1962); Advisor, Negaunee Youth Council (1956-..); Treasurer, Marquette County Mental Health Association (1961); Chairman, Board of Trustees and member of Methodist Church. Married to Dorothy Davey; one son: James Leslie (1947).

GEORGE ROMNEY

12th Senatorial District

Republican of Bloomfield Hills; Vice President; Committee on Education. Industrialist. Born July 8, 1907 to Gaskell and Anna Pratt Romney in Chihuahua, Mexico. Moved to Michigan in 1939. Graduated, Latter Day Saints High School, Salt Lake City, Utah, 1926; attended University of Utah; attended George Washington University; LL.D. (honorary), Wayne State University, 1959; LL.D., (honorary), Brigham Young University (Utah), 1959; LL.D., (honorary), University of Utah, 1960; L.H.D., (honorary), Macalester College (Minnesota), 1961; D.C.S., (honorary), George Washington University (Washington, D.C.), 1961; LL.D., (honorary), Michigan State University, 1961. Founder, Detroit Victory Council (1944); Director, Automotive Golden Jubilee (1946); Employer Delegate, Metal Trades Industry of the International Labor Office (1946-49); Chairman, Boys' Committee of Detroit (1953); Chairman, Detroit Citizens' Advisory Committee on School Needs (1957-58); Founder and President, Citizens for Michigan (1959-62); Director, Cranbrook School. Recipient, University of Utah Outstanding Achievement Award (1958); Associated Press Industrial Man of the Year Award (1958; 1959; 1960; 1961); Saturday Review Businessman of the Year Award (1959); Washington Board of Trade Award of Achievement (1959); University of Michigan Outstanding Businessman of the Year Award and 2nd Annual Business Leadership Award (1959); Detroit Education Association Annual Civic Award (1959); Anti-Defamation League of B'nai B'rith American Democratic Living Award (1959); Detroit Federation of Teachers Distinguished Service Award (1959); National Management Association Management Man of the Year Award (1959); Michigan Education Association Distinguished Service Award (1960). Member, Michigan Economic Developement Commission; Citizens' Research Council of Michigan; Future Detroit, Inc.; Detroit Regional Planning Commission; United Foundation; Detroit Children's Hospital; Institute of Economic Education; United Negro College Fund; Detroit Round Table of Christians and Jews; Executive Committee, Region VII, Boy Scouts of America. President, Detroit Stake, Church of Jesus Christ of Latter Day Saints. Married to Lenore LaFount; four children: Mrs. Lynn Keenan (1936); Mrs. Jane LaFount Robinson (1939); Scott (1942); and Willard Mitt (1948).



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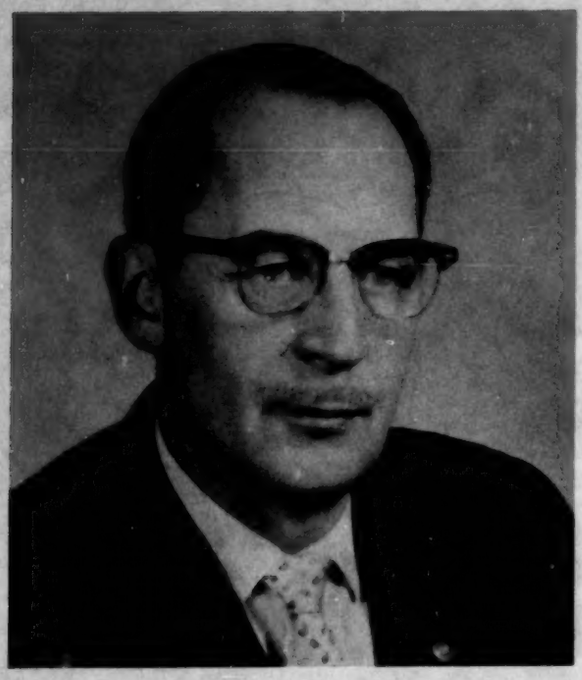
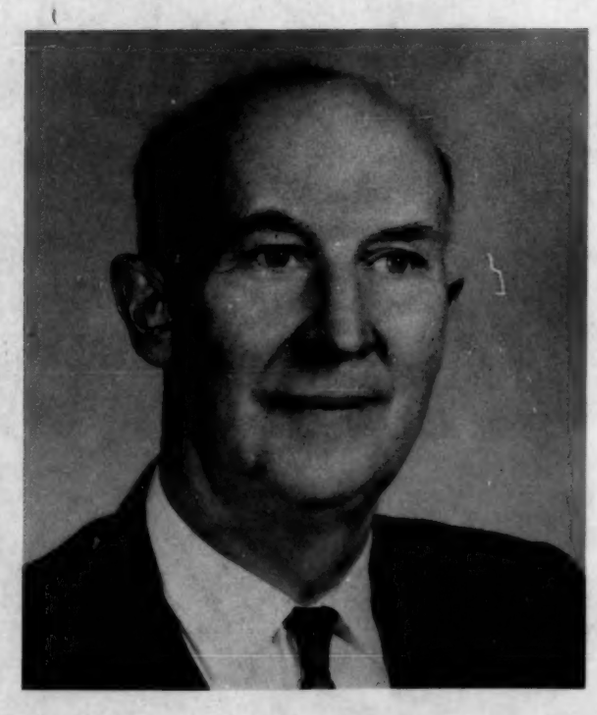


JAMES RICHARD ROOD

Midland County District

Republican of Midland; Committee on Legislative Organization. Attorney. Born March 31, 1906 to Frank and Elizabeth Simpson Rood in LaRose, Illinois. Moved to Michigan in 1926. Graduated, Anthony (Kansas) High School, 1924; attended Oberlin (Ohio) College; A.B., University of Michigan, 1928; LL.B., University of Michigan, 1931. Served as Major, Army Air Corps, Judge Advocate General's Department; discharged 1945. Midland County Prosecuting Attorney (1953-60); Circuit Court Commissioner (1933-37); Assistant Prosecuting Attorney, Midland County (1935-37). Chairman, Midland County Republican Committee (1940-42); Republican State Central Committee (1946-48). President, Civitan (1952); Board of Directors, Civitan (1952-56); Lieutenant Governor, Great Lakes District, Civitan (1953); Big Brothers of Midland, President (1959), Board of Directors (1955-61); Big Brothers of America, Board of Directors (1959). Member, Delta Theta Phi; Barristers; Elks; Midland County Bar Association; Tri-County Bar Association; State Bar of Michigan; American Bar Association; American Judicature Society; Lawyers' Club. Presbyterian. Married to Helen Margaret Collins; two daughters: Suzannne Marie (1935); and Sandra Elizabeth (1938).



ALLEN F. RUSH

Macomb 3rd District

Republican of Lake Orion; Committees on Finance and Taxation; Education. Farmer. Born January 3, 1902 to Lee and Mary Crissman Rush in Romeo, Michigan. Graduated, Romeo High School, 1918; attended Michigan State University. Chairman, Romeo Community Schools; Macomb County Board of Education. President, Romeo Rotary Club (1938); Director, Michigan Farm Bureau; Vice President, Michigan Livestock Exchange; President, Macomb County Farm Bureau; Vice President, Farmers' Petroleum Cooperative. Chairman, Board of Trustees, Romeo Methodist Church. Married to Jessie A. Turner; one son: Marvin F. (1931).

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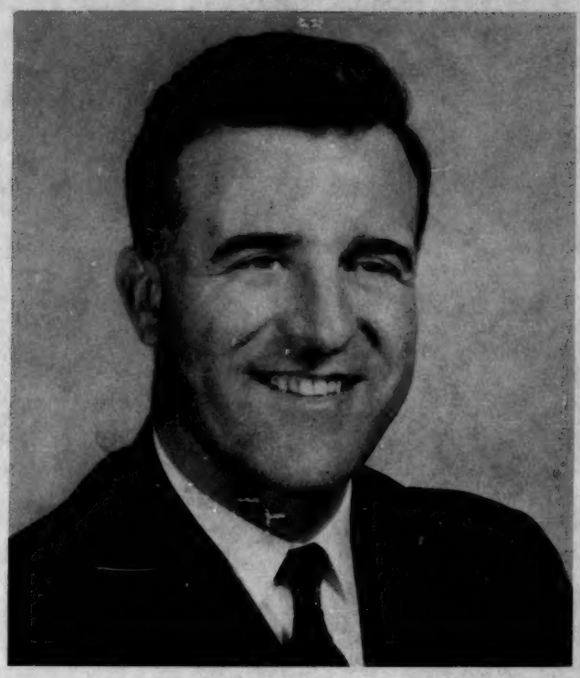
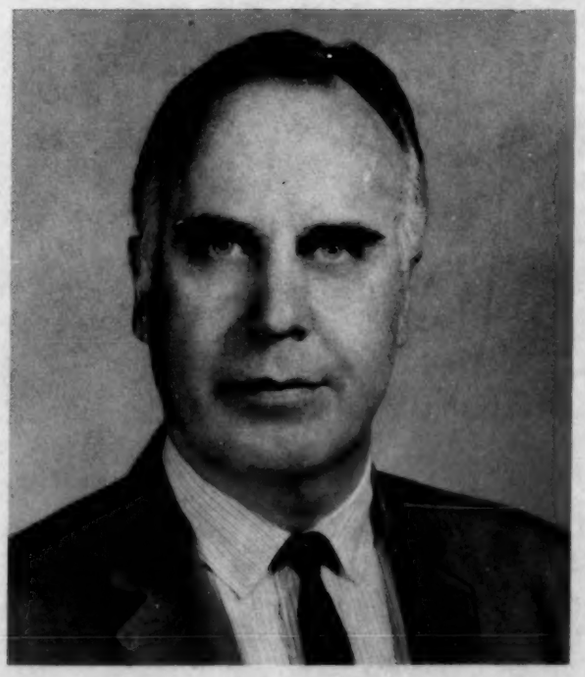


JOSEPH F. SABLICH

Iron District

Democrat of Caspian; Committees on Style and Drafting (2nd Vice Chairman); Legislative Organization. Attorney. Born July 11, 1928 to Nick and Milka Sablich in Caspian, Michigan. Graduated, Stambaugh High School, 1946; B.A., University of Michigan, 1954; LL.B., University of Michigan, 1954. Served in United States Army; discharged 1956. Member, Knights of Columbus; Elks. Roman Catholic.



DON FREDERICK SEYFERTH

Muskegon 1st District

Republican of Muskegon; Committees on Finance and Taxation; Miscellaneous Provisions and Schedule. Manufacturer. Born May 14, 1913 to Otto and Alma Sundell Seyferth in Grand Rapids, Michigan. Graduated, Howe (Indiana) Military Academy, 1931; attended Purdue University (Indiana). Muskegon City Commissioner (1956-..); Muskegon Mayor (1958-60); President and Director, Greater Muskegon Chamber of Commerce (1956-58). Member, Rotary Club. Episcopalian. Married to Ruth Marian Justin; two children; Sandra Jane (1935); and Charles Andrew (1941).

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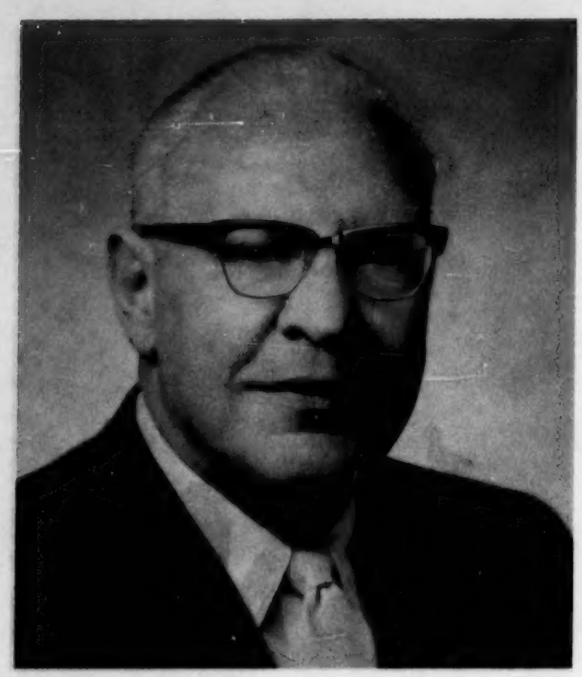
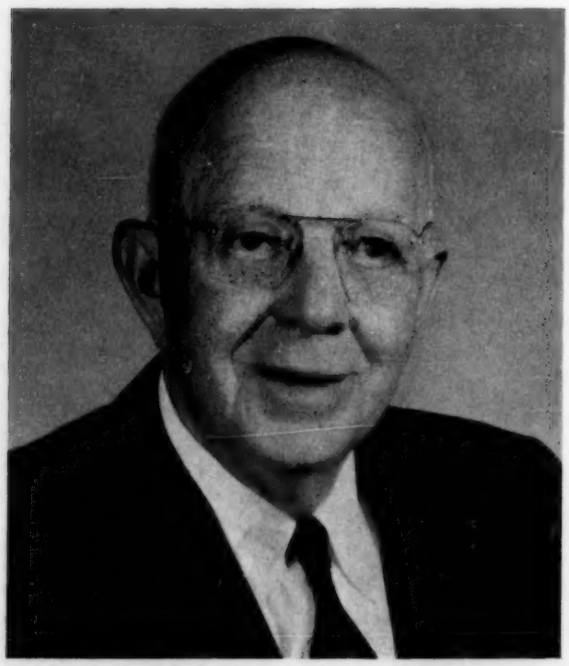


JAMES MAXWELL SHACKELTON
Saginaw 1st District

Republican of Saginaw; Committees on Executive Branch; Administration. Banker. Born May 25, 1896 to James M. and Mary Morehouse Shackleton in Janesville, Wisconsin. Moved to Michigan in 1898. Graduated, Kalamazoo Central High School, 1914; attended Kalamazoo College; A.B., Western Michigan University, 1919. Served as Pfc., United States Army; discharged 1918. President, Saginaw Board of Education (1947-50); Commissioner, Saginaw Public Library (1937-50); Saginaw Planning Board (1944-50; 1951-59). First State President, Michigan United Fund (1947-49); Director, Saginaw Community Chest (1944-48); Director, Saginaw Chamber of Commerce (1941-46; 1947-49; 1952-57; 1961-..); President, Saginaw Community Concerts Association (1940-41; 1962-..). President, Saginaw Rotary Club (1945-46); Director, Wickes Corporation, Saginaw; Michigan National Bank, Saginaw; Midland National Bank, Midland; Lobdell Emery Manufacturing Company, Alma; Wickes Foundation; F. N. Anderson Foundation; Draper Foundation. Member, Masons; Germania of Saginaw. Member, First Presbyterian Church, Saginaw. Married to Marie Seward King.



JOHN C. SHAFFER
Arenac District

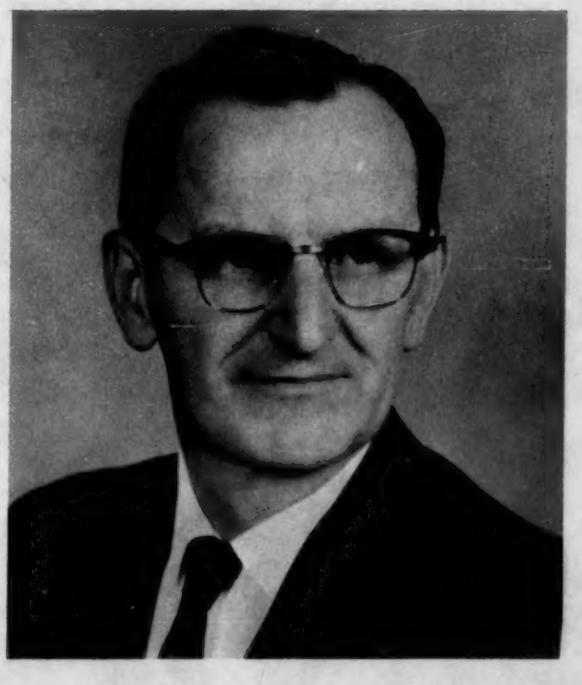
Republican of Gladwin; Committees on Declaration of Rights, Suffrage and Elections; Executive Branch. Retired Circuit judge. Born August 31, 1888 to John M. and Dora Troy Shaffer in Gladwin, Michigan. Graduated, Gladwin High School, 1904; attended Ferris Institute; attended Assumption College (Massachusetts); LL.B., University of Michigan, 1910. Served as Sergeant, United States Army in France; discharged 1919. Former Gladwin County Prosecuting Attorney; former Gladwin County Probate Judge; former Judge, 34th Judicial Circuit. Roman Catholic.

DELEGATES

EDWARD KIM SHANAHAN

Charlevoix District

Republican of Charlevoix; Committees on Declaration of Rights, Suffrage and Elections; Administration. Farmer. Born July 15, 1904 to Lisle and Mary Dunham Shanahan in Charlevoix, Michigan. Graduated, Charlevoix High School, 1923; B.S., United States Naval Academy (Maryland) 1927. Served as Commander, Naval Aviator, United States Navy; retired 1950. Chairman, Charlevoix County Republican Committee (1958-62). President, Charlevoix Board of Commerce (1951-54); President, Charlevoix Kiwanis Club (1961); President, Charlevoix County Farm Bureau (1959-61). Past Master, Masons. Trustee, Charlevoix Congregational Church. Married to Phila Averill Armstrong; two sons: Robert Edward (1931); and Bruce Kim (1933).



THOMAS GEORGE SHARPE, III

Shiawassee District

Republican of Howell; Committees on Local Government; Rules and Resolutions. Farmer and realtor. Born April 6, 1917 to Thomas George and Laura White Sharpe, Jr. in Livingston County, Michigan. Graduated, Fowlerville High School, 1935; attended Detroit Business Institute. President, Livingston County Farm Bureau (1961); Vice President, Livingston County Livestock Exchange (1961). Howell Lions Club Board of Directors (1961); 4-H Leader. Member of the Board, Church of the Nazarene. Married to Esther Diana Carnell; four children: Thomas Thurber, IV (1937); Ronald Russell (1939); Mrs. Diana Kaye Kimberly (1941); and Linda Ann (1947).

DELEGATES

JULIUS CHARLES SLEDER

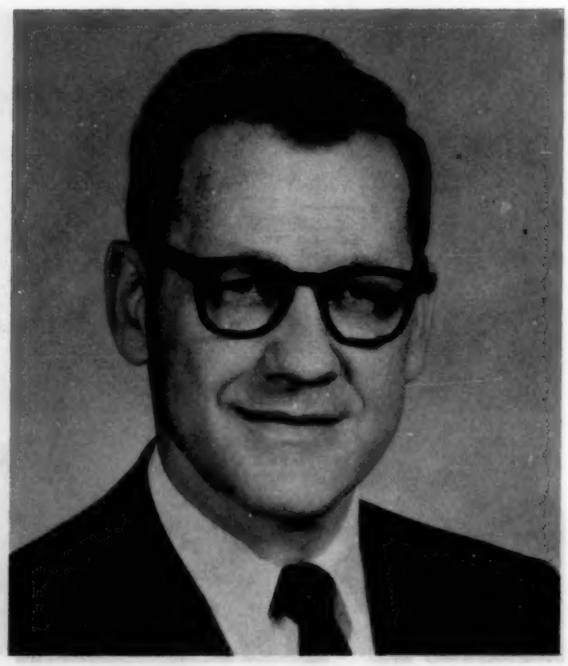
27th Senatorial District

Republican of Traverse City; Committee on Local Government. Businessman. Born January 28, 1914 to Frank and Anna Lautner Sleder in Grand Traverse County, Michigan. Graduated, Traverse City Central High School, 1932; B.A., Michigan State University, 1936. Served as Lieutenant, United States Navy in Europe and the Mediterranean; discharged 1945. City Commissioner, Traverse City (1948-58); Mayor, Traverse City (1952); Vice President, Board of Trustees, Northwestern Michigan College (1954-..); Grand Traverse County Supervisor (1956-..); Traverse City Planning Commission (1952); Traverse City Board of Review (1961). Member, Traverse City Chamber of Commerce; Elks; American Legion. Member, First Congregational Church, Traverse City. Married to Doris Mary Pulcipher; two daughters; Mary Jo (1953); and Jayne Elizabeth (1958).

JOSEPH M. SNYDER

Macomb 2nd District

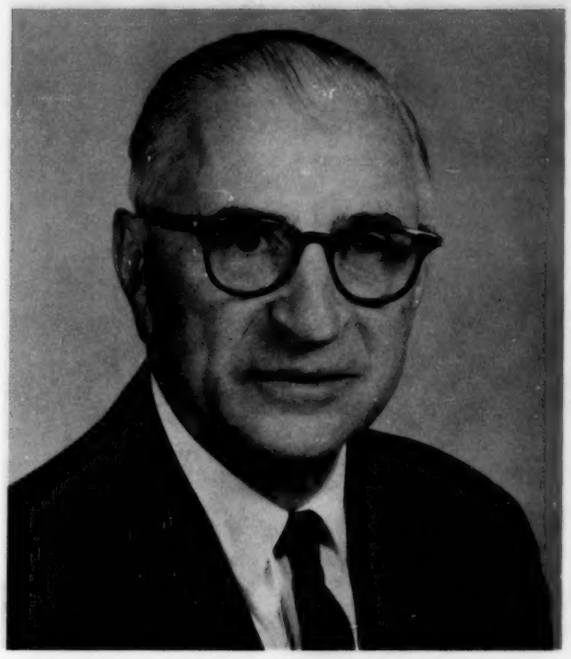
Democrat of St. Clair Shores; Committees on Miscellaneous Provisions and Schedule; Administration. Labor representative. Born March 18, 1915 to Mathew and Lucy Konc Snyder in Barberton, Ohio. Moved to Michigan in 1922. Graduated, Detroit Wilbur Wright High School, 1934. St. Clair Shores City Councilman (1960-..); Macomb County Supervisor (1961-..); Chairman, St. Clair Shores Planning Commission (1957-62). Vice Chairman, 14th Congressional District Democratic Committee (1950). Member, Michigan Society for Mental Health; Macomb County Alcoholism Study Committee; Boy Scouts of America. Recipient, Boy Scouts of America Scouter's Training Award (1961). Member, St. Joan of Arc Roman Catholic Church; St. Joseph Society. Married to Rita Marie Kanthak; three children: Donna Katherine (1944); Joseph M., II (1945); and Ronald J. (1956).



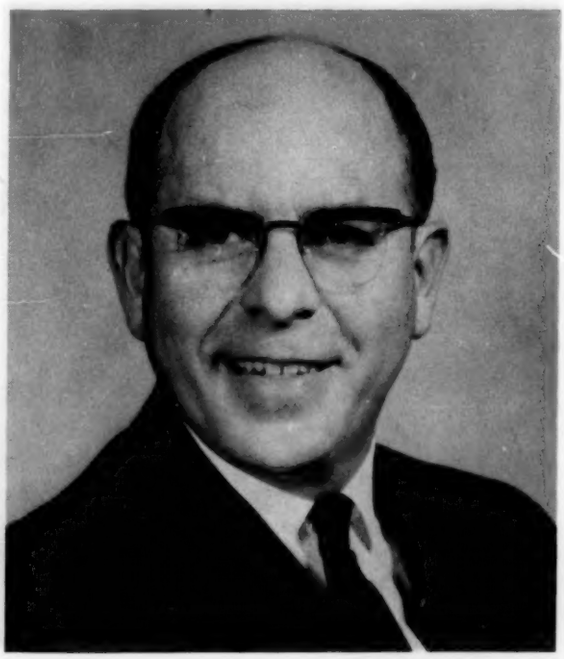
DELEGATES

H. CARL SPITLER

Emmet District



Republican of Petoskey; Committee on Education. Retired Superintendent of schools. Born November 22, 1892 to H. and Fronia Clever Spitler in Nashville, Michigan. Graduated, Lima Township High School, Howe, Indiana, 1912; B.S., North Central College, Naperville, Illinois, 1917; M.A., University of Michigan, 1931; attended University of Chicago; attended Columbia University (New York City); LL.D. (honorary), Central Michigan University, 1957. Served as Ensign, United States Navy; discharged 1919. Petoskey City Charter Commission (1959-60); President, Emmet County Fair Board (1961); Republican County Committee (1960-61); President, Petoskey Kiwanis (1925); Lieutenant Governor, Michigan District, Kiwanis (1935); Board of Directors, Petoskey Chamber of Commerce (1940); Chairman, Community Chest (1961). Recipient, Michigan Congress of Parents and Teachers Distinguished Service Award (1962). Regional Chairman, Michigan Education Association (1932-33); Vice President, Michigan Association of School Administrators (1931-32); Vice President, Michigan Congress of Parents and Teachers (1960-61); Life Membership Award, Michigan Congress of Parents and Teachers (1953). Member, Masons; Knights Templar. Member of the Session and Deacon, Petoskey Presbyterian Church. Married to Gladys Dressander; two sons: Donald H. (1931); and Richard C. (1935).



HENRIK EKROLL STAFSETH

Ottawa County District

Republican of Grand Haven; Committees on Finance and Taxation; Public Information. Civil Engineer. Born April 14, 1919 to Henrik J. and Inger Nordhem Stafseth in Lansing, Michigan. Graduated, East Lansing High School, 1937; B.S., Michigan State University, 1942. Served as Lieutenant, United States Naval Reserve in Pacific and Atlantic; discharged 1946. Grand Haven City Planning Commission (1955-57); Chairman, Ottawa County Republican Committee (1958-60); President, Michigan County Road Association (1960); President, Southern Michigan County Road Association (1956); Vice President, Grand Haven Rotary (1961-62). Member, American Legion; Kiwanis; Chamber of Commerce; Sigma Chi; Masons. Elder, First Presbyterian Church, Grand Haven. Married to Lillian Mae Carisch; one son: David Allen (1938).

DELEGATES

FRANK O. STAIGER, JR.

34th Senatorial District

Republican of Port Huron; Committees on Finance and Taxation; Style and Drafting. Attorney. Born February 1, 1930 to Frank O. and Leona Little Staiger, Sr. in Port Huron, Michigan. Graduated, Port Huron High School, 1948; B.B.A., University of Wisconsin, Madison, Wisconsin, 1952; LL.B., University of Wisconsin, 1954. Served as 1st Lieutenant, United States Army; discharged 1956. Vice Chairman, Port Huron Community Relations Board (1960-..). Member, Port Huron Exchange Club. Married to Irene E. Wagener; three children: Thomas Owen (1955); Janet Irene (1957); and David John (1961).

ANTHONY STAMM

Kalamazoo 2nd District

Republican of Kalamazoo; Committees on Executive Branch; Rules and Resolutions. Kalamazoo County Clerk. Born in 1914 to John and Stella Berghuis Stamm in Kalamazoo, Michigan. Graduated, Kalamazoo Central High School, 1931; attended Parsons Business School, Kalamazoo, Michigan; B.S., Western Michigan University, 1946; M.A., Western Michigan University, 1960. Presbyterian. Married to Miriam J. Wise.

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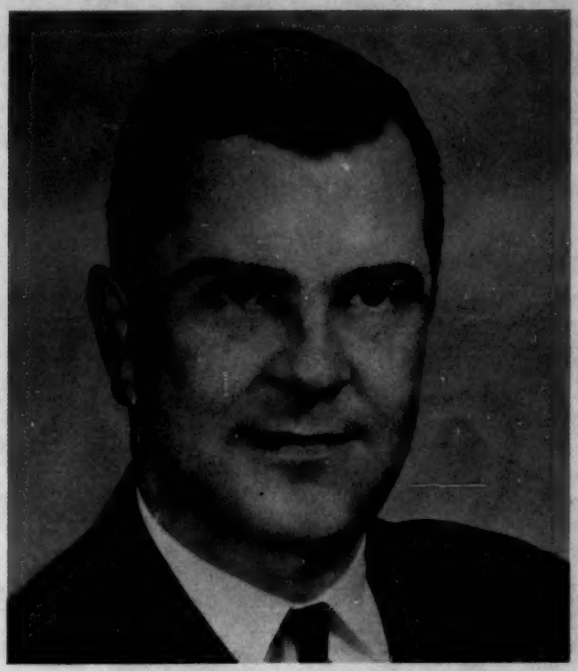
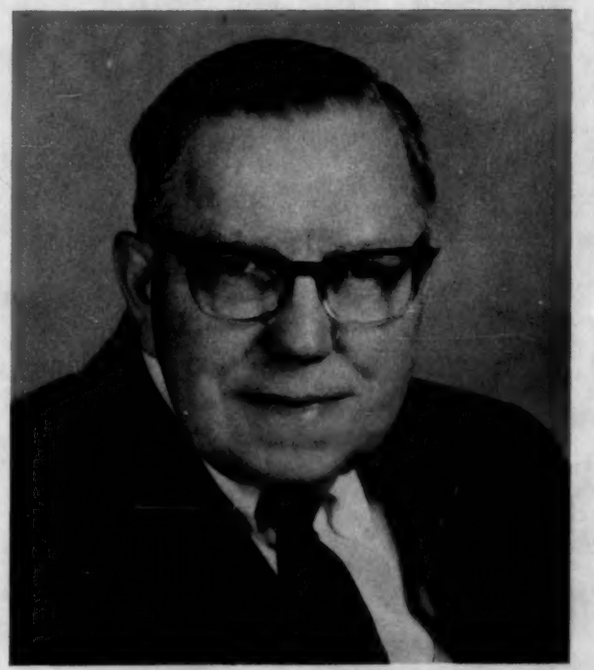


JAMES HOYT STERRETT

Wayne 12th District

Republican of Detroit; Committees on Executive Branch; Administration. Insurance executive. Born October 2, 1926 to Dee and Maribel Sill Sterrett in Detroit, Michigan. Graduated, Highland Park High School, 1944; attended Highland Park Junior College; attended Michigan State University. Served as Storekeeper 3/c, United States Navy in the Pacific; discharged 1946. Member, Rosedale Park Civic Association; Propeller Club of the United States; 'Economic Club of Detroit. Congregationalist. Married to Nancy Helen Coffey; two children: John Hoyt (1950); and Suzanne Louise (1955).



J. HAROLD STEVENS

Wayne 12th District

Republican of Detroit; Committees on Declaration of Rights, Suffrage and Elections (1st Vice Chairman); Style and Drafting. Attorney; retired teacher. Born March 21, 1895 to Frank and Jeanette Millett Stevens in Lansing, Michigan. Graduated, Lansing High School, 1914; A.B., Hillsdale College, 1921; M.A., University of Michigan, 1924; attended University of Wisconsin; J.D., Detroit College of Law, 1937. Served as Pfc., and 1st Lieutenant, United States Army; discharged 1918 and 1938. Editor, Rosedale Tattler (1947-57); President, Detroit Chapter, Hiawatha Sportsman's Club (1957-58); member, American Legion; Masons; Shrine; Alpha Tau Omega; Sigma Nu Phi; Epsilon Delta Alpha; Detroit Education Association; Michigan Education Association; Detroit Schoolmen's Club; Michigan Schoolmasters' Club; Detroit Metropolitan Social Studies Club; State Bar of Michigan. Member, Mt. Hope Congregational Church. Married to Martha Beal; two children: Thomas Harold (1927); and Mrs. Janet Beal Papworth (1930).

DELEGATES

STEPHEN J. STOPCZYNSKI

Wayne 7th District

Democrat of Detroit; Committee on Finance and Taxation. Machinist. Born January 1, 1911 to Louis and Lottie Stanczak Stopczynski in Detroit, Michigan. Attended Detroit St. Stanislaus High School; attended Highland Park Ford Trade School; attended Detroit Northeastern High School. Executive Board, 1st Congressional District Democratic Committee (1958-..); Ward Chairman, 1st Congressional District (1956-..); Democratic State Central Committee (1959-..); 1st District Committee on Political Education (1959-..); Wayne County AFL-CIO Council (1952-..). Member, North Detroit Dom Polski Association; Pulaski Democratic Club of North Detroit; Polish-American Political Club. Member, St. Augustine Roman Catholic Church; Holy Name Society; Polish Roman Catholic Union. Married to Cassie Dzienciolowski; three sons: Stephen L. (1932); Stanley (1934); and Thaddeus C. (1940).

WILLIAM G. SUZORE

Wayne 17th District

Democrat of Lincoln Park; Committee on Local Government. Lincoln Park City Clerk. Born August 10, 1926 to Simon and Helen Craven Suzore in Newport, Michigan. Graduated, Ecorse St. Francis Xavier High School, 1945; attended University of Detroit. Served as Pfc., United States Army; discharged 1946. Wayne County Board of Supervisors (1955-..). Precinct Delegate (1954-..). Executive Board and Building Association Trustee, Lincoln Park Exchange Club (1960-..); State Treasurer, Catholic War Veterans (1952-53). Member, Knights of Columbus; Catholic War Veterans; American Legion; Eagles; Moose. Member, St. Henry's Roman Catholic Church, Lincoln Park.

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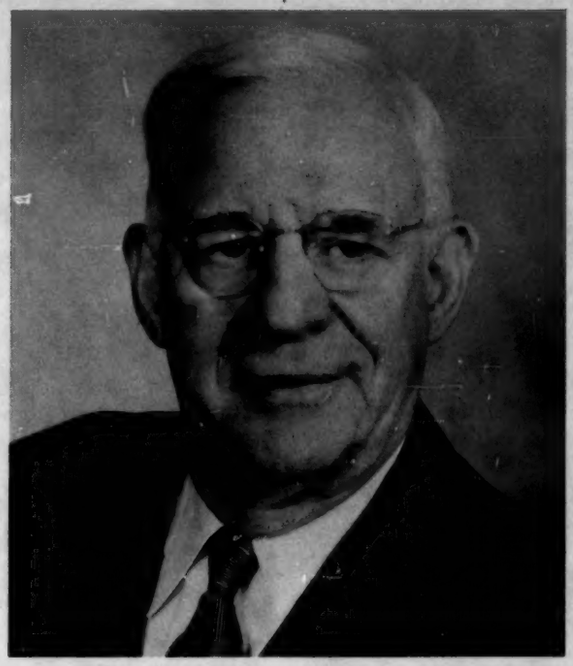
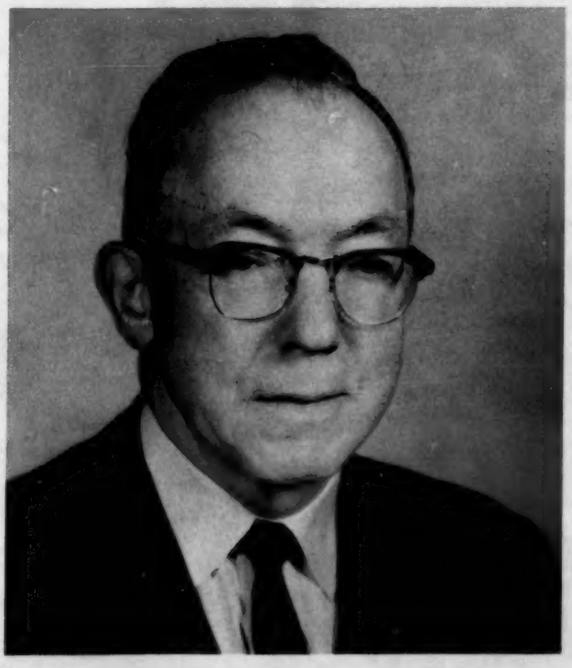


JAMES FRANCIS THOMSON

Jackson 2nd District

Republican of Jackson; Committees on Finance and Taxation; Local Government. Farmer and County Treasurer. Born November 19, 1891 to James C. and Mary Dack Thomson in Jackson County, Michigan. Graduated, Jackson High School, 1912; attended Michigan State University. State Representative (1929-31); Township Supervisor (1917-29); Township Board of Review (1915-17); Township Treasurer; Jackson County Treasurer (1941-61); Michigan Commissioner of Agriculture (1934-36). Chairman, Republican State Central Committee (1936-39); Chairman, Jackson County Republican Committee (1939-41). Member, Kiwanis Club of Jackson; Northwest Lions Club; Grange; Masons; Odd Fellows. Methodist. Married to Florence Elvira Sanford; four children: James Edwin (1915); Mrs. Virginia Allison (1919); Seymour Sanford (1923); and Jack Russell (1926).

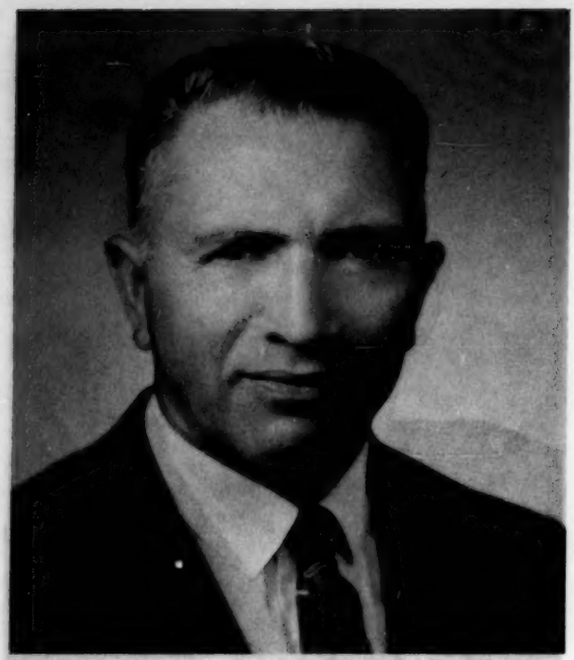


ROBERT SPEER TUBBS

Kent 1st District

Republican of Grand Rapids; Committee on Judicial Branch. Attorney. Born January 23, 1897 to Levi and Myrtle Speer Tubbs in Corning, New York. Moved to Michigan in 1924. Graduated, Corning (New York) Northside High School, 1915; A.B., University of Michigan, 1922; LL.B., University of Michigan, 1924. Served as Chief Gunner's Mate, United States Naval Reserve; discharged 1918. Wyoming Park Board of Education (1928-31); Grand Rapids Board of Education (1947-59); Deputy City Attorney (1929-33); Grand Rapids City Attorney (1933-34); Grand Rapids Public Recreation Board (1945-47); member Kent County Draft Board No. 42 (1947-51); Precinct Delegate (1943); President, Grand Rapids Y's Men's Club (1928); President, Grand Rapids Bar Association (1946-47). Member, Grand Rapids University Club; American Judicature Society; American Bar Association; Michigan State Bar. Protestant. Married to Lorraine Joyce Burgess; two children: Norman O. (1929); and Mrs. Joan Hovdesven (1933).

DELEGATES



HERBERT MARVIN TURNER

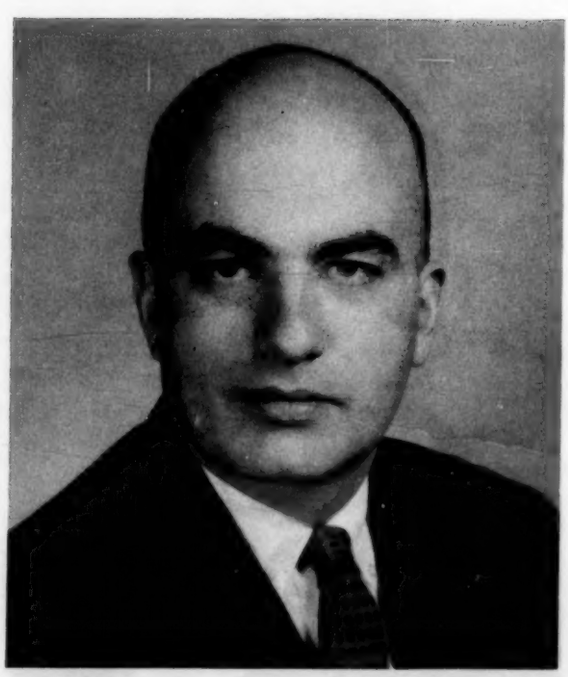
Saginaw 2nd District

Republican of Saginaw; Committees on Finance and Taxation; Public Information. Farmer. Born October 25, 1908 to Marvin and Ernestine Turner in Freeland, Michigan. Graduated, Saginaw Arthur Hill High School, 1928; attended Michigan State University. Member, Saginaw County Farm Bureau; Saginaw Chamber of Commerce; Michigan State Horticultural Society; Saginaw County Agricultural Society. Recipient, Michigan State University Honor Award (1941); Saginaw Chamber of Commerce Honor Award (1961). Trustee, First Presbyterian Church, Saginaw. Married to Irene Ethelyn Fish; three children: Donald H. (1936); Mrs. Donalda I. Gunther (1936); and Kenneth A. (1949).

SANFORD MARTIN TWEEDIE, III

St. Clair District

Republican of Port Huron; Committees on Local Government; Public Information. Attorney. Born January 2, 1931 to S. Martin and Gladys Jones Tweedie in Sandusky, Michigan. Graduated, Sandusky High School, 1948; B.B.A., University of Michigan, 1953; LL.B., Detroit College of Law, 1958. Served as 1st Lieutenant, United States Army in Japan; discharged 1955. Port Huron Assistant City Attorney (1960-61); Delegate to State Republican Conventions (1952; 1960; 1961); President, Toastmasters (1960); President, Port Huron McKinley School (1961-62); President, Delta Theta Phi (1957-58). Member, Exchange Club; American Legion; Delta Upsilon. President, Young Couples' Club, First Presbyterian Church, Port Huron (1961). Married to Pat Rae Benedict; three children: Juliette Ann (1954); Suzette Marie (1956); and Sanford Martin, IV (1962).



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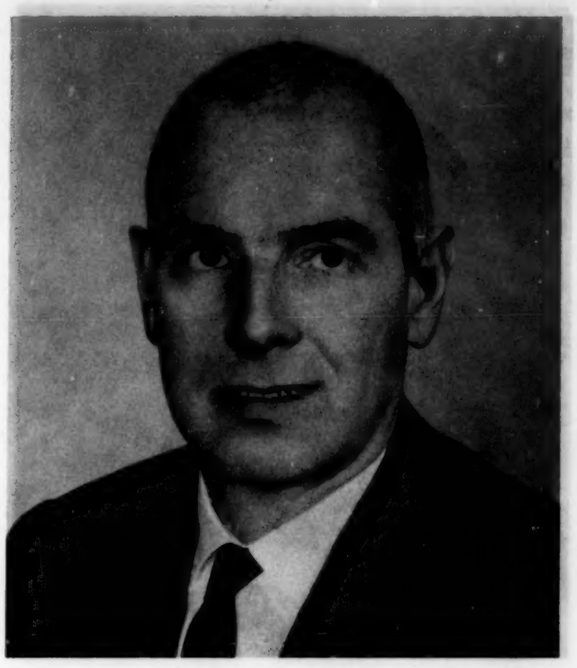
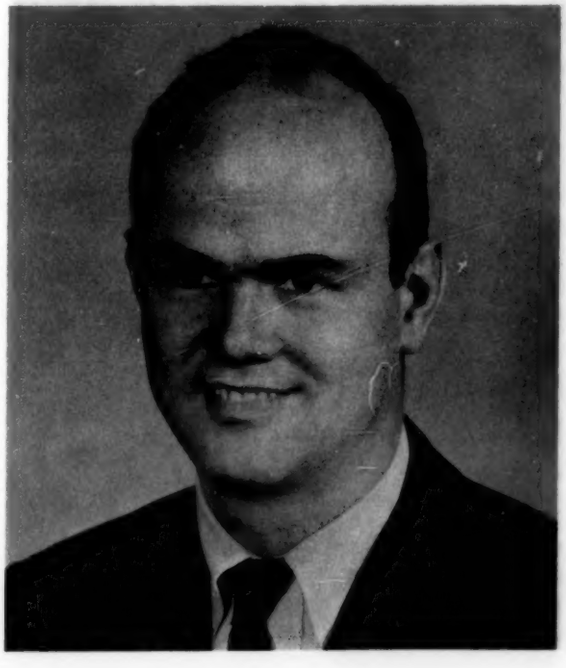


DAVID FREDERICK UPTON

Berrien 1st District

Republican of St. Joseph; Committees on Finance and Taxation; Public Information. Business executive. Born November 13, 1921 to Frederick S. and Margaret Beckley Upton in Benton Harbor, Michigan. Attended St. Joseph High School; graduated, Deerfield (Massachusetts) Academy, 1941; B.S., University of Michigan, 1948. Served as Lieutenant (j.g.), United States Navy in the Pacific; discharged 1946. Treasurer, St. Joseph Harbor Authority (1958-..); Chairman, St. Joseph Republican Committee (1952-54); Treasurer, Berrien County Republican Committee (1954-58); Chairman, Region 9, and Vice President, Michigan United Fund (1961-..); Trustee, Benton Harbor-St. Joseph Memorial Hospital (1960-..). Member, Twin Cities Rotary Club; Twin Cities Chamber of Commerce; Alpha Delta Phi. Recipient, Michigan United Fund Certificate of Merit (1960). Member, First Congregational Church, St. Joseph. Married to Harriet W. Skinner; four children: Margaret Woodworth (1949); Betsy Ingersol (1951); Benjamin Mather (1953); and David Skinner (1954).



RICHARD CAMPBELL VAN DUSEN

Oakland 4th District

Republican of Birmingham; Committees on Rules and Resolutions (Chairman); Finance and Taxation. Attorney. Born July 18, 1925 to Bruce and Helen Campbell Van Dusen in Jackson, Michigan. Graduated, Deerfield (Massachusetts) Academy, 1943; attended Central Michigan University; B.S., University of Minnesota, 1945; LL.B., Harvard University (Massachusetts) 1949. Served as Lieutenant (j.g.), United States Navy in the Pacific; discharged 1946. State Representative (1954-56); Chairman, Republican State Convention (1956); Oakland County Republican Committee (1954-..); Director and Vice President, Boys' Republic, Inc. (1958-..); Director, Big Brothers of Oakland County (1955-..); Director, Michigan State Chamber of Commerce (1961-..); Director, Birmingham Athletic Club (1958-61); Assistant Secretary, Institute for Economic Education; Director, University Club of Detroit. Clerk of the Vestry, Christ Church Cranbrook (Episcopal) Bloomfield Hills. Married to Barbara Congdon; three daughters: Amanda (1952); Lisa (1954); and Katherine (1957).

DELEGATES

LEE WALKER

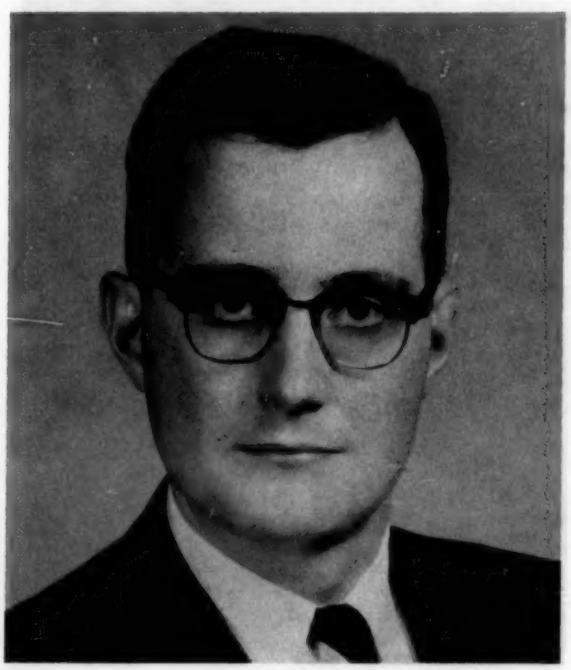
Oakland 6th District

Democrat of Madison Heights; Committees on Finance and Taxation; Administration. Building contractor. Born November 22, 1921 in Florida. Graduated, Ferndale Lincoln High School, 1938; attended Highland Park Junior College; attended Great Lakes College, Detroit. Served in Air Corps three years. Member, Guardian Angels Church. Married to Mary Jo Greiner.

EUGENE GILKISON WANGER

Ingham 1st District

Republican of Lansing; Committees on Legislative Powers; Rules and Resolutions. Attorney. Born May 16, 1933 to Eugene and Roka Gilkison Wanger in Chicago, Illinois. Moved to Michigan in 1934. Graduated, Lansing Sexton High School, 1951; B.A., Amherst (Massachusetts) College, 1955; LL.B., University of Michigan, 1958. Director, Citizens for Michigan, (1960-62); Ingham County Chairman, Citizens for Michigan (1960-62); Drive Chairman, Ingham County Chapter, American Cancer Society (1961); President Elect, Friends of the Library, Michigan State University (1962); Director, Greater Lansing Junior Chamber of Commerce (1961-..). Member, State Bar of Michigan; Ingham County Bar Association; Community Chest; Phi Alpha Delta; Delta Sigma Rho; Theta Xi; National Honor Society; Toastmasters International. Recipient, Outstanding New Jaycee Award (1960); Secretary of Defense Certificate of Esteem (1955); Silver Medal, United States Far Eastern Command (1953). Member, Plymouth Congregational Church, Lansing. Married to Marilyn Rose Morris.



DELEGATES

INK WHITE

Eaton District

Republican of St. Johns; Committees on Public Information (Chairman); Declaration of Rights, Suffrage and Elections. Journalist. Born July 8, 1913 to Enoch T. and Jacqueline Egglestone White in Lapeer, Michigan. Graduated, Lapeer High School, 1930; graduated, Asheville (North Carolina) School, 1931; attended University of Michigan. Gladwin County Tax Allocation Board (1940-42); St. Johns City Zoning Board of Appeals (1951-..); Michigan State Fair Board (1938-42); Chairman, Clinton County Republican Committee (1960-..); Secretary, Gladwin County Republican Committee (1938-44); Trustee and Director, Clinton Memorial Hospital (1946-..); President, St. Johns Rotary Club (1950-51); President, St. Johns Chamber of Commerce (1952-53); President, Michigan Press Association (1950-51); President, University Press Club of Michigan (1950-51). Member, Masons. Senior Warden and Vestryman, St. John's Episcopal Church, St. Johns. Married to Barbara Jane Raymond; three sons: Enoch T., III (1938); Henry R. (1938); and Jonathon R. (1941).

ANTHONY J. WILKOWSKI

Wayne 9th District

Democrat of Detroit; Committee on Executive Branch. Retail merchant. Born April 16, 1898 to Anton and Veronica Skelnik Wilkowski in Detroit, Michigan. Attended Northeastern High School, Detroit; Detroit Business University. State Senator (1933-38; 1945-46; 1949-50); Wayne County Democratic Chairman (1934); Wayne County Democratic Secretary (1932-33); 1st District Democratic Chairman (1939-41); Wayne County Congressional District Chairman (1941-44); Secretary, Polish National Alliance; Secretary, Polish Roman Catholic Union; President, Dom Polski Association. Member, Retail Hardware Dealers Association; Holy Name Society; Knights of Columbus. Roman Catholic. Married to Ann Chrzanowski; one child: Anthony J., Jr. (1920).

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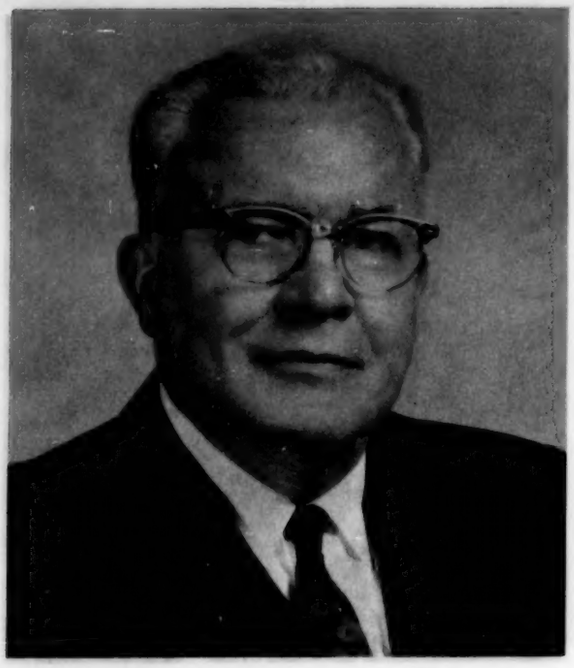


CLAUDE L. WOOD
20th Senatorial District

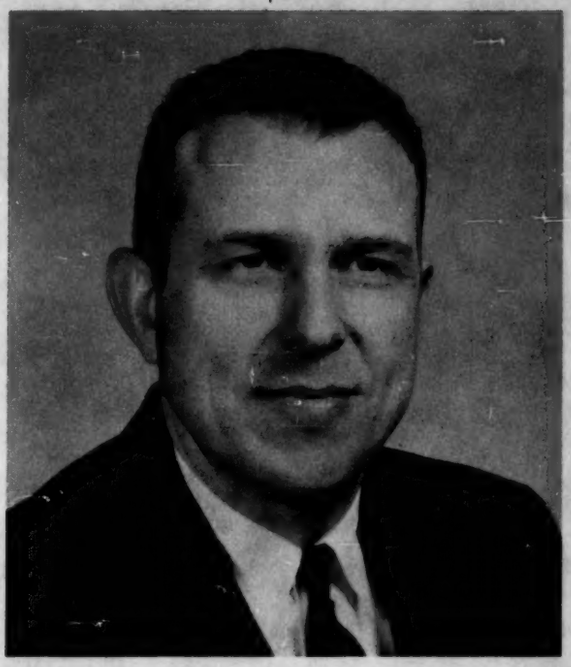
Republican of Brown City; Committees on Legislative Powers; Public Information. Farmer and businessman. Born November 12, 1901 to M. G. and Mary McLain Wood in Sanilac County, Michigan. Graduated, Brown City High School, 1918; attended Detroit Business Institute. Past President, Board of Education; President, Production Credit Association of Sanilac, St. Clair and Huron Counties (1940-46); Chairman, Sanilac County Road Commission (1946-54); Delegate to State Republican Conventions; President, Brown City Rotary (1961-62). Member, Detroit Agricultural Club; Elks; Odd Fellows. Methodist. Married to L. Velma Storey; three children: Mrs. Marilyn Kay Dwyer (1937); Mrs. Claudia Lynn Grace (1939); and Rodger Kent (1944).

HENRY LUMSDEN WOOLFENDEN

Oakland 3rd District

Republican of Bloomfield Hills; Committees on Judicial Branch; Miscellaneous Provisions and Schedule. Attorney. Born November 25, 1906 to Henry Lumsden and Carrie Thomas Woolfenden in Denver, Colorado. Moved to Michigan in 1922. Graduated, Detroit Central High School, 1923; attended University of Michigan; LL.B., Detroit College of Law, 1929; J.D. (honorary), Detroit College of Law, 1955. Chairman, Contract Award Board, Detroit Ordnance District (1942-44); Bloomfield Hills City Commissioner (1957-..); Bloomfield Hills Mayor (1960-61); Michigan Compilation of Laws Commission (1943-47); Michigan Teachers' Tenure Commission (1945-47); Michigan Public Service Commission (1947-49); Republican Precinct Delegate (1952-..); Delegate to Republican State Conventions (1952-..); Chairman, Oakland County Delegation to State Republican Convention (1958); President, State Bar of Michigan (1954-55); Board of Governors, American Bar Association (1959-60); House of Delegates, American Bar Association (1954-..); Director, American Judicature Society (1942-43; 1957-60); Trustee, Michigan State Bar Foundation (1955-..); Fellow American Bar Foundation. Member, Detroit Bar Association; Oakland County Bar Association. Vestryman, Christ Church Cranbrook (Episcopal), Birmingham (1956-59). Married to Helen Vincentia Barden; two daughters: Mrs. Joyce Chesbrough (1932); and Mrs. Carolyn Cote (1935).

DELEGATES



WELDON O. YEAGER

18th Senatorial District

Republican of Detroit; Committees on Legislative Organization; Emerging Problems. Personnel agency. Born July 26, 1922 to Stella McCall and Carl O. Yeager in Hillsboro, Ohio. Graduated, Hillsboro (Ohio) High School, 1940; B.S., Wayne State University, 1956. Served in United States Air Force; separated as Captain, 1946. Precinct Delegate; 17th Congressional District Republican Committee (1958-60); Republican State Central Committee (1960-62). Member, Rosedale Park Civic Association; Military Order of World Wars. Protestant. Married to T. Ione Affholder; two sons: Richard W. (1952); and Mark O. (1954).

COLEMAN A. YOUNG

Wayne 9th District

Democrat of Detroit; Committee on Finance and Taxation. Public relations consultant. Born May 24, 1918 to Coleman and Ida Jones Young in Tuscaloosa, Alabama. Moved to Michigan in 1923. Graduated, Detroit Eastern High School, 1935. Served as 2nd Lieutenant, United States Air Force; discharged 1945. National Representative, UAW-CIO (1946-47); Director of Organization, Wayne County CIO Council (1947-48); State Director, Michigan Progressive Party (1949-50); Executive Secretary, National Negro Labor Council (1951-55).

DELEGATES

CHARLES N. YOUNGBLOOD, JR.

Wayne 3rd District

Democrat of Detroit; Committee on Legislative Powers. Deputy Sheriff. Born April 24, 1932 to Charles N. and Lucille Stoll Youngblood, Sr. in Detroit, Michigan. Graduated, Detroit Denby High School, 1950; attended University of Hawaii; attended Wayne State University. Served as BM. SN. 1st, United States Navy in Korea; discharged 1955. Wayne County Deputy Sheriff (1955-..). Member, Disabled American Veterans; Knights of Columbus. Member, Our Lady of Good Counsel Church, Detroit. Roman Catholic. Married to Delores Mary Buttigieg; five children: Victoria Ann (1954); Michael Charles (1955); Donna Marie (1957); Cynthia Ann (1958); and Cathleen Delores (1960).

State of Michigan
CONSTITUTIONAL CONVENTION
1961

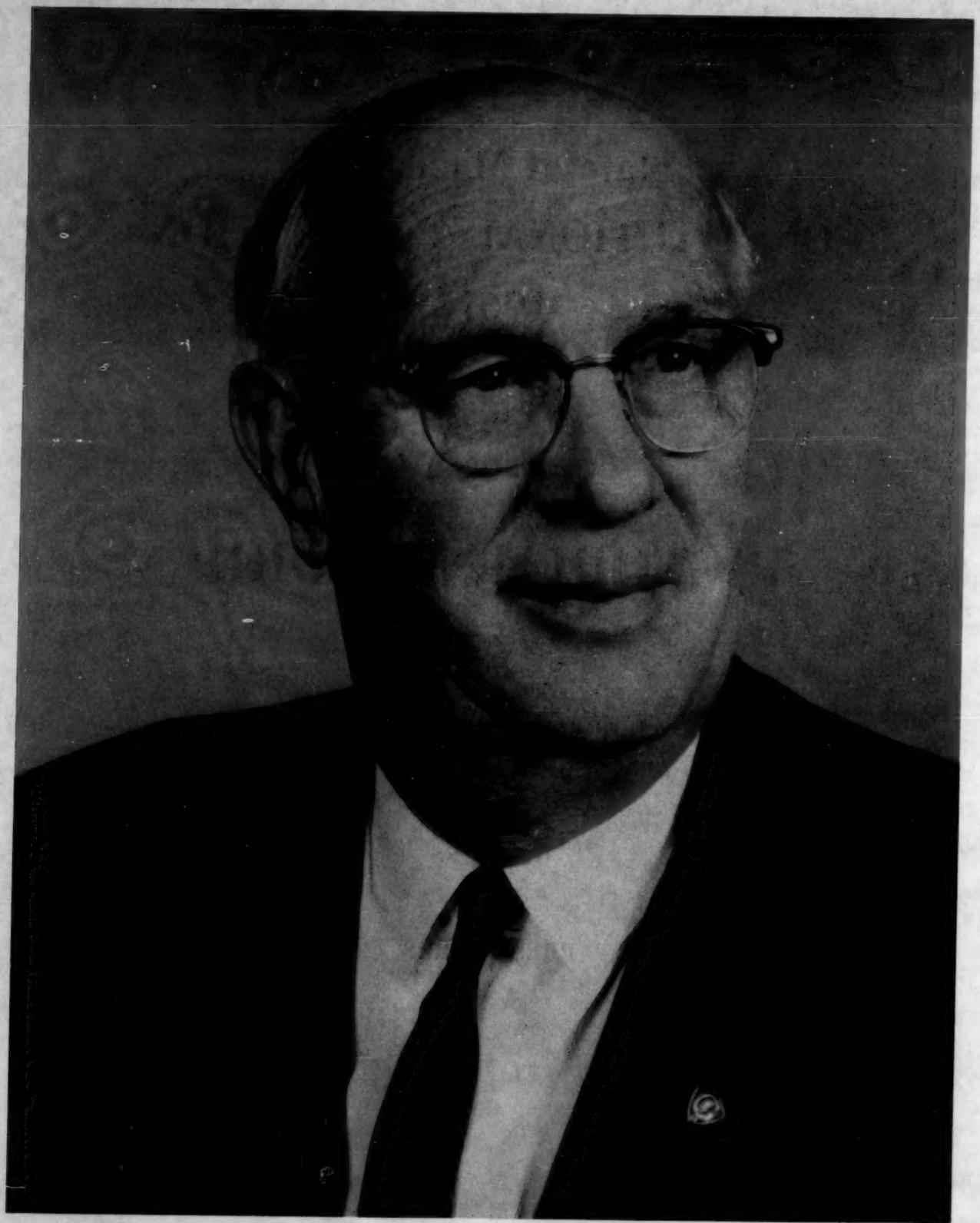
PICTORIAL RECORD

OFFICERS

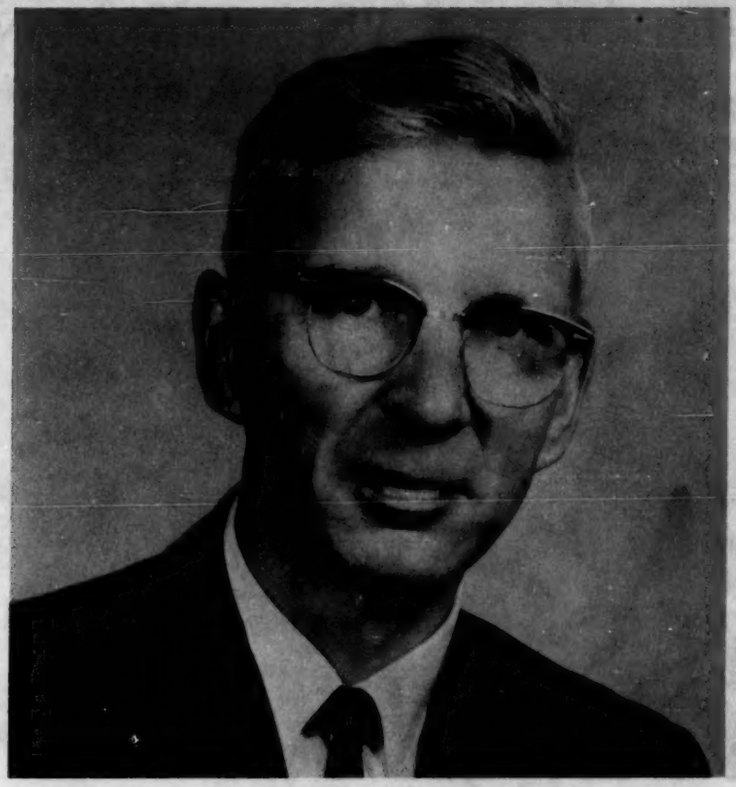
STAFF

PRESS CORPS

OFFICE OF THE PRESIDENT



PRESIDENT STEPHEN S. NISBET

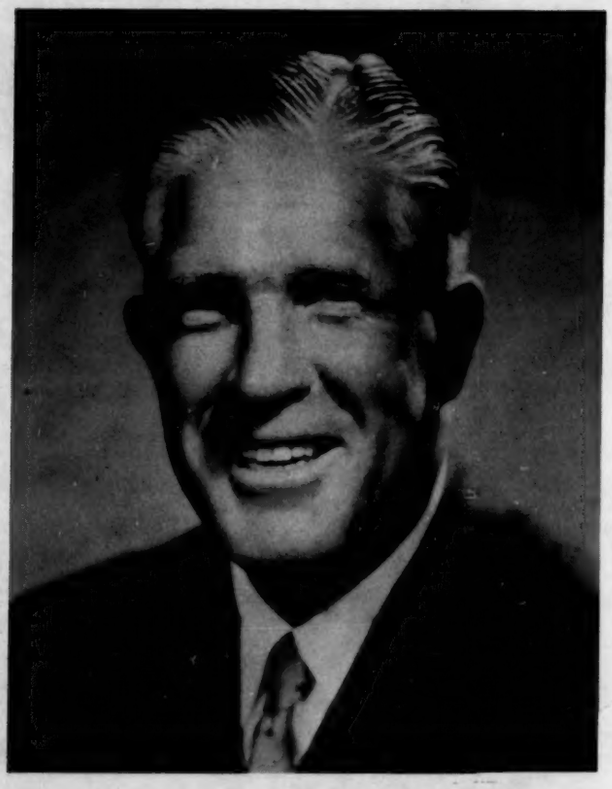


BERNARD J. APOL
Administrative Assistant to the President

BERNICE TUCKER
Secretary to the President

OFFICE OF THE VICE PRESIDENTS

VICE PRESIDENT EDWARD HUTCHINSON



VICE PRESIDENT GEORGE ROMNEY

VICE PRESIDENT TOM DOWNS

KATHLEEN FOWLER
Secretary to Vice Presidents
Hutchinson and Romney

A. GERALDINE RAPAPORT
Secretary to Vice President
Downs

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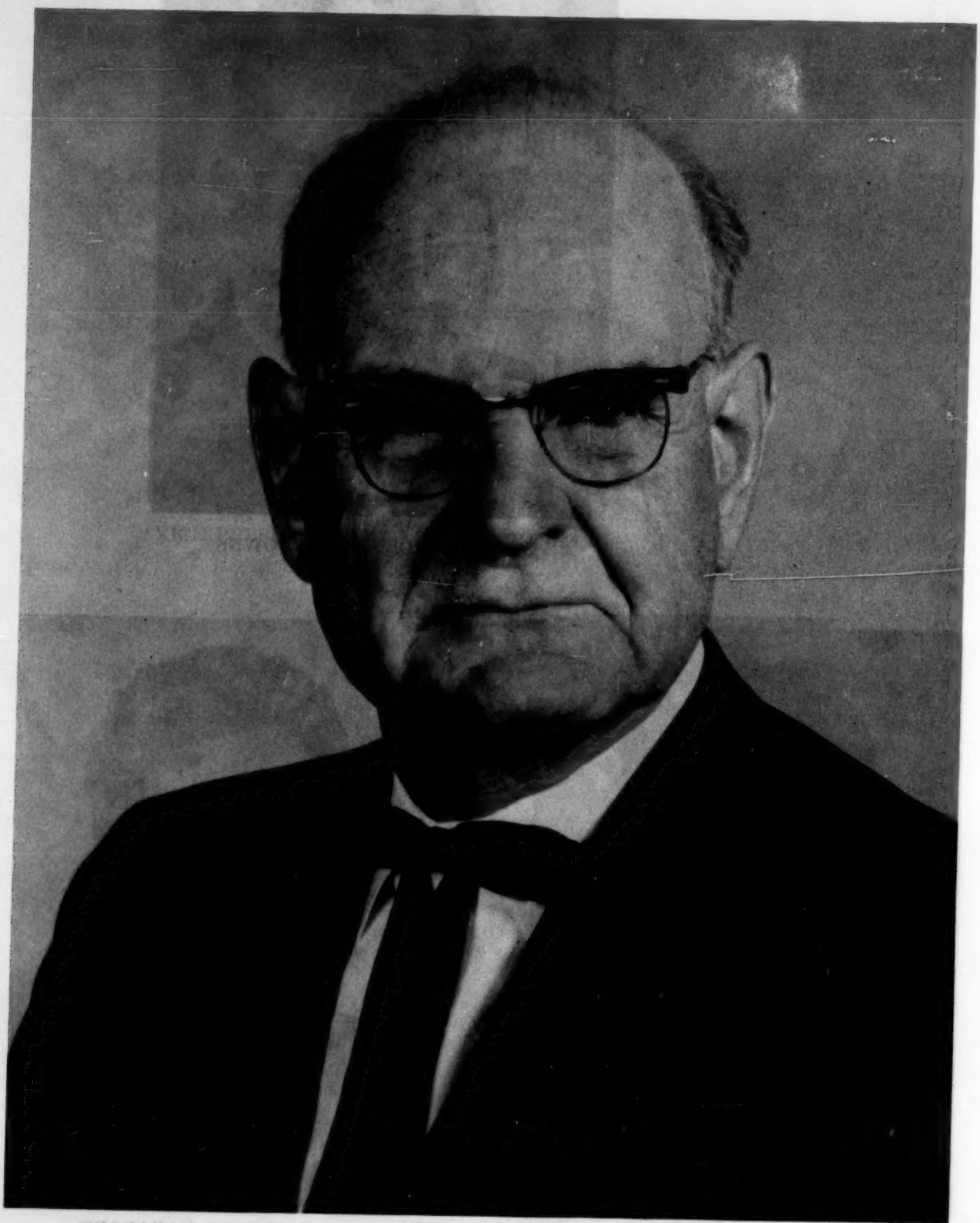
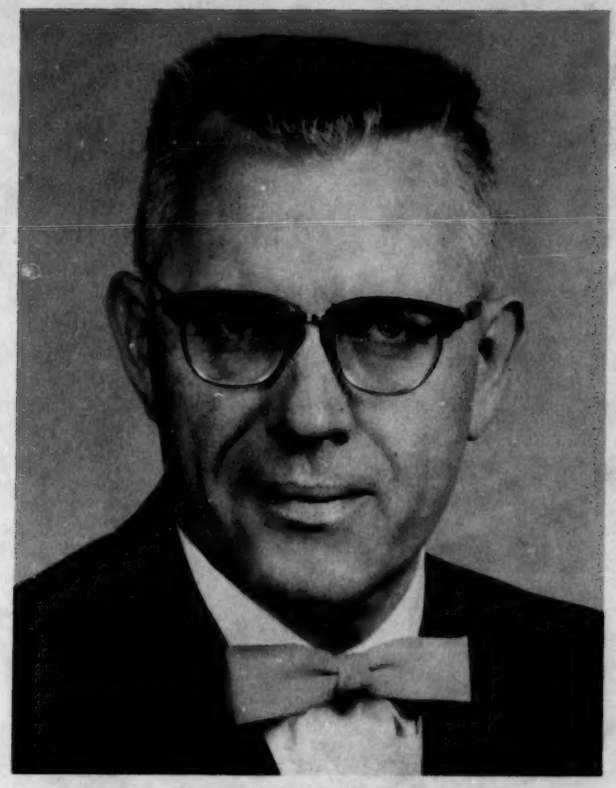
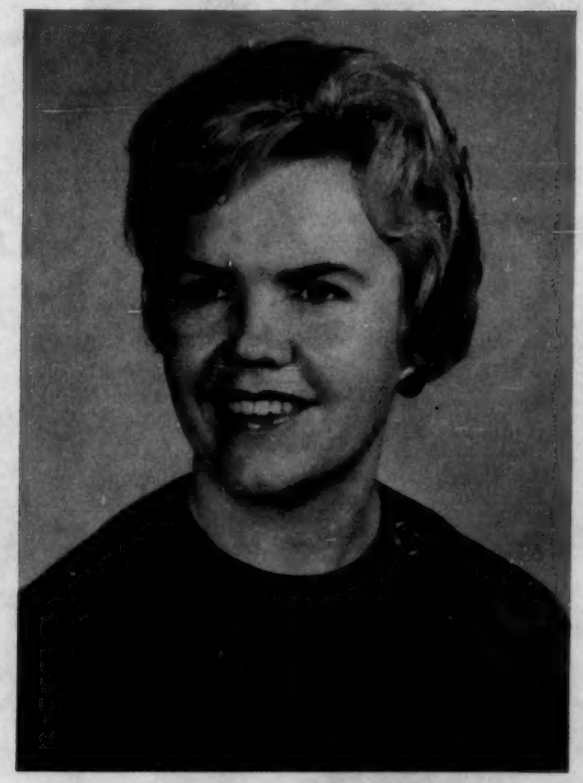


FRED I. CHASE
Secretary of the Convention



AUSTIN C. KNAPP
Assistant Secretary of the Convention
and
Editor



BILLIE L. DOWELL
Secretary to the Secretary of the Convention

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and
Associate Editor

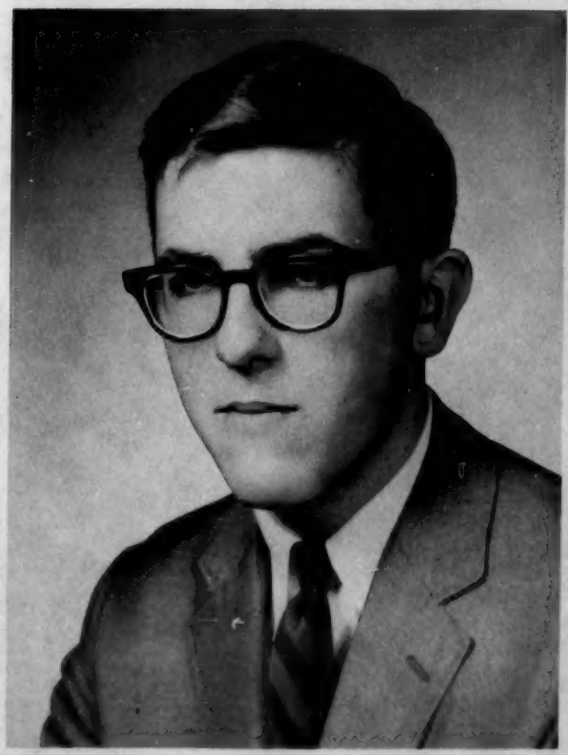
MARILYN L. WEST
Proposal and Enrolling Clerk
and
Assistant Editor

LOIS TOMLINSON
Finance Clerk

MIMI SIMPSON
Assistant Journal Clerk

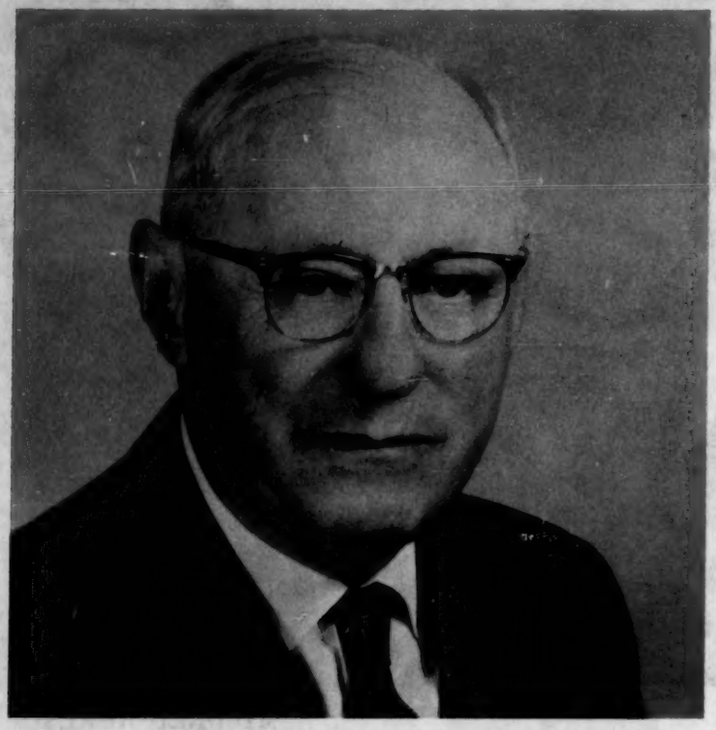
MILDRED RUKES
Status Clerk

DORIS LAMBERT
Assistant Proposal and Enrolling Clerk

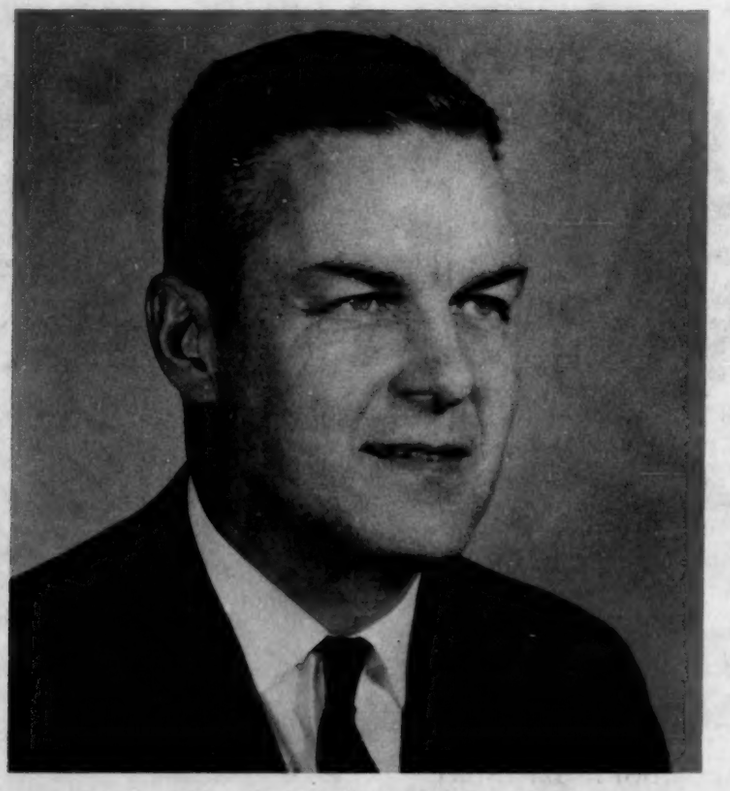


WILLIAM S. DOYLE
Secretary's Messenger

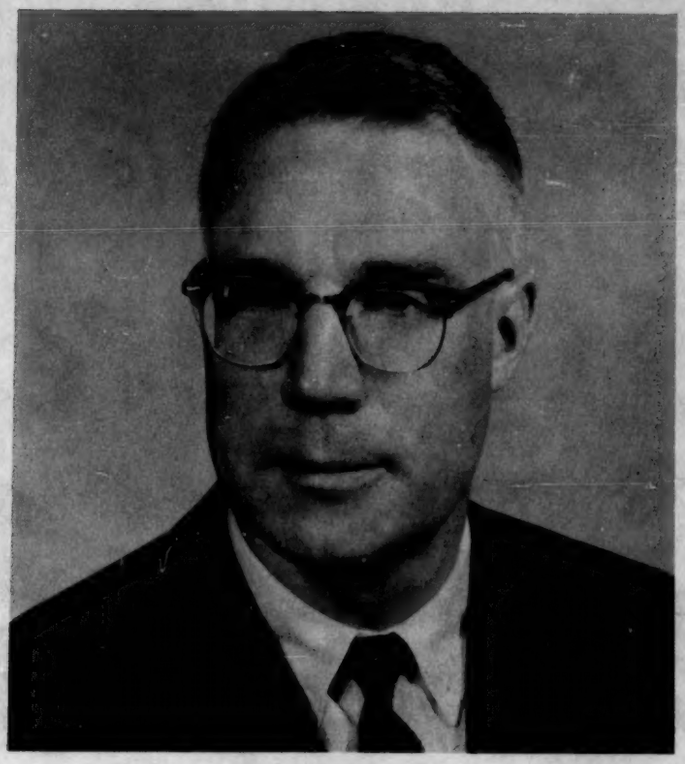
OFFICE OF RESEARCH AND DRAFTING



WILLIAM COMBS
Co-Director of Research and Drafting



CHARLES JOINER
Co-Director of Research and Drafting



ALFRED KELLY
Co-Director of Research and Drafting

RUEGENE LUEDTKE
Secretary to the Co-Directors of Research and Drafting

MARITHERESE McGORRIN
Secretary to the Co-Directors of Research and Drafting

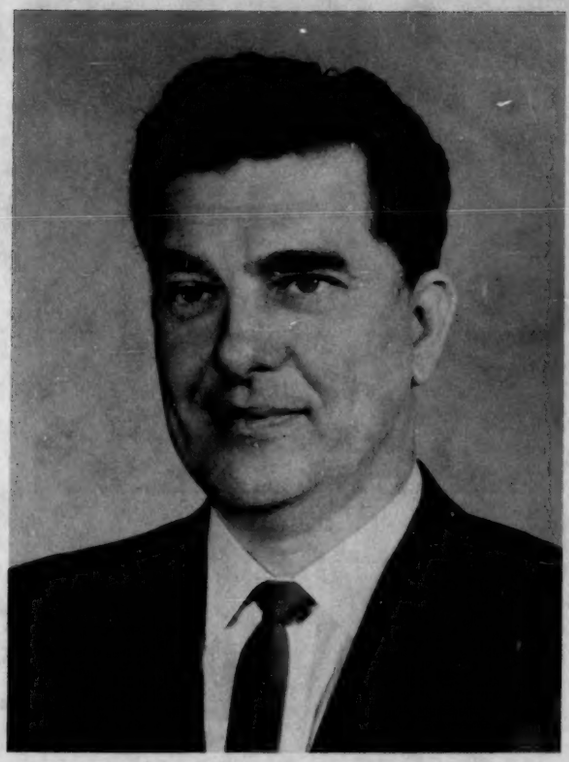
CHARLES ADRIAN
Research Assistant

JOSEPH COX
Research Assistant

ROBERT BOLTON
Research Assistant

JANE K. DENISON
Research Assistant

SARAH LUEDDERS
Research Assistant



WILLIAM ROE
Research Assistant

MARY RUTH JOHNSON
Research Assistant

THEODIS GAY
Research Assistant

FERRELL HEADY
Research Consultant

DANIEL McHARGUE
Research Consultant

O. CHARLES PRESS
Research Consultant

GEORGE SIDWELL
Research Consultant

JOHN WHITE
Research Consultant

OFFICE OF PUBLIC INFORMATION

HAROLD ARNOW
Research Assistant

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picture
available

CHARLES FERRY
Research Assistant

R. STUART KIRVAN
Director of Public Information

WILLIAM SORRELL
Research Consultant

No
picture
available

EDWARD WALSH
Research Assistant

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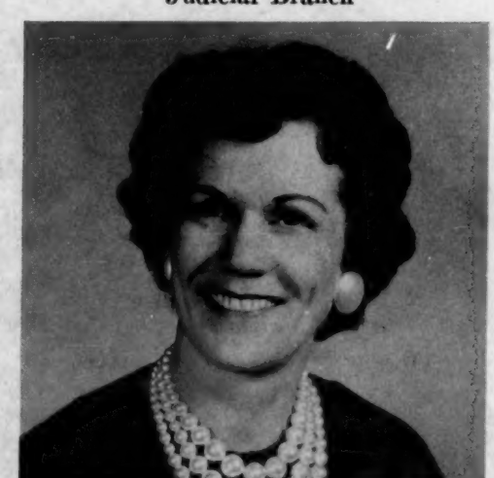
Legislative Organization

PAULINE FARMAN
Committee Clerk
Finance and Taxation

BEVERLY KIRKSEY
Committee Clerk
Style and Drafting; Rules and Resolutions

VALVERDA LOUDEN
Committee Clerk
Judicial Branch

LOIS MAHONEY
Committee Clerk
Emerging Problems



LOUISE PARKER
Committee Clerk
Administration; Public Information

BERNICE POPP
Committee Clerk
Legislative Powers

SHIRLEY QUINN
Committee Clerk
Education

VIRGINIA (DIERKES) SCHMIDT
Committee Clerk
Local Government

EVELYN SILVERMAN
Committee Clerk
Executive Branch

NANCY STAY
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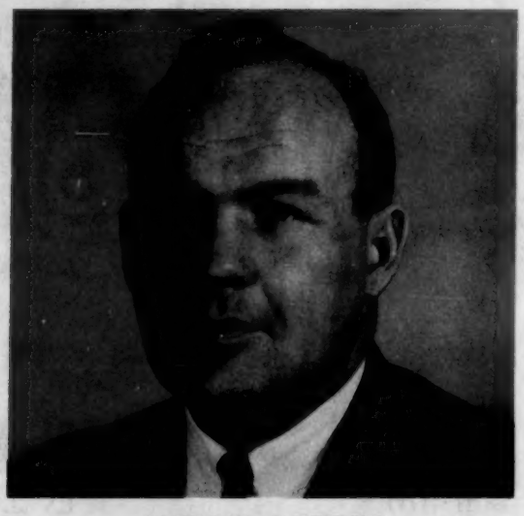
Miscellaneous Provisions and Schedule

CHARLOTTE WALTER
Committee Clerk
Declaration of Rights, Suffrage and Elections

SERGEANT-AT-ARMS

MICHAEL CARL
Assistant Sergeant-at-Arms

DONALD FABER
Assistant Sergeant-at-Arms



JOHN DesROCHER
Sergeant-at-Arms

CLIFFORD STANLEY
Assistant Sergeant-at-Arms

HENRY VERKAIK
Assistant Sergeant-at-Arms

PAGES and GUIDES

JOHN PAUL DYKSTRA, JR.
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L. WAYNE FERRY
Page

FREDERICK GRASMAN
Page Co-Captain

ALAN JOHNSTON
Page

GERALD PLAS
Page Co-Captain

KERN TOMLIN
Page

HARRIET SCHIFF
Guide

M. PATRICIA ARBER
Guide

JENNIE VEEN
Guide

STENOGRAPHIC POOL

JUDITH CHELF
Chief Stenographer

No picture available

PATRICIA ANN CARLSON
Stenographer

No picture available

BEATRICE CARTER
Stenographer

JANE CLARK
Stenographer

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Stenographer

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Stenographer

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Stenographer

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Stenographer

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Stenographer

HELEN VARG
Stenographer

MARVELLA WITT
Stenographer

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Detroit News

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Associated Press

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United Press International

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Michigan AFL-CIO News and Labor Press

COMMITTEES OF THE CONVENTION

(First named member is Chairman; next named, is First Vice Chairman; next named, is Second Vice Chairman; names in ( ) resigned, *names replaced.)

ADMINISTRATION—Conference Room—Delegates DeVries, Gust, Mahinske; Beaman, (Davis), Farnsworth, Hood, *Jones, Perlich, Perras, J. B. Richards, Shackleton, Shanahan, Snyder, Sterrett, Walker. Louise Parker, Clerk.

DECLARATION OF RIGHTS, SUFFRAGE AND ELECTIONS—Room F—Delegates Pollock, Stevens, Norris; Beaman, Buback, Butler, Dade, Gadola, Hatcher, Hodges, Hubbs, Leppien, Shaffer, Shanahan, White. Charlotte Walter, Clerk.

EDUCATION—Room J—Delegates Bentley, Anspach, Hart; Andrus, Balcer, Barthwell, Bonisteel, T. S. Brown, Conklin, Douglas, Faxon, Follo, J. A. Hannah, Heideman, Karn, Page, L. W. Richards, Romney, Rush, Spitler, Kuhn. Shirley Quinn, Clerk.

EMERGING PROBLEMS—Room I—Delegates Millard, Bonisteel, T. S. Brown; Anspach, Austin, *Bowens, Downs, Daisy Elliott, Erickson, Figy, Goebel, Hatch, (King), Nord, Pugsley, Yeager. Lois Mahoney, Clerk.

EXECUTIVE BRANCH—Room C—Delegates Martin, Karn, Marshall; Bentley, *Bowens, Dean Doty, Durst, Daisy Elliott, Greene, Gust, Hart, Hatch, Kelsey, (King), Perlich, Pollock, Rajkovich, Stamm, Shackleton, Shaffer, Sterrett, Wilkowski. Evelyn Silverman, Clerk.

FINANCE AND TAXATION—Room E—Delegates Brake, Goebel, Austin; Binkowski, (Davis), Dean Doty, Haskill, Howes, *Jones, Ostrow, Pellow, Rush, Seyferth, Stafseth, Staiger, Stopczynski, Thomson, Turner, Upton, Van Dusen, Walker, Young. Pauline Farman, Clerk.

JUDICIAL BRANCH—Room B—Delegates Danhof, Leibrand, Ford; Barthwell, Bledsoe, Cudlip, Donnelly, Everett, Garvin, Higgs, Iverson, Krolikowski, Lawrence, McAllister, McGowan, Mosier, Ostrow, Prettie, Pugsley, Tubbs, Woolfenden. Valverda Louden, Clerk.

LEGISLATIVE ORGANIZATION—Room D—Delegates J. A. Hannah, Dehnke, Nord; Blandford, Boothby, *Bradley, G. E. Brown, T. S. Brown, Donald Doty, A. G. Elliott, Greene, W. F. Hanna, Hodges, Kirk, Knirk, Liberato, (Lundgren), Marshall, Plank, Rood, Sablich, Yeager. Margery Archer, Clerk.

LEGISLATIVE POWERS—Room H—Delegates Hoxie, Millard, Baginski; Downs, Habermehl, Hubbs, Koeze, Kuhn, Lesinski, Murphy, Perras, Powell, Wanger, Wood, Youngblood. Bernice Popp, Clerk.

LOCAL GOVERNMENT—Room A—Delegates A. G. Elliott, Figy, Buback; Allen, Baginski, Batchelor, Brake, Cushman, Dell, Farnsworth, Finch, Follo, Ford, Gover, Hatcher, Judd, Madar, McCauley, McLogan, Radka, J. B. Richards, L. W. Richards, Sharpe, Sleder, Suzore, Thomson, Tweedie. Virginia (Dierkes) Schmidt, Clerk.

MISCELLANEOUS PROVISIONS AND SCHEDULE—Room G—Delegates Erickson, Leppien, Bledsoe; Binkowski, DeVries, Durst, Donnelly, Habermehl, Hood, Hutchinson, Lawrence, Mahinske, Seyferth, Snyder, Woolfenden. Nancy Stay, Clerk.

PUBLIC INFORMATION—Conference Room—Delegates White, Koeze, Douglas; Andrus, Balcer, Faxon, Garvin, Conklin, Judd, Kelsey, Heideman, Lesinski, Madar, Page, Plank, Radka, Stafseth, Turner, Tweedie, Upton, Wood. Louise Parker, Clerk.

RULES AND RESOLUTIONS—Room I—Delegates Van Dusen, Prettie, McGowan; Allen, *Bradley, Butler, Daisy Elliott, Finch, Gover, (Lundgren), McCauley, Nord, Pellow, Sharpe, Stamm, Wanger. Beverly Kirksey, Clerk.

STYLE AND DRAFTING — Room K — Delegates Cudlip, Hutchinson, Sablich; Austin, Blandford, Cushman, Dehnke, Gadola, W. F. Hanna, Higgs, Krolikowski, Norris, Powell, Staiger, Stevens. Beverly Kirksey, Clerk.

CONSTITUTIONAL CONVENTION REPRESENTATION BY COUNTY AND DISTRICT

County	Senatorial District Delegate and Party	Senatorial District	Representative District Delegate and Party	Representative District
Alcona	Lewis T. Hubbs (R)	28th	Herman Dehnke (R)	Alpena
Alger	Kent T. Lundgren (R)*	30th	Joseph F. Sablich (D)	Iron
Allegan	Edward Hutchinson (R)	8th	James S. Farnsworth (R)	Allegan County
Alpena	Donald M. Habermehl (R)	29th	Herman Dehnke (R)	Alpena
Antrim	Julius C. Sleder (R)	27th	Edward K. Shanahan (R)	Charlevoix
Arenac	Lewis T. Hubbs (R)	28th	John C. Shaffer (R)	Arenac
Baraga	Bert M. Heideman (R)	32nd	Joseph F. Sablich (R)	Iron
Barry	Edward Hutchinson (R)	8th	Dean Doty (R)	Eaton
			Ink White (R)	Eaton
Bay	Karl K. Leibrand (R)	24th	Milton E. Higgs (R)	Bay County
Benzie	Julius C. Sleder (R)	27th	Edward K. Shanahan (R)	Charlevoix
Berrien	Lee Boothby (R)	7th	David F. Upton (R)	Berrien (1st)
			J. Burton Richards (R)	Berrien (2nd)
Branch	Blaque Knirk (R)	9th	Kenneth G. Prettie (R)	Hillsdale County
Calhoun	Blaque Knirk (R)	9th	H. V. Hatch (R)	Calhoun (1st)
			Stanley Everett (R)	Calhoun (2nd)
Cass	Lee Boothby (R)	7th	Carl D. Mosier (R)	St. Joseph
Charlevoix	Donald M. Habermehl (R)	29th	Edward K. Shanahan (R)	Charlevoix
Cheboygan	Donald M. Habermehl (R)	29th	H. Carl Spitler (R)	Emmet
Chippewa	Kent T. Lundgren (R)*	30th	Clarence B. Dell (R)	Chippewa
Clare	Lewis T. Hubbs (R)	28th	Charles L. Anspach (R)	Isabella
Clinton	Alvin M. Bentley (R)	15th	Dean Doty (R)	Eaton
			Ink White (R)	Eaton
Crawford	Lewis T. Hubbs (R)	28th	Elmer L. Radka (R)	Presque Isle
Delta	Kent T. Lundgren (R)*	30th	Charles L. Follo (D)	Delta County
Dickinson	William P. Pellow (D)	31st	Cliff Perras (R)	Menominee
Eaton	Alvin M. Bentley (R)	15th	Dean Doty (R)	Eaton
			Ink White (R)	Eaton
Emmet	Donald M. Habermehl (R)	29th	H. Carl Spitler (R)	Emmet
Genesee	Paul V. Gadola, Sr. (R)	13th	Edward A. McLogan (R)	Genesee (1st)
			Frank G. Millard (R)	Genesee (1st)
			G. Keyes Page (R)	Genesee (1st)
			Don G. Batchelor (R)	Genesee (2nd)
Gladwin	Lewis T. Hubbs (R)	28th	John C. Shaffer (R)	Arenac
Gogebic	William P. Pellow (D)	31st	Frank T. Perlich (D)	Gogebic
Grand Traverse	Julius C. Sleder (R)	27th	Nick J. Rajkovich (R)	Grand Traverse
Gratiot	D. Hale Brake (R)	25th	T. Jefferson Hoxie (R)	Gratiot County
Hillsdale	Berry N. Beaman (R)	10th	Kenneth G. Prettie (R)	Hillsdale
Houghton	Bert M. Heideman (R)	32nd	(Mrs.) Ruth G. Butler (R)	Houghton
Huron	Claude L. Wood (R)	20th	Thomas R. McAllister (R)	Huron County
Ingham	John A. Hannah (R)	14th	Eugene G. Wanger (R)	Ingham (1st)
			Claud R. Erickson (R)	Ingham (1st)
			Charles J. Davis (R)**	Ingham (2nd)
Ionia	D. Hale Brake (R)	25th	Stanley M. Powell (R)	Ionia County
Iosco	Lewis T. Hubbs (R)	28th	Herman Dehnke (R)	Alpena
Iron	William P. Pellow (D)	31st	Joseph F. Sablich (D)	Iron
Isabella	Karl K. Leibrand (R)	24th	Charles L. Anspach (R)	Isabella
Jackson	Berry N. Beaman (R)	10th	Dan E. Karn (R)	Jackson (1st)
			James F. Thomson (R)	Jackson (2nd)
Kalamazoo	Garry E. Brown (R)	6th	Glenn S. Allen, Jr. (R)	Kalamazoo (1st)
			Anthony Stamm (R)	Kalamazoo (2nd)
Kalkaska	Julius C. Sleder (R)	27th	Nick J. Rajkovich (R)	Grand Traverse
Kent	Paul G. Goebel (R)	16th	Walter D. DeVries (R)	Kent (1st)
			Robert S. Tubbs (R)	Kent (1st)
Kent	John B. Martin (R)	17th	Robert H. Blandford (R)	Kent (1st)
			(Mrs.) Ella Koeze (R)	Kent (2nd)
			(Mrs.) Dorothy L. Judd (R)	Kent (3rd)
Keweenaw	Bert M. Heideman (R)	32nd	(Mrs.) Ruth G. Butler (R)	Houghton
Lake	Stephen S. Nisbet (R)	26th	Raymond A. Plank (R)	Mason
Lapeer	Frank O. Staiger, Jr. (R)	34th	Ervin J. Haskill (R)	Lapeer County
Leelanau	Julius C. Sleder (R)	27th	Edward K. Shanahan (R)	Charlevoix
Lenawee	Charles Figy (R)	19th	Clyne W. Durst, Jr. (R)	Lenawee County
Livingston	John A. Hannah (R)	14th	Thomas G. Sharpe (R)	Shiawassee County
Luce	Kent T. Lundgren (R)*	30th	Clarence B. Dell (R)	Chippewa
Mackinac	Kent T. Lundgren (R)*	30th	Clarence B. Dell (R)	Chippewa
Macomb	Ralph A. Liberato (D)	11th	John T. Kelsey (D)	Macomb (1st)
			Joseph M. Snyder (D)	Macomb (2nd)
			Allen F. Rush (R)	Macomb (3rd)
Manistee	Stephen S. Nisbet (R)	26th	Roy Howes (R)	Wexford
Marquette	William P. Pellow (D)	31st	Leslie W. Richards (R)	Marquette County
Mason	Stephen S. Nisbet (R)	26th	Raymond A. Plank (R)	Mason
Mecosta	D. Hale Brake (R)	25th	William G. Gover (R)	Montcalm
Menominee	Kent T. Lundgren (R)*	30th	Cliff Perras (R)	Menominee
Midland	Karl K. Leibrand (R)	24th	James R. Rood (R)	Midland County

*Resigned March 31, 1962. Russell Bradley (D) appointed April 11, 1962.
**Resigned March 17, 1962. Howard Jones (D) appointed March 20, 1962.

CONSTITUTIONAL CONVENTION REPRESENTATION BY COUNTY AND DISTRICT—Concluded

County	Senatorial District Delegate and Party	Senatorial District	Representative District Delegate and Party	Representative District
Missaukee	Julius C. Sleder (R)	27th	John C. Shaffer (R)	Arenac
Monroe	Charles Figy (R)	19th	Donald D. Doty (R)	Monroe County
Montcalm	D. Hale Brake (R)	25th	William G. Gover (R)	Montcalm
Montmorency	Donald M. Habermehl (R)	29th	Elmer L. Radka (R)	Presque Isle
Muskegon	Robert J. Danhof (R)	23rd	Don F. Seyferth (R)	Muskegon (1st)
			William F. Hanna (R)	Muskegon (2nd)
Newaygo	Stephen S. Nisbet (R)	26th	Earl C. Pugsley (R)	Newaygo
Oakland	George Romney (R)	12th	Richard D. Kuhn (R)	Oakland (1st)
			Raymond L. King (R)†	Oakland (2nd)
			Henry L. Woolfenden (R)	Oakland (3rd)
			Richard C. Van Dusen (R)	Oakland (4th)
			Arthur G. Elliott, Jr. (R)	Oakland (5th)
			Lee Walker (D)	Oakland (6th)
Oceana	Stephen S. Nisbet (R)	26th	Earl C. Pugsley (R)	Newaygo
Ogemaw	Lewis T. Hubbs (R)	28th	Elmer L. Radka (R)	Presque Isle
Ontonagon	Bert M. Heideman (R)	32nd	Frank T. Perlich (D)	Gogebic
Osceola	Lewis T. Hubbs (R)	28th	Raymond A. Plank (R)	Mason
Oscoda	Lewis T. Hubbs (R)	28th	Elmer L. Radka (R)	Presque Isle
Otsego	Donald M. Habermehl (R)	29th	H. Carl Spitler (R)	Emmet
Ottawa	Robert J. Danhof (R)	23rd	Henrik E. Stafseth (R)	Ottawa County
Presque Isle	Donald M. Habermehl (R)	29th	Elmer L. Radka (R)	Presque Isle
Roscommon	Lewis T. Hubbs (R)	28th	John C. Shaffer (R)	Arenac
Saginaw	William J. Leppien (R)	22nd	James M. Shackleton (R)	Saginaw (1st)
			Herbert M. Turner (R)	Saginaw (2nd)
Sanilac	Claude L. Wood (R)	20th	(Miss) Vera Andrus (R)	St. Clair
			S. Martin Tweedie, III (R)	St. Clair
Schoolcraft	Kent T. Lundgren (R)*	30th	Joseph F. Sablich (D)	Iron
Shiawassee	Alvin M. Bentley (R)	15th	Thomas G. Sharpe (R)	Shiawassee
St. Clair	Frank O. Staiger, Jr. (R)	34th	(Miss) Vera Andrus (R)	St. Clair
			S. Martin Tweedie, III (R)	St. Clair
St. Joseph	Garry E. Brown (R)	6th	Carl D. Mosier (R)	St. Joseph
Tuscola	Claude L. Wood (R)	20th	Shuford Kirk (R)	Tuscola County
Van Buren	Edward Hutchinson (R)	8th	Francis Finch (R)	Van Buren County
Washtenaw	Roscoe O. Bonisteel (R)	33rd	James K. Pollock (R)	Washtenaw (1st)
			J. Don Lawrence (R)	Washtenaw (2nd)
Wayne	Rockwell T. Gust, Jr. (R)	1st	Arthur J. Madar (D)	Wayne (1st)
			Robert G. Hodges (D)	Wayne (1st)
	Don Binkowski (D)	2nd	Harold Norris (D)	Wayne (6th)
			Sidney Barthwell (D)	Wayne (2nd)
			Samuel B. Ostrow (D)	Wayne (2nd)
			Morris W. Hood, Sr. (D)	Wayne (2nd)
			Charles N. Youngblood, Jr. (D)	Wayne (3rd)
			Peter L. Buback (D)	Wayne (3rd)
			Wynne C. Garvin (D)	Wayne (3rd)
			Malcolm Gray Dade (D)	Wayne (4th)
			(Mrs.) Daisy L. Elliott (D)	Wayne (4th)
			Tom Downs (D)	Wayne (4th)
			Edmond Lesinski (D)	Wayne (5th)
			Martin W. Baginski (D)	Wayne (5th)
			(Miss) Marjorie McGowan (D)	Wayne (5th)
	William O. Greene (D)	3rd	Richard H. Austin (D)	Wayne (6th)
			Melvin Nord (D)	Wayne (6th)
	(Mrs.) Lillian Hatcher (D)	4th	Stephen Stopczynski (D)	Wayne (7th)
	Jack Faxon (D)	5th	Paul R. Mahinske (D)	Wayne (7th)
	Weldon O. Yeager (R)	18th	Frank A. Balcer, Jr. (D)	Wayne (8th)
	William C. Marshall (D)	21st	Edward L. Douglas (D)	Wayne (8th)
			Anthony J. Wilkowski (D)	Wayne (9th)
			Coleman A. Young (D)	Wayne (9th)
			(Miss) Adelaide J. Hart (D)	Wayne (10th)
			Arthur T. Iverson (R)	Wayne (10th)
			Harold E. Bledsoe (D)	Wayne (11th)
			Raymond M. Murphy (D)	Wayne (11th)
			James H. Sterrett (R)	Wayne (12th)
			J. Harold Stevens (R)	Wayne (12th)
			William B. Cudlip (R)	Wayne (13th)
			Ray Krolikowski (D)	Wayne (14th)
			(Miss) Ann E. Donnelly (R)	Wayne (15th)
			(Mrs.) Katherine Moore Cushman (D)	Wayne (16th)
			William G. Suzore (D)	Wayne (17th)
			John E. McCauley (D)	Wayne (18th)
			William D. Ford (D)	Wayne (19th)
			Theodore S. Brown (D)	Wayne (20th)
			(Mrs.) Anne M. Conklin (R)	Wayne (21st)
Wexford	Julius C. Sleder (R)	27th	Roy Howes (R)	Wexford

*Resigned March 31, 1962. Russell Bradley (D) appointed April 11, 1962.
†Resigned May 17, 1962. Robert Bowens (D) appointed July 11, 1962.

State of Michigan

CONSTITUTIONAL CONVENTION

1961

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STATE OF MICHIGAN

CONSTITUTIONAL CONVENTION

CIVIC CENTER, LANSING, MICHIGAN

FIRST DAY

Tuesday, October 3, 1961, 12:00 o'clock noon.

PROCEEDINGS

[In conformity with the requirements of article XVII, section 4 of the Constitution of the State of Michigan, the constitutional convention delegates elect, elected under the provisions of Act 125 of the Public Acts of 1960, as amended by Acts 8 and 230 of the Public Acts of 1961, assembled in the main auditorium in the civic center at Lansing this day (being the first Tuesday in October next succeeding the election of April, 1961), at 12:00 o'clock noon, and were called to order by the Honorable James M. Hare, Secretary of State.

Secretary of State Hare designated Mr. Fred I. Chase, Secretary of the Senate, as temporary secretary; Mr. Norman E. Philleo, Clerk of the House of Representatives, as temporary parliamentarian; and Mrs. Margery Archer as temporary reporter.]

CHAIRMAN HARE: May I have your attention, please? Will all the delegates elect take their seats?

By authority vested in me as secretary of state by the constitution and statutes of the state of Michigan, **I hereby call this Constitutional Convention of 1961 to order.**

The Reverend Canon Malcolm Gray Dade, Rector of St. Cyprian's Protestant Episcopal Church of Detroit and a delegate elect to this convention from the fourth representative district of Wayne, will offer the **invocation.**

Father Dade, will you please come forward?

MR. DADE: Almighty God, if ever we needed Thy guidance and Thy wisdom, it is now as we begin this first meeting of the Constitutional Convention of the State of Michigan in the year of our Lord 1961.

We pray that Thy good spirit may guide and sustain us as we carry the grave responsibilities, accept the challenges ever before us, meet the opportunities afforded us to do a mighty work as delegate representatives of all the people of this great state.

Grant that in all our deliberations and discussions we may do that which is well pleasing in Thy sight. May we be big when we are tempted to be little and petty, dedicated and selfless when we want to be undedicated and selfish, for we shall remember that Thou art concerned in all that we do here, so that our conscience before God and man will be clean. For what we say here will not long be remembered, but what we do in this place we pray will meet the needs and stand the test of the years to come.

Bless each one of us. Bless the homes from which we come, bless the land in which we dwell and bless those to whom leadership shall be entrusted by this convention. Deal graciously with them and hold them and us in strict accountability to Thy judgment and Thy authority. This is our prayer, Almighty God. Amen.

CHAIRMAN HARE: Thank you, Father Dade.

This day is a significant one for the people of Michigan. It is a day which offers a challenge to each of us. For me it marks the fruition of a long dream. It is only by the accident of statute and the fact that I am secretary of state that I hold this gavel in my hand here today. Long before the concept of a constitutional convention was accepted by the Michigan people as a device for building a better state, there were many of us convinced that only through the deliberations of a convention such as this, could this state keep in stride with the headlong thrust of this era.

We now live in a world filled with space vehicles, atomic energy and with miracle medicines. We have an electronic way of life, a way of life far different than we had in the beginning of this century when the Michigan constitution was last revised. The technical tools we now have will make this Constitutional Convention of 1961 a markedly different one than that of 1908.

Television, photo transmission machines, radio, and other electronic devices will carry your words and action into every home in Michigan. Step by step the people will watch the debate on the issues and problems which you in this convention face. They can become knowledgeable constituents, and it is my hope they will also become articulate constituents, letting you know from time to time how they feel about specific sections of the document which you will be building during the significant days ahead.

In fact, I've contended from the beginning that the educational values inherent in a convention such as this could easily be as valuable as the final document itself. I suppose it is the political science teacher in me but I am always optimistic about the public's capacity and interest in learning and growing. And I firmly believe that a knowledgeable electorate which has watched you forge a vital and forward looking constitution in tune with our times will accept and cherish the final document you submit for their approval.

The governor's constitutional convention preparatory commission has done everything possible to insure that your deliberations get off to a smooth beginning. We hope that the facilities of constitution hall, where you will be in session tomorrow, will help you do a better job under workable conditions and aided with the finest available tools. We have set up in constitution hall a united nations seating pattern which will enable delegates to see one another as issues are debated. Equally important — and our television audience will know whereof I speak in the days to come — we have protected the people's right to know by setting up television, radio, and press facilities so that your words and your actions can become part of every citizen's experience.

The research staff has published the first studies which should make your work a great deal easier during the forthcoming weeks. Others which will provide you with many of the facts, the outlines, and the references you will require to do your work will be issued in the next few days.

The governor's constitutional convention preparatory commission has, by swinging into action 10 weeks ago, succeeded in saving you thousands of hours of time and research effort and, equally important, has saved the taxpayers of Michigan hundreds of thousands of dollars.

Yours is a great challenge and a deep responsibility. I can do no better than to re-echo the words Dr. Alfred Kelly uses to close his research study on The Meaning of Constitutional Government:

> It is an awesome and magnificent tradition within which the Michigan convention finds itself a part. The task confronting the delegates, defined in the largest sense, is the preservation and implementation of the American heritage

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of constitutional government; so that the institutions of free men may continue to enjoy that vitality and strength which has contributed so much to the rise both of our state and the American republic to their present position of greatness.

The people of Michigan have charged you with a great responsibility. We believe that you will write a constitution worthy of this great state, a constitution which will serve as an example to our 49 sister states, and which will be the instrument which brings about greater progress, prosperity and a better way of life for all of us.

Now, I think I should introduce you to some of the people who face you here on the platform. I want to make sure you know the people who worked so long and hard on the preparatory commission. Can I ask you to simply stand as I call your names?

First of all, the chairman of the preparatory commission, Howard Stoddard. Next, Dean William Combs from Michigan State University, Dr. Charles Joiner from the University of Michigan, and Dr. Alfred Kelly from Wayne State University. I do want you to know a man I stole from our own office who has been tremendously valuable in setting up this convention, Mr. Bernard Apol.

Thank you very much.

Now I should like you to know that we have 2 men sitting here in front of me who were certainly very valuable in the past and in the help and advice and counsel they have given me: Mr. Chase who is acting as the temporary secretary of the convention—will you stand?—and Mr. Philleo who is acting as temporary parliamentarian.

I want you to hear from the man who, 3 months ago, began to think about what should be done to prepare for the convention. The need of a preparatory commission became obvious and he considered that need and, indeed, talked with the members of the Kellogg foundation staff. Out of that came a fine grant from the Kellogg foundation of $85,000 to help set that up. The man who implemented this preparatory commission is our governor, John B. Swainson, and he is here to give greeting and welcome to the delegates.

Governor Swainson.

GOVERNOR SWAINSON: Jim Hare, our secretary of state, Governor Brucker, Chief Justice Dethmers, Mayor Bowerman, ladies and gentlemen of the Michigan constitutional convention and their guests, it is with a great deal of pride that I accept this opportunity to extend official welcome and to offer, as the governor, my most sincere greetings to the delegates here assembled to inaugurate Michigan's fifth constitutional convention.

This is an historic moment in the annals of our state. The eyes of every Michigan citizen are focused on this hall. And centered here, too, are his hopes.

In the days and months to come your deliberations will be watched eagerly and anxiously. Each word uttered here will be significant, each debate will be followed very carefully, and every action will be submitted to scrutiny by a citizenry which has vested you with tremendous responsibility.

The great tasks you face have been lightened at the outset by the work of the convention preparatory commission and the study committees appointed by this administration. Physical preparations have been made, a staff has been assembled, and research materials have been compiled and made available. I know that you join me in commending these most valuable efforts.

In addition, directives have gone to the administrative principals of every state department, every bureau, every agency, instructing each to make himself and the facilities of his division available in the service of this constitutional convention. The doors of the executive office are open to you at any time.

All of us in state government stand ready to assist you. In our agencies you will find a fountainhead of sound counsel and information, experienced leadership, and capable acquaintanceship with current problems.

Many of the delegates seated here are embarking on their very first tour of elective office. You may find that the necessities of interaction in any deliberative body will test your ideals. You may find that the requirements of democratic action seem to counter singleminded purpose. To each of you, I would like to offer the encouragement that you need not surrender your individual goals if your efforts are toward the greatest public good.

If your work is to be fruitful, no cause can be greater than that of serving the public good. It transcends partisanship and it overpowers personal, sectional or any other special interest.

It is unnecessary to retell here the course of events which has brought this convention into being. Each of you is fully aware of the successive steps which were necessary antecedents to this auspicious occasion.

It is our common good fortune that Michigan is a great and growing state. This growth has been in numbers of people, in economic wealth, and in diversity of enterprise.

When our forefathers last convened more than half a century ago to write the constitution which has been our basic law since 1908, they met in an environment that was much different than today's. Agriculture was our dominant pursuit. Industry was insular. The mode of life was far less complex.

Although we have interspersed our constitution with frequent amendments since 1909, a great many of our citizens are now agreed that time has come to review the document in its entirety and to recast it, where deemed necessary, in terms more fitting to the last half of the twentieth century than to the first half.

The challenges you face in this task are manifold.

There is the difficult problem of government finance through taxation. There is urgent necessity for fresh guide lines to be laid down so that equitable and adequate funds can be raised in support of government endeavors at all levels.

Your tasks also will include reappraisal of all executive functions and the requirement that fulfillment of such responsibilities be flexible to meet changing conditions.

Review also must be made of the entire legislative process, from town hall meeting to state legislative assembly, to make it most responsive to democratic principles.

There is the challenge, also, to reevaluate our judicial fabric and to keep this all important machinery able to guarantee justice, to adjudicate injustice, and to temper government with wisdom and fairness.

Another of your heavy responsibilities will be review of our constitutional declaration of rights. As that part of our constitution that guarantees the civil and political integrity, the freedom and independence of our citizens, the bill of rights is the bedrock upon which all else in the constitution may be built.

These are but skeletal outlines of the tasks awaiting you. Into your hands the people of Michigan have entrusted much. Never before, perhaps, have so many pressing problems of constitutional government been imposed on a like body of delegates.

It is fitting at the opening of this constitutional convention to remind ourselves of the great political heritage that this meeting represents. You meet here as duly elected representatives of a free people to establish in free discussion and open debate an instrument of government by which this state shall rule itself and order its affairs.

As delegates to this convention, you are participants in a process which from the beginnings of this nation to this time has been the chief guarantee of our American liberties and the foundation of our system of government.

At the outset we must, I believe, remind ourselves of the importance of this convention. We must remind ourselves that we live in one of the few nations of the world in which men may meet to determine how they shall be governed, one of the few nations in which men may still exercise free choice over their own destinies.

The majority of the nations in our world—and I need not list them for you—live under governments which do not dare to trust their citizens with the authority which the voters of Michigan have given you. The greater part of the people who inhabit this earth live under political systems in which they have no voice, for whose future they have no responsibility, and in which a meeting such as this one is both unthinkable and impossible.

Thomas Jefferson once said that the great genius of the

American system rested in the fact that it could modify its government "by assembling the wise men of the state instead of assembling armies", and his statement still rings true. Where else, beyond the iron curtain of Europe or the bamboo curtain of the Orient, could men and women meet as you do here, to decide how they shall be governed? What happens here then, I believe, has a larger relevance and a wider meaning than we may at first realize.

The idea of constitutional government lies at the heart of our way of life. The belief that men can gather in peace and good faith to establish a contract by which they rule themselves and those they represent, is a belief uniquely and distinctively our own. It is the most powerful of all political ideas, the most effective means of governing a free and independent people that any men have ever found.

We have fought great wars to protect this belief and millions of Americans have given their lives to guarantee that it will endure. For the constitutions of our American states are, as Woodrow Wilson once wrote, "living proofs to the world that men are human, reasoning creatures, capable of directing and ruling themselves by pledging their honor and faith to their ideals." The language of constitutions may change—as the needs of the people change—but the principle of constitutional government remains as the vital center of our political system.

This convention, therefore, bears a great responsibility. It is no doubt the heaviest political responsibility that most of you will ever be called upon to assume, for what you decide here will determine for many years how the people of Michigan will live, and what that manner of life shall be. I know that you will discharge your task with wisdom and statesmanship and I know that I speak for the people of the state in wishing you well.

Into your conscientious hands we now place our highest hopes. From your deliberations the people of Michigan will expect a document forthrightly reaffirming our faith in democracy, a document broad in vision, wise in words, clear in phrase; a constitution which will reflect the dedicated determination of the people to govern themselves with justice and equality.

I wish you all Godspeed in this great task.

CHAIRMAN HARE: Thank you very much, Governor Swainson, for those words which I think will give courage to the delegates for the task ahead.

Since we meet in the civic center, this beautiful building here in Lansing, it is only fitting and proper that we should hear from the mayor of this city, and let me say that in the beginning, when the preparatory commission first began its work and the question came up "How shall we find a place to work in?", the man who stepped forth and gave us the help we had to have at that point was the mayor of Lansing, Willard I. Bowerman. He will give you his greeting for the city of Lansing.

Mayor Bowerman.

MAYOR BOWERMAN: Governor Swainson, Governor Brucker, Justice Dethmers, Secretary Hare, members of the constitutional convention, and guests, on behalf of the people of the city of Lansing I extend to you our most cordial greetings and wishes for a very productive convention. The people of Lansing have anticipated this day since last April when the people of Michigan called for this convention.

About four months ago, I appointed a committee of outstanding citizens of Lansing to be known as the mayor's constitutional convention cooperation commission. It was designed to see that Lansing received the utmost consideration as the site for the convention and that the best facilities be available for the delegates to permit you to write the best constitutional draft possible and to make your stay in Lansing a most delightful one. The mayor's commission is a continuing one while you are in session and it is designed to administer to your every need. I might say that this afternoon the delegates and their wives are invited to a civic reception at the Jack Tar hotel at 4:00 o'clock. Further, when the delegates are very busy Wednesday afternoon, there is a tea at the Riverside Manor motel for the delegates' wives and, also for them, a style show at the J. W. Knapp company the following morning.

Since taking office last April, members of the city council and I have visited many cities throughout Michigan in search of information and ideas that will help Lansing become the second home town for every resident of the state of Michigan. Naturally, being delegates, you are pillars of your own community. Please do us a favor and visit my office and give us the benefit of your experiences on the local level.

I want to say again that I am delighted to greet you, many of whom are friends from my partisan days in the state legislature. If there is anything we can do to make your stay in Lansing a pleasant one, consider us at your service.

Thank you.

CHAIRMAN HARE: Thank you, Mayor Bowerman. Now we shall follow the statute, and I shall ask the secretary of the convention, Mr. Fred Chase, to read the certified list of the delegates elect.

TEMPORARY SECRETARY CHASE:

Michigan Department of State,
Lansing, October 2, 1961.

Constitutional Convention
Civic Center
Lansing, Michigan

Attached is a certified list of the delegates elect to the constitutional convention convening on October 3, 1961, as shown by the returns of the clerks of the several counties in this state, and now on file in this office.

Very respectfully,
James M. Hare,
Secretary of State.

TO ALL TO WHOM THESE PRESENTS SHALL COME

I, James M. Hare, Secretary of State of the State of Michigan and Custodian of the Great Seal thereof, Do Hereby Certify that Attached hereto is a list of the delegates-elect to the Constitutional Convention for the year 1961, as shown by the returns from the clerks of the several counties in this State, now on file in this office.

In Testimony Whereof, I have hereunto set my hand and affixed the Great Seal of the State at the Capitol, in the City of Lansing, this 2nd day of October A.D. 1961.

[SEAL]

James M. Hare,
Secretary of State.

Following is the list:

CONSTITUTIONAL CONVENTION DELEGATES ELECT
1961 CONVENTION

SENATORIAL DISTRICT	NAME
1st	Rockwell T. Gust, Jr.
2nd	Don Binkowski
3rd	William O. Greene
4th	(Mrs.) Lillian Hatcher
5th	Jack Faxon
6th	Garry E. Brown
7th	Lee Boothby
8th	Edward Hutchinson
9th	Blaque Knirk
10th	Berry N. Beaman
11th	Ralph A. Liberato
12th	George Romney
13th	Paul V. Gadola, Sr.
14th	John A. Hannah
15th	Alvin M. Bentley
16th	Paul G. Goebel
17th	John B. Martin, Jr.
18th	Weldon O. Yeager
19th	Charles Figy
20th	Claude L. Wood
21st	William C. Marshall
22nd	William J. Leppien
23rd	Robert J. Danhof
24th	Karl K. Leibrand
25th	D. Hale Brake
26th	Stephen S. Nisbet
27th	Julius C. Sieder
28th	Lewis T. Hubbs

29th	Donald M. Habermehl
30th	Kent T. Lundgren
31st	William P. Pellow
32nd	Bert M. Heideman
33rd	Roscoe O. Bonisteel
34th	Frank O. Staiger, Jr.

REPRESENTATIVE DISTRICT	
Allegan County	James S. Farnsworth
Alpena	Herman Dehnke
Arenac	John C. Shaffer
Bay County	Milton E. Higgs
Berrien—1st	David F. Upton
—2nd	J. Burton Richards
Calhoun—1st	H. V. Hatch
—2nd	Stanley Everett
Charlevoix	Edward K. Shanahan
Chippewa	Clarence B. Dell
Delta County	Charles L. Follo
Eaton	Dean Doty
	Ink White
Emmet	H. Carl Spitler
Genesee—1st	Edward A. McLogan
	Frank G. Millard
	G. Keyes Page
—2nd	Don G. Batchelor
Gogebic	Frank T. Perlich
Grand Traverse	Nick J. Rajkovich
Gratiot County	T. Jefferson Hoxie
Hillsdale	Kenneth G. Prettie
Houghton	(Mrs.) Ruth G. Butler
Huron County	Thos. R. McAllister
Ingham—1st	Eugene G. Wanger
	Claud R. Erickson
—2nd	Charles J. Davis
Ionia	Stanley M. Powell
Iron	Joseph F. Sablich
Isabella	Charles L. Anspach
Jackson—1st	Dan E. Karn
—2nd	James F. Thomson
Kalamazoo—1st	Glenn S. Allen, Jr.
—2nd	Anthony Stamm
Kent—1st	Walter D. DeVries
	Robert S. Tubbs
	Robert H. Blandford
—2nd	(Mrs.) Ella Koeze
—3rd	(Mrs.) Dorothy Leonard Judd
Lapeer County	Ervin J. Haskill
Lenawee County	Clyne W. Durst, Jr.
Macomb—1st	John T. Kelsey
—2nd	Joseph M. Snyder
—3rd	Allen F. Rush
Marquette County	Leslie W. Richards
Mason	Raymond A. Plank
Menominee	Cliff Perras
Midland County	James R. Rood
Monroe County	Donald D. Doty
Montcalm	William G. Gover
Muskegon—1st	Don F. Seyferth
—2nd	William F. Hanna
Newaygo	Earl C. Pugsley
Oakland—1st	Richard D. Kuhn
—2nd	Raymond L. King
—3rd	Henry L. Woolfenden
—4th	Richard C. Van Dusen
—5th	Arthur G. Elliott, Jr.
—6th	Lee Walker
Ottawa County	Henrik E. Stafseth
Presque Isle	Elmer L. Radka
Saginaw—1st	James M. Shackleton
—2nd	Herbert M. Turner
Shiawassee	Thomas G. Sharpe
St. Clair	(Miss) Vera Andrus
	S. Martin Tweedie, III
St. Joseph	Carl D. Mosier
Tuscola County	Shuford Kirk
Van Buren County	Francis Finch
Washtenaw—1st	James K. Pollock
—2nd	J. Don Lawrence
Wayne—1st	Arthur J. Madar
	Robert G. Hodges
—2nd	Sidney Barthwell
	Samuel B. Ostrow
	Morris W. Hood, Sr.
—3rd	Charles N. Youngblood, Jr.
	Peter L. Buback
	Wynne C. Garvin
—4th	Malcolm Gray Dade
	(Mrs.) Daisy L. Elliott
	Tom Downs
—5th	Edmond Lesinski
	Martin W. Baginski
	(Miss) Marjorie McGowan
—6th	Harold Norris
	Richard H. Austin
	Melvin Nord
—7th	Stephen Stopczynski
	Paul R. Mahinske
—8th	Frank A. Balcer, Jr.
	Edward L. Douglas
—9th	Anthony J. Wilkowski
	Coleman A. Young
—10th	(Miss) Adelaide J. Hart
	Arthur T. Iverson
—11th	Harold E. Bledsoe
	Raymond M. Murphy
—12th	James H. Sterrett
	J. Harold Stevens
—13th	William B. Cudlip
—14th	Ray Krolikowski
—15th	(Miss) Ann E. Donnelly
—16th	(Mrs.) Katherine Moore Cushman
—17th	William G. Suzore
—18th	John E. McCauley
—19th	William D. Ford
—20th	Theodore S. Brown
—21st	(Mrs.) Anna M. Conklin
Wexford	Roy Howes

That completes the reading of the certified list, Mr. Chairman.

CHAIRMAN HARE: Mr. Secretary, thank you very much. Let us proceed to the next order of business, the **calling of the roll** to establish the quorum. Mr. Secretary, will you call the roll?

TEMPORARY SECRETARY CHASE:

Allen	Knirk
Miss Andrus	Mrs. Koeze
Anspach	Krolikowski
Austin	Kuhn
Baginski	Lawrence
Balcer	Leibrand
Barthwell	Leppien
Batchelor	Lesinski
Beaman	Liberato
Bentley	Lundgren
Binkowski	Madar
Blandford	Mahinske
Bledsoe	Marshall
Bonisteel	Martin
Boothby	McAllister
Brake	McCauley
Garry E. Brown	Miss McGowan
Theodore S. Brown	McLogan
Buback	Millard
Mrs. Butler	Mosier
Mrs. Conklin	Murphy
Cudlip	Nisbet
Mrs. Cushman	Nord
Dade	Norris
Danhof	Ostrow
Davis	Page
Dehnke	Pellow

Dell	Perlich
DeVries	Perras
Miss Donnelly	Plank
Dean Doty	Pollock
Donald D. Doty	Powell
Douglas	Prettie
Downs	Pugsley
Durst	Radka
Arthur G. Elliott	Rajkovich
Mrs. Daisy L. Elliott	J. Burton Richards
Erickson	Leslie W. Richards
Everett	Romney
Farnsworth	Rood
Faxon	Rush
Figy	Sablich
Finch	Seyferth
Follo	Shackleton
Ford	Shaffer
Gadola	Shanahan
Garvin	Sharpe
Goebel	Sleder
Gover	Snyder
Greene	Spitler
Gust	Stafseth
Habermehl	Staiger
William F. Hanna	Stamm
John A. Hannah	Sterrett
Miss Hart	Stevens
Haskill	Stopczynski
Hatch	Suzore
Mrs. Hatcher	Thomson
Heideman	Tubbs
Higgs	Turner
Hodges	Tweedie
Hood	Upton
Howes	Van Dusen
Hoxie	Walker
Hubbs	Wanger
Hutchinson	White
Iverson	Wilkowski
Mrs. Judd	Wood
Karn	Woolfenden
Kelsey	Yeager
King	Young
Kirk	Youngblood

Mr. Chairman, 144 delegates elect, a quorum, are present. There are no absentees.

CHAIRMAN HARE: Thank you, Mr. Chase. The convention is well in order.

I should like to pause here to make one more introduction. We have invited all living former governors to be with us here. Two of them are out of the country; G. Mennen Williams is in Africa and Murray D. Van Wagoner is in Europe. One of them, Harry F. Kelly, is conducting business in the supreme court. But I do have the pleasure of recognizing the dean of Michigan governors, and the man who was once the youngest of Michigan governors, Mr. Wilber M. Brucker. Will you stand, Governor Brucker? Thank you very much.

We now come to that point where you must take your oath of office. You have before you on your desks an oath. After the oath has been administered, will you sign both copies, and at that time will you simply leave them on your desks and we will have the pages collect them?

Here today to swear you in, administer the oath, we have the Chief Justice of the Supreme Court, John R. Dethmers.

Justice Dethmers, will you take over?

JUSTICE DETHMERS: The persons certified as elected to be the delegates to the Michigan constitutional convention will now please rise, raise your right hands, and take the constitutional **oath of office** qualifying you to be such delegates.

Do you solemnly swear that you will support the Constitution of the United States and the Constitution of the State of Michigan, and that you will faithfully discharge the duties of the office of delegate to the constitutional convention according to the best of your abilities, so help you God?

DELEGATES ELECT (en masse): I do.

JUSTICE DETHMERS: You may be seated. Now, for the first time, you are the duly qualified delegates. As the secretary of state has indicated, there are before you 2 copies of the constitutional oath of office. Will you sign them both? They will be gathered, and thereafter I shall sign them to evidence your having taken that oath of office. Thereafter, that there may be a record of your having qualified as delegates, one copy will be filed in the office of the secretary of state, and the other, I understand, will be returned to you as a memento.

CHAIRMAN HARE: Thank you, Justice Dethmers.

Now we come to that part of the opening day ceremonies which is so meaningful, the election of a permanent president of this organization. I think those of you who have read the newspapers realize we have had some slight legal problems involved. The statutes setting up the constitutional convention, which were passed by the 1961 legislature, indicated that the vote for president should be by secret ballot. However, Paul Adams, the Attorney General of the State of Michigan, advises me that yours is an autonomous body, and that you can decide on the method of vote.

The Chair is ready at this point to entertain a motion. What is your pleasure?

Mr. Hutchinson.

MR. HUTCHINSON: The delegate from Wayne, Miss Hart, and I join in offering a resolution which is on the secretary's desk and which the secretary will read and after its reading, I move its adoption.

CHAIRMAN HARE: Mr. Chase, will you read the resolution?

TEMPORARY SECRETARY CHASE: Miss Hart and Mr. Hutchinson offer

Resolution 1, Resolved by the constitutional convention,

That the election of the president and other officers to be elected by this convention shall be by roll call vote. Nominating speeches shall be limited to 5 minutes. As soon as all nominations have been made, the presiding officer shall declare the nominations closed and the temporary secretary shall call the roll of delegates arranged alphabetically according to surname. Each delegate shall state the candidate for whom he votes as his name is called. In the election of a secretary, the roll shall be called by the temporary parliamentarian. Seventy-three votes, being a majority of the delegates, shall be requisite for election. If no candidate receives such majority, succeeding ballots shall be cast in the same manner unless the convention shall otherwise direct.

CHAIRMAN HARE: Miss Hart.

MISS HART: Mr. Chairman, I second the motion.

CHAIRMAN HARE: Miss Hart seconds the motion. The delegates have heard the resolution. Is there any discussion? If not, will all those in favor of the resolution just read by the secretary of the convention respond by saying aye? Those opposed by responding nay? The ayes have it.

The resolution is adopted.

We shall proceed to the **election of the president.** The Chair is open for nominations for the office of permanent president of the constitutional convention. Is there a nominee?

Mr. Prettie.

MR. PRETTIE: Mr. Chairman, Governor Swainson, Governor Brucker, distinguished guests, my fellow delegates, ladies and gentlemen of the convention, and citizens of the state of Michigan everywhere, I rise to place before you the name of Stephen S. Nisbet, delegate from Fremont, Michigan, as a candidate for the office of president of this constitutional convention. I pray the indulgence of this audience in a few remarks dealing with the qualifications of this man for this high office.

Thousands of citizens know this man, but for those who do not, may I present a thumbnail biography? Mr. Nisbet is a native of Michigan and a veteran of world war I. His formal education includes a bachelor of arts degree from Alma College and a master's degree from the University of Michigan. In 1920, after his stint in the navy, he entered his chosen profession as an educator in the Fremont, Michigan, school system

which he served for a quarter of a century and most of this time as its superintendent. He served 18 years on the state board of education of Michigan, and 12 years as its chairman. In this office he demonstrated his bipartisan approach to problems. He is no stranger to business either, having served 15 years as vice president of an industrial company in charge of public relations. He is versed in matters of finance with experience as a director and officer of a bank. His activities in community affairs have endeared him to his neighbors in western Michigan. He is a fine Christian gentleman.

Many delegates, in considering the qualifications required for the president of this august body, have felt that the one chosen to this office must have prestige, objectivity, fairness, ability, strength, leadership, nonpartisanship—or, perhaps better, bipartisanship. In the person of the 144 delegates seated here, chosen by the electors of this state, there reposes a tremendous reservoir of ability. Scores of men and women among us possess in high measure the qualifications I have mentioned but upon some one man there must repose the awesome responsibility of presiding over our deliberations.

I submit, fellow delegates, that no one among us possesses all of these requisites to a greater degree than does Mr. Nisbet. His selection will demonstrate at the very opening of this convention the ability of these delegates to think and to act on their own and with only the best interests of the people of the state of Michigan as their governing concern.

It has been pointed out that, after our work is done, it must still receive the approval of the people whom we represent. Mr. Nisbet has the time and the talent to inspire the voters of this state to an acceptance of the product of our labors. We have an opportunity to put a capstone on a lifetime of service to Michigan by honoring this man with the leadership of this convention.

Ladies and gentlemen, it has been my privilege and an honor to place in nomination as president of this convention, Michigan's native son and distinguished citizen, Stephen S. Nisbet.

CHAIRMAN HARE: Thank you, Mr. Prettie. Is there a second?

Mr. Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, Mr. Elliott from the fifth District in Oakland. It is my extreme pleasure to support the nomination of Stephen S. Nisbet for president.

CHAIRMAN HARE: Thank you, sir.

Mr. Farnsworth.

MR. FARNSWORTH: Mr. Chairman, James Farnsworth from Allegan county. I would like to second Mr. Prettie's nomination of Stephen Nisbet.

CHAIRMAN HARE: Thank you, sir. Mr. Farnsworth seconds the nomination.

Mr. Goebel.

MR. GOEBEL: Mr. Goebel of the sixteenth senatorial district of Grand Rapids. I am very proud to second the nomination of Stephen Nisbet for president of this convention.

CHAIRMAN HARE: Mr. Goebel seconds the nomination. Are there any other nominations?

Mr. Lundgren.

MR. LUNDGREN: Delegate Lundgren of the upper peninsula of Michigan. It is a pleasure to support the nomination of Mr. Nisbet.

CHAIRMAN HARE: Thank you very much, Mr. Lundgren. Are there any other nominations?

Mr. Martin.

MR. MARTIN: Mr. Chairman, in view of the fact that there are no other nominations, I move that the nominations be closed, that the rule of this convention be suspended requiring a roll call vote, and that the secretary be instructed to cast the unanimous ballot of this convention for the election of Stephen S. Nisbet as president of the convention.

CHAIRMAN HARE: Thank you, Mr. Martin

Mr. Marshall.

MR. MARSHALL: Mr. Chairman, Delegate Marshall, twenty-first senatorial district, Wayne county. I am extremely pleased and happy at the demonstration of cooperation that has existed among the delegates here assembled in the preconvention discussions that we have had. I am also happy with the display of bipartisanship that has been existing, and I am sure that, if this spirit continues, we will draft a document that will be acceptable to the citizens of the state of Michigan, and that will move our great state forward in the twentieth century, and in that spirit I am happy at this time to second the motion made by Delegate Martin to suspend the rules and elect Stephen Nisbet president of the convention by acclamation. Thank you.

CHAIRMAN HARE: Thank you, Delegate Marshall.

You have heard the motion. Is there any discussion? If there is no discussion, all delegates in favor of the motion as so stated, respond by saying aye. Those opposed, nay.

The motion prevails.

TEMPORARY SECRETARY CHASE: The temporary secretary is pleased to cast 143 votes of the delegates for Mr. Stephen S. Nisbet as president of the constitutional convention.

CHAIRMAN HARE: Gentlemen, we are not quite through yet.

Judge Pugsley, you have the floor.

MR. PUGSLEY: I wish to move at this time that a committee of 3 be appointed to escort Stephen S. Nisbet, president elect of this convention, to the platform.

CHAIRMAN HARE: I will ask for a second.

Mr. Beaman.

MR. BEAMAN: Mr. Chairman, Berry Beaman of the tenth senatorial district. I am very happy to second that motion.

CHAIRMAN HARE: Thank you, sir. You have heard the motion. Is there any discussion? If there is no discussion, will all the delegates in favor respond by saying aye? Opposed, nay.

The motion prevails and I shall appoint a 3 man committee to escort the president elect to the platform. I shall appoint Mr. John Hannah, Mr. James Pollock and Mr. Sidney Barthwell. Will you 3 delegates join with the president elect and escort him to the platform?

Gentlemen, will you come forward?

[Whereupon, president elect Nisbet was escorted to the platform by Messrs. John Hannah, Pollock and Barthwell.]

CHAIRMAN HARE: Stephen Nisbet of Fremont, the delegates assembled here have conferred high honor and great distinction on you, and as I transfer to you these 2 gavels, I am transferring the authority as president of this convention. It is with great pleasure that I make this transference. I am sure you will be a good president, and many good things will come out of this convention.

Steve Nisbet, I hereby make of you the new permanent President of the Constitutional Convention of 1961. I am sure the delegates here will want to hear from you immediately.

My congratulations.

PRESIDENT NISBET: Chairman Hare, Governor Swainson, Governor Brucker, Mr. Stoddard and members of your preparatory commission, members of the press, radio and television, delegates to this constitutional convention, ladies and gentlemen:

We, all of us, are fortunate to be citizens of our great state of Michigan, land of opportunity, with its great industry, its varied agriculture, its excellent natural resources, its resourceful and efficient people. Michigan through its history has climbed to leadership in our country. Time and again it has proved its right to this position by its achievements in cases of emergency, and in quieter times it is just as noble and constructive. Great in industry, in agriculture, in education, remembered for its achievements in this and other fields, Michigan, through the ability of its people, stands high in every category of our national life. Now, today, the delegates to this 1961 Constitutional Convention are accepting the challenge to an even greater stature in our state.

We have heard a lot about the mandates given the delegates to this convention. To me, there is only one mandate that has been given us, 144 delegates elected from 144 districts because the citizens of those districts said, "We believe you are the best to accomplish the big task before you, the construction of

a firm, stable foundation for our state and local government." I think I hear them say,

> We expect and anticipate that you will be statesmen in your work, that you will consider the welfare of all Michigan, that you will put your state above personal ambitions, above sectional interests, above small or selfish motives, believing that if you will develop a constructive program for the welfare of Michigan, it will also serve all the other ends.

I think they expect us to do this as people of good will who will work together even though we know before we start that we will not and probably should not agree on every issue that needs to be discussed, with the expectance that we will do this in a spirit of good will and compromise, in a spirit that will engender confidence in the work that we do. And when we disagree, they expect us to do it, not in a spirit of personalities or bitterness, but in a spirit of constructive thinking, bringing to the fore all viewpoints on the various issues.

Delegates of this convention, I accept the honor accorded me to be your presiding officer. I accept it in a spirit of humility, knowing that only as I can lead you in this spirit of cooperation and constructive thinking can we accomplish our task.

I would like to express for you our appreciation to Governor Swainson, the legislature, the preparatory commission, and all of the people who worked with them, to Secretary Hare and his staff, to Mayor Bowerman and the city of Lansing, for their careful preparation made for this convention. It is going to enable us to get at our work with greater speed and efficiency. I would also like to express our appreciation to the members of the press, radio and television for what they have already done to acquaint the people of our state with the importance of this convention, and I am going to ask them for their further help and assistance, as they report our deliberations, to develop a feeling of confidence and hope in the minds of our citizens that our work will be beneficial to them and to our state. It is a great task and we need the help of everyone.

Tomorrow is the start of the world series. Many of us interested in baseball have watched with interest as Roger Maris endeavored to break the record of home runs made by the immortal Babe Ruth. He shook the pinnacle to its very foundation but the Babe's record still stands. In my own mind I don't know whether I regret that he did not break the record or that I hoped that he would. For, you see, in baseball Babe Ruth's record stands for more than 60 home runs. It stands for the Babe himself and for his contribution to his game, his work.

May I tell you a story? A little boy was born in the city of Baltimore. For many years he lived in the shadow of the orphanage where the Babe grew up. And because he had heard of the Babe and of his feats in baseball, he, too, wanted to be a baseball player. They had not many parks in the city of Baltimore at that time and they played their games in the street. One day this lad was struck by a truck, his leg was broken, and he probably would not be able to play baseball again. But still he loved the game—he dreamed of the game. The Babe even visited him on one occasion. He read everything he could about him. One night he dreamed that Babe Ruth came, and he said something like this to him:

> It's a team game, Jimmie, and it's ours. It's come out of the heart of America. That's why we are so hard to lick when the chips are down, because whenever we get into a jam, we play it like a team instead of every man for himself. A soldier or sailor or marine will back up his buddy because he has learned somewhere, on a sandlot or in some stadium, that a pitcher can pitch his heart out but you have got to go out and spear those liners or take those drives off the fence and then go out and get some runs or it doesn't do any good. Jimmie, it's like you are all brothers, or a family, working together.

So today we start as a family of 144 devoted, sincere, hard-working delegates. I am confident we will give every ounce of our ability to this work, but even that will not be sufficient. Will you pray with me to our heavenly Father for divine strength and guidance in our task?

Our kind, gracious, heavenly Father, we delegates to this convention come to Thee today in a spirit of humility, recognizing our inability to do this great work alone. We ask for divine guidance as we approach this task. We place ourselves in Thy hands. Give us ears that we may use them to hear Thy Word, and strength to direct our thoughts and energies so that out of this convention will come a document that will be of material assistance in building a greater state of Michigan and one that will be of mutual benefit to all its citizens. In a spirit of hope and optimism we ask that Thou wilt be with us every step of the way. We do this because we believe our greatest strength can come only from Thee. In our heavenly Father's name. Amen.

And now may we proceed with diligence and dedication to the work before us?

The Chair recognizes Delegate Bentley.

MR. BENTLEY: Mr. President—and may I, sir, add my personal pleasure to be the first of our delegates to so address you?—I have a resolution, a copy of which is at the desk of the temporary secretary, which will provide for the election of a permanent secretary to the convention, the adoption of which would in effect mean that other officers of the convention be deferred insofar as their election is concerned until permanent rules of the convention are adopted. Following the reading of this resolution by the temporary secretary, I move its adoption.

TEMPORARY SECRETARY CHASE: Mr. Bentley offers **Resolution 2,** Resolved, That the convention proceed to the election of a secretary.

PRESIDENT NISBET: The Chair recognizes Mr. Shanahan to second the motion.

MR. SHANAHAN: Ed Shanahan of Charlevoix. I second the motion.

PRESIDENT NISBET: You have heard the motion and its second. Is there any discussion? If not, all in favor of the adoption of the resolution, please say aye. Opposed, nay.

The resolution is adopted.

The Chair recognizes, for the purpose of making a nomination, Mr. Brake.

MR. BRAKE: Mr. President, ladies and gentlemen of the convention, and our guests, I place in nomination for the office of secretary of this convention, Fred I. Chase, for many years secretary of the senate of this state, and for one who has had the opportunity to serve in that august body for 8 years there can scarcely be a greater pleasure than to nominate Fred Chase.

Many of us in this convention might go quite a way, might be quite useful with just good intentions, a desire to be right, but there is one person in the convention who must be right, who must know the answers, and that person is the secretary.

Fred Chase started with an apprenticeship here in Michigan under the guidance of a very distinguished parliamentarian. He followed that with service in the house of representatives at Washington with no less a parliamentarian and leader than Nick Longworth as speaker of that house, came back here, and for some 26 years has been secretary of our senate. He knows the answers. His decisions are not only right, but they are quick. He moves the procedure forward rapidly. His voice, as you have just witnessed, is strong and clear. You can understand what he says. He has to be an administrator, too. We are going to have a very sizable staff in this convention. They will need to be guided and directed. He knows how. It is a privilege to present his name and we are fortunate that there is such a man available for us. I place in nomination Fred I. Chase.

PRESIDENT NISBET: The Chair recognizes Mr. Hubbs for the purpose of seconding the nomination.

MR. HUBBS: I second the nomination of Fred I. Chase.

PRESIDENT NISBET: Are there any other nominations for the office of secretary?

Mr. Yeager.

MR. YEAGER: Mr. President, Weldon Yeager, eighteenth senatorial district, Wayne county. Since there are no further nominations, I move that the nominations be closed, the rules be suspended, and the acting temporary secretary be directed

to cast a unanimous ballot for Mr. Fred I. Chase as secretary of this convention.

PRESIDENT NISBET: The Chair recognizes Mr. DeVries for the purpose of seconding the motion.

MR. DeVRIES: I second the motion made by Delegate Yeager.

PRESIDENT NISBET: Ladies and gentlemen, you have heard the motion and its support. All those in favor say aye. Opposed, nay.

The motion prevails.

TEMPORARY PARLIAMENTARIAN PHILLEO: The temporary acting secretary would like to cast the votes of the 144 delegates for Mr. Fred I. Chase as permanent secretary to the convention.

PRESIDENT NISBET: Mr. Chase, you are our new secretary.

SECRETARY CHASE: All of my adult life, I have had the happy privilege of working with a group of winners. They had to be winners, or they didn't get there.

I served in the senate of Michigan for 8 years, and the house in Washington for 3, and, as has already been stated, a number of years here. I have been one man in Michigan recently with 36 bosses—34 senators, the lieutenant governor, and the little gal that accepted my invitation to become Mrs. Chase a number of years ago. Today you have paid me the greatest honor in my career of promoting and graduating me to a position where I now have 144 bosses. I just hope that I can meet your expectations and do the job in the way that you want it done. Thank you very much.

PRESIDENT NISBET: Thank you, Mr. Chase. I think all 144 delegates now feel a little safer in their deliberations.

The Chair now recognizes Mr. Allen for the purpose of making a motion.

MR. ALLEN: Mr. President, in order that the convention may set up a permanent organization and rules, I have a resolution which I would like to offer. I shall read it.

Resolution 3, A resolution establishing a committee on permanent organization and rules.

Resolved, That a committee on permanent organization and rules be appointed by the president, to consist of 10 members of the majority and 5 members of the minority, with a request that the committee report as soon as practicable a proposed permanent organization and rules for the convention.

Mr. President, I move the adoption of the resolution.

PRESIDENT NISBET: You have heard the motion. I recognize Mr. Ford for the purpose of seconding the motion.

MR. FORD: William Ford, nineteenth representative district, Wayne county. I second the motion.

PRESIDENT NISBET: You have heard the motion and support. Is there any discussion? If not, all in favor of the resolution please say aye. Opposed, nay.

The resolution is adopted.

The Chair recognizes Mr. Danhof for the purpose of a resolution.

MR. DANHOF: Mr. President, while a great deal has been said here today, I think it is only fitting that a formal resolution be offered at this time to those persons who have contributed greatly to the opening of this convention. Therefore, I offer the following resolution:

Resolution 4, A resolution of thanks of the convention.

Whereas, It is obvious to all who are gathered here that considerable time, effort and expense have been put forth by various organizations and individuals, in order to insure the success of this constitutional convention; and

Whereas, The efforts of these organizations and individuals have contributed greatly to the personal comforts of each delegate; and

Whereas, Without the efforts of these organizations and individuals the convention would have been forced to expend considerable time and money in making preparatory arrangements; and

Whereas, The work of these various organizations and individuals has been officially completed and will be long remembered by the delegates to this convention; now therefore be it

Resolved, That this convention of constitutional delegates does hereby commend and extend its sincere appreciation to the following organizations and individuals:

The Honorable John B. Swainson, Governor of the State of Michigan, and his staff, for the foresight displayed in appointing the capable preparatory commission and the various committees of active and experienced citizens who have diligently reviewed the many facets of our government and whose reports will be of countless value to the delegates;

The Honorable James M. Hare, Secretary of State of the State of Michigan, and his staff, for the work they have done in preparing the facilities and in the preliminary organizational work that will enable us to proceed with the monumental task ahead;

To the Legislature of the State of Michigan for its cooperation and generous appropriation which will enable this convention to secure the necessary tools to adequately complete its task;

To the City of Lansing and its fine mayor, Willard I. Bowerman, for the generous hospitality and warm greeting which has been extended to the delegates of this convention;

To the civic center board and management and to the various labor organizations for the services rendered in preparation for this convention;

To the W. K. Kellogg foundation for its generous gift without which the outstanding work of the preparatory commission could not have been accomplished; and

To the constitutional convention preparatory commission, Mr. Howard J. Stoddard, its chairman, its members and its staff, for the outstanding work which the commission has performed in securing the physical facilities in which we are now meeting; the preparation and dissemination of vital information and for the excellent reports and studies which have been prepared in order to assist and guide this convention in its deliberations. The conduct of the preparatory commission, its members, and its staff have been of the highest caliber and have been beyond reproach and for this they are to be commended and congratulated.

I move the adoption of this resolution and request that the secretary of the convention be instructed to forward copies of the same to the appropriate organizations and persons. Thank you.

PRESIDENT NISBET: The Chair recognizes Mrs. Hatcher for the purpose of seconding the motion.

MRS. HATCHER: It is my honor and privilege to rise at this time to second the motion offered by the previous speaker.

PRESIDENT NISBET: You have heard the resolution and its support. Is there any discussion? If not, all in favor of the resolution say aye. Opposed, nay.

The resolution is adopted.

Acting on your instructions to name a committee on permanent organization and rules, **the president appoints** the following people:

Richard Van Dusen
Edward Hutchinson
Miss Adelaide Hart
Alvin Bentley
Kent Lundgren
Peter Buback
Arthur Iverson
Mrs. Dorothy Judd
Richard Austin
John Martin
Glenn Allen
Melvin Nord
William Pellow
Robert Danhof
Miss Ann Donnelly

I am a little tempted to ask the committee to meet this afternoon to go to work but this is a special day, so will the committee please meet tomorrow morning at 9:00 o'clock in convention hall, and will you make every effort to have at least a partial report for our meeting tomorrow afternoon?

I would ask now for a motion to approve this committee.

Mr. Hutchinson.

MR. HUTCHINSON: I so move.

PRESIDENT NISBET: Is it supported?

A DELEGATE: Supported.

PRESIDENT NISBET: Thank you. It is moved and supported that the committee appointments be approved. Is there any discussion? If not, all in favor say aye. Opposed, no.

The motion prevails.

The Chair now recognizes Mr. Bonisteel.

MR. BONISTEEL: Mr. President, I offer the following resolution and move its adoption:

Resolution 5, Resolved, That when the convention adjourns today, it stand adjourned until 2:00 o'clock p.m. tomorrow, at which time it shall convene in constitution hall, civic center, Lansing, Michigan.

PRESIDENT NISBET: The Chair recognizes Mr. Upton.

MR. UPTON: It is a pleasure to second that motion.

PRESIDENT NISBET: You have all heard the motion and its support. Is there any discussion? If not, all in favor say aye. Opposed, no.

The resolution is adopted.

May I have your attention for just a minute? May I read this announcement, please, from Mr. Starr Hull? Due to the short timing of the opening session, it is impossible to get sufficient drivers to complete the motorcade. This will not cause any change in plans of the civic reception which will be held in honor of Michigan constitutional convention delegates at the Jack Tar hotel at 4:00 p.m. as scheduled.

There is one more announcement.

SECRETARY CHASE: I have the following telephone call for Mr. Albert Forbes. Please call your home.

PRESIDENT NISBET: Do I have a motion to adjourn? Mr. Austin.

MR. AUSTIN: I move that we adjourn.

PRESIDENT NISBET: Mr. Balcer.

MR. BALCER: I support that motion.

PRESIDENT NISBET: It has been moved and seconded that we adjourn. All in favor say aye. Opposed, no.

The motion prevails. We are adjourned.

[Whereupon, and in pursuance of the order previously made, at 1:30 o'clock p.m., the convention adjourned until 2:00 o'clock p.m. Wednesday, October 4, 1961.]

SECOND DAY

Wednesday, October 4, 1961, 2:00 o'clock p.m.

PROCEEDINGS

PRESIDENT NISBET: The convention will please **come to order.** The **invocation** will be given by the Reverend Charles Matthews, president of Great Lakes Bible College, Lansing.

REVEREND MATTHEWS: Our eternal God, we thank Thee for this day. We thank Thee for Thy interest in every phase of our activities including our government. We ask Thy blessings be upon this assembly in their deliberations that they may promote justice, mercy, peace and good will among all the citizens of this state. We ask it in the name of our Lord. Amen.

PRESIDENT NISBET: The **roll call** will be taken by the secretary.

SECRETARY CHASE: May I have your attention, please? This is the first for me, as it is for you, in the operation of this voting machine. Will every one present please vote yes on your voting machine. Is everyone registered? When you have all registered, we will lock the machine so it cannot be changed. Is everyone registered, please? All right. Push down the white button on these microphones when you wish recognition. When you have been recognized by the Chair, the green light will come on at your mike.

Roll call shows no absentees. A quorum is present, Mr. President.

PRESIDENT NISBET: Since we are still a little bit informal and learning to work the voting machine — you may take it from what I said yesterday that I am a little interested in athletics — the score happens to be 2 to nothing in favor of the Yankees at the present time; and that noise you heard is the Yankees rumbling, I am afraid.

The first order of business this afternoon is the **report of the committee on permanent organization and rules,** Mr. Van Dusen, chairman. Mr. Van Dusen, I wonder if you would come up here, please, and make your report?

Mr. Van Dusen is here now, to make his report.

MR. VAN DUSEN: Mr. President, delegates, I apologize for being slightly out of breath. The committee on permanent organization and rules met until almost 1:00 o'clock, and the chairman has been readying its report since then.

Mr. President, the committee met this morning. All its members were present. It has a number of recommendations for this convention.

First, the committee recommends the adoption, as temporary rules of procedure, of Mason's Manual of Legislative Procedure.

PRESIDENT NISBET: The question is on concurring in the recommendation. All in favor say aye. Opposed, no.

It is concurred in.

MR. VAN DUSEN: The second recommendation of the committee on permanent organization is as follows: The committee recommends that the convention adopt, as the order of business for this second session of the convention, the proposed order of business which has been furnished to each delegate in writing and which I will now ask the secretary to read.

SECRETARY CHASE: The proposed order of business for the second session today:

1. The call to order
2. The invocation
3. Roll call
4. Report of the committee on permanent organization and rules in reference to
   - a—adoption of Mason's Manual of Legislative Procedure

Previously concurred in. See above.

   - b—the proposed order of business
   - c—the permanent site of the convention
   - d—seating arrangement for delegates
   - e—the number and method of election of vice presidents
5. The election of vice presidents
6. Continuation of report of the committee on permanent organization and rules in regard to
   - f—establishment of standing committees
   - g—method of appointment of committees
   - h—method of selection of sergeant at arms
   - i—the continuation of temporary employees
   - j—the time of daily sessions
   - k—the date of the next session
7. Announcements, and
8. Adjournment.

PRESIDENT NISBET: The question is on concurring in

recommendation b. All in favor say aye. Opposed, no.

It is concurred in.

MR. VAN DUSEN: Mr. President, now that we have adopted the proposed order of business, the next recommendation of the committee on permanent organization is item c under 4, which deals with the permanent site of the convention. The committee recommends that the permanent site of the convention be the city of Lansing, and that all general sessions of the convention and all committee meetings be held in constitution hall in the civic center in Lansing unless otherwise authorized by the convention.

PRESIDENT NISBET: The question is on concurring in recommendation c. Is there any discussion? If not, all in favor say aye. Opposed, no.

The recommendation is concurred in.

MR. VAN DUSEN: The next recommendation of the committee on permanent organization, Mr. President, deals with the seating arrangement for delegates. The committee recommends that the delegates be seated alphabetically in constitution hall, from left to right in row 1, from right to left in row 2, and so on until all delegates are seated.

PRESIDENT NISBET: The question is on concurring in recommendation d. Is there any discussion? If not, all in favor say aye. Opposed, no.

It is concurred in.

Mr. Brown.

MR. G. E. BROWN: Mr. President, I believe they are now left to right, and left to right. Is there a change intended?

MR. VAN DUSEN: Mr. President, in response to Mr. Brown's question, no change was intended. I had not realized that that was the current arrangement. We took it directly from the procedural manual. Mr. President, I would move that the recommendation be construed to adopt the present pattern of seating.

PRESIDENT NISBET: Unless there is objection, it is so ordered.

MR. VAN DUSEN: Mr. President, the next recommendation of the committee on permanent organization deals with the number of vice presidents and the method of their election. The committee recommends that there be 3 vice presidents of this convention, of whom 2 shall represent the majority party and 1 shall represent the minority party, said vice presidents to be elected in accordance with the procedure for the election of officers embodied in Resolution 1 which we adopted at the first session of this convention yesterday.

PRESIDENT NISBET: The question is on concurring in recommendation e. Is there any discussion? If not, all in favor say aye. Opposed, no.

The recommendation is concurred in.

MR. VAN DUSEN: Mr. President, this completes the portion of the report of the committee on permanent organization called for to the present point in the order of business and, if I may, I will retire to my seat for the moment.

PRESIDENT NISBET: The question now is on the nominations for and election of vice presidents.

Mr. Millard.

MR. MILLARD: Mr. President, it is my honor and privilege to place in nomination the 2 nominees for the majority party. I would like to present the names of Edward Hutchinson and George Romney as the nominees for those 2 positions.

PRESIDENT NISBET: Is there a second to the nomination?

Judge Dehnke.

MR. DEHNKE: It is my pleasure to second the nomination just made by Mr. Millard.

PRESIDENT NISBET: Thank you.

Mr. Plank.

MR. PLANK: Mr. President, I would like to second the same nominations.

PRESIDENT NISBET: Mr. Norris.

MR. NORRIS: I should like to second the nomination of Mr. George Romney.

PRESIDENT NISBET: Thank you.

Mr. Brown.

MR. T. S. BROWN: Mr. President, I should like to second the nomination of Mr. Hutchinson.

PRESIDENT NISBET: Thank you.

Miss McGowan.

MISS McGOWAN: It is my honor and privilege to nominate for vice president Mr. Tom Downs, delegate from Wayne county.

Because of the importance of this high office I ask your indulgence while I give you a sketch of Mr. Downs' background. He is an attorney and was graduated from the University of Michigan law school. He is a member of the Michigan employment security commission, having been appointed by the Honorable G. Mennen Williams and reappointed by the Honorable John Swainson. He served as a member of Governor Swainson's constitutional convention committee on the judiciary. He was an attorney for Michigan AFL-CIO. He is a member of the state bar committee on administrative law. He is a member of the Michigan united fund executive committee. He is past chairman of the missions and budget committee of the Michigan united fund. Mr. Downs is a man of integrity, ability and intelligence and has a genuine belief in the dignity of man. It is a real privilege for me to nominate Mr. Downs for vice president.

PRESIDENT NISBET: Thank you. Is there a second to the nomination?

Mr. Iverson.

MR. IVERSON: It is my pleasure to second the nomination of Tom Downs.

PRESIDENT NISBET: Thank you. Are there any other seconds?

Mr. McAllister.

MR. McALLISTER: If there are no other nominations, I should like to move that the nominations be closed and the entire vote of the convention be cast for the nominees.

PRESIDENT NISBET: The motion has been made by Mr. McAllister that the nominations be closed, the rules be suspended, and the secretary cast a unanimous ballot for Mr. Hutchinson, Mr. Romney and Mr. Downs for the vice presidents of this convention. Is there any discussion? If not, all in favor say aye. Opposed, no.

The motion prevails.

SECRETARY CHASE: The secretary is pleased to cast the unanimous ballot of this convention for the 3 vice presidents designated as nominated from the floor, 143 votes for each.

PRESIDENT NISBET: Mr. Downs, Mr. Hutchinson, and Mr. Romney are declared elected vice presidents of this convention.

Mr. Leppien.

MR. LEPPIEN: I believe we have 144 present.

PRESIDENT NISBET: Mr. Leppien, I might say I found out yesterday when I was elected by that same vote, that Mr. Chase was a very wise and understanding man and he kept me from voting for myself. I think that's how he got the 143 for the other delegates.

We have some time this afternoon, and I am sure you would like to see and hear briefly from our 3 vice presidents. Mr. Hutchinson, would you like to come up?

Ladies and gentlemen, Mr. Hutchinson.

MR. HUTCHINSON: Thank you, Mr. President. Ladies and gentlemen of the convention, I accept your election as one of your vice presidents with a great deal of humility and appreciation and I assure you that my every effort in this convention will be to the end that a document will be produced which will win the approval of the people of Michigan and to that end I will serve in every detail and in any capacity the president chooses to assign to me. Thank you very much.

PRESIDENT NISBET: Mr. Downs, also elected vice president.

MR. DOWNS: Mr. President, fellow delegates, it is of course, a real honor and I hope as the convention continues history will show I have proven worthy of this splendid responsibility. I, too, am dedicated to working with the delegates and the people of the state of Michigan so we can

develop a document that will improve conditions for all the people of the state. Thank you very much.

PRESIDENT NISBET: I am very happy to present to the convention the third vice president, Mr. Romney.

MR. ROMNEY: Ladies and gentlemen of the convention, I want to express my appreciation for this high honor and for the opportunity to participate in this historic convention. I hope that I can serve unstintingly in helping each delegate to play his full part in this effort.

We have a devout president. He is a God fearing man, and I think this is a good thing, and it could be a decisive factor in connection with this convention. I want him to know that he will have my full support and assistance in his desire to provide effective leadership for us in this great effort, and I just hope that when we finish up I can feel in my heart and my mind that I have done what I could to help us get a new constitution that is absolutely sound and also adequate, that will bless the people of this state, and be a pattern for the whole nation. Thank you very much.

PRESIDENT NISBET: Thank you, Mr. Romney, Mr. Downs, and Mr. Hutchinson.

The next order of business is the continuance of the **report of the committee on permanent organization and rules.**

Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, the next item in the report of the committee on permanent organization and rules deals with the establishment of standing committees. The committee recommends the establishment of the following standing committees of this convention. First I will list 9 substantive committees and the number of members of each, recommended by this committee.

1. Committee on declaration of rights, suffrage and elections, 15 members.
2. Committee on legislative organization, 21 members.
3. Committee on legislative powers, 15 members.
4. Committee on executive branch, 21 members.
5. Committee on judicial branch, 21 members.
6. Committee on finance and taxation, 21 members.
7. Committee on local government, 27 members.
8. Committee on education, 21 members.
9. Committee on miscellaneous provisions and schedule, 15 members.

These are the substantive committees recommended by the committee on permanent organization.

The committee on permanent organization also recommends 4 operational committees as standing committees of this convention.

10. Committee on style and drafting, 15 members.
11. Committee on administration, 15 members.
12. Committee on public information, 21 members.
13. Committee on rules and resolutions, 15 members.

Mr. President, the committee on permanent organization further recommends, with respect to the establishment of these committees, that each delegate, except the president, shall be appointed to at least 1 substantive committee and not more than 2 standing committees, that the membership of each committee be appointed so as to reflect as nearly as possible the percentage of representation of the political parties in the convention as a whole.

The committee makes a specific recommendation with respect to the function of the committee on administration for the reason that that committee should become operative as soon as possible. It is the recommendation of the committee on permanent organization that the committee on administration shall generally oversee the administrative and business affairs of the convention, including finances, personnel, printing, distribution of reports, physical arrangements for the convention, including the press and television and related matters. It shall also provide guidance to the secretary, sergeant at arms, and the director of research in the discharge of their duties.

Mr. President, that is the report and recommendation of the committee on permanent organization and rules with respect to the establishment of standing committees of this convention.

PRESIDENT NISBET: You have heard the recommendation. Is there any discussion?

Mr. Snyder.

MR. SNYDER: Joe Snyder from the second representative district, Macomb. I rise on a point of procedure not only in reference to the committees we are about to act upon, but as a request to have the Chair outline to me a little bit more clearly the procedure to be used in laying out the chain of command on the various vice presidents that were selected by this convention.

I was very fortunate to have read the newspapers prior to attending the session today and I found that we were to have 3 vice presidents instead of the 2 proposed vice presidents. Two were nominated by one person, and the third was nominated by an additional person. It is not clear in my mind yet, and it is possibly not clear in the minds of some of the other delegates, what the priority or what the chain of command will be in these particular areas. There is also the question in my mind, have we by the creation of an additional vice president shelved temporarily, only for this particular office, the 2 to 1 ratio? Because obviously now we have a 3 to 1 ratio on the question of the top officers of this convention.

I feel also that while I am on my feet I should caution not only the officers of this convention but also the delegates assembled here that we must begin to more actively as delegates participate in some of the decisions that are brought upon us. I feel it is wonderful to have unanimity amongst the delegates up to a point but I feel that somewhere down the line we must discuss more thoroughly and more deliberately the matters we have before us. Thank you very much.

PRESIDENT NISBET: Mr. Van Dusen.

MR. VAN DUSEN: Mr. Snyder, I might comment briefly in response, and hope that it may be helpful to all of the delegates.

The functions of the 3 vice presidents are, in part, the subject of the next order of business, item 6-g, which deals with the method of appointment of committees, and that order of business will be the only place in the report of the committee on permanent organization in which the responsibilities of the vice presidents are touched upon today. It may be that in the consideration of additional rules of the convention which the committee will undertake in the succeeding days, these functions and responsibilities will be spelled out in more detail, but until this point it has been the feeling of the committee on permanent organization that we simply wish to propose for your adoption — and you have done so — 3 vice presidents of equal rank, and we will propose as a part of item 6-g this afternoon certain of the functions of these 3 vice presidents. That is as far as the committee on permanent organization is prepared to go at this time.

PRESIDENT NISBET: Is there any other discussion? The question is on concurring in recommendation f. All those in favor say aye. Opposed, no.

The recommendation is concurred in.

MR. VAN DUSEN: We now come to item g, the method of appointment of committees. I am grateful to the sergeant for having handed me the balance of my report. I had gotten a little ahead of it. The recommendation of the committee on permanent organization with respect to the appointment of the standing committees and committees generally is as follows: The committee recommends that the president, after consultation with the vice presidents, shall nominate for convention approval the membership of all committees except where the convention shall otherwise order. This is the recommendation of the committee, Mr. President.

PRESIDENT NISBET: The question is on concurring in recommendation g. Is there any discussion? If not, all in favor say aye. Opposed, no.

The recommendation is concurred in.

MR. VAN DUSEN: The next item in the report of the committee on permanent organization deals with the method of selection of a sergeant at arms and it is the recommendation of the committee on permanent organization that the sergeant at arms be appointed by the president.

PRESIDENT NISBET: The question is on concurring in

recommendation h. Is there any discussion? If not, all in favor say aye. Opposed, no.

The recommendation is concurred in.

MR. VAN DUSEN: Mr. President, the next recommendation of the committee on permanent organization deals with the temporary staff of the convention. Obviously, we have had no opportunity to make recommendations with respect to permanent staff, nor would we attempt to do so for that would in some measure usurp the function of the committee on administration which must now begin to function. However, it seemed appropriate, and the committee recommends, that such temporary employees as may have been employed for the convention continue as convention employees until replaced by permanent employees.

PRESIDENT NISBET: The question is on concurring in recommendation i. Is there any discussion? If not, all in favor say aye.

Mr. Kelsey.

MR. KELSEY: Kelsey from the first representative district, Macomb county. I would support the recommendation. However, I would like some explanation as to what "until" means. I would like to have the word "until" clarified.

MR. VAN DUSEN: Mr. Kelsey, I would imagine that as soon as the committee on administration has been appointed, it will begin to deal with the question of the number of employees and the designation of their functions and will make recommendations to the convention with respect to those matters; and upon the adoption of those recommendations by this convention, we will have reached the point of 'until".

MR. KELSEY: Mr. President, I would certainly like to amend that recommendation to some degree at least, so that we have some period indicated here in terms of days or maybe weeks.

PRESIDENT NISBET: Mr. Downs.

MR. DOWNS: Tom Downs of the fourth district, Wayne. I believe that the motion as passed, as the chairman of the committee said, will provide that there will be a transition just as fast and reasonable as possible. I think certainly it has taken imagination by the secretary of state and others to go ahead. Now the speed of that will depend upon how fast the committee on administration functions. I think, since the chairman has indicated and the practice through the present has been that these have been appointed on a responsible bipartisan basis, that we as a convention have every right to feel that this committee will operate just as fast as is reasonable. If it would turn out to be unreasonable I would then be among the first to raise the question of "until", but I think as a matter of good faith we should give this committee, which has not even yet been appointed, a reasonable chance to satisfy the meaning of the word "until". Thank you.

MR. KELSEY: Mr. President, I will accept in part this reasoning. However, I would like to see this recommendation again become the property — suppose that in a 30 day period if we couldn't reach some agreement on employees, it would again become the property of the convention. Thank you very kindly.

PRESIDENT NISBET: The question is on concurring in recommendation i. Any further discussion? If not, all in favor say aye. Opposed, no.

The recommendation is concurred in.

MR. VAN DUSEN: Mr. President, the committee on permanent organization has been mindful of the fact that the delegates have up to now been working on a day to day schedule, and have had very little opportunity to plan their own affairs. Therefore, the committee on permanent organization has 2 recommendations, one dealing with the immediate scheduling of our functions, and the other dealing with the general scheduling of our functions.

The general recommendation comes first, and it is item 6-j in your order of business, "Time of daily sessions". The committee recommends that sessions of this convention be held at 8:00 p.m. on Mondays; at 2:00 p.m. on Tuesdays, Wednesdays, and Thursdays; and at 10:00 a.m. on Fridays. This is the recommendation of the committee on permanent organization, Mr. President.

PRESIDENT NISBET: Mr. Snyder.

MR. SNYDER: Mr. President, thank you for permitting me to present my point of view on what I feel is probably the most important decision that we as delegates have at this particular time had the opportunity to act upon. Certainly, when I spoke of deliberation in my previous remarks, I can only reemphasize the importance that scheduling will mean to this convention. I am very disappointed that I am asked at this particular time, without any prior knowledge, to commit myself, along with 143 other delegates, to an irrevocable schedule. I certainly had hoped that a point as important as this one would have been presented in advance so that we could have discussed this matter much more intelligently than a simple yes or no vote.

I know there are many at this delegation who have indicated a desire to meet in places other than this very fine installation. I think the circumstances are such, however, that we had to accept these fine facilities.

I believe that, in consideration of some of the sacrifices made by the other delegates, the matter of scheduling should have been one of advance notice. I feel that the Monday night scheduling for 8:00 o'clock is a very unwise one because it would simply mean that we would come in here, probably answer roll, there would be not too much opportunity to do any constructive work. I have discussed this matter with many other delegates, and many here feel it would be unwise to schedule for 8:00 o'clock Monday. Personally, I speak against this motion and I hope that other delegates will also present their point of view on this important matter.

PRESIDENT NISBET: Mr. Bentley.

MR. BENTLEY: Mr. President, I am inclined, although a member of the committee on permanent organization and rules, to agree somewhat with the gentleman who has just spoken. I thing it might be helpful if the chairman of our committee would indicate whether these weekdays are fixed and arbitrary times of meeting or only whether, if we decide to meet on a particular weekday, the hour of meeting would be so fixed.

MR. VAN DUSEN: Mr. President and Mr. Bentley, the understanding which the chairman has of the purport of the rule is that unless otherwise ordered by this convention, the convention will meet in session at the times indicated.

It is, of course, within the prerogative of the convention to order otherwise with respect to any given day or series of days, and in response to Mr. Snyder's point I would suggest that it is entirely possible that the convention may order otherwise with respect to certain days, particularly in the early sessions of the convention. I would point out, however, with respect, for example, to next Monday night, that it is entirely possible — as a matter of fact, we fully expect to be able to do so — that the committee on permanent organization and rules will have for the consideration of the convention a set of permanent rules.

It is entirely possible that the committee on administration may have recommendations with respect to the staffing of the convention which can be presented at that time.

And it appeared to the committee on permanent organization that it was desirable that from the outset the delegates have some reasonable understanding of the times at which they might be expected to be here for convention sessions unless a majority of the delegates chose to do otherwise with respect to any given session or series of sessions.

PRESIDENT NISBET: Mr. Nord.

MR. NORD: Nord of the sixth senatorial district. I would like to speak generally in support of the recommendation with one amendment which I will offer in a moment. The intention of the committee was, as pointed out by the chairman now, to set up this schedule simply as a tentative understanding so that people will know when they are expected to be required to be here. It was not intended to be a rigid schedule, and I think I would move to amend the recommendation to make that point clear by adding, after the word "follows" a comma and "except as otherwise ordered by the convention".

PRESIDENT NISBET: You have heard the motion. Is there further discussion?

Mr. Habermehl of Alpena.

MR. HABERMEHL: In consideration of the number of delegates that have quite a distance to go in attendance, including myself, I would move an amendment to the committee report that the requirement for the Monday evening session be eliminated from the committee report.

PRESIDENT NISBET: The question is on the amendment of Mr. Nord that the recommendation of the committee be accepted with the addition "except as otherwise ordered by the convention". Is there any further discussion on that amendment?

Mr. Martin.

MR. MARTIN: Mr. President, may I just offer a word of explanation on the discussion within the committee?

It was the feeling of the committee that this convention has a responsibility to work as far as we are able to find work to do — and we think we will find plenty — some 5 days a week, and the provision for a meeting on Monday night would give most of the delegates an opportunity to have a good share of Monday to do various matters at home, and to come down. I realize this is not entirely convenient for those who live perhaps as far away as the upper peninsula. Then it would give us, too, 3 full days of work in which the convention sessions would begin at 2:00 o'clock, but the mornings would be presumably filled with committee sessions. And the evenings could — since we are going to be here and ought to be working — be used for either committee sessions or hearings.

If we were to follow the legislative practice in the early stages, it might be entirely possible then to terminate our work on Thursday evening, although in the latter stages — if things happen about as they do in the legislature — work will begin to pile up and we will find ourselves needing to work on Friday, and perhaps all day Friday. But the thinking behind the proposal was to give you as full a day as we could on Monday and at least a portion of Friday, and all of the week end.

PRESIDENT NISBET: Thank you.

Mr. Bentley.

MR. BENTLEY: Mr. President, a parliamentary inquiry to clarify the situation. The vote comes first on the Nord amendment and then on the Habermehl amendment following?

PRESIDENT NISBET: That is right. The question is on the Nord amendment. Is there any further discussion?

Mr. Richards.

MR. L. W. RICHARDS: Les Richards from the upper peninsula, the Marquette district. Certainly I am one from the upper peninsula who will be traveling a long way. But one thing would disturb me, if I didn't feel my obligations first would be to my duties here at the convention, and certainly I don't think any of us would want to be spending too much time at home, as much as we like our home and so forth. Our duties are here, and if there is an 8:00 o'clock meeting Monday evening I certainly will be here to attend. But I think, as the gentleman spoke first, that to set up this regular schedule immediately, to find out what is going to be most efficient in effect would be difficult this first week, and certainly as we proceed I think we should then determine what our requirements are for meetings and length of time and so forth. I think all of our obligations will be filled.

PRESIDENT NISBET: Thank you very much. The question is on the amendment. Any further discussion? If not, all in favor please vote aye. Opposed, no.

The amendment is adopted.

The question is now on Mr. Habermehl's amendment. Your amendment, Mr. Habermehl, was that the Monday night sessions be eliminated? Is there any discussion?

Mr. Hutchinson.

MR. HUTCHINSON: Mr. President, I would like to call this matter to the attention of the convention. If we eliminate Monday night sessions, the tendency will grow not to come in until Tuesday night. I think that we must have these Monday night sessions in order that everybody will be aware of the fact that by Tuesday morning committees will be meeting.

Now, it is obvious that right at the start perhaps there will not be a necessity for a Monday night session, but we must have these regular general sessions of the convention because it is necessary to have the opportunity to introduce proposals. Unless proposals are introduced in what I guess we would call plenary sessions, nothing much can get started. It seems to me that we, all of us, accepted this duty as members of this convention with the realization that for the next 5 or 6 months this is going to be practically a full time job, and I am sure that the people expect us to work 5 days a week.

I also agree with Mr. Martin that it is part of our job and essential that we spend part of our time in districts because we have to be available there. On the other hand, the work of the convention can actually only proceed with the speed that we are ready to proceed on this floor, and consequently I am of the opinion that the recommendations of the committee are right, that there should be 5 sessions a week unless otherwise ordered by the convention, and I must respectfully oppose the Habermehl amendment now being considered for the reason that I feel that in the end result we might find ourselves working only 4 days a week, or perhaps only 3.

PRESIDENT NISBET: Mr. Boothby.

MR. BOOTHBY: Mr. President, I would like to remind the delegates that we are costing the taxpayers $144,000 a month just for our salaries.

PRESIDENT NISBET: Thank you. Is there any further discussion?

Mr. Snyder.

MR. SNYDER: Again I would like to point out that my motivation was not to try to avoid any work. In fact, if we want to work, let's start working Monday morning. I don't think that any of the delegates have a corner on a desire to work for the taxpayer. This we all want to do. My question was this: can we accomplish anything by a mere roll call on Monday night? I did not say we should eliminate the Monday sessions. I said we ought to revise these hours. If necessary, revise them upwards to start working Monday morning. If there is work to be done, let's do it. But let's face the facts and not have a device to meet on Monday nights for the purpose of roll call and then not do any work. If you want to meet Monday morning, that's fine with me.

PRESIDENT NISBET: The question is on the amendment.

Miss Donnelly.

MISS DONNELLY: I believe that it should be established in the minds of most of the delegates now that the rules committee expects to come forward with work to be acted upon next Monday night. Probably the committee on administration also will have work for us to do. I do not believe we will be just calling the roll. Likewise the other committees, having been established, will probably the next Monday night have many things for this group to act upon, and to think we are going to sit here on a Monday night and do nothing but call the roll, I think, is unimaginative.

PRESIDENT NISBET: Thank you.

Mr. Habermehl.

MR. HABERMEHL: I don't believe that in the minds of most of the delegates there is any attempt here to avoid one day's labor. I think a very important part of the work of any delegate, as has been mentioned, is going to be in his own district. We have to stop, then, to consider in our own district what meetings we might be able to attend, and still fit the convention schedule. If we are going to work Fridays and we hope to attend any meetings at all, about the only night available for attending such meetings — and communication with the people in our district is a most important part of our job — would be a Monday evening, assuming an evening meeting. That would be impossible in the case of many of the delegates and still permit them to arrive here for an 8:00 o'clock session of this convention.

It seems we must allow some time, if we are going to carry out this duty of communicating with the people of our districts, in order to do that part of our job. That, I believe, is the motivation for most of us who feel that the Monday night session ought to be eliminated and whatever might be accomplished there could well be taken care of early Tuesday morning.

PRESIDENT NISBET: The question is on the amendment. Mr. Marshall.

MR. MARSHALL: I want to speak against the Habermehl amendment. I don't agree with the statements that we would have merely a roll call on Monday night. I do agree with the statements made by Mr. Hutchinson that if we should eliminate the Monday night session, we no doubt then would have some people maybe considering convening on Tuesday night. Now, insofar as this problem of getting back to the district and reporting to the people there that was raised here, there are very few meetings on Monday night in the district. Most of these reports and these types of meetings will have to be made on the week ends when we are not in session; and as time and the convention proceeds and we get down to the work of drafting the document where committees are meeting and holding hearings, there will be committee reports that can be made on Monday nights. Some of our committees will be meeting on Monday. Some will be meeting on Friday afternoon. So I want to speak against the Habermehl amendment, Mr. President.

PRESIDENT NISBET: The question is on the Habermehl amendment. Is there any further discussion? If not, all those in favor say aye. Opposed, no.

The Habermehl amendment is not adopted.

The question is on concurring in recommendation j, as amended. All in favor say aye. Opposed, no.

The recommendation is concurred in, as amended.

MR. VAN DUSEN: Now, Mr. President, the committee on permanent organization has one further recommendation. That is, that when the convention adjourns today, it stand adjourned until Monday, October 9, at 8:00 p.m.

PRESIDENT NISBET: You have heard the recommendation. The question is on concurring in recommendation k. Is there any discussion? If not, all in favor say aye. Opposed, no.

The recommendation is concurred in.

MR. VAN DUSEN: Mr. President, that concludes the report of the committee on permanent organization and rules.

I would like having the opportunity to speak to you from this rostrum to tell you that this committee is one which has addressed itself most diligently and carefully to a difficult task, and I think has accomplished in a very brief time a great deal which will contribute to the structuring and activity and function of this convention. I would like to compliment each and every member of that committee, and thank them for their attention to the work.

I would like to announce that the committee will meet again at 9:00 o'clock tomorrow morning in committee room G in constitution hall, and that any member of the body wishing to present recommendations dealing with the permanent rules of the convention should present himself at that time ready to be heard.

PRESIDENT NISBET: Thank you, Mr. Van Dusen.

I would like to make an announcement or two before Mr. Chase does.

I appreciate, Mr. Snyder and Mr. Kelsey, your concern about the opportunity for debate and discussion in this convention. I appreciate that in the question of organization we may have to move a little rapidly but we are desiring to get our organization perfected so that we can actually get down to work.

I have asked Mr. Chase, if he will, next Monday night to give us a little presentation of operation. I appreciate that when Mr. Chase has taken charge of the senate when they meet on January 1, he probably has 4 or 6 new senators, and they sit back and listen for a few moments, and pretty soon — in a day or two, or a week — they learn procedure. But we are 144 people who don't know very much about procedure, and I know some of you are concerned with "how do you get proposals before the convention — how are they acted on — what's the procedure — what is the method", and just so that we will have a greater understanding on that, I have asked Mr. Chase if he won't give some description of that next Monday evening.

Furthermore, as Mr. Van Dusen has said, the committee on permanent organization and rules will meet tomorrow and Friday to continue their work so that they will have a report for Monday night. I hope, and I might say that if Mr. Downs and Mr. Romney and Mr. Hutchinson will meet with me in the president's office tomorrow morning at 8:30, we will start on some of our activities, too.

In the meantime, I hope that the delegates who go home for the week end will spend the next couple of days going through this material that was presented to them. It is very voluminous, but it is very important. You are not going home, I hope, to take a vacation — we haven't worked that long yet — but you are going home to prepare yourself in better shape for your work here at the convention which is very important.

Now Mr. Chase has some announcements.

SECRETARY CHASE: The President has caused to be placed on your desks this sheet, at the head of which is your name. Will you please put in there following that, some background data similar to what you put in the directory of delegates? Some of you put nothing in there. The president and vice presidents, when they meet in committee to select committee members, would like to have some knowledge of your background of experience and things you are interested in, to be of assistance to them in making committee assignments.

You will find, following that, the list of the 13 committees that have been set up, and at the bottom of the page a place for you to list your committee requests, the committees to which you would like to be assigned. Please list as number one the committee on which first you would like to serve, and so on. Turn that in either to the president's office or secretary's office today. Miss Hart has requested, and I think this is a good idea, that you make these out in duplicate. This will be of assistance to the committee so that instead of only 1 copy they will have 2. So will you please make these in duplicate and turn them in in that form, and if you don't have enough copies we will get more.

Another announcement. The gentlemen who have installed the voting machine have announced that they will be happy to remain here for a while this afternoon, and any questions you have about how the voting machine operates, if you want to try this out and ask some questions, they will be very happy to explain, demonstrate, and answer your questions.

Mr. Apol tells us that the mail room is across the hall, and in there you will find in the appropriate box for you any and all mail that has been received. It will be available from day to day as we get it from the post office.

The pages will be seated at the back of the room. We haven't had too much occasion to use them as yet but as time goes by we will. When you need to call for a page, if you will stand and turn in that direction and get their attention and give them a "come hither" signal of some kind, they will be at your service.

One other announcement. A number of you have had these name clips break. The people who made them are disappointed and unhappy about it and they have asked that you leave the broken ones in the top drawer of your desks and they will see to it that one that is good is here for your use when you come back and it will be a good one.

I have one or two other brief announcements. Secretary of State Hare has provided and there is at your desks this information in regard to the delegates: the alphabetical list, the seating chart, and the parking lot allotment. And from the constitutional convention preparatory commission there is this material. Mr. Tilden V. Mason, on behalf of the citizens research council, has placed in the lower drawer of your desk the publication, A Comparative Analysis of the Michigan Constitution. Any delegate who wishes an additional copy for his personal use may secure it by calling the Lansing office of the research council. The telephone number is Ivanhoe 9-0717.

One other request. I believe that everyone is planning on going home over the week end so that it will not be necessary for police protection in the parking lot. Unless there is some contrary request, we shall so advise the Lansing police department so the officers may not be required to be on duty over the week end.

PRESIDENT NISBET: Mr. Sharpe.

MR. SHARPE: In regard to rules, I would like to offer this suggestion, if it is feasible. Hereafter, when we are voting on an amendment to the amendment to the amendment to the motion and therefore down the line, that before we vote on the motion, that the motion be read again. If that is feasible, I would like to make a motion to that effect.

PRESIDENT NISBET: Thank you, Mr. Sharpe. Instead of voting on it, if you don't mind, that will be taken care of from the Chair. If I should happen to overlook it, will you please let me know about it?

Mr. Hodges.

MR. HODGES: Robert Hodges from the first district, Wayne. Mr. President, I would move that a copy of Mason's rules be provided to every delegate if that is not already taken care of or provided for.

PRESIDENT NISBET: The secretary informs me, Mr. Hodges, that they are not available at the present time. Whether they can be made available, I do not know. The secretary informs me that there are several copies in the library.

MR. HODGES: I think it would be much wiser if this convention provide each delegate with a copy of the rules, if possible. Is it the understanding that they are out of print?

PRESIDENT NISBET: Mr. Chase will talk to that point.

SECRETARY CHASE: At the present moment the volume is out of print. I am sure we can secure several copies. It will take a little while to do it. We will be glad to have them made available, but may I suggest this? Very shortly your permanent rules will have been adopted and they will cover most cases, and they will provide that in the case where these rules do not cover a parliamentary situation this volume shall govern. So the volumes we will be able to get, I am sure, will take care of anything in the convention.

PRESIDENT NISBET: Thank you, Mr. Hodges, for the suggestion. We will get as many more copies as we can.

Mr. Wanger.

MR. WANGER: Mr. President, I think our own personal preferences as to what committee or committees we would like to be on is of great importance, not only to the result of the convention but to our own feeling of being able to work in those areas where we feel the greatest aptitude.

The titles of these 9 substantive committees are very general. I, personally, do not feel that I could intelligently state a preference in order, as requested on this sheet today, from 1 through 4. I realize the need for getting organized and getting the committees appointed as soon as possible. Therefore I would request that a member of, or members of the committee which proposed these 9 substantive committees speak to just what subject matters these committees would include. They are, in my way of thinking, too generally stated for many of us to make up our minds.

PRESIDENT NISBET: Mr. Van Dusen, do you want to speak on this?

MR. VAN DUSEN: Mr. President, it was the feeling of the committee that the committee on declaration of rights, suffrage and elections would deal with the bill of rights, with the questions of suffrage and franchise, with matters relating to the holding and conduct of elections. I think that's reasonably descriptive.

It is the intention of the committee that the committee on legislative organization would deal with the problems of apportionment, with problems of the internal organization of both houses of the legislature.

The committee on legislative powers would deal with all of those powers of the legislature not otherwise covered in specific substantive committees such as finance and taxation, local government, education, or such matters as might be assigned to the committee on miscellaneous provisions.

The committee on the executive branch I think needs no particular explanation, nor does the committee on the judicial branch or the committee on finance and taxation.

The committee on local government was made a large one because it is likely to be broken into subcommittees dealing with various units of local government.

The committee on education I think is reasonably descriptive.

The committee on miscellaneous provisions and schedule may deserve some explanation. The scheduling function of this committee will be in all likelihood an extremely important one, for it will provide for the orderly transition from the present constitution to the new constitution, making provision for the applicability of statutes enacted under the present constitution until such time as they might be amended under the new constitution, and so forth. Miscellaneous provisions might include, for example, such subjects as eminent domain, the militia, corporations, many of which are dealt with in some detail in the present constitution and would have to be referred to some substantive committee of this convention.

If there are specific questions relating to matters which might be subjects of concern to specific committees, I will be glad to try to answer them, as I am sure would other members of the committee on permanent organization, but I hope that that explanation may suffice.

PRESIDENT NISBET: Is there any other discussion?

Mr. Mahinske.

MR. MAHINSKE: Mr. Mahinske from the seventh district, Wayne. In relation to Mr. Hodges' comment on Mason's rules, they are available through Doubleday and Doran, if you want to buy your own or if the convention wants to allocate these books to us. I think it is necessary that we do have them. I realize there is going to be a catchall clause in our own permanent rules that where these rules do not cover situations, Mason's will govern. I don't think we are going to be in a position to go to the state library and draw out one of these when a question arises on the floor. I feel that it is important that we all have our own manual on the legislative procedure provided by Mason right here on the spot to use at any particular time.

PRESIDENT NISBET: Thank you very much, Mr. Mahinske. Mr. Chase will be glad to contact them. Will you give him your source after the session? Any other questions?

Mr. Van Dusen.

MR. VAN DUSEN: Some of the members of the committee on permanent organization and rules have indicated that they might wish to consider meeting briefly further this afternoon. I can tell them they are going to wear out their chairman but I am glad to suggest that if the members of the committee on permanent organization and rules would meet with me here in this corner of the hall following the session of today, we will consider the question of whether we should have a further meeting this afternoon.

PRESIDENT NISBET: Thank you. Anything further?

Mr. Cudlip.

MR. CUDLIP: I move that this body adjourn.

PRESIDENT NISBET: The question is on the motion. All those in favor say aye. Opposed, no.

The motion prevails. The session is adjourned until Monday night at 8:00 p.m.

[Whereupon, and in pursuance of the order previously made, at 3:10 o'clock p.m., the convention adjourned until 8:00 o'clock p.m. Monday, October 9, 1961.]

THIRD DAY

Monday, October 9, 1961, 8:00 o'clock p.m.

PROCEEDINGS

PRESIDENT NISBET: The convention will please come to order. The invocation will be given by the Reverend William S. Hill, Rector of St. Paul's Episcopal Church, Lansing.

REVEREND HILL: Let us pray. O God, the fountain of wisdom, whose statutes are good and gracious and whose law is truth, we beseech Thee so to guide and bless the convention assembled to draw up a constitution for our state, that it may ordain for our governance only such things as please Thee, to the glory of Thy name and the welfare of Thy people; through Jesus Christ, Thy Son, our Lord. Amen.

PRESIDENT NISBET: The roll call will be taken by the secretary.

SECRETARY CHASE: Will those present please vote aye? Has everyone voted?

There is a quorum present, Mr. President.

Prior to today's session, the secretary received a request that Mr. Heideman be excused, and Mr. John E. McCauley wishes an excuse because of illness in his family.

PRESIDENT NISBET: Without objection, the requests are granted.

SECRETARY CHASE: Absent with leave: Messrs. Heideman and McCauley.

Absent without leave: Messrs. G. E. Brown, Dade, Norris and Suzore.

PRESIDENT NISBET: Without objection, the delegates are excused.

[During the proceedings the following delegates entered the chamber and took their seats: Messrs. G. E. Brown and Dade.]

We will now listen to an announcement by the secretary.

SECRETARY CHASE: On your desk you will find, on a letterhead from the senate, a letter to the delegates of the constitutional convention together with the W-2 form to be filled in by each delegate. Please do this at this time. The convention will be at ease until they are completed.

Please show your name exactly as it is shown in your social security records; your social security number; number 5 is your street address; number 6 is the date of your birth; number 7, the number of exemptions you wish to declare for income tax purposes; and 8, please do not fail to sign the card in the same manner as your social security records. We need them by tomorrow morning. If you will, please fill them out now, sign the letter, and list the city of your residence and the mileage one way.

When this is completed, the sergeants and the pages will pick up the letters and cards and we will be able to take care of the pay roll and the mileage vouchers.

PRESIDENT NISBET: The convention will be at ease while you are doing your home work. Will the sergeant at arms pick up the letters and the cards as they are finished?

SECRETARY CHASE: From the report made by the sergeant at arms, it seems the biggest difficulty is lack of the social security numbers. For those who do not have your cards with you, if you will fill that card in, bring it in the first thing tomorrow morning, and turn it in to the secretary's office, that will take care of it. For the rest of those who have them ready, will you please turn them over to the sergeant at arms for collection at this time?

PRESIDENT NISBET: We will now have a report of the committee on permanent organization and rules.

Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, fellow delegates, the committee on permanent organization and rules has a number of recommendations for the convention this evening. The first are a series of somewhat miscellaneous recommendations which are nevertheless important to the basic organization of the convention. You will note that they follow in each case the recommendations of the preparatory commission.

The first recommendation deals with the execution of official documents of the convention. The committee recommends as follows:

1. That the president, where required, and the secretary, under the direction of the president, be authorized to execute and certify all acts of the convention.

2. That the secretary be authorized to execute and certify all vouchers for payment of expenditures pursuant to authorization by the convention for such expenditures.

Mr. President, I move concurrence in the recommendation.

PRESIDENT NISBET: The question is on concurring in the recommendation.

MR. VAN DUSEN: I should state to the delegates that, with respect to these first 6 recommendations, you do not have copies simply because we were unable to get them prepared in time for your consideration. If there are any questions, I will be glad to read them the second time.

PRESIDENT NISBET: Inasmuch as this is the first one to be read and as you do not have a copy of it so that you do not know what they will be, Mr. Van Dusen, would you read them again, please?

MR. VAN DUSEN: 1. That the president, where required, and the secretary, under the direction of the president, be authorized to execute and certify all acts of the convention.

2. That the secretary be authorized to execute and certify all vouchers for payment of expenditures pursuant to authorization by the convention for such expenditures.

I think if you will look in your manuals prepared by the preparatory commission on page 17, you will find that recommendation as item 3.

PRESIDENT NISBET: You have heard the recommendation. The question is on the recommendation. Is there any discussion? If not, all in favor say aye. Opposed, no.

The recommendation is concurred in.

MR. VAN DUSEN: The second recommendation, Mr. President, deals with the daily journal of the convention. This recommendation you will also find in your preparatory commission manual. I believe this is also on page 17.

The recommendation is as follows:

That not to exceed 6,000 copies of the journal be duplicated in a manner to be prescribed by the secretary after consultation with the committee on administration and distributed to each delegate and to such other persons requested by each delegate not to exceed 25 each and to such other persons designated by the secretary, the president, or the committee on administration. Distribution of the journal to delegates shall be accomplished by 10:00 a.m. on the day following the adjournment of the session.

Mr. President, I might explain the recommendation of the committee in this respect. If each delegate is permitted 25 copies for mailing to persons in his district such as schools, libraries, and interested groups, this would be 3,600 copies. For the use of the delegates and staff, some 250 copies daily would be required. The experience of the legislature in general mailing of the journal indicates that perhaps 900 copies might be needed immediately for coverage of their mailing list. This once again includes libraries, bar associations, government officials, and so forth. This totals 4,750 copies.

It was the feeling of the committee that we should allow some reasonable cushion because of considerable interest in the proceedings of this convention, and therefore it is our recommendation that not to exceed 6,000 copies of the journal be printed. Needless to say, if that number is not required, the secretary will not provide for the duplication of that many.

I move the adoption of this recommendation, Mr. President.

PRESIDENT NISBET: The question is on concurring in the recommendation. Is there any discussion? If not, all in favor say aye. Opposed, no.

The recommendation is concurred in.

MR. VAN DUSEN: Mr. President, the third recommendation of the committee deals with the printing and distribution of a handbook. The recommendation is as follows:

That the secretary be directed to prepare and print 5,000 copies of a convention handbook containing the names of the delegates, their addresses, the committees, the rules of the convention, and such other information as the committee on administration deems appropriate. Twenty-five copies shall be given to each delegate and a copy shall be given to such other persons designated by the secretary, the president, or the committee on administration.

Now, in explanation of this recommendation, I believe many of you are familiar with the handbook of the legislature which lists the names and address of the members of the 2 houses, includes the Constitution of the State of Michigan, the rules of both houses of the legislature and the joint rules, and other information helpful to members of that body and to persons having business with it. A similar handbook was prepared in connection with the 1907 Constitutional Convention and was found to be most useful. Here again, we recommend that 25 copies of the handbook be made available to each delegate for his own use and for use of persons in his district who might be interested. It is felt that this would leave some 1,400 copies available for general distribution.

Mr. President, I move the adoption of this recommendation.

PRESIDENT NISBET: The question is on concurring in the recommendation. Is there any discussion? If not, all in favor say aye. Opposed, no.

The recommendation is concurred in.

MR. VAN DUSEN: Mr. President, the next recommendation of the committee on permanent organization deals with stationery and supplies. You will find this once again in your preparatory commission manual. The recommendation is as follows:

That the secretary be directed to print stationery for the delegates, showing the name of the delegate as a delegate to the 1961 Michigan Constitutional Convention in a style approved by the secretary, and to furnish each delegate with 1,000 sheets and envelopes. Additional stationery and envelopes shall be furnished on approval of the committee on administration.

That the secretary be also directed to print stationery for each of the officers of the convention in a style approved by the secretary, showing the name of the officer, and to keep such officer supplied with stationery and envelopes.

Here again the amount of stationery to be initially supplied to each delegate is based to some extent on the experience of members of the legislature who typically sit for periods equivalent to that that we may be expected to devote to our work. It is going to be necessary, obviously, for all of us to handle a fair volume of correspondence. The recommendation is that made by the preparatory commission and the committee felt it to be a reasonable one.

Mr. President, I move the adoption of the recommendation.

PRESIDENT NISBET: The question is on concurring in the recommendation. Is there any discussion? If not, all in favor vote aye. Opposed, no.

The recommendation is concurred in.

MR. VAN DUSEN: Mr. President, the next recommendation of the committee on permanent organization deals with the function of the committee on rules and resolutions. You will recall at our last session the committee made recommendations with respect to 13 committees. With respect to one of these committees, we made a recommendation, which you adopted, spelling out the functions of the committee on administration. This was necessary at that time because the committee on administration was required to become imminently active. The committee now feels that it is desirable to spell out the functions of 2 of the additional operational committees. The first of these is the committee on rules and resolutions. The recommendation is as follows:

That the committee on rules and resolutions shall consider and report upon changes in the rules and organization of the convention. It shall also consider all resolutions and other matters not germane to the work of other committees and make such recommendations as it deems necessary for action thereon.

Mr. President, I move the adoption of the recommendation.

PRESIDENT NISBET: The question is on concurring in the recommendation. Is there any discussion? If not, all in favor say aye. Opposed, no.

The recommendation is concurred in.

MR. VAN DUSEN: The next recommendation, Mr. President, deals with the function of the committee on style and drafting. The recommendation is as follows:

The committee on style and drafting shall examine and edit all proposals for inclusion in the constitution which are referred to it for the purposes of avoiding inaccuracies, repetition, inconsistencies, or poor drafting and shall consider and make recommendations on any differences, conflicts, or unresolved matters of substance. The committee shall have the authority to rephrase or to regroup proposed language or sections of the proposed constitution but shall have no authority to change the sense or purpose of any proposal referred to it. The committee shall also be empowered to recommend referral of proposals submitted to it to any committee which may have an interest in the proposal. Where a proposal has been already acted upon favorably by the convention at second reading, the committee shall undertake to resolve any inconsistency or conflict in conference with the substantive committee concerned. If the committee on style and drafting shall fail to resolve any such inconsistency or conflict, it shall notify the convention and await its instructions.

Mr. President, I move the adoption of the recommendation.

PRESIDENT NISBET: The question is on concurring in the recommendation. Is there any discussion? If not, all in favor vote aye. Opposed, no.

The recommendation is concurred in.

MR. VAN DUSEN: The next recommendation of the committee on permanent organization and rules, Mr. President, deals with the structure of the convention staff, and this report is on the desk of each of the delegates. I will read the recommendation.

The committee recommends the following:

1. That the convention create the employee positions described in the appendices to this report.

2. That the committee on administration consult with the president and then recommend to him for approval by the convention:

a. a salary scale for the employees of this convention whose job descriptions are indicated in the appendices to this report;

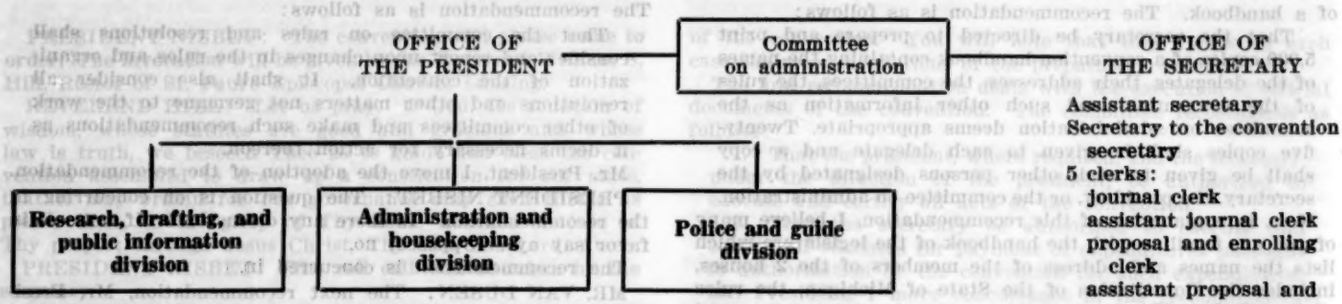
b. persons capable of fulfilling the job descriptions set forth in the appendices to this report, if and to the extent desired by the appropriate committees or officers;

3. That the director of research be appointed by the president.

Following are the appendices to the report:

Appendix A

ORGANIZATIONAL CHART
CONSTITUTIONAL CONVENTION STAFF



Director of research, drafting, and public information
Assistant to the director of research and drafting
Assistant to the director of public information
2 secretaries to the director and his assistants
9 research and drafting associates
2 librarians

Administrative assistant to the president
Secretary to the president
9 committee clerks*
Stenographic Pool:
chief stenographer
15 stenographers*
2 postmaster and document clerks
Duplication clerk
Press room manager
3 telephone operators
6 pages*

Chief sergeant at arms
2 assistant sergeants at arms*
2 convention guides*
Electrician

Assistant secretary
Secretary to the convention secretary
5 clerks:
journal clerk
assistant journal clerk
proposal and enrolling clerk
assistant proposal and enrolling clerk
finance clerk

* or more when authorized by the committee on administration.

Appendix B

I. OFFICE OF THE PRESIDENT*

Division of research, drafting, and public information

A. Director of research and public information.

The director of this division would be responsible to the president. He should be a senior lawyer, political scientist, historian or economist; and have a knowledge of the methods of research and the capacity to do research and to manage a research team, to draft and write articles, to supervise the writing and drafting of others and to edit their materials. He must be able to work with people, to express his ideas without antagonizing people, and to harmonize the ideas of others.

B. Assistant to the director in charge of research and drafting.

This person should be able to do hurry up jobs of research on special problems. He should be able to help in putting out files of a research nature and to prepare brief memoranda on immediate problems needing research. He should assist the director in any manner suggested by the director. He should be a lawyer or a political scientist who has demonstrated his ability to write and do research.

C. Assistant to the director in charge of public information.

This person would work closely with the committee on public information. He should be a competent researcher and writer who can write notices and reports of committee hearings and sessions; prepare press releases and other materials designed to inform the public of the activities of the convention and its delegates. He should be available to all delegates for the preparation of releases and speeches. He should keep all groups interested in convention proceedings (e.g., schools and service organizations) informed of the convention's meetings and activities.

D. Secretaries (2) to the director of research, drafting, and public information and his assistants.

Persons capable of taking shorthand and typing letters, memoranda and studies. Should be capable of using dictaphone machine.

E. Research and drafting associates (9 or more if authorized by the committee on administration).

Some of these men should be trained in law, some in political science and some in economics. They should be assigned to the major committees and should be either full time or part time, depending upon the needs of the committees. They must know their own field well and be capable of doing research, of writing articulately, and of putting into words the ideas of others.

Such persons may be assigned by the director of research and drafting to more than one committee if necessary.

F. Librarians (2).

These persons should be capable of managing the library facilities of the convention, of keeping track of the library materials of the convention and of helping delegates to find material in the library of the convention.

Administration and housekeeping division

A. Administrative assistant to the president.

This person should be the personal choice of the president. He should have had experience and ability in handling administrative, personnel, and housekeeping details and problems. He will assist the president in his office duties in any manner the president requests. Under the president's direction he will supervise and direct the staff within his division. In addition to being an experienced administrator, he must have demonstrated imagination in working out problems. He must

* All employee positions listed under the office of the president will be filled by the president upon the recommendation of the committee on administration.

be congenial and able to work with people. This position could be assigned to someone who worked in a similar position on the constitutional convention preparatory staff.

B. Secretary to the president.

A person capable of taking shorthand and typing letters, memoranda and studies. This person must also have the capacity to get along with people and work well with other staff members.

C. Committee clerks (9 or more if authorized by the committee on administration).

These persons would serve as committee clerks and secretaries for the committees to which the research associate is assigned. Such persons may be assigned to more than one committee, if necessary. All of these persons should be capable of taking shorthand and doing dictaphone work, of typing accurately, and of keeping track of committee activity.

D. Stenographic pool.

1. Chief stenographer.

This person must be able to get along with other members of the pool and keep them working.

2. Stenographers (15 or more if authorized by the committee on administration).

These persons would be capable of taking shorthand and typing letters, memoranda and reports for the delegates, the committees, and the officers and staff of the convention.

E. Postmaster and document clerk (2).

These persons would be in charge of mail, its distribution, and all internal and external document distribution.

F. Duplication clerk.

A person to schedule and operate mimeograph and other duplication equipment.

G. Press room manager.

This person would maintain liaison between newsmen and their offices, newsmen and convention leaders, newsmen and the committee chairmen, newsmen and each delegate. He would receive and distribute press releases, making sure all news correspondents are treated fairly. He would maintain order in the press room, excluding all unauthorized personnel, answering telephones, finding those called, filing journals and proposals in each correspondent's file. He would relay office messages to those newsmen called, supervise the mail received, and arrange for maintenance services. He would arrange contacts between newsmen and delegates, if desired and necessary. He should be a person with an extensive news reporting background, known to the correspondents and delegates as well.

H. Pages (6 or more if authorized by the committee on administration).

These persons would be able to act as messengers for the delegates and staff. They should be high school graduates or college students who have taken a leave from their studies. (The convention should avoid hiring grade school or high school students because to do so would mean providing tutors for their continued schooling.)

I. Telephone operators (3).

Police and guide division

A. Chief sergeant at arms.

The sergeant at arms shall be the chief police officer of the convention. He must be mature, get along well with people but must be firm. He must be able to supervise a small staff.

B. Assistant sergeants at arms (2 or more if authorized by the committee on administration).

These persons must be able to get along well with people and be firm without antagonizing them. They must be able to follow directions with common sense.

C. Convention guides (2 or more if authorized by the committee on administration).

These persons might well represent the only contact many convention visitors will have with the constitutional convention. Their primary function would be to explain the background, activities, sessions, and problems of the convention. They would conduct regular tours through constitution hall and its offices and committee rooms, explaining to visitors convention activities and answering any questions or furnishing information requested by them. The guides would be located in an information booth in the delegates' lobby and in the gallery of the convention while it is in session. They would relay any messages from visitors to the delegates. They would keep order in the delegates' lobby and in the gallery. They would make available information concerning the convention to its many visitors. They would take charge of all school, or other large groups. These persons should be recent college graduates, pleasing in appearance, amiable, and able to get along with people. They should be articulate and knowledgeable about government, particularly with the history of the 1961-62 Constitutional Convention.

D. Electrician.

A person to run the public address system during the convention sessions, controlling microphones. He should also be able to tape committee sessions and other meetings if requested by the delegates.

II. OFFICE OF THE SECRETARY*

A. Convention secretary (elected).

B. Assistant secretary.

This person would assist the convention secretary in his duties, replacing him whenever necessary in his duties on the rostrum.

C. Secretary to the convention secretary.

This person should serve the secretary as he desires including taking dictation and typing and following up on details suggested by the secretary with other persons connected with the convention.

D. Journal clerk.

This person is in charge of seeing that a verbatim journal is printed each day. The person must be a careful worker with editorial experience, must be able to supervise and manage typists, work with a duplication staff or a printing firm. Must keep the journal if it is not a verbatim journal.

E. Assistant journal clerk.

Assist the journal clerk with duties.

F. Proposal and enrolling clerk.

This person must keep track of all proposals and see that they are duplicated. Must be methodical.

G. Assistant proposal and enrolling clerk.

Assist the proposal and enrolling clerk with duties.

H. Finance clerk.

This person, under the direction of the secretary, will be in charge of the paper work of the convention relative to the payment of bills, the approval of purchases and all matters pertaining to spending the money appropriated for the convention. This person should have elementary knowledge of accounting procedures. This employee will be the liaison person with the department of administration who will handle these matters and the officers or committees of the convention having authority to spend money.

* Personnel in the secretary's office would be appointed by the secretary with the approval of the committee on administration.

MR. VAN DUSEN (continuing): Some discussion of this recommendation may be in order, though I think that appendix A shows you quite graphically the staff positions and the organization structure which are recommended. In general the committee has followed the recommendations of the preparatory commission though there have been some changes, largely in the enlargement of the recommended staff. I should indicate that it is the function of this recommendation simply to create the positions. It will be the responsibility of the committee on administration, if you adopt this recommendation, to determine salary scales and to recommend personnel to fill these positions.

Mr. President, I move the adoption of the recommendation.

PRESIDENT NISBET: The question is on concurring in the recommendation. Is there any discussion?

Mr. Boothby.

MR. BOOTHBY: I am wondering if it might not be wise to have this matter laid over for a day so that we can read through this material that's just been placed on our desks. I talked to 2 or 3 delegates and they feel that it might be wise to lay this matter over due to the fact that we are creating positions that will cost considerable money.

MR. VAN DUSEN: I believe, Mr. Boothby, that it is the feeling generally of the committee on permanent organization that with respect to this particular report it is desirable to act as promptly as we can. I certainly do not mean to indicate that we should rush through it, and we have ample opportunity to discuss it rather thoroughly this evening. Unless and until —I recall the use of the word "until" at the last session—we are in a position to know what the staff structure of the convention will be, the committee on administration will be at a loss to proceed with the business of providing the staff which we will need to do our work.

The matter of filling these positions, as I said, and the question of salaries are matters which must be considered by the committee on administration, and which must then be recommended to the convention for the convention's approval. So that before any commitments are made which would involve the expenditure of funds, the convention will have another opportunity to pass upon the matter. I think this is not such a complex proposal that I would think it needed to lie over, and I would think we could act upon this proposal this evening.

PRESIDENT NISBET: Mr. Boothby.

MR. BOOTHBY: Is my understanding correct that we are actually creating these jobs at the present time?

MR. VAN DUSEN: We are creating the positions, yes.

MR. BOOTHBY: How many jobs are there in toto?

MR. VAN DUSEN: There are 66.

PRESIDENT NISBET: Is there any more discussion?

Mr. Yeager.

MR. YEAGER: Is it correct that we are going to treat all the rest of these rules the same as we are treating this rule, as a degree of emergency? Or are we going to have a chance to consider them?

MR. VAN DUSEN: Mr. President, if I may. In response to Mr. Yeager's inquiry, it is the intention of the committee on permanent organization that there be such discussion as the delegates may desire with respect to the report on the rules this evening, and that the rules then lie over until tomorrow. It is only the report with respect to staff structure which we recommend action on this evening.

PRESIDENT NISBET: Mr. Allen.

MR. ALLEN: In connection with the point Mr. Boothby raised, I was talking with one of the delegates to this convention whose father happened to be a member of the 1907 Convention, and he gave me for the purpose of study the handbook of the Convention of 1907. I thought it would be interesting to know how many staff were on the Convention of 1907. There were only 96 delegates at that convention, 3 from each of 32 senatorial districts, and when I totaled them up I found that the staff in 1907 equalled 62, as contrasted with the 66 which is recommended by Mr. Van Dusen's committee this time, with a convention membership of 144. I think we can take some pride in saying that comparatively we are not overdoing it.

PRESIDENT NISBET: Is there any other discussion?

Mr. Woolfenden.

MR. WOOLFENDEN: Does this recommendation represent the unanimous recommendation of your committee, Mr. Chairman?

MR VAN DUSEN: So far as I can recall, Mr. Woolfenden, there was no dissent. However, I would invite any of the members of the committee who recall voting against it to rise and identify themselves. We have covered quite a lot of ground in the last couple of days, Mr. Woolfenden, and I regret to say that I do not recall the precise vote on this recommendation.

MR. WOOLFENDEN: Did the entire committee sit?

MR. VAN DUSEN: The entire committee sat, and sat, and sat.

PRESIDENT NISBET: Mr. Martin.

MR. MARTIN: I think it might be worth pointing out that these are maximums. It is not intended that all of these positions will necessarily be filled. They will be filled only as rapidly and to the extent as they are needed. So that if one of the committees, for example, doesn't need a committee clerk, the position will be filled only if the committee chairman asks for a committee clerk. So this is the maximum and we might be able to do with less.

PRESIDENT NISBET: Is there any other discussion?

Mr. King.

MR. KING: I wonder if the chairman could tell us how many are now being employed by the convention on a temporary basis?

MR. VAN DUSEN: I will defer to the secretary for that purpose, Mr. King.

SECRETARY CHASE: I think we could state at this time, Mr. King, that the personnel at the desk at the present time are here pretty much on loan from the senate in accordance with a resolution that was adopted by the senate before adjournment last spring. We have the journal clerk, Mrs. Nethaway, and on a temporary appointment basis Mrs. Archer has been named as reporter. Outside of that, the other people that have been working have been working on a voluntary basis.

PRESIDENT NISBET: Any further discussion?

Mr. Higgs.

MR. HIGGS: Mr. President, I would like to voice some agreement with the delegate that spoke initially in this regard. This is quite a lot of material to put on our desk and ask us to vote on it intelligently. I would like to hear a discussion from the committee chairman outlining in particular these posts. It seems to me, just in glancing through it, that there is quite a lot of authority in some of these posts. I honestly don't feel that I could vote on this particular proposal without more discussion.

MR. VAN DUSEN: Mr. Higgs, I would be glad to do this. If you will turn to your appendix A, you will note under the office of the president there are 3 significant divisions: the division of research, drafting, and public information; the division of administration and housekeeping; and the police and guide division.

Dealing first with the division of research, drafting, and public information, the positions involved are: a director, an assistant in charge of research and drafting, an assistant in charge of public information, 2 secretaries, 9 research and drafting associates who will work with committees in doing necessary research assignments and in drafting committee proposals, and 2 librarians.

Under the administration and housekeeping division, the chief officer will be an administrative assistant to the president. The president will have a secretary. It is proposed that there will be 9 committee clerks and more if the committee on administration finds it necessary, a stenographic pool consisting of a chief stenographer and 15 stenographers, 2 postmasters, a duplication clerk who is responsible for the sort of material you have on your desks this evening, a press room manager, 3 telephone operators, and 6 pages. I think all of these positions are reasonably self explanatory.

Under the police and guide division, it is proposed that there will be a chief sergeant at arms, 2 assistant sergeants

at arms and 2 convention guides, and finally an electrician who will be responsible for such things as the public address system and the voting machine.

Then, under the office of secretary, there will be an assistant secretary to act in Mr. Chase's place in the event he is unavoidably absent from the rostrum and to assist him in the performance of his duties, a secretary to the convention secretary, 5 clerks whose responsibilities are spelled out in some greater detail on the last page of the second appendix: the journal clerk, the assistant journal clerk, the proposal and enrolling clerk, an assistant proposal and enrolling clerk, and a finance clerk. These positions will carry out substantially the functions which are outlined but they will keep track of the orderly flow of documents. Mr. Chase points out to me that it will not be necessary to have a reading clerk and that that position will probably not be filled in the ordinary course.

PRESIDENT NISBET: Mr. Bentley.

MR. BENTLEY: Mr. President, I wouldn't want the convention to get an erroneous impression. I believe it was Mr. Martin who said that these represent maximum in all cases. However, you will notice that many of these positions are marked by asterisks which means that in such cases the committee on administration can increase them, as I believe the chairman just mentioned, if necessary, so they are not absolutely maximum figures if the committee on administration believes, for example, that the committees need more personnel than herein listed.

MR. VAN DUSEN: That's quite correct, Mr. Bentley. Thank you.

PRESIDENT NISBET: Is there other discussion?

Miss Donnelly.

MISS DONNELLY: I would like to point out that under the research and public information, we believe that the committee on public information may not wish this, and this is the outside limit to be hired in that instance, and it is not necessary to be hired at this time unless it was so desired by that committee.

PRESIDENT NISBET: Mr. Brake.

MR. BRAKE: Mr. President, and ladies and gentlemen, I understand that in the legislature, and certainly in the senate in connection with the stenographic force, the 2 parties have something to say about selecting their own. No such provision made here?

MR. VAN DUSEN: Mr. Brake, the selection of personnel is a matter placed under the recommendation and in the hands of the committee on administration which has the political balance which all of our standing committees have. It would therefore be the function of that committee to allocate positions in a responsible and equitable manner with unquestionably due regard for the political affiliations of the members who will be using the stenographers.

PRESIDENT NISBET: Is there further discussion? The question is on the adoption of the recommendation.

Mr. Higgs.

MR. HIGGS: Mr. President, with regard to the office of assistant to the director of public information, it states here that this person would work closely with the committee on public information. I wonder, Mr. Van Dusen, if the responsibility of the assistant to the director is directly to the director of research, to the president, or to the committee on public information? I note there are broad powers involved in this particular office.

MR. VAN DUSEN: Mr. Higgs, each of the positions, other than those indicated as being directly responsible to the office of the secretary, are responsible in the ultimate regard to the office of the president. The assistant to the director in charge of public information will have as his chain of command the director of research to whom he will have his immediate staff responsibility, and through the director of research to the president. He will unquestionably be assigned to work with the committee on public information but as a staff responsibility, his responsibility will be to the director of research and through him to the president.

PRESIDENT NISBET: The question is on concurring in the recommendation. Is there any further discussion?

Mr. Boothby.

MR. BOOTHBY: Mr. President, at this time I would like to move that this question be laid over until tomorrow, to be considered tomorrow.

PRESIDENT NISBET: The question is on the motion of Mr. Boothby that this question be laid over until tomorrow. Is there any discussion?

Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, I would simply remark that I would oppose the motion for the reasons I have previously given.

PRESIDENT NISBET: Mr. Martin.

MR. MARTIN: Mr. President, as a member of the committee, I think that the report should be adopted but I don't think that any of us want any of the delegates to feel that they are in any way being pushed to adopt something they are not familiar with or that they are not ready to adopt. I don't think we want to start out that way and I think if the decision of the body is to put the matter over until the session tomorrow, probably no harm will be done. It would be desirable to adopt it tonight but I think if it is not done, there will be no harm done.

PRESIDENT NISBET: The question is on the motion of Mr. Boothby to put the question over until tomorrow. Is there any further discussion? If not, all in favor say aye. Opposed, no.

The motion does not prevail.

The question is now on concurring in the recommendation. Is there any further discussion? If not, all in favor vote aye. Opposed, no.

The recommendation is concurred in.

MR. VAN DUSEN: Mr. President, the final item in the report of the committee on permanent organization and rules is a preliminary report with respect to convention rules. Here, quite obviously, we do not request that the delegates act this evening on some 74 proposed rules.

If there are questions this evening with respect to rules, the committee will be happy to attempt to answer them. I would state that the committee will be sitting tomorrow morning at 9:00 a.m. in either room C or room B downstairs, and we will be glad to hear at that time from any delegate who has any question or who has any suggestion for inclusion in these rules.

It is the intention of the committee on permanent organization and rules to complete its second run through these rules tomorrow and to present them for adoption at the session tomorrow afternoon. However, we would welcome discussion this evening. We would welcome your participation in the work of the committee tomorrow morning. We would welcome your questions.

I would suggest to you at this time that the rules are those proposed by the preparatory commission with amendments which have been recommended by the committee. The form in which you have the rules is a form which indicates the original proposal by the preparatory commission and indicates the changes in those proposals recommended by the committee on permanent organization and rules, so that those of you who have already devoted some study to the rules proposed by the preparatory commission will be able to see at a glance with respect to each rule those changes which the committee proposes.

As I say, we will be delighted to try to respond to questions if you have them this evening, to the extent that questions may be posed. If there are no questions, or when we run out of questions this evening, we would then move that the report be put over until tomorrow at which time the committee will present a final report, and will hope to present rules for your adoption.

PRESIDENT NISBET: Mr. Bentley.

MR. BENTLEY: Mr. President, I am sure the chairman is well aware of the fact that it is awfully difficult to ask questions until the proposed rules have been read; and although I, of course, have no objection to initiating discussion or questions on the rules this evening, I suggest that it would probably be helpful if the delegates had a chance to read

the rules and consider them before they care to ask questions and enter into discussion of them. Wouldn't the chairman share that feeling?

MR. VAN DUSEN: I certainly would, Mr. Bentley; certainly with respect to any specific rules. However, I had thought that conceivably there might be some questions which had been prompted by the preparatory commission rules and I just simply wanted to offer the committee's services in that regard.

PRESIDENT NISBET: Will the convention prefer to have the secretary read the rules or is it satisfactory for you just to look at them?

Mr. Hodges.

MR. HODGES: I would move that the secretary dispense with the reading of the rules.

PRESIDENT NISBET: Mr. Bledsoe.

MR. BLEDSOE: Harold Bledsoe seconds that.

PRESIDENT NISBET: It has been moved and supported that the secretary dispense with the reading of the rules. Is there any discussion? If not, all in favor say aye. Opposed, no.

The motion prevails.

For proposed rules, as submitted, see below, pages 130-135.

Mr. Van Dusen.

MR. VAN DUSEN: That completes the report of the committee on permanent organization and rules, Mr. President.

PRESIDENT NISBET: I have one announcement to make.

By the way, I hope that you will study these rules tonight so that when you come back tomorrow, we will spend the afternoon in going through them and your understanding of them before they are adopted so you will know the rules of the convention.

Tonight it has been the hope of your officers that we could name the committees. Let me say that we have worked Wednesday, Thursday, Friday, Saturday, Sunday and Monday. We have the committees, but they were not ready until after 6:00 o'clock tonight so it was impossible to duplicate them for you. That is now being done. They will be on your desk for adoption tomorrow. However, it is very necessary that we have one committee named tonight. That is the committee on administration that takes care of the things we have discussed tonight—takes care of the leasing of this building which has nearly expired, and particularly your own pay which will come before very long. I will ask the secretary to read the names of the committee on administration.

SECRETARY CHASE: **The president appoints** the following delegates to the committee on administration:

Walter DeVries, chairman	Frank Perlich
Rockwell T. Gust, first vice chairman	Clifford Perras
	J. Burton Richards
Paul Mahinske, second vice chairman	James Shackelton
	Edward Shanahan
Berry Beaman	Joseph Snyder
Charles Davis	James Sterrett
James Farnsworth	Lee Walker
Morris Hood	

PRESIDENT NISBET: Mr. Durst.

MR. DURST: Mr. President, I move that the committee appointments be approved.

PRESIDENT NISBET: The question is on the approval of the appointments to the committee on administration. All in favor say aye. Opposed, no.

The committee appointments are approved.

Mr. DeVries.

MR. DeVRIES: Mr. President and delegates, there will be a meeting of the committee on administration in room G on the lower floor immediately after the session this evening.

PRESIDENT NISBET: Any announcements by the secretary?

SECRETARY CHASE: The secretary wishes to call to your attention the blue pamphlet which you will find in the manila envelope which was left on your desk with your name on it. Senator Porter, chairman of the senate committee on appropriations, was responsible with the help of one of the delegates, Mr. Claud Erickson, who came up with a copy, for the reprinting of the Address to the People that came from the 1907 Convention at the conclusion of their work. This is given to you with the compliments of the Michigan senate.

Also you have been handed a copy of a yellow sheet, a temporary list of delegates. This is through the courtesy of the Detroit News. Mr. Rudow tells me he has already discovered 3 errors on it which in the subsequent ones will be corrected. If there comes to your attention any correction that needs to be made, please let him know.

PRESIDENT NISBET: Ladies and gentlemen of the convention, I have asked Mr. Chase tonight if he will, in an attempt to speed up our understanding of procedure—in an effort to make familiar to us the facilities that are here for us to use and how to operate them—take a few minutes and give us an orientation talk on convention procedure so that when the time comes for us to operate we will do so with the knowledge that we are operating in the proper form. Mr. Chase has very kindly consented to do it. The hour is not late. I am very happy to have him do it at this time.

Mr. Secretary.

SECRETARY CHASE: Mr. President and delegates, as to just how to proceed in this matter, I am at a bit of a loss. In the organization of the legislature, this becomes routine as time goes by and you follow a certain set pattern. We have pretty much adopted this same pattern here except that with a group of 144 people coming together for the first time it is a bigger job and takes a little longer.

I would like to pay a particular compliment to the committee on permanent organization and rules. I should like you to know that last Thursday, for example, in the drawing of this set of rules that they have for your consideration, they met at 9:00 o'clock in the morning, at 12:15 they recessed for lunch until 1:30, and they completed their work at 7:00 o'clock Thursday night—and there were no coffee breaks. I am not complaining—don't misunderstand me. They came back today after the staff had worked diligently over the weekend to get these changes in the rules and form, and they sat for 2 hours this afternoon until it came time for a minority caucus and the minority members felt constrained to leave. They finished part of the rules, and they are going to meet tomorrow morning at 9:00 o'clock.

In all my years of experience in work with the legislature I should like to say simply this: here was a consecrated, dedicated, determined and capable group that was going to come up with one of the finest sets of rules I think you will find anywhere. I would just like to say this and give them the pat on the back that I think they deserve. It's been a pleasure to work with them.

Now, after the rules are adopted and the committees are appointed, there follows of necessity a tremendous amount of work, getting your stationery ready, getting the handbook ready for distribution, getting these various appointments filled and getting these people oriented in their jobs.

Across the hall we will have a document room in which there will be available every day the journals, copies of the proposals that you introduce, and all other documents that may be the result of this convention and its work. These will be available for public distribution and they will be put on your desks by the pages every day.

And of course it naturally follows, how do we get a proposal before this convention? In the routine that comes here, all you need to do is to have an idea, and you go to the director of research. He may take this responsibility himself. He may assign it to one of his assistants. You say to whomever you are assigned, "I want a proposal to amend the constitution." This may be offered in one of 2 forms. It may be offered merely as an idea, or, if you are an attorney and want to spell out exactly and in the nth degree the detail of the language you want therein, it can be done in that fashion. These will be delegate proposals, so called. They will be introduced by reading just the title from the

rostrum. They will be referred by the presiding officer to the appropriate standing committee.

This, then, becomes the end of the delegate proposals as we understand it, and subsequently the committees—your substantive committees to which these proposals will have been referred—will hold meetings and they will invite you in, they will invite interested parties in, they may hold committee hearings, they will do everything in their power to get at exactly what you want to have done and get it done in the best possible shape for presentation to this convention.

The committees will report out what we call committee proposals. They will not be delegate proposals. They will be committee proposals which will incorporate in them the ideas that you may have or perhaps, if you have been meticulous in the drafting of the language you have in mind, they may incorporate therein the exact language that you have in mind. When they are reported out, they will be reported as committee proposals with a different number. They will be committee proposals as opposed to delegate proposals in the first case.

We propose to do this. Delegate proposals will be numbered starting with 1001 because there are likely to be a lot of them. Committee proposals, because the number will undoubtedly be considerably less than 1,000, will be started with 1, and will be numbered Committee Proposal 1, Committee Proposal 2, and so forth, as they come from the committees. The sequence in which they are reported gives them their numbers. The delegate proposals—the sequence in which you file them with the secretary will cause their numbers, starting with 1001.

We hope to print them on 2 different colors of paper so as to further aid in the differentiation to everybody so that they will be aware of which is which. These committee proposals will go through the regular routine of business. They will be reported out. They will go to the committee of the whole.

Now, what is the committee of the whole? It is just what its name says it is, a committee of the whole convention. The purpose of the committee of the whole is to allow free and unlimited debate. Under these proposed rules, you cannot close debate or limit debate or move the previous question in the committee of the whole. You can talk as many times as you want to in the committee of the whole. There is no limit on that. You may offer as many amendments as you care to.

The idea of the committee of the whole is to work out, without the formality that you find in the committee and the convention session as such, the perfecting of these proposals. When they have been perfected, the committee will rise and report the committee proposal to the convention, and from there on it takes whatever course you may determine. Ordinarily it will be referred to the committee on style and drafting and come back later on for further consideration.

These are the steps very briefly. I crave your indulgence because some of this procedure is just as new to me as it is to you and I shall have to do a lot of studying in the convention procedures of 1907 so that I, too, may know the answer to some of your questions. I shall be happy at any time to be of whatever assistance I can, and my staff the same, in the answering of any questions that occur to you.

May I ask this, please? In these daily journals as you find them on your desks, there are bound to be—in the process of getting them printed overnight—errors; typographical errors, errors in spelling, and what not. Whenever you find them, please let us know. This helps us to keep your journal.

I shall be glad to answer any other questions that I am asked.

PRESIDENT NISBET: Thank you, Mr. Chase. I imagine the committee on administration will shortly report, too, as to the facilities that are available to the delegates such as secretarial service, telephone service, and those other things that are necessary to the operation of the convention. We are most anxious to get this under way with all the rapidity we can and still on an efficient basis.

One other thing that your vice presidents and I have discussed was to request Dr. Pollock—and I am glad to see that he is here tonight—to have us as his class for a day on the subject of what is a constitution and what it should include. I think none of us have ever before written a constitution of this character and magnitude and maybe before we start, it would be well for us to know just what it is, what it incorporates, what its purpose is, what its over all structure should be. I haven't talked with Dr. Pollock since last Saturday—I will try to see him after the session—but sometime this week we hope to have that discussion, too.

It is our earnest hope that by the end of this week we will have all of the preliminaries out of the road, our committees appointed and in operation so that next week we might receive proposals. If we can do that, I think we have done a good job. I talked to one member of the legislature the other day, and he said we wouldn't get started for a month, but I think we are going to beat that quite a long ways.

Are there any other announcements? What is the pleasure of the convention?

Mr. Buback.

MR. BUBACK: I move we adjourn.

PRESIDENT NISBET: The question is on the motion that we adjourn. All in favor say aye. Opposed, no.

The motion prevails. The convention is adjourned until 2:00 o'clock tomorrow afternoon.

[Whereupon, at 9:05 o'clock p.m., the convention adjourned until 2:00 o'clock p.m., Tuesday, October 10, 1961.]

FOURTH DAY

Tuesday, October 10, 1961, 2:00 o'clock p.m.

PROCEEDINGS

PRESIDENT NISBET: The convention will please come to order. The invocation will be given by Delegate Arthur Elliott.

MR. A. G. ELLIOTT: Dear Father, we are grateful that Thou art ever present and that Thou protect and direct each one of us with Thy unlimited wisdom. May we express in our dealings the Christ, Truth, thus humbly serving Thee. We ask that we demonstrate an ever unfolding spiritual dominion as the sons of God. Amen.

PRESIDENT NISBET: The roll call will be taken by the secretary.

SECRETARY CHASE: Will everyone present please vote aye? Has everyone voted? Mr. President, a quorum is present.

PRESIDENT NISBET: Mr. Erickson.

MR. ERICKSON: Mr. Hoxie would like to be excused for this session. He was called out of town on an emergency.

PRESIDENT NISBET: Thank you. Without objection, Mr. Hoxie will be excused.

SECRETARY CHASE: Absent with leave: Mr. Hoxie. Absent without leave: None.

PRESIDENT NISBET: Reports of standing committees.

SECRETARY CHASE: The committee on administration, by Mr. DeVries, chairman, submits the following report and recommendation:

That the convention accept the lease entered into by and between the city of Lansing and the governor's constitutional convention preparatory commission and that it exercise its option under the conditions of the lease.

PRESIDENT NISBET: The question is on concurring in the recommendation.

Mr. DeVries.

MR. DeVRIES: Mr. President, if I may, I would like to explain the conditions of the lease. The lease is effective from September 1, 1961, to May 31, 1962. The total cost of leasing these facilities is $110,000, of which $10,000 has already been paid by the governor's preparatory constitutional convention commission. The payments start on October 15. The first payment is $33,333.33, and subsequent payments are made on November 15 and December 15.

If there are any questions on the lease specifically, I would be happy to try to answer them. If not, Mr. President, I move the adoption of this item of the committee on administration report.

PRESIDENT NISBET: The question is on concurring in the recommendation. Is there any other discussion? If not, all in favor say aye. Opposed, no.

The recommendation is concurred in.

SECRETARY CHASE: Number 2. The committeee on administration recommends to the convention that it authorize the repayment of $10,000 to the governor's constitutional convention preparatory commission used by them as a good faith deposit on the constitution hall lease.

PRESIDENT NISBET: Mr. DeVries.

MR. DeVRIES: I believe this item is self explanatory. We are repaying the governor's constitutional convention preparatory commission the $10,000 used by them as a good faith deposit. I move the adoption of this item of the committee on administration report.

PRESIDENT NISBET: The question is on concurring in the recommendation. Is there any discussion? If not, all in favor say aye. Opposed, no.

The recommendation is concurred in.

SECRETARY CHASE: Number 3. The committee on administration recommends to the convention the adoption of a floor plan with the space allocations suggested in the committee report. Copies of the proposed floor plan are on the delegates' desks.

PRESIDENT NISBET: Mr. DeVries.

MR. DeVRIES: Mr. President, if the delegates are interested, we can briefly run through this floor plan and point out to you where the officers will be assigned in constitution hall.

PRESIDENT NISBET: The question is on concurring in the recommendation. Is there any discussion or questions?

Mr. DeVries.

MR. DeVRIES: We had intended to affix a map to the 2 pages. The map has not arrived. It will be here at 2:30 and we will have them put on your desks at that time.

Basically, the recommendations of the committee are this: that on this floor, the first floor, the convention hall will remain in the small auditorium.

Secondly, the press room which is located behind constitution hall be allowed to remain where it is.

Third, that the switchboard which is now on the stage will remain in its present location.

Fourth, that the 3 offices south of the corridor — those are the offices back of convention hall — be assigned in the following manner: The first office, which is now the office of the president, remains the office of the president. Within that office will be located the administrative assistant to the president, his secretary, and any other staff members that he may designate. One end of the room will become a conference room to be used by the president in press conferences and meetings with committee chairmen or any other groups that he desires to meet with. The center office would become the offices of the vice presidents where each would have separate but equal facilities. Each vice president will have his own personal office and his own personal stenographer. The last office in this block of offices will be assigned to the office of the secretary, providing him with a private office, and the rest of the space will be used for his immediate staff.

The fifth recommendation of the committee, under "a", is that the delegates' lounge remain as a lounge except that on the north end of the lounge a partition will be constructed, and within that room we will place a document, mail and cloak room. We thought this would give better access to the delegates and it would allow us to use the other office for different facilities.

Sixth, in the corridor immediately north of the public entrance — the entrance to the convention — the committee recommends the establishment of an information booth and a registration booth where visitors to this convention would register, would get information, and perhaps would be taken on guided tours of constitution hall.

On the lower level — the level below this one — the snack bar has been converted by the preparatory commission into 3 committee rooms. We recommend that that area be left the way it is. The kitchen in the snack bar area we have tentatively designated as a duplicating room. It has shelves and adequate space for duplicating equipment. The 4 rooms on the north side of the corridor are to continue as committee rooms except the committee recommends that we erect partitions approximately 12 feet from the north end of each room for office space for the committee chairman and the committee clerk.

The fourth item under "b", the check room downstairs. Since we will have a cloak room upstairs, we would like to convert that into a TV-radio-press room for interviews, sound and motion picture film, tape recordings, and the like.

The large room on the south side of the corridor which used to be the dining room, will continue as the stenographic pool, delegates' offices, research area, and the library. There are some 42 offices or carrels available in that room and the committee on administration has yet to figure out how we are going to assign these to the members of this convention. Each chairman will have his own office, the vice presidents and president obviously will have their offices, but we still have the problem of assigning office space in 42 carrels to some 135 people.

On the third floor — this was not included in the lease — the committee on administration surveyed the third floor and found out that there were 950 square feet of space available which we could rent at a very reasonable cost and it was our thinking that 2 committee rooms could be established up there and the 4 operational committees could be located on the third floor.

Mr. President, I move the adoption of this report.

PRESIDENT NISBET: The question is on concurring in the recommendations concerning space allocations. Are there any questions or discussion? If not, all in favor say aye. Opposed, no.

The recommendations are concurred in.

SECRETARY CHASE: Number 4. The committee on administration recommends to the convention the following committee room assignments:

Room A: Committee on local government
Room B: Committee on judicial branch
Committee on rules and resolutions
Room C: Committee on executive branch
Committee on public information
Room D: Committee on legislative organization
Committee on style and drafting
Room E: Committee on declaration of rights, suffrage and elections
Committee on miscellaneous provisions and schedule
Room F: Committee on finance and taxation
Committee on education
Room G: Committee on legislative powers
Committee on administration

PRESIDENT NISBET: The question is on concurring in the recommendation. Is there any discussion?

Mr. DeVries.

MR. DeVRIES: The thinking of the committee on administration with regard to committee assignments is this.

The committee on local government is the largest committee with 27 members, and we think it will be a very active committee, so we have assigned it permanently to one room.

Room B — the committee on the judicial branch. Our thinking is pretty much the same on that line. The committee on rules and resolutions will meet temporarily in that committee room until October 23 when they will move to the third floor.

The same is true of the others. We have had to double up in room E with 2 committees. The same thing is true in room F and we hope this doesn't result in too much conflict. We have tried to pair together committees we thought wouldn't be meeting as much as some of the other committees. This remains to be seen and the committee will be able to work it out if conflicts develop.

What we have tried to do is give every committee its own room, its own headquarters, permanently.

Mr. President, I move the adoption of this item in the agenda.

PRESIDENT NISBET: The question is on concurring in the recommendation. Is there any discussion? If not, all in favor say aye. Opposed, no.

The recommendation is concurred in.

SECRETARY CHASE: Number 5. The committee on administration recommends to the convention that for the purpose of efficiency and quality the convention authorize the civil service commission to conduct stenographic tests for applicants for stenographic positions on the constitutional convention staff. Furthermore, the committee recommends that tests for these stenographic positions be given by the civil service commission on October 11, 12, 13, 14 and 16 and at such other times as may be directed by the committee on administration.

PRESIDENT NISBET: The question is on concurring in the recommendation.

Mr. DeVries.

MR. DeVRIES: The committee on administration called in this morning Mr. Franklin DeWald, the director of civil service, and Mr. Richard Crable, the director of recruitment and examination, and Mr. Charles S. Pearson, the assistant director of civil service, and they told us that they would be willing to do this, to test all those people who have applied for stenographic positions.

At the present time we have over 150 applications. The committee felt that there must be some rational empirical way to evaluate these people and we asked civil service to do this. They say that they can handle all the testing, prepare a roster in a rank order showing those with the highest grades down to the lowest grades, and have this to us by next week. They also tell us that this will be done at no cost to the constitutional convention.

People who are interested in applying for these positions, as you will notice in the handout — the press release that is on your desks — should go to the information desk on the third floor of the Lewis Cass building and ask to take the examination for the constitutional convention stenographic positions. At that time they will also fill out an application form with standard kinds of information for use by the committee on administration. You might, if you are interested in somebody for this kind of position with the constitutional convention, have them contact Mr. Apol or the civil service people before Friday evening by telephone preferably, or by mail if necessary, and have them take the examination no later than Monday.

We would like to get some people appointed to the staff but we feel that we have to have qualified, competent people, and we know of no other way to test them.

PRESIDENT NISBET: The question is on concurring in the recommendation. Is there any further discussion?

Mr. King.

MR. KING: A point of information. I notice here in the press release it states that these people must be residents of Lansing. Do you mean the city limits of Lansing or do you just mean that they must be available in this area?

MR. DeVRIES: Mr. President and Mr. King, this release was written by Mr. Gust, Mr. Mahinske, and Mr. Snyder. I don't know what they had in mind when they said residents of Lansing. I don't think they mean to say that people who live in Delta township cannot work for the constitutional convention. I think what they are recommending is that we take people from the Lansing area, but perhaps Mr. Snyder, who participated in the writing of this handout, could explain it better than I can.

PRESIDENT NISBET: Mr. Snyder.

MR. SNYDER: Mr. President, there was no intention of limiting job opportunities to people with residence in Lansing. We felt in fairness to the many people who are looking upon this convention as possible means of gaining some livelihood that they should be located in the area of Lansing because the work would be of such a nature that their residence must be within a reasonable proximity of Lansing. There was no intent to limit it to the confines of Lansing.

PRESIDENT NISBET: The question is on concurring in the recommendation. Is there other discussion?

Mr. Barthwell.

MR. BARTHWELL: I would like to know the method of selection after the people qualify. Will they be selected from the highest person on the list and the next person in order?

PRESIDENT NISBET: Mr. DeVries.

MR. DeVRIES: Mr. President, the committee on administration tentatively decided on this procedure, that we would take perhaps the 50 to 100 highest scoring applicants. A committee of 3 from the committee on administration would talk to them and rank them in terms of personality, personal characteristics and appearance. Does that answer the question?

If I may, Mr. President, one more comment on the applicants for staff positions. The committee has directed me to inform all the delegates that there are other positions available other than stenographic help that we will have to fill in the near future and we would like to call your attention to the qualifications listed in the staff organization adopted by this convention last evening.

If I may make a personal observation, it doesn't seem to me that we should view the constitutional convention staff as a green pasture in which we can feed a lot of unemployed politicians. I think what the committee is interested in is qualified, competent people and we certainly would like your recommendations as to who you think might fill the other positions prescribed in the rules, with this proviso. We would like the applications no later than the end of the week.

Mr. President, I move the adoption of this item of the committee on administration report.

PRESIDENT NISBET: The question is on concurring in the recommendation. Is there any further discussion? If not, all in favor say aye. Opposed, no.

The recommendation is concurred in.

SECRETARY CHASE: Item 6. The committee on administration recommends and **the president appoints** the following constitutional convention staff members:

Administrative assistant to the president — Bernard J. Apol

Secretary to the president — Mrs. Bernice Tucker.

PRESIDENT NISBET: The question is on concurring in the recommendation.

Mr. DeVries.

MR. DeVRIES: May I point out to the delegates that under the rules, the president picks his own staff? The committee in this case is just referring to you his appointments, and I move the adoption of these appointments by the president of the convention.

PRESIDENT NISBET: The question is on concurring in the recommendation. Is there any further discussion? If not, all in favor say aye. Opposed, no.

The recommendation is concurred in and the appointments approved.

SECRETARY CHASE: Number 7. The committee on administration recommends and the secretary appoints the following staff members:

Journal clerk — Mrs. Lynn Nethaway

Proposal and enrolling clerk — Mrs. Marilyn West.

PRESIDENT NISBET: The question is on concurring in the recommendation.

Mr. DeVries.

MR. DeVRIES: The rules also provide that the committee on administration consult with the secretary of the convention, the secretary of the convention appoints his own staff, and the committee on administration recommends that these appointments be confirmed by the constitutional convention. I so move.

PRESIDENT NISBET: Is there any further discussion? The question is on concurring in the recommendation. If there is no further discussion, all in favor say aye. Opposed, no.

The recommendation is concurred in and the appointments approved.

Mr. DeVries.

MR. DeVRIES: That concludes the report of the committee on administration. Thank you.

PRESIDENT NISBET: We will now have the report of the committee on permanent organization and rules.

Mr. Van Dusen.

MR. VAN DUSEN: The committee on permanent organization and rules is pleased to present its report with respect to the rules of this convention. The committee recommends that the proposed rules attached to its report, copies of which have been furnished to each delegate, be adopted as the rules of this convention.

Following are the proposed rules of the convention, as submitted:

Chapter I — General Provisions

Quorum and majority.

Rule 1. A majority of the delegates elected to the convention shall constitute a quorum for the transaction of business but a smaller number may adjourn from day to day, and may compel the attendance of absent delegates by any means adopted by a majority of those present but not less than 15 so voting, and a majority of the delegates elected may fix penalties for nonattendance.

There being a quorum, a majority of delegates present shall be sufficient for the adoption of any motion or resolution or the taking of any action except where the affirmative votes of a greater number shall be required by these rules.

Admission to floor — defined.

Rule 2. No person, other than a convention delegate, an officer, employee, or accredited news correspondent shall be admitted on the floor of the convention for a period of 30 minutes immediately preceding the time set for any call to order and for 10 minutes immediately following adjournment unless invited by the president. Only delegates, officers and employees authorized by the president shall be admitted to the floor of the convention during the session. The words "floor of the convention" mean the space of the main floor of the convention, excluding the space designated for visitors and for the press. No introductions shall be made, except that the presiding officer may introduce official representatives of other states, the United States or other nations, or other persons invited by him to address the convention.

Bar of the convention — defined.

Rule 3. Any delegate, having answered roll call at the opening of any session, or having entered upon the floor of the convention after roll call, shall thereafter be deemed as present until leave of absence is obtained from the convention. Any delegate present at any session shall continue to be present if he shall be within the bar of the convention. The words "within the bar of the convention" mean the space occupied and used by the convention or any committee or other room attached thereto and used in connection with conducting of the business of the convention.

Chapter II — Officers and Employees

Officers of the convention.

Rule 4. The officers of the convention shall be a president, 3 vice presidents, a secretary, a sergeant at arms, and a director of research to be selected as determined by resolution of the convention adopted by a majority of the delegates elected. The president and vice presidents shall be delegates. The salaries of nondelegate officers shall be fixed by resolution of the convention.

For rule 4 as amended, see below, page 135.

The President

Duties of presiding officer.

Rule 5. The president shall take the Chair each day at the hour to which the convention shall have adjourned or recessed. He shall call the convention to order and, except in the absence of a quorum, shall proceed to business in the manner prescribed by these rules.

Further duties of presiding officer.

Rule 6. The president shall preserve order and decorum; may speak to points of order and shall decide questions of order, subject to an appeal to the convention. When 2 or more delegates seek recognition at the same time for purposes of debate, the president shall recognize the delegate who is to speak first.

Appointment by the president.

Rule 7. The president, after consultation with the vice presidents, shall nominate for convention approval the membership of all committees except where the convention shall otherwise order. All appointments shall be announced to the convention and entered upon the journal. The president shall appoint a committee consisting of 3 regular news correspondents of daily papers, 1 news correspondent from the wire services, and 1 news correspondent from the radio and television agencies. This press committee shall pass upon the credentials of all news media representatives, and no correspondent shall be entitled to a press desk who is not approved by such committee and the president. The president shall assign such accredited news correspondents press desks in the convention chamber and provide each news correspondent with a card of admission showing his desk number and signed by the president and the chairman of the convention press committee. Persons desiring to be accredited news correspondents at the convention shall file written application with the president, who shall refer them to the press committee. The application shall state in writing the names of all newspapers, publications or news media by which they are employed, and no news agency shall be assigned more than 1 desk in the press gallery. News correspondents using cameras, tape recorders and similar reporting devices shall conduct themselves so as not to interfere with the orderly course of the proceedings of the session. Persons registered with the secretary of state as legislative agents shall be ineligible for constitutional convention press credentials.

Naming of acting president.

Rule 8. The president may appoint any delegate to perform the duties of the Chair, but not for a longer time than 1 day without leave of the convention.

Naming of chairman of the committee of the whole.

Rule 9. When the convention shall have decided to go into the committee of the whole, the president shall name a chairman to preside therein.

Voting.

Rule 10. The president may vote in all elections, on all divisions called for by any delegate, and on all questions

taken by yeas and nays, except on appeals from his decisions.

Vice Presidents

Powers and duties.

Rule 11. In the temporary absence of the president or his temporary inability to preside, one of the vice presidents designated by the president shall exercise the powers and perform the duties of the president, and shall preside over the convention, unless the president shall have designated a delegate to preside for that day.

Secretary

Roll call.

Rule 12. The secretary shall call the roll at the opening of each session of the convention and announce whether or not a quorum is present. He shall announce the names of the delegates absent with leave of the convention, and the names of delegates absent without leave, and enter the names of all absentees upon the journal. If a voting machine is provided, vote by machine shall be taken whenever a roll call or a vote by yeas and nays is directed by or in accordance with these rules.

Invocation.

Rule 13. The secretary shall arrange for an invocation at the opening of each session of the convention.

Publication, distribution, and correction of journal.

Rule 14. The secretary shall keep a journal of the proceedings of the convention in conformity with the rules, supervise the daily publication thereof, and make such corrections as may be necessary. He shall furnish each delegate a printed copy of the proceedings of the previous day. The journal shall be considered the approved journal of the convention, unless otherwise ordered thereby. The convention reporter shall keep a verbatim record of convention proceedings and shall, within the time prescribed in his appointment by the convention, provide a verbatim transcript of all proceedings had in convention sessions and the sessions of the committee of the whole for duplication and distribution to interested persons.

Order of business.

Rule 15. The secretary shall furnish each delegate daily with a calendar of the business on his desk under each order of business.

Printing and care of delegate proposals and committee proposals.

Rule 16. The secretary shall attend to the printing of all delegate proposals, committee proposals, resolutions, and documents ordered printed by the convention. The secretary shall give to each proposal when introduced, a number, and the numbers shall be in numerical order. When proposals are reported back from committees, they shall be called committee proposals, shall be printed, and shall be numbered in numerical order. The secretary shall cause to be printed at the head of the committee proposal the name of the committee which reported the same and the character and number of any report of the committee respecting the proposal. The secretary shall be responsible to the convention for the care and preservation of each proposal introduced into the convention and committee proposals. Committee proposals shall be kept on file in numerical order, unless otherwise ordered by the convention, and such file shall be called the general orders of the day.

Responsibility for constitution hall.

Rule 17. The secretary shall exercise supervisory care and control of the hall of the convention and all convention rooms and equipment. The secretary shall purchase or rent all necessary equipment, supplies, and postage and arrange for postal, telephone, and telegraph service.

Incapacity of secretary.

Rule 18. In case of the temporary inability of the secretary, from sickness or other cause, to perform the duties of his office, the assistant secretary shall act as secretary until the secretary is able to assume his duties.

Sergeant at Arms

Powers and duties.

Rule 19. The sergeant at arms shall be the chief police officer of the convention. He shall have charge of such assistants as the convention authorizes. He shall attend to the heating, lighting, and ventilation of the constitution hall, committee rooms, and connecting corridors. He shall have authority to serve subpoenas and warrants issued by the convention or any duly authorized officer or committee of the convention, or cause the same to be done by his assistants.

Directors of Research

Duties.

Rule 20. The director of research shall supervise all research and drafting activities of the convention and supervise the employees of the convention engaged in research and drafting.

For rule 20 as amended, see below, page 135.

Employees

Appointment.

Rule 21. The convention by resolution shall designate employee positions and job descriptions, provide salary scales, and provide for the appointment of employees by an officer of the convention or by a committee of the convention.

Chapter III — Delegates

Conduct in debate.

Rule 22. When any delegate is about to speak in debate or present any matter to the convention, he shall rise from his seat, and respectfully address himself to "Mr. President;" he shall not speak until recognized and when recognized he shall confine himself to the question under debate, and avoid personalities.

Delegates called to order.

Rule 23. If any delegate in speaking transgresses the rules of the convention, the president shall, or any delegate may, call him to order; in which case the delegate so called to order shall immediately sit down and shall not rise unless to explain or proceed in order.

Times delegates may speak.

Rule 24. No delegate may speak more than once on the same question without leave of a majority of those present and voting, unless he be the mover of the matter pending or chairman of the committee that reported it, in which case he shall be privileged to speak twice.

Conduct on the floor.

Rule 25. While the president is putting any question, or while the roll is being called or taken by the secretary, no delegate shall walk out of or cross the constitution hall; nor in such case when a delegate is speaking, shall any delegate entertain private discourses or pass between the speaker and the Chair.

Contest of election.

Rule 26. No protest or petition contesting the election of any delegate shall be received or considered unless filed within 10 days after the adoption of this rule.

Chapter IV — Committees

Establishment and meetings.

Rule 27. Committees of the convention and their functions and membership shall be provided by resolution of the convention adopted by a majority of the delegates elected. Committees shall meet at the call of the chairman or upon written request of a majority of the members.

A roll call vote on any matter before a committee shall be taken on demand by any member of the committee.

Each committee shall maintain an action journal of its proceedings.

For rule 27 as amended and adopted, see below, page 135.

Chairman of committee.

Rule 28. The first named member of any committee shall be the chairman, the second named member shall be first vice chairman, and the third named member shall be second vice chairman. The presiding officer of the committee may place under oath or affirmation any person who appears to testify on any matter pending before the committee.

In case of a vacancy or the prolonged absence of the chairman and first vice chairman, the president of the convention shall appoint a chairman to act until the chairman or first vice chairman shall return.

Sitting of committees during sessions of the convention.

Rule 29. No committee shall sit during the sessions of the convention, without special leave of the convention, by a majority vote of those present and voting.

Power to incur expenses.

Rule 30. No committee or delegate shall incur any expenses chargeable to the convention unless authorized by resolution of the convention.

Subcommittees of committees.

Rule 31. A committee, by a majority vote of its number, may provide for the appointment by the committee chairman of subcommittees composed of delegates named to the committee. Reports of subcommittees shall be considered by the entire committee before recommending any action thereon by the convention.

Notice of reports without recommendation.

Rule 32. All committees before reporting without recommendation on any proposal shall notify delegates who have introduced proposals on the same subject matter when and where they may meet such committee to explain the same before the committee reports; such notice to be given by mail in the convention post office or in person 24 hours before so reporting.

Report of committees.

Rule 33. A majority of the members appointed to a committee shall be necessary to report a proposal out of committee. The report of a minority of at least 3 of the members of any committee shall be received, printed in the same manner as the majority report, and treated as an amendment or substitute offered to or for the report of the committee if offered as such on the floor. All proposals reported by a committee to the convention shall be referred to the committee of the whole.

Powers of committees.

Rule 34. Committees may hold public hearings at the seat of the convention and may be authorized by the convention to hold public hearings any place in the state. Committees may take testimony under oath or affirmation. A committee may by resolution of the convention be given the power to subpoena documents and witnesses. A committee may grant the powers here authorized to any subcommittee.

For rule 34 as amended and adopted, see below, page 135.

Consideration of proposals without committee recommendation.

Rule 35. After 1 session days' notice a majority of the delegates elected may by motion require a committee to report any proposal without recommendation.

Chapter V — Committee of the Whole

General orders of the day.

Rule 36. All proposals reported by any committee shall be referred to the committee of the whole and kept in the file called general orders of the day.

For rule 36 as amended, see below, page 135.

Consideration of proposals.

Rule 37. When the convention shall have arrived at the general orders of the day, it shall go into a committee of the whole upon such orders, or a particular order designated by the convention by a majority vote of those present and voting, and no business shall be in order until the whole are considered or passed over, or the committee rise. Unless a particular proposal is ordered up, the committee of the whole shall consider, act upon, or pass over all matters on the general orders according to the order of their reference.

Reading; debate; amendment.

Rule 38. In the committee of the whole proposals shall first be read through by the secretary, and then read, debated, and acted upon by clauses. All amendments shall be entered on separate paper and reported to the convention by the chairman.

Motion that committee of the whole rise.

Rule 39. A motion that the committee of the whole rise shall always be in order unless a member of the committee is speaking or a vote is being taken, and shall be decided without debate by a majority vote of those present and voting.

Reconsideration.

Rule 40. A motion to reconsider shall be in order in the committee of the whole by a majority vote of those present and voting, before the committee shall rise.

Application of convention rules.

Rule 41. The rules of the convention shall be observed in the committee of the whole, so far as they may be applicable, except that it cannot adjourn the convention, the previous question shall not be ordered, the yeas and nays shall not be called, the vote of a majority of the committee shall govern its action, it cannot refer matters to any other committee, and a motion to postpone indefinitely or for a call of the convention shall not be in order. A delegate may speak more than once in the committee of the whole. A journal of the proceedings in committee of the whole shall be kept as in convention.

For rule 41 as amended, see below, page 135.

Chapter VI — Transaction of Business

Order of business.

Rule 42. The order of business of the convention shall be as follows:

1. Call to order.
2. Invocation.
3. Roll call.
4. Reports of standing committees.
5. Reports of select committees.
6. Communications from state officers.
7. Introduction, first reading and reference of proposals.
8. Second reading of proposals.
9. Third reading of proposals.
10. Motions and resolutions.
11. Unfinished business.
12. Special orders of the day.
13. General orders of the day.

Petitions

Printing in journal.

Rule 43. No memorial, remonstrance, or petition shall be read or printed in full in the daily journal unless ordered read or printed by a majority vote of those present.

Motions and Resolutions

Stating motions.

Rule 44. When a motion is made, it shall be stated by the president; or, if in writing, it shall be handed to and read aloud by the secretary before being debated.

Every resolution, other than a proposal, shall be submitted in quadruplicate, shall be read by title, and shall be referred to the appropriate committee. When the rules are suspended to permit immediate consideration of a resolution, the resolution shall be read in full before it is considered.

Reduced to writing.

Rule 45. Every motion shall be reduced to writing if the president or any delegate shall request it, and shall be entered upon the journal, together with the name of the delegate making it, unless withdrawn by the maker or ruled out of order by the president.

When in possession; withdrawal.

Rule 46. After a motion has been stated by the president or read by the secretary, it shall be deemed to be in the possession of the convention, but may be withdrawn at any time before being amended or put to a vote.

Precedence of motions.

Rule 47. When a question is under debate, no motion shall be received but—

1. To fix the time to which to adjourn.
2. To adjourn.
3. To take a recess.
4. To reconsider.
5. To lay on the table.
6. For a call of the convention.
7. To limit debate.
8. For the previous question.
9. To postpone to a day certain.
10. To commit.
11. To amend.
12. To postpone indefinitely.

Such motions shall take precedence in the order in which they stand arranged, and shall be decided by a majority vote of those present and voting, except the motion to postpone indefinitely, which shall be decided by a majority vote of the delegates elected. When a recess is taken during the pendency of any question, the consideration of such question shall be resumed upon reassembling unless otherwise determined. No motion to postpone to a day certain, or to commit, being decided, shall be again allowed on the same day and at the same stage of the question. Whenever a proposal is up for consideration at any stage of procedure, and a motion is made to postpone indefinitely, or to commit, amendments to the proposal shall be in order before taking a vote on any such motion.

Motions not debatable.

Rule 48. A motion to adjourn shall always be in order except when a motion to fix the time to which to adjourn is pending. A motion to adjourn, a motion to lay on the table, and all matters relating to questions of order, shall be decided without debate. A motion for a recess, pending the consideration of other business, shall not be debatable.

Order of putting questions.

Rule 49. All questions shall be put in the order they were moved, except in the case of privileged questions.

Amendments to be germane.

Rule 50. No motion or proposition on a subject different from that under consideration shall be admitted under color of an amendment or substitute.

Division of question.

Rule 51. Any delegate may call for a division of the question, which shall be divided if it comprehends propositions in substance so distinct that one being taken away a substantive proposition shall remain for the decision of the convention. A motion to strike out and insert shall be deemed indivisible.

Motions for the Previous Question

Method of ordering.

Rule 52. The method of ordering the previous question shall be as follows: Any delegate may move the previous question and unless otherwise stated the motion shall apply to the pending question only. This being seconded by at least 10 delegates, the Chair shall put the question, "Shall the main question now be put?" This shall be ordered only by a majority of the delegates present and voting. After the seconding of the previous question and prior to ordering the same, a call of the convention may be moved and ordered, but after ordering the previous question nothing shall be in order prior to the decision of the pending question or questions, except demands for the yeas and nays, points of order, appeals from the decision of the Chair, and a motion to adjourn or to take a recess, which shall be decided without debate. The effect of the previous question shall be to put an end to all debate and bring the convention to a direct vote upon the pending question or questions in their order down to and including the main question: Provided, however, That when the previous question shall be ordered, amendments then on the secretary's desk shall be disposed of. When a motion to reconsider is taken under the previous question and is decided in the affirmative, the previous question shall have no operation upon the question to be reconsidered. If the convention shall refuse to order the previous question, the consideration on the subject shall be resumed as though no motion for the previous question had been made.

Motion for reconsideration.

Rule 53. Any delegate may move for a reconsideration of any question at the same or next succeeding session of the convention or the committee on style and drafting may move for reconsideration on any subsequent day if 1 session days' notice of its intention to do so is given in writing to the secretary, which shall be spread upon the journal. A motion to reconsider shall take precedence of all other questions, except a motion to fix the time to which to adjourn, a motion to adjourn and a motion to recess. No motion to reconsider shall be renewed on the same day.

Motion for Calls of the Convention

Ordering calls of the convention.

Rule 54. Calls of the convention may be ordered upon motion by a majority of the delegates present, but the total vote in favor of such call shall not be less than 15 in number. A motion for a call of the convention shall not be entertained after the previous question is ordered.

Procedure.

Rule 55. After a call of the convention is ordered the doors shall be closed and the delegates shall not be permitted to leave the floor of the convention without permission of the convention. The sergeant at arms shall notify all delegates within the bar of the convention of the call. The roll of the convention shall be called by the secretary and the absentees noted. The sergeant at arms may, upon motion, be dispatched after the absentees. In such case a list of the absentees shall be furnished by the secretary to the sergeant at arms, who shall bring such absentees to the floor of the convention with all possible speed. In case the sergeant at arms shall require assistance in addition to the regularly appointed assistant sergeants at arms of the convention, the president may, upon motion, deputize any person properly qualified as a special assistant sergeant at arms. The convention may proceed to business under a call of the convention pending the arrival of any absentees.

Chapter VII — Proposals

Introduction.

Rule 56. All matters intended to become a part of any revised constitution or constitutional amendment shall be introduced by a delegate or delegates in the form of a proposal and endorsed by the delegate or delegates introducing them. Five copies of any proposal shall be handed to the secretary not later than 3 hours prior to calling the convention to order. All proposals shall be introduced in accordance with the form prescribed by the secretary. Proposals shall be printed and distributed under the direction of the secretary.

For rule 56 as amended, see below, page 135.

Order of consideration.

Rule 57. The regular order to be taken by proposals introduced in the convention shall be as follows:

1. Introduction, first reading by title, reference to a committee by the president, and ordered printed and distributed unless otherwise ordered by a majority of the delegates present.
2. Report of committee and placing on the general orders.
3. Consideration in committee of the whole in order of reference.
4. Report by the committee of the whole and reference to the committee on style and drafting.
5. Report of committee on style and drafting.
6. Second reading, vote on passage.
7. Rereference to committee on style and drafting for incorporation in final draft.
8. Report by committee on style and drafting of any complete revision of or proposed amendment to the constitution.
9. Reference to committee of the whole which shall pass any complete revision or amendment by sections.
10. Report of the committee of the whole and placing on the order of third reading.
11. Third reading and passage of any complete revision by article and as a whole or in the case of any amendment by sections and as a whole.

For rule 57 as amended, see below, page 135.

Majority vote on proposals.

Rule 58. On the passage of every proposal, section, article and any complete revision of or amendment to the constitution, the vote shall be taken by yeas and nays, and entered on the journal, and no proposal, section, article or any such amendment or complete revision shall be declared passed unless a majority of all the delegates elected to the convention shall have voted in favor of the passage of the same.

Special Orders

Unfinished special orders.

Rule 59. Any subject matter made the special order for a particular day, not having been reached on that day, shall come up for consideration under the order of unfinished business at the next succeeding session.

Limitation on debate and control of dilatory procedure.

Rule 60. The convention by resolution may limit the time of debate on any subject matter before the convention, designate a method of allocating the period allowed for debate among delegates, and take appropriate action to control dilatory procedure.

Chapter VIII — Miscellaneous

Reading and Endorsement of Papers

Reading.

Rule 61. When the reading of a paper is called for and an objection is raised to such reading, the convention by a majority vote of delegates present and voting shall determine without debate whether or not the paper shall be read.

Presentation and endorsement of petitions.

Rule 62. Petitions received by any officer of the convention or by any delegate may be initialed by the recipient, and by him handed directly to the chairman or clerk of the committee which has the subject matter of the petition under consideration. The chairman of the committee, on behalf of the convention, shall give appropriate notice of the receipt of the petition.

Calls of convention — yeas and nays.

Rule 63. Upon calls of the convention, and in taking the yeas and nays upon any question, the names of the delegates shall be called alphabetically unless a voting machine is provided in which case it shall be used.

Putting the question.

Rule 64. The president shall distinctly put all questions in this form: "As many as are in favor of (as the question may be), say 'aye'" and after the affirmative vote is expressed, "as many as are opposed, say 'no'." If the president doubts, he may order a division of the convention.

A division of the convention may be had on the demand of 10 delegates, or a roll call of the convention may be demanded by a vote of 1/5 of the delegates present on any pending question. When a division of the convention is ordered, the voting machine shall be used and the president shall declare the result. On a tie vote the question shall be deemed as lost.

For rule 64 as amended and adopted, see below, page 136.

Recognition during roll call.

Rule 65. After a question has been stated by the president, and the call of the roll has been started by the secretary, the president shall not recognize a delegate for any purpose, except upon points of order, until after the announcement of the vote by the secretary. The secretary shall enter upon the journal the names of those voting "aye" and the names of those voting "no". Any delegate is privileged to explain in writing his vote on record roll call votes. The written explanation shall be included in the journal if presented to the secretary before the next session of the convention.

Roll call.

Rule 66. At the roll call at the opening of each session and upon calls of the convention, the voting machine shall be used and the absentees noted, after which the names of the absentees shall be called.

For rule 66 as amended, see below, page 136.

Abstaining from vote.

Rule 67. No delegate shall be entitled to abstain from voting in any roll call unless he shall have stated his intention to abstain before the voting starts. Upon any announcement of intention to abstain, the delegate making such announcement, upon request of 5 delegates, may be required to state his reasons.

For rule 67 as amended, see below, page 136.

Amendment or suspensions of rules.

Rule 68. Any rule of the convention may be altered by a majority vote of the delegates elected, but no rules shall be amended unless such amendment is in writing, has been considered by the committee on rules and resolutions and is in the possession of the convention 2 session days prior to its consideration. A rule may be suspended by a vote of 2/3 of the delegates shown to be present by the journal entries.

For rule 68 as amended and adopted, see below, page 136.

Appeals

Form of question.

Rule 69. On all appeals from decisions of the Chair, the question shall be "Shall the judgment of the Chair stand as the judgment of the convention?" which question shall be decided by a majority vote of those present and voting by a recorded machine vote, unless otherwise ordered by the convention.

Debate on appeal.

Rule 70. No delegate shall speak on the question of an appeal more than once without leave of the convention by a majority vote of those present and voting.

Tabling appeals.

Rule 71. An appeal may be laid on the table but shall not carry with it the subject matter before the convention at the time such appeal is taken.

Practice.

Rule 72. In all cases not provided by these rules, the authority shall be Mason's Manual of Legislative Procedure.

Appropriations.

Rule 73. No motion or resolution calling for an appropriation or expenditure of money shall be acted upon by the convention without first having been referred to some appropriate committee for consideration and recommendation.

Method of Voting

Voting by the electrical roll call system.

Rule 74. When taking the yeas and nays on any question to be voted upon, the electrical roll call system may be used, and when so used shall have the same force and effect as a roll call taken as otherwise provided in these rules.

When the convention is ready to vote upon any question requiring a roll call, and the vote is to be taken by the electrical roll call system, the presiding officer shall announce:

"The question is on the passage of (designating the matter to be voted upon). All in favor of such question shall vote 'yea', all opposed shall vote 'nay'. The convention will now proceed to vote."

When sufficient time has been allowed the delegates to vote, the presiding officer shall announce: "Have all voted?" And after a short pause shall say: "The secretary shall proceed to record the vote."

The secretary shall immediately start the vote recording equipment, and when completely recorded, shall announce the result to the convention. The secretary shall enter upon the journal the result in the manner provided by the rules of the convention.

Any delegate shall be privileged to vote or change his vote after the vote recording equipment has started to operate, by rising in his seat and announcing his vote before the result of the vote has been announced by the secretary.

No delegate shall vote for another delegate, nor shall any person not a delegate cast a vote for a delegate. In addition to such penalties as may be prescribed by law, any delegate who shall vote or attempt to vote for another delegate may be punished in such manner as the convention may determine. If a person not a delegate shall vote or attempt to vote for any delegate, he shall be barred from the floor of the convention for the remainder of the session and may be further punished in such manner as the convention may deem proper, in addition to such punishment as may be prescribed by law.

* * * *

Rules 4, 20, 27, 34, 36, 41, 56, 57, 64, 66, 67 and 68 of the foregoing rules were later amended by the convention. Following are these rules in their amended form, together with the date amended:

Rule 4 (as amended October 17, 1961.)

Officers of the convention.

Rule 4. The officers of the convention shall be a president, 3 vice presidents, a secretary, a sergeant at arms, and 3 codirectors of research to be selected as determined by resolution of the convention adopted by a majority of the delegates elected. The president and vice presidents shall be delegates. The salaries of nondelegate officers shall be fixed by resolution of the convention.

Rule 20 (as amended October 17, 1961.)

Duties.

Rule 20. The directors of research shall supervise all research and drafting activities of the convention and supervise the employees of the convention engaged in research and drafting.

Rule 27 (as amended October 10, 1961.)

Establishment and meetings.

Rule 27. Committees of the convention and their functions and membership shall be provided by resolution of the convention adopted by a majority of the delegates elected. Committees shall meet at the call of the chairman or upon written request of a majority of the members.

A recorded roll call vote on any matter before a committee shall be taken on demand by any member of the committee.

Each committee shall maintain an action journal of all of its proceedings and a calendar, which shall be available to news media and interested members of the public.

Rule 34 (as amended October 11, 1961.)

Powers of committees.

Rule 34. Committees may hold public hearings at the seat of the convention and may be authorized by the convention to hold public hearings any place in the state. Committees may take testimony under oath or affirmation. A committee may by resolution of the convention be given the power to subpoena documents and witnesses. Any witness so subpoenaed shall have the right to be represented by counsel of his own choosing. A committee may grant the powers here authorized to any subcommittee. All committee meetings shall be open to the public unless otherwise authorized by the convention by a majority vote of the delegates elected. A committee may direct a verbatim record of any portion of its proceedings.

Rule 36 (as amended November 27, 1961.)

General orders of the day.

Rule 36. All proposals reported by any committee shall be referred to the committee of the whole and kept in the file called general orders of the day. No committee proposal shall be considered by the committee of the whole until the third day following the day of its reference to the committee of the whole.

Rule 41 (as amended April 2, 1962.)

Application of convention rules.

Rule 41. The rules of the convention shall be observed in the committee of the whole, so far as they may be applicable, except that it cannot adjourn the convention, the previous question shall not be ordered, the vote of a majority of the committee shall govern its action, it cannot refer matters to any other committee, and a motion to postpone indefinitely or for a call of the convention shall not be in order. A delegate may speak more than once in the committee of the whole. A journal of the proceedings in committee of the whole shall be kept as in convention. When the committee of the whole reports to the convention, the actions of the committee of the whole shall be accepted.

Rule 56 (as amended October 26, 1961.)

Introduction.

Rule 56. All matters intended to become a part of any revised constitution or constitutional amendment shall be introduced by a delegate or delegates in the form of a proposal and endorsed by the delegate or delegates introducing them, or shall originate as committee proposals. Five copies of any proposal shall be handed to the secretary not later than 3 hours prior to calling the convention to order. All proposals shall be introduced in accordance with the form prescribed by the secretary. Proposals shall be printed and distributed under the direction of the secretary.

Rule 57 (as amended March 7, 1962.)

Order of consideration.

Rule 57. The regular order to be taken by proposals introduced in the convention shall be as follows:

1. Introduction, first reading by title, reference to a committee by the president, and ordered printed and distributed unless otherwise ordered by a majority of the delegates present.

2. Report of committee and placing on the general orders.

3. Consideration in committee of the whole in order of reference.

4. Report by the committee of the whole and reference to the committee on style and drafting.

5. Report of committee on style and drafting.

6. Second reading, vote on passage.

7. Rereference to committee on style and drafting for incorporation in final draft.

8. Report by committee on style and drafting of any complete revision of or proposed amendment to the constitution.

9. Third reading and passage of any complete revision by article and as a whole or in the case of any amendment by sections and as a whole.

Rule 64 (as amended October 11, 1961.)

Putting the question.

Rule 64. The president shall distinctly put all questions in this form: "As many as are in favor of (as the question may be), say 'aye' " and after the affirmative vote is expressed, "as many as are opposed, say 'no'." If the president doubts, he may order a division of the convention.

A division of the convention may be had on the demand of 10 delegates, or a roll call of the convention may be demanded by a vote of 1/5 of the delegates present on any pending question. When a division of the convention is ordered, a rising vote shall be taken or the voting machine may be used, if provided, and the president shall declare the result. On a tie vote the question shall be deemed as lost.

Rule 66 (as amended October 11, 1961.)

Roll call.

Rule 66. At the roll call at the opening of each session and upon calls of the convention, the names of the members shall be called by the secretary, or the voting machine shall be used if provided and the absentees noted, after which the names of the absentees shall be called.

Rule 67 (as amended October 10, 1961.)

Abstaining from vote.

Rule 67. No delegate shall be entitled to abstain from voting in any roll call unless he shall have stated his intention to abstain before the voting starts. He may voluntarily state his reasons for such abstention. Upon any announcement of intention to abstain, the delegate making such announcement, upon request of 5 delegates, may be required to state his reasons.

Rule 68 (as amended October 10, 1961.)

Amendment or suspension of rules.

Rule 68. The rules of the convention may be amended by a majority vote of the delegates elected, but no rules shall be amended unless such amendment is in writing, has been considered by the committee on rules and resolutions and is in the possession of the convention 2 session days prior to its consideration. A rule may be suspended by a vote of 2/3 of the delegates shown to be present by the journal entries.

* * * *

MR. VAN DUSEN: Now, Mr. President, I should like to explain briefly the procedure which the committee has followed in preparing this recommendation.

At the second session of the convention last Wednesday, we announced that the committee would meet on Thursday and on Friday if necessary to consider proposed rules, and that we would use as a basis for our discussion the rules prepared by the governor's preparatory commission. We invited at that time the attendance of any interested delegate and any interested persons to make comments and suggestions with respect to the content of these rules. We met all day on Thursday, and we were favored with comments and suggestions from a number of delegates who attended that meeting. We also had the benefit of the comments and advice of Professor Pierce, the draftsman of the preparatory commission rules, and of course we had the assistance throughout of our own secretary, Mr. Chase. We went through the proposed rules prepared by the preparatory commission one by one and we either adopted them as a part of the report as they had been proposed or we recommended changes and then adopted them as amended.

Now, over the weekend Mr. Chase and his staff prepared our preliminary report which you had on your desks last night, which showed the preparatory commission rules and all changes in those preparatory commission rules recommended by the committee on permanent organization and rules.

Monday afternoon the committee met again and began its second trip through the rules and this resulted in a few changes which were embodied in the preliminary report which was on the desk of each of the delegates last night.

You will recall that last night we announced that the preliminary report was on your desks, that the committee would be happy to have questions at that time, that the committee would meet at 9:00 o'clock this morning and complete its consideration of the rules and we asked any of you who had questions or suggestions to meet with us at that time and give us the benefit of your comments.

Fortunately, a good many of the delegates did attend our committee meeting this morning. We had the benefit of a number of their suggestions which in many cases have been incorporated in the proposed report.

On your desks this afternoon you have not only the report which you were furnished last night, but you also have 8 additional sheets reflecting the changes adopted by the committee in its report as a result of its deliberations this morning. In most cases these are very simple, insignificant changes. There are few of them that are of importance.

Now, Mr. President, the committee is aware that many of the delegates are not fully familiar with parliamentary procedure as it is outlined in these rules and that many of the delegates may have questions with respect to the rules. Therefore, before moving the adoption of the rules, I would like to ask that any delegates who have questions please ask them at this time. The members of the committee on permanent organization and rules will attempt to answer them, with the assistance of our secretary, and after we have had all the questions and not before, Mr. President, I will then move the adoption of the rules.

I would like now, with your permission, to open the matter to questions with respect to the rules.

PRESIDENT NISBET: Mr. Downs.

MR. DOWNS: I have an inquiry on rule 27 on page 28, which refers to the roll call. Through the Chair, may I ask Mr. Van Dusen if the implication is that it be a recorded roll call vote?

MR. VAN DUSEN: That is the intention, Mr. Downs, of the committee on permanent organization and rules, yes.

MR. DOWNS: Mr. President, may I ask that if that is the intention, the chairman of the committee make that recommendation as part of his report.

MR. VAN DUSEN: The secretary points out to me, Mr. Downs, that the next line of the proposed rule requires that each committee shall maintain an action journal of its proceedings. It would seem to me that this would necessarily require the recording of roll call votes.

MR. DOWNS: I think it would but I think some of us who aren't as astute in some of these matters would feel better if the term "recorded" were before the word "roll call".

MR. VAN DUSEN: I would move, then, if there is no objection, Mr. President, that the word "recorded" be inserted before the word "roll call" in the report of the committee as you have it before you.

MR. DOWNS: Thank you.

PRESIDENT NISBET: Is there objection?

Mr. Suzore.

MR. SUZORE: Some of the delegates in the back of the hall do not have the supplement. We are without the supplement.

PRESIDENT NISBET: Thank you.

Mr. Van Dusen.

MR. VAN DUSEN: Well, Mr. Suzore, that is an oversight I guess on the part of the sergeant at arms, and we will try

to get them to you promptly. I can indicate to you, I think, the changes which were recommended by the committee this morning.

The first is a change in rule 7 as proposed. It appears in the last sentence of that section and it deals with the question of press credentials for lobbyists. As the rule was proposed originally, it stated that persons registered with the secretary of state as legislative agents or who are engaged at any time during the 1961-1962 legislature or the constitutional convention as legislative agents shall be ineligible for constitutional convention press credentials.

It was the feeling of the committee this morning that since the secretary of state requires current annual registration of legislative agents, it would be sufficient simply to require or to provide that persons registered with the secretary of state as legislative agents shall be ineligible for constitutional convention press credentials. And that is the first of the recommendations.

PRESIDENT NISBET: Mr. Van Dusen, on Mr. Down's suggestion, has offered the following amendment:

1. Amend rule 27, second paragraph, line 1, after the first "a" by inserting "recorded".

The question is on the amendment. If there are no objections, it will be adopted.

Hearing none, the amendment is adopted.

MR. VAN DUSEN: Mr. President, if I may, I will, for the benefit of those members who may not have the insert sheets, cover the remaining 7 of them as quickly as I can.

Rule 27, which Mr. Downs just alluded to, the committee recommends the addition at the end of the proposed rule of two sentences as follows: first, a recorded roll call vote on any matter before a committee shall be taken on demand by any member of the committee. Each committee shall maintain an action journal of its proceedings. This is new language added to rule 27.

The next rule to which changes are proposed which you may not have is rule 32. All of the additions are in line 2. The line as amended would read ". . . any proposal shall notify delegates who have introduced proposals on the same subject matter when and where they may meet such committee . . . " . The problem there was the question of being sure that adequate notice was given to any delegate who had a proposal in a committee before the committee reported those proposals without recommendation. The purpose is to be sure everyone has adequate notice.

Rule 33. A rather substantial change was recommended by the committee. The proposal initially was that the report of a minority of ¼ of the members of any committee shall be received and printed, and so forth. At its meeting this morning the committee recommended an amendment of that, that the report of a minority of at least 3 members of any committee shall be received, printed, and so forth. Thus, with respect to a 27 man committee, for example, as few as 3 members might require the printing of a minority report.

Rule 39. I think the change was fairly simple. The committee recommended the insertion of some language in the second line. I will read the whole rule as it is proposed to be amended.

> A motion that the committee of the whole rise shall always be in order unless a member of the committee is speaking or a vote is being taken, and shall be decided without debate by a majority vote of those present and voting.

The purpose of that change is simply to preclude a motion that the committee rise in the middle of a delegate's remarks or while a vote was being taken.

The next proposed change was in rule 42 dealing with the order of business. The change appears in item 7, "Introduction and first reading of proposals." It was felt that to make this conform to the anticipated practice it should read "Introduction, first reading and reference of proposals", because after a proposal is introduced, it is contemplated that it will be referred by the president to the appropriate committee.

Rule 45. A grammatical change for clarity was inserted. This deals in part with withdrawal of motions, and the second to the last line was amended to read, "unless withdrawn by the maker or ruled out of order by the president." This was designed to eliminate any ambiguity as to whether the president had the right to withdraw any motion and to make it clear that only the maker had the right to withdraw.

Then in rule 47, dealing with the precedence of motions, 2 changes were recommended: one, the order of precedence of a motion for a call of the convention was moved from number 8 up to number 6, so that it would come immediately after a motion to lay on the table and immediately before a motion to limit debate. This was designed to eliminate what appeared to be a conflict between the provisions of rule 47 and the provisions of rule 52 dealing with the circumstances which might be presented where a call of the convention was requested at the time the previous question had been moved.

Many of the members of the committee expressed concern that a very few members of the convention might cut off debate by calling for the previous question. It was indicated that by moving the call of the convention up in the order of precedence, then a call of the convention could be put on, precluding the termination of debate by a minority of the members.

The only other change in rule 47 was one of grammar. In the second to the last line we inserted the word "postpone" in front of "indefinitely" instead of after it so it reads "to postpone indefinitely" instead of "to indefinitely postpone". This is simply designed to conform to the terminology used earlier in the section.

I think, Mr. Suzore, this covers each of the proposed changes which were made this morning and which you may not have on your desk. Now, if there are other questions we will be happy to try and deal with them.

PRESIDENT NISBET: Mr. Powell.

MR. POWELL: I imagine the committee gave very careful thought to this one matter, but in the latter part of rule 7 relative to the assignment of seats in the press box I read these words: ". . . . no news agency shall be assigned more than 1 desk in the press gallery."

Now, of course, the larger press services—the State Journal, the Detroit newspapers—have a corps of newsmen assigned here. I see all the space is taken right now. I don't know whether we have that many papers and press services represented or whether there is some duplication, but I should think that to the limit of our facilities we ought to grant opportunity for these gentlemen of the press that are trying to cover this convention.

I haven't discussed this matter with any member of the committee. I don't know just how that stands but I caught that and I thought I would raise that point.

MR. VAN DUSEN: Mr. Powell, in the committee's consideration of this rule, we had the benefit of the comment and the advice of the several members of the press who were there covering our work. I do not wish to speak for them but at the time they raised no objection to any of the language of the rule as it is proposed here.

Of course, to be completely fair, to the extent that we have limited facilities inadequate to fulfill all requests for space, it seemed reasonable to allot each of the several agencies space before allotting more than one to any individual agency.

PRESIDENT NISBET: Any other questions?

Mrs. Hatcher.

MRS. HATCHER: I would like the right to comment on rule 7 as it deals with newspaper coverage. I agree with the previous comments of the gentleman who just commented on the filled press gallery. Just a few moments ago, one of the press men who lives in the district that I represent was here and wanted to be seated. Of course, I assured him that we were about to discuss the very rules that covered his problem.

I do believe that some consideration should be given in terms of offering accommodations to representatives of weekly newspapers, religious groups and various other reporters who will be coming to cover special sessions during our deliberations. I realize the physical arrangements here and I recognize it to be a problem, but I do think wherever it is necessary

and when it is necessary that these people should be given some consideration to be seated and to also be given a place to do their work.

MR. VAN DUSEN: Certainly the committee is in agreement with your position, Mrs. Hatcher, and it is for that reason that the recommended rule leaves to the representatives of the press themselves, a committee of 5, the responsibility of accreditation and working out the availability of facilities for the members of the press. We felt that they were best aware of their own problems in their attempt to cover our deliberations and that it would be wisest to refer the matter to them.

PRESIDENT NISBET: Any further discussion?

Mr. DeVries.

MR. DeVRIES: Mr. President and Mrs. Hatcher, I had something to do with the drafting of this rule. It is modeled after the house rule, or the way we would like to see the house rule set up. It provides for a committee of 5 correspondents. This committee and the president will assign temporary and permanent press cards.

There are transient reporters who come in for a day or two or a week. The office of the president, after consultation with the chairman of the press committee, will then issue a permanent card if the person is to stay on, or a temporary card if they will be here only on a temporary basis.

Each news agency was assigned one desk, and the rest of the desks in the second row, as I understand it, are available for transient—maybe that's not a good word—temporary news correspondents. That was the thinking in this particular rule.

PRESIDENT NISBET: Mr. Marshall.

MR. MARSHALL: Mr. President, I want to direct a point of information to Mr. Van Dusen through the Chair. I am somewhat confused as to the interpretation of rule 34 on page 35 which deals with the powers of committees. The question is, number 1, does this imply that the sessions of the committees will not be open to the public and to the press? And number 2, if this is the implication, is the discretion left to the chairman of the committee as to whether or not the committee should go into executive session, or does this imply that the committee itself by majority vote make this determination?

I am aware of the fact that there were some amendments offered to this rule in the committee hearings. It is not quite clear in my mind as to whether or not this rule permits executive sessions at the discretion of the chairman or at the discretion of the committee itself. I would like a clarification on it.

MR. VAN DUSEN: Mr. Marshall, I would be glad to try and clarify it for you. In the first place, the rule itself contains no implication one way or the other. The rule is simply designed to provide for authorization by the convention to committees to hold public hearings at places other than the seat of the convention here in Lansing.

As Mr. Marshall points out, there were amendments offered to this section designed either to provide specifically that committees might hold socalled executive sessions, or designed to provide that they might not under any circumstances hold executive sessions. Each classification of amendment was not carried and consequently the rules are silent on the question of the right of committees to exclude the press or to conduct private sessions.

There is no rule in this regard one way or the other. It is, I believe, the opinion of the committee that in the absence of such rule, it would be the prerogative of a majority of the committee, if it chose to do so—not the prerogative of the chairman—to hold sessions in private. I would simply suggest that, from the experience of the committee on permanent organization and rules in dealing with this question, a committee which chose to do so would have to have awfully good reasons and would do so at its peril.

MR. MARSHALL: That answers the question but I am still in the dark. Maybe I am being somewhat thickheaded and I think Mr. Van Dusen's explanation is clear, but I cannot understand leaving the proposal without at least the convention as a whole determining whether or not they desire open sessions of the committee meetings or whether they desire to permit committees to call executive sessions at the discretion of a majority of the committee.

PRESIDENT NISBET: Mr. Nord.

MR. NORD: Mr. President, I would like to speak to the same point. Mr. Van Dusen, the chairman of the committee, has stated as his opinion here and also in the committee that rule 34 as it is presently written does not preclude the power of the committee to hold open meetings or closed meetings or to conduct the meetings in any way they see fit, generally speaking.

At the same time I recall at the previous time the question was raised, which was, I believe, last Thursday—the first time we discussed it—it was left in the same form as it is now and and at that point the understanding or the interpretation of the rule was that there was no power given by this rule or by any other rule to the committee to hold executive sessions and that the only powers that were given to the committees, other than those that may be expressly listed here or in Mason's rules, that there was no power granted, and therefore, in order for the committee to have that power, it would have to ask for that power by a resolution of the convention.

Now, since that time, we have also provided or proposed a rule which has to do with amendment of the rules and that rule—I don't have the number in front of me—that rule provides that a resolution would not be sufficient to amend the rules but it would have to go to a committee. Therefore, if an amendment of the rules would be necessary in order to permit this, there is a third possibility. As as result there are 3 different possible interpretations of this rule insofar as executive sessions are concerned.

In addition to that, I have discussed the matter further with delegates during the lunch hour and since the committee meeting, and additional ideas have been proposed which have not as yet come before the committee which I believe merit consideration. They are not prepared in final form to be brought here as yet and, as a result, I would ask the chairman of the committee whether he would be agreeable to delaying action on this particular rule, rule 34, and resubmit it to the committee for further action tomorrow.

MR. VAN DUSEN: The chairman of the committee would have no objection to that proposal. Certainly if this rule is to be a controversial one, it is wise to have that controversy as thoroughly thrashed out in committee as possible, and certainly it should not delay our consideration of the other rules. I speak only for myself in this regard. The other members of the committee obviously have not had an opportunity to consider it other than Dr. Nord who is a member of the committee.

PRESIDENT NISBET: Is there other discussion?

Mr. Ford.

MR. FORD: I have before me both rule 27 and rule 34. Rule 27 is the only other place that I find where the general powers of committees are discussed and, as has already been stated, it appears to be the belief of the majority of the committee on permanent organization and rules that as the rules now stand, each committee has inherently within its power, under normal parliamentary procedure, the power to vote by a simple majority of a quorum of that committee, which I understand from the discussion I overheard in the rules committee, is provided in these rules to be a majority of the members of the committee and that in the exercise of this inherent power, they could determine to hold one or more, or a series of executive sessions.

Coupled with this, in rule 34 we have the subpoena power. Now, I don't know that anyone in this room presently contemplates this possibility, but it would seem to me to be an eminently possible situation that might frequently occur, or might occur, not frequently, at least once, to the embarrassment of this delegation, that people would be subpoenaed before a committee, the public and the press excluded, and the committee proceed with its business. This is one aspect.

The second aspect frames itself in a question I ask myself. I can't understand—in searching my mind, I cannot find a single laudable motive for seeking to exclude either the public

or the press from the deliberations of any standing committee of this convention. It appears to me that from the outset the attitude of all of the delegates I have talked to and this includes the people I have had the pleasure of meeting here from other parts of the state from that which I represent— has been that they are here to do a job for the state of Michigan, and that they want the people to know what is going on here.

I believe that it goes without saying that the principal business of this convention, the real meat of the provisions that the people of this state are going to be asked to adopt or at least to consider when we finish our deliberations here, are going to be discussed far more fully and by people in many instances more expert in the fields being discussed than those of us who are delegates, at the committee level than they will be here on the floor of this convention, and it would seem to me that this is the place that the public is entitled to view, this is the forum that the public should have the opportunity of viewing in every respect, and it would seem to me that, regardless of how we rationalize it, when the rules fail to provide direction from this body to the committees, what we are doing is saying to the committees, "We are in effect giving you the authority to do this if you in the particular committee see fit to do so".

Now, the difficulty arises — it's been suggested to me by members of the rules committee — that should there be any abuses of this privilege, should it prove to be embarrassing or should prove not in the best interests of the convention, that we could then, at that time, adopt a resolution or rules change here. But this necessitates a considerable amount of parliamentary maneuvering because such a proposal, as has been stated by Dr. Nord, would have to go back to the same committee which has previously, as I am now informed by the previous speakers, on 2 occasions refused to adopt such a rule.

So as a practical matter, we either decide now that we want these committee hearings to be open to the public and the press and we want the people of the state of Michigan to know everything that goes on up here, or we decide that, by failure to act and failure to face the responsibility of a decision at this time, we are never going to do anything during the course of this convention to change the situation as it now exists in the rules, and I oppose the adoption of these rules at this time.

PRESIDENT NISBET: Any further discussion?

Mr. Martin.

MR. MARTIN: Mr. President, of course Mr. Ford was not present at all of the discussions that went on in the committee on rules so he did not hear all of the comments that were made.

I think the decision of the committee — and it was discussed at great length, and backwards and forwards — was that exactly the thing should happen which Mr. Ford would like to see happen, which I think the rest of us would like to see happen, that is, that the deliberations of these committees should be public, that there should be every opportunity for the public to know what was going on in these committees. I am sure that was the result of the committee action on several votes that were taken, and for that reason it seems to me that the decision or the course that we should follow here should be the support of the rule as it is presently proposed.

I think it is perfectly clear from discussion throughout this convention that committee chairmen, as Mr. Van Dusen says, will proceed at their peril. I think you might say that they will think a long time before they call an executive session and, if they do consider such a matter, will want to bring the matter before the convention for approval. For that reason I believe the rule should be supported as the committee has voted it.

PRESIDENT NISBET: Mr. Woolfenden.

MR. WOOLFENDEN: Mr. President, I have 2 suggestions to make with respect to these rules. The first relates to rule 12 and rule 63, both of which evidently were drafted before it was known whether or not a voting machine would be available. In each rule it states that if a voting machine is available, the votes shall be taken by such a machine.

Therefore, I offer the following amendment:

1. Amend the last sentence of rule 12 by striking the first clause "If a voting machine is provided" and adding in the next to the last line between the words "vote by" and "machine" the word "voting" so that it will read "Vote by voting machine shall be taken whenever a roll call or a vote by yeas and nays is directed by or in accordance with these rules.".

MR. VAN DUSEN: Mr. Woolfenden, the committee on permanent organization and rules gave careful consideration to these rules which were, as you suggest, drafted before the draftsmen knew whether or not a voting machine would be available.

However, in the course of our discussions 2 possibilities suggested themselves. One, it is possible that the convention might on some occasion meet in a place other than constitution hall where a voting machine was not available. Second, and more likely, it is possible that on some occasion the voting machine may not be functioning properly, as the secretary advises me was just the case, and under each of those circumstances it seems desirable that the rules make some provision for an alternative method of voting.

MR. WOOLFENDEN: Elsewhere in the rules you have amended it to make it mandatory, so I think that should be changed back then. I think the rules should be consistent. That's the only thing I am speaking for.

PRESIDENT NISBET: The question is on the amendment of Mr. Woolfenden. Is there any further discussion on that question? Mr. Woolfenden's amendment will be read by the secretary.

SECRETARY CHASE: Mr. Woolfenden offers the following amendment:

1. Amend rule 12, the last sentence of the rule by striking out the words "If a voting machine is provided", and start the next line with the word "Vote" with a capital "V", so that it will read "Vote by voting machine shall be taken whenever a roll call or a vote by yeas and nays is directed by or in accordance with these rules."

PRESIDENT NISBET: Mr. Woolfenden.

MR. WOOLFENDEN: A similar amendment to rule 63 I think should be voted on at the same time as follows:

2. Amend rule 63, the last clause of the sentence to strike the words "the names of the delegates shall be called alphabetically unless . . .", and then add before "voting machine" the word "the" and after "voting machine" the word "which" so that it reads "the voting machine which is provided in which case it shall be used."

SECRETARY CHASE: Mr. Woolfenden offers the following amendment:

2. Amend rule 63 so that it will read "Rule 63. Upon calls of the convention, and in taking the yeas and nays upon any question, the voting machine which" — I am sorry. I missed this, Mr. Woolfenden.

MR. WOOLFENDEN: I may have misspoken, Mr. Chase. It should read, "the voting machine which is provided shall be used". That is the way it should read after the amendment.

SECRETARY CHASE: So the language shall read "Upon calls of the convention, and in taking the yeas and nays upon any question, the voting machine which is provided shall be used."

PRESIDENT NISBET: Mr. Romney.

MR. ROMNEY: I would like to ask either the chairman of the committee on permanent organization and rules or Mr. Woolfenden to point out whether these rules are inconsistent in this respect. I think if they are inconsistent that is one thing, but on the other hand if they are not, that is another thing. I for one would like to know before I vote.

MR. VAN DUSEN: In the opinion of the committee, the rules are generally consistent. There may be possibly one rule where no alternative provision is made to the use of the voting machine, but it was the intent of the committee generally to permit that alternative to provide for such occasions as might arise when the voting machine might not be functioning.

MR. WOOLFENDEN: I invite the chairman's attention to

rule 64 which reads in the final sentence: "When a division of the convention is ordered, the voting machine shall be used and the president shall declare the result." My amendments are to correct the inconsistency in these rules.

MR. VAN DUSEN: I agree that Mr. Woolfenden has pointed out an inconsistency which I would suggest might conceivably exist. It would be the opinion of the committee, I believe, that rule 64 be amended rather than the rules suggested by Mr. Woolfenden.

PRESIDENT NISBET: The question is on the amendments of Mr. Woolfenden. Is there further discussion?

Mr. Yeager.

MR. YEAGER: I would like to make one inquiry, Mr. President. Is there an outside possibility that any sessions of the convention will be held in a different location? If this were so, however brief, it might mean that you would have to take a roll call by voice vote.

PRESIDENT NISBET: Mr. Higgs.

MR. HIGGS: Mr. President, I should like to ask this question with regard to both rule 12 and 63; does this preclude voting in the manner in which we have been voting?

MR. VAN DUSEN: This does not, Mr. Higgs.

PRESIDENT NISBET: Mr. Romney.

MR. ROMNEY: Mr. President, I would like to move that these particular rules, rules 12, 63 and 64, be referred back to the committee on permanent organization and rules to eliminate any inconsistency on this point.

PRESIDENT NISBET: The question is on Mr. Romney's motion to rerefer. Is there any discussion?

Mr. Woolfenden.

MR. WOOLFENDEN: I would like to support that motion. My only brief is for consistency in the rules.

PRESIDENT NISBET: Any further discussion? The question is on the motion to rerefer rules 12, 63 and 64. All those in favor of the motion say aye. Opposed, no.

The motion prevails.

Mr. Woolfenden.

MR. WOOLFENDEN: Mr. President, I have one more motion I would like to make on rule 41.

Rule 41 has to do with the rules of the committee of the whole and provides in part that the rules of the convention shall be observed in the committee of the whole so far as they are applicable with certain additional qualifications.

Now, rule 60 of the convention rules provides that the convention by resolution may limit the time of debate on any subject matter before the convention, designate a method of allocating the period allowed for debate among delegates, and take appropriate action to control dilatory procedure. I think that is a very important provision of the rules relating to the convention.

A similar rule or provision is not included in rule 41 relating to the committee of the whole, and I believe that there is at least some question as to whether or not under rule 41 and the other rules relating to the committee of the whole we would be powerless to stop a filibuster which I think we certainly should be in a position to do. I therefore offer the following amendment:

1. Amend rule 41 next to the last sentence, by adding a sentence to read as follows: "Before a proposal shall be considered by the committee of the whole, any delegate (the chairman of the general standing committee in charge of the proposal having prior right) shall be privileged to move a limitation upon the time of debate and consideration by the committee, and the convention may fix in advance of consideration, a time for the committee to rise and report.".

PRESIDENT NISBET: Mr. Woolfenden, would you bring a copy of that up, please?

Mr. Elliott.

MR. A. G. ELLIOTT: A point of information. With the motion and the amendment, I became slightly confused. I understood Mr. Romney's motion to refer this back to the committee on rules, and then I understood Mr. Woolfenden's amendment to restrict our voting to a voting machine. I understood also that the Chair ruled that both the motion and the amendment passed. Is that correct?

PRESIDENT NISBET: Mr. Chase tells me that the question is now rereferred to the committee for them to report back to the convention.

Mr. Habermehl.

MR. HABERMEHL: Mr. President, a point of information. Back to rule 34, we note that—

PRESIDENT NISBET: Mr. Habermehl, may we finish discussing this particular one first?

Let's have a reading of the amendment first.

SECRETARY CHASE: Mr. Woolfenden has offered the following amendment:

1. Amend rule 41, following the next to the last sentence which reads "A delegate may speak more than once in the committee of the whole.", by inserting "Before a proposal shall be considered by the committee of the whole, any delegate (the chairman of the general standing committee in charge of the proposal having prior right) shall be privileged to move a limitation upon the time of debate and consideration by the committee, and the convention may fix in advance of consideration, a time for the committee to rise and report.".

PRESIDENT NISBET: Mr. Nord.

MR. NORD: I rise to speak against the amendment.

When the rules relating to the committee of the whole were brought up in the committee on rules, the question of whether we should have a committee of the whole was raised. At that point, I couldn't see any particular reason why we needed a committee of the whole. It is nothing but a legal fiction and I see no reason why it is important. But the explanation was given that we ought to have a committee of the whole because the rules of debate were much freer and there was no way to limit debate in the committee of the whole. That was the reason for the committee of the whole. If it were not for that, we might as well eliminate the committee of the whole.

Now, if we have a committee of the whole and there is a possibility of limiting debate, it seems to me we simply have 2 different procedures in each of which you can limit debate. The only difference would be you can't move the previous question, but in any event you can limit debate in both.

My feeling is that a committee of the whole is of no value if you can limit debate. Therefore I speak against the amendment.

PRESIDENT NISBET: The question is on Mr. Woolfenden's amendment.

Mr. Pellow.

MR. PELLOW: I also rise to speak against this amendment. When I was in this committee meeting this morning, it was my understanding that we would, at least the minority, have the right to express our views before this convention and not be gagged, and I say it is dangerous to this convention, that if this rule proposed is allowed to be put into effect, that the minority will have no chance, not because I am from the minority party, the democratic party, but I am also a minority from the upper peninsula, and I would appreciate having the privilege of stating my minority position. Thank you.

PRESIDENT NISBET: The question is on the amendment.

Mr. Van Dusen.

MR. VAN DUSEN: I would like to make, if I might, Mr. President, one comment with respect to the proposed amendment. Mr. Woolfenden indicated that its purpose was to preclude filibuster. I would suggest that there is a very simple motion already provided to accomplish that purpose which goes like this: Mr. President, I move that the committee do now rise.

That is my only comment. I take no particular position for or against.

PRESIDENT NISBET: Mr. Martin.

MR. MARTIN: I think the committee was very well aware of the fact that there was both a minority, and a minority from the upper peninsula, and it was our desire to make it possible for the freest kind of debate in the committee of the whole, and that's the reason that the rule is drafted in the way that it is. I therefore urge that the delegates accept the rule as it is, because that's exactly what it is designed to do.

I don't believe, particularly in the light of Mr. Van Dusen's comment, that there can be any real filibuster in the situation, but there should be an opportunity for active debate on both sides and for both sides to fully state their case.

PRESIDENT NISBET: Mr. Ostrow.

MR. OSTROW: Delegate Ostrow from Wayne county. My comments are directed more to the way we are proceeding then to any particular issue.

We have these rules. The committee on rules studied them, worked on them for a long time. We were given the rules last night to study. Now we get amendments on the floor. They are oral. You hardly hear them. You don't have a chance to understand them. A lot of the amendments practically reverse the previous rules.

I would suggest this. Let's find out what rules anyone suggests any amendments to. Let's pass the rules to which there are no amendments or objections, and then let's get all of the amendments. Let's get them in writing so that we understand them, read them, and then discuss them.

PRESIDENT NISBET: The question is on Mr. Woolfenden's amendment. Any further discussion? If not, all in favor say aye. Opposed, no.

The amendment is not adopted.

Mr. Habermehl.

MR. HABERMEHL: I think I am back in order now. On rule 34, I note that the committees have the power to administer oaths and the power to subpoena documents and witnesses. As a point of information, I would like to ask the committee on rules if this also contemplates that the committee shall also have power to enforce its subpoena powers. I know of no statutory provision that would give it that right unless it is adopted in the rule.

MR. VAN DUSEN: Mr. Habermehl, it was the opinion of the committee, I believe, that any enforcement action not specifically provided for in the rules — and there is some specific provision with respect to enforcement of subpoena in the rules — but any action not specifically contemplated in the rules would have to be taken by resolution of the entire convention. not just the committee.

PRESIDENT NISBET: Mr. Nord.

MR. NORD: In view of the fact that considerable discussion, confusion and ambiguity exist with respect to rule 34, not particularly in the connection that was just raised but in connection with the executive session problem — whether they should be allowed or whether they are allowed under the rule — I move to recommit rule 34 to the committee on permanent organization and rules for further consideration.

PRESIDENT NISBET: The question is on Mr. Nord's motion.

Mr. Bledsoe.

MR. BLEDSOE: I second that motion.

PRESIDENT NISBET: The question is on Mr. Nord's motion that rule 34 be recommitted to the committee. Is there any further discussion? If not, all in favor say aye. Opposed, no. The Chair is in doubt. We will use the voting machine. All those in favor of Mr. Nord's motion to recommit rule 34. vote aye. Those opposed vote no. Have you all voted? The secretary will lock the machine and tally the vote.

SECRETARY CHASE: On Mr. Nord's motion that rule 34 be rereferred to the committee, the yeas are 89, the nays are 50.

PRESIDENT NISBET: The motion prevails.

Mr. Elliott.

MR. A. G. ELLIOTT: I would like to discuss for a moment rule 33. I am in some sympathy with the change that was made from yesterday which yesterday required a minority of at least ¼ of the members, and which on the smaller committees would have made it a requirement that a minimum of 4 members submit a minority report. I am not in sympathy with a report which requires only 3 for a committee as large as 27.

I have an amendment which I gave to the secretary which I would like to have read.

PRESIDENT NISBET: The secretary will read Mr. Elliott's amendment.

SECRETARY CHASE: Mr. A. G. Elliott's amendment to rule 33 is as follows:

1. Amend rule 33, line 3, by striking out "at least 3" and inserting "at least 1/5".

PRESIDENT NISBET: Mr. Elliott.

MR. A. G. ELLIOTT: This would require only 3 in those committees of 15. It would require 4 in those committees of 21, and would require 5 in those committees of 27. This seems to be a more logical progression when you are talking in terms of a minority report.

PRESIDENT NISBET: The question is on Mr. Elliott's amendment.

Mr. Yeager.

MR. YEAGER: I should like to support that.

PRESIDENT NISBET: Mr. Norris.

MR. NORRIS: Mr. President, I should like to oppose the amendment. As a matter of fact, I should like to oppose the insertion that is in the report. I believe that the recommendation of Mr. Pierce's committee ought to be the one to be accepted by this body.

I think if there is any quality of this body, it ought to be deliberativeness, and by that I mean that every relevant consideration with regard to matters of substance ought to have its day in court before a deliberative body. I believe that the convictions and conscience of each member of this body are equivalent in value to every other member of this body. And that if some person, any person, any delegate is moved to write a report to express his conscience and convictions about a constitutional provision that will be serving this state for several decades, he ought to have an unequivocal right to do so. I don't think that any infraction or any mitigation of the deliberative process would be endured by this body by providing that unequivocal right of conscience and conviction on the part of any delegate who wishes to express himself in a formal fashion by writing a report and getting the cogency and efficacy of his arguments before this body.

I therefore oppose Mr. Elliott's amendment and, if anything, I should like to have the original Professor Pierce rule before us so that any person at any time who feels moved to express himself to the people of this state and to this body on any relevant consideration ought to have a right to do so.

PRESIDENT NISBET: Is there any further discussion?

MR. VAN DUSEN: I might express the views of the committee to the extent that they were in agreement with respect to this point.

First, quite obviously any member of this body can offer an amendment to a committee proposal when the committee proposal is before the delegates for discussion and action. Therefore, the only consequence of the rule as proposed is that the minority members of a committee, a minority as small as 3, might have the privilege not only of offering an amendment, but of having their report printed in the journal along with the report of a majority of the committee and given the same dignity that the majority report has as such. In the absence of any rule with respect to minority reports, the opportunity would still be present for any individual delegate to offer individual amendments to any committee proposal. So even if no minority report were provided at all, the individual delegate would not be the least bit foreclosed from bringing his views before the body.

The feeling of the committee on permanent organization and rules was that rather than encumbering the journal with the reports of any individual member of a committee who does not agree with the majority report and who has a right to offer his views as amendments, a report should only be given that dignity and treatment if it were subscribed by a significant minority of the committee. The figure finally agreed on was 3. I should state that this was a matter on which the committee was closely divided in terms of the size of the minority required to qualify a minority report for being printed.

PRESIDENT NISBET: Mr. Nord.

MR. NORD: I should like to speak against the amendment offered to change at least 3 members to 1/5.

I sat on this committee and we heard this question discussed a number of times. We started with a report which said that

any person, any member of a committee has a right to submit a minority report. At the committee meeting, it was suggested by some that there should be no minority report, which of course goes to the opposite extreme.

We also heard a proposal that it should be 1/3 of the delegates who might do that, and it was suggested by me at the committee meeting that that would simply enforce bloc voting which would be extremely undesirable, and at that point we moved to ¼. Since that time we have moved to 3. Now we are asked to move somewhere in between to 1/5 and I believe it is possible that we may get somewhere in between 3 and 1/5 before we are through.

It seems to me we are haggling over something which is not worth haggling over. What is important is to decide, first of all, that there should be minority reports. Secondly, that a reasonably small number of people — I prefer that it be one, myself, but I am not against 3 — have the right to speak.

Now, in connection with the argument raised by the chairman of the committee that a minority report is not really absolutely indispensable because it could always be offered as an amendment, it seems to me that overlooks the difference between a report and an amendment on the floor. We could do the same thing to the majority report if we were to use parity of reasoning. There would be no majority report. It would simply be introduced as an amendment which nobody would be able to read. If there is to be a majority report — and we know there ought to be — there should be a minority report as long as any person actually, or certainly not more than the number we have finally agreed upon — wishes to go to the trouble of preparing it in writing.

If there is some nut in this convention who will be the only person who has a certain view, my opinion is that he will not have the ability to write a report in any event. And if he has, I doubt if he would be able to write it.

Let's not worry about the fact that we have 3 or 4 or 5. We have been over this and I feel that we should settle the matter. Let it stand as it is. Otherwise, we are going to start the argument all over again that it should be one. Therefore, I oppose the amendment.

PRESIDENT NISBET: Is there any further discussion? The question is on Mr. Elliott's amendment substituting the figure 1/5 for the 3. Is there any further discussion? If not, all in favor of the amendment, say aye. Opposed, no.

The amendment is not adopted.

Miss Donnelly.

MISS DONNELLY: Mr. President, I should like to move that we approach these rules in numerical order. I think we have jumped to the point that I am confused and I sat on the committee to write them. Perhaps others are having my difficulty and I think we could start from one and go through.

MR. VAN DUSEN: I am perfectly willing to do that if that is the wish of the delegates.

PRESIDENT NISBET: Mr. Ford.

MR. FORD: Mr. President, I am coming back to the point I raised before, because we have rereferred rule 34, and it would seem to me, as we look at the rules, that points that have been raised here are also contained in rule 27 and it would seem to me that this should be rereferred also.

I should like to move at this time to rerefer to the committee on rules, rule 27, with the direction to the committee to prepare a proper amendment to provide that no person or group shall appear voluntarily or as a result of subpoena before any committee of the whole of this convention and give either testimony or evidence of whatever kind for the purpose of persuading the members of that committee to act in a particular manner unless such action shall take place at an open public hearing where adequate access of the public and press is provided.

MR. VAN DUSEN: Mr. President, as chairman of the committe on permanent organization and rules, I should have to oppose Mr. Ford's motion. The rule has nothing to do with the subjects which he has discussed. I will read rule 27:

> Committees of the convention and their functions and membership shall be provided by resolution of the convention adopted by a majority of the delegates elected. Committees shall meet at the call of the chairman or upon written request of a majority of the members.
>
> A recorded roll call vote on any matter before a committee shall be taken on demand by any member of the committee.
>
> Each committee shall maintain an action journal of its proceedings.

These are a simple set of ground rules for basic committee action. If committees are to be appointed in the near future, as I suspect they will be, they will be starting their work in the very near future. It seems important and desirable that they be guided by general rules of this convention for the conduct of their action, and therefore I would oppose the motion by Mr. Ford.

PRESIDENT NISBET: Mr. Ford, will you submit your motion in writing, please?

MR. FORD: All that the motion is, in essence, is a motion to refer this to committee. It is in the same nature as Mr. Nord's motion. The only reason that I point to rule 27 is that — this is correct as has been stated by the chairman — prior to this morning's session, rule 27 dealt with some simple ground rules but it was this morning that you put in the last 2 sentences and you now use this rule as a method of defining specifically the operations of the committee. I don't want to argue semantics, about whether it should be in rule 34 or rule 27; I just want to guarantee that no one is going to be talking to the committees unless the public is there.

PRESIDENT NISBET: Mr. Ford, is your motion to rerefer rule 27 to the committee?

MR. FORD: Yes, sir.

PRESIDENT NISBET: The question is on the motion of Mr. Ford to rerefer rule 27 to the committee. Is there any discussion? If not, all in favor say aye. Opposed, no.

The motion does not prevail.

Mr. Cudlip.

MR. CUDLIP: While we are on rule 27, I should like to address this question to the chairman of the committee on permanent organization and rules. We have just been talking about proposed rule 27. This morning as I understand it a sentence was added to the effect that an action journal shall be kept by each committee. I assume an action journal is similar to the journal of this body which under the proposed rules is available to the interested members of the public, and my question to Mr. Van Dusen is simply this. Was there any discussion this morning as to whether this action journal should be available to members of the press or the interested members of the public or the public in general? I think it is a pertinent inquiry because I think it may temper some of this discussion about the dangling participle now as respects closed committee sessions.

MR. VAN DUSEN: Mr. Cudlip, it was the intention of the committee on permanent organization and rules by requiring each committee to maintain an action journal of its proceedings, that that journal would be available to the press, to the public, to interested parties generally.

PRESIDENT NISBET: Mr. Cudlip.

MR. CUDLIP: Mr. President, I move to amend the rule under discussion, 27, as follows:

1. Amend rule 27, last line, after the words "maintain an action journal of its proceedings" by inserting "which shall be available to the press and interested members of the public", to correspond with our action here on the floor as respects our own journal.

PRESIDENT NISBET: Was that a motion, Mr. Cudlip?

MR. CUDLIP: I thought, Mr. President, I said, "I move that."

PRESIDENT NISBET: The question is on the amendment of Mr Cudlip. Mr. Cudlip, will you state your amendment for the secretary and for the members, please?

MR. CUDLIP: I refer again to rule 27, the last sentence of which reads this way as proposed this afternoon: "Each committee shall maintain an action journal of its proceedings.". My amendment is:

1. Amend rule 27, last line, after the word "proceedings" by inserting "which shall be available to the press and interested members of the public".

PRESIDENT NISBET: The question is on the amendment of Mr. Cudlip. Is there any discussion?

MR. VAN DUSEN: I should just like to comment that this accords with the thinking of the committee, Mr. President.

PRESIDENT NISBET: Mr. Mahinske.

MR. MAHINSKE: There is a point of information I would like to know. Does Mr. Cudlip consider an action journal a verbatim journal and is it recorded in executive session? As I understand it, there is no journal kept during an executive session and therefore Mr. Cudlip's amendment does not resolve our problem.

MR. VAN DUSEN: It is not a verbatim journal. It records actions taken, where members voted aye and nay. It records that for every session of the committee whether in executive session or otherwise.

MR. MAHINSKE: Then I think we should spell this out. In the event — now, you yourself maintain that there is a possibility, depending on the boldness of the chairman of these various committees — that we may have an executive session. I would like to guarantee the proposition that there will be an action journal kept during executive sessions if and when there are any.

MR. VAN DUSEN: I might suggest, Mr. President, that Mr. Mahinske's point might be accomplished in this fashion, by making the sentence read, "Each committee shall maintain an action journal of all its proceedings". If Mr. Mahinske would find that acceptable, I would move that amendment.

PRESIDENT NISBET: Mrs. Cushman.

MRS. CUSHMAN: My question was on the nature of the action journal. From listening to the discussion of the committee on rules this morning, my understanding was that that action journal also would indicate to those interested what was going to be coming up in that committee in the immediate future so that people could be prepared to attend such committee meetings. Is that correct, or not?

MR. VAN DUSEN: No, I think that's a misunderstanding, Mrs. Cushman. The journal records what has happened. The calendar records what is going to.

MRS. CUSHMAN: Is there any mention, then, of a calendar coming up, or is this just an understanding, or what?

MR. VAN DUSEN: There is no specific provision in the rules other than one which we have already touched upon which deals with notice to an interested member. It was the understanding of the committee on permanent organization and rules that, as a matter of ordinary course, each committee would advise the convention and interested parties of the nature of the work which it proposed to undertake in the immediate future so that not only the members of the convention would know what subjects were to be under consideration but the public also would know.

PRESIDENT NISBET: The question is on Mr. Cudlip's amendment. Mr. Secretary, will you read the amendment?

SECRETARY CHASE: Mr. Cudlip offers the following amendment to rule 27.

1. Amend rule 27, at the end of the last sentence of the rule which reads, "Each committee shall maintain an action journal of its proceedings" by adding the following language: "which shall be available to the press and interested members of the public".

PRESIDENT NISBET: Is there any further discussion? Mr. Gust.

MR. GUST: I thought Mr. Van Dusen offered an amendment to Mr. Cudlip's amendment to insert still more words there. A point of information. Don't we vote on his amendment first, and then Mr. Cudlip's?

PRESIDENT NISBET: Mr. Chase says we vote on that later as a separate amendment.

Mr. Powell.

MR. POWELL: Mr. President, I was wondering if there was the implication that these journals would be in same form and distributed in the same quantity as our regular daily journals. If so, it would seem to me that that might be superfluous. I believe it is some 5,000 copies we were going to have, or something like that, yesterday. It would seem that, though we do not have experience in the legislature to go by, a rather limited number of possibly mimeographed copies of these action journals of the committees might serve the purpose. I just raise that as a suggestion.

PRESIDENT NISBET: The question is on Mr. Cudlip's amendment. Is there any further discussion?

MR. VAN DUSEN: I would simply state, in response to Mr. Powell's point, that there was no intention on the part of the committee on permanent organization and rules that significant numbers of these be printed, simply enough to take care of those who might be immediately interested.

PRESIDENT NISBET: Those in favor of Mr. Cudlip's amendment.

Mr. Hodges.

MR. HODGES: I am still somewhat confused as to your answer to Mr. Gust's question. Has this been incorporated now into the amendment, or will it be taken up separately?

PRESIDENT NISBET: It will be taken up separately.

MR. HODGES: I see. Thank you.

PRESIDENT NISBET: The question is on Mr. Cudlip's amendment.

Mr. Higgs.

MR. HIGGS: Mr. President, I move to amend that amendment as follows:

1. Amend the amendment, after "available to" by striking out "the press" and inserting "news media" to incorporate the word "news media" rather than "press". If that is his intention, he might agree to that.

PRESIDENT NISBET: The question is on Mr. Higgs' amendment to the amendment.

Mr. Romney.

MR. ROMNEY: Some of us back here are confused, Mr. President. We don't know whether this word "all" that the chairman proposed is in there or not, and we don't know what Mr. Higgs just proposed. So if you can clarify it, we would appreciate it.

PRESIDENT NISBET: Mr. Chase.

SECRETARY CHASE: May the secretary clarify this situation? Mr. Cudlip's amendment was pending, and still is. The chairman suggested an additional amendment to the language which will be voted on a little later. Mr. Cudlip's amendment is now pending to which Mr. Higgs offers the following amendmenent:

1. Amend the amendment by striking out the words "the press" and inserting "news media", so that the language will then read "which shall be available to news media and interested members of the public."

PRESIDENT NISBET: The question is on Mr. Higgs' amendment to the amendment.

Mr. Romney.

MR. ROMNEY: Mr. President, I move an amendment to Mr. Higgs' amendment, inserting the word "all" before "proceedings" so that we can wrap the whole thing up with one motion here.

PRESIDENT NISBET: Mr. Romney, would you, in the interests of clarity, please withdraw your amendment, because it is coming up a little later?

MR. ROMNEY: All right.

PRESIDENT NISBET: Thank you. The question is on Mr. Higg's amendment to the amendment. All in favor say aye. Opposed, no.

The amendment to the amendment is adopted.

The question now is on Mr. Cudlip's amendment as amended. All in favor say aye. Opposed, no.

The amendment as amended is adopted.

SECRETARY CHASE: Mr. Van Dusen offers the following amendment:

1. Amend rule 27 in the last sentence of the rule, after the words "action journal of" by inserting "all of", so the language will read "Each committee shall maintain an action journal of all of its proceedings . . . .".

PRESIDENT NISBET: The question is on Mr. Van Dusen's amendment. Is there any discussion? If not, all in favor say aye. Opposed, no.

The amendment is adopted.

Mr. Van Dusen.

MR. VAN DUSEN: Now, Mr. President, I think that it is wise that we continue our consideration of such sections of the rules as may invite the questions of individual members. I would suggest that if we were to take them individually, there are 74 rules. I would prefer to stay with those in which individual members are interested. We can deal at whatever length the members choose with those. When the questions are exhausted, we then move the adoption of the rules as a whole, with the exception of those which have been referred to the committee on permanent organization and rules.

PRESIDENT NISBET: Mrs. Cushman.

MRS. CUSHMAN: I would like, going back once again to rule 27, to offer the following amendment:

1. Amend rule 27, last line, after "action journal" by inserting "and a calendar,".

MR. VAN DUSEN: So your amendment, Mrs. Cushman, would make it read "Each committee shall maintain an action journal and a calendar, of all of its proceedings . . .".

MRS. CUSHMAN: Maybe the wording "an action journal of all of its proceedings and a calendar,", would be a better wording there.

MR. VAN DUSEN: The language, then as I understand it, would read: "Each committee shall maintain an action journal of all of its proceedings and a calendar, . . .".

PRESIDENT NISBET: The question is on Mrs. Cushman's amendment as revised. Is there any discussion? If not, all in favor of Mrs. Cushman's amendment say aye. Opposed, no.

The amendment is adopted.

Dr. Pollock.

MR. POLLOCK: Mr. President, I have just 2 questions on which I would like information. The first relates to rule 28. It seems to be a bit unusual. I presume the committee has some reason. Could we have the reason for this unusual arrangement?

Second, with reference to rule 35, it appears to me to be entirely adequate but since I put such great stress upon this convention controlling itself so that no chairman and no committee, as in other legislative bodies, can hold up something which the convention wants to discuss, I would just like to be reassured that rule 35 has been discussed with this in mind.

MR. VAN DUSEN: Yes. Professor Pollock, I will take up your questions in reverse order. With respect to rule 35 which provides that "After 1 session days' notice a majority of the delegates elected may by motion require a committee to report any proposal without recommendation.", it is the intention of the committee on permanent organization and rules that that rule make it possible for a majority of the delegates elected to require a committee to report any proposal on which a majority of delegates elected would like to have debate, discussion and consideration. No committee would be able to bottle up any matter which a majority of the delegates elected wanted reported to the floor.

With respect to rule 28, the provision is perhaps somewhat unusual. However, many of the committees are large. It is the purpose of this rule to provide for a chairman, a first vice chairman, and a second vice chairman, to give recognition as officers of the committees to members of both the majority and minority parties so that all will be fully represented not only as members of the committee but as officers of the committee.

PRESIDENT NISBET: Is there further discussion?

Mr. Hatch.

MR. HATCH: I have a question concerning rule 68. Rule 68 provides for altering the rules of the convention and also for suspending the rules of the convention. I would like to know whether or not this rule also provides for additional rules rather than the altering of a rule which we adopt.

MR. VAN DUSEN: The secretary points out, Mr. Hatch, that you have made perhaps a worthwhile point. Obviously, the rule contemplates additional rules as well as simple alterations of rules. The secretary suggests that perhaps the word "altered" in the first line should more appropriately be "amended". Of course, this doesn't completely solve the problem. The secretary now suggests that it read "The rules of the convention may be amended", and I would offer Mr. President, the following amendment:

1. Amend rule 68, line 1, after "Rule 68.", by striking out "Any rule of the convention may be altered" and inserting "The rules of the convention may be amended . . . .".

MR. HATCH: I will support it.

PRESIDENT NISBET: The question is on Mr. Van Dusen's amendment to rule 68.

MR. VAN DUSEN: So that the first line would read "The rules of the convention may be amended by a majority vote of the delegates elected."

PRESIDENT NISBET: Is there any discussion?

Mr. Allen.

MR. ALLEN: A question to Mr. Van Dusen. Does that solve Mr. Hatch's problem? Suppose the committee on rules wanted to bring in a new rule which would not be an amendment or an alteration. I do not think, as the proposed suggestion is made, it would cover that situation.

MR. VAN DUSEN: The secretary suggests, Mr. Allen, that an addition to the rules would be an amendment to the rules, and that therefore a completely new rule would be covered by the amendment as suggested.

PRESIDENT NISBET: The question is on Mr. Van Dusen's amendment. Is there any further discussion? If not, all in favor say aye. Opposed, no.

The amendment is adopted.

Mr. Hodges.

MR. HODGES: Mr. President, on rule 28 again, it would seem to me that if we are going to have a second vice chairman, it should serve some purpose, and in relation to the last paragraph of the rule in which it states that,

> "In case of a vacancy or the prolonged absence of the chairman and first vice chairman, the president of the convention shall appoint a chairman to act until the chairman or first vice chairman shall return."

it seems that with this type of language, the use or what possible purpose a second vice chairman would serve, seems to be in doubt. I would therefore move that it read that in case of the vacancy or prolonged absence of the chairman and first vice chairman, that the second vice chairman shall act as chairman. I would offer this amendment, Mr. President;

1. Amend rule 28, second paragraph, line 2, after "vice chairman,", by striking out the balance of the rule and inserting "the second vice chairman shall act as chairman.".

PRESIDENT NISBET: The question is on the amendment of Mr. Hodges. Mr. Hodges, would you please write that amendment out and bring it to Mr. Chase?

Mr. Martin.

MR. MARTIN: Mr. President, the thought of the committee on this, I believe, was that the president, having the original authority to appoint a chairman, a vice chairman — and a second vice chairman, for that matter — should, in the event that any of these persons were to be absent for a prolonged period, have the right to fill such vacancies, and that is certainly the prerogative of the president so that he can have those persons, or that person, as chairman to work with whom he thinks he can work with most effectively and who will do the most efficient job.

PRESIDENT NISBET: Mr. Hutchinson.

MR. HUTCHINSON: Mr. President, I will support Mr. Martin on this and I want to oppose this amendment. I think that it is very evident here that it would not probably be good policy, in the case of a permanent vacancy or a vacancy due to prolonged illness on the part of the chairman and the first vice chairman, that the second vice chairman, being a member of the minority, become the chairman of the committee.

Now, I will be frank to say that it doesn't disturb me in the least to have a situation where on a particular day, or for 2 or 3 days, the second vice chairman might actually be acting as the chairman of the committee, but in the case of a vacancy over a prolonged period of time, I think that the members of the minority here would recognize that the rules ought not to provide for an automatic filling of that vacancy by the second vice chairman.

The responsibility of the majority party in this convention is such that the situation, I think, must be clear to us all, and

so I hope that the convention will not adopt the amendment now being proposed.

PRESIDENT NISBET: The question is on the amendment offered by Mr. Hodges.

Mr. Romney.

MR. ROMNEY: Mr. Chase, will you please read the amendment?

SECRETARY CHASE: As the secretary understands the amendment, it is:

1. Amend rule 28, second paragraph, line 2, after "vice chairman,", by striking out the words "the president of the convention shall appoint a chairman to act until the chairman or first vice chairman shall return.", and insert "the second vice chairman shall act as chairman.", so the language will read "In case of a vacancy or the prolonged absence of the chairman and first vice chairman, the second vice chairman shall act as chairman."

PRESIDENT NISBET: Mr. Romney.

MR. ROMNEY: Mr. President, I would like to offer an amendment which would carry out the intent, I think, that Mr. Martin and Mr. Hutchinson indicated.

1. Amend rule 28, in the last sentence, so that the word "and" is stricken and the words "or second vice chairman" are inserted after "first vice chairman" and the word "first" is deleted in the last line, and the words "vice chairman" are made "vice chairmen", so that it reads

> In case of a vacancy or the prolonged absence of the chairman, first vice chairman, or second vice chairman, the president of the convention shall appoint a chairman to act until the chairman or vice chairmen shall return.

This would mean that in the case of a vacancy in any one of these 3 positions, the Chair would be authorized to fill that vacancy.

PRESIDENT NISBET: Mr. Hutchinson.

MR. HUTCHINSON: Mr. President, I regret that I must take issue with Mr. Romney on this matter. I think that if Mr. Romney's suggestion were adopted we would have the same situation, that the second vice chairman would, as a matter of right, succeed to the chairmanship and I think that would create the same situation as Mr. Hodges' original amendment. I would oppose Mr. Romney's amendment.

PRESIDENT NISBET: Mr. Marshall.

MR. MARSHALL: Mr. President, I find myself in agreement with all of the speakers on this. However, I rise to support Mr. Romney's amendment.

Now, in regard to Mr. Hutchinson's remarks, I think it is quite clear to all of us where the responsibility lies in the convention and I think it lies with each and every delegate. As far as I am concerned personally, rule 28—and I stated heretofore, and I don't retract that statement, that I have been pleased and happy with the show of bipartisanship, the spirit of fair play that's been demonstrated here in this convention by the delegates assembled — in my considered and humble opinion rule 28, as proposed, makes a mockery of the spirit of bipartisanship and it also makes a mockery of the established unofficial rule of fair play on a 2 to 1 ratio.

I do not contend that the minority party should have any of the chairmanships of the committees. I think that rightfully belongs with the majority. But in order to clear this up and move on and in the spirit of fair play and bipartisanship that we have tried and attempted seriously to establish, I second Mr. Romney's amendment, and I would urge the delegates to do likewise. Thank you.

PRESIDENT NISBET: Mr. King.

MR. KING: Mr. President, I would like to request that any vote on the pending amendment or amendments to the amendment be taken by roll call on the voting machine.

PRESIDENT NISBET: Without objection, it will be so ordered.

Mrs. Judd.

MRS. JUDD: Mr. President, I don't think I want to propose this as an amendment because I might get mixed up, but I would like to suggest that if Mr. Romney's amendment is voted down, the logic of Mr. Martin's defense of his point of view points rather to the elimination also of the first vice chairman as succeeding the chairman in the case of his permanent absence, and it might very well read that in the case of the prolonged absence of the chairman that the president shall appoint a new chairman.

PRESIDENT NISBET: Mr. Elliott.

MR. A. G. ELLIOTT: Mr. President, a request for information. As I read rule 28 originally, it indicated that if the chairman or first vice chairman had a prolonged absence, the president would have the authority to appoint a chairman. I would suggest that we probably wouldn't have had this discussion at all if we had added the word "second vice chairman" originally, because I feel that it must have been the intent of the committee that the president should, in the area of the chairman and the vice chairman, have good communications and that he would want those officers to be officers that he selected.

Now, I would like to get it clear in my mind. Mr. Romney's amendment, as I see it, in no way changes the intent of rule 28 but it merely adds to it an inclusiveness, including the second vice chairman, but that if there were an absence, a prolonged absence, of the chairman, that in that event the president of the convention would have the right to appoint someone to serve as chairman. Am I correct?

PRESIDENT NISBET: Mr. Secretary, will you interpret the amendment?

SECRETARY CHASE: Mr. President, I shall read the amendment as I have it, in my understanding, as offered by Mr. Romney. Mr. Romney's amendment is:

1. Amend rule 28 by striking out the last sentence and inserting "In case of a vacancy or the prolonged absence of the chairman, the first vice chairman, or the second vice chairman, the president of the convention shall appoint a chairman to act until the chairman or first vice chairman shall return.".

MR. ROMNEY: Mr. Secretary, I struck out the word "first vice chairman" on the last line and changed the word "vice chairman" to "vice chairmen" so that it will apply to both vice chairmen, and Mr. Elliott's statement of the intent of this amendment is exactly correct.

SECRETARY CHASE: May the secretary read the amendment again for the purpose of clarification and to make certain that he has it correct? The amendment would read:

1. Amend rule 28 by striking out the last sentence and inserting "In case of a vacancy or the prolonged absence of the chairman, the first vice chairman, or the second vice chairman, the president of the convention shall appoint a chairman to act until the chairman or vice chairmen shall return.".

PRESIDENT NISBET: Mr. Hutchinson.

MR. HUTCHINSON: It must be clear, I hope, to everyone that the effect of Mr. Romney's amendment will be to limit the power of the president of the convention to fill vacancies on the committee. Only in the case that the 3 top people were gone would the president of the convention be permitted to designate an acting chairman of the committee.

Now, the rule as it was reported out of the committee on permanent organization and rules is that in case of a vacancy of both the chairman and first vice chairman, then the president may designate an acting chairman. Can't you see that the effect of Mr. Romney's amendment would be to make it possible for a member of the minority to act as chairman of a committee over a prolonged period of time?

As a matter of fact, a matter of policy, the relationship between the president of this convention and the presiding officers of his committees should be maintained.

PRESIDENT NISBET: Mr. Romney.

MR. ROMNEY: Mr. President, Mr. Hutchinson, may I indicate that it is not the intent of my amendment to do what you say. Now, if it does what you say, I would be very happy to have language inserted that would clarify it on that point. I don't personally think it does but if that is the correct interpretation of it, I think it should be corrected to make it clear that the president has the right to fill a vacancy in the chairmanship or to fill a vacancy in either of the vice chairmanships without regard to whether or not the other 2 offices are vacant. I believe that the language means that but if it doesn't, I would welcome language that would clarify the point.

PRESIDENT NISBET: Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, I would like to suggest that perhaps the insertion of one word would solve the problems existing here between Mr. Romney and Mr. Hutchinson. We could amend Mr. Romney's amendment as follows:

1. Amend the amendment by inserting the word "or" before the word "first vice chairman". It would then read "In case of a vacancy or the prolonged absence of the chairman, or the first vice chairman, or the second vice chairman, the president of the convention shall appoint a chairman to act until the chairman or vice chairmen shall return."

PRESIDENT NISBET: Mr. Romney.

MR. ROMNEY: Having high regard for Mr. Van Dusen's legal authority, I accept the amendment.

PRESIDENT NISBET: Mr. Martin.

MR. MARTIN: I think if you go just a little farther in following Mr. Van Dusen's suggestion and make the amendment read this way, that you will have the problem licked:

1. Amend rule 28 by striking out the last sentence and inserting "In case of a vacancy or the prolonged absence of the chairman, or the first vice chairman, or the second vice chairman, the president of the convention shall appoint a chairman or first vice chairman or second vice chairman, as the case may be, to act until the chairman or first vice chairman or second vice chairman shall return.".

PRESIDENT NISBET: It sounds a little complicated but it does the job.

Mr. Romney.

MR. ROMNEY: Mr. President, I accept that amendment. I want it to be clear.

PRESIDENT NISBET: Mr. Hutchinson.

MR. HUTCHINSON: Mr. President, I don't want to belabor this point too far and I presume I should simply say all right, we will accept that amendment. My only concern is that by Mr. Martin's latest proposal we might end up with having the second vice chairman, a member of the minority, presiding over the committee during a prolonged period, which I think is poor policy. If Mr. Martin, who has the text of his amendment before him and I do not, can assure me that that language would not bring that result about, I would be very happy to support him.

PRESIDENT NISBET: Mrs. Cushman.

MRS. CUSHMAN: Perhaps the language — I don't know that I should be suggesting this with all these brilliant legal minds — but,

> In case of a vacancy or the prolonged absence of the chairman, or first vice chairman, or second vice chairman, the president of the convention shall fill the vacancy by appointment until the chairman or the others return."

Maybe this might make it a little clearer.

PRESIDENT NISBET: Mr. Martin, will you bring your amendment to the secretary, please?

Mr. Hanna.

MR. W. F. HANNA: Mr. President, I think the worry here may be over the word "prolonged". I would like to offer this amendment:

1. Amend rule 28, last sentence, by striking out "prolonged", and after "absence" by inserting "for 3 consecutive committee sessions or more", so that if the chairman, vice chairman, or second vice chairman should miss 3 consecutive committee sessions, he would be replaced. This spells it out so we have no question about the word "prolonged".

PRESIDENT NISBET: Mr. Hanna, would you write out your amendment and give it to Mr. Chase?

Mr. Elliott.

MR. A. G. ELLIOTT: I would just like to make this comment, that my interest in this is to retain in the presidency the right of working with the officers of the committee that he should desire. I think it is just as wise for the president to have the privilege of appointing a new chairman if the first vice chairman were there as it is if the first vice chairman were also absent.

PRESIDENT NISBET: Mr. Gust.

MR. GUST: Mr. President, in an effort to unscramble this, I wonder if we might not attempt to cut the gordian knot here.

I would like to make an amendment to all these other amendments. Since, if we adopt the rule as it is presently written, the vacancy will be filled by the president of the convention in consultation with his 3 vice presidents, I move the adoption of this rule as it is presently in front of us, and let's see if we have to go any further for these amendments. If somebody will second my motion.

PRESIDENT NISBET: The question is on Mr. Martin's amendment.

Mr. Higgs.

MR. HIGGS: Mr. President, aren't we trying to do the work of the committee on rules? I would move that we table further consideration of this and send it back to the committee on rules to redraft. There seems to be a lot of agreement on what the intent is, but in framing the precise language I think it should go back to the committee.

MR. VAN DUSEN: Mr. President, I would strongly resist Mr. Higgs' motion. I think that this is a problem which we can resolve here and which Mr. Martin's language does resolve. I would call your attention to the first 2 lines of the rule which are of great significance, that the first named member of any committee shall be the chairman, the second named member shall be first vice chairman, and so forth. Committee appointments are imminent, and I think it is desirable that this rule be adopted.

PRESIDENT NISBET: Miss Hart.

MISS HART: I think we all appreciate the generosity of the majority in thinking of this particular move. However, it is creating a problem that is far greater than its importance.

It would seem to me that in the first place, the minority party needs every voice it has on a committee, that to have any of our people presiding would take away a voice, and I would like very much to suggest to whomever knows the parliamentary procedure on this that we remove ourselves from this kind of position and go on with the business of the convention which is important business.

PRESIDENT NISBET: Mr. Marshall.

MR. MARSHALL: I agree with Delegate Hutchinson in the remarks that he made. In order not to belabor this issue any longer, I would like to offer an amendment at this time:

1. Amend rule 28 by striking out "second vice chairman" and all language relative thereto wherever it appears.

I am overwelmed with the generosity but I, as an individual, personally would not care to serve in this capacity in such an innocuous position. Therefore, I would like to offer an amendment that we strike the second vice chairman.

PRESIDENT NISBET: The question is on Mr. Marshall's amendment that in this rule any reference to the words "second vice chairman" be stricken from the rule. The question is on the amendment.

Mr. Leppien.

MR. LEPPIEN: I move as a substitute motion that all of the original rule be adopted as it is before us in the paper handed us this date.

PRESIDENT NISBET: Would you please bear with us just a minute? You have caused us some confusion.

Mr. Van Dusen.

MR. VAN DUSEN: A point of inquiry, Mr. President. It is my understanding of Mr. Leppien's motion that we simply vote down all amendments and then adopt the rule as proposed by the committee on permanent organization and rules. Is that correct?

MR. LEPPIEN: My motion is a substitute motion which takes precedence over all other motions and amendments, and if my motion is adopted that this convention adopt the original rule as proposed by the committee on permanent organization and rules, that wipes out all the rest of it.

PRESIDENT NISBET: Mr. Gust.

MR. GUST: I understood that to be my substitute motion 10 minutes ago, but if his is in order and mine wasn't, I would like to second his.

PRESIDENT NISBET: Mr. Hodges.

MR. HODGES: Mr. President, is that substitute motion in order?

PRESIDENT NISBET: Yes.

MR. HODGES: If it is, I would like to speak in opposition to it. It seems to me that we all have a lot of nice titles now and we have got a lot of nice committee assignments coming up, and I think that superfluous titles — and this is exactly what this second vice chairman is — is unnecessary, and therefore I would speak in opposition to the substitute motion in favor of Mr. Marshall's or Miss Hart's, that we abolish any reference to a second vice chairman.

PRESIDENT NISBET: The question is on Mr. Leppien's substitute motion. Will you please read it?

SECRETARY CHASE: Mr. Leppien's substitute motion is that we adopt the original recommendation from the committee on permanent organization and rules, which will eliminate all reference to any amendments that have been offered from the floor.

PRESIDENT NISBET: The question is on the substitute motion. Is there any discussion?

Mr. Wanger.

MR. WANGER: Mr. President, I would be very much tempted to vote in favor of this merely for the reason of eliminating some of the confusion and getting on to something else. However, some people who have done some very thorough study on this and who are very interested in this, have made suggestions which, from their words, we all know they feel are very important.

Now, I am not going to bring them up at this time, but I have a couple of questions for additions to this rule that haven't even been mentioned yet. Here it is after 4:00 o'clock. I would therefore move to recommit this rule to the committee along with rule 34. since the commitee is going to have to meet again, where the committee can carefully consider all of the wording that has been suggested by all of these people and come up with something which will be the considered opinion of the committee on this problem and which we can then pass without delay.

PRESIDENT NISBET: The question is on —

Mr. Van Dusen.

MR. VAN DUSEN: I should like to speak vigorously in opposition to Mr. Wanger's motion. The recommendation of the committee on permanent organization and rules with respect to this rule is its considered judgment. The rule is one of the most important which we will adopt today, and it has among the most important significance of any of the rules with respect to the appointments which are shortly to be announced. If you recommit this rule in accordance with the suggestion of Mr. Wanger, you leave the convention without a rule with respect to the designation of committee chairmen.

I think, therefore, it is of great importance that this rule be adopted. Mr. Wanger participated in the sessions of the committee on permanent organization and rules. There was ample opportunity to present amendments there. There will be ample opportunity in the future to present amendments to the rules. I would vigorously oppose any effort to recommit this rule.

PRESIDENT NISBET: Mr. Brown.

MR. G. E. BROWN: Mr. President, it seems to me we have before us now a substitute motion to adopt rule 28 as it was originally stated. Mr. Van Dusen's opposition to the substitute motion goes to, I believe, the first paragraph of that rule.

PRESIDENT NISBET: Mr. Van Dusen's opposition is to the motion of Mr. Wanger to recommit.

MR. G. E. BROWN: But I mean that in substance it goes to the first paragraph due to the fact that that paragraph establishes the procedure for the appointment of a chairman and vice chairman. It does not necessarily incorporate the last paragraph relative to the filling of vacancies.

I therefore would move an amendment to the substitute motion, that amendment being that the first paragraph of the rule be adopted and that the second paragraph be recommitted to committee.

PRESIDENT NISBET: The question is on the motion of Mr. Wanger to recommit the whole rule to the committee. Is there any other discussion?

Mr. Leppien.

MR. LEPPIEN: A point of order. There can be no amendments to a substitute motion.

PRESIDENT NISBET: The question is on the motion to recommit. All in favor say aye. Opposed, no.

The motion does not prevail.

The question now is on Mr. Leppien's substitute motion. Mr. Chase, will you read it, please?

SECRETARY CHASE: Mr. Leppien's substitute motion is to adopt rule 28 as follows:

> Rule 28. The first named member of any committee shall be the chairman, the second named member shall be first vice chairman, and the third named member shall be second vice chairman. The presiding officer of the committee may place under oath or affirmation any person who appears to testify on any matter pending before the committee.
>
> In case of a vacancy or the prolonged absence of the chairman and first vice chairman, the president of the convention shall appoint a chairman to act until the chairman or first vice chairman shall return.

This was as reported by the committee on permanent organization and rules and is Mr. Leppien's substitute.

PRESIDENT NISBET: Mr. Kuhn.

MR. KUHN: A parliamentary inquiry, Mr. President. If we are going to go according to any type of rules, it doesn't make sense to me how you can have a substitution of the original motion and then have the original motion intact. I think this motion is completely out of order because it is a substitution of the original motion and is identical word for word and therefore it is not a substitution and it is out of order.

PRESIDENT NISBET: The substitute motion is in order. All those in favor say aye. Opposed, no.

The substitute motion prevailes and rule 28 is agreed to.

Mr. Van Dusen.

MR. VAN DUSEN: Are there other questions with respect to the rules?

PRESIDENT NISBET: Mr. Cudlip.

MR. CUDLIP: I rise to a point of information. I would like to ask the chairman this. I am alluding to Delegate Hart's remarks. Is the chairman precluded from a vote? I think Delegate Hart said something about this chairmanship business and presiding and so forth would mean the loss of a vote. I don't find as a rule that the chairman is without a vote, and I didn't want to let the remark go unchallenged in our journal if I am right.

MR. VAN DUSEN: I think, Mr. Cudlip, that Miss Hart's remarks were directed simply to the typical conduct of a chairman who frequently does not participate in debate. There is nothing in these rules that would preclude the chairman or any of the vice chairmen from voting as members of the committee.

PRESIDENT NISBET: Mr. Hannah.

Mr. J. A. HANNAH: Mr. President, in order to expedite action, I would like to return to a suggestion made more than an hour ago, and that is that the chairman permit the delegates to indicate the rules to which they have objection or question, and that we approve all the rest of them and then return to those about which we want to debate, and I move, sir, that procedure.

PRESIDENT NISBET: You have heard the motion of Dr. Hannah.

Mr. Downs.

MR. DOWNS: I would second the motion, Mr. President.

PRESIDENT NISBET: The question is on the motion of Dr. Hannah that all rules about which there is no question be adopted.

Mr. Martin.

MR. MARTIN: It seems to me that if we are to adopt this procedure, there will be numerous objections simply based on "I object to such and such a rule", and the first thing we know we will have about half of these rules back in the

committee on rules which has already worked over them long and arduously.

It seems to me the procedure Mr. Van Dusen is following is a good one. I think we have answered most of the questions likely to arise, and if we will just go forward, we will end up with the bulk of these rules adopted, and the one or 2 that have been referred back to committee for consideration tomorrow morning.

PRESIDENT NISBET: The question is on Dr. Hannah's motion.

MR. VAN DUSEN: May I speak to the motion, please?

PRESIDENT NISBET: Yes.

MR. VAN DUSEN: Mr. President, I see no particular inconsistency between the motion of Dr. Hannah and the position espoused by both Mr. Martin and myself. It would seem to me that the sensible procedure here would be to exhaust questions with respect to particular rules and then to move the adoption of all the rules with those exceptions.

Now, to this point we have acted to rerefer to the committee on permanent organization and rules, rules 12, 34, 63 and 64. There has been some discussion of other rules but no motion which would have in any way affected them, so far as I know, except for amendment.

At this point, if Dr. Hannah would temporarily withdraw his motion, I would like to move the adoption of the rules as presented by the committee on permanent organization and rules with the exception of rules 12, 34, 63 and 64 which have been rereferred.

PRESIDENT NISBET: Dr. Hannah.

MR. J. A. HANNAH: I will withdraw my motion for that purpose only.

PRESIDENT NISBET: The question is on the motion of Mr. Van Dusen that the rules be adopted with the exception of rules 12, 34, 63 and 64. It there any discussion?

Mr. Mahinske.

MR. MAHINSKE: With reference to rule 67, I would like to propose an amendment to this rule:

1. Amend rule 67, at the end of the first sentence, after "starts.", by inserting the additional words "He may voluntarily state his reasons for abstaining.". I so move.

MR. VAN DUSEN: Where would you put that, Mr. Mahinske?

MR. MAHINSKE: At the end of the first sentence immediately after the word "starts" so that the first sentence would read:

> No delegate shall be entitled to abstain from voting in any roll call unless he shall have stated his intention to abstain before the voting starts. He may voluntarily state his reasons for abstaining.

The purpose of this alteration would be for a delegate obviously to voluntarily state his reasons for abstaining because the majority of the rule would not give him this privilege unless he were forced to state his reasons for abstaining by 5 other delegates, or he could get 5 friendly delegates to force him to give his reasons.

PRESIDENT NISBET: The question is on Mr. Mahinske's amendment to rule 67. Is there any discussion?

Mr. Nord.

MR. NORD: I am not opposed to the substance of the amendment but I am opposed to the grammar of the amendment and I would ask Mr. Mahinske to restate it, if possible, because I believe it is certainly not clear and certainly not in grammatical form at the moment.

MR. VAN DUSEN: I would suggest, Mr. Mahinske, that if you made that read "his reasons for such abstention", it would satisfy your substantive point and, I hope, Dr. Nord's grammatical point.

PRESIDENT NISBET: Is that satisfactory, Mr. Mahinske? Those in favor of the amendment, as revised, say aye. Opposed, no.

The amendment is adopted.

The question is now on Mr. Van Dusen's motion. All in favor of the motion which is to adopt the proposed rules, as amended, except rules 12, 34, 63 and 64, say aye. Opposed, no.

The motion prevails.

For rules as adopted by the convention (except rules 12, 27, 34, 63, 64, 67 and 68), see above, pages 130-136.

For rules 27, 67 and 68 as amended and adopted by the convention, see above, pages 135-136.

MR. VAN DUSEN: This concludes the report of the committee on permanent organization and rules for today, Mr. President.

The committee will meet tomorrow morning at 11:00 o'clock in room B.

[By unanimous consent the convention returned to the order of **motions and resolutions.**]

SECRETARY CHASE: Mr. Austin offers **Resolution 6.**

PRESIDENT NISBET: Mr. Austin.

MR. AUSTIN: Mr. President, this resolution is offered on behalf of the committee on permanent organization and rules, and I move its adoption.

> Resolved, That we, the members of the committee on permanent organization and rules, commend the chairman for the competent and impartial manner in which he conducted the business of this committee and the manner in which he has presented its findings.

PRESIDENT NISBET: The question is on the adoption of the resolution. All in favor say aye. Opposed, no.

The resolution is adopted.

Thank you very much, Mr. Van Dusen, and your committee.

The sergeant at arms will now pass among you the report of the committees and the appointments which will be read by Mr. Chase. I might say, as he is doing this, that we have worked long and hard on making these appointments. It was not easy. We took interests, personal desires, political philosophy, areas of location, and points of view into consideration. We were able to give most people what they had requested as far as committee appointments are concerned.

As far as committee chairmen are concerned, we have selected people who have demonstrated their ability to lead discussions, to bring out different points of view, to resolve differences, and to come up with a report that will reflect the action of the committee. They will now be distributed.

Mr. DeVries.

MR. DeVRIES: There will be a meeting of the committee on administration at 9:00 o'clock tomorrow morning in room G. Thank you.

SECRETARY CHASE: And while the proposed committee appointments are being passed out, may the secretary request those who have not yet turned in the letter and the form W-2 for the pay roll vouchers, please do so. At the time we started the session this afternoon I think there were 22 missing, and 3 have come in since then. If there are more that are available, please let us have them as soon as you can.

PRESIDENT NISBET: Mr. Madar.

MR. MADAR: I was just wondering, now that we have decided to pay the rent, if they couldn't turn on the air conditioning.

PRESIDENT NISBET: Will the sergeant at arms see if the air conditioning can be turned on?

Mr. DeVries.

MR. DeVRIES: I regret to inform the delegates that there are no facilities for air conditioning in this auditorium, to the best of my knowledge.

PRESIDENT NISBET: Do you all have a copy of the report? Mr. Chase will read.

SECRETARY CHASE: **The president appoints** the following delegates to the several committees of the convention:

Committee on declaration of rights, suffrage and elections

James Pollock, chairman
Harold Stevens, first vice chairman
Harold Norris, second vice chairman
Berry Beaman
Paul Gadola
Lillian Hatcher
Robert Hodges
Lewis Hubbs
William Leppien
John Shaffer

Peter Buback
Ruth Butler
Malcom G. Dade
Edward Shanahan
Ink White

Committee on legislative powers

T. J. Hoxie, chairman
Frank Millard, first vice chairman
Martin Baginski, second vice chairman
Tom Downs
Don Habermehl
Lewis Hubbs
Ella Koeze
Richard Kuhn
Edmond Lesinski
Raymond Murphy
Clifford Perras
Stanley Powell
Eugene Wanger
Claude Wood
Charles Youngblood

Committee on legislative organization

John A. Hannah, chairman
Herman Dehnke, first vice chairman
Melvin Nord, second vice chairman
Robert Blandford
Lee Boothby
Garry Brown
Theodore Brown
Donald Doty
Arthur Elliott
William Greene
William Hanna
Robert Hodges
Shuford Kirk
Blaque Knirk
Ralph Liberato
Kent Lundgren
William Marshall
Ray Plank
James Rood
Joseph Sablich
Weldon O. Yeager

Committee on executive branch

John Martin, chairman
Dan Karn, first vice chairman
William Marshall, second vice chairman
Alvin Bentley
Clyne Durst
Daisy Elliott
William Greene
Rockwell Gust
Adelaide Hart
H. V. Hatch
John Kelsey
Raymond King
Frank Millard
Frank Perlich
James Pollock
Nick Rajkovich
Anthony Stamm
James Shackleton
John Shaffer
James Sterrett
Anthony Wilkowski

Committee on judicial branch

Robert Danhof, chairman
Karl Leibrand, first vice chairman
William Ford, second vice chairman
Sidney Barthwell
Harold Bledsoe
William Cudlip
Ann Donnelly
Stanley Everett
Wynne Garvin
Milton Higgs
Arthur Iverson
Ray Krolikowski
Don Lawrence
Thomas McAllister
Marjorie McGowan
Carl Mosier
Samuel Ostrow
Kenneth Prettie
Earl Pugsley
Robert Tubbs
Henry Woolfenden

Committee on finance and taxation

D. Hale Brake, chairman
Paul Goebel, first vice chairman
Richard Austin, second vice chairman
Don Binkowski
Charles Davis
Dean Doty
Ervin Haskell
Roy Howes
Samuel Ostrow
William Pellow
Allen Rush
Don F. Seyferth
Henrik Stafseth
Frank Staiger
Stephen Stopczynski
James Thomson
Herbert Turner
David F. Upton
Richard C. Van Dusen
Lee Walker
Coleman Young

Committee on local government

Arthur Elliott, chairman
Charles Figy, first vice chairman
Peter Buback, second vice chairman
William Gover
Lillian Hatcher
Dorothy Judd
Arthur Madar
John McCauley
Glenn Allen
Martin Baginski
Don Batchelor
D. Hale Brake
Katherine Cushman
Clarence B. Dell
James Farnsworth
Francis Finch
Charles Follo
William Ford
Edward McLogan
Elmer Radka
J. Burton Richards
Leslie Richards
Thomas Sharpe
Julius C. Sieder
William Suzore
James Thomson
Martin Tweedie

Committee on miscellaneous provisions and schedule

Claud Erickson, chairman
William Leppien, first vice chairman
Harold Bledsoe, second vice chairman
Don Binkowski
Walter DeVries
Clyne Durst
Paul Goebel
Don Habermehl
Morris Hood
Edward Hutchinson
Don Lawrence
Paul Mahinske
Don Seyferth
Joseph Snyder
Henry Woolfenden

Committee on education

Alvin Bentley, chairman
Charles Anspach, first vice chairman
Adelaide Hart, second vice chairman
Vera Andrus
Frank Balcer
Sidney Barthwell
Roscoe Bonisteel
Theodore Brown
Anne Conklin
Edward L. Douglas
Jack Faxon
Charles Follo
John Hannah
Bert Heideman
Dan Karn
G. Keyes Page
Leslie Richards
George Romney
Allen Rush
Carl Spitler
Robert Tubbs

Committee on style and drafting

William Cudlip, chairman
Edward Hutchinson, first vice chairman
Joseph Sablich, second vice chairman
Richard Austin
Robert Blandford
Katherine Cushman
Herman Dehnke
Paul Gadola
William Hanna
Milton Higgs
Ray Krolikowski
Harold Norris
Stanley Powell
Frank Staiger
Harold Stevens

Committee on rules and resolutions

Richard Van Dusen, chairman
Kenneth Prettie, first vice chairman
Marjorie McGowan, second vice chairman
Glenn Allen
Ruth Butler
Daisy Elliott
Francis Finch
Arthur Iverson
Kent Lundgren
John McCauley
Melvin Nord
William Pellow
Thomas Sharpe
Anthony Stamm
Eugene Wanger

Committee on public information

Ink White, chairman
George Romney, first vice chairman
Edward Douglas, second vice chairman
Charles Anspach
Frank Balcer
Jack Faxon
Wynne Garvin
William Gover
Dorothy Judd
John Kelsey
Karl Leibrand
Edmond Lesinski
Arthur Madar
G. Keyes Page
Ray Plank
Elmer Radka
Henrik Stafseth
Herbert Turner
Martin Tweedie
David Upton
Claude Wood

PRESIDENT NISBET: The question is on the approval of the committee appointments.

Mr. Beaman.

MR. BEAMAN: I move the approval of the committee appointments.

PRESIDENT NISBET: The question is on the approval of the committee appointments.

Mr. Kuhn.

MR. KUHN: I am very, very disappointed in this report. Naturally it was ready yesterday, but as the president said, they didn't have time to have it printed. When I got here to Lansing last night, I was informed by my democratic friends just what committee they were on. And so at the conclusion of last night I find that in my mind there are 3 groups here and not just 2, republicans and democrats. There are those of the democratic party who definitely know what is going on, and there are those in the republican party who know what is going on, and there are the rest of us in the republican party who do not know anything about what's going on. We were asked to make 4 selections, which I did. I find that none of the 4 selections were granted, and yet some of my colleagues from my county who are in the know are put on 2 of the committees to which I asked to be assigned. Now, to me this is not fair, but as we were not in on the know and were not consulted, I am a member of this third group who does not know what is going on and a victim of this railroading. Thank you.

PRESIDENT NISBET: Thank you, Mr. Kuhn. The question is on the approval of the committee appointments.

Mrs. Butler.

MRS. BUTLER: I would like to ask why no women are put on either the legislative committee or the committee on administration. There are 11 good smart women, and I think we should be represented on these committees.

PRESIDENT NISBET: Thank you very much.

Mr. Balcer.

MR. BALCER: Mr. President, is there a possibility of knowing what some of the professions are to which members of those committees belong? I think they are off balance, the way it appears to me, as much as I know about it.

PRESIDENT NISBET: Mr. Balcer, I would be glad to visit with you in my office as soon as the session is over.

The question is on the approval of the committee appointments. All in favor say aye. Opposed, no.

The committee appointments are approved.

I would like to have a meeting of all the committee chairmen in room E tomorrow morning at 11:00 o'clock.

Are there any other announcements, Mr. Chase?

SECRETARY CHASE: I have none.

PRESIDENT NISBET: Is there anything further?

Mr. Van Dusen.

MR. VAN DUSEN: In view of your announcement, might I ask how long you think that meeting might last? The reason I asked is that I had already announced a meeting of the committee on permanent organization and rules at that time. I will defer to you, but I would like to set a new time for the committee on permanent organization and rules.

PRESIDENT NISBET: Probably half an hour.

MR. VAN DUSEN: In that event, the committee on permanent organization and rules will meet at 11:45 in room B.

PRESIDENT NISBET: Is there any further business?

Mr. Cudlip.

MR. CUDLIP: I would like to state that after the close of the convention tomorrow afternoon, if there is a session, there will be a meeting of the committee on style and drafting in the room assigned to it.

PRESIDENT NISBET: Any further announcements?

Mr. Sharpe.

MR. SHARPE: Mr. President, I move that we adjourn.

PRESIDENT NISBET: The question is on adjournment. All in favor say aye. Opposed, no.

The motion prevails and the convention is adjourned until 2:00 o'clock tomorrow afternoon.

[Whereupon, at 4:40 o'clock p.m., the convention adjourned until 2:00 o'clock p.m. Wednesday, October 11, 1961.]

FIFTH DAY

Wednesday, October 11, 1961, 2:00 o'clock p.m.

PROCEEDINGS

PRESIDENT NISBET: The convention will please **come to order.** The **invocation** will be given by the Reverend Joseph E. Sutherland, Minister of the South Lansing Church of Christ of Lansing.

REVEREND SUTHERLAND: Grant, O Father, the fullness of Thy grace and guidance to this assembly this day. We pray that all who share and participate deny the prideful expressions of self and think and act only in the best interests of all concerned, even to generations still unborn. May each one that shares this day, O God, have a high and honest sense of purpose and destiny in this historic session. To this purpose we dedicate ourselves to Thy purpose and Thy will, in the name of Jesus Christ our Lord. Amen.

PRESIDENT NISBET: The **roll call** will be taken by the secretary. Those present please vote aye.

SECRETARY CHASE: Mr. President, 142 delegates are present, a quorum.

Absent with leave: None.

Absent without leave: Mr. Wilkowski.

PRESIDENT NISBET: If there is no objection, Mr. Wilkowski will be excused.

A few days ago, the question of having Dr. James Pollock address us on the question of the basicness of our constitution was presented to this convention. Dr. Pollock has agreed to do this. With no objection, I will ask Dr. Pollock if he will privilege us with his presentation at this time.

Dr. James Pollock.

MR. POLLOCK: Mr. President and fellow delegates, at the suggestion of the president and a number of other delegates, it was thought fitting and proper that before we began to divide ourselves into special committees and began to think about special and specific and individual problems, we should, at least for some time, focus our attention on the overall job which we are about to perform and to see the picture in the large rather than in miniature and that we should give some thought to what a constitution should be and what goals and objectives we have before we begin to work on the details.

The president very kindly suggested a very charming committee for me to work with, consisting of 3 of the most charming ladies in the convention: Miss Andrus, Miss Hart, and Mrs. Judd, and they probably will not approve of everything I am about to say, but at least they are a very agreeable committee — and, Mr. President, I hope I can always have as pleasant committee assignments.

Now, to begin with there should be, I think, no particular mystery about a constitution, particularly a state constitution. Americans have had the greatest experience with constitutions of any people in the world. All you have to do is look at the compiled volume of state constitutions of the 50 American states and you will realize that a tremendous amount of constitutional experience is involved in that volume.

State constitutions, of course, have to be considered as something rather special. They are hardly in the same category as the federal constitution and yet, we frequently make the comparison with the federal constitution because it has always been looked upon as something of a model. Obviously the

federal constitution is supreme. State constitutions must conform to it; and unlike the federal constitution which has developed around it a certain aura of worship, a state constitution is much more an instrument of government to be worked and not so much an idol to be worshipped.

I should say at the outset that my approach to state constitutional revision is both positive and dynamic. I want to strengthen the underpinnings of our democracy at a time of very great crisis and I want us also to support, at a time of great crisis like this, at the essential state and local level, our great democracy of the country as a whole. The underpinnings are just as important as the superstructure. I also feel that democracy should always be on the march in order to keep up with rival systems.

Next, I think it is well for us to keep in mind what has happened to our state since the last constitutional revision of 1908. Also we should keep in mind what has happened to our federal system of government and its division of powers between the states and federal government. If we given attention to these 2 important points, I think we will see that effective revision of our basic document is needed. If I simply remind you of what I am sure you are already aware, of the great changes which have occurred in this state, you too, I am sure, will put this in proper perspective.

Let me refer first of all to the tremendous population changes which have now made our state 73.4 per cent urban as compared to 26.6 per cent rural. Quite as important as this overall figure is the fact that the socalled urban fringe areas around our central cities have had an increase of 125.8 per cent in the period from 1950 to 1960 and this constitutes, therefore, one of our greatest problems.

We now have 10 standard metropolitan statistical areas in the state of Michigan. You are also aware of the tremendous industrialization which has occurred in Michigan with all of its consequent social and economic problems. You don't make the transition from an agricultural economy to an industrial one without creating both social and economic problems.

You are aware of how our communications network has improved and multiplied. What you may not be aware of is the heavy impact on our state of the developments in Washington. Do you realize, for instance, that there are now more federal employees in the state of Michigan than there are state employees? And that federal grant-in-aid expenditures have more than doubled in the past 10 years and they have now reached the $7 billion annual level, which is about 1/6 of the national government's nondefense expenditures? These are expenditures that we handle and deal with, for which we have to provide the machinery.

Indubitably, the load now carried by state and local governments will continue to grow. It hasn't come, certainly, to a stop. The administration of all these programs, both national and state, depends to a very large extent on the structure and the efficiency of our state and local governments. National administration would break down if it were not for the underpinning and support given by state and local governments. In a word, as Woodrow Wilson one time put it, "Like a lusty child government with us has grown great in stature but it has also become awkward in movement. It has grown strong but it has not acquired deportment."

Our state government, like all state governments, has now become a service state. Every type of specialist and expert from actuary to zoologist is now required to perform the multifarious services which our citizens are now demanding. The difficulties in the way of effective regulation of a great many activities have consequently multiplied.

Fortunately, in the last 50 years our knowledge of government management has greatly increased and we no longer need to flounder around in ignorance about how to efficiently manage thousands of employees and millions of dollars. This is of the greatest importance because, as Stanley Baldwin one time put it, "Administration is now the essence of government and its quality a prime condition of civic comfort."

Finally, may I merely refer to the fact that we are living in a period of great crisis for democratic states. Less than 1/9 of the world's population enjoy freedom. The perpetuation and improvement of our own freedom must be undertaken now at a time when freedom everywhere is under attack.

May I finally, in these brief introductory remarks, quote from the report of the so called Kestenbaum commission on intergovernmental relations which was set up some years ago representing all levels of government. After thoroughly studying the role of the states in our federal system, they said,

> Early in its study the commission was confronted with the fact that many state constitutions restrict the scope, effectiveness, and adaptability of state and local action. These superimposed constitutional limitations make it difficult for many states to perform what their citizens require and consequently have frequently been the underlying cause of state and municipal pleas for federal assistance . . . . It is significant that the constitution prepared by the founding fathers, with its broad grant of authority and avoidance of legislative detail, has withstood the test of time far better than the constitutions later adopted by the states. A due regard for the need for stability in government requires adherence to basic constitutional principles until strong and persistent public policy requires a change. A dynamic society requires a constant review of legislative detail to meet changing conditions and circumstances . . . . The commission finds a very real and pressing need for the states to improve their constitutions.

Let me come now to a very brief discussion of the proper attributes of a good state constitution as these attributes are pretty well understood by students of the problem. You have been supplied with a considerable amount of very good reading on this point. I am sure many of you are already familiar with this point. Whether you are or whether you are not, it won't hurt to rehearse them and to read further along this line, so that all I need to do now is to remind you of the principal points which I think we should always keep in mind as we proceed to draft a new constitution.

I think it was John Dickinson who said in very eloquent words, "The function of a written constitution is to provide a principle and a framework of order within which change can proceed without endangering stability." This is the difference between a country which has an orderly system of progress and one which always has to have a revolution.

Obviously, therefore, the first requirement of a constitution is to provide a mechanism of orderly government through which not merely the existing laws may be executed but new laws can from time to time be adopted. This essential frame of government is one of the principal reasons for a state constitution. Such a document should take its yardstick, I think, from the spirit of the age, and in addition to providing for the 3 branches — now really 4 if you include administration as one — of our state government, a good constitution should preserve the American tradition of a separate judiciary and the separation of powers. It should, however, always endeavor to harmonize progress and stability and it should not promote government by deadlock.

Speaking now on the proper attributes of a good state constitution, all of us agree that a constitution should be as brief and concise as possible, logically arranged, and readable. It should deal only with fundamentals. Obviously, it is a good question as to what is fundamental — and we should always ask ourselves that question — but in general I think it is proper to repeat that we should be more concerned with ends than with means. We should only include what is essential. Unnecessary statutory detail is the curse of most of our state constitutions.

Where it is possible, I recommend that we take the Constitution of the United States as a model. It does not refer to any government department nor does it set up even the structure of the courts. It only says "there shall be created a supreme court and such inferior courts as congress shall from time to time establish." The present constitution of Michigan is 3 times the size of the federal constitution.

In urging that our new state constitution be brief and concise, I should also add that since it is an object of study for all citizens it should also be put out in a proper format so that it can be properly and even interestingly studied. Our present

edition coming in such small print really takes someone with 20/20 vision.

In deciding what should be included and what should not be included in the constitution, we should always raise the question: why should this be in the constitution? The constitution isn't supposed to do everything. In fact, it should do only what is absolutely essential. When constitutions become filled with statutory detail, they require too frequent revision, as has been the case with our own. As Governor Driscoll of New Jersey warned the New Jersey convention in 1947, "When statutory detail is permitted to infiltrate a constitution, it shackles the hands of the men and women elected by the people to exercise public authority." Occasionally, of course, statutory material is simply ignored and therefore ineffective.

As we look at our own constitution, together with those of other states, we find that it perpetuates many archaic offices and is continually in need of amendment.

The more details that are crowded into a constitution the more quickly it loses touch with the social and economic needs of a rapidly growing community. Excessive details impair the capacity of the state and its local units of government for self government. We have what Henry James Ford once called "the manacled state" — the state in manacles.

Obviously much can be done to eliminate the deadwood from our own constitution. In the Missouri convention of 1945, they reduced the size of the document by 1/3. I would hope that we could do much better.

Next I think I should point out that a good constitution should be flexible and should be realistic. Judge Cardozo made it very clear one time when he said, "A constitution states, or should state, not just rules for the passing hour but principles for an expanding future." It should, of course, make adequate provision for administrative problems. It should reflect the current best thinking among the people. A good constitution, it also seems to me, grows with the society it orders. It does not straightjacket that society. Because of the requirements of our economic order, it should also stimulate economic growth. Obviously Michigan's constitution, as do those of many other states, leaves much to be desired along these lines.

Finally, I should say that a state constitution must be internally consistent and, of course, not in violation of the United States constitution.

These points are offered, Mr. President and my fellow delegates, as a basis for discussion and thought. As one of our early political scientists said, "I should be unwilling to go to jail as a martyr for any or all of them", but I suggest them to you as a desirable basis of discussion. And then finally, I think we, as we proceed with our discussions here, must keep in mind, too, that we are not just legislating for the present; we are certainly legislating for the future. We have to keep our minds not only upon the problems of the present but try to be perceptive and inventive as we look through our glasses into the future.

I cannot avoid saying, too, my fellow delegates, that we have upon us not only the eyes of the citizens of this state, but the whole country is thinking about what Michigan is doing, and many of our sister states wish they had proceeded as we have in an orderly way to provide for a review of their basic documents.

Just recently in Europe I found an interesting article in the leading Swiss newspaper, The Neue Zürcher Zeitung, which took 2 full columns to describe the Michigan constitutional convention. So we have eyes on our work and we are doing this, as I indicated in the beginning, in a period of tremendous international crisis and at a time when the whole success of our democratic system depends so much more on the underpinning of our local government and our state government than it does on our national government. Our national government happens to have unlimited taxing power and can provide a great many of the services which we found it undesirable or difficult to provide but, after all, the work has to be done within the cities and the counties and the townships of this and every other state.

But fundamentally I suppose everything gets down not merely to what we do as a group but to what we do as individuals, and here may I be permitted to quote from Walt Whitman one of the poems cited in the recent report of the commission on national goals which, I think, sums up the matter rather succinctly:

I swear I begin to see the meaning of these things!
It is not the earth, it is not America, who is so great,
It is I who am great, or to be great — it is you up there, or anyone:
It is to walk rapidly through civilizations, governments, theories, through poems, pageants, shows, to form great individuals.
Underneath all, individuals!
I swear nothing is good to me now that ignores individuals.
The American compact is altogether with individuals, the only government is that which makes minute of individuals.
the whole theory of the universe is directed to one single individual, namely you.

Thank you.

PRESIDENT NISBET: Thank you very much, Dr. Pollock. When this was first discussed, we talked of having Dr. Pollock make his presentation one day and have some discussion the next when you might have had some time to think it over and ask some questions. Consequently at tomorrow afternoon's session, we will save some time for a discussion of Dr. Pollock's lecture.

Mr. Kuhn.

MR. KUHN: Mr. President, I would like to rise to a question of personal privilege.

MR. KUHN: Yesterday I raised a point of order on a substitute motion proposed by Mr. Leppien. The Chair ruled that the substitute motion was in order. This has bothered me very much and that is why I ask for this time today. We are here in Lansing to rewrite the constitution of the state of Michigan. We are here to write the basic law of the state of Michigan. It would seem to me that we should follow basic rules of parliamentary procedure. I know of rules — Robert's, Mason's, Cannon's — I observed Sam Rayburn's rulings in the house of representatives for 3 years. I will say to you that at that time when a point of order was made, it was given serious consideration. And if Mr. Rayburn did not know the rule, or Mr. Deschler who was his parliamentary assistant, it was given serious consideration even if they had to say the Chair was calling a short recess. The reason this disturbs me so much is that that was a fundamental question. There is no question in my mind that this motion was out of order. I would like to report to this body today that I have spoken to the secretary of this body, Mr. Chase, and he agreed with me that it was out of order and should not have been voted on. The only reason I am making this statement at this time is to keep the record straight. I don't want some people to think that I am one of those people who will be jumping up and talking all the time. I know some people who are jumping up and talking all the time and I don't like them any better than you do.

PRESIDENT NISBET: Thank you.

Mr. Ostrow.

MR. OSTROW: In order that there may be no question about this matter, I now move that this convention reaffirm the action taken yesterday on Mr. Leppien's motion.

PRESIDENT NISBET: The question is on Mr. Ostrow's motion. Is there any discussion? If not, all in favor say aye. Opposed, no.

The motion prevails.

May I say to you very sincerely, Mr. Kuhn, that if this bothered you, it also bothered me. Incidentally, due to the vast realm of amendments that had been introduced, we have endeavored to work out a system of having these amendments taken care of as they are presented, and having amendments presented in writing to the secretary so that this matter will not occur again. Thank you very much for your comments.

We will now have **reports of standing committees.**

SECRETARY CHASE: The committee on administration, by Mr. DeVries, chairman, recommends the appointment of the following constitutional convention staff members: Emma

Davis, Sharon Johnson and Janina Moser, as telephone operators.

Walter DeVries, chairman.

PRESIDENT NISBET: The question is on the recommendation. Is there any discussion?

Mr. DeVries.

MR. DeVRIES: Mr. President, I move the adoption of the recommendation of the committee on administration.

PRESIDENT NISBET: Is there any further discussion? If not, all in favor say aye. Opposed, no.

The recommendation is concurred in.

SECRETARY CHASE: **The president appoints,** pursuant to authorization by the convention, and with the approval of the committee on administration, the aforenamed persons to the respective positions indicated.

PRESIDENT NISBET: Without objection, the appointments are approved.

SECRETARY CHASE: That is the only standing committee report on file, Mr. President.

PRESIDENT NISBET: **Reports of select committees.**

Mr. Van Dusen.

MR. VAN DUSEN: The committee on permanent organization and rules has a further report.

The committee's first recommendation deals with the functions of the committee on public information. The members will recall that the committee on permanent organization and rules has previously offered recommendations, which have been adopted by the delegates, defining the functions of the other 3 operational committees. The only one with its functions as yet undefined is the committee on public information and the committee offers the following report and recommendation with respect to the functions of the committee on public information:

(a) Purpose and duties:

The purpose of the committee on public information shall be to develop public interest in and public understanding of the work of the convention throughout its existence and to advise on methods for explaining the results of the work of the convention to the public.

The duties of the committee on public information shall be:

1. To cooperate with the news media and to facilitate their understanding of the convention's work, its problems, and its results.

2. To assist the delegates, when requested by them, in informing civic groups, individual leaders, schools, libraries and the like about all aspects of convention activity.

3. To train and advise the guides employed by the convention for the assistance of student groups and other visitors in understanding the convention activities they may be witnessing.

4. To assist the substantive committees, if requested by such committees, to obtain publicity for their meetings and public hearings to the end that public attitudes on the issues may be expressed for the guidance of the committees and that there may be a development of public interest in and understanding of the issues facing the committees.

5. To assist the convention to develop full public informational benefits from any convention sessions which may be held elsewhere than in Lansing.

6. To watch the trend of public opinion with respect to convention issues as the convention proceeds and to report thereon periodically to the convention and its substantive committees.

7. To prepare a documentary film of the convention, its activities, problems and deliberations as a part of the permanent record of the convention, such film to be available for showing in high schools, colleges and public meetings as a means of explaining the process of writing the constitution prior to the vote on the convention's final proposals.

8. To consider and report to the convention methods of explaining the results of the convention's deliberations to the people of the state; to prepare an address to the people; to recommend to the convention proposals for widespread distribution of such address; to recommend to the convention any other means that may be carried on after convention adjournment to assure voter understanding of the convention's final proposals.

9. To conduct such other public informational activities within the purview of the committee's appropriation as may be acceptable to the convention.

(b) Qualifications of the assistant in charge of public information to the director of research, drafting, and public information:

The committee on permanent organization and rules recommends to the convention that in addition to the qualifications of the assistant in charge of public information as defined in the report of said committee with respect to the convention staff, this staff member be a person of broad experience in public relations and education in the field of public affairs.

I move the adoption of these recommendations, Mr. President.

PRESIDENT NISBET: The question is on concurring in the recommendations. Is there any discussion? If not, all in favor say aye. Opposed, no.

The recommendations are concurred in.

MR. VAN DUSEN: The next item in the report of the committee on permanent organization and rules deals with rule 34 of the convention rules which was yesterday rereferred to this committee for action. The committee recommends the adoption of rule 34 of the convention rules in the following form:

Committees may hold public hearings at the seat of the convention and may be authorized by the convention to hold public hearings any place in the state. Committees may take testimony under oath or affirmation. A committee may by resolution of the convention be given the power to subpoena documents and witnesses. A committee may grant the powers here authorized to any subcommittee.

Now the following language is added — all I have read to you so far was in the rule as offered yesterday:

All committee meetings shall be open to the public unless otherwise authorized by the convention. A committee may direct a verbatim record of any portion of its proceedings.

Mr. President, I move the adoption of rule 34 as recommended by the committee.

PRESIDENT NISBET: The question is on concurring in the recommendation. Is there any further discussion?

Mr. Theodore Brown.

MR. T. S. BROWN: Mr. President, because of the gravity of our consideration of the motions that I know will be coming up concerning rule 34, I would move at this time that the vote on any of the motions and amendments concerning rule 34 be on a recorded roll call basis. Now, I noticed yesterday the one vote which we had was tallied, it was not conducted on a roll call basis and we have the numbers and not the identification of the delegates involved.

Now, in addition to my motion in that regard — because I know Mr. Bledsoe has an amendment pending on rule 34 concerning the subpoena section of the rule as amended by the committee on rules and I know there will be other amendments offered on the open committee portion — I suggest that we first consider, for the purposes of clarity, the portions containing amendments to the subpoena portions.

PRESIDENT NISBET: Is your motion —

MR. T. S. BROWN: My motion was for a recorded roll call vote.

SECRETARY CHASE: If the secretary may suggest the procedure here, Mr. Brown has demanded the yeas and nays on the question of voting on any amendment to this rule. Rule 64, as you adopted it yesterday, provides a division of the convention may be had on the demand of 10 delegates, or a roll call of the convention may be demanded by a vote of 1/5 of the delegates present, on any pending question. Mr. Brown has demanded a roll call vote, and the secretary would suggest that the question of seconding the demand for this roll call be done by a rising vote, as we call it in the legislature, by which the members do not stand but they merely raise their hands so that when the president says "those in favor, rise", you merely put up your hand so that we may count,

and upon assurance that 1/5 of the delegates present here have put up their hands, the yeas and nays will be ordered.

Mr. Brown has demanded the yeas and nays. Is the demand seconded? Those in favor will rise. Obviously a sufficient number.

PRESIDENT NISBET: Mr. Wanger.

MR. WANGER: Because of the anticipated number of amendments to which this matter may be subjected, I would move that this matter be referred to the committee of the whole, and that this body now resolve itself into the committee of the whole for the purpose of considering the matter and reporting the same back to the convention.

PRESIDENT NISBET: The question is on Mr. Wanger's motion. Is there any discussion? If not, all in favor say aye. Opposed, no. The Chair is in doubt. All those in favor please say aye. Opposed, no.

The motion prevails.

I would like to ask Mr. Hutchinson if he would preside at the meeting of the committee of the whole.

Mr. King.

MR. KING: A point of information. I am not familiar with Mason's rules. I would like to know how many amendments can be before this body at one time?

PRESIDENT NISBET: One at a time.

MR. KING: Is that the ruling of the Chair, or is that as set forth by Mason's rules? Amendments or amendments to amendments.

PRESIDENT NISBET: An amendment may be offered and amendments to that amendment may be offered but the original amendment will be taken care of. In other words, what I think we are trying to say is that the amendment on a certain point and amendments to that amendment would be taken care of before an amendment on another subject would come into the picture.

MR. KING: Under Roberts' rules you can only have 2 amendments pending to the initial amendment, as I understand it, and at one time yesterday I think we had 7 or 8 amendments pending and I am just looking for clarification on that point.

PRESIDENT NISBET: That is what got us into difficulty. I hope Mr. Chase can keep us out of it this afternoon.

[Whereupon, Mr. Hutchinson assumed the Chair to preside as chairman of the committee of the whole.]

CHAIRMAN HUTCHINSON: The committee will be in order.

The gentleman from Oakland, Mr. Van Dusen.

MR. VAN DUSEN: The matter before the committee of the whole, I believe, is the recommendation of the committee on permanent organization and rules with respect to the adoption of rule 34. This has already been read to the members of the committee, and I believe by now it is on every member's desk in writing, if you will turn to the appropriate page of the report of the committee.

Yesterday, you will recall, there was some discussion of the manner in which committees of this convention should conduct their business, particularly with respect to members of the public at those meetings. It was suggested that perhaps this rule should receive the further consideration of the committee on permanent organization and rules. The rule as then proposed was rereferred to the committee.

The committee has met and has unanimously recommended the rule in the form in which it is presented to you, which quite obviously provides that all committee meetings shall be open to the public unless authorized by the convention and further provides that a committee may direct that a verbatim record of any portion of its proceedings be made.

I move the adoption of the recommendation by the committee of the whole.

CHAIRMAN HUTCHINSON: The question is on agreeing to rule 34 as explained by Mr. Van Dusen, to which there are some amendments to be offered. The secretary will read.

SECRETARY CHASE: Does Mr. Ford wish this amendment considered in the light of the language in the rule?

May the secretary suggest, if I may interrupt here just a moment, below the platform on each of those microphones there is a little black band and if you will take hold of that, you can raise or lower the microphone by the simple process of pulling it up or down. When you wish to be recognized, push that white button, then the presiding officer will be aware of the fact that you wish recognition and, depending upon whom he recognizes, the electrician up here will press the appropriate button and you will find a green light flash alongside and you will know you are recognized and may proceed.

CHAIRMAN HUTCHINSON: Mr. Bentley.

MR. BENTLEY: A parliamentary inquiry. Do I understand that a motion in the convention prevailed to the effect that all votes on amendments on this issue should be by yeas and nays?

CHAIRMAN HUTCHINSON: That prevailed in the convention, Mr. Bentley, and it would be the ruling of the Chair that in the committee of the whole there can be no record roll call taken, and so long as this committee of the whole sits, there will be no record roll call.

MR. BENTLEY: Thank you.

CHAIRMAN HUTCHINSON: Mr. Ford.

MR. FORD: I have in the secretary's hands language that I would like to propose as an amendment, but before proposing the amendment I would like to move at this point to divide the question of rule 34 so as to divide the discussion of the provisions pertaining to the holding of hearings and the subpoena power from the provision pertaining to the power to hold other than open meetings. I move the division of the question at this time.

CHAIRMAN HUTCHINSON: Mr. Ford, the Chair would like to inquire whether, as a matter of fact, this matter won't be divided because of the fact that there will be amendments offered one at a time and the question in each instance will be upon these amendments so you are in effect dividing the question, perhaps not only into categories but into perhaps several?

MR. FORD: If this is an inquiry as to the reason for this motion at this time, I will call to the Chair's recollection and to the convention, the confusion that arose yesterday when, in the midst of a discussion of one part of rule 34, we got back into the discussion of other rules and we discussed rule 34 at 2 separate and distinct times. I will admit to being one of the people who was confused with rule 27. I had people over here telling me it should have been rule 28. All I am trying to do is simplify this so that we don't have to subject our people who may want to speak to both points — I don't want to foreclose that — to a situation of confusion. And if the question is divided, I should like to yield the floor to Mr. Bledsoe who will offer an amendment with relation to the principal part of rule 34.

CHAIRMAN HUTCHINSON: Mr. Bledsoe.

MR. BLEDSOE: Mr. Chairman, may I call upon the secretary to read my amendment? I would rather prefer to discuss both of these together in order to save the convention's time. I gave you a copy of it — the proposed amendment to rule 34.

CHAIRMAN HUTCHINSON: The Chair understands that Mr. Ford moves that amendments having to do with the subpoena power be considered ahead of amendments having to do with the public character of the meetings. Is that what Mr. Ford moves? All right, the Chair will entertain that motion. I assume that is what you want done, too, is it, Mr. Bledsoe?

MR. BLEDSOE: Substantially.

CHAIRMAN HUTCHINSON: The motion is that amendments filed in relation to the subpoena power will be considered before amendments relative to the public character of the meetings. All those in favor of the motion will say aye. Opposed, no.

The committee so orders. The secretary will read the amendment.

SECRETARY CHASE: Mr. Bledsoe has offered the following amendment to rule 34:

1. Amend the rule after "documents and witnesses.", by

inserting "Any witness so subpoenaed shall have the right to be represented by counsel of his own choosing.".

CHAIRMAN HUTCHINSON: The question is upon the amendment.

The Chair recognizes Mr. Bledsoe.

MR. BLEDSOE: May it please the convention, this amendment is submitted by virtue of the fact that I believe we are duty bound — in the course of doing the work of this convention, which undoubtedly will necessitate the calling of witnesses and possibly subpoenaing of documents — I believe that in the light of our sensory experiences, that persons who are called before a committee should unquestionably have the right to be represented by counsel of their own choosing, and I further feel that it is necessary, growing out of our experiences with bodies and procedures of this kind, and unless we contemplate that and make it evident in our rules, there could possibly be certain public abuses that I am certain we do not want to run the risk of taking place, during any of the deliberations and committee meetings that we will necessarily become a part of.

I would also like to address myself to the question of open meetings and the provision "unless otherwise authorized" in the rule as it was presently recommended. I believe that our position should be so clear that the word "unless" should be stricken completely and that we unalterably take the position that we, as a sovereign body representing all of the people of the state of Michigan, are here today and will be throughout this convention acting for and on their behalf. I cannot for the life of me understand what could possibly come before this committee, or this convention, of the people's business that should at any time be made a matter of secrecy.

I believe the spirit of due process should be carried out to the letter, as well as the spirit of all of our deliberations. We are acting here and the actions that will be taken will become a part of, we hope, the permanent and never fading archives of what we do here as a deliberative body. For that reason and many others that I would not at this time certainly belabor, I believe that all of our actions — this will not prevent conferences — but any action predicated upon any conference taken later by this body should remain open, all covenants should be arrived at openly and carried out in the same spirit. That is the motivating spirit, my colleagues, for the offering of this amendment.

CHAIRMAN HUTCHINSON: The question is upon an amendment offered to the rule by Mr. Bledsoe which, for clarification, the secretary will read again.

SECRETARY CHASE: Mr. Bledsoe offers the following amendment:

1. Amend rule 34, after the sentence which reads "A committee may by resolution of the convention be given the power to subpoena documents and witnesses.", by inserting this sentence: "Any witness so subpoenaed shall have the right to be represented by counsel of his own choosing.".

CHAIRMAN HUTCHINSON: The Chair recognizes Mr. Van Dusen.

MR. VAN DUSEN: Mr. Chairman and members of the committee, I am quite sure the committee on permanent organization and rules would have no objection to the amendment offered by Mr. Bledsoe. It is the purport of the rule as presented to the convention by the committee that any person appearing before a committee may be accompanied, if he chooses, by a symphony orchestra, so long as they do not all play. Therefore, I am sure that there is no objection to the amendment offered by Mr. Bledsoe.

CHAIRMAN HUTCHINSON: The question is upon the amendment. All in favor say aye. Opposed, no.

The amendment is adopted.

The secretary will read the next amendment.

SECRETARY CHASE: Mr. Ford has offered an amendment to read as follows:

1. Amend rule 34, by adding "All meetings of all committees and subcommittees of this convention shall be open to the public.". May the secretary inquire, Mr. Ford, do you intend to strike out the sentence which reads "All committee meetings shall be open to the public unless otherwise authorized by the convention.", and insert this one in lieu of it?

CHAIRMAN HUTCHINSON: The Chair recognizes Mr. Ford.

MR. FORD: It was my intention in submitting the amendment rather than getting into a discussion of striking and deleting, in lieu of the entire sentence which presently reads in the rule "All committee meetings shall be open to the public unless otherwise authorized by the convention.", to become a part of this rule, as a separate and distinct sentence, standing by itself, stating a complete proposition as a sentence and a paragraph in this rule, that will admit of no equivocation in the future or during our deliberations of our intention to have all meetings open to the public, and this is the intent and purpose and the form I wish it would take if it is adopted.

SECRETARY CHASE: May the secretary then, sir, restate your amendment as follows:

1. Amend rule 34, at the end, by adding a separate paragraph to read "All meetings of all committees and subcommittees of this convention shall be open to the public.". Am I correct now?

MR. FORD: Yes, you are, Mr. Secretary.

SECRETARY CHASE: Thank you, sir.

CHAIRMAN HUTCHINSON: Mr. Ford, have you completed your argument at this point?

MR. FORD: I would like to state very briefly — I stated my position yesterday — I have been in conference with people of several groups last evening and today and I still fail to appreciate any sincere and laudable reason for attaching any element of secrecy to the deliberation and action of this body.

I would like to call your attention with regard to the way the rule is proposed: ". . . unless otherwise authorized by this convention." Rule 1 that we adopted yesterday provides that "A majority of the delegates elected to the convention shall constitute a quorum for the transaction of business . . . ." I take that quickly to mean a quorum in this convention is 73 people. It further says in this rule,

> There being a quorum, a majority of delegates present shall be sufficient for the adoption of any motion or resolution or the taking of any action except where the affirmative votes of a greater number shall be required by these rules.

Now, I compute a majority of a quorum at its minimum to be 37 members. That means that at any time during this convention, should there for any reason be an experience similar to what frequently occurs in the legislature whereby the nature of the business of the day, or the nature of the duties of the members of standing committees who find themselves away from the city of Lansing on the particular day in question, any person could simply put to as few as 73 delegates present the question of wide open license to conduct quiet or secret meetings from that point for a particular phase of a committee's work or for all the balance of a committee's work.

And of course the remedy remains with the delegation to come back on our next occasion and try and upset this but we find ourselves constantly at the point of making decisions as to particular issues. Now, the danger of that is this. There may be members of standing committees who are persuaded by the most laudable motives that there are circumstances requiring the holding of meetings from which the public is excluded. As I have said, I haven't yet heard a cogent explanation of why they should be necessary but I am certainly not going to question anybody's motives in this convention.

So, assuming that there is a legitimate difference of opinion here, which we know does exist, should there be a given set of circumstances which appeals on its face to a majority of a quorum from time to time attending here, I think we are doing by indirection that thing which we say in the principal part of the rule as recommended by the committee we don't want to do. We are opening the door, and where does it stop? I think this revolves around and around until it resolves itself to a simple question: Shall everything we do and shall everyone that appears before our committees be exposed to the glare of the public spotlight and be exposed to knowledge, analysis, criticism, and what have you?

I would like to suggest this possibility. There are people who have a legitimate reason and a legitimate purpose and a legitimate right to appear before all the various committees in pursuance of their special interests. This applies to individuals, to groups and organizations and even to political organizations. They should have this right by all means. By the same token, all other groups and persons interested in the same subject matter should have the right to know as a practical matter, not by going to the record and looking it up but by the glare of the public spotlight, what representations are made from time to time by individuals or groups, with special interests in particular, to the committee members.

I suggest that the greatest protection against bad information being given to members of our committees is the protection of having other people with experience in the field and other people with contrasting or contradictory opinions be in a position to pick up their daily newspapers and read what was said before the committee, read who is appearing there and what they are representing to the committee, and then the other people in this state who we can hope will participate will be in a position to come forward and express their views. I can't see any other way that the people in this state can stay informed and the people who have interests in the matters that will be coming up before us than to have the press available and have the press reporting.

It is suggested that we will be hamstrung as a practical parliamentary procedure if we can't have executive sessions. It has also been suggested that we are whistling in the dark or fearful of shadows. The Michigan legislature as recently as 1959, both houses incidentally, since it is the law, felt that there was sufficient reason to take from the school boards of this state the right to hold secret meetings or private meetings or conduct any business except in an open public meeting and this is now the law of the state. Now, I don't know what provoked the legislature to adopt this law but I assume it wasn't something that was done ipse dixit. It was something based on someone's honest belief that it was necessary. And I submit that the same considerations that made this type of law necessary there, might well come into consideration here.

As I said, I think that any attempt to add this qualifying language is simply begging the question here. Either we are not in favor of a 100 per cent open convention from the beginning to the end, or we are in favor of leaving a foot in the door for the possibility of having a large portion of the important business of this convention conducted under circumstances where the confidence of the public in our deliberations may be hampered and harmed and where the opportunity of every person in this state to participate and to make themselves heard to us, in committee sessions in particular, might be impaired. Thank you.

CHAIRMAN HUTCHINSON: Mr. Van Dusen.

MR. VAN DUSEN: Mr. Chairman, it seems to me that we have come to the point in our deliberations of this matter of the open convention where it seems incumbent upon many of our members to demonstrate that they are opener than thou.

I don't wish to suggest that this is not a significant point. Certainly the openness of our deliberations is a matter of great importance. However, the rule as proposed by the committee provides: "All committee meetings shall be open to the public unless otherwise authorized by the convention."

Now, Mr. Ford suggests that that may under certain circumstances be ordered by less than a majority of the delegates elected. I suggest that the remedy for the matter that he suggests is a call of the house which would require the presence of all the delegates. The call can be ordered in advance of any vote on a matter of this kind and would insure the requirement that a very substantial majority of the delegates to the convention acted before any change was made in the procedure to authorize something other than an open meeting.

The only reason for the proviso "unless otherwise authorized by the convention" is to avoid the necessity of a change in the rules which requires submission to the rules committee, 2 days notice, and so forth, before such a meeting could be held if in the judgment of a majority of the members of this body that should seem desirable. Certainly in the conduct of every meeting, not only of this body as a whole but of every committee of this body to date, proceedings have been fully open, so far as I know. No one has any intention of holding any meetings otherwise.

This rule as proposed by the committee — as I say, the rule was unanimously recommended by the committee — seems to govern every contingency and to provide for the orderly transaction of our business. I would oppose the amendment offered by Mr. Ford.

CHAIRMAN HUTCHINSON: Mr. Martin.

MR. MARTIN: Mr. Chairman, speaking on the rule proposed, the matter has had the most extensive debate in the committee. There have been varying opinions. I have personally taken the view from the very beginning that this convention should be open not only as to the sessions of the convention but as to all sessions of the committees and all sessions of subcommittees.

Mr. Van Dusen has explained the reason for the rule as proposed. In the absence of the clause at the end of that sentence, it will be necessary first to adopt a rule which would have to go back to the committee on rules, have the rule argued there, have the rule come out again, and then to ask for actual authorization to hold an executive session.

The rule as proposed is far more liberal than the rule which Mr. Ford has proposed and for that reason I would oppose his amendment and recommend to the delegates that they accept the rule as set forth here. The rule does nothing more than state the obvious authority of the convention to decide what it may do in any circumstance, including this question of executive sessions.

CHAIRMAN HUTCHINSON: Mr. Marshall.

MR. MARSHALL: Mr. Chairman, it seems to me that we operate here in a goldfish bowl. This convention is not the property of the delegates, nor is it the property of the committees. The final document will be the basic document of all the people of the state of Michigan. What is done here on the floor of the convention and in committee sessions necessitates, I think, that we have as much light as possible shed at all times. If you are permitted to go into executive sessions, you will not stop even then. The delegates will have outside caucuses among themselves. Rumors will come out of the committee which will be picked up by the press. The press then will concoct a few ideas of their own and incorporate this into a statement or a story which would not necessarily — and I do not intend to question the press as to their accuracy, but I have seen occasions where they were not quite accurate enough when they wrote from rumors.

I do not see any reason why we should fear to discuss the people's business, that we should fear to compromise, if necessary, in certain areas and I see no reason why we should fear to do this publicly and openly. On the other hand, I don't think we should discuss them either out of fear that we might be misquoted or that someone might reprimand us for our actions within the committee.

I take exception to the statement by our able chairman of the committee, Mr. Van Dusen, and I believe he said that the time has come for some of us to get up and state — I believe his words were our "opener than thou" attitude. I want to say, with all respect to Mr. Van Dusen, that my position on this matter has not changed from the very outset, from the time I announced my candidacy for the constitutional convention. I have taken a forthright position on this repeatedly, time and time again, in the basic belief that this is the people's business and the people have a right to know at all times what is being discussed, what compromises are being made, what their representatives are doing in committee sessions as well as on the floor of the convention.

It seems to me, in conclusion, that the more open we keep this convention and the more open we keep the discussions, the more informed electorate we are going to have when the final document is submitted, the more they are going to understand the document.

Therefore, Mr. Chairman, I support the amendment of Mr. Ford, and I hope that the delegates to this convention will

not permit a situation to develop where you will go behind closed doors to discuss the business of all the people of the state of Michigan. Thank you.

CHAIRMAN HUTCHINSON: Mr. Hubbs.

MR. HUBBS: Mr. Chairman, I have heard a great deal of talk this afternoon about open committee meetings, an open convention, and open meetings of all kinds. Now, I happen to be a member of the majority party at this convention and as of now I have as yet to be summoned in any way since this convention opened to any sort of a party caucus.

I would like to know if it would not be possible to introduce another rule at this stage, stating that any party here represented who are about to hold a caucus to discuss their views, give notice to all delegates so that all delegates may attend all caucuses of all parties.

I would like, Mr. Chairman, to further point out that a considerable number of party caucuses have been held and I was not informed and I was not present, and if the press was present I have not heard about it, and so long as this is going to be open to the public, let's let them right into our party caucuses also. Thank you.

CHAIRMAN HUTCHINSON: The question is on the amendment offered by Mr. Ford, to which Mr. Brown is now recognized.

MR. G. E. BROWN: Mr. Chairman, I have given the secretary an amendment to Mr. Ford's amendment which I think is self explanatory.

CHAIRMAN HUTCHINSON: The secretary will read the amendment to the amendment.

SECRETARY CHASE: Mr. G. E. Brown offers the following amendment to the pending amendment offered by Mr. Ford:

1. Amend Mr. Ford's amendment by adding at the end of it this language, "And notice of the time and place of every meeting of every committee or subcommittee shall be given to all news media. No meeting of a committee or subcommittee shall be held without such notice first having been given.".

CHAIRMAN HUTCHINSON: The question is upon Mr. Brown's amendment to the amendment. Does Mr. Brown desire to debate his amendment?

Mr. Ford.

MR. FORD: I haven't had an opportunity to talk with Mr. Brown but I would simply like to say I feel this is completely consistent with the objectives of my amendment and I would like to support the position he is now taking. I think this is consistent with the entire theory we are arguing here.

The question is really not on who is more opener than thou — and we can start to be cute about this sort of thing if we will — it is a question of whether we are going to equivocate now or not.

What we are faced with right now is what I invite you people to consider we will be faced with the first time somebody comes in and attempts to use the rule the way the committee has written it. The point is that now is the time to make the decision. Why are we afraid to make a decision at this particular time? Why do we have to equivocate? If it becomes so apparent that this convention cannot proceed without such a rule as now proposed, the time to adopt that rule is when somebody can come up with a clean cut reason to give us why we have to have any secret meetings at this time and I invite any delegate to give me reason for such a provision. I would like to know under what circumstances anybody in this delegation would like to have the right to meet with any person in front of a committee or to have the committee deliberate on any matter without the public present.

CHAIRMAN HUTCHINSON: Mr. King.

MR. KING: In answer to Mr. Ford's point, I might state that unfortunately many of the delegates have put themselves in somewhat equivocal positions during their partisan campaigns. This is unfortunate but it is true and I think we ought to recognize it.

An executive session of a committee would provide that type of atmosphere which would permit some resolution of our differences. There is legitimate reason for executive committee meetings. Now, I don't propose to tell you what those reasons are in advance. I don't know. I just say they could exist. So far as I know, all legislative bodies in this country reserve the right to have executive committee meetings. You might say this is not a legislative body. The greatest constitutional convention I am aware of took place 174 years ago in the city of Philadelphia. I am given to understand, although I wasn't present, that this was conducted in a great deal of secrecy and the very essence of the document we now live under would not have been possible without that sort of secrecy.

With regard to school boards, I don't think that is a fair analogy to a constitutional convention.

Now, as has been pointed out, the majority party has held no secret caucuses that I am aware of. The minority party has. The press reported the reason in one case as being a discussion of personalities. This seems like a valid reason to me. I wouldn't quarrel with it if that is the reason they advanced. I would support the rule as it is now, or I would have supported it as it was before this latest amendment.

CHAIRMAN HUTCHINSON: Mr. Ostrow.

MR. OSTROW: Mr. Chairman, with the exception of the last speaker, every other speaker was in favor of open meetings. They disagreed on language. It seems that we present a ridiculous spectacle to the public when all of us agree — Mr. Van Dusen, Mr. Martin, Mr. Marshall, Mr. Ford — everybody wanted open meetings and we couldn't agree on language. Now, if at this stage of the proceedings, language is going to hold us up when we all — almost all except the last speaker — are agreed on what we want, what is going to happen to us when we get into substantive matters?

I know you can't move the previous question in committee of the whole. I think everybody understands what is involved. Let's take a vote on this matter. Let's dispose of it one way or the other and go on to the next order of business or the next amendment.

CHAIRMAN HUTCHINSON: Mr. Lundgren.

MR. LUNDGREN: I would be very much for the vote too, but if you want something more — Mr. Ford, on your invitation, will you tell us what you told us last evening about a secret session, or executive sessions and how you would like to have one? I think you had quite a discussion with us last evening about that.

CHAIRMAN HUTCHINSON: Mr. Ford.

MR. FORD: I don't think that Mr. Lundgren is referring to — and I think it is about time for me to start rebelling a bit against constant reference to the members of the minority party. I am a member of the democratic party which isn't in all instances a minority party. I am a member of a delegation of 144 people, and I certainly don't, in offering this amendment, suggest anything different than what happened last night, and I think Mr. Lundgren has struck on a good point.

Last evening by chance I happened to run into about 5 or 6 members of the republican party who might be expected on a number of occasions to disagree with me because of my party affiliations, and I was very pleased to have the opportunity to sit down for about an hour with those gentlemen and to discover that we really aren't too far apart on the basic things that are good for the people of Michigan.

As a matter of fact, you would be very hard put to find a real party issue in any of the matters we discussed last night, and I strongly would urge that committee members get in the habit, all delegates get in the habit, of exchanging these ideas on an informal and social basis, and I would expect in any committee I am on that I will have the right at any time to sit down, with the entire committee for that matter as long as we are not deliberating as a committee, and discuss any of these matters.

I reserve the right to discuss it with anyone, from 1 to 143 delegates, and when we talk about caucusing — there isn't any question but that members of the committee will be caucusing, if we use the word caucus. I don't see that the word caucus carries with it any sinister connotation, and since there's some note of levity injected in this, I certainly hope none of the speakers are going to try to convince me — I am young and I am new at this, all of us are new at constitu-

tional conventions — but I don't think anybody is making a statement that either party has been without its caucus since we arrived here a week ago Monday. None of us are naive enough to accept that proposition.

The practices — so far as I know, I read when I arrived here in time for the dinner on Monday night that both parties were having open caucuses. I participated in an open caucus with the press present, where we discussed the election of the president of this convention, and I believe, as a matter of fact, members of the opposite party also attended the caucus and talked with us. I don't want to mention names on it. It is certainly proper and in the best keeping for us to meet and talk about these things.

I think Mr. Lundgren is entirely correct that this is the right that everybody should retain so long as they are not sitting and acting as a committee.

CHAIRMAN HUTCHINSON: Mr. Gust.

MR. GUST: Mr. Chairman, I rise on a point of information with reference to Mr. Ford's original amendment, if I may. Is that in order at this time under the present procedure?

It was my understanding that Mr. Ford wanted to add a paragraph to rule 34, as originally submitted to us today and amended by Mr. Bledsoe, that he wanted to put an additional paragraph down at the bottom to provide that all committee meetings shall be open to the public.

CHAIRMAN HUTCHINSON: The secretary will read the amendment, Mr. Gust.

SECRETARY CHASE: Mr. Ford has offered the following amendment to rule 34:

1. Amend rule 34 by adding at the end the following paragraph "All meetings of all committees and subcommittees of this convention shall be open to the public.".

MR. GUST: Does the Ford amendment contemplate any deletion of any of the rule as given to us in its present form today by the committee on permanent organization and rules?

SECRETARY CHASE: The Secretary understood from what Mr. Ford indicated that it would not.

MR. GUST: That's what I understood, Mr. Secretary. That being so, would you not have 2 conflicting sentences in the same rule? You have in there presently that "All committee meetings shall be open to the public unless otherwise authorized by the convention." If you merely added this as a paragraph, wouldn't they be inconsistent?

CHAIRMAN HUTCHINSON: Mr. Gust, the Chair would remind you that the question immediately before the committee is the amendment of Mr. Brown, not the amendment of Mr. Ford.

MR. GUST: That's why I asked if I was in order, Mr. Chairman. It is not in order at this time, is that right?

CHAIRMAN HUTCHINSON: In the interest of keeping things in order, let's defer that until we get Mr. Brown's amendment out of the way.

Mr. Ostrow.

MR. OSTROW: I call the convention's attention to rule 22:

> When any delegate is about to speak in debate or present any matter to the convention, he shall rise from his seat, and respectfully address himself to "Mr. President;" he shall not speak until recognized and when recognized

and this is the important thing —

> he shall confine himself to the question under debate and avoid personalities.

In view of the tone of some of the remarks, I would suggest that the chairman caution delegates to avoid personalities and stick to the issue.

CHAIRMAN HUTCHINSON: Delegates will take warning. Mr. King.

MR. KING: Mr. Chairman, I would just like to clarify the record. I don't know if anyone was referring to personalities, but the implication was made that 143 of us were in favor of an open convention and one of us, being myself, was opposed to it. That is not correct, and I want that made very clear at this point.

When I made reference to the federal constitution, I was stating a fact. If anybody takes issue with this fact, that that was held with a great deal of secrecy, I will be glad to lend them my history books.

My position is that I support the amendment of the committee on permanent organization and rules, and that is my only position.

CHAIRMAN HUTCHINSON: Dr. Nord.

MR. NORD: I rise to speak on the question again of whether the rule in the original form is satisfactory or whether it needs to be amended at all.

I am a member of the committee that has recommended this rule. The reason it was sent back to the committee yesterday was because it was ambiguous. It certainly is not ambiguous at the present time. That doesn't solve the entire problem, of course. The question is not only whether it is ambiguous, but whether it is correct. It is not ambiguous. I also state that it is correct in the present form and ought to be adopted.

The reason I have arisen at this point — and I didn't intend to — but somebody has challenged all of the delegates, I believe, to rise and state whether there are any circumstances where there might be executive sessions. Nobody so far has thought fit to rise and say that there ought to be executive sessions on some particular occasions. Therefore I arise to do so.

I don't believe this will make me the most popular delegate, but nevertheless I have been challenged, and I have never yet refused to accept a challenge, and I have the scars to prove it. And I also suggest that it would be better in the future if we do not challenge each other.

I am in favor of executive sessions in certain cases, and it is my opinion that a great many members of the convention are as well. This is based on discussion with many members of both sects, you might say — the democratic sect and the republican sect. I realize there are various different types of religious belief of that type at the convention. Nevertheless, as I say, there are various different reasons. I advanced them at the committee meetings on 3 different occasions and I would like to repeat them. They have never been advanced on the floor.

In my opinion, there is one reason and only one reason, but that is a valid reason, why an executive session might at some time be had. That is when personalities are brought into play. I don't mean personalities between the delegates. They can slug it out as much as they wish. I wish they would do that in committee meetings rather than on the floor.

What I am afraid of is what has happened in congressional committee hearings. In my opinion, many congressional committee hearings have abused the process of conducting hearings. I have long felt that. I have been opposed to the way many committee hearings in congress have been held. I have not opposed their making investigations, full investigations, of facts and I don't oppose our doing so. I think we should do so. If we do so, if we make full investigations of fact, we are bound to discover an occasion where somebody begins to sling mud against somebody else. That is the occasion which I am concerned about. At that point, I don't believe we should say, "Stop slinging mud and forget what you have to say." Rather, I would like to hear what he has to say, but I don't wish that to be made public until there is an opportunity to determine whether it is fair to allow some person who is not present to be slandered.

In my opinion, if such occasion arises where personalities are brought in by a witness, that witness ought to be brought before the committee. I believe it is possible that might happen. In the event that is not done, the only other cure is an executive session. I would favor an executive session, or else a rule that protects persons who are not present, whose reputations are impugned by witnesses. There being no such rule at the present time and none proposed, I believe there are cases where executive sessions would be worth while but only in those cases.

I would say that it is not too funny to note, as it has been noted by someone, that there have been caucuses, at least one caucus, that was secret. I believe that it was proper to have it secret. I don't think it needs to be defended. It was the correct thing to do. There will be cases where committees will

do the same thing. It will be better to hear the evidence, even in secret, than to shut it up.

Therefore, let's not assume that we have all taken a purity pledge that nothing we ever do will be secret. I believe we all have hotel rooms and we close the door, and I hope that we don't have to keep that door open, too.

CHAIRMAN HUTCHINSON: Mr. Hatch.

MR. HATCH: I would like to direct a question concerning Mr. Brown's proposed amendment which, as I understand it, provides that before a committee could hold a meeting there must be notice to the news media. I would like to know what he means by notice. Does this mean that all newspapers, radio stations, television corporations, must be served by registered mail before a committee meeting can be held? Or just what does the amendment mean when it speaks of notice?

CHAIRMAN HUTCHINSON: Mr. Brown.

MR. G. E. BROWN: Mr. Chairman, Mr. Hatch, I think the impracticality of your interpretation is apparent. We do, however, have liaison with the press. At present I think there are 3 members of the press who have been designated by the president for that liaison, and certainly insofar as the notice is concerned it could be given to that group which would constitute notice to the news media as a whole.

This does not contemplate certified mail or registered mail or anything of that nature. It is primarily to make sure that every meeting, regardless of where held and regardless of the extent of the deliberations involved, notice of that meeting is given to the news media.

CHAIRMAN HUTCHINSON: Miss Donnelly.

MISS DONNELLY: Mr. Chairman, I would like to answer the challenge, and support very firmly everything Professor Nord has had to say.

I also would like to add that I believe the difficulty in refusing to allow executive sessions thus establishes more secret sessions than anyone could dream of, and thus more danger to the public and to all individual delegates, and defeats our job which I believe is to keep the public informed.

The only instance I think the public should not necessarily be informed is to protect individuals, and I am very fearful that if we do not provide the opportunity to protect them we will damage them and thus ourselves, because we are also part of the people and must represent them.

CHAIRMAN HUTCHINSON: Mr. Martin.

MR. MARTIN: On Mr. Brown's amendment which is now offered to Mr. Ford's amendment, it seems to me we could get a little better and more intelligent result if that were deferred until we could vote on the amendment we are concerned about, and then consider the amendment Mr. Brown has offered. I am sure probably there is no objection to it on anyone's part, but in the order it is presented it will cause some confusion.

CHAIRMAN HUTCHINSON: The Chair will have to rule that the question is still upon Mr. Browns amendment to the Ford amendment, it being a principle of parliamentary procedure that amendments to perfect must be taken care of ahead of the main question, and so the question is still upon Mr. Brown's amendment. All those in favor of Mr. Brown's amendment say aye. Opposed, no.

The Chair would rule by voice volume that the amendment to the amendment is not adopted.

Now the question is upon Mr. Ford's amendment.

Mr. Gust.

MR. GUST: Mr. Chairman, I rise now on my point of information. I may have lost track through the minutes here, but it appears to me that unless you delete the following sentence from the printed rule 34 as submitted today before you add the last paragraph, that you will have inconsistent sentences in this rule, because the second to the last sentence now reads "All committee meetings shall be open to the public unless otherwise authorized by the convention." To leave that in and to substitute in a subsequent paragraph, I submit for the Chair's consideration, would leave 2 inconsistent sentences within a single rule.

CHAIRMAN HUTCHINSON: Mr. Ford

MR. FORD: Mr. Chairman, it was my intention, and I believe I used this exact language, that I would propose this paragraph in lieu of the sentence which reads "All committee meetings shall be open to the public unless otherwise authorized by the convention." I stand corrected on the semantics of the word, or the phrase "in lieu of". It has been my intention to strike that sentence, leaving the rest of the rule, as placed on our desks after we started this discussion, intact.

SECRETARY CHASE: The secretary is sorry that he misunderstood your intent. I understood originally that that was your intent, and then we adopted this other form. So Mr. Ford's amendment now is as follows:

1. Amend the proposed rule 34 by striking out the sentence which reads, "All committee meetings shall be open to the public unless otherwise authorized by the convention.", and inserting in lieu thereof the sentence "All meetings of all committees and subcommittees of this convention shall be open to the public.".

CHAIRMAN HUTCHINSON: Mr. Wanger.

MR. WANGER: Mr. Chairman, the late Judge Learned Hand once said that "The spirit of liberty is that spirit which is not too sure that it is right".

We have heard several people here today say that they cannot conceive of any circumstances whatsoever when an executive session of a committee should be held. I think that impression has been corrected. While all of us want to have a convention and committees which are as open as possible, I think there is some question remaining in most of our minds that perhaps once in a while — we hope not, but maybe — a secret meeting should be held in the interests of the people of the state of Michigan, and in the interests of the information which must be presented to us if we are to judge the facts fully, and that would be presented to us in no other way. If that is so, then the question comes up, how do we go about doing it?

I suggest that it is probable, in the unlikely event that the need should arise, it should be done as soon as possible, that we should not have to go through the rules committee, wait 2 days — which I don't believe would be just 2 ordinary days but 2 session days — and go through all that procedure and then come back and debate it again. I think we should be able to do it as soon as possible, and as Mr. Van Dusen suggests, with a roll call or a call of the convention a sufficient number of delegates can be obtained so that the motion as proposed by the committee will most satisfactorily serve the interests of the people of the state of Michigan, and that therefore Mr. Ford's very well intentioned amendment should be defeated.

CHAIRMAN HUTCHINSON: Mr. Snyder.

MR. SNYDER: Thank you, Mr. Chairman. I arise in support of the amendment offered by Delegate Ford. I feel that we have here more than a simple matter of whether we will have open and public meetings. I feel that we have here an issue that is of more significance not only to the delegates assembled but to the people of the entire state of Michigan. I feel that we have involved here a basic principle of rights.

Should we defeat the proposition on the floor at the present time, I feel that there would be an erosion of the basic rights of the people. Once we lose this basic right, there is a strong possibility that we can also lose other rights guaranteed to us in our present constitution. These rights that we have at the present time were gained over a period of many years. Certainly in the history of our conventions, both on a state and national level, there was much discussion on the rights of people.

Our learned instructor of the day, Professor Pollock, pointed out that times have changed. Indeed times have changed, and I feel that the basic agreement among all of us is that the most significant change of this century is one of communications. Communications are vital to the people, to the democratic procedure of the entire state. We have got to bring into the homes of the people by the various news media the actions of all the committees, and I will say that as presently written it is my opinion that the rule offered by the committee at the present time does not include the subcommittees because there is a distinction made, there is a specific power

given to the committee as a whole here that they may refer this matter to a subcommittee, and once you raise a distinction between a committee and a subcommittee, you do not contain in context the basic right that all meetings will be public.

You have here a question that committee meetings as such may be public, but also further appended is that the committee may set up subcommittees and pass certain powers to that subcommittee, not that all the meetings will be open.

CHAIRMAN HUTCHINSON: The question is on Mr. Ford's amendment. All those in favor say aye. Opposed, no. The amendment is not adopted on a voice vote.

Mr. Dehnke.

MR. DEHNKE: I am concerned about the effect that this debate might have in creating a false impression around the state. It may have the effect, although of course not intended, of leading the people to believe that the convention is about ready to authorize some committee to hold a secret session. That, of course, has not been done. The time for that to be decided is when some committee asks leave to hold executive sessions.

I am also cencerned about one of the points raised by Mr. Ford, that by reason of a bare plurality of members in attendance, a bare quorum, such an authorization might be given by a vote of less than 40. I do not have the impression of the membership of this convention that there will be any meetings whatever when there will be a substantial absentee list except for illness or some other emergency. However, to guard against any such possibility and to set at rest all fears resting upon it, I move that the proposed rule be amended as follows:

1. Amend rule 34, in the next to the last sentence, after "convention" by inserting "by a majority vote of the delegates elected", so that it will read as follows: "All committee meetings shall be open to the public unless otherwise authorized by the convention by a majority vote of the delegates elected."

CHAIRMAN HUTCHINSON: The question is upon Mr. Dehnke's amendment. All those in favor of Mr. Dehnke's amendment will say aye. Opposed, no.

The amendment is adopted. The question is upon the rule as amended.

Mr. Wanger.

MR. WANGER: Mr. Chairman, do I understand that the question before us now is the rule as proposed by the committee?

CHAIRMAN HUTCHINSON: And as amended by the Dehnke amendment and the Bledsoe amendment. There have been 2 amendments adopted.

MR. WANGER: Mr. Chairman, the substance of the matter before us is the provision of this rule which grants committees the power only to hold public hearings unless otherwise authorized by this convention, sessions wide open to the press and the people. This is without precedent in the history of representative government.

So far as I can determine, never before has a representative body of consequence gone so far in laying bare the inner workings of its activity, the vital and delicate process, if you will, of combining the real and the ideal with common sense and compromise into law. As was pointed out by Luther Cushing, who is the authority historically on this subject, it was only in a very recent historical period that legislative sessions were in fact open to the public.

Furthermore, our own constitution was drafted in secrecy, and more recently, in 1953, it was disclosed that the constitutions of but 2 of our states, Idaho and New Mexico — those 2 states only — provided for unrestricted access of the press and the people to their general sessions. This secrecy grew up historically not merely to conceal the compromises of the members or the true reasons for their decisions, as some would have us believe, but also for the fear which was too often justified in fact in those days, of inaccurate, unfairly opinionated, or sometimes even coercive treatment by the press. But both the press and the people have come a long ways since those days.

By adopting the rule as recommended by the committee and amended, we who have no control over the newcasters, reporters, headline writers, columnists, editors or publishers, will be giving them an immensely increased control and power over our deliberations, and with that power we will be sharing in a very real sense our responsibility which on September 12 the people of Michigan entrusted to us. We will be making the news media of Michigan full partners with us in our task of doing our very best to improve Michigan's constitution. Only if both partners fulfill that responsibility can the task succeed. And while the eyes of Michigan, and perhaps some of the rest of the world, will be on us, as delegates here, the journalistic professions of America will be watching to see if the news men and news women of Michigan do theirs.

We have all read, heard and, I believe, thought a good deal about our responsibilities as delegates, and therefore I think it would not be inappropriate to hear briefly mentioned the responsibilities of the news media as well.

Will our committee deliberations be reported to the people fully, accurately and objectively? Will the facts be correct, and sufficient space and time be allotted so that all significant matters appear? And most important of all, perhaps, will our news men and news women keep first in mind that their influence is far out of proportion to their rights as individual citizens, and that the heavy duty of deciding what to submit to the people is and must be left with the delegates here? Will they therefore firmly resist the natural temptations to glamorize their choices of people and issues, to vilify to some extent the people and issues with which they disagree, and to sensationalize what they consider to be mistakes? Mr. Chairman, I have much confidence that the answer to each of these questions is yes.

In light of the news media's generally very good record in covering con con over the past 8 months, and in light of the inescapable fact that the people will judge our work as we go along and in light of the fact that I understand that the committee's report on this was unanimous, or substantially unanimous, I urge each delegate here respectfully to support the committee's report as amended.

However, in the spirit of what I just said, I would like to offer the following addition to the rule:

1. Amend rule 34 by adding to it the following sentence: "The convention press committee together with such other persons as the president may choose to appoint, shall, as soon as practicable before the convention's final adjournment, poll the delegates by secret ballot to determine the opinion of the delegates as to whether or not and to what extent the convention's activities have been covered fully, accurately and objectively, by the press, radio and television media of the state, and shall report the results thereof to the convention.".

CHAIRMAN HUTCHINSON: Mr. Wanger offers an amendment.

Mr. Van Dusen.

MR. VAN DUSEN: Mr. Chairman I listened with great care to the remarks by Mr. Wanger, as I think we all did. They were very much to the point. I know that they were listened to with care and respect by the members of the press.

I think, however, that with respect to the amendment to the rule which he now offers, I would suggest that it is the purpose of the rules to deal with recurring events, that his amendment deals with a single event and might more appropriately be dealt with as a separate resolution rather than as a part of our standing rules of this convention. For that reason, and for that reason only, I would oppose Mr. Wanger's amendment.

CHAIRMAN HUTCHINSON: The question is upon Mr. Wanger's amendment.

Mr. Wanger.

MR. WANGER: Mr. Chairman, I agree that perhaps under some circumstances this could be handled fully as well by resolution as by rule. However, I would suggest to the committeee that, in addition to providing for recurring matters, the rules are also to empower committees and establish their duties, which, of course, my proposed amendment to the rule does.

From the standpoint of procedure, I would also respecfully

suggest that I would like to have this adopted, but before we pass on the rule as a whole. I think perhaps there is some feeling among the delegates here, and since it would be, I presume, out of order to take it as a resolution at this time, I would resist Mr. Van Dusen's suggestion that consideration of it be deferred.

CHAIRMAN HUTCHINSON: Mr. Brown of the sixth senatorial distict.

MR. G.E. BROWN: A point of information. I would like to direct my question to either Mr. Van Dusen or Dr. Nord, and since Dr. Nord is on his feet perhaps he would like to answer it. I am wondering if in connection with the discussion of this amendment to the rule they went into the ramifications of what would amount to sufficient persuasion to get this convention to authorize the holding of an executive session? It occurs to me that if there are matters which the committee proposes to discuss that will necessitate an executive session, those matters would have to be presented to this convention to determine whether or not this convention would authorize an executive session. If that is done, would not the benefit and effect of an executive session, if it is ever necessary, be lost completely?

CHAIRMAN HUTCHINSON: The Chair would suggest that the question is on Mr. Wanger's amendment, and the question directed to Mr. Nord appeared to be on a a subject other than Mr. Wanger's amendment. Will you kindly withhold that question until we get rid of the immediate motion?

The Chair recognizes Dr. Nord on the immediate motion of Mr. Wanger.

MR. NORD: In accordance with the Chair's instructions, I will not bother to answer the question addressed to me and will hope that at some later date Mr. Van Dusen might do so.

I would like to speak against the amendment, and I hope that this will be the last amendment offered to this rule. This rule is not worth this many amendments. The motives behind this amendment may be great as well. I am sure they are. But this amendment rubs me the wrong way. I don't know that you care if it rubs me the wrong way, but anyway it does. The reason it rubs me the wrong way is this: Here we are debating how great everything is, that it is in the open, and that we are just concerned whether there is any possibility whatever that sometime we might want to be closed, but now the amendment says we will have something closed. It says we will have a secret ballot. Let's not have any secret ballots. Let's not worry about that. The newspaper men will ask our opinions in any event, and I hate to see the word secret get into this rule. I wish Mr. Wanger would withdraw this amendment. If not, I wish that we would vote it down.

CHAIRMAN HUTCHINSON: Mr. Wanger.

MR. WANGER: Mr. Chairman, with regard to the objection that the word secret is in this amendment, I would merely like to say that here is one place where the word secret ballot is appropriate.

After all, we are deciding on something that's past. It is not anything that is going to go into the constitution, and I think we have an opportunity in passing this amendment to do the press and the news media, not of Michigan but perhaps of part of the rest of the country, a great service, because by adopting it we will have the opportunity to give the journalistic profession in their fight for what I believe Kent Cooper called "the right to know" a tremendous and a meaningful vote of confidence for the job I am sure we are convinced they are all going to do here.

That is the spirit that prompted me to offer this amendment, and I think that is the spirit in which it should be be passed.

CHAIRMAN HUTCHINSON: Mr. DeVries.

MR. DeVRIES: Mr. Chairman, members of the committee, I am opposed to Mr. Wanger's amendment. It has been my experience that if you tell the press the truth and you are fair with them, you get good coverage.

I think by Mr. Wanger's amendment we are impugning or suggesting that we are not going to get fair coverage of this convention. What's the purpose of it? Are we trying to scare the press? Are we trying to threaten them? Are we going to scare them into fair coverage? I don't think so.

I wonder what purpose the poll serves. Does it tell us that the members think they have done a good job or a bad job? My response to that is, so what? What does it tell us? I am 100 per cent opposed to the amendment.

CHAIRMAN HUTCHINSON: The question is upon the amendment offered by Mr. Wanger. Mr. Wanger, do you desire further recognition on this?

MR. WANGER: Briefly, Mr. Chairman, to say this. There is no coercion in this. In the most unlikely event that there would be any amount of unfavorable vote on such a poll, it would be the press who would be the ones charged with disseminating that information. I doubt very much if it would receive a tremendous amount of publicity as a practical matter, in the ways in which it would be used, and I have no questions in my own mind but that that eventuality would never arise.

CHAIRMAN HUTCHINSON: The question is upon the amendment offered by Mr. Wanger. All in favor will say aye. Opposed, no.

The amendment is not adopted.

The question is now upon the rule, as amended.

The gentleman from Wayne, Mr. Brown.

MR. T. S. BROWN: Mr. Chairman, a point of information. Are we still sitting as a committee of the whole?

CHAIRMAN HUTCHINSON: We are, sir.

MR. T. S. BROWN: I move at this time that the committee rise.

CHAIRMAN HUTCHINSON: The question is upon the motion. Let us advise the committee, however, that unless we take action upon the rule, the rule will have been left in the committee of the whole.

Mr. Brown.

MR. T. S. BROWN: I suggest actually the purpose of my question, Mr. Chairman, was not to delay action upon particular amendments, but to place the matter back in the convention after we have finished our deliberations as the committee of the whole.

CHAIRMAN HUTCHINSON: Mr. Brown, the Chair would advise that under this procedure, the committee of the whole, upon its rising, assuming that it has resolved something, will report back to the convention and the question will then be upon agreeing with the recommendations of the committee of the whole, and if it was your concern that you wanted to put everybody on record in that regard, you could do that by demanding the yeas and nays on agreeing to the recommendations of the committee of the whole.

Mr. Brown of Kalamazoo.

MR. G. E. BROWN: Mr. Chairman, I once again would rise to a point of information more properly at this time. I don't think it is necessary to restate that inquiry, and I would once again direct it to either Dr. Nord or Mr. Van Dusen.

CHAIRMAN HUTCHINSON: Perhaps in the light of much having transpired, it would be well if you would restate it.

MR. G. E. BROWN: The amendment that's been offered by the committee to rule 34 at present refers to "meetings shall be open to the public unless otherwise authorized by the convention.", to which has been added "by a majority vote of the delegates elected."

My point of information and my inquiry to Dr. Nord and Mr. Van Dusen was as to whether or not the rules committee had considered how this matter would be brought before the convention if a committee desired to hold an executive session? My point is that, if it is necessary in order to persuade the convention or to persuade a majority of the delegates elected to hold an executive session, these matters which we attempt to protect by an executive session will have to be disclosed here, which is an open forum, in order to get that authority to hold an executive session, which means that, in effect, the idea of an executive session would be nullified. I am just wondering whether or not the committee has discussed it and what the answer of the committee was to the question.

CHAIRMAN HUTCHINSON: The Chair recognizes Mr. Van Dusen.

MR. VAN DUSEN: I do not recall, Mr. Brown, any specific discussion of the point which you raise in the committee on permanent organization and rules, although, of course, this subject received our most careful and lengthy deliberation.

I think the answer to the question is that it would be necessary for the chairman of the committee, if a majority of his committee desired an executive session, to bring his reasons and the reasons of the committee before convention, the delegates as a whole.

I do not think, however, that it would be necessary in putting forward those reasons to defeat the purposes suggested by Dr. Nord. I think the reasons could be stated in such a manner, if they were valid reasons, that the rights of no individual would be thereby impugned.

CHAIRMAN HUTCHINSON: The question is upon the rule, as amended. All those in favor will say aye. Opposed, no.

The rule, as amended, is adopted by the committee of the whole.

Is there any further business before the committee of the whole?

Mr. Van Dusen.

MR. VAN DUSEN: I move that the committee do now rise.

CHAIRMAN HUTCHINSON: The gentleman from Oakland, Mr. Van Dusen, moves that the committee do now rise. All those in favor will say aye. Those opposed will say no.

The motion prevails.

[Whereupon, the committee of the whole having risen, President Nisbet resumed the chair.]

PRESIDENT NISBET: The Chair recognizes Mr. Hutchinson.

MR. HUTCHINSON: Mr. President, the committee of the whole has had under consideration a certain rule upon which the secretary will make a detailed report.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration rule 34 and reports the same back to the convention with the following amendments:

1. Amend the body of the rule following the language "A committee may by resolution of the convention be given the power to subpoena documents and witnesses.", by inserting, "Any witness so subpoenaed shall have the right to be represented by counsel of his own choosing.". This was Mr. Bledsoe's amendment.

2. Amend rule 34 at the end of the next to the last sentence after "convention" by inserting "by a majority vote of the delegates elected", so that the sentence will read: "All committee meetings shall be open to the public unless otherwise authorized by the convention by a majority vote of the delegates elected."

PRESIDENT NISBET: The question is on agreeing to the amendments as recommended by the committee of the whole.

Mr. Brown, do you now insist upon a yea and nay vote upon this matter?

MR. T. S. BROWN: Correct, sir. I believe Mr. Ford had an amendment.

PRESIDENT NISBET: Mr. Ford, may we proceed to dispose of these committee amendments first?

MR. FORD: Mr. President, I don't in any way want to be disrespectful, but I think I am learning a lesson in parliamentary procedure here from Mr. Hutchinson.

We are now placed in a position — in the very beginning before we went into the committee of the whole, we had, I believe, adopted in this convention a motion to separate this question as to its 2 principal parts; and it is apparent, although some of us are not apparently skillful enough to bring it to this, that we would like to have a yea and nay recorded roll call vote on the amendment that received so very much discussion in the committee of the whole.

I don't purport to open the floor to a lengthy discussion, but I would like to have a yea and nay vote on my amendment as presented, and I submit that, if you now proceed to act on the recommendation of the committee of the whole, the challenge might well be made that this is out of order after this vote is taken.

PRESIDENT NISBET: Mr. Ford, you may present your amendment after the committee amendments are disposed of.

Mr. Brown.

MR. T. S. BROWN: Do I understand the purport of your last ruling, Mr. President, that we will still vote now in toto on the several amendments?

PRESIDENT NISBET: The 2 amendments that were proposed by the committee of the whole were those of Mr. Bledsoe and Mr. Dehnke. The vote is on those 2 amendments.

MR. T. S. BROWN: By recorded roll call vote?

PRESIDENT NISBET: You called for that. Yes, sir.

MR. T. S. BROWN: Might I also ask, then, what are the people to do who were in favor of Mr. Bledsoe's amendment which passed, and in favor of Mr. Ford's amendment which failed?

PRESIDENT NISBET: Mr. Ford can offer his amendment after we have voted on these 2 amendments. And there can be a yea and nay vote on that.

The question is on the report of the committee of the whole. Those in favor will vote aye on the machine. Those opposed will vote no. Have you all voted?

The roll was called and the delegates voted as follows:

Yeas — 132

Allen	Goebel	Page
Andrus, Miss	Gover	Pellow
Anspach	Greene	Perlich
Austin	Gust	Perras
Baginski	Habermehl	Plank
Balcer	Hanna, W. F.	Pollock
Barthwell	Hannah, J. A.	Powell
Batchelor	Hart, Miss	Prettie
Beaman	Haskill	Pugsley
Bentley	Hatch	Radka
Binkowski	Hatcher, Mrs.	Rajkovich
Blandford	Heideman	Richards, J. B.
Bledsoe	Higgs	Richards, L. W.
Bonisteel	Howes	Romney
Boothby	Hoxie	Rood
Brake	Hubbs	Rush
Brown, G. E.	Hutchinson	Seyferth
Brown, T. S.	Iverson	Shackleton
Buback	Judd, Mrs.	Shaffer
Butler, Mrs.	Karn	Shanahan
Conklin, Mrs.	King	Sharpe
Cudlip	Kirk, S.	Sleder
Cushman, Mrs.	Knirk, B.	Snyder
Dade	Koeze, Mrs.	Spitler
Danhof	Krolikowski	Stafseth
Davis	Kuhn	Staiger
Dehnke	Lawrence	Stamm
Dell	Leibrand	Sterrett
DeVries	Leppien	Stevens
Donnelly, Miss	Lesinski	Stopczynski
Doty, Dean	Liberato	Suzore
Doty, Donald	Lundgren	Thomson
Douglas	Madar	Tubbs
Downs	Mahinske	Turner
Durst	Marshall	Tweedie
Elliott, A. G.	Martin	Upton
Elliott, Mrs. Daisy	McAllister	Van Dusen
Erickson	McLogan	Wanger
Everett	Millard	White
Farnsworth	Mosier	Wood
Faxon	Murphy	Woolfenden
Figy	Nord	Yeager
Finch	Norris	Young
Gadola	Ostrow	Youngblood

Nays — 7

Follo	Hood	McGowan, Miss
Ford	McCauley	Sablich
Hodges		

SECRETARY CHASE: Upon the question of the convention concurring in the amendments recommended by the committee of the whole, the yeas are 132, and the nays are 7.

[A majority of all the delegates elected having voted therefor, the amendments were adopted.]

PRESIDENT NISBET: Mr. Ford.

MR. FORD: Thank you, Mr. President. Without discussion, at this time I would like to propose as an amendment to this rule the deletion of the sentence which reads "All committee meetings shall be open to the public unless otherwise authorized by the Convention.", and the addition to the rule as a distinct paragraph and sentence the language which the secretary has before him and will read.

SECRETARY CHASE: Mr. Ford offers the following amendment:

1. Amend the body of the rule by striking out the sentence which reads "All committee meetings shall be open to the public unless otherwise authorized by the convention by a majority vote of the delegates elected.", and inserting "All meetings of all committees and subcommittees of this convention shall be open to the public.".

PRESIDENT NISBET: The question is on the amendment by Mr. Ford. Is there any discussion?

Mr. Hodges.

MR. HODGES: I call for the yeas and nays. Is that right?

PRESIDENT NISBET: That has already been ordered. Any further discussion? All those in favor of the Ford amendment vote aye. Those opposed vote no. Have you all voted? The secretary will record the vote.

The roll was called and the delegates voted as follows:

Yeas — 41

Austin	Ford	Murphy
Baginski	Garvin	Norris
Balcer	Greene	Ostrow
Barthwell	Hart, Miss	Pellow
Binkowski	Hatcher, Mrs.	Perlich
Bledsoe	Hodges	Sablich
Brown, T. S.	Hood	Snyder
Buback	Judd, Mrs.	Stopczynski
Cushman, Mrs.	Lesinski	Suzore
Dade	Madar	Walker
Douglas	Mahinske	White
Downs	Marshall	Young
Elliott, Mrs. Daisy	McCauley	Youngblood
Follo	McGowan, Miss	

Nays — 100

Allen	Habermehl	Pollock
Andrus, Miss	Hanna, W. F.	Powell
Anspach	Hannah, J. A.	Prettie
Batchelor	Haskill	Pugsley
Beaman	Hatch	Radka
Bentley	Heideman	Rajkovich
Blandford	Higgs	Richards, J. B.
Bonisteel	Howes	Richards, L. W.
Boothby	Hoxie	Romney
Brake	Hubbs	Rood
Brown, G. E.	Hutchinson	Rush
Butler, Mrs.	Iverson	Seyferth
Conklin, Mrs.	Karn	Shackleton
Cudlip	King	Shaffer
Danhof	Kirk, S.	Shanahan
Davis	Knirk, B.	Sharpe
Dehnke	Koeze, Mrs.	Sieder
Dell	Krolikowski	Spitler
DeVries	Kuhn	Stafseth
Donnelly, Miss	Lawrence	Staiger
Doty, Dean	Leibrand	Stamm
Doty, Donald	Leppien	Sterrett
Durst	Liberato	Stevens
Elliott, A. G.	Lundgren	Thomson
Erickson	Martin	Tubbs
Everett	McAllister	Turner
Farnsworth	McLogan	Tweedie
Faxon	Millard	Upton
Figy	Mosier	Van Dusen
Finch	Nord	Wanger
Gadola	Page	Wood
Goebel	Perras	Woolfenden
Gover	Plank	Yeager
Gust		

SECRETARY CHASE: On the question of the amendment offered by Mr. Ford, the yeas are 41 and the nays are 100.

PRESIDENT NISBET: The amendment is not adopted.

The question is now on the adoption of rule 34, as amended.

Mr. Ford.

MR. FORD: Mr. President, a point of information. I am sorry that I can't recollect this. Do we have 3 delegates absent at this time?

SECRETARY CHASE: There was one who was absent. Mr. Wilkowski was excused at the beginning of the session.

MR. FORD: Then I would continue this point of inquiry to this. It was my understanding of the rules of this convention that everyone is to cast a vote aye or nay on a roll call unless they have previously stated their intention to abstain. Apparently at least 2 of the delegates didn't understand this, and I would challenge the vote on that basis.

SECRETARY CHASE: May the secretary point out that the only votes that are not recorded are the votes of the President and Mr. Wilkowski. And Mr. Kelsey did not vote. The yeas are 41, the nays are 100, and 3 not voting.

PRESIDENT NISBET: The question is on the adoption of rule 34, as amended. Is there any further discussion? If not, all in favor say aye. Opposed, no.

The rule is adopted.

For rule 34 as amended and adopted by the convention, see above, page 135.

Mr. Van Dusen.

MR. VAN DUSEN: For those of you who may have lost your place, we are now on page 6 of the report of the committee on permanent organization and rules with respect to certain rules relative to the use of the voting machine.

You will recall that yesterday Mr. Woolfenden called to the attention of the delegates and of the committee the fact that while rules 12 and 63 presented the alternative between the use of the voting machine and the use of some more primitive method of voting, rule 64 made mandatory the use of the voting machine. Because of this apparent inconsistency these rules were referred to the committee on permanent organization and rules for their further consideration.

The committee has given that consideration, and recommends the adoption of rules 12 and 63 as previously presented, and the adoption of rule 64 amended so that the second to the last sentence, where the problem arose, would read as follows: "When a division of the convention is ordered, a rising vote shall be taken or the voting machine may be used, if provided, . . .". Thus, in the event of the disability of the voting machine, a rising vote by a show of hands could be authorized in the alternative. The committee recommends the adoption of all 3 rules.

Mr. President, I move their adoption at this time.

PRESIDENT NISBET: The question is on the adoption of rules 12, 63 and 64. Is there any discussion? If not, all in favor say aye. Opposed, no.

Rules 12, 63 and 64 are adopted.

For rules 12 and 63 as adopted by the convention, see above, pages 131 and 134.

For rule 64 as amended and adopted by the convention, see above, page 136.

MR. VAN DUSEN: Mr. President, in the consideration of the inconsistency raised by Mr. Woolfenden yesterday, the committee discovered that the inconsistency exists also with respect to rule 66 which was adopted yesterday which, as adopted, provides only for the use of the voting machine. Therefore the committee recommends that rule 66 be amended to read as follows:

Rule 66. At the roll call at the opening of each session and upon calls of the convention, the names of the members shall be called by the secretary, or the voting machine

shall be used if provided and the absentees noted, after which the names of the absentees shall be called.

Mr. President, because this is now a part of the permanent rules of the convention it will be necessary first to suspend the rules in order to consider this amendment at this time. Therefore, I move first that the rules be suspended for the purpose of considering an amendment to rule 66 at this time.

PRESIDENT NISBET: Is there objection? I hear none and the rules are suspended.

MR. VAN DUSEN: The rules having been suspended, Mr. President, I move the adoption of the recommendation of the committee on permanent organization and rules with respect to the amendment of rule 66.

PRESIDENT NISBET: The question is on the recommendation. Is there any discussion? If not, all in favor say aye. Opposed, no.

The recommendation is concurred in and rule 66 is adopted, as amended.

For rule 66 as amended by the convention, see above, page 136.

MR. VAN DUSEN: Mr. President, this concludes the work of the committee on permanent organization and rules which, as the delegates are aware I believe, was a temporary committee created for the purpose of assisting in the organization of this body of 144 men and women into a functional constitutional convention with committees, with staff and with rules.

The work of the committee has been done. It has been made immeasurably easier by the work of the preparatory commission and its staff. We have been greatly assisted in our work by Mr. Apol and his staff and by our secretary, Mr. Chase, and his staff.

The committee has been diligent, conscientious, and thoughtful. It has been a pleasure for me to work with each of the individual members of that committee, and I am grateful to each of them for their intelligent and conscientious work.

I hope that each of the standing committees which are now embarking on their work will find their experience in working together as pleasant and their work as fruitful as ours has been on the committee on permanent organization and rules.

Mr. President, I move that the committee on permanent organization and rules be now discharged.

PRESIDENT NISBET: You have heard the motion. Is their any discussion? If not, all in favor say aye. Opposed, no.

The motion prevails. Thank you, Mr. Van Dusen, and your committee.

The next order of business is communications from state officers.

SECRETARY CHASE: There are none, Mr. President.

PRESIDENT NISBET: **Introduction, first reading and reference of proposals.**

SECRETARY CHASE: Mr. Erickson introduces **Delegate Proposal 1001,** A proposal for election of a nonpartisan state board of education. Amends article XI, section 6.

PRESIDENT NISBET: Referred to the committee on education.

SECRETARY CHASE: Mr. Erickson also introduces **Delegate Proposal 1002,** A proposal for election of a nonpartisan board of trustees for Michigan State University. Amends article XI, section 7.

PRESIDENT NISBET: Referred to the committee on education.

SECRETARY CHASE: Mr. Erickson also introduces **Delegate Proposal 1003,** A proposal for election of a nonpartisan board of regents for the University of Michigan. Amends article XI, section 3.

PRESIDENT NISBET: Referred to the committee on education.

SECRETARY CHASE: Mr. Erickson also introduces **Delegate Proposal 1004,** A proposal for election of a nonpartisan board of governors for Wayne State University. Amends article XI, section 16.

PRESIDENT NISBET: Referred to the committee on education.

SECRETARY CHASE: Mr. Erickson also introduces **Delegate Proposal 1005,** A proposal for an appellate court. Amends article VII by adding a new section.

PRESIDENT NISBET: Referred to the committee on judicial branch.

SECRETARY CHASE: Mr. Erickson also introduces **Delegate Proposal 1006,** A proposal for election of nonpartisan supreme court. Amends article VII, section 2.

PRESIDENT NISBET: Referred to the committee on judicial branch.

SECRETARY CHASE: Mr. Yeager introduces **Delegate Proposal 1007,** A proposal relative to the private ownership of real property. Amends Article II by adding a new section 23.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: That is all the proposals on file at this time, Mr. President.

May the secretary comment that the rule provides that proposals to be introduced at any session shall be filed with the secretary 3 hours in advance of the session. There are some other proposals that he knows of that are in process which did not come in in time for introduction today.

PRESIDENT NISBET: The next order of business is motions and resolutions. Hearing none, any unfinished business?

SECRETARY CHASE: None, Mr. President.

PRESIDENT NISBET: Special orders of the day.

SECRETARY CHASE: There are none.

PRESIDENT NISBET: General orders of the day.

SECRETARY CHASE: None.

PRESIDENT NISBET: Announcements.

Mr. Bentley.

MR. BENTLEY: Mr. President, I would like to announce that in view of the work we have just received and for other reasons the committee on education will meet in room F immediately following the close of today's session. This will be an open meeting.

PRESIDENT NISBET: Any further announcements?

Mr. Boothby.

MR. BOOTHBY: I would request from the Chair permission to be excused from the early portion of tomorrow's session for the reason that approximately 6 months ago I made a commitment to a teachers' conference at Kalamazoo.

PRESIDENT NISBET: Without objection, you will be excused.

Dr. De Vries.

MR. De VRIES: Mr. President, there will be a brief meeting of the committee on administration immediately following this session in room G. The committee will also meet tomorrow morning at 9:00 o'clock in room G.

PRESIDENT NISBET: Dr. Hannah.

MR. J. A. HANNAH: The committee on legislative organization will hold its first meeting tomorrow afternoon 15 minutes after the close of the session in room D.

PRESIDENT NISBET: Dr. Pollock.

MR. POLLOCK: The committee on declaration of rights, suffrage and elections will hold its first meeting tomorrow morning, 11:00 o'clock, committee room E.

PRESIDENT NISBET: Mr. Powell.

MR. POWELL: This forenoon I was contacted by Mr. Lloyd Ashe of East Lansing, a retired mechanical engineer, who for a number of years has carried on a personal project of making a record of the attendance and the voting participation of members of the legislature. He does this entirely as a public service and has never been compensated in any way for his time or material.

Mr. Ashe is a native of Michigan, having been brought up in a farm area near Frankenmuth, and having at one time owned and operated a farm in Tuscola county. He is a veteran of World War I and, as I have said, is a retired mechanical engineer who does this purely as a citizen interested in this subject and without any pecuniary compensation whatsoever

A copy of this report is being placed in your mail box. The yellow sheet explains the setup of the compilation.

Of course, I had no part in the preparation of this material, having merely sponsored the placing of it in your mail boxes. I thought you might be interested in studying the voting record of your own state legislators.

PRESIDENT NISBET: Mr. Martin.

MR. MARTIN: Mr. President, the committee on executive branch will meet briefly in room C at the conclusion of this session.

PRESIDENT NISBET: Any other announcements?

Mr. Cudlip.

MR. CUDLIP: Mr. President, just to remind the members of the committee on style and drafting that after the close of this session, we will have a brief meeting in room D.

SECRETARY CHASE: Mr. Danhof announces a meeting of the committee on judicial branch in room B at 10:00 o'clock a.m. tomorrow.

Mr. Erickson announces there will be an organization meeting of the committee on miscellaneous provisions and schedule tomorrow morning at 11:00 a.m. in room E.

Mr. Hoxie announces a meeting of the committee on legislative powers immediately following adjournment today in room E.

Mr. Shackleton has filed with the secretary a request to be excused from the convention session of Thursday so that he may attend a director's meeting scheduled for that afternoon.

PRESIDENT NISBET: Without objection, it will be so granted.

SECRETARY CHASE: May the secretary point out that the staff will again process the rules that you amended today and they will be placed upon your desks in a packet so that you may interleaf them in the packet that you now have.

There has also been left with the secretary a note that one gold pendant with a rhinestone has been found in the library, and if the person who lost this will call for it, it may be obtained there.

This further and final announcement on the part of the secretary which has been filed with the request that the announcement be made: Mrs. Ella D. Koeze, national committeewoman, calls a republican caucus in committee room B after the session today.

PRESIDENT NISBET: Mr. Leppien.

MR. LEPPIEN: Mr. President, I believe there is a conflict of committee calls. I believe the secretary announced committee calls for 2 separate committees in room E at 11:00 o'clock. I think one should have been 9:00 o'clock.

PRESIDENT NISBET: Will Mr. Erickson correct that?

MR. ERICKSON: One of the vice presidents couldn't be there at 9:00 and he asked me to have it at 11:00 o'clock. But if there is a conflict with E, if the secretary will give us another room, we will defer to Dr. Pollock.

SECRETARY CHASE: I am sorry, sir, but I am unable to.

MR. ERICKSON: Well, what other letters are there that we can have? We are not choosy right now.

PRESIDENT NISBET: Mr. Erickson, if you will see Mr. Apol, he will take care of that for you, I am sure.

MR. LEPPIEN: Mr. President, I would like to point out to Mr. Erickson that at least one member of his committee is a member of both committees, and you can't be in 2 places.

PRESIDENT NISBET: Any further announcements?

MR. HOXIE: Mr. President, it appears we have some conflict, there being a republican caucus called in conflict with the committee meeting that was called directly after this session by myself, as chairman of the legislative powers committee, and in deference to the democratic members of our committee I will ask that that committee meeting be postponed.

PRESIDENT NISBET: Any other announcements?

Mr. DeVries.

MR. DeVRIES: Mr. President, the committee on administration will not meet following the session but will meet at 9:00 a.m. tomorrow morning in room G.

PRESIDENT NISBET: What is your further pleasure?

Mr. Bentley.

MR. BENTLEY: Mr. President, in view of the fact that there apparently is a conflict and since I was unaware of this when I prepared this announcement for my committee meeting, I will now announce that the committee on education will meet at 9:00 o'clock tomorrow morning in room F if there are no conflicts and no caucuses and nothing else going on at that time that will interfere with the committee.

PRESIDENT NISBET: Thank you very much.

Mr. Cudlip.

MR. CUDLIP: I will now say that the committee on style and drafting will not meet in room D after this meeting but we shall meet at 10:00 o'clock tomorrow morning in room D.

PRESIDENT NISBET: Mr. Martin.

MR. MARTIN: The committee on the executive branch will meet briefly and it will take us just about 3 minutes to transact our business. It will work out all right, I am sure.

PRESIDENT NISBET: Mr. Elliott.

MR. A. G. ELLIOTT: Mr. President, the 2 vice chairmen of the committee on local government and myself will meet immediately after this session.

PRESIDENT NISBET: Dr. Anspach.

MR. ANSPACH: I move that we adjourn.

PRESIDENT NISBET: The motion has been made that we adjourn. All those in favor say aye. Opposed, no.

We are adjourned until 2:00 o'clock tomorrow afternoon.

[Whereupon, at 4:35 o'clock p.m., the convention adjourned until 2:00 o'clock p.m. Thursday, October 12, 1961.]

SIXTH DAY

Thursday, October 12, 1961, 2:00 o'clock p.m.

PROCEEDINGS

PRESIDENT NISBET: The convention will please come to order. The invocation today will be given by the Reverend John W. Murbach, Pastor of the Calvary Evangelical United Brethren Church of Lansing.

REVEREND MURBACH: Shall we pray? O God, to whom all hearts are open and who art the author and life of happiness, of freedom, grant us, O God, clarity of insight and understanding as together we share in the important responsibilities that are committed to us. We thank Thee for the dedication of those who have committed themselves to the responsibilities of working on behalf of our state and grant, O God, that from the deliberations of the hours spent together there will come that which is Thy will and that which shall be of Thy purpose and shall be for the betterment and establishment of the kind of state we all seek. We give Thee thanks for the freedoms and liberties that are ours, and grant that we ever cherish those things which Thou has given to us, and that we are Thine. Grant us in this meeting this afternoon and in every instance and in every circumstance clarity of thought, determination of purpose, to know Thy will and to do Thy purpose. To these ends let Thy blessing rest upon each member. We ask this through Jesus Christ, our Lord. Amen.

PRESIDENT NISBET: The roll call will be taken by the secretary.

SECRETARY CHASE: Everyone present please vote aye. Mr. President, a quorum of the convention is present.

Prior to today's session, the secretary received the following request for leave:

Mrs. Conklin reports that Mrs. Koeze called earlier today, and her father has had a heart attack.

PRESIDENT NISBET: Without objection, Mrs. Koeze will be granted an indefinite leave of absence.

SECRETARY CHASE: Absent with leave: Mrs. Koeze, Messrs. Boothby and Shackleton.

Absent without leave: None.

PRESIDENT NISBET: Mr. Madar.

MR. MADAR: Mr. President, I would like an omission here to be corrected in today's journal for yesterday's proceedings. I am not listed as having voted either yea or nay. I did vote on the first recorded vote and it was a yea vote. I would like the journal to carry that today for yesterday's proceedings.

PRESIDENT NISBET: Without objection, the correction will be made.

[The correction has been made at page 162 above.]

Reports of standing committees.

SECRETARY CHASE: The committee on administration, by Mr. DeVries, chairman, submits the following report and recommends that the convention immediately approve the following vouchers incurred by the preparatory committee:

Tape Recording Industries $26,000.00
East Lansing, Michigan
Voting system as specified for constitutional convention.

Capitol City Lumber Company 7,320.00
Lansing, Michigan
Labor, materials, tools, equipment and services for fabrication and installation of podium with cabinets and lectern; desk, table and cabinets for the press; panels and hand rails for the gallery area; 2 bookcases; and the mail room case with cubicles and storage.

C. J. Parducci Studio 450.00
Detroit, Michigan
Material and labor for 5½ foot state seal.

Herman Miller, Inc. 8,577.00
Zeeland, Michigan
Delegates' chairs for the assembly room.

Capitol City Lumber Company 17,000.00
Lansing, Michigan
Labor, materials, tools, equipment and services for fabrication and installation of delegates' desks in assembly room.

Irwin Seating Company 1,800.95
Grand Rapids, Michigan
Labor, materials, tools, equipment and services for fabrication and installation of theater chairs in the spectators' gallery.

Dowcraft Corporation 4,628.00
Jamestown, New York
Steel and glass partitions for committee rooms in the northeast portion of the basement of the building.

Grand Rapids Partitions, Inc. 4,876.25
Grand Rapids, Michigan
Glass partitions for the dictation, research and press carrels in the building.

International Forwarding Company 449.68
Los Angeles, California
Shipping charges for chairs.

Bouma Cartage Company 8.80
Grand Rapids, Michigan
Shipping charges for partitions.

The committee on administration further recommends that the convention avail itself of the necessary facilities of the department of administration in order to expedite payment of bills, purchases and matters pertaining to spending money authorized by the convention.

Walter DeVries, chairman.

PRESIDENT NISBET: Mr. DeVries.

MR. DeVRIES: Mr. President, perhaps there should be a brief explanation of these items. All these bills were incurred by the preparatory commission and I think it is our obligation to pay them as soon as possible. The $26,000.00 for the voting system includes service for the voting system, which I see today may need some repair.

The other items, I don't think there's any question about them. I think they have to be paid. Many of them are with small contractors and they need their money badly.

So I would like to make 2 motions, if I may, that the bills incurred by the preparatory commission be taken over by the constitutional convention and we immediately approve their payment, and then make the last part of the report a separate motion.

PRESIDENT NISBET: The question is on the approval of bills. Is there any discussion? If not, all in favor say aye. Opposed, no.

The recommendation is concurred in.

Mr. DeVries.

MR. DeVRIES: It might be of interest to the delegates with regard to the chairs and desks that were purchased, the committee on administration tentatively decided this morning that the delegates could buy these when the constitutional convention adjourns next year. We did not set a price.

One further item. You will notice there is an item in here for $8.80. We will not insult your intelligence to bring this kind of bill before you again. We intend to provide in our

budget, which we hope to present to you next Monday evening along with the salary schedule, a contingency fund from which the committee on administration and secretary can approve small amounts like this without bringing it to your attention.

My second motion, Mr. President, is that we recommend that we avail ourselves of the department of administration and let them handle our postaudit and preaudit and the processing of all our financial documents. I move concurrence in that recommendation.

PRESIDENT NISBET: The question is on concurrence in the recommendation. Is there any discussion? If not, all those in favor vote aye. Opposed, no.

The recommendation is concurred in.

Any other standing committee reports?

SECRETARY CHASE: That is the only standing committee report on file, Mr. President.

PRESIDENT NISBET: Reports of select committees.

SECRETARY CHASE: None.

PRESIDENT NISBET: Communications from state officers.

SECRETARY CHASE: No communications, Mr. President.

PRESIDENT NISBET: **Introduction, first reading and reference of proposals.**

SECRETARY CHASE: Mr. Gover introduces

Delegate Proposal 1008, A proposal relative to the rights of an individual before an administrative body. Amends article II by adding new sections.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: Mr. Brake introduces

Delegate Proposal 1009, A proposal to provide home rule for townships. Amends article VIII, section 16.

PRESIDENT NISBET: Referred to the committee on local government.

SECRETARY CHASE: Mrs. Daisy Elliott introduces

Delegate Proposal 1010, A proposal relating to the equal protection of laws and prohibiting discrimination in civil rights. Amends article II by adding a new section 23.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: Mr. Brake introduces

Delegate Proposal 1011, A proposal to abolish April elections.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: Mr. Brake also introduces

Delegate Proposal 1012, A proposal to amend the civil service section of the constitution. Amends article VI, section 22.

PRESIDENT NISBET: Referred to the committee on executive branch.

SECRETARY CHASE: Mr. Brake also introduces

Delegate Proposal 1013, A proposal to provide a uniform rate of assessment of real property. Amends article X, section 7.

PRESIDENT NISBET: Referred to the committee on finance and taxation.

SECRETARY CHASE: Mr. Norris introduces

Delegate Proposal 1014, A proposal to prevent the denial of any political or civil right on the basis of race, color, creed or national origin. Amends article II by adding a new section.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: Mr. Norris also introduces

Delegate Proposal 1015, A proposal relative to amendment of provision regarding unreasonable search and seizure. Amends article II, section 10.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: Mr. Norris also introduces

Delegate Proposal 1016, A proposal relative to provision for the deletion from article II, section 22, of the prohibition therein of liberty of speech and press. Amends article II, section 22.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: Mr. Brake introduces

Delegate Proposal 1017, A proposal to clarify elector's immunity from arrest. Amends article III, section 5.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: Mr. Brake also introduces

Delegate Proposal 1018, A proposal to clarify legislator's immunity from arrest. Amends article V, section 8.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: Mrs. Butler introduces

Delegate Proposal 1019, A proposal for election of nonpartisan board of control for Michigan College of Mining and Technology. Amends article XI, section 10.

PRESIDENT NISBET: Referred to the committee on education.

SECRETARY CHASE: That is all the proposals for introduction today, Mr. President.

PRESIDENT NISBET: Second reading of proposals.

SECRETARY CHASE: None.

PRESIDENT NISBET: Third reading of proposals.

SECRETARY CHASE: Nothing on the calendar.

PRESIDENT NISBET: **Motions and resolutions.**

Mr. Hutchinson.

MR. HUTCHINSON: Mr. President, I move that when the convention adjourns today, it stand adjourned until next Monday evening, October 16.

PRESIDENT NISBET: The question is on the motion. Is there any discussion? If not, all those in favor say aye. Opposed, no.

The motion prevails.

Mr. Woolfenden.

MR. WOOLFENDEN: I have a resolution which is in the hands of the secretary to be read and, since we will not be meeting tomorrow, I ask unanimous consent to make a brief statement in support of the resolution before it is referred to a committee.

PRESIDENT NISBET: Is there objection? Hearing none, Mr. Woolfenden.

MR. WOOLFENDEN: Will the secretary read the resolution, please?

SECRETARY CHASE: Mr. Woolfenden offers

Resolution 7, A resolution providing for final adjournment of the convention.

Whereas, Section 4, article XVII of the Michigan constitution provides that any proposed constitution or amendments adopted by this convention shall be submitted at an election to be held the first Monday in April, 1962, in the event final adjournment of this convention takes place on or before January 2, 1962; and

Whereas, Under the weekly work schedule heretofore adopted by this convention, 7700 delegate work days are available between today and December 31, 1961, for the formulation of the recommendations of this convention; and

Whereas, It is the view of the delegates assembled in this convention that it is in the best interest of the state of Michigan to conduct the work of this convention as expeditiously as is feasible, with due regard to the deliberative responsibilities of the delegates; now therefore be it

Resolved, That this convention adopt a timetable for its deliberations and the deliberations of its several committees to the end that the work of the convention may be completed, if feasible, on or before December 31, 1961, as follows:

1. All proposals by delegates shall be submitted and all public hearings by committees shall be held on or before November 15, 1961;

2. All committees shall report their recommendations to the convention on or before December 1, 1961; and

3. The convention shall complete its work on or before December 31, 1961.

PRESIDENT NISBET: Mr. Woolfenden.

MR. WOOLFENDEN: Mr. President, I believe under the rules that the resolution is to be referred to an appropriate committee, and I think I have unanimous consent to make a brief statement before reference.

I think that the delegates in this convention have an overriding responsibility, not only to produce a good constitution, but a responsibility that carries forward to the election at which this constitution will be voted upon by the people. I think we delegates will have engaged only in an academic exercise if we produce a good constitution and then fail to support it or to sell it to the people of the state of Michigan.

It was evidently the intent of the people, the wish of the people in adopting this constitutional amendment, to have it voted on in April of 1962 if that is feasible. Having due regard for the caliber of the 144 delegates assembled in this convention, the many years of experience of most of these delegates — in fact, all of them — I think that under the work schedule we have already adopted, we have 7700 work days left before December 31 to complete this job. There can be no question but that we have the time available to do it. It is a question of how we spend that time, and I strongly urge the delegates to consider this matter carefully, and I earnestly hope that the delegates will support this resolution.

I feel that if the question is submitted to the people in April of 1962, it will be the only question on the ballot in all probability, in most areas of the state, probably throughout the state. It will be in very sharp focus. The people will have been following the deliberations of this convention in the press and otherwise, and the subject will be fresh in their minds. I think we will have an excellent chance of getting approval by the electorate of the product which we produce at this convention if it is voted on in April. If it is not voted on in April, under the constitutional provision it will be voted on in November of 1962.

I think that the chance of getting this constitution passed will be prejudiced in 2 important respects if it goes on the November ballot. First, it will be so long after we have concluded our deliberations that it will constitute a kind of warmed over dish that we are submitting to the electorate. I don't believe it will be possible to get the same support and understanding of the job we have done in November that it will be in April, approximately 90 days after we complete our deliberations.

The second important reason why I think the chance of passage would be prejudiced in November is that in the November election this question will be only one of many submitted to the voters. There will be, undoubtedly, partisan questions and partisan candidates being considered by the voters. There will have intervened between the conclusion of our convention and the November election primary elections throughout the state which will have diverted the attention of the voters. I can conceive that the very subject of the passage of the proposed constitution may itself receive some partisan attack from some point of the compass in the November election.

If it is submitted on the April ballot, it will be considered squarely on the merits, and I feel very sincerely that we have the manpower here to do it if we address ourselves primarily to this problem of getting the show on the road and getting the job done.

I earnestly ask your support when the resolution is before the convention here.

PRESIDENT NISBET: Under the rules, this resolution will be referred to the committee on rules and resolutions.

Mr. Hodges.

MR. HODGES: Do I take it that this is not to be discussed any further but referred directly to the committee?

PRESIDENT NISBET: That is correct.

MR. HODGES: Thank you.

PRESIDENT NISBET: Mr. Nord.

MR. NORD: In view of the fact that the rules have been suspended in order to hear this speech, I ask the privilege of responding in 2 sentences. May I do so?

PRESIDENT NISBET: Without objection, you may do so. I hear none.

Mr. Nord.

MR. NORD: Thank you. These are my 2 sentences. The last time I saw such a timetable was when I was on a railroad. That's number 1. I don't intend to be railroaded here. That's number 2.

PRESIDENT NISBET: Mr. Mahinske.

MR. MAHINSKE: I assume the rules are still suspended, Mr. President?

PRESIDENT NISBET: They are not.

MR. MAHINSKE: Well, I move that we suspend the rules and take a vote on this issue right here and now.

PRESIDENT NISBET: The question is on the motion of Mr. Mahinske. Is there any discussion? If not, all in favor say aye. Opposed, no.

The motion does not prevail.

The Chair recognizes Mr. Binkowski.

MR. BINKOWSKI: Mr. Secretary, will you please read my motion?

SECRETARY CHASE: Mr. Binkowski moves that, because of the limited spectator space and the interest of high school and college students and because of the need of this convention to have a knowledgeable electorate who understand how we function, the committee on administration be requested to consider the advisability of retaining closed circuit television and contact all parties who may be of assistance, such as the capitol building superintendent, who can testify to the number of students visiting Lansing each year, the working committee on educational television, and the universities.

MR. BINKOWSKI: Just a few brief remarks. As you can see, our space here for visitors is limited to 180. On the other hand, talking with the capitol building superintendent, he informed me this morning that during the peak season, which usually starts in November, there are approximately between 600 and 900 students per day. I don't think that we can possibly accommodate them, and the only way that they can actually watch and see what is going on is via this closed circuit TV, and outside I think you have seen it in operation.

Incidentally, another benefit which we delegates can derive from this is that we can wander around outside perhaps sometimes during the debates and still keep track of the sessions so that we can return here in time to vote. My motion is only to have this matter fully discussed and considered by the committee on administration.

PRESIDENT NISBET: The question is on the motion of Mr. Binkowski.

Mr. DeVries.

MR. DeVRIES: Mr. President, we appreciate Mr. Binkowski's motion, and I am sure the committee will give it every due consideration.

As I understand it, there are 2 policy questions involved in the use of closed circuit television which I would like the delegates to consider, and give their opinions to the committee. First of course, is the obvious expense. The contract, I understand, runs out at the end of the week. The second is we would like to make arrangements with the television stations of this state, if they so desire, to tie into this closed circuit television and do it either on video tape or do it live on their television stations, and of course in this case we would like to know if they are willing to share the cost.

In any event, we would like your opinions on this. If you have any, please make them known either to myself or the other members of the committee on administration. Thank you.

PRESIDENT NISBET: The question is on the motion of Mr. Binkowski. Is there any further discussion? If not, all those in favor say aye. Opposed, no.

The motion prevails.

Any further motions or resolutions?

SECRETARY CHASE: That is all the motions or resolutions on file, Mr. President.

PRESIDENT NISBET: **Unfinished business.**

The Chair recognizes Dr. Pollock. Incidentally, I might say that Dr. Pollock was asked to do this.

MR. POLLOCK: Mr. President, you asked me yesterday to make a few preliminary remarks of a general nature before we began to split up into committees in order to

focus the attention of the delegates upon the general problems that face all of us.

I merely wanted to suggest that I consider general discussion, both in the convention and in the committees, prior to getting down to our specific work, to be highly desirable, and if the Chair wants to make arrangements for some kind of general discussion at our next meeting, I certainly would be very glad to support that action. I have no particular suggestion to make but perhaps the delegates themselves would care to react either to what I said or have additional ideas of a general nature which will be valuable to us as a convention.

PRESIDENT NISBET: Thank you, Dr. Pollock. Without objection, would you please consider Dr. Pollock's presentation of yesterday, and Monday evening if at all possible we will try and save some time for discussion of his presentation and ideas that you might have on this very important subject.

Special orders of the day.

SECRETARY CHASE: None.

PRESIDENT NISBET: General orders of the day.

SECRETARY CHASE: None.

PRESIDENT NISBET: Announcements.

SECRETARY CHASE: We have the following announcements of committee meetings. May the secretary state that it is his intention to publish this list of committee meeting announcements at the end of the journal for today so they may be found for quick and easy reference when you come back on Monday. But here are 2 or 3 of immediate importance.

The committee on administration will meet in room G today immediately after the session, and also the committee on administration will meet in room G today at 8:00 o'clock p.m. Two meetings of the committee on administration, one immediately after the session and the other at 8:00 o'clock this evening. Walter DeVries, chairman.

Mr. Arthur Elliott announces that the committee on local government will meet next Tuesday, 9:00 o'clock a.m., in room A.

Mr. Danhof announces that the committee on judicial branch will meet in room B next Tuesday, October 17, at 10:00 o'clock a.m.

Mr. Ink White announces a meeting of the committee on public information immediately after the session today in committee room C.

Mr. Brake announces that the committee on finance and taxation will meet next Tuesday morning at 10:00 o'clock in room E.

Mr. John Hannah announces that the committee on legislative organization will meet in room D immediately after the session today.

Mr. Van Dusen requests that the standing committee chairmen meet briefly in room B immediately following the adjournment of today's session—committee chairmen meet briefly in room B immediately following today's session.

Now in regard to the mailing lists, we borrowed them from the house of representatives so you will find these journal mailing lists with an indication "representative" instead of "delegate". Please put your name at the top of the sheet, and over this weekend you are allowed to put 25 names on the mailing list for the mailing of the daily journals.

Mr. White has raised a question as to whether or not automatically the names of the members of the legislature, Michigan newspapers, and schools and libraries are on this mailing list. They are not. If you wish any of these on the mailing list that are in your district, please put the names and addresses on the mailing list for your district. If it runs to over 25 in that category, I am sure my secretary will be glad to arrange a method to see that interested citizens in this category, and particularly the schools and libraries, may be furnished with the journals.

One other request on the part of the secretary and his staff and that is please, for a little while yet, when you rise to be recognized here on the convention floor, the court reporter in particular who must keep her nose in her notebook, has some difficulty in finding out who is speaking, so if immediately before you start to speak after being recognized you would give your name, it would help the reporter considerably.

Also, when you hand a document of any kind in to the secretary's office or to anyone on the staff, please see that your name is on it. We haven't yet reached the point where we know you all. We hope to before too long.

Another committee meeting notice. Mr. Martin gives notice that the committee on the executive branch will meet in room C next Tuesday morning at 8:30.

PRESIDENT NISBET: Dr. Pollock.

MR. POLLOCK: I also sent in a notice that the committee on declaration of rights, suffrage and elections will meet at 10:30 on Tuesday in room E.

PRESIDENT NISBET: Mr. DeVries.

MR. DeVRIES: Mr. President, the committee on administration wishes me to make 2 announcements. First of all, that all applications for staff positions with the constitutional convention must be in the committee on administration office, room G, by 11:00 p.m. Monday, October 16. Secondly, there has been some question from the delegates as to when they are going to get their salary checks. Mr. McLaury, of the department of administration, tells me that we should have the first check no later than the middle of next week.

PRESIDENT NISBET: One other announcement. Mr. Brake.

MR. BRAKE: Dr. Pollock's committee and the committee on finance and taxation cannot both meet in the same room at the same time. If he is going to occupy E, perhaps we can occupy F. It makes no difference as long as we have separate rooms.

SECRETARY CHASE: Mr. Brake has changed the meeting of the committee of which he is chairman to room F — committee on finance and taxation.

A question has been raised as to the use of the telephone credit cards. These are to be used on convention business only, and any calls you make by the use of these telephone credit cards will be billed to the convention, and through that, with the information that we receive, we will maintain a record of the expense of the telephone calls that you make individually.

PRESIDENT NISBET: Any further announcements?

Mr. Wilkowski.

MR. WILKOWSKI: I ask leave to be absent from Monday night's session. I make this request because of the death of a very close and dear friend of mine.

PRESIDENT NISBET: Without objection, leave will be granted. Any further business?

The Chair recognizes Mr. Blandford.

MR. BLANDFORD: Mr. President, I move we adjourn.

PRESIDENT NISBET: The question is on adjournment. All those in favor say aye. Opposed, no.

The motion prevails. The convention is adjourned until Monday evening at 8:00 o'clock.

[Whereupon, and in pursuance of the order previously made, at 2:35 o'clock p.m., the convention adjourned until 8:00 o'clock p.m. Monday, October 16, 1961.]

SEVENTH DAY

Monday, October 16, 1961, 8:00 o'clock p.m.

PROCEEDINGS

PRESIDENT NISBET: The convention will please come to order.

The invocation will be given by the Reverend Virgil Felton Director of New Churches of Christ Evangelism, Grand Ledge.

REVEREND FELTON: Our heavenly Father, tonight we pray for three vital things: One, we pray for wisdom and understanding to know that which is right. Two, for courage that we might stand on that which we determine to be right. And finally, our Father, wilt Thou grant to us the greatest of all gifts, that of love.

May love truly dominate every person here tonight, and may our love for each other be the kind of love that was exemplified in the person of the Christ, Who gave Himself, in His great love, a ransom for all. We ask it through His name. Amen.

PRESIDENT NISBET: The roll call will be taken by the secretary. All present please vote aye.

SECRETARY CHASE: Mr. President, 129 delegates are present, a quorum.

There have been filed with the secretary the following requests for leave:

To be excused from tonight's session: Mr. Snyder, on request of the committee on administration, is in Detroit inquiring into the use of some furniture for the convention; Mr. Upton, attending the 50th anniversary of the founding of his company; and Mr. G. E. Brown, who is attending a township board meeting.

To be excused from the sessions of today and tomorrow: Mr. Walker; Mr. Shackleton, who is attending a board meeting in New York City which was scheduled before the election.

To be excused from Wednesday's session: Mr. Pugsley so that he may attend a funeral in the immediate family.

Miss Hart requests that Messrs. Baginski, Binkowski, Lesinski and Stopczynski be excused from today's and Tuesday's sessions and that Messrs. Mahinske and Wilkowski be excused from Tuesday's session.

Mr. Faxon requests that Messrs. Norris and Suzore be excused from today's session.

PRESIDENT NISBET: Without objection, the requests are granted.

SECRETARY CHASE: Absent with leave: Messrs Baginski, Binkowski, G. E. Brown, Lesinski, Norris, Shackleton, Snyder, Stopczynski, Suzore, Upton, Walker and Wilkowski.

Absent without leave: None.

The secretary has been requested to make an announcement. In the parking lot, a blue Ford with license number LA-1309 is not parked in the proper place.

That is all the announcements, Mr. President.

PRESIDENT NISBET: Reports of standing committees.

SECRETARY CHASE: None.

PRESIDENT NISBET: Reports of select committees.

SECRETARY CHASE: None.

PRESIDENT NISBET: Communications from state officers.

SECRETARY CHASE: None.

PRESIDENT NISBET: Introduction, first reading and reference of proposals.

SECRETARY CHASE: Mrs. Daisy Elliott introduces

Delegate Proposal 1020, A proposal relating to election, term and duties of state officers. Amends article VI, section 1.

PRESIDENT NISBET: Referred to the committee on executive branch.

SECRETARY CHASE: Mrs. Hatcher and Mr. Faxon introduce

Delegate Proposal 1021, A proposal to change the voting age minimum from 21 years to 18 years. Amends article III, section 1.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: Mr. Hoxie introduces

Delegate Proposal 1022, A proposal to provide 4 year terms for members of the legislature. Amends article V, sections 2, 3 and 12.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: Mr. Hoxie also introduces

Delegate Proposal 1023, A proposal to provide 4 year terms for governor and certain other state officers. Amends article VI, section 1.

PRESIDENT NISBET: Referred to the committee on executive branch.

SECRETARY CHASE: Mr. Hoxie also introduces

Delegate Proposal 1024, A proposal to provide 4 year terms for certain county and township officers. Amends article VIII, sections 3, 5 and 18.

PRESIDENT NISBET: Referred to the committee on local government.

SECRETARY CHASE: Mr. Erickson introduces

Delegate Proposal 1025, A proposal for qualification of electors for president and vice president of the United States. Amends article III, section 1.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: Mr. Faxon introduces, for Mr. Norris,

Delegate Proposal 1026, A proposal providing for the adoption of the national municipal league model state constitution provisions for a single chamber legislature elected by such apportioned numbers as to grant all areas, rural and urban, effective representation, and granting the governor power of districting with judicial review of such districting by any qualified voter. Amends article V, sections 2, 3 and 4.

PRESIDENT NISBET: Referred to the committee on legislative organization.

SECRETARY CHASE: Mr. Faxon introduces

Delegate Proposal 1027, A proposal relating to the appointment and duties of the superintendent of public instruction. Amends article XI, section 2.

PRESIDENT NISBET: Referred to the committee on education.

SECRETARY CHASE: Mr. Faxon also introduces

Delegate Proposal 1028, A proposal relating to increasing the size of the state board of education and expanding its functions. Amends article XI, section 6.

PRESIDENT NISBET: Referred to the committee on education.

SECRETARY CHASE: Mr. Austin introduces

Delegate Proposal 1029, A proposal to give broader constitutional freedom to the legislature to levy all types of taxes and to delete confusing reference to "an annual tax". Amends article X, section 2.

PRESIDENT NISBET: Referred to the committee on finance and taxation.

SECRETARY CHASE: Mr. Austin also introduces

Delegate Proposal 1030, A proposal to direct the legislature to give taxing powers to local governments or political subdivisions. Amends article X by adding a new section.

PRESIDENT NISBET: Referred to the committee on finance and taxation.

SECRETARY CHASE: Mr. Austin also introduces

Delegate Proposal 1031, A proposal to remove the prohibition against tax legislation by reference to other legislation. Amends article X, section 6.

PRESIDENT NISBET: Referred to the committee on finance and taxation.

SECRETARY CHASE: Mr. Austin also introduces **Delegate Proposal 1032,** A proposal to direct the legislature, without unnecessary limitation, to provide for equalization of assessments. Amends article X, section 8.

PRESIDENT NISBET: Referred to the committee on finance and taxation.

SECRETARY CHASE: That is all the proposals for introduction this evening, Mr. President.

PRESIDENT NISBET: Second reading of proposals.

SECRETARY CHASE: Nothing on that calendar.

PRESIDENT NISBET: Third reading of proposals.

SECRETARY CHASE: Nothing on that calendar.

PRESIDENT NISBET: **Motions and resolutions.**

SECRETARY CHASE: Mr. Faxon offers **Resolution 8,** A resolution requesting the transmittal of copies of convention proceedings to all secondary schools and libraries of the state.

Following is the body of Resolution 8, as offered:

Whereas, The state of Michigan is now in the midst of a constitutional convention, the results of which, if adopted, will be the basic law of the state for many years to come and the generation of students now in schools and colleges will be governed by the same; now therefore be it

Resolved, That copies of all convention proceedings be sent to all secondary schools and libraries of the state.

PRESIDENT NISBET: Referred to the committee on administration.

SECRETARY CHASE: Mr. Nord offers **Resolution 9,** A resolution relative to the form of writing the constitution.

Following is the body of Resolution 9, as offered:

Resolved, That the substantive committees of the convention be requested to consider the writing of the constitution in such manner as to contain 2 distinct types of provisions, each amendable in a different manner, to wit:

1. General provisions of a broad scope, amendable in the normal manner; and

2. Implemental provisions designed to make immediately self executing certain general provisions, such as, for example, supplying dates and certain other numerical quantities, to be amendable by legislative action.

PRESIDENT NISBET: Referred to the committee on rules and resolutions.

SECRETARY CHASE: Mr. Nord also offers **Resolution 10,** A resolution pertaining to the procedure of substantive standing committees relative to proposals.

Following is the body of Resolution 10, as offered:

Resolved, That

1. Each substantive standing committee, before undertaking an evaluation of specific proposals for changes in the constitution in its particular area of competence, undertake a study having as its object to evaluate the relevant present system or systems and/or constitutional provisions; for example, as to origin, history, rationale, costs, effectiveness and need for change or improvement if any;

2. Each such committee thereafter proceed to consider all modifications or alternatives to said present system or systems and/or constitutional provisions, whether presented to the committee in the form of proposals, petitions, or suggestions of members of the committee, in the light of the prior study set forth in item 1 above, in order to determine which, if any, of these will provide necessary corrections or desirable improvements;

3. Each such committee then draft its specific committee proposal or proposals in the light of such evaluation of the present status and on the basis of such study of proposals, petitions, and suggestions;

4. Each such committee immediately arrange a planned program and tentative time schedule for carrying out the above activities, and report same to the convention as soon as feasible: Provided however, That such time schedules shall yield to the orderly progression of work of the committee, and that there shall be no rigid deadlines for the receipt of new proposals, petitions, and suggestions from committee members; and

5. Each such committee thereafter submit brief periodic progress reports to the convention approximately every 2 weeks, showing any changes in said program, the degree of progress with respect to said program, the number and location of committee meetings and public hearings held, the names of all persons who appeared in such public hearings and on whose behalf they have appeared, and any tentative conclusions reached by the committee in the course of its study.

PRESIDENT NISBET: Referred to the committee on rules and resolutions.

SECRETARY CHASE: Messers. DeVries, Gust and Mahinske offer **Resolution 11,** A resolution to amend the appendices to the report of the committee on permanent organization and rules, adopted by the convention October 9, 1961.

Resolved, That the convention adopt the following amendments:

1. Amend the table of organization, **Appendix A,** under **"Research, drafting, and public information division"** by striking out "Director of research, drafting, and public information" and inserting "3 codirectors of research, drafting, and public information".

A. Amend the appendix by striking out "Assistant to the director of research and drafting".

B. Amend the appendix by striking out "2 secretaries to the director and his assistants" and inserting "2 secretaries to codirectors and their assistant directors".

C. Amend the appendix by striking out "9 research and drafting associates" and inserting "9 research, drafting, and public information assistants and consultants*".

2. Amend the table of organization, **Appendix A,** under **"Administration and housekeeping division"** by inserting, following "Secretary to the president", "3 secretaries to the vice presidents".

3. Amend the job descriptions **Appendix B** under **"OFFICE OF THE PRESIDENT* — Division of research, drafting, and public information"** by striking out all of item A and inserting "A. Codirectors of research, drafting, and public information (3).

The codirectors of this division are responsible to the president. They should be senior lawyers, political scientists, historians or economists; have a knowledge of the methods of research and the capacity to do research and to manage a research team, to draft and write articles, to supervise the writing and drafting of others and to edit their materials. They must be able to work with people, to express their ideas without antagonizing people, and to harmonize the ideas of others.".

A. Amend the appendix by striking out all of item B.

B. Amend the appendix, item C, by striking out "C. Assistant to the director in charge of public information.", and inserting "B. Assistant director in charge of public information.";

C. Amend the appendix, item E, by striking out "Research and drafting associates" and inserting "Research, drafting, and public information assistants and consultants".

4. Amend the job descriptions, **Appendix B,** under **"OFFICE OF THE PRESIDENT* — Administration and Housekeeping Division"** by inserting a new item C as follows:

"C. Secretaries to the vice presidents (3).

These people must be capable of taking shorthand and typing letters, memoranda and studies. These people must

also have the capacity to get along with people and work well with other staff members."; and relettering the remaining items accordingly.

For body of original report, see above, page 122.

PRESIDENT NISBET: The resolution will be referred to the committee on rules and resolutions.

[By unanimous consent the convention returned to the order of reports of standing committees.]

SECRETARY CHASE: The committee on administration, by Mr. DeVries, chairman, submits the following report and recommends that the convention approve the report:

1. That the size of the convention journal be 8½ x 11 inches, same to be printed on 50 lb. Climax paper stock, 3 hole punched, larger left hand margin, uniform right hand margin, with proceedings of the convention printed in 2 columns on each page. Also, that a performance bond be required.

Further, that the convention accept the proposal of Speaker-Hines and Thomas, Inc.

2. That the convention employ Accurate Court Reporters to make verbatim transcripts of the sessions of this convention until further action of the committee on administration.

Walter DeVries, chairman

PRESIDENT NISBET: The question is on the adoption of the report. Is there any discussion?

MR. FARNSWORTH: Mr. President, I move the adoption of the report of the committee on administration.

PRESIDENT NISBET: The question is on concurring in the recommendation. Is there any further discussion?

If not, all those in favor say aye. Opposed, no.

It is concurred in.

Is there any unfinished business?

SECRETARY CHASE: None, Mr. President.

PRESIDENT NISBET: The other day, Dr. Pollock made his presentation on the constitution. We have reserved some time this evening at this time for further discussion of Dr. Pollock's presentation, and suggestions and questions that some of us might like to put to Dr. Pollock or to discuss among ourselves on his presentation that day. The meeting is now open for questions, contributions or discussion on Dr. Pollock's talk on the constitution.

Mr. Cudlip.

MR. CUDLIP: Mr. President, I should like to ask our distinguished colleague for his ideas, if he has any at this time, about the priority of work, to use a general phrase, as amongst the subjects before the convention as we now know them or think they will develop.

I realize that is a broad question, but I think it will open up a subject that is very interesting to all of us.

MR. POLLOCK: Mr. President, I have no very clear ideas on that specific proposal, although it is my notion that sooner or later the committee chairmen are going to have to get together and decide upon the order in which their various proposals are going to come before the convention.

They can come, of course, hit and miss. It would be much better if some order could be brought into this matter. I do think, however, that there is a collateral matter that has occurred to me. I have noticed as the president has been referring bills to committees it is quite obvious that a proposal has an effect upon the substantive material of 2 or 3 committees. I should think that the rules committee should somehow bring out a rule which would make certain that there be collateral references to affected committees in all matters which are before the convention.

Take, for instance, the matter of elections. It is obviously a matter of significance to the committee on executive branch about the term for governor and the time for the election in which the governor is chosen. This is obviously a matter of elections too, and one can't consider the whole electoral process and that means perhaps collateral reference to committees.

I also think that somehow — I have no very specific suggestion here — some of the basic questions facing this convention are going to have to be discussed somewhere, somehow, at least in a preliminary manner, before we begin to refer single issues. Let us take, for instance, the whole question involving the legislative process and the powers of the legislature. We can't talk very much about whether we believe in earmarking revenues or not earmarking revenues until we decide whether the legislative body we are going to propose is the kind of body we want to be unrestricted. There are 2 or 3 of those issues that I should like to have more discussion on before we begin to get down to specifics.

But on the point that Mr. Cudlip has raised, I'm afraid that I have no better suggestion than that perhaps the president, with the assistance of the committee chairmen, can work out some system of priorities.

PRESIDENT NISBET: Mr. Allen.

MR. ALLEN: Dr. Pollock, I have 2 questions that concern the statistics which I believe you gave, which interested me and some of the other delegates very much, concerning the extent of federal grants-in-aid out of the total nondefense budget of the United States. I believe you said it amounted to about 1/6 of the total nondefense budget of the federal government.

I wonder, first, if you could comment on that a little more, particularly in regard to Michigan?

And then, second, particularly in what way you would feel that this constitutional convention could do anything effective so that this large dependency which we seem to have on the federal government could be retarded or slowed down?

MR. POLLOCK: This would require at least a couple of hours. (laughter) Mr. Allen, I will be glad to talk to you privately, or anybody else. I threw the statistic in because it does seem to me to be very eloquent in demonstrating the extent to which Washington now has been assuming control — and it is in many cases effective control — over services which are performed in the state of Michigan, some of which, I think I can say without being controversial, could just as well be provided for and therefore controlled exclusively by the state of Michigan.

I meant to illustrate the fact that I think the states have been negligent in providing services demanded by their citizens. Therefore, the citizens have been turning more and more to Washington, and my figure clearly indicated the extent to which that trend has gone.

I think beyond that, I don't care to say any more now.

PRESIDENT NISBET: Mr. Follo.

MR. FOLLO: I would like to ask Dr. Pollock how long should a constitutional convention take in its labors? Can it be done in a short period of time, on a short schedule?

MR. POLLOCK: Mr. Follo, here I have to express disagreement with my good friend Mr. Woolfenden who introduced his resolution the other day, because I don't see how anyone at this point can do this; even the president himself, who is in a better position than anybody else to predict when we are going to be able to come to grips with some of the basic issues before us.

To say that this will be December 1 is, I think, to be extremely optimistic. As far as I am concerned, I would not want us to loaf on the job, but I do believe that we should proceed without hurry or rush. If we proceed along normal lines and normal circumstances, I see no reason why we can't complete our labors certainly within the period mentioned in the statute and, I would hope, a little bit sooner, but not as soon as I think was indicated by my friend Mr. Woolfenden.

PRESIDENT NISBET: Mr. Woolfenden.

MR. WOOLFENDEN: Dr. Pollock, it is a fact, is it not, that Alaska wrote its new constitution in 75 days and New Jersey wrote its new constitution in 90 days? Is that correct?

MR. POLLOCK: That is correct, but it is not the whole story.

MR. WOOLFENDEN: Is it also correct that Missouri, running without a timetable, ran a constitutional convention for 2 years and ended with really trivia that the people would not approve?

MR. POLLOCK: Yes, that is also correct. And that is most of the story so far as Missouri is concerned.

But when you talk about Alaska, you should mention the fact that they all went up into the woods in the university and holed up for the period without any other diversions and were able, therefore, to give their full time to the task.

In a great industrial commonwealth like this, it doesn't seem possible for us to do that under those circumstances. Therefore, it is bound to take us longer.

And so far as New Jersey is concerned, please remember that one of the most controversial issues before this convention was completely excluded from the discussion at the New Jersey convention, and therefore they had to worry no time at all about reapportionment.

PRESIDENT NISBET: Mr. Prettie.

MR. PRETTIE: In your very instructive remarks, Dr. Pollock, you mentioned, speaking of the attributes of a constitution, that we agreed the same should be as brief and as concise as possible.

Would you care to express an opinion whether, in your view, our present constitution is at this time unnecessarily encumbered with legislative detail?

MR. POLLOCK: Yes, I certainly do think so. I tried to mention the fact that our constitution, I hope, would be very considerably reduced in size, and I have hardly met a delegate in this convention who hasn't agreed with me on that point.

I think there is a considerable amount of deadwood in the constitution which, without much controversy, can be eliminated.

Of course, the point you raise about the inclusion of the statutory material is often more difficult than it appears. We sometimes put statutory material in the constitution because we didn't trust the legislature to do what we wanted them to do. This is a basic point. That is way I said earlier that unless we can develop a legislative body in which the public is likely to have more confidence than it has had in legislatures in the past, there will be many delegates in this hall who feel loath to remove present restriction on that legislative power.

This is one of those basic questions that will have to await the careful handling of Dr. Hannah's committee before we get into other substantive matters.

PRESIDENT NISBET: Mrs. Judd.

MRS. JUDD: Mr. President, I should like to speak to Dr. Pollock on the point that the constitution should be dynamic and, as he quoted, I believe, Justice Cardozo, it should express principles for our expanding future. I think this is very challenging. At the same time I find it presents one with quite a paradox.

If you try to envision Michigan's expanding future, you can get very enthusiastic. But when you try to translate it into constitutional terms, you come down with quite a thud because you come face to face with the other principle Dr. Pollock mentioned — brevity and flexibility.

I would like to illustrate this with just one example from my pet interest, which is local government. I have spent a good many years on metropolitan area problems, so when I found the constitution was going to be open to change, for my amusement I drafted a provision which would set up what I consider to be an ideal situation for metropolitan government. Then, when I checked up on it from the point of view of brevity and flexibility, my pride in authorship took quite a beating, and I think these are the 2 reasons in this particular example:

First, there is no one form of metropolitan government that would satisfy the needs of our very widely differing metropolitan areas, where we have Detroit, for instance, which is a multicounty area and almost interstate and, indeed, international.

Then we have areas which fit very neatly into a single county situation. We have other areas that are just emerging and whose problems really are in the preventative stage.

Secondly, there really is not as yet any satisfactory form of metropolitan government. There is a great deal of talk and there is a great deal of experimenting going on, but certainly not even Miami or Toronto offer us anything we want to freeze into the constitution. So I am much impressed with the combination of qualities that Dr. Pollock has outlined for us because it would, if we adhered to it, make room for inventiveness.

I think Dr. Luther Gulick, who was one of the principal speakers here in East Lansing a few years ago at the first conference on metropolitan government, brought this point out very well. I will quote him. He said:

> The time has come for inventive thinking, for action as inventive as with our forefathers, when in the face of great need they brought the squabbling colonies together under the federal Constitution of the United States in 1789.

So it does seem to me that about the most we can do on this problem is perhaps remove the restrictive provisions that prevent change in local government, and then give authority and freedom to both the local units of government and state to make room for invention and improvement and change, and in this way I feel that we will draw a dynamic constitution which, as Dr. Pollock has said, should keep democracy on the march.

PRESIDENT NISBET: Mr. King.

MR. KING: Dr. Pollock, you mentioned in your talk, as I recall it, a state constitution should be a document which is worked rather than worshiped.

I wondered if you had reference in the context of our present constitution, or would you still say this was true assuming a constitution could be written which would meet with your complete approval?

In other words, do you feel that the amendment process in a state constitution must be considerably more liberal than the amendment process in the federal constitution?

MR. POLLOCK: Mr. President, I have found in my life that there has been a good deal of transfer made of that very sacred quality which I think does attach to our federal constitution to documents at the state level which don't deserve that attention and worship. In other words, state constitutions have been, by and large, hodgepodge documents and have become even more so in recent years.

When they cease to have that eternal quality ringing true on institutions that have lasting value, then I think it is wrong to attach to them qualities which they really do not possess. That is what I meant to say.

Regarding the amending process of the two, this of course raises all kinds of collateral questions which we will have to discuss when we consider the amending process.

As far as I am concerned, I think our present amending process is reasonably satisfactory and I think should remain reasonably flexible as it is now. This is my own opinion.

PRESIDENT NISBET: Mr. Sharpe.

MR. SHARPE: Dr. Pollock, I would like to have you answer this question in regard to a drastic change that we might make in our present document. What effect will it have in getting it passed by the electorate?

MR. POLLOCK: I am very sorry. I didn't hear the last part of that question.

MR. SHARPE: In the event there is a drastic change made in our present document, what do you think it will do in regard to the vote of the population of Michigan when they come to vote on the document?

MR. POLLOCK: I don't think anybody can tell at this stage. I can conceive of a constitution that is completely worked over, new, even radical in some respects which might be adopted easier than one which just changed a few commas. I wouldn't want to say one way or the other. I am not able to judge the temper of the people of Michigan a year from November — I think we should keep this in mind — but I believe the temper of Michigan is a little more progressive than most people make it out to be.

PRESIDENT NISBET: Mr. Kelsey.

MR. KELSEY: Dr. Pollock, my notes tell me that you mentioned something about government by deadlock. I won-

der if you would give some example of this remark, government by deadlock?

MR. POLLOCK: Well, I think we can see the record of Michigan during the last decade, and that is the only documentation that you need. (laughter)

Of course here, Mr. President, you are forcing me to express my own opinions without benefit of all of the advice and counsel and argument which I am bound to have here at this convention.

At one time or another I have had, I think, a fairly reasoned opinion on most of these problems, but whatever I have thought in the past has got to stand up to the arguments that are presented in this convention, and I expect many times to withdraw from my position, as I expect others to withdraw from theirs, to the end that we all come to a happy compromise.

PRESIDENT NISBET: Mr. Hutchinson.

MR. HUTCHINSON: Mr. President, I would like to address myself to Dr. Pollock's remarks of the other day very briefly, and to say at the beginning that I subscribe substantially to everything that he says. I think that it will be one of our chief goals to write a constitution for this state which is brief, provides a flexible government vesting in the legislature sufficient power to meet changing conditions, changing times and changing demands.

As I approach this task, though, I believe there is, perhaps, quite a fundamental difference in function between the Constitution of the United States and the constitution of Michigan or of any one of the 50 states.

I was taught — and I believe rightly — that the government of the United States is a government of limited power; that the function of the Constitution of the United States is to grant that power to the federal government; and that every activity of the federal government must be based in that constitution — must be found there within that grant of power.

On the other hand, I conceive the state constitution not to be a grant of power at all, but a limitation upon power.

I think that the people of the state of Michigan in their sovereignty retain all power for themselves, save only that part which they have delegated to the national government. The people of Michigan in the exercise of their sovereignty hold all political power which is expressed through their elected representatives in the legislature. Therefore, I believe that it is the function of a state constitution to write restrictions upon the legislative power, and that unless you find a restriction there prohibiting a particular course of action, that the legislature does have the power to act.

It has been my privilege — and I have counted it a privilege — to have served in the legislature of Michigan for 14 years. I have felt that that legislative power has been unduly restricted by our present constitution, and I am hopeful that the legislative power can be greatly increased; that is to say, that the restrictions upon it will be measurably reduced.

I have thought about the matter even to this extent, and this may oversimplify it, but to make a point: if in the beginning the congress of the United States had not required Michigan to submit a written constitution as a condition precedent to entering the union of these states — if instead of that the congress of the United States had passed a law authorizing and directing the territorial legislature to have passed a law for election of a state legislature and that is all, then the state legislature so elected back in those days could have by law — by legislative act — created an executive; created a judiciary; created local units of government; created the whole structure of government by legislative act. And since that would have been possible — and, I submit, constitutionally possible — it occurs to me that by that reasoning we demonstrate that the whole function of a state constitution is to write restrictions upon the legislative power insofar as the constitution provides for an executive branch and for local units of government and for a judiciary.

And insofar as the constitution goes into details and sets those things up, to that extent the power of the legislature in its discretion is limited.

Therefore, Mr. President, I say I approach this task with a conviction that our problem is to weigh the restrictions upon legislative power primarily, and I hope that we will adhere to Dr. Pollock's admonition that in each and every case, we put each and every proposal to this test: Why must this be in the constitution? Why must it be there? Couldn't it be as well left to the discretion of the legislature?

And I would be extremely happy to see our labors result in a constitution limited and broad; but I agree also — as I think Dr. Pollock has pointed out this evening — that our first task here must be the determination of what kind of a legislature we are going to create. If we can create the kind of a legislature which can bear this broad responsibility, then I think that the people of Michigan will be better off to leave that broad discretion in the legislature's hands.

PRESIDENT NISBET: Mr. Stevens.

MR. STEVENS: My question has been partially answered by Mr. Hutchinson. The question was to Dr. Pollock: Did he have any suggestions by which we could shorten the present constitution? He said in committee meeting one day that he hoped it could be cut about ⅓. I told him he was an optimist.

Mr. Hutchinson has suggested certain plans. I am sure there are some others.

MR. POLLOCK: I think I would agree very thoroughly with Mr. Hutchinson and thank him for his remarks which are obviously a necessary addition to what I was able to say in a few minutes. I think the principal saving, aside from mere material which through the ages has become just logically and naturally out of date, the basic shortening of the constitution can come best by the elimination of material which properly should belong to statutory drafting, namely to action by the legislature.

PRESIDENT NISBET: Mr. Martin.

MR. MARTIN: Mr. President, I don't want to disagree with Dr. Pollock with respect to the shortening of the constitution, but I think it is possible to put too much emphasis, perhaps, on the number of words in the constitution, and that we have to put more emphasis on the content of it and let the words take care of themselves, recognizing that we should keep it as short and as concise and as easily understandable as possible.

With regard to Mr. Hutchinson's comment, I think we ought to add — at least in my own view — that the framing of a good constitution is not solely a question of the extent of legislative power and how to free that so that the legisture can operate as it should operate, as freely as possible, but that it is also a question of establishing the powers of the governor in such form that the governor can also act to the full extent of not only his ability, but to the extent of the needs of the state of Michigan. I think that in many respects this power has been unduly restricted.

I think there are not only opportunities to consider changes that can be made in restrictions on the legislature, but that there should be equal consideration given to those changes we can make which will make the governor a more effective governor and one who can more readily carry out the wishes of the people.

PRESIDENT NISBET: Mr. Wanger.

MR. WANGER: Mr. President, I wish to speak in support of the approach which Mr. Hutchinson suggests that we should take in examining the constitution, which is an approach not favoring increasing or keeping restrictions which we have in the document, but rather the basic standpoints from which we view the constitution.

According to the Book of the States, our constitution has about 15,300 words in it. It is about 3 times as long in words as the United States constitution. It is, of course, far more specific than the United States constitution, which, on the other hand, is far more general than specific. Those people who wish to eliminate a great deal of restrictive detail from our constitution often use this comparison between the 2 documents as an argument.

While there may be very excellent reasons for removing many specific restrictions from our constitution, I would like to say that this analogy, this comparison, is not a good argument.

Lord Bryce, in The American Commonwealth, put it very well, I think, when he said, speaking of America's national government:

> The national government is an artificial creation with no powers except those conferred by the instrument which created it.
>
> A state government is a natural growth which prima facie possesses all the powers incident to any government whatever.

And he goes on at some length quoting from one of many American supreme court cases as follows:

> It has never been questioned that the American legislatures (speaking of the state legislatures) have the same unlimited power in regard to legislation which resides in the British parliament except where they are restrained by written constitutions.

So we see the fundamental legal concept behind our state constitutions is entirely different in this respect from that of our federal constitution, and we should not use that comparison as an argument for limiting the details which we wish to remove for other reasons from our basic document in Michigan.

PRESIDENT NISBET: Mr. Ford.

MR. FORD: Mr. President, I would like to start by saying that I don't find it unpleasant to be able to find a point of agreement with Mr. Hutchinson so soon after our tiff the other day (laughter) but I feel constrained to follow the thinking of Mr. Martin who, it seems to me, is touching on what Dr. Pollock said, at least as I understood it, the other day; that although he, as most scholars of his stature that have spoken and written on this subject, would look for some condensation of the present constitution, he nevertheless stays with the basic idea of our constitution, although it can't be, because of the difference in function outlined by Mr. Hutchinson, completely an exact duplicate or even an expansion of the federal constitution.

We find that numerous points of restriction are in our constitution of necessity to preserve the balance of power that Mr. Martin was touching on, and I got the impression from Dr. Pollock's remarks the other day that he felt that the clear-cut distinction between the three branches of the government would have to be maintained, and perhaps in some instances more clearly than now.

I believe there was some reference to the encroachments of administrative boards and bodies into the judiciary — at least a suggestion of it.

I would like to ask Dr. Pollock if he doesn't believe that a good many of the perhaps quasi-legislative actions taken in the constitution itself and in its amendments resulted from either the legislature's failure to act with respect to the other 2 principal departments of the government or, in some instances, situations that this state has found itself in where there has been such clear cut conflict between the legislative and executive, for example, and even the legislative and the judiciary that the people have come to feel a situation where either of the other 2 principal parts of the government might find themselves in a position of responding to the will of the legislature rather than to their own independent power and acting on their own conscience?

MR. POLLOCK: Mr. President, if I may reply to this last question, you may recall that I said in my remarks that we really now have 4 branches of the state government as we commonly mention them as we teach political science these days, meaning the administrative being the fourth.

Our constitution, of course, dating really from 1850, gives almost no attention, aside from the civil service amendment which was adopted 20 years ago, to the development of this huge new dimension within modern government, namely, administration, and this is certainly one aspect which needs to be given careful attention by the appropriate committees as we draft this constitution.

However, that in no way means that we should overlook the normal discussion and attention to the balance of powers between the authorities in the state.

And here I would reply to Mr. Martin that I am perhaps as strong an advocate as he is of developing the governorship into an office where you could expect the governor to do the job that the people ask him to do, which I think is not possible as the governorship is set up today.

But, although I believe in strengthening the position and power of the governor, at the same time I believe in strengthening the position and power of the legislature. I think they go hand-in-glove.

And I think I might also say I also believe in strengthening the powers and capacities of local government.

PRESIDENT NISBET: Dr. Nord.

MR. NORD: Mr. President, in view of the fact that all the professors are getting into the act, I would like to do so a bit myself.

First of all, I would like to strike a blow in favor of long constitutions — not necessarily that they must be long, but that they might be long.

It seems to be that it is very easy for us to jump to a wrong conclusion: namely, the shorter the better. Obviously, by reductio ad absurdum, you could see that the best constitution would be no constitution at all — and I believe Mr. Hutchinson has indicated that that might not be a bad idea. (laughter) I would like to dissent from that.

I don't believe that you can tell how good a constitution is by how short it is. I don't think that the style of drafting and the brevity and beauty of language are what count.

What counts is what is in the constitution regardless of the form or the words. What counts is whether we have a responsible government and an effective government, and if it needs a lot of words, I see no objection to it. I believe words are quite cheap.

I would point out that good grammar is not what we are after. What we are after is good government.

I would like to comment further on what Mr. Hutchinson says about the function of the state constitution. Mr. Hutchinson says the function of the state constitution is to write restrictions on the legislative power, that that is the basic function.

Mr. Hutchinson then goes on to say that we should get rid of many of these restrictions. If the purpose is to put them in, it seems kind of odd that our main purpose should be to get them out. I think they should be in, not out.

If, as Mr. Hutchinson says, the object of the constitution is to limit the legislature, I don't see how it follows that we can leave everything to the discretion of the legislature as Mr. Hutchinson indicates. To me the question is not how much liberty the legislature should have; the question is how much liberty the people should have.

PRESIDENT NISBET: Mr. Shanahan.

MR. SHANAHAN: Mr. President, I have been impressed by some of the comments. I like very much the comments that Mr. Hutchinson made. I would like to express what I have thought a constitution should be in just a very few words:

> I consider that a constitution is a good constitution or is a poor constitution in its measure against this consideration: I believe we are here as free men and as free women representing free men and free women for the purpose of stating, in just as few words as possible, the amount of our freedoms that we are willing to turn over to government.
>
> Man was born free. If he does not remain free, it is because he loses his freedom. I would hate to be a party to any convention that would infringe unnecessarily on the freedom of people.

I will explain this just a little bit if I may: I have felt for a long time that government is a necessary evil. I say it is a necessary evil. I emphasize the word "evil." It is

evil because it infringes on the liberties of people. It imposes on people, but it is necessary. When government goes beyond that which is necessary, it becomes an unmitigated evil.

Thank you very much.

PRESIDENT NISBET: Mr. Richards.

MR. L. W. RICHARDS: Mr. President, certainly one of the observations I have made in the short time I have been here concerns the caliber of people I have had the opportunity of meeting and being with, and it certainly gives a person a challenge to even play a small part in trying to write this constitution.

Meeting with these people, with the training they have, comparing them to the position I hold, I would say probably in my position I am representing our people as a layman, having experience in our local government and certainly having a wonderful opportunity to represent our people.

I might add, first of all, that to have a short written constitution, by the discussion I have heard here, seems to be a great impossibility, due to the fact that a number of people, like myself, like to have the opportunity to speak, and I imagine they would like to have as much as they could in writing, (laughter) so that a short constitution would be almost an impossibility.

So my deep concern is this, Dr. Pollock: do you believe this should be written as closely as possible in average layman's language so it can be easily interpreted?

Secondly, in what manner, besides the journal, can we help our people in making comparisons as to the changes we approve as a majority, and how this differs from the present constitution?

MR. POLLOCK: Your last question, Mr. Richards: it seems to me obvious that it is the duty of this convention to keep the people of this state informed not merely of what we do but the reasons for doing it. This, I think, is quite obvious.

Your first point with reference to the shortness of the document, the readability of the document: you will recall what Justice Dethmers said so well to us at the banquet, that he hoped this time the convention would give the supreme court a constitution which even they could understand. (laughter) This, I think, is something of an ideal (laughter) and points, regardless of length, to the fact that I think it is incumbent upon us to write the clearest possible language which we are capable of, and here, of course, we will rely heavily, I am sure, in the final analysis upon the committee on style and drafting.

PRESIDENT NISBET: Mrs. Cushman.

MRS. CUSHMAN: I would like to speak in regard to one of the points made by several of our speakers tonight, namely the desirability of considering reapportionment as possibly the first major issue to be debated on the floor.

With all due respect to the great people that have spoken before me, I would like to disagree with them, and I would like to point out a couple of dangers, to my way of thinking, that such a procedure might involve.

First of all, this issue is going to be possibly the most divisive issue of any we are going to meet here, and I think for it to come up first may set a tone for the rest of the convention in terms of the divisive atmosphere that I think can go far toward injuring what we are going to do or try to do.

Secondly, it will also be deciding all the rest of the issues in terms of what happened on reapportionment. This means, then, that you are going to be deciding policies in the constitution that may last for 50 years in terms of what you will be getting as a political party member in the next 5 years.

Actually, as a matter of fact, at the present time, the way people are moving around the state and the way political conditions change, it is very difficult indeed to predict what is going to happen as to benefits or harm to various political parties for a very long period in the future. We don't know what political changes will be taking place in the next 5 or 10 years, let alone the next 25 or 30 years, so let's make our decision on what goes into the constitution not in terms of what may happen in the next 5 years or how we happen to come out on reapportionment, but let's make our decisions in terms of what the people of the state can best use in their constitution 50 years from now.

Thank you.

PRESIDENT NISBET: Mr. Downs.

MR. DOWNS: Mr. President, I find it impossible to resist the urge if not to get equal time, at least ⅓ of the time given to our esteemed professor, so I think while we are making our comments on history, I too want to get in the act.

To paraphrase Calhoun, I view government not as a necessary evil but as a positive good, and as a positive good to the extent that this government responds to the wishes of an informed, educated electorate.

I think with that, I would just like to say a word on the historical shift that has, in my judgment, taken place between the executive and the legislative branch. Perhaps our founding fathers whose wisdom was great in many areas made one almost fatal mistake: they continued to call the chief executive of a state the governor, and prior to that time the governor of the colony had been a hand picked, imposed individual selected by the King of England who, as a result of not being elected, was not responsive to the people whereas the legislature was.

By using the same word, I think many of the historical criticisms and fears of the chief executive or the former British colonial governor continued, but as time has gone on — and this touches upon what we call legislative organization; I understand "apportionment" is not a nice word to use in this convention — we get then into the shift that at the present time the governor of any state in the United States, regardless of his party affiliation, is elected in an arena or an elective process where each person's vote is equal and to that extent can and does tend to respond to the wishes of the people, whereas, unfortunately — and I mean this in no personality sense, I want to make clear — our legislative process, which at the time of the colonial government was the responsive arm of government to the needs of the people, has increasingly, compared to the executive, been less responsive — not because of the intents or attitudes of the individuals, but because of the fact that each person's vote was not equal in the legislative area in the sense it was in the executive.

I suppose I might end up by saying, "Dr. Pollock, isn't that so?" and put it in the form of a question. (laughter) But it is, perhaps, because of these historical trends that we need to take another look at our legislative and executive branches and see that what we need is not a matter of applying these terrific checks and balances that prevent action, which we say in our state compare to a power lawnmower that has air brakes to slow it down.

I would like to ask Dr. Pollock if he visualizes making our state government more responsive to the needs of the people by trying to get a more positive structure in which both the executive and legislative more rapidly respond to the needs of the people?

Thank you.

MR. POLLOCK: Mr. President, of course I believe in making our government much more responsible and more responsive, and I thought I had indicated that by the phrase that we didn't want government by deadlock.

I certainly feel that in these days when so much apparently has to be done by government, the best we can do is to develop a structure which is not only in and of itself efficient, but which also responds to the recurrent needs of an enlightened electorate.

PRESIDENT NISBET: Mrs. Hatcher.

MRS. HATCHER: Mr. President, I would like to add, in just a few remarks, my personal observation of this convention and the discussion that is going on at the present time.

Of course, I view this convention as a very significant

occasion in the history of the state of Michigan, and I think the manner in which all of the delegates here came here is significant.

The fact that we do represent people back in our respective areas and that we were elected on a senatorial and representative basis means primarily that we will be expressing certain points of view, certainly points of view that people in our respective areas maybe are primarily concerned about as it affects the constitution of the state of Michigan.

A few days ago, one of the newspapers covered the vital statistics of this convention, pointing out how many lawyers, how many professors, how many businessmen, how many accountants, how many undertakers and how many other people were present here in this convention body, only saying to me in my own analysis of that particular appraisal that who the people are, what they represent and who they represent will determine how they will view certain sections of the constitution and what parts of it will play an important part to them. It seemed to me that how we determine these things will certainly be based upon these facts that I have just mentioned.

Of course, a good constitution to some people would be in the brevity of it. Some others may think that a full, lengthy document would be important. In my opinion I think it should be a constitution that would be meaningful to the people.

And certainly I will speak in agreement with what Tom Downs said and what Mr. Martin said a few minutes ago, that the constitution should be, for the most part, a document that would apply and be meaningful to people, in this case the people of the state of Michigan.

As delegates of this body, we are not only representing the people in our respective areas but all of the people in the state of Michigan, so our charge here is to review this document, the Constitution of the State of Michigan, and to recommend certain changes and to see to it that those changes, for the most part, will be flexible and farreaching enough to cover the needs of the people in the years to come.

I certainly hope that in our deliberations here within the next few months, however long they may be, we will certainly keep uppermost in our minds the importance of trying to keep abreast with the kind of surge that is going on throughout the nation and throughout the world, and that the people of America do have their eyes on the state of Michigan. What we do in terms of trying to create a greater degree of protection, a greater degree of electoral rights and all of the phases of the constitution that will be under discussion will certainly be something that all of the citizens throughout the country will be interested in.

And I certainly want to say to Dr. Pollock that it will be a pleasure serving with him on the committee on declaration of rights, suffrage and elections, and I look forward certainly to being able to improve the document, especially that particular section.

PRESIDENT NISBET: Mr. Boothby.

MR. BOOTHBY: I have 2 questions to direct to Dr. Pollock, both dealing with apportionment.

Should a legislature be reapportioned so that it responds only to the needs and wishes of the majority, or should it also respond to the needs and wishes of the minority?

Secondly, is the purpose of a legislative body one of action or one of deliberation? (laughter)

MR. POLLOCK: Mr. President, I think it is about time that I claimed the protection of the Fifth Amendment. (laughter and applause)

PRESIDENT NISBET: Thank you, Dr. Pollock.

MR. POLLOCK: Mr. President, could I say finally that it was never my intention — and I am sure it wasn't yours — that I should be laying down the law and the gospel to this convention.

It was your idea and mine, I believe, that we did need to have — and I think the discussion this evening proves it — a discussion about general principles, general goals, general objectives before we began spreading all over the map and I, for one, am very grateful for the various comments which have been made this evening.

PRESIDENT NISBET: Thank you very much, Dr. Pollock, for your presentation. It was very provocative, as the discussion has been tonight, I am sure. I think that must be some compensation to you for making your presentation.

Special orders of the day.

SECRETARY CHASE: There are none, Mr. President.

PRESIDENT NISBET: General orders of the day.

SECRETARY CHASE: None.

PRESIDENT NISBET: Announcements.

SECRETARY CHASE: The following announcements relative to committee meetings after the session this evening:

The committee on rules and resolutions will meet briefly in room B immediately following the session. R. O. Van Dusen, chairman.

The committee on administration will meet in room E immediately after the session. Walter DeVries, chairman.

The committee on legislative powers will meet in room F this evening after the session. T. Jefferson Hoxie, chairman.

A correction in the notice as it appears in the journal of last Thursday. The committee on executive branch will meet in room C tomorrow at 8:30 a.m. John Martin, chairman.

The committee on miscellaneous provisions and schedule will meet in room C tomorrow morning at 10:30.

The committee on local government will meet tomorrow morning at 9:00 o'clock in room A. Arthur Elliott, chairman.

The committee on finance and taxation will meet Tuesday morning, 10:00 o'clock in room E.

The committee on education will meet in room F tomorrow after the session. Alvin M. Bentley, chairman.

The president requests a meeting of the committee chairmen Wednesday at 11:00 o'clock in the morning in room E.

Miss McGowan requests to be excused from attendance at the convention for the period October 18 through October 20. She has a first-degree murder trial to conduct. (laughter)

PRESIDENT NISBET: Without objection Miss McGowan will be excused.

Mr. Pollock.

MR. POLLOCK: Mr. President, I didn't hear the secretary announce the meeting of my committee on declaration of rights, suffrage and elections at 10:30 tomorrow morning, and he was to provide a room for us. I haven't heard that room indicated. We were originally scheduled to meet in room E. I see you have now put another committee there. Could we have a committee room?

SECRETARY CHASE: Will it be satisfactory, Dr. Pollock, to meet in room F tomorrow morning?

MR. POLLOCK: At 10:30. All right.

SECRETARY CHASE: Thank you.

PRESIDENT NISBET: Are there any further announcements?

SECRETARY CHASE: **The secretary appoints,** pursuant to authorization by the convention, and with the approval of the committee on administration, the following persons to the positions indicated:

Assistant secretary — Dr. Austin C. Knapp.

Assistant journal clerk — Mrs. Mimi Simpson.

Assistant proposal and enrolling clerk — Mrs. Louise B. Parker.

Finance clerk — Mrs. Lois H. Tomlinson.

Secretary to the secretary — Mrs. Billie L. Dowell.

PRESIDENT NISBET: Without objection, the appointments will be approved.

Is there anything further to come before the convention?

SECRETARY CHASE: There is on your desk the blank which you sign, with a request for information as to your occupation and your home post office address. We should have put there your home phone. Please list your Lansing address and the committees to which you have been assigned. This will assist us materially in the preparation of the copy for the handbook.

That is all, Mr. President.

PRESIDENT NISBET: Is there anything further to come before the convention? That completes our business for the day.

Mr. Elliott.

MR. A. G. ELLIOTT: I move we adjourn, Mr. President.

PRESIDENT NISBET: Those in favor say aye. Opposed, no.

The convention is adjourned until 2:00 o'clock tomorrow.

[Whereupon, at 9:20 o'clock p.m., the Convention adjourned until 2:00 o'clock p.m., Tuesday, October 17, 1961.]

EIGHTH DAY

Tuesday, October 17, 1961, 2:00 o'clock p.m.

PROCEEDINGS

PRESIDENT NISBET: The Convention will please come to order.

The invocation will be given by theReverend E. Eugene Williams of the East Lansing Trinity Church.

REVEREND WILLIAMS: Almighty God, our Father in heaven, reverently now in Thy holy presence we bow our hearts to invoke Thy presence and Thy power upon this assembly this afternoon. We thank Thee that Thou hast indeed enjoined us to call upon Thee for wisdom, indicating that Thou wouldst give unto us liberally. We thank Thee, God, for the way Thou hast distributed this wisdom upon the delegates who are assembled here. We pray with a true sense of humility they might recognize now Thou hast given these gifts variously to different individuals, and therefore there might be an interdependence upon one another; that there might be a consciousness, our God, for the need of real cooperation and true statesmanship that will rise above any political partisanship.

We pray, our God, they might have a sense not only of duty and responsibility and commitment, but a sense that there are christian people praying throughout this state for them that they might be helped even in the realization of this, our God, because the matters before them are of such serious consequence. And thus we pray that by Thy grace and Thy love they might be blessed, our God, to make this convention all that it should be in every way. We shall give unto Thee the praise, for we ask it in the name of Thy holy Son, the Lord Jesus Christ. Amen.

PRESIDENT NISBET: The roll call will be taken by the secretary. All present please vote aye.

SECRETARY CHASE: The secretary will lock the voting machine. We suggest that while the tabulation is being taken and the machine is locked, you can return your voting switch to the not voting or center position, which will clear the board.

Mr. President, 136 delegates are present, a quorum.

Prior to today's session, the secretary received the following requests for leave: Mr. Donald Doty requests to be excused from the early part of today's session because of a death in the family; and Mr. Tubbs requests to be excused from the sessions of today and tomorrow because of a death in the family.

PRESIDENT NISBET: Without objection, the requests are granted.

SECRETARY CHASE: Absent with leave: Messrs. Binkowski, Donald Doty, Lesinski, Shackleton, Stopczynski, Tubbs, Walker and Wilkowski.

Absent without leave: None.

PRESIDENT NISBET: Reports of standing committees.

SECRETARY CHASE: The committee on rules and resolutions, by Mr. Van Dusen, chairman, reports back to the convention Resolution 11, a resolution to amend the appendices to the report of the committee on permanent organization and rules, adopted by the convention October 9, 1961; with amendments, recommending that the amendments be agreed to and that the resolution, as thus amended, be adopted.

Following are the amendments:

1. Amend page 1, following subsection C, by inserting subsection D to read as follows:

"D. Amend the appendix by striking out "Assistant to the director of public information" and inserting "Assistant director of public information".".

2. Amend page 2, following subsection C by striking out all of paragraph 4.

3. So that the convention rules may correspond with the changes made in the Organizational Chart, correct rule 4 to provide for 3 codirectors of research and rule 20 to make the word "director" plural.

Richard Van Dusen, Chairman.

For the body of the resolution, see above, page 171; and for the body of the original report, see above, page 122.

MR. VAN DUSEN: Mr. President, perhaps the easiest way to deal with this report is first to describe briefly the content of the resolution submitted by Dr. DeVries, Mr. Gust and Mr. Mahinske. It has 2 principal purposes:

First, to change the single director of research, drafting and public information, as shown in the Organization Chart, to 3 codirectors of research, drafting and public information, it being the intention of the committee on administration, as reported to our committee, to fill these positions, if possible, with the 3 distinguished professors who served on the preparatory commission. The change from a single director to 3 codirectors makes unnecessary the position of assistant director of research and drafting and requires a slight change in the description of the assistant to the director of public information, making him the assistant director of public information. That position would remain with simply a slight change in description.

The other feature of the resolution as proposed would be to insert in the Organization Chart 3 secretaries for the vice presidents. Last night, when the committee on rules and resolutions considered the recommendations, the hour was somewhat late and most of our consideration was devoted to the question of creating the 3 codirectors of research, drafting and public information, and the recommendation in that respect was adopted by the committee on rules and resolutions and is a part of the report as presented to you.

The hour being late and there being some tentative disagreement between members of the committee on rules and resolutions with respect to the requirement for 3 secretaries for the vice presidents, it was determined that we should defer consideration of that matter until we had an opportunity to hear from the vice presidents, who were not available to us last night.

For that reason, one of the amendments to the resolution which is proposed by the committee on rules and resolutions is the striking, temporarily, of 3 secretaries for the vice presidents from the Organization Chart. This does not indicate

any disposition on the part of the committee on rules and resolutions to deprive the vice presidents of their secretaries, but it only means that we did not have time last night to give sufficient consideration to that proposal to justify acting affirmatively on it.

Accordingly, the report of the committee on rules and resolutions recommends the adoption of the resolution as presented by Dr. DeVries and Messrs. Gust and Mahinske, with the amendment striking the 3 secretaries for the vice presidents.

PRESIDENT NISBET: The question is on the amendments. Is there any discussion? If not, all in favor say aye. Opposed, no.

They are adopted.

The question is on the adoption of the resolution, as amended. Any discussion? If not, all in favor say aye. Opposed, no.

It is adopted.

Following is Resolution 11 as amended and adopted by the convention:

Resolution 11, A resolution to amend the appendices to the report of the committee on permanent organization and rules, adopted by the convention October 9, 1961.

Resolved, That the convention adopt the following amendments:

1. Amend the table of organization, **appendix A**, under **"Research, drafting, and public information division"** by striking out "Director of research, drafting, and public information" and inserting "3 codirectors of research, drafting, and public information".

A. Amend the appendix by striking out "Assistant to the director of research and drafting".

B. Amend the appendix by striking out "2 secretaries to the director and his assistants" and inserting "2 secretaries to codirectors and their assistant directors".

C. Amend the appendix by striking out "9 research and drafting associates" and inserting "9 research, drafting, and public information assistants and consultants*".

D. Amend the appendix by striking out "Assistant to the director of public information" and inserting "Assistant director of public information".

2. Amend the table of organization, **appendix A**, under **"Administration and housekeeping division"** by inserting following "Secretary to the president", "3 secretaries to the vice presidents".

3. Amend the job descriptions, **appendix B, under "OFFICE OF THE PRESIDENT* — Division of Research, Drafting, and Public Information"** by striking out all of item A and inserting "A. Codirectors of research, drafting, and public information (3).

The codirectors of this division are responsible to the president. They should be senior lawyers, political scientists, historians or economists; have a knowledge of the methods of research and the capacity to do research and to manage a research team, to draft and write articles, to supervise the writing and drafting of others and to edit their materials. They must be able to work with people, to express their ideas without antagonizing people, and to harmonize the ideas of others.".

A. Amend the appendix by striking out all of item B.

B. Amend the appendix, item C, by striking out "C. Assistant to the director in charge of public information.", and inserting "B. Assistant director in charge of public information".

C. Amend the appendix, item E, by striking out "Research and drafting associates" and inserting "Research, drafting, and public information assistants and consultants*".

SECRETARY CHASE: The committee on administration, by Mr. DeVries, chairman, recommends the following temporary reassignment of committee rooms:

Room E: committee on finance and taxation
committee on miscellaneous provisions and schedule.
Room F: committee on declaration of rights, suffrage and elections.
committee on education.

Walter DeVries, chairman.

The Secretary will repeat these: room E, the committee on finance and taxation and the committee on miscellaneous provisions and schedule. And in room F, the committee on Declaration of rights, suffrage and elections and the committee on education.

PRESIDENT NISBET: The question is on concurring in the recommendation of the committee. Are there any remarks? If not, all in favor say aye. Opposed, no.

It is concurred in.

SECRETARY CHASE: The committee on administration, by Mr. DeVries, chairman, also recommends:

1. That the convention authorize the purchase of the following equipment:
   a. Varitype 610F $3,205.00
   b. Model 2550W Multilith offset ..... $5,601.20.
2. That the convention adopt the following policy relative to the use of telephone credit cards by all convention delegates:

Telephone credit cards are to be used solely for convention business.

The budget is predicated on the assumption that credit cards will not be used for personal reasons.

Walter DeVries, chairman.

PRESIDENT NISBET: Mr. DeVries.

MR. DeVRIES: Mr. President, just a few comments about the last recommendation of the committee on administration.

We provided the policy statement to clear up some misunderstanding and questions about the telephone credit cards. The views on this range anywhere from those who think that this might be a carte blanche to telephone at will to the possibility of this being some kind of a fringe benefit for delegates. A lot of questions have been asked of the members of the committee. We thought it was necessary to come up with a policy statement to clear the air and provide a guide for the use of these cards.

Further, may we suggest this: when you do make a long distance telephone call within the convention hall on an extension phone, that you cite to the switchboard operator either your number or your name. The call can be placed in that manner.

PRESIDENT NISBET: The question is on concurring in the committee recommendation. Is there any discussion?

If not, all in favor say aye. Opposed, no.

It is concurred in.

SECRETARY CHASE: That is all the standing committee reports, Mr. President.

PRESIDENT NISBET: Reports of select committees.

SECRETARY CHASE: None.

PRESIDENT NISBET: Communications from state officers.

SECRETARY CHASE: None.

PRESIDENT NISBET: **Introduction, first reading and reference of proposals.**

SECRETARY CHASE: Mr. Prettie introduces **Delegate Proposal 1033,** A proposal to retain operating expenses in the general fund of the county for inferior courts. Amends article XI, section 14.

PRESIDENT NISBET: Referred to the committee on local government.

SECRETARY CHASE: Mr. Sharpe introduces **Delegate Proposal 1034,** A proposal requiring voters in school elections dealing with bonding issues to be registered and to own real estate in city or county of residence. Amends article III, section 4.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: Mr. Sharpe also introduces **Delegate Proposal 1035,** A proposal requiring supreme court judges to be nominated at partisan convention, elected on partisan ticket. Amends article VII, section 2.

PRESIDENT NISBET: Referred to the committee on judicial branch.

SECRETARY CHASE: Mr. Sharpe also introduces **Delegate Proposal 1036,** A proposal dealing with purity of elections. Amends article III, section 8.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: Mrs. Daisy Elliott introduces **Delegate Proposal 1037,** A proposal for port authority development for benefit of colleges and universities.

PRESIDENT NISBET: Referred to the committee on legislative powers.

SECRETARY CHASE: Mrs. Daisy Elliott also introduces **Delegate Proposal 1038,** A proposal relating to authorization of voting machines and insuring secrecy in voting. Amends article III, section 7.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: Mr. Boothby introduces **Delegate Proposal 1039,** A proposal for the establishment of the office of legislative auditor. Amends article X by adding a new section.

PRESIDENT NISBET: Referred to the committee on legislative powers.

SECRETARY CHASE: Mr. Tweedie introduces **Delegate Proposal 1040,** A proposal that justices of the peace receive an annual salary, and that candidates be required to pass a qualifying examination. Amends article VII by adding 2 new sections.

PRESIDENT NISBET: Referred to the committee on judicial branch.

SECRETARY CHASE: Mr. Erickson introduces **Delegate Proposal 1041,** A proposal for limitation on income tax. Amends article X by adding a new section.

PRESIDENT NISBET: Referred to the committee on finance and taxation.

SECRETARY CHASE: Mr. Douglas introduces **Delegate Proposal 1042,** A proposal relative to the qualifications of justices of the peace. Amends article VII by adding a new section.

PRESIDENT NISBET: Referred to the committee on judicial branch.

SECRETARY CHASE: Mr. Boothby introduces **Delegate Proposal 1043,** A proposal to abolish the office of auditor general, and commissioner of the state land office. Amends article VI, sections 1 and 17.

PRESIDENT NISBET: Referred to the committee on executive branch.

Yesterday **Delegate Proposal 1025** by Mr. Erickson was referred to the committee on local government. If there is no objection, that proposal will be referred to the committee on declaration of rights, suffrage and elections. Hearing none, it will be so referred.

Second reading of proposals.

SECRETARY CHASE: Nothing on that calendar, Mr. President.

PRESIDENT NISBET: Third reading of proposals.

SECRETARY CHASE: Nothing on that calendar.

PRESIDENT NISBET: **Motions and resolutions.**

SECRETARY CHASE: Mr. Douglas offers **Resolution 12,** A resolution relative to the simultaneous holding of 2 or more public offices.

Following is the body of Resolution 12, as offered:

Resolved, That this convention consider the question of whether an individual may hold 2 or more public offices at the same time; and be it further

Resolved, That the question be referred to the appropriate committee with instructions to determine the question and submit a committee proposal with recommendations to this convention for its adoption.

PRESIDENT NISBET: Referred to the committee on rules and resolutions.

SECRETARY CHASE: Mr. Turner offers **Resolution 13,** A resolution relative to students visiting the convention.

Following is the body of Resolution 13, as offered:

Whereas, There are many school classes that want to visit the convention; and

Whereas, These visits would provide an excellent means of informing the people of Michigan of the work and progress of the convention; now therefore be it

Resolved, That the superintendent of public instruction be requested to provide a method of coordinating these visits, so that not too large a number of classes will come on any one day; and be it further

Resolved, That each student be asked to register his name, address and school and that the convention provide a suitable brochure about the convention for each student.

PRESIDENT NISBET: Referred to the committee on rules and resolutions.

Mr. Romney.

MR. ROMNEY: Mr. President, if I may have permission to do so, I would like to make a brief statement on the discussion of objectives and goals that Dr. Pollock made and that we engaged in last night.

PRESIDENT NISBET: If there is no objection, Mr. Romney, you may proceed.

MR. ROMNEY: I am sure we all appreciate very much your having Dr. Pollock make this statement, and I am sure the discussion we have had thus far has been very beneficial. It has stimulated my thinking, and I would like to voice a few thoughts. I have reduced them to writing to be succinct and also for purposes of clarity.

Dr. Pollock referred to publicity in Berlin about this convention. With national survival at stake and freedom challenged everywhere, there is no question, I think, in most of our minds but that this constitutional convention is of worldwide significance. The greatest weaknesses are always within and the greatest strengths are always within. Consequently, it is essential for us, it seems to me, to fulfill the purpose and opportunity of this convention.

I think there is cause for grave concern as we take a look at the world situation, and one reason is that most states — in fact, practically all states — need new constitutions to strengthen the underpinning that Dr. Pollock talked about, and also the mainsprings of freedom.

Now, despite the number of state constitutions and the number of times they have been revised, none yet matches the federal constitution in fulfilling its purpose. I think this is a significant factor in our effort; that despite the period of time that our country has been in existence, we do not yet have a state constitution that in its area meets the needs of a state constitution as well as the federal constitution does in its area. This deficiency is now so widespread that the federal constitution itself is in danger of being nullified, and the sources of its strength made anemic and eventually sterile. Others are looking to us to meet this need and fill this void and it is because of this aspect, it seems to me, that our efforts assume their major proportions. Under these circumstances, it seems to me that nothing less than a thorough, comprehensive revision will be adequate. No piecemeal or partial revision will do. I think our task will be neglected if we fail to fashion a model state constitution, which is what this country needs.

A constitutional convention is the mechanism by which the people achieve the necessary common understanding and agreement on the principles of self government. Because it represents the sovereign will of the people, in the scale of political values its function is of a higher order than that of a governor, a legislature, supreme court or any private group.

Thus I believe our first objective should be a model state constitution equal to and capable of preserving the federal

constitution. This means a comprehensive, thorough and adequate revision.

Second, we need an open convention whose public discussion of the basic issues of government will contribute to better citizen understanding of the processes of representative government, which I think we are in general agreement on.

Third, we should strive for the achievement of a greater degree of unity throughout the state. For too long we have emphasized our conflicts and differences instead of our superior common interests.

And, fourth, we should seek the removal of the obstacles to effective local and state government.

The political philosopher, Henry Simons, writing nearly 30 years ago, expressed this need with great clarity. He wrote:

> Modern democracy rests upon free, responsible local government and will never be stronger than this foundation. . . . Progress to which local freedom, responsibility and experimentation have pointed the way may be accelerated for a time . . . by the shortcut of central action. But such shortcutting . . . impairs . . . the roots of progress in order to obtain a briefly luxuriant bloom.

It seems to me a fifth objective — and most of these objectives Dr. Pollock mentioned — is a better national image of Michigan as a state that meets its citizenship responsibilities, effectively resolves its governmental and fiscal problems, and is superior in its economic, social and cultural progress.

It seems to me that our realization of these objectives will depend on our acceptance of them together with our concept of our responsibility as delegates. What do we consider our primary delegate responsibility?

I believe that our responsibility as delegates exceeds that of supreme court justices. After all, we have to review and revise those basic principles that govern courts, legislators, administrators and our private political, economic and social activities.

To fulfill our purpose, I think we need the wisdom, impartiality, objectivity and moral courage for our task, and we must also have faith — faith in each other and faith in representative government.

I want to express particular appreciation for the words that Ed Hutchinson spoke last night in which he voiced great faith in the representative process as representative of the legislature, and also faith in the actual availability of divine guidance.

The nature of our responsibility suggests, it seems to me, something we have the right to expect from those outside of this convention in carrying out our responsibilities. Haven't the people clearly placed the question of a new constitution in our hands? It seems to me we are their representatives and undertaking to shape a constitution that they can accept or reject.

And through our committee organization we have created the means by which all interested citizens and groups can present their views directly to us. Wouldn't it be helpful for political organizations and leaders to avoid speeches that make political capital out of our efforts until they are completed? Wouldn't it be wise to have a self-imposed moratorium by the parties and their leaders on self-serving statements before we report back to the people? I think it would be.

Of course, I am not referring to recommendations from them as to what we should do. We should seek and welcome their suggestions just as we seek those of other groups and citizens.

In addition to establishing our goals and objectives and our personal concepts as to our responsibilities as delegates, we need to determine, it seems to me, the basic steps in getting our job done and establish a specific timetable. In any cooperative activity involving as many people as there are delegates to this convention, it is necessary to know not only what we are going to try to do, but also how we are going to try to do it. Our general rules that we now have are rules of procedure that largely apply to our procedure as a convention, but they do not apply to or establish committee procedure.

The chairmen of the various committees have been asked by our president to give consideration to basic steps that should be included in their committee work, and I am hopeful that they will agree on a general procedural program for committees. While the work of the various committees differs and they will need considerable flexibility, there are, nevertheless, certain basic elements of procedure that apply to successful committee effort. If committee chairmen and committee members can agree on the basic steps of committee procedure with which the convention as a whole agrees — in other words, if we have a common understanding as to the basic procedure we are going to follow — then it will be possible to develop a specific and realistic timetable.

In my opinion, the agreement on basic committee steps should precede our effort to work out the timetable and a deadline for the completion of the whole job. Our efforts will be much more productive if we do agree at an early date on general committee procedure and a firm timetable.

Now a final comment: when we have completed our work, it seems to me, there is a danger that it will be rejected by those who will vote against the entire constitution because of disagreement over a particular argument or detail. This is more likely to be the case if our work bears a partisan, sectional or special interest stamp. There are 2 possible protections against this danger, it seems to me.

First is a bipartisan approved and recommended constitution and, second, an informed and conscientious appraisal of the whole document by the voters. Our success with citizens generally will depend on the extent to which we ourselves can measure up to the view expressed by Benjamin Franklin at the conclusion of the federal Convention of 1787. Franklin said:

> I confess that there are several parts of this constitution which I do not at present approve but I am not sure I shall never approve them: for, having lived long, I have experienced many instances of being obliged, by better information or fuller consideration, to change opinions even on important subjects which I once thought right but found to be otherwise. It is therefore, that the older I grow, the more apt I am to doubt my own judgment, and to pay more respect to the judgment of others.
>
> I doubt too whether any other convention we can obtain may be able to make a better constitution . . . on the whole, sir, I cannot help expressing a wish that every member of the convention who may still have objections to it would, with me, on this occasion doubt a little of his own infallibility — and, to make manifest our unanimity, put his name to this instrument.

Even this appeal didn't get unanimity on the federal constitution, but certainly this attitude has prevailed and the federal constitution saved the nation. Those who wrote it preserved our country despite problems much more difficult than ours and pressures, interests and factions greater than ours. Unquestionably, their success resulted importantly from the above attitude expressed by Benjamin Franklin as well as his better known suggestion that they accept help through prayer.

While it may not be as apparent to us, I believe future historians may well conclude that what we do here or fail to do here will either save or lose the Republic which Benjamin Franklin and his fellow delegates saved for us.

Desperately needed is a constitution that will serve our state — yes, and other states as a pattern — as well as our federal charter has served the nation.

And it seems to me that this opportunity is the most fundamental opportunity that we have and the most fundamental need that we have, and may our dedication as delegates, with God's help, make us equal to this task. Thank you very much.

PRESIDENT NISBET: Thank you, Mr. Romney.

Is there any unfinished business?

SECRETARY CHASE: None, Mr. President.

PRESIDENT NISBET: Special orders of the day.

SECRETARY CHASE: None.

PRESIDENT NISBET: General orders of the day.

SECRETARY CHASE: None.

PRESIDENT NISBET: Announcements.

Mr. Hoxie.

MR. HOXIE: Mr. President, I would like the privilege of speaking under personal privilege.

PRESIDENT NISBET: Without objection, proceed Mr. Hoxie.

MR. HOXIE: Mr. President and fellow delegates, a matter has come to my attention of inaccuracy in reporting the proposals introduced by myself yesterday, which is reported in this morning's Free Press.

The proposal which I introduced was Proposal 1023, which proposed to amend article VI, section 1, of the term of office of our state officials. This proposed change was from 2 to 4 year terms for all state officials. That included the governor, lieutenant governor, secretary of state, state treasurer, auditor general and attorney general.

The article which I would like to call your attention to reads as follows:

> Delegate T. Jefferson Hoxie, Republican, St. Louis, also proposed 4 year terms for the governor and lieutenant governor and appointed department heads.

This is inaccurate, and I think we, as delegates, should be sure that every newspaper article which is inaccurate is called to the attention of the press.

PRESIDENT NISBET: Announcements.

SECRETARY CHASE: Dr. Pollock gives notice of a meeting of the committee on declaration of rights, suffrage and elections in room F, Thursday, October 19, at 10:00 o'clock in the morning.

Mr. Bentley gives notice of the meeting of the committee on education in room F on Thursday, October 19, at 10:00 o'clock a.m.

PRESIDENT NISBET: Mr. Bentley.

MR. BENTLEY: Mr. President, we obviously have a conflict that I wasn't aware of when I gave my notice in to the secretary.

I am wondering if the chairman of declaration of rights, suffrage and elections would be able to change the time of his meeting, since I understand there are a large number of school children who are planning to attend the meeting of my committee at that time and place.

PRESIDENT NISBET: Mr. Pollock.

MR. POLLOCK: I don't know, Mr. President, why everybody is picking on my committee. (laughter) It is not really a matter for me to determine. I assume that it is the business of the secretary to work out committee rooms without conflict. I am willing to do anything that is agreeable.

PRESIDENT NISBET: I suggest, Mr. Bentley, you confer with Mr. Chase. Maybe something can be arranged on it.

SECRETARY CHASE: Mr. Bentley also announces that the meeting that he has called is in addition to the meeting following the adjournment of the session today. Committee on education after the session today.

Mr. A. G. Elliott gives notice of the meeting of the committee on local government 15 minutes after we adjourn on Thursday, but not before 3:15 o'clock in the afternoon.

Mr. Van Dusen announces a meeting of the committee on rules and resolutions in room B today after the session.

Mr. Hannah announces a meeting of the committee on legislative organization in room D this afternoon immediately after the session.

Mr. Danhof gives notice of a meeting of the committee on judicial branch in room B Thursday, October 19, at 10:00 o'clock a.m.

Mr. Brake gives notice of a meeting of the committee on finance and taxation in room E Friday, October 20, at 9:00 o'clock a.m.

Mr. Brake also gives notice of a public hearing on the question of constitutionally earmarked funds, in committee room C Wednesday, October 25 at 7:30 o'clock in the evening.

Mr. DeVries announces a meeting of the committee on administration in room G today immediately after the session, and a second meeting at 8:00 o'clock this evening.

May the secretary call attention to an error on the last page of yesterday's journal, in which it was stated that the president requested a meeting of the committee chairmen. That is for Wednesday, tomorrow, at 11:00 o'clock a.m. in room E.

PRESIDENT NISBET: Dr. Hannah.

MR. J. A. HANNAH: Mr. President, there is an error in the announcement of the committee on legislative organization. It is tomorrow afternoon after the session rather than today.

And for the guidance of our committee members, it will be Tuesday, Wednesday and Thursday afternoons immediately following the session until we decide otherwise. Tuesday, Wednesday and Thursday afternoon, after the session every day.

PRESIDENT NISBET: Dr. DeVries.

MR. DEVRIES: Mr. President, if I may make these announcements on behalf of the committee on administration: first of all, the committee will present for your approval tomorrow the operational budget of the convention with the suggested staff salaries. Second, we will be ready tomorrow to recommend to the president the names of potential clerks for the committees. Third, we hope to have enough committee rooms for every committee at the end of next week so we can stop the confusion. We apologize for this but there is nothing else we can do at the moment. We are trying to lease some additional space in the building. Fourth, we intend to process the rest of the staff applications by the middle of next week. We have over 350 applications. We are interviewing now. We are about ⅓ done. We appreciate your patience. We are trying to get it done as fast as we can. Thank you.

PRESIDENT NISBET: Let me commend the committee chairmen for calling their committee meetings as frequently as they are in order to get started and get into operation. Probably that is what causes our difficulty on rooms, but I am happy that you are a working group.

Announcements, Mr. Chase.

SECRETARY CHASE: Mr. White asks to be excused from the session of Wednesday afternoon because of a speaking engagement which he had accepted prior to the convention.

PRESIDENT NISBET: Without objection, the leave will be granted.

SECRETARY CHASE: Dr. Hannah has filed with the secretary this statement for your information: Several delegates have asked him whether or not it would be possible for them to be informed of events on the university campus in which they might have an interest. They pointed out that they might have free time when various educational features in which they were interested might be available.

There are present here at the secretary's desk 25 or 30 copies of the staff bulletin left after last week's distribution. These copies are available. Dr. Hannah states that if you would like copies of these each week, he would be glad to provide them and see to it that they are placed in your mail boxes.

If you would care to receive these in your mail box, please sign this yellow pad up here on the secretary's desk at the close of the convention. That will put in your mail box these weekly staff bulletins from the university.

That is all I have.

PRESIDENT NISBET: This completes the business of the convention today. What is your pleasure?

Mr. Buback.

MR. BUBACK: I move the convention adjourn.

PRESIDENT NISBET: The motion is on adjournment. All in favor say aye. Opposed, no.

The convention is adjourned until tomorrow at 2:00 o'clock.

[Whereupon, at 2:40 o'clock p.m., the convention adjourned until 2:00 o'clock p.m., Wednesday, October 18, 1961.]

NINTH DAY

Wednesday, October 18, 1961, 2:00 o'clock p.m.

PROCEEDINGS

PRESIDENT NISBET: The convention will please come to order.

The invocation today will be given by Reverend Guy N. Bridges, pastor of the First United Missionary Church, Lansing.

REVEREND BRIDGES: We lift to Thee, our Father, the deepest longings of our souls. We recognize Thee as the sovereign of the universe; and ask that Thou wilt help us to make Thee the Lord of our lives.

We thank Thee that Thou art concerned about government and that this convention desires divine direction. May these delegates be guided by the moral code which Thou hast given.

Impress upon each one the importance of his task. Let us sense our responsibility to Thee, as well as to the people. Deliver us from the fear of men, and give us courage to do that which we believe to be right. In the name of our Lord. Amen.

PRESIDENT NISBET: The roll call will be taken by the secretary. All present please vote aye.

SECRETARY CHASE: Mr. President, a quorum of the convention is present.

Absent with leave: Miss McGowan, Messrs. Pugsley, Tubbs and White.

Absent without leave: Messrs. Douglas and Walker.

PRESIDENT NISBET: Without objection, the delegates are excused.

PRESIDENT NISBET: Reports of standing committees.

SECRETARY CHASE: The committee on administration, by Mr. DeVries, chairman, submits the budget for the constitutional convention, and recommends its adoption.

Following is the budget as reported:

Constitutional Convention of 1961 Budget

I. Salaries and wages — delegates	**$1,080,000.00**
II. Other salaries, wages, contractual services, supplies, materials, rent and equipment	
A. Rental, lease, and purchase of equipment	
1. Office fixtures and furnishings	$ 10,000.00
2. Carpet	3,500.00
3. Platforms, wiring, etc.	25,000.00
4. Backdrop in convention hall	4,500.00
5. Voting equipment	26,000.00
6. Lumber—Capitol City ($7,320.00 plus $17,000.00)	24,320.00
7. Partitions ($4,628.00 plus $4,876.25)	9,504.25
8. Installation of chairs	1,800.95
9. Chairs	8,577.00
10. Seal	450.00
11. Xerox machine and supplies ($95.00 monthly rental plus $1,060.00 for extra copies and supplies)	1,680.00
12. Varitype 610F	3,205.00
13. Model 2550W Multilith offset duplicator	5,601.20
14. Office machines—(50 typewriters at $6.00 per month—$2,100.00; 5 electric typewriters—$16.00—$560.00; 1 adding machine—$12.00—$84.00)	2,744.00
15. Addressograph (lease—$1,438.74; cabinet $76.25; shipping of cabinet $3.75; 8,000 plates $560.00)	2,078.74
16. Postage meter	1,661.50
B. Office supplies and printed matter	
1. Delegates' stationery (Wellman Press)	2,011.83
2. Journal (Speaker-Hines and Thomas on the basis of 6,000 copies daily for 150 days: 50 days — 12 pages at $445.00; 100 days — 24 pages at $797.00)	101,950.00
3. Office supplies	8,175.00
C. Rental and lease of building	
1. Civic center — ($110,000.00 plus $4,200.00 for additional space)	114,200.00
D. Other contracual services	
1. TV—closed circuit (from 10-3-61 through 10-20-61)	4,200.00
2. Sound system	8,000.00
3. Clipping service ($40.00-$50.00 monthly)	400.00
4. Freight for chairs	458.48
5. Convention reporter	25,000.00
6. Police	17,600.00
E. Postage	15,000.00
F. Telephone	
1. Basic charge plus allowance for changes	4,596.00
2. Toll calls	15,404.00
G. Fees and compensation	
1. Mileage and subpeona fees for persons called before convention committees	6,000.00
H. Maintenance services—minor repairs and services	450.00
I. Travel and subsistence	
1. Delegates—2 monthly trips at the rate of $3,286.60 per round trip for the total delegation based on 7 months	46,012.40
2. Reimbursement of actual and necessary expenses for officers, delegates and staff of the convention	31,000.00
J. Educational supplies and library	
1. Books and services already purchased	2,203.90
2. Additional materials	1,000.00
K. Insurance and bond	
1. Fire 2. Comprehensive general liability 3. Bond for finance clerk and secretary of the convention 4. Workmen's compensation on employees	4,455.00
5. Social security — employer	9,879.20

L. Other salaries and wages

Position	No.	Monthly	Total
*1. Administrative assistant to president	1	$1,200	$ 9,600.00
*2 Secretary to the president	1	600	4,800.00
3. Sergeant at arms	1	500	3,500.00
4. Assistant sergeant at arms	3	450	9,450.00

Position	No.	Monthly	Total
5. Secretary to the vice president	3	550	11,550.00
6. Convention guide	3	450	9,450.00
*7. Convention secretary	1		10,806.52
*8. Secretary to the convention secretary	1	600	4,800.00
9. Assistant convention secretary	1	1,000	7,000.00
*10. Journal clerk	1	600	4,800.00
*11. Assistant journal clerk	1	500	4,000.00
*12. Proposal and enrolling clerk	1	600	4,800.00
*13. Assistant proposal and enrolling clerk	1	500	4,000.00
*14. Finance clerk	1	600	4,800.00
15. Committee clerk	11	600	46,200.00
16. Post master and document clerk	2	450	6,300.00
*17. Duplicating clerk	1	500	4,000.00
18. Page	6	350	14,700.00
*19. Telephone operator	3	350	8,400.00
20. Press room manager	1	550	3,850.00
21. Stenographic clerk chief	1	500	3,500.00
22. Stenographic clerk	14	450	44,100.00
23. Codirector of research and drafting	3	1,500	31,500.00
24. Assistant director in charge of public information	1	1,000	7,000.00
25. Secretary to codirectors of research and drafting	2	600	8,400.00
26. Research and drafting, public information assistants	9		50,000.00
27. Other consultants			
*28. Librarian	2	500	8,000.00
			$ 329,306.52

*These employees have been working since the opening of the convention; therefore, the totals for them are based upon 8 months.

M. Contingency fund ..... $ 42,075.03

Subtotal—category II ..... $ 920,000.00
Grand total $2,000,000.00

PRESIDENT NISBET: Mr. DeVries.

MR. DEVRIES: Mr. President, if I may make these comments and opening statement on behalf of the committee on administration before we discuss the individual items, I would like to point these things out:

1. This budget is the unanimous recommendation of the committee on administration.

2. This is a projection based on 7 months of operation, from October 3, 1961 to April 30, 1962, with certain exceptions; for example, some salaries, the lease of certain materials and equipment which are indicated in the budget are projected on an 8 month basis.

3. If the constitutional convention meets less than 7 months, the budget can be reduced proportionately.

4. This budget is projected within the $2 million appropriation passed by the legislature. There are 2 schools of thought on this matter: one, that we are bound by this $2 million appropriation and can spend no more than this amount. The second school of thought is that the $2 million appropriation does not bind the convention; that we can ask the legislature for more money, if needed. Nevertheless, the committee has budgeted within the $2 million.

5. This is a projected budget. We have tried to estimate and anticipate all expenses. We have not provided for some, either because we didn't know the cost, or because we have not anticipated these expenses. We expect to come before you to ask you to authorize additional expenditures from the contingency fund.

6. The committee on administration believes this budget will provide the constitutional convention with enough money to organize and run a model convention, in the belief that the administration of the convention materially affects its product.

7. Last, we suggest that in considering this budget, we follow this procedure: that the secretary read one item at a time and then a committee member will make a brief explanation and answer any questions by the delegates.

We will ask the secretary to read the first items, roman numeral one on page 2 of this report.

SECRETARY CHASE:

I. Salaries and wages — delegates **$1,080,000.00**

PRESIDENT NISBET: Mr. DeVries.

MR. DeVRIES: Mr. President, this is in line with what was set up by the legislature as salaries of delegates.

SECRETARY CHASE:

II. Other salaries, wages, contractual services, supplies, materials, rent and equipment

A. Rental, lease and purchase of equipment

1. Office fixtures and furnishings	$ 10,000.00
2. Carpet	3,500.00
3. Platforms, wiring, etc.	25,000.00
4. Backdrop in convention hall	4,500.00
5. Voting equipment	26,000.00
6. Lumber—Capitol City ($7,320.00 plus $17,000.00)	24,320.00
7. Partitions ($4,628.00 plus $4,876.25)	9,504.25
8. Installation of chairs	1,800.95
9. Chairs	8,577.00
10. Seal	450.00
11. Xerox machine and supplies ($95.00 monthly rental plus $1060.00 for extra copies and supplies)	1,680.00
12. Varitype 610F	3,205.00
13. Model 2550W Multilith offset duplicator	5,601.20
14. Office machines—(50 typewriters at $6.00 per month—$2,100.00; 5 electric typewriters—$16.00—$560.00; 1 adding machine—$12.00—$84.00)	2,744.00
15. Addressograph (lease—$1,438.74; cabinet $76.25; shipping of cabinet $3.75; 8,000 plates $560.00)	2,078.74
16. Postage meter	1,661.50.

PRESIDENT NISBET: Mr. DeVries.

MR. DeVRIES: Mr. President, most of these items have already been approved by the convention. If there are any questions, I would be happy to try to answer them.

PRESIDENT NISBET: Mr. Lesinski.

MR. LESINSKI: Mr. President, in regard to item II-A-12, the varitype, it is my belief the varitype is not necessary in this operation if you have 55 typewriters. I believe it is an expensive piece of equipment and if it is really necessary it can be leased like the other items.

PRESIDENT NISBET: Mr. Farnsworth.

MR. FARNSWORTH: Mr. President, delegates, by action in the convention on October 17 you authorized the purchase of the varitype. This convention authorized the purchase. The committee recommended that on this basis, where you have 2 and 3 sheets that you want to consolidate into one stencil to put on your multilith machine, that machine will do that, whereas a typewriter will not.

Regarding the rental factor, we could have rented this machine and paid ½ of the total cost to rent it. It was our feeling that we might better purchase it, use it, and have whatever salvage value we thought might come out of it.

PRESIDENT NISBET: Any further questions?

Mr. Powell.

MR. POWELL: I would appreciate a little enlightenment on item II-A-8, installation of chairs.

PRESIDENT NISBET: Mr. Gust.

MR. GUST: Mr. President, it is our understanding that this was the cost item for the installation of the chairs in the gallery to the delegates' right, and this was done substantially at cost by the people who sold the chairs and installed them for convention purposes.

PRESIDENT NISBET: Any further discussion?

Mr. Plank.

MR. PLANK: My addition doesn't come out with yours on item II-A-11. Ninety-five dollars monthly and $1,060.00 is not $1,680.00. There must be an explanation.

PRESIDENT NISBET: Mr. Snyder.

MR. SNYDER: Mr. President, the $95.00 is the minimum cost for the rental of the machine and the supplies, and you are permitted, with this $95.00, 2,000 individual copies. In addition to this, you pay the cost for the extra supplies and the copies, which is not provided in the rental of the machine. The $95.00 is for the 2,000 written copies. After the 2,000, the cost goes down to 3½ cents per copy.

PRESIDENT NISBET: Any further discussion?

Mr. Madar.

MR. MADAR: Mr. President, on item II-A-15, on the lease of the addressograph, wouldn't it be better to purchase the addressograph machine? I am quite sure we can certainly use it in the state government. This vague idea of talking about writing off things after we get through is a little foolish, because we certainly can use them in the state government. I would like to have a question answered on the 8,000 plates.

MR. FARNSWORTH: The addressograph machine has not been purchased. The item was put in the budget to allow for it. We hope to make an arrangement with a state office to either address the envelopes before they come here, or perhaps use the Elliott people at a lesser cost to do the addressing on the premises.

We thought it necessary to put in some figure. That was the figure we had, and it will not be any higher.

MR. MADAR: I think he misunderstood me. I wasn't questioning price. I was questioning the idea of just leasing one when we could buy one. I don't think they cost too much more, but if it was even twice as much it would be well worth buying it and giving it to the state.

MR. FARNSWORTH: This committee did investigate that possibility and it would have cost considerably more to have purchased it, and even if it cost $10.00 more, we didn't feel we should give it to the state. We are responsible to the constitutional convention budget.

PRESIDENT NISBET: Dr. Pollock.

MR. POLLOCK: Mr. President, I do not notice under item 14 any mention of dictaphones or transcribers. After all, we are having evening sessions. Will there always be secretaries present? If not, should there be some item for dictaphones?

PRESIDENT NISBET: Mr. DeVries.

MR. DeVRIES: Dr. Pollock, it is our intention to assign you a secretary. She will be present at all hearings. Other committee chairmen have suggested we inquire into the renting of tape recorders and the purchase of tape recorders and dictaphones. If we decide to do this, it would have to come out of the contingency fund. There is no appropriation in the budget at the present time.

PRESIDENT NISBET: Any other questions?

Mr. Madar.

MR. MADAR: Mr. President, I wish to return to item II-A-15 because I think we are responsible to the people not just to get this constitution through, but also to try to save as much money as we can. That is one of the reasons why we are trying to draw up a constitution.

At this time I would like to amend this to strike out item 15 until we can find out what a new machine would cost us to purchase.

PRESIDENT NISBET: Mr. Farnsworth.

MR. FARNSWORTH: Mr. President, as a member of the committee on administration, I would object to that being done at the moment. We have advised the convention that this is a maximum figure that would be expended for that function, which is to address a mailing list.

We anticipate the committee on public information will have quite a lot of addressing to do. We anticipate quite a large mailing list. It must be done on some type of equipment or in some state office.

I hope this convention will have confidence in the committee on administration; that it will ultimately get the job done at the lowest possible cost. I do think, however, we must have some figure in there for it. That is as good a figure as we now have.

Should you vote on this amendment favorably, all it would do would be to take the figure out and add it to the contingency fund at the end of the budget and increase your contingency fund by that amount; and, later on, you would have to go back and change it. I see no merit in the amendment.

PRESIDENT NISBET: The question is on the amendment that Mr. Madar has offered, that item 15 be stricken from item II-A. Any further discussion?

If not, all in favor of the amendment say aye. Opposed, no.

The amendment is not adopted.

The question is on the approval of the budget.

Next item, Mr. Secretary.

SECRETARY CHASE:

B. Office supplies and printed matter

1. Delegates' stationery (Wellman Press)	$ 2,011.83
2. Journal (Speaker-Hines and Thomas on the basis of 6,000 copies daily for 150 days: 50 days—12 pages at $445.00; 100 days—24 pages at $797.00)	101,950.00
3. Office supplies	8,175.00.

PRESIDENT NISBET: Mr. Farnsworth.

MR. FARNSWORTH: Mr. President, I should say this is based on the convention operating for 150 days. The only basis we have to go on was the Convention of 1908, which did meet 71 days. We are getting a break here. We are having better than 2 times the amount of time.

Before we could estimate printing cost, the question was how many pages are you going to have? Frankly, that we do not know. We did make a rundown of the 1908 Convention and analyzed that as best we could day by day, and came up with an estimate and presented it to the printers.

We had 2 bids, and we took what, in the opinion of the committee, was the lower of the 2 bids, and you have been getting that product here in the last day or two. You have it on your desks now. That is a projected figure.

Let me say this: if you are really interested in keeping the cost of the convention down, here is a place where each and every delegate can contribute his full share. (applause)

We have gotten off to a fine start due to the prodding of the president and good organization, and we are getting some very favorable responses. We are getting down to business.

This item does not include printing of the verbatim journal at the end of the convention. That will be another cost.

Mr. President, if you can keep these political speeches or campaign speeches out of the verbatim record, naturally it is going to save printing cost.

PRESIDENT NISBET: Any questions on item II-B? If not, we will proceed to item II-C.

SECRETARY CHASE:

C. Rental and lease of building

1. Civic center—($110,000.00 plus $4,200.00 for additional space.)	$ 114,200.00.

PRESIDENT NISBET: Dr. DeVries.

MR. DeVRIES: Mr. President, I believe this item is also self explanatory. The convention has already authorized the payment of $110,000.00 on the lease and also provided for $4,200.00 for additional space on the third floor.

PRESIDENT NISBET: Any questions on item II-C?

Mr. King.

MR. KING: Mr. President, I am sorry but I would like to

go back to item II-B-2. I am sure the price is quite reasonable. We are not talking about the $100,000.00.

Is there any possible way we could produce this document ourselves with our offset printing equipment?

PRESIDENT NISBET: Mr. Farnsworth.

MR. FARNSWORTH: Mr. President, I can assure you that possibility has been explored to the fullest extent. At the beginning we thought that could be done, and we had a proposal that, in cooperation with the secretary of state's office, this could be accomplished at considerably less cost until this convention went on record asking for 6,000 copies of the journal daily.

When you did that, you ruled out any possibility of working with the state office and accomplishing that job at a lesser cost.

This figure is the lowest figure we were able to obtain on that item and in the time you have to have it, which is of course, the following day.

PRESIDENT NISBET: Are there any further questions? We will go to item II-D.

SECRETARY CHASE:

D. Other contractual services

1. TV — closed circuit (from 10-3-61 through 10-20-61) ..... $ 4,200.00.

PRESIDENT NISBET: Mr. Mahinske.

MR. MAHINSKE: Mr. President, up to and including Friday of this week we are paying for the closed circuit TV service to the Giant View Television Corporation, the fee of $300.00 per day whether or not we use the service.

We contacted these people and asked them to give us prices on what they would be willing to give us this service for, for the balance of the convention. We estimate the balance of the convention will be approximately 25 weeks.

The Giant View people informed us there would be no change in the price. It will still be $300.00 a day or $1,500.00 for a 5-day week whether or not we use this equipment.

In view of this, we feel this is a rather expensive item; especially in view of the fact that our attendance has not been landoffice type of attendance in the lobbies where we have these 3 viewers.

There is no transformation of material that goes through the 3 TV viewers. None of this is taped. It is lost.

With this in mind, and extending the figure for a 25 week period, in order to maintain this service the convention would have to ratify a sum of $37,500.00.

It is the feeling of the committee on administration that when and if the time arrives that we feel we need this service, possibly we should seriously consider retaining these services with the Giant View people.

Meantime, the audio visual departments of Wayne State University, Michigan State University and the University of Michigan are working out a plan where they will come in and service the convention on a closed TV remote control circuit, with TV viewing and recording and storing of material. They have given us no statement as to how much it will cost the convention. Their thought is they would like to use this convention as a training ground to train some of their people.

I would have no objection to this as long as we are not personally involved in training them.

It is the feeling of the committee that as of Friday of this week we should terminate the contract we have with the Giant View people, which we have on a $300.00 a day basis.

PRESIDENT NISBET: Any questions? If not, item II-D-2.

SECRETARY CHASE:

II-D-2. Sound system ..... $ 8,000.00.

PRESIDENT NISBET: Dr. DeVries.

MR. DeVRIES: Mr. President, this is a contract with KLA Sound. It provides for the installation of the sound system and the operation of the sound system throughout the period of the convention.

PRESIDENT NISBET: Any questions? If not, we will proceed with the next item.

SECRETARY CHASE:

II-D-3. Clipping service ($40.00-$50.00 monthly) ..... $ 400.00.

PRESIDENT NISBET: Dr. DeVries.

MR. DeVRIES: This is a service provided by the Michigan press association. They clip all of the daily and weekly newspapers in the state without duplication and send them to the convention. We anticipate establishing a file in the library of these clippings by subject matter for research and a permanent record of the constitutional convention.

PRESIDENT NISBET: Any questions? If not, next item.

SECRETARY CHASE:

II-D-4. Freight for chairs ..... $ 458.48.

PRESIDENT NISBET: Dr. DeVries.

MR. DeVRIES: Mr. President, we have already authorized this a week ago.

PRESIDENT NISBET: Any questions? If not, item II-D-5.

SECRETARY CHASE:

II-D-5. Convention reporter ..... $ 25,000.00.

PRESIDENT NISBET: Mr. Beaman.

MR. BEAMAN: Mr. President, the committee had before it proposals from 4 different reporting agencies, all highly qualified and highly recommended; 2 from Detroit and 2 from Cleveland, Ohio. After careful review of all of the proposals, it was found that the one proposed by the Accurate Court Reporters, of Detroit, Michigan, was the most favorable and we have recommended entering into a contract with them.

The basis of cost on all of the proposals was predicated on a cost per page of transcript. The budget cost of $25,000.00 was based on an estimate of the possible number of words of debate and oratory necessary for us to complete our work.

Now, if you are interested in statistics, we found that approximately 1,500,000 words were transcribed in the 1908 Convention. In arriving at our estimate, we have based it on a possibility of 2,500,000 words, which the committee feels was very liberal.

If you are further interested in statistics, that figure divided among 144 delegates means that each one of us will be entitled to 17,300 words, at a cost to the taxpayers of $173.00.

Now it may be in order to make a rule that after the delegate has used up his 17,300 words—(applause) he should be denied the privilege of the floor.

I might say, after sitting through 8 sessions of this convention, some of the delegates are right on the fringe of silence. (applause)

PRESIDENT NISBET: I think we are having a very enlightening report here. Any further discussion? Item II-D-6.

SECRETARY CHASE:

II-D-6. Police ..... $ 17,600.00.

PRESIDENT NISBET: Dr. DeVries.

MR. DeVRIES: Mr. President, this will provide for 2 security officers on 24 hours a day and 2 security officers on 12 hours a day in order to police the parking lot and other facilities of the convention, mostly in the late evening hours and early morning hours.

PRESIDENT NISBET: Any questions? Item II-E.

SECRETARY CHASE:

II-E. Postage ..... $ 15,000.00.

PRESIDENT NISBET: Dr. DeVries.

MR. DeVRIES: Mr. President, this estimate is based on what the house and senate do in a comparable rate of time. It is much more conservative.

PRESIDENT NISBET: Any question? If not, item II-F.

SECRETARY CHASE:

II-F. Telephone

1. Basic charge plus allowance for changes ..... $ 4,596.00
2. Toll Calls ..... 15,404.00.

PRESIDENT NISBET: Mr. Davis.

MR. DAVIS: Mr. President, I believe the telephone charges are self explanatory. The basic charge of $4,596.00 is for telephone rental at $1,725.00 per quarter, plus installation charges and the toll calls at $15,404.00 represents a conservative estimate of toll charges for delegates and staff on matters of convention business.

PRESIDENT NISBET: Any questions? If not, we will proceed to item II-G.

SECRETARY CHASE:

II-G. Fees and compensation

1. Mileage and subpeona fees for persons called before convention committees ..... $ 6,000.00.

PRESIDENT NISBET: Mr. Gust.

MR. GUST: Mr. President, obviously in this category we had to make an educated guess as to what the needs of the convention might be in this particular category. There has been some discussion on several occasions as to the possibility that people might be brought before committees or subcommittees of this convention.

In addition thereto, it is possible that at some time in the future some committee or subcommittee might find it imperative to meet in some other place.

Both of these items are of a speculative nature at this time, and we felt that a budgetary amount of $6,000.00 was very reasonable in light of possibilities that exist.

PRESIDENT NISBET: Any questions? If not, we will proceed to item II-H.

SECRETARY CHASE:

II-H. Maintenance services — minor repairs and services ..... $ 450.00.

PRESIDENT NISBET: Mr. Gust.

MR. GUST: I really don't think this item needs too much consideration. Obviously there will be certain maintenance costs around the building here which are our responsibility, such as signs and other needed guides for the delegates and visitors. This again was based on a projected sum that we felt would be adequate, though reasonable, for our uses.

PRESIDENT NISBET: Any further questions?

Mr. Lesinski.

MR. LESINSKI: Mr. President, how are the other items provided for as far as maintenance is concerned; in other words, typewriters and office equipment?

MR. GUST: That includes the multilith and varitype. I believe, Mr. President—without having all these documents in front of me, but in one instance, and perhaps in 2—the terms of the lease covers maintenance. In the event other problems of this nature would arise, if they are not specifically covered in the budget, of course they would have to be covered by an appropriation from the contingency fund.

PRESIDENT NISBET: Mr. Farnsworth.

MR. FARNSWORTH: You will note that a great amount of this equipment is on a lease basis. Those are obviously covered in respect to servicing.

You have items that you have purchased, to be sure, and the guarantee expires in 90 days. This convention might conceivably be obligated to a service problem after the 90 days expire. The committee didn't feel there was much liability and we thought the $450.00 would be adequate for any contingencies.

PRESIDENT NISBET: Any further questions? Item II-I.

SECRETARY CHASE:

II-I. Travel and subsistence

1. Delegates — 2 monthly trips at the rate of $3,286.60 per round trip for the total delegation based on 7 months ..... $ 46,012.40
2. Reimbursement of actual and necessary expenses for officers, delegates and staff of the convention 31,000.00.

PRESIDENT NISBET: Mr. Perras.

MR. PERRAS: Mr. President, the figure of $46,012.40 was arrived at by going up to the office and adding up the mileage on the slips the delegates filled out a week ago; normal mileage trips to and from their homes. That was taken at $32.80 a month and based on 7 months.

The item 2, of $31,000.00, is just an estimate of the cost of the travel for delegates on committees and subcommittees, if it does happen that they have to travel. We also took that from the budget of the house and senate for 1960 and 1961. It goes up to $275,000.00. We took approximately 9 per cent of that figure.

PRESIDENT NISBET: Any questions on item II-I? If not, item II-J.

SECRETARY CHASE:

II-J. Educational supplies and library

1. Books and services already purchased ..... $ 2,203.90
2. Additional materials ..... 1,000.00.

PRESIDENT NISBET: Mr. Gust.

MR. GUST: Mr. President, I think that item speaks for itself. I think most of the delegates are aware of the volume of materials that have already been purchased and are available for their use. We are hopeful in the future that we will not have to purchase too many additional materials but we felt that some appropriation should be made for it and we felt that $1,000.00, though only a guess, is an appropriate figure at this time based on our best estimates.

PRESIDENT NISBET: Any questions? If not, item II-K.

SECRETARY CHASE:

II-K. Insurance and bond

1. Fire ..... } $ 4,455.00
2. Comprehensive general liability ..... }
3. Bond for finance clerk and secretary of the convention ..... }
4. Workmen's compensation on employees ..... }
5. Social security — employer ..... 9,879.20.

PRESIDENT NISBET: Mr. Sterrett.

MR. STERRETT: Mr. President, the committee on administration recommends these items for approval because they have surveyed the risk involved and evaluated the possibility of losses.

After careful deliberation the committee decided the damage or exposure would be to fire, public liability, workmen's compensation, embezzlement and, of course, social security. The social security is for employees of the convention only, because we have asked the attorney general's office to give us an opinion, and this will go to Cincinnati to the federal social security commission as to whether or not it is necessary to take the employer's part out of the social security allowance at this time. Therefore, we have not considered any part for the delegation itself.

PRESIDENT NISBET: Any questions?

Mr. Hodges.

MR. HODGES: I was wondering about the item for fire insurance. Is this just for the personal property of the convention?

MR. STERRETT: Yes, sir, it is just for personal property.

PRESIDENT NISBET: Any other questions?

Mr. Hoxie.

MR. HOXIE: Mr. President, I might address this question I would like some discussion on to Dr. DeVries.

The question, Doctor, I have in mind: I notice we have workmen's compensation for employees—not that I think the members of this delegation should be considered in that category—but I am wondering if the committee has investigated at all the possibility of a group death and accident policy for the members while they are discharging their duties?

PRESIDENT NISBET: Mr. DeVries.

MR. DeVRIES: Mr. President, may I yield to Mr. Sterrett? He was in charge of the subcommittee investigating insurance.

PRESIDENT NISBET: Mr. Sterrett.

MR. STERRETT: Mr. President, as far as the workmen's compensation insurance on the delegation itself, we have had a ruling from the attorney general that we do not come under the workmen's compensation act in the state of Michigan.

As far as the fringe benefits, the committee on administration felt that it was not necessary because we are already getting quite a good salary for this convention.

PRESIDENT NISBET: Any further questions?

Mr. DeVries.

MR. DeVRIES: Mr. President, before we get to the section on salary schedule, I would like to make these observations, if I may:

One, that the salaries are based on 7 months of operation, from October 3, 1961 to April 30, 1962, except those which have an asterisk. In these cases we anticipate possibly 8 months of service.

Two, the committee on administration anticipates that the work week of the staff of this convention will be at least 40 hours per week, and probably a good deal more as we move ahead during the next few months.

Furthermore, the hours will be irregular and uncertain. Therefore, in order to avoid the problem of overtime, we have set the salary somewhat higher than might be the case otherwise.

Furthermore, we want to avoid the payment of fringe benefits, such as group insurance mentioned by Mr. Hoxie, and are paying a flat salary and no hourly wages.

The committee strongly believes that in order to obtain top quality personnel on this convention staff, not only in skills but in personality characteristics, we are obligated to pay commensurate salaries. We didn't feel we wanted to conduct a training program. We need people with optimum skill and competence.

The salary figures you see before you have received thorough consideration and have been given unanimous support of this committee but have been scaled down in some instances on the request and appearance of certain delegates before the committee.

Further, Mr. President, most of the salaries in this schedule are based upon comparable positions in the house of representatives and the senate of Michigan. Civil service recommendations for those positions not found in the house and senate table of organization were used as the basis for judgment in the other cases.

With that, Mr. President, I ask the secretary to read the salary schedule as outlined in the report.

SECRETARY CHASE:

L. Other salaries and wages

Position	No.	Monthly	Total
*1. Administrative assistant to president	1	$1,200	$ 9,600.00
*2. Secretary to the president	1	600	4,800.00
3. Sergeant at arms	1	500	3,500.00
4. Assistant sergeant at arms	3	450	9,450.00
5. Secretary to the vice president	3	550	11,550.00
6. Convention guide	3	450	9,450.00
*7. Convention secretary	1		10,806.52
*8. Secretary to the convensecretary	1	600	4,800.00
9. Assistant convention secretary	1	1,000	7,000.00
*10. Journal clerk	1	600	4,800.00
*11. Assistant journal clerk	1	500	4,000.00
*12. Proposal and enrolling clerk	1	600	4,800.00
*13. Assistant proposal and enrolling clerk	1	500	4,000.00
*14. Finance clerk	1	600	4,800.00
15. Committee clerk	11	600	46,200.00
16. Post master and document clerk	2	450	6,300.00
*17. Duplicating clerk	1	500	4,000.00
18. Page	6	350	14,700.00
*19. Telephone operator	3	350	8,400.00
20. Press room manager	1	550	3,850.00
21. Stenographic clerk chief	1	500	3,500.00
22. Stenographic clerk	14	450	44,100.00
23. Codirector of research and drafting	3	1,500	31,500.00
24. Assistant director in charge of public information	1	1,000	7,000.00
25. Secretary to codirectors of research and drafting	2	600	8,400.00
26. Research and drafting, public information assistants	9		50,000.00
27. Other consultants			
*28. Librarian	2	500	8,000.00
			$ 329,306.52.

*These employees have been working since the opening of the convention; therefore, the totals for them are based upon 8 months.

PRESIDENT NISBET: Mr. DeVries.

MR. DeVRIES: Mr. President, items 26 and 27 should be combined into that $50,000.00 total figure.

PRESIDENT NISBET: Any discussion?

Mr. Boothby.

MR. BOOTHBY: I wonder if we could have some further clarification of items 26 and 27?

PRESIDENT NISBET: Mr. Gust.

MR. GUST: I suppose it would be impossible to discuss items 26 and 27 without discussing item 23, but suffice it to say that after much discussion and conferences with the proposed codirectors of research and drafting, we tried to establish some means of setting up a staff for them.

Items 26 and 27 were seperated for this reason: after going over the applications in our file and interviewing various people who had applied for a research and drafting job, we found that, generally speaking, they fell into 2 categories: those usually of a younger nature, either still in school or recently graduated from some college and, in some cases, young men and women working on their master's or doctor's degree who wanted to take a leave of absence from their studies in order to work full time doing research and drafting for the committees and the delegates of this convention.

In addition thereto, we found that there were many outstanding men, both on the campuses of the various universities of this state and, in some instances, in the professions, who were not in a position to devote any sustained continuous amount of time on research and drafting for the convention but who were willing to make their services available to us on a per diem basis at such time as a committee or subcommittee of this convention might require their services.

For your information, we attempted to—after going through our files and consulting with the 3 gentlemen, Drs. Combs, Joiner and Kelly, who worked extensively on the preparatory commission—reach what in our combined considered opinion was a reasonable scale both for research and drafting assistants and public information assistants who would be available on a full time basis and also what would be a reasonable scale for experts in a chosen field who would be available on a per diem or part time basis.

Projecting these figures forward, and again speculating somewhat, to be sure, as to what the future needs of the delegates to the convention would be, we established this item of $50,000.00 for items 26 and 27.

PRESIDENT NISBET: Any discussion?

Mr. Norris.

MR. NORRIS: Mr. President, I wonder just what this language can mean with regard to the research facilities that will be available to each of the respective committees. I gather there are going to be some 13 research people. How many are going to be full time, how many part time, and how many will the committee have at their disposal for the work of this convention?

MR. GUST: Generally speaking, it had been our intention to make available to each committee some one person, if it so desired and felt the need, on a full time basis. After discussing this with, again, Drs. Combs, Joiner and Kelly, it was the feeling that although some committees certainly would need a full time assistant to do drafting and research and, in the case of one committee, public information work, that there were several committees who probably would not need somebody full time.

In addition to that thought, we ran into a scheduling problem. As you know, the committee that is submitting this report,

and the committee which Mr. Van Dusen has so ably discharged his duties on—very cheerfully, I might say—will have the bulk of their work completed and it is possible from time to time, though we need the assistance of some experts in this field, that we probably will not need them on anything other than an occasional basis.

Therefore, to arbitrarily say we are going to, right off the bat, assign a full time drafting and research assistant to a single committee would not appear feasible. So we gave it the maximum flexibility. But I can assure you that the co-directors of research and drafting will be very sensitive to the needs of the various committees and subcommittees of this convention. I also can assure you that we will see that your needs in this field are fully met.

PRESIDENT NISBET: Any other questions? If not, next item.

SECRETARY CHASE:

II-M. Contingency fund .....$ 42,075.03.

PRESIDENT NISBET: Mr. Gust.

MR. GUST: Obviously, Mr. President, from the questions which have just arisen here, and the many more questions that I am sure the delegates have, you can realize that a number of items undoubtedly will come up throughout the course of this convention that none of us could foresee at this time.

This, quite frankly, is the remainder of the figure left over from the appropriation from the legislature, which I think some of the arithmetic will disclose; and we have seen fit to allocate it into a contingency fund with the hope that we will not have to spend all or any part of it; but knowing full well we will undoubtedly have to spend some part of it, both on items which we have budgeted for you which turn out to be inadequate and, in addition thereto, for certain items neither this committee nor, perhaps, any of the delegates foresee at this time.

PRESIDENT NISBET: Any questions?

Mr. Bentley.

MR. BENTLEY: Mr. President, I wonder if the committee on administration feels that it has the authority to make changes of funds between various categories without further reference to the convention in the event such might prove feasible.

I am thinking of one item of $31,000.00 for committee travel. In the event, as time goes by, that was proven to be far in excess of needs, I wonder if the committee would feel free to take that money and put it into another budget that might need it more.

PRESIDENT NISBET: Dr. DeVries.

MR. DeVRIES: It is my interpretation that any time you want to make a change in the convention budget, you will have to bring it before the full convention for its approval.

PRESIDENT NISBET: Mr. Erickson.

MR. ERICKSON: Mr. President, a few days ago the convention authorized the lease, and among the things set forth was that the leased premises shall be returned to the lessor as they are received by the lessee. I don't believe that contingency item would be enough to take care of it and I am wondering if that should not be classified as a foreseeable expenditure.

MR. DeVRIES: Mr. President, Mr. Erickson, we anticipate we will be able to sell a good deal of material and equipment used in this convention which we hope can be used to restore the facilities. We completely surveyed the building before any equipment or installations were put in here. We do hope to use the money received from the salvage of equipment to restore the building to good shape.

PRESIDENT NISBET: Any questions?

Mr. Woolfenden.

MR. WOOLFENDEN: Mr. President, I am aware, as I am sure all of the delegates are, that we have gotten away to a very fast start in this convention due to the excellent work of the preparatory commission which was financed by a grant from the W. K. Kellogg foundation. It is my understanding that many of these items and facilities, contractual services and leases were initially committed for with funds that the W. K. Kellogg foundation advanced.

I am wondering if Dr. DeVries can tell us the extent to which, by our action here if we adopt this budget, we are reimbursing the foundation for the funds so generously advanced. As a citizen and as a delegate I earnestly hope that we can repay any funds which probably should have come out of the convention in the first instance.

MR. DeVRIES: Mr. President, Mr. Woolfenden, we did authorize the repayment of $10,000.00 that was given to us to make the deposit on the lease. That is the only money refunded to the Kellogg foundation. That money will be used by the 3 universities for distribution after the convention.

One thing that wasn't pointed out: the Kellogg foundation didn't charge us for the $1,500.00 used to get the auditorium ready for the opening day's session and $500.00 which was paid to a wrestling promoter in order that we could have the auditorium on that day. That was given to us. I didn't want to bring that out but I suppose it should be mentioned.

PRESIDENT NISBET: Any other questions?

Mr. Austin.

MR. AUSTIN: Mr. President, it has been stated by the committee on administration that the convention will not be required to pay federal insurance contribution tax, which is the social security, on the earnings or compensation of the delegates.

I am wondering if in making this determination — I understand they are getting a ruling from Cincinnati on this matter — it has been decided that the delegates are not employees as defined under the FICA and, if they are not regarded as employees, will their compensation be subject to income tax withholding?

PRESIDENT NISBET: Mr. Sterrett.

MR. STERRETT: Sir, this is not in the realm of insurance. The income tax feature I could not answer on myself. However, we are awaiting a ruling on the social security from Cincinnati and the committee on administration, I am sure, will be very glad to look into this for the delegates. If somebody already has, I am not aware of it.

PRESIDENT NISBET: Any further questions? If not, continue, Mr. Secretary.

SECRETARY CHASE:

Subtotal — category II .....$ 920,000.00
Grand total ..... $2,000,000.00.

PRESIDENT NISBET: Mr. Snyder.

MR. SNYDER. Mr. President, on behalf of the committee on administration, may I state that we are deeply indebted to the constitutional convention preparatory commission for their preliminary report on administrative procedure.

It was necessary, however, for our committee to tailor some of their recommendations to fit our specific circumstances. Some of the problems that we had were easy to solve but, in addition to that, we had many knotty problems. In order to best resolve these, and to use most effectively the many and varied talents of our committee members, several subcommittees were designated by our chairman, Dr. DeVries.

Their efforts were reported out from time to time to the committee as a whole and then, after full discussion and deliberation over such recommendations, general agreement was usually reached. In fact, I am very happy to say that every final action taken by the committee as a whole was a unanimous action.

In conclusion, Mr. President and delegates, I will say that the reports that we are offering to you for your approval represent what we feel is an objective, bipartisan effort of the entire committee on administration. Thank you.

PRESIDENT NISBET: The question is on the adoption of the budget as submitted by the committee. Any questions?

Mr. Ford.

MR. FORD: Mr. President, one question — I am not trying to save money here; perhaps spend a little more — I notice under the salaries, which is the only place where we have an actual breakdown of the committee's contemplated personnel, they have stenographic clerk.

Am I correct in assuming this classification would be the people to whom we as individual delegates, rather than as

members or officers of a committee, would turn to for stenographic assistance in preparing proposals or any other memoranda to be presented to this convention?

PRESIDENT NISBET: Dr. DeVries.

MR. DeVRIES: Mr. President, Mr. Ford, it is the intent of the committee on administration, as we read the table of organization, that these 15 stenographic clerks will be the personal secretaries of the delegates. Each delegate will be assigned one stenographer — perhaps I should put it this way: 4 or 5 delegates will be assigned one stenographer.

MR. FORD: This is why I raise the question. When I divide 14 into 144, I have difficulty in getting 4. Perhaps there is something here that isn't apparent. Perhaps some people are doing double duty and also doing duty to the delegates.

But it appears to me, if we tie ourselves to this budget of 14 stenographers, this may be grossly inadequate, if we have one person serving 10 delegates. Maybe this is too soon to anticipate the difficulty but while you are securing personnel, it seems like this would be the appropriate time to raise the question.

MR. DeVRIES: The rules provide for 15 or more if authorized by the committee on administration. If you deduct the personal secretary to the president, 3 personal secretaries to the vice-presidents, and 13 committee clerks, deduct those from a total of 144 delegates, it would be considerably less than 10.

It has been my experience there are many members in the house who do not dictate very much, do not have much work. We anticipate that will cut down this figure. If it turns out we cannot handle the work, I suppose the committee will have to authorize the hiring of additional stenographers.

PRESIDENT NISBET: The question is on the adoption of the committee's report. Any further questions?

If not, all in favor say aye. Those opposed, no.

The budget is adopted.

May I, without any lack of dignity, convey to this committee, as well as Mr. Van Dusen's committee, our appreciation for the very thorough job both committees have done in getting this convention started in administration. (applause)

Mr. DeVries.

MR. DeVRIES: Mr. President, on behalf of the committee on administration, we want to thank you for this vote of confidence. We worked hard and, as you can probably see, we rehearsed our parts quite well. (applause)

The committee on administration will celebrate the completion of this part of its work with another meeting immediately following in room G.

PRESIDENT NISBET: Mr. Chase, any further reports of standing committees?

SECRETARY CHASE:

Mr. DeVries submits the following report:

The committee on administration, by Mr. DeVries, chairman, recommends the following persons to the president for consideration as staff members of the constitutional convention:

Codirector of research, drafting, and public information, Dr. William Combs.

Codirector of research, drafting, and public information, Dr. Charles Joiner.

Codirector of research, drafting, and public information, Dr. Alfred Kelly.

Secretary to vice president Tom Downs, Mrs. Geraldine Rapaport.

Committee clerk to the committee on legislative organization, Mrs. Margery Archer.

Committee clerk to the committee on finance and taxation, Mrs. Pauline Farman.

Committee clerk to the committee on judicial branch, Mrs. Valverda Louden.

Committee clerk to the committee on executive branch, Miss Evelyn Silverman.

Walter DeVries, chairman.

PRESIDENT NISBET: Unless there is objection, the recommendation of the committee will be concurred in.

SECRETARY CHASE: **The president appoints,** pursuant to authorization by the convention, and with the approval of the committee on administration, the aforenamed persons to the respective positions indicated.

PRESIDENT NISBET: Without objection, the appointments are approved.

Any further reports of standing committees?

SECRETARY CHASE: The committee on rules and resolutions, by Mr. Van Dusen, chairman, submits the following report and recommends that the appendices to the report of the committee on permanent organization and rules, adopted by the convention October 9, 1961, be amended as follows:

Amend the job descriptions, appendix B, under "OFFICE OF THE PRESIDENT* — **Administration and housekeeping division**" following item B, by inserting a new item C to read as follows:

"C. Secretaries to the vice presidents (3).

These people must be capable of taking shorthand and typing letters, memoranda and studies. These people must also have the capacity to get along with people and work well with other staff members."; and relettering the remaining items accordingly.

Richard Van Dusen, chairman.

For the body of the original report, see above, page 122.

PRESIDENT NISBET: Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, delegates, in view of the fact that 3 secretaries to the vice presidents have been included in the budget which you just adopted, and one just appointed, I hope you will find this recommendation acceptable. It is made at the request of the committee on administration. It has the full approval of the committee on rules and resolutions.

PRESIDENT NISBET: The question is on concurring in the recommendation.

All in favor say aye. Those opposed, nay.

It is concurred in.

Any further reports of standing committees, Mr. Secretary?

SECRETARY CHASE: That is all, Mr. President.

PRESIDENT NISBET: Reports of select committees.

SECRETARY CHASE: None.

PRESIDENT NISBET: Communications from state officers.

SECRETARY CHASE: None.

PRESIDENT NISBET: **Introduction, first reading and reference of proposals.**

SECRETARY CHASE: Mrs. Conklin introduces **Delegate Proposal 1044,** A proposal requiring that electors must vote within 2 year period to avoid reregistration. Amends article III, section 1.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: Mr. Yeager introduces **Delegate Proposal 1045,** A proposal to limit the term of governor to 2 consecutive terms. Amends article VI, section 1.

PRESIDENT NISBET: Referred to the committee on executive branch.

SECRETARY CHASE: Mr. Norris introduces **Delegate Proposal 1046,** A proposal granting to any person convicted in any criminal case an appeal as a matter of right rather than as a matter of discretion. Amends article II, section 19.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: Mr. Sterrett introduces **Delegate Proposal 1047,** A proposal to provide a 4 year term of office for legislators, the governor, lieutenant governor, secretary of state, state treasurer, auditor general, and attorney general, and to fix the time of such elections. Amends article III by adding a new section.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: Mr. G. E. Brown introduces **Delegate Proposal 1048,** A proposal relative to approval of amendments to the constitution by initiatory petition. Amends article XVII, section 2.

PRESIDENT NISBET: Referred to the committee on miscellaneous provisions and schedule.

SECRETARY CHASE: Mr. G. E. Brown introduces **Delegate Proposal 1049,** A proposal to make inadmissible evidence obtained by illegal search and seizure. Amends article II, section 10.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: Mr. Suzore introduces **Delegate Proposal 1050,** A proposal to take property; necessity and compensation. Amends article XIII, section 1.

PRESIDENT NISBET: Referred to the committee on miscellaneous provisions and schedule.

SECRETARY CHASE: Mr. Suzore introduces **Delegate Proposal 1051,** A proposal relating to debt limitation. Amends article X, section 10.

PRESIDENT NISBET: Referred to the committee on finance and taxation.

SECRETARY CHASE: Mr. Erickson introduces **Delegate Proposal 1052,** A proposal setting a limitation on state indebtedness to meet deficits in revenue. Amends article X, section 10.

PRESIDENT NISBET: Referred to the committee on finance and taxation.

SECRETARY CHASE: Mr. Hoxie introduces **Delegate Proposal 1053,** A proposal to establish a uniform basis of valuation on taxation of property. Amends article X, sections 3, 5 and 7.

PRESIDENT NISBET: Referred to the committee on finance and taxation.

SECRETARY CHASE: Mr. Norris introduces **Delegate Proposal 1054,** A proposal dealing with prohibition of liberty of speech and press. Amends article II, section 22. Replaces Delegate Proposal 1016.

PRESIDENT NISBET: Referred to the committee on Declaration of rights, suffrage and elections.

SECRETARY CHASE: Mr. Faxon introduces **Delegate Proposal 1055,** A proposal to establish the position of state director of arts; his appointment, duties, and compensation. Amends article XI by adding a new section.

PRESIDENT NISBET: Referred to the committee on education.

SECRETARY CHASE: Mr. Faxon introduces **Delegate Proposal 1056,** A proposal to establish a state commission of the arts. Amends article XI by adding a new section.

PRESIDENT NISBET: Referred to the committee on education.

SECRETARY CHASE: Mrs. Daisy Elliott introduces **Delegate Proposal 1057,** A proposal to encourage economic development through state loans. Amends article X, section 12.

PRESIDENT NISBET: Referred to the committee on finance and taxation.

SECRETARY CHASE: Mrs. Daisy Elliott introduces **Delegate Proposal 1058,** A proposal regarding debt limitation. Amends article X, section 10.

PRESIDENT NISBET: Referred to the committee on finance and taxation.

SECRETARY CHASE: Mrs. Daisy Elliott introduces **Delegate Proposal 1059,** A proposal relative to unreasonable search and seizure and interceptions. Amends article II, section 10.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: Mr. Kuhn introduces **Delegate Proposal 1060,** A proposal to allow permissive home rule for counties. Amends article VIII by adding a new section.

PRESIDENT NISBET: Referred to the committee on local government.

SECRETARY CHASE: Mr. Sharpe introduces **Delegate Proposal 1061,** A proposal relative to granting powers to the legislature. Amends article VI, section 22.

PRESIDENT NISBET: Referred to the committee on legislative powers.

SECRETARY CHASE: Mr. Bentley introduces **Delegate Proposal 1062,** A proposal to lower the voting age to 18 years. Amends article III, section 1.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: Mr. Brake introduces **Delegate Proposal 1063,** A proposal to describe the organization of the state administrative board and define its jurisdiction.

PRESIDENT NISBET: Referred to the Committee on Executive branch.

SECRETARY CHASE: That is all the proposals for introduction today, Mr. President.

May the secretary make this announcement? In connection with proposals, when the research and drafting staff is established, will you please take your proposals to that staff, because we have found a number of these are raising pretty technical questions. If you will take all of your proposals to them, then they will be filed with the proposal clerk. Meantime, please, if you will, take your proposals down to Mrs. West during the afternoon or early the next morning, because the deadline is 11:00 o'clock. When that deadline comes, if they are not in and several of you are dictating, it is a pretty hard thing to get everything in readiness by 2:00 o'clock.

Your cooperation will be greatly appreciated by the staff.

PRESIDENT NISBET: Second reading of proposals. Mr. DeVries.

MR. DeVRIES: Mr. President, if I may comment on Mr. Chase's suggestion, the procedure the 3 codirectors would like you to follow is: if you have a research project, give it to one of the 3 codirectors. They will then assign the assistant or consultant, after conferring with the chairman, who will do the work for you. That will save time. We would like the research directed through the 3 codirectors, after consultation with the chairman and then have the research go back to the codirectors for editing.

PRESIDENT NISBET: Second reading of proposals.

SECRETARY CHASE: Nothing on the calendar.

PRESIDENT NISBET: Third reading of proposals.

SECRETARY CHASE: None.

PRESIDENT NISBET: **Motions and resolutions.**

SECRETARY CHASE: Mr. Faxon offers **Resolution 14,** A resolution to establish a speaker's bureau.

Following is the body of Resolution 14, as offered:

Whereas, Many civic and political groups around the state are vitally interested in the events of this convention; and

Whereas, There will be much discussion by the citizenry of the action we take; and

Whereas, An informed electorate is the best electorate; now therefore be it

Resolved, That this convention establish a speaker's bureau of our members in order to clarify the issues under discussion for the citizens of this state.

PRESIDENT NISBET: Referred to the committee on rules and resolutions.

SECRETARY CHASE: Mr. Faxon also offers **Resolution 15,** A resolution inviting foreign students to our convention.

Following is the body of Resolution 15, as offered:

Whereas, The work of this convention has received national and international attention; and

Whereas, There are many nations in the world today which face a task similar to our own here; and

Whereas, There are many foreign students attending schools in Michigan; and

Whereas, These students will be the future leaders in their respective countries; now therefore be it

Resolved, That this convention extend an invitation to these students to attend our meetings and meet our delegates in order that they may better their understanding of our American democratic process in action.

PRESIDENT NISBET: Referred to the committee on rules and resolutions.

SECRETARY CHASE: Mr. Faxon offers **Resolution 16,** A resolution to invite social scientists to speak before our convention.

Following is the body of Resolution 16, as offered:

Whereas, There are many changes taking place in this state and the world today; and

Whereas, Social scientists are and have been engaged in studies dealing with an objective view in these changing conditions; and

Whereas, Economic and political and social changes vitally affect the fabric of the product of this convention; now therefore be it

Resolved, That we invite these social scientists to speak before our entire convention on their respective fields of study to provide an information background towards our future deliberations.

PRESIDENT NISBET: Referred to the committee on rules and resolutions.

SECRETARY CHASE: That is all the resolutions on file.

PRESIDENT NISBET: Are there any further motions or resolutions?

Mr. Romney.

MR. ROMNEY: I move that when the Convention adjourns tomorrow afternoon, it stand adjourned until Monday evening at 8:00 o'clock p.m. This will give us time for committee sessions on Friday.

PRESIDENT NISBET: The question is on the motion of Mr. Romney. Any discussion?

All in favor say aye. Those opposed, no.

The motion prevails.

Any unfinished business?

SECRETARY CHASE: None, Mr. President.

PRESIDENT NISBET: Special orders of the day.

SECRETARY CHASE: None.

PRESIDENT NISBET: General orders of the day.

SECRETARY CHASE: None, Mr. President.

PRESIDENT NISBET: Mr. Norris.

MR. NORRIS: Mr. President, at 2:00 o'clock I was before the Michigan supreme court and therefore not available to be checked in. I am now present and I would like to have the record show that.

PRESIDENT NISBET: Your presence is noted.

Announcements.

SECRETARY CHASE: The following announcements of committee meetings:

The committee on administration, as already announced by Mr. DeVries, will meet after the session today in room G. Mr. DeVries, chairman.

The committee on legislative powers will meet in the room at the north end of the lounge today following the session. T. J. Hoxie, chairman.

The committee on executive branch — there are 2 meetings tomorrow in room C, but they do not conflict — the committee on executive branch will meet in room C tomorrow, Thursday, October 19, at 8:30 a.m. John B. Martin, chairman.

The committee on education will meet in room C on Thursday, October 19, at 10:00 o'clock a.m. Alvin M. Bentley, chairman.

The committee on legislative organization meets immediately after the session today, and also tomorrow, in room D. John A. Hannah, chairman.

The committee on miscellaneous provisions and schedule will meet in room E next Tuesday, October 24, at 7:00 o'clock p.m. Claud R. Erickson, chairman.

The committee on finance and taxation will meet in room E, tomorrow, Thursday, at 9:00 o'clock a.m. This meeting will be repeated on Friday morning, same place and same time. D. Hale Brake, chairman.

The committee on judicial branch will not meet at 10:00 o'clock tomorrow but will meet tomorrow, Thursday, 15 minutes after the session adjourns, in room B. The change was necessary in order to accommodate the speaker of the day. Robert J. Danhof, chairman.

The committee on local government: will the members please bring to the meeting Thursday — which meeting is scheduled for room A after the session, but not before 3:15 p.m. — that portion of the constitution workbook which deals with local government. Arthur G. Elliott, chairman.

Mr. Erickson requests the reading of the committee assignments for workload of committee on miscellaneous provisions and schedule.

Following are the subcommittee assignments for the committee on miscellaneous provision and schedule:

Claud R. Erickson, chairman
William J. Leppien, first vice chairman
Harold E. Bledsoe, second vice chairman

Preamble
- William J. Leppien, chairman
- Harold E. Bledsoe, vice chairman
- Clyne W. Durst, Jr.
- Don F. Seyferth
- Don Binkowski

Article I — Boundaries and seat of government
- Ann E. Donnelly, chairman
- Harold E. Bledsoe, vice chairman
- Don F. Seyferth
- Paul R. Mahinske
- William J. Leppien

Article XII — Corporations
- Henry L. Woolfenden, chairman
- Don Binkowski, vice chairman
- J. Don Lawrence
- Edward Hutchinson
- Paul R. Mahinske

Article XIII — Eminent domain
- Paul R. Mahinske, chairman
- Ann E. Donnelly, vice chairman
- Harold E. Bledsoe
- Morris W. Hood
- J. Don Lawrence

Article XV — Militia
- Walter D. DeVries, chairman
- Paul R. Mahinske, vice chairman
- Don Binkowski
- William J. Leppien
- Ann E. Donnelly

Article XVI — Miscellaneous provisions
- Edward Hutchinson, chairman
- Morris W. Hood, vice chairman
- Henry L. Woolfenden
- J. Don Lawrence
- Joseph M. Snyder

Article XVII — Amendment and revision
- Donald M. Habermehl, chairman
- Joseph M. Snyder, vice chairman
- Ann E. Donnelly
- Clyne W. Durst, Jr.
- Walter D. DeVries

Schedule
- Clyne W. Durst, Jr., chairman
- Joseph M. Snyder, vice chairman
- Donald M. Habermehl
- Don F. Seyferth
- Morris W. Hood

The secretary has on his desk the following requests for leave of absence from tomorrow's session: Messrs. Douglas, A. G. Elliott, Farnsworth and Karn.

PRESIDENT NISBET: Without objection, they will be excused.

SECRETARY CHASE: The secretary has been requested to make this announcement: The apples on your desks are from the Turner orchards, with the compliments of Delegate Herbert Turner, of Saginaw.

This final announcement: The checks for the delegates for this first pay period will be available from the finance clerk, Mrs. Tomlinson, in the office of the secretary tomorrow any time after 8:00 o'clock, with the exception of the members who were not able to get their social security in time. Those will be available by the first of next week.

PRESIDENT NISBET: This completes the business of the convention for today. What is your pleasure?

Mr. Barthwell.

MR. BARTHWELL: I move we adjourn.

PRESIDENT NISBET: The motion is on adjournment. All in favor say aye. Those opposed, no.

The convention is adjourned until tomorrow at 2:00 o'clock.

[Whereupon at 3:20 o'clock p.m., the Convention adjourned until 2:00 o'clock p.m., Thursday, October 19, 1961.]

TENTH DAY

Thursday, October 19, 1961, 2:00 o'clock p.m.

PROCEEDINGS

PRESIDENT NISBET: The convention will please come to order.

The **invocation** today will be given by the Reverend Vernon T. Smith, of the Holt Presbyterian Church, Holt.

REVEREND SMITH: Let us bow our heads in the spirit of prayer. Almighty God, before Whom all nations rise or fall, in Whose hands rest the total history of man, make us all humble enough to seek Thy holy will in the affairs of state. O Thou creator of all things, of life, of mind and spirit, Who has given us all a rich inheritance, give to these, Thy servants the health of body and mind, the guidance of Thy spirit to do a wise and lasting work in this constitutional convention. Bless us all and keep us and our loved ones safe in Thy care today and always. Amen.

PRESIDENT NISBET: The **roll call** will be taken by the secretary. All present please vote aye.

SECRETARY CHASE: May we suggest, please, that you canvass the switches and make sure at this time that every one is in the not voting position. Then, if there is a vacant seat next to you, please be sure that that is also in the not voting position. Now, will you vote aye?

The secretary will now lock the machine and record the vote.

Mr. President, a quorum of the convention is present.

Absent with leave: Miss McGowan, Messrs. A. G. Elliott and Karn.

Absent without leave: Mr. Everett.

PRESIDENT NISBET: Mr. Erickson

MR. ERICKSON: I move that Mr. Everett be excused from today's session.

PRESIDENT NISBET: Without objection, the motion prevails and Mr. Everett is excused.

Reports of standing committees.

SECRETARY CHASE: Mr. Bentley, for the committee on education, introduces

Committee Proposal 1, A proposal pertaining to the inclusion of section 1 of article XI in the constitution;
with the recommendation that it pass.

Alvin M. Bentley, chairman.

For Committee Proposal 1, see below, page 197.

PRESIDENT NISBET: It will be referred to the committee of the whole and placed on general orders.

Mr. Bentley.

MR. BENTLEY: Mr. President, I would merely like to state that there was a great deal of interest in my committee on receiving as expeditious action as possible on this proposal, owing not only to its noncontroversial nature but to the high value which the committee and, I'm sure, the convention places on this declaration of principle which historically dates back to the Northwest Ordinance of 1787.

However, if it had been desired to consider this proposal today, it would, of course, have involved a suspension of the rules and it was felt that this would not be a good time to start setting such a precedent of this nature.

Therefore, I announce for the members of the committee and the convention, as I understand it, that this will be an order of business in the coming session on Monday evening. Thank you, sir.

SECRETARY CHASE: The committee on administration, by Mr. DeVries, chairman, recommends the following persons to the president for consideration as staff members of the constitutional convention:

Committee clerk to the committee on legislative powers, Mrs. Bernice Popp.

Committee clerk to the committee on declaration of rights, suffrage and elections, Mrs. Charlotte Walter.

Walter DeVries, chairman.

PRESIDENT NISBET: Without objection, the committee recommendations are concurred in.

SECRETARY CHASE: **The president appoints,** pursuant to authorization by the convention, and with the approval of the committee on administration, the aforenamed persons to the respective positions indicated.

PRESIDENT NISBET: Without objection, these appointments will be approved. Are there any objections? They are approved.

SECRETARY CHASE: That is the only remaining standing committee report, Mr. President.

PRESIDENT NISBET: Reports of select committees.

SECRETARY CHASE: None.

PRESIDENT NISBET: Communications from state officers.

SECRETARY CHASE: None.

PRESIDENT NISBET: **Introduction, first reading and reference of proposals.**

Mr. Yeager.

MR. YEAGER: Mr. President, there is a procedure in the legislature which permits members of the legislature to join in putting in bills to the legislature. I'm wondering if this convention is aware of the possibility that members can join in preparing proposals and we might perhaps eliminate some duplications and some paper in that regard.

SECRETARY CHASE: In response to the inquiry from Mr. Yeager, there are today on file for introduction several proposals, 2 or 3 of which are by 2 or 3 delegates acting together and one in which there are 5 joined together for introduction.

Messrs. Binkowski, Stopczynski, Perlich, Pellow and Wilkowski introduce

Delegate Proposal 1064, A proposal allowing operation of lotteries if conducted by charitable or fraternal organizations. Amends article V, section 33.

PRESIDENT NISBET: It will be referred to the committee on legislative powers.

SECRETARY CHASE: Mr. Faxon introduces

Delegate Proposal 1065, A proposal to increase the size of the state board of education and to change time of elections. Amends article XI, section 6.

PRESIDENT NISBET: Referred to committee on education.

SECRETARY CHASE: Mr. Faxon also introduces

Delegate Proposal 1066, A proposal relating to the selection of the superintendent of public instruction. Amends article XI, section 6.

PRESIDENT NISBET: Referred to the committee on education.

SECRETARY CHASE: Mr. Erickson introduces

Delegate Proposal 1067, A proposal to divide state into 8 territorial districts for nonpartisan election of certain state officials.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: Messrs. Allen, G. E. Brown and Stamm introduce

Delegate Proposal 1068, A proposal to establish a separate governing board for Western Michigan University. Amends article XI, section 6, and adds a new section.

PRESIDENT NISBET: Referred to the committee on education.

SECRETARY CHASE: Messrs. Anspach, Leibrand and Spitler introduce

Delegate Proposal 1069, A proposal to establish a separate governing board for Central Michigan University. Amends article XI, section 6, and adds a new section.

PRESIDENT NISBET: Referred to the committee on education.

SECRETARY CHASE: Messrs. L. W. Richards and Pellow introduce

Delegate Proposal 1070, A proposal to establish a separate governing board for Northern Michigan College. Amends article XI, section 6, and adds a new section.

PRESIDENT NISBET: Referred to the committee on education.

SECRETARY CHASE: Mr. Lawrence introduces

Delegate Proposal 1071, A proposal to establish a separate governing board for Eastern Michigan University. Amends article XI, section 6, and adds a new section.

PRESIDENT NISBET: Referred to the committee on education.

SECRETARY CHASE: Messrs. Madar and Youngblood introduce

Delegate Proposal 1072, A proposal to provide employment protection for public employees. Amends article V, section 29.

PRESIDENT NISBET: Referred to the committee on legislative powers.

SECRETARY CHASE: Mr. Perras introduces

Delegate Proposal 1073, A proposal providing that no state income tax shall be levied without a favorable vote at a general referendum. Amends article X by adding a new section.

PRESIDENT NISBET: Referred to the committee on finance and taxation.

SECRETARY CHASE: Mr. Wood introduces

Delegate Proposal 1074, A proposal that no representative district shall have more than one representative. Amends article V, section 3.

PRESIDENT NISBET: Referred to the committee on legislative organization.

SECRETARY CHASE: That's all the proposals for introduction today, Mr. President.

PRESIDENT NISBET: Dr. Pollock.

MR. POLLOCK: Mr. President, I rise to a question of privilege of the convention.

I received a letter in the mail yesterday. It happens to be the first of its kind and that's why I rise at this moment to make a comment.

It came from the attorney general of the state and related to a matter of internal business of the executive branch and ended up with some prejudicial information in the letter.

I just want to say that I consider this letter to be very prejudicial to our fair discussion of the question in hand and an example — whether it was intended this way or not I shall not say — of official influence or pressure on our deliberations.

Regardless of the subject or the form of the letter, to both of which I could take exception, I should like to say that I don't want any kind of pressure, official or unofficial, to affect our decisions. If every state official or employee should follow the lead of the attorney general, we not only would be flooded, but we would be given only prejudicial and self serving information.

If we want any information, we can ask for it. If any state official is so anxious to communicate with the convention, let him submit a formal and proper communication to the president, under our rules, and under the regular order of business it will be presented in order to this body. To drop the letter in each delegate's box, not even using a postage stamp, (laughter) also abuses our box privileges.

If this form of self serving, prejudicial, official pressure continues, I shall ask the convention to take appropriate action by a special rule. We already have one for nonofficial personnel.

PRESIDENT NISBET: Mr. Downs.

MR. DOWNS: Mr. President, I assume that the attorney general would not attempt to pressure any delegate and I also assume that the delegate who just spoke could not conceivably be pressured by anybody, official or unofficial.

I, for one, welcome communications of all sorts. Those that are anonymous get filed in the wastebasket; others receive the attention that I think they warrant.

I think our concept of freedom of speech and press permits anybody to make the communication and I assume that all the delegates are mature enough to give to the communications the merit they deserve. Thank you.

PRESIDENT NISBET: Mr. Dehnke.

MR. DEHNKE: I just want to take a moment to express my agreement with what Mr. Downs has just said. Thank you.

PRESIDENT NISBET: Second reading of proposals.

SECRETARY CHASE: Nothing on the calendar, Mr. President.

PRESIDENT NISBET: Third reading of proposals.

SECRETARY CHASE: Nothing on that order.

PRESIDENT NISBET: **Motions and resolutions.**

SECRETARY CHASE: Messrs. Faxon and Heideman offer

Resolution 17, A resolution relating to the televising of our proceedings.

Following is the body of Resolution 17, as offered:

Resolved, That this convention take immediate steps to procure the services of the state university television staffs and their facilities for purposes of televising these proceedings.

PRESIDENT NISBET: Referred to the committee on rules and resolutions.

SECRETARY CHASE: Mr. Norris offers

Resolution 18, A resolution for the compilation of all suggestions and recommendations that are statutory in character for forwarding to the legislature.

Following is the body of Resolution 18, as offered:

Whereas, In the process of presenting and evaluating proposals, many suggestions and recommendations emerge as statutory and discretionary matter for the legislature rather than as constitutional in nature; and

Whereas, Such suggestions and recommendations may have merit for statutory enactment; and

Whereas, It would be helpful if it be known to the public that even if many suggestions are regarded by the convention as statutory and not constitutional, such suggestions could nevertheless be consolidated and forwarded to the legislature; now therefore be it

Resolved, That suggestions and recommendations that are regarded by the committees and the convention as being statutory rather than constitutional in character

be compiled and organized in a formal fashion as the convention proceeds for forwarding to the legislature upon conclusion of the convention.

PRESIDENT NISBET: Referred to the committee on rules and resolutions.

SECRETARY CHASE: That's all of the resolutions on file, Mr. President.

PRESIDENT NISBET: Unfinished business.

SECRETARY CHASE: None.

PRESIDENT NISBET: Special orders of the day.

SECRETARY CHASE: There are no special orders.

PRESIDENT NISBET: Mr. McAllister.

MR. McALLISTER: Mr. Chairman, a murder trial which I am defending has been set for October 24. My client is in jail and I don't want to be a party with him in the jail. So I have to be absent next week, if it's agreeable with the convention.

PRESIDENT NISBET: Without objection, you will be excused.

General orders of the day.

SECRETARY CHASE: None.

PRESIDENT NISBET: Announcements.

SECRETARY CHASE: **The president appoints,** pursuant to the provisions of rule 7, the following press credentials committee: Messrs. Carl Rudow, William Kulsea, Willard Baird, Eugene Schroeder and Rob Downey.

[There being no objection, the appointments were considered approved]

There have been filed with the secretary the following requests for leaves of absence:

Messrs. Dehnke, Durst, Prettie and Snyder ask for leave of absence from the session of Monday next; and Miss Hart and Mr. Buback ask for leave of absence from the sessions of Monday and Tuesday of next week.

PRESIDENT NISBET: Without objection, they will be granted. There is no objection; they are granted.

SECRETARY CHASE: We have the following notices of committee meetings:

The committee on declaration of rights, suffrage and elections will meet in room F next Tuesday, the 24th, at 10:30 a.m. James K. Pollock, chairman.

The committee on administration will meet in room G next Monday, October 23, at 6:30 p.m. Walter DeVries, chairman.

The meeting of the committee on finance and taxation which was scheduled for 9:00 o'clock tomorrow morning is cancelled and instead the committee will meet in room E, Tuesday morning from 10:30 to 12:30. D. Hale Brake, chairman.

May the secretary request that those members who have not yet turned in the material on the blank where we ask for the delegate, his occupation and home post office, etc., please do that before you leave today, so that we may get the orders for your stationery and the material for the handbook ready over the weekend.

PRESIDENT NISBET: Are there any other announcements?

Mr. Martin.

MR. MARTIN: Mr. President, there has been a little confusion on when these committees will be able to meet. A meeting of the committee on executive branch will be held Tuesday morning, the 24th, in room C at 10:30 a.m.

PRESIDENT NISBET: Are there any further announcements?

This completes our business for the day. What is the pleasure of the convention?

Mr. Lundgren.

MR. LUNDGREN: I move we adjourn.

PRESIDENT NISBET: All in favor say aye. Opposed, no. The convention is adjourned until 8:00 o'clock Monday night.

[Whereupon, and in pursuance of the order previously made, at 2:20 o'clock p.m., the convention adjourned until 8:00 o'clock p.m., Monday, October 23, 1961.]

ELEVENTH DAY

Monday, October 23, 1961, 8:00 o'clock p.m.

PROCEEDINGS

PRESIDENT NISBET: The convention will please **come to order.**

The **invocation** this evening will be given by one of our own delegates, Mrs. Ruth Butler of Houghton.

MRS. BUTLER: Mr. President and members of the convention, 54 years ago yesterday, October 22, 1907, the previous constitutional convention convened in the state capitol. Time has shown that their work was completed in a most excellent manner. It is fitting that tonight we recognize the fruits of their thoughts and labor.

This evening let us bow our heads in prayer and offer the same prayer given by the Reverend Frank G. Ward of the Plymouth Congregational Church of Lansing, that opened the 1907 convention.

Let us pray. The wise man did build his house upon a rock, and the rain descended, and the floods came, and the winds blew, and beat upon that house and it fell not, for it was founded upon a rock.

O, God, our heavenly Father, we pray Thee as we are called together here again to construct the foundations of our commonwealth, and to widen and strengthen its bulwarks, we may have something of the prophet's vision which shall enable us to foresee and interpret the trend of men's thoughts, and may we have that wisdom which is not selfish or superficial, and which is not provincial, but works for the building up of society upon those foundations which are strong and permanent, and which give opportunity for progress. We ask it in the faith of Jesus Christ. Amen.

PRESIDENT NISBET: Thank you, Mrs. Butler.

The **roll call** will be taken by the secretary. All those present please vote aye.

SECRETARY CHASE: Have you all voted? If so, the secretary will lock the machine. You may now return your voting switch to the neutral position.

Mr. President, 129 delegates are present, which is a quorum.

Prior to today's session, the secretary received the following requests for leave:

Messrs. Allen and Norris request that they be excused from tonight's session and from the sessions of October 30, November 6 and 13, 1961.

Mr. Kirk requests that he be excused from the sessions of tonight and tomorrow.

PRESIDENT NISBET: Without objection, the requests are granted.

SECRETARY CHASE: Absent with leave: Miss Hart, Messrs. Allen, Durst, Kirk, McAllister, Norris and Prettie.

Absent without leave: Messrs. Bledsoe, Gadola, Lundgren and Suzore.

PRESIDENT NISBET: Without objection, the delegates are excused.

Reports of standing committees.

SECRETARY CHASE: The committee on administration, by Mr. DeVries, chairman, recommends to the convention the following permanent committee room assignments:

Room A: Committee on local government
Room B: Committee on judicial branch
Room C: Committee on executive branch
Room D: Committee on legislative organization
Room E: Committee on finance and taxation
Room F: Committee on declaration of rights, suffrage and elections
Room G: Committee on miscellaneous provisions and schedule
Room H: Committee on legislative powers
Room I: Committee on style and drafting
Committee on rules and resolutions
Room J: Committee on public information
Committee on administration
Room K: Committee on education.

Committee rooms A through G are located on the lower level. Committee rooms H and I are located on the third floor of the office wing of the civic center. Tentatively, committee room J is on the third floor of the office wing of the civic center and K is on the second floor. All of the tentative room assignments will be made permanent by the time of tomorrow's meeting.

Walter DeVries, chairman.

PRESIDENT NISBET: Without objection, those assignments will be approved.

Mr. DeVries.

MR. DeVRIES: Rooms H, I, J and K will be ready for occupancy at 9:00 a.m. Wednesday morning, with the necessary desks, typewriters, tables and chairs.

We are now awaiting a decision by the city council in regard to room J, which is on the third floor and room K on the second floor.

SECRETARY CHASE: The committee on administration, by Mr. DeVries, chairman, recommends the following persons to the president for consideration as staff members of the constitutional convention:

Press room manager, Mr. Hub George

Secretary to Vice Presidents Hutchinson and Romney, Mrs. Kathleen Fowler

Committee clerk to the committee on education, Mrs. Shirley Quinn

Secretary to the codirectors of research, Miss Ruegene Luedtke

Research assistants, Miss Jane Denison and Miss Sarah Luedders.

Walter DeVries, Chairman.

PRESIDENT NISBET: Without objection, the committee recommendations are concurred in.

Mr. DeVries.

MR. DeVRIES: Mr. President, the rest of the recommendations will be in tomorrow afternoon for the session.

SECRETARY CHASE: **The president appoints,** pursuant to authorization by the convention, and with the approval of the committee on administration, the aforenamed persons to the respective positions indicated.

PRESIDENT NISBET: Without objection, they will be approved. Hearing none, they are approved.

SECRETARY CHASE: That is all the standing committee reports, Mr. President.

PRESIDENT NISBET: Reports of select committees.

SECRETARY CHASE: None.

PRESIDENT NISBET: Communications from state officers.

SECRETARY CHASE: None.

PRESIDENT NISBET: **Introduction, first reading and reference of proposals.**

SECRETARY CHASE: Mr. McCauley introduces

Delegate Proposal 1075, A proposal to limit liability of a county or political subdivision thereunder. Amends article VIII by adding a new section.

PRESIDENT NISBET: Referred to the committee on local government.

SECRETARY CHASE: Mr. McCauley introduces

Delegate Proposal 1076, A proposal to provide for local libraries. Amends article XI, section 14.

PRESIDENT NISBET: Referred to the committee on education.

SECRETARY CHASE: Mr. McCauley introduces

Delegate Proposal 1077, A proposal with regard to certain officials holding their offices at the county seat. Amends article VIII, section 4.

PRESIDENT NISBET: Referred to the committee on local government.

SECRETARY CHASE: Messrs. Nord and Austin introduce

Delegate Proposal 1078, A proposal regarding the encouragement of education. Amends article XI, section 1.

PRESIDENT NISBET: Referred to the committee on education.

SECRETARY CHASE: Mr. Brake introduces

Delegate Proposal 1079, A proposal to provide an alternate form of county government.

PRESIDENT NISBET: Referred to the committee on local government.

SECRETARY CHASE: Mr. Brake introduces

Delegate Proposal 1080, A proposal to prescribe the method of voting. Amends article III, section 7.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: Mr. Brake introduces

Delegate Proposal 1081, A proposal as to the eligibility of legislators to other offices. Amends article V, section 7.

PRESIDENT NISBET: Referred to the committee on legislative powers.

SECRETARY CHASE: Mr. Brake introduces

Delegate Proposal 1082, A proposal with reference to the incompatibility of certain offices.

PRESIDENT NISBET: Referred to the committee on miscellaneous provisions and schedule.

SECRETARY CHASE: Mr. Brake introduces

Delegate Proposal 1083, A proposal regarding the membership of a jury. Amends article V, section 27.

PRESIDENT NISBET: Referred to the committee on legislative powers.

SECRETARY CHASE: Mr. Austin introduces

Delegate Proposal 1084, A proposal to require that all bills for raising revenue originate in the house of representatives. Amends article V, section 19.

PRESIDENT NISBET: Referred to the committee on legislative powers.

Second reading of proposals.

SECRETARY CHASE: Nothing on that calendar, Mr. President.

PRESIDENT NISBET: Third reading of proposals.

SECRETARY CHASE: None.

PRESIDENT NISBET: **Motions and resolutions.**

SECRETARY CHASE: Messrs. Faxon, Tweedie, Wood and Lesinski offer

Resolution 19, A resolution relative to inclusion of delegates' names in the Michigan Manual.

Following is the body of Resolution 19, as offered:

Whereas, The Michigan Manual is the official publication of the state of Michigan; and

Whereas, The publication of this manual is to go to press on December 1, 1961; now therefore be it

Resolved, That this convention appropriate the necessary funds to include the names of the delegates to the constitutional convention in the Michigan Manual.

PRESIDENT NISBET: Referred to the committee on rules and resolutions.

SECRETARY CHASE: Messrs. Haskill, Perras, Walker and Lesinski offer

Resolution 20, A resolution to change the name of "veterans' section" of the civic center to "constitution hall".

Following is the body of Resolution 20, as offered:

Whereas, The south east corner of the Lansing civic center is designated as "veterans' section"; now therefore be it

Resolved, That the name be changed to read "constitution hall" for the duration of our deliberations here.

PRESIDENT NISBET: Referred to the committee on rules and resolutions.

SECRETARY CHASE: Mr. President, those are all of the resolutions presently on file.

PRESIDENT NISBET: Unfinished business.

SECRETARY CHASE: None.

PRESIDENT NISBET: Special orders of the day.

SECRETARY CHASE: None.

PRESIDENT NISBET: **General orders of the day.**

Mr. Bentley.

MR. BENTLEY: Mr. President, I move that the convention do now resolve itself into committee of the whole for the further consideration of Committee Proposal 1.

PRESIDENT NISBET: The question is on Mr. Bentley's motion. All in favor say aye. Opposed, no.

The motion prevails.

Will Mr. Brake please take the Chair.

[Whereupon, Mr. Brake assumed the Chair to preside as chairman of the committee of the whole.]

CHAIRMAN BRAKE: The committee will be in order. The secretary will read.

SECRETARY CHASE: **Committee Proposal 1,** A proposal pertaining to the inclusion of section 1 of article XI in the constitution.

The committee recommends that the following be included in the constitution:

Sec. a. Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.

CHAIRMAN BRAKE: Are there any amendments to the body of the proposal?

Mr. Bentley.

MR. BENTLEY: Mr. Chairman, I would like to speak briefly on this particular proposal, the first substantive proposal, I believe, to come before this convention.

As the secretary has read, the committee on education has recommended — and I might add that the recommendation was unanimous — that the present article XI, section 1 of our state constitution be retained verbatim.

Mr. Chairman, this particular section has indeed a very historic background. It is not my intention to take the convention this evening through a lesson in history. There may be other delegates who may wish to speak in more detail on this particular subject, but I am sure that many, if not all, of our delegates realize that this identical language was first contained in the northwest ordinance which passed the congress, the congress then formed under the articles of confederation, on July 13, 1787, by a vote I might add, of 17 to 1. In other words, this language dates back before the federal constitution, before the formation of our present federal government, really. It goes back to the earliest possible reported history insofar as this part of our country, the great northwest territory, is concerned.

Following its adoption in the northwest ordinance, the Constitutional Conventions of 1835 and 1850 made no reference to this particular subject. But in the last Constitutional Convention, that of 1907-08, it was inserted in the constitution, the document which, of course, we now have under consideration.

There was some discussion following the committee report a few days ago that this item was relatively noncontroversial. Mr. Chairman, I hope very much that it will be noncontroversial so far as this particular committee and the convention itself is concerned.

The committee on education passed it and reported it believing that it would not be controversial and hoping that it would be adopted by an overwhelming vote because not only of the historic significance of the language but because of the importance which, I am sure, the entire convention attaches to the subject of the development of education in our state of Michigan.

I think it would only be fair to remind the delegates, those who have not had the opportunity to do research in the proceedings of the last constitutional convention, that at that time there was some controversy, not — I might add and emphasize — with respect to any particular portion of the language, but rather as to the merit and the wisdom of its inclusion or not. The question was voted on on various occasions, upon the occasion of the first reference back from the committee on arrangement and phraseology and again upon the second reference from that committee and, although the vote particularly on the second occasion was somewhat divided, nevertheless it was adopted by a very substantial majority indeed.

Now without going further into the merits of this particular provision of the constitution, which I think is self explanatory, I might say that it is the sincere and earnest hope of the committee on education that this language will be accepted in toto. Any change or attempted change in the language would, I think, invalidate the entire sense of the article.

We hope very much that these words:

Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged

will be adopted to take their appropriate place in our new constitution of the state of Michigan.

I remind the committee again that these are indeed historic words in the history of our great state. I am sure many of you have seen them emblazoned on the front of Angel hall at the University of Michigan at Ann Arbor. They have been a part of our very first historic document. I think the action of the 1907-08 Convention in including them was worthy and justifiable. The people of Michigan are familiar with these words. I believe they are proud of these words and I believe that this is one part of our present constitution which we should keep and give a note of familiarity to the people when they come to vote on the document next year.

I sincerely hope that there will be some discussion of this but again I very strongly urge the committee, at the end of the discussion and when it rises, to recommend the favorable passage of this particular phrase — this particular clause — and to send it on its way to the committee on style and drafting.

CHAIRMAN BRAKE: Are there any amendments to the proposal?

Mr. Faxon.

MR. FAXON: Mr. Chairman and fellow delegates, I have prepared a statement here on this proposal and I wish to give credit to the Detroit public library for securing the necessary materials to bring about this little report.

We are gathered here at an historic moment in the life of this convention and in the course of our history. We are about to consider the first recommendation before this body by one of its standing committees. Such an action deserves our utmost attention and considered deliberation.

The statement we are about to consider is the following from article XI, section 1:

Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.

Part of our job at this convention is to write a constitution that is purposeful and meaningful. This statement, on the surface, is one which few could find any objection to. The questions we must constantly keep in mind are, "Is this meaningful? To what extent must we be wedded to its phraseology? Is there a better way of saying it?"

I propose, therefore, that we ought to identify the person or persons responsible for writing these words, examine their meaning, then view the context from which they were drawn, trace the origin of the idea and then intelligently deliberate on the merit of its inclusion in the constitution. I might add that such a methodology might serve as a guide for our future deliberations and a stimulus to our own information. It is, therefore, with these thoughts in mind that I approach the subject under discussion.

It seems to me that the best way to answer these questions is to trace this statement back to its original authors. Most of us are aware of the fact that this statement appears as the first sentence of article III of the Northwest Ordinance of 1787 and was adopted by the U. S. congress on July 13, 1787.

At the time of its passage by a unanimous vote of the 8 states present it brought little note and comment from the press of the day. According to Walter C. Haight in his work on the Ordinance of 1787,

> It seems to have been regarded much of the time as simply a preliminary measure to a sale of lands . . . . and the New York newspapers issued the week that the ordinance became law contained no notice of its passage.

And so what is considered today as one of the truly great documents in our history slipped onto the stage of time not with a cry but a whisper. Indeed, Daniel Webster was to say some 40 years later of this same document:

> We are accustomed to praise the law givers of antiquity, we help to perpetuate the fame of Solon and Lycurgus, but I doubt whether one single law of any law giver, ancient or modern has produced effects of more distinct, marked, and lasting character than the Ordinance of 1787.

And so with the passage of time, the fame of the ordinance grew and its provisions became an integral part of many a constitution. For the purpose of the act was aptly put in its own section 13

> for extending the fundamental principles of civil and religious liberty, which forms the basis whereon these republics, their laws and constitutions are erected.

Yet, we are here concerned only with that sentence dealing with education and therefore we must transport ourselves back to that hot summer of 1787 when our founding fathers were diligently applying their skills to our present federal constitution and a small group of men remained in the capital at New York City to maintain the then functioning government under the articles of confederation. It was from this group of 18 men that a smaller committee worked on the draft of what was to be the Ordinance of 1787. The most prominent figure in this endeavor was Nathan Dane, a representative of the commonwealth of Massachusetts and the scribe for the committee.

They say that behind every legislator is someone desiring some legislation. Such a person was seen in the figure of Dr. Menasseh Cutler, who according to W. P. Cutler's work on the ordinance of 1787 from the Ohio archeological and historical publications, had reached New York on July 5, 1787, and finding a quorum of congress present, set about his work immediately. As a director of the Ohio company, Cutler's chief concern was providing for some suitable settlement of the western lands question so that the sale of lands would commence as soon as the settlers began to move in. Dr. Cutler's background had been a long association with the New England clergy and as such, he was a firm believer in the principles of human rights, of personal liberty, of the necessity of obedience to law as being the foundations upon which a republic can stand. As a supporter of these principles, these puritan clergy organized and maintained a system of popular education extending from common school to institutions of highest culture.

Dr. Cutler's cultivating of the various congressmen present soon brought results in the formation of a committee which he helped to select and in a document which he probably helped to write. According to Harlow Lindley, Norris Schneider and Milo Quaife in their History of the Ordinance of 1787,

> Cutler made suggestions and proposed amendments so that on July 10th he left for Philadelphia to look in on the constitutional convention.

Actually it can't be proven for certain whether it was either Nathan Dane or Menassah Cutler who actually wrote that little statement on education, since both have claimed this fame. The original report from the committee had this language:

> Institutions for the promotion of religion, morality, schools and the means of education shall forever be encouraged, and all persons, while young, shall be taught some useful occupation.

What is even more significant, however, is the fact that both of the gentlemen emanated from Massachusetts, where the following article appeared in the Massachusetts Constitution of 1780:

> Wisdom and knowledge, as well as virtue, diffused generally among the body of the people, being necessary for the preservation of their rights and liberties; and as these depend on spreading the opportunities and advantages of education in the various parts of the country, and among the different orders of the people, it shall be the duty of legislatures and magistrates, in all future periods of this commonwealth, to cherish the interests of literature and the sciences, and all seminaries of them; especially the university at Cambridge, public schools and grammar schools in the towns; to encourage private societies and public institutions, rewards and immunities, for the promotion of agriculture, arts, sciences, commerce, trades, manufactures, and a natural history of the country; to countenance and inculcate the principles of humanity and general benevolence, public and private charity, industry and frugality, honesty and punctuality in their dealings; sincerity, good humor, and all social affections, and generous sentiments, among the people.

A careful analysis will reveal that the statement in article XI, section 1, which we are now considering, is a derivation from this lengthier provision in the Massachusetts constitution.

This comment is verified by a letter written by Nathan Dane concerning the ordinance, to be found in the Proceedings of the Indiana Historical Society in 1897, in which he states that this passage was taken from the code of Massachusetts and has thus

> created for her [Massachusetts] an extensive and lasting influence in the west and of the most republican, liberal and beneficial kind.

Now that we have the statement traced back to its previous source, it becomes necessary to go back still another step. Permit me to briefly call to your attention one of those basic documents of freedom and liberty that ranks next to the magna charta in significance and effect. The declaration of rights issued in 1689 following that most glorious revolution of 1688 is a document basic to everything we call American today. In section 3 there occurs the following passage:

> As the happiness of a people and the good order and preservation of civil government essentially depend upon piety, religion, and morality, and as these cannot be generally diffused through a community but by the institution of the public worship of God, and in public instructions in piety, religion, and morality: therefore, to promote their happiness and to secure the good order and preservation of this government,

etc., followed later by

> Wisdom and knowledge, as well as virtue, diffused generally among the body of the people, being necessary for the preservation of their rights and liberties; and as these depend on spreading the opportunities and advantages of education in the various parts of the country, and among the different orders of the people, it shall be the duty of legislatures and magistrates in all future periods of this commonwealth, to cherish the interests of literature and the sciences, and all seminaries of them.

It is therefore within this great historic tradition that we consider this section today. It is with the realization that our basic liberties and our very foundations are rooted in an educated society as was foretold by our forefathers hun-

dreds of years ago. It is fitting and proper that the purpose of education be the first item submitted for your consideration. There is no doubt that it has been one of the first items of government since we have known that institution on these soils. For us, the people of Michigan, the Ordinance of 1787 was our first and most basic constitution. And its proper concern with religious freedom, the bill of rights and education is a living testimony to the wisdom of its writers.

I find myself in complete agreement with Milo M. Quaife, a name familiar to many of us, as he viewed this education provision in the Ordinance of 1787. At that time — and I quote —

> Education found precious little encouragement over the face of the globe. Today America is dedicated to the ideal of universal education and nowhere is more liberal encouragement extended to schools and the means of education than in the five states of the old northwest.

This concludes my report, Mr. Chairman, and this is the amount of evidence that I was able to uncover in the last couple of days in regard to the origins of this statement.

CHAIRMAN BRAKE: Are there any amendments?

Mr. Austin.

MR. AUSTIN: I have one or 2 questions to ask in regard to this proposal. First, I would like to compliment Chairman Bentley and his committee on education for diligence in presenting the first committee proposal to this convention. Also, I believe most of us are grateful for the effort of the committee in presenting the proposal to provide a philosophical link between the objectives of our founding fathers and those of our convention.

I think it goes without saying that most of us, like the early framers of constitutions, favor religion, morality and knowledge, and acknowledge their importance to good government and the happiness of mankind. However, before we are asked to take a vote on this proposal, it seems appropriate to ask Chairman Bentley for clarification of the record of this convention, whether his committee has given due deliberation to these questions that may arise with respect to the language of the proposal. If the committee has not carefully considered these questions and studied the content of its own report, I would then ask that the proposal be referred back to the committee for further deliberation. Here are the questions:

Is the language of the proposal likely to be interpreted by readers as a directive and therefore suggests that religion may form a part of public school programs? Secondly, are the implications in the proposal apt to be construed as contradictory to the mandate of article II, section 3, that public funds not be spent for religious education? And thirdly, is the language of the proposal germane to article XI, the article on education?

Mr. Chairman, it is not my intention to provoke a floor debate on substance and intent of this proposal. It expresses a sacred principle traceable to an era precedent to the founding of this nation. I merely ask these questions to be sure that the language of the proposal has been carefully deliberated by the committee.

CHAIRMAN BRAKE: Mr. Bentley.

MR. BENTLEY: Mr. Chairman, in the first place I would like to express my thanks and the thanks of the committee to Mr. Austin for the very fine words about the diligence and the research that has been done by the committee on this particular proposal.

In answer to his 3 questions, as I recall them, in the first place I feel sure that no one on the committee on education has any idea that the present wording of article XI, section 1, would in any way imply or hint anything to do with the question of teaching religion in the schools. My interpretation, Mr. Austin, of this particular section is that the phrase beginning ". . . schools and the means of education shall forever be encouraged" refers only to the word "knowledge". In other words, knowledge is one of the 3 principles, or virtues — whichever way you want to put them — that are necessary to good government and the happiness of mankind. Therefore, since knowledge is included, "schools and the means of education shall forever be encouraged".

I think the same answer then could be applied, sir, to your second question: is there anything that might be taken as being in conflict with article II, section 3, contained in the declaration of rights. And of course, with the heading "freedom of worship; disabilities", I suppose the particular part of article II, section 3 to which you are referring states that

> No money shall be appropriated or drawn from the treasury for the benefit of any religious sect or society, theological or religious seminary; nor shall property belonging to the state be appropriated for any such purpose.

Knowing something of the background of the framers of the northwest ordinance, knowing perhaps a little bit more about the background of the framers of our present state constitution and having read with care every word contained in the 2 volumes of the proceedings of that convention — although the provisions with respect to the northwest ordinance are not so set forth — but having read with care every word contained in these proceedings, I find nowhere among all of those learned gentlemen of that time any hint as to the possibility that such an interpretation as your question might suggest could possibly be placed on this particular article.

Now, the third question was: is this germane to the whole question of education? I certainly believe it is because — and I want the committee to bear this in mind — not only was the northwest ordinance historic in establishing the great territory which later became divided into, I believe, 5 separate states, but also the northwest ordinance contained another provision which has formed the background of education and the need of educational financing in the state, and that was the provision that the sixteenth section of every township should be set aside for purposes of education. That proposal, which was truly unique for that time, has come all the way down through the years to us, all the various legislation, statutes, etc. with regard to the question of public support of our schools. So I would certainly say, sir, in reply to your third question that I consider this article most germane and most appropriate to a discussion of education, to the article on education, and to the question of education as a whole.

CHAIRMAN BRAKE: Mr. Nord.

MR. NORD: Mr. Chairman, I rise to speak to the proposal and as I have prepared a somewhat lengthy statement in this connection, I respectfully request that I be permitted to approach the secretary's desk for this purpose.

[The request being granted, Mr. Nord spoke from the Secretary's desk.]

Mr. Chairman and delegates, in rising to speak to such an innocuous appearing and apparently uncontroversial proposal as the one presently before us, I realize that I take the risk of appearing to be wasting your time and to be acting eccentrically and conspicuously, as if I insisted on wearing a beret or swinging a dead cat. I realize further that the statement I am about to make will win me no popularity, no friends, no merit badges, no thanks, and is likely only to have quite the reverse effects. Nevertheless, I wish you to know that I speak at this time as a matter of principle because certain basic principles are at stake.

One, I seek to establish a precedent for this convention, that no provision be incorporated in the constitution without firstly a careful study of the constitutional and judicial history pertaining thereto — so that we can see whether it is necessary or useful to adopt it — without secondly, a further consideration of what reasons there might be why it would be inadvisable to adopt it, and without thirdly, a final conclusion based on a weighing of the aforementioned considerations.

Two, I have personally conducted such an analysis over the past weekend following the introduction of the present proposal and as a result it appears to me that the present proposal (a) serves no useful purpose (b) is violative of procedural principles and (c) conflicts with fundamental substantive principles.

I now proceed to develop these several points. Before doing

so, however, I respectfully urge the press and others to exercise care not to misquote me in this connection, as the customary rules of legal immunity are not applicable to this convention. In order to make certain that my remarks are not misquoted or misunderstood by anyone, I have prepared them in the form of a written statement, and I shall make no departure whatever from this written text.

First I should like to discuss the constitutional history of the proposal. As indicated by the chairman of the committee on education, this section appears verbatim in the present Michigan constitution and its source is the Northwest Ordinance of 1787. These exact words, in fact, appear in the northwest ordinance in article III of the articles of compact. As pointed out by the citizens research council of Michigan in its manual, A Comparative Analysis of the Michigan Constitution, the provision was deleted from the 1835 and 1850 Michigan Constitutions and was subsequently incorporated within the 1908 Constitution. However, this is by no means the whole story with regard to the constitutional history of this article. We need to understand why it was in the Northwest Ordinance of 1787, what happened to it in the 1835 and 1850 Michigan Constitutions and why it was inserted in the 1908 Constitution.

We first need to understand that the northwest ordinance was never adopted as such by the people of Michigan; it was a statute adopted by the confederate congress, acting for the then existing states, for the government of this territory. As a part of this statute, section 14 provided as follows:

> That the following articles shall be considered as articles of compact between the original states, and the people and states in the said territory, and forever remain unalterable, unless by common consent, to wit: . . .

Following this there were 6 such articles of compact, each of which was to be of an enduring nature. These were the following: Article I provided that the broadest possible degree of religious freedom should forever be maintained.

Article II provided for a permanent bill of rights.

Article III contained the language of the present proposal regarding the fostering of education. It also provided that the lands, property, rights and liberty of Indians should never be invaded or disturbed, but that laws, founded in justice and humanity, should be made for preventing wrongs being done them.

Article IV provided that the territory and states formed from it should always be a part of the United States.

Article V provided for the admission of states formed from the territory, provided

> the constitution and government so to be formed shall be republican, and in conformity to the principles contained in these articles.

Finally, article VI forever prohibited slavery from the territory. Each of these embodied a noble concept; each was meant to be put into practical operation; and each was meant to remain inviolate forever, unless there was common consent by the people of the United States and the people of each of the states to be formed from the territory.

In view of the fact that these noble principles, including the one embodied in the present proposal, were then declared to be of an enduring and binding nature on us, I believe it can be readily understood that the delegates to the 1908 Michigan Convention might have felt a moral obligation to insert these words into our constitution. In fact I believe an interesting argument can be made that, whether we like it or not, there is a legal obligation to maintain inviolate each of the 6 principles of the articles of compact, except to the extent that the law of the United States now provides otherwise. The basis of this argument is as follows:

One, the condition of the grant of territory from the original states to the people of the northwest territory was that these principles remain inviolate forever, except insofar as changed by subsequent consent;

Two, these conditions are binding on the present inhabitants of the territory — except to the extent subsequently changed by common consent — either as a real covenant attaching to the territory as land, or as an agreement in the form of a treaty — somewhat akin to the treaties between the United States and unorganized groups of people like the indians;

Three, when the 1835 Constitution of Michigan was offered to congress, along with the Michigan Ordinance of July 25, 1836, and the document entitled Assent of the State of Michigan, of December 15, 1836, and Michigan was formally admitted to the union, these documents covered all the conditions embodied in the articles of compact and the northwest ordinance generally, and superseded them in legal effect; this was common consent to alter the articles of compact;

Four, however, this consent of the United States to alter the articles of compact presumably would not have extended to an outright license for the state of Michigan to amend its constitution to rid itself of any or all of the obligations covered in the articles of compact and the 1835 Michigan Constitution.

For example, it is inconceivable that the state of Michigan, in 1838, could legally have amended its constitution so as to allow slavery to be introduced into the state, even though slavery was lawful at that time under the United States constitution. We were in other words still bound to observe the principles embodied in the articles of compact in the modified form found in the 1835 Constitution and the other documents mentioned above relating to the admission of Michigan to the union.

Therefore, in my opinion, we are still bound — certainly morally and perhaps legally — to observe all the principles of the articles of compact, except to the extent that they have been changed by common consent, that is, one, by the adoption of the 1835 Michigan Constitution; 2, by the agreement between the United States and the people in the documents relative to the admission of Michigan into the union; and 3, by subsequent changes in the federal law which may affect these principles.

Now let us examine whether we are or to what extent we are still bound, whether legally or morally, by the educational provision of the articles of compact which forms the present committee proposal. If we turn to the articles of compact, we find that article III contains 2 apparently unrelated subjects: encouragement of education and protection of the lands and rights of indians. Presumably there must have been some connection intended between these 2 concepts, although what that connection may be is not at first apparent. We can get a better idea of this relation by observing what followed in the subsequent constitutional history of Michigan.

In 1835, the people of the territory of Michigan promulgated their constitution. This document contained an article X, on the subject of education, which presumably was intended to satisfy the principle of encouraging education as expressed in the articles of compact. In addition to providing for a superintendent of public instruction, for a state school system and for libraries, it also provided for perpetual funds for the support of schools and a state university, said funds to be provided from lands to be granted by the United States to the state of Michigan for the support of state schools and a state university. Furthermore, the 1835 Constitution was not silent but contained explicit language relating to the encouragement of education. Thus, in article VIII, section 2, it was provided that:

> The legislature shall encourage, by all suitable means, the promotion of intellectual, scientifical [sic] and agricultural improvement.

The rest of this section provided for the use of lands to support state schools. Thus, the precise language of the articles of compact relative to the encouragement of education was modified by deleting the term religion, by making it more specific and practical action was taken to implement the concept of state schools by the reservation of lands as a perpetual fund for the support of the schools.

On June 23, 1836, the congress of the United States provided for the admission of Michigan into the union, under the 1835 Constitution, provided that 5 additional conditions were met. The first 2 of these related to the grant of certain specific lands by the United States to the state of Michigan for the support of state schools and a state university. These pro-

posals were formally accepted by the state of Michigan in the statutes of July 25, 1836, and December 15, 1836. Then, in an early Michigan supreme court case, Ballou v. O'Brien, 20 Mich. 304, it was pointed out that the words employed in the proposal of the United States relating to school lands, in the act of congress for the admission of the state of Michigan into the union, indicated that the grant by the United States of such lands was subject to any prior rights of the indians in such lands, under treaties with them.

Taking these various facts together, we can see that the reason that the encouragement of education and the protection of the indians were placed in the same paragraph in the articles of compact of the northwest ordinance was that some very specific action was intended as a condition for admission of Michigan into the union as a state, namely, the reservation of certain lands as a perpetual fund to insure that the state would always support a public school system. In other words, the language:

> Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged

was not intended to be a mere noble sentiment, but rather was meant as an absolute requirement that the state set up and maintain permanently a public school system, rather than relying solely on the system of private religious education which prevailed in 1787 in most parts of the United States. This was in fact accomplished by the 1835 Constitution, and it has been maintained ever since.

Thus, the language of the northwest ordinance relative to the encouragement of education was in fact superseded by common consent, by the language of the 1835 Constitution, which provided broadly for the encouragement of intellectual, scientific, and agricultural improvement, and specifically for the financial means of carrying out this mandate.

Thus, it is concluded that while the principles of the articles of compact of the northwest ordinance do in general bind us morally and perhaps even legally, except insofar as they have been modified by common consent, this is not so with regard to education. In this respect the starting point of our law and moral obligations is the 1835 Constitution and its practical provisions for education.

It will be noted that this view is in accordance with the language of the 1850 Constitution. Article XIII, section 2, of the 1850 Constitution omitted the general language relating to the encouragement of education, retaining only the practical provisions relating to the school fund.

The report of the committee on education of the 1850 Constitutional Convention — which will be found in Document 2 of the 1850 Convention Journal — doesn't even mention the fact that the broad language of encouragement of education was being dropped since it was obvious that the principles had already been put into practice. There was no need to say what we were getting ready to do, as we were already doing it.

Until the 1907 Constitutional Convention, this language of the northwest ordinance relative to education had been preserved only as an item of historical interest but as having no current effect. When the 1907 Constitutional Convention inserted this language into our constitution, it was evidently done on the mistaken assumption that this language was a mere noble sentiment rather than a pledge of future concrete action which had already become past action by 1836.

The entire constitutional history of Michigan thus shows that there was no moral or legal obligation to have adopted this language in the 1908 Constitution, that its meaning was not clearly understood when it was inserted in the 1908 Constitution and that the effort to reinsert it again is based on this same misapprehension of the constitutional history of Michigan.

Let us, however, examine the possible value of including such a provision in the constitution, regardless of the fact that it may not be historically necessary for us to keep it. Looking at its language from the viewpoint of today, rather than from the past, the questions arise, what does it mean today? What does it do? What is its present effect?

At first reading the language is so innocuous as to appear, at least to modern minds unconcerned with constitutional history, to be of no effect whatever. It does not purport to set up any branch of government. It does not purport to provide financial support for state schools. It does not create or modify any law. In other words it appears to be entirely an expression of a noble sentiment with which no one disagrees — namely that we wish to encourage education. If this is the actual purpose of retaining this provision in the constitution, I submit that it is not a valid reason for doing so. I understand that many, if not all of us, are opposed to retaining language in the constitution which is not necessary for its proper operation, — which is not functional in other words. We want a constitution in which every word does something — does something which cannot be better done elsewhere. If this is so, I submit that the present proposal fails on this ground.

I have compared this section with every other section in the present constitution and find that it is the only section which has no apparent functional effect whatever.

I have also studied every judicial case cited in the Michigan Statutes Annotated as having a bearing on this provision of our constitution. There are 11 such cases. Inspection of these cases indicates, however, that this section of the constitution was actually mentioned in only 5 of the 11 cases and that in none of these cases did it determine or affect the result. Not only was it thus found that this provision had not been determinative of any judicial decisions over a 53 year period but it was also found that the intention of the state to encourage education has always been held to be present, regardless of whether such a provision was present or absent in the constitution. For example, in the case of Michigan Female Seminary v. Secretary of State, 115 Mich. 118, the Michigan Supreme Court said:

> It has always been the policy of this state, as indicated by the provisions of its constitution and a long line of legislative enactments, to encourage the cause of education.

The interesting factor in this case is that it was decided in 1897 when there was no express provision whatever in the Michigan constitution purporting to encourage education. Similarly, the cases of Dennis v. Wrigley, 175 Mich. 621, Attorney General v. Connolly, 193 Mich. 499, and in re School District 6, 284 Mich. 132, also indicate that this policy is settled in Michigan, despite the fact that it has been out of the constitution almost as long as it has been in the constitution.

The only judicial decisions I have been able to find which even appear to be based on the present article XI, section 1, are the following 2 cases: One of these is entitled Roman Catholic Archbishop of Detroit v. Village of Orchard Lake, 333 Mich. 389, in which it was held that there was no presumption of validity of an ordinance which in effect precluded the erection of a church and school anywhere in the village. While article XI, section 1, was cited by the court in this connection, the actual holding was that the ordinance was void on its face as unreasonable. Thus, the application of article XI, section 1, was mere dictum. The other case is Daskiewicz v. Detroit Board of Education, 301 Mich. 212, which held that the board of education of the city of Detroit had governmental immunity in a negligence case because public education is a governmental activity. While the decision cites article XI, section 1, in support of its holding that public education is a governmental activity, this is clearly superfluous, since the holding is the same in other states which have no such constitutional provision. Furthermore, the holding of this case has, in any event, been overruled by the recent decision of the Michigan supreme court which abolished the doctrine of immunity from tort liability for governmental actions. Thus, the overall legal effect of article XI, section 1, in Michigan remains nil.

That this is so is also indicated by the fact that, of the 50 states, the overwhelming majority have not found the need to provide broad language of encouragement of education in their constitutions. According to the citizens research council of Michigan, 10 states have constitutional provisions similar to ours in this respect.

An examination of the constitutions of other states demonstrates, however, that this statement is somewhat inaccurate

and misleading. Actually, there are at least 12 states which have constitutional provisions containing broad language of encouragement to or promotion of education; namely Michigan, Massachusetts, North Carolina, Rhode Island, Tennessee, West Virginia, Maine, California, Wyoming, Nebraska, Ohio and Indiana. However, only one of these is the same as that of Michigan, namely North Carolina, and only 2 others, Ohio and Nebraska, contain substantially our language including along with other language tending somewhat to separate the religious connotations from the educational functions.

Thus, it is perfectly clear that whatever legal function the present provision may be intended to have, it has in fact not been of any value in Michigan, nor has it or anything similar been found necessary or valuable for incorporation within the constitutions of 46 of the 50 states.

It is interesting further, to compare the constitutional history of each of the 5 states carved out of the northwest territory, since each was originally governed by the same provision of the northwest ordinance with regard to the encouragement of education. In Ohio the provision was incorporated in the 1802 Constitution, article VIII, section 3, in the bill of rights, under the subject of religious freedom. After stating the rule as to religious freedom, the section continues as follows:

> Religion, morality and knowledge, however, being essential to good government, it shall be the duty of the legislature to pass suitable laws to protect every religious denomination in the peaceable enjoyment of its own mode of public worship, and to encourage schools and the means of instruction.

This provision remains in the present 1851 Constitution as article I, section 7. While this provision resembles ours, it is slightly clearer, in that it draws the distinction between religion and education, namely that religion is to be protected and education is to be encouraged. It is also more functional in that legislation is called for.

In Illinois the Constitutions of 1818 and 1848 contained no comparable provision; the Constitution of 1870 provides in article VIII, section 1, as follows:

> The general assembly shall provide a thorough and efficient system of free schools, whereby all children of this state may receive a good common school education.

This provision has the advantage of being straightforward in function and entirely clear.

The Indiana Constitution of 1851, article VIII, section 1, is also clearer and more functional, providing:

> Knowledge and learning, generally diffused throughout a community, being essential to the preservation of a free government; it shall be the duty of the general assembly to encourage, by all suitable means, moral, intellectual, scientific, and agricultural improvement, and to provide, by law, for a general and uniform system of common schools, wherein tuition shall be without charge, and equally open to all.

Finally the Wisconsin Constitution of 1848 provides in article X, section 3, as follows:

> The legislature shall provide by law for the establishment of district schools, which shall be as nearly uniform as practicable; and such schools shall be free and without charge for tuition to all children between the ages of 4 and 20 years; and no sectarian instruction shall be allowed therein.

This provision clearly negatives any possible link between religion and public schools and is entirely functional.

Thus, it will be seen that of the 5 states which derive from the northwest territory and the northwest ordinance, only 2 — Michigan and Ohio — employ words allowing any possible implication that religion and public education are compatible, and only one of these — Michigan — does so in the article on education; 2 — Illinois and Indiana — completely divorce language relating to religion from language relating to public education; and one — Wisconsin — affirmatively states that no sectarian instruction shall be allowed in public schools. Obviously, therefore, no other state deriving from the northwest territory has felt obliged to retain the northwest ordinance language relative to the encouragement of education in its original form or to allow it to be included in the article on education. Further, no state other than Michigan has ever readopted it after it once went without it. In fact, only one other state of the union — North Carolina — has adopted this language in its education article.

Thus, we can readily see that this language is not needed, particularly in the article on education, and that virtually every other state has done well without it. On this basis I can see no reason for including it within our constitution.

There are, however, affirmative reasons why I believe it ought to be omitted from the constitution. I have already pointed out that its original meaning and purpose has been misapprehended of late in Michigan. It was a call for public education. This has now been accomplished. If it is to mean anything — and under the canons of legal construction, it must be construed to mean something — it can only mean what it says or implies, namely that religion is necessary to public education. It is my opinion that this was indeed originally included within its meaning and that the connection between religion and education was taken for granted in 1787, even by such champions of separation of church and state as Thomas Jefferson. This, at least, was the opinion of Justice Reed in the 1948 United States supreme court decision of McCollum v. Board of Education, 92 L. Ed. 649, where he said:

> The "wall of separation between church and state" that Mr. Jefferson built at the university which he founded did not exclude religious education from that school. The difference between the generality of his statements on the separation of church and state and the specificity of his conclusions on education are considerable. A rule of law should not be drawn from a figure of speech.

We know that in 1787 when the northwest ordinance was written, education was largely religious, being confined largely to and for the purpose of reading the Bible. Jefferson's contribution was to separate church from state in providing that education should not be limited to private religious organizations but should be public and that public funds should not be used to support private religious activities. He did not, however, conceive that the teaching of religion should be removed from public schools. Since that time, however, there has been a gradual change of attitude on this subject. Thus, in the 1948 case of McCollum v. Board of Education, the United States supreme court for the first time held that under the fourteenth amendment to the United States constitution, there can be no religious instruction in state supported schools. The rationale given by Justice Frankfurter in that case was as follows:

> Designed to serve as perhaps the most powerful agency for promoting cohesion among a heterogeneous democratic people, the public school must keep scrupulously free from entanglement in the strife of sects.

Thus, it seems to me that the clear implication of the language of article XI, section 1, is that it was intended to mean — among other things — and in any event implies, that religion is necessary or desirable in the public schools. It may be that some delegates will disagree with my interpretation of this sentence, feeling that there is no connection between the first clause relative to religion and the final clause relative to education. If this were so, the entire first clause ought to be stricken as not only functionless in its present context but also as not being germane to article XI, all of which pertains to education. However, I believe that every word in a constitution must be interpreted in some meaningful way and that the implication of the language tends in a direction which is not now desired and which in any event would be illegal under the United States supreme court decision in the McCollum case. That this is not far fetched is indicated by the construction that such provisions have already been given in previous cases. Thus, in the 1872 Ohio case of Cincinnati v. Minor, 23 O.S. 211, the plaintiff claimed that the language of the similar Ohio provision required religious education in the schools; the Ohio supreme court held that religious education was not, however, required by this provision but was merely permitted. This, of course, would now be violative of the construction of the four-

teenth amendment to the United States constitution given by the United States supreme court in the McCollum case.

In Michigan, in the case of Roman Catholic Archbishop of Detroit v. Village of Orchard Lake, referred to previously, the Michigan supreme court construed this provision to mean that religious education was to be encouraged in connection with the erection of a religious school even though this was not in itself decisive of the case. Thus, there is no question that there is a tendency to construe this provision in such a way as to operatively relate religion and schools and since the sentence also refers to government, there is certainly an implication that religion ought to be encouraged in schools operated by the government. Such a construction is no longer permissible under the United States constitution and we ought not even to appear to fly in the face of the law of the land. We ought to remove all mention of religion in connection with article XI, which relates entirely to public education, in order to avoid a provision which is either illegal or else which appears to be illegal.

To suggest that the present provision be deleted from the constitution obviously is not to be hostile to religion, morality or education. Insofar as I personally am concerned, for example, I am willing to match my religious background with those of any of the delegates here, in the firm belief that I will not be found in the lower half of the group. I have received a religious education, am a member of a religious congregation, am a leader of an organization of my coreligionists, have given my children a religious education, possess many religious books in my house, have made 2 visits to the Holy Land, teach in a law school in which every class session opens and closes with a prayer and have written articles on religious matters. I have actually spent a continuous period of 40 days and 40 nights in religious study and contemplation in the preparation of an article, which I believe ties the record set by Moses some years ago. (laughter)

I personally believe that certain principles of religion ought to be applied to governmental problems, such as in the area of criminal law, and have a written legal article in the University of Detroit Law Journal in this respect. When it comes to morality, I believe I am the superior of none here but the equal of all and I believe everyone here knows that I am conscientious in all I do.

And insofar as education is concerned, it has been reported that I am the most highly educated person here. I believe that to be a gross misunderstatement. Thus, I personally feel safe that no one can mistakenly believe that my motives for seeking to remove this section from the constitution are based on any antagonism to religion, morality or education. Quite the reverse; I wish each to be fostered but I believe with the supreme court of the United States that this can best be done by secular public education and religious private education.

Obviously, the hallmark of a person's protagonism or antagonism for various principles cannot be determined merely by knowing his views as to whether or not he wishes those principles to form a part of the constitution. If the only way to prove my adherence to my beliefs would be to move to introduce them into the constitution, I would immediately have to submit to this convention a proposal which is the same as the one I made to my wife when I asked her to marry me. I do not believe, however, that it would be proper for me to propose to introduce into the constitution the statement, "I love you, Eleanor", (laughter) even though it is a deeply held conviction. Such convictions are best kept private; they belong in a person's mind or heart or soul or home. They are not fit for public examination.

I would take it amiss if anyone were to propose to debate with me whether I ought to love my wife or whether I ought to adhere to my religious convictions. These are not debatable and are not open to public discussion. They must be kept private. Therefore, let no one think that I am opposed to religion or morality merely because I propose to remove these words from the section of the constitution relating to public education. I do not intend to throw them away; I intend to take them home with me to cherish in private.

Surely no one believes that we oppose every noble sentiment which we see fit to omit from the constitution. Obviously, the 46 states which have no provision resembling ours are not antireligious or immoral; nor is the United States supreme court; nor are we; for failing to include such characteristics in our educational article as are found for example in the Massachusetts constitution, chapter V, section 2, — namely: wisdom, virtue, rights, liberties, literature, sciences, agriculture, arts, commerce, trades, manufactures, natural history, humanity, general benevolence, public and private charity, industry, frugality, honesty, punctuality, sincerity, good humor, social affections and generous sentiments. Not everything belongs in the constitution. And I submit that, noble as is the sentiment which appears in our article XI, section 1, it has no place in our constitution and tends to cause unnecessary confusion and difficulties which nearly every state has seen fit to avoid, including our own state between the years 1835 and 1908.

For the foregoing substantive reasons I believe we ought not to adopt the present proposal, that is, because (1) it serves no useful function, (2) it contains materials not germane to public education, (3) it is likely to be misunderstood and (4) by its plain language and reasonable construction conflicts with the principle of separation of church and state, as embodied in the fourteenth amendment to the United States constitution as interpreted by the United States supreme court.

I am not, however, moving at this time that we decide this issue on the merits. I do not believe the committee on education has laid a sufficient foundation as yet for the delegates to reach a conclusion on this matter. Certainly I do not believe they can be expected to decide simply on the basis of the few days' homework I have been able to do over the weekend. It is rather my belief that this proposal should be sent back to the committee for much more careful and thorough consideration. I would hate to think that we are ready to adopt or or reject any part of the constitution with such a small amount of reflection as has thus far been afforded this subject.

In addition to the foregoing reasons for my urging the delegates to return this proposal to the committee for further study, I also have 2 further procedural reasons for urging the same. In the first place I have this day — jointly with Delegate Austin — introduced a proposal to amend the article in question and I believe it would clearly be a violation of the spirit of fair play in procedure for a committee to urge adoption of its proposal before any other proposals submitted by delegates have been considered. In the second place I object to the introduction of this proposal to the convention in the first place because I know of no rule which provides for the introduction of a proposal not to amend the constitution. So far as I am aware, the proposals provided for by the rules are limited to proposals for amending or revising the constitution, not for refusing to amend it. It may be that we shall ultimately decide to submit an entire constitution to the public for ratification but we have not as yet done so. Therefore, it is premature to submit a proposal to retain in its present form any provision of the constitution without amendment.

Mr. Chairman, for each of the above reasons, both procedural and substantive, I move that this proposal be sent back to the committee on education for further and more thorough consideration.

CHAIRMAN BRAKE: The question is on the motion of Dr. Nord, that when the committee rises it recommend that this proposal be sent back to the committee on education. Are there any remarks?

Mr. Higgs.

MR. HIGGS: Mr. Chairman, it may be with a certain degree of temerity that I rise to argue and debate with the learned Dr. Nord inasmuch as during the past weekend I spent more time hunting than I did in the library. However, I do feel that I have been brought up to date. (laughter)

First of all, with regard to the argument as to establishing a precedent here in this convention, I would like to answer Dr. Nord and say that I believe that we should have a good and valid reason for removing or taking out any part of the constitution as well as amending or revising it. We may just as well create a legal conflict by eliminating a part of the

constitution as we might by revising or amending it. I do not believe that the affirmative reasons stated for leaving it out are valid in that, with regard to the illegality or apparent illegality there is any merit in this proposition. I think Dr. Nord referred to the federal constitution as a basis for arguing the separation of church and state. If so, the federal law would control.

Now with regard to the second argument, that it serves no useful purpose, I would like to state most emphatically in support of the committee proposal that I believe sincerely that these words give heart and soul to the document which we are writing. It is my belief that a constitution should be a living spirit of the people of the state of Michigan — the spirit as well as the letter of the law — and I believe that these words should be retained for that reason.

Now with regard to the argument that the words conflict with substance of law and principle, Dr. Nord stated that he had examined 11 cases decided by the Michigan supreme court, 5 of which commented upon these words. He stated that in none of these cases did this particular provision decide the case. Wherein then, I ask, arises any conflict with substantive law when since 1908, apparently these words have stood and been an inspiration to the people of the state of Michigan and have led to no conflict as far as I can see with any substantive law in any court in this land? And for that reason I feel that the committee proposal should be adopted.

CHAIRMAN BRAKE: Any further remarks?

Mr. Stevens.

MR. STEVENS: Mr. Chairman, I think the whole thing can be simplified by the question whether a statement of principles which neither grants nor denies any powers serves some useful purpose, such as a guide to the courts in interpreting constitutional and statutory matters. I would like to hear from the committee chairman on this point.

CHAIRMAN BRAKE: Mr. Bentley.

MR. BENTLEY: Mr. Chairman, if I understood the delegate's question, it was whether the proposed inclusion of this particular article, which neither grants nor withholds any powers insofar as the courts are concerned for the purpose of judicial interpretation of the document, serves any useful purpose. Did I hear the gentleman correctly?

MR. STEVENS: I think not.

MR. BENTLEY: Will you restate the question, please?

MR. STEVENS: The question was whether such a statement, which neither grants nor denies any powers, is nevertheless useful to the courts and possibly the legislature as a guide to the courts in the case of construing other laws, constitutional or statutory.

MR. BENTLEY: I thank the delegate for restating the question and I certainly want to state my personal conviction, that my answer is in the affirmative. I believe, Mr. Chairman, that this section will serve as a guidepost to our courts, to our legislature, to our entire body of state government. In the past 54 years that has been a part of our constitutional document. I certainly hope very, very much that this present convention will see fit to continue this guidepost in the great field of education for the future.

I am not going to take the time, Mr. Chairman, to comment upon the very eloquent, very learned speech of Dr. Nord nor of the delegate who spoke earlier, Mr. Faxon. I must remark parenthetically that it should be apparent to the members of the committee that we know at least what 2 of our colleagues were doing over the past weekend. (laughter)

But I will say this: I will, I think, make one remark with respect to his inference that the committee on education did not give this question sufficient consideration before proposing it to the convention as a whole. And I will say: this, I believe, has stood the test of time in the past 54 years and we can go through all the documents of reference and research which we have been furnished. There has been no question and there has been no argument, to the best of my knowledge, as to the interpretation, as to the meaning and as to the significance of article XI, section 1. And acting on that basis and acting on the fact that Michigan has always been a leader in the field of education — and we hope, of course, always will remain a leader in the field of education — they found it wise and proper and fitting 54 years ago to write these historic words — and I claim no legal compulsion on us for doing so — into our document. I would hope very, very much, as I said earlier, that we see fit to indicate our continuation of purpose in this respect.

Now, I warn the committee on parliamentary procedure: if the Nord motion is adopted, this will come back to the committee on education. On the other hand, I propose before the committee rises, to offer a substitute motion to the effect that the committee of the whole report this with a reference that it be referred to the committee on style and drafting. If that committee receives this proposal and reports it back, then, of course, at that time, as I understand the rules, there will be a roll call vote on whether or not the proposal is to be contained in the new constitution. And so I warn the members of the committee again that this matter can be considered at a later date. It was actually considered and debated 3 times in the last convention before it was adopted. But I would hope very much that the motion which has been offered by the delegate, Mr. Nord, will not prevail and that the substitute, which I move at this time, Mr. Chairman, will.

CHAIRMAN BRAKE: Mr. Bentley, I think that your first statement of procedure was a little in error. If Dr. Nord's motion prevails here, the question of accepting the committee's recommendation will be before the convention for a vote before the matter can go back to your committee. Your motion is not necessary anyway because it goes to the committee on style and drafting automatically in case Dr. Nord's motion does not prevail.

MR. BENTLEY: I thank the chairman for that interpretation.

CHAIRMAN BRAKE: Dr. Nord.

MR. NORD: Mr. Chairman, I would like to point out that there is pending before the committee on education a proposal — they probably have not yet received it but it was filed today. I mentioned this in my statement. I did not read the proposal. I would like to do so now. I wish to take out that language that refers to education and refer to substitute language that was taken from 2 sources: the model state constitution of the national municipal league and from Brown v. Board of Education, which states there shall be no discrimination in schools. This is the way the text would read in the proposal of Mr. Richard Austin and myself.

> The legislature shall provide for the maintenance and support of free public schools open to all children in the state without discrimination as to race, creed or color, and shall establish, organize and support such other public educational institutions, including public institutions of higher learning, as may be desirable, subject however to all other provisions of this article and the constitution.

Therefore, I want the committee of the whole to realize that what is at stake is not to remove encouragement of education, but to use different language which will not merely state the objective, but would be directing the legislature to do something about it.

The present language, while it was more noble in sentiment, is less practical in operation. The language I am proposing, which I think the committee sees accomplishes the same purpose without eloquence of language, does the thing functionally. It says the legislature shall encourage, whereas the present language doesn't say who shall encourage or how. It states how they shall encourage: by doing certain things. It also states that it shall provide free public schools. Obviously you want that but it doesn't say that in the present constitution. It says it shall be without discrimination as to race, creed or color. That is now a law of the land, which we wish in any event.

I believe there are other statements — perhaps not mine — which would be at the same time noble and practical and would compel somebody to do something.

CHAIRMAN BRAKE: Dr. Heideman.

MR. HEIDEMAN: Mr. Chairman and delegates, I rise to urge the adoption of the proposal of the committee on education in regard to article XI, section 1, as contained in article

III of the Northwest Ordinance of 1787, one of 6 articles of the compact. This ordinance, of course, has centuries of history back of it.

Section 1 of the Constitution of 1908 has not been amended since the present constitution was adopted. It is significantly included in article XI, as section 1, as an historic introduction to the article on education. It is not included in article II, the declaration of rights. That is a confusion of the issues.

The northwest ordinance brought about a new approach to the governance of after-acquired territory — not that such territory be held as subordinate or in a colonial status but rather that newly acquired lands or territories be given an opportunity, when settled, to become equal states.

This was a new concept in history at the time, one which has had great meaning in American and world history since in the promotion of free societies, including those that are being born about us almost every day.

A constitution is not like a new car. It is a document which of necessity takes us back to our historic past. The difference between a civilized society and a barbarian people is that a civilized people look to their yesterdays and tomorrows. They do not merely grub for today.

James Bryce, the author of the American Commonwealth, said to be one of the 2 greatest works on the American political society, said — and I'd like to paraphrase this for the Michigan constitution:

> The American constitution is no exception to the rule that everything which has power to win the obedience and respect of men must have its roots deep in the past, and the more slowly an institution has grown, so much more enduring is it likely to prove.

CHAIRMAN BRAKE: Any further remarks?

Mr. Romney.

MR. ROMNEY: Mr. Chairman, I'd like to make a few comments on this discussion because I think it is a very fundamental discussion.

I would like to say at the start that if Dr. Nord had only made his procedural proposal, I might be inclined to concur with him. I am a member of the committee on education but a meeting of the officers was being held at the time this matter was being discussed so I had no opportunity to participate in the committee's discussion.

Might I say at the start that if Dr. Nord had only made his procedural proposal, I might have been inclined to concur with him. He has gone beyond that and he has attacked the substance of the language of this proposal and I think in doing so he has raised a question as fundamental as any we are going to deal with at this meeting. He has referred to the historical background of this language. I don't believe that the principal historical background for this language has been dealt with.

It is my recollection that the most basic document in American history is the declaration of independence and that the declaration of independence indicates that we hold certain truths to be self evident that all men are created equal and endowed by their Creator with certain inalienable rights.

Now, I believe that the principles that we are here to deal with are related to our belief in the existence of a Creator and that this language in the northwest ordinance and this language in the constitutions of the states is derived from this fundamental premise on which free society is based.

I believe, without any reservation, in the separation of church and state. I am unalterably opposed to the use of any public funds for teaching sectarian doctrines in any public institution and our state's constitution makes that provision in this respect in section 2, article II, as has already been indicated and that is not the issue here.

It seems to me that the principal issue here is whether we, as Americans, living in the state of Michigan, still believe that there is some relationship between the rights we have derived from our Creator and a free government. And, although the history of the United States can be properly taught without making general reference to the religious base on which our whole society is premised, I believe that if we should repudiate the idea that there is a relationship between the broad religious concept of our being the children of a Creator, that we would strike at the very foundation-stone of free government, not only in Michigan but elsewhere. Consequently, when that point is raised, it seems to me that it is time to recognize that perhaps we are confronted with the question of whether we are going to apply the sound principle of separation of church and state to the point where we render ineffective the teaching of the real history of the United States.

Now, it is for this reason that I rise. I am, as a result of the substance of this issue having been raised, in a position where I cannot support the motion that was made. If it had been made purely on a procedural basis, as I say, I would have reason for weighing the procedural question because I think we are only in the early process of organizing our work here and the committee work and I believe that the rules committee and the chairmen of committees still have work to do in determining the order that we are going to follow in dealing with such proposals. But I think that to do other than to support the committee at this point would be to raise questions about the appropriate teaching of the fundamental history of the United States and I don't think this relates to any question of teaching sectarian doctrines.

After all, our form of government is based on Judeo-Christian principles and it derives from Judeo-Christian principles. I am not here for the purpose of doing anything that will raise any question about the validity of those principles and the essentiality of Americans understanding them if we are going to have an effective operation over free society, including our educational system.

CHAIRMAN BRAKE: Any further remarks?

Mr. Cudlip.

MR. CUDLIP: Mr. Chairman, I want to rise to applaud member Romney's remarks and just briefly to remind the members that these words that we are talking about have, as has been admitted, no legal significance.

Member Higgs speaks of a spirit. If we are going to be brittle and icy in this meeting, we are not going to appeal to the electorate of Michigan. Our coins say "In God We Trust." The congressman in my district, member Rabaut, in congress a few years ago, introduced an amendment to the pledge of allegiance to the flag, in which he said: ". . . one nation, under God, . . ."

Another part of our constitution is now before the courts but it does infuse the courts as members of society as well as us and all of our colleagues in the length and breadth of the state with the spirit under which we live. This is the preamble. Today it reads as follows — the preamble of our Michigan constitution:

> We, the people of the state of Michigan, grateful to Almighty God for the blessings of freedom, and earnestly desiring to secure these blessings undiminished to ourselves and our posterity, do ordain and establish this constitution.

Again referring to member Romney's remarks about the separation of church and state, I stand with him. But I don't think that we are going to get anywhere or do anything for ourselves or for the people of our sovereign state if we emasculate this organic law by deleting all reference to the Creator, the Supreme Universal Ruler, under which we all humbly live. And God knows we are living today with more tremor than ever before.

CHAIRMAN BRAKE: Mr. Binkowski.

MR. BINKOWSKI: Mr. Chairman and fellow delegates, regarding the judicial history, if anyone is interested in a bird's eye view, I suggest that you turn to pages 428 and 429 in Michigan Statutes Annotated. There are 7 cases, as I count them, and nowhere in the 7 cases has there been any question of the separation of church and state raised. However, in the first case that has been decided and annotated, it does contain the expression that this is our public policy; and I think, as has been expressed by most of the delegates here, that we wish this to be an expression of the public policy here in the state of Michigan. Therefore I favor the retention of the language in the constitution.

CHAIRMAN BRAKE: Mr. Bentley.

MR. BENTLEY: Mr. Chairman, I rise just briefly to ad-

dress myself to the 2 procedural questions, as I recall, that were raised by Dr. Nord.

In the first place, I am certain that it is perfectly proper and parliamentarily proper to submit proposals pertaining to the retention of language already in our constitution. That was done in the last convention. I assume it is perfectly proper to do it in this convention.

In the second place, I did not have, of course, and I don't know that any other member of the committee had any awareness of the proposal contemplated by Delegates Nord and Austin. If those proposals had been introduced — and I refer to the education committee — of course, we would give them all the careful consideration they deserve. If they should be favorably considered by the committee, then, of course, there would be an appropriate time for their consideration and that is when we have further discussion and consideration of the proposal under consideration, when it is returned to the convention from the committee on style and drafting.

CHAIRMAN BRAKE: Mr. Faxon.

MR. FAXON: I just want to make one point. The fact is that the lawyers want a constitution that they can argue before the courts effectively, as agreed upon by lawyers. But I feel that a statement of purpose is something that the people need to better understand a document of this sort. Not speaking as a lawyer — because I am not one — but I know as a teacher, a statement of purpose in front of any article gives it meaning and gives the people something they can grasp on to. So I wish to favor the statement and I certainly don't feel that eliminating it would accomplish the purposes which were alluded to earlier.

CHAIRMAN BRAKE: Mrs. Cushman.

MRS. CUSHMAN: I don't think we are any of us here tonight to discuss whether we are in favor of religion, morality and knowledge. I think we are all in favor of this.

I think the question, though, that has been raised is a legal question and the question is: Does the section do something that we really didn't intend it to do, nor did they intend it to do in 1907? This is a question that personally I would like to know a lot more about before I would vote one way or the other. I am not a lawyer. I didn't even spend the weekend reading the constitution. I just spent it straightening up the house most of the time. (laughter)

But I do think that just because this question never has been raised about the separation of church and state in regard to this action, does not mean that it might not be raised in the future. Therefore, I would like to speak to Dr. Nord's proposed motion. Thank you.

CHAIRMAN BRAKE: Mr. Ostrow.

MR. OSTROW: I think that the injection of the issue of separation of church and state into a discussion of this particular article is without merit. There have been hundreds and hundreds of questions of separation of church and state. The attorney general has ruled on them hundreds of times but they come under other sections of the constitution. Article II, section 3, takes care of part of the problem.

The other part of the problem, if my memory serves me correctly, is taken care of by that section of the constitution which forbids the use of public money for private purposes. This section has stood the test of time — 50 years. In 50 years every conceivable question that could have been raised has been raised. The fact that it hasn't been litigated is because most people were satisfied with the attorney general's opinion and other attorney generals' opinions. If you change so much as a comma of this language, you start the litigation and the question all over again.

CHAIRMAN BRAKE: Are there any further remarks?

Mr. Martin.

MR. MARTIN: Mr. Chairman, just on the legal aspect of this provision, I rise to suggest that along the lines of Mr. Ostrow's talk, this question would undoubtedly have been raised perhaps many times if the provision that we are talking about which is before us for approval or disapproval had contained in it anything which was contrary to the provisions of article II, section 3 of the constitution. That section, of course — that latter section — deals clearly with the question of separation of church and state and it makes it clear that public moneys cannot be used for private sectarian purposes.

It seems to me that the section presented to us by the committee on education is a general statement of the general fact that religion has a place in our life, but certainly is not a declaration in any way that it can be combined with public education.

I think for that reason that the motion should not be supported and I feel sure that further debate on article II, section 3, when that matter comes before the convention, will make this matter equally clear.

CHAIRMAN BRAKE: Any further remarks?

Mr. Walker.

MR. WALKER: I wonder if we are not losing sight of Dr. Nord's actual motion to refer the matter back to the education committee. As I understand it, we are not asked at this time to decide yes or no on religion or any such important question but only to give more thought to a matter which obviously requires much thought.

CHAIRMAN BRAKE: Mr. Garvin.

MR. GARVIN: Mr. Chairman, in reference to Dr. Nord's statement and the proposal of the committee, I am just wondering if the delegates are not losing sight of the fact that maybe we are confusing the preamble and also the purpose in this whole idea.

If we would take, I believe, the beginning of the article that we were discussing, we would find that it is strictly under education, and in the first part, the subtitle is "encouragement of education." Now why we have to have anything by education in this particular part I don't know.

There seems to be a great bit of sentiment among the delegates because it came down from many years ago — in fact I believe it was in the paper — but I don't believe that we are here for sentiment. We are here to write a constitution that will stand up in the courts. If there is a doubt among this delegation about whether it will or whether it will not stand up, then it is wrong as it is written and it is time to write it so there will not be any question about it.

The fact that we put religion under education and anything else under education is wrong to start with. If we are going to talk about education, let's talk about education. Let's write our constitution on education. Let us write the article and section under education exactly where it belongs and then there will not be any discussion 10, 20, 30 years from now about whether religion shall come in or not. I support Dr. Nord.

CHAIRMAN BRAKE: Miss Andrus.

MISS ANDRUS: Mr. Chairman, I was the one who introduced that proposal in the education committee and I would like to say this to all of you: for years I have been teaching that we should have as brief a constitution as possible and I certainly agree with Dr. Pollock and the others who were speaking in favor of it and urging us to do it. However, this provision, the first section in article XI, is of great historical and sentimental value to all of the people of Michigan and so in our committee last Thursday we voted unanimously to propose this to the convention. Later we will propose details on education. This is just a statement, a very important and significant statement, which we would like to see retained in our constitution for our children and grandchildren in the future. It carries us from 1787 which, as Mr. Bentley said, was before our national constitution was drawn up. We feel it is very important that this be retained in our constitution.

CHAIRMAN BRAKE: Mr. Boothby.

MR. BOOTHBY: Mr. Chairman, I think possibly some of the delegates have lost sight of some of the problems that are before us. I have noted that there have been several cases that have been cited to us that have been decided by the Michigan supreme court regarding this particular section, with the inference that during the last several years there had been no decision which would create any idea that this section would be used to allow an encroachment upon separation of church and state. That would never happen.

And during the history of our courts I have found that

many times the courts have changed their opinions and possibly at times seized upon words to bolster up their arguments in favor of a new idea. And I think it might merit us to consider this particular problem that Dr. Nord has raised. I can see no reason why the committee cannot reconsider this matter.

It would seem to me that it would be of some great merit to allow any proposal regarding this section to be first submitted to the committee on education — at least a reasonable time to have these proposals in — because I think that the committee might not give due consideration to proposals that are submitted which have already been decided and have been referred out to the floor and have been voted on by the convention proper.

I know it has been indicated that this can be changed after a report from the committee on style and drafting. However, I do not think that is the time to change our basic idea on what should be included in the constitution but that is the time that we should try to clear up any conflict between various sections that are reported out of the committees and have been voted on by the convention proper.

CHAIRMAN BRAKE: Mr. Iverson.

MR. IVERSON: Mr. Chairman, I find myself in agreement with Mr. Ostrow and I think that this committee would make a great mistake if we changed one word or one sentence or one comma or period in this declaration of principle. After all, that is what this section is, it is a declaration of principle. And I submit that it has stood the test of time for the last 50 years or more and if we proceed at this time to change any part of this section, we are inviting an interpretation which may mean that we will be sorry for the action we take. I hope that this committee will vote against the motion by Mr. Nord.

CHAIRMAN BRAKE: The question is on the motion.

Reverend Dade.

MR. DADE: Mr. Chairman, I would like to speak in favor of retention of this section. Certainly, we live in a time when it is most important that we have these what we call sentiments. I would state the principle should be enunciated over and over again. I certainly cannot find any harm in my standing up and being counted, as one might say, on the side of God. But I am extremely concerned, with Dr. Nord, about whether there is any conflict where the courts are concerned. And I am asking myself: is there any need for undue haste? Or is there anything wrong with this being sent back to the committee on education that we may be thoroughly clear that there is no conflict in the matter of education?

It is my opinion, with Mr. Romney, that here we are spelling out that which is the very bedrock not only of the history of our state but of the history of our country and that it is good and that is as it should be.

But on the other hand, I find myself lacking the knowledge and praying that this convention be given that knowledge as to whether or not in the matter of a legal interpretation we are running into difficulty. To that end, I see no reason why the committee wouldn't welcome a restudy of the matter in bringing us further light.

CHAIRMAN BRAKE: The question is on the motion of Dr. Nord, that when this committee rises, it recommend to the convention that this proposal be sent back to the committee on education. All in favor of the motion say aye. Opposed, no.

The motion does not prevail.

Are there any amendments to the proposal?

Mr. Higgs.

MR. HIGGS: Mr. Chairman, for the sake of the record and to enable the courts of the state of Michigan in the future to interpret our action correctly, I think for the sake of the record here today if there is any delegate who believes that our action is intended to contravene the doctrine of separation of church and state, I would ask him to rise and so state. And if not, then our action here in adopting this proposal of the committee on education would be construed as being merely the retention of the language as written and as interpreted since 1908 and eliminate any possibility of any argument or controversy in this regard.

I might say I have heard 3 lawyers and Mr. Faxon speak in favor of eliminating conflict and controversy.

CHAIRMAN BRAKE: Dr. Nord.

MR. NORD: I believe they have invited me to state whether or not there is an intention to violate the doctrine of separation of church and state. I do not believe there is any intention but I do believe the language has that tendency. I pointed that out. I see no reason to use language which anyone suspects. I don't care to raise the question. I will be satisfied, along with Mr. Higgs, if we leave this question at rest.

CHAIRMAN BRAKE: Are there any amendments to the proposal?

Mr. Bentley.

MR. BENTLEY: Mr. Chairman, if there are no further amendments to the proposal, I move the committee rise.

CHAIRMAN BRAKE: Are there any amendments to the proposal?

If not, Committee Proposal 1 will pass. It is passed.

Mr. Bentley moves the committee rise.

All in favor say aye. Opposed, no. The motion prevails.

[Whereupon, the committee of the whole having risen, President Nisbet resumed the chair.]

PRESIDENT NISBET: Mr. Brake.

MR. BRAKE: Mr. President, the committee of the whole has had under consideration a certain proposal, on which the secretary will give a complete report.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 1** from the committee on education and reports the proposal back to the convention without amendment, with the recommendation that it pass.

PRESIDENT NISBET: Under the rules it is referred to the committee on style and drafting.

For Committee Proposal 1 as passed and referred to the committee on style and drafting see above, page 197.

SECRETARY CHASE: That completes the report of the committee of the whole, Mr. President.

PRESIDENT NISBET: Announcements.

SECRETARY CHASE: There will be the following committee meetings:

A meeting of all committee chairmen will be held 15 minutes after adjournment of this session this evening in room E.

At 8:30 a.m. tomorrow, in room A, the committee on local government will meet. The chairman asks that the members of the committee bring their workbooks. (laughter)

The committee on judicial branch will meet in room B tomorrow, Tuesday, the 24th, at 9:30 a.m., Mr. Robert Danhof, chairman.

The committee on education will meet in room C Wednesday at 9:00 o'clock a.m., Mr. Bentley, chairman. There will be an informal discussion with Dr. Lynn Bartlett, the superintendent of public instruction.

The committee on administration will not meet this evening after the session. Walter DeVries, chairman. The committee on administration will meet in room G tomorrow at 9:30 a.m., Mr. DeVries, chairman.

I have the following requests for leave of absence:

Dr. Pollock for Thursday, October 26, due to a speaking engagement of 6 months' standing.

Mr. Shackleton for tomorrow, Tuesday, for the purpose of attending a directors' meeting.

President Nisbet asks to be excused from Thursday's session.

Mr. Mahinske requests permission to be absent from the meeting of Tuesday, October 24, as he is chairman of the united nations day dinner in Detroit.

PRESIDENT NISBET: Without objection, they will be excused.

SECRETARY CHASE: The secretary has been requested to read the following announcement in regard to the contingency fund in the constitutional convention budget:

Due to a mechanical error there has been a mistake which shows itself only in the contingency fund of the convention budget submitted on October 18. The $31,000.00 figure for reimbursement of actual and necessary expenses for officers, delegates and staff of the convention is correct in the body of the report but the error will reflect itself in the total figure shown as the contingency fund. This figure should now read $42,075.03, the old contingency fund figure of $72,765.03 minus the figure of $30,690.00. This figure is arrived at by subtracting $310.00, which the machine recorded as $31,000.00, which the machine should have recorded. (laughter) Those figures are correct and remain the same. The committee on administration would like to thank the delegate who brought this error to its attention.

PRESIDENT NISBET: Dr. DeVries.

MR. DeVRIES: Mr. President, I am chagrined to have to report the apparent loss of $30,690.00. This was a mechanical error; $31,000.00 was punched on the machine. It is shown on the tape but it was not shown on the total. So the change from $72,765.03 has been made. I may sweeten this mistake by telling you that through the efforts of Mr. Apol's negotiations with the television people, we were able to save $1500.00 on our TV contract and had it changed from $4200.00 to $2700.00.

PRESIDENT NISBET: Without objection, the error will be corrected.

This correction has been made on pages 184 and 189 above.

Any further announcements?

SECRETARY CHASE: None are present here.

PRESIDENT NISBET: That completes the business of the day. What is the pleasure of the convention?

Mr. Brown.

MR. G. E. BROWN: I move we adjourn, Mr. President.

PRESIDENT NISBET: Those in favor say aye. Opposed, no. The convention is adjourned until 2:00 o'clock tomorrow.

[Whereupon, at 10:05 o'clock p.m., the convention adjourned until 2:00 o'clock p.m., Tuesday, October 24, 1961.]

TWELFTH DAY

Tuesday, October 24, 1961, 2:00 o'clock p.m.

PROCEEDINGS

PRESIDENT NISBET: The convention will please come to order.

Our invocation today will be given by the Reverend Father John Slowey of the Catholic Social Service of Lansing.

REVEREND SLOWEY: Almighty God, divine legislator, guide our deliberations at this session of the constitutional convention. Grant us the patience, fortitude and wisdom which are most important to effectively work out the framework for good government in our state. At all times may we ever be aware that all power is delegated by Thee. Amen.

PRESIDENT NISBET: The roll call will be taken by the secretary. All present please vote aye.

SECRETARY CHASE: Before you do, ladies and gentlemen, will you please check any vacant seats next to you and see that the voting lever in the vacant seats is registered in the non-voting position.

Will everyone present please vote aye. Has everyone voted?

Mr. President, a quorum is present.

Absent with leave: Miss Hart, Messrs. Mahinske, McAllister and Shackleton.

Absent without leave: None.

PRESIDENT NISBET: Reports of standing committees.

SECRETARY CHASE: The committee on administration, by Mr. DeVries, chairman, submits the following report and recommends the following persons to the president for consideration as staff members of the constitutional convention:

Sergeant at arms, Mr. John DesRocher

Assistant sergeants at arms, Mr. Michael Carl, Mr. Henry Verkaik, Mr. Clifford Stanley

Convention guides, Mrs. Harriet R. Schiff, Mr. Don Faber and Miss Jennie I. Veen

Committee clerks:

Mrs. Nancy Stay, committee on miscellaneous provisions and schedule

Mrs. Beverly J. Kirksey, committee on style and drafting and committee on rules and resolutions

Mrs. Virginia Dierkes Schmidt, committee on local government

Mrs. Louise Parker, committee on public information and committee on administration

Postmaster and document clerks, Mr. James R. Bridges, Mrs. June Van Alstine

Duplicating clerk, Mr. Jack Ellis

Pages, Mr. Kern Tomlin, Mr. Alan Johnston, Mr. John Paul Dykstra, Jr., Mr. Wayne Ferry, Mr. Frederick Grasman, Mr. Gerald Plas

Stenographic chief clerk, Mrs. Judith E. Chelf

Stenographic clerks, Mrs. Jane Clark, Miss Patricia Ann Carlson, Mrs. Agnes Steffens, Mrs. Valerie A. Counard, Mrs. Arlene Groh, Miss Beatrice Carter, Miss Betty Kauffman, Mrs. Frances Marshall, Mrs. Jeanne Kingan, Mrs. Lois Mahoney, Mrs. Sondra Kosier, Mrs. Helen Varg, Mrs. Angela Kapuscinski, Mrs. Marvella Witt, Mrs. Mary Martha Lippincott, Mrs. Patricia Gorski

Secretary to codirectors of research and drafting, Mrs. Maritherese McGorrin

Librarian, Miss Mary M. Long.

Walter DeVries, chairman.

PRESIDENT NISBET: Dr. DeVries.

MR. DeVRIES: Mr. President, these are the unanimous recommendations of the committee on administration. I might briefly explain to the convention how we arrived at these decisions. A subcommittee of the committee on administration, consisting of myself, Mr. Gust, Mr. Mahinske and others, carefully reviewed about 400 applications for staff positions. Of the 400 applications received, 168 were reviewed and the applicants were not called in for interviews. A little over 200 applicants were interviewed by the subcommittee for the 76 positions on the constitutional convention staff. Of those interviewed about 90 were recommended to the entire committee on administration for its consideration.

Today's recommendations by the committee to the president will fill the staff positions with 3 exceptions. These are: 1 librarian, 1 assistant director of public information and the research assistants and consultants. It is our expectation that these appointments will be made later this week or next week.

In relation to the secretarial, committee clerk and stenographic positions, I might explain that 104 applicants took the civil service test. This was a 6 minute test designed to reveal stenographic ability as well as typing ability. Of this number of applicants, 60 passed the test and 44 failed or achieved a mark below that of 250. We considered that any mark below 250 was not a passing mark.

All those who have been appointed scored in the "excellent" to "superior" range, obtaining marks ranging up to 543. We have been advised by the civil service commission that it is highly unusual to have any scores above 500. Parenthetically, I should point out that approximately 45 people applied for positions after the deadline and their applications could not be considered.

In the interview situation the subcommittee tried to cover such points as the availability of the applicant and attempted to make clear the conditions relating to salary. It was explained that the hours would be irregular and that we required firm commitments for the length of the convention. In discussing the salary, it was explained that there were no fringe benefits, no overtime provisions, no insurance provisions, no retirement provisions—that it was a straight salary.

We attempted to explain and question them concerning the duties connected with the positions. We also attempted to evaluate the personality characteristics of the applicants and to make an assessment of their qualifications and their honest, genuine interest in the constitutional convention.

The applications of those who were interviewed were then subjected to another review by the subcommittee and what the convention has before it today is the result of our work.

May I point out that these staff members referred to were selected on the basis of competence, qualifications and personality characteristics. We believe we have the best staff that it is possible to obtain. The choice was not one between competence and incompetence. Almost without exception the more than 200 persons interviewed were of high calibre and the choice was between "very good" and "excellent". The interviewers were truly impressed and our choices were difficult.

Perhaps I might be allowed to make the following comments about certain of the positions. With reference to the guides, it might be explained that all successful applicants for this position have a B.A. or an even higher degree in political or social science. They are all articulate, personable and congenial.

The pages are all at least high school graduates and several are college students who wished to take leave from their studies to serve on the convention staff. Following the specifications outlined in the rules, the committee decided not to appoint any person as page who was still in high school. This was done primarily to avoid tutoring these students but also to avoid the possibility of behavioral problems with juveniles.

I might point out that we sincerely regret that the application of this specification outlined in the rules means the loss of the services of Mr. Bill Doyle, Jr., who has been faithfully serving the constitutional convention since the opening day as a page. If you do not mind, ladies and gentlemen, may I now call upon the convention to indicate by applause some public recognition of his services. (applause).

Stenographers will report for duty at 8:30 a.m. on Thursday. Tomorrow we will assign delegates to a stenographer. An arrangement has been made under which 8 delegates will be assigned to a stenographer who will be available in a stenographic pool located behind the library, commencing Thursday morning.

I might at this point suggest that all questions regarding personnel from now on should be referred to Mr. Apol.

With this report, the major portion of the work of the committee on administration is completed. Members of this committee have worked very hard and for many hours. I thank them for the former and apologize for the latter. (laughter) I wish to publicly thank them for not initiating a coup d'etat or other form of revolutionary activity during the past 4 weeks. (laughter)

If every committee tackles its task in the spirit and with the degree of bipartisanship in which the committee on administration has approached its task, this will indeed be a most fruitful convention.

I might point out, before concluding, that each applicant for a position on the staff of the constitutional convention will receive a personal letter from myself thanking them for their interest. We did appreciate their interest and we wish that more of them could have been placed on the staff. If members of the convention have any questions about why a person in which they had a particular interest was not appointed, I, or Mr. Gust, or Mr. Mahinske, will endeavor to answer them for you.

In any event, these appointments were the decisions of the committee on administration. Members of the convention need not take the brunt of any criticism—it can be placed on my committee. Or, if that is too impersonal, it may be placed on the committee and its chairman. We are so paranoid now, that a little more criticism will not seriously depress us! (laughter)

One final note. The committee wishes to publicly thank those staff members of the house of representatives who have worked with us during the past several weeks; and we wish to thank the speaker of the house, Mr. Don R. Pears, and the clerk of the house, Mr. Norman Philleo, for generously lending us parts of their staff.

Those who should be singled out for our appreciation of their services are: Mrs. Neva Mikesell, journal clerk of the house; Mrs. Betty Hathaway, assistant bill clerk; Mrs. Virginia Carey, house taxation committee clerk; Mrs. Mildred Hutchinson, committee clerk to the state affairs committee; and Mrs. Margery Archer who is now on the staff of the constitutional convention.

This concludes the report of the committee on administration and if members of the convention have any questions, I shall be happy to endeavor to answer them.

PRESIDENT NISBET: Mr. Bentley.

MR. BENTLEY: Mr. President, I know that all of us feel a deep sense of gratitude to the committee on administration and to all of those who have been associated with it for the wonderful work they have done in getting this convention off to such an expeditious and auspicious start.

The only question I wish to raise at this time is with reference to the report made by Dr. DeVries yesterday in which he referred to committee rooms J and K as being available on a tentative basis and said they would be made permanent by the time of tomorrow's meeting. I wonder if that assurance can now be given?

MR. DeVRIES: Mr. President, Mr. Bentley, I suggested last evening that we were awaiting a decision that was to be reached by the city council. That decision has been made and it was not favorable. We shall, therefore, have to cancel our plans for a room on the second floor.

Provision is being made to move one of the offices associated with the convention in order to give us additional room but I regret to report that again, this will take until the end of the week. However, we will end up with enough rooms, one for every substantive committee and there will be rooms for the 4 operational committees.

In the interval, however, certain partitions and furniture must be moved from one office to another and this will not be completed until the end of the week.

PRESIDENT NISBET: Any further questions?

If not, the recommendation of the committee on administration is concurred in.

SECRETARY CHASE: **The president appoints,** pursuant to authorization by the convention, and with the approval of the committee on administration, the aforenamed persons to the respective positions indicated.

PRESIDENT NISBET: Without objection, they are approved.

SECRETARY CHASE: **The secretary appoints,** pursuant to the authorization of the convention, and with the approval of the committee on administration, the following:

Assistant proposal and enrolling clerk — Mrs. Doris Lambert.

This appointment is to replace Mrs. Louise B. Parker, who has been appointed to another position.

PRESIDENT NISBET: Unless there is objection, that appointment will be approved. Carried, there being no objection.

SECRETARY CHASE: That is the only standing committee report, Mr. President.

PRESIDENT NISBET: Reports of select committees.

SECRETARY CHASE: None.

PRESIDENT NISBET: Communications from state officers.

SECRETARY CHASE: None.

PRESIDENT NISBET: **Introduction, first reading and reference of proposals.**

SECRETARY CHASE: Mr. President, the following are the proposals:

Mr. Madar introduces

Delegate Proposal 1085, A proposal to make the state responsible for aiding and assisting the indigent and needy.

PRESIDENT NISBET: Referred to the committee on legislative powers.

SECRETARY CHASE: Messrs. Binkowski and Stopczynski introduce

Delegate Proposal 1086, A proposal to repeal the 10 year limitation on property owned by corporations. Amends section 5 of article XII.

PRESIDENT NISBET: Referred to the committee on miscellaneous provisions and schedule.

SECRETARY CHASE: Messrs. Binkowski and Stopczynski introduce

Delegate Proposal 1087, A proposal to provide for executive reorganization. Amends article VI by adding a section.

PRESIDENT NISBET: Referred to the committee on executive branch.

SECRETARY CHASE: Mr. Stevens introduces

Delegate Proposal 1088, A proposal relating to the matter of succession of the lieutenant governor. Amends article VI, section 16.

PRESIDENT NISBET: Referred to the committee on executive branch.

SECRETARY CHASE: Mrs. Daisy Elliott and Mr. Barthwell introduce

Delegate Proposal 1089, A proposal to provide for maintenance and support of a free public school system, including public institutions of higher learning. Amends article XI by adding a new section.

PRESIDENT NISBET: Referred to the committee on education.

SECRETARY CHASE: Messrs. Suzore and Stamm introduce

Delegate Proposal 1090, A proposal to establish voter qualifications and to change residence requirements for voting for presidential and vice presidential electors. Amends article III, section 1.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: Mr. Nord introduces

Delegate Proposal 1091, A proposal relative to equality of suffrage, derived from the bill of rights provisions of the articles of compact of the northwest ordinance. Amends article II, section 1.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: Mr. Nord also introduces

Delegate Proposal 1092, A proposal relative to religious freedom, based on the language of the Wisconsin constitution. Amends article II, section 3.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: That concludes the proposals, Mr. President.

PRESIDENT NISBET: Second reading of proposals.

SECRETARY CHASE: Nothing on that order, Mr. President.

PRESIDENT NISBET: Third reading of proposals.

SECRETARY CHASE: Nothing there.

PRESIDENT NISBET: **Motions and resolutions.**

SECRETARY CHASE: Messrs. Van Dusen, Hutchinson and Romney offer

Resolution 21, A resolution establishing a deadline for introduction of delegate proposals.

Following is the body of Resolution 21, as offered:

Resolved, That after November 15, 1961, no delegate proposal shall be introduced, numbered or printed except upon authorization by the convention. This resolution shall not prevent any delegate or interested citizen from thereafter submitting to the appropriate committee any suggestion for revision of the constitution.

PRESIDENT NISBET: Referred to the committee on rules and resolutions.

SECRETARY CHASE: That is the only resolution on file, Mr. President.

PRESIDENT NISBET: Unfinished business.

SECRETARY CHASE: None.

PRESIDENT NISBET: Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, I think it might be worth noting, just for the information of the delegates generally, that the resolution which has just been offered, dealing with the deadline for the introduction of delegate proposals, proposes that after November 15, 1961, no delegate proposal shall be introduced, numbered or printed except upon authorization by the convention. In other words, no delegate proposal may be introduced, printed or referred to committee after that deadline without the authorization referred to.

The adoption of this resolution, however, would not mean, of course, that individual delegates or interested citizens could not thereafter make suggestions for the revision of the constitution to the committee; but it would mean that after that date no proposals could be formally introduced.

I make this comment on the resolution at this time, simply as a "word to the wise."

PRESIDENT NISBET: Unfinished business.

SECRETARY CHASE: None.

PRESIDENT NISBET: Special orders of the day.

SECRETARY CHASE: None, Mr. President.

PRESIDENT NISBET: General orders of the day.

SECRETARY CHASE: None.

PRESIDENT NISBET: Announcements.

SECRETARY CHASE: Mr. Lewis T. Hubbs, who sits in the northwest corner of the hall, requests that all rotarians who are delegates please meet with him in that corner for 5 minutes after the convention session adjourns today.

There are the following committee meeting announcements:

The committee on local government, Wednesday, tomorrow, immediately following the session, in room A. Mr. A. G. Elliott, chairman.

The committee on judicial branch will meet in room B, on Wednesday, at 3:00 o'clock. Robert J. Danhof, chairman. The matter under discussion will be the proposed poll by the state bar association relative to the selection of judges.

The subcommittee on corporations of the committee on miscellaneous provisions and schedule will meet in room G today, 15 minutes after the close of the session. Mr. Raymond F. Clevenger, corporation and securities commission, and Mr. Don Weeks, executive director, economic development commission, will appear before the committee. Henry L. Woolfenden, chairman of the subcommittee.

The notice in regard to the scheduled meeting of the committee on miscellaneous provisions and schedule which was scheduled for 7:00 o'clock this evening has been invalidated. The meeting has been cancelled and in lieu thereof the committee will meet in room G tomorrow at 9:00 a.m. Claud R. Erickson, chairman.

The committee on executive branch will meet in room C Wednesday, immediately after the session. John B. Martin, chairman. The same committee, the committee on executive branch, will also meet in room C on Thursday at 8:30 a.m. John B. Martin, chairman.

The committee on legislative powers will meet in room H tomorrow at 8:30 a.m. T. Jefferson Hoxie, chairman.

PRESIDENT NISBET: Any further announcements?

SECRETARY CHASE: Yes, Mr. President. There have been filed with the secretary the following requests for leave of absence:

Delegates Dell and Karn have asked to be excused from the session on Thursday and Mr. Austin has asked to be excused from Friday's session.

PRESIDENT NISBET: Unless there is objection, they will be excused.

SECRETARY CHASE: There are no further announcements on the desk, Mr. President.

PRESIDENT NISBET: Are there any announcements from the delegates? Any comments?

Mr. Ford.

MR. FORD: Mr. President, since the convention convened, I have talked with a number of people who feel as I do, that some, if not all, of the committees will have ample reason to locate themselves on a temporary basis in places other than this hall in facilities that would make themselves accessible to larger groups of people who wish to appear and observe the committees as they consider the specific problems coming before them.

This morning I observed that already in such committees as the committee on finance and taxation there prevailed, for those wishing to observe the meeting of the committee, accommodation on a standing room only basis. Those of us who wished to appear as observers found that it was difficult even to get our heads in the door. If this is an indication of things to come, I should like to move that the Chair instruct the administration committee to make arrangements for circumstances where there are groups of people larger than we have had thus far in the meetings of the committees so that they can be accommodated. I also urge that they investigate the possibility, by meeting with the committee chairmen, of exploring the likelihood of securing other locations about the state where the committees might sit and make their hearings available and accessible to other citizens of the state.

I would ask that following the exploration of the aforementioned possibility, the administration committee report back to us within a reasonable length of time as to the facilities that are available and as to possible scheduling which might be available to the convention so that we can be prepared, if and when requests are made in other parts of the state, to make some sort of proper decision in respect to this matter.

PRESIDENT NISBET: I might say, Mr. Ford, that an investigation is already being made of rooms in this building for use for committee hearings where the number exceeds that which can be conveniently accommodated in our present committee rooms. That might take care of the matter. Mr. Apol is working on the problem and I think perhaps Dr. DeVries might wish to comment on it, if he knows anything about it. An announcement will be made about that in a very short time, as soon as the meetings are arranged. Is there any further comment?

Mr. De Vries.

MR. DeVRIES: Perhaps I might make this comment, Mr. President. The way the committees are meeting now on a staggered basis, on Tuesday, Wednesday and Thursday, it will be impossible to hold large hearings except in the evenings. Then it will be possible to take down the partition between rooms B and C to accommodate large crowds, I understand. I am informed that that is the only way we could do it in the evening session.

Mr. President, it has also been suggested that we use the plenary session hall for the committee meetings. I think I would be opposed to that because we, as delegates, have a number of documents and papers on our desks and to meet in the hall would mean receiving the public near and by our desks. I do not think that this would be a good procedure.

PRESIDENT NISBET: May I ask one question. Dr. DeVries, there was some suggestion about using the balcony or the gallery for the people appearing before the committee and the suggestion was made that the committees meet in that area of the hall, this side of the railing. Has that been discussed or considered at all, and are you able to comment on it?

MR. DeVRIES: Yes, Mr. President, it has been discussed. If we can arrange for microphones to be placed in the gallery so that the witnesses and people appearing before the committees do not have to appear on the floor, I think everything would be all right and we could make that arrangement.

PRESIDENT NISBET: Mr. Ford.

MR. FORD: With this physical problem in mind, the problem of physical accommodation, I should like to move at this time that the administration committee be directed to procure such information as is available concerning available sites somewhere in the Detroit area, and preferably in downtown Detroit, where facilities could be made available to such committees, during the course of this convention, concerning which it is felt that the best interests of the citizens of the state would essentially and best be served by having the committees meet in that area.

I do not care about the selection of other areas such as Grand Rapids in relation to which it might be felt that large numbers of people might wish to attend hearings of the committees but I do think it is now apparent that our facilities here will not accommodate large groups of people.

I feel that it is hardly fair, when we get into the meat of the issues that will come before this convention, to turn away people who wish to attend those hearings simply because of a lack of adequate accommodation.

The citizens should not be deprived of the opportunity of attending the hearings and listening to what is going on. To turn people away due to lack of adequate physical accommodation would be extremely embarrassing to the convention and I think it would be extremely harmful in terms of the public image and the impression it would create.

PRESIDENT NISBET: Dr. DeVries.

MR. DeVRIES: Mr. President, Mr. Ford, as I understand it, the proper procedure here is this: if a committee wishes to take a trip to Detroit for the purpose of holding a public hearing, a resolution must be introduced to this convention which would refer it to the committee on administration. We would then make the decision and refer it back to the convention.

PRESIDENT NISBET: Mr. Elliott.

MR. A. G. ELLIOTT: Mr. President, may I have permission to ask Dr. DeVries a question at this point? Dr. DeVries has raised a question about the difficulties involved in holding meetings of the committees about which he spoke and he referred to partitions between 2 of the committee rooms which partitions could be taken down to provide larger accommodation.

There are only 3 committees meeting at any one time I believe. This would mean that it would be possible for a meeting to be held at 8:30 in rooms B and C perhaps by opening them up and removing the partition. Unless the partitions are of such a nature as to render it difficult to easily dismantle and erect them, they could be taken down and the meetings could be held there. Is it possible? Has Dr. DeVries any comment to make?

MR. DeVRIES: Mr. President, Mr. Elliott, I frankly do not know the answer to that question. A study of it would have to be made and reported back to the convention. It will be difficult, however, to find a morning on which rooms B and C are not in use, one or the other of them. I think Mr. Apol told me that the only time we could do this would be in the evening. However, I will check and report back to the convention.

PRESIDENT NISBET: Mr. Martin.

MR. MARTIN: I wonder, Mr. President, whether Dr. DeVries' committee could investigate the possibility of using—at least for evening meetings—the rooms on the north side of the hall here which can be opened up and which could form a large room for hearings of one kind or another. There are obviously going to be some problems if every hearing

is held in the evening in committee rooms B and C because I am sure Mr. Danhof may want to do some work or there may be meetings of subcommittees and so on.

I think the committee on executive branch may be in the same position and it really seems to me that we ought to have, if we can, a larger room or more than one where these larger meetings held in the evening could be accommodated with a minimum of discomfort and dislocation.

MR. DeVRIES: Mr. President, Mr. Martin, we have investigated that possibility, but not too thoroughly, because these rooms, as I understand it, are now under the jurisdiction of the veterans' organizations which were moved out of this part of constitutional hall. We will be happy to further investigate this possibility, although I do not think we can promise too much or hold out too much hope of success in this regard.

PRESIDENT NISBET: Mr. Powell.

MR. POWELL: Mr. President, I have not been a visitor to the second floor of the state capitol building recently but unless there is underway some renovation or decorating or something of that nature of which I am not aware, it seems to me there might be the possibility of obtaining space in the capitol building between now and the middle of January.

Of course that would not carry us through the entire period of the convention but it might work out very nicely in terms of carrying us through an awkward time during which we will have many hearings going forward, perhaps simultaneously.

In the state capitol building there is the senate chamber and the house chamber and to my knowledge other rooms in that building have been used for hearings of one kind and another. On some occasions hearings of one type or another have even been held in the supreme court chamber.

I simply throw this out as a suggestion and ask that the appropriate persons investigate the possibility of using the annex for the purposes of this convention.

MR. DeVRIES: Mr. President, Mr. Powell, that is a very good suggestion. I think we will check with the speaker of the house of representatives and the clerk. I am sure that these facilities might be made available to us. No doubt we would be required to furnish the electrician and no more. I think that suggestion is deserving of consideration and that there is a possibility of obtaining the use of such facilities. The possibility will be explored.

PRESIDENT NISBET: Mr. Madar.

MR. MADAR: Mr. President, I just wish to make this comment. I hope that most of this discussion today is going into the record of this convention so that the next convention, even if it is held 50 or 100 years from now, will not be "taken" in the same manner as we have been.

PRESIDENT NISBET: Mr. Gadola.

MR. GADOLA: Mr. President, may I suggest that the possibility be explored of using the Michigan state bar association building for our purposes. There is ample room there and it is not in use at all times I am sure. I believe they have ample facilities there and I urge that we investigate the possibility of making use of them.

PRESIDENT NISBET: Dr. DeVries.

MR. DeVRIES: Mr. President, if I might reply to Mr. Madar, let me say this: this convention has not been "taken". On the contrary, it would appear, indeed, that we are "taking" someone else. Mr. Starr Hull, who is in charge of the facilities in this part of the building, has been extremely cooperative and has leased us additional space on the third floor for which we did not contract. He is moving his entire office into smaller quarters in order to accommodate us. I do not think it can be fairly said that we have been "taken" and it is my feeling that we should be extremely grateful for the kind consideration and cooperation we have received.

SECRETARY CHASE: Several of the delegates have asked a question as to whether or not the debates of this convention are being recorded. They definitely are, and they will be reproduced in separate volumes after the close of the convention. There seems to be some doubt as to whether the discussion in the committee of the whole has been recorded. It has been.

In point of fact, we maintain 2 sets of records. We maintain the action journal of the convention and that includes the action journal of the committee of the whole.

We also maintain the record of the debates and that includes the debates in the committee of the whole as well as in the convention.

PRESIDENT NISBET: Mr. Austin.

MR. AUSTIN: Mr. President, may I make this anouncement? The committee on finance and taxation will be meeting tomorrow morning at 10:30 in room E and on Thursday immediately following the session.

PRESIDENT NISBET: Are there any further announcements? If not, that concludes the business of the convention today.

What is your pleasure, ladies and gentlemen?

Mr. Doty.

MR. DEAN DOTY: I move we adjourn.

PRESIDENT NISBET: The motion is on adjournment. All in favor say aye. Opposed, no.

The convention is adjourned until tomorrow afternoon at 2:00 o'clock.

[Whereupon, at 2:35 o'clock p.m., the convention adjourned until 2:00 o'clock p.m. Wednesday, October 25, 1961.]

THIRTEENTH DAY

Wednesday, October 25, 1961, 2:00 o'clock p.m.

PROCEEDINGS

PRESIDENT NISBET: The convention will please **come to order.**

Our **invocation** today will be given by the Reverend John Murbach, of the Cavalry Evangelical United Brethren Church of Lansing.

REVEREND MURBACH: Let us pray. Almighty God, author of life, liberty, justice and truth, we humbly bow in Thy presence in this moment of reverent worship to acknowledge Thee and to seek Thy divine presence at this time. May we ever sense Thee near to us in this moment and every moment of our life.

Keep us aware that Thou art the source of all truth and that only as we seek Thy will shall we find truth. Grant unto these elected representatives of the people of this great state this purpose as they continue in the great responsibility committed to them. Deliver us from pettiness. Forbid that for selfish purposes we shall refuse to do that which we know to be right. Give us conviction in the purposes which are ours, but give us insight so that we may see where we are wrong, when we are wrong, and strength to persist when we are right. Help us to be men and women of purpose and destiny.

Again we pray for Thy divine guidance to be upon the president of this great gathering. Give him direction as he seeks to guide the affairs which are before us. Grant to us all the constant companionship of Thy spirit in this and every hour which we spend in the task to which we have been called. This we ask with humble gratitude for Thy constant guidance in all our lives. We pray in the great name of our God and Father. Amen.

PRESIDENT NISBET: The **roll call** will be taken by the secretary. All present please vote aye.

SECRETARY CHASE: Before you do, ladies and gentlemen, please be so kind as to check the vacant seats next to you and see that the voting lever there is registered in the nonvoting position. Have you all voted?

The machine will now be locked and the vote will be taken. Before this is done, however, may I make this additional announcement? You may now put your voting lever in the nonvoting position. If you will leave your lever in that position while we are in session, when you want to call a page, all you need to do is slip the voting lever over to the nay position and a red light will show on the board and a page will come to your desk.

Mr. President, a quorum is present.

Prior to today's session, the secretary received the following requests for leave:

Mr. Farnsworth from today's session.

Mr. Stamm from today's session in order to be in Kalamazoo on business.

PRESIDENT NISBET: Without objection, the requests are granted.

SECRETARY CHASE: Absent with leave: Messrs. Farnsworth, McAllister and Stamm.

Absent without leave: None.

PRESIDENT NISBET: **Reports of standing committees.**

SECRETARY CHASE: The committee on administration, by Mr. DeVries, chairman, submits the following report and recommends the following assignment of stenographers to the delegates of the constitutional convention.

For the body of this report, see below.

PRESIDENT NISBET: Dr. DeVries.

MR. DeVRIES: Mr. President and delegates, I move that this report be considered read and that it appear in printed form in the journal of this day's session. The report consists only of a list of the stenographers and the delegates to whom they are assigned.

I might mention that the report will be available to the delegates within one hour. The duplicating machine broke down so we could not have copies prepared for distribution among the delegates before 2:00 o'clock. However, copies should be on the desks of the delegates within one hour.

The stenographers' pool will be on duty at 8:30 tomorrow morning. I would ask that the delegates check with the chief stenographer who will point out to them the stenographer to whom they are assigned.

I might also point out that stationery will be available on Monday. The proof came back from the printers today and we hope to have supplies of stationery available for the use of the delegates on Monday.

Perhaps I might also make this comment, Mr. President. We have inquired about renting or using some of the rooms in the veterans' section of the civic center and I am told that they are available. Furthermore, I have checked with the clerk of the house, Mr. Norman Philleo, who tells me that upon clearance with him the constitutional convention might be granted permission to use the house chamber for its committee hearings. However, this should all be cleared through Mr. Apol and any committee chairman wishing to make arrangements through the clerk of the house for use of the house chamber should approach Mr. Apol on this subject please.

Dr. Hannah has further volunteered the use of the facilities of the university. If anyone wishes to make arrangements for use of a room or any of the facilities of the university, I suggest that he contact Mr. Apol for further information.

PRESIDENT NISBET: Without objection, the list shall be printed in the journal and without objection, the assignment of stenographers to the various delegates as recommended by Dr. DeVries, chairman of the committee on administration, will be approved.

Hearing none, the stenographers are so assigned and the list shall be printed.

Following is the report submitted by the committee on administration:

The committee on administration recommends the following assignment of stenographers to the delegates of the constitutional convention:

Miss Beatrice Carter
group 1
Austin, Richard
Balcer, Frank A.
Hart, Adelaide J. (Miss)
Hatcher, Lillian (Mrs.)
Kelsey, John T.
Liberato, Ralph
Snyder, Joseph

Mrs. Jane Clark
group 3
Follo, Charles
Ford, William D.
Garvin, Wynne C.
Lesinski, Edmond
Nord, Melvin
Pellow, William P., Jr.
Perlich, Frank T.

Mrs. Arlene Groh
group 5
Brown, Theodore S.
Douglas, Edward L.

Mrs. Patricia Gorski
group 2
Barthwell, Sidney
Binkowski, Don
Dade, Malcolm G.
Faxon, Jack
Krolikowski, Ray
McGowan, Marjorie (Miss)
Murphy, Raymond M.

Mrs. Angela Kapuscinski
group 4
Baginski, Martin W.
Buback, Peter L.
Madar, Arthur J.
Norris, Harold
McCauley, John E.
Stopczynski, Stephen
Young, Coleman A.
Youngblood, Charles N., Jr.

Mrs. Helen Varg
group 6
Suzore, William G.

Elliott, Daisy L. (Mrs.)
Hood, Morris W., Sr.
Hodges, Robert G.
Mahinske, Paul E.
Walker, Lee
Wilkowski, Anthony J.

Miss Patricia Ann Carlson
group 7

Allen, Glenn S., Jr.
Andrus, Vera (Miss)
Anspach, Charles L.
Batchelor, Don G.
Beaman, Berry N.
Blandford, Robert H.
Bonisteel, Roscoe O.
Boothby, Lee

Mrs. Valerie Counard
group 9

Plank, Raymond A.
Powell, Stanley M.
Prettie, Kenneth G.
Pugsley, Earl C.
Radka, Elmer L.
Rajkovich, Nick J.
Kirk, Shuford
Richards, Leslie W.

Mrs. Jeanne Kingan
group 11

Judd, Dorothy L. (Mrs.)
Karn, Dan E.
King, Raymond L.
Richards, J. Burton
Knirk, Blaque
Koeze, Ella D. (Mrs.)
Kuhn, Richard D.
Lawrence, J. Don

Mrs. Marvella Witt
group 13

Durst, Clyne W., Jr.
Everett, Stanley
Farnsworth, James S.
Figy, Charles
Finch, Francis
Gadola, Paul V., Sr.
Goebel, Paul G.
Gover, William G.

Mrs. Lois Mahoney
group 15

Spitler, H. Carl
Stafseth, Henrik E.
Staiger, Frank O., Jr.
Stamm, Anthony
Sterrett, James H.
Stevens, J. Harold
Thomson, James F.
Tubbs, Robert S.

Ostrow, Samuel B.
Sablich, Joseph F.
Greene, William O.
Marshall, William G.
Bledsoe, Harold E.
Cushman, Katherine (Mrs.)

Mrs. Agnes Steffens
group 8

Habermehl, Donald M.
Hanna, William F.
Haskill, Ervin J.
Hatch, H. van den Berg
Heideman, Bert M.
Higgs, Milton E.
Howes, Roy
Hubbs, Lewis T.

Mrs. Frances Marshall
group 10

Butler, Ruth G. (Mrs.)
Conklin, Anne M. (Mrs.)
Cudlip, William B.
Davis, Charles J.
Dehnke, Herman
Dell, Clarence B.
Donnelly, Ann E. (Miss)
Doty, Dean

Miss Betty Kauffman
group 12

Rood, James R.
Rush, Allen F.
Seyferth, Don F.
Shackleton, James M.
Shaffer, John C.
Shanahan, Edward K.
Sharpe, Thomas G.
Sleder, Julius C.

Mrs. Sondra Kosier
group 14

Leppien, William J.
Lundgren, Kent T.
McAllister, Thomas R.
McLogan, Edward A.
Millard, Frank G.
Mosier, Carl D.
Page, G. Keyes
Perras, Clifford E.

Mrs. Mary Lippincott
group 16

Turner, Herbert M.
Tweedie, S. Martin, III
Upton, David F.
Wanger, Eugene C.
Wood, Claude L.
Woolfenden, Henry L.
Yeager, Weldon O.
Doty, Donald D.

Mrs. Judith Chelf (chief stenographer)
group 17

Brown, Garry E.
Iverson, Arthur T.
Leibrand, Karl K.
Gust, Rockwell T., Jr.

Walter DeVries, Chairman.

SECRETARY CHASE: That is the only standing committee report, Mr. President.

PRESIDENT NISBET: Reports of select committees.

SECRETARY CHASE: None, Mr. President.

PRESIDENT NISBET: Communications from state officers.

SECRETARY CHASE: No communications, Mr. President.

PRESIDENT NISBET: **Introduction, first reading and reference of proposals.**

SECRETARY CHASE: Mr. President, the following proposals are offered:

Mr. Bledsoe introduces

Delegate Proposal 1093, A proposal relating to equal protection of the laws. Amends article II by adding a new section.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: Mr. Douglas introduces

Delegate Proposal 1094, A proposal increasing personal property exemptions. Amends article XIV, section 1.

PRESIDENT NISBET: Referred to the committee on legislative powers.

SECRETARY CHASE: Mr. Douglas introduces

Delegate Proposal 1095, A proposal relating to homestead exemptions. Amends article XIV, section 2.

PRESIDENT NISBET: Referred to the committee on legislative powers.

SECRETARY CHASE: Mrs. Daisy Elliott introduces

Delegate Proposal 1096, A proposal relating to bail, fines, punishment and detention of witnesses. Amends article II, section 15.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: Mrs. Daisy Elliott also introduces

Delegate Proposal 1097, A proposal to grant counties authority to set the closing hour for alcoholic establishments.

PRESIDENT NISBET: Referred to the committee on legislative powers.

SECRETARY CHASE: Mr. Suzore introduces

Delegate Proposal 1098, A proposal to prohibit discrimination in employment because of age. Amends article II by adding a new section.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: Messrs. Austin, Buback, Downs, Ford, Hodges and Marshall introduce

Delegate Proposal 1099, A proposal to provide equality in Michigan congressional districts.

PRESIDENT NISBET: Referred to the committee on legislative powers.

SECRETARY CHASE: Miss Donnelly introduces

Delegate Proposal 1100, A proposal requiring the publication of supreme court decisions, contents thereof; and requiring the publication of index of all matters before said court and the disposal thereof. Amends article VII, section 7.

PRESIDENT NISBET: Referred to the committee on judicial branch.

SECRETARY CHASE: Mr. Brake introduces

Delegate Proposal 1101, A proposal with reference to the state board of escheats.

PRESIDENT NISBET: Referred to the committee on executive branch.

SECRETARY CHASE: Mr. Brake introduces

Delegate Proposal 1102, A proposal relative to the removal of state officers by the governor. Amends article IX, section 7.

PRESIDENT NISBET: Referred to the committee on executive branch.

SECRETARY CHASE: Messrs. Austin, Buback, Douglas, Downs and Marshall introduce

Delegate Proposal 1103, A proposal to establish a system of proportional voting in the house of representatives.

PRESIDENT NISBET: Referred to the committee on legislative powers.

SECRETARY CHASE: Messrs. Beginski, Buback, Downs, Follo, Ford and Marshall introduce

Delegate Proposal 1104, A proposal for earmarking funds for highways.

PRESIDENT NISBET: Referred to the committee on finance and taxation.

SECRETARY CHASE: Messrs. Buback, Douglas, Downs, Follo, Ford, Miss Hart and Mr. Marshall introduce

Delegate Proposal 1105, A proposal for earmarking funds for schools.

PRESIDENT NISBET: Referred to the committee on finance and taxation.

SECRETARY CHASE: Messrs. Austin, Buback, Douglas, Downs, Follo, Miss Hart, Mr. Marshall and Miss McGowan introduce

Delegate Proposal 1106, A proposal to retain civil service. Article VI, section 22.

PRESIDENT NISBET: Referred to the committee on executive branch.

SECRETARY CHASE: Messrs. Faxon and Wanger introduce

Delegate Proposal 1107, A proposal regarding right of access to public educational facilities.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: Messrs. Baginski and Suzore introduce

Delegate Proposal 1108, A proposal to require election of county supervisors or their appointment from elected officials. Amends article VIII, section 7.

PRESIDENT NISBET: Referred to the committee on local government.

SECRETARY CHASE: Messrs. Wanger and DeVries introduce

Delegate Proposal 1109, A proposal to create the office of legislative auditor general; to provide for his appointment and term; and to describe his powers and duties. Amends article V by adding a new section.

PRESIDENT NISBET: Referred to the committee on legislative powers.

SECRETARY CHASE: Messrs. Wanger and DeVries introduce

Delegate Proposal 1110, A proposal to change the title of auditor general to state comptroller. Amends article VI, sections 1, 17 and 21. To be considered in connection with Delegate Proposal 1109.

PRESIDENT NISBET: Referred to the committee on executive branch.

SECRETARY CHASE: Messrs. Wanger and DeVries introduce

Delegate Proposal 1111, A proposal to provide that the auditor general shall be ineligible for appointment to any other state office during the term for which he was appointed. Amends article VI, section 7. To be considered in connection with Delegate Proposal 1109.

PRESIDENT NISBET: Referred to the committee on legislative powers.

SECRETARY CHASE: That completes the proposals presently before the convention, Mr. President.

PRESIDENT NISBET: Second reading of proposals.

SECRETARY CHASE: Nothing on that order.

PRESIDENT NISBET: Third reading of proposals.

SECRETARY CHASE: Nothing on that calendar, Mr. President.

PRESIDENT NISBET: **Motions and resolutions.**

SECRETARY CHASE: Mr. DeVries, on behalf of the committee on administration, offers

Resolution 22, A resolution commending the civil service commission.

For body of resolution, see below.

PRESIDENT NISBET: Referred to the committee on rules and resolutions.

SECRETARY CHASE: Mr. DeVries, on behalf of the committee on administration, offers

Resolution 23, A resolution authorizing the appointment of a secretary's messenger.

Following is the body of Resolution 23, as offered:

Resolved, That the organizational chart of the convention staff be amended by adding to the office of the secretary an additional position to be named "Secretary messenger", as follows:

1. Amend **Appendix A,** under "OFFICE OF THE SECRETARY" after "finance clerk" by inserting "Secretary's messenger"; and

2. Amend **Appendix B,** after item **"II-H"** by inserting item **"I.** Secretary's messenger."

This person to serve as messenger to the president, to the secretary and his staff and to the press room manager.".

PRESIDENT NISBET: Referred to the committee on rules and resolutions.

Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, with respect to Resolution 22, may I say it is one in relation to which the convention should act at this time.

I would therefore move that the referral of Resolution 22 be rescinded, the rules be suspended, the secretary be instructed to read the resolution and that we act upon it at this point in our proceedings. We should certainly commend the civil service commission, without delay, for its assistance in creating the staff we are now enjoying.

PRESIDENT NISBET: Is there objection? I hear none. The referral of Resolution 22 is rescinded and the secretary will read the resolution.

SECRETARY CHASE: Mr. DeVries, on behalf of the committee on administration, offers

Resolution 22, A resolution commending the civil service commission.

Whereas, The civil service commission administered stenographic tests to 104 individuals over a period of 8 days, thus saving the committee on administration considerable time, effort and expense; now therefore be it

Resolved, That the delegates, on behalf of the constitutional convention, commend the civil service commission, Mr. Franklin DeWald, and his staff, for the competent and efficient service rendered the convention in the matter of testing stenographic personnel; and be it further

Resolved, That copies of this resolution be transmitted to members of the civil service commission and Mr. DeWald.

PRESIDENT NISBET: The question is on the resolution. All those in favor say aye. Those opposed, no.

The resolution is adopted.

SECRETARY CHASE: There are no further resolutions on file, Mr. President.

PRESIDENT NISBET: Any further motions or resolutions? Mr. Downs.

MR. DOWNS: Mr. President, I move that when the convention adjourns on Thursday, it stand adjourned until Monday evening.

PRESIDENT NISBET: Discussion? The vote is on the motion. Is there any discussion? If not, I will put the question. All those in favor say aye. Opposed, no.

There being no opposition, the motion prevails.

Are there any further motions or resolutions? Is there any unfinished business?

SECRETARY CHASE: None, Mr. President.

PRESIDENT NISBET: Special orders of the day.

SECRETARY CHASE: None.

PRESIDENT NISBET: General orders of the day.

SECRETARY CHASE: None.

PRESIDENT NISBET: Mr. Howes.

MR. HOWES: Mr. President, may I have permission to make a statement?

PRESIDENT NISBET: Without objection, you may, Mr. Howes.

MR. HOWES: Thank you.

Mr. President and fellow delegates, much has been said about the amount of money being spent for this constitutional convention. The money that the people of Michigan are spending for this convention is money they are risking on an investment in their future.

It is for us here convened to determine the results of that investment, so let us here strive as delegates with all our collective ability to produce a document which will prove to all the people of the state of Michigan, as proof of our ability or

inability unfolds, that they have made a blue chip investment in their future.

May we ask that the all-knowing, all-seeing Power help us to see ourselves as others see us and help us to realize, as we try to persuade our fellow delegates to our point of view, that there is one life we can always change—and that is our own.

PRESIDENT NISBET: Thank you. Are there any announcements?

SECRETARY CHASE: Mr. President, there have been filed the following notices of committee meetings:

The committee on legislative powers will meet in room H tomorrow at 10:30 a.m. T. Jefferson Hoxie, chairman.

The committee on administration will meet in the conference room, next to the office of the president, Thursday, tomorrow, at 1:00 o'clock. Walter DeVries, chairman.

The subcommittee on corporations of the committee on miscellaneous provisions and schedule will meet in room G tomorrow, Thursday, at 10:30 a.m. Alfred F. Conard, professor of law, University of Michigan, author of the constitutional convention preparatory commission's study on Corporations and the Michigan Constitution, will appear before the subcommittee. Henry L. Woolfenden, chairman.

The committee on declaration of rights, suffrage and elections will meet in room F tomorrow, Thursday, at 3:00 p.m. James K. Pollock, chairman.

The committee on judicial branch will meet in room B tomorrow, Thursday, at 8:30. Mr. Meredith Doyle, court administrator, will appear before the committee. Robert J. Danhof, chairman.

The committee on judicial branch will meet in room B next Tuesday, October 31st, at 10:30 a.m. The Honorable John R. Dethmers, chief justice of the Michigan supreme court, will meet with the committee on that occasion. Robert J. Danhof, chairman.

The committee on education will meet in room B tomorrow, Thursday, at 10:30 a.m. Dr. Ferris Crawford, assistant superintendent of public instruction, will appear before the committee. Alvin M. Bentley, chairman.

The committee on finance and taxation will meet in room E tomorrow, Thursday, immediately following the session. D. Hale Brake, chairman.

The committee on finance and taxation will meet according to the following schedule, until further notice: Every Tuesday, at 8:30 o'clock; every Wednesday, at 10:30 o'clock; every Thursday, immediately following the session. All meetings will be held in room F unless otherwise advised. D. Hale Brake, chairman.

The committee on rules and resolutions will meet in room B tomorrow, Thursday, at 10:30 a.m. Richard C. Van Dusen, chairman.

PRESIDENT NISBET: Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, may I offer a word of explanation? I scheduled that meeting before knowing of the intention of Mr. Bentley to hold a meeting with his committee in that same room. May I inquire if there are any other rooms we could use for the purpose of this meeting, as our own room is not yet available?

SECRETARY CHASE: What about the conference room?

MR. VAN DUSEN: I have just been advised by Dr. DeVries, Mr. President, that the conference room is available, and so we shall use it.

SECRETARY CHASE: The meeting, then, will be held in the conference room, next to the president's office, tomorrow, at 10:30 a.m.

There is one final announcement concerning committees. The committee on legislative organization will meet in room D today, immediately following the session. John Hannah, chairman.

PRESIDENT NISBET: Mr. Martin.

MR. MARTIN: Mr. President, I wish to speak with reference to the notice of the meeting of the committee on executive branch that has been announced in the journal.

The meeting is scheduled at 8:30 a.m. in room C, tomorrow morning. On that occasion the committee will hear from Mr. Brake, and also from Mr. Higgins, the chairman of the civil service commission, and from Mr. DeWald, personnel diretor of the civil service commission.

PRESIDENT NISBET: Mr. Brake.

MR. BRAKE: With reference, Mr. President, to the public hearing on the subject of earmarked funds in the constitution, may I say this. All delegates will be most welcome at that hearing which will be held in the 3 committee rooms, B, C and D.

However, if any delegate wishes to make a statement to the committee on this subject, we would appreciate if he would do so at another session of the committee rather than tonight when we will have present so many representatives of the general public who wish to be heard.

PRESIDENT NISBET: Are there any further announcements?

SECRETARY CHASE: Mr. President, there have been filed with the secretary the following requests for leave of absence: Mr. Donald Doty wishes to be excused from tomorrow's session; Mr. Figy wishes to be excused from the session on next Monday, October 30th; Mr. Pellow also wishes to be excused from tomorrow's session.

PRESIDENT NISBET: Without objection, they will be excused and they are.

Mr. Elliott.

MR. A. G. ELLIOTT: Mr. President, I simply wish to remind the members of the committee on local government that we will meet immediately after the adjournment of today's session in room A.

PRESIDENT NISBET: I wish to announce, ladies and gentlemen, that your president will be absent tomorrow. Mr. George W. Romney will preside at the session.

That completes the business of the session this afternoon. What is your pleasure?

Mr. Heideman.

MR. HEIDEMAN: Mr. President, I move that we adjourn.

PRESIDENT NISBET: The motion is for adjournnment of the session. All those in favor say aye. Opposed, no.

The motion prevails and we will now adjourn until 2:00 o'clock tomorrow afternoon.

[Whereupon, at 2:20 o'clock p.m., the convention adjourned until 2:00 o'clock p.m., Thursday, October 26, 1961.]

FOURTEENTH DAY

Thursday, October 26, 1961, 2:00 o'clock p.m.

PROCEEDINGS

VICE PRESIDENT ROMNEY: Will the delegates come to order, please.

The **invocation** will be offered by the Reverend C. Oscar Leonardson, of the Grace Lutheran Church of Lansing.

REVEREND LEONARDSON: Let us bow our heads in prayer.

We thank Thee, Lord, for the privilege of beginning all our daily activities in Thy name. How vital it is to have Thee in our midst as we ponder the tremendous import of a new constitution for this great state of Michigan.

We pray for Thy continued blessings on each delegate and beseech Thee to keep the entire delegation and the other citizens of Michigan as well, mindful of the fact that if the new instrument is to be of utmost benefit and value to all of us, we must seek Thy guidance and wisdom in all deliberations and decisions.

Be with us, therefore, in these crucial days and months so that when the convention is closed, we may all join in much gratitude to Thee for a task well done by those dedicated to Thee. We pray all this in the name of Jesus Christ, our Lord, saviour and guide. Amen.

VICE PRESIDENT ROMNEY: Thank you very much, Reverend Leonardson.

The **roll call** will be taken by the secretary.

SECRETARY CHASE: Those present please vote aye. Have you all voted? The secretary will lock the machine, and you may now return your voting lever to the non voting position.

Mr. President, a quorum of the convention is present.

Prior to today's session, the secretary received the following request for leave:

Mr. Perlich has filed a request that he be excused from today's session.

VICE PRESIDENT ROMNEY: Without objection, the request is granted.

SECRETARY CHASE: Absent with leave: Messrs. Dell, Donald Doty, Karn, Nisbet, Pellow, Perlich and Pollock.

Absent without leave: Mr. Bonisteel.

VICE PRESIDENT ROMNEY: Without objection, Mr. Bonisteel is excused.

Reports of standing committees.

SECRETARY CHASE: The committee on rules and resolutions, by Mr. Van Dusen, chairman, submits the following report and recommendations regarding committee procedures:

Recommended Committee Procedures

The following basic procedure is recommended for each substantive committee:

1. Each committee shall review and study existing constitutional provisions in the area of its substantive jurisdiction to determine:

(a) The existing provisions, their origin, history and rationale, the manner in which they have been interpreted and the practice thereunder;

(b) The extent to which existing provisions adequately meet the state's needs; and

(c) Areas in which improvement seems desirable.

2. After substantial completion of such study, each substantive committee shall then proceed to consider all proposed changes in the present constitution, within its substantive area, whether embodied in delegate proposals or otherwise.

3. Each substantive committee shall then prepare its committee proposal or proposals, and its supporting reason or reasons setting forth all relevant facts and arguments relating to said proposals.

4. Each substantive committee shall maintain a calendar showing, insofar as possible, the proposed order and dates of consideration of particular substantive matters within its jurisdiction, witnesses to be heard and such other information as may in the opinion of the committee assist interested citizens in their presentation of suggestions and advice and their understanding of the work of the committee.

5. The action journal to be maintained by each committee shall contain, in addition to the record of formal action taken by the committee, the subjects discussed, witnesses heard and reports submitted. Copies of committee journals shall be furnished to:

(a) All members of the committee;

(b) The president, vice presidents, secretary and codirectors of research;

(c) Chairmen and vice chairmen of all other standing committees;

(d) The convention library; and

(e) The press room.

6. Each substantive committee shall present to the convention for the information of delegates not serving on such committee periodic informal reports of its progress and activities. The schedule for submission of such reports shall be fixed by the president.

7. Not later than November 8, each substantive committee shall file with the president, in writing, proposed dates for the completion by such committee of the steps described in sections 1, 2 and 3 above.

VICE PRESIDENT ROMNEY: Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, this recommendation of the committee on rules and resolutions is the result of some careful and thorough consideration of the matter of committee procedures by the committee chairmen, by many of the committees themselves, by the rules committee, and its members; and it embodies the suggestions made by each of the committee chairmen. It embodies much of the work contained in a resolution offered by Dr. Nord, which was most helpful in the preparation of the recommendation.

It is not the intention of the rules committee by proposing these procedures to in any way hamstring or straitjacket the individual committees in their work. On the other hand, it is felt desirable that each member of the convention have a good idea of the order in which matters will be considered, the method of attack by which each committee will proceed to do its work.

The first 3 items propose 3 basic steps in the work of each committee:

First, the study step, in which we are now engaged.

Second, the consideration of proposals made by delegates, made by interested groups, made by interested citizens.

Third, finally, the development by each committee of its committee proposals to be reported to the floor, to be accompanied by committee reasons fully explaining and supporting the committee proposals.

Now, the remaining recommendations are designed to give as much communication to each of the members of the delegation as possible respecting the work of every one of the substantive committees.

The maintenance of a calendar is designed to inform all of the delegates what subjects the various committees are going to be considering and when and what witnesses are proposed to be heard, so that the delegates, if they want to be heard on a particular substantive matter, can come in and talk; and so that interested citizens can know when it is time for them to be present and heard.

The action journal, a little bit of backward communication, is to let all the delegates and the press as well know where the committees have been in the conduct of their work.

The distribution of the action journal, as set forth here, is of course not designed to be exclusive but is designed to

simply cover those places where we feel it is important that the action journal certainly go.

I think that many of the delegates will be particularly interested in the recommendation of item 6, to the effect that each substantive committee shall make periodic reports to the convention as a whole in an informal manner, describing the work of the committee, where it has been, and where it proposes to go.

It is contemplated that these reports will start in the near future and that perhaps 2 committees will report at each session, so that on a continuing basis the entire convention will know what is going on in each of the 9 substantive committees.

The final recommendation with respect to the filing by substantive committees of proposed dates of the completion of the study step, the consideration of proposals and the development of reports is simply a prod in the direction of establishing a schedule for our work as soon as can be realistically estimated.

Mr. President, I move the adoption of the recommendation.

VICE PRESIDENT ROMNEY: The question is on the committee recommendation.

Mr. Madar.

MR. MADAR: Mr. President, at this time I would like to move to amend as follows:

1. Amend the report by adding "8. that on November 15, no delegate proposal shall be introduced, numbered, or printed except upon authorization by the convention.".

MR. VAN DUSEN: Point of order, Mr. President.

I question whether Mr. Madar's motion is germane to the matter before us, which deals with the committee procedures, and not with the general convention business.

VICE PRESIDENT ROMNEY: The secretary advises me that is correct, because the motion you made, Mr. Madar, is part of another resolution that has previously been filed and is being presented this afternoon for consideration.

Miss Donnelly.

MISS DONNELLY: Mr. President, I would like to move to amend item 5, to add:

1. "(f) All delegates.".

2. Amend item 7, after "than" by striking out "November" and inserting "December".

VICE PRESIDENT ROMNEY: Mr. Van Dusen.

MR. VAN DUSEN: I would like, Mr. President, to request that these be considered separately; and I would like first to discuss the proposal of Miss Donnelly that all delegates receive copies of all committee journals.

This was considered by the rules committee. Certainly, any delegates who would like to be furnished with all committee journals are welcome to them but you are asking for a blizzard of paper in your mail boxes every day.

I would think—and I request the advice of the secretary on this point—that it might be better to permit any delegate who wants copies of any or all committee journals to file a request with the secretary, who could then see that they would be furnished. Could that be done, Mr. Secretary?

SECRETARY CHASE: That could be done.

It has likewise been suggested that the delegate or the person interested make requests from the clerk of the committee in which they are particularly interested for copies of the action journal of that committee.

MR. VAN DUSEN: Either way, Mr. President. It seems to me superior to inflicting upon each delegate every morning 9 action journals of substantive committees. We already have quite a lot of reading.

VICE PRESIDENT ROMNEY: Miss Donnelly, do you want to insist on your first amendment in light of that permission?

MISS DONNELLY: No, I wouldn't insist upon it as long as they are definitely available so that we don't have to chase over to each clerk each day and say we would like them.

So if they are automatically placed in the boxes of those of us who make this request, that would be satisfactory. I think it is an unusual burden for the delegate to have to go to each committee clerk, 9 in all, and ask for a journal. I think there should be a place where we can sign our name and have them automatically given to us.

MR. VAN DUSEN: I'm sure that Miss Donnelly's request can be accomplished. I also suggest that the rule provides for copies in the convention library where the delegates who are interested could go and get them.

But I'm sure that any delegate who wants to be furnished on a daily basis in his box the copies of the action journals of the committees, can have that done.

VICE PRESIDENT ROMNEY: As I understand it then, Miss Donnelly, you withdraw your first amendment?

MISS DONNELLY: Yes.

VICE PRESIDENT ROMNEY: Now, there was the other motion to amend item 7; substituting "December" for "November", as I understand it, in that item.

SECRETARY CHASE: Miss Donnelly has offered the following amendment:

2. Amend item 7, after "than" by striking out "November" and inserting "December", so the language will read: "Not later than December 8, each substantive committee shall file with the President . . ."

MR. VAN DUSEN: Here, Mr. President, I would only suggest that these are only proposed dates. There's nothing definite or firm about the dates on which the committees will report.

However, it seems to me extremely important that each committee start thinking now, not in December, about when it is going to be able to complete its study; about approximately how long it thinks it is going to take to consider proposals; and when it thinks it can get the committee proposals out.

Quite obviously, if those dates later turn out to be inaccurate, or they can't be met, they can be revised. But I think it is not too early to require committees to think about this.

VICE PRESIDENT ROMNEY: The question is on Miss Donnelly's amendment. Those in favor say aye. Those opposed say no. The ayes have it.

The amendment is adopted.

Dr. Nord.

MR. NORD: Mr. President, relative to the recommendation, as amended, I would like to speak in favor of it in general and with an amendment in particular.

First of all, I would like to point out to those delegates who may not have had a chance to study this document that it is perfectly correct, as pointed out by Mr. Van Dusen, that I am, let's say, the instigator of some of the ideas or nearly all of the ideas in here, so it would be very difficult for me to oppose this resolution. I do not intend to oppose it.

But I would like to make this comment. Although it is really a great piece of work, there is one flaw. (laughter) At the committee meeting this morning I pointed out to the committee—and they agreed, and I believe they may have overlooked it in presenting it—that it is important that this document should not be in a separate category from every other document we receive.

For example, this one is headed "Recommended Committee Procedures". There is no resolution number before it. And whereas it came from a resolution, it was my understanding—and I believe it was agreed on by the committee—that this would be returned as a substitute for Resolution 10, which I offered.

The reason I move to amend that the title be stricken and no longer read "Recommended Committee Procedures" but be headed "Substitute Resolution 10", will be illustrated further when I point out the other half of my motion to amend.

The reason that I ask that this be in the form of a resolution of a standard type, so to speak, is this. All other resolutions state that they are resolutions and they are obligatory upon the entire convention. This one should be, too. In fact, it is vital that this one be, too. I say this because whatever else comes out of this committee this afternoon is based upon the understanding that this one will be obligatory—obligatory in a certain respect, as I'll point out in a minute.

The reasons it needs to be obligatory are these: In item 5

it is stated that copies of the committee journals shall be furnished to various people. It is absolutely indispensable that they be furnished. If that is optional with the committee, everything else we have done this morning in the rules committee will fail because it is all predicated on information that everything that is done will be absolutely available to people and cannot in any sense of the word be suspected of being secret.

I dare say that nobody has the guts to stand up in here and propose that anything be secret anymore, especially myself. But if we don't make this obligatory, we run the risk that someone will say that certain things that happened in the committee, such as suggestions which are not formal proposals, would not necessarily be reported back to the members and to the press. That is one of the reasons why I believe this resolution needs to be obligatory.

The other one is in item 6, where periodic reports are to be made to the delegates. It seems to me it is absolutely indispensable, and not just advisable, that there be such reports. It is indispensable for us to know what the committee thinks it's doing, how it is making out, and so on.

For that reason, I offer the following amendment, I move to amend as follows:

(1) That the title presently appearing, be stricken and changed to read "Substitute Resolution 10.";

(2) That the following words be added at the beginning of the resolution: "Be it resolved, That"; and

(3) That the first line shall be stricken in part, and the following words be added to it, so that it shall read as follows: "The following basic procedure shall be followed by each substantive committee insofar as feasible:".

Mr. President, I move the amendment.

SECRETARY CHASE: Mr. Nord offers the following amendment:

1. Amend the committee report by striking out the heading "Recommended Committee Procedures" and the first line thereafter, and inserting "**Substitute for Resolution 10.**

Be it resolved, That the following basic procedure shall be followed by each substantive committee insofar as feasible:".

MR. VAN DUSEN: Mr. President, I'm sure the committee on rules and resolutions has no objection to the amendments offered by Dr. Nord.

VICE PRESIDENT ROMNEY: The question is on the amendment. All in favor say aye. Opposed?

The amendment is adopted.

The question now is upon the Substitute for Resolution 10. Those in favor, say aye. Those opposed, no.

It is adopted.

Following is Resolution 10 as substituted and adopted by the convention:

Substitute for Resolution 10.

Be it resolved, That the following basic procedure shall be followed by each substantive committee insofar as feasible:

1. Each committee shall review and study existing constitutional provisions in the area of its substantive jurisdiction to determine:

(a) The existing provisions, their origin, history and rationale, the manner in which they have been interpreted and the practice thereunder;

(b) The extent to which existing provisions adequately meet the state's needs; and

(c) Areas in which improvement seems desirable.

2. After substantial completion of such study, each substantive committee shall then proceed to consider all proposed changes in the present constitution, within its substantive area, whether embodied in delegate proposals or otherwise.

3. Each substantive committee shall then prepare its committee proposal or proposals and its supporting reason or reasons setting forth all relevant facts and arguments relating to said proposals.

4. Each substantive committee shall maintain a calendar showing, insofar as possible, the proposed order and dates of consideration of particular substantive matters within its jurisdiction, witnesses to be heard and such other information as may in the opinion of the committee assist interested citizens in their presentation of suggestions and advice and their understanding of the work of the committee.

5. The action journal to be maintained by each committee shall contain, in addition to the record of formal action taken by the committee, the subjects discussed, witnesses heard and reports submitted. Copies of committee journals shall be furnished to:

(a) All members of the committee;

(b) The president, vice presidents, secretary and codirectors of research;

(c) Chairmen and vice chairmen of all other standing committees;

(d) The convention library; and

(e) The press room.

6. Each substantive committee shall present to the convention for the information of delegates not serving on such committee periodic informal reports of its progress and activities. The schedule for submission of such reports shall be fixed by the president.

7. Not later than December 8, each substantive committee shall file with the president, in writing, proposed dates for the completion by such committee of the steps described in sections 1, 2 and 3 above.

SECRETARY CHASE: Item 2. Recommendation relative to amendment of rule 56.

The committee recommends that rule 56 of the rules of the convention be amended by adding at the end of the first sentence after "them" a comma and the words "or shall originate as committee proposals", so that the first sentence of rule 56 will read:

All matters intended to become a part of any revised constitution or constitutional amendment shall be introduced by a delegate or delegates in the form of a proposal and endorsed by the delegate or delegates introducing them, or shall originate as committee proposals.

For the text of rule 56 as adopted by the convention see above, page 133.

VICE PRESIDENT ROMNEY: Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, it was brought to the attention of the rules committee this morning that there might be some ambiguity in the rules relating to the requirement that committee proposals have their origin in delegate proposals.

I think I can speak for the committee on permanent organization and rules, which considered and promulgated these rules, in saying that that was not the intention of that committee; but that it was the intention of the committee that committees themselves would develop, as a result of their studies and consideration, proposals which might incorporate the substance of delegate proposals or might contain wholly original matter.

It is the purpose of this rule change to make sure that committees have the right to include in their proposals wholly original matter. I think it simply is designed to make the rules consistent with our original intention.

For that reason, I would move that the rules be suspended for the immediate consideration of this recommendation.

VICE PRESIDENT ROMNEY: Without objection, the rules will be suspended and we will proceed to the consideration of the amendment. Is there objection? I hear none. It is so ordered.

The question is on the amendment. Those in favor say aye. Opposed?

The amendment to rule 56 is adopted.

Following is rule 56 as amended by the convention:

Introduction.

Rule 56. All matters intended to become a part of any revised constitution or constitutional amendment shall be introduced by a delegate or delegates in the form of a proposal and endorsed by the delegate or delegates introducing them, or shall originate as committee proposals. Five copies of any proposal shall be handed to the secretary not later than 3 hours prior to calling the convention to order. All proposals shall be introduced in accordance with the form prescribed by the secretary. Proposals shall be printed and distributed under the direction of the secretary.

SECRETARY CHASE: Item 3. The committee on rules and resolutions respectfully reports back to the convention **Resolution 21**, A resolution establishing deadline for introduction of delegate proposals; with amendments, recommending that the amendments be agreed to and that the resolution, as thus amended, be adopted.

For the full text of Resolution 21, as offered, see above, page 210.

The following are the amendments recommended by the committee:

1. Amend the first sentence by striking out "November 15, 1961," and inserting "November 21, 1961,".

2. Amend the second sentence by adding at the end thereof a comma and "and if so requested in writing by any delegate, said committee shall acknowledge in its action journal its receipt of any such suggestion.", so that the body of the resolution will then read:

Resolved, That after November 21, 1961, no delegate proposal shall be introduced, numbered, or printed except upon authorization by the convention. This resolution shall not prevent any delegate or interested citizen from thereafter submitting to the appropriate committee any suggestion for revision of the constitution, and if so requested in writing by any delegate, said committee shall acknowledge in its action journal its receipt of any such suggestion.

VICE PRESIDENT ROMNEY: Mr. Van Dusen.

MR. VAN DUSEN: I would like to state first, Mr. President, that, at least in part, the committee is indebted to Delegate Henry Woolfenden for this suggestion and I think it is perhaps regrettable that he was not joined as a cosponsor of it because certainly he is entitled to that recognition.

In support of the resolution I would like to say this. The rules committee considers it one of its important functions to assist the substantive committees and the convention in the orderly conduct of its business and, because at this stage most of our work is being done in committee, the rules committee believes that it is important that we be of such assistance as we can to the substantive committees in formulating measures which will be helpful to them.

Now in the committee procedures which we have just adopted, the first step is the study step, in which the committees study the substantive areas in which they are concerned.

The second step will be the consideration of proposals—proposals made by delegates, proposals made by interested citizens, proposals from whatever source derived. And this second step, most of the substantive committees have agreed, will be difficult to undertake without some assurance that as it is begun, the substantive committees will have before them most, if not all, of the proposals which are to be made to them by delegates, not members of the committee, for revision of the constitution in the area of their concern.

Accordingly, this resolution, as amended, is designed to see to it that by November 21 all formal printed and numbered delegate proposals are in.

Now, this should not impose serious hardship. All of us have known since April of this year that the convention was coming. We all went through campaigns in which the issues were thoroughly discussed and we formulated positions with respect to many of them. We have all known since September twelfth that we were going to be here and for nearly 4 weeks now we have actually been serving as delegates to this convention. The insertion of a deadline 4 weeks away should not therefore cause undue hardship on any delegate.

Now some delegates have indicated that they have been waiting up to now for professional assistance in drafting proposals for introduction. We have 3 codirectors of research who are waiting to serve you in this regard and as of Monday I'm advised by one of the codirectors there will be 2 assistant directors of research available on a full time basis to do nothing but help draft delegate proposals for introduction.

In other words, there's no reason why delegates who wish to present formal proposals can't get them ready for presentation by November 21. Incidentally, November 21 is the date picked by the committee in preference to November 15 because it gave a week longer to accomplish the purpose and because it will enable the printing of such formal delegate proposals as come in near the deadline in time so that the delegates can consider them over the Thanksgiving recess.

Now there has been some concern expressed about the meaning of this resolution. They say: what happens if I have a good idea in January which hadn't previously occurred to me? Well now, this should not, I submit, concern any delegate.

First, if it is so important that it justifies formal presentation, introduction, numbering and printing, then the convention can authorize that to be done under the express language of the resolution.

However, I suggest that most of these good ideas—these late blooming afterthoughts—will not require such formal treatment. They can simply be submitted informally to the appropriate committee, either in writing or orally, where they will, in common with formal delegate proposals, be considered by the committee, boiled down, and assimilated into the eventual committee proposal and report.

If a delegate is concerned about being sure his suggestion is acknowledged by the committee, under the amendment proposed by the rules committee, at his request, receipt of his suggestion will be duly acknowledged and will appear in the action journal of the committee.

If a delegate is concerned that a committee may not thereafter report out his proposal, I should refer his attention to the standing rule with respect to minority reports. If the suggestion has sufficient merit to attract the support of 3 members of the committee, even in a committee as large as 27, it can be incorporated in a minority report, printed in the journal of the convention, and presented before action is taken on the committee proposal itself.

Now in summary, this is a resolution which is designed to help us as a full convention, accomplish our work. It does not foreclose any delegate or interested citizen from bringing his proposals before a committee to be heard either before November 21, which is the suggested deadline, or thereafter.

The proposal had not quite the unanimous support of the committee on rules and resolutions but there was only one dissent. I respectfully urge the adoption of the resolution.

VICE PRESIDENT ROMNEY: Mr. Hutchinson.

MR. HUTCHINSON: Mr. President, I would like to ask Mr. Van Dusen if the committee gave any thought to the fact that since Thanksgiving comes on the twenty-third, it would seem as though a very logical time then for the last introduction of proposals should be our session of the twenty-second, rather than the twenty-first. It would just seem logical that way.

That would give right up until the Thanksgiving recess, in other words, for the introduction of proposals and I dare say that if you cut off all proposals the day before, I wonder what we are going to do in our session of the twenty-second.

MR. VAN DUSEN: Well, Mr. President and Mr. Hutchinson, the committee was impressed with the logic of the twenty-second and an amendment was offered to make it the twenty-second. The twenty-first was finally agreed upon, on the premise that if the proposals were introduced on the twenty-first, they

would be printed and available to the delegates on the twenty-second, which would be the last day we would be here and those delegates who were diligent enough to wish to give consideration to proposals over the Thanksgiving recess would then have them available in print during that period. This was the only reason for the change.

MR. HUTCHINSON: Mr. President, I would like to make further inquiry along that line then. I wonder if we can make a proper assumption that a proposal introduced on the twenty-first would be duplicated and on the desks of all the members on the morning of the twenty-second. I don't notice that I've gotton very many proposals on my desk yet.

I wonder if there isn't going to be such a tremendous volume of them perhaps, in the last couple of days, that the duplicating staff might not be expected to be swamped and they might better have until the following week, actually, in order to get them cranked out.

MR. VAN DUSEN: Mr. President, certainly the committee is not going to dispute the matter of one day with Mr. Hutchinson. Obviously his point is well taken. If the twenty-second would suit better, we are happy to go to the twenty-second. I have given you the reasons why we suggested the twenty-first and we don't feet particularly strongly about it.

VICE PRESIDENT ROMNEY: Are you accepting the twenty-second?

MR. VAN DUSEN: I think it would have to be proposed as an amendment.

MR. HUTCHINSON: Mr. President, I will offer that as an amendment. Not that I feel particularly strong about it, but it does seem to me that that is quite likely to happen—that those that are introduced on the twenty-first are not likely to be available on the twenty-second. So why not cut it off just before the Thanksgiving holiday?

VICE PRESIDENT ROMNEY: The question is on the amendment offered by Mr. Hutchinson to committee amendment 1, as follows:

1. After "November" strike out "21" and insert "22".

That is the immediate question.

Mr. Upton.

MR. UPTON: Point of information. If this is passed, does that mean the whole amendment is passed?

VICE PRESIDENT ROMNEY: No. This is simply an amendment to the amendment; and if this is adopted, we will then vote on the committee amendment, as amended; and if that is adopted, we will then vote on the resolution.

Correct, Mr. Secretary?

SECRETARY CHASE: Correct.

VICE PRESIDENT ROMNEY: Mr. Snyder.

MR. SNYDER: Mr. President, a point of information. After you take your vote on the amendment, are you going to have further discussion on the resolution or are you going to proceed with the vote?

VICE PRESIDENT ROMNEY: There will be opportunity for further discussion once we have acted on the amendment to the amendment.

MR. SNYDER: Thank you.

VICE PRESIDENT ROMNEY: Those in favor say aye. Opposed?

The amendment to the amendment is adopted.

Now the question is on the amendment, as amended.

Mr. Downs.

MR. DOWNS: Mr. President, I think the committee has worked with what is a difficult problem and it is almost like: which comes first, the chicken or the egg?

As I understand this, they tried to get a cutoff date so the delegates would move faster but at the same time, through the idea of a suggestion for revision, permit a delegate who gets an idea after studying proposals to come in with that at a later date.

I would like to say now that what I think are the principles we need are to have an orderly process and protect the minority of one who may have an idea at a later time. I think the rule comes awfully close to it and I have 2 questions I would like to ask the chairman of the committee through the Chair.

I think, first, after the orderly deadline for the official proposals, there should then be the right to present any idea to a committee, which I believe is incorporated in the concept of the suggestion for revision.

Secondly, there should be the right of the individual to get a discharge motion on this in case he feels that nothing is happening.

Thirdly, the right to speak.

And, fourth, the right for a recorded roll call vote.

I am therefore asking the chairman of the committee if this could be accomplished by 2 things—and I do not know if it is in order now.

The first would be that rule 56 which, as we amended it, says that the method for changing the constitution is a proposal or a committee recommendation, should be amended to include the term "suggestion for revision." I believe that if that were done, it would make it clear that if the suggestion for revision avenue were followed, that that would then have the same status as a proposal.

The second would be an amendment to what I believe is rule 34, which says the discharge motion can be made on a proposal. If that can be amended to include the term "suggestion for revision", I think we would then accomplish the dual purpose, which seems conflicting at times, of an orderly process, plus the right of the individual who gets an idea later to have it fully presented to the convention.

MR. VAN DUSEN: Mr. President, in response to Mr. Downs' suggestions, both of which were considered in the rules committee, let me suggest this.

First, you've got to have rules of some sort, and at some point I suppose they pinch. We have attempted to take as much of the pinch out of this rule as possible, consistent with keeping it an effective aid to orderly procedure, and not just a statement of organized anarchy.

If a delegate has a proposal, a suggestion or a brilliant afterthought, he has 2 avenues of bringing it before the entire convention, as distinguished from just having it considered in the committee.

The first is a request that his proposal be introduced, numbered and printed in accordance with the first sentence of this rule, which requires that after November 22, no delegate proposal be introduced, numbered or printed except upon authorization of the convention.

Now, if his proposal is so meritorious—but he is the only one who thinks of it—that it ought to be given the dignity of a formal delegate proposal, then it seems to me his request to have it printed is an effective, complete substitute for a discharge motion because he would have the same opportunity to argue the merits on such a motion as he would on a discharge motion.

Second, and a far more likely remedy for a delegate who makes a suggestion to a committee which he wants to have brought before the entire delegation, is his remedy of having his suggestion incorporated as a part of a minority report, which requires only that he obtain the support of 3 members of a committee. And if a suggestion is so lacking in merit that it cannot obtain the support of 3 members of a committee to be incorporated in a minority report, printed in the journal, and presented as an amendment ahead of the majority report, then it seems to me that we are wasting the time of the convention in further considering it.

So my response to Mr. Downs is that all of these points have been thoroughly considered and it was the feeling of the rules committee that adequate remedies were present in the existing rules without further weakening the present rule structure.

VICE PRESIDENT ROMNEY: Mr. Downs, the Chair would like to inquire as to whether you made a motion?

MR. DOWNS: As I understand, would it be in order to make an amendment to the amendment at this time? This would be amending rule 56 and rule 34.

VICE PRESIDENT ROMNEY: No, it would not be in order, Mr. Downs.

MR. DOWNS: It would not be in order. All right.

VICE PRESIDENT ROMNEY: Mr. McCauley.

MR. McCAULEY: Mr. President, as the lone dissenter on that committee, I appreciate the remarks of our chairman, Mr. Van Dusen, and I certainly don't mind being pinched, but I don't like to be pinched when I first arrive someplace.

I say this: I think that we, being a deliberative body, have got a responsibility not only to our constituents back home, but to ourselves and our fellow delegates. It has been my impression during the short time that we have been here that there has been much knowledge disseminated amongst the delegates through the proposals as introduced formally.

I say this: I say that with the rule that we adopted, this Substitute for Resolution 10—and I was sorry to see Miss Donnelly drop her amendment as far as the delegates receiving the journals—I feel that there's going to be a lack of communication between the delegates. I feel that we are going to miss a lot of the action and a lot of the studies of individual delegates.

I do not feel that the research department will have sufficient time with this deadline of November 22 to come forth with studious reports covering the various phases of the constitution. For this reason, Mr. President, I'm against it and I urge my fellow delegates to vote against a set deadline at this particular time.

VICE PRESIDENT ROMNEY: Mrs. Cushman.

MRS. CUSHMAN: I too, am somewhat reluctant to impose a November 22 deadline on the delegate proposals. Before this morning I might not have considered it too important a matter but something happened in the meeting of our local government committee this morning that I personally consider rather interesting in that I think it might indicate some of the problems we might possibly get into.

As a result of discussing a present provision in the constitution, we found ourselves involved in a completely new area, which as far as we can see is not covered in adequate form in the present constitution, and as nearly as we can tell there is a question about whether it might not require the attention of a special committee of some sort.

Our chairman appointed a subcommittee to consider this and our subcommittee is going to report back to the committee. Where it goes from there I'm not completely clear. Anyway, we hope it will be brought to the attention of the convention that this is an area, which in the opinion of at least some of us, requires some serious consideration.

And I don't think that, actually—I know for myself I never had considered this in regard to the constitution before. In regard to other matters, yes; but not in regard to the constitution. Yet I think it is something that we should think of.

And if you can get into a completely new area like that after only a couple of weeks, it might be that there are other things, too, that might require this kind of consideration. I think this is the type of trouble that we might get into if we were not able to continue our delegate proposals.

You have almost an automatic limit on your delegate proposals and that is because of the fact that the committee, in its discussion, isn't going to want to go back and discuss the same thing too many times. It would do well for anybody to get that material in fairly early if they wanted adequate consideration.

MR. VAN DUSEN: I would simply say, Mr. President, in response to Mrs. Cushman, that I completely agree with her concern for the newly discovered area of substantive matter, but I believe the rule as proposed fully contemplates and fully protects the consideration of it.

VICE PRESIDENT ROMNEY: Mr. Hodges.

MR. HODGES: Mr. President, this proposed restriction either serves a purpose or it doesn't. If it does not serve a purpose, then we shouldn't consider it. If it does serve a purpose, then I am against it.

If the purpose is to restrict proposals from being made after the deadline, I'm against it. I think that this gives the opportunity and gives the advantage to those groups that have vested interests in this constitutional convention and puts at a disadvantage those of us who have come up here to do some deliberation and thinking about the various items before us.

Therefore, Mr. President, I would propose an amendment to change the deadline date to January 1.

VICE PRESIDENT ROMNEY: Mr. Woolfenden.

MR. WOOLFENDEN: Mr. President, I don't know whether that amendment is seconded. I wanted to speak to the most recently made amendment.

VICE PRESIDENT ROMNEY: It doesn't need to be seconded, Mr. Woolfenden, so the amendment is before us. Is that right, Mr. Secretary?

SECRETARY CHASE: Mr. Hodges has offered the following amendment to the committee's amendment:

1. Amend committee amendment 1 by striking out "November 22, 1961" and inserting "January 1, 1962", so the language will then read:

Resolved, That after January 1, 1962, no delegate proposal shall be introduced, numbered, or printed . . .

VICE PRESIDENT ROMNEY: Mr. Woolfenden.

MR. WOOLFENDEN: Mr. President, if I may, I will address myself to that amendment because I think it goes to the heart of this motion.

I oppose the amendment and I am in favor of the resolution as it has come from the committee. I may say that I would be heartily in favor of going even further than the committee has or the authors of this resolution.

However, it does constitute a long step in the direction in which I sought to induce this convention to go with my Resolution 7. At the time that resolution was introduced, Dr. Nord referred to it or drew the analogy of a railroad and said he did not want to buy a ticket on the railroad.

I appreciate that analogy because I think it is very pertinent. I don't know whether Dr. Nord has had any administrative experience in running a railroad or any other business enterprise but I can say to you that a railroad that attempts to run without a timetable will not be a very successful railroad.

I can also say to you that if we try to operate this convention without any self imposed timetable, it's a heck of a way to run a railroad or this convention. I think it's vitally important that we, as a matter of self discipline, impose upon ourselves a timetable to get the job done.

The people of the state of Michigan are looking to the 144 delegates assembled here to get down to business and do a job expeditiously and I think that we will make an inexcusable mistake if we just drift along and do not set a timetable for our deliberations.

This is the first step in the timetable. I strongly support it. But I oppose the most recent amendment and I hope the delegates will go along with me.

VICE PRESIDENT ROMNEY: Mr. Snyder.

MR. SNYDER: Thank you, Mr. President. I am in receipt of some conflicting information as presented by the committee and I would ask Mr. Van Dusen to clarify the matter for me.

At a meeting at luncheon yesterday with various members of the research department, we were advised that committee requests will have priority and precedence over the requests of an individual. In addition to that we were advised that there is a heavy backlog of research work already requested by some of the committees and therefore it may be several weeks before some of the delegate proposals can be acted upon.

In view of this information, does the committee still hold to the rationale that they advanced in supporting the proposition?

And, while Mr. Van Dusen is there, I certainly would like to know where he got that fancy holder for his papers. I think that could be used on all the microphones.

MR. VAN DUSEN: Dealing with the second question first, Mr. President, it simply appeared here Monday evening. I suspect that perhaps some of the administrative people might have thought this was a convenient spot for Dr. Nord to speak. (laughter)

Lest I be misunderstood, I would like to state that Dr. Nord is a very constructive member of the rules committee, and

I'm very grateful to have him on it and I hope the spirit of levity may be welcomed.

On the second point, I spoke with Dr. Joiner after your meeting yesterday, Mr. Snyder. He had been concerned about the matters which you expressed, and after consultation with his codirectors of research, had determined that it was important that staff help be made available on a priority basis to individual delegates; and he assured me that as of Monday, he would have 2 experienced assistant directors of research available on a full time basis for that particular aspect of the work.

VICE PRESIDENT ROMNEY: Mr. Upton.

MR. UPTON: Mr. President, I know there is a great deal of concern among many delegates concerning this deadline. I also realize that it is necessary to have some kind of a target date to go forward. I know Mr. Hodges selected January 1 as an arbitrary date, just as the committee selected the November date. I feel that we should have more time, perhaps, to consider this date, and let us have more experience as to what is required in making proposals. Most of us haven't made a proposal and don't know what it consists of.

Therefore, to give us more time to consider this proposition, I would move to table this resolution for 2 weeks.

VICE PRESIDENT ROMNEY: The question is on the motion to lay the resolution on the table. It is not debatable. The question is on the motion to table. Those in favor say aye. Those opposed? The ayes have it.

Resolution 21 is laid on the table until Thursday, November 9.

Does that complete the rules committee's recommendations?

SECRETARY CHASE: Item 4. The committee on rules and resolutions reports back to the convention **Resolution 23,** A resolution authorizing the appointment of a secretary's messenger; and recommends that the resolution be adopted.

For Resolution 23, as offered, see above, page 215.

VICE PRESIDENT ROMNEY: Mr. Van Dusen.

MR. VAN DUSEN: This resolution, Mr. President, has been offered on behalf of the committee on administration by its chairman, Dr. DeVries, and amends the table of organization by creating the position of messenger to the secretary.

The rules and resolutions committee supports it heartily.

VICE PRESIDENT ROMNEY: The question is on the adoption of the resolution. Those in favor say aye. Opposed? The resolution is adopted.

Are there any further reports of standing committees?

SECRETARY CHASE: None.

VICE PRESIDENT ROMNEY: If not, reports of select committees.

SECRETARY CHASE: None, Mr. President.

VICE PRESIDENT ROMNEY: Communications from state officers.

SECRETARY CHASE: None.

VICE PRESIDENT ROMNEY: **Introduction, first reading and reference of proposals.**

SECRETARY CHASE: Mr. Yeager introduces

Delegate Proposal 1112, A proposal to amend the legislative apportionment sections of the constitution. Amends article V, sections 2, 3 and 4.

VICE PRESIDENT ROMNEY: The proposal is referred to the committee on legislative organization.

SECRETARY CHASE: Messrs. Faxon, Wood and Gust introduce

Proposal 1113, A substitute proposal pertaining to the inclusion of section 1 of article XI in the constitution. Amends article XI, section 1.

VICE PRESIDENT ROMNEY: The proposal is referred to the committee on education.

SECRETARY CHASE: Mr. Lawrence introduces

Delegate Proposal 1114, A proposal relating to the method of nomination for certain judicial officers. Amends article VII, section 23.

VICE PRESIDENT ROMNEY: Referred to the committee on judicial branch.

SECRETARY CHASE: Mr. W. F. Hanna introduces

Delegate Proposal 1115, A proposal for the organization of county government and the division of county government into an executive, legislative, and judicial branch. Amends article VIII by striking out that part which deals with counties and substituting new material.

VICE PRESIDENT ROMNEY: Referred to the committee on local government.

SECRETARY CHASE: Mr. W. F. Hanna also introduces

Delegate Proposal 1116, A proposal to establish a county judicial system and to abolish justice of the peace and municipal courts. Repeals all references in constitution to justice of the peace courts.

VICE PRESIDENT ROMNEY: Referred to the committee on judicial branch.

SECRETARY CHASE: Messrs. Downs, Marshall, Austin, Buback, Ford and Hodges introduce

Delegate Proposal 1117, A proposal to provide equality in state representative districts.

VICE PRESIDENT ROMNEY: Referred to the committee on legislative organization.

SECRETARY CHASE: Messrs. Downs, Marshall, Austin, Buback and Douglas introduce

Delegate Proposal 1118, A proposal to establish a system of proportional voting in the state senate.

VICE PRESIDENT ROMNEY: Referred to the committee on legislative powers.

SECRETARY CHASE: Messrs. Downs, Marshall, Austin, Buback, Ford and Hodges introduce

Delegate Proposal 1119, A proposal to provide equality in state senatorial districts.

VICE PRESIDENT ROMNEY: Referred to the committee on legislative organization.

SECRETARY CHASE: Messrs. Faxon and Upton introduce

Delegate Proposal 1120, A proposal to empower the legislature to take recognition of religious holidays in fixing the date of elections. Amends article III, section 1.

VICE PRESIDENT ROMNEY: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: Mr. Stevens introduces

Delegate Proposal 1121, A proposal relating to the appearance in person or by counsel in any court in this state. Amends article II, section 12.

VICE PRESIDENT ROMNEY: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: Mr. Stevens introduces

Delegate Proposal 1122, A proposal to change the per centum of qualified and registered electors required on the petitions to amend the state constitution. Amends article XVII, section 2.

VICE PRESIDENT ROMNEY: Referred to the committee on miscellaneous provisions and schedule.

SECRETARY CHASE: Mr. Stevens introduces

Delegate Proposal 1123, A proposal to provide for legislative control of certain delegated powers. Amends article V by adding a new section.

VICE PRESIDENT ROMNEY: Referred to the committee on legislative powers.

SECRETARY CHASE: Mr. Faxon introduces

Delegate Proposal 1124, A proposal to create a state department of public instruction under authority of the state superintendent of public instruction. Amends article XI, section 2.

VICE PRESIDENT ROMNEY: Referred to the committee on education.

That completes the introduction, first reading and reference of proposals.

Second reading of proposals.

SECRETARY CHASE: Nothing on that order, Mr. President.

VICE PRESIDENT ROMNEY: Third reading of proposals.

SECRETARY CHASE: Nothing.

VICE PRESIDENT ROMNEY: **Motions and resolutions.**

SECRETARY CHASE: Mr. DeVries offers

Resolution 24, A resolution regulating interest group agents at the Michigan constitutional convention.

Following is the body of Resolution 24, as offered:

Resolved, That any person employed by a person, persons, firm, association, or corporation; or by board, department, or agency of Michigan, or any political subdivision thereof, to engage in promoting, advocating, or opposing any matter before the constitutional convention or any committee thereof, or who is employed expressly for the purpose of promoting, advocating, or opposing any matter which might come before the constitutional convention or any committee thereof, shall be considered an interest group agent within the provisions of this resolution; and be it further

Resolved, That the terms "advocating," "promoting," and "opposing" shall be construed to mean any act or acts, performed directly with a delegate to the constitutional convention, for the purpose of influencing him to vote or to use his influence for or against any matter before the constitutional convention or any committee thereof; and be it further

Resolved, That the provisions of this resolution shall not apply to any person who merely appears before a committee of the constitutional convention in support of or opposition to matters before the committee; nor to any public official acting in his official capacity who has been requested to appear before any committee of the convention; nor in the case of any newspaper, news media, regularly published periodical (including any individual who owns, publishes, or is employed by any such newspaper, news media, or periodical) which in the ordinary course of business publishes or broadcasts news items; editorials or other comments, or paid advertisements which directly or indirectly urge the passage or defeat on any constitutional provision, if such newspaper, periodical, news medium, or individual engages in no further or other activities in connection with the passage or defeat of such constitutional provision, other than to appear before a committee of the convention in support of or in opposition to such constitutional provision; and be it further

Resolved, That all persons who come under the definition of interest group agent cited in this resolution shall:

(1) register with the office of the president of the constitutional convention;

(2) state in writing and under oath his name, business address, and the name and address of the person, persons, firm, association, or corporation or board, department, or agency of the state of Michigan, or any political subdivision thereof, by whom he is employed and in whose interest he appears;

(3) state in writing the exact article(s) or section(s) of the constitution in which he, acting as interest group agent, is interested;

(4) keep and report a record of all expenditures made by himself or his employer or employees for the following purposes:

(a) total amount expended on mailings, advertising, publications, or other publicity efforts intended to influence the deliberations of the constitutional convention; and

(b) total amount expended on the entertainment of constitutional convention delegates and staff; and

(5) state the names of papers, periodicals, magazines, other publications, and broadcast stations, in which he has caused to be disseminated any reports, articles, or editorials; and be it further

Resolved, That each such person so registering shall file with the office of the president a report of the above described expenditures made during the preceding month between the first and fifteenth days of each month that the constitutional convention is in session, and the total amount expended during the convention within 30 days of the final adjournment; and be it further

Resolved, That all information required to be filed under the provisions of this resolution with the office of the president shall be available to the public and shall be compiled by the administrative assistant to the president; and be it further

Resolved, That all reports and statements required herein shall be made under oath; and be it further

Resolved, That all persons who are defined and/or registered as interest group agents within the provisions of this resolution who violate the provisions of this resolution, if so judged by the office of the president, shall be deemed in contempt of the constitutional convention. His name and that of the person, persons, firm, association, or corporation, or board, department, or agency of the state of Michigan, or any political subdivision thereof, shall be published in the action journal of the constitutional convention proceedings; and if registered as an interest group agent, his registration card shall be revoked.

VICE PRESIDENT ROMNEY: Referred to the committee on rules and resolutions.

SECRETARY CHASE: That is the only resolution on file Mr. President.

VICE PRESIDENT ROMNEY: Unfinished business.

SECRETARY CHASE: None.

VICE PRESIDENT ROMNEY: Special orders of the day.

SECRETARY CHASE: None.

VICE PRESIDENT ROMNEY: General orders of the day.

SECRETARY CHASE: Nothing on that calendar.

VICE PRESIDENT ROMNEY: Announcements.

SECRETARY CHASE: The following notices of committee meetings:

The committee on administration will meet in the conference room of the president's office immediately after the session today. Walter DeVries, chairman.

The committee on rules and resolutions will meet in room I on Monday, October 30, immediately following the session. R. C. Van Dusen, chairman.

The committee on local government would like to announce that Mr. Eckhardt, chairman of the tax commission, will be a featured speaker at our next meeting, which will be held Tuesday, October 31, at 10:30 a.m., in committee room A. Anyone who is interested may attend. A. G. Elliott, chairman.

The committee on legislative organization will meet in room D, Tuesday, immediately following the session. John Hannah, chairman.

The committee on declaration of rights, suffrage and elections will meet in room F today immediately following the session. J. Harold Stevens, vice chairman.

The secretary is in receipt of the following requests: from Delegate Snyder, a request to be excused from Monday's session; from Delegate Ford, to be excused from the session of Monday, October 30th, and Tuesday, October 31st; and from Delegate J. B. Richards, to be excused from Monday night's session of October 30th.

VICE PRESIDENT ROMNEY: Without objection, the requests will be granted.

SECRETARY CHASE: The secretary has also been requested to call your attention to the fact that the coat racks for the delegates are now found in the mail room, saving you the necessity of going up and down the stairs.

VICE PRESIDENT ROMNEY: Mr. Martin.

MR. MARTIN: Mr. President, the committee on executive branch will meet in room C on Tuesday, at 10:30 a.m., and Governor Swainson will be here as a witness before the committee to discuss the executive branch.

VICE PRESIDENT ROMNEY: Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, I would just like to announce to those delegates who have resolutions pending before the committee on rules and resolution that we will attempt to hear any of you who wish to appear at our meeting Monday evening. I would suggest this does not obtain, however, with respect to Dr. DeVries, whose resolution was just introduced. We will take that up at a later session.

Secondly, there are a few scheduling changes on which I would like to meet very briefly back in the corner with the substantive committee chairmen immediately after the session.

SECRETARY CHASE: **The secretary appoints,** pursuant to authorization of Resolution 23, and with the approval of the committee on administration, William Doyle as secretary's messenger.

VICE PRESIDENT ROMNEY: Without objection, the appointment is approved.

What is the pleasure of the convention?

Mr. Kuhn.

MR. KUHN: I move we adjourn.

VICE PRESIDENT ROMNEY: The question is on the motion to adjourn, Those in favor, say aye. Those opposed, no.

The motion prevails. We are adjourned until Monday night at 8:00 o'clock.

[Whereupon, and in pursuance of the order previously made, at 3:05 o'clock p.m., the Convention adjourned until 8:00 o'clock p.m., Monday, October 30, 1961.]

FIFTEENTH DAY

Monday October 30, 1961, 8:00 o'clock p.m.

PROCEEDINGS

PRESIDENT NISBET: The convention will please **come to order.**

The **invocation** this evening will be given by Elder J. M. Nerness of the Seventh Day Adventist Church of Lansing.

ELDER NERNESS: Our Father, we thank Thee tonight for the providences of God which have served to bring together these dedicated delegates. We also pause in thanksgiving for the high privilege which is ours to live in this great land of liberty and opportunity where we may have the privileges and opportunities to discuss the kind of government under which we desire to live. Help us to realize that all this is ours because dedicated men in times past established principles of good government.

Bless this convention and their work tonight. May each delegate sense the importance of the service which he may now render to our beloved state. Help all to be continuously conscious of the fact that the decisions made here will have farreaching effects upon the lives of many in days to come.

May the welfare of the small be as precious as the interests of the great. Add Thy blessing to every sincere endeavor to improve the government of our state, for we ask in Jesus' name. Amen.

PRESIDENT NISBET: The **roll call** will be taken by the secretary. All present please vote aye.

SECRETARY CHASE: Has everyone voted? If so, the secretary will lock the machine and record the vote.

Mr. President, a quorum of the convention is present.

Prior to today's session, the secretary received the following requests for leave:

Miss McGowan asks to be excused from tonight's session and from the session of tomorrow; Mr. Suzore wishes to be excused from tonight's session; and Mr. Seyferth asks to be excused from this evening's and tomorrow's sessions because of a special meeting of the city commission.

PRESIDENT NISBET: Without objection, the requests are granted.

SECRETARY CHASE: Absent with leave: Mr. Allen, Mr. Ford, Miss McGowan, Mr. Norris, Mr. J. B. Richards, Mr. Seyferth, Mr. Snyder and Mr. Suzore.

Absent without leave: Mr. Bledsoe.

PRESIDENT NISBET: Without objection, Mr. Bledsoe is excused.

Ladies and gentlemen, there has been some discussion since the leaflet concerning income tax deductions was prepared and distributed last week by Secretary Chase. I have asked one of our delegates, Mr. Austin, if he would offer, this evening, some explanation of the deduction of expenses from federal income tax as this applies to the delegates at this convention.

Mr. Austin.

MR. AUSTIN: Mr. President and delegates, I realize that we should not take up too much of the delegates' time discussing personal income tax but I have to confess that I am enough of a ham to want to take advantage of this opportunity to do a little commercial for my profession. (laughter)

Each of you has been given an outline of the requirements for the deduction of expenses for the constitutional convention while living at or attending the constitutional convention.

I think the first point I should make is that the deduction of expenses for federal income tax purposes is a personal matter and it is very difficult to deal in generalities or to give categorical explanations for the deduction of federal income tax expenses. The deduction of expenses for federal income tax purposes depends almost entirely upon individual circumstances and conditions pertaining to your own situation, your relationship with your employer, the distance that you live from Lansing, and the nature of the requirement that you spend your nights in Lansing. If you will check the outline, which has been distributed, I shall attempt to review that briefly and then give some additional information which I hope will be helpful.

First of all, it is necessary to point out to you that this information was secured from the local representative of the Lansing office of the internal revenue service.

Delegates are entitled to claim living expenses for attendance at the convention for the days actually in session. The memo states that receipted hotel bills should accompany the claim. It is not necessary, certainly, for your hotel bills to accompany the income tax return which you will file but you should most certainly have them available in the event of an examination. Claims for meals also can be submitted for the same number of days. Here it is suggested that the delegates keep a notebook and a list of the amounts paid for each meal each day of the convention sessions. This will be acceptable to the internal revenue service.

As for mileage, each delegate is given a mileage reimbursement. If a delegate does not feel it is fair to claim any expense in addition to the amount for which he is reimbursed, he can completely ignore the reimbursement and ignore the expense. However, if a delegate feels that his expense exceeds the amount of the reimbursement, then he must report the reimbursement and then claim the expense for operating his automobile.

There are 2 ways in which this can be done. One is to use the per diem figures that are shown under paragraphs 3a or 3b of the memorandum. In the general claim for automobile expense for the year, estimate under business expense the per cent of the expense of the automobile for convention business. All that means is simply this, that you report the full amount of your automobile expense and deduct that portion which relates to your actual travel in connection with attending the constitutional convention.

Now here you must be very careful, because many of the trips that you will make between your home and Lansing

will not necessarily be business expenses. For example, if you were to receive a telephone call from your home advising you that your mother in law has some instructions to give you and if you were to make the trip back home, there is no question that this is an ordinary and necessary expense—(laughter)—but I doubt very seriously that you can press your luck so far as to reasonably expect an internal revenue agent to be sympathetic about your attempt to deduct it. He may be sympathetic about your mother in law problem but I doubt whether he would be sympathetic toward allowing you to claim this expense as a deduction on your federal income tax return.

The last item mentioned in the memorandum is item 4, which says: "In any event, it would be advisable to confer with your own tax consultant."

This actually cannot be stressed too much because each of you, as an individual, has an individual problem that cannot be dealt with categorically. It is absolutely essential that you discuss the matter with your own consultant because you may have circumstances that are peculiar and the general rules perhaps will not apply.

The deduction of traveling expenses which are incident to traveling away from home overnight—the language of the regulations—is an individual matter for each delegate as I have indicated. Individual circumstances incident to service here in Lansing will be the determinants. Some of these determinants are:

A. The place of your residence and the requirement to be away from home overnight. Ordinarily, Lansing residents would not be allowed to deduct hotel expenses and cost of meals. As to how far you need to live away from Lansing before you would be able to deduct these expenses is a matter which again can be determined only by close examination of individual circumstances and is a matter that each of you will have to determine. There is the question of conscience; the question of circumstances; the question of how aggressive you and your consultant are in claiming expenses on your income tax return. There may be, however, circumstances under which even a resident of Lansing may be able to deduct overnight expenses. However, the circumstances would have to be peculiar and I don't mind telling you that the revenue agent will think they are mighty peculiar. (laughter)

B. Another factor to be taken into account is the relationship of your service here in Lansing to your regular employment. Now, this is rather important. For example, some delegates may be privileged to charge all expenses incurred here to their employer. Others may be continuing in full employment status at home and accounting to their employer for compensation received at the convention. There are any number of combinations that may be in operation for each of you and it is obvious that you need to sit down and check with your own consultant and your own employer in relation to your peculiar, individual circumstances.

Regulation 1.162-17 of the internal revenue code provides the rules that govern the substantiation of travel and other business expenses for federal income tax purposes. The rules that I am going to refer to do not apply to incidental expenses such as office expenses, office supplies, and so on. These pertain only to expenses incurred in relation to traveling away from home overnight. The expenses for which an employee is required to account to his employer need not be reported on his income tax return if a full and itemized account is made to the employer and where he is reimbursed the exact amount of his expenditures.

In other words, if you are reporting to your employer the amount of your expenses here and your employer is reimbursing you in dollar amounts for those expenses, you need not report either the reimbursement or the expenses on your income tax return.

Now, if you do not report to your employer, then, of course, you must report to the internal revenue service on your income tax return. You must report: (a) the total amount received; (b) the nature of your occupation; (c) the number of days away from home on business; and (d) the amount of the expenses, broken down into broad categories as to transportation, meals, lodging, entertainment and any other expenses that you incur.

With respect to the substantiation of expenses—and now I am quoting from the regulations:

> (1) Although the commissioner may require any taxpayer to substantiate such information concerning expense accounts as may appear to be pertinent in determining tax liability, taxpayers ordinarily will not be called upon to substantiate expenses, . . . if information is available under the following categories:
>
> (a) The taxpayer who is required to account to his employer is not required to report on his federal income tax return;
>
> (b) The taxpayer whose expenses exceed his reimbursement but who does not expect to receive reimbursement, is not required to report;
>
> (c) The taxpayer who has an "arm's length" arrangement with his employer and who makes a full report, is not required to report.

Now, who is required to report? That leaves:

> (a) Those who do expect to claim expenses in excess of reimbursement;
>
> (b) A related taxpayer;
>
> (c) A taxpayer whose employer has inadequate records.

That is, an employer whose accounting records are inadequate, even though there has been an accounting.

Referring once again to the regulations:

> (2) The internal revenue code contemplates that taxpayers keep such records as will be sufficient to enable the commissioner to correctly determine income tax liability. Accordingly, it is to the advantage of taxpayers who may be called upon to substantiate expense account information to maintain as adequate and detailed records of travel, transportation, entertainment, and similar business expenses as practical since the burden of proof is upon the taxpayer to show that such expenses were not only paid or incurred but also that they constitute ordinary and necessary business expenses.
>
> One method for substantiating expenses incurred by an employee in connection with his employment is through the preparation of a daily diary or record of expenditures, maintained in sufficient detail to enable him to readily identify the amount and nature of any expenditure, and the preservation of supporting documents, especially in connection with large or exceptional expenditures. Nevertheless, it is recognized that by reason of the nature of certain expenses or the circumstances under which they are incurred, it is often difficult for an employee to maintain detailed records or to preserve supporting documents for all his expenses.
>
> Detailed records of small expenditures incurred for travel or for transportation, as, for example, tips, will not be required.

And continuing the quotation drawn from the regulations:

> (3) Where records are incomplete or documentary proof is unavailable, it may be possible to establish the amount of the expenditures by approximations based upon reliable secondary sources of information and collateral evidence.

For example, in connection with an item of traveling expense a taxpayer might establish that he was in travel status a certain number of days but that it was impracticable for him to establish the details of his various items of travel expense. And again:

> A reasonable approximation of meals and lodging might be based upon receipted hotel bills or upon average daily rates for such accommodations and meals prevailing in the particular community for comparable accommodations.

And still further:

> In cases where a taxpayer is called upon to substantiate expense account information, the burden is on the taxpayer to establish that the amounts claimed as a deduction are reasonably accurate and constitute ordinary and

necessary business expenses paid or incurred by him in connection with his trade or business.

There is one more point I should like to make before I conclude, and that is that some of you may have been under the misapprehension that you may have been able to claim per diem amounts in lieu of itemizing your expenses on your federal income tax return.

The regulations provide that where there is an accounting to an employer—if there is an agreement between the employee and the employer to pay a per diem allowance rather than require the employee to itemize his expenses—then the employee need not report the items on his income tax return.

But the main point to remember here is that there must be an accounting either on a per diem allowance basis or on the basis of an itemization to the employer to avoid any reporting on your income tax return.

In no event will you be permitted to use a per diem deduction on your income tax return, even though the amount of your per diem deduction is less than the maximum amount that would be allowed by the treasury in the event of reporting to the employer.

If we delegates were required to report our expenses to the convention and to then receive a separate payment for expenses, we could report per diem rates in lieu of itemization, provided of course. that the convention were willing to accept per diem accounting.

It is important to remember that we do not account to the convention for our expenses, either on a per diem basis or on the basis of itemization. Consequently, in reporting our expenses on our federal income tax returns, it is absolutely necessary that we report detail.

If we could find some way to persuade the secretary of the convention to enter into an arrangement whereby we could account to him on a per diem basis, we might be able to convince the treasury department that it should accept that per diem accounting as the basis for reporting.

PRESIDENT NISBET: Thank you, Mr. Austin. It might be well to see that we adjourn well before income tax time so we will have plenty of time in which to complete our income tax returns. (laughter)

Reports of standing committees.

SECRETARY CHASE: The committee on administration, by Mr. DeVries, chairman, submits the following report and recommends to the president for consideration as staff members of the constitutional convention:

Research assistants:
Mr. William Roe
Mrs. Mary Ruth Johnson
Mr. Robert Bolton
Mr. Joseph Cox.

Research consultants:
Dr. Ferrell Heady
Dr. Daniel McHargue.

Walter D. DeVries, chairman.

PRESIDENT NISBET: Without objection, the recommendations will be concurred in.

SECRETARY CHASE: **The president appoints,** pursuant to authorization by the convention and with the approval of the committee on administration, the aforenamed persons to the positions indicated.

PRESIDENT NISBET: Without objection, the appointments will be approved. Hearing none, they are approved.

Reports of select committees.

SECRETARY CHASE: None.

PRESIDENT NISBET: Communications from state officers.

SECRETARY CHASE: None.

PRESIDENT NISBET: **Introduction, first reading and reference of proposals.**

SECRETARY CHASE: The following are the proposals, Mr. President:

Mr. Douglas introduces
Delegate Proposal 1125, A proposal relating to homestead exemptions. Amends article XIV, section 2, and corrects Delegate Proposal 1095.

PRESIDENT NISBET: Referred to the committee on legislative powers.

SECRETARY CHASE: Messrs. Dade, Downs, Mrs. Daisy Elliott and Mrs. Hatcher introduce
Delegate Proposal 1126, A proposal on right to earn.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: Mr. Binkowski introduces
Delegate Proposal 1127, A proposal to provide that the credit of the state may be granted only at the directive of a legislative act. Amends article X by adding a new section.

PRESIDENT NISBET: Referred to the committee on finance and taxation.

SECRETARY CHASE: Messrs. A. G. Elliott and Hutchinson introduce
Delegate Proposal 1128, A proposal to assure rights of citizens in matters of conscience. Amends article II by adding a new section.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: Messrs. Dade, Downs, Mrs. Daisy Elliott and Mrs. Hatcher introduce
Delegate Proposal 1129, A proposal on right to spend.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: Messrs. Dade, Downs, Mrs. Daisy Elliott and Mrs. Hatcher introduce
Delegate Proposal 1130, A proposal on right to learn.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: That completes the proposals, Mr. President.

PRESIDENT NISBET: Second reading of proposals.

SECRETARY CHASE: Nothing on that calendar, Mr. President.

PRESIDENT NISBET: Third reading of proposals.

SECRETARY CHASE: Nothing on that calendar.

PRESIDENT NISBET: **Motions and resolutions.**

SECRETARY CHASE: Mr. Dean Doty offers
Resolution 25, A resolution regulating interest group agents at the Michigan constitutional convention.

Following is the body of Resolution 25, as offered:

Resolved, That any person employed by a person, persons, firm, association or corporation; or by board, department, or agency of Michigan, or any political subdivision thereof, to engage in promoting, advocating, or opposing any matter before the constitutional convention or any committee thereof, or who is employed expressly for the purpose of promoting, advocating, or opposing any matter which might come before the constitutional convention or any committee thereof, in the interests of his employer or employers, shall be considered an interest group agent within the provisions of this resolution; and be it further

Resolved, That all persons who come under the definition of interest group agent cited in this resolution shall:

(1) register with the secretary of the constitutional convention;

(2) state in writing and under oath his name, business address and the name and address of the person, persons, firm, association, or corporation, or board, department, or agency of the state of Michigan, or any political subdivision thereof, by whom he is employed and in whose interest he appears; and

(3) state in writing the subject or subjects in which he, acting as interest group agent, is interested; and be it further

Resolved, That upon application, the secretary of the constitutional convention shall issue to the applicant hereunder, a certificate showing the name and business address of the person to whom such certificate is issued. Certificates issued by the secretary of the constitutional convention in accordance with the provisions of this resolution shall be prima facie evidence of compliance with the registration requirements hereof; and be it further

Resolved, That every interest group agent, or his employer, or an agent appointed by either, shall keep in his custody and control at an office in this state, the address of which shall be filed with the secretary of the constitutional convention, a record of all expenses incurred and paid pursuant to his employment as an interest group agent, together with records of all compensation payments to him for his services. All such accounts and records shall be produced by such interest group agent, or his employer, or an agent appointed by either, upon subpoena issued by a court of competent jurisdiction or by the constitutional convention; and be it further

Resolved, That any interest group agent who, in his capacity as such, has any financial transaction with any member of the constitutional convention, other than in the course of regular business, shall within 5 days from the date thereof, file a sworn statement with the secretary of the constitutional convention giving in detail the nature of the transaction together with the name of the delegate to the constitutional convention. If he fails to file such affidavit, he shall be guilty of a felony. Upon receipt of any such sworn statement, it shall be the duty of the secretary of the constitutional convention to forthwith furnish a copy of said statement to the delegate to the constitutional convention mentioned therein.

PRESIDENT NISBET: Referred to the committee on rules and resolutions.

Mr. Cudlip.

MR. CUDLIP: Mr. President, I am sure that we are all indebted to Delegate Austin for his splendid exposition on the subject of income tax reporting.

I should like to move that the committee on administration of this convention consider that report, which I assume has been taken verbatim, and if it thinks it would be useful, to in due course prepare a summary for distribution among all members of this convention.

PRESIDENT NISBET: The question is on the motion of Mr. Cudlip. Any discussion? If not, all in favor say aye. Opposed, no.

The motion prevails.

Mr. Hoxie.

MR. HOXIE: Mr. President, I am wondering whether I could ask Mr. Austin a question concerning a point which I do not believe he covered in his discussion of this subject.

This does not apply to me, Mr. Austin, but I assume perhaps there might be certain delegates who are retired individuals and who do not maintain a business of any nature at home. A question arises in my mind as to their right to claim any expenses while attending this convention.

MR. AUSTIN: Mr. President, Mr. Hoxie, whether or not a delegate can claim expenses will depend upon whether he is in overnight travel status away from home. For example, if a delegate resides in Detroit and finds it necessary to spend 3 or 4 nights a week here in Lansing, he is certainly entitled to deduct his hotel expenses, his food, and any other expenses incident to living here in Lansing.

If a delegate lives in Lansing, it is very difficult to determine whether that delegate would have any expenses. However, even though a delegate resides in Lansing—even for a Lansing delegate—there may be an opportunity to deduct some expenses if, for example, it becomes necessary for that delegate to remain in the downtown area at the civic center during the evening, thus not being able to go home for dinner or other meals. In such circumstances, certainly the delegate would be able to deduct his supper expense.

There might be some other expenses incident to convention business which could be deducted even by delegates who reside in Lansing. It is just a matter of whether the delegate is incurring expenses in connection with earning his compensation here at the convention. That is the question that determines whether or not he will be able to deduct.

PRESIDENT NISBET: Unfinished business.

SECRETARY CHASE: None on the calendar for today, Mr. President.

PRESIDENT NISBET: Special orders of the day.

SECRETARY CHASE: None.

PRESIDENT NISBET: General orders of the day.

SECRETARY CHASE: None.

PRESIDENT NISBET: Announcements.

SECRETARY CHASE: The following announcements have been filed with the secretary, Mr. President:

There is the following announcement of resignations and appointments by the president:

Committee on Education
Resigned: Robert Tubbs
Appointed: Richard Kuhn.

Committee on Miscellaneous Provisions and Schedule
Resigned: Paul Goebel
Appointed: Miss Ann Donnelly.

Committee on Public Information
Resigned:
George Romney
Charles Anspach
Karl Leibrand
William Gover
Appointed:
Miss Vera Andrus
Bert Heideman
Mrs. Anne Conklin
Committee member Mrs. Ella Koeze, first vice chairman to replace Mr. Romney.

Committee on Rules and Resolutions
Resigned: Arthur Iverson
Appointed: William Gover.

PRESIDENT NISBET: Without objection, those appointments will be approved. Hearing none, they are approved.

Further announcements?

SECRETARY CHASE: The secretary again wishes to call to the attention of the delegates the desirability of going to the research and drafting department for the drafting of any proposals the delegates have in mind for introduction. If you will go there first, this will expedite the handling of proposals and will ensure their being drawn in correct form.

Mrs. Tucker, the secretary to the president, is making a contribution of a new Webster-Merriam dictionary to the convention library and is requesting that when the delegates visit the library they sign the flyleaf in the dictionary. When the convention is over, the dictionary will then be presented to the state library and, later on, will become a part of the museum having to do with the constitutional convention.

We have received the following notices of committee meetings:

The committee on legislative powers will meet in room H, October 31, tomorrow, at 3:00 p.m. T. Jefferson Hoxie, chairman.

The committee on administration will meet in the conference room, adjacent to the president's office, immediately following the session tonight. Walter DeVries, chairman.

The meeting of the subcommittee on amendment and revision, which was scheduled for Wednesday evening at 8:00 p.m., has been cancelled due to the fact that Dr. Pollock has been unexpectedly called to Washington for Wednesday.

The committee on education will meet in room J, on Tuesday, October 31, at 8:30 a.m.; on Wednesday at 10:30 a.m. and on Thursday at 3:00 p.m. Alvin M. Bentley, chairman.

The committee on finance and taxation will meet in room E tomorrow, Tuesday, at 8:30 a.m. Appearing before the committee will be Mr. Sanford Brown, state treasurer; Mr. F. M. McLaury of the department of administration. Subject: state expenditures. Also appearing will be Robert W. Armstrong, Harold Martelle and Ransom Richards of the Michigan state library association speaking on penal fines for libraries. Mr. D. Hale Brake, chairman.

The committee on miscellaneous provisions and schedule will meet in room G tomorrow at 3:00 p.m. Mr. Claud Erickson, chairman.

There are on file with the secretary requests to be excused from the sessions of the convention, and if the delegates will observe this practice it will expedite the handling of these matters. If the delegates at the close of the day, knowing

they are going to be absent from the session of the following day, will file a request for leave of absence from tomorrow's session, that will be in the journal prepared that night and such delegates will be in the excused category for the following day.

Mrs. Butler asks to be excused from the sessions of Thursday and Friday, November 2 and 3; Mr. McLogan wishes to be excused from the afternoon session of Wednesday, November 1, in order to fulfil a public speaking engagement; Mr. Everett asks to be excused from tomorrow's session, Tuesday; Mr. Marshall requests leave to be absent tomorrow at 2:00 o'clock because of the necessity for him to attend a meeting of the civil defense advisory council.

PRESIDENT NISBET: Without objection, those requesting to be excused will be excused. Hearing none, they are excused.

SECRETARY CHASE: Those are all the items on the secretary's desk, Mr. President.

PRESIDENT NISBET: Any further announcements? If not, that concludes the business of the day.

Mr. Pugsley.

MR. PUGSLEY: I move that the convention adjourn, Mr. President.

PRESIDENT NISBET: Judge Pugsley moves that the convention adjourn. The question is on the motion. Those in favor, say aye. Opposed, no.

The motion prevails and the convention stands adjourned until Tuesday, October 31 at 2:00 p.m.

[Whereupon, at 8:35 o'clock p.m., the convention adjourned until 2:00 o'clock p.m. Tuesday, October 31, 1961.]

SIXTEENTH DAY

TUESDAY, OCTOBER 31, 1961, 2:00 O'CLOCK P.M.

PROCEEDINGS

PRESIDENT NISBET: The convention will please **come to order.**

Our **invocation** today will be given by the Reverend W. Milton Lowery, pastor of Bethany Baptist Church, Lansing.

REVEREND LOWERY: O God, our heavenly Father, we thank Thee for this occasion. We thank Thee for Thy presence. May Thou make Thy presence known in the heart of each one present.

We supplicate Thy assistance to inspire our deliberations in these hours as we come together.

Assist us to a higher realization of the reality of life and a better understanding of our relationship to Thee. May we find a true love of Christ in our lives as we relate ourselves one to the other.

O God, bless our nation, bless our state, and bless us individually. Help us to better learn to live with men.

We thank Thee, heavenly Father, for Thy blessings. We thank Thee for wealth, for health and for happiness. We thank Thee for the power of Thy will that is performed through Thy creatures and placed upon them.

We seek Thy divine guidance this day in all that we undertake to glorify Thy name.

Unto Thee be the honor, the power and the glory, for it is in Jesus' name we pray. Amen.

PRESIDENT NISBET: The **roll call** will be taken by the secretary. All present please vote aye.

SECRETARY CHASE: Has everyone voted? If so, the secretary will lock the machine. You may now clear your voting machines.

Mr. President, a quorum of the convention is present.

Absent with leave: Miss McGowan and Messrs. Everett, Ford, Marshall and Seyferth.

Absent without leave: None.

PRESIDENT NISBET: As your president, ladies and gentlemen, I have been proud of the way in which the delegates of this convention are working in their committees.

I realize that because of the frequency of committee meetings and the volume of work they are carrying forward some of them may from time to time miss some of the discussion that takes place in various other committees.

Therefore, until such time as the committees are ready to report, we have asked the chairmen of the committees to make brief reports to the convention under the order of **reports of standing committees** on the basis of 2 of them reporting each day on the progress of their work, so that all of the delegates will have some idea of what is going on in the other committees.

We are fortunate to have Dr. Pollock, as chairman of the committee on declaration of rights, suffrage and elections to present our first progress report.

Dr. Pollock.

MR. POLLOCK: Mr. President and delegates, on behalf of the committee on declaration of rights, suffrage and elections, I should like to make a very brief progress report.

Our committee, consisting of 15 very able, hardworking members, after some difficulty about having a fixed committee room, and securing a clerk, a typewriter and a filing cabinet, and all the other difficulties under which the committees have been operating, has been able, finally, to get down rather seriously to the work assigned to it.

We decided that naturally we have 2 principal areas of work. The first of these deals chiefly with article II and everything related to the bill of rights. The second field is that of suffrage and elections.

We have reviewed, with the assistance of members of the committee who themselves have considerable expertness in this field, the various leading problems with which the committee will have to deal.

We have already been successful in identifying the principal problems in both fields, and having done that we are now beginning to go through, section by section, the relevant portions of the constitution. Thus far we have completed our preliminary discussion and examination of the first 6 sections of article II and at each meeting we are proceeding to go forward with that assignment. When we have finished our preliminary discussion of the original sections — bringing up in the course of that preliminary discussion certain proposals which have relevance — we then, of course, will begin to put these decisions of the committee into final language.

I might say that the committee has been very fortunate in having the services of Dr. Kelly, one of the codirectors of research, who leads off by putting each one of these problems in an excellent setting not only historically, but legally, thus enabling the committee members to have something very definite, in addition to their own work, on which to base their discussions.

I cannot give any prediction as to how long this work is going to take, Mr. President, but within a few weeks we should be able at least to finish the preliminary consideration of half of our job, and then we will get down to elections.

We have called a few people before us but not very many. If there are any others who desire to testify, including the

delegates, some of whom have expressed their desire to testify, I would be glad to hear from them.

PRESIDENT NISBET: Thank you, Dr. Pollock.

Our second report today is on the committee on legislative organization, by the chairman, Dr. Hannah.

MR. J. A. HANNAH: Mr. President and delegates, this too, will be a brief report of the work done to date by our committee on legislative organization.

I should like to start off by making it clear at the outset that I did not particularly request the assignment as chairman of this committee, but I am pretty optimistic about the work the committee is doing and about the results I am sure the committee is going to accomplish before we are finished.

I can say about my committee, as Professor Pollock said about his, that it is a good committee made up of dedicated persons only interested — I hope and I believe — in doing the best they can with a very difficult assignment.

We are in the process of educating ourselves to learn all that we can about the background information that we must have in order to do an intelligent job based on facts and the historical experience in Michigan as well as on the experience in other states and on other appropriate factors.

We have been meeting every Tuesday, Wednesday and Thursday for 2 hours each day and we have had appear before us, at our invitation, a number of able people, such as Professor Adrian, director of urban development, Michigan State University. Professor Adrian appeared before us to review the historical background of our present basis for legislative representation. Professor Shull of Wayne State University appeared before the committee to review, among other things, the advantages and disadvantages of a unicameral versus a bicameral legislature. Mr. Sneeringer of the state chamber of commerce who, with Professor Shull, was an author of the citizens research council reviews and proposals for representation in 1952 and in 1953. Professor Thaden, a distinguished demographer, who reviewed with us population trends in Michigan and probable trends of the future. And Dean Combs, who has discussed various factors with us.

Today, Professor Press and Professor Garfinkel will review the experience of other states in dealing with reapportionment in recent years. Others have been invited to appear tomorrow. On Thursday, Dean Combs will present charts reflecting the present basis of representation, applied to the 1960 census. Next Tuesday, Professor Pollock will give us his views.

Our plans beyond that are tentative, but we are planning, about a week from tomorrow, to begin having appear before the committee those with announced positions or suggestions, including Judge Creighton Coleman of Marshall, Gus Scholle, and others.

We invite the names of delegates who wish to appear before us, and of those persons in the state whom you think have views that should be presented to the committee, before we begin to give serious consideration to any definite proposal.

I am sure I speak for our entire committee in saying that it is our intention, and we hope it is the intention of all the delegates, to be concerned, first of all, with the best interests of the almost 8 million people now living in Michigan, and the additional millions who will be living here in the decades ahead, and to be willing to submerge the purely local, or prejudiced, or partisan, view.

If the delegates wish to keep posted on some of the things to which our thinking and attention are being directed, I invite them to visit room D. This is the meeting room of our committee.

Delegates will find on the wall of committee room D a number of charts that set out certain figures and that are extremely interesting. Four of the charts set out information on the following subjects:

(a) Congressional districts;
(b) House of representatives districts;
(c) Senatorial districts; and
(d) Population trends.

It may surprise some of the delegates, as it surprised some of our committee members, to know that there are very substantial inequities in some areas of the state. A great many people start with the notion that the basic inequity is an under representation for the people in the southeastern portion of Michigan and the big cities, and basically an over representation for the people in the rural parts of the state.

Essentially that is true, but there are 3 representative districts in Wayne county that are among the 10 smallest in population — Wayne 14 and Wayne 15 (that is, Highland Park and Hamtramck) and one of the city districts of Detroit, district 11, which has an average of just over 37,000 people, according to the present census, per representative.

At the other end of the spectrum, some of the most under represented districts are also in Wayne county. The largest single representative district, population wise, in the state is Wayne 21 with 188,000. Wayne 19 has 179,000, Macomb 2, 172,000, and Oakland, 151,000.

I will not bore you further with those details.

When you get into the senate, of course, it is recognized that there are several factors that perhaps should receive consideration. The committee has not as yet given consideration to all those factors to which consideration should perhaps be given, but there does exist a chart which outlines the 1960 population of all the senatorial districts of the state and, of course, the most under represented district is Oakland county with 690,000 people and a single senator. The smallest senatorial district in the state is district 32 with a population of 55,806.

There is a wide variation in the 7 senatorial districts in Wayne county, varying from a low of 246,000 to a high of 647,000 people in the same county.

Naturally, while we are concerned with equitable representation, taking into consideration all of the state, we are also concerned with equitable representation within counties, or regions, or areas, or cities.

I have already requested the president of the convention to give consideration to referring either to our committee, or jointly to our committee, a proposal that has already been introduced with reference to the population in congressional districts. That, of course, is not a matter of legislative organization, but when you are dealing with the matter of reapportionment and representation, it is a little difficult not to be somewhat concerned with equitable distribution so far as the congressional districts are concerned.

I think you would be interested in knowing that some of the smallest populations in congressional districts in this state are in Wayne county, and the very largest one is in Wayne county, as well. District 1 — congressional district 1 in Wayne county had a population in 1960 of 283,000 people, whereas congressional district 16 had a population in 1960 of 802,994 people in the same county. Our committee feels that this, too, is a matter with which it is somewhat concerned.

Now, just one other bit of information. In this very interesting material that Professor Thaden has already furnished to us — of course, this has to do with not only the past, but with predictions for the future — because if we are going to come up with some new basis of representation, the concern is not only adequate representation in 1960, but in 1970, 1980, 1990, — a basis for equitable representation as we go down the road. This material gives, among other things, the percentage of population for each county in the state, on the basis of the 1960 census, and indicates what these figures were in 1950, 1940, 1930, 1920 and 1910.

The material also sets out some predictions as to what the percentage of the population of Michigan is likely to be in every county in the state in 1970, 1980 and 1990. Now, of course these are to a degree, crystal ball predictions because there are other factors which cannot be foreseen which will change these predictions and affect the pattern, but the committee is concerned with all the material it can acquire. We are interested, even in relevant material produced by various commercial interests in the state.

I have already talked too long. I should say in conclusion: up until now the committee has been, and for the balance of this week and on next Monday the committee will be, concerned with self education. About Wednesday of next week — a week from tomorrow — we will begin to hear from those who have specific proposals. It will vastly assist us in the intelligent

planning of our work if you will let us know if you wish to be heard by the committee or if you have others whom you think we should hear.

Thank you.

PRESIDENT NISBET: Thank you very much, Dr. Hannah.

Tomorrow we will hear progress reports from Mr. T. Jefferson Hoxie, chairman, committee on legislative powers, and from Mr. John B. Martin, chairman, committee on executive branch.

SECRETARY CHASE: The committee on rules and resolutions, by Mr. Van Dusen, chairman, reports back to the convention **Resolution 13,** A resolution relative to students visiting the convention; without amendment, and with the recommendation that the resolution be referred to the committee on public information.

R. C. Van Dusen, chairman.

For the body of Resolution 13, see above, page 180.

MR. VAN DUSEN: Mr. President, delegates, the substance of this resolution is that the convention would do well to provide a means for coordinating the visits of students who come to see our work, and to assist them to make their visit more meaningful.

The committee felt that the resolution had merit but that certain technical amendments were desirable. The general subject of those amendments and their detail falls more within the province of the committee on public information.

We therefore respectfully move that the resolution be referred to that committee.

PRESIDENT NISBET: The question is on the recommendation of the committee that the resolution be referred to the committee on public information. Is there any discussion?

If not, all in favor say aye. Opposed, no.

The recommendation is concurred in. The resolution is referred to the committee on public information.

SECRETARY CHASE: The committee on rules and resolutions, by Mr. Van Dusen, chairman, reports back to the convention **Resolution 14,** A resolution to establish a speakers bureau; without amendment, and with the recommendation that the resolution be referred to the committee on public information.

R. C. Van Dusen, chairman.

For the body of Resolution 14, see above, page 191.

MR. VAN DUSEN: Here again, Mr. President, the committee felt the resolution had merit, but that its execution fell largely within the domain of the committee on public information. We felt that the committee on public information should have a look at this resolution before it was presented on the convention floor.

PRESIDENT NISBET: The question is on the recommendation of the committee that Resolution 14 be referred to the committee on public information. Any discussion? If not, all in favor say aye. Opposed, no.

It is concurred in, and the resolution is referred to the committee on public information.

SECRETARY CHASE: The committee on rules and resolutions, by Mr. Van Dusen, chairman, reports back to the convention **Resolution 17,** A resolution relating to the televising of our proceedings; without amendment, and with the recommendation that the resolution be referred to the committee on administration.

R. C. Van Dusen, chairman.

For the body of Resolution 17, see above, page 194.

MR. VAN DUSEN: Mr. President, this is a matter on which the committee on administration has already held some hearings and to which it has devoted some time and consideration.

We felt it might appropriately consider this resolution along with the others presented to the committee on administration.

PRESIDENT NISBET: The question is on the recommendation of the committee that this resolution be referred to the committee on administration. Any discussion? If not all in favor say aye. Opposed, no.

The recommendation is concurred in, and the resolution is referred to the committee on administration.

SECRETARY CHASE: The committee on rules and resolutions, by Mr. Van Dusen, chairman, reports back to the convention **Resolution 19,** A resolution relative to inclusion of delegates' names in the Michigan Manual; without amendment, and with the recommendation that the resolution be referred to the committee on administration.

R. C. Van Dusen, chairman.

For the body of Resolution 19, see above, page 196.

MR. VAN DUSEN: Mr. President, here, in the course of our discussions concerning the resolution, we learned that the secretary of state advises that to include the names of the delegates to this convention in the current edition of the Michigan Manual, as proposed by the resolution, would involve an appropriation of $5,000 which would have to come from our contingency fund.

The committee on rules and resolutions makes no recommendation whatsoever in respect to the substance of this resolution, but feels, in view of the fact that it involves an appropriation, it should be reviewed by the committee on administration.

PRESIDENT NISBET: The question is on the recommendation of the committee that this resolution be referred to the committee on administration. Is there any discussion? If not, all in favor say aye. Opposed, no.

The recommendation is concurred in, and the resolution is referred to the committee on administration.

SECRETARY CHASE: The committee on rules and resolutions, by Mr. Van Dusen, chairman, reports back to the convention **Resolution 15,** A resolution inviting foreign students to our convention; with amendment, recommending that the amendment be agreed to and that the resolution be referred to the committee on public information.

R. C. Van Dusen, chairman.

The following is the resolution:

Whereas, The work of this convention has received national and international attention; and

Whereas, There are many nations in the world today which face a task similar to our own here; and

Whereas, There are many foreign students attending schools in Michigan; and

Whereas, These students will be the future leaders in their respective countries; now therefore be it

Resolved, That this convention extend an invitation to these students to attend our meetings and meet our delegates in order that they may better their understanding of our American democratic process in action.

The following is the amendment recommended by the committee:

1. Amend the resolving clause, line 3, after "action" by inserting a semicolon and "which invitations shall be prepared for the president's signature and disseminated as soon as possible by the committee on public information".

PRESIDENT NISBET: The question is on the amendment. Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, the committee felt that this resolution had great merit and that it was of some importance that we make those foreign students who are presently attending our Michigan high schools and universities feel particularly welcome in observing our proceedings.

We felt that the execution of this resolution also logically fell within the field of the committee on public information.

We have proposed this simple amendment which implements, to some extent, the resolution, and then we propose that the entire resolution be referred to the committee on public information.

I should think that first we should ask the convention to approve the amendment which the committee on rules and resolutions has recommended.

PRESIDENT NISBET: The question is on the amendment just read by Secretary Chase. Is there any discussion? If not, all in favor say aye. Opposed, no.

It is adopted.

The question is now on the recommendation of the committee that this resolution be referred to the committee on public information. Any discussion? If not, all in favor say aye. Opposed, no.

It is concurred in. The resolution, as amended, is referred to the committee on public information.

SECRETARY CHASE: The committee on rules and resolutions, by Mr. Van Dusen, chairman, reports back to the convention **Resolution 18,** A resolution for the compilation of all suggestions and recommendations that are statutory in character for forwarding to the legislature; with amendments, recommending that the amendments be agreed to and that the resolution, as thus amended, be adopted.

R. C. Van Dusen, chairman.

Following is the resolution:

Whereas, In the process of presenting and evaluating proposals, many suggestions and recommendations emerge as statutory and discretionary matter for the legislature rather than as constitutional in nature; and

Whereas, Such suggestions and recommendations may have merit for statutory enactment; and

Whereas, It would be helpful if it be known to the public that even if many suggestions are regarded by the convention as statutory and not constitutional, such suggestions could nevertheless be consolidated and forwarded to the legislature; now therefore be it

Resolved, That suggestions and recommendations that are regarded by the committees and the convention as being statutory rather than constitutional in character be compiled and organized in a formal fashion as the convention proceeds for forwarding to the legislature upon conclusion of the convention.

The following are the amendments recommended by the committee on rules and resolutions:

1. Amend the third whereas clause, line 2, after "by the" by striking out "convention" and inserting "committees".

2. Amend the resolving clause, line 2, after "committees" by striking out "and the convention", so that the final clause, as amended, would read:

Resolved, That suggestions and recommendations that are regarded by the committees as being statutory rather than constitutional in character be compiled and organized in a formal fashion as the convention proceeds for forwarding to the legislature upon conclusion of the convention.

PRESIDENT NISBET: Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, both of these amendments have the same purpose.

The committee on rules and resolutions felt that the resolution proposed by Mr. Norris had merit and that we should, as suggestions and proposals are made to the convention which are regarded as statutory in character, make a record of them and transmit them to the legislature for the information of the legislature.

We felt, however, as was perhaps implied by the language of the resolution, that to require the convention to make some determination as to whether a proposal was statutory in nature, as distinguished from constitutional, might unduly clutter our docket and our calendar, and that therefore we could leave to the committees, in their consideration of the proposals referred to them, the responsibility for determining whether a particular matter was statutory and therefore should be forwarded to the legislature.

The committee recommends the adoption of the amendments.

PRESIDENT NISBET: The question is on the adoption of the amendments. Any discussion?

Mr. Martin.

MR. MARTIN: Point of information, Mr. President.

Does this resolution contemplate that the committees would indicate in any way their feeling on the recommendations that are made?

My understanding is that it only contemplates their indication of the fact that this is legislative matter, but that it does not contemplate any indication as to whether or not they think these particular suggestions are of value.

Would Mr. Van Dusen care to comment?

PRESIDENT NISBET: Mr. Van Dusen.

MR. VAN DUSEN: Your understanding is correct, Mr. Martin.

The understanding of the committee in recommending adoption of the resolution was that the convention would not presume to suggest to the legislature that any of these suggestions should receive favorable consideration, but only would indicate to the legislature that we thought they might be interested.

MR. MARTIN: It seems to me, that many of these suggestions are suggestions which come up in connection with and are related to matters which are being considered for inclusion in the constitution, and that the committees have a fine opportunity to consider whether or not at least certain of these have merit.

I think it would be of some value to the legislature and to the people of the state if the committees were to indicate, in passing on such recommendations, if they so desire, their feeling as to whether or not these are good recommendations.

Obviously, this would not be binding on the legislature in any way, in my opinion.

This morning in our committee we had advanced 2 or 3 suggestions which seemed to various members of the committee to make rather good sense. I would feel it was not only useful but desirable that we indicate, when we pass on some of these suggestions, whether or not they are of value.

PRESIDENT NISBET: Mr. Hutchinson.

MR. HUTCHINSON: Mr. President, I do not desire to speak on the amendments, but, I do desire to speak on the resolution after the amendments are adopted and before the resolution is acted upon.

PRESIDENT NISBET: The question is on the amendments proposed by the committee. Any further discussion?

Mr. Austin.

MR. AUSTIN: Mr. President, I would like to support Delegate Martin's suggestion.

I do so because there are some sections of the constitution that include what some of us may think of as legislative matter at this time. For that reason we may propose suggestions or advance proposals that will eliminate from the constitution certain legislative material.

At that time it would seem appropriate to indicate in some way to the legislature that it will be necessary to introduce legislation to take the place of this material that we take out of the constitution.

PRESIDENT NISBET: Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, I might suggest to both Mr. Martin and Mr. Austin that there is nothing in the resolution which would preclude a committee from making such recommendations to the legislature as it chooses to. Neither is there anything in the resolution which would require a committee to make any recommendation.

I think, therefore, the opportunity which Mr. Austin and Mr. Martin seem to think desirable is present now in the language of the present resolution. There is nothing here that would preclude it.

PRESIDENT NISBET: The question is on the amendments. Is there any further discussion? If not, all in favor say aye. Opposed, no.

The amendments are adopted.

The question is now on the resolution as amended.

Mr. Hutchinson.

MR. HUTCHINSON: Mr. President, simply for the record, I should like to ask Mr. Van Dusen a question in order to clear up this matter.

The recommendation is that all of this material is to be transmitted to the legislature. I do not know how voluminous this material might be, but let me ask this question. Is it the intention that enough copies would be prepared so that every member—every one of the 144 members—would receive it in toto? Or would it be transmitted addressed to the president of the senate and the speaker of the house?

PRESIDENT NISBET: Mr. Van Dusen.

MR. VAN DUSEN: Well, Mr. President, I think that matter

would be largely within the province of the committee on administration.

However, in view of the size of our contingency fund, it would appear to me at the moment as though we should probably transmit this statutory material to the president of the senate and the speaker of the house and if the president of the senate and the speaker of the house deem it of such merit that they wish to have it duplicated for all their members they could do so.

MR. HUTCHINSON: Thank you, Mr. Van Dusen. I think that clears the matter on the record.

PRESIDENT NISBET: Mr. King.

MR. KING: Mr. President, I would like to move to amend this resolution in such a way as to incorporate the ideas expressed by Mr. Martin and Mr. Austin. I think the idea they advanced is very deserving of consideration.

I think that the legislature is entitled to the benefit of our thoughts, or the thoughts of the committees, with respect to these various matters. I recognize, of course, that our recommendations would have no binding effect upon the legislature. We all realize that. However, I do think it would be helpful if the legislature knew what our thinking was.

I would, therefore, move to so amend. I do not have before me a copy of the resolution and therefore I am unable to put my amendment in writing.

PRESIDENT NISBET: Mr. King, I think, according to our rules, your amendment should be presented in writing. Are you able to do that now?

MR. VAN DUSEN: Mr. President, I should like to speak to Mr. King's point.

Last evening in the committee we had before us another resolution which dealt, I think, very closely with the kind of material he has in mind, suggesting that the constitution be drafted in 2 forms, one essentially constitutional and the other accompanying it to be substantially statutory and implemental in nature.

I think the resolution which we have before us—and perhaps Mr. Norris, who is its author, should address himself to this point—deals with that broad mass of statutory material which may or may not be related, directly, to the constitution as we ultimately propose it. I believe, to that extent, it is going to be somewhat presumptuous of this convention to suggest to the legislature that they should enact a law dealing with something completely outside our province.

There are likely to be, however, other matters dealt with in the constitution which require direct implementation through legislation which should be accompanied not only by our suggestions but by our recommendations.

I suggest for the consideration of Mr. King and also of Mr. Martin and Mr. Austin that perhaps the suggestion which they have in mind might more appropriately be made the subject matter of a separate resolution, rather than an amendment to this one.

PRESIDENT NISBET: Mr. Hodges.

MR. HODGES: Mr. President, like Delegates Martin and Austin, I believe that perhaps some of the most profound thinking that has been done for a long time in the state of Michigan with respect to these subjects will be done by this convention in relation to the many items that will come before it.

I think we would be losing a great deal if the important and constructive thinking on the part of the members of this convention and its committees were not transmitted to the legislature by some means.

I would, therefore, at this time move to refer this resolution back to the committee in order to have them come up with a resolution in amended form in language consistent with Mr. Martin's suggestion.

PRESIDENT NISBET: The question is on the motion of Mr. Hodges to rerefer.

Mr. Nord.

MR. NORD: Mr. President, I would speak against that motion of Mr. Hodges, for this reason. I believe that the language that is sought would be better left out. That is to say, the resolution ought to be adopted as it is.

My reason for stating that, is this. While we may more or less accidentally in our committee work come across material which we feel we do not wish to act upon but which we feel the legislature might like to know about, I think we should be very careful not to invite such material to be brought here.

If we were to state, point blank, in a resolution that material which comes before us which is statutory in nature will be considered by us and that we will make recommendations in regard to it even though we make clear that we will not always do that, I have the feeling—perhaps it is just a hunch—that a lot of people will waste our time bringing before us material which they know is statutory, and which we know is statutory, and which, although they and we may think is good material, we might not wish to consider and make recommendations in regard thereto.

It seems to me, therefore, that the best thing to do is to leave the resolution as it now stands, and leave it to the discretion of each committee. If they come across something concerning which they wish to make a recommendation, they should be free to do so, but let us not invite a flood of extraneous matter.

PRESIDENT NISBET: The question is on the motion of Mr. Hodges to rerefer this to the committee.

Mr. Van Dusen.

MR. VAN DUSEN: I would simply like to say that I concur completely with the remarks just contributed to this discussion by Dr. Nord.

PRESIDENT NISBET: Any further discussions? The question is on Mr. Hodges' motion. All in favor say aye. Opposed, no.

The motion to rerefer does not prevail.

The question now is on the adoption of the resolution as amended. Any further discussion? All in favor say aye. Opposed, no.

The resolution, as amended, is adopted.

Following is Resolution 18 as amended and adopted:

A resolution for the compilation of all suggestions and recommendations that are statutory in character for forwarding to the legislature.

Whereas, In the process of presenting and evaluating proposals, many suggestions and recommendations emerge as statutory and discretionary matter for the legislature rather than as constitutional in nature; and

Whereas, Such suggestions and recommendations may have merit for statutory enactment; and

Whereas, It would be helpful if it be known to the public that even if many suggestions are regarded by the committees as statutory and not constitutional, such suggestions could nevertheless be consolidated and forwarded to the legislature; now therefore be it

Resolved, That suggestions and recommendations that are regarded by the committees as being statutory rather than constitutional in character be compiled and organized in a formal fashion as the convention proceeds for forwarding to the legislature upon conclusion of the convention.

PRESIDENT NISBET: Mr. Hutchinson.

MR. HUTCHINSON: Mr. President, on a point of inquiry, what did we just do? Did we adopt that resolution? I thought it was to be referred to the committee on administration.

MR. NISBET: Mr. Chase.

SECRETARY CHASE: The committee report contained a recommendation that the amendments be agreed to and that the resolution, as thus amended, be adopted.

MR. HUTCHINSON: I beg your pardon—I was thinking of another one. I stand corrected.

MR. VAN DUSEN: Mr. President, perhaps I might make this comment. I think the committee has passed the buck so often that Mr. Hutchinson felt we were going to do it all the time. (laughter)

This completes the report of the committee on rules and resolutions for today, Mr. President.

For the information and benefit of all delegates, I should

like to state that our next meeting will be next Monday night, following the session, at which time we will consider the resolutions offered by Dr. DeVries and Mr. Dean Doty with respect to the regulation of legislative agents appearing before the convention.

PRESIDENT NISBET: Mr. Hutchinson.

MR. HUTCHINSON: Perhaps I should offer a word of explanation, Mr. President.

The reason I went off on a tangent here was that in answer to an inquiry I made Mr. Van Dusen suggested it was a matter that probably the committee on administration would have to consider, as to whether they were going to prepare 144 copies or only one.

This is why I left the microphone thinking it was going to go to that committee.

The fact of the matter is that I went over and was so bold as to suggest to Mr. King that since the matter was going to go back and come before the convention once more, after having been considered by the committee on rules and resolutions, he could let the matter he raised go until then.

I misadvised him, and I am sorry for that. If he wishes to move to have the first matter raised reconsidered, I advise him that he would be in order.

PRESIDENT NISBET: **Reports of standing committees.**

SECRETARY CHASE: The committee on legislative powers, by Mr. Hoxie, chairman, reports **Delegate Proposal 1061,** A proposal relative to granting powers to the legislature. Amends article VI, section 22; with the recommendation that the proposal be referred to the committee on executive branch.

T. Jefferson Hoxie, chairman.

PRESIDENT NISBET: The question is on the recommendation of the committee. Any discussion? If not, all in favor say aye. Opposed, no.

It is concurred in and Delegate Proposal 1061 is referred to the committee on executive branch.

SECRETARY CHASE: The committee on administration, by Mr. DeVries, chairman, submits the following report and recommends the adoption of the following procedures on calling and reimbursing witnesses and special consultants:

It has become clear that some standardized procedure on committee witnesses is highly desirable. The following is a proposed mode of standardizing procedure thereto:

Committee witnesses and special consultants, in fact, fall into 2 categories:

1. Those who appear before a committee to testify as technical experts in response to a specific committee request; and

2. Those who appear before a committee on their own initiative or request or in response to some general committee invitation.

Category (1.) usually will require payment to the witness or consultant.

Category (2.) will not require payment to the individual in question.

The codirectors of research suggest that all committee requests for witnesses or consultants in category (1.) be channelled to them by committee chairmen. The director on duty will discuss and agree with the chairman on an appropriate fee, where necessary, and whether it is to be paid as a single sum or on a per diem basis.

The director will then "log" the committee request and report it to the executive committee of the administration committee.

This arrangement will make it possible to keep budget control over committee witnesses' and consultants' expenditures, to prevent gross inequities in fees and comparative committee expenditures, and to avoid "crossed wires" where 2 or more committees may be interested in the appearance or services of the same witness or consultant.

Walter DeVries, chairman.

PRESIDENT NISBET: Mr. DeVries.

MR. DeVRIES: Mr. President, I move the adoption of this report, and make these explanatory remarks.

We have a very limited budget of $6,000 for the calling of witnesses.

I address these words to all delegates: if you can obtain an expert without a fee or without the payment of expenses, we would appreciate it and it would help our budgetary problem immensely.

We would suggest to the convention that it adopt this report in the calling of all witnesses.

PRESIDENT NISBET: The question is on concurring in of the recommendation.

Mr. Hodges.

MR. HODGES: Point of information: is this retroactive for those people who have already testified?

MR. DeVRIES: Mr. President, Mr. Hodges, my understanding is that nothing in this convention is retroactive, neither salaries, expenses nor fees.

PRESIDENT NISBET: Any further discussion? The question is on concurring in the recommendation. All in favor say aye. Opposed, no.

It is concurred in.

SECRETARY CHASE: The committee on administration, by Mr. DeVries, chairman, submits to the convention for its information the following policy statement regarding the staff of the constitutional convention: . . .

MR. DeVRIES: Mr. President, I move that we consider this report read and have it printed in the journal.

PRESIDENT NISBET: The question is now on the motion of Dr. DeVries. Any discussion?

Without objection, the report will be considered read and published in the journal.

Following is the body of the foregoing report, as submitted:

To the staff of the constitutional convention:

We welcome you as an employee and staff member of the Michigan constitutional convention. For the next several months you will combine your talents and efforts with others to give service to the citizens of Michigan and provide assistance to 144 duly elected delegates.

It is essential that in order to derive greatest benefit from the appropriation for the convention, made by the state legislature, that we work in harmony and as a team. It is vital that high standards of both workmanship and attitude be maintained, and only through your wholehearted cooperation can we attain this objective.

While it is not the intention of this brochure to stereotype or standardize your conduct, certain minimum requirements must be outlined and we solicit your earnest cooperation in their observance. The following have been established for your guidance:

Remuneration and hours of service

Salary and wage scales approved by the convention were set higher than levels in commensurate governmental service. In arriving at these salary scales, the delegates took into consideration that no training period would be involved and employees would perform from the start at almost optimum efficiency. It should be clearly understood that because of the complexity of work assignments no standard hours can be set, and no overtime payments will be made. Every effort will be made to work reasonable and predetermined hours but because committee reports often must be prepared on short notice prior to convention sessions, work assignments can vary from time to time. Limitations on the availability of office equipment can also affect scheduling.

The hours of the staff, unless otherwise directed by the office of the president, shall be:

Monday—1:00 p.m. until the convention adjourns.

Tuesday, Wednesday, Thursday and Friday—9:00 a.m. to 5:00 p.m. or such time as the convention may adjourn after 5:00 p.m.

The convention staff may be required to work additional hours if so directed by the office of the president or committee chairmen. A one hour lunch period will be permitted each day at a time convenient with the business of the convention.

Employees will be paid twice a month on the first and fifteenth days. For bookkeeping purposes each half month is considered 15 days. Deductions for unauthorized absences will be computed on the basis of 1/15 of a pay for each day involved.

Attendance

Due to severe limitations on the size of staff, good attendance is mandatory. Unexcused absences and frequent tardiness can be basis for dismissal by the president.

Every reasonable effort will be made to accommodate an employee's request for excuse from work because of extenuating personal circumstances.

Confidence

While all business of the convention is open, delegates themselves want to report out their programs to the convention. For this reason, no employee will be permitted to discuss the work given him by one delegate with another delegate or person. All communications between delegates and staff shall be considered confidential. An employee will be expected to exercise normal routine security procedures to assure confidence and this includes safekeeping of reports and other documents while unattended and proper disposal of memos, notes and wastepaper.

Personal behavior, attitude, and appearance

The public will judge us by our conduct, personal appearance and courtesy. With pressures from many sources (and the pressures will compound as the convention progresses) self restraint and personal control must be exercised at all times. An intelligent, courteous attitude under even the most trying circumstances is expected and will be appreciated by the public.

Staff members shall not smoke on the convention floor, in the hallways or in the delegates' lounge.

The sergeant at arms, assistant sergeants, guides and pages shall wear their uniforms during working hours.

Parking

Parking spaces for 150 cars have been provided for the use of the delegates. Only convention delegates and those approved by the president shall be allowed to park their cars in the delegates' parking area.

Duties

There may not be a clearcut definition of duties and work assignments at all times. The staff will be expected to be flexible and to fill in for unusual and emergency situations. Efforts will be made to keep duties from overlapping wherever possible and the origin of authority will be limited to avoid confusion. Prime authority flows from the office of the president, but for practical reasons, if there is any conflict of assignment, contact the administrative assistant to the president, Mr. Apol, Dr. DeVries or your respective committee chairman for clarification.

It is the responsibility of the office of the president to provide and maintain for the physical arrangements of the convention. To best accomplish this, it is important that all contacts with the civic center commission, vendors and outside contractors be made through Mr. Apol, administrative assistant to the president.

General

There will be no discrimination of employees or separation thereof, because of race, color, religion, national origin, ancestry or because of partisan consideration.

The above rules are not all inclusive, and may be amended.

Walter DeVries, Chairman.

SECRETARY CHASE: That completes the reports of standing committees, Mr. President.

PRESIDENT NISBET: Reports of select committees.

SECRETARY CHASE: None.

PRESIDENT NISBET: Communications from state officers.

SECRETARY CHASE: None.

PRESIDENT NISBET: **Introduction, first reading and reference of proposals.**

SECRETARY CHASE: Mrs. Daisy Elliott introduces **Delegate Proposal 1131,** A proposal to require the legislature to enact a minimum wage law. Amends article V.

PRESIDENT NISBET: Referred to the committee on legislative powers.

SECRETARY CHASE: Mrs. Daisy Elliott also introduces **Delegate Proposal 1132,** A proposal to empower the legislature to create an intermediate appellate court. Amends article VII.

PRESIDENT NISBET: Referred to the committee on judicial branch.

SECRETARY CHASE: Messrs. Boothby and J. B. Richards introduce **Delegate Proposal 1133,** A proposal to provide for county home rule in welfare administration. Amends that part of article VIII dealing with counties.

PRESIDENT NISBET: Referred to the committee on local government.

SECRETARY CHASE: That completes the reference of proposals.

PRESIDENT NISBET: Second reading of proposals.

SECRETARY CHASE: Nothing on that calendar.

PRESIDENT NISBET: Third reading of proposals.

SECRETARY CHASE: None.

PRESIDENT NISBET: **Motions and resolutions.**

SECRETARY CHASE: Mr. Lundgren offers **Resolution 26,** A resolution regulating constitutional convention agents at the Michigan constitutional convention.

Following is the body of Resolution 26, as offered:

Resolved, That any person employed by a person, persons, firm, association, or corporation; or by any board, department, or agency of Michigan, or any political subdivision thereof, to engage in promoting, advocating, or opposing any matter pending before the constitutional convention or any committee thereof, or who is employed expressly for the purpose of promoting, advocating, or opposing any matter which might come before the constitutional convention or any committee thereof, shall be considered a "convention agent" within the provisions of this resolution; and be it further

Resolved, That the terms "advocating," "promoting," and "opposing" shall be construed to mean any act or acts, performed directly with a delegate to the constitutional convention, for the purpose of inducing him to vote or to use his influence for or against any matter before the constitutional convention or any committee thereof; and be it further

Resolved, That any person who shall confine his activities in promoting, advocating or opposing any matter pending before the constitutional convention, or any committee thereof, to formal appearances before any constitutional convention committee, and who in writing identifies himself to the committee, together with each and every person, firm, association, corporation or other interest represented by him, shall not be deemed to be a "convention agent" within the meaning of this resolution; neither shall such term include any person whose contact with a delegate is limited to furnishing information at the request of any delegate or any constitutional convention committee regarding any matter pending before the constitutional convention or any committee thereof; and be it further

Resolved, That every "convention agent" shall file with the secretary of the convention on forms provided by that office, a sworn statement containing the following information:

1. Full name of applicant, place of residence and place of business;

2. Name of firm, corporation, association or governmental agency of which he is an employee, partner or owner, together with the position held, business address and principal occupation of the organization of which applicant is an employee or agent;

3. If the applicant mentioned in (2) is employed by

more than one person, firm, corporation, association or agency, the names of such persons, firms, corporations, associations or agencies, business addresses, and principal occupation or occupations;

4. The name and address of the person, firm, corporation, association or agency who will keep the custody and control of the accounts and records required to be kept by further provisions of this resolution; and

5. When any change modification or addition of such employment is made, the applicant shall, within one week of such change, modification or addition, furnish full information regarding the same to the secretary of the constitutional convention on forms provided by that office; and be it further

Resolved, That the secretary of the constitutional convention shall record and index in his office the information required by this resolution and shall furnish copies thereof to all delegates of the constitutional convention. The records required to be kept by the provisions of this resolution shall be open to inspection in the office of the secretary of the convention or in such office as he shall designate; and be it further

Resolved, That upon application by any person who has complied with the provisions of this resolution, the secretary of the convention shall issue to the applicant an identification card showing the name and business address of the person to whom such identification card is issued. Certificates issued by the secretary shall be prima facie evidence of compliance with the registration requirements hereof; and be it further

Resolved, That every "convention agent" or his employer or an agent employed by either, shall keep in his custody and control at an office in this state his address which shall be filed with the secretary of the convention, a record of all expenses incurred and paid by him or his employer incident to advocating, promoting and/or proposing any matter pending before the constitutional convention or any matter which can properly come before the convention. All such accounts and records shall be produced by such "convention agent" or his employer or an agent employed by either upon request of the president of the constitutional convention after a resolution has been adopted by the convention requesting such report; and be it further

Resolved, That any person who shall wilfully violate any provision of this resolution as determined by a resolution of the convention, shall forfeit his identification card and shall thereafter be barred from entering the convention hall or any of the adjacent halls or rooms which are under the jurisdiction of the constitutional convention: Provided however, That before any such resolution of license forfeiture shall be placed before the convention, the person, firm, etc., shall be given an opportunity to be heard in a duly noticed public hearing which shall be conducted by the committee on rules and resolutions of the constitutional convention to which the forfeiture resolution shall be referred; and be it further

Resolved, That the names of all persons whose registrations have been revoked shall be certified to the convention delegates by the secretary of the convention.

PRESIDENT NISBET: Referred to the committee on rules and resolutions.

SECRETARY CHASE: That is the only resolution on file, Mr. President.

PRESIDENT NISBET: Unfinished business.

SECRETARY CHASE: None.

PRESIDENT NISBET: Special orders of the day.

SECRETARY CHASE: None.

PRESIDENT NISBET: General orders of the day.

SECRETARY CHASE: None.

PRESIDENT NISBET: Announcements.

SECRETARY CHASE: The secretary has the following announcements:

The committee on administration will meet in the conference room of the president's office immediately following the session today. Walter DeVries, chairman.

The committee on judicial branch will meet in room B, Wednesday, tomorrow, at 8:30 a.m. and on Thursday at 3:00 o'clock p.m. Robert J. Danhof, chairman. On Wednesday Justice George Edwards will appear before the committee, and on Thursday Justice Thomas Kavanaugh will appear before the committee.

The secretary has been requested to announce that the apples on your desks today are from the Rush orchards at Lake Orion, by courtesy of Delegate Allen F. Rush.

The secretary has also been requested to read this announcement in regard to visits to the convention from schools:

The convention guides are here to help you. If you receive any requests for information about the convention or concerning tours, we will be happy to take care of such correspondence. The convention guides.

We will attempt from now henceforth to prepare for you a composite calendar of committee calendars each day which will give the total schedules for the days as they appear from now on, as furnished by your committee calendars.

I have one further announcement. Yesterday there were placed on your desks some blank amendment forms. These included forms relating to: amendment to strike out; amendment to insert; amendment to strike out and insert; and amendment to strike out the entire section and insert another. When the question of amendments comes before the convention, will you please prepare these in duplicate or triplicate and send copies to the desk. This will expedite the procedure and make certain that the secretary does not misinterpret anything you may have in mind in the language of an amendment that you propose to offer.

There have been filed the following requests for leave of absence: Mr. A. G. Elliott requests to be excused from the session on Thursday; and Mr. Pollock requests to be excused from the sessions of Thursday and Friday this week because of a meeting he must attend in Washington in connection with his work as vice chairman of the commission on intergovernmental relations.

PRESIDENT NISBET: Without objection, the delegates will be excused. Hearing none, they are excused.

Mr. DeVries.

MR. DeVRIES: Mr. President, on behalf of the committee on administration, I should like to remind all employees and the entire staff of the constitutional convention that they are to meet tomorrow, Wednesday, at 1:00 o'clock in the convention hall, at which time the president will administer the oath of office to the staff.

PRESIDENT NISBET: Are there any further announcements?

Mr. Yeager.

MR. YEAGER: Mr. President, perhaps I might be permitted to say this in the interests of equal representation. A few days ago Mr. J. Burton Richards placed apples on everybody's desks and there was no announcement made. (laughter)

PRESIDENT NISBET: This completes the business of the day.

Mr. Ostrow.

MR. OSTROW: I move that the convention adjourn.

PRESIDENT NISBET: Mr. Ostrow moves that we adjourn. The question is on Mr. Ostrow's motion. All in favor say aye. Opposed, no.

The motion prevails.

The convention stands adjourned until tomorrow afternoon at 2:00 o'clock.

[Whereupon, at 2:50 o'clock p.m., the convention adjourned until 2:00 o'clock p.m. Wednesday, November 1, 1961.]

SEVENTEENTH DAY

Wednesday, November 1, 1961, 2:00 o'clock p.m.

PROCEEDINGS

PRESIDENT NISBET: The convention will please come to order.

Our invocation today will be given by the Reverend Carl F. Graves, Pastor of the Mt. Hope Assembly of God Church, Lansing.

REVEREND GRAVES: Dear Father in heaven, we come to Thee in the worthy and wonderful name of Jesus Christ to thank Thee for all the rich blessings which Thou hast bestowed upon our nation and the great state of Michigan. Thy love and compassion have been shown toward us in many ways and we would like to show our appreciation of these mercies by doing our utmost to live as Thou wouldst have us to live.

Grant to this responsible body of delegates vision to see what should be incorporated in this new constitution, and wisdom to clothe these provisions in the right language.

May the Lord grant to each delegate the strength and willingness to act free from any selfish consideration or political bias, so that this new constitution may be a source of real satisfaction to all concerned and that it may meet the vital needs of our state of Michigan.

This we ask in the precious name of Jesus. Amen.

PRESIDENT NISBET: The roll call will be taken by the secretary. All present please vote aye.

SECRETARY CHASE: Has everyone voted?

The secretary will lock the machine and you may now release your voting stations.

Mr. President, a quorum of the convention is present.

Mr. Hatch had previously filed with the secretary a request to be excused from today's session.

PRESIDENT NISBET: Without objection he will be excused.

SECRETARY CHASE: Absent with leave: Mr. Hatch and Mr. McLogan.

Absent without leave: Miss McGowan.

PRESIDENT NISBET: Without objection, Miss McGowan is excused.

The oath of office was administered this afternoon to the staff of the convention.

The oath of office will now be administered to the officers of the convention, and will the secretary, the sergeant at arms, the administrative assistant to the president, and the official stenographer please present themselves before the president's desk?

[Whereupon, Secretary Chase, the sergeant at arms, the administrative assistant to the president, and the official stenographer approached the rostrum.]

Raise your right hand.

Do you each solemnly swear that you will support the Constitution of the United States and the constitution of the state of Michigan, and that you will each faithfully discharge the duties of your respective offices, according to the best of your ability?

OFFICERS — (en masse) : I do.

PRESIDENT NISBET: Following our custom of having 2 committee reports each day, under the order of reports of standing committees, I will now call upon Mr. Hoxie, chairman of the committee on legislative powers.

MR. HOXIE: Mr. President, for the purpose of conserving my quota of words, I yield to Mr. Millard, who will make a report on the activity of our committee.

PRESIDENT NISBET: Mr. Millard.

MR. MILLARD: Mr. President and members of the convention, it is my privilege to make a progress report of the activities of the committee on legislative powers.

As has been said many times by many speakers in this convention, a constitution is primarily a statement of the powers and limitations of the legislature. However, this committee has been assigned certain definite powers and limitations which are now expressed in the present constitution for study and examination.

Because of the diversification of subjects assigned to the committee, it had been thought best to divide the work among subcommittees and assign definite parts of the present constitution to them for study and investigation. Accordingly, 4 subcommittees have been set up as follows:

Committee 1, chaired by Richard Kuhn, is to study article V — that's the legislative department — sections 1 to 23, inclusive, excepting sections 2, 3 and 4 which apply to apportionment and are assigned to the legislative organization committee, whose report you heard here yesterday. One of the main purposes of this subcommittee will to be to examine the initiative and referendum section which was probably the main cause for calling the 1907 Constitutional Convention.

Committee 2, chaired by Stanley Powell, is investigating the rest of article V, the legislative department, sections 24 through 40. This committee has at least one very controversial subject before it. That is the restriction in the present constitution against lotteries. I might add that I have been in receipt of several postcards and letters already opposing any changes in this section, and I understand that other members of our committee have been receiving such communications.

Committee 3, chaired by Claude L. Wood, has been assigned to study article IX, impeachments and removals from office, and article XVI, miscellaneous provisions, sections 5 and 7. Several new proposals defining legislative powers have also been assigned to this committee.

Committee 4, chaired by myself, has been assigned section 9, article XII, banking and trust company laws, regarding which this committee has concurrent jurisdiction with the committee on miscellaneous provisions and schedules; also article XIV, exemptions on real and personal property, and section 11 of article XVI, on liquor control. This committee has already met with a subcommittee of the miscellaneous provisions and schedules committee to hear Dr. Alfred Conard of the University of Michigan discuss banking and trust company laws and whose written treatise on the subject has been presented to each one of you delegates.

Many proposals for alterations of present constitutional provisions and additions or new sections have been received by the committee and have been assigned to the various subcommittees in the areas above mentioned. Each subcommittee is now formulating a schedule for hearings on any controversial issues, which will be duly announced in the calendar. If anyone in the convention has any matter involving subject matters under the jurisdiction of the legislative powers committee, we will be glad to offer them an opportunity to appear before the subcommittee involved or before the full committee, as they so desire, to receive any statements they may wish to offer.

Thank you for the courtesy of hearing this report.

PRESIDENT NISBET: Thank you, Mr. Millard.

Now the committee on executive branch, Mr. Martin.

MR. MARTIN: Mr. President, if I could have the opportunity, I would like to make each member of the convention, each delegate of the convention, a member of the executive branch committee for a few minutes this afternoon to take them into some of the problems, very briefly, that we are working with; so that as these matters come to the floor and before they come to the floor, they will have an opportunity to think about them and form their own opinions.

First of all, we are primarily interested in article VI of the constitution and, in that regard, the first thing the committee did was to prepare a definition of its responsibilities. It is short — one paragraph — which I would like to read to you:

The concern of the committee on executive branch includes all

of those matters affecting the eligibility for, term of, compensation of, and succession to office within the executive branch of state govenrnment; the selection by appointment or election, and the removal of members of the executive branch; the authority, responsibility and powers of the principal officers of this branch within the branch; the relation to members of the executive branch to both the legislative and the judicial branches; the nature and scope of the civil service system, and the structure of administration within the executive branch including the budgetary process and the process of administrative reorganization.

The committee has a general objective: that is to provide for Michigan, insofar as this article of the constitution is concerned, the best and most effective government it can to carry out efficiently the will of the people of Michigan.

In that regard another definition which I think is useful is the statement made by the little Hoover commission, which spent two years studying this problem and others. Their statement was this:

> The underlying objective is a government responsible to the people, a governmental structure so designed that the citizens can understand it, can hold it accountable; simple enough to be kept within the citizens' grasp and, at the same time, permit effective execution of govenmental stewardship.

The committee proceeded, after defining its responsibility, to consider the subject matter of the committee. The committee will be considering it in some detail. It breaks down into 3 areas:

First of all, the governor, the office of governor, and his responsibilities and duties;

Second, the offices of the other members, who are generally designated as members of the state administrative board, and their duties and responsibilities;

And, finally, the general question of the administration of the executive branch.

In laying out the detail on these subjects, the committee is asking itself a number of questions. Those are the questions which we are asking the people who appear before the committee to discuss, and each of the witnesses is given in advance a statement of these questions. I thought they might be of interest to you.

Under the heading of "The governor", the first question of substance is qualifications. What age limit? 30? What length of citizenship? — Now 5 years — What length of residence? Should the requirement simply be that he be a qualified voter?

Second, the method of selection. And in this connection the question arises as to the relation of the governor to the lieutenant governor. Should the nomination of the lieutenant governor be by statewide primary or by party convention? Should the lieutenant governor be selected to run with the governor as a team, that is, to be elected by the same votes as are cast for governor? Is the lieutenant governor needed in the state structure? And should he serve as presiding officer of the senate or be freed for other duties assigned by the governor or the legislature, or can another state officer serve in his stead?

These questions don't indicate any position on any of these points. They are questions, however, which will be discussed in the committee.

Third, the term of office of the governor. Should it be 2, 3, or 4 years? The number of terms. Should there be any limit on the total number of terms? If so, should this limit be one, two, or more terms? And if so, should it be possible for a former governor to run again after an intervening term? Referring to the beginning of the term, should it begin on January 1, or on December 1 or other date in order to integrate the inaugural date with early preparation of the budget? For the year of the election, should it correspond to the presidential year or fall in between?

The question of compensation. Should it be fixed in the constitution?

The question of vacancy and succession. Specified officers. What should the order of succession be? And to what extent should it be specified in the constitution?

The question of disability, termination of disability: what procedure for determining disability is recommended? And who should determine it, the supreme court or some other body? Who should initiate the request for the termination? And how would you determine when the disability is terminated?

Then there are the executive powers of the governor, a long list of them, but I will just run down them quickly. The inaugural address, the exaugural address — is that necessary? How are the governors to execute the laws which are specified in our constitution? Should there be a power to enforce these, to investigate, or to require by court action the performance of duties within the executive branch? What should the appointment powers of the governor be? Should he have power to appoint presently elected state officers or other department heads or members of boards and commissions? And should the appointment powers be subject to confirmation by the senate or the house or neither? Should the confirmation procedure differ according to the type of the office, whether executive or regulatory?

Question of filling vacancies. Should it be subject to confirmation?

Question of removal powers. Should it be for cause only or for policy reasons? Should it be limited to the period when the legislature is not in session, as is now the case?

There are a number of other powers here: military, messages to the legislature, writs of election, calling of special sessions. Should these be limited to subjects specified by the governor or should the legislature have power to call special sessions?

Question of approval of legislation. How should that be done, by signature only or by failure to sign in a 10 day period as is now possible?

The whole question of disapproval of legislation — the pocket veto, the item veto — whether the governor should have the power to reduce items as well as to veto items, whether he should have the conditional veto or whether he may make suggestions which can be adopted by the legislature, if they so desire.

Then, getting briefly into the officers of the executive branch, whom, as you know, are the lieutenant governor, the secretary of state, the attorney general, the state treasurer, the auditor general, the superintendent of public instruction, the highway commissioner, and the members of boards and commissions including, actually, the members of educational boards; although this is doubtless a question for the education committee. Their qualifications, method of selection, term of office, year of election, compensation, vacancies, and duties: these are similar questions to those relating to the governor.

Finally, the administration of the executive branch, its structure. Should there be a limitation on the number of departments, as has been done in most of the recently revised constitutions? Should the maximum number be specified in the constitution? Should the departments be specifically named if the number is limited?

The question of executive reorganization. Who should have the power to initiate it? Should the governor have this power? And should this be specified in the constitution? If so, what should be the limitations on such powers? Should such plans of reorganization be subject to disapproval by the senate or house or both, or neither? And what should be the procedure for disapproval if allowed?

The civil service commission. Should any changes be made in the method of selection or term or other related items? What should be the position of the convention with regard to exempt positions? Should the present limits of 2 per agency be changed? Abolition of positions. Should this require commission approval?

Question of compensation. Should control of compensation be placed in the legislature instead of in the commission, or shared by the legislature and commission? Question of the mandatory appropriation. Should the 1 per cent mandatory provision be eliminated or reduced?

Finally, the problem of budget and fiscal management.

I realize that is a rather long list, but it gives you an idea of the questions we are taking up and I thought it would be of interest to you.

Now, very quickly, we are calling 2 kinds of witnesses before the committee: the practitioners — that is, the people who

are now in government or who have served in government — and the students of government, that is, close observers and analysts who have had experience with other constitutional conventions, as well as this one, and who are well known in their fields.

We are calling 4 classes of witnesses. We are calling all the Michigan governors — I mean the Michigan governor and all former governors. All of the former governors have agreed to appear before the committee with the exception of Governor Kelly, for whom we have not yet fixed a final date but who is equally agreeable to appearing before the committee and that date will be fixed at a little later time. Then we plan to bring in some outside governors from the states where changes have occurred in constitutional revision long enough ago so that they have had some experience with the situation; that would be principally New York and New Jersey — Hawaii and Alaska are so recent that there has been no experience yet with those — possibly Missouri. The ad board members will be asked for their views, and the civil service's we are already studying.

In general we are asking first: how does Michigan's executive branch operate? And second: how do states operate where major changes have been made in their constitutions and what are the advantages and disadvantages? What improvements are possible?

Finally, I might say that the aims of the committee are:

One — this is only my own formulation — to maintain a clear separation of powers, insofar as the executive branch may be concerned, to strengthen all 3 branches. Our responsibility, of course, is only the executive branch, to cope with the multiplicity of modern problems. And finally, in the executive branch to achieve so far as possible what Mr. Hoover set forth in his statement in setting up the large, not the little, Hoover commission, which dealt with the problems of the federal government, in which Mr. Hoover said that the responsibility and accountability are impossible without authority; the power to direct the exercise of authority is impossible without a clear line of command from the top to the bottom and a return line of responsibility and accountability from the bottom to the top.

This is the problem that we are struggling with as to whether that can be achieved in our Michigan constitution.

Mr. President, I think if the committee achieves the major part of these aims, certainly if it achieves all of them, we will be satisfied, and I believe the convention — perhaps the constitution — will benefit.

Thank you very much.

PRESIDENT NISBET: Thank you, Mr. Martin.

Mr. Hutchinson.

MR. HUTCHINSON: Mr. President, I thought that it might be of interest to the convention to note that in at least 1 standard of measurement we are not keeping pace with the 1907 convention. At the end of the sixteenth session of the 1907 convention, there had been 248 proposals introduced and yesterday at the end of our sixteenth session, we had only reached 133.

PRESIDENT NISBET: Thank you for your information.

Reports of standing committees.

SECRETARY CHASE: The committee on administration, by Mr. DeVries, chairman, reports back to the convention **Resolution 8**, A resolution requesting the transmittal of copies of convention proceedings to all secondary schools and libraries in the state; with a substitute therefor, recommending that the substitute be agreed to and the resolution as thus substituted be adopted.

Walter DeVries, chairman.

For the body of Resolution 8, as offered, see above page 171.

MR. DeVries: Mr. President, the following is the substitute:

A resolution requesting the transmittal of the action journals of the constitutional convention to certain institutions.

Whereas, The state of Michigan is now in the midst of a constitutional convention, the results of which, if adopted, will be the basic law of the state for many years to come; now therefore be it

Resolved, That copies of all convention proceedings be sent to all public and private high schools, public and private colleges and institutions of higher learning, libraries, daily and weekly newspapers, and radio and television stations.

PRESIDENT NISBET: The question is on the adoption of the substitute recommended by the committee. Is there any discussion?

Mr. Higgs.

MR. HIGGS: Just as a point of inquiry, with regard to this list compiled, I wonder if we aren't going to be doing a lot of duplicating in sending materials because I know we have pretty well covered these schools in our area.

MR. DeVRIES: Mr. President, Mr. Higgs, I think on every delegate's desk is a memorandum from the committee on administration which explains what we are planning to do.

If you adopt the substitute resolution, we shall send to every public and private high school in the state — and there are 744 of them — copies of the action journals of this convention. We shall, furthermore, send copies to all the institutions of higher learning, both public and private — and there are 73 of those — also to the daily and weekly newpapers and radio and television stations, for a total of about 600; and to the libraries — about 320 libraries — for a total of 1,737.

Each delegate is requested to submit, if he so desires, 25 names and this will total up to 3,600 copies of the journal. The grand total then of the institutions and the delegates' requests will be 5,337.

We anticipate using about 250 journals for convention use, and the rest will be in the document room and perhaps we can add some names to this later.

Does that answer your question, Mr. Higgs?

PRESIDENT NISBET: Mr. Hodges.

MR. HODGES: First of all, does this now preclude any delegate from seeking more than the 25 that he originally was given?

MR. DeVRIES: We'll return to you the list that you originally filled out with the original blanks. We would like to have you check the list to make sure you have no libraries, public or private high schools or institutions of higher learning, daily or weekly newspapers, radio or television stations on your list. If you do, delete them.

MR. HODGES: There is another point: in our large metropolitan areas, many of our schools are of such a nature that certainly 1 copy is not going to be enough.

For instance, in 1 case, I have submitted 15 to 1 school because I really feel that they have a genuine need for this number. Will we be able to do this?

MR. DeVRIES: Mr. President, I don't think this will be possible. We have 6,000 copies of the action journal and that is all.

MR. HODGES: I would just like to speak on this point. I know we have already adopted this figure of 6,000. I don't know what the possibility is of changing it, but it seems to me that something as important as this convention is to the educational process — to Michigan schools — is something that we shouldn't dismiss too lightly.

Now I know very well that if 1 copy of this journal is sent into a high school in the Detroit metropolitan area, it will probably see no use whatsoever and will be filed in the circular file, probably. But if they are given sufficient copies of it to use for their political science and civics classes — maybe their high schools run as many as 70 civics classes in 1 school — if they are given sufficient quantities in order that they can have at least 1 for each instructor, so he can possibly do some work with this, then it would serve a beneficial purpose.

I would think that the expense of additional copies is worthwhile. The figure set at 6,000 was somewhat arbitrary, because we didn't know what the demand was going to be for them. I think we would be much better off in enlarging this figure if the cost is not prohibitive, rather than restricting the use of these journals.

MR. DeVRIES: Mr. President, Mr. Hodges, there is nothing to preclude you from sending your copies to the schools, if you like. Furthermore, I think that where there is an interest in

the government in political science classes, they could be thermofaxed or duplicated in some other way. It would require a change in the rules to go beyond 6,000 copies.

PRESIDENT NISBET: Mr. Sharpe.

MR. SHARPE: Mr. President, Mr. DeVries, a point of information in regard to yesterday's comment that there would be nothing retroactive. Does that hold true on these journals also?

MR. DeVRIES: Mr. President and Mr. Sharpe, I don't want to be guilty of a pun, but that is a rather sharp observation in this case.

What we will do with the journals — and we have them at the printer — is that we will bind them and send all the previous copies to the people who are on this list and the institutions on this list.

PRESIDENT NISBET: Further discussion on the substitute? Mr. Higgs.

MR. HIGGS: Now that I have my mailing list back here, just a further question: in arriving at your 6,000 total, Mr. DeVries, are you making allowance not only for the schools but also for those on our mailing list?

MR. DeVRIES: Twenty-five. Yes, sir.

MR. HIGGS: I would just like to note this inasmuch as we are coming close to the maximum that we have authorized. I have, for instance, indicated 4 for Delta College. Now I have covered the schools in my area, together with Delegate Karl K. Leibrand, and we have pretty well covered this particular area. I still wonder if we are not duplicating. I would like these particular professors and teachers individually to get these copies and by just blanket mailings I wonder if we are not duplicating the efforts of other delegates.

MR. DeVRIES: Mr. President, may I suggest this: that you check over your list and see if you have any duplications and if you have any of these other institutions on it, please remove them from the list. You don't have to fill out 25 names on a list.

I would like to recommend that these lists be returned to the secretary's office no later than the middle of next week.

PRESIDENT NISBET: Question is on the substitute.

Mr. Hodges.

MR. HODGES: Just one more point of information. Mr. DeVries, would it be possible — or first of all, have we been printing at the rate of 6,000? Is that right?

MR. DeVRIES: That's right.

MR. HODGES: So any change in this number at this point would be quite a problem, is that right?

MR. DeVRIES: In terms of back copies also? No, it would not constitute a problem unless you wanted to make it retroactive.

MR. HODGES: Well, I'm assuming that anyone that we have on these lists now will receive all the back copies, isn't that right?

MR. DeVRIES: That's correct. But if you want to print more than 6,000 copies and you want copies of the original first 16 or 17 journals, that would present a problem.

MR. HODGES: Well, I don't want to belabor this, but I do think it is a fairly significant thing.

Is it possible, if we suggest that the committee review it again, to see how many actually will be used? I am sure many delegates might not use their total 25. Then some evaluation can be made to see how much the other delegates need — those whose demands are somewhat stronger — that may be able to be met within the next couple of weeks, so that we can see if actually we need more copies.

MR. DeVRIES: Mr. President, Mr. Hodges, we will be delighted to do that.

PRESIDENT NISBET: The question is on the substitute. Any further discussion? If not, all in favor say aye. Opposed, no.

It is adopted.

Question is now on the resolution as substituted. Any discussion? If not all in favor say aye. Opposed, no.

The resolution, as substituted, is adopted.

For the body of Resolution 8, as substituted and adopted, see above, page 239.

Further reports?

SECRETARY CHASE: That is the only standing committee report, Mr. President.

PRESIDENT NISBET: Mr. DeVries.

MR. DeVRIES: Mr. President, yesterday the convention adopted a staff policy which appears on page 85 of yesterday's journal, and I just wanted to point out that this statement for the most part was drafted by Mr. Snyder. I want to bring this to your attention and publicly commend him on behalf of the entire committee on administration.

This concludes the report of the committee on administration.

PRESIDENT NISBET: Thank you.

Reports of select committees.

SECRETARY CHASE: None.

PRESIDENT NISBET: Communications from state officers.

SECRETARY CHASE: None.

PRESIDENT NISBET: **Introduction, first reading and reference of proposals.**

SECRETARY CHASE: Messrs. Norris and Hodges introduce **Delegate Proposal 1134,** A proposal to reduce the number of signatures required in proposing legislation by initiative petition to 4 per cent instead of 8 per cent. Amends article V, section 1.

PRESIDENT NISBET: Referred to the committee on legislative powers.

SECRETARY CHASE: Messrs. Norris and Hodges introduce **Delegate Proposal 1135,** A proposal to reduce the number of signatures required in proposing amendments to the constitution by initiative petition to 5 per cent instead of 10 per cent. Amends article XVII, section 2.

PRESIDENT NISBET: Referred to the committee on miscellaneous provisions and schedule.

SECRETARY CHASE: Messrs. Danhof and W. F. Hanna introduce **Delegate Proposal 1136,** A proposal to elect governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, and state highway commissioner, and the appointment of the state executive officials.

PRESIDENT NISBET: Referred to the committee on executive branch.

SECRETARY CHASE: Mr. Nord introduces **Delegate Proposal 1137,** A proposal to amend article I by eliminating the boundaries provision, providing for the seat of government, and recognizing the obligation of government to preserve and promote the human and natural resources of the state.

PRESIDENT NISBET: Referred to the committee on miscellaneous provisions and schedule.

SECRETARY CHASE: Mr. Upton introduces **Delegate Proposal 1138,** A proposal to eliminate article XI, section 13 from the constitution — salt spring lands.

PRESIDENT NISBET: Referred to the committee on education.

SECRETARY CHASE: Mr. Ostrow introduces **Delegate Proposal 1139,** A proposal with reference to the appointment of successors in the case of vacancies in the office of judges of courts of record, permitting them to serve the unexpired terms of their predecessors. Amends article VII, section 20.

PRESIDENT NISBET: Referred to the committee on judicial branch.

SECRETARY CHASE: Mr. Ostrow also introduces **Delegate Proposal 1140,** A proposal with reference to the legislation regulating the business of banking requiring an affirmative 2/3 vote. Amends article XII, section 9.

PRESIDENT NISBET: Referred jointly to the committee on miscellaneous provisions and schedule and the committee on legislative powers.

SECRETARY CHASE: Mr. Ostrow also introduces **Delegate Proposal 1141,** A proposal to provide uniform compensation for all justices of the supreme court. Amends article VII, section 2.

PRESIDENT NISBET: Referred to the committee on judicial branch.

SECRETARY CHASE: Mr. Ostrow also introduces **Delegate Proposal 1142,** A proposal relating to the increase of salaries of public officers, permitting increase of salaries of supreme court justices. Amends article XVI, section 3.

PRESIDENT NISBET: Referred to the committee on judicial branch.

SECRETARY CHASE: Messrs. Wanger, White, Van Dusen, A. G. Elliott, Nord, Austin, and Baginski introduce **Delegate proposal 1143,** A proposal to retain the preamble to the constitution of 1908.

PRESIDENT NISBET: Referred to the committee on miscellaneous provisions and schedule.

Second reading of proposals.

SECRETARY CHASE: Nothing on that calendar.

PRESIDENT NISBET: Third reading of proposals.

SECRETARY CHASE: None.

PRESIDENT NISBET: Motions and resolutions.

SECRETARY CHASE: None.

PRESIDENT NISBET: Unfinished business.

SECRETARY CHASE: None on the calendar.

PRESIDENT NISBET: Special orders of the day.

SECRETARY CHASE: None.

PRESIDENT NISBET: General orders of the day.

SECRETARY CHASE: None.

PRESIDENT NISBET: Announcements.

SECRETARY CHASE: The following announcements of committee meetings:

The committee on legislative organization will meet in room D today immediately following the session.

There is an error in today's calendar as printed which needs to be particularly noted: legislative organization, room D, after the session today. Dr. John Hannah, chairman.

Committee on public information will meet in room J, Thursday, tomorrow, immediately after the close of the session. Mr. Ink white, chairman.

Committee on education will meet in room J, November 2nd, at 10:30 a.m. tomorrow. Alvin M. Bentley, chairman. This supersedes an earlier announcement.

Committee on legislative organization will meet in room D, Thursday, tomorrow, at 8:30 a.m. Dr. John Hannah, chairman.

Committee on finance and taxation will meet in room E today, immediately after the session. D. Hale Brake, chairman.

The committee on administration will meet in the conference room of the president's office tomorrow, Thursday, at 10:00 a.m. Walter DeVries, chairman.

PRESIDENT NISBET: Any further announcements?

SECRETARY CHASE: Mr. Erickson has filed with the secretary a list of the subcommittees and the work assigned to each of them for the committee on miscellaneous provisions and schedule.

PRESIDENT NISBET: Mr. Erickson.

MR. ERICKSON: Mr. President, this is a rather long list and I request that the list be considered read and printed in the journal for the information of the delegates.

PRESIDENT NISBET: Unless there is objection . . . . Hearing none, it is so ordered.

For list of subcommittee assignments, see above, page 192.

Judge Gadola.

MR. GADOLA: I move that the convention adjourn.

SECRETARY CHASE: Mr. Upton has raised a question in a request to the secretary in regard to these verbal reports made by the chairmen of the respective committees, as to whether or not they should be printed in the journal.

The secretary has no feeling one way or the other. This is a matter, it seems to me, for the convention to determine. If these verbal reports are of enough interest, they can be printed in the journal.

PRESIDENT NISBET: It was the intent when we first started these reports that they were to be rather brief and concise as they are for information purposes only, but, as Mr. Chase said, what is the wish of the convention? It is in your hands.

Mr. Elliott.

MR. A. G. ELLIOTT: Mr. President, I might just suggest that if they were printed in the journal it would achieve this: that with the mailing of nearly 6,000 of them, the convention deliberations at least in a narrative form would then be brought to the attention of those people on the mailing list on a daily basis.

PRESIDENT NISBET: Dr. Pollock.

MR. POLLOCK: I see no purpose, no good purpose, served by printing them. It is going to take a good deal of space. It is very tentative, fleeting material, for the tentative information of the delegates. I cannot see that it needs to be preserved.

PRESIDENT NISBET: Any further discussion?

Mr. Upton.

MR. UPTON: It was my idea, listening to the reports today, and the excellent ones yesterday, that it would not only give our delegates a record of the committee actions, but also provide the members on the mailing list, let's say, with what is happening at the convention, in convention committee meetings; and, if it is in order, I would like to move that these remarks by the committee chairman be placed in the daily journal.

PRESIDENT NISBET: The question is on the motion of Mr. Upton. Any discussion? If not, all in favor say aye. Opposed, no.

The motion does not prevail.

SECRETARY CHASE: We have the following requests for leaves of absense: Mr. Perras asks to be excused from Thursday's session; Mr. Stamm wishes to be excused from the Thursday session; Mr. Pellow, Mr. Perlich and Mr. Sablich wish to be excused from Thursday's session; Mr. Iverson requests leave to be excused from Thursday's session so that he may attend a funeral; and Mr. A. G. Elliott asks to be excused from the session of next Monday evening.

PRESIDENT NISBET: Without objection, the requests will be granted.

Mr. Suzore.

MR. SUZORE: If I am in order, I would like to make a motion that when the convention session adjourns tomorrow, it stand adjourned until 8:00 p.m. on Monday.

PRESIDENT NISBET: The question is on Mr. Suzore's motion. Any discussion? If not, all in favor say aye. All opposed, no.

The motion prevails.

Now I think we are ready for a motion that we adjourn.

MR. GADOLA: I made a motion. It was not debatable, so I move the previous question. (laughter)

PRESIDENT NISBET: All in favor of the motion to adjourn, please say aye. Opposed, no.

The convention is adjourned until 2:00 o'clock tomorrow.

[Whereupon, at 2:45 o'clock p.m., the convention adjourned until 2:00 o'clock p.m., Thursday, November 2, 1961.]

EIGHTEENTH DAY

Thursday, November 2, 1961, 2:00 o'clock p.m.

PROCEEDINGS

PRESIDENT NISBET: The convention will please come to order.

The invocation today will be given by the Reverend Ernest St. Andrew, pastor of St. Michael's Episcopal Church of Lansing.

REVEREND ST. ANDREW: Let us pray:

Almighty God, who hast given us this good land for our heritage, we humbly beseech Thee that we may always prove ourselves a people mindful of Thy favor and glad to do Thy will.

Bless our land with honorable industry, sound learning and pure manners. Save us from violence, discord and confusion; from pride and arrogancy, and from every evil way.

Defend our liberties, and fashion into one united people the multitude brought hither out of many kindreds and tongues.

Endue with the spirit of wisdom those to whom in Thy name we entrust the authority of government, that there may be justice and peace, and that, through obedience to Thy law, we may show forth Thy praise. In the time of prosperity, fill our hearts with thankfulness, and in the day of trouble, suffer not our trust in Thee to fail.

We humbly pray for the people of this state, and especially for this convention assembled, that Thou wouldst be pleased to direct and prosper all their consultations, to the advancement of Thy glory, the safety, honor and welfare of Thy people; that all things may be so ordered and settled by their endeavors upon the best and surest foundations, that peace and happiness, truth and justice, may be established among us for all generations.

These and all other necessaries, for them and for us, we humbly beg in the name and mediation of Jesus Christ, our most blessed Lord. Amen.

PRESIDENT NISBET: The roll call will be taken by the secretary. All present, please vote aye.

SECRETARY CHASE: Have all present voted? If so, the secretary will now lock the voting machine and you may release your voting levers.

Mr. President, a quorum of the convention is present.

The secretary has had previously filed with him a request for leave of absence from today's session for Mr. Garvin.

PRESIDENT NISBET: Without objection, the request is granted.

SECRETARY CHASE: Absent with leave: Mrs. Butler, Messrs. A. G. Elliott, Garvin, Iverson, Pellow, Perlich, Perras, Pollock, Sablich and Stamm.

Absent without leave: None.

PRESIDENT NISBET: This afternoon our first committee report, under the order of reports of standing committees, will be given by the chairman of the judicial branch committee, Mr. Robert J. Danhof.

MR. DANHOF: Mr. President and members of the convention, the committee on judicial branch at its original organizational meeting endeavored to ascertain what the aims and objectives of the committee should be in reporting back to this convention with respect to the judicial article.

We basically decided that our aim should be to maintain and strengthen the judicial system in our state and to continue to promote the impartial and efficient administration of justice. The rights and protections that are granted to us by the present constitution or by any document we may write here can be protected only by a vigilant judiciary.

In our consideration we have determined that we must ascertain the type of court administration that we desire, from the inferior court system straight through to the supreme court.

We will likewise consider the selection and tenure of judges, so that we may best submit to the convention what we believe to be the best method for obtaining able and dedicated persons to serve in our judiciary.

In our initial meetings we decided that the following procedure would be followed by the committee in determining the needs of the state:

First, we decided that we would study our present system and ascertain whether it has met the needs of the people in the past and is continuing to meet the needs of the people at this time. If the system has not met the needs of the people, then we would ascertain where it has failed and, naturally, we would strive to come up with a remedy. If the present system is proved adequate, we will study and endeavor to ascertain whether it will continue to meet the needs of the people in years to come; and finally, whether in any way we can make more efficient the administration of justice under the system that we have.

Our basic considerations will be concerning article VII of the Constitution of 1908 which encompasses the judicial article, our court system and the method of selecting our judges.

Our apparent greatest areas of interest to date — and I think, from correspondence, will continue to be — are:

1. The justice of the peace system;
2. The establishment of an intermediate appellate court;
3. The method of selecting our judges — that is, to continue on the basis of election or to go to an appointive system; and
4. The possible establishment of a court wherein there would be tried cases involving violations of the rules and regulations of administrative agencies.

To date our committee has heard from the chief justice of the Michigan supreme court, Chief Justice Dethmers. We have also heard from Justice Edwards, and Justice Kavanaugh is scheduled to appear this afternoon. We have also scheduled appearances of other members of the supreme court. Also, the court administrator, Mr. Meredith Doyle, has appeared before the committee to give facts and information.

It is apparent that meetings of this type where various individuals appear to express their views will continue to be held for some time. We will continue to hear from the judges of the supreme, circuit, probate and municipal courts, from justices of the peace and other court officials.

In weeks to come we will also have appear before us other people, agencies and associations interested in the administration of justice.

I should like to ask the members of the convention, when they are at home and amongst their constituents, to mention to various organizations and groups to whom they may be speaking that the judicial branch is one of the 3 major branches of our government, along with the legislative and executive. I have the feeling that it is too often overlooked and consideration of the judicial article is left largely to attorneys and other persons who have a specific interest, and that members of the general public have a tendency to ignore this vital arm of our government.

I would request that when you make your remarks before various groups and organizations, you relay to them our request to have them forward any recommendations, proposals, suggestions or complaints they may have so that they may come up for consideration by the committee in its deliberations.

For the benefit of those in the gallery — and I see a substantial number — may I say that the committee will meet this afternoon at 3:00 o'clock, or at the close of the session, to hear Justice Kavanaugh. The meeting will take place in committee room B.

Thank you, Mr. President.

PRESIDENT NISBET: Thank you, Mr. Danhof.

Mr. D. Hale Brake, chairman of the committee on finance

and taxation, will now present a progress report for that committee.

MR. BRAKE: Mr. President, and ladies and gentlemen of the convention, our committee, thus far, has spent nearly all of its time in trying to learn some of the fundamentals in our field, and we have done this both by engaging in some reading and by listening to experts in that field.

Among those from whom we have heard in the committee are the following: Sanford Brown, state treasurer; Ira Polley, controller, department of administration; Edward Kane, executive secretary, state tax commission, as well as Chairman Eckhardt, Mr. Barr, commissioner, and Sheldon Markel, staff member; Mr. Harold Brown, finance division, department of public instruction; B. J. Potter of the auditor general's department; Frank McLaury, chief accountant, department of administration; Rollo G. Conlin, state representative and chairman, taxation committee, house of representatives; Albert Champney, director, Wayne county bureau of taxation; Professor Raleigh Barlowe, department of economics, Michigan State University; Dr. Denzel Cline, department of economics, Michigan State University; and some representatives of interested organizations.

We have on the schedule for next week the chairmen of the house ways and means and senate appropriations committees, Representative Engstrom and Senator Porter; the chairman of the senate taxation committee, and several others.

Quite frankly, Mr. President, we would like to stop calling in experts, but we simply cannot do it. We have to keep on calling in experts until we get a majority of one on the same side of some issue. (laughter)

I think somebody, some time in the past, said that if you want a positive opinion with no qualifications, you have to ask an ignorant person to give it. The people we have talked with are not ignorant and they are plenty positive. But the difficulty is that that positiveness runs to every point of the political compass.

As I have listened to them and their differences of opinion, I have thought of the statement that Burke made in England almost 2 centuries ago: "Refined policy ever has been and ever will be the parent of confusion."

It may be that our committee will have to come up with some answers that will not be completely pleasing to some of the experts, but which will offer some possibility of being workable in the everyday business of running a government.

Our fields of controversy have largely centered around the socalled "uniformity clause" of the constitution; the statement which is not observed in the constitution which requires that property shall be assessed at 100 per cent of its value, expressed as fair cash value; the 15 mill limitation; the earmarking of funds by constitutional mandate, including the sales tax, road money, penal fines for libraries, and what have you. Those are the principal controversies.

We have listened to the municipal league today in one of our most interesting and useful sessions.

We have established for ourselves a deadline with respect to procedure. We propose, if it is possible—and we think it will be—that this matter of holding continuous hearings will come to an end the week of November 13, and commencing the week of November 20, insofar as their schedules permit, we will listen to those members of the convention who have proposals in our committee. Before we argue any about their proposals, we want their viewpoints. We hope their schedules will permit them to give us their viewpoints that week.

And then, the next week, we propose to lay in a supply of aspirin and start in on the business of coming to some conclusions.

There will be some people called before us from time to time, but we hope that during and after the week of November 27 we will devote nearly all our time to trying to reach conclusions to submit back to the convention on matters within our field.

PRESIDENT NISBET: Thank you, Mr. Brake.

Mr. Beaman.

MR. BEAMAN: Mr. President, I have to catch a plane at 3:00 o'clock to attend a meeting in Washington. I should like to be excused for the balance of the session.

PRESIDENT NISBET: Without objection, Mr. Beaman is excused. Hearing none, he is excused.

Reports of standing committees.

SECRETARY CHASE: The committee on administration, by Mr. DeVries, chairman, recommends the following persons to the president for consideration as staff members of the constitutional convention:

Assistant director of public information: Stuart Kirvan,
Research assistant: Charles Ferry, Edward Walsh and Theodis Gay.

Walter DeVries, chairman.

Messrs. Snyder, Walker and Hood, a minority of the committee on administration, respectfully submit to the convention the following minority report:

At a meeting of the committee on administration held at 10:00 a.m., November 2, 1961, recommendations for appointments to the position of assistant director of public information and 3 research assistants, were discussed.

This minority report recommends that the convention concur with the following recommendations: Mr. Stuart Kirvan, assistant director of public information; Mr. Edward Walsh, research assistant; and Mr. Theodis Gay, research assistant.

It recommends also that the convention not concur with the appointment of Mr. Charles Ferry as research assistant.

PRESIDENT NISBET: Mr. Snyder.

MR. SNYDER: Thank you, Mr. President. In an effort to expedite this matter, I would request that we separate the issues, and I would offer a motion to concur with those 3 names upon which we have agreed.

PRESIDENT NISBET: The question is on Mr. Snyder's motion.

Mr. DeVries.

MR. DeVRIES: Mr. President, I will support Mr Snyder's motion.

PRESIDENT NISBET: The question is on Mr. Snyder's motion. Any discussion? If not, all in favor say aye. Opposed, no.

The motion prevails, and that portion of the report is concurred in.

SECRETARY CHASE: Messrs. Stuart Kirvan, Edward Walsh and Theodis Gay are appointed by the president to those respective positions.

PRESIDENT NISBET: Mr. DeVries.

MR. DeVRIES: Mr. President, I understood that we just divided the question. I did not know that we acted on the question of these 3 people being appointed. Messrs. Kirvan, Walsh and Gay are mentioned in the committee's report. I think we would have to make a motion to accept them in that that is also part of the minority report.

PRESIDENT NISBET: Without objection, that part of the report, then, will be so entered into the journal. Hearing none, it is entered into the journal.

SECRETARY CHASE: **The president appoints,** pursuant to authorization by the convention, and with the approval of the committee on administration, Messrs. Stuart Kirvan, Edward Walsh and Theodis Gay to the respective positions indicated.

PRESIDENT NISBET: Without objection, the appointments are approved.

Mr. DeVries.

MR. DeVRIES: Regarding the second part of the minority report, Mr. Ferry has the unanimous recommendation of the subcommittee which includes Mr. Gust, Mr. Mahinske and myself, and he has the recommendation of all but 3 of our 15 man committee.

We felt he was the best qualified man for this position. I urge that you vote down the recommendation in the minority report "that the convention not concur with the appointment of Mr. Charles Ferry as research assistant".

I urge that you vote no on this recommendation in the minority report.

PRESIDENT NISBET: The question is on the recommenda-

tion of the committee on administration that Mr. Charles Ferry be appointed as research assistant.

Mr. DeVries.

MR. DeVRIES: I understood that when the minority report was offered it became an amendment to the committee report, and that we separated the questions, first voting on the 3 appointments recommended in the minority report, and then next voting on the recommendation of the minority report regarding Mr. Ferry. I understood that that was the question before us.

PRESIDENT NISBET: Mr. Snyder did not move it to be an amendment to the majority report. His comment was an objection to the appointment of Mr. Ferry, and that is the matter now before the convention, the recommendation of your committee that Mr. Ferry be named as research assistant.

Mr. Walker.

MR. WALKER: Mr. President, it is my understanding of the rules that at this time it would be proper to move that the convention resolve itself into committee of the whole for the consideration of this matter.

PRESIDENT NISBET: That is right, Mr. Walker.

MR. WALKER: Then I so move, Mr. President.

PRESIDENT NISBET: Mr. Walker moves that the convention resolve itself into committee of the whole and that the report be discussed in committee of the whole.

MR. WALKER: Just that portion of the report that deals with Mr. Ferry, Mr. President.

PRESIDENT NISBET: The other is already passed; has been adopted.

Mr. DeVries.

MR. DeVRIES: On a point of information, Mr. President, what is before us? Is it the second recommendation of the minority report, or the report of the committee on administration?

PRESIDENT NISBET: The report of the committee was divided into 2 sections, Mr. DeVries. The first 3 names have been approved by the convention, and the matter now under discussion is the approval of Mr. Ferry whose appointment is recommended in the report of your committee. That is the question before the convention.

Mr. Walker has since moved that the convention resolve itself into committee of the whole.

MR. DeVRIES: I would urge that you vote no on Mr. Walker's motion to resolve this convention into committee of the whole.

PRESIDENT NISBET: Any discussion? The question is on the convention resolving itself into committee of the whole. If there is no discussion, all in favor say aye. Opposed, no.

The motion does not prevail.

Mr. Snyder.

MR. SNYDER: Mr. President, am I in order in speaking in support of my amendment at this time?

PRESIDENT NISBET: You have not offered an amendment, Mr. Snyder. The question we are discussing is the recommendation of the committee on administration that Mr. Ferry be appointed to the position of research assistant. You may speak to that point.

MR. SNYDER: This, then, I take it, is the recommendation by the majority of the committee. Is that correct?

PRESIDENT NISBET: That is right.

MR. SNYDER: And therefore, in order to support my point of view, I must speak against the recommendation?

PRESIDENT NISBET: That is correct.

MR. SNYDER: There is a tremendous advantage, Mr. President, in working with another boy scout because we always get our courses straightened out and make sure we are going in the correct direction.

I feet we have a very important principle involved here, ladies and gentlemen. We have here not the question of an individual — and I regret that we must mention names on this matter — but one of far reaching consequences. I think we have a problem here that confronts not only us but, if I may plagiarize from Dr. Hannah's speech of the other day, we have "a trust to all the citizens of Michigan."

This is not a partisan issue. This is an issue that will ultimately affect all of us and our constituents back home. We have here a person who will, in many phases, from now until the conclusion of the convention, help mold the public image of this convention.

I am certain, from the degree of cooperation that has been displayed to date, it will be your feeling that this will not be a Republican convention, nor will it be a Democratic convention. This will be a bipartisan effort and at the conclusion of our efforts we will be able, as individuals, as a team, and as citizens, to say to our people: This is something that we agreed to.

I should like to go on record that this is not motivated by any partisan feelings. In fact, if you review the application of one of the key people among the persons whose appointments we did approve today you will find that his record is, by and large, a Republican record. But we felt that in this case his workmanship would not be affected by partisanship and with a clear conscience we were able to support, unanimously, his particular choice.

Now there is reason for me to suspect, because of some of the incidents that have occurred prior to this appointment being recommended, that the person we now have under consideration could not objectively, and could not with a degree of thoroughness, support the position of both parties. In fact, there is some dispute in my mind as to whether he would even take care of all the people within his own department with a completely unbiased point of view.

The other day at this convention we approved the list of duties of the committee on public information. I do not know how many of you delegates have taken occasion to read the broad powers that we gave to this committee. In view of this I think it is very important that we, as delegates, if we are to allow these powers to remain, have a responsibility to make certain that the people who will be on this committee and who will be the resource people and the research people will approach their work objectively and that they will not use this particular spot for any purpose other than for informing the public.

I feel that research and resource people should be just that — they should not be advocates. I feel that if we were to concur in the recommendation of the majority of this committee we would be putting on the staff a person who would be an advocate and who would not be giving us the service that we so rightfully need.

There are other facets of this matter which are quite nebulous and they would require a considerable amount of discussion but I feel that, from my own point of view, I have expressed for the minority of the committee some of the very serious objections we have raised.

Just one more point. It was made very clear to us in our committee meeting today that the research person we have discussed is one whose assignment had already been made, and he would end up nowhere other than on the committee on public information.

With this thought in mind, I had before me no other course than to support the request that we concur in the recommendation of this person. I felt, then, that this was a matter which I should bring to the attention of the entire convention with the assistance of my 2 colleagues, Mr. Hood and Mr. Walker.

PRESIDENT NISBET: Mr. Nord.

MR. NORD: Mr. President, I am not a member of the committee on administration — and for that I should like to say publicly "Thank God!" — but I have been a member of the committee on rules which set up the committee on public information. I should like to make this comment at the start.

When the name of that committee came before the committee on permanent organization and rules, I made the comment at that time that the name of that committee scared the devil out of me. It reminded me of the French revolution, and being a rather conservative fellow, that did scare me. (laughter)

The title "committee on public information" suggests that they are the only source of information. Naturally we know that that is not so. Nevertheless, ever since that time, I have

been very nervous about this committee and I still am. (laughter)

It is not that they have done a great deal of harm so far. As far as I know, they have not met yet and therefore it would be difficult for them to do great harm. (laughter) But, I am still concerned about this. If the information which has been given to us is correct — that this gentleman, whom I have never met, never seen and have no personal knowledge of and, as far as I know, is an extremely competent person — if the information I have been given about him is correct, my opinion is that he does not belong on an assignment in the committee on public information.

The reason I state that — and will I will state, very bluntly and frankly, as is my wont — is this: I believe the information we have so far does not state a good reason — but I believe there is a good reason — why this man should not be assigned to that committee. That being the case, I wish to present the reason, as I understand it, and let the chips fall where they may — and I suspect they may fall on me.

The real objection, as I understand it, to this gentleman being on the committee on public information — in any capacity, what ever it may be — is on the basis of a press release which was given out by the committee on administration, and on the basis of the translation of that into a press release which was, I understand, drafted from the original by the gentleman in question.

I should like to read the 2 press releases and point out why I take exception to the assignment of this person to this particular committee. Concerning his appointment to any other committees, I have no fear. This is the original release as I have it. It was released at 12:00 noon, October 10, 1961.

> Committee chairman Walter DeVries announced the committee on administration of the constitutional convention met today and discussed procedure for selecting stenographic help. After considerable discussion it was decided that competitive civil service type examinations would be held in Lansing in connection therewith. Applicants for stenographic help must contact Mr. Bernard Apol, assistant to the president of the constitutional convention, by Friday, October 13. The committee pointed out that the nature of the work required a high degree of skill and residence in Lansing.

I am not entirely clear as to whether this was the original press release or the one finally released. I believe it was the one finally released. But this was the information, as I understand it, that was originally to be released and which was actually released.

The other attempted release, or draft release let us say, which I am informed by members of the committee on administration was prepared or drafted by the gentleman in question reads as follows. I would like you to compare 2 things on which I shall comment. I might as well tell you now what they are. These are the 2 things: one is the length, and the other is the content. I might say that the length of the first release was 83 words — just a nice small number — and the length of the other release was 179 words, which is not a very nice, small number if we are concerned about expense. But that is not my principal objection. The content is what I am concerned with. The second release prepared or drafted by the gentleman in question reads as follows:

> Lansing—The committee on administration of the constitutional convention today ordered that civil service type examinations be held in the selecting of all stenographic employees.
>
> Committee chairman Walter DeVries made the announcement after a lengthy session of budgetary and staff matters.
>
> Rockwell T. Gust Jr., vice chairman of the committee, explained that the use of civil service facilities and procedures would —

And this is in quotation marks:

> facilitate the organization of the convention and provide us with a tested method of determining employee qualifications.

That concludes the quotation attributed to Mr. Gust. I continue:

> Gust said competitive civil service examinations will be held in Lansing October 11-16, inclusive. Applicants must apply to Bernard Apol, assistant to the president of the constitutional convention, by no later than Friday, October 13.
>
> Gust pointed out that the stenographic demands of the convention demand —

Again in quotation marks:

> a high degree of skill.

The quotation ends. I continue:

> Employees will also be required to reside in Lansing during their period of employment with the convention, Gust added. (laughter)

Again a quotation attributed to Mr. Gust:

> The convention has an urgent and immediate demand for skilled stenographic help, Gust emphasized. (laughter)

Again a quotation:

> We're hopeful that many competent persons will be eager to participate in the convention's historic work. (laughter)

I am informed that Mr. Gust is embarrassed by this, and I am sure he is, but it is not my intention to embarrass him. He had nothing to do with the drafting of this release and as I understand it he grabbed all the papers back and prevented this from going out.

I am the first one to release this publicly to my knowledge and I hasten to explain that I do not do so with a view to embarrassing Mr. Gust. My purpose is to prevent embarrassing the rest of us in the future.

I believe that the person who drafted this document is an enthusiast, all right, but I believe he is a super enthusiast. I believe this is not the correct approach to the job that we have.

Any job connected with public information is an extremely sensitive position. It is a very tough position, and I think many people would prefer not to be in such a position because it requires that you be purer than pure can be. I don't know who can be that pure, but I do know that it is not easy, and I believe that this gentleman has failed in his first effort. I would hate to see him have a chance at a second effort and as a result I believe that this gentleman—if he is appointed as research assistant, and I have no objection to that as an abstract proposition—in any event, if the understanding is that he is to be assigned to the committee on public information, I think that it should be prevented.

PRESIDENT NISBET: Mr. Ostrow.

MR. OSTROW: Mr. President, I do not wish to delay the proceedings of the convention, but let me say this: I have watched the committee on administration work throughout the period of time we have been here and I have such faith in the ability and integrity of this committee that if this man is their choice, I will go along with this man, confident that if in the future there is any occasion for any doubt about this man in connection with his ability, integrity or the direction of his interest, the committee on administration will take care of the situation.

PRESIDENT NISBET: Mr. Marshall.

MR. MARSHALL: Mr. President, fellow delegates, I, too, agree partially with the statements made by Delegate Ostrow. I do not think that this is a matter of questioning the good faith or the integrity of the committee on administration. I, too, would like to commend the committee for the work that they have done here in this convention. However, I am speaking against the recommendation of the committee. Because of the broad discretionary powers that have been given to the committee on public information, this committee will be the one committee that will be in the position of not having to come back to the convention for approval of what they release. This is the committee that is supposed to report to the people of the state of Michigan from time to time—the committee that will, in the eyes of the people, cast the image of this convention.

I do not even know Mr. Ferry. I have not had the opportunity of meeting him. I understand from what I have been told that he is a very capable, qualified person. But if there is any committee in this convention wherein a bipartisan

spirit should prevail—or a nonpartisan spirit, perhaps I should say—it should be this committee which is in a very sensitive position.

I know from experience that it is very difficult to cast yourself overnight, in a nonpartisan role and to lay aside your personal thinking after having been oriented over a long period of time in partisan, political activities.

I think we owe it to the state of Michigan to ensure that the people appointed to such a sensitive position are able to reach that degree of objectivity, are able to cast aside partisan positions and attitudes and work in a nonpartisan spirit.

I am told that there were other people who applied for this position and who met the qualifications but who did not receive serious consideration. It seems to me that equal consideration should be given to all people who applied who have had experience in this field, particularly former employees of the Detroit Times, (Ed. Note: The Detroit Times had recently suspended publication) who would be available to perform in a position like this, who have had no tag attached to them identifying them as being involved in partisan politics.

I have been informed that Mr. Ferry just recently resigned as the publicity director of the Oakland county republican committee. In his role as press agent for the Oakland county republican committee it was his responsibility and his duty to do what he could to enhance the political fortunes of the Oakland county republican organization. I do not quarrel with this, but I question whether or not anyone so oriented should be appointed to a sensitive position of the type we are discussing here. I do not believe, for example, that Jim Vinal or Paul Weber could take this job and be really and truly objective in their approach to it . . .

MR. DeVRIES: Point of order.

PRESIDENT NISBET: Dr. DeVries.

MR. DeVRIES: Mr. President, on a point of order, I wonder whether, under rule 22, this delegate is in order and has a right to discuss personalities on the floor? I should like a ruling from the Chair on that point.

PRESIDENT NISBET: The Chair would rule that in this case Mr. Marshall is not discussing personalities within the meaning of the word "personalities" as set forth in the rule referred to.

MR. MARSHALL: Thank you, Mr. President. I do not think, Mr. President, I was discussing personalities. I hasten to add that if my remarks were construed in that light, I would apologize to the entire convention. I was seeking to make an analogy between an extreme partisan democrat and an extreme partisan republican and attempting to outline the difficulty involved in casting either of them in the role under discussion—one requiring a high degree of ability to be nonpartisan. I was trying to establish through my analogy how difficult it would be for one who was politically oriented to be objective, and how important it is to be objective in a sensitive role such as that of research assistant connected with the committee on public information which creates the public image of this convention.

It seems to me that in this sensitive spot we would be much better off to try and come up with a recommendation for the appointment of a person who is well qualified and capable in this field but one who is nonpartisan, so called, or who had never been associated with either political party, in order to achieve objective reporting of the work of this convention to the people of the state.

If I would be in order at this time in so doing, I should like to move to have this tabled, at least for the time being. As I say, I do not know Mr. Ferry—I honestly do not know him. It might be that if we were to have a talk with him our concern about many of these things we have heard reported would disappear. If there were a hearing and if I were to listen to what was said there, I might feel otherwise inclined concerning his appointment. I would like to move at this time, if I am in order in so doing, that we table this matter until one week from today in order that we might request and hold a public hearing in order to go into this matter further. If I am in order in making that motion at this time, Mr. President, I move that we table this until one week from today.

PRESIDENT NISBET: The question is on the motion of Mr. Marshall to lay this on the table for a week from today, November 9.

Dr. DeVries.

MR. DeVRIES: Mr. President, delegates, I would urge you not to vote for Mr. Marshall's motion. I should also like to speak on it—

MR. MADAR: Point of order.

PRESIDENT NISBET: Mr. Madar.

MR. MADAR: Mr. President, I rise on a point of order. A motion to table is not debatable, and I think that Dr. DeVries should know that.

PRESIDENT NISBET: A motion to lay on the table is not debatable. The question is on the motion of Mr. Marshall to lay on the table for a week from today. All in favor—

Mr. Hutchinson.

MR. HUTCHINSON: Mr. President, I rise to a point of parliamentary inquiry. I wish to know whether it is in order to make a motion to lay on the table to a time certain.

This is something that in all my experience under Mr. Chase in the senate we never had and I would like to have the matter clarified.

PRESIDENT NISBET: We will ask Secretary Chase that question.

Will the convention please be at ease for a few minutes.

[Whereupon the convention stood at ease from 2:40 o'clock p.m. until 2:45 o'clock p.m.]

Mr. Marshall.

MR. MARSHALL: Mr. President, I should like first to thank Mr. Hutchinson for his gracious lesson in parliamentary procedure, but I should also like to point out that the other day in our proceedings a motion was made to table for a definite period of time the question of the cutting off of the deadline.

I think the question is whether or not it is debatable, so I will change my motion merely to lay on the table.

PRESIDENT NISBET: The question is on the revised motion of Mr. Marshall to lay on the table. All in favor say aye. Opposed, no.

The motion does not prevail.

Dr. DeVries.

MR. DeVRIES: Mr. President, delegates, several points have been raised to which I think we should address ourselves.

First of all, all the research assistants appointed by this convention are appointed as research assistants and they are then referred to the codirectors and the committee chairmen, and they are given their assignments.

In the case of Mr. Ferry, his appointment was a recommendation to the committee on administration, a unanimous recommendation from the subcommittee consisting of Mr. Gust, Mr. Mahinske and myself. It is a bipartisan recommendation. The vote was 12 to 3.

I have confidence in Mr. White, the chairman of the committee on public information, who concurs in this recommendation. The field of activity of this gentleman will be under his direction and I am convinced that their work will be objective in character.

I am satisfied with the objectivity, the qualifications, the competence and the experience of Mr. Ferry.

With regard to the press releases which Dr. Nord drew to our attention, I can briefly tell you the story behind that if you wish to hear it, but I think it has been told so many times already that it is becoming rather boring. This press release has been reproduced in a frenzied attempt at ridicule. It has been presented this afternoon. The same thing has been released at least twice and has been on your desks at least once.

The committee on administration, the day of its organizational meeting, decided that it would send out an appeal for applicants for positions on the staff of the constitutional

convention because we felt at that time we did not have enough applications. I then appointed a subcommittee consisting of Mr. Mahinske, Mr. Snyder and Mr. Gust to draft this release. They drafted the release.

On returning to the committee room, Mr. Gust ran into Mr. Ferry, who was on the convention site for about 15 or 30 minutes. Mr. Ferry may have thought that Mr. Gust was chairman of the committee, so it does not bother me at all, Dr. Nord, that his name was in there 5 times. The point is that, through an honest mistake, the release was drafted and it did mention Mr. Gust's name 5 times. The subcommittee objected to this draft release. The end result was that we recalled all the copies and issued the original release. As far as I am concerned, this was an honest error.

I would suggest to you that Mr. Ferry by now is gun shy and will lean over backwards to prevent an occurrence like this happening again. Furthermore, I am curious about one aspect of this discussion. Everybody who is opposing Mr. Ferry seems never to have met him.

All the recommendations of the committee on administration have been unanimous up to this point. I like to think that the committee did a good job. We selected people purely on the basis of competence, qualifications and experience and I think we are doing the same thing here.

In regard to the number of applications received for the position, Mr. Marshall, about 30 people applied for the position of director of public information. About half of these obviously were not qualified and were not called in for interview. There seems to be a common misunderstanding among people that all you have to have in order to be a public relations man is a Brooks Brothers suit, a blue shirt with the collar buttoned down, a narrow tie, a thin briefcase, and you are in business. The net result was that we received a lot of applications that could not be considered.

We did, however, interview at least 15 people we thought were qualified after reviewing the files. Of this group, 6 were picked as qualified. Out of the 6, we picked these 2 as the most qualified men we could find among those applying for this position. Furthermore, as a concession to some of the members of the committee, last week, when we originally were going to make this appointment, we agreed to once again open up the applications. A lot of publicity was received over the weekend on this. The net result was 4 applications. Two of them were fairly good, one was written on the back of a postcard, and the other we could not consider, either. Of the 4, we considered one of these people and interviewed him. He was a very well qualified man, but we felt that of the other interviewees Mr. Ferry and Mr. Kirvan were the most qualified.

The committee on administration still maintains that position. We believe that we have done the right thing and we urge you to support the recommendation of the committee on administration with regard to the appointment of Mr. Ferry.

PRESIDENT NISBET: Mr. Madar.

MR. MADAR: Mr. President, it so happens that I am on a committee that has met once. That committee is the committee on public information. The only thing that was taken up at that meeting was the hiring of men for public relations work, and I do not think the discussion lasted for more than 2 or 3 minutes. In that time I was given one promise—that the committee on public information would be given the opportunity to discuss the merits and qualifications of the gentlemen seeking the position.

I have, on 3 or 4 occasions, spoken to Mr. White, the chairman of that committee, asking when we were going to hold any meeting. I heard yesterday that we were to have a meeting this afternoon after this session. I again spoke to Mr. White when he came to me just before going to lunch and told me about the fact that they were going to hire Mr. Gay, Mr. Walsh and Mr. Kirvan, and then we also discussed Mr. Ferry.

I have thought quite a bit about all of the individuals serving as delegates at this convention, and one of the men who stands out among us is Mr. White. Just by talking with Mr. White I could sense whether or not he was satisfied with any of these particular individuals. I was rather surprised to note that it seemed that Mr. White went along wholeheartedly with the appointment of the others, but that when it came to this particular instance and the appointment concerned, his conviction did not appear to be as wholehearted with respect to having Mr. Ferry doing our public relations work.

Now, so far as our knowing about this particular press release, yes, it was on our desks for about 2 minutes, and there was a great rush on the part of the pages to get the copies off our desks so that no one would see them. I grant you that there has been discussion of these things.

If you will remember, gentlemen, you have studied over the past years and you have read a lot. You know that it is the policy in an organization that amounts to anything that if you have a personnel man doing your hiring, the departments within that organization are given the opportunity to discuss with this man their qualifications.

But apparently the committee on administration did not think that we were capable and at this time I am going to ask you, as a fairminded group of individuals, to give us our right to interview applicants for positions relating to the committee on public information. Before deciding whether you are going to accept this man or reject him, give us the opportunity to find out what each and every member of the committee on public information would think about our hiring him, after we have talked to him.

At this time I move that this be done.

PRESIDENT NISBET: Mr. Madar, would you please rephrase your motion? Just what was your motion?

MR. MADAR: My motion, Mr. President, is that this recommendation be sent to the committee on public information and that we consider this man, that we interview him, and then our committee submit a recommendation to the convention.

PRESIDENT NISBET: The motion of Mr. Madar is that this recommendation be referred to the committee on public information. Any discussion?

Dr. DeVries.

MR. DeVRIES: Mr. President, I submit that Mr. Madar's motion is out of order. Under the rules, the committee on administration recommends to the president, for his appointment, staff members of the constitutional convention. The fact that we call in committee chairmen as consultants is done in good faith with the committee chairmen.

I stick with the original recommendation of the committee on administration. It is our decision along with that of the president, and we think Mr. Ferry is a good choice.

PRESIDENT NISBET: Mr. Brown.

MR. T. S. BROWN: Mr. President, I have a question, or a point of order. Is the chairman of the reporting committee exempt from the rule which holds that he may only speak once when we are not sitting as a committee of the whole?

PRESIDENT NISBET: I think the chairman can speak more than once.

MR. T. S. BROWN: Thank you, Mr. President. I just wanted to ask that question. And now, as to my remarks . . . (laughter)

PRESIDENT NISBET: Mr. Brown, are you now proposing to discuss Mr. Madar's motion?

MR. T. S. BROWN: No, Mr. President. I just had a question about whether or not Dr. DeVries was speaking in order.

PRESIDENT NISBET: I must now put the question before the convention.

MR. T. S. BROWN: I will yield the floor in order that you may do so, but I will remain standing.

PRESIDENT NISBET: The question is on Mr. Madar's motion that the recommendation be referred to the committee on public information. Is there any discussion? If not, all in favor say aye. Opposed, no.

The motion to refer does not prevail.

And now, Mr. Brown?

MR. T. S. BROWN: Just generally speaking, Mr. President and fellow delegates, the public relations man—the P. R. man, as he is popularly referred to—is strictly an American

phenomenon. I do not believe there is any other country in the world where the P.R. man is elevated to the present status he enjoys here.

I reserve the right—I think perpetually— to always distrust P.R. men, because in any particular instance if you ask a man who is engaged in that particular line of work why his particular line of work is necessary, his answer always is a description of how his job works, and he is never able to answer the question because it is a particularly American phenomenon.

Now, beginning with that particular orientation, and without discussing the qualities of the instant gentleman, I suggest this: we may do everything conceivable in all good conscience over a period of many months in this convention to arrive at some objective document which is good for the people of the state of Michigan, and then impose upon our delegates, during the course of our deliberations in drafting, all sorts of cross checks to prevent any sort of misinterpretation of what we are doing, and then, in the final outcome, when the product is coming off the end of the assembly line, if you will, we do not have a check there. We do not have a final inspection.

I wish to read to you from appendix B of the journal of October 9, which is the job description of the position for which Mr. Ferry has applied, assistant to the director in charge of public information. It reads:

> This person would work closely with the committee on public information. He should be a competent researcher and writer who can write notices and reports of committee hearings and sessions; prepare press releases and other materials designed to inform the public of the activities of the convention and its delegates. He should be available to all delegates for the preparation of releases and speeches. He should keep all groups interested in convention proceedings (e.g., schools and service organizations) informed of the convention's meetings and activities.

At this juncture it is possible, theoretically, without discussing the individual in question and speaking only theoretically, that a man may fumble inadvertently and thus destroy a good portion of the work we have done over many months. If that is allowed as a matter of mechanics, then I think we are in error.

I have no objection to the individual in question, but I do think this: in some way, shape or form he ought to be made more responsible to the committee on public information and he ought not to be allowed, as this job description would imply, a free hand in writing press releases for delegates or for various committees, and he ought to be made to report back to the committee on public information before issuing any such press releases, and I so move at this time.

PRESIDENT NISBET: Would you restate your motion, please, Mr. Brown?

MR. T. S. BROWN: Yes, Mr. President. I move to amend the job description of the assistant to the director in charge of public information as found in paragraph (c) of appendix B, to include a requirement that press releases be approved by the committee on public information.

I beg your pardon, Mr. President, but after consulting with one of the delegates I understand that my motion to amend is out of order.

PRESIDENT NISBET: Yes.

Mr. Farnsworth.

MR. FARNSWORTH: Mr. President and delegates, this matter of hiring these people to work with the committee on public information has been gone over many times in the committee meetings. I have been there, and I can tell you that the man is well qualified. We could sit here all afternoon and we would not know any more about the matter than we do right at the moment.

At this time, Mr. President, I move the previous question.

PRESIDENT NISBET: Is the demand for the previous question seconded? Those in favor will rise.

SECRETARY CHASE: There are a sufficient number up, Mr. President.

PRESIDENT NISBET: The demand for the previous question is seconded. The question now is: shall the main question now be put? Those in favor will vote aye. Those opposed will vote no.

Mr. Downs.

MR. DOWNS: I ask for a recorded roll call vote.

PRESIDENT NISBET: The question is on the demand for a roll call vote. Those in favor will vote aye.

Mr. Madar.

MR. MADAR: Mr. President, may I rise on a question of privilege? I should like to ask this question: is it not a rule of parliamentary procedure that when a delegate speaks on a question he cannot then ask to move the previous question? Am I correct in that understanding?

PRESIDENT NISBET: The qustion now is: is there a rising vote in support of the demand for ayes and nays? Those in favor of having the ayes and nays called, please rise.

SECRETARY CHASE: Forty-four, Mr. President.

PRESIDENT NISBET: There are a sufficient number up. The yeas and nays are ordered.

The question is: shall the main question now be put? Those in favor, vote aye; those opposed vote no.

SECRETARY CHASE: Has everyone voted? The secretary will now lock the machine.

PRESIDENT NISBET: Mr. Snyder is rising to speak.

MR. SNYDER: This is a roll call vote, Mr. President, and I do not wish to go on the record as voting improperly. Will you please be so kind as to restate the proposition on which we are now voting, Mr. President?

PRESIDENT NISBET: The question is on ordering the previous question. This is to decide whether or not the previous question shall be ordered. Those in favor of that, vote aye. Those opposed, vote no.

SECRETARY CHASE: Have you all voted? The secretary will now lock the machine.

The roll was called and the delegates voted as follows:

Yeas—93

Allen	Gover	Prettie
Andrus, Miss	Gust	Pugsley
Anspach	Habermehl	Radka
Barthwell	Hanna, W. F.	Rajkovich
Batchelor	Hannah, J. A.	Richards, J. B.
Bentley	Haskill	Richards, L. W.
Blandford	Hatch	Romney
Bledsoe	Heideman	Rood
Bonisteel	Higgs	Rush
Boothby	Howes	Seyferth
Brake	Hoxie	Shackleton
Brown, G. E.	Hubbs	Shaffer
Conklin, Mrs.	Hutchinson	Shanahan
Cudlip	Judd, Mrs.	Sharpe
Dade	Karn	Sleder
Danhof	King	Spitler
Davis	Kirk, S.	Stafseth
Dehnke	Knirk, B.	Staiger
Dell	Kuhn	Sterrett
DeVries	Lawrence	Stevens
Donnelly, Miss	Leibrand	Thomson
Doty, Dean	Leppien	Tubbs
Doty, Donald	Lundgren	Turner
Durst	Martin	Tweedie
Erickson	McAllister	Upton
Everett	McLogan	Van Dusen
Farnsworth	Millard	Wanger
Figy	Mosier	White
Finch	Page	Wood
Gadola	Plank	Woolfenden
Goebel	Powell	Yeager

Nays—35

Austin	Hart, Miss	McGowan, Miss
Baginski	Hatcher, Mrs.	Murphy
Balcer	Hodges	Nord
Brown, T. S.	Hood	Norris
Buback	Kelsey	Snyder
Douglas	Krolikowski	Stopczynski
Downs	Lesinski	Suzore
Elliott, Mrs. Daisy	Liberato	Walker
Faxon	Madar	Wilkowski
Follo	Mahinske	Young

Ford	Marshall	Youngblood
Greene	McCauley	

Mr. President, on the question of ordering the previous question, the yeas are 93 and the nays 35.

PRESIDENT NISBET: The previous question is ordered. Those in favor of concurring in the recommendation of the committee will please vote aye.

Mr. Hodges.

MR. HODGES: Mr. President, I request a recorded roll call vote on this question.

PRESIDENT NISBET: Is the demand seconded? All in favor, please rise.

PRESIDENT NISBET: There are a sufficient number up. The question before the convention now is the recommendation of Mr. DeVries' committee that Mr. Ferry be appointed research assistant. Those who are in favor, please vote aye; those opposed, vote no.

SECRETARY CHASE: Have you all voted? The machine is now locked and we will record the vote.

The roll was called and the delegates voted as follows:

Yeas—94

Allen	Hanna, W. F.	Prettie
Andrus, Miss	Hannah, J. A.	Pugsley
Anspach	Haskill	Radka
Batchelor	Hatch	Rajkovich
Bentley	Heideman	Richards, J. B.
Blandford	Higgs	Richards, L. W.
Bonisteel	Howes	Romney
Boothby	Hoxie	Rood
Brake	Hubbs	Rush
Brown, G. E.	Hutchinson	Seyferth
Conklin, Mrs.	Judd, Mrs.	Shackleton
Cudlip	Karn	Shaffer
Cushman, Mrs.	King	Shanahan
Danhof	Kirk, S.	Sharpe
Davis	Knirk, B.	Sleder
Dehnke	Kuhn	Spitler
Dell	Lawrence	Stafseth
DeVries	Leibrand	Staiger
Donnelly, Miss	Leppien	Sterrett
Doty, Dean	Lundgren	Stevens
Doty, Donald	Mahinske	Thomson
Durst	Martin	Tubbs
Erickson	McAllister	Turner
Everett	McLogan	Tweedie
Farnsworth	Millard	Upton
Figy	Mosier	Van Dusen
Finch	Nisbet	Wanger
Gadola	Ostrow	White
Goebel	Page	Wood
Gover	Plank	Woolfenden
Gust	Powell	Yeager
Habermehl		

Nays—37

Austin	Ford	McCauley
Baginski	Greene	McGowan, Miss
Balcer	Hart, Miss	Murphy
Barthwell	Hatcher, Mrs.	Nord
Bledsoe	Hodges	Norris
Brown, T. S.	Hood	Snyder
Buback	Kelsey	Stopczynski
Dade	Krolikowski	Suzore
Douglas	Lesinski	Walker
Downs	Liberato	Wilkowski
Elliott, Mrs. Daisy	Madar	Young
Faxon	Marshall	Youngblood
Follo		

On the question of concurring in the recommendation of the committee on administration for the appointment of Mr. Charles Ferry as research assistant; the yeas are 94 and the nays are 37.

PRESIDENT NISBET: The recommendation of the committee is concurred in and the president appoints Mr. Charles Ferry as research assistant.

Without objection the appointment is approved.

Thank you very much for a parliamentary lesson. I have been somewhat confused.

I recognize Mr. Kelsey.

MR. KELSEY: Thank you very kindly, Mr. President. I should like to have some explanation from Dr. DeVries of some of the material I was examining on my desk shortly after the convention convened. There are no dates on these papers, and I made no notation in that respect.

In the journal dated October 9, we have under appendix A, "committee on administration," 3 positions. Under appendix B, we also have 3 positions in paragraphs a, b and c. Apparently we now have employed 4 people in this category.

I wonder whether Mr. DeVries can explain how the budget was used here and how he made room or provision for the extra person. Could he explain that to the delegates?

MR. DeVRIES: Mr. President, Mr. Kelsey, the rules authorize the appointment of 9 research assistants, or more if authorized by the committee on administration. As I understand it, this brings the total number of research assistants we have appointed up to 9, and nothing beyond that.

If I may, Mr. President, I should like to comment on Mr. Brown's amendment offered just a moment ago. I think there is a mistaken idea here. Mr. Ferry was not considered and appointed as assistant director in charge of public information. Mr. Kirvan has already received that assignment earlier this afternoon. Mr. Ferry was recommended for appointment as research assistant to work with the committee on public information.

It is with great relief that I say this concludes the report of the committee on administration. (laughter)

PRESIDENT NISBET: Are there further reports of standing committees?

SECRETARY CHASE: None on file, Mr. President.

PRESIDENT NISBET: Mr. Douglas.

MR. DOUGLAS: Mr. President, I have a question I should like to put to Dr. DeVries. Under the table of organization to which reference has been made, appendix A, this assistant to the director in charge of public information is shown as being responsible only to the director and to the president.

I think that in working as closely as he will with the committee on public information, it should be made clear and it should be made a matter of record that the assistant to the director in charge of public information and the assistant research men, are directly responsible to the committee on public information.

PRESIDENT NISBET: Mr. Madar.

MR. MADAR: Mr. President, I have here in my hand a speech that was delivered last evening to the Michigan chapter of the public relations society of America. This speech was delivered by the chairman of our committee on public information.

So that we will go on record as showing our public relations people what we mean by nonpartisanship and nonpartisan writing, speeches and releases I would ask that this speech be printed in the journal so that they can compare it in the future with anything else they may be doing.

PRESIDENT NISBET: Without objection, it will be so printed.

MR. HUTCHINSON: I object.

PRESIDENT NISBET: There is objection.

Dr. DeVries.

MR. DeVRIES: Mr. President, with respect to the comments made by Mr. Douglas, may I say this. I do believe the rules provide that the assistant director in charge of public information must work with the committee on public information. I suggest that if he wishes to make that tie stronger, he should introduce a resolution providing for an amendment of the rules in that regard to make it more specific in regard to the research assistant.

PRESIDENT NISBET: Reports of select committees.

SECRETARY CHASE: None.

PRESIDENT NISBET: Communications from state officers.

SECRETARY CHASE: None.

PRESIDENT NISBET: Introduction, first reading and reference of proposals.

SECRETARY CHASE: Mr. Powell introduces

Delegate Proposal 1144, A proposal pertaining to the initiative and referendum. Article V, section 1.

PRESIDENT NISBET: Referred to the committee on legislative powers.

SECRETARY CHASE: Mr. Powell introduces

Delegate Proposal 1145, A proposal pertaining to senate and house quorum; requiring speaker of house to be a member. Amends article V, section 15.

PRESIDENT NISBET: Referred to the committee on legislative powers.

SECRETARY CHASE: Mr. Powell introduces

Delegate Proposal 1146, A proposal providing for elimination of article V, section 17. Senate and house, elections viva voce.

PRESIDENT NISBET: Referred to the committee on legislative powers.

SECRETARY CHASE: Mr. Powell introduces

Delegate Proposal 1147, A proposal pertaining to laws, object and title, revision, amendment, effective date, permitting amendment by section publication only. Amends article V, section 21.

PRESIDENT NISBET: Referred to the committee on legislative powers.

SECRETARY CHASE: Mr. Powell introduces

Delegate Proposal 1148, A proposal pertaining to legislators' qualifications, effect of removal from district. Amends article V, Section 5. Change qualifications to registered elector.

PRESIDENT NISBET: Referred to the committee on legislative powers.

SECRETARY CHASE: Mr. Powell introduces

Delegate Proposal 1149, A proposal pertaining to legislators, eligibility to other office, conflict of interest, broadening conflict of interest provision. Amends article V, section 7.

PRESIDENT NISBET: Referred to the committee on legislative powers.

SECRETARY CHASE: Mr. Powell introduces

Delegate Proposal 1150, A proposal pertaining to legislators, compensation, milage, right to publications, eliminating unnecessary restrictions. Amends article V, section 9.

PRESIDENT NISBET: Referred to the committee on legislative powers.

SECRETARY CHASE: Mr. Powell introduces

Delegate Proposal 1151, A proposal pertaining to meeting of legislature, adjournment, permitting bills to carry over sessions in term. Amends article V, section 13.

PRESIDENT NISBET: Referred to the committee on legislative powers.

SECRETARY CHASE: Messrs. Donald Doty and Figy introduce

Delegate Proposal 1152, A proposal providing for dedication of penal fines to the support of public libraries. Amends article XI, section 14.

PRESIDENT NISBET: Referred to the committee on education.

SECRETARY CHASE: Mr. G. E. Brown introduces

Delegate Proposal 1153, A proposal to make the searches and seizures provision comply with supreme court decisions and to make evidence obtained in violation thereof inadmissible. Amends article II, section 10. Replaces Delegate Proposal 1049.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: Mr. Wanger introduces

Delegate Proposal 1154, A proposal to strike language which now serves no useful purpose from article VI, section 1 of the constitution, reference to the office of commissioner of state land office.

PRESIDENT NISBET: Referred to the committee on executive branch.

SECRETARY CHASE: Mr. Wanger introduces

Delegate Proposal 1155, A proposal to prohibit capital punishment, with 3 exceptions. Amends article II by adding a new section.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: Mr. Upton introduces

Delegate Proposal 1156, A proposal to make election of supreme court justices on a partisan basis. Amends article VII, section 23.

PRESIDENT NISBET: Referred to the committee on judicial branch.

SECRETARY CHASE: Mr. Norris introduces

Delegate Proposal 1157, A proposal to guarantee all persons fair treatment before legislative and executive investigations. Amends article II, section 16.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: Messrs. Downs and Follo introduce

Delegate Proposal 1158, A proposal to retain, intact, article XI, section 14, providing that fines assessed and collected in counties, cities and townships go to the library fund.

PRESIDENT NISBET: Referred to the committee on education.

SECRETARY CHASE: Messrs. Binkowski, Downs, Hood, Kelsey, Liberato, Marshall and Snyder introduce

Delegate Proposal 1159, A proposal to amend article XII, section 4, providing an extension of stockholders' liability to all debts incurred on account of employment and to benefits of employment.

PRESIDENT NISBET: Referred to the committee on legislative powers.

SECRETARY CHASE: Mr. Wanger introduces

Delegate Proposal 1160, A proposal to give the governor a conditional veto, similar to that in the state of New Jersey. Amends article V.

PRESIDENT NISBET: Referred to the committee on legislative powers.

SECRETARY CHASE: Mr. Balcer introduces

Delegate Proposal 1161, A proposal to retain article XV, militia.

PRESIDENT NISBET: Referred to the committee on miscellaneous provisions and schedule.

SECRETARY CHASE: Mr. Balcer introduces

Delegate Proposal 1162, A proposal pertaining to alien property rights and providing an exception as provided in the federal law. Amends article XVI, section 9.

PRESIDENT NISBET: Referred to the committee on miscellaneous provisions and schedule.

SECRETARY CHASE: That concludes the proposals, Mr. President.

PRESIDENT NISBET: Second reading of proposals.

SECRETARY CHASE: None.

PRESIDENT NISBET: Third reading of proposals.

SECRETARY CHASE: None.

PRESIDENT NISBET: Motions and resolutions.

SECRETARY CHASE: There are no resolutions on file, Mr. President.

Mr. Marshall has submitted the following parliamentary inquiry, under date of November 2, 1961:

1. If a section of the present constitution is not reported out by a committee, would that section automatically be excluded from any new constitution that is presented to the people as a result of this convention?

2. In other words, are we writing a brand new draft constitution, or are we simply amending the present constitution?

3. Does the term "proposed constitution or amendment" in section 4 of article XVII mean that anything that is desired to stay in the constitution must be reintroduced as a proposal or recommended by a committee for convention action?

I would like a ruling from the Chair on this in a reasonable time, and have such ruling printed in the journal as part of our official records.

William C. Marshall, delegate.

PRESIDENT NISBET: The president will take it under advisement and endeavor to give a ruling on the question early next week.

Unfinished business.

SECRETARY CHASE: None.

PRESIDENT NISBET: Special orders of the day.

SECRETARY CHASE: None.

PRESIDENT NISBET: General orders of the day.

SECRETARY CHASE: None.

PRESIDENT NISBET: Announcements.

SECRETARY CHASE: The secretary has on file a variety of announcements this afternoon.

The Kent county delegation is requested to meet at the rostrum next Monday evening immediately after the session. Mr. Blandford filed this request.

The following committee meetings are now scheduled:

Subcommittee, 4, of the committee on legislative powers, will meet in room H at 3:00 o'clock p.m. on November 7 to hear representatives from the Michigan bankers' association, and at 9:00 o'clock a.m. on November 9 to hear a presentation by Robert E. Childs of Wayne State University, who will speak on the subject: real and personal property exemptions. Frank G. Millard, subcommittee chairman. T. Jefferson Hoxie, chairman.

The committee on rules and resolutions will meet in room I, next Monday, November 6, immediately following the session. Richard C. Van Dusen, chairman.

The committee on legislative powers will hold a public hearing in room H on November 8 at 10:30 o'clock a.m. on Delegate Proposal 1085, A proposal to make the state responsible for aiding and assisting the indigent and needy. Claude L. Wood, subcommittee chairman. T. Jefferson Hoxie, chairman.

On the composite calendar of committee calendars is the following information:

The committee on executive branch will meet immediately after the session today for the purpose of the appearance and presentation of Daniel McHargue, University of Michigan institute of public administration; Dr. Milton E. Muelder, dean of graduate school, Michigan State University, and former member of civil service commission.

The committee on judicial branch will meet immediately following the session for the purpose of the appearance and presentation of Justice Thomas Kavanaugh. Subject: study and investigation of the current court system.

The committee on local government will also meet this afternoon immediately after the session for the purpose of discussing article VIII.

The committee on public information will meet immediately after the session for the purpose of continuing discussions. The meeting will take place in room J on the third floor.

On next Monday, November 6, the committee on rules and resolutions will meet immediately after the session. The committee will consider Resolutions 24 and 25 proposing regulation of lobbyists. The meeting will take place in room I on the third floor.

The committee on legislative powers has filed their list of subcommittee assignments with the request that the same be printed in the journal.

PRESIDENT NISBET: Without objection, they will be printed.

Following are the assignments:

Committee on legislative powers subcommittee assignments

T. Jefferson Hoxie, chairman
Frank G. Millard, first vice chairman
Martin W. Baginski, second vice chairman

Committee 1

Article
V Legislative department
Sections 1-23 inclusive (except 2, 3 and 4)
Richard Kuhn, chairman
Charles N. Youngblood, Jr., vice chairman
Clifford Perras
Lewis Hubbs

Committee 2

V Legislative department
Sections 24-40 inclusive
Stanley Powell, chairman
Martin Baginski, vice chairman
Donald M. Habermehl
Raymond M. Murphy

Committee 3

IX Impeachments and removals from office
XVI Miscellaneous provisions
Sections 5 and 7
Claude L. Wood, chairman
Edmond Lesinski, vice chairman
Eugene Wanger

Committee 4

XII Corporations
Section 9 (concurrent jurisdiction)
XIV Exemptions
XVI Miscellaneous provisions
Section 11
Frank G. Millard, chairman
Tom Downs, vice chairman
Mrs. Ella Koeze
Eugene Wanger

SECRETARY CHASE: The secretary is delighted to announce that the salary checks and the mileage checks have been received. Mrs. Tomlinson will have them ready for you in the secretary's office after the adjournment today.

We have had filed the following requests for leave of absence:

From the session of next Monday; Messrs. Snyder, Boothby and Suzore;

From the sessions of next Monday and Tuesday; Messrs. Hood, and Murphy, Mrs. Hatcher, Messrs. Youngblood and Mr. Douglas.

PRESIDENT NISBET: Without objection, they will be excused.

Mr. Hodges.

MR. HODGES: Mr. President, I think we should be eternally grateful to Mr. Hutchinson for giving us his assistance in pointing out the parliamentary puzzle we are involved in.

Some time ago I made the recommendation that we should all be provided with a copy of Mason's rules, the Manual of Legislative Procedure for Legislative and Other Governmental Bodies. If copies were provided to us then all of us, I think, could start becoming somewhat more familiar with parliamentary procedure. As much as I respect Mr. Hutchinson's knowledge, I rather prefer relying on my own sometimes. (laughter)

I wonder whether we have found out anything concerning the availability of such books?

PRESIDENT NISBET: The secretary has an announcement to make on this subject.

SECRETARY CHASE: Mr. Hodges, we received a report to the effect that Mason's Manual of Legislative Procedure was available in a branch of a New York book store in Detroit. We canvassed that situation most thoroughly and found out that the proprietor of the store was in error in feeling that copies were available because the book is now out of print. I understand that he has put out flyers, I believe to various book stores all around the United States, in an effort to obtain additional copies. We will have these as soon as we can obtain them.

In the meantime, I have put through a long distance telephone call to my friend, Joseph A. Beek, secretary of the California senate, asking him from whom I could obtain copies. Paul Mason, the writer of the book, is a personal friend of his, and if there are any copies available in California, I am sure we will receive them.

MR. HODGES: Thank you.

SECRETARY CHASE: I have one further announcement: Mr. Sharpe has furnished the apples for today. (laughter)

PRESIDENT NISBET: Dr. DeVries.

MR. DeVRIES: Mr. President, after a lengthy conversation with my well known first vice chairman, Mr. Gust, it has been decided that the committee on administration will hold a group therapy session on Monday evening at 7:00 o'clock in the president's conference room.

PRESIDENT NISBET: Mr. Walker.

MR. WALKER: With very great sincerity and appreciation, I rise at this time to say that I fully agree with Mr. Hodges' remarks to the effect that we are all indebted to

Mr. Hutchinson, and I would ask that we now give a vote of thanks to Mr. Hutchinson for contributing his knowledge of parliamentary procedure at this convention. (applause)

PRESIDENT NISBET: Mr. Hutchinson.

MR. HUTCHINSON: Thank you.

Mr. President, I did raise in all sincerity an oral parliamentary inquiry. I think the record should show a decision of the Chair on that inquiry. I do not believe that it would be shown thus far in the record of our proceedings. I believe I already understand the answer, but I think the record should show it.

SECRETARY CHASE: In response to the inquiry of the senator from—(laughter) in response to the inquiry of the delegate with respect to the form of the motion to lay on the table, Mason's Manual of Legislative Procedure has this to say:

> Section 334. Form of Motion to Lay on the Table
> . . . . A motion to lay the question on the table until a certain time is a motion to postpone definitely and takes a lower rank of precedence.

PRESIDENT NISBET: Mr. Gadola.

MR. GADOLA: Mr. President, may I be permitted to say that we have discussed this matter of public information and the director of public information at some length. I believe that there may be some misunderstanding in the public mind over the matter as it has been presented here. It might appear from what has been said on this subject that there is only one source of public information, the director of public information, or the committee on this subject.

In the press gallery behind me we have another important source, a committee on public information without portfolio, if you will. They are a wonderful body of individuals. They are as fine as you could assemble anywhere. I am not bowing to Huntley, Brinkley or anyone else. This group back here in the gallery is the committee on public information.

I believe that this committee and this convention believes in their integrity and in the integrity of the members and staff of the information bureau whose function is to ensure that the information that is given out is accurate and fair.

PRESIDENT NISBET: That concludes the business of the day.

Mr. Anspach.

MR. ANSPACH: Mr. President, I rise to give expression to those familiar words which often are quite welcome—I move we adjourn.

PRESIDENT NISBET: The question is on the adjournment. All in favor, say aye. Opposed, no.

The convention stands adjourned until Monday evening at 8:00 o'clock.

[Whereupon, and in pursuance of the order previously made, at 3:30 o'clock p.m., the convention adjourned until 8:00 o'clock p.m. Monday, November 6, 1961.]

NINETEENTH DAY

Monday, November 6, 1961, 8:00 o'clock p.m.

PROCEEDINGS

PRESIDENT NISBET: The convention will please come to order.

Our invocation this evening will be given by the Reverend Glenn Carpenter, Pastor of the Presbyterian Church, Lansing

REVEREND CARPENTER: Almighty God, our heavenly Father, we come into Thy presence this evening realizing that we are Thy children and that in ourselves we are very weak, but with Thy help we will be strong.

We thank Thee for our great country and for the opportunity we have of meeting here in freedom, without fear, in order that we might confer upon those things which are of paramount value and importance to us, not only in the present but particularly in the future.

We thank Thee for the history of the past, and for the devotion of those men who made possible the freedom we enjoy today. Enable us to go forward not on our own strength alone but assisted by Thy strength, Thy wisdom and Thy guidance.

May everything that is accomplished be done for the benefit of our great commonwealth, and may we as citizens realize that we have an obligation not alone to ourselves but as well to our whole state and our nation.

Keep us true and faithful until we have performed the task that has been given to us to do, and then receive us unto Thyself. We ask it in the Master's name and for His sake. Amen.

PRESIDENT NISBET: The roll call will be taken by the secretary. All present please vote aye.

SECRETARY CHASE: Have you all voted? The secretary will lock the machine and the vote will be recorded.

Mr. President, a quorum of the convention is present.

Prior to today's session, the secretary received the following requests for leave:

Messrs. G. E. Brown, Dehnke, Ford and Knirk, from tonight's session, Monday, November 6, 1961.

Messrs. Dade and Greene, from the sessions of Monday and Tuesday, November 6 and 7, 1961.

Mr. Garvin, from the sessions of November 6, 7, 8 and 9, 1961.

Mr. Norris, from the session of Monday, November 13, 1961.

PRESIDENT NISBET: Without objection, the requests are granted.

SECRETARY CHASE: Absent with leave: Messrs. Allen, Boothby, G. E. Brown, Dade, Dehnke, Douglas, A. G. Elliott, Ford, Garvin, Greene, Mrs. Hatcher, Messrs. Hood, Knirk, Murphy, Norris, Snyder, Suzore and Youngblood.

Absent without leave: None.

PRESIDENT NISBET: Tomorrow at the convention session we will hear reports from 2 more of our committees. Mr. Arthur Elliott will present a report on behalf of the committee on local government and the chairman of the committee on education, Mr. Alvin M. Bentley, will present a report on behalf of that committee.

Reports of standing committees.

SECRETARY CHASE: Mr. President, the committee on public information, by Mr. White, chairman, respectfully reports back to the convention **Resolution 15**, A resolution inviting foreign students to our convention; without amendment and with the recommendation that it be adopted.

Ink White, chairman.

The following is the resolution as amended and referred to the committee on public information:

> Whereas, The work of this convention has received national and international attention; and
>
> Whereas, There are many nations in the world today which face a task similar to our own here; and

Whereas, There are many foreign students attending schools in Michigan; and

Whereas, These students will be the future leaders in their respective countries; now therefore be it

Resolved, That this convention extend an invitation to these students to attend our meetings and meet our delegates in order that they may better their understanding of our American democratic process in action; which invitations shall be prepared for the president's signature and disseminated as soon as possible by the committee on public information.

For the body of Resolution 15 as offered, see above, page 191. For amendments, see above, page 231.

PRESIDENT NISBET: The question is on the adoption of the resolution. All in favor say aye. Opposed, no.

The resolution, as amended, is adopted.

SECRETARY CHASE: Those are all the standing committee reports, Mr. President.

There have been filed with the secretary for reporting and registering in the journal, pursuant to the provisions of rule 65, 2 explanations of votes.

The first of these is dated November 6, 1961, and is offered by Delegate William C. Marshall. It reads as follows:

Delegate Marshall desires to explain his vote under rule 65 of the convention on the recommendation of the committee on administration relative to the appointment of Mr. Charles Ferry as research assistant at the session of Thursday afternoon, November 2, 1961.

I voted against the recommendation because I sincerely believe that no one should have been employed in the public information department who had been identified with extreme partisan politics with either political party. All of the delegates are aware of the broad powers given this committee and with the fact that they will exercise these powers arbitrarily without prior approval of the convention.

In an attempt to not be accused of making this a partisan political fight I voted to approve Messrs. Walsh, Kirvan and Gay even though Mr. Walsh was the campaign manager for one of the delegates to this convention during the recent con con campaign. We are all aware of the fact that Mr. Ferry just recently resigned as the publicity director for the Oakland county republican committee.

I question also whether we needed as many employees in this department as were employed and whether this was not an unnecessary burden upon the convention to say nothing of the taxpayers of the state of Michigan. Much has been said by individual delegates about polarization of the delegates along party lines, and this, of course, a great majority of us have tried desperately to avoid, realizing our responsibility to all the people of the state of Michigan whether they be republicans, democrats, or independents.

I sincerely believe that employing people in this particular department who are not identified with partisan politics would have been more conducive to bipartisan acceptance and cooperation than the action that was taken.

I regret that we were forced to accept in this department people who are obviously extremely partisan in their political beliefs, and I resent politicians of either party pressing to have their own political cronies or political "yes men" placed upon the payroll of this convention.

I sincerely hope that in the future a minority in the convention will be properly consulted in order to avoid a recurrence of this type of disagreement.

The following communication offering an explanation of her vote is from Delegate Adelaide J. Hart and bears the date of November 6, 1961. It reads:

In compliance with my rights as delineated in rule 65, I, Adelaide J. Hart, do hereby submit for publication in the journal my reasons for voting "nay" on the question of hiring Charles A. Ferry as a research assistant, the question being decided in session the afternoon of November 2, 1961.

It should be a matter of serious concern to all delegates that the paid staff of the constitutional convention not become the winter pasture for party professionals whose backgrounds do not suggest a natural tendency toward a history of objectivity.

The action in question and the prior action of hiring others to the staff of the convention strongly suggest that, based upon recent performances, at least one known aspirant to high political office in the delegation may now have two campaigners employed at public expense.

Too few delegates, republican and democrat, were made aware prior to balloting of the background of one new employee who had been campaign manager for a successful delegate.

Certainly his new post must be considered a worthy reward for past services, however questionable filling such a position might be regarded as a means for repayment.

Most disturbing, however, was the determination of certain leaders of one party to name three of their own to serve with this most powerful of committees with no effort whatsoever to curb the powers of the committee, making its actions directly responsible to the full convention.

This initial display of careless partisanship must be recognized as a serious move to negate the efforts of most of the delegates from both parties who strongly prefer that all deliberations be conducted in an atmosphere of mutual trust and respect.

PRESIDENT NISBET: Reports of select committees.

SECRETARY CHASE: None.

PRESIDENT NISBET: Communications from state officers.

SECRETARY CHASE: None.

PRESIDENT NISBET: **Introduction, first reading and reference of proposals.**

SECRETARY CHASE: Mr. Wanger introduces **Delegate Proposal 1163,** A proposal to make the board of state canvassers the chief election authority of the state. Amends article III.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: Mr. Wanger introduces **Delegate Proposal 1164,** A proposal to delete section 13 of article XI, pertaining to salt spring lands, which now serves no useful purpose.

PRESIDENT NISBET: Referred to the committee on education.

SECRETARY CHASE: Mr. Wanger also introduces **Delegate Proposal 1165,** A proposal to delete section 20a of article X, pertaining to world war I veterans' bonus, which now serves no useful purpose.

PRESIDENT NISBET: Referred to the committee on finance and taxation.

SECRETARY CHASE: Mr. Martin introduces **Delegate Proposal 1166,** A proposal to retain the uniformity clause of the constitution and clarify its wording to clearly forbid the enactment by the legislature of a graduated income tax. Amends article X.

PRESIDENT NISBET: Referred to the committee on finance and taxation.

SECRETARY CHASE: Miss Donnelly introduces **Delegate Proposal 1167,** A proposal to fix qualifications for all judicial officers and to prohibit the judiciary from receiving remuneration based upon litigation. Amends article VII.

PRESIDENT NISBET: Referred to the committee on judicial branch.

SECRETARY CHASE: Miss Donnelly introduces **Delegate Proposal 1168,** A proposal to delete the constitutional status of the office of justice of the peace. Amends article VII and article VIII.

PRESIDENT NISBET: Referred to the committee on judicial branch.

SECRETARY CHASE: Mr. Balcer introduces **Delegate Proposal 1169,** A proposal to retain article X, sections 20a, 23a, 25, 26, pertaining to military service bonuses.

PRESIDENT NISBET: Referred to the committee on finance and taxation.

SECRETARY CHASE: That completes the proposals, Mr. President.

PRESIDENT NISBET: Second reading of proposals.

SECRETARY CHASE: Nothing on that order, Mr. President.

PRESIDENT NISBET: Third reading of proposals.

SECRETARY CHASE: None.

PRESIDENT NISBET: **Motions and resolutions.**

SECRETARY CHASE: Mr. Perras offers **Resolution 27,** A resolution regulating constitutional convention agents at the Michigan constitutional convention.

Following is the body of Resolution 27, as offered:

Resolved, That any person employed by a person, persons, firm, association, or corporation; or by any board, department, or agency of Michigan, or any political subdivision thereof, to engage in promoting, advocating, or opposing any matter pending before the constitutional convention or any committee thereof, or who is employed expressly for the purpose of promoting, advocating, or opposing any matter which might come before the constitutional convention or any committee thereof, shall be considered a "convention agent" within the provisions of this resolution; and be it further

Resolved, That the terms "advocating", "promoting", and "opposing" shall be construed to mean any act or acts, performed directly with a delegate to the constitutional convention, for the purpose of inducing him to vote or to use his influence for or against any matter before the constitutional convention or any committee thereof; and be it further

Resolved, That any person who shall confine his activities in promoting, advocating or opposing any matter pending before the constitutional convention, or any committee thereof, to formal appearances before any constitutional convention committee, and who in writing identifies himself to the committee, together with each and every person, firm, association, corporation or other interest represented by him, shall not be deemed to be a "convention agent" within the meaning of this resolution; neither shall such term include any person whose contact with a delegate is limited to furnishing information at the request of any delegate or any constitutional convention committee regarding any matter pending before the constitutional convention or any committee thereof; and be it further

Resolved, That every "convention agent" shall file with the secretary of the convention on forms provided by that office, a sworn statement containing the following information:

1. Full name of applicant, place of residence and place of business;

2. Name of firm, corporation, association or governmental agency of which he is an employee, partner or owner, together with the position held, business address and principal occupation of the organization of which applicant is an employee or agent;

3. If the applicant mentioned in (1) is employed by more than one person, firm, corporation, association or agency, the names of such persons, firms, corporations, associations, or agencies, business addresses, and principal occupation or occupations;

4. The name and address of the person, firm, corporation, association or agency who will keep the custody and control of the accounts and records required to be kept by further provisions of this resolution; and

5. When any change, modification or addition of such employment is made, the applicant shall, within one week of such change, modification or addition, furnish full information regarding the same to the secretary of the constitutional convention on forms provided by that office; and be it further

Resolved, That the secretary of the constitutional convention shall record and index in his office the information required by this resolution and shall furnish copies thereof to all delegates of the constitutional convention. The records required to be kept by the provisions of this resolution shall be open to inspection in the office of the secretary of the convention or in such office as he shall designate; and be it further

Resolved, That upon application by any person who has complied with the provisions of this resolution, the secretary of the convention shall issue to the applicant an identification card showing the name and business address of the person to whom such identification card is issued. Certificates issued by the secretary shall be prima facie evidence of compliance with the registration requirements hereof; and be it further

Resolved, That any person who shall wilfully violate any provision of this resolution as determined by a resolution of the convention, shall forfeit his identification card and shall thereafter be barred from entering the convention hall or any of the adjacent halls or rooms which are under the jurisdiction of the constitutional convention: Provided however, That before any such resolution of license forfeiture shall be placed before the convention, the persons, firm, etc., shall be given an opportunity to be heard in a duly noticed public hearing which shall be conducted by the committee on rules and resolutions of the constitutional convention to which the forfeiture resolution shall be referred; and be it further

Resolved, That the names of all persons whose registrations have been revoked shall be certified to the convention delegates by the secrtary of the convention.

PRESIDENT NISBET: Referred to the committee on rules and resolutions.

SECRETARY CHASE: That is the only resolution on file.

PRESIDENT NISBET: Mr. Downs.

MR. DOWNS: Mr. President, I rise to present a motion. Mr. President, I move that rule 72 be amended as follows:

1. Amend rule 72, after "shall be" by striking out " "Mason's Manual of Legislative Procedure." " and inserting "any standard book on parliamentary or legislative procedure selected by the president and readily available in Lansing bookstores.". (laughter)

PRESIDENT NISBET: Without objection, Mr. Downs, this will be referred to the committee on rules and resolutions for their consideration.

SECRETARY CHASE: May the secretary make this comment? Today I received word from the secretary of the senate of California, Mr. Joseph A. Beek, that he had obtained, and there are being forwarded to us, 10 copies of Mason's Manual which will be available for use in the library and here on the convention floor.

PRESIDENT NISBET: Unfinished business.

SECRETARY CHASE: None, Mr. President.

PRESIDENT NISBET: Special orders of the day.

SECRETARY CHASE: None.

PRESIDENT NISBET: General orders of the day.

SECRETARY CHASE: None.

PRESIDENT NISBET: Announcements.

SECRETARY CHASE: The secretary has the following announcements:

Mr. Blandford requests the delegation from Kent county to meet at the rostrum this evening immediately after the session.

Will the delegates please turn in to the secretary's office, as soon as you can conveniently, your revised mailing lists for receipt of the senate journal — (laughter) I mean the convention journal. These are in the process of preparation and the library and other lists are all ready. The printing office has provided us with enough copies so that these can be mailed at once.

This request is from the telephone company: there is at the foot of the stairs on the lower level a telephone station that has been provided by the courtesy of the telephone

company. The phones there are for the use and convenience of the delegates and the guests of the convention in making local and long distance calls. This unit will continue, dependent of course upon the usage. At the present time they are making no charge for the use of this telephone service—it is there for your convenience.

We have the following notices of committee meetings:

The committee on public information will meet in room C this evening immediately following the session. Ink White, chairman.

The committee on finance and taxation will meet in room E tomorrow at 8:30 a.m. D. Hale Brake, chairman.

The committee on judicial branch will meet in room B tomorrow, Tuesday, at 10:30 a.m. Robert J. Danhof, chairman.

There will be a joint meeting of the corporation subcommittee of the committee on miscellaneous provisions and schedule and subcommittee 4 of the committee on legislative powers in committee room C, Tuesday, November 7, at 3:00 o'clock p.m. or immediately after the session. Mr. Henry L. Woolfenden and Mr. Frank G. Millard, chairmen.

The committee on education will meet in room J and will follow, in its meetings, the regular schedule of meetings previously announced: Tuesdays at 8:30 a.m., Wednesdays, at 3:00 p.m. and Thursdays at 10:30 a.m. Alvin M. Bentley, chairman.

The committee on rules and resolutions is meeting this evening to consider Resolutions 24 and 25 proposing regulation of lobbyists.

The committee on legislative organization will meet tomorrow immediately after the session in room D for the purpose of the appearance and presentation to be made by Dr. Pollock.

The committee on finance and taxation will meet tomorrow at 8:30 a.m. in room E—the appearance of Senator Elmer Porter, state senate; Representative Arnell Engstrom, state house; Professor Alfred M. Pelham, Wayne State University, Detroit.

The committee on executive branch will meet tomorrow at 10:30 a.m. in room C—the appearance of former governor Wilber M. Brucker.

The committee on declaration of rights, suffrage and elections will meet tomorrow at 8:30 a.m. in room F for a discussion of the bill of rights with Dr. Kelly, codirector of research for the convention.

The committee on legislative powers will meet tomorrow at 3:00 o'clock p.m. or immediately after the session in room H. Subcommittee 4 of the committee will meet to hear representatives from the Michigan bankers' association.

A notice of a public hearing. The committee on legislative powers will hold a public hearing in room H. The date will be November 8, 1961, at 10:30 a.m. The hearing will take place on Delegate Proposal 1085, A proposal to make the state responsible for aiding and assisting the indigent and needy. Claude L. Wood, subcommittee chairman, and T. Jefferson Hoxie, chairman.

I also have the following announcements:

There is in the president's office an Elgin wristwatch that was found in the hall by one of the pages. It is a silver or white gold watch. If the owner will come in to identify it, it will be appreciated. Mrs. Tucker, the president's secretary, has it.

The secretary would like to call your attention to the fact that on your desks, in a black binding, is the first publication of our "status of proposals and resolutions", together with an index indicating who introduced the proposals and resolutions. This is our first effort in this regard.

The secretary would like to thank particularly his own staff, the stenographers downstairs, the pages and everybody else who worked like a bunch of busy beavers to get this put together for you for tonight's session. If it had not been for their help, this would not have been available.

Mr. Nisbet has asked that the following announcement be made, for those interested in football: the downtown coaches' club wishes to extend an invitation to the male members of the constitutional convention to attend the weekly Wednesday luncheons at the Jack Tar Hotel. Luncheon is $2:00 per person and is held throughout the fall football season. They convene at 11:45 a.m. and terminate at 1:30 p.m. Movies of the preceding game played by the Michigan State University spartans are shown, a scout report of the upcoming game is given, and awards are made. Those who are interested please register with Mr. Sleder.

The following requests have been filed with the secretary asking for leaves of absence:

Mr. Stopczynski and Mr. Upton request to be excused from tomorrow's session; and Mr. Follo requests to be excused from Wednesday's session, November 8, to attend a funeral following a death in the family.

PRESIDENT NISBET: Without objection, they will be excused.

SECRETARY CHASE: If the delegates who know in advance that they will be absent will please file a request with the secretary, it will expedite the handling of the leaves of absence.

PRESIDENT NISBET: Are there any other announcements?

Mrs. Butler.

MRS. BUTLER: They say that all of these hurricanes which sweep the country are usually named after a woman, and I have noticed that they are.

Right at the moment I feel a little "hurricaney" myself. And I just want to make this statement. I was terribly disappointed when the appointments were announced that there was no person from the upper peninsula appointed to any job at this constitutional convention.

PRESIDENT NISBET: Thank you.

Any other announcements?

Mr. White.

MR. WHITE: Mr. President there have been distributed on the desks of the delegates this evening copies of a brochure which are just fresh from the printers. We have only a limited quantity at this moment but by late tomorrow we will have many more of them and they will be available in reasonable quantities for distribution by the delegates among their friends, and so on, and when they are out engaged in keeping public speaking engagements. We trust that you will use them with some discretion, but they are available and will continue to be available in the office of the committee on public information for your use. Thank you.

PRESIDENT NISBET: Mr. Madar.

MR. MADAR: Mr. President, I have here this evening with me a copy of a speech that was delivered at a meeting of the public relations society of America, the Michigan chapter.

Last Thursday I made a motion that this speech be inserted in the journal so that all delegates could read it and read a speech that was as nonpartisan as ever a speech could be, and still be good. (laughter) I wanted this in the journal so that our public relations men could see it, so they could pattern their work after this speech.

As I said, I made a motion at that time but the motion was not really acted on because I did not state in my motion that I wanted unanimous action.

At this time I am again going to move that this speech be inserted in the journal.

PRESIDENT NISBET: The question is on Mr. Madar's motion.

Mr. Hutchinson.

MR. HUTCHINSON: Mr. President, I was the delegate who was opposed on Thursday or who objected to the inclusion of this speech in the journal. My objection was based on the fact that the maker of the speech had not made any move or indicated that he desired it in the journal. I did not believe that the convention should simply proceed without first ascertaining his wishes. I understand that it is immaterial to the maker of the speech whether or not it appears in the journal.

I would like to know, however, how long the speech is, and how much it is going to cost to print it. I raise this policy question with the convention: if we permit ourselves to develop in this journal anything approaching the appendix to the congressional record, we will have to go to the legislature and ask for several million dollars more money.

I am serious in inquiring whether the maker of the motion can advise as to how long the speech is and about how much it will cost to print it.

PRESIDENT NISBET: Mr. Madar.

MR. MADAR: I am extremely sorry that I cannot give you the cost. However, I can tell you that it is 6½ pages. And I can assure you of this: if all the delegates read it; if the public relations men read it and pattern their work after this speech, it will be worth 10 times what it might cost us to put it in the journal.

This speech was given by Ink White, the chairman of the public information committee. I did not think that we had to ask for permission to have it put in there but if Delegate Hutchinson feels that we should, why we might try to get permission of Ink White to allow us to print it.

PRESIDENT NISBET: Mr. Upton.

MR. UPTON: Mr. President, I would like to amend Mr. Madar's motion. I move that we circulate this speech among the delegates by means of a special printing. This will, if adopted, save the charge of having it inserted in the journal and yet, at the same time, give the delegates a chance to read what I agree is a very fine speech. It will give us an opportunity to read these words and save us the cost of printing.

I therefore move to amend Mr. Madar's motion as follows:

1. Amend the motion by striking out "printed in the journal" and inserting "mimeographed and passed out among the delegates".

PRESIDENT NISBET: The question is on the amendment of Mr. Upton.

Mr. Farnsworth.

MR. FARNSWORTH: Mr. President, I would oppose both the amendment and the adoption of the motion offered by Mr. Madar on the basis that Mr. Hutchinson mentioned. Obviously, anything that you will allow like this in the convention must go into the record and be printed, and that is expensive.

Now Mr. Madar asked that it be made available to 3 people —3 public information people. I suggest that he get 3 copies of it and give it to each of them, and save all that printing expense.

PRESIDENT NISBET: Mr. Sterrett.

MR. STERRETT: I rise to express support for Mr. Farnsworth's statement. The very same result could be accomplished by giving copies to the public information men.

As I understood it, Mr. Madar's intention in making his motion was to make copies available so that the staff of the public information committee could pattern their work after this speech, so that something will not be prejudiced one way or the other. I am sure it will not, in the beginning, but I would feel much better if this sort of thing did take place and copies were given to the public information men, which would also save us the expense of printing this speech in the journal.

PRESIDENT NISBET: Mr. Madar, do you wish to speak?

MR. MADAR: I would certainly go along with the amendment, but I am sure that it would not hurt the rest of you delegates to read it—at least a good many of you.

PRESIDENT NISBET: Mr. Marshall.

MR. MARSHALL: Mr. President and delegates, I am inclined to agree with Mr. Hutchinson. I would not want to see us get in the position wherein we constantly have people coming in wanting to introduce speeches made by individual delegates into the journal for printing. Knowing the cost of printing these days, it would run into an enormous sum of money.

I also agree with Mr. Hutchinson that we would have to go back to the legislature and ask for several million dollars if we were to get ourselves in this position.

I do, however, rise in support of the amendment. I do not believe that it would be too costly to have this mimeographed and passed out to the delegates and to the staff of the committee on public information. And, since we had a slight controversy over the committee on public information, I would support the amendment. But I would not think it wise for us to start instituting a program of printing these in the journal.

PRESIDENT NISBET: Mr. Lesinski.

MR. LESINSKI: Mr. President, I wish to comment on the cost of printing. I hold in my hand a recent copy of our action journal wherein there are practically 3 pages that we paid for and they are blank. Although they are blank pages, presumably we paid for them.

PRESIDENT NISBET: Mr. White.

MR. WHITE: Mr. President, this is all very embarrassing to me. I have only one comment: "It ain't that good a speech!" (laughter)

PRESIDENT NISBET: Mr. Walker.

MR. WALKER: Mr. President, I would first like to commend Mr. White on his modesty.

Secondly, I would like to amend the amendment so that there would be sufficient copies distributed to make it possible to have copies of the speech available for those delegates who are very appreciative of Mr. White's efforts, to pass out among our friends and constituents.

PRESIDENT NISBET: Mr. Nord.

MR. NORD: Mr. President, I find myself in a very peculiar position. I back what everyone has said so far. I would like to make this comment. I believe it is perfectly correct to say that we should not get into the habit of introducing into our journal speeches that were not made on the floor. We know that even if they are made on the floor, they are not put in our daily action journal, and this is the correct procedure.

The only other point I would like to add, is this. I think it is a very wise thing for democrats to take the position that we do not wish to have speeches inserted into the record because there are a lot more republicans around here than there are democrats. (laughter) I certainly think it would be a bad move especially to start out with one republican speech, even if it is a good speech. I think that it is the course of wisdom, and that the amendment should be adopted. Mr. Hutchinson has pointed out the consequences of indiscriminately placing in the journal speeches not made on the floor of this convention, and everyone else has agreed with him. I think that the amendment ought to be adopted.

PRESIDENT NISBET: Any further discussion? It looks like a good week. (laughter) The question is on Mr. Upton's amendment. All in favor say aye. Opposed, no.

The amendment is adopted.

The question is now on the motion as amended. All in favor say aye. Opposed, no.

The motion prevails.

This completes our business for this evening. What is your pleasure?

Mr. Barthwell.

MR. BARTHWELL: I move that we adjourn, Mr. President.

PRESIDENT NISBET: Mr. Barthwell moves that we adjourn. The question is on adjournment. Those in favor say aye. Opposed?

The motion prevails.

We are adjourned until tomorrow at 2:00 o'clock p.m.

[Whereupon, at 8:35 o'clock p.m., the Convention adjourned until 2:00 o'clock p.m. Tuesday, November 7, 1961.]

TWENTIETH DAY

Tuesday, November 7, 1961, 2:00 o'clock p.m.

PROCEEDINGS

PRESIDENT NISBET: The convention will please **come to order.**

Our **invocation** this afternoon will be given by Mrs. W. B. Ver Meulen, National Chaplain of the National Federation of Republican Women, Grand Rapids.

MRS. Ver MEULEN: Our Father in heaven, Thou who art the Creator, the Ruler, Sustainer and the Savior of the race, we pause before Thee today to praise Thy holy name and to adore Thee for Thy greatness and Thy goodness. We bring our hearts to Thee full of gratitude for all Thou hast done for us and for the many blessings which we have received from Thy most holy hand.

We thank Thee for the many material blessings of life which we enjoy every day in a nation enjoying those things that many other nations long for and never have received and which are ours. We thank Thee for this nation of ours which is truly a land flowing with milk and honey.

We also thank Thee for the spiritual gifts which are ours, the gift of being Thy children and the gift of being a free people of which this meeting today is a sign and a symbol.

We ask forgiveness for the fact that all too often we accept Thy gifts and forget Thee, the Giver of every good and perfect gift.

We ask Thy forgiveness for all that we have done that is not pleasing in Thy sight. We beseech Thy blessing for the men and women who are gathered in this convention and thank Thee that they are willing to give of their time, their minds, their energies and their skills for the improvement of this, our beloved state.

We ask that Thou bless them in all their endeavors. Raise them to new heights as they struggle with these many problems. May they not deal in personalities, or in self, or in partisan interests, but may they so labor that at the end of these many long and weary months they may produce a document which the people of this state can adopt with pleasure, with gratitude, and with thanksgiving.

We would also pause for a moment to bring before you the peace of this world. We live in a world which seems to grow darker every day. We recognize that all things are in Thy hands; and that it is Thy will that we live in this age in which a power has been released — a power which, if used rightly, can bring untold blessings to all mankind, but a power which, uncontrolled, can bring untold horror and suffering, and even total destruction itself. So we ask for all those who must deal with the great problems that lie before us as we struggle to bring about peace in this world.

Bless our president. Grant to him good health, strength of mind and body, as he grapples with all these problems. Bless all of those who rule with him, both in this land and the united nations, and in all the conferences that are being held.

We would pray especially for those who represent us as a nation whose God is the Lord, that they may not rule in their own strength but recognize Thee; that it is only as they come to Thee that that superhuman wisdom can come which will solve these problems.

And we would ask for ourselves that we may also remember that this nation is no stronger than its citizens, and so may we strive to so live that the peace which we desire may flow from our own lives through living in peace with Thee, our God, and with all those around us. Now bless us further this afternoon we pray, in the name of our Lord and Savior, Jesus Christ. Amen.

PRESIDENT NISBET: The **roll call** will be taken by the secretary. All those present, please vote aye.

SECRETARY CHASE: The voting machine is now locked and you may release your voting lever.

Mr. President, a quorum of the convention is present.

Absent with leave: Messrs. Dade, Douglas, Garvin, Greene, Mrs. Hatcher, Messrs. Hood, Murphy, Stopczynski and Youngblood.

Absent without leave: Mr. G. E. Brown.

PRESIDENT NISBET: Without objection, Mr. G. E. Brown is excused.

I would like to ask the permission of the convention this afternoon to excuse from the balance of this afternoon's session Vice President Downs, Delegate Page and myself. I have been asked to speak on the constitutional convention at the annual meeting of the citizens' research council of Michigan. This is the organization which has provided much of the material for study by this group, so I hope, without objection, we may be excused. Hearing none, we are.

Will Vice President Hutchinson please take the Chair?

[Whereupon, Vice President Hutchinson assumed the Chair to preside over the convention.]

VICE PRESIDENT HUTCHINSON: Pursuant to the order of business heretofore set up, whereby on certain days we receive progress reports from committees under the order of **reports of standing committees,** the Chair recognizes the chairman of the committee on education, Mr. Alvin M. Bentley, for a progress report at this time.

MR. BENTLEY: Mr. President, fellow delegates, ladies and gentlemen, the committee on education found itself at the outset of the convention with a most unique advantage in having among its membership a great many people who had long and distinguished backgrounds in the field of education at various levels. However, those backgrounds were, for the most part, confined to one or another of the levels in the field of education.

There were also many of us on the committee, including the chairman, whose knowledge of and background in the field of education was somewhat rudimentary, to say the least. Therefore, it was felt by the committee that it would be best to devote the first few weeks to a general study and review of the entire field of education in the state of Michigan, and to that end we have primarily devoted our efforts during the first few weeks of our committee hearings.

Our initial witness, for example, was Dr. Lynn Bartlett, state superintendent of public instruction, who discussed with us the work of his department. He was followed by Dr. Ferris Crawford, one of the assistant superintendents, who discussed in particular the role played by the community colleges, the former junior colleges, in this state. We also heard, during the course of our committee meetings, from 2 of our own committee members, Dr. Hannah and Mr. Bonisteel, who discussed governing boards of control and the administration of the 3 institutions of higher learning which have constitutional status. A discussion was also led by our convention president, Mr. Nisbet, who for many years was president of the state board of education, and who dealt with that particular function.

It is our intention in the time ahead to continue in this field in reviewing generally the question of education, turning perhaps from the levels of higher education more to the primary and secondary levels.

For example, tomorrow afternoon at our committee meeting, to be held immedately following the adjournment of the session in room J, we will have the pleasure of hearing from Dr. Samuel M. Brownell, superintendent of Detroit public schools, and we are asking other interested parties and experts in these related fields to come before the committee, both people who are holding official positions in the field, and those who are not holding official positions of an educational nature or

otherwise but who show a particular interest in and have particular qualifications in this field.

At the same time we are scheduling, subject to the approval of the convention, 3 socalled public hearings. While, of course, all the meetings of the committee are open to the public, committee room J on the third floor where the committee on education meets is not a large room and does not permit a large attendance. With the cooperation of Michigan State University we have been able to make arrangements, at no cost to the convention, for the use of the main auditorium of the Kellogg center at Michigan State University for these public hearings to which I referred.

It is our hope to hold meetings on Wednesday afternoons and, if necessary, in the evenings, beginning a week from tomorrow, November 15. The committee felt that the following Wednesday, being the day before Thanksgiving, would hardly be conducive to a good attendance.

We have tentatively scheduled for the dates November 15 and November 29, public hearings in the main auditorium of Kellogg center, from 4:15 p.m. to 6:15 p.m. and, if interest and attendance should warrant it, we purpose to resume the hearings at approximately 7:30 p.m., following the dinner hour.

At this time, incidentally, pursuant to rule 34, I should like to request, on behalf of the committee on education, permission of the convention to hold open hearings as stated at Kellogg center at no expense to the convention.

VICE PRESIDENT HUTCHINSON: The question is upon the request of the chairman of the committee on education that his committee be permitted to hold public hearings at Kellogg center at no expense to the convention, Kellogg center being just outside the city of Lansing, on the dates requested. Is there objection?

Hearing none, the request is granted. And now you may resume.

MR. BENTLEY: As of this morning, also, we appointed — I say "we", the chairman and the 2 vice chairmen have made these appointments with the approval of the full committee — 4 subcommittees: one on higher education; one on elementary and secondary education; one on school financing at all levels; and one on libraries and related provisions. I shall hand this list of the subcommittees to the secretary of the convention and ask that it be printed in the journal.

VICE PRESIDENT HUTCHINSON: Without objection it will be printed.

Following are the preliminary subcommittee assignments for the committee on education:

A—Higher education committee (including governing boards and administrative structure, community colleges and adult education)
Bonisteel, Roscoe O—chairman
Andrus, Vera (Miss)
Conklin, Anne M. (Mrs.)
Follo, Charles
Hannah, John A.

B—Elementary and secondary committee (state superintendent of public instruction, state board of education, certification, school districts, lands)
Romney, George—chairman
Balcer, Frank A., Jr.
Douglas, Edward L.
Richards, Leslie W.
Spitler, H. Carl

C—School finance committee (bonds and borrowing, sales tax, earmarking, escheats, etc.)
Page, G. Keyes—chairman
Barthwell, Sidney
Karn, Dan E.
Rush, Allen F.
Bonisteel, Roscoe O.

D—Committee on libraries and other provisions (charitable institutions, culture, training schools, trade and vocational schools, mentally afflicted)
Andrus, Vera (Miss)—chairman
Brown, Theodore S.
Faxon, Jack
Kuhn, Richard D.
Heideman, Bert M.

Ex-officio members on all committees
Bentley, Alvin M.—chairman, education committee
Anspach, Charles L.—vice chairman, education committee
Hart, Adelaide J. (Miss)—vice chairman, education committee

MR. BENTLEY: Thank you. Finally, it is our intention to offer this afternoon, for probable reference to the committee on administration, a resolution cosponsored by 3 of our members, requesting permission for the committee on education, or part of it — I believe not to exceed 12 members — to make a trip for the purpose of holding public hearings in the upper peninsula at some date to be fixed hereafter. As I say, I am sure that resolution is on the secretary's desk and will be offered, I presume, and referred to the committee on administration. I merely announce that at this particular time as another example of the activities of the committee on education.

To conclude my report I will only say that, as of course the convention is aware, the committee on education was the first substantive committee to come forth with a committee proposal — an event which I am sure we all will remember took place a few weeks ago on a Monday night.

For the information of the convention, Mr. President, I might remark that research into the proceedings of the 1907-1908 Convention shows that this particular proposal, relating to section 1, article XI, with which the convention is familiar, was the most controversial part of the constitution on the subject of education before the convention in that year. There were 4 roll call votes on it. And so, in that respect, we apparently are following an established precedent.

We are following the plan of holding our usual hearings following the regular schedule of meetings published in the composite calendar and interested parties will continue to appear before and make presentations to our committee. Possibly we will be adding additional meetings, if interest warrants, in addition to the public hearings already announced to take place at Kellogg center.

It is the chairman's hope that we can complete our public hearings perhaps within the next 4 or 5 weeks and then undertake a substantive study of the issues involved and the studies which will be engaged in, in large part, by the subcommittees I have named.

That concludes my report. Thank you, Mr. President.

VICE PRESIDENT HUTCHINSON: Thank you, Mr. Bentley.

The Chair now recognizes the chairman of the committee on local government, Mr. Arthur G. Elliott, for a progress report at this time.

MR. A. G. ELLIOTT: Mr. President, and delegates, the committee on local government held its organizational meeting on October 17. At this meeting the general approach to the problems confronting our committee was decided upon. The pattern follows the basic outline of the other committees as reported to the convention earlier.

As of today, November 7, we have held 10 committee meetings and several subcommittee meetings. All but 2 of these committee meetings have been devoted to a review of the provisions of article VIII of the present constitution. This article, which relates to local government, contains 31 sections which run the gamut from metropolitan districts, referred to in section 31, to villages, reference to which can partially be found in section 20. As of today we have completed the initial discussion through section 17.

After the first few meetings, it became obvious that much of our work was intertwined with questions of local finance. We therefore heard from Mr. Eckhardt, chairman of the tax commission, along with Mr. Kane and Mr. Markle, his aides. This meeting took the entire 2 hours of our committee session. As a result of Mr. Eckhardt's presentation and the report of his aides, I am sure that all 27 members of the committee on local government have a much clearer concept of the problems of

local taxation, equalization, and of the 15 mill limitation.

We also had the pleasure of having a report from one of our own committee members, Mr. Ford, in which he discussed in detail the problems of township government, particularly the urban townships.

In other discussion and study of article VIII a question was posed by one of the members of the committee which opened an entirely new field of thought. This involved Michigan's natural resources. A subcommittee has been appointed to be chaired by Dorothy Judd and to work under the supervision of one of the committee's vice chairmen, Mr. Figy. The result of this study is nearing completion and we may be making a report to you, as a convention assembled, if it is found advisable, in the next few days.

Several temporary subcommittees have been appointed touching specific areas of inquiry involving the present article VIII. In addition, 2 permanent subcommittees have been appointed. The first is to record all points of interest which might more properly be legislative in nature. This committee is charged with the preparation of a report to the legislature as part of our final responsibilities. The chairman is Mr. McLogan and its membership includes Mrs. Cushman and Mr. Leslie Richards. The second permanent committee is charged with the responsibility of recording all subject areas of constitution modification that we may come across in our general discussions. They have an important task, as many subjects are being touched upon during these preliminary discussion periods. The chairman appointed here is Mr. Farnsworth and its membership includes Mr. Ford and Mr. Tweedie.

Our 2 vice chairmen have been asked to accept the responsibility of keeping our calendar published as far in advance as possible, which we hope will be helpful to all here as well as to the news media and to all interested citizens. They are also preparing a committee time table for the committee's consideration later this week.

We would welcome your suggestions and visits to our committee sessions. I feel that our progress to date has been very satisfactory and that we have worked together most harmoniously.

It is our intention to complete, by the end of next week, the initial study of article VIII, and to then begin to hear testimony from people who have particular interest in these areas of local government.

I might point out that on Thursday morning at our 8:30 a.m. session we will be pleased to have with us Mr. John Bebout as our speaker and that tomorrow at the session one of our own members of this convention, Mr. Millard, will speak to us on the subject of navigable streams.

Mr. President, this concludes the report of the committee on local government.

VICE PRESIDENT HUTCHINSON: Thank you very much, Mr. Elliott.

Further reports of standing committees.

SECRETARY CHASE: The committee on rules and resolutions, by Mr. Van Dusen, chairman, reports back to the convention **Resolution 24,** A resolution regulating interest group agents at the Michigan constitutional convention; **Resolution 25,** A resolution regulating interest group agents at the Michigan constitutional convention; and **Resolution 26,** A resolution regulating constitutional convention agents at the Michigan constitutional convention; with a substitute therefor, recommending that the substitute be agreed to, and that the resolution as substituted be adopted.

Richard C. Van Dusen, chairman.

VICE PRESIDENT HUTCHINSON: The question is on the substitute.

Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, I think probably some detailed explanation of the substitute is in order. You will all find copies of the substitute for the resolution before you. They were placed on your desks this morning.

The committee on rules and resolutions has had before it for upwards of a week 3 separate resolutions offered by Delegates DeVries, Dean Doty and Lundgren, each dealing with the same subject matter: the regulation of persons who appear before and work with the convention as representatives of various groups, associations or others interested in the work of the convention.

Prior to our meeting last night, the 3 sponsors of the separate Resolutions, 24, 25 and 26, had conferred and were able to present to us last night a proposed substitute which embodies the best features, in the judgment of the committee, of all 3 separate resolutions.

I think I should emphasize at this point that there is nothing new in the substitute. All of the material contained in the substitute was found previously in one or more of the several resolutions which have been before the committee and the convention for over a week.

Now, perhaps I should outline for you — and you may wish to follow on the copies of the substitute before you — just what these resolutions seek to accomplish.

First, it is, of course, a simple routine matter of regulating the people who do business with our convention. The first resolving clause defines "convention agent" as

> any person employed by a person, persons, firm, association, or corporation; or by any board, department, or agency of the state of Michigan, or any political subdivision thereof, to engage in promoting, advocating, or opposing any matter pending before the constitutional convention or any committee thereof, or who is employed expressly for the purpose of promoting, advocating, or opposing any matter which might come before the constitutional convention or any committee thereof, in the interest of his employer or employers shall be considered a convention agent within the provisions of this resolution.

Several persons and types of activities are exempted from the provisions of the resolution. The resolution does not apply to those who confine their activities to appearing before any constitutional convention committee. It does not apply to public officials who at the request of a committee appear before that committee to make presentations.

The resolution does not apply to any person whose contact with a delegate is limited to furnishing information to a delegate at the delegate's request. In other words, if you, as a delegate, desire some particular information from someone in your home district who is particularly knowledgeable in the subject and you call him and ask him for that information, it is not necessary for him to register or be defined as a convention agent in order to answer your question.

The resolution does not apply to accredited correspondents of news media who are defined in our rules, nor does it apply to newspapers, other news media, radio and television agencies, those who publish periodicals on a regular basis — house organs would apply, for example — who in the ordinary conduct of their business make editorial comment, either in print or on the air, about the work of the convention.

Convention agents, as so defined, who are not specifically exempted, are required by the resolution to file with the president of the convention their names, the name of the person or organization which they represent and a specification of the particular article or section of the constitution in which they are particularly interested. There may be many such convention agents who are interested in the entire constitution, and they may so indicate.

The second particular requirement of the resolution with respect to the conduct of convention agents is that each must keep and report, on a regular basis, expenditures made by himself or by his employer in 2 general categories: first, the total amount spent on mailings, advertising, publications or other publicity efforts having as their principal purpose influencing the deliberations of the constitutional convention or of any delegate thereto; and second, the total amount expended on entertainment of constitutional convention delegates and staff.

Here I might pause to point out that these are 2 separate bulk reports, the amount spent on publicity and the amount spent on entertainment. Quite obviously it would be unfair to any interested organization which spent quite a lot of money in one month, for example, preparing a brochure to simply make

a lump report because it might appear that they had spent a lot of money on entertainment which was not the case.

These reports are required to be filed monthly on or before the fifteenth of the month following the month in which the expenditures were made. They are to be made under oath, and they are to be maintained in the office of the president and will be open to the public following the fifteenth of the month in which they are filed.

There are provisions designed to enforce the regulations so imposed. If there is someone who is within the definition of a convention agent and therefore required to register and make reports but fails to do so, and this is brought to the attention of the convention, the person will be accorded a hearing before the committee on rules and resolutions on the question of whether he has wilfully violated the provisions of the resolution, and if the committee so determines, it will bring forward a resolution to the floor of the convention charging the person with contempt of the convention.

If the convention adopts the resolution, the name of the individual and his employer will be published in the journal of the convention and the person thereafter will be barred from constitution hall, a rather stringent remedy, I would think, and one purely within the jurisdiction of this convention.

Now, I would like to point out that there is nothing in the action of the committee on rules and resolutions in favor of reporting this substitute resolution which implies or in any way infers that the committee is of the opinion that we doubt whether convention agents will conduct themselves with propriety. We recognize the great importance of their work to the whole convention through having ably presented to it the views of groups interested in the subject matter of the convention, and we fully expect that those views will be presented with propriety, with clarity and with great benefit to the convention.

By the same token, I should indicate that there is no intent on the part of the committee on rules and resolutions to imply, by recommending this resolution, that we doubt the ability of our fellow delegates to properly weigh and evaluate all information which is presented to them, regardless of the context in which it is presented. The resolution simply recognizes that there are a great many groups who are interested in the matters coming before the convention, that they will present their views in many cases through agents employed for that purpose, and that these convention agents are together with the delegates and the general public and the press, an important part of the work of this convention; and that just as the delegates have subjected themselves to rules, and have subjected the press to rules, we think it is reasonable to subject the representatives of these interest groups to careful and reasonable regulations. The regulations proposed by the resolution are, in the judgment of the committee, fair, thorough, far reaching and carefully conceived.

The committee reported the substitute for the resolutions by a vote which was nearly unanimous. There was one negative vote cast in the entire committee.

The committee strongly recommends the adoption of the substitute for the resolutions.

VICE PRESIDENT HUTCHINSON: The question is upon the substitute. The secretary will read the substitute.

SECRETARY CHASE: Following is the substitute for Resolutions 24, 25 and 26 which were offered by Messrs. DeVries, Dean Doty and Lundgren:

A resolution regulating convention agents at the Michigan constitutional convention.

Resolved, That any person employed by a person, persons, firm, association, or corporation; or by any board, department, or agency of the state of Michigan, or any political subdivision thereof, to engage in promoting, advocating, or opposing any matter pending before the constitutional convention or any committee thereof, or who is employed expressly for the purpose of promoting, advocating, or opposing any matter which might come before the constitutional convention or any committee thereof, in the interest of his employer or employers shall be considered a convention agent within the provisions of this resolution; and be it further

Resolved, That the terms "promoting", "advocating", and "opposing" shall be construed to mean any act or acts, performed for the purpose of influencing a delegate to the constitutional convention to vote or to use his influence for or against any matter before the constitutional convention or any committee thereof; and be it further

Resolved, That the provisions of this resolution shall not apply:

(1) To any person who shall confine his activities in promoting, advocating or opposing any matter pending before the constitutional convention, or any committee thereof, to formal appearances before any constitutional convention committee;

(2) To any public official acting in his official capacity who has been requested to appear before any committee of the convention;

(3) To any person whose contact with a delegate is limited to furnishing information at the request of any delegate or any constitutional convention committee regarding any matter pending before the constitutional convention or any committee thereof;

(4) To news media correspondents accredited in accordance with rule 7 of this convention;

(5) To any newspaper, news medium, regularly published periodical (including any individual who owns, publishes, or is employed by any such newspaper, news medium, or periodical) which in the ordinary course of business publishes or broadcasts news items, editorials or other comments, or paid advertisements which directly or indirectly urge the passage or defeat of any constitutional provision, if such newspaper, periodical, news medium, or individual engages in no further or other activities in connection with the passage or defeat of such constitutional provision, other than appearances described in subparagraph (1) of this paragraph; and be it further

Resolved, That every convention agent shall:

(1) File with the president of the convention on forms provided by that office, a statement containing the following information:

(a) full name of applicant, place of residence and place of business;

(b) name of any and all firms, corporations, associations, or governmental boards, departments, or agencies of which he is an employee, together with the position held, business address and principal occupation of the organization(s) of which applicant is an employee or agent;

(c) the article(s) or section(s) of the constitution in which he, acting as convention agent, is interested;

(2) Keep and report a record of all expenditures made by himself or his employer or employees for the following purposes:

(a) total amount expended on mailings, advertising, publications, or other publicity efforts having as their principal purpose influencing the deliberations of the constitutional convention or of any delegate thereto;

(b) total amount expended on the entertainment of constitutional convention delegates and staff;

(3) File on or before the fifteenth of each month a report of the above described expenditures made during the preceding calendar month;

(4) File on or before 30 days following final adjournment of the convention a report of the total amount so expended during the convention;

(5) When any change, modification or addition of such employment is made, the convention agent shall, within one week of such change, modification or addition, furnish full information regarding the same to the president of the constitutional convention on forms provided by that office; and be it further

Resolved, That all information required to be filed under the provisions of this resolution with the office of the president shall be available after the fifteenth of each

month to the public and shall be compiled by the administrative assistant to the president; and be it further

Resolved, That all reports and statements required herein shall be made under oath; and be it further

Resolved, That upon application by any person who has complied with the provisions of this resolution, the president of the convention shall issue to the applicant an identification card showing the name and business address of the person to whom such identification card is issued and the name of his employer(s). Identification cards so issued by the president shall be prima facie evidence of compliance with the requirements hereof; and be it further

Resolved, That any person who is defined or registered as a convention agent within the provisions of this resolution, who shall willfully violate the provisions of this resolution, if so determined by resolution of the constitutional convention, shall be decreed in contempt of the constitutional convention, and if registered as a convention agent, his identification card shall be revoked: Provided however, That before any such resolution shall be placed before the convention, any person so defined or registered as a convention agent shall be notified in writing and shall be given an opportunity to be heard in a duly noticed public hearing which shall be conducted by the rules and resolutions committee of the constitutional convention; and be it further

Resolved, That the name of any person so determined to be in contempt of the convention and the name of his employer(s) shall be published in the action journal of the constitutional convention, and such person shall thereafter be barred from entering constitution hall.

VICE PRESIDENT HUTCHINSON: The question is on the adoption of the substitute for the resolutions. All those in favor will say aye. Opposed?

The substitute is adopted.

Mr. Kelsey.

MR. KELSEY: Mr. President, much has been said about this resolution in many forms. I wish to go on record as voting against the resolution.

I should like to take issue with Mr. Van Dusen on the basis of his saying that it is now in a form comprising or incorporating the text of all 3 resolutions.

I dislike very much, and object very strenuously to some of the words used in the press. I feel it has cast a doubt by inference on the integrity of every delegate in this convention by suggesting that they could be bought for a dinner or a drink. Let me say speaking for myself, that I am a very moderate eater and a very moderate drinker. Certainly I feel I am here at this convention because of the respect in which my integrity is held by the people in my representative district.

I should like to see Dr. DeVries' original resolution brought before us. Whoever these lobbyists are—and incidentally I have never met one in 10 years in public life—they should be made to file an expense account to include itemized details. If they should spend any amount of money on any particular delegate, that should be included in view of what has been said.

In conclusion, I repeat that I wish to go on record as voting against the resolution.

VICE PRESIDENT HUTCHINSON: The Chair would like to inquire of you, Mr. Kelsey, whether you want your nay vote to be recorded on the vote just taken which was on the adoption of the substitute, or whether you want it recorded in opposition to the next question, which is upon the adoption of the resolution as substituted?

MR. KELSEY: I suppose I would be against both of them.

VICE PRESIDENT HUTCHINSON: All right. Without objection, the statement will be entered in the journal.

Mr. Marshall.

MR. MARSHALL: Mr. President, I rise to speak in support of the recommendation of the committee. I think that the regulations as adopted here are fair. I do not think that they cast any suspicion over the delegates unless we want to take it that way.

I would say that Delegate Ford and I should have a complaint, if anyone should. About a week ago, we were taken out with a group of people including a known lobbyist, who has been lobbying over on capitol hill. I do not know how it happened, but Delegate Ford and I got stuck with a $50 tab. Everyone had their dinner and when it came time to leave the Capitol Park, the lobbyist rose and left with friends of ours who had come with us, and there was nothing left for Bill and I to do except to dig down and pay the check. So we might need protection against that. (laughter)

I see nothing out of line here. I think this is a fair set of regulations and I rise in support of the recommendation.

VICE PRESIDENT HUTCHINSON: Mr. DeVries.

MR. DeVRIES: Mr. President, I should like to speak to Mr. Kelsey's point, if I may. It has been charged that these regulations suggest that a delegate may be purchased for the price of lunch or dinner. All I say in reply to this point is that nobody really believes this, and nobody ever will. It is not my intention to cut off any delegate from free lunches and dinners, although I cannot resist saying that in my own case I have noticed a drastic reduction in the number of invitations I have received in the last few weeks. (laughter) Either the lobbyists do not want to take me out or they cannot afford to be seen with me by the other lobbyists—I don't know which the case is.

In any event, this is a regrettable situation, because they do contribute very valuable advice and information and often this is done by breaking bread at the luncheon or dinner table.

Seriously, all regulatory legislation suggests something about human behavior. Very few would seriously argue that we must do away with all regulatory legislation and agencies, just because it might suggest that we cannot trust all human beings all of the time.

I think the substitute resolution is a good one and I will be glad to see the convention adopt it.

MR. KELSEY: Mr. President. . .

VICE PRESIDENT HUTCHINSON: For what purpose does the gentleman rise? Mr. Kelsey, you have already debated on this particular issue, have you not?

MR. KELSEY: I have further remarks to make, Mr. President, but if I am to be deprived of that opportunity, that is your decision.

VICE PRESIDENT HUTCHINSON: Under the rules, every delegate may speak only once, unless there is unanimous consent.

Is there objection to Mr. Kelsey speaking further? The Chair hears no objection. You may proceed.

MR. KELSEY: Thank you very kindly.

Possibly everyone has read Senator Porter's remarks in the News and read everything that was said about lobbyists. Certainly one could interpret that it is an inference on the integrity of each delegate.

If these lobbyists have any valuable information to contribute, let them bring it before the respective committees. That is all, Mr. President.

VICE PRESIDENT HUTCHINSON: The question is upon the resolutions as substituted.

Mr. Allen.

MR. ALLEN: A point of inquiry, Mr. President. A question was raised earlier today, if this is passed, as to the effective date. I should like to ask Mr. Van Dusen of the committee on rules and resolutions this question. I would assume the effective date, if this is passed, would be today, so that on the monthly expenditures, the record would start as of today.

I notice in paragraph 4 of the substitute resolution that after the convention adjourns a report is turned in as to the total amount. I would assume that that total amount would apply to the total expenditures from the time the convention started until the end, but the monthly report would commence as of today. Would that be correct?

VICE PRESIDENT HUTCHINSON: Do you care to reply, Mr. Van Dusen?

MR. VAN DUSEN: Thank you, Mr. President. I think Mr. Allen's interpretation is correct. There is no intent here

that this would apply retroactively. I would think that if persons have not kept a record of expenditures up till now they would not be required to report them. If they have kept them and can report them, however, they should do so. But there is no intention to apply this retroactively. It becomes effective as of the date of its adoption.

VICE PRESIDENT HUTCHINSON: The question is upon the adoption of the resolutions as substituted. All those in favor of the resolutions as substituted will say aye. Those opposed will say no.

The resolutions, as substituted, are adopted.

Further reports of standing committees.

SECRETARY CHASE: The committee on administration, by Mr. DeVries, chairman, recommends to the constitutional convention the adoption of the following report regarding convention library services:

1. That the library hours should be as follows:

Monday thru Thursday—8:00 a.m. to 10:00 p.m.

Friday—8:00 a.m. to 6:00 p.m.

Saturday—8:00 a.m. to 12:00 noon.

2. The library staff should be on duty during the following hours:

10:00 a.m. to 12:00 noon—2 librarians on duty.

2:30 p.m. to 5:30 p.m.—2 librarians on duty.

Other hours—1 librarian on duty.

3. That the financial arrangements for the library staff be as follows:

a. One convention librarian (a convention employee paid from the convention budget).

b. Two state library employees (who will remain state library employees on loan to the convention—total salary of approximately $1,000 a month).

It is further recommended that the convention, by interdepartmental transfer of funds, turn over to the state library the necessary appropriation to provide for the completion of this arrangement.

4. The committee further recommends that the state board for libraries, and its acting secretary, Mr. Charles L. Higgins, be commended for their willingness to cooperate with the constitutional convention in making their facilities and experienced personnel available to the convention.

Walter DeVries, chairman.

VICE PRESIDENT HUTCHINSON: Mr. DeVries.

MR. DeVRIES: Just a brief word of explanation, Mr. President. The rules of the convention call for 2 librarians. We have employed Miss Mary Long as our convention librarian. She is a member of the convention staff, employed full time, and paid from the budget.

We have arranged to borrow 2 employees from the state library, Mary Armstrong on a half time basis, and Lila Colby full time. These employees will be loaned to the convention from the state library.

Mary Long, who is a convention employee, will be paid from the convention budget. Mary Armstrong and Lila Colby will remain state library employees, on loan to the convention. Their total salary is approximately $1,000 a month.

The convention, by this interdepartmental transfer of funds, should turn over to the state library the budgeted funds for the second library position, $4,000, for the rest of the convention. From these funds, they will hire part time help to do some of the things in their library that Miss Armstrong and Miss Colby do there. They will absorb the additional cost of the salaries of these 2 persons in their budget.

I recommend that the convention approve this transfer and commend the state library board for its cooperation with the convention.

VICE PRESIDENT HUTCHINSON: The question is upon concurring in the recommendations contained in the report of the committee on administration. All those in favor say aye. Those opposed, no.

The recommendations are concurred in.

SECRETARY CHASE: That is all of the standing committee reports, Mr. President.

VICE PRESIDENT HUTCHINSON: Reports of select committees.

SECRETARY CHASE: None.

VICE PRESIDENT HUTCHINSON: Communications from state officers.

SECRETARY CHASE: None.

VICE PRESIDENT HUTCHINSON: **Introduction, first reading and reference of proposals.**

SECRETARY CHASE: The following are the proposals, Mr. President:

Messrs. Marshall, Anspach and Faxon, and Mrs. Koeze introduce

Delegate Proposal 1170, A proposal to amend section 21 of article VI to provide a suitable residence for the governor and to authorize an allowance for maintenance.

VICE PRESIDENT HUTCHINSON: Referred to the committee on executive branch.

SECRETARY CHASE: Mr. Hutchinson introduces

Delegate Proposal 1171, A proposal to provide for courts of conciliation and boards of arbitration. Amends section 7 of article XVI.

VICE PRESIDENT HUTCHINSON: Referred to the committee on legislative powers.

SECRETARY CHASE: Mr. Hutchinson introduces

Delegate Proposal 1172, A proposal to enlarge the senate's power of advice and consent. Replaces article VI, section 10.

VICE PRESIDENT HUTCHINSON: Referred to the committee on executive branch.

SECRETARY CHASE: Mr. Hoxie introduces

Delegate Proposal 1173, A proposal to provide for salary of civil service commission as established by legislature. Amends section 22 of article VI.

VICE PRESIDENT HUTCHINSON: Referred to the committee on executive branch.

SECRETARY CHASE: Mr. Norris introduces

Delegate Proposal 1174, A proposal to add a section to protect all persons against denial of equal protection of the law. Amends article II.

VICE PRESIDENT HUTCHINSON: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: Mr. Norris introduces

Delegate Proposal 1175, A proposal to grant the power and the duty to the legislature to prevent or prohibit discrimination or segregation on the basis of sex, age, race, color, religion, or national origin. Amends article II.

VICE PRESIDENT HUTCHINSON: Referred to the committee on declaration of rights, suffrage and elections.

Second reading of proposals.

SECRETARY CHASE: Nothing on that calendar.

VICE PRESIDENT HUTCHINSON: Third reading of proposals.

SECRETARY CHASE: Nothing on that calendar, Mr. President.

VICE PRESIDENT HUTCHINSON: **Motions and resolutions.**

SECRETARY CHASE: Mr. Faxon offers

Resolution 28, A resolution regarding the announcement and time of public hearings.

Following is the body of Resolution 28, as offered:

Whereas, The work of this convention is to be made known to the public; and

Whereas, The public ought to have an opportunity to participate in whatever manner they deem possible; and

Whereas, Public hearings are to be scheduled which involve public participation; and

Whereas, Many people who work during the daytime may desire to appear before these committees; now therefore be it

Resolved, That all public hearings be announced at least one week in advance and that all such public hearings be arranged in the evening hours whenever possible.

VICE PRESIDENT HUTCHINSON: Referred to the committee on rules and resolutions.

SECRETARY CHASE: Messrs. Heideman, Follo and L. W. Richards, on behalf of the committee on education, offer

Resolution 29, A resolution requesting authority and funds for the committee on education to hold hearings in the upper peninsula at Houghton and Marquette.

Following is the body of Resolution 29, as offered:

Whereas, Some parts of the upper peninsula are as far away as 600 miles and since many people concerned with schools in that area have expressed a desire to attend a hearing of the committee; and

Whereas, The committee on education feels it necessary to get the opinions of people from all over the state and get an overview of the state as a whole; and finds it important to hold public hearings in Houghton at the Michigan College of Mining and Technology and in Marquette at Northern Michigan College or at such other place as may appear desirable for the purpose of permitting the educators at these colleges and the community colleges, those in the elementary and secondary schools of that area, librarians, and other interested persons of the upper peninsula, an opportunity to be heard concerning their problems pertaining to education and libraries, and for the further purpose of informing the people of the upper peninsula of the developments at the constitutional convention; and

Whereas, The rules of this convention require convention approval before a committee can conduct such a hearing at places other than in Lansing; now therefore be it

Resolved, That the convention grant authority to the committee on education to hold the hearings described at the places indicated, and that the convention appropriate the necessary funds to defray the costs of travel for not more than 12 members of the committee to and from the places indicated, and other expenses necessary and incidental to the holding of such hearings.

VICE PRESIDENT HUTCHINSON: Referred to the committee on administration.

SECRETARY CHASE: Mr. Pollock offers

Resolution 30, A resolution for a select committee to deal with proposals not presently within the jurisdiction or consideration of any committee.

Following is the body of Resolution 30, as offered:

Whereas, Many of the emerging problems of state and local government may not be dealt with by the present standing committees; and

Whereas, Several of these new and emerging problems should be given careful consideration; now therefore be it

Resolved, That the president appoint a select committee consisting of the president, the vice presidents, and 5 other delegates to deal: (1) with proposals not presently within the jurisdiction of any of the substantive committees, or (2) which are not being considered by present committees because they refer to new or emerging problems; and be it further

Resolved, That this committee be also charged with arranging for the joint consideration by 2 or more committees or subcommittees thereof of any matters which require such joint consideration.

VICE PRESIDENT HUTCHINSON: Referred to the committee on rules and resolutions.

SECRETARY CHASE: That is all of the resolutions on file, Mr. President.

VICE PRESIDENT HUTCHINSON: Unfinished business.

SECRETARY CHASE: None.

VICE PRESIDENT HUTCHINSON: Special orders of the day.

SECRETARY CHASE: None.

VICE PRESIDENT HUTCHINSON: General orders of the day.

SECRETARY CHASE: None.

VICE PRESIDENT HUTCHINSON: Announcements and notices.

SECRETARY CHASE: The following are the notices of committee hearings:

The committee on legislative organization will meet in room D, Wednesday, tomorrow, at 10:30 a.m. Appearing will be Judge Creighton Coleman of Marshall, and Delegate Arthur Elliott. Dr. John Hannah, chairman.

The committee on legislative powers will meet in room H tomorrow at 10:30 a.m., and in room H on Thursday at 9:00 o'clock a.m. T. Jefferson Hoxie, chairman.

The subcommittee on eminent domain will meet on Wednesday, November 8, at 10:45 a.m. Judge Pugsley will speak to the subcommittee. Claud Erickson, chairman of the committee, and Paul Mahinske, chairman of the subcommittee on eminent domain.

The committee on finance and taxation will meet in room E tomorrow, Wednesday, immediately following the session.

The committee on administration will have a brief meeting immediately following the session today in the conference room of the president's office. Walter DeVries, chairman.

The committee on miscellaneous provisions and schedule announces that the meeting planned for 3:00 o'clock this afternoon has been cancelled due to conflict with another committee. This committee will meet at 9:00 a.m. on Thursday, November 9, instead.

Notice of a public hearing: The committee on legislative powers will hold a public hearing in room H. Date will be November 8, 1961 at 10:30 a.m., on Delegate Proposal 1085, A proposal to make the state responsible for aiding and assisting the indigent and needy. Claude L. Wood, subcommittee chairman, and T. Jefferson Hoxie, chairman.

The apples today were provided by Delegate Turner. (applause)

We have the following requests for leave of absence: Mr. Rush wishes to be excused from the session of Thursday; Mr. Erickson wishes to be excused from tomorrow's session due to a speaking engagement in Detroit; Mr. Austin wishes to be excused from Thursday's session; and Mr. Ostrow wishes to be excused from the session of next Monday evening, November 13.

VICE PRESIDENT HUTCHINSON: Without objection, the several requests will be granted. The Chair hears no objection, and the requests for leave of absence are granted.

Further announcements?

Mr. Powell.

MR. POWELL: Mr. President, I wish to announce that subcommittee 2 of our committee on legislative powers will meet in room C immediately after the session this afternoon.

VICE PRESIDENT HUTCHINSON: Mr. Hannah.

MR. J. A. HANNAH: Mr. President, the calendar of the committee on legislative organization should be corrected. We have appearing before us this afternoon Dr. Pollock; a representative of the Consumers' Power Company; and Mr. August Scholle of Detroit.

VICE PRESIDENT HUTCHINSON: Mr. Millard.

MR. MILLARD: Subcommittee 4 of the committee on legislative powers, in conjunction with the subcommittee of the committee on miscellaneous provisions and schedule, will meet immediately after this session and hear witnesses in room C.

VICE PRESIDENT HUTCHINSON: Mr. Elliott.

MR. A. G. ELLIOTT: Mr. President, I wish to correct a statement I made in my report given earlier this afternoon in which I said that Mr. Millard would be speaking to us on Thursday. He will be speaking to us tomorrow at 8:30 a.m. and Mr. John Bebout will speak on Thursday, immediately after the session.

VICE PRESIDENT HUTCHINSON: Any further announcements or notices?

Mr. Allen.

MR. ALLEN: Mr. President, I move we adjourn.

VICE PRESIDENT HUTCHINSON: The gentleman from Kalamazoo, Mr. Allen, moves that the convention do adjourn. The question is on the motion to adjourn. Those in favor say aye. Those opposed say no.

The convention stands adjourned until tomorrow at 2:00 o'clock.

[Whereupon, at 2:55 o'clock p.m., the convention adjourned until 2:00 o'clock p.m. Wednesday, November 8, 1961.]

TWENTY-FIRST DAY

Wednesday, November 8, 1961, 2:00 o'clock p.m.

PROCEEDINGS

PRESIDENT NISBET: The convention will please come to order.

The invocation today will be given by the Reverend Guy N. Bridges, of the United Missionary Church of Lansing:

REVEREND BRIDGES: Our Father, we are thankful that Thy hand is still over the affairs of men. Though sinister forces seem to threaten this world, Thou art still in control of Thy creation. We are grateful that there are those with strong faith who are a part of this body. Give them wisdom to know what is good, and give them strength to perform it.

Remember those who are under pressure to make decisions against their better judgment. Help them to be true to themselves. Help us all to remember that Thou art a shelter in the time of storm.

May the work accomplished today be such that Thy blessing may rest upon it. This we request in the name of the Lord Jesus, Amen.

PRESIDENT NISBET: The roll call will be taken by the secretary. All those present, please vote aye.

SECRETARY CHASE: Has everyone voted? If so the secretary will record the vote. The voting machine is now locked and you may release your voting lever.

Mr. President, a quorum of the convention is present.

Absent with leave: Messrs. Erickson, Follo and Garvin.

Absent without leave: none.

PRESIDENT NISBET: Reports of standing committees. According to our program of the last 2 weeks of hearing committee reports, our first report today will be by William Cudlip, chairman of our committee on style and drafting.

Mr. Cudlip.

MR. CUDLIP: Mr. President and delegates, the committee on style and drafting I have termed the caboose of this assembly. We are ready to move and will move when the locomotives are ready. We are ready to go. We have a fine committee, as all the committees are. Our room is high on the third floor and our clerk is Mrs. Kirksey.

That is the extent of our committee report, except that I would remind you that this assembly on October 9, by rule, outlined the scope of our jurisdiction and power. It is one of the few committees of this convention that can have its powers so prescribed. That is Journal 3 of our body. I am going to read it because it is going to become more and more prominent in our deliberations. This is what you told us we could do:

> The comittee on style and drafting shall examine and edit all proposals for inclusion in the constitution which are referred to it, for the purposes of avoiding inaccuracies, repetition, inconsistencies or poor drafting, and shall consider and make recommendations on any differences, conflicts, or unresolved matters of substance. The committee shall have the authority to rephrase or to regroup proposed language or sections of the proposed constitution but shall have no authority to change the sense or purpose of any proposal referred to it. The committee shall also be empowered to recommend referral of proposals submitted to it to any committee which may have an interest in the proposal. Where a proposal has been already acted upon favorably by the convention at second reading, the committee shall undertake to resolve any inconsistency or conflict in conference with the substantive committee concerned. If the committee on style and drafting shall fail to resolve any such inconsistency or conflict, it shall notify the convention and await its instructions.

Mr. President and members, I took the liberty of reading this language because as all of us go forward with the committee work and as committee proposals come to this floor, I think it behooves all of us to carefully understand the function of this particular committee because we are a seamless web—it is all related—and this way you will get guidance that will alleviate our work and pressures. Thank you, Mr. President.

PRESIDENT NISBET: Thank you, Mr. Cudlip.

Our other committee report today is from the committee on public information, of which Mr. Ink White is chairman.

Mr. White.

MR. WHITE: Mr. President and fellow delegates, this must necessarily be a somewhat sketchy report of the activities of the committee on public information.

I am sure that you are all aware that it was not until last week that the permanent membership of our committee was established, there being a considerable shift in membership of this particular group due to rearrangement of committee assignments.

You are aware too that it was not until Thursday of last week that we were assigned a professional staff to assist us with the myriad of details involved in doing a proper public information job for the convention and for you delegates. I should like to report now that there have been 2 meetings of the committee as permanently constituted during the past week, and we are presently engaged in study and discussion of our problems.

We have determined to divide our group into a total of 11 subcommittees, covering pretty generally the wide spectrum of activities in which we will be engaged. I think a listing of them and a minimal description of their duties may be of interest to the convention.

Our first subcommittee will be charged with the responsibility of newspaper liaison. It will maintain contact with the newspaper personnel and assist them with their problems of communication with delegates and staff of the convention. Included in their duties also will be keeping proper relationship with the community weeklies and other periodicals published for special groups within the state.

Our second subcommittee will have to do with radio and TV. Again, here it will maintain proper liaison with radio and TV personnel and assist them with their problems of communication with delegates, committee chairmen and the officers of the convention.

Our third subcommittee will be charged with the responsibility of convention hall courtesies. It will work in cooperation with the sergeant at arms and the convention guides to assure courteous treatment to convention visitors.

Our fourth subcommittee will have to do with public hearings. It will arrange proper news coverage for committee hearings in Lansing and elsewhere in the state if they are so ordered.

Our fifth subcommittee will be concerned with service to delegates. It will offer and arrange for the committee's service to individual delegates in matters pertaining to their own public information problems: newspaper columns, press releases, background for speeches, radio and TV appearances.

Our sixth subcommittee will set up a speaker's bureau. I think that matter is self explanatory.

Our seventh subcommittee will have to do with schools and colleges. Here again, it will maintain proper liaison with the state's schools and colleges and offer our services to them for a better understanding of convention procedures.

Our eighth subcommittee will have to do with civic, labor, fraternal and community groups, in an effort to promote better understanding of the convention and its work among these people.

Our ninth subcommittee will have to do with government groups. Here again it will attempt to promote better understanding of the convention and its work among townships, villages, cities, county and state officers and their employees.

Our tenth subcommittee will be involved with the pro-

duction of a documentary film, in which we will have the cooperation of the 3 major state universities. This will be available, we hope, soon after the adjournment of the convention for use in public gatherings.

Our eleventh subcommittee will be engaged in surveying public opinion trends, maintaining a clipping bureau which will be available to all of us, and also make some regular reports to committee chairmen as to public opinion on the matters before their particular committees.

Now, as to what you may expect soon from our staff: in preparation at present are 3 basic talks on the convention and its problems, which we hope to distribute to all delegates before they leave for the weekend recess. Accompanying these talks will be an outline of statistical data about the convention and its facilities, which may be interesting to groups before whom you are asked to speak.

Tomorrow the first of a regular weekly review of convention activities will go out to all of the state's weekly newspapers. This will assure us of regular publicity in an important segment of the state's press.

When we have acquired complete mailing lists, we shall also plan to send regular releases to labor and religious periodicals, and publications for the several ethnic groups of the state. Industrial and commercial house organs will also be included in our mailings. In this connection, we are also planning a suggested weekly column which you may adapt to your own use for publication in your community publications. The first of such columns will be ready, we hope, before you go home tomorrow.

Our staff is also prepared to help you individually with preparation of your own news releases for distribution to the media which you specify. I am sure you can understand, however, that with our 3 man staff and the present volume of work we are a little handicapped in this respect. We urge that you give us a day or two notice, if possible, on these individual releases. We want to accommodate all of you, but with 144 delegates to service, we obviously can't handle all of you at once.

Also in the works are plans for a weekly intraconvention bulletin to delegates and staff, carrying informal items of general interest. Included, we hope, will be a listing of each delegate's past and future speaking engagements. We will need your help in accumulating information for this bulletin and we will have future announcements to you about it.

With the help of the sergeant at arms and his staff and the 3 convention guides, we are making every effort to accommodate and make welcome visitors here to constitution hall. We are suggesting that the larger groups who plan to visit us notify our staff by telephone or letter prior to their arrival. This will give us an opportunity to notify interested delegates when folks from their home communities will be here for our sessions.

Ample arrangements have been made for school bus parking in areas adjacent to constitution hall. We have also provided for the serving of a hearty, warm meal to school youngsters for 75 cents at the Mason cafeteria. Delegates are not eligible for this meal. (laughter)

I call your attention briefly again to the brochure which has been prepared. These are available in reasonable quantity to all delegates and may be taken with you for distribution when you go out on speaking engagements. Some of us are also including them with our personal correspondence with constituents and others.

May I say, in conclusion, that our committee is grateful to all of the news media of the state for the splendid coverage which they have accorded the convention to date. Without the day to day help and understanding of the men and women who sit over here in the press box, our public information job would be a completely impossible task.

I also wish to express my heartfelt appreciation to the members of our committee for their patience and understanding in these early days of formulating policy and gathering unto ourselves a qualified staff.

That concludes my report, Mr. President. Thanks for your attention.

PRESIDENT NISBET: Thank you, Mr. White.

SECRETARY CHASE: The committee on administration, by Mr. DeVries, chairman, reports back to the convention **Resolution 29,** A resolution requesting authority and funds for the committee on education to hold hearings in the upper peninsula at Houghton and Marquette; without amendment, and with the recommendation that it be adopted.

Walter DeVries, chairman.

Following is the resolution:

Whereas, Some parts of the upper peninsula are as far away as 600 miles and since many people concerned with schools in that area have expressed a desire to attend a hearing of the committee; and

Whereas, The committee on education feels it necessary to get the opinions of people from all over the state and get an overview of the state as a whole; and finds it important to hold public hearings in Houghton at the Michigan College of Mining and Technology and in Marquette at Northern Michigan College or at such other place as may appear desirable for the purpose of permitting the educators at these colleges and the community colleges, those in the elementary and secondary schools of that area, librarians, and other interested persons of the upper peninsula an opportunity to be heard concerning their problems pertaining to education and libraries, and for the further purpose of informing the people of the upper peninsula of the developments at the constitutional convention; and

Whereas, The rules of this convention require convention approval before a committee can conduct such a hearing at places other than in Lansing; now therefore be it

Resolved, That the convention grant authority to the committee on education to hold the hearings described at the places indicated, and that the convention appropriate the necessary funds to defray the costs of travel for not more than 12 members of the committee to and from the places indicated, and other expenses necessary and incidental to the holding of such hearings.

PRESIDENT NISBET: Mr. DeVries.

MR. DeVRIES: Mr. President and fellow delegates, this resolution has the unanimous recommendation, first, of all of the committee on education, and second, of the committee on administration.

The committee on education members testified that this was necessary for several reasons:

One, they felt it would bring its work close to the people; Secondly, they wanted to study higher and other educational institutions of the upper peninsula, particularly in regard to various proposals in regard to independent boards and the merging of the 2 colleges in the upper peninsula; and Three, many delegates are not familiar with the educational institutions of the upper peninsula, and they want a chance to study them first hand. The feeling was that they are pretty familiar with the educational institutions in the lower part of the state and not with those of the upper peninsula.

Twelve members of the committee will make this trip at economy rates. The total estimate for this is about $1300 for the 3 day trip and hearings. The convention has a budget of $31,000 for this kind of activity.

The committee on administration is satisfied it is a worthwhile activity and urges the adoption of this resolution.

PRESIDENT NISBET: The question is on the adoption of the resolution. Any discussion?

Mr. Heideman.

MR. HEIDEMAN: Mr. President and fellow delegates, I would just like to make a short statement. Justice Oliver Wendell Holmes used to say it is sometimes more necessary to explain the obvious than to elucidate upon the obscure.

With this in mind, may I again remind you that our state of Michigan is unique geographically. It is long and narrow. The only other state which is comparable to it is the state of California. But Michigan is even more unique than California in that it is composed of 2 peninsulas almost surrounded by water, one jutting north and the other jutting

east, both peninsulas connected to the United States by land but separated from each other by water at the straits of mackinac. We now, of course, have a wonderful bridge spanning the straits. But because of the fact of these 2 separate peninsulas and their physical separation, we need always to do all that we can to unite their people and to keep them conscious that we are all "Michiganders" and "Michigeese." Thank you. (laughter)

PRESIDENT NISBET: Any other discussion?

Dr. Pollock.

MR. POLLOCK: I do not desire to oppose this resolution but I feel sure that we will now have a rash of applications to the committee on administration to go here and there, either where there are votes or where there aren't many votes. There will be some good reason. I question whether this is the most efficient way to utilize the small sum at the disposal of the committee on administration.

I have nothing but fondness for the upper peninsula and if it feels neglected, it must be neglected in ways in addition to education. And I am sure that the whole problem of constitutional revision as it affects the upper peninsula is not quite as important as the question of education.

I should think therefore, instead of waiting for energetic chairmen to put forward resolutions for hearings, that the committee on administration might work out some systematic schedule by which not only the upper peninsula, but the whole state is considered.

PRESIDENT NISBET: Mr. McAllister.

MR. McALLISTER: I want to support the resolution offered in favor of this trip to the upper peninsula. We here in the lower peninsula often pay too little attention to this great part of our state. And I say that $1200 is not an excessive amount to investigate education in the upper peninsula. And I heartily endorse it.

PRESIDENT NISBET: Mr. Sterrett.

MR. STERETT: Mr. President, being on the committee on administration, we heard the hearings just prior to this session. Miss Hart, I thought, made a very good explanation in justification of this trip because she stated that most of our hearings will come from people within approximately a 2 hour drive or trip, and they can appear before us here. This, of course, is much farther than 2 hours, and it appeared to us that it was necessary to have a special trip to the upper peninsula.

Now, I would like to point out that it has been handled very economically by Mr. Heideman, and with a rough calculation, while we were in the committee meeting, I figured that we could make approximately 24 or 25 such trips.

PRESIDENT NISBET: Mr. Madar.

MR. MADAR: Mr. President, I am not up here to oppose it. Frankly, I'm for giving the voters an opportunity to see us in action. However, I would like to know just why we are going to Houghton. I know that this isn't going to be a "dear trip"—an expensive trip, I meant to say—pardon me. (laughter) I would like to know, however, the dates.

PRESIDENT NISBET: Mr. DeVries, will you answer the question, please?

MR. DeVRIES: Mr. President and Mr. Madar, the point was raised in the committee as to whether this didn't correlate with the opening and closing of the deer season. It does not. This will be the first week in December.

If I may, Mr. President, talk to Dr. Pollock's point, the committee on administration would be delighted to work out a systematic schedule of trips as soon as the resolutions are in. I suggest that we try to do that in the next couple of weeks.

If I may further interpret Mr. Sterrett's remarks, I don't think because we can probably get 25 trips out of a $31,000 budget, that this would be considered carte blanche and that we should now try to get as many resolutions as we can for trips. We want to limit it as much as possible.

PRESIDENT NISBET: Any further discussion?

Mr. Richards.

MR. L. W. RICHARDS: Mr. President, I feel that I would be lax—being from the upper peninsula—if I didn't speak on behalf of this resolution.

I am happy the 2 gentlemen stood and said definitely they were unopposed to it. I hope the delegates realize they made that statement when they vote.

Certainly, we feel that we would like an administrative group—I'd like the whole 144 delegates—to come to the U.P. We believe it would simply be worthwhile to see what the other part of Michigan is, what we have to offer. We certainly feel the committee on education is more justified probably than the others, due to the extensiveness of our 2 larger schools up there.

A lot of our people who were definitely interested in our constitutional convention will not have the opportunity of coming down, and we would like to go to them. I think there will be some of the committee on education that have never been to the U.P. and they will come back and sell you folks who have never been up there and encourage you to come up.

I think whether expenses are paid or not, it would be a worthwhile investment to personally come and visit us and meet some of the fine people that are up there. They aren't all down here as delegates, I assure you.

I talked to a lot of of both our democratic friends and republican friends and they all intend to be up there, whether or not the committee on education goes up, and that will be a fine representation, I think, of all the various committees that are represented here.

I hope that all of you delegates will support us. Certainly it is not a selfish interest on anyone's part. And certainly, we've been happy to work with our committee on education. Their interest is in a good constitution. I've never seen any partisan politics and I've certainly been happy to serve them, and I hope you support this resolution. Thank you.

PRESIDENT NISBET: Mr. Stevens.

MR. STEVENS: Mr. President, as a delegate from Wayne county, I should be happy to support a trip of any of our members to that wonderful part of the state, the upper peninsula.

PRESIDENT NISBET: The question is on the resolution. All in favor, say aye. Opposed, no.

The resolution is adopted.

SECRETARY CHASE: That is the only standing committee report, Mr. President.

PRESIDENT NISBET: Reports of select committees.

SECRETARY CHASE: None.

PRESIDENT NISBET: Communications from state officers.

SECRETARY CHASE: None.

PRESIDENT NISBET: **Introduction, first reading and reference of proposals.**

SECRETARY CHASE: Messrs. Madar and Baginski introduce

Delegate Proposal 1176, A proposal to amend article VIII, section 2; townships in county; city as separate county; by providing that cities over 1,000,000 may become separate counties by a vote of its populace.

PRESIDENT NISBET: Referred to committee on local government.

SECRETARY CHASE: Messrs. Madar, Baginski and Buback introduce

Delegate Proposal 1177, A proposal to add to article VIII a section providing for the office of county assessor who shall have the duty to determine the valuation of all property within the county subject to county, township, school and municipal taxes of any nature.

PRESIDENT NISBET: Referred to the committee on local government.

SECRETARY CHASE: Messrs. Perlich and Pellow introduce

Delegate Proposal 1178, A proposal to add a new section to article X providing for the creation of an economic development council for the upper peninsula and the appropriation of 1 per cent of the total revenue for said council.

PRESIDENT NISBET: Referred to the committee on finance and taxation.

SECRETARY CHASE: Mr. Barthwell introduces

Delegate Proposal 1179, A proposal to add an additional section to article XI, providing for a community college system within the state, which system shall provide 2 tuition free years of collegiate work for its pupils.

PRESIDENT NISBET: Referred to the committee on education.

SECRETARY CHASE: Mr. Hodges introduces

Delegate Proposal 1180, A proposal to amend article VI, section 19, president of the senate. Office of lieutenant governor, right of same to appoint committees.

PRESIDENT NISBET: Referred to the committee on legislative powers.

SECRETARY CHASE: Mr. Millard introduces

Delegate Proposal 1181, A proposal to add a new section to article V, the legislative department, providing that the legislature shall not set a date of adjournment more than 5 days prior to such date.

PRESIDENT NISBET: Referred to the committee on legislative powers.

SECRETARY CHASE: Mr. Faxon introduces

Delegate Proposal 1182, A proposal to authorize the legislature to establish a research and administrative staff and to provide itself with adequate office and storage facilities. Amends article V.

PRESIDENT NISBET: Referred to the committee on legislative powers.

Second reading of proposals.

SECRETARY CHASE: Nothing on that calendar.

PRESIDENT NISBET: Third reading of proposals.

SECRETARY CHASE: Nothing there.

PRESIDENT NISBET: **Motions and resolutions.**

SECRETARY CHASE: Messrs. Snyder, Walker and Perlich offer

Resolution 31, A resolution asking the convention to review the salary of a research assistant assigned to the committee on public information.

Following is the body of Resolution 31, as offered:

Resolved, That the convention review the salary of one thousand dollars ($1,000.00) per month granted to Charles Ferry, research assistant, by the committee on administration, because of certain serious deviations from policy and precedent set by the convention; and be it further

Resolved, That the review take in consideration all of the facts surrounding the salary determination, some of which are as follows:

The organizational chart adopted and amended by this convention provides that the 9 research, drafting, and public information assistants and consultants come within the jurisdiction of the 3 codirectors of research, drafting, and public information. As a matter of policy and precedent salary recommendations for the positions involved in all cases excepting the case of Charles Ferry have been made by the 3 codirectors. In no case did the salary recommended exceed eight hundred dollars ($800.00) per month. The 3 codirectors did not have the opportunity to offer a salary recommendation after a review of Charles Ferry's qualifications. The one thousand dollars ($1,000.00) salary in question was not discussed by the committee on public information prior to it being presented to the committee on administration. It should be noted that the committee on administration, in setting the salary at one thousand dollars ($1,000.00) and in concurrent action, completely ignored the fact that Mr. Theodus Gay, former dean of law at South Carolina State, was most eminently qualified for a similar top rate of one thousand dollars ($1,000.00), but had his salary set at eight hundred dollars ($800.00) per month; and be it further

Resolved, That the action minutes of the meeting held by the committee on administration, on November 7, 1961, be printed in the daily journal, so that all may have benefit of the full discussion held on the problem involved; now therefore be it

Resolved, That this convention reconsider the action of the committee on administration and either pay both Mr. Gay and Mr. Ferry one thousand dollars ($1,000.00) per month, if it is to be recognized that high standard of training and qualifications entitle a person to the top rate, or that if the extraordinary background of Mr. Gay entitles him to receive only eight hundred dollars ($800.00), this should be applied uniformly to all other research positions.

PRESIDENT NISBET: Mr. Walker.

MR. WALKER: May I speak to this resolution?

PRESIDENT NISBET: Yes, you may, Mr. Walker.

MR. WALKER: Due to the urgency of the subject matter of this resolution and in view of the fact it will undoubtedly take at least 1 day to duplicate this resolution and distribute it to the body, might I at this time move for the suspension of the rules so that we might immediately consider this matter and dispose of it?

PRESIDENT NISBET: The question is on the motion of Mr. Walker that the rules be suspended and the question be considered at this time.

Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, I would respectfully oppose that motion.

PRESIDENT NISBET: Any further discussion on the motion of Mr. Walker?

Mr. Snyder.

MR. SNYDER: Thank you, Mr. President. The intent of Mr. Walker's motion was this: we have involved here an item of salary and if we prolong it through a long and devious course in our procedures, it may be several days before we come to some conclusion. It was merely Mr. Walker's intent to get the subject matter on the floor as rapidly as possible. I think he probably intended to hold the discussion on this thing until the resolution was actually printed and distributed to all of the delegates. This is what we feel should be done in order to get an urgent item on the agenda disposed of properly.

PRESIDENT NISBET: Mr. Farnsworth.

MR. FARNSWORTH: Mr. President, I might say this matter should be handled in committee. This convention has set up a regular procedure for handling these things. I would most certainly have to oppose suspension of the rules at this time.

PRESIDENT NISBET: Mr. Prettie.

MR. PRETTIE: I also rise to oppose the suspension of the rules. I think orderly procedure in a matter of this sort is certainly indicated. I see no urgency because it is a salary matter; and should the salary be readjusted why could it not be adjusted by a future adjustment should a change in salary be made? I heartily oppose the consideration of the suspension of the rules in this matter.

PRESIDENT NISBET: The question is on the motion of Mr. Walker that the rules be suspended. Any further discussion? If not, all in favor say aye. Opposed, no.

The motion does not prevail.

The resolution is referred to the committee on rules and resolutions.

SECRETARY CHASE: That is the only resolution on file, Mr. President.

PRESIDENT NISBET: Last Thursday, Mr. Marshall presented a parliamentary inquiry to the Chair. Mr. Chase will read the answer.

SECRETARY CHASE: In answer to the parliamentary inquiry propounded by Mr. Marshall on November 2, the Chair is of the opinion that this convention is engaged in writing a new constitution, and Mr. Marshall's second question is so answered.

The reply to Mr. Marshall's first question is that every clause in the document to be presented to the people must be affirmatively acted upon by this convention.

The answer to question 3 is that anything that is desired to stay in the constitution must be reintroduced as a delegate proposal or recommended by a committee for

convention action or incorporated as an amendment to a committee proposal.

The Chair does not intend to limit the power of this convention to decide for itself what course of action it shall pursue. The convention retains the power to determine that it will submit amendments to the present constitution and the convention also has the power to determine the manner in which it will present either a new constitution or amendments to the present constitution to the people. Conceivably, the convention might decide to submit a new constitution in several parts and as separate questions to the people.

PRESIDENT NISBET: Unfinished business.

SECRETARY CHASE: None.

PRESIDENT NISBET: Mr. Howes.

MR. HOWES: Mr. President, I move that when the convention adjourns on Thursday of this week, it stand adjourned until Monday evening at 8:00 o'clock.

PRESIDENT NISBET: Any discussion on Mr. Howe's motion? If not, all in favor say aye. Opposed, no.

The motion prevails.

Mr. Hutchinson.

MR. HUTCHINSON: Mr. President, there has been considerable inquiry about the holiday adjournment. The president and vice presidents have conferred about the matter, and the motion that I am about to make, while a little bit complex, will accomplish this: it will provide for a Thanksgiving recess from Wednesday before Thanksgiving until the following Monday night. There would be a Wednesday morning session on the twenty-second of this month, and that session would commence at 10:30 o'clock in the morning and obviously would not last very long, but would meet at 10:30 a.m. in order that a group of committees which would want to have an 8:30 a.m. meeting could carry on their session on that date.

The motion also would provide for a Christmas recess which would commence after our Thursday session on December 21, and continue through until Wednesday, January 3. This would mean that we would have an afternoon session on Thursday, the twenty-first, to permit all of the delegates to get home either after the session on the twenty-first, or on Friday, the twenty-second, Christmas being on the following Monday. It would provide that we would be in recess throughout all of Christmas week and that nobody would have to start back to the convention on new year's day. Those from the upper peninsula would perhaps have to get started on January 2, unless they want to travel through the night. We would have a regular session on Wednesday, January 3, at 2:00 o'clock in the afternoon.

Therefore, Mr. President, I move that when the convention meets on Wednesday, November 22, it meet at 10:30 o'clock in the morning; that when it adjourns on Wednesday, November 22, that it stand adjourned until Monday, November 27; that when it adjourns on Thursday, December 21, 1961, it stand adjourned until Wednesday, January 3, 1962.

PRESIDENT NISBET: The question is on the motion of Mr. Hutchinson.

Mr. Downs.

MR. DOWNS: I will second the motion.

PRESIDENT NISBET: Any further remarks? (laughter)

Mr. Martin.

MR. MARTIN: Mr. President, so far as the adjournment on December 21 is concerned, I hope that the committees which are scheduled to meet on that Thursday afternoon can have their meetings. In other words, if everybody just takes off, we will have no quorum in those committees, and time is very much of the essence. I hope that those committees will meet, certainly ours.

PRESIDENT NISBET: Thank you, Mr. Martin.

Mr. Sterrett.

MR. STERRETT: Mr. President, I have a similar question. If we are to meet for the 2:00 o'clock session on January 3, does this mean that there will be no committee meetings on January 3 prior to the 2:00 o'clock session?

PRESIDENT NISBET: Mr. Hutchinson.

MR. HUTCHINSON: Mr. President, in answer to Mr. Sterrett, it would mean that if the members of the committee, at the request of the committee chairman, are willing to cooperate with him—and I hoped they would be—and if in the opinion of that committee it was desired to have a meeting of that committee on Wednesday morning, January 3, that the committee would assemble itself and proceed.

PRESIDENT NISBET: Mr. Elliott.

MR. A. G. ELLIOTT: Point of information, please. I assume that the committees can meet at other hours on other than those days when there is a general session. You made a point, Mr. Hutchinson, of the fact that the Wednesday session at 10:30 a.m. would make it possible for those committees to meet at 8:30 a.m. on the morning of that date.

Thinking of our friends from the upper peninsula, if it is a problem for them to travel in one direction coming down, is it not also a problem for them to travel up on Thanksgiving? Would it not be wise for us to adjourn after the Tuesday session, letting those committees who feel they want to, hold their committee sessions on Wednesday in any event?

MR. HUTCHINSON: Mr. President, I suppose Mr. Elliott asks just to get a reaction. My reaction to it—though my mind is not closed—my initial reaction to his suggestion would be negative in that if you are going to adjourn on Tuesday, why not adjourn on Monday? If you are going to adjourn on Monday, why come at all that week? (laughter) You see, it is just a practical matter of a cutoff date. Of course, I say to you again, Mr. Elliott, that if a delegate from the upper reaches of the state found it necessary or desirable from his standpoint to leave after the Tuesday session, he quite obviously could get excused from the Wednesday session.

PRESIDENT NISBET: Mr. Perras.

MR. PERRAS: I would like to direct a question to Mr. Hutchinson concerning our returning here on January 3. Is it your opinion that we will meet on Wednesday, Thursday and Friday through Saturday or will we adjourn on Thursday evening again? Because it wouldn't pay for us driving 400 miles or more to drive down here on Wednesday, then turn around on Thursday to go back.

MR. HUTCHINSON: Mr. President, I would hope that by that time we will be having Friday sessions. I would hope that that would be the situation. And I would suggest that perhaps this particular combination of circumstances might be just the thing that would break into that idea and that we begin to have Friday sessions on that weekend and from there on.

PRESIDENT NISBET: Mr. Lundgren.

MR. LUNDGREN: Mr. President, on behalf of the upper peninsula, I would say we'll take care of ourselves. (laughter)

PRESIDENT NISBET: The question is on the motion. All in favor say aye. Opposed, no.

The motion prevails.

Any other unfinished business?

Mr. Norris.

MR. NORRIS: Mr. President, I note that we have made certain efforts to bring the public within the informational orbit of the convention. I am not so certain, however, that we have taken all of the steps necessary to bring the public within the deliberative orbit of this convention. I have received several calls from community organizations, asking how and to whom they might submit recommendations and make requests for appearances before the convention. I think it might be in order for the Chair, on behalf of the convention, to indicate through the press to the public the ways and means by which the public can become part of the deliberative process of this convention.

There are 2 reasons for this: first there is, after all, the right of the people to know, and in the second and last analysis, the document is going to have to be submitted for ratification; and to the degree that we have an intimate, creative, constructive, participating response on the part of the public in the deliberations of this convention, to that degree we will get that kind of response to the final document that does emerge from the convention.

Accordingly, may I respectfully suggest that the Chair do prepare some announcement to the public with regard to at least these 2 points. That is, first of all, when recommendations might be submitted by members of the public and interested community organizations, and second, to whom, so that there might be an appropriate appearance before the committees.

I might indicate that if the committees knew, too, which members of the public, what committee the organization wanted to appear before, they could better gauge the timing of their own deliberations.

PRESIDENT NISBET: The president will act on your suggestion, Mr. Norris.

Any other unfinished business?

SECRETARY CHASE: None, Mr. President.

PRESIDENT NISBET: Special orders of the day.

SECRETARY CHASE: None.

PRESIDENT NISBET: General orders of the day.

SECRETARY CHASE: None.

PRESIDENT NISBET: Announcements.

SECRETARY CHASE: Mr. Danhof has filed with the secretary a list of the subcommittees of the committee on judicial branch, with a request that the list of subcommittees be printed in the journal.

PRESIDENT NISBET: Without objection, they will be.

Following is the list of subcommittees of the committee on judicial branch:

Subcommittee on inferior court systems:
Mr. Pugsley, chairman
Miss McGowan, vice chairman
Mr. McAllister
Mr. Bledsoe
Mr. Iverson
Mr. Prettie

Subcommittee on courts of original jurisdiction:
Mr. Mosier, chairman
Mr. Krolikowski, vice chairman
Mr. Barthwell
Mr. Higgs
Miss Donnelly
Mr. Everett

Subcommittee on appellate courts:
Mr. Tubbs, chairman
Mr. Ostrow, vice chairman
Mr. Garvin
Mr. Lawrence
Mr. Woolfenden
Mr. Cudlip

The chairman of the committee on judicial branch, Robert J. Danhof, and the 2 vice chairmen, Karl Leibrand and William Ford, shall be ex officio, with vote, to all subcommittees.

SECRETARY CHASE: The committee on legislative organization will meet tomorrow, Thursday, at 8:30 o'clock in the morning to hear the leaders of both houses of the Michigan legislature — both parties — in room D tomorrow at 8:30. Senator Beadle and Senator Ryan from the senate, and the house members will be speaker Pears or his representatives and house member Kowalski. John Hannah, chairman.

The committee on education will meet in room J today, Wednesday, immediately after the session to hear Dr. Samuel Brownell, superintendent of schools in Detroit. Alvin M. Bentley, chairman.

The committee on finance and taxation will meet in room E tomorrow at 10:30 a.m. D. Hale Brake, chairman.

Subcommittee 2 of the committee on legislative powers will meet in room H at 8:30 a.m. tomorrow, Thursday, to consider Delegate Proposal 1064, which would permit lotteries by charitable or fraternal organizations after a referendum. Stanley Powell, chairman.

The committee on education has already been announced. A meeting this afternoon immediately after the session.

The committee on finance and taxation will meet immediately after the session today in room E. Appearance and presentation of Keith Wilson, of Michigan waterways commission; members of the Michigan state association of supervisors; and Joe Parisi, of Michigan townships association.

Tomorrow the committee on judicial branch will meet in room B immediately after the session. Appearance and presentation of Justice Theodore Souris in a discussion of the state court system.

The committee on executive branch will meet in room C tomorrow immediately after the session. Appearance and presentation of George Higgins and Franklin DeWald to continue the discussion of the earlier presentations on the civil service commission; appearance of Mr. Robert Grosvenor to continue his discussion of his earlier presentation.

Are there any other committee meeting announcements that the secretary may have overlooked?

PRESIDENT NISBET: Mr. Millard.

MR. MILLARD: Mr. President, subcommittee 4 of the committee on legislative powers will meet tomorrow morning. It is on your list there but you didn't announce it. We will hear Professor Robert E. Childs, Wayne State University, who wrote the treatise on Real and Person Property Exemptions. We will hear him on that subject. Anybody that is interested, we will be glad to have them there. That is in committee room H.

PRESIDENT NISBET: Mr. Elliott.

MR. A. G. ELLIOTT: Immediately after the session tomorrow we will be privileged to hear Mr. Bebout, professor of urban planning from Rutgers University, speak to the committee on local government.

SECRETARY CHASE: I think the other committee meeting announcements have been listed on the committee calendar.

I have the following requests for leave of absence: President Nisbet asks to be excused from the Thursday session because of a company directors' meeting.

Mr. Hoxie requests a leave of absence from the convention sessions of next Wednesday, Thursday and Friday, November 15, 16 and 17, due to a prior commitment of several months' standing to attend a conference.

Mr. Tubbs requests leave of absence from the session of tomorrow; and Mr. Heideman asks to be excused from the session of tomorrow.

PRESIDENT NISBET: Without objection, the requests for leave are granted.

SECRETARY CHASE: I have one additional request on the part of the secretary and president's offices: some 46 delegates — this has been revamped just a little because some have been turned in — but at the time this was written, some 46 delegates still had not turned in their journal mailing lists. Please do this as soon as possible so that we may complete the mailing machine address plates.

PRESIDENT NISBET: Vice President Tom Downs will preside at tomorrow's meeting.

Mr. Hoxie.

MR. HOXIE: Mr. President, I have had several inquiries. I have to advise some of the folks that are on my list as to when they can expect these journals. I wonder if the secretary could apprise us of that fact.

SECRETARY CHASE: The secretary is informed that the journals have been printed. A number of them, I think, have already been mailed. Quite obviously we cannot mail those for whom the lists of names have not been turned in as yet. It will take a day or so to process these address plates so that they may then be mailed, but certainly over the weekend, I would say.

PRESIDENT NISBET: Mr. Hubbs.

MR. HUBBS: Mr. President and my fellow delegates, I notice that Mr. Tubbs, T-u-b-b-s, has requested a leave of absence and I wish to make it absolutely clear to the delegates and all those present that I, Hubbs, do not request leave of absence. I intend to be present here for the next 2 weeks. Thank you. (laughter)

SECRETARY CHASE: This completes the convention business of the day.

PRESIDENT NISBET: Mr. Page.

MR. PAGE: Mr. President, I am always glad to use some

portion of my 17,000 words for any purpose that seems to be in the common good. I move that we adjourn. (laughter)

PRESIDENT NISBET: The question is on the motion to adjourn. Those in favor, say aye. Those opposed, no.

The convention stands adjourned until 2:00 o'clock tomorrow.

[Whereupon, at 2:50 o'clock p.m., the convention adjourned until 2:00 o'clock p.m., Thursday, November 9, 1961.]

TWENTY-SECOND DAY

Thursday, November 9, 1961, 2:00 o'clock p.m.

PROCEEDINGS

VICE PRESIDENT DOWNS: The convention will please come to order.

The invocation will be given by the Reverend Harold Jacobs, Grand Ledge Methodist Church, Grand Ledge.

REVEREND JACOBS: Let us unite in prayer. O God, our heavenly Father, as we pause at the beginning of this session, we first acknowledge Thee as the author of man's faith. We recognize that Thou art the giver of every good and perfect gift and in this faith we find the basis of a good life.

With our thanksgiving we also come with a sincere request for divine direction and guidance without which man's deliberations may become distorted and without proper perspective.

For every member of this constitutional convention we solicit maximum understanding, strength of purpose and strength of body, soul and spirit. May Thy blessing rest upon the homes and communities from which our elected delegates come.

May Thy blessing be upon our nation and our world, giving peace in our time through the Prince of Peace. Again, for the work of this afternoon hour we invoke divine guidance, gratefully praying through Jesus Christ, our Lord. Amen.

VICE PRESIDENT DOWNS: Thank you, Reverend Jacobs.

For the roll call, will all those present please vote aye.

SECRETARY CHASE: Has every delegate present voted? The machine is now locked and you may release your voting levers.

Mr. President, a quorum of the convention is present.

Prior to today's session, the secretary received the following requests for leave:

Mr. D. Hale Brake wishes to be excused from today's session on account of illness; Mr. Page asks to be excused from today's session; and urgent, unexpected company business compels the absence of Delegate Romney.

VICE PRESIDENT DOWNS: Without objection, the requests are granted.

SECRETARY CHASE: Absent with leave: Messrs. Austin, Brake, Garvin, Heideman, Nisbet, Page, Romney, Rush and Tubbs.

Absent without leave: None.

VICE PRESIDENT DOWNS: Mr. Kelsey.

MR. KELSEY: Mr. President, I rise to a question of personal privilege.

VICE PRESIDENT DOWNS: The delegate will state his point of personal privilege.

MR. KELSEY: Thank you, Mr. President. In the Detroit Free Press of yesterday, November 8, 1961, appeared the following statement:

> John T. Kelsey, a Warren democrat, said he voted against the resolution because he felt that lobbyists should be permitted to come in and talk to the convention without registering.

This statement is completely erroneous, to say the least. So again let me state for the record unequivocally my position:

I voted against the combined resolutions 24, 25, and 26, because it failed to include itemized expense accounting of moneys spent on each individual delegate. Nowhere in my remarks and explanation of voting against the combined resolutions did I say that the lobbyist should have a right to come before the convention or any other committee without registration, as quoted by the press.

Let me ask at this time, Mr. President, before I leave the verbatim record, that we pause in respect and gratitude to the inventor of the tape recorder.

VICE PRESIDENT DOWNS: Is the delegate requesting that his statement be read in the journal as an explanation of his nay vote, or simply that it be read into the journal?

MR. KELSEY: That it be read into the journal in connection with both the nay vote and that it be read in.

VICE PRESIDENT DOWNS: Is there any objection to the statement being read into the journal? Hearing none, it is so ordered.

MR. KELSEY: This, Mr. President, is the verbatim record of the tape recorder as to my remarks of Tuesday, November 7:

> Much has been said about this resolution in many forms. I wish to go on record as voting against the resolution.
>
> I should like to take issue with Mr. Van Dusen on the basis of his saying that it is now in a form comprising or incorporating the text of all 3 resolutions. I dislike very much, and object very strenuously to some of the words used in the press. I feel it has cast a doubt by inference on the integrity of every delegate in this convention by suggesting that they could be bought for a dinner or a drink. Let me say, speaking for myself, that I am a very moderate eater and a very moderate drinker. Certainly I feel I am here at this convention because of the respect in which my integrity is held by the people in my representative district.
>
> I should like to see Dr. DeVries' original resolution brought before us. Whoever these lobbyists are — and incidentally I have never met one in 10 years in public life — they should be made to file an expense account to include itemized details. If they should spend any amount of money on any particular delegate, that should be included in view of what has been said.
>
> In conclusion, I repeat that I wish to go on record as voting against the resolution.

Nowhere, Mr. President, can I see where the press could misconstrue my remarks.

For further clarification, I have submitted a resolution amending the combined resolutions, which is on today's calendar in proper procedural form, so it will be impossible to misconstrue my position in reference to lobbyists.

Mr. President, at this time I move that the president of the convention instruct the press room manager, or whoever was responsible for this misquote, to print a retraction correcting the previous statement of November 8, and I ask my fellow delegates for their unanimous support of this motion. Thank you very kindly, Mr. President.

VICE PRESIDENT DOWNS: We will stand at ease while the Chair confers with the secretary on whether the fact that you have made a motion means this should come under motions or now, because you asked for unanimous consent. Will you be patient with the Chair while he checks the parliamentary procedure on this? You still have the floor, Delegate Kelsey.

MR. KELSEY: My record in the past 5 weeks, I am sure, demonstrates one of patience, Mr. President.

VICE PRESIDENT DOWNS: Thank you. Mine demonstrates one of inquiry.

Will the convention please come to order.

The Chair rules that on the question of personal privilege the delegate had the right to make his statement. However, the question on the motion should properly come under the agenda where the item "motions" is, which would mean that when we come to motions on the agenda, the delegate can make that motion. However, the statement of personal privilege stands as it was stated.

Now, in case you do not agree with the Chair, you have the opportunity to appeal the decision of the Chair. And I might add for the benefit of the delegate, that my very wise consultant disagrees with me on this point. So you have sound authority for appealing the decision of the Chair.

Do you accept the ruling?

MR. KELSEY: Mr. President, with all respect to the President, I accept the ruling, which is, if I understand correctly, that at the proper time in today's proceedings of the convention, I will have the opportunity to then make the motion.

VICE PRESIDENT DOWNS: Under item 10 of the order of business, you will have the opportunity to make the motion, Delegate Kelsey.

MR. KELSEY: I accept the ruling, Mr. President, and acquiesce until item 10 appears.

VICE PRESIDENT DOWNS: **Reports of standing committees.**

The committee on rules and resolutions. Mr. Van Dusen.

MR. VAN DUSEN: Mr. President and fellow delegates: We have before us this afternoon, as a result of action taken 2 weeks ago, Resolution 21, introduced by myself, and Vice Presidents Hutchinson and Romney, which proposes that after November 22, 1961, no delegate proposal shall be introduced, numbered or printed, except upon authorization by the convention.

The resolution contains further provisions about which I might speak for a moment: the matter was tabled on October 26 until today, and at the time it was tabled there was a pending motion to amend the resolution by substituting for the date November 22, 1961, the date January 1, 1962.

I rise at this point in opposition to the motion to amend because I believe that the date November 22 is the date which should properly be adopted by this convention.

VICE PRESIDENT DOWNS: Mr. Van Dusen, under the order of unfinished business, we will have Resolution 21 which was postponed to a day certain, today. I believe that your talking about the pros and cons of that would more properly come under unfinished business when that will be brought up. The purpose of this presentation is a summary of the actions of the committee, or a progress report.

MR. VAN DUSEN: Excuse me, Mr. President. I had not been previously advised this was my date to report. The only thing the committee on rules and resolutions had pending before the convention was Resolution 21. I apologize for misunderstanding.

VICE PRESIDENT DOWNS: That is accepted. We will hear from you under unfinished business.

MR. VAN DUSEN: I can report briefly to the convention that the work of the committee on rules and resolutions, a housekeeping committee of the convention dealing with matters of organization and matters of order, has been pretty thoroughly exposed to the convention as we have gone along.

We are completely current in our work. Every resolution which has been referred to us, or which had been referred to us up to the date of our last meeting, which was Monday evening, has been acted upon by the committee in one way or another. We have 2 or 3 resolutions currently pending before us which have been referred to us subsequent to Monday.

As you know, the function of the committee on rules and resolutions is to deal with matters pertaining to the organization of the convention, matters pertaining to the order of business of the convention, and such miscellaneous business as is from time to time referred to us.

I am happy to report, Mr. President, as I said before, we are completely current in the disposition of the matters before us and all of the subject matters with which we have dealt are fully known to the convention because it has been reported here from time to time.

VICE PRESIDENT DOWNS: Thank you, Mr. Van Dusen.

The next report is on the committee on miscellaneous provisions and schedule, of which Mr. Erickson is chairman. Do you care to report at this time, Mr. Erickson?

MR. ERICKSON: There are 8 subcommittees working on this section and they have had several meetings.

The subcommittee on preamble, Mr. Leppien, chairman: that sounds like a very simple thing but they have had quite a bit of discussion. I think they spent a good 45 minutes this morning just talking on those few words.

The subcommittee on corporations, under the chairmanship of Mr. Woolfenden, heard Professor Conard of the University of Michigan, discussing corporations. They had a meeting with the subcommittee on legislative powers on section 9 of article XII, and they heard several of the bankers from the state and the banking commissioner.

The subcommittee on eminent domain, under the chairmanship of Mr. Mahinske, heard Judge Pugsley yesterday. On November 15 they will hear Mr. Bienenfeld, who prepared the preparatory commission report, and he informs Mr. Mahinske that he has quite a bit of new data. Our chairman expects to have the Wayne county road commission, state highway department, and many others who are interested in the matter of eminent domain, before the committee shortly.

The subcommittee on the militia, under Delegate DeVries, has completed a schedule to call many of our military personnel in the state, and also interested citizens in on this section.

Delegate Hutchinson is chairman of article XVI, miscellaneous provisions, and he has been discussing with the delegates their proposals prior to calling a meeting.

The boundaries and the seat of government subcommittee is under the chairmanship of Miss Donnelly. She is really going into this very thoroughly, even to the extent of finding out what the condition of our state capitol is. (laughter) She isn't missing very much. (laughter) And of course, there is a question that came up before this committee whether the boundaries should be indicated by metes and bounds or some other way. Dr. Nord has a very interesting proposal which contemplates taking cognizance of our natural resources.

The subcommittee on amendment and revision of this new constitution that isn't written yet, under Don Habermehl, has heard Professor Pollock. This morning he had a meeting with Dr. McHargue and he is sending out several letters to people who may be interested in appearing.

The schedule is under Delegate Durst's chairmanship, and that is the section that deals with the transition from the old constitution to the new. They have done quite a bit of work in research, comparing it with other constitutions.

When a cutoff date is determined on the various subcommittees, we will be in a position to report out promptly. They are withholding their recommendations to the full committee until they get all the proposals in, and I am sure after that date it won't take this committee very long to have something very definitely before the convention.

That is the report, Mr. President.

VICE PRESIDENT DOWNS: Thank you, Mr. Erickson.

Reports of select committees.

SECRETARY CHASE: None, Mr. President.

VICE PRESIDENT DOWNS: Communications from state officers.

SECRETARY CHASE: None.

VICE PRESIDENT DOWNS: The next item — and I wish to make a statement on this — is the introduction, first reading and reference of proposals.

Delegate Ostrow has requested privilege of the convention for saying a few words to explain his proposals. If there are

no objections, Delegate Ostrow will be given an opportunity to explain the broad purpose of these proposals.

Is there objection? Hearing none, the permission is granted. Mr. Ostrow.

MR. OSTROW: Mr. President and members of the convention, I thought that I owed you an explanation as to why I am introducing 17 proposals, one covering each article of the present constitution. Rule 56 provides that all matters intended to become a part of any revised constitution or constitutional amendment shall be, when introduced by a delegate, in the form of a proposal.

I have only one concern in this matter, and that is that every part of our constitution be properly before some committee and eventually reach the floor for discussion and ultimate adoption or rejection. I wanted to avoid any possible parliamentary or technical positions, because conceivably some parts of the present constitution might be overlooked and somebody might raise a technical question as to what the committees' powers were in that particular area. I thought it was much simpler, instead of introducing a resolution to amend rule 56, with the consequent discussion, amendments and amendments to the amendments, to introduce each of these proposals.

In this connection, I would like to ask a parliamentary question, if it is in order now; or if the chairman will tell me when the proper time is, I would like to ask that question then.

VICE PRESIDENT DOWNS: What is your parliamentary inquiry?

MR. OSTROW: Mr. President, in each of these proposals I propose that the present section of the constitution, together with any changes, amendments and additions, deletions or substitutions, become part of the new constitution. Parenthetically I might say I am not in favor of all of these being adopted, but I wanted to put them in a technical position where each committee would have full jurisdiction.

My question now is this: with such a proposal before each committee, is each committee then in a position to consider the entire range of that subject and is a minority of that committee, that is, the minority of 3 provided by the rules, in a position to make a minority report if my proposal is either accepted or rejected by the particular committee?

VICE PRESIDENT DOWNS: The inquiry is accepted and the Chair will take this under advisement presumably to answer Monday or Tuesday. Would you please submit your inquiry in writing for the convenience of the Chair in answering? Mr. Powell.

MR. POWELL: I have no desire to appear as a parliamentarian or anything like that, but with reference to this whole batch of proposals that have just been mentioned, it seems to me that they are entirely needless. It has been my understanding that every one of our committees had entire jurisdiction to originate their own reports, based on the material in the constitution or that the thing should be in the constitution and that a delegate proposal has no particular status as we have been told that it sort of dies aborning. It has no value unless it is acted upon affirmatively by a committee.

It looks to me as though we are just incurring a little extra printing expense here without any necessity therefor.

VICE PRESIDENT DOWNS: The Chair will rule that any delegate may introduce any proposal and the need or lack of need of a proposal is not the function of the Chair to determine, but that of the convention to determine.

Introduction, first reading and reference of proposals.

SECRETARY CHASE: Mr. Ostrow introduces **Delegate Proposal 1183,** A proposal to retain article I in the constitution, with such changes as the convention may adopt. Boundaries and seat of government.

VICE PRESIDENT DOWNS: Referred to the committee on miscellaneous provisions and schedule.

SECRETARY CHASE: Mr. Ostrow introduces **Delegate Proposal 1184,** A proposal to retain article II in the constitution, with such changes as the convention may adopt. Declaration of rights.

VICE PRESIDENT DOWNS: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: Mr. Ostrow introduces **Delegate Proposal 1185,** A proposal to retain article III in the constitution, with such changes as the convention may adopt. Elective franchise.

VICE PRESIDENT DOWNS: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: Mr. Ostrow introduces **Delegate Proposal 1186,** A proposal to retain article IV in the constitution, with such changes as the convention may adopt. Division of the powers of government.

VICE PRESIDENT DOWNS: Referred to the committee on miscellaneous provision and schedule.

SECRETARY CHASE: Mr. Ostrow introduces **Delegate Proposal 1187,** A proposal to retain article V in the constitution, with such changes as the convention may adopt. Legislative department.

VICE PRESIDENT DOWNS: Referred to the committee on legislative powers.

SECRETARY CHASE: Mr. Ostrow introduces **Delegate Proposal 1188,** A proposal to retain article VI in the constitution, with such changes as the convention may adopt. Executive department.

VICE PRESIDENT DOWNS: Referred to the committee on executive branch.

SECRETARY CHASE: Mr. Ostrow introduces **Delegate Proposal 1189,** A proposal to retain article VII in the constitution, with such changes as the convention may adopt. Judicial department.

VICE PRESIDENT DOWNS: Referred to the committee on judicial branch.

SECRETARY CHASE: Mr. Ostrow introduces **Delegate Proposal 1190,** A proposal to retain article VIII in the constitution, with such changes as the convention may adopt. Local government.

VICE PRESIDENT DOWNS: Referred to the committee on local government.

SECRETARY CHASE: Mr. Ostrow introduces **Delegate Proposal 1191,** A proposal to retain article IX in the constitution, with such changes as the convention may adopt. Impeachments and removals from office.

VICE PRESIDENT DOWNS: Referred to the committee on legislative powers.

SECRETARY CHASE: Mr. Ostrow introduces **Delegate Proposal 1192,** A proposal to retain article X in the constitution, with such changes as the convention may adopt. Finance and taxation.

VICE PRESIDENT DOWNS: Referred to the committee on finance and taxation.

SECRETARY CHASE: Mr. Ostrow introduces **Delegate Proposal 1193,** A proposal to retain article XI in the constitution, with such changes as the convention may adopt. Education.

VICE PRESIDENT DOWNS: Referred to the committee on education.

SECRETARY CHASE: Mr. Ostrow introduces **Delegate Proposal 1194,** A proposal to retain article XII in the constitution, with such changes as the convention may adopt. Corporations.

VICE PRESIDENT DOWNS: Referred to the committee on miscellaneous provisions and schedule.

SECRETARY CHASE: Mr. Ostrow introduces **Delegate Proposal 1195,** A proposal to retain article XIII in the constitution, with such changes as the convention may adopt. Eminent Domain.

VICE PRESIDENT DOWNS: Referred to the committee on miscellaneous provisions and schedule.

SECRETARY CHASE: Mr. Ostrow introduces **Delegate Proposal 1196,** A proposal to retain article XIV in the constitution, with such changes as the convention may adopt. Exemptions.

VICE PRESIDENT DOWNS: Referred to the committee on legislative powers.

SECRETARY CHASE: Mr. Ostrow introduces **Delegate Proposal 1197,** A proposal to retain article XV in the

constitution, with such changes as the convention may adopt. Militia.

VICE PRESIDENT DOWNS: Referred to the committee on miscellaneous provisions and schedule.

SECRETARY CHASE: Mr. Ostrow introduces

Delegate Proposal 1198, A Proposal to retain article XVI in the constitution, with such changes as the convention may adopt. Miscellaneous Provisions.

VICE PRESIDENT DOWNS: Referred to the committee on miscellaneous provisions and schedule.

SECRETARY CHASE: Mr. Ostrow introduces

Delegate Proposal 1199, A proposal to retain article XVII in the constitution, with such changes as the convention may adopt. Amendment and Revision.

VICE PRESIDENT DOWNS: Referred to the committee on miscellaneous provisions and schedule.

SECRETARY CHASE: Mr. Hutchinson introduces

Delegate Proposal 1200, A proposal to provide that the house of representatives shall always consist of an odd number of members. Amends article V, section 3.

VICE PRESIDENT DOWNS: Referred to the committee on legislative organization.

SECRETARY CHASE: Mr. Hutchinson introduces

Delegate Proposal 1201, A proposal to define the legislative power. Amends article V, section 1.

VICE PRESIDENT DOWNS: Referred to the committee on legislative powers.

SECRETARY CHASE: Mr. Stafseth introduces

Delegate Proposal 1202, A proposal to amend article VIII, section 26, providing highways; powers of supervisors, county or district road system, tax limitation. Power of legislature over highways.

VICE PRESIDENT DOWNS: Referred to the committee on local government.

SECRETARY CHASE: Mr. Stafseth introduces

Delegate Proposal 1203, A proposal to amend article VIII, section 18, township officers; providing for election of township officers, and the titles thereof.

VICE PRESIDENT DOWNS: Referred to the committee on local government.

SECRETARY CHASE: Mr. Stafseth introduces

Delegate Proposal 1204, A proposal to amend article VIII, section 28, highways, streets, etc.; utilities; control.

VICE PRESIDENT DOWNS: Referred to the committee on local government.

SECRETARY CHASE: Mr. Stafseth introduces

Delegate Proposal 1205, A proposal to retain, intact, article VIII, section 14, navigable streams; permission to bridge or dam. Right of county supervisors to grant permission, state retains right over navigation improvements, and individual navigations not prejudiced.

VICE PRESIDENT DOWNS: Referred to the committee on local government.

SECRETARY CHASE: Messrs. Follo, Perlich, Rajkovich and Spitler introduce

Delegate Proposal 1206, A proposal to empower the legislature to establish and contribute to the support of community colleges. Amends article XI.

VICE PRESIDENT DOWNS: Referred to the committee on education.

SECRETARY CHASE: Mr. Norris introduces

Delegate Proposal 1207, A proposal to guarantee all persons fair treatment before legislative and executive investigations. Amends article II, section 16. Replaces Delegate Proposal 1157.

VICE PRESIDENT DOWNS: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: Messrs. Binkowski and Hutchinson introduce

Delegate Proposal 1208, A proposal to require all public institutions of higher education to give an annual accounting to the legislature. Amends article XI.

VICE PRESIDENT DOWNS: Referred to the committee on education.

SECRETARY CHASE: Messrs. Baginski and Youngblood introduce

Delegate Proposal 1209, A proposal to require the legislature to remain in permanent session. Amends article V, section 13.

VICE PRESIDENT DOWNS: Referred to the committee on legislative powers.

SECRETARY CHASE: Messrs. Youngblood and Baginski introduce

Delegate Proposal 1210, A proposal to increase salaries of senate and house members to $12,000 a year. Amends article V, section 9.

VICE PRESIDENT DOWNS: Referred to the committee on legislative powers.

SECRETARY CHASE: Messrs. Binkowski, Perlich, Pellow, Wilkowski and Stopczynski introduce

Delegate Proposal 1211, A proposal to strike out article V, section 33 of the constitution.

VICE PRESIDENT DOWNS: Referred to the committee on legislative powers.

SECRETARY CHASE: Mr. Faxon introduces

Delegate Proposal 1212, A proposal to provide for a maximum of 50 senators elected to 4 year terms from 34 districts apportioned by the state board of canvassers. Amends article V, section 2.

VICE PRESIDENT DOWNS: Referred to the committee on legislative organization.

SECRETARY CHASE: Mr. Faxon introduces

Delegate Proposal 1213, A proposal to provide for a house of representatives on a representative basis, districts to be established and apportioned by the state board of canvassers. Amends article V, section 3.

VICE PRESIDENT DOWNS: Referred to the committee on legislative organization.

SECRETARY CHASE: Mr. Faxon introduces

Delegate Proposal 1214, A proposal to grant the state board of canvassers the authority to reapportion legislative and congressional districts. Amends article V, section 4.

VICE PRESIDENT DOWNS: Referred to the committee on legislative organization.

SECRETARY CHASE: Mr. Lawrence introduces

Delegate Proposal 1215, A proposal to retain article V, section 29 in the constitution.

VICE PRESIDENT DOWNS: Referred to the committee on legislative powers.

Second reading of proposals.

SECRETARY CHASE: Nothing, Mr. President.

VICE PRESIDENT DOWNS: Third reading of proposals.

SECRETARY CHASE: None.

VICE PRESIDENT DOWNS: **Motions and resolutions.**

Mr. Kelsey.

MR. KELSEY: Mr. President, complying with the previous ruling of the Chair, I now rise. Before I restate my motion, Mr. President, let me first make a public apology because it was an erroneous assumption depending on my memory. I did not want, in absolute candor, to accuse any member of this delegation of being unfair. That refers to the remark of wanting to take issue with Mr. Van Dusen. He was absolutely correct in saying that the resolution as proposed Tuesday was in complete conformity with the 3 resolutions. I was erroneously, as I mention, under the impression — relying on my memory — that the original resolution by Dr. DeVries included my resolution, which will be read later. So I would personally like to apologize to Mr. Van Dusen, and on the ninth day of November I do not want to take issue with you, Mr. Van Dusen.

Because I am sure that by the verbatim tape — which is now again in the record — I have proved a case beyond a reasonable doubt to the 143 jurors of this delegation, I ask your unanimous support in my motion. Mr. President, at this time I move

> that the president of the convention instruct the press-room manager, or whoever was responsible for this misquote, to print a retraction correcting the previous statement of November 8.

I ask my fellow delegates for their unanimous support of this motion. Thank you.

VICE PRESIDENT DOWNS: The motion has been made. Discussion is in order.

Mr. Hodges.

MR. HODGES: Point of information.

VICE PRESIDENT DOWNS: What is your point of information, Delegate Hodges?

MR. HODGES: Does the Chair have the power to instruct the press on a motion of this sort? It seems to me that we are getting into quite a hazy area here when we start this.

VICE PRESIDENT DOWNS: May I just have a short recess here? (laughter) Are you asking for a ruling on the question?

MR. HODGES: Yes.

VICE PRESIDENT DOWNS: Will you be patient during a short recess.

Will Delegate Kelsey please come to the podium.

[Whereupon, the convention stood in informal recess for 5 minutes.]

Will the convention be in order, please.

The Chair did not make a ruling on the question. However, Delegate Kelsey asks permission to withdraw his motion and make another one. Is there any objection to his withdrawing his motion? Hearing none, the motion is withdrawn and I recognize Delegate Kelsey for the purpose of making another motion.

MR. KELSEY: Mr. President, at this time I move that the president of the convention request the pressroom manager to note the inconsistency of the previous statement of November 8. I ask my fellow delegates for their unanimous support of this motion.

VICE PRESIDENT DOWNS: Is there any discussion on the motion?

Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, first let me thank Delegate Kelsey for his kind and gracious remarks, which would seem to suggest in and of themselves that the human recollection may be faulty. It occurs to me that if on each occasion on which the recollection of the press in its reporting appears to have been in mild variance with our statements here on the floor we choose to take such violent issue with them, we will be here probably until this time next year, if not considerably thereafter. For that reason it occurs to me that we should probably vote nay on this resolution.

VICE PRESIDENT DOWNS: Mr. Kelsey.

MR. KELSEY: Mr. President, let me say that I have no intent to take issue with the press. They have more pencils than my ability to afford to keep up with them. I, in absolute candor, was erroneous in some of my remarks yesterday, depending on memory. I was willing to put them on the record to correct them and apologize to Mr. Van Dusen personally. I see no reason why the press should not be of the same candor and make the correction.

VICE PRESIDENT DOWNS: Any further discussion?

Mr. Plank.

MR. PLANK: I agree with Delegate Kelsey, but I don't think you ought to demand from the press that they do this. I think if he gives them an opportunity after the convention recess, they will probably do that. I don't believe that we in the convention should go on record as demanding anything of the press. To my knowledge, they are free and I think they ought to remain that way.

VICE PRESIDENT DOWNS: Mr. Kelsey.

MR. KELSEY: Let me thank the delegate for his support of my motion. Let me remind him that I amended my motion to use the word "request."

Let me further say for the purpose of the record that I talked to Mr. Ken McCormick, who acknowledged that he would make some correction. However, I want this as a matter of record for the journal, which my people receive.

VICE PRESIDENT DOWNS: Mr. DeVries.

MR. DeVRIES: Mr. President and fellow delegates, a question to Delegate Kelsey, if I may: why is this being directed to the pressroom manager, who is nothing more than a member of the constitutional convention staff?

VICE PRESIDENT DOWNS: Mr. Kelsey.

MR. KELSEY: Mr. President, I assume again it is risky for the error that I made in my memory, but we do have rules and regulations for the press to follow. I only suggested that I think this is the proper person that we should deal with the pressroom manager in this case. He is the person that we should deal with, in accordance with the rules adopted by this convention.

VICE PRESIDENT DOWNS: Mr. White.

MR. WHITE: Mr. President, I am not quite aware of Delegate Kelsey's reasons for wanting this motion to prevail. It appears to me that the matter has been thoroughly aired here on the floor. The correction will be made through the journal, I assume. I understand that the newspaper in question has agreed to properly retract. It appears to me that this matter has gone far enough.

As a matter of policy and principle, it is my personal feeling it is hardly incumbent upon us or anyone else to presume to instruct, directly or indirectly, the newspapers as to what they should or shouldn't do.

VICE PRESIDENT DOWNS: Mr. Martin.

MR. MARTIN: Mr. President, if we followed this policy in every case we would find ourselves having to vote to request the president to make such instruction perhaps on numerous other occasions. It seems to me that this is calling on the convention to do more than it has a responsibility for doing. Since Mr. Kelsey has presented his case, the press knows how to handle it, and I think they are fair and they will do whatever is necessary. I think we ought to drop the matter.

VICE PRESIDENT DOWNS: Mr. Marshall.

MR. MARSHALL: Mr. President and fellow delegates, it seems to me that we are wasting a lot of valuable time and I do not take exception to Mr. Kelsey's request. However, I do think — and I think all the delegates here will agree — that the press has done a reasonably good job to date in reporting accurately the conduct of this convention and the issues before it. The gentlemen of the press are human, like all the rest of us, and they too can make errors. I read the same story that Mr. Kelsey refers to and I did not take it in the same vein that he did. I do not believe that it would be wise for us to interfere. As I read the story, I might say it was not a direct quotation; it was a story that had been written. I did not take it in the same light that Mr. Kelsey did.

I do not believe that this convention should be on record as demanding or requesting, as the case may be, a retraction. I think that the gentlemen of the press have been informed of this by now as the discussion has gone on, and I think that they themselves will make the necessary correction. I would not want the convention to cast any reflection that the press has not been more than fair and most of the time accurate.

I have been misquoted many times in the press and if I took time to question every time I was misquoted, I wouldn't have time to do anything else. So I'd like to move the previous question, Mr. President.

VICE PRESIDENT DOWNS: Mr. Kelsey.

MR. KELSEY: For the sake of expediency I will withdraw my motion but let me make some remarks: I followed the instructions of my law professors and I have made my record. Let me say to Delegate Marshall that if he had the name of Kelsey, I am sure he would take my position. But I have made the record clear.

I withdraw my motion for the sake of expediency so we can go on with the next order of business. Thank you, Mr. President.

VICE PRESIDENT DOWNS: The motion is withdrawn. With that, the motion for the previous question dies.

SECRETARY CHASE: Mr. Kelsey now offers **Resolution 32,** A resolution to amend the substitute for Resolutions 24, 25 and 26.

Following is the body of Resolution 32, as offered:

Resolved, That the substitute resolution be amended as follows:

Under the resolving clause "Resolved, That every convention agent shall:" item (2) (b), amend the language to read "(b) . . . itemized amount expended on the enter-

tainment of individual constitutional convention delegates and staff.".

VICE PRESIDENT DOWNS: Referred to the committee on rules and resolutions.

SECRETARY CHASE: Mr. King offers **Resolution 33,** A resolution relative to delegate immunity.

Following is the body of Resolution 33, as offered:

Resolved, That delegates to this constitutional convention shall in all cases, except for treason, felony or breach of the peace, be privileged from arrest during sessions of the convention and for 15 days next before the commencement and after the termination thereof; and they shall not be subject to any civil process during the same period; and they shall not be questioned in any other place for any speech delivered from the floor of the convention.

VICE PRESIDENT DOWNS: Referred to the committee on rules and resolutions.

SECRETARY CHASE: That is all of the resolutions on file, Mr. President.

VICE PRESIDENT DOWNS: Before we have our next item of business, which is **unfinished business,** I would like to ask the secretary to read the matter before us.

Briefly, for the delegates' assistance, 2 weeks ago a resolution was postponed until a day certain, today. There are 2 amendments pending. For the convenience of the delegates this is listed on the calendar but, since it is in 2 places in the journal, I am going to ask the secretary to read the resolution and point out the amendments to it, so as to help us in our parliamentary procedure. Mr. Chase, would you read Resolution 21, including the amendments that have been offered.

SECRETARY CHASE: **Resolution 21,** by Messrs. Van Dusen, Hutchinson and Romney, this is the resolution as originally offered: A resolution establishing deadline for introduction of delegate proposals.

Resolved, That after November 15, 1961, no delegate proposal shall be introduced, numbered, or printed except upon authorization by the convention. This resolution shall not prevent any delegate or interested citizen from thereafter submitting to the appropriate committee any suggestion for revision of the constitution.

The committee on rules and resolutions reported this with 2 amendments. The first amendment was to change the date from November 15 to November 21. To that amendment Mr. Hutchinson offered an amendment to change the date to November 22. This amendment to the amendment was adopted and subsequently the committee amendment, as amended, read:

1. Amend line 1 by striking out "November 15, 1961, and inserting November 22, 1961".

There was also pending a committee amendment which reads:

2. Amend the second sentence by adding at the end thereof a comma and "and if so requested in writing by any delegate, said committee shall acknowledge in its action journal its receipt of any such suggestion.".

Mr. Hodges then offered an amendment to committee amendment 1 as follows:

1. Amend committee amendment 1 by striking out "November 22, 1961,", and insert "January 1, 1962,". This amendment to the committee amendment is now pending, together with the committee amendments.

VICE PRESIDENT DOWNS: Mr. Ostrow.

MR. OSTROW: If I am in order at the present time, I would like to offer a substitute for Resolution 21. May I send it to the secretary's desk?

VICE PRESIDENT DOWNS: I am going to ask the secretary to read this.

I wish to advise the convention that before the substitute is acted upon, the pending amendments to Resolution 21 must be disposed of to perfect that resolution.

Would you, Mr. Chase, then please read the substitute resolution offered by Delegate Ostrow.

SECRETARY CHASE: Mr. Ostrow offers the following substitute for Resolution 21, A resolution establishing deadline for introduction of delegate proposals and processing by co-directors of research.

Resolved, That all delegate proposals shall be filed by January 15, 1962, and that all requests for drafting or preparation of delegate proposals shall be processed and considered timely filed for the purposes of this resolution if they are filed with the codirectors of research by 5:00 p.m., on January 15, 1962, except upon authorization by the convention for a later date. This resolution shall not prevent any delegate or interested citizen from thereafter submitting to the appropriate committee any suggestion for revision of the constitution, and if so requested in writing by any delegate, said committee shall acknowledge in its action journal its receipt of any such suggestion.

VICE PRESIDENT DOWNS: Now Mr. Chase, would you read the amendment we have before us?

SECRETARY CHASE: The amendment pending at the present time is the amendment to the committee amendment offered by Mr. Hodges to strike out "November 22, 1961" and insert "January 1, 1962".

VICE PRESIDENT DOWNS: The question is on the amendment to the committee amendment. Is there any discussion? Mr. Van Dusen.

MR. VAN DUSEN: Mr. President and fellow delegates, speaking on the amendment, I think, after a time gap of 2 weeks, it may be necessary to review briefly the reasons for this resolution itself and the necessity for establishing a deadline, first of all, for the introduction of delegate proposals.

The committee on rules and resolutions, which reported the resolution with only one dissenting vote, was of the opinion that in order to assist the substantive committees in the handling of their work, it would be necessary to establish, at as early a date as possible, a point in the course of our work at which the substantive committees would know that they had before them substantially all of the proposals which they would receive from delegates respecting revision of the constitution because I believe it is generally agreed — and the resolutions of the convention so provide — that after the study phase of the work of the substantive committees is completed, they will then take up delegate proposals and it will be difficult for them to begin their consideration of delegate proposals in a sensible, orderly manner unless they have reasonable assurance that all those proposals are before them.

Now, there is another important reason for the establishment of some cutoff point for the introduction of delegate proposals, and that looks toward the conclusion of the work of the convention. This was another matter which the committee on rules and resolutions had very much in mind in submitting the resolution in its present form.

As any of us who have had experience in deliberative bodies which carry their work through a several months' period know, the most serious problems in terms of giving thoughtful and careful consideration to the matter at hand come at the end of your work, when very frequently a log jam of work builds up, which results in long sessions of the entire body, and unless those sessions are carefully scheduled this can result in inadequate consideration of the matter before the body.

Now, certainly, in the revision of the constitution of this state we want at the conclusion of our work to make provision for the most orderly, most thoughtful, most careful consideration by this entire convention of the committee proposals brought before us. That means that we will want the committee proposals brought before us in ample time so that we will have a long and adequate period for their consideration on the floor. Thus, I think it beyond question that the establishment of deadlines for the orderly conduct of our work is very much in order and that the first deadline which must logically be established is for the introduction of delegate proposals.

Now, when this matter was last before us 2 weeks ago, the question came up: to be sure, the establishment of a deadline is desirable, but how about the brilliant afterthought which comes to the delegate's mind only after the deadline for submission of proposals? How can that new idea be brought

before a committee and be brought before the convention for its consideration? Well, now, the resolution in its present form provides 2 ways for any delegate to bring his afterthought to the attention of the convention.

First, if he deems it of such great importance that it requires formal introduction, printing and numbering in the same manner as other proposals, he may request the convention that it be formally introduced, numbered, printed and referred to a committee in the same manner as we are doing now. If the convention deems it of the same importance, they will grant that request.

Second — and this is the more likely fashion in which these proposals will be in — if the delegate so desires, he may bring it directly to the attention of the committee, either as formally or informally as he might desire, and the committee amendment which is pending following the amendment which we are currently discussing provides for the formal acknowledgment by the committee of its receipt of the late blooming suggestion.

No delegate should consider himself foreclosed, nor should any interested citizen, for that matter, from submitting to the appropriate committee, or submitting to the convention, his ideas, despite the passage of the deadline.

Finally, we get the question — to be sure, a deadline is desirable; to be sure, the resolution provides adequate safeguards for the late blooming idea — why this date, November 22?

This convention has been in session since October 3. By November 22 it will have been in session for nearly 2 months. The resolution has been pending before us since October 24. By November 22 the resolution itself will have been before us for nearly one month. I think this is ample time for every delegate who has a proposal which he wants to formally introduce to have prepared it, submitted it, gotten it formally introduced.

Now one final question: how about the problem of a log jam in the drafting office? I am informed that Mr. Hutchinson has on the secretary's desk an amendment designed to cover the problem of the log jam in the drafting office, which will provide for the establishment of appropriate treatment for ideas which are in the hands of the codirectors of research on November 22, but with respect to which they have not been able to complete their work, which will permit their introduction in the usual and orderly fashion.

Therefore, it seems to me that the resolution as reported by the committee, with the committee amendments pending, with Mr. Hutchinson's amendment pending, adequately provides for all of the problems which have been called to our attention with respect to the establishment of a deadline and I don't think that anyone can seriously argue that it is not necessary and that it is not desirable for this convention to establish the most orderly procedure possible for the conduct of our work.

This has been a long discussion, Mr. President, for which I apologize, but it brings me around to the logical conclusion that I would urge the delegates to vote against the Hodges' amendment and vote for the November 22 date.

VICE PRESIDENT DOWNS: Mr. Brown.

MR. T. S. BROWN: Mr. President, I would like at this time not to speak on any of the motions or substitutions or amendments to date, but simply to ask Mr. Van Dusen, as the exponent of the principal resolution, some questions that I am terribly concerned with.

I am not concerned with the guarantee of the ingress of proposals or ideas or suggestions into the committee. There is nothing magic about attaching your name to a formal document and having it labeled as proposal number so and so. An idea of any sort, as far as I am concerned, could come into any committee wrapped in a wet paper bag full of garbage. Now, I am concerned about the egress of an idea, after the cutoff date, from such committees. I wonder if Mr. Van Dusen would care to elaborate on the protection that the idea of egress has as he understands it.

VICE PRESIDENT DOWNS: Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, Mr. Brown, I believe when this matter was last before us I discussed 2 means by which any delegate who wanted to bring to the floor — and I presume that this is the problem which you envision — a proposal which he had not formally introduced, 2 methods by which any delegate could bring such matter to the floor.

First there is the simple procedure of offering the proposal and requesting the permission of the convention to have it formally introduced. This accomplishes ingress, Mr. Brown, and also provides the only means we currently have of ingress of the proposal into the committee. It would therefore be treated in exactly the same manner as any delegate proposal now being introduced.

Second — and I think this is far more to the point: the rules of the convention provide, as you know, for minority reports, which means that whenever 3 members of a committee, — regardless of whether the committee is as small as 15, which is as small a committee as we have, or if it is as large as 27, our largest committee — whenever 3 members of the committee deem a matter before that committee of such great importance that it should be brought to the floor, they may do so by means of a minority report presented to the convention and, if properly moved, acted upon by the convention in advance of final action on the majority report. Therefore, it seems to me that quite aside from the deadline proposed by the resolution currently before us, the rules provide ample means for achieving the withdrawal of any proposal from a committee.

Now let me make one further comment. I think it has been said before that the only means by which proposals are going to reach the floor, once they come before a committee, is by their incorporation in a committee proposal or by their incorporation, as I just said, in a minority report. The delegate proposal as such, once in, never emits.

MR. T. S. BROWN: I have a further question then in that regard: if you indicate that protection for egress is had through the medium of the minority report, then I might ask you for this further clarification, Mr. Van Dusen. In the instance of an idea which is novel and original — and it seems to me we certainly need those ideas — in the instance of that type of an idea, which is submitted in the form of a suggestion to a particular committee after the cutoff date, is it possible for this idea to be submitted to the floor for general debate as a minority report even though it may not be germane to the majority report? In other words, in the usual context of the language you would have to have a minority of something and I envision the possibility that the majority members of a committee might say to the 3 minority members:

> Well, you have an idea here but it is not germane to the proposals that have already been submitted and therefore it does not enjoy the status of a minority report and therefore it does not go to the floor.

VICE PRESIDENT DOWNS: Mr. Van Dusen.

MR. VAN DUSEN: Delegate Brown suggests a truly novel question. I would state first that Delegate Ostrow's action today of introducing the entire present constitution puts before the substantive committees of convention everything which anyone has to to date thought it necessary to include in a constitution for this state. It is difficult for me to conceive of a matter so novel that it would not be germane as an amendment to something currently before a committee and which would not therefore be the appropriate subject of a minority report. I do not mean to indicate that it is not possible to have something which is so foreign and unrelated to anything reported by any committee that it could not be the subject of an appropriate minority report, but it is very difficult for me to envision it at this point. For that reason it would seem to me that our convention rules adequately protect the submitter of any idea, regardless of how novel, as long as it is reasonable.

MR. T. S. BROWN: Actually, Mr. Van Dusen, can I interpret your answer as not being an answer because of the possibility that this is so remote? You see, I would like to preclude an argument which I am afraid we are going to get into, an argument which is going to consume a lot of our time, which appears to me and several other people to be a matter of great import. If an assurance is given to this ultimate

question, I'll be very happy to sit down and not take part in your discussion about the ultimate cutoff date.

I'm concerned with this: that a minority of 3, be they members of the majority party or minority party, shall always — if this convention lasts 3 months, 4 months, 5 months — always, up until the last day of the convention, have the power to bring an idea that they feel has validity to the floor of this convention and say, "Look, this is what we want. This is what we think is good. Let's debate it."

Now, as a practical matter, because of the way in which this body is constituted, it would seem as though it could be construed that the majority party here, after the cutoff date, could effectively still the voice of the minority party's right to come to the floor with proposals. And this is what I am concerned with.

VICE PRESIDENT DOWNS: Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, I don't wish to belabor this point. I would suggest first that Delegate Brown's question with respect to the right of a minority of 3 to bring totally novel matter to the floor may not be completely germane to the matter before us. I would like to suggest further, however, that a minority of one, if he chooses, may present his proposal to this convention on its very last day, regardless of how novel, and may request the authority from this convention to have it introduced, printed, numbered and referred, and he will therefore obtain the same debate with respect to his proposal which he would be able to obtain on a motion to discharge a committee if the matter had been introduced on the first day. Therefore, a minority of one is going to have an opportunity for the consideration by this convention as a whole of his proposal, regardless of how novel and regardless of how late blooming.

MR. T. S. BROWN: But as a practical matter, now we are getting down to the mundane aspects of it, Mr. Van Dusen. I would simply like an answer and I would like to get the consensus of this delegation concerning this point.

Effectively — because of the fact that members of the minority party may have ideas which are not consonant with the ideas of the majority party — effectively, if you have to ask the total body for permission to bring a matter up, you may be saying "No, you can't even discuss it."

Now, I'm concerned — and I think Mr. Hutchinson and many other republicans on our legislative organization committee are concerned — with the protection of minorities. Now we see here the minority party as a true minority in this particular convention and we would like not to have our voice stilled if a matter is of extreme importance to us.

We are not here to obfuscate the issues or to act in a dilatory manner and as I say, I am not concerned with the exact date on which you cut off proposals because a proposal is nothing more than a formal introduction of an idea. But if, for instance — and I'll put it right down the line now; I am on the legislative organization committee. After the cutoff date, if 3, say 2 other democrats and I, get an idea which we think is germane — which may not be germane; it may be novel — if we want to bring this matter to the floor formally as a minority report, even though it has no connection with any other proposal ever submitted in that committee, do we have the right to do that and does every member of this delegation have the right to sit and listen to what we have to say?

VICE PRESIDENT DOWNS: Mr. Van Dusen.

MR. VAN DUSEN: In view of the fact that the entire discussion of the last 10 minutes has been totally nongermane to the issue before us, I would suggest that Delegate Brown already has his answer; that he can make the entire delegation sit and listen, regardless of the absence of germaneness.

I would only suggest further that a minority of one will have the opportunity to offer an amendment on the floor to any proposal brought out by the committee on which you sit, Mr. Brown, or any of the other substantive committees and have it debated on the floor.

I think that our entire discussion for the last 15 minutes, however, has been entirely beside the point of whether or not there should be a deadline for delegate proposals, but has rather been directed to a consideration of other features of the convention rules. I suggest that if Delegate Brown wants to bring these to the attention of the body, he should bring them to us as members of the rules committee, or request a ruling from the Chair.

MR. T. S. BROWN: I might add, Mr. President, I am not getting anywhere in pursuing this course, my one turn at these particular resolutions in this past series of questions being simply a series of quesions to clarify the issue.

VICE PRESIDENT DOWNS: Mr. Ostrow.

MR. OSTROW: Mr. President, I believe in a deadline. I believe we ought to set a deadline. However, I also believe that the people of the state of Michigan waited 50 years for this constitution. I am more concerned with the quality of this constitution. I want to be able to brag about what we did and not how fast we did it.

I am not a member of a large law firm. I practice by myself and am just as anxious to get back to my law practice as everyone else is to get back to their business. I also happen to be very fond of my wife and I'd like to see more of her. But when I undertook this job — and nobody grabbed at me — I knew it might take a long time. No committee has been dragging its feet. We have been working so fast that I for one — may be I'm slower than everybody else here — have been unable to digest all of the material that has come before us. We are going to have these long 2 weeks from December 21st to January 3rd. That would give us time to review what we have been hearing. Out of the whole 144 delegates, if we come up with one single worthwhile idea, I think that the delay, if you can call it that, would be worthwhile.

I'm for a deadline, but let's not rush. This is not a legislative session, where if you don't take care of it this session you come back next session and it will be taken care of. I oppose any of these shorter periods. If we err at all, let's err on the side of taking a little bit longer and let's do a good job.

VICE PRESIDENT DOWNS: Mr. Hutchinson.

MR. HUTCHINSON: Mr. President, I would like permission first to answer, if I may — and I hope to his satisfaction — the question raised by Mr. Brown of Wayne. He made a specific proposal, that is to say, he asked the specific question: Suppose that he had a very novel idea about the organization of the legislature — that is to say, on the apportionment issue — and it hadn't been introduced as a formal proposal; he hadn't mentioned it at all to the committee on legislative organization. Now, how does he get that considered? Well, here is another course of action, Mr. Brown, which I do not think has been clearly indicated to you.

The committee on legislative organization will report its proposal to the floor and it will be first considered in the committee of the whole, where debate cannot be limited. It would be in order for you to offer any kind of an apportionment proposal — that had then occured to you — on the floor in the course of that debate. And it is hard for me to conceive that it would be not germane for the reason that at that time the question before the committee of the whole would be, let us say, the composition and the apportionment of the senate of Michigan. Now, any amendment that you might offer would be germane, it would seem, so long as it touched upon the organization and the apportionment of the senate of Michigan — no matter how novel, no matter how different from the committee proposal.

And suppose you didn't get your idea across to the committee of the whole. Now, the committee has to rise and the question would be upon concurring in the recommendations made by the committee of the whole. You may have disagreed with what the committee of the whole wanted to do. So there again, the question being upon concurring in those recommendations, you would again be able to put yourself on the record.

Then it goes to style and drafting and you have an opportunity to go before style and drafting, and while style and drafting doesn't have any power to make an substantive changes, it certainly has power to consider the way in which things are stated. Well, you are not satisfied with what style and drafting did either. So it comes back to the floor on second reading. And I submit to you that there again you may make the same

suggestion as an amendment, or, lo and behold, if you have a later one, you can make that.

And maybe that isn't enough. Then it goes to style and drafting again. And in the end, the whole article on the make-up of the legislature comes before us on third reading and, Mr. Brown, you have an opportunity even then to offer still another novel suggestion.

Now, in pointing these things out, I hope to make clear to you that in the parliamentary process of writing a constitution you will have numerous opportunities not only to present your position, but to place this convention on record with regard to your position on anything, no matter how novel it is, no matter whether it was originally covered in a delegate proposal, or whether it was originally covered in a committee proposal.

A committee proposal, once it gets out onto the floor, is subject to amendment and you can offer anything you want to, as I say, of course, within the rule of germaneness, but don't let that worry you too much because there is going to come a time when anything you might want to offer — in the field of legislative apportionment, for instance — would be germane to the subject under discussion.

I would like to now, if I might, get back onto the immediate question before us, this question of a proper date for cutting off delegate proposals. I think that Mr. Van Dusen has covered the subject admirably and I think very clearly, and I don't want to repeat anything that he has said, but I think that there is one aspect that I don't recall his covering, to which I want to invite the attention of the floor.

At the present time, our drafting and reasearch staff properly is concerning itself with delegate proposals. All of its thrust, all of its effort should be toward the working out of delegate proposals. This staff, these same people, are also going to have to work on committee proposals. And it is only orderly — and in fact, from an administrative standpoint, seems to me to be the only reasonable approach to take — that until you can get this research staff — this phase of delegate proposals — behind it, not until then will it really begin to work upon committee proposals.

So what I am saying is we cannot expect anything really to start in this convention until after delegate proposals have been cut off and committee proposals start. And those of us who have had experience in these parliamentary bodies such as the legislature — and I suppose the congress is the same way but I speak from legislative experience — know that floor debate requires a great deal of time and when we get busy on the floor, my fellow delegates, you will find that it is going to be necessary for this convention to be in session on the floor all morning and all afternoon, and I hope not all evening and not all night, but certainly all afternoon and all morning. And the point that I want to make is that when that time comes, there will be no time for committee meetings.

Consequently, we have to keep in mind that an orderly process of bringing our work to a conclusion means that the committee work of this convention has to be completely finished, certainly not any later than the end of January, and hopefully before the end of January. And only after the committee work is finished will you find that you can devote the time necessary for full and thorough floor debate in writing a constitution.

The people of Michigan and, I know, each and every one of you feels that in the end, the most important part of this convention is going to be the thoroughness of floor debate and we must reserve at least 2 months, and preferably more than 2 months, for that work alone. And you aren't going to get committees wound up unless you start in on this process.

We have no desire to cut you off or to be unreasonable in this first phase but, after all, we will have been in session 7 weeks by Thanksgiving time and it does seem as though that is a reasonable time in which to receive original delegate proposals. I submit to you that until we arrive at this cutoff date — until we actually set it, abide by it — we can't really get started in this convention. And for that reason, I oppose Mr. Hodges' motion which is before us. I would certainly oppose extending the thing until the fifteenth of January. It is our considered opinion that it is a proper time to close it as of the beginning of the Thanksgiving recess, on the twenty-second of November.

I hope that the delegates present will vote against the amendment immediately before us.

VICE PRESIDENT DOWNS: Mr. Walker.

MR. WALKER: May I direct a question to Delegate Hutchinson? Some time ago, in the earlier part of Mr. Hutchinson's dissertation, he spoke of the multitude of opportunities of one delegate or a group of delegates to, by various means, bring forth an idea. One of these things he spoke of was asking for a committee of the whole. If you remember, a few days ago I asked for a committee of the whole so that we might consider, on its merits, rather than on a partisan basis, one matter. If you recall, the motion did not prevail. What then, Mr. Hutchinson?

VICE PRESIDENT DOWNS: Mr. Hutchinson.

MR. HUTCHINSON: Mr. President. Under the rules, Mr. Walker, every committee proposal will, as a matter of course, go to the committee of the whole. It takes no motion to resolve into a committee of the whole for the consideration of matters on general orders. The only way you can get to them is to go into the committee of the whole. You are confusing the orderly procedure of substantive proposals with a procedure on resolutions of organization. There is a difference there.

Under our rules, resolutions coming forth in the form of a resolution are immediately before the body on third reading status for final adoption. Proposals under our rules, as a matter of course, go to committee of the whole and they will be there, and you have to go into the committee of the whole to get them unless you want to suspend the rules. I don't think we want to suspend the rules.

MR. WALKER: Thank you, Mr. Hutchinson. It sounds real good but I'm still bloodied and bruised. (laughter)

VICE PRESIDENT DOWNS: Mr. Douglas.

MR. DOUGLAS: I don't think that, Mr. Hutchinson, you have answered the real problem, the question by Mr. Brown. It is not a question of whether the committee proposal comes on the floor and there is an amendment or some modification which is germane. The question is: if minority members of the committee or anyone else of the delegation want to bring a matter to the floor after the cutoff date and it is not germane, we have no way to do it under the rules here. Now, the best thing that I have heard you say so far is that you do not want to cut us off.

Now, I think that we should have some definite proposal here, or resolution or rule, that will spell out the thing that we want—and the real thing that we want. We want to be able to come before this convention right up to the last day—and it does not concern just the members of the minority party here—it concerns every delegate here, because there are some of us, after we go home for Thanksgiving and for Christmas, after we talk to our many neighbors and constituents, we are going to come back with some more ideas.
So far we've only heard the experts. The experts as a group won't really pass this constitution. We've got to go back to the people and sell this constitution to them. After we have heard from them we might have some very good ideas and we want to make sure that we can get them before this convention.

VICE PRESIDENT DOWNS: Mr. Nord.

MR. NORD: Mr. President, first of all, I would like to say on the general subject of any cutoff date, I think we must have a cutoff date. I will say I did not always think so but I believe many of the arguments Mr. Hutchinson made cannot be avoided, and I have come to that conclusion independently within the last few weeks. Some cutoff date, obviously, will be needed. The main question before us at the moment is whether we know now what that cutoff date should be.

I feel that we are in difficulty in determining whether we know yet what that cutoff date should be because we are a little bit uncertain as to what the effect of cutting off the proposals at an early date would be. For example, we have heard that there are a great many ways of getting an idea

on the floor and before committees. That is true, although each one of them has some kind of problem.

The rule of germaneness is a problem to some of them. There are questions about germaneness also, possibly, on rules of order; if a delegate seeks to get the permission of the convention to introduce a proposal, whether he can debate his proposal. I don't know whether we know the answer or not. There may be some problems, but nevertheless, there certainly are a lot of possibilities of introducing ideas in one form or another. Assuming that to be so, then I wonder what we accomplish by having a cutoff date. If we have a cutoff date at a time when we believe there might be still quite a few ideas to come, then those ideas will come, and they will come after the cutoff date. And if they come, they will come in an extremely unhappy form. They will come in a most time consuming and complicated and confusing form.

If they have to be brought to the floor every time somebody wishes to make a point, that will be extremely time consuming. If they are brought to a committee by suggestion, which is the simplest procedure, there the difficulty will be nobody will have any record of what is going on. We will be really floundering. If we should get a big flood of suggestions to committees, I think we would regret it very much. And similarly, if we should get a great deal of debate on the floor about whether or not a proposal should be introduced, that would be terrifically time consuming. So as a result, my conclusion is this: we do need to get to a cutoff date.

I think the correct approach is to find out when we are likely to find a cutoff date which we can make really final, a cutoff date which would cut off the introduction of new proposals, even by approval of the convention; some cutoff date which will really allow the committees to function almost entirely secure in the knowledge that unless somebody suspends the rules, they will not have any more proposals except by committee members.

I don't believe we are at that date as yet. I don't know what the statistics are, but I remember Mr. Hutchinson saying, either this week or last week, that we had only about half as many proposals in as in the previous convention. I believe we may be 100 or so short.

On that basis, it is hard for me to believe that we now know that we are coming near the end of this proposal process. I believe that the motion to table that we had the last time was based on a good concept, but I am not moving to table again—I didn't move last time to table. But I believe it was based on this question: did we have enough knowledge at that time to know what date was a good date, or should we wait a little while to find out what date is a good date? Now we have waited 2 weeks to find out. I don't know. Nobody has told me that they now have the experience—that they now know that the flood of proposals is nearly at an end.

As a result, it appears to me that the remarks made by Mr. Ostrow are very pertinent. Some date must be established. It seems to me a date which is far enough in the future—January 15—to be reasonably certain that nobody is going to come forward with a flood of unofficial proposals afterwards—would be a good thing.

So, as a result, I am in favor of a cutoff date. I would prefer it to be something later than November 22.

VICE PRESIDENT DOWNS: Mr. Martin.

MR. MARTIN: If we follow Mr. Nord's views, we will be here forever because there isn't going to be any time when sound ideas are not going to develop in this convention right up to the time when we vote on the final draft. So that if we need to make a decision, we are in just as good a position to make that decision today as we will be 2 weeks or 4 weeks from now.

As to the problem that is bothering Mr. Douglas and Mr. Brown, the situation, I think, is this—that the question they are raising is: What do you do if 3 people of a committee want to bring a matter which is not germane out on the floor? That problem is just as much of a problem with respect to proposals which are formally introduced now as it would be with respect to any proposal which was made after the cutoff date. This is not a problem that has to do with the question of a cutoff date at all. But if they want to have some provision for that sort of situation, then they need to introduce a resolution for an amendment of the rule which would correct that if the convention sees fit.

It seems to me we have explored the problem as far as we can. I don't like to move the previous question, but unless there are further problems, Mr. President, I would move the previous question.

VICE PRESIDENT DOWNS: The previous question has been moved.

Mr. Hoxie.

MR. HOXIE: Seconded.

VICE PRESIDENT DOWNS: Those in favor will say aye. Opposed, no. The motion prevails and we are now voting on the amendment.

Will the secretary please read the amendment upon which we are now voting.

SECRETARY CHASE: The amendment upon which the convention is now voting is the amendment to the committee amendment offered by Mr. Hodges to strike out "November 22, 1961" and insert "January 1, 1962".

VICE PRESIDENT DOWNS: All those in favor, signify by saying aye.

Mr. Hoxie.

MR. HOXIE: Mr. President, I request a record roll call.

VICE PRESIDENT DOWNS: A request has been made for a roll call vote. Is the demand for the yeas and nays seconded? Those in favor please rise.

SECRETARY CHASE: A sufficient number.

VICE PRESIDENT DOWNS: A roll call will be made. Will those in favor please vote yea. Those opposed, nay.

Mr. Ford.

MR. FORD: Mr. President, I'd like to ask a question of procedure here. Is it correct that Mr. Ostrow's substitute resolution will be considered after the vote on the amendments, the one proposed by Mr. Hodges, and, in the event the Hodges' amendment fails, secondly on the amendments proposed by the committee, and thereafter, before voting on the resolution itself, as amended, we will vote on the substitute resolution of Mr. Ostrow?

VICE PRESIDENT DOWNS: We will vote on the substitute resolution after the present resolution has been perfected. That means the vote is on the existing amendments and any other amendments.

Those in favor of Mr. Hodges' amendment, vote aye. Those opposed vote nay.

SECRETARY CHASE: Has everyone voted?

The Secretary will lock the machine and record the vote.

The roll was called and the delegates voted as follows:

Yeas—40

Baginski	Hart, Miss	Murphy
Balcer	Hatcher, Mrs.	Nord
Barthwell	Hodges	Norris
Binkowski	Hood	Pellow
Bledsoe	Kelsey	Perlich
Buback	Lesinski	Sablich
Cushman, Mrs.	Liberato	Snyder
Dade	Madar	Stopczynski
Douglas	Mahinske	Suzore
Elliott, Mrs. Daisy	Marshall	Walker
Faxon	McAllister	Wilkowski
Follo	McCauley	Young
Ford	McGowan, Miss	Youngblood
Greene		

Nays—92

Allen	Gust	Powell
Andrus, Miss	Habermehl	Prettie
Anspach	Hanna, W. F.	Pugsley
Batchelor	Hannah, J. A.	Radka
Beaman	Hatch	Rajkovich
Bentley	Higgs	Richards, J. B.
Blandford	Howes	Richards, L. W.
Bonisteel	Hoxie	Rood
Boothby	Hubbs	Seyferth
Brown, G. E.	Hutchinson	Shackleton
Brown, T. S.	Iverson	Shaffer

Butler, Mrs.	Judd, Mrs.	Shanahan
Conklin, Mrs.	Karn	Sharpe
Cudlip	King	Sieder
Danhof	Kirk, S.	Spitler
Davis	Knirk, B.	Stafseth
Dehnke	Koeze, Mrs.	Staiger
Dell	Krolikowski	Stamm
DeVries	Kuhn	Sterrett
Donnelly, Miss	Lawrence	Stevens
Doty, Dean	Leibrand	Thomson
Doty, Donald	Leppien	Turner
Durst	Lundgren	Tweedie
Erickson	Martin	Upton
Everett	McLogan	Van Dusen
Farnsworth	Millard	Wanger
Figy	Mosier	White
Finch	Ostrow	Wood
Gadola	Perras	Woolfenden
Goebel	Plank	Yeager
Gover	Pollock	

On the question of Mr. Hodges' amendment, the yeas are 40 and the nays are 92.

VICE PRESIDENT DOWNS: The amendment is not adopted.

SECRETARY CHASE: Now pending are the committee amendments to change the deadline date and to add at the end of the language of the resolution a comma and "and if so requested in writing by any delegate, said committee shall acknowledge in its action journal its receipt of any such suggestion.".

The language in the last sentence would then read:

> This resolution shall not prevent any delegate or interested citizen from thereafter submitting to the appropriate committee any suggestion for revision of the constitution, and if so requested in writing by any delegate, said committee shall acknowledge in its action journal its receipt of any such suggestion.

VICE PRESIDENT DOWNS: Any discussion on the amendments?

We are having an informal recess on whether the previous question that was moved on the other amendment applies also to these. If you will be patient, we will make a ruling very shortly.

[Whereupon, the convention stood in informal recess for 6 minutes]

The convention will please come to order. Rule 52 says:

> The effect of the previous question shall be to put an end to all debate and bring the convention to a direct vote upon the pending question or questions in their order down to and including the main question: Provided however, That when the previous question shall be ordered, amendments then on the secretary's desk shall be disposed of.

Under that we now, without further debate, vote on the next question.

MR. WALKER: Point of information, Mr. President.

VICE PRESIDENT DOWNS: State your point.

MR. WALKER: I would like to ask of Mr. Van Dusen if the intention of the last amendment is to make the so called gag rule a little more palatable or a little less obnoxious to certain of us?

VICE PRESIDENT DOWNS: This is out of order because the debate has been closed.

Would you read the amendments again, Mr. Secretary, so there will be no confusion as to what we are voting upon.

SECRETARY CHASE: The question now is upon committee amendments, which are:

1. Amend line 1 by striking out "November 15, 1961,", and inserting "November 22, 1961,".

2. To add at the end of the resolution a comma and the following language: "and if so requested in writing by any delegate, said committee shall acknowledge in its action journal its receipt of any such suggestion.".

VICE PRESIDENT DOWNS: All those in favor, signify by saying aye. Those opposed, nay.

The committee amendments, as amended, are adopted.

Under the same rule we have another amendment that is on file, which the secretary will read.

SECRETARY CHASE: Mr. Hutchinson offers the following amendment to Resolution 21:

1. Amend the resolving clause, following the first sentence, after "convention.", by inserting "By a subsequent resolution, the convention will provide for the introduction of delegate proposals in preparation on November 22 in the office of research and drafting.",

so the first resolving clause of the resolution will then read,

> Resolved, That after December 1, 1961, no delegate proposal shall be introduced, numbered, or printed except upon authorization by the convention. By a subsequent resolution, the convention will provide for the introduction of delegate proposals in preparation on November 22 in the office of research and drafting.

VICE PRESIDENT DOWNS: All those in favor, signify by saying aye. Those opposed, nay.

The amendment is adopted.

SECRETARY CHASE: Now the question is upon the substitute offered by Mr. Ostrow, which reads as follows—

VICE PRESIDENT DOWNS: Mr. Ford.

MR. FORD: Mr. President, a parliamentary inquiry. Is my understanding correct that the effect of the motion for the previous question at the time that we had 2 amendments pending and one upon which we have had no debate at all, which was sitting on the secretary's desk and not previously read, was to preclude us from having any debate on the merits of Mr. Ostrow's substitute resolution?

VICE PRESIDENT DOWNS: I read again from rule 52, on method of ordering:

> The effect of the previous question shall be to put an end to all debate and bring the convention to a direct vote upon the pending question or questions in their order down to and including the main question: Provided however, That when the previous question shall be ordered, amendments then on the secretary's desk shall be disposed of.

Under this, my understanding, Mr. Ford, would be that we get to the main question, the resolution, without further discussion and to get to the main question, we go through or to the substitute before voting on the main question, but that the previous question applies to that also.

You may appeal the decision of the Chair. That is my understanding and that is the ruling.

MR. FORD: Deferring to you as one of the 2 or 3 people in the room who have a copy of the complete rules, I simply want to ask a question of Mr. Chase through the Chair: I hope that the thoughts now running through my mind about the manner in which we have been precluded from debating Mr. Ostrow's substitute are not entirely well founded. I wonder if he could suggest to me the proper way now to open the floor for debate on the merits of Mr. Ostrow's substitute, which I don't believe any of us had an opportunity to debate.

MR. MAHINSKE: Point of information, Mr. President.

VICE PRESIDENT DOWNS: We have a parliamentary inquiry on whether this can be opened. There is a point of order here, and then Mr. Bentley.

Mr. Mahinske.

MR. MAHINSKE: I understand, Mr. President, that under the rules we can only have an amendment to an amendment and nothing else is in order. Would our third motion or substitute resolution be within the consideration of the Chair after we have 2 amendments?

VICE PRESIDENT DOWNS: My understanding is that we can only have 2 amendments before the body at once but when those amendments are disposed of, another amendment is in order.

I will ask the secretary to read the rule on that for the clarification of the delegates.

SECRETARY CHASE: As the secretary understands the situation, it is this: the resolution was before the convention for consideration. Amendments were in order, were considered

and, as the president has indicated, an amendment to the main question is in order, and an amendment to that amendment is in order. When disposed of, other amendments to the body of the resolution are likewise in order.

Now, in regard to a substitute resolution, the situation is this: the original main question or resolution should first be perfected by amendment. Following that, a substitute may be offered and it may be perfected by amendment, if any are desired to be offered. Then the question goes upon the adoption of the substitute and after the substitute is adopted or rejected, then the question reverts to the main question, either as amended or as substituted. And of course, the moving of the previous question under the rules precludes all debate down to and including the final vote upon the main question before the body.

This also precludes, after the ordering of the previous question, any and all amendments except those that may have been on file upon the secretary's desk.

VICE PRESIDENT DOWNS: Mr. Bentley.

MR. BENTLEY: Mr. President, a parliamentary inquiry: would a motion permit debate on the substitute if moved and adopted at this time, to reconsider the moving of the previous question?

VICE PRESIDENT DOWNS: I want to see if I understand your question, Mr. Bentley. You are asking if a motion to reconsider the motion to close debate or the previous question would, if passed, permit debate to be reopened. Would you please pause for just a moment while I confer with Mr. Chase. (laughter)

Mr. Hoxie.

MR. HOXIE: Mr. President, perhaps I could clarify it.

Mr. President, I would like to move that we reconsider the vote by which the previous question was ordered.

VICE PRESIDENT DOWNS: I would say that if this is passed by unanimous consent there will be no problem. (laughter)

Is there any objection? Hearing none —

MR. STEVENS: I object.

VICE PRESIDENT DOWNS: An objection has been heard. (laughter)

Will you please bear with us while we now check the rules a little bit further. I don't know why the delegates never did this when someone else was in the Chair. (laughter)

[Whereupon, the convention stood in informal recess for 3 minutes.]

The convention will please come to order.

A delegate, I believe, is rising to a parliamentary point.

Mr. Elliott.

MR. A. G. ELLIOTT: While we were in informal recess, I was looking up something. I would hope in the wisdom of the Chair and the secretary there would be found some method of making a debate on the substitute resolution possible.

VICE PRESIDENT DOWNS: We are looking hard, Mr. Elliott.

Mr. Bentley, did you want to wait until a ruling has been made?

MR. BENTLEY: I'll wait for the ruling, and if favorable, I will move the reconsideration.

[Whereupon, the convention stood in informal recess for 3 minutes.]

VICE PRESIDENT DOWNS: Will the convention come to order, please.

Delegate Bentley has pointed out under rule 52 the following sentence:

> When a motion to reconsider is taken under the previous question and is decided in the affirmative, the previous question shall have no operation upon the question to be reconsidered.

Therefore, it is the ruling of the Chair that a motion to reconsider is in order and if it passes, then the previous question is rescinded.

MR. BENTLEY: I will move to reconsider, Mr. President.

VICE PRESIDENT DOWNS: A motion has been made to reconsider the vote by which the previous question was ordered. All those in favor, signify by saying aye. Those opposed, no.

The motion prevails.

The secretary will read the substitute resolution.

SECRETARY CHASE: Mr. Ostrow offers the following substitute for Resolution 21, A resolution establishing deadline for introduction of delegate proposals and processing by codirectors of research.

> Resolved, That all delegate proposals shall be filed by January 15, 1962, and that all requests for drafting or preparation of delegate proposals shall be processed and considered timely filed for the purposes of this resolution if they are filed with the codirectors of research by 5:00 p.m., on January 15, 1962, except upon authorization by the convention for a later date. This resolution shall not prevent any delegate or interested citizen from thereafter submitting to the appropriate committee any suggestion for revision of the constitution, and if so requested in writing by any delegate, said committee shall acknowledge in its action journal its receipt of any such suggestion.

VICE PRESIDENT DOWNS: The question is on the adoption of the substitute.

Mr. Ford.

MR. FORD: Mr. President, what we have now before us is actually Mr. Ostrow's substitute. When viewed in light of Senator Hutchinson's amendment, when you look at the two, it is difficult at first to see the distinction; but the one thing that the Ostrow substitute does that the other doesn't is determine right now that any matter that is in the hands of the research personnel and the drafting personnel at the time that whatever deadline that is adopted — if one is adopted by this convention — takes effect will be considered to have been filed for the purpose of the resolution.

Now, we don't have to come back here and argue about what we would do with the resolutions or the proposals that are in that status. The alternative to this, should the other one be adopted — and I don't want to get into the other one since it isn't this moment on the floor — as I understand it, would be that at some future date we would meet this problem. And I think that all we are doing — at least in my mind — is adding doubt upon doubt about the real purpose of the cutoff date as it is set up now.

First of all, I've got serious reservations about whether cutting off delegate proposals — why not cut off any other kind of proposals? — is going to accomplish the purpose that the exponents of this cutoff are espousing. If it is the principal desire of Mr. Hutchinson and Mr. Van Dusen, as the authors of this proposal, in the first instance to expedite the business of the convention by providing an orderly method of proceeding and encouraging the delegates to put their proposals in without undue delay, then I submit that the proper way to serve this purpose without endangering in any way the effective right of the minority to be heard — whether that minority consists of 1 person or 45 persons, or in fact 72 persons — is to place effectively before this convention, and in thus doing, the people of the state of Michigan, any idea that comes to light as a result of the study we have been undertaking.

I feel just a little bit disturbed about the fact that there is some feeling that many of us came to this convention with our minds so firmly set and geared with respect to those particular things we wanted changed or retained as they are in the constitution that we perhaps are closing our eyes to the real value of the tremendous amount of work that all of the delegates have been doing in this convention to date. Many people on this floor have commented, and many people on the outside have commented on the diligence of the delegates and the hard work that has gone into studying the problems. And in neither of the committees on which I have served are we at the stage where we have considered proposal A — not one single proposal — and we aren't going to be there for some time at the present rate. This is because both those committees are going very carefully through a study process.

And I have already discovered, at least in the local government committee, that areas are being exposed to my limited field of thought on the subject that I had not contemplated

in any respect at all before I came to this convention. And before I get into a position to put a proposal in, I should like to hear a lot more from a lot of people whom I have had the opportunity of meeting here, because I think we have assembled for the first time in over 50 years in Michigan in one place the best cross section of brains and ability, in terms of the literally centuries of public service that some of these men have accumulated behind them in a cumulative sense that the people of the state of Michigan are going to have the benefit of for some time, and I think we should take advantage of this to the fullest.

As Mr. Douglas has stated, the experts have talked, but the experts are not going to pass final judgment on the document we are here to write. I think that any thought that goes out of this convention to the effect that individual delegates reach a point where their initiative to have independent and novel thoughts is stopped by an artificial rule would be very bad in the public image and would accumulate with the objections that I have to the cutoff in the first instance.

One other thing that is particularly alarming is when you notice that there are delegates here who make statements to the effect that delegate proposals are really unnecessary since the committee shall initiate such matters as are approved by a majority of the members of each respective committee, and this is really what we will vote on when we get to the convention.

Secondly, if there are people here who have serious disillusionment about the dignity that will be afforded to independent thoughts that arise after the cutoff date, I call your attention to these words that have been used, and I trust that they were used in a sense of levity, but they nevertheless created in me the fear that this might be typical of the feeling of the delegates relative to any one of the alternative ways that Senator Hutchinson has mentioned: late blooming suggestions; brilliant afterthoughts; late blooming ideas. These were used in such a way as to indicate, at least in my mind, the thought that already we are beginning to consider matters being brought to the attention of the convention through the alternative means, through the introduction of a delegate proposal, as not having the dignity of delegate proposals themselves.

I can't think, as has been stated here, of a single specific novel idea that shouldn't be thought of before November 22 or December 1 or any other date that is brought on. But that seems to me to prove the very point, that to say that we are going to spend months here studying this matter and preclude the possibility of any mind in this room having the imagination to come up with a novel idea simply because any one of us at this particular time cannot think of anything novel, seems to me to be begging the question.

Now, novel doesn't mean that it has to be radical. We have already been exposed to the fact that there is a serious disagreement in this convention as to those things that should be in the constitution in the first instance and in many areas, and those things that should be left entirely to the legislature. And this is where I think the real strong argument about germaneness is going to occur, and it is going to be something that we have an obligation to the people of the state of Michigan to air thoroughly when it does happen.

Now, it has been mentioned that there are several avenues, one of them being the minority report. Now, as I understand the rules at the present time, the minority report has to in some way relate itself to the majority report. I can't conceive of properly having a minority report initiated by any minority of this convention up to and including 72 of the delegates that should be placed in a position of facing the test of whether or not it fits into the germane pattern of what the committee majority covering a particular part of the constitution has determined to be the scope of their activity.

There is some disagreement within the committee. As a matter of fact, we had last week a serious disagreement between 2 committees as to which one should properly handle a particular matter. And I submit that on the particular question that was the subject of the jurisdictional dispute last week, I would like to ask somebody to tell me to which committee it is germane when there is a legitimate difference of opinion at the present time.

Mr. Hutchinson has stated that the most important part of the convention process will be the open floor debate, and this is the most important thing to the citizens of the state of Michigan. I think anything that endangers this open floor debate, leaving any doubt as to whether or not any of it will occur as to all possible aspects of the proposed documents from this convention, should be avoided.

Now, with respect to the particular date involved, we had a motion passed here yesterday — there was no objection to it of any magnitude — which cuts 2 weeks out of the next month of this convention. But this 2 weeks is certainly not going to be wasted by the delegates because we already have ample material to keep us busy in that 2 weeks and many more to come. I think that the real merit of waiting until after the holidays to tie ourselves down to this sort of a rule lies in the fact that during that time we have the best chance of coming up with these novel or new ideas or coming up with areas that haven't previously been touched on.

Nobody can argue the necessity for the orderly conduct of his business. But as we face the problems before us, if it is our intention that under no circumstances anyone should be precluded from having his proposal considered because of a possible flood of proposals at the eleventh hour of the filing date, then the Ostrow proposal makes it eminently clear what the status of such proposals would be, and it doesn't leave us to come back at some future date and try and determine what we ought to do about them. I submit that there should be no doubt that any proposal — even if it is written on a piece of tissue paper — that is presented to the research people prior to the filing date should have the dignity of being carefully considered by them and put into proper form and ultimately finding its way into the hopper as a delegate proposal, even if the flood of work that they have causes it to be delayed for 2 or 3 weeks. The Ostrow proposal clearly sets this up to be the rule.

The other alternative that we are presented with here leaves this question as much up in the air when we leave here today as it was when we came in.

VICE PRESIDENT DOWNS: Mr. McCauley.

MR. McCAULEY: Mr. President and delegates, speaking in favor of the substitute resolution, I want to say this: that I certainly appreciate Mr. Hutchinson's remarks, especially about this vacation that we are going to have.

The only trouble with some of the late blooming people that I have in the downriver area — some 190,000 — the only time I'm going to have a chance to talk to these people will be over these vacations, for which I want to thank Mr. Hutchinson. However, when I attempt to tell them — after discussing the various pros and cons of what happened here about proposals or ideas or suggestions that they might have — I have to tell them

> well, there are 3 ways we can do it, but I as your duly elected delegate can no longer do it. If you are going to give it the dignity of a proposal, I can put it into the back door through a committee, or you can come up. If you are recognized by the committee, you might be able to come up, or in the event I can get a majority of the delegation here elected to listen to me, I might be able to put it on the floor.

I think this: I think that we need the opportunity to talk to our people to find out what their thinking is. I don't know about the rest of you delegates, but I've been pretty busy up here doing my homework, attending committee meetings and hoping that over this vacation period we'll have an opportunity to get next to the people and find out what they think about it. After all, they're the ones that are paying our salaries up here and I think we ought to listen to them just a little bit. Thank you.

VICE PRESIDENT DOWNS: Mr. Sterrett.

MR. STERRETT: I've heard this several times, Mr. President, that we want to speak to our constituents when we go home Thanksgiving to get some ideas. I would like to know what some of these people have been doing for the 21 days they haven't been in the convention.

VICE PRESIDENT DOWNS: Is there any further discussion? Are you ready for the question? The question is on the

substitute resolution. All those in favor, signify by saying aye. Those opposed, no.

The substitute resolution is not adopted.

SECRETARY CHASE: Mr. Marshall has now offered an amendment to the original resolution to substitute the date of December 8 for November 22. His motion is to

1. Amend line 1 by striking out "November 22" and inserting "December 8" so the language will read in the original resolution:

Resolved, That after December 8, 1961, no delegate proposal shall be introduced, numbered, or printed except upon authorization by the convention.

VICE PRESIDENT DOWNS: Mr. Marshall.

MR. MARSHALL: Mr. President and fellow delegates, I offer this amendment because we have wasted the entire afternoon. I don't mean to imply that the discussions were wasted, but it was rather obvious to me in the beginning, without all of the discussion, what the outcome of the vote would be.

However, in consideration of the question that some of the delegates raised about the little time in which to study the wealth of material that they have before them and to prepare to meet this deadline, it seems to me this amendment would give them to the Thanksgiving holiday weekend in which to consider this and to be prepared.

I think in all fairness that we should adopt this amendment to the original resolution, and I would sincerely solicit support of this delegation, which merely moves us from November 22 to December 8, giving us the Thanksgiving weekend in which to do some more work, and I would appreciate the support of the delegates on the amendment to the main resolution. Thank you.

VICE PRESIDENT DOWNS: Any further discussion on the amendment?

Mr. Suzore.

MR. SUZORE: Mr. President, I ask for a recorded roll call vote.

VICE PRESIDENT DOWNS: Is the demand for the yeas and nays seconded? Raise your hands.

SECRETARY CHASE: There is sufficient number.

VICE PRESIDENT DOWNS: There is sufficient number. The yeas and nays will be taken. Please vote on the machine.

SECRETARY CHASE: The question is upon the amendment offered by Mr. Marshall to change the date to December 8. Have you all voted?

The secretary will now lock the machine and record the vote.

The roll was called and the delegates voted as follows:

Yeas—50

Anspach	Gover	McCauley
Baginski	Greene	McGowan, Miss
Balcer	Hanna, W. F.	Murphy
Barthwell	Hart, Miss	Nord
Binkowski	Hatcher, Mrs.	Ostrow
Bledsoe	Higgs	Pellow
Brown, T. S.	Hodges	Perlich
Buback	Hood	Sleder
Cushman, Mrs.	Judd, Mrs.	Snyder
Dade	Kelsey	Stopczynski
Donnelly, Miss	Krolikowski	Suzore
Douglas	Lesinski	Walker
Elliott, A. G.	Liberato	Wilkowski
Elliott, Mrs. Daisy	Madar	Wood
Faxon	Mahinske	Young
Follo	Marshall	Youngblood
Ford	McAllister	

Nays—80

Allen	Gust	Pugsley
Andrus, Miss	Habermehl	Radka
Batchelor	Haskill	Rajkovich
Beaman	Hatch	Richards, J. B.
Bentley	Howes	Richards, L. W.
Blandford	Hoxie	Rood
Bonisteel	Hubbs	Sablich
Boothby	Hutchinson	Seyferth
Brown, G. E.	Iverson	Shackleton
Butler, Mrs.	Karn	Shaffer
Conklin, Mrs.	Kirk, S.	Shanahan
Cudlip	Knirk, B.	Sharpe
Danhof	Koeze, Mrs.	Spitler
Davis	Kuhn	Stafseth
Dehnke	Lawrence	Staiger
Dell	Leibrand	Stamm
DeVries	Leppien	Sterrett
Doty, Dean	Lundgren	Stevens
Doty, Donald	Martin	Thomson
Durst	McLogan	Turner
Erickson	Millard	Tweedie
Everett	Mosier	Upton
Farnsworth	Perras	Van Dusen
Figy	Plank	Wanger
Finch	Pollock	Woolfenden
Gadola	Powell	Yeager
Goebel	Prettie	

Mr. President, on Mr. Marshall's amendment, the yeas are 50 and the nays are 80.

VICE PRESIDENT DOWNS: The amendment is not adopted.

Now the question is on the adoption of the resolution, as amended. Would the secretary read the resolution as amended? Then we will have the vote.

SECRETARY CHASE: The resolution now reads as follows:

Resolution 21, A resolution establishing deadline for introduction of delegate proposals.

Resolved, That after November 22, 1961, no delegate proposal shall be introduced, numbered, or printed except upon authorization by the convention. By a subsequent resolution, the convention will provide for the introduction of delegate proposals in preparation on November 22 in the office of research and drafting. This resolution shall not prevent any delegate or interested citizen from thereafter submitting to the appropriate committee any suggestion for revision of the constitution, and if so requested in writing by any delegates, said committee shall acknowledge in its action journal its receipt of any such suggestion.

VICE PRESIDENT DOWNS: The question is on the resolution. All those in favor, signify by saying aye. Those opposed, nay.

The resolution is adopted.

Mr. Brown.

MR. T. S. BROWN: I am sorry, Mr. President, I understood debate was not foreclosed on the original resolution. We passed a motion to reconsider which contravened our previous action, bringing our consideration down to the original resolution. I am prepared now to speak on the original resolution.

VICE PRESIDENT DOWNS: The Chair was in error. Mr. Brown was seeking recognition, and so was Delegate King.

Mr. Kuhn.

MR. KUHN: Parliamentary inquiry, Mr. President.

VICE PRESIDENT DOWNS: What is your question?

MR. KUHN: Isn't it true when you moved the previous question on the amendment before this that you revived it and took everything that was on the table at that time; and if that is true the previous question was in order and it would close debate for everything that was on the table.

VICE PRESIDENT DOWNS: Except that Delegate Bentley made the motion to reconsider the previous question and then that opened up everything we had.

MR. KUHN: True. But then after Delegate Bentley's motion to reconsider the previous question, there was a new previous question which was adopted.

VICE PRESIDENT DOWNS: I don't believe there was. We will check the records of the secretary.

Mr. Brown.

MR. T. S. BROWN: I understood there was no previous question. It was adopted by a voice vote.

VICE PRESIDENT DOWNS: There was not. The Chair was in error.

Do we have consent for the 2 delegates who were trying to get the floor, Delegate King and Delegate Brown, to speak? And then what do we have to do? (laughter) Will you please be patient?

We could reconsider the vote by which that was taken and reopen the discussion, or do it by unanimous consent.

Without objection, the 2 delegates who were trying to get the floor could be recognized to speak. Is there objection to the 2 delegates who were trying to get the floor, speaking?

MR. YEAGER: I object.

VICE PRESIDENT DOWNS: The resolution has been adopted, but a motion to reconsider is in order.

Mr. Brown.

MR. T. S. BROWN: I should like to object to the decision of the Chair. The Chair reversed itself the last 2 times after consultation with Mr. Chase not 30 seconds ago. You agreed you were in error in calling for the vote on the main question. Mr. King and I were standing and asking for recognition at that time. Now, as far as I am concerned, the main question is not passed, and I will object to that.

VICE PRESIDENT DOWNS: You are correct. You were standing for recognition, and the Chair was in error in not recognizing the 2 delegates.

Mr. Everett.

MR. EVERETT: Mr. President, I move we reconsider the vote.

VICE PRESIDENT DOWNS: A motion has been made to reconsider the vote by which the resolution, as amended, was adopted. All those in favor, say aye. Those opposed, no.

The motion to reconsider prevails.

Of the 2 delegates, I believe Delegate King was up first. I will recognize him, then Delegate Brown.

Mr. King.

MR. KING: Mr. President, I would move to insert the date "December 1" in place of the date "November 22" in the now pending motion before this convention.

SECRETARY CHASE: Mr. King offers the following amendment to Resolution 21:

1. Amend the resolving clause by striking out "November 22" and inserting "December 1".

VICE PRESIDENT DOWNS: Is there any discussion?

Mr. Brown.

MR. T. S. BROWN: I would support the tenor of Mr. King's amendment except to amend the date to November 29, the twenty-ninth being a Thursday, I believe, and the first being a Saturday, which would make it more commensurate with our work week.

SECRETARY CHASE: Mr. Brown moves to amend Mr. King's amendment by striking out "December 1" and inserting "November 29".

VICE PRESIDENT DOWNS: Mr. King.

MR. KING: I concur in that change.

VICE PRESIDENT DOWNS: Is there any discussion on the amendment? The secretary will again state the amendment as it now stands.

SECRETARY CHASE: By agreement between Messrs. King and Brown, it is to strike out "November 22" and insert "November 29".

VICE PRESIDENT DOWNS: Is there any further discussion on the question?

Mr. Faxon.

MR. FAXON: Mr. President, I am just looking at the calendar here. I see the twenty-ninth is Wednesday, and I believe Mr. Brown said the twenty-ninth was Thursday. Now, the original amendment made by Mr. King was for December first, which is Friday, which is the proper closing of the week.

I am supporting Mr. King on this (laughter) because the first is the time. (laughter)

VICE PRESIDENT DOWNS: Mr. Brown.

MR. T. S. BROWN: Mr. President, I will be only too happy to withdraw my amendment. (laughter)

VICE PRESIDENT DOWNS: Mr. Brown has withdrawn his amendment, which was done with the permission of Mr. King.

We now have, I believe no amendment before us. Does somebody wish to make an amendment? (laughter)

Mr. King.

MR. KING: Mr. President, I am sorry, but I didn't quite get the full tenor of the remarks of Delegate Faxon. Would you repeat them?

VICE PRESIDENT DOWNS: Will Delegate Faxon repeat his comment?

MR. FAXON: I'm just supporting Delegate King. He originally proposed December 1, which is Friday, which is the proper closing of the week. So if this amendment is still on the floor, then I am rising to support his, and I just wanted to call attention that there was an error made by Mr. Brown.

MR. KING: I will renew my amendment of December 1.

VICE PRESIDENT DOWNS: Will the secretary read the amendment?

SECRETARY CHASE: Mr. King offers the following amendment:

1. Amend the resolving clause by striking out "November 22" and inserting in lieu thereof "December 1".

VICE PRESIDENT DOWNS: Any discussion on the amendment?

Mr. Martin.

MR. MARTIN: Mr. President, I don't think that there is any intention or desire on the part of the majority in this convention to ram this thing through against the reasonable objections of the minority. I see no reason why we should not accord them this later date. I propose to vote for the date of December 1.

VICE PRESIDENT DOWNS: Mr. Suzore.

MR. SUZORE: Mr. President, I ask for a recorded roll call vote.

VICE PRESIDENT DOWNS: A request has been made for a roll call vote. Is there a demand for the yeas and nays? Please raise your right hand for the yeas and nays.

SECRETARY CHASE: Forty-two.

VICE PRESIDENT DOWNS: There is a sufficient number to demand for the yeas and nays. Those in favor of Mr. King's amendment will vote aye. Those opposed will vote nay.

SECRETARY CHASE: Have you all voted? The secretary will now lock the machine and record the vote.

The roll was called and the delegates voted as follows:

Yeas—78

Allen	Faxon	McGowan, Miss
Andrus, Miss	Ford	McLogan
Anspach	Gover	Nord
Baginski	Greene	Ostrow
Balcer	Hanna, W. F.	Pellow
Barthwell	Hart, Miss	Perlich
Bentley	Hatcher, Mrs.	Perras
Binkowski	Higgs	Pollock
Bledsoe	Hodges	Prettie
Bonisteel	Hood	Pugsley
Brown, G. E.	Howes	Rajkovich
Brown, T. S.	Hoxie	Richards, L. W.
Buback	Judd, Mrs.	Rood
Butler, Mrs.	Kelsey	Sablich
Conklin, Mrs.	King	Shackleton
Cushman, Mrs.	Kirk, S.	Shaffer
Dade	Koeze, Mrs.	Sharpe
Danhof	Krolikowski	Sleder
Davis	Kuhn	Sterrett
Dell	Leppien	Stopczynski
Donnelly, Miss	Lesinski	Suzore
Doty, Donald	Madar	Walker
Douglas	Mahinske	Wanger
Elliott, A. G.	Marshall	White
Elliott, Mrs. Daisy	Martin	Wood
Everett	McCauley	Young

Nays—43

Batchelor	Hannah, J. A.	Radka
Beaman	Haskill	Richards, J. B.
Blandford	Hatch	Seyferth
Boothby	Hubbs	Shanahan
Cudlip	Hutchinson	Spitler
Dehnke	Iverson	Stafseth
DeVries	Karn	Staiger
Doty, Dean	Knirk, B.	Stevens
Durst	Leibrand	Thomson
Erickson	Lundgren	Turner
Farnsworth	McAllister	Tweedie
Finch	Millard	Upton
Gadola	Mosier	Woolfenden
Goebel	Plank	Yeager
Habermehl		

On the adoption of Mr. King's amendment to change the date from November 22 to December 1, the yeas are 78; the nays are 43.

VICE PRESIDENT DOWNS: The amendment is adopted. Now the question is on the adoption of the resolution, as amended.

Mr. Snyder.

MR. SNYDER: Mr. President, I would like to explain my abstention on the vote. I think that this is in order with the procedure; is that correct?

VICE PRESIDENT DOWNS: Will you wait just a minute? We are going to check it.

Mr. Elliott.

MR. A. G. ELLIOTT: I believe that this is supposed to be announced prior to voting and I would suggest and ask Mr. Snyder to hold his explanation until Monday evening. I say it for this reason: Mr. Bebout is here from New Jersey and has been here this latter part of the week to discuss with the delegates an important subject. He represented several states in their constitutional work and he is going to appear before the committee on local government yet tonight, and I think that it is important that we get along with the proceedings so we do not show discourtesy to our guest.

VICE PRESIDENT DOWNS: Mr. Snyder.

MR. SNYDER: It is a very logical request and I will be most happy to comply.

VICE PRESIDENT DOWNS: Thank you. We are now ready for the vote on the resolution, as amended. Are you ready for the question? All those in favor, signify by saying aye. Those opposed nay.

The resolution is adopted.

Following is the resolution as amended and adopted:

Resolution 21.

A resolution establishing deadline for introduction of delegate proposals.

Resolved, That after December 1, 1961, no delegate proposal shall be introduced, numbered, or printed except upon authorization by the convention. By a subsequent resolution, the convention will provide for the introduction of delegate proposals in preparation on December 1 in the office of research and drafting. This resolution shall not prevent any delegate or interested citizen from thereafter submitting to the appropriate committee any suggestion for revision of the constitution, and if so requested in writing by any delegate, said committee shall acknowledge in its action journal its receipt of any such suggestion.

Special orders of the day.

SECRETARY CHASE: None.

VICE PRESIDENT DOWNS: General orders of the day.

SECRETARY CHASE: None.

VICE PRESIDENT DOWNS: Announcements.

Mr. Danhof.

MR. DANHOF: Mr. President, I would like to ask leave of the convention for the committee on judicial branch to be excused to meet with Justice Souris, who is impatiently waiting. As an attorney, I think that some day I may have to practice before the Justice and I would like to meet with him yet this afternoon.

VICE PRESIDENT DOWNS: Hearing no objection, leave is granted.

Any other announcements?

SECRETARY CHASE: We have the following announcement of committee meetings and several announcements of general interest.

First, the committee on administration will meet in the conference room of the president next Monday at 7:00 o'clock p.m. Walter DeVries, chairman.

The subcommittee on corporations of the committee on miscellaneous provisions and schedule will meet in room G on November 14, Tuesday, at 10:30 a.m. Henry Woolfenden, subcommittee chairman.

The committee on finance and taxation will meet in room E next Tuesday, November 14, at 8:30 a.m. D. Hale Brake, chairman.

The committee on judicial branch will be meeting this afternoon immediately after the session for the appearance and presentation of Justice Theodore Souris.

The committee on executive branch will meet in room C immediately after the session today for the appearance and presentation of Mr. George Higgins and Franklin DeWald to continue the discussion of earlier presentations on the civil service commission; and the appearance of Mr. Robert Grosvenor to continue discussion of his earlier presentation.

The committee on local government is meeting in room A immediately after the session for the appearance and presentation of Mr. John Bebout.

Monday, the committee on rules and resolutions will meet immediately after the session in room I, and the Committee on education will meet on Monday at 4:30 p.m. in the capitol room at the Capitol Park Motel.

Will the delegates please turn in to your secretary, down in the steno pool the black bound copies of your status, and they will be brought up to date over the weekend.

The secretary of state, James Hare, advises that he can pull out license numbers CC 9001 through CC 9144 for assignment to the delegates, if you are interested. The numbers will correspond with your delegate seat numbers and these papers may be processed through Mr. Apol's office and the plates delivered to your desk.

The secretary wishes to announce that 10 copies of Mason's Manual purchased by the convention have been received. The president and the 3 vice presidents each have a copy. The other 6 copies are on file in the library for your use. And in addition to that, 4 copies borrowed from the clerk of the house of representatives, Norman Philleo, are on file for use in the library.

We have the following requests for leaves of absence:

Mr. McCauley wishes to be excused from the evening session of next Monday, November 13, and the session of November 14.

Mr. Figy wishes to be excused from the session of November 13.

Mr. Haskill asks to be excused from the sessions of November 15, 16 and 17;

Because of a previous commitment, Mr. Millard asks to be excused from the session of Tuesday, November 21;

Mr. Sablich requests to be excused from the sessions of November 20, 21 and 22;

Mrs. Conklin, Messrs. Stevens, Sterrett, Iverson, and Yeager request to be excused from next Monday evening's session to attend an important meeting in northwest Detroit; and Delegate G. E. Brown requests to be excused from the session on Monday because of a speaking engagement.

VICE PRESIDENT DOWNS: Are there any objections? Hearing none, the delegates are excused.

Are there any more announcements?

SECRETARY CHASE: That is all of the announcements on the secretary's desk, Mr. President.

VICE PRESIDENT DOWNS: Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, I think you have had a difficult afternoon in the Chair and I move the delegates congratulate you on your baptism of fire. (applause)

VICE PRESIDENT DOWNS: Thank you, Mr. Van Dusen. I'd like to thank the delegates for their good natured patience and cooperation this afternoon.

A motion to adjourn is in order.

Mr. Perras.

MR. PERRAS: I move that we adjourn, Mr. President.

VICE PRESIDENT DOWNS: Those in favor say aye. Opposed, no.

The motion prevails. We are adjourned.

[Whereupon, and in pursuance of the order previously made, at 4:35 o'clock p.m., the convention adjourned until 8:00 o'clock p.m., Monday, November 13, 1961.]

TWENTY-THIRD DAY

Monday, November 13, 1961, 8:00 o'clock p.m.

PROCEEDINGS

PRESIDENT NISBET: The convention will come to order, please.

Our invocation this evening will be given by the Reverend Paul Arnold, Pastor of the Mason Presbyterian Church in Mason.

REVEREND ARNOLD: Our heavenly Father, we come unto Thee this evening with renewed thanksgiving in our hearts for the bounties of life and the privileges of this land and of this state, and we come to ask Thy benediction upon this body and its concern for the welfare of the state in the future.

We pray that Thou wilt guide us. In the midst of the varied interests within our state, we are often in conflict with one another, because we, as people, are in conflict even within ourselves many times. We would pray that the compulsion that may be ours may be that inner compulsion for the welfare of every man. We are unable to realize this prayer in our own wisdom and strength, and we ask of Thee, who giveth to all men liberally when they ask, and we pray in the name of Him who manifested supremely the meaning of this inner compulsion to do the will of His heavenly Father for the welfare of all mankind. Amen.

PRESIDENT NISBET: The roll call will be taken by the secretary. All present please vote aye.

SECRETARY CHASE: Has everyone voted? The machine is now locked and you may release the voting lever.

Mr. President, a quorum of the convention is present.

Prior to today's session, the secretary received the following requests for leave:

Mr. Bledsoe called in this evening. He has been detained en route by adverse weather; Mr. Lundgren wishes to be excused from tonight's session. He ran into bad weather en route; and Mr. Brake asked to be granted indefinite leave because of illness.

PRESIDENT NISBET: Without objection, the requests are granted.

SECRETARY CHASE: Absent with leave: Mrs. Conklin, Messrs. Allen, Bledsoe, Brake, G. E. Brown, Figy, Garvin, Iverson, Lundgren, McCauley, Norris, Ostrow, Sterrett, Stevens and Yeager.

Absent without leave: Mr. Suzore.

PRESIDENT NISBET: Without objection, Mr. Suzore is excused.

PRESIDENT NISBET: Reports of standing committees.

SECRETARY CHASE: I have no reports on file, Mr. President.

PRESIDENT NISBET: Reports of select committees.

SECRETARY CHASE: None.

PRESIDENT NISBET: Communications from state officers.

SECRETARY CHASE: None

PRESIDENT NISBET: **Introduction, first reading and reference of proposals.**

SECRETARY CHASE: Mr. Norris introduces

Delegate Proposal 1216, A proposal to require equal protection of the laws for all persons and prohibiting discrimination in civil rights. Amends article II.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: Mr. Norris introduces

Delegate Proposal 1217, A proposal to amend article II, section 10, providing for security against unreasonable searches and seizures and interceptions.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: Messrs. Iverson, Leibrand, McAllister, Mosier, Pugsley and Prettie introduce

Delegate Proposal 1218, A proposal to group the 41 judicial circuits of Michigan into 7 judicial districts, numbered consecutively from 1 to 7, and to elect 3 justices of the supreme court from district number 1, which is judicial circuit number 3, Wayne county, and 1 from each of the other 6 districts. Amends article VII.

PRESIDENT NISBET: Referred to the committeee on judicial branch.

SECRETARY CHASE: Mr. Millard introduces

Delegate Proposal 1219, A proposal to guarantee all persons against discrimination in employment and wages on account of age. Amends article II.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: Mr. Hoxie introduces

Delegate Proposal 1220, A proposal to empower the legislature to provide by law for the imposition of specific taxes by counties, which shall be uniform within the counties upon which they operate. Amends article X.

PRESIDENT NISBET: Referred to the committee on finance and taxation.

SECRETARY CHASE: Mr. Hoxie introduces

Delegate Proposal 1221, A proposal to permit bills and resolutions to carry over to the next session upon adjournment of sessions held in odd numbered years. Amends article V, section 13.

PRESIDENT NISBET: Referred to the committee on legislative powers.

SECRETARY CHASE: That concludes the proposals, Mr. President.

PRESIDENT NISBET: Second reading of proposals.

SECRETARY CHASE: Nothing on that order, Mr. President.

PRESIDENT NISBET: Third reading of proposals.

SECRETARY CHASE: None.

PRESIDENT NISBET: **Motions and Resolutions.**

SECRETARY CHASE: Mr. McCauley and Miss McGowan offer

Resolution 34, A resolution regarding submission of the constitution to the people for ratification.

Following is the body of Resolution 34, as offered:

Resolved, That the constitution shall be submitted in entirety to the people of the state of Michigan for ratification, rather than in sections.

PRESIDENT NISBET: Referred to the committee on rules and resolutions.

SECRETARY CHASE: That is the only resolution on file, Mr. President.

PRESIDENT NISBET: Unfinished business.

SECRETARY CHASE: None.

PRESIDENT NISBET: Special orders of the day.

SECRETARY CHASE: None.

PRESIDENT NISBET: Mr. Perras.

MR. PERRAS: Mr. President, may I have your consent to make a brief statement?

PRESIDENT NISBET: Without objection, you may proceed.

MR. PERRAS: The other night, during our regular skirmishing over the public information department, my colleague, Mrs. Butler, rightfully expressed her concern over the fact that none of the convention employees is from the upper peninsula. As a representative of that remote and ofttimes overlooked appendage of the state of Michigan, I share Mrs. Butler's concern.

However, as a member of the committee on administration, I feel compelled to point out certain facts. Of the hundreds of

applications for employment received by the committee on administration, only one was from a resident of the upper peninsula. And, unfortunately, that lone applicant did not measure up to the requirements of the position applied for.

I think the lack of U. P. applications is understandable. Convention employment is temporary, and the upper peninsula is a long way away. However, I want to assure Mrs. Butler that the upper peninsula had a vigilant watchdog on the administration committee to safeguard the interests of that fair part of our state. And had there been any qualified U.P. applicants, you may rest assured they would be holding down staff positions today.

PRESIDENT NISBET: Thank you.

Announcements.

SECRETARY CHASE: The following committee meeting announcements:

The committee on public information will meet in the conference room next to the president's office this evening immediately after the session. Ink White, chairman.

The committee on rules and resolutions will meet this evening immediately after the session in room I.

The following announcements are for tomorrow:

The committee on executive branch, which usually meets in room C, will meet, instead, in parlors A, B, C, and D, off corridor A at the north end of the civic auditorium, tomorrow at 10:30 a.m.

The committee on legislative organization will meet immediately after the session tomorrow in room D. Mr. John Huss and other representatives of the Michigan municipal league are scheduled to appear.

The committee on judicial branch will meet in room B at 10:30 in the morning. Appearance and presentation of Noel P. Fox, circuit judge, chairman of the constitutional convention citizens advisory committee, judiciary department.

The committee on local government will meet at 10:30 tomorrow morning in room A. Appearance and presentation of Dr. Arthur W. Bromage, head of the political science department of the University of Michigan, on problems of local government, exclusive of metropolitan areas.

The committee on miscellaneous provisions and schedule will meet tomorrow morning at 10:30 in room G, corporation subcommittee.

The committee on declaration of rights, suffrage and elections will meet tomorrow morning in room F at 8:30. General review of the declaration of rights by Dr. Kelly.

The committee on finance and taxation will meet tomorrow morning at 8:30 in room E. The appearance and presentation of Harry Hall of the state chamber of commerce, and Bernard N. Ward, CPA, Bay City.

The committee on executive branch, already announced, has a change of meeting place tomorrow morning: parlors A, B, C, and D at the north end of the building, appearance and presentation of former Governor Williams.

The committee on education will meet tomorrow morning in room J at 8:30. The appearance and presentation of Mr. Clyde Campbell, executive secretary of the Michigan association of school administrators, and several others.

The committee on legislative powers has 4 subcommittee meetings scheduled as follows:

Subcommittee 1 will meet in room H at 3:00 o'clock, Richard D. Kuhn, subcommittee chairman; subcommittee 2 of the committee on legislative powers will meet in room K tomorrow at 3:00 p.m. Stanley M. Powell, subcommittee chairman; subcommittee 3 of the committee on legislative powers will meet in room H tomorrow at 3:00 o'clock. Claude L. Wood, subcommittee chairman; and subcommittee 4 of the committee on legislative powers will meet in room H tomorrow at 3:00 o'clock. Frank G. Millard, subcommittee chairman.

The committee on miscellaneous provisions and schedule will meet at 3:00 o'clock tomorrow or immediately after the session in room G.

There is a public hearing scheduled for Wednesday, November 15, by the committee on education, in the main auditorium of the Kellogg center at Michigan State University from 4:15 to 6:15 p.m.

The following announcements of general interest to the delegates:

All of the telephones on the switchboard here have now been connected by direct lines to the capitol switchboard, so that if you want to place a call to Detroit over the state leased lines, or to reach anyone on the capitol telephone exchange, all you need do is ask the switchboard operator here for the capitol operator, then give your request.

An announcement was made last Thursday in regard to license plates for the delegates. This is being arranged through the courtesy of Secretary of State James Hare, and you may obtain the necessary forms and other information from Mr. Apol, the administrative assistant to the president.

The Ingham county medical society has provided a well equipped first aid facility which will be located in the west end of corridor A. Available for your needs will be a registered nurse, the daughter of Dr. Cummings of the state health department.

The secretary sometime ago received from the Virginia commission on constitutional government, which is an official agency of the commonwealth of Virginia, created by act of the Virginia legislature to assemble, publish and distribute material relating to the state and federal relationship, with particular emphasis on material upholding the reserved powers of the state mailed out a little pamphlet called Socdolager! A Tale of Davy Crockett. After the president read this, he enjoyed it and appreciated it so much, he suggested that we obtain copies. In your mailboxes tomorrow you will each receive one of these.

We have the following requests for leaves of absence from the session: Mr. Bonisteel requests to be excused from the session of Wednesday of this week to attend a directors' meeting; Mr. Perras wishes to be excused from the meetings of November 20, 21, and 22 due to prior commitments; Mr. Goebel requests to be excused from the sessions of November 15, 16, and 17; Miss Hart requests to be excused from the session of tomorrow. It is necessary for her to attend a white house conference in Detroit; Mr. Anspach requests leave to be excused from the sessions of Monday evening, November 20, and November 27, in order to keep previous speaking engagements; and Mr. Norris has filed a request to be excused from the sessions of Monday, November 20, and November 27.

PRESIDENT NISBET: Without objection, those requests will be granted. Hearing none, they are.

SECRETARY CHASE: That is all the items on the secretary's desk, Mr. President.

PRESIDENT NISBET: Are there any other announcements? If not, the Chair recognizes Miss Andrus.

MISS ANDRUS: I didn't think it would come so soon, Mr. President. I move that we adjourn.

PRESIDENT NISBET: The question is on adjournment. All in favor say aye. Opposed, no.

We are adjourned until tomorrow at 2:00 o'clock.

[Whereupon, at 8:20 o'clock p.m., the convention adjourned until 2:00 o'clock p.m., Tuesday, November 14, 1961.]

TWENTY-FOURTH DAY

Tuesday, November 14, 1961, 2:00 o'clock p.m.

PROCEEDINGS

PRESIDENT NISBET: The convention will please come to order.

Our invocation today will be given by the Reverend Bruce Huffer, Pastor of the First Baptist Church of Lansing.

REVEREND HUFFER: Our heavenly Father, we thank Thee for the privilege that is ours to live in this country, to be a part of it. We ask Thy blessing to rest upon the deliberations this afternoon that we might always keep in mind the presence of almighty God in the universe that we live and share in, and that we might be conscious too of the needs of our neighbors and friends whom we represent. Guide and direct and use each one of us as servants of Thine, for this we would ask in Jesus' name. Amen.

PRESIDENT NISBET: The roll call will be taken by the secretary. All present, please vote aye.

SECRETARY CHASE: Has everyone voted? The machine is now locked and you may return your voting levers to the neutral position.

Mr. President, a quorum of the convention is present.

Absent with leave: Miss Hart, Mrs. Hatcher, Messrs. Brake, Garvin, McCauley and Murphy.

Absent without leave: None.

PRESIDENT NISBET: Reports of standing committees.

SECRETARY CHASE: None.

PRESIDENT NISBET: Reports of select committees.

SECRETARY CHASE: None.

PRESIDENT NISBET: Communications from state officers.

SECRETARY CHASE: None.

PRESIDENT NISBET: Introduction, first reading and reference of proposals.

SECRETARY CHASE: Mr. Powell introduces

Delegate Proposal 1222, A proposal to amend article III, section 4, to include millage increases in provisions covering elections on direct expenditures and bond issues.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: Mr. Faxon introduces

Delegate Proposal 1223, A proposal to enlarge state board of canvassers to 8 members subject to the approval of the senate. Amends article III, section 9.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: Mr. Austin introduces

Delegate Proposal 1224, A proposal to permit full participation by electors in votes involving the direct expenditure of public money. Amends article III by deleting section 4.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: Messrs. T. S. Brown, Douglas, Downs, Follo, Ford, Marshall, Snyder, Stopczynski and Miss Hart introduce

Delegate Proposal 1225, A proposal to grant the credit of the state, up to $50 million, for the aid of public benefit corporations. Amends article X by adding a new section 29.

PRESIDENT NISBET: Referred to the committee on finance and taxation.

SECRETARY CHASE: Messrs. Austin, Barthwell, T. S. Brown, Downs, Ford, Hodges, Snyder, Stopczynski and Miss Hart introduce

Delegate Proposal 1226, A proposal to empower the governor to make appointments subject to veto by 2/3 of the members of the senate and house within 60 legislative days. Amends article VI, section 10.

PRESIDENT NISBET: Referred to the committee on executive branch.

SECRETARY CHASE: Messrs. Barthwell, Downs, Marshall, Snyder, Stopczynski and Mrs. Daisy Elliott introduce

Delegate Proposal 1227, A proposal to provide that no state senatorial district shall be created unless it contain 3 per cent of the population of the state. Amends article V, section 2.

PRESIDENT NISBET: Referred to the committee on legislative organization.

SECRETARY CHASE: Messrs. T. S. Brown, Downs, Hodges, Hood, Marshall, Snyder, Stopczynski, Walker, Mrs. Daisy Elliott and Miss Hart introduce

Delegate Proposal 1228, A proposal to empower the governor to appoint all members of executive boards, commissions and agencies without senate confirmation. Amends article VI, section 10.

PRESIDENT NISBET: Referred to the committee on executive branch.

SECRETARY CHASE: Messrs. Downs, Ford, Hood, Marshall, Snyder, Stopczynski and Mrs. Daisy Elliott introduce

Delegate Proposal 1229, A proposal to provide that no representative district shall be created unless it contains 1 per cent of the population of the state. Amends article V, section 3.

PRESIDENT NISBET: Referred to the committee on legislative organization.

SECRETARY CHASE: Messrs. Austin, Douglas, Downs, Follo, Ford, Hood and Walker introduce.

Delegate Proposal 1230, A proposal to provide that a constitutional amendment may be initiated by a petition containing 100,000 signatures only. Amends article XVII, section 2.

PRESIDENT NISBET: Referred to the committee on miscellaneous provisions and schedule.

SECRETARY CHASE: Messrs. T. S. Brown, Downs, Ford, Hood and Walker introduce

Delegate Proposal 1231, A proposal to permit legislation to be initiated with 75,000 signatures. Amends article V, section 1.

PRESIDENT NISBET: Referred to the committee on legislative powers.

SECRETARY CHASE: Messrs. Austin, Barthwell, Douglas, Downs, Hood, Norris, Snyder, Stopczynski, Walker, Mrs Daisy Elliott and Miss Hart introduce

Delegate Proposal 1232, A proposal to guarantee to every citizen of Michigan an equal opportunity to vote and to have his vote counted equally, regardless of race, creed, color, national origin or geographical location. Amends article II.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: Messrs. Downs, Hood, Marshall, Snyder, Stopczynski and Mrs. Daisy Elliott introduce

Delegate Proposal 1233, A proposal to provide that each representative district shall be of equal population. Amends article V, section 3.

PRESIDENT NISBET: Referred to the committee on legislative organization.

SECRETARY CHASE: Mrs. Daisy Elliott introduces

Delegate Proposal 1234, A proposal relative to unreasonable search and seizure and interceptions, amending article II, section 10, prohibiting the interception of telephone, telegraph and electronic communications, and making evidence obtained in violation of the section as amended inadmissible. Replaces Delegate Proposal 1059.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: Messrs. Durst, King and Sterrett introduce

Delegate Proposal 1235, A proposal to exempt certain positions from civil service, provide for unclassified policymaking positions, guarantee equality in appointments and promotions, and to appropriate 1 per cent of annual payroll to civil service commission. Amends article VI, section 22.

PRESIDENT NISBET: Referred to the committee on executive branch.

SECRETARY CHASE: Messrs. Farnsworth and Hutchinson introduce

Delegate Proposal 1236, A proposal to retain the 15 mill limitation of taxes assessed against property. Amends article X, section 21.

PRESIDENT NISBET: Referred to the committee on finance and taxation.

SECRETARY CHASE: Messrs. Iverson, Gust and Mosier introduce

Delegate Proposal 1237, A proposal to authorize placing of state funds in institutions, the accounts of which are insured by the federal government. Amends article X, section 13.

PRESIDENT NISBET: Referred to the committee on finance and taxation.

SECRETARY CHASE: Mr. Sleder introduces

Delegate Proposal 1238, A proposal providing for a 20 mill limitation on property taxes, and for the imposition of said taxes in specified proportions by local government units. Amends article X, section 21.

PRESIDENT NISBET: Referred to the committee on finance and taxation.

SECRETARY CHASE: Mr. Sleder introduces

Delegate Proposal 1239, A proposal to provide for public hearings on all budgets established by local subdivisions of the state. Amends article X by adding a new section.

PRESIDENT NISBET: Referred to the committee on finance and taxation.

SECRETARY CHASE: Messrs. Downs, Ford, Hood, Marshall, Snyder, Stopczynski and Mrs. Daisy Elliott introduce

Delegate Proposal 1240, A proposal to provide that each congressional district shall have at least 5 per cent of the population of the state. Amends article V by adding a new section.

PRESIDENT NISBET: Referred to the committee on legislative powers.

SECRETARY CHASE: Messrs. Barthwell, Downs, Marshall, Snyder, Stopczynski and Mrs. Daisy Elliott introduce

Delegate Proposal 1241, A proposal to provide that no senate district shall contain less than 140,000 persons or more than 144,000 persons. Amends article V, section 2.

PRESIDENT NISBET: Referred to the committee on legislative organization.

SECRETARY CHASE: Messrs. Downs, Ford, Hood, Marshall, Snyder, Stopczynski and Mrs. Daisy Elliott introduce

Delegate Proposal 1242, A proposal to provide that no representative district shall contain less than 70,000 persons or more than 72,500 persons. Amends article V, section 3.

PRESIDENT NISBET: Referred to the committee on legislative organization.

SECRETARY CHASE: Messrs. Barthwell, Downs, Marshall, Snyder, Stopczynski and Mrs. Daisy Elliott introduce

Delegate Proposal 1243, A proposal to provide that each state senatorial district shall be of equal population. Amends article V, section 2.

PRESIDENT NISBET: Referred to the committee on legislative organization.

SECRETARY CHASE: Mr. Norris introduces

Delegate Proposal 1244, A proposal to permit persons to petition all departments and subdivisions of the government and not merely the legislature. Amends article II, section 2.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: Mr. Nord introduces

Delegate Proposal 1245, A proposal regarding the organization of the legislature consisting of a senate only and the means of apportionment. Amends article V, sections 2, 3 and 4.

PRESIDENT NISBET: Referred to the committee on legislative organization.

SECRETARY CHASE: Mr. Kuhn introduces

Delegate Proposal 1246, A proposal to retain article IV, section 1 on the departments of government unchanged.

PRESIDENT NISBET: Referred to the committee on miscellaneous provisions and schedule.

SECRETARY CHASE: Mr. Kuhn introduces

Delegate Proposal 1247, A proposal to provide a method of nomination for incumbent supreme court justices and to establish qualifications for nominations for supreme court justices. Amends article VII, section 23.

PRESIDENT NISBET: Referred to the committee on judicial branch.

SECRETARY CHASE: Mr. Kuhn introduces

Delegate Proposal 1248, A proposal to prohibit ballot designations except for judicial officers. Amends article III, section 7.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: Mr. Kuhn introduces

Delegate Proposal 1249, A proposal to provide for a presidential primary and to bind delegates to observe the results for at least the first ballot. Amends article III.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: Messrs. Downs, Ford, Hood, Marshall, Snyder, Stopczynski and Mrs. Daisy Elliott introduce

Delegate Proposal 1250, A proposal to provide that no congressional district shall be created which shall have more or less population than any other congressional district. Amends article V by adding a new section.

PRESIDENT NISBET: Referred to the committee on legislative powers.

Second reading of proposals.

SECRETARY CHASE: Nothing on that calendar, Mr. President.

PRESIDENT NISBET: Third reading of proposals.

SECRETARY CHASE: Nothing on that calendar.

PRESIDENT NISBET: Motions and resolutions.

SECRETARY CHASE: There are no resolutions on file.

PRESIDENT NISBET: Mrs. Butler.

MRS. BUTLER: Mr. President, today, in talking to a number of our delegates, we noticed that most of us are not wearing our badges. I think this is because we have become familiar with each other.

It was the consensus that a number of the guests and visitors to the constitutional convention might like to know who the delegates are, and it was suggested that a request be made by the president that we wear our badges while we are at the constitutional convention.

PRESIDENT NISBET: Thank you, Mrs. Butler. That is a very fine suggestion. I think it would be well if we all did it, and if any of you have had your badges broken, please refer them to Mr. Apol. Thank you, Mrs. Butler.

Unfinished business.

SECRETARY CHASE: None.

PRESIDENT NISBET: Special orders of the day.

SECRETARY CHASE: None.

PRESIDENT NISBET: General orders of the day.

SECRETARY CHASE: Nothing on that calendar.

PRESIDENT NISBET: Announcements.

SECRETARY CHASE: The committee on administration will meet in the conference room of the president's office immediately after today's session. Walter DeVries, chairman.

PRESIDENT NISBET: Mr. Pollock.

MR. POLLOCK: I notice a typographical error on the composite calendar report for today, which had the committee on declaration of rights, suffrage and elections, the appearance of delegates on proposal regarding article I. It should be article II, declaration of rights.

PRESIDENT NISBET: Please note the correction. Thank you, Dr. Pollock.

SECRETARY CHASE: The committee on legislative organization will meet immediately after the session today in room D. Mr. John Huss and other representatives of the Michigan municipal league will be present.

The committee on legislative powers will meet at 3:00 o'clock or immediately after the session today, subcommittee 2, in room K, on Delegate Proposals 1131 and 1160, sponsored by Mrs. Daisy Elliott and Mr. Wanger, respectively. Subcommittees 1, 3 and 4 in room H will meet to discuss assignment.

The committee on miscellaneous provisions and schedule

will meet at 3:00 o'clock or immediately after the session in room G.

Tomorrow, Wednesday, the committee on executive branch will meet at 8:30 a.m. in room C. Dr. Pollock will present an analysis of the questions on which committee decisions will be required.

The committee on judicial branch will meet at 8:30 a.m. in room B.

The committee on local government will meet at 8:30 a.m. in room A. Committee discussion concerning article VIII, sections 23 through 28.

In room A, also, the committee on local government will meet tomorrow evening at 7:30 for a complete discussion of article VIII.

The committee on legislative organization will meet at 10:30 a.m. tomorrow in room H. Full committee meeting to hear subcommittee reports.

PRESIDENT NISBET: Dr. Hannah.

MR. J. A. HANNAH: I apologize for the problems we seem to have in getting this calendar straight. The committee on legislative organization will meet at 10:30 a.m. That part is correct, but it is in room D. Tomorrow we are going to have appear before us Mr. Apol, Mr. Montgomery and Mr. Carroll, to give us some information as to why it is important—if it is important—to stick to county lines in apportionment of the legislature; and also Delegate Downs will appear before the committee.

SECRETARY CHASE: The committee on miscellaneous provisions and schedule will meet at 10:30 a.m. tomorrow, subcommittee on boundaries, and the subcommittee on eminent domain, in room G. The speaker will be Mr. Saul Greenfield, author of the con con preparatory commission report on this same topic.

The committee on finance and taxation will meet tomorrow immediately after the session in room E. Appearance and presentation of Commissioner Mackie of the highway department.

The committee on declaration of rights, suffrage and elections will meet immediately after the session tomorrow in room F. Appearance of delegates on proposals referred to this committee regarding article II of the declaration of rights.

A notice of a public hearing: committee on education will hold a series of open hearings in the main auditorium of the Kellogg center at Michigan State University on Wednesday, tomorrow, from 4:15 to 6:15 p.m. The request has been made that notice be given that all committee meetings at all times are open to the public.

One other request for announcements: There have been some inconveniences occasioned by the fact that delegates have neglected to hang their coats and hats in the cloakroom according to their seat numbers. If you would observe the seat number and file your coats and hats accordingly, those who were inconvenienced would be most pleased.

We have the following requests for leaves of absence:

Mr. Krolikowski requests leave to be excused from the session of tomorrow, November 15; Mr. Radka requests to be excused from the Wednesday and Thursday sessions of this week; and Mr. Romney asks to be excused on Thursday, November 16, for a company board of directors' meeting.

PRESIDENT NISBET: Without objection, they will be excused.

Mr. Lesinski.

MR. LESINSKI: Mr. President, the proposals given to us for signing have been mixed up. First of all, the proposal I had was in someone else's mailbox. Secondly, the first 5 sheets were my proposal, the one on the blue sheet was another proposal.

PRESIDENT NISBET: Mr. Lesinski, after adjournment will you please come up here and we will see if we can get it straightened out with the secretary.

Are there any other announcements?

Mr. Baginski.

MR. BAGINSKI: I move we adjourn.

PRESIDENT NISBET: The question is on adjournment. All in favor say aye. Opposed, nay.

The convention is adjourned until tomorrow at 2:00 o'clock.

[Whereupon, at 2:20 o'clock p.m., the convention adjourned until 2:00 o'clock p.m. Wednesday, November 15, 1961.]

TWENTY-FIFTH DAY

Wednesday, November 15, 1961, 2:00 o'clock p.m.

PROCEEDINGS

PRESIDENT NISBET: The convention will please come to order.

It is my pleasure today to have the pastor of my own church here to give the **invocation**; the Reverend Eugene Cotton, Pastor of the First Congregational Church of Fremont.

REVEREND COTTON: Will you pray with me?

Our heavenly Father, we do pause to offer unto Thee our thanksgiving; thankful, God, for the privilege of a freedom of the land in which we might gather together in seeking to serve Thy children.

Grant upon our hearts, we do ask of Thee, that we are Thy hands that labor, that we are Thy heart that feels, that we are Thy mind that seeks Thy wisdom. Permit us, our God, to do a service to our constituents, to Thy children, that our labors may not be in vain, that they might show forth Thy glory, Thy concern. For this, our God, and countless unspoken prayers of each of our hearts, we do ask in the name of Thy Son, our Lord, even Jesus Christ. Amen.

PRESIDENT NISBET: The **roll call** will be taken by the secretary. Those present, please vote aye.

SECRETARY CHASE: Have you all voted? The machine is now locked.

Mr. President, a quorum of the convention is present.

Prior to today's session, the secretary received the following requests for leave:

From today's session by Mr. Dean Doty; and a call from Mr. Seyferth asking to be excused from the sessions of today and tomorrow, as he was called away to Florida on urgent business.

PRESIDENT NISBET: Without objection, the requests are granted.

SECRETARY CHASE: Absent with leave: Messrs. Bonisteel, Brake, Dean Doty, Goebel, Haskill, Hoxie, Krolikowski, Radka and Seyferth.

Absent without leave: Mr. Romney.

PRESIDENT NISBET: Without objection, Mr. Romney is excused.

Mr. Danhof.

MR. DANHOF: I rise to speak to the convention on a matter which was brought before the committee on judicial branch this morning, and a matter which has appeared in the morning paper. The committee felt, and took a unanimous action, that a statement should be made in order to correct any erroneous impression which might have arisen.

In the Wednesday, November 15, 1961, issue of the Detroit Free Press the editorial appears as follows: "A high court bench chosen by district."

The opening paragraph reads:

> Supplementing other proposals for changing the method of electing state supreme justices, members of the constitutional convention judiciary committee have introduced a plan to elect the justices from districts.

In the second paragraph, one sentence reads as follows:

> The committee's plan includes the nonpartisan feature so strongly urged by Justice Eugene Black and discussed on this page Tuesday.

The committee on judicial branch wishes to make it absolutely clear that the plan or proposal introduced, to which the editorial refers, has not in any way been endorsed by the committee on judicial branch of the constitutional convention; that the committee has taken no action on any plan or proposal that has been introduced; and the committee objects to the use of the committee's designation, calling this the committee's plan.

In the order of business of this convention, the committee's plans will only be those which are reported from the actual committee after we have discussed all of the ideas and proposals.

I am not sure this was done intentionally, but we would point out that neither this plan nor any other plan has been approved by our committee, and we would hope in the future they refer to the specific proposal by the delegate's name or some other designation. Thank you, Mr. President.

PRESIDENT NISBET: Thank you, Mr. Danhof.

Reports of standing committees.

SECRETARY CHASE: The committee on administration, by Mr. DeVries, chairman, recommends to the president for consideration for a staff appointment Dr. Charles Adrian as research assistant. Walter DeVries, chairman.

PRESIDENT NISBET: The question is on the committee's report. Any discussion? If not, all in favor say aye. Opposed, no.

The recommendation is concurred in.

SECRETARY CHASE: **The president appoints,** pursuant to authorization by the convention, and with the approval of the committee on administration, the aforenamed person to the position indicated.

PRESIDENT NISBET: Without objection, the appointment is approved.

Any other committee reports?

SECRETARY CHASE: That is the only standing committee report.

PRESIDENT NISBET: Reports of select committees.

SECRETARY CHASE: None.

PRESIDENT NISBET: Communications from state officers.

SECRETARY CHASE: None.

PRESIDENT NISBET: **Introduction, first reading and reference of proposals.**

SECRETARY CHASE: Mr. Suzore introduces

Delegate Proposal 1251, A proposal to provide that local subdivisions may tax state owned realty and personalty being used for nonessential government functions. Amends article X by adding a new section.

PRESIDENT NISBET: Referred to the committee on finance and taxation.

SECRETARY CHASE: Messrs. Austin and Barthwell introduce

Delegate Proposal 1252, A proposal to allow the supreme court to render advisory opinions on tax legislation. Amends article VII.

PRESIDENT NISBET: Referred to the committee on judicial branch.

SECRETARY CHASE: Mr. Young introduces

Delegate Proposal 1253, A proposal to require that the votes cast by mechanical methods in any congressional, senatorial or representative district all be cast in the same manner. Amends article III, section 7.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: Mr. Young introduces

Delegate Proposal 1254, A proposal to provide that no appointments or promotions shall be denied in state civil service because of party, racial or religious consideration. Amends article VI, section 22.

PRESIDENT NISBET: Referred to the committee on executive branch.

SECRETARY CHASE: Mr. Powell introduces

Delegate Proposal 1255, A proposal pertaining to 15 mill limitation and method of making exceptions thereto by vote of property owner electors. Amends article X, section 21.

PRESIDENT NISBET: Referred to the committee on finance and taxation.

SECRETARY CHASE: Messrs. Gust and Yeager introduce **Delegate Proposal 1256,** A proposal to amend the preamble.

PRESIDENT NISBET: Referred to the committee on miscellaneous provisions and schedule.

SECRETARY CHASE: Messrs. Gust and Yeager introduce **Delegate Proposal 1257,** A proposal requiring legislative authorization for joint federal-state programs. Amends article X.

PRESIDENT NISBET: Referred to the committee on finance and taxation.

SECRETARY CHASE: Mr. Millard introduces **Delegate Proposal 1258,** A proposal to amend article VII, the judicial department, by providing for an 11 justice supreme court, a court of appeals, a court of domestic relations, and county courts of limited jurisdiction.

PRESIDENT NISBET: Referred to the committee on judicial branch.

SECRETARY CHASE: Mr. Kirk introduces **Delegate Proposal 1259,** A proposal to permit the legislature to increase but not decrease salaries of incumbent members of state boards and commissions and to permit county boards of supervisors to increase salaries of incumbent members of such boards. Amends article XVI, section 3.

PRESIDENT NISBET: Referred to the committee on miscellaneous provisions and schedule.

SECRETARY CHASE: Miss Donnelly and Mr. Mosier introduce **Delegate Proposal 1260,** A proposal to provide for a probate court in each county, the jurisdiction of such courts and power in the legislature to combine probate courts. Amends article VII, section 13.

PRESIDENT NISBET: Referred to the committee on judicial branch.

SECRETARY CHASE: Miss Donnelly and Mr. Mosier introduce **Delegate Proposal 1261,** A proposal to provide for the election of probate judges and for a 6 year term of office. Amends article VII, section 14.

PRESIDENT NISBET: Referred to the committee on judicial branch.

SECRETARY CHASE: Mr. Rajkovich introduces **Delegate Proposal 1262,** A proposal to retain article V, section 30, local or special acts; referendum.

PRESIDENT NISBET: Referred to the committee on legislative powers.

SECRETARY CHASE: Miss McGowan introduces **Delegate Proposal 1263,** A proposal to empower the legislature to create a family court.

PRESIDENT NISBET: Referred to the committee on legislative powers.

SECRETARY CHASE: That is all of the proposals, Mr. President.

PRESIDENT NISBET: Second reading of proposals.

SECRETARY CHASE: Nothing on that order.

PRESIDENT NISBET: Third reading of proposals.

SECRETARY CHASE: Nothing on that calendar.

PRESIDENT NISBET: **Motions and resolutions.**

SECRETARY CHASE: Messrs. Danhof and Ford, on behalf of the committee on judicial branch, offer **Resolution 35,** A resolution requesting authority and funds for the committee on judicial branch to hold hearings in the city of Detroit.

Following is the body of Resolution 35, as offered:

Whereas, The committee on judicial branch is engaged in the study of the problems confronting the judiciary of the state of Michigan; and

Whereas, The city of Detroit and the county of Wayne involve the largest and most complex court system in the state of Michigan; and

Whereas, There exists in the city of Detroit a system of courts not found in the remainder of the state of Michigan and whose problems must, of necessity, be given considerable study by the committee; and

Whereas, It is the unanimous opinion of the committee that it would be more advantageous to the committee, to the convention, to the people of the city of Detroit, to the county of Wayne and the surrounding metropolitan area, if an on the spot survey and examination were made; now therefore be it

Resolved, That the committee on judicial branch does herewith request the permission of the convention to hold committee hearings in the city of Detroit on or about the fifth day of December, 1961; and be it further

Resolved, That the convention appropriate the necessary funds to defray the costs of travel for the members of the committee and staff to and from Detroit and other expenses necessary and incidental to the holding of such hearings.

PRESIDENT NISBET: Referred to the committee on administration.

SECRETARY CHASE: Messrs. Perras, Stopczynski, Binkowski, Walker, Young, Austin, Lundgren, Upton, Leibrand and Dell offer **Resolution 36,** A resolution requesting authority and funds for the committee on finance and taxation to hold hearings in the upper peninsula at Ironwood and Marquette.

Following is the body of Resolution 36, as offered:

Whereas, Delegates Pellow and Perlich of the upper peninsula have introduced a proposal to add a new section to article X providing for the creation of an economic development council for the upper peninsula and the appropriation of 1 per cent of the total revenue for said council; and

Whereas, Many people concerned with the economic development of the upper peninsula have expressed an urgent desire to attend hearings of the finance and taxation committee; and

Whereas, The movers of this resolution believe that it is necessary to obtain the opinions of people from all over the state of Michigan including the upper peninsula; and

Whereas, The movers of this resolution believe that it is necessary for the finance and taxation committee to hold public hearings at Ironwood, Michigan or such other places as may appear desirable for the purpose of permitting people who are interested in the economic development of the upper peninsula to appear concerning the above mentioned proposal and for the further purpose of informing the people of the upper peninsula of the developments at the constitutional convention; and

Whereas, The rules of this convention require convention approval before a committee can conduct such a hearing at places other than Lansing; now therefore be it

Resolved, That the convention authorize the committee on finance and taxation to hold hearings at the places indicated and that the convention appropriate necessary funds to defray the cost of travel for not more than 15 members of the committee to and from the places indicated and other expenses necessary and incidental to the holding of such hearings.

PRESIDENT NISBET: Referred to the committee on administration.

SECRETARY CHASE: That is all of the motions or resolutions on file, Mr. President.

PRESIDENT NISBET: Mr. Lawrence.

MR. LAWRENCE: Mr. President, I move that when the convention adjourns on Thursday, November 16, 1961, that it stand adjourned until Monday, November 20, 1961.

PRESIDENT NISBET: The question is on the motion of Mr. Lawrence. Those in favor, say aye. Opposed, no.

The motion prevails.

Any further motions?

Unfinished business.

SECRETARY CHASE: None.

PRESIDENT NISBET: Special orders of the day.

SECRETARY CHASE: None.

PRESIDENT NISBET: General orders of the day.

SECRETARY CHASE: None.

PRESIDENT NISBET: Announcements.

SECRETARY CHASE: Mr. White has filed with the secre-

tary the list of the subcommittee assignments for the committee on public information, with a request that they be printed in the journal.

PRESIDENT NISBET: Without objection, they will be printed.

Following is the list of subcommittee assignments for the committee on public information, as submitted by the chairman:

Newspapers and Periodicals
- Edward Douglas, chairman
- S. Martin Tweedie
- Mrs. Anne Conklin

Radio and television
- Ray Plank, chairman
- Elmer Radka
- John T. Kelsey

Convention hall
- Mrs. Ella Koeze, chairman
- Edmond Lesinski
- Edward Douglas
- David Upton
- Miss Vera Andrus

Public hearings
- Bert Heideman, chairman
- Arthur Madar
- Mrs. Anne Conklin

Service to delegates
- Herbert Turner, chairman
- G. Keyes Page
- Frank Balcer

Speakers' bureau
- G. Keyes Page, chairman
- Claude Wood
- Wynne Garvin
- Mrs. Ella Koeze

Schools and colleges
- Miss Vera Andrus, chairman
- Jack Faxon
- Henrik Stafseth

Civic, labor, fraternal and community groups
- David Upton, chairman
- Frank Balcer
- S. Martin Tweedie
- Elmer Radka
- Mrs. Dorothy Judd

Government groups
- Henrik Stafseth, chairman
- Wynne Garvin
- Arthur Madar
- Herbert Turner

Documentary film
- Claude Wood, chairman
- Ray Plank
- John Kelsey
- Edmond Lesinski

Public opinion trends
- Mrs. Dorothy Judd, chairman
- Jack Faxon
- Bert Heideman

SECRETARY CHASE: The following announcements of committee meetings:

The committee on local government will meet in room A at 7:30 this evening for a complete discussion of article VIII.

The committee on finance and taxation will meet today immediately after the session in room E. The appearance and presentation of Commissioner John C. Mackie, Michigan state highway department.

The committee on declaration of rights, suffrage and elections will meet in room F immediately after the session. Appearance of delegates on proposals referred to this committee regarding article II, declaration of rights.

Notice of a public hearing this afternoon at the Kellogg center by the committee on education. The hearing will be from 4:15 to 6:15 p.m.

For tomorrow, the committee on legislative organization meets at 8:30 a.m.

The committee on legislative powers, subcommittee 2, will meet in room K at 8:30 a.m. to discuss Delegate Proposal 1072, Messrs. Madar and Youngblood. Subcommittees 1, 3 and 4 will meet at 8:30 in room H to discuss assignments.

The committee on education will meet at 10:30 a.m. tomorrow in room J.

The committee on finance and taxation will meet at 10:30 tomorrow morning in room A. Appearance and presentation of Howard E. Hill, managing director, Michigan state highway department; Clyde M. Campbell, Michigan association of school administrators; and 2 persons from Kalamazoo.

The committee on miscellaneous provisions and schedule will meet at 10:30 a.m. tomorrow. Subcommittees on amendment and revision, and schedule will meet in room G.

The subcommittee on civil service of the committee on executive branch will meet in room F tomorrow at 9:00 a.m. James K. Pollock, chairman.

The committee on declaration of rights, suffrage and elections will meet in room B this afternoon, after the session, and also at 10:30 tomorrow morning, on the north side of the building, corridor A. James K. Pollock, chairman.

The committee on judicial branch meets tomorrow at 3:00 o'clock or immediately after the session. The appearance and presentation of Judge Michael Carland, president, Michigan judges' association.

The committee on local government meets at 3:00 o'clock tomorrow, or immediately after the session, in room A. Dr. Louis L. Friedland, department of political science, Wayne State University.

The committee on administration will meet tomorrow, Thursday, at 1:00 o'clock. Walter DeVries, chairman.

I have the following announcements. The committee on administration, Dr. DeVries, chairman, requests the secretary to announce that all seats in the gallery are to be assigned on a first come, first served basis. Henceforth no seating will be reserved.

Another announcement of importance to the delegates: tomorrow morning at 8:00 o'clock, in the office of the secretary, you may obtain your mileage and compensation checks from the finance clerk.

The following requests for excuse from sessions: Mr. A. G. Elliott wishes to be excused from the session of tomorrow; Mr. Davis wishes to be excused from the session tomorrow due to a death in the family; Mr. Hodges requests to be excused from the Thursday session for personal business; Mr. Sharpe requests excuse from tomorrow's session.

Messrs. Pellow and Perlich request permission to be excused from the sessions of Monday, Tuesday and Wednesday, November 20, 21 and 22.

Mr. Dan Karn wishes to be excused from the session of next Tuesday, November 21, to attend a directors' meeting.

PRESIDENT NISBET: Without objection, they will be excused.

Mr. Bentley.

MR. BENTLEY: I would like to announce the witnesses for the hearings of the committee on education this afternoon at Kellogg center, as well as tomorrow morning. As the secretary said, we are holding the public hearing this afternoon, starting at approximately 4:00 p.m., in the main auditorium of Kellogg center. The first witness is Dr. John J. Lee, of Wayne State University, on behalf of the governor's commission on the employment of the handicapped. We have a variety of private witnesses for the balance of the afternoon.

We will also hold a further hearing in the same place this evening at 7:30 p.m. for the purpose of hearing Mr. Henry B. Linne, president, Michigan federation of teachers.

Tomorrow morning the committee on education will hold a hearing in committee room J, at 10:30 a.m., for the purpose of hearing Mr. Clair Taylor, former superintendent of public instruction; and State Representative Mr. Raymond C. Wurzel, chairman of the house committee on education. Thank you.

PRESIDENT NISBET: Mr. Figy.

MR. FIGY: Mr. President, the scheduled meeting for the

committee on local government for this evening has been cancelled.

PRESIDENT NISBET: Mr. DeVries.

MR. DeVRIES: The committee on administration would like the introducers of Resolutions 35 and 36 to testify in behalf of their resolutions before the committee tomorrow at 1:00 p.m.

PRESIDENT NISBET: Before we adjourn I would like to announce to our guests who are here today that it is their privilege to attend any of the committee meetings that are announced this afternoon or any other time while they are in Lansing.

This completes the business of the day.

Mr. Balcer.

MR. BALCER: Mr. President, I move we adjourn.

PRESIDENT NISBET: The question is on adjournment. All in favor say aye. Those opposed, no.

The motion prevails. We are adjourned until 2:00 o'clock tomorrow afternoon.

[Whereupon, at 2:20 o'clock p.m., the convention adjourned until 2:00 o'clock p.m. Thursday, November 16, 1961.]

TWENTY-SIXTH DAY

Thursday, November 16, 1961, 2:00 o'clock p.m.

PROCEEDINGS

PRESIDENT NISBET: The convention will please come to order.

Our invocation today will be given by the Reverend Marvin Zimmerman of the Mt. Hope Methodist Church of Lansing.

REVEREND ZIMMERMAN: Almighty God, our Father, we pause at this moment to give Thee thanks for life's many blessings. Surely Thou hast placed us in a good land. We are in great debt to those who have given to us a great heritage. Thy blessings upon our nation have been great because our forefathers sought to be obedient to Thy will. As this became known to them, they responded and received wisdom that far surpassed the thoughts of their day.

We pray for the leaders of our nation and of this great state that they, too, may seek Thy face and thereby acquire great wisdom. Grant that in the writing of this great document, a reflection of Thy will, Thy goodness, may be made known to all people. In Thy name we pray. Amen.

PRESIDENT NISBET: The roll call will be taken by the secretary. Those present please vote aye.

SECRETARY CHASE: Have you all voted? The voting machine is now locked and the vote will be recorded.

Mr. President, a quorum of the convention is present.

Prior to today's session, the secretary received the following request for leave:

Mr. Buback phoned in earlier today that due to the exceedingly heavy rain in Detroit he was unable to make it and asked to be excused from this session.

PRESIDENT NISBET: Without objection, the request is granted.

SECRETARY CHASE: Absent with leave: Messrs. Brake, Buback, Davis, A. G. Elliott, Goebel, Haskill, Hodges, Hoxie, Romney and Seyferth.

Absent without leave: None.

PRESIDENT NISBET: Reports of standing committees.

SECRETARY CHASE: The committee on administration, by Mr. DeVries, chairman, respectfully recommends to the president for consideration for appointment to the constitutional convention staff, Dr. Charles Press as research consultant.

Walter DeVries, chairman.

PRESIDENT NISBET: The question is on the committee report. Any discussion? If not, all in favor say aye. Opposed no.

The recommendation is concurred in.

SECRETARY CHASE: The president appoints, pursuant to authorization by the convention, and with the approval of the committee on administration, the aforenamed person to the position indicated.

PRESIDENT NISBET: Without objection, the appointment is approved.

SECRETARY CHASE: The committee on administration, by Mr. DeVries, chairman, recommends that delegates of this convention, who make trips on convention business, shall file individual expense accounts with the finance clerk in the secretary's office.

Walter DeVries, chairman.

PRESIDENT NISBET: Mr. DeVries.

MR. DeVRIES: Mr. President, this report advises the filing of individual expense accounts for authorized committee trips. This is necessary for your own records as well as the records of the convention. If you are making an authorized committee trip, I would suggest you file your individual expenses with Mrs. Tomlinson, the finance clerk in the secretary's office.

PRESIDENT NISBET: The question is on the committee report. Any discussion? If not, all in favor say aye. Opposed no.

The recomendation is concurred in.

SECRETARY CHASE: The committee on administration, by Mr. DeVries, chairman, reports back to the convention Resolution 35, A resolution requesting authority and funds for the committee on judicial branch to hold hearings in the city of Detroit; without amendment and with the recommendation that it be adopted.

Walter DeVries, chairman.

The following is the resolution:

A resolution requesting authority and funds for the committee on judicial branch to hold hearings in the city of Detroit.

Whereas, The committee on judicial branch is engaged in the study of the problems confronting the judiciary of the state of Michigan; and

Whereas, The city of Detroit and the county of Wayne involve the largest and most complex court system in the state of Michigan; and

Whereas, There exists in the city of Detroit a system of courts not found in the remainder of the state of Michigan and whose problems must, of necessity, be given considerable study by the committee; and

Whereas, It is the unanimous opinion of the committee that it would be more advantageous to the committee, to the convention, to the people of the city of Detroit, to the county of Wayne and the surrounding metropolitan area, if an on the spot survey and examination were made; now therefore be it

Resolved, That the committee on judicial branch does herewith request the permission of the convention to hold committee hearings in the city of Detroit on or about the fifth day of December, 1961; and be it further

Resolved, That the convention appropriate the necessary funds to defray the costs of travel for the members of the committee and staff to and from Detroit and other expenses necessary and incidental to the holding of such hearings.

PRESIDENT NISBET: Mr. DeVries.

MR. DeVRIES: Mr. President and fellow delegates, this resolution has the unanimous recommendation of the committee on judicial branch and the committee on administration. The committee recommends that morning and afternoon and, if necessary, evening meetings in Detroit be held, using the board of supervisors room in the city-county building of the city of Detroit. The purpose of the trip is to hear judges of the Wayne circuit and probate courts and other courts in the Wayne county area. The per man appropriation for the cost of the trip is $300. The committee on administration has now authorized $1,600 of its $31,000 appropriation for this purpose.

Mr. President, that concludes the report of the committee on administration.

PRESIDENT NISBET: The question is on the adoption of the resolution. Any discussion? If not, all in favor say aye. Opposed, no.

The resolution is adopted.

SECRETARY CHASE: The committee on legislative powers, by Mr. Millard, first vice chairman, reports back to the convention **Delegate Proposal 1159,** A proposal to amend article XII, section 4, providing an extension of stockholders' liability to all debts incurred on account of employment and to benefits of employment; with the recommendation that the proposal be referred to another committee.

Frank G. Millard, first vice chairman.

PRESIDENT NISBET: Without objection, this proposal will be referred to the committee on miscellaneous provisions and schedule.

SECRETARY CHASE: Also, the committee on legislative powers, by Mr. Millard, first vice chairman, reports back to the convention **Delegate Proposal 1180,** A proposal to amend article VI, section 19, president of the senate. Office of lieutenant governor, right of same to appoint committees; with the recommendation that the proposal be referred to another committee.

Frank G. Millard, first vice chairman.

PRESIDENT NISBET: Without objection, this proposal will be referred to the committee on executive branch.

SECRETARY CHASE: That completes the reports of standing committees, Mr. President.

PRESIDENT NISBET: Reports of select committees.

SECRETARY CHASE: None.

PRESIDENT NISBET: Communications from state officers.

SECRETARY CHASE: None.

PRESIDENT NISBET: **Introduction, first reading and reference of proposals.**

SECRETARY CHASE: Messrs. Follo, Sleder and Rajkovich introduce

Delegate Proposal 1264, A proposal to retain restriction on legislature in passing special or local acts, and to place certain other restrictions on legislation affecting local units of government. Amends article V, section 30.

PRESIDENT NISBET: Referred to the committee on legislative powers.

SECRETARY CHASE: Messrs. Follo and Rajkovich introduce

Delegate Proposal 1265, A proposal to provide for permissive county home rule. Amends article VIII by adding a new section.

PRESIDENT NISBET: Referred to the committee on local government.

SECRETARY CHASE: Messrs. Follo and Rajkovich introduce

Delegate Proposal 1266, A proposal for the organization, powers and government of counties. Amends article VIII by deleting sections 3, 4, 5, 7, 8 and 15, and inserting a new section.

PRESIDENT NISBET: Referred to the committee on local government.

SECRETARY CHASE: Mr. Upton introduces

Delegate Proposal 1267, A proposal to amend article VII, section 23, nonpartisan elections for judiciary by providing that incumbent elected judicial officers who are candidates for the same office shall have that designation on the ballot.

PRESIDENT NISBET: Referred to the committee on judicial branch.

SECRETARY CHASE: Mr. Douglas introduces

Delegate Proposal 1268, A proposal to retain article XIV, sections 3 and 4, but combine them into one section; providing for exemption of homesteads after death of owner.

PRESIDENT NISBET: Referred to the committee on legislative powers.

SECRETARY CHASE: Mr. McCauley and Miss McGowan introduce

Delegate Proposal 1269, A proposal for empowering the supreme court to furnish advisory opinions. Amends article VII.

PRESIDENT NISBET: Referred to the committee on judicial branch.

SECRETARY CHASE: Mr. Faxon introduces

Delegate Proposal 1270, A proposal to provide that persons elected or appointed to full time state or local offices shall not engage in private business pursuits. Amends article V.

PRESIDENT NISBET: Referred to the committee on legislative powers.

SECRETARY CHASE: Mr. Faxon introduces

Delegate Proposal 1271, A proposal to establish a constitution and law revision commission to be appointed by the governor as the legislature shall direct. Amends article V.

PRESIDENT NISBET: Referred to the committee on legislative powers.

SECRETARY CHASE: Mr. Faxon introduces

Delegate Proposal 1272, A proposal to provide that no member of the legislature shall engage in private business pursuits. Amends article V.

PRESIDENT NISBET: Referred to the committee on legislative powers.

SECRETARY CHASE: Messrs. Tubbs, Van Dusen and Ostrow introduce

Delegate Proposal 1273, A proposal to abolish the common law right of dower. Amends article XVI, section 8.

PRESIDENT NISBET: Referred to the committee on miscellaneous provisions and schedule.

SECRETARY CHASE: Messrs. Walker, Greene and Garvin introduce

Delegate Proposal 1274, A proposal to provide for minority reports of standing committees of the legislature upon a vote of 3 or more members. Amends article V by adding a new section.

PRESIDENT NISBET: Referred to the committee on legislative powers.

SECRETARY CHASE: Messrs. Walker, Greene and Garvin introduce

Delegate Proposal 1275, A proposal to provide that all standing committees of the legislature shall hold open meetings unless otherwise specifically provided by the legislature. Amends article V by adding a new section.

PRESIDENT NISBET: Referred to the committee on legislative powers.

SECRETARY CHASE: Messrs. Walker, Greene and Garvin introduce

Delegate Proposal 1276, A proposal to provide for recorded votes in standing legislative committees on the request of any one member. Amends article V by adding a new section.

PRESIDENT NISBET: Referred to the committee on legislative powers.

SECRETARY CHASE: Mr. Batchelor introduces

Delegate Proposal 1277, A proposal to provide an age limit of 30 for state senators and 25 for state representatives. Amends article V, section 5.

PRESIDENT NISBET: Referred to the committee on legislative powers.

SECRETARY CHASE: Mr. Davis introduces

Delegate Proposal 1278, A proposal specifically to empower the legislature to enact laws for the protection, conservation, regulation and development of natural resources. Amends article XVI.

PRESIDENT NISBET: Referred to the committee on miscellaneous provisions and schedule.

SECRETARY CHASE: Mr. Higgs introduces

Delegate Proposal 1279, A proposal to provide for the use of depositions in criminal cases in accordance with court rules. Amends article II, section 19.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: Mr. Lesinski introduces

Delegate Proposal 1280, A proposal to provide the boundaries of the state to accord with supreme court decisions and common understanding. Amends article I, section 1.

PRESIDENT NISBET: Referred to the committee on miscellaneous provisions and schedule.

Second reading of proposals.

SECRETARY CHASE: Nothing on that calendar.

PRESIDENT NISBET: Third reading of proposals.

SECRETARY CHASE: Nothing on that calendar.

PRESIDENT NISBET: **Motions and resolutions.**

SECRETARY CHASE: Messrs. Van Dusen, Hutchinson and Downs offer

Resolution 37, A resolution to amend rule 36 of the standing rules of the constitutional convention.

Following is the body of Resolution 37, as offered:

Resolved, That rule 36 of the standing rules of the constitutional convention be amended at the end thereof after "Day.", by inserting a new sentence to read as follows: "No committee proposal shall be considered by the committee of the whole until the third day following the day of its reference to the committee of the whole.".

PRESIDENT NISBET: Referred to the committee on rules and resolutions.

SECRETARY CHASE: Mrs. Daisy Elliott and Mr. Young offer

Resolution 38, A resolution requesting a public hearing on the rights of minorities.

Following is the body of Resolution 38, as offered:

Whereas, In view of the intense interest of residents of the Detroit metropolitan area in constitutional provisions affecting the rights of minorities; and

Whereas, In consideration of the numerous requests from constituents expressing interest in this subject and a desire to be heard; now therefore be it

Resolved, That such hearing be held preferably in Cobo hall, or some other suitable place of adequate capacity in order to guarantee the possibility of the maximum participation of interested citizens in the Detroit area and that the public be given sufficient notice.

PRESIDENT NISBET: Referred to the committee on administration.

SECRETARY CHASE: Messrs. King and Durst offer

Resolution 39, A resolution expressing sympathy and paying tribute to the memory of the Honorable Sam Rayburn, speaker of the United States house of representatives.

PRESIDENT NISBET: Mr. King.

MR. KING: Mr. President, I rise to request the unanimous consent of this convention to consider Resolution 39 at this time.

I should like to have the secretary, who was a personal acquaintance of the speaker, read the resolution at this time in order that we may consider it.

PRESIDENT NISBET: Without objection, unanimous consent is given.

SECRETARY CHASE: Resolution 39, A resolution expressing sympathy and paying tribute to the memory of the Honorable Sam Rayburn, speaker of the United States house of representatives.

Whereas, The assembled delegates of the constitutional convention of the state of Michigan have learned of the passing of the Honorable Sam Rayburn of Bonham, Texas, a member of the United States house of representatives for 48 years; and

Whereas, Mr. Rayburn has contributed immeasurably to the orderly growth of constitutional government in these United States of America by faithful and dedicated service to the democratic process, earning the respect of all persons by his capable service as Speaker of the House of Representatives of the United States congress during 9 congressional sessions; now therefore be it

Resolved, That this convention here assembled arise and express its deep regret by one minute of silent tribute to the memory of this great American, the Honorable Sam Rayburn.

PRESIDENT NISBET: The question is on the resolution. All in favor say aye.

The resolution is adopted. Will you therefore please stand for one minute as a tribute to this great American.

[Whereupon, for one minute the delegates stood in silent tribute.]

Unfinished business.

SECRETARY CHASE: None.

PRESIDENT NISBET: Special orders of the day.

SECRETARY CHASE: None.

PRESIDENT NISBET: General orders of the day.

SECRETARY CHASE: None.

PRESIDENT NISBET: Announcements.

SECRETARY CHASE: The following are notices of committee meetings in addition to those on the calendar:

The committee on administration will meet in room F, next Monday, November 20, at 7:00 o'clock p.m. Walter DeVries, chairman.

The committee on legislative powers will meet in room H on November 21, Tuesday, at 3:00 o'clock p.m., for a hearing with the chairman and the commissioners and other officials of the state liquor control commission. Frank G. Millard, vice chairman.

There are the following announcements that appear on the committee calendars for today:

The committee on executive branch will meet immediately after the session today in room C for the appearance and presentation of Senator Elmer Porter, chairman of the appropriations committee of the senate.

The committee on judicial branch will meet at 3:00 o'clock or immediately after the session today in room B for the appearance and presentation of Judge Michael Carland, the president of the Michigan judges' association.

The committee on local government will meet immediately after the session in room A, for appearance and presentation of Dr. Louis L. Friedland, department of political science of Wayne State University. Topic: the problems of local government in metropolitan areas.

The committee on education will meet at 4 o'clock Monday in room J for the appearance and presentation of Dr. Eugene B. Elliott, president of Eastern Michigan University.

The committee on executive branch is to meet Monday immediately after the session in Room C for the appearance and presentation of former Governor Murray D. Van Wagoner.

The committee on public information will meet next Monday immediately after the session in the conference room.

The committee on rules and resolutions will meet next Monday immediately after the session in room I, to consider pending resolutions.

Additional notice, or further information on the meeting of Tuesday, November 21: The committee on legislative organization will meet at 3:00 o'clock or immediately after the session for the appearance and presentation of Delegates Harold Norris, Glenn Allen, and Edward Hutchinson.

Also, on next Wednesday, November 29, the committee on education will hold a public hearing at the main auditorium of Kellogg center at Michigan State University, from 4:15 to 6:15 p.m. and from 7:30 to 9:00 p.m.

The president has asked that the following notice be given: Last week Mr. Norris suggested that effort be made to apprise the general public of their opportunity to participate through their suggestions in the convention. A news release is being issued today that suggests methods by which this can be accomplished. If any delegate would like a copy of the release, please see Ink White, the chairman of the public information committee.

There is a request from the sergeant at arms that when delegates know of school groups that are coming to visit the convention, please leave a note about it with the sergeant at arms so that he can make some preliminary arrangement for the visit of these students while they are here.

There are the following requests for leaves of absence: Mr. Donald Doty requests leave from the session of Monday, November 20, because of a township board meeting; Mr. Joseph Snyder asks to be excused from next Monday's session; and Mr. Mosier desires to be excused from the session of next Monday evening because of a speaking engagement.

PRESIDENT NISBET: Without objection, those requests will be granted.

SECRETARY CHASE: That is all the items on the secretary's desk, Mr. President.

PRESIDENT NISBET: Dr. Hannah.

MR. J. A. HANNAH: Mr. Chairman, I would like to announce that the committee on legislative organization decided to hold a public hearing on Tuesday evening, November 28, either in this building or in the state capitol, and if there are delegates who know of organizations that would like to make their appearance, we would appreciate it very much if you would leave the names of the organizations and the addresses so that we can get a formal invitation to them so that they may have an opportunity to be heard.

PRESIDENT NISBET: Are there any other announcements?

I might say for the delegates to the convention that at a meeting of committee chairmen this week a request was made to them to survey their committee to see if it would not be possible for them to report sections of their articles to the convention floor sometime during the month of December, so that we might get started on some of the discussion of these articles that could be handled by that time.

I would also like to say that the committee chairmen have been very cooperative in this. If any of them think it would be possible for them to do it, you will be given ample opportunity to know what articles or what sections will be presented, but right now, I think we can say we have every confidence that we will be able to get some of these substantive matters before the convention at least during the month of December.

I thought you ought to know that, because our committees have been working very diligently on their articles and their part of the constitution, we will not be forced to take the time from January first on debating some of these issues that can be handled before then. We are going to be very pressed for time anyway, when you consider the number of sections of the various articles that will need to come forth from the committees. So I think we ought to be very grateful to our committee chairmen and our committees if they could bring to us as much of these matters as possible before December.

Incidentally, I might say that there is every indication that when that times comes, we will be expected to meet the full 5 days of the week and it would not be at all surprising if we were to have evening sessions as well as afternoon sessions. I thought you would like to hear that before you go away for this weekend. (laughter)

Any other business before the convention? If not, Mr. Batchelor.

MR. BATCHELOR: Mr. President and fellow delegates, I move we adjourn.

PRESIDENT NISBET: The question is on adjournment. All in favor say aye. Opposed, no.

The convention is adjourned until Monday night at 8:00 o'clock.

[Whereupon, and in pursuance of the order previously made, at 2:25 o'clock p.m., the convention adjourned until 8:00 o'clock p.m., Monday, November 20, 1961.]

TWENTY-SEVENTH DAY

Monday, November 20, 1961, 8:00 o'clock p.m.

PROCEEDINGS

PRESIDENT NISBET: The convention will please come to order.

Our invocation this evening will be given by Rabbi Philip Frankel, Shaarey Zedek Congregation, of Lansing.

RABBI FRANKEL: Our God and God of our fathers, with hearts both grateful and reverent, we ask Thy favor in our gathering this evening. At this, the fall season of the year, we recall with genuine delight the spirit of our nation. We recall with genuine delight a national heritage for which we are grateful and thankful.

O heavenly Father, as we thank Thee for the blessings of the past, so make us aware of our responsibilities for tomorrow. Give us, we pray Thee, a portion of Thy wisdom in our deliberations and help us to create a world in which there will be more people who will be thankful and more things for which to be thankful. Amen.

PRESIDENT NISBET: The roll call will be taken by the secretary. Those present please vote aye.

SECRETARY CHASE: Has everyone voted?

The machine has now been locked and we will record the votes.

Mr. President, a quorum of the convention is present.

Prior to today's session, the secretary received the following requests for leave:

From the session of this evening, Messrs. Suzore and Seyferth.

We are also in receipt of a report from Sergeant Glenwist of the Lansing state police post, who said that Mr. Bledsoe was involved in an accident on Novi road going west and is at the Redford Community Hospital, condition unknown. The report at 6:15 reported that he was bleeding profusely from the mouth when he was removed from the car.

Prior to receiving this report, Mr. Baginski called that he had come through the expressway and had noted Mr. Bledsoe standing in the center of the pavement having been involved in this accident with a truck. He said he was apparently wanting and almost determined to come on ahead but, because of his bleeding condition, he insisted upon taking him to the hospital; so Mr. Baginski also asked to be excused from tonight's session.

PRESIDENT NISBET: Without objection, the requests are granted.

SECRETARY CHASE: Absent with leave: Messrs. Anspach, Baginski, Bledsoe, Donald Doty, Mosier, Norris, Pellow, Perlich, Perras, Sablich, Seyferth, Snyder and Suzore.

Absent without leave: Messrs. Allen and G. E. Brown.

PRESIDENT NISBET: Without objection, the delegates are excused.

Reports of standing committees.

SECRETARY CHASE: There are no standing committee reports.

PRESIDENT NISBET: Reports of select committees.

SECRETARY CHASE: None.

PRESIDENT NISBET: Communications from state officers.

SECRETARY CHASE: None.

PRESIDENT NISBET: Introduction, first reading and reference of proposals.

SECRETARY CHASE: Mrs. Daisy Elliott introduces

Delegate Proposal 1281, A proposal to provide for the creation of a port authority to provide facilities for the development of the Saint Lawrence seaway and distribution of rentals therefrom to colleges and universities.

PRESIDENT NISBET: Referred to the committee on legislative powers.

SECRETARY CHASE: Mrs. Cushman and Mr. Sleder introduce

Delegate Proposal 1282, A proposal to authorize intergovernmental contracts. Amends article VIII, by adding a new section.

PRESIDENT NISBET: Referred to the committee on local government.

SECRETARY CHASE: Mr. Allen, Mrs. Cushman, Mrs. Judd, and Messrs. Follo, Sleder, and Suzore introduce

Delegate Proposal 1283, A proposal to provide for the incorporation and government of cities and villages. Amends article VIII, sections 20, 21, 22, 23, 24 and 25.

PRESIDENT NISBET: Referred to the committee on local government.

SECRETARY CHASE: Mr. Faxon introduces

Delegate Proposal 1284, A proposal to provide for continuous annual session of the legislature. Amends article V, section 13.

PRESIDENT NISBET: Referred to the committee on legislative powers.

SECRETARY CHASE: Messrs. Bonisteel, Cudlip and Lawrence introduce

Delegate Proposal 1285, A proposal to establish a system for the selection and tenure of judges combining election and appointment from a panel of persons nominated by a judicial commission.

PRESIDENT NISBET: Referred to the committee on judicial branch.

SECRETARY CHASE: Messrs. Lawrence, Bonisteel, and Cudlip introduce

Delegate Proposal 1286, A proposal to amend article VII, judicial department, by providing for a unified court system, jurisdiction thereof, a 9 justice supreme court, a 9 judge court of appeals, circuit courts, and other courts of limited jurisdiction and other incidental matters.

PRESIDENT NISBET: Referred to the committee on judicial branch.

SECRETARY CHASE: Messrs. Cudlip, Bonisteel and Lawrence introduce

Delegate Proposal 1287, A proposal to establish a judicial department of government, to establish and define the jurisdiction of the courts, and to provide a means of selecting the judges and their terms and other matters incident thereto.

PRESIDENT NISBET: Referred to the committee on judicial branch.

SECRETARY CHASE: Messrs. Lawrence, Cudlip, and Bonisteel introduce

Delegate Proposal 1288, A proposal to amend article VII, the judicial department, by providing for an intermediate appellate court, county wide courts of common pleas, the supreme court the right to issue advisory opinions, nonpartisan election of justices and judges, and other incidental matters.

PRESIDENT NISBET: Referred to the committee on judicial branch.

SECRETARY CHASE: Messrs. Lawrence, Bonisteel and Cudlip introduce

Delegate Proposal 1289, A proposal pertaining to selection of judges, prescribing a system involving election, appointment, and tenure in office. Substitute for article VII, section 23.

PRESIDENT NISBET: Referred to the committee on judicial branch.

SECRETARY CHASE: Messrs. Ford, McCauley, Cudlip, T. S. Brown, Mahinske and Krolikowski introduce

Delegate Proposal 1290, A proposal to provide for the courts in the judicial system, preventing nonlawyers from exercising judicial power with an exception for incumbents, and requiring locally elected, local judges of local courts. Amends article VII, section 1.

PRESIDENT NISBET: Referred to the committee on judicial branch.

SECRETARY CHASE: Messrs. Ford, McCauley, Cudlip, Mahinske and Krolikowski introduce

Delegate Proposal 1291, A proposal to provide for a supreme court, the manner of election of the justices, its jurisdiction and powers, appointment of personnel. Amends article VII, sections 2 through 7, by providing for November elections and abolishing the term restrictions.

PRESIDENT NISBET: Referred to the committee on judicial branch.

SECRETARY CHASE: Messrs. Ford, McCauley, Cudlip, T. S. Brown, Mahinske and Krolikowski introduce

Delegate Proposal 1292, A proposal to provide for circuit courts, judicial circuits, the election of judges at November elections, for 8 year staggered terms, the salary of judges, the power and jurisdiction of said courts, filling vacancies and other incidental matters. Amends article VII, sections 8 thorugh 12.

PRESIDENT NISBET: Referred to the committee on judicial branch.

SECRETARY CHASE: Messrs. Ford, McCauley, Cudlip, T. S. Brown and Mahinske introduce

Delegate Proposal 1293, A proposal relating to the judiciary generally retaining sections 17 through 23 of article VII, except providing for the filling of vacancies for the unexpired term, permitting salaries of judicial officers to be increased but not decreased and providing for an automatic increase in judicial manpower based on population; and providing for ballot designation of incumbents. Amends article VII, sections 17 through 23.

PRESIDENT NISBET: Referred to the committee on judicial branch.

SECRETARY CHASE: Mr. Lesinski introduces

Delegate Proposal 1294, A proposal to provide for the prohibition of lotteries, but to permit bingo for certain charitable institutions under certain requirements. Amends article V, section 33.

PRESIDENT NISBET: Referred to the committee on legislative powers.

SECRETARY CHASE: Miss Hart and Messrs. Douglas, Liberato, Marshall, Barthwell, T. S. Brown, Faxon and Balcer introduce

Delegate Proposal 1295, A proposal to provide that the superintendent of public instruction shall have the power to supervise instruction in state institutions of correction, health, welfare. Amends article XI, section 2.

PRESIDENT NISBET: Referred to the committee on education.

SECRETARY CHASE: Messrs. Youngblood and Binkowski introduce

Delegate Proposal 1296, A proposal to guarantee the benefits of governmental pensions and retirement systems. Amends article XVI.

PRESIDENT NISBET: Referred to the committee on miscellaneous provisions and schedule.

SECRETARY CHASE: Mr. Faxon introduces

Delegate Proposal 1297, A proposal to require the superintendent of public instruction to survey educational facilities and determine if they are equal. Amends article XI.

PRESIDENT NISBET: Referred to the committee on education.

SECRETARY CHASE: Mr. Ostrow introduces

Delegate Proposal 1298, A proposal to empower the legislature to authorize the issuance of full faith and credit bonds. Amends article X, section 22.

PRESIDENT NISBET: Referred to the committee on finance and taxation.

SECRETARY CHASE: Mr. Faxon introduces

Delegate Proposal 1299, A proposal to authorize the legislature to make a general revision of the laws. Amends article V, section 40.

PRESIDENT NISBET: Referred to the committee on legislative powers.

SECRETARY CHASE: Mr. Wanger introduces

Delegate Proposal 1300, A proposal to enlarge and modify the prohibition against increasing the salaries of public officers during the term of their election or appointment. Amends article XVI, section 3.

PRESIDENT NISBET: Referred to the committee on miscellaneous provisions and schedule.

Second reading of proposals.

SECRETARY CHASE: Nothing on that calendar.

PRESIDENT NISBET: Third reading of proposals.

SECRETARY CHASE: Nothing.

PRESIDENT NISBET: **Motions and resolutions.**

SECRETARY CHASE: Mr. Faxon offers

Resolution 40, A resolution to amend rule 52 of the standing rules of the constitutional convention.

Following is the body of Resolution 40, as offered:

Resolved, That the sentence in rule 52 which reads "The effect of the previous question shall be to put an end to all debate and bring the convention to a direct vote upon the pending question or questions in their order down to and including the main question: Provided however, That when the previous question shall be ordered, amendments then on the secretary's desk shall be disposed of.", be amended by striking out "or questions in their order down to and including the main question". The amended sentence shall read: "The effect of the previous question shall be to put an end to all debate and bring the convention to a direct vote upon the pending question: Provided however, That when the previous question shall be ordered, amendments then on the secretary's desk shall be disposed of.".

PRESIDENT NISBET: Referred to the committee on rules and resolutions.

SECRETARY CHASE: Miss Hart and Mr. Downs offer

Resolution 41, A resolution concerning referral to committees and reporting by committees.

Following is the body of Resolution 41, as offered:

Whereas, The successful operation of the convention requires an orderly review of the existing constitution and a report to the voters of the action of the convention on each section of the present constitution; and

Whereas, The voters must constantly be kept aware of the final recommendations of the convention; now therefore be it

Resolved, The following procedure be followed:

1. The secretary shall place in the journal the article and section of each provision of the present constitution that has been referred to a substantive committee, with the name of the committee or committees to which such provision has been referred.

2. The president shall assign the preamble and any section of any article not so listed to a substantive committee or committees and the journal shall show such assignment.

3. Each committee shall report to the convention each section of each article referred to it in the following manner:

a. Continuation of such section and article unchanged.
b. Elimination of such article and section.
c. Revision of such article and section.

The recommended action and reasons therefor shall be submitted in writing and printed in the journal.

PRESIDENT NISBET: Referred to the committee on rules and resolutions.

SECRETARY CHASE: That's all the resolutions on file.

PRESIDENT NISBET: Unfinished business.

SECRETARY CHASE: None.

PRESIDENT NISBET: Special orders.

SECRETARY CHASE: None.

PRESIDENT NISBET: General orders.

SECRETARY CHASE: Nothing on that calendar.

PRESIDENT NISBET: Announcements.

SECRETARY CHASE: There have been filed with the

secretary the following notices on the composite calendar for this evening:

The committee on executive branch will meet immediately after the session this evening in room C, for the appearance and presentation of former Governor Murray D. Van Wagoner.

The committee on public information will meet immediately after the session this evening, and the meeting place has been changed from the conference room to room A.

The commitee on rules and resolutions will meet immediately after the session in room I to consider pending resolutions.

Tomorrow, Tuesday, the committee on education will meet at 8:30 a.m. in room J, for appearance and presentation of Dr. Foust, president of Central Michigan University; John Visser, the president of the Michigan association of community colleges; Phillip Gannon of the Michigan association of community colleges; William J. Atkinson, president of Jackson community college; Fred Eshleman, dean, Henry Ford community college; Preston Tanis, director of Northwestern Michigan community college, Traverse City.

The committee on declaration of rights, suffrage and elections will meet at 8:30 tomorrow morning in room D for appearance of delegates regarding proposals on article II, declaration of rights.

PRESIDENT NISBET: Mr. Pollock.

MR. POLLOCK: Mr. President, I merely wanted to say that at the last meeting of our committee we had asked the delegates to appear at 9:00. The committee time is all right, but we did ask the delegates who wanted to discuss their proposals to appear at 9:00.

SECRETARY CHASE: Thank you, Dr. Pollock.

The committee on executive branch will meet tomorrow morning at 10:30 in room C to hear those delegates wishing to be heard on Delegate Proposals 1020, 1023, 1043, 1045, 1061, 1063, 1087, 1088, 1101, 1102, 1106, 1110, 1136, 1154, 1170, 1172, 1188, 1226, and 1228. Delegates who have not already notified the committee clerk of their desire to be heard are asked to do so as soon as possible in order that appearances may be scheduled.

The committee on finance and taxation will meet tomorrow morning at 8:30 in room E.

The committee on judicial branch, tomorrow morning at 10:30 in room B, appearance and presentation of the Honorable Frederick T. Miles, the Honorable Philip H. Mitchell, and the Honorable Frank L. McAvinchey, probate judges' association.

Committee on local government, tomorrow morning at 10:30 in room A. The legal powers of local government will be discussed. Appearance and presentation of Professor Paul G. Kauper of the University of Michigan law school.

The committee on miscellaneous provisions and schedule will meet at 10:30 tomorrow morning, subcommittee on militia, in room G. Appearance and presentation of Mr. S. L. A. Marshall, Detroit News; and General Ronald D. McDonald, adjutant general.

The committee on legislative organization will meet tomorrow afternoon at 3:00 o'clock or immediately after the session in room D. Appearance and presentation of Delegates Norris and Hutchinson.

The committee on legislative powers will meet tomorrow afternoon at 3:00 o'clock or immediately after the session in room H. The chairman, commissioners, and other officials of the state liquor control commission will appear.

The other announcements have to do with the meetings later in the week.

There is a notice of a public hearing: the committee on legislative organization will hold an open hearing on Tuesday evening, November 28. Time and place to be announced. Please contact the legislative organization committee clerk, Mrs. Margery Archer, extension 117, if you would like to appear before the committee.

The committee on education will hold an open hearing in the main auditorium of Kellogg center at Michigan State University on Wednesday, November 29, from 4:15 p.m. to 6:15 p.m. and from 7:30 p.m. to 9:00 p.m.

The following additional announcements are on behalf of the committee on legislative powers:

The committee on legislative powers will meet in room H on November 28 at 3:00 o'clock p.m. for a hearing on article XIV, exemptions. T. Jefferson Hoxie, chairman.

The committee on legislative powers will also meet in room H on November 29 at 3:00 p.m. to hear Representative Arnell Engstrom, chairman of the ways and means committee of the house, and Mr. Sanford Brown, state treasurer, on Delegate Proposal 1085. Claude L. Wood, chairman of subcommittee 3. Mr. Hoxie, chairman.

The committee on legislative powers will meet in room H on November 29 at 10:30 in the morning for a hearing on Delegate Proposals 1072, 1131, 1171 and 1215. T. Jefferson Hoxie, chairman.

And there is the following request: If the delegates will leave their status booklets on their desks, their secretary will revise and bring them up to date, either this evening or the first thing tomorrow morning, and again at the end of this week's sessions.

I have the following requests for leaves of absence:

Mrs. Butler requests leave of absence from the session of Wednesday, November 22; Mr. Austin wishes to be excused from the session of Tuesday, tomorrow, to attend a community leadership conference in Detroit; Mr. Everett requests leave from the session of Wednesday, the twenty-second; Mr. Cudlip requests leave of absence from the sessions of November 27 and 28. The Wayne county circuit court has set for trial on these dates a suit in which he is a party; and Dr. Hannah asks to be excused from the sessions of Tuesday and Wednesday, November 21 and 22. He will be conducting a meeting of the federal commission on civil rights in Washington on Tuesday and conferring with the president and the attorney general on civil matters on Wednesday.

PRESIDENT NISBET: Without objection, the requests will be granted.

Mr. Bentley.

MR. BENTLEY: Mr. President, I submit the names of those members of the education committee who have been designated as traveling to the upper peninsula next week on December 1 and 2, for the purpose of public hearings in Marquette and Houghton. I request that the delegates so designated be excused from the session of December 1, that their names be considered as read, and ask that they be printed in the convention journal.

PRESIDENT NISBET: Without objection, they will be so considered. Hearing none, they are.

Following is the list of delegates excused at the request of Chairman Bentley:

Andrus, Vera (Miss)
Barthwell, Sidney
Bentley, Alvin M., chairman
Brown, Theodore S.
Conklin, Anne M. (Mrs.)
Douglas, Edward L.
Faxon, Jack
Follo, Charles L.
Hart, Adelaide J. (Miss) vice chairman
Heideman, Bert M.
Kuhn, Richard D.
Richards, Leslie W.

Miss Hart has indicated that there is a substantial interest on the part of delegates in the rapid reading course. I think you can all appreciate that . . . (laughter) This will be offered through the continuing education service of the Michigan State University. Plans are being completed to offer this course at a time and location convenient to delegates. Delegates who are interested will please contact Miss Hart.

We are very happy today to welcome back Mr. Brake from

a leave of absence due to illness. Hale, we are glad to have you back with us.

This completes the business of the convention for today. What is your pleasure?

Mr. Beaman.

MR. BEAMAN: Mr. President, I move we adjourn.

PRESIDENT NISBET: The question is on the motion for adjournment. All in favor say aye. Opposed, no.

The convention is adjourned until 2:00 o'clock tomorrow afternoon.

[Whereupon, at 8:25 o'clock p.m., the convention adjourned until 2:00 o'clock p.m., Tuesday, November 21, 1961.]

TWENTY-EIGHTH DAY

Tuesday, November 21, 1961, 2:00 o'clock p.m.

PROCEEDINGS

PRESIDENT NISBET: The convention will please come to order.

Our invocation today will be given by one of our own delegates, Mr. Stanley Powell. Will you please rise.

MR. POWELL: Let us join in prayer.

Our gracious heavenly Father, we pause at the threshold of this, our daily session, to voice our dependence on Thee for all that we are and have.

We thank Thee especially for our great heritage of freedom and opportunity. Give us the vision and wisdom to preserve these precious liberties for our fellow men and to pass them on, undiminished, to future generations.

We come to Thee today in a spirit of praise, of gratitude, and thanksgiving. We ask that Thy special blessing may be upon us.

Reduce our prejudices and our pettiness. Purify our motives and our aspirations. Clarify our vision and grant us a double portion of discretion, understanding, and wisdom. Help us to be ever true to our highest and most worthy principles. In the name of Thy dear Son, our Savior, we pray. Amen.

PRESIDENT NISBET: The roll call will be taken by the secretary. All present, please vote aye.

SECRETARY CHASE: Has everyone voted? If everyone has voted, the secretary will now lock the machine.

Mr. President, a quorum of the convention is present.

MR. NISBET: Mr. Ford.

MR. FORD: Mr. President, Delegate William Marshall, who is a regional representative on the civil defense organization and also a member of the state commission on civil defense, was called to Battle Creek this morning for a meeting, and he asked me to request that he be excused and I neglected to write this out as a written request.

PRESIDENT NISBET: Thank you, Mr. Ford. Without objection, he is excused.

SECRETARY CHASE: With reference to Delegate Bledsoe, the president's secretary called the hospital this morning and was informed that he is in fair condition. He is in the intensive care unit of the hospital in order to be watched closely. He is allowed no visitors or gifts at the present time.

PRESIDENT NISBET: Mr. Balcer.

MR. BALCER: I move that Mr. Bledsoe be granted an indefinite leave of absence.

PRESIDENT NISBET: Without objection, the motion prevails.

SECRETARY CHASE: Mr. Downs called in and informed the secretary that he would be in Detroit on business this morning. He will be detained until 2:15 or 2:30 p.m. and asks to be excused from the early part of the session.

PRESIDENT NISBET: Without objection, the request is granted.

Incidently, I might add this to Mr. Chase's announcement about Mr. Bledsoe: The 12:00 o'clock report was that he was still in the same condition in the intensive care unit and listed as fair.

SECRETARY CHASE: Absent with leave: Messrs. Austin, Bledsoe, Downs, J. A. Hannah, Karn, Marshall, Millard, Pellow, Perlich, Perras and Sablich.

Absent without leave: None.

PRESIDENT NISBET: **Reports of standing committees.**

SECRETARY CHASE: The committee on rules and resolutions, by Mr. Van Dusen, chairman, reports back to the convention **Resolution 37,** A resolution to amend rule 36 of the standing rules of the constitutional convention; without amendment and with the recommendation that the resolution be adopted.

Richard Van Dusen, chairman.

For Resolution 37 as offered, see above, page 296.

PRESIDENT NISBET: Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, I believe that under the rules as they exist an amendment to the standing rules of the constitutional convention may not be considered until it has been in the possession of the convention for 2 days. Therefore, it is not in order for us to consider it at this time, and I presume that we will get to it Monday evening in the ordinary course.

PRESIDENT NISBET: The resolution will be considered next Monday evening.

SECRETARY CHASE: That is the only standing committee report.

PRESIDENT NISBET: Reports of select committees.

SECRETARY CHASE: None.

PRESIDENT NISBET: Communications from state officers.

SECRETARY CHASE: None.

PRESIDENT NISBET: **Introduction, first reading and reference of proposals.**

SECRETARY CHASE: Mr. Page introduces **Delegate Proposal 1301,** A proposal to protect the right of the people pertaining to the sale, rental or leasing of property. Amends article II.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: Mr. W. F. Hanna introduces **Delegate Proposal 1302,** A proposal to provide for an annual state wide election, to be held on the first Tuesday of November of each year. Amends article III, section 1.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: Mr. W. F. Hanna introduces **Delegate Proposal 1303,** A proposal for the classification of counties and their incorporation as municipal corporations.

PRESIDENT NISBET: Referred to the committee on local government.

SECRETARY CHASE: Mr. W. F. Hanna introduces **Delegate Proposal 1304,** A proposal for incorporation by home rule charter of cities, townships, and villages as muncipal corporations and the classification of the same. Amends article VIII.

PRESIDENT NISBET: Referred to the committee on local government.

SECRETARY CHASE: Mr. Binkowski introduces

Delegate Proposal 1305, A proposal to provide that the oath of state officers shall be prescribed by law. Amends article XVI, section 2.

PRESIDENT NISBET: Referred to the committee on miscellaneous provisions and schedule.

SECRETARY CHASE: Messrs. Binkowski and Danhof introduce

Delegate Proposal 1306, A proposal to provide that the legislature shall pass liberal homestead laws. Amends article XIV, section 1.

PRESIDENT NISBET: Referred to the committee on legislative powers.

SECRETARY CHASE: Messrs. Erickson and Pollock introduce

Delegate Proposal 1307, A proposal to permit administrative and executive agencies to establish rules and for legislative review thereof. Amends article V by adding a new section.

PRESIDENT NISBET: Referred to the committee on legislative powers.

SECRETARY CHASE: Mr. Young introduces

Delegate Proposal 1308, A proposal to make election day, whether state or local, a holiday. Amends article III.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: Mr. A. G. Elliott introduces

Delegate Proposal 1309, A proposal to provide for the filling of judicial vacancies at the November general election following its occurrence and for interim appointments by the supreme court to fill vacancies until election. Amends article VII.

PRESIDENT NISBET: Referred to the committee on judicial branch.

SECRETARY CHASE: Mr. Allen introduces

Delegate Proposal 1310, A proposal to guarantee that benefits in employer retirement systems shall not be diminished. Amends article XVI.

PRESIDENT NISBET: Referred to the committee on miscellaneous provisions and schedule.

SECRETARY CHASE: Mrs. Hatcher, Messrs. Dade, Hood and Murphy introduce

Delegate Proposal 1311, A proposal to provide that there shall be no distinction of sex in state office. Amends article II.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: Mrs. Hatcher, Messrs. Dade, Hood and Murphy introduce

Delegate Proposal 1312, A proposal to provide that there shall be no discrimination of sex in any business or profession. Amends article II.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: Mrs. Hatcher, Messrs. Dade, Hood and Murphy introduce

Delegate Proposal 1313, A proposal to provide equal opportunity on housing, employment, education and civil rights. Amends article II.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: Mrs. Hatcher, Messrs. Dade, Hood and Murphy introduce

Delegate Proposal 1314, A proposal to provide that there shall be no discrimination in civil rights. Amends article II.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: Mrs. Hatcher, Messrs. Dade, Hood and Murphy introduce

Delegate Proposal 1315, A proposal to provide that laws which affect political rights shall make no distinction of sex. Amends article II.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: Mrs. Hatcher, Messrs. Dade, Hood and Murphy introduce

Delegate Proposal 1316, A proposal to provide that no distinction of sex shall be made in choosing juries. Amends article II.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: Mrs. Hatcher, Messrs. Dade, Hood and Murphy introduce

Delegate Proposal 1317, A proposal to provide that the legislature shall provide penalties for persons who shall abuse their duties while having care of persons in certain institutions. Amends article V.

PRESIDENT NISBET: Referred to the committee on legislative powers.

SECRETARY CHASE: Mr. Gust introduces

Delegate Proposal 1318, A proposal to state the right and duty of parents to educate their children. Amends article XI, section 1.

PRESIDENT NISBET: Referred to the committee on education.

SECRETARY CHASE: Mr. Gust introduces

Delegate Proposal 1319, A proposal to protect citizens in criminal matters from former jeopardy; to protect long time repentant and reformed citizens from prosecution and extradition; to limit conspiracy charges; to grant right of trial by jury before another judge for contempt of court. Amends article II, section 14.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: Mr. Gust introduces

Delegate Proposal 1320, A proposal to prohibit extra compensation of contractors and salaries of public officers, other than circuit judges except under certain circumstances. Amends article XVI, section 3.

PRESIDENT NISBET: Referred to the committee on miscellaneous provisions and schedule.

SECRETARY CHASE: Mr. Gust introduces

Delegate Proposal 1321, A proposal to enlarge the supreme court to 9 members. Amends article VII, section 2.

PRESIDENT NISBET: Referred to the committee on judicial branch.

SECRETARY CHASE: Mr. Gust introduces

Delegate Proposal 1322, A proposal to provide for continuity of government, elected successor to fill vacancy. Amends article XVI, section 5.

PRESIDENT NISBET: Referred to the committee on miscellaneous provisions and schedule.

SECRETARY CHASE: Mr. Gust introduces

Delegate Proposal 1323, A proposal to apply all fines assessed for any breach of penal laws to support of public libraries. Amends article XI, section 14.

PRESIDENT NISBET: Referred to the committee on education.

SECRETARY CHASE: Mr. Gust introduces

Delegate Proposal 1324, A proposal to authorize retired supreme and circuit judges to sit on the supreme court in certain instances; to require the court to overrule prior decisions on ruling with at least the same number of judges originally ruling; to declare decisions in effect over 16 years similar retrospective legislation and require repeal by the legislature [sic]; to guarantee the right of oral argument, and to require participation by the full court. Amends article VII, section 7.

PRESIDENT NISBET: Referred to the committee on judicial branch.

SECRETARY CHASE: Mr. Gust introduces

Delegate Proposal 1325, A proposal to provide that designation of political office shall not appear on ballots but that occupations shall appear to differentiate candidates with similar names. Amends article III.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: Messrs. Yeager and Stamm introduce

Delegate Proposal 1326, A proposal for gubernatorial appointment for life of justices of the supreme court with the advice and consent of the senate.

PRESIDENT NISBET: Referred to the committee on judicial branch.

SECRETARY CHASE: Messrs. Austin and Walker introduce

Delegate Proposal 1327, A proposal to remove the unnecessary restraint on the legislature to tax and to levy differential tax rates, and to remove administrative matter from the constitution. Amends article X by deleting sections 3, 4 and 7.

PRESIDENT NISBET: Referred to the committee on finance and taxation.

SECRETARY CHASE: Messrs. Austin and Walker introduce

Delegate Proposal 1328, A proposal to eliminate ambiguity and to remove unnnecessary and arbitrary limitations of the legislature's power to tax, particularly with respect to the property of certain public utilities. Amends article X by deleting section 5.

PRESIDENT NISBET: Referred to the committee on finance and taxation.

Second reading of proposals.

SECRETARY CHASE: Nothing on that order.

PRESIDENT NISBET: Third reading of proposals.

SECRETARY CHASE: None.

PRESIDENT NISBET: **Motions and resolutions.**

SECRETARY CHASE: Messrs. Erickson and Mahinske offer

Resolution 42, A resolution requesting public hearings in Detroit on the problems of eminent domain.

Following is the body of Resolution 42, as offered:

Whereas, In view of the intense interest of the residents of the Detroit metropolitan area in constitutional provisions affecting the power of eminent domain; and

Whereas, There is in the Detroit metropolitan area a large number of public officials and attorneys who have great expertise in the area of eminent domain; and

Whereas, There have been numerous requests from these officials and attorneys and the public expressing interest in this subject and a desire to be heard; now therefore be it

Resolved, That hearings be held preferably in the veterans' memorial building in Detroit or in the city-county building in Detroit or in some other place of adequate capacity in order to guarantee the possibility of the maximum participation of interested citizens in the Detroit area and that the public be given sufficient notice; and be it further

Resolved, That the convention authorize the holding of this meeting in Detroit and that the convention appropriate the necessary funds to defray necessary and incidental expenses of such hearing.

PRESIDENT NISBET: Referred to the committee on administration.

SECRETARY CHASE: That is the only resolution on file, Mr. President.

PRESIDENT NISBET: Unfinished business.

SECRETARY CHASE: None.

PRESIDENT NISBET: Special orders.

SECRETARY CHASE: None.

PRESIDENT NISBET: General orders.

SECRETARY CHASE: None.

PRESIDENT NISBET: Announcements.

SECRETARY CHASE: I have notices about the following committee meetings today, Tuesday:

The committee on legislative organization will meet immediately after the session in room D for the appearance and presentation of Delegates Harold Norris and Edward Hutchinson.

The committee on legislative powers will meet immediately after the session in room H. The chairman, commissioners and other officials of the state liquor control commission will appear.

Meetings for tomorrow, Wednesday:

The committee on executive branch will meet at 8:30 a.m. tomorrow in room C. Mr. Ira Polley and Dr. James Miller will discuss responsibilities of the executive branch in the matter of budgeting and fiscal management.

The committee on judicial branch will meet tomorrow morning at 8:30 in room B. Appearance and presentation of Judge Murphy, the president of the municipal judges' association, and a spokesman from the circuit court commissioners' association.

The committee on miscellaneous provisions and schedule will meet at 9:30 tomorrow morning, subcommittee on eminent domain, in room G. Appearance of Delegate William Suzore on Proposal 1050, which was referred to this committee.

Notice of public hearings:

The committee on legislative organization of the convention will hold a hearing on Tuesday evening, November 28. The time and place will be announced. Please contact the legislative organization committee clerk, Mrs. Margery Archer, extension 117, if you wish to appear before the committee.

The committee on legislative powers will hold a public hearing in room H on Tuesday, November 28, at 3:00 o'clock or immediately after the session, for the purpose of discussing article XIV, exemptions.

The committee on education will hold an open hearing in the main auditorium of Kellogg center at Michigan State on Wednesday, November 29, from 4:15 to 6:15 p.m. and from 7:30 to 9:00 p.m.

The committee on legislative powers will hold a public hearing in room H on Wednesday, November 29, at 10:30 a.m., for the purpose of discussing Delegate Proposals 1072, 1131, 1171 and 1215.

PRESIDENT NISBET: There being a 3 hour deadline for the introduction of proposals, there has been a great deal to do by the convention with the convention meeting at 10:30 tomorrow morning.

All delegates who wish to file proposals for introduction tomorrow, please leave them in the secretary's office this afternoon or this evening. Dr. Knapp will be on duty for awhile this evening so that you may still file your proposals during the evening.

SECRETARY CHASE: I have the following requests for leaves of absence:

Mr. Haskill and Mrs. Judd would like to be excused from tomorrow's session, Wednesday, November 22.

PRESIDENT NISBET: Without objection, they will be excused.

SECRETARY CHASE: That is all of the items on the secretary's desk, Mr. President.

PRESIDENT NISBET: The apples on your desks today come from the Allen Rush farm through the courtesy of Delegate Rush. (applause)

Will you please remember that the dinner tonight at the Jack Tar hotel will be held at 6:30?

Mr. Bentley.

MR. BENTLEY: Mr. President, I move that the convention stand adjourned.

PRESIDENT NISBET: The question is on adjournment. All in favor say aye. Opposed, no.

The convention is adjourned until 10:30 tomorrow morning.

[Whereupon, and in pursuance of the order previously made, at 2:20 o'clock p.m., the convention adjourned until 10:30 o'clock a.m., Wednesday, November 22, 1961.]

TWENTY-NINTH DAY

Wednesday, November 22, 1961, 10:30 o'clock a.m.

PROCEEDINGS

PRESIDENT NISBET: The convention will please come to order.

Our invocation this morning is to be given by one of our own delegates, J. Burton Richards. Will you please rise?

MR. J. B. RICHARDS: O, God, our Father, creator of the universe, giver of every good and perfect gift, we bow humbly before Thee, thankful in our hearts for all of the blessings we have received, for all the goodness of this earth, for the privileges that we have in this country, for the opportunities that we have to serve Thee.

We pray that Thou wilt give us open minds and hearts—open to Thee that we may receive Thy will and do Thy will. Give us wisdom and knowledge, integrity, and courage that we may go about our business here, that what we produce may be acceptable in Thy sight and before all men. Guide us and keep Thy strengthening hand on us as we go to our homes this week and protect us that we may enjoy our loved ones and come back to serve Thee. Amen.

PRESIDENT NISBET: The roll call will be taken by the secretary. All present please vote aye.

SECRETARY CHASE: Has everyone voted?

The secretary will lock the machine and take the record.

Mr. President, a quorum of the convention is present.

Prior to today's session, the secretary received the following requests for leave:

Mr. Romney has previously filed a request for leave of absence from today's session; and this morning Mr. Kuhn phoned in to announce that his wife had given birth to a 7 pound, 13 ounce girl and he wishes to be excused from today's session. (applause)

PRESIDENT NISBET: Without objection, the requests are granted.

SECRETARY CHASE: Absent with leave: Mr. Bledsoe, Mrs. Butler, Messrs. Everett, J. A. Hannah, Haskill, Mrs. Judd, Messrs. Kuhn, Pellow, Perlich, Perras, Romney and Sablich.

Absent without leave: Messrs. T. S. Brown and Ford.

PRESIDENT NISBET: Without objection, the delegates are excused.

I would like to congratulate the delegates at this convention for the fine attendance the day before a holiday. It is a little bit better than we do in industry. I know that.

I would like to report we have just received word from the nursing supervisor at Sparrow hospital that Mr. Bledsoe's condition is still listed as fair. There is no change indicated. She said that the condition is quite static. If any of you people are interested in medicine, you know what that means.

Reports of standing committees.

SECRETARY CHASE: None.

PRESIDENT NISBET: Select committees.

SECRETARY CHASE: None.

PRESIDENT NISBET: Communications from state officers.

SECRETARY CHASE: None.

PRESIDENT NISBET: Introduction, first reading and reference of proposals.

SECRETARY CHASE: Mrs. Daisy Elliott and Messrs. Young and Stamm introduce

Delegate Proposal 1329, A proposal to retain the executive power in the governor. Amends article VI, section 2.

PRESIDENT NISBET: Referred to the committee on executive branch.

SECRETARY CHASE: Mrs. Daisy Elliott and Mr. Young introduce

Delegate Proposal 1330, A proposal to eliminate the ineligibility of the governor and lieutenant governor to other state offices. Amends article VI, section 15.

PRESIDENT NISBET: Referred to the committee on executive branch.

SECRETARY CHASE: Mrs. Daisy Elliott and Mr. Young introduce

Delegate Proposal 1331, A proposal to provide that there shall be no spring elections. Amends article V.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: Mrs. Daisy Elliott and Mr. Young introduce

Delegate Proposal 1332, A proposal to delete from the constitution the ineligibility of other state and national officers to serve as governor of this state. Amends article VI, section 14.

PRESIDENT NISBET: Referred to the committee on executive branch.

SECRETARY CHASE: Mrs. Daisy Elliott, Miss Hart, Messrs. Young and Stamm introduce

Delegate Proposal 1333, A proposal to provide that the lieutenant governor shall not preside over the senate. Amends article VI, section 19.

PRESIDENT NISBET: Referred to the committee on executive branch.

SECRETARY CHASE: Messrs. Danhof and W. F. Hanna introduce

Delegate Proposal 1334, A proposal to establish a state board of higher education and to define the duties of same. Amends article XI.

PRESIDENT NISBET: Referred to the committee on education.

SECRETARY CHASE: Messrs. Barthwell, Young, Mrs. Daisy Elliott, Messrs. Ford, Yeager, Turner, Stopczynski, Stamm, Habermehl, Murphy, Hodges, T. S. Brown, Faxon, and Austin introduce

Delegate Proposal 1335, A proposal to exempt food and medicines from the sales tax. Amends article X, section 23.

PRESIDENT NISBET: Referred to the committee on finance and taxation.

SECRETARY CHASE: Mr. Finch introduces

Delegate Proposal 1336, A proposal to provide that 2 trustees shall be elected in each township to a 4 year term. Amends article VIII, section 18.

PRESIDENT NISBET: Referred to the committee on local government.

SECRETARY CHASE: Mr. Suzore introduces

Delegate Proposal 1337, A proposal to forbid designations of candidates on ballots except in cases of similarity of surnames. Amends article VII, section 23 and article III, section 7.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: Mr. Suzore introduces

Delegate Proposal 1338, A proposal to provide that no question or proposal shall be certified for the ballot less than 49 days before any special, primary or general election. Amends article III.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: Messrs. Madar, Allen, McCauley, A. G. Elliott, Baginski, Buback and Batchelor introduce

Delegate Proposal 1339, A proposal to provide that membership in a public employee pension or retirement system shall be a contractual relationship and to require that the cost of public employee pension or retirement benefits be actuarially funded. Amends article X.

PRESIDENT NISBET: Referred to the committee on executive branch.

SECRETARY CHASE: Messrs. Cudlip and Plank introduce

Delegate Proposal 1340, A proposal to limit the power of sale and disposition of certain public property and to require state officers under certain circumstances to resist condemnation by the United States government. Amends article V by adding a section.

PRESIDENT NISBET: Referred to the committee on legislative powers.

SECRETARY CHASE: Mr. Hodges introduces

Delegate Proposal 1341, A proposal to amend article V, section 23, reading, passage, vote; by providing that passage of a bill by the house of representatives at 2 consecutive annual regular sessions shall constitute passage thereof.

PRESIDENT NISBET: Referred to the committee on legislative powers.

Second reading of proposals.

SECRETARY CHASE: Nothing on that calendar.

PRESIDENT NISBET: Third reading of proposals.

SECRETARY CHASE: Nothing on that calendar.

PRESIDENT NISBET: The Chair recognizes Judge Dehnke.

MR. DEHNKE: Mr. President and fellow delegates, on behalf of the members of the committee on legislative organization, I rise to a question of personal and committee privilege, which I would like to preface with a bit of convention history.

On October 17, Mr. Hoxie called attention to a report in the Detroit Free Press which inaccurately described a proposal introduced by him.

On November 9, Mr. Kelsey protested inaccuracies in a report in the Detroit Free Press which attributed to him statements which he had not made.

On November 26, the chairman of the committee on judicial branch, Mr. Danhof, found it necessary to correct an article in the same newspaper which repeatedly referred to a delegate proposal as one having been presented by the committee.

What we feel obliged to add is, on November 16 the committee on legislative organization adopted a resolution authorizing public hearings in Lansing on matters within the jurisdiction of the committee and defeated, by a roll call vote of 11 to 4, a proposal that public hearings be also held elsewhere. In the report on which the action was passed, it was stated in part:

> Initially, there were several members who were disposed to agree to holding one such hearing in Detroit provided we could be assured, first, that all members of the committee would accept this as satisfactory to them and, second, that it would not lead to a rash of proposals for other hearings away from Lansing.

It developed that neither of these assurances could be given. First, the minority group presented their minimum demand to include Flint as well as Detroit. Second, many members made it clear that their own areas would insist on hearings there if any were held away from Lansing and that mayors, city councils, and boards of supervisors were ready to present such requests.

The conclusion was, first, the time and effort involved in holding such hearings around the state would not be justified; second, the committee would be in a bad light if it held a hearing in Detroit and refused to respond to calls from other areas; and third, that Lansing, by reason of its central location, is reasonably accessible to much the greater part of the population of the state, giving every interested person an opportunity to be heard at the public hearings there, as well as to communicate his opinions to the committee by letter or petition.

The report of this meeting in the Detroit Free Press of November 17 stated, first, that the action was by a party line vote which the recorded roll call vote refutes. Second, the report was onesided in that it reported at length statements by members of the minority group with no attempt to balance it by statements made on the other side, some of which have been mentioned. Third, it quoted an inflammatory remark made in the discussion by a member of the minority group in such a way as to give the casual reader the impression that it was based on remarks made by members of the majority group.

At yesterday's meeting of the committee, consideration of a motion to reconsider the earlier action was postponed to November 29 following the public hearing at Lansing scheduled for November 28. The Free Press report this morning carries the headline, GOP Again Denies Dems' Bid and erroneously states in substance that the vote was again along party lines. In fairness, this error may be excusable, because it was not a recorded roll call vote. This cannot, however, be said about other portions of the report such as, first, it conveys the idea that the motion to reconsider was rejected, which is not true. What eventually happens to it we do not know at this time, but it was not rejected yesterday.

Again the quotes from one group are grossly disproportionate to those from the other.

In the interest of historic accuracy, I suggest — as Mr. Hoxie said on October 17 — I think we, as delegates should be sure that every newspaper article which is inaccurate is called to the attention of the press.

Thank you, Mr. President.

PRESIDENT NISBET: Mr. Hodges.

MR. HODGES: A point of information, Mr. President. I didn't understand whether Judge Dehnke was speaking as a matter of personal privilege or the committee's.

PRESIDENT NISBET: Both, I think; yes.

MR. HODGES: Well, I think it is out of order for him to speak for the committee inasmuch as we have had no committee meeting on this. I think it is all right for him to speak as a matter of personal privilege.

MR. DEHNKE: Mr. President, perhaps I should state that I was speaking for the majority group members of the committee.

PRESIDENT NISBET: Thank you.

Mr. Nord.

MR. NORD: I would like to respond, if I may, on the same basis, as a member of the minority group. Mr. President, I was not prepared to debate this subject at this time, but if the convention believes this ought to be debated on the floor, I will be glad to oblige; but I don't believe this is the time to do it. I would suggest, however, that I have read the articles in the newspaper mentioned and in my opinion it was accurate.

If there is anything which, as he says, is unfortunate in the statements to the press, it is not because it was reported improperly but because the action taken was improper, and I believe I have asked the committee to reconsider its action. I have asked the committee to change its action, and I believe the correct way to cure this is not to change the statement in the paper but to change the action of the committee.

PRESIDENT NISBET: **Motion and resolutions.**

SECRETARY CHASE: Mr. DeVries, on behalf of the committee on administration, offers

Resolution 43, A resolution relative to transfer of the constitutional convention records to the Michigan historical commission.

Following is the body of Resolution 43, as offered:

Whereas, The records being created and received by this convention will be of value to governmental officials and researchers for years to come; and

Whereas, The statutes provide for the Michigan historical commission archives to preserve the records of the state and local governments which are of historical value; now therefore be it

Resolved, That all documentary materials, including reports, testimony, photographs, motion picture film, recordings, correspondence, and published items, which are or have been created or received by any committee, officer, or employee of this convention and which relate to its organization, functions, policies, decisions, or procedures, be sent to the Michigan historical commission archives and be transferred to its custody for preservation upon the adjournment of this convention.

PRESIDENT NISBET: Referred to the committee on administration.

SECRETARY CHASE: That is the only resolution on file.

PRESIDENT NISBET: Unfinished business.

SECRETARY CHASE: None.

PRESIDENT NISBET: Special orders of the day.

SECRETARY CHASE: None.

PRESIDENT NISBET: General orders.

SECRETARY CHASE: None.

PRESIDENT NISBET: Announcements.

SECRETARY CHASE: The committee on administration will meet Monday, November 27, at 7:00 p.m. Walter DeVries, chairman.

There will be a public hearing held by the committee on finance and taxation in rooms B, C and D the evening of Wednesday, December 6, beginning at 7:30 p.m. This hearing will be for taxpayers on both state and local levels who wish to be heard on anything that should or should not go into the constitution with reference to taxation. D. Hale Brake, chairman.

The following announcements are from the composite calendar:

Monday, November 27, the committee on rules and resolutions will meet immediately after the session in room I, to consider pending resolutions.

On Tuesday, November 28, the committee on education will meet at 8:30 a.m. in room J, for the appearance and presentation of Philip Buchen, the vice president for business affairs of Grand Valley State College; N. P. Ralston, director, cooperative extension service at Michigan State; Everett Soop, director of extension service of the University of Michigan.

The committee on declaration of rights, suffrage and elections will meet at 8:30 on Tuesday morning in room F, for a review of committee work by Dr. Kelly.

The committee on local government will meet on Tuesday morning at 10:30 in room A. Metropolitan government. Dr. William Gable of the University of Michigan will appear.

The committee on legislative powers will meet Tuesday at 3:00 p.m., subcommittees 1 and 2, in room K. Joint meeting of the subcommittees to discuss several proposals.

Notice of public hearing by the committee on legislative organization, which will hold an open hearing on Tuesday evening, November 28, the time and place of the hearing to be announced. Those wishing to appear, please contact Mrs. Margery Archer, extension 117, if you wish to appear before the committee.

The committee on legislative powers will hold a public hearing in room H on Tuesday, November 28, at 3:00 o'clock or immediately after the session, for the purpose of discussing article XIV, exemptions.

The committee on education will hold an open hearing in the main auditorium of Kellogg center, Michigan State, on Wednesday, November 29, from 4:15 p.m. to 6:15 p.m., and from 7:30 p.m. to 9:00 o'clock p.m.

The committee on legislative powers will hold a public hearing in room H of constitution hall on Wednesday, November 29, at 10:30 a.m., for the purpose of discussing several proposals.

If the delegates will again leave the status books that they have on their desks, their secretary will revise and bring them up to date by Monday evening.

PRESIDENT NISBET: Mr. Dehnke.

MR. DEHNKE: With reference to the public hearing of the committee on legislative organization scheduled for next Tuesday evening at 7:30, it will be held in room D and the adjoining rooms downstairs in this building.

PRESIDENT NISBET: Mr. White.

MR. WHITE: The first in a series of releases of information will be in your mailboxes at the conclusion of this session. Because of the short week, this current issue will necessarily be unscheduled. Our staff would appreciate your suggestions as to how this service may be improved for your benefit.

I should like further to add that a new summary of the convention activities is being sent out from our office on Thursday of each week to all weekly newspapers in the state. It might be helpful if you delegates would mention this weekly release to your editors and suggest that they use it, unless you have submitted copies or comment of your own. Thank you very much.

PRESIDENT NISBET: Mr. Bentley.

MR. BENTLEY: In addition to the committee meetings already announced, the committee on education will meet in committee room J, at 4:00 p.m. Monday afternoon, November 27, for the purpose of hearing witnesses from the American association of university professors. There are other witnesses tentatively scheduled for this meeting at 4:00 p.m. on Monday afternoon, but they will not be announced, since they have not been confirmed. Thank you.

PRESIDENT NISBET: Mr. DeVries.

MR. DeVRIES: Mr. President, the committee on administration will meet on Monday at 7:00 o'clock and will discuss the reinstallation of closed circuit television in constitution hall. Delegates who would like to appear on this matter are invited to testify on Monday evening at 7:00 o'clock.

PRESIDENT NISBET: Mr. Chase.

SECRETARY CHASE: I have the following requests for leaves of absence:

Judge Dehnke wishes to be excused from the session of Monday, November 27; Dr. Pollock wishes to be excused from the session of Thursday, November 30, in order to attend sessions in Washington of the advisory council on intergovernmental relations, of which he is vice chairman and Mr. Bonisteel wishes to be excused from the meetings of December 4 through 7, inclusive.

PRESIDENT NISBET: Without objection, they will be excused.

SECRETARY CHASE: That is all of the items on the secretary's desk, Mr. President.

PRESIDENT NISBET: May I have the personal privilege of expressing to the delegates, and to our staff and the news media, congratulations for their very constructive work in this first phase of our constitutional convention. I think the work that has been done by all of our delegates has been exceptional. It has been very constructive and very helpful in building this foundation.

I want to say that a few years ago it was my privilege to visit Plymouth Rock with my family. Historically, I am a rather sentimental fellow and I was standing there looking down at this rock with "1620" carved on it and through my mind came this feeling of gratitude for the pilgrims and for their coming here and giving us this country and for the Mayflower compact which has been so important in our history.

A couple came up, stood beside me, looked over the railing and left with the remark, "Hmpff, we have bigger rocks than that at home." (laughter) It seemed to me that they entirely missed the conception of what that stood for.

At this Thanksgiving period, as we are about to adjourn to go home, I think we all feel a great sense of gratitude for our great government and our great state and the great personal privilege and opportunity that we have.

I say this because I want us all to go home with the feeling of solid satisfaction for a good job done in these early stages of our convention. I hope that you have a period of very pleasant relaxation and come back next week with a feeling that we are now entering the second phase of this convention with a terrific job ahead of us, and I am sure you will be just as dedicated to it as you have been to the first part of this convention. (applause)

The Chair recognizes Mr. Binkowski.

MR. BINKOWSKI: Mr. President, I move that we adjourn.

PRESIDENT NISBET: The question is on adjournment. Those in favor, please say aye.

The convention is adjourned until 8:00 o'clock p.m. Monday night.

[Whereupon, and in pursuance of the order previously made, at 11:00 o'clock a.m., the convention adjurned until 8:00 o'clock p.m., Monday, November 27, 1961.]

THIRTIETH DAY

Monday, November 27, 1961, 8:00 o'clock p.m.

PROCEEDINGS

PRESIDENT NISBET: The convention will please come to order.

Our invocation this evening will be given by one of our own delegates, Mr. Thomas Sharpe.

MR. SHARPE: Our heavenly Father, we thank Thee for the opportunity we have to come tonight to this convention. We thank Thee for the many blessings Thou hast bestowed upon us through the days gone by; and we ask, Lord, that Thou wilt be with each of us tonight specifically, and in this convention from now until adjourment that we may do the things that may be pleasing in Thy sight, as well as pleasing in the sight of the people of the state of Michigan. We ask that Thou be with our good president here, and our vice presidents and the many committee chairmen. May we do the thing Thou wouldst have us do, and be the citizens of this state that it would be admirable for us to be. We ask that Thou wilt guide and direct us in everything that is said and done, and we will give Thee praise. Amen.

PRESIDENT NISBET: The roll call will be taken by the secretary. All present please vote aye.

SECRETARY CHASE: Will you flip your voting lever, please? Have you all voted? The machine is now locked and your attendance will be recorded.

Mr. President, a quorum of the convention is present.

Prior to today's session, the secretary received the following requests for leave:

Mr. McCauley wishes to be excused from tonight's session so that he may attend a city council meeting; Mr. Woolfenden was unavoidably detained because of professional commitments in Detroit; Mr. Murphy was called out of town because of a death in his immediate family, and would like to be excused from Monday's and Tuesday's sessions; Mr. Knirk is in the hospital with 2 lumbar vertebrae misplaced. He is in traction and requests an indefinite leave; Delegate Walker phoned. Due to illness he would like to be excused from the sessions of tonight and tomorrow; Mr. Gust had some mechanical trouble. He will be late or possibly not be here for the evening. He asks to be excused; (laughter) and Mr. Ford requests leave from the session of this evening because of the necessity of addressing a business session of his luncheon club.

PRESIDENT NISBET: Without objection, the requests are granted, and Mr. Knirk is granted indefinite leave.

SECRETARY CHASE: Absent with leave: Messrs. Anspach, Dehnke, Ford, Gust, Knirk, McCauley, Murphy, Norris, Walker and Woolfenden.

Absent without leave: Mr. Suzore.

PRESIDENT NISBET: Without objection, Mr. Suzore is excused.

Mr. Bledsoe, we are happy to have you back with us.

MR. BLEDSOE: Thank you very much, Mr. President. I do want to thank my beloved and distinguished colleagues for the very fine and magnificent concern that was manifested through their prayers, their letters, their telegrams, and their thoughts. I assure you that they were very sustaining. I am happy to report that with the prayers and your thoughts and your good will, the doctor said that my spare tire surrounding my torso contributed to no little degree (laughter) when it came in contact with the steering wheel of my car. I wanted to pass that on to the older boys that all is not lost. (laughter)

I also want you to know that the real hero of what might have been a statistical tragedy was my good friend Martin Baginski, who was the first colleague to my side. He came and I was dancing around trying to get flares by my car, to stop the traffic on the expressway, to keep a similar accident from piling up, and poor Mike came there to help me direct traffic and to divert any further trouble. I want to tell you I can see him now dancing around through the dark there having given legs to his country. I said to myself, we'd both make a couple of good country constables directing traffic on Fifth Avenue in New York. (laughter) The state police — God bless them — came, and they were angels of mercy. I want you to know you have every reason to be proud of your state police. I thank you so much. (applause)

PRESIDENT NISBET: Thank you, Mr. Bledsoe.

Reports of standing committees.

SECRETARY CHASE: The committee on legislative powers, by Mr. Hoxie, chairman, respectfully reports back to the convention Delegate Proposal 1263, by Marjorie McGowan, A proposal to empower the legislature to create a family court; with the recommendation that the proposal be referred to the committee on judicial branch.

T. Jefferson Hoxie, chairman.

PRESIDENT NISBET: Without objection, it will be referred to the committee on judicial branch.

SECRETARY CHASE: The committee on administration, by Mr. DeVries, chairman, respectfully reports back to the convention Resolution 42, by Messrs. Erickson and Mahinske, A resolution requesting public hearings in Detroit on the problems of eminent domain; without amendment and with the recommendation that the resolution be adopted.

Walter DeVries, chairman.

Following is the resolution:

Whereas, In view of the intense interest of the residents of the Detroit metropolitan area in constitutional provisions affecting the power of eminent domain; and

Whereas, There is in the Detroit metropolitan area a large number of public officials and attorneys who have great expertise in the area of eminent domain; and

Whereas, There have been numerous requests from these officials and attorneys and the public expressing interest in this subject and a desire to be heard; now therefore be it

Resolved, That hearings be held preferably in the veterans' memorial building in Detroit or in the city-county building in Detroit or in some other place of adequate capacity in order to guarantee the possibility of the maximum participation of interested citizens in the Detroit area and that the public be given sufficient notice; and be it further

Resolved, That the convention authorize the holding of this meeting in Detroit and that the convention appropriate the necessary funds to defray necessary and incidental expenses of such hearing.

PRESIDENT NISBET: The question is on the report of the committee.

Mr. DeVries.

MR. DeVRIES: Mr. President and fellow delegates, Mr. Erickson appeared before the committee on administration requesting this trip to Detroit on behalf of the subcommittee on eminent domain. They will conduct one afternoon hearing in the city. The cost of this trip will not exceed $100.

PRESIDENT NISBET: The question is on the report of the committee. Any further discussion? If not, all in favor say aye. Opposed, no.

The resolution is adopted.

Any other reports of standing committees?

SECRETARY CHASE: The committee on administration, by Mr. DeVries, chairman, reports back to the convention Resolution 43, A resolution relative to transfer of the constitutional convention records to the Michigan historical commission; without amendment and with the recommendation that the resolution be adopted. Walter DeVries, chairman.

Following is the resolution:

Whereas, The records being created and received by this convention will be of value to governmental officials and researchers for years to come; and

Whereas, The statutes provide for the Michigan historical commission archives to preserve the records of the state and local governments which are of historical value; now therefore be it

Resolved, That all documentary materials, including reports, testimony, photographs, motion picture film, recordings, correspondence, and published items, which are or have been created or received by any committee, officer, or employee of this convention and which relate to its organization, functions, policies, decisions, or procedures, be sent to the Michigan historical commission archives and be transferred to its custody for preservation upon the adjournment of this convention.

PRESIDENT NISBET: The question is on the report of the committee.

Mr. DeVries.

MR. DeVRIES: Mr. President, fellow delegates, this resolution will transfer, upon the adjournment of the convention, all of our official records to the Michigan historical commission. You are not requested or required to send your own personal correspondence. However, the commission would like to receive it if you have not already promised it to the University of Michigan, Michigan State or some other university for a personal collection.

PRESIDENT NISBET: The question is on the adoption of the resolution. Any further discussion? All in favor say aye. Opposed, no.

The resolution is adopted.

SECRETARY CHASE: That is all the standing committee reports, Mr. President.

PRESIDENT NISBET: Reports of select committees.

SECRETARY CHASE: None.

PRESIDENT NISBET: Communications from state officers.

SECRETARY CHASE: None.

PRESIDENT NISBET: **Introduction, first reading and reference of proposals.**

SECRETARY CHASE: Mr. Young introduces

Delegate Proposal 1342, A proposal to provide for the registration of electors at the precinct level. Amends article III, section 1.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: Mr. Stamm introduces

Delegate Proposal 1343, A proposal to add an introduction and a new section to article II stating the thrust of the article and broadly preventing discrimination.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: Messrs. Suzore and Stamm introduce

Delegate Proposal 1344, A proposal to establish voter qualifications and to change residence requirements for voting for presidential and vice presidential electors. Amends article III, section 1. Replaces Delegate Proposal 1090.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: Mr. Karn introduces

Delegate Proposal 1345, A proposal to provide for consolidation of cities, villages or townships into municipal corporations and for assessment districts within such municipal corporations. Amends article VIII.

PRESIDENT NISBET: Referred to the committee on local government.

SECRETARY CHASE: Messrs. Baginski, Buback, Downs, Durst, Madar, A. G. Elliott, Barthwell and Miss Hart introduce

Delegate Proposal 1346, A proposal to permit county boards of supervisors to establish merit systems subject to the approval of the electors of a county. Amends article VI, section 22.

PRESIDENT NISBET: Referred to the committee on local government.

SECRETARY CHASE: Messrs. Suzore and McCauley introduce

Delegate Proposal 1347, A proposal to establish a state board of higher education. Amends article XI.

PRESIDENT NISBET: Referred to the committee on education.

SECRETARY CHASE: Messrs. Norris and Dade introduce

Delegate Proposal 1348, A proposal to provide 19 shall be the voting age. Amends article III, section 21.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: Messrs. Lawrence and Erickson introduce

Delegate Proposal 1349, A proposal to guarantee salt spring land revenues to educational institutions.

PRESIDENT NISBET: Referred to the committee on education.

SECRETARY CHASE: Messrs. Dean Doty, Allen and Stafseth introduce

Delegate Proposal 1350, A proposal to provide a sales tax limitation on retail sales. Amends article X, section 23.

PRESIDENT NISBET: Referred to the committee on finance and taxation.

SECRETARY CHASE: Messrs. Lesinski, Wood, Suzore and Mrs. Conklin introduce

Delegate Proposal 1351, A proposal for the creation of districts for the election of representatives in the United States congress, Amends article V by adding a section.

PRESIDENT NISBET: Referred to the committee on legislative powers.

SECRETARY CHASE: Messrs. Shackleton, Turner and Leppien introduce

Delegate Proposal 1352, A proposal to require the civil service commission to establish pay districts in the state. Amends article VI, section 22.

PRESIDENT NISBET: Referred to the committee on executive branch.

SECRETARY CHASE: Miss Hart, Messrs. Downs, Binkowski and Marshall introduce

Delegate Proposal 1353, A proposal with reference to laws, object and title, revision, amendment, effective date. Amends article V, section 21.

PRESIDENT NISBET: Referred to the committee on legislative powers.

SECRETARY CHASE: Miss Hart, Messrs. Downs, Binkowski and Marshall introduce

Delegate Proposal 1354, A proposal with reference to state credit, stock; application to public employee retirement systems. Amends article X, sections 12 and 13.

PRESIDENT NISBET: Referred to the committee on finance and taxation.

SECRETARY CHASE: Miss Hart, Messrs. Downs, Binkowski, Marshall and Snyder introduce

Delegate Proposal 1355, A proposal regarding extra compensation; increase or decrease of salaries. Not to apply to post retirement increases. Amends article XVI, section 3.

PRESIDENT NISBET: Referred to the committee on miscellaneous provisions and schedule.

SECRETARY CHASE: Miss Hart, Messrs. Downs, Binkowski and Marshall introduce

Delegate Proposal 1356, A proposal regarding state sales tax, distribution; school districts, allocation, special school aid fund, expenditure; appropriation for school employees' retirement system; maximum sales tax levy. Amends article X, section 23.

PRESIDENT NISBET: Referred to the committee on finance and taxation.

SECRETARY CHASE: Mr. Mahinske and Miss Donnelly introduce

Delegate Proposal 1357, A proposal to provide that membership in a public employee pension or retirement system shall be a contractual relationship and to require that the cost of public employee pension or retirement benefits be actuarially funded. Amends article X.

PRESIDENT NISBET: Referred to the committee on finance and taxation.

SECRETARY CHASE: Mr. Greene introduces

Delegate Proposal 1358, A proposal to provide for equal protection of the laws. Amends article II.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: Messrs. Austin, Brake and Goebel introduce

Delegate Proposal 1359, A proposal to provide that all accounting of state funds shall be done through a general fund with such divisions as the legislature shall establish. Amends article X.

PRESIDENT NISBET: Referred to the committee on finance and taxation.

SECRETARY CHASE: Mr. Faxon introduces

Delegate Proposal 1360, A proposal to provide that the regents of the University of Michigan supervise Eastern Michigan University. Amends article XI, section 5.

PRESIDENT NISBET: Referred to the committee on education.

SECRETARY CHASE: Mr. Romney introduces

Delegate Proposal 1361, A proposal on legislative representation in Michigan. Amends article V.

PRESIDENT NISBET: Referred to the committee on legislative organization.

Second reading of proposals.

SECRETARY CHASE: Nothing on that calendar.

PRESIDENT NISBET: Third reading of proposals.

SECRETARY CHASE: None.

PRESIDENT NISBET: **Motions and resolutions.**

SECRETARY CHASE: Mr. Wanger offers

Resolution 44, A resolution to amend convention rule 33 to provide for the printing of substantive committee reports on committee proposals in the convention journal.

Following is the body of Resolution 44, as offered:

Whereas, The convention rules do not expressly provide for the printing of committee proposals and reports verbatim in the journal; and

Whereas, Such printing would greatly facilitate the work of the convention; now therefore be it

Resolved, That convention rule 33 be amended by changing the final period to a semicolon and adding thereafter the following language: "which proposal, together with the full substantive report and recommendations of the committee thereon, shall be printed verbatim in the journal on the day of its reference.".

PRESIDENT NISBET: Referred to the committee on rules and resolutions.

SECRETARY CHASE: Mr. Wanger offers

Resolution 45, A resolution to provide a timetable for completing the work of the convention by April 1, 1962.

Following is the body of Resolution 45, as offered:

Whereas, The attorney general of Michigan has ruled that the convention must finally adjourn not later than April 1, 1962, in order that its work be submitted to the people at the November, 1962, general election; and

Whereas, It is in the best interest of the people of Michigan that it be submitted at said November, 1962, election; now therefore be it

Resolved, That:

1. All matters shall be finally cleared from the committee of the whole not later than Friday, March 16, 1962.

2. No committee proposals shall be received unless they are in the hands of the secretary on or before Wednesday, January 31, 1962.

3. No public hearings shall be held after Wednesday, January 17, 1962, without leave of the convention.

PRESIDENT NISBET: Referred to the committee on rules and resolutions.

SECRETARY CHASE: That is all of the resolutions on file, Mr. President.

PRESIDENT NISBET: **Unfinished business.**

SECRETARY CHASE: Under the order of unfinished business, the president lays before the convention **Resolution 37,** A resolution to amend rule 36 of the standing rule of the constitutional convention; reported from the committee on rules and resolutions without amendment and with the recommendation that the resolution be adopted.

For Resolution 37 as offered, see above, page 296.

PRESIDENT NISBET: The question is on the resolution. Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, fellow delegates, the substantive committees will shortly begin to report their committee proposals for revision of the constitution to the floor. It has seemed desirable to give every delegate an opportunity and ample opportunity to review these committee proposals and the supporting reports before debate on these committee proposals takes place in the full convention.

For that reason, it seemed desirable to provide in the rules for an automatic time lag between the point at which the committee proposal was received by the convention and referred to the committee of the whole and the time of its consideration by the committee of the whole. This proposed amendment of the rules does just that. It provides that no committee proposal shall be considered by the committee of the whole until the third day following the day of its reference to the committee of the whole.

The committee on rules and resolutions unanimously recommends the adoption of the rule change. I move it at this time, Mr. President.

PRESIDENT NISBET: The question is on the resolution. Is there further discussion?

Mr. Downs.

MR. DOWNS: Mr. President, I would like to speak in favor of this. I believe it will assure the delegates a more ample opportunity to review the reports before we finally act upon them.

PRESIDENT NISBET: Mr. Doty.

MR. DEAN DOTY: Mr. President, is this 3 calendar days or 3 convention days?

PRESIDENT NISBET: Mr. Van Dusen?

MR. VAN DUSEN: Three calendar days, Mr. Doty.

PRESIDENT NISBET: Any further discussion? The question is on the resolution. All in favor say aye. Opposed, no. The resolution is adopted.

Any other unfinished business?

SECRETARY CHASE: None.

PRESIDENT NISBET: Special orders of the day.

SECRETARY CHASE: None.

PRESIDENT NISBET: General orders of the day.

SECRETARY CHASE: None.

PRESIDENT NISBET: Announcements.

SECRETARY CHASE: I have the following announcements of committee meetings and public hearings:

The committee on judicial branch will meet in room B, Tuesday, tomorrow, at 10:30 a.m. Speakers of the day will be from the justices of the peace association. Robert J. Danhof, chairman.

The committee on administration will meet Thursday, November 30, at 1:00 o'clock p.m., in the conference room. Walter DeVries, chairman.

The committee on public information will meet immediately after tonight's session to hear a presentation from Delegate Romney. The committee will meet in room D.

The committee on rules and resolutions will meet this evening immediately after session in room I to consider pending resolutions.

Committee meetings for tomorrow:

Committee on education tomorrow morning at 8:30 in room J to hear Mr. Phillip Buchen, vice president for business affairs, Grand Valley State College; Mr. N. P. Ralston, director,

cooperative extension service, MSU; and Mr. Everett Soop, director of extension services, University of Michigan.

Committee on finance and taxation tomorrow at 8:30 a.m. in room E.

The committee on declaration of rights, suffrage and elections, tomorrow morning at 9:00 o'clock. The meeting was previously scheduled for 8:30. The time was changed to 9:00 in room F, to review the committee work by Dr. Kelly.

Committee on executive branch will meet at 10:30 in room C for the appearance of Mrs. Robert Foerch, league of women voters, on the subject of civil service; of Mr. Downs on Delegate Proposals 1226 and 1228; Mr. Boothby on Delegate Proposal 1043; and Mr. Yeager on Delegate Proposal 1045.

The committee on local government will meet at 10:30 tomorrow morning in room A. Metropolitan government; Dr. William Gable, of the University of Michigan, will appear.

The committee on legislative powers will meet at 3:00 o'clock tomorrow in room K. Subcommittees 1 and 2 to discuss several proposals.

The committee on executive branch will meet tomorrow immediately after the session in room C. Subcommittee on executive organization.

The committee on legislative organization will meet immediately after the session tomorrow, in room D, for the appearance and presentation of Senator Frank Beadle, Senator Harold Ryan, Representative Joseph J. Kowalski, and Speaker Don R. Pears.

The committee on miscellaneous provisions and schedule will meet immediately after the session in room G. Subcommittee on corporations. Mr. Raymond Clevenger, corporation and securities commissioner; Mr. Stanton Faville, chief assistant attorney general; and Mr. Theodore Sacks to appear.

The following public hearings:

The committee on legislative organization will hold an open hearing tomorrow evening, November 28, at 7:30, in room D. Please contact Mrs. Archer, the committee clerk, extension 117, if you wish to appear before the committee.

The committee on legislative powers will hold a public hearing in room H tomorrow at 3:00 o'clock or immediately after the session for the purpose of discussing article XIV on exemptions.

The committee on education will hold an open hearing in the main auditorium of Kellogg center Wednesday from 4:15 to 6:15 and from 7:30 to 9:00 o'clock p.m.

The committee on legislative powers will hold a public hearing in room H on Wednesday at 10:30 a.m. for the purpose of discussing Proposals 1072, 1131, 1171 and 1215.

The secretary wishes to make one other announcement of a meeting of the committee chairmen in room E tomorrow at 1:00 o'clock. The meeting is called by President Nisbet.

For the information of the delegates, all of Journals 1 through 6 have been mailed to the entire mailing list, including your mailing lists that have been submitted up to the present time.

Journals 7 through 17 we expect to receive by Wednesday and have them mailed on Wednesday. The rest of them will follow in short order.

With reference to the status report that we have available, which is intended for your aid and assistance, and which contains a complete list of all of the delegate proposals introduced to date, a short index of the proposals, the committees to which they have been referred and some other pertinent information in regard to resolutions, if you will please leave them on your desk at the end of the week, this will permit your secretary to put in the new leaves that will be prepared over the weekend to bring your status up to date, together with the up to date index which will, we hope, be of material assistance to you in your daily work.

PRESIDENT NISBET: Mr. Martin.

MR. MARTIN: Mr. President, the subcommittee on civil service of the committee on executive branch will meet in committee room C immediately after the session.

SECRETARY CHASE: I have the following requests for leaves of absence: Judge Pugsley requests a leave of absence from the session of tomorrow, Tuesday; Dr. Hannah is to preside over a meeting of the governing board, Michigan council of state college presidents, tomorrow at Wayne State University in Detroit. It means that he may be late or may miss entirely the convention session. He says:

> I hope, however, to return in time to participate in the afternoon meeting of the committee on legislative organization, and will certainly be here for the public hearing scheduled for Tuesday evening.

PRESIDENT NISBET: Without objection, they will be excused. Is there anything else?

SECRETARY CHASE: That is all of the items on the secretary's desk, Mr. President.

PRESIDENT NISBET: The Chair recognizes Mr. Bonisteel.

MR. BONISTEEL: Mr. President, some of my friends on this side of the aisle are worried because I am not using up any of my 17,000 words, so I move we adjourn.

PRESIDENT NISBET: The question is on adjournment. All in favor say aye. Opposed, no.

We are adjourned until 2:00 o'clock tomorrow afternoon.

[Whereupon, at 8:30 o'clock p.m., the convention adjourned until 2:00 o'clock p.m., Tuesday, November 28, 1961.]

THIRTY-FIRST DAY

Tuesday, November 28, 1961, 2:00 o'clock p.m.

PROCEEDINGS

PRESIDENT NISBET: The convention will come to order.

Our invocation today will be given by the Reverend Richard Beckett, of the First Methodist Church of Lansing.

REVEREND BECKETT: O God, our heavenly Father, we would acknowledge Thy sovereignty over all things, for there is nothing in this world that is not Thine or in Thy keeping. And so as this group deliberates in the task which lies before them of serving Thy people, their people, the people of this great state, wilt Thou give them wisdom and understanding, courage and consideration for all of their needs that the things which they do may be wise in Thy sight and good for this state and good for the peace of Thy world. We ask these things in Jesus' name. Amen.

PRESIDENT NISBET: The roll call will be taken by the secretary. Those present please vote aye.

SECRETARY CHASE: Has everyone voted? If so, we will record the vote.

Mr. President, a quorum of the convention is present.

Prior to today's session, the secretary received the following request for leave:

Earlier today, Mr. Rush filed a request stating he found it necessary to be excused from the session of this afternoon.

PRESIDENT NISBET: Without objection, the request is granted.

SECRETARY CHASE: Absent with leave: Messrs J. A. Hannah, Knirk, Pugsley, Rush and Walker.

Absent without leave: None.

PRESIDENT NISBET: Reports of standing committees.

SECRETARY CHASE: None.

PRESIDENT NISBET: Reports of select committees.

SECRETARY CHASE: None.

PRESIDENT NISBET: Communications from state officers.

SECRETARY CHASE: None.

PRESIDENT NISBET: Introduction, first reading and reference of proposals.

SECRETARY CHASE: Mr. Van Dusen introduces

Delegate Proposal 1362, A proposal to revise article X of the constitution, finance and taxation.

PRESIDENT NISBET: Referred to the committee on finance and taxation.

SECRETARY CHASE: Mr. Lawrence introduces

Delegate Proposal 1363, A proposal to provide for a supreme court, intermediate appellate court and such circuit, probate and common pleas courts as the legislature shall establish. Amends article VII, section 1.

PRESIDENT NISBET: Referred to the committee on judicial branch.

SECRETARY CHASE: Mr. Lawrence introduces

Delegate Proposal 1364, A proposal to provide that the supreme court shall have superintending control of the courts including right of removal with legislative approval. Amends article VII, section 4.

PRESIDENT NISBET: Referred to the committee on judicial branch.

SECRETARY CHASE: Mr. Pollock and Mrs. Judd introduce

Delegate Proposal 1365, A proposal to provide for cooperation and agreements between state or local units and foreign governments or their subdivisions. Amends article VIII.

PRESIDENT NISBET: Referred to the committee on local government.

SECRETARY CHASE: Messrs. Stafseth, Spitler and Seyferth introduce

Delegate Proposal 1366, A proposal to provide that membership in a public employee pension or retirement system shall be a contractual relationship and to require that the cost of public employee pension or retirement benefits be actuarially funded. Adds a new section to article X.

PRESIDENT NISBET: Referred to the committee on finance and taxation.

SECRETARY CHASE: Messrs. A. G. Elliott, Yeager, King, Kuhn and Mrs. Conklin introduce

Delegate Proposal 1367, A proposal to provide no judicial authority shall be conferred on any administrative or executive agency and for de novo determination of agency rulings. Amends article V.

PRESIDENT NISBET: Referred to the committee on legislative powers.

SECRETARY CHASE: Messrs. King, Yeager, A. G. Elliott, Kuhn and Mrs. Conklin introduce

Delegate Proposal 1368, A proposal for requiring a written legal opinion prior to the enactment of local ordinances. Amends article VIII.

PRESIDENT NISBET: Referred to the committee on local government.

SECRETARY CHASE: Messrs. Binkowski, Buback, Pellow, Perras, Perlich, Liberato, Sablich and Stopczynski introduce

Delegate Proposal 1369, A proposal to permit the sale of alcoholic beverages on Sunday by local option laws. Amends article XVI, section 11.

PRESIDENT NISBET: Referred to the committee on legislative powers.

SECRETARY CHASE: Messrs. Binkowski, Pellow, Perlich and Stopczynski introduce

Delegate Proposal 1370, A proposal to delete article XVI, section 11, establishing a liquor control commission.

PRESIDENT NISBET: Referred to the committee on legislative powers.

SECRETARY CHASE: Messrs. Binkowski, Kelsey and Liberato introduce

Delegate Proposal 1371, A proposal to provide for the taxing powers of local governments. Amends article X, section 2.

PRESIDENT NISBET: Referred to the committee on finance and taxation.

SECRETARY CHASE: Messrs. Ford, McCauley, Cudlip, T. S. Brown, Baginski and W. F. Hanna introduce

Delegate Proposal 1372, A proposal to provide for probate courts in each judicial circuit and the election of the judges thereof at the November election and for one probate judge in each circuit for 100,000 persons or major fraction thereof. Amends article VII, section 13.

PRESIDENT NISBET: Referred to the committee on judicial branch.

SECRETARY CHASE: Mr. W. F. Hanna introduces

Delegate Proposal 1373, A proposal to create a bicameral legislature and to apportion the same. Amends article V.

PRESIDENT NISBET: Referred to the committee on legislative organization.

SECRETARY CHASE: Mr. Madar introduces

Delegate Proposal 1374, A proposal to require the legislature to establish county departments of health and establish minimum health service standards. Amends article VIII by adding a section.

PRESIDENT NISBET: Referred to the committee on local government.

SECRETARY CHASE: Mr. W. F. Hanna introduces

Delegate Proposal 1375, A proposal to provide for a system of financing state and local government, assessment of tangible real and personal property and authorizing retail sales, income and other taxes. Amends article X.

PRESIDENT NISBET: Referred to the committee on finance and taxation.

SECRETARY CHASE: Mrs. Judd introduces

Delegate Proposal 1376, A proposal to eliminate interschool district competition for industrial tax base in metropolitan areas with its adverse effect on economically sound land use planning. Adds a new section to article X.

PRESIDENT NISBET: Referred to the committee on finance and taxation.

SECRETARY CHASE: Mrs. Judd introduces

Delegate Proposal 1377, A proposal to leave to legislative discretion the establishment of the legal level of assessment and to require periodic review thereof. Amends article X, section 7.

PRESIDENT NISBET: Referred to the committee on finance and taxation.

SECRETARY CHASE: Mrs. Judd introduces

Delegate Proposal 1378, A proposal to make possible maximum convenience, economy and service in the public interest through cooperation between the school district lying within a city of 50,000 population or over and the municipality. Amends article XI, section 9.

PRESIDENT NISBET: Referred to the committee on education.

SECRETARY CHASE: Mr. Suzore introduces

Delegate Proposal 1379, A proposal for jury determination of just compensation. Amends article XIII, section 2.

PRESIDENT NISBET: Referred to the committee on miscellaneous provisions and schedule.

SECRETARY CHASE: Mr. Suzore introduces

Delegate Proposal 1380, A proposal to authorize private roads. Amends article XIII, section 3.

PRESIDENT NISBET: Referred to the committee on miscellaneous provisions and schedule.

SECRETARY CHASE: Mr. Suzore introduces

Delegate Proposal 1381, A proposal to authorize state agencies and subdivisions to acquire title or easement in abutting property. Amends article XIII, section 5.

PRESIDENT NISBET: Referred to the committee on miscellaneous provisions and schedule.

SECRETARY CHASE: Messrs. Bonisteel, J. A. Hannah and Anspach introduce

Delegate Proposal 1382, A proposal to provide that general fund appropriations shall not be increased more than 5 per cent from year to year with exceptions. Amends article V by adding a new section

PRESIDENT NISBET: Referred to the committee on legislative powers.

SECRETARY CHASE: Messrs. Bonisteel, J. A. Hannah and Anspach introduce

Delegate Proposal 1383, A proposal to provide that appropriations for education shall be set apart first. Amends article X by adding a new section.

PRESIDENT NISBET: Referred to the committee on finance and taxation.

SECRETARY CHASE: Messrs. Young, Greene and Mrs. Daisy Elliott introduce

Delegate Proposal 1384, A proposal to provide for a capitol and other buildings sufficient to meet the needs of the 3 branches of government. Amends article I, section 2.

PRESIDENT NISBET: Referred to the committee on miscellaneous provisions and schedule.

Second reading of proposals.

SECRETARY CHASE: Nothing on that calendar, Mr. President.

PRESIDENT NISBET: Third reading of proposals.

SECRETARY CHASE: Nothing there.

PRESIDENT NISBET: Motions and resolutions.

SECRETARY CHASE: No resolutions have been filed.

PRESIDENT NISBET: Unfinished business.

SECRETARY CHASE: None.

PRESIDENT NISBET: Special orders.

SECRETARY CHASE: None.

PRESIDENT NISBET: General orders.

SECRETARY CHASE: None.

PRESIDENT NISBET: Announcements.

SECRETARY CHASE: The secretary has been requested to announce that the cigars and candy today are from Delegate Richard Kuhn; he reports mother and daughter are doing nicely. (applause)

The following notices of committee meetings:

The committee on legislative powers will meet this afternoon at 3:00 o'clock in room K. Joint committee meeting of the subcommittees to discuss several proposals.

The committee on executive branch will meet in room C at 3:00 o'clock or immediately after the session. Subcommittee on executive organization.

The committee on legislative organization will meet in room D after the session. Appearance of Senator Frank Beadle, Senator Harold Ryan, Representative Joseph Kowalski, and Speaker Don Pears.

The committee on miscellaneous provisions and schedule will meet in room G after the session. Subcommittee on corporations. Mr. Raymond Clevenger, corporation and securities commissioner; Mr. Stanton Faville, chief assistant attorney general; and Mr. Theodore Sacks.

Committee on legislative powers will meet at 3:00 o'clock this afternoon in room H. A public hearing to discuss article XIV, exemptions.

The committee on legislative organization will hold a public hearing at 7:30 this evening.

Tomorrow, 8:30 a.m., the committee on executive branch will meet in room C. Mr. Arnell Engstrom, chairman of the house ways and means committee, to appear, and Mr. Stopczynski and Mr. Binkowski on proposals.

Committee on local government tomorrow morning at 8:30 in room A. Education and local government, Dr. Lynn Bartlett, superintendent of public instruction; and county and township governments, Dr. Robert Pealy, University of Michigan.

Committee on judicial branch will meet in room B tomorrow morning at 8:30.

Committee on legislative organization will meet tomorrow morning at 10:30 in room D. Mr. Stanley Kilpatrick, city clerk, Grand Rapids, and Dr. James Pollock, a delegate, to appear.

Committee on legislative powers will meet at 10:30 tomorrow morning in room H.

Committee on miscellaneous provisions and schedule will meet tomorrow morning at 10:30 in room G. Mr. Nicholas V. Olds, state conservation department. Mr. Robert W. Kelley, state geological survey division. A 15 minute film will also be shown regarding the boundaries of Michigan.

At 11:30 tomorrow morning, the committee on miscellaneous provisions and schedule will meet in room G. The subcommittee on eminent domain.

The committee on declaration of rights, suffrage and elections will meet tomorrow afternoon at 3:00 o'clock or after the session in room F. Delegates on proposals regarding article II, declaration of rights.

The committee on finance and taxation will meet in room E at 3:00 o'clock tomorrow afternoon or after the session.

The committee on legislative powers will meet in room H at 3:00 o'clock tomorrow afternoon or after the session. Representative Arnell Engstrom, chairman ways and means committee, house of representatives, and Mr. Sanford Brown, state treasurer, on Delegate Proposal 1085.

Committee on miscellaneous provisions and schedule will meet in room G tomorrow afternoon after the session. Subcommittee on militia.

The commission on education, 4:00 o'clock tomorrow afternoon, a public hearing in the main auditorium at Kellogg center.

The public hearings will hereafter be posted on a separate sheet. They are as follows:

Committee on legislative organization will hold an open hearing this evening, Tuesday. Please contact the committee clerk, Mrs. Margery Archer, extension 117, if you would like to appear before the committee.

The committee on legislative powers will hold a public hearing in room H at 3:00 o'clock or immediately after the sesssion this afternoon for the purpose of discussing article XIV, ex-

emptions and also will hold a public hearing in room H tomorrow, Wednesday, November 29 at 10:30, for the purpose of discussing several proposals.

The committee on education will hold an open hearing in the main auditorium of Kellogg center Wednesday, tomorrow, November 29, from 4:15 to 6:15 and from 7:30 to 9:00 o'clock p.m.

That is all of the committee meeting announcements and hearings for the present, Mr. President.

PRESIDENT NISBET: Mr. Hoxie.

MR. HOXIE: Mr. President, I wonder if the secretary would read the numbers of the proposals on our public hearing tomorrow morning. They are important proposals, and many of the delegates have indicated an interest. I wish that they could be advised as to the numbers of these proposals.

SECRETARY CHASE: I am glad to, Mr. Hoxie. The committee on legislative powers at their public hearing tomorrow, will discuss Delegate Proposals 1072, 1131, 1171 and 1215.

PRESIDENT NISBET: Mr. Martin.

MR. MARTIN: The committee on executive branch will meet with former Governor Harry Kelly at 8:00 o'clock on Wednesday evening, tomorrow evening, in committee room C.

PRESIDENT NISBET: Requests for leave.

SECRETARY CHASE: The following requests for a leave of absence from convention sessions:

Mr. Page requests that he be excused from the sessions of Thursday, November 30 and Friday, December 1.

Mr. McAllister wishes to be excused from the sessions of December 4 to 7 because he is required to be in court in Sandusky during that period.

Mrs. Judd requests to be excused from the sessions of Wednesday and Thursday, November 29 and 30, to attend a national conference on government of the national municipal league on the subject of the model state constitution and government in metropolitan areas; and Mr. Rood requests that he be excused from the sessions of Wednesday and Thursday, the twenty-ninth and the thirtieth, and all committee hearings due to the death of 2 very close friends as a result of a drowning accident at Higgins lake on November 25. He has been requested to act as pallbearer in both cases, and wishes to render whatever help he may to the families.

PRESIDENT NISBET: Without objection, they will be excused.

On your desk this afternoon is a copy of Michigan History, placed there through the courtesy of the historical society of Michigan. You will notice from the Christmas card attached to the magazine that the historical society of Michigan is one of the oldest organizations of the state. Since its organization, it has had a distinguished leadership.

John Biddle of Detroit, president of the constitutional convention of 1835, was one of the earliest presidents of the society; Clarence M. Burton, president of the historical society of Michigan from 1901 to 1914, was a delegate to the Constitutional Convention of 1908; Mr. Charles Follo, a delegate to this convention, was president of the society in 1952-1953; and another delegate to this constitutional convention, Mr. Roscoe O. Bonisteel, is now the president of the historical society of Michigan. It is entirely possible that in the next issue of the magazine there may be an article on this constitutional convention.

Just so you will be informed as early as possible, there will be a Friday morning session this week, and I think the delegates should count on Friday morning sessions from this time on.

The Chair recognizes Mr. Boothby.

MR. BOOTHBY: Mr. President, without giving a detailed reason for my arising at this time, I move we adjourn. (laughter)

PRESIDENT NISBET: The question is on adjournment. All in favor say aye. Those opposed, no.

We are adjourned until tomorrow afternoon at 2:00 o'clock.

[Whereupon, at 2:20 o'clock p.m., the convention adjourned until 2:00 o'clock p.m., Wednesday, November 29, 1961.]

THIRTY-SECOND DAY

Wednesday, November 29, 1961, 2:00 o'clock p.m.

PROCEEDINGS

VICE PRESIDENT HUTCHINSON: The convention will come to order.

The invocation today will be delivered by the Reverend William H. Range, Pastor of Bethel Lutheran Church, St. Clair Shores.

REVEREND RANGE: Lord God, heavenly Father, we would pray of Thee a full measure of a divine and holy spirit that we may ever be mindful of Thee as our God, our Creator, our Sustainer, the One to whom we and all men are now and ultimately responsible. We would pray Thee further, make us mindful of ourselves as Thy people, knowing that we are here by Thy grace, sustained by Thy strength and ever in need of Thy guidance. Help us to know that which lies before us, that we may plan and execute all things well, to the glory and honor of Thy name, to the benefit of these, our fellow men in the state of Michigan and to all with whom we come in contact. We would pray Thee, forgive us where we err, help us where we are weak, give us light where we are blind to the end that all things may be done well. We ask it in the name of Christ, our Lord. Amen.

VICE PRESIDENT HUTCHINSON: The roll call will be taken by the secretary. All present will vote aye. Have you all voted? If so, the secretary will record the vote.

SECRETARY CHASE: Mr. President, a quorum of the convention is present.

Absent with leave: Mrs. Judd, Messrs. Knirk and Rood.

Absent without leave: Mr. Nisbet.

VICE PRESIDENT HUTCHINSON: Without objection, Mr. Nisbet is excused.

Reports of standing committees.

SECRETARY CHASE: The committee on declaration of rights, suffrage and elections, by Mr. Pollock, chairman, reports back to the convention **Delegate Proposal 1155,** A proposal to prohibit capital punishment, with 3 exceptions; with the recommendation that the proposal be referred to the committee on legislative powers.

James K. Pollock, chairman.

VICE PRESIDENT HUTCHINSON: The question is on concurring in the recommendation made by the committee on declaration of rights, suffrage and elections that the delegate proposal be referred to the committee on legislative powers. Is there objection? The Chair hears none.

It is referred to the committee on legislative powers.

SECRETARY CHASE: Mr. Martin, for the committee on executive branch, introduces

Committee Proposal 2, A proposal to provide the executive power be vested in the governor. Amends article VI, section 2; with the recommendation that it pass.

John B. Martin, chairman.

For the body of Committee Proposal 2, and the reasons submitted in support thereof, see below, page 336.

VICE PRESIDENT HUTCHINSON: The report will be accepted and printed in the journal. The committee proposal is referred to the committee of the whole and placed on general orders.

SECRETARY CHASE: Mr. Martin, for the committee on executive branch, introduces

Committee Proposal 3, A proposal to provide the governor shall be commander of the state armed forces. Amends article VI, section 4; with the recommendation that it pass.

John B. Martin, chairman.

For the body of Committee Proposal 3, and the reasons submitted in support thereof, see below, page 337.

VICE PRESIDENT HUTCHINSON: The report will be received and printed in the journal. The committee proposal is referred to the committee of the whole and placed on general orders.

SECRETARY CHASE: That is all the standing committee reports, Mr. President.

VICE PRESIDENT HUTCHINSON: Reports of select committees.

SECRETARY CHASE: None.

VICE PRESIDENT HUTCHINSON: Communications from state officers.

SECRETARY CHASE: None.

VICE PRESIDENT HUTCHINSON: **Introduction, first reading and reference of proposals.**

SECRETARY CHASE: Mr. Yeager introduces

Delegate Proposal 1385, A proposal to provide that the assessment of all property shall be by county assessors. Amends article X.

VICE PRESIDENT HUTCHINSON: Referred to the committee on finance and taxation.

SECRETARY CHASE: Mr. Seyferth introduces

Delegate Proposal 1386, A proposal to clarify the "loan of credit" provision so as not to prohibit the investment of idle public funds. Amends article X, section 12.

VICE PRESIDENT HUTCHINSON: Referred to the committee on finance and taxation.

SECRETARY CHASE: Messrs. McCauley, McLogan and L. W. Richards introduce

Delegate Proposal 1387, A proposal to empower cities and villages to levy taxes other than ad valorem property taxes. Amends article VIII.

VICE PRESIDENT HUTCHINSON: Referred to the committee on local government.

SECRETARY CHASE: Mrs. Cushman and Miss Donnelly introduce

Delegate Proposal 1388, A proposal to amend the constitution by adding a new section to article VIII thereof, to provide for the reorganization of county government.

VICE PRESIDENT HUTCHINSON: Referred to the committee on local government.

SECRETARY CHASE: Messrs. Downs, Douglas, Follo, Mahinske, Snyder and Suzore introduce

Delegate Proposal 1389, A proposal to provide that deputies to administrative board members may serve as ex officio members of the same boards their superiors do in case of absence of the superior. Amends article VI.

VICE PRESIDENT HUTCHINSON: Referred to the committee on executive branch.

SECRETARY CHASE: Messrs. Downs, Follo, Mahinske, Perras, and Snyder introduce

Delegate Proposal 1390, A proposal to provide for libraries throughout the state, a state library and financing of libraries. Amends article XI, section 14.

VICE PRESIDENT HUTCHINSON: Referred to the committee on education.

SECRETARY CHASE: Messrs. Barthwell, Hood, Snyder, Young, Mrs. Daisy Elliott and Miss Hart introduce

Delegate Proposal 1391, A proposal to provide that the trustees of Michigan State University shall give to the legislature an annual, detailed accounting of all income and expenditures. Amends article XI, section 8.

VICE PRESIDENT HUTCHINSON: Referred to the committee on education.

SECRETARY CHASE: Messrs. Barthwell, Hood, Snyder, Young, Mrs. Daisy Elliott and Miss Hart introduce

Delegate Proposal 1392, A proposal to provide that the regents

of the University of Michigan shall give to the legislature an annual, detailed accounting of all income and expenditures. Amends article XI, section 4.

VICE PRESIDENT HUTCHINSON: Referred to the committee on education.

SECRETARY CHASE: Messrs. Barthwell, Downs, Hood, Snyder, Young and Mrs. Daisy Elliott introduce

Delegate Proposal 1393, A proposal to provide for an executive head of each administrative agency, appointed by the governor, exempt from civil service, but subject to legislative veto. Amends article VI.

VICE PRESIDENT HUTCHINSON: Referred to the committee on executive branch.

SECRETARY CHASE: Messrs. Buback, Downs, Garvin, Hood, Marshall, Snyder and Miss Hart introduce

Delegate Proposal 1394, A proposal to provide for no discrimination in employment because of age. Amends article II.

VICE PRESIDENT HUTCHINSON: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: Mr. Lundgren introduces

Delegate Proposal 1395, A proposal to authorize limits for damages recovered against nonprofit religious and charitable corporations. Amends article V.

VICE PRESIDENT HUTCHINSON: Referred to the committee on legislative powers.

SECRETARY CHASE: Mr. Lundgren introduces

Delegate Proposal 1396, A proposal to require all administrative regulations to be submitted to the legislature. Amends article VI.

VICE PRESIDENT HUTCHINSON: Referred to the committee on executive branch.

SECRETARY CHASE: Mr. Lundgren introduces

Delegate Proposal 1397, A proposal to exempt nonprofit religious and charitable organizations from all taxation not including income or revenue from nonrelated sources. Amends article X.

VICE PRESIDENT HUTCHINSON: Referred to the committee on finance and taxation.

SECRETARY CHASE: Messrs. Lundgren and Leppien introduce

Delegate Proposal 1398, A proposal to prohibit governmental units from purchasing supplies or services at less than cost. Amends article XVI.

VICE PRESIDENT HUTCHINSON: Referred to the committee on miscellaneous provisions and schedule.

SECRETARY CHASE: Mr. Habermehl introduces

Delegate Proposal 1399, A proposal to provide that school districts may consolidate for school purposes, and associate for high school and community college purposes. Amends article XI, section 9.

VICE PRESIDENT HUTCHINSON: Referred to the committee on education.

SECRETARY CHASE: Mrs. Daisy Elliott and Mr. Young introduce

Delegate Proposal 1400, A proposal to provide that the enjoyment of civil rights shall not be abridged because of race, age, origin or religion. Amends article II.

VICE PRESIDENT HUTCHINSON: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: Mrs. Daisy Elliott and Mr. Young introduce

Delegate Proposal 1401, A proposal to provide for 4 year terms for the legislature. Amends article V, sections 2 and 3.

VICE PRESIDENT HUTCHINSON: Referred to the committee on legislative powers.

SECRETARY CHASE: Mrs. Daisy Elliott and Mr. Young introduce

Delegate Proposal 1402, A proposal to provide the governor may use the veto power over parts of appropriation bills. Amends article VI.

VICE PRESIDENT HUTCHINSON: Referred to the committee on executive branch.

SECRETARY CHASE: Mrs. Daisy Elliott and Mr. Young introduce

Delegate Proposal 1403, A proposal to provide the lieutenant governor have the same qualifications as the governor and duties prescribed by constitution and law. Amends article VI.

VICE PRESIDENT HUTCHINSON: Referred to the committee on executive branch.

SECRETARY CHASE: Mrs. Daisy Elliott and Mr. Young introduce

Delegate Proposal 1404, A proposal to provide that the governor may appoint and remove heads of administrative departments. Amends article VI.

VICE PRESIDENT HUTCHINSON: Referred to the committee on executive branch.

SECRETARY CHASE: Mrs. Butler, Mrs. Koeze, Messrs. Anspach, Batchelor, Beaman, Boothby, Figy, Dell, Durst, Finch, Gover, Habermehl, Haskill, Heideman, Kirk, Knirk, Lawrence, Leppien, Leibrand, McAllister, Mosier, Perras, Plank, Pugsley, J. B. Richards, L. W. Richards, Rood, Rush, Shackleton, Shaffer, Sharpe, Spitler, Stamm, Thomson, Turner, Tweedie, Tubbs, Upton and Wood introduce

Delegate Proposal 1405, A proposal relating to the election of senators, and fixing their terms of office. Substitute for article V, section 2.

VICE PRESIDENT HUTCHINSON: Referred to the committee on legislative organization.

SECRETARY CHASE: Messrs. Buback, Stamm, Madar, Baginski, A. G. Elliott, Leppien, Pellow, White, Downs and Miss Hart introduce

Delegate Proposal 1406, A proposal to provide that all elections for state and local office be held on the first Tuesday after the first Monday in November. Amends article III.

VICE PRESIDENT HUTCHINSON: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: Mr. Erickson introduces

Delegate Proposal 1407, A proposal to guarantee access of all laws, records, etc., to public inspection. Amends article XVI, section 6.

VICE PRESIDENT HUTCHINSON: Referred to the committee on miscellaneous provisions and schedule.

SECRETARY CHASE: Messrs. Wanger, McLogan and Hubbs introduce

Delegate Proposal 1408, A proposal to make clear that the enumeration in the constitution of certain rights shall not be construed to deny or disparage others retained by the people. Amends article II, section 1.

VICE PRESIDENT HUTCHINSON: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: Messrs. Wanger, White, McLogan, Davis and Shaffer introduce

Delegate Proposal 1409, A proposal to make clear that the electronic communications media are protected by the right of freedom of speech. Amends article II, section 4.

VICE PRESIDENT HUTCHINSON: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: Messrs. Wanger, McLogan, White and Shaffer introduce

Delegate Proposal 1410, A proposal to guarantee the right of public access to public records, subject only to reasonable limitation by statute or court rule; to provide for the enforcement of said right; and to partly define public records. Amends article II by adding a new section.

VICE PRESIDENT HUTCHINSON: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: Messrs. Wanger, McLogan, Hubbs and Prettie introduce

Delegate Proposal 1411, A proposal to delete language from article III, section 1, regarding inhabitants of indian descent, which now serves no useful purpose.

VICE PRESIDENT HUTCHINSON: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: Messrs. Wanger, Hubbs and Prettie introduce

Delegate Proposal 1412, A proposal to empower the legislature to establish a reasonable test of literacy for voters. Amends article III, section 1.

VICE PRESIDENT HUTCHINSON: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: Messrs. Wanger and Prettie introduce

Delegate Proposal 1413, A proposal to deprive persons under sentence of imprisonment for crimes involving moral turpitude of the right to vote. Amends article III, section 1.

VICE PRESIDENT HUTCHINSON: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: Messrs. Wanger, Hubbs and Prettie introduce

Delegate Proposal 1414, A proposal to deprive mental incompetents of the right to vote during the period of their disability. Amends article III, section 1.

VICE PRESIDENT HUTCHINSON: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: Messrs. Wanger and Hubbs introduce

Delegate Proposal 1415, A proposal to provide that, should article XII, section 5, be retained, then religious, charitable or educational corporations be exempt from its operation.

VICE PRESIDENT HUTCHINSON: Referred to the committee on miscellaneous provisions and schedule.

SECRETARY CHASE: Messrs. Wanger, McLogan, Davis, Hubbs and Prettie introduce

Delegate Proposal 1416, A proposal to clarify the date on which the work of future constitutional conventions will be submitted to the voters. Amends article XVII, section 4.

VICE PRESIDENT HUTCHINSON: Referred to the committee on miscellaneous provisions and schedule.

SECRETARY CHASE: Messrs. Wanger, McLogan, Davis and Hubbs introduce

Delegate Proposal 1417, A proposal to provide that, unless stated to the contrary, no deletion of language from the constitution shall be construed to deprive the people or the government of any right or power to which they would otherwise be entitled by law. Amends article XVII by adding a new section.

VICE PRESIDENT HUTCHINSON: Referred to the committee on miscellaneous provisions and schedule.

SECRETARY CHASE: Messrs. Wanger, McLogan, Davis and Hubbs introduce

Delegate Proposal 1418, A proposal to provide that, unless otherwise stated, no failure to include language from the 1908 constitution in the new constitution shall be construed to deny or disparage any right or power to which the people or their government would otherwise be entitled by law. Amends the schedule by adding a new section.

VICE PRESIDENT HUTCHINSON: Referred to the committee on miscellaneous provisions and schedule.

SECRETARY CHASE: Messrs. Yeager, Gust, Leibrand, McAllister and Shaffer introduce

Delegate Proposal 1419, A proposal to retain the minimum age for voting at 21 years. Amends article III, section 1.

VICE PRESIDENT HUTCHINSON: Referred to the committee on declaration of rights, suffrage and elections.

SECRETARY CHASE: Messrs. Yeager, Dean Doty, Everett, Erickson, Leppien, Hodges, Anspach, Boothby, Kirk, Dehnke, Hubbs, Habermehl, Wood, Powell, Gust, Leibrand, McAllister, Shaffer, Plank, Donald Doty, Iverson, Lundgren, Millard, White, Lawrence, G. E. Brown, Cudlip, J. B. Richards and Beaman introduce

Delegate Proposal 1420, A proposal to provide for closed party primaries. Amends article III.

VICE PRESIDENT HUTCHINSON: Referred to the committee on declaration of rights, suffrage and elections.

Second reading of proposals.

SECRETARY CHASE: None.

VICE PRESIDENT HUTCHINSON: Third reading of proposals.

SECRETARY CHASE: None.

VICE PRESIDENT HUTCHINSON: Motions and resolutions.

SECRETARY CHASE: Messrs. Baginski, Downs, Walker, Mrs. Hatcher, Messrs. Perras and Wanger offer

Resolution 46, A resolution commending Mr. and Mrs. Kuhn on the birth of a daughter.

VICE PRESIDENT HUTCHINSON: The Chair recognizes the delegate from Oakland county, Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, it seems appropriate to move to suspend the rules for the purpose of immediate consideration of this resolution at this time, if the secretary's voice will hold out to read it in full.

VICE PRESIDENT HUTCHINSON: Mr. Van Dusen moves that the rules be suspended for the consideration of this resolution at this time. Is there objection? The Chair hears no objection.

The rules are suspended. The secretary will read the resolution.

SECRETARY CHASE: Following is the resolution:

Whereas, Delegate Kuhn and his wife were successful in producing a fine daughter; and

Whereas, We hope she will be a delegate to the constitutional convention of the year 2000; now therefore be it

Resolved, That this convention officially commend Delegate Kuhn and his wife, and that copies of this resolution be sent to the daughter, Connie, with the best wishes of the convention.

VICE PRESIDENT HUTCHINSON: The question is on the resolution. All those in favor say aye. Opposed?

The resolution is adopted. (applause)

SECRETARY CHASE: That is the only resolution on file, Mr. President.

VICE PRESIDENT HUTCHINSON: Unfinished business.

SECRETARY CHASE: None.

VICE PRESIDENT HUTCHINSON: Special orders of the day.

SECRETARY CHASE: None.

VICE PRESIDENT HUTCHINSON: General orders of the day.

SECRETARY CHASE: None.

VICE PRESIDENT HUTCHINSON: Announcements and notices.

SECRETARY CHASE: The committee on judicial branch will meet tonight at 8:00 o'clock in conjunction with the committee on executive branch to hear the Honorable Harry F. Kelly, justice of the Michigan supreme court. The meeting will be held in rooms B, C and D. Mr. Danhof, chairman.

The committee on legislative powers will continue the public hearing on Delegate Proposals 1072, 1131, 1171 and 1215 in room H immediately after the session adjourns.

The committee on declaration of rights, suffrage and elections will meet in room D Thursday at 10:30 a.m. James K. Pollock, chairman.

The committee on finance and taxation will meet in room E today immediately after the session. D. Hale Brake, chairman.

I think all of the delegates have the composite calendar of committee meetings. If you wish them read, I will be glad to do so.

VICE PRESIDENT HUTCHINSON: Mr. Elliott.

MR. A. G. ELLIOTT: Mr. President, I don't wish to have them read, but I do wish to correct an error under the notice of public hearings. The public hearings that are scheduled for the committee on local government will be for the entire committee and not the subcommittee. These will be committee hearings of the entire committee.

SECRETARY CHASE: Thank you. The correction will be made in the list.

VICE PRESIDENT HUTCHINSON: Any further announcements?

SECRETARY CHASE: Mr. President, I have the following announcement: Mr. Blaque Knirk called and talked to Mr. Apol. He will be out of traction 2 hours a day but will be in traction for a week or 10 days more. He is in the Coldwater

hospital and has his own private telephone if the delegates wish to contact him.

VICE PRESIDENT HUTCHINSON: Mr. Bentley.

MR. BENTLEY: Mr. President, it was suggested that some announcement should be made regarding those witnesses who are scheduled to appear at the public hearings this afternoon and evening at Kellogg center before the committee on education.

For the information of the delegates, we have the following organizations whose representatives have been scheduled to make presentations: The superintendent of schools from the archdiocese of Detroit, the superintendent of Inkster public schools, state board for libraries, Michigan library association, league of women voters, superintendent of schools from Redford union schools, district 1, board of education, Michigan district, Wisconsin evangelical lutheran synod, national union of christian schools, AFL-CIO, Detroit federation of teachers, and the Godwin Heights public schools.

Any delegates who wish to come out either this afternoon or this evening to Kellogg center would be most welcome.

VICE PRESIDENT HUTCHINSON: Any further announcements?

SECRETARY CHASE: The finance clerk announces that the mileage checks and salary checks may be picked up tomorrow morning after 8:00 o'clock in the office of the finance clerk in the secretary's office.

The following delegates request to be excused from sessions: Mr. Downs wishes to be excused from tomorrow's session for the purpose of attendance at a funeral. Messrs. Millard, Tweedie, Perras and Sablich wish to be excused from the session of Friday.

VICE PRESIDENT HUTCHINSON: Is there objection to the requests of the several delegates? If not, the requests will be granted. They are granted.

SECRETARY CHASE: That is all of the items on the secretary's desk, Mr. President.

VICE PRESIDENT HUTCHINSON: Any further announcements? If not, the Chair recognizes the delegate from Wayne county, Mr. Bledsoe, for the purpose of a motion.

MR. BLEDSOE: Mr. President, I rise for the purpose at this time of moving that the convention be adjourned.

VICE PRESIDENT HUTCHINSON: The gentleman moves that the convention do now adjourn. All those in favor say aye. Opposed?

The convention stands adjourned until tomorrow at 2:00 p.m.

[Whereupon, at 2:20 o'clock p.m., the convention adjourned until 2:00 o'clock p.m., Thursday, November 30, 1961.]

THIRTY-THIRD DAY

Thursday, November 30, 1961, 2:00 o'clock p.m.

PROCEEDINGS

PRESIDENT NISBET: The convention will please come to order.

Our invocation today will be given by the Reverend John Bullock of the Potter Park Methodist Church of Lansing. Will you please rise.

REVEREND BULLOCK: Let us pray a prayer today, the lines of which are familiar to many of us.

Almighty God, who in the former time didst lead our fathers forth into a wealthy place; give Thy grace, we humbly beseech Thee, to us, their children, that we may always prove ourselves a people mindful of Thy favor, and glad to do Thy will.

Bless our land with honorable industry, sound learning, and pure religion. Defend our liberties, preserve our unity. Save us from violence, discord and confusion, from pride and arrogance, and from every evil way. Fashion into one happy people the multitudes brought hither out of many kindreds and tongues. Endue with the spirit of wisdom those whom we entrust in Thy name with the authority of governance, to the end that there be peace at home, and that we keep a place among the nations of the earth. In the time of prosperity fill our hearts with thankfulness; and in the day of trouble suffer not our trust in Thee to fail.

Grant unto these honorable delegates gathered for this historic step in the life of our great state, the wisdom to seek Thy guidance, uniting the best government of the past with fearless and prophetic insight to meet the needs of our changing social order. May all that is done here be in harmony with the great prayer Thou hast put upon our lips. "Thy kingdom come, Thy will be done on earth."

In the name of our Lord and Master. Amen.

PRESIDENT NISBET: The roll call will be taken by the secretary. Those present, please vote aye.

SECRETARY CHASE: Has everyone voted? The voting machine is now locked. The vote will be recorded.

Mr. President, a quorum of the convention is present.

Prior to today's session, the secretary received the following request for leave:

Mr. Romney has previously filed an excuse requesting leave from the session of today and tomorrow, due to other convention business.

PRESIDENT NISBET: Without objection, the request is granted.

SECRETARY CHASE: Absent with leave: Mrs. Judd, Messrs. Downs, Knirk, Page, Pollock, Romney and Rood.

Absent without leave: Messrs. Allen and Krolikowski.

PRESIDENT NISBET: Without objection, the delegates are excused.

Reports of standing committees.

Dr. DeVries.

MR. DeVRIES: Mr. President, fellow delegates, with the leave of the convention, I would like to make a report on behalf of the committee on administration with regard to the filing of daily journals and committee reports.

1. At the end of the session today, all delegates are requested to put on top of their desks all copies of the daily journal which they presently have. The pages will put them in notebooks, fill in the missing copies, and bring them up to date. We have purchased 2 notebooks for every delegate.

2. There will be a second notebook placed on the delegates' desks this evening, which is to be left empty. This notebook, and the other, is to be left on the desk at the end of every session, or in the second drawer of your desk, and in it we will have the pages file the committee proposals and reports.

3. The pages will file the daily journals, committee proposals and committee reports in these notebooks each morning. So we would like to urge you to make sure that the 2 notebooks are on your desk every evening when you leave the session, or in the second drawer of your desks.

Mr. President, I move the adoption of this report.

PRESIDENT NISBET: The question is on concurring in

the report. Any discussion? If not, all in favor say aye. Opposed, no.

The report is concurred in.

MR. DeVRIES: Mr. President, that concludes the report of the committee on administration.

PRESIDENT NISBET: Mr. Chase, are there any other reports?

SECRETARY CHASE: There are no other committee reports on file, Mr. President.

PRESIDENT NISBET: Reports of select committees.

SECRETARY CHASE: None.

PRESIDENT NISBET: Communications from state officers.

SECRETARY CHASE: None.

PRESIDENT NISBET: **Introduction, first reading and reference of proposals.**

On Wednesday, November 22, **Delegate Proposal 1339** was referred to the committee on executive branch. Without objection, it will be recalled from that committee and referred to the committee on finance and taxation.

Hearing none, it is referred to the committee on finance and taxation.

ASSISTANT SECRETARY KNAPP: Mr. Nord introduces
Delegate Proposal 1421, A proposal regarding the privileges and immunities of the state, its instrumentalities and officials. Amends article XVI by adding a new section.

PRESIDENT NISBET: Referred to the committee on miscellaneous provisions and schedule.

ASSISTANT SECRETARY KNAPP: Mr. Nord introduces
Delegate Proposal 1422, A proposal regarding the abolition of immunity of legislators from arrest and civil process. Amends article V, section 8.

PRESIDENT NISBET: Referred to the committee on legislative powers.

ASSISTANT SECRETARY KNAPP: Messrs. Dean Doty, Farnsworth, J. B. Richards and Boothby introduce
Delegate Proposal 1423, A proposal to provide for the equalization of assessments by a state board and the use of the state equalized assessed valuation by all taxing units within the counties. Amends article X, section 8.

PRESIDENT NISBET: Referred to the committee on finance and taxation.

ASSISTANT SECRETARY KNAPP: Messrs. Bledsoe and Garvin introduce
Delegate Proposal 1424, A proposal that the privilege of self-incrimination shall remain as a bar against denial of the privilege unless waived by the witness. Amends article II, section 16.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

ASSISTANT SECRETARY KNAPP: Messrs. Bledsoe and Garvin introduce
Delegate Proposal 1425, A proposal to provide for trials de novo in circuit courts of traffic matters from courts having original jurisdiction involving statutory and ordinance violations. Amends article VII, section 10.

PRESIDENT NISBET: Referred to the committee on judicial branch.

ASSISTANT SECRETARY KNAPP: Messrs. Erickson and Plank introduce
Delegate Proposal 1426, A proposal to guarantee freedom of expression to the press, radio, television and other modern means of communication. Amends article II, section 4.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

ASSISTANT SECRETARY KNAPP: Mrs. Daisy Elliott, Messrs. Young and Stamm introduce
Delegate Proposal 1427, A proposal to limit the principal administrative and executive departments to 20. Amends article VI.

PRESIDENT NISBET: Referred to the committee on executive branch.

ASSISTANT SECRETARY KNAPP: Mrs. Daisy Elliott, Messrs. Young and Stamm introduce
Delegate Proposal 1428, A proposal to allow the governor to change the organization of the executive branch with legislative consent. Amends article VI.

PRESIDENT NISBET: Referred to the committee on executive branch.

ASSISTANT SECRETARY KNAPP: Mr. Pollock introduces
Delegate Proposal 1429, A proposal to provide for all state subdivisions to employ civil servants on a merit and fitness basis. Amends article VI.

PRESIDENT NISBET: Referred to the committee on executive branch.

ASSISTANT SECRETARY KNAPP: Messrs. Stafseth and Staiger introduce
Delegate Proposal 1430, A proposal to provide gasoline taxes be used for highway purposes, including acquistion of right of way and prior debts. Amends article X, section 22.

PRESIDENT NISBET: Referred to the committee on finance and taxation.

ASSISTANT SECRETARY KNAPP: Messrs. Gover, McCauley, J. B. Richards, Lundgren, Prettie and Ford introduce
Delegate Proposal 1431, A proposal to provide that one representative from each incorporated village sit on the board of supervisors. Amends article VIII, section 7.

PRESIDENT NISBET: Referred to the committee on local government.

ASSISTANT SECRETARY KNAPP: Messrs. Dade, Bledsoe, Hood and Mrs. Hatcher introduce
Delegate Proposal 1432, A proposal for a new preamble.

PRESIDENT NISBET: Referred to the committee on miscellaneous provisions and schedule.

ASSISTANT SECRETARY KNAPP: Mr. Stevens introduces
Delegate Proposal 1433, A proposal to fix the qualifications for the franchise. Amends article III, section 1. To be substituted for sections 1 and 2.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

ASSISTANT SECRETARY KNAPP: Messrs. Balcer and Haskill introduce
Delegate Proposal 1434, A proposal to provide for a tax exemption for residents over 62 years of age. Amends article X.

PRESIDENT NISBET: Referred to the committee on finance and taxation.

ASSISTANT SECRETARY KNAPP: Messrs. Balcer and Haskill inroduce
Delegate Proposal 1435, A proposal to provide for a system of pensions to certain residents with repayment to the state from pensioners' estates. Amends article XVI.

PRESIDENT NISBET: Referred to the committee on miscellaneous provisions and schedule.

ASSISTANT SECRETARY KNAPP: Mr. King introduces
Delegate Proposal 1436, A proposal to provide for popular election of all members of county boards of supervisors. Amends article VIII, section 7.

PRESIDENT NISBET: Referred to the committee on local government.

ASSISTANT SECRETARY KNAPP: Mr. Suzore introduces
Delegate Proposal 1437, A proposal to create a state election commission, to provide for its membership, and to establish an administrative staff to assist it in its duties. Amends article III, section 9.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

ASSISTANT SECRETARY KNAPP: Mrs. Judd and Mr. Sablich introduce
Delegate Proposal 1438, A proposal to provide proportional representation by districts in the lower house with no deviation over 10 per cent allowed. Amends article V, section 3.

PRESIDENT NISBET: Referred to the committee on legislative organization.

ASSISTANT SECRETARY KNAPP: Mrs. Judd and Mr. Sablich introduce
Delegate Proposal 1439, A proposal to provide for periodic reapportionment of the legislature. Amends article V.

PRESIDENT NISBET: Referred to the committee on legislative organization.

ASSISTANT SECRETARY KNAPP: Messrs. Erickson and Figy introduce

Delegate Proposal 1440, A proposal to prohibit the irrevocable sale of public utilities by municipalities except after affirmative vote of 3/5 of the electors. Amends article VIII, section 25.

PRESIDENT NISBET: Referred to the committee on local government.

ASSISTANT SECRETARY KNAPP: Mrs. Cushman introduces

Delegate Proposal 1441, A proposal providing for consolidation and abolition of townships in certain circumstances. Amends article VIII, section 15.

PRESIDENT NISBET: Referred to the committee on local government.

ASSISTANT SECRETARY KNAPP: Mrs. Cushman introduces

Delegate Proposal 1442, A proposal to provide there shall be no discrimination in jury duty because of sex. Amends article II.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

ASSISTANT SECRETARY KNAPP: Mrs. Cushman introduces

Delegate Proposal 1443, A proposal to provide the responsibility for the exercise of political power is in the people. Amends article II, section 1.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

ASSISTANT SECRETARY KNAPP: Mrs. Cushman introduces

Delegate Proposal 1444, A proposal to define the governor's removal powers. Amends article VI.

PRESIDENT NISBET: Referred to the committee on executive branch.

ASSISTANT SECRETARY KNAPP: Mrs. Cushman introduces

Delegate Proposal 1445, A proposal to limit the number of administrative departments to 30. Amends article VI.

PRESIDENT NISBET: Referred to the committee on executive branch.

ASSISTANT SECRETARY KNAPP: Mrs. Cushman introduces

Delegate Proposal 1446, A proposal providing for the election and term of the governor and lieutenant governor to 4 year terms. Amends article VI, section 1.

PRESIDENT NISBET: Referred to the committee on executive branch.

ASSISTANT SECRETARY KNAPP: Messrs. Leppien, Turner and Shackleton introduce

Delegate Proposal 1447, A proposal to permit counties to assess taxes not to exceed 5/10 per cent of assessed valuation, and townships not to exceed 1/10 per cent of assessed valuation and to provide that the total property tax shall not exceed 6/10 per cent, and to provide for the levy of income taxes in cities and school districts in lieu of general property taxes. Amends article X, section 21.

PRESIDENT NISBET: Referred to the committee on finance and taxation.

ASSISTANT SECRETARY KNAPP: Messrs. Austin, Bledsoe, T. S. Brown, Garvin, Hood, Marshall, Murphy, Nord, Perlich and Suzore introduce

Delegate Proposal 1448, A proposal to deny tax exempt status to any eleemosynary, charitable or service organization which violates public policy by discriminatory practices. Amends article XIV by adding a new section.

PRESIDENT NISBET: Referred to the committee on legislative powers.

ASSISTANT SECRETARY KNAPP: Messrs. Bledsoe, Downs, Garvin, Miss Hart, Messrs. Hood, Marshall, Murphy, Pellow, Perlich and Stopczynski introduce

Delegate Proposal 1449, A proposal to retain the present provisions on the election of the University of Michigan regents, the trustees of Michigan State University and the Wayne State University board of governors. Retains article XI, sections 3, 7 and 16.

PRESIDENT NISBET: Referred to the committee on education.

ASSISTANT SECRETARY KNAPP: Messrs. Buback, Downs, Garvin, Miss Hart, Messrs. Hood, Madar, Marshall, Murphy, Perlich, Snyder and Suzore introduce

Delegate Proposal 1450, A proposal to provide for the support of social welfare programs. Amends article XI, section 15.

PRESIDENT NISBET: Referred to the committee on education.

ASSISTANT SECRETARY KNAPP: Messrs. Bledsoe, Buback, Downs, Garvin, Hood, Krolikowski, Madar, Marshall, Murphy, Perlich and Snyder introduce

Delegate Proposal 1451, A proposal to guarantee equal protection of the laws and due process of law. Amends article II, section 16.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

ASSISTANT SECRETARY KNAPP: Messrs. Buback, Douglas, Downs, Hood, Madar, Mahinske, Murphy, Perlich and Suzore introduce

Delegate Proposal 1452, A proposal to provide that all elections shall be held on Tuesday. Amends article III; article VII, section 18; article XI, sections 2, 6 and 7.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

ASSISTANT SECRETARY KNAPP: Messrs. Buback, Downs, Garvin, Hood, Madar, Murphy and Miss Hart introduce

Delegate Proposal 1453, A proposal to consolidate the school financing provisions of article X and article XI. Amends article X, sections 1, 21, 23, 27, 28 and article XI.

PRESIDENT NISBET: Referred to the committee on finance and taxation.

ASSISTANT SECRETARY KNAPP: Mr. Pollock and Miss Donnelly introduce

Delegate Proposal 1454, A proposal for the creation of an appointive proportional commission to advise the legislature, governor and public regarding effectiveness of the constitution and recommend necessary amendments.

PRESIDENT NISBET: Referred to the committee on miscellaneous provisions and schedule.

ASSISTANT SECRETARY KNAPP: Mr. J. A. Hannah introduces

Delegate Proposal 1455, A proposal to define the inherent rights of people and to guarantee the enjoyment of civil rights. Amends article I, sections 1 and 2.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

ASSISTANT SECRETARY KNAPP: Messrs. Erickson, and Plank introduce

Delegate Proposal 1456, A proposal to exempt newspapers, television and radio stations of state institutions from the prohibition on the publication of state newspapers. Amends article V, section 35.

PRESIDENT NISBET: Referred to the committee on legislative powers.

ASSISTANT SECRETARY KNAPP: Mr. Faxon introduces

Delegate Proposal 1457, A proposal to remove all reference to boundaries in the constitution. Amends article I, section 1.

PRESIDENT NISBET: Referred to the committee on miscellaneous provisions and schedule.

ASSISTANT SECRETARY KNAPP: Mr. Faxon introduces

Delegate Proposal 1458, A proposal to provide that all voting shall be by machine. Amends article III.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

ASSISTANT SECRETARY KNAPP: Mr. Faxon introduces

Delegate Proposal 1459, A proposal to delete from the constitution the provision on elections to direct expenditures and bond issues. Amends article III, section 4.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

ASSISTANT SECRETARY KNAPP: Mr. Faxon introduces

Delegate Proposal 1460, A proposal to provide that no public moneys shall be appropriated to aid private schools or other institutions. Amends article V.

PRESIDENT NISBET: Referred to the committee on legislative powers.

ASSISTANT SECRETARY KNAPP: Mr. Faxon introduces **Delegate Proposal 1461,** A proposal to provide that the provisions giving legislators rights to legislative documents shall be deleted. Amends article V, section 9.

PRESIDENT NISBET: Referred to the committee on legislative powers.

ASSISTANT SECRETARY KNAPP: Mr. Faxon introduces **Delegate Proposal 1462,** A proposal to delete provisions pertaining to compensation of president and speaker of the legislature. Amends article V, section 10.

PRESIDENT NISBET: Referred to the committee on legislative powers.

ASSISTANT SECRETARY KNAPP: Mr. Faxon introduces **Delegate Proposal 1463,** A proposal to delete provisions concerning method of taking legislative votes. Amends article V, section 17.

PRESIDENT NISBET: Referred to the committee on legislative powers.

ASSISTANT SECRETARY KNAPP: Mr. Faxon introduces **Delegate Proposal 1464,** A proposal to prohibit legislative appropriation to private use. Amends article V, section 24.

PRESIDENT NISBET: Referred to the committee on legislative powers.

ASSISTANT SECRETARY KNAPP: Mr. Faxon introduces **Delegate Proposal 1465,** A proposal to provide no legislator shall have any interest in contracts with the state. Amends article V, section 25.

PRESIDENT NISBET: Referred to the committee on legislative powers.

ASSISTANT SECRETARY KNAPP: Mr. Faxon introduces **Delegate Proposal 1466,** A proposal to delete provisions regarding legislative divorces. Amends article V, section 32.

PRESIDENT NISBET: Referred to the committee on legislative powers.

ASSISTANT SECRETARY KNAPP: Messrs. Faxon and Kuhn introduce

Delegate Proposal 1467, A proposal to require all tax money to go to the general fund and to prescribe allocations to schools at the 1961 level. Amends article X.

PRESIDENT NISBET: Referred to the committee on finance and taxation.

ASSISTANT SECRETARY KNAPP: Mr. Faxon introduces **Delegate Proposal 1468,** A proposal to delete provisions prohibiting establishment of a state paper. Amends article V, section 35.

PRESIDENT NISBET: Referred to the committee on legislative powers.

ASSISTANT SECRETARY KNAPP: Mr. Faxon introduces **Delegate Proposal 1469,** A proposal to allow each county to determine who its officers shall be. Amends article VIII, section 3.

PRESIDENT NISBET: Referred to the committee on local government.

Second reading of proposals.

SECRETARY CHASE: Nothing on that calendar, Mr. President.

PRESIDENT NISBET: Third reading of proposals.

SECRETARY CHASE: Nothing on that calendar, Mr. President.

PRESIDENT NISBET: **Motions and resolutions.**

SECRETARY CHASE: Mrs. Daisy Elliott and Mr. Young offer

Resolution 47, A resolution requesting authority and funds for the committee on declaration of rights, suffrage and elections to hold hearings in the city of Detroit.

Following is the body of Resolution 47, as offered:

Whereas, In view of the intense interest of residents of the Detroit metropolitan area in constitutional provisions affecting the rights of minorities; and

Whereas, In consideration of the numerous requests from constituents expressing interest in this subject and a desire to be heard; now therefore be it

Resolved, That such hearings be held preferably in Cobo hall, or some other suitable place of adequate capacity in order to guarantee the possibility of the maximum participation of interested citizens in the Detroit area and that the public be given sufficient notice; and be it further

Resolved, That the convention appropriate the necessary funds to defray the costs of travel for the members of the committee and staff to and from Detroit and other expenses necessary and incidental to the holding of such hearings.

PRESIDENT NISBET: Referred to the committee on administration.

SECRETARY CHASE: Messrs. Buback, Downs, Miss Hart, Messrs. Hodges, Kelsey and Liberato offer

Resolution 48, A resolution to commend the Michigan consolidated gas company for its showing of the Michigan Story visual education movie and to encourage it to make this movie available to the citizens of the state.

Following is the body of Resolution 48, as offered:

Whereas, The Michigan Story visual education movie has been shown the delegates of the constitutional convention; and

Whereas, This historical document is of value to the citizens of Michigan; and

Whereas, This was produced by the Michigan consolidated gas company; now therefore be it

Resolved, That this company be commended for this public service activity and be encouraged in its efforts to make this available to the citizens of our state for their information.

PRESIDENT NISBET: Referred to the committee on rules and resolutions.

SECRETARY CHASE: That is all of the resolutions on file, Mr. President.

PRESIDENT NISBET: Unfinished business.

SECRETARY CHASE: None.

PRESIDENT NISBET: Special orders.

SECRETARY CHASE: None.

PRESIDENT NISBET: General ordears.

SECRETARY CHASE: There are 2 items on general orders but they are not in order for consideration until Monday.

PRESIDENT NISBET: Announcements.

SECRETARY CHASE: The following committee announcements:

The committee on judicial branch will meet this afternoon at 3:00 o'clock in room B.

The committee on local government will meet in room A at 3:00 o'clock.

The committee on executive branch will meet in room C at 3:00 o'clock.

The committee on education will be holding a public hearing in Marquette on Friday, December 1 and in Houghton on Saturday, December 2.

The committee on judicial branch will hold a public hearing in the city-county building in Detroit on Tuesday, December 5 at 9:30 a.m.

The committee on finance and taxation will hold a public hearing for taxpayers on both state and local levels on Wednesday, December 6, at 7:30 in rooms B, C and D.

PRESIDENT NISBET: I would like to announce that Miss Hart has informed me that 30 have been enrolled in the speed reading course. Classes will be held on Monday and Wednesday evenings from 6:00 to 7:30. Consequently, would the chairmen of the committees make every effort to see that there is no conflict on those 2 days, Monday and Wednesday, from 6:00 to 7:30?

Mr. Yeager.

MR. YEAGER: Mr. President, I hope I am not out of line in making this request—and I don't really believe I am. But I would like the delegates of this convention to recognize that Mrs. Lila Masson of Redford township was, within the

past few days, honored nationally by her selection as Mrs. America.

The fact that Mrs. Masson happens to be a constituent of mine and Mrs. Conklin is not of consequence here. I am sure that if a Michigan man had been chosen as the first United States astronaut to explore outer space, it would be noted in this convention.

By the same token, in the past 2 years Michigan has produced a Miss America and a Mrs. America. I believe it is noteworthy that the state that served as the arsenal of democracy in 2 world wars, the state that put the world on wheels, the state that is noted for agriculture and outstanding tourist attractions, has now come to the fore as a state recognized for its beautiful and talented women. (laughter)

Mr. President, it should not be difficult, therefore, to get applause from the delegates present in recognition of the lovely women of Michigan. (applause)

PRESIDENT NISBET: Thank you, Mr. Yeager.

I hope your district produces many more beautiful women. (laughter)

SECRETARY CHASE: We have the following requests for leaves of absence:

Mr. Austin requests leave of absence from the session of tomorrow to attend a conference in Washington; Mr. Baginski and Mr. Stopczynski request leave from tomorrow's session; Mrs. Butler requests leave from the session of tomorrow in order that she may attend the public hearings in the upper peninsula; Mr. Danhof asks to be excused from Friday's session as he made a previous commitment to meet with the Muskegon county township officers' association; Mr. Dell wishes to be excused from tomorrow's session; Miss Donnelly asks to be excused from tomorrow's session because of the necessity to appear in court; Mr. Durst requests excuse from the session of tomorrow; Mr. Finch wishes to be excused from tomorrow's session due to a prior commitment; Mr. Habermehl requests to be excused from the session of tomorrow to appear in court; Mrs. Koeze asks to be excused from Friday's session. She has a speaking engagement in Muskegon; Messrs. Kelsey and Liberato request leave from Friday's session; Mr. Lesinski requests leave of absence from tomorrow's session; Mr. Leibrand asks to be excused because of a matter that was set a month ago; Mr. Radka requests permission to be excused from tomorrow's session; Mr. Seyferth requests permission to be excused from tomorrow's session; Mr. Tubbs requests permission to be excused from tomorrow's session due to a previous commitment; and Mr. Ink White requests to be excused from tomorrow's session; Mr. Bonisteel requests leave from the session of tomorrow and Friday, December 8, due to a prior engagement; Mr. Upton wishes to be excused from the sessions of tomorrow and Monday, December 1 and 4, because he has speaking engagements relative to the constitutional convention.

PRESIDENT NISBET: Without objection they will be excused.

I hope all the rest of you will be present. (laughter)

Mr. Nord.

MR. NORD: Mr. President, I demand equal time on behalf of my wife. If we're speaking about Mrs. America, I don't see why my wife should not get equal time.

Secondly, I request leave to attend tomorrow's session. (laughter)

PRESIDENT NISBET: Without objection, leave will be granted. (laughter)

SECRETARY CHASE: I have the following request:

Mr. Danhof asks that the committee on judicial branch be excused from the sessions of Monday and Tuesday, December 4 and 5, as they will be in Detroit conducting hearings. The members of the committee are: Messrs. Danhof, Leibrand, Ford, Barthwell, Bledsoe, Cudlip, Miss Donnelly, Messrs. Everett, Garvin, Higgs, Iverson, Krolikowski, Lawrence, McAllister, Miss McGowan, Messrs. Mosier, Ostrow, Prettie, Pugsley, Tubbs and Woolfenden.

PRESIDENT NISBET: Without objection, they will be excused.

SECRETARY CHASE: That is all of the items on the secretary's desk, Mr. President.

PRESIDENT NISBET: The Chair recognizes Mr. Brake.

MR. BRAKE: Mr. President, ladies and gentlemen of the convention, I move we adjourn.

PRESIDENT NISBET: The question is on adjournment.

Mr. Madar.

MR. MADAR: What I would like to do is move that we adjourn until Monday. It doesn't seem that anybody else wants to work and I'm sure that those of us who didn't ask for leave would just as soon be away because we know there is nothing to do tomorrow. So why don't we just adjourn until Monday?

PRESIDENT NISBET: The question is on Mr. Madar's motion. Is there any discussion?

Mr. Yeager.

MR. YEAGER: Mr. President, I thought one of the reasons for coming in tomorrow was that tomorrow was the last day for proposals and there was a great deal of discussion here at one time on late blooming ideas, and I think they should have a chance to get in tomorrow and be read.

PRESIDENT NISBET: The question is on the motion of Mr. Madar. All in favor, say aye. Opposed, no.

The motion does not prevail.

The question is on the motion for adjournment. All in favor, say aye. Opposed, no.

We are adjourned until 10:00 o'clock tomorrow morning.

[Whereupon, at 2:30 o'clock p.m., the convention adjourned until Friday, December 1, 1961 at 10:00 o'clock a.m.]

THIRTY-FOURTH DAY

Friday, December 1, 1961, 10:00 o'clock a.m.

PROCEEDINGS

PRESIDENT NISBET: The convention will please come to order.

Our invocation this morning will be given by Father Slowey of the Catholic Social Services, of Lansing. Father Slowey. Please rise.

FATHER SLOWEY: Almighty God, help us to recognize that the purpose of government is to protect the rights which Thou has given to the human person and also for the good of man. Assist our constitutional delegates to be dedicated to the highest moral principles and to the welfare of our state. May we ever be alert to the fact that public office is a public trust. Amen.

PRESIDENT NISBET: The roll call will be taken by the secretary. Those present, will please vote aye.

SECRETARY CHASE: Has everyone present voted? If so, the machine is now locked and the vote will be recorded.

Mr. President, a quorum of the convention is present.

PRESIDENT NISBET: Mr. Shackleton.

MR. SHACKLETON: I had a phone call from Mr. Leppien last evening. He said he would not be able to come back today. He was performing duties in connection with his resignation as county clerk. He asked to be excused.

SECRETARY CHASE: Prior to today's session, the secretary received the following requests for leave:

Messrs. G. E. Brown, Cudlip, Leppien, Marshall, Pollock, Rush and Norris, who also asks to be excused from the sessions of Monday, December 4, and Monday, December 11.

PRESIDENT NISBET: Without objection, the requests are granted.

SECRETARY CHASE: Absent with leave: Miss Andrus, Messrs. Austin, Baginski, Barthwell, Bentley, Bonisteel, G. E. Brown, T. S. Brown, Mrs. Butler, Mrs. Conklin, Messrs. Cudlip, Danhof, Dell, Miss Donnelly, Messrs. Douglas, Durst, Faxon, Finch, Follo, Habermehl, Miss Hart, Messrs. Heideman, Kelsey, Knirk, Mrs. Koeze, Messrs. Kuhn, Leibrand, Leppien, Lesinski, Liberato, Marshall, Millard, Norris, Page, Perras, Pollock, Radka, L. W. Richards, Romney, Rush, Sablich, Seyferth, Stopczynski, Tubbs, Upton and White.

Absent without leave: Messrs. Allen, King, Nord, Rood and Mrs. Judd.

PRESIDENT NISBET: Without objection, the delegates are excused.

I want to express my appreciation to you people who are here for being here today.

[During the proceedings Mr. Nord entered the chamber and took his seat.]

Reports of standing committees.

SECRETARY CHASE: The committee on administration, by Mr. DeVries, chairman, recommends to the convention for consideration the following policy statement:

> Tapes recorded in committee are the property of the convention and are to be safeguarded as such. Their custody is with the chairmen of the respective committees to be kept secure in the committee room. Except by specific authority in each case, tapes are not to be removed from the committee rooms, nor are they to be duplicated, edited, abstracted or erased. Tapes shall not be duplicated without the consent of the committee chairman and vice chairman and the committee chairman shall at the earliest convenience identify and transfer the tapes to the library of the convention.
>
> Walter DeVries, chairman.

PRESIDENT NISBET: Mr. DeVries.

MR. DeVRIES: Mr. President, fellow delegates, this is an attempt to clarify the policy regarding the use and preservation of the tapes of this convention and also their unauthorized duplication.

I move the recommendation be concurred in.

PRESIDENT NISBET: The question is on concurring in the recommendation of the committee on administration.

Mr. Downs.

MR. DOWNS: Could I ask that this be carried over until Monday, when we have a fuller delegation here in the event they do wish any additional discussion? I ask the chairman if there is any objection to that.

MR. DeVRIES: I have no objection.

PRESIDENT NISBET: Mr. Walker.

MR. WALKER: I believe this covers my point, thank you.

PRESIDENT NISBET: Mr. Lundgren.

MR. LUNDGREN: Mr. President, I would ask if any part of the tapes can be made available to delegates.

PRESIDENT NISBET: Mr. DeVries.

MR. DeVRIES: Mr. President and Delegate Lundgren, only if authorized by the committee chairman and vice chairman.

PRESIDENT NISBET: Mr. Stevens.

MR. STEVENS: Mr. President, I move the previous question.

PRESIDENT NISBET: Without objection, consideration of the recommendation will be postponed until the Monday session. I hear none.

SECRETARY CHASE: The committee on administration, by Mr. DeVries, chairman, recommends to the convention the following policy regarding the distribution of daily journals, proposals and other documents from the post office and document room:

> Persons other than delegates and staff members may receive no more than 2 copies of any proposal, journal or other material from the post office and document room.
>
> Walter DeVries, chairman.

PRESIDENT NISBET: Mr. DeVries.

MR. DeVRIES: Mr. President and fellow delegates, this is an attempt to cut down the distribution of the number of proposals and journals. Some people have been coming into the document room and asking for 15 copies of up to 25 different proposals. It is our feeling that in order to save paper and run a more economical operation, we could limit it to 2 for people other than delegates or staff members.

I move the recommendation be concurred in.

PRESIDENT NISBET: Mr. Walker.

MR. WALKER: Mr. President, I would like to ask that this be set over until the session of Monday so that it might be discussed by the full body.

PRESIDENT NISBET: The question is on the motion that consideration of the recommendation be postponed until Monday.

Mr. Stevens.

MR. STEVENS: I had moved the previous question on the other report, thinking it was merely a matter of taking care of this properly. We could just as well vote on it today, before some of these tapes disappear entirely.

I rise to a point of order.

PRESIDENT NISBET: Mr. Stevens, I am informed that the motion to postpone was made ahead of your moving the previous question. That is why it was acted on in that manner at that time. What is your wish in this connection?

MR. STEVENS: It seems to me the sooner we act on this thing, the better. It is just a matter of taking care of our property.

PRESIDENT NISBET: We are now discussing the present recommendation of the committee on the 2 copies to be handed out in the mailing room. Mr. Walker has moved that this be

postponed until Monday night. That is the matter we are voting on now.

Mr. Lawrence.

MR. LAWRENCE: Mr. President, since members of the judicial committee will not be here Monday or Tuesday, and since I won't be here, I would like to make an inquiry of Mr. DeVries. Does that mean that the delegates do not have the right to go into the committee room and listen to the tapes on any matter?

MR. DeVRIES: Mr. President, are we discussing the report that was laid over?

PRESIDENT NISBET: I was going to say, Mr. Lawrence, we have at this point been discussing the matter of the 2 copies of the daily journals and proposals. Could we dispose of that? Then you ask Mr. DeVries the question.

MR. DeVRIES: I can answer that question now if you would like me to.

PRESIDENT NISBET: Go ahead and do it if you would like to.

MR. DeVRIES: Mr. Lawrence, the delegates are free to listen to the tapes at any time. This is an effort to preserve them in order that we have them as permanent records of the convention and to make someone responsible for them so that people will not walk into committee rooms and walk off with their tapes.

MR. LAWRENCE: I assume also that the delegates would have a right to make a copy of any portion of the tapes?

MR. DeVRIES: Yes, sir, with the permission of the chairman and vice chairman of the committee, according to this policy statement.

MR. LAWRENCE: Why? I don't understand why. Any delegate has a right to make a copy of anything that is the property of the convention.

MR. DeVRIES: This is a matter of control, Mr. Lawrence, so that the tapes are not taken out of the room and we don't know where they go.

MR. LAWRENCE: Used right in the committee room in the presence, if necessary, of the secretary of the committee. But there is no attempt to restrict listening to them, I take it?

MR. DeVRIES: No, sir.

MR. LAWRENCE: You may have my vote on Monday for that. (laughter)

PRESIDENT NISBET: Mr. Stevens.

MR. STEVENS: Mr. President, I am somewhat confused about these points of order. May I move to reconsider the earlier motion to postpone?

PRESIDENT NISBET: Mr. Stevens, would you mind if we dispose of this one first and then make a motion on the other? The question now is on Mr. Walker's motion that the matter be put over until Monday night. Any further discussion? All in favor, say aye. Opposed, no.

The motion to postpone does not prevail.

The question is on concurring in the report of the committee on administration.

May we have the report read so we are clear as to what we are discussing right now?

SECRETARY CHASE: The committee on administration, by Mr. DeVries, chairman, recommends to the convention the following policy regarding the distribution of daily journals, proposals and other documents from the post office and document room:

> Persons other than delegates and staff members may receive no more than 2 copies of any proposal, journal or other material from the post office and document room.

PRESIDENT NISBET: The question is on concurring in that recommendation

Mr. Walker.

MR. WALKER: Mr. President, I would like to speak against the recommendation, or possibly in the future offer an amendment, in that it would restrict the ability of any delegate to carry home information concerning the proceedings of the convention to his constituents.

There are many times—yesterday, for example—when I took several copies of a couple of different proposals and distributed them at meetings that I attended last evening. Had I not been able to do that, my constituents would not have been well informed on the proceedings here.

PRESIDENT NISBET: Mr. Walker, may I ask the secretary to read the recommendation again because I think your point is covered there.

SECRETARY CHASE: The recommendation of the committee is this: "Persons other than delegates and staff members may receive no more than 2 copies of any proposal—"

MR. WALKER: I'm sorry.

PRESIDENT NISBET: Mr. Hoxie.

MR. HOXIE: Mr. President and fellow members, I am beginning to wonder perhaps on these matters that come up before us from the committee on administration if we shouldn't have ample time or a reasonable period of time to duly consider them before we take action on them.

In my legislative experience, a member who desired the laying over of a matter of this nature for the purpose of due consideration always was extended that courtesy. I don't think it is so imperative at this time that we have to act, and if we do act on this—I'll make that in the nature of a motion, Mr. President—that it be laid over until Monday evening, and if that is not the desire of the group, I request a record roll call.

PRESIDENT NISBET: The question is on the motion of Mr. Hoxie to postpone until Monday.

Mr. Woolfenden.

MR. WOOLFENDEN: Mr. President, I think we just voted on that and it lost.

I, for one, am a member of a 21 man committee. Most of the members are here this morning. We are ready to vote. Apparently Mr. Walker has changed his mind, regardless of what Mr. Hoxie says about due deliberation. I think the motion is out of order. We just finished voting on it. Let's get on with the business and vote.

PRESIDENT NISBET: Mr. Downs.

MR. DOWNS: Mr. President, I would like to concur with the principle of Delegate Hoxie's statement. I am not so concerned about this as I am in future matters, and I would be glad to join with Delegate Hoxie in proposing such a procedure.

It just happened when this was first read, I did not hear the part "other than delegates" and was confused, just as the delegate who raised the question. As soon as that was explained, I saw no objection to the recommendation from the committee.

I do feel that if we could, for the future, work out something where perhaps a report is reproduced or in the journal 24 hours ahead so people would have a chance to read it, that it would prevent much of the confusion we get on the floor, and would save the time of the delegates for the rest of the convention.

PRESIDENT NISBET: Mr. DeVries.

MR. DeVRIES: Mr. President and Delegate Hoxie and Delegate Downs, I thought this was one of those simple noncontroversial type reports. (laughter) All we are trying to do is limit the distribution of proposals and journals to people other than delegates and staff members to 2 copies. Ordinarily we prepare our reports and multilith them and put them on your desk. This is, maybe, a mistake in judgment. This again is one of those recommendations that turns out to be quite controversial.

If I can restate it again: We are trying to cut down on the amount of paper that we are using in this convention. We are trying to cut down on promiscuous distribution of proposals. There are people who come into the document room and ask for 15 copies of 20 or 30 proposals, so we are having to run into a second printing of a lot of proposals. We wanted to cut down the distribution.

The thinking was this: that if an outside interest group or an agency wanted to reproduce the proposals, they could do it on their own, without the convention paying the cost. That is why this recommendation was adopted by the committee on administration.

PRESIDENT NISBET: Mr. Prettie.

MR. PRETTIE: May I ask Delegate DeVries what is to prevent a person under this recommendation, as worded, from walking into the document room every 5 minutes and getting 2 copies?

MR. DeVRIES: Mr. President and Delegate Prettie, to be candid, nothing.

PRESIDENT NISBET: Mr. Elliott.

MR. A. G. ELLIOTT: I would like a point of information. Does Mr. Hoxie's motion stand?

PRESIDENT NISBET: Yes.

MR. A. G. ELLIOTT: Then I move the previous question.

PRESIDENT NISBET: The question is on the motion of Mr. Hoxie that the matter be postponed until Monday night. All in favor, say aye. Opposed, no.

The motion to postpone does not prevail.

The question is on the committee recommendation. Any other discussion?

Mr. Walker.

MR. WALKER: Point of information, Mr. President. I agree with Mr. Hoxie as a matter of principle.

If this recommendation were defeated at the present time and reinstated on Monday, would this serve the same purpose?

PRESIDENT NISBET: You can move to reconsider on Monday, Mr. Chase informs me.

MR. WALKER: Mr. President, I would like to ask for a record roll call vote at this time.

PRESIDENT NISBET: The question is on the committee recommendation. All in favor, vote aye. Those opposed, vote nays.

I am informed I made a mistake. Will the secretary please read the report again so that everyone is clear on it.

SECRETARY CHASE: The committee on administration, by Mr. DeVries, chairman, recommends to the convention the following policy regarding the distribution of daily journals, proposals and other documents from the post office and document room:

> Persons other than delegates and staff members may receive no more than 2 copies of any proposal, journal or other material from the post office and document room.

PRESIDENT NISBET: A roll call has been demanded.

Mr. Higgs.

MR. HIGGS: Mr. President, is this open for discussion?

PRESIDENT NISBET: No. The question has been asked for.

MR. HIGGS: The question has been moved?

PRESIDENT NISBET: Yes. All in favor of a roll call vote, please rise.

SECRETARY CHASE: Mr. President, there is a sufficient number.

PRESIDENT NISBET: Those in favor of the committee recommendation, please vote aye. Those opposed, vote nay.

Mr. Hoxie.

MR. HOXIE: Mr. President, I have been informed over in this quarter that there is some confusion relating to this vote. It is my understanding that if you are in favor of acting on this report at this time, you will vote green. If you are in favor of the motion to postpone to Monday evening consideration of this matter, you will vote the other way. Am I wrong?

PRESIDENT NISBET: The question is on the recommendation of the committee on administration. Those in favor of the recommendation of the committee on administration will vote aye. Those opposed will vote nay.

SECRETARY CHASE: Have you all voted?

PRESIDENT NISBET: A roll call has been demanded.

The question is on concurring in the report from the committee on administration, which has been read. Have you all voted?

Mr. Hoxie.

MR. HOXIE: What happened, Mr. President, to the motion to postpone, the record roll call demand?

PRESIDENT NISBET: The record roll call was made for the committee report.

SECRETARY CHASE: Have you all voted? The machine is now locked and the vote will be recorded.

The roll was called and the delegates voted as follows:

Yeas—66

Anspach	Gadola	Powell
Balcer	Goebel	Prettie
Batchelor	Gover	Pugsley
Beaman	Greene	Rajkovich
Binkowski	Hanna, W. F.	Richards, J. B.
Blandford	Hannah, J. A.	Shackleton
Bledsoe	Haskill	Shaffer
Boothby	Hatch	Shanahan
Brake	Higgs	Sharpe
Cushman, Mrs.	Hubbs	Sieder
Dade	Hutchinson	Spitler
Davis	Iverson	Stamm
Dehnke	Karn	Sterrett
DeVries	Kirk, S.	Stevens
Doty, Dean	Krolikowski	Suzore
Doty, Donald	Lawrence	Thomson
Elliott, A. G.	Mahinske	Turner
Erickson	Martin	Tweedie
Everett	McGowan, Miss	Van Dusen
Farnsworth	McLogan	Woolfenden
Figy	Mosier	Yeager
Ford	Plank	Youngblood

Nays—19

Buback	Howes	Perlich
Downs	Hoxie	Snyder
Elliott, Mrs. Daisy	Lundgren	Staiger
Garvin	Madar	Walker
Hatcher, Mrs.	McCauley	Wood
Hodges	Murphy	Young
Hood		

On concurring in the report from the committee on administration, the yeas are 66, the nays are 19.

PRESIDENT NISBET: The recommendation is concurred in.

I think I ought to say that those people who are not here today will be sorry they missed this pleasant affair. (laughter)

MR. WOOLFENDEN: Mr. President, I would like to make a parliamentary inquiry. Am I correct that on the previous report of the committee on administration regarding the tapes, the proper way to bring it before us on the merits is an appeal from the reference made by the Chair? Or can I move to reconsider that matter?

PRESIDENT NISBET: You may move to reconsider.

MR. WOOLFENDEN: I so move, that we reconsider at this time the first report this morning of the committee on administration with reference to the tapes.

PRESIDENT NISBET: Mr. Hodges.

MR. HODGES: I think as a matter of legislative courtesy, Mr. Hoxie's point was well taken before. I think there was confusion when he requested the recorded roll call vote. Therefore, in considering Mr. Woolfenden's motion to reconsider, I request a recorded roll call vote, and request that it be voted down as a matter of legislative courtesy.

PRESIDENT NISBET: I might say, Mr. Hodges, in response to Mr. Hoxie's request, it is my understanding — at least, he indicated — that he did not care to pursue that matter. That was why it was left that way.

Mr. Woolfenden.

MR. WOOLFENDEN: May I speak on this motion to reconsider, Mr. President?

PRESIDENT NISBET: Yes.

MR. WOOLFENDEN: I would like to state that I am heartily in favor of Mr. Hoxie's thesis and Mr. Downs' thesis that these matters should receive due deliberation. I think the matter we have just voted on was, in essence, a noncontroversial matter and I feel that the matter we now have before us on the tapes is a matter of some urgency because I think it would be a tragedy if any of these tapes disappeared. As I understand it, this is for the preservation of them. They are accessible to all delegates.

I am heartily in favor of it and I, as one member of the 21 member judicial committee, which will not be here Monday night, would like an opportunity to vote on this matter.

PRESIDENT NISBET: The question is on reconsidering the vote. The yeas and nays have been demanded.

MR. DOWNS: Mr. President, a point of order. The former speaker spoke on the motion to reconsider. I think if he was allowed to speak on the motion to reconsider, I would like equal time to speak on the motion.

PRESIDENT NISBET: You may proceed.

MR. DOWNS: The problem here is that I for one am not sure just what is before us. I do not want to go into the merits because I am not sure what the merits are. I have heard from some of the delegates on the committee that there was difficulty in getting copies of the tape of somebody that spoke before the committee on legislative organization.

If this recommendation deals with that, I want to speak on the merits. If it is simply a matter of preserving tapes, I am for preserving tapes and letting them get to the library. But I do not want, under the guise of preserving a tape, to get into the issue of whether or not delegates who have requested copies of that are to be denied that request after it was made.

This is why I asked that it be carried over until Monday, so I could have had an opportunity to read the recommendation, discuss it with the chairman of the committee, and see what the intent is.

PRESIDENT NISBET: I might say the question is on the motion of Mr. Woolfenden to reconsider the action of the convention.

Mr. Stevens.

MR. STEVENS: Mr. President, I think in the absence of Dr. Pollock, I speak on behalf of the committee on declaration of rights, suffrage and elections. We are not concerned with delegates copying the tape; we are concerned with the preservation of the tape — knowing where it is if it should be out of the room — and we think that the action is simply a matter of taking care of important property. I should like to see the matter taken care of today, and vote yes on that matter.

PRESIDENT NISBET: Mr. Richards.

MR. J. B. RICHARDS: Mr. President, I would like to ask Mr. DeVries this question: is it possible for the committee on public information to duplicate tapes for delegates that require them?

PRESIDENT NISBET: Mr. DeVries.

MR. DeVRIES: Mr. President and Delegate Richards, would I be in order, Mr. President, to speak on the recommendation of the committee in order to answer some of the questions?

PRESIDENT NISBET: Without objection, you may. Hearing none, you may proceed.

MR. DeVRIES: To summarize again what the statement is intended to do: it is to provide for the custody and preservation of the tapes. Furthermore, it provides that unless there is authority granted by the chairman and the vice chairman, these tapes are not to be removed from the committee rooms, nor are they to be duplicated, edited, abstracted or erased without the permission of the committee chairman and the vice chairman. They cannot be duplicated without the consent of the committee chairman and vice chairman. When committees have finished with the tapes, the committee on administration would like to have them transferred to the library so they become a permanent record of the constitutional convention.

I have no objection, Mr. President, to putting this report over until Monday, printing copies and having them on the members' desks by Monday.

PRESIDENT NISBET: It will be in the journal Monday.

Mr. Madar.

MR. MADAR: Mr. President, after the vote for reconsideration does take place, I would like an opportunity to amend that particular report — that is, the report of the committee on administration — so that we can have a copy in the library which will never go out, and this be the original copy; and that the only copy to go out of here or be given to anyone during the convention be a duplicate copy.

MR. DOWNS: May I make a parliamentary inquiry? I understood first from the chairman of the committee that we were simply discussing the preserving of tapes and from the statement that was just made I understand that this provides that the tapes cannot be used or duplicated unless the chairman approves it.

My parliamentary inquiry is: what is before us? The preservation of the tapes or who gets to use a copy of the tapes?

PRESIDENT NISBET: The question now before us, Mr. Downs, is the question of reconsidering. Otherwise, the matter will go over until Monday.

Mr. Walker.

MR. WALKER: May I ask a question of Dr. DeVries? Would it be contrary to the wishes of the chairman of the committee on administration to offer an amendment at the proper time to alter the wording of the thing so that copies could be made with due safeguards to the tape rather than due safeguards to people in political entities and parties?

PRESIDENT NISBET: I think you are discussing a matter, Mr. Walker, that is not pertinent to this particular motion. Would you keep that until the next question comes up?

The yeas and nays have been demanded. Is there a sufficient number? Those in favor, please rise.

SECRETARY CHASE: There is a sufficient number up, Mr. President.

PRESIDENT NISBET: The question is on the motion of Mr. Woolfenden to reconsider. The motion of Mr. Woolfenden is to reconsider the vote by which the first recommendation of the committee on administration was postponed until Monday. Those in favor of reconsidering, please vote aye. Those opposed, vote nay.

SECRETARY CHASE: Have you all voted?

MR. HIGGS: Mr. President, I have a parliamentary inquiry.

PRESIDENT NISBET: State your inquiry, Mr. Higgs.

MR. HIGGS: Assuming that the motion to reconsider is passed, the next step will be to open the original recommendation for discussion?

PRESIDENT NISBET: It will be on the question of concurring in the recommendation of the committee on administration.

MR. HIGGS: Will that be open for discussion at that time?

PRESIDENT NISBET: Right.

SECRETARY CHASE: Have you all voted? The machine is now locked and the vote will be recorded.

The roll was called and the delegates voted as follows:

Yeas—37

Anspach	Gover	Perlich
Balcer	Greene	Plank
Batchelor	Hannah, J. A.	Powell
Blandford	Haskill	Richards, J. B.
Boothby	Higgs	Shaffer
Brake	Hubbs	Shanahan
Davis	Hutchinson	Stafseth
Doty, Dean	Iverson	Stamm
Doty, Donald	Kirk, S.	Sterrett
Elliott, A. G.	Lawrence	Stevens
Erickson	Madar	Woolfenden
Farnsworth	Pellow	Yeager
Goebel		

Nays—54

Beaman	Hodges	Rajkovich
Binkowski	Hood	Shackleton
Bledsoe	Howes	Sharpe
Buback	Hoxie	Sieder
Cushman, Mrs.	Karn	Snyder
Dade	Krolikowski	Spitler
Dehnke	Lundgren	Staiger
DeVries	Mahinske	Suzore
Downs	Martin	Thomson
Elliott, Mrs. Daisy	McAllister	Turner
Everett	McCauley	Tweedie
Figy	McGowan, Miss	Van Dusen
Ford	McLogan	Walker
Gadola	Mosier	Wanger
Garvin	Murphy	Wilkowski
Hanna, W. F.	Ostrow	Wood
Hatch	Prettie	Young
Hatcher, Mrs.	Pugsley	Youngblood

The vote on the motion to reconsider postponement is the yeas, 37; nays, 54.

PRESIDENT NISBET: The motion does not prevail.

Any further reports of standing committees?

Dr. Anspach.

MR. ANSPACH: May I have the privilege of making a comment on the procedure that just transpired? We all have nice badges with our names on them so we are identified.

The other day I heard of a boy who was going around with a big badge and on the badge it had "B-A-I-K."

A man said, "What does that mean?"

He said, "Boy, am I confused!"

The man said, "You don't spell confused with a K".

He said, "It just shows how confused I am." (laughter and applause)

PRESIDENT NISBET: Dr. DeVries.

MR. DeVRIES: Mr. President, the committee on administration has another recommendation. (laughter) with leave of the convention, I would like to present it.

PRESIDENT NISBET: You don't have to, you know. (laughter) You may proceed.

MR. DeVRIES: The committee on administration recommends that the convention approve the contract with Jenison and Stratton insurance agency for the following:

1. General public liability insurance policy at a cost of $1,479.40.

2. Employer's nonowned automobile liability insurance at a cost of $467.95.

for a total cost of $1,947.35.

Walter DeVries, chairman.

Mr. President, I urge concurrence in this recommendation.

PRESIDENT NISBET: Mr. Ford.

MR. FORD: Mr. President, this is a matter that has been a little bit confusing to me ever since we first started adopting budgets in this convention.

Perhaps Mr. DeVries or a member of his committee could state, for my illumination and others who have wondered as I have, how we arrive at a particular insurance agent, at a particular policy and a particular quotation on the commission — I mean on the premium. (laughter) Apparently the thoughts in the back of my mind are pushing themselves forward more swiftly than I had intended. (laughter) But I would like some explanation of how we select these people we have been buying a rather substantial amount of insurance from, and how these decisions are made, and by whom.

PRESIDENT NISBET: Dr. DeVries.

MR. DeVRIES: Mr. President, I hesitate to speak for fear that I may make a Freudian slip. In the original budget adopted by the convention the second week we convened, we provided a cost of $4,455 for insurance for the convention. We took bids from several insurance agencies to take care of our insurance costs. Mr. Sterrett, of the committee on administration, worked with the insurance agents and the committee arrived at this decision on Monday.

I will ask Mr. Sterrett to make an explanation of what these 2 policies involved.

PRESIDENT NISBET: Mr. Sterrett.

MR. STERRETT: The first is a general liability policy and it is to cover the activities and operations of the convention, including any particular contracts they might go into in the hearings away from the convention site.

The other policy is to cover what we call nonowned automobile liability insurance.

The convention would have a liability for any delegate driving his automobile around Lansing because he is a delegate on convention business in this area, also driving to and from home. If there was an automobile accident of some sort through the delegate's operation of his vehicle, this would reflect back to the convention and he would be liable under your, I believe it is, master-servant relationship.

The individual delegate does have his own automobile insurance, or possibly would have his own automobile insurance to protect himself, but this does not protect the convention. The nonowned automobile liability insurance is in excess of your own personal insurance. This does not protect the delegate. This protects the convention and the delegate as a member of the convention, but it has nothing to do with your own personal use.

PRESIDENT NISBET: Any other questions? Mr. Hoxie, do you have a question?

MR. HOXIE: Mr. President and fellow delegates, I don't want any delegate to get the idea that I am opposed to any of these rules, or whatever we may call them, that have been reported before this convention this morning. My sincere concern is that I think every delegate has a right and an opportunity to hear more of the facts and have an opportunity to study these things and know something about them before we are asked to cast our ballot. I have felt for some time that these matters coming out of the committee on administration should take the same procedure as set up for resolutions coming out of the committee on rules and resolutions. I see no logical reason why this membership couldn't and shouldn't have the right to duly consider them before we adopt them.

At this time I am going to make a motion that the rules of this convention be amended so that these proposed recommendations follow the same procedure as resolutions before this convention. That is a motion which I think is germane at this time.

PRESIDENT NISBET: Mr. Hoxie, would you offer that in the form of a resolution for consideration on Monday?

MR. HOXIE: I would like to report to the membership that I did suggest to the chairman of the committee on rules and resolutions that a resolution that would cover this subject be prepared and introduced to the convention. I appreciate that I have that privilege and right. However, I haven't done it. I think that at this time I would like to make it in the nature of a motion, to be followed by a proper resolution of the convention at an early date. If the membership decides to adopt the motion I have just made, it will settle this matter at this particular time.

PRESIDENT NISBET: Mr. Hoxie, for use here, will you please put your motion in writing so we will have it up here to act on.

Mr. Brake.

MR. BRAKE: Mr. President, I am in the "K" class now. I want to know if I correctly understood the gentleman who spoke in connection with this committee recommendation. If I am driving my own personal car, coming to this convention, and I run over somebody in such a way as to make myself liable, that this convention is liable for what I have done? Is that the meaning that the gentleman intended to give?

MR. STERRETT: Only if you are on convention business.

MR. BRAKE: When I am coming to the convention, am I on convention business?

MR. STERRETT: This is merely my opinion, but I would say that if you are here in Lansing, residing away from your permanent domicile, then you are here on convention business.

MR. BRAKE: Gentlemen, I am learning some law.

PRESIDENT NISBET: Mr. Downs.

MR. DOWNS: Mr. President, if the motion of Mr. Hoxie is before the body, I would like, as I indicated before, to speak in favor of it. I believe this will do much to prevent the confusion we have had this morning and perhaps limit the members of the "K" club.

PRESIDENT NISBET: It will be if he presents it.

Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, I would simply like to suggest that Mr. Hoxie's motion envisions a change in the rules of the convention, and therefor would have to be referred to the committee on rules and resolutions.

I do not at this point make any comment in favor of it or against it.

Mr. Hoxie and I, as he has pointed out, have discussed it. I think that there may be some desirability, as a matter of ordinary routine, to let recommendations of more than ordinary interest lay over at least 1 day. But this prejudges the substance of Mr. Hoxie's motion, and it should, under the rules, be referred to the committee on rules and resolutions.

PRESIDENT NISBET: Mr. DeVries.

MR. DeVRIES: Mr. President, do I understand Mr. Hoxie's motion is now before us?

PRESIDENT NISBET: It is not until he gets it here.

MR. DeVRIES: May I make a comment on it? As I understand it, this would mean that every decision made by the committee on administration has to take the course of a resolution, be submitted to this convention, and then go back to the committee on administration because it involves an appropriation.

Believe me, gentlemen, these decisions are not reached hastily. This matter of insurance has been studied for 6 weeks. We have looked at a series of bids and contracts which we have as a result of our best thinking. The convention originally appropriated $4,500 for this item. We manager to come up with a contract under $2,000. I am quite proud of our work.

I would suggest that Mr. Hoxie's motion is out of order. It would mean that every decision made by the committee on administration be required to take the course of a resolution, be presented to this convention and then reported back to the committee and reported out. It seems like a waste of time to me.

PRESIDENT NISBET: Mr. Hutchinson.

MR. HUTCHINSON: Mr. President, I would like to read rule 68 of the convention as I have it before me, unless we have had some further alteration that I don't know about.

Rule 68 says:

> The rules of the convention may be amended by a majority vote of the delegates elected, but no rules shall be amended unless such amendment is in writing, has been considered by the committee on rules and resolutions and is in the possession of the convention 2 session days prior to its consideration.

Therefore, I don't think that it would be in order to consider Mr. Hoxie's motion as a motion at this time.

PRESIDENT NISBET: Mr. Hutchinson, if Mr. Hoxie's motion is made, it would be referred to the committee on rules and resolutions, just as you suggest from reading the rule.

Mr. Yeager.

MR. YEAGER: Mr. President, I would like to ask Dr. DeVries: on these liability situations that we have, do we now have temporary coverage to carry us until we can decide this thing?

PRESIDENT NISBET: Mr. DeVries.

MR. DeVRIES: Mr. President and Delegate Yeager, we are under a binder with this insurance company, which did cover us from the beginning of the convention and does cover us now.

PRESIDENT NISBET: Mr. Prettie.

MR. PRETTIE: A further question please, Mr. President, to Dr. DeVries: can you tell us the limits of this nonowned liability policy that we are paying some $1,500 for?

PRESIDENT NISBET: Mr. DeVries.

MR. DeVRIES: Mr. President, I will yield to Mr. Sterrett if he wants. I have the letter that he has, but I would rather have him make the explanation.

PRESIDENT NISBET: Mr. Sterrett.

MR. STERRETT: The limits in this policy for bodily injury liability is $500,000 per person; $1 million each accident; and for property damage liability, it is $25,000. These are very adequate limits and the cost is very reasonable for the type of insurance.

PRESIDENT NISBET: Mr. Higgs.

MR. HIGGS: Mr. President, I would like to make an inquiry here with regard to the coverage of these policies. I wonder whether there has been legal research done as to the necessity for coverage as to the delegates. I can see where there may be a master-servant relationship as for the employees of the convention in this area of agency, but I wonder if there can be any question in this connection with regard to the elected delegates. I feel — like Mr. Brake's suggestion — there may be some new law involved here, but I wonder if due consideration has been given this. Very possibly it has.

PRESIDENT NISBET: Mr. Sterrett.

MR. STERRETT: Mr. Apol had checked into the liability of the delegates, and there is a liability on the part of the delegates and the convention.

Now, back to this new law: I am not attempting to make a new law. The thing I am trying to point out is you don't know how a decision is going to go until you get into a court of law, and, being in the insurance business myself — and for Mr. Ford's benefit, I have absolutely no interest in the insurance that has been written here; we handled this through the administrative assistant to the president of the convention — I do believe, though, that it is necessary to have proper protection in the event that there is a judgment rendered against the delegates and the convention.

PRESIDENT NISBET: Mr. Higgs.

MR. HIGGS: Mr. President, I gather that the answer to the question is: this question of liability has only been considered by Mr. Apol.

It is inconceivable to me that this group of delegates are the masters of an individual delegate, who would be considered a servant on convention business.

PRESIDENT NISBET: Mr. Lundgren.

MR. LUNDGREN: Mr. President, before we come to a vote — and I believe there is much mystery about this between the lawyers and also some of the insurance men here as to whether we need this and also in one of our early meetings of the rules committee, I believe this was discussed about liability of delegates, and we were told there was no need for it because we were a different type of body.

So I would move that we lay this matter over until Wednesday, I believe it's the sixth of December, for consideration.

PRESIDENT NISBET: Mr. Farnsworth.

MR. FARNSWORTH: Mr. President and delegates, I would like to speak to the point of the desirability of having insurance without regard as to whether we do have a liability or not. I think the fact that we have divisions of opinion between lawyers here would indicate that there is a question about it. I only point out this from the business angle of the thing. If there is doubt here, then there would also be doubt in the court, which would necessitate you defending a suit in the event of an accident. And as I see it, Mr. President, what we are trying to do here is to provide for the defense of a suit which very likely could cost us a great deal more than the premium that is involved.

PRESIDENT NISBET: The question right now is on Mr. Lundgren's motion that this matter be postponed until Wednesday.

Mr. Lawrence.

MR. LAWRENCE: I would like to point out that I have not given this consideration but I believe there is a ruling somewhere that we are exempt from service process on our way to and from the convention and while we are here. So apparently there is a relationship of some kind between the delegate and the convention.

It would be tragic if it could be provided for us to have protection, and some accident, with the weather getting worse, should occur and the convention might be construed to be liable.

Now, I have a very inexpensive way of getting out of it. That would be that if by noon, or whatever time it is, we get in a proposal to make it unconstitutional to sue the constitutional convention. (laughter)

PRESIDENT NISBET: Mr. King.

MR. KING: Mr. President, with regard to one remark by the delegate, it is my considered opinion that the delegates are not immune from service of process, and I have a resolution now pending before the committee on rules and resolutions which would grant us that sort of immunity. I just mention that in passing. In the event anyone does think we have immunity, it is my opinion that we do not have immunity nor do we have immunity for anything we state here on the floor.

PRESIDENT NISBET: Mr. Hodges.

MR. HODGES: Mr. President, I think I would concur as an attorney, with Mr. Higgs' and Mr. Brake's opinion. I think it is not a question of attorneys disagreeing at this point but it is something that you would have to go to the books and look up. There is a considerable amount of money involved here.

Therefore, I would move to amend Mr. Lundgren's motion that we hold this over until Wednesday, and at that time hopefully have a legal opinion — maybe from our staff; we do have

lawyers on it — on the question of whether there is liability towards delegates. Now, we are covered apparently under this binder and there is not going to be any question of us being liable on the matter until we decide this. Therefore, I would make that amendment.

PRESIDENT NISBET: Mr. Higgs.

MR. HIGGS: Mr. President, I would like to concur with what Mr. Hodges just said. The point that I had been making earlier was that I didn't feel we should go ahead and buy this policy on the strength of an inquiry by Mr. Apol, recognizing the wonderful work he has done here, and not meaning to discredit him in any way, but I think the serious question involves the coverage of what it is we are trying to do.

I question the master-servant relationship but I recognize the possibility of the state being liable in view of the recent opinion of the supreme court, which has indicated that they will in the future deny immunity of governmental units. I think we should have a legal opinion before we proceed to buy this policy and I concur with Mr. Hodges.

PRESIDENT NISBET: Mr. Hodges, was your amendment to the effect that the committee on administration get a legal opinion? And if so, from whom?

MR. HODGES: Well, either one of two. I don't think we should go out and hire lawyers for legal opinion. But we do have a staff which has attorneys on it. I presume one of them could do it, or we could request it from the attorney general's office.

This is merely an amendment to Mr. Lundgren's motion, just merely adding that we have some opinion when we do consider this thing on Wednesday.

PRESIDENT NISBET: If you have an amendment to make, Mr. Hodges, would you please present it in writing.

Mr. Richards.

MR. J. B. RICHARDS: Mr. President, I think it is about time that those of us who know a little bit about insurance speak up and tell you that the time for the binder to elapse has properly passed, and that we are going by the grace of God and the good word of the gentleman who has given us this binder.

This is not a matter of controversy when you get to thinking about it. If we are sued because of negligence and because we are here and because the state of Michigan has money, we will be sued and the constitutional convention will be sued and the state of Michigan will be sued. This has been discussed; this has been studied. There have been some men who know insurance on the committee. There are some lawyers on the committee. We have agreed that this is a good contract to have and a proper contract to have.

Now, if you would like to have 144 opinions, this is fine. But I think that probably we should all write them out. But if you want the opinion of some people who know what they are doing on insurance and some lawyers who have an understanding of this, then I think that it is time that we take the advice or recommendation of the committee on administration.

We have had this probably longer than we should and we are going by the grace of God and the word of an insurance man who has given us this binder. Now, I think it is time we got on without all of these motions to put it off. Let's do business like people should do business. Thank you.

PRESIDENT NISBET: Mr. Nord.

MR. NORD: Mr. President, I would like to speak in support of Mr. Lundgren's motion for this reason: it occurs to me that the problem we have is a legal problem. We are not certain whether someone might rule that the delegates are servants of the convention. If that is the case, it appears to me that there is another avenue of approach which will solve the problem for nothing, which would seem to be the best way to do it. That is the adoption of an ordinance by this convention — which I understand we have the power to do — which will state that no delegate is a servant of the convention or of the state; that he shall not be in the capacity of a servant. That is something we could consider at the same time as we are considering these other matters.

If we could do it that way, it would certainly be the cheapest way and it would be nice also to pass a constitutional ordinance anyway. For that reason, I believe we ought to give Mr. Lundgren's motion to table or postpone until Wednesday, a chance. And if anybody can come up with these answers by Wednesday, we will be just that much ahead.

PRESIDENT NISBET: Mr. Dehnke.

MR. DEHNKE: Mr. President and delegates, I think we are missing the real key of the problem here. I agree that under the rules as they have been laid down in the past — I want to remind you that curbstone opinions are usually worth what they cost, but for what it is worth, I agree that there would be no liability on the part of the convention or of the state. But there is some uncertainty in these days, as every lawyer knows, about the extent to which the rules recognized up to this date will be followed in the future. There is nothing to stop anybody who might be injured in such an accident from suing the convention and suing the state. And this premium that is presented to us here is less than it would cost the convention to defend that suit successfully.

For that reason I think the sooner we dispose of the matter and agree to buy that policy, the better it will be for everybody concerned.

PRESIDENT NISBET: Mr. Wanger.

MR. WANGER: Mr. President, I would like to speak, as a practicing attorney, to this problem. When a client comes into the office and he says: should we pay this $100 as premium for this insurance? Do we need the insurance? And we tell him: well, in order to research this fully for you, it will cost you $200, you know, he usually buys the insurance and tells us to forget about the research. I think we are in that position here and that we should definitely support the recommendation of the committee.

PRESIDENT NISBET: Mr. Pugsley.

MR. PUGSLEY: I would like to sustain the reasoning of my former colleague, Judge Dehnke.

PRESIDENT NISBET: Mr. DeVries.

MR. DeVRIES: Mr. President and fellow delegates, there are a lot of intimations in the debate, and one of them that I see is this: that the committee on administration did not research this thoroughly before bringing it to the floor. We asked for informal opinions from people in the attorney general's office; we asked for informal opinions from the people in the department of administration; and they told us that it would be foolhardy for the convention not to take on this insurance. So we got bids.

Let me remind you that the second week of the convention we adopted a budget in which we provided $4,500 for this item. We secured insurance at $2,500 less than the estimated cost. Now, I am willing to take the opinion of the people who talked to us in the attorney general's office, the department of administration and the insurance people we contacted, and to go along with their recommendations. I think it is foolhardy to postpone this matter any longer.

PRESIDENT NISBET: The question is on Mr. Hodges' amendment.

Mr. Secretary, will you please read the amendment?

SECRETARY CHASE: Mr. Hodges offers an amendment to the motion as follows:

1. Amend the motion by adding "and a legal opinion shall be secured from the attorney general prior to Wednesday, if possible, as to the liability of the convention delegates and of the state of Michigan.".

PRESIDENT NISBET: The question is on the amendment. Mr. Higgs.

MR. HIGGS: Mr. President, first of all, I would like to say to Mr. DeVries that as far as I am concerned I never intended to suggest that you were remiss in your duties. You have now indicated that you did speak with the attorney general's department. I had understood previously that the only thing that had been done was that it had only been turned over to Mr. Apol — not from you, but from another speaker. I am persuaded by the reasoning of a delegate, former Judge Dehnke and another delegate, former Judge Pugsley.

The only question that remains in my mind is: does the coverage include not only the convention, but the state of Michigan? Just what is the coverage of the proposed insurance? Assuming that it covers the convention and assuming that it

covers the state of Michigan, which I think would be the primary liability, I would support the recommendation at this time without further delay.

PRESIDENT NISBET: The question is on the amendment. Mr. Plank.

MR. PLANK: Mr. President, I am wondering if we are taking the proper action. It seems like we have already approved the expenditure of this money for this purpose in adopting the budget. Perhaps now the only action we should take is to commend the committee on saving us $2,000.

PRESIDENT NISBET: The question is on the amendment of Mr. Hodges to Mr. Lundgren's motion. All in favor, please say aye. Opposed, no.

The amendment is not adopted.

The question is now on Mr. Lundgren's motion to postpone to Wednesday.

Mr. Woolfenden.

MR. WOOLFENDEN: Mr. President, I have already stated that I think these matters that require deliberation should have deliberation. But this is not one in my judgment. I think the committee on administration has done an excellent job.

The state of Michigan is paying in delegates' salaries alone — forgetting the other expense of this convention — $144,000 a month, or $7,200 a session. We have already spent half of our session today, which is about $3600 worth of time, trying to decide whether to spend $1,900.00. I think we should get on with it and decide this favorably and get on to the serious work of the convention.

PRESIDENT NISBET: The question is on the motion of Mr. Lundgren to postpone. Those in favor, say aye. Opposed, no.

The motion does not prevail.

The question is now on the recommendation of the committee on administration.

Mr. Brake.

MR. BRAKE: Mr. President, I would like to have the vote on the 2 policies divided. I raise no question about the first policy of general liability. But I wish to record a vote against the cost of liability that I don't think exists.

PRESIDENT NISBET: Without objection, that will be ordered.

Mr. Walker.

MR. WALKER: A question of Dr. DeVries: did we advertise for bids on these policies? If so, in what paper and on what dates? And what insurance company are we dealing with, as a matter of curiosity?

PRESIDENT NISBET: Mr. DeVries.

MR. DeVRIES: Mr. President and Delegate Walker, this was discussed at the Monday evening meeting which you could not attend, in which Mr. Apol told us of the various companies that had been contacted and it was presented. It was not advertised in any paper. We have not done that. We relied on our administrative assistant to the president to get bids from various agencies.

We are dealing with the Stratton insurance agency on these 2 policies.

PRESIDENT NISBET: Mr. DeVries, would you please read the first policy on which Mr. Brake has requested a vote, and what that involves, just so they will understand it.

MR. DeVRIES: I would ask Mr. Sterrett to do so.

PRESIDENT NISBET: Mr. Sterrett.

MR. STERRETT: I would prefer, with Mr. Brake's permission, to summarize it rather than read the policy, which would require a number of hours. (laughter)

PRESIDENT NISBET: I think the question is: what does it entail and what does it involve?

MR. STERRETT: First, it is generally, in the insurance business, called a comprehensive general liability policy. It covers the operations of the convention, including blanket contractual liability. That is specifically stated. The premium on that policy is $1,479.40.

PRESIDENT NISBET: The question is on concurring in the recommendation of the committee that the general public liability contract be approved. All in favor, say aye. Opposed, no.

The recommendation is concurred in.

Now the second policy of the report.

Mr. Sterrett.

MR. STERRETT: Mr. President, the second policy is an automobile liability policy covering the liability of nonowned automobiles through the operation of the convention, which would be driven by the delegates, employees, et cetera.

PRESIDENT NISBET: Mr. Brake.

MR. BRAKE: Mr. President, I ask for a roll call vote.

PRESIDENT NISBET: Is the demand seconded for a roll call vote? Those in favor, please rise.

SECRETARY CHASE: Fifteen. Not a sufficient number up.

PRESIDENT NISBET: Mr. Boothby.

MR. BOOTHBY: Mr. President, I would like to ask Mr. Sterrett: who is covered by this insurance policy? Is it the state of Michigan or is it the constitutional convention, or both?

MR. STERRETT: We have this written as the Michigan constitutional convention.

MR. BOOTHBY: Mr. President, I raise the question as to whether the Michigan constitutional convention is a body which can be sued. It would seem to me that the proper body to be sued, if one is sued, is the state of Michigan, and I am wondering, if we do take this policy out, whether we should direct that the state of Michigan be added to this.

MR. STERRETT: I am sure, Mr. Boothby, it would be very easy to do that.

PRESIDENT NISBET: The question is on the recommendation of the committee on administration that the employer's nonowned automobile liability contract be approved. Those in favor, say aye. Those opposed, no.

The recommendation is concurred in.

Any further reports of standing committees?

Mr. Elliott.

MR. A. G. ELLIOTT: Mr. President, I will not detain the convention very much longer, but I just want to make this point: I believe that Mr. Hoxie's position was very sound and I think that it is wise to always give a group of this size an opportunity to deliberate over any item.

I am sure that the committee on rules and resolution will come up with a resolution which will perhaps incorporate in it the administration reports and recomendations being laid over for 1 day. If it is something that is not controversial or is of minor importance, it is easy enough to move that we waive the rules and go on and do that piece of business that day. Thank you.

PRESIDENT NISBET: Thank you very much.

Mr. DeVries.

MR. DeVRIES: Mr. President, I regret to inform you that this does not conclude the reports of the committee on administration. (laughter) However, the next 2 reports are filed for information and not for action of the delegates, unless they so desire.

The committee on administration wishes to report to the convention that it has purchased a policeman's booth for the parking lot, to be constructed at a cost of not more than $200.

Secondly, the committee on administration has also recomended that the chains be removed from the parking lot and that the plates with the delegates' names be affixed to the iron posts in front of each parking space.

The reason for this is that we have had 3 accidents with people who have run across the parking lot and been cut on the chains and they have been severely injured.

This report is filed as information unless the convention wishes to take action on it.

PRESIDENT NISBET: Thank you very much, Mr. DeVries. Any other standing committee reports?

Mr. DeVries.

MR. DeVRIES: Mr. President, again for information:

The committee on administration also reports that it has entered into an agreement with the voice of music company of Benton Harbor in which they have agreed to loan the constitutional convention 9 tape recorders at no cost to the convention. However, the convention has

assumed the responsibility for loss of the recorders and for the servicing of them. The committee wants to publicly acknowledge the fine spirit of cooperation demonstrated by the voice of music company in this matter.

Walter DeVries, chairman.

Again, Mr. President, this report should be received as information.

PRESIDENT NISBET: Thank you. It will be received and placed on file.

MR. DeVRIES: Mr. President, it is with relief that I say that this concludes the reports of the committee on administration.

PRESIDENT NISBET: Mr. Hodges.

MR. HODGES: A point of information. I was wondering about the printed copy of the rules. I was wondering how it was coming along and when it may be expected.

SECRETARY CHASE: The secretary has been striving diligently with the printer to get copies of the handbook. We had practical assurance that we would have some of them today but they would have to be bound in plain paper. This did not seem to be a logical thing to do, so they have assured us that by the first of the week we will have our handbooks, which include the rules as amended to date.

PRESIDENT NISBET: Mr. Walker.

MR. WALKER: I would like to add a brief comment on Mr. Woolfenden's remarks of some $7200 per day and that we spent half of our session. If we have to spend 4 hours to save the taxpayers of this state 5 cents, I would consider it time well spent. And we aren't spending any more or any less of the taxpayers' money by fully discussing the thing in their interest.

PRESIDENT NISBET: Reports of select committees.

SECRETARY CHASE: None.

PRESIDENT NISBET: Communications from state officers.

SECRETARY CHASE: None.

PRESIDENT NISBET: **Introduction, first reading and reference of proposals.**

ASSISTANT SECRETARY KNAPP: Messrs. Buback, Downs, Hood, Krolikowski, Marshall, Murphy, Pellow, Perlich and Stopczynski introduce

Delegate Proposal 1470, A proposal to provide county boards of supervisors with the power to establish public utility corporations. Amends article VIII, section 31.

PRESIDENT NISBET: Referred to the committee on local government.

ASSISTANT SECRETARY KNAPP: Messrs. Baginski, Buback, Downs, Hood, Mahinske, Marshall and Murphy introduce

Delegate Proposal 1471, A proposal to provide for partisan election of county boards of supervisors and proportional voting by supervisors. Amends article VIII.

PRESIDENT NISBET: Referred to the committee on local government.

ASSISTANT SECRETARY KNAPP: Messrs. Douglas, Downs, Garvin, Hood, Mahinske, Marshall, Murphy, Pellow, Perlich, Snyder, Stopczynski and Suzore introduce

Delegate Proposal 1472, A proposal to provide that there shall be no distinction of sex in hiring, education and other matters. Amends article II.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

ASSISTANT SECRETARY KNAPP: Mr. Walker introduces

Delegate Proposal 1473, A proposal to create additional lieutenant governors who shall serve as an administrative board and to provide a uniform system of electoral and taxation districts. Amends article V and article VI.

PRESIDENT NISBET: Referred to the committee on legislative powers.

ASSISTANT SECRETARY KNAPP: Mr. Walker introduces

Delegate Proposal 1474, A proposal to limit benefits received by counties to twice the amount paid the state. Amends article X by adding a new section.

PRESIDENT NISBET: Referred to the committee on finance and taxation.

ASSISTANT SECRETARY KNAPP: Messrs. DeVries, Allen, Martin, Perras and Goebel introduce

Delegate Proposal 1475, A proposal to create a legislative council and to define its membership and duties. Amends article V.

PRESIDENT NISBET: Referred to the committee on legislative powers.

ASSISTANT SECRETARY KNAPP: Mr. DeVries, Miss McGowan, Mrs. Koeze, Mr. Perras, Miss Hart, Messrs. Binkowski, Gust, Dean Doty, Buback, J. A. Hannah, Plank and Goebel introduce

Delegate Proposal 1476, A proposal to provide that exemption from taxation shall be granted only by general laws.

PRESIDENT NISBET: Referred to the committee on legislative powers.

ASSISTANT SECRETARY KNAPP: Messrs. DeVries, Erickson, Allen, Binkowski, Miss McGowan, Mrs. Koeze, Mr. Perras, Miss Hart, Messrs. Buback, J. A. Hannah, Plank and Goebel introduce

Delegate Proposal 1477, A proposal to limit the credit of the state to purposes involving health, safety or public welfare. Amends article X, section 12.

PRESIDENT NISBET: Referred to the committee on finance and taxation.

ASSISTANT SECRETARY KNAPP: Messrs. DeVries, Erickson, Allen, Binkowski, Miss McGowan, Mrs. Koeze, Mr. Perras, Miss Hart, Messrs. Buback, J. A. Hannah and Plank introduce

Delegate Proposal 1478, A proposal to provide for the distribution of federal funds and to guarantee against the denial of same to any person on account of race, religion or national origin.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

ASSISTANT SECRETARY KNAPP: Mr. Balcer introduces

Delegate Proposal 1479, A proposal to prevent discrimination against the disabled upon merger or sale of a business. Amends article XVI.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

ASSISTANT SECRETARY KNAPP: Mr. Seyferth introduces

Delegate Proposal 1480, A proposal to restore to the legislature regulatory control over bridging and damming of navigable streams. Amends article VIII, section 14.

PRESIDENT NISBET: Referred to the committee on local government.

ASSISTANT SECRETARY KNAPP: Messrs. Pellow, Perlich, Stopczynski and Binkowski introduce

Delegate Proposal 1481, A proposal to provide a system of socialized medicine for the aged. Amends article V.

PRESIDENT NISBET: Referred to the committee on legislative powers.

ASSISTANT SECRETARY KNAPP: Messrs. Pellow, Perlich, Stopczynski and Binkowski introduce

Delegate Proposal 1482, A proposal to provide hospital care for the indigent and needy. Amends article V.

PRESIDENT NISBET: Referred to the committee on legislative powers.

ASSISTANT SECRETARY KNAPP: Messrs. Faxon and Howes introduce

Delegate Proposal 1483, A proposal to provide for the maintenance of a system of public education for all ages. Amends article XI.

PRESIDENT NISBET: Referred to the committee on education.

ASSISTANT SECRETARY KNAPP: Messrs. Faxon and Spitler introduce

Delegate Proposal 1484, A proposal to provide a free public system of education through the secondary level with equal opportunities for all. Amends article XI.

PRESIDENT NISBET: Referred to the committee on education.

ASSISTANT SECRETARY KNAPP: Mr. Faxon introduces

Delegate Proposal 1485, A proposal to eliminate the state board

of escheats and board of fund commissioners. Amends article VI, section 20.

PRESIDENT NISBET: Referred to the committee on executive branch.

ASSISTANT SECRETARY KNAPP: Messers. Pellow, Perlich, Stopczynski and Binkowski introduce

Delegate Proposal 1486, A proposal to require the payment of prevailing union wages on state projects. Amends article V.

PRESIDENT NISBET: Referred to the committee on legislative powers.

ASSISTANT SECRETARY KNAPP: Messrs. Pellow, Perlich, Stopczynski and Binkowski introduce

Delegate Proposal 1487, A proposal to provide for a system of disability compensation. Amends article V.

PRESIDENT NISBET: Referred to the committee on legislative powers.

ASSISTANT SECRETARY KNAPP: Messrs. Prettie, Iverson, Leibrand and Pugsley introduce

Delegate Proposal 1488, A proposal to provide for a unified court system comprising a supreme court, a court of appeals, circuit court, and other courts of limited jurisdiction; to provide for the jurisdiction thereof, for the election of the judiciary, and other matters incidental thereto. Amends by complete rewriting of article VII.

PRESIDENT NISBET: Referred to the committee on judicial branch.

ASSISTANT SECRETARY KNAPP: Mr. Habermehl introduces

Delegate Proposal 1489, A proposal to create a county court to replace and have the powers of probate and justice court and to have jurisdiction of domestic relations and a civil limit of $1,500. Amends article VII, sections 1, 13 through 20, and 23.

PRESIDENT NISBET: Referred to the committee on judicial branch.

ASSISTANT SECRETARY KNAPP: Messrs. Habermehl and Woolfenden introduce

Delegate Proposal 1490, A proposal to amend article VII by providing for an integrated court system, with a 7 justice supreme court, a court of appeals, district courts and magistrate courts, all lower courts to be under the jurisdiction and control of the supreme court, and other incidental matters.

PRESIDENT NISBET: Referred to the committee on judicial branch.

ASSISTANT SECRETARY KNAPP: Messrs. Habermehl and Woolfenden introduce

Delegate Proposal 1491, A proposal to amend article VII, by providing for filling of judicial vacancies by gubernatorial appointment from a list provided by a nominating commission, eligibility for judicial office, tenure, approval or rejection by the electorate, retirement, removal, selection of chief justice, and makeup of nominating commission.

PRESIDENT NISBET: Referred to the committee on judicial branch.

ASSISTANT SECRETARY KNAPP: Messrs. Habermehl and Woolfenden introduce

Delegate Proposal 1492, A proposal to amend article VII providing for the fixing of judicial salaries by statute, a limitation on the same, and pensions of judicial officers.

PRESIDENT NISBET: Referred to the commitee on judicial branch.

ASSISTANT SECRETARY KNAPP: Mr. Finch introduces

Delegate Proposal 1493, A proposal to provide for submission of the question of boards, commissions or districts to the elections of lesser political subdivisions. Amends article VIII.

PRESIDENT NISBET: Referred to the committee on local government.

ASSISTANT SECRETARY KNAPP: Mr. Hutchinson introduces

Delegate Proposal 1494, A proposal to define quorums in the legislature. Amends article V, section 14.

PRESIDENT NISBET: Referred to the committee on legislative powers.

ASSISTANT SECRETARY KNAPP: Messrs. Wanger, Shackleton, Mrs. Cushman, Messrs. Kuhn, Dell and McLogan introduce

Delegate Proposal 1495, A proposal to provide for a preparatory commission for future constitutional conventions. Amends article XVII, section 4.

PRESIDENT NISBET: Referred to the committee on miscellaneous provisions and schedule.

ASSISTANT SECRETARY KNAPP: Messrs. Wanger, Shackleton, Mrs. Cushman, Messrs. Kuhn, Dell and McLogan introduce

Delegate Proposal 1496, A proposal to provide that special sessions of the legislature may be convened by a majority of the members elected to each house. Amends article V, section 13.

PRESIDENT NISBET: Referred to the committee on legislative powers.

ASSISTANT SECRETARY KNAPP: Messrs. Wanger, Shackleton, Mrs. Cushman, Mr. Kuhn, Mrs. Koeze and Mr. McLogan introduce

Delegate Proposal 1497, A proposal to provide that the opportunity for periodic revision of the constitution every 16 years by a majority of those voting on the question be retained in article XVII, section 4.

PRESIDENT NISBET: Referred to the committee on miscellaneous provisions and schedule.

Second reading of proposals.

SECRETARY CHASE: Nothing on the calendar, Mr. President.

PRESIDENT NISBET: Third reading of proposals.

SECRETARY CHASE: None.

PRESIDENT NISBET: **Motions and resolutions.**

Mr. Hutchinson.

MR. HUTCHINSON: Mr. President, on November 9 this convention determined that today, the first day of December, would be the last day for the introduction of delegate proposals. As it was originally written and as it was adopted, some confusion may arise out of it and I propose to make a motion, a procedural motion, which will clarify the situation.

I might point out that the resolution as it was adopted on November 9 said that after December 1, 1961, no delegate proposal shall be introduced, numbered, or printed except upon authorization of the convention. And then there was an amendment offered and adopted, which provided that by a subsequent action the convention could provide for the introduction of delegate proposals in preparation on the first of December.

I would like to report to you that according to research and drafting, as of 6:00 p.m. last Monday there were only 7 proposals which were still in process of preparation down there but that during this current week they received requests to draft 395 delegate proposals, and that there are still, as of 9:00 o'clock this morning, in various degrees of drafting, 255 delegate proposals.

I move, Mr. President, that the provisions of convention Resolution 21 be construed to mean that requests for delegate proposals logged in the office of research and drafting prior to 5:00 o'clock p.m. today, December 1, be eligible for introduction until further order of the convention.

I would say that Dr. Combs indicated that they anticipated that it would take about another week to process these items but you will note that the wording of the motion that I now offer does not specify an absolute closing date. In fairness to everyone, if you have a request logged down there by 5:00 o'clock today, it will be processed and there will be an opportunity for its timely introduction.

PRESIDENT NISBET: The question is on the motion of Mr. Hutchinson.

Mr. Downs.

MR. DOWNS: Mr. President, in the spirit of bipartisanship, even though this lops off 7 hours from the date of December 1, I think it is a reasonable motion and would like to speak in support of it.

PRESIDENT NISBET: The question is on the adoption of the motion. All in favor, say aye. Opposed, no.

The motion prevails.

Just to be certain what this is, any delegate who has a proposal that he wants presented can still present it to the drafting office until 5:00 o'clock tonight and all proposals

thus received until 5:00 o'clock tonight can then be introduced at a subsequent date.

Mr. Madar.

MR. MADAR: Mr. President, because of the discussion on Mr. DeVries' report and the recommendation that was made about the tapes and records, I would like to move at this time—and I'd certainly be in favor of a motion to delay this until Monday night—but I'd like to move at this time that the public information committee be instructed to have made, without alterations, a copy of all records and tapes, and that the originals be not removed from the convention until the convention is over and provisions have been made to turn them over to the historical society.

PRESIDENT NISBET: The question is on the motion of Mr. Madar.

Mr. Mahinske.

MR. MAHINSKE: Mr. President, in view of the fact that the main topic of discussion has been put over until Monday, I would suggest that this motion be put over until Monday and introduced at the general discussion of the topic.

PRESIDENT NISBET: Mr. Madar, is that satisfactory to you, to make your motion on Monday?

MR. MADAR: Yes.

PRESIDENT NISBET: Any other motions or resolutions?

SECRETARY CHASE: Mr. J. A. Hannah offers **Resolution 49,** A resolution requesting authority and funds for the committee on legislative organization to hold hearings in the city of Detroit.

Following is the body of Resolution 49, as offered:

Whereas, In view of the intense interest of residents of the Detroit metropolitan area in constitutional provisions affecting the apportionment of the legislature; and

Whereas, In consideration of the numerous requests from constituents expressing interest in this subject and a desire to be heard; now therefore be it

Resolved, That such hearings be held on Tuesday, December 12, 1961, in order to guarantee the possibility of the maximum participation of interested citizens in the Detroit area and that the public be given sufficient notice; and be it further

Resolved, That the convention appropriate the necessary funds to defray the costs of travel for the members of the committee and staff to and from Detroit and other expenses necessary and incidental to the holding of such hearings.

PRESIDENT NISBET: Referred to the committee on administration.

SECRETARY CHASE: Mr. J. A. Hannah offers **Resolution 50,** A resolution requesting authority and funds for the committee on legislative organization to hold hearings in the city of Berrien Springs.

Following is the body of Resolution 50, as offered:

Whereas, In view of the interest of residents of outstate areas in constitutional provisions affecting the apportionment of the legislature; and

Whereas, In consideration of the numerous requests from constituents expressing interest in this subject and a desire to be heard; now therefore be it

Resolved, That such hearings be held on Wednesday, December 20, 1961, in order to guarantee the possibility of maximum participation of interested citizens of the state of Michigan and that the public be given sufficient notice; and be it further

Resolved, That the convention appropriate the necessary funds to defray the costs of travel for the members of the committee and staff to and from Berrien Springs and other expenses necessary and incidental to the holding of such hearings.

PRESIDENT NISBET: Referred to the committee on administration.

SECRETARY CHASE: That is all of the resolutions on file, Mr. President.

PRESIDENT NISBET: Unfinished business.

SECRETARY CHASE: None.

PRESIDENT NISBET: Mr. Madar.

MR. MADAR: Mr. President, I just forgot to say that Mr. Plank and I agreed on this motion.

PRESIDENT NISBET: Thank you.

Special orders.

SECRETARY CHASE: None.

PRESIDENT NISBET: General orders.

SECRETARY CHASE: Items on the general orders calendar are not available for consideration until Monday.

PRESIDENT NISBET: Announcements.

SECRETARY CHASE: The following are committee meeting announcements:

The committee on legislative powers will meet in room H for a short meeting following the session today. T. Jefferson Hoxie, chairman. It will meet in room H on Tuesday, December 5, at 3:00 o'clock. Subcommittee 1 will meet with sponsors of Delegate Proposals 1109 and 1111 in room H on Tuesday, December 5 at 3:00 o'clock. Richard Kuhn, chairman of subcommittee 1. Subcommittees 2 and 3 will meet in room H on Tuesday, December 5 at 3:00 o'clock to consider respective committee assignments. Stanley M. Powell, chairman, subcommittee 2; Claude L. Wood, chairman, subcommittee 3. Subcommittee 4 will meet in room H on Tuesday, December 5 at 3:00 o'clock or immediately after the session. Frank G. Millard, chairman, subcommittee 4.

The committee on administration will meet on Monday, December 4, at 7:00 o'clock p.m. Walter DeVries, chairman.

The committee on rules and resolutions will meet Monday, December 4, immediately after the session in room I to consider Resolution 30 and other pending resolutions.

The committee on education will meet on Tuesday at 8:30 in the morning in Room J. Delegate Glenn Allen, Mr. Julius Barker and Mrs. Shields of the Michigan association of school boards, and Mr. R. P. Smith of the Michigan farm bureau will appear.

The committee on judicial branch will meet on Tuesday, December 5, holding a public hearing in Detroit in the city-county building. Representatives from the common pleas court and circuit court commissioners from 9:30 to 10:30; probate court, 10:30 to 11:30; recorders court, 11:30 to 12:30; circuit court, 1:30 to 4:00.

The committee on education will meet in room J on Wednesday, December 6, at 3:00 o'clock. Mr. Ralph A. Ulveling, director of the Detroit public library, will appear.

There was filed in the library earlier an unabridged dictionary with a request that the delegates sign this. There are 67 delegates who have not yet signed the flyleaf.

That is all of the announcements, Mr. President.

PRESIDENT NISBET: Mr. DeVries.

MR. DeVRIES: Mr. President, the introducers of resolutions requesting authority for funds for trips to various parts of the state are invited to appear before the committee on administration on Monday evening at 7:00 o'clock.

PRESIDENT NISBET: Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, for the information of the delegates, I would like to amplify a little bit on Mr. Chase's announcement with respect to the matters to be considered by the committee on rules and resolutions at its meeting on Monday evening.

One of the resolutions currently pending is one establishing a work schedule designed to complete the work of the convention on March 31, 1962. That resolution will receive the consideration of the committee on rules and resolutions on Monday evening and any delegate who wishes to be heard with respect to matters relating to scheduling of the work in the convention is invited to be present at that time.

PRESIDENT NISBET: Mr. Yeager.

MR. YEAGER: Mr. President, I would like to ask the secretary: do you still wish these status books on the desk this weekend?

SECRETARY CHASE: Thank you for the reminder, Mr.

Yeager. If you will leave your status of all of the delegate proposals and resolutions on top of your desk, your secretary will bring them up to date by Monday.

We have the following requests for excuse from session:

Mr. Batchelor, Mr. Farnsworth and Mr. Snyder request leave of absence from the sessions of next Monday evening.

Mr. Binkowski wishes to be excused from the sessions of Monday and Tuesday, December 4 and 5.

PRESIDENT NISBET: Without objection, they will be excused.

Mr. Farnsworth.

MR. FARNSWORTH: Mr. President, I would like to direct a question to Dr. DeVries relative to the time of the meeting of the committee on administration. I'm sorry, Dr. DeVries, I was asked by several members of that committee who want to take the rapid reading course, if I wouldn't consult with you and see if we could get that thing changed. I neglected to do so.

Would it be possible, sir, to change the meeting date of the committee on administration in deference to the people who want to take the rapid reading course at the same hour?

MR. DeVRIES: Mr. President and Delegate Farnsworth, could we discuss that Monday evening at 7:00 o'clock? (laughter)

MR. FARNSWORTH: That is exactly the same date and hour that the reading course will be in session.

MR. DeVRIES: Mr. President, it looks like we are conducting committee business before the convention. However, there are some resolutions, Mr. Farnsworth, that we must act on in order that these people can take the trips and report them out favorably. We can move the meeting to 7:30, but this will crowd us.

MR. FARNSWORTH: Could it be moved to 4:00 o'clock in the afternoon, for instance?

MR. DeVRIES: We have a problem there, Mr. Farnsworth, with the delegates who have been invited to appear. We have invited at least 8 delegates to appear.

The committee on administration will meet at 7:30 on Monday.

SECRETARY CHASE: We have one additional announcement for the attention of all the delegates. All titles for license plates must be in not later than Monday night after the session in order for you to obtain the constitutional convention license plates.

PRESIDENT NISBET: Mr. Buback.

MR. BUBACK: Mr. President, I move that we adjourn.

PRESIDENT NISBET: The question is on adjournment. All in favor, say aye.

We are adjourned to Monday night at 8:00 o'clock.

[Whereupon, at 11:55 o'clock a.m., the convention adjourned until Monday, December 4, 1961, at 8:00 o'clock p.m.]

THIRTY-FIFTH DAY

Monday, December 4, 1961, 8:30 o'clock p.m.

PROCEEDINGS

PRESIDENT NISBET: The convention will please **come to order.**

The **invocation** for this evening will be given by one of our own delegates, Mrs. Cushman.

MRS. CUSHMAN: Let us pray. Dear Lord, help us tonight and throughout this convention in both the great things and the small.

Help us to appreciate the wonder of Thy creations, men and women, and to glory both in the basic beliefs we have in common and in the fact that we are free to differ with each other.

Help us understand what others say to us, and to listen not only with our ears but with our hearts.

Help us, in our discussions, to comprehend that spirit of liberty which, in the words of Thy servant, Learned Hand, is not too sure that it is right.

Help us appreciate the importance of every delegate to this convention, and the work of the many who assist us.

Give us the wisdom to know Thy will in writing this constitution, the courage to stand for our beliefs, and the strength to presevere in our work.

And finally, help us to find some joy in each day and to use wisely each hour that Thou has given us. In Thy name we ask. Amen.

PRESIDENT NISBET: The **roll call** will be taken by the secretary. Those present please vote aye.

SECRETARY CHASE: Mr. President, a quorum of the convention is present.

Prior to today's session, the secretary received the following requests for leave:

Mr. Dehnke, from today's session; and Mr. Liberato requests to be excused from today's and tomorrow's sessions because of illness.

PRESIDENT NISBET: Without objection, the requests are granted.

SECRETARY CHASE: Absent with leave: Messrs. Barthwell, Batchelor, Binkowski, Bledsoe, Bonisteel, Cudlip, Danhof, Dehnke, Miss Donnelly, Messrs. Everett, Farnsworth, Ford, Garvin, Higgs, Iverson, Knirk, Krolikowski, Lawrence, Leibrand, Liberato, McAllister, Miss McGowan, Messrs. Mosier, Norris, Ostrow, Pugsley, Snyder, Tubbs, Upton and Woolfenden.

Absent without leave: Mr. Suzore.

PRESIDENT NISBET: Without objection, Mr. Suzore is excused.

Reports of standing committees.

SECRETARY CHASE: There are no standing committee reports on file.

PRESIDENT NISBET: Reports of select committees.

SECRETARY CHASE: None.

PRESIDENT NISBET: Communications from state officers.

SECRETARY CHASE: None.

PRESIDENT NISBET: **Introduction, first reading and reference of proposals.**

ASSISTANT SECRETARY KNAPP: Mrs. Judd introduces **Delegate Proposal 1498,** A proposal to provide optional plans for township government in metropolitan areas. Amends article VIII by adding a section.

PRESIDENT NISBET: Referred to the committee on local government.

ASSISTANT SECRETARY KNAPP: Mrs. Judd introduces **Delegate Proposal 1499,** A proposal to provide for township government and to provide for its powers and duties. Amends article VIII, sections 15 and 18, and retains sections 16 and 17.

PRESIDENT NISBET: Referred to the committee on local government.

ASSISTANT SECRETARY KNAPP: Mr. Hutchinson introduces

Delegate Proposal 1500, A proposal to define the veto power of the governor. Amends article V, section 36.

PRESIDENT NISBET: Referred to the committee on legislative powers.

ASSISTANT SECRETARY KNAPP: Messrs. Binkowski, Perlich, Walker, Ford and Pellow introduce

Delegate Proposal 1501, A proposal to amend article V by adding a new section.

PRESIDENT NISBET: Referred to the committee on legislative powers.

ASSISTANT SECRETARY KNAPP: Messrs. Boothby, Dean Doty and Gust introduce

Delegate Proposal 1502, A proposal to provide that the executive and judicial departments of government construe legislative acts so as to avoid bills of attainder, ex post facto laws and the impairment of obligations of contract. Amends article II, section 9.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

ASSISTANT SECRETARY KNAPP: Messrs. Binkowski, Madar, Pellow, Mahinske, Walker, Buback and Perlich introduce

Delegate Proposal 1503, A proposal to amend article V, section 5 by deletion of certain words in the second sentence.

PRESIDENT NISBET: Referred to the committee on legislative powers.

ASSISTANT SECRETARY KNAPP: Mr. Hutchinson introduces

Delegate Proposal 1504, A proposal to limit reforestation power to state lands. Amends article X, section 14.

PRESIDENT NISBET: Referred to the committee on finance and taxation.

ASSISTANT SECRETARY KNAPP: Mr. Hutchinson introduces

Delegate Proposal 1505, A proposal to protect the state from engaging in competitive enterprises. Amends article XVI.

PRESIDENT NISBET: Referred to the committee on miscellaneous provisions and schedule.

ASSISTANT SECRETARY KNAPP: Mr. Snyder introduces

Delegate Proposal 1506, A proposal to escheat unredeemed trading stamps. Amends article XI, section 12.

PRESIDENT NISBET: Referred to the committee on miscellaneous provisions and schedule.

ASSISTANT SECRETARY KNAPP: Messrs. Binkowski, Pellow, Perlich and Wilkowski introduce

Delegate Proposal 1507, A proposal to amend article V, section 19.

PRESIDENT NISBET: Referred to the committee on legislative powers.

ASSISTANT SECRETARY KNAPP: Mrs. Judd introduces

Delegate Proposal 1508, A proposal to require the establishment of standards for municipal incorporation and for boundary changes in metropolitan areas. Amends article VIII, section 31.

PRESIDENT NISBET: Referred to the committee on local government.

ASSISTANT SECRETARY KNAPP: Messrs. Binkowski, Madar, Pellow, Perlich, Wilkowski, Snyder, Buback and Hodges introduce

Delegate Proposal 1509, A proposal to amend article VIII, sections 30 and 31.

PRESIDENT NISBET: Referred to the committee on local government.

ASSISTANT SECRETARY KNAPP: Messrs. Prettie, Pugsley, McAllister, Bledsoe and Iverson introduce

Delegate Proposal 1510, A proposal to continue courts of inferior jurisdiction as now or hereafter provided by law. Amends article VII.

PRESIDENT NISBET: Referred to the committee on judicial branch.

ASSISTANT SECRETARY KNAPP: Messrs. Binkowski, Perlich and Walker introduce

Delegate Proposal 1511, A proposal to make failure to vote at a general election a misdemeanor.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

ASSISTANT SECRETARY KNAPP: Mr. Murphy, Mrs. Hatcher and Mr. Hood introduce

Delegate Proposal 1512, A proposal to provide that all contracts entered into by the state with private contractors doing business with the state shall prohibit discrimination because of race, creed, color, religion, or national origin. Amends article X, section 14.

PRESIDENT NISBET: Referred to the committee on finance and taxation.

ASSISTANT SECRETARY KNAPP: Messrs. Binkowski, Madar, Pellow, Perlich and Wilkowski introduce

Delegate Proposal 1513, A proposal to amend article V, section 32, by deleting same.

PRESIDENT NISBET: Referred to the committee on legislative powers.

ASSISTANT SECRETARY KNAPP: Mr. Hatch introduces

Delegate Proposal 1514, A proposal to limit the executive department to 15 in addition to the military establishment and civil service. Amends article VI.

PRESIDENT NISBET: Referred to the committee on executive branch.

ASSISTANT SECRETARY KNAPP: Messrs. Binkowski, Madar, Pellow and Wilkowski introduce

Delegate Proposal 1515, A proposal to amend article 5, section 31, by deleting same.

PRESIDENT NISBET: Referred to the committee on legislative powers.

ASSISTANT SECRETARY KNAPP: Mr. Danhof introduces

Delegate Proposal 1516, A proposal to provide that there shall be no county under 10,000 persons. Amends article VIII.

PRESIDENT NISBET: Referred to the committee on local government.

ASSISTANT SECRETARY KNAPP: Mrs. Judd introduces

Delegate Proposal 1517, A proposal to retain restrictions on the legislature in passing special or local acts and to restrict methods of classification of local political subdivisions for said purpose. Amends article V, section 30.

PRESIDENT NISBET: Referred to the committee on legislative powers.

ASSISTANT SECRETARY KNAPP: Mrs. Judd introduces

Delegate Proposal 1518, A proposal to provide flexibility with regard to allocation of functions and costs thereof within a standard statistical metropolitan area. Amends article VIII by adding a section.

PRESIDENT NISBET: Referred to the committee on local government.

ASSISTANT SECRETARY KNAPP: Mrs. Judd introduces

Delegate Proposal 1519, A proposal permitting consolidation of a village with its township under optional plan township provisions. Amends article VIII by adding a section.

PRESIDENT NISBET: Referred to the committee on local government.

ASSISTANT SECRETARY KNAPP: Mr. Prettie introduces

Delegate Proposal 1520, A proposal to continue article V, section 33.

PRESIDENT NISBET: Referred to the committee on legislative powers.

PRESIDENT NISBET: Second reading of proposals.

SECRETARY CHASE: Nothing on that order, Mr. President.

PRESIDENT NISBET: Third reading of proposals.

SECRETARY CHASE: Nothing there.

PRESIDENT NISBET: Motions and resolutions.

SECRETARY CHASE: Messrs. Downs, Hutchinson, Romney, Austin, McLogan and White offer

Resolution 51, A resolution to invite the recent presidents of the United States, Dwight D. Eisenhower and Harry S. Truman, to make separate addresses to the convention.

Following is Resolution 51, as offered:

Whereas, The Michigan constitutional convention is

charged with the responsibility of preparing the basic documents containing the principles and rules of government under which all the institutions and individuals of the state of Michigan must live; and

Whereas, There is urgent need to strengthen the underpinnings of American democracy, particularly at the state and local levels, in this period of world crisis; and

Whereas, By strengthening state and local governmental units so they are adequate to deal with the problems of our times, the Michigan constitutional convention can permit Michigan governmental units to perform the functions they are intended to discharge under the federal constitution, and thus handle their state and local problems in Michigan rather than shifting the responsibility for their solution to the federal government; and

Whereas, By releasing the chief branches of the federal government of the burden of having to face the solutions and revenues to deal with state and local problems, the president of the United States, the United States senate, the United States house of representatives, and the federal administrative agencies may concentrate their time and energies to a greater degree on problems of national and international character which are so urgently in need of attention; and

Whereas, The Michigan constitutional convention process thus is an effective instrument for contributing to public understanding of the processes of representative government; now therefore be it

Resolved:

1. That the recent past presidents of the United States, Dwight D. Eisenhower and Harry S. Truman, be invited to address the Michigan constitutional convention on the extent to which national and international conditions have a relationship to our task and the role of a constitutional convention in coping with today's national, state and local problems.

2. That the president of the Michigan constitutional convention appoint a committee of 5 delegates to make arrangements for the time and place of their separate appearances.

PRESIDENT NISBET: Referred to the committee on rules and resolutions.

SECRETARY CHASE: Mr. Downs and Miss Hart offer **Resolution 52,** A resolution that no delegate shall have a conflict of interest in political ambitions.

Following is Resolution 52, as offered:

Whereas, The deliberative nature of this constitutional convention must be untarnished by individual political ambitions; and

Whereas, No delegate should have any conflict of interest that inevitably develops from such political ambitions; now therefore be it

Resolved, That any delegate who announces his candidacy for state office shall resign as a delegate to this convention upon such announcement.

PRESIDENT NISBET: Referred to the committee on rules and resolutions.

Unfinished business.

SECRETARY CHASE: Under the order of unfinished business, presently before the convention is a report from the committee on administration in regard to tapes, the recording of them, their custody and care, and so forth.

PRESIDENT NISBET: Mr. DeVries.

MR. DeVRIES: Mr. President, I move that the report of the committee on administration in regard to tapes be postponed until Wednesday, December 6.

PRESIDENT NISBET: You heard the motion of Mr. DeVries. Any discussion? If not, all in favor say aye. Opposed, no.

The motion prevails.

Any other unfinished business?

SECRETARY CHASE: That is the only item under unfinished business.

PRESIDENT NISBET: Special orders of the day.

SECRETARY CHASE: None.

PRESIDENT NISBET: General orders of the day.

Mr. Van Dusen.

MR. VAN DUSEN: I move that the convention resolve itself into committee of the whole.

PRESIDENT NISBET: Question is on the motion of Mr. Van Dusen. All in favor say aye. Opposed, no.

The motion prevails.

Before we go into the committee of the whole, may I have the privilege of expressing a few thoughts?

As we approach the end of this phase of our convention, we have arrived at approximately the 1/3 mark of our work. The first phase, that of orientation, getting acquainted, study and research, committee meetings, learning the state's problems and allied questions, has gone, in my opinion, well. An editorial recently characterized our work thusly: "The work of the convention has proceeded with a high degree of efficiency to date."

This is good, and our delegates are to be congratulated for the degree of intelligence, integrity, industry and outlook they have given to their work.

I think we have built a solid foundation for the next phase of our operation. This phase will be the real test of our ability to think and act on a statesmanship level. During the second phase we must resolve our substantive problems. Make no mistake about it, these are going to be tough decisions to make. There will be arguments on both sides of these issues.

Here, as convention delegates, we will show our caliber of dedication to our work; for again, if we are to be true to our dedication, we must resolve our differences on a statesmanship level.

As the editorial further stated:

> The important goal is the creation of a constitutional draft that will permit Michigan to move forward in the years ahead, to meet its problems and obligations squarely and efficiently in the spirit of democracy and individual freedom.

We must realize that this convention is operating on the committee system. It is impossible for every delegate to be an authority or know in complete detail every subject that will come up for discussion. We must trust and depend on our committees, which, I am pleased to say, and I am certain that every delegate knows, have worked diligently and efficiently to bring out a report only after they have covered the entire field of ideas and suggestions, and only after thorough discussion and debate.

For highest efficiency, delegate suggestions can best be made to the committees themselves. Let us save our convention debating time for the real issues involved.

Tonight we start on the committee proposals. We will operate on the committee of the whole program. To many of us this is new and not a completely familiar system. Consequently, for the first few sessions of this nature, I am asking delegates who have been members of the legislature and are familiar with this procedure, to preside until we all become familiar with the system. This may happen several times in the next weeks. After that period I hope many of you will then be willing to preside when the committee of the whole operates. I would hope that every delegate would have the privilege of this before our convention is over.

Finally, I am sure that every delegate will dedicate herself and himself to a method of operation that will enable us to proceed surely and efficiently to our April 1 deadline.

I would like to ask Mr. Van Dusen to preside at the meeting tonight. (applause)

[Whereupon, Mr. Van Dusen assumed the Chair to preside as chairman of the committee of the whole.]

CHAIRMAN VAN DUSEN: A brief statement, before I ask the secretary to read, about the work of the committee of the whole, for some of you may not be completely familiar with the way in which committee proposals are handled within the committee of the whole.

The function of the committee of the whole is to permit complete debate and discussion of proposals, to consider amendments to proposals, to consider referral of proposals otherwise than they might go in their ordinary course.

After a proposal has been fully debated, and after all amendments have been considered, then, if there is nothing further, and the committee does not otherwise indicate, I will simply announce that the proposal passes, and that means that it passes in the ordinary course back to the convention for referral to the committee on style and drafting, if the committee so recommends.

With that brief explanation, the committee will come to order, and the secretary will read.

SECRETARY CHASE: From the committee on executive branch, by Mr. Martin, chairman, **Committee Proposal 2, A** proposal to provide the executive power be vested in the governor. Amends article VI, section 2.

Following is Committee Proposal 2 as read by the secretary, and the reasons submitted in support therof:

The committee recommends that the following be included in the constitution:

The [chief] executive power is vested in the governor.

Mr. Martin, chairman of the committee on executive branch, submits the following reasons in support of Committee Proposal 2:

The committee on executive branch proposes deletion of the word "chief" in section 2 of article VI, so that the section will read as follows: "The executive power is vested in the governor." It is the view of the committee that the adjective, as it has been interpreted, serves as a limitation on the executive power of the governor although it was apparently originally intended to enhance the executive power. The committee believes that the proposed language properly reflects the major responsibility which the governor bears for the executive branch. The phrasing suggested is patterned after the language of the United States constitution and a number of new and recently revised state constitutions. This language was originally approved by the 1908 convention but the present language was substituted by the committee on style and drafting. The proposed language was also the language of the 1850 constitution.

CHAIRMAN VAN DUSEN: Amendments to the proposal?

SECRETARY CHASE: Mr. Brake offers the following amendment:

1. Amend page 1, line 6, after the first "The" by inserting the word "chief" as the second word, so that the language will read "The chief executive power is vested in the governor."

CHAIRMAN VAN DUSEN: Mr. Brake.

MR. BRAKE: Mr. Chairman, members of the committee, this sentence, which is taken from section 2 of the part of our constitution having to do with the executive branch of the government, is introductory in nature. It is followed by the various sections defining the governor's power.

The introductory sentence ought to be a forecast of what is to follow. Perhaps the committee has decided that the pattern is such that this is a forecast of what is to follow; for certainly the convention has not yet made that decision.

If it developes eventually that the convention is going to be willing to make all parts of the executive branch of government subservient completely to the governor, then the language the committee has reported is in order. If, on the other hand, the convention decides to keep some balance in the executive branch of government, to keep some safeguards against mediocrity and spoilsmanship, then this sentence is not appropriate. It is not descriptive of the government that we now have in Michigan.

The style and drafting committee of the 1907 convention was completely right when it put that word "chief" in the sentence.

We have chief executive power in the governor, not all executive power in the governor.

If we determine to keep any part of the divided executive responsibility, then we should have that word "chief" there, as this amendment proposes. At the present time all executive power is not in the governor. The state highway commissioner has a considerable chunk of it, so does the superintendent of public instruction, the regents of the University of Michigan, trustees of Michigan State, the governors of Wayne, the conservation commission, the welfare commission. The administrative board has a little, and the civil service commission is loaded with it.

We are not, of course, Mr. Chairman, at the time for a detailed discussion or debate of the subject of concentration of power in the governor's office. When we reach that time, and when we make at least a tentative determination of what the pattern is going to be, we will be in a position to write an introduction to that design.

I therefore move that when this committee rises it recommend that Committee Proposal 2 and the proposed amendment be laid on the table to stay there until such time as a pattern has been determined.

CHAIRMAN VAN DUSEN: The question is on the motion of Mr. Brake.

Mr. Martin.

MR. MARTIN: Mr. Chairman, members of the committee—

CHAIRMAN VAN DUSEN: Just a minute, Mr. Martin. I have to check with my parliamentarian.

The question is on the motion of Mr. Brake, which is not a motion to table but a motion to recommend tabling, which is, therefore, debatable.

Mr. Martin.

MR. MARTIN: Mr. Chairman, a matter of procedure, I assumed that the chairman of the committee would make his report before the matter is up for amendment, so the committee would know what they are discussing before we got to discussing it.

CHAIRMAN VAN DUSEN: The Chair apologizes, Mr. Martin. I didn't realize there was an amendment on the secretary's desk before I made the routine question.

MR. MARTIN: Thank you Mr. Chairman. The committee on executive branch unanimously recommends that section 2 of article VI be amended to read: "The executive power is vested in the governor.", makes this recommendation after thoughtful consideration of earlier constitutional provisions.

In the 1835 constitution the words "supreme executive power" were used. In the 1850 constitution the wording which is now proposed by this committee was employed. The simple statement was "The executive power is vested in the governor.". That language stood for some 60 years.

In 1908 the words used were changed to read "The chief executive power", on the suggestion of the committee on arrangement and phraseology after the constitutional convention had adopted the 1850 wording to which your committee now proposes to return.

The language proposed is a recognition of the fact that the people regard the governor as having the ultimate responsibility for what happens in state government. This is emphasized by the provisions of section 3 of article VI, which immediately follows section 2, and requires the governor first, to ". . . take care that the laws be faithfully executed;" second, that he ". . . shall transact all necessary business with the officers of government;" and finally, that he ". . . may require information in writing from all executive and administrative state officers, elective and appointive, upon any subject relating to the duties of their respective offices."

Clearly, this power to require reports in writing relative to the duties of other officers would be of little importance and of no use unless it were to enable the governor to carry out his prescribed responsibilities to see that the laws are faithfully executed.

This does not mean, of course, that no other officials exercise executive power. As Mr. Brake pointed out, there are many officials who exercise executive power, and they are not restricted to elected officials; they include many appointed officials who hold positions of responsibility quite as great as

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Explanation—Matter within [ ] is stricken, matter in capitals is new.

those of the elected officials. It does not mean that no other officials exercise executive power. They do, whether elected or appointed, but the final responsibility remains with the governor, and the failure to properly and judiciously use that power must finally be charged to him.

The language proposed recognizes this fact. This is the language which is used in the various recently revised constitutions in New Jersey and New York, Hawaii and Alaska, and also used in the United States constitution.

For these reasons the committee recommends the adoption of Committee Proposal 2.

Since a motion is on the floor to recommend tabling of the proposal, the committee on executive branch would, I am sure, unanimously agree in opposing the motion as made.

CHAIRMAN VAN DUSEN: The question is on the motion of Mr. Brake.

Mr. Walker.

MR. WALKER: If I might address myself to the remarks of Mr. Brake, it seems to simmer down to a very, very simple question: are we here for a purpose or are we not here for a purpose? Are we here to make changes or are we here to preserve the status quo? Thank you.

CHAIRMAN VAN DUSEN: The question is on the motion of Mr. Brake that Committee Proposal 2 and amendment thereto be laid on the table. Is there any further discussion? If not, those in favor will say aye. Opposed, no.

The motion does not prevail.

The question now is on the amendment of Mr. Brake.

SECRETARY CHASE: Mr. Brake has offered an amendment to insert, or reinsert, the word "chief" so the language would read "The chief executive power is vested in the governor."

CHAIRMAN VAN DUSEN: Any discussion on the amendment offered by Mr. Brake? If not, those in favor of the amendment will say aye. Opposed, no.

The amendment is not adopted.

Are there any further amendments to the proposal?

SECRETARY CHASE: There are none on file, Mr. Chairman.

CHAIRMAN VAN DUSEN: Any further discussion? If not, Committee Proposal 2 will pass without amendment.

It is passed.

The secretary will read.

SECRETARY CHASE: From the committee on executive branch, by Mr. Martin, chairman, **Committee Proposal 3**, A proposal to provide the governor shall be commander of the state armed forces. Amends article VI, section 4.

Following is Committee Proposal 3, as read by the secretary, and the reasons submitted in support thereof:

The committee recommends that the following be included in the constitution:

[He] THE GOVERNOR shall be commander in chief of the [military and naval] ARMED forces, and may call out such forces to execute the laws, to supress insurrection and to repel invasion.

Mr. Martin, chairman of the committee on executive branch, submits the following reasons in support of Committee Proposal 3:

The committee on executive branch recommends a change in the wording of section 4 of article VI, to substitute the phrase "armed forces" for the phrase "military and naval forces". The term "armed forces" is now commonly used to include all elements in the military services. The proposed language recognizes that the state now has an airforce as well as army and navy units in the national guard. This proposal does not affect article XV dealing with the militia.

CHAIRMAN VAN DUSEN: Mr. Martin.

MR. MARTIN: I would like to call on Mr. Millard, chairman of the subcommittee that worked on this proposal, to discuss it with the committee.

Explanation—Matter within [ ] is stricken, matter in capitals is new.

CHAIRMAN VAN DUSEN: Mr. Millard.

MR. MILLARD: Mr. Chairman, this matter of having a commander in chief of the armed forces has always been before legislative bodies. If we go back over the history of our state, we find that in our first Constitution of 1835 the governor was designated as commander in chief of the army and naval forces. That provision was carried in the 1850 constitution, and then in the 1908 constitution that last sentence in the article and the section was added, that he may call out such forces to execute the laws, to suppress insurrection and to repel invasion.

Since that was adopted in the 1908 convention, and in the constitution, we have had quite a change in our armed forces in the United States. Since that time we have added an air force, and I know that some of my brethren are probably members of the air force, and they would not like to be left out of the new constitution.

If we had just said the same thing that was in the 1908 constitution, that would only mean the army and the navy. The words "armed forces" have been used extensively and exclusively by the federal government in recent years. Therefore, the only change we would recommend is that the army and naval forces be changed to armed forces, to include the air force and all other combat forces that might come under the control of the governor.

CHAIRMAN VAN DUSEN: Any amendments to the proposal?

SECRETARY CHASE: None on file, Mr. Chairman.

CHAIRMAN VAN DUSEN: Any further discussion? If not, Committee Proposal 3 will pass without amendment.

It is passed.

The secretary will read.

SECRETARY CHASE: That completes the general orders calendar, Mr. Chairman.

CHAIRMAN VAN DUSEN: Do I hear a motion to rise?

Mr. Powell.

MR. POWELL: I move that the committee rise.

CHAIRMAN VAN DUSEN: Those in favor say aye. Opposed, no.

The motion prevails.

[Whereupon, the committee of the whole having risen, President Nisbet resumed the Chair.]

PRESIDENT NISBET: Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, the committee of the whole has had under consideration 2 proposals on which the secretary will give a more detailed report.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 2**, A proposal to provide the executive power be vested in the governor; and **Committee Proposal 3**, A proposal to provide the governor shall be commander of the state armed forces. The committee reports these 2 proposals back to the convention without amendment, and with the recommendation that they do pass.

PRESIDENT NISBET: **Committee Proposal 2** and **Committee Proposal 3** are referred to the committee on style and drafting.

For Committee Proposal 2, as referred to the committee on style and drafting, see above, page 336.

For Committee Proposal 3, as referred to the committee on style and drafting, see above.

SECREARY CHASE: That completes the report of the committee of the whole, Mr. President.

PRESIDENT NISBET: Mr. Madar.

MR. MADAR: Mr. President, I would like to move to return to the order of **motions and resolutions.**

PRESIDENT NISBET: Without objection, we will return to the order of motions and resolutions.

You may proceed.

MR. MADAR: At this time I would like to move that the public information committee be instructed to have made,

without alterations, a copy of all the records and tapes, and that the originals be not removed from the convention until the convention is over and provisions have been made to turn them over to the historical commission.

PRESIDENT NISBET: The question is on the motion of Mr. Madar. Any discussion?

Mr. Stevens.

MR. STEVENS: Mr. President, I would like to support Mr. Madar's motion. I think it might go a long way to solve the question of the custody of the tapes.

PRESIDENT NISBET: Mr. DeVries.

MR. DeVRIES: Mr. President, fellow delegates, I believe the committee on administration is working on an amendment which they intend to offer, which may clarify the matter, and I suggest that Mr. Madar's motion be tabled until Wednesday.

PRESIDENT NISBET: Would you move the motion be postponed until Wednesday?

MR. DeVRIES: I move that we postpone Mr. Madar's motion until Wednesday, December 6.

PRESIDENT NISBET: The question is on Mr. DeVries' motion. Any discussion? If not, all in favor say aye. Opposed, no.

The motion prevails.

Announcements.

SECRETARY CHASE: Mr. White announces that there will be no meeting of the committee on public information this evening after the session.

The committee on administration will meet this evening, Monday, immediately following the session. Mr. DeVries, chairman.

On Tuesday, December 5, the committee on judicial branch will hold a public hearing in the city-county building, Detroit, Michigan. Representatives from common pleas court and circuit court commissions, 9:30 to 10:30. Probate court, 10:30 to 11:30. Recorders court, 11:30 to 12:30. Circuit court, 1:30 to 4:00.

On Tuesday, December 5, the committee on education will meet in room J, 8:30 a.m. Delegate Glenn Allen, Mr. Julius Barbour and Mrs. Fields, Michigan association of school boards; and Mr. R. E. Smith, Michigan farm bureau.

The committee on finance and taxation will meet tomorrow morning at 8:30 a.m., room E. Clarence Paddock, Charlotte, and John Patriarche, city council, East Lansing, will appear.

The committee on declaration of rights, suffrage and elections will meet tomorrow morning at 8:30 a.m., room F. Regular meeting.

The committee on executive branch will meet tomorrow morning at 10:30 a.m., room C. Delegate proposals related to the executive branch.

The committee on local government will meet tomorrow morning at 10:30 a.m., room A. Professor Alfred M. Pelham, Wayne State University, will appear.

Committee on legislative powers — all 4 subcommittees — will meet tomorrow afternoon in room H, 3:00 p.m. or after session to consider various items that have been referred to each subcommittee.

The committee on miscellaneous provisions and schedule will meet tomorrow afternoon at 3:00 o'clock, or after session, in room G. Full committee meeting.

The public hearings that are scheduled are listed on the composite notice of public hearings. We have already announced that the committee on judicial branch is holding a public hearing in the city-county building in Detroit tomorrow morning at 9:30.

The committee on legislative organization will be holding a public hearing Wednesday, December 6, at 2:30 or 15 minutes after the session, in parlors A, B and C. Representatives of the county boards of supervisors will appear.

The committee on declaration of rights, suffrage and elections will be holding a public hearing Wednesday, after the session, in room 333 of the Stevens T. Mason building, a public hearing of citizens and citizen groups regarding the declaration of rights.

The committee on finance and taxation will be holding a public hearing on Wednesday, rooms B, C, and D, at 7:30 in the evening, for taxpayers on both state and local levels who wish to be heard on anything that should or should not go into the constitution with reference to taxation.

The committee on legislative organization will be holding a public hearing on Wednesday at 7:30 in room 133 of the Mason building. Representatives of the county boards of supervisors will appear in a continuation of the hearing previously announced.

The secretary wishes to mention that of the handbooks which have been provided, only enough copies for the delegates were available this evening. Tomorrow morning the printer hopes to have the additional supply here for your use.

PRESIDENT NISBET: I would like to make one other announcement. A few weeks ago, when Dr. Pollock gave his very interesting and informative discussion on the constitution, it was suggested that some copies of Goals for Americans be ordered. There are 12 copies now available, and they will be in the library for your use.

SECRETARY CHASE: We have the following requests for leaves of absence:

Mrs. Koeze wishes to be excused from the sessions of December 5 and 6.

Mr. Gover asks to be excused from the session on Wednesday, December 6, to attend a senior government day.

PRESIDENT NISBET: Without objection, they will be excused.

SECRETARY CHASE: That is all the requests for leave of absence.

PRESIDENT NISBET: Any other announcements?

The Chair recognizes Mr. Brown.

MR. T. S. BROWN: Mr. President, I move we adjourn.

PRESIDENT NISBET: The question is on adjournment. All in favor say aye. Opposed, no.

The motion prevails. We are adjourned until 2:00 o'clock tomorrow afternoon.

[Whereupon, at 8:40 o'clock p.m., the convention adjourned until 2:00 o'clock p.m., Tuesday, December 5, 1961.]

THIRTY-SIXTH DAY

Tuesday, December 5, 1961, 2:00 o'clock p.m.

PROCEEDINGS

PRESIDENT NISBET: The convention will please come to order.

Today we are very happy to have the invocation given by the pastor of one of our delegates, Mr. Sleder, of Traverse City, Reverend Howard Towne, pastor of the First Congregational Church of that city.

REVEREND TOWNE: Let us pray. Father in heaven, guardian and guide of our nation, we pause to give Thee our gratitude for life's many blessings; for the Thanksgiving season just past; for the splendor and beauty that accompany the coming of the yuletide season, and for all life's enrichments and privileges that are ours.

We come into Thy presence conscious that our supreme need is Thy approval in all our endeavors. Wilt Thou now breathe upon this momentous convention Thy gracious power and wisdom. We pray that Thy living spirit may direct the delegates as they carry the weighty responsibility afforded them by the people of our great commonwealth.

We are grateful to Thee, O God, for leading our fathers in establishing our great state, and for those whose wisdom and courage and sacrifice have preserved it and made it a power in our beloved land. Remind us, however, that we are not chosen to fill the places of those who have gone, but to fill our own places, to do the significant task Thou has laid before us, always striving to do the very best we can.

Grant that in the writing of this constitution these delegates may have the faith to believe that if they seek Thy will, Thou wilt give them the answers they cannot find in themselves. Help them, O God, at any point of uncertainty, for there is no uncertainty with Thee. May Thy gracious blessing give them strong minds and sturdy health until their tremendous task is performed for the good of our great commonwealth. We ask it in the Master's name, and for His sake. Amen.

PRESIDENT NISBET: The roll call will be taken by the secretary. Those present please vote aye.

SECRETARY CHASE: Has everyone voted? The voting machine is now locked and the attendance will be recorded.

Mr. President, a quorum of the convention is present.

Prior to today's session, the secretary received the following request for leave:

Mr. Douglas phoned in and asked to be excused from today's session because of illness.

PRESIDENT NISBET: Without objection, the request is granted.

SECRETARY CHASE: Excused to conduct committee hearings in Detroit: Messrs. Barthwell, Bledsoe, Cudlip, Danhof, Miss Donnelly, Messrs. Everett, Ford, Garvin, Higgs, Iverson, Krolikowski, Lawrence, Leibrand, McAllister, Miss McGowan, Messrs. Mosier, Ostrow, Prettie, Pugsley, Tubbs and Woolfenden.

Absent with leave: Messrs. Binkowski, Bonisteel, Douglas, Mrs. Koeze and Mr. Liberato.

Absent without leave: None.

PRESIDENT NISBET: I am sure we are all very happy to welcome back one of our delegates who has been in the hospital, Mr. Blaque Knirk. (applause)

Mr. Knirk.

MR. KNIRK: President Nisbet and delegates, I certainly am awfully glad to be back, and I would like to take this opportunity to thank each and every one of you for the kind letters and cards. Some of them were ones that I could laugh at for a long time. I sure appreciate them. (applause)

PRESIDENT NISBET: Reports of standing committees.

SECRETARY CHASE: The committee on rules and resolutions, by Mr. Van Dusen, chairman, reports back to the convention Resolution 30, A resolution for a select committee to deal with proposals not presently within the jurisdiction or consideration of any committee; with amendments, recommending that the amendments be agreed to and that the resolution, as thus amended, be adopted.

R. C. Van Dusen, chairman.

For Resolution 30 as offered, see above, page 263; for recommended amendments, see below, page 348.

PRESIDENT NISBET: Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, in view of the fact that the committee on rules and resolutions did recommend a number of amendments to this resolution, I would respectfully move that the resolution lie over 1 day so that the delegates will have the opportunity to read the amendments in the journal when the matter is considered tomorrow.

PRESIDENT NISBET: The question is on the motion of Mr. Van Dusen. Any discussion? If not, all in favor say aye. Opposed, no.

The motion prevails.

SECRETARY CHASE: The committee on rules and resolutions, by Mr. Van Dusen, chairman, reports back to the convention Resolution 45, A resolution to provide a timetable for completing the work of the convention by April 1, 1962; with 8 amendments, recommending that the amendments be agreed to and that the resolution, as thus amended, be adopted.

R. C. Van Dusen, chairman.

For Resolution 45 as offered, see above, page 309; for recommended amendments, see below, page 348.

PRESIDENT NISBET: Mr. Van Dusen.

MR. VAN DUSEN: Once again, Mr. President, because the committee on rules and resolutions has recommended a number of amendments, I would respectfully move that it lie over 1 day so the delegates will have an opportunity to read the amendments in the journal before tomorrow.

PRESIDENT NISBET: The question is on the motion of Mr. Van Dusen. All in favor say aye. Those opposed, no.

The motion prevails.

SECRETARY CHASE: The committee on rules and resolutions, by Mr. Van Dusen, chairman, reports back to the convention, Resolution 51, A resolution to invite the recent presidents of the United States, Dwight D. Eisenhower and Harry S. Truman, to make separate addresses to the convention; without amendment, and with the recommendation that the resolution be adopted.

R. C. Van Dusen, chairman.

PRESIDENT NISBET: Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, the resolution is, I believe, self explanatory. Because of the importance of the relationship of strong state and local government to the work of the federal government, and particularly to the work of the presidency, and because of the great experience of both of the 2 recent presidents, General Eisenhower and Mr. Truman, whose experience spans some 16 years of relationship between federal and state governments, it is the committee's unanimous recommendation that both of these gentlemen be invited to address the convention.

The second portion of the resolution deals simply with the establishment of a committee to be appointed by the president, to make arrangements for their separate addresses.

I move the adoption of the resolution.

PRESIDENT NISBET: The rules provide that the resolution be read. The secretary will read.

SECRETARY CHASE: Resolution 51, A resolution to invite the recent presidents of the United States, Dwight D. Eisenhower and Harry S. Truman, to make separate addresses to the convention.

Whereas, The Michigan constitutional convention is charged with the responsibility of preparing the basic documents containing the principles and rules of government under which all the institutions and individuals of the state of Michigan must live; and

Whereas, There is urgent need to strengthen the underpinnings of American democracy, particularly at the state and local levels, in this period of world crisis; and

Whereas, By strengthening state and local governmental units so they are adequate to deal with the problems of our times, the Michigan constitutional convention can permit Michigan governmental units to perform the functions they are intended to discharge under the federal constitution, and thus handle their state and local problems in Michigan rather than shifting the responsibility for their solution to the federal government; and

Whereas, By releasing the chief branches of the federal government of the burden of having to face the solutions and revenues to deal with state and local problems, the president of the United States, the United States senate, the United States house of representatives, and the federal administrative agencies may concentrate their time and energies to a greater degree on problems of national and international character which are so urgently in need of attention; and

Whereas, The Michigan constitutional convention process thus is an effective instrument for contributing to public understanding of the processes of representative government; now therefore be it

Resolved:

1. That the recent past presidents of the United States, Dwight D. Eisenhower and Harry S. Truman, be invited to address the Michigan constitutional convention on the extent to which national and international conditions have a relationship to our task and the role of a constitutional convention in coping with today's national, state and local problems.

2. That the president of the Michigan constitutional convention appoint a committee of 5 delegates to make arrangements for the time and place of their separate appearances.

PRESIDENT NISBET: Mr. Marshall.

MR. MARSHALL: Mr. President and fellow delegates, inasmuch as there are 3 living former presidents realizing, of course, that maybe distance and age might prevent President Hoover from attending, I would still like to suggest, and offer this as an amendment, that we extend the same invitation, as a matter of courtesy, to former President Hoover; inasmuch as there are only 3 former living presidents, and this would also continue the 2 to 1 ratio. (laughter)

PRESIDENT NISBET: Mr. Bentley.

MR. BENTLEY: Mr. President, I appreciate the words of Delegate Marshall. My thinking had reached the same objective, although not, perhaps, for the very same reason. I have prepared, if Delegate Marshall will accept them, amendments which would accomplish the suggestion he has made. It was not my intention to offer these amendments until we had reached the question, because I felt if, for any reason there was any particular objection or feeling to the inclusion of Mr. Hoover, I wouldn't care to offer the amendments.

I would like to say I think this is a wonderful thing. I think the action of the committee in proposing this resolution and acting on it expeditiously is fine. I might say one thing further, and that is, I would in no way wish to jeopardize any arrangements that have already been made or any plans that have been made by offering this amendment, but if the proposers of this resolution — and I have discussed this with some of them — are willing to accept them, I would like to offer these amendments, which have been prepared in written form.

PRESIDENT NISBET: Mr. Marshall.

MR. MARSHALL: Mr. President, fellow delegates, I made mine as a matter of suggestion, and I would withdraw the amendment and accept either the inclusion of the recommendation of the committee or accept Mr. Bentley's amendments. I thought since there are only 3 former living presidents, that they all should be invited.

PRESIDENT NISBET: Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, I am sure if the sponsors of the resolution have no objections, the committee on rules and resolutions would happily accept the amendments offered by Messrs. Marshall and Bentley.

SECRETARY CHASE: Mr. Bentley has offered the following amendments:

1. Amend the title, line 1, after "invite the" by striking out "recent" and inserting "past".

2. Amend the title, line 2, after "Eisenhower" by striking out "and Harry S. Truman" and inserting a comma and "Harry S. Truman and Herbert Hoover".

3. Amend the resolving clause, line 1, after "That the" by striking out "recent".

4. Amend the resolving clause, line 2, after "Eisenhower" by striking out "and Harry S. Truman" and inserting a comma and "Harry S. Truman and Herbert Hoover", so the language of the title will then read:

A resolution to invite the presidents of the United States, Dwight D. Eisenhower, Harry S. Truman and Herbert Hoover, to make separate addresses to the convention.

and the resolving clause will read:

Resolved:

1. That the past presidents of the United States, Dwight D. Eisenhower, Harry S. Truman and Herbert Hoover, be invited to address the Michigan constitutional convention on the extent to which national and international conditions have a relationship to our task and the role of a constitutional convention in coping with today's national, state and local problems.

PRESIDENT NISBET: The question is on the amendments. Mr. Sharpe.

MR. SHARPE: Mr. President, I am overwhelmed with the statement from my colleague, Mr. Marshall, on the 2 to 1 ratio. However, I would like to make the point of information that this was not the first time this was brought up.

In our committee meeting last night the name of Mr. Hoover was brought up, but at that time it wasn't seen fit to do anything special about it, and I am really happy that Bill, and also Mr. Bentley, brought this up, because I would like to second the motion and speak in favor of it.

PRESIDENT NISBET: The question is on the amendments. All in favor say aye. Opposed, no.

The amendments are adopted.

The question now is on the resolution, as amended. Any discussion?

Mr. Romney.

MR. ROMNEY: Mr. President, I would just like to say this whole idea started from a suggestion made by Delegate McLogan of Flint, and I thought the delegates should know that fact.

PRESIDENT NISBET: Thank you. Any further discussion? If not, all in favor say aye. Opposed, no.

The resolution, as amended, is adopted.

Following is Resolution 51 as amended and adopted:

A resolution to invite the past presidents of the United States, Dwight D. Eisenhower, Harry S. Truman and Herbert Hoover, to make separate addresses to the convention.

Whereas, The Michigan constitutional convention is charged with the responsibility of preparing the basic documents containing the principles and rules of government under which all the institutions and individuals of the state of Michigan must live; and

Whereas, There is urgent need to strengthen the underpinnings of American democracy, particularly at the state and local levels, in this period of world crisis; and

Whereas, By strengthening state and local governmental units so they are adequate to deal with the problems of our times, the Michigan constitutional convention can permit Michigan governmental units to perform the functions they are intended to discharge under the federal constitution, and thus handle their state and local problems in Michigan rather than shifting the responsibility for their solution to the federal government; and

Whereas, By releasing the chief branches of the federal government of the burden of having to face the solutions and revenues to deal with state and local problems, the president of the United States, the United States senate, the United States house of representatives, and the federal administrative agencies may concentrate their time and energies to a greater degree on problems of national and international character which are so urgently in need of attention; and

Whereas, The Michigan constitutional convention process thus is an effective instrument for contributing to public understanding of the processes of representative government; now therefore be it

Resolved:

1. That the past presidents of the United States, Dwight D. Eisenhower, Harry S. Truman and Herbert Hoover, be invited to address the Michigan constitutional convention on the extent to which national and international conditions have a relationship to our task and the role of a constitutional convention in coping with today's national, state and local problems.

2. That the president of the Michigan constitutional convention appoint a committee of 5 delegates to make arrangements for the time and place of their separate appearances.

Further reports of standing committees?

SECRETARY CHASE: The committee on administration, by Mr. DeVries, chairman, reports back to the convention **Resolution 49,** A resolution requesting authority and funds for the committee on legislative organization to hold hearings in the city of Detroit; without amendment, and with the recommendation that the resolution be adopted.

Walter DeVries, chairman.

Following is Resolution 49, offered by Mr. J. A. Hannah:

A resolution requesting authority and funds for the committee on legislative organization to hold hearings in the city of Detroit.

Whereas, In view of the intense interest of residents of the Detroit metropolitan area in constitutional provisions affecting the apportionment of the legislature; and

Whereas, In consideration of the numerous requests from constituents expressing interest in this subject and a desire to be heard; now therefore be it

Resolved, That such hearings be held on Tuesday, December 12, 1961, in order to guarantee the possibility of the maximum participation of interested citizens in the Detroit area and that the public be given sufficient notice; and be it further

Resolved, That the convention appropriate the necessary funds to defray the costs of travel for the members of the committee and staff to and from Detroit and other expenses necessary and incidental to the holding of such hearings.

PRESIDENT NISBET: Mr. DeVries.

MR. DeVRIES: Mr. President, fellow delegates, the committee on administration reports this resolution unanimously. The committee on legislative organization will hold hearings in the city-county building, Detroit, and return the same day. Mr. Hannah has secured the university bus at a nominal cost. The total cost is not to exceed $150. I move the adoption of this resolution.

PRESIDENT NISBET: The question is on the adoption of the resolution. Any discussion? If not, all in favor say aye. Opposed, no.

The resolution is adopted.

SECRETARY CHASE: The committee on administration, by Mr. DeVries, chairman, reports back to the convention **Resolution 50,** A resolution requesting authority and funds for the committee on legislative organization to hold hearings in the city of Berrien Springs; without amendment, and with the recommendation that the resolution be adopted.

Walter DeVries, chairman.

Following is Resolution 50, offered by Mr. J. A. Hannah:

A resolution requesting authority and funds for the committee on legislative organization to hold hearings in the city of Berrien Springs.

Whereas, In view of the interest of residents of outstate areas in constitutional provisions affecting the apportionment of the legislature; and

Whereas, In consideration of the numerous requests from constituents expressing interest in this subject and a desire to be heard; now therefore be it

Resolved, That such hearings be held on Wednesday, December 20, 1961, in order to guarantee the possibility of maximum participation of interested citizens of the state of Michigan and that the public be given sufficient notice; and be it further

Resolved, That the convention appropriate the necessary funds to defray the costs of travel for the members of the committee and staff to and from Berrien Springs and other expenses necessary and incidental to the holding of such hearings.

PRESIDENT NISBET: Mr. DeVries.

MR. DeVRIES: Mr. President and fellow delegates, this resolution has the unanimous recommendation of the committee on administration for the holding of the hearing in Berrien Springs. It will be a one day trip with the use of the university bus, and the cost will not exceed $175. I move the adoption of this resolution.

PRESIDENT NISBET: The question is on the adoption of the resolution. Any discussion? If not, all in favor say aye. Opposed, no.

The resolution is adopted.

SECRETARY CHASE: The committee on administration, by Mr. DeVries, chairman, reports and recommends to the president for consideration for staff appointment, Mrs. Inge Kyler as stenographer to the constitutional convention.

Walter DeVries, chairman.

PRESIDENT NISBET: The question is on the recommendation of the committee. Any discussion? If not, all in favor say aye. Opposed, no.

The recommendation is concurred in.

SECRETARY CHASE: **The president appoints,** pursuant to authorization by the convention, and with the approval of the committee on administration, the aforenamed person to the position indicated.

PRESIDENT NISBET: Without objection, the appointment is approved.

SECRETARY CHASE: The committee on administration, by Mr. DeVries, chairman, submits the following report as a matter of information:

The committee on administration reports that in a committee meeting of November 30, the committee on administration agreed to accept the offer of the secretary of state to place the 3 original constitutions on display in the delegates' lounge.

Walter DeVries, chairman.

PRESIDENT NISBET: Mr. DeVries.

MR. DeVRIES: The committee wishes to thank the secretary of state for making these valuable documents available to the constitutional convention. The documents will be placed in the delegates' lounge at no expense to the convention.

PRESIDENT NISBET: Reports of select committees.

SECRETARY CHASE: None.

PRESIDENT NISBET: Communications from state officers.

SECRETARY CHASE: None.

PRESIDENT NISBET: **Introduction, first reading and reference of proposals.**

ASSISTANT SECRETARY KNAPP: Mr. Young, Mrs. Daisy Elliott, Mrs. Hatcher and Mr. Murphy introduce

Delegate Proposal 1521, A proposal to provide that no person shall be allowed to contract to provide the state with goods or services unless there is no discrimination in hiring by such a person. Amends article V.

PRESIDENT NISBET: Referred to the committee on legislative powers.

ASSISTANT SECRETARY KNAPP: Mrs. Hatcher, Mr. Dade, Mrs. Daisy Elliott, Messrs. Murphy, Douglas and Young introduce

Delegate Proposal 1522, A proposal to create a state civil rights commission to effectuate rights guaranteed under article II. Amends article VI.

PRESIDENT NISBET: Referred to the committee on executive branch.

ASSISTANT SECRETARY KNAPP: Mrs. Hatcher, Mr. Dade, Mrs. Daisy Elliott, Messrs. Murphy and Young introduce

Delegate Proposal 1523, A proposal to create a civil rights commission which will hear and act upon civil rights violations and other matters. Amends article VI.

PRESIDENT NISBET: Referred to the committee on executive branch.

ASSISTANT SECRETARY KNAPP: Mr. G. E. Brown introduces

Delegate Proposal 1524, A proposal to clarify the right of recall. Amends article III, section 8.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

ASSISTANT SECRETARY KNAPP: Mr. Allen and Mrs. Cushman introduce

Delegate Proposal 1525, A proposal for a county charter commission and county home rule. Amends article VIII by adding a new section.

PRESIDENT NISBET: Referred to the committee on local government.

ASSISTANT SECRETARY KNAPP: Mr. Allen and Mrs. Cushman introduce

Delegate Proposal 1526, A proposal to permit cooperation between the state, cities, counties, townships and other governmental subdivisions and to authorize persons holding office to serve on any governmental body established for cooperative undertakings. Amends article VIII by adding a new section.

PRESIDENT NISBET: Referred to the committee on local government.

ASSISTANT SECRETARY KNAPP: Mrs. Cushman introduces

Delegate Proposal 1527, A proposal to provide for the establishment of special service areas within a county. Amends article VIII by adding a section.

PRESIDENT NISBET: Referred to the committee on local government.

ASSISTANT SECRETARY KNAPP: Mrs. Cushman introduces

Delegate Proposal 1528, A proposal to establish an agency to assist and advise local government units. Amends article VIII by adding a new section.

PRESIDENT NISBET: Referred to the committee on local government.

ASSISTANT SECRETARY KNAPP: Mrs. Cushman and Mr. Follo introduce

Delegate Proposal 1529, A proposal to provide for abolishing township government whenever there no longer exists unincorporated territory within its boundaries. Amends article VIII by adding a new section.

PRESIDENT NISBET: Referred to the committee on local government.

ASSISTANT SECRETARY KNAPP: Mrs. Cushman and Mr. Follo introduce

Delegate Proposal 1530, A proposal to prohibit the payment of legal fees to elected officials as a part of their salary. Amends article XVI, section 3.

PRESIDENT NISBET: Referred to the committee on miscellaneous provisions and schedule.

ASSISTANT SECRETARY KNAPP: Mrs. Cushman and Mrs. Judd introduce

Delegate Proopsal 1531, A proposal to prohibit the dedication of state revenue except for participation under federal programs. Amends article X.

PRESIDENT NISBET: Referred to the committee on finance and taxation.

ASSISTANT SECRETARY KNAPP: Mrs. Cushman and Mrs. Judd introduce

Delegate Proposal 1532, A proposal to delete article X, section 14, relative to internal improvement.

PRESIDENT NISBET: Referred to the committee on finance and taxation.

ASSISTANT SECRETARY KNAPP: Mrs. Cushman introduces

Delegate Proposal 1533, A proposal to provide that constitutional convention delegates be elected on a nonpartisan basis. Amends article XVII, section 4.

PRESIDENT NISBET: Referred to the committee on miscellaneous provisions and schedule.

ASSISTANT SECRETARY KNAPP: Messrs. Millard, Page, Shaffer, White and Mrs. Koeze introduce

Delegate Proposal 1534, A proposal to provide for the apportionment of the house of representatives based on the number of persons voting for secretary of state. Amends article V.

PRESIDENT NISBET: Referred to the committee on legislative organization.

ASSISTANT SECRETARY KNAPP: Mr. Hubbs introduces

Delegate Proposal 1535, A proposal to provide for secret ballot by mechanical means. Amends article III, section 7.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

ASSISTANT SECRETARY KNAPP: Mrs. Judd introduces

Delegate Proposal 1536, A proposal to increase the power of the legislature with respect to internal improvements by deleting the negative and restrictive specifications of article X, section 14.

PRESIDENT NISBET: Referred to the committee on finance and taxation.

ASSISTANT SECRETARY KNAPP: Mrs. Judd introduces

Delegate Proposal 1537, A proposal to provide for county government by deleting article VIII, sections 1, 2, 6, 11 and 14; by amending sections 3, 5, 7, 8 and 9; by combining sections 4 and 13; and by adding new sections. (Note: section 10 on certain taxing powers and section 12 on certain debt limitations are not treated in this proposal.)

PRESIDENT NISBET: Referred to the committee on local government.

ASSISTANT SECRETARY KNAPP: Mrs. Judd introduces

Delegate Proposal 1538, A proposal to further protect the public interest as it may be affected by the power of county boards of supervisors to permit the bridging or damming of navigable streams. Amends article VIII, section 14.

PRESIDENT NISBET: Referred to the committee on local government.

ASSISTANT SECRETARY KNAPP: Messrs. Howes and Rush introduce

Delegate Proposal 1539, A proposal to provide that taxes levied to provide schools with operating moneys, be equal throughout each county. Amends article X.

PRESIDENT NISBET: Referred to the committee on finance and taxation.

ASSISTANT SECRETARY KNAPP: Mr. Howes introduces

Delegate Proposal 1540, A proposal to provide for an exemption of $1,000 for persons over 65 on the assessed valuation of homestead property for tax purposes. Amends article X.

PRESIDENT NISBET: Referred to the committee on finance and taxation.

ASSISTANT SECRETARY KNAPP: Messrs. Karn, Beaman, Shackleton and Goebel introduce

Delegate Proposal 1541, A proposal pertaining to the holding of real estate by corporations. Deletes article XII, section 5.

PRESIDENT NISBET: Referred to the committee on miscellaneous provisions and schedule.

ASSISTANT SECRETARY KNAPP: Mr. Tweedie introduces

Delegate Proposal 1542, A proposal to permit boards of supervisors to levy a tax of 1 mill on assessed valuation for construction or repair of public buildings or bridges. Amends article VIII, section 3.

PRESIDENT NISBET: Referred to the committee on local government.

ASSISTANT SECRETARY KNAPP: Messrs. King, A. G. Elliott, Mrs. Conklin, Messrs. Kuhn and Yeager introduce

Delegate Proposal 1543, A proposal to prohibit conflict of interests among municipal and county employees. Amends article VIII by adding a new section.

PRESIDENT NISBET: Referred to the committee on local government.

ASSISTANT SECRETARY KNAPP: Messrs. King, A. G. Elliott, Mrs. Conklin, Messrs. Yeager and Kuhn introduce

Delegate Proposal 1544, A proposal to provide methods of notice to owners of property of laws or regulations affecting their real property. Amends article VIII by adding a new section.

PRESIDENT NISBET: Referred to the committee on local government.

ASSISTANT SECRETARY KNAPP: Mr. White introduces

Delegate Proposal 1545, A proposal to amend the provision on freedom of speech and press. Amends article II, section 4.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

ASSISTANT SECRETARY KNAPP: Mr. White introduces

Delegate Proposal 1546, A proposal to abolish criminal prosecutions for libel and slander. Amends article II, section 18.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

ASSISTANT SECRETARY KNAPP: Mr. White introduces

Delegate Proposal 1547, A proposal to retain article V, section 35, that the legislature shall not establish a state paper.

PRESIDENT NISBET: Referred to the committee on legislative powers.

ASSISTANT SECRETARY KNAPP: Messrs. Bonisteel and Greene introduce

Delegate Proposal 1548, A proposal to authorize the legislature to provide by law for the registration of the names of lodges, fraternal orders, and benevolent societies and to protect such organizations against unauthorized use of their names and insignia. Amends article XVI.

PRESIDENT NISBET: Referred to the committee on legislative powers.

ASSISTANT SECRETARY KNAPP: Mr. Kuhn introduces

Delegate Proposal 1549, A proposal to provide for a method of determining the membership of boards of supervisors. Amends article VIII, section 7.

PRESIDENT NISBET: Referred to the committee on local government.

ASSISTANT SECRETARY KNAPP: Mrs. Daisy Elliott introduces

Delegate Proposal 1550, A proposal to provide for the deletion of the requirement that bills be read 3 times before final passage. Amends article V, section 23.

PRESIDENT NISBET: Referred to the committee on legislative powers.

ASSISTANT SECRETARY KNAPP: Mrs. Daisy Elliott and Mr. Young introduce

Delegate Proposal 1551, A proposal to provide that moneys set aside for veterans shall be used for their training, education, disability and old age assistance. Amends article X.

PRESIDENT NISBET: Referred to the committee on finance and taxation.

ASSISTANT SECRETARY KNAPP: Mrs. Daisy Elliott and Mr. Young introduce

Delegate Proposal 1552, A proposal to provide that consolidation of railroads should be deleted. Amends article XII, section 8.

PRESIDENT NISBET: Referred to the committee on miscellaneous provisions and schedule.

ASSISTANT SECRETARY KNAPP: Mrs. Daisy Elliott and Mr. Young introduce

Delegate Proposal 1553, A proposal to delete representation of territory from the constitution. Amends schedule.

PRESIDENT NISBET: Referred to the committee on miscellaneous provisions and schedule.

ASSISTANT SECRETARY KNAPP: Mrs. Daisy Elliott and Mr. Young introduce

Delegate Proposal 1554, A proposal to provide that the state may aid in the internal improvement of harbors. Amends article X, section 14.

PRESIDENT NISBET: Referred to the committee on finance and taxation.

ASSISTANT SECRETARY KNAPP: Mrs. Daisy Elliott and Mr. Young introduce

Delegate Proposal 1555, A proposal to provide for the retention of the provisions regarding estates of married women. Amends article XVI, section 8.

PRESIDENT NISBET: Referred to the committee on miscellaneous provisions and schedule.

ASSISTANT SECRETARY KNAPP: Mrs. Daisy Elliott introduces

Delegate Proposal 1556, A proposal to delete existing rights under common law from the constitution. Amends schedule, section 1.

PRESIDENT NISBET: Referred to the committee on miscellaneous provisions and schedule.

Second reading of proposals.

SECRETARY CHASE: Nothing on that calendar today.

PRESIDENT NISBET: Third reading of proposals.

SECRETARY CHASE: Nothing on that calendar.

PRESIDENT NISBET: Motions and resolutions.

SECRETARY CHASE: There are no resolutions on file, Mr. President.

PRESIDENT NISBET: Unfinished business.

SECRETARY CHASE: None for today.

PRESIDENT NISBET: Special orders.

SECRETARY CHASE: None.

PRESIDENT NISBET: General orders.

SECRETARY CHASE: None.

PRESIDENT NISBET: Announcements.

SECRETARY CHASE: The subcommittee on school finance, committee on education, will meet in room J this afternoon immediately after the session. G. Keyes Page, chairman.

The committee on public information will meet in room D, at 7:30 p.m. Members are asked to bring their copies of the committee's organizational plan. Ink White, chairman.

The committee on administration will meet on Thursday, December 7, at 1:00 o'clock p.m. Walter DeVries, chairman.

Other committee meetings for today:

Committee on legislative powers, subcommittee 1, will meet after the session in room H, with sponsors of Delegate Proposals 1039, 1109 and 1111; subcommittees 2 and 3 will meet immediately after the session in room H to consider respective committee assignments; and subcommittee 4 will meet after the session in room H, to hear delegates on behalf of their proposals.

The committee on miscellaneous provisions and schedule will meet after the session today in room G for a full committee meeting.

The committee on executive branch, subcommittee on executive reorganization, will meet in room C after the session.

The committee on legislative organization will meet in room D after the session to hear delegates on behalf of their proposals.

Committee meetings for tomorrow:

At 8:30 a.m., the committee on executive branch will meet in room C. Hearings on delegate proposals related to the executive branch.

Tomorrow morning at 8:30 a.m., the committee on local government will meet in room A. Delegate D. Hale Brake,

division of education, county supervisors association; Mr. Ross Hilliard, Ingham county clerk.

Tomorrow at 10:30 a.m., the committee on legislative powers will meet in room H.

Tomorrow at 10:30 a.m., the committee on miscellaneous provisions and schedule will meet in room G, subcommittee on boundaries and seat of government. At 11:30 a.m., the committee on miscellaneous provisions and schedule, subcommittee on eminent domain, will meet in room G.

Tomorrow at 3:00 o'clock p.m., the committee on education will meet in room J. Mr. Ralph A. Ulveling, director, Detroit public library.

On Wednesday, December 6, after session, in room 333, Stevens T. Mason building, the committee on declaration of rights, suffrage and elections will hold a public hearing of citizens and citizen groups regarding declaration of rights.

Tomorrow at 3:00 o'clock p.m., or after the session, the committee on finance and taxation will meet.

The committee on declaration of rights, suffrage and elections have a meeting tomorrow evening at 6:00 at the Jack Tar hotel, a committee dinner party followed by a special meeting of the committee at constitution hall.

Wednesday, December 6, 7:30 p.m., rooms B, C and D, the committee on finance and taxation will hold a public hearing for taxpayers on both state and local levels, who wish to be heard on anything that should or should not go into the constitution with reference to taxation.

On Wednesday, December 6, at 7:30 p.m., in room 133, Stevens T. Mason building, the committee on legislative organization will continue the public hearing.

The other notices of committee meetings for subsequent days and public hearings are on the composite calendar which has been provided all the delegates.

PRESIDENT NISBET: Dr. Hannah.

MR. J. A. HANNAH: Mr. President and delegates, as the committee on legislative organization nears the end of its formative period, I would like to state that we have had suggestions from many delegates that they would like to be heard. As far as we know they have all been heard.

Those who have proposals that have not been introduced have been given the opportunity to appear this afternoon, and no one has indicated a desire to be heard. If there are delegates that have proposals and would like to appear before our committee, we would like them to appear after this afternoon's session.

Telegrams were sent to all the boards of supervisors of the counties of the state except Wayne and Berrien, who will be heard when we hold hearings in their counties. The representatives of those boards of supervisors are appearing tomorrow afternoon. Only 6 or 8 have indicated they will be in attendance.

On Thursday at our meeting of the committee Dr. A. C. Breckenridge of the University of Nebraska will speak on the unicameral legislature. He will be accompanied by a state senator of Nebraska.

PRESIDENT NISBET: Mr. Kuhn.

MR. KUHN: I would like to announce that our lieutenant governor, T. J. Lesinski, will appear in room H to testify.

PRESIDENT NISBET: Any other announcements?

SECRETARY CHASE: In answer to some inquiries as to whether or not a mailing list is functioning: some individuals have indicated that Journals 1 through 6, which were mailed a week ago Friday, have not been received. We found that from personal knowledge some of that mail addressed to individuals here in Lansing was received on yesterday, even though it had been mailed a week ago last Friday. Remember, this is fourth class mail matter. We hope to get this straightened out with the post office before long. Meantime, Journals 7 through 25 have been mailed today.

That is all of the announcements I have.

We have some requests for leave:

Mr. Romney requests leave from tomorrow's session because of a meeting of the automobile manufacturers' association board of directors which he is scheduled to attend.

Mr. Anspach requests leave from Thursday's session, December 7, to keep a speaking appointment in Grayling.

Mr. Shanahan wishes to be excused from the session on Friday, December 8, as he has a board meeting on December 7 and two speaking engagements December 8, and also wishes to be excused on December 14 for the senior government day in Charlevoix county.

PRESIDENT NISBET: Without objection, they will be excused.

Acting upon the resolution adopted by the convention this afternoon authorizing an invitation to Presidents Hoover, Truman and Eisenhower, the president appoints the following committee: Mr. Romney, Mr. Downs, Mr. Hutchinson, Miss Hart and Mrs. Koeze.

Without objection, they are approved.

The Chair recognizes Mr. Brown.

MR. G. E. BROWN: Mr. President, it being my turn to be spontaneous, I move we adjourn.

PRESIDENT NISBET: The question is on adjournment. All in favor say aye. Those opposed, no.

We are adjourned until 2:00 o'clock tomorrow afternoon.

[Whereupon, at 2:40 o'clock p.m., the convention adjourned until 2:00 o'clock p.m., Wednesday, December 6, 1961.]

THIRTY-SEVENTH DAY

Wednesday, December 6, 1961, 2:00 o'clock p.m.

PROCEEDINGS

PRESIDENT NISBET: The convention will please come to order.

Our invocation this afternoon will be given by the Reverend John Hofman, Pastor of the First Christian Reformed Church of Lansing.

Please rise.

REVEREND HOFMAN: Let us pray. Our gracious God, we thank Thee that we can pause for this moment to invoke Thy blessing upon us, for we know that if we should strive to carry on the activity of this day without Thee, we would be foolish.

O God, we thank Thee for our constitutional convention and for all its delegates; for those who are willing to give of their time, of their talent, and of their effort in order that we might have good government. We thank Thee for laws, because we know that only when we have laws do we have real freedom, and we thank Thee for the freedom that we enjoy in this great land of ours, and also in this great state.

We pray that we may cherish it with all our hearts, and that we may give Thee the praise that we can still live in this land of freedom and of plenty.

But we want to thank Thee, O God, too, for the real freedom that we have, and for the freedom that is available to all of us, the freedom that comes from knowing that Jesus is our eternal Savior, for Jesus Christ, Himself, said, "And ye shall know the truth and the truth shall make you free."

May we seek after truth with all our hearts; also, as we, in this assembly, seek to perform the work that is entrusted unto us to do, bless all our leaders in government. Grant that they may dispatch their office in such a way that it is pleasing unto Thee, that we may have the opportunity to give Thee the praise and the adoration. In Jesus' name we pray. Amen.

PRESIDENT NISBET: The roll call will be taken by the secretary. All present, please vote aye.

SECRETARY CHASE: Has everyone voted? The machine is now locked and the attendance will be recorded.

Mr. President, a quorum of the convention is present.

Prior to today's session, the secretary received the following requests for leave:

Mr. Woolfenden called from Detroit. He has been unavoidably detained and wishes to be excused from today's session; and Mr. Hoxie expects to be a little bit late and wishes to be excused from the session.

Mr. DeVries wished to be excused from the sessions of Wednesday, Thursday and Friday, because of illness.

Mr. T. S. Brown requests leave of absence from the session of today, Thursday, Friday and Monday, because of urgent business in Detroit.

PRESIDENT NISBET: Without objection, the requests are granted.

SECRETARY CHASE: Absent with leave: Messrs. Bonisteel, T. S. Brown, DeVries, Gover, Hoxie, Mrs. Koeze, Messrs. Romney and Woolfenden.

Absent without leave: None.

[During the proceedings, Mr. Hoxie entered the chamber and took his seat.]

PRESIDENT NISBET: Reports of standing committees.

SECRETARY CHASE: The committee on administration, by Mr. Gust, vice chairman, submits the following report to the constitutional convention and recommends its approval:

That the convention authorize the purchase of a model 1000 multilith offset duplicator and the maintenance contract covering the same, $2,027.15.

Rockwell T. Gust, vice chairman.

PRESIDENT NISBET: Mr. Gust.

MR. GUST: Mr. President, for the delegates' information, this machine has been in our possession and has been in use for approximately 3 weeks. We originally were not sure whether we would need this on a full time basis, but we are informed now, in light of the work schedule, the backlog thereof, and our projected activities in the future, that we will need this machine for the remainder of the convention.

The breakdown on this is: the machine costs actually $1,871.75, and your committee on administration unanimously recommends the purchase of this machine, together with a service contract in the amount of $155.40, making the total $2,027.15.

PRESIDENT NISBET: The question is on the recommendation of the committee. Any discussion? If not, all in favor say aye; opposed no.

The recommendation is concurred in.

SECRETARY CHASE: No other committee reports at this time, Mr. President.

PRESIDENT NISBET: Reports of select committees.

SECRETARY CHASE: None.

PRESIDENT NISBET: Communications from state officers.

SECRETARY CHASE: None.

PRESIDENT NISBET: Introduction, first reading and reference of proposals.

ASSISTANT SECRETARY KNAPP: Messrs. Romney, Van Dusen and A. G. Elliott introduce

Delegate Proposal 1557, A proposal to provide for the election and appointment of state officers. Amends article VI.

PRESIDENT NISBET: Referred to the committee on executive branch.

ASSISTANT SECRETARY KNAPP: Messrs. Wanger and Baginski introduce

Delegate Proposal 1558, A proposal to deprive mentally ill persons of the right to vote during the period of their disability. Amends article III, section 1 (to be considered in connection with Delegate Proposal 1414.)

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

ASSISTANT SECRETARY KNAPP: Mrs. Cushman, Miss Andrus and Mr. McLogan introduce

Delegate Proposal 1559, A proposal to provide for intergovernmental cooperation. Amends article VIII by adding a section.

PRESIDENT NISBET: Referred to the committee on local government.

ASSISTANT SECRETARY KNAPP: Mrs. Cushman, Miss Andrus and Mr. McLogan introduce

Delegate Proposal 1560, A proposal to provide for the organization of local governments. Amends article VIII.

PRESIDENT NISBET: Referred to the committee on local government.

ASSISTANT SECRETARY KNAPP: Messrs. Gadola and Batchelor introduce

Delegate Proposal 1561, A proposal to prohibit discriminatory legislation within the same group or classification. Amends article II.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

ASSISTANT SECRETARY KNAPP: Mr. Seyferth introduces

Delegate Proposal 1562, A proposal to provide that employment rights of the individual shall not be conditioned upon race, color, creed or national origin, or upon membership or nonmembership in a labor organization. Amends article II by adding a new section.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

ASSISTANT SECRETARY KNAPP: Messrs. Liberato and Kelsey introduce

Delegate Proposal 1563, A proposal to provide that disabled or retired persons living on pensions shall be exempt from personal property taxes. Amends article X.

PRESIDENT NISBET: Referred to the committee on finance and taxation.

ASSISTANT SECRETARY KNAPP: Messrs. Liberato and Kelsey introduce

Delegate Proposal 1564, A proposal to provide that areas incorporating into cities shall vote on the form of municipal government as a separate proposition. Amends article VIII.

PRESIDENT NISBET: Referred to the committee on local government.

ASSISTANT SECRETARY KNAPP: Messrs. Liberato and Kelsey introduce

Delegate Proposal 1565, A proposal to provide for the retention of the present method of election of the governing bodies of the University of Michigan, Michigan State University, and Wayne State University. Amends article XI, sections 3, 7 and 16.

PRESIDENT NISBET: Referred to the committee on education.

ASSISTANT SECRETARY KNAPP: Messrs. Karn, Beaman, Shackleton, Goebel, Leppien, Gadola, Allen, Austin, Kelsey, Buback and Leibrand introduce

Delegate Proposal 1566, A proposal relating to the creation of corporations, extension of the term of existence of a corporation, and the domestication in this state of foreign corporations. Replaces article XII, section 3.

PRESIDENT NISBET: Referred to the committee on miscellaneous provisions and schedule.

ASSISTANT SECRETARY KNAPP: Mr. Knirk introduces

Delegate Proposal 1567, A proposal to regulate the levying of the tax on sales at retail of tangible personal property. Amends article X, section 23.

PRESIDENT NISBET: Referred to the committee on finance and taxation.

ASSISTANT SECRETARY KNAPP: Messrs. Seyferth, L. W. Richards and McCauley introduce

Delegate Proposal 1568, A proposal to grant full power to cities to levy all taxes as may be necessary for public purposes and to permit a legislative limitation thereof. Amends article VIII by adding a new section.

PRESIDENT NISBET: Referred to the committee on local government.

ASSISTANT SECRETARY KNAPP: Mr. Young, Mrs. Daisy Elliott, Mrs. Hatcher, Messrs. Murphy, Greene, Marshall, Downs, Miss Hart and Mr. Norris introduce

Delegate Proposal 1567, A proposal to provide for a civil rights commission with power to investigate and act upon violations of civil rights within the state, and other incidental matters. Amends article VI.

PRESIDENT NISBET: Referred to the committee on executive branch.

ASSISTANT SECRETARY KNAPP: Mrs. Daisy Elliott, Messrs. Young and Greene introduce

Delegate Proposal 1570, A proposal to provide moneys for the libraries of the state by legislative appropriation. Amends article XI.

PRESIDENT NISBET: Referred to the committee on education.

ASSISTANT SECRETARY KNAPP: Mrs. Daisy Elliott, Messrs. Young and Greene introduce

Delegate Proposal 1571, A proposal to provide that the legislature must pass or reject all bills regarding the economic, social, or general welfare of state citizens during the term in which the bill was introduced. Amends article V.

PRESIDENT NISBET: Referred to the committee on legislative powers.

ASSISTANT SECRETARY KNAPP: Mrs. Daisy Elliott, Messrs. Young and Greene introduce

Delegate Proposal 1572, A proposal to provide that the legislature shall have the power to provide for the needy, and the physically and socially handicapped. Amends article V.

PRESIDENT NISBET: Referred to the committee on legislative powers.

ASSISTANT SECRETARY KNAPP: Mrs. Daisy Elliott, Messrs. Young and Greene introduce

Delegate Proposal 1573, A proposal to foster and support institutions for handicapped people. Amends article XI, section 15.

PRESIDENT NISBET: Referred to the committee on education.

ASSISTANT SECRETARY KNAPP: Mrs. Daisy Elliott, Messrs. Young and Greene introduce

Delegate Proposal 1574, A proposal to put supervision of all principal administrative and executive departments in the governor. Amends article VI.

PRESIDENT NISBET: Referred to the committee on executive branch.

ASSISTANT SECRETARY KNAPP: Mrs. Daisy Elliott and Mr. Young introduce

Delegate Proposal 1575, A proposal to require the governor to submit to the legislature a budget of all proposed expenditures and anticipated revenue. Amends article VI.

PRESIDENT NISBET: Referred to the committee on executive branch.

ASSISTANT SECRETARY KNAPP: Mrs. Daisy Elliott and Mr. Young introduce

Delegate Proposal 1576, A proposal to provide that the right of eminent domain shall specifically extend in regards to frontage on navigable waters. Amends article XIII.

PRESIDENT NISBET: Referred to the committee on miscellaneous provisions and schedule.

ASSISTANT SECRETARY KNAPP: Mrs. Daisy Elliott and Mr. Young introduce

Delegate Proposal 1577, A proposal to provide against double jeopardy either for prior convictions within or without the state. Amends article II, section 14.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

ASSISTANT SECRETARY KNAPP: Mrs. Daisy Elliott and Mr. Young introduce

Delegate Proposal 1578, A proposal to provide that the governor shall appoint an administrative director. Amends article VI.

PRESIDENT NISBET: Referred to the committee on executive branch.

ASSISTANT SECRETARY KNAPP: Mrs. Daisy Elliott and Mr. Young introduce

Delegate Proposal 1579, A proposal to provide that the legislature shall receive a salary of at least $12,000 per member per year. Amends article V, section 9.

PRESIDENT NISBET: Referred to the committee on legislative powers.

ASSISTANT SECRETARY KNAPP: Mrs. Daisy Elliott and Mr. Young introduce

Delegate Proposal 1580, A proposal to provide that the lieutenant governor shall perform such duties as the governor or the law specifies. Amends article VI.

PRESIDENT NISBET: Referred to the committee on executive branch.

ASSISTANT SECRETARY KNAPP: Messrs. Upton, McLogan, Tweedie, J. B. Richards, L. W. Richards, McCauley, Sharpe, Farnsworth and Boothby introduce

Delegate Proposal 1581, A proposal to change the preamble.

PRESIDENT NISBET: Referrd to the committee on miscellaneous provisions and schedule.

Second reading of proposals.

SECRETARY CHASE: Nothing on that calendar, Mr. President.

PRESIDENT NISBET: Third reading of proposals.

SECRETARY CHASE: Nothing there.

PRESIDENT NISBET: **Motions and resolutions.**

SECRETARY CHASE: Mrs. Conklin offers

Resolution 53, A resolution of gratitude to the citizens of the upper peninsula.

PRESIDENT NISBET: The question is on referring the resolution to the committee on rules and resolutions.

Mrs. Conklin.

MRS. CONKLIN: Mr. President, I move that the rules be suspended and this resolution be considered at this time.

PRESIDENT NISBET: The question is on the suspension of the rules. Is there objection? Hearing none, the question is on the resolution. Is there any discussion? The secretary will read the resolution.

SECRETARY CHASE: Resolution 53, by Mrs. Conklin, A resolution of gratitude to the citizens of the upper peninsula.

Whereas, Certain members of the committee on education of this convention have lately staged hearings at several cities in the upper peninsula of this state; and

Whereas, The citizenry of the upper peninsula demonstrated at these hearings an extraordinary and highly enlightened interest in the proceedings of this convention, the problems confronting the committee on education, and numerous matters concerning the welfare of the state of Michigan; and

Whereas, The members of the committee on education who staged the said hearings, including Mr. Bentley, chairman, and Miss Andrus, Mr. Barthwell, Mrs. Conklin, Mr. Douglas, Mr. Faxon, Mr. Follo, Miss Hart, Mr. Heideman, Mr. Kuhn and Mr. L. W. Richards, were the recipients of a gracious and warm hospitality which has inspired in the foregoing committee members a sense of friendship and personal gratitude; now therefore be it

Resolved, That this convention, at the request of the foregoing delegates, does herewith express its thanks to the good people of the upper peninsula for their hospitality and their fine interest in the problems of this convention and of the great state of Michigan.

PRESIDENT NISBET: The question is on the resolution. Mr. Norris.

MR. NORRIS: Mr. President, I wonder if I might offer an amendment to the resolution, to change the word "staged" to the word "held"?

SECRETARY CHASE: Mr. Norris offers the following amendments:

1. Amend the first whereas clause of the resolution, line 2, after "lately" by striking out the word "staged" and inserting "held".

2. Amend the third whereas clause, line 2, by striking out "staged" and inserting "held", so that the language will then read:

Whereas, Certain members of the committee on education of this convention have lately held hearings at several cities in the upper peninsula . . . .

PRESIDENT NISBET: The question is on the amendments of Mr. Norris. All in favor say aye; opposed, no.

The amendments are adopted.

The question is on the resolution, as amended. Any further discussion? If not, all in favor say aye; opposed, no.

The resolution, as amended, is adopted.

Following is Resolution 53 as amended and adopted:

A resolution of gratitude to the citizens of the upper peninsula.

Whereas, Certain members of the committee on education of this convention have lately held hearings at several cities in the upper peninsula of this state; and

Whereas, The citizenry of the upper peninsula demonstrated at these hearings an extraordinary and highly enlightened interest in the proceedings of this convention, the problems confronting the committee on education, and numerous matters concerning the welfare of the state of Michigan; and

Whereas, The members of the committee on education who held the said hearings, including Mr. Bentley, chairman, and Miss Andrus, Mr. Barthwell, Mrs. Conklin, Mr. Douglas, Mr. Faxon, Mr. Follo, Miss Hart, Mr. Heideman, Mr. Kuhn and Mr. L. W. Richards, were the recipients of a gracious and warm hospitality which has inspired in the foregoing committee members a sense of friendship and personal gratitude; now therefore be it

Resolved, That this convention, at the request of the foregoing delegates, does herewith express its thanks to the good people of the upper peninsula for their hospitality and their fine interest in the problems of this convention and of the great state of Michigan.

SECRETARY CHASE: That is the only resolution on file, Mr. President.

PRESIDENT NISBET: Unfinished business.

SECRETARY CHASE: Under the order of unfinished business, the president lays before the convention the report from the committee on administration in reference to tapes recorded by committees, the custody and so forth, of same.

For the report as submitted, see above, page 322.

The question being on concurring in the recommendation of the committee,

Mr. Gust, on behalf of the committee on administration, moves to amend the report as follows:

1. Amend the report of the committee regarding the custody of tapes by striking out all of the language in the report and substituting the following:

"Constitutional convention policy on tape recordings. Original tapes recorded by the convention, both in plenary session and committee sessions, are the property of the convention and are to be safeguarded as such. Their custody at the time of recording is with the president and the chairman of the respective committees. Original tapes are not to be removed from the office of the president or the committee rooms, nor are they to be duplicated, edited, abstracted, or erased. Original tapes of the plenary sessions of the convention are to be transferred immediately after recording to the office of the president. Original tapes made in committee shall be identified and transferred by the committee chairman, as soon as practicable, to the office of the president, and shall be placed under the direct custody of the administrative assistant to the president. All original tapes recorded in plenary sessions and committee meetings shall be duplicated by the office of the president, and duplicate tapes shall then be identified and transferred to the convention library for the use of the delegates. Such use shall not extend beyond the convention hall. Any delegate may have duplicated by the office of the president, at his own expense, any duplicate tape recording or any portion thereof.".

PRESIDENT NISBET: Mr. Gust.

MR. GUST: Mr. President, we have endeavored in the committee on administration, to answer all of the various objections that have been raised in the past to the other forms which this regulation took. The final policy was hammered out after lengthy discussions by all members of the committee on administration. I would be happy to answer any questions if there are any, but I certainly hope that once and for all this will end the matter of tapes.

PRESIDENT NISBET: The question is on the amendment. Is there any discussion?

Mr. Downs.

MR. DOWNS: Mr. President, I want to say that this amendment handles the question I raised Friday. My understanding is it does provide for the adequate safeguarding and also the duplication, and answers the question that Delegate Madar brought up. I think in the present form it is in very good shape. I would like to express my appreciation to the committee and to the convention for carrying it over from last Friday.

PRESIDENT NISBET: The question is on the amendment to the report. Any further discussion?

If not, all in favor say aye; opposed, no.

The amendment is adopted.

Now the question is on concurring in the report, as amended. Any further discussion? If not, all in favor please say aye; opposed, no.

The report, as amended, is concurred in.

The question now is on the motion of Mr. Madar relative

to committee records and tapes, which motion was postponed until today.

For the motion offered by Mr. Madar, see above, page 337.

Mr. Madar.

MR. MADAR: Mr. President, inasmuch as the committee on administration has added what we had asked for in our motion in preserving the tapes, I would at this time withdraw my motion.

PRESIDENT NISBET: Without objection, it will be withdrawn.

SECRETARY CHASE: Item 3 on the calendar under unfinished business, by Mr. Pollock, **Resolution 30,** A resolution for a select committee to deal with proposals not presently within the jurisdiction or consideration of any committee.

Following is Resolution 30, as offered:

Whereas, Many of the emerging problems of state and local government may not be dealt with by the present standing committees; and

Whereas, Several of these new and emerging problems should be given careful consideration; now therefore be it

Resolved, That the president appoint a select committee consisting of the president, the vice presidents, and 5 other delegates to deal: (1) with proposals not presently within the jurisdiction of any of the substantive committees, or (2) which are not being considered by present committees because they refer to new or emerging problems; and be it further

Resolved, That this committee be also charged with arranging for the joint consideration by 2 or more committees or subcommittees thereof of any matters which require such joint consideration.

The committee on rules and resolutions reports the resolution with the following 3 amendments:

1. Amend the first resolving clause, line 1, after "committee" by striking out "consisting of the president, the vice presidents, and 5 other delegates".

2. Amend the first resolving clause, line 3, by striking out "deal" and inserting "consider" and by striking out the word "with" after "(1)".

3. Amend the first resolving clause, line 5, after "problems" by changing the semicolon to a period and striking out the balance of the resolution; so that the resolution will then read:

A resolution for a select committee to deal with proposals not presently within the jurisdiction or consideration of any committee.

Whereas, Many of the emerging problems of the state and local government may not be dealt with by the present standing committees; and

Whereas, Several of these new and emerging problems should be given careful consideration; now therefore be it

Resolved, That the president appoint a select committee to consider: (1) proposals not presently within the jurisdiction of any of the substantive committees, or (2) which are not being considered by present committees because they refer to new or emerging problems.

PRESIDENT NISBET: Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, fellow delegates, speaking briefly on the committee amendments, I think the resolution speaks for itself. The resolution, as originally offered, dealt with 2 problems: first, the question of emerging problems envisioned by the language which the secretary just read; and secondly, the problem of possible conflicts of jurisdiction between the presently existing substantive committees.

Before the resolution was considered by the committee on rules and resolutions the second of these problems, the problem of conflict of jurisdiction, had been otherwise dealt with to the satisfaction of Dr. Pollock, the sponsor of the resolution, and that, therefore, has resulted in the third proposed amendment, which simply strikes from the resolution language referring to problems of jurisdiction.

The first 2 amendments are addressed to the question of a select committee to deal with emerging problems, those being ones not now being considered by any of the substantive committees, and which people may not have yet thought of.

The resolution, as originally proposed, suggested the appointment of a select committee consisting of the president, the vice presidents, and 5 other delegates. Now the committee on rules and resolutions felt that the president and the vice presidents were otherwise occupied to an extent which might preclude their effective participation in the work of such a select committee, and we therefore struck any reference to the size or composition of the committee, leaving that to the discretion of the president.

In response to an inquiry propounded by Mr. Downs immediately prior to the meeting today, I would say that the president is not bound to do so, but I would anticipate that he would follow the 2 to 1 ratio in appointing this committee.

The second amendment strikes the words "deal with proposals" and inserts, instead, "consider proposals." The committee on rules and resolutions was not entirely clear as to what course the select committee might pursue once it discovered an emerging problem which it felt should be considered by the convention, and believes that the term "to consider" such problems gave it a little bit more discretion in recommending to the convention what should be done with an emerging problem once it had emerged.

Mr. President, I move the adoption of the committee amendments.

PRESIDENT NISBET: The question is on the amendments. Any discussion?

Mr. Hodges.

MR. HODGES: Just a point of information, Mr. President, would it be the intention of the president to follow the usual outline of committee assignments that we made before on the appointments to this committee?

PRESIDENT NISBET: That is correct. Any further discussion? The question is on the committee amendments. All in favor say aye; opposed, no.

The amendments are adopted.

The question is now on the resolution, as amended. Any discussion? If not, all in favor say aye; opposed, no.

The resolution as amended is adopted.

Following is Resolution 30 as amended and adopted:

A resolution for a select committee to deal with proposals not presently within the jurisdiction or consideration of any committee.

Whereas, Many of the emerging problems of state and local government may not be dealt with by the present standing committees; and

Whereas, Several of these new and emerging problems should be given careful consideration; now therefore be it

Resolved, That the president appoint a select committee to consider: (1) proposals not presently within the jurisdiction of any of the substantive committees, or (2) which are not being considered by present committees because they refer to new or emerging problems.

SECRETARY CHASE: Item 4 on the calendar, by Mr. Wanger, **Resolution 45,** A resolution to provide a timetable for completing the work of the convention by April 1, 1962.

Following is Resolution 45 as offered:

Whereas, The attorney general of Michigan has ruled that the convention must finally adjourn not later than April 1, 1962, in order that its work be submitted to the people at the November, 1962, general election; and

Whereas, It is in the best interest of the people of Michigan that it be submitted at said November, 1962, election; now therefore be it

Resolved, That:

1. All matters shall be finally cleared from the committee of the whole not later than Friday, March 16, 1962.

2. No committee proposals shall be received unless they are in the hands of the secretary on or before Wednesday, January 31, 1962.

3. No public hearings shall be held after Wednesday, January 17, 1962, without leave of the convention.

The committee on rules and resolutions reports the resolution with amendments, recommending the amendments be agreed to and that the resolution, as thus amended, be adopted.

Following are the amendments proposed by the committee on rules and resolutions:

1. Amend the title, line 1, after "provide a" by striking out "timetable" and inserting "schedule".

2. Amend the title after "by" by striking out "April 1, 1962" and inserting "March 31, 1962".

3. Amend the resolution by striking out the two whereas clauses.

4. Amend the resolving clause, line 1, after "That:", by striking out the balance of the resolution and inserting:

"1. All public hearings by substantive committees shall be completed on or before December 21, 1961, unless otherwise authorized by the convention. This shall not preclude a committee from hearing witnesses invited by the committee.

2. All substantive committee hearings on delegate proposals shall be completed on or before January 5, 1962.

3. All substantive committee proposals and supporting reports shall be submitted to the convention and placed on general orders in accordance with rule 57, paragraph 2, on or before January 31, 1962.

4. The committee of the whole shall complete its consideration of all committee proposals and make its reports in accordance with rule 57, paragraph 4, on or before February 21, 1962.

5. The committee on style and drafting shall complete its consideration of all committee proposals and make its reports in accordance with rule 57, paragraph 5, on or before March 2, 1962.

6. Second reading of all committee proposals shall be completed on or before March 9, 1962.

7. The final report of the committee on style and drafting shall be made in accordance with rule 57, paragraph 8, on or before March 23, 1962.

8. The convention shall finally adjourn on or before March 31, 1962.".

PRESIDENT NISBET: Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, as you could tell from the secretary's reading of the committee amendments, the amendments are, in effect, a substantially complete substitute for the initial resolution offered by Mr. Wanger. The amendments are similar in that they propose the same or substantially the same adjournment date for the conclusion of the work of the convention.

Mr. Wanger's resolution had proposed April 1. That being a Sunday, the committee recommended changing it to March 31. The interim steps on the way to completion of the work by that date suggested in the original resolution have been somewhat elaborated and revised in the committee's recommended amendments.

I think it is quite apparent that for some time the convention has been informally heading for the completion of its work by approximately March 31. Suggestions to that effect have been made from time to time by various of the officers, and I believe the matter came up when we, back in early November, were considering the matter of a deadline for delegate proposals.

I think it is important for a number of reasons that the convention at this point act to schedule the completion of its work and take steps to accomplish that completion in an orderly fashion. The time allotted by the proposed amendments is, in the judgment of the committee on rules and resolutions ample time.

Michigan's previous constitutional conventions have all been completed in much less time than the 6 months offered by this resolution. The constitutional conventions recently held in other states, those of Alaska, Hawaii, New Jersey and New York, all were completed in much less than the 6 months which are contemplated by this resolution. I think their experiences clearly indicate that we can, in an orderly and appropriate manner, complete our work within that time, and that that is ample time for the job.

Secondly, it should be quite obvious that if we complete our work within the scheduled 6 months, there will be a substantial saving to the taxpayers in terms of expense which might otherwise be incurred. I don't think this is an overriding consideration because, surely, it is of greater importance that we do our work well than that we do it cheaply; but if by allotting ample time, we can, nevertheless, do it at a relatively modest expense, I think that is desirable.

A further point which cannot be overlooked is that an adjournment by March 31 would remove any doubt that the proposed new constitution would be presented to the voters at the earliest opportunity contemplated by the present constitution; i.e., November, 1962. That would be an election at which the maximum turnout of the voters of the state of Michigan could be expected and, therefore, maximum consideration could be given to our work product. Furthermore, the new constitution would be presented to the voters at a time when it was fresh in their minds. Adjournment, as I say, by March 31, would clearly remove any doubt but that the new constitution could be voted upon in the November election.

Finally, I think without any question it is necessary for any deliberative body of the size of this one to have a work schedule, to carefully program its work, to permit itself ample time for the orderly consideration of the business before it. I think the schedule proposed by the committee amendments is designed purely to accomplish this purpose.

I therefore move, Mr. President, the adoption of the committee amendments.

PRESIDENT NISBET: The question is on the amendments.

Mr. Nord.

MR. NORD: Mr. President, I have sent Mr. Chase, the secretary, an amendment, which I will ask him to read. Then I would like to comment on it.

SECRETARY CHASE: Mr. Nord offers the following amendment to the committee amendments:

1. Amend committee amendment 4, at the end of the amendment, by inserting the following: "9. None of the aforesaid dates shall be absolutely binding on the convention or its committees, but rather it is intended that they shall stand as guidelines and as goals for the prompt dispatch of our business and that we as delegates resolve that we shall make every effort to meet them, consistent with our obligation to prepare a sound document.".

PRESIDENT NISBET: Dr. Nord.

MR. NORD: Mr. President, I would like to point out that I agree with nearly every remark that has been made by Mr. Van Dusen. I agree that we ought to make every effort to get through by April 1, and I agree that the motive for doing so is the correct motive; that we should make every effort to make sure that the document we put on the ballot is put on a ballot where there will be a large vote turnout. We certainly want the voters, and the maximum number, to determine whether this is the constitution that we want to live under.

I also agree with Mr. Van Dusen that the various deadlines he has submitted on the way toward the April 1 deadline are as good as we can estimate at the present time, and I don't take any issue with them, either.

The only issue I take with Mr. Van Dusen is, basically, a matter of wording on the rigidity or lack of rigidity of these deadlines, not as to what the deadlines should be but whether they are to be absolutely binding. My feeling on this is expressed by the language of the amendment that I have offered. That is that we should guarantee that every delegate make the best effort that he is capable of making —

physically, mentally, and so on — and sincerely try to get this constitution on the ballot, no matter how difficult it may be to get it done by April 1.

As far as I know, I don't know that anybody is opposed to that at all. The various deadlines, as far as we can predict at this time, are presumably needed in order to accomplish that; but I feel that to put these deadlines in the form of rigid, strait jacket type deadlines is a mistake.

I feel, for example, that experience may teach us in the course of the next 4 months that some committees can work much faster than this and ought to be pressed much harder, and others cannot work as fast and should not be pressed as hard. I feel it is not a good idea to make our predictions in a rigid form this far in advance.

I do believe that before we can make them on the basis of more and more experience, we ought to have some goals and that these are the best we can do at the present time. I would prefer that these goals be revised from time to time and, possibly, even be spread out to be different for different committees.

In any event, if we could not revise the deadlines, I think we should if necessary, take the deadlines as they are but not require that they be rigid. My feeling is this: we should take first things first. The first thing is to write a good constitution and the second thing is to adjourn. We should not be too nervous about getting ready to adjourn until we are absolutely certain that the constitution we have written is one that we wish the people to adopt and that 20, 30 years later we still wish that they had adopted and will be glad that they did adopt it.

I will point out, for example, what happens even when we think that we have covered every situation. We know that we can make mistakes. It is human for one person to err. It is 144 times as human for 144 people to err. We have the constitutional amendment which is causing us difficulty right now. That is the one which we believed would require only 90 days before the November ballot, and now we have all kinds of suspicions and so on that 90 days is the wrong amount of time and that 7 months is the right amount of time. That is quite a blunder. If it is true that we need 7 months before we can submit our constitution to the people, that certainly, I believe, is not what was intended. Now, if that is a mistake, I hope we are not going to be parties to making other mistakes like that and putting them in the constitution on a grand scale.

I would also like to point out the experience we have had with a deadline so far. We have had one deadline, and, depending on how you look at it, we either accomplished what we set out to accomplish or we accomplished the reverse. We did cut off the flow of delegate proposals, but, in doing so, I do not know that we did what we ought to do. We did not exactly cut them off; it seems we multiplied them in number and reduced them in intensity. As far as we can judge, many proposals were put in in an unleavened condition — "unleavened" is another way of saying they were halfbaked. (laughter)

I put in a few myself and I know I could have done better, and probably reduced the number, if I had had more time.

I don't think we should do the same thing with the constitution itself. We should not cheapen it, so to speak, by doing a lot of work in a hurry.

I feel, and I can see that when a certain deadline arrives when a committee is required to report out or the committee of the whole is required to report out, what we will be asked to do is stay up all night, perhaps, to meet the deadline. I am willing to stay up all night but I am not positive I am able to. I have been through that already in this convention in the rules committee, and we adopted rules which had to be revised later on, on the theory that we were asleep at the time, which was perfectly true. I hope that we do not need to do that.

Therefore, the amendment I offered, I believe, is an extremely moderate, reasonable idea, and I would ask your support.

PRESIDENT NISBET: Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, I must respectfully oppose the amendment offered by Dr. Nord for 2 reasons. First, in my judgment, it is unnecessary, because the convention can always, if one of these deadlines proves too binding, by a simple majority vote, adjust the deadline to suit the need of the moment. Therefore, as I say, the amendment is unnecessary; secondly, the amendment, in my judgment, would create an exception which would swallow up and nullify the rule. I think if you are going to have deadlines, you impose them because you mean them and because you have every intention of meeting them. For that reason I would urge you to vote no on Dr. Nord's amendment.

PRESIDENT NISBET: Dr. Nord.

MR. NORD: Mr. President, I would like to go on record on behalf of my amendment, and I would ask, when we are ready to vote, that we do it by recorded roll call vote.

PRESIDENT NISBET: The demand is for yeas and nays. Those supporting, please rise.

There are not a sufficient number up.

Any further questions? Mr. Wanger.

MR. WANGER: Mr. President, I must also respectfully oppose the amendment to the resolution before the convention. I do so for 3 reasons: first of all, I think it is entirely redundant to point out to this convention our solemn duty to prepare a sound document. That is needless. We are well aware of that obligation; secondly, as Mr. Van Dusen pointed out, the time schedule can, in any case, always be extended by a simple vote of this convention. This is not a rule; this is a resolution which we are adopting. It is in no sense of the word — I repeat that — in no sense of the word, whatsoever, a strait jacket upon this convention; and finally, I oppose Dr. Nord's amendment because I frankly think it will encourage some foot dragging by some people, who, perhaps, have their just share of that natural temptation, which I have and I am sure everyone else has, to put off until tomorrow what we can do today, in trying to get some of this job done.

I think the reasons which have been given for adjournment at the time which the resolution provides, are evident and clear to everyone in this convention, and I believe that it is clearly in the best interests of the people of the state of Michigan to adjourn so that there will be no doubt but that they will be able to vote on it at the November, 1962, election, while our work is still fresh in the minds of the people of Michigan, and they can make their best, just decision on the matter.

PRESIDENT NISBET: Mr. Higgs.

MR. HIGGS: In voting against Dr. Nord's amendment, I would like to recognize the sincerity with which he proposed it and the serious considerations that he has given us to think about.

I do believe we should support the committee's recommendations. However, should any committee feel that the deadline is too rigid for their individual purposes, that is, should a committee come on the floor of the convention and ask to extend a deadline, I would vote in favor of it.

PRESIDENT NISBET: Mr. Elliott.

MR. A. G. ELLIOTT: Mr. President, I merely wish to point out this is a resolution and not a rule and that this convention, with its 144 delegates, has all the flexibility of change that it would need at any one time. Therefore, I do not feel that the resolution, as presented, is a rigid resolution but one which we have in our own province the right to amend or change at our desire.

PRESIDENT NISBET: Mr. Ford.

MR. FORD: I would like to ask, perhaps, Mr. Van Dusen or anybody else who could give me the information, to go through this with me and see if we understand it. At least, I would like to understand it before we vote.

As I look at item 4, "The committee of the whole shall complete its consideration of all committee proposals and make its reports in accordance with rule 57, paragraph 4, on or before February 21, 1962.", it follows a previous deadline target date of January 31, 1962, which is the time of all the committee

proposals, as such, would be on general orders and available to us to start debate.

Now it is my understanding of the procedure that this is the stage where the debate before this entire body would take place for the first time on the various proposals coming out of committees and, by a quick look at the calendar, I would compute there would be 15 working days if we had 5 day sessions within that time; and, in comparing this with previous constitutional conventions, I think we should bear in mind that the 1908 convention made very few changes from the previous constitution and, even there, they used considerably more time than this for the debate stage.

Now, should we discover at that stage that this is not adequate for the debates and that we don't always agree with what the committees recommend, it is now suggested that we could extend these times. But then, when you go into item 5, you find that the committee is already limited to only 7 days in which to rewrite, examine, and redraft the entire document after we get through with the debates in the committee of the whole. So, if we extend it and try and take any of that 7 days away, I wonder what happens.

Then, as I understand it, when we get through on March 2, the final drafting is ready. They have until the ninth to get this back before us. Then, of course, I assume that we would all want to examine all of the proposals in their finalized form as they come from the committee on style and drafting.

The next period involved is 10 working days, and this leaves, after the final action by the committee on style and drafting, after their last chance at it, only 5 working days between that date and the March 31 deadline.

So we look at these dates and start to consider, in voting on this, the question of changing them. I wonder how we could and still finish by the thirty-first, without seriously impairing one of those functions. Perhaps Mr. Van Dusen can straighten me out.

PRESIDENT NISBET: Mr. Van Dusen.

MR. VAN DUSEN: Mr. Ford, I would simply point out that the debate stage of our work has already begun. It began — were you here Monday night, Mr. Walker? Mr. Walker asked the question "When?" — the debate stage of our work has already begun. The work of the committee of the whole, therefore, will proceed through December, through all of January, and until February 21. That, it seems to me, is ample time to complete the work of the committee of the whole. Thereafter, the steps are pretty much as you outlined them, Mr. Ford, and I think the committee amendments speak for themselves on that point. If there are specific questions, I would be glad to try to deal with them.

I think at the moment the question is on Mr. Nord's amendment, which I oppose and wish to vote on now.

PRESIDENT NISBET: Mr. Madar.

MR. MADAR: Mr. President, speaking in favor of Mr. Nord's amendment, I just cannot understand why Mr. Van Dusen and any of the others stand up and insist that we can change this in the future if we need more time.

Actually, I don't see any sense in setting a time, because I feel everybody here is being honest in saying that they want to get this finished on time, that they are going to do their best.

I don't want to see any rushing. I am on the local government committee. It is the only substantive committee that I am on, and in this particular committee I think we have wasted a good deal of time giving a couple of hours to a theorist and then we are going to have to listen — and we should listen — to the public. We should listen to people who have worked in government, who have had experience, and if we are going to start rushing now, we are going to have to cut these witnesses down to about 10 minutes. I can assure you that it is going to be better for us to give them an hour and a half or two hours rather than have given that time to the theorists.

I do not mind, either, working 3, 4, 5 or 6 hours in the evening extra. That is all right with me. So far I haven't missed a day, and the only time I have been out of this committee was this morning for a short time, and that was on convention business.

Now, I would say this: let's stop trying to introduce deadlines. Let's be honest and serious about doing the work here. Let's stop taking time off — and I am not doing it — but let's stop taking time off, being absent to take care of business and clients and every other possible means to get away from here for awhile, when we should spend the time right here. We can do a good job if we do this. Let's not establish deadlines.

PRESIDENT NISBET: Mr. Kuhn.

MR. KUHN: Mr. President, I rise to speak in favor of the amendment. I am of the opinion that this convention has some of the most capable committee chairmen and the most capable officers of any legislative body that I have witnessed. There is no doubt in my mind that we can get through by March 31 without any rigid schedule. I see absolutely no need for it. Personally, it insults my intelligence to think that our leadership cannot get it done by that date if they desire to do so.

I would like to say that I wish that someone would try to explain to me what the difference is between a rule and a resolution. They keep saying, "Remember, it is not a rule; it is a resolution.". It only takes a majority vote to amend a rule, and it is going to take a majority vote to change this resolution.

PRESIDENT NISBET: Mr. Faxon.

MR. FAXON: I rise to support Dr. Nord's amendment. It is not a question here of any partisanship. It is simply a question of being fair about it. Mr. Van Dusen stated that we are informally heading towards this completion date. He furthermore admits that the amendment that Mr. Nord proposes is unnecessary. If it is unnecessary and it does not change the intent of the rule or the proposal or whatever you call it, then why should it bother him that this would be included?

It seems to me that what we are trying to do is give flexibility to these dates, and if a group of people here feel that the dates are not flexible, why are you trying to incur their displeasure and the displeasure of people that might look upon this as trying to push in some sort of rigidity into these work dates?

I know that the committee chairmen are doing a wonderful job, a very conscientious job of trying to get the work through. There is no foot dragging. I have heard this stated other times by several people. We are working our full days and our evenings, too, and I think it is fair to the people that we give ample time for all considerations here. The inclusion of the amendment does not, in any way, alter the schedule. It simply gives it that degree of flexibility which it ought to have.

PRESIDENT NISBET: Mr. Martin.

MR. MARTIN: Mr. President, we all are agreed, I think, that we would like to see this new constitution presented to the people in the fall of '62.

This procedure that has been suggested is not just an arbitrary matter, but it is based upon a lot of experience which I am sure Mr. Van Dusen has had in the legislature, and some others. That is that unless you set deadlines and make them as strict as you can, you end up in complete chaos. You end up at the end of the time working around the clock on a 24 hour basis.

If we really mean to finish in time to submit this to the people next fall, then the only orderly way to do it is to impose our own deadlines on ourselves in this way. This will avoid the very thing that a lot of you are afraid of, and that is trying to wind them up on an around the clock basis where everyone gets so tired that they cannot think clearly and accurately.

PRESIDENT NISBET: Mr. Sterrett.

MR. STERRETT: Mr. President, in my opinion this amendment looks like a dodge to avoid doing an adequate job. Therefore, I would like to vote now and move the previous question.

PRESIDENT NISBET: The previous question has been demanded. Is there support? The previous question has been seconded. The question now is: "Shall the main question now be put?" Those in favor say aye; opposed, no.

The previous question is ordered.

The question is now on Mr. Nord's amendment.

Mr. Chase, read the amendment.

SECRETARY CHASE: Mr. Nord has offered the following amendment:

1. Amend committee amendment 4 at the end of the amendment, by inserting the following: "9. None of the aforesaid dates shall be absolutely binding on the convention or its committees, but rather it is intended that they shall stand as guidelines and goals for the prompt dispatch of our business and that we as delegates resolve that we shall make every effort to meet them, consistent with our obligation to prepare a sound document.".

PRESIDENT NISBET: The question is on the amendment of Mr. Nord. Those in favor of Mr. Nord's amendment, please vote aye. Those opposed will vote no. Have you all voted?

SECRETARY CHASE: The machine is now locked and the vote will be recorded.

The roll was called and the delegates voted as follows:

Yeas—45

Austin	Hart, Miss	Nord
Baginski	Hatcher, Mrs.	Norris
Balcer	Hodges	Ostrow
Barthwell	Hood	Pellow
Binkowski	Kelsey	Perlich
Bledsoe	Krolikowski	Pollock
Dade	Kuhn	Richards, L. W.
Douglas	Lesinski	Sablich
Downs	Liberato	Snyder
Elliott, Mrs. Daisy	Madar	Stopczynski
Faxon	Mahinske	Suzore
Follo	Marshall	Walker
Ford	McCauley	Wilkowski
Garvin	McGowan, Miss	Young
Greene	Murphy	Youngblood

Nays—89

Allen	Gust	Prettie
Andrus, Miss	Habermehl	Pugsley
Anspach	Hanna, W. F.	Radka
Batchelor	Hannah, J. A.	Rajkovich
Beaman	Haskill	Richards, J. B.
Bentley	Hatch	Rood
Blandford	Higgs	Rush
Boothby	Howes	Seyferth
Brake	Hoxie	Shackleton
Brown, G. E.	Hubbs	Shaffer
Buback	Hutchinson	Shanahan
Butler, Mrs.	Iverson	Sharpe
Conklin, Mrs.	Judd, Mrs.	Sleder
Cudlip	Karn	Spitler
Danhof	King	Stafseth
Davis	Kirk, S.	Staiger
Dehnke	Knirk, B.	Stamm
Dell	Lawrence	Sterrett
Donnelly, Miss	Leibrand	Stevens
Doty, Dean	Leppien	Thomson
Doty, Donald	Lundgren	Tubbs
Durst	Martin	Turner
Elliott, A. G.	McAllister	Tweedie
Erickson	McLogan	Upton
Everett	Millard	Van Dusen
Farnsworth	Mosier	Wanger
Figy	Page	White
Finch	Perras	Wood
Gadola	Plank	Yeager
Goebel	Powell	

On the adoption of the amendment proposed by Dr. Nord, the yeas are 45; the nays are 89.

PRESIDENT NISBET: The amendment is not adopted.

The question is now on the committee amendments. Any further discussion? Mr. Kuhn.

MR. KUHN: I wish to amend committee amendment 4 to strike out items 1, 2, 3, 4, 5, 6 and 7. In this way, Mr. President, I will once again reaffirm complete faith in the leadership of this convention; in you, in all of my committee chairmen, that this job can be done, should be done, and will be done by March 31, 1962.

PRESIDENT NISBET: The question is on the amendment offered by Mr. Kuhn.

SECRETARY CHASE: Mr. Kuhn has offered the following amendment:

1. Amend committee amendment 4 by striking out all of items 1, 2, 3, 4, 5, 6 and 7, and renumbering item 8 to stand as item 1, so that the language will then read: "The convention shall finally adjourn on or before March 31, 1962.".

PRESIDENT NISBET: Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, for the reasons previously stated, I would oppose the amendment and move the previous question on it.

PRESIDENT NISBET: The previous question has been asked. Those in favor of having the previous question, please rise. Sufficient number up. The previous question is supported. The question now is "Shall the main question now be put?" Those in favor please vote aye; opposed, vote no.

The previous question is ordered.

The question is on the adoption of Mr. Kuhn's amendment. Those in favor, please vote aye; those opposed, vote no.

The amendment is not adopted.

The question is now on the amendments recommended by the committee.

MR. KUHN: I ask for the yeas and nays, Mr. President.

PRESIDENT NISBET: The yeas and nays have been demanded. Is there support? The previous question has been ordered.

Mr. Baginski.

MR. BAGINSKI: In the event, Mr. Van Dusen, that we put any of these dates back, are the subsequent or later dates adjusted accordingly, or are we going to squeeze the work in?

MR. VAN DUSEN: Mr. Baginski, they may be adjusted separately or in tandem.

MR: BAGINSKI: For example, if we adjust the date of December 21, assuming we would not be in recess, to December 25, adding 6 days, would the date of January 5 be changed to January 11, or would we squeeze everything in between?

MR. VAN DUSEN: Only if the convention so determined.

PRESIDENT NISBET: The previous question has been ordered. Those in favor of the amendments offered by the committee on rules and resolutions, please vote aye, and opposed, vote no.

Mr. Marshall.

MR. MARSHALL: I just want to announce my intention to abstain from voting under rule 67. Half of my friends seem to be in favor of a rigid deadline, and half of them do not, and I do not want to be accused of not sticking with my friends.

PRESIDENT NISBET: Those in favor, vote aye; those opposed, vote no.

SECRETARY CHASE: Have you all voted? The machine is now locked and the vote will be recorded.

The roll was called and the delegates voted as follows:

Yeas—94

Allen	Habermehl	Prettie
Andrus, Miss	Hanna, W. F.	Pugsley
Anspach	Hannah, J. A.	Radka
Austin	Haskill	Rajkovich
Batchelor	Hatch	Richards, J. B.
Beaman	Higgs	Rood
Bentley	Howes	Rush
Blandford	Hoxie	Sablich
Boothby	Hubbs	Seyferth
Brake	Hutchinson	Shackleton
Brown, G. E.	Iverson	Shaffer
Butler, Mrs.	Judd, Mrs.	Shanahan
Conklin, Mrs.	Karn	Sharpe
Cudlip	King	Sleder
Cushman, Mrs.	Kirk, S.	Spitler
Danhof	Knirk, B.	Stafseth
Davis	Lawrence	Staiger
Dehnke	Leibrand	Stamm
Dell	Leppien	Sterrett
Donnelly, Miss	Lundgren	Stevens
Doty, Dean	Martin	Thomson
Doty, Donald	McAllister	Tubbs
Durst	McCauley	Turner
Elliott, A. G.	McLogan	Tweedie
Erickson	Millard	Upton

Everett	Mosier	Van Dusen
Farnsworth	Page	Wanger
Figy	Perras	White
Finch	Plank	Wood
Gadola	Pollock	Yeager
Goebel	Powell	Youngblood
Gust		

Nays—31

Baginski	Kelsey	Norris
Barthwell	Krolikowski	Ostrow
Bledsoe	Kuhn	Pellow
Dade	Lesinski	Perlich
Faxon	Liberato	Snyder
Garvin	Madar	Stopczynski
Greene	Mahinske	Suzore
Hart, Miss	McGowan, Miss	Walker
Hatcher, Mrs.	Murphy	Wilkowski
Hodges	Nord	Young
Hood		

On the adoption of the committee amendments to Resolution 45, as offered by the committee on rules and resolutions, the yeas are 94; the nays are 31.

PRESIDENT NISBET: The amendments are adopted.

The question is now on the resolution, as amended.

Miss Hart.

MISS HART: Mr. President, is a motion in order?

PRESIDENT NISBET: The question is on the adoption of the resolution, as amended, Miss Hart. All in favor, say aye; opposed, no.

The resolution, as amended, is adopted.

Following is Resolution 45 as amended and adopted:

A resolution to provide a schedule for completing the work of the convention by March 31, 1962.

Resolved, That:

1. All public hearings by substantive committees shall be completed on or before December 21, 1961, unless otherwise authorized by the convention. This shall not preclude a committee from hearing witnesses invited by the committee.

2. All substantive committee hearings on delegate proposals shall be completed on or before January 5, 1962.

3. All substantive committee proposals and supporting reports shall be submitted to the convention and placed on general orders in accordance with rule 57, paragraph 2, on or before January 31, 1962.

4. The committee of the whole shall complete its consideration of all committee proposals and make its reports in accordance with rule 57, paragraph 4, on or before February 21, 1962.

5. The committee on style and drafting shall complete its consideration of all committee proposals and make its reports in accordance with rule 57, paragraph 5, on or before March 2, 1962.

6. Second reading of all committee proposals shall be completed on or before March 9, 1962.

7. The final report of the committee on style and drafting shall be made in accordance with rule 57, paragraph 8, on or before March 23, 1962.

8. The convention shall finally adjourn on or before March 31, 1962.

[By unanimous consent the committee returned to the order of motions and resolutions.]

Miss Hart.

MISS HART: Mr. President, in teaching school, I learned long ago that cram courses are not productive. I think all of us need time for deliberation. I think we need that time during the daytime. I do not think that we are in any condition to work day and night and come up with objective decisions. I think we are going to be counting our bones instead of considering the merits of each issue, and so I should like to move that as of next Monday we start 5 day sessions, with committee meetings beginning in the morning on Monday and lasting through Friday in the afternoon.

PRESIDENT NISBET: The question is on the motion of Miss Hart. Miss Hart, would you write that out, please, so we will have it? While she is writing it out, we can have discussion.

Mr. Van Dusen.

MR. VAN DUSEN: I move that Miss Hart's motion be referred to the committee on rules and resolutions.

PRESIDENT NISBET: The question is on the motion of referral. Is there discussion? Those in favor, say aye; opposed, no.

The motion prevails, and it is referred to the committee on rules and resolutions.

Following is the motion offered by Miss Hart as referred to the committee on rules and resolutions:

Miss Hart moved that the convention begin Monday, December 11, 1961, to schedule committee meetings from Monday at 8:30 a.m. through Friday afternoon.

Mr. Madar.

MR. MADAR: Mr. President, seeing as how we want to get this over with, and seeing as we want to do it properly so that no one will be able to say that we have not done everything we could, at this time I would like to move that the press be asked to carry a box score on absenteeism for the duration of the convention.

PRESIDENT NISBET: The question is on the motion of Mr. Madar. Any discussion? All in favor, say aye; opposed, no.

The motion does not prevail.

Mr. Madar.

MR. MADAR: I just wondered how many would be honest with their constituents.

SECRETARY CHASE: That completes the calendar of unfinished business, Mr. President.

PRESIDENT NISBET: Mr. Marshall.

MR. MARSHALL: Mr. President, I rise to a point of personal privilege. I don't think it is being honest or dishonest with the constituents. I would like to take exception to the statements made by the previous speaker. I don't think anybody should be absent from this convention unless it is an absolute necessity.

I have been one of the ones that have been guilty of having to absent myself. For example, I have a commitment on Friday which was made previous to the commencement of the Friday deadlines, and I don't think that that statement was in order. I think we know when people are being absent consistently and repeatedly, and I think the delegates themselves and the constituents they represent will keep an eye on that. I just want to set my position clear on that one.

PRESIDENT NISBET: Announcements.

SECRETARY CHASE: I have the following announcements:

Dr. Hannah asked that the following announcement be made: several delegates have asked whether delegates would be welcome at the fall term commencement at Michigan State University tomorrow evening, December 7. The speaker will be Delegate Romney. All delegates are welcome. Tickets are not necessary. The program will begin promptly at 8:00 o'clock p.m. in the auditorium on the campus. Dr John Hannah.

I have the following announcement in regard to the convention handbooks: most of the delegates, I believe, have received them. Those of you who have not, if you will see the sergeant at arms immediately after the session today, he will see that you get your 25 copies. Manila envelopes will be provided your secretary, so that she may address them to the list which you prefer to send them to. You need not send them to the present members of the legislature. That is being attended to in the secretary's office.

There is one additional announcement that is requested: there were 2 looseleaf notebooks provided for your use on your desks. One was for the journals and the other for committee proposals. No more of these are available. If you will please see that your looseleaf notebooks are on your desks,

the pages will file your journals and your committee proposals as they are introduced.

We have the following announcements of committee meetings:

The subcommittee on executive reorganization of the committee on executive branch will meet in room C, Tuesday next, December 12, immediately after the convention session. Mr. Bentley, chairman.

The committee on declaration of rights, suffrage and elections will meet in room 337. Please note the change of the room.

PRESIDENT NISBET: Dr. Pollock.

MR. POLLOCK: I have just been notified by Mr. Apol that the room to be used is 133 Mason hall, because of the necessity to have larger quarters.

SECRETARY CHASE: Room 133 in the Mason building. Please note the change. The committee on declaration of rights, suffrage and elections, after the session, room 133. There will be a public hearing of the citizens groups regarding the declaration of rights.

The committee on finance and taxation will meet this evening at 7:30, rooms B, C and D. A public hearing for taxpayers on both state and local levels who wish to be heard on anything that should or should not go into the constitution with reference to taxation.

This evening at 7:30, the committee on legislative organization, room 133 in the Mason building. Representatives of county boards of supervisors will be heard in a public hearing.

Thursday, tomorrow, at 10:30, the committee on finance and taxation will meet in rooms B, C and D. Mr. I. L. Colburn of the Michigan beverage retailers' association will appear.

The following public hearings:

The committee on legislative organization has already been announced.

The committee on education will hold a public hearing in room J at 3:00 o'clock this afternoon. Mr. Ralph Ulveling, the director of the Detroit public library, will appear.

At 6:00 o'clock this evening, the committee on declaration of rights, suffrage and elections will hold a committee dinner party followed by a special meeting of the committtee at constitution hall. The dinner meeting is at the Jack Tar hotel.

PRESIDENT NISBET: Mr. Brake.

MR. BRAKE: Mr. President, the finance and taxation committee meeting tomorrow morning at 10:30 is not a public hearing. We crossed you up some way, and I am sorry. It will be held in our regular committee room. Mr. Colburn will be one of the witnesses. He will not be allowed to pass out any samples during the committee meeting. The other witness at that meeting in the morning will be Congressman Robert Griffin of Traverse City. I understand his topic will be the state debt limitations. At the public hearing tonight, if any delegates wish to gripe about their taxes, they will be heard.

PRESIDENT NISBET: Dr. Hannah.

MR. J. A. HANNAH: The committee on legislative organization understands there is a probability that the public hearing today may be completed this afternoon. It is possible that we may complete these hearings this afternoon and in that event there will be no further hearing.

PRESIDENT NISBET: Mr. Gust.

MR. GUST: Mr. President, there seems to be some confusion in the minds of the delegates as to whether we have gotten 1 or 2 notebooks, because they only see 1 on their desks. You do have notebooks. You have only 1 on your desk. The reason that the other is not there, so you will be unable to leave it there when you go, is that it is for committee proposals, but they have not been coming up with enough rapidity to make it worthwhile to put them on; but I am informed by the sergeant at arms, as soon as we have them in sufficient quantities, they will be inserted in a book with your name on it and placed on your desk. Once it is on your desk, we would appreciate it if you would leave it there.

PRESIDENT NISBET: Mr. Ford.

MR. FORD: Mr. President, I would like to state that the members of the judiciary committee, because we were away on convention business, apparently missed the beginning of the debates. I wonder if, for the information of those delegates who have not been able to keep track of it, the secretary could tell us approximately how many committee proposals we now have before this body which are ready for the committee of the whole?

PRESIDENT NISBET: There are none.

Mr. Martin.

MR. MARTIN: Mr. President, the committee on executive branch will meet tomorrow immediately after the session instead of at 2:00 o'clock, and there will be a very brief meeting immediately after this session in committee room C.

SECRETARY CHASE: We have the following requests for leave from the convention:

Mr. McCauley wishes to be excused from Thursday and Friday sessions.

Mr. Pellow would like to be excused from the sessions of Thursday and Friday of this week.

Delegate Marshall desires to be excused from the session of Friday, for a commitment which was made prior to the commencement of the Friday sessions.

Mr. Youngblood wishes to be excused from the session of Friday.

PRESIDENT NISBET: Without objection, they will be excused.

I might say, the apples that were on your desks yesterday were from the farm of Delegate J. Burton Richards. (applause).

Before we adjourn — and in a lighter vein — may I read a letter that I received this morning?

There will be extra apples next week.

Yesterday, December 5, at 2:05 p.m., our daughter delivered our first grandchild. The baby, a boy, John Burton Engel, weighed 10 pounds, 5 ounces. The mother is well, happy and tired. The father, Lawrence McKean Engel of 9815 Schiller Boulevard, Franklin Park, Illinois, is exhausted.

Both grandfathers, John Engel of Rochester, Minnesota, and Delegate Burton Richards, are "busting their buttons" at having a namesake. Both grandmothers knew how it would be long ago.

Excitedly, Grandfather Burton Richards.

Mrs. Butler.

MRS. BUTLER: Mr. President, before I make my motion, I would like to ask the secretary if these handbooks are going to be sent to the libraries as the journals are, the libraries in schools?

SECRETARY CHASE: That has not been contemplated, Mrs. Butler. We print 6,000 copies of the journal and only 5,000 copies of the handbook.

MRS. BUTLER: I move we adjourn.

PRESIDENT NISBET: The motion is on adjournment. All in favor, say aye; opposed, no.

The convention is adjourned until tomorrow afternoon at 2:00 o'clock p.m.

[Whereupon, at 3:20 o'clock p.m., the convention adjourned until 2:00 o'clock p.m., Thursday, December 7, 1961.]

THIRTY-EIGHTH DAY

Thursday, December 7, 1961, 2:00 o'clock p.m.

PROCEEDINGS

PRESIDENT NISBET: The convention will please come to order.

Our invocation today is to be given by the Reverend Henry Levi Parker, Vicar of the Episcopal Church of the Resurrection, of Ecorse.

Brother Parker.

REVEREND PARKER: Let us pray. We yield Thee hearty thanks, almighty God, for the vision that has brought us together for these appointed days and hours so that we might concern ourselves with the desire for continued progress, development and betterment of the citizens and constitution of this great and sovereign state of Michigan.

Give to the elected delegates and all concerned determination, devotion, and a sense of their awesome responsibility to the task committed to them and knowledge of the fact that this task is divine in origin.

We beseech Thee to continue the awareness in each one that the future progress, happiness and stability for all the people in this commonwealth are dependent upon the courage and unflinching decision for right that is made in this historic hall. May all of the deliberations and dispatch of business be done in decency and order.

Come, labor on.
Away with gloomy doubts and faithless fear!
No arm so weak that may do service here;
By feeblest agents may our God fulfill
Through you, His righteous will.

Amen.

PRESIDENT NISBET: The roll call will be taken by the secretary. All present please vote aye.

SECRETARY CHASE: Has everyone voted? The voting machine is now locked, and the attendance will be recorded.

Mr. President, a quorum of the convention is present.

Absent with leave: Messrs. Anspach, Bonisteel, T. S. Brown, DeVries, McCauley and Pellow.

Absent without leave: None.

PRESIDENT NISBET: Mr. Baginski.

MR. BAGINSKI: Mr. President, at this time I ask the unanimous consent of the convention to present a resolution out of order.

PRESIDENT NISBET: Without objection, the request will be granted. Hearing none, the secretary will read it.

[Whereupon, the convention proceeded to the order of motions and resolutions.]

SECRETARY CHASE: Messrs. Baginski, Everett, Balcer, Millard, Madar, Lesinski, Dean Doty, Bentley and Blandford offer

Resolution 54, A resolution to commemorate Pearl Harbor day.

PRESIDENT NISBET: Mr. Bentley.

MR. BENTLEY: Mr. President, I move that the rules be suspended for the immediate consideration of this resolution.

PRESIDENT NISBET: The question is on the motion of Mr. Bentley. Any remarks? If not, all in favor say aye. Opposed, no.

The motion prevails.

SECRETARY CHASE: Following is the resolution:

A resolution to commemorate Pearl Harbor day.

Whereas, Today is the twentieth anniversary of the infamous Japanese attack upon Pearl Harbor; and

Whereas, Several thousand Americans lost their lives on this day; and

Whereas, World conflict and universal disaster resulted from the attack on Pearl Harbor; and

Whereas, This country is now faced with even greater dangers than it then knew; now therefore be it

Resolved, That in the hope that this nation and this state shall hereafter always be prepared to meet the disasters of attack or war to defend the cause of freedom and free people in America or abroad, the delegates of the constitutional convention rise in silent prayer to honor the men of Pearl Harbor and the name of their country.

PRESIDENT NISBET: The question is on the resolution. All in favor say aye. Opposed, no.

The resolution is adopted.

Will the delegates please rise.

[Whereupon, the assembled delegates rose for a moment of silent prayer.]

Reports of standing committees.

SECRETARY CHASE: Mr. Martin, for the committee on executive branch, introduces

Committee Proposal 4, A proposal to provide communication by the governor to the legislature on the condition of the state. Amends article VI, section 5;
with the recommendation that it pass.

John B. Martin, chairman.

For Committee Proposal 4 and the reasons submitted in support thereof, see below, page 369.

PRESIDENT NISBET: The proposal will be referred to the committee of the whole and placed on general orders.

SECRETARY CHASE: Messrs. Hoxie and Erickson, for the committee on legislative powers and the committee on miscellaneous provisions and schedule, introduce

Committee Proposal 5, A proposal pertaining to the inclusion in the constitution of all of section 9 of article XII except the portion relating to bank notes or paper credit;
with the recommendation that it pass.

T. Jefferson Hoxie, chairman,
committee on legislative powers;
Claud R. Erickson, chairman,
committee on miscellaneous provisions and schedule.

For Committee Proposal 5 and the reasons submitted in support thereof, see below, page 370.

PRESIDENT NISBET: The proposal will be referred to the committee of the whole and placed on general orders.

SECRETARY CHASE: Mr. Brake, for the committee on finance and taxation, introduces

Committee Proposal 6, A proposal to preserve the state's responsibility under sections 20a, 23a, 24, 25 and 26 of article X of the 1908 constitution;
with the recommendation that it pass.

D. Hale Brake, chairman.

For Committee Proposal 6 and the reasons submitted in support thereof, see below, page 372.

PRESIDENT NISBET: The proposal will be referred to the committee of the whole and placed on general orders.

SECRETARY CHASE: Mr. Martin, for the committee on executive branch, introduces

Committee Proposal 7, A proposal to provide that the governor shall issue writs of election to fill vacancies in the legislature. Amends article VI, section 6;
with the recommendation that it pass.

John B. Martin, chairman.

For Committee Proposal 7, and the reasons submitted in support thereof, see below, page 375.

PRESIDENT NISBET: The proposal will be referred to the committee of the whole and placed on general orders.

SECRETARY CHASE: Mr. Martin, for the committee on executive branch, introduces

Committee Proposal 8, A proposal to provide that the governor may convene the legislature on extraordinary occasions. Amends article VI, section 7; with the recommendation that it pass.

John B. Martin, chairman.

For Committee Proposal 8 and the reasons submitted in support thereof, see below, page 375.

PRESIDENT NISBET: The proposal will be referred to the committee of the whole and placed on general orders.

SECRETARY CHASE: Mr. Martin, for the committee on executive branch, introduces

Committee Proposal 9, A proposal to provide that the governor may convene the legislature at other places when the seat of government becomes dangerous. Amends article VI, section 8; with the recommendation that it pass.

John B. Martin, chairman.

For Committee Proposal 9 and the reasons submitted in support thereof, see below, page 377.

PRESIDENT NISBET: The proposal will be referred to the committee of the whole and placed on general orders.

SECRETARY CHASE: The committee on administration, by Mr. Gust, first vice chairman, submits the following report to the constitutional convention and recommends its approval:

That the convention authorize the appropriation of $300.00 to cover additional and necessary expenses in connection with the visit of General Eisenhower.

Rockwell T. Gust, Jr., first vice chairman.

PRESIDENT NISBET: Mr. Gust.

MR. GUST: Mr. President, fellow delegates, just by way of explanation, I would like to say that Delegate Romney and his committee have made arrangements to fly General Eisenhower to and from his visit to the convention at no cost to the convention.

In addition, he and his committee have made arrangements for the General's assistant to come here from New York and return, again at no expense to the convention.

This $300 will be used to hire for that particular session special and additional stenographic help, so that the remarks of the General and the question and answer period may be transcribed and transmitted almost as soon as the session closes to the members of the press, radio and television corps who will be covering this particular session.

In addition thereto, a small amount of money is needed for additional police protection for convention hall itself. The additional police force needed on the outside of the convention hall, it is my understanding, will be supplied by the municipal police of Lansing and the Michigan state police.

In addition thereto, a token sum from this $300 will be set aside to present Generol Eisenhower with a suitable memento of this occasion.

PRESIDENT NISBET: The question is on concurring in the recommendation. Is there any discussion? If not, all in favor say aye. Opposed, no.

The recommendation is concurred in.

SECRETARY CHASE: That's all of the standing committee reports, Mr. President.

PRESIDENT NISBET: **Reports of select committees.**

Mr. Romney.

MR. ROMNEY: Mr. President, inasmuch as our committee meetings are open, including the meeting of the special committee, it would seem appropriate to give all delegates as much information as we have from our meeting this morning on the assignment we received as a result of the resolution yesterday.

Now, our committee is to meet again at the end of this session to review what I'm going to say to you, but again, it has already been released, and it has already been made available to the press, so let's keep everyone as current as we can.

President Eisenhower is scheduled to fly into Lansing on the morning of December 13, leaving York, Pennsylvania, at 8:00 a.m. His scheduled arrival at capital city airport is at approximately 9:40 a.m.

Now, the committee has worked out the following as a suggested timetable:

That the official reception party assemble at the building here and proceed to the airport to meet General Eisenhower. They will be there at the time that he arrives.

He will leave with a police escort over an established route which will be publicized so that those caring to be on the route may do so.

On the basis of our schedule he will arrive at the building here at the Washtenaw entrance at 10:00 o'clock.

It is recommended that all delegates and all guests be seated in this convention hall not later than 10:00 o'clock, and that the doors to this hall be closed at 10:00 o'clock.

The session will be convened at 10:10 by the president, and following the opening ceremonies it is proposed that the president appoint a special committe to escort General Eisenhower to the rostrum.

It is proposed that his presentation will cover whatever period he desires, but we have indicated, as a result of information we have, approximately an hour.

It was his thought that instead of coming to make a formal address in a large auditorium such as our public auditorium here, that he could best serve the purposes of this convention if he spoke more informally and presented in his opening remarks statements that he thought would be pertinent, and then permit questions to be asked so that he could express himself on points that would be of particular meaning to the delegates.

In other words, he views this as an opportunity to be helpful to the delegates of this convention and the spirit of this convention, and he has rearranged his schedule to do this.

He was approached only last Friday. His aides had indicated that there was no possibility of his coming. When he heard of the nature of this convention's work, he immediately began to rearrange a completely full schedule in order to be here. That is the reason why he has found it necessary to come for this purpose and then leave immediately after meeting with us.

So at the conclusion of his remarks and the answering of questions, he would then leave the convention, and it is proposed that everyone in the hall remain seated until he has left the building, and that the convention recess then until 2:00 p.m. in the afternoon.

Now, assignments have been made, and there's no point in going over those, with possibly one exception. I have covered that. That is the route. There will be an established route of travel.

Now, the reception group at the airport is proposed to include the following, and I list this as well as the other things because if any of you have suggestions that would improve this program, I'm sure that all members of the special committee would appreciate your suggestions.

It is proposed that the reception group at the airport include the governor; the president; the mayor; the vice presidents; the U. S. Senators McNamara and Hart, if they can be here; the representatives from this congressional district; the members of the special committee, the members other than the vice presidents; Senator Perry Greene, senate president pro tem; Senator Frank Beadle, senate majority leader; Senator Harold Ryan, senate minority leader; Representative Don Pears, house speaker; Representative Allison Green, house majority leader; Representative Joseph J. Kowalski, house minority leader; National Committeewomen Mrs. Ella Koeze and Mrs. Mildred Jeffries; National Committeemen Mr. John Martin and Mr. Neil Staebler; the Democratic state chairman, Mr. John Collins; the Democratic state vice chairman, Mrs. Harriet Phillips; Mr. George VanPeursem, Republi-

can state chairman; and Mrs. Elly Peterson, Republican state vice chairman.

Now, it is proposed that access to convention hall on the morning of December 13 be permitted as follows:

That the delegates wear badges. If you do not have your badge, then you should see Bernie Apol and make provision for entrance to convention hall, because there will be officers stationed at the entrances to the hall.

Each delegate will be given one ticket to use as he pleases for the visitors' gallery.

In addition, there will be space in the visitors' gallery and on the floor for all members of the staff of the convention, either standing room or sitting room.

The press, radio and TV, of course, will be arranged for by the public information committee and the press room committee.

Those who will be honored guests on this occasion, in addition to the members of the reception committee, are: members of the Michigan supreme court; members of the state administrative board; and former governors of Michigan. Their admission will be by ticket to the convention floor.

It is suggested that in order to have an orderly meeting following the General's opening remarks and to make as meaningful use of that time as possible, the delegates file with the public information committee not later than the end of the Monday session questions that they would like to ask the General, so that the public information committee can use some discretion and select the questions that would have the greatest meaning in terms of the work of the convention.

They will handle notifying the delegates so the delegates may take advantage of the opportunity to ask these questions to the extent that time permits. So be sure to file your questions with the public information committee no later than the end of the Monday session.

Now, the committee gave careful consideration to space limitations and security problems. Because of those reasons, and because the session will be broadcast, both by television and radio, and because it will be broadcast not only at the time that it is occurring, but also later in the day, it was felt better to restrict the building to those who will actually attend the meeting.

Furthermore, television and other equipment will be up in the halls here, so it will be a rather difficult problem to set up a closed circuit broadcast for that occasion.

Now, in addition to making these arrangements in connection with General Eisenhower's visit, plans were discussed for former President Truman's visit before the convention in January, and members of the committee were assigned the responsibility of following up on this; and the same is true with respect to the invitation to former President Hoover.

Mr. President, the only other thing I have is a motion; namely, I would like to move that the committee appointed to handle the arrangements for the visits of the former presidents, created pursuant to Resolution 51, be increased to 8 members, so that all of those who sponsored the original resolution may be appointed on this committee. The additiinal members would be Messrs. McLogan, Austin and White.

I submit that report, and motion, and I would be happy to answer questions if anyone has questions after the motion is acted on.

PRESIDENT NISBET: The question is on the motion of Mr. Romney.

Mr. Norris.

MR. NORRIS: Mr. President, I note with interest in Mr. Romney's report the fact that the only way by which delegates may ask a question of General Eisenhower is through a sort of screen test of questions.

It seems to me that if the General's purpose was to encourage certain spontaneity and sharing of ideas and experiences with reference to the idea of a constitution and our job in drawing up the constitution, we ought to be able to have confidence in the delegates' ability to ask questions directly of the General, and not have the questions channeled through those who may exercise their own judgment as to what is appropriate. Is there any particular reason why we should have that screening operation, sir?

MR. ROMNEY: I don't think there is any necessity of limiting the questions submitted to the public information committee, but it does seem necessary that we be certain that we have meaningful questions asked following the remarks, with such additional time as may be available for supplemental questions from the floor.

MR. NORRIS: I feel, sir, that the delegates themselves can make judgment as to what are meaningful questions. We have been elected by the people of the state to draw up a meaningful constitution, and I think we ought to be able to ask meaningful questions of the General.

MR. ROMNEY: I think that's what I said, Mr. Norris, if you heard what I said. Namely, that it would be the privilege of the delegates to ask questions following the questions that have been submitted to the public information committee.

The principal reason for having questions submitted to the public information committee is to make certain that there will be an opportunity for the questions of a meaningful character filed ahead of time to start a meaningful question and answer period immediately following the presentation.

PRESIDENT NISBET: The question is on the motion of Mr. Romney. Is there any further discussion? If not, all in favor say aye. Opposed, no.

The motion prevails and **the president appoints** to the committee, Mr. McLogan, Mr. Austin and Mr. White.

Without objection, they are approved.

Communications from state officers.

SECRETARY CHASE: None.

PRESIDENT NISBET: **Introduction, first reading—**

Mr. Downs.

MR. DOWNS: Mr. President, I would like to move that the rules be suspended, and the introduction, first reading and reference of proposals be considered read and placed in the journal.

The purpose of this is to save time. I understand there are quite a few, and I do think it might help facilitate meeting our deadline.

PRESIDENT NISBET: The question is on the motion of Mr. Downs that the rules be suspended and that the introduction, first reading and reference of proposals be considered read. Is there any discussion? If not, all in favor say aye. Opposed, no.

The motion prevails.

Following are the delegate proposals, by title, as introduced and referred to committee:

Mr. Romney introduced

Delegate Proposal 1582, A proposal to provide for county charter government by majority vote of county electors, to authorize the legislature to establish charter commissions and to confer certain powers on charter counties and to provide for changes of local governmental boundaries with local consent. Amends article VIII.

Referred to the committee on local government.

Messrs. Buback, Madar, Baginski, Mrs. Butler and Mr. Stevens introduced

Delegate Proposal 1583, A proposal to amend the constitutional provision on double jeopardy. Amends article II, section 14.

Referred to the committee on declaration of rights, suffrage and elections.

Messrs. Liberato, Kelsey and Youngblood introduced

Delegate Proposal 1584, A proposal to provide that local subdivisions shall have the option of bringing their fire and law enforcement agencies under the state civil service. Amends article VIII.

Referred to the committee on local government.

Mr. Danhof introduced

Delegate Proposal 1585, A proposal that the state and its agencies shall be immune from tort liability except as may be provided for by the legislature. Amends article XVI by adding a new section.

Referred to the committee on miscellaneous provisions and schedule.

Mr. Danhof introduced

Delegate Proposal 1586, A proposal to provide that there shall be no "earmarking" of funds. Amends article X.

Referred to the committee on finance and taxation.

Mrs. Daisy Elliott, Messrs. Young, Greene and Barthwell introduced

Delegate Proposal 1587, A proposal to provide that the governor and other executive heads of government shall take office 30 days prior to the legislature. Amends article VI.

Referred to the committee on executive branch.

Mrs. Daisy Elliott, Messrs. Young, Greene and Barthwell introduced

Delegate Proposal 1588, A proposal to provide that all state expenditures, including payment of salaries, be made a matter of public record. Amends article VI by adding a section.

Referred to the committee on executive branch.

Mrs. Daisy Elliott, Messrs. Young, Greene and Barthwell introduced

Delegate Proposal 1589, A proposal to provide that the legislature shall pass no special acts when a general act is applicable. Retains article V, section 30.

Referred to the committe on legislative powers.

Mrs. Daisy Elliott and Mr. Young introduced

Delegate Proposal 1590, A proposal to delete article V, section 11.

Referred to the committee on legislative powers.

Mrs. Daisy Elliott and Mr. Young introduced

Delegate Proposal 1591, A proposal to provide for amendments to the constitution by a majority vote of the members of the legislature. Amends article XVII, section 1.

Referred to the committee on miscellaneous provisions and schedule.

Mrs. Daisy Elliott, Messrs. Young and Barthwell introduced

Delegate Proposal 1592, A proposal to retain provisions against self incrimination. Amends article II, section 16.

Referred to the committee on declaration of rights, suffrage and elections.

Second reading of proposals.

SECRETARY CHASE: Nothing on the calendar, Mr. President.

PRESIDENT NISBET: Third reading of proposals.

SECRETARY CHASE: Nothing.

PRESIDENT NISBET: **Motions and resolutions.**

SECRETARY CHASE: Mr. Pollock, on behalf of the committee on declaration of rights, suffrage and elections, offers **Resolution 55,** A resolution requesting authority and funds for the committe on declaration of rights, suffrage and elections to hold hearings in the cities of Detroit, Saginaw and Flint.

Following is Resolution 55, as offered:

Whereas, The subject matter of the declaration of rights, suffrage and elections has evoked very considerable statewide interest and concern; and

Whereas, Recent public hearings held by the committee clearly demonstrate that many organizations, groups and individuals in at least Detroit, Saginaw and Flint wish to be heard and present their views to our committee; and

Whereas, Affording such citizens an opportunity to be heard in these areas would substantially assist the committee in its deliberations on civil rights, suffrage and elections, and materially enhance the prospect of a ratifiable constitution for Michigan; now therefore be it

Resolved, That the committee on declaration of rights, suffrage and elections be authorized to conduct public hearings, on all matters within its province, in Detroit, on Monday, December 18; in Saginaw, on the morning of December 19; and in Flint on the afternoon of December 19; and be it further

Resolved, That the expenses and arrangements for members of the committee and staff to and from such public hearings be authorized by the convention.

PRESIDENT NISBET: Referred to the committee on administration.

SECRETARY CHASE: That is the only resolution on file, Mr. President.

PRESIDENT NISBET: Unfinished business.

SECRETARY CHASE: Mr. Buback submits the following explanation of his vote:

In accordance with rule 65, I wish to explain that due to inadvertence beyond my control, I am recorded as voting "no" on amendment to Resolution 45, whereas I intended to vote "yes."

PRESIDENT NISBET: Special orders.

SECRETARY CHASE: None.

PRESIDENT NISBET: General orders.

SECRETARY CRASE: None.

PRESIDENT NISBET: Announcements.

SECRETARY CHASE: I have the following announcements of committee meetings and hearings:

Subcommittee 4 of the committee on legislative powers will meet in room H, December 12, at 3:00 o'clock, or immediately following the session, with proponents of Delegate Proposals 1155, 1369, 1370 and 1448. Frank G. Millard, subcommittee chairman; T. Jefferson Hoxie, chairman.

The committee on local government will meet at 8:30 tomorrow morning, and each Friday morning thereafter at 8:30.

The committee on legislative organization will hold a public hearing in Kalamazoo on December 20, in the afternoon, prior to the evening hearing in Berrien Springs. John A. Hannah, chairman.

The president announces there will be a meeting of committee chairmen next Tuesday, December 12, at 1:00 o'clock, in room E.

The following committee meetings:

At 3:00 o'clock this afternoon the committee on executive branch will meet in room C. Dr. Martin Faust, advisor to the Missouri constitutional convention, will be present.

The committee on miscellaneous provisions and schedule will meet in room G, subcommittee on corporations, at 3:00 o'clock or immediately after the session.

The committee on judicial branch will meet at 3:00 o'clock this afternoon, or immediately after the session, in room B. Mr. Albert Jenner, attorney, past president of the Illinois bar association, of Chicago, will be present.

The committee on local government will meet at 3:00 o'clock, or after the session, in room A, public utility franchises; Mr. George Sidwell, attorney from Lansing, and Dr. Lynn Bartlett, superintendent of public instruction, testifying on education and local government.

On Monday next, after the session, the committee on rules and resolutions will meet in room I. Resolutions 41 and 48 will be considered, and all other pending resolutions.

Next Monday at 3:30 the committee on style and drafting will meet in room K on the third floor.

The following announcements of public hearings:

Next Tuesday, December 12, at 9:30 a.m., the committee on miscellaneous provisions and schedule will be holding a public hearing in Detroit at the veterans' memorial building, the subcommittee on eminent domain in charge.

Next Tuesday, December 12, at 9:30 a.m., the committee on local government will be holding a public hearing in Detroit at the veterans' memorial building.

Tuesday, December 12, the committee on legislative organization will be holding a public hearing in Detroit, with afternoon and evening sessions, the time and place to be announced later.

Tuesday, December 12, the committe on local government will be holding a public hearing in room A at 10:30 a.m. on townships.

On Wednesday, December 13, at 8:30 a.m., the committee on local government in room A will be holding a public hearing on counties.

On Wednesday, December 13, the committee on judicial branch will be holding a public hearing at 7:30 p.m. in rooms B, C and D on all matters pending before the committee.

The rest of the public hearing and committee announcements appear in the schedule that you have on your calendar.

PRESIDENT NISBET: Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, there will be a special meeting of the committee on rules and resolutions immediately following the session in room I. I recognize that many of the members may have conflicts with other committee meetings, but I will advise you this will be a very short meeting, and ask you to be very prompt in your attendance.

PRESIDENT NISBET: Mr. Bentley.

MR. BENTLEY: Mr. President, the committee on education will meet on Monday afternoon, December 11, at 4:00 o'clock, in committee room J on the third floor, to hear Mr. Roy Stevens of the Detroit board of education; and a representative of the national council of Catholic women, archdiocese of Detroit.

SECRETARY CHASE: One other announcement.

The sergeant at arms wishes the announcement to be made that the delegates will have copies of Committee Proposals 1 through 9 in their files this afternoon.

I have the following requests for leaves of absence:

From the session of Friday, tomorrow: Mr. Everett, Mr. Tweedie, Mr. Baginski, Mr. Bentley, Mr. Garry Brown, Mr. Figy, Mr. Goebel, Mr. Higgs, Mr. J. A. Hannah (who is expecting to participate in a conference out of the state, where consideration will be given to some of the problems of defense), Mr. Heideman, Mr. Knirk (who has an appointment with his doctor and a specialist tomorrow at 1:30), and Mr. Plank wishes to be excused from the session of tomorrow, as he has a meeting to attend which was scheduled prior to his knowing of Friday's meeting.

Mr. Shackleton requests to be excused from the sessions of next Monday and Tuesday to attend prescheduled meetings out of town.

Mr. J. A. Hannah, as chairman, requests the committee on legislative organization to be excused from the session of next Tuesday, December 12, for the purpose of conducting committee hearings in Detroit.

PRESIDENT NISBET: Without objection, the leaves will be granted.

Just for your information, Dr. Joiner has said that at the present time there have been 50 delegate proposals delivered to the mailroom which will be ready for presentation tomorrow; 25 that are in the process now of being typed; 85 that are drafted but not typed; and 6 yet to be drafted. He informs me that these will all be in fairly early next week.

SECRETARY CHASE: There are no other announcements, Mr. President.

PRESIDENT NISBET: Is there any further business? If not, the Chair recognizes Mrs. Conklin.

MRS. CONKLIN: Mr. President, in the interest of becoming the most popular delegate here, I move we adjourn.

PRESIDENT NISBET: The question is on adjournment. All in favor say aye. Opposed, no.

We are adjourned until 10:00 o'clock tomorrow morning.

[Whereupon, at 2:35 o'clock p.m., the convention adjourned until 10:00 o'clock a.m., Friday, December 8, 1961.]

THIRTY-NINTH DAY

Friday, December 8, 1961, 10:00 o'clock a.m.

PROCEEDINGS

PRESIDENT NISBET: The convention will please come to order.

Our invocation this morning will be given by the Reverend Father John Slowey of the Catholic Social Service, Lansing. Will you please rise.

FATHER SLOWEY: During our deliberations to draft a new constitution for our state, almighty God, grant us the grace to be perceptive listeners, the skill to benefit from the experience of the past, the foresight to be persons of vision, and the wisdom to keep in focus the common good of every citizen. Amen.

PRESIDENT NISBET: The roll call will be taken by the secretary. All present, please vote aye.

SECRETARY CHASE: Has everyone voted? The machine will now be locked and the attendance will be recorded.

Mr. President, a quorum of the convention is present.

Prior to today's session, the secretary received the following requests for leave:

From today's session; Messrs. McAllister, Romney and Rush.

PRESIDENT NISBET: Without objection, the requests are granted.

SECRETARY CHASE: Absent with leave: Messrs. Baginski, Bentley, Bonisteel, G. E. Brown, T. S. Brown, DeVries, Everett, Figy, Goebel, J. A. Hannah, Heideman, Higgs, Knirk, Marshall, McAllister, McCauley, Pellow, Plank, Romney, Rush, Shanahan, Tweedie and Youngblood.

Absent without leave: None.

PRESIDENT NISBET: Reports of standing committees.

SECRETARY CHASE: The committee on rules and resolutions, by Mr. Van Dusen, chairman, reports back to the convention Resolution 41, A resolution concerning referral to committees and reporting by committees; with a substitute therefor, recommending that the substitute be agreed to and that the resolution, as thus substituted, be adopted.

R. C. Van Dusen, chairman.

For Resolution 41 as offered, see above, page 299; for proposed substitute, see below, page 365.

PRESIDENT NISBET: Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, because the committee has reported a substitute resolution, I move that the report lay over for one day.

Before doing so, I would like to invite the attention of the committee chairmen in particular and their various subcommittee chairmen to the schedule attached to the substitute resolution, which assigns primary jurisdiction over sections of the present constitution to each of the 9 substantive committees.

This schedule of assignments has previously been furnished to all of the committee chairmen as a part of the memorandum prepared by myself dealing with concurrent jurisdiction and later resubmitted to each of the committee chairmen by the president.

Since the committee reported this substitute resolution, it has come to the attention of the committee that certain of the assignments shown on this schedule may not be entirely as understood by the committee chairmen themselves and some of their subcommittee chairmen.

I would, therefore, respectfully urge each of the committee chairmen to carefully review that schedule of assignment of primary jurisdiction over sections of the present constitution and if there are any items which you believe should be changed please bring them to my attention prior to the session on Monday evening, and we can then offer an ap-

propriate amendment to the schedule to make sure that the schedule is correct as all of the committee chairmen understand it.

The resolution generally deals with the method of reporting by committees. I think it will merit your careful attention, and I urge you to study it in advance of the session Monday evening.

Now, Mr. President, I will move that this committee report lay over until Monday.

PRESIDENT NISBET: The question is on the motion of Mr. Van Dusen that this committee report lay over until Monday evening. Any discussion?

Without objection, it will lay over until the Monday, December 11, session.

Mr. Hoxie.

MR. HOXIE: Mr. President, I wonder if I may ask a question in connection with this resolution?

It indicates that attached to this resolution is a proposed assignment of responsibility. I do not find any such attachment to the resolution.

PRESIDENT NISBET: Mr. Van Dusen.

MR. VAN DUSEN: Mr. President and Mr. Hoxie, you will note a postscript on the matter that you have just read, a note that the schedule which is attached to the resolution, a copy of which has been furnished to all the committee chairmen, is the same schedule which you were furnished 2 weeks ago with the memo on concurrent jurisdiction and the same schedule that you were furnished once again a week ago, before the present convention, dealing again with the question of concurrent jurisdiction; so that you have at least 2 copies of it in your possession. I will be glad to see that you have a third, if you would like it.

MR. HOXIE: I am only referring to the resolution, which states that there is a schedule attached and it is not attached. Is that correct?

MR. VAN DUSEN: That is not correct. It is attached — with a copy in the hands of the secretary.

PRESIDENT NISBET: I might say, Mr. Hoxie, that that schedule will also be printed in the journal.

SECRETARY CHASE: The committee on administration, by Mr. Gust, first vice chairman, recommends to the convention that the following policy be adopted regarding holiday vacation for the staff:

That the staff work through December 21, that they be given December 22 and 26 off, that the staff be reduced to ½ force on December 27, 28, and 29 and return to work at noon on January 2.

Rockwell T. Gust, first vice chairman.

PRESIDENT NISBET: Mr. Gust.

MR. GUST: Mr. President, I was informed shortly before the session began by our committee clerk, who had been in touch with Chairman DeVries, who was home ill, that this particular report should have come out as information only, since this was something that concerned a policy to be determined by the administration committee. However, following that great Calvin Coolidge doctrine that the best delegation and the most pliable one is that which has the most information, I humbly ask that you adopt our recommendation officially.

PRESIDENT NISBET: The question is on concurring in the recommendation. Any remarks? All in favor, say aye; opposed, no.

The recommendation is concurred in.

SECRETARY CHASE: The committee on administration, by Mr. Gust, first vice chairman, submits the following report to the convention and recommends its adoption:

That the convention authorize the purchase of 3 service contracts to cover service and maintenance of the addressograph machine, the model 2550 multilith machine, and the varitype machine, $549.12.

Rockwell T. Gust, first vice chairman.

PRESIDENT NISBET: Mr. Gust.

MR. GUST: Mr. President, our committee was informed several days ago that we had not purchased the service contracts on several of our pieces of equipment. These were our earliest purchases at the convention and in the early days we were not certain whether it would be the most economical thing to purchase these service contracts. On our subsequent equipment that we have, our experience has shown us that we will save money in the long run if we will purchase the service contracts for the remainder of these pieces of equipment.

PRESIDENT NISBET: The question is on the recommendation of the committee. Any discussion? Those in favor, please say aye; those opposed, no.

The recommendation is concurred in.

SECRETARY CHASE: The committee on administration, by Mr. Gust, first vice chairman, submits the following report to the convention and recommends its adoption:

That the convention authorize the purchase of a collating machine, $5,806.05.

Rockwell T. Gust, first vice chairman.

PRESIDENT NISBET: Mr. Gust.

MR. GUST: Mr. President, Mr. Apol did considerable investigation for our committee before we brought out this recommendation. He has made contact both with the legislative service bureau and the motor vehicle bureau and both of these bureaus have indicated an interest in purchasing this collator from us at the termination of the convention.

At the present time, we are using approximately 35 or 40 man hours per day in handling this collating. Estimating 35 hours a day for, say, 80 days at $2 per hour, which is roughly what we figured it is costing us to put our personnel on this project, from now until the first of April there would be a total of $5,600, which is just about the cost of this machine. Since it does have resale value and since it will speed up our work considerably, at long last we are able to recommend to you that we should probably have purchased this before, but our experience shows now that it is imperative and we ask you to approve our report.

PRESIDENT NISBET: The question is on concurring in the recommendation of the committee.

Mr. Elliott.

MR. A. G. ELLIOTT: A question, please. I am sure that there has been consideration given to renting that machine, or isn't that possible?

MR. GUST: Yes, there was consideration given to rental. We had the figures in our committee discussions. However, it would cost us somewhere, I believe, in excess of — it was either $3,500 or $4,000 to rent this for the remainder of the convention and, of course, with no resale value. On the basis of the cost of this machine and the depreciation, we are going to come out ahead.

PRESIDENT NISBET: The question is on concurring in the recommendation of the committee. Those in favor, say aye; opposed, no.

The recommendation is concurred in.

SECRETARY CHASE: The committee on administration, by Mr. Gust, first vice chairman, submits the following report to the convention and recommends its adoption:

That the convention authorize the purchase of one gross of tapes for use with the tape recording machines, $302.10.

Rockwell T. Gust, first vice chairman.

PRESIDENT NISBET: Mr. Gust.

MR. GUST: These are du Pont mylar tapes at $2.10 apiece, long playing, for our recording machines. Mr. Apol, and Mr. J. Burton Richards of our committee, did considerable investigating on the prices and kinds of tape which would best suit the needs of the delegates, and this was their unanimous recommendation.

PRESIDENT NISBET: The question is on concurring in the recommendation of the committee. Those in favor, say aye; opposed, no.

The recommendation is concurred in.

SECRETARY CHASE: The committee on administration, by Mr. Gust, first vice chairman, submits the following report:

The committee on administration has authorized the payment of $4,543.32 to the department of administration for blueprint, architectual and engineering fees. As there

is still money in the budget appropriated for contractual services, this item will not require an appropriation and is offered as information only.

Rockwell T. Gust, first vice chairman.

PRESIDENT NISBET: The report will be printed in the journal.

SECRETARY CHASE: That completes the standing committee reports on file, Mr. President.

PRESIDENT NISBET: Reports from select committees.

SECRETARY CHASE: None.

PRESIDENT NISBET: Communications from state officers.

SECRETARY CHASE: None.

PRESIDENT NISBET: **Introduction, first reading and reference of proposals.**

ASSISTANT SECRETARY KNAPP: Mr. Snyder introduces

Delegate Proposal 1593, A proposal to provide that no city, village or township shall levy a payroll tax upon a resident of any other city, village or township. Amends article X.

PRESIDENT NISBET: Referred to the committee on finance and taxation.

ASSISTANT SECRETARY KNAPP: Messrs. Madar, Balcer, Baginski, G. E. Brown and Everett introduce

Delegate Proposal 1594, A proposal to retain those provisions of the constitution relating to appropriations for local or private purposes. Retains article V, section 24.

PRESIDENT NISBET: Referred to the committee on legislative powers.

ASSISTANT SECRETARY KNAPP: Mr. Lawrence introduces

Delegate Proposal 1595, A proposal to provide for an appeal as of right in criminal cases. Amends article VII.

PRESIDENT NISBET: Referred to the committee on judicial branch.

ASSISTANT SECRETARY KNAPP: Mr. Lawrence introduces

Delegate Proposal 1596, A proposal relating to the court structure, selection and tenure of judges, number of judges, qualifications of judges, compensation of judges, and to provide for multijudge circuits. Amends article VII.

PRESIDENT NISBET: Referred to the committee on judicial branch.

ASSISTANT SECRETARY KNAPP: Mr. Stafseth introduces.

Delegate Proposal 1597, A proposal to provide for membership of county boards of supervisors to consist of township supervisors, city assessors, and additional members elected on a population basis. Amends article VIII.

PRESIDENT NISBET: Referred to the committee on local government.

ASSISTANT SECRETARY KNAPP: Messrs. Binkowski, Baginski, Ford and Bledsoe introduce

Delegate Proposal 1598, A proposal to provide for 8 year terms for probate judges in counties having one million or more inhabitants. Amends Delegate Proposal 1261.

PRESIDENT NISBET: Referred to the committee on judicial branch.

ASSISTANT SECRETARY KNAPP: Messrs. Rush and Spitler introduce

Delegate Proposal 1599, A proposal to provide for the distribution of 6 mills of the property taxes to school districts on an enrollment basis. Amends article X, section 21.

PRESIDENT NISBET: Referred to the committee on finance and taxation.

ASSISTANT SECRETARY KNAPP: Mr. Heideman and Mrs. Butler introduce

Delegate Proposal 1600, A proposal to change the name of the Michigan College of Mining and Technology to the Michigan College of Science and Technology, and to establish a governing board as the successor to the board of control of the Michigan College of Mining and Technology. Amends article XI.

PRESIDENT NISBET: Referred to the committee on education.

ASSISTANT SECRETARY KNAPP: Mr. Danhof introduces

Delegate Proposal 1601, A proposal to provide for a house of representatives based upon districts, which districts shall be entitled to increased representation in accordance with population growth. Amends article V, section 3.

PRESIDENT NISBET: Referred to the committee on legislative organization.

ASSISTANT SECRETARY KNAPP: Mr. Hoxie introduces

Delegate Proposal 1602, A proposal to retain article V, section 24.

PRESIDENT NISBET: Referred to the committee on legislative powers.

ASSISTANT SECRETARY KNAPP: Messrs. Karn, Beaman, Gadola, Goebel, Shackleton, Leppien, Leibrand, Austin, and Stamm introduce

Delegate Proposal 1603, A proposal relating to the granting of franchises and licenses by municipalities. Replaces article VIII, section 29.

PRESIDENT NISBET: Referred to the committee on local government.

ASSISTANT SECRETARY KNAPP: Messrs. Ostrow and Dean Doty introduce

Delegate Proposal 1604, A proposal to limit the right of the legislature to pledge the faith and credit of the state of Michigan. Adds a new section to article X.

PRESIDENT NISBET: Referred to the committee on finance and taxation.

ASSISTANT SECRETARY KNAPP: Mr. Rood introduces

Delegate Proposal 1605, A proposal to establish a constitutional minimum for the personal property exemption and the homestead exemption and to permit the legislature to increase such minimums. Amends article XIV, sections 1 and 2.

PRESIDENT NISBET: Referred to the committee on legislative powers.

ASSISTANT SECRETARY KNAPP: Mr. Rood introduces

Delegate Proposal 1606, A proposal to create an intermediate court of criminal appeals. Amends article VII.

PRESIDENT NISBET: Referred to the committee on judicial branch.

ASSISTANT SECRETARY KNAPP: Mr. Rood introduces

Delegate Proposal 1607, A proposal to include damages as just compensation in eminent domain proceedings and to provide for a jury as prescribed for civil cases. Amends article XIII, sections 1 and 2.

PRESIDENT NISBET: Referred to the committee on miscellaneous provisions and schedule.

ASSISTANT SECRETARY KNAPP: Mr. Nord introduces

Delegate Proposal 1608, A proposal to regulate the appearance of any member of the legislature before state agencies on behalf of any other person in any matter under consideration by said boards or agencies. Amends article V, section 6.

PRESIDENT NISBET: Referred to the committee on legislative powers.

ASSISTANT SECRETARY KNAPP: Messrs. Downs, Liberato, Perlich and Stopczynski introduce

Delegate Proposal 1609, A proposal to provide that all meetings of legislative committees and all state and local agencies and authorities shall be public. Amends article V.

PRESIDENT NISBET: Referred to the committee on legislative powers.

ASSISTANT SECRETARY KNAPP: Messrs. Buback, Downs, Mrs. Daisy Elliott, Messrs. Hood, Liberato, Murphy, Pellow, Perlich and Suzore introduce

Delegate Proposal 1610, A proposal to provide that the legislature may establish committees necessary for efficient conduct of business, and committees shall give public notice of hearings. Amends article V.

PRESIDENT NISBET: Referred to the committee on legislative powers.

ASSISTANT SECRETARY KNAPP: Messrs. Buback, Downs, Mrs. Daisy Elliott, Messrs. Hood, Lesinski, Liberato, Murphy, Pellow, Perlich and Stopczynski introduce

Delegate Proposal 1611, A proposal to provide that no elec-

tions shall be held on the day before, the day of, or the day after any holiday. Amends article III.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

ASSISTANT SECRETARY KNAPP: Messrs. Buback, Downs, Mrs. Daisy Elliott, Messrs. Hood, Liberato, Murphy, Pellow, Perlich, Snyder and Walker introduce

Delegate Proposal 1612, A proposal to provide that all public schools above the high school level shall have constitutional status. Amends article XI.

PRESIDENT NISBET: Referred to the committee on education.

ASSISTANT SECRETARY KNAPP: Messrs. Buback, Downs, Mrs. Daisy Elliott, Messrs. Hood, Lesinski, Liberato, Madar, Murphy and Suzore introduce

Delegate Proposal 1613, A proposal to provide that all legislative districts be compact and contiguous. Amends article V, section 2.

PRESIDENT NISBET: Referred to the committee on legislative organization.

ASSISTANT SECRETARY KNAPP: Messrs. Upton, Seyferth, Van Dusen and Austin introduce

Delegate Proposal 1614, A proposal to provide for a manner of execution of contracts entered into by the state and to prohibit conflicts of interest. Amends article V, section 25.

PRESIDENT NISBET: Referred to the committee on legislative powers.

ASSISTANT SECRETARY KNAPP: Mr. Upton introduces **Delegate Proposal 1615,** A proposal to delete certain sections in article XII, corporations.

PRESIDENT NISBET: Referred to the committee on miscellaneous provisions and schedule.

ASSISTANT SECRETARY KNAPP: Mr. Upton introduces **Delegate Proposal 1616,** A proposal to delete the phrase "absence from the state" as a condition for succession in the offices of governor and lieutenant governor. Amends article VI, sections 16 and 17.

PRESIDENT NISBET: Referred to the committee on executive branch.

ASSISTANT SECRETARY KNAPP: Mr. Upton introduces **Delegate Proposal 1617,** A proposal to delete certain sections in article V, legislative department.

PRESIDENT NISBET: Referred to the committee on legislative powers.

ASSISTANT SECRETARY KNAPP: Mr. Upton introduces **Delegate Proposal 1618,** A proposal to delete certain sections under article II, declaration of rights.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

ASSISTANT SECRETARY KNAPP: Mr. Upton introduces **Delegate Proposal 1619,** A proposal to delete section 10 of article XVI, miscellaneous provisions.

PRESIDENT NISBET: Referred to the committee on miscellaneous provisions and schedule.

ASSISTANT SECRETARY KNAPP: Mr. Perras introduces **Delegate Proposal 1620,** A proposal to provide for the appointment of periodic study groups to appraise the efficiency of the executive and administrative agencies of the state. Amends article VI.

PRESIDENT NISBET: Referred to the committee on executive branch.

ASSISTANT SECRETARY KNAPP: Mr. Downs, Miss Hart, Mrs. Hatcher, Messrs. Pellow, Perlich, Nord and Norris introduce

Delegate Proposal 1621, A proposal to guarantee equal protection to all and to prevent discrimination. Amends article II.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

ASSISTANT SECRETARY KNAPP: Mr. Ford introduces **Delegate Proposal 1622,** A proposal to prevent use of public funds to maintain public or quasi public institutions without equal access by all taxpayers. Amends article VIII by adding a new section.

PRESIDENT NISBET: Referred to the committee on local government.

ASSISTANT SECRETARY KNAPP: Mr. Ford introduces **Delegate Proposal 1623,** A proposal to require separate counting of votes in annexation procedures by adding a new section to article VIII.

PRESIDENT NISBET: Referred to the committee on local government.

ASSISTANT SECRETARY KNAPP: Messrs. Ford and Gover introduce

Delegate Proposal 1624, A proposal to require the legislature to grant townships powers of local government. Replaces section 17 of article VIII.

PRESIDENT NISBET: Referred to the committee on local government.

ASSISTANT SECRETARY KNAPP: Mr. Binkowski, Mrs. Daisy Elliott, Messrs. Hood, Lesinski, Madar, Murphy, Perlich and Suzore introduce

Delegate Proposal 1625, A proposal to provide that all nonprofit religious, educational, charitable and benevolent organizations shall be exempt from state and local taxation. Amends article XIV.

PRESIDENT NISBET: Referred to the committee on legislative powers.

ASSISTANT SECRETARY KNAPP: Messrs. Binkowski, Downs, Mrs. Daisy Elliott, Messrs. Hood, Madar, Marshall, Murphy, Perlich and Suzore introduce

Delegate Proposal 1626, A proposal to provide that the legislature may veto appointments by the governor only by a vote of those representing 2/3 of the state's electors in both houses. Amends article VI.

PRESIDENT NISBET: Referred to the committee on executive branch.

ASSISTANT SECRETARY KNAPP: Mrs. Daisy Elliott, Messrs. Hood, Murphy, Perlich, Suzore and Stopczynski introduce

Delegate Proposal 1627, A proposal to limit interest rates to 15 per cent. Amends article XVI.

PRESIDENT NISBET: Referred to the committee on miscellaneous provisions and schedule.

ASSISTANT SECRETARY KNAPP: Mrs. Daisy Elliott, Messrs. Hood, Madar, Murphy and Suzore introduce

Delegate Proposal 1628, A proposal to provide that all promotions and appointments in the state civil service shall be first offered to the highest eligible person. Amends article VI, section 22.

PRESIDENT NISBET: Referred to the committee on executive branch.

ASSISTANT SECRETARY KNAPP: Messrs. Binkowski, Downs, Mrs. Daisy Elliott, Messrs. Hood, Madar, Marshall, Murphy, Perlich and Suzore introduce

Delegate Proposal 1629, A proposal that membership on a county board of supervisors shall not in itself disqualify a person from another legislative or executive office. Amends article VIII, section 7.

PRESIDENT NISBET: Referred to the committee on local government.

ASSISTANT SECRETARY KNAPP: Messrs. Boothby, Dehnke and Gust introduce

Delegate Proposal 1630, A proposal to provide for the separation of powers in administrative agencies and to establish rules and regulations thereto. Amends article IV by adding a section.

PRESIDENT NISBET: Referred to the committee on miscellaneous provisions and schedule.

ASSISTANT SECRETARY KNAPP: Messrs. Boothby, Plank, Blandford and J. Burton Richards introduce

Delegate Proposal 1631, A proposal to prohibit the appropriation of money in excess of taxes and other revenue. Amends article X, section 2.

PRESIDENT NISBET: Referred to the committee on finance and taxation.

ASSISTANT SECRETARY KNAPP: Messrs. Boothby, Plank, and J. Burton Richards introduce

Delegate Proposal 1632, A proposal to provide for the sub-

mission of a comprehensive executive budget by the governor. Amends article VI, section 5.

PRESIDENT NISBET: Referred to the committee on executive branch.

ASSISTANT SECRETARY KNAPP: Messrs. Binkowski, Downs, Mrs. Daisy Elliott, Messrs. Hood, Marshall, Murphy and Perlich introduce

Delegate Proposal 1633, A proposal to provide for a state department of public welfare to have charge of all forms of public assistance. Amends article XVI.

PRESIDENT NISBET: Referred to the committee on miscellaneous provisions and schedule.

SECRETARY CHASE: That completes the first reading of proposals, Mr. President.

PRESIDENT NISBET: Second reading of proposals.

SECRETARY CHASE: Nothing on that calendar.

PRESIDENT NISBET: Third reading of proposals.

SECRETARY CHASE: Nothing on that calendar.

PRESIDENT NISBET: **Motions and resolutions.**

SECRETARY CHASE: Mr. Danhof, on behalf of the committee on judicial branch, offers

Resolution 56, A resolution expressing appreciation to the city of Detroit.

PRESIDENT NISBET: Mr. Danhof.

MR. DANHOF: Mr. President, I would ask that the rules be suspended, so that we can consider this resolution on this date.

PRESIDENT NISBET: Without objection, the rules will be suspended. They are suspended, and the secretary will read the resolution.

SECRETARY CHASE: The following is the resolution:

Whereas, The committee on judicial branch held public hearings in Detroit on December 5, 1961; and

Whereas, The cooperation of the city of Detroit, the Wayne county board of supervisors, the Detroit-Wayne joint building authority and the common council of Detroit contributed greatly to the success of these hearings; now therefore be it

Resolved, That this convention does hereby express its appreciation to the city of Detroit and, in particular, to the members of the common council of the city of Detroit, Miss Mary Beck, president; to the Wayne county board of supervisors, Edward Carey, president; and to the Detroit-Wayne joint building authority, Mr. Charles G. Oakman, general manager; and be it further

Resolved, That the secretary of the convention forward copies of this resolution to the above named persons.

PRESIDENT NISBET: The question is on the adoption of the resolution. Any discussion? If not, all in favor, say aye; opposed, no.

The resolution is adopted.

SECRETARY CHASE: That is the only resolution on file, Mr. President.

PRESIDENT NISBET: Unfinished business.

SECRETARY CHASE: Nothing on that calendar.

PRESIDENT NISBET: Special orders of the day.

SECRETARY CHASE: None.

PRESIDENT NISBET: General orders.

SECRETARY CHASE: The items on general orders will not be in order for consideration until Monday.

PRESIDENT NISBET: Announcements.

SECRETARY CHASE: There are the following announcements:

The envelopes that have been placed on the desks of the delegates are for use by your secretaries, for them to address the envelopes in which to forward the handbooks that have been furnished to you.

Mr. Ink White requests the following announcement to be made: a second delegates' bulletin outlining amounts for the arrangements and details for the visit of General Eisenhower to the convention has been placed in the delegates' mailboxes this morning.

The following are notices of committee meetings:

The 4 subcommittee chairmen of the committee on legislative powers will meet in room H, December 11, Monday, at 7:00 p.m. T. Jefferson Hoxie, chairman.

Subcommittee 1 of the committee on legislative powers will meet for discussion of delegate proposals assigned; subcommittee 2 will meet with the sponsors of Delegate Proposals 1262 and 1264; subcommittee 3 will discuss article X, section 14, and article XVI, sections 5 and 7; and subcommittee 4 will meet with sponsors of Delegate Proposals 1155, 1369, 1370 and 1448, and with Mr. George Burke, Jr., of the state liquor control commission. All of these meetings will be held December 12, at 3:00 p.m., or immediately after the session in room H. Signed by the respective subcommittee chairmen and the chairman of the committee, Mr. T. Jefferson Hoxie.

The following are notices for committee meetings for next Tuesday — first, for next Monday, December 11:

After the session, the committee on rules and resolutions will meet in room I to consider pending resolutions.

At 3:00 o'clock Monday, the committee on education will meet in room J. Mr. Roy L. Stephens of the Detroit board of education; and Mrs. John Shada, family life chairman of the Detroit archdiocesan council of the national council of catholic women will appear.

At 3:30 p.m. Monday, the style and drafting committee will meet in room K on the third floor.

The committee meetings for Tuesday, December 12:

The committee on education in room J at 8:30 a.m.: Dr. Harlan Hatcher, president of the University of Michigan; Mr. Eugene Powers, president of the board of regents of the University; and Mr. Les Biederman, who is chairman of the board of control, Northwestern Community College, will appear.

At 9:00 o'clock Tuesday morning, the committee on declaration of rights, suffrage and elections will meet in room F to hear delegate proposals.

The committee on executive branch will meet Tuesday at 10:30 a.m. in room C. Dr. William Ronan, executive assistant to the governor of New York, will appear.

At 10:30 a.m. Tuesday, the committee on judicial branch will meet in room B. Mr. William Lynch of New York City will appear.

At 1:00 o'clock Tuesday, there will be a meeting of all committee chairmen in room E.

Tuesday at 3:00 o'clock or after the session, the committee on executive branch will meet in room C, the subcommittee on executive reorganization.

The committee on miscellaneous provisions and schedule will meet Tuesday at 3:00 o'clock or after the session in room G. Several nurserymen will appear before the committee.

The committee meetings for Wednesday:

The committee on legislative powers will meet after the session in room H, after General Eisenhower's speech.

At 3:00 o'clock, the committee on education will meet in room J. Mr. Harmon Cropsey, president of the friends of the Michigan schools; Delegate Melvin Nord on Delegate Proposal 1078; Delegate Nick Rajkovich on Delegate Proposal 1206.

The other committee meetings for the rest of the week are contained in the composite schedule.

Public hearings scheduled for Tuesday:

The committee on miscellaneous provisions and schedule, Tuesday, December 12 at 9:30 a.m., a public hearing in Detroit in the veterans' memorial building, the subcommittee on eminent domain.

A public hearing at 9:30 Tuesday morning of the committee on local government, in Detroit, at veterans' memorial building.

The committee on legislative organization will hold a public hearing in the supervisors' auditorium of the city-county building in Detroit, Tuesday afternoon at 3:30 and at 7:30 in the evening.

The committee on local government will hold a public hearing, Tuesday at 10.30 a.m., in room A on townships. On Wednesday at 8.30 a.m. in room A, the committee on local government will hold a public hearing on counties.

A public hearing will be held by the committee on judicial branch on Wednesday evening at 7:30 in rooms B, C, and D on all matters pending before the committee.

The balance of the public hearings are listed in the composite schedule.

PRESIDENT NISBET: Mr. Gust.

MR. GUST: Mr. President, I would like to announce that there will be a meeting of the committee on administration at 7:30 Monday night preceding the session.

There is one other announcement that I would like to make: we have discussed in our committee meetings the possibility of building a shelf or shelves underneath your desks in the footspace there to try and alleviate the problem of your having so much on top of your desks. If any of you engineers, carpenters, or ingenious people have any suggestions that you would like to give us, we would welcome them. (applause)

SECRETARY CHASE: We have the following requests for leaves of absence from the sessions of next week:

Mrs. Conklin wishes to be excused from the session of Monday evening, she is scheduled to make a speech in Detroit; Mr. Dehnke is requesting a leave of absence from the session of Monday; Mr. Liberato is requesting leave from the session of Monday; Mr. Snyder from the session of Monday; and Mr. Suzore from the session of Monday.

Mr. Kelsey is requesting a leave of absence from the sessions of Monday and Tuesday.

PRESIDENT NISBET: Without objection, they will be excused.

Mr. Prettie.

MR. PRETTIE: Responding, Mr. President, to the request of Mr. Gust, I invite his attention to the "do it yourself" project in the kneespace under my desk. (applause)

PRESIDENT NISBET: Mr. White.

MR. WHITE: Mr. President, a major and unintentional error appears in the list of accredited press representatives to which, in the past, delegates have been directed. This will be corrected by a revised list which will be in your boxes Monday. Thank you.

PRESIDENT NISBET: That completes the business of this convention today.

The Chair recognizes Mrs. Cushman.

MRS. CUSHMAN: Mr. President, I move that we adjourn.

PRESIDENT NISBET: The question is on adjournment. Those in favor, please say aye; opposed, no.

The convention is adjourned until Monday night at 8:00 p.m.

[Whereupon, at 10:35 o'clock a.m., the convention adjourned until 8:00 o'clock p.m., Monday, December 11, 1961.]

FORTIETH DAY

Monday, December 11, 1961, 8:00 o'clock p.m.

PROCEEDINGS

PRESIDENT NISBET: The convention will please come to order.

Our invocation this evening will be given by one of our own delegates, Mr. Romney.

MR. ROMNEY: Our Father in heaven, we acknowledge Thy sovereignty in all things, and we express gratitude for the bounteous blessings that we have.

We are grateful for our knowledge of Thee and for our knowledge of our relationship to Thee as Thy children.

We are grateful for this great country and for the constitution on which it is based.

We are grateful for its inspired character and for the men who were raised up to give us a document that is capable of freeing men everywhere from all forms of bondage.

We are grateful for this state. We are grateful for the opportunity to serve as delegates to this constitutional convention.

We pray that Thou wilt bless us that we may ever be able to devote ourselves to this task and that we may have Thy guidance to the extent that we may be able to devise a document that will better serve the people of this state and enable us and all citizens of this state to better serve the nation and Thy purpose.

All these blessings we ask in the name of Thy Son, Jesus Christ. Amen.

PRESIDENT NISBET: The roll call will be taken by the secretary. All present, please vote aye.

SECRETARY CHASE: Has everyone voted? The machine is now locked and the attendance will be recorded.

Mr. President, a quorum of the convention is present.

Prior to today's session, the secretary received the following requests for leave:

Mr. Gadola, who is not feeling well; Mr. Garvin, illness in the family; Mr. Ford, who called in from Detroit; Mr. Sterrett, who has been requested to make a speech on behalf of the convention; Mrs. Hatcher and Mr. Murphy, because of important business in Detroit; and

Mr. Knirk, who asks to be excused from the sessions of today and tomorrow, has additional back trouble and is back in the hospital.

Excused to conduct committee hearings in Detroit: Messrs. Mahinske, Hood and Bledsoe.

PRESIDENT NISBET: Without objection, the requests are granted.

SECRETARY CHASE: Absent with leave: Mrs. Conklin, Messrs. Ford, Gadola, Garvin, Mrs. Hatcher, Messrs. Kelsey, Knirk, Liberato, Murphy, Norris, Shackleton, Sterrett and Suzore.

Absent without leave: None.

PRESIDENT NISBET: Reports of standing committees.

SECRETARY CHASE: None.

PRESIDENT NISBET: Reports of select committees.

SECRETARY CHASE: None.

PRESIDENT NISBET: Communications from state officers.

SECRETARY CHASE: None.

PRESIDENT NISBET: **Introduction, first reading and reference of proposals.**

ASSISTANT SECRETARY KNAPP: Mr. Mahinske introduces

Delegate Proposal 1634, A proposal to raise personal exemptions to $1,500.00 and to authorize homestead exemptions of at least $10,000.00 as the legislature shall direct. Amends article XIV, sections 1 and 2.

PRESIDENT NISBET: Referred to the committee on legislative powers.

ASSISTANT SECRETARY KNAPP: Mrs. Judd, Mr. Radka, Mrs. Cushman and Mr. Davis introduce

Delegate Proposal 1635, A proposal to direct the use of legislative power with respect to natural resources for the public interest and to grant state and local government the power to acquire land. Creates a new article.

PRESIDENT NISBET: Referred to the committee on miscellaneous provisions and schedule.

ASSISTANT SECRETARY KNAPP: Mrs. Judd, Mr. Radka, Mrs. Cushman, Messrs. Follo, Sharpe, Davis and Figy introduce

Delegate Proposal 1636, A proposal to provide a new article on natural resources.

PRESIDENT NISBET: Referred to the committee on miscellaneous provisions and schedule.

ASSISTANT SECRETARY KNAPP: Mr. Nord introduces **Delegate Proposal 1637,** A proposal to provide for a two house legislature representing the rural and urban areas and for the organization of the same. Amends article V.

PRESIDENT NISBET: Referred to the committee on legislative organization.

ASSISTANT SECRETARY KNAPP: Mrs. Cushman and Mr. Rajkovich introduce **Delegate Proposal 1638,** A proposal to provide for a method of altering boundaries of units of local government. Amends article VIII by adding a new section.

PRESIDENT NISBET: Referred to the committee on local government.

ASSISTANT SECRETARY KNAPP: Messrs. Shackleton, Leppien, Turner and Mrs. Cushman introduce **Delegate Proposal 1639,** A proposal to provide for the consolidation of townships. Amends article VIII, section 15.

PRESIDENT NISBET: Referred to the committee on local government.

ASSISTANT SECRETARY KNAPP: Mrs. Cushman introduces **Delegate Proposal 1640,** A proposal to provide for the interpretation of language used in the constitution. Amends article XVI by adding a new section.

PRESIDENT NISBET: Referred to the committee on miscellaneous provisions and schedule.

ASSISTANT SECRETARY KNAPP: Messrs. Sleder and Allen introduce **Delegate Proposal 1641,** A proposal to retain restrictions on the legislature in passing special or local acts, and to place certain other restrictions on legislation affecting local units of government. Amends article V, section 30.

PRESIDENT NISBET: Referred to the committee on legislative powers.

ASSISTANT SECRETARY KNAPP: Mr. Powell introduces **Delegate Proposal 1642,** A proposal to authorize local approval of liquor licenses and require establishments to be 500 feet from a church or school. Amends article XVI, section 11.

PRESIDENT NISBET: Referred to the committee on legislative powers.

ASSISTANT SECRETARY KNAPP: Miss Donnelly introduces **Delegate Proposal 1643,** A proposal to prevent judicial officers from appointment to other judicial offices during term of office and 1 year thereafter. Amends article VII, section 9.

PRESIDENT NISBET: Referred to the committee on judicial branch.

ASSISTANT SECRETARY KNAPP: Mr. Faxon introduces **Delegate Proposal 1644,** A proposal to provide for the establishment by the legislature of a business activities commission. Amends article V by adding a new section.

PRESIDENT NISBET: Referred to the committee on legislative powers.

ASSISTANT SECRETARY KNAPP: Mr. Faxon introduces **Delegate Proposal 1645,** A proposal to create a civil rights commission and to define its powers and duties. Amends article VI.

PRESIDENT NISBET: Referred to the committee on executive branch.

ASSISTANT SECRETARY KNAPP: Mr. Faxon introduces **Delegate Proposal 1646,** A proposal to provide for submission of constitutional amendments to electors by a majority of the legislature. Amends article XVII, section 1.

PRESIDENT NISBET: Referred to the committee on miscellaneous provisions and schedule.

ASSISTANT SECRETARY KNAPP: Mr. Faxon introduces **Delegate Proposal 1647,** A proposal to create a coordinating council and four governing bodies for all state institutions of higher learning, and to provide for membership, terms, powers and duties thereof. Amends article XI.

PRESIDENT NISBET: Referred to the committee on education.

ASSISTANT SECRETARY KNAPP: Mr. Heideman introduces **Delegate Proposal 1648,** A proposal to guarantee teacher tenure in tax supported educational institutions. Amends article XI.

PRESIDENT NISBET: Referred to the committee on education.

ASSISTANT SECRETARY KNAPP: Mr. Faxon introduces **Delegate Proposal 1649,** A proposal to provide for a constitutional convention each 20 years, to authorize the governor to appoint a preparatory commission, and to provide for the approval of a majority of those voting at the next fall election. Amends article XVII, section 4.

PRESIDENT NISBET: Referred to the committee on miscellaneous provisions and schedule.

ASSISTANT SECRETARY KNAPP: That completes the introduction of proposals, Mr. President.

PRESIDENT NISBET: Second reading of proposals.

SECRETARY CHASE: Nothing on that calendar.

PRESIDENT NISBET: Third reading of proposals.

SECRETARY CHASE: None.

PRESIDENT NISBET: **Motions and resolutions.**

SECRETARY CHASE: Mr. Dade offers **Resolution 57,** A resolution promoting fellowship and understanding among the constitutional convention delegates.

Following is Resolution 57 as offered:

Whereas, The Constitutional Convention of 1908 was immeasurably enriched in its morale, efficiency and cooperative action; and

Whereas, The Constitutional Convention of 1961-62, in the togetherness experienced by its several committees during the course of their being in the life and work of public hearings away from convention, has similarly been enriched; and

Whereas, It is the consensus of all experiencing such association that it is good for men to be together under such meaningful relationships; now therefore be it

Resolved, That the convention, through the proper committee, do devise ways and means by which the convention delegates may, from time to time, be drawn together in congeniality and friendship; and be it further

Resolved, That the purpose of such get togethers, accompanied with the breaking of bread and refreshments, be for the sole purpose of enriching and deepening common understanding, mutual respect and fellowship, toward a creative expression of a noteworthy document.

PRESIDENT NISBET: Referred to the committee on rules and resolutions.

SECRETARY CHASE: That is the only resolution on file, Mr. President.

PRESIDENT NISBET: **Unfinished business.**

SECRETARY CHASE: Under the order of unfinished business, the president lays before the convention **Resolution 41,** A resolution concerning referral to committees and reporting by committees; by Miss Hart and Mr. Downs. This resolution was reported Friday by the committee on rules and resolutions with a substitute therefor.

For Resolution 41 as offered, see above, page 299.

The following is proposed substitute Resolution 41:

Whereas, The convention has adopted as its objective the drafting of an entirely new constitution; and

Whereas, In so doing it is important that consideration be given to the manner in which the proposed new constitution differs from the present constitution, and that inadvertent omission of provisions of the present constitution be avoided; and

Whereas, It may be beneficial to the people of Michigan in evaluating the proposed new constitution and to the courts in construing it, if it is adopted, to indicate in the

records of the convention the consideration given to each provision of the present constitution; now therefore be it

Resolved, That:

1. Primary jurisdiction for each article and section of the present constitution shall be assigned in accordance with the attached schedule.

2. Committee proposals shall include only such matter as is proposed to be included in the new constitution.

3. In supporting reports accompanying committee proposals each committee shall indicate the extent to which the committee proposal includes new matter not covered in the present constitution, and the extent to which the committee proposal continues, revises, or replaces provisions of the present constitution, and the reasons therefor.

4. When a substantive committee determines that a provision of the present constitution assigned to it in accordance with item 1 of the resolving clause of this resolution shall be omitted entirely from the new constitution, without replacement by new matter contained in a committee proposal, the committee shall so report to the convention within the time prescribed for substantive committee proposals and reports with a concise statement of the reasons therefor. All such reports shall be placed on general orders and considered in committee of the whole. Upon the consideration of any such report, it shall be in order for a delegate to move to include in the new constitution the provision of the present constitution which the committee recommends be omitted, and if such motion prevails, said provision shall then be known as a proposal of the committee of the whole, and shall thereafter follow the procedure provided under rule 57 for any other committee proposal.

PRESIDENT NISBET: Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, I should like to move that the schedule be considered read in deference to Mr. Chase's voice.

PRESIDENT NISBET: Without objection it will be so considered.

For text of schedule as amended, included as part of proposed substitute Resolution 41, see below, page 367.

MR. VAN DUSEN: And now, if I may, I should like to speak on the proposed substitute resolution and offer some explanation of it.

This is a somewhat complicated subject, I suspect. It is designed, however, to give guidance to committees in making their reports in the most useful fashion.

In the work of the committee on public information in preparing an address to the people explaining what we have done here, in our own work in explaining to our constituents what the new constitution does and purports to do, and in the consideration of the new constitution in the years to come by the courts of the state of Michigan, it will be helpful to all of these people to know to what extent consideration was given by this convention to the provisions of the present constitution and to what extent this convention intended to continue, to revise or to replace the provisions of the present constitution, to add entirely new material and to delete entirely material found in the present constitution.

Earlier, in response to a parliamentary inquiry by Mr. Marshall, President Nisbet responded to the effect that we are engaged here in writing an entirely new constitution. We are not, therefore, simply proposing several amendments to the present constitution.

Therefore, it is the theory of this resolution that because we are writing an entirely new constitution, committee proposals will include only that material which is intended to be included in the new constitution. Committee proposals will not simply be amendments to the present constitution.

But because the committee proposals will incorporate only new matter intended to be included in the new constitution, it is important that the supporting reports describe with reasonable care the intention of the committee with respect to the provisions of the present constitution which are being left behind.

And, therefore, the purpose of this resolution is, first, to assign every section of the present constitution to one of the 9 substantive committees; to state that committee proposals shall include only new matter proposed to be incorporated in the new constitution; and to require that in supporting reports accompanying committee proposals each committee shall indicate the extent to which that committee proposal includes brand new matter or the extent to which it continues, revises or replaces provisions of the present constitution, and the reasons.

Now, this leaves one subject which I think has been giving many committees some concern in recent weeks as they have prepared to submit reports. In many cases the committees in considering the present constitution have simply concluded that some provisions are so obsolete, so unnecessary and so —well, I repeat, unnecessary—that they may be completely deleted and not replaced by any new matter.

However, it is important that future courts, and that the convention as a whole, know that the committee has reached this conclusion advisedly and not simply inadvertently.

It is important, also, that if a delegate does not agree with a committee's decision or conclusion that a particular section of the present constitution be omitted, that he have an opportunity to have the full convention determine whether or not it should be continued in the new constitution.

Therefore, when a committee determines that a section of the present constitution shall be left out entirely it will so report under this resolution to the convention, giving the reasons.

That report will be placed on general orders and when it is considered on general orders it will be in order for a delegate to move to put into the new constitution the subject matter of the provision of the present constitution which the committee has concluded shall be deleted, and if that motion prevails then the retention of that matter in the present constitution will become a proposal of the committee of the whole and thereafter shall be treated like any other committee proposal.

As I say, this is a somewhat complicated subject, but I think it is one which merits our careful consideration and the resolution, if adopted, will be helpful in terms of guiding the committees in making their reports and in terms of guiding us through carrying out the balance of our work in this convention.

There is one amendment on the secretary's desk to which I should direct the attention of the convention. In preparing the schedule entitled "Schedule Showing Primary Jurisdiction of Substantive Committees" we had inadvertently assigned to the committee on legislative organization some matters which are properly within the jurisdiction of the committee on legislative powers and which have been handled by the committee on legislative powers.

If the secretary will read the amendment, I would move its adoption.

SECRETARY CHASE: Mr. Van Dusen offers the following amendment to the schedule entitled "Schedule Showing Primary Jurisdiction of Substantive Committees" attached to the substitute for Resolution 41:

1. Amend under article V, by striking out lines 2, 3 and 4 which read as follows:

"2- 6	Apportionment, qualifications of legislature	Legislative organization
7- 8	Rights and privileges of legislators	Legislative powers
9-11	Compensation of legislators	Legislative organization"

and inserting the following:

"2- 4	Apportionment of legislature	Legislative organization
5- 8	Qualifications, rights and privileges of legislators	Legislative powers
9-11	Compensation of legislators	Legislative powers".

PRESIDENT NISBET: The question is on the amendment offered by Mr. Van Dusen. Any discussion? If not, all in favor say aye. Opposed, no.

The amendment is adopted.

The question is now on agreeing to the substitute, as amended by the amendment offered by Mr. Van Dusen. Any discussion?

Mr. Downs.

MR. DOWNS: Mr. President, I believe the committee has made a very good rewrite of the original resolution, and that this will help us in keeping track of our work throughout the convention. I recommend support of the substitute resolution that has been offered.

PRESIDENT NISBET: Mr. Marshall.

MR. MARSHALL: Mr. President, just a matter of inquiry. The committee's resolution says nothing with respect to concurrent jurisdiction on various matters.

I simply wish to clarify my understanding that this does not affect the earlier memorandum which assigned concurrent jurisdiction on many of these matters to committees other than those committees having primary jurisdiction, so that consultation and perhaps joint committee reports are still contemplated, are they not?

PRESIDENT NISBET: Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, Mr. Marshall, that is quite correct. I should add, Mr. President, in response to an inquiry just propounded by Mr. Kuhn who, like some others, may be confused on the point, concerning a couple parts of the schedule where ditto marks appear, that it is the intention of the amendment to the schedule that only sections 2, 3 and 4 of article V shall be assigned to the committee on legislative organization. The others would be assigned to the committee on legislative powers, except as otherwise indicated.

PRESIDENT NISBET: The question is on the substitute, as amended by the amendment offered by Mr. Van Dusen. Any discussion? If not, all in favor say aye. Opposed, no.

The substitute, as amended, is adopted.

The question is now on the adoption of the resolution as substituted. All in favor say aye. Opposed, no.

Resolution 41, as substituted, is adopted.

Following is Resolution 41 as substituted and adopted:

A resolution concerning referral to committees and reporting by committees.

Whereas, The convention has adopted as its objective the drafting of an entirely new constitution; and

Whereas, In so doing it is important that consideration be given to the manner in which the proposed new constitution differs from the present constitution, and that inadvertent omission of provisions of the present constitution be avoided; and

Whereas, It may be beneficial to the people of Michigan in evaluating the proposed new constitution and to the courts in construing it, if it is adopted, to indicate in the records of the convention the consideration given to each provision of the present constitution; now therefore be it

Resolved, That:

1. Primary jurisdiction for each article and section of the present constitution shall be assigned in accordance with the attached schedule.

2. Committee proposals shall include only such matter as is proposed to be included in the new constitution.

3. In supporting reports accompanying committee proposals each committee shall indicate the extent to which the committee proposal includes new matter not covered in the present constitution, and the extent to which the committee proposal continues, revises, or replaces provisions of the present constitution, and the reasons therefor.

4. When a substantive committee determines that a provision of the present constitution assigned to it in accordance with item 1 of the resolving clause of this resolution shall be omitted entirely from the new constitution, without replacement by new matter contained in a committee proposal, the committee shall so report to the convention within the time prescribed for substantive committee proposals and reports with a concise statement of the reasons therefor. All such reports shall be placed on general orders and considered in committee of the whole. Upon the consideration of any such report, it shall be in order for a delegate to move to include in the new constitution the provision of the present constitution which the committee recommends be omitted, and if such motion prevails, said provision shall then be known as a proposal of the committee of the whole, and shall thereafter follow the procedure provided under rule 57 for any other committee proposal.

SCHEDULE SHOWING PRIMARY JURISDICTION OF SUBSTANTIVE COMMITTEES

Article and Section		Primary Jurisdiction
		Committee on:
Preamble		Miscellaneous provisions and schedule
Art. I (entire)	Boundaries and seat of government	" " " "
Art. II	— Declaration of rights	
1- 2	Inherent power, right of assembly	Declaration of rights, suffrage and elections
3-	Separation of church and state	" " " " " "
4-10	Free speech, searches, seizures, etc.	" " " " " "
11-19	Rights relating to courts, etc.	" " " " " "
21-22	Treason, subversion	" " " " " "
Art. III	— Elective franchise	
1-	Qualificators of electors voting	" " " " " "
2- 3	Residence of electors	" " " " " "
4-	Votes on bond issues	" " " " " "
5- 9	Rights of electors, recall, board of canvassers	" " " " " "
Art. IV (entire)	Division of powers	Miscellaneous provisions and schedule
Art. V	— Legislature	
1-	Initiative, referendum	Legislative powers
2- 4	Apportionment of legislature	Legislative organization
5- 8	Qualifications, rights and privileges of legislators	Legislative powers
9-11	Compensation of legislators	" "
12-	Election of legislators	" "
13-18	Meetings of legislature, conduct of business	" "
19-26	Handling of bills, miscellaneous powers	" "
27-	Jury of less than 12	" "
28-	Indeterminate sentence	" "
29-35	Certain powers of legislature	" "
36-	Veto, procedure to override	" "

Article and Section		Primary Jurisdiction
		Committee on:
37-	Item veto	Executive branch
38-	Referendum by legislature	Legislative powers
39-40	Publication of laws	" "
Art. VI — Executive		
1-	Constitutional officers, 2 year term	Executive branch
2- 3	Certain powers of governor	" "
4-	Military powers of governor	" "
5- 9	Certain powers of governor	" "
10-	Appointive power, senate approval	" "
11-18	Seal, eligibility, succession	" "
19-	The lieutenant governor, president of senate	" "
20-22	Certain duties, salaries, civil service	" "
Art. VII — Judicial		
1-	Courts	Judicial branch
2-	Supreme court justices, election	" "
3- 7	Terms of supreme court, jurisdiction, staff, etc.	" "
8- 9	Circuit judges, election	" "
10-13	Circuit and probate court jurisdiction, staff salary	" "
14-15	Probate courts, justices of peace, election	" "
16-19	Jurisdiction of justices of peace, courts of record	" "
20-	Appointment to fill vacancies	" "
21-	Circuit court commissioners' election	" "
22-	Style of process	" "
23-	Nomination and election of judges	" "
Art. VIII — Local government		
1- 2	Counties, organization, status	Local government
3-	County officers, election	" "
4-	County seat	" "
5-	Sheriff	" "
6- 9	Jury commissioners, boards of supervisors, powers	" "
10-	County taxing, borrowing power	" "
11-	County hospitals	" "
12-	County borrowing power	" "
13-15	County seat, navigable streams, townships	" "
15a-	Drainage district bonds	" "
16-17	Townships, powers	" "
18-19	Township officers, public utility franchise	" "
20-	Cities and villages, taxing, borrowing powers	" "
21-23	Home rule, parks, public utilities	" "
24-25	Cities, borrowing, taxing powers, public utilities	" "
26-	County roads	" "
27-31	Control of streets, franchises, port districts, metropolitan districts	" "
Art. IX — Impeachments and removals		
1- 2	Impeachment by house of representatives	Legislative powers
3-	Trial of impeachment by senate	" "
4-	Impeachment of judge	" "
5-	Provisional appointment	Executive branch
6- 7	Removals by governor	" "
8-	Removal of municipal officers	Legislative powers
Art. X — Finance and taxation		
1-	Primary school interest fund	Finance and taxation
2-	Annual tax to meet expenses	" " "
3-	Uniform rule, property tax	" " "
4-	Specific taxes	" " "
5-	Assessment of public utility property	" " "
6-	No taxation by reference	" " "
7-	Cash value standard	" " "
8-	Equalization	" " "
9-	Power of taxation never suspended	" " "
10-13	Borrowing, investment powers	" " "
14-	Internal improvements	Legislative powers
15-18	Deposits, payments, accounts	Finance and taxation
19-	Ineligibility to certain offices	" " "
20-20a	Railroad acquisitions, WWI bonus	" " "
21-	15-mill limit	" " "
22-	Gas tax earmarking	" " "
23-	Sales tax earmarking	" " "
23a-26	Various bond issues	" " "
27-28	School borrowing	" " "

Article and Section		Primary Jurisdiction
Art. XI — Education		Committee on:
1-	Preamble	Education
2-	Superintendent of public instruction	"
3-	Regents of U. of M., election	"
4- 5	Regents, body corporate, powers	"
6- 7	State board of education, MSU trustees	"
8-	MSU trustees, powers	"
9-	Primary school system	"
10-	Other colleges, etc.	"
11-	Proceeds of school lands	"
12-13	Escheats, salt spring lands	Miscellaneous provisions and schedule
14-	Libraries, penal fines	Education
15-	Institutions for deaf, etc.	"
16-	Wayne State U., board, powers	"
Art. XII — Corporations		
1- 8	General provisions	Miscellaneous provisions and schedule
9-	Banking laws	" " " "
Art. XIII — Eminent Domain		
1- 3	Taking, power, purpose, procedure	" " " "
4-	Regents of U. of M. have power	" " " "
5-	Power of municipalities, bonding	" " " "
Art. XIV (entire)	Exemptions	Legislative powers
Art. XV (entire)	Militia	Miscellaneous provisions and schedule
Art. XVI — Miscellaneous provisions		
1-	Terms of office	Miscellaneous provisions and schedule
2-	Oath	" " " "
3-	Compensation of public officials	" " " "
4-	Tie votes, contested elections	" " " "
5-	Continuity in case of disaster	Legislative powers
6-	Use of English language	Miscellaneous provisions and schedule
7-	Courts of conciliation	Legislative powers
8-10	Property of married women, aliens, agricultural leases	Miscellaneous provisions and schedule
11-	Liquor control, excise tax, local option	Legislative powers
Art. XVII (entire)	Amendment and revision, schedule	Miscellaneous provisions and schedule

PRESIDENT NISBET (continuing): Any further unfinished business?

SECRETARY CHASE: That is the only item on the calendar, Mr. President.

PRESIDENT NISBET: Special orders of the day.

SECRETARY CHASE: None.

PRESIDENT NISBET: **General orders of the day.**

Mr. Baginski.

MR. BAGINSKI: Mr. President, I move that the convention resolve itself into committee of the whole for the purpose of discussing several proposals.

PRESIDENT NISBET: The question is on the motion of Mr. Baginski that the convention resolve itself into committee of the whole. All in favor say aye. Opposed, no.

The motion prevails.

Mr. Baginski will preside over the committee of the whole.

[Whereupon, Mr. Baginski assumed the Chair to preside as chairman of the **committee of the whole.**]

CHAIRMAN BAGINSKI: The committee will be in order.

The Chair would like to call the attention of the delegates to rule 45. Rule 45 contemplates that all motions and proposals of business will be submitted in writing. The proposals have been before the convention for a number of days and I am sure we are all ready to submit all the amendments in writing.

The secretary will read.

SECRETARY CHASE: Before we read the first proposal, the attention of the secretary has been called to 4 errors on the calendar.

Committee Proposal 4, Committee Proposal 7, Committee Proposal 8 and Committee Proposal 9 were reported by the committee on executive branch, not the committee on education.

From the committee on executive branch, by Mr. Martin, chairman, **Committee Proposal 4,** A proposal to provide communication by the governor to the legislature on the condition of the state. Amends article VI, section 5.

Following is Committee Proposal 4 as read by the secretary, and the reasons submitted in support thereof:

The committee recommends that the following be included in the constitution:

[He] THE GOVERNOR shall communicate by message to the legislature AT THE BEGINNING OF EACH SESSION, [and at the close of his official term to the incoming legislature, the condition of the state, and recommend such measures as he may deem expedient] AND MAY, AT OTHER TIMES, PRESENT TO THE LEGISLATURE INFORMATION AS TO THE AFFAIRS OF THE STATE, AND RECOMMEND MEASURES HE CONSIDERS NECESSARY OR DESIRABLE.

Mr. Martin, chairman of the committee on executive branch, submits the following reasons in support of Committee Proposal 4:

The committee on executive branch proposes to delete the present requirement for the exaugural message. The requirement is a potential source of embarrassment to an outgoing governor. However, an outgoing governor may, if he so desires, present an exaugural message under his power to "present to the legislature information as to the affairs of the state, and recommend measures he considers necessary or desirable." Only a half dozen states besides Michigan now require the exaugural.

In requiring the governor to "communicate by message

Explanation—Matter within [ ] is stricken, matter in capitals is new.

to the legislature at the beginning of each session," the practice most common among the states is being followed.

CHAIRMAN BAGINSKI: Are there any amendments to Committee Proposal 4?

Mr. Martin.

MR. MARTIN: Mr. Chairman, this proposal, as is clear from reading it, relates to messages from the governor to the legislature.

The present provision of the constitution provides for an exaugural message. It is felt that the governor should have the opportunity to present an exaugural message if he wishes to, and that is covered in the language that is now used. But it is not felt that he should be required to do so.

The remainder of the language is only clarifying. It relates to the beginning of the session and provides that the governor shall, at the beginning of each session, present his message, and at such other times as he considers it necessary.

The earlier provision reads "recommend such measures as he may deem expedient." The committee felt that the wording "and recommend measures he considers necessary or desirable" was better in that situation.

The committee unanimously recommends the adoption of this proposal.

CHAIRMAN BAGINSKI: Are there any amendments to Committee Proposal 4? If not, it will pass.

Committee Proposal 4 is passed.

The secretary will read.

SECRETARY CHASE: Concurrently from the committee on legislative powers, by Mr. Hoxie, chairman, and from the committee on miscellaneous provisions and schedule, by Mr. Erickson, chairman, **Committee Proposal 5**, A proposal pertaining to the inclusion in the constitution of all of section 9 of article XII except the portion relating to bank notes or paper credit.

Following is Committee Proposal 5 as read by the secretary, and the reasons submitted in support thereof:

The committee recommends that the following be included in the constitution:

Sec. 9. No general law providing for the incorporation of trust companies or corporations for banking purposes, or regulating the business thereof, shall be adopted, amended or repealed except by a vote of 2/3 of the members elected to each house of the legislature. [Such laws shall not authorize the issue of bank notes or paper credit to circulate as money.]

Messrs. Hoxie and Erickson, chairmen of the committees on legislative powers and miscellaneous provisions and schedule, submit the following reasons in support of Committee Proposal 5:

The committees on legislative powers and miscellaneous provisions and schedule purpose that the first sentence of section 9 of article XII of the 1908 constitution be retained in the proposed new constitution intact for the following reason:

This sentence provides that no general law in regard to banking and trust companies can be changed except on the vote of 2/3 of the elected members to each house of the legislature. This provision was put in the 1908 constitution in lieu of a provision in the 1850 constitution that all charters for banks should have to be submitted to the vote of the people. This provision in the 1908 constitution has proved effective and there has been no serious objection to it.

It is the belief of the committees that it is necessary to have this 2/3 provision in order that the banking laws may be kept as permanent and stable as possible. The history of banking during this period since 1908 has been to the effect that the provision has been amply protective of public rights, and it is not necessary to go back to the provision of requiring a vote of the people on banking laws.

It is recommended that the last sentence of said section in the present constitution be eliminated for the reason that the federal government has preempted the issuance of money and this provision has been practically obsolete for nearly 100 years.

Explanation—Matter within [ ] is stricken, matter in capitals is new.

CHAIRMAN BAGINSKI: Mr. Hoxie.

MR. HOXIE: Mr. Chairman and fellow delegates, with respect to this particular section of the constitution—section 9 of article XII—the legislative powers committee and the committee on miscellaneous provisions and schedule have concurrent jurisdiction.

Under our table of organization of the legislative powers committee this particular section was assigned to a subcommittee composed of Mr. Millard, Mr. Downs, Mr. Wanger and Mrs. Koeze.

They worked in conjunction with the committee on miscellaneous provisions and schedule, and I am sure they would like to speak also on behalf of this particular proposal and as to the activities of the two committees and the recommendations of the two full committees.

At this time I should like to call on Mr. Millard to state the position of the legislative powers committee.

CHAIRMAN BAGINSKI: Mr. Millard.

MR. MILLARD: Mr. Chairman and members of the committee, the subcommittee of the committee on legislative powers met with a subcommittee of the committee of miscellaneous provisions and schedule and held 2 hearings.

At the first hearing we heard Professor Conard of the University of Michigan law school who gave us the background of this particular provision.

Later, we opened a public hearing for the members of the banking fraternity, and we were pleased at having representations from large banks and medium size banks and small banks. They all appeared before the 2 subcommittees, together with the director of the Michigan bankers' association and the legal counsel. We found no one who was opposed to this particular section. Everyone seemed to be in favor of it.

This section has been in the constitution since 1908. At that time it was adopted in preference to a provision which had been heretofore in the constitution which required a vote of the people.

Instead of that, this section as it now is written was put in requiring that any change in any law would have to be by 2/3 vote of the members of the legislature of each house of the legislature elect.

According to the history of the provision, this section has worked very favorably. There have been no amendments to it. There seems to have been no objection to it and everything has seemed to work out satisfactorily.

I have gone over the arguments that were advanced and the debates that took place in the 1907 convention. At that time it was pointed out that this 2/3 provision was necessary to stabilize the banking laws. And in the course of the historical review, it seems to have done exactly what the members of that convention had anticipated.

Also, in that convention, a motion was made to strike out this last sentence which provided that no money could be issued. I will read this portion of section 9 of article XII as it presently appears in the constitution. It reads: "Such laws shall not authorize the issue of bank notes or paper credit to circulate as money."

That is the last sentence of that section. That was argued quite extensively. A motion was passed by the committee of the whole to strike out that sentence. Then another committee came along and found some provisions in another article which they thought were somewhat contradictory and that if this was not left in the others would have to be left in. So that the proposer of this amendment finally withdrew his objections and had this sentence reinstated so that the two other sections of another article could be taken out.

Since this has been in, no state banks or national banks

have been allowed to issue money. That has been preempted by the federal government.

Your committee saw no reason for the continuation of this sentence any more than the 1907 convention found any reason to continue the sentence in that section of the article referred to.

The subcommittee of the committee on legislative powers passed unanimously this proposal embodying the first sentence of the section intact and eliminating the second sentence. This was referred to the full committee, the committee on legislative powers, and there it was also passed unanimously.

Then it was coordinated with the subcommittee of the committee on miscellaneous provisions and schedule, and I think the subcommittee chairman of that committee would like to heard on that matter and report on behalf of that committee. Thank you, Mr. Chairman.

CHAIRMAN BAGINSKI: Mr. Woolfenden.

MR. WOOLFENDEN: Mr. Chairman, fellow delegates, Mr. Millard has given a very complete report on the action with respect to this proposal. I should like to supplement what he said about the public hearing. In addition to the witnesses to whom he has referred, the state banking commissioner appeared and unequivocally recommended that the first sentence of this section be retained.

The subcommittee of the committee on miscellaneous provisions and schedule which considered this matter was composed of Messrs. Lawrence, Binkowski, Mahinske, Hutchinson and myself. Its action was unanimous. The action of the miscellaneous committee as a whole was also unanimous.

I feel that unquestionably this proposal is in the best interests of the state and should be approved.

CHAIRMAN BAGINSKI: Are there any amendments to the proposal?

If not, Committee Proposal 5 will pass.

Mr. Austin.

MR. AUSTIN: Mr. Chairman, fellow delegates, I have a slight amendment which is purely procedural. The reference to section 9 in the proposal should be deleted because it is impossible to determine at this time whether this language will in fact be section 9 of the article.

CHAIRMAN BAGINSKI: Mr. Austin, it has been suggested that this matter might be properly taken up by the committee on style and drafting, rather than at this time.

Mr. Hoxie.

MR. HOXIE: Mr. Chairman, I was going to request that Mr. Cudlip make a statement on this matter. I understand that is the only way we can proceed from the committee. But it is also my understanding that the committee on style and drafting will have the authority to try and arrange these so that they will be consistent in the constitution. Mr. Cudlip, is that correct?

CHAIRMAN BAGINSKI: Mr. Cudlip.

MR. CUDLIP: Mr. Chairman, members and Mr. Hoxie, the committee on style and drafting held its second meeting today and I arise on behalf of the committee, since this question was raised by one of our distinguished members, to say this: as you know, under the rules of this convention, matters are referred by this body to the committee on style and drafting before and after second reading.

We get integrated parts of the constitution by article or section. To date, mostly by section.

Today at our meeting we determined that because we do not have before us the entire substance in connection with given articles, to say nothing about the entire document, we are not sending matters back to this floor, unless we are reversed, with the section number and the article number included in our report.

The reason is obvious. Until you have all the bricks before you, you do not know what kind of house you are going to build. And when we deal with these matters in this fragmentary style, we do not have complete information. Today, for example, we considered 8 proposals. Two did not come to us with the article or the section number, and 1 did.

The 1 that did will come back to the floor of this convention with the recommendation of the committee; and the recommendation is that for the time being we forget about the article and the section number.

Now, documentary wise in the office of the secretary and in the style and drafting committee, we have a history and we have the numbers. But again we cannot build the house the way it should be built by now suggesting to this body what those numbers would or should be.

Therefore, to get to the nub of the matter—and this may not be the appropriate place to say this; but it did arise here—I was going to make the suggestion under motions and resolutions that when committees report matters, even before they come to the floor, they keep them documented in terms of what our constitution is today, but let us not place the section and article number on the proposal, because we cannot build in that fashion.

So I feel that this is an appropriate time, in view of the tenor of the debate, to suggest to committees and to committee chairmen that we temporarily forget about the article and section number. In terms of documentation for internal purposes, yes, keep track of the article and section number, but when we have it before the committee here let us not use the section number or the article number. They will come on another reading.

Thank you, Mr. Chairman.

CHAIRMAN BAGINSKI: The Chairman would like to ask Mr. Austin if that satisfies his desire?

MR. AUSTIN: Mr. Chairman, after hearing the chairman of the committee on style and drafting, I am inclined to restate my motion, that we amend this proposal by deleting section 9, the reference to the section number.

CHAIRMAN BAGINSKI: The secretary will read the amendment.

SECRETARY CHASE: Mr. Austin has offered the following amendment to Committee Proposal 5:

1. Amend line 7 by striking out "Sec. 9."; so the language will then read: "No general law providing for the incorporation of trust companies or corporations for banking purposes . . .", and so forth.

CHAIRMAN BAGINSKI: The question is on the amendment of the gentleman from Detroit.

Mr. Downs.

MR. DOWNS: Mr. Chairman, I have no objection to the amendment, but I would just ask if between now and our next meeting of the committee of the whole the style and drafting committee could accord this subject matter a little additional thought.

I think this would be of advantage and to the benefit of the delegates, and I certainly speak for myself when I say that I find that it is easier to follow the provision if there is a notation on the green sheet as to what section we are discussing in the present constitution. I would certainly rely on style and drafting to make the final, proper order.

I do not wish to make a motion or to oppose this. I simply request that the committee on style and drafting give this matter additional consideration before our next meeting as a committee of the whole.

CHAIRMAN BAGINSKI: Mr. Cudlip.

MR. CUDLIP: Mr. Chairman, the point that Mr. Downs makes is quite proper. All we are saying is that in the committee on style and drafting we are trying to avoid sending a message back here for your consideration in which we say we are eliminating the numbers.

If we could by consensus persuade the chairmen of committees to exclude them, except in their internal reports, then it would make our work easier because we would save a lot of trouble and we would not have to say we send it back with approval but we are requesting that the numbers be deleted because we cannot deal with numbers at this time. That is the whole philosophy.

CHAIRMAN BAGINSKI: Mr. Powell.

MR. POWELL: Mr. Chairman and fellow delegates, I happen to be a member of the committee on style and drafting and we did discuss this matter at some length this afternoon.

It was my understanding that our purpose was that this material be left out of the body of the proposal but continued in the title so that it would be identified up there to tell where the language is now found in the existing constitution, but that it would not be carried forward in the body of the proposal.

CHAIRMAN BAGINSKI: The Chairman would like to know whether Mr. Woolfenden would like to say something. The Chair noticed that he was up and was not recognized.

MR. WOOLFENDEN: Mr. Chairman, the amendment proposed is acceptable to the committee on miscellaneous provisions and schedule.

CHAIRMAN BAGINSKI: Mr. Erickson.

MR. ERICKSON: Mr. Chairman, I was simply going to say the same thing.

CHAIRMAN BAGINSKI: The question is now on the amendment offered by Mr. Austin.

Mr. Hutchinson.

MR. HUTCHINSON: Mr. Chairman, will the secretary please read that amendment again?

SECRETARY CHASE: Mr. Austin has offered the following amendment to Committee Proposal 5:

1. Amend line 7 by striking out "Sec. 9."; so that the language will then read, "No general law providing for the incorporation of trust companies or corporations for banking purposes . . .", and so forth.

The secretary should make it clear that when he refers to lines in a proposal, they will be the lines as you find them in the official copy of the committee proposal that you have in your file.

MR. HUTCHINSON: Thank you. That is clear.

CHAIRMAN BAGINSKI: The question is on the adoption of the amendment. Those in favor signify by saying aye. Opposed, no.

The amendment is adopted.

Are there any further amendments to Committee Proposal 5? If not it will pass.

Committee Proposal 5 is passed.

Proposal 6. The secretary will read.

SECRETARY CHASE: From the committee on finance and taxation, by Mr. Brake, chairman, **Committee Proposal 6,** A proposal to preserve the state's responsibility under sections 20a, 23a, 24, 25 and 26 of article X of the 1908 constitution.

Following is Committee Proposal 6 as read by the secretary, and the reasons submitted in support thereof:

The committee recommends that the following be included in the constitution:

NOTHING IN THIS CONSTITUTION SHALL BE CONSTRUED AS IN ANY WAY IMPAIRING THE OBLIGATION OF THE STATE IN CONNECTION WITH ANY BENEFITS CONFERRED BY OR ISSUE OF BONDS AUTHORIZED BY THE PROVISIONS OF ARTICLE X, SECTIONS 20A, 23A, 24, 25 AND 26 OF THE CONSTITUTION OF 1908, AND THE OBLIGATION OF THE STATE IN CONNECTION WITH SAID SECTIONS IS SPECIFICALLY RECOGNIZED.

FOR THE RETIREMENT OF SUCH NOTES AND BONDS AS MAY HAVE BEEN ISSUED UNDER SECTION 26 OF THE 1908 CONSTITUTION, THERE IS HEREBY APPROPRIATED FROM THE GENERAL FUND EACH YEAR DURING THEIR LIFE A SUM EQUAL TO THE AMOUNT OF PRINCIPAL AND INTEREST PAYMENTS DUE AND PAYABLE IN EACH SUCH YEAR.

Mr. Brake, chairman of the committee on finance and taxation, submits the following reasons in support of Committee Proposal 6:

The committee reports that section 20a of article X providing for the borrowing of money for a bonus for veterans of world war I, has completely performed its service. The last of the bonds issued under that section were retired in the early forties.

As to section 23a under which money was borrowed to pay the bonus for service in world war II, the only liability that remains with the state is that of liability due a surviving dependent where the veteran dies for service connected causes, and act 171 of the public acts of 1951 has accepted that liability as a general fund responsibility.

As to section 24 for borrowing for mental hospitals and T. B. hospitals, the money has been borrowed and expended and there is no obligation remaining under this section.

The same is true as to section 25 which is supplementary to section 23a. There is nothing remaining to be done thereunder.

Under section 26 authorizing the borrowing for the bonus for veterans of the Korean war there remains an obligation for the continuing appropriations of sufficient funds to meet the payment for both principal and interest. The legislature assumed the responsibility for any claims under this section by making them a general fund liability under act 11 of the public acts of 1958.

All of the remaining responsibility of the state under these provisions is covered by the proposal reported herewith. The committee has decided not to report any of the sections mentioned above as they appear in the present constitution.

CHAIRMAN BAGINSKI: Mr. Brake.

MR. BRAKE: Mr. Chairman, and ladies and gentlemen of the committee, under the 1908 constitution the state can borrow no money of any consequence at all except through amendment to the constitution, and we have in that constitution several amendments authorizing that power for bonuses and other purposes.

The purpose of this proposal is to retain in the state what little liability there is left under these borrowing proposals and to eliminate all the unnecessary language—and there is a lot of it.

Now, section 20a authorizes the borrowing of $30 million with which to pay the bonus to the veterans of world war I, and the matter is completely dead.

The last of the bonds issued under that authority were retired during my first term as treasurer in the early '40s, so there is nothing left in the way of liability whatsoever under that provision.

Incidentally, we paid through the nose in connection with that borrowing. The interest rates were high—5 and 5½ per cent, as I remember it. The bonds were not serials but long term bonds. There was a sinking fund in connection with it. Many of the investments made in the '20s and '30s went sour. It was an extremely expensive bit of financing.

Section 23a contains the authority to borrow $270 million with which to pay the bonus to the veterans of world war II. It was not found necessary to borrow that much money.

We did borrow $230 million and, incidentally, it had an average interest rate of 1.44 per cent.

Practically all of the liability under that borrowing is gone, but there is still a small possibility, and I guess a probability, of the need for payment to dependents of veterans who died of a service connected cause. You will find that near the end of the amendment. The legislature, by act 171 of 1957, dissolved this special fund and assumed whatever liability remained as a general fund liability.

Probably as a matter of legal need we could get along without putting this saving clause we are proposing into the new constitution at all because of the fact that the legislature has made that a general fund liability, and likewise with the later provision that I will mention, but to avoid any question and to make doubly certain, we are proposing this saving clause.

Section 24 authorized the borrowing of $65 million with which to build mental hospitals and tuberculosis hospitals. That has been carried out. There is nothing yet remaining to be done and no liability remains.

Section 25 is supplementary to 23a and contains only the

Explanation—Matter within [ ] is stricken, matter in capitals is new.

same kind of liability as section 23a, a liability to the survivors of veterans who died from service connected causes.

Section 26 authorized the borrowing of $80 million for the bonus for the veterans in connection with the Korean war. That also has been dissolved as a special fund and the liability assumed under act 11 of 1958.

That particular constitutional amendment has a feature none of the others did in that it provided for a continuous appropriation of sufficient funds each year to meet those bonds, and the last of them will not be due until 1970.

That language is carried forward in our proposal in the exact words that you find in the amendment itself which was adopted in 1954. Here again, probably it is unnecessary to have the saving clause, but it can do no harm and we are using very few words.

Now, in the proposal there should have been, for clarity, the words "of article X" inserted after the words "section 26" in the second paragraph. While probably that figure 26 would refer back sufficiently to the first paragraph which does say "article X", there is no use leaving it at loose ends, and I therefore offer an amendment to that effect.

SECRETARY CHASE: Mr. Brake offers the following amendment to Committee Proposal 6:

1. Amend the second paragraph, line 13, after "section 26" by inserting "of article X"; so the language will then read:

> For the retirement of such notes and bonds as may have been issued under section 26 of article X of the 1908 constitution, there is hereby appropriated from the general fund each year . . .

and so forth.

CHAIRMAN BAGINSKI: The question is on the amendment offered by Mr. Brake.

Mr. Hodges.

MR. HODGES: Mr. Chairman, I should like to direct a couple of questions to Mr. Brake, if I may. Would it be possible to have more general language than this referring to all other general bonds?

While this undoubtedly takes care of a lot of the language contained in the present constitution, would it not be better if we just had a general clause of this nature, and maybe at the end of the constitution, and maybe one that had a time limit to it so that we would not have this type of carryover material actually found in the body of the constitution?

MR. BRAKE: If I might reply to that question, Mr. Chairman, I would say this. There are no other general obligation bonds outstanding except under these issues. I think anybody who was interested in this particular subject matter would expect to find these issues referred to specifically here.

Very likely there will be at the end of the constitution somewhere a saving clause for everything, but for these particular bond issues, which are specific, I think there should be a specific provision so that no one will need to search beyond that.

CHAIRMAN BAGINSKI: Dr. Nord.

MR. NORD: Mr. Chairman, I should like, if I may, to ask Mr. Brake this question. Mr. Nisbet and I are puzzled in trying to find section 23a in the copy we have of the Michigan Statutes Annotated. Is that a new section that is later than the date of publication of our book?

MR. BRAKE: Mr. Chairman, Dr. Nord, the reference is to 23a which was adopted on November 2, 1954. I refer to the constitutional amendment. Are you looking at the amendments or the statute, Dr. Nord?

MR. NORD: We looked in each of the 3 parts. Apparently it exists, but it is not in our book. Thank you.

CHAIRMAN BAGINSKI: Mr. Woolfenden.

MR. WOOLFENDEN: Mr. Brake, according to the Michigan Statutes Annotated there are 2 amendments numbered 23.

MR. BRAKE: There is one 23 and one 23a. This one is 23a.

MR. WOOLFENDEN: Was it in fact adopted as 23a or is that some editorial notation?

MR. BRAKE: Section 23 is the sales tax amendment.

MR. WOOLFENDEN: Michigan Statutes Annotated says there were 2 adopted and both were numbered 23, apparently by inadvertence, including the one you are referring to. I am just wondering whether you are historically correct in calling this one 23a.

MR. BRAKE: I think so. This is the senate's handbook, and so it couldn't be wrong. (laughter)

CHAIRMAN BAGINSKI: Mr. Stevens.

MR. STEVENS: Mr. Chairman, I am quite sure if it was done by mistake originally, the "a" was inserted later to take care of it. It was a mechanical error in the beginning.

CHAIRMAN BAGINSKI: Mr. Hutchinson.

MR. HUTCHINSON: Mr. Chairman, just so there will not be any feeling of partisanship here, let me say this. Mr. Brake referred to the senate's handbook. I refer to the constitution as compiled by the secretary of state and the secretary of state also refers to section 23a. (laughter)

CHAIRMAN BAGINSKI: The question is on the adoption of the amendment of Mr. Brake. Those in favor of the amendment shall so signify by saying aye. Opposed, no.

The amendment is adopted.

Are there any further amendments?

SECRETARY CHASE: Mr. Hubbs offers the following amendment to Committee Proposal 6:

1. Amend page 1, after line 16, by inserting a new paragraph to read as follows:

"When all bonds outstanding complete with interest due thereon have been redeemed and paid in full, this section of the constitution shall be automatically removed from the constitution.".

CHAIRMAN BAGINSKI: Mr. Hubbs.

MR. HUBBS: Mr. Chairman, during the campaign we heard a lot of conversation about making this constitution just as short as we possibly could.

Therefore, in the interests of keeping it from getting "fat" over the years, I should like to make provision for having it automatically pruned, and this is my method.

This will apply only for a limited length of time, will become operative and then it will not be printed in future constitutions, after these bonds have been redeemed and paid in full.

CHAIRMAN BAGINSKI: Mr. Brake.

MR. BRAKE: Upon whom do you place the responsibility of deciding that the obligation is over?

I cannot stress too strongly the difficulty of determining when the liability will expire. There is the possibility of some person dying and leaving dependents—dying from a service connected cause to which I referred earlier.

Nobody knows how many years in the future the obligation will continue, unless you are going to rely completely on what the legislature did in assuming the liability. I should like to know who can determine when everything is all over.

CHAIRMAN BAGINSKI: Mr. Hubbs.

MR. HUBBS: Well, Mr. Brake, that is a very good question, and not being a former treasurer of the state I would not be able to say when, exactly, all the state's obligations would be fully met.

However, I would say that if no one came forward within a period of 15 or 20 years, let us take it out then, because we are going to write a constitution which, I hope, will last 100 years. Thank you.

CHAIRMAN BAGINSKI: The question is on the amendment offered by Mr. Hubbs. Those in favor so signify by saying aye. Those opposed, no.

The amendment is not adopted.

Mr. Prettie.

MR. PRETTIE: Mr. Chairman, following up the discussion that has just taken place, I should like to address a question to Delegate Brake. I understood him to say that all obligations under section 20a of the Constitution of 1908 had been fully satisfied.

On that basis, why should we continue at least that one section in the new constitution that we are writing?

CHAIRMAN BAGINSKI: Mr. Brake.

MR. BRAKE: If our proposal is adopted, we are not going to carry any of these forward in the constitution.

MR. PRETTIE: Mr. Chairman, perhaps I did not state my question quite clearly. The proposal refers to article X, section 20a, and I wondered whether that might not, with wisdom, be eliminated.

MR. BRAKE: That again brings us back to the question of someone wondering what has become of it. There it is—you have the record.

CHAIRMAN BAGINSKI: Are there any further amendments to the proposal?

Mr. Hutchinson.

MR. HUTCHINSON: Mr. Chairman, I should like to direct a question to Mr. Brake. I should like to refer Mr. Brake to section 10 of article X, and call attention to that statement that was put in there in 1919, where it says:

> . . . The state may borrow not to exceed $50,000,000 for the improvement of highways and pledge its credit, and issue bonds therefor on such terms as shall be provided by law.

I wonder whether any reference should be made to that bond issue in this committee proposal, and if not, why not.

MR. BRAKE: Mr. Chairman, Senator Hutchinson, section 10 of article X is not confined to the matter of highway borrowing.

That is the section that gives us a $250,000 limitation that we can borrow without amending the constitution under certain circumstances.

It has been the feeling of the committee that when we deal with that section and report back here what we think ought to be done in the way of state borrowing, that the whole matter should be taken care of at that time instead of including it with these other proposals.

MR. HUTCHINSON: Mr. Chairman, Mr. Brake, is there some anticipated liability with regard to the world war I bonus still outstanding?

MR. BRAKE: Not a thing. There couldn't be.

MR. HUTCHINSON: Then I do not suppose there could be with regard to the $50 million bond issue, either?

MR. BRAKE: That is right.

MR. HUTCHINSON: So I do not understand why we do not treat them the same. If you are going to refer to section 20a in this committee proposal, why do you not refer to the bond issue referred to in section 10?

MR. BRAKE: We could have, and it could be done here in committee of the whole. We did not, however, because there are other things in that section, and we thought we would take care of everything in that section at one time.

MR. HUTCHINSON: Then you would save and reserve and preserve any possible liability as to the $50 million bond issue at another time?

MR. BRAKE: No. There isn't any. The bonds have all been paid and there is nothing to be done.

MR. HUTCHINSON: Then I want to ask Mr. Brake why we cannot strike from the committee proposal any reference to 20a?

MR. BRAKE: There will be certainly in the committee report on the subject matter of section 10 a reference to this to show what has become of it.

It could have been done with these others, but we thought we ought to handle everything under section 10 at one time instead of carrying it over into this other field.

MR. HUTCHINSON: Well, Mr. Brake, somehow or other, apparently, I do not seem to get the distinction in treatment between the bond issue in section 10 and the bond issue in section 20a.

MR. BRAKE: Section 20a has nothing else in it. It is just that bond issue, and that is that. Here we have something that is going to have serious attention and quite a lot of action in connection with state borrowing which is part of that same section.

Perhaps we were in error in thinking we ought to take care of this $50 million at the same time we are taking care of the rest of section 10, but that is nevertheless the reason we did it that way as I have attempted to make clear.

MR. HUTCHINSON: Well, then, Mr. Brake, I should like to ask why it is necessary to make any reference at all to section 20a in the new constitution if there is no possible liability under that section. Why do we try to save it?

MR. BRAKE: I just answered that to someone on the other side of the hall. Someone will be looking to see what became of that section. This tells you, and it only requires about 2 words to do it.

MR. HUTCHINSON: And you propose, Mr. Brake, that as to the $50 million referred to in section 10 that if anybody wanted to find out what became of that matter they would have to find out in another manner; but as to section 20a they could find it out by looking at the section within the text of the constitution which refers to section 20a of article X; but there is nothing, apparently, going to be there in the new constitution, no reference as to the $50 million in section 10 and we have to look for that in one of the committee reports?

MR. BRAKE: We think we should take care of that in the same company that it is now in.

MR. HUTCHINSON: All right. Maybe we can take care of it in style and drafting. (laughter)

CHAIRMAN BAGINSKI: Mr. Van Dusen.

MR. VAN DUSEN: I think that Mr. Hutchinson has anticipated my point. I raised the same question in finance and taxation that he has raised here, and I think because of the possibility of dealing with it in finance and taxation at a later point, it seemed that when we got to dealing with section 10, if the $50 million bond issue was the same as that in this provision here, we were relying on style and drafting to put the reference to section 10 into this provision.

CHAIRMAN BAGINSKI: Mr. Bentley.

MR. BENTLEY: Mr. Chairman, I should like to ask Mr. Brake a question about section 26 as it now reads:

> The state shall borrow not to exceed $80,000,000.00, pledge its faith and credit and issue its serial notes or serial bonds therefor, with maturities of not to exceed $1,000,000.00 in each of the years 1956 to 1965, both inclusive, and $13,000,000.00 in each of the years 1966 to 1968, both inclusive, and $14,000,000.00 in each of the years thereafter, . . .

et cetera.

Now, do I understand that all the notes and bonds issued or authorized by section 26 have been issued?

MR. BRAKE: I think not, Mr. Bentley. I think they borrowed $60 million.

MR. BENTLEY: Then I am wondering if the language of the second paragraph of the committee proposal should not read: ". . . for the retirement of such notes and bonds as may have been or are hereafter issued . . ."?

MR. BRAKE: There will not be any more bonds issued. The legislature has closed the account and assumed the liability in a general fund obligation.

MR. BENTLEY: Do I understand correctly that section 26 does not authorize any more notes or bonds to be issued?

MR. BRAKE: It is all over.

CHAIRMAN BAGINSKI: Mr. Higgs.

MR. HIGGS: Mr. Chairman, I suggest to Mr. Brake, and for the convenience of the style and drafting committee, if section 20a is referred to and covered in the accompanying reports and schedules, in accordance with Resolution 41, section 4, I think that can be handled very nicely in the manner in which Mr. Hutchinson suggested.

In the accompanying reports, of course, you can explain why it was left out, and the information then would be preserved, but it would be left out of the body of the constitution.

CHAIRMAN BAGINSKI: Mr. Hodges.

MR. HODGES: Mr. Chairman, I was just going to state the same thing, that we have an address to the people to explain why we are going to delete certain things. If we have to explain in the constitution everything we do, we will have in the new constitution just about everything we have in the present constitution.

CHAIRMAN BAGINSKI: Mr. Hatch.

MR. HATCH: Mr. Chairman, earlier Delegate Nord referred to some question concerning the numbering of section 23a. I should like to call to the attention of the delegates page 189 of the cumulative supplement of our Michigan Statutes Annotated where it states that 2 amendments to article X, both numbered 23, were submitted to the voters at the general election of November 5, 1946 and both were adopted.

It goes on to explain what actually happened. I would suggest that, after the committee proposal is referred to style and drafting, they give serious consideration to the numbering of these sections and determine whether any language change is necessary.

CHAIRMAN BAGINSKI: Any further amendments to Committee Proposal 6? If not, it will pass.

Committee Proposal 6 is passed.

The secretary will read.

SECRETARY CHASE: From the committee on executive branch, by Mr. Martin, chairman, **Committee Proposal 7,** A proposal to provide that the governor shall issue writs of election to fill vacancies in the legislature. Amends article VI, section 6.

Following is Committee Proposal 7 as read by the secretary, and the reasons submitted in support thereof:

The committee recommends that the following be included in the constitution:

[He] THE GOVERNOR shall issue writs of election to fill such vacancies as occur in the senate or house of representatives IN A MANNER PRESCRIBED BY LAW.

Mr. Martin, chairman of the committee on executive branch, submits the following reasons in support of Committee Proposal 7:

The committee on executive branch recommends that section 6, article VI be included in the constitution in substantially its present form except to recognize the right of the legislature to prescribe procedure for the filling of vacancies in the senate or house of representatives when the governor has determined, as he is required to do, whether a special election shall be held or that the vacancy shall be filled at the next general election. The present provision of the constitution has worked well in conjunction with the provisions of the present Michigan election law and the committee sees no reason for change other than to recognize the need for legislative action to establish procedure upon the determination of the governor as to when the election shall be held.

It is, therefore, recommended that this section with the proposed committee amendment be adopted by the convention.

CHAIRMAN BAGINSKI: Mr. Martin.

MR. MARTIN: Mr. Chairman, the committee on executive branch unanimously recommends the proposal be adopted in its form here presented.

The requirement on the governor is a mandatory one that he shall decide whether a special election be held or will permit it to be held at the next general election.

The only effect of the proposed new language is to permit the legislature to do what it has already done, and that is to provide a manner in which such elections shall be held.

Therefore, the committee recommends the language proposed here.

CHAIRMAN BAGINSKI: Are there any amendments to Committee Proposal 7? If not, it will pass.

Committee Proposal 7 is passed.

The secretary will read.

SECRETARY CHASE: From the committee on executive branch, by Mr. Martin, chairman, **Committee Proposal 8,** A proposal to provide that the governor may convene the legislature on extraordinary occasions. Amends article VI, section 7.

Following is Committee Proposal 8 as read by the secretary, and the reasons submitted in support thereof:

The committee recommends that the following be included in the constitution:

[He] THE GOVERNOR may convene the legislature on extraordinary occasions.

Mr. Martin, chairman of the committee on executive branch, submits the following reasons in support of Committee Proposal 8:

The committee on executive branch recommends the adoption of section 7, article VI, without substantial change. The present provision has become less needed today in view of the fact that the legislature now holds annual sessions, but it is still necessary from time to time to hold extraordinary sessions and the committee feels that the need for such sessions is a determination which should be made by the governor in the light of all the facts existing at any particular time.

The committee, therefore, recommends that section 7, article VI of the present constitution be adopted with the proposed committee amendment.

CHAIRMAN BAGINSKI: Mr. Martin.

MR. MARTIN: Mr. Chairman and members of the committee, the committee on executive branch unanimously recommends the adoption of this section in its present form except for the minor change indicated.

The question was raised as to whether there should be other methods of calling extraordinary sessions. The committee felt that if an extraordinary session were necessary it should be called by the governor.

The calling of extraordinary sessions is somewhat less necessary today than it was in the past, perhaps because we now have annual sessions, but there may be times occasionally when it is necessary, and the committee feels that the provision should remain in the constitution.

CHAIRMAN BAGINSKI: Mr. Hutchinson.

MR. HUTCHINSON: Mr. Chairman, I should like to ask Mr. Martin to tell me what an extraordinary occasion is. (laughter)

MR. MARTIN: Well, Mr. Chairman and Mr. Hutchinson, I do not know that we can say what an extraordinary occasion is, but the language has been used for a long time, and it seems to imply something other than the basis on which the general session usually came together; that is, some form of emergency or some provision, some action, which the legislature either did not take because it did not think it was necessary or which it did not take because at the time it came together in general session it was not necessary to consider it —something of an emergency nature.

MR. HUTCHINSON: Mr. Chairman, I wonder why, as a matter of common parlance, we do not refer to these as special sessions? I wonder why we do not forthrightly empower the governor to convene the legislature in special session rather than on extraordinary occasions?

I ask that because, as I understand it on the basis of Mr. Martin's exposition of the point, an extraordinary occasion is any time that the governor wants to convene the legislature in special session.

He has that power and under another section of the constitution, as it now stands at least, the legislature in special session convened on such extraordinary occasions can consider only such matters as the governor submits.

I do not wish to be unduly technical, pedantic, or fly speck things here, but I was just wondering whether the committee had given any consideration at all to a change in that phraseology as it appears there.

That phrase "extraordinary occasions" has always puzzled me. Did you give any consideration to it?

MR. MARTIN: Mr. Chairman, I should say that the committee did not consider the idea of changing this wording "extraordinary occasions" to the wording "special session."

Explanation—Matter within [ ] is stricken, matter in capitals is new.

We felt that the present wording "extraordinary occasions" had a well established meaning from antiquity, and still had that meaning, and that it would suffice.

MR. HUTCHINSON: Mr. Chairman, I should then like to ask Mr. Martin this question. I am seeking his opinion on this proposition. If the committee on style and drafting should change that phraseology from "extraordinary occasions" to "special session", do you think that would bring about any change in substance?

MR. MARTIN: Mr. Chairman, I think the general concept of a special session is that it does involve something unusual, some unusual need, but I should like to think that over. I think the meaning of the original phrasing is well established and in this case it seems to me it is well to retain it.

MR. HUTCHINSON: All right, thank you, Mr. Martin.

CHAIRMAN BAGINSKI: Dr. Nord.

MR. NORD: Mr. Chairman, I should like to ask Mr. Martin a question, too. The question I raise has to do with whether or not, in his opinion, the lieutenant governor would be able to act in this way in the event of the absence of the governor, and whether the change in language from the word "he" to the words "the governor" could possibly cause any trouble in that respect?

MR. MARTIN: I do not think so, Dr. Nord. The word "he" referred back originally to the governor, and the lieutenant governor is acting in the shoes of the governor when he is serving in that capacity. I do not think there would be any question as to the authority of the lieutenant governor, if he were properly acting as governor, to call an extraordinary session.

MR. NORD: The reason for my question, Mr. Martin, is that I see in section 16 of article VI the lieutenant governor is not called the governor on that occasion. It is stated that he has the powers and duties of the governor, but he is not called the governor and, therefore, if you use the words "the governor" here, I just wondered whether that would cause any unnecessary trouble. I do not think it does, actually, but the thought just crossed my mind.

MR. MARTIN: I do not think so. I think that this is a matter which the committee on style and drafting might consider. I do not believe, however, it causes any difficulty that I can envisage.

MR. NORD: Thank you.

CHAIRMAN BAGINSKI: Mr. Downs.

MR. DOWNS: Mr. Chairman, in view of the recent exchange, I should like to ask Mr. Hutchinson if he construes the powers of the committee on style and drafting to be such that they would be empowered to change the words "extraordinary occasions" to the words "special session" if that committee so desired, before it was presented back to the convention?

MR. HUTCHINSON: Mr. Chairman, in answer to the question, I will stick my neck out this far and say that if a majority of the committee, the committee on style and drafting, concluded that there was no change in substance arising from such an alteration, it might dare do so. That is as far as I can go. If the committee on style and drafting concludes that there might be a change in substance resulting from such an alteration, I suppose the committee members would not feel themselves empowered to change the phraseology.

MR. DOWNS: Well, Mr. Chairman, I was perhaps unduly —I hope unduly—anticipating a problem in raising the suggestion that we might have an occasion on which the committee on style and drafting might think that something did not change the substance, yet the convention did.

In this particular case I do not pretend to speak as to which language is better. But it would suggest that if we do have differences in language, that so far as possible they should be resolved at this stage of our procedure, instead of waiting until the documents come out of the committee on style and drafting, at which time there might be a great number of changes which might not seem substantive to the committee but which may appear extremely substantive to the delegates sitting on this convention floor. This would possibly cause a terrific procedural log jam.

I am not speaking of this with respect to this particular occasion. What I am really seeking to indicate at this time is that it would appear wise to get as many of these problems as possible resolved on the floor of this convention before these matters are referred to the committee on style and drafting.

CHAIRMAN BAGINSKI: The Chair wishes for a moment to refer to the fact that there is an amendment offered by Mr. Prettie which may clear the air, if it is read.

The secretary will please read it.

SECRETARY CHASE: Mr. Prettie offers the following amendment to Committee Proposal 8:

1. Amend page 1, line 7, after "legislature" by striking out "on extraordinary occasions" and inserting "in special session"; so that the language will then read: "The governor may convene the legislature in special session."

CHAIRMAN BAGINSKI: Mr. Prettie.

MR. PRETTIE: Mr. Chairman, in view of the discussion that we have had this evening on this point, and in view of the points raised by Mr. Hutchinson to which Mr. Downs indirectly addressed himself, and, further, dealing with Mr. Martin's statement to the effect that he thinks this ought to be given some consideration, and particularly in view of the provisions presently appearing in section 22 of article V, which is the one, I think, to which Mr. Hutchinson referred, which reads: "No bill shall be passed at a special session of the legislature . . .", et cetera.

It seems to me that this is the time, in the committee of the whole, to get these matters before us, to clarify this language, and bring about a consistency if section 22 of article V is to be continued; and to obviate the problem we might be faced with in a report brought forward by the committee on style and drafting. I therefore offer the amendment which the secretary has read.

CHAIRMAN BAGINSKI: Mr. Cudlip.

MR. CUDLIP: Mr. Chairman, I subscribe to Mr. Prettie's remarks. That was one thing I was going to say. The other was that it should be obvious to the members of the convention who create these committees and who prescribe their orbit, that the committee on style and drafting is bound by the rules of this convention. And if I am going to act as chairman of that committee there is not going to be any change in the meaning of anything that comes from this floor, because that is far beyond our power.

But I do think that in the committee of the whole when these questions arise they should be clarified because it would be awkward for our committee if they were not. We would not assume such powers, I am sure, but when there are these matters I think they should be cleared up.

The average voter, including myself, is used to the governor's power to call a special session of the legislature. Because of the conflict, as pointed out by Delegate Prettie, it would be well to resolve these matters while we are meeting together as a committee of the whole.

CHAIRMAN BAGINSKI: The question is on the amendment offered by Mr. Prettie.

Mr. Martin.

MR. MARTIN: Mr. Chairman, I am not sure that this amendment greatly changes the import of the provision, but I do think that the words "extraordinary occasions" create a picture which is desirable. In other words, the governor should not call socalled special sessions just for ordinary reasons. He ought not to have the legislature in socalled special sessions on all occasions. I think the word "extraordinary" puts an emphasis on the calling of these special sessions only when there is a real and a distinct necessity for so doing.

CHAIRMAN BAGINSKI: Mr. Elliott.

MR. A. G. ELLIOTT: I wonder, Mr. Chairman, if it might not be wise, since there is no clear indication that those two phrases mean the same thing, for this to be sent back to the executive committee for their report?

CHAIRMAN BAGINSKI: The question is on the amend-

ment offered by Mr. Prettie. Those in favor will please signify by saying aye. Opposed, no.

The amendment is adopted.

Are there any further amendments to Committee Proposal 8? Mr. Powell.

MR. POWELL: Mr. Chairman and fellow delegates, I do not have a specific amendment to offer at this time, but I do wish to mention one thing. In the committee on style and drafting this afternoon we had before us, among others, Committee Proposal 3, which is one of a series from this committee which changes the pronoun "he" to the noun "the governor." I think it was Delegate Mrs. Cushman who raised the point: are we going to change that throughout the article?

If you examine the article you will notice that in section 2 the executive power is vested in the governor. You will notice I slipped by and did not say whether it was going to be chief executive power or just executive power is vested in the governor.

The next section starts out "The governor . . ." and so forth, but then there follow 6 sections beginning with the pronoun "he" instead of the noun "the governor" being repeated. To us on the committee this afternoon, giving it as little thought as we had in the committee, "he" looked simpler and more direct and saved a little space. But apparently the committee on executive branch has some reason to think that in each section they should start off with the words "the governor."

I personally, and I think the members of the committee on style and drafting, would be interested in hearing the point of view of Mr. Martin or any other member of the committee as to why the words "the governor" should appear at the beginning of each of these sections.

CHAIRMAN BAGINSKI: Mr. Bentley is recognized.

MR. BENTLEY: Mr. Chairman, I have a motion on the secretary's desk.

SECRETARY CHASE: Mr. Bentley moves that when the committee rises, it recommend that Committee Proposal 8 be referred to the committee on legislative powers.

MR. BENTLEY: Very briefly, Mr. Chairman, I think that since we have changed the wording from "extraordinary occasions" to "special session" it would now be helpful to the committee on style and drafting, and probably the convention, to allow the committee on legislative powers to consider this section in conjunction with section 22 of article V.

CHAIRMAN BAGINSKI: Mr. Marshall.

MR. MARSHALL: I simply rise, Mr. Chairman, to answer Delegate Stanley Powell's question. The only reason I can see for changing the language from "he" to "the governor" is that most of us on the committee did not wish to go around referring to Miss Donnelly as "he" when she becomes governor. (laughter)

CHAIRMAN BAGINSKI: The question is on the motion of Mr. Bentley that when the committee of the whole rises, it recommend that Committee Proposal 8 be referred to the committee on legislative powers. Those in favor of the motion please signify by saying aye. Opposed, no.

The motion does prevail.

The secretary will please read.

SECRETARY CHASE: From the committee on executive branch, by Mr. Martin, chairman, **Committee Proposal 9,** A proposal to provide that the governor may convene the legislature at other places when the seat of government becomes dangerous. Amends article VI, section 8.

Following is Committee Proposal 9 as read by the secretary, and the reasons submitted in support thereof:

The committee recommends that the following be included in the constitution:

[He] THE GOVERNOR may convene the legislature at some other place when the seat of government becomes dangerous from [disease or a common enemy] ANY CAUSE.

Mr. Martin, chairman of the committee on executive branch, submits the following reasons in support of Committee Proposal 9:

The committee on executive branch recommends that provisions of section 8, article VI of the constitution be broadened to recognize that disease and the threat of enemy attack are not the only possible sources of danger to the seat of government. The possibility that there might be radioactive fallout not directly accompanied by enemy attack and not specifically involving disease is one such possibility. For this reason the committee recommends that the governor be authorized to convene the legislature at some other place than the seat of government if the present location becomes dangerous to human life from any cause.

It is, therefore, recommended that section 8, article VI, as amended by the committee, be adopted by the convention.

Explanation—Matter within [ ] is stricken, matter in capitals is new.

CHAIRMAN BAGINSKI: Mr. Martin.

MR. MARTIN: Mr. Chairman and members of the committee, the proposed change was made to recognize the fact that disease and enemy attack, referred to in the present provision, are not the only possibilities today which may make the seat of government dangerous. One, in particular, of course, relates to radioactive fallout which may create a situation not directly connected with enemy attack at all and possibly not connected directly with disease.

I realize that this is a time of peril—world peril—and that the seat of government might become dangerous from some of these other causes, so the provision is slightly broadened to take care of that situation.

CHAIRMAN BAGINSKI: Mr. King.

MR. KING: Mr. Chairman, I raise this question just as a point of clarification and to set the record straight. Did we refer Committee Proposal 8 to a particular committee and, if so, was it the committee on executive branch to which it was referred?

CHAIRMAN BAGINSKI: It was recommended that the proposal be referred to the committee on legislative powers.

MR. KING: For what reason, may I inquire, Mr. Chairman?

CHAIRMAN BAGINSKI: It was recommended that the proposal be referred to the committee on legislative powers on motion of Mr. Bentley.

Mrs. Cushman.

MRS. CUSHMAN: Mr. Chairman and fellow delegates, since we are going to get into the question of language there, I wonder if we need the 3 words "for any cause" contained in the proposal. I think that if the seat of government becomes dangerous it will surely become dangerous from a cause. It seems to me that we could very well do without those 3 words to which I have referred, if we are going to get into that type of detail at this time.

CHAIRMAN BAGINSKI: Mr. Martin.

MR. MARTIN: Well, Mr. Chairman, if I might comment on that, the committee considered doing just that, just ending the provision with the word "dangerous", but they felt the additional words added or contributed some meaning to the provision and so they proposed their addition in the proposal now before us.

CHAIRMAN BAGINSKI: Mr. Hubbs has an amendment. Mr. Hutchinson.

MR. HUTCHINSON: Mr. Chairman, before we get on to another amendment, I should like to ask Mr. Martin whether consideration was given to the following: if the seat of government becomes dangerous from any cause, why should the governor's power be restricted to convening the legislature at some other place?

I would think the problem would then be to have him empowered to move the entire government somewhere else. I simply wonder why we should restrict it to empowering the governor to convene the legislature at some other place.

MR. MARTIN: Well, Mr. Chairman, there is another provision of the constitution which gives the legislature authority

to set up a general provision with respect to the removal of the entire government, as I understand it, in the event of enemy attack.

This provision does not relate solely to enemy attack and it was thought desirable to have it included, although the other provision could perhaps be broadened to include this.

This is a possibility, but we had no jurisdiction over the provisions with respect to the actions of the legislature in the event of enemy attack.

MR. HUTCHINSON: Mr. Chairman, I think that I get the point, and being a loyal legislative man I kind of support the idea. But I wonder whether it is actual and pertinent in this day and age.

I mean to say, back there in earlier times it probably was conceived that if the governor could get the legislature assembled somewhere else the legislature could then pass a law which would provide for the removal of the rest of the government.

I just wonder if in this day and age, and in the circumstances in which we find ourselves, that would happen; whether, as a practical matter, that would happen. I daresay the whole government would move out of Lansing before the legislature ever assembled. (laughter)

CHAIRMAN BAGINSKI: Mr. Hubbs has offered an amendment which the secretary will read.

SECRETARY CHASE: Mr. Hubbs offers the following amendment to Committee Proposal 9:

1. Amend page 1, line 8, after "from" by striking out "any cause" and reinserting "disease or a common enemy"; so that the language will then read: "The governor may convene the legislature at some other place when the seat of government becomes dangerous from disease or a common enemy."

CHAIRMAN BAGINSKI: Mr. Hubbs.

MR. HUBBS: Mr. Chairman, Mr. Martin, I respectfully submit that there are probably a great many causes as a result of which the seat of the legislature could become dangerous—such as termites in the floor of the capitol building, or too many people of the opposite party sitting around throwing rocks at the governor and things like that. (laughter)

I think "any cause" is far too broad and that the original intent of this language was to protect the government from disease or a common enemy, and nuclear fallout or nuclear attack, in my opinion, would be a common enemy. Therefore, I think that the original language in that section is completely appropriate and that the phrase "any cause" is far too broad, because we all could think of a great many reasons why a particular governor would say: "This is a dangerous place to be." (laughter)

CHAIRMAN BAGINSKI: Mr. Martin.

MR. MARTIN: Mr. Chairman, if I might comment on those remarks, the only problem you get into in returning to the original language is that you avoid the very cause about which most people are concerned today, that is the problem of radioactive fallout. The danger is danger to human life. If Mr. Hubbs wishes to offer an amendment such as "dangerous to human life from any cause" I am sure the committee would have no objection. But that is the point with which we are concerned.

MR. HUBBS: Mr. Chairman, I do not believe that anybody would conceive that nuclear fallout was not a common enemy. I should also like to have this question answered. If we were having nuclear fallout here in Michigan, where would you go?

MR. MARTIN: The nuclear fallout might result from our own detonations which would hardly be a common enemy, Mr. Chairman.

MR. HUBBS: Mr. Chairman, it would be a common enemy of all the people, not necessarily an enemy at war. I think the phrase "any cause" is much too broad. It brings in the possibility of skulduggery.

CHAIRMAN BAGINSKI: The question is on the amendment offered by Mr. Hubbs. Those in favor please signify by saying aye. Opposed, no. The Chair is in doubt. The delegates will please rise.

Members of the committee who are in favor of the amendment of Mr. Hubbs will please raise their hands.

SECRETARY CHASE: Twenty-nine.

CHAIRMAN BAGINSKI: Those opposed?

The amendment is not adopted.

Are there any further amendments to this proposal?

SECRETARY CHASE: None on file, Mr. Chairman.

CHAIRMAN BAGINSKI: If not, it will pass.

Committee Proposal 9 is passed.

Dr. Anspach.

MR. ANSPACH: Mr. Chairman and fellow delegates, I was pleased to observe that we are spending a great deal of time in the selection of words because this is very, very important so we will have no misunderstanding.

Noah Webster found it so one day when his wife discovered him sitting with a very attractive young lady on his lap, and she commented, "I am surprised!"

He replied, "No, my dear, you are amazed. I am surprised!" (laughter)

CHAIRMAN BAGINSKI: Mr. Batchelor.

MR. BATCHELOR: I move we rise.

CHAIRMAN BAGINSKI: The question is on the motion of Mr. Batchelor that the committee of the whole rise and report back to the convention. Those in favor will please signify by saying aye. Opposed, no.

The motion prevails.

[Whereupon, the committee of the whole having risen, President Nisbet resumed the Chair.]

PRESIDENT NISBET: The Chair recognizes Mr. Baginski.

MR. BAGINSKI: Mr. President, the committee of the whole has had under consideration several proposals concerning which the secretary will now make a complete and detailed report.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 4,** A proposal to provide communication by the governor to the legislature on the condition of the state; **Committee Proposal 7,** A proposal to provide that governor shall issue writs of election to fill vacancies in the legislature; and **Committee Proposal 9,** A proposal to provide that the governor may convene the legislature at other places when the seat of government becomes dangerous; and reports these 3 committee proposals back to the convention without amendment and with the recommendation that they do pass.

PRESIDENT NISBET: Without objection, **Committee Proposal 4, Committee Proposal 7** and **Committee Proposal 9** are referred to the committee on style and drafting. I hear none. They are so referred.

For Committee Proposal 4 as referred to the committee on style and drafting, see above, page 369.

For Committee Proposal 7 as referred to the committee on style and drafting, see above, page 375.

For Committee Proposal 9 as referred to the committee on style and drafting, see above, page 377.

SECRETARY CHASE: The committee of the whole has also had under consideration **Committee Proposal 5,** A proposal pertaining to the inclusion in the constitution of all of section 9 of article XII except the portion relating to bank notes or paper credit; reports this back to the convention with an amendment and with the recommendation that the amendment be agreed to and that the proposal, as thus amended, do pass.

[The following is the amendment recommended by the committee of the whole:

1. Amend line 7, by striking out "Sec. 9.".]

PRESIDENT NISBET: The question is on the amendment. Those in favor say aye. Those opposed, no.

The amendment is agreed to and without objection, **Committee Proposal 5,** as amended, is referred to the committee on style and drafting.

Following is Committee Proposal 5 as amended and referred to the committee on style and drafting:

The committee recommends that the following be included in the constitution:

No general law providing for the incorporation of trust companies or corporations for banking purposes, or regulating the business thereof, shall be adopted, amended or repealed except by a vote of 2/3 of the members elected to each house of the legislature.

SECRETARY CHASE: The committee of the whole has also had under consideration **Committee Proposal 6,** A proposal to preserve the state's responsibility under sections 20a, 23a, 24, 25 and 26 of article X of the 1908 constitution; reports this proposal back to the convention with an amendment and the recommendation that the proposal, as thus amended, do pass.

[The following is the amendment recommended by the committee of the whole:

1. Amend the second paragraph, line 13, after "section 26" by inserting "of article X".]

PRESIDENT NISBET: The question is on the amendment. Any discussion? If not, those in favor say aye. Opposed, no.

The amendment is agreed to and without objection, **Committee Proposal 6,** as amended, is referred to the committee on style and drafting.

Following is Committee Proposal 6 as amended and referred to the committee on style and drafting:

The committee recommends that the following be included in the constitution:

Nothing in this constitution shall be construed as in any way impairing the obligation of the state in connection with any benefits conferred by or issue of bonds authorized by the provisions of article X, sections 20a, 23a, 24, 25 and 26 of the Constitution of 1908, and the obligation of the state in connection with said sections is specifically recognized.

For the retirement of such notes and bonds as may have been issued under section 26 of article X of the 1908 constitution, there is hereby appropriated from the general fund each year during their life a sum equal to the amount of principal and interest payments due and payable in each such year.

SECRETARY CHASE: Mr. President, the committee of the whole has also had under consideration **Committee Proposal 8,** A proposal to provide that the governor may convene the legislature on extraordinary occasions; reports this proposal back to the convention with the recommendation that it be referred to the committee on legislative powers.

PRESIDENT NISBET: The question now is on concurring in the recommendation of the committee of the whole. Those in favor, say aye. Those opposed, no.

The recommendation is concurred in and **Committee Proposal 8,** together with the amendment thereto adopted by the committee of the whole, is referred to the committee on legislative powers.

[Mason's Manual, sec. 388, par. 3, provides that "Reference of a measure to committee when amendments are pending, carries the amendments to the committee with it. . . ."]

For Committee Proposal 8 as referred to the committee on legislative powers, see above, page 375; for the amendment, see above, page 376.

SECRETARY CHASE: Mr. President, that completes the report of the committee of the whole.

PRESIDENT NISBET: Announcements.

SECRETARY CHASE: The following announcements have been filed with the secretary:

The president's office has a group of letters which were returned. There is no return address or signature inside, making it impossible to return them to the correct delegate. The contents are a newsletter on con con, volume I; and Journal 38 under date of December 5. Those who are interested can obtain these from the president's office.

Mr. Danhof has requested that the following correction be made in Delegate Proposal 1601 which was offered by him. Delegate Proposal 1601, A proposal to provide for a house of representatives based upon districts, which districts shall be entitled to increased representation in accordance with population growth. There was an error in the drafting of this proposal. In line 15 of the proposal strike out the figure "2" after the word "and".

May the secretary suggest that he has been importuned by several delegates that inasmuch as you each have on your desks a composite calendar of committee meetings and a composite notice of public hearings which is prepared every day and placed there, that the reading of all of these notices of committee meetings and notices of public hearings be dispensed with except in cases where there may be changes, and if that is agreeable we will follow that practice.

The committee on public information will be meeting in room E this evening after the session. The committee designation does not appear on the calendar. Ink White is chairman.

The subcommittee on budget and fiscal management of the committee on executive branch will be meeting this evening following the adjournment. Mr. Dan E. Karn, chairman.

The committee on administration will be meeting in the conference room Tuesday, tomorrow, at 1:00 o'clock. Walter DeVries, chairman.

The committee on declaration of rights, suffrage and elections, which has on your composite calendar a notice of a committee meeting for tomorrow morning at 9:00 o'clock in room F, wishes it to be emphasized that this will be the last opportunity for the delegates to be heard on their delegate proposals before that committee.

Otherwise, the announcements are as they appear on the calendar.

PRESIDENT NISBET: Mr. Chase, may I announce that Messrs. Joiner, Combs and Kelly have informed me today that almost all of the delegate proposals are now typed, with very few exceptions. The proposals have been put in the mailboxes of the delegates. Will the delegates please get them and see to it that they get to the secretary's office. If, for some reason, a proposal which you put in is not there, will you please see the directors of research because there is some question in their minds as to the drafting of a few of the proposals. In other words, the proposals are practically all finished that have been put in, and should be presented to the convention tomorrow.

SECRETARY CHASE: I have the following requests for leave of absence from the session:

Mr. Romney requests to be excused from tomorrow's session due to a preconvention speaking engagement at the national convention of the American farm bureau association.

Mr. Bentley requests leave of absence from the session of Wednesday afternoon, December 13.

Mr. Karn wishes to be excused from Thursday's session, December 14, because of a speaking engagement before the Jackson exchange club.

Mr. Sablich wishes to be excused from the session of Friday, December 15.

PRESIDENT NISBET: Without objection they will be excused.

SECRETARY CHASE: That is all of the requests for leave, Mr. President.

PRESIDENT NISBET: Mr. Dade.

MR. DADE: Mr. President, I move that this convention adjourn.

PRESIDENT NISBET: The question is on the motion for adjournment. Those in favor say aye. Opposed, no.

The convention stands adjourned until 2:00 o'clock tomorrow afternoon.

[Whereupon, at 9:45 o'clock p.m., the convention adjourned until 2:00 o'clock p.m., Tuesday, December 12, 1961.]

FORTY-FIRST DAY

Tuesday, December 12, 1961, 2:00 o'clock p.m.

PROCEEDINGS

PRESIDENT NISBET: The convention will please **come to order.**

The minister who will give the **invocation** today comes through the courtesy of one of our delegates, Mr. Tom Sharpe. He is the Reverend William Varian, Pastor of the Nazarene Church, Howell.

Will you please rise.

REVEREND VARIAN: Blessed heavenly Father, we thank Thee for the privilege of bringing this convention to Thee.

We thank Thee that Thy word declares that Thy arm is not shortened that Thou canst not save; and that Thy ear is not closed that Thou canst not hear; and that Thy eye is not heavy that Thou canst not constantly watch Thy people.

We are glad today for the opportunity to bring this very important part of our life to Thee, and ask Thy divine direction for each one of the delegates represented here.

May we have the judgement of God which is greater than the judgement of men. May we have the wisdom of God which is more far reaching than the wisdom and understanding of men.

Grant to us to know Thy will and may we somehow understand better the truth that is found within Thy word and within Thy wisdom.

Grant Thy grace and blessing to each one today and may there be, when this session is over, a sense in which we can say: "Thy will has been done."

We ask these favors in the name of Christ our Savior. Amen.

PRESIDENT NISBET: The **roll call** will be taken by the secretary. All present please vote aye.

SECRETARY CHASE: Have you all voted? The machine is now locked and the attendance will be recorded.

Mr. President, a quorum of the convention is present.

Excused to conduct committee hearings in Detroit: Messrs. Blandford, Bledsoe, Boothby, G. E. Brown, T. S. Brown, Mrs. Cushman, Messrs. Dehnke, Donald Doty, Gover, Greene, W. F. Hanna, J. A. Hannah, Hodges, Hood, Kirk, Liberato, Lundgren, Mahinske, Marshall, Nord, Plank, Rood, Sablich and Yeager.

Absent with leave: Messrs. Kelsey, Knirk, Romney and Shackleton.

Absent without leave: None.

PRESIDENT NISBET: Perhaps I might offer this comment. One reason for the high number of absentees today is that one of our committees, the committee on legislative organization, is meeting in Detroit.

Reports of standing committees.

SECRETARY CHASE: Mr. Martin, for the committee on executive branch, introduces

Exclusion Report 2001, A report recommending the exclusion of article VI, section 14.

The committee on executive branch recommends that article VI, section 14 of the present constitution be excluded entirely from the new constitution.

Mr. Martin, for the committee on executive branch, submits the following reasons in support of Exclusion Report 2001:

Over ½ of the states have no such provision. The type of dual office holding prohibited by section 14 involves such obvious incompatibility, there appears to be no need for constitutional prohibition.

PRESIDENT NISBET: Referred to the committee of the whole and placed on general orders.

SECRETARY CHASE: Mr. Martin, for the committee on executive branch introduces

Exclusion Report 2002, A report recommending the exclusion of article VI, section 15.

The committee on executive branch recommends that article VI, section 15 of the present constitution be excluded entirely from the new constitution.

Mr. Martin, for the committee on executive branch, submits the following reasons in support of Exclusion Report 2002:

Very few states have similar provisions. Much of the justification for section 15 disappeared with the seventeenth amendment to the United States constitution (1913), which provided for the selection of United States senators by popular election instead of by election by state legislatures.

PRESIDENT NISBET: Referred to the committee of the whole and placed on general orders.

[Exclusion Reports 2001 and 2002 are presented here in full as they later die in committee.]

SECRETARY CHASE: The committee on administration, by Mr. DeVries, chairman, reports back to the convention **Resolution 55,** A resolution requesting authority and funds for the committee on declaration of rights, suffrage and elections to hold hearings in the cities of Detroit, Saginaw and Flint; without amendment, and with the recommendation that the resolution be adopted.

Walter DeVries, chairman.

For Resolution 55 as offered, see above page 358.

PRESIDENT NISBET: Mr. DeVries.

MR. DeVRIES: Mr. President and fellow delegates, this recommendation had the unanimous approval of the committee on administration.

The committee will hold morning and afternoon hearings on Monday, December 18, in the city of Detroit, and then move on to Saginaw on Monday evening, stay overnight, and hold hearings there the following morning. The committee will then move to Flint for an afternoon hearing and will then return to Lansing, at a total cost not to exceed the amount of $300.00.

Mr. President, I move the adoption of the resolution.

PRESIDENT NISBET: The question is on the adoption of the resolution. Any discussion? If not, all in favor say aye. Opposed, no.

The resolution is adopted.

SECRETARY CHASE: That is all of the standing committee reports, Mr. President.

PRESIDENT NISBET: Reports of select committees.

SECRETARY CHASE: None.

PRESIDENT NISBET: Communications from state officers.

SECRETARY CHASE: None.

PRESIDENT NISBET: **Introduction, first reading and reference of proposals.**

ASSISTANT SECRETARY KNAPP: Messrs. Buback, Baginski, Madar, Durst, T. S. Brown, Miss Hart, Messrs. Stamm and Leppien introduce

Delegate Proposal 1650, A proposal to provide an alternate form of county government. Amends article VIII.

PRESIDENT NISBET: Referred to the committee on local government.

ASSISTANT SECRETARY KNAPP: Messrs. Higgs, Everett, Heideman and McLogan introduce

Delegate Proposal 1651, A proposal to establish a constitution and law revision commission to be appointed by the chief justice. Amends article V.

PRESIDENT NISBET: Referred to the committee on legislative powers.

ASSISTANT SECRETARY KNAPP: Mr. Higgs introduces **Delegate Proposal 1652,** A proposal to provide that the accused shall have the right of appeal in all criminal prosecutions and that the appellate court shall have the power to reduce sentences. Amends article II.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

ASSISTANT SECRETARY KNAPP: Messrs. Martin and Leppien introduce **Delegate Proposal 1653,** A proposal to provide for the establishment and support of county and district departments of health. Amends article VIII.

PRESIDENT NISBET: Referred to the committee on local government.

ASSISTANT SECRETARY KNAPP: Messrs. Rush and Rood introduce **Delegate Proposal 1654,** A proposal to amend article V, section 2, to increase the number of seats in the senate and to provide for senatorial districts.

PRESIDENT NISBET: Referred to the committee on legislative organization.

ASSISTANT SECRETARY KNAPP: Mr. Marshall introduces **Delegate Proposal 1655,** A proposal to retain article XVI, section 5, relative to vacancies in office and the continuity of government in emergencies.

PRESIDENT NISBET: Referred to the committee on legislative powers.

ASSISTANT SECRETARY KNAPP: Mr. Rood introduces **Delegate Proposal 1656,** A proposal to provide that the power of eminent domain shall be exercised only for public use or purpose, that necessity be determined by jury, and that compensation be paid for damages as well as value of property taken. Amends article XIII, sections 1 and 2.

PRESIDENT NISBET: Referred to the committee on miscellaneous provisions and schedule.

ASSISTANT SECRETARY KNAPP: Mr. Bonisteel introduces **Delegate Proposal 1657,** A proposal to amend the powers of the board of governors of Wayne State University. Amends article XI, section 16.

PRESIDENT NISBET: Referred to the committee on education.

ASSISTANT SECRETARY KNAPP: Mr. Nord introduces **Delegate Proposal 1658,** A proposal to authorize circuit court judges to give the attorney general the power to subpoena witnesses for certain purposes. Amends article VII by adding a section.

PRESIDENT NISBET: Referred to the committee on judicial branch.

ASSISTANT SECRETARY KNAPP: Mrs. Daisy Elliott, Messrs. Young and Greene introduce **Delegate Proposal 1659,** A proposal to resolve the submission of conflicting provisions to the electors at the same election. Amends article III by adding a section.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

ASSISTANT SECRETARY KNAPP: Mrs. Daisy Elliott, Messrs. Young and Greene introduce **Delegate Proposal 1660,** A proposal to provide for the encouragement and operation of a system of primary and secondary education. Amends article XI, section 1.

PRESIDENT NISBET: Referred to the committee on education.

ASSISTANT SECRETARY KNAPP: Mrs. Daisy Elliott, Messrs. Young and Greene introduce **Delegate Proposal 1661,** A proposal to expressly permit the passage of mortgage moratorium legislation. Amends article II, section 9.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

ASSISTANT SECRETARY KNAPP: Mrs. Daisy Elliott and Mr. Young introduce **Delegate Proposal 1662,** A proposal to provide for appeal to the courts of decisions of the civil service commission. Amends article VI.

PRESIDENT NISBET: Referred to the committee on executive branch.

ASSISTANT SECRETARY KNAPP: Mr. Young and Mrs. Daisy Elliott introduce **Delegate Proposal 1663,** A proposal to guarantee more impartial consideration in civil service appointments. Amends article VI, section 22.

PRESIDENT NISBET: Referred to the committee on executive branch.

ASSISTANT SECRETARY KNAPP: Messrs. Baginski and Barthwell introduce **Delegate Proposal 1664,** A proposal to allow resident veterans, widows and persons over 62 years of age to deduct $3,000.00 from the assessed valuation of realty. Amends article X.

PRESIDENT NISBET: Referred to the committee on finance and taxation.

ASSISTANT SECRETARY KNAPP: Mr. Suzore introduces **Delegate Proposal 1665,** A proposal to provide that provisions on home rule be retained and that there be no loss of home rule status. Amends article VIII, sections 20 through 29.

PRESIDENT NISBET: Referred to the committee on local government.

ASSISTANT SECRETARY KNAPP: Mr. Suzore introduces **Delegate Proposal 1666,** A proposal to provide that there shall be no personal income tax. Amends article X.

PRESIDENT NISBET: Referred to the committee on finance and taxation.

ASSISTANT SECRETARY KNAPP: Mr. Woolfenden introduces **Delegate Proposal 1667,** A proposal to establish a senate elected on population and a house of representatives with one member from each county. Amends article V, sections 2 and 3.

PRESIDENT NISBET: Referred to the committee on legislative organization.

ASSISTANT SECRETARY KNAPP: Mr. Woolfenden introduces **Delegate Proposal 1668,** A proposal to permit salary increases for judges of courts of record during term of office. Amends article XVI, section 3.

PRESIDENT NISBET: Referred to the committee on miscellaneous provisions and schedule.

ASSISTANT SECRETARY KNAPP: Mr. Woolfenden introduces **Delegate Proposal 1669,** A proposal to grant probate judges the same tenure of office as other courts of record. Amends article VII, section 14.

PRESIDENT NISBET: Referred to the committee on judicial branch.

ASSISTANT SECRETARY KNAPP: Mr. McCauley introduces **Delegate Proposal 1670,** A proposal to elect judges of courts supported by a county from the county of electorate. Amends article VII by adding a new section.

PRESIDENT NISBET: Referred to the committee on judicial branch.

ASSISTANT SECRETARY KNAPP: Mr. McCauley introduces **Delegate Proposal 1671,** A proposal to authorize the incorporation of metropolitan districts and to define their purposes and powers. Amends article VIII, section 31.

PRESIDENT NISBET: Referred to the committee on local government.

ASSISTANT SECRETARY KNAPP: Mr. Boothby introduces **Delegate Proposal 1672,** A proposal to provide for the diversion of a portion of the gasoline taxes for the enforcement of boating laws and regulations. Amends article X, section 22.

PRESIDENT NISBET: Referred to the committee on finance and taxation.

ASSISTANT SECRETARY KNAPP: Messrs. Boothby, Gust and J. B. Richards introduce **Delegate Proposal 1673,** A proposal to provide that the legis-

lature may submit any bill passed by it to the electors to determine whether the same should become law. Amends article V, section 38.

PRESIDENT NISBET: Referred to the committee on legislative powers.

ASSISTANT SECRETARY KNAPP: Mr. Boothby introduces

Delegate Proposal 1674, A proposal to require a financial certificate to be attached to all bills requiring an expenditure of funds. Amends article V by adding a section.

PRESIDENT NISBET: Referred to the committee on legislative powers.

ASSISTANT SECRETARY KNAPP: Mr. Boothby introduces

Delegate Proposal 1675, A proposal to provide that the territory of no senate district shall be changed without the consent of a majority of the electors residing therein. Amends article V.

PRESIDENT NISBET: Referred to the committee on legislative organization.

ASSISTANT SECRETARY KNAPP: Miss Andrus and Mr. Rajkovich introduce

Delegate Proposal 1676, A proposal to establish a board to supervise the community and junior colleges. Amends article XI.

PRESIDENT NISBET: Referred to the committee on education.

ASSISTANT SECRETARY KNAPP: Mr. Heideman introduces

Delegate Proposal 1677, A proposal to substitute the word separation for division, and to limit exercise within branches. Amends article IV, sections 1 and 2.

PRESIDENT NISBET: Referred to the committee on miscellaneous provisions and schedule.

ASSISTANT SECRETARY KNAPP: Mr. Woolfenden introduces

Delegate Proposal 1678, A proposal to retain and delete certain sections concerning corporations. Amends article XII.

PRESIDENT NISBET: Referred to the committee on miscellaneous provisions and schedule.

Second reading of proposals.

SECRETARY CHASE: Nothing on that order, Mr. President.

PRESIDENT NISBET: Third reading of proposals.

SECRETARY CHASE: None.

PRESIDENT NISBET: Motions and resolutions.

Mr. Hutchinson.

MR. HUTCHINSON: Mr. President, in view of the impending visit of the former president tomorrow, I move that when the convention adjourns today, it stand adjourned until 10 minutes past 10:00 o'clock in the forenoon tomorrow.

PRESIDENT NISBET: The question is on the motion of Mr. Hutchinson. Any discussion? If not, all in favor say aye. Opposed, no.

The motion prevails.

Mr. Hutchinson.

MR. HUTCHINSON: Mr. President, having decided to adjourn this afternoon, following the conclusion of the session, to an early hour tomorrow, and keeping in mind the present provisions of rule 56 which says that any delegate proposal which would be introduced tomorrow would have to be filed with the secretary at least 3 hours prior thereto, and also keeping in mind that that would unduly cut off the consideration of the introduction of proposals tomorrow, I now move that the provisions of rule 56 be suspended, insofar as necessary, to permit the introduction of delegate proposals tomorrow, so long as they are filed with the secretary not later than 11:30 a.m.

That will permit the filing of delegate proposals with the secretary during the morning hours and when the convention reconvenes after recess tomorrow afternoon, then these delegate proposals which are filed during the morning tomorrow may be introduced just as though we were actually starting in the afternoon session as usual.

PRESIDENT NISBET: Mr. Downs.

MR. DOWNS: Mr. President, fellow delegates, I rise to speak in favor of the motion. I think the adoption of this motion will permit the convention to have the introduction of proposals tomorrow in the usual manner.

PRESIDENT NISBET: Is there any objection to Mr. Hutchinson's motion? If not, it will prevail.

The motion prevails.

SECRETARY CHASE: Mr. White moves that that portion of rule 2 which bars accredited press and television photographers from the floor of the convention during plenary sessions be suspended for the period beginning with the entry of General Eisenhower into the convention hall on Wednesday, December 13, and ending not more than 7 minutes thereafter.

PRESIDENT NISBET: Mr. White.

MR. WHITE: Mr. President, fellow delegates, you will have noted that this provides for the suspension of the rules for this Wednesday morning's session only. It implements an arrangement we have worked out with the cooperation of our regular news correspondents to permit picture coverage of General Eisenhower's appearance for a period not to exceed 7 minutes from the time he enters the hall.

PRESIDENT NISBET: Is there any objection to Mr. White's motion?

The motion prevails.

SECRETARY CHASE: Mr. Martin offers

Resolution 58, A resolution requesting authority and funds for the committee on executive branch to hold hearings in the city of Pontiac.

Following is Resolution 58 as offered:

Whereas, 1,444 classified employees of the state of Michigan live and work in Oakland county, more such employees than in any other county in the state except Ingham and Wayne; and

Whereas, Many other varied and diverse points of view are represented in Oakland county; and

Whereas, In consideration of the numerous requests from constituents expressing interest in the subject of civil service and a desire to be heard; now therefore be it

Resolved, That such hearings be held in the city of Pontiac on Tuesday, December 19, 1961, in order to guarantee the possibility of maximum participation of interested citizens in the Oakland county area and that the public be given sufficient notice; and be it further

Resolved, That the convention appropriate the necessary funds to defray the cost of travel for the members of the subcommittee to and from Pontiac and other expenses necessary and incidental to the holding of such hearings.

PRESIDENT NISBET: Referred to the committee on administration.

SECRETARY CHASE: Those are all the resolutions on file, Mr. President.

PRESIDENT NISBET: Unfinished business.

SECRETARY CHASE: Nothing on that calendar, Mr. President.

PRESIDENT NISBET: Special orders.

SECRETARY CHASE: None.

PRESIDENT NISBET: General orders.

SECRETARY CHASE: None.

PRESIDENT NISBET: Announcements.

SECRETARY CHASE: The secretary would like to announce that because of the serious misprinting of the journal of yesterday, Journal 40 will be reset and reprinted in the proper form.

Also, the apples furnished yesterday were furnished by Mr. J. B. Richards, and today they were furnished by Mr. Rush. (applause)

The committee on administration requests that the following announcement be made:

In the matter of individual delegates sending out journals, proposals, booklets and handbooks to their constituents, it is requested by the committee on administration that you do not seal the envelopes as these can be

sent third class bulk mail rather than first class letter rate. Thank you. The committee on administration.

In addition to the composite calendars of committee meetings and public hearings, there are the following announcements:

The subcommittee on corporations of the committee on miscellaneous provisions and schedule will meet in room G, Wednesday, tomorrow, at 3:00 o'clock p.m. Claud Erickson, chairman. Henry L. Woolfenden, subcommittee chairman.

An announcement with respect to the subcommittees of the committee on education. There will be a meeting of the primary and secondary committee and the school finance committee in room J immediately after the session today.

The committee on local government will continue the meeting on townships at 7:30 this evening. Also, the committee on local government will meet at 8:30 a.m. tomorrow, Wednesday, in parlors A and B of corridor A in the civic center to consider the subject of county government. The meeting will adjourn at 9:30 a.m. sharp. The committee will reconvene in the afternoon for the continuation of the committee meeting in their own room, room A.

That is all of the announcements on file, Mr. President.

PRESIDENT NISBET: Mr. White.

MR. WHITE: Mr. President, I should like to call the attention of the delegates to the fact that they should wear their badges when they come to convention hall tomorrow. The doors will be handled by police officers and if delegates will wear their badges this will save the police trouble, and will save the delegates trouble, too.

I might make one other announcement. There will be 2 cameras on the floor of the convention tomorrow during the morning session, but they will be in the hands of employees of the convention — our film documentary crew — so if you see them you will know what they are doing. Thank you.

SECRETARY CHASE: Delegate Davis wishes to be excused from the session of Friday to address a meeting of the Michigan agricultural council.

PRESIDENT NISBET: Without objection, he will be excused.

SECRETARY CHASE: That is all of the items on the secretary's desk, Mr. President.

PRESIDENT NISBET: Just to be certain about tomorrow's session and to make it run as well as possible, may I say this. To assist us in keeping our arrangement for the hour of assembly at 10:10 a.m., would delegates please be in the convention hall or in their seats at 10:00 o'clock or at least by 5 minutes after 10:00 because tomorrow we will be operating on a very tight schedule.

Following the presentation to General Eisenhower of a gavel that has been prepared for him, opportunity will be given the delegates to shake hands with the general. Just so that this can be done quickly, it will be done in sections. The general will stand in this particular spot right here, and after this section over here on my right has been given a nod or some signal of that nature they will rise.

Mr. Allen, the first man in the row, will come around to the front of the secretary's desk, go by the place around in front of where Mr. Chase stands, and if the delegates in that section follow Mr. Allen on that course they can shake hands with the general who will be standing here, and return to their seats. As soon as this section has completed shaking hands with the general, we will then start with Mr. Austin in the next section, and then Mr. Balcer in the next section and then Mr. Batchelor in the next section.

If you will wear your badges, this will be a means of introduction to our guest as well as a means of getting you into the hall, because to the policemen on the door you are not Delegate Tom Jones but just some guy trying to get in unofficially. If you do not wear your badge you will cause Mr. White a lot of trouble, and he is already in enough trouble making arrangements for the meeting tomorrow. (laughter) Thank you very much.

We are anxious not to delay the general because it is important that he follow his schedule and address a meeting at Michigan State University tomorrow. We are anxious that our arrangements for tomorrow run smoothly and that there be no delay.

If there are no other announcements, the Chair recognizes Mr. Danhof.

MR. DANHOF: Mr. President, I move that we adjourn.

PRESIDENT NISBET: Mr. Danhof moves the adjournment of the session. The question is on adjournment. Those in favor say aye. Those opposed say no.

The motion prevails. We are adjourned until 10:10 a.m. tomorrow.

[Whereupon, and in pursuance of the order previously made, at 2:25 o'clock p.m., the convention adjourned until 10:10 a.m., Wednesday, December 13, 1961.]

FORTY-SECOND DAY

Wednesday, December 13, 1961, 10:10 o'clock a.m.

PROCEEDINGS

PRESIDENT NISBET: The convention will please come to order.

Our invocation this morning is through the courtesy of one of our own delegates, Tom Sharpe. Our invocator is Reverend Dale Stewart, Associate Minister of the Presbyterian Church of Howell.

Will you please rise.

REVEREND STEWART: Our Father, God, we give thanks unto Thee that Thou hast given into the hands of the elected representatives of the people the government of these United States.

We pray that Thy presence might be with these delegates assembled here, that it might be as a pillar of cloud by day and a pillar of fire by night, guiding and directing us amidst chaos, confusion, conflict and compromise.

We give Thee thanks that in Thy providence Thou hast given wisdom, courage and strength to those leaders in all generations who consciously looked unto Thee for guidance and support.

We pray that those assembled here who seek Thy purpose might be given Thy power to perform it in Thy name.

We give Thee thanks that Thou hast never relieved the burden of concern from that leader in our midst who has been relieved of the burden of office of president of these United States.

We pray that those assembled here might have their concern enlarged and enlightened, that we might seek more than personal advantage or party power, local gain or states' rights; that we might even look beyond the welfare of our own nation and seek the welfare of all Thy children throughout the world.

May Thy presence be with us, for we make our prayer in Jesus' name. Amen.

PRESIDENT NISBET: The roll call will be taken by the secretary. All present, please vote aye.

SECRETARY CHASE: Mr. President, a quorum of the convention is present.

Absent with leave: None.

Absent without leave: Mr. Pellow.

PRESIDENT NISBET: Without objection, Mr. Pellow is excused.

[During the proceedings Mr. Pellow entered the chamber and took his seat.]

The Chair recognizes Mr. Dean Doty.

MR. DEAN DOTY: Mr. President, I move that the regular order of business be temporarily postponed and that the convention receive an address by General Dwight D. Eisenhower, former president of the United States.

PRESIDENT NISBET: Without objection, the motion prevails and it is so ordered.

The Chair recognizes Mrs. Butler.

MRS. BUTLER: Mr. President, I move that the president appoint a special committee consisting of 6 delegates to wait upon former President Eisenhower and to escort him to the rostrum.

PRESIDENT NISBET: The question is on the motion of Mrs. Butler. Is there objection?

If not, the motion prevails and the president appoints Delegates Bentley, Conklin, Figy, J. A. Hannah, Millard, and Pollock to escort the president to the rostrum. Without objection, the appointments are approved.

Mr. Bentley.

MR. BENTLEY: Mr. President, will the members of the committee just named meet immediately outside of the president's office for this purpose.

PRESIDENT NISBET: May I just mention this to the photographers who are present. Shortly after the president begins his speech I will raise my hand like this [indicating] and that will be the signal that you people should leave the floor for the purpose of the address by Mr. Eisenhower. Will you please observe that signal.

The Chair now recognizes the delegate from the eighteenth senatorial district, Mr. Romney, for the purpose of making the introduction. Mr. Romney, will you approach the rostrum, please.

The sergeant at arms.

SERGEANT AT ARMS DES ROCHER: Mr. President, I announce the special committee appointed to wait upon and escort the former president.

PRESIDENT NISBET: Permit them to approach the rostrum. (standing ovation)

Mr. Romney, will you assume the Chair?

[Whereupon, Mr. Romney assumed the Chair.]

VICE PRESIDENT ROMNEY: Mr. President, Governor Swainson, honored guests including our wives and staff, delegates:

It is my high honor to introduce the Honorable Dwight D. Eisenhower. (applause)

GENERAL EISENHOWER: Governor Swainson, President Nisbet, Mr. Romney and delegates to this convention, and honored guests:

By the terms of the invitation that I received from this convention by the hand of Mr. Romney, I have the honor of speaking to you briefly as you meet in the bipartisan purpose of rewriting the constitution of the great state of Michigan.

Such a purpose, pursued in such a setting, cannnot fail to bring to me, as an out of stater, renewed respect for my late friend, Senator Arthur Vandenberg. As the first individual of our nation to give true significance and real depth to the concept of bipartisanship in our country's international affairs, it would be strange indeed if any of you engaged in this worthy effort should fail to feel a sense of guidance from his spirit and his mature wisdom. I am certain that all of you here are convinced—as I am—that his passing was a grievous loss to his state, his nation, and indeed, the world.

Because in political work at the state level, I have had no experience whatsoever, it would be far from fitting for me to urge upon you any notion of mine respecting either the form or content of the document you are engaged in preparing. But since I did have the privilege of serving for 8 exciting years as head of the federal government, it might be appropriate for me first to express to you some personal thoughts as to the desirable relationships between state and federal levels of government in this nation.

The several states—at least the first 13 of them—are the collective parents of the federal government; our constitution recognizes that each of them possesses a sovereignty limited only by the special grants of authority given by them to the central government.

If it were possible for us to have here, at this moment, a temporary reincarnation of any one of the framers of our constitution, telling us with what care those men defined this relationship and how they believed it would develop, I am quite sure that we would be astonished by the differences in his vision in 1787 and the reality of 1961. By the same token our spiritual visitor would be bewildered, if not dismayed, by the result he would see around him.

For example, some years ago a court decision extended the meaning of that section of the constitution which accords to the congress the power to regulate commerce among the several states so as to include in the term, interstate commerce, also those things that affect such commerce. The changes that have grown out of that decision are indeed great —for the better or for the worse is here beside the point. But, because we are bound by the judicial interpretations made of any part of the constitution, the effect has been to place in the hands of the central government more power over the nation's internal commerce than was previously and popularly supposed to have been intended.

So, as you set about the rewriting of your constitution, it seems to me you must take account of other governmental changes in our nation. Such an examination is timely and I have felt—and surely you have felt—that there are tendencies developing that affect adversely our cherished ideas of government and tend to revise the structure built by those who preceded us. Of those principles I refer specifically to one drawn from the colonists' bitter struggle against tyranny and from man's progress from serfdom to liberty and to self government. That principle is this: those who would be and would stay free must stand eternal watch against undue centralization of power in government. Faithful to that principle, our founder saw to it that governmental authority would be diffused—counter balanced—checked, hedged about, and restrained so as to minimize the possibility of its abuse. In that principle and in those precautions, we have believed, was established the true anchor of our freedom.

Due to our decentralized system, most political and economic questions can be approched in many reasonable ways. With our constitutional checks and balances, with our state and territorial governments, our multiplicity of county and municipal governing bodies, without emphasis upon individual initiative and community responsibilities, there is encouraged unlimited experimentation in the solving of America's problems, and through this diversified approach the effect of error is restrained, calamitous mistakes are avoided, and the self governing genius of our people is perpetually renewed.

In this vast system of self government, the state echelon is of vital importance, and was so recognized by our forefathers.

Being accustomed to decentralized authority, we are too often inclined to accept it as an ordinary fact of life, and to assume that it will always endure. But in other lands millions, helpless before concentrated power, have been born and lived and have died in slavery, or have lost their liberties to despots.

Today, in those areas, any one who speaks does so as the government directs, or he speaks no more. A meeting such as this one would be unthinkable in those regions.

Contemplating these things, we in America gain renewed determination to hew to the principle of diffusion of power, knowing that only thus can we be sure to avoid drifting irretrievably—even though so slowly as to be almost imperceptible—into the grasp of some form of centralized government.

Our governmental system has survived longer than any other attempt to conduct a nation's affairs by the authority of the people themselves. Yet we have often been cautioned by responsible observers that in the measurable future, if present trends continue, the states will finally become nothing but powerless satellites of the national government in Washington.

The tendency of bureaucracy to grow in size and power does not bear the whole of the blame for the march of political power toward Washington. Never under our constitutional system could the national government have siphoned away so much state responsibility and authority without the neglect, acquiescence, or unthinking cooperation of the states themselves. Every state failure to meet a pressing public need has created the opportunity, developed the excuse and fed the temptation for the national government to poach on the state's preserve. Year by year, responding to transient popular demands and localities seeking special advantage, the congress has increased federal functions. The pendulum of power has swung far from our states toward the federal government.

Eight years ago, I publicly expressed the conviction that unless we preserve the traditional power and responsibilities of state government, with revenues necessary to assure exercise of that power and discharge those responsibilities, there will not forever be preserved the kind of America we have known. Eventually, we shall have, instead, another form of government, and therefore quite another form and kind of America. That conviction I hold just as firmly today.

In that same year I obtained congressional authority to establish a commission to study and report on intergovernmental relations. The study brought long needed perspective and pointed the way to improvement in areas of mutual concern to the states and to the federal government. Unfortunately, sound recommendation and resultant action are not always the same.

Opposed though I am to needless federal expense and centralization of power, I found it necessary at times, during my terms in the presidency, to urge federal action in some areas traditionally reserved to the states. In each instance, state inaction or inadequate action, coupled with undeniable national need forced emergency federal intervention. But I tried to keep the word "emergency" of real significance in such legislation so that the invasion, which I felt forced to accept, would not be of long duration. These recommendations applied to such problems as classroom shortages, slum clearance, urban renewal, relief in the case of natural disasters and matters of traffic safety.

In varying degrees and varying circumstances, both federal and state responsibility in some types of activity has been, is now, and will continue to be indispensable. But I would urge that the states insistently contend for the fullest possible responsibility, well knowing that with responsibility there goes, in the long run, authority.

Take the matter of traffic safety. This happily is still a state and local responsibility, but day by day the American people are paying a fearful price for the failure of the states to agree on such safety essentials as standards for licensing of drivers and vehicles and basic rules of the road. Each year, from 35,000 to 40,000 persons are killed on our highways, a million and a half citizens injured, of whom many are disabled for life. In addition, the estimated cost to the country in the year 1956, for example, was almost $5 billion. We simply cannot let this go on. The human and material costs of inaction are prohibitive. Who is going to fill the vacuum? Someone must and someone will. I believe that the federal government has a function, but only as a leader and a coordinator. The basic responsibility and authority should be with the states among which there should be effective cooperation.

I believe that the preservation of our states as vigorous, powerful governmental entities is essential to permanent individual freedom and to national growth. But it is idle to champion states' rights without upholding state's responsibilities as well. So I hope that the rewritten draft of Michigan's constitution will define carefully the responsibilities that its people believe should belong to Michigan, and that they will forthrightly assume and exercise the authority essential to the carrying out of those responsibilities.

So acting, they will do something positive and effective about problems that directly concern their fortunes, their welfare and their lives.

Of and by and for themselves, they will be using their money; improving their present; exploring their future—as these things can never be done by a distant and centralized bureaucracy, always preoccupied with its own amplification and the manufacture of inflexible master plans for the infinitely varied circumstances of 50 sovereign states and many thousand communities.

The responsibilities, best exercised by the people of a state, can be returned to them in all 50 states. And Michigan can lead the way.

The only limit placed by the constitution on the kind of state government established by its people is that it must be republican in form. I believe therefore that this body, awakened to the trends of our time, has an opportunity to establish

greater respect for the vital place that state government has fulfilled in our national development. Michigan's example of self examination and its assertion of responsibility and authority could lead to like action in other states of the union.

And, my friends, let us not forget that the American people are not completely dependent upon congressional action to accomplish any amendment in the national constitution if they should believe such action desirable. On the application of the legislatures of 2/3 of the several states, the congress is compelled to call a convention for proposed amendments. It is quite clear that if 2/3 of the states wanted our constitution so amended as to define more exactly proper relations between the federal and state governments, they could accomplish this by calling such a convention and gaining the approval of 3/4 of the states.

Now a final word which may be shooting far wide of the target at which you are aiming. It is my hope that in its preamble or in the accompanying documents of your new constitution, there will be greater emphasis placed, particularly before our young people, on the opportunities before them, [rather] than merely upon the problems and fears of our age. The hope of life long individual security is a natural one; but it is not an inspirational impulse. It does not encourage exploration, venturesomeness, ambition. Unless the individual is inspired to dream, to work and accomplish according to his own needs and desires, he will be courting a dreary, dull and eventually an insecure life indeed. I pray that the language of your new constitution will bring to its people a message of hope, a feeling of greater courage and confidence, a pioneering urge to sustain and enjoy freedom to the full.

Put it this way—if our people are to be tireless, two fisted champions and workers for America's great goals, they should have two fisted, sturdy, alert and tireless state governments to preserve their opportunities and give them a real example.

And I should add, my friends, Merry Christmas. (applause)

VICE PRESIDENT ROMNEY: We are very fortunate that after this inspiring talk General Eisenhower has indicated a willingness to answer questions. As the delegates know, we agreed that questions would be filed with the committee on public information by Monday night. Now, a number of questions have been filed and those delegates filing such questions will be asked to state their questions first. Following that, time permitting, other questions will be permitted from other delegates. I shall call on the delegates in the order in which I have been given the questions by the public information committee.

Delegate Koeze.

MRS. KOEZE: Delegate Koeze, Grand Rapids, Michigan. General Eisenhower, would you care to comment on the implications of the Baker vs. Carr case, the socalled Tennessee apportionment case, now before the United States supreme court? I am not asking that you state your views on any decision the court may render, but rather on the implications that the appealing of this case to the federal supreme court may portend in regard to federal-state relationships.

GENERAL EISENHOWER: I do not believe I could comment usefully on the very last part of your question [concerning] what this distribution may portend.

I do believe this—this is largely a state business, of course, and my idea is merely a personal one. There is, of course, first of all, the obvious distribution according to population —population alone. But through great areas of the United States we also have great problems of distribution.

Now, as I understand it, each man in the legislative body is to represent the views of people of a region. If these people are difficult to reach, it is obviously more difficult for him to represent them accurately if he does it completely by the population ratio. I would think, therefore, that there must be a good, common sense compromise, although I think always the great weight would be according to numbers. But certainly if you have a great city, you can much more easily reach those people than you can through large districts where populations are sparse.

As I say, I believe the basic thing must be population; the rest of it, some modification because of special conditions.

MRS. KOEZE: Thank you, sir.

VICE PRESIDENT ROMNEY: Mr. King.

MR. KING: Raymond L. King, delegate from the city of Pontiac. General Eisenhower, the tenth amendment to the United States constitution, as you know, provides that

> The powers not delegated to the United States by the constitution nor prohibited by it to the states, are reserved to the states respectively, or to the people.

My question is this. What special responsibility, if any, does this amendment place upon us as delegates to a state constitutional convention?

GENERAL EISENHOWER: My goodness, I gave my whole talk on that one. (laughter) As a matter of fact, I suspect from the tenor of your question that you are thinking exactly as I am, and that is that the states themselves do have a great responsibility, because if you duck your responsibility, then it goes to the federal government, and along with that, final authority is bound to go.

You cannot give all your tax money to one central authority and then suppose that the people of the United States are not going to call for an accounting of the way this is done. Once you have to account for the way you distribute this money, that is the authority of the federal government. So I would think that the convention would want very clearly to spell out what they think their authorities and comparable responsibilities are in this field.

MR. KING: Thank you, sir.

VICE PRESIDENT ROMNEY: Delegate Blandford.

MR. BLANDFORD: Delegate Blandford from Grand Rapids, Michigan. General Eisenhower, I believe my question has been fairly well answered already by your first answer. As you well know, of course, having worked 8 years with congress —and many of us wish it could have been longer— (laughter)

GENERAL EISENHOWER: Thank you. (applause)

MR. BLANDFORD: The house of representatives is elected on a population basis, and the senate, of course, is elected on an area basis with 2 senators from each state. This results in a diffusion of power.

In your judgment is this system—electing one house by population and the other by area—a sound method of selecting a legislative body?

GENERAL EISENHOWER: Well, now, first I will comment on your comment. Then I will try to answer your question. (laughter)

You said that many of you wished that I could have stayed in Washington longer. I will point out, I believe it was Republican pressure that made it impossible for me to try. (laughter)

MR. BLANDFORD: One of our errors. (laughter)

GENERAL EISENHOWER: Let us remember this. The states were entities in themselves and believed they were sovereign entities before they established the federal government. So their compromise demanded that while the house could be organized on the basis of population in the several states, each state would have 2 senators. I think that this was —and I think the reading of the papers of the time would corroborate this belief, this opinion—that they were anxious to keep the proper sovereign power in the states except that given specifically and that they had equal representation, each as a state rather than as a group of people, this was the compromise they believed in.

Now, when you go to applying this same principle further down, I am not so certain of my ground and I do not believe I could quite go along, for the simple reason that a county or a subdivision of a state is not sovereign, and I would believe that the practice of using population as the principal factor in producing a representative legislature is good. Although, as I remarked before, I think other factors must be taken into consideration, particularly distribution of population.

MR. BLANDFORD: Thank you, sir.

VICE PRESIDENT ROMNEY: Delegate Prettie.

MR. PRETTIE: Delegate Prettie from the Hillsdale-Branch representative district. General Eisenhower, in your masterful

address you commented that Michigan had the opportunity to lead the way.

Let us assume that this constitutional convention recommends and the people adopt a constitution designed to strengthen government at the state level so as to reverse the trend toward greater centralization of power at the federal level. Let us further assume that state services would require additional state tax revenues. Do you know of any way in which the citizens of this state could be relieved of any portion of the federal tax burden to offset an increased state tax burden?

GENERAL EISENHOWER: I do not want to be too sure of an older man's failing memory. I have constantly urged that as the states took back more responsibility they should have some revenue. I remember in one instance—I forget the exact power we wanted to give back—but we were going to give back the taxes on the tolls on telephone calls. Whether or not we thought it was possible to give back those taxes to a specific state rather than to the generality, I do not now recall, and I would not wish to be too positive in my answer.

But I believe if you set before the United States a real shining example of self dependence and individual initiative —in other words, a true example of Americanism as we have believed it has existed and has brought us to this stage of our development—I believe you are going to get a lot of other states excited and pretty soon you might have it easily within your power to make this apply to all the states rather than merely to one. That, of course, would be the ideal.

MR. PRETTIE: Thank you, sir.

VICE PRESIDENT ROMNEY: Delegate Tweedie.

MR. TWEEDIE: Delegate Tweedie from the St. Clair-Sanilac representative district, and specifically from Port Huron. General Eisenhower, generally speaking, what length of term of office do you feel is best for heads of the executive department and what factors should be considered in determining this length?

GENERAL EISENHOWER: Well, personally, I think 2 years is too short for any elective official, certainly above the city level.

I believe that for governors—of course, this is state's business and I do not wish to be guilty of invading that, even in advice—but I think 2 years is too short. In this day and time of almost instant communication, when anyone in public office is brought much closer to the people than he ever was before, I believe it should be at least 4 years. Along with this I believe we should some day have a constitutional amendment that will make our congressmen's terms 4 years, being elected at the same time as the president, rather than having 2 years, and running back and forth, thinking every single instant of campaigning. That simply is not good practice in my opinion.

MR. TWEEDIE: Thank you, sir.

VICE PRESIDENT ROMNEY: Delegate Bentley.

MR. BENTLEY: Mr. President—that is a habit I got into in Washington, sir, so I am not prepared to abandon it—this question has been touched upon, of course, sir, in your speech, and also in Mr. Prettie's remarks. Do you think the federal government can and should return many of its functions to the states, along with additional sources of tax revenue? And have you any further specific suggestions?

I recall, sir, that in 1957, I believe, you did make a very specific recommendation to the conference of state governors about returning the tax on long distance telephone calls. I am wondering if you have any other suggestions, principally in those areas in which you said you felt, as president, compelled to act which had formerly been reserved to the states.

GENERAL EISENHOWER: Well, we are talking now about getting back revenues. This, of course, is a very tough thing and that is why I believe very positive and definite action will be required. Whenever any level of authority has gotten its hands onto any part of the treasury and of our tax money, they are not going to give it up very easily. But I believe pressures can be brought so they will. I think there are a lot of things to be borne in mind. Remember, the federal government lives largely upon income tax. It lives on profits. There have to be profits. But I think the federal government should not constantly seek to invade those areas which have been traditionally reserved to the localities and states, the fields of sales taxes and excise taxes of all kinds. I think the best way it could be done would be an agreement in the fields of taxation. Naturally, states and localities get tired of trying to live just on property taxes.

The owner of a farm—and I am one of them—believes that taxes go up too high if local needs are met. So I think a good study will have to be developed in the fields of taxation that properly or, let us say, primarily belong to the several echelons of government before we are going to get anywhere. In the meantime, I believe that all sorts of things need attention; everything from schools to urban renewal and every other kind of problem that has been too much neglected by the states, and has been passed along to the federal government with the money. I feel that both the revenue and the responsibility in these areas should be returned to the states.

MR. BENTLEY: Thank you, Mr. President.

VICE PRESIDENT ROMNEY: Delegate Higgs.

MR. HIGGS: Delegate Milton E. Higgs representing Bay county. General Eisenhower, during the period of your presidency, it seemed to many that you exercised a great deal of restraint in the use of federal power in domestic crises. Would that have been based upon a faith in the power of the people through state and local units of government to solve such problems; and, if so, do you feel that such a faith was justified in the light of subsequent events?

GENERAL EISENHOWER: Well, I would say that is almost a principal tenet of my political faith. I believe, with Jefferson, that the government that is closest to the people is the best. Whether it is in welfare or any other kind of governmental activity—the development of roads, public buildings and everything else—if the people close by feel keenly about it and are paying for it, I think there is always greater efficiency. I do not have very great respect for a bureaucracy's efficiency in handling the business and affairs that range all the way from Seattle to Pensacola. There are many, many problems that are so localized or so colored by the locality that we need more of this kind of government and less of the centralized kind.

Now, the only time that I can recall intervening with force was when I sent troops to Little Rock and there, I believe, a very definite principle was involved. There was a properly issued order of a federal court, and the federal court had approved a plan for the locality, working with the school board, and so on. All was in accordance with the supreme court's decision.

The president of the United States is sworn to defend the Constitution of the United States and to execute its laws. Now, if any mob action, organized or unorganized, or indeed a local national guard tries to get in the way of a federal court's order being properly executed, then I think the president has no other recourse but to intervene.

But I do say that we must recall this. I think it was Wilson who used a very beautiful phrase, "The highest form of efficiency is the spontaneous cooperation of a free people." If we are going to live with freedom, if we are going to venerate and depend upon freedom and preserve it, we must not lose this faith in the ability of the locality to handle its own affairs to the maximum. Now, I do not mean to say there are not certain federal functions. Of course there are. But it is always a better relationship if, when the federal government has to intervene, there is a study made with the state and locality to see what the problems are. And then, let's cooperate; let's have a proper field or sector allotted to the federal government. But, my goodness, let's not surrender our responsibilities and our opportunities to better ourselves to the hands of someone sitting in Washington, 3,000 miles away, or less.

MR. HIGGS: Thank you, sir.

VICE PRESIDENT ROMNEY: Delegate Sharpe.

MR. SHARPE: Delegate Sharpe from Shiawassee representative district. General Eisenhower, according to the secretary of health, education and welfare, Abraham Ribicoff, the federal government anticipates a constantly expanding welfare program. Do you see in the near future any major changes in

this area that would be of some relief to the taxpayer, particularly in state-federal aid to dependent children programs?

GENERAL EISENHOWER: Well, just right now, the details of this particular law I couldn't recall and therefore I would not want to discuss them. I do have very definite opinions about your general question. I do not believe that we should be pressing our welfare problems more and more to Washington. I believe we ought to take them more to ourselves. I believe they will be done better, more sympathetically and more in accordance with the needs of, not merely the people who are helpless and cannot help themselves, but more nearly in accordance with our own self respect and our own concern for helpless human beings. I just distrust this business of putting all of our welfare and relief programs and that kind of activity in the hands of someone who would rather make speeches than to go around and see whether someone is hungry. I simply believe that is local business.

MR. SHARPE: Thank you, sir.

VICE PRESIDENT ROMNEY: Delegate Durst.

MR. DURST: Delegate Durst of Adrian. President Eisenhower, the state of Michigan now has more than 120 executive agencies, departments and boards. Would you have any comment on the desirability of streamlining this multiplicity of agencies? And would you have any comment on the maximum number of executive agencies that a chief executive can efficiently administer?

GENERAL EISENHOWER: Well, of course, when you have 120, that, in my opinion—and I hope I am not too severely criticized for my opinion—is an absurdity. (laughter) In other words, if you are going to have good people running things and the chief executive is going to take a real interest in them, well then, it can't be done. If, on the other hand, they are of minor importance and are related to others, any principle of sound logic applied to the matter of organization would group some of them under a man with whom the governor or the president could deal.

Now this is a matter, strangely enough, that has been argued, talked about and discussed in the staff schools of military organisms, I guess, since the time of Caesar. How many men can the high commander handle? This limits the number of divisions you have in a corps, the number of regiments or brigades you have in a division and, finally, the number of separate commands that the very highest commander, say in a whole theatre, can handle. This particular principle, or consideration, or factor in organization applies everywhere. How much can the top man do efficiently and get it done?

I think we must start with this solution to the problem. How good are the men you get around you? Are you getting political hacks, someone who thinks he is being a help, or are you getting people who can really serve the people of the state? And if you get enough of them—and I am just guessing offhand—there should be not over 7 or 8 of those who are really at the top, and they will have supervision under properly grouped agencies under them.

Now, as a matter of fact, in relation to this matter, the federal government has many, many socalled independent agencies—those that belong to the legislature. Of course, there is nothing any executive can do about that—I mean the I.C.C. and the F.C.C. and that sort of thing—they are set up separately and they are there, although I do not believe in them particularly. I believe there should be an executive responsibility toward them, too. But the others in the federal government are largely grouped so that they are put under some secretary who has a large interest in their welfare. So, I would say the 120 ought to be grouped together so you could certainly handle them through 7 to 10 people.

MR. DURST: Thank you, sir.

VICE PRESIDENT ROMNEY: Delegate Faxon.

MR. FAXON: Delegate Jack Faxon, fifth senatorial district, Wayne county. General Eisenhower, my question is in line with the last question that was put to you with regard to these executive agencies. Would you see any need for a state to go into areas of responsibility already covered by the federal government, such as intrastate business activities, civil rights, et cetera? And, if so, what recommendations would you care to make?

GENERAL EISENHOWER: Well, in the case of civil rights, assuming that in their general principles all state constitutions must be in accord with the national constitution, this is a matter for all our people, and that means the federal government. The federal government must do its best to see that equal rights guaranteed by the constitution are given and accorded to every individual in the whole nation. But, when it comes to this business of concurrent jurisdiction or some conflict of jurisdiction, this became a very troublesome problem during my administration. One of them was this. I believe the state of Pennsylvania convicted someone of communism, or some communistic association, and the supreme court ruled that the congress had preempted the field in this matter and that a state had no authority of any kind to punish a man for communistic actions.

Personally, I was just about horror-stricken because I did not believe that any free nation or any governing element or any part, would be stopped from looking into this matter of communism and taking action. But then the leaders of congress finally told me there was no thought, at the time of the passage of that act, that they were preempting. They thought everyone could look into it. But then they decided to establish a practice—which may have been abandoned or may not, I do not know—that each law passed by the congress should state whether or not there was any intent to preempt the field, or whether the state should have the right to take concurrent jurisdiction.

My own feeling would be, if I had the honor of sitting here as one of these delegates, I would want to define our rights and our authorities and if the congress had already preempted some of them, I would make my fight through the state's attorney and make suit to try to get them back. If I could not do that, I would again go back to my old scheme of a national constitutional convention.

I believe you are not going to do these things and be satisfied that you have done these things correctly unless you are ready to stand up and be counted and fight right down to the last ditch.

MR. FAXON: Thank you, sir.

VICE PRESIDENT ROMNEY: Mrs. Judd.

MRS. JUDD: Delegate Judd from Grand Rapids. General Eisenhower, I believe that this convention is consciously engaged in doing just what you suggest, that is, attempting to strengthen our state and local governments in large part to retard the growing reliance of local government on Washington, and to preserve our federal system of government. However, it has puzzled me as to just what we, as a single state, can accomplish in this direction.

Now, you have answered my question in part with regard to the effect of our leadership on other states, but could you tell us something of the possible movements in other states to modernize their constitutions also?

GENERAL EISENHOWER: No. As a matter of fact, I must say this one was the first one I heard of, and that is the reason that, without any quarrel, I accepted the invitation to come here; not because I thought I could give you people any particularly worthwhile counsel but because if my coming here would publicize a little bit better what you people are trying to do, I was all for it. That is the real reason for my being here.

Now, I should make this clear. There are certain things that are going to congress now by law. With those changed, you can get back your traditional authority and responsibility in these fields. If, wherever there has been an interpretation of the constitution you think is not quite correct, then you would have to make that change by constitutional convention, that's all. But I believe that your example, your fighting the laws that you think are wrong in the federal area and finally by continuing to urge other states to join you—these are the only ways by which you will do it.

MRS. JUDD: Thank you, sir.

VICE PRESIDENT ROMNEY: Delegate Norris.

MR. NORRIS: Delegate Norris, sixth district, Wayne county. General Eisenhower, you touched upon the subject matter very briefly, but I would like to ask this specific question, sir. During your presidency you appointed a commission on national goals. This commission reported the following in 1960:

> Respect for the individual means respect for every individual. Every man and woman must have equal rights before the law and an equal opportunity to vote, to be educated, to get a job, to buy a home. These goals, which are at the core of our system, must be achieved by action at all levels.

End of quotation, sir.

Do you not believe that action at all levels to secure equal opportunity for employment, housing and education, includes appropriate expression in a state constitution, and would not a clear cut expression at the level of state government on behalf of such equal opportunity be helpful in strengthening America's moral position in the world?

GENERAL EISENHOWER: Well, I think it is an essential, because I believe this, I believe that every individual in this room possesses moral responsibility in this field. We are citizens of a free nation and wherever we impinge upon or diminish the freedom of another individual, we impinge upon our own.

I believe that self interest demands that every single individual put himself four square on this principle. Certainly it is implied and stated as solemnly as it can be in the constitution. I see no reason for any state refraining from making such a declaration. I would be very much in favor of it.

MR. NORRIS: Thank you, sir.

VICE PRESIDENT ROMNEY: It happens that we had a preponderance of questions from Republican delegates submitted to the committee.

In fairness, it seems to me that in the brief time we have remaining we ought to give the Democratic delegates a little priority in asking questions from the floor.

I have had 3 additional questions sent up to me, but they are also from Republican delegates and I am therefore, going to see if there are any questions from Democratic delegates that they would like to ask.

I recognize Delegate Snyder.

MR. SNYDER: Thank you, Mr. Romney.

Delegate Joe Snyder from St. Clair Shores, Macomb county. Mr. President, with improved technological processes and with people getting older, what are our responsibilities at this constitutional convention to help those who have reached the years of life where they cannot find a proper employment and they have not had the availability of resources to provide them through the end of their lives?

GENERAL EISENHOWER: Well, of course, I believe in many of our industrial organizations we have already got pension and retirement systems and, of course, O.A.S.I., and all that sort of thing. They are not adequate, particularly where emergency strikes. I believe we should sponsor voluntary plans for insurance in this field, making the state the agent rather than the federal government, but with the federal government participating wherever it can be shown the need, for the simple reason—as your Governor Swainson pointed out to me this morning when we were riding in—that a state boundary is not anything sacrosanct. People can come in who can be indigent, old, sick, in far greater proportion than in many other states, and therefore you have a big problem.

But you pointed out in your question that technology is making us all older. Also, I think it is giving us a greater span of useless—pardon me—of useful life. (laughter) Because we are having automation coming along, we have been talking for some time about shorter periods of active service. I doubt that this is the answer. I believe that old people can be used—I am very sensitive about that point—(laughter) in our industries, in our whole social arrangements, in our lives—maybe we have to study more what is the kind of thing that older people ought to be doing and so on down the line. So, I believe that they must be given help in terms of subsistence and proper medical care, as far as possible on a voluntary basis, but make sure they have it. I think, also, we ought to be studying this whole problem, how a population is best employed. And not to get so many of these arbitrary laws that at 60 you are done. As a matter of fact, my friends, at 62 I was nominated to the presidency. Now, I do not think I was completely useless, even if the calendar would have said so. (applause)

MR. SNYDER: Thank you, sir.

VICE PRESIDENT ROMNEY: Delegate Binkowski.

MR. BINKOWSKI: Delegate Binkowski, second senatorial district, representing part of the east side of Detroit and Hamtramck. General, do you believe that a limitation on the term of governor, such as a 2 term limitation, is advisable?

GENERAL EISENHOWER: I did not quite understand you. A limitation of 2 terms?

MR. BINKOWSKI: Yes, general.

GENERAL EISENHOWER: Well, I have felt this way about it. Let us go back to the presidency. Certainly at my age I was never going to run for the presidency again, I don't care what the constitution said. (laughter) So I could study and examine this question very objectively.

I believe, in the case of the presidency, that the weight of evidence is on the side of limiting it—I mean the weight of logic is on that side—because of the possibilities that you could encounter. Take the president, who is also commander in chief of the armed forces, who is certainly the most powerful individual and occupying the most powerful office in the free world. There is always a possibility of a development in that area that we would not want to have. Then I studied along with that—should we limit the number of years a senator should serve? I raise that question because if you do it with the president, should you do it with senators and congressmen? I think there might be some advantages in that (laughter), but I do not believe it is a good thing because there you again have a proliferation of authority. One man stays one term, another fellow stays 20 terms in the house. I do not think the same thing applies.

When you come to the governor, I really am not qualified to talk, but I do think that in my state, where we have 1 term —1 term and he is out—that is too short. I certainly think that is too short, but I believe you might make a reasonable number of years—8 years, or something of that kind, or 10 years—and say that is the limit. I believe that you would not ever want to see in the state some kind of machine-hold of popular elections, popular elections that could, just by that very fact, perpetuate a man in office. Actually, I do not think the question is too important because there are not many Americans, I think, that would have that kind of venal ambition.

MR. BINKOWSKI: Thank you, sir.

VICE PRESIDENT ROMNEY: I am going to have to exercise a pocket veto over the other questions that have been sent up because we are already 10 minutes behind schedule. I am sure we all appreciate General Eisenhower's willingness to answer questions as he has. I am sure, also, that we would like to have him take with him at least some symbolic mementos of our appreciation of the effort he has made to be with us on this occasion.

I believe I voice the attitude of all of us in saying that we are grateful to him for sharing with us his wisdom and his great integrity and that we appreciate not only what he has done today, but what he has done throughout his life—both in war and in peace. General Eisenhower, on behalf of the delegates, I would like to present you with a gavel which, after all, is a symbol of democratic society, and an engraved copy of the Michigan Constitutional Convention Handbook, and to express our heartfelt appreciation.

GENERAL EISENHOWER: Thank you. (applause)

[Whereupon, General Eisenhower retired from rostrum; and President Nisbet resumed the Chair to preside over the convention.]

PRESIDENT NISBET: I might say to the convention that sometimes even the best laid plans go awry. The question of time enters the picture, and the General is now unable to

remain to shake hands with the delegates. The General is on a very tight schedule and he was kind enough to take a little longer time than was planned on in answering the questions put to him by the delegates.

General Eisenhower has another appointment he must keep. I think we are all grateful that he could be with us today.

The Chair will now call upon Delegate Davis.

MR. DAVIS: Mr. President, I move that we recess this convention until 2:30 o'clock this afternoon.

PRESIDENT NISBET: The question is on the motion of Mr. Davis that we recess the convention until 2:30 o'clock this afternoon. The hour of resuming is a little different from our usual convention procedure because of our having met here this morning. For that reason it was necessary to put before you a motion to reconvene at the hour of 2:30 p.m. I hope you will agree. (laughter) All in favor say aye. Opposed, no.

The motion prevails and we will now recess until 2:30 p.m.

[Whereupon, at 11:20 o'clock a.m., the convention recessed; and, at 2:30 o'clock p.m., reconvened.]

The convention will please come to order.

SECRETARY CHASE: Mr. President, a quorum of the convention is present.

PRESIDENT NISBET: **Reports of standing committees.**

SECRETARY CHASE: The committee on finance and taxation, by Mr. Brake, chairman, reports back to the convention **Delegate Proposal 1504,** A proposal to limit reforestation power to state lands. Amends article X, section 14; **Delegate Proposal 1512,** A proposal to provide that all contracts entered into by the state with private contractors doing business with the state shall prohibit discrimination because of race, creed, color, religion or national origin; **Delegate Proposal 1532,** A proposal to delete article X, section 14, relative to internal improvements; **Delegate Proposal 1536,** A proposal to increase the power of the legislature with respect to internal improvements; and **Delegate Proposal 1554,** A proposal to provide that the state may aid in the internal improvement of harbors; with the recommendation that the proposals be referred to the committee on legislative powers.

D. Hale Brake, chairman.

PRESIDENT NISBET: The question is on the recommendation of the committee that these 5 delegate proposals be referred to the committee on legislative powers. Any discussion? If not, all in favor say aye. Opposed, no.

They will be so referred.

SECRETARY CHASE: That is the only standing committee report, Mr. President.

PRESIDENT NISBET: Reports of select committees.

SECRETARY CHASE: None.

PRESIDENT NISBET: Communications from state officers.

SECRETARY CHASE: None.

PRESIDENT NISBET: **Introduction, first reading and reference of proposals.**

ASSISTANT SECRETARY KNAPP: Messrs. Everett, Page and Seyferth introduce

Delegate Proposal 1679, A proposal to authorize the legislature to provide for changes in boundaries of local units of government by use of courts. Amends article VIII.

PRESIDENT NISBET: Referred to the committee on local government.

ASSISTANT SECRETARY KNAPP: Messrs. Higgs, Everett and Seyferth introduce

Delegate Proposal 1680, A proposal to provide for a unified court system. Amends article VII, section 1.

PRESIDENT NISBET: Referred to the committee on judicial branch.

ASSISTANT SECRETARY KNAPP: Mr. Follo introduces **Delegate Proposal 1681,** A proposal to provide for libraries throughout the state, for a state board of libraries, and for financing of libraries. Amends article XI, section 14.

PRESIDENT NISBET: Referred to the committee on education.

ASSISTANT SECRETARY KNAPP: Messrs. Buback, Downs, Mrs. Daisy Elliott, Messrs. Lesinski and Perlich introduce

Delegate Proposal 1682, A proposal to provide that no vendors of supplies, material or contractual services shall be required to supply the same to any governmental unit at less than cost. Amends article XVI.

PRESIDENT NISBET: Referred to the committee on miscellaneous provisions and schedule.

ASSISTANT SECRETARY KNAPP: Mrs. Daisy Elliott introduces

Delegate Proposal 1683, A proposal to provide for a court of domestic relations and its operation within each county by local option. Amends article VII.

PRESIDENT NISBET: Referred to the committee on judicial branch.

ASSISTANT SECRETARY KNAPP: Mr. Buback, Mrs. Daisy Elliott and Mr. Snyder introduce

Delegate Proposal 1684, A proposal to provide that wages shall not be subject to garnishment or other legal process prior to payment. Amends article XVI.

PRESIDENT NISBET: Referred to the committee on miscellaneous provisions and schedule.

ASSISTANT SECRETARY KNAPP: Messrs. Buback, Hood, Murphy and Mrs. Daisy Elliott introduce

Delegate Proposal 1685, A proposal to provide that no member of the legislature shall be appointed to offices created, or have his pay raised during his term of office; and other matters. Amends article V, section 7.

PRESIDENT NISBET: Referred to the committee on legislative powers.

ASSISTANT SECRETARY KNAPP: Messrs. Binkowski, Buback, Downs, Mrs. Daisy Elliott, Messrs. Hood, Murphy, Snyder and Walker introduce

Delegate Proposal 1686, A proposal to provide for a program of natural resources development for recreational purposes. Amends article XVI.

PRESIDENT NISBET: Referred to the committee on miscellaneous provisions and schedule.

ASSISTANT SECRETARY KNAPP: Messrs. Buback, Downs, Mrs. Daisy Elliott and Mr. Hodges introduce

Delegate Proposal 1687, A proposal to provide that the full time head of each executive agency shall be an exempt position under civil service. Amends article VI, section 22.

PRESIDENT NISBET: Referred to the committee on executive branch.

ASSISTANT SECRETARY KNAPP: Messrs. Buback, Downs, Mrs. Daisy Elliott, Messrs. Marshall and Snyder introduce

Delegate Proposal 1688, A proposal to provide that members of the executive and legislative branches may also serve on the county board of supervisors. Amends article VIII.

PRESIDENT NISBET: Referred to the committee on local government.

ASSISTANT SECRETARY KNAPP: Messrs. Buback, Downs, Mrs. Daisy Elliott and Mr. Snyder introduce

Delegate Proposal 1689, A proposal to provide for apportionment of the legislature every 10 years after the effective date of this constitution and for the secretary of state to act if the legislature does not. Amends article V.

PRESIDENT NISBET: Referred to the committee on legislative organization.

ASSISTANT SECRETARY KNAPP: Messrs. Binkowski, Buback, Downs, Mrs. Daisy Elliott, Messrs. Hood, Murphy, Perlich and Snyder introduce

Delegate Proposal 1690, A proposal to provide that there shall be no denial of equal protection of the laws by the state or its subdivisions and no discrimination in civil rights. Amends article II, section 23.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

ASSISTANT SECRETARY KNAPP: Messrs. Van Dusen and A. G. Elliott introduce

Delegate Proposal 1691, A proposal to provide that all elec-

tions be held on one day in each year except those for vacancies and certain constitutional exceptions. Amends article III.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

ASSISTANT SECRETARY KNAPP: Mr. T. S. Brown introduces

Delegate Proposal 1692, A proposal to reorganize county boundaries; to establish school districts therein; to establish representation in the senate on the basis of said county system; to provide for the method of representation in the house of representatives; and to define the powers of the senate and house. Amends articles V and VIII.

PRESIDENT NISBET: Referred to the committee on local government.

ASSISTANT SECRETARY KNAPP: Messrs. Hodges and Yeager introduce

Delegate Proposal 1693, A proposal to establish a board of colleges and universities with jurisdiction over all 4 year colleges and universities. Amends article XI.

PRESIDENT NISBET: Referred to the committee on education.

ASSISTANT SECRETARY KNAPP: Mr. Suzore introduces **Delegate Proposal 1694,** A proposal to provide that the present personal property tax laws be retained and also the tax base of home rule communities. Retains legislation enacted pursuant to articles VIII and X.

PRESIDENT NISBET: Referred to the committee on finance and taxation.

ASSISTANT SECRETARY KNAPP: Mr. Suzore introduces **Delegate Proposal 1695,** A proposal to restrict municipal income taxes to persons resident within the corporate limits of any municipality levying such tax. Amends article X.

PRESIDENT NISBET: Referred to the committee on finance and taxation.

ASSISTANT SECRETARY KNAPP: Mr. Norris introduces **Delegate Proposal 1696,** A proposal to guarantee rights not enumerated in the constitution. Adds new section to article II.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

ASSISTANT SECRETARY KNAPP: Messrs. Ford, Binkowski and Suzore introduce

Delegate Proposal 1697, A proposal to provide for an auditor general; to provide for his election and term; to describe his powers and duties. Amends article VI by adding a new section.

PRESIDENT NISBET: Referred to the committee on executive branch.

ASSISTANT SECRETARY KNAPP: Mr. Ford introduces **Delegate Proposal 1698,** A proposal to provide for the continuance of present municipalities until otherwise provided for by law. Amends article VIII.

PRESIDENT NISBET: Referred to the committee on local government.

ASSISTANT SECRETARY KNAPP: Mr. Ford introduces **Delegate Proposal 1699,** A proposal to grant all powers of local self government to municipalities. Amends article VIII.

PRESIDENT NISBET: Referred to the committee on local government.

ASSISTANT SECRETARY KNAPP: Messrs. Ford and McCauley introduce

Delegate Proposal 1700, A proposal to guarantee liberal construction by the courts of laws conferring powers upon local units of government. Amends article VIII.

PRESIDENT NISBET: Referred to the committee on local government.

ASSISTANT SECRETARY KNAPP: Mr. Ford introduces **Delegate Proposal 1701,** A proposal to provide for election of township officials; their term of office; the time of their election; and to authorize the legislature to create additional township offices. Amends article VIII, section 18.

PRESIDENT NISBET: Referred to the committee on local government.

ASSISTANT SECRETARY KNAPP: Messrs. Upton, Ford, McCauley and Pugsley introduce

Delegate Proposal 1702, A proposal to make appeal of administrative rulings a matter of right. Amends article VII.

PRESIDENT NISBET: Referred to the committee on judicial branch.

ASSISTANT SECRETARY KNAPP: Messrs. Dade, Downs, Mrs. Daisy Elliott and Mrs. Hatcher introduce

Delegate Proposal 1703, A proposal to guarantee equal opportunity to learn regardless of race, creed, color, national origin, or geographical location. Amends article II and revises Delegate Proposal 1130.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

ASSISTANT SECRETARY KNAPP: Messrs. Everett and Higgs introduce

Delegate Proposal 1704, A proposal to provide that all vacant judicial offices be filled by special election and authorizing the supreme court to temporarily fill vacancies with retired judges. Amends article VII, section 20.

PRESIDENT NISBET: Referred to the committee on judicial branch.

ASSISTANT SECRETARY KNAPP: Mr. Everett introduces **Delegate Proposal 1705,** A proposal to authorize the supreme court to create judicial circuits for circuit courts. Amends article VII, section 8.

PRESIDENT NISBET: Referred to the committee on judicial branch.

ASSISTANT SECRETARY KNAPP: Mr. Shackleton introduces

Delegate Proposal 1706, A proposal to eliminate the commissioner of highways from township government. Amends article VIII, section 18.

PRESIDENT NISBET: Referred to the committee on local government.

ASSISTANT SECRETARY KNAPP: Mr. Shackleton introduces

Delegate Proposal 1707, A proposal to limit the borrowing power of the state to 1 per cent of the average annual revenue for the preceding 3 years. Amends article V.

PRESIDENT NISBET: Referred to the committee on legislative powers.

ASSISTANT SECRETARY KNAPP: Mr. Shackleton introduces

Delegate Proposal 1708, A proposal to provide that the legislature shall make no appropriations, nor do any borrowing for financing or subsidizing private enterprise. Amends article V.

PRESIDENT NISBET: Referred to the committee on legislative powers.

ASSISTANT SECRETARY KNAPP: Mr. Sablich introduces

Delegate Proposal 1709, A proposal to create a coordinating council of higher education composed of members from each institution. Amends article XI.

PRESIDENT NISBET: Referred to the committee on education.

ASSISTANT SECRETARY KNAPP: Messrs. Rajkovich, Howes, Perlich, Dean Doty, Turner and Sleder introduce

Delegate Proposal 1710, A proposal to increase to $1,000 the amount over which justices of the peace have concurrent jurisdiction. Amends article VII, section 16.

PRESIDENT NISBET: Referred to the committee on judicial branch.

ASSISTANT SECRETARY KNAPP: Messrs. Rajkovich, Howes, Perlich, Dean Doty, Turner and Sleder introduce

Delegate Proposal 1711, A proposal to provide for the election of justices of the peace. Amends article VII, section 15.

PRESIDENT NISBET: Referred to the committee on judicial branch.

ASSISTANT SECRETARY KNAPP: Messrs. Rajkovich, Howes, Perlich, Turner, Dean Doty and Sleder introduce

Delegate Proposal 1712, A proposal to retain in the constitution sections 1, 18 and 19 of article VII.

PRESIDENT NISBET: Referred to the committee on judicial branch.

ASSISTANT SECRETARY KNAPP: Mr. Liberato introduces

Delegate Proposal 1713, A proposal to provide that no person over 70 shall be elected or appointed to public office. Amends article XVI.

PRESIDENT NISBET: Referred to the committee on miscellaneous provisions and schedule.

ASSISTANT SECRETARY KNAPP: Messrs. Liberato, Snyder and Kelsey introduce

Delegate Proposal 1714, A proposal to divide the state into 19 congressional districts and to apportion the state legislature within the 19 districts. Amends article V, sections 3 and 4.

PRESIDENT NISBET: Referred to the committee on legislative organization.

ASSISTANT SECRETARY KNAPP: Messrs. Liberato and Kelsey introduce

Delegate Proposal 1715, A proposal to provide that tie votes in the house shall be broken by the speaker and in the senate by the lieutenant governor. Amends article V.

PRESIDENT NISBET: Referred to the committee on legislative powers.

ASSISTANT SECRETARY KNAPP: Messrs. Romney and A. G. Elliott introduce

Delegate Proposal 1716, A proposal to restrict the number of executive agencies and to provide for executive appointment and confirmation and reorganization power. Amends article VI.

PRESIDENT NISBET: Referred to the committee on executive branch.

ASSISTANT SECRETARY KNAPP: Messrs. Murphy, Hood, Mrs. Hatcher, Mrs. Daisy Elliott and Mr. Young introduce

Delegate Proposal 1717, A proposal to provide salaries of $8,500 and expenses of $3,500 for members of the legislature. Amends article V, section 9.

PRESIDENT NISBET: Referred to the committee on legislative powers.

ASSISTANT SECRETARY KNAPP: That completes the proposals, Mr. President.

PRESIDENT NISBET: Second reading of proposals.

SECRETARY CHASE: Nothing on that calendar, Mr. President.

PRESIDENT NISBET: Third reading of proposals.

SECRETARY CHASE: Nothing on that calendar, Mr. President.

PRESIDENT NISBET: **Motions and resolutions.**

SECRETARY CHASE: Mr. Van Dusen moves that all committee reports recommending exclusion of present constitutional provisions submitted pursuant to the last paragraph of Resolution 41, as substituted, and known as exclusion reports, be automatically laid over 3 days before consideration on general orders.

PRESIDENT NISBET: Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, this motion would simply subject these exclusion reports, which are in effect committee proposals for deletion, to the requirement of rule 36 of the convention that no committee proposal be considered by the convention until it has been before us for 3 days.

I think the matters are of equal importance, and it is just as important that we be able to read the journal and know what the committees recommend be taken out as it is that we read the journal and know what the committees recommend be put in. I think it is important that both be considered as far as consideration on general orders is concerned.

PRESIDENT NISBET: The question is on the motion of Mr. Van Dusen.

Mr. Chase, would you read the motion again, please?

SECRETARY CHASE: Mr. Van Dusen moves that all committee reports recommending exclusion of present constitutional provisions submitted pursuant to the last paragraph of Resolution 41, as substituted, and known as exclusion reports, be automatically laid over 3 days before consideration on general orders.

PRESIDENT NISBET: The question is on the motion. Any discussion? If not, all those in favor say aye. Opposed, no.

The motion prevails.

SECRETARY CHASE: Messrs. Spitler and Snyder offer **Resolution 59,** A resolution to commend Chairman White and the committee on public information for their work in connection with the visit of General Dwight D. Eisenhower.

PRESIDENT NISBET: Mr. Spitler.

MR. SPITLER: Mr. President, I move the suspension of the rules and immediate consideration of the resolution.

PRESIDENT NISBET: The motion of Mr. Spitler is to suspend rule 44 to provide for immediate consideration of the resolution. Is there objection? The Chair hearing none, the rule is suspended.

The secretary will read the resolution.

SECRETARY CHASE: Messrs. Spitler and Snyder offer the following resolution,

A resolution to commend Chairman White and the committee on public information for their work in connection with the visit of General Dwight D. Eisenhower.

Whereas, The visit this morning of General Dwight D. Eisenhower, former president of the United States, necessitated a vast amount of work and planning; and

Whereas, This work was undertaken and well performed by Chairman White and the committee on public information; now therefore be it

Resolved, That this convention commend Chairman White and his committee for their work and furnish them with copies of this resolution.

PRESIDENT NISBET: The question is on the adoption of the resolution. Is there any discussion?

Mr. Spitler.

MR. SPITLER: Mr. President and delegates, I think the resolution speaks for itself. I believe it was only last week that consideration was given to the possibility of this type of program we had this morning. I am sure that the task of Mr. Ink White and his committee was not easy.

It was necessary for the committee to satisfy a great many individuals and many groups and they discharged their responsibility with outstanding efficiency. I myself was very much impressed with the orderly and effective manner in which that program was carried out this morning.

I think the least we can do is to commend the chairman and members of this committee for the splendid manner in which their work was carried out.

PRESIDENT NISBET: The question is on the adoption of the resolution. Are there any remarks?

Mr. Hodges.

MR. HODGES: Mr. President and delegates, I do not want to act as the devil's advocate here, and I certainly think that Chairman Ink White is to be commended, as are the members of the committee on public information, but I do question the wisdom of our having these self gratification or self congratulatory type resolutions moved on the floor of this convention commending the work of members or committees within our own convention.

I think that when the work is performed by those outside the convention a resolution might very well be in order, but not when the work originates among those within the convention.

I can envisage that this might very well get out of hand, with every committee offering resolutions commending the work of the other committees and the effective manner in which they are performing the work of this convention.

After all, I remind the delegates, that is what we are here to do.

PRESIDENT NISBET: The question is on the adoption of the resolution. All those in favor say aye. Opposed, no.

The resolution is adopted.

SECRETARY CHASE: That is the only resolution on file, Mr. President.

PRESIDENT NISBET: Unfinished business.

SECRETARY CHASE: None.

PRESIDENT NISBET: Special orders.

SECRETARY CHASE: None.

PRESIDENT NISBET: General orders.

SECRETARY CHASE: Nothing on that calendar today, Mr. President.

PRESIDENT NISBET: Announcements.

SECRETARY CHASE: The secretary has the following announcements:

Delegate and Mrs. Henry L. Woolfenden are pleased to announce that immediately after the departure of General Eisenhower this morning, they were presented with a beautiful baby granddaughter—their sixth grandchild—by their daughter, Mrs. Edward A. Cote of East Lansing. (applause)

There are the following notices of committee meetings which do not appear on the composite calendar:

The committee on administration will meet on Thursday, tomorrow, at 1:00 o'clock p.m. Walter DeVries, chairman.

The committee on judicial branch will meet in room B on Friday at 9:00 o'clock a.m. Robert J. Danhof, chairman.

There is the following addition to the composite calendar:

On Thursday, December 14, the fifth item on that calendar, at 8:30 in the morning, the committee on legislative powers, subcommittee 4, meeting in room H, will meet with the sponsors of Delegate Proposals 1369 and 1370, and Mr. George Burke, Jr., of the state liquor commission.

The secretary is pleased to announce that tomorrow morning at 8:00 o'clock the mileage and salary checks may be picked up in the secretary's office.

We have the following requests for leave of absence:

Mr. W. B. Cudlip requests leave from the session of Friday.

Mr. Page wishes to be excused from the sessions of Thursday and Friday, December 14 and 15.

Mr. Paul Goebel wishes to be excused from Friday's session to attend a meeting of the board of regents of the university.

Mr. Radka wishes to be excused from the sessions of Thursday and Friday to prosecute a manslaughter case that has been pending for nearly 3 years. (laughter)

Mr. Don Binkowski requests to be excused from the session of Thursday, December 14, to attend the presentation of the portrait of the late United States District Judge Arthur A. Konscinski.

PRESIDENT NISBET: Without objection the leaves will be granted.

Mr. Hoxie.

MR. HOXIE: Mr. President, perhaps I am in error but I did not hear the announcement relative to the meeting of the committee on legislative powers. Do I understand that the committee will be meeting immediately following the session today?

SECRETARY CHASE: Legislative powers committee, immediately following the session today.

PRESIDENT NISBET: Mr. Boothby.

MR. BOOTHBY: Mr. President, I should like to speak to a matter of personal privilege. With some consternation I noted that my microphone up to this point was not manufactured by a Michigan firm, whereas most of my associates here at this convention had microphones which were manufactured by the only Michigan firm manufacturing microphones. This particular industry is in my district, in Buchanan. However, I noted, on returning from the delightful trip we took to Detroit yesterday, that some person had the keen foresight to observe that Michigan workmanship is far superior to any other. Now I have a microphone manufactured by Electrovoice of Buchanan, and I thank that individual. (laughter)

SECRETARY CHASE: Mr. Cudlip announces a meeting of the committee on style and drafting tomorrow evening, Thursday, at 8:00 o'clock, in room K.

Delegate Wood requests to be excused from the sessions of Thursday and Friday due to illness.

PRESIDENT NISBET: Without objection, the request will be granted.

I hate to spoil the very pleasant time you are having this afternoon, but the Chair recognizes Judge Dehnke.

MR. DEHNKE: Mr. President, I move that the convention do now adjourn.

PRESIDENT NISBET: The question is on the motion for adjournment. All those in favor say aye. Opposed, no.

The motion prevails. We are adjourned until 2:00 o'clock tomorrow afternoon.

[Whereupon, at 2:55 o'clock p.m., the convention adjourned until 2:00 o'clock p.m., Thursday, December 14, 1961.]

FORTY-THIRD DAY

Thursday, December 14, 1961, 2:00 o'clock p.m.

PROCEEDINGS

PRESIDENT NISBET: The convention will please come to order.

Our invocation today is given by Mr. Maurice W. Kempthorne, former Reader of Third Church of Christ, Scientist, Detroit.

Will you please rise.

MR. KEMPTHORNE: Let us have a moment of silent prayer, after which I shall conclude with verses from the Bible.

> Wherewith shall I come before the Lord, and bow myself before the high God? He hath shewed thee, O man, what is good; and what doth the Lord require of thee, but to do justly and to love mercy, and to walk humbly with thy God?
>
> O man, greatly beloved, fear not: peace be unto thee, be strong, yea, be strong.
>
> Let Thy work appear unto Thy servants, and Thy glory unto their chidren.
>
> And let the beauty of the Lord, our God, be upon us: and establish Thou the work of our hands upon us; yea the work of our hands establish Thou it. Amen.

PRESIDENT NISBET: The roll call will be taken by the secretary. All present please vote aye.

SECRETARY CHASE: Has everyone voted? The voting machine is now locked, and the attendance will be recorded. Mr. President, a quorum of the convention is present.

Prior to today's session, the secretary received the following communication:

> I ask to be excused from the session of the convention today, December 14, because of a meeting of the interim legislative committee with the state board of college presidents.
>
> I also ask to be excused from the session of Friday, December 15, because I will be meeting with the board of trustees of Michigan State University. John A. Hannah.

PRESIDENT NISBET: Without objection, the request is granted.

SECRETARY CHASE: Absent with leave: Messrs. J. A. Hannah, Karn, Page, Radka, Shanahan and Wood.

Absent without leave: None.

The secretary wishes to announce that the speech of General Eisenhower, and the questions and answers following his speech, are being printed as a supplement to the journal of yesterday, and will be on your desks tomorrow morning.

PRESIDENT NISBET: Reports of standing committees.

SECRETARY CHASE: The committee on declaration of rights, suffrage and elections, by Mr. Pollock, chairman, reports back to the convention Delegate Proposal 1478, A proposal to

provide for the distribution of federal funds and to guarantee against the denial of same to any person on account of race, religion, or national origin; with the recommendation that the proposal be referred to the committee on finance and taxation.

James K. Pollock, chairman.

PRESIDENT NISBET: The question is on the recommendation of the committee on referral. Any discussion? If not, all in favor please say aye. Opposed, no.

The recommendation is concurred in and it is so referred.

SECRETARY CHASE: The committee on administration, by Mr. De Vries, chairman, reports back to the convention **Resolution 58,** A resolution requesting authority and funds for the committee on executive branch to hold hearings in the city of Pontiac; without amendment, and with the recommendation that the resolution be adopted.

Walter DeVries, chairman.

For Resolution 58 as offered, see above, page 382.

PRESIDENT NISBET: Mr. DeVries.

MR. DeVRIES: Mr. President, fellow delegates, this resolution has the unanimous recommendation of the committee on executive branch and the committee on administration, and authorizes a 5 man subcommittee to hold hearings in the city of Pontiac on Tuesday evening, next week, at a cost not to exceed $75.

Mr. President, I move the adoption of this resolution.

PRESIDENT NISBET: The question is on the adoption of the resolution. Is there any discussion? If not, all in favor say aye. Those opposed, no.

The resolution is adopted.

SECRETARY CHASE: Mr. Brake, for the committee on finance and taxation, introduces

Exclusion Report 2003, A report recommending the exclusion of article X, section 20.

D. Hale Brake, chairman.

For Exclusion Report 2003 and the reasons submitted in support thereof, see below, page 415.

PRESIDENT NISBET: The report will be referred to the committee of the whole and placed on general orders.

SECRETARY CHASE: Mr. Erickson, for the committee on miscellaneous provisions and schedule, introduces

Committee Proposal 10, A proposal to amend article I, section 2 of the present constitution pertaining to the seat of government at Lansing;

with the recommendation that it pass.

Claud R. Erickson, chairman.

For Committee Proposal 10 and the reasons submitted in support thereof, see below, page 416.

PRESIDENT NISBET: Referred to the committee of the whole and placed on general orders.

Reports of select committees.

SECRETARY CHASE: None.

PRESIDENT NISBET: Communications from state officers.

SECRETARY CHASE: None.

PRESIDENT NISBET: **Introduction, first reading and reference of proposals.**

ASSISTANT SECRETARY KNAPP: Mr. Sleder introduces

Delegate Proposal 1718, A proposal to clarify provisions for the control over highways and streets by local units and to delete reference to townships. Amends article VIII, section 28.

PRESIDENT NISBET: Referred to the committee on local government.

Mr. Elliott.

MR. A. G. ELLIOTT: Mr. President, I move that we suspend the rules and dispense with the reading of the titles of the delegate proposals.

PRESIDENT NISBET: Mr. Elliott moves that the rules be suspended and the delegate proposals for introduction today be considered read, and that they be printed in the journal. Any discussion? Is there objection?

[Objection was heard]

The secretary will read.

ASSISTANT SECRETARY KNAPP: Messrs. A. G. Elliott and Yeager introduce

Delegate Proposal 1719, A proposal to establish a method of election of candidates for governor and lieutenant governor and to establish their tenure of office. Amends article VI, section 1.

PRESIDENT NISBET: Referred to the committee on executive branch.

ASSISTANT SECRETARY KNAPP: Miss Hart introduces

Delegate Proposal 1720, A proposal for retaining the primary school fund. Amends article XI, sections 11 and 12.

PRESIDENT NISBET: Referred to the committee on education.

ASSISTANT SECRETARY KNAPP: Mr. Douglas introduces

Delegate Proposal 1721, A proposal to substitute specific tax limitations for certain units of government for the present section 21, article X. (The present 15 mill limitation).

PRESIDENT NISBET: Referred to the committee on finance and taxation.

ASSISTANT SECRETARY KNAPP: Mr. Austin introduces

Delegate Proposal 1722, A proposal regarding the qualifications of electors in any election. Amends article III.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

ASSISTANT SECRETARY KNAPP: Mr. Douglas introduces

Delegate Proposal 1723, A proposal for election of members of the board of governors for Wayne State University on a partisan basis at large. Amends article XI.

PRESIDENT NISBET: Referred to the committee on education.

ASSISTANT SECRETARY KNAPP: Mr. Douglas introduces

Delegate Proposal 1724, A proposal for election of members of the board of regents for the University of Michigan on a partisan basis at large. Amends article XI.

PRESIDENT NISBET: Referred to the committee on education.

ASSISTANT SECRETARY KNAPP: Mr. Douglas introduces

Delegate Proposal 1725, A proposal for election of members of the board of trustees for Michigan State University on a partisan basis at large. Amends article XI.

PRESIDENT NISBET: Referred to the committee on education.

ASSISTANT SECRETARY KNAPP: Miss Hart introduces

Delegate Proposal 1726, A proposal regarding the primary school system. Amends article XI, section 9.

PRESIDENT NISBET: Referred to the committee on education.

ASSISTANT SECRETARY KNAPP: Miss Hart introduces

Delegate Proposal 1727, A proposal to provide a uniform rate of assessment on real property. Amends article X, section 7.

PRESIDENT NISBET: Referred to the committee on finance and taxation.

ASSISTANT SECRETARY KNAPP: Miss Hart introduces

Delegate Proposal 1728, A proposal to provide for equalization of assessments. Amends article X, section 8.

PRESIDENT NISBET: Referred to the committee on finance and taxation.

ASSISTANT SECRETARY KNAPP: Miss Hart introduces

Delegate Proposal 1729, A proposal relating to the election and duties of the superintendent of public instruction. Amends article XI, section 2.

PRESIDENT NISBET: Referred to the committee on education.

ASSISTANT SECRETARY KNAPP: Miss Hart introduces

Delegate Proposal 1730, A proposal relating to the election and duties of the superintendent of public instruction. Amends article XI, section 2.

PRESIDENT NISBET: Referred to the committee on education.

ASSISTANT SECRETARY KNAPP: Miss Hart introduces **Delegate Proposal 1731,** A proposal to establish a separate governing board for Central Michigan University. Amends article XI, section 6, and adds a new section.

PRESIDENT NISBET: Referred to the committee on education.

ASSISTANT SECRETARY KNAPP: Miss Hart introduces **Delegate Proposal 1732,** A proposal for election of a partisan state board of education at large and duties thereof. Amends article XI.

PRESIDENT NISBET: Referred to the committee on education.

ASSISTANT SECRETARY KNAPP: Miss Hart introduces **Delegate Proposal 1733,** A proposal to establish a separate governing board for Grand Valley State College. Amends article XI, section 6.

PRESIDENT NISBET: Referred to the committee on education.

ASSISTANT SECRETARY KNAPP: Miss Hart introduces **Delegate Proposal 1734,** A proposal to establish a separate governing board for Western Michigan University. Amends article XI, section 6, and adds a section.

PRESIDENT NISBET: Referred to the committee on education.

ASSISTANT SECRETARY KNAPP: Miss Hart introduces **Delegate Proposal 1735,** A proposal to establish a separate governing board for Ferris Institute. Amends article XI, section 6.

PRESIDENT NISBET: Referred to the committee on education.

ASSISTANT SECRETARY KNAPP: Miss Hart introduces **Delegate Proposal 1736,** A proposal to establish a separate governing board for the Michigan College of Mining and Technology. Amends article XI, section 6.

PRESIDENT NISBET: Referred to the committee on education.

ASSISTANT SECRETARY KNAPP: Miss Hart introduces **Delegate Proposal 1737,** A proposal to establish a separate governing board for Eastern Michigan University. Amends article XI, and adds a new section.

PRESIDENT NISBET: Referred to the committee on education.

ASSISTANT SECRETARY KNAPP: Miss Hart introduces **Delegate Proposal 1738,** A proposal to establish a separate governing board for Northern Michigan College. Amends article XI, section 6, and adds a new section.

PRESIDENT NISBET: Referred to the committee on education.

ASSISTANT SECRETARY KNAPP: Mr. Everett introduces

Delegate Proposal 1739, A proposal to provide for the appointment of supreme court justices by the governor with public notice; with senate approval; and removal thereof. Amends article VII, section 2.

PRESIDENT NISBET: Referred to the committee on judicial branch.

ASSISTANT SECRETARY KNAPP: Mr. Suzore introduces

Delegate Proposal 1740, A proposal to retain home rule and provide for municipal courts. Amends and retains article VIII, sections 20 through 29.

PRESIDENT NISBET: Referred to the committee on local government.

ASSISTANT SECRETARY KNAPP: Mr. Suzore introduces **Delegate Proposal 1741,** A proposal to provide governmental immunity in tort actions. Amends article XVI.

PRESIDENT NISBET: Referred to the committee on miscellaneous provisions and schedule.

ASSISTANT SECRETARY KNAPP: Mr. Walker introduces

Delegate Proposal 1742, A proposal to provide for statewide equalization to be performed by a board subject to mandamus. Amends article X, section 8.

PRESIDENT NISBET: Referred to the committee on finance and taxation.

ASSISTANT SECRETARY KNAPP: Mr. Walker introduces **Delegate Proposal 1743,** A proposal to earmark funds in an equal amount for each pupil attending schools in the state with the existing debt payable from existing school districts, and for statewide school assessments. Amends article XI.

PRESIDENT NISBET: Referred to the committee on education.

ASSISTANT SECRETARY KNAPP: Mr. Walker introduces **Delegate Propoal 1744,** A proposal to allow any municipality, by a majority vote, to assess a municipal income tax on its residents. Amends article VIII.

PRESIDENT NISBET: Referred to the committee on local government.

ASSISTANT SECRETARY KNAPP: Mr. Walker introduces **Delegate Proposal 1745,** A proposal allowing property to be condemned for the highest assessed valuation of any 1 year of the last 5 years. Amends article XIII.

PRESIDENT NISBET: Referred to the committee on miscellaneous provisions and schedule.

ASSISTANT SECRETARY KNAPP: Mr. Walker introduces **Delegate Proposal 1746,** A proposal to assess property at 100 per cent of cash sale value. Amends article X, section 7.

PRESIDENT NISBET: Referred to the committee on finance and taxation.

ASSISTANT SECRETARY KNAPP: Mr. Walker introduces **Delegate Proposal 1747,** A proposal to assess buildings or other improvements at replacement value. Amends article X.

PRESIDENT NISBET: Referred to the committee on finance and taxation.

ASSISTANT SECRETARY KNAPP: Mr. Walker introduces **Delegate Proposal 1748,** A proposal to eliminate existing school districts and in their place form countywide school districts. Amends article XI.

PRESIDENT NISBET: Referred to the committee on education.

ASSISTANT SECRETARY KNAPP: Mr. Walker introduces **Delegate Proposal 1749,** A proposal placing any justice court, municipal court or like court under the supervision of the circuit court in that district. Amends article VII.

PRESIDENT NISBET: Referred to the committee on judicial branch.

ASSISTANT SECRETARY KNAPP: Mr. Walker introduces **Delegate Proposal 1750,** A proposal to assess land at a rate higher than improvements. Amends article X.

PRESIDENT NISBET: Referred to the committee on finance and taxation.

ASSISTANT SECRETARY KNAPP: Messrs Leppien and Shackleton introduce

Delegate Proposal 1751, A proposal to appoint a state health commissioner. Amends article VI.

PRESIDENT NISBET: Referred to the committee on executive branch.

ASSISTANT SECRETARY KNAPP: Messrs Van Dusen and Romney introduce

Delegate Proposal 1752, A proposal to provide for a supreme court to be appointed by the governor to 8 year terms, justices to be elected to additional terms. Amends article VII.

PRESIDENT NISBET: Referred to the committee on judicial branch.

ASSISTANT SECRETARY KNAPP: Messrs. Boothby, Yeager, G. E. Brown, Knirk, Kirk, W. F. Hanna, Dehnke, A. G. Elliott, Rood, Lundgren, Plank, Donald Doty, J. A. Hannah and Blandford introduce

Delegate Proposal 1753, A proposal to provide for all standing committees of the legislature to hold open meetings and, upon demand, record all votes and other matters. Amends article V.

PRESIDENT NISBET: Referred to the committee on legislative powers.

ASSISTANT SECRETARY KNAPP: Mr. W. F. Hanna introduces

Delegate Proposal 1754, A proposal to limit the privilege of candidates from libel and slander suits. Amends article II.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

ASSISTANT SECRETARY KNAPP: Messrs. Buback, Leppien, Madar, A. G. Elliott, Baginski, Downs, Pellow, White, Stamm and Miss Hart introduce

Delegate Proposal 1755, A proposal to provide that all elections for state and local office shall be held on the first Tuesday after the first Monday in November. Amends article III. Replaces Proposal 1406.

PRESIDENT NISBET: Referred to the committee on declaration of rights, suffrage and elections.

ASSISTANT SECRETARY KNAPP: Mr. Gover introduces **Delegate Proposal 1756,** A proposal to provide for senate apportionment on a 1 to each district basis with additional senators for specified population increases. Amends article V, section 2.

PRESIDENT NISBET: Referred to the committee on legislative organization.

ASSISTANT SECRETARY KNAPP: Messrs. Boothby and J. B. Richards introduce

Delegate Proposal 1757, A proposal to provide for a 28 member senate, elected from single districts for 2 year terms. Amends article V, section 2.

PRESIDENT NISBET: Referred to the committee on legislative organization.

ASSISTANT SECRETARY KNAPP: Mr. Boothby introduces

Delegate Proposal 1758, A proposal to provide for the diversion of a portion of the gasoline taxes for the enforcement of boating laws and regulations. Amends article X, section 22, and replaces Delegate Proposal 1672.

PRESIDENT NISBET: Referred to the committee on finance and taxation.

ASSISTANT SECRETARY KNAPP: Messrs. Blandford, Goebel, De Vries and Page introduce

Delegate Proposal 1759, A proposal to reapportion the state senate and house of representatives. Replaces sections 2 and 3 of article V.

PRESIDENT NISBET: Referred to the committee on legislative organization.

Second reading of proposals.

SECRETARY CHASE: Nothing on that calendar, Mr. President.

PRESIDENT NISBET: Third reading of proposals.

SECRETARY CHASE: Nothing on that calendar, Mr. President.

PRESIDENT NISBET: **Motions and resolutions.**

SECRETARY CHASE: Mr. Hoxie, on behalf of the committee on legislative powers, offers

Resolution 60, A resolution requesting the authority and funds for the committee on legislative powers to hold hearings in the cities of Grand Rapids and Detroit.

Following is Resolution 60 as offered:

Whereas, There is widespread interest in what should be included in the new constitution relative to the subject covered in article V, section 33 of the present constitution which now reads: "The legislature shall not authorize any lottery nor permit the sale of lottery tickets."; and

Whereas, Delegate proposals are now pending which would retain this provision; delete it entirely, leaving the entire field to legislative discretion; amend it to provide exemption for lotteries conducted by charitable or fraternal organizations, subject to a county referendum; or to amend the section by adding an exemption for controlled, legalized bingo for charitable purposes, after an approving vote in any city, village or township; and

Whereas, Individual delegates and the committee on legislative powers have received extensive and widely diversified correspondence on these matters; and

Whereas, Many persons and organizations have expressed a desire to be heard; now therefore be it

Resolved, That such hearings be held in Grand Rapids on December 18, 1961, and in Detroit on December 19, 1961, both hearings beginning at 7:00 p.m. in order to provide an opportunity for maximum participation of interested citizens in these areas in the consideration of these maters; and be it further

Resolved, That the convention appropriate necessary funds, not to exceed $300.00, to defray the cost of travel of the members of the committee and the committee clerk to and from Grand Rapids and Detroit, and other expenses necessary and incidental to the holding of these hearings.

PRESIDENT NISBET: Referred to the committee on administration.

SECRETARY CHASE: That is the only resolution on file, Mr. President.

PRESIDENT NISBET: Unfinished business.

SECRETARY CHASE: None.

PRESIDENT NISBET: Special orders.

SECRETARY CHASE: None.

PRESIDENT NISBET: General orders.

SECRETARY CHASE: The items on general orders are not in order for consideration until tomorrow.

PRESIDENT NISBET: Announcements.

SECRETARY CHASE: The committee on miscellaneous provisions and schedule will hold a public hearing on natural resources this evening at 7:30 in committee rooms A and B. Claud R. Erickson, chairman.

The committee on administration will meet in the conference room today immediately following the session. Walter DeVries, chairman.

The committee on finance and taxation will meet in room E tomorrow morning at 8:30.

The committee on local government will meet in room A tomorrow from 8:30 until 9:40 a.m. Arthur Elliott, chairman.

All notices to delegates with reference to being heard on proposals referred to the committee on judicial branch must be returned not later than Monday evening, December 18, 1961. Robert J. Danhof, chairman.

The committee on legislative powers will meet in room H Thursday, December 14, 1961, at 3:00 p.m., or immediately following the session. T. Jefferson Hoxie, chairman.

Mr. Brake requests the following announcement be read:

> In addition to the prescheduled meetings on Tuesday, Wednesday and Thursday, the committee on finance and taxation will meet from 6:00 until 7:50 p.m. on Monday, January 8, and at the same time on every other Monday in January; and it will likewise meet from 8:00 o'clock in the morning until 9:50 on Friday, January 5, and every other Friday in January. D. Hale Brake, chairman.

The committee on declaration of rights, suffrage and elections requests that attention be called to the composite calendar, page 2, the committee meeting at 9:00 o'clock tomorrow morning, Friday, in room F for the final consideration of the report.

The secretary has been requested to make the following announcement:

The document room is being swamped with requests for complete sets of delegate proposals, resolutions and so forth. If the immediate filling of these requests is important, the document room people will do their best. If a little time over the coming weekend or over the holiday can be granted, it will be greatly appreciated. Please indicate on your request how soon it needs to be filled.

PRESIDENT NISBET: Mr. Bentley.

MR. BENTLEY: Mr. President, I have been asked to announce the subcommittee on libraries of the education committee will hold a hearing in committee room J immediately after the session today and, further, I would like to announce that the time for the full education committee meeting tomorrow morning in room J has been changed from 8:30, as appears on the composite calendar, to 9:00 o'clock.

SECRETARY CHASE: The following requests for absence with leave have been filed:

Mr. Perras requests leave from the session of tomorrow because of a prior commitment; and Mr. Donald Doty requests leave from tomorrow's session.

Mr. Pollock, chairman of the committee on declaration of rights, suffrage and elections, requests leave of absence for the entire committee from the session of December 18 and the session of December 19 for the purpose of conducting a committee hearing in Detroit, December 18, and in Saginaw and Flint, December 19.

PRESIDENT NISBET: Without objection, the leaves will be granted.

SECRETARY CHASE: That completes the business for today.

PRESIDENT NISBET: The chair recognizes Mr. Dell.

MR. DELL: Mr. President, I move that we adjourn.

PRESIDENT NISBET: The question is on adjournment. All in favor say aye. Those opposed, no.

We are adjourned until 10:00 o'clock tomorrow morning.

[Whereupon at 2:25 o'clock p.m., the convention adjourned until 10:00 o'clock a.m., Friday, December 15, 1961.]

FORTY-FOURTH DAY

Friday, December 15, 1961, 10:00 o'clock a.m.

PROCEEDINGS

PRESIDENT NISBET: The convention will please **come to order.**

Our **invocation** this morning will be given by the Reverend Father John Steffey, secretary to the Bishop of the Catholic Diocese of Lansing.

Will you please rise.

REVEREND FATHER STEFFEY: We pray Thee, O almighty God, through whom authority is rightly administered, laws are enacted and judgment decreed, assist with Thy holy spirit of counsel and fortitude the delegates to this constitutional convention, that their deliberations may be conducted in righteousness and that their conclusions be eminently useful to the people of the state of Michigan. Inspire them with due respect for the dignity of the human person and for the common good. Let the divine light of Thy wisdom shine forth in all the proceedings and laws framed for our rule and government. We beg Thee, O God, to shower Thy choicest blessings on this convention and its delegates. Amen.

PRESIDENT NISBET: The **roll call** will be taken by the secretary. All present, please vote aye.

SECRETARY CHASE: Have you all voted? The machine is now locked, and the attendance will be recorded.

Mr. President, a quorum of the convention is present.

Prior to today's session, the secretary received the following requests for leave:

Mr. Hodges, from today's session; Mr. Lundgren, to attend a business conference in Chicago; and Mr. Romney, to attend important church business in Chicago.

PRESIDENT NISBET: Without objection, the requests are granted.

SECRETARY CHASE: Absent with leave: Messrs. Cudlip, Davis, Donald Doty, Goebel, J. A. Hannah, Hodges, Lundgren, Page, Perras, Radka, Romney, Sablich and Wood.

Absent without leave: Mr. W. F. Hanna.

PRESIDENT NISBET: Without objection, Mr. Hanna is excused.

Your president is not in good shape, so with your permission I would like to ask Mr. Hutchinson, vice president, to preside at this morning's session.

[Whereupon, Vice President Hutchinson assumed the Chair to preside over the convention.]

VICE PRESIDENT HUTCHINSON: **Reports of standing committees.**

SECRETARY CHASE: The committee on administration, by Mr. DeVries, chairman, recommends to the president for his consideration the appointment of the following persons to the constitutional convention staff:

Dr. John White as research consultant and Mr. Harold Arnow as research assistant.

Walter DeVries, chairman.

VICE PRESIDENT HUTCHINSON: Without objection, the recommendations will be concurred in.

SECRETARY CHASE: **The president appoints,** pursuant to authorization by the convention, and with the approval of the committee on administration, the aforenamed persons to the respective positions indicated.

VICE PRESIDENT HUTCHINSON: Without objection, the appointments are approved.

SECRETARY CHASE: The committee on administration, by Mr. DeVries, chairman, reports back to the convention, **Resolution 60,** A resolution requesting the authority and funds for the committee on legislative powers to hold hearings in the cities of Grand Rapids and Detroit; without amendment, and with the recommendation that the resolution be adopted.

Walter DeVries, chairman.

For Resolution 60 as offered, see above, page 395.

VICE PRESIDENT HUTCHINSON: The question is upon the adoption of the resolution.

Mr. DeVries.

MR. DeVRIES: Mr. President and fellow delegates, this resolution has the approval of the legislative powers committee and the unanimous recommendation of the committee on administration, which will allow the committee on legislative powers to conduct hearings in the cities of Grand Rapids and Detroit on proposals relative to legalized gambling. The cost of the hearings and travel are not to exceed $300.

The committee on administration wishes the committee on legislative powers a lot of luck in this enterprise, and moves the adoption of this resolution.

VICE PRESIDENT HUTCHINSON: The question is upon the adoption of the resolution. All those in favor will say aye. Opposed?

The ayes have it, and the resolution is adopted.

SECRETARY CHASE: That is all of the standing committee reports on file.

VICE PRESIDENT HUTCHINSON: Reports of select committees.

SECRETARY CHASE: None.

VICE PRESIDENT HUTCHINSON: Communications from state officers.

SECRETARY CHASE: None.

VICE PRESIDENT HUTCHINSON: **Introduction, first reading and reference of proposals.**

ASSISTANT SECRETARY KNAPP: Messrs. Ostrow and Walker introduce

Delegate Proposal 1760, A proposal to provide a new financial article. Amends article X.

VICE PRESIDENT HUTCHINSON: Referred to the committee on finance and taxation.

ASSISTANT SECRETARY KNAPP: Mr. Marshall introduces

Delegate Proposal 1761, A proposal relating to powers of the lieutenant governor. Amends article VI, section 19.

VICE PRESIDENT HUTCHINSON: Referred to the committee on executive branch.

ASSISTANT SECRETARY KNAPP: Mr. Marshall introduces

Delegate Proposal 1762, A proposal to amend the provisions with respect to the requirement that legislation originate in either house. Amends article V, section 19.

VICE PRESIDENT HUTCHINSON: Referred to the committee on legislative powers.

ASSISTANT SECRETARY KNAPP: Mr. Marshall introduces

Delegate Proposal 1763, A proposal to amend the provisions with respect to the eligibility to office of federal office holders. Amends article V, section 6.

VICE PRESIDENT HUTCHINSON: Referred to the committee on legislative powers.

ASSISTANT SECRETARY KNAPP: Messrs. Lesinski and Marshall introduce

Delegate Proposal 1764, A proposal to delete sections 31 and 32 of article V.

VICE PRESIDENT HUTCHINSON: Referred to the committee on legislative powers.

ASSISTANT SECRETARY KNAPP: Messrs. Lesinski and Marshall introduce

Delegate Proposal 1765, A proposal to eliminate article V, section 27.

VICE PRESIDENT HUTCHINSON: Referred to the committee on legislative powers.

ASSISTANT SECRETARY KNAPP: Messrs. Lesinski and Marshall introduce

Delegate Proposal 1766, A proposal to delete article V, section 11.

VICE PRESIDENT HUTCHINSON: Referred to the committee on legislative powers.

ASSISTANT SECRETARY KNAPP: Mr. Marshall introdues

Delegate Proposal 1767, A proposal to combine article V, sections 21 and 24, relative to the legislative process.

VICE PRESIDENT HUTCHINSON: Referred to the committee on legislative powers.

ASSISTANT SECRETARY KNAPP: Mr. Marshall introduces

Delegate Proposal 1768, A proposal to amend the provisions relative to succession to the governorship by the lieutenant governor. Amends article VI.

VICE PRESIDENT HUTCHINSON: Referred to the committee on executive branch.

ASSISTANT SECRETARY KNAPP: Mr. Marshall introduces

Delegate Proposal 1769, A proposal relating to compensation for the governor, secretary of state, state treasurer, lieutenant governor and attorney general. Amends article VI.

VICE PRESIDENT HUTCHINSON: Referred to the committee on executive branch.

ASSISTANT SECRETARY KNAPP: Mr. Marshall introduces

Delegate Proposal 1770, A proposal to delete section 20 of article VI.

VICE PRESIDENT HUTCHINSON: Referred to the committee on executive branch.

ASSISTANT SECRETARY KNAPP: Mr. Marshall introduces

Delegate Proposal 1771, A proposal to amend article VI, section 5.

VICE PRESIDENT HUTCHINSON: Referred to the committee on executive branch.

ASSISTANT SECRETARY KNAPP: Messrs. Mahinske and Snyder introduce

Delegate Proposal 1772, A proposal to include representation in the inherent political power of the people. Amends article II, section 1.

VICE PRESIDENT HUTCHINSON: Referred to the committee on declaration of rights, suffrage and elections.

ASSISTANT SECRETARY KNAPP: Mr. Mahinske introduces

Delegate Proposal 1773, A proposal to provide for succession to the office of governor, and to provide for election of the presiding officer of the senate to replace the lieutenant governor. Amends article VI, sections 16, 17 and 19.

VICE PRESIDENT HUTCHINSON: Referred to the committee on executive branch.

ASSISTANT SECRETARY KNAPP: Messrs. Mahinske and Snyder introduce

Delegate Proposal 1774, A proposal to define certain duties of the governor and of the attorney general. Amends article VI.

VICE PRESIDENT HUTCHINSON: Referred to the committee on executive branch.

ASSISTANT SECRETARY KNAPP: Messrs. Mahinske and Snyder introduce

Delegate Proposal 1775, A proposal to declare the constitution the fundamental law of the state and to grant any citizen the right to seek redress if the constitution is abused by any public official. Amends article II.

VICE PRESIDENT HUTCHINSON: Referred to the committee on declaration of rights, suffrage and elections.

ASSISTANT SECRETARY KNAPP: Messrs. Mahinske and Binkowski introduce

Delegate Proposal 1776, A proposal to remove and recall public officials who are chronic absentees from duty. Amends article III.

VICE PRESIDENT HUTCHINSON: Referred to the committee on declaration of rights, suffrage and elections.

ASSISTANT SECRETARY KNAPP: Mr. Mahinske introduces

Delegate Proposal 1777, A proposal to require the legislature to abolish secret sessions, to construe publication to permit reproduction processes other than printing, to delete the section covering the sale of real estate and to define jurors as citizens. Amends article V, sections 16, 18, 22, 25, 27 and 31.

VICE PRESIDENT HUTCHINSON: Referred to the committee on legislative powers.

ASSISTANT SECRETARY KNAPP: Mr. Norris introduces

Delegate Proposal 1778, A proposal relating to election, term and duties of state officers. Amends article VI, section 1.

VICE PRESIDENT HUTCHINSON: Referred to the committee on executive branch.

ASSISTANT SECRETARY KNAPP: Mr. Norris introduces

Delegate Proposal 1779, A proposal for appointment of a state board of education by the governor, and duties thereof. Amends article XI.

VICE PRESIDENT HUTCHINSON: Referred to the committee on education.

ASSISTANT SECRETARY KNAPP: Mr. Norris introduces

Delegate Proposal 1780, A proposal to retain in the Michigan constitution the present content of sections 27 and 28 of article X.

VICE PRESIDENT HUTCHINSON: Referred to the committee on finance and taxation.

ASSISTANT SECRETARY KNAPP: Mr. Norris introduces

Delegate Proposal 1781, A proposal to empower the legislature to contribute to the support of community colleges and to place them under the general supervision of the state board of education. Amends article XI.

VICE PRESIDENT HUTCHINSON: Referred to the committee on education.

ASSISTANT SECRETARY KNAPP: Mr. Norris introduces

Delegate Proposal 1782, A proposal for election of a nonpartisan state board of education at large, and duties thereof. Amends article XI.

VICE PRESIDENT HUTCHINSON: Referred to the committee on education.

ASSISTANT SECRETARY KNAPP: Mr. Norris introduces

Delegate Proposal 1783, A proposal for retaining the primary school interest fund. Amends article X, section 1.

VICE PRESIDENT HUTCHINSON: Referred to the committee on finance and taxation.

ASSISTANT SECRETARY KNAPP: Mr. Stopczynski introduces

Delegate Proposal 1784, A proposal to establish a governor's consumer council and to describe its responsibilities and duties and the manner in which funds are to be appropriated for it. Amends article VI.

VICE PRESIDENT HUTCHINSON: Referred to the committee on executive branch.

ASSISTANT SECRETARY KNAPP: Messrs. Ford and G. E. Brown introduce

Delegate Proposal 1785, A proposal to give township option in

the creation of the office of the justice of the peace. Amends article VII.

VICE PRESIDENT HUTCHINSON: Referred to the committee on judicial branch.

ASSISTANT SECRETARY KNAPP: Mr. Ford introduces **Delegate Proposal 1786,** A proposal to reenact section 1 of article VII and to provide for local courts locally elected, the judges of which be paid a salary in lieu of fees and to empower the supreme court to establish qualifications for nonlawyer justices of the peace. Amends article VII, section 1.

VICE PRESIDENT HUTCHINSON: Referred to the committee on judicial branch.

ASSISTANT SECRETARY KNAPP: Mr. Downs introduces **Delegate Proposal 1787,** A proposal to allow the governor to organize all administrative branches of government. Amends article VI.

VICE PRESIDENT HUTCHINSON: Referred to the committee on executive branch.

ASSISTANT SECRETARY KNAPP: Mr. Downs introduces **Delegate Proposal 1788,** A proposal to establish a state department of public welfare. Amends article VI.

VICE PRESIDENT HUTCHINSON: Referred to the committee on executive branch.

ASSISTANT SECRETARY KNAPP: Messrs. Downs and Lesinski introduce

Delegate Proposal 1789, A proposal to provide for a continuing constitutional revision committee. Amends article XVII.

VICE PRESIDENT HUTCHINSON: Referred to the committee on miscellaneous provisions and schedule.

ASSISTANT SECRETARY KNAPP: Mr. Walker introduces **Delegate Proposal 1790,** A proposal to vest the judicial power in the supreme court, a court of appeals, circuit courts, and such other courts as the legislature may establish by law. Amends article VII, section 1.

VICE PRESIDENT HUTCHINSON: Referred to the committee on judicial branch.

ASSISTANT SECRETARY KNAPP: Mr. Binkowski introduces

Delegate Proposal 1791, A proposal to define eligibility for judicial office. Replaces article VII, section 17.

VICE PRESIDENT HUTCHINSON: Referred to the committee on judicial branch.

ASSISTANT SECRETARY KNAPP: Mr. Binkowski introduces

Delegate Proposal 1792, A proposal to define judicial vacation of office. Amends article VII, section 19.

VICE PRESIDENT HUTCHINSON: Referred to the committee on judicial branch.

ASSISTANT SECRETARY KNAPP: Mr. Binkowski introduces

Delegate Proposal 1793, A proposal to amend article VII, on appointment of successors.

VICE PRESIDENT HUTCHINSON: Referred to the committee on judicial branch.

ASSISTANT SECRETARY KNAPP: Mr. Binkowski introduces

Delegate Proposal 1794, A proposal to amend article VII, on dissenting opinions.

VICE PRESIDENT HUTCHINSON: Referred to the committee on judicial branch.

ASSISTANT SECRETARY KNAPP: Mr. Binkowski introduces

Delegate Proposal 1795, A proposal relating to the superintending powers of the supreme court. Amends article VII, section 4.

VICE PRESIDENT HUTCHINSON: Referred to the committee on judicial branch.

ASSISTANT SECRETARY KNAPP: Messrs. Ford and Hodges introduce

Delegate Proposal 1796, A proposal to provide for the size, election, and tenure of the state supreme court. Replaces article VII, section 2.

VICE PRESIDENT HUTCHINSON: Referred to the committee on judicial branch.

ASSISTANT SECRETARY KNAPP: Messrs. Ford and Hodges introduce

Delegate Proposal 1797, A proposal to provide for terms of the supreme court. Replaces article VII, section 3.

VICE PRESIDENT HUTCHINSON: Referred to the committee on judicial branch.

ASSISTANT SECRETARY KNAPP: Messrs. Ford and Hodges introduce

Delegate Proposal 1798, A proposal to provide for establishment by the supreme court of general rules for practice and procedure in the state courts. Amends article VII, section 5.

VICE PRESIDENT HUTCHINSON: Referred to the committee on judicial branch.

ASSISTANT SECRETARY KNAPP: Messrs. Ford and Hodges introduce

Delegate Proposal 1799, A proposal to authorize one supreme court to appoint its administrative staff and prescribe duties for such staff. Amends article VII, section 6.

VICE PRESIDENT HUTCHINSON: Referred to the committee on judicial branch.

ASSISTANT SECRETARY KNAPP: Mr. Ford introduces **Delegate Proposal 1800,** A proposal to provide for the nomination and election of judges of the court of appeals. Adds a new section to article VII.

VICE PRESIDENT HUTCHINSON: Referred to the committee on judicial branch.

ASSISTANT SECRETARY KNAPP: Mr. Ford introduces **Delegate Proposal 1801,** A proposal to amend article VII, section 8.

VICE PRESIDENT HUTCHINSON: Referred to the committee on judicial branch.

ASSISTANT SECRETARY KNAPP: Mr. Ford introduces **Delegate Proposal 1802,** A proposal to define the jurisdiction of the court of appeals. Adds a new section to article VII.

VICE PRESIDENT HUTCHINSON: Referred to the committee on judicial branch.

ASSISTANT SECRETARY KNAPP: Messrs. Ford and Ostrow introduce

Delegate Proposal 1803, A proposal to amend article VII, on nomination of judicial officers.

VICE PRESIDENT HUTCHINSON: Referred to the committee on judicial branch.

ASSISTANT SECRETARY KNAPP: Messrs. Boothby, Gust, Batchelor and J. B. Richards introduce

Delegate Proposal 1804, A proposal to liberalize Delegate Proposal 1216 by the inclusion of new language.

VICE PRESIDENT HUTCHINSON: Referred to the committee on declaration of rights, suffrage and elections.

ASSISTANT SECRETARY KNAPP: Mr. Gust introduces **Delegate Proposal 1805,** A proposal to prevent escheat of property prior to final judicial process although the statutory limitation has expired. Amends article XI, section 12.

VICE PRESIDENT HUTCHINSON: Referred to the committee on miscellaneous provisions and schedule.

ASSISTANT SECRETARY KNAPP: Mr. Gust introduces **Delegate Proposal 1806,** A proposal to require closed party primary elections. Amends article III.

VICE PRESIDENT HUTCHINSON: Referred to the committee on declaration of rights, suffrage and elections.

ASSISTANT SECRETARY KNAPP: Messrs. Boothby, Gust, Batchelor and J. B. Richards introduce

Delegate Proposal 1807, A proposal to liberalize Delegate Proposal 1126 by the inclusion of new language. Amends article II.

VICE PRESIDENT HUTCHINSON: Referred to the committee on declaration of rights, suffrage and elections.

ASSISTANT SECRETARY KNAPP: Messrs. Boothby, Gust, Batchelor and J. B. Richards introduce

Delegate Proposal 1808, A proposal to liberalize Delegate Proposal 1175 by the inclusion of new language. Amends article V.

VICE PRESIDENT HUTCHINSON: Referred to the committee on declaration of rights, suffrage and elections.

ASSISTANT SECRETARY KNAPP: Messrs. Boothby, J. B. Richards, Gust and Batchelor introduce

Delegate Proposal 1809, A proposal to provide that contributions to political parties shall not be a condition of employment. Amends article II.

VICE PRESIDENT HUTCHINSON: Referred to the committee on declaration of rights, suffrage and elections.

ASSISTANT SECRETARY KNAPP: Miss Donnelly introduces

Delegate Proposal 1810, A proposal to provide for a minimum of 8 years' admission to practice for eligibility to be a circuit judge. Amends article VII, section 9.

VICE PRESIDENT HUTCHINSON: Referred to the committee on judicial branch.

ASSISTANT SECRETARY KNAPP: Messrs. Bledsoe and Garvin introduce

Delegate Proposal 1811, A proposal to permit the governor to issue executive orders to carry out his existing powers. Amends article VI, section 3.

VICE PRESIDENT HUTCHINSON: Referred to the committee on executive branch.

ASSISTANT SECRETARY KNAPP: Messrs. A. G. Elliott and Yeager introduce

Delegate Proposal 1812, A proposal to establish a commission on reapportionment and to provide for its membership and duties. Amends article V, section 4.

VICE PRESIDENT HUTCHINSON: Referred to the committee on legislative organization.

ASSISTANT SECRETARY KNAPP: Messrs. A. G. Elliott and Van Dusen introduce

Delegate Proposal 1813, A proposal to provide for governing boards for institutions of higher learning. Amends article XI.

VICE PRESIDENT HUTCHINSON: Referred to the committee on education.

Mr. Bentley.

MR. BENTLEY: Mr. President, I wonder if the convention and, most specifically, the committee chairmen, could be advised as to when the delegate proposals now pending in research and drafting will be completed?

VICE PRESIDENT HUTCHINSON: Mr. Secretary?

SECRETARY CHASE: The secretary has been informed that the research and drafting people have completed all of the delegate proposals that were filed with them before the deadline of 5:00 o'clock on December 1, and they are now in the possession of the delegates.

MR. BENTLEY: In other words, Mr. President, it is contemplated that all delegate proposals will be introduced at the convention at the latest sometime next week?

VICE PRESIDENT HUTCHINSON: The Chair would so contemplate. It would be in order to move to set a deadline on that, Mr. Bentley.

MR. BENTLEY: I don't think that is necessary, Mr. President, in view of the fact that we have a deadline, I believe, of January for the hearing of proposals. But I'm sure that many of the chairmen share my own feelings that we are anxious to get these delegate proposals before us, and give the delegates who introduced them a chance to be heard, if they so desire. Thank you.

VICE PRESIDENT HUTCHINSON: Without objection, we will return to the order of **communications from state officers.** The Chair hears no objection.

SECRETARY CHASE: We have the following message from the governor, addressed to the convention:

To the constitutional convention delegates,

Constitution Hall, Lansing, December 15, 1961.

Ladies and Gentlemen:

Friday, December 15, 1961, marks the anniversary of the adoption — 170 years ago — of the first 10 amendments to the federal constitution which have come to be known as the bill of rights.

This national recognition of the meaning to democracy of the federal bill of rights offers the opportunity to call the attention of the citizens of Michigan to the protections afforded them by the declaration of rights of our own state constitution. This public recognition can result in wider interest and attention to the activities of the constitutional convention directed to strengthening our political and civil rights.

The drafting of a declaration of rights that will incorporate the distilled wisdom of the past and provide for the protection of individual rights emerging from the social and economic ferment of the twentieth century could very well be the most important and lasting contribution that this convention can make to the preservation of the democratic ideal.

Other provisions of the fundamental law of the state affect some of us in our relation to state government and the services it provides for us. But the rights guaranteed by the declaration of rights affect all of us.

Action by the state to buttress the protection of the individual against the possible tyrannies of bureaucracy, exploitation, discrimination, invasion of privacy, and unequal access to justice will give strong support to the revitalization of our state.

Affirmative support for state action to provide individuals — as a matter of right — constitutional protection from the most devastating effects of the changes which to date have marked our development as a highly organized, impersonal, urbanized, industrial society will do much to strengthen the ties between the people of Michigan and their state government.

To the extent that this constitution makes it possible for the state to meet the needs of its people, to that degree will it contribute to the infusion of new strength into our federal system — with the states being more nearly equal, working partners in this bold experiment to provide effective, democratic government. And it will provide a positive answer to those on both the left and on the right who say that democracy cannot work.

Man's struggle for constitutional government has been chronicled in the pages of history which record the great human and material sacrifices that marked the way. The symbol of victory has everywhere been the establishment of civil liberties.

At a time in history when the political faith and ideals of democracy are being threatened at home and abroad, it is especially fitting that we in Michigan use this opportunity — the writing of a new constitution — to restate our faith in the validity of these principles which were purchased at such a high price — and to apply them clearly, forcefully and succinctly to a state government serving all of Michigan's citizens in the twentieth century. We can establish a framework for government in Michigan which will, in the words of Justice Douglas, provide "security for the individual and freedom for the development of his talents."

While the federal bill of rights — especially through recent supreme court interpretation — stands as an important protector of individual rights, both historical practice and practical considerations seem to me to make it essential that we have a declaration of rights in our new constitution — a declaration which will have continuity with the past — and at the same time will provide an umbrella of constitutional protection for the emerging needs for individual guarantees and protections arising out of a changing society.

The role of the states as partners in our federal system has been a cause for concern on the part of many. Concern has been expressed about the centralization of power in Washington. In the eyes of some, the states have been becoming more and more junior partners in the federal system.

Part of this trend has been the result of the growing recognition of our role in a world in which the menace to freedom looms large. But another important reason for the trend has been the failure of our states to meet the needs of their citizens. In this they will not — as they should not — be denied if government is to function as an instrument of the people.

As Mr. Justice Holmes so well stated it, the states have an unusual opportunity to serve as laboratories for economic and social experimentation. And — if the states are to become vigorous and active partners in the federal system — then they are going to have to utilize the opportunities thus afforded to them. They are going to have to break

new ground as they respond to the challenge of new ideas and new problems.

A declaration of rights for the '60s and into the foreseeable future must certainly recognize that the individual must not only have protection from the possible dangers of a police state, from arbitrary bureaucratic behavior, but also — in the words of Robert Hutchins — from the "remorseless tendency of the industrial system."

The political forms and freedom so dearly won by our forefathers must be maintained and strengthened. But we also must provide individual protection from the tyrannies they did not face.

In a society that is becoming more highly organized in groups, the proper expression of these group interests and activities must be harmonized with the urgent necessity to reassert the doctrine that the essential feature of democracy remains the status of the individual.

The state constitution should reflect our determination to achieve equal treatment of men and women, to enlarge their incentives, and to expand their opportunities for self development and self expression.

In the words of the president's commission on national goals, in their report issued last year, we must remove the "vestiges of religious prejudice, handicaps to women, and, most important, discrimination on the basis of race must be recognized as morally wrong, economically wasteful, and in many respects, dangerous."

Our state constitution should point out in unmistakable language that respect for the individual means respect for every individual. Not just those with whom we happen to agree.

We have achieved our present position of greatness because — as a people — we have rejected the idea that unpopular or controversial ideas or people must be throttled. We have long held that the market place offers the best test of ideas. And we have directed our efforts to the maintenance of fair competition in that arena.

The threat to our democratic institutions posed by those who seek to promote conformity by labels and who set themselves up as arbiters of what is and what is not "100 per cent American" is one that must be answered vigorously and affirmatively by a strong statement of principle in support of freedom.

I am certain that the convention has received many good suggestions of concepts that should be incorporated in a new declaration of rights.

I, personally, find myself in agreement with the tenor of the proposals in this vital area contained in the civil rights and national goals reports made under Presidents Roosevelt, Truman, and Eisenhower. And I note that many proposals incorporating these principles have been introduced by delegates to this convention.

But I would like to suggest that the approach to a new declaration of rights should be widened to include what to me seems an equally important facet of citizenship in the twentieth century — a bill of duties for the individual as a citizen.

For many of the rights that should be embodied in a new declaration of rights, it seems to me that there is an equal duty which we must accept as individuals — if these rights are to be meaningful. These, I submit, should be incorporated in a companion bill of duties.

For the right of freedom of speech, for example, there is a concurrent duty for every individual to be concerned about the fullest possible guarantee of the exercise of this right by others. When we acquiesce in any threat to the fullest exercise of freedom of speech, by that degree we impair the effectiveness of this guarantee.

When we remain quiet when the privacy of an individual is invaded by illegal means, by this lack of concern we, to that extent, undermine the strength which this guarantee affords members of a free society. We, also, thereby help to destroy the way of life which has been purchased for us — at such a high price — by our forefathers.

When we sit quietly by while equal access to justice, in fact, is not available to a defendant before the bar of justice, by that measure do we destroy the concept of justice so essential to individual freedom. By our failure to see our duty — in this instance to insure equal access, in fact — we impair the guarantee of equal justice, without which democracy is reduced to a hollow shell.

When we remain silent while fellow citizens are denied equal opportunity because of race or religion — when equal opportunity to vote, to be educated, to get a job, to buy a home, to adequate medical care, to fair pay, are denied our fellow men, then we fail to accept the duty that is ours as a member of a democratic society. Through such silence we subvert our way of life more effectively than those who would elicit our support for some foreign power or ideology.

When we fail to exercise our duty to see that the rights of all citizens are preserved and protected, then we become the hand maidens — knowingly or unknowingly — of the enemies of democracy.

This convention can write and the people will, I am certain, adopt a declaration of rights and a companion bill of duties that will provide a forceful answer to those of small mind and little faith in popular, democratic government.

Such a document should include the hard won principles of political and civil liberties that are part of our democratic heritage. It should also accept as "rights" those basic social and economic goals which meet the needs of Michigan citizens living in the twentieth century.

Acceptance of this challenge will demonstrate the vitality of our democratic system and enable Michigan to assume a role of leadership among the states. It will also make a significant contribution to the strengthening of our federal system.

We, in Michigan, have the opportunity to establish another benchmark in the history of the struggle to enhance the dignity of man.

John B. Swainson, governor.

VICE PRESIDENT HUTCHINSON: The message will be referred to the secretary, and is ordered printed in the journal.

SECRETARY CHASE: That is the only communication, Mr. President.

VICE PRESIDENT HUTCHINSON: Second reading of proposals.

SECRETARY CHASE: Nothing on that calendar.

VICE PRESIDENT HUTCHINSON: Third reading of proposals.

SECRETARY CHASE: Nothing on that calendar.

VICE PRESIDENT HUTCHINSON: **Motions and resolutions.**

Mr. Martin.

MR. MARTIN: Mr. President, at the time that Exclusion Reports 2001 and 2002 were reported out to the convention, there had been no concurrent jurisdiction assigned on sections 14 and 15 of article VI. Our attention has been called to the fact that sections 6 and 7 of article V, which are being handled by the legislative powers committee, are closely related to these sections; and in order to develop a cooperative stand on these, I move, Mr. President, that Exclusion Reports 2001 and 2002 be referred to the committee on legislative powers for coordination.

VICE PRESIDENT HUTCHINSON: Mr. Martin moves that **Exclusion Reports 2001 and 2002** be referred to the committee on legislative powers. The question is upon the motion. All those in favor will say aye. Opposed, no.

The motion prevails. The exclusion reports are so referred.

For Exclusion Reports 2001 and 2002, see above, page 380.

SECRETARY CHASE: Mr. Stevens offers **Resolution 61,** A resolution that the constitutional convention recognize the significance of bill of rights day, Friday, December 15, 1961.

VICE PRESIDENT HUTCHINSON: Mr. Pollock.

MR. POLLOCK: Mr. President, I would like to move that the rules be suspended and the resolution be considered immediately.

VICE PRESIDENT HUTCHINSON: Mr. Pollock moves that the rules be suspended for the immediate consideration of this resolution. Is there objection?

Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, I do not rise to object, but I rise to ask a point of information of Professor Pollock. If you would give us some indication of the nature of the resolution, it would be helpful in considering whether or not there is objection to suspension of the rules.

VICE PRESIDENT HUTCHINSON: Mr. Van Dusen, are you objecting to the suspension of the rules?

MR. VAN DUSEN: No, I'm not, Mr. President. All I'm doing is inquiring, before the rules are suspended, for what specific purpose it is asked that the rules be suspended.

VICE PRESIDENT HUTCHINSON: Mr. Van Dusen reserves the right to object, and the Chair recognizes Dr. Pollock.

MR. POLLOCK: Mr. President, this is a resolution from the committee on declaration of rights, suffrage and elections to commemorate today as bill of rights day.

MR. VAN DUSEN: I have no objection, Mr. President.

VICE PRESIDENT HUTCHINSON: Without objection, the rules are suspended.

The secretary will read the resolution.

SECRETARY CHASE: Resolution 61, by Mr. Stevens, A resolution that the constitutional convention recognize the significance of bill of rights day, Friday, December 15, 1961.

Whereas, Friday, December 15, is officially recognized as "bill of rights day"; and

Whereas, The declaration of rights is recognized as an important part of our own state constitution; and

Whereas, Said declaration of rights contains most of the guarantees of the fundamental rights of the people, protecting them to a large degree against arbitrary, unjust and discriminatory acts by the state and its agencies; and

Whereas, It is our traditional American dedication to the freedom of all citizens, a concept enshrined in our bill of rights, which chiefly distinguishes us from the tyranny of totalitarian governments; and

Whereas, The freedom of speech, press, assembly, association and religious worship, the right of due process under law and equal treatment under law are a priceless heritage which must constantly be safeguarded; now therefore be it

Resolved, That this convention recognize the significance of bill of rights day as a symbol of human rights and the principle that governments are created for the benefit of mankind.

VICE PRESIDENT HUTCHINSON: The question being upon adoption of the resolution, the Chair recognizes Dr. Pollock.

MR. POLLOCK: Mr. President, I should like to have a few moments to appropriately recognize this occasion, as chairman of the committee on rights, suffrage and elections, and on behalf, I hope, of the Michigan constitutional convention, to make appropriate remarks celebrating this occasion.

Public law 392 of the seventy-ninth Congress, signed by the president on May 29, 1946, has designated December 15 as bill of rights day and it invited "the people of the United States to observe the day with appropriate ceremonies and prayer." The people of Michigan, having selected us to reconsider the basic values and institutions of the state, are now in session on this auspicious occasion, and one of your committees, which I have the honor to represent, has been deliberating for months on the declaration of rights which it will soon present to this convention.

Because of the desirability of public hearings away from Lansing and the delay in the receipt of delegate proposals, our committee is unable on this day, as it had originally planned, to present to you our recommendations for that vital portion of our state constitution known as the declaration of rights. Due to these circumstances beyond our control, we shall have to delay the presentation of our proposals until a later day.

But we do not want this day to pass without reviewing before you, very briefly, the record which shows the development of our own declaration of rights in the Michigan constitution.

Bill of rights is the term commonly applied to the English statute of William and Mary of 1689, the most important of the parliamentary enactments by which legal effect was given to the revolution settlement. Its chief constitutional and political significance lies in the important limitations it imposed on the royal prerogative.

The bill of rights, although in form and legal effect an ordinary act of parliament, has always been ranked with magna carta and the petition of rights as one of the few fundamental documents of the English constitution.

In America, as earlier in England, a "revolution settlement" brought with it the apparent need for formulations of rights. But in this case the representatives of the people were drawing up constitutions for their newly created governments and were therefore enabled to guard more effectively against government encroachments on individual rights by embodying these rights in the constituent law itself rather than in the isolated acts of a purely legislative body. The first "bill of rights" in America after the outbreak of the revolution was that adopted by the Constitutional Convention of Virginia on June 12, 1776, to accompany the first Virginia constitution, which was agreed to about two weeks later. As adopted, it follows closely a draft, still in existence, made by George Mason, and 14 of its 16 articles are in substance his.

The first constitution of Pennsylvania, prefaced by a "declaration of rights" also of 16 articles, was completed on September 28, 1776, and was followed by those of Maryland, North Carolina, Vermont, Massachusetts and New Hampshire.

In the first constitution of New Jersey, of New York, of Georgia and of South Carolina, no distinct bill of rights appears, although somewhat similar safeguards are usually included in the body of the constitution.

In all subsequent state constitutions in the United States varying types of "bills" or "declarations" of rights are to be found, related in their general character to the early ones and usually following them rather closely in both form and substance.

The draft of the Constitution of the United States as completed by the assembly at Philadelphia in 1787 contained no distinct bill of rights. The debates in the several states on the ratification of the constitution, while disclosing a great difference of opinion as to the necessity for one, did indicate a widespread feeling that such a bill was required. Among the amendments proposed, the addition of a formal declaration of reserved rights was several times included. Hamilton argued with force against this in number 84 of the Federalist, but it was becoming evident that without the assurance of the addition of some such reservations a sufficient number of ratifications was unlikely to be obtained. As a consequence a resolution of the first congress which met under the new constitution in 1789 proposed 12 amendments, 10 of which received the requisite number of ratifications on December 15, 1791.

These first 10 amendments to the federal constitution, popularly known as the "bill of rights," and composed mainly of parts drawn from the earlier state bills of rights, forbid the government of the United States to do certain things and enjoin certain other things upon it.

All these restrictions affect the organs of the national government, not those of the several states, and many of them are identical with limitations originally imposed upon English kings.

But it was not alone the Constitution of the United States which was patterned after the bills of rights adopted in the American states before 1789. These were also the models for the famous French declaration of the rights of man and of the citizen, drawn up in 1789 and later combined with the Constitution of 1791, and for similar declarations in the constitutions of 1793 and 1795. From France these ideas spread throughout Europe and ultimately beyond. The Belgian Constitution of 1831, for example, contained a bill of rights, and after the revolution of 1848 the number of such constitutions increases. The revolutions and the creation of new states which accompanied or followed the world war naturally brought about the adoption of many new constitutions containing for the most part bills of rights on which the influence of the French declaration

of 1789 is obvious. Among the most important is the Constitution of the new West German Republic of 1949.

The basic theory underlying the early bills of rights is a belief in the rights of individual men and in rights existing in the law of nature independent of states or their laws, as set forth especially in Locke's Second Treatise on Government (1690). Some of these rights were regarded as alienable and might be entrusted by a people to its government for due compensation, but there are others of which no man is ever capable of divesting himself or his posterity even by consent or for compensation; they are inalienable.

An instrument of government ought then to consist of two parts: a "frame" or form of government in which the first of these two kinds of rights, the alienable ones, are entrusted to the various organs of the state under proper safeguards for due compensation in the form of just and effective government; and a "bill of rights" enumerating the inalienable rights of the people which they cannot delegate to their government and upon which the latter is explicitly forbidden ever to infringe. Such was the theory.

Our earlier Michigan Constitutions of 1835, 1850 and 1908, faithfully followed the historical pattern which I have traced. Changes here and there in some details were made, but the basic substance of inalienable rights, declared to be basic and fundamental, remained substantially the same.

Today we are reviewing this impressive historical record to see if our present social and economic situation, and our juridical experience since 1908, require changes, adaptations, or additions to those sacred rights which have been handed down to us by our ancestors.

At a time when only a portion of the world enjoys the blessings of freedom, it is well for us, as the representatives of the free and sovereign commonwealth of Michigan, in convention assembled, to pause these few moments at least, in tribute to our ancestors and our sacred heritage.

VICE PRESIDENT HUTCHINSON: Thank you, Dr. Pollock.

The question is upon the resolution. All those in favor will say aye. Opposed?

The resolution is adopted.

The Chair recognizes Miss Andrus.

MISS ANDRUS: Mr. President, I move that these remarks by Dr. Pollock from the committee on declaration of rights, suffrage and elections be printed in the journal.

VICE PRESIDENT HUTCHINSON: Miss Andrus moves that the remarks of Dr. Pollock, because of their historical content, be printed in the action journal. All those in favor will say aye. Opposed?

The motion prevails, and it is so ordered.

SECRETARY CHASE: That is the only resolution on file, Mr. President.

VICE PRESIDENT HUTCHINSON: Unfinished business.

SECRETARY CHASE: None.

VICE PRESIDENT HUTCHINSON: Special orders of the day.

SECRETARY CHASE: None.

VICE PRESIDENT HUTCHINSON: General orders of the day.

SECRETARY CHASE: Two items on the general orders calendar have been referred to committee. There are no general orders for the day.

VICE PRESIDENT HUTCHINSON: Announcements.

SECRETARY CHASE: The committee on administration will meet in the conference room on Monday next at 7:30 p.m. Walter DeVries, chairman.

The committee on public information will meet in room 2 on Monday, December 18, immediately after the session. Ink White, chairman.

The committee on judicial branch will meet in room B, Tuesday, at 9:30. Robert J. Danhof, chairman.

The committee on legislative powers will meet in room H for a short meeting on Monday, immediately following the session. T. Jefferson Hoxie, chairman.

The other committee announcements are in the composite calendar.

The secretary has been requested to read this announcement:

On your desk this morning is the book entitled, Poles in Michigan. These booklets have been given by Benjamin Stanczyk and have been placed through the courtesy of Delegate Frank Balcer and the historical society of Michigan. These books would be a valuable addition to any public library. Submitted by Roscoe Bonisteel.

VICE PRESIDENT HUTCHINSON: Dr. Pollock

MR. POLLOCK: Mr. President, could I point out a mistake in the public hearing schedule? Instead of the hearing in Flint being on Wednesday afternoon, it is on Tuesday afternoon. Tuesday morning in Saginaw, and Tuesday afternoon in Flint. The hours and the place are correct, but not the day.

VICE PRESIDENT HUTCHINSON: Mr. Bentley.

MR. BENTLEY: Mr. President, composite calendar 41 shows the subcommittee on libraries of the education committee as meeting at 8:30 a.m. on Tuesday morning. I am informed by the chairman of the subcommittee that that is in error. The subcommittee on libraries will meet on Monday, immediately after the session of Monday night; and at the time of 8:30 a.m. on Tuesday there will be a meeting of the full education committee.

VICE PRESIDENT HUTCHINSON: Mr. Martin.

MR. MARTIN: The committee on executive branch will meet today, after the session, for a short meeting; and will meet Monday evening at 6:30 in committee room C. The committee members are requested to have their dinner first.

VICE PRESIDENT HUTCHINSON: Mr. Hoxie.

MR. HOXIE: Mr. President, there was an error in the announcement that was just made relative to a meeting of the legislative powers committee immediately following the session Monday. That should have been immediately following today's session. There will be a short meeting of the members of the legislative powers committee immediately following the session today.

While I have the mike, Mr. President and fellow members, I would like to call your attention to the program of the public hearings to be held in Grand Rapids and Detroit. We are going to ask the cooperation of those delegates from the Grand Rapids area, as well as the Detroit area, to help us advise the people in that district of these 2 public hearings. The public hearing arranged in Grand Rapids by Delegate Koeze will be at the commission chambers Monday evening at the city hall, in the city of Grand Rapids. The public hearing in Detroit, arranged by Delegate Baginski, will be in the supervisor's room of the city-county building on Tuesday evening, at 7:00 o'clock.

Letters are going to be sent to various groups and organizations — church groups, legion groups, all types of organizations — that would be particularly interested in this subject. But, because of the shortness of time, we are going to ask the delegates from the Grand Rapids area as well as the delegates from the Detroit area, to cooperate and spread the news of these 2 public hearings in those respective districts. Thank you.

VICE PRESIDENT HUTCHINSON: Are there any further announcements?

SECRETARY CHASE: There are the following requests for leave of absence:

Requests to be excused from the session of Monday: Messrs. G. E. Brown, Lawrence, Marshall, Snyder and Suzore.

Mr. Hoxie, as chairman, requests leave for the committee on legislative powers to be excused from the session of Monday for the purpose of conducting the committee hearing in Grand Rapids; and for the members of the committee on legislative powers, Messrs. Baginski and Murphy, to conduct committee hearings in Detroit on Tuesday.

Dr. Hannah has filed a request that the committee on legislative organization be excused from the session of Wednesday, for the purpose of conducting committee hearings in Kalamazoo and in Berrien Springs.

VICE PRESIDENT HUTCHINSON: Is there objection to the several requests for leaves of absence? Hearing none, they will be granted; and they are granted.

Any further announcements? What is the pleasure of the convention?

Mr. DeVries.

MR. DeVRIES: Mr. President, I move that the convention now adjourn.

VICE PRESIDENT HUTCHINSON: The gentleman moves that the convention now adjourn. All those in favor will say aye. Those opposed will say no.

The motion prevails. The convention stands adjourned until Monday evening, December 18, at 8:00 p.m.

[Whereupon, at 10:55 o'clock a.m., the convention adjourned until 8:00 o'clock p.m., Monday, December 18, 1961.]

FORTY-FIFTH DAY

Monday, December 18, 1961, 8:00 o'clock p.m.

PROCEEDINGS

PRESIDENT NISBET: The convention will please come to order.

Our invocation tonight will be given by one of our own delegates, Walter DeVries.

MR. DeVRIES: Our Father in heaven, we thank Thee for the many blesings that are ours. In the week that lies ahead grant us continued clarity of mind and purpose that we may responsibly fulfill our tasks in this convention. Keep us Christian in our thoughts and actions as we attempt to implement Christian principles. Prevent us from becoming intolerant and undemocratic in the pursuit of tolerance and the goals of a democratic society. May we follow the mandate of Jesus Christ that in all things the work of God should be our first consideration, the welfare of our fellowmen second, and ourselves last. We ask this in the name of the Father, Son and the Holy Ghost. Amen.

PRESIDENT NISBET: The roll call will be taken by the secretary. All present please vote aye.

SECRETARY CHASE: Has everyone voted? The machine is now locked and the attendance will be recorded.

Mr. President, a quorum of the convention is present.

Prior to the session this evening, the secretary received the following requests for leave: Messrs. Dehnke, Habermehl, McAllister and Wood, indefinitely due to illness; Mr. Gust had a speaking engagement that lasted longer than he expected. (laughter) He will be here later but asked to be excused at the opening of the session; and Mr. Norris, from tonight's session.

I have a communication from Mr. Romney:

> I have met with former President Hoover relative to his con-con visit. New York airport has grounded all planes due to bad weather and I am forced to take a train back. Please excuse my forced absence from tonight's session.

PRESIDENT NISBET: Without objection, the requests are granted.

SECRETARY CHASE: Excused to conduct committee hearings: Messrs. Baginski, Beaman, Buback, Mrs. Butler, Messrs. Dade, Gadola, Habermehl, Mrs. Hatcher, Messrs. Hodges, Hoxie, Hubbs, Mrs. Koeze, Messrs. Kuhn, Leppien, Lesinski, Murphy, Norris, Perras, Pollock, Powell, Shaffer, Shanahan, Stevens, White and Youngblood.

Absent with leave: Messrs. G. E. Brown, Dehnke, Gust, Lawrence, Marshall, McAllister, Romney, Snyder, Suzore and Wood.

Absent without leave: Messrs. Krolikowski and Lundgren.

PRESIDENT NISBET: Without objection, the delegates are excused.

We should recognize tonight that 2 of our committees are out of Lansing for hearings, which accounts for a great deal of absenteeism.

Reports of standing committees.

SECRETARY CHASE: Mr. Brake, for the committee on finance and taxation, introduces

Committee Proposal 11, A proposal to provide for care and control of state funds, accounting for public moneys, audits, and publication of reports, and covering the general subject matter found in sections 15, 16, 17, 18 and 13 of article X of the 1908 constitution;

with the recommendation that it pass.

D. Hale Brake, chairman.

For Committee Proposal 11 and the reasons submitted in support thereof, see below, page 416.

PRESIDENT NISBET: Referred to the committee of the whole and placed on general orders.

SECRETARY CHASE: That is the only standing committee report, Mr. President.

PRESIDENT NISBET: Reports of select committees.

SECRETARY CHASE: None.

PRESIDENT NISBET: Communications from state officers.

SECRETARY CHASE: None.

PRESIDENT NISBET: **Introduction, first reading and reference of proposals.**

ASSISTANT SECRETARY KNAPP: Messrs. Lesinski, Krolikowski and Mahinske introduce

Delegate Proposal 1814, A proposal to change the power of married women to devise and bequeath property. Amends article XVI, section 8.

PRESIDENT NISBET: Referred to the committee on miscellaneous provisions and schedule.

ASSISTANT SECRETARY KNAPP: Mrs. Daisy Elliott and Mr. Young introduce

Delegate Proposal 1815, A proposal to amend article V, section 19.

PRESIDENT NISBET: Referred to the committee on legislative powers.

ASSISTANT SECRETARY KNAPP: Mrs. Daisy Elliott and Messrs. Young and Greene introduce

Delegate Proposal 1816, A proposal to prohibit the offering and giving of bribes and acceptance thereof by public officers. Amends article XVI by adding a section.

PRESIDENT NISBET: Referred to the committee on miscellaneous provisions and schedule.

ASSISTANT SECRETARY KNAPP: Mrs. Daisy Elliott and Mr. Young introduce

Delegate Proposal 1817, A proposal to provide for the designation of terms of court for the supreme court by court rule. Amends article VII, section 3.

PRESIDENT NISBET: Referred to committee on judicial branch.

ASSISTANT SECRETARY KNAPP: Mr. Suzore introduces

Delegate Proposal 1818, A proposal to provide that the present legislative establishment of school districts be retained and protected in the constitution. Amends article XI.

PRESIDENT NISBET: Referred to the committee on education.

ASSISTANT SECRETARY KNAPP: Mr. Suzore introduces

Delegate Proposal 1819, A proposal to provide that consideration be given to the more equitable representation in the legislature of Wayne county outside of the city of Detroit. Amends article V.

PRESIDENT NISBET: Referred to the committee on legislative organization.

I might say that all of the delegate proposals that were presented before the deadline are now back in the hands of the delegates from the drafting room. You delegates who have them, please see that they are turned in immediately so this phase can be completed.

Second reading of proposals.

SECRETARY CHASE: Nothing on that calendar, Mr. President.

PRESIDENT NISBET: Third reading of proposals.

SECRETARY CHASE: Nothing on that calendar.

PRESIDENT NISBET: **Motions and resolutions.**

Mr. Brake.

MR. BRAKE: Mr. President, I move that the 2 matters that are eligible for general orders for tonight's consideration be postponed to Thursday of this week.

PRESIDENT NISBET: The question is on the motion of Mr. Brake that the 2 items on general orders for tonight be postponed to Thursday of this week. Any discussion? If not, all in favor say aye. Opposed, no.

The motion prevails.

[The 2 items mentioned above were Exclusion Report 2003 and Committee Proposal 10.]

Unfinished business.

SECRETARY CHASE: None.

PRESIDENT NISBET: Special orders.

SECRETARY CHASE: None.

PRESIDENT NISBET: Mr. Yeager.

MR. YEAGER: Mr. President, I would like to inquire, was there a motion before this body that we would be in session at 10:00 o'clock Thursday or 2:00 o'clock Thursday?

PRESIDENT NISBET: Mr. Chase will make an explanation.

SECRETARY CHASE: The secretary would like to point out that on October 4, the second day of the convention, on the recommendation of the committee on permanent organization and rules, the time of the daily sessions was set. That time was, Mondays at 8:00 p.m., Tuesdays, Wednesdays and Thursdays at 2:00 p.m., and Fridays at 10:00 a.m., unless otherwise ordered by the convention. That order has not been changed and under the present schedule the convention will meet Thursday at 2:00 o'clock.

The secretary would also like to suggest that when the time comes for adjournment, it is not necessary to make any other than the simple motion that we adjourn because under this agreement that has been adopted by the convention, the time is automatically set for the session each day.

PRESIDENT NISBET: General orders of the day have just been taken care of.

Announcements.

Mr. Binkowski.

MR. BINKOWSKI: Excuse me, Mr. President. Are we still under "motions?"

PRESIDENT NISBET: We can be.

MR. BINKOWSKI: Thank you. At this time, then, Mr. President, I would move that the convention allow me to introduce a delegate proposal.

PRESIDENT NISBET: The question is on the motion of Mr. Binkowski that he be allowed to introduce a delegate proposal. Any discussion?

Mr. Walker.

MR. WALKER: Mr. President, I request a record roll call vote.

PRESIDENT NISBET: Mr. Hutchinson.

MR. HUTCHINSON: Mr. President, I would like to inquire whether the proposal that is offered now for introduction is one that was filed with the drafting division on or before the first day of December.

PRESIDENT NISBET: Mr. Binkowski.

MR. BINKOWSKI: Mr. President and Mr. Hutchinson, no, sir, it was not.

PRESIDENT NISBET: Mr. Hodges.

MR. HODGES: I just wonder what the proposal is about. I think the delegate should inform us what kind of a proposal he intends to present here.

PRESIDENT NISBET: Without objection, the secretary will indicate.

SECRETARY CHASE: Mr. Binkowski's proposal as laid on the desk proposes the following or its substance as a part of the constitution:

> Citizens shall have the right to organize, except in military organizations not under the supervision of the state, and except for purposes of resisting the duly constituted authority of this state or of the United States. Public employees shall have the right, through representatives of their own choosing, to present to and make known to the state, or any of its political subdivisions or agencies, their grievances and proposals. Persons in private employment shall have the right to bargain collectively through representatives of their own choosing.

PRESIDENT NISBET: Is the demand for the yeas and nays seconded? Those in favor, please rise.

There are not a sufficient number up.

The question is on the motion of Mr. Binkowski. Those in favor, please say aye. Opposed, no.

The motion does not prevail.

Announcements.

SECRETARY CHASE: I have the following announcements of committee meetings:

The committee on administration will meet in the conference room tomorrow, Tuesday, at 1:15 p.m. Walter De Vries, chairman.

The committee on executive branch will meet tonight immediately after the session.

The committee on legislative powers will meet in the supervisors room of the city-county building in Detroit tomorrow, Tuesday, at 7:00 p.m. on the subject of lotteries.

The committee on finance and taxation will meet in room E tomorrow at 8:30 a.m. D. Hale Brake, chairman.

The chairman of the committee on judicial branch has requested that emphasis be given to the following announcement which is on the composite calendar. Item 2 under Tuesday, December 19: committee on judicial branch will meet in room B at 9:30 a.m. Note the change in time. Sylvester Smith, president-elect of the American bar association, will appear.

Mr. A. G. Elliott, the chairman of the committee on local government, moves that the subcommittee appointments made to date within the committee on local government be considered read and published in the daily journal.

PRESIDENT NISBET: Without objection, they will be published in the daily journal.

Following are the subcommittee assignments for the committee on local government:

Legislative report
- McLogan, chairman
- Mrs. Cushman
- L. W. Richards

Constitutional matters
- Farnsworth, chairman
- Tweedie
- Ford

Concurrent jurisdiction, article VIII, section 18
- Ford, chairman
- Radka
- Tweedie

Concurrent jurisdiction, article XIII, section 5
- Gover, chairman
- Mrs. Cushman

Township government
- Radka, chairman
- Farnsworth
- Ford
- Suzore

City government
- McCauley, chairman
- Dell

Tweedie
L. W. Richards

County government
Mrs. Judd, chairman
Baginski
Finch
McLogan
Figy

Metropolitan areas and intergovernmental relations
Allen, chairman
Brake
Sharpe
Mrs. Cushman

Annexation and consolidation, and miscellaneous provisions
Follo, chairman
Gover
Batchelor
Thomson
Buback

Public utilities
Sleder, chairman
Mrs. Hatcher
Madar
J. B. Richards

SECRETARY CHASE: The secretary has placed in the box of each of the delegates in the mailroom a memo for your assistance, entitled, For Chairmen of Committee of the Whole, which spells out in detail the procedure if and when you are called upon to preside as chairman. In the event you are not, you can familiarize yourselves with the processes that ordinarily will occur in the committee of the whole.

There are no other announcements, Mr. President.

PRESIDENT NISBET: Miss Donnelly.

MISS DONNELLY: I move we adjourn.

PRESIDENT NISBET: The question is on adjournment. Those in favor, say aye. Opposed, no.

The motion prevails. We are adjourned until 2:00 o'clock tomorrow afternoon.

[Whereupon, at 8:15 o'clock p.m., the convention adjourned to Tuesday, December 19, 1961, at 2:00 o'clock p.m.]

FORTY-SIXTH DAY

Tuesday, December 19, 1961, 2:00 o'clock p.m.

PROCEEDINGS

PRESIDENT NISBET: The convention will please come to order.

The invocation today will be given by one of our own delegates, Lee Boothby.

MR. BOOTHBY: Father, we accept the scriptural promise that if we acknowledge You in all our ways, You will direct our work. We do look to You for guidance in all our affairs. We ask for wisdom in search of truth and justice. Give us strength to never compromise principle. Grant to us, however, understanding of our fellow man so that we may seek accord. Remove selfishness from our lives. In our work let us always keep foremost those rights that flow from You. Amen.

PRESIDENT NISBET: The roll call will be taken by the secretary. Those present please vote aye.

SECRETARY CHASE: Have you all voted? The machine is now locked and the attendance will be recorded.

Mr. President, a quorum of the convention is present.

Excused to conduct committee hearings were Messrs. Baginski, Beaman, Buback, Mrs. Butler, Messrs. Dade, Gadola, Mrs. Hatcher, Messrs. Hodges, Hubbs, Leppien, Murphy, Norris, Pollock, Shaffer, Shanahan, Stevens and White.

Absent with leave: Messrs. Dehnke, McAllister and Wood.

Absent without leave: None.

PRESIDENT NISBET: Reports of standing committees.

SECRETARY CHASE: The committee on style and drafting, by Mr. Cudlip, chairman, submits Report 1 of that committee, reporting back to the convention the following committee proposal, recommending that the style and form be approved:

Committee Proposal 1, A proposal pertaining to the inclusion of section 1 of article XI in the constitution.

The committee recommends that the following be included in the constitution:

Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.

William B. Cudlip, chairman.

PRESIDENT NISBET: The committee proposal will be placed on second reading for tomorrow.

Mr. Faxon.

MR. FAXON: Mr. President, in view of the fact that the committee on legislative organization will be holding hearings outside of Lansing tomorrow, I would like to move to postpone this until Thursday.

PRESIDENT NISBET: The question is on the motion of Mr. Faxon.

Mr. Bentley.

MR. BENTLEY: Mr. President, it is a matter of personal irrelevance to me whether this matter is debated Wednesday or Thursday, but in view of the fact that we already have several matters before the convention scheduled for Thursday, I am a little surprised that my friend, Jack Faxon, is reluctant to return home for the Christmas holidays. (laughter)

PRESIDENT NISBET: Dr. Nord.

MR. NORD: Mr. President, with respect to this particular committee proposal, I spoke to Mr. Cudlip a number of times, pointing out to him that, in my opinion, there is a conflict of language between the present language of article II, the bill of rights, sections 1 and 3, together with other language that has been proposed to be incorporated in this article and the committee proposal, and that one of the duties of the style and drafting committee is to determine whether there are any such conflicts. Mr. Cudlip agreed that I should be given an opportunity to appear before the style and drafting committee in order to speak on that subject. He guaranteed me twice, on 2 different occasions, that he would not submit this committee proposal to the floor without giving me an opportunity to speak.

I therefore move that this committee proposal be returned to the style and drafting committee with instructions to hold it until they have had an opportunity to examine the question of whether there is, in fact, any such conflict with the bill of rights.

PRESIDENT NISBET: A motion to postpone to a day certain takes priority over Mr. Nord's motion to commit.

Mr. Cudlip.

MR. CUDLIP: Mr. President, as you all realize, this was the first proposal referred to style and drafting. The attitude of style and drafting committee was simply that we have nothing, of course, to do with meaning, and we couldn't improve on the language. The disposition of the matter obviously is before the members of this convention. We disposed of this matter some time ago, and my remarks now are just for the record.

On 2 or 3 occasions Chairman Bentley spoke about the matter. We said we have no particular desires in this case except that we have decided what we should do within our function, and I was advised by Mr. Nord and by Mr. Bentley that it should be held there, and I said, "That is all right. We will hold it there for awhile."

The last understanding I had — and if I am wrong, I am sorry — I was told by the chairman of the committee on education that Mr. Nord and Mr. Gust and perhaps some others would be witnesses before their committee a couple of days ago, and that after they appeared before the committee on education, the matter would be resolved. The witnesses were heard, as I understand it. And when the chairman of the committee on education told our committee that witnesses had been heard and it was now in order, if we were ready, to report the matter to the floor. I assumed that all of the conflict had been resolved. And so this morning in the order of business, we sent the matter to the secretary's office.

PRESIDENT NISBET: Mr. Bentley.

MR. BENTLEY: Mr. President, what Mr. Cudlip says is basically correct. We heard several witnesses within the past few days who wished to be heard on this subject.

Following the final witness — a member of our committee, Mr. Faxon — only yesterday afternoon I asked the full committee whether there was any disposition on the part of anyone to further delay the style and drafting committee from bringing this matter to the floor. Finding no such objection, I then notified Mr. Cudlip that it was the intention and desire of our committee that his committee would proceed, as they have done.

PRESIDENT NISBET: Dr. Nord.

MR. NORD: Mr. President, I would like to point out several inaccuracies in Mr. Cudlip's statement. First of all, I have a letter from him in which he stated that I could speak before his committee on this subject, and it has nothing to do with whether or not I appear before Mr. Bentley's committee, because the question is a question of conflict between article II, the bill of rights, and this Committee Proposal 1. Obviously this can't be cleared up by appearing before the education committee. That can only be cleared up after 2 things happen:

1. The bill of rights is reported to the committee on style and drafting; and

2. They have had an opportunity to determine whether I am right or wrong in saying there is a conflict.

Further, when Mr. Cudlip was reported as intending to bring this on the floor previously about a week ago, I spoke to him about it and reminded him that he had made a commitment to me in writing that I would be given an opportunity to speak before his committee. He remembered it, and he said to me — and I quote: "I will not put this on the floor until I have a release of Mr. Bentley and of you."

I said, "I don't want you to wait for me to release it, but I want you to give me an opportunity to speak."

He said, "You will be sure to have an opportunity to speak before my committee."

Now I wish that I can have an opportunity to speak. And it seems to me there is no reason why we have to ask the committee a question, when this comes on the floor, whether they have made a determination, a finding of fact that there is no conflict.

I therefore adhere to my position that this should be rereferred to the committee.

PRESIDENT NISBET: The question is on the motion of Mr. Faxon that this be postponed until Thursday.

Mr. Downs.

MR. DOWNS: Mr. President, I think that in a deliberative body of this nature, we should have a maximum discussion at the committee level and get as many questions as possible resolved at the committee level so that we will then have only the main key issues in the committee of the whole.

I personally regret if there has been any misunderstanding on people appearing before a committee. However, I think that if a committee does not provide a maximum opportunity to clear up questions in that committee, then the only recourse is to use up the time of the whole convention and resolve the questions in the committee of the whole.

Personally, I would rather see the committee of the whole used only for those questions that cannot be resolved within the various substantive or technical committees, but I do think there is an obligation to a delegate who does not have the opportunity to have his presentation heard within the smaller committee, that then his only resort is to use the committee of the whole for that function.

PRESIDENT NISBET: The question is on the motion of Mr. Faxon that consideration of Committee Proposal 1, now on order of second reading, be postponed until Thursday, December 21. All in favor say aye. Opposed, no.

The motion does not prevail.

The question is now on Mr. Nord's motion that this matter be rereferred to the style and drafting committee. Is there any further discussion?

Mr. Romney.

MR. ROMNEY: Mr. President, it doesn't seem to me that Mr. Nord's point is valid. As I understand it, his point is, as far as substance is concerned, that there is a conflict between this preamble of article XI and section 3 of article II.

It happens that I am chairman of the subcommittee of the education committee responsible for this part of article XI, and we are in the process of giving consideration to the suggestions that have been made for additions to the preamble, and we have also given consideration to this question of whether there is a conflict between the preamble and section 3 of article II.

It was our deliberate conclusion — and unanimous conclusion — as we reviewed the two, that there was not the conflict that Dr. Nord speaks of, and that this language in the preamble should be in article XI and that it would be unwise to leave out of article XI the language in the preamble in that there is no conflict and that there is a need for this language in the article on education.

PRESIDENT NISBET: Dr. Nord.

MR. NORD: Mr. President, I am puzzled how anyone is in the position to affirm in a deliberative manner that there is no conflict between Committee Proposal 1 and another committee proposal which we do not even have the language of. How do you know what it will look like when it comes to the floor? There have been proposals to amend it. Maybe it will be amended. It might even be amended on the floor. You won't be able to determine whether there is a conflict until you have two things. How can you determine that there is no conflict when you have only one thing before you? I can't understand how that can be.

PRESIDENT NISBET: Mr. Romney.

MR. ROMNEY: That was not the point and that was not what I said. Your point was there was a conflict between the present section 3 and the preamble that has been submitted for approval, and it was on that basis that I said that our committee had concluded that this language in the preamble was needed in the constitution and in the part relating to education, and that it should be in without regard to the facts that you are raising.

PRESIDENT NISBET: Mr. Downs.

MR. DOWNS: Mr. President, the discussion by the 2 delegates has, I believe, demonstrated the very point I made; namely, that if a delegate requests the opportunity to appear before a committee for some reason or other — perhaps a misunderstanding — and does not have that opportunity, then we end up using the time on the floor discussing what more appropriately should be screened through the committee. And I believe the chairman of the education committee had pointed out that there had been full opportunity for discussion there. Nobody is questioning that. But when the delegate, Mr. Nord, had asked for the chance there, I feel that it would be good wisdom and good judgment to see that he was afforded that opportunity, and perhaps in the committee hearing these problems could be resolved so that we could use our plenary sessions or our committee of the whole to discuss only those problems we have not been able to resolve in the smaller working committees. I support Dr. Nord.

PRESIDENT NISBET: Mr. Bentley.

MR. BENTLEY: Mr. President, just a brief statement regarding the rule which has recently been adopted by the convention on the subject of jurisdiction. On this particular section, no concurrent jurisdiction with any other committee is listed. The only jurisdiction is in the education committee.

PRESIDENT NISBET: Mr. Sterrett.

MR. STERRETT: Mr. President, I would like to call a point of order. Rule 24, the times a delegate may speak on the subject; the times a person introducing a motion may speak and the times the chairman may speak on a subject.

PRESIDENT NISBET: The question is on the motion of Mr. Nord that this be rereferred to the committee on style and drafting. All in favor say aye. Opposed, no.

The motion prevails and **Committee Proposal 1** is rereferred to the committee on style and drafting.

SECRETARY CHASE: The committee on legislative powers, by Mr. Hoxie, chairman, reports back to the convention **Committee Proposal 8,** A proposal to provide that the governor may convene the legislature on extraordinary occasions. Amends article VI, section 7; without amendment and with the recommendation that it pass.

Walter DeVries, chairman.

For Committee Proposal 8, the reasons submitted in support thereof and prior action thereon, see above, page 375.

PRESIDENT NISBET: Referred to the committee of the whole and placed on general orders.

SECRETARY CHASE: Mr. Bentley, for the committee on education introduces

Exclusion Report 2004, A report recommending the exclusion of article XI, section 13.

Alvin M. Bentley, chairman.

For Exclusion Report 2004 and the reasons submitted in support thereof, see below, page 434.

PRESIDENT NISBET: Referred to the committee of the whole and placed on general orders.

SECRETARY CHASE: The committee on administration, by Mr. DeVries, chairman, submits the following report for the information of the delegates:

Convention stationery for use of individual delegates in some instances is being used at a rate far in excess of anticipated needs, and the committee on administration requests the cooperation of delegates in conserving paper.

No additional personally imprinted letterheads will be ordered for delegates, but a supply of convention letterheads and envelopes is being ordered. If delegates need additional stationery, they may obtain this type through the president's office.

If any delegate has need of or desires the personally imprinted letterhead, he can order this at his own expense through the secretary's office. The cost is $30.03 per 1,000 sheets and envelopes; however, if more than 4 such orders are placed together, the price would drop to $19.75 per 1,000.

As the convention has more than 3 months yet to run and the amount originally budgeted for office supplies has about been depleted, we ask your cooperation in this matter.

T. Jefferson Hoxie, chairman.

PRESIDENT NISBET: Dr. DeVries.

MR. DeVRIES: Mr. President, a brief word of explanation for this report. Under the rules the committee on administration has the power to authorize more than 1,000 sheets of stationery and envelopes. In some cases, personal stationery is being used in excess of anticipated needs, and of course we urge conservative use of the stationery. We are almost over our budgeted amount for office supplies at the present time.

A survey has shown that there is still a large amount of personal stationery downstairs, over 54,000 letterheads and envelopes. Therefore, the committee decided not to authorize any more personally imprinted stationery for the delegates. However, the committee has authorized the purchase of more convention letterhead stationery and envelopes for use of delegates if they run out of their own stationery. As the report points out to you, we can order additional personally imprinted stationery for your own use if you are willing to pay for it.

I will be happy to answer any questions and then move that the convention accept this report as information, and that it be printed in the journal.

PRESIDENT NISBET: The question is on the report of the committee on administration. Is there any discussion? If not, all in favor say aye. Opposed, no.

The report is accepted and will be printed in the journal.

Mr. Hoxie.

MR. HOXIE: Mr. President, I wonder if I might request that the members of the legislative powers committee be excused at this time. As you all know, we are going to Detroit and the roads are kind of bad.

I would also like to call to your attention the fact that subcommittee 4, chaired by Mr. Millard, has sent notices to several members that wish to be heard on exemptions, so that subcommittee is going to meet right away, and we urge that all delegates who received a notice from Mr. Millard come immediately to the committee room. So at this time, all members of the legislative powers committee will meet in room H.

PRESIDENT NISBET: Without objection, the committee will be excused.

Mr. Perras.

MR. PERRAS: Mr. President, at this time I would like to move that when the convention adjourns tomorrow, that we stand adjourned until 10:30 on Thursday.

PRESIDENT NISBET: The question is on the motion of Mr. Perras that when we adjourn tomorrow, we stand adjourned until Thursday at 10:30.

Mr. Danhof.

MR. DANHOF: As one of those gentlemen who unfortunately has a committee which meets on Thursday afternoon, I had relied upon the original resolution as it was adopted by this convention, and pursuant to the schedule of work that we adopted in this convention to end the public hearings by Thursday of this week, I made necessary contact with the attorney general of the state of Michigan, requesting him to appear before my committee. After much discussion, we arrived at a time of Thursday afternoon at 3:00 o'clock. He not only is now the attorney general but he is a supreme court justice-designate, who will assume office shortly after the first of the year.

Now, having visited the upper peninsula many times, I can see Mr. Perras' concern about wanting to start for home, and I don't blame him if he would start Thursday morning if the roads are going to be the way they are.

But when I look at the schedule, I find that my committee meets on Wednesdays at 8:30. Now, if we leave here Thursday at noon and we don't come back until Wednesday at 2:00, I am sure that I will not get my committee back here 8:30 Wednesday morning, January 3, and I don't blame them. I don't think I would want to start out that early either.

I think that we passed a motion setting up the timetable for this convention, with the timetable that we have for our work. If those members who have long distances to travel wish to be excused, I think the policy of this convention has been very lenient in granting such an excuse. I think we should stay with our original resolution as passed, and as a committee chairman, I would urge the convention to oppose the motion and to abide by the resolution so we may finish the public hearings, as stated in here, by the afternoon of the twenty-first. I think it would be quite inopportune for me to recontact the attorney general and tell him that while we passed one resolution, that now, when we get close to the deadline, we have changed our minds and can he please come back another time.

Therefore, I would urge that we abide by our original decision. Thank you.

PRESIDENT NISBET: Mr. Brake.

MR. BRAKE: Mr. President, ladies and gentlemen of the convention, the committee on finance and taxation has that hour of meeting on Thursday morning, 10:30 to 12:30, and we have a full schedule laid out. We are adjourning a day

early this week in order to let people get home. We object to having our time cut down.

PRESIDENT NISBET: Mr. Martin.

MR. MARTIN: Mr. President, we have the same problem that Mr. Danhof's committee has, and we had hoped to hear delegate proposals in time for our committee meeting after the session on Thursday afternoon, so I would certainly agree with him. If we are going to get the job done, we had better stay here long enough to do it.

PRESIDENT NISBET: Mr. Van Dusen.

MR. VAN DUSEN: I concur with the previous speakers, Mr. President, and request a roll call vote.

PRESIDENT NISBET: The question is on the roll call vote. Those in favor please rise. A sufficient number are up. Those in favor of Mr. Perras' motion that when we adjourn Wednesday, we stand adjourned until 10:30 Thursday morning —

Mr. King.

MR. KING: Mr. President, can you tell me by way of information what kind of a vote is required to pass this sort of a change in the permanent rules?

PRESIDENT NISBET: Majority vote.

MR. KING: Is it the majority present and voting?

PRESIDENT NISBET: Yes.

Mr. Perras.

MR. PERRAS: Mr. President, in view of all the trouble we are causing, I withdraw my motion. (laughter and applause)

PRESIDENT NISBET: The motion is withdrawn.

Further reports of standing committees.

SECRETARY CHASE: There are no other standing committee reports.

PRESIDENT NISBET: Reports of select committees.

SECRETARY CHASE: None.

PRESIDENT NISBET: Communications from state officers.

SECRETARY CHASE: None.

PRESIDENT NISBET: **Introduction, first reading and reference of proposals.**

SECRETARY CHASE: Mr. Sharpe introduces

Delegate Proposal 1820, A proposal to authorize income taxes and to provide for reduction in taxes on real property if income taxes are enacted. Amends article X.

PRESIDENT NISBET: Referred to the committee on finance and taxation.

Second reading of proposals.

SECRETARY CHASE: Nothing on that calendar.

PRESIDENT NISBET: Third reading of proposals.

SECRETARY CHASE: Nothing there.

PRESIDENT NISBET: Unfinished business.

SECRETARY CHASE: None.

PRESIDENT NISBET: **Motions and resolutions.**

Mr. Hutchinson.

MR. HUTCHINSON: Mr. President, when delegate proposals were logged in down at the drafting department, they were given a log number, a request number, and when they are introduced up here, they are, of course, given a proposal number. If you take the total number of proposals that were drafted down there and delivered to delegates, and the total number of proposals that have actually been introduced up here, as of the moment there is a difference of 113. In other words, there are 113 delegate proposals kicking around someplace which haven't been introduced.

The work of drafting has been completed. The delegate proposals have been presented to the delegates. Certainly from the standpoint of proceeding in this convention, it is necessary to now establish a cutoff date. The president of the convention has done some checking, inquiring from various delegates who are supposed to have these proposals outstanding, and we have found that for the most part, they were drafted, but upon further reflection on the matter, the delegates have decided not to introduce them. I dare say that these delegate proposals are now all virtually in. But so that there will be no misunderstanding, I now move that no delegate proposals shall be introduced after the adjournment of the session on Thursday, December 21, without leave of the convention.

PRESIDENT NISBET: The question is on the motion of Mr. Hutchinson. Is there any discussion? All in favor say aye. Opposed, no.

The motion prevails.

Mr. Madar.

MR. MADAR: Mr. President, on the delegate proposals, I notice that there are quite a few that haven't been printed, or at least we haven't received them. We are way behind on some of these proposals. I wonder why they couldn't go ahead and bring up some of these lower numbers instead of going along with the 1700's, and get caught up.

For instance, we have a hearing coming up tomorrow on one proposal, and it would be a good thing if we had these proposals to refer to and talk to the committees about. As yet we haven't received the printed proposals.

PRESIDENT NISBET: Mr. Chase, can you answer that question?

SECRETARY CHASE: The only answer the secretary has, Mr. President, is that because of the number of proposals that came in, the machine room has been absolutely swamped on a production basis, and they are being gotten out just as fast as it is humanly possible.

PRESIDENT NISBET: Mr. Madar.

MR. MADAR: That doesn't quite answer the question. Here we are with Proposal 1759. Yet, the last proposal I received prior to that was 1704. Why can't we catch up on some of these others prior to 1759? There are a lot of others besides that.

PRESIDENT NISBET: That will be checked on, Mr. Madar, and an effort made to correct it.

Further motions and resolutions.

SECRETARY CHASE: Mr. DeVries, on behalf of the committee on administration, offers

Resolution 62, A resolution expressing appreciation of services provided by the Michigan state medical society and the Ingham county medical society.

Following is Resolution 62 as offered:

Whereas, The Michigan state medical society and the Ingham county medical society have provided for the use of the convention delegates a first aid facility staffed by a registered nurse, located in the civic center; and

Whereas, A number of doctors of medicine and general practitioners located in the downtown Lansing area have volunteered to be on call at all times for emergency service to insure that every member of the constitutional convention shall have available 24 hour adequate medical care while he is away from his own doctor; now therefore be it

Resolved, That the constitutional convention go on record expressing its appreciation of this arrangement enabling the delegates to approach their deliberations with the knowledge that an important medical service protecting their well being is at their disposal; and be it further

Resolved, That copies of this resolution be transmitted to the Michigan state medical society and the Ingham county medical society.

PRESIDENT NISBET: Referred to the committee on rules and resolutions.

SECRETARY CHASE: That is the only resolution, Mr. President.

PRESIDENT NISBET: Special orders.

SECRETARY CHASE: None.

PRESIDENT NISBET: General orders.

SECRETARY CHASE: Nothing on that calendar.

PRESIDENT NISBET: Announcements.

SECRETARY CHASE: I have the following announcements of committee meetings:

The committee on administration will meet in the conference room Thursday, December 21, at 1:00 o'clock p.m. Walter DeVries, chairman.

There will be a brief meeting of the special committee created to make arrangements for the appearances of the former presidents in the conference room next to the pres-

ident's office immediately after the session this afternoon. Mr. Romney, chairman.

The committee on finance and taxation will meet in room E tomorrow immediately after the session. D. Hale Brake, chairman.

The committee on judicial branch will meet in room B Thursday at 3:00 o'clock p.m. Robert J. Danhof, chairman. Attorney General Adams will appear before the committee. The composite calendar showing Mr. Adams appearing before the committee on executive branch is in error.

Due to an illness in his immediate family, Highway Commissioner John Mackie will not appear at the subcommittee hearing on eminent domain today. The legal advisor for the highway department, Mr. James Andrews, will appear for Mr. Mackie. Paul R. Mahinske, subcommittee chairman on eminent domain.

The other changes in the composite calendar:

On page 2 should be inserted 10:30 a.m. Wednesday, tomorrow, committee on local government will meet in room A, subcommittee on annexation and consolidation. Charles Follo, chairman.

The committee on executive branch will meet after the session Thursday in room C. Hearings on delegate proposals referred to the committee on executive branch.

A notice of a meeting on Wednesday, January 3. The committee on local government will meet in room A at 7:30 p.m. Subcommittee on metropolitan government hearing on delegate proposals.

The apples today were furnished by Delegate Turner. (applause)

It is requested that we have the cooperation of all delegates to please refrain from the use of the wall telephone in the corner of the convention hall. This will expedite convention business, as this phone is needed for incoming calls in regard to convention business, to locate delegates and so forth.

I have the following requests for leave of absence: Mr. Haskill, due to an important meeting being held in Detroit tomorrow, would like to be excused from tomorrow's session; and Mr. Hutchinson requests leave from tomorrow's session so that he may attend the hearings in Kalamazoo and Berrien Springs on reapportionment.

PRESIDENT NISBET: Without objection, they will be excused.

Mr. Doty.

MR. DEAN DOTY: Mr. President, I move we adjourn.

PRESIDENT NISBET: The question is on adjournment. Those in favor say aye. Opposed, no.

We are adjourned until tomorrow at 2:00 o'clock.

[Whereupon, at 2:35 o'clock p.m., the convention adjourned until 2:00 o'clock p.m., Wednesday, December 20, 1961.]

FORTY-SEVENTH DAY

Wednesday, December 20, 1961, 2:00 o'clock p.m.

PROCEEDINGS

PRESIDENT NISBET: The convention will please come to order.

The invocation today will be given by one of our own delegates, Herbert Turner from Saginaw.

MR. TURNER: Our Father who art in heaven, lend us Thy hand. Lead us through the coming days of deliberations. Give us the strength, O God, to find what is right, not for our selfish interest but for the good of all people. Give us courage to face our problems, to listen to reason and debate, to carefully weigh the facts, to reach a decision that is right — not for the satisfaction of pressure groups, not necessarily for the benefit of ourselves, but for the good of the forthcoming generations whose lives will be guided by what we do here. Give us the strength, O God, to exercise our virtue of speech to help others to find the right way. Give us the strength to exercise our virtue of silence when our words will not aid the decision. Watch over us and guide us, O God. We ask it in Christ's name. Amen.

PRESIDENT NISBET: The roll call will be taken by the secretary.

Those present, please vote aye.

SECRETARY CHASE: Has everyone voted? The machine is now locked and the attendance will be recorded.

Mr. President, a quorum of the convention is present.

Prior to today's session, the secretary received the following requests for leave:

Mr. Finch, from today's session; and Mr. Upton, from today's session to attend a meeting of the committee on legislative organization in Berrien Springs.

PRESIDENT NISBET: Without objection, the requests are granted.

SECRETARY CHASE: Excused to conduct committee hearings: Messrs. Blandford, Boothby, G. E. Brown, T. S. Brown, Dehnke, Donald Doty, Greene, W. F. Hanna, J. A. Hannah, Hodges, Kirk, Knirk, Liberato, Lundgren, Marshall, Nord, Plank, Rood, Sablich and Yeager.

Absent with leave: Messrs. Finch, Haskill, Hutchinson and Upton.

Absent without leave: None.

PRESIDENT NISBET: Reports of standing committees.

SECRETARY CHASE: The committee on legislative powers, by Mr. Hoxie, chairman, reports back to the convention **Delegate Proposal 1448,** A proposal to deny tax exempt status to any eleemosynary, charitable or service organization which violates public policy by discriminatory practices; **Delegate Proposal 1476,** A proposal to provide that exemption from taxation shall be granted only by general laws; and **Delegate Proposal 1625,** A proposal to provide that all nonprofit religious, educational, charitable, and benevolent organizations shall be exempt from state and local taxation; with the recommendation that these 3 delegate proposals be referred to the committee on finance and taxation.

T. Jefferson Hoxie, chairman.

PRESIDENT NISBET: Without objection, they will be referred to the committee on finance and taxation, and they are so referred.

Mr. Cudlip.

MR. CUDLIP: Mr. President and members of the conventon, I rise at this time to discuss briefly some aspects of convention procedure. This is not a committee report of the committee on style and drafting, of which I have the honor to be chairman, but I speak as a member of that committee because of the relationship between the work of that committee and the various procedures of this convention. I think it is appropriate to do that at this time because we are going home soon for a holiday and you will have time to think about these procedural aspects. Furthermore, after we return you will be hearing more about them — all of us will — and a corollary to all of that is the fact that soon now the deadlines will have passed for public hearings, hearings on delegate proposals and the hearing of witnesses.

Let me start by saying this — and there is an interchange here of necessity between a discussion of the style and drafting committee work and the work on the floor of this convention — first of all, a report of a select committee of this convention, defining the powers of the committee on style and

drafting, was adopted on October 9 of this year. It hardly seems possible we've been here that long. And I think it behooves us all from time to time — if we are interested — to read the powers of this committee as approved by the convention on October 9. It has been underlined before, but I want to emphasize again that this committee has no power to change the substance. We are interested, at your direction, only in arrangement, chronology and phraseology. Next, I think when you have time, when we all have time, you should read our convention rules, chapter IV, rules 27 to 35, inclusive, which govern committee procedure, including the committee on style and drafting. In examining these rules, I would call your attention to rule 35, which states that on 1 day's notice this convention can require a committee to report any proposal without recommendation.

To date, the committee on style and drafting has dealt with 8 submitted committee proposals, and we are up to date. Why we are up to date will appear as I go forward with the remainder of this message.

Now, let's go back a minute to some of our basic rules of procedure with respect to entire convention practice. Rule 20 provides that the directors of research shall supervise all research and drafting activities of the convention. In connection with the committee on style and drafting, we have had assigned to us — and it gives us great pleasure — Dr. Charles Joiner, associate dean of the University of Michigan law school, and professor of law, and he in turn has a staff, as you are aware. Now, it is my understanding that the research staff of this convention is willing to take any committee proposal before it comes before this convention and make suggestions, if any, as to form, and all committee chairmen have been advised to that effect. I call your attention again to rule 20, which provides that these directors shall supervise all such work.

Under rule 57 of this convention, the substantive committee reports committee proposals to the convention, which proposals are placed on general orders. Recently we amended rule 36 of this convention to provide that after 3 days, the proposal referred by the committee to the floor is considered in the committee of the whole of this convention and of course, after that, we rise as a committee of the whole and convention action is taken, and then is the first reference to the committee on style and drafting. The committee on style and drafting then reports back to the convention.

Here I should make the following remarks. After this first reference of a committee proposal from the convention to the committee on style and drafting, the research department of this convention examines the language of that committee proposal for suggestions. Rule 20 empowers the research department to do this. We have also arranged by common consent that the research staff will investigate any court interpretations of the existing constitution to make sure that we know what words have been construed by any competent court — I mean by that a federal court or the state Supreme Court of Michigan — because it could just happen that the committee or the convention might not want to change meaning but has done so by inept use of words. So it is important that we know if there have been any final court determinations with respect to the language of the present constitution. At that point the research department gives to each member of the committee on style and drafting a report with its suggestions and these are carefully considered by our committee when it is preparing its first report back to this convention. We do not necessarily need to agree with the suggestions but 15 people, plus any other help we can get, discuss these matters and resolve them to the best of our ability.

It has been determined by the officers of this convention and others, within the rules, that the committee on style and drafting may, in its own discretion, retain a section or sections or an article of the proposed constitution in order that it might obtain a complete picture before it makes its first report to the convention. You can readily see that if we get a 4 line sentence pertaining to some article of the constitution that deals with chief executive, for example, it is only good sense to wait until we get all the bricks before us to see what kind of a house is being built, to avoid inconsistencies.

Further, when we have these meetings, we notify each chairman of the committee involved if a committee proposal of his committee is to be discussed that evening. We do not hold up any meetings for any chairmen. We're glad for their advice. We want them to know that they are welcome while we are considering the matters in which thy are involved and our experience to date has been interesting and the cooperation complete on all sides.

When we act for the first time and before sending our first report back to this floor, we pay no attention to article numbers or section numbers, but they do appear in the committee proposal in the title. The reason that we pay no attention to them is that we do not know quite how the house will be built in the end and we don't want to get the bathroom in front of the kitchen.

Now, we have approved in this committee 2 forms for reporting back to the floor; one, a form where no amendments are proposed, and two, a form where amendments are proposed. These forms have the approval of the office of the secretary and the research division.

Now, when style and drafting reports a committee proposal back to the floor after the first reference to it, the proposal is then before this convention for what you are well aware is a second reading and vote. At this point the convention does not resolve itself into a committee of the whole and, of course, the difference is generally that there is limited debate when we are not acting as a committee of the whole. After the consideration by this body, there is a rereference to the style and drafting committee for incorporation in the final proposed draft of the constitution. The committee then waits until the entire set of proposals comprising the entire proposed constitution is before it and it then makes its suggestions, within the powers allotted to it, as to the document as a whole and reports it back for the second time to this convention floor as a complete revision. The convention then acts on the revision as a committee of the whole, followed by final action on the order of third reading and the convention then makes its final determination.

You will notice that a delegate, under the rules adopted by you ladies and gentlemen, has 3 chances to make his wishes known on the floor and he has, of course, a chance, if the committee is willing to hear him — I guess they all are — to appear before the substantive committee.

I think it is good that we get these rules in mind because as the flow of work comes in here, we are going to be very much concerned with orderliness and with an understanding of what we are about.

The last 3 months for all of us have been pretty much a matter of black type and white paper, some blue paper. I hope that in the next 10 days you will find more red, green, pink, silver and other colors of your favor and that you come back refreshed and ready to play the second half. A Merry Christmas.

PRESIDENT NISBET: Thank you, Mr. Cudlip. I am glad you gave that report because I think it is important that we understand the procedure that will continue from now on in style and drafting.

Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, particularly because there are a number of delegates absent this afternoon attending committee meetings and because it may be helpful to all of us to refer from time to time to the substance of Mr. Cudlip's report, I would like to move that after suitable editing to accomplish brevity, Mr. Cudlip's report be printed in the journal.

PRESIDENT NISBET: The question is on the motion of Mr. Van Dusen. Is there discussion? If not, all in favor say aye. Opposed, no.

The motion prevails.

SECRETARY CHASE: There are no other standing committee reports, Mr. President.

PRESIDENT NISBET: Reports of select committees.

SECRETARY CHASE: None.

PRESIDENT NISBET: Communications from state officers.

SECRETARY CHASE: None.

PRESIDENT NISBET: **Introduction, first reading and reference of proposals.**

ASSISTANT SECRETARY KNAPP: Messrs. Faxon and W. F. Hanna introduce

Delegate Proposal 1821, A proposal to provide for a senate elected by population and area. Amends article V. Replaces Delegate Proposal 1212.

PRESIDENT NISBET: Referred to the committee on legislative organization.

ASSISTANT SECRETARY KNAPP: Mrs. Daisy Elliott and Mr. Young introduce

Delegate Proposal 1822, A proposal to require that all state depositories must be in full compliance with the provisions of the constitution. Amends article X, section 15.

PRESIDENT NISBET: Referred to the committee on finance and taxation.

ASSISTANT SECRETARY KNAPP: Mr. White introduces **Delegate Proposal 1823,** A proposal that laws and records be in English, and open for public inspection. Amends article XVI, section 6.

PRESIDENT NISBET: Referred to the committee on miscellaneous provisions and schedule.

May I announce that tomorrow is the last day for the receiving of any delegate proposals that have to be printed. If any of you still have them and want to present them, be sure they are in tomorrow before 11:00 o'clock in the morning.

Mr. Brake.

MR. BRAKE: Mr. President, I wasn't paying as close attention as I should and I didn't get the name of the delegate or delegates that introduced one of those proposals. That section to which the proposal refers is on general orders here tomorrow. Our committee will be working tomorrow morning from 10:30 to 12:30 and if that delegate wishes to present anything to the committee, it will need to be done at that time.

PRESIDENT NISBET: The proposal that was referred to the committee on finance and taxation was 1822, by Mrs. Daisy Elliott and Mr. Young. You both heard Mr. Brake's statement on the matter.

Second reading of proposals.

SECRETARY CHASE: Nothing on that calendar.

PRESIDENT NISBET: Third reading of proposals.

SECRETARY CHASE: Nothing on that calendar.

PRESIDENT NISBET: Motions and resolutions.

SECRETARY CHASE: There are no resolutions on file, Mr. President.

PRESIDENT NISBET: Unfinished business.

SECRETARY CHASE: None.

PRESIDENT NISBET: Special orders.

SECRETARY CHASE: None.

PRESIDENT NISBET: General orders.

SECRETARY CHASE: Items on general orders are not in order for consideration until tomorrow.

PRESIDENT NISBET: Announcements.

SECRETARY CHASE: The committee on judicial branch will meet in room B tomorrow at 9:00 o'clock a.m. Robert Danhof, chairman.

Committee on finance and taxation will meet in room E tomorrow at 10:30 a.m.

The subcommittee on public utilities of the committee on local government will meet in room A tomorrow at 8:30 a.m. for a hearing on delegate proposals; the subcommittee on cities of the committee on local government will meet Thursday, January 4 at 7:30 p.m. in room A; and the local government subcommittee on township government will hold committee meetings on delegate proposals immediately following the session today and at 10:30 tomorrow morning in room A. Elmer L. Radka, subcommittee chairman.

The committee on legislative powers, subcommittee 1, will meet in room H tomorrow at 9:30 a.m. for a hearing on Delegate Proposals 1109 and 1111, having to do with the legislative auditor. T. Jefferson Hoxie, committee chairman.

The committee on administration will meet in the conference room tomorrow at 1:15 p.m. Walter DeVries, chairman.

The remaining committee meeting announcements and public hearing announcements appear on the composite calendar.

Mr. Romney has the following announcement:

Due to your lack of time to shop for Christmas, in the probability you have missed some child on your list, I thought you might like to have a model car. (applause)

On Sunday afternoon, December 31, I invite you to listen to the Columbia broadcasting system television network, entitled "Let Freedom Ring," a thrilling story of America primarily in song.

PRESIDENT NISBET: Mr. Elliott.

MR. A. G. ELLIOTT: Mr. President, it may have been announced and I may have missed it. But I would like to inform the delegates that this evening at 7:30 the committee on local government will have its last general public hearing.

PRESIDENT NISBET: Mr. Hoxie.

MR. HOXIE: Mr. President and fellow delegates, I am a little disappointed. It was partly through my efforts, I'm sure, that we finally received this token from our illustrious delegate, Mr. Romney. In examining it I fail to find it qualifies with what I expected to receive. It doesn't have any engine. (laughter) The steering wheel doesn't operate. (laughter) It doesn't have any con con plates. And further than that, my 1962 Rambler is a station wagon, green and white. I wonder if this could be corrected, Mr. Romney. (laughter)

PRESIDENT NISBET: Mr. Hoxie, I am sure you know you might have opened up a whole afternoon of advertising here. (laughter)

Mr. Farnsworth.

MR. FARNSWORTH: Mr. President, having spent 33 years in the business of retailing automobiles, I might say that Delegate Hoxie is a difficult customer. (laughter) The one who pays the least for what he gets in the way of an automobile usually does the most complaining. (laughter and applause)

PRESIDENT NISBET: Mr. Romney.

MR. ROMNEY: As a matter of fact, this all reminds me of a favorite old Christmas story about the pessimist and the optimist. You never satisfy everyone. A father had 2 sons, Johnny and Bill. Johnny was an optimist and Bill was a pessimist and he wanted to test their respective qualities on Christmas. So he bought Bill, the pessimist, a Rambler and a Buick and a baseball bat, and a bike, and a whole raft of presents, and he took Johnny, the optimist's, stocking and filled it full of horse manure. And the 2 boys came down on Christmas morning and Billy, the pessimist, saw the automobile and said, just like Jeff Hoxie here, that it wasn't green and white and it wasn't a station wagon; it was a convertible. And the Buick had the wrong type wheels on it and the bike was red instead of black and he didn't like anything. And so the father said to Johnny, the optimist, "Johnny, what do you think of Santa Claus?" He said, "Santa Claus is great, dad." He said, "Santa Claus left me a horse and if I'd been here soon enough I'd have had him." (laughter)

PRESIDENT NISBET: Mr. Figy.

MR. FIGY: Mr. President, along the same line, if you'll notice (laughter) — of course, you know I'm a farmer. (laughter) The 2 gentlemen that got the cars and spoke first about them, the 2 delegates, if you notice, they've both got sport cars. We farmers are very glad to get one of the cheaper model 2 doors. (laughter)

PRESIDENT NISBET: Mr. Perras.

MR. PERRAS: I think since everybody is so happy I should put my motion back before the convention. (laughter)

PRESIDENT NISBET: I knew we were going to get into trouble.

SECRETARY CHASE: We have the following requests for leave: Mr. Perras, Mr. Gadola, Mr. Gust, Mr. Sablich, Mr. Lundgren, and Messrs. Pellow and Perlich wish to be excused from tomorrow's session.

Messrs. Beaman, Karn and Thomson ask to be excused from the session of January 3 to permit them to participate in a panel discussion on con con before the Jackson rotary club.

PRESIDENT NISBET: Without objection, they will be excused.

SECRETARY CHASE: That is all of the items on the secretary's desk, Mr. President.

PRESIDENT NISBET: Mr. Douglas.

MR. DOUGLAS: Mr. President, I move the convention now adjourn.

PRESIDENT NISBET: The question is on adjournment. All those in favor, say aye. Opposed, no.

We are adjourned until tomorrow afternoon at 2:00 o'clock.

[Whereupon, at 2:30 o'clock p.m., the convention adjourned to Thursday, December 21, 1961, at 2:00 o'clock p.m.]

FORTY-EIGHTH DAY

Thursday, December 21, 1961, 2:00 o'clock p.m.

PROCEEDINGS

PRESIDENT NISBET: The convention will please **come to order.**

Our **invocation** today will be given by one of our own delegates, Mr. Gover.

Will you rise.

MR. GOVER: Our Father, we come to Thee with grateful hearts today, thankful for Thy care and guidance during the past weeks. We have felt Thy guiding hand as we deliberate on the many issues before us. We pray for Thy blessings to continue, and that from this convention will come a document of which we can be proud. Go with each of us as we travel to our homes for the holidays. May the spirit of Christmas fill our hearts and lives according to our beliefs. In the name of our Lord we ask. Amen.

PRESIDENT NISBET: Thank you.

The **roll call** will be taken by the secretary. All present, please vote aye.

SECRETARY CHASE: Has everyone voted? The machine is now locked and the attendance will be recorded.

Mr. President, a quorum of the convention is present.

Prior to today's session the secretary received the following requests for leave: Messrs. Dell, Ostrow and Stamm, from today's session.

PRESIDENT NISBET: Without objection, the requests are granted.

SECRETARY CHASE: Absent with leave: Messrs. Dehnke, Dell, Gadola, Gust, Lundgren, Ostrow, Pellow, Perlich, Perras, Sablich and Stamm.

Absent without leave: Mr. Batchelor.

PRESIDENT NISBET: Without objection, Mr. Batchelor is excused.

Reports of standing committees.

SECRETARY CHASE: Mr. Hoxie, for the committee on legislative powers, introduces

Committee Proposal 12, A proposal pertaining to exemptions as a substitute for all of article XIV;

with the recommendation that it pass.

T. Jefferson Hoxie, chairman.

For Committee Proposal 12 and the reasons submitted in support thereof, see below, page 435.

PRESIDENT NISBET: Referred to the committee of the whole and placed on general orders.

SECRETARY CHASE: The committee on declaration of rights, suffrage and elections, by Mr. Pollock, chairman, reports back to the convention **Delegate Proposal 1426,** A proposal to guarantee freedom of expression to the press, radio, television and other modern means of communication; with the recommendation that the proposal be referred to the committee on legislative powers.

James K. Pollock, chairman.

PRESIDENT NISBET: Without objection, it will be referred to the committee on legislative powers.

SECRETARY CHASE: The committee on administration, by Mr. DeVries, chairman, submits the following report and recommends that the constitutional convention budget be amended as follows:

1. Reduce item **M. Contingency fund,** $42,075.03, by $17,557.05 to read $24,517.98.
2. Add an item to read as follows:

"N. Office of public information

1.	Brochures	$3,002.60
2.	Radio tape equipment	1,500.00
3.	Mailing	2,930.45
4.	Photography	341.00
5.	Engraving and mats	1,573.00
6.	Stock	460.00
7.	40 prints of documentary film	6,600.00
8.	Slide or film strip presentation	750.00
9.	Contingency	400.00
		$17,557.05"

Walter DeVries, chairman.

PRESIDENT NISBET: Dr. DeVries.

MR. DeVRIES: Mr. President and fellow delegates, it was anticipated in our general budget which was adopted on October 18 that we would provide a special line item for the committee on public information in that we didn't know how many staff people they would have and what kind of equipment they needed. We held off until this point. The committee on public information has submitted these requests to the committee on administration.

Briefly, to go through these items in the budget, they request a transfer from the contingency fund to a new item in the budget called the office of public information. This provides $3,000 for brochures. This will cover the cost of 10,000 convention brochures, the brown colored kind that you have seen on your desks. It also provides $1,500 for radio, which covers the cost of equipment, materials and distribution, providing radio coverage of the constitutional convention to the radio media. It also provides for close to $3,000 for expenses connected with the mailing of releases to the weekly and daily newspapers of this state.

There is an item in there of $341 for photography, which covers the professional cost involved in photography for this convention. One other explanation about an item in this, the documentary film. We have provided $6,600 to cover the cost of 40 prints of the documentary film being made by the 3 major universities for distribution when the convention ends, and for use by schools and other service groups around the state. We also provided $750 for a slide or film presentation to be completed within 1 month, to be used by school and other service groups throughout the state.

Mr. President, I move the adoption of this report.

PRESIDENT NISBET: The question is on concurring in the recommendation of the committee. Any remarks? If not, all in favor say aye. Opposed, no.

The recommendation is concurred in.

SECRETARY CHASE: The committee on administration, by Mr. DeVries, chairman, submits the following report and recommends its adoption:

That we enter into a contract with general television network to provide 1 fixed closed circuit television camera and 6 monitors for overall view of proceedings, at a cost of $75 per week.

Walter DeVries, chairman.

PRESIDENT NISBET: Dr. DeVries.

MR. DeVRIES: Mr. President and fellow delegates, we have considered this matter carefully. We have asked the chairman of the committee on public information to testify on it and it is our best judgment that we ought to reinstall some form of closed circuit television. In our original budget adopted on October 18 we provided $4,200 for closed circuit television. We have used $2,700 of that amount. If we adopt this contract, it will cost us $975. The convention will have left in that line $525. This service will commence on January 3.

Mr. President, I move the adoption of this report.

PRESIDENT NISBET: The question is on concurring in the recommendation of the committee. Any discussion? If not, all in favor, say aye. Opposed, no.

The recommendation is concurred in.

Mr. DeVries.

MR. DeVRIES: Mr. President, the committee on administration a week ago authorized the purchase of shelves to fit underneath your desks. These shelves are being prepared at a cost of not to exceed $5.00 and will be installed by the time you return from the holidays.

Thank you, Mr. President.

PRESIDENT NISBET: Thank you. (applause)

Are there any further reports of standing committees?

SECRETARY CHASE: I have the following communication, Mr. President, addressed to the president, dated December 20:

Dear Mr. Nisbet:

Please accept my resignation from the committee on executive branch effective today.

Very truly yours,
Frank G. Millard.

PRESIDENT NISBET: Without objection, it will be accepted.

SECRETARY CHASE: To fill the vacancy on the committee on executive branch, **the president appoints** Mr. Dean Doty.

PRESIDENT NISBET: Without objection, Mr. Doty's appointment will be approved. Any objections? If not, it is approved. Mr. Doty, you are a member of that committee.

SECRETARY CHASE: **The president appoints,** pursuant to the provisions of Resolution 30, as amended, the following delegates to the committee on emerging problems:

Mr. Frank Millard, chairman
Mr. Roscoe Bonisteel, first vice chairman
Mr. Theodore S. Brown, second vice chairman

Charles Anspach	Paul Goebel
Richard Austin	H. V. Hatch
Tom Downs	Raymond King
Mrs. Daisy Elliott	Melvin Nord
Claud Erickson	Earl Pugsley
Charles Figy	Weldon Yeager

For Resolution 30, see above, page 263.

PRESIDENT NISBET: The committee on emerging problems has been named, and unless there is some objection, the appointments will be approved. Any objections? Hearing none, they are approved.

SECRETARY CHASE: The president announces that the committee on emerging problems just named will meet briefly after today's session in the president's conference room.

That is all of the reports of standing committees, Mr. President.

PRESIDENT NISBET: Reports of select committees.

SECRETARY CHASE: None.

PRESIDENT NISBET: Communication from state officers.

SECRETARY CHASE: None.

PRESIDENT NISBET: **Introduction, first reading and reference of proposals.**

ASSISTANT SECRETARY KNAPP: Mr. Rood introduces **Delegate Proposal 1824,** A proposal to broaden eminent domain by including public purpose and to provide for determination of just compensation by a jury as in other civil cases. Amends article XIII, sections 1 and 2.

PRESIDENT NISBET: Referred to the committee on miscellaneous provisions and schedule.

ASSISTANT SECRETARY KNAPP: Messrs. Krolikowski and Mahinske introduce
Delegate Proposal 1825, A proposal to increase the supreme court to a chief justice and 13 associate justices, 5 of whom shall sit as an intermediate appellate court. Amends article VII, section 2.

PRESIDENT NISBET: Referred to the committee on judicial branch.

ASSISTANT SECRETARY KNAPP: Messrs. Krolikowski, McCauley and Mahinske introduce
Delegate Proposal 1826, A proposal to retain the primary school interest fund without restrictions on subjects contributing. Amends article X, section 1.

PRESIDENT NISBET: Referred to the committee on finance and taxation.

ASSISTANT SECRETARY KNAPP: Messrs. Krolikowski and Mahinske introduce
Delegate Proposal 1827, A proposal to reduce the number of justices to 7 upon the creation of an intermediate appellate court and to prescribe qualifications of judges of the intermediate court. Amends article VII.

PRESIDENT NISBET: Referred to the committee on judicial branch.

ASSISTANT SECRETARY KNAPP: Messrs. Krolikowski and Mahinske introduce
Delegate Proposal 1828, A proposal to elect senators from congressional districts and representatives on population, and for the house of representatives to pass legislation by a 2/3 vote. Amends article V.

PRESIDENT NISBET: Referred to the committee on legislative organization.

ASSISTANT SECRETARY KNAPP: Messrs. Boothby and J. B. Richards introduce
Delegate Proposal 1829, A proposal to provide for a separation of powers in the government and a two house legislature based on population and area. Amends article IV, section 1.

PRESIDENT NISBET: Referred to the committee on legislative organization.

ASSISTANT SECRETARY KNAPP: Mrs. Daisy Elliott and Mr. Young introduce
Delegate Proposal 1830, A proposal to provide the legislature shall pass no laws impairing the right to contract of a labor organization. Amends article V.

PRESIDENT NISBET: Referred to the committee on legislative powers.

SECRETARY CHASE: Relative to the delegate proposals, the last of which has now been introduced, under the usual procedure the secretary's staff would prepare a status as of this weekend, and again on the following weekend would present a final status to you. The staff is not satisfied as to all of the details in the present status and would like the opportunity to omit the preparation of the status this weekend so that we may make a complete check and revision and present to you a final status the first week end in January.

PRESIDENT NISBET: Unless there is some objection, that procedure will be followed.

SECRETARY CHASE: Thank you.

PRESIDENT NISBET: Second reading of proposals.

SECRETARY CHASE: Nothing on that calendar, Mr. President.

PRESIDENT NISBET: Third reading of proposals.

SECRETARY CHASE: Nothing on that calendar, Mr. President.

PRESIDENT NISBET: Mr. Downs.

MR. DOWNS: May I make my motion and then state the reason, Mr. President?

PRESIDENT NISBET: Yes.

MR. DOWNS: I would like to move that the copies of the journal today be mailed to the delegates, so that if there are any matters that will come before us as a committee of the whole, since the rules provide for 3 calendar days, we will have an opportunity to review those before we come back into session.

PRESIDENT NISBET: Will that be done, Mr. Chase?

SECRETARY CHASE: We will be very happy to do that.

PRESIDENT NISBET: Without objection, that will be done.

Without objection, we will return to the order of **reports of standing committees.**

Mr. Chase.

SECRETARY CHASE: Mr. Bentley, for the committee on education, introduces

Exclusion Report 2005, A report recommending the exclusion of section 11 and section 12 of article XI.

For Exclusion Report 2005 and the reasons submitted in support thereof, see below under date of April 25, 1962.

PRESIDENT NISBET: Mr. Bentley.

MR. BENTLEY: Mr. President, I move that this exclusion report be referred to the committee on finance and taxation.

PRESIDENT NISBET: Without objection, **Exclusion Report 2005** will be referred to the committee on finance and taxation.

SECRETARY CHASE: That is the only standing committee report remaining, Mr. President.

PRESIDENT NISBET: **Motions and resolutions.**

SECRETARY CHASE: Mr. Faxon offers

Resolution 63, A resolution to amend rule 33 regarding proposals reported out by committees.

Following is Resolution 63, as offered:

Resolved, That rule 33 be amended at the end of the first sentence, after the word "committee.", by inserting a sentence to read as follows: "No proposal may be reported out by any committee until it shall have been under consideration therein for at least one day." The balance of the rule will remain unchanged.

PRESIDENT NISBET: Referred to the committee on rules and resolutions.

SECRETARY CHASE: That is the only resolution on file.

PRESIDENT NISBET: Unfinished business.

SECRETARY CHASE: Nothing on that calendar.

PRESIDENT NISBET: Special orders.

SECRETARY CHASE: None.

PRESIDENT NISBET: **General orders.**

Mr. Powell.

MR. POWELL: Mr. President, I move that the convention resolve itself into a committee of the whole for consideration of matters on the general orders calendar.

PRESIDENT NISBET: The question is on the motion of Mr. Powell. All in favor, say aye. Opposed, no.

The motion prevails.

Mr. Powell, would you take the Chair?

[Whereupon, Mr. Powell assumed the Chair to preside as chairman of the **committee of the whole.**]

CHAIRMAN POWELL: The committee will be in order.

The convention is in the committee of the whole for consideration of items on the general orders calendar, which the secretary will report.

SECRETARY CHASE: From the committee on finance and taxation, by Mr. Brake, chairman, **Exclusion Report 2003,** A report recommending the exclusion of article X, section 20.

Following is Exclusion Report 2003 as read by the secretary, and the reasons submitted in support thereof:

The committee on finance and taxation recommends that article X, section 20, of the present constitution be excluded from the new constitution.

Mr. Brake, chairman of the committee on finance and taxation, submits the following reasons in support of Exclusion Report 2003:

The committee on finance and taxation, as to section 20 of article X of the constitution, says that from the reading of this section it is apparent that it was designed to meet a specific problem existing at one time in the state's history but that the problem no longer exists and that therefore there is no reason for continuing it in the constitution.

CHAIRMAN POWELL: Mr. Brake.

MR. BRAKE: Mr. Chairman and ladies and gentlemen of the committee, I think that the reasons the committee had for making this recommendation have been stated in the report as read by the secretary.

It is very obvious that this was passed to meet a particular problem and was necessary if that problem was to be met in this way because of section 14 in the same article, which forbids the state to go into the matter of internal improvements.

I think that the section is no longer needed and may as well be deleted.

CHAIRMAN POWELL: Mr. Hutchinson.

MR. HUTCHINSON: Mr. Chairman, supplementing what Mr. Brake had to say, I think that it is well to point out that this section very obviously was placed in the finance and taxation article of the constitution because it had something to do with taxes.

The work prepared by the Michigan citizens research council has this to say — and I'd like to read it:

Railroad charters were granted with provisions limiting the amount of taxes payable but reserving rights to the state to buy the railroads.

Now, this was the apparent practice throughout the whole United States. The charters as granted limited the taxing power, but reserved rights to the state to buy the railroads. Similar rights to purchase reserved by other states in similar charters became instruments for changing the charters in a way to permit tax changes. Michigan found this instrument ineffective because of its constitutional restrictions on internal improvements. The United States supreme court had ruled that the charters were contracts which the state must observe. That sounds like the principle of the decision of the supreme court under John Marshall which held that a corporate charter was a contract.

The constitutional amendment to include section 20 had as its purpose making the right of the state to purchase railroads effective, thus enabling the state to change the railroad tax. I am led to believe that at least one railroad still in existence in Michigan has a Michigan charter, and a special charter at that. I believe it is the Michigan Central Railroad. That is the information given us in the committee on miscellaneous provisions.

Will Mr. Brake assure me that the taking of this section from the constitution will leave unaffected the state's power to tax that railroad?

CHAIRMAN POWELL: Mr. Brake.

MR. BRAKE: I can't make any such assurance. We have gone many, many years without it being used in any way whatsoever, either by the taking over of the railroads or the compulsory paying of taxes. What the situation will be for 100 years I don't know. The fact that it has never had any use would seem to indicate that it is useless.

CHAIRMAN POWELL: Mr. Hutchinson.

MR. HUTCHINSON: All I'd like to say, Mr. Chairman, is I think this convention should be very careful that we make sure that if this thing were taken out, some railroad would not claim that its original charter, having a tax limiting power in it, is still effective. I think we'd better make sure of that.

That is why I asked for the assurance. I assumed that the committee had probably made sufficient investigation so that it could tell us that.

CHAIRMAN POWELL: Is there any further discussion? Mr. Higgs.

MR. HIGGS: Mr. Chairman, with regard to the statements of Mr. Hutchinson, it seems to me that if the matter that he has brought out is not the intention of the committee, this should be included in the committee report.

Inasmuch as under Resolution 41, the committee report determines constitutional intent, we must be very careful in examining the committee report — just as careful in examining that report as in examining the text of the law itself which we adopt. And I think that that kind of a problem could be resolved very easily in the committee report, and I wonder if Mr. Brake would care to comment upon that.

CHAIRMAN POWELL: Mr. Brake, do you have any comment?

MR. BRAKE: No, I have no further comment. This is not a matter of any great consequence so far as we see it. If you want to take a week or a month, we don't care.

CHAIRMAN POWELL: Are there any amendments to this exclusion report?

Mr. Binkowski.

MR. BINKOWSKI: Mr. Chairman and ladies and gentlemen of the committee, as to Mr. Hutchinson's question I, as a member of the committee, was not present when any factor as you brought out was discussed or explored, so I can't help you in that respect. But you do raise a point which perhaps should be considered.

CHAIRMAN POWELL: Are there any amendments regarding the exclusion report? The question is on the passage of this exclusion report. As many as are in favor of it, say aye. As many as are opposed, say no.

The Chair feels that the ayes have it. Is there a desire for a rising vote?

MR. YEAGER: I ask for a division.

CHAIRMAN POWELL: A division has been requested. As many as are in favor of the passage of the report, please rise.

SECRETARY CHASE: Sixty-eight.

CHAIRMAN POWELL: Those opposed, rise.

SECRETARY CHASE: Forty-three.

CHAIRMAN POWELL: The exclusion report is passed. The secretary will read the next item on the calendar.

SECRETARY CHASE: From the committee on miscellaneous provisions and schedule, by Mr. Erickson, chairman, **Committee Proposal 10,** A proposal to amend article I, section 2, of the present constitution pertaining to the seat of government at Lansing.

Following is Committee Proposal 10 as read by the secretary, and the reasons submitted in support thereof:

The committee recommends that the following be included in the constitution:

The seat of government shall be at Lansing.

Mr. Erickson, chairman of the committee on miscellaneous provisions and schedule, submits the following reasons in support of Committee Proposal 10:

Article I, section 2 of the 1908 constitution reads: "The seat of government shall be at Lansing, where it is now established.". Committee Proposal 10 states "The seat of government shall be at Lansing."; and "where it is now established" is deleted for the following reasons:

Since 1847, the seat of government for the state of Michigan has been located at Lansing (acts 60 and 65 of 1847, 237 of 1847). Prior to 1847, the seat of government was located at Detroit (Constitution of 1835, article XII, section 9).

The Constitution of 1850 first presented the language "The seat of government shall be at Lansing, where it is now established.". The Constitution of 1908 carried over the same language unchanged.

The wording in the 1850 constitution was thought necessary to resist the occasional desire to move the seat of government to serve personal and political need.

In view of the seat of government now having been at Lansing, its present location, for 115 years, it is recommended by this committee that the clause following the comma, to wit, "where it is now established", be deleted.

CHAIRMAN POWELL: Delegate Erickson.

MR. ERICKSON: I would like to yield to Miss Donnelly, who is chairman of the subcommittee that handled this matter, along with Messrs. Bledsoe, Seyferth, Mahinske and Leppien.

CHAIRMAN POWELL: Miss Donnelly.

MISS DONNELLY: Mr. Chairman, we feel that our report is rather self evident. If there are any questions I'd be glad to attempt to answer them. In essence, we think that "where it is now established" is surplusage.

CHAIRMAN POWELL: Are there any amendments to the body of the proposal? If not, it will be passed.

Committee Proposal 10 is passed.

The secretary will read the next item.

SECRETARY CHASE: From the committee on finance and taxation, by Mr. Brake, chairman, **Committee Proposal 11,** A proposal to provide for care and control of state funds, accounting for public moneys, audits, and publication of reports, and covering the general subject matter found in sections 15, 16, 17, 18 and 13 of article X of the 1908 constitution.

Following is Committee Proposal 11 as read by the secretary, and the reasons submitted in support thereof:

The committee recommends that the following be included in the constitution:

No state money shall be deposited in banks other than those organized under the national or state banking laws. No state money shall be deposited in any bank in excess of 50 per cent of the capital and surplus of such bank. Any bank receiving deposits of state money shall show the amount of state money so deposited as a separate item in all published statements.

* * * *

No money shall be paid out of the state treasury except in pursuance of appropriations made by law. THE LEGISLATURE SHALL PROVIDE BY LAW FOR THE USE OF ALL STATE RESOURCES TO PAY ALL STATE OBLIGATIONS REGARDLESS OF FUND CLASSIFICATION, SUBJECT TO ANY FIDUCIARY, CONTRACTUAL OR CONSTITUTIONAL OBLIGATIONS TO WHICH THE STATE IS PLEDGED. THE LEGISLATURE SHALL CONSOLIDATE ALL STATE RESOURCES SUBJECT TO APPROPRIATION INTO A GENERAL FUND AND MAY ESTABLISH OTHER FUNDS FOR THE EXERCISE BY THE STATE OF ITS FIDUCIARY AND CONTRACTUAL RESPONSIBILITIES AND FOR THE OPERATION OF INTERNAL ENTERPRISES.

THE LEGISLATURE MAY ESTABLISH WITHIN THE GENERAL FUND SUCH ACCOUNTS AS IT DEEMS NECESSARY TO REFLECT FINANCIAL TRANSACTIONS FOR OPERATING PURPOSES IN ACCORDANCE WITH ACCEPTED GOVERNMENT ACCOUNTING PRINCIPLES AND PRACTICES AND AS REQUIRED BY THIS CONSTITUTION OR BY LAW.

* * * *

THE LEGISLATURE SHALL PROVIDE BY LAW FOR THE ANNUAL ACCOUNTING FOR ALL PUBLIC MONEYS, AND MAY ALSO PROVIDE BY LAW FOR INTERIM ACCOUNTING. THE LEGISLATURE SHALL PROVIDE BY LAW FOR THE AUDIT OF STATE AND COUNTY ACCOUNTS BY COMPETENT STATE AUTHORITY, AND MAY ALSO PROVIDE FOR THE AUDIT OF ANY OTHER PUBLIC ACCOUNTS.

ALL ACCOUNTINGS, RECORDS, AUDIT REPORTS AND OTHER REPORTS OF PUBLIC MONEYS SHALL BE PUBLIC RECORDS AND OPEN TO INSPECTION. A DETAILED STATEMENT OF ALL REVENUES AND

Explanation—Matter within [ ] is stricken, matter in capitals is new.

EXPENDITURES OF PUBLIC MONEYS SHALL BE PUBLISHED AND DISTRIBUTED ANNUALLY AS PRESCRIBED BY LAW.

* * * *

The state shall not subscribe to, nor be interested in the stock of any company, association or corporation[.], EXCEPT THAT FUNDS ACCUMULATED TO PROVIDE RETIREMENT OR PENSION BENEFITS FOR PUBLIC OFFICIALS AND EMPLOYEES AND ENDOWMENT FUNDS MAY BE INVESTED AS PROVIDED BY LAW.

Mr. Brake, chairman of the committee on finance and taxation, submits the following reasons in support of Committee Proposal 11:

The first paragraph of the proposal dealing with state deposits in banks is section 15 of the present constitution unchanged. In the opinion of the committee and of the fiscal officers of the state it is adequate and satisfactory.

The committee recommends adoption of the second and third parts of this proposal in order to provide adequately for control of state funds, accounting for public moneys, audits, and publication of reports. Sections 16, 17 and 18 of article X of the present constitution have provided the framework for these functions in the past. However, the greater portion of the provisions of these sections have been rendered obsolete because of their inadequacy to fulfill today's fiscal management needs and those needs which can be reasonably anticipated in the near future.

The present provisions do not permit sufficient freedom of access to available resources to pay the obligations of the state. Section 17, which relates to the publication of reports, is ambiguous. Section 18, which provides for the keeping of uniform records and the supervision, audit and inspection thereof, includes legislative detail which is not needed in the constitution. The language is so restrictive as to fail to accomplish its purpose.

Section 18 was first introduced into the Michigan constitution in 1908 as a way to force the legislature to make suitable provision for uniform accounts and audits. When appraised against this background it would not appear to perform a useful purpose in the new constitution. A uniform accounting law was passed in 1919 which contains considerable detail in prescribing accounting and auditing responsibilities and duties. Moreover, accounting and auditing concepts and techniques have advanced to the point where a body of generally accepted standards of uniformity, consistency and competence is available as a guide.

The first 2 paragraphs of this part of the proposal (which should comprise a single section) provide adequately for control of state funds but allow necessary flexibility to use available resources to pay state obligations. They also authorize the consolidation of resources subject to appropriation into a single general fund. The committee has taken cognizance of the need for separate funds to fulfill the state's fiduciary, contractual and constitutional obligations, and for the operation of such internal enterprises as the liquor fund, state (prison) industries, airport terminal, motor transport, industrial fund for the blind, office services, and the insurance fund. The committee has taken cognizance also of the need for separate accounting for separate functions within the general fund.

The last two paragraphs of this part of the proposal direct the legislature to provide for the annual accounting (and interim accountings where desirable) of all public moneys and the audit of state and county accounts by state authority, and any other public accounts. There is a declaration that all records and reports relating to public moneys shall be public records and open to inspection. Finally, there is the requirement that there be annual publication and distribution of reports of public moneys.

Section 13 of the present constitution, which is revised by the committee proposal, has the desirable object of preventing state ownership of private business. However, it has some other results which the committee believes are unduly restrictive. The development, since the adoption of the present constitution, of substantial public employee retirement funds and university endowment funds, has made necessary reexamination of the type of investments available for such funds. The committee believes that, if these funds are to earn the best return and are to be protected against inflation the legislature should have the power to permit, under appropriate restrictions as to quality and amount, investment of these funds (but not other public funds) in such things as share accounts in savings and loan associations, and high grade corporate securities.

Explanation—Matter within [ ] is stricken, matter in capitals is new.

CHAIRMAN POWELL: Are there any amendments to the body of the proposal?

Mr. Brake.

MR. BRAKE: Mr. Chairman and ladies and gentlemen of the committee, just a brief statement supplementing the report that the secretary has just read. We know that the first paragraph of the second part — it is a little awkward to deal with several sections when we are not allowed to have a number or letter or something on them — but the first paragraph of the second part is controversial. For some of us it is going to be a rather hard decision. I just want to say that there is a human trait, I suppose, recognized by everybody, to put off tough decisions just as long as you can put them off, and there is another human trait when vacation is coming up, to get away just as fast as you can. I hope that we can resist both of those temptations.

We have been here 3 months and this is the last working day of the first half of our scheduled convention and we have not yet processed on the floor of this convention one single item of major importance. I am not saying we haven't worked. I have never been in a group in my life that worked as hard as this convention has worked. But it hasn't shown up above the committee room. Here is one chance to go home for vacation with one thing accomplished, whether you leave it as we have presented it or whether you amend it. If we can get it through, we have done one major job.

The report indicates the general nature of what we are trying to do. We are fortunate in having on our committee a professional accountant, Mr. Austin. On the 2 middle sections of this proposal, we will ask that your questions be directed to Mr. Austin. On the final section dealing with an enlargement of the legislature's power with reference to investments, we will ask that you direct your questions to Mr. Van Dusen.

Now, as to the first section which is immediately before us, there is no change in the present constitutional language. The experience of the fiscal officers of the state is that it is sufficient, it is adequate; and it is the belief of the committee that it ought to remain in the constitution unchanged.

CHAIRMAN POWELL: Is it the understanding of the Chair that the proposal is just as reported? I know that the committee was deliberating. Is there anything to offer in the way of an amendment by the committee?

MR. BRAKE: When you get to the second part of it, there will be an amendment offered, and when you get to the final part there will be an amendment offered.

CHAIRMAN POWELL: Are there any amendments to this first portion of the committee proposal?

Dr. Nord.

MR. NORD: Point of information. I'd like to know whether we are dividing this into paragraph by paragraph treatment or whether we are considering it all at once.

CHAIRMAN POWELL: Apparently section by section down to the asterisks, I gather. Is that agreeable?

MR. BRAKE: Perhaps I've had too much legislative experience. When we go through a bill, we go through it a section at a time, asking if there are amendments, and when you get all through with that, you ask if there are any

amendments to the body of the bill. I assumed that we were following that procedure.

CHAIRMAN POWELL: If it is agreeable, let us take this a portion at a time, down to the first row of asterisks.

Mr. Nord.

MR. NORD: Still on the same point of information, I am not clear in my mind whether we vote on each one, one at a time as it is subdivided, or whether we vote on all at the same time.

CHAIRMAN POWELL: I think that it would expedite the orderly consideration of the matter if we might.

MR. NORD: I would move that we do that. I wondered if that is the standard procedure, in any event.

CHAIRMAN POWELL: I said we would. Maybe I was sort of making it up but as Delegate Brake just said, here we have a document which by our procedure does not have numbers on it, of course, because that has been held in abeyance until the final report of the committee on style and drafting which will arrange these paragraphs and articles and sections. For the time being, we do not have that advantage. But let us take it down to the first line of asterisks.

Are there any amendments to that portion? If not, it will be passed. The first paragraph is passed.

Let's take the middle portion, which involves 2 paragraphs, and I will call on Mr. Austin.

MR. AUSTIN: Mr. Chairman, I offer the following committee amendments to the second portion of this proposal:

1. Amend page 1, line 19, after the word "obligations" by inserting the words "when due".

2. Amend page 1, line 21, after the word "shall" by striking out the word "consolidate" and inserting the words "provide for the consolidation of".

3. Amend page 1, line 23, after the word "fiduciary" by striking out the word "and" and inserting a comma and after the word "contractual" by inserting the words "or constitutional".

Each delegate now has on his desk a copy of that paragraph which has been changed to read as it will be, or as it is to be amended, so that it will now read, if amended:

> No money shall be paid out of the state treasury except in pursuance of appropriations made by law. The legislature shall provide by law for the use of all state resources to pay all state obligations when due regardless of fund classification, subject to any fiduciary, contractual or constitutional obligations to which the state is pledged. The legislature shall provide for the consolidation of all state resources subject to appropriation into a general fund and may establish other funds for the exercise by the state of its fiduciary, contractual or constitutional responsibilities and for the operation of internal enterprises.

The purpose of these amendments is to clarify some of the questions that were raised in the committee meeting this morning and at this point I would like to talk on the paragraph, or I should say, the whole section taken as a whole and as amended. My responsibility in connection with Committee Proposal 11, as suggested by Chairman Brake, is to explain the proposed revisions relating to the control of funds, accounting for moneys, audits and publication of reports.

Now, I think it should be made clear that this first paragraph deals with the control of funds. It is not an accounting function. It is a function relating to the handling of money. The consideration of this proposal is an awful blow to strike on the eve of the Christmas holiday, when everyone is anxious to be on his way. There is probably not a more mundane section of the whole constitution. Perhaps when we have completed this discussion, if indeed we should, each of you will have a greater appreciation for your holiday. (laughter) And I hope you will have some sense of accomplishment because it is hoped that you will pass this section.

As we discuss this part of the proposal, may I suggest that each of you have before you sections 16, 17 and 18 of article X. When you have this material before you, you are ready for the short course in control of funds, accounting and auditing.

Traditionally, Michigan has stood alone in the comprehensive manner in which it has provided in its constitution for fiscal controls. In proposing these recommendations, the committee on finance and taxation is attempting to update the very fine work of the 1908 convention and to maintain Michigan's tradition of comprehensive coverage in this area. This to me is very important. No one member of the committee on finance and taxation claims pride of authorship in drafting this portion of the proposal. We have had plenty of research, plenty of help, plenty of advice and assistance in its preparation, and I should say, plenty of opposition. I feel it is appropriate to mention some of our outside consultants, the department of administration, with particular credit to Ira Polley who is the controller of the state of Michigan; Frank McLaury, who is in charge of the accounting division of the department of administration; the treasurer of the state of Michigan, Sanford Brown; the auditor general of the state of Michigan; the citizens research council; and some of the professors from the accounting department of Michigan State University. And, as has been mentioned by our knowledgeable chairman, D. Hale Brake, although we have not satisfied all interests with this draft, we believe we have divided the framework for dealing with Michigan's complex fiscal management problem. With minor amendments, our Committee Proposal 11 should do the required job.

And now I am wondering if you will read with me sections 16, 17 and 18, and I will try to explain what we had in mind.

Section 16 now reads "No money shall be paid out of the state treasury except in pursuance of appropriations made by law." The committee felt that this section should be retained verbatim because we will all agree that no money should be paid out of the state treasury unless it has been properly appropriated by law. However, where it becomes necessary, as it has been in recent years, to manage a sizable deficit — today the deficit of the general fund is somewhere in the neighborhood of $75 million — the treasurer needs some freedom of access to whatever resources are available to keep his bills current. So the committee felt, along with the state treasurer and many others who are interested, that we should provide for free access to funds that are available, certainly on a temporary basis.

It is the intention of the committee, I should relate at this time, to increase the borrowing power of the state on a very limited basis, but even if we give it the borrowing power that it needs, the treasurer may be able to save some interest if he is able to manage whatever funds he has properly.

I would like to give an example. This is an oversimplification, but I think it will explain the point. If, for example, we should have $50 million on hand — and this is not an unusual situation — of earmarked moneys, and we do not have cash available to meet current bills, and if it should happen that $50 million is reposing in bank A, we could authorize the treasurer to go to bank A and borrow $10 or $20 million, pay interest on the loan to meet these obligations that are due. When he does that, what money is he borrowing? He's got $50 million on deposit. He is borrowing his own money and paying interest for the use of it. Some of you may feel that that interest is not worth saving. Maybe it isn't. Maybe it's not even an important factor. But I think you will agree that there ought to be more freedom of access to manage the money and manage it properly. Incidentally, this practice is being followed today but it is of questionable legality. There is no reason why it should not be made legal since we all agree that it is desirable and necessary.

We now proceed to section 17, which I will read with you.

> An accurate statement of the receipts and expenditures of the public moneys shall be attached to and published with the laws passed at every regular session of the legislature.

This is ambiguous, I believe, to anyone who reads it and is required to act upon it. "An accurate statement of receipts and expenditures of the public moneys . . . ." Does this mean all public officials throughout the state? It does not in any way indicate what public officials are required to account, nor does it indicate what period the receipts and disbursements should reflect. And, just to show you how confusing this can

be, during a regular session of the legislature funds are appropriated. Those funds are spent during that year and in subsequent periods. Now, obviously, it would be impossible to publish a statement of receipts and disbursements pertaining to those particular appropriations in the same publication. It would be necessary to publish figures for some preceding period. This language does not make that very clear. We have attempted to clear up this language, and I would like to point to our new language, which I think you will agree is an improvement.

I suggest that you move to the very last sentence of this section — actually it's the next section — of Committee Proposal 11. If you will turn to page 2, line 16, you will find new language which will take care of the requirement of section 17. "A detailed statement of all revenues and expenditures of public moneys shall be published and distributed annually as prescribed by law."

Here it becomes necessary for the legislature to determine which officials should report which funds, how they should report, and how the reports are to be distributed. The language of section 17 does not give the legislature the authority to prescribe the manner of publication of reports. It tells how it is to be done, but in a very ambiguous manner.

Now we turn to section 18. It now reads:

> The legislature shall provide by law for the keeping of accounts by all state officials, boards and institutions, and by all county officials; and shall also provide for the supervision and audit thereof by competent state authority and for uniform reports of all public accounts to such authority. Such systems of account shall provide for accurate records of all financial and other transactions and for checks upon all receipts and disbursements of all such officials, boards and institutions; and shall be uniform for all similar boards, institutions and county officials. All public accounts and the audit thereof shall be public records and open to inspection.

There is considerable language in this section which is unnecessary for the constitution and, just by way of example, it is not necessary to provide for the keeping of accounts if we provide for an annual accounting because it is impossible to make an accurate accounting without maintaining accurate records. Added to that is the fact that in 1919 the uniform accounting law was passed, which has established a uniform system, or the concept of uniformity in accounting in our state. I might add that in 1908, when this section was passed, there was not a pattern of uniform accounts or of reporting in the state of Michigan. Since then the concept of uniformity and competence has been well established, not only in the state, but also within the profession, on which the legislature should rely for consultation and advice on how to provide for better accounting.

I might add also that, just as in the legal profession we have found considerable advance, within the accounting profession there has been considerable advance in establishing generally accepted standards of auditing and generally accepted accounting principles. The standards of auditing are well established and the American institute of accountants, incidentally, is in the process now of spending $2 million in an effort to better define generally accepted accounting principles. But aside from that, the government officials have also established generally accepted government accounting principles for governments, and I think that with this body of knowledge available to us, we can be a little more general in expressing our language and devote our expressions in the constitution to more inclusive language of those who are required to report and giving the legislature a little more authority in providing for audits.

I would like, if you don't mind, to just read the new language and we might comment on it briefly. I would like you to turn to line 8, page 2. "The legislature shall provide by law for the annual accounting for all public moneys, and may also provide by law for interim accounting . . . ." Here we have established the concept of an annual accounting of all public moneys. Wherever public moneys are handled in the state of Michigan, an annual accounting is required. The legislature may, wherever it feels it desirable to do so, require interim accountings.

> The legislature shall provide by law for the audit of state and county accounts by competent state authority, and may also provide for the audit of any other public accounts.

The constitution will specifically provide for the audit of state accounts and county accounts by a competent state authority, but the legislature may in its wisdom decide that other public accounts should be audited also by a competent state authority.

We have not sought in this section of the constitution to provide who shall do the audit. That will be left to either the committee on legislative powers or the committee on executive branch. But we do insist that it be a competent state authority. Now, as for "All accountings, records, audit reports and other reports of public moneys shall be public records and open to inspection," this is found in the present constitution, but we believe we have improved the language some and made it a little clearer. I have already commented on that last sentence, which is an improvement over the present section 17.

Are there any questions?

CHAIRMAN POWELL: Delegate Austin has discussed really 2 sections here. Maybe they are so well tied in together that he had to, but the material I brought to the rostrum was the journal and apparently he has taken the 2 center sections.

Would it be the desire of the committee to consider them as a unit, or do you want to take them down to the first asterisks?

MR. AUSTIN: Mr. Chairman, I would suggest that they be taken separately but I wanted to discuss them together because the material was in the section of the constitution and I wanted to show how it had been reorganized.

CHAIRMAN POWELL: I believe Delegate Downs was next on his feet.

MR. DOWNS: Mr. Chairman, I have some questions. As a procedure, I direct them through you to the speaker. The first question is on the word "shall" on line 17, on page 1, where it says, "The legislature shall provide . . ." and so forth. The existing language says, "No money shall be paid out of the state treasury except in pursuance of appropriations made by law." I assume that under the present language, if the treasurer would try to spend money in some way considered illegal there could be a citizen or other person go to court and obtain an injunction and there would be some judicial review. The question I have is: since the legislature cannot be mandamused or brought to court, what is the enforcement procedure of the language beyond the word "shall"?

CHAIRMAN POWELL: Delegate Austin, would you care to reply?

MR. AUSTIN: First of all, it should be understood that Delegate Austin is not a lawyer. Delegate Austin is not a legislator. So Delegate Austin may give only a layman's answer and I am hopeful that some legal mind will come to my rescue if I'm neither right nor wrong.

It would appear to me that any penalty on the legislature for failure to comply with any section of this constitution would be found elsewhere in the constitution, and not here. All we can do is provide what our intent is, and that is that the legislature shall do these things. If it does not, I have no answer.

MR. DOWNS: Mr. Chairman, I was about to suggest that we wait until "elsewhere," but I think that would be flip.

My next question is on line 20 on page 1. The 2 words inserted, I believe were "when due" after "obligations." I want to see if I understand this right. Would this mean that earmarked funds or other reserve funds could be spent until they were due? Specifically the question, Mr. Chairman, is, if there were a few million dollars in pension funds for state employees, could those funds be spent until such time as they were due the employees who retired? And if the answer to that is yes, what assurance is there that employees would get their pension?

MR. AUSTIN: I think it would be better to say that the money could be spent until it is required to be placed in the appropriate funds; certainly not until it is due to be paid to employees, I mean if you are referring to the pension fund.

You see, as I understand it, the treasurer is required to receive all moneys from all sources and maintain that first of all, let's say, in a common depository. He is able to manage this money in some instances for a period of 30 days, and some even longer. And at the end of that period, he is required to make the necessary deposits or separations or divisions to the appropriate funds. And when he is called upon to do that, he will be required to do so because it will be due at that time. Now, it is quite possible that our chairman may want to add to that.

MR. BRAKE: I'll take those two, Mr. Downs, before you get any more out here. Let me call your attention to the word "shall" that you mentioned. Can you compel the legislature to do this? No. There is no way. If the legislature does not do it, this whole thing will never go into effect because it is not self executing. The legislature must act or this provision never becomes effective law.

On the other question as to employees retirement funds, you will notice the word "fiduciary." We have been economical in the use of words, I admit that. But that covers that. Fiduciary funds are not included in this provision. Pensions and such things as that have got to be kept separate. They are not included in the general fund. It is only operating funds that we are talking about and not what the employees retirement fund takes, or any other retirement funds. They are not operating funds.

MR. DOWNS: Mr. Chairman, may I show my grammatical ignorance? Do the words "when due" not apply to the word "fiduciary" in lines 19 and 20?

MR. BRAKE: Nothing in this procedure applies to fiduciary funds. It is operating funds.

MR. DOWNS: Well, I may have read the insert wrong, Mr. Chairman. I am sorry if I have.

CHAIRMAN POWELL: Mr. Austin.

MR. AUSTIN: Isn't there a correction in line 19?

CHAIRMAN POWELL: The Chair has a copy with the correction in line 19.

MR. AUSTIN: Is that where you have yours inserted, Mr. Downs?

MR. DOWNS: I have it. I am glad to stand corrected. Thank you very much.

CHAIRMAN POWELL: Any other questions, Mr. Downs?

MR. DOWNS: The other question I have is whether this would have any effect on bonding provisions, particularly for highway funds or any other purposes.

MR. AUSTIN: Well, the direct answer is it would have no effect.

CHAIRMAN POWELL: Dr. Nord.

MR. NORD: I have a number of questions as well for Mr. Austin. I am still puzzled, and I am not quite certain that I understand all of his answers. For example, I notice we begin in the second sentence with "The legislature shall . . . " do so and so. And the next paragraph reads "The legislature may . . ." do so and so. Now, I have a number of questions. My first question is, what happens if the legislature does not? Another one is, suppose there is no legislature? We have none provided for as yet. It is a little premature to be certain. (laughter) Another one is, if we do have a legislature, the committee on legislative powers could conceivably limit the powers of the legislature contrary to this. I don't know whether they would, but they might. I also question that the legislature may do this because maybe the committees on legislative powers or legislative organization might limit the money powers of 1 house. That is not an uncommon proposition. Therefore, I am not clear on how we can go about adopting a section which says what the legislature shall do before we have any idea what the legislature shall be or how it shall be apportioned, for example, and so on.

I am also concerned about this question. Should we write the entire principles of accounting into the constitution? It appears to me we are moving in that direction. The reason I object to that is because I don't understand those principles. And if they are in the constitution, that means I will not understand that part of the constitution.

Another thing that is bothering me is that there have been some amendments on the floor by your committee to this particular section. I deduce from that your committee has not been completely satisfied or else is confused about the meaning or the impact of some of the words in this section. I would like you to realize that if you are confused, then you should imagine how confusing it is to us. It seems to me that the rule about 3 days' notice permits us to deliberate about the meaning of a section. Now, if the section is changed in any substantive way, then we don't have 3 days' notice to deliberate on it and we will come across problems of this type.

Finally, I am not at all satisfied that I understand what is meant by "subject to any fiduciary obligation." As far as I can determine, I don't know what "subject to" means. I do not see that that means that it strikes that kind of obligation out of this section. The reason I feel it is not clear is because in discussing this with many members of the committee just before I came onto the floor, they all gave me the reverse impression. Many of them indicated to me that they were not clear about the language of this section; that they thought there were questions about earmarking but they were not certain what effect it had on earmarking. That is the main thing that puzzles me. It is not whether or not we will have a legislature, but it is whether or not we will have earmarking. I can't tell for sure from this whether we have earmarking or whether we can have earmarking, or whether if we do, earmarked funds will have the security that we think they will have. If I could be sure, I could vote intelligently on this. If I could not, I do not see how I can vote on it. I believe since there are members of the committee who informed me that they are not certain, since there are amendments on the floor, it seems to me that many members of the committee must not be certain.

I therefore move that we postpone this question until January 10.

CHAIRMAN POWELL: May the Chair comment that if we are to hold everything until everything else is decided, this thing would run into infinity. Obviously we have to start somewhere. Each of these matters will be subject to a second and third reading so they can be further integrated as we go along. However, I think the motion is in order that this whole report be postponed until a day set. January 10, you say?

MR. NORD: Yes, sir.

CHAIRMAN POWELL: All those in favor, signify by saying aye. Opposed, no.

The motion does not prevail.

I think the question is on the committee amendments that have been discussed. We have 2 or 3 folks wanting to be heard. Those who have been on the floor the longest in sequence that I observed them were first, Mr. Yeager. What is your desire, Mr. Yeager?

MR. YEAGER: I wanted to rise to a small point of order here, Mr. Chairman, that was brought up by the Chair. Calling your attention to rule 38:

> In the committee of the whole proposals shall first be read through by the secretary, and then read, debated, and acted upon by clauses. . .

There was some question about that earlier.

CHAIRMAN POWELL: A clause is a pretty short thought, isn't it? It's not even a complete sentence. I wasn't aware that that was the procedure, but we have established this other modus operandi. I wonder if there is any desire to depart from the way we are proceeding.

MR. YEAGER: I simply called your attention to the rule as written.

CHAIRMAN POWELL: Mr. Stafseth, did you want to talk on these amendments?

MR. STAFSETH: Yes. First I'd like to ask, if you have an amendment to an amendment that the committee has offered, you just offer the amendment, is that correct?

CHAIRMAN POWELL: I would say yes, if it is an amendment to this language. However, it might simplify things if we could get this behind us and see what you have up your sleeve. (laughter)

MR. STAFSETH: All I was going to do was to try and solve some of this problem in relation to the earmarked funds,

where they affect the highway bonds or any other bonds that may be earmarked. I have an amendment that our bond attorneys whom we talked to today said would be sufficient to take care of this. I might point out one thing: on the question that was asked Mr. Austin, if the highway bonds would be affected by this provision, that Mr. Brown—who is Mr. Nunneley's assistant in the firm of bonding attorneys in Detroit—said that it definitely would affect the bonding provision or there would be a higher interest rate on the bonds if this provision stood as it is.

I might say in general—and this is referring to the new language of the second paragraph—as I view the situation here today, we are in a similar situation to what we have been in this state for quite a long time. We are not facing up to our responsibility of getting sufficient revenue to meet our appropriations. We have gone through a period where we have liquidated the veterans trust fund. I don't have any quarrel on that because I don't think we should finance funds on interest money. But there are a lot of people that thought we should. Next we sold the liquor stock in order to meet our expenditures. Now we are licensing the treasury of the state, or the legislature, to intermingle funds to avoid facing the day of financial responsibility. To me this is just going to be an excuse for the people that have to do this to delay or procrastinate a little bit longer.

Now, this is new. This intermingling of funds in a constitutional provision, I think, is quite new. I am not quite sure if it is in any other constitutions in the United States. But I certainly can see if we get into trouble on this, it is going to be an awfully hard thing for the people of the state of Michigan to rectify because you can easily pass a law and change it if you have it in a statute, but if you have it in a constitutional provision, it would require a referendum of the people.

I was going to offer an amendment, but if you want me to wait until this is straightened out—

CHAIRMAN POWELL: Mr. Stafseth, I think it would simplify things if you would wait. I understand your amendment has to do with a provision which was already in the committee report prior to this pending amendment. I think it would simplify things if we consider now what has been proposed by the committee and explained by Delegate Austin. Are there any further comments on that?

Mr. Snyder, you have been trying to get recognition.

MR. SNYDER: Thank you, Mr. Chairman. I know it was easy to overlook me because in accordance with rule 22, I stayed at my seat where I feel you should remain until you are recognized. I feel that some of us in the back row have an advantage. We can get to the microphone rapidly. But I think we should remain at our seat.

I certainly agree with Mr. Stafseth in his argument that we have more than a basic problem of combining the funds. We've got to cut a little deeper and try to correct the cause of our problems and inasmuch as he has already brought this to your attention, I won't repeat my thinking on this thing because it does coincide.

I would like to get a little clarification from Mr. Austin, if I may, on some of the more mechanical aspects of the change that the committee has presented to us. Certainly, I agree that there has been a lot of work and a lot of effort and a lot of collective thinking pulled together and brought into this report, and I do not want to appear to be presumptuous at this particular point and say that with my limited knowledge of accounting or arithmetic that I can improve upon some of the efforts of some of the people who are exceedingly qualified. However, I do seriously question the inclusion of some of the language at the present time, especially that section that says that an annual accounting will be sufficient.

I have had experience personally of having annual accounts and I know that the annual accounting is an end product. It is not the means that provides for the end product. There are certain basic steps and processes that you must take before you get to an annual accounting and I believe that in their wisdom the delegates at the preceding convention prepared and put into our present constitution some of the essential safeguards that would require the records such as we have at the present time.

Certainly, with the need of uniformity of records, if we are going to have uniformity in our accounting, regardless of the exceedingly high standards set by the profession, I feel that there may be times in which we will have a deviation from the high standards, human beings being what they are. And I can only say that this coming April 15 we will be having a final accounting of some of the records that we should have been maintaining throughout the whole year. I am certain that some of us will spend a great many long hours preparing for our income tax returns because we haven't made the necessary steps for this final accounting. So there is serious doubt in my mind whether we should exclude from the present constitution some of the language which has served us so well.

Now, with the danger of oversimplifying our problem, Mr. Downs asked a question and Mr. Austin gave him a direct answer. However, I feel in this case that if he gave him an indirect answer it would have been apropos to the problem because this borrowing of funds over an extended period of time will correct itself. But I want to caution you that the earmarking in the various statutes that are set up are a simple budget with which we must operate and if the circumstances are such that we overborrow within a short period of time, regardless of the long term direct answer to their problem, we will not be able to face our immediate responsibility to the specific budgetary item that is involved.

I feel again that the committee has made some good progress in this respect. However, I am willing to stay here as long as anyone in the interest of reporting something out. But I think just to report something out for the sake of reporting something out will not accomplish what we are here for. We are here today to take care of one of the most vital problems of our constitution, that is, a pocketbook problem of our constitution, and we should not do it in haste. And I certainly would appreciate it if the committee would take into consideration some of the statements that I have made. Thank you very much.

CHAIRMAN POWELL: The question is on the committee amendments offered by Mr. Austin.

MR. AUSTIN: Mr. Chairman, was he asking me a question?

CHAIRMAN POWELL: I wondered.

MR. AUSTIN: It sounded more like a speech.

CHAIRMAN POWELL: Is there a specific question in your mind on which you desire an answer from Delegate Austin?

MR. SNYDER: I just brought to Delegate Austin's attention some of the shortcomings which I felt the new language would create. However, if he would care to answer them, I would feel it would be in order.

MR. AUSTIN: I think that the one question that I got out of your comments was whether we should continue the same language that we have in the present constitution. I don't know whether you have read the public acts of 1919—I cannot remember the exact number of the act now, but it is in the uniform accounting act—but it might be appropriate for me to give you some idea as to the amount of detail that we now have in our statutes in regard to uniform accounting, and when you have seen this and read it, I think you will wonder too why we need any detail about accounting in our constitution except to require that we shall have an annual accounting and an audit of these accounts and require publication of these accounts.

But I would like to know from you, since you have asked me the question, why you feel that we need accounting detail in our constitution, especially in view of the remarks made by Dr. Nord.

CHAIRMAN POWELL: Does Delegate Snyder wish to reply?

MR. SNYDER: I feel that we have an area here which is not primarily a statutory matter. I feel that we have here a matter of finances, of money, that can be changed from time to time. A problem as important as this should not be covered merely by the statutory provision. I feel that the control of state money, the control of the auditing, which is the

final accounting, should be a constitutional matter, and not one of a statutory nature.

MR. AUSTIN: Delegate Snyder, I am agreeing with you that the constitution should provide for audits and it should also provide for the publication of accountings and it should also require accounts, but why is it necessary to provide in the constitution how records are to be kept? Let me, for example, read to you what the title to act 71 of the public acts of 1919 provides.

> An act to provide for the formulation and establishment of a uniform system of accounting and reporting in the several departments, offices and institutions of the state government and in all county offices; to provide for the examination of the books and accounts of each state department office and institution and each county office; to provide for annual financial reports from all such departments, institutions and offices and for the tabulation and publication of comparative financial statistics relating thereto; to provide that the auditor general and the board of state auditors shall administer the provisions of this act prescribing their powers and duties in relation thereto; to provide penalties for the violation or failure to comply with the requirements of this act; to provide for the expense authorized by this act.

This is just the title. The act goes into considerable detail in prescribing the accounting and auditing responsibilities and duties. Certainly, it does not seem wise to include matter of this sort in the constitution.

MR. SNYDER: I agree with you and I do not believe the language as such should be included in the constitution, Delegate Austin. I am only saying that we should at least include the concept of this regardless of legislative detail, to provide for "accurate records of all financial and other transactions and for checks upon all receipts and disbursements of such officials. . . ." These are the few words that I feel should be a constitutional matter. I feel we have here a question of the basic constitutional concept in statutory detail. I feel the statutory detail that you mentioned is well, but we should cover it with a constitutional concept.

MR. AUSTIN: Mr. Chairman, I realize that this has developed into colloquy between 2 delegates, but the only way I know how to handle this is to continue to answer the questions that he has raised. You see, Delegate Snyder, the present constitution does not provide for all of the checks that ought to be made in connection with an audit. There are quite a few more checks that any auditor would make — and I am sure you are aware of that — so why attempt to indicate in the constitution what checks ought to be made? Require an audit and whatever is required to make a comprehensive audit would be made and these concepts are changing from time to time. It would be possible for the legislature to examine them from time to time and update the laws as it found it necessary. But don't attempt to determine how an audit should be conducted in the constitution. It is terribly unnecessary and it is entirely too restrictive.

MR. SNYDER: I will yield to Mr. Norris.

CHAIRMAN POWELL: Delegate W. F. Hanna is the one I have observed waiting the longest.

MR. FORD: Point of order.

CHAIRMAN POWELL: What is your point?

MR. FORD: I think that the discussion for the last 20 minutes has concerned itself with lines 8 through 18 of page 2 and it was my understanding that we were going in a seriatim process through this and we were discussing lines 16 through 24 on the first page.

CHAIRMAN POWELL: The question is on the committee amendments offered by Mr. Austin. I believe they were made to that portion which you mentioned.

MR. FORD: The amendments we are talking about are contained in the lines between 16 and 24 on the first page. We have for 20 minutes been engaged in a scholarly discussion of the accounting procedures set out in lines 8 through 18 of the second page and I am getting a little confused as to just which part we are debating.

CHAIRMAN POWELL: Thank you for that suggestion. Let's stick to the second section.

Mr. Hanna, what was your —

MR. MADAR: Mr. Chairman, I've been standing, if you'll glance over in this direction. I've had the red light for quite some time. I believe it was turned on approximately the same time that Mr. Snyder got up. I am awfully sorry if that can't be seen but I believe we ought to recognize that the gentleman up there in that window is pressing the buttons.

MR. W. F. HANNA: Mr. Chairman, I will be glad to wait until the gentleman is through.

CHAIRMAN POWELL: The delegate yields to Delegate Madar.

MR. MADAR: Mr. Chairman, I just want to say this, now that I have been recognized. Mr. Austin answered a question very quickly for Mr. Downs by saying "no" — and he referred to whether or not this would affect bonds. Well, I don't think that any good banker, any good investment company in the entire United States would want to invest in Michigan highway bonds when they read that the constitutional convention assembled here today gives our treasurer the right to juggle these highway funds, earmarked funds.

Now, in the last paragraph it says

> The state shall not subscribe to, nor be interested in the stock of any company, association or corporation, except that funds accumulated to provide retirement or pension benefits for public officials and employees and endowment funds may be invested as provided by law.

Now, the legislature may, after this goes through, decide that it is all right for the retirement systems to invest in highway bonds. You can be well assured that as a member of the board of trustees of the Detroit system pension fund — and that does amount to approximately $200 million — I am not going to be crazy enough to invest in bonds when I know that there is a juggling of highway funds. And I believe that that is what you are going to have everybody thinking.

MR. AUSTIN: Mr. Chairman, I believe I should respond to the comments.

CHAIRMAN POWELL: Very well. Delegate Hanna did yield but you may answer those points. (laughter)

MR. AUSTIN: I believe this is proper procedure, is it not? I would like to make it clear that in answering Delegate Downs I was merely stating that the language that has been suggested would not affect the obligation of the state in regard to any bonds that we now have. I thought that was his question.

I would not presume to tell you what would happen to the bond market, that is, what effect this provision would have on the sale of bonds. I think that answer should be left to someone who is more competent to give the answer, and I hope that everyone understands that I was only talking about our obligation under our bonds.

CHAIRMAN POWELL: Mr. Hanna.

MR. W. F. HANNA: Mr. Austin, in the last part of this line 22, you have "may establish". Would this defeat your entire purpose if you inserted the word "shall"?

MR. AUSTIN: I can not say for all of the members of the committee because we discussed the possibility of using both "may" and "shall". I do not believe we defeat our purpose if we use the term "shall".

MR. W. F. HANNA: The second question. As to "when due", is there anything here to assure that they will be paid in the order that the obligation became due, or is there discretion left in the treasurer to pick out those items that are due and of those items pay part and leave part of them to remain?

MR. AUSTIN: Yes, he would have that same discretion that he has now.

MR. W. F. HANNA: If he is going to follow this procedure, should your language not read, then, ". . . when due in the order that the obligation became due" so that he is not accused of favoring one department or one group of creditors over another?

MR. AUSTIN: I am not absolutely sure that that language is necessary to be added because I think the impression we want to convey is that he will honor all obligations when they

are due and I think there is a presumption — certainly an assumption — that if one item is due before another, that it would be paid before one that is due subsequent thereto.

MR. W. F. HANNA: If a general cash deficit results from this language, I assume then that you are saying that the legislature shall at its next regular or special session levy sufficient taxes to raise cash revenues to reimburse any fund or earmarked obligation?

MR. AUSTIN: I think you have hit a key point here and one which maybe we have overlooked in our discussion, and that is that our problems in the management of moneys are not going to be solved until we have sufficient tax revenue to pay all obligations. The problem is that we have a $71 million deficit which has to be managed by someone, and the responsibility seems to be that of the treasurer. And if you expect him to do the job well, you've got to give him the freedom that he needs to handle the money properly.

MR. W. F. HANNA: Mr. Austin, should there not then be a limitation of time during which this procedure can continue so that it does not go on, starting with the first month of a fiscal year and continuing thereafter for 11 months, without some requirement that the governor call the legislature into special session, and if they fail to act in 90 days, this practice should cease? Otherwise, it is conceivable that the failure of the legislature so to act in appropriating or levying sufficient revenue ultimately would result in a specific earmarked fund, such as highway funds or sales tax diverted to local schools, being put off and put off, and in turn, each fund remains bankrupt, and local governments, to wit, county road commissions or school districts who have based their local budgets for a fiscal year on the estimated funds to be received from designated or earmarked funds, not receiving even a substantial percentage thereof over a period of years.

MR. AUSTIN: Again, this gets back to a question that was raised earlier as to what should be done if the legislature does not act to fulfill its full responsibility. I do not know what we can do to require the legislature to do whatever it must do, but I would like to get back to this question of the management of moneys.

The schools are complaining now that they do not get their money soon enough. And it is not because of any mismanagement of the school money. It is simply that there just isn't enough money to do the job.

MR. W. F. HANNA: Mr. Austin, my only comment is that it seems to me that while the treasurer should have management of the funds, and I agree with the principle by which you are trying to enunciate some method that can eliminate this should be placed in connection with this section, even if it means that you put in a penalty provision someplace in the constitution, that the legislature shall no longer draw its pay until it performs its obligations. (laughter)

MR. AUSTIN: Well now, I am wondering if that would not be appropriate for either the committee on legislative powers or some other committee. I do not believe that that is the responsibility of this committee.

CHAIRMAN POWELL: May the Chair restate that the question, of course, is on the committee amendments offered by Delegate Austin. I have tried to keep track of the people standing around here and I think that Delegate Norris has been very patient.

Do you wish to speak on these pending amendments, Delegate Norris?

MR. NORRIS: Yes, Mr. Chairman. I think the observations I have are related and germane. I think the discussion thus far indicates that we are in a pretty delicate area and I would suggest here that we would bear in mind the purpose that Mr. Austin has suggested to us, and on that purpose I wish to oppose what is now pending. The idea is to give the treasurer more flexibility and discretion with regard to where he derives money to pay expenses of the state and to do this in such a way as to impair the demarcations clearly delineated in the past by constitutional amendment for earmarked purposes.

The schools and the highways have worked hard over a period of some decades to secure earmarking in order to protect the integrity of their function. And what you are doing here is taking certain steps to undermine the integrity of that function, in my judgment. I think what is happening is because the ineptitude and inadequacy of the legislature in the financial field, which has led to payless paydays, and so forth, that we've seen — and which brought about the existence of this convention, incidentally — is compounded.

What is going to happen under this particular proposal to accomplish this objective? The legislature does not appropriate enough; there is not enough money coming in as was anticipated for the earmarking. So they are going to rob Peter to pay Paul. And by continuing to do that, we are not going to get the kind of functions that we intended to accomplish by earmarking in the first instance. I don't think that this particular proposition can be appraised independently of what is a sine qua non of this convention, and that is to develop a satisfactory tax and financial structure necessary to meet the needs of the state. We are doing this on a piecemeal basis by this particular proposition, and by doing it in this fashion, we are not acquitting ourselves of the responsibility that we have to the people that elected us.

I oppose this particular section that is before us, Mr. Chairman.

CHAIRMAN POWELL: Delegate Brake, do you wish to comment?

MR. BRAKE: Yes, I would like to comment to the effect that we are trying to put into the constitution what is already in the statute and that which is already being done; and to call your attention to the fact that sometimes just plain necessity is a pretty powerful law. Three times in the time that I have been around state government we have had to resort to what could not be avoided, even though we did not have the legal sanction to do it. The legislature has authorized just exactly what we are proposing here. It is being done; it has been done. Some day somebody is going to take that to the supreme court. That is what we are thinking about in putting it into the constitution.

Sanford Brown was before us this morning. He said that recently, time after time, payment is due the schools. There is not enough money in the school fund to meet it but there is money in the general fund. Part of it is highway money; part of it is conservation money; part of it is civil service money. It is taken and the schools are paid. In a few days the money is back. And we go on doing the same thing the next time it happens. What are you going to do? Tell the road people, "Go on, build your roads; make your contracts; let's have roads. It's your money"? And let people go hungry? Close your institutions? Close up your payroll? Certainly, there ought to be more money. Certainly, it ought to be raised. But what are you going to do in the meantime when you've got these kinds of necessities before you?

While I am on my feet I want to answer what was said about that bond business. There are so few words in this proposal — and I assumed that that was one of the objectives of this convention, not to overload the thing with details — there are so few words that a lot of us are missing some of them. Mr. Madar missed one. This excepts anything required for a contractual obligation. Your bond is a contractual obligation. If the legislature were to authorize the taking of money which would leave nothing to meet bonds, it would be violating exactly what we have said, and that is so for the fiduciary and other items here.

CHAIRMAN POWELL: Mr. Madar.

MR. MADAR: Mr. Chairman, may I answer that, please?

CHAIRMAN POWELL: If you want to answer that particular point.

MR. MADAR: I did not make any mistake in regard to that particular section, Mr. Chairman. I said that if the legislature gave us the right to purchase this type of bond, I certainly would not recommend the purchase of them. I did not misunderstand it.

CHAIRMAN POWELL: Delegate Marshall, do you wish to speak on the committee amendments?

MR. MARSHALL: Against the amendments, Mr. Chairman. But I would like to ask a question, in closing, of Mr. Austin.

I agree with Mr. Brake that under the present method that is being used we might some day have someone go to the supreme court with it. I am not so sure that they should not do just that. I would ask Mr. Austin, in making it possible to make a raid on funds that people have earmarked for a specific purpose, such as highway and schools and others, at the same time not having any constitutional guarantee for the repayment of this money, aren't we being somewhat hypocritical?

On the one hand, I know some of us — I don't know the position of all the delegates — have very strong, deepseated viewpoints on the question of earmarked funds in certain areas. We want to see these earmarked funds used for the purpose for which they were earmarked. It seems to me under this proposal that what we are doing, constitutionally, is making it possible to make a raid upon any of these earmarked funds at any time with absolutely no guarantee — as I read this provision — or limitation upon time to repay. To me this would completely do away with earmarked funds. And too, we are trying to erase an image in this proposal of the legislature's failure to act to raise the necessary funds and this would simply make it much easier for the legislature to measure up to its responsibility in this all important area.

For these reasons I am opposed to the amendments.

CHAIRMAN POWELL: Is there a rejoinder on behalf of the committee?

MR. AUSTIN: I think that he is right in expressing the view that it would be possible for the legislature or for the treasurer, having been authorized by the legislature, to use earmarked moneys where he felt that those were needed for other purposes. But the obligation is there to place the money back. And if you are of the view that this is an unsatisfactory arrangement, you would vote no on this proposal.

MR. MARSHALL: May I ask Delegate Austin one question?

CHAIRMAN POWELL: Proceed.

MR. MARSHALL: You state that the obligation is there to repay the money. If this is true — and I can see where maybe the obligation might be there — is there any specific provision that guarantees that they have to meet the obligation?

MR. AUSTIN: Well, as clearly as we can state it.

> The legislature shall provide by law for the use of all state resources to pay all state obligations when due regardless of fund classification, subject to any fiduciary, contractual or constitutional obligations to which the state is pledged.

MR. MARSHALL: I am in the same boat you are in, Dick. I am not an attorney but I don't believe this makes it mandatory.

CHAIRMAN POWELL: Mr. Stafseth.

MR. STAFSETH: Mr. Chairman, could I have a point of order, please? I think there may be a little confusion here but I would just like for my own information, so we can understand ourselves, the proposal that was printed up, the green sheet, has now been amended with just a minor change. In effect, it has substantially the same meaning.

As I understand it, all we vote for is to amend it. We don't necessarily vote it down. If we voted it down we would not change the meaning a great deal. So in this process, don't we just keep amending it? We vote on something. Then if we do not like that, we amend that. So you can not in effect vote it down, can you?

CHAIRMAN POWELL: Not right at this moment.

The question pending is on the committee amendments, which I think are not on the green sheet. They are on a white sheet, aren't they?

MR. STAFSETH: The thing I am getting at, Mr. Chairman, is that they are arguing more in the line of what my amendment would deal with than what the committee's amendments are dealing with right now. If they voted on this so we could get into the new area, I think we would open it up to where they could discuss it and either accept it or reject it.

CHAIRMAN POWELL: The question is still on Mr. Austin's amendments.

Mr. Mahinske, you have been waiting a long time. Do you wish to speak on those amendments?

MR. MAHINSKE: Mr. Chairman, I wish to speak against the amendments and against the committee report and against the submission of the committee report at this time.

CHAIRMAN POWELL: Don't go too far. Just take the Austin amendments. (laughter)

MR. MAHINSKE: On the amendments to the report, I have to agree with Mr. Marshall, that this—in my interpretation—leaves the raiding of funds wide open here. There is absolutely no guarantee that the repayment has to be made. The inclusion of the phrase "when due" would lead me to believe that an interpretation could justifiably be had here that "when due" also applies to fiduciary and contractual obligations up to the point when the fiduciary and contractual obligations absolutely have to be met; that these trusts or funds could be violated until such time as payment must be made under the trust fund or the contractual obligation, which would take in highway bonds.

Also, the clause here that really bothers me and leads me to believe that this is a basic, fundamental policy that the legislature will have to follow to implement the whole finance and taxation article of the constitution is the phrase "constitutional obligations". At this point the committee on finance and taxation has come out with this report only. We have before us no idea or indications of what, if any, constitutional obligations there will be written into this article of the constitution. It seems to me that until we know that there are going to be constitutional obligations, we don't know that there are going to be any earmarked funds, so called.

At this time I would have to rise in opposition—as I mentioned before—to the amendments for the same reasons that I would be opposed to the committee report itself.

CHAIRMAN POWELL: Do you wish to speak, Delegate Austin?

MR. AUSTIN: Yes. I would like to know whether you are suggesting we postpone action on this until you get the rest of article X? Is that what you are referring to?

MR. MAHINSKE: I think that—because you are talking about constitutional obligations in addition to fiduciary and contractual obligations—until we know what constitutional obligations there are, we can't intelligently pass this basic policy procedure that we are laying down for the legislature in finance and taxation.

CHAIRMAN POWELL: Mr. Austin has pointed out you are not adopting anything in the constitution at this stage of the game because there is a second reading and a third reading coming along a little later. But you are within your bounds in suggesting that these amendments be voted down or that anything be deferred if there is any such motion. But right now the question is on the Austin amendments.

Mr. Austin.

MR. AUSTIN: Mr. Chairman, I have attempted to answer all questions related to any aspect of this proposal. It is my feeling that at this point it might be best to confine the questions just to the language which I have proposed in the amendments, to see whether or not the delegates approve of the improvement in the language which the committee voted this morning. You see, this language was presented on behalf of the committee to clear up some ambiguities which were raised in the committee this morning and I am just hopeful that we can confine our questions right now to these amendments and then take up the question of the section following that. In that way we may be able to get through something here.

CHAIRMAN POWELL: I don't like to keep a lady standing so long and Miss Donnelly has been on her feet for a good time.

MISS DONNELLY: Thank you. Whether we're ladies or not, we have to stand on our feet too, and this is the procedure to get recognition. Back to the issue though, there is no question in your mind, is there, Mr. Austin, that this provision as written at this moment with your amendments still allows the use of earmarked funds as we know them, and if we were to retain it in the constitution it will allow their temporary use?

MR. AUSTIN: Yes, it will. It will permit temporary use of earmarked funds.

MISS DONNELLY: There is no question?

MR. AUSTIN: No.

MISS DONNELLY: On that basis, I must oppose that issue at this time.

May I also go to a term nobody has gone into—and I hate to confuse things more—but the use of "all state resources" is a term which to me is very ambiguous. Regardless of whether we are going to use earmarked funds or evade them or invade them or not, "state resources" can involve all resources in the aspect of natural resources as well as assets which we can bring in and cash, and what have you. Has your committee considered another term which could indicate to all that you do not intend to utilize, in effect, the water? In backing these obligations, you intend to use the cash resources which you may collect?

MR. AUSTIN: The term "all resources" is subject to legal interpretation and I will not presume to be competent to answer that question directly. I am wondering if some other member of the committee would be willing to answer that question.

CHAIRMAN POWELL: Delegate Van Dusen, are you rising to do that?

MR. VAN DUSEN: That was my purpose, Mr. Chairman, yes. The committee considered the use of the term "resources" and considered it confined to what we normally consider intangible liquid resources, such as securities, cash, money.

MISS DONNELLY: Couldn't they use "assets" as opposed to "resources?"

MR. AUSTIN: That would mean the same thing.

MISS DONNELLY: It would mean the same thing for your purposes but I think it may remove question. Did you go over this word?

MR. VAN DUSEN: We went over this word for at least 20 minutes and concluded because the word "resources" was used in the context of the present constitution, it was a good word to be continued in the proposed new constitution.

MISS DONNELLY: I would have to object to that too if we are going to other resources in the proposed new constitution.

CHAIRMAN POWELL: Delegate Bentley, did you wish to speak on the Austin amendments?

MR. BENTLEY: Yes, Mr. Chairman, on the specific amendment of the insertion of the words "when due". I would like to say that I have been very impressed by the committee presentation, specifically the presentation of Mr. Austin in this respect. But I would like to ask one question. As chairman of the committee on education, I have been aware that there have been many of our local school districts throughout the state that have been seriously embarrassed at times through the failure or the tardiness of the state in making the payments to these districts under the school aid fund. My question is this: if these earmarked funds can be temporarily used for other purposes, is this likely to further delay the payment to these local school districts, thus forcing them to continue and even increase the practice of borrowing at burdensome rates of interest from local sources? Or rather, Mr. Austin, does the committee on finance and taxation contemplate subsequently any increase in the present constitutional borrowing authority of the state to permit the state to borrow at rates of interest which would be lower than are available to most of these local districts?

MR. AUSTIN: Thank you for the compliment, Delegate Bentley. I think it is appropriate to explain something that I hoped I would not have to say, and that is that it is quite possible that with the language that we have suggested, the schools may fare a little better. I am reluctant to say that because it means that perhaps someone may be hurt. But the point is that if we can get this language into the constitution, it is quite possible that there will be a little more freedom to provide moneys for schools when due. As it is now, the treasurer is somewhat handicapped in being able to find money to send to the schools. This may give him a little more freedom. Does that answer your question?

MR. BENTLEY: Most satisfactorily. Thank you.

CHAIRMAN POWELL: Mr. Van Dusen.

MR. VAN DUSEN: Mr. Chairman, if I might simply elaborate briefly on Mr. Austin's fine answer to Mr. Bentley's question. The committee has also had under consideration and has adopted in substance, a proposal which will increase the short term working capital borrowing power of the state which would enable the state to do the kind of borrowing which the school districts are now forced to do because of the inability of the state to do it. So while it is not incorporated in this proposal, it is one on which the committee has already acted tentatively without as yet deciding the exact language.

CHAIRMAN POWELL: Mr. Martin.

MR. MARTIN: If I might, Mr. Chairman, I would like to revert to a little bit of history here because as I understand the committee proposal, it effectively vetoes or negatives the provisions of the second paragraph of section 23, which specifically provides that 2 cents of the state sales tax

> . . . so collected shall be deposited in a special school aid fund and be expendable only by legislative appropriations, for aid to the school districts and school employees retirement purposes as shall be provided by law.

A further sentence states, "Said school aid fund shall be separate and distinct from the state general fund."

I think that the committee's amendments are in clear contradiction of that section of the constitution. And I assumed from the questions and from the discussion I have had with the committee members, that they recognize this and that they intend to provide a deletion of at least the last sentence of that second paragraph in section 23 and 1 or 2 words above there, to make possible the proposal which is now before us to be effective and not in contradiction of another section of the constitution. The section that I am quoting from was enacted, I believe, in 1954. It became effective in '55 and it was enacted because we went through a crisis at that time in which we simply did not have enough money and we were accumulating a very large deficit. I think it didn't run to $70 million, but it ran to $40 or $50 million, and as auditor general I was unable to pay the schools. There were other very pressing needs that are not in the constitution. There was no provision of that kind. So the schools had to wait, and they did wait, and they were very patient. They waited for long periods of time—in fact, several months some of them—and they borrowed very heavily, and in many instances they paid very substantial sums by way of interest for their borrowing, which was not repaid to them because when they were finally paid out of the school moneys, they were not paid the interest which they had had to pay for the money which they borrowed.

For that reason I was especially interested in this proposed change because I do not think that the schools will want to find themselves back in that situation again. I am sure they won't. And I do not want to see them in that situation.

In talking with members of the committee I was assured—and Mr. Van Dusen has just brought out the point—that they do propose to introduce a provision with respect to borrowing on tax anticipation notes, which would give the state some authority for short time borrowing to meet situations of this kind, where there was a shortage or an insufficient amount of money to pay all obligations, particularly if these earmarking provisions prevailed. That change providing such authority to borrow might meet this problem. I would want to at least consider whether it did or not when I saw what that provision was. But I don't see how the committee can intelligently vote on this provision as it stands now without knowing what kind of a provision there will be with respect to additional borrowing. I, of course, assume Mr. Van Dusen is correct when he says the committee is coming forth with some such proposal.

It seems to me that if the committee is going to amend section 23, and possibly section 22, to make it fit the proposal which it now submits, if that is necessary, that this matter,

if it is passed, should be delayed or held in the committee on style and drafting until the other provisions catch up with it, or else should be referred back to the committee. I would be satisfied with either provision.

I want to get along with these things, but this is a very, very important provision to a very large number of people throughout the state and we are just lacking the factor in the equation to know whether the problem can be cured in some other way than it is now being handled.

CHAIRMAN POWELL: Mr. Austin.

MR. AUSTIN: Delegate Martin raises a very significant point. It is true that the committee is contemplating revision of the section dealing with the borrowing power of the legislature and it is also considering a small change in the one he referred to in section 23. There would be no change necessary in section 22 because section 22 does not provide for a separate fund. It merely states that the highway revenue shall be earmarked. But section 23 does provide for a separate fund which shall be separate from the others.

There is a legitimate reason, as I see it, for withholding a view on this proposal until you see what we do with section 23. That is my personal view. There may be other views on the committee. Mr. Chairman, would you care to express a view on that?

CHAIRMAN POWELL: Mr. Brake.

MR. BRAKE: Mr. Powell, acting as our chairman, gave the only answer I can give on that to Mr. Martin or anybody else. We can not pass the whole constitution at once.

What the committee has in mind—and it has been agreed to except for detail in language—is that short term borrowing shall be permitted, if the legislature authorizes it, up to 15 per cent of the unrestricted revenues of the previous year, which at the present time would run somewhere in the neighborhood of $50 million, or possibly $60 million, all to be repaid within the fiscal year in which it is borrowed. In other words, it is a borrowing against incoming taxes. That, however, is not a substitute for what we are trying to put here for better management of the state's funds. It would help and would often avoid any taking of restricted funds for any purpose other than for which they were restricted, but it would not be a complete answer to the problem.

CHAIRMAN POWELL: Mr. Upton.

MR. UPTON: I would like to rise in support of the committee amendments by Mr. Austin, for I feel that this addition clarifies our financial situation and will help guide the legislature in meeting its payments when due. I feel this will not only help us manage money better but establish a pattern in our state for recognition throughout the country that we intend, constitutionally, to pay our bills when due. Thank you.

CHAIRMAN POWELL: Mr. Mahinske.

MR. MAHINSKE: I rise to a point of information. I think Mr. Van Dusen could answer this. The first sentence in both the amended language and the section as submitted by the committee says, "The legislature shall provide by law for the use of all state resources to pay all state obligations." Does your interpretation of this go so far as to allow the state to issue full faith and credit bonds for the payment of any obligation?

MR. VAN DUSEN: No.

MR. MAHINSKE: Do you feel it could legitimately be interpreted to mean that?

MR. VAN DUSEN: Mr. Chairman, Mr. Mahinske, no.

CHAIRMAN POWELL: Mr. Kelsey.

MR. KELSEY: I rise in opposition to the amendments, Mr. Chairman. And I wonder what happened to the rule on the maker of a motion being able to speak twice, unless it doesn't apply to the committee of the whole.

CHAIRMAN POWELL: It does not apply here. It is unrestricted debate.

MR. KELSEY: Thank you very kindly. Let me first, in respect to the committee on finance and taxation, acknowledge that I certainly appreciate that they are trying to take a bad situation and correct it. We know that there have been irregularities in this area of making payments to different institutions and using this money. However, I don't want to open the door any further to allow the people on the "hill", when they come here in January, to drag their heels.

We have heard our great president say to us that we have to have responsibility right here in the state. We have had adversaries, of another ideology, say that they are going to bury us. They tell us this in this very area of dollars and cents. I say we should defeat this at least until we have a tax structure that we can accept, that we will be sure that we will have the moneys, that the legislature will act and take the able members of both parties and go over on the "hill" after we come back after our adjournment, and get them to do something about this fiscal problem, and not delay it any more and drag our heels. I am against the amendments and I would like to have this entire delegation join me if it is at all possible.

CHAIRMAN POWELL: Mr. Downs.

MR. DOWNS: Mr. Chairman, I would just like to remind us—and I think we need to remind ourselves—that one of the compelling arguments for this convention was that we would have the time, in a deliberative, responsible sense, to solve those problems that were difficult for the legislature because of the pressures of day to day financial problems. And I say that if we are to be successful, that finance and taxation is one of the main things we should do. I would hope that first we would put in the constitution a sound provision to insure adequate revenue provided equitably for the people of this state. And secondly, if we need to borrow, to provide full faith and credit rather than to get off to what was called robbing Peter to pay Paul.

Now, getting back to this amendment, I think it either does too much or too little, and I am not quite sure which. (laughter) If the words "the legislature shall" are legally meaningless, then it does nothing. If the term "shall" is a moral suasion that is carried out, then that applies to all state resources when due, and if I read that properly, then the legislature would have to sell the little pigs at Michigan State University until the $71 million debt is liquidated.

I think that that is not the approach. I think that, unfortunately, this is taking an approach that is an oblique attack on earmarking. And earmarking again, we should remember, was adopted by the vote of the people to assure the people that tax payments would be spent as the people provided on the ballot. I, for one, would not want to limit the earmarking provisions that the people voted for.

CHAIRMAN POWELL: Mr. McLogan.

MR. McLOGAN: Mr. Chairman, as a layman, I rise to speak in favor of the Austin amendments, based on what I consider to be a matter of simple logic. Here is a report of a specialized committee on a matter most technical. I, for one, being a layman, would be willing to favorably consider their considered judgment. Thank you.

CHAIRMAN POWELL: Mr. Hodges.

MR. HODGES: I think we are again faced with the problem of whether we are speaking on the Austin amendments or whether we are speaking on the committee proposal. At least in my own mind the Austin amendments aren't too controversial. I think maybe for just good parliamentary order we ought to get these out of the way and then get on to the other question and decide whether we are going to put it over, or what we're going to do.

Therefore, I move the previous question.

CHAIRMAN POWELL: The question is on the committee amendments offered by Mr. Austin. All in favor, signify by saying aye. Opposed, no.

The amendments are adopted.

A while ago Mr. Stafseth had an amendment here.

MR. BENTLEY: Mr. Chairman, a point of order. I make the point of order that a motion to put the previous question is not permissible in the committee of the whole.

CHAIRMAN POWELL: I didn't even hear it. It certainly is not permissible in the committee of the whole. I did not recognize that such a motion had been proposed.

I call attention to the fact that after this has been adopted here, as I understand it, there is on the secretary's desk an

amendment proposed by Delegate Stafseth which the secretary will read.

SECRETARY CHASE: Delegate Stafseth offers the following amendment: —

MR. STAFSETH: Just a minute, Mr. Secretary. May I say this first? There is more than a reasonable doubt in my mind — I assumed, when I offered that amendment, that the reaction of the people on the floor would be to allow this using of funds intermingled. If that is the case and you have the Austin amendments, the purpose of my amendment would be to guarantee that the bonds that somebody else had on revenues would be protected. After you read it, I will comment a little more.

SECRETARY CHASE: Mr. Stafseth offers the following amendment to Committee Proposal 11:

1. Amend page 1, line 18, after "resources" by inserting a comma and "except funds dedicated by the constitution to a specific purpose,"; so that the language will then read:

> The legislature shall provide by law for the use of all state resources, except funds dedicated by the constitution to a specific purpose, to pay all state obligations when due regardless of fund classification. . . .

and so forth.

MR. STAFSETH: I think this amendment is pretty clear. There is no question about it that this is a case where you have a revenue. I think from the statement of Mr. Brown in the committee this morning he gave clear evidence that the more you can guarantee a revenue account or a revenue fund that is coming into the state, the better chance you have of a lower interest rate.

I might say at the time the highway bonds were sold in the state of Michigan we got rates that were comparable to some general obligation bonds for some of the school districts. In other words, we got very favorable rates in selling these bonds, and one of the things it was predicated on was the existing constitution which guaranteed that all the funds that were collected from gas and weight taxes were pledged to the paying off of these bonds. In addition to the amount you pay off, you have an additional amount which gives an extra safety factor. And I think this is important.

We may be faced in the next 100 years that maybe all our schools may get out of the property situation and they will be on a revenue bond basis. Maybe they will have to use this provision. They would have the same protection. This is basically all I want to say on the amendment, although there is just one thing I would like to see on this money management that was just brought to my attention. One of the reasons that the committee had for adding this new language was so that you could intermingle funds. Now, one thing I want to point out to the committee is that if you had funds that were laying in an account for a period of time, you could buy government certificates and you could earn money on those funds. Then you could turn around — which the committee proposes to do, or thinks that it will propose to do — and let the treasurer go out and borrow the money and pay interest.

So you have very little difference. But if you had this money management of the funds that are in the accounts and are earning this interest, you would not have very much gain in interest in today's market. You would make money. If you had money today in government certificates, you could get more interest than it would cost you to borrow them on short term notes. So it is not very far apart. I just make that comment.

CHAIRMAN POWELL: Mr. Brake.

MR. BRAKE: Mr. Chairman, if that is the wish of the committee, Mr. Stafseth's amendment should be to strike out everything after the first sentence. Everything that is left we can do now. We need no constitutional provision for it whatsoever. It strikes out every change that we have tried to make. So his amendment should be to strike out everything from the proposal in this paragraph — not the others — after the sentence "No money shall be paid out of the state treasury except in pursuance of appropriations made by law."

CHAIRMAN POWELL: Mr. Nord.

MR. NORD: I so move to amend.

CHAIRMAN POWELL: The question is on the amendment offered by Mr. Stafseth. We should not interpose another amendment.

Mr. Stafseth.

MR. STAFSETH: Mr. Chairman, I will be very glad to withdraw my amendment if the committee of the whole would like to vote on Mr. Nord's amendment first. Then if they are successful in that, they would not need my amendment.

CHAIRMAN POWELL: Mr. Stafseth withdraws his amendment with that understanding. I believe Mr. Nord made a motion. Do you want to restate your motion to amend?

MR. NORD: I would like to make that motion and speak in support of it.

CHAIRMAN POWELL: What is your amendment?

MR. NORD: My amendment is:

1. Amend page 1, line 17, after "law.", by striking out the balance of the line and all of lines 18 through 24 and all of lines 1 through 5 on page 2.

The reason for this amendment is that whatever effort we have promised that may be made later by this committee to permit borrowing by the schools, whatever other approach you may have as suggested to guarantee people who hold bonds, that is the wrong approach in my opinion. The people we have to protect are the children in the schools. They are not going to be protected unless we have earmarked funds for the schools. I might say further I don't take the view that every earmarked fund is sacred. There are some earmarked funds I would like to get rid of, but the school is not one. And if we take the approach we are taking here, we cannot take them up piecemeal. I would like to consider earmarked funds one at a time and decide whether highways are entitled to priority over schools, for example, and so on. But if we take the approach we have been taking, we must do this to all earmarked funds, and that means some funds which we certainly do not wish to attack. I think we should leave the earmarked funds alone until we get to them in the constitution one by one, treat them, decide which ones we want and which we do not.

CHAIRMAN POWELL: The portion of the report that we have before us is the second section. We have adopted the Austin amendments. Now it is proposed we strike out everything from this section except the first sentence, which says "No money shall be paid out of the state treasury except in pursuance of appropriations made by law." Any discussion?

Mr. Hanna.

MR. W. F. HANNA: Mr. Chairman, I move that we lay this question over to next week. I join Dr. Anspach's kid that spells "confused" with a "K" at this point and I am neither ready at this point to vote on Mr. Austin's amendments or Mr. Nord's amendment or to the proposal. And I certainly would like some opportunity to look into this matter, discuss it with members of the committee on finance and taxation, and to move intelligently. I recognize that we should move this along but I am getting more and more perturbed as I listen to these gentlemen.

Mr. Martin shows how it is tied with another provision. And unless we get these out more than just as subject matter — more than an article, but in an entire subject matter — we are going to lose some continuity and certainly, I, for one, feel perfectly ignorant at this point to vote on either amendment.

The coaches say to move the committee rise. I will so move.

CHAIRMAN POWELL: I was just going to put your other motion, but this is the one you have now placed. The motion is in order.

Delegate W. F. Hanna moves that the committee of the whole do now rise.

Mr. Cudlip.

MR. CUDLIP: I am not going to speak on this question but before we rise, I do want to make a motion. It has to do with —

CHAIRMAN POWELL: I think you would not strictly be in order. The question is on the motion to rise, which is equivalent to adjournment of the committee of the whole. Can't your statement be made after the committee rises? We will still be here.

MR. CUDLIP: I would just ask for information. I was

going to ask under rule 40 that we reconsider our action in connection with article X, section 20, which was discussed in this committee of the whole, and I thought I should do it or we should consider it before we rise. If it can be done later when we do rise and get back to the convention session, why, O.K. I do not know the parliamentary rule.

CHAIRMAN POWELL: Mr. Bentley.

MR. BENTLEY: Mr. Chairman, I make a point of order that under rule 39 a motion to rise shall be decided without debate. I ask for a division on this motion.

CHAIRMAN POWELL: I think there is no argument about it. There is nothing in order except to vote on this motion to rise.

I will say that after the committee rises, the whole convention has to act on anything that has been done in committee, and there will be an opportunity at that time to accept or reject the progress made in the committee of the whole.

The question is on the motion that the committee of the whole do now rise. Those in favor, say aye. Opposed, no.

The motion does not prevail.

Mr. Yeager.

MR. YEAGER: There was a division requested, Mr. Chairman, and I would ask that you use the board for that purpose.

CHAIRMAN POWELL: Is the demand supported? I have ruled that the vote was in the negative, that we did not decide to rise. If you want to still have another vote on it, that can be done.

Mr. Mahinske.

MR. MAHINSKE: A point of order. I don't think, Mr. Chairman, a division is permissible under our rules.

CHAIRMAN POWELL: The parliamentarian rules it can be demanded.

Mr. Bentley.

MR. BENTLEY: Mr. Chairman, Delegate Bentley asked for a division but I believe under rule 41, the yeas and nays shall not be called under the committee of the whole.

CHAIRMAN POWELL: That is correct. It is not a record roll call. I think if it is your desire to have the board used, that should be done to expedite it, but it would not be a record.

The question is now on the motion that the committee do rise. We will use the voting machine. All in favor will vote aye. Those opposed, vote no.

Have you all voted? If so, the secretary will tally the vote.

SECRETARY CHASE: On the question that the committee rise, the yeas are 49; the nays are 69.

CHAIRMAN POWELL: The motion does not prevail.

I believe Mr. Nord had an amendment pending. The secretary will read the amendment as it is now before us.

SECRETARY CHASE: Mr. Nord has offered the following amendment:

1. Amend page 1, line 17, after "law.", by striking out the balance of the line and all of lines 18 through 24 and all of lines 1 through 5 on page 2.

CHAIRMAN POWELL: The question is on the amendment just read by the secretary.

Mr. Higgs.

MR. HIGGS: Mr. Chairman, I would like to direct a question to Mr. Austin, if I may, with regard to the significance of this amendment. In particular, I had understood originally that it was the intent of the committee to permit the commingling of operating funds and that this permission would be expeditious in the administration and handling of state moneys. In other words, I am not sure that this statement was consistent with what Mr. Brake has said, that everything else might just as well be stricken out if Mr. Stafseth's amendment were adopted with regard to excepting earmarked funds.

Do you have my question now? I am a little confused, but I am trying. My original understanding was that there were operating funds that you intended to permit the state to commingle for administrative purposes that were not earmarked funds. Is that right?

CHAIRMAN POWELL: Mr. Austin.

MR. AUSTIN: I am going to try to give a little history which may not be strictly accurate, but I think it will give you a pretty good idea what the problem is. I think most of you recall the payless paydays back in 1959 when there was money in the treasury. The treasurer was unable to meet payrolls simply because he was afraid to use some of the money that was available, some of the money that was in the treasury. The legislature, as I understand it, has been enacting temporary legislation, which expired at the end of each year, to authorize him to commingle funds. Should the legislature fail to renew this temporary legislation, the treasurer is in trouble. He is very much concerned that we do something to make permanent this right of his to commingle the money on a temporary basis to meet whatever bills are due. I don't know whether this completely answers your question, but does it, in essence, give you what you want?

MR. HIGGS: No. When you speak of the cash crisis in 1959 and the fact that there were moneys in the treasury, and that the legislature authorized the use of these moneys, were those particular moneys earmarked moneys or not?

MR. AUSTIN: Oh, yes.

MR. HIGGS: They were?

MR. AUSTIN: Earmarked moneys are used now on a temporary basis for all purposes. This should be made clear to everyone. All we are doing is legalizing what is being done now.

MR. HIGGS: Are we talking about the legislature authorizing the use of constitutionally earmarked moneys or legislatively earmarked moneys?

MR. AUSTIN: Well, let me put it this way. It is my understanding that all operating moneys that come into the treasury are available for general purposes on a temporary basis.

CHAIRMAN POWELL: Mr. Brake.

MR. BRAKE: Mr. Higgs, the amendment proposed by Mr. Stafseth would prevent the intermingling of anything that is constitutionally earmarked. All that would leave of earmarked funds would be legislative earmarked funds, of which the principal item is the intangibles tax. But this is not self executing. This would not be effective until acted upon by the legislature and the legislature can act upon statutorily earmarked funds without our saying anything about it so that we can do everything that we could do with the amendment that was proposed without putting anything in the constitution at all. Therefore, if that is the wish of the committee, there is no need of all this extra language. We have everything that we would be able to do, and we could do it all right now. Have I made that clear to you?

MR. HIGGS: I believe you have, Mr. Brake.

CHAIRMAN POWELL: Delegate Farnsworth.

MR. FARNSWORTH: Mr. Chairman, I simply want to rise to oppose the proposed Nord amendment.

I have some doubts too and some fears about earmarked funds, particularly highway funds. If this proposed amendment is adopted it would not give this committee an opportunity at all to attempt to handle what we recognize as being a good bookkeeping practice, and that is the intermingling of funds. There isn't any question about that. It is standard bookkeeping practice throughout the land.

I wonder if we are not losing sight of something, Mr. Austin. I have heard a lot of terms used. You have used the term "management of money" and you have also used the term "management of a deficit." Now, I wonder if all this language that the Nord amendment would strike out isn't in fact put in there in an effort to manage a deficit.

MR. AUSTIN: I would agree with you but the one other point I want to make while I am on my feet is that we not confuse this subject with bookkeeping. We are not talking about the bookkeeping of this money. We are actually talking about the handling of the money. And I want to make sure that everyone understands that this is not an accounting problem that we are discussing now. This is the actual management of the money itself.

MR. FARNSWORTH: That's the point I'd like to clear up. You say it is the management and the handling of money. But my point is: isn't it actually to enable you to manage a deficit?

MR. AUSTIN: Oh, yes, I'll agree.

MR. FARNSWORTH: Where there is a deficit, there is no money. (laughter)

MR. AUSTIN: Deficit in the general fund means that moneys from elsewhere have been used. You see, it would be impossible to manage a deficit unless you were getting the money from somewhere. If you are not borrowing it from the bank, it may be someone else. It may be creditors; it may be some earmarked money; it may be any source. If you have a deficit and you are managing it, you are using money that belongs to someone other than the general fund.

CHAIRMAN POWELL: Mr. Upton.

MR. UPTON: As a member of the committee looking into this matter, we considered very seriously this problem of commingling of funds, and I feel that Dr. Nord's amendment would completely destroy our intent and our study of the needs of our state government. Therefore, I would vigorously oppose his amendment. Thank you.

CHAIRMAN POWELL: Delegate Nord, as the sponsor of the pending amendment, I will recognize you again.

MR. NORD: Mr. Chairman, I would like to point out 2 things. As I said before, what we are doing here in one fell swoop is to impair all earmarked funds. Some are good; some are bad. We are not going to discriminate between them. We are going to injure every one of them.

Secondly, as to intermingling of funds, I have heard those words used many times here and the last time I heard them used, they were used in the sense that this is merely an accounting procedure. I would like to dissent extremely strongly from that.

As a teacher of criminal law, I would like to remind you that intermingling of trust funds is a crime. I might add that I defended somebody on that account and got them off, but that is beside the point. That is how I happen to know that intermingling of funds is a crime. And even if it were not a crime, it certainly would be extremely immoral. It is just not a bookkeeping procedure. I'll admit my client thought it was. But it was not. (laughter) It is a crime. It is a vicious thing to take somebody's money that is protected — not just like somebody else is considered a creditor of money, but that is earmarked specially for him. It is his money that you take and when you mingle that, even if you never spend it, it is a crime.

Now, it may not be a crime in this particular case, but the moral principle is identical. Let's not think that when we intermingle somebody else's funds with ours, that all we are doing is a little bookkeeping finagling. We are not. We are doing something wrong. Let's not do that.

CHAIRMAN POWELL: Does that complete your question, Delegate Upton?

MR. UPTON: I would like to answer it, if I might.

CHAIRMAN POWELL: Surely.

MR. UPTON: I believe Dr. Nord is worrying about earmarking of funds. In our committee we are most concerned about this. It was our thought that this would strengthen not only the highway department but the school system and guaranteeing moneys to them.

If schools had had to depend completely upon earmarked funds, they would not be operating today. Therefore, we feel that this is a stronger position than what is now in our constitution.

CHAIRMAN POWELL: Delegate Staiger.

MR. STAIGER: Mr. Chairman, I rise in support of the Nord amendment. As a member of the committee, I made a similar motion this morning, which was defeated in the committee. I think in hearing the discussion here, the same fears and questions have been raised as were raised and discussed in the committee. I feel the same, that on the earmarking, on the bonds, on all of these questions, there are real problems that will develop from this type of a proposal.

On the question of the bonds that Mr. Nord expressed — a question as to existing bonds — this is not the question that was raised in the committee or by the bonding attorneys. It was as to future financing by bonds. If this question is left open, dedicated funds can be diverted temporarily again under the present system or under this proposal without a time limit. This leaves prospective bondholders in a questionable situation as to what funds are going to be available to pay their bonds. As a result, this in turn is going to be reflected, in my opinion — and there is a difference of opinion on the committee — in higher interest rates, which will again mean the taxpayer paying more money to finance the bonds.

I will say that I think the original purpose, the flexibility in treasury management, is an admirable one, but I feel that the way and the approach that we have taken causes many more ills than the ill that it was designed to cure. Thank you.

CHAIRMAN POWELL: Mr. Faxon.

MR. FAXON: I'd like to ask Delegate Austin a question and then perhaps comment. Under the way things are going today, when the treasurer takes from another fund in order to pay a bill, doesn't he replace that money? It isn't a question of the fund actually losing anything. It's simply a question of meeting the financial obligation at that time. Is that correct?

MR. AUSTIN: That's correct. It is a temporary measure.

MR. FAXON: So that under your original amendment here, or the original proposal, none of the present dedicated funds are going to be diminished in terms of how much is going to be appropriated?

MR. AUSTIN: None whatever.

MR. FAXON: All this simply does is to permit a certain degree of flexibility in terms of the financial operation of the state.

MR. AUSTIN: Mr. Faxon, you put it so beautifully. (laughter)

MR. FAXON: Then I just want to go on record in support of the committee's original proposal.

CHAIRMAN POWELL: Delegate Hanna.

MR. W. F. HANNA: Mr. Austin, before you sit down, would it be possible to accomplish the same thing by providing that the treasurer may borrow a restricted amount for a restricted time by placing tax anticipation notes, we'll say, in the school fund that had to be paid back within 90 days, and that if they paid the current going rate of interest, the school fund would be enhanced by this money? Would you accomplish the same financial management without the danger that the borrowing would continue or the spending of the actual cash would be continued indefinitely if the legislature failed to provide adequate revenue?

MR. AUSTIN: Delegate Hanna, I believe that a borrowing arrangement would accomplish the same end. In fact, temporary borrowing really is what we are talking about, but I think we are making it a little easier to do. I think we would get rather legalistically involved if you attempted to do it.

CHAIRMAN POWELL: Delegate John Hannah.

MR. J. A. HANNAH: Mr. Chairman, I feel the matter we have been discussing is of considerable importance. We have now devoted approximately 2½ hours to the subject. We are only a little more than half way through with our discussion and I know there are going to be questions raised with reference to those sections that have not yet been discussed. I suspect that some of our members are already beginning to leave and I am afraid that in an effort to dispose of this matter this afternoon we may make the wrong decision.

If it is in order, sir, I should like to move that this matter be rereferred to the committee from which it came, with a request that they put all of their amendments on one piece of paper and give the delegates that have questions an opportunity to raise the questions they want to raise with them, hoping that they will have part of them answered when it comes back to the floor.

CHAIRMAN POWELL: The motion is in order. The question will be on the motion made by Delegate John Hannah —

MR. MAHINSKE: A point of order, Mr. Chairman.

CHAIRMAN POWELL: Just let me state the question — that when the committee rises, it recommend that Committee Proposal 11 be rereferred to the committee on finance and taxation.

MR. MAHINSKE: That the committee rise and not that

the proposal be rereferred to the committee, because under rule 41 —

CHAIRMAN POWELL: A more accurate statement would be when the committee does rise, it recommend that Committee Proposal 11 be rereferred to the committee on finance and taxation for printing and reproduction with the pending language.

MR. MAHINSKE: I don't know if that would be in order, Mr. Chairman, because under rule 41, the committee of the whole cannot refer any matter to any committee. We would have to move to rise.

CHAIRMAN POWELL: I said with the recommendation that it be rereferred. The final vote would have to be taken by the convention following the rising of the committee of the whole.

The question is on the motion of Delegate John Hannah that when we rise, we report with the recommendation that Committee Proposal 11 be rereferred to the committee on finance and taxation. All in favor, signify by saying aye. Opposed, no.

The motion prevails, and that completes the business pending here.

A motion that the committee do now rise would be in order.

Dr. Anspach.

MR. ANSPACH: Delegates, we have had a very fine discussion this afternoon, which I think is good. This is Christmas. We've had for and against. Therefore, to make everybody feel well, I think we should recall the experience of the good President Abraham Lincoln who wore a big stovepipe hat. He put it on a chair one day and a lady of some size came in and sat down on it. The good president said, "Madame, I could have told you before you sat down that it wouldn't fit." (laughter)

CHAIRMAN POWELL: When I was asked to preside today I remarked to the president that this might be a little controversial and somewhat prolonged. I think that was a mild understatement. (laughter)

What is the pleasure of the committee? Mr. Leppien.

MR. LEPPIEN: I move that the committee rise.

CHAIRMAN POWELL: Mr. Leppien moves that the committee do now rise. All in favor, signify by saying aye. Opposed, no.

The motion prevails and the committee has risen.

[Whereupon, the committee of the whole having risen, President Nisbet resumed the Chair.]

PRESIDENT NISBET: The Chair recognizes Mr. Powell.

MR. POWELL: Mr. President, the committee of the whole has had under consideration certain proposals, has considered them briefly and the secretary will make a detailed report. (laughter)

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Exclusion Report 2003,** A report recommending the exclusion of article X, section 20; and reports the exclusion report back to the convention without amendment and with the recommendation that it be adopted.

PRESIDENT NISBET: The question is on the adoption of Exclusion Report 2003. All those in favor, say aye. Opposed, no.

Exclusion Report 2003 is adopted and referred to the committee on style and drafting.

Mr. Cudlip.

MR. CUDLIP: Mr. President, I don't know at what point of these meetings you make your motion to reconsider. I was out of order earlier before we rose. I want to ask now if I am in order to make a motion that we reconsider the action taken by the committee of the whole. I think we made a mistake. I think we acted too early and I want to know if this is the time to make a motion that we delay this matter until we come back here in 1962 for further consideration.

PRESIDENT NISBET: On what item, Mr. Cudlip?

MR. CUDLIP: Exclusion Report 2003, article X, section 20.

PRESIDENT NISBET: The one that we just adopted? (laughter)

MR. CUDLIP: I guess we did adopt it before I could be heard. I would make a motion then that we reconsider this last vote. Then if the convention decides to reconsider, I would tell my story.

PRESIDENT NISBET: Mr. Hutchinson.

MR. HUTCHINSON: Mr. President, might I suggest to the Chair that perhaps under the circumstances, since everybody was aware of the fact that Mr. Cudlip wanted to make a motion with regard to this exclusion report as soon as the committee of the whole did rise, that perhaps the Chair was a little bit hasty putting the question before recognizing Mr. Cudlip and that really the question is still upon whether we should concur in the recommendation made by the committee of the whole.

PRESIDENT NISBET: Thank you very much, Mr. Hutchinson. I did not realize that Mr. Cudlip had asked this question. The question now then is on the adoption of Exclusion Report 2003.

Mr. Cudlip, now you may speak to the question.

MR. CUDLIP: Mr. President, thank you. I don't blame you for this and I know I will be an unpopular fellow because I am delaying the proceedings here for a few minutes.

I wasn't aware until I checked, after hearing from Delegates Hutchinson and Higgs, that this article X, section 20, was only adopted in 1917 and there was no assurance given in response to a question by each of these gentlemen that there is no specially chartered railroad in Michigan at this time. And I can't answer that. We have some old railroads here and there may be some special charters under which they operate. If they do, we should consider this matter carefully, and I just want to point out the following reasons. Let us say back in the days of Governor Mason the state built a railroad. Ventures were failing throughout the middlewest and internal improvements were frowned upon. So the state, like other states, started to sell the railroads to private companies, under special charters — not under corporations that were formed under general laws — and in those charters, as I understand it, there were limitations as to the amount of taxes payable. But there was a reservation to the state that it had the right to buy the railroad. Now, this sounds archaic today, but it isn't. Bear with me. In 1850, after this 1837 panic and thereafter, the 1850 constitution provided that there could be no further internal improvements, meaning that Michigan could build no more canals and railroads. Now Michigan couldn't use its charter provision under which the particular railroad was sold, providing for its taxes, the amount thereof, and the option of the state to repurchase because the Constitution of 1850 said there could be no more internal improvements. Then the United States supreme court ruled that these charters were contracts and must be honored.

In the light of all that, if we have special chartered railroads today — we did have in 1917, because this provision wasn't in the constitution until 1917, and to me that does not seem very long ago — we should not follow the recommendation of the committee of the whole because we could seriously disturb the tax power of the state with respect to these railroads. I don't know the answer, and the purpose for my rising is to suggest that we delay a vote on this matter until we meet next as a committee of the whole, but not earlier than say January 5.

PRESIDENT NISBET: Mr. Cudlip, is your motion that this be rereferred to the committee of the whole?

MR. CUDLIP: No, Mr. President. If I am in order, I just suggest that we not vote on the recommendation of the committee of the whole until we get the answer to the question that I have raised, namely: are there any specially chartered railroads in Michigan today? I thought we could delay that vote until a day certain, and I suggest the next time we meet it would be as a committee of the whole, but not earlier than January 5. I'll put it that way.

PRESIDENT NISBET: Mr. Cudlip's motion then is that we —

MR. CUDLIP: —delay consideration of the recommendation of the committee of the whole, I'll say till January 5.

PRESIDENT NISBET: The motion is that we delay consideration of Exclusion Report 2003 until January 5. Is there any discussion?

Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, I hesitate to raise any questions with my senior partner so close to the end of the year. (laughter) However, it occurs to me that there may be an easier solution to the problem. The only purpose of section 20 of article X of the present constitution is to get around a problem created by section 14 of article X of the present constitution.

Section 14, the one prohibiting works of internal improvement, is presently in the hands of the committee on legislative powers. I think it might be entirely appropriate for the committee on legislative powers to have this exclusion report in its hands at the same time it is considering what to do with the matter of internal improvements generally. Therefore, I would move the exclusion report be referred to the committee on legislative powers.

PRESIDENT NISBET: Mr. Cudlip.

MR. CUDLIP: I will withdraw my motion.

PRESIDENT NISBET: Thank you, sir.

The question is on Mr. Van Dusen's motion that Exclusion Report 2003 be referred to the committee on legislative powers.

Mr. Hutchinson.

MR. HUTCHINSON: Mr. President, I was simply going to rise in support of the views of the senior partner and to point out to the senior partner that as a matter of fact there seems to be a taxing power also involved here. If as a matter of fact the special charter of a railroad corporation limited the power of the state relative to taxing that railroad — and that may be in a special charter still outstanding — then this 1917 amendment had as one of its purposes the power of the state to get around that limitation of taxing power. So I think there is more involved than just this internal improvement section 14. However, I would rise in support of the motion to refer it to the committee for further study.

PRESIDENT NISBET: The question is on the motion to refer it to the committee on legislative powers. Is there any further discussion? All in favor, signify by saying aye. Opposed, no.

The motion prevails. **Exclusion Report 2003** is referred to the committee on legislative powers.

Mr. Chase.

SECRETARY CHASE: Mr. President, the committee of the whole has also had under consideration **Committee Proposal 10,** A proposal to amend article I, section 2 of the present constitution pertaining to the seat of government at Lansing; and reports the proposal back to the convention with the recommendation that it pass.

PRESIDENT NISBET: Pursuant to rule 57, **Committee Proposal 10** is referred to the committee on style and drafting.

For Committee Proposal 10 as referred to the committee on style and drafting, see above, page 416.

SECRETARY CHASE: The committee of the whole, Mr. President, has also had under consideration **Committee Proposal 11,** A proposal to provide for care and control of state funds, accounting for public moneys, audits, and publication of reports, and covering the general subject matter found in sections 15, 16, 17, 18 and 13 of article X of the 1908 constitution; and reports it back to the convention with the recommendation that it be rereferred to the committee on finance and taxation.

PRESIDENT NISBET: Mr. Bentley.

MR. BENTLEY: Mr. President, I ask for the yeas and nays.

PRESIDENT NISBET: The yeas and nays have been demanded. Those in favor, please rise. There is a sufficient number up. Secretary Chase, will you state that question again so everybody understands it?

SECRETARY CHASE: The question is on the recommendation of the committee of the whole that Committee Proposal 11 be rereferred to the committee on finance and taxation.

PRESIDENT NISBET: Mr. Elliott.

MR. A. G. ELLIOTT: I think it was being referred with amendments. I think Mr. Austin's amendments passed.

PRESIDENT NISBET: Mr. Chase, do you want to comment on it?

SECRETARY CHASE: We had a similar situation just a little while ago on another committee proposal.

A motion to recommit takes priority over the motion to amend. It was held, and stated in the journal at that time, that the amendment, even though it had been adopted, was not before the convention for consideration. The question was on the motion to recommit and the amendments and the proposal go back to the committee for their consideration.

PRESIDENT NISBET: The question is on the recommendation that Committee Proposal 11 be rereferred. The yeas and nays have been asked for. Those in favor, using the machine, will vote aye. Those opposed will vote no. Have you all voted?

SECRETARY CHASE: The machine is now locked and the vote will be recorded.

The roll was called and the delegates voted as follows:

Yeas—84

Allen	Gover	Murphy
Andrus, Miss	Greene	Nord
Austin	Habermehl	Prettie
Balcer	Hanna, W. F.	Rajkovich
Barthwell	Hannah, J. A.	Richards, L. W.
Binkowski	Hart, Miss	Romney
Bledsoe	Hatcher, Mrs.	Rood
Bonisteel	Heideman	Rush
Brown, G. E.	Higgs	Shackleton
Brown, T.S.	Hodges	Shaffer
Buback	Hood	Shanahan
Cudlip	Howes	Sleder
Cushman, Mrs.	Hutchinson	Snyder
Dade	Iverson	Spitler
Danhof	Kelsey	Stafseth
DeVries	Kirk, S.	Staiger
Donnelly, Miss	Krolikowski	Sterrett
Doty, Dean	Kuhn	Stevens
Doty, Donald	Lawrence	Stopczynski
Douglas	Lesinski	Suzore
Downs	Liberato	Thomson
Elliott, Mrs. Daisy	Madar	Turner
Erickson	Mahinske	Tweedie
Farnsworth	Marshall	Upton
Faxon	Martin	Wanger
Follo	McAllister	Wilkowski
Ford	McCauley	Young
Garvin	McGowan, Miss	Youngblood

Nays—35

Anspach	Figy	Page
Baginski	Finch	Pollock
Beaman	Goebel	Powell
Bentley	Haskill	Radka
Blandford	Hatch	Richards, J. B.
Boothby	Hubbs	Seyferth
Brake	Karn	Sharpe
Conklin, Mrs.	King	Van Dusen
Davis	Leibrand	White
Durst	Leppien	Woolfenden
Elliott, A. G.	McLogan	Yeager
Everett	Millard	

On the question of rereferring Committee Proposal 11, together with the amendments adopted by the committee of the whole, to the committee on finance and taxation, the yeas are 84; the nays, 35.

PRESIDENT NISBET: The recommendation is concurred in and **Committee Proposal 11** is rereferred to the committee on finance and taxation.

SECRETARY CHASE: That completes the report of the committee of the whole.

PRESIDENT NISBET: Announcements. Mr. Danhof.

MR. DANHOF: Mr. President, I had a committee meeting scheduled. I would like the committee on judical branch to meet briefly in committee room B for about 5 minutes at the close of the session.

SECRETARY CHASE: I have the following notices of committee meetings:

Subcommittee on amendment and revision will meet in room G, January 3, 1962, Wednesday evening, at 7:00 o'clock p.m. Don Habermehl, chairman.

Committee on Judicial Branch will meet in room B, Wednesday, January 3, 12:30 p.m. This is in addition to the committee meeting immediately following today's session.

It is requested that all members check their mail boxes before leaving convention hall today.

The committee on legislative powers, subcommittees 1 and 2, will meet in room H on Thursday, January 4, at 8:30 a.m. for a hearing on section 5.

There will be a meeting of the subcommittee on eminent domain on Friday, January 5, at 10:00 o'clock a.m. in room G. At this meeting all delegates who have proposals on this topic will be given an opportunity to be heard. Please notify the committee clerk of the committee on miscellaneous provisions and schedule if you wish to appear. Paul Mahinske, chairman.

PRESIDENT NISBET: Mr. Pollock.

MR. POLLOCK: Mr. President, I have 2 notices from the committee on declaration of rights, suffrage and elections. Hearings for delegate proposals dealing with suffrage and elections will be held before our committee on January 3 and January 4 at the regular meeting time. If delegates wish to be heard, get in touch with the committee clerk for the exact time. Second, the proposed report of the committee on declaration of rights, suffrage and elections is now being distributed to the members of the judiciary committee and if any of the members of that committee have not received a copy of that report, will you put on the red button and the page will bring it to you.

PRESIDENT NISBET: Mr. Martin.

MR. MARTIN: Mr. President, the executive committee had scheduled a meeting this afternoon which obviously cannot be held. We will hold a meeting of the executive committee after the session on Wednesday afternoon, January 3 to hear delegate proposals which we planned to hear today. All delegates have been notified. If you expected to be heard today, will you please come up after the session on Wednesday, January 3.

PRESIDENT NISBET: Mr. Madar.

MR. MADAR: Mr. President, at this time I'd like to change the order a little bit. I don't know who was to make the motion, but at this time I would like to move that we adjourn until January 3 at 2:00 o'clock and I want to wish everybody a merry Christmas and a happy new year.

PRESIDENT NISBET: Will you withhold that just a moment until we get through. We don't want to go home yet. We have a lot of time. (laughter) Mr. Chase has an announcement.

SECRETARY CHASE: Mr. Mahinske wishes to be excused from the meetings of January 3 and 4. He has been scheduled to conduct a trial that has been on the docket since prior to the election.

PRESIDENT NISBET: Without objection, he is excused. Mr. McAllister.

MR. McALLISTER: Fellow delegates, I notice that our president has been in a quandary for a considerable period of time and after this afternoon's session he seems in a very much disturbed state. So at this time I'd like to present to Stephen S. Nisbet, President of the Constitutional Convention of 1961-62 and -63 (laughter) to aid him in keeping the convention on the level, this little token. (laughter and applause)

[Whereupon, Mr. McAllister presented President Nisbet with an inscribed carpenter's level.]

PRESIDENT NISBET: Thank you, Mr. McAllister. I hope that it also says on there "Guaranteeing adjournment on April 1." (laughter) Thank you very much.

Mr. Madar has moved that we adjourn. Would you please make your motion just that we adjourn?

MR. MADAR: Mr. President, I want to make a motion that we adjourn until January 3 and I'm glad you had me defer it until after this presentation because you have been on the level. (laughter)

PRESIDENT NISBET: Mr. Madar, just for a matter of the record, would you please make your motion just that we adjourn. (laughter)

MR. MADAR: I move we adjourn.

PRESIDENT NISBET: Thank you. The question is on adjournment. Those in favor, say aye. Opposed, no.

We are adjourned until 2:00 o'clock January 3, 1962.

[Whereupon, and in pursuance of the order previously made, at 5:05 o'clock p.m., the convention adjourned to January 3, 1962, at 2:00 o'clock p.m.]

FORTY-NINTH DAY

Wednesday, January 3, 1962, 2:00 o'clock p.m.

PROCEEDINGS

VICE PRESIDENT HUTCHINSON: The convention will come to order.

The invocation today will be delivered by the delegate from Saginaw, Mr. Leppien.

MR. LEPPIEN: Let us pray. O Lord, our God, if ever we needed Thy wisdom and Thy guidance, it is now—as this convention begins a new session, standing upon the threshold of a new year, fraught with so many dangerous opportunities. We pray that Thou wilt bless us, chosen by the people of this state, for Thou knowest us, our needs, our motives, our hopes, and our fears. Lord Jesus, put Thine arm around us to give us strength and speak to us to give us wisdom greater than our own. May we hear Thy voice and seek Thy guidance. May we remember that Thou art concerned with what is said and done here, and may we have a clear conscience before Thee, that we may fear no man. Bless each of us according to our deepest needs, and use us for Thy glory, we humbly ask in Jesus' name. Amen.

VICE PRESIDENT HUTCHINSON: Thank you, Mr. Leppien.

The roll call will be taken by the secretary. All those present will vote aye. Have you all voted? If so, the secretary will record the vote.

SECRETARY CHASE: Mr. President, a quorum of the convention is present.

Prior to today's session, the secretary received the following requests for leave:

Mrs. Koeze and Mr. Marshall, from today's session.

Messrs. Page and Young, from the sessions of today and tomorrow.

Messrs. Pellow, Perlich and Wood, from the sessions of today and the balance of the week.

VICE PRESIDENT HUTCHINSON: Without objection, the requests are granted.

SECRETARY CHASE: Absent with leave: Mrs. Koeze, Messrs. Marshall, Page, Pellow, Perlich, Thomson, Wood and Young.

Absent without leave: None.

VICE PRESIDENT HUTCHINSON: The Chair would like to announce to the delegates that President Nisbet is on the floor of the convention, but states that he has difficulty in communicating. He is suffering from a type of laryngitis, or the flu, or whatever it is that has been going around lately, and he asked me to preside simply because he didn't want to trust his voice.

Reports of standing committees.

SECRETARY CHASE: Mr. Bentley, for the committee on education, introduces

Committee Proposal 13, A proposal respecting the physically, mentally or otherwise seriously handicapped. Amends article XI, section 15;

with the recommendation that it pass.

Alvin M. Bentley, chairman.

For Committee Proposal 13 and the reasons submitted in support thereof, see below, page 462.

VICE PRESIDENT HUTCHINSON: Referred to the committee of the whole and placed on general orders.

SECRETARY CHASE: That is the only standing committee report.

VICE PRESIDENT HUTCHINSON: Reports of select committees.

SECRETARY CHASE: None.

VICE PRESIDENT HUTCHINSON: Communications from state officers.

SECRETARY CHASE: None.

VICE PRESIDENT HUTCHINSON: Second reading of proposals.

SECRETARY CHASE: Nothing on that calendar.

VICE PRESIDENT HUTCHINSON: Third reading of proposals.

SECRETARY CHASE: Nothing on that calendar.

VICE PRESIDENT HUTCHINSON: Motions and resolutions.

SECRETARY CHASE: There are no resolutions on file, Mr. President.

VICE PRESIDENT HUTCHINSON: Unfinished business.

SECRETARY CHASE: Nothing on that order.

VICE PRESIDENT HUTCHINSON: Special orders of the day.

SECRETARY CHASE: None.

VICE PRESIDENT HUTCHINSON: General orders of the day.

The delegate from the seventeenth district, Mr. Martin.

MR. MARTIN: Mr. President, I move the convention resolve itself into committee of the whole for consideration of items on the general orders calendar.

VICE PRESIDENT HUTCHINSON: The question is upon the motion of Mr. Martin. All those in favor will say aye. Opposed?

The motion prevails, and Mr. Martin will preside over the committee.

[Whereupon, Mr. Martin assumed the Chair to preside as chairman of the committee of the whole.]

CHAIRMAN MARTIN: The committee will be in order.

The convention is in committee of the whole for consideration of items on the general orders calendar which the secretary will report.

SECRETARY CHASE: The first item on the calendar, from the committee on executive branch, by Mr. Martin, chairman, Committee Proposal 8, A proposal to provide that the governor may convene the legislature on extraordinary occasions. Amends article VI, section 7. It was considered in the committee of the whole on December 11 and referred to the committee on legislative powers. It has been reported by the committee on legislative powers without amendment.

For Committee Proposal 8 and the reasons submitted in support thereof, see above, page 375.

CHAIRMAN MARTIN: Mr. Hutchinson.

MR. HUTCHINSON: Mr. Chairman, because when this matter was before the committee of the whole I raised some question about it, I think perhaps that it is proper that I make some further statement at this time, if for no other reason than I am aware of the fact that everything that is said in this hall is being taken verbatim, and will appear in the permanent record of the convention.

This proposal comes back to the committee of the whole at this time in the same form in which it was originally reported from the committee on executive branch. In other words, the actions of the previous sitting of the committee of the whole in this matter have been washed out by the committee on legislative powers.

I think, upon further reflection, that the traditional phraseology providing that "the governor may convene the legislature on extraordinary occasions" is the best decision. I raised the question before as to what an extraordinary occasion was, and it was pointed out that perhaps an extraordinary occasion was whatever the governor said it was. On the other hand, I dare

say that this language as it appears in the constitution and has appeared for all these years is broader than the language which the previous committee of the whole recommended; that is, saying that he could convene the legislature in special session.

I am reminded of the situation back, I believe it was in 1950 or '51 or thereabouts, when there was a riot at Jackson prison. At that time the situation was that the legislature, although in regular session, had recessed itself for a month or 6 weeks, and at that time the legislature didn't have any provision in its rules for getting itself together until the time to which it adjourned had arrived. Later the legislature corrected that deficiency, and its joint rules now provide that the president of the senate and the speaker of the house, at any time when the legislature has adjourned for more than 3 days, are empowered by the joint rules of the legislature to reconvene the legislature if the occasion should warrant. Certainly back at the time of the riot, there was an occasion when it might have been well to have the legislature immediately back in session.

As the committee on legislative powers, listening to the views of some delegates, further considered this matter we suggested that it might have been legally possible, under the phraseology as it existed all these years, saying that the governor could convene the legislature on extraordinary occasions, it might have been legally possible for the governor to have asserted the constitutional power to get the 2 houses of the legislature back into actual session, even though it was in a regular session, and therefore the governor couldn't have called a special session on the matter. Even though he couldn't have called a special session, he might have had the legal power to have convened them, because there was an extraordinary occasion. The mere fact that that course of action wasn't followed at that time doesn't preclude the possibility that on another occasion it might be followed.

An so I would like to state to this committee that while I raised this matter before in committee of the whole, I am now of the opinion, upon further reflection, that the present language is the best solution, and I raise no further objection to it, and will happily support the proposal as it has come from the committee on legislative powers.

CHAIRMAN MARTIN: Mr. Millard.

MR. MILLARD: Mr. Chairman, and members of the committee of the whole, representing the committee on legislative powers, I was present when Delegate Hutchinson appeared, and we argued it out, and he finally came to the conclusion which he has stated to this committee.

There are, however, some more reasons why the words "extraordinary occasion" should not be changed to "special session." I wish to refer to an attorney general's opinion a long time ago, 1898, under the Constitution of 1850, but the language in the 1850 constitution was set forth in the 1908 constitution, and I am quoting "By the constitution, section 7 of article V"—which is the section under the Constitution of 1850—

> the executive is given the power to convene the legislature upon extraordinary occasions. It is contemplated by the constitution that an extra session of the legislature is to be convened only upon extraordinary occasions. The construction has made it a matter of executive discretion to determine when an occasion sufficiently extraordinary to warrant the special calling of the body exists.

There has been one case only upon this point, the case of Smith vs. Curran, 268 Michigan 366, decided in 1934. There being no Michigan cases, the court quotes with authority an excerpt from 59 Corpus Juris, on page 530, in this language:

> This constitutional provision contemplates that there shall first exist in the executive mind a definite conception of the public emergency which demands an extraordinary occasion.

Consequently, extraordinary occasion does have a different meaning than special session, and it has been interpreted all along, and acted upon for 100 years, that extraordinary occasions can be brought out in a special session called by the governor. I therefore concur in the conclusion reached by Delegate Hutchinson and the conclusion reached by the legislative powers committee, and move that this proposal be adopted.

CHAIRMAN MARTIN: Thank you, Mr. Millard.

Are there any amendments to the body of the proposal?

Mr. Downs.

MR. DOWNS: Mr. Chairman, I too would like to join Mr. Millard and Mr. Hutchinson in speaking in favor of the language as reported to the committee of the whole. This language, as I believe was pointed out, could in one sense mean the governor could call a legislature in session on extraordinary occasions whether the legislature had adjourned or whether the legislature was in session but was in a recess at that moment.

Now, certainly, for those who are concerned, this means that the legislature would still have the power to act or not act as it sees fit. I do think that in the committee hearings it was very properly pointed out that perhaps there needs to be some further definition of the words "special session" in section 22 of article V. However, that in my judgment could be better handled in that part of the constitution, and leave this part just as it is.

In conclusion, I wish to again state that I support the motion as made by Mr. Millard.

CHAIRMAN MARTIN: Any amendments to the body of the proposal? If not, it will pass.

Committee Proposal 8 is passed.

The secretary will read.

SECRETARY CHASE: Item 2 on the calendar, from the committee on education, by Mr. Bentley, chairman, **Exclusion Report 2004,** A report recommending the exclusion of article XI, section 13.

Following is Exclusion Report 2004 as read by the secretary, and the reasons submitted in support thereof:

The committee on education recommends that article XI, section 13 of the present constitution be excluded from the new constitution.

Mr. Bentley, chairman of the committee on education, submits the following reasons in support of Exclusion Report 2004:

The mention of the salt spring lands in the state constitution is obsolete. These lands have long since been disposed of and the money used by the State.

The education committee therefore recommends this section be deleted with the idea that these funds and other such funds should be consolidated into a single fund for educational purposes with the interest to be paid out as the legislature may direct.

CHAIRMAN MARTIN: Mr. Bentley.

MR. BENTLEY: Mr. Chairman, the committee's explanation for making this exclusion recommendation or proposal is deservedly very brief. The salt spring lands have now long since been sold, and the committee unanimously felt there was no further reason for their inclusion in the new constitution.

For those who are interested in researching the origin of this money, I would recommend that the interested members turn to volume 2 of the citizens research council preparative analysis, and under chapter 11, page 37, they will find 4½ pages of explanation tracing the origin of the salt spring lands and the money deriving from their use, and even after their sale. But I think the committee might be properly interested only in the comment which was made in the citizens research council analysis as follows:

> The mention of salt spring lands in the state constitution is obsolete, and does not need to be continued in any new version.
>
> As distinct from this, the question of the corpus of the funds established from the sale of these and other lands and of the disposition of the interest thereon poses a problem. The constitutional convention appears to have 3 basic alternatives respecting these funds:
>
> It can abolish them and provide for state support of education through regular or other forms of appropriation.
>
> It can retain the funds as a nostalgic nod to the past.
>
> It can consolidate the funds into a single fund for educational purposes, with interest to be paid out as the legislature or the constitution may direct.

As the committee will see, the committee on education has decided to adopt the last of these 3 recommendations by the citizens research council, which will provide for the entire exclusion of article XI, section 13, and the incorporation of the existing funds, along with the funds derived from other sources for this purpose, into a single fund for education.

I think that completes the explanation of this recommendation, Mr. Chairman. As I say, the action of the committee on education was unanimous, and it is our recommendation that the exclusion report be approved by the committee of the whole.

CHAIRMAN MARTIN: Are there any amendments to the exclusion report? If not, it will be passed.

Exclusion Report 2004 is passed.

The secretary will read.

SECRETARY CHASE: Item 3 on the calendar, from the committee on legislative powers, by Mr. Hoxie, chairman, **Committee Proposal 12,** A proposal pertaining to exemptions as a substitute for all of article XIV.

Following is Committee Proposal 12 as read by the secretary, and the reasons submitted in support thereof:

The committee recommends that the following be included in the constitution:

THE LEGISLATURE SHALL PROVIDE BY LAW FOR THE EXEMPTION OF REAL PROPERTY IN THE AMOUNT OF NOT LESS THAN $3,500.00, AND PERSONAL PROPERTY IN THE AMOUNT OF NOT LESS THAN $750.00, AS DEFINED BY LAW, FROM FORCED SALE OR EXECUTION OR OTHER PROCESS OF THE COURT.

Mr. Hoxie, chairman of the committee on legislative powers, submits the following reasons in support of Committee Proposal 12:

The committee on legislative powers proposes the indicated language in lieu of all existing language in article XIV entitled "Exemptions" for the following reasons:

The original 1908 constitution of Michigan set forth an exemption of $500.00 for personal property and a homestead exemption of $1,500.00. Because of the change in value of property due to inflation and the subsequent decreased purchasing power of the dollar, this was amended in 1943 by raising the homestead exemption from the original $1,500.00 to $2,500.00. This change should have been allowed by legislation rather than through the necessity of a constitutional amendment. Furthermore, exemptions on real and personal property have always been provided for by law enacted by the legislature, and such laws recently have provided for greater exemptions than stated in the constitution. All exemptions, both real and personal, have been set forth in detail in act 236 of the public acts of 1961 which is a compilation of all judicial proceedings in all courts and takes effect January 1, 1963.

The committee believes, however, that minimum exemptions on both real and personal property should be placed in the constitution in order that the legislature shall not have the complete power of wiping out all exemptions in the future. Testimony was taken as to the minimum amounts thought advisable and the amounts mentioned above in the proposed section were those recommended by the state bar association of Michigan and other members of the legal profession who testified before the committee.

Fifteen states have no provision in their respective constitutions for exemptions. Twenty states have short provisions, as suggested by this committee in its proposal. The committee believes that specific exemptions should be set forth in the statutes and only a general expression of legislative power is necessary in the constitution, limited, however, to limited amounts as stated in the proposal.

It is therefore recommended that article XIV of the 1908 constitution entitled "Exemptions" be deleted from any proposed new constitution and that a section be added to the legislative powers article embodying the language in the committee proposal.

Explanation—Matter within [ ] is stricken, matter in capitals is new.

CHAIRMAN MARTIN: Mr. Hoxie.

MR. HOXIE: Mr. Chairman and fellow delegates, this particular article, article XIV, was referred to one of our subcommittees for study and research. The report that was just read is rather abbreviated, considering all the work that was done on it. Mr. Millard is chairman of this subcommittee, along with Mr. Downs, Mr. Wanger and Mrs. Koeze. I'm sure Mr. Millard or any other member of the committee has some further information on that particular article, if they would like to give it to us.

CHAIRMAN MARTIN: Mr. Millard.

MR. MILLARD: Mr. Chairman and members of the committee, the subcommittee referred to by Chairman Hoxie met quite early in the session of this convention. In order to get a proper background, we took the treatise prepared by Professor Robert E. Childs, professor of law of Wayne State University, which is entitled State Constitutional Provisions on Exemptions. It is a white pamphlet, of which each and every one of you, I presume, received a copy. We had Professor Childs appear as a witness and he confirmed all that he had stated in this treatise.

Also, Professor Kelly was present, and he came to the same conclusion, which was that a short statement of the power delegated to the legislature should be all that was necessary.

However, I think maybe I should go a little more into the history, and maybe also define what exemptions are. I know the lawyers present are all familiar with this, but maybe some of the laymen have not come in contact with it. "Exemptions" may be defined as a statutory freedom of the personal property of debtors from liability to seizure and sale under legal process for the the payment of their debts. "Homestead exemptions" may be defined as a statutory freedom of the real property of debtors from liability to seizure and sale under legal process for payment of their debts.

There were no personal property or homestead exemptions at common law, and going back into the history of our own state, there was no provision for exemptions in the first Constitution of 1835. However, the legislature, in its wisdom, saw that it was necessary to provide for relief of debtors who had, maybe through something not of their own making, gotten into financial difficulties. And so, in 1848, a statute was passed which provided for exemptions of $500 on personal property, and homestead exemptions of $1,500.

The constitutional convention which was convened in 1849 and produced the Constitution of 1850 thought so much of this provision in the statute that they adopted it practically in toto in the Constitution of 1850. And that was carried over with hardly any change into the Constitution of 1908. Now, the original provisions, as stated, set forth an exemption of $500 on personal property and $1,500 on real property, and those 2 figures were carried over into the 1908 constitutional convention. But we had a change in economic conditions, and it was found that those provisions were not enough.

I want, first, to call to your attention that in both the 1850 and the 1908 constitutions personal property was exempted to the amount of not less than $500—both of them the same wording—but that real property, the homestead exemption, is exempted not to exceed the value of $1,500. In other words, there was a floor put on the personal property, but a ceiling put on real property. So that when our economic conditions changed, it was found that $1,500 was not enough exemption for a homestead. Consequently, in 1943 an amendment was passed to the constitution in which that amount was raised to $2,500, as it now stands.

Now, there have been two or three attempts to get the constitution changed, and one of them was by a Michigan constitutional revision study commission of 1942. On this particular subject, I would like to read a quotation from that report. The following quotation was taken from the final report of the subcommittee on taxation and finance of the Michigan constitutional revision study commission of 1942. That report, submitted by the committee chairman, E. Blythe Stason, dean of the University of Michigan law school, was unanimously adopted by the commission and was deemed to be of such importance

that it was appended to the commission's report in its entirety. I'm quoting:

Article XIV. Exemptions.

The provisions for exemptions were taken verbatim from the 1850 constitution, which for the most part simply adopted existing statutes. Apparently there was no need of writing them into the constitution, other than the fact that the constitutional convention mistrusted the legislature and felt inclined to place many limitations on the power of that body.

Perhaps an added factor was the novel character of the exemption statutes. They were first enacted in the late 1840s. It was said in the convention that Michigan was the first state to have any such legislation, and there may have been a desire to insure their continuance.

The committee feels that these sections do not constitute proper constitutional provision. Instead, they should be incorporated in statute law if found desirable by the state legislature.

The committee does not take exception to any of the specific provisions of article XIV, but it recognizes that there are probably more exemptions that might just as appropriately be included. The article, however, is of slight importance, and no recommendation is made.

That's what they thought about this article in 1942.

Now, just what has the legislature done in regard to exemptions for the protection of, might I say, legitimate debtors? I hope that they are. In the session of 1961 the legislature passed act 236, which was quoted in our report. It was an act to revise and consolidate the statutes relating to the organization and jurisdiction of the courts of this state, the powers and duties of such courts, and so forth. In this revision of the statutes and the compilation, the exemptions have been set forth, and I would like to call your attention to some of the exemptions. Chapter 53—and I'm reading on page 576 of the Compiled Laws of the Public Acts of 1961 — is Receivership for Wage Earners, and that has nearly 4 pages. Chapter 60, page 595, has Enforcement of Judgment, and that has, oh, 20 pages or more. In that particular chapter are included the provisions in the constitution, and I am now quoting from section 600.6022, on page 598 of the public acts of 1961, in which it says "Executions shall not issue," and then it goes on and it designates a lot of things that are not mentioned in the constitution, of course, such as family pictures; household goods; a seat, pew or slip occupied by the judgment debtor or his family in a house of worship; tools and implements; and so forth. But it raises the amount to $1,000. In other words, the legislature has increased the exemption on personal property from $500 to $1,000. And they could do that because it was only a floor in the constitution. Now, the homestead exemption is cut down a little bit from the verbiage in the constitution, but it is all there. Everything is there.

We have had the statutes and the exemptions checked—both real and personal property—by our research man, Professor Gay, and he says that every provision that is in the constitution is covered in the statutes, with a lot more, as I am pointing out.

We have other sections in this act 236. Chapter 62, Installment Judgments; and chapter 75, Garnishment in Justice Court; so that the debtors are very well taken care of by statute. In fact, members of the committee, if we were to give the debtors the benefit of all of the rights that they have and all of the exemptions that they have by statutes, we would have a constitution which would be twice as large as the one we have now.

Now, as I said, Professor Childs recommends that a clause be inserted in the article of the proposed constitution entitled Legislative Department, as follows "The legislature shall pass homestead and exemption laws." Your committee, after hearing the professors, referred it to research; and Professor Joiner, of the University of Michigan law school, prepared the provision which you have in front of you, with the exception of the floors on personal and real property.

After the committee had started its hearings, several proposals came in to raise the ceiling on real property. We had proposals all the way from $5,000 to $10,000. So we had a hearing last week, and had all the people in that were interested—representatives of the state bar, and so forth—and everybody talked about a ceiling, and finally we came to the conclusion that it would be better to put a floor under it than put a ceiling on it. If we said there would be a ceiling of $10,000 then people would expect the legislature to put in an exemption of $10,000. Your committee decided that inasmuch as the legislature had increased the personal exemption from $500 to $1,000, which was an increase of about 100 per cent, and whereas the original homestead exemption was $1,500, that we would increase that 100 per cent; so we put a floor in this proposal of $3,500 on real property, and $750 on personal property.

We feel that this is sufficient protection for the debtor; that he will always have some exemptions, but looking back over the history of our legislature, we find that the exemptions have always been higher than was in any constitution, and probably would have been higher if it had been allowable on real property after the 1908 convention. Your committee therefore feels that the question of amount is a legislative function; that protection has been amply given by statute; and therefore recommends that this proposal be passed as submitted.

CHAIRMAN MARTIN: Mr. Norris.

MR. NORRIS: Mr. Chairman, I wonder if I might ask a question or 2 of Delegate Millard. First, I note that the suggested language states that "The legislature shall provide by law," and I wanted to ask the question as to why this was made less than constitutionally mandatory. In other words, you have the matter of moment of the homestead exemption resting upon the discretion of the legislature, and not a specific requirement by constitution, which is now being changed—or at least offered to be changed.

The second question is, I note that the words homestead exemption are not found in the suggested language, but what we have are the words "real property." I wondered what the thinking was of the committee in making that alteration.

CHAIRMAN MARTIN: Mr. Millard.

MR. MILLARD: Professor Norris, I will answer the second one first. The thinking of the committee—and this was proposed by Dr. Joiner—is that "homestead" is a limitation. Homestead has been defined by our supreme court in a great many cases, and it requires occupancy by the person claiming the homestead. Your committee felt that we could put a floor of $3,500 on real property, and leave it up to the legislature as to whether they wanted to make it a homestead or not. It is a homestead now in the statutes. However, this is really lifting a restriction. This is giving more power, so that they can lift it from the homestead provision and apply it to any real estate.

Now, on your first question, it has been told here many, many times that this convention has no power over the legislature except to express its intention, and by putting the word "shall" in we certainly mean what we say; that they shall do this. As has been pointed out, you can't mandamus the legislature. But, by putting the word "shall" in there, we think that that is showing enough of the intention of this convention that they would adopt it, as they already have for the last 100 years. Does that answer your question?

CHAIRMAN MARTIN: Mr. Hodges.

MR. HODGES: Mr. Chairman, I think the committee has shown a great deal of wisdom in setting floors. I think this is what we need. But I really question the $3,500 floor limit. Mr. Millard talks about a 100 per cent increase since 1908, but if we try to reflect on what the $1,500 meant in a homestead in 1908 and what $3,500 means today, there's a great discrepancy.

While I realize this is a floor, I think there always is the pressure on the legislature to maintain this floor. I'm not suggesting that we should set a reasonable figure today, but at least I think it should be more in line with what reasonably can be expected in the near and distant future. I think $3,500 certainly is very little protection for the average home owner and homesteader. This is actually what we are trying to

protect. I have no set figure, but I would like to suggest that we set a much more realistic figure.

CHAIRMAN MARTIN: Are there any amendments to the body of the proposal?

Mr. Nord.

MR. NORD: Mr. Chairman, I would speak against the passage of the committee proposal at this time. I believe there are 2 defects in it which ought to be rectified before it is reported out. These are not serious defects, and they could be rectified easily, but I don't think we could do it on the floor. I would like to point out anyway what I believe these defects are. They have both been alluded to briefly by Mr. Norris, and I would like to go a little further into them. I'm not satisfied that these are cured as well as they can be cured.

First of all, as to the compulsoriness of the exemption, it seems to me it would be very simple to make these exemptions absolutely compulsory by using language similar to the language presently in the constitution—not as detailed, perhaps, but language which says point blank that property of a certain type shall be exempt. If it says it shall be exempt, then it is exempt. But if it says the legislature shall provide laws, then if the legislature should happen not to provide laws, there is obviously no exemption.

Actually, there are 2 parts of the language which I object to in connection with the lack of compulsoriness of the exemptions. One is in the first line, where it says, "The legislature shall provide by law . . ." We have had a lot of experience with legislatures being required to do things by law which they have not done. I will just mention, for example, the apportionment problem, which has existed in 40 states, and legislatures as we know have not always done what has been required of them. Whereas, if it states in the constitution that a certain result shall exist, then it does exist.

The other language that I find objectionable on this point about compulsoriness is the last 4 lines, which are as follows: "as defined by law . . ." That is to say, the legislature shall provide by law for these exemptions on personal property and real property, and the type of exemption shall be as defined by law. Now, if the legislature fails to make such definitions, we won't know what kind of property is involved. For example, we won't know whether it is a homestead or not. So, obviously, the legislature must act. These are not self executing provisions as they now read. They could easily be made self executing, but they are not at the present time, and I believe they should be made self executing.

The other problem has to do with homesteads. Nearly all of the constitutions that have been referred to from other states mention the word homestead. If they mention exemptions at all, they almost always mention the word homestead. Now, of course, that doesn't mean that we must do so. We don't in this particular section. We do in the present constitution. The explanation that was offered doesn't convince me that it is an improvement. The language that is offered is this, "the exemption of real property . . ."

Now, the problem that I can foresee is this. The legislature might exempt real property other than homesteads, and not exempt homesteads. They might provide a broadened definition, as was suggested, which would include real property which we don't really wish to be exempted, but at the same time not provide an exemption against real property which we feel must be exempted; namely, homesteads. It seems to me it is very important that we mention that homesteads are the things that are to be exempted. We don't really care whether other real property is exempted or not. But if it is a homestead, it should be exempted. That is the big reason why we have exemption laws; so that nobody will be kicked out of their house.

Both of these, it seems to me, could easily be corrected. Instead of saying "real property," we could say "homestead." Instead of saying "the legislature shall provide" and "as defined by law," we could substitute some other language. I can't give the exact language myself at the moment, but it seems to me the best thing is to refer this back to the committee and ask it to bring it forward with other language.

I move that the proposal be rereferred to the committee for that purpose.

CHAIRMAN MARTIN: The motion to rerefer takes priority. The question is on the motion that when the committee rises, it recommend that Committee Proposal 12 be rereferred to the committee on legislative powers. All those in favor will say aye. Those opposed will say no.

The Chair is in some doubt. Those in favor will rise.

SECRETARY CHASE: Forty-seven.

CHAIRMAN MARTIN: Those opposed will rise.

SECRETARY CHASE: Seventy-four.

CHAIRMAN MARTIN: The motion to rerefer does not prevail.

Are there any amendments to the body of the proposal?

Miss Donnelly.

MISS DONNELLY: I had recently placed on my desk a copy of my amendment which I placed with the secretary. I find that it is incorrect in monetary amounts, and I will ask the secretary to read it with these corrections:

In section 1, $750; in section 2, $5,000.

SECRETARY CHASE: Miss Donnelly offers the following amendment:

1. Amend page 1 by striking out all of lines 6 through 9, which is the present language of the proposal and inserting the following, which is the present 4 sections of article XIV, with the changes as just noted by Miss Donnelly:

"Sec. 1. The personal property of every resident of this state, to consist of such property only as shall be designated by law, shall be exempted to the amount of not less than $750.00 from sale on execution or other final process of any court.

Sec. 2. Every homestead of not exceeding 40 acres of land and the dwelling house thereon and the appurtenances to be selected by the owner thereof and not included in any town plat, city or village; or instead thereof, at the option of the owner, any lot in any city, village or recorded town plat, or such parts of lots as shall be equal thereto, and the dwelling house thereon and its appurtenances, owned and occupied by any resident of the state, not exceeding in value $5,000.00 shall be exempt from forced sale on execution or any other final process from a court. Such exemption shall not extend to any mortgage thereon lawfully obtained, but such mortgage or other alienation of such land by the owner thereof, if a married man, shall not be valid without the signature of his wife to the same: Provided, That notwithstanding anything in this section to the contrary, such mortgage or other alienation of such land shall be valid without the signature of said wife, after 25 years unless within said 25 years from the date of the recording thereof in the office of the register of deeds of the county or counties wherein the property is located, there is filed in said office notice of claim of the invalidity of such mortgage or alienation under this section, excepting that in case of every mortgage or alienation recorded prior to January 1, 1920, said notice of claim may be filed prior to January 1, 1950.

Sec. 3. The homestead of a family, after the death of the owner thereof, shall be exempt from the payment of his debts in all cases during the minority of his children.

Sec. 4. If the owner of a homestead dies, leaving a widow but no children, such homestead shall be exempt, and the rents and profits thereof shall accrue to her benefit during the time of her widowhood, unless she be the owner of a homestead in her own right.".

CHAIRMAN MARTIN: Miss Donnelly.

MISS DONNELLY: Mr. Chairman, briefly, my reason for offering the amendment to the report of the committee is that originally it does not include the exclusion report. I think they have spent a great deal of time discussing the amount of money that we are talking about. This to me is not the most substantive part. There is a basic, fundamental attitude that certain debtors shall be protected; that they shall have a right to go forward in the future and not be badgered forever, not only by their claims in bankruptcy, but also having a chance to reestablish themselves.

The intent of this constitutional provision at this time, in

my opinion, is to protect not only the individual debtor, but his wife and children. Obviously, I'm not doing this for my own self, inasmuch as I don't have this problem. However, this statute, as taken care of by Mr. Millard, in my opinion—I haven't read it recently—but I do not think it includes the alienation of property on mortgaging; I do not think it excludes the mortgage value; it does not include the requirement that the wife must join, or in 25 years time to allow this dower interest to be barred. We've got a lot of statutes on real property law that have determined this. We have a lot of claims against title; we have instances of forgeries and fraud wherein someone other than the wife has signed to bar this dower. We also have provisions to allow a minor 18 years of age to join with her husband and mortgage the homestead in the case of certain mortgages, but not to convey the title to realty. We have many statutes to take care of certain aspects of this, but none prohibit this alienation, without this addition.

In addition, without this constitutional prohibition, they could be changed legislatively. In addition to this, the attitude of the committee in discussing real property, in my opinion, does not adequately take care of a land contract vendee's interest. They have not indicated whether they are going to consider this personalty or realty.

Generally, I feel that they are in haste to shorten this constitution, and will not necessarily benefit it by this change. Therefore, I speak in favor, naturally, of my amendment, which reinstates these provisions. I'm not particularly concerned about the monetary aspects, but I am concerned as to the approach. And I think that these provisions keep the approach—keep the protection to not only the individual debtor, but to his family.

CHAIRMAN MARTIN: The question is on the amendment.

Mr. Stafseth.

MR. STAFSETH: I would like to ask a question of Mr. Millard, because I think it would have a relationship to how I vote on the amendment. But I see under section 2, under the homestead exemption in the middle—and this is what Miss Donnelly spoke to—that it specifically exempts a mortgage. In other words, you can have a mortgage written so that it wouldn't guarantee a man who has an equity of $3,500 in his property when actually he may only pay $500.

Now, are there provisions in your original proposal, or the committee proposal, to take care of the situation that they can write a mortgage of a lesser down payment than $3,500 and not be in the position where they would have to guarantee that amount? Because this would have a very definite effect on the size of down payments in buying homes and might make it very difficult.

CHAIRMAN MARTIN: Mr. Millard.

MR. MILLARD: I think that your question in regard to the mortgage is taken care of in the statute which I cited to you, being 600.6022 at page 598 of the public acts of 1961. And it says:

> But this exemption does not apply to any mortgage on the homestead lawfully obtained, except that such mortgage is not valid without the signature of a married judgment debtor's wife unless:
>
> A. The mortgage is given to secure the payment of the purchase money or portion thereof; or
>
> B. The mortgage is recorded in the office of the register of deeds of the county wherein the property is located for a period of 25 years, and notice of a claim of invalidity is filed in such office during the 25 years following the recording of the mortgage.

I think that answers your question.

MR. STAFSETH: According to your proposal, if you have a floor, if you set a definite floor, there shall be this limit. What provision have you in this that would allow the statutory provision to be exercised? This would take precedence, wouldn't it?

MR. MILLARD: This provision that we propose lodges the power in the legislature to make provision for the exemption. That is the reason for it. And we did that because the legislature has, in the past, and in this particular public act 236 of 1961, provided for all of the exemptions that are in the constitution plus a great, great many more.

CHAIRMAN MARTIN: The question is on the amendment.

Mr. Hubbs.

MR. HUBBS: I have an amendment of my own, but I would first like to answer Miss Donnelly and Mr. Stafseth, and comment on what Mr. Millard said. I'm a member of the committee on legislative powers, and we were given to understand during our study of this problem that all of the exemptions and dates and times and amounts and everything that were matters of statutory detail were covered in house bill 3, which has been recently revised, and that in general most of the provisions that were in there were more than adequate and far exceeded what was already in the constitution.

My amendment, if I may proceed with it at this point, is this. I would amend the proposal—

CHAIRMAN MARTIN: Mr. Hubbs, maybe we should stay with the Donnelly amendment, and then let you offer your amendment; and then we can discuss that. Otherwise we will get confused as to which amendment we are talking about.

MR. HUBBS: With reference to Miss Donnelly's amendment and what has been said, I think Mr. Millard adequately covered the thing; that house bill 3 and the present statutory laws covering exemptions in all fields take care of the situation; and the amendment that I propose to offer is in a slightly different direction.

CHAIRMAN MARTIN: We will come to your amendment in a moment.

The question is on the Donnelly amendment.

Mr. Farnsworth.

MR. FARNSWORTH: I would like to speak to the Donnelly amendment. There is another party that probably hasn't been given too much consideration. That is the man to whom money might be owed. We are talking all the while about the man that owes money and what his exemptions and rights are.

In the Donnelly amendment we are restoring some sanity to it, I believe, by retaining this ceiling on the homestead exemption. I'm not in agreement with Miss Donnelly in the amount of that, but I agree with the principle that if you're going to have a floor, likewise you should have a ceiling. That is the only protection that the man has who has the money coming to him.

I would be quite willing to turn the entire matter over to the legislature, but I am not willing to have a floor that you cannot go under without having a ceiling that you cannot go above. So, Miss Donnelly, I like that very, very much.

I would like to offer an amendment to the Donnelly amendment, to amend $5,000 to $3,750.

CHAIRMAN MARTIN: Will you submit your amendment to the secretary, please, Mr. Farnsworth?

MR. FARNSWORTH: Yes.

SECRETARY CHASE: Mr. Farnsworth offers the following amendment to Miss Donnelly's amendment:

1. Amend section 2 of the amendment by striking out "$5,000.00" and inserting "$3,750.00".

CHAIRMAN MARTIN: The question is on Mr. Farnsworth's amendment to the Donnelly amendment.

Miss Donnelly.

MISS DONNELLY: I would just like to state I have no particular objection to his amendment. My whole point is that I think these constitutional provisions must be maintained so that the legislature cannot remove them eventually if it so chooses.

The fact that house bill 3 or public act 236 is going to cover it is fine. I had no intent to try to change that. I just feel that this is a statement of limit on power, which is a constitutional purpose in the first instance, and to remove it and entrust all this to the legislature is, I think, too hasty. Also, I want to restate that I certainly oppose "real property." If this would allow an individual who was not living there but was, for instance, collecting rent—he was living in an apartment; this is not his homestead, but it is just an investment—to keep this investment, and his creditors can't reach

this investment, it isn't protecting him; it is acting against his creditors.

I think the purpose of this is to protect the individual and give him a chance for him and his family to live on this property as a homestead, and not just to protect real property.

CHAIRMAN MARTIN: The question is on Mr. Farnsworth's amendment to the amendment.

Mr. Higgs.

MR. HIGGS: Mr. Chairman, in order to vote intelligently upon the amendment, I would like to ask a question of Mr. Millard. If I read this correctly, is this not the way this reads, "shall provide by law for the exemption of real property and personal property as defined by law"?

I would understand that the legislature would have the power to define by law what is intended by real property and what is intended by personal property; is that correct?

CHAIRMAN MARTIN: Mr. Millard.

MR. MILLARD: That is true, Mr. Higgs. At the present time the statute defines the homestead exemption for real property. That is defined in the law, and it will stay there until changed by the legislature. So you are absolutely correct.

MR. HIGGS: Mr. Chairman, I would oppose the amendment then, inasmuch as the committee apparently has given consideration to the matter of defining real property, and I would feel confident that the legislature, in making that definition, would take into account such matters as the land contract vendee's interests; and with that assurance I think I would favor the proposal.

CHAIRMAN MARTIN: The question is on the Farnsworth amendment to the amendment.

Mr. Hodges.

MR. HODGES: Mr. Chairman, speaking in opposition to the Farnsworth amendment to the amendment, our basic idea is to protect homesteaders. In 1908 we protected them to the extent of $1,500, which was a realistic figure in 1908. The figure proposed by Mr. Farnsworth—and I think any figure that you set as a ceiling is unrealistic, and what you need is a floor—just negates for all practical purposes the homestead protection. It is really not any protection at all.

I think what we need is a floor, and therefore I'm opposed to the Farnsworth amendment and to the Donnelly amendment also.

CHAIRMAN MARTIN: Mr. Mahinske.

MR. MAHINSKE: I have a point of information I would like to ask both Mr. Farnsworth and Miss Donnelly. Are you setting a floor on personal property and a ceiling on real property, or are you setting both floors and ceilings?

CHAIRMAN MARTIN: Mr. Farnsworth.

MR. FARNSWORTH: Mr. Mahinske, if I understand the proposal correctly, it would set a ceiling on real property, or a homestead, but it would set only a floor on personal property.

Is that right, Miss Donnelly?

CHAIRMAN MARTIN: Miss Donnelly.

MISS DONNELLY: I would say that is the intent of the Constitution of 1908. The constitution, section 1, says, "not less than $500.00," and section 2 says, "every homestead of not exceeding 40 acres of land," and it goes forward to eventually pick up the monetary amount, "not exceeding in value $2,500.00."

MR. MAHINSKE: Then your amendment is a repeat of the 1908 provision, as revised in 1943, with just a change in the money figures?

MISS DONNELLY: Yes.

MR. MAHINSKE: And you are not going to bring up a 25 year change in your date figures from 1920—

MISS DONNELLY: Frankly, I intended to. Specifically, I was in a meeting of the committee on judicial branch all morning, and that's the reason why it came out incorrectly. In the first instance, I rather hurriedly gave instructions to research, and they apparently misunderstood me. And I do believe that if that last year were retained as it is, we would not necessarily have to go into alienation recorded prior to January 1, 1920. We are now at 1962. The 40 years would handle it. The 25 years would handle it. We don't need to go back to that, and it should really be removed.

MR. MAHINSKE: Wouldn't your mortgages and land contracts be covered by impairment of contracts in the federal constitution, at any rate, whether we put it in here or not?

MISS DONNELLY: Off hand, my answer, I think, is no. I think that is a very broad statement, and the impairment of mortgages is not the same as to the validity as to who may make. And I think at this moment that if we say who may mortgage this land—which I believe this could allow changes in, or who may make this mortgage—that that would be an impairment of contract, so we couldn't do it anyway, if I follow your logic.

MR. MAHINSKE: If you follow me, then we may as well throw out this whole section on land contracts and mortgages. It is statutory to begin with, and we couldn't statutorily impair any contract, and a land contract or a mortgage is a contract.

MISS DONNELLY: You're talking about in the past. I'm talking about going forward in the future, too. I think this constitution will act in future years if it's passed.

CHAIRMAN MARTIN: The question is on Mr. Farnsworth's amendment to the Donnelly amendment.

Mr. Danhof.

MR. DANHOF: I wish to speak to the entire matter.

CHAIRMAN MARTIN: The question is on the Farnsworth amendment to the Donnelly amendment.

Mr. Downs.

MR. DOWNS: Mr. Chairman, I just wish to repeat that in the committee, when this matter was considered, I believe Mr. Millard pointed out very well that the 1908 constitution had set a floor on personal property and a ceiling on the homestead or real property. Now, with the changes that we all anticipate in the price index, I think it is very hard for us to set a maximum amount; and that was the thinking on putting in the floor. Now, there was the original recommendation that no particular amount be put in. This was the recommendation, I believe, of Professor Childs.

However, from a very practical viewpoint, and I'm thinking not only of the convention, but when some of us are out, I presume, selling the new document that we have, I think it will be much easier to sell if we can say that the protection we had in the 1908 constitution is still in there and, if anything, it has been slightly improved. I don't pretend to get into a discussion as to just what the amounts should be. I think that is subject to legitimate discussion and difference. But I do think that if a reasonable floor is set on both, it does make it much easier for us to get the support for the document when we are completed. I do think that really what we were looking at in the committee was not only draftsmanship, but also the problem of selling the document. And I hope this gives some of the background of the discussions that were had in the committee.

CHAIRMAN MARTIN: Mr. Farnsworth.

MR. FARNSWORTH: Mr. Chairman, in defense of the amount that I am suggesting as an amendment to the Donnelly amendment, it is exactly 50 per cent higher than what is now in the constitution. I note that the committee, in setting an amount on personal property, used that exact ratio in their proposal. They proposed from $500 to $750. So it is an exact ratio that I have stated. That is why the $3,750. I take it that you are going to vote on that quite soon now.

CHAIRMAN MARTIN: The question is on the Farnsworth amendment to the Donnelly amendment.

Mr. Lawrence.

MR. LAWRENCE: I would like to ask Miss Donnelly a question, in view of the fact that I may not have heard the amendment read correctly. But is it the intent of the amendment to prohibit the complete collection of a mortgage not signed by a wife if it is a purchase money mortgage?

CHAIRMAN MARTIN: Miss Donnelly.

MISS DONNELLY: It certainly is not. If it is a purchase money mortgage in the first instance, dower would not have attached, and you would not have had any interest anyway. So I'm going to real property, and not to this language.

The whole intent of my amendment is—contrary to what Mr. Downs said—to guarantee that we have not interfered

with these guarantees. If we change it and take the committee's report, we have not made a constitutional guarantee of this. We have allowed the legislature to do what it will.

Now, certainly in the past the legislature has acted, I think, very properly in increasing it. But that doesn't mean that it won't go in the other direction, and I think that there should be a guarantee of an exemption, and certain rights that cannot be changed by legislative action. That is the whole purpose of my amendment. I am not particularly concerned with the monetary amounts; but it certainly has nothing to do with the purchase money mortgage.

CHAIRMAN MARTIN: Mr. Lawrence.

MR. LAWRENCE: Certainly some time has gone by since this amendment has been read, and it is a little bit technical. I would like to have it read again, because, as I heard it, it specifically precluded the taking of property if it was not signed by a wife in certain instances, and I didn't hear the exception of a purchase money mortgage not signed by the wife. It was later brought out, I believe, by Mr. Millard in the statutory language.

CHAIRMAN MARTIN: The secretary will read the amendment.

Mr. Ford.

MR. FORD: Maybe we can save some time. I followed this in the book, and you got a little bit ahead of me. Is the language of your amendment the same as sections 1 through 4 of the present article XIV?

MISS DONNELLY: Yes, it is. But it shouldn't be exactly the same, because the amount of money and the dates are incorrect. Frankly, I just had them throw it in so I could have it technically in writing. I think this "alienation recorded prior to January 1, 1920," is unnecessary. But I want the intent of the protections, and the requirement of the wife joining in the mortgage or alienation of the land.

Now, back to your purchase money mortgage, Mr. Lawrence, I think the fact that the statute is spelled out on a purchase money mortgage is merely reiterating the common law. Certainly the title does not vest in the husband in the purchase money mortgage. The dower could not have attached, because he couldn't have been seized of both the equitable and the legal at the same time—or am I being too argumentative on real property?

CHAIRMAN MARTIN: Mr. Lawrence.

MR. LAWRENCE: I still would like to hear the amendment read.

CHAIRMAN MARTIN: The secretary will read the amendment.

SECRETARY CHASE: The amendment offered by Miss Donnelly is:

[The Donnelly amendment was again read by the secretary. For text, see above, page 437.]

To section 2 Mr. Farnsworth has offered an amendment to strike out the sum of $5,000 and insert $3,750.

CHAIRMAN MARTIN: The question is on the Farnsworth amendment to the Donnelly amendment. All those in favor of the amendment proposed will say aye. All those opposed will say no. The nays have it.

The amendment to the amendment is not adopted.

The question is now on Miss Donnelly's amendment.

Mr. Wanger.

MR. WANGER: Mr. Chairman and members of the committee, I think the entire issue in this amendment which is before us is whether or not on the matter of exemptions we can trust the legislature at this time in our history and in the foreseeable future. I suggest that there's no question whatsoever but that based on the present and past legislative history the legislature can be fully trusted with this matter of exemptions. As pointed out by Mr. Millard, the law most recently passed compiles previous laws in this area which go far beyond the constitutional minimum which was established in the document of 1908.

Furthermore, as you will note from looking at your copy of the constitution, the homestead exemption was increased by constitutional amendment in 1943 to the figure of over $2,000. That constitutional amendment was put on the ballot pursuant to a proposal not initiated by the people, but rather proposed by the legislature itself, by a vote of 2/3 of both of the houses.

I think it is further very well known that today we live in what has been variously described as a credit economy, with many, many people who owe money. Those people also possess votes, and to suggest for a moment that the legislature would pull the rug out from underneath honest debtors in this society is to ignore political reality and to suggest that it would do something to the people of Michigan which the entire legislative history of this subject is against.

Therefore, I urge you to vote no on this particular amendment, and vote yes on the proposal as recommended by the committee.

CHAIRMAN MARTIN: The question is on the Donnelly amendment.

Mr. Danhof.

MR. DANHOF: I, too, would join in urging a no vote on the amendment. As it now stands, it would appear that the majority of us who dwell in the cities are being discriminated against. It is perfectly obvious that in 1908 it was thought that 40 acres of land and $1,500 were approximately equal. I submit that it seems to be a pretty poor farm if 40 acres of land would not be worth whatever amount we have now, $2,500. I see no reason that there should be any distinguishment when we talk of acreage in one sense and value in another. That is one of the reasons that I think these particular sections should be revised.

So far as the mortgage requirement is concerned, I agree with Mr. Wanger. I think that this is statutory, and can be handled by statute as we now have it.

I have some reservations regarding the committee proposal, and I think that they were brought out by Mr. Stafseth, and I think they were valid. I think perhaps when we get to that particular portion of our discussion, if we do, we should consider it. I think what Mr. Stafseth was bringing out was the question of assuming a mortgage which is in default under which the owner has a $2,500 equity, and a mortgagee forecloses. He then points to this specific section and says, "I am entitled to an exemption of at least $3,500. Why can't I have it?" Because as the committee proposal now reads it says that the legislature shall provide for the exemption of real property in the amount of not less than $3,500 from any forced sale, execution or other process of the court, which would include a decree and a mortgage foreclosure.

I think that the exemption which we now have as it relates to mortgages is one that we should consider, because with the idea of low down payments that we have now, and practically nothing down, and 30 or 40 year mortgages, this gets to be a particular problem; and I see no exemption for mortgages as we now have in the present section 2.

As to the remaining sections, I submit that under the present system of welfare programs that we have on the local, state and federal levels, that widows and orphans are usually well taken care of and normally are protected by the legislature; everybody wanting to be on the side of widows and orphans. Consequently, I would urge that we vote no on the amendment; but that we give consideration to an exemption of which I understand an amendment will be filed to allow for the exemption of mortgages. I understand there is one on the secretary's desk at this time. Thank you.

CHAIRMAN MARTIN: The question is on the Donnelly amendment.

Mr. Nord.

MR. NORD: Mr. Chairman, I believe the best argument against Miss Donnelly's amendment was the one made by Mr. Wanger, and therefore I would like to attack that on several grounds and speak against his argument.

His argument is that we don't trust the legislature if we adopt the constitution as it is now written. That's what it boils down to. When you look at it that way, you can see a number of glaring defects in that type of argument. In the first place, if you follow that argument all the way down the

line, we might as well get rid of almost everything in the constitution.

It is true that we don't trust the legislature in the abstract. That's why we have a constitution limiting the legislature. We don't distrust the individual people. We just have a history in the United States of distrusting legislatures to the extent that we must have a constitution, and we still want to have a constitution. Therefore, let's not get worried about the fact that we distrust the legislature. That's quite typical in America.

Secondly, we have already had this in the constitution. We are not adding anything. We are not increasing our distrust of the legislature. We are simply continuing our distrust of the legislature, if you want to call it distrust.

Thirdly, I think this misses the whole point, in any event, when you say that all Miss Donnelly is trying to do is show distrust of the legislature. That's not so. It isn't the only thing that is involved. Another thing that is involved is, taking up the original argument of Mr. Millard that a floor should be provided, some sort of security should be provided for such exemptions in the constitution.

Now, if we take it for granted that some sort of floor should be in the constitution, and then we look at the provision that has been proposed and we see that it does not provide any floor, then we know that there's something wrong with the original proposal. Therefore, it is clear that we do have to have some sort of a floor; some sort of a provision in the constitution which absolutely guarantees, with no ifs, ands or buts, that there will be some sort of exemptions.

The committee proposal does not do that. Miss Donnelly's does do that. As between the 2, therefore, it seems to me, if we really want to guarantee exemptions, we must go to Miss Donnelly's. I urge that you do.

CHAIRMAN MARTIN: Mr. Wanger.

MR. WANGER: Mr. Chairman and members of the committee, just a comment upon Delegate Nord's answer to the argument of trusting the legislature. I think we all agree that there are certain things that we don't trust the legislature with. After all, we have a bill of rights which is a restriction on the power of the legislature and the rest of the government.

But that's not the question. That ignores the entire question of what we should be considering on this particular amendment that is before us. That is, simply, should we trust the legislature on this particular subject at this time in our history and in the foreseeable future? That's the question. And, as I pointed out, there's no question but that we can. This is a subject which was put into law in Michigan—as Mr. Millard pointed out citing Dean Stason's report—back in the 1840s, when these exemptions were passed. They were something new at that time in the history of American government. Therefore, in the upsurge of great distrust of the legislature in 1850, this was frozen into the constitution. Now, whether it should have been put in or should not have been put in back then is one question. But whether it should be kept in at this time is entirely different. And for the reasons which I gave when I previously spoke, I think it is quite clear that any need to have this in the constitution as a protection against abuse of legislative power has now long passed.

CHAIRMAN MARTIN: The question is on the Donnelly amendment. All those in favor will say aye. All those opposed will say no.

The amendment is not adopted.

Now, are there any other amendments to the body of the proposal?

Mr. Hubbs.

MR. HUBBS: Mr. Chairman, I have an amendment with the secretary.

SECRETARY CHASE: Mr. Hubbs has the following amendments:

1. Amend line 7, after "property" by striking out "in the amount of not less than $3,500.00,".

2. Amend line 8, after "property" by striking out "in the amount of not less than $750.00".

The language will then read:

The legislature shall provide by law for the exemption of real property and personal property, as defined by law, from forced sale or execution or other process of the court.

CHAIRMAN MARTIN: Mr. Hubbs.

MR. HUBBS: Mr. Chairman and my fellow delegates, I have been very patiently awaiting my opportunity to explain my position on this point. As you can see, I feel that there should be no dollar amount specified in the constitution, floors or ceilings. We are writing a constitution here; we are not writing a bankruptcy law, with all kinds of dates, stipulations, times, places and things of that sort, and having to do with acres and homesteads and things like that. In the committee on legislative powers I have been assured that house bill 3 covers every single detail that has been brought up here today, to the advantage of all debtors and people in dire circumstances.

Now, I think that what we need to do, as Mr. Wanger so admirably stated, is trust the legislature to implement a constitution which is sound in its basic principles, and not be sticking in a lot of dollar amounts, which Mr. Farnsworth, like myself, being an automobile dealer, would tend to haggle on to begin with. We had no sooner started then we were going from $3,500 to $5,000 to $3,750 and in the committee we were as high as $7,500. It is ridiculous to put dollar amounts into a constitution.

I feel that neither floors nor ceilings should be put in; that the legislature, which has served us admirably in the past, will serve us in the future, and that we can depend on it through statute to take care of all of the details which need to be taken care of. I thank you.

CHAIRMAN MARTIN: The question is on the Hubbs amendments.

Mr. Farnsworth.

MR. FARNSWORTH: Mr. Chairman, I would like to support the Hubbs amendments—believe it or not. My objection to this whole process as the committee proposed it was that it set only a floor, and did not set a ceiling. If they want to remove both, I'm for it. But I don't want to have a floor and not a ceiling.

The Hubbs amendments would leave it all up to the legislature, and I'm for it. I will support that.

CHAIRMAN MARTIN: Mr. Brown.

MR. G. E. BROWN: Mr. Chairman, I have a substitute amendment with the secretary. It is very similar to Mr. Hubbs', and I would like either to amend his amendments in accordance with the language of mine, or ask him to withdraw his and substitute mine. (laughter) I think for the benefit of both of us, if the secretary would read it, conceivably either Mr. Hubbs would withdraw his, or mine could be substituted.

CHAIRMAN MARTIN: Without objection, the secretary will read the substitute amendment of Mr. Brown.

SECRETARY CHASE: Mr. G. E. Brown has offered the following substitute amendment:

1. Amend page 1 by striking out all of lines 6 through 9 and inserting:

"Real and personal property shall be exempt from forced sale on execution or process of any court in such amounts and under such provisions and conditions as the legislature shall provide by law.".

CHAIRMAN MARTIN: Mr. Brown.

MR. G. E. BROWN: Mr. Chairman, if I may speak on that—. First I would ask Mr. Hubbs if he would withdraw his amendments in favor of my substitute.

CHAIRMAN MARTIN: Mr. Hubbs.

MR. HUBBS: At the moment, I would like to hear what Mr. Brown has to say before I withdraw.

CHAIRMAN MARTIN: Without objection, Mr. Brown may proceed.

MR. G. E. BROWN: For the sake of brevity, I have outlined a couple of points, Mr. Chairman. First of all, it seems to me that the legislature has periodically increased the exemptions by law, and once having done so, has not reduced these exemptions; second, the committee report as presented by Mr. Millard admits that most of the present language of

this article is statutory in nature and should be excluded from the new constitution; and, third, the present statutory enactments could and would remain in full force under this proposal, there being no conflict with such enactments. Judicial interpretation of present laws would apply. For example, where the exemption now applies to proceeds of sales where there has been a homestead sold, the proceeds are clothed with the same exemption.

If it is our purpose and intent to write a good fundamental law—leaving to the legislature those things which are legislative in nature—amounts, such as amounts of exemptions, should not be included in the constitution.

I would like to add further that in view of some of the comments made today, I'm awfully glad to see that the Republican party does not have a corner on the status quo proponents.

CHAIRMAN MARTIN: Mr. Hubbs.

MR. HUBBS: Mr. Brown, I would say that the proposal, with my amendment, is basically what the committee came forth with; and in effect your substitute wording doesn't radically change it. Since, however, our words were suggested to us by some eminent legal authorities—of course, I know you are also an eminent legal authority (laughter)—but these gentlemen are classified as egghead advisers, and I kind of like the words that they have come up with, and I'll stand with my committee's wording with my amendments, for the time being. I think that either one of them will accomplish the thing that we are trying to accomplish.

CHAIRMAN MARTIN: Mr. Brown, then, do you wish to offer your amendment as a substitute amendment?

MR. G. E. BROWN: In effect, wouldn't this be a substitute for his amendments? Mr. Chairman, if I might, I would like to point out to Mr. Hubbs there are a couple of things that I think are different than the committee's language. First of all, I think the committee should have used the words "forced sale on execution" instead of "forced sale or execution." There are forced sales presently which are not subject to the exemption, such as tax sales, mortgage foreclosures, and so forth. Furthermore, it says "as defined by law" in the committee proposal, whereas in mine it says "in such amounts and under such provisions and conditions as the legislature shall provide by law."

CHAIRMAN MARTIN: Mr. Brown, Mr. Hubbs has offered amendments to the committee proposal. I think that your amendment is essentially a substitute for the committee proposal. I think, therefore, that we should vote on the Hubbs amendments to the committee proposal, and then let you offer your substitute to the committee proposal, if you wish to do so.

The question is on Mr. Hubbs' amendments.

Mr. Kuhn.

MR. KUHN: I wish to speak in support of the Hubbs amendments. As a member of the committee on legislative powers, we discussed this subject at great length. Professor Kelly came in and spoke to us, and we told him of our thoughts on the question, and he did not agree with us. He thought we should put a floor in this section as far as exemptions went. We asked him to think about it and talk to some other authorities and report back, which Professor Kelly did; and when he reported back, he said he had now changed his mind, that he had talked to Professor Kauper, and the language that Mr. Hubbs had proposed was agreeable with Professor Kauper, and they thought this was the best language. I understand that Professor Kauper is an authority on constitutional law, being the author of one of the books which is used in the law schools in this state.

We do believe that this is a legislative function. To be absolutely honest with you, this is the original way it passed the subcommittee; that is, the Hubbs amendments. But after some reflection on the part of certain members, they decided that we should have a floor, because this would be possibly the only way we could get the constitution accepted. As Tom Downs has said, he thought it was a practical way. In other words, it is the belief—and an honest belief—of several members that the people would not accept it unless it had a floor. All agree that a floor was not necessary, because house bill 3 covers the subject matter perfectly.

Therefore, I am in support of Mr. Hubbs' amendments, and I would like to report to you that some other states—notably, Colorado, Illinois, Maryland, Mississippi and Montana—have substantially the same language. And this was a very close vote in our committee. In fact, I believe it was 7 to 6. Thank you.

CHAIRMAN MARTIN: The question is on the Hubbs amendments.

Mr. Habermehl.

MR. HABERMEHL: I think that the Hubbs amendments and the one that Garry Brown suggested both seem to miss the point of the committee proposal.

Neither—and I'll speak specifically to the Hubbs amendments—gives the legislature any more power than the legislature has now. The committee proposal would, in fact, limit the legislative power to a certain extent. It would say in effect that the legislature has this power, but subject to certain limits. That any exemption that might be granted could not be less than $3,500 in the case of real estate and $750 in the case of personal property. In other words, we will trust the legislature, but not quite completely. We will still put a floor there so that the figures as set by the legislature could not be reduced to a merely nominal figure, such as a dollar.

From the standpoint of selling it, as has been mentioned, I believe that the people would look for that sort of assurance; that the legislative power would not be wholly unrestricted in this field, but would be limited to the amounts as set in the committee proposal. For that purpose I believe that the committee proposal is a reasonable compromise between the power of the legislature and the wish, I believe, of the people to assure themselves that the legislature could not in effect abolish the exemptions.

For that reason, I would oppose the Hubbs amendments and support the committee proposal.

CHAIRMAN MARTIN: The question is on the Hubbs amendments.

Mr. Ford.

MR. FORD: Mr. Chairman, to make it clear from the outset, I want to oppose both the Hubbs and Brown amendments, because they are worse than the committee proposal when we look at the basic issue here, and this is the question of whether or not we are going to continue in the constitution some sort of a minimum guarantee of a homestead exemption.

The act, incidentally, that Frank Millard is talking about, act 236 of 1961, is the new judicature act. It has been before the legislature in every session for a number of years, and it finally squeaked by the last session with the entire bar association, through its various committees, pushing for one section or another of that act.

In the course of examining what the legislature might do if we don't have a floor and say they shall provide at least a minimum, as the committee proposal does—and to that extent we have to agree—I call your attention to article VII, section 5, which says—and this is in the 1908 constitution; it is not an amendment thereto—that the legislature shall abolish the distinction between law and equity proceedings in the courts in this state.

The act that Frank Millard is talking about finally did that in 1961. And that's what the Michigan legislature has done historically when you say to it you shall do thus and so.

After brief conference with eminent counsel over here, I voted against Miss Donnelly's amendment because it was pointed out that there was discrimination in the present provisions between platted and unplatted land, and if we went back to the committee and brought this to their attention, perhaps they could clean up the language a little bit. But I certainly would oppose either of the amendments that would permit us to go out of here and permit the people of the state of Michigan, examining the document that we present to them, to observe the possibility that the homestead exemption in Michigan could come to an end. I fear that this is the sort of thing that the people are not going to accept.

It is all very well to say that the legislature has gone along. But let's ask the question: what really has the legislature done? It hasn't done a thing that the constitution hasn't guar-

anteed to the people in this act. And to correct eminent counsel Brown, the legislature has never raised the amount of the exemption on real property. It was raised by a vote of the people in 1943 by way of a constitutional amendment.

The one advantage that the committee report has over the amendments that are now being considered by us is that it does put a floor which says that if there is a homestead exemption, it will be something more than a dollar; it would be at least the amount of money that they set forth. To that extent we have some protection left. But any of these amendments opens the door for the death of the homestead exemption in Michigan.

CHAIRMAN MARTIN: Mr. Downs.

MR. DOWNS: Mr. Chairman, I wish, too, to point out that if we simply adopt the language saying the legislature shall provide for exemptions, etc., we might as well leave that out. Because I think there is agreement that the legislature has that inherent power unless there is constitutional language to the contrary.

Now, we have talked about drawing up a sound document and a document that is acceptable. I think the two statements are not inconsistent.

But I do think that we need to distinguish between the statutory right and a constitutional right. I, for one, feel there is good argument for continuing the historic practice of saying there is a certain amount of property that the individual can keep regardless of any unfortunate debt situation he shall fall into.

We have been talking a lot about the rights of individuals. It would seem to me that this is one very good right of the individual to keep, though I do think there is a very logical question on what is a reasonable amount. And certainly none of us can anticipate exactly what is going to happen for the life of the ensuing document.

While in committee discussions I was not in complete agreement—as I don't believe anybody was—with the exact figures, this concept that there should be a floor did come out as a consensus feeling; and it would seem to me that having this protection that the committee recommended as a floor does have considerable merit.

There is a point that is raised when we say, "The legislature shall . . ." — and I'm sure there are people more familiar with constitutional law than I am. I think the fact that we now have the personal exemption in excess of this amount would, in my offhand judgment, mean that the legislature could not eliminate that, because that would be in the constitution. Now, if there were nothing in the statute, then I agree there would be the problem of getting the legislature to do anything where there wasn't an already existing statute. But it would seem to me that when we do have basic exemption statutes, this saying, "The legislature shall . . ." would mean the legislature could not go below the floor set here. That's one reason why I think the floor is of a low nature in the dollar figures, and so perhaps there is not the need for a comparable ceiling figure which has been brought up. Thank you.

CHAIRMAN MARTIN: Mr. Farnsworth.

MR. FARNSWORTH: In further support of the Hubbs amendments, without any amounts, there seems to have been a fear expressed by a couple of delegates that people might not be inclined to vote for the constitution if there are not floor amounts in there.

I just want to tell you it has been my observation over a great many years that the great multitude of people are strictly honest. When they are going into debt, they invariably have no thought whatsoever of ever making use of any kind of an exemption that is ever granted to them by statutory or constitutional provision. I think that when people are looking at the constitution and are going to decide whether they are going to vote for or against it, they are not going to be looking at whether there is a floor in there or not. This little provision saying that the legislature shall provide for it, I think, is plenty adequate. People just do not look for those things. The average person, the great majority of them—I don't know what the percentage is, but the great majority of them—are strictly honest. They are not looking for those loopholes.

It is not going to be something that people are going to vote against when you leave those amounts out.

CHAIRMAN MARTIN: Mr. Hubbs.

MR. HUBBS: Mr. Chairman, I appreciate the support of Mr. Farnsworth and the others who have agreed with me in removing the floor from the proposal and entirely eliminating dollar amounts. However, I detect the note in the argument that there should be some floor amount in there which will give people some degree of protection and persuade them to say yes when we vote on the constitution.

However, I would like to make this argument against dollar amounts. As far as I am concerned, I entered into a contract not long ago which based something on the bureau of labor statistics' consumer price index, and my contract hadn't been in force one month before they decided to change the base year and to change the consumer price index from 128.6, where it now stands, to probably 103 after the first of the year. Now, this is done to keep people thinking that things aren't changing, and it is ridiculous.

Now, a dollar today is not a dollar tomorrow; it wasn't a dollar yesterday. I don't think in any case that we should put a dollar amount into the constitution. If you must have a floor —and I submit that I trust the legislature to do what is right by the people; I don't think we need it—but if you must have a floor, let's change it to this kind of situation, where we express the minimum in terms of so many times a day's pay, as currently being paid in a particular labor market, or something of that sort.

If you use a standard that will change with the times, and not be variable from one day to the next, then this constitution will last. It won't be out of date 2 or 3 weeks from now. So I'm against putting dollar amounts in. I don't think we need them in this instance. But if we do have to put minimums in, let's do it by means of a rule which will produce an equitable settlement at any given time in the future, based on what a man earns when he goes to work at an 8 hour day or a 40 hour week, or whatever it may be.

CHAIRMAN MARTIN: The question is on the Hubbs amendments.

Will the secretary read the amendments again?

SECRETARY CHASE: Mr. Hubbs has offered the following amendments to Committee Proposal 12:

1. Amend line 7, after "property" by striking out "in the amount of not less than $3,500.00,".

2. Amend line 8, after "property" by striking out "in the amount of not less than $750.00"; so that the language will then read:

> The legislature shall provide by law for the exemption of real property and personal property, as defined by law, from forced sale or execution or other process of the court.

CHAIRMAN MARTIN: The question is on the Hubbs amendments. As many of those as are in favor will say aye. As many as are opposed will say no.

The amendments are not adopted.

SECRETARY CHASE: Mr. G. E. Brown has offered the following amendment to the committee proposal:

1. Amend page 1 by striking out all of lines 6 through 9 and inserting:

"Real and personal property shall be exempt from forced sale on execution or process of any court in such amounts and under such provisions and conditions as the legislature shall provide by law.".

CHAIRMAN MARTIN: The question is on the Brown amendment.

Mr. Brown.

MR. G. E. BROWN: Mr. Chairman, I will be very brief, having already explained my position on this matter. I think that this language is a little better, because of the few little areas—which are drafting matters—that eliminate some question that I think exists in the committee proposal which was used by Mr. Hubbs in his amendments.

I think, on the matter of exemptions, that the legislature has taken care of this in the past, and will continue to do so;

that this is not something that needs to be put in the constitution as far as amounts are concerned.

Mr. Childs, of course, in his manual, suggested a proposal or language that would not include dollar amounts. Other states do not do so. It has worked out elsewhere very well. I think this is a good area to make a change for the better and show that we do have some confidence in the legislature, which is the duly elected body to pass the laws that we will be guided by, whether a dollar is worth 10 cents today or worth $4 tomorrow. Thank you.

CHAIRMAN MARTIN: The question is on the Brown amendment. Mr. Hutchinson.

MR. HUTCHINSON: Mr. Chairman, I would like to say that I would go along pretty much with Mr. Brown's amendment except for the fact that in his amendment he has not got any reference to a floor, and it seems to me as though the committee has just now decided that it is going to have a floor in there. Consequently, I just want to serve notice on the committee that if Mr. Brown's amendment is voted down, I have still another amendment up there which does include the stated floors, but is worded more consistently, I think, with the expression on the floor here than is the committee proposal.

CHAIRMAN MARTIN: The question is on the Brown amendment. As many as are in favor will say aye. As many as are opposed will say no.

The amendment is not adopted.

SECRETARY CHASE: Mr. Hodges has offered the following amendment to the committee proposal:

1. Amend page 1 by striking out all of lines 6 through 9 and inserting:

"Real property shall be exempt in the amount of not less than $3,500.00 and personal property in the amount of not less than $750.00 from forced sale or execution or other process of the court.".

CHAIRMAN MARTIN: The question is on the Hodges amendment.

Mr. Hodges.

MR. HODGES: Just to explain the amendment, I think this might meet the criticism of Dr. Nord that we refer it to the legislature. What this does is set a floor as a statement of policy, without reference to the legislature. Although I think it is within the langauge, it is clear that the legislature would have the power to increase the amount.

CHAIRMAN MARTIN: Dr. Nord.

MR. NORD: Mr. Chairman, I would like to point out, in this connection, that I also have an amendment before the secretary, and it is almost identical with that read by Mr. Hodges, except there are a few differences. But the main one is that instead of saying "real property," mine says "homestead property." On that basis, it would seem to me that if we said, "homestead property shall be exempt," and so on, there's no question then that we have a floor on homestead property, and also on the basis of the Hodges amendment we would have a floor on personal property reasonably well established; and I wonder whether Mr. Hodges would accede to changing the word from "real" to "homestead"?

CHAIRMAN MARTIN: Mr. Hodges.

MR. HODGES: I don't believe so. I am a little concerned. I think that possibly the legislature in its wisdom, with this floor set, might conceivably set a different rate for homesteads than it would for other real property. But, in the absence of a homestead, there may be circumstances and times where real property should not be executed against. I think that this rate of $3,500 is not an unreasonable one. I think it is certainly inclusive of homesteads. Therefore, I think I would stay with my language.

CHAIRMAN MARTIN: The question is on the Hodges amendment. Will you read it again, please, Mr. Secretary?

SECRETARY CHASE: Mr. Hodges has offered an amendment to the committee proposal:

[The amendment was again read by the secretary. For text, see above.]

CHAIRMAN MARTIN: Mr. Staiger.

MR. STAIGER: Again, speaking on the Hodges amendment, the original provision made an exception that such exemption should not extend to any mortgage thereon lawfully obtained. The Hodges amendment would not make this exception. This, in effect, would mean that it wouldn't be the banks or the loaning institutions that would be harmed by this; it would, in effect, mean that the bank just wouldn't loan money unless they had a $3,500 down payment on it. I think it is going far beyond what we want to do, unless there is some exception made for mortgage payments. I think that that will have to be provided for at this or at some point in here before we are going to have the clear intent of the convention.

CHAIRMAN MARTIN: Mr. Hutchinson.

MR. HUTCHINSON: Mr. Chairman, I would like to support Mr. Staiger in this point. Let's get ourselves reoriented here, ladies and gentlemen, if we can, as to just exactly what we do in a constitution. At least it is my theory—and I think it is a very sound one—that it is the function of a state constitution to limit the power of the legislature. It is not a matter of granting power; it is a matter of limiting power.

Consequently, every word in this particular section that we are working on now, every word of this proposal, is to be construed as a limitation upon legislative power. And when you say that real property shall be exempt in the amount of not less than $3,500 and personal property shall be exempt in the amount of not less than $500, there is a limitation upon the legislature from which it cannot depart. It cannot make any conditions; it cannot make any exclusions from the exemption. It could not say that a mortgage could be lawfully obtained against property which otherwise would be exempt, because the constitution itself takes precedence; and the constitutional provision as the Hodges wording would have it would so far restrict the legislature in this field that it would be impossible to mortgage a homestead or any other real property that was of less than $3,500 in value.

Therefore, I respectfully oppose Mr. Hodges' proposition, and if we ever get to it, I have a substitute up there which takes care of the mortgage matter and takes care of the homestead matter, and I will discuss it when we get to it.

CHAIRMAN MARTIN: Mr. Everett.

MR. EVERETT: Mr. Chairman, I would like to offer an amendment to the Hodges amendment, which I have given to Mr. Chase.

CHAIRMAN MARTIN: The secretary will read it.

SECRETARY CHASE: Mr. Everett has filed the following amendment to the amendment offered by Mr. Hodges:

1. Amend the amendment after "court.", by inserting "Such exemption shall not extend to any mortgage lawfully obtained on said real or personal property.".

CHAIRMAN MARTIN: Mr. Everett?

MR. EVERETT: I think the amendment speaks for itself.

CHAIRMAN MARTIN: Mr. Brown.

MR. G. E. BROWN: Mr. Chairman, it occurs to me that in view of the self implementing language that we are suggesting for this constitution at the present time, and others that will be suggested later on, that very conceivably, taking a page from Dr. Nord's book, this should be referred back to the committee on legislative powers. Because very conceivably we won't have a legislature, and therefore there will be no necessity for this committee to be handling this proposal.

I therefore would move that when the committee rises, that we refer this back to the committee on legislative powers.

MR. BENTLEY: Mr. Chairman, I make a point of order under rule 47 against that motion.

CHAIRMAN MARTIN: The secretary, as parliamentarian, advises me that there has been intervening business, and that though this is the same motion that was previously made, because there has been intervening business it is in order, and it takes precedence over other matters.

The question is now on Mr. Brown's motion that when the committee do rise, it recommend that Committee Proposal 12 be referred back to the committee on legislative powers. As many as are in favor will say aye. As many as are opposed will say no.

The motion does not prevail.

Now, the question is on Mr. Everett's amendment to the Hodges amendment. Will the secretary read the amendment.

SECRETARY CHASE: Mr. Everett has offered the following amendment to Mr. Hodges' amendment, adding at the end thereof, after "court.", the following language "Such exemption shall not extend to any mortgage lawfully obtained on said real or personal property.".

CHAIRMAN MARTIN: The question is on the amendment to the amendment. As many as are in favor will say aye. As many as are opposed will say no.

The amendment to the amendment is not adopted.

Now, the question is on Mr. Hodges' amendment. Mr. Secretary, will you read that, just so we don't get confused here.

SECRETARY CHASE: Mr. Hodges has offered the following amendment:

1. Amend page 1, by striking out all of lines 6 through 9 and inserting:

"Real property shall be exempt in the amount of not less than $3,500.00 and personal property in the amount of not less than $750.00 from forced sale or execution or other process of the court.".

CHAIRMAN MARTIN: As many as are in favor of the Hodges amendment will say aye. As many as are opposed will say no.

The amendment is not adopted.

SECRETARY CHASE: Mr. Prettie has filed the following amendment:

1. Amend page 1 by striking out all of lines 6 through 9 and inserting:

"A homestead in the amount of not less than $3,500.00 and personal property in the amount of not less than $750.00 shall be exempt from forced sale or execution or other final process of any court. Such exemption shall not extend to any mortgage lawfully obtained on said real or personal property.".

CHAIRMAN MARTIN: Mr. Prettie.

MR. PRETTIE: This is an attempt, Mr. Chairman and ladies and gentlemen of the committee, to shorten the article. I think the work of the committee on legislative powers in that direction has been commendable. Its sole purpose is to establish a floor, which is what we have been talking about here for the last hour and a half. It does provide a definite floor, whereas the committee proposal leaves it to the legislature to establish such floor.

If this proposal has any place in the constitution whatsoever, I believe it is to assure the people of this state that there is a minimum amount of real and personal property that they may own and which shall not be subject to forced sale on execution or other legal process.

I fully recognize that the problem of a mortgage exists, and hence the amendment that I offer. I feel that the present provision of the constitution, which extends an exemption to personal property, has created no problem to the loan companies, who have loaned millions of dollars on the security of chattel mortgages covering household property which under the terms of article XIV, section 1, is presently exempt.

I don't think it raises any question, but to avoid any possibility of that question I have included in the amendment that I propose the clear language that the exemption does not apply to a mortgage validly obtained against either real or personal property so exempted.

CHAIRMAN MARTIN: The question is on the Prettie amendment. The secretary will read the amendment.

SECRETARY CHASE: Mr. Prettie has offered the following amendment:

1. Strike out the language of the committee proposal and insert:

"A homestead in the amount of not less than $3,500.00 and personal property in the amount of not less than $750.00 shall be exempt from forced sale or execution or other final process of any court. Such exemption shall not extend to any mortgage lawfully obtained on said real or personal property.".

CHAIRMAN MARTIN: The question is on the amendment. Mr. Hutchinson.

MR. HUTCHINSON: Mr. Chairman, I would like to ask Mr. Prettie a couple of questions, if he would care to answer. The first question I want to ask you about is where you use the language of the committee proposal—and I think it is definitely different than the present language—where you say "exempt from forced sale or execution or other final process," don't you think that that really should read, "forced sale on execution or other final process"?

MR. PRETTIE: I do not, sir.

MR. HUTCHINSON: You do not?

MR. PRETTIE: The reason for that answer: a forced sale may arise through the foreclosure of a mortgage by advertisement, which does not contemplate legal process. A forced sale may arise through property taken upon a writ of replevin or upon a foreclosure of a chattel mortgage by constable sale. No legal process is necessary.

MR. HUTCHINSON: I understand that. That's why I said I understood that there was a difference in meaning there. I just wonder whether what you are doing is further restricting the legislative discretion in the matter. You want to further restrict the legislature on this matter?

MR. PRETTIE: I don't think it is restricting it any further than it is presently, Mr. Hutchinson.

MR. HUTCHINSON: I submit to you that at the present time under the constitution the only thing that the legislature has to recognize is that there should be an exemption from a forced sale on execution. The legislature may go further. You and I will both agree that the legislature may go further than the constitution provides, because the constitution is not a grant of authority, but a limitation upon the legislature.

Consequently, at the present time all the constitution requires is that the legislature provide for an exemption upon forced sale on execution. Now, then, when you say "or execution," you are further limiting the power of the legislature.

MR. PRETTIE: Well, that may be your opinion. It doesn't happen to be in accord with mine, sir.

MR. HUTCHINSON: All right. Reasonable men may differ. But, on that point, you and I do differ, and that's one reason why I guess I can't support your amendment.

The other question I would like to ask of you is this. I think that your amendment pretty much follows the language of the first section of the present article, when you add to it the concept of homestead, except in that first section of the present article, "The personal property and homestead of every resident of this state . . . shall be exempted." In your amendment here that we are now debating, you do not refer to this matter of "resident of this state." Therefore, I submit that you are further restricting the power of the legislature, in that under your amendment the legislature could not limit this exemption to residents of the state.

Do you think that it is important—constitutionally, at least—that the power of the legislature should be limited only insofar as residents of this state are concerned?

MR. PRETTIE: I think your point is well taken, sir, and I would be happy to agree to any amendment that you might propose that would limit the personal property exemption to residents of the state. The homestead exemption, of course, would necessarily be restricted to residents of the state.

MR. HUTCHINSON: That's right. Now, Mr. Chairman, I would like to point out this situation. Of course, I have had no time to prepare any such amendment in writing. You see, I wanted to first discuss it with Mr. Prettie and get his reaction. We are right here on the question of voting for Mr. Prettie's amendment. Is it the ruling of the Chair that I have no power to offer from the floor orally an amendment to accomplish those purposes?

CHAIRMAN MARTIN: The Chair would rule that an amendment can be offered. I would indulge the delegate with sufficient time to write it out, if he would care to do so.

MR. HUTCHINSON: Of course, I can't write it out until I have the text of Mr. Prettie's amendment before me, which I do not have. I don't like to embarrass the progress of the committee by asking for an informal recess of the committee solely to accommodate me; but, on the other hand, we seem to be doing things here differently than we do in the senate. In the senate Mr. Chase was willing to accept an amendment made

by me or any other senator from the floor without the necessity of putting it in writing, and therefore the progress could go on.

CHAIRMAN MARTIN: Mr. Hutchinson, without objection, the Chair will rule that you may offer such an amendment from the floor, if we can get it in proper order here.

MR. HUTCHINSON: Will you then read the Prettie amendment?

SECRETARY CHASE: Mr. Prettie's language is as follows:

A homestead in the amount of not less than $3,500 and personal property in the amount of not less than $750 shall be exempt—

MR. HUTCHINSON: At which point I would add "of every resident of this state".

[Following is Mr. Hutchinson's amendment:

1. Amend the first sentence of the amendment after "property" by inserting "of every resident of this state".]

MR. PRETTIE: I rise to accept the amendment, sir.

SECRETARY CHASE: May the secretary ask Mr. Hutchinson just where you wish this inserted? After the sum $750.00?

MR. HUTCHINSON: Yes, because, as Mr. Prettie points out, a homestead necessarily would be of a resident of the state, and it couldn't be a homestead unless they lived on it.

SECRETARY CHASE: The only question in the secretary's mind, Mr. Hutchinson, is whether the language should be inserted after the words "personal property"—

MR. HOXIE: Mr. Chairman, I think we are dealing with an awfully important subject when we are dealing with the exemptions that people are entitled to. The committee on legislative powers has done considerable work. We don't mean to say that we are infallible at all. Certainly we welcome any suggestions that perhaps will improve the particular proposal before you.

I do not wish to delay your consideration of this matter. There is only one way that it can be done at this time, and that would be with a motion for the committee to rise to give Mr. Hutchinson or any other member adequate time in which to consider any amendment judiciously before it is presented to this committee; and I so move, Mr. Chairman, that the committee do now rise.

CHAIRMAN MARTIN: The question is on the motion that the committee do now rise. As many as are in favor will say aye. As many as are opposed will say no.

I believe the nays have it. A division is called for. Those who are in favor will rise.

SECRETARY CHASE: Fifty-nine.

CHAIRMAN MARTIN: Those who are opposed will rise.

SECRETARY CHASE: Fifty-seven.

CHAIRMAN MARTIN. The motion prevails. The committee will rise.

[Whereupon, the committee of the whole having risen, Vice President Hutchinson resumed the Chair.]

VICE PRESIDENT HUTCHINSON: The convention will be in order.

The delegate from the seventeenth senatorial district, Mr. Martin, is recognized.

MR. MARTIN: Mr. President, the committee of the whole has had under consideration several items regarding which the secretary will give a detailed report.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 8,** A proposal to provide that the governor may convene the legislature on extraordinary occasions. It reports this proposal back to the convention without amendment, and with the recommendation that it do pass.

VICE PRESIDENT HUTCHINSON: Pursuant to rule 57, **Committee Proposal 8** is referred to the committee on style and drafting.

For Committee Proposal 8, as referred to the committee on style and drafting, see above, page 375.

SECRETARY CHASE: The committee of the whole has also had under consideration **Exclusion Report 2004,** A report recommending the exclusion of article XI, section 13. It reports this exclusion report back to the convention without amendment and with the recommendation that it be adopted.

VICE PRESIDENT HUTCHINSON: The question is upon agreeing to the recommendation made by the committee of the whole that this exclusion report be adopted. All those in favor will say aye.

Mr. Ford.

MR. FORD: Mr. President, I would like to make a parliamentary inquiry. Are we now considering both items simultaneously?

VICE PRESIDENT HUTCHINSON: No, Mr. Ford. The question is upon the recommendation of the committee of the whole relative to this exclusion report as to section 13 of article XI. That's the salt spring lands matter.

MR. FORD: And this is the only thing before it?

VICE PRESIDENT HUTCHINSON: I asked the secretary, as a matter of procedure, whether it might not be a good practice to have these exclusion reports actually voted upon by the convention when the committee rises.

This for the reason that these exclusion reports going to the committee on style and drafting represent a final action of the convention upon the matter; and it does seem as though there should be a convention action as well as a committee of the whole action on these exclusion reports.

Therefore, I put the question this way. As many as are in favor of the adoption of the exclusion report will say aye. Those opposed will say no.

Exclusion Report 2004 is adopted and is referred to the committee on style and drafting.

For Exclusion Report 2004 as referred to the committee on style and drafting, see above, page 434.

SECRETARY CHASE: Mr. President, the committee of the whole has also had under consideration **Committee Proposal 12,** and has come to no final resolution thereon.

This completes the report of the committee of the whole.

VICE PRESIDENT HUTCHINSON: Mr. Ford.

MR. FORD: Mr. President, another inquiry, if I may. As I understood what happened when we got through here, there was almost a meeting of the minds on some language here. Is it my understanding that we would have to pass on this matter now, or at tomorrow's session, unless it is tabled?

VICE PRESIDENT HUTCHINSON: It is the opinion of the Chair that when the committee of the whole next meets, this matter which was last under consideration will be up for further debate.

Announcements?

Mr. Leppien.

MR. LEPPIEN: Mr. President, I think our administrative committee has done a splendid job in all of its work. However, I think there is one suggestion I would like to make. Now that the Chair has ruled that this convention is going to vote on exclusion matters by a vote of this convention, I wonder if I could dare suggest that the powers that be bring those committee exclusion reports back to us on different colored paper, one item on a sheet, for the record.

I don't think a motion is necessary, Mr. President. However, I would make it if you do so rule.

VICE PRESIDENT HUTCHINSON: Yes, I think the secretary can find another color.

Mr. Brake.

MR. BRAKE: Mr. President, while the hour is very late, there will be a very short meeting of the committee on finance and taxation starting about 10 minutes after we adjourn.

SECRETARY CHASE: I have the following announcements of committee meetings other than those enumerated in the composite calendar:

The committee on administration will meet in the conference room tomorrow, Thursday, at 11:15 p.m. Walter De Vries, chairman.

A note of change of time of the meeting of the subcommittee

on eminent domain, which will meet Friday, January 5, at 9:00 o'clock a.m. in room G. At this meeting all delegates who have proposals on this topic will be given an opportunity to be heard. Please notify the committee clerk of the miscellaneous provisions and schedule committee if you will appear. Paul R. Mahinske, chairman of the subcommittee.

The committee on legislative organization will meet in room D tomorrow, Thursday, at 8:30 a.m. John Hannah, chairman.

The subcommittee on metropolitan government of the local government committee will hold hearings on delegate proposals at 7:30 p.m. today, this evening, in committee room A. Also, hearings on proposals will again be held tomorrow at 3:00 o'clock or as soon as possible after the convention session adjourns; and again on Friday, January 5, at 8:30 a.m. You will be notified later as to the room where the Thursday and Friday meetings will be held. Glenn S. Allen, Jr., chairman of the subcommittee. The subcommittee on annexation and consolidation of the local government committee will meet at 7:30 p.m. January 3, today, in room 133 of the Lewis Cass building. Said subcommittee will meet again at 8:30 a.m. tomorrow. You will be notified as to what room has been assigned for the Thursday meeting. Delegate Charles Follo, chairman.

The committee on rules and resolutions is scheduled to meet next Monday, after the session, in room I.

VICE PRESIDENT HUTCHINSON: Mr. DeVries.

MR. DeVRIES: Mr. President, I have just been informed that the Democratic delegation has a caucus tomorrow afternoon. Lest I be accused of interfering with the democratic process, the committee on administration will not meet tomorrow noon.

SECRETARY CHASE: The secretary has been requested to read the following announcement. The cigars and candy that are being furnished today are in honor of the arrival of Miss Ann Marie Bentley on December 30, 1961, at Owosso. (applause)

The apples today are from Mr. J. B. Richards. (applause)

VICE PRESIDENT HUTCHINSON: Mr. Martin.

MR. MARTIN: Mr. President, the committee on executive branch had scheduled a special meeting this afternoon, which will not be held. It will meet tomorrow afternoon at its usual time immediately after the session to hear delegate proposals, and on Friday morning at 8:30.

VICE PRESIDENT HUTCHINSON: Mr. Hoxie.

MR. HOXIE: Mr. President, I would like to call to the attention of the members of the legislative powers committee that all 4 subcommittees will meet tomorrow morning at 8:30. I urge everyone to be present.

SECRETARY CHASE: With regard to the announcement made previously concerning the subcommittee on metropolitan government meeting on Thursday at 3:00 o'clock and Friday at 8:30, these committee meetings will be in room A. Delegate Allen is chairman of the subcommittee.

The mileage and salary checks which have not yet been picked up by delegates are available in the office of the secretary.

We have the following requests for leave of absence:

Delegate Gover would like to be excused from tomorrow's session.

Delegate John Hannah is asking leave of the convention from the sessions of January 4 and 5, Thursday and Friday. On January 4 he is making a speech in Washington at a conference on Equal Opportunities for Higher Education, which is a keynote speech on the morning of the fourth.

The Ford foundation and Carnegie corporation have jointly set up a new fund of $2,500,000.00 to be handled by a new group to explore the possibilities and appropriate roles for American colleges and universities in international affairs. I have been made one of the directors of this group, and they are holding their first meeting in New York on January 5. I feel that this meeting is of such importance that I should be in attendance.

Sincerely, John A. Hannah.

VICE PRESIDENT HUTCHINSON: Without objection, Mr. Hannah and Mr. Gover will be excused as requested. The Chair hears no objection, and the requests are granted.

Mr. Follo.

MR. FOLLO: Mr. President, word has arrived here this afternoon of the sudden death of Senator William Miron, of the thirtieth senatorial district, of a heart attack shortly after noon today.

I would move that this convention send its condolences to his family.

VICE PRESIDENT HUTCHINSON: Without objection, it will be so ordered.

The Chair is grieved to learn of the death of Senator Miron. It was my pleasure to serve with him in the senate for several terms, and he was highly respected in that body. Will the delegates please rise for a moment of silent tribute to the memory of Senator Miron.

[Whereupon, for one minute the delegates stood in silent tribute.]

Thank you.

Mr. Karn.

MR. KARN: Mr. President, Mr. James Thomson has been ill all during the holiday week, and has asked that I enter an excuse for him covering Thursday and Friday of this week. He is out today, but unable to come over for the last part of the week.

VICE PRESIDENT HUTCHINSON: Without objection, Mr. Thomson will be excused due to illness. The Chair hears no objection, and the excuse is granted.

Are there any further announcements? If not, what is the pleasure of the convention?

The delegate from Wayne, Mr. Downs.

MR. DOWNS: Mr. President, I move we adjourn.

VICE PRESIDENT HUTCHINSON: The question is upon the motion that the convention do now adjourn. All those in favor will say aye. Those opposed?

The motion prevails, and the convention stands adjourned until tomorrow at 2:00 p.m.

[Whereupon, at 4:30 o'clock p.m., the convention adjourned to Thursday, January 4, 1962, at 2:00 o'clock p.m.]

FIFTIETH DAY

Thursday, January 4, 1962, 2:00 o'clock p.m.

PROCEEDINGS

PRESIDENT NISBET: The convention will please come to order.

Our invocation today is to be given by the Reverend M. Schuurmans of the Delta Center Methodist Church of Lansing.

REVEREND SCHUURMANS: Shall we stand, please. Let us pray. We bow before Thee, our heavenly Father, as the creator and sustainer of the universe, to whom we as Thy children are responsible and obligated.

We thank Thee for the revelation that Thou art concerned and interested in the concerns of men and that through Thy holy spirit Thou canst help us in our need. We thank Thee for our blessed country and pray Thy blessing and guidance upon President Kennedy, the congress, and all those who lead us during these trying and difficult times. We thank Thee, too, for our great state of Michigan with all its beauty and its unexcelled opportunities for attaining the good life. Bless our governor, the legislature, and all those officials who direct the affairs of this state. Above all we thank Thee that we are free men who live in a democracy where we establish our own government, where the best interest of the majority is our ideal, but also where the rights of the individual are held sacred.

We thank Thee for this constitutional convention and we invoke Thy blessing and guidance upon each of its members. We pray for inspiration and vision and wisdom that the deliberations now under way may provide for our people a state constitution that will promote the public welfare for many, many years to come. May posterity be able to look back upon this body and call it blessed because of what it has accomplished.. Keep us in Thy favor and look upon us in Thy mercy. Forgive us, Lord, wherein we fail Thee and fall short of Thine expectations of us. We pray, Lord, in our Master's name and for His sake. Amen.

PRESIDENT NISBET: The roll call will be taken by the secretary. Those present please vote aye.

SECRETARY CHASE: Has everyone voted? The machine is now locked and the attendance will be recorded.

Mr. President, a quorum of the convention is present.

Prior to today's session, the secretary received the following requests for leave:

Mr. G. E. Brown, from today's session to be a pallbearer at a funeral in Kalamazoo; and Mr. Van Dusen from today's session as he must attend a board of directors meeting.

PRESIDENT NISBET: Without objection, the requests are granted.

SECRETARY CHASE: Absent with leave: Messrs. G. E. Brown, J. A. Hannah, Pellow, Perlich, Thomson, Van Dusen, Wood and Young.

Absent without leave: None.

PRESIDENT NISBET: Reports of standing committees.

SECRETARY CHASE: The committee on declaration of rights, suffrage and elections, by Mr. Pollock, chairman, reports back to the convention **Delegate Proposal 1018,** A proposal to clarify legislator's immunity from arrest; with the recommendation that the proposal be referred to the committee on legislative powers.

James K. Pollock, chairman.

PRESIDENT NISBET: Without objection it will be so referred. Hearing none, it is referred to the committee on legislative powers.

SECRETARY CHASE: The committee on declaration of rights, suffrage and elections, by Mr. Pollock, chairman, reports back to the convention **Delegate Proposal 1022,** A proposal to provide 4 year terms for members of the legislature; with the recommendation that the proposal be referred to the committee on legislative powers.

James K. Pollock, chairman.

PRESIDENT NISBET: Without objection the recommendation will be approved. Hearing none, it is referred to the committee on legislative powers.

SECRETARY CHASE: The committee on declaration of rights, suffrage and elections, by Mr. Pollock, chairman, reports back **Delegate Proposal 1047,** A proposal to provide a 4 year term of office for legislators, the governor, lieutenant governor, secretary of state, state treasurer, auditor general, and attorney general, and to fix the time of such elections; with the recommendation that this proposal be referred to the committee on legislative powers.

James K. Pollock, chairman.

PRESIDENT NISBET: Without objection the report will be accepted and the proposal referred. Hearing none, it is referred to the committee on legislative powers.

SECRETARY CHASE: The committee on declaration of rights, suffrage and elections, by Mr. Pollock, chairman, also reports back **Delegate Proposal 1067,** A proposal to divide the state into 8 territorial districts for nonpartisan election of certain state officials; with the recommendation that the proposal be referred concurrently to the committees on education and judicial branch.

James K. Pollock, chairman.

PRESIDENT NISBET: Without objection the referral will be made as recommended. Hearing none, it is concurrently referred to the committees on education and judicial branch.

SECRETARY CHASE: The committee on declaration of rights, suffrage and elections, by Mr. Pollock, chairman, also reports back **Delegate Proposal 1232,** A proposal to guarantee to every citizen of Michigan an equal opportunity to vote and to have his vote counted equally, regardless of race, creed, color, national origin, or geographical location; with the recommendation that the proposal be referred to the committee on legislative organization.

James K. Pollock, chairman.

PRESIDENT NISBET: Without objection, the report of the committee will be accepted and it will be so referred. Hearing none, it is referred to the committee on legislative organization.

SECRETARY CHASE: Mr. Erickson, for the committee on miscellaneous provisions and schedule, introduces **Committee Proposal 14,** A proposal pertaining to the preamble to the constitution;
with the recommendation that it pass.

Claud Erickson, chairman.

For Committee Proposal 14 and the reasons submitted in support thereof, see below, page 464.

PRESIDENT NISBET: Referred to the committee of the whole and placed on the general orders calendar.

SECRETARY CHASE: Mr. Pollock, for the committee on declaration of rights, suffrage and elections, introduces **Committee Proposal 15,** A proposal to amend article II pertaining to the declaration of rights;
with the recommendation that it pass.

James K. Pollock, chairman.

For Committee Proposal 15 and the reasons submitted in support thereof, see below, page 464.

PRESIDENT NISBET: Referred to the committee of the whole and placed on the general orders calendar.

SECRETARY CHASE: That is all of the standing committee reports.

PRESIDENT NISBET: Reports of select committees.

SECRETARY CHASE: None.

PRESIDENT NISBET: Communications from state officers.

SECRETARY CHASE: None.

PRESIDENT NISBET: Second reading of proposals.

SECRETARY CHASE: Nothing on that calendar.

PRESIDENT NISBET: Third reading of proposals.

SECRETARY CHASE: Nothing.

PRESIDENT NISBET: Motions and resolutions.

SECRETARY CHASE: There are no motions or resolutions on file.

PRESIDENT NISBET: Unfinished business.

SECRETARY CHASE: None.

PRESIDENT NISBET: Special orders of the day.

SECRETARY CHASE: None.

PRESIDENT NISBET: **General orders of the day.**

The Chair recognizes Mr. Martin.

MR. MARTIN: Mr. President, I move that the convention resolve itself into committee of the whole for consideration of the items on the general orders calendar.

PRESIDENT NISBET: The question is on the motion of Mr. Martin that we resolve ourselves into committee of the whole. All in favor say aye; opposed, no.

The motion prevails.

Mr. Martin, will you take the Chair.

[Whereupon, Mr. Martin assumed the Chair to preside as chairman of the **committee of the whole.**]

CHAIRMAN MARTIN: The committee will be in order.

The secretary will read the matter now pending before the committee of the whole.

SECRETARY CHASE: From the committee on legislative powers, by Mr. Hoxie, chairman, **Committee Proposal 12,** A proposal pertaining to exemptions as a substitute for all of article XIV.

When the committee of the whole rose on yesterday afternoon, there was pending an amendment offered by Mr. Prettie to which an amendment had been offered by Mr. Hutchinson.

For last previous action by the committee of the whole on Committee Proposal 12, see above, page 435.

CHAIRMAN MARTIN: The Chair recognizes Mr. Prettie.

MR. PRETTIE: Mr. Chairman and fellow delegates, in the hope that we may unwind ourselves from the parliamentary snarl in which we found ourselves yesterday and expedite our procedure, I wish to withdraw the amendment submitted yesterday.

CHAIRMAN MARTIN: The amendment is withdrawn. There was an amendment to that amendment, Mr. Chase, and the amendment to the amendment falls automatically.

Is that satisfactory, Mr. Hutchinson?

MR. HUTCHINSON: Yes, we have another. (laughter)

SECRETARY CHASE: Mr. Hutchinson had previously filed another amendment.

CHAIRMAN MARTIN: Mr. Hutchinson.

MR. HUTCHINSON: Mr. Chairman, I withdraw the amendment that I offered.

CHAIRMAN MARTIN: The amendment is withdrawn.

SECRETARY CHASE: Dr. Nord had filed an amendment.

CHAIRMAN MARTIN: Dr. Nord.

MR. NORD: Mr. Chairman, I have already withdrawn that, too.

CHAIRMAN MARTIN: All right, Dr. Nord's amendment is withdrawn.

SECRETARY CHASE: Mr. Hoxie, for the committee on legislative powers, offers the following sustitute for Committee Proposal 12:

> A proposal pertaining to exemptions as a substitute for all of article XIV.
>
> The committee recommends that the following be included in the constitution:
>
> A homestead in the amount of not less than $3,500.00 and personal property of every resident of this state in the amount of not less than $750.00, as defined by law, shall be exempt from forced sale on execution or other process of the court. Such exemptions shall not extend to any mortgage or other lien thereon lawfully obtained.

CHAIRMAN MARTIN: Are there any amendments to the body of the substitute?

Mr. Hoxie, do you wish to discuss this? Or Mr. Millard?

MR. HOXIE: Mr. Chairman and fellow delegates, Mr. Millard will carry on in the discussion that the membership feels advisable. You will note that we had delivered to the desk of each delegate a copy of the substitute proposal. If there are any questions, I am sure Mr. Millard will be happy to answer them.

CHAIRMAN MARTIN: Mr. Millard.

MR. MILLARD: Mr. Chairman, members of the committee, yesterday we saw the legislative process in one of its active moments. I think that everybody learned a lot from the matters as they emerged. That seems to be a new word around this convention, "emerging."

At the time of the adjournment, we were in the process of hammering out what I thought would be an acceptable proposal. After the session I got together with Mr. Hutchinson, who had an amendment in, and Mr. Prettie and with the research director, Dr. Joiner, and we have a substitute proposal on your desk which I think covers all of the objections that were made yesterday. I might add that I think the proposal, the original proposal of the committee, was satisfactory; however, I realize there were certain objections and we have tried to take care of them.

You all have the substitute proposal in front of you. You will note that instead of "real estate" we substituted the word "homestead" for which there was some sentiment yesterday. Then we made it self executing rather than having it left to the will of the legislature. As I said yesterday, the word "shall" in there made it practically mandatory because the legislature does do what is in the constitution, but nevertheless, we made this a self executing provision. Now, this was not new, because this same provision was self executing as far as personal property was concerned in section 1 of the old article. So all we did was make it self executing as far as the real property or the homestead property was concerned.

I think the reason that there was a distinction made in the 1908 constitution was the fact that there was a floor on personal property and a ceiling on real property. Now we have put a floor under both of them. We have made this a self executing clause in both of them, so that it will read:

> A homestead in the amount of not less than $3,500.00 and personal property of every resident of this state . . .

We added those words which were in the old section.

> . . . every resident of this state in the amount of not less than $750.00, as defined by law, ...

There has been a definition of homestead law in the statutes since 1848 — that was the original statute — and it has gone right down through the years and is still the law. So we put in there

> . . . as defined by law, shall be exempt from forced sale on execution or other process of the court. Such exemptions shall not extend to any mortgage or other lien thereon lawfully obtained.

We added that clause, that sentence, because some of the lawyers had raised the question. However, I wish to state that there has been that provision since 1848; before there was any constitutional provision there was this exemption. The exemption did not extend to mortgages, and that has been carried down, right down to the present time. If any of the lawyers present want to take the citation, I have it here. It is section 27.1573, Michigan Statutes Annotated, and this was amended after the amendment of 1943. It was amended by the legislature in 1945, containing the same language that was in that amendment; so that I think we have taken care

of all of the objections of yesterday and, therefore, I move the adoption of the substitute proposal as presented.

CHAIRMAN MARTIN: Are there any amendments to the body of the substitute proposal?

SECRETARY CHASE: Messrs. Mahinske and Erickson offer the following amendment to the substitute:

1. Amend the first sentence after "process of" by striking out "the" and inserting "any"; so the language will then read: ". . . shall be exempt from forced sale on execution or other process of any court."

CHAIRMAN MARTIN: Mr. Mahinske.

MR. MAHINSKE: Mr. Chairman, under the wording of the committee proposal, I am not so sure that the phrase "the court" may not be strictly construed to exclude some courts.

I notice under the 1908 constitution in section 1, the reference is made to "final process of any court," and in section 2, the reference is made to "final process from a court." I interpret both of these words as being inclusive of all courts that we now have or may have in this state, and I do not know that the phrase "the court" includes all courts. Now if we would interpret this as "the court," I immediately think of the supreme court and, at the same time, this conflicts with what has been said prior to this, that is, "the court" may not necessarily be interpreted to exclude, say, justice courts or municipal courts.

CHAIRMAN MARTIN: Mr. Millard.

MR. MILLARD: Mr. Chairman, I have no objection to that.

CHAIRMAN MARTIN: The question is on the amendment of Messrs. Mahinske and Erickson.

Mr. Yeager.

MR. YEAGER: Mr. Chairman, I would like to ask Mr. Millard one question for purposes of clarity. The expression "as defined by law" should that follow the words "personal property" or does it refer to every resident of the state? Is there going to be any conflict because of the way "as defined by law" is put there?

MR. MILLARD: We discussed that in the committee this morning. There was a comma after "$3,500." At one time I was at a meeting of the style and drafting committee and they talked about loose commas and tight commas, so we considered this was a loose comma and we unloosed it and took it out; so that now "defined by law" refers to everything ahead of that comma after "$750" and includes both the "homestead" and the "personal property" and includes that whole section.

CHAIRMAN MARTIN: The question is on Messrs. Mahinske and Erickson's amendment. As many as are in favor will say aye. As many as are opposed will say no.

The amendment to the substitute is adopted.

Mr. Woolfenden.

MR. WOOLFENDEN: Mr. Chairman, I have another amendment to suggest which I have submitted to the secretary.

SECRETARY CHASE: Mr. Woolfenden offers the following amendment to the substitute:

1. Amend the second sentence after "extend to" by inserting "property subject to"; so that the language will then read "Such exemptions shall not extend to property subject to any mortgage or other lien thereon lawfully obtained."

CHAIRMAN MARTIN: Mr. Woolfenden.

MR. WOOLFENDEN: I believe the amendment is self explanatory. As I read the sentence without the amendment, it is ambiguous and it would appear that the "mortgage or other lien thereon" would be on the exemptions, and I believe this clarifies the intent of the sentence.

I move adoption of the amendment.

CHAIRMAN MARTIN: The question is on the amendment of Mr. Woolfenden.

Mr. Downs.

MR. DOWNS: I think we all have trouble trying to understand things without having them before us. I wonder if I could ask the maker of the amendment for a little further explanation. For example, if, say, a home worth $15,000 had a $5,000 mortgage on it, would the person still get the exemption for the $10,000 value? I just wanted to have that point cleared up by the proposed language.

MR. WOOLFENDEN: I don't think that the language I suggested changes the intent of the sentence, but the sentence as it comes back from the committee is not intelligible to me. Maybe I am the only delegate who does not understand it, but it seems to me that is is merely a matter of grammar.

CHAIRMAN MARTIN: Mr. Hutchinson.

MR. HUTCHINSON: Mr. Chairman, this matter that Mr. Woolfenden now brings up was mentioned to me yesterday by Mr. Joiner, and I pointed out to Mr. Joiner that the phrase as it is now here, "Such exemption shall not extend to any mortgage . . .", is the phraseology exactly as it is in the present constitution and as it always has been.

What I fear if you add the words "property subject to" is that it might then be construed, if you had a $5,000 mortgage on your homestead, that you would lose the entire exemption. I don't think that was the intent.

CHAIRMAN MARTIN: Mr. Woolfenden.

MR. WOOLFENDEN: May I ask Delegate Hutchinson a question? I think the thing that perplexes me is the word "thereon." I believe that what I have in mind might be accomplished if the word "thereon" were eliminated. To what does the word "thereon" refer in this sentence?

MR. HUTCHINSON: I see your point, Mr. Woolfenden. I would hope that it would refer to a homestead or to the personal property which is exempt.

MR. WOOLFENDEN: I think that was the intent, but I don't think that is the way it reads.

MR. HUTCHINSON: Well, I see your point. On the other hand, I trust you see my problem here that if you just put in that "property subject to," you might be wiping out the entire exemption and not just to the extent of the mortgage or lien.

MR. WOOLFENDEN: Perhaps if the period after the words "process of the court" were changed to a semicolon, it would accomplish what we are after, but as the language now stands the word "thereon" in an independent sentence, I think, refers to nothing unless it refers to exemptions.

CHAIRMAN MARTIN: Mr. Nord.

MR. NORD: I would like to suggest that Mr. Hutchinson's view on this is correct. It would be preferable to take a risk that the grammar is not perfect, especially in connection with the word "thereon," but it would not be safe to take the risk and add the words as Mr. Woolfenden has suggested because that, I believe, is absolutely unambiguous and means what we do not wish it to mean.

It says, "Such exemptions shall not extend to property subject to" a mortgage. That obviously means property interests which are bigger than the mortgage debt, the entire property. So, therefore, as was pointed out by Mr. Hutchinson and, I believe, Mr. Downs as well, if property which is homestead property, for example, has any mortgage no matter how small, the entire exemption on the homestead is lost according to this. Of course, it is true, the legislature could put it back again, but the point is that the guarantee is lost.

I see no reason to risk wiping out the exemption just on account of grammar. It seems to me that although there may be some possible grammatical objection to the language here, it is not a serious objection and we would be better off leaving the language as it is. I would also like to add, while I am on my feet, that I believe the language as we now have it satisfies all the objections I raised and everyone raised yesterday, and we ought to decide to adopt the language as we have it now.

CHAIRMAN MARTIN: Mr. Ford.

MR. FORD: Mr. Chairman, I would like to ask Mr. Millard a question with respect to the language. Now the present constitution reads:

> . . . shall be exempt from forced sale on execution or any other final process from a court. Such exemption shall not extend to any mortgage thereon lawfully obtained, but such mortgage or other alienation of such land. . . .

and it is very clear in the present constitution that the only

way you can waive this exemption and create a lien that would have priority over the exemption is by a deliberate act, either a mortgage or some other form of alienation that would divest you of the right to title.

Now I don't know what "or any other lien thereon lawfully obtained" might be construed to mean, and it is conceivable that the legislature might say that a lien obtained for a tort judgment, for example, is a lien "lawfully obtained" within the meaning of this, and we get back to where we started yesterday. So I have this question, does this language express the intent of what you are trying to do?

CHAIRMAN MARTIN: Mr. Millard.

MR. MILLARD: There have been court decisions that mechanics' liens are excepted and these exemptions are not extended to them when the contract is signed by both the wife and the husband on the homestead property, and we made that to go also. We say "such exemptions." Now that "s" refers both to the exemptions of personal property and to homestead property, so that it goes to chattel mortgages as well as encumbrances on land, and liens, land contracts, and conditional sales contracts which are properly recorded that are lawful.

CHAIRMAN MARTIN: Mr. Ford.

MR. FORD: You see, this is where the problem arises. The present language of the constitution makes it eminently clear that they intended the exception from this to be only where the people voluntarily placed their property outside of the protection of this lien and, as Mr. Millard points out, where the husband and wife sign a contract for improvements to the property, it has been held that a mechanics' lien based on that contract is not within the purview of the present language. But the question here is why put in "or other lien"? Why don't we use the language that has been good since 1850 and has been interpreted by the courts and play safe?

CHAIRMAN MARTIN: Mr. Boothby.

MR. BOOTHBY: Mr. Chairman, I would like to direct a question to Mr. Woolfenden. I would like to ask him if he would have any objection to adding the following words after the conclusion of the last sentence, after the word "obtained," adding the words "to the extent of the mortgage or lien"?

MR. WOOLFENDEN: I would have no objection to that. I am persuaded by Delegates Hutchinson and Nord that the language submitted in my amendment is subject to abuse and I would like to withdraw the amendment.

CHAIRMAN MARTIN: The amendment is withdrawn.

MR. BOOTHBY: I would like to redirect the question to Mr. Woolfenden and ask him whether he feels this abuse would be present if the sentence did in fact read, "Such exemptions shall not extend to property subject to any mortgage or other lien thereon lawfully obtained to the extent of the mortgage or lien." Would then the objection of Mr. Hutchinson be present? Maybe I should address that question, also, to Mr. Hutchinson.

CHAIRMAN MARTIN: Mr. Hutchinson.

MR. HUTCHINSON: Mr. Chairman, I would like to ask again — Mr. Boothby, would you tell me how this sentence would read if your amendment were adopted?

MR. BOOTHBY: Well, I do not have an amendment in. I only raised the question. The wording would be "Such exemptions shall not extend to property subject to any mortgage or other lien thereon lawfully obtained to the extent of the mortgage or lien."

MR. HUTCHINSON: Well, Mr. Chairman, in answer to the inquiry, I would like to invite the attention of everybody to the fact that the present language of the constitution has to do — and I refer to the section 2 — and the language there is, and has been for over 100 years, "Such exemption shall not extend to any mortgage thereon lawfully obtained . . ."

Now that is the phraseology as it has been interpreted for 100 years, ". . . any mortgage thereon lawfully obtained."

The courts have not construed that that applied to the mortgage and not to the property. That is a separate sentence just as it is in this proposal. In other words, this language, "Such exemption shall not extend to any mortgage thereon lawfully obtained . . ." is the same context independent of any other statement in this proposal and just as it is in the present constitution. The only thing is that they have added "or other lien". I don't think that would change it at all.

I do not see, in view of the long history of this, that we have got anything substantive to argue about, and I prefer to have the language continue just as it has been for 100 years. I might suggest to you that if upon further reflection there did appear to be an inconsistency which genuinely does concern the attenders of commas, periods and question marks in the style and drafting committee of which I am a member, we could perhaps fix it up there or send it back and ask the convention to consider it further, rather than try to hammer out some language here on the floor at this present time which has not been thoroughly thought out and agreed upon.

CHAIRMAN MARTIN: Mr. Boothby.

MR. BOOTHBY: I agree to that.

CHAIRMAN MARTIN: Mr. King.

MR. KING: Mr. Chairman, my question was somewhat along the lines of Mr. Boothby's. I thought that perhaps the wording, "Such exemptions shall not extend to the amount of any mortgage or other lien thereon lawfully obtained" would solve the problem, but I am somewhat persuaded by Mr. Hutchinson's remarks that in view of the long standing court interpretation of the present language we might be all right, but I am not satisfied that the wording "or other lien thereon lawfully obtained" does not present a new problem in line with what Mr. Ford had suggested. I think we ought to discuss that, so I will withdraw my suggestion and would like to hear more from Mr. Ford with regard to these other liens "lawfully obtained."

CHAIRMAN MARTIN: Mr. Lawrence.

MR. LAWRENCE: Mr. Chairman, I would like to speak in support of Mr. Hutchinson's suggestion in view of the long standing wording and the fact that this has been interpreted. I would be concerned — and I think you should give some thought to this — that if you added the words "to the extent of the mortgage or lien," it might be construed not to cover taxes, insurance premiums, and expenses that would be incurred by a mortgagee or a lien holder in the foreclosing or closing of that lien. In other words, "to the extent of the mortgage or lien" might be construed to be words of limitation rather than as words of permission.

CHAIRMAN MARTIN: Thank you, Mr. Lawrence.

Mr. Ford.

MR. FORD: Mr. Hutchinson and I, I think, are in agreement and, as I say, I would like to retain the present language. Now the present language says, ". . . shall not extend to any mortgage thereon lawfully obtained," and the only thing new we are putting in is "or other lien," and I am fearful that people are going to seize upon this as a reason for imposing other forms of lien than those which are deliberately placed upon the homestead by the parties who benefit by the protection we are trying to put into the constitution, and I would ask him if he might consider deleting those 3 words so that we would go back to the original language.

CHAIRMAN MARTIN: Judge Dehnke.

MR. DEHNKE: Mr. Chairman and fellow members of the committee, I think that language is of some importance. I can conceive of a possibility of a husband and wife obtaining title to a piece of property and a court later finding that they obtained that title through misrepresentation or fraud, and in that case the decree would provide that the opposite party is entitled to a rescission and a lien on the property, and including this language would eliminate any room for argument on that. Also, in a divorce decree the title might be given to the husband and the wife might be given a lien on it, and then the question could be raised.

If we strike out this language — it was the intent of this convention not to — how should it apply to that kind of lien? Those are merely 2 illustrations of others that might be found.

CHAIRMAN MARTIN: Thank you.

Mr. Cudlip.

MR. CUDLIP: Mr. Chairman, this last sentence, I think,

is bothersome. I think what Delegate Ford is getting at is this, and he made himself clear. Liens arise in 2 ways: by operation of law or by contract, and by voluntary act of the parties. Those that arise by operation of law are those such as mechanics' liens, tax liens, liens that are imposed by law despite your wishes. Now we speak of mortgages. We really mean mortgage indebtedness, I suppose, that pertains to real estate and that is there because of the constitutional history.

Personal property, of course, can be mortgaged by chattel mortgage, but it can also be subject to other liens such as pledges, et cetera, and I am just making these observations because I am not clear as to whether "or other lien" is intended to cover liens arising by operation of law as well as those that are contracted for, such as pledges of security with a bank, and I am not sure that if you throw this into the lap of another committee that we will have an idea of the full meaning, because if we are going to exempt, as planned here, real and personal property liens, we ought to make it clear that we mean only voluntary liens, or voluntary liens plus those imposed by operation of law, and mechanics' liens were cited as one illustration in the case of real property, and there are many other types of such liens. I am just making an observation.

CHAIRMAN MARTIN: Thank you. Are there any other amendments to the body of the substitute proposal?

SECRETARY CHASE: Mr. Ford offers the following amendment:

1. Amend the substitute following the last line by inserting 2 paragraphs to read as follows:

"The homestead of a family, after the death of the owner thereof, shall be exempt from the payment of his debts in all cases during the minority of his children.

If the owner of a homestead dies, leaving a widow but no children, such homestead shall be exempt, and the rents and profits thereof shall accrue to her benefit during the time of her widowhood unless she be the owner of a homestead in her own right.".

CHAIRMAN MARTIN: Mr. Ford.

MR. FORD: I came to Lansing expecting to be one of the last delegates to be pleading for something because we have had it for 100 years and that makes it good, but this is merely what Miss Donnelly had yesterday, adding sections 3 and 4 of the present constitution in that. They are very short sections. We have now condensed this section — 1 and 2 — into a single paragraph, a simple paragraph that is contained in the committee report, and all this would do would be to continue the tradition of extending the homestead benefits to the immediate family.

Now if you take a quick look at the statutes that have implemented this exemption, you find that if the family is very clearly defined, the conditions under which they can continue to claim the exemption are clearly defined, and, as was pointed out by Mr. Millard, the judicature act will continue this provision starting in 1963, assuming that we adopt this constitution without putting it in; but I think that a careful examination of the statutes will indicate that what the statute actually does is not create the right but define the right that is created by the constitution.

I am fearful that if we do not continue the protection for the widow and the children in the tradition that it has been continued that the legislature standing alone is not going to be sufficient. I do not want to precipitate a discussion of whether we can trust the legislature to take care of widows and children. This is not my fear. My fear is that we are departing from a tradition, that we have a body of law including a new statute that has a lot of work in it that contemplates this language that is in the present constitution and I do not think that it does violence to the principles that we are trying to espouse and the object we are trying to accomplish here. That is the reason for my amendment.

CHAIRMAN MARTIN: Thank you. The question is on the Ford amendment.

Mr. Millard.

MR. MILLARD: Mr. Chairman, your committee has gone over that very carefully. It is covered very fully in the statutes, and it is unnecessary and I hope you will vote the amendment down.

CHAIRMAN MARTIN: The question is on the Ford amendment. All those in favor —

Miss Donnelly.

MISS DONNELLY: I must naturally rise to support this and also to recall to people that the statute that we are relying on is not effective yet, and it could be changed.

CHAIRMAN MARTIN: Mr. Millard.

MR. MILLARD: Miss Donnelly, I would like to say that this is a compilation of the present statutes. They are all in effect right now. This is a compilation that only goes into effect in 1963. The exemptions are still in the statute operative today.

CHAIRMAN MARTIN: Miss Donnelly.

MISS DONNELLY: However, the judicature act is not in effect yet and can still be changed; is that not true?

MR. MILLARD: The so called compilation which is called the judicature act goes into effect January 1, 1963. That judicature act is a compilation that embodies all of the exemptions which are now in existence. They are still in existence until this act goes into effect. It is the same thing that was taken out by our research man, Professor Gay.

MISS DONNELLY: You have not answered my second question, Mr. Millard.

MR. MILLARD: What is that?

MISS DONNELLY: Could it not be changed between now and then?

MR. MILLARD: Well, any act can be changed at any time.

MISS DONNELLY: For that reason I support Mr. Ford's amendment.

CHAIRMAN MARTIN: Mr. Farnsworth.

MR. FARNSWORTH: I would like to direct a question to Mr. Ford. Does the Ford amendment, where it mentions homestead, mean $3,500 exemption or would that be a $25,000 homestead, Mr. Ford?

CHAIRMAN MARTIN: Mr. Ford.

MR. FORD: I think that since it is contained in the same section, it's homestead as defined by the statute that Mr. Millard describes—both the present law and the laws that will be — and by the decisions of our courts over a long period of time, and it is complementary. Paragraphs 2 and 3 of this section would be complementary to the first paragraph and would draw their meaning from the first paragraph.

MR. FARNSWORTH: That is a typical reply from an attorney. Would it be $3,500?

MR. FORD: My interpretation would be that it would be an exemption of not less than $3,500, in such sum as the legislature from time to time establishes but not less than $3,500, and that a homestead would be as defined by our courts over a period of time and by the legislature.

MR. FARNSWORTH: Thank you very much.

CHAIRMAN MARTIN: Mr. Farnsworth, if you reflect on the attorneys, we are going to have a lot of people claiming personal privilege around here. (laughter)

The question is on the Ford amendment. As many as are in favor will say aye. As many as are opposed will say no.

The amendment is not adopted.

Any further amendments to the body of the substitute proposal?

Mr. Hubbs.

MR. HUBBS: Mr. Chairman, I do not wish to amend the proposal, but I do wish to ask a question of Mr. Millard. I would like to know how the dollar amounts stated were determined and are they related to any basic factors of minimum cost of shelter and basic necessities for survival?

MR. MILLARD: The answer is no.

MR. HUBBS: You mean somebody just sat down and fished them out of the air?

MR. MILLARD: Mr. Hubbs, if you will notice the original exemption was $500. The legislature has put it up to $1,000, and we have put a floor of $750. In other words, it increased it 100 per cent. The original exemption was $1,500 in 1908; it moved up to $2,500 in 1943, and we have moved

the floor — that was the ceiling — we have moved the floor to $3,500 which we think is in proportion with that which we have recommended for personal property.

MR. HUBBS: Your last statement intrigues me. You say you think it is in proportion to what you think is right for personal property, but it is between homesteads and personal property. But there was no statistical method used in determining what minimum factor — dollar amount — should be considered.

MR. MILLARD: I do not think there was an accountant upon our committee. I do not think we went into the gross national income or anything like that to make a determination of it. I think that we all used our common sense and we felt that $3,500 as a floor was reasonable.

MR. HUBBS: Well, I would like to ask the committee to use further common sense and consider the suggestion that the committee on emerging problems set up a method of providing a measured value for use in the constitution which does not express measures of value in terms of dollars but relates them to some basic economic factor and that this study be done by the research department and we, therefore, translate all dollar amounts into multipliers of this basic factor. Thank you. (laughter)

CHAIRMAN MARTIN: Mr. Norris.

MR. NORRIS: Mr. Chairman, I am somewhat apprehensive about the 3 words "or other lien" in the formulation which we have before us. I realize the good and cogent reasons that have been advanced by Judge Dehnke and some of the other delegates and there may be an argument with regard to it. However, the absence of such language for some 100 years and the fact that, as Mr. Cudlip indicated, by operation of law potential future liens may become operative in such fashion as to jeopardize the purpose of the homestead exemption, I feel somewhat moved to offer an amendment that we strike the words "or other lien" and I so move, Mr. Chairman.

CHAIRMAN MARTIN: Mr. Norris, would you care to submit that in writing? Oh, you have it in writing.

SECRETARY CHASE: Mr. Norris submits the following amendment to the substitute:

1. Amend the second sentence after "mortgage" by striking out "or other lien"; so the language will then read, "Such exemption shall not extend to any mortgage thereon lawfully obtained."

CHAIRMAN MARTIN: The question is on the Norris amendment to the substitue proposal.

Mr. Lawrence.

MR. LAWRENCE: I would like to speak in support of the amendment of Mr. Norris and of Mr. Cudlip, just to point out 2 situations. Then we come to the matter of the use of the words and their being construed as limiting. Liens could lawfully be obtained by a lis pendens and by an execution levy, both of which would defeat the purpose of what we are trying to do.

CHAIRMAN MARTIN: Miss Donnelly.

MISS DONNELLY: I have an amendment which perhaps Mr. Norris would agree to. Otherwise, it would be a substitute to his, I would presume, by my verbiage. It is on the secretary's desk. I agree with him in theory; that is, I have some other language.

SECRETARY CHASE: Miss Donnelly has filed an amendment to add after the word "obtained" at the end of the second sentence, the words "by voluntary alienation."

CHAIRMAN MARTIN: I think we had better consider things one at a time.

Mr. King.

MR. KING: Mr. Chairman and members of the committee, my position is somewhat similar to Miss Donnelly's. I have an amendment on the secretary's desk which inserts "contract or tax" after the words "or other" and before the word "lien." I don't think that Miss Donnelly's amendment considers tax liens, which I believe are not included.

CHAIRMAN MARTIN: The question is on the Norris amendment.

Mr. King.

MR. KING: Mr. Chairman, would it not be proper to offer my amendment as a substitute amendment for that of Mr. Norris?

CHAIRMAN MARTIN: We are voting on an amendment to a substitute proposal now. I think we had better do this one at a time or the delegates will become confused, Mr. King.

The question is on the Norris amendment. Will you read it again, Mr. Secretary?

SECRETARY CHASE: Mr. Norris has offered the following amendment:

1. Amend the second sentence after "mortgage" by striking out "or other lien"; so the language will then read, "Such exemptions shall not extend to any mortgage thereon lawfully obtained."

CHAIRMAN MARTIN: Mr. Cudlip.

MR. CUDLIP: Mr. Chairman, again adverting to my previous remarks — and I am not doing other than observing — if we accomplish what Delegate Norris desires, I understand that then a chattel mortgage — and a chattel mortgage only — will be involved as respects personal property in this exemption process, and a real estate mortgage — and a real estate mortgage only — will be involved in connection with the real estate. All other types of voluntarily contracted liens — and there are many others, as the lawyers at least know — and all liens arising by operation of law and there accomplished would not be involved in this provision, and I just again make the observation.

CHAIRMAN MARTIN: Mr. Prettie.

MR. PRETTIE: Much of which I wished to say has been covered by Mr. Cudlip, Mr. Chairman, but while some advertence has been made to land contracts, I wish to point out that a mortgage is not a land contract, that this was a method of financing not widely in acceptance at the time of the Constitution of 1908, that it is now probably a much more common means of financing than the mortgage, and, certainly, in order to encompass the subjugation of homestead rights to the equities of a contract vendor, some language such as "or other lien" must be retained in this section.

CHAIRMAN MARTIN: Dr. Nord.

MR. NORD: I rise to support the amendment of Mr. Norris and on further reflection, I believe these 3 words could be better removed. The reasons are first of all, that they are not in the present constitutional provision and, therefore, I believe it is clear that the language that we would have is the language that we now have on the subject of mortgages. That language does not cause any difficulty in the subject of exemptions. The language that is about to be added, could—we have seen how—could cause trouble, because on certain liens we probably would want the exemptions and on others we would not. That is a matter that should be left to the legislature. I would like to point out that by taking out these words "or other lien", we do not preclude the legislature from passing other laws relating to exemptions and those laws might relate to exemptions in connection with liens or not in connection with liens, and they might distinguish between one kind of lien and another kind of lien, and it may have no effect on that law.

For example, Judge Dehnke's remark as to equitable liens — they would not be affected one way or another by the constitutional provision, because all that is provided in these sections as it would read with these 3 words removed is that there are certain guaranteed exemptions. Additional exemptions can be provided by the legislature. As a result, it seems to me that we would be better off to take out the words "or other lien" and go back to the language that we now have in the constitution.

CHAIRMAN MARTIN: Miss Hart.

MISS HART: Mr. Chairman, this is a field day for the attorneys and I am sympathetic with them. I think they should have their questions answered. I think this kind of thing should be thrashed out, but I wonder for the benefit of those of us who are not attorneys if, after a proposal is placed on the general orders, the people who have this type of question about it might not appear before that committee, if time could not be given and people appear before that committee, thrash

out the legalities, and then let the rest of us vote on the merits of the proposal. (applause)

CHAIRMAN MARTIN: The suggestion seems to be a popular one. I do not know whether it is practical or not, but the delegates can certainly give it consideration.

Mr. Ford.

MR. FORD: To continue the field day, if I may, I would like to take exception to the analysis that Mr. Cudlip has made because, really, the present proposal of the committee incorporates some key words from the present constitution that save us from the problem that we were talking about, Mel, and these words are "as defined by law," which follow the figure of $750.

Now this makes it clear that the legislature can specify such property, and I call attention of the lawyers particularly to the fact that again we have a long history of necessities versus television sets and the arguments about whether a sewing machine — I think we went to the supreme court on that one — about whether a sewing machine is included as part of household goods, and the legislature has limited this and I believe that the legislature in various statutes protects people's rights in things such as title retaining contracts and other pledges of property, even leasing arrangements, and they do not find themselves coming under this protection of the constitution because of these words that leave it to the legislature with respect to personal property. This section is only specific, self executing, and limiting as to the word "homestead" and not with respect to "personal property."

CHAIRMAN MARTIN: Mr. Habermehl.

MR. HABERMEHL: Mr. Chairman, I have submitted a substitute amendment to the Norris amendment, which the secretary now has.

CHAIRMAN MARTIN: The secretary will read it.

SECRETARY CHASE: Mr. Habermehl offers a substitute amendment for the amendment to the substitute that is pending:

1. Amend the amendment by striking out the entire last sentence which reads as follows:

"Such exemptions shall not extend to any mortgage or other lien thereon lawfully obtained.".

CHAIRMAN MARTIN: Mr. Habermehl.

MR. HABERMEHL: I am inclined, Mr. Chairman, to agree with Miss Hart. The discussion for the past 30 minutes has resembled a lawsuit far more than it has the work of the convention. I think, generally, attorneys will agree that the importance of that last sentence is very debatable. The existence or the priority of a voluntarily incurred mortgage or lien would certainly be greater than that of the homestead exemption. In other words, if people want to create a lien against property they can do so voluntarily. It is certainly going to come ahead of the homestead exemption.

In committee we agreed that there was no point to the last sentence. It was added there only for the purpose of satisfying some objections that had been made on the floor yesterday. It adds nothing to the constitutional provision that we propose and to spend a great deal of time on something that has no actual effect seems to me to be a waste of this committee's time. I have moved that we strike the entire last sentence.

CHAIRMAN MARTIN: The question is on the Habermehl amendment.

Mr. Austin.

MR. AUSTIN: Mr. Chairman, could I ask Mr. Habermehl a question? We have in the first sentence the term "as defined by law." Would that take care of the mortgage situation? In other words, in defining a homestead, if there has been a voluntary mortgage or debt, would the law which defines a homestead give consideration to a mortgage? This is a non-lawyer getting involved in a legal fight.

MR. HABERMEHL: No, I don't believe, Mr. Austin, that that language takes care of it. I believe that the nature of a mortgage or a lien that is created takes care of it. The fact that people have voluntarily incurred this lien certainly is a waiver of their homestead or their personal property exemption. That is really all there is to it. It is a waiver of it when they incur these liens.

CHAIRMAN MARTIN: Mr. King.

MR. KING: Mr. Chairman, I would say in my opinion that this is not so, that there would not be any waiver; I mean, any contractual arrangement of an individual is not going to do away with the constitution of the state of Michigan. I think that last sentence is necessary.

I would like at this time to once again move my substitute amendment because I think it clarifies it.

CHAIRMAN MARTIN: I do not think we can have a substitute on a substitute.

MR. KING: You just entertained one, Mr. Chairman.

CHAIRMAN MARTIN: Mr. Hutchinson, can you clarify this, or are you going to—

MR. HUTCHINSON: Mr. Chairman, I was not going to clarify the matter procedurally. I was going to debate on the merits of Mr. Habermehl's amendment. If the Chair rules it is not now in order, I will wait until it is in order.

CHAIRMAN MARTIN: I am going to rule that Mr. King's substitute amendment is out of order for the time being and hold that the question is on the Habermehl substitute amendment.

Mr. Hutchinson.

MR. HUTCHINSON: Mr. Chairman, I just wanted to make this observation. In listening to Mr. Habermehl's argument, I was reminded of the provision in the Constitution of the United States that no state shall impair the obligation of a contract. If it is a matter of contract — and a mortgage or any other kind of a voluntary lien based upon a contract is contractual — although, of course, even the constitution of Michigan could not by an exemption provision impair the obligation of that contract. Is that what I understand you to say, Mr. Habermehl?

MR. HABERMEHL: That's right, Mr. Hutchinson, plus the fact that any constitutional right, for that matter, can be waived and when people sign an obligation that in effect waives it, it is waived.

MR. HUTCHINSON: I think that Mr. Habermehl has a very sound point there, and while I was one yesterday who was of the opinion that some reference to a mortgage might be necessary in here, I am inclined to believe perhaps that if we went along with this amendment now offered, it would be all right. I would be interested to hear some other observations on the matter.

CHAIRMAN MARTIN: The question is on the —

Mr. Farnsworth.

MR. FARNSWORTH: Now that Mr. Hutchinson has asked for another observation, I would like to make one. Being a layman, I am a member of this group of 88 people in the convention who are not lawyers; I understand we have 56 of them here. You can readily see that they have quite a time agreeing.

Now I would like to believe what I can see here on paper, and this tells the man loaning the money that he has a certain amount of protection if he makes the loan, and I think it is essential that you have it in there. But look at the time we are taking now. I might make a mortgage loan and I might end up in court finding out whether it was good or not, with this $3,500 exemption in it. I would like very much to see that remain in the language of the proposal.

CHAIRMAN MARTIN: Mr. Hutchinson.

MR. HUTCHINSON: I would just like to observe, Mr. Farnsworth, that neither he nor anybody else would look up the constitution of Michigan to see what it says whenever he decides whether he was going to loan money or not. If there is any question about it, he can go to a lawyer and the lawyer would undoubtedly look to the statutes first. They ordinarily do. The matter is covered in the statute. The matter is covered by principles of law, and I doubt very much whether Mr. Farnsworth would hunt up the provisions of the constitution of Michigan in that regard whenever he was going to take a chattel mortgage on an automobile.

MR. FARNSWORTH: I just want to say that that opinion of Mr. Hutchinson has changed slightly since yesterday. Suppose I go to that lawyer and I get that advice and it changes the next day. That is exactly — (laughter) that is exactly the point that I am trying to make. I like to believe

what I can read, and this proposal has my protection in it. I would like to see it stay in.

CHAIRMAN MARTIN: You have scored, Mr. Farnsworth. Mr. Higgs.

MR. HIGGS: Mr. Chairman, following the invitation of Mr. Hutchinson for observations, I have a further observation. Speaking as a lawyer — hesitantly — and being in agreement, actually, with Mr. Habermehl in substance, I think part of our difficulty in either including or in excluding this last sentence lies in the area outlined by Mr. Cudlip.

I think, unquestionably, if we exclude the whole sentence we leave open the voluntary contract to the intrepretation that he has given, but we still do not resolve the question of the tax lien, which does not fit nicely into a voluntary contract situation. I do not think we want to extend this exemption to exclude the tax lien. Of course, I do not believe that is the interpretation of the language as presently written, either, and I am wondering, however, whether or not this is not a responsibility of style and drafting to examine this language. I do not think there is too much difference of opinion as to what we are trying to do. We are trying to seek language to cover it, and I think that style and drafting could do that.

CHAIRMAN MARTIN: Mr. Perras.

MR. PERRAS: Mr. Chairman, after 2 days of deliberation on this proposal, I would like to make a motion that when the committee rises, it recommend that this be sent back to committee and I would suggest that all the proposers of amendments to this proposal be made honorary members of this committee and thrash it out with them and save the time of all of us.

CHAIRMAN MARTIN: Mr. Romney.

MR. ROMNEY: I would like to support the Perras motion, and I would also like to support Delegate Hart in her suggestion and Delegate Farnsworth. As far as I can sense the attitude of the delegates at this time, we are ready to act on this matter and, really, there is sense to dealing with these questions of language either before the committee or in the style and drafting; but, furthermore, there is plenty of opportunity for the lawyers in this body to run for the legislature and engage in such debate in that body, which is appropriate.

CHAIRMAN MARTIN: The secretary points out that the provision of rule 47 provides that whenever a proposal is up for consideration at any stage of procedure and a motion is made to postpone indefinitely or to recommit, amendments to the proposal shall be in order before taking a vote on any such motion. So I think if your motion were made in earnest, Mr. Perras, I think we should dispose of the amendments before we can vote on that.

Mr. Norris.

MR. NORRIS: Mr. Chairman, I rise to oppose the motion of Mr. Perras, because I feel that we are not recognizing as much as we ought the deliberative process that this convention must go through. There is an unseemly undercurrent here with regard to the fact that when we probe deeply into the meaning of words and contingencies which such words are going to cover, that we are getting into a lawyers' discussion.

I think we ought to get the record straight that for this convention from this point forward we are going to be getting into minutiae in the question of what a constitution is and how it is going to apply to the many circumstances that 8 million people live in in the state of Michigan.

The lawyers have a certain discipline of perhaps a more probing nature with regard to some of the matters that come before us, and I do not think it is a question of lawyer versus nonlawyer; it is a question of depth perception here as to just what is involved in the particular matter that is before us. I do not think that we ought to say that when we get to a certain stage in our deliberations the only appropriate action is to revert back to committee. We are getting through a certain process. We are working out the will of this committee. It reaches a certain stage. We are now at a dispositive stage with regard to this proposal and we ought to get together and dispose of it, rather than to say that every time we get to this dispositive stage we ought to send it back.

CHAIRMAN MARTIN: Mr. Sterrett.

MR. STERRETT: Mr. Chairman, I would like to speak to Mr. Norris' opposition. I personally do not care to be here a year from now, but I would like to support Mr. Perras' motion to send it back to committee. I feel that if this is reported back out of the committee with the adequate report, the report will go in the journal. If there is any question in any court of law, the intent can be discovered within the verbatim journal of this convention. Therefore, I would like to support Mr. Perras' motion.

CHAIRMAN MARTIN: Mrs. Butler.

MRS. BUTLER: I would like to know what the meaning of the word "minutiae" is. (laughter)

CHAIRMAN MARTIN: Mr. Perras.

MR. PERRAS: I would like to answer Mr. Norris, too. I happen to be a member of the legislative powers committee. It seemed we hired research assistants here. We have men that are on the style and drafting that are supposed to put these things in order; so if we are going to have to fight everything on the floor, we might as well dispose of our research assistants and all these other things and let the floor take care of everything.

CHAIRMAN MARTIN: The question is on the amendments which we have on file.

Do you wish to speak to any of those, Miss Donnelly?

MISS DONNELLY: Yes, I wish to oppose Mr. Habermehl's substitute to the Norris substitute which, in effect, is my substitute. Is that what you want me to speak to, or do you want me to defend the lawyers, which I think we need at this moment?

CHAIRMAN MARTIN: The question is on Mr. Habermehl's amendment.

MISS DONNELLY: I am opposed to it because I feel that the clarity of the intent of voluntary exemptions — voluntary alienation — should not deprive the creditor from collection against this, and I feel that this intent should be clear and, speaking as a lawyer, what a lawyer should do, the lawyer also has a duty to look at the constitution besides the statute.

CHAIRMAN MARTIN: Mr. Walker.

MR. WALKER: We have had considerable conversation about Mr. Perras' motion. May I voice one alternate along that same line that I think would possibly be of great benefit to the committee?

CHAIRMAN MARTIN: Providing we are talking about the Habermehl amendment.

MR. WALKER: There has been, Mr. Chairman, considerable comment one way or the other on Mr. Perras' motion that we refer it to the committee again. Would it be, as a suggestion, reasonable to presume that, so that we might possibly reach our April first deadline imposed by the majority of the delegates here, would it be sensible to take a 30 minute recess for the committee to consider this thing with the amenders and one thing or another, then come back and fight this thing out, thrash it out and be done with it today?

CHAIRMAN MARTIN: The committee of the whole does not recess, Mr. Walker. The committee can rise but it does not recess.

MR. WALKER: Thank you.

CHAIRMAN MARTIN: Mr. Stevens.

MR. STEVENS: Mr. Chairman, I think we have a solution to this. Vote down this amendment, all other amendments, pass the proposal as submitted by the committee and leave it to style and drafting to come up with something, if it can. If it cannot, it can again return to the committee, which is what you want to do now. There seems to be no question about the intent. The question of wording would be one, I think, for the style and drafting committee. I assure you they will spend much more than 30 minutes on it if it goes there.

CHAIRMAN MARTIN: The question is on the Habermehl amendment.

Mr. Nord.

MR. NORD: Mr. Chairman, there have been a number of remarks on this subject which, I think, are extremely inappropriate, and I want to go on record as opposing them. There

have been a number of remarks that somebody else ought to figure this thing out. I do not think somebody else is going to figure this out. We are going to figure this out. Now, let us not get nervous or impatient. We are going to figure this out and we are going to get through by March 31; I have no doubt about it. What we are doing now is simply going through the initial phases of teaching our committees that they have got to do their homework and get it out on the floor right the first time. I believe they will learn the lesson sooner or later and it will come out right the first time. I also believe that we are going to learn our lesson. We have not learned ours either. We have not learned that we should make our objections to the committee before we get on the floor, and I believe we are going to do that, too.

But I do not like the idea that lawyers should be quiet just because they see a problem. After their convention role is over and when the law comes out backwards, opposite to what we want, they are going to say why did we not object. So we are objecting, and I do not believe we can leave it to the original committee. We have left it to the committee twice. Yesterday I wanted to give this back to the committee. That would have been an appropriate time but after we spend 2 days on it, that is not an appropriate time to put it back to the committee. Now is the appropriate time for us to act. The argument that we have people paid to do research and drafting and, therefore, we do not need to do our work does not impress me either. I think we have got to buckle down and do the job and, if we are not satisfied with something when it comes on the floor, we should send it back immediately. But after we have had it for 2 days, we should make up our mind that we are going to decide it. We are very close to deciding this now and let us not put it off. Let us decide it.

CHAIRMAN MARTIN: Mr. Kuhn.

MR. KUHN: I agree with Delegate Stevens that we should vote down all the amendments and pass this as it was reported out of the committee by unanimous vote.

I want to say that even Delegate Nord agreed to this language when he first spoke today, and I think your first thoughts are your best thoughts.

CHAIRMAN MARTIN: Mr. Hoxie.

MR. HOXIE: Mr. Chairman, I am not going to take exception to Dr. Nord's remarks which could be interpreted as criticism for the many hours of work that we in the legislative powers committee have spent in trying to bring something that we felt would be realistic to the floor of the convention. All I will say is let us wait until some proposals come out of his committee. (laughter)

CHAIRMAN MARTIN: Mr. Wanger.

MR. WANGER: Mr. Chairman and fellow delegates, I believe that the committee in adopting this substitute proposed today did not hold a particularly strong brief for this last sentence, as Delegate Millard indicated.

I would like to suggest that we can solve this thing very appropriately by adopting Mr. Habermehl's amendment to strike that sentence, and I do not think there is any danger in striking it for the reason that the legislature has protected the mortgagor, as Mr. Habermehl himself points out. There are questions under the United States constitution which would protect mortgagors and, finally, from a matter of simple, practical politics, should the legislature remove the protection from the mortgagor, the mortgagors would stop loaning money to mortgagees and no one would be able to put up their property as security except under, perhaps, very unusual circumstances, and this would create a very difficult situation for all concerned.

CHAIRMAN MARTIN: The question is on the Habermehl amendment.

Mr. Stafseth.

MR. STAFSETH: Mr. Chairman, I rise to speak against the amendments. I feel that the committee has offered a substitute proposal that has curtailed some of the objections that some of us had yesterday. I think that there is something more than just a legal interpretation of this and there seem to be questions on both sides of this. I support Mr. Farnsworth in his observation that certainly this is something that shows a person that is going to obtain a mortgage or a person that is going to give a mortgage what the intent of this body is.

CHAIRMAN MARTIN: The question is on the Habermehl substitute amendment. As many as are in favor will say aye. As many as are opposed will say no.

The amendment is not adopted.

Now the question is on the Norris amendment.

SECRETARY CHASE: Mr. Norris has offered the following amendment:

1. Amend the second sentence after "mortgage" by striking out "or other lien".

CHAIRMAN MARTIN: The question is on the Norris amendment.

Mr. Cudlip.

MR. CUDLIP: I am in sympathy with the Norris amendment. Since it was proposed, Delegate Ford spoke about some language up in front which I do not interpret as he does. "As defined by law" relates to the property, not to the exemption. Mr. Nord, before he spoke the last time, made some wise remarks about what the legislature could do by statute.

All I was trying to find out earlier is whether the committee intended in the case of these exemptions to have the exemptions relate to liens created by operation of law as well as contractually, or whether just the plain, old, contractually created mortgage in the case of both types of property. If they want to cover every kind of lien, I think it will be covered if we leave the language as it is. If we take it out, as I see it, it only relates to mortgages covering both types of property. The rest will be up to the legislature. That is to say that the legislature, then, will decide what other types of contractual liens — and there are many more than mortgages, I emphasize — and what types of liens arising by operation of law — and they have been mentioned here before — are intended. That would be a legislative matter.

Again, this is just an observation that that will be the effect if you adopt the Norris amendment, which I favor.

CHAIRMAN MARTIN: Mr. Hutchinson.

MR. HUTCHINSON: Mr. Chairman, I believe that perhaps these 3 words got in here yesterday after the session because I mentioned to Dr. Joiner that there were some delegates who raised the point that other liens should be included. I, however, think that in the spirit of drawing this thing to a conclusion, keeping in mind the fact that we have got committee meetings set up this afternoon and also keeping in mind the fact that this language "Such exemptions shall not extend to any mortgage thereon lawfully obtained" is the wording that has been in the constitution for 100 years and it caused no embarrassment. It has been interpreted. The legislature has statutorily recognized that it could go beyond what the constitution provided. The legislature will undoubtedly continue to go on beyond what the constitution provides. The legislature will take care of this "or other lien" problem in the future as it has in the past. So, if we just adopt Mr. Norris' amendment and strike out "or other lien", we will be left with the language that we have had for 100 years and, as I say, it has been proved adequate, and there is not any reason to believe that it will not be adequate in the future.

So I support Mr. Norris' amendment.

CHAIRMAN MARTIN: The question is on the Norris amendment.

Mr. King.

MR. KING: Mr. Chairman, I, too, feel that if we go along with the present language which has been proven over the years that we will not be in any trouble. We do leave the door open to the legislature to add on to it. My amendment concerns the inclusion of the words "or other liens" and if those words are not in there then I do not have any reservations about the Norris amendment.

CHAIRMAN MARTIN: Then you would withdraw your pending amendment? Is that it?

MR. KING: Well, I will wait and see how this vote goes.

CHAIRMAN MARTIN: All right. The question is on the Norris amendment to the substitute. As many as are in favor will say aye. As many as are opposed will say no.

The amendment is adopted.

Mr. King has an amendment pending. Mr. King, do you wish to withdraw that?

MR. KING: Yes, Mr. Chairman, I wish to withdraw my amendment.

CHAIRMAN MARTIN: All right, the amendment is withdrawn. Do we have any other amendments?

SECRETARY CHASE: Miss Donnelly has the following amendment:

1. Amend the second sentence after "obtained" by inserting "by voluntary alienation"; so the language will then read, "Such exemptions shall not extend to any mortgage thereon lawfully obtained by voluntary alienation."

CHAIRMAN MARTIN: Miss Donnelly.

MISS DONNELLY: Originally I intended, and I still would like to make it, because I am now disturbed by equitable mortgages; and I know that people don't like to hear lawyers talk at this stage of the game, but I do think it is a point. I do think that the language has been clear in the constitution for umpteen years according to Mr. Hutchinson, and what have you, because of the alienation provision therein having been voluntary alienation. This clarifies what they meant. If you strike the voluntary alienation by requiring how it should be done, we can still have involuntary or equitable mortgages. The court could appoint.

Now I think we have got to make up our minds — some way or another — whether we mean voluntary or involuntary. This is the language — the reason why I added these words is to indicate that we mean voluntary, willful acts of the individual debtors to pledge their property and nothing that the court would construe, and I had intended any other lien would be, also.

That is the reason I meant it as a substitute to the Norris amendment, and I thought it should have been first, so that it would include that sentence, too; but I still believe that the voluntary aspect of it should be clearly set forth in this constitution.

CHAIRMAN MARTIN: The question is on the Donnelly amendment. As many as are in favor will say aye. As many as are opposed will say no.

The amendment is not adopted.

Are there any other amendments?

SECRETARY CHASE: There are no other amendments on file.

CHAIRMAN MARTIN: If there are no other amendments on file, the question is on the substitute committee proposal, as amended, and the secretary will read.

SECRETARY CHASE: The substitute, as amended, is as follows:

> A homestead in the amount of not less than $3,500.00 and personal property of every resident of this state in the amount of not less than $750.00, as defined by law, shall be exempt from forced sale on execution or other process of any court. Such exemptions shall not extend to any mortgage thereon lawfully obtained.

CHAIRMAN MARTIN: The question is on the substitute, as amended. As many as are in favor will say aye. As many as are opposed will say no.

The substitute, as amended, is adopted.

Any further amendments?

If not, I recognize Mr. Perras on his motion to rerefer.

MR. PERRAS: I will withdraw the motion, Mr. Chairman.

CHAIRMAN MARTIN: If there is no further discussion, the proposal will pass.

Committee Proposal 12, as substituted, is passed.

Mr. Lawrence.

MR. LAWRENCE: Mr. Chairman, I wonder if, before we rise, I might say a word in defense of the lawyers here. Now we have been pounded on the back to get things before the convention and we have not done it with any great haste and then when things come out the lawyers get criticized. It seems to me that the words — so that these laymen will understand what is going to come from the lawyers — are well summed up in a poem which is very short. It goes:

> Catsup's in a funny bottle;
> At first none comes
> And then a lottle. (laughter)

CHAIRMAN MARTIN: Mr. Dehnke.

MR. DEHNKE: I have a couple of observations to make while observations are being made. I am sympathetic toward the attitude expressed by Miss Hart. I have been wondering whether this idea I am about to suggest would be practicable. Once a committee proposal is presented, it is a little more difficult for an individual member to make his thought, his objections, his questions known; at least, it makes it much more complicated if the questions are not raised until the proposal comes before us in committee of the whole.

If it could be arranged that the convention could be notified 2 or 3 days in advance, at least, of the broad outlines of the committee proposal that seems to be near the completion stage, then we would have an opportunity to talk to the chairman of the committee and if he is impressed, he might call a meeting of the committee to discuss it before it gets to the stage of being before the committee of the whole.

I think the other point I would like to suggest is we have had ample opportunity now to learn that in our discussions it makes a great deal of difference as to the definitions we attach — the meanings we attach — to the phrases and expressions we use. We sometimes use the same word and then find out afterward we have been talking about two different things.

In that connection I found a little illustration in The Lion's Magazine a few days ago:

> A peasant in a Russian village went to the polls on election day and was handed a sealed envelope to drop in the ballot box. He began to tear the envelope open when a Soviet official shouted, "What do you think you are doing?" The peasant said he wanted to see for whom he was voting. "Are you crazy?" exclaimed the official, "This is a secret ballot!" (laughter)

CHAIRMAN MARTIN: Mr. Danhof.

MR. DANHOF: I move the committee now rise.

CHAIRMAN MARTIN: The question is on the motion that the committee do now rise. As many as are in favor will say aye. As many as are opposed will say no.

The motion prevails. The committee will rise.

[Whereupon, the committee of the whole having risen, President Nisbet resumed the Chair.]

PRESIDENT NISBET: The convention will come to order. Mr. Martin.

MR. MARTIN: Mr. President, the committee of the whole has had under consideration several items on which the secretary will give a detailed report.

PRESIDENT NISBET: Mr. Secretary.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 12**, A proposal pertaining to exemptions as a substitute for all of article XIV. It reports the same back to the convention with a substitute therefor, recommending that the substitute be agreed to and that the committee proposal, as substituted, do pass.

PRESIDENT NISBET: The question is on our agreement to the substitute for Committee Proposal 12. Those in favor say aye; those opposed, no.

The substitute is agreed to and **Committee Proposal 12**, as substituted, is referred to the committee on style and drafting.

Following is Committee Proposal 12 as substituted and referred to the committee on style and drafting:

The committee recommends that the following be included in the constitution:

A homestead in the amount of not less than $3,500.00

and personal property of every resident of this state in the amount of not less than $750.00, as defined by law, shall be exempt from forced sale on execution or other process of any court. Such exemptions shall not extend to any mortgage thereon lawfully obtained.

Dr. Anspach.

MR. ANSPACH: Mr. President, Judge Dehnke made part of my speech. However, for the encouragement of all the delegates after this long session, I heard one the other day that I think that we would profit by, the story of the 2 fellows who had been places and had seen things and they got back in the hotel late at night. One chap said to the hotel clerk, "What we want is 2 rooms with one bed." The clerk said, "You don't mean 2 rooms with one bed; you mean one room with 2 beds." And they said, "All right." Both drunks got into the same bed. After awhile Bill said, "There's somebody in bed with me and I don't like it." And Jim said, There's somebody in bed with me. Let's kick them out." So they started to roughhouse and after awhile Jim landed on the floor with a thud. He said, "How did you come out, Bill? I got kicked out of bed." "Well," Bill said, "I got along all right. I kicked a fellow out of bed." "Well, Bill," Jim said, "I'm out of bed." Bill said, "That's all right. Get in bed with me." (laughter)

PRESIDENT NISBET: I might say that after this experience this afternoon, we will need more of Charlie's stories and comments during our sessions.

I hope you will not be disturbed, however, because, after all, we only have been meeting for an hour and a half and starting next week as our committee reports get in, we are going to be very fortunate if we can meet in less than 3 or 4 hours a session, and after the first month we will be meeting morning and afternoon; so I think we might as well accomplish this and at the same time have a good time, enjoying ourselves and in the meantime doing our work. And let us not get too disturbed about it, because we are just going to have to put the time in. It is a very interesting time.

[Without objection, the convention returned to the order of motions and resolutions.]

Did you have a motion you wanted to make, Mr. Downs?

MR. DOWNS: Mr. President, Miss Hart and I have filed a motion with the secretary. It is along the line of what Judge Dehnke said. He said he would like to cosponsor the motion. We would be glad to have him do it. I wonder if we could ask the secretary to read the motion.

SECRETARY CHASE: Miss Hart and Mr. Downs have filed the following motion:

> Miss Hart and Mr. Downs move that committees hold a meeting of their full committee or a subcommittee after a committee proposal is printed in the journal and before it is on general orders, at which committee meeting any delegate may appear.

PRESIDENT NISBET: Mr. Chase, would you mind reading that motion again?

SECRETARY CHASE: That committees hold a meeting of their full committee or a subcommittee after a committee proposal is printed in the journal and before it is on general orders, at which committee meeting any delegate may appear.

PRESIDENT NISBET: Mr. Downs.

MR. DOWNS: Mr. President, the purpose of this motion is to provide what some of the other delegates have mentioned. That is, mainly, that after a proposal is printed in the journal that there be an additional opportunity for delegates to appear before a committee in the hope that some of the problems could be cleared up there and prevent the whole discussion being had before the committee of the whole.

I realize this is something different in parliamentary procedure and, certainly, if the Chair wishes to refer this to the committee on rules and resolutions to get their additional thinking, there is no attempt to try to get immediate action on it; but I think as long sessions will develop, this might be a means of screening out some questions so that we can confine our committee of the whole to the basic issues.

PRESIDENT NISBET: Mr. Hutchinson.

MR. HUTCHINSON: Mr. President, I move that the motion be referred to the committee on rules and resolutions. I make this motion in the same spirit that Mr. Downs suggested that he would not oppose it.

It does introduce something different in the parliamentary procedure. As a technical matter, of course, once the committee has reported its proposal to the floor and it is printed in the journal, it has no technical jurisdiction over it. I think there are several avenues to be explored. Also I think that the attitude of the committee chairmen on the matter should be ascertained and, for that reason, would move that the matter be referred to the committee on rules and resolutions.

PRESIDENT NISBET: Mr. Downs.

MR. DOWNS: Mr. President, I will support the motion of Mr. Hutchinson.

PRESIDENT NISBET: Mr. Romney.

MR. ROMNEY: Mr. President, I would like to support the motion, but I would like to suggest that when the motion is considered by the committee on rules and resolutions they consider adding the language which may appear for the purpose of improving the wording used to express the intent of the committee. In other words, it does not seem to me that we should set up another hearing at which the substance of the matter dealt with by the committee should be reopened, but it does seem to me that there should certainly be an opportunity for the thing we have been talking about today, which is an opportunity to express technical viewpoints on the adequacy of the language being used, and it is for that reason that I make this suggestion.

PRESIDENT NISBET: Mr. Erickson.

MR. ERICKSON: I would just like to add that when the committee on rules and resolutions considers this, they also add "on application of any member," so that it does not have to sit there for awhile, after all, if nobody wants to come and talk.

PRESIDENT NISBET: Mr. Heideman.

MR. HEIDEMAN: Mr. President, I simply wish to ask what is the function of the committee of the whole?

PRESIDENT NISBET: Mr. Chase, would you like to give a definition of the committee of the whole?

SECRETARY CHASE: No, I don't want to.

PRESIDENT NISBET: Mr. Mahinske.

MR. MAHINSKE: I would like to remark that Mr. Romney has made a statement here that if the committee makes a report and then delegates can appear in front of this additional hearing of the committee to change the wording of the report, then the committee report is no longer the report as such and it may change from time to time as delegates appearing in front of that committee report.

PRESIDENT NISBET: Mr. Leppien.

MR. LEPPIEN: Mr. President and fellow delegates, I think we have missed the point of the procedure concerning committee proposals. According to my understanding, a committee proposal is brought in, is debated to some degree, and then is sent to style and drafting. Now it seems to me that if this convention would resolve that when a committee proposal comes in, we would merely adopt it and then, if we have any objections, take it to the style and drafting committee and let them hear the complaint, and then they would be in position to either bring it back to this convention for action or recommend it be sent back to the committee from whence it came.

PRESIDENT NISBET: Mr. King.

MR. KING: Mr. President, I do not oppose the idea of having an opportunity for the delegates to express their ideas, but I do oppose the idea of a proposal being printed and laying over for the required 3 days and then when we come back to consider it, the first thing that happens is that the committee offers a substitute proposal without having the opportunity of the 3 days. Now this has happened once. I would not want it to happen on a regular basis, and I

would hope that the rules and resolutions committee would take that under consideration when they think about this particular problem.

PRESIDENT NISBET: We have committee meetings this afternoon — Mr. Martin.

MR. MARTIN: On this same question, it seems to me that we are going to get into a lot of confusion if, after the committees have reported out their proposals they then have to hold a hearing on these proposals, and it seems entirely in order, if a delegate has some change that he thinks should be made, to have him submit that in writing to the committee, so that if the committee wants to consider it and to offer it as a committee substitute or as a committee amendment, that is all right; but if these committees, in addition to all the meetings they have been holding, now begin to hold hearings on the proposals that they have already reported out, we will have chaos compounded.

PRESIDENT NISBET: In the interest of time and economy of time and in the interest of all the committees that are planning on meeting, would you give me the personal privilege of referring this to the committee on rules and resolutions and ask them to make some statement on this at some future time? Would that take care of your problem? Thank you very much. It is so referred.

SECRETARY CHASE: The following committee meeting announcements in addition to the ones on the composite calendar:

The subcommittee on annexation and consolidation of the local government committee will meet Friday, tomorrow, at 9:00 o'clock a.m. in room A. Mr. Follo, chairman.

The committee on finance and taxation will meet in room E at 8:00 o'clock tomorrow morning.

The committee on legislative powers, subcommittee 1, will meet in room H after the session today and from 8:30 until 9:45 tomorrow morning. There are a number of delegate proposals to be considered.

The committee on administration will meet in the conference room Tuesday, January 9, at 1:15 p.m. Walter De Vries, chairman.

The committee on judicial branch will meet immediately after the session today for a hearing on delegate proposals.

The secretary, in response to the inquiries from several delegates, has this announcement to make: your W-2 forms will be available during the week of January 22 to 27.

We have the following requests for leaves of absence:

I request to be excused from the session of Friday, January 5. The probate judge's association has requested I meet with them at their annual meeting at the Kellogg Center. Mr. Danhof.

Please excuse me from the session of Friday, January 5. Prior commitments. Mr. Garvin.

Mr. Haskill asks to be excused from tomorrow's session because of illness; Mr. McAllister requests leave of absence from the session of tomorrow because of a legal matter which originated more than a year ago; Mr. Douglas, to attend a convention on Friday; and Mr. Baginski requests leave to be excused from tomorrow's session.

PRESIDENT NISBET: Without objection, they will be excused.

Mr. Kuhn.

MR. KUHN: Mr. President, I would like to advise the delegates that anyone that has a delegate proposal before the committee on legislative powers to please check in room H. We are going to have hearings right after the session all afternoon and tomorrow, from 8:00 to 9:45, and that will be the end of it.

PRESIDENT NISBET: Mr. Durst.

MR. DURST: I move that we adjourn.

PRESIDENT NISBET: The motion is that we adjourn. Those in favor say aye; opposed, no.

We are adjourned until 10:00 tomorrow morning.

[Whereupon, at 3:45 o'clock p.m., the convention adjourned to Friday, January 5, 1962, at 10:00 o'clock a.m.]

FIFTY-FIRST DAY

Friday, January 5, 1962, 10:00 o'clock a.m.

PROCEEDINGS

PRESIDENT NISBET: The Convention will please come to order.

The invocation this morning will be given by one of our own delegates, Mr. Gover. Please rise.

MR. GOVER: Let us pray. Our gracious heavenly Father, we thank Thee for the help Thou hast given us in our lives. Thy guiding hand has directed us more than we realize in our lives. Be with us during our deliberations that we may take Thee into our council, and that we may come out of this convention with a constitution that will be good for the people of Michigan. In Thy name we ask these things. Amen.

PRESIDENT NISBET: Thank you.

The roll call will be taken by the secretary. Those present, please vote aye.

SECRETARY CHASE: Mr. President, a quorum of the convention is present.

Prior to today's session, the secretary received the following requests for leave: Messrs. Follo, Gadola, Habermehl, Pugsley and Radka from today's session, due to inclement weather and for other reasons.

PRESIDENT NISBET: Without objection, the requests are granted.

SECRETARY CHASE: Absent with leave: Messrs. Danhof, Douglas, Follo, Gadola, Garvin, Habermehl, J. A. Hannah, Haskill, McAllister, Pellow, Perlich, Pugsley, Radka, Thomson and Wood.

Absent without leave: Messrs. Bledsoe and Marshall.

PRESIDENT NISBET: Without objection, the delegates are excused.

Reports of standing committees.

SECRETARY CHASE: There are no reports on file, Mr. President.

PRESIDENT NISBET: Reports of select committees.

SECRETARY CHASE: None.

PRESIDENT NISBET: Communications from state officers.

SECRETARY CHASE: None.

PRESIDENT NISBET: Second reading of proposals.

SECRETARY CHASE: Nothing on that calendar.

PRESIDENT NISBET: Third reading of proposals.

SECRETARY CHASE: Nothing on that calendar.

PRESIDENT NISBET: Motions and resolutions.

SECRETARY CHASE: There are no resolutions on file.

PRESIDENT NISBET: Unfinished business.

SECRETARY CHASE: None.

PRESIDENT NISBET: Special orders of the day.

SECRETARY CHASE: None.

PRESIDENT NISBET: General orders.

SECRETARY CHASE: The items on the general orders calendar are not in order for consideration until Monday.

PRESIDENT NISBET: Announcements.

SECRETARY CHASE: Mr. Cudlip gives notice of a meeting of the committee on style and drafting on Monday, January 8 at 5:00 o'clock p.m.

Mr. Brake gives notice of a meeting of the committee on finance and taxation in room E on January 8 at 6:00 o'clock p.m.

The committee on education, subcommittee on higher education, will meet January 10 at 6:00 o'clock p.m. at the Kellogg center.

The subcommittee on county government of the committee on local government will hold hearings on delegate proposals Tuesday, January 9, and Wednesday, January 10, from 9:00 a.m. to 12:00 in room 337 in the Mason building. Mrs. Judd, chairman.

The committee on public information will meet in the conference room Monday following the session. Ink White, chairman.

The other committee meetings are on the composite calendar.

The following announcement has been requested to be made: will the owner of a green and white Oldsmobile, license number LB-7972 please contact Delegate Garry Brown. (laughter)

The owner of the cafeteria in the Mason building wishes it known that he will stay open until 8:00 o'clock p.m. weekdays. Formerly he has been closing at 6:00. This is for the convenience of the delegates.

I have the following requests for leave of absence: Mr. Lawrence requests to be excused from the session of Monday, January 8; and Delegates Garry Brown and Judge Mosier desire to be excused from the session of Monday, January 8, because of speaking engagements in Sturgis.

PRESIDENT NISBET: Without objection, they will be excused.

Mr. Norris.

MR. NORRIS: Mr. President, I am heartened by the fact that the report submitted by our chairman, Professor Pollock, is reproduced in its entirety in the journal this morning. I understand we are going to be getting to this matter on Monday evening and from that point forward I wondered if it would be amiss to make the suggestion that perhaps the delegates might take this report home with them and read it. This might facilitate debate on Monday and from that point forward.

PRESIDENT NISBET: Thank you, Mr. Norris.

Any further announcements? Inasmuch as the weather is rather inclement outside and driving a little hazardous, maybe some committees might like to meet that have not been scheduled. (laughter)

Mr. Hoxie.

MR. HOXIE: Mr. President and fellow delegates, the committee on legislative powers would like to report to the convention that with the adoption of the matter of yesterday, we have completed 1/17 of the constitution. There are 17 articles. (laughter)

PRESIDENT NISBET: Thank you very much, Mr. Hoxie.

Mr. Elliott.

MR. A. G. ELLIOTT: Mr. President, I move we adjourn.

PRESIDENT NISBET: The question is on adjournment. Those in favor, say aye. Opposed, no.

The motion prevails. We are adjourned until 8:00 o'clock p.m. Monday, January 8.

[Whereupon, at 10:10 o'clock a.m., the convention adjourned to Monday, January 8, 1962, at 8:00 o'clock p.m.]

FIFTY-SECOND DAY

Monday, January 8, 1962, 8:00 o'clock p.m.

PROCEEDINGS

PRESIDENT NISBET: The convention will please come to order.

The invocation this evening will be given by one of our own delegates, Mr. Claud Erickson, delegate from the Ingham county first representative district, Lansing.

Will you please rise.

MR. ERICKSON: Let us all pray. O, Creator of the universe, we pray for guidance and wisdom in this great undertaking, that our actions will be in keeping with Thy will, and will be in accordance with Thy infinite wisdom. Realizing that any efforts by Thy children are short of perfect, we beseech Thee to enlighten us with intelligence so that we can observe the absolute truths so necessary for a perfect document that will endure.

Let not our diversity of opinions regarding religion, government and other interests lead us toward enmities, but with Thy help give us proper motivation so that in the days to come our work will be good in Thy sight. We pray that Thou wilt grant us tolerance and wisdom to weigh and foresee the consequence of our daily actions here and elsewhere so we may properly grasp the import of our actions for ourselves, the future generations, our state, our country and Thy entire universe. Amen.

PRESIDENT NISBET: The roll call will be taken by the secretary. Those present please vote aye.

SECRETARY CHASE: Have you all voted? The machine is now locked and the attendance will be recorded.

Mr. President, a quorum of the convention is present.

Prior to today's session, the secretary received the following requests for leave of absence from this evening's session: Mr. Ford wishes to be excused to attend a county township board meeting; Mr. Hutchinson because of the inclement weather was unable to get here; and

Mr. Beaman requests that Mr. Thomson be excused because of illness.

PRESIDENT NISBET: Without objection, the requests are granted.

SECRETARY CHASE: Absent with leave: Messrs. G. E. Brown, Ford, Hutchinson and Thomson.

Absent without leave: None.

PRESIDENT NISBET: Reports of standing committees.

SECRETARY CHASE: There are no standing committee reports, Mr. President.

PRESIDENT NISBET: Reports of select committees.

SECRETARY CHASE: None.

PRESIDENT NISBET: Communications from state officers.

SECRETARY CHASE: None.

PRESIDENT NISBET: Second reading of proposals.

SECRETARY CHASE: Nothing on that calendar, Mr. President.

PRESIDENT NISBET: Third reading of proposals.

SECRETARY CHASE: Nothing on that calendar, Mr. President.

PRESIDENT NISBET: Motions and resolutions.

SECRETARY CHASE: There are no resolutions on file.

PRESIDENT NISBET: Mr. Prettie.

MR. PRETTIE: Mr. President and fellow delegates, I rise to a point of personal and professional privilege. Last Wednesday and Thursday, this convention considered in depth, and for

several hours debated, the subject of exemptions from forced sale and execution now contained in article XIV of our constitution.

Certain newspapers referred to this as a "field day for lawyers." A delegate evoked applause on the floor of this convention by criticizing the differences of opinion between lawyers. And one delegate commented that if his staff of engineers disagreed and changed their opinions as frequently as did certain lawyers, he would fire the whole lot.

Some delegates have become impatient at the time consumed in considering the meaning of the words we use. The public press and some delegates have implied that actions taken in committee and proposals already submitted to this convention are for the purpose of furthering a monopoly for the legal profession. These are but a few examples of many I might give which impugn the integrity of a profession of which I have proudly been a member for 37 years.

We are now about to enter upon a consideration of the bill of rights, an area sensitive to all who hold liberty dear. There will be differences of opinion between the delegates on these matters, both those who are lawyers, and those who are not.

I submit that before we enter upon this debate, and apart from the controversies that may develop over certain specific provisions, we should pause at this moment to consider some basic and fundamental facts.

First, whether we like it or not, we are engaged in writing a legal document; a most important and fundamental law. If our work is well done and the people approve of it, this constitution will become the framework within which our legislature must act in considering the laws of this state for years to come. It will lay down the guide lines which must be considered by our courts in passing upon the laws thus enacted. It will be a basic law controlling the conduct of our millions of citizens. Yes, and it will be one of the instruments used daily by 9,000 lawyers in this state in advising our citizens in their personal and property rights. That this too be well designed and built to meet the task it must perform should ever be our paramount consideration. This must override the element of time and convenience of the delegates who are, after all, but the makers of this tool.

Second, whether we like it or not, the voters of this state chose as their craftsmen in this task, 56 lawyers—40 per cent of all those so chosen. This is in accord with the historic pattern of constitutional conventions in this country ever since 1787. I submit that this points up the fact that the electors of this state feel that those with legal training possess some special competence in framing legal instruments.

Third, many of this profession, so chosen, combine with their legal training decades of experience on the bench of our courts; distinguished public service as state officials and members of the legislature; and government service at the county and local level. The practiced knowledge of government represented by this accumulated experience gives these delegates a more than average competence for the task at hand.

Fourth, the law admittedly is not a precise science. We have no legal micrometer that will measure the meaning of a word to 1/10,000 of an inch. We have no legal caliper of girth sufficient to span the rights of citizens in a free society. Because of this lack of precision, there is room for difference of opinion. The resolution of these differences and the spelling out of our exact intent requires time and patience. But it is better that this document be accurately drawn than that it be quickly finished. No one has ever claimed that the democratic process is rapid or efficient. If those attributes are what we seek, let us turn to dictatorship. But we are here as the elected representatives of the free citizens of this state. Let us devote to this task such time, patience and effort as may be required by our system of government.

Fifth, the law is not static. It must evolve to meet the changing conditions of a changing society. I learned in law school that the state and its subdivisions were protected from suit by the cloak of governmental immunity. Within 15 years this state created in 1939 its court of claims and shed its cloak of immunity, but as to lesser governmental units this doctrine persisted until it was struck down for the future by a decision of our supreme court only last year. In less than 2 decades a complete reversal of the law has come about.

In like manner, the declaration of rights, which we are about to consider, in our Constitution of 1908 was no doubt sufficient unto the times in which it was written. Intervening amendments, particularly in section 10, have down dated its provisions and we are now about to review its protections in the light of present knowledge and, hopefully, with a long view to the years ahead.

Finally, fellow delegates, you have my assurance—and in this I am certain I can speak for fellow members of my profession—that no action suggested or taken here is motivated by a desire of this profession for selfish advantage.

Let me illustrate. Our Constitution of 1908 made no requirement for legal training of those who judged their fellow men. As recently as 1955, section 17 of the judicial article was amended by a vote of about 2½ to 1, 590,000 to 230,000, to require that justices of the supreme court and judges of our circuit courts be licensed to practice law. Whether this requirement be extended to other courts is for you and the citizens of this state to decide.

Of more immediate concern, and soon to come before you in considering section 12 of the bill of rights, is whether you wish to require that citizens coming before our courts may represent themselves or be represented by a trained spokesman. In this age of specialized knowledge, I would want a dentist to fill my teeth; a medical doctor to protect my health; a veterinarian to attend my dog; and a pharmacist to fill my prescriptions. Learned as they are, I would not choose one of these men to perform a service for which he was not trained —nor to speak for me in court. It is my concern as a lawyer that the rights of free men before our courts be protected at the bar and on the bench by persons trained and experienced in this work, who are officers of the court, and whose conduct can be controlled by disciplinary power of the supreme court of this state. To me it is vital that this constitution provide that if a citizen chooses not to speak for himself, he shall have the right to competent representation. It is of this right that I speak. It is for this right that I shall vote. (applause)

PRESIDENT NISBET: Any unfinished business, Mr. Secretary?

SECRETARY CHASE: None, Mr. President.

PRESIDENT NISBET: Mr. King.

MR. KING: Mr. President, I merely wish to heartily second those wonderful remarks of Mr. Prettie on behalf of the members of our profession. I do realize how difficult it is for laymen to follow the technical discourses that are bound to come about.

I am reminded of the story of the Baptist preacher who was having some difficulty keeping his congregation awake. There was one grandfather who used to attend church regularly with his young grandson. The grandfather had the habit of dozing off and so the preacher went up to the little boy, the grandson, and said "I will give you 10 cents a week if you will keep your grandfather awake during service." And surely this worked because for the next 3 weeks the grandfather sat there very attentively and each week the preacher would give the dime to the little boy. But the fourth week he noticed that the grandfather had reverted to his old habit of sleeping during service. The preacher went up to the little boy after the sermon and said, "I'm sorry, but I cannot give you the dime this week." And the little boy said, "I know. My grandfather gave me a quarter to leave him alone." (laughter)

PRESIDENT NISBET: Special orders.

SECRETARY CHASE: None.

PRESIDENT NISBET: General orders.

The Chair recognizes Mr. Baginski.

MR. BAGINSKI: Mr. President, I move that the convention resolve itself into committee of the whole for the purpose of discussing the proposals on the general orders calendar.

PRESIDENT NISBET: The motion is that the convention resolve itself into committee of the whole. The question is on the motion of Mr. Baginski. All those in favor say aye. Opposed, no.

The motion prevails.

Mr. Baginski, will you preside?

[Whereupon, Mr. Baginski assumed the Chair to preside over the committee of the whole.]

CHAIRMAN BAGINSKI: The committee of the whole will be in order.

The secretary will read.

SECRETARY CHASE: Before reading, the secretary would like to call to your attention the fact that there are on your desks forms for offering amendments and also the carbon paper necessary to make extra copies. If you do not have enough amendment forms or carbon paper on your desks, please call a page. Please submit to us at the desk 3 copies of amendments.

Item 1 on the calendar, from the committee on education, by Mr. Bentley, chairman, **Committee Proposal 13**, A proposal respecting the physically, mentally or otherwise seriously handicapped. Amends article XI, section 15.

Following is Committee Proposal 13 as read by the secretary, and the reasons submitted in support thereof:

The committee recommends that the following be included in the constitution:

Institutions, [for the benefit of those inhabitants who are deaf, dumb, blind, feeble-minded or insane] PROGRAMS, AND SERVICES FOR THE CARE, TREATMENT, EDUCATION AND/OR REHABILITATION OF THOSE INHABITANTS WHO ARE PHYSICALLY, MENTALLY, OR OTHERWISE SERIOUSLY HANDICAPPED shall aways be fostered and supported.

Mr. Bentley, chairman of the committee on education, submits the following reasons in support of Committee Proposal 13:

The committee on education felt that the words, "deaf, dumb, blind, feeble minded and insane" are not only too restrictive in scope but in certain cases have been outmoded by recent developments in the field of physical and mental rehabilitation. Further, it was felt that public responsibility for all unfortunate persons who may be handicapped through physical, mental and other causes and who can respond to care, treatment and rehabilitation should be set forth in the new constitution. Finally, it was strongly felt that the new constitution should contain language which was not confined to institutional treatment as in the present document.

There was little argument within the committee upon the inclusion of physically and mentally handicapped persons. There was considerable discussion, however, on the use of the words, "otherwise seriously handicapped". It was the general feeling of the committee that this latter category might reasonably be construed to include those persons suffering disorders of an emotional or psychological nature (but not necessarily approaching the stage of mental illness), disorders which in many cases might be aggravated by an unfortunate and even discriminatory social environment. It was not the intention of the committee to include purely welfare cases under the term, "seriously handicapped".

Some discussion arose within the committee over the use of the word inhabitant as possibly denoting an unfortunate connotation of institutionalized inmates. The committee's final adoption of the term which appears in the present constitution was supported by legal opinion which favored the retention of the word "inhabitant" in preference to either, "citizens", "residents", or "persons".

CHAIRMAN BAGINSKI: Are there any amendments to Committee Proposal 13?

Mr. Bentley.

MR. BENTLEY: Mr. Chairman, and members of the committee of the whole, I would like to explain very briefly the procedure which the committee on education would like to follow at this particular point.

As chairman, I would like to make a few brief remarks about the committee proposal and then while retaining the floor I would like to yield to one or two of the other members of the education committee to make supplementary remarks. Following that, and still retaining the floor, if the committee sees no objection, I would like to invite questions, if any, from the delegates. And then I intend to yield the floor for further remarks or amendments as the case may be. We hope this method of presenting our proposal will meet with your approval.

Mr. Chairman, I would like, for the guidance of the members of the committee of the whole, to point out that, unfortunately, we must have run out of capital letters when we were preparing this proposal, but if you will take your pencils and on the green copy that is before you underline all of line 7, beginning with "programs", all of line 8, and the word "handicapped" in line 9, you will see the language that has been added to the existing language in the constitution by the committee on education.

Very briefly, Mr. Chairman, the words as contained in the present constitution, "institutions for the benefit of those inhabitants who are deaf, dumb, blind, feeble minded or insane shall always be fostered and supported," go back to the 1850 constitution with the exception of the words "feeble minded" which were added in the Constitutional Convention of 1908.

As explained in the committee's report, submitted January 3, the committee on education felt that the terms "deaf, dumb, blind, feeble minded or insane" were somewhat restrictive, and in some cases even outmoded by the latest developments in the field of physical and mental rehabilitation. Therefore we decided to strike those words and to add the words "physically, mentally or otherwise seriously handicapped" as indicating those types of unfortunates for whom we desire to indicate an area of public responsibility.

I should like to point out, Mr. Chairman, that according to the citizens research council, the provision, even if eliminated, would not thereby relieve public responsibility. I am referring to chapter 11, page 50, volume 2. It reads, "If the provision were eliminated, the state would still be able to support these institutions and programs." In other words, this, Mr. Chairman, is not a grant of power to the legislature that the legislature does not already have to take care of these unfortunate persons. It is merely, in the feeling of the education committee, an extension and a broadening of the area of general responsibilities which we felt were worthy of retention and broadening, and even inclusion, in our new constitutional section relating to this subject. I may say that both the subcommittee and the committee adopted the new language by unanimous vote and I hope very much that it will receive similar approval on behalf of the committee of the whole.

At this time, Mr. Chairman, I would like to yield to the lady from Port Huron, the chairman of the subcommittee which handled this proposal, Miss Vera Andrus, to make a few supplemental remarks.

CHAIRMAN BAGINSKI: Miss Andrus.

MISS ANDRUS: Mr. Chairman, I would like to explain a little of the work done in our subcommittee and in our education committee in this respect. I think that Mr. Bentley has made it very clear. Michigan was one of the first states to establish a provision for a charitable institution in our state constitution. In 1848 we had our first. It was called an asylum. The legislature established it in Pontiac. It was for the deaf, dumb, blind and insane. Then, when the 1850 constitutional convention met, they were very proud of our institution and our interest in our unfortunate inhabitants, and it was put in the constitution at that time. Now, in 1879, the training school at Lapeer was established, and so in the 1908 constitution they added the words "feeble minded", as Mr. Bentley said. Our 1908 constitution provides for institutions for the deaf, dumb, blind, insane and feeble minded.

As Dr. Pollock and Mr. Hutchinson brought out so very clearly at the beginning of this convention, the state legislature can provide institutions and care without our saying anything

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Explanation—Matter within [ ] is stricken, matter in capitals is new.

in the constitution about it. But Michigan has been very proud of the fact that we were among the first to provide such institutions and in both the conventions of 1850 and 1908 members of the convention on the floor spoke of their pride in this, and mentioned their desire to have this provision retained in the constitution.

Our subcommittee considered this question. We had many witnesses. Much evidence was brought in. We don't talk about "dumb" any more and we don't talk about "feeble minded". And there is also a tendency on the part of the courts, if you enumerate something in the constitution, it can be interpreted to mean that that is all we wish the state to do. And among some of the witnesses we had were people who said there are groups who have no provision made for them. It seems difficult to take care of some of our young people who are not physically or mentally handicapped in an extreme sense but who are apt to become delinquents and who eventually may be our lifelong guests in some institution for crimes committed. There are also elderly people who do not come under the term "insane", and some judges told us about cases like this.

So, as we talked this over, we decided on this wording which is now before you, to have the physically handicapped, which is quite obvious, but is not enumerative, so it takes care of whatever the legislature, representing us, the people of Michigan, would wish to do. Reference is also made to the mentally handicapped, and then provision is also made for these other people. The one class that was spoken of in one of our hearings was people who are let out from prison who have had a record of that sort. We do have provision, but probably there could be more or it could be broadened.

There are various classes that do not come under "physically or mentally handicapped." And since we are mentioning those, let me say this. We had a rather lengthy discussion in this regard. The term that is used by the psychologists is "socially" handicapped. But there was quite a roar of laughter when we reported that. We also thought about the term "psychologically" handicapped, the term "emotionally" handicapped, and we finally came upon this term which can be interpreted by our legislature as needs come up.

I think that is all I need speak of. We tried to get our report all on one page, and so our committee did not say as much about the word "inhabitant" as we might have. We did not like that term; we did not like the sound of the word "inhabitant". Some people thought it might mean an inmate of an institution. So we talked over the terms "person" and "citizen" and "resident". Resident was the term we seemed to like best. We asked Mr. Bolton, one of our legal advisers, about this, and he felt that the term "inhabitant" included just the people we wanted. It includes people who are not citizens, people who need care. It would not include people such as transients; people who might come here to get care. He devotes a whole page to this subject in his brief, but this is his final sentence,

It is suggested that since Michigan law now uses the word "inhabitant," under article XI, section 13, that it be retained.

I believe that is all I need speak of. Miss Adelaide Hart who has had much experience in the Detroit area with some of these handicapped people is, I think, going to explain a little more about classes and groups that might be included.

CHAIRMAN BAGINSKI: Mr. Bentley.

MR. BENTLEY: At this time I would like, Mr. Chairman, to yield to the distinguished vice chairman of the education committee, the lady from Detroit, Miss Adelaide Hart, for some further remarks.

CHAIRMAN BAGINSKI: Miss Hart.

MISS HART: Mr. Chairman, fellow delegates, the term "otherwise seriously handicapped" has meant a great deal to many of us because it might well make possible for those of us who work with children to anticipate emotional disturbance among the young, and perhaps prevent that very serious illness.

We adopted a slogan in Michigan back in 1955 in relation to our mental health program. It is a good slogan and it would be a great blessing if we took it seriously and supported it as it deserves. It goes like this, "Brains, not bricks". It suggests that an ounce of prevention is worth a pound of cure, and that we might better keep people out of hospitals than to play the losing game of building institutions in which to lock them up. An adequate program of prevention, properly administered, could save this state millions of dollars within the not too distant future. More than this, it could save precious human life for constructive purposes, instead of institutionalization for life.

Classroom teachers in the state of Michigan can tell stories by the hour of children they have observed in the early stages of emotional disturbance or mental breakdown. They will tell, also, of their helplessness in saving these children for productive lives because there is too little help and it comes, all too frequently, far too late.

What are some of these symptoms these teachers have observed? Well, there is the boy, for example, who, although he has a superior mentality, sits hour after hour in the classroom gazing intently into space. He doesn't listen, he doesn't read, he doesn't write. He just sits. The chances are that he is remembering the drunken brawl through which he shivered under the covers last night, the night before that and the night before that. He lives in terror that one parent may exterminate the other. Or, he may be facing up to eviction from his home. He knows it is coming today, as it has come all too often in the past. He may have gone to 26 schools before he had reached the seventh grade. His father is always the last one hired, and the first one fired. The family is constantly on the move, and life is a frustrating experience.

And then, there is the little girl who hates the world and the adults who live in it. Her mother has been prematurely dismissed from a mental institution and the child is kept a virtual prisoner during her hours out of school. She has an uncontrollable desire to hurt other human beings. She not only disrupts a classroom; she disrupts the school. This child sings like an angel. She loves to read. She writes very well, but cannot adjust to living peaceably with other people. She desperately needs help and every teacher knows it all too well. The alternatives are undoubtedly immediate help or institutionalization for the better part of an unhappy life. And an expense to the state of Michigan that is a formidable item to consider.

There is the child, also, who never keeps still. He talks incessantly. He marches up and down the aisle or crawls under the seats, determined to be the center of attention. He has to go to the lavatory at least 3 times during the hour. He has an assortment of severe pains that will guarantee a trip to the office or to the school nurse. He is, of course, starved for affection and he refuses to grow up. He is a problem today, but he may be a menace tomorrow unless someone takes time out to do intensive work with this boy.

One city has undertaken a project encompassing 14 elementary schools. Its purposes are to one, identify as early as possible elementary school children who exhibit antisocial behavior; and two, do everything possible to bring about better attitudes and adjustment among these small children. In these schools, when signs of emotional disturbance evidence themselves, a team of workers sets about the business of determining the cause. Home, school and neighborhood are all involved. Something happens. If it is humanly possible, the child whose future is threatened is quickly set to right. That the experiment has proved effective is evidenced by the fact that in a recent sampling of some 124 cases, it was found that the children who benefited by early help showed an 82 per cent improvement in citizenship, a 55 per cent improvement in scholarship and a 64 per cent improvement in effort. These children, instead of ending up in the detention home, the vocational schools, or the mental institutions of our state, may well be on their way to constructive lives as productive citizens who will be a credit to our state.

It is not surprising that the discouraged boy or girl, the ill adjusted child, or the "problem child" as they are often characterized, is the "drop out" at school. The United States government reports that out of 10.8 million students in grades 9 to 12 in public and parochial schools, 2.5 million will quit

before graduation. The appalling fact is that unemployment among the nongraduates is 8.5 million. Among graduates the number of unemployed is about ½ of that number.

What the education committee asks is that this convention make it possible for the state of Michigan to invest in the future, in the lives of our most important possession, the future citizens of our state.

MR. BENTLEY: Thank you, Miss Andrus, Miss Hart. I will be glad to yield to any questions from any member of the committee of the whole at this time. If there are no questions, I shall be glad to yield the floor for any possible amendments.

CHAIRMAN BAGINSKI: Are there any questions of Mr. Bentley?

Mrs. Butler.

MRS. BUTLER: Mr. Chairman, I wanted to ask a question of Mr. Bentley. I should like to know what word you said, first, to underline. I did not fully understand what you said in that regard.

MR. BENTLEY: For the information of the lady from Houghton, if you will start on line 7, Mrs. Butler, with the word "programs"—the first word that is not stricken— and go down to the word "handicapped" on line 9, those are all the new words added by the committee on education.

CHAIRMAN BAGINSKI: Are there any amendments?

Mr. Farnsworth.

MR. FARNSWORTH: Mr. Chairman, I have no amendment but I do have a question to put to Mr. Bentley or Miss Hart.

MR. BENTLEY: I will gladly yield, Mr. Chairman.

CHAIRMAN BAGINSKI: Do you care to answer it?

MR. BENTLEY: Surely.

MR. FARNSWORTH: Mr. Bentley, Miss Hart, is it your idea that this will pretty much put the state in the business of completely supporting the child guidance clinics and the schools for mentally retarded children who are trainable?

CHAIRMAN BAGINSKI: Do you care to answer, Miss Hart?

MISS HART: I would hope it would have this effect.

MR. FARNSWORTH: That answers my question. Thank you.

CHAIRMAN BAGINSKI: Are there any further questions? Are there any amendments to the proposal?

If not, it will pass.

Committee Proposal 13 is passed.

Committee Proposal 14. The secretary will read.

SECRETARY CHASE: Item 2 on the calendar, from the committee on miscellaneous provisions and schedule, by Mr. Erickson, chairman, **Committee Proposal 14,** A proposal pertaining to the preamble to the constitution.

Following is Committee Proposal 14 as read by the secretary, and the reasons submitted in support thereof:

The committee recommends that the following be included in the constitution:

We, the people of the state of Michigan, grateful to Almighty God for the blessings of freedom, and earnestly desiring to secure these blessings undiminished to ourselves and our posterity, do ordain and establish this constitution.

Mr. Erickson, chairman of the committee on miscellaneous provisions and schedule, submits the following reasons in support of Committee Proposal 14:

After consideration of the various delegate proposals and hearing of witnesses, the committee recommends the following:

That the preamble in the present constitution is fitting and proper and is sufficient for all purposes.

The preamble should be retained without change.

CHAIRMAN BAGINSKI: Are there any amendments to Committee Proposal 14?

Mr. Erickson.

MR. ERICKSON: Mr. Chairman and members of the committee of the whole, the work on this preamble, although it is suggested and recommended that it be the same as in our present constitution, was done by Mr. Leppien as subcommittee chairman, Mr. Bledsoe as vice chairman, Mr. Durst, Mr. Seyferth and Mr. Binkowski.

Of course, we see that this preamble is part of the constitution and it is not part of the constitution, and perhaps we should take a moment in which to explain that seemingly contradictory statement. In Jacobson v. Massachusetts, 197 U.S. 11, 1905, the Supreme Court of the United States said of the preamble of the United States constitution that it was, strictly speaking, not a part of the constitution at all, but "walks before" it. The court held further that it, the preamble, can support, by itself alone, no basis of a claim either of governmental power or of private right. Rather it is declamatory of the great ends for which the constitution was written, and in addition it indicates the contractual character of the constitution. The language "We the people of the United States, . . . do ordain and establish this constitution for the United States . . . ." is quite clearly a reflection of the Lockeian concept of the compact theory of the state, under which all American governments, since the time of the revolution, both state and federal, are derived from the compact of the people setting up the government. By analogy, sound certainly in this instance, these ideas would apply to the preamble of the Constitution of the State of Michigan. That is, it is declaratory of general intent, but it is not law in the sense that it can establish any basis for a claim, right, title, privilege, immunity, et cetera, in a court of law.

The language of the Michigan preamble, as standing in the Constitution of 1908, clearly reflects the Lockeian compact theory of the state. It employs this language, "We, the people of the state of Michigan . . ." and it ends up with, "do ordain and establish this constitution." Its concluding words are "do ordain and establish this constitution."

On the other hand, the preamble of the 1850 constitution said simply, "The people of the state of Michigan do ordain this constitution." That is ample. At that time the change was made to give recognition in the constitution to the Supreme Being. Similar recognition is found in many other constitutions.

This committee did considerable work and they have asked me to make this report. The United States and 48 state constitutions have a preamble as a matter of form. The constitutions of the states of Vermont and West Virginia do not have a preamble. Presently the preambles of the constitutions of the states of New Hampshire, Oregon and Tennessee do not mention God. The preambles of 31 states give recognition to Almighty God. The references vary. Six states refer to God, 3 states refer to the Supreme Ruler of the Universe. Others refer to the Creator, the Supreme Being, Divine Guidance, Great Legislator of the Universe or Sovereign Ruler of the Universe. The wording in each case is similar.

The other principal reference in preambles is to either liberty or freedom. Twenty-nine states use the term "liberty" and 8 use the term "freedom". Michigan uses the word "freedom". Thank you, Mr. Chairman.

CHAIRMAN BAGINSKI: Are there any amendments to the proposal? If not, it will pass.

Committee Proposal 14 is passed.

The secretary will read.

SECRETARY CHASE: From the committee on declaration of rights, suffrage and elections, by Mr. Pollock, chairman, **Committee Proposal 15,** A proposal to amend article II pertaining to the declaration of rights.

Following is Committee Proposal 15 as read by the secretary, and the reasons submitted in support thereof:

The committee recommends that the following be included in the constitution:

Article I [II]

Declaration of rights

Political power

Sec. 1. All political power is inherent in the people. Government is instituted for their equal benefit, security and protection.

Right of assembly and petition

Sec. 2. The people have the right peaceably to assemble, to consult for the common good, to instruct their representatives and to petition the [legislature] GOVERNMENT for redress of grievances.

Freedom of worship; disabilities

Sec. 3. Every person shall be at liberty to worship God according to the dictates of his own conscience. No person shall be compelled to attend, or, against his consent, to contribute to the erection or support of any place of religious worship, or to pay tithes, taxes or other rates for the support of any minister of the gospel or teacher of religion. No money shall be appropriated or drawn from the treasury for the benefit of any religious sect or society, theological or religious seminary; nor shall property belonging to the state be appropriated for any such purpose. The civil and political rights, privileges and capacities of no person shall be diminished on account of his religious belief.

Liberty of speech and press

Sec. 4. Every person may freely speak, write, EXPRESS, and publish his [sentiments] VIEWS on all subjects, being responsible for the abuse of such right; and no law shall be passed to restrain or abridge the liberty of speech or of the press.

Right to bear arms

Sec. 5. Every person has a right to bear arms for the defense of himself and the state.

Civil power supreme

Sec. 6. The military shall in all cases and at all times be in strict subordination to the civil power.

Quartering of soldiers

Sec. 7. No soldier shall, in time of peace, be quartered in any house without the consent of the owner or occupant, nor in time of war, except in a manner prescribed by law.

Slavery prohibited

Sec. 8. Neither slavery, nor involuntary servitude[,] unless for the punishment of crime, shall ever be tolerated in this state.

Attainder; ex post facto laws; impairment of contracts

Sec. 9. No bill of attainder, ex post facto law or law impairing the obligation of contracts shall be passed.

Searches and seizures

Sec. 10. The person, houses, papers and possessions of every person shall be secure from unreasonable searches and seizures. No warrant to search any place or to seize any person or things shall issue without describing them, nor without probable cause, supported by oath or affirmation[: Provided, however, That the provisions of this section shall not be construed to bar from evidence in any court of criminal jurisdiction, or in any criminal proceeding held before any magistrate or justice of the peace, any narcotic drug or drugs, any firearm, rifle, pistol, revolver, automatic pistol, machine gun, bomb, shell, explosive, blackjack, slungshot, billy, metallic knuckles, gas ejecting device, or any other dangerous weapon or thing, seized by any peace officer outside the curtilage of any dwelling house in this state]. EVIDENCE OBTAINED IN VIOLATION OF THIS SECTION SHALL NOT BE USED EXCEPT AS AUTHORIZED BY LAW.

Habeas corpus

Sec. 11. The privilege of the writ of habeas corpus shall not be suspended unless in case of rebellion, INSURRECTION or invasion the public safety may require it.

Appearance in person or by counsel

Sec. 12. Any suitor in any court of this state shall have the right to prosecute or defend his suit, either in his own proper person or by an attorney [or agent of his choice].

Jury trial

Sec. 13. The right of trial by jury shall remain, but shall be deemed to be waived in all civil cases unless demanded by one of the parties in such manner as shall be prescribed by law.

Former jeopardy; bailable offenses

Sec. 14. [No person, after acquittal upon the merits, shall be tried for the same offense] NO PERSON SHALL BE SUBJECT FOR THE SAME OFFENSE TO BE TWICE PUT IN JEOPARDY. All persons shall, before conviction, be bailable by sufficient sureties, except for murder and treason when the proof is evident or the presumption great.

Bail, fines; punishment; detention of witnesses

Sec. 15. Excessive bail shall not be required; excessive fines shall not be imposed; cruel or unusual punishment shall not be inflicted; nor shall witnesses be unreasonably detained.

Self incrimination; due process of law

Sec. 16. No person shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law. THE RIGHT OF ALL PERSONS TO FAIR AND JUST TREATMENT IN THE COURSE OF LEGISLATIVE AND EXECUTIVE PROCEEDINGS, INVESTIGATIONS, AND HEARINGS SHALL NOT BE INFRINGED.

Competency of witnesses

Sec. 17. No person shall be rendered incompetent to be a witness on account of his opinions on matters of religious belief.

Libels; truth as defense

Sec. 18. In all prosecutions for libels the truth may be given in evidence to the jury; and, if it shall appear to the jury that the matter charged as libelous is true and was published with good motives and for justifiable ends, the accused shall be acquitted.

Rights of accused

Sec. 19. In every criminal prosecution, the accused shall have the right to a speedy and public trial by an impartial jury, which may consist of less than 12 [men] JURORS in all courts not of record; to be informed of the nature of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; to have the assistance of counsel for his defense; TO HAVE AN APPEAL AS A MATTER OF RIGHT; and in courts of record, when the trial court shall so order, to have such reasonable assistance as may be necessary to perfect and prosecute an appeal.

Imprisonment for debt or military fine

Sec. 20. No person shall be imprisoned for debt arising out of, or founded on a TORT OR A contract, express or implied, except in cases of fraud or breach of trust, or of moneys collected by public officers or in any professional employment. [No person shall be imprisoned for military fine in time of peace.]

Treason; definition, evidence

Sec. 21. Treason against the state shall consist only in levying war against it or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason unless upon the testimony of 2 witnesses to the same overt act, or on confession in open court.

[Subversion; definition, penalty; rights not valid as defense.]

[Sec. 22. Subversion shall consist of any act, or advocacy of any act, intended to overthrow the form of government of the United States or the form of government of this state, as established by this constitution and as guaranteed by section 4 of article 4 of the Constitution of the United States of America, by force or violence or by any unlawful means.]

[Subversion is declared to be a crime against the state, punishable by any penalty provided by law.]

[Subversion shall constitute an abuse of the rights secured by section 4 of this article, and the rights secured

Explanation—Matter within [ ] is stricken, matter in capitals is new.

thereby shall not be valid as a defense in any trial for subversion.]

SEC. — THE ENUMERATION IN THIS CONSTITUTION OF CERTAIN RIGHTS SHALL NOT BE CONSTRUED TO DENY OR DISPARAGE OTHERS RETAINED BY THE PEOPLE.

Mr. Pollock, chairman of the committee on declaration of rights, suffrage and elections, submits the following reasons in support of Committee Proposal 15:

Article II—Proposed Article I

The committee recommends herewith to the convention that the declaration of rights, which is now article II of the present constitution, become article I of the new constitution. In the committee's opinion the liberties of the people are so fundamental to the Michigan constitution and to free representative government generally that the declaration of rights which establishes the fundamental principles of liberty and sets up the basic legal guideposts for their implementation and enforcement, should appear as the first article in the new constitution. In retaining or altering any present provisions, the committee has carefully considered the exact language in question, as well as committee intent, with the purpose of reducing as far as possible the necessity of judicial construction.

Sec. 1. "All political power is inherent in the people. Government is instituted for their equal benefit, security and protection."

Comment: This section is declaratory of the basic idea of free government. The committee recommends that it be retained without change. Delegate Proposal 1408, submitted by Mr. Wanger, would add to this "The enumeration in this constitution of certain rights shall not be construed to deny or disparage others retained by the people." The committee, it will be observed from the report, believes this section, which is modeled upon the ninth amendment of the federal constitution, is appropriate to a declaration of rights, but it recommends its inclusion in the constitution as a separate section.

Sec. 2. "The people have the right peaceably to assemble, to consult for the common good, to instruct their representatives and to petition the [legislature] GOVERNMENT for redress of grievances."

Comment: This section embodying the historic rights of freedom of assembly and petition has been retained intact except for the substitution in the text of the word "government" for "legislature." This change reflects recognition by the committee that whether one likes it or not other agencies of the government than merely the legislature today exercise actual policy making functions and so ought to be subject to the right of petition. This is undoubtedly true, for example, of the governor and the executive establishment. The committee considered various possible formulas for expanding the right of petition but came to the conclusion that the word "government" was best calculated to accomplish its intention and that the attempt at more precise definition encountered some difficulties. The word "government," it may be observed, has good precedent for it occurs in this usage in the first amendment to the Constitution of the United States.

Sec. 3. "Every person shall be at liberty to worship God according to the dictates of his own conscience. No person shall be compelled to attend, or, against his consent, to contribute to the erection or support of any place of religious worship, or to pay tithes, taxes or other rates for the support of any minister of the gospel or teacher of religion. No money shall be appropriated or drawn from the treasury for the benefit of any religious sect or society, theological or religious seminary; nor shall property belonging to the state be appropriated for any such purpose. The civil and political rights, privileges and capacities of no person shall be diminished or enlarged on account of his religious belief."

Comment: This section incorporates in some detail the traditional American guarantees of individual religious liberty and the separation of church and state. From one point of view, this section may now be unnecessary, in that the supreme court of the United States beginning with the New Jersey Bus Case (1946) has gone to great lengths to incorporate a like series of guarantees against the states within the content of the fourteenth amendment. However, the committee has acted consistently on the basis of the belief that long established and traditional guarantees within the Michigan constitution ought to be retained intact. The committee also believes that it is good constitutional practice for the Michigan constitution to continue the incorporation of the fundamental guarantees of liberty in our declaration of rights even when the federal government appears to have gone very far in guaranteeing the rights in question against state action.

The committee also has considered carefully Mr. Nord's proposal, Delegate Proposal 1092, which would have added to the section the words "nor shall sectarian instruction be allowed in any school supported by the state." Though there was some sentiment for the amendment, the majority in the committee voted not to include it, principally on the ground that it was unnecessary.

The committee on education concurs in the language of the section as submitted.

Sec. 4. "Every person may freely speak, write, EXPRESS, and publish his [sentiments] VIEWS on all subjects, being responsible for the abuse of such rights; and no law shall be passed to restrain or abridge the liberty of speech or of the press."

Comment: Here again is a traditional guarantee of American liberty, now covered largely by the extension of federal constitutional guarantees against the states, which the committee nonetheless believes it wise to continue to incorporate in Michigan's fundamental law.

The incorporation of the word "express" and the substitution of the word "views" for "sentiments" both taken from an amendment submitted in committee by Mr. Norris were done on the unanimous vote of the committee. The committee believes that the multiplicity of contemporary means of expression (as over and against the traditional means of speaking and writing) justifies the first change, while the word "views" seems to have a sharper and more specific meaning than the former word "sentiments."

The committee carefully considered but unanimously decided against the incorporation, after the phrase "liberty of speech," additional wordage which would have read "by whatever means communicated." The committee believes that this phrase raises potential difficulty with respect to the federal government's exclusive sovereignty in the area of radio and television communication particularly in the light of certain concepts in the federal communications act of 1934, as amended, which make it clear that radio and television communication are subject to a wide sweep of control in the public interest.

Sec. 5. "Every person has a right to bear arms for the defense of himself and the state."

Sec. 6. "The military shall in all cases and at all times be in strict subordination to the civil power."

Sec. 7. "No soldier shall, in time of peace, be quartered in any house without the consent of the owner or occupant, nor in time of war, except in a manner prescribed by law."

Sec. 8. "Neither slavery, nor involuntary servitude unless for the punishment of crime, shall ever be tolerated in this state."

Sec. 9. "No bill of attainder, ex post facto law or law impairing the obligation of contracts shall be passed."

Comment: These sections all incorporate traditional guarantees of American liberty. In part they may be obsolete (for example, the guarantee against quartering of soldiers in time of peace), and in part they may have become so self evident that their affirmation may appear to be superfluous; i.e., the guarantee against slavery and involuntary servitude. In addition, several of the guarantees

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in question (the prohibition upon slavery, and those against bills of attainder, ex post facto laws and the impairment of the obligations of contracts) appear in the federal constitution as against the states so that their inclusion in the state constitution as guarantees of liberty is in a certain technical sense superfluous. However, the committee believes strongly that the preservation of liberty and its affirmation is as much a function of the several states and their respective governments as it is of the federal government. Accordingly, it believes that the retention of the enumeration of the liberties in question in a state constitution is proper in all the aforementioned instances.

The delegates will observe that one very minor substantive change has been made in section 8. The comma which formerly appeared after the word "servitude" has been eliminated and a new comma inserted after the word "slavery." The old punctuation conceivably made slavery permissible as a punishment for crime. The new punctuation forbids slavery categorically and makes involuntary servitude alone permissible as a punishment for crime.

Sec. 10. "The person, houses, papers and possessions of every person shall be secure from unreasonable searches and seizures. No warrant to search any place or to seize any person or things shall issue without describing them, nor without probable cause, supported by oath or affirmation[: Provided, however, That the provisions of this section shall not be construed to bar from evidence in any court of criminal jurisdiction, or in any criminal proceeding held before any magistrate or justice of the peace, any narcotic drug or drugs, any firearm, rifle, pistol, revolver, automatic pistol, machine gun, bomb, bomb shell, explosive, blackjack, slungshot, billy, metallic knuckles, gas ejecting device, or any other dangerous weapon or thing, seized by any peace officer outside the curtilage of any dwelling house in this state]. EVIDENCE OBTAINED IN VIOLATION OF THIS SECTION SHALL NOT BE USED EXCEPT AS AUTHORIZED BY LAW."

Comment: As the foregoing text makes evident, the committee after very careful consideration decided to drop the proviso with respect to the admissibility into evidence of certain weapons, arms, narcotics and other articles, which had been adopted by constitutional referendum in 1952. The committee's decision rests principally upon its recognition of the apparent sweeping impact of the opinion of the United States supreme court in Mapp v. Ohio (June, 1961) in which the court, in a 5 to 3 opinion, appears to have asserted categorically in very broad language that hereafter evidence obtained in violation of the guarantees of the fourth amendment to the federal constitution will be inadmissible in both state and federal courts.

There was some considerable difference of opinion among the legal experts in the committee as to the force of the Mapp case for Michigan constitutional law. Certain of the judges and lawyers on the committee believed that the impact of the Mapp case on state law is so categorical that it leaves no possible constitutional grounds whatsoever for the inclusion of the 1952 proviso, which according to this interpretation now is null and void under the doctrine of federal supremacy.

Other legal experts on the committee pointed out, however, that the Mapp case may very well be construed more narrowly than the foregoing argument implies. In the first place, the Mapp case dealt with a seizure within the curtilage, whereas the 1952 proviso specifically is limited to seizures outside the curtilage. In addition, the Mapp case dealt also with the seizure of printed materials and it thus has first amendment implications about which the supreme court of the United States has traditionally entertained a specially tender regard. In short, this argument runs, the Mapp case may very well be limited in the future by the process of redefinition, exclusion, and limitation so as to establish the constitutionality of state provisions similar to that in the 1952 Michigan proviso.

It should be observed, also, that there was a genuine difference in the committee with respect to the wisdom of the policy incorporated in the 1952 proviso. Certain members of the committee believed that the proviso incorporated legal guarantees essential to the maintenance of public order and safety and that it did not infringe in any fundamental way upon the traditional constitutional limits against arbitrary search and seizure. The opposite point of view also found expression: that the proviso constituted a serious impairment of the traditional guarantees of American liberty and, as such, ought to be eliminated.

The committee finally resolved these differences of opinion both with respect to constitutional law and good constitutional policy by the adoption of a new provision stipulating that "evidence obtained in violation of this section shall not be used except as authorized by law." This language, in the committee's belief, will have the following constitutional and legal consequences: first, it recognizes the supremacy of federal constitutional law with respect to search and seizure as defined in the Mapp case and other opinions. This is the implication in part of the new phrase, "as authorized by law." Thus, if the Mapp case turns out to have the all inclusive sweep that some observers believe it will, the wording of the Michigan constitution will remain consistent with supreme federal law.

At the same time, the new provision recognizes that the sweep of the Mapp case ultimately may not be as all inclusive as it now appears to some to be. Should the definition of the federal limits imposed on the states with respect to the admissibility of evidence change in the future, the Michigan legislature and the Michigan courts could incorporate, in statute and court decisions, those rules with respect to the admissibility of evidence which reflect the opinion of the legislature and the Michigan courts as to what ought to constitute sound practice in this state, subject only to the continuing recognition of the limits set by federal constitutional supremacy.

The new provision also obviously has the effect of restoring to the legislature of the state of Michigan a very large degree of discretion in what constitutes good policy on rules of evidence in relation to search and seizure. The committee believes that the restoration of legislative flexibility in this matter is consistent with generally sound constitutional practice.

Sec. 11. "The privilege of the writ of habeas corpus shall not be suspended unless in case of rebellion, INSURRECTION or invasion the public safety may require it."

Comment: This section has been carried over intact from the old declaration of rights with the important addition of the word "insurrection." On a roll call vote, the committee voted 13 to 2 in favor of the addition of this word. It was the belief of the committee that there have been historical situations in which uprisings against the government so wide spread, well organized and effective as to close the civil courts and require suppression by military force which nonetheless cannot properly be described technically as rebellion. Technically in law "rebellion" implies a state of belligerency and public war such as that alluded to by the supreme court in the Prize Cases (1863) and in Texas v. White (1866). Disturbances which close the courts and require suppression by military force may require suspension of the writ of habeas corpus and yet not be rebellion in the sense that the confederacy constituted such. See, for example, ex parte Merryman, 9 Fed. Cases, 487 (1861).

Sec. 12. "Any suitor in any court of this state shall have the right to prosecute or defend his suit, either in his own proper person or by an attorney [or agent of his choice].

Comment: This section as now worded deletes the word "agent" to clarify the meaning and reconcile its provisions with current practice, so that no one may contend that a litigant is empowered by constitutional law to engage a person to represent him in a court of record unless said

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person is licensed to practice law. This is consistent with a supreme court decision which holds that the word "agent" as used in the 1908 constitution was in substance synonymous with "attorney." Thus this change is in conformity with the court's recognition that the public interest is best protected by those who are subject to the superintending power of the courts. This, of course, does not preclude any person from arguing his own case in court if he so desires. The new wording also allows the legislature, at its discretion, to broaden the right of persons to representation in court by counsel or persons not attorneys.

Sec. 13. "The right of trial by jury shall remain, but shall be deemed to be waived in all civil cases unless demanded by one of the parties in such manner as shall be prescribed by law."

Comment: This provision guarantees the right to a jury trial but requires that the right is deemed to be waived in a civil suit unless one of the parties demands it, whereas, in a criminal case a jury must be affirmatively waived by the defendant (in practice in writing).

The committee recommends the retention of this section.

Sec. 14. "[No person, after acquittal upon the merits, shall be tried for the same offense] NO PERSON SHALL BE SUBJECT FOR THE SAME OFFENSE TO BE TWICE PUT IN JEOPARDY. All persons shall, before conviction, be bailable by sufficient sureties, except for murder and treason, when the proof is evident or the presumption great."

[The comment regarding section 14 immediately following is the comment as originally submitted by the committee. This was ordered revised on January 11 (see below, page 544). The revised comment appears following this original comment.]

Comment: The foregoing change in section 14 involves the substitution of the double jeopardy provision from the Constitution of the United States (except for the deletion of the obsolete words of "life or limb") in place of the original provision which merely prohibits retrial after "acquittal upon the merits." The former language, the committee points out, has been consistently construed by the Michigan supreme court to mean something quite different than the words on the surface appear to connote. Taken literally, the words appear to say that there is no double jeopardy until a trial has run its course complete to acquittal. In fact, however, the Michigan courts have followed the federal rule on double jeopardy and have construed the provision to mean that an accused person is put in jeopardy as soon as a jury is empanelled. This is the same rule with respect to jeopardy as is followed by the federal courts. The new language thus appears to be more consistent with the actual practice of the courts in Michigan.

The committee also believes that the new provision will permit the courts an appropriate degree of latitude in defining and restricting the concept of jeopardy so as to permit retrial of a defendant in certain instances in which some minor mechanical legal flaw in indictment or procedure permits a guilty person to escape without punishment.

Following is the comment regarding section 14 as revised on January 12 (see below, page 559) by the committee on declaration of rights, suffrage and elections:

Comment: The foregoing change in section 14 involves the substitution of the double jeopardy provision from the Constitution of the United States (except for the deletion of the obsolete words of "life or limb") in place of the original provision which merely prohibits retrial after "acquittal upon the merits." The former language, the committee points out, has been consistently construed by the Michigan supreme court to mean something quite different than the words on the surface appear to connote. Taken literally, the words appear to say that there is no double jeopardy until a trial has run its course complete to acquittal. In fact, however, the Michigan courts have followed the federal rule on double jeopardy. The new language thus appears to be consistent with the actual practice of the courts in Michigan.

Sec. 15. "Excessive bail shall not be required; excessive fines shall not be imposed; cruel or unusual punishment shall not be inflicted; nor shall witnesses be unreasonably detained."

Comment: The committee believes that these guarantees against a requirement of excessive bail, excessive fines, cruel or unusual punishment, and the unreasonable detention of witnesses are satisfactory as now stated and require no change from the present constitution.

Sec. 16. "No person shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law. THE RIGHT OF ALL PERSONS TO FAIR AND JUST TREATMENT IN THE COURSE OF LEGISLATIVE AND EXECUTIVE PROCEEDINGS, INVESTIGATIONS, AND HEARINGS SHALL NOT BE INFRINGED."

Comment: This section, as amended, incorporates a new guarantee of fair and just treatment in legislative and executive investigations. This recognizes the extent to which legislative and executive investigations, both on the state and federal level, lately have tended to assume a quasi judicial character. The language proposed is similar to that contained in a comparable section of the recent Constitution of the state of Alaska. The language proposed by the committee does not in any sense impose categorically the guarantees of procedural due process upon such investigations. Instead, it leaves to the legislature, the executive and finally to the courts, the task of developing fair rules of procedure appropriate to such investigations and hearings. It may be observed that a considerable body of federal constitutional law with respect to federal investigations both by executive bodies and by congress has evolved in the last 10 years. This section as drafted by the committee would make Michigan practice consistent with this development.

Sec. 17. "No person shall be rendered incompetent to be a witness on account of his opinions on matters of religious belief."

Comment: The committee believes this provision should be retained intact. At first glance it might be supposed that it should be incorporated in section 3, which guarantees freedom of worship and religious liberty. Actually, however, section 17 deals with court procedure rather than with religious liberty as such, and for this reason the committee has suggested retaining it intact, as a separate section.

Sec. 18. "In all prosecutions for libels the truth may be given in evidence to the jury; and, if it shall appear to the jury that the matter charged as libelous is true and was published with good motives and for justifiable ends, the accused shall be acquitted."

Comment: The committee recommends the continuation unchanged of this provision in the present constitution. It considered carefully an amendment which would have modified the section to eliminate criminal prosecutions for malicious libel against private individuals. But it believes that the defenses of truth, good motives and justifiable ends constitute an adequate protection, both for individuals and for the press, and that the provision accordingly ought to remain unchanged.

The language of the section also apparently deals with the traditional right of the state to prosecute the offense originally known as seditious libel, which today probably could be comprised merely within the phrase "sedition"; i.e., language intended to damage or destroy the government or to overthrow it by unlawful means. Again, the guarantees of the section with respect to defenses of truth,

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motives and justifiable ends appear to be adequate for this purpose also.

Sec. 19. "In every criminal prosecution the accused shall have the right to a speedy and public trial by an impartial jury, which may consist of less than 12 [men] JURORS in all courts not of record; to be informed of the nature of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; to have the assistance of counsel for his defense; TO HAVE AN APPEAL AS A MATTER OF RIGHT; and in courts of record, when the trial court shall so order, to have such reasonable assistance as may be necessary to perfect and prosecute an appeal."

Comment: This section deals with the traditional guarantees of a fair trial for an accused person in criminal cases. It needs little change. The substitution of the word "jurors" for "men" in the 12 person jury guarantee takes recognition of the modern fact that women as well as men now are electors and eligible to serve on juries.

The guarantee of a categorical right of appeal in criminal cases the committee believes to be consistent with the recent trend of opinion in the federal courts and, in any event, to be sound and fair procedural practice. As one of the members of the committee said, "It is not merely the consequence or inconsequence of the punishment which may be imposed upon a defendant upon conviction; there is also the fact that a conviction for any offense, no matter how trivial it may be, nowadays constitutes a blot upon an individual's record which may be of subsequent significance with respect to employment, government service, or merely a person's standing and reputation in the community at large." We desire to grant the status of a categorical constitutional right to at least one appeal in a criminal case. We do not intend to restrict the legislature in its power to provide by law for additional appeals.

Sec. 20. "No person shall be imprisoned for debt arising out of, or founded on a TORT OR A contract, express or implied, except in cases of fraud or breach of trust, or of moneys collected by public officers or in any professional employment. [No person shall be imprisoned for military fine in time of peace.]"

Comment: The addition of a prohibition on imprisonment for debt for torts where there is no fraud or breach of trust is intended to eliminate a practice still moderately common in the Michigan courts, whereby a plaintiff who gets a judgment in a tort case may under some circumstances secure an order for the imprisonment of a defendant where the judgment remains unsatisfied. The committee believes that this remnant of imprisonment for debt is inconsistent with modern conceptions of liberty and ought to be eliminated. It points out that imprisonment as a remedy for the nonpayment of alimony is not affected by the new language, since imprisonment in alimony cases is technically in pursuance of a finding that a defendant is in contempt of court.

The committee recommends striking the language guaranteeing against imprisonment for military fine in time of peace. The language in question appears in part to be too narrow a guarantee against the abuse of military authority in peace time. (If a guarantee of this kind were to be incorporated it ought to prohibit categorically the jurisdiction of military courts over civil persons except in cases of rebellion, insurrection, or invasion.) The provision is also apparently unnecessary, since the more general guarantees in the constitution with respect to the supremacy of the civil over the military power and the writ of habeas corpus appear adequate to take care of the matter of the jurisdiction of military courts.

Sec. 21. "Treason against the state shall consist only in levying war against it or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason unless upon the testimony of 2 witnesses to the same overt act, or on confession in open court."

Comment: The committee recommends the retention of this section intact from the present constitution. It may well be that the federal government's virtually complete preemption of the subject of treason and sedition has made this section so much surplusage, see Pennsylvania vs. Nelson (1956). However, it is quite conceivable that congress and the federal courts may, at least in part, in the future return jurisdiction over treason to the states, in which case the Michigan treason provision would take on renewed meaning as a guarantee against broad prosecutions for this offense. Conceivably, also, the state of Michigan, in a modern war, might find itself isolated from control by the central government; again, the treason provision would become significant.

"[Sec. 22. Subversion shall consist of any act, or advocacy of any act, intended to overthrow the form of government of the United States or the form of government of this state, as established by this constitution and as guaranteed by section 4 of article 4 of the Constitution of the United States of America, by force or violence or by any unlawful means.]

[Subversion is declared to be a crime against the state, punishable by any penalty provided by law.]

[Subversion shall constitute an abuse of the rights secured by section 4 of this article, and the rights secured thereby shall not be valid as a defense in any trial for subversion.]"

Comment: The committee recommends the deletion of section 22 of the present constitution. This section as at present constituted deals with the crime of subversion which it defines as "any act, or advocacy of any act, intended to overthrow the form of government of the United States or the form of government of this state, as established by this constitution and as guaranteed by section 4 of article 4 of the Constitution of the United States of America, by force or violence or by any unlawful means." This section in its second paragraph declares subversion "to be a crime against the state, punishable by any penalty provided by law." And in the third paragraph it declares that subversion "shall constitute an abuse of the rights secured by section 4 of this article, and the rights secured thereby shall not be valid as a defense in any trial for subversion."

After considering section 22 with very great care and after inquiring carefully into the section's origins, the committee believes it has no place in a declaration of rights; its reasoning may be briefly summarized as follows:

1. In the first place, bills of rights historically guarantee the rights of the people by imposing limits upon the power of the state whereas this section defines and provides for the punishment of a new crime. Its provisions thus are at odds with the historic function of a declaration of rights in that they restrict liberty rather than guarantee it.

It is true that certain criminal acts traditionally have been recognized in bills of rights. For example, section 21 of the present constitution deals with treason, while section 18 deals with libel prosecutions. But in both of these cases the language of the section is couched as a limitation on the power of the state to prosecute the crime in question and not as an affirmation of the right of the state to punish. Section 22, on the contrary, as at present constituted, defines a new crime hitherto unknown to common law or constitutional law. It thus appears to place new limits upon the liberties of the people rather than to guarantee the liberties of the people against their abuse by the power of the state. It is therefore technically at odds with the proper subject matter of a bill of rights and ought to be eliminated from the Michigan declaration of rights for this reason, if for no other.

2. A second serious objection to the section is to be found in the vague and confusing language of paragraph 3. This paragraph, if read literally, seems to be radically at odds with the guarantee of freedom of speech set forth in section 4 of the declaration of rights. Read in this fashion,

Explanation—Matter within [ ] is stricken, matter in capitals is new.

it constitutes an outright denial of the right of freedom of speech and of press as a defense whenever the state might choose to undertake a prosecution for the crime in question. Such a construction, if correct, renders the paragraph radically unconstitutional as a violation of the elementary guarantees of freedom of speech and freedom of the press as incorporated in the first amendment to the Constitution of the United States, and imposed upon the states through the inclusion of first amendment guarantees in the content of the first section of the fourteenth amendment.

3. Finally, the committee believes that this section was added to the constitution at a time when the people of the state of Michigan, very properly concerned with the threat to freedom and liberty posed by the communist menace, were momentarily diverted from their historic recognition of the necessity of preserving constitutional rights even for those persons who may be accused quite properly of the most despicable crimes against the public security and safety.

In recommending the elimination of section 22 in the present constitution, the committee wishes to make clear that it is in no sense advocating any diminution of the power of the state, the courts and the legislature, to define and punish, within proper constitutional limits, the crime of subversion or like offenses against the public safety and security of the state (acts of criminal syndicalism, sedition, and the like). To emphasize this point, it submits herewith, in an accompanying report, the text of a proposed resolution memorializing the legislature to this effect so that its position with respect to the elimination of section 22 shall be completely clear.

"SEC. ——. THE ENUMERATION IN THIS CONSTITUTION OF CERTAIN RIGHTS SHALL NOT BE CONSTRUED TO DENY OR DISPARAGE OTHERS RETAINED BY THE PEOPLE."

Comment: This language is taken from the ninth amendment to the Constitution of the United States. The committee believes that its incorporation in the Michigan constitution will set up a sound state parallel. The language recognizes that no bill of rights can ever enumerate or guarantee all the rights of the people and that liberty under law is an ever growing and ever changing conception of a living society developing in a system of ordered liberty.

Footnote: The committee report, as presented, comprises only the portions of the declaration of rights which appear in the 1908 constitution, together with such changes, deletions, and additions as the committee has deemed it advisable to make. The committee has under consideration a number of proposals, the substance of which in the opinion of the committee may properly be dealt within separate additional sections.

Appendix

The following are the recommendations and decisions of the committee on judicial branch with reference to sections 11 through 19 of article II:

Sec. 11. That this section should remain as it is now constituted in the 1908 constitution and that the word "INSURRECTION" not be included.

Sec. 12. That a period be inserted after the word "attorney", and that all language appearing thereafter in the present section be deleted and the additions made by the committee on declaration of rights, suffrage and elections not be included.

Sec. 13. Concurs unanimously with the committee on declaration of rights, suffrage and elections.

Sec. 14. That the first sentence of the section be changed so as to read, "NO PERSON SHALL BE PUT IN JEOPARDY TWICE FOR THE SAME OFFENSE." It is pointed out that this is a change from the present section and is a change in the wording of the recommendation of the committee on declaration of rights but is, in essence, only the deletion of the words "life or limb", as found in the U.S. constitution, which this committee believes to be obsolete. This committee concurs in the intent expressed by the committee on declaration of rights in the change made from the present section. This committee concurs unanimously in the recommendation of the declaration of rights committee in the remaining portion of this section.

Sec. 15. Concurs unanimously with recommendation of the declaration of rights committee.

[The statement regarding section 16 immediately following is in the form originally submitted. This was ordered revised on January 12 (see below, page 560). The revised statement appears following this original statement.]

Sec. 16. Concurs in principle with declaration of rights committee recommendation; words "proceedings" and "hearings" added at judiciary's recommendation.

Following is the statement as revised on January 12 (see below, page 560) by the committee on judicial branch:

Sec. 16. This committee concurs with the recommendation of the rights committee as they are contained in sentence 1 of said section.

The judicial committee concurs, in principle, with the recommendations set forth in the second sentence of this section but recommends that, in addition to the word "INVESTIGATIONS", there should be included the words "proceedings and hearings". The committee was of the opinion, also, that the word "persons" might be expanded to include corporations and business entities in addition to natural persons.

Sec. 17. Concurs unanimously with recommendations of the declaration of rights committee.

Sec. 18. Concurs with recommendations of the declaration of rights committee.

[The statement regarding section 19 immediately following is in the form originally submitted. This was ordered revised on January 12 (see below, page 560). The revised statement and a motion appears following this original statement.]

Sec. 19. Concurs with the recommendation of declaration of rights committee, but not necessarily for the reasons given in that committee's report.

Following is the statement as revised on January 12 (see below, page 560) by the committee on judicial branch and a motion of that committee:

Sec. 19. This committee concurs in the recommendations contained in this section and approves of the word "JURORS" in place of the word "CITIZENS" which latter word was the original choice of the committee on rights prior to consultation with the committee on judicial branch. It was the considered opinion of the committee that this would eliminate any confusion and would leave to the legislature the manner of determining the qualifications of jurors.

The following motion was likewise passed by the committee on judicial branch:

That, by approving or concurring in the recommendations, or any part thereof, of the committee on rights, suffrage and elections, the committee on judicial branch does not necessarily concur in, or agree to, all of the reasons and grounds contained in the report of the committee on rights, suffrage and elections.

Explanation—Matter within [ ] is stricken, matter in capitals is new.

[The following is the resolution, in its corrected form, referred to in the above supporting reasons submitted by the committee on declaration of rights, suffrage and elections. This became Resolution 64.]

A resolution to memorialize the legislature in the matter of the deletion of section 22 of article II of the 1908 constitution.

Resolved, That the legislature be informed that the deletion of section 22 of article II is not to be construed as opposing the definition of subversion by the legislature, or providing a statutory crime of subversion; and be it further

Resolved, That the last paragraph is held to be of extremely doubtful constitutionality as a denial of due process of law and that such a provision would not, in any case, be within the powers of the legislature; and be it further

Resolved, That the provision is held to be so poorly drafted that its exact meaning cannot be determined; and be it further

Resolved, That copies of this resolution be transmitted to the legislature.

CHAIRMAN BAGINSKI: The committee will be in order. It is very difficult to read or to be heard.

Dr. Pollock.

MR. POLLOCK: Mr. Chairman, members of the committee, on behalf of the committee on declaration of rights, suffrage and elections, I am now pleased to present to you article II of the present constitution as we have proposed to amend it.

Because of my earlier remarks on the declaration of rights, dated December 15, I think it is not necessary for me to emphasize again this evening the basic importance of the matters dealt with in the declaration of rights. This is the keystone in our governmental arch. And if ever we deserve wisdom, or rather if ever we deserve to use wisdom, we deserve to use it in connection with this article of the constitution. Organs of government may change. Procedures may change. These inalienable rights must be very carefully weighed and understood. I say, therefore, that I welcome not only the criticisms but the careful analyses of all the delegates in the discussion of these some 23 sections of the constitution which we have proposed for your consideration.

Since the matter involves so many questions of law, court decision and practice, being a mere political scientist and not a lawyer, I yield now to my colleague, the first vice chairman of my committee, Mr. Harold Stevens, of Detroit, who will present the matters as they come along, with the assistance of the second vice chairman, Mr. Norris, and Judge Gadola, a distinguished member of our committee. May I say that we had the benefit of lawyers both inside, therefore, as well as outside the committee. And now we hope to have the benefit of discussion on the floor.

I suggest, Mr. Chairman, that this is a matter of great importance, and perhaps will require considerable discussion. I hope, therefore, that you will permit me to move that the committee rise when I think the moment for termination has come, so that we can carry over to another session this matter if we are not able to finish it this evening. I now yield to my colleague, Mr. Stevens, and I suggest, Mr. Chairman, that we take this matter up section by section.

CHAIRMAN BAGINSKI: Mr. Stevens.

MR. STEVENS: Mr. Chairman, fellow delegates, taking this section by section, section 1 reads:

[Section 1 was read by Mr. Stevens. For text, see above, page 464.]

If you have done your homework, I am sure you understand this quite well. This section is declaratory of the basic idea of free government. The committee recommends that it be retained without change.

Delegate Proposal 1408, submitted by Mr. Wanger, would add to this, "The enumeration in this constitution of certain rights shall not be construed to deny or disparage others retained by the people." The committee, it will be observed from the report, believes this section which is modeled upon the ninth amendment of the federal constitution is appropriate to a declaration of rights, but it recommends its inclusion in the constitution as a separate section. This will be suggested later. The purpose of this, of course, is to indicate that the government stems from the people. The government is the government of the people. The people are sovereign in the government. Beyond that, there is little more to say.

Mr. Chairman, are you going to take these up one at a time?

CHAIRMAN BAGINSKI: The Chair wishes to advise, unless there is objection, that we go through this proposal by sections and that, as we pass each section, the secretary will read the next section, and then the proponents will take the floor.

Is there any further discussion on section 1? If not, it will pass.

Section 1 is passed.

The secretary will read section 2.

SECRETARY CHASE: Section 2 reads:

[Section 2 was read by the secretary. For text, see above, page 465.]

MR. STEVENS: That section, Mr. Chairman, it will be noticed, is changed in only one respect. I should like to yield to Second Vice Chairman Norris to explain the change in the wording.

CHAIRMAN BAGINSKI: Dr. Norris.

MR. NORRIS: Mr. Chairman, I am very happy to represent the committee on declaration of rights, suffrage and elections with regard to this and some of the other matters which will come before the convention. I want to, if I may, express a personal debt of gratitude to the members of this committee who have deliberated with great intensity and with great quality to bring before you the changes which we now recommend. I wish personally to acknowledge a debt of gratitude to Dr. Alfred Kelly who was with us during the entire proceedings to this date and we look forward to his recommendations and thinking in the future. I also wish to name for you the members of this committee. I have not been asked to do so, but I feel moved to do so because they have worked hard and long and I think they have produced a set of constructive recommendations for this convention. In addition to the chairman, Dr. Pollock, and first vice chairman, Mr. Harold Stevens, of Detroit, and myself, there are on this committee Mr. Beaman, Mr. Buback, Mrs. Butler, Father Dade, Judge Gadola, Mrs. Lillian Hatcher, Mr. Robert Hodges, Mr. Hubbs, Mr. Leppien, Mr. Shaffer, Mr. Shanahan and Mr. White. I personally have been much moved by the conscientious spirit which has animated this group of men and women and I wanted to say that on the record of this convention.

Secondly, I should like to say that there is a bit of human interest involved in that some time back in the early '30s, Mr. Harold Stevens taught my wife and me civics and economics as high school students in the city of Detroit, and so it is with a great deal of pleasure and inspiration that I now find myself as a vice chairman of this committee working with him and Dr. Pollock and members of this committee, some 30 years later. This, it seems to me, is some kind of true sentiment which ought to be recognized and I wish to recognize it.

With regard to the very fundamental matter that is now before us, the question of to whom the right of petition might be addressed, I think the committee wishes to incorporate in the record of this convention the comment which has been stated before you in the journal of January 4. In addition to that, I should like to make these observations. Under the United States constitution, the people have the right to petition the government for the redress of grievances, not merely the legislature. This is in article I, section 1 of the federal constitution. Similar wording is recommended by the model state constitution of the national municipal league. The New York constitution adopted in 1938 contains a formulation that includes, "government or any department thereof." The opinion

prepared for the citizens research council and published in their A Comparative Analysis of the Michigan Constitution, volume 1, comments as follows:

> The general language of the present provision would appear to include the protection afforded by the more specific sanctions in other state constitutions; e.g., the guarantee against abridgement by legislative action and the right to present views to all departments of government. Specific inclusion of such guarantees would, however, remove any doubt.

Since the adoption of the Michigan Constitution of 1908, substantial changes have occurred in the powers of all departments and subdivisions of government. The governor has much greater leadership and policy power and is, indeed, expected to be the chief policymaker of state government. A large number of departments, agencies and independent commissions, both responsible to the governor and independent of him, have been created. To some degree, comparable parallel developments have occurred in cities and counties at the local level throughout the state. Numerous echelons of officialdom and bureaucracy have proliferated. As a partial result a gap between officials and people has developed. Accordingly the wording herein suggested—suggested in my memorandum in support of Delegate Proposal 1244—is intended to help narrow this gap and bring government closer to people. A more specific right of assembly and petition can help create greater opportunity for officials in every department and unit of government at both state and local levels to possess more directly the thinking of people to the end that such officials may discharge their constitutional and statutory duties with greater effectiveness and fairness.

The suggested language makes more specific the right to assemble and to present, and the duty on the part of the official to accept, though not necessarily to act upon, the petition. Increasing the possibility of presenting a petition to officials is perhaps one way of increasing citizen responsibility by making citizen participaton more effective. Officials and representatives in every unit of government may thus become more sensitive and responsive to changing needs and problems. This sense of responsiveness and fairness helps to instill faith and confidence of people in themselves and in their government and, as a result, makes democratic government more secure.

Strengthening the right of assembly and petition also strengthens the public purpose of the great freedoms of speech and press. These rights are described as "cognate and related" by the United States supreme court. Justice Rutledge, speaking for the high court, declared:

> It is, therefore, in our tradition to allow the widest room for discussion, the narrowest range for restriction, particularly when this right is exercised in conjunction with peaceable assembly. It was not by accident or coincidence that the rights of freedom of speech and press were coupled in a single guarantee with the rights of people to peaceably assemble and to petition for redress of grievances. All these, though not identical, are inseparable . . . and are therefore united in the first article's assurance.

The recommendation of the citizen's research council that "specific inclusion of such guarantees would, however, remove any doubt," is reinforced by taking into account the great constitutional policy in favor of assembly and petition stated by Chief Justice Waite in the United States v. Cruikshank, a leading case:

> The very idea of government republican in form implies a right on the part of its citizens to meet peaceably for consultation in respect to public affairs and to petition for a redress of grievances . . . it derives its source from those laws whose authority is acknowledged by civilized man throughout the world. It is found wherever civilization exists.

For the reasons that were stated in the previous comment, and this elucidation of it, Mr. Chairman, we urge a favorable consideration of the recommendation by the members of this body.

CHAIRMAN BAGINSKI: Mr. Yeager.

MR. YEAGER: Mr. Chairman, ladies and gentlemen of the committee, I think Mr. Norris is to be complimented on his scholarly background material on this subject, but I do wish to ask him one question. I believe that a redress of grievance would actually constitute an act of the legislature, or an act of law. Since we have separation of the legislature which enacts the law, and the executive which carries out the law, was there intent here to imply that the executive has law making power through executive or administrative order?

CHAIRMAN BAGINSKI: Do you care to answer, Mr. Norris?

MR. NORRIS: Well, Mr. Chairman, I think it is contemplated by the changing of the word "legislature" to "government" to indicate that there are 3 coordinate branches of government, each of which has certain powers delegated by the people through the constitution.

Now, it has so happened that over a period of years, the governor has had expanded powers and expanded policy influence. It is also true to say that if people may petition the government, including the executive departments and particularly the governor, that the governor might be more sensitive to certain things which may be, in essence, a grievance, and can, within his own executive power, rectify the grievance. It does not necessarily mean that he has the power to pass a law. That is restricted to the legislature. But he does have the power to act as an executive over his various departments, and if his departments are conducting themselves in a manner in which the citizens have a legitimate grievance, it is possible for him to take the action which would be prompted by constructive petition. That is what is contemplated by this language, as I understand it.

CHAIRMAN BAGINSKI: Are there any amendments to section 2?

Mr. Stevens.

MR. STEVENS: Mr. Chairman, fellow delegates, I should simply like to repeat that the word "government" as used here was taken bodily from the United States constitution, so it is not an innovation.

CHAIRMAN BAGINSKI: Are there any amendments to section 2? If not, it will pass.

Section 2 is passed.

The secretary will read.

SECRETARY CHASE: Section 3 reads:

[Section 3 was read by the secretary. For text, see above, page 465.]

CHAIRMAN BAGINSKI: Are there any amendments to section 3? Mr. Stevens.

MR. STEVENS: Mr. Chairman, fellow delegates, we made no change in this section, although we did consider some suggested changes. The section incorporates in some detail the traditional American guarantees of individual religious liberty and the separation of church and state. You have the explanation here, carefully written. From the point of view of the committee, there was no essential reason for adding to it or subtracting from it. It is very difficult to find words, sometimes, which mean exactly what somebody wants to express, and we have found that any addition or subtraction from this might lead only to confusion. These words have been construed by the courts. They seem to have been satisfactory. The committee believes we would do well to stay with what we have.

CHAIRMAN BAGINSKI: Mr. Hubbs.

MR. HUBBS: Mr. Chairman, I rise only to comment that I was following the reading word for word in my Comparative Analysis of the Michigan Constitution, and I find that your copy, line 23, says, "shall be diminished on account of," and so on. It does not contain the words "diminished or enlarged." My copy says "or enlarged on account," and I think this should be corrected in the green copy.

CHAIRMAN BAGINSKI: Do you care to answer, Mr. Stevens?

MR. STEVENS: Mr. Chairman, this must be a typographical error. I move the correction so that it reads as it now stands in the 1908 constitution.

CHAIRMAN BAGINSKI: Can you do that without an amendment coming up? Is that possible, Mr. Secretary?

SECRETARY CHASE: Mr. Stevens offers the following amendment:

1. Amend page 1, line 23, after "diminished" by inserting "or enlarged".

CHAIRMAN BAGINSKI: The question is on the amendment. The Chair recognizes Mr. Stevens.

MR. STEVENS: Are you going to put the amendment, Mr. Chairman? It is simply the correction of a typographical error.

CHAIRMAN BAGINSKI: Mr. Martin, do you care to comment on the amendment?

MR. MARTIN: Simply as a matter of clarification, Mr. Chairman, and perhaps it is not necessary, but it is important that the record be quite clear in respect to this matter. The committee states that Mr. Nord's Delegate Proposal 1092 was not included by the committee because, although there was some sentiment for the amendment, the majority in the committee voted not to include it, principally on the ground that it was unnecessary. Just as a matter of inquiry, I understand this to mean that the committee believes that sectarian instruction under the present constitutional provision cannot be allowed in any school supported by the state. May I inquire for a specific statement on that point, Mr. Chairman?

MR. STEVENS: I take it it is the opinion of the committee that public funds may not be used for instruction in religion—in any particular religion. Is that the answer to your question?

MR. MARTIN: Yes, that is the answer to my question. I just wanted to be clear that that is exactly what we were talking about.

MR. STEVENS: A point of information, Mr. Chairman.

CHAIRMAN BAGINSKI: Yes, Mr. Stevens?

MR. STEVENS: Did the amendment pass?

CHAIRMAN BAGINSKI: No, the amendment has not been put, as yet.

MR. STEVENS: It is not now in order?

CHAIRMAN BAGINSKI: The question is now on the amendment of Mr. Stevens. Do you care to speak to the amendment, Dr. Nord?

Dr. De Vries, do you wish to speak to the amendment? If not, those in favor will signify by saying aye. Opposed, no.

The amendment is adopted.

Mr. McCauley, you were up; do you wish to speak?

Dr. De Vries.

MR. De VRIES: Mr. Chairman, members of the committee, I rise to support the recommendation of the committee on the declaration of rights. Article II, section 3, is part of our heritage as an organized people. The historians tell us that the substance of the proposal was adopted by the people of this state when they enacted their first constitution in 1837. Each time other delegates like us have met to consider reframing the basic law of our state the substance of article II, section 3, has been reenacted as it was in 1850 and in 1908. This section has stood the test of time. It has served Michigan well. The language is meaningful. It has been reviewed by the highest court of our state. Its meaning is definite and certain. It would be unrealistic to pretend that we are confronted here with a matter devoid of feeling or emotion. We are a people possessed of many beliefs and creeds. Article II, section 3 of the Michigan constitution has aided us in living together in harmony. To amend or question this committee proposal without good cause is to open a controversy that is divisive and unnecessary. Let us keep that which is good, is certain and is necessary. This section as reported by the committee meets all of these tests.

The constitutional preparatory commission in analyzing section 3 of article II said this, and I quote:

> . . . any attempt to refine, expand or contract the language of the present text might be construed as having the effect of a further limitation, maybe an unwitting abridgement of a basic right.

I hope the committee will retain article II, section 3, in its present form.

CHAIRMAN BAGINSKI: The Chair recognizes Dr. Nord.

MR. NORD: Mr. Chairman, I would like to make a comment on the committee's comment, and also on the question asked by Mr. Martin and the answer given by the vice chairman of the committee. I note in the comment that the delegate proposal which I introduced relating to sectarian instruction in public schools is referred to, and it was mentioned that it was not intended to include it, principally on the ground that it was unnecessary.

I should like to thank the committee for its very, very careful consideration of this particular subject. I should like to add that I have examined the question myself very thoroughly since I have spoken to the committee on it. I have also consulted attorney general's opinions—that is, printed opinions—and I find that there are 2 attorney general's opinions which have held that, in essence, the language which now appears, "no money shall be appropriated or drawn from the treasury for the benefit of any religious sect," clearly implies that as a result no religious sectarian instruction can be given in the public schools because they are supported by public funds. And, therefore, I conclude that the committee is correct in saying that nothing would be added by using the words "nor shall sectarian instruction be allowed", because that is already included by attorney general's opinions. Also, that is apparently the conclusion of the committee.

I would simply like again to ask—for the record, and only for the record—of Mr. Stevens, whether I am correct in understanding that that is the conclusion of the committee, that the language I suggested is not needed because it is impliedly present. Is that correct, sir?

MR. STEVENS: Mr. Chairman and delegates, it is my opinion that the committee so held. Certainly that is the way it voted.

CHAIRMAN BAGINSKI: Mr. Nord.

MR. NORD: Thank you, Mr. Stevens. I should like to make one further remark, if I may, in support of the language which we have here, and not just in support of the language, but of the content and the subject matter.

This, in my opinion, is a very crucial subject or rather a very crucial section, or I never would have entertained any idea of working hard on the language. It is a very, very important subject probably, to all Americans because almost every American has a history of coming from another country, if not everyone. Nearly all have a history of coming from another country and in many cases, if not in most, they did so to avoid religious persecution. Certainly my people came here for that reason, and I believe most other people did, too. And the language of this section, therefore, is important to everyone, and the language that "the civil and political rights, privileges and capacities of no person shall be diminished or enlarged on account of his religious belief" appears to me as the thing which has made this country possible.

I do not want anyone to think there is any doubt in my mind, after having considered this thoroughly, that there is any question but that the language does do what it is supposed to do. As I say, I think this is one of the most important principles we have, the freedom of religion. I certainly support the section, and I thank the committee for its very careful attention to this subject. Thank you.

CHAIRMAN BAGINSKI: Reverend Dade.

MR. DADE: Mr. Chairman, I was going to say before Delegate Nord spoke that I recognize, as we all do, that he is a man of integrity, and his remarks in sustaining the committee's report show that he is.

I wish to say, in support of our work on the committee, that we recognized that in this state there are multiple religious groups and this expression in this section of the constitution really stands for a generous freedom of worship, the kind of freedom of worship that those of us who are believers and those of us who are nonbelievers can give adherence to. We also felt that this had stood the test of time. We felt, with great respect to Dr. Nord, that inserting this particular pro-

vision, rather than being an enlargement, would be an abridgement, and for that reason we did not vote to sustain his particular insertion.

CHAIRMAN BAGINSKI: Mr. Hubbs.

MR. HUBBS: Mr. Chairman, considering the amount of legal counsel we have here, I should like to pose a question with regard to this section. Is it the opinion of the attorneys here present that this section would preclude the acceptance of federal aid to education in Michigan?

CHAIRMAN BAGINSKI: Mr. Hubbs, this question was addressed to 57 attorneys. Who is going to answer it?

Mr. Stevens? Who is going to speak up for this? Mr. Stevens?

MR. STEVENS: Mr. Chairman, Mr. Hubbs, I do not feel competent to answer this question on a curbstone opinion. I would be glad to yield to anyone who does.

CHAIRMAN BAGINSKI: Is there any attorney here who cares to answer the question? Let's don't get into a hassle over this. (laughter)

Do you wish to answer, Mr. Mahinske?

MR. MAHINSKE: At this time, Mr. Chairman, I should like to give you the benefit of a saying that we have in the legal profession. If you want the $10 answer, you can have it today. If you want the $200 answer, you can have it next week —and you can rely on it. (laughter)

CHAIRMAN BAGINSKI: Mr. Romney.

MR. ROMNEY: Mr. Chairman, I am not a lawyer nor the son of a lawyer, but the subcommittee, of which I am chairman, of the education committee has been dealing extensively with this language and with the related language in article XI. Now, the facts are that under this language, at the present time, the state of Michigan will not permit the state to transport surplus food to private religious schools, and this is because of the restrictions of this language. I mention that because it does place restrictions on the use of federal aid and federal assistance to education, and is thus somewhat more restrictive than the language in the federal constitution.

Now, while I am on my feet, let me express gratification at the fact that Dr. Nord has evidenced a high degree of consensus on the article. Like Dr. Nord, members of our subcommittee in the education committee have had a series of sessions on article II, section 3. We have had the benefit not only of the expert advice of eminent counsel to this convention, Dr. Joiner and Dr. Kelly, but we also asked Dr. Kauper of the University of Michigan, who has made this particular subject his specialty, to give the committee the benefit of his judgment. And it was his expert judgment that we could not materially strengthen the present language of the constitution as it relates to religious freedom and separation of church and state.

Certainly those 2 things have played a fundamental part, as Dr. Nord has indicated, in the origin of our country and in the growth of our country, and it is highly desirable to retain them in a strong form, and I am pleased to see this degree of unanimity developing on the fact that this language does this. Our subcommittee has been unanimous in this viewpoint.

CHAIRMAN BAGINSKI: Mr. Binkowski.

MR. BINKOWSKI: Mr. Chairman, Mr. Hubbs, while I am an attorney, I will not answer your question as an attorney. However, I will answer it as a delegate. I support the language of this proposal, and in supporting it, I would like, in answer to your question, to emphasize the last sentence, "The civil and political rights, privileges and capacities of no person shall be diminished or enlarged on account of his religious belief." Therefore, if the federal government should decide to render federal aid to education on the basis of students, then I hope that that aid will not be denied to him because he does have religious beliefs.

In other words, I think we can use the analogy of the G.I. bill of rights under which so many of you here have received your education, as I have.

CHAIRMAN BAGINSKI: Mr. Snyder.

MR. SNYDER: Mr. Chairman, I am quite concerned over the interpretation given this particular section by one of the previous speakers. It was not my understanding that the acceptance of this particular section, as such, would prohibit us from accepting the federal aid should it become available. I feel that this is a separate question and certainly I must arise to differ with the interpretation of the previous speaker, because I would not, based on a hasty decision, commit this convention, or its interpretation thereof, to the proposition that we did give tacit approval to this interpretation.

Therefore, I should like to go on record that I do not agree with the interpretation, that I feel these are separate decisions that we should make individually.

CHAIRMAN BAGINSKI: The Chair recognizes Dr. De Vries.

MR. De VRIES: Mr. Chairman and members of the committee, I want to agree with Mr. Snyder. Certainly it is not my intent to vote for this based on the premise that all future federal grants in aid programs, and those in the past, are unconstitutional based on what we said on this floor today. I do not think we can make that interpretation and if we are I am on record against it.

With respect to secular programs provided by the federal government now and in the future, if private schools can qualify for those, I am all for it, and I do not think we should try to write into the record at this point that this is our interpretation of this section of the constitution.

CHAIRMAN BAGINSKI: The Chair recognizes Mr. Bentley.

MR. BENTLEY: Mr. Chairman, I just think it should be pointed out that there are a great many federal programs that are now available to private schools in the state of Michigan and elsewhere. It is my understanding that because of the language of the present constitution, which we are recommending be retained, the grants in those particular cases go directly from the federal government to the parochial or private institution involved, and do not pass through the state department of public instruction, or any other branch of state government because of this particular provision. But if we retain the language, I see no reason why any federal program that should encompass private or parochial institutions in its grants cannot continue as in the past if the language is retained unchanged.

CHAIRMAN BAGINSKI: The Chair recognizes Mr. Romney.

MR. ROMNEY: Mr. Chairman, I should like to subscribe to what Mr. Bentley has just stated, and I was not endeavoring to indicate an interpretation of this section. I was simply reporting the fact that he has just reported, and that was my only intent, namely that at the present time some of these federal aid programs, such as the food program, go directly to the public schools rather than through the state, because of this language. It was purely a question of reporting, and not a question of interpretation.

CHAIRMAN BAGINSKI: The Chair recognizes Mr. Hodges.

MR. HODGES: Mr. Chairman, I do not think we should, as attorneys or as delegates, try to speculate on proposed legislation of the federal government, and how it is going to affect this constitution.

We have the language here. It is for us to look at it and see if it is the best we can do. It is for the courts later on, or somebody else, when they are given the specific language of a statute or of a proposal to review it at that time and decide. I think we are getting on dangerous ground when we try to speculate.

CHAIRMAN BAGINSKI: The Chair recognizes Mr. Norris.

MR. NORRIS: Mr. Chairman, with regard to the specific question which was posed by Mr. Hubbs which, as I understand it, was: what would be the effect of this article, article II, section 3, regarding federal aid to education? Now, standing on its face, the question seems to suggest that there is something inimical between the wording of article II, section 3, and any program of federal aid to education as such. I would venture the judgment that there is nothing that is inconsistent between the two.

I should like, however, to make one observation with regard to the section that is before us. Mr. Romney made the point that there are 2 propositions: freedom of religion, and separation of church and state. These are not 2 inconsistent propositions, as well. The general theory upon which the first amendment to the Constitution of the United States rests, and article II, section 3, that we have before us, is that only when there

is separation of church and state do you have freedom of religion, of conscience and of worship. The 2 are related, and one is an indispensable prerequisite of the other. I think we ought to remember that in answering any question with regard not only to the question of federal aid to education, but federal aid to what education or to what institution—I think we ought to leave that matter where it is now.

I think the answer has been given, as far as any official statement has been given, by Mr. Stevens, or as far as any official statement could be made. That is a matter of interpretation. But I do think we have gone as far as we ought to go in this particular segment of our deliberations on this particular question.

CHAIRMAN BAGINSKI: The Chair recognizes Mr. Mahinske.

MR. MAHINSKE: Mr. Chairman, I should like to ask Mr. Bentley to go a little further with his explanation as to federal aid funds, in view of what Mr. Romney has said about surplus food. Now, you mentioned that direct funds would not be curtailed in any degree by this. If the federal government is going to allocate funds that are to be used for private and public schools, but the state has the distribution powers of these funds, would the private religious schools, under your interpretation of this section, be excluded from those funds simply because the state is administering the funds?

CHAIRMAN BAGINSKI: Mr. Bentley.

MR. BENTLEY: Mr. Chairman, evidently I did not make myself clear to the gentleman the first time. There are several programs, the national defense education act, the surplus food program, the school lunch program, the school milk program, and I believe several other programs about which I cannot be exact at the moment which are administered by the federal government. In the case of private and parochial schools or institutions in the state of Michigan these have—in the past, under the present language and if the present language is retained presumably they would continue—been administered by the federal government and would be allocated directly by the federal government to the private or parochial institution concerned. In other words, Mr. Mahinske, if we adopt the present language, there would be no change in the present method of federal distribution directed to the private institutions, as there has not been in the past.

MR. MAHINSKE: But you are talking now about direct programs on the federal level. These programs are not administered at the state level.

MR. BENTLEY: That is right.

MR. MAHINSKE: In other words, a fund is not turned over to the state to distribute.

MR. BENTLEY: That is right.

MR. MAHINSKE: So, would you say—or would you be willing to say—what the effect of this would be on the religious schools if the funds were turned over to the state to administer, because there would be a certain amount of administrative cost to the state?

MR. BENTLEY: My understanding is that the interpretation of the present language has held that if the federal money were turned over to the state, the present language would prohibit the state from making these funds available to private or parochial institutions.

MR. MAHINSKE: Thank you.

CHAIRMAN BAGINSKI: Mr. Stevens.

MR. STEVENS: It seems rather simple. First, we have no control here over the federal government. If it wants to grant loans or if it wants to grant aid directly, there is no question but that it may do so. This has to do with the expenditure of state money, and of course, if the expenditure of state money is involved, undoubtedly it applies.

CHAIRMAN BAGINSKI: Are there any amendments to section 3? If not, it will pass and it—

Mr. Brown.

MR. T. S. BROWN: If you will give me the benefit of about 5 seconds, Mr. Chairman.

CHAIRMAN BAGINSKI: The Chair recognizes Mr. Brown.

MR. T. S. BROWN: I think I had my hand up before you uttered that last sentence. I would like to ask a question of Mr. Stevens. I do not mean to be obtuse in this particular matter, but the question is this, does the present terminology of section 3 that we are now considering preclude reimbursement type payments by the state of Michigan to private families for expenditures incurred by those families in sending their children to parochial schools? And if the answer is in the affirmative, I should like some legal validation of such.

CHAIRMAN BAGINSKI: Do you care to answer, Mr. Stevens?

MR. STEVENS: Well, I would be glad to tell him, in my opinion, as a curbstone opinion, it would. However, I have not particularly studied this matter, and the committee did not particularly study this matter, so I do not know what would be held in the matter if it should go to court, and I do not think anybody else does.

MR. T. S. BROWN: It would seem to me, Mr. Stevens—I have asked several people on our research staff, including Dr. Joiner, the same question, and their answer was as yours—that we do not know as to whether this would preclude reimbursement. Now, the question I am asking is, specifically, this. If we were to have a test case in the state of Michigan where a private family is sending its children to a parochial school, and on the basis of double taxation and several other bases which has been used in similar suits throughout the country, they were to ask the state for reimbursement, and the state were to grant such reimbursement, would not this particular act, if carried to its logical extreme, absolutely destroy the wall of separation between church and state?

As I indicated before I began to speak, Mr. Chairman, I do not mean to make an amendment. I just mean to point up a problem which I do not think we have sufficiently considered.

MR. STEVENS: Well, may I have your question? I do not know what part of that is a question. Are you assuming that it would violate this constitutional provision? Is that your assumption in this question?

MR. T. S. BROWN: Yes.

MR. STEVENS: If you assume that, then what do you want to know?

MR. T. S. BROWN: Has the committee given it any serious consideration, or are we patting ourselves on the back a little prematurely in this particular matter?

MR. STEVENS: Well, I do not think there is any question but that if the state paid the tuition of children in school, that it would be a violation. Now, I am not talking about scholarships which might be based on the unusual ability or capacity of the student.

MR. T. S. BROWN: No, this is a reimbursement, Mr. Stevens, for moneys laid out for tuition.

MR. STEVENS: Well, I think it is quite clear it would violate it. However, that is just my immediate curbstone opinion. I think that is the opinion of the committee, that the state should not spend money for support of parochial schools.

CHAIRMAN BAGINSKI: Do you care to help with this answer, Mr. Romney?

MR. ROMNEY: Mr. Chairman, I should just like to say for Mr. Brown's information, it was the opinion of Dr. Kauper, who as we understood it was as fine an expert in this field as we could bring in, that this language did preclude such reimbursement. Now, that was his legal opinion, for whatever it is worth.

MR. T. S. BROWN: Well, then, I should just like to conclude and not take further of the committee's time. I would like to conclude by some indication of the intention of the committee in this particular regard. I certainly am in agreement with you in what you say about Dr. Kauper, Mr. Romney, and I would just like to ask any member of the committee if he feels other than what has been indicated about this particular matter? Are we agreed, for the sake of the record, that the terminology we are approving here would preclude reimbursement type payments to individual families for moneys laid out for parochial education?

CHAIRMAN BAGINSKI: Dr. De Vries?

MR. De VRIES: Mr. Chairman and members of the committee, I am at a loss to understand where you get this authority, Mr. Stevens. The section says "No money shall be

appropriated or drawn from the treasury for the benefit of any religious sect or society, theological or religious seminary. . . ." Now, upon this, you are basing your opinion that in the future rebates cannot be given to the parents who send their children to private schools. I do not understand how you can arrive at an opinion like this, based on this section.

MR. STEVENS: Well, Dr. De Vries, I did not write any such opinion. I was simply asked to give my personal curbstone opinion on the matter. The committee presumed that the state would not spend money to support parochial schools under this provision.

MR. De VRIES: Yes, but your personal curbstone opinion is written in the proceedings of the constitutional convention and may be used as the basis for interpretation by the supreme court, and if there is no correction of this . . .

MR. STEVENS: It is quite clear, Dr. De Vries, that I stated it as a personal, immediate, curbstone opinion. It is not based on any prolonged research, I can assure you of that.

MR. De VRIES: Well, Mr. Chairman, Mr. Brown wanted to know if anybody objected to this, and I do.

CHAIRMAN BAGINSKI: Are there any further amendments? Any amendments to section 3? If not, it will pass.

Section 3, as amended, is passed.

The secretary will read.

SECRETARY CHASE: Section 4 reads:

[Section 4 was read by the secretary. For text, see above, page 465.]

CHAIRMAN BAGINSKI: Are there any amendments to section 4? Mr. Stevens.

MR. STEVENS: Mr. Chairman, fellow delegates, I should like to yield the floor to Delegate Norris on this matter. One word was changed and one word was added in the existing provision.

CHAIRMAN BAGINSKI: Do you care to comment, Mr. Norris?

MR. NORRIS: Mr. Chairman and ladies and gentlemen of the committee, we have before us a very fundamental article of the Constitution of the State of Michigan, and the words, of course, resemble the first article of our constitutional faith in the federal constitution. I wish to make 3 brief points in addition to the words which are used by the committee in its comment on this section.

First, with regard to the word "express" and the adding of that word. It is the intendment of that word to encompass new forms of personal communication since the 1908 constitution; to encompass the new forms that have developed in the intervening years. We now have a vast popularization of photography, of painting, of sculpture, of the song and of the theater, and it is intended that these forms of communication be protected by adding the word "express". Up to now, you have had the words "speaking, writing and publishing". The word "express" comprehends more than speaking, writing or publishing, and the word "express" is intended to carry forward the concept which has more and more frequently been used by our courts and by our people, namely the concept of freedom of expression as more than freedom of speech and of the press; so we felt that in terms of the experience of the state and the nation, much would be gained and Michigan would be taking a forward step in advancing the concept of freedom of expression by using the word "express".

Further, we add here the word "view" instead of the word "sentiment". We believe that it comprehends more than perhaps the romantic or "belles lettres" type of concept which the word "sentiment" seems to connote. By this, we mean a "view" in the sense of an interpretation or comment or criticism or evaluation or judgment or idea or concept or proposal. In this language we intend to carry forward the function of freedom of speech and press.

There is a two fold function, as Professor Zachariah Chaffey, in his classic book Free Speech in the United States, indicated. There is, first of all, the personal right of expression, the personal view; and second, and more important, perhaps, is the public's right to know, the right to receive information, the right to listen, the right to hear views, so that people may understand these views and exercise personal judgments and electoral judgments in expressing themselves at the polls, and in other forms, by which people express themselves.

The third point I wish to make is with regard to the proposal which was advanced in our committee about which the comment deals briefly, namely that there should have been added at the end of this particular section the language, "by whatever means communicated". This was urged by those who felt that the new forms of communication, particularly radio and television, ought to be comprehended on an equal status with the liberty of speech and of the press. However, when you examine this concept, you get a recognition that there is, in fact, already, regulation which, in a sense, constitutes restriction or abridgement in the sense that the very medium by which radio and television is communicated is the subject of license, and is the property of all the people. That is not the case with the printed word, and that is not the case with reference to any publishing or speaking. And it was felt that the inclusion of the words "by whatever means communicated" would get us into an area of the margin of a frontier in which more problems would be raised than solved.

However, when you use the word "express" you are protecting personal communication and personal expression of views when used over these media which have arrived upon the scene since 1908, and the words "express" and "view" would also in the future be contemplated to comprehend any form of new electronic device which we may only suspect at this time. So, we felt that an advancement of the fundamental rights of communication and expression would be accomplished by the recommended language, the insertion of the new word "express" and the changing of the word "sentiment" to "view".

CHAIRMAN BAGINSKI: Mrs. Cushman.

MRS. CUSHMAN: Mr. Chairman, fellow delegates, I notice that both the citizens research council and the preparatory commission to this constitutional convention remarked that while this section provided against the abridgement of the right of free speech by legislative action, there was nothing in the section about possible abridgement by executive action. I wonder whether any member of the committee would care to comment on that?

CHAIRMAN BAGINSKI: Does anyone from the committee care to comment on it?

Mr. Norris.

MR. NORRIS: Mr. Chairman, I would suggest that from my reading of the court decisions dealing with this matter, the question of what constitutes a restriction or abridgement also comprehends executive action and the word "law" has been used in that direction, as well.

CHAIRMAN BAGINSKI: Mr. Plank.

MR. PLANK: Mr. Chairman, the secretary has an amendment I would like to have him read at this time, if it is in order.

SECRETARY CHASE: Mr. Plank offers the following amendment to section 4:

1. Amend page 2, line 6, after "press" by inserting a comma and "radio television, or other means of communication"; so that the language will then read:

> . . . no law shall be passed to restrain or abridge the liberty of speech or of the press, radio or television or other means of communication.

CHAIRMAN BAGINSKI: The question is on the amendment of Mr. Plank.

Mr. Plank.

MR. PLANK: Mr. Chairman, I would like to make a few remarks at this time. Fellow delegates, I am sure a great deal of discussion has taken place in the committee about this particular section and also, perhaps, the language that I am submitting at this time. However, I would like to point out to you that I may be a little closer to the field than perhaps some of the members of the committee. I would, therefore, like to make a few remarks for their edification.

In my research, I have not found any other constitution which uses words such as we have in our constitution or as are suggested here today. This does not preclude our having them, of course. Justice Douglas says the first amendment draws no distinction between the various methods of communicating ideas. I think I would stand by that.

I would like to point out further that Delegate Norris has said that we have a licensing by the federal government which precludes any problem we might have. I want to point out a few things about licensing which are perhaps not generally known. The F.C.C., of course, does license broadcast media. However, they have no control over some actions, certain actions, of the broadcasters. For instance, no creature of congress, such as the federal communications commission, can do any of the things which the constitution forbids congress to do specifically under the present constitution. They can do nothing which abridges freedom of the press or of speech, within the limitations imposed by the first amendment. This, of course, we have been discussing, and we are agreed upon.

Freedom of speech, as guaranteed by the first amendment, includes not only speech broadcast directly by the vocal organs and the mouth, but also speech amplified by a megaphone, telephone, a public address system or by a radio transmitter. The same reasoning which makes radio broadcasting subject to control under the commerce clause makes it subject also to the protection of the first amendment. The fact that it may not have been in the actual contemplation of the constitution makers does not prevent the language of the first amendment from extending to cover anything which comes legitimately within the meaning of the constitutional language in the same manner as the word "press" has been expanded. This we will agree upon. The only thing we must now agree upon is that of recognition, and I submit to you that in the language I am presenting here in my amendment such recognition is given.

With respect to freedom of the press, several cases have arisen in connection with the granting or refusing to grant the privilege of second class mail privileges. This might appear irrelevant to you. You might wonder what that has to do with this question. All I am trying to prove to you is that the press, too, has its regulations. The F.C.C. has the same type of regulation over the broadcast media as it has over the printing media. This, too, then, would make us equal in that manner.

I would point out that it even covers magazines. In the case of Esquire and the postmaster general—some of the attorneys may want to look it up—it is Hannigan v. Esquire, Incorporated, 327 U.S. 146. In the Esquire case, the postmaster general revoked the permit of the Esquire publishing company to use the second class mail privilege on the theory that so called Petty girl pictures and smoking room humor published in the magazine did not constitute literature within the meaning of the regulations set up for the administration of the second class mail privilege and, of course, it won that case.

Most of the delegates will be familiar with the Wall Street Journal. Mr. Kilgore made a statement in the Wall Street Journal in which he said the idea of a free press would become "dangerously obscured if we try to stretch it to fit radio and television;" and, "in a medium licensed by the government we have no argument against a licensed press." That statement was made by Bernard Kilgore, Wall Street Journal president. Governor Collins immediately countered the arguments at a news conference in Boston that was covered and reported by radio and T.V. stations, the wire services, the trade press and local newspapers. His rebuttal also was given wide distribution by N.A.B., the national association of broadcasters.

I read now from a newsletter entitled Highlights, dated November 20, 1961, published for members of the N.A.B.. It reads—here's the N.A.B. president's complete statement on Mr. Kilgore's remarks:

> This is a preposterous suggestion. In the first place, to suggest that broadcasting does not now have the legal right to freedom of expression that is guaranteed to the printed word betrays a lack of knowledge about the whole subject of constitutional liberties. There is no question about whether broadcasting should or should not be given such freedom, for it already has such freedom—as the United States supreme court has already ruled. To suggest otherwise would be to try to overrule the supreme court.
>
> While it is true that broadcasting stations are licensed by the government due to technological necessity — and this, I will point out again, is the important fact — the supreme court has held that the government can no more impinge upon the freedom of the broadcaster's right of expression in its programming than it can impinge upon the publisher's right of expression. The free speech amendment in the bill of rights, the supreme court has said, applies to broadcasting as well as to printing.
>
> In a democracy, you do not secure the liberty of one form of expression by strangling it in another. If broadcasting's freedom of expression were curtailed, the way would be opened to the loss of that freedom by publishers.

In conclusion, I would just like to point out that it may be said programs specifically prohibited by statute such as lotteries and broadcasts of an indecent and obscene character are contrary to the public interest and must be avoided. But more than this, the F.C.C. holds that the licensee has a positive responsibility to provide a program service designed to meet the varied needs of the particular community in which the station is located. The primary responsibility for determining what this program service will be vests in the licensee.

Therefore, I maintain that to give the proper recognition to all media, and maintain the constitution up to date, we should include the words of my amendment. Thank you.

CHAIRMAN BAGINSKI: Are there any further questions on the amendment offered by Mr. Plank?

Dr. Pollock.

MR. POLLOCK: Mr Chairman, fellow delegates, Mr. Plank has made the issue very clear for you. He has indicated that it is a matter of recognition he is asking for.

We are discussing a declaration of rights. He has admitted that the declaration of rights covers, under freedom of speech, everything in the spoken media. Therefore it is a sheer question of recognition, and whether this is a proper place to recognize these media is something for you to decide. It would seem to me that the committee having given this matter consideration, and having decided that it was not necessary, that is all we need to say.

CHAIRMAN BAGINSKI: Mr. Gover.

MR. GOVER: Mr. Chairman, I would like to ask Mr. Plank a question with regard to this. I am very much in favor of allowing recognition, except that there is one thing that bothers me, and that is these public address systems that go up and down the streets in mobile form making all kinds of blaring noises. Would they be considered "other media"? If so, this is something to which we would have to give consideration in this case.

CHAIRMAN BAGINSKI: Do you wish to answer, Mr. Plank?

MR. PLANK: It was not my intention that they be considered "other media", but you could do that. The contention, really—or rather, the problem—that Mr. Gover is presenting is usually taken care of in a local ordinance, and I would believe it would continue to be handled in that way.

In answer to Dr. Pollock, I would say that recognition is given to the press and, therefore, I believe if you keep this up to date, or desire to do so, you should give recognition to other media as well.

CHAIRMAN BAGINSKI: Dr. Nord.

MR. NORD: Mr. Chairman, fellow delegates, I should like to remark that I am somewhat sympathetic to the objective of the amendment but I also foresee a problem. I might say it is very similar to the problem I ran into when I tried to add language to another section. It is not easy to add language to another section without getting by-products, and I would like to suggest one which I believe might militate against adding this language.

Of course, it has been pointed out that the subject matter of freedom of speech on radio and television is really covered already, so we could not really improve the law of radio and

television freedom of speech. What concerns me is that it is possible that we might narrow the freedom of the press. It is conceivable that we might. The reason for that is this. If we put "press" and "radio" alongside of it—radio, television and other media of communication—we tend to put them on somewhat of a parity. We tend to make it appear as though the type of freedom would be the same or could be the same for press and radio.

Now, we notice that there is some difference in the type of freedom that exists. There is certainly more control over radio and television than there is over the press, even though there is no actual impairment of freedom of speech. But radio and television are regulated with much greater rigidity, to a much greater extent, than the press, and it has been pointed out that the reason is a sort of a mechanical reason. But I feel it is not solely a mechanical reason, that it is because there is a limitation on the amount of media available. The air is limited. Therefore, every channel and every radio station or television station has a monopoly over some frequency. Because it has a monopoly over a frequency, therefore, the government regulates it in some degree or to some extent.

Now, the reason for bringing this up is this. It seems to me, and frequently, especially in the last few days, when I hear about more and more newspapers disappearing—I understand 2 more are disappearing from Los Angeles. We know, also, that in Michigan we have had a number of them disappear. Therefore, it concerns me, if we should ever have the situation arise wherein, in one or more areas of the state, we have only one newspaper or even 2, someone may raise the argument that we have a rather monopolistic control of the news media of the press, somewhat analogous to radio and television. It seems to me that is likely to occur to someone. It has already occurred to me, in fact. But I have dismissed it, because it is the easiest thing in the world to think of it, but as you think of it more and more you know it does not appear logical, that that cannot be the way we control the press. We cannot control them in a way similar to radio and television. There must be freedom in the classical way.

I would fear that if we put press, radio and television in the same sentence, side by side, we will tend to obliterate the fact that there is a distinction and has been historically in the way we grant that freedom. For that reason I believe it is safer, again, to leave the language as it is.

CHAIRMAN BAGINSKI: Mr. Hodges.

MR. HODGES: Mr. Chairman, fellow delegates, I agree with Dr. Nord's sentiments on this question. We did broaden it by adding the word "express", and I think that to the extent that radio and television can be given freedom, this is done.

We realize that most of this is preempted by the federal government. There are such things as the provision that equal time must be given to political candidates, as such, and we know that even if we could put this in jeopardy, which we cannot do because of federal preemption, it would be unwise to do so. That is my opinion.

I think we have broadened it to a state which brings it up to date and yet preserves the concept we are trying to keep.

CHAIRMAN BAGINSKI: Mr. Yeager.

MR. YEAGER: Mr. Chairman, I rise to support the Plank amendment, and when the vote is taken, I request a division of the committee by the use of the board.

CHAIRMAN BAGINSKI: The question is on the amendment.

Mr. Yeager.

MR. YEAGER: What I have requested, Mr. Chairman, is not a recorded roll call vote. It is just a division.

CHAIRMAN BAGINSKI: Mr. Brown.

MR. T. S. BROWN: Mr. Chairman, I would like to speak against Mr. Plank's amendment for an additional reason, and that is somewhat of an aesthetic one. It is simply this, that the terminology which he suggested is not necessarily in the classic vein. I think that to speak of television and certain technological anachronisms in a constitution when you are dealing with the classical terminology of freedom of the press would not be fitting of this convention. I do not feel that should be done. After all, in my opinion, the essential element is the thought in the writing out of thoughts and the reporting of events, and this occurs on the basic level in the traditional freedom of the press. A newscaster, whether he be on the air or on television, must necessarily still do the same thing. I suggest that all media that derive from this particular series of actions are therefore covered by our present terminology.

CHAIRMAN BAGINSKI: The question now is on the amendment offered by Mr. Plank.

Dr. De Vries.

MR. DeVRIES: Mr. Chairman, members of the committee, I do not think the term "press" is generic enough to cover this, Mr. Brown, and I would support the amendment.

In our own rules we refer to the press, radio and television, and other news media. I do not think the term is generic enough to cover the point.

CHAIRMAN BAGINSKI: Are there any further comments?

Mr. Higgs.

MR. HIGGS: Mr. Chairman, fellow delegates, I wonder whether Delegate Plank would care to comment on the remarks of Delegate Nord with regard to the aspect of radio and television being subject to some legal regulation.

I note in reading this section, section 4, that we are speaking in the first part, that is, preceding the semicolon, with regard to a freedom of the person in his expression and views, and in that part of the sentence appearing after the semicolon we are speaking about the passing of laws with regard to regulation, in essence. I am somewhat concerned about this particular division of this section, and somewhat persuaded by Delegate Nord's argument, although I would like to favor the Plank amendment.

CHAIRMAN BAGINSKI: Does Delegate Plank care to comment?

MR. PLANK: I do not have the same problem, Mr. Higgs. But thank you for bringing it up.

I feel that there are certain regulations on the broadcasting industry which are necessary by virtue of the fact that we have only one spectrum and this spectrum belongs to the people and, therefore, you have certain technological regulations. Now there are others, as has been mentioned here. We have a regulation providing that both sides of the case are heard, as far as politics is concerned.

We do not think this is bad. We think this is good. In fact, I don't think it would be too bad if the same regulation were applied to the newspapers. But I fail to see how it could be. And so I feel that Dr. Nord's remarks are just not in line with the decision to be made here, at all, and as far as I am concerned I think the amendment, as I have presented it, is all encompassing, does a good job of covering the situation, brings our constitution up to date as far as the communications media are concerned, and keeps it up to date, in my estimation, for the next 50 years.

CHAIRMAN BAGINSKI: Mr. Erickson.

MR. ERICKSON: Mr. Chairman, I would like to speak in favor of the Plank amendment. I notice in the last part of this section that this language is used, ". . . no law shall be passed to restrain . . .". We are dealing here with limitations on the legislature. We put the limitations that they cannot pass it against the press, so I think we should also put it on radio and T.V.

CHAIRMAN BAGINSKI: The question now is on the amendment by Mr. Plank. A division was asked for. Is it supported?

Mr. Wanger.

MR. WANGER: Mr. Chairman, I rise to present a parliamentary inquiry. I question whether or not it is proper, in the committee of the whole, to make any use of the board before a voice vote has been taken?

I raise this question at this time because I think this matter is relatively noncontroversial. I wonder if, perhaps, the use of the board would be more appropriately reserved for use in the committee of the whole, if ever, at such time as it is impossible to tell by a voice vote or by a rising vote, conveniently, which side shall prevail.

CHAIRMAN BAGINSKI: The Chair's answer to Mr. Wanger would be that in order to expedite the matters before us this evening we will use the board, just for that purpose.

Mr. Marshall.

MR. MARSHALL: Well, Mr. Chairman, I recall early in the convention that we did the same thing. Someone called for the yeas and nays in the committee of the whole, and the chairman at that time went ahead and called for them. But this is a direct violation of rule 41. The question was raised at that time that in the committee of the whole you shall not call for the yeas and nays. I think we only delay things by getting involved in these discussions.

A question might be raised after you take the voice vote, if the Chair is in doubt. Because when the committee of the whole rises, then you get your recorded roll call vote.

CHAIRMAN BAGINSKI: The Chair might advise Mr. Marshall that this is not a recorded roll call that we are going to use the board for; it is just as a matter of expediting the work of the committee of the whole.

MR. MARSHALL: Well, as I understood Mr. Yeager, he called for a division of the house. That seems to me to call for the yeas and nays.

Now, I would have to appeal to the Chair to take into consideration rule 41 and also rule 55. This happened once before and the question was raised and I still think that I am right in regard to this particular subject.

CHAIRMAN BAGINSKI: Mr. Martin.

MR. MARTIN: Mr. Chairman, the traditional procedure, at least in the legislature, on the request, or in committee of the whole, with respect to a request for a division, is simply the raising of hands. I think Mr. Marshall has a point. It is true that this is not, technically, a roll call vote but it is essentially the same thing. I do not think we should stand on technicalities. I think we should follow the usual pattern. If you wish a roll call vote you can take it when you come out of the committee of the whole.

CHAIRMAN BAGINSKI: Mr. Hoxie.

MR. HOXIE: Mr. Chairman, I should like to take exception to my friend, Mr. Martin. I believe that the demand is supported. Under the rules, we have a division that is in order.

CHAIRMAN BAGINSKI: Mr. Mahinske.

MR. MAHINSKE: Mr. Chairman, the support lends nothing to this. Under rules 41 and 55, a division of the house is not in order. If we are going to suspend the rules we need a 2/3 vote at this stage of the game. And I do not think that even in the committee of the whole we can suspend the rules.

I think a simple voice vote is in order. If there is doubt on the part of the Chair, then we can use the board, but the vote cannot be recorded.

If we are going to call for a division of the house, we might as well institute the whole rule and have the sergeant at arms lock the doors, we'll call the roll, find out who is absent, instruct the sergeant at arms to bring these people in, and then take our vote.

CHAIRMAN BAGINSKI: The Chair did not anticipate this situation. (laughter) I was going to ask Mr. Wanger if he will withdraw his inquiry, and we will go back to the rules of the committee of the whole.

Mr. Wanger.

MR. WANGER: I beg your pardon, Mr. Chairman. I did not raise a point of order. I merely asked a question by way of parliamentary inquiry. If there is any reason why it should be withdrawn, I shall be glad to do so. Is that what the Chair requested?

CHAIRMAN BAGINSKI: Would you do that, please?

MR. WANGER: Yes, I will.

CHAIRMAN BAGINSKI: Thank you, the inquiry is withdrawn.

The question now is on the amendment to section 4 offered by Mr. Plank. A division of the house was asked for. Is it supported?

Mr. Downs.

MR. DOWNS: Mr. Chairman, on a point of information. could we ask that the secretary read the amendment again before we vote on it?

SECRETARY CHASE: Mr. Plank's amendment is as follows:

[The amendment was again read by the secretary. For text, see above, page 476.]

CHAIRMAN BAGINSKI: Mr. Upton.

MR. UPTON: Mr. Chairman, I have sent to the secretary an amendment to the present amendment. Is it in order for that to be read at this time?

CHAIRMAN BAGINSKI: Yes, it is.

SECRETARY CHASE: Mr. Upton offers the following amendment to the amendment offered by Mr. Plank:

1. Amend the amendment after "television,", by striking out "or other means of communication" and inserting "or other news media"; so the language will then read, ". . . no law shall be passed to restrain or abridge the liberty of speech or of the press, radio, television, or other means of communication or other news media."

MR. UPTON: No, Mr. Secretary. You are supposed to omit "or other means of communication", and insert the wording I proposed.

SECRETARY CHASE: Pardon me, Mr. Upton, I misinterpreted your amendment. Mr. Upton offers the amendment to the amendment to strike out "or other means of communication" and insert in lieu thereof "or other news media"; so the language will then read, ". . . no law shall be passed to restrain or abridge the liberty of speech or of the press, radio, television, or other news media."

CHAIRMAN BAGINSKI: The question is on Mr. Upton's amendment to the Plank amendment.

MR. UPTON: Mr. Chairman, may I explain why I offer this amendment?

CHAIRMAN BAGINSKI: Proceed.

MR. UPTON: It is offered, Mr. Chairman, mainly as a result of my thinking about Mr. Gover's comments. I would think that this might open up the way by which it would be impossible for local ordinance control of such things as sound trucks if we allow any other means of communication to be granted by the constitution.

With respect to Dr. De Vries' comment that we have recognized in our own rules other news media, I thought this might be appropriate to consider in relation to the problem now before us.

CHAIRMAN BAGINSKI: Dr. Nord.

MR. NORD: Mr. Chairman, I feel there is another problem added in this new language, for this reason. The language as proposed is "or other news media". That implies that what goes before will be "news media". That is obvious. But unfortunately it is not so, because some of the words that appear before may relate to news media but others certainly do not. For example, speech. Liberty of speech is one of the things that is included in this list. And if you say liberty of speech "or other news media", I believe you are beginning to decrease the liberty of speech.

It seems to me the first amendment will limit or tend to limit the freedom the press. And the second one, I think, will tend to limit freedom of speech. I fear that if we have any other amendments we may limit some other freedoms—we do not even know what they are. The best thing, I still think, is to leave it as it is.

CHAIRMAN BAGINSKI: Mr. Upton.

MR. UPTON: Mr. Chairman, I look at this in the following way. The word "or" after speech defines speech or other news media. Press is a news medium, as are radio and T.V. My interpretation of the word "or" separates that problem about which Dr. Nord has spoken.

CHAIRMAN BAGINSKI: The question is on the amendment offered by Mr. Upton.

Mr. Faxon.

MR. FAXON: Mr. Chairman, I should like to ask Dr. Pollock a question if I may. Dr. Pollock, as the chairman of

the committee, I imagine that this matter must have been brought to your attention at the time the deliberations were going on in the committee. Is this true?

MR. POLLOCK: I thought I had already explained that it was considered by the committee and we felt that it was not necessary.

MR. FAXON: And was this the unanimous approval of the committee? Was the feeling of the committee unanimous in this respect?

MR. POLLOCK: It was.

MR. FAXON: Thank you.

CHAIRMAN BAGINSKI: Mr. Hodges.

MR. HODGES: Mr. Chairman, fellow delegates, in speaking in opposition to the Upton amendment, I would just point out to Mr. Upton that everything that is on radio and T.V. is not news, either. It is a much broader concept than this. I think Dr. Nord is right in saying that this would be restrictive.

CHAIRMAN BAGINSKI: The question is on the amendment offered by Mr. Upton to the Plank amendment. As many as are in favor of the amendment to the amendment will signify by saying aye. Opposed, no.

The amendment to the amendment is not adopted.

The question is on the amendment offered by Mr. Plank.

Mr. Hoxie.

MR. HOXIE: Mr. Chairman, I would like to have a ruling of the Chair, with the cooperation of our able secretary, as to the right of this body, in the committee of the whole, upon proper demand, to have a division.

CHAIRMAN BAGINSKI: Mr. Van Dusen.

MR. VAN DUSEN: Mr. Chairman, while you are considering this ruling, might I simply call to your attention rule 64.

CHAIRMAN BAGINSKI: Mr. Van Dusen, I wish you would read rule 64.

MR. VAN DUSEN: The portion of it, Mr. Chairman, that I consider pertinent is the second paragraph which reads as follows:

> A division of the convention may be had on the demand of 10 delegates, or a roll call of the convention may be demanded by a vote of 1/5 of the delegates present on any pending question. When a division of the convention is ordered, a rising vote shall be taken or the voting machine may be used if provided, and the president shall declare the result.

CHAIRMAN BAGINSKI: That is when in convention but not in committee of the whole.

MR. VAN DUSEN: The rules of the convention, Mr. Chairman, apply in the committee of the whole except as otherwise specifically provided.

CHAIRMAN BAGINSKI: The Chair still rules that on the amendment of Mr. Plank, a division of the house was asked for, and the Chair was about to ask for support, if there were 10 or more members who would support it, then it would be taken by a rising vote.

Mr. Marshall.

MR. MARSHALL: Mr. Chairman, are you using rule 64?

CHAIRMAN BAGINSKI: No.

MR. MARSHALL: Well, you said if 10 people supported it, then a roll call would be ordered.

CHAIRMAN BAGINSKI: Oh, I'm sorry.

MR. MARSHALL: I just want to get the rules clear. It took me too long to get them and now that I have them I want to get them straight.

CHAIRMAN BAGINSKI: Is the demand for the division supported?

Mr. Upton.

MR. UPTON: Mr. Chairman, I am sorry, but I am still in doubt. Rule 41 does say that:

> The rules of the convention shall be observed in the committee of the whole, so far as they may be applicable, except that it cannot adjourn the convention, the previous question shall not be ordered, the yeas and nays shall not be called. . . .

To me, that is a division of the house.

CHAIRMAN BAGINSKI: The Chair wishes to advise that no roll call is being taken here. All we are asking for is the yeas and nays, the number of yeas and nays. There will be no record made of this vote in committee of the whole.

Mr. Bentley.

MR. BENTLEY: Mr. Chairman, I would merely like to point out to the Chair that on December 21, when we were in committee of the whole, and a vote was taken on the amendment then before us, I raised a point of order against the use of the machine on the ground that other people are now questioning, and the then occupant of the Chair ruled against the point of order.

CHAIRMAN BAGINSKI: Mr. Marshall.

MR. MARSHALL: Mr. Chairman, let me rise in order to make myself clear. I am not trying to bog down the progress of this committee, nor to belabor this issue. The only thing is this. There are some things we do not want to get into. I think the rule is clear. I disagreed with the chairman at the time refered to by Mr. Bentley.

I do not think we should get in a position of having recorded roll call votes in the committee of the whole on top of unlimited debate, when you get your recorded roll call vote when the committee of the whole rises. That is the only point I am trying to make.

I think rule 41 is clear. Now, if the Chair wants to overrule it, I am not going to say another word. But this is twice that the question has been raised. You can have it now, and you also can have it—a recorded roll call vote—when the committee of the whole rises.

CHAIRMAN BAGINSKI: The Chair wishes to advise, with the advice and consent of the secretary, that when the committee rises, unless we take a vote on this amendment, unless the amendment is adopted, the amendment cannot be up for consideration then for adoption, when the committee rises.

Mr. Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, is it not the intention of the Chair, in using the machine, not to record the vote, but merely to count the tally?

CHAIRMAN BAGINSKI: That is right.

MR. A. G. ELLIOTT: And this is allowable under rule 64?

CHAIRMAN BAGINSKI: That is right.

MR. A. G. ELLIOTT: The only thing that I can understand is that it is not allowed under rule 41 to have a recorded tally of votes. So that if we use the machine as you have so ruled, and do not record the vote, but merely count it and then erase it, we will be complying with the rules of the convention as they are set out in the provisions of rule 64.

CHAIRMAN BAGINSKI: That is right.

Mr. Barthwell.

MR. BARTHWELL: Mr. Chairman, I want to rise on a technical question. If you are going to use the machine simply for the purpose of counting the tally, I want to suggest to the Chair that you lock the machine and everyone vote, and then that you turn the machine on and the votes will show.

CHAIRMAN BAGINSKI: That was the intention. It will be done unless there are objections.

Mr. Marshall.

MR. MARSHALL: Have you made a ruling, Mr. Chairman? If you have, I wish under another rule to appeal the ruling of the Chair, because the matter is of serious concern to me.

The only reason that I raise this question is this. Under rule 41, you call for the yeas and nays. Now, if the Chair is in doubt you can have a show of hands. And the only thing I am trying to avoid is this. I hope the other delegates will listen to this. I wish to avoid our getting involved in having recorded roll call votes in the committee of the whole, as I stated earlier, and then having them again after the committee of the whole rises. This is the only question before us. Now, what I would like to ask is this. What is the decision of the Chair? That is all I wish to have at this time.

CHAIRMAN BAGINSKI: Mr. Marshall, the point here was this. On the amendment offered by Mr. Plank someone demanded a division. I believe it was Mr. Yeager. A division of the house was requested, a division of the committee. Do you feel that is proper?

MR. MARSHALL: I do not think it is proper in the committee of the whole, under rule 41.

CHAIRMAN BAGINSKI: Mr. Yeager.

MR. YEAGER: Mr. Chairman, Mr. Marshall was implying here that by taking a vote on the board we would be taking a recorded roll call vote. As I see it, we are are not taking a recorded roll call vote. We are simply taking a division.

Now, some of us are situated in the house in such a way that it is difficult to see how everyone votes, and if we use the board it is easier to exchange information on how other people are voting. (laughter) There will be no record made of it . . .

CHAIRMAN BAGINSKI: The committee will be in order.

MR. MARSHALL: In answer to Delegate Yeager, I do not think . . .

MR. YEAGER: I am not quite finished, Mr. Marshall.

MR. MARSHALL: I'm sorry.

MR. YEAGER: As I understand it, Mr. Chairman, the machine simply runs a complete tally, and we can get some idea of what other people are doing in this committee. (laughter)

CHAIRMAN BAGINSKI: Mr. Marshall.

MR. MARSHALL: Mr. Chairman, the only question that I raise, and let me repeat it for the last time, is this. And then I want a ruling from the Chair. It is not a question of knowing how we vote; but when the committee of the whole rises, you can have a roll call vote and everyone will know how everyone else votes. My only purpose in raising this question is that I just happen to think that rule 41 means what it says. If it does not mean what it says—and I want to know; I want a ruling from the Chair—I would hope we will not be getting bogged down and find ourselves in the position of using the machine, in addition to unlimited debate, in the committee of the whole.

Now, my interpretation of rule 41, and I think it is the interpretation of others, or was when it was raised before as a question, is that a division of the house cannot be called. You call for the yeas and nays. And I should like a ruling from the Chair.

CHAIRMAN BAGINSKI: Mr. Marshall and members of the committee, Mr. Chase has been asked to make a few brief remarks.

SECRETARY CHASE: I think perhaps some of the difficulty, Mr. Marshall, comes from the fact that some of the delegates are acquainted with the use of the voting machine in the house of representatives here in Lansing, where, in the committee of the whole, repeatedly, the voting machine is used for the ascertainment of the number of votes in a division. The tally is not recorded other than the number that is given "yes" and the number that is given "no".

Now, the secretary would like to add that in this machine we will put only one copy of the roll call. In order to get a record vote we must have 2 copies of the roll call here, and the machine records on the second copy, by carbon, the yeas and nays by name. When we use only one copy, there will be no record, and the only thing we will have when we are finished is the number of "yes's" and the number of "no's" and the number not voting.

MR. MARSHALL: Well, up until now, Mr. Chase, and that was the time that Mr. Bentley and I objected, the Chair has put the question on a voice vote and if there was any doubt a show of hands was called for. Now, if we are going to get into the habit of using the machine, I think we are going to be bogged down, and I think every time you have an issue come to the floor you will be using the machine. It is not a question of my not wanting to have a roll call vote.

Is this the ruling of the Chair, then?

CHAIRMAN BAGINSKI: It is not. The Chair did not rule that we should use the board. It was suggested. A demand was made for a division. Is the demand for the division seconded? Those in favor will rise.

The demand is supported.

Mr. Mahinske.

MR. MAHINSKE: Mr. Chairman, under rule 64 it specifically says "a division of the convention". We are not the convention at the present time. We are the committee of the whole. Under rule 41 it specifically says, "The rules of the convention shall be observed in the committee of the whole, so far as they may be applicable," and it goes on and on and on.

At page 48, on the third line, it says, talking about motions that are not in order, rule 41 provides, ". . . or for a call of the convention. . . ." and it says it shall not be in order. Now, if we are going to start disregarding our rules, we might as well start right now and throw this book right out the window.

If we are going to start calling for divisions and using the board when a voice vote may obviously vote this thing down or in, why start using the board when it can be determined one way or the other by a voice vote whether or not the Chair is in doubt.

CHAIRMAN BAGINSKI: The Chair did not say that we would use the board.

MR. MAHINSKE: Well, I am just arguing against using the board at this point. We would be only opening the door to using the board on every vote in committee of the whole.

CHAIRMAN BAGINSKI: We have had a request for a division of the committee and it was supported.

MR. MAHINSKE: I do not believe that is in order. I do not believe a division is in order.

CHAIRMAN BAGINSKI: A division is in order.

Mr. Yeager.

MR. YEAGER: The request, Mr. Chairman, was for using the board.

CHAIRMAN BAGINSKI: Well, the Chair will rule that the board will not be used.

Mr. Powell.

MR. POWELL: Mr. Chairman and ladies and gentlemen of the committee, I have sat here rather quietly and I think I have been accused, by implication, with respect to the ruling that I made on the Thursday prior to Christmas, when I did rule that the use of the board was in order in committee of the whole. I still feel that I was right at that time. This business of asking for a record roll call vote has nothing to do with the use of the machine.

Now, Mr. Marshall has said over and over that we would bog down the proceedings if we developed the habit of using the machine to count the vote. I think it is just the contrary. I think the use of this mechanical tabulator is to expedite our proceedings, not to slow them up.

Mr. Mahinske talks about a call of the house and so on. That is not involved here. That is an elaborate procedure that is used only in the convention and not in committee of the whole.

I believe that the use of the voting machine as a means of finding out the relative number of yes and no votes on any given proposition is entirely within the rules. It is not a record roll call. It is not a roll call of any sort. It is just a speedy way to count.

I do not know just where we stand at the moment. The Chair made a ruling once comparable to the ruling that I made a few weeks ago and now I understand he has sort of withdrawn that ruling and has said that we will go to a show of hands. But I think if we want to get out of here on March 31, it would be to our advantage to get to using this equipment that has been supplied here. Nobody is going to take a picture of it. Nobody is going to use it later. It is just a way to speed things along.

CHAIRMAN BAGINSKI: Mr. Hoxie.

MR. HOXIE: Mr. Chairman and fellow delegates, I should like to support all that Delegate Powell has said. Customarily, when you ask for a division, it refers to a tally on the board, not a record roll call.

It has been customary through the years, so far as legislative procedure is concerned, if at any time the chairman of the committee of the whole is in doubt, he asks for this division tallied on the board. And, if necessary, I am going to move that the division be on the board.

CHAIRMAN BAGINSKI: Mr. Upton.

MR. UPTON: In response to what was said by Mr. Powell, may I say this. I believe the call was for yeas and nays. And to me this is a matter of putting your voting button in a position to show a red light or a green one.

You say it is not a roll call vote, but everybody knows and will be able to tell which way you voted, including the press. I am not objecting to a roll call vote in the convention, but I do not believe that this is in order in committee of the whole. Therefore, I object to using the board, or even to calling for a roll call vote or a division of the house before you, Mr. Chairman, determine there is a question.

CHAIRMAN BAGINSKI: A division has been demanded and it has been seconded. The question is on the amendment by Mr. Plank. As many as are in favor of the amendment will please signify by saying aye. Opposed, no. The Chair is in doubt. (laughter) Those in favor of the amendment of Mr. Plank will please rise.

SECRETARY CHASE: Seventy-three.

CHAIRMAN BAGINSKI: The majority of the members-elect having voted for the amendment, the amendment is adopted.

I might suggest at this time a little chore for Mr. Van Dusen —to straighten out this situation. (laughter)

Mr. Van Dusen.

MR. VAN DUSEN: Mr. Chairman, I think in defense of these rules, with which I do have some familiarity, both your ruling that a rising vote would be taken on the question of the division, and Mr. Powell's ruling that the machine would be used, a division having been called for, were correct because rule 64 states, "When a division of the convention is ordered, a rising vote shall be taken or the voting machine may be used, if provided. . . ." Now, that leaves it, I think, in the discretion of the Chair as to which device he chooses to employ in taking the division of the committee of the whole, and there is no question whatever but that a division of the committee of the whole is appropriate under the rules.

CHAIRMAN BAGINSKI: Mr. Pollock.

MR. POLLOCK: Mr. Chairman, I believe you have not put the question on the section, as amended.

CHAIRMAN BAGINSKI: Mr. Upton's amendment was voted down on a voice vote.

MR. POLLOCK: Yes, Mr. Chairman, but Mr. Plank's amendment was adopted.

CHAIRMAN BAGINSKI: Yes, adopted.

MR. POLLOCK: All right, now how about the section.

CHAIRMAN BAGINSKI: Well, that is coming next. (laughter) Are there any further amendments to section 4?

SECRETARY CHASE: Mr. Wanger offers the following amendment to section 4:

1. Amend page 2, line 6, after "press,", by inserting "which liberty shall include"; so that the language would then read: "no law shall be passed to restrain or abridge the liberty of speech or of the press, which liberty shall include radio, television, or other means of communication."

CHAIRMAN BAGINSKI: Mr. Wanger.

MR. WANGER: Mr. Chairman, members of the committee, this amendment is submitted to clear up a problem which might otherwise arise under the amendment which has just been adopted by the committee.

The words "liberty of speech" and "liberty of press" have unique historical and legal meaning. Literally construed, Mr. Plank's amendment would also create the liberty of radio, the liberty of television, the liberty of other means of communication. This, I am sure, was not the literal intent, and I think it would be possible to forestall this merely by the inclusion of the words which I offer as an amendment at this time, in other words, "which liberty shall include" the media which have just been added.

CHAIRMAN BAGINSKI: The question is on the amendment of Mr. Wanger. In response to a request that the amendment be reread, the secretary will read.

SECRETARY CHASE: Mr. Wanger's amendment is as follows:

[The amendment was again read by the secretary. For text, see above.]

CHAIRMAN BAGINSKI: Mr. Brown.

MR. T. S. BROWN: Mr. Chairman, I should just like to highlight my prior objection to the amendment we passed—Mr. Plank's amendment—by asking Mr. Wanger if, according to his amendment, this would include subliminal communication and nonverbal communication? There are things of this nature and if we can answer these questions satisfactorily, I would be very happy.

CHAIRMAN BAGINSKI: Mr. Wanger.

MR. WANGER: Mr. Chairman, my amendment was presented merely to perfect the one which this committee already adopted. I shared some of the concern that was expressed about the potential problem which was just raised, and this amendment is not directed at that problem whatsoever. It is, rather, directed to the problem which I stated, that of perfecting the form of the amendment to make it clear that we are not here creating liberties hitherto unknown to the law, but are merely including in the present liberties communication media which have developed since the time of the adoption of the first amendment to the Constitution of the United States.

CHAIRMAN BAGINSKI: Mr. Bentley.

MR. BENTLEY: Mr. Chairman, a parliamentary inquiry. Since the language of the Wanger amendment does not include the language of the Plank amendment which we have adopted, would the passage of the Wanger amendment cancel out the Plank amendment?

CHAIRMAN BAGINSKI: No, not at all, I am advised.

MR. BENTLEY: Then would the Wanger amendment not have to be amended to include the Plank amendment?

CHAIRMAN BAGINSKI: No.

MR. BENTLEY: I wonder, Mr. Chairman, whether the secretary would read the Wanger amendment with the language of the Plank amendment included so we can understand it.

CHAIRMAN BAGINSKI: The secretary just did so, but he will do so again.

SECRETARY CHASE: Mr. Wanger's amendment is as follows:

Bearing in mind the adoption of the Plank amendment which has already been agreed to, the amendment reads:

1. Amend page 2, line 6, after the word "press" and between that and the language of the Plank amendment, by inserting "which liberty shall include"; so that the language will read, ". . . and no law shall be passed to restrain or abridge the liberty of speech or of the press, which liberty shall include radio, television, or other means of communication."

CHAIRMAN BAGINSKI: Mr. Hoxie.

MR. HOXIE: Mr. Chairman, so that we do not become confused, I wonder whether you would have read the proposed Wanger amendment with the Plank amendment that has already been adopted.

CHAIRMAN BAGINSKI: The secretary just read it, Mr. Hoxie.

MR. HOXIE: Well, there is other language there that is rather confusing to me. Is he amending the Plank amendment, or is Mr. Wanger amending the proposal as it came before us from the committee?

SECRETARY CHASE: May the secretary clarify the situation. Mr. Plank's amendment to add at the end of the line the words "radio, television, or other means of communication" was adopted.

Mr. Wanger now moves to insert between the word "press" and the language of the Plank amendment the words "which liberty shall include"; so that the language will then read, ". . . and no law shall be passed to restrain or abridge the liberty of speech or of the press, which liberty shall include radio, television, or other means of communication."

MR. HOXIE: In other words, Mr. Chairman, as I understand it, if the Wanger amendment is adopted, the other language pertaining to the Plank amendment is deleted, is that correct?

CHAIRMAN BAGINSKI: No, it is not deleted. It is just added to it.

Mr. Wanger.

MR. WANGER: Mr. Chairman, Mr. Hoxie, perhaps I can clarify this matter by saying that I would not have offered my amendment if Mr. Plank's amendment had not passed. This

is merely to further perfect the Plank amendment which this body indicated it was in favor of previously.

CHAIRMAN BAGINSKI: Mr. Nord.

MR. NORD: Mr. Chairman, I should like to speak in favor of the Wanger amendment. I believe it satisfies the objection that I made before, and I believe it is very advantageous to do so. As a matter of fact, it seems to me it is an admirable solution to the problem that has been raised in that it will satisfy the desire of Mr. Plank which I believe all of us feel is the right thing to do if we can do it. At the same time, it will make it absolutely crystal clear that we are not inventing new types of liberty which are on an exact par, or parity, I should say, with the classical types of liberty.

I think it is important that we do make this kind of distinction, because as Mr. Wanger pointed out, these words "no law shall be passed to restrain or abridge the liberty of speech or of the press" are extremely crucial legal words. They don't just mean what they say, as such. They have been construed for hundreds of years and they have a lot, if not everything, to do with the law of defamation. They have to do with the rule that you cannot get an injunction to restrain in advance libel or slander. And "speech" is the slander part, and "press" is the libel part. There aren't any other parts, according to the common law of the subject.

And, therefore, since every single word in that final clause has a technical interpretation that is not obvious on the face of it, it is important that if we do add these words, "by radio, television" and so on, to put them in a somewhat different form and it seems to me that the form suggested by Mr. Wanger is admirably adapted to do what it seeks to do.

CHAIRMAN BAGINSKI: Mr. Downs.

MR. DOWNS: Mr. Chairman, I was going to ask Dr. Nord a question, but he has already answered it. Therefore, I would simply like to speak in favor of Mr. Wanger's amendment since, if I understand this correctly, Dr. Nord, this will maintain our historic definition of the liberty of speech and of the press, and also make it clear that we wish to include the radio, T.V. and other means of communication, without jeopardizing, in any way, our established and historic interpretations. Is that correct?

MR. NORD: Mr. Downs, that is my interpretation.

CHAIRMAN BAGINSKI: Mr. Higgs.

MR. HIGGS: Mr. Chairman, I somewhat hesitate to ask this question, but I would like to ask Dr. Pollock if the committee considered putting a period after the word "speech".

CHAIRMAN BAGINSKI: Dr. Pollock.

MR. POLLOCK: No, the committee did not.

MR. HIGGS: I wonder whether, in view of the fact that the first section includes the words "Every person may freely speak, write,"—and we inserted the word "express"—whether what we are really driving at, in the last clause, is that "no law shall be passed to restrain or abridge such liberty of speech" as is defined in the first part of the section. This would treat all means of communication equally. I do not propose that as an amendment. I just throw it out for thought.

CHAIRMAN BAGINSKI: The question is on the amendment offered by Mr. Wanger. As many as are in favor of the amendment will signify by saying aye. Opposed?

The amendment is adopted.

Are there any further amendments?

Dr. Pollock.

MR. POLLOCK: Mr. Chairman, I move that the committee now rise and report to the convention.

I retract that motion, Mr. Chairman, until you have put the final question.

CHAIRMAN BAGINSKI: Are there any further amendments to section 4?

Mr. Powell.

MR. POWELL: Mr. Chairman, our debate this evening has been on such a high level that I hesitate to bring anything trivial into the discussion, but I think it should be settled now, and the question I raise is with regard to the use of the term "section 1, section 2, section 3," and so forth. It happens that I am on the committee on style and drafting. The latest word that I heard was that no committee proposal was to contain that designation.

Now, I can see that with a whole detailed article like this with some, I believe, 22 sections, maybe it does expedite our work here tonight if we have them enumerated or labeled. But I understand that somewhere along the line we are to divest ourselves of all this nomenclature and then, after the committee on style and drafting has received these various sections the second time, they will arrange them in proper sequence. There has been a point made here that this should be article I instead of article II. I think that is one of the decisions that should first be made by the committee on style and drafting after second consideration.

I do not know who should rule on this, whether we should have a suggestion from the secretary or wait until we are back in convention and have the president say a word to us, or what. But I thought if the reference to sections should be stricken out in committee of the whole, I had better bring this up now before the committee rises.

CHAIRMAN BAGINSKI: Mr. Downs.

MR. DOWNS: Mr. Chairman, may I suggest that the practical solution is that these section numbers be construed for identification facility, knowing that the committee on style and drafting has the right to change them and that we can call upon the Chair to make a further ruling at our session tomorrow. I believe the question was properly raised, but I think it could be solved that way very practically.

CHAIRMAN BAGINSKI: Dr. Pollock.

MR. POLLOCK: Will the Chair put the final question?

CHAIRMAN BAGINSKI: Mr. Cudlip.

MR. CUDLIP: Before you do that, Mr. Chairman, if I may delay the committee for a moment, let me say that I subscribe to what Delegate Downs has said. When there are multiple sections, for convenience sake, we would like to have the numbering go back to the committee on style and drafting in the early stages through second reading. It will help us and it will help the convention. I think, if the secretary agrees with the Chair, that that could be just an understanding.

CHAIRMAN BAGINSKI: Are there any further amendments to section 4?

If not, it will—

Mr. Faxon.

MR. FAXON: Now, Mr. Chairman, my colleague tells me one thing and I thought it was another. Is Mr. Pollock's motion that the committee now rise put aside? Was that motion put aside until we have acted upon this?

CHAIRMAN BAGINSKI: Yes. Are there any further amendments?

MR. FAXON: I just wish to ask this question, Mr. Chairman. I am a little bit disturbed at the haste at which we are changing one of these sections of the constitution which has been included in that document for so long a time.

We heard testimony this afternoon from somebody who pointed out that these little sections have a great deal of interpretation behind them. And now we are proceeding to add language, and there have been certain doubts expressed. Certain of the delegates have asked questions about the validity of this language, about its effectiveness in accomplishing what we hope it will accomplish.

We are now being asked to pass this on to the committee on style and drafting after the declaration of rights committee unanimously approved the report as it was originally put before us.

Now, I would at least like the opportunity to have the question on this put over until tomorrow, at the very least, so that the people in the research department and other people could give us some advice as to what further interpretations might be made as far as this section is concerned.

CHAIRMAN BAGINSKI: The Chair might advise that we will be on general orders on this again tomorrow, so any further action can be taken on changing these numbers, if the committee so desires.

MR. FAXON: Well, will this be the last action on this, Mr. Chairman, or will we have another opportunity?

CHAIRMAN BAGINSKI: No.

MR. FAXON: I mean just in terms of the committee of the whole?

CHAIRMAN BAGINSKI: We have all these sections to go through.

MR. FAXON: My question is this, Mr. Chairman. If we act upon this now, will we be able to consider this again tomorrow?

CHAIRMAN BAGINSKI: Surely. Are there any further amendments?

Mr. Mahinske.

MR. MAHINSKE: Mr. Chairman, I would like to appeal from your decision in this instance. I do not think we will reconsider these tomorrow, the first sections set out here numbered 1 to 4.

CHAIRMAN BAGINSKI: Was that your question, Mr. Faxon?

MR. FAXON: Yes, that is what I asked.

CHAIRMAN BAGINSKI: I'm sorry; I misunderstood you. The Chair wishes to advise that tomorrow, if you care to reconsider anything that was done here, that can be done.

MR. FAXON: Now, that means that we will not take action on this now?

CHAIRMAN BAGINSKI: Will the committee be in order, please. Mr. Faxon, I wish to advise that when we are through with this proposal—we have been going through here with amendments to sections—when we are through with the entire proposal the question then will be, are there any amendments to the body of the proposal, and at that time you will have an opportunity to offer your amendment.

MR. FAXON: Now, would that be on all of the amendments?

CHAIRMAN BAGINSKI: Yes. After we have completed all the sections, then the question will be: are there any amendments to the body of the proposal? And at that time you can offer some changes.

Are there any further amendments to section 4?

Mr. Mahinske.

MR. MAHINSKE: I would like to ask some questions of Dr. Pollock, before you put the revised section, Mr. Chairman.

CHAIRMAN BAGINSKI: Do you care to answer them, Dr. Pollock?

MR. POLLOCK: Surely.

CHAIRMAN BAGINSKI: Proceed, Mr. Mahinske.

MR. MAHINSKE: Dr. Pollock, obviously from your statement you have considered these items before in the committee and rejected them and they were not included in your committee report. Now, are you satisfied, in view of the hasty action we have taken here tonight, with the changes we have had with respect to the end of this sentence, especially with reference to the last 3 words, the last phrase here, "or other means of communication"—"means" being an all inclusive word?

MR. POLLOCK: No, I am not satisfied. I am not satisfied, but I bow to the will of this committee, of course.

CHAIRMAN BAGINSKI: Are there any further amendments to section 4? If not, it will pass.

Section 4, as amended, is passed.

Dr. Pollock.

MR. POLLOCK: Mr. Chairman, I move that the committee do now rise and report to the convention.

CHAIRMAN BAGINSKI: Before I put the motion, the Chair would like to express gratitude for your cooperation in a matter of such great importance as that before us this evening. Thank you very much.

The question is on the motion that the committee of the whole rise and report to the convention. As many as are in favor signify by saying aye. Opposed?

The motion prevails.

[Whereupon the committee of the whole having risen, President Nisbet resumed the Chair.]

PRESIDENT NISBET: The Chair recognizes Mr. Baginski.

MR. BAGINSKI: Mr. President, the committee of the whole has had under consideration several proposals. The secretary will make a detailed report.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 13,** A proposal respecting the physically, mentally or otherwise seriously handicapped; **Committee Proposal 14,** A proposal pertaining to the preamble to the constitution; and reports these 2 committee proposals back to the convention without amendment and with the recommendation that they do pass.

PRESIDENT NISBET: Pursuant to rule 57, **Committee Proposal 13** and **Committee Proposal 14** are referred to the committee on style and drafting.

For Committee Proposal 13 as referred to the committee on style and drafting, see above, page 462.

For Committee Proposal 14 as referred to the committee on style and drafting, see above, page 464.

SECRETARY CHASE: The committee of the whole has also had under consideration **Committee Proposal 15,** A proposal to amend article II pertaining to the declaration of rights; has adopted certain amendments to this proposal; and has come to no final resolution thereon.

This completes the report of the committee of the whole, Mr. President.

PRESIDENT NISBET: Mr. DeVries.

MR. De VRIES: Mr. President, I rise to a question of personal privilege. In the committee of the whole Mr. Stevens was asked for an interpretation by Mr. T. S. Brown of article II, section 3 of this constitution. Mr. Bentley further added to this interpretation, which was that the state could not administer federal grant in aid programs and also an interpretation was made regarding rebates to parents sending children to parochial schools.

Mr. Brown then asked what seemed to be a rhetorical question. Paraphrased, it went something like this, are there any objections or disagreements with this interpretation of this section of the constitution? I objected. So, the record can be interpreted as follows: 143 people have given tacit approval to these interpretations and one has objected. I do not know if I disagree with the interpretation rendered by Mr. Stevens. All I know is that I strongly object to this procedure.

The committee report and the recommendations will appear in the record of the debates of this convention for future interpretations. I approve article II, section 3, but I do not approve of off the cuff interpretations. We are not supreme court justices. We are not interpreting our own committee proposals. And we are not making tacit votes in answer to questions on which we do not really have a chance to vote.

As I understand what happened, Delegate Brown, in effect, has cast 143 silent votes on the interpretation of article II, section 3, and to this procedure I strongly object.

PRESIDENT NISBET: Mr. Brown.

MR. T. S. BROWN: Mr. President, the procedural analysis given by Dr. DeVries in relation to what I did when I was on the floor is absolutely 100 per cent correct. But I think, however, in order to preclude any hostile feelings, if this particular problem arises again—and I think it shall—that we should request our rules and resolutions committee to set up some certain format for those occasions wherein, from a legal point of view, it may seem logical in fact necessary for an expression of sentiment on the part of the delegates concerning a particular proposition, the exact terminology of which does not appear in the constitution.

I think this is a rather serious problem, and although we certainly do not mean to usurp the prerogatives of our supreme court, I think the lawyers among us will agree that on many occasions the supreme court will look back to our verbatim testimony and the debates on the floor of this convention in order to give them guide lines in borderline cases.

PRESIDENT NISBET: Mr. Stevens.

MR. STEVENS: Mr. President, Delegate DeVries, if I had been asked the simple question: would this preclude, and so

forth, I would have answered, "I don't know." But since Mr. Brown asked me to state my opinion, it seemed only polite that I should tell him what it was, although I do not think it has any significance or importance.

PRESIDENT NISBET: Mr. Binkowski.

MR. BINKOWSKI: Mr. President, for the record but not to take up the time of the convention, I should like to state that I agree wholeheartedly with Dr. DeVries.

PRESIDENT NISBET: Mr. Snyder.

MR. SNYDER: Mr. President, I think that the record will also show the count was not 143. I also stated my feelings in opposition to the interpretation previously made.

PRESIDENT NISBET: Mr. Mahinske.

MR. MAHINSKE: Mr. President, regardless of what the record shows, one way or another, I think it is a healthy thing that the delegates ask the convention committee chairmen, and so forth, for their opinions concerning what they think various things mean, so that we can use this as a guide line in voting one way or another, and at the same time we should keep under consideration the fact that in borderline cases the supreme court will look to our deliberations and will look to the record containing our voiced intent or expression of intent as to what these sections mean.

I can draw only one conclusion from what Mr. Bentley said and that is, that under the wording of this provision, that if federal funds are given to the state for administration, they cannot be used for private schools and must be used for public schools only. I do not see how I can draw any other conclusion from a statement like that. It is on the record as to what his intent, at least, is, as to what this section means, his understanding and interpretation of it.

I do not think that holding these things back from each other is going to do any good, and I say that because if I had not known that, I would have voted yes for this, and knowing it, I will vote no on it.

PRESIDENT NISBET: Mr. Bentley.

MR. BENTLEY: Mr. President, when Mr. Mahinske asked me for my opinion, I gave him what I understood was the practice and has been the practice up to this time. I wonder whether Dr. DeVries was objecting to my interpretation or only to the interpretation of other delegates to the question of tax rebate.

I did not understand that he was objecting to the question that federal funds, if given to the state, could not be used for parochial or private institutions.

PRESIDENT NISBET: Dr. DeVries.

MR. DeVRIES: Further to the comment of Delegate Bentley, Mr. President, I am not objecting to asking questions. I am objecting to the procedure when Mr. Brown says, "Are there any objections to this interpretation?" and, in effect, saying, "I hear none, therefore it passes." That is what I object to. I do not object to Mr. Stevens giving an opinion, or Mr. Bentley, but I do not want rhetorical questions asked and then, because there is no objection, this convention is on record as approving that interpretation.

PRESIDENT NISBET: Mr. Hoxie.

MR. HOXIE: Mr. President, I wish to raise a question as a point of information. Under article II, declaration of rights, section 4, relating to liberty of speech and press, to which an amendment was adopted by the committee of the whole, it appears that in our proceedings when the president took the Chair and the report of the chairman of the committee of the whole was made, we did not adopt the amendment which was endorsed by the committee of the whole. It is my belief that we did not comply with the proper action by adopting the report of the committee of the whole, which would be the amendment to section 4.

Now, it is true that on the balance of the article, that we asked for leave to sit again. The committee rose, but as far as the amendment is concerned, we did adopt it in committee of the whole and it should have been the question before this body, when the president took the Chair, whether we concur in the amendment adopted by the committee of the whole.

PRESIDENT NISBET: It is my understanding, Mr. Hoxie, that the report of the committee on declaration of rights, suffrage and elections includes 22 sections and one unnumbered of article II. The committee of the whole proceeded to discuss 4 sections of that article, the fifth section of which will be taken up in the committee of the whole tomorrow. When the complete article is debated and is disposed of by the committee of the whole, then the convention will be called upon to accept the amendments as they were offered to the various sections of this article.

At the present time there has been an amendment to section 3 and there has been an amendment to section 4. They will be acted upon when the entire article is passed by the committee of the whole. Are there any further questions?

Announcements.

SECRETARY CHASE: The meeting of the committee on public information scheduled for following the session this evening has been postponed until further notice. Ink White, chairman.

The committee on finance and taxation will meet in room E tomorrow morning at 8:30. D. Hale Brake, chairman.

The subcommittee on higher education of the committee on education will meet in room K tomorrow, Tuesday, at 9:00 o'clock a.m. Mr. Bonisteel, chairman.

The committee on judicial branch will meet in room B tomorrow at 10:30 a.m. Mr. Robert J. Danhof, chairman.

Will you please note the following. The committee on local government, the subcommittee on metropolitan government, has given notice of a meeting scheduled for tomorrow at 10:30. That meeting will be held in room I. Notice of this meeting appears on the composite calendar.

The committee on administration, scheduled to meet tomorrow, has advanced the time of meeting from 1:15 to 12:45 tomorrow. The committee on administration meets tomorrow at 12:45. Walter DeVries, chairman.

The committee on education will meet Thursday at 10:30 a.m. in room K.

PRESIDENT NISBET: Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, the committee on rules and resolutions will meet as scheduled, immediately following the session, in room I. (laughter)

PRESIDENT NISBET: Mr. Martin.

MR. MARTIN: Mr. President, the committee on executive branch will hold its usual meetings at 10:30 a.m. on Tuesday, tomorrow, and at 8:30 on Wednesday.

PRESIDENT NISBET: The Chair recognizes Mrs. Elliott.

MRS. DAISY ELLIOTT: Mr. President, I move that the convention do now adjourn.

PRESIDENT NISBET: The question is on the motion for adjournment. Those in favor say aye. Opposed, no.

We are adjourned until 2:00 o'clock tomorrow afternoon.

[Whereupon at 10:45 o'clock p.m., the convention adjourned until 2:00 o'clock p.m. Tuesday, January 9, 1962.]

FIFTY-THIRD DAY

Tuesday, January 9, 1962, 2:00 o'clock p.m.

PROCEEDINGS

PRESIDENT NISBET: The convention will please come to order.

Our invocation today will be given by the Reverend E. W. Martin, District Superintendent of the Churches of the Nazarene of Eastern District, Pontiac.

Will you please rise.

REVEREND MARTIN: Eternal God, our Father, we are grateful for the providences that allow us to come together in this convention. We are grateful to Thee for Thy mercies and for the prosperity that Thou hast given, for these freedoms that we have inherited and preserved.

We are keenly aware, as we gather here, that not all are so favored. We are reminded of the third of the earth under the domination — the slavery — of communism. We are reminded, again, that a third of the people of the world are presently in revolution. We are grateful that we are included in that third enjoying freedom. We recognize that there is a price to pay for this freedom, that there is maintenance required. Grant that as those assembled here meet together in this convention, they may be guided by Thy eternal wisdom and that we may make provision not just for the immediate present but for generations to come. Thy holy word encourages us to ask for wisdom, and so we come in confidence and faith, believing that Thou wilt grant it.

Grant that all personal considerations may be submerged for the greater good, and grant that we may be willing to give ourselves in the dedication that is required in this day of darkness, this day when some have doubted.

Give us faith to carry on believing that God will prosper those who labor unselfishly and sincerely. This we ask for the sake of freedom in Thy holy name. Amen.

PRESIDENT NISBET: The roll call will be taken by the secretary. Those present will please vote aye.

SECRETARY CHASE: Has everyone voted? The machine is now locked and the attendance will be recorded.

Mr. President, a quorum of the convention is present.

Prior to today's session, the secretary received the following requests for leave:

Mr. Thomson has been ordered by his physician to remain at home for the balance of this week and requests to be excused for the remainder of this week's sessions.

PRESIDENT NISBET: Without objection, the request is granted.

SECRETARY CHASE: Absent with leave: Mr. Thomson.

Absent without leave: None.

PRESIDENT NISBET: There is a wonderful attendance today. Thank you very much.

Reports of standing committees.

SECRETARY CHASE: The committee on executive branch, by Mr. Martin, chairman, reports back to the convention **Delegate Proposal 1396,** A proposal to require all administrative regulations to be submitted to the legislature; with the recommendation that the proposal be referred to the committee on legislative powers.

John B. Martin, chairman.

PRESIDENT NISBET: Without objection, it will be referred.

Hearing none, Delegate Proposal 1396 is referred to the committee on legislative powers.

SECRETARY CHASE: That is the only standing committee report, Mr. President.

PRESIDENT NISBET: **Reports of select committees.** The Chair recognizes Mr. Millard.

MR. MILLARD: Mr. President and members of the convention, since the formation of the committee on emerging problems, many of the delegates have asked just what the duties of this committee are. In order to better understand the function of the committee, it might be well to review the history of its formation.

In one of the early sessions of the convention, Dr. Pollock introduced a resolution [Resolution 30] that a select committee should be appointed in order to take jurisdiction over any problems that might emerge out of delegate proposals which were not covered by particular assignments.

As each delegate knows, the present constitution has been divided into areas and assigned to 9 substantive committees, and the basis of their work so far has been a revision of the 1908 constitution. As delegate proposals came in, it was evident that there were new problems being introduced which did not fall within the framework of the present constitution, and thus did not have any particular basis of assignment to a substantive committee.

However, the president has made assignments of these new emerging problems to various substantive committees, but most of the committees were engrossed in making a revision of the present articles and sections of the constitution, and have not fully investigated some of these emerging problems.

This committee was finally formed the last of December. Since that time some problems have been turned over to the committee for their investigation. In order that the convention might know some of these areas and to better understand the functions of the committee, the following are some of the matters now being investigated by the committee:

1. Pensions——Mr. Claud Erickson, who is a member of this committee, has suggested that pension funds are rapidly becoming one of the main problems of our economy because of the large sums of money which are being accumulated and the number of people being covered by pensions. It is estimated that there are more than 90 million workers and their dependents presently covered by employee benefit plans and that the amount of money in the various plans is nearly $100 billion. In 1958 congress passed an antifraud act for policing these funds, but it has not proven adequate. It is felt that the matter of pension funds, both public and private, which are regulated solely within the state of Michigan, would be a proper subject for investigation by this committee.

2. Intergovernmental relations — This problem has been looked into to some extent by the committee on local government, but only in a limited way, and their investigation did not go beyond local government. Mrs. Dorothy Judd, a member of the committee on local government, has obtained information on intergovernmental relations which goes beyond local government into state, national and international relations. She has given the material to this committee for investigation.

3. Natural resources, particularly water resources — Mrs. Judd was also interested in this area and has obtained a great deal of information in regard to the preservation of our water resources in the state of Michigan. She has obtained a lot of material and has turned this over to the committee for investigation.

4. Public health — There is nothing in the present constitution about public health for it has always been considered a part of the police power, and it might be questionable whether any mention should be made in the new constitution. However, medical sources have suggested that this matter be investigated and Mrs. Judd also has obtained some information on this subject which she has turned over to the committee.

5. Administrative procedures — This is an area in which administrative agencies have taken over a great many functions of the courts, and it is felt that this matter should be

investigated to see whether or not any constitutional provision is necessary for the regulation and jurisdiction of such agencies.

6. Atomic energy — This is a problem which is bound to arise in the future because of radioactive fallout and other dangers to the people of Michigan. It is felt that this area should be investigated to find out if it is necessary to make provision for protection of the people from this danger.

7. States rights — It has been suggested that this committee make an investigation of the possibility of returning to the state of Michigan some of the services and responsibilities which have now been usurped by the federal government.

8. Separation of legislative from constitutional matters — As all of the delegates know, there have been many delegate proposals introduced in the convention which are purely legislative in substance and should not be given the dignity of constitutional mention. It has been suggested that this committee could act as a coordinating agency between the convention and the legislature and could inform the legislature on matters to which it is felt their attention should be directed.

A letter has been sent to all the committee chairmen calling their attention to the formation of this committee and requesting that if they have any problems which they do not deem to be within their jurisdiction or for some other reason are not receiving proper attention, that they can be referred to the committee on emerging problems.

These statements are being made to the convention as a whole so that any delegate may have the opportunity to express any problem which he might think should be investigated by this committee, and we welcome such information and suggestions.

The members of the committee are listed in the journal of December 21, and any member of the committee will be glad to accept such information. The committee room is room I on the third floor and someone will always be available to receive and give information in regard to these matters.

This committee has been divided into 4 subcommittees, and the problems just listed above have been assigned to them. A list of the members of the subcommittee are attached to this report. I would request that this statement and the list of the subcommittees be printed in the journal.

PRESIDENT NISBET: Without objection, they will be printed in the journal.

MR. MILLARD: Thank you, Mr. President.

The following are the subcommittee assignments for the committee on emerging problems:

Frank G. Millard, chairman
Roscoe Bonisteel, first vice chairman
Theodore S. Brown, second vice chairman

Subcommittee 1 — Pensions
Claud R. Erickson, chairman
Richard H. Austin
Charles L. Anspach

This subcommittee will also investigate the problem of separation of legislative from constitutional matters.

Subcommittee 2 — Natural resources
Charles Figy, chairman
Tom Downs
Hazen van den Berg Hatch

This subcommittee will also investigate the problem of public health.

Subcommittee 3 — Administrative procedures
Earl C. Pugsley, chairman
Melvin Nord
Raymond L. King

This subcommittee will also investigate the problem of states rights.

Subcommittee 4 — Intergovernmental relations
Paul G. Goebel, chairman
Mrs. Daisy Elliott
Weldon O. Yeager

This subcommittee will also investigate the problem of atomic energy.

PRESIDENT NISBET: The Chair recognizes Mr. Brake.

MR. BRAKE: Mr. President, we have had referred to the committee on finance and taxation a very considerable number of delegate proposals dealing with retirement systems. The assignment of primary and concurrent jurisdiction of matters has been made by the rules committee. Before we spend any time on the proposals, I think we would very much like a ruling from the officers of the convention or from the rules committee as to whether they are our troubles or whether Mr. Millard should have them.

PRESIDENT NISBET: May I suggest, Mr. Brake, that you and Mr. Millard and Mr. Van Dusen sit down and discuss this matter and then if you need some help on it after that we can talk about it.

MR. BRAKE: Thank you very much.

PRESIDENT NISBET: Communications from state officers.

SECRETARY CHASE: None.

PRESIDENT NISBET: Second reading of proposals.

SECRETARY CHASE: Nothing on that calendar, Mr. President.

PRESIDENT NISBET: Third reading of proposals.

SECRETARY CHASE: Nothing on that calendar, Mr. President.

PRESIDENT NISBET: Motions and resolutions.

SECRETARY CHASE: There are no resolutions on file.

PRESIDENT NISBET: Father Dade?

MR. DADE: Mr. President, I have a parliamentary inquiry which I trust is on the secretary's desk to be read.

SECRETARY CHASE: Father Dade submits the following parliamentary inquiry:

> As a delegate speaking on the constitutional convention in my district in the city of Detroit, I have been asked many times this question concerning the life and the work of the constitutional convention.
>
> There seems to be a consensus of opinion among delegates as to the answer, but no official statement is on record as to the position of the constitutional convention in the matter.
>
> The question which I am asked by my constituents is this, upon the completion of the revision by the 1961-62 constitutional convention, will this document be submitted to the electorate of the state of Michigan in its entirety for ratification, or article by article?
>
> Would you be good enough to address yourself in a statement to this inquiry?
>
> Malcolm G. Dade.

PRESIDENT NISBET: Off the cuff, Father Dade, I would say that that is a matter that might better —

MR. DADE: Mr. President, I am somewhat afraid of these off the cuff opinions, and would respectfully request an answer later.

PRESIDENT NISBET: In that case, would you let me make a statement about this a little later?

MR. DADE: I will let you be the best judge of that, sir.

PRESIDENT NISBET: I will make a statement tomorrow, then.

MR. DADE: Thank you, sir.

PRESIDENT NISBET: Unfinished business.

SECRETARY CHASE: None.

PRESIDENT NISBET: Special orders.

SECRETARY CHASE: None.

PRESIDENT NISBET: General orders.

The Chair recognizes Mr. Baginski.

MR. BAGINSKI: Mr. President, I move that the convention resolve itself into committee of the whole for the purpose of taking up several proposals.

PRESIDENT NISBET: The question is on the motion of Mr. Baginski. All in favor say aye. Opposed, no.

The motion prevails.

May I, in answer to an inquiry yesterday, make the following statement of interpretation as to voting in the committee

of the whole. I wish to do so before Mr. Baginski assumes the Chair.

The ordinary method of voting in committee of the whole is by voice vote. This will be used, with 2 exceptions. One, when the Chair is in doubt, he may order a division; and two, when a delegate asks for a division, and his demand is seconded by 10 or more delegates, the Chair will order a division.

A division is not a recorded roll call vote. When a division is ordered, the Chair will specify whether it will be taken by a rising vote (show of hands) or by use of the voting machine. If the machine is used, no record will be made of individual votes, but only of totals.

There has been some confusion as a result of the provision of rule 41, that in committee of the whole the yeas and nays shall not be called. What this means is that there shall be no recorded roll call vote. It does not mean that a division may not be ordered, either by rising vote or by machine vote.

This statement will be printed in the journal, and unless there is objection, it will be followed.

Mr. Baginski, will you please take the Chair?

[Whereupon, Mr. Baginski assumed the Chair to preside as chairman of the committee of the whole.]

CHAIRMAN BAGINSKI: The committee of the whole will be in order. The secretary will read.

SECRETARY CHASE: From the committee on declaration of rights, suffrage and elections, Mr. Pollock, chairman, **Committee Proposal 15,** A proposal to amend Article II pertaining to the declaration of rights.

For last previous action by the committee of the whole on Committee Proposal 15, see above, page 464.

CHAIRMAN BAGINSKI: Dr. Pollock.

MR. POLLOCK: Mr. Chairman, the committee on rights will continue today its discussion here in presenting the various sections of the bill of rights.

At our last session we discussed the first 4 sections as they are numbered now in the present bill of rights and today, therefore, we will begin by taking up section 5. May I say that sections 5, 6, 7, 8 and 9 to which we have proposed no amendments will be explained by the vice chairman of the committee, Mr. Stevens. Section 10 will be explained by Judge Gadola.

Mr. Stevens, I yield to you.

CHAIRMAN BAGINSKI: The Chair recognizes Mr. Krolikowski.

MR. KROLIKOWSKI: Mr. Chairman—

MR. STEVENS: Mr. Chairman, a point of order. Dr. Pollock yielded to me. He had the floor.

MR. KROLIKOWSKI: Oh, I am sorry.

CHAIRMAN BAGINSKI: I'm sorry. Would you yield, Mr. Stevens?

MR. KROLIKOWSKI: Mr. Chairman, I wish to raise a matter for clarification on committee procedure and I think it would be in order at this junction before the committee resumes consideration of the report.

CHAIRMAN BAGINSKI: What is the point, Mr. Krolikowski?

MR. STEVENS: All right, Mr. Chairman, I will yield. (laughter)

MR. KROLIKOWSKI: Thank you. Mr. Chairman, I should like to have this one matter clarified for at least one bewildered mind. Now, when the committee is reporting its recommendation, and in the course of that report a delegate propounds a question to the committee chairman or to the committee vice chairman, and that committee chairman or vice chairman clearly indicates that the answer to that question is a personal answer, I should like to know whether it is then incumbent upon a delegate who disagrees with that personal answer to raise his dissent at that point in order to avoid the imputation of that answer to him.

Up until yesterday there was no doubt in my mind that a personal opinion, be it made by a chairman or a vice chairman, meant just that—that it had no more significant implication. Yesterday, however, after the committee rose, a delegate stated that by reason of the fact that no individual dissent had been made to the answer made by a vice chairman to a question raised by a delegate, that, in effect, indicated a passive, tacit acceptance of the answer of the vice chairman. I am bewildered whether a delegate must rise and take issue with the personal construction at that point or is he given an opportunity to dissent after the committee rises?

CHAIRMAN BAGINSKI: Mr. Krolikowski and delegates, this is a very difficult question to answer. It would seem that if someone did make a dissent yesterday or if some question was raised, and if no one cared to answer this on a personal basis, that was their privilege. I do not think the Chair can properly answer this question.

MR. KROLIKOWSKI: Mr. Chairman, I should like to have a clear understanding as to whether, when a chairman or a vice chairman is expressing his personal opinion in an answer, that opinion is restricted to his own individual interpretation and goes no further than that.

Now, I should think that great mischief might be performed here by someone reading this record 10 or 20 or 50 years from today and attempting to reach a construction of what was intended.

CHAIRMAN BAGINSKI: The Chair cannot answer. I will not try to. I will say this. This is the committee of the whole and we attempt to be as informal as we possibly can here.

MR. KROLIKOWSKI: Well, there is no question that the answer of a committee chairman or vice chairman does not extend beyond his own personal view, is that correct?

CHAIRMAN BAGINSKI: I would say so.

MR. KROLIKOWSKI: Thank you very much, Mr. Chairman.

CHAIRMAN BAGINSKI: Particularly if he so states.

MR. STEVENS: Mr. Chairman, I think we still have the floor.

CHAIRMAN BAGINSKI: Yes.

MR. STEVENS: Sections 5, 6, 7, 8 and 9 which follow, are, as near as can be estimated, probably noncontroversial. (laughter) They are old, established, traditional rights of Americans and citizens and residents of Michigan. We saw no reason to take them out because someone might say it is not necessary. We realize that slavery is prohibited by the federal constitution in every state but we think that Michigan ought to protect its own citizens.

We do not wish to give the federal government the idea that we turn always to them for all these things. We believe if we are going to have a declaration of rights we should have these traditional things in it, so without further comment, I think we are ready to proceed with section 5.

CHAIRMAN BAGINSKI: The secretary will read section 5.

SECRETARY CHASE: Section 5.

[Sec. 5 was read by the secretary. For text, see above, page 465.]

CHAIRMAN BAGINSKI: Are there any amendments to section 5? If not, it will pass.

Section 5 is passed.

Section 6; the secretary will read.

SECRETARY CHASE: Section 6.

[Sec. 6 was read by the secretary. For text, see above, page 465.]

CHAIRMAN BAGINSKI: Are there any amendments to section 6? If not, it will pass.

Section 6 is passed.

Section 7; the secretary will read.

SECRETARY CHASE: Section 7.

[Sec. 7 was read by the secretary. Fox text, see above, page 465.]

CHAIRMAN BAGINSKI: Are there any amendments to section 7? If not, it will pass.

Section 7 is passed.

Section 8; the secretary will read.

SECRETARY CHASE: Section 8.

[Sec. 8 was read by the secretary. For text, see above, page 465.]

CHAIRMAN BAGINSKI: Are there any amendments to section 8? If not, it will pass.

Section 8 is passed.

Section 9; the secretary will read.

SECRETARY CHASE: Section 9.

[Sec. 9 was read by the secretary. For text, see above, page 465.]

CHAIRMAN BAGINSKI: Are there any amendments to section 9? If not, it will pass.

Section 9 is passed.

Section 10; the secretary will read.

SECRETARY CHASE: Section 10.

[Sec. 10 was read by the secretary. For text, see above, page 465.]

CHAIRMAN BAGINSKI: Mr. Stevens.

MR. STEVENS: Now, Mr. Chairman, we come to a consideration of an entirely different proposition. In section 10, the search and seizure provision of our state constitution contains 2 provisos, at the present time, which take from the jurisdiction of the courts, as we see it, the right to exclude certain specified evidence. On this, the committee was very much divided and worked a long time and was still divided.

I am going to yield to Judge Gadola who will explain the committee's report on this proposal.

CHAIRMAN BAGINSKI: Judge Gadola.

MR. GADOLA: Mr. Chairman and members of the committee of the whole, I shall talk as briefly as possible because I do not know how long I will be able to talk. My voice and throat are in such condition that I am not certain how long they will hold out.

However, this matter that is coming up before us now for consideration, I believe, is the most important matter to come before us for consideration to date, and probably it will be one of the most important subjects we will have to discuss in this entire convention.

Of course, we think so much about taxation. We think so much about reapportionment, about representation, and all of these things. But we must ask ourselves this question, what is a constitution? A constitution is ordained as a limitation on government. That is what we have it for. Then, the other angle of the constitution is the protection of the rights of every individual who lives under that constitution.

This section, section 10, is one of those great rights that has been ordained by the Constitution of the United States and has been continued in the Constitution of the State of Michigan. There have been 2 amendments made to that because of supreme court decisions. One of them came about through the hysteria concerning a certain case. An amendment was submitted allowing an unreasonable search to be made of a car, or outside the curtilage of the person. If that unreasonable search was made and narcotic drugs were found, then they could be offered in evidence.

That was the first amendment to that part of the constitution. What did it do? It authorized the police, under any circumstance, to search any car you please upon the road and, if they found contraband, then they could proceed to prosecute and the person would have no defense against an unreasonable search. That was the first one.

Then it went on under that phase until 1951 and then another case arose. They stopped a car and searched it. One related to firearms, and I think it was the other way around—'36 and '51. But anyway, then the supreme court again said that it was an unreasonable search and the articles could not be received in evidence. Immediately they submitted to a vote of the people of the state of Michigan an amendment to that article in the constitution to allow the articles to be offered in evidence if the search was illegal — unreasonable — and that went through. And so, at the present time, we have in the Constitution of the State of Michigan a proviso that if an unreasonable search is made of the person or of anything under his command or control, outside the curtilage, and they find contraband, he cannot raise the question of unreasonable search, because of the fact that the articles can be offered in evidence against him.

Now, this is not absolutely new. We have had this question coming through the federal courts for 50 years. The Weeks case was the original, the first case on that point, which prohibited anything to be offered in evidence that was seized in violation of the search and seizure laws of the United States constitution. It went on. It was followed on down through. Then we came to the Wolf case. The Wolf case, by a 5 to 3 decision, upheld the search. However, for the people of the state of Michigan, we had a man who was considered quite a great fellow, a great governor, a great justice of the supreme court. I refer to Justice Murphy. He dissented and said it should not be allowed. But anyway it went on down through and it came on down through until this last decision in the so called Mapp case which is in great controversy here.

Now, on this search and seizure question, do we want a police state? That is the first thing. Is the right of the individual supreme? Is it paramount? Am I to be subjected to a search any time a police officer thinks that he wants to search me? Is my car upon the road to be stopped and searched any time a police officer thinks that it should be searched? These are questions to which we should direct our attention.

Let me now refer to the last decision of the Supreme Court of Michigan passing on this question. I refer to the Gonzales case. They held in that that the search was unreasonable and that the search was illegal but, because of this provision in the constitution, it was found that the evidence could be used.

We all drive cars. I will give you a definition later on of the Supreme Court of Michigan relative to the driving of cars upon the highway. However, I want to call your attention to a few little known facts.

A few years ago the conservation department of the state of Michigan decided that they were going to make a lot of money, I guess, in seizing violators of the game laws. Therefore, during the hunting season, they posted conservation officials and state police upon the highways. They stopped every car and searched it for contraband. At Standish, officials were posted and the cars were lined up for a mile waiting to be searched on an illegal — absolutely illegal — premise. But the state police were doing it.

It happened that I was coming down from Tawas and I had in my car my wife, my 3 children and one other passenger that I wish I had let loose — my dog. (laughter). The state police stopped me. I said, "Why are you stopping me?" "Well," I was told, "you just go through there." "Why should I go through there?" I asked. "Oh well, never mind; just go through there," he said. I said, "No, you have no right to stop me. I don't have to go through there." He said, "Well, to avoid trouble just drive around through there anyway." So I said, "All right, I'll do that." And I drove around through and didn't stop. No one said anything about it. But there were dozens and dozens of cars stopped there being searched at that time. That was an illegal search, an absolutely illegal search. It violated every right that the individual has.

Now, the matter arises here in this convention in relation to this constitution. Are we going to delete the individual right of a citizen to go over our highways, the right of the individual to the sacredness and sanctity of his person, and make a police state where any police officer may stop you and search you? Well, I don't know.

Some say that this is probably a political question; unless something is done about it, it is going to reflect in the next election. Maybe so. I don't know. But I will tell you this, that it just did reflect in an election. Down in Detroit they

had an election a little while ago and an unknown was elected mayor of Detroit by a vote of 5 to 1 on the sole basis of the police stopping and searching people without right. I don't know whether they did it or whether it was right but anyway that was the outcome of the election. So you do have these things and if this is a political question let us look at it that way. I don't know.

But the whole question that arises now is whether we desire to turn over to police officers the right to stop us, to search us. Perhaps if we can get it in this far, maybe they will put it through so they will get in on the curtilage too. I don't know. If they can do it in one thing they can do it in another thing. If they amend it one way they can amend it in another way. I have no way of knowing.

But I believe in the protection of the individual. The constitution is the individual's guarantee of rights. It is his guarantee of liberty. The first 10 amendments to the U. S. constitution represent the sacred rights of every man and woman in this country. And this article is the sacred right in our constitution. It is the guarantee of rights. This preserves what every individual in this state of Michigan values as sacred, his rights.

There has been some very high authority passing upon this question, perhaps much greater than my own. I say that because I have been ruled wrong. I decided the search in the Gonzales case was illegal and the supreme court said, "Well, it was an unreasonable search, an illegal search." But that part of the constitution takes your rights and pitches them right out the window. And there they went.

I wish now to direct your attention to some comments with respect to section 10, relating to searches and seizures. It is the proviso clause added by the amendment which creates the difficulty.

Page, may I have a drink of water? I said water. (laughter) I add that because I may have some constituents sitting in the gallery. (laughter)

Now, with respect to section 10, searches and seizures, no question is raised about the general provision presently found in section 10 in regard to unreasonable searches and seizures. It is the proviso clause which was added by amendment which creates the difficulty. It expressly authorizes the use in evidence of certain items even though obtained by unlawful search and seizure by peace officers outside the curtilage of any dwelling house in this state. In short, this provision recognizes a general rule that evidence obtained by illegal search and seizure cannot be used but then states express exceptions in regard to the enumerated items if seized by a peace officer outside the area of any dwelling house.

The United States supreme court has recently held in the Mapp case that under the fourteenth amendment's due process clause, which is deemed to incorporate the fourth amendment of the bill of rights, evidence obtained by an unreasonable search and seizure cannot be used in a state court. This case had to do with evidence taken by illegal search and seizure of a home, and it does not necessarily follow that the provisions of the Michigan constitution relating to evidence obtained by an illegal search outside of the home would also be unconstitutional or that a provision of a state constitution expressly authorizing use in a court proceeding of certain types of evidence obtained by an unconstitutional search would be invalid.

If the present policy of the proviso clause is thought to be desirable, one possibility is to keep the present language and leave it for a matter of future judicial determination whether or not it is valid so far as the federal constitutional restriction is concerned.

Another possibility is to delete this proviso either on the theory that to authorize the use of this evidence violates the due process clause of the fourteenth amendment on the assumption that this is required by the Mapp case or on the basis of a policy determination that it is wise to prohibit the use of all evidence obtained by unconstitutional search and seizure. Indeed, if this is deemed to be the wise policy, section 10 could be amended to substitute in place of the proviso the express provision barring the use of evidence obtained in violation of this section.

Another possibility — and one which, in my opinion, has much merit — is to delete the proviso clause and substitute in its place a provision that evidence acquired in violation of this section shall not be used in any proceeding except as authorized by law. This would keep open the possibility of use of much evidence to the extent authorized by legislation which, of course, would be subject to fourteenth amendment limitations.

A further question arises in regard to unreasonable search and seizure and that is whether a proviso should be expressly added to section 10 regarding the interception of any telephone and telegraph messages. That is not involved now because it is not before us.

Now, those comments which I have just placed before you were from a man for whom we have a great deal of respect here in this convention. I refer to Paul G. Kauper of the University of Michigan. That is his summation of this proviso.

Now, going into the legal aspects and the background of the question here involved, let me say this, this question is not so new. This question arose years and years ago when they were battling between the north and the south on tariffs. The question then arose as to what was the power of a state to overrule any act of the federal government. And a representative in congress made what is claimed to be the outstanding speech any congressman ever made, saying that no state has the right to overrule or outlaw any activity of the federal government. There it stands. That was reiterated in the decision of the Supreme Court of Michigan in the Gonzales case.

Now, with respect to the provisions of the United States constitution, article XIV, may I say here that article XIV and article IV of the federal constitution were under consideration by this committee on civil rights almost every day because the question arose — and it arose in other committees, I think, or so I am given to understand — whether it is necessary for us to put a lot of these things in our constitution because today they are ruled and governed by the fourteenth and fourth amendments of the Constitution of the United States. Then we decided in our committee that it would do no harm, even though they were protected, to put them in and so they were included. But every one of these rights of the individual, these civil rights that have been put in, have been examined in the light of the fourteenth and fourth amendments of the Constitution of the United States. They were scrutinized in that light.

Let me now place these facts before you. The original provision of Michigan's constitution, 1908, was the same as the federal constitution. However, in accordance with the desire of the police prosecution departments, 1952, there was enacted the present provision governing illegal search and seizure. I shall not read that because you all have it before you and are familiar with it. To continue, the enactment cited supra has, by insidious contravention, nullified to the citizens of Michigan their inherent and federal constitutional right to immunity of illegal search and seizure.

Under the provisions of the United States constitution, article XIV, or more commonly known as the fourteenth amendment, is found the following, "No state shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; . . . ."

Illegal search and seizure lying 4 square within the gambit of "privileges or immunities," the federal constitution granted or guaranteed an inalienable right to all citizens and also to the citizens of Michigan, the privilege and immunity of illegal search and seizure. Inasmuch as many of the states have in the past, as did Michigan, made an attempt to contravene the federal constitution, the United States supreme court in many of its historical decisions under due process of law made the provision of the bill of rights, article IV, and article XIV, of the United States constitution, applicable against all the states by the fourteenth amendment, illegal search and seizure.

In a little known case, Weeks v. United States, 232 U.S. 383

(1914), the supreme court made illegal search and seizure applicable against the states. The rule or doctrine in Wolf v. Colorado, 338 U.S. 25 (1949), reaffirmed the Weeks holding. Justice Frankfurter, speaking for the court, said:

> The security of one's privacy against arbitrary intrusion by the police which is at the core of the fourth amendment is basic to a free society. It is therefore implicit in the concept of ordered liberty and as such enforceable against the states through the due process clause. . . .

At page 28, Justice Frankfurter stated further:

> We have no hestitation in saying that where the state affirmatively sanctions such police intrusion into privacy, it would run counter to the guarantee of the fourteenth amendment . . . .

Again, as in the past, the import of this decision was missed — ignored — by many of the states. Subsequently, in order to adequately enforce the theory of illegal search and seizure being applicable against the individual states through the due process clause of the fourteenth amendment and to protect the rights of the citizens, the court — in multiple cases — again ruled to the same import as held in the Weeks and Wolf cases. Among the latest cases will be found Stefanni v. Minard, (1951) 343 U.S. 117; Rios v. United States, 364 U.S. 253 (1959), and Elkins v. United States, 364 U.S. 206 (1959). Each enumerated the doctrine that the fourteenth amendment made the fourth amendment applicable against the states and illegal search and seizure inadmissible.

At the time of the Elkins v. United States decision, 24 states held that evidence seized illegally was admissible, 20 states holding to rigid exclusion of such evidence and 4 holding that such evidence could be excluded under special provision. Michigan being one. Alaska and Hawaii both hold illegally obtained evidence to be excludable.

Inasmuch as some states steadfastly refused to adhere to the doctrine of illegal search and seizure, the United States supreme court, in conformity with its previous decisions in the now famous Dollree Mapp v. Ohio (docket 236, United States Supreme Court, June 19, 1961) definitely laid the issue to rest for all time henceforth.

Justice Clark, speaking for the majority of the court, said:

> Today we once again examine Wolf's constitutional documentation of the right to privacy free from unreasonable state intrusion and, after its dozen years on our books, are led by it to close the only courtroom door remaining open to evidence secured by official lawlessness in flagrant abuse of that basic right, reserved to all persons as a specific guarantee against that very same unlawful conduct. We hold that all evidence obtained by searches and seizures in violation of the constitution is, by that same authority, inadmissible in a state court.

Now, no matter what you say about how the Mapp case arose, that does not say anything about how it arises. It says it is inadmissible in all state courts. I continue:

> Having once recognized that the right to be secure against rude invasions of privacy by state officers is, therefore, constitutional in origin, we can no longer permit that right to remain an empty promise. Because it is enforceable in the same manner and to like effect as other basic rights secured by the due process clause, we can no longer permit it to be revocable at the whim of any police officer who, in the name of law enforcement itself, chooses to suspend its enjoyment.
>
> Our decision, founded on reason and truth, gives to the individual no more than that which the constitution guarantees him, to the police officer no less than that to which honest law enforcement is entitled, and, to the courts, that judicial integrity so necessary in the true administration of justice.

And again, there exists a manifest doctrine of the law, little known except but to members of the judicial profession, "Decisions of the United States supreme court control state court decisions in matters of due process." Michigan also acknowledges this doctrine, to wit, Scholle v. Secretary of State, 360 Mich. 1. I think that case was rejected for consideration by the Supreme Court of the United States, if I remember it correctly.

I continue:

> Headnote 1. Constitutional law; Interpretations of the Constitution of the United States —
>
> Interpretations of the Constitution of the United States by the Supreme Court of the United States are final authority and constitute exclusive guidance for a state supreme court.

In addition to that I want to call your attention to a comment made by a very fine gentleman who addressed this convention a few days back. There was one outstanding thing he said when he was talking about the authority of government. He wasn't a lawyer — although he had something or other to do with law at one time or another — but nevertheless in his discourse he said, "Remember this, when the supreme court has decided, that is final." That was the statement made by our retired president.

Mr. Perry A. Maynard, assistant attorney general of Michigan, in his thesis Post Conviction Problems and Procedure, published in the Michigan state bar journal (Vol. 38, No. 7, July 1959) in speaking of decisions of the United States supreme court controlling state court decisions, said at page 10:

> . . . The United States supreme court has preempted the field of construction and interpretation as to due process and its decisions are supersessive of state court holdings . . .

I'm sorry, and I hope I am not boring you, but I just can't help it; I am so imbued with this idea that I cannot quit. Let me deal now with some conclusions. In matters affecting due process of law, decisions of the United States supreme court control.

Under existing decisions (case law) —case law is known as "stare decisis", which may be of interest to all of you people who are stargazers but who do not know anything about the law, although you said yesterday you know more than the lawyers know (laughter) — under existing decisions (case law), the right and immunity against illegal search and seizure is made applicable against the states by the fourteenth amendment.

The fourteenth amendment specifies that "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."

The amendment to the Constitution of Michigan, article II, section 10, being an abridgment — a contravention — of the initial inalienable right of a citizen, it is by the past, present and future decisions of the Supreme Court of the United States invalid, null and void.

Subsequently, if the citizens shall enjoy the immunities and rights of the U.S. constitution, then any enactment as to abridgment contravenes same and is automatically unconstitutional.

As conclusive argument, the wording of the federal constitution speaks for itself in no uncertain terms. "This constitution and the laws of the United States, which shall be made . . . shall be the supreme law of the land. . . ."

I wish now to place on the record some excerpts from the New York Times relating to the famous Mapp case. The articles state, "The striking outcome of the Weeks case —"

That was the first one that originated in which it was held that they could not accept illegally seized articles. I continue:

> The striking outcome of the Weeks case and those which followed it was the sweeping decision that the fourth amendment, although not referring to or limiting the use of evidence in courts, really forbade its introduction if obtained by government officers through a violation of the amendment.

Of course, that was a federal case.

In McNab v. United States, 318 U.S. 332 (1943) we note this statement:

> (a) Conviction in the federal courts "the foundation of which is evidence obtained in disregard of liberties

deemed fundamental by the constitution, cannot stand" (Boyd v. United States and Weeks v. United States) and this court has, on constitutional grounds, set aside convictions both in the federal and state courts—

Remember that, both in the federal and state courts.

—which were based upon confessions secured by protracted and repeated questioning of ignorant and untutored persons in whose minds the power of officers was greatly magnified . . . or "who have been unlawfully held incommunicado without advice of friends or counsel".

That is just another angle of the right of the individual, another aspect of it. I am reading from the decision in the Mapp case; just remember that.

Some 5 years after the Wolf case in answer to a plea made here term after term that we overturn its doctrine on applicability of the Weeks exclusionary rule, this court indicated that such should not be done until the states had adequate opportunity to adopt or reject the rule.

That is, the Weeks rule. There again it was said:

Never until June of 1949 did this court hold the basic search and seizure prohibition in any way applicable to the states under the fourteenth amendment.

And only last term, after again carefully reaffirming the Wolf doctrine in Elkins v. United States the court pointed out that the controlling principles as to the search and seizure and the problem of admissibility seemed clear until the announcement in Wolf that the due process clause of the fourteenth amendment does not itself require state courts to adopt the exclusionary rule of the Weeks case.

At the same time the court pointed out the underlying constitutional doctrine which Wolf establishes . . . that the federal constitution . . . prohibits unreasonable searches and seizures by state officers had undermined the foundation upon which the admissibility of state seized evidence in a federal trial originally rested. . . . The court concluded that it was therefore obliged to hold, although it chose the narrower ground on which to do so, that all evidence obtained by an unconstitutional search and seizure was inadmissible in a federal court, regardless of its source.

Since the fourth amendment's right of privacy has been declared enforceable against the state through the due process clause of the fourteenth amendment, it is enforceable against them by the same sanction of exclusion as is used against the federal government.

Were is otherwise, then just as without the Weeks case rule the assurance against unreasonable federal searches and seizures would be a form of words, valueless and undeserving of mention in a perpetual charter of inestimable human liberties, so too, without that rule the freedom from state invasions of privacy would be so ephemeral as to neatly sever from its conceptual nexus with the freedom from all brutish means of coercing evidence as not to merit this court's high regard as a freedom implicit in the concept of ordered liberty.

At the time that the court held in Wolf that the amendment was applicable to the states through the due process clause, the cases of this court, as we have seen, had steadfastly held that as to federal officers the fourth amendment included the exclusion of the evidence seized in violation of its provisions. Even Wolf stoutly adhered to that proposition.

The right to privacy, when available against the states, was not susceptible of destruction by avulsion of the sanction upon which its protection and enjoyment had always been deemed dependent under the Boyd, Weeks and Silverthorne cases.

The federal courts themselves have operated under the exclusionary rule of Weeks for almost half a century; yet it has not been suggested either that the federal bureau of investigation has thereby been rendered ineffective, or that the administration of criminal justice in the federal courts has thereby been disrupted. Moreover, the experience of the states is impressive. . . . The movement toward the rule of exclusion has been halting but seemingly inexorable.

The ignoble shortcut to conviction left open to the state tends to destroy the entire system of constitutional restraints on which the liberties of the people rest.

Having once recognized that the right to privacy embodied in the fourth amendment is enforceable against the states, and that the right to be secure against rude invasions of privacy by state officers is, therefore, constitutional in origin, we can no longer permit that right to remain an empty promise.

Because it is enforceable in the same manner and to like effect as other basic rights secured by the due process clause, we can no longer permit it to be revocable at the whim of any police officer who, in the name of law enforcement itself, chooses to suspend its enjoyment.

Our decision, founded on reason and truth, gives to the individual no more than that which the constitution guarantees him; to the police officer no less than that to which honest law enforcement is entitled; and to the courts, that judicial integrity so necessary in the true administration of justice.

The judgment of the supreme court of Ohio is reversed and the cause remanded for further proceedings not inconsistent with this opinion.

I believe I already placed on the record some of those quotations, but they are of extreme importance, in my opinion.

Now, that is the final case, the final case in Michigan. I am not going to take too much more of your time.

I arose because it so happens that I am the culprit in this case. I held that the search was illegal and that the evidence could not be used. It went to the supreme court twice. Peculiarly, it went up in the first place after I had ruled to exclude the evidence. But for some reason or other, in making out the record, it had been stipulated and agreed what the facts were, by the prosecutor and the defense attorney, and so I suppose it was there, but evidently in making out the record they left out this stipulation so the fact was not ascertained and it was sent back for the purpose of ascertaining the fact whether the search was reasonable or unreasonable. It came back and we reheard the matter and at that time this police officer stated that it was made a practice to search every car on the road late at night. And that the supreme court didn't like, either.

But in going over this decision of the supreme court of Michigan, in that case they themselves thought it was so important that they asked the attorney general to come in and file his brief in the case, and then they asked the state bar of Michigan, the civil liberties committee, to come in as amicus curiae.

There is a gentleman over here who has been trying to get me to interpret some Latin for him. "Amicus curiae" is the only Latin phrase I know. It means "friend of the court." They don't have many, so they put it in Latin. (laughter)

Now, the facts in the Gonzales case were these, there was a car stopped. It was 4:00 o'clock in the morning. It had only one headlight burning. The state police stopped the car, went over, took the driver of the car out of his vehicle, took him over to their car, and gave him a ticket for having defective lights. He went back to his car and proceeded to drive away. And then the officers got a new idea. So they stopped him again. They went over and said, "Here, get out of the car." Well, there was a passenger in the car and the passenger was Gonzales. They got the men out of the car and then they proceeded to search the car. Well, they found under the seat an unloaded revolver. And it was an unregistered revolver. And, unluckily for Gonzales, he had one cartridge in his pocket that fitted the gun. I guess Gonzales admitted that it was his gun. But anyway they immediately arrested him.

It was that search which the supreme court of Michigan said was absolutely unwarranted and unreasonable. But they had to consider another point. The question was raised that Gonzales was not the operator of the car and had nothing to do with the car when the police stopped it, and therefore he

could not question the constitutionality of the stopping and the searching of the car. But the supreme court got around that in a very neat little way—just like a boy going around the end when they expect a forward pass.

Anyway, they said, "Well, here, he was a passenger in the car, and just as soon as they told him to get out of the car then he was under police surveillance and therefore he has a right to question the constitutionality of the search of the car." And that ended it; or rather, that ended that aspect of it; and that was it.

Their greatest concern was whether the fourth amendment and the fourteenth amendment of the Constitution of the United States overruled their decision. And there is a very, very lengthy decision here.

I have already talked too long and bothered you too much. There is more to come from people who are better able to describe this than I am. But there are some portions of this I do want to read to you, just certain little parts of it.

I am referring now throughout the course of my remarks to the case of the People v. Gonzales [356 Michigan 254]. I shall read portions—if I can find it. (laughter)

> As of the time this search was commenced, we are unable to ascertain any justification therefor which would not freely allow any officer to search an automobile . . .

That is found at page 255 of 356 Michigan Reports. And they lay down a rule there how a search can be made, how a legal search can be made, of a car.

But there has to be grounds for that search. And here is the rule:

> In general, the courts have recognized that officers who, as an incident to a lawful arrest, make a reasonable search of the premises of the person arrested for the means or instruments of the crime committed, may seize the instruments or means of committing another crime which that incidental search uncovers; at least that is true where the articles seized were of a contraband nature, the possession of which was illegal per se, or where another crime is discovered being committed in the presence of the officers.

I have read from page 254 of Gonzales, in 356 Michigan Reports.

So they don't have to make these illegal searches, you know. If they have proper grounds, they can search any car. But they don't want to do that. They just want to search every car.

I am not against police officers. Do not entertain that thought for one moment. Because, after all, you must recognize —and I'm not bragging about it in any sense—but 34 years of my life have been spent in law enforcement, so you cannot ever make the claim that I am against it; not in any manner.

Let me refer again to the decision in the Gonzales case:

> We believe that what we have said to this point requires our holding the search and seizure in the instant case as being unreasonable in a constitutional sense.
>
> We believe also that our views of the constitutional guarantee involved as applied to a modern situation is in basic accord with applicable precedents in this and other jurisdictions.

And then they go on and quote, relative to the fourth and fourteenth amendments. With respect to Wolf v. Colorado they say:

> . . . Wolf v. Colorado also held the fourth amendment's prohibition against unreasonable searches and seizures to be among the essential ingredients of due process and, hence, enforceable against the states through the fourteenth amendment.

Now that is what the supreme court of the United States says. It says it is enforceable against the states. But I notice that they don't follow it.

Then reference is made to Justice Frankfurter's statement about the fourth amendment. I have read that quotation before but it might be good to read it again:

> The security of one's privacy against arbitrary intrusion by the police—which is at the core of the fourth amendment—is basic to a free society. It is therefore implicit in the concept of ordered liberty and as such enforceable against the states through the due process clause.

I am not going to become involved in a discussion of the fourth and fourteenth amendments, to any great extent. Another member of our committee will explain for you their application. But I do want to read a paragraph from the Michigan supreme court in the People v. Roache—this is one of those cases back in the days, you know, when everybody had a bathtub that was used for more than taking a bath; (laughter) the prohibition era, as it were—and they make this definition:

> While we may take judicial notice of the fact that rum runners and bandits ride in automobiles, and use them to commit crimes and effect their escape, may we not also take judicial notice of the fact that where there is one bandit or rum runner passing over a public highway, there are thousands of respectable, law abiding citizens who are doing likewise? The protection afforded by the constitution to such persons must be regarded as paramount to any right to be given a police officer to enable him to verify his ungrounded suspicion that a law is being violated.

I have read from page 263 of the People v. Gonzales, 356 Michigan Reports.

I shall not continue to bother you or harass you longer. I am firmly convinced that this provision in our constitution is unconstitutional under the federal constitution and will be so declared.

I was the one who first proposed that last clause as a saving clause. I don't know whether I got it from Professor Kauper or whether he got it from me, but anyway I was the one who proposed it, and I worked it out with the brains we have in our law staff here in this convention. We have come up with this saving clause so that if anything should happen, if there should be a change in the decision in the Mapp case, then it would leave the door open and give the legislature permission to enact laws to care for the situation. And that is the saving clause that is there.

I thank you for your consideration and I hope I have not bored you too much. No matter what you do, I know it will be right so far as you are concerned. Although perhaps it may not be right so far as someone else is concerned. But no matter what you do, remember this: my head may be bloody, but it will be unbowed.

Thank you. (applause)

CHAIRMAN BAGINSKI: Dr. Norris.

MR. NORRIS: Mr. Chairman, like the Judge I have had a cold too, during the course of this convention, and this cold has reminded me, as a matter of fact, of this convention, in that sometimes the "ayes" have it, and sometimes the "no's". (laughter)

Turning now to a more searching subject, we have before us a very serious matter, and I believe Judge Gadola, in typical judicial fashion, has laid before us the pertinent issues which we will, I am certain, elucidate during the course of our deliberations. The fundamental interest which we seek to protect by the prohibition against unreasonable searches and seizures is what Justice Brandeis has called the right to privacy. That is the most comprehensive right known to civilized man, the right to be left alone.

Now, we have had before us in our declaration of independence an admonition to government as to its purpose. To secure these rights, governments are instituted among men. In other words, it is the function of the government of the United States and of the state of Michigan to secure these rights, and by securing these rights they are securing them in 2 senses. First, to secure them in the sense of obtaining them, of arriving at them. And, second, once having obtained them, to actually give them performance; that is, to make them genuinely secure. And that is what we do by the fourth amendment to the constitution of the United States and by article II, section 10, without the proviso, in the state of Michigan.

Now, under this particular provision of the prohibition against unreasonable searches and seizures, the anglo saxon world has had a tremendous history. I do not propose to go into that history except to say that there was a period when we had what was known as the general warrant. That is, a

piece of paper by authority which did not name any specific articles, did not require any probable cause, and a home, a person, or any other accouterment, could be searched and seized, by virtue of it. And so, when the founding fathers got together, they decided to make this provision in the constitution as one which government is essentially aimed to secure, namely a prohibition against unreasonable searches and seizures.

Now, it is a prohibition against unreasonable searches and seizures; it is not a prohibition against all searches and seizures, only those which are unreasonable are prohibited by the fourth amendment and through the fourteenth amendment against the states by the Mapp case. Now, we can have a reasonable search when there is probable cause, and that has been defined by the courts over a period of time, but I think we ought to get that before us, because, as some people have reminded us, not all of us at this convention are lawyers.

The court has said—if you will bear with me for just one moment—that

> there is probable cause when the officer making it (the search or seizure) from the exercise of his own senses, and acting upon information received from sources apparently reliable, a prudent and careful person, having due regard for the rights of others, would be induced to the honest belief that a felony was committed in such automobile.

That refers the matter to an automobile.

In other words, there has to be more than mere suspicion, and there cannot be a search just for investigatory purposes. There has to be probable cause in order that there might be a reasonable search. Now, this has stood in the United States and this has stood in the state of Michigan for a considerable number of years, until the amendments were passed by the people of this state, putting in what we have now, known as a proviso, which states that it is not an essential ingredient of the right against unreasonable searches and seizures to admit into evidence certain objects which are obtained as a result of an unreasonable search.

In other words, here there is a question of policy, whether or not, in fact, you have the lawless enforcement of the law. If you have an object which is obtained by an unreasonable search and seizure admitted in evidence, you are saying that even though the constitution is flouted by an overzealous officer, nevertheless the object which is obtained by that search can be admitted in evidence.

I assert that what the Mapp case says—the recent case which Judge Gadola was adverting to—indicates that it is now an essential ingredient of the right against unreasonable searches and seizures that the object which is obtained by an unreasonable search may not be admitted in evidence, in order that we might have, if you will, constitutional law enforcement.

Those of us who argue for the committee position in this matter indicate to you that that is the principle—the protection of the right of privacy and the promotion of constitutional law enforcement—as the most effective law enforcement.

The argument has been made, and probably will be made during the course of this deliberation, that if people have nothing to hide, then they ought not to be too sensitive about having their person searched or their car searched.

But there is more to this than the proposition merely that there is nothing to hide. In that proposition we have, if you will, the concept of a democratic state or an authoritarian state at issue. I say that because, as long as you say there is nothing to hide, then you are granting to authority, to government, the right to invade a person's privacy or property—in this case, the property being a car. To be sure, we still protect the home under this proviso. But I submit to you that it is just as logical to protect a person in his car or in his person himself, if you are going to have full protection against unreasonable searches and seizures.

And when you say "nothing to hide" you are saying that the state is supreme over the individual. As I understand it, in the past 25 years of world history, we have had a little experience with governments throughout the world with regard to a concept such as that.

If you want total security against crime, if you want total security for the state, you have it in a police state. But if you are going to have democratic government, a democratic spirit, and the protection of rights of the individual in terms of his person and property, then you are going to protect the fourth amendment to the constitution and the provision in the Michigan constitution, without the proviso, in order that we might have constitutional law enforcement and a lawful enforcement of the law, and not unlawful enforcement of the law.

Why is that in the public interest? Not only because it protects the right of privacy, when government is fair, when government proceeds to operate constitutionally, it is more effective because it secures from the people the wholehearted response and cooperation necessary to foster lawful enforcement of the law.

In other words, people are more apt and more disposed and more sensitive and respond with greater alacrity to assisting officers and to assisting the lawful police authority when they feel that the government is fair and that it is proceeding with circumspection, and with due respect for the constitutional rights of all the citizens.

That is what is behind, I think, the thinking of the committee in urging upon this body, and upon the committee of the whole, consideration for the proposal that we delete the proviso and substitute the one which the Judge has indicated.

While I do not have a preference for the language, nevertheless I feel that the substituted language does enact before us the federal rule, the federal exclusionary rule, which says that the rule in the Mapp case is the rule of the state of Michigan. That is the constitutional boundary within which the state must act. It also opens the door—in the event that the United States supreme court does change its view—for the state, through its legislature, to deal with this problem.

It constitutes a sort of saving clause, as the Judge characterized it. But it does mean to those of us who are in favor of the exclusionary rule as being in the public interest, as being in the interest of the promotion of constitutional law enforcement, as the rule for the state of Michigan.

I can only say to you, Mr. Chairman, that the committee gave deliberation to this particular matter with great sensitivity and preciseness and I think that the thing was represented as being a majority report—I understood, and Professor Pollock could correct me if I am wrong—that this was a unanimous report of the committee and I think it ought to be appraised by this body as such.

I think we do have here one of the basic individual rights that was first a right of Englishmen, a right of Americans, and we at this constitutional convention, sworn to uphold the federal constitution in its deliberations, ought to give full force and effect to the committee recommendation in this case.

CHAIRMAN BAGINSKI: The Chair would like to ask Dr. Pollock if he has any further presentations?

MR. POLLOCK: No, Mr. Chairman, that is the only presentation we have from the committee.

CHAIRMAN BAGINSKI: The Chair wishes to advise that we have 5 amendments, and they will be called in the order in which they were placed upon the secretary's desk.

The question now is on the amendment to section 10.

SECRETARY CHASE: Mr. Prettie has offered the following amendment:

1. Amend page 2, line 28, after "affirmation" by striking out the period and on page 3, line 6, by striking out "Evidence obtained in violation of this section shall not be used except as authorized by law.", and inserting a colon and "Provided however, That the provisions of this section shall not be construed to bar from evidence in any court of criminal jurisdiction, in any criminal proceeding or preliminary examination any narcotic drug or drugs, any firearm, bomb, explosive, or any other dangerous weapon or thing, seized by any peace officer outside the curtilage of any dwelling house in this state.".

CHAIRMAN BAGINSKI: Mr. Danhof.

MR. DANHOF: Mr. Chairman, Mr. Prettie has prepared a memorandum in support of his amendment. He thought that perhaps we would reach it last night which we did not do. He therefore asked me if I would convey to the convention his statement in support of it, because he was forced to leave, although he was here earlier. I am therefore prepared to present a memorandum in support of his amendment which has just been read by the secretary.

I have gone over the memo and subscribe to it, but the authorship and the investigation were conducted by Mr. Prettie, the background material was prepared by him, and the memorandum was written by him. This is a memorandum re: declaration of rights, section 10, article II, Constitution of 1908. It reads:

> Mr. Chairman, we are considering the proviso of article II, section 10, of the Constitution of 1908, which the report of the committee on declaration of rights, suffrage and elections proposes that we eliminate because of its "doubtful constitutionality" under article IV of the amendments to the federal constitution as interpreted by the supreme court of the United States in Mapp v. Ohio.
>
> The first sentence of this section has been in the declaration of rights in the constitution of this state for 110 years. In 1935 the proviso was added permitting the introduction in evidence of certain weapons seized outside the curtilage of any dwelling house.
>
> It is this proviso with which we are concerned. The question is whether it should be continued in or eliminated from our constitution.
>
> The meaning of this proviso was so clear that it was not until 1943 that it was called in question before the supreme court of this state in the People v. Orlando, 305 Michigan 686.
>
> In this case the supreme court sustained the admission in evidence of stench bombs found in the automobile of the defendants and their conviction was sustained by unanimous decision.
>
> This remained the law in Michigan without question in the supreme court of this state, and in 1952 by the overwhelming vote of 5 to 1, the people amended the proviso to this section so as to include narcotic drugs as items admissible in evidence when seized outside the curtilage.
>
> The next case coming before our court of last resort was the People v. Gonzales, 356 Michigan 247, decided as recently as 1959. Judge Gadola, the trial judge in this case, is a delegate to this convention and could speak with great knowledge concerning this decision.
>
> I would, however, presume to invite the attention of this convention to some of the language contained in this lengthy decision, which I believe is pertinent to our deliberations. The court said:
>
> > The supreme law of this state, its constitution, thus directs the admission of evidence of the character with which we are concerned in this case even if the evidence was produced by an unconstitutional search and seizure.
> >
> > Our remaining question is whether or not such state constitutional sanction of the admission of illegally seized evidence is barred by the federal constitution. . . .
> >
> > We hold article II, section 10, as last amended in 1952, not offensive to the United States constitution, amendments four and fourteen, on the grounds stated.
>
> The answer to this second question is, of course, decisive as to this defendant. But we do not logically reach the attack upon the 1936 amendment until we have decided that this search itself was unreasonable. And the issue is important to millions of our citizens other than defendant. In People v. Roache, supra (pp 224, 225), this court said:
>
> > While we may take judicial notice of the fact that rum runners and bandits ride in automobiles, and use them to commit crimes and effect their escape, may we not also take judicial notice of the fact that where there is one bandit or rum runner passing over a public highway, there are thousands of respectable, law abiding citizens who are doing likewise? The protection afforded by the constitution to such persons must be regarded as paramount to any right to be given a police officer to enable him to verify his ungrounded suspicion that a law is being violated.
>
> It should be noted that the language that I have quoted was concurred in by 4 members of the court, one of them now the chief law enforcement officer of the city of Detroit.
>
> The 3 remaining members of the court who considered this case, concurred in the result reached in the majority opinion, but for somewhat different reasons. In their concurring opinion, these 3 members of the court subscribed to the following significant statements:
>
> > Smith, J. (concurring). When we conclude that article II, section 10, of the Michigan constitution (1908), as amended in 1952, is not repugnant to the Constitution of the United States, we have disposed of the case before us.
> >
> > With this holding, my concurrence ends. The balance of what is written concerns the concept of liberty under our constitutional guarantees. More specifically, whether the search of an automobile after the arrest of the driver for a minor offense against the traffic laws violates our basic freedoms.
> >
> > The constitution does not define liberty nor do we. In an absolute sense it does not exist. A myriad of commands we follow daily. But not every intrusion upon our person or property is an encroachment so gross that the spirit becomes hostage to the act and we are no longer free. Much will depend upon the circumstances attendant. The car search itself, in the vicinity of a prison break, may be more an act of mercy than an act of oppression. The concept of freedom, then, has no fixed content. Always there is the problem of balance. The freedom of one man necessarily involves the correlative restraint of his brother. Specifically, and with reference to the criminal law, we are sensitive to the constitutional rights of alleged or convicted criminals. . . . But equally sensitive are we to the demands of our people that they be as secure as may be from violence and pillage. All too often, as we know judicially, the automobile is handmaiden to the assassin. Learned Hand put the problem we will some day reach in these words:
> >
> > > The protection of the individual from oppression and abuse by the police and other enforcing officers is indeed a major interest in a free society; but so is the effective prosecution of crime, an interest which at times seems to be forgotten. Perfection is impossible; like other human institutions criminal proceedings must be a compromise.
> >
> > The day for that problem, however, is not this day. The case before us is governed by a specific and valid constitutional enactment . . .
>
> So stated and held the supreme court of this state 2½ years ago.
>
> The most recent case reaching our supreme court in 1960 is People v. Winkle. In this case the defendant was arrested for a traffic violation and a search of his car disclosed that he was in possession of a .38 caliber revolver and a quantity of burglar tools. It should be noted that the revolver was within the proviso which we are considering and the burglar tools were not.
>
> The defendant was charged, tried, and convicted of both the offense of carrying concealed weapons and with the crime of possessing burglar tools.
>
> His conviction was sustained with 2 separate opinions, each joined in by 4 members of the court.
>
> One of these opinions contained a strong admonition to the law enforcement officers of this state and the following language in particular, should be of assistance to us in our deliberations here:

Since our decision in Gonzales it appears that once it has been determined that the search and seizure has occurred, in the words of the amendment, "outside the curtilage of any dwelling house in this state" and once it has further been determined that the articles seized and offered in evidence in a criminal proceeding are among those enumerated in that amendment (both of which are so here), then the circumstances of the arrest and of any search or seizure, or the frequently prickly question of whether or not the search and seizure was unreasonable, appear to become totally irrelevant in any phase of the criminal case. . . .

Before prosecutors and police go dance in the streets, a word or 2 of warning is in order. The question nevertheless still persists whether there are no possible situations in these or similar circumstances where the legality of the search might become relevant or even crucial. We think there may be and that this very case suggests, if it does not present, some of them. We have here a situation where on the face of it part of the results of the search appear admissible regardless of the validity of the search (the nitroglycerin and the detonator caps), since they are embraced both within the amendment and the burglar tools statute, and again in the same case a situation where the admissibility of another part of the results of the same search (the bulk of the burglar tool articles here seized) in turn depends upon the reasonableness of the search. The trial judge admitted all of them, evidently on the theory that the search was not unreasonable. If the search was good, then all the articles were admissible and his decision was correct, amendment or no amendment. . . .

We note that the 2 state police officers who made the search and testified below, candidly admitted at the trial that searches of this kind made here, at the hour this one was made (around 2:00 a.m.) are routine with their department, once a car is legally stopped for a minor traffic offense. This is the second time in a few months that questioned searches of this kind have come before us. Gonzales was the other. We do not understand that either the noted amendment or our decision in Gonzales authorized the police to become motorized inquisitors or to make indiscriminate searches of persons or cars following their legally being stopped for minor traffic offenses. If this is indeed the settled policy of the state police or others, we suggest that it forthwith be reviewed and that the practice cease.

I have previously pointed to the fact that law and legal doctrine are not static. They must evolve to meet changing conditions. The historic guarantees against unreasonable search and seizure are basic to our concept of liberty, but the sanctity of one's home is quite a different thing from the question of admitting in evidence weapons and narcotics found in an automobile on a public highway.

I would further suggest that in a free society, liberty must not be confused with license. As Justice Smith stated,

The concept of freedom, then, has no fixed content. Always there is the problem of balance. The freedom of one man necessarily involves the correlative restraint of his brother.

The freedom of 8 million law abiding citizens of this state may require the admission in evidence against alleged criminals lawfully arrested of weapons and narcotics found in their possession outside their dwelling.

After careful reading of Mapp v. Ohio, it is my considered opinion that it is not in point. It involved a seizure in a dwelling of pornographic literature, not of weapons or narcotics. It does not overrule, except by way of dictum, the clear decisions of the supreme court of this state in the Gonzales and the Winkle cases.

I am informed that there are pending or on appeal at least 2 other cases in which the validity of this provision is now in question. For this convention to remove the proviso from the constitution would be to pull the rug out from under the position of the people in these pending cases and in many others that may arise.

I submit that the admonitions given to the prosecutors and the police in the Winkle case are more than sufficient to put them on notice that they must act with prudence and circumspection in making searches and seizures even on the public highway and even in protection of the life of the police officer himself. With this admonition before them, the law abiding citizen is given every protection to which he is entitled.

Finally, the report of the committee on declaration of rights suggests that in place of the proviso we have been discussing, the constitution shall provide that "evidence obtained in violation of this section shall not be used except as authorized by law."

The committee comments that this provision has the effect of restoring to the legislature a very large degree of discretion in what constitutes good policy on rules of evidence in relation to search and seizure.

I submit that no legislative enactment can be given the dignity of a constitutional provision, either by the supreme court of this state or of the United States.

The time is now and the place is here to retain in our constitution in improved form the proviso which will protect the law-abiding citizen and the law enforcement officer.

Should this proviso later be struck down by the courts as violative of the federal constitution the resulting license of the hoodlum, the burglar, the highwayman, the bank robber, and the narcotics peddler, will be chargeable to those courts and not to this convention.

This, Mr. Chairman, completes the prepared statement of Mr. Prettie. I have some remarks of my own to make, but I shall yield the floor at this time.

CHAIRMAN BAGINSKI: Very well, to whom are you yielding?

MR. DANHOF: I yield the floor.

CHAIRMAN BAGINSKI: Very well.

Mr. Higgs.

MR. HIGGS: Mr. Chairman, I rise in support of the Prettie amendment.

I think that at this time it is very important to analyze and sum up the statements made by members of the committee in support of the committee proposal.

In particular, I should like to refer to the comment that appears in the journal wherein it is stated that the committee's decision rests principally upon its recognition of the fact that the apparent sweeping impact of the opinion of the United States supreme court in Mapp against Ohio, June 19, 1961, in which the court, in a 5 to 3 opinion, appears to have asserted categorically in very broad language that hereafter evidence obtained in violation of the guarantees of the fourth amendment to the federal constitution will be inadmissible in both state and federal courts.

I wish to point out, first of all, that Mapp against Ohio is overruling the previous decision of the United States supreme court. It is very significant that they are split in this way. I also suggest that wherein it states, in the committee's report, that the decision was 5 to 3, they do not take account of the opinion of Justice Stewart.

Actually, the line up of the opinions is as follows. You have Justices Clark, Black and Douglas all writing concurring opinions—Clark writing the majority opinion, and Black and Douglas writing separate concurring opinions, and Justice Stewart agreeing with the decision of the majority to overrule the lower court, but on a totally different basis.

He states in his memorandum that although he would reverse the judgment in the case, he is persuaded that the provisions of the Ohio revised code, upon which the petitioner's conviction was based, is, in the words of Mr. Justice Harland, not "consistent with the rights of free thought and expression assured against state action by the fourteenth amendment."

In other words, at least one member of the supreme court, in favor of reversing the judgment, bases it not on the fourth amendment, but on the first.

Now I suggest, then, that this decision in the Mapp case is such that it leaves very much in doubt, on its facts, what the supreme court would do in another case, and I do not feel that the delegates to this convention should prejudge what the supreme court might do in the future, faced with other facts.

At pointed out in Delegate Prettie's statement, the facts are entirely different. The evidence in the Mapp case would not have been admissible under the Michigan provision which the committee seeks to strike out.

The Mapp case is perhaps an example of a very old idea expressed by lawyers and judges that hard cases make bad law.

In the Mapp case the police officers broke in the door of an apartment which would fit as a dwelling house. In other words, here is the first point, under Michigan law the evidence has to be received outside of the curtilage. That means outside not only the home but the outbuildings and the immediate vicinity of the home. Not only that, but the police officers in the Mapp case grabbed the woman, twisted her arm, handcuffed her unlawfully and took her up and made her sit in the bedroom while they searched the dresser and searched suitcases and they actually physically seized and abused this woman. And the evidence that they secured was pornographic literature which would not be admissible under the Michigan rule.

Now, there are 2 other factors which must be borne in mind. The Ohio law which was overruled was statutory, it was not a constitutional provision.

There is also the fact that this woman, when the police officers came, called an attorney and asked his advice as to what to do, and he told her not to let them in, not without a search warrant. And the police officers thereupon sought reinforcements but they did not obtain a search warrant. They waited 2½ hours, as I recollect the facts, before they broke down the door.

This is indeed a hard case, but it is certainly not authority for the proposition that the committee advances.

I should also like to point out that Judge Gadola repeated the wise words of Justice Frankfurter and placed a great deal of reliance upon what he had to say in the civil rights field, but Justice Frankfurter was with the dissenting justices in the Mapp case.

I wish to also to make it clear that what we are dealing with here is of great importance. A great deal has been said and much emphasis has been placed upon the historic rights of our citizens.

The federal constitution, in the fourth amendment, which deals with unreasonable searches and seizures, says nothing whatsoever about the problem that we are debating. It merely states, "The right of the people to be secure . . . against unreasonable searches and seizures. . . ."

What we are dealing with is a judicially created rule of evidence. And the question whether we are going to extend the opinions of the supreme court in such a way as to, in advance of such a decision, contend that the federal government has preempted this field, must be answered. The question is whether the fourth and fifth amendments shall be applied to the states under the fourteenth. This, I submit, has not been definitely decided.

Now, a great deal was also said about conservation officers and police officers indiscriminately searching automobiles and I submit that if this should constitute an illegal search or seizure, these offended persons have a remedy. They have a civil remedy at law for damages. And this is not a hollow and meaningless remedy. Police officers have been on many occasions sued and made to pay—they are bonded—and they are made to pay when they conduct an illegal search and seizure. And the delegate who raised this point would have had a remedy if he had been forced to submit.

Now, who suffers when guns, narcotics and dangerous weapons are excluded from evidence? Have we punished the police officers or have we punished the law abiding citizens of the state? Who is that bullet meant for? What about the civil rights of the bullet? I refer of course to the bullet that Gonzales was carrying in his pocket. I should like to know about that.

I also wish to say, in conclusion, that the supreme court of the United States is composed of 9 men who happen to be lawyers. If they want to overrule the will of the people of the state of Michigan, that's their business. But I'm not going to do it here today.

In 1952 the vote of the people of the state of Michigan in favor of including the narcotics provision was 1,910,728 for the inclusion of this in our constitution; and against that 382,285. I feel that the proceedings of this convention, our official record, should include those figures. They represent, as Delegate Prettie has said, a vote of 5 to 1. I also wish to point out that the vote in Wayne county was 6 to 1.

As I understand it, at the time this vote was taken there was a serious problem in Detroit with regard to narcotics and the police officers there and the law abiding members of the public derived some benefit, in that narcotics since that time have ceased to be the menace they were at that time to the high school children in that community.

Accordingly, I urge you to support the Prettie amendment.

CHAIRMAN BAGINSKI: Mr. Hanna.

MR. W. F. HANNA: Mr. Chairman. I rise to point out that I have placed on the secretary's desk an amendment to the Prettie amendment which I would ask the secretary to read at this time.

SECRETARY CHASE: Mr. Hanna offers the following amendment to the amendment offered by Mr. Prettie:

1. Amend the amendment after "seized" by inserting "by reasonable means"; so that the language of the Prettie amendment will read, after the recital of the items that may be considered: ". . . or any other dangerous weapon or thing, seized by reasonable means by any peace officer outside the curtilage of any dwelling house in this state."

MR. W. F. HANNA: Mr. Chairman, it seems to me that the problem with which we are faced here is the unreasonable use of this loophole to the exclusionary rule of evidence to allow police officers to make searches, and the court is powerless to pass, when it is presented to them, on the reasonableness of the initial search.

I believe the language that I propose would serve to carry out the warning offered to police officers to the effect that they should not "dance in the streets". My amendment, I believe, would implement that warning in relation to police officers.

CHAIRMAN BAGINSKI: Mr. Nord.

MR. NORD: Mr. Chairman, I would oppose the Prettie amendment, and also the Hanna amendment to the Prettie amendment.

Of course, the Hanna amendment is a substantial improvement over the Prettie amendment because it now says that legal seizures cannot be excluded from evidence. Of course, legal seizures cannot be excluded from evidence. We do not need to state that in the constitution.

I see no reason to engage in circumlocution. If it is a legal seizure it is clear without this statement, and therefore I believe it is not necessary to approach it in that way. What we should do is strike all the language which is submitted in this amendment, and I would like to state my reasons for saying that.

First of all, I should like to point this out. The way we are talking here you might think that we are about to change the law on this subject. That is not so. That is not what the issue is. We cannot change the law on this subject. The law on this subject has been handled by the United States supreme court in the Mapp case. The law has been handed down by them. They have said, without any ambiguity whatever, what the law on the subject is. They have said that the federal rule is one which they have been applying for many, many years—and not just this year—for a period of about 50 years, and that it will now be construed to apply to the states and will be obligatory upon the states and applicable to them in the same way as it has been applicable to and obligatory upon the federal government. No distinction was made as to what kind

of evidence was seized or where it was seized. The only thing that was done in that decision was simply that it was said

> We give up; we have waited for the states to begin to tell the police officers to obey the law; we have waited and we have waited and the states have not done so, and now we give up, just as we gave up with the federal officers 50 years ago.

There are no if's, and's or but's about that decision. We are not in a position to reargue that case here. The 9 supreme court justices are someplace else.

What we are doing here is saying that the case is different. I repeat that there is nothing in that case that draws any distinction. There is no rationale in that case that permits any distinction. It is a clear cut decision. The attempt to draw distinctions could go on forever.

This is a common problem in law school. The student will say, "Well, that case does not apply to John Smith because the last case happened to Al Brown, and there is a distinction between Al Brown and Jack Smith." There is a distinction but there is no difference. There is certainly no legal difference.

The differences that are being mentioned here have never been mentioned in any federal case. They are ignored. Narcotics, for example, are included. Weapons are included in the federal decisions.

And therefore let us not kid ourselves that we are doing anything differently from what the southern states did when they did not like a certain supreme court decision. It was only a few years ago that the United States supreme court also changed its mind. They gave a decision which said: We change the law. We say from now on there must be integration of schools.

The southern states didn't like that, just as many of the people in this state do not like that—do not like what we have, that is, what we have before us. They did not like that change. They said we can distinguish that and not only can we distinguish it—we can probably distinguish it for about 100 years.

They can distinguish it forever, they think. They have lost every case, I believe, one right after the other and they have done what we are now going to attempt to do, put language in laws which on the face of it is illegal, on the theory that either, somehow or other, the supreme court will change its mind and reverse a decision which took 100 years in that case to reach, and 50 years in this case.

They feel that by obstinacy or by some such means they can hold back the tide. We cannot do it and they can not do it, and I hope that we will not make any effort to do that.

We should abide by the law. What is at stake here, in other words, is not whether we can change the law. We can not change the law. We can change the words in the constitution but that will not have any effect upon the law. Actually, no matter what words we have in this section — even if we were to delete all the words — it would make no difference. We cannot change that federal law. The only thing that is really at stake here is whether we wish to follow the law and wish to say so.

That is one of the points I should like to make, that the issue is not clearly drawn as it should be. The issue is not: should we change the law? The issue is: could we change the law? And the answer is that we absolutely cannot. The second issue is: should we change the law, if we could? In other words, is the change proposed good and worthwhile? Is it a good change or a bad change?

The change as suggested by the Prettie amendment in my opinion is extremely unsatisfactory and I should like to explain why. It is often argued and it was argued in the newspapers for quite awhile, and I believe the impression is broadcast here, that if you do this, if you put this kind of language in, then the police will be able to enforce the law. They will now have authority to do something that they do not otherwise have.

In other words, it is thought that by putting the language in or taking it out, a difference would be brought about as to what the police can do. But that is not so.

The police, in any event, cannot make an unreasonable search or seizure, because it is illegal. They cannot be instructed to do so by anybody who has an oath of office or anybody who believes in the law of the land. The police are not permitted to make an unreasonable search or seizure, that is clear, and if we put the language in here that this kind of evidence, if seized, could conceivably be introduced in evidence, that does not authorize them to seize it anyway.

It was pointed out before that if they seize it, they commit a tort, a civil wrong, and they might very easily commit a crime in addition. As was pointed out, in the Mapp case they did commit a crime. They manhandled a woman. There was an assault and battery on that woman. When you manhandle a person in searching them, it is almost impossible to do that without committing a battery which is a crime.

I hope that nobody is going to tell us that the chief of police will instruct the policemen to go ahead and make unreasonable searches and seizures. I do not think they are likely to tell them that; they are not permitted to do that. And, therefore, let us keep that in mind, that what this language that we have in the Prettie amendment would do, would not make or permit the police to do anything that they cannot now do. They could not make an illegal search and seizure and if they did they would be subject to civil penalties and criminal penalties.

Now, we know that it is argued that since that is the case, therefore, why worry? Of course, there are 2 answers to that. One answer is that if that is the case, they are going to make the searches and seizures anyway. The other answer is that there is something to worry about in any event.

The relief that is suggested, this relief of a civil suit, or maybe possibly criminal penalties, can be looked at in this way. Criminal penalties, of course, are not very good against the police department. It is probably not a good idea to try to get these prosecutors to bring a criminal action against the police. You may end up finding that you are charged with some other crime. Civil actions against police have not been extremely successful, either.

Let me point this out, if those remedies had succeeded, the United States supreme court and the supreme courts of half of the states would not have been in despair, as they have been. They did not reach this decision lightly. It has taken 50 years for the United States supreme court to throw up its hands 100 per cent. It is not because they wish to get to this position.

Everyone realizes, I believe, that this is not the logical way to solve the problem — that is, making the evidence illegal, or rather inadmissible. But that was likely done because no other solution had ever been proposed which would do it successfully. Every solution that had been proposed had been unsuccessful. Therefore, it is either this remedy, or no real remedy.

Putting this language in could certainly do nothing except invite the police to make a search which they are not permitted to make, a search which is illegal, a search which on the face of it is unreasonable. If the search they make is reasonable, they do not need this provision. If it is illegal, this provision will not make it legal.

What are we actually asked to do, in fact, when we put this language in, the language suggested in the Prettie amendment? One thing we are asked to do is to encourage the police to commit illegal acts. I say we should never encourage the police or anyone else to commit illegal acts, whether it be illegal search and seizure or any other illegal act.

The other thing we are asked to do is to fight the legality of the United States supreme court, to fight a rearguard action similar to the southern states with respect to integration and other arguments with the supreme court. We are asked to say, in essence, that the United States supreme court is not the law of the land, or to fight it. We are asked to say that it is okay for the police to commit illegal acts.

Now, the argument is made, suppose the police do make these illegal searches and seizures. Who does it hurt, anyway? Suppose they do stop every car. Suppose they do seize evidence, and so on. Who is being injured — only the criminal. That is the argument. If that is the only person that is being

injured, I have no objection to it. I wish criminals to be punished. But the trouble is, as is pointed out, 1000 persons for every criminal will be injured.

Well, it is stated that the injury is very slight. What happens is that they stop your car, they ask you to get out, politely no doubt, and never do anything except to search your car. And if there is nothing wrong, what do you have to worry about?

I think the answer to that is that you have a great deal to worry about. They could do that to everyone. I suppose they could. But suppose they decide not to do it to everyone. Suppose they decide to do it only to some people. If they had the practice of doing it to everyone, it certainly would not be harmful to quit doing it to some people and to do it only to the ones who are left over.

Now there have been countries where that is exactly what happened. The police violated the law, not as to everyone but only as to some people. They pick out the people whom they wish to abuse. And when they do that they do not only abuse them in a slight way; they abuse them as much as they can get away with.

You will have noticed, as was pointed out to you, that in the Mapp case the abuse in that case was not a very slight abuse. It was manhandling. That is the result of allowing any kind of improper or illegal conduct by the police.

If you allow one kind of illegal conduct by the police, why shouldn't they do illegal conduct number 2, and why not illegal conduct number 3? Why shouldn't they manhandle someone if that is the way to get the evidence? Why shouldn't they stomach pump someone, for example, in a case where they think he swallowed drugs? The police have done that in a case in California and the supreme court had to act on that.

When you encourage illegality by the police, you permit, as Judge Gadola pointed out, a gradual erosion of the freedom of the people and you make it possible for discriminatory police illegality to exist. That is no theory. That has been a fact. What you encourage — I do not say that the mere searching of a car does this — but what you encourage is a gestapo technique. I wish to discourage the gestapo technique. Many people of my race have experienced it personally. They are not here to report it, but I would like to report that I am opposed to it, and even if it is only a slight violation, let us not go in that direction.

Once you point to a disease and say it is good, what do you do? Do you cure it? No, you spread it. And if this is a wrong thing, let us not make it appear right. We cannot make it right, therefore let us admit that it is not right. If it is not right, let us stop it and let us not spread it or encourage its spreading.

Now, I should like to make another observation. This argument is obviously not just a legal argument and I believe it is not an argument that is being brought to us entirely on its merits. This argument has been presented in an unusual way. I believe that the delegates have been bombarded with information and with a great deal of misinformation.

I somehow feel it is like a jury in which they discussed the issue beforehand. I do not refer to our caucuses. I realize that both caucuses discussed it. But they have lots of democrats who did not have enough time to determine the answer. But this has been discussed in the newspapers. Not only was it discussed in the newspapers but copies of the newspapers have been sent around to us in case we missed them.

I received 3 copies of the Detroit Free Press telling me the whole thing in a nutshell. One of them I got when I was home, when this article came out in the Detroit Free Press of December 26, a copy of which was sent to me yesterday. And by bad luck a delegate gave me a third copy today. It was just as wrong each time I got it.

The first time I got it I wrote an outraged letter to the editor and to his boss setting forth categorically 14 points of factual and legal error and I pointed out that I did not think that was very responsible journalism.

He wrote me back and he said, "Well, just because you disagree with me does not mean it is irresponsible." But I believe that it is, when it is chockfull of factual, legal errors. And that is the kind of information that you undoubtedly will be bombarded with.

I will not read the article. I would just like to point out, however, to the free press — and I use the term "free press" in a generic sense — that last night some of us were fighting our hearts out for the free press and we were not exactly winning. We were fighting our hearts out for the freedom of the press in spite of what we knew they had done. It was not a simple decision to conclude that this kind of journalism should be protected without any regulation, but that was the conclusion that we reached, except that maybe it should be said the convention did not. There is a great deal of misinformation, not only the misinformation in the article referred to.

I should like to point out what the actual law is on this subject. I refer not just to the federal law, but to the law of search and seizure. First of all, you have to keep this in mind. If seizure is legal, it can be admitted — the evidence I mean — it doesn't matter whether it is narcotics or weapons or whatever, it can be admitted in evidence.

Now what kind of seizures are legal? There is a great deal of confusion about that. There are 3 different ways in which evidence can be seized and it could be legal.

One of them is with a search warrant. Naturally that is not the best way with an automobile. But it is the best way in many other cases. That can only be obtained upon probable cause, upon oath before a magistrate. But that is not the only way.

There is a certain amount of belief among some people that you have to get a search warrant and if not it is automatically an illegal seizure. That is not so. There are 2 other ways of making a seizure which are legal, or which are reasonable, in other words.

One of them is where there is probable cause to believe that a crime has been committed and evidence thereof, and where there is no time to get a warrant because the evidence is in such a condition or is of such a type that it is likely to be removed. Now, an automobile, of course, is such an example. If there is evidence which is believed to be in an automobile and there is probable cause for believing it is there, so that you could have gotten a warrant if you had had time, you do not have to get the warrant, you can seize it. Therefore, if you have a situation where a policeman stops a car and he seizes something in there, that is legal. If he sees something in the car he can make the seizure right then and there. In fact, he can make it on that ground and on another ground which I will mention in just a moment.

The third ground which makes a seizure legal is, as also was mentioned somewhere along the line today, when a seizure is incident to a lawful arrest. If there is a lawful arrest, whatever the reason may be, the officer who makes the arrest has the authority to make a reasonable search and seizure of the surroundings, of the person and the surroundings. The original intention was to protect the officer from being killed by some weapon but it is not limited to that.

There are 3 different ways of making a search and seizure which are legal and there are no other ways at the present time.

The point, then, is this. There are certain cases when seizure from an automobile, even without any advance information, will be legal. There are other cases in which it is illegal. The police are not prevented from making legal seizures just because it is from a car. There are certain cases when they can make it and other cases when they cannot.

Now, if the police are interested in solving their problems, what they should do is to try to expand the law concerning reasonable searches and seizures. They should try to find a way to make searches which are legal. And I will suggest a way. It is not a correct solution to say, "Well, we are going to go ahead and make illegal searches and seizures," on the theory that it will pay off. What I am asserting now, is that the solution to this problem of the police, which of course is a real problem, lies not in breaking the law but in making the law, finding a way, if they can, to make legal searches and seizures.

The law of search and seizure is very vague. It is possible that it can be amplified and clarified by law. I would simply suggest 2 things that I believe the police could do. Probably there are many others that could be thought of, but here are 2 which occur to me.

One of them, I suggested to the convention. And that would be that the attorney general, who is basically in charge of the state's law enforcement, could be given subpoena power to investigate. If he could investigate, probably we could get probable cause to make these searches and seizures; and in addition, of course, it would assist in all kinds of crime prevention and law enforcement. That ought to be done. I asked the convention to do it; I do not know whether or not they will do it.

The main thing that I suggest, however, is this. This relates directly to searches and seizures, let us say, and not indirectly. Let me put it like this, the difficulty with these searches and seizures is this. We all know that it is unknown before we make the search and seizure whether the person is innocent or guilty. If we were positive beforehand that he were guilty, we would have no problem. The evidence should be seized in that case. If we were positive beforehand that he were innocent, the evidence should not be seized. We do not want searches conducted against innocent people; but we do want searches conducted against guilty persons, basically, but the trouble is that we do not know which is which until it is too late.

Suppose we did know which was which beforehand. Suppose we took into account that what we are really after in criminal law enforcement is to break down syndicated or professional crime, not just the person who commits a crime once but the persons who make it a business. If we can solve that problem, then we are solving the main problem. Suppose, for example, then, that there were enabling legislation enacted by our legislature which would say something like this, "a person convicted of a felony may be sentenced, among other things, to a loss of certain civil rights, one of which includes the right to be free of unreasonable searches and seizures within certain limits." Now, that has never been done, as far as I am aware, but there is a first time for everything, just as there was for many other things much bigger than that. And bigger things are done all the time.

When you deprive a person of all his liberties by putting him in jail, that is, of course, much bigger than depriving him of this little liberty. It seems to me we could put criminals out of business—professional criminals, that is,—if we sought to do so. We could do so if, in so doing, we would not make a wholesale attack upon the entire population but if we could make it on the professional criminal. It seems to me that a professional criminal is out of business when his associates know that he actually is a dangerous person to be next to because he can be searched any time.

Some such attack as that on the problem is what I believe would be an appropriate attack. Try to find out how you can make legal searches and seizures and do not try to make illegal ones appear to be legal.

I will close now by simply saying this. Let's not kid ourselves about what we are asking ourselves to do here and about what we are being asked to do. We are being asked to make illegal acts appear to be legal and permissible. That is the wrong approach. There are approaches that can be taken but this is not the right one. Let's not be stampeded by error in law and logic. Let us consider the matter coolly, face the truth and act upon it.

CHAIRMAN BAGINSKI: The Chair wishes to advise the delegates who are standing that he has written their names down and it is not necessary to remain standing. You will be called in the order in which you rose.

The Chair at this time will recognize Judge Pugsley.

MR. PUGSLEY: Mr. Chairman, ladies and gentlemen of the committee, I have been very much interested in the discourses here this afternoon. At the outset I wish to express my appreciation of the work of Dr. Pollock's committee. And I do not question the sincerity of him or any members of his committee, and I have profound respect for the legal opinions that have been given here this afternoon.

So much has been said, pro and con, with regard to the technicalities of procedure that are involved in the question under discussion, that I believe that I would only add more confusion through any attempt that I might make at this time to expose my theory of the law.

To come to the point, I rise to support the amendment of my colleague, Mr. Prettie, who sits across the aisle.

I might talk for some time regarding personal experiences which I have had during my years on the bench and particularly with cases during the latter days of my term in which the question which has been discussed here this afternoon was presented. I know that there are men today at 4000 Cooper street who did not agree with my rulings and interpretations of the law. Fortunately, the supreme court did not have the opportunity to do by me as they did by my colleague, Judge Gadola, and so my decisions stand, in those cases, without reversal.

It seems to me that it is very obvious that there are 2 or 3 or more points of view in this case. I do not profess to have either the gift of prophecy or the legal knowledge to foretell with accuracy what the supreme court may finally say, if and when they have an opportunity to do so, regarding the issue before us. But I do feel this way at this particular time. As a delegate, I am not in favor of reversing the verdict of the people of the state of Michigan which they expressed in 1952 and before that many years.

In other words, I believe that the issue is one which the supreme court and not this convention should decide.

From my own experience, and I repeat, I believe that we should retain and support the law enforcing officials of this state who are trying to do their duty. I, too, might cite examples in which I think they infringed upon the personal liberty of individuals. And I have never, and I do not now, wish to tolerate or encourage them in any form of wrongdoing.

On the other hand, I do not wish my position on this issue to be misconstrued or I may place myself in the position of appearing to be selling out to public enemies. I believe those are the ones who stand to profit most by the deletion from the constitution of the provision which is here under consideration.

I think I have said enough. I might, however, conclude with this thought. It has been said of police officers, when they are selected to receive their badges, some of them grow with authority and other just swell.

CHAIRMAN BAGINSKI: Mr. Hatch.

MR. HATCH: Mr. Chairman, I should like to offer a substitute amendment, which is on the secretary's desk, for the amendment offered by Mr. Prettie and the amendment to Mr. Prettie's amendment.

SECRETARY CHASE: Mr. Hatch has filed the following substitute amendment:

1. Amend page 2, line 28, after "affirmation" by striking out the period and on page 3, line 6, by striking out "Evidence obtained in violation of this section shall not be used except as authorized by law" and inserting "Evidence obtained in violation of this section shall not be admissible in any court against any person".

MR. HATCH: Mr. Chairman and members of the committee, at the outset I might state that I agree wholeheartedly with the remarks of Judge Gadola, Delegates Nord and Norris. I also agree with the spirit of Mr. Hanna's amendment.

However, I feel that the language which is suggested by the committee—in other words, "Evidence obtained in violation of this section shall not be used except as authorized by law"—may open the door even wider to the use of evidence illegally obtained. In other words, as I understand the provision, "as authorized by law" would permit the legislature to expand the present proviso which applies only outside the curtilage to within the curtilage.

True, the Supreme Court of the United States has ruled that evidence obtained illegally within the curtilage in the Mapp case is not admissible. But I would hate to see an individual put in the position of having to take a case all the way up to the Supreme Court of the United States merely in order to have an enactment of our legislature stricken down.

Therefore, I offer this amendment in order to make crystal clear that any evidence that is obtained illegally or by unreasonable searches and seizures shall not be admissible in any court.

I agree with the remarks of Dr. Nord to the effect that the Mapp case has settled this matter. I think that the language suggested by Delegate Prettie, in effect, would be unconstitutional under the Mapp decision. I believe what the Mapp decision decides is that where there is an illegal search and seizure, regardless of where it occurs or how it occurs, evidence obtained in violation of that search and seizure is not admissible against the defendant or accused. But assuming that the Mapp case had not been decided or, as some contend, that it does not apply to the language suggested by Mr. Prettie, as a matter of principle I still advocate the language I have proposed.

I oppose the Prettie amendment in principle because it fosters illegal acts, and while paying lip service to the constitutional guarantee, that of freedom from unreasonable search and seizure, to permit the admission of evidence illegally obtained nurtures and even acts as an inducement to law enforcement agencies to act illegally. In my mind it is a prime example of the adoption of a concept of the ends justifying the means.

Now, the laymen here may not understand that legal searches may be made without a warrant. That is, a legal search may be made pursuant to a lawful arrest. I will not go into all the ramifications of that because it has already been covered by Delegate Norris, Judge Gadola and Dr. Nord. I feel that where a search is made, pursuant to a lawful arrest, or by virtue of a warrant, lawfully issued, this is certainly adequate protection to society and to law enforcement agencies.

We have heard the complaint that if the present language is not continued, that law enforcement will be irreparably damaged. This I dispute and the United States supreme court disputed it in the Mapp case.

It was pointed out in the majority opinion by Mr. Justice Clark, who I might point out was formerly holder of the top law enforcement position in the country, namely that of attorney general, that the federal government has been working under the rule that I propose for nearly 50 years and that this has not hampered or in any way reduced the efficiency or effectiveness of the federal bureau of investigation.

I urge all delegates to consider seriously my amendment and I thank you for this opportunity to present it.

CHAIRMAN BAGINSKI: Mr. Norris.

MR. NORRIS: Mr. Chairman, on a point of information, I did not fully understand Delegate Hatch's amendment with regard to a substantive change. Did he indicate that he wished to delete the present proviso in article II, section 10, and add the words that he proposed, or just add the words that he proposed?

SECRETARY CHASE: The amendment offered by Mr. Hatch is offered as a substitute to the Prettie amendment, and would strike out the language on page 3, in line 6, in capitals, which reads, "Evidence obtained in violation of this section shall not be used except as authorized by law.", and would insert in lieu thereof "Evidence obtained in violation of this section shall not be admissible in any court against any person.".

CHAIRMAN BAGINSKI: Mr. King.

MR. KING: Mr. Chairman, fellow delegates, this particular issue is one to which I have given some serious consideration. I have examined the long line of federal cases and the long line of state cases on the question. It is unfortunate but true that there is a great deal of emotional emphasis being placed on the true issue here. For example, the statement was made, "If the supreme court of the United States wants to overrule the will of the people, let them; but I'm not going to do it." Several delegates have expressed this sort of sentiment.

Of course, it is not the supreme court of the United States. It goes back to a group something like this that met in Philadelphia about 175 years ago. The presiding officer was a fellow by the name of George Washington. These people decided what our federal constitution should consist of.

The supreme court is duty bound, and this was established very, very early in Marbury v. Madison and other early cases, that the supreme court is the arbitrator of the meaning of the constitution and how it should be applied. For nearly half a century the supreme court has been eloquent and clear with regard to applying the law pertaining to this sort of illegally obtained evidence in federal courts. The Weeks case settled the issue once and for all.

It is true that in the Wolf v. Colorado case the supreme court vacillated a little bit, I think, in applying the rule to the states with the hope that the states would step up to their responsibilities. Apparently the states, although unfortunately not all of the states, did this. I would say that most of them have.

We are now in a position where we have to decide, as delegates to this constitutional convention, what course we want Michigan to take.

Now, obviously there are 2 approaches to the problem. We can do what we think is right or we can do what we have to do under the supreme court. In my opinion, it all adds up to the same thing. We still have to obey the supreme law of the land.

I am now suggesting that the people were wrong in 1952. I am saying that the people were wrong on June 19, 1961, if they still felt the same way as they felt in 1952, when completely apprised of all the facts. That, of course, is a moot question. No one knows how they felt on June 19, 1961. But at that time the Mapp case came down. That became the supreme law of the land.

Attorneys, by habit I suppose, try to distinguish any case that they do not like. Perhaps, we have not gone into the question of the color of Mrs. Mapp's house, so maybe it only applies to brown houses or to white houses. I don't know. But the supreme court made no attempt to distinguish the facts of this particular case. Now, surely it is not the same thing. It was pornographic material they were talking about, it was the violation of an Ohio statute they were talking about, it was a search within the curtilage—in fact, within the very dwelling. But the Supreme Court of the United States said, and these words were repeated today by Judge Gadola. I am not going to talk too long but I want delegates to pay particular attention to what is being said here:

> Today we once again examine Wolf's constitutional documentation of the right to privacy free from unreasonable state intrusion and, after its dozen years on our books, are led by it to close the only courtroom door remaining open to evidence secured by official lawlessness in flagrant abuse of that basic right, reserved to all persons as a specific guarantee against that very same unlawful conduct. We hold that all evidence obtained by searches and seizures in violation of the constitution is, by that same authority, inadmissible in a state court.

Now, they are speaking very specifically, and when they say constitution, unfortunately they do not mean the Michigan constitution, they mean the federal constitution. They do not mean certain types of searches and seizures in certain types of circumstances and they do not say that.

I will concede that some argument can be made for the one majority voice on the supreme court which did try to distinguish his opinion on a few facts. But the other 4 justices made no such attempt. They very clearly go along with this wording and this now is the supreme law of the land.

Now, as a delegate, first of all, let me say that I have sworn to uphold the federal constitution, the Constitution of the United States, and that I will do. I will not vote in favor of something which I personally believe—and I realize that reasonable men can differ—but I will not vote in favor of something which I personally feel violates the federal constitution. And if there was ever any question in my mind before, and frankly there was not, there is none now. The Mapp case has made the issue crystal clear as far as I am concerned.

A second point, the record may show this, I will stake my professional reputation as an attorney at law that, if we adopt any of these amendments, or retain the present proviso,

it will be held unconstitutional by the supreme court of these United States.

I thank you.

CHAIRMAN BAGINSKI: The Chair recognizes Mr. Sharpe.

MR. SHARPE: Mr. Chairman, in view of the fact that the hour is so late and I have become so weary, I will yield to someone else. (laughter)

CHAIRMAN BAGINSKI: The Chair recognizes Mr. Faxon. Mr. Faxon, will you yield for just a moment?

Dr. Pollock?

MR. POLLOCK: Mr. Chairman, I have no desire to terminate an interesting and valuable discussion but perhaps we have gotten as far as we can get this afternoon in relation to these matters. If the committee would prefer to sit it out, that is fine. I was prepared to move to rise but I will not do so if that is not the wish of the committee.

CHAIRMAN BAGINSKI: The Chair would like to call attention to the fact that the speakers should confine their remarks and make them germane to the amendment before the committee of the whole.

The Chair recognizes Mr. Faxon.

MR. FAXON: Mr. Chairman and fellow delegates, I can see that I am coming on at a very unpopular time, as the hour gets later and as the words become many, people grow even more fatigued.

I just heard Delegate Hatch's amendment or substitute amendment and, although I had an amendment pending, I realize that you get involved with a certain degree of complexity through adding and adding and adding, so I would then at this time rise to support Delegate Hatch's amendment and speak to that particular point. I refer to Delegate Hatch's substitute amendment. Is that correct?

CHAIRMAN BAGINSKI: Do you mean that you will withdraw your amendment?

MR. FAXON: At this moment, yes.

CHAIRMAN BAGINSKI: Very well, Mr. Faxon. You may proceed.

MR. FAXON: Now, we have been hearing so many different arguments that I know we are beginning to repeat some of these things. I think we have to remember, however, that the people of the state of Michigan in 1835 and again in 1850 and again in 1908 submitted to the people of the state for ratification a constitution without any proviso. I think we have to keep in mind that we are dealing with a very old and sacred doctrine in our history; that is, dealing with unreasonable searches and seizures.

I am slightly worried, as I think Delegate Prettie was, about the wording of the committee proposal and I share with Delegate Hatch the concern he expressed, because the committee proposal leaves it up to law and it does not say the rule of the Mapp case is the rule for Michigan. It says it shall be as prescribed by law.

I think this could be interpreted in many ways and I would much prefer to see something along the lines of the substitute of Delegate Hatch which takes care of this and does not put it in the hands of the legislature to interpret at will or to change it. It could lead to even greater infractions upon the rights of the people.

Our proposition is to protect society from the criminal. Everyone is agreed on the value of that. At least we start out with something we generally agree upon. In order to do that, however, we want to get as perfect a case as possible. Historically speaking, the most perfect case that you can present is a confession, a signed confession.

Now, this is the procedure that was used for hundreds of years. We go back to Roman law — we can see it in the Spanish inquisition — they used the signed confession as the perfect case, and this would ultimately mean that the person accused was guilty. We see it today in the Russian courts.

Now, this is all based on a perfect case. No matter how you get it, if you have a signed confession, that is enough. But the anglo American development, our own development here, is not based on a perfect case.

In our system, as it has developed over the years, we let a jury decide, with the assistance of the judge on points of law, whether the facts in the case are such as to indicate a decision against the person involved. This means that the prosecutor, or whoever is prosecuting the case, does not have to have a perfect case. He does not have to have a signed confession in order to prosecute. He can go ahead with circumstantial evidence, if that happens to be available, and prosecute on the basis of that.

This very process of permitting the use of circumstantial evidence results in a less perfect case. It also means that the person has to have certain protections. That is, the individual does not have to expose himself, and he is protected in his daily activities from such exposure. This is based on the doctrine of individual freedom.

The other system of a perfect case, of a signed confession, is alien and foreign to our ideals and to our tradition. We settle for much less, as far as the evidence is concerned but in doing so, we protect the individual in the whole process.

As soon as you institute illegal seizures, you restrict the individual and you give him less protection. Now, I am going through this review very quickly, but let me say this. You simply cannot have a free, fluid society, a capitalistic society, and have this kind of provision which restricts the rights of everyone. It is not just a matter of law enforcement; this deals with the whole activity of society, the activities of everyone — all the people — in our society. This, in a sense, represents taking away certain liberties. I realize that we are talking about unreasonable searches and seizures and I think everyone who has spoken in this debate has made that clear.

We have heard reference to this case to which I shall direct your attention. I simply wish to make one point a little clearer. I refer to the case dealing with James Otis and his speech against the writs of assistance, February 24, 1761. That is a very famous case in point which led up to the adoption in all the colonial constitutions of restrictions against unlimited search and seizure. It was reflected in the 1776 constitution, and in 1778, in 1779 — Pennsylvania, New York, et cetera — they all carried forward this idea, because these general writs did not define the place, they lasted as long as the life of the king, they did not require the person who served them to make any return, they did not require a report to the court on what the server did, and so on. These are essentially illegal and the American colonists fought a war to protect themselves against this kind of usurpation of the authority of the king.

I will skip all this — these portions of my notes — (laughter) I am going to make this a little shorter because the hour is late. I will just quote from one extract. Everybody is quoting this afternoon and I think I should get in at least a couple of quotes. I do not have the court citation and all the elaborate paraphernalia of the lawyers that the legal profession requires but later I will produce the evidence.

I wish simply to quote from a decision of Chief Justice Taney, 1862, in the case of ex parte Merryman, 17 Federal Cases, 144. Here it says:

> The constitution provides, as I have before said, that "no person shall be deprived of life, liberty or property without due process of law." It declares that "the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated, and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized."

He considers these a fundamental law and a fundamental right and it is one of those rights referred to by previous speakers as being embodied in the present declaration.

And so, in concluding, I put this statement forth, certain rights are so fundamental as to be derived from the very nature of justice, even from the very nature of God. It was the purpose and function of society to protect these rights, and indeed constitutional government existed to assure this protection.

CHAIRMAN BAGINSKI: Mr. Ford indicated that he wished to speak and he is now yielding to Judge Dehnke.

MR. DEHNKE: Mr. Chairman, delegates to the convention, I have learned once again that if I can only restrain myself and keep still long enough, almost invariably somebody else will voice the thoughts that are going through my mind. And that has happened this afternoon. Of course, they did not say the things as well as I could have. (laughter) But yet they voiced them.

There is one thing, however, I should like to bring to your attention. Much of the discussion we have heard this afternoon seems to be based upon the absolute certainty that the Michigan supreme court and the federal supreme court will declare our present constitutional provision void as being in conflict with the federal constitution.

And in that connection, I hope you noted a part of the remarks of Delegate Higgs. From that it appears that the meat of that decision that the barring of the testimony in a case of illegal search applies to state courts as well as to federal courts, was not the decision of the majority of the supreme court. That was a decision of 4 of the justices. Apparently that case was heard by only 8, and the fifth justice, there concerned, joined in voting for a reversal upon some other ground. So we have this picture, that 4 of the justices of the supreme court have committed themselves on this issue. You might say that 3 definitely, the other way, and one, inferentially, and it all depends upon the ninth justice when we have a case that is heard before the full court.

I realize the seriousness of this question and it is not lightly that I have arrived at my conclusions in the matter. However, I recognize the compelling force of the arguments on the other side. But my feeling is this, that this convention should not take out what the people have so emphatically put in, unless and until the highest court has specifically declared the proviso to be invalid and ineffective.

I noted, and I am sure it was sincere, that everybody who has spoken on this subject has done so out of a sense of loyalty to our free principles as reflected by our bill of rights in the federal and state constitutions. I am reminded by the spectacle that we have had before us that although we may be convinced of each other's sincerity, we are still convinced of the superiority of our own reasoning.

There is the story of 2 clergymen who had gotten into a red hot discussion about some point of theology to the extent that they had become very angry with each other. They turned away to part and one of them remembered his Christian principles sufficiently to suggest to the other, "Now, brother, it really would be unseemly, would it not, if we parted here in a spirit of hostility?" And the other one said, "Yes, come to think of it, I guess that would be true. I think the important thing to remember is that we are engaged in the same endeavor. We are both trying to do the Lord's work — you in your way, and I in His!" (laughter)

CHAIRMAN BAGINSKI: Mr. Brown.

MR. G. E. BROWN: Mr. Chairman, fellow delegates, I was one of the delegates who submitted a proposal relative to this very question. My proposal was somewhat like the committee's proposal as it eventually was turned out, except that the last sentence went something like this:

> The evidence obtained in violation of this section shall not be admitted in any court in criminal cases or in any criminal proceedings held before any magistrate or justice of the peace.

I would like to point that out, due to the fact that I feel I am now taking a different position relative to this matter. I shall not quote other authorities because in my own modest way I feel that I am the best authority on this subject today. (laughter)

I think we should recognize that this is not—the language that we are contemplating for this constitution, that is—a matter of eliminating illegal searches and seizures. Basically, we are attempting to adopt language that will act as a deterrent to illegal searches and seizures.

The history of this, which I think we should investigate a little bit, goes back, first of all, to the Weeks case. At that time, of course, there was a federal constitutional guarantee against illegal searches and seizures. There have been in some states—I recall that at that time there were in some states and even after that—statutes adopted which made it a criminal offense for a state officer to violate the state's constitutional guarantee against illegal searches and seizures by the making of such a search or seizure.

This proved to be ineffective. Likewise, the other deterrent to such illegal searches and seizures—the right of a trespass action against the officer who committed this illegal search and seizure or this trespass—has proved unavailing and did not deter illegal searches and seizures by officers.

This, as I say, was adopted, so therefore, in the federal government there came about the exclusionary rule which was a judicial decision. It was adopted in the case of Weeks v. United States.

Following that, Michigan, which also had a constitutional guarantee in much the same language as that contained in the federal constitution, adopted the exclusionary rule in the case of People v. Markshousen.

Subsequent to that, of course, the amendments were put into the constitution which presently constitute the so called proviso dealing with contraband, which permitted the admission of contraband into evidence in a trial of respondents even though such contraband had been illegally obtained.

Now, with this short background, we move on to a critique of the committee proposal. First of all, I think that it is objectionable. By the way, in order to show that I am dealing with something that is properly before the committee at this time, I am speaking both to the Hatch amendment, the committee proposal, and the amendment offered by Mr. Prettie. They are so intertwined that they cannot be segregated.

The failure of the committee proposal, first of all, to limit the application of the inadmissibility language to criminal proceedings raises a question of the effect of this provision on civil proceedings. It has always been contemplated and the proviso where it speaks of the admissibility of contraband in the trial of a respondent limits it to criminal proceedings.

I would not be so bold as to say that I can contemplate all of the effects of the present committee proposal—the language of that proposal—under civil proceedings. I can think of divorce actions, et cetera, where very possibly evidence would be offered and an attempt would be made to have it admitted, which in effect would be contrary to the search and seizure provision of the constitution. And I am sure, sir, the committee did not contemplate that this would be applicable to civil proceedings.

Too, the following may be said. My second criticism of the language of the committee proposal is this. I believe they have employed the word "used"—shall not be used—it is not that it shall not be admissible but that it shall not be used. This, of course, brings in a whole raft of judicial applications of the language. For instance, the following questions are raised. Does this mean that although maybe a certain invoice which is illegally obtained may not be used in evidence but may be used to obtain information and in that way lead the enforcement officer to other evidence which, in a sense, would also be convicting in nature?

There have been cases in other jurisdictions and a case in Michigan which seem to say that evidence which is indirectly obtained by virtue of an illegal search and seizure may not be used, either. Neither can the evidence itself nor any evidence which is indirectly obtained by this very evidence which was initially illegally obtained.

As I have said, at first I was of the opinion that the Hatch amendment or the amendment of the committee proposal, which would make this evidence inadmissible, was the proper way to handle this matter. However, the present controversy arises, basically—as I have said—out of the amendment to the 1908 constitution, that is, those amendments which constitute the proviso at present.

That, plus the decision of the United States supreme court in the case of Dollree Mapp v. State of Ohio which was decided on June 19, 1961—June 19 of last year, which held that the protection against illegal searches and seizures of the fourth amendment of the federal constitution is carried over

and imposed upon the states by the fourteenth amendment to the United States constitution, in effect, said that the exclusionary rule is not a rule of evidence, but is a rule of substance; that the exclusionary rule is part and parcel of the fourth amendment and that no state may further limit the fourth amendment in its effect upon their residents or citizens. That is what they said.

Now, what is the effect of the Mapp case? Certainly the facts of the Mapp case would limit that decision to the curtilage of the home, if that was the intent of the courts, because the facts of the case were that the curtilage of the home was involved and it did not involve contraband. But I am of the opinion—and I think that any lawyer here who has read that case certainly should be of the opinion—that the Mapp case is not limited to the curtilage of the home nor has it any effect on the decision, the judicial interpretation, of our present constitutional provision about contraband.

It certainly does raise a question, however, in view of the effect that Judge Dehnke spoke of, and that is that 4 of the supreme court justices held that the decision as we have mentioned it applies to the states whereas the fifth justice joined with the 4 for reversal of the Ohio supreme court's decision but really did not join with the other 4 in their reasons for their decision. At the same time I think that it should be pointed out that, as I recall the Mapp case, in rebuttal of what Judge Dehnke has said, I believe that one of the justices at least said that although he was inclined to think that possibly this should be the reasoning of the court, he did not think that the question had been properly raised in the Mapp case since the attorneys arguing the case had not really raised the matter as an issue in the United States supreme court.

It is, therefore, my purpose in speaking at this time—and I am not offering an amendment because I have checked with the secretary and I notice that there are amendments in the secretary's hands—1 or 2 at least—which suggest that we retain the language of the present constitution without amendment. Otherwise, that would be the language of the 1908 constitution without the proviso—without any language with respect to the inadmissibility of evidence obtained in violation of the section.

I support this approach because it occurs to me that, now that we have said that the exclusionary rule is not a rule of evidence but a rule of substance, very likely congress may pass a law making it a criminal offense for any state officer to violate this constitutional guarantee.

This was not possible and it was not effective before because you were requiring the county prosecutor who was constantly working with the law enforcement officers to cite that law enforcement officer for a violation of a constitutional provision. This was impossible to do. Prosecutors would not do it and they could always find some reason for not doing it.

However, when we remove the jurisdiction of that criminal offense from the state jurisdiction to the federal jurisdiction, very likely we will have a protection against the over zealous officer who in reality should be the one punished and not the people, by failure of a conviction. The whole purpose of the exclusionary rule is aimed against the over zealous officer, not against the people by result of the failure to get a conviction.

Secondly, I think there can be little question but that the proviso as it presently stands under the wording of the Mapp case decision and the present holding of the United States supreme court, is unconstitutional. I, as a delegate here and as a lawyer, do not propose to put something into this constitution which at this time, in my opinion, is unconstitutional. I appear stupid at times but I do not like to do so when I know I am appearing stupid.

Thirdly, I think that the effect of the exclusionary rule, as it has been brought down to us by the federal court, can best be determined in a judicial proceeding rather than in a convention called to draft the constitution. It has always been my opinion that judicial questions should be decided in a judicial rather than in a political atmosphere.

Now, as to the proviso, it seems to me that, if the Mapp case by subsequent judicial opinion is limited in its effect to the curtilage of the home and to exclude contraband, the legislature may very well, by a simple legislative action, enact the very proviso about which we are now talking.

Furthermore, this can be done by judicial interpretation. It has been said here today that, in effect, not to retain the proviso is to "pull the rug out from under the people of the state of Michigan" with respect to cases that are presently pending in our supreme court.

I do not agree with this. I think that the debate and the reasons advanced for the removal, if it is removed, have been very well recorded here, and there is no basis for a court subsequently to say that it was the will of the constitutional convention to remove the proviso as a matter of political theory rather than of facing reality in terms of this decision in the Mapp case.

To those who have said that the Mapp case does not mean what it says, I would like to mention that the United States supreme court, in several cases—I have noted here just 3—the United States supreme court, in effect, has said the very same thing that is said in the Mapp case, but has found some other way to justify the decision.

First of all, in Rios v. United States, a federal officer obtained narcotics by an illegal search and seizure, and was unable to present that evidence in a federal proceeding because of a motion to suppress that evidence. When that motion was dismissed—when the case was dismissed because of the way in which the evidence had been obtained—he walked across the street to the prosecutor's office and brought a similar proceeding in a state court where this rule would not apply.

The defense attorney being quite wise in that action—the state action—proceeded to file a motion for an injunction in the federal district court having jurisdiction over that officer and the federal district court there enjoined the federal officer from testifying in the state prosecution. In that case they did not say that the fourth amendment applies to the states through the fourteenth but rather the court said, "We hold that this man may not testify in this action, not because of the fourth amendment but rather because of the general supervisory powers which the federal courts have over federal officers. That was begging the question, I believe, Mr. Chairman.

Likewise, in the wire tapping cases. Once again the court, after finding that the evidence was inadmissible by virtue of section 535 of the federal communications code, said that since it is unlawful to do this, the evidence is inadmissible and we do not reach the other constitutional grounds.

Likewise in Lustig v. United States, there was a 5 to 4 decision in which I recall one of the justices saying the defendant in this case is not concerned with who made this illegal search and seizure and who obtained this evidence illegally; and we should not be either. This was a 4 man dissent out of the court with a 5 man majority.

The Mapp case is, therefore, not a new decision. It is not a new development in criminal procedure, in criminal law, in this nation; but rather, it is the end result of the eventual processes of the law.

I would like to further point out that there are at least 2 circuit judges that I know of in this state of Michigan who have already held that the proviso of the Michigan constitution is unconstitutional under the ruling of the Mapp case.

Thank you very much.

CHAIRMAN BAGINSKI: Dr. Pollock.

MR. POLLOCK: Mr. Chairman, I move that the committee do now rise and report to the convention.

CHAIRMAN BAGINSKI: Those in favor of the motion signify by saying aye. Opposed, no. The Chair is in doubt. Those in favor of the motion will rise.

SECRETARY CHASE: Eighty-two, Mr. Chairman.

CHAIRMAN BAGINSKI: The majority elect of the committee having voted to rise, it is so ordered.

[Whereupon the committee of the whole having risen, President Nisbet resumed the Chair.]

PRESIDENT NISBET: The Chair recognizes Mr. Baginski.

MR. BAGINSKI: Mr. President, the committee of the whole has had under consideration one proposal, has made no amendments thereto, and begs leave to sit again in this matter. The secretary will give a detailed report.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 15,** and has come to no final resolution thereon.

This completes the report of the committee of the whole.

PRESIDENT NISBET: Mr. Downs.

MR. DOWNS: Mr. President, may I request that any copies of amendments that were resting on the secretary's desk in the committee of the whole be mimeographed for distribution before our session tomorrow. I think this will facilitate the work of the committee.

PRESIDENT NISBET: Without objection, it will be done. Announcements.

SECRETARY CHASE: Mr. President, in addition to the announcements on the composite calendar, the following:

Due to the lateness of the hour, the meeting of the committee on legislative organization, scheduled for this afternoon, is postponed until tomorrow morning at 9:30 a.m. John Hannah, chairman.

The meeting of the committee on miscellaneous provisions and schedule, which was scheduled after the session, is cancelled. The next meeting will be at the regularly scheduled time, tomorrow morning, at 10:30. Reports by subcommittees on corporations, militia and division of the powers of government will be considered. Claud Erickson, chairman.

The school financing subcommittee of the committee on education will meet after the session today in room J. Mr. Page, chairman.

The committee on administration will meet tomorrow at 1:00 o'clock p.m. Walter DeVries, chairman.

The committee on legislative powers will meet Wednesday at 10:30. T. Jefferson Hoxie, chairman.

The committee on public information will meet in room D tomorrow at 1:00 o'clock. Ink White, chairman.

The committee on legislative organization will also meet in room D tomorrow, immediately following the session.

And this further notice, the committee on education will meet January 11 at 10:30 a.m. for a full committee meeting; report of subcommittee on libraries, article XI, section 14. All meetings of the committee on education and the subcommittees are held in room J—mark this, note please; room "J", not "K".

The apples today are furnished by Delegate Rush. (applause)

I have the following requests for leave of absence: Mrs. Koeze and Mr. Martin ask to be excused from the latter part of Thursday's session and the Friday session to attend a meeting of the Republican national committee in Oklahoma City.

PRESIDENT NISBET: Without objection, they are excused.

The Chair recognizes Mr. Doty.

MR. DONALD DOTY: Mr. President, I move that we adjourn.

PRESIDENT NISBET: The question is on the motion for adjournment. Those in favor say aye. Opposed, no.

We are adjourned until tomorrow at 2:00 o'clock.

[Whereupon at 5:00 o'clock p.m., the convention adjourned until 2:00 o'clock p.m., Wednesday, January 10, 1962.]

FIFTY-FOURTH DAY

Wednesday, January 10, 1962, 2:00 o'clock p.m.

PROCEEDINGS

PRESIDENT NISBET: The convention will please come to order.

The **invocation** today will be given by Mr. L. Edsil Dale, Professor of New Testament and Church History, Great Lakes Bible College, Lansing, Minister of the Church of Christ, Charlotte, Michigan.

Will you please rise.

PROFESSOR DALE: Our Father and our God, our help in ages past, our hope in years to come, we thank Thee for the powers that be which are ordained of Thee. Grant and hasten the day, our Father, when the governments of men on this earth may humbly acknowledge the source and finality of all human powers — that both our wisdom and our strength come from Thee. May the leaders of our great nation constantly seek strength and wisdom from Thee.

And now, in this historic session of these lawmakers of this, our own state, grant guiding wisdom and quiet courage, mingled with faith and foresight, to accept their responsibility and proceed in a proper manner to reframe our guiding principles for good government and Christian conduct. May the decisions of this earnest effort become a worthy example to our sister states and our nation.

To this end let Thy blessing rest upon this daily session, we pray in the name of Christ. Amen.

PRESIDENT NISBET: The **roll call** will be taken by the secretary. Those present, please vote aye.

SECRETARY CHASE: Have you all voted? The machine is now locked and the attendance will be recorded.

Mr. President, a quorum of the convention is present.

Absent with leave: Mr. Thomson.

Absent without leave: None.

PRESIDENT NISBET: **Reports of standing committees.**

SECRETARY CHASE: Mr. Martin, for the committee on executive branch, introduces

Committee Proposal 16, A proposal to permit the governor to grant reprieves, commutations and pardons and to delegate this power according to law. Amends article VI, section 9; with the recommendation that it pass.

John B. Martin, chairman.

For Committee Proposal 16 and the reasons submitted in support thereof, see below, page 579.

PRESIDENT NISBET: Referred to the committee of the whole and placed on the general orders calendar.

SECRETARY CHASE: Mr. Martin, for the committee on executive branch, introduces

Committee Proposal 17, A proposal respecting eligibility for the offices of governor and lieutenant governor. Amends article VI, section 13;

with the recommendation that it pass.

John B. Martin, chairman.

For Committee Proposal 17 and the reasons submitted in support thereof, see below, page 591.

PRESIDENT NISBET: Referred to the committee of the whole and placed on the general orders calendar.

SECRETARY CHASE: Mr. Martin, for the committee on executive branch, introduces

Committee Proposal 18, A proposal to provide for a great seal

of the state and to authorize its use. A substitute for article VI, sections 11 and 12;
with the recommendation that it pass.
John B. Martin, chairman.

For Committee Proposal 18 and the reasons submitted in support thereof, see below, page 593.

PRESIDENT NISBET: Referred to the committee of the whole and placed on the general orders calendar.

SECRETARY CHASE: Mr. Erickson, for the committee on miscellaneous provisions and schedule, introduces **Committee Proposal 19,** A proposal to provide for a state militia. A substitute for all of article XV;
with the recommendation that it pass.
Claud R. Erickson, chairman.

For Committee Proposal 19 and the reasons submitted in support thereof, see below, page 593.

PRESIDENT NISBET: Referred to the committee of the whole and placed on the general orders calendar.

SECRETARY CHASE: The committee on legislative powers, by Mr. Hoxie, chairman, reports back to the convention **Exclusion Report 2003,** A report recommending the exclusion of article X, section 20; without amendment, and with the recommendation that the exclusion report pass.
T. Jefferson Hoxie, chairman.

For Exclusion Report 2003, as introduced by the committee on finance and taxation, and the reasons submitted in support thereof, see above, page 415.

PRESIDENT NISBET: Referred to the committee of the whole and placed on general orders.

SECRETARY CHASE: That is all of the standing committee reports.

PRESIDENT NISBET: Reports of select committees.

SECRETARY CHASE: None.

PRESIDENT NISBET: Communications from state officers.

SECRETARY CHASE: None.

PRESIDENT NISBET: Second reading of proposals.

SECRETARY CHASE: Nothing on that calendar, Mr. President.

PRESIDENT NISBET: Third reading of proposals.

SECRETARY CHASE: Nothing on that calendar, Mr. President.

PRESIDENT NISBET: Motions and resolutions.

SECRETARY CHASE: There are no resolutions on file, Mr. President.

PRESIDENT NISBET: Yesterday, Delegate Dade submitted the following parliamentary inquiry:

> Upon the completion of the revision by the 1961-62 constitutional convention, will this document be submitted to the electorate of the state of Michigan in its entirety for ratification, or article by article?

Article XVII, section 4 of the present constitution, as amended November 8, 1960, provides in part:

> Any proposed constitution or amendments adopted by such convention shall be submitted to the qualified electors in the manner provided by such convention.

Professor Pierce and Mr. Lowe, in their work on constitutional convention powers, state, on page 22:

> One of the most important problems to be faced by the convention will be the method to be chosen to govern the submission of the constitution to the electorate. The 1907 convention was bound to submit the constitution as a whole, but the 1961 convention will not be so limited. It has discretion to submit its proposals in any manner it should deem fit.

Accordingly, it is the opinion of the Chair in response to Delegate Dade's inquiry, that the proposed new constitution may be submitted to the people in any manner determined by resolution of this convention.

Special orders of the day.

SECRETARY CHASE: None.

PRESIDENT NISBET: General orders of the day.

The Chair recognizes Mr. Baginski.

MR. BAGINSKI: Mr. President, I move that the convention resolve itself into committee of the whole for the purpose of discussing items on the general orders calendar.

PRESIDENT NISBET: The question is on the motion of Mr. Baginski that the convention resolve itself into committee of the whole.

All those in favor say aye. Opposed, no.

The motion prevails.

May I make just one more statement before I relinquish the Chair. Yesterday for 3 hours we debated section 10. I hope that in today's discussion and debate we will not have to go back and review all the work that was done yesterday and all the arguments and questions that were raised. I trust that members of the convention will address themselves to the issue before them and make their remarks germane to the discussion in an effort to expedite the work of the convention.

Mr. Baginski, please proceed.

[Whereupon Mr. Baginski assumed the Chair to preside as chairman of the committee of the whole.]

CHAIRMAN BAGINSKI: The committee will be in order. We have before us from the committee on declaration of rights, suffrage and elections, by Mr. Pollock, chairman, **Committee Proposal 15,** A proposal to amend article II pertaining to the declaration of rights.

For last previous action by the committee of the whole on Committee Proposal 15, see above, page 488.

The Chair recognizes Dr. Pollock.

MR. POLLOCK: Mr. Chairman, as the committee resumes its consideration of the proposal of the committee on rights and specifically section 10, may I suggest, as the president of the convention has done, that since we have had such an adequate general debate, the delegates limit themselves to a brief discussion of the proposed clarifying amendments.

CHAIRMAN BAGINSKI: Mr. Downs.

MR. DOWNS: Mr. Chairman, I should like to speak in favor of the Hatch amendment, that appearing as "C" on the sheet listing pending amendments to committee Proposal 15, and I also wish to speak in support of the principles of amendments 2 and 3. Before speaking, I wish to express appreciation to Dr. Pollock and his committee for the very excellent presentation made and for the very fine way in which it handled this problem which has been a very difficult one in the history of mankind.

I believe that the language of these 3 amendments and the intent arises from a desire to provide people with protection from unreasonable searches and seizures as individual citizens and that the result will be that of protecting society by permitting reasonable or lawful search and seizure. The particular reason for my desiring to see this included in our state constitution, and not just in the federal constitution, is that it means that we would then have this historic right spelled out, clear cut, defined and protected, both in the state and federal constitutions.

I, for one, support the concept that a right this strong and this important should be protected in both the state and federal constitutions. Thank you.

CHAIRMAN BAGINSKI: Ladies and gentlemen, before we go any further with the action of this committee of the whole today, I am going to ask Secretary Chase to read a statement relative to the procedure on amendments to amendments, to substitutes, and so forth, and I would ask that each of you give your approval to that procedure.

SECRETARY CHASE: The procedure on amendments as generally followed and as approved by Mason is as follows:

1. Amendments to the pending amendment are to be disposed of before a substitute amendment will be taken

up. Only one amendment to the amendment is in order at one time.

2. Amendments to the substitute amendment, if any, are to be next voted on.

3. The substitute amendment will be next voted on. Both the amendment and the substitute amendment having been perfected and presented in final form, the committee will make its choice between the two.

4. The amendment is to be voted on last. If the substitute amendment has been agreed to, the vote then comes on the amendment as amended by the substitute.

CHAIRMAN BAGINSKI: Do I hear any objection to this procedure?

Hearing none, it will be adopted.

SECRETARY CHASE: Before we proceed, Mr. Chairman, may the secretary, on behalf of the reporter, make this request. If you have some brief or some particular statement from which you read during the course of your remarks, the reporter would appreciate receiving a copy of it so that this may help insure the accuracy of the reporting.

CHAIRMAN BAGINSKI: Before proceeding, ladies and gentlemen, the Chair will further state that yesterday afternoon a number of delegates rose to speak and their names were placed on the list. These delegates wanted to talk. We will hear them in the proper order.

The Chair at this time will ask the secretary to read aloud what is before the committee of the whole for its consideration today.

SECRETARY CHASE: Pending at this time is the amendment offered by Mr. Prettie which appears as item 1 on the mimeographed sheet of pending amendments to Committee Proposal 15, copies of which have been distributed and are now before the delegates. Mr. Prettie's amendment reads as follows:

[The amendment was again read by the secretary. For text, see above, page 494.]

To this amendment, Mr. W. F. Hanna has offered an amendment which is now pending:

[The amendment to the Prettie amendment was again read by the secretary. For text, see above, page 497.]

CHAIRMAN BAGINSKI: The question is now on Mr. Hanna's amendment to the Prettie amendment. The Chair will recognize Mr. Sharpe.

MR. SHARPE: Mr. Chairman, ladies and gentlemen of the committee, I rise to express my views on this question at this time. Yesterday, I yielded my privilege. Today I asked for it back, and through the courtesy of Mr. Boothby who is on the docket next, he yielded. I am not an orator. I do not have straight in my mind the law about which we heard yesterday — and I am not so sure that we want to hear any more of it, anyway. (laughter) I told someone that I was going to make a farmer's speech but I am going to leave out a few of the farmer's words.

This document which I have here is, I think, the best that has been prepared on this subject. I prepared it last Saturday, as a matter of fact, on my wife's kitchen table. She said, "If you are going to keep this up, I am going to leave you, and move out." But, in any event, I will read this thing verbatim — or nearly so — hoping that you will bear with me if I become a little shaky here, and I probably will. My father told me one time that it takes a smarter man to sit down and shut up than to stand up and talk. And so I will not talk too much. My statement is as follows:

Since it has come to my attention that the committee on rights, suffrage and elections has recommended the deletion of the major part of section 10 by a vote of 8 to 7, I have found myself acting contrary, taking a different position from that which many of you have previously heard me recommend. That is that we should, by and large, take the recommendation of the committee as being the "last word" in sound judgment.

I have attended every session of the convention since its opening and, as you know, I have been saving my words on unimportant matters for occasions such as this.

This proposal to delete from our constitution the amendment of 1936 permitting the introduction of certain weapons in evidence, and the amendment of 1952 permitting the introduction of narcotics into evidence, whenever the same are seized outside the curtilage of a dwelling house, should command our serious attention. These amendments were added to the 1908 constitution after proper deliberation and following a 5 to 1 vote of the people of the state of Michigan. And I say the will of the people is the supreme law of the land. This section, incidentally, is not a part of the so called "horse and buggy" constitution, since its last revision was less than 10 years ago.

Let us not forget that these amendments were considered necessary in order to enable the police to effectively combat gangsterism and traffic in narcotics. What are your proponents of this change going to tell the mother whose daughter is involved with a dope pusher who is given license to carry narcotics without the threat of having it used against him in court? I am well aware that the constitution must protect the rights of the people and that we, as delegates to this convention, should not be permitted to transgress against the rights of the individual. However, we must have the proper regard for the rights of society as well as the duties imposed upon law enforcement officials by the people.

A police officer, as well as a prosecuting attorney, is bound by our constitution in performing his duties. Protection of our society should not be suppressed — law enforcing officers must have the backing of every honest citizen. They must continue to achieve victory over those in our state who are habitually committing crimes against our society. The liberty of the honest, hard working citizen must be protected from the racketeers and hoodlums. They have never worked, nor do they intend to.

This provision relating to search and seizure should not be weakened. We, I am sure, want to live in a state of which we can be proud, with honor and integrity, and not in a state that is full of corruption. Let us stiffen the backbone of our state. And for heaven's sake let us not relax our guard against the thugs and murderers. The hands of our law enforcement people should not be tied so that they cannot perform their duties, the duties which they have sworn to perform to the best of their ability.

I presume that the proponents of the movement to strike out these provisions are motivated by one or more of the civil rights groups, and possibly they honestly feel that the rights of the individual are transgressed by these clauses. However, I do not see how any individual here could object to a clause permitting the seizure of illegally carried guns or narcotics.

I am well aware of the decisions of our supreme court in the cases of the People v. Gonzales, and the People v. Zeigler. These cases carefully define the rights of a police officer to search an automobile on the highway. The Gonzales decision held that the constitutional amendment was not in violation of the United States constitution. I really wish to emphasize that and so I repeat: the amendment is not repugnant to the United States constitution.

I would guess that the officer who stops an automobile for a traffic violation and finds in it ½ dozen stolen typewriters or some other stolen goods, only to have the evidence suppressed, would be discouraged, to say the least, but I ask you this question. Would you want a similar circumstance to obtain if, instead of typewriters, the officer were to discover a quantity of illegal narcotics? Would you like to sit back and watch the narcotics peddler go on his merry, illegal way? Illegally carried weapons and narcotics are certainly 2 items which should not be carried by the violator under the immunity given to that violator by ourselves as delegates to this constitutional convention.

If these clauses come out of the constitution, as has been recommended by the committee, a police officer, in order to prosecute, will have to have advance information that is reliable to the effect that such narcotics or guns are actually

being carried in the specific automobile, before he stops it for search or seizure.

If the criminal is given a license to carry his tools, in the same fashion as the carpenter, the plumber, — and, yes, even the lawyer — this will encourage the cunning, law defying individual to undermine every branch of society in our state.

I would not wish to be guilty of following the rule of appeasement, regardless of any pressure to which I might be subjected. I do not believe in giving up, in surrendering, essential liberties that the people of the state of Michigan saw the need for and in respect of which passed the present amendment that we are asked to delete from the new constitution.

Let us not be taken in by some cock and bull story about some people being unduly harassed. Let us demonstrate leadership and integrity by protecting the honest, upright, hard working citizen.

I urge you to vote against the proposal to delete these clauses from our constitution. Be careful that you do not — in effect — license persons to carry narcotics, guns, bombs, et cetera, under the protection of the law of our state.

I thank the committee for its indulgence.

CHAIRMAN BAGINSKI: The question now is on Mr. Hanna's amendment to the amendment.

Mr. Boothby.

MR. BOOTHBY: Mr. Chairman, fellow delegates, I rise to oppose the Hanna amendment and, of course, necessarily must speak to the other amendments which are on the floor. The reason for my rising at this time is because of the fact that Mr. Brown and other individuals have raised the 2 cases which have been recently decided by the circuit court in the state of Michigan, one of them being a case which occurred in Berrien county. I wish to speak with respect to this particular matter because I am familiar with this case, being a member of the prosecutor's office of Berrien county.

That case was entitled the People of the State of Michigan v. George Washington. And incidentally, this is a different George Washington from the gentleman of the same name who served as president of the United States. (laughter) This matter arose out of a factual situation which occurred on July 9, 1961. It is correct to say that our circuit court, in a much publicized decision, indicated that the facts were controlled by the Mapp decision.

The facts in this case are concerned with the provision in our constitution dealing with section 10 of article II. However, I think it might be of some value for you to know that at the present time the case of the People v. Washington is being appealed to the Michigan supreme court. I also understand that the other circuit court decision is also being appealed to the Supreme Court of the State of Michigan.

At the present time, we have on the books a decision of the supreme court of this state, the People v. Gonzales, which has held that the proviso in our present constitution is constitutional and that matters which are seized, that come within this provision, may be introduced into evidence even though they may be obtained under an illegal search or seizure.

I thought it might be of some benefit to the committee if I were to read a portion of the brief which was filed by the prosecutor's office in the case of the People v. Washington because it touches on this issue. I think possibly it pinpoints the distinction between the matters which we have before the committee at this time and those in the Mapp case. Reading now from the brief:

> It is the contention of defense counsel that the question of whether or not the search of respondent Washington was reasonable is in no way affected by the following provision:
>
> > The person, houses, papers and possessions of every person shall be secure from unreasonable searches and seizures. No warrant to search any place or to seize any person or things shall issue without describing them, nor without probable cause, supported by oath or affirmation: Provided however, That the provisions of this section shall not be construed to bar from evidence in any court of criminal jurisdiction, or in any criminal proceeding held before any magistrate or justice of the peace, any narcotic drug or drugs, any firearm, rifle, pistol, revolver, automatic pistol, machine gun, bomb, bomb shell, explosive, blackjack, slungshot, billy, metallic knuckles, gas ejecting device, or any other dangerous weapon or thing, seized by any peace officer outside the curtilage of any dwelling house in this state.

This was article II, section 10 of the Michigan Constitution of 1908, as amended in 1952.

This position is based solely and entirely on counsel's interpretation of the United States supreme court decision in Mapp v. Ohio, 367 United States, 643, 81 Supreme Court 1684 (1961), in which counsel contends renders the Michigan constitutional provision above quoted void and of no validity or effect.

Prior to the decision in Mapp v. Ohio, supra, the United States supreme court had adhered to the rule handed down in Wolf v. Colorado, 338 United States, 25, 69 Supreme Court 1359 (1949), viz., that a conviction obtained in a state court on evidence obtained without a warrant and as the result of an unreasonable search and seizure did not offend the due process clause of the fourteenth amendment of the federal constitution. In the same opinion, however, the supreme court stated further that unchecked lawlessness by a state would not be tolerated and could very well be found to violate the federal guarantee.

And then it is quoted:

> We have no hesitation in saying that were a state affirmatively to sanction such police incursion into privacy it would run counter to the guarantee of the fourteenth amendment. (Frankfurter, J.)

And then it continues:

> Hence, even prior to the overthrow of Wolf by the Mapp decision, the law of the land was clear: the statutes and constitutional provisions of each sovereign state would control until such time that those same provisions, or their application and interpretation at the state level, became intolerable and offensive to common decency and honesty.

Said the court in Mapp:

> Today we once again examine Wolf's constitutional documentation of the right to privacy free from unreasonable state intrusion and, after its dozen years on our books, are led by it to close the only courtroom door remaining open to evidence secured by official lawlessness in flagrant abuse of that basic right, reserved to all persons as a specific guarantee against that very same unlawful conduct. (Clark, J.)

It is contended by the people that a comparison of the facts in Mapp v. Ohio, supra, with those in the case at bar make the decision in Mapp understandable and laudable, and further that the Mapp rule does not operate to render void the provision in the state constitution.

Miss Mapp lived on the second floor of a 2 family residence. She was suspected by police to have in her possession obscene literature, contrary to the Ohio criminal code.

Three police officers arrived at her home and demanded entrance. Miss Mapp telephoned her attorney and was advised to deny the officers unless they presented a search warrant.

The officers left the premises and returned some 3 hours later. When Miss Mapp did not respond to their knock at her door, the officers broke down several doors and entered the house.

Miss Mapp demanded to see the search warrant. The officers waved a paper before her, implying that it was a warrant. Miss Mapp demanded that she be allowed to inspect it, grabbed the paper and placed it in her bosom. Several of the officers thereupon seized her, retrieved the paper, twisted her arm, put handcuffs on her, and forced her to accompany them to her bedroom.

Once there, the officers searched Miss Mapp's dresser, a chest of drawers, a closet, and some suitcases. They looked at a photo album and other personal papers.

They then searched a second bedroom, the living room, the kitchen, a dinette. The basement of the house was also searched and a trunk opened and inspected.

During this entire time Miss Mapp was handcuffed. Her attorney appeared on the scene but the officers refused him admittance and would not permit him to communicate with his client.

During the course of this outrageous search, obscene literature was discovered. The Ohio supreme court upheld the conviction that followed with obvious reluctance, stating that the conviction was valid though based primarily upon the introduction in evidence of lewd and lascivious books and pictures unlawfully seized during an unlawful search of defendant's home . . .

Moreover, no warrant was introduced at the trial; it was apparent that a warrant had not been obtained.

And continuing:

Let us consider the various factors which render the Mapp factual situation so vastly different from the instant case.

The search was of a woman's house, not of her person, following her valid arrest for a traffic violation. There is nothing to indicate that Miss Mapp tried to escape or to destroy the literature found in her possession. The officers had to break down doors to gain admittance. They had had ample time in which to procure a search warrant and had failed to do so. Their search was not confined to a wallet, but to Miss Mapp's entire dwelling. They refused her the benefit of counsel and the entire scene is accompanied by continued violence.

It is the position of the people that this is the very conduct which was intended to be outlawed by the supreme court in Mapp as "official lawlessness" and "flagrant abuse" of the individual's basic security.

It is also the people's position that the Mapp decision was not intended to overthrow the provision in the Michigan constitution nor to prevent its reasonable use to the end that the people of the state of Michigan may be the better protected from traffic in narcotics.

Now, I submit to you that this certainly comes within a situation that is a flagrant abuse. But that is certainly a situation different from the one being considered before this constitutional convention — to merely exclude certain evidence.

I should now like to make a couple of additional comments. It has been suggested that there is some degree of comparison between a forced confession — forced confessions which are not admissible in evidence — and matter being introduced in evidence in compliance with our constitutional provision.

There is no duplication here nor is there any similarity or possible basis of comparison. In a coerced confession you have a great degree of doubt as to whether it is a true confession. But when you find a gun in an automobile, there is no question that it is a gun. When you find narcotics in an automobile, there is no question but that it is narcotics. When you have a forced confession, there is certainly grave doubt as to whether it is an actual confession, freely given. So there is a distinction between forced confessions and evidence found in an automobile.

Now, there has been a question raised as to why, since the federal government has not had a problem with the federal bureau of investigation, with this rule of evidence that the federal court has against the admissibility of evidence relating to matters found in searches and seizures, the state cannot abide by the same program the federal government has. And then they refer to the F.B.I. That is the argument raised.

The F.B.I. is only an investigative body. They do not ride around in squad cars. They do not have a situation similar to that of the police of the state of Michigan in terms of ferreting out criminal offenses.

Again, it was pointed out by Mr. Faxon that in our 1908 constitution we did not have the proviso that is now contained in section 10 of article II. And I agree with you, Mr. Faxon, because in 1908 the common law of the state of Michigan was that you could introduce into evidence matters which were found in illegal searches and seizures. It was only some time later that the court changed the common law and for that reason it was necessary to include the 1937 and 1952 amendments to the Michigan constitution. And that is the reason why it is presently there and why the people of the state of Michigan put it there.

I should like to submit this one further thought. But first, I think I need to point out one thing. The introduction of a matter into evidence is one thing. A false arrest suit is another thing. You do have a remedy when there has been an unlawful search and seizure, as was pointed out in People v. Gonzales. You have the remedy of a false arrest suit.

I submit that when a crime has been committed the people of the state, acting through the prosecutor's office, should not be bound by the single act of an investigative officer. The wrong of a police officer should not be imputed to the prosecutor's office or the people of the state. I submit that the wrong of an individual officer should be dealt with by the proper action against the wrongdoer and I would submit that this can be done by a civil suit for false arrest.

Now, I understand that some people think that that is not a sufficient remedy. But at least I can assure you from my own bailiwick that after a false arrest suit was brought in the city of Benton Harbor, our police officers were very concerned about false arrest suits. We have a case going up to the Michigan supreme court on this very constitutional issue. And I understand there is one coming on in the Ingham county circuit on this very constitutional issue.

As Judge Pugsley has well pointed out, we are not a court of last resort; in fact, we are not even a court. We are only the meeting of the sovereign people of the state of Michigan. In 1952 the sovereign people of the state of Michigan spoke. And I submit to you that if we want to determine what is correct and what the proper decision is on this constitutional question, it is best to leave this to the courts, as I have previously said.

Since honest people do differ in this body, have honest differences of opinion, and since lawyers also differ in this body, it would seem that it would be best to leave it to the Supreme Court of the State of Michigan to decide if we are going to overrule the case of the People v. Gonzales. And we will not have to wait long for this decision, there being 2 cases that are now scheduled to go up to the supreme court for decision.

Thank you very much.

CHAIRMAN BAGINSKI: The question is now on the Hanna amendment to the amendment.

Mr. Brake.

MR. BRAKE: Mr. Chairman and ladies and gentlemen of the committee, I would not presume upon the time of this committee, either with or without the admonition of the president and the chairman of the committee, if I did not think that there was a viewpoint which has not been expressed and which ought to be expressed before we come to a vote on this question.

I cannot regard the action of the rights committee in leaving this item out of the constitution as an isolated instance. We have running through government, in most of its phases, fashions and styles that we change almost as thoughtlessly and as unreasonably sometimes, as we change fashion in clothes. Some of that is evident already.

I have been interested in how many of our present styles are coming from Alaska, Hawaii and New Jersey. But in the field of law enforcement we have a fashion and it is a recent fashion. And that fashion is to lean over backwards in trying to give a person accused of crime every possible right, every possible advantage, and, to borrow a phrase from the past, "let the public be damned." It is not a case of whether we are going to protect the accused or protect the officer; it is a question of how far we are going to go in seeing to it that the accused has his rights and forgetting completely the necessity of the protection of the public from dangerous criminals. And people who run around with ammunition and guns and explosives and narcotics in their cars, are dangerous to the public.

I think we ought to examine this situation in its proper perspective. I simply want to show you some of the things that have been done very recently in following this trend which to me seems to be a dangerous trend. And the strange part of it is that it comes at a time when the crime rate in this United

States is the highest in the history of the country. It is so high that it lacks very little of being a national disgrace.

Now in Michigan 2 lawyers at least on the floor here yesterday stated that you can search a car, or make a search of anything, after you have made an arrest. Unfortunately, that is no longer the law of Michigan. It was the law for many years, a well established law for many years. And if you like to look through political eyes, the last 2 opinions were written, one by a Republican, Justice Clark, and the other by a Democrat, Justice Bushnell. Under that, police officers did search cars after they had made an arrest. They thought they had a right to; the court had said they had a right to; and in doing so they protected the public from a tremendous number of dangerous criminals.

That is no longer the law. By dictum in the Gonzales case, by direct decision in the Ziegler case and the Winkle case which followed, our court has now laid down the rule that the arrest does not give you the right to search. The arrest, of course, even when you had the right to search, had to be a genuine arrest, not just arrest on a pretext. But you had the right to search after you had made the arrest.

Our court in 1962 took another step — this is a step which makes it difficult for law enforcement officers — and that was in the Hamilton case which came up in Detroit. And it was a tough case; it is one of those cases that makes bad law.

But there, in the question of a confession — it always has been the law that an involuntary confession is not admissible in evidence and it ought not to be admissible because it is not reliable. May I call your attention to the fact that that is generally the reason for excluding evidence, the fact that it is not reliable; it may not be the truth. That is the reason we exclude hearsay — but in this case it was a confession and the court held it to be involuntary and therefore it should not have been admitted.

The difference is this. It has always been the law that the question of whether or not the confession was voluntary was a question of fact for the jury. Now, in Michigan the law is that it is a question of law for the courts. And that is a stumbling block for police officers who are trying to protect the public from dangerous criminals.

Now, I wish to review what has happened on the federal level. I think we have had painted a very incorrect picture, so far in this discussion, as to what has taken place. It is true that 50 years or so ago the federal court decided that they would not admit in federal courts illegally obtained evidence. But under what conditions? Only — and I repeat, only — if the federal officers were the ones who made the illegal search. If the search were made by state officers or by a local police officer, they still admitted it. In other words, it was just a matter of disciplining the federal officers.

But recently they have changed that and they said that no matter who made the search it would not be admissible. And — when you have in mind that the federal officers were abusing the thing, they got the state officers and the local officers to do what they could not do themselves — it was not surprising that the court made that change, but it didn't stop there. They made a decision then which makes anyone's hair stand on end who has any regard for state's rights; an unusual decision. Before that, always what was a question as to what was legal and what was illegal was to be decided in the state involved. And if the supreme court of the state involved said "this act is legal" the federal court did not go back of it.

For instance, in Michigan we have had the law that after you have made an arrest you can make a search. If that kind of case came into the federal court, they would say, "Okay, that is the state law; that is enough to make it legal here." But the Supreme Court of the United States has now gone to the extent of saying, "We will for ourselves determine what is illegal and what is legal in terms of searches in any state regardless of what the supreme court of the state has said about that question."

Then, of course, they went on to the Mapp case. The language in the Mapp case encompasses what we have here. You take the language of the 4 justices who agreed, for instance. The decision does not.

In the old days lawyers relied on what courts decided and paid little attention to the superfluous language that we ordinarily speak of as dictum. I don't know now what lawyers can rely upon in these days when it is so difficult to distinguish the work of the legislators who dress in business clothes and the work of the legislators who are garbed in black robes.

But whatever we may be able to depend upon, I have in my hand a petition filed in the Supreme Court of the United States asking for a rehearing in the Mapp case. The case was not argued as it was determined. The state of Ohio had no warning that the court might go off on a tangent and use the language that it did use and they are asking for the privilege of presenting their side of that particular question. I do not know what the court will do with it. But it is pending in the Supreme Court of the United States.

Now, if this fashion that we are following goes on, very likely when the Supreme Court of the United States gets to our case, they will throw this out. But who knows how long this will go on? At some time or other we are going to turn back from this trend and start paying some attention to the protection that the public needs. Maybe that time is now. Maybe the pendulum has swung as far as it is going to swing and we will start back to balance, and "balance" is the big word.

Certainly we must protect the right of a person accused of crime — just as we must certainly protect the public against dangerous criminals. Those 2 ideas are in conflict. Good service to the public requires that we get a good balance between them and not go to any extreme; and that runs true all through government. Maybe the pendulum now starts to swing back to balance. I hope so. The public will be better off if it does.

As for me, I shall vote for the Prettie amendment.

CHAIRMAN BAGINSKI: The question now is on the Hanna amendment to the amendment.

Mr. Danhof.

MR. DANHOF: If you please, Mr. Chairman, when I asked yesterday to be heard, I was speaking also on behalf of Mr. Prettie who has since returned, and basically can take up for himself a number of the items on which I was going to talk.

I would only state this: that when we vote, we have heard a lot about voting in a calm, cool, collected manner. I have heard a lot of talk which has bothered me somewhat.

It was my privilege to spend some 7½ years in a law enforcement agency of the United States and I wish to state that I have been greatly perturbed about the statement that the question is whether we are or are not going to continue a police state in the state of Michigan. This has not been the fact.

I am greatly perturbed when an inference, or a direct statement is made, that by voting for the amendment offered by Mr. Prettie, we will be encouraging or fostering or even intending to start a gestapo type operation in the state of Michigan. This infers that by reason of the amendments of 1936 and of 1952 we have had this in the past. This, I submit, is not true.

By and large, the law enforcement officers of this state — for the salaries that they receive from the municipalities which each one of us come from, be it city, township, or county — do a tremendous job on behalf of the public. The question here is not to discipline police officers, state police or deputy sheriffs. The question is on a rule of evidence.

The upgrading of our police departments and our sheriff's departments is not a question of this rule or of any other. I think it is unfortunate that there has ever been brought into play — or rather brought into question — the integrity, the honesty and the hard working ability of our law enforcement officers. And I, for one, hope that when eventually we vote on this, it is not upon that particular item.

As to the other points, I think Mr. Prettie should speak to his own amendment. Yesterday I was speaking on his behalf.

Thank you.

CHAIRMAN BAGINSKI: Mr. Stevens.

MR. STEVENS: Mr. Chairman and fellow delegates, I have discarded my 50 page address. I simply want to make an announcement to correct a mistake which seems to exist in

the minds of some delegates. The committee, it is true, voted unanimously to submit this. It is also true that the committee voted by a vote of 7 for and 8 against reconsidering The original vote was a compromise between the idea of retaining the provision and the idea of striking it entirely. The vote to reconsider was with the purpose of again voting to retain the present provision.

Now, I make this statement only to make it clear that the committee was about equally divided in the matter. Thank you, Mr. Chairman.

CHAIRMAN BAGINSKI: The question now in on the Hanna amendment to the Prettie amendment.

The Chair will recognize Mr. Habermehl. Mr. Habermehl, will you speak on the Hanna amendment or on your own amendment? Of course, your own amendment cannot be presented at this time.

MR. HABERMEHL: Mr. Chairman, fellow delegates, I wish to speak on the Hanna amendment, and, of course, necessarily, on the Prettie amendment. It seems to me that we have spent 2 days here trying to do the work of the courts. I think it might come as quite a relief to nonlawyer members of this convention for me to make the statement that we cannot do the work of the courts and we cannot pass rules of evidence.

I think the question is considerably more fundamental than that. When we think of the constitutionally guaranteed rights, we think of rights that individuals have against any encroachment by any branch of government. We consider them to be so fundamental to the basic rights of individuals that no branch of government has any right to infringe or encroach upon such rights.

Now, that idea has been many, many years in developing, and of course, the federal constitution, in the bill of rights, reinstated the English common law doctrine. As a matter of fact, if you remember your history, without the first 10 amendments, the socalled bill of rights, the federal constitution would never have been adopted. People felt that strongly about a constitutionally guaranteed right.

Now, the federal government said that congress shall pass no act; and I do not think there is any question here but what the federal constitution in article IV, section 4 — you will find it on page 45 of your blue book; you will find it much easier by looking at the Bledsoe and Donnelly amendment on your desks — did intend to guarantee the rights of individuals against an unreasonable search and seizure. And note the use of the word "unreasonable". Not all searches and seizures but just unreasonable searches and seizures.

Now we did, in 1908, in the constitutional provisions adopted at that time, actually reenact or restate the federal guarantee.

I would not question but what the state of Michigan has some rights in this field that have not been preempted by the federal government. But I would very seriously question that they would have any right to limit or abridge a constitutional guarantee, the type of right which no government is empowered to abridge or limit.

If the state of Michigan, in other words, chose to extend this and grant the individual more freedom, more rights than he enjoys as a United States' citizen, I think it would have the right to do it. But no question of state's rights is involved here in the issue before us. Neither congress nor the states can abridge these constitutional guarantees. The language of the 1908 amendment did exactly what the federal rule or the federal provision does now. I do not remember the dates, but the people of this state saw fit to add an amendment to that provision, to section 10.

I do not think that any of us here today would question but what that abridged, that limited, that somewhat encroached upon the right of a person to be secure from an unreasonable search and seizure. Now, that might be a legal question. If it is a legal question, let us argue it in the courts. I think it was intended to do exactly that, and that is why it was made in the form of an amendment to section 10. It was intended to abridge that right.

Now, I call your attention again to the blue book, on page 49. About the middle of section 1 of article 14, it says, "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; . . ."

We are not a court here. The court is bound by rules that we are not bound by. One of the most important rules of construction in any court is that if the court has any possible way of avoiding holding a statute unconstitutional, it will do so. It will seize upon any other basis for a decision rather than contest the constitutionality of a statute.

That is not our problem here. We are a law making body for the state of Michigan. The question before this committee then, is simply this, do we, the law making body, make the law that would abridge the protection afforded by the fourth amendment? And the fourteenth amendment says simply that we do not have that right as a law making body. We are not a deputy sheriff or a state trooper or a constable making an arrest. We are here making law. We are not the supreme court of Michigan nor the supreme court of the United States which are bound by certain other precedents and certain rules of construction which do not apply to us. We are concerned here simply with that one sentence in section 1 of article XIV of the United States constitution which says, "No state shall make any law abridging . . . the rights or the privileges or the immunities of the federal constitution. . . ." I am paraphrasing, really, in this instance.

We are all citizens of the United States; and no state — and certainly not this body — has the right to abridge what rights, privileges or immunities we enjoy as United States citizens.

I think all of you would agree that it could not be otherwise. We could not have a certain right or privilege or immunity against an unreasonable search and seizure in the state of Ohio, only to lose it when we cross the state line. This right must be enjoyed by all United States citizens regardless of where they might reside; and no law making body has the right to abridge it.

For that reason I would oppose the Hanna amendment principally on the ground that while it does take some of the sting out of the Prettie amendment, it does not actually go far enough.

I would oppose the Prettie amendment because it clearly and very obviously is an abridgement of a right all of us enjoy as individuals and as citizens of the United States. Now, I very seriously question whether this body would have any such right to so abridge that immunity or privilege we enjoy as United States' citizens.

Thank you.

CHAIRMAN BAGINSKI: The question is on the Hanna amendment to the Prettie amendment.

The Chair will recognize Mr. Downs. He indicated yesterday that he wanted to talk.

MR. DOWNS: Thank you very much, Mr. Chairman, but I have made my comments at the first of today's session. If I was out of order of seniority, I apologize to the committee.

CHAIRMAN BAGINSKI: Very well. Mr. Greene.

MR. GREENE: Mr. Chairman, members of the committee, I hope to bring you a relief, in a sense, from the type of testimony or remarks, evaluations, or what have you, that you have been hearing for the last 2 days, and to bring you comments, truisms, that probably you have not been exposed to, or understood.

Now, I have no citations. I acknowledge or accept, for my personal interest, the fact that I cannot discuss language — and I put the word "language" in quotation marks — with you. But I do come to you to give you, probably, the views of one who is closer to this matter than likely any of you, including the law enforcement person with 7½ years' experience, for I am still, with the exception of the leave of absence I now enjoy, engaged in law enforcement.

In a dramatic way, let me say: I'm a cop. And as a cop, I do not get secondhand the impact of the provisions of 1936 and 1952 that many of you receive. I pay special deference to the judges and to the attorneys, Mr. Boothby, and to prosecutors on leave.

And I say unequivocally that the deleted articles that now appear in the constitution are absolutely no good. I say this

realizing that I take certain personal security job risks, but from the 10 years that I have been in law enforcement, I have been able to make certain evaluations and I know that the articles, or rather the amendments that we refer to, have given the presumption of false license, to disregard the total concept of the section on illegal search and seizure.

And is so happens that I am fraternal leader of a secular organization that has been in the state of Michigan for better than 120 years, composed, if you please, of good and true citizens — by careful choosing, or permission, to belong to us — I repeat, of good citizens.

It was necessary, because of a false premise of license, for me to print last year and to distribute to all of them a document which would tell them how they must react to search, to arrest, and to all of the things embodied, if you please, in the matter we have before us.

Over and beyond this, for fear you may have forgotten, I am a cop; but because of certain natural identifications ordained by God which I am not ashamed of, I, too, have been subjected to the abuse that obtains from these 2 provisions in our constitution, 6 times in the 10 years that I have been a law enforcement officer. The first time found me subjected to physical contact, while I was attempting to identify myself. The other 5 times, I deliberately refused to identify myself up to a certain point so that for my own edification I would be able to ascertain the reaction of those who were searching me.

And I say to you, not in relation to the technical aspects of the Mapp case or of any other case, I say to you in behalf of human dignity, that I do not see how anyone here who daily stands on his feet and listens and subjects himself to the prayers that are offered on our behalf in a democratic and Christian spirit, how we can continue to permit the inclusion of the provisions we refer to.

Remember, I am a cop. (applause)

CHAIRMAN BAGINSKI: The question is on the Hanna amendment to the Prettie amendment.

The Chair will recognize Mr. Youngblood.

MR. YOUNGBLOOD: Mr. Chairman, I should like to speak also as a law enforcement officer in the county of Wayne.

I do not believe any of the provisos that are in the present constitution are necessary. As it reads, up to the provisos, we are protected both as police officers and as citizens. Both the police officers and the citizens are protected.

The words "unreasonable search" are very big words and they can be used in many ways. If an illegal search is made, the people have the right to sue the police officer, and I think, too, with the proper schooling, you are not going to have incidents like you have had in the Mapp case. Those officers evidently were not schooled properly. I say that because we are not like that in Wayne county.

I am in favor of dealing with the matter in this way. I am in favor of deleting all of the provisos in this section.

Thank you.

CHAIRMAN BAGINSKI: The question is now on the Hanna amendment to the Prettie amendment.

The Chair recognizes Mr. Bledsoe. Are you going to talk on the Hanna amendment, Mr. Bledsoe, or on your own?

MR. BLEDSOE: Mr. Chairman, my fellow colleagues, I had hoped that it would be possible for me, if I may use the term, since our committee has done such a magnificent job in this area of rights, to let this cup pass.

I approach this matter from an entirely different point of view. I do not speak to you as a lawyer. I prefer to speak to you in the spirit of the town meeting.

When I think of what I have heard here, I want to express my appreciation for the magnificent contributions that each and every one of you made as you have discussed the sacred principles involved in this matter. To me, they are indeed sacred.

The nearest that someone got to this yesterday was when he mentioned George Washington and the second continental congress. It goes much further than that.

Ever since man, in his ceaseless effort and the ceaseless shuffling of his feet in pursuit of an area to build a better society, a better government, a better lair, a home with a fence around it, contemplated this area of rights — that is where it started.

Someone said — I believe it was Gladstone — speaking of our constitution, that it was the greatest document that had ever been stricken, as it were, overnight by the hand of man. I differ with him on that. Long before any pen had ever been dipped in the never fading ink that transcribed that document, the people who founded this great country of ours were on the move. The bill of rights, the continental congress, and America as we know it today — these constitute a result, an achievement. The bill of rights was picked up in progress.

Let us begin there. Let us not get into the emotional abyss of whether some police officer will or will not or may or may not catch a dope peddler. That is police work and I think the police are doing a good job and I have no quarrel with them. All of the paraphernalia that they need, the legislature will give to them.

We sit here in this room today, my colleagues, in the presence, spiritually, of the men and women who built this nation. We are a sovereign body here. The things that we do here are basic and fundamental. We are not interested here, as it were, as I said a moment ago, in whether or not some dope peddler may get away. By and large the majority of the people in this country are law abiding citizens. They are not dope peddlers. We did not build a society either for or against dope peddlers. We built society in order to bring into being a great nation, and this we have done, and we are going to keep it that way if we will only keep the proper balance.

I am a little ahead of my amendment here, on which my colleague, Miss Donnelly, will speak. But I may make reference to it, and in doing so, I want to beg your pardon and call your attention to article VI of the United States constitution. I am not going to read it all, just a part of it. You have it in your manual on your desks. There is nothing new about this.

And in support of article IV, that my colleague spoke about a moment ago, article VI of the United States constitution says simply this: ". . . and the judges of every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding. . . ." This refers to the constitution and laws of the United States which shall be made and which we recognize as the fundamental law of our land.

I wish to call your attention to this purported appeal with reference to one of the cases that has been discussed here. I have no hesitation in saying to you that it was used by one of my colleagues — I believe it is the same, is it not? — I am going to ask the chairman, since it has been referred to as an appeal of this case to the United States supreme court, an appeal for rehearing, — but I do not think my colleague read the top lines and I am going to read them for you.

I have in my hand a document which is entitled Articles, Reports and Notes of the National District Attorneys' Association, the headnote of which reads:

> This section of the journal has been added for the exclusive use of the national district attorneys' association. The selection and editing of the material contained herein is the sole responsibility of the association's representative, Mr. Duane R. Nedrud, a former prosecuting attorney, and a member of the association. However, neither Mr. Nedrud, the association, nor the journal assumes any responsibility for the views expressed by the authors of the articles appearing in this section.

Mr. Duane R. Nedrud is associate professor of law, University of Kansas City, Kansas City, Missouri. The article is entitled Petition for Rehearing — Mapp v. Ohio.

I call your attention to the fact that this is apparently unauthenticated material, an apparently unauthenticated document. I have just read what was said by those sponsoring it — that is what they say about it. In conclusion, my colleagues, I wish to say this with reference to this fourth amendment. We who have to do here with writing this constitution are dealing with the basic law of our land. When the fathers of our country sat in similar edifices engaged in the same type of work, let me repeat they were engaged in building a struc-

ture — the blueprint of a structure — upon which a government and a nation could find and create a better way of life for its people.

And that is what is involved here. The law, the statutes, the constitution, the work of this committee, and all that has gone into making up the proposal that has been presented here, with reference to the rights of our people in an effort to secure those rights; all these things are completely in accord with the Constitution of the United States of which we are all proud and with which we have no quarrel.

I am going to ask you members of the committee, with reference to this proposal, that you remember that you have no need, in my humble judgment, for any qualms about supporting it. The question of search and seizure, and all illegal and unreasonable traverses upon the liberties of the people, are shrouded in this document.

I cannot escape the facts of harsh reality and I am sure you can't. In the past decade or so we have just gone through and experienced an occasion and a case when the liberties of the people, the basic liberties of the people, were forgotten. That story was wiped out by General Eisenhower. It is in the face of the crises — the great crises — that the basic law we must rely upon to defend the rights and liberties of our people is relied upon. The questions that belong to the police and to the statutory enactments of our legislature are separate and distinct from the basic law of our constitution.

I am going to ask you, in the light of that, to support this proposal as it has been presented on this floor by the committee.

CHAIRMAN BAGINSKI: The question now is on the Hanna amendment to the Prettie amendment.

Mr. Iverson.

MR. IVERSON: Mr. Chairman, on a point of order, we have heard arguments here, I believe from about 6 people in the last hour, and I seem to recall that the chairman announced that we were on the Hanna amendment. May we now have a vote on the Hanna amendment?

CHAIRMAN BAGINSKI: The answer will be, Mr. Iverson, that these people requested to speak on the Hanna amendment.

MR. IVERSON: Well, I have heard none do so as yet.

CHAIRMAN BAGINSKI: The Chair might point out and call attention to the fact that the next speakers should confine themselves as closely as possible to the Hanna amendment. I know it is pretty difficult to separate them, but I urge you to do the best you can to make your remarks germane to that amendment.

The Chair will recognize Mr. McAllister.

MR. McALLISTER: Mr. Chairman, fellow delegates, I will be brief. I would like to say that while I am a lawyer, I am not here in that capacity. I am here representing the people of Huron county district, and am speaking as their representative. Because of that, I oppose the Hanna amendment. It is not what I personally think. I have been on both sides of this proposition, as a prosecutor and as a defense attorney, and I am not giving, as I said, my personal opinion. The people of my area voted for substantially the content of the Prettie amendment some time ago and, since I represent them, I feel that it is my duty to do as they wish in this matter.

There is another angle here that has come up which I do not think is pertinent. One speaker, yesterday, stated that if he voted for the Prettie amendment, he would be violating his oath as a lawyer, given in support of the Constitution of the United States and the Constitution of the State of Michigan. It is my opinion that in a representative capacity he is not a lawyer, and no lawyer would be violating his oath by voting for the Prettie amendment. That is all I have to say.

Thank you.

CHAIRMAN BAGINSKI: Mr. Norris.

MR. NORRIS: Mr. Chairman, I should like to defer speaking at this time so that we can draw this particular matter to a head, but I would like to speak on this matter in favor of one of the other amendments at the appropriate time and would like to ask to be recognized at that juncture.

CHAIRMAN BAGINSKI: Mr. Pollock.

MR. POLLOCK: Mr. Chairman, as we vote upon these so called clarifying amendments, I can merely say this, occasioned by Mr. Danhof's remarks that the members of the committee all voted on the matter without any reference whatever to law enforcement officers as such. To imply, as some of the speakers have implied, that any of the members of the committee, any of them, were less diligent and alert in protecting society and law enforcement officers is wrong. Some of us differed. It happened to be that the majority differed as to the method and the means which would be provided for law enforcement officers. Some people look upon this as an exceedingly important question. Obviously we differ about this. But let us not leave the implication on the record that any of the members of this committee — the majority or minority — were inspired by any desire to weaken law enforcement. We are all just as strongly in support of legitimate and proper law enforcement as anybody else.

And, as we vote upon these amendments, I hope you will keep in mind the question of whether or not they are clarifying and improving without regard to any of these implications that have been so simply stated.

CHAIRMAN BAGINSKI: Mr. Martin.

MR. MARTIN: Mr. Chairman, I can be very brief. I will talk on the Hanna amendment which is, of course, related directly to the Prettie amendment.

It seems to me that all of us are sitting here bothered by the problem that this is the kind of question where, for some reasons, we might like to vote both ways. But we cannot do that.

Everybody believes that there should be the right of privacy and that it should not be invaded and that police officers should not make unreasonable searches and seizures. At the same time, everybody wishes to do what he or she can to make sure that crime does not spread and is not encouraged by whatever procedures we have.

Now, the one thing that has not been mentioned here is the background of this particular amendment, or these particular amendments. The background is the advent in the entire crime picture of the mobile vehicle, of the automobile.

When there was no automobile, there were very few problems of having rum runners or people trafficking in narcotics or people running in firearms or moving from place to place rapidly in getaways from burglaries, robberies or something of that kind. The advent of the automobile has created a problem in the enforcement of law which in many cases makes it almost impossible to solve, unless the officer can go on something less than a warrant because the automobile makes it possible to be gone before the warrant can be obtained. For this reason the officer often has to go on less cause, in making his arrest or in making his search and seizure, than might be the case where we were just dealing with the dwelling house or something of that kind. This is the origin, this is the background, of these amendments.

I know a little bit about this because some years ago when I was in the senate the problem came up with regard to the conservation laws and the right of search and seizure there. The supreme court threw out the provisions of the law which were clearly unconstitutional and it was necessary to pass some additional legislation. The problem, however, was essentially the same as the one before us.

Now, I do not agree with my colleague, Mr. Brake, that this is just a fashion, that the amendments of the committee are just a fashion. I do not think the committee was working in that way and certainly the right to freedom from invasion of privacy is not a fashion. I believe it was Mr. Brake who made that point.

But we have a provision in the constitution. It obviously seems to the people themselves to be of tremendous importance to have it there. Probably the people themselves, if you asked them, are not familiar with the particular provisions of law involved, and the search and seizure provisions, and so on; but they want some kind of protection if they can get it. So the provision is there.

The matter has come under the scrutiny of the supreme court in the Mapp case. There is grave doubt in my own mind, and I am sure in the minds of many of the lawyers

here, as to whether the Mapp case doesn't make these provisions entirely unconstitutional. But no man can tell until the court has passed on those questions. But, for that reason, it seems to me important that we give the court the opportunity to make a decision in this matter and that we should leave the provisions there substantially as they are at the present time.

For that reason I believe we should oppose the Hanna amendment and we should favor the Prettie amendment which will affect just that, and probably almost even before we leave this convention, perhaps, we may have a decision on this question which will materially clarify it and will preserve for the people whatever protection the supreme court says they are entitled to under this language.

CHAIRMAN BAGINSKI: The Chair will recognize Mr. Binkowski who has indicated that he wishes to speak to the Hanna amendment to the Prettie amendment at this time.

MR. BINKOWSKI: Mr. Chairman, I am not necessarily going to speak; I would like to ask a question. I am not going to read all of the document I have in my hand but in order to ask my question I will have to read a couple of paragraphs.

There was a speech made by Mr. Leo Farhat, the prosecuting attorney of Ingham county, on behalf of the prosecuting attorney's association, and I should like Mr. Norris or some other member of the committee to comment upon a few of the paragraphs from that speech which I should like to read to the entire committee with respect to the Mapp case. I do not know if this is necessarily germane to the Hanna amendment. I think it runs throughout all of the amendments. There are only about 4 paragraphs of this, so please bear with me. I quote:

> It is interesting to note that if Miss Mapp had been arrested in the state of Michigan she would never have been prosecuted and the evidence obtained by the illegal search and seizure would have been suppressed by the trial court.
>
> In the first place there is wide variance between pornographic pictures and narcotic drugs. But even assuming that the Michigan constitution proviso had been broad enough to include pornographic pictures, still the evidence would have been inadmissible because the search and seizure in the Mapp case was within the curtilage of the home.
>
> Also, in Michigan we have no rules of court similar to the one invoked by the courts of Ohio. What rules Michigan has, allowing such evidence, are those prescribed by the constitutional proviso.
>
> While perhaps not material to this subject it is also interesting to note that Michigan requires positive knowledge on the part of one seeking to obtain a search warrant while many states and the federal government allow a search warrant to be issued upon information and belief.

Going now to another paragraph:

> Thus, a proper analysis of the Mapp case indicates that the question before the United States supreme court in the determination of that case was whether or not there had been a violation of article IV of the federal constitution, to wit: an unreasonable search and seizure in the specific case.
>
> The court did not determine whether or not the people of a state, by the exercise of the police power inherent in their rights under article X of the federal constitution, could adopt an amendment similar to that adopted by the people of the state of Michigan.
>
> The fact that this particular decision in Mapp may have raised questions concerning our constitutional amendment can properly be laid on the natural contentiousness of attorneys.

There are 2 more portions — bear with me, please:

> With these guideposts and standards to go by, consider whether the provisions of article II, section 10 of our present Michigan constitution look unreasonable. Consider the danger to the people of the state from the illegal traffic in narcotic drugs and from the uncontrolled handling of dangerous weapons by agents of organized crime.
>
> Consider, also, that the constitutional provision limits the location which may be searched to one outside of the curtilage of a dwelling house in this state.
>
> Consider also that the limitation in the proviso is not to allow an unreasonable search and seizure, but to allow the admission of evidence in a court of criminal jurisdiction of limited articles.

The great jurist, Judge Learned Hand, was quoted by Justice Smith of the Michigan supreme court in People v. Gonzales as follows:

> The protection of the individual from oppression and abuse by the police and other enforcing officers is indeed a major interest in a free society; but so is the effective prosecution of crime, an interest which at times seems forgotten. Perfection is impossible; like other human institutions, criminal proceedings must be a compromise.
>
> That a state by a valid exercise of its police power does in effect limit the rights of the people under the federal constitution cannot be denied. Even our most basic rights, those of religious freedom, freedom of speech and the press, and the right to assemble peaceably are limited by the exercise of the state's police power.
>
> Freedom of religion is controlled or limited by statutes relative to obscenity and polygamy. The right of freedom of speech is limited by laws of slander and libel. The right of the people to assemble is limited by laws against syndicalism, communism, and organizations advocating the overthrow of government.
>
> The right to bear arms, guaranteed by the second amendment to the federal constitution, is limited by the state laws against carrying of concealed weapons.
>
> Is it not equally logical that the right of privacy should be limited by rules or laws against the use and carrying of dangerous items such as narcotics and weapons?

Those are not my words. I wish to emphasize that, before taking my seat. But because I was not in attendance at the committee hearings, as I believe most of us were not, I should like to get comments from the committee members, if that is possible.

CHAIRMAN BAGINSKI: Mr. Stevens.

MR. STEVENS: Mr. Chairman, I simply do not know what the question is.

MR. BINKOWSKI: There must be 2 sides to the question. Perhaps Mr. Norris would like to comment on those sections from the document which I have just read to the committee.

In other words, I think this of some importance. This is the presentation of the association of prosecuting attorneys of the state of Michigan, and I should like to hear from Mr. Norris or some other member of the committee, or anyone in the committee, as far as that goes, with respect to those items I quoted.

MR. STEVENS: Well, Mr. Chairman, will you permit me to answer this briefly? The committee considered all these things. There was no question that if this thing had happened in Michigan, the evidence would have been inadmissible. There is no argument about that. That was not the question. The committee seemed to be concerned with the dictum in the federal case. But nobody contended that in Michigan this evidence would have been admitted. That was not the question. The question here was: would evidence have been admitted if it were within the provisos of the Michigan constitution?

CHAIRMAN BAGINSKI: Mr. Norris, would you care to comment?

MR. NORRIS: Thank you, Mr. Chairman. The question really posed here boils down to this: what is the constitutional significance of the matters in the Mapp case with regard to the deliberations of this convention and this committee of the whole, particularly with regard to the Prettie amendment and the Hanna amendment?

I think we ought to recognize that what the supreme court was doing in the Mapp case was reflecting an historical judgment in the history of American constitutional jurisprudence. This was not a decision which was specifically applicable exclusively to the fact of the Mapp case. It was intended to ex-

plain or expound a theory of constitutional law to which Mr. Brake, in part, alluded. It was intended to open the court room door to all of the first 10 amendments to the Constitution of the United States through the fourteenth amendment, and make them applicable against the states, and it was in this context that we wanted to, and should now, appraise the Mapp case. This point has not been expounded and it should be expounded.

In a portion of the statement quoted by Mr. Binkowski there was an allusion to limitations on the freedoms of speech and the press and assembly. And it is indigenous to the subject matter when the justice so links the question of freedom of speech, press and assembly to unreasonable searches and seizures.

I say that because what has happened in the last 40 or 50 years in the supreme court's history is this. The court has said that those rights which are fundamental, which are implicit in a system of ordered liberty, are applicable and obligatory upon the states through the fourteenth amendment, which amendment says that no state shall deprive any person of life, liberty or property without due process of law.

So that there has been, if you will, a nationalization of the bill of rights, an exposition on the part of the courts to say that these rights are so fundamental, so implicit in a system of ordered liberty, that they are applicable to the states, and in those rights we include all of the rights of the first amendment, freedom of religion, speech, press and assembly, and the court has added, freedom from unreasonable searches and seizures.

And in the Mapp case, in order to implement that trend, it has stated that as an essential ingredient of the prohibition against unreasonable searches and seizures, such evidence which is obtained in violation of that prohibition shall not be admitted in any court, state or federal. And it does not get into the specific minutiae of the Mapp case. What it really does is say, in categorical, historical terms is that today we once again examine Wolf's constitutional documentation of the right to privacy, free from unreasonable state intrusion, and after its dozen years on our books are led by it to close the only courtroom door open to evidence secured by official lawlessness in flagrant abuse of that basic right reserved to all persons as a specific guarantee against that very same unlawful conduct. And this is not dictum. We hold that all evidence obtained by searches and seizures in violation of the constitutional guarantee is by that same authority inadmissible in a state court.

This decision was presaged and developed from Boyd to Weeks and then in 1959 through the Elkins case, the so called "silver platter" doctrine. In that case state officers who had obtained evidence inadmissible — I mean federal officers who had nothing to do with obtaining the inadmissible evidence — turned it over — the state turned it over to the federal government to be admitted — and the court excluded it in the federal court.

Under the silver platter doctrine state officers obtained evidence during the search which, if conducted by federal officers, would constitute an unreasonable search and seizure under the fourth amendment.

Under the Elkins case the Supreme Court of the United States threw out this silver platter doctrine and said that even though no federal officers were involved in securing the evidence in violation of the fourth amendment and only state officers were involved, the evidence was inadmissible in a federal court. The federal officers did not have anything to do with obtaining it. The state did. And yet the federal government did not admit this in evidence in the federal court.

And that was a step to the Mapp case. So this was not a matter of a decision that did not have any historical antecedents. They had been building this up for some time.

Yesterday, I think, Judge Dehnke indicated, and I respectfully watched in detail what he said, and I have been moved by various of his contributions to the convention, but I respectfully disagree with what I thought I understood him to say during the course of his remarks. He said that this was, in essence, a 4 to 4 decision. I wish to state to you that this was at least a 5 to 4 decision and could have been a 6 to 3 decision, depending upon some of the language here.

Now, Justice Clark wrote this decision and he spoke for himself and Justice Warren, Justice Douglas and Justice Brennan. And to this, Justice Black added a concurring opinion in which he said that the combined impact of the fourth amendment and the fifth amendment against compulsory testimony would, in his judgment, sustain the findings of the court. And, in addition to that, Mr. Justice Stewart said that while agreeing wholly with part one of Mr. Justice Harlan's dissenting opinion, "I express no view as to the merits of the constitutional issue which the courts today decide." So he leaves it open, and he is one of the persons who combine in the dissenting opinion.

So you could say that Justice Stewart leaves the matter open and 5 justices agreed with the decision of the Mapp case and 3 dissented. So you actually have a 5-3, and one reserving judgment with regard to it, and even one of the 3 gentlemen who wrote the dissenting opinion, Mr. Justice Harlan, said that had this matter been raised properly in the Ohio court, then he would have come to deal with the constitutional question. So he, too, leaves it open.

This is a landmark decision, and we are dealing with that matter here in this particular assembly, and we have a duty as a constitutional body, dealing with constitutional issues, to appraise the state of constitutionality of the matters before us.

But there are 2 issues. There is not only the question of constitutionality, there is the question of wisdom, and with regard to that I would say that there is this important proposition, and that is that a prohibition against unreasonable searches and seizures protects individual privacy, protects the right of people in their personal effects, their property, not only in automobiles, as Mr. Martin has suggested, but personally. The fact that automobiles might have come about recently does not preclude the fact that persons are excluded from the proviso of the Prettie amendment and from the proviso in the existing constitution.

I submit to you that if we are admonished by the ancient injunction that eternal vigilance is the price of liberty, we ought to exercise that vigilance here and continue the trend — not a fashion but a trend — in favor of expanding the function of the bill or rights, not only as a prohibition against unlawful conduct, or unconstitutional conduct, in relation to the federal authorities, but also in the states.

This is what America is all about. This bill of rights is what we export. This is what gives us moral stature throughout the world. This is what, I think, gives us the kind of authority to speak for people throughout the world. And we ought to support, I believe, the committee report and be against both the Hanna amendment and the Prettie amendment.

CHAIRMAN BAGINSKI: At this time the Chair will recognize Mr. Hodges and will admonish the speaker to confine himself to the Hanna amendment.

MR. HODGES: Mr. Chairman, fellow delegates, speaking in favor of the Hanna amendment, only because I think that it does the best it can with a bad situation, which is the Prettie amendment, I would only say to those who have argued that this — I am speaking of the Mapp case — that this is not a majority decision, that it starts out with Mr. Justice Clark speaking for the court, and as all attorneys know, the man who writes the majority opinion speaks for the court. The others speak as individuals on their dissent. But this is the Supreme Court of the United States speaking.

I would just reflect a minute — this has been done before — and recall how this case came about, the Mapp case. This is not an instance in which this issue was even raised in the lower court. Mr. Brake makes this point. I think this is an important point. This was not raised in the lower court, it was raised in an amicus brief filed, and the court went out of its way to pick this case up, not because of its peculiar facts in the situation or anything else but because it wanted to make this point, that it did not believe that state courts should use illegally obtained evidence.

Now, I think that all this boils down to this — disregarding the fact of what we may believe in this matter, it boils down to this question — are we going to accept the interposition argument of the south? This is what it boils down to, in my opinion.

Those that rise and say, "I don't like what the supreme court has said; I don't think it really said that and the facts are a little different" — are in this position. The south has been arguing for almost 10 years the Brown decision because each state says "Our segregation is a little bit different from that one, and let us wait until the court strikes it down."

I don't think we here should be in the position of interposing ourselves between what we know is federal supremacy — the decisions of the United States supreme court — and all I think we are doing is giving aid and comfort to this lunatic fringe in our country which is decrying the courts and castigating them continually. There are those in this country who want to hold our courts up to disrepute. And if we join in this folly — and I believe we are because we are proceeding here as a constitutional convention, and we cannot disregard what is being said by our courts. If this convention were not meeting at this time I could say, "all well and good, let's leave this decision to the state supreme court to apply it to these provisions and it will be dead anyway," and in my humble opinion this will be done before the people ever vote on this.

But this isn't the point. We have an obligation. We are meeting as a constitutional convention and we cannot disregard this, we cannot ignore it. And I beseech you — especially the attorneys here — and urge you to think of this, we are officers of the court. And I differ with my good friend behind me here. I think as attorneys we do have an obligation to consider these cases and I don't think we should find ourselves on the side of the lunatic fringe in this country and the dixiecrats from the south who try to impugn our courts by disregarding their decisions.

I thank you, Mr. Chairman.

MR. IVERSON: A point of order, Mr. Chairman.

CHAIRMAN BAGINSKI: State your point.

MR. IVERSON: Mr. Chairman, I have listened to these arguments and I would like to hear some argument on the Hanna amendment. If there is no argument on it, I would like to see a vote taken on the Hanna amendment.

CHAIRMAN BAGINSKI: Your point is well taken, Mr. Iverson.

Judge Mosier?

MR. MOSIER: Mr. Chairman, I propose to speak on the Hanna amendment as it amends the Prettie amendment.

Mr. Chairman and fellow delegates, I wish to speak briefly upon a point which I do not think has been properly elaborated before this committee. In 1791, the constitution was amended by the bill of rights, and article IV as written in at that time, contained this language:

> The rights of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

That is the language and it stands today, after 170 years, without change.

That language, substantially, was the language that was put into the Constitution of Michigan in 1835. It is substantially the same language that was put in the Constitution of Michigan in 1850. It is substantially the same language that was put into the present constitution. And it served this state until, in 1936 and again in 1952, an amendment was made.

This was an unusual thing. And I say "unusual" because it is rare for the people, by constitutional amendment, to set forth in our basic law a rule of evidence which binds the court to receive in evidence any narcotic, firearm or other dangerous weapon seized by any peace officer outside of the curtilage of any dwelling house in this state. Ordinarily, such language would be found in a bill by the legislature.

Now, as the court said in the Gonzales case, and I quote:

> The supreme law of this state, its constitution, thus directs the admission of evidence of the character with which we are concerned in this case even if the evidence was produced by an unconstitutional search and seizure.

And the court went out of its way to emphasize the meaning of that language by putting the words "even if the evidence was produced by an unconstitutional search and seizure" in italics.

Now, in this Gonzales case the court went on to decide a second question. The court said, and I quote:

> Our remaining question is whether or not such state constitutional sanction of the admission of illegally seized evidence is barred by the federal constitution.

The Michigan supreme court in the Gonzales case then proceeded to determine this question and for authority for its decision it relied on the reasoning of 2 cases decided by the United States supreme court, Wolf v. Colorado, 338 United States 25, and Salsburg v. Maryland, 346 United States 545. I shall not burden you with the arguments other than to quote from the Wolf case where the United States supreme court said:

> We hold, therefore, that in a prosecution in a state court for a state crime the fourteenth amendment does not forbid the admission of evidence obtained by an unreasonable search and seizure.

That is the United States supreme court speaking in that instance. It is of interest to note that in that case there were 3 dissenting opinions.

Now, I quote from the case of Salsburg v. Maryland where the Supreme Court of the United States used the following language:

> Rules of evidence, being procedural in their nature, are peculiarly discretionary with the lawmaking authority, one of whose primary responsibilities is to prescribe procedures for enforcing its laws. Several states have followed diametrically opposite policies as to the admission of illegally seized evidence.

Now, the Michigan supreme court in the Gonzales case concluded its decision holding that the articles seized should have been received in evidence but in doing so they used this language — and I quote — and I think it is important that we consider the language of our supreme court in its last pronouncement:

> It is beyond all question that the United States supreme court is the sole authoritative interpreter of the United States constitution; and that it speaks only through opinions adopted by the majority of the court.
>
> Interesting as may be the view of the minority of the United States supreme court as stated by Justices Murphy, Douglas and Rutledge in Wolf v. Colorado, this offers no reason for failing to give effect to the interpretation adopted by the majority of the United States supreme court until and unless it is changed.

That is the language in the Gonzales case, the judgment in that case.

Those last 5 words from Gonzales were prophetic — they were indeed prophetic. It is quite likely that the Michigan supreme court could envision the day when the United States supreme court would say that articles seized by an officer illegally could not be received in evidence in a trial in a state court.

And this was what happened in the Mapp case decided in June of this year. And, as has been quoted here, this is the language of the United States supreme court. It is plain language. It is not ambiguous. It deals with the subject that the court was considering. This is the language of the United States supreme court in the Mapp case. I quote, "We hold that all evidence obtained by searches and seizures in violation of the constitution is by that same authority inadmissible in a state court."

Now then, let me say this. We are here today dealing with fundamental rights. At no time or place has it ever been written or decreed that any and all searches and seizures are improper or illegal. From the earliest days in 1791 down

to this day our constitutions have sought to protect the people against unreasonable searches and seizures.

The difference between a reasonable or unreasonable search or seizure becomes a question for the courts. Its determination depends upon the particular facts and circumstances of each case. No constitution and no act of the legislature could possibly comprehend all the facts and circumstances surrounding the conduct of officers who attempt to search and seize.

Therefore, it must be left to the courts to say in each instance whether or not the search and seizure was justified as being reasonable. The law on this question has been expounded many times by courts of appeal and all trial judges would have ample guideposts.

As the court said in Gonzales, and again I proceed to quote:

> Facts which indicate probable cause to believe a felony is being committed have many times been held to render "reasonable" within constitutional terms a search and seizure without warrant.

The court then cited both Michigan and United States supreme court cases.

The law protecting persons from unreasonable searches and seizures in our federal constitution has not been changed in any way for 170 years. The same language protected the people of Michigan from 1835 for over 100 years and no one could point out that the Michigan courts were derelict in their duty in determining what constituted reasonable or unreasonable searches and seizures.

Now, the court, the United States supreme court, upon which our Michigan court rested its decision in Gonzales, has spoken and has changed its mind and has specifically said, in no uncertain or ambiguous terms, that a state trial court should not receive in evidence where it appears that the thing seized was taken in an unreasonable search and seizure. Let us not encumber our organic law with a command to our courts by a rule of evidence that they must receive certain evidence, where it was produced by an unconstitutional search and seizure.

I hope, therefore, that the delegates will see fit to keep that which is good and has stood the test of time, and reject that which violates our basic right to be secure against unreasonable conduct.

CHAIRMAN BAGINSKI: Mr. Beaman.

MR. BEAMAN: Mr. Chairman, fellow delegates, as a lay member of the rights committee I have been hearing for many weeks much discussion and debate on this particular issue and I want to say that it has not been easy to reach a decision in the matter.

Yesterday we heard Delegates Norris, Nord, Gadola, Stevens, Pugsley, Ken Prettie — all men of the highest integrity and of great legal ability, and I say that sincerely; and I say that they probably rank equal or above many of the men who have in the past and who are at the present time serving in our courts — but they do not agree, and so it has caused many of us to look elsewhere to arrive at a decision which we think is right.

I think there is one aspect of this matter of which I believe I have some knowledge, and that is the shocking increase of the young men and women who are being committed to our federal institutions on narcotic charges. I certainly would not wish to do anything that would make that situation more aggravated.

I was somewhat concerned yesterday when one delegate said that he would not be so dumb as to vote for something that might be declared unconstitutional. And also, more recently, I have heard that we might be considered lunatics.

But we have also heard that the supreme court is the supreme law of the land. I have been taught all my life that in this great democracy of ours the people are the supreme law of the land. In 1952 the people of Michigan gave us a 5 to 1 decision on this subject and for that reason I am against the Hanna amendment and any other amendment except the Prettie amendment which I hope that we can pass, and if that is "dumb" — so be it.

CHAIRMAN BAGINSKI: The Chair recognizes Dr. Nord. Do you care to speak on the Hanna amendment?

MR. NORD: Yes, Mr. Chairman, I will speak exactly on the Hanna amendment. I believe it has had very little discussion; in fact, I don't really know that it has had any specific discussion even though I have spoken on it myself on one occasion. (laughter)

Now, the only reason I returned to the floor is this. There is one subject which I believe has come up since I have spoken which has not been adequately handled.

All of the arguments I have heard have been exceptionally high level arguments, not only my own, as has been pointed out, but we have undoubtedly had, I believe, an exceptional debate here and there is no question but that the arguments on both sides have been extremely sincere, and, I might add also that I observed the delegates listening with extreme care and diligence, and I was thrilled to see that because it is an extremely legal, difficult subject.

But there was one point that was made to which I think we ought to devote further attention. And that is that the people have spoken in 1952 and I believe in 1935 or 1936 and, therefore, we should leave the Prettie amendment in and not the Hanna amendment.

That is the subject on which I should like to speak. First of all, I should like to point out that the people have not seen Mr. Hanna's amendment. That is the subject with which we are dealing. Have the people seen Mr. Hanna's amendment? Do they think that it would be wrong to say evidence obtained in violation of this section shall not be used if it is a certain type or provided it was seized by reasonable means? Are they opposed to that? I believe several people have indicated they think that the people back home are opposed to Mr. Hanna's amendment. How can they be opposed to Mr. Hanna's amendment when he only dreamed it up yesterday? And, anyway, are they against it in any event? Are they against the principle? I don't know anyone who says that they wish evidence to be seized unreasonably.

What Mr. Hanna says is that evidence that is seized by reasonable means of this type should be admitted. Now, how can the people be against that? That is point number one. I doubt that anybody has a good or reliable poll to tell us that the people are opposed to Mr. Hanna's amendment.

I would also say I have extreme doubt whether the argument that was actually made that they are in favor of the Prettie amendment can be correct for the same reason. The Prettie amendment is not the one on which the people voted. The one that the people voted on you will find in Michigan Statutes Annotated. It is true that the Prettie amendment is very similar to it but it is not the same.

I wonder why any change is being made. Have the people ever voted on that? Have they ever seen it? I can tell you the answer to that right now. I happen to know that the people have not seen that because I happen to know where it came from. It is the same language as appeared in the letter that was sent to all of us by Donald Leonard except for certain changes.

Now, the people may have seen the language of Donald Leonard, I suppose that is quite possible. But it was changed. And it was changed the night before it was submitted to us. Obviously the people didn't see that either.

Therefore, I draw to your attention the fact that there are certain assumptions being made which are certainly not true.

The people have not seen the language of either of the amendments, either the amendment offered by Mr. Prettie or the amendment to the amendment offered by Mr. Hanna.

However, that is not the main reason for my speaking. The main reason is the substantive question of whether we should do — whether we should be bound, so to speak, by what the people have said in 1952 and 1935 and last week. That is an important question. In fact it seems to me it is an indispensable question for us to answer now that it has been raised.

For example, are we bound by what the people did in adopting the constitution, and therefore we should not change it? If that is the case, I call to your attention the fact that every single part of the constitution that we are considering has been adopted by the people — every part.

If that idea follows, that when the people have adopted something we should not touch it, what are we doing here? That is exactly what we are doing. We are deciding whether, after the people have adopted something, it should be reconsidered by us.

We cannot take the view that because the people have adopted this language, that language, or similar language, or any language, that the people want us to conduct a poll to find out whether they want to ratify it themselves. If that was all they wanted, we could have put the constitution on the ballot and had no convention.

I realize that many people here say they are bound or they feel bound by their constituents. If we were the legislature we should feel that way. But we are not the legislature.

I don't know the answer to the question that was just handed to me, because I can't read it — the question I was just handed, I mean — and, anyway, I think the question I am raising is better and I'll stick to that. (laughter)

The question I was raising is this, are we bound by what the people think, what our constituents think? If we are the legislature, probably we are bound. But the reason for having a constitutional convention is different. We obviously are not bound just by the constituents who live in our territory, and I would like to explain why. Why I think so, I mean. We are trying to adopt a constitution that will live not for 2 years — which is the way the legislature works — but for 50 years. We do not know who will live in our districts in the next 50 years. We have to protect all of the people for the next 50 years, those who live in our districts now and those who do not live in our districts now. We have to be thinking of the people who are not even born and who will be born within the next 50 years. We are not in the same boat as the legislature. The reason the constitutional convention was called — and I think we have to keep this in mind all the time — is that they wanted a group of people to do what we are doing here, to consider word by word, section by section, idea by idea, everything that the people have adopted in the past and to decide whether we suggest that they keep it or that they not keep it.

Now, we should not ask the people by a poll what they think. They have sent us here and they have asked us: what do we think? If they don't agree with us, they won't adopt it. But our job is to find out what we think.

Therefore, I hope that of all the arguments that have been presented, you will pay attention to every single one of them, except the one that says, "I don't know what to do; I'm going to ask someone else."

CHAIRMAN BAGINSKI: Mr. Higgs.

MR. HIGGS: Mr. Chairman and fellow delegates, we must be very close to voting on the Hanna amendment. (laughter) Accordingly, I would like to speak about the Hanna amendment so we won't forget what it is all about. Mr. Hanna proposes to insert the words "by reasonable means" after the word "seized". I do not believe that we have had very much enlightenment as to what is reasonable or what is unreasonable under the law.

I would like to give you a case in point. One of the delegates to this convention was driving his car down the road. One headlight was out. The state police stopped him. I won't disclose his name. The trooper asked the delegate to stop. The delegate asked, "Why are you stopping me?" The trooper said, "You have a headlight out. That is violating the law." The trooper asked, "Have you been drinking?" The delegate said, "Yes, I have." The trooper asked, "Would you mind getting out and walking around the car?" And the delegate did. The trooper asked the delegate if he had a bottle in the car and the delegate said "No." "Do you mind if I search?" the trooper asked. "No, you may search," the delegate replied. And the trooper did search. And having concluded that there was no bottle in the car he said, "I think you have not had too much to drink, you have nothing in the car to drink; I am satisfied that you are in good condition and can drive home," whereupon he let the delegate go home.

Do you think that was reasonable or unreasonable conduct? The Michigan supreme court has declared that this was an unreasonable search and seizure.

If the police officer had found, in the glove compartment, a half pound of heroin, or a loaded automatic, he would not, under the Hanna amendment, have been able to introduce that in a court of law.

I do not believe that that is what the people of the state of Michigan want. I think when they voted in 1952 — and I think the same would be true if they voted today — they did not want to prohibit the introduction into evidence of that loaded automatic or that half pound of heroin, because the public safety is involved.

The case I am relying upon is 358 Michigan 355, and I am reading from the Wayne Law Review, Volume 6, Summer 1960, No. 3, and it states:

> It was also found that the defendant had not voluntarily waived his right to be secure against unreasonable search and seizure by telling the officer to search his car and by himself removing the wagering memoranda.
>
> For a voluntary waiver to be valid the accused must first be advised of his rights, informed he need not submit to a search, and that if he did, the fruits thereof would be used in evidence against him. 358 Michigan 355, 362; 100 N.W.2d 456, 461 (1960)

The people, I think, in the public safety, — and we have authority for this, by the way, coming up, section 11 — the right of habeas corpus is certainly as venerable and old and well recognized a right as any that we have, and yet under section 11 we provide for the suspension of the right of habeas corpus when the public safety shall require it.

Now, I would submit that under this provision, under the Hanna amendment, I think the people if they were voting on it today — if you think of that particular case and that half pound of heroin and that loaded automatic — would want to have that evidence submitted and admitted and the criminal convicted.

Thank you.

CHAIRMAN BAGINSKI: The Chair recognizes Mr. Tubbs.

MR. TUBBS: Mr. Chairman, in view of what I am going to say I am sure that Mr. Hubbs would be glad if I said my name begins with a "T".

I once knew a man who became 95. He was asked to what he attributed his long life. And he said, "I have never wasted my strength resisting temptation." (laughter)

I would not suggest than anyone here should waste his strength resisting temptation but I would hope that 144 people would resist the temptation to add any more verbiage to that we have already had, for a period of 5 minutes, and that during that time we would come to these amendments and vote on them. (applause)

CHAIRMAN BAGINSKI: The question is on the Hanna amendment to the Prettie amendment. As many as are in favor will signify by saying aye. Those opposed?

The amendment to the amendment is not adopted.

Are there any further amendments?

SECRETARY CHASE: The next amendment on file is the one proposed by Miss McGowan and Mr. McCauley to amend the Prettie amendment:

1. Amend the amendment after "weapon" by striking out "or thing"; so the language of the amendment will then read in part, " . . . or any other dangerous weapon seized by any peace officer outside the curtilage of any dwelling house in this state."

CHAIRMAN BAGINSKI: Mr. Prettie.

MR. PRETTIE: I rise, Mr. Chairman, to accept the amendment.

CHAIRMAN BAGINSKI: The question is on the adoption of the amendment to the amendment. As many as are in favor of the adoption of the amendment to the Prettie amendment will signify by saying aye. Opposed?

The amendment to the amendment is adopted.

SECRETARY CHASE: Mr. Mahinske has filed the following amendment to the Prettie amendment:

1. Amend the amendment after "drugs,", by striking out "any firearm, bomb, explosive, or any other dangerous weapon" and inserting "any machine gun or automatic pistol"; so the language of the amendment will then read in part, " . . . preliminary examination any narcotic drug or drugs, any machine gun or automatic pistol seized by any police officer. . . . "

CHAIRMAN BAGINSKI: Mr. Mahinske.

MR. MAHINSKE: Mr. Chairman, I think, in view of all the debate that we have had yesterday and all of the debate that we have had today, although I tend to go along with the Prettie amendment, I must object to the general terms used. We have just excluded the phrase "or thing". I am doubtful as to whether or not the phrase "dangerous weapon" is just as inclusive as the words "or thing". We know that the courts have interpreted the phrase "dangerous weapon" to include anything that has been or could be used as a dangerous weapon and I think with respect to firearms that we are in the area of the conservation people again and there is a lot of objection to the conservation people being able to search cars.

Just in the past couple of days we passed the civil rights section allowing the people to bear arms in defense of themselves or the state. I wonder how far that goes? Does this mean that they can bear arms but not in game reserves or not in forest lands or not as the conservation department believes they should?

I would think that the words "bomb" and "explosive" are also general terms that could be widely applied here. I think the crux of this whole proviso is that most of us are objecting to items that we feel there is absolutely no doubt about and narcotics, drugs, and so on — I do not think we can place any second meaning on what the intent of a person carrying narcotics or drugs either on their person or in their car would be. And also, any person carrying a machine gun or an automatic pistol — I do not think there is any doubt about what the intent of the person is who has these items on his person or in his car.

And for those reasons I object to the general terms "firearms, dangerous weapons, bomb or explosive".

CHAIRMAN BAGINSKI: The question is on the Mahinske amendment to the Prettie amendment. As many as are in favor of the amendment will signify by saying aye. Those opposed?

The amendment to the amendment is not adopted.

Are there any further amendments?

SECRETARY CHASE: That is the last amendment on file that has been offered to the Prettie amendment, Mr. Chairman.

MR. FORD: Mr. Chairman —

CHAIRMAN BAGINSKI: Are you rising to a point of order?

MR. FORD: This maybe isn't a point of order, Mr. Chairman. Perhaps it is more in the nature of a parliamentary inquiry. When do we get to the Hatch amendment?

CHAIRMAN BAGINSKI: Next.

MR. FORD: Do we vote on the Prettie amendment first?

CHAIRMAN BAGINSKI: No, the Hatch amendment is a substitute for the Prettie amendment and that is coming up before us next. The secretary will read the Hatch substitute.

SECRETARY CHASE: The amendment offered by Mr. Hatch as a substitute for the Prettie amendment is as follows:

1. Amend page 3, line 6, by striking out "Evidence obtained in violation of this section shall not be used except as authorized by law" and inserting "Evidence obtained in violation of this section shall not be admissible in any court against any person".

CHAIRMAN BAGINSKI: The question now in on the substitute amendment offered by Mr. Hatch. As many as are in favor of the substitute will signify by saying aye. Those opposed?

The substitute amendment is not adopted.

A DELEGATE: Division.

CHAIRMAN BAGINSKI: Is the demand for a division supported?

It is supported. As many as are in favor of the substitute amendment offered by Mr. Hatch will rise.

SECRETARY CHASE: Forty-five.

CHAIRMAN BAGINSKI: Those opposed?

SECRETARY CHASE: Eighty-one.

CHAIRMAN BAGINSKI: The substitute amendment is not adopted.

Are there any further amendments?

The question now is on the —

MR. NORD: Mr. Chairman.

CHAIRMAN BAGINSKI: Dr. Nord.

MR. NORD: Mr. Chairman, may I ask Mr. Prettie a question as to the meaning of some of the words in this amendment? I note that the amendment is drafted in language of this type, that the provisions of this section shall not be construed, et cetera. Now, those 2 parts interest me and I should like to inquire what the meaning is. First of all, I would like to inquire whether this means that this is only to be a question of construction and not a matter of substantive law?

CHAIRMAN BAGINSKI: Mr. Prettie.

MR. PRETTIE: Mr. Chairman, we have had in the constitution of this state for 25 years language similar in principle to that proposed. The incidence of the amendment that I presented, Dr. Nord, was in my own mind. I took the language of the present constitution. I eliminated therefrom the spelling out of what I thought was a verbose number of definitions or descriptions or words as to articles. I then, because of the thinking in this convention on the subject of magistrates or justices of the peace, substituted "preliminary examination".

I feel that the language that has been the settled law of this state for the past 25 years is so clear, the English so cogent, that the meaning of those words cannot be in question in anyone's mind and particularly the mind of a brilliant man like you.

MR. NORD: I would like this for the record, sir.

MR. PRETTIE: You have it, sir.

MR. NORD: Now I have an additional question in connection with that. I note only that it says — I might add, incidentally, that this question was ruled on in the Gonzales case; I simply want everyone to know what we are doing — the language reads "nothing shall be construed" but we have, for the record, that it means something more than that in legal parlance.

The other question is this. It states here that "the provisions of this section". Now, does that mean that if there is anything else in the constitution which would prohibit this, or any other rule of law, let us say, in the federal constitution, or any common law rule of law, does that mean that those rules might not prohibit such evidence?

MR. PRETTIE: In my opinion, Mr. Chairman, for what it may be worth, they do not. This is a proviso to the section we have been debating now for 2 long sessions. I think it is definitely restricted to the language to which it is a proviso.

MR. NORD: My other question then, sir, is this. I assume — I trust correctly — that we all understand what it is we are doing here. I would like everyone to understand what we are voting on. Check me if I am incorrect. This does not in any way imply, does it, that evidence of this type which is seized in an unreasonable manner is legally seized? Is that correct?

MR. PRETTIE: That is correct.

MR. NORD: Thank you.

CHAIRMAN BAGINSKI: Mr. Leibrand.

MR. LEIBRAND: Mr. Chairman and delegates, I rise to speak very briefly in support of the Prettie amendment.

What section 10, as it now exists, and what the Prettie amendment mean to me is this. Even though you have an illegal machine gun or a bomb or narcotic drugs in your house, the law says you cannot reach them without a search warrant. But if you take that machine gun or that bomb or those narcotic drugs on the street, then the law says that they can be reached without a search warrant because you are endangering public safety.

Mr. Greene, Delegate Greene, spoke of the deplorable conditions in Detroit in connection with police work. I point out

to the delegates of this convention that those deplorable conditions do not come from section 10. If they did, they would exist everywhere in the state because section 10 is applicable everywhere in the state. The deplorable conditions that Delegate Greene says exist in the city of Detroit are a local police matter and could and should be corrected by the local citizens of Detroit.

Again, I advocate the passage of the Prettie amendment.

CHAIRMAN BAGINSKI: The Chair recognizes Mr. Garry Brown. Is this on the Prettie amendment?

MR. G. E. BROWN: It is, Mr. Chairman. I would like to move at this time that we consider a substitute for the Prettie amendment, that being the Habermehl amendment presently on the desk of the secretary.

CHAIRMAN BAGINSKI: Miss Donnelly.

MISS DONNELLY: Mr. Chairman, on a point of order, I understand that we cannot do this, that by marching down the list the way we are supposed to is the only course now open to us. That is the reason the amendments were set out in this fashion. I do not basically quarrel with this. The only difference between Mr. Habermehl's amendment and mine is one of phraseology. The intent is the same. I could move mine as a substitute for the other. They are absolutely opposed — both of them — to Mr. Prettie's amendment.

CHAIRMAN BAGINSKI: Before this session started we agreed to go along and follow certain rules of procedure, and I think the motion made by Mr. Brown is contrary to that agreement. His motion, therefore, is not in order.

The question is now on the Prettie amendment as amended. Mr. Faxon, are you going to speak on the Prettie amendment?

MR. FAXON: Yes, sir.

CHAIRMAN BAGINSKI: Very well.

MR. FAXON: I wish to ask Mr. Prettie a question on the amendment here. We are probably all concerned with the idea of doing the right thing and some of us are concerned about getting at the criminal in one way and some in another way.

What I want to know is primarily concerned with the idea the police officer has in his own mind. Maybe he stops a car when he suspects there may be narcotics or other contraband in the car. He thinks he wants to find out. Now, it may be some intuition on his part. He goes ahead and he searches the car. First he removes the occupant of the car or asks him to get out. The occupant of the car may object. The policeman makes his search and does not find any evidence such as listed here in the amendment. Now, his motive may have been in some way prompted by the thought that if he had found contraband it would be all right.

I wish to ask and I think it is important to have and record the answer to this question — what guarantees does the person have in this instance other than what some people have alluded to, which is that they can take the police to court for searching them, because he found nothing, but if he had found something it would be all right.

I am simply trying to get at what the citizens' rights are here.

CHAIRMAN BAGINSKI: Mr. Prettie.

MR. PRETTIE: Mr. Chairman, Mr. Faxon, I did not have the privilege of hearing the debate of 3 hours yesterday afternoon on this subject which you did have. I have, however, with you, listened to the debate this afternoon. I am sure that the answer to the question you have posed — which I do not think I quite understand — but I think I get the purport of it — if the answer to that question is not clear, sir, in your mind after 2½ hours, I am sure I cannot clarify it.

MR. FAXON: Well, let me just state this for the record. It has been said by many that the recourse for an illegal search or seizure is court action and I think that for lawyers this would probably be a likely thing to expect. But I think it is unreasonable to expect such action on the part of the many, many people who may have this experience of being illegally searched or seized as they pass through life. I do not think we can logically expect them to go into a court — and I don't know what procedures would be involved but I suppose the hiring of an attorney — to take action against law enforcement officers in a matter of this sort where usually 2 officers are going to testify differently anyhow, and the judge won't pay much attention to the citizen.

So I do not believe in this case the idea of expecting many people to go to court where they feel there has been an illegal search is particularly reasonable or valid and I simply offer that comment for what it is worth.

CHAIRMAN BAGINSKI: The Chair wishes to state at this time that there seems to be some concern about taking up the amendments as they were presented to the secretary. This will be done in the exact order that you have on your calendar.

Are there any questions on the Prettie amendment as amended?

Mr. Habermehl.

MR. HABERMEHL: Mr. Chairman and fellow delegates, I believe that there has been one point made here which I think ordinarily, in relation to many parts of this constitution, would carry a good deal of weight with all of us. That is the fact that the people in a statewide election have passed or have carried or ratified certain amendments to this section.

I should like to point out, however, that we are dealing here with a subject which is intended to protect the individual against just exactly that sort of majority action. We are talking about a constitutional guarantee, the right of the individual to be secure. We assume, by the fact that it is a constitutional guarantee for the protection of the individual, that no majority, regardless of how great it might be, can affect that individual's liberty.

Therefore, the size of the vote has nothing whatsoever to do with this unless we want to get down to the matter of people's courts — the abolition of all rights of individuals as against the majority. The size of the vote has nothing whatsoever to do with this question.

As a second point I should like to say that in my opinion, as an ex prosecutor, this Prettie amendment is absolutely unnecessary. In 6 years of acting as prosecuting attorney I have never on one occasion felt the necessity to rely upon this ruling. All that was ever necessary was that the officer make the reasonable search and seizure.

I should like to point out, in response to Mr. Higgs' example, that when the officer said, "Do you mind if I look in the car?" that he made a reasonable search, despite what the Michigan supreme court might have said in regard to this question. The officer in the illustration conducted a reasonable search. He obtained the permission of the man concerned to search. It is simply unnecessary, as 2 police officers have testified, and as I testify now. In 6 years I never found any occasion to rely on it whatsoever.

Then the original language, without the provisos, provides adequate police power and it still provides for the protection of these individual rights against the right of the majority. I would not want to have any delegate influenced by the fact that the majority of the people of the state have abridged a constitutional guarantee of an individual. The majority of the state simply does not have that right.

CHAIRMAN BAGINSKI: The Chair recognizes Miss McGowan.

MISS McGOWAN: Thank you. Mr. Chairman and fellow delegates, I consider it a privilege to support the Prettie amendment. I speak as a former assistant prosecutor and as a defense attorney.

I can see absolutely nothing in this provision which lends weight to the argument that law enforcement officers are given blanket authority to crush or violate the basic rights of any person.

We believe in the dignity of all men and inherent in our belief is the thought that society deserves protection. Our children need protection from gunmen and from narcotic pushers.

We feel that the Prettie amendment is the way to afford society, and especially our children, the proper and much needed protection.

I implore you to join me in supporting the Prettie amendment

and thereby reaffirming and clarifying the direct mandate of all of the people of the state of Michigan.

Thank you. (applause)

CHAIRMAN BAGINSKI: I wish to advise that an amendment has been offered to the Prettie amendment.

SECRETARY CHASE: Mr. King has filed the following amendment to the Prettie amendment:

1. Amend the amendment after "weapon,", by inserting "unlawfully"; so that the language will then read:

. . . in any criminal proceeding or preliminary examination any narcotic drug or drugs, any firearm, bomb, explosive, or any other dangerous weapon unlawfully seized by any peace officer . . . .

CHAIRMAN BAGINSKI: The question is on the amendment offered by Mr. King to the Prettie amendment.

Mr. King.

MR. KING: Mr. Chairman and fellow delegates, the purpose for offering this amendment is to convey clearly to the people just what we intend to do here, that we intend to sanction unlawful activity.

I read from the Mapp decision yesterday some quotations which I thought might sustain the legal authority involved. As I say, there is no question in my mind what the case says. And if you will recall — and the record will show I staked my professional reputation upon my beliefs, something which no one else has done, to my knowledge.

But let me not argue the merits of the case. Let me rather point out what the court in that case said with regard to what they thought, these men, this particular group of men, sitting as our supreme tribunal, thought about what they were doing or what they would not be doing if they did not hold as they held. I quote:

> Nothing can destroy a government more quickly than its failure to observe its own laws, or worse, its disregard of the charter of its own existence. As Mr. Justice Brandeis, dissenting, said in Olmstead v. United States (1928):
>
> > Our government is the point, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. If the government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy.

And in conclusion I should like to reiterate what that quote said:

> Our decision, founded on reason and truth, gives to the individual no more than that which the constitution guarantees him; to the police officer no less than that to which honest law enforcement is entitled, and to the courts, that judicial integrity so necessary in the true administration of justice.

I think the people are entitled to know what we propose and I do not think there is any reason why we cannot spell it out. I do not think there is one out of 144 people sitting in this room who do not agree that this is what we are saying. And inasmuch as this is what we are saying, let us say it. Let us be honest. Frankly, many people, I am afraid, believe that the law is what Mr. Hanna's amendment would make it. But unfortunately, of course, that is not what the present law is. So let us be honest with the people.

CHAIRMAN BAGINSKI: The question now is on the King amendment to the Prettie amendment.

MR. KING: Mr. Chairman, could I ask that the whole amendment be read, please, with the word of my amendment inserted?

SECRETARY CHASE: Mr. Prettie's amendment is sought to be amended in the following way:

Mr. Prettie's amendment, as amended, and with the amendment now proposed by Mr. King, would read as follows:

Amend page 2, line 28, after "affirmation" by striking out the period and on page 3, line 6, by striking out "Evidence obtained in violation of this section shall not be used except as authorized by law.", and inserting a colon and "Provided however, That the provisions of this section shall not be construed to bar from evidence in any court of criminal jurisdiction, in any criminal proceeding or preliminary examination any narcotic drug or drugs, any firearm, bomb, explosive, or any other dangerous weapon unlawfully seized by any peace officer outside the curtilage of any dwelling house in this state.".

CHAIRMAN BAGINSKI: Mr. Prettie.

MR. PRETTIE: Mr. Chairman, I rise to oppose the King amendment for reasons that are so obvious after 5 hours and 45 minutes of debate that I shall not belabor them.

CHAIRMAN BAGINSKI: The question is now on the King amendment to the Prettie amendment. As many as are in favor of the amendment to the amendment will signify by saying aye. Opposed?

The amendment to the amendment is not adopted.

Are there any further amendments? The question now is on the Prettie amendment as amended.

Mr. Norris.

MR. NORRIS: Mr. Chairman, fellow delegates, as I understand the procedural posture it is this, that if we vote down the Prettie amendment, then we have before us the committee report to which there may be further amendments.

If we vote for the Prettie amendment, then we vote for that as, in effect, an amendment to or a substitute for the committee's suggestion. Is that right, sir?

CHAIRMAN BAGINSKI: That is right.

MR. NORRIS: I just wish to make one point in passing, and in response to the question that was asked by Mr. Faxon which I think was germane to this inquiry and to which I think too flippant an answer was given by the very able representative of the amendment which we now have before us. I can only cite, if I may, Mr. Justice Jackson who made this observation which I think is pertinent to the 8 million people in the state of Michigan who are our clients in this matter. The statement reads:

> Only occasional and more flagrant abuses come to the attention of the courts, and then only those where search and seizure yields incriminating evidence and the defendant is at least sufficiently compromised to be indicted.
>
> If the officers raid a home, an office, or stop and search an automobile, but find nothing incriminating, this invasion of the personal liberty of the innocent too often finds no practical redress.
>
> There may be, and I am convinced that there are, many unlawful searches of homes and automobiles of innocent people which turn up nothing incriminating, in which no arrest is made, about which courts do nothing and about which we never hear.
>
> Courts can protect the innocent against such invasions only indirectly and through the medium of excluding evidence obtained against those who frequently are guilty. Brinegar v. United States, 338 United States, 160, 181; 69 Supreme Court 1302, 1313 L. Ed. 1879 — dissenting opinion.

I think that succinctly states what we have before us and I respectfully urge a vote against the Prettie amendment and a vote in favor of the committee report.

CHAIRMAN BAGINSKI: Mrs. Elliott would like to talk on the Prettie amendment.

MRS. DAISY ELLIOTT: Mr. Chairman, fellow delegates, I rise to speak against the Prettie amendment and speak favorably for the Bledsoe and Donnelly amendment. As one of the delegate proposers to the deletion of the proviso in article II, section 10 —

CHAIRMAN BAGINSKI: Mrs. Elliott, the Chair would like to call to your attention the fact that we are on the Prettie amendment and not on the Donnelly, Bledsoe amendment. We are about to vote on the Prettie amendment and if that is lost then we will proceed to a consideration of the other.

MRS. DAISY ELLIOTT: Mr. Chairman, I propose to speak against the Prettie amendment.

CHAIRMAN BAGINSKI: All right.

MRS. DAISY ELLIOTT: As one of the delegate proposers — one of the initial or original delegate proposers — of the deletion of the proviso in article II, section 10, I, too, believe that the right to be left alone is the most comprehensive of the rights most valued by civilized men and hold that the proviso in the Michigan constitution is a violation of the federal constitution.

I agree with and condone the summation of Judge Gadola of the historical facts and, because of my moral obligation to my constituents as a delegate to the constitutional convention, I would like the record to show that regardless of the decision here, I shall vote against any amendment that retains the proviso of article II, section 10. I should like the record to show my position in this matter.

Thank you.

CHAIRMAN BAGINSKI: Mr. Prettie.

MR. PRETTIE: Mr. Chairman and fellow delegates, the hour is late. I raise for about 2 minutes in support of the amendment that has been so long discussed. I wish to apologize, first of all, to this committee for having presented an amendment upon which I was not present to speak at its introduction.

I had it prepared on Sunday after 2 days of work. I had it ready for presentation at the Monday night session. And when it became apparent, because of the debate arising out of section 4, that I probably would not be here when this committee reached this debate, I had to submit it in absentia, so to speak, for which I think I am deserving of censure. I wish publicly to express my deep appreciation to Mr. Danhof, who so ably presented the remarks I would have made, to Miss McGowan, to Messrs. Sharpe, Boothby, Brake, Stevens, McAllister, Martin, Binkowski, Beaman, Davis and Leibrand.

One point and one point only I think has not been covered here. We have had a long and a most arduous discussion and on a very high level and a very sincere level with respect to a very fundamental thing. We have heard many comments as to the relevance of certain provisions of the federal constitution, the laws of the sovereign state of Michigan.

I did not hear what was mentioned yesterday and I hope I am not being redundant, but in the amendments and the tenth amendment which had to be annexed before the constitution itself was adopted, it is stated:

> The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively or to the people.

We are the people — or at least the chosen representatives thereof. We are here assembled to voice their views. We have been admonished from the rostrum our chairman occupies that now is the time for Michigan to lead the way in recovering to the states some of the powers that have been lost through dereliction of state duty. This recovery, I submit, applies equally to the recovery of our legislative, our executive and our judicial powers.

The Mapp case, so long discussed, is on petition for rehearing. It is a case about which you have heard much on both sides. It is the only legal doctrine upon which the proponents of the original report of the committee on declaration of rights bases its objection to the present language which we have by this amendment attempted to simplify.

We think that case casts doubt upon the sovereign powers of the people of the state of Michigan. I say it is time for us to stop indulging in guessing games. We were sent here by the people of the state of Michigan to speak their views, to voice their sentiments.

I do not agree with Delegate Habermehl when he says that a vote of the people is not of any significance to us. It certainly is. This is what we are here for. The people within the past 9 years have given a mandate.

If that proviso, as simplified by this amendment, is to be struck down, let it be struck down by the courts of the United States of America and let the results rest where they belong, and not with this convention. (applause)

CHAIRMAN BAGINSKI: Mr. Rush.

MR. RUSH: Mr. Chairman, I rise to support the Prettie amendment. I feel it is about time to take action if we are going to give the honest citizens of this country the protection they need. To do so, we had better stand behind the law enforcement officers.

I would also like to ask Mr. Habermehl, who seems to advocate that an officer should not search a car without the permission of the driver or owner of that car, if he would be very apt to get permission from a thug or a bunch of bank robbers?

CHAIRMAN BAGINSKI: Do you care to answer, Mr. Habermehl?

MR. HABERMEHL: Mr. Chairman, I would hate to leave the impression that I advocated that that is the only way an officer can search a car. An officer can search a car any time that he can make a valid arrest. An officer can make a valid arrest when he knows that a felony has been committed and has reasonable grounds to believe that the person that he is arresting committed the felony. He can make an arrest any time a misdemeanor is committed in his presence.

Now, the law has been for many years — a couple of recent cases from the Michigan supreme court notwithstanding — that any time an officer makes an arrest he may search the house, in case the arrest is made there, he may search the automobile, he may search the immediate vicinity of the commission of the crime. Under those provisions, 99 and 99/100 per cent of all searches are made. That is the reason why, in a period of 6 years, I never felt any necessity to rely upon the proviso that is presently contained in the constitution.

The officer has ample power, as Delegate Greene and Delegate Youngblood stated, and he is instructed in the proper means of making a search so that it will be a reasonable search and seizure. That affords the police all the power that they need.

CHAIRMAN BAGINSKI: Mr. Binkowski requests one minute.

MR. BINKOWSKI: I just want to say to Mr. Prettie that I am normally very receptive to thanks, but one of the delegates back here perhaps misinterpreted one of your helpers and I think it was I, and so for the record will you please tell this convention which "ski" you are talking about?

CHAIRMAN BAGINSKI: Do you care to answer, Mr. Prettie?

MR. PRETTIE: I think I gave the name of representative Binkowski.

MR. BINKOWSKI: Again for the record, Mr. Chairman, may I say this. I think this perhaps deserves some explanation. I know of no occasion on which I have helped you, Mr. Prettie, with respect to your amendment, or any endeavor in this cause.

MR. PRETTIE: I may have been confused by the tenor of your remarks but it sounded right down my alley. (laughter)

CHAIRMAN BAGINSKI: The question now is on the Prettie amendment, as amended.

Mr. Binkowski.

MR. BINKOWSKI: Mr. Chairman, please, for the record, I was just reading comments. They were not my own. Heaven forbid. Well, perhaps I should not say that. (laughter)

CHAIRMAN BAGINSKI: The Chair recognizes Mrs. Judd.

MRS. JUDD: Mr. Chairman, I simply want to remind the committee of this fact. If we are to give priority to the vote of the people on this provision of some 10 years ago, I would like to remind the convention that about 8 months ago the people voted to have the constitution revised. (applause)

CHAIRMAN BAGINSKI: Mr. Faxon.

MR. FAXON: Mr. Chairman, I would like to ask why this provision has not been adopted in any other state? Does this mean that every other state has a flow of narcotics and firearms? Why is this necessary only in the state of Michigan to insert a proviso? Would any of the proponents of the Prettie amendment care to answer the question as to why Michigan will be the only state in the union to have a provision restricting the present wording of the federal constitution in respect to searches and seizures?

CHAIRMAN BAGINSKI: Mr. Stevens.

MR. STEVENS: Mr. Chairman, Mr. Faxon, the committee studied this proposal very carefully. Many states that do not have any provision in the constitution do permit the introduction of evidence following an unreasonable search and seizure.

The exclusionary rule is that of the federal government and the state of Michigan and such other states as have adopted it by judicial action. In Ohio, for example, it was not necessary to have anything in the constitution. Ohio, apparently, does not have the exclusionary rule. That, at least in part, answers your question.

MR. FAXON: Well, does this come about then, by reason of the decision of the courts of Michigan?

MR. STEVENS: I thought by now everybody would understand that the exclusionary rule is a rule of evidence and not a constitutional provision. It is not even a statute.

MR. FAXON: Well, I am not a lawyer and I am sorry, Mr. Stevens, if I was unable to follow all the legal arguments but I was just concerned with the reason why Michigan would be the only state that would find it necessary and I thought I understood you to say that this was due to the interpretation that the courts of Michigan have placed upon the amendment.

MR. STEVENS: This is a rule of procedure. I cannot understand why you don't understand it, Jack. The courts have adopted this as a rule of procedure in order to enforce the search and seizure provision. In the federal courts it was adopted and it was adopted in some state courts but in many courts it is not the rule. So those states that do not have it have no reason to put it in the constitution. Other states might, but haven't, that is true.

MR. FAXON: And the exclusionary rule is then what is in question here?

MR. STEVENS: Delegate Faxon, the exclusionary rule is the rule of evidence which forbids the admission of evidence which has been secured by an unreasonable search and seizure. That is a rule adopted by the courts. It seems it ought to have been clear long ago that we are not talking about a constitutional provision. The Constitution of the State of Michigan never did provide for the exclusion of the evidence.

MR. FAXON: Why were these amendments added in 1936? What was the motivating factor at the time?

MR. STEVENS: I yield to Mr. Prettie. Maybe he wants to answer your question.

CHAIRMAN BAGINSKI: Mr. Prettie.

MR. PRETTIE: My view is that we have this proviso in the Constitution of the State of Michigan, not found in any other state, because the people put it there.

CHAIRMAN BAGINSKI: The question is on the Prettie amendment as amended.

Mr. Brown.

MR. T. S. BROWN: Mr. Chairman, fellow delegates, let me quote from the oath of office that we took when we first arrived here in Lansing, as follows:

> I do solemnly swear or affirm that I will support the Constitution of the United States, and the constitution of this state, and that I will faithfully discharge the duties of the office of a constitutional convention delegate according to the best of my ability.

Now, you will notice that it says we will support the Constitution of the United States and, very briefly, that means that we will support the Constitution of the United States as interpreted by the Supreme Court of the United States at any time.

The argument that has been advanced, the vote that has been indicated favorably for the Prettie amendment, are all arguments which would obviate the effect of the decision of the supreme court which is undeniably at present, however you may dislike it, the law of the land.

I would simply like to remind the delegates that when you are voting thusly you are voting against the principles of the constitution. I, for one, cannot do it and I hope that you will not be able to say, ashamedly, to your grandchildren that you did vote to strike down a basic tenet of the United States constitution by so voting here today.

CHAIRMAN BAGINSKI: Mr. Prettie.

MR. PRETTIE: Mr. Chairman, I feel compelled to rise in answer to Delegate Brown's remarks. The oath that he read compels me and every delegate here to support 2 documents, the Constitution of the State of Michigan which we now have — true, we are revising it — but as it now exists it has been construed in Gonzales as clearly the law of this land, and surely not violative of the federal constitution. I also swore to and I am observing my oath in upholding the Constitution of the United States of America. A very recent decision of the supreme court of this state, even now on petition for rehearing before that court, in which after about 7 months the decision was arrived at in overruling the settled law under Wolf v. Colorado and other cases, is something that I do not feel constrained to observe as a constitutional mandate within the federal constitution.

I also feel that article X of the state constitution reserving sovereign rights to the people whom we here represent is a very great part of the oath that I took on October third.

CHAIRMAN BAGINSKI: Mr. Mahinske.

MR. MAHINSKE: Mr. Chairman, I must also rise in opposition to the remarks made by Delegate Brown and I object to his or any other delegate placing any qualifications or definitions on the intent or motive of my vote; whether they are legal or illegal, I think that this is something that I must decide myself and not someone else for me. (applause)

CHAIRMAN BAGINSKI: Miss Donnelly.

MISS DONNELLY: Just for the benefit of those who have not rechecked it, I wish people would be mindful of the fact that Mr. Bledsoe's amendment which I cosponsor is article IV of the United States constitution, and in re that statement and what it says, and what you are for and what you are against, I am not saying necessarily that I believe that any individual who votes to support Mr. Prettie's amendment would be violating the United States constitution. This is just a matter of opinion among people and I do not wish to say that anybody would violate his oath if he voted for Mr. Prettie's amendment.

I do want them to know, however, that it is opposed to the language, in my opinion, of the United States constitution which language is contained in my amendment that will come up after this is disposed of.

CHAIRMAN BAGINSKI: Mrs. Hatcher?

MRS. HATCHER: Mr. Chairman, fellow delegates, I rise at this time because I feel compelled to put before you the position that Delegate Brown took just a few moments ago.

At first, sitting here as a delegate and an active citizen, and as one who has been active in community affairs in the state of Michigan for a number of years, and having the privilege of serving as a delegate to this constitutional convention, I felt that certainly this particular section of article II, section 10, was being sufficiently discussed by the legal minds of this convention. And it has also been discussed by those on the committee on declaration of rights, suffrage and elections who have been designated by that committee to more or less carry the ball in this behalf.

But after sitting here for 2 days listening to the discussion and listening to the points that some of the delegates have raised and the positions they have taken in terms of their point of view, I felt compelled to enter some remarks, based on the experience that I have had for the past 15 years working in the field of human rights and in the field of community relations in the city of Detroit, in the state of Michigan, and on a national and international level.

I feel that the position that I must take at this time is in opposition to the Prettie amendment and to support the recommendation made by the committee on declaration of rights, suffrage and elections.

I certainly feel that those people who like to divide decisions that are made by the supreme court by saying that only 4 voted this way and 2 voted another way, are only attempting to evade the law of the land and the decisions that are made by one of the highest bodies of our great nation.

I think, too, that certainly the comments that have been made here today and yesterday are more or less tending to lead some people, who may not be thoroughly aware of what is the discussion on the floor, to believe that we are discussing the rights of police officers in the city of Detroit or in the state of Michigan to search and to obtain certain illegal properties from individual citizens.

But in the context of section 10 we are talking about the rights and privileges of the people and protecting those rights. No place in this particular section does it deal primarily with the rights of officers, but more or less with the rights of people. And that is a point which I certainly wish to emphasize.

And so, in concluding, Mr. Chairman, I would like to record

my support at this time for the recommendation of the committee's report. And before concluding I should like to say that the fact that the committee on declaration of rights, suffrage and elections voted 7 to 8 to reconsider section 10, certainly does not mean that we were in favor of including the proviso finally because we did not reach that point. We were merely voting on whether or not we should take up the matter again. I would not be so presumptuous as to say how the vote might have gone. I have an idea but I would not answer that. I would rather have gone through the procedure.

I thank you for this opportunity of entering my view on this section.

CHAIRMAN BAGINSKI: Mr. McCauley.

MR. McCAULEY: In response to Delegate Brown's remarks in worrying about all of our grandchildren and so on, I am certainly not afraid of anything my grandchildren might think about this in the event that I am fortunate enough to have any. And I might state further in response to Delegate Brown that I am as aware of my constitutional obligations as I am sure he is or anybody else in the room.

CHAIRMAN BAGINSKI: Mr. King.

MR. KING: Mr. Chairman and fellow delegates, I am opposed, as I guess everyone knows by now, to the Prettie amendment, but I am also opposed to the remarks that Mr. Brown made. I do not think that it is the intention of anyone to do something which is opposed to the federal constitution, and I think we may inadvertently do something which, in my opinion, violates the federal constitution; but there are many people here who are not lawyers and even the lawyers disagree, and I cannot understand that, but I am never able to. (laughter) Every time I go into court I never can understand how the guy on the other side can think the way that he thinks. So I just want to state very clearly that I do not think that anyone here is intentionally doing something which would be in violation of his oath of office.

CHAIRMAN BAGINSKI: Mrs. Butler.

MRS. BUTLER: Mr. Chairman and fellow delegates, I have been hearing a great deal about the officers, as though they were public enemy number 1. I noticed that Mrs. Hatcher talked about the rights of the people and I wondered if officers are not people.

CHAIRMAN BAGINSKI: The question is on the Prettie amendment as amended.

Mr. McLogan.

MR. McLOGAN: Mr. Chairman, fellow delegates, I am in the anomalous position of favoring what I feel to be the true intent of the Prettie amendment but I am compelled by the arguments of the last 2 sessions to feel that, in balance, the matter of rights is better expressed by the precept of the argument given by Mr. Habermehl. Therefore, I respectfully oppose the Prettie amendment.

CHAIRMAN BAGINSKI: The question is on the Prettie amendment as amended. As many as are in favor will signify by saying aye.

Mr. Douglas.

MR. DOUGLAS: Mr. Chairman, I have sat here very quietly hoping that the complexion of this committee would change and I have heard the technical arguments pro and con and I am not afraid, as a lawyer, of the principles enunciated in the Mapp case. I am also a teacher in the city of Detroit. I have seen the impact, the real thing that happens, with this provision amended in 1952.

Now, since 1952 we have had supreme court decisions that have given to our democracy a greater emphasis, a greater meaning throughout the world. In 1954 all of you lawyers remember what happened. Our thinking progressed on the supreme court. And again in the Mapp case we see that the thinking of the supreme court is keeping pace with international affairs.

Now, I take this matter very personally because this provision affected me in 1956. I think it is worthwhile that I relate this to you.

I am a lawyer today only because there was, fortunately, a gentleman who was connected with the prosecutor's office in Wayne county who had some foresight. I had recently returned from West Virginia, the university there, and I had in my trunk sporting equipment. Not having much time — just as now — I had not completed emptying out my trunk. And so one Saturday night I was dressed, driving in accordance with the law, and there was absolutely no reason for the police to stop me. But we in Detroit know why I was stopped. I was stopped, I was searched, my car was searched, and in the trunk, buried underneath all of this sporting equipment were war souvenirs.

A technicality? Yes, a technicality. I had a souvenir pistol and hunting knives from Japan. I had forgotten they were there. They had been there for 6 months since I was attending school in West Virginia.

And so I was taken downtown and I was kept in the "bull pen" which was very confined, all weekend. And over and over the detectives were apologizing to me because they had to submit a recommendation for prosecution.

And I am very grateful for that deputy prosecutor who had some foresight. After they had investigated me back through the years, 10 years, they saw that I had a clean record, was formerly an army officer, the deputy prosecutor entertained or filed a motion to quash. What would have happened had he not done that? I would have been technically convicted of a felony and I would not be here today.

When I first came to this convention, the first week I was here, it was important to me to meet many of the delegates from out state areas. And I remember one of them asking me, "Delegate Douglas, whom do you represent?" And I told him that I could give him 3 answers. I could first tell him that I came here to represent the 119,000 people in my district. And in another sense I could tell him that I came here to represent the 700,000 citizens of color in this state. And even in the greater sense, I came here for the benefit and welfare of 8 million citizens.

Now, we can deal in technicalities all we want to. You can disregard the mandate of the Mapp case. But I tell you, in truth, that this is not the last time you will hear of this. In 1952 you say that the people voted for this measure. If they voted for this thing, why should it not be changed now? A wise man changes; a fool will never change.

Now, we have had one delegate speak of "cock and bull" stories. I raise my hand. What I have told you today is no cock and bull story and it is very similar to the experiences of many citizens who are affected by this thing. It is a mandate to our courts. They cannot do anything about it.

It was also said by another delegate that perhaps this is a fashion of the times. Well, maybe it is a fashionable thing but surely the time has come when we should start to uphold the individual's rights.

In the first week we were here, I heard one of the most able leaders of this convention say that this convention has an international complexion. The whole world is watching what we are doing here. So the technicalities, you see, are so very important as to what happens to people when you pass something like this.

We are doing something here which we thought was important enough that we invited the former president of the United States to come here and talk to us about it. And we are meeting in our sessions here at the same time that many millions and millions of dollars are being spent trying to convince the Asian bloc and the African bloc nations that we have a good democracy.

Ladies and gentlemen of this committee, I think we must give sincere thought to this question. I am not for the Prettie amendment. I am for the committee's proposal.

Thank you. (applause)

CHAIRMAN BAGINSKI: Mr. Gover.

MR. GOVER: Mr. Chairman, fellow delegates, I had thought that I would not get to my feet but I can't sit any longer and I wanted to stand up anyway. I just wanted to relate one incident. Delegate Douglas spoke about army souvenirs and such. Back during the war I had a store. I stepped out of the store one Saturday night to deliver groceries to a person in a car and on the way back I stepped into a gas

station. As I stepped through the door, one of these souvenir guns was pointed at me. I was looking right down the muzzle of a German luger. And that was like one of these souvenir items that are casually carried around. But how can the police know about the intention of the person carrying the weapon without checking into these things?

I do not feel that the original statements in our constitution are so bad. They have been in there up to now and they are good. I think the Prettie amendment is probably just as good but as far as that is concerned I would just as soon go back to the original wording of the constitution.

Thank you.

CHAIRMAN BAGINSKI: Mr. Sharpe.

MR. SHARPE: Mr. Chairman, in view of the fact that I spoke about a "cock and bull" story, I would like to remind my good colleague, Mr. Douglas, of the fact that I feel for these people but I also say this is a city of Detroit problem and it looks to me as though they have solved the problem for themselves very well.

CHAIRMAN BAGINSKI: Mr. Lawrence.

MR. LAWRENCE: Ladies and gentlemen, I did not intend to say anything but I do feel compelled to do so for this reason. So much heat has been generated — perhaps that is the word — that in view of the fact that I support the committee proposal, and oppose the Prettie amendment, I feel called upon to state for the record my reason. Within the last year I have had the privilege twice of seeing a documentary motion picture film in Williamsburg, Virginia. That film has been shown, I believe, to millions of people who have visited Williamsburg and the film has been very popular.

During some of the debates I had an opportunity to think of that film in lieu of anything else, and when I think of the travail, the things that our forefathers went through, to get us the privileges we have, I feel compelled to vote against anything that tends to delete one of our basic rights.

I feel that although this may be labeled an evidentiary rule, the results have been and cannot help but be to dilute that hard won right. (applause)

CHAIRMAN BAGINSKI: Mr. Heideman.

MR. HEIDEMAN: Mr. Chairman, fellow delegates, I also wish to express my view for the record. A free or constitutional society has 2 main aspects, the right of the majority to rule, and the right of the individual to be free. We are now here concerned with the right of the individual to be free, free even against the majority.

Man's most sacred right is the finest jewel in the crown of democracy and, because there is a reasonable doubt in my mind, I wish to do the sure thing and support the original committee report.

CHAIRMAN BAGINSKI: The question is on the Prettie amendment as amended. As many —

Mr. Higgs.

MR. HIGGS: Mr. Chairman, fellow delegates, we must be very close to voting on the Prettie amendment. (laughter)

I feel constrained to say this. A certain amount of emotion has been introduced into this debate upon which I should like to comment and, in particular, that introduced by Delegate Douglas. I am, I think, pleased, and Delegate Douglas should be pleased, with the compassion demonstrated by the law enforcement officers in that particular case. Although he was carrying weapons, he had an opportunity to explain himself and it was explained and he was released.

But I would not like him to think that illegal arrest is a matter of color. I, too, have been illegally arrested. In 1951, in flagrant violation of my rights — and I might say that I do not take my rights lightly — I was stopped, taken to the police station, and fortunately I did not have in my possession anything illegal. But I would like to say that as a consequence of that, when I had the opportunity to do so as an attorney, I prosecuted a civil claim against 2 constables and a sheriff in a federal court, for an illegal arrest, and secured a judgment.

Thank you.

CHAIRMAN BAGINSKI: Mr. Garvin.

MR. GARVIN: Mr. Chairman and fellow delegates, first I want to say, in answer to Mr. Higgs, if there is emotion in this debate, there has been emotion with regard to this issue since 1835; and that emotion has worked out pretty well in these United States of America. And since 1835, this emotion has been reflected in the state constitution, and it has worked out well.

If it is emotion, let us have the emotion, if that is your opinion of it. But actually, it is law. It is basic law under the Constitution of the United States.

Judge Mosier, Judge Gadola and other delegates here have explained to the committee all the legal efficacy of the Constitution of the United States, and I do not believe it is for us to change it. It has been going along great so far.

Now, as has been stated, this is a rule of evidence and I believe that most of us know that rules of evidence are not ordinarily contained in a constitution.

I was impressed, too, by the few words spoken by Mrs. Judd. There has been a lot of talk here about what has happened heretofore when people were voting on these amendments. Of course, one of the reasons they voted for the amendment is that through the newspapers and through the press — which was brought out yesterday — the facts were made known and that is the reason they voted as they did.

But more important than that, just a few months ago they asked us to review the constitution and draw up a new one. And I am standing by that, and I am standing by the proposal as brought in by the committee.

CHAIRMAN BAGINSKI: Mr. Young.

MR. YOUNG: Mr. Chairman and fellow delegates, I, too, wish to take a position in opposition to the Prettie amendment. I think that our present discussion, in its inordinate length, is an indication of the importance of this matter, and of the fact that this will probably be one of the most critical discussions we have had and will have in this constitutional convention.

We have, in my opinion, reached the turning point. The basic question before us is: shall we continue the 100 year march of progress, the extension of human rights, that has characterized the great state of Michigan and go forward and expand those rights? Or shall we turn our back and begin to contract individual rights of citizens?

I have heard it said here that this is a Detroit problem and that Detroit can solve that problem. I think Delegate Sharpe indicated that he was sorry for those people. Now, I don't know what he meant by "those people" — he might have meant the citizens of Detroit or he might have meant the negro people who constitute 1/10 of the population of this state.

But in any event, whether it is a minority consisting of the population of the city of Detroit or the minority of the negro people, this entire convention should be very alert to any threat to the liberties of any individual, much less any substantial minority among us.

There were those in Germany when Hitler started his imposition of the laws of the state, his illegalization of police power, who felt this only concerned the Jewish people. But history has shown how wrong those people were, for indeed Hitler's illegality was extended against the whole German people, against all of continental Europe, and it threatened to engulf the world.

I think that here today we all are faced with this question, this same type of constitutional question. I say that the people of the state of Michigan will judge, to a great degree, whether or not this constitution shall be accepted or rejected on the basis of what attitude we take toward the basic human liberties that are enshrined in our national constitution.

This is no technical question. I am no lawyer. This is a matter of human rights. This is a matter of the doctrine of the federal constitution as opposed to the doctrine of interposition, as has been advanced here.

I, for one, take the position that the doctrine of human rights deserves my support and I take my position in support of the Constitution of the United States.

CHAIRMAN BAGINSKI: Mr. Sharpe.

MR. SHARPE: Mr. Chairman, Mr. Young, I did not say this was a problem for the city of Detroit that they could not

solve. What I said was this: it looks to me, as though, according to the last election, they have solved this problem — and I do say that it is a local problem because it has not happened that way in Grand Rapids, at least I have no knowledge of it, and it has not happened in Howell. We have, however, apprehended several criminals because of this proviso and that is why I am in favor of it. I did not say that it was a problem for the colored people. I said I feel for these people whoever they are, who are harrassed. Thank you.

CHAIRMAN BAGINSKI: Mr. Barthwell.

MR. BARTHWELL: Mr. Chairman, fellow delegates, I am not an orator. I am not even a public speaker. I had planned to keep my seat — and I have been trying very, very hard to do so — but there are many reasons why I am going to have to stand up here and talk now. You see all of my colleagues, fellow citizens and members of my race in this convention have gone on record as stating their positions, so I am forced to. And I am forced to for a very important reason. I am here as an independent. I am here because my actions in the community and my actions in the city of Detroit have demonstrated to many, many people in the city the type of thing for which I stand.

I have had great faith in the results that this convention was going to produce in terms of human rights. I had great faith in the results that would be achieved by the convention in the field of human rights for the people of my race in this state.

However, I have been tremendously disappointed with the people here expressing insistence on keeping those clauses which really are meaningless in this section. I have been disappointed with their desire to retain them.

I have been searched, too. I have been searched so many times that it has become just one of those things that I expect. I was searched in the recent dragnet. I was not driving a car. I heard Delegate Norris mention that you do not even have the right of protection from your person being searched. I was walking down the street at 2:30 in the afternoon when I was searched. I had to pull my personal belongings out of my pockets. I do not wish to dramatize this situation, but let me say that this is the bill of rights, and this is a deplorable situation, and I do not think the courts will be able to do anything, as a result of our action here, that they cannot already do.

I rise in support of the proposal just exactly as it was introduced by the committee on declaration of rights.

CHAIRMAN BAGINSKI: Mr. Tweedie.

MR. TWEEDIE: Mr. Chairman, fellow delegates, Mr. Heideman talks about reasonable doubt. Well, because there is very reasonable doubt in my mind as to whether the committee did the right thing in overruling the mandate of the people, I support the Prettie amendment.

CHAIRMAN BAGINSKI: Miss Donnelly.

MISS DONNELLY: Mr. Chairman, fellow delegates, at this time I feel compelled to rise, not because of my being a resident of the city of Detroit, I am not; and not because I am a member of the colored race, I obviously am not. I do not think that is the issue in front of us. I think the issue in front of us is the rights of all people in this entire state versus the right of the police in an attempt to gain evidence and to gain it in an unlawful manner because it is not pursuant to a lawful arrest.

It seems to me that not enough emphasis has been placed on the fact that lawful arrest will allow for lawful search which will allow for the proper admission into evidence.

The issue in front of us in my opinion is: do we vote, in effect, to uphold the general statement as set forth in the United States constitution, article IV, or do we wish to preserve the limitations on the rights of every individual to help the police?

I should like to state one other point. I happen to think that many of the police are marvelous. I do not mean to be against them. But I would like to point out that for every police officer and every prosecutor in any instance you take them, wherever the citizens are, you will find that against them you will have one defendant and his counsel. Now, I do not think the police are in that bad shape. I think they do a marvelous job and I do not think they need this.

Further, if we are going into narcotics very intensely, as an individual who has practiced in Wayne county courts, in my opinion whenever a narcotics issue arises and there can be any federal situation involved, we will waive to the federal authorities so that they may commit the individual to the federal hospital which we cannot do in the state of Michigan.

So, if anybody is getting carried away on the question of narcotics, I would remind them of this. I think it is basically not understanding what is done where probably most of it is going on.

So, as I say, again, the basic issue is: do you want to protect the rights of all people against this method of obtaining evidence, bearing in mind that they can always get a search and seizure by legal means — they can always get a warrant — and if they cannot get a warrant they can make a lawful arrest for a misdemeanor, in their presence, or a felony, or on probable cause that a felony has occurred, and they are not helpless.

CHAIRMAN BAGINSKI: The question now is on the Prettie amendment as amended. As many as are in favor of the amendment will signify by saying aye. Those opposed?

The amendment, as amended, is not adopted.

DELEGATES: Division.

CHAIRMAN BAGINSKI: Is the request for a division supported? A sufficient number are up.

The question is now on the Prettie amendment as amended. Mr. Ford.

MR. FORD: Mr. Chairman, I should just like to ask this question. We went through this division twice just a few minutes ago. I wonder whether by consent of the committee we could use the voting board just to make it a little easier and we could also all see the count.

CHAIRMAN BAGINSKI: That is up to the committee of the whole. We went through the rules on this yesterday. I would like to have the consensus of the committee of the whole in this regard.

MR. FORD: Mr. Chairman, I am asking for the consent of the committee of the whole to use the board for the division when it is called for.

CHAIRMAN BAGINSKI: Is that a motion?

MR. FORD: I am just asking for consent. I do not believe that I can make such a motion. Is anybody objecting?

CHAIRMAN BAGINSKI: It will be so ordered, unless there is objection.

MR. FORD: A correction, Mr. Chairman. Senator Hutchinson informs me that I can make such a motion, so I move that the board be used in this division in the committee of the whole.

CHAIRMAN BAGINSKI: Mr. Madar.

MR. MADAR: Mr. Chairman, if I recall correctly, yesterday our president said that if this question came up about the use of the board, if there were 10 delegates requesting that the board be used, that you could then use the board.

CHAIRMAN BAGINSKI: We will ask the secretary to read the memorandum applying in this particular case.

SECRETARY CHASE: This is found on page 297 of yesterday's journal. The president made the following statement relative to voting in committee of the whole:

> The ordinary method of voting in committee of the whole is by voice vote. This will be used, with 2 exceptions. One, when the Chair is in doubt, he may order a division; and two, when a delegate asks for a division, and his demand is seconded by 10 or more delegates, the Chair will order a division.
>
> A division is not a recorded roll call vote. When a division is ordered, the Chair will specify whether it will be taken by a rising vote (show of hands) or by use of the voting machine. If the machine is used, no record will be made of individual votes, but only of totals.

CHAIRMAN BAGINSKI: The Chair will order the use of the machine.

Mr. Madar.

MR. MADAR: Mr. Chairman, I would like to say I have been corrected slightly on this, because I did say a recorded vote, but I meant a division. But just to let everyone else in the committee know — I did not agree with what the president said yesterday, because that is a recorded vote, and the only reason that I am for it now is to find out how they are going to vote, and I can't by a show of hands.

CHAIRMAN BAGINSKI: Mr. Marshall.

MR. MARSHALL: Mr. Chairman, I think I was the one who raised the biggest question in this respect, and for clarification, I did have a discussion with President Nisbet, Secretary Chase and others. It was explained to my satisfaction that this is not a recorded roll call vote, it is merely a division and by using the board it does not record here. By using the board you merely save time and it is faster than having to go around and count hands and I am satisfied with this procedure.

CHAIRMAN BAGINSKI: As many as are in favor of the Prettie amendment as amended will vote aye. Those opposed will vote no.

SECRETARY CHASE: Have you all voted? The machine is now locked and the tally will be taken.

On the adoption of the Prettie amendment there are 74 yeas and 62 nays.

CHAIRMAN BAGINSKI: The majority of the delegates having voted therefor, the amendment is adopted.

Are there any further amendments?

SECRETARY CHASE: The next amendment on file is the amendment offered by Mr. Bledsoe and Miss Donnelly. It is as follows:

1. Amend the body of the proposal, pages 2 and 3, by striking out all of section 10 and inserting a new section 10 to read as follows:

"Sec. 10. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.".

CHAIRMAN BAGINSKI: The question is on the Bledsoe, Donnelly amendment.

Miss Donnelly.

MISS DONNELLY: I would again like to state, Mr. Chairman, that this is merely article IV of the United States constitution. It is not my authorship. I would like to urge it for 4 specific reasons.

First, there is no question about its meaning. It has been interpreted many, many times.

Secondly, it does not have the onus of an attempt to change the Michigan constitution against the will of the people of Michigan in any way, shape or form, because I do not think the will of the people of Michigan is 100 per cent against the language of the United States constitution.

Thirdly, I originally put this in to absolutely clarify the issue between this and the Prettie amendment. However, I think people now know that this is language opposed to the Prettie amendment in the sense that they are attempting to reserve the amendment we have set up.

Fourthly, and in conclusion of my brief statement, I think we have had more than enough argument. I believe basically that in People v. Gonzales, the people have been citing repeatedly that the United States did indicate at that time that our amendment was not of the best but that it was being upheld.

I think at that time they were improper in reducing our good Judge Gadola and I think that if that were in front of them at this time they would have upheld Judge Gadola and not reversed this, mainly because, whether it is dictum or not, it has a tendency to indicate the direction that that court is going.

With those few remarks, I will yield to my cosponsor, Mr. Bledsoe, if he so desires.

CHAIRMAN BAGINSKI: Mr. Bledsoe.

MR. BLEDSOE: Mr. Chairman, and fellow delegates, every person in this great assembly, I am certain, is in support of the Constitution of the United States.

This measure was presented as a sort of saving clause, if I may use that term, so that whatever happens, I wanted to be certain that we would not be going far afield.

This is something that was included in our oath, as Mr. Brown has already said. It is something to which we are already committed, without amendment or without any change. It is the law of the land. Our supreme court's decisions are in accord with it. And every oath that was taken was taken in support of it.

Someone has said here that they did not think anybody intentionally or wittingly would violate his oath. I will go along with him — up until now. You know now. Look in your drawer at your copy of the constitution and read it. You have subscribed to it — it was born of the sweat and tears of your forefathers — and I think we should stand by it today.

I am still voting against the Prettie amendment.

CHAIRMAN BAGINSKI: Mr. Downs.

MR. DOWNS: Mr. Chairman, I should like to speak briefly for the amendment of Miss Donnelly and Mr. Bledsoe. The question in my mind is one basically of what is right and what is wrong. These provisions are in the United States constitution and I for one believe we should have at least the same protections in our state constitution.

Now, I am the first to admit that the concept of unreasonable search and seizure is not one that is detailed out for all time but is one of those terms, similar to equal protection of the law and due process of law, which must be interpreted from time to time by the courts. But I am particularly concerned that the people feel that we have at least the same basic protection in our state constitution that we do have in the federal constitution, so our citizens will look to the state, equally as well as to the federal government, for the protection of these rights.

Thank you.

CHAIRMAN BAGINSKI: Mr. Mahinske.

MR. MAHINSKE: I would have to at this time object to the statement made by Mr. Bledsoe for the very same reasons that I objected to these statements made by Mr. Brown. I intend to vote against this particular amendment and I do not believe that in so doing I am violating the federal constitution or any other principles or my oath of office here. I think it is an imposition on the rest of us for Mr. Bledsoe to make remarks to the effect that we are violating our oath if we vote against this particular amendment. (applause)

CHAIRMAN BAGINSKI: Mr. Bledsoe.

MR. BLEDSOE: Mr. Chairman, I beg your indulgence, just to have that read, so that when we vote on it we will know exactly what is contains.

CHAIRMAN BAGINSKI: The secretary will read the amendment.

SECRETARY CHASE: The amendment offered by Mr. Bledsoe and Miss Donnelly is:

[The amendment was again read by the secretary. For text, see above.]

CHAIRMAN BAGINSKI: Mr. Mahinske.

MR. MAHINSKE: I do not see where voting against this is a violation of my oath of this office or a snubbing of my nose at the federal constitution, if you please. I just cannot come to this legitimate determination under any argument presented here. We have this provision that goes before the Prettie amendment to article II, section 10, that we are proposing here.

CHAIRMAN BAGINSKI: Mr. Habermehl.

MR. HABERMEHL: Mr. Chairman, I think Mr. Mahinske raises a good point. I think each one of us right now ought to stop for a moment and realize exactly what we seem to be in the process of doing. Mr. Prettie made no bones about it whatsoever. In response to a direct question Mr. Prettie said that this amendment of his would authorize the use of evidence obtained by an illegal search.

If the language as it now stands, with the Prettie amendment intact, goes into this constitution, is there any question in the mind of a single delegate here that you are giving tacit permission, constitutional authority if you will, to a violation of an individual's right against an unreasonable search and seizure? That is precisely what you are doing. That is precisely the point that Mr. Prettie made.

The sole question then that you have before you is whether or not you, as constitutional convention delegates, want to grant this tacit authority to violate the rights of one single individual against a constitutional guarantee, against an illegal, unreasonable search and seizure.

I rise to support the Donnelly, Bledsoe amendment. There is no substantive difference between this amendment and mine which will follow. I do not wish to withdraw mine at this moment, since my amendment procedure would be a little bit simpler.

CHAIRMAN BAGINSKI: Mr. Youngblood.

MR. YOUNGBLOOD: Mr. Chairman, ladies and gentlemen, as a police officer for the past 7½ years, I have seen both sides of this story. As I look at this amendment, I see no quarrel with it at all. It protects both the people and the police officer. We have everything we want in this. Therefore, I am in support of this amendment, just as it is now.

CHAIRMAN BAGINSKI: Mr. McAllister.

MR. McALLISTER: Mr. Chairman and fellow delegates, I wish to say in the beginning that I have the highest regard and the greatest respect for both Miss Donnelly and Mr. Bledsoe. They are people of good judgment.

I was prosecuting attorney for 12 years and have been a defense counsel for the past 15 years. The benefits of section 10 as enacted are far greater and far outweigh the harm it will do. We have law enforcement officers who are overzealous and on 2 occasions I have had the privilege of looking down the barrel of a gun.

We at times must suffer some inconvenience in order that a great majority of the people may be protected. A gun, a bomb, dope, a machine gun, or a pistol are items not usually carried for pleasure. And when a person is found carrying one of these articles he or she should expect to be apprehended and investigated before being allowed to continue.

I might also add that I have been threatened with an illegal search. In other words, when threatened, I told them they could take me to jail if they wanted. I had no contraband and that was up to them. Incidentally, I was allowed to go on. I probably am a suspicious looking character, because of the experiences I have had. But in spite of that, I think the benefits of section 10 as amended far outweigh any damage that could be done by it.

CHAIRMAN BAGINSKI: Mr. Dehnke.

MR. DEHNKE: Mr. Chairman and members of the committee, I arose for another purpose than that of discussing the amendment immediately before us. I want to refer back to this discussion of the charge that was made in very blunt language that those of us who did not agree with the speaker were knowingly and deliberately violating the oath we had taken. My first emotional impulse was to rise and to resent that statement. Then I began to look the group over and I realized that that remark had been made under the influence of a momentary emotion and that the response it first engendered in me was also due to a momentary emotion.

We are here engaged in a great historic task. We differ, and differ sincerely, and will continue to do so about many things.

In this convention are long time friends of mine. Among them is Mr. Bledsoe who sits almost directly in front of me. I learned to regard him highly and to respect him many years ago and I have continued to do so over the years.

My plea is that however high our emotions may rise, let us never permit it to be said that, more than momentarily, years of love have been forgotten in the anger of a minute. (applause)

CHAIRMAN BAGINSKI: Mr. Bledsoe.

MR. BLEDSOE: Mr. Chairman, I could not live with myself knowing His Honor as I have known him, and the respect that I have for him, both as a man and as a judge before whom I have appeared while he was on the bench, if he for one moment thinks that I think that he would wittingly violate any oath that he might take, and I wish now to disabuse his mind of any such impression.

I revere our judiciary because they are symbols of the sovereign power of the people and that means a lot. This is a sovereign body. We, too, are symbols here today.

That is why I simply wanted to be sure that whatever we do here, we will measure it by the highest law of the land. That was the only reason why I thought it wise, after lengthy deliberation, to suggest the amendment that was placed before you today. I did not rise in any way to impugn the character of anyone, or the honor and reputation of anyone.

CHAIRMAN BAGINSKI: Mr. Faxon:

MR. FAXON: Mr. Chairman, fellow delegates, yesterday I tried to say some words with regard to the history of this. I am not going to read any statement now. But I think we should understand that we are dealing here with a very, very basic right.

It has been said and said again that when this came up in the 1787 convention, one of the arguments for their not including a bill of rights at that time was that these rights were already known and understood, and so why put them down, as this would tend, almost, to restrict them because it would spell them out. This is Madison's argument, I believe, in this respect. Now, afterwards, some of the people felt that we ought to spell out some of these inalienable rights.

I am speaking now with reference to a question that was answered in response to an inquiry I put when I asked why this was adopted here in Michigan and no other place — and that was because the people of Michigan voted for it. That was the answer I was given. Does this mean that the people of Michigan voted to establish a church? Voted to take away our freedom of speech, our freedom of assembly? Does it mean that the Michigan residents could do this kind of thing?

There is a law beyond which the people of Michigan cannot vote to impose upon their fellow citizens and we are dealing here with a basic right. This is not a subject for voting upon in terms of a majority taking something away from a minority. We are dealing with individual rights and individual liberties. We are here representing all of the people of the state.

Now, some people like to say, "Well, this is a problem for you people in Detroit." But this is not a problem exclusively for those from Detroit. It is a problem for all of us. I am told to take into account the problems of the people in the upper peninsula and the problems of people of western Michigan and I am willing to do this. And certainly it is a problem with which all of us should be concerned. It is not a local problem, it is a fundamental problem.

I am supporting the Donnelly, Bledsoe amendment. It is the basic right that was put into our constitution in 1791. It deals with those rights that Jefferson and Madison and the founding fathers of our country believed in. It is a right that has been with us for hundreds of years. I cannot see why anyone at this point wishes to turn the tide of history and the direction of our whole culture by starting to restrict those rights.

CHAIRMAN BAGINSKI: The Chair recognizes Mr. Upton. The Chair admonishes the speakers to confine themselves to the amendment.

MR. UPTON: Mr. Chairman, I know the hour is getting late, but we have heard much said about our having to abide by article IV of the Constitution of the United States and I wish to make a comment in this connection. I have been reviewing this blue book that has been referred to and I find a note in here to the effect that the application is limited to the federal government only, "The fourth and fifth amendments of the national constitution are limitations upon the federal, not upon state, powers."

Therefore, not being a lawyer, but a layman, I would say that the amendment that we have already adopted is completely

within our jurisdiction, and we do not have to abide completely by the fourth amendment in our state powers.

Thank you very much.

CHAIRMAN BAGINSKI: The Chair recognizes Dr. Hannah.

MR. J. A. HANNAH: Mr. Chairman, members of the committee, I have listened attentively through 2 days of discussion of this problem and I rise to speak in favor of this amendment, being as interested in strengthening the ability of law enforcement officers of this state as any member of this convention.

The university with which I have the honor to be connected has for a long period of years operated the outstanding program in police administration in this country — and I think in the world — because we believe that law enforcement is important, and that the officers who have to enforce the law should be well trained and should have all the tools that are required to do the job that society gives them to do.

For the past 4 years, I have had the responsibility of serving as the chairman of the federal commission on civil rights, appointed by President Eisenhower and reappointed by President Kennedy. A few weeks ago we gave our report to the congress and to the president, outlining what we believe the facts to be with reference to the infringement of the civil rights of the people of this country where the infringement is due in part to race, color, creed or national origin.

One section of that report — one whole volume — is entitled Justice, and it is a compilation not of myths but of what the facts are in the United States with reference to the administration of justice to members of society who are not white or economically advantaged.

And, ladies and gentlemen, there is a vast difference between the treatment that I receive, or those of most of the members of the convention receive, when they are approached by officers of the law, and the treatment that is accorded those disadvantaged good American citizens — just as good as you and I are — who pay their taxes and serve in our armies and give their all. But when they are apprehended or even when they are not apprehended, they are harshly and unreasonably treated. And this treatment is not limited to nonwhites. It is the kind of treatment too often accorded to white people, too, who are economically disadvantaged. It is an entirely different kind of treatment.

I understand why it exists, and I understand why the officers of the law feel they are entitled to behave as they do. But I do not believe that any citizen of this state, if he really is thoughtful, will knowingly do anything that will encourage the continuance of the abuse of unfortunate people, as they have been abused not only in Alabama and Mississippi, but in Chicago and in Detroit, and, I suspect, in other Michigan cities.

Without prolonging my remarks, I would only urge — you cannot do it now but I would urge for your own education — that sometime in the next few days or weeks you read this volume Justice. It is factual and it is disturbing. I am not a lawyer. I am impressed with the good faith of all of the people who have spoken in favor of the Prettie amendment and all of these other matters that have been before us.

But I, for one, am not interested in making it difficult in any way for the state police, the sheriffs, the local police officers. However, I think it is important, too, that we make certain that every citizen is given fair treatment always and is not damned because he happens to be black or brown or economically disadvantaged.

And it is for these reasons that I shall vote for the amendment before us. (applause)

CHAIRMAN BAGINSKI: Dr. Nord.

MR. NORD: Mr. Chairman, I should like to call to the attention of the committeee a few facts.

First of all, the beginning language of the section under consideration states " . . . the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated.". It says it shall not be violated. I ask you whether it is being violated? I don't need to ask you because many people have stood on this floor, some in favor of the Prettie amendment and some against, and have told us that it has been violated in relation to themselves.

I believe that perhaps 15 people have stood here on the floor and said they had personal experience with this particular provision of the United States constitution and that it has been violated. This provision and a similar one in the Michigan constitution have been violated repeatedly.

It says, in section 10 of the constitution, at the present time, and also under the Prettie amendment, " . . . persons, houses, papers and effects. . . . " It means that the persons, houses, papers and possessions of every person shall be secure from unreasonable searches and seizures.

I ask you whether they are secure. Are they secure? Can it be said that they are secure when our own delegates report to us that they are not secure?

Let me ask you this: how many of the parts of the bill of rights that presently I hold in my hand have been similarly violated? If all of them were violated to that extent, what would be left of the bill of rights? It would be a shred, a tatter; it would be nothing.

If this is a bill of rights, it has to be secure, and it is not secure. It is not secure with the Prettie amendment. As a matter of fact it is very difficult to keep it secure even without the Prettie amendment. But we certainly cannot keep it secure by encouraging, as was pointed out, the police to violate it.

I think what we should do is this. We should adopt the Bledsoe, Donnelly amendment, and when we leave here, we should go back to our people and tell them that when it says "the right of the people to be secure in their persons, houses, papers and effects," and so on, we mean it to be applied.

CHAIRMAN BAGINSKI: Mr. Prettie.

MR. PRETTIE: Mr. Chairman, I wish first to ask Dr. Nord a question, and reserving the floor until I have his answer, I would like to make a brief statement in opposition to the Donnelly, Bledsoe amendment. My question, sir, is this. Under the proposed amendment it is prescribed against the issuance of warrants but upon probable cause supported by oath or affirmation, particularly describing the place to be searched and the person or things to be seized.

How does a police officer, with a car in front of him, having perhaps been informed of a bank robbery in the vicinity, go about obtaining a warrant such as this constitutional mandate requires?

MR. NORD: Mr. Prettie, you have asked the perfect question. I am delighted that you asked me that question because it is one question on which I have lectured to my students over and over again and I mentioned it on the floor but I believe that nobody paid much attention to it because somebody else asked that same thing, or implied the same thing — that there is no way. There is a way under the federal cases.

The federal cases provide, as I pointed out, 3 different ways, in addition to the one — the instance — in which there is permission to search. In addition to getting a search warrant, there are other ways. That is one way.

Another is incidental to lawful arrest. The federal cases have provided repeatedly that there is a third way in addition. I am glad you pointed this out. I will mention what it is in a moment. I am glad because I am quite certain that the police seem never to have heard of it.

The third way is by probable cause when the evidence is in such a place or in such a condition or of such a nature that it is likely to be moved away. And the reason for that rule — in that case no warrant is required — the type of probable cause that is required is the same type of probable cause as if you were going to get a warrant.

In other words you must have personal knowledge that would support a search warrant. In that case you could make the arrest without the warrant. That has been held by the United States supreme court and as a result I see no reason to worry about this.

I might add further that the language before us would state how the warrant is to be obtained. It does not say,

however, that that is the only way there can be a reasonable search and seizure.

The United States supreme court has interpreted this particular language, as I say, to allow 2 other ways. That is my answer, sir.

MR. PRETTIE: I appreciate the short course just given, Dr. Nord. I wish, in opposing the Donnelly, Bledsoe amendment, once again to remind the delegates of this committee of the language of Mr. Justice Smith in the very recent case that we have discussed so much, the Gonzales case. That language is as follows:

> The constitution does not define liberty, nor do we. In an absolute sense it does not exist.
>
> A myriad of commands we follow daily. But not every intrusion upon our person or property is an encroachment so gross that the spirit becomes hostage to the act and we are no longer free. Much will depend upon the circumstances attendant.

Omitting some language for brevity, I continue as follows:

> Always there is the problem of balance. . . .
>
> . . . The concept of freedom, then, has no fixed content.
>
> . . . The freedom of one man necessarily involves the correlative restraint of his brother. . . .

CHAIRMAN BAGINSKI: Mr. Rush.

MR. RUSH: Mr. Chairman, it looks as though this could be debated for a long, long time.

I move that the committee do rise.

CHAIRMAN BAGINSKI: The question is on the motion that the committee rise.

Mr. Marshall.

MR. MARSHALL: Mr. Chairman, I thought that you were keeping a record of the people who were standing and who wished to speak.

CHAIRMAN BAGINSKI: I am.

MR. MARSHALL: Well, do they get to speak? Will they have that opportunity?

CHAIRMAN BAGINSKI: The motion is not debatable. The question is on the motion that the committee rise. As many as are in favor signify by saying aye. Those opposed?

The motion does not prevail.

The Chair recognizes Mr. Ostrow.

MR. OSTROW: Mr. Chairman, ladies and gentlemen of the committee, I voted for the Prettie amendment. I am going to vote against the Bledsoe, Donnelly amendment. I have lived in the city of Detroit for over 50 years. Nobody knows any better than I do the disgraceful treatment at times accorded by the police to the negroes and other groups in Detroit. But that has been an old, old story. It has nothing to do with this proviso.

Long before 1936 the same things occurred spasmodically. In periods of hysteria the police would start wholesale, unlawful searches and seizures. But the remedy is not this proviso. Frank Murphy, when he was mayor of Detroit, put a stop to it the first time and your present mayor of Detroit will probably put a stop to it again.

The remedy is with the responsible people and no constitutional proviso will stop illegal searches and seizures.

All that this proviso does is this. When you do catch a narcotics peddler or a criminal you convict him. It does not hurt the innocent person; it does not help him.

When I first started law school in 1921, we studied illegal searches and seizures — and they had them then by the hundreds. One of my classmates who is now a high official in Detroit was picked up on the average of 1 or 2 nights a month on his way home from law school. But not because of this proviso. That was 15 years before this proviso. This proviso does not hurt any innocent person. It merely enables the people to convict guilty ones.

Now, nobody has more sympathy — and it is not an abstract sympathy — with people who are unreasonably searched or unreasonably persecuted. I know, first hand, what it is to be the object of nationwide persecution. My people came here from Russia. A mad painter in Germany tried to exterminate all the members of my religion.

But this is not going to cure the situation. Taking this provision out will not meet the situation, in that it will not stop discrimination and it will not stop illegal searches and seizures and leaving it in will help send some guilty persons to jail. Keeping it in will not hurt any innocent people. Taking it out will not help any innocent people. (applause)

CHAIRMAN BAGINSKI: The Chair recognizes Mr. Brown.

MR. G. E. BROWN: Mr. Chairman, I shall be very brief in my remarks. I have indicated previously, of course, that I would support the Habermehl amendment which is the language of the Michigan constitution as it was in 1908 prior to the amendments of 1936 and 1952.

The Donnelly, Bledsoe amendment being very comparable in language — constituting practically the same thing as the 1908 language of the Michigan constitution — is not so essentially different that I would not support it also.

I think that rather than listening to what I might have to say, you might be interested in what the director of the federal bureau of investigation has said regarding this subject. Mr. Hoover, in 1952, said this:

> One of the quickest ways for any law enforcement officer to bring public disrepute upon himself, his organization and the entire profession is to be found guilty of a violation of civil rights.
>
> Our people may tolerate many mistakes both in intent and performance, but with unerring instinct, they know that when any person is intentionally deprived of his constitutional rights, those responsible have committed no ordinary offense.
>
> A crime of this nature, if suddenly encouraged by failure to condemn and punish, certainly leads down the road to totalitarianism. Civil rights violations are all the more regrettable because they are so unnecessary.
>
> Professional standards in law enforcement provide for fighting crime with intelligence rather than force. In matters of scientific crime detection, the services of our F.B.I. laboratory are available to every duly constituted law enforcement officer in the nation.
>
> Full use of these and other facilities should make it entirely unnecessary for any officer to feel the need to use dishonorable methods.
>
> Complete protection of civil rights should be a primary concern of every officer. These rights are basic in the law and our obligation to uphold them leaves no room for any other course of action.
>
> Although the great majority in our profession have long since adopted that policy, we cannot yet be entirely proud of our record. Incidents which give justification to charges of civil rights violations by law enforcement officers still occur.
>
> This state of affairs ought to be taken as a challenge to all of us. Every progressive police administrator and officer must do everything within his power to bring about such an improvement that our conduct and our record will conclusively prove each of these charges to be false.

I merely direct the committee's attention, in the field of narcotics, to this point. Most of these indictments, charges and convictions arise in the federal jurisdiction which is governed by the exclusionary rule and they have no problem with a provision of this nature. Thank you.

CHAIRMAN BAGINSKI: Mr. Youngblood.

MR. YOUNGBLOOD: Thank you for recognizing me Mr. Chairman, but what was just said was what I went down to the library to look up, so I will not have to repeat it. Thank you.

CHAIRMAN BAGINSKI: Mr. Marshall.

MR. MARSHALL: Mr. Chairman and fellow delegates, I rise in support of the Donnelly, Bledsoe amendment. I am not going to infringe upon your time and patience to give the reasons, because I believe that every reason that I could conceivably think of and which I might have had in mind has been expressed on the floor here today and yesterday. I can think of nothing that has not been said.

I appreciate — and I want to say this very honestly and very frankly — Mr. Prettie's wonderful presentation in support of and in substantiation of his position. I believe that all of the speakers have been sincere in their remarks and in expressing their convictions. I have to concur with what Judge Dehnke said in his remarks the last time he was on the floor. I think we can disagree without being disagreeable.

I feel very strongly about this particular subject myself and I should like to have more time to go into some of the reasons, as many of the other speakers have done, including speakers much more eloquent than I, such as Dr. Hannah, Mr. Bledsoe and others.

If you listened closely to Dr. Hannah's presentation, I think you heard one of the most forthright and eloquent presentations that could be made on the subject which we have been debating here during the past 2 days.

And even more important than rising to support the Bledsoe, Donnelly amendment, I rise to ask the delegates to use some degree of reasonableness in helping to bring the debate to a close, because if the committee of the whole should rise, then we start over tomorrow where we leave off now. And it is obvious to me, and it has been obvious for at least ½ a day or longer, that most of the minds, if not all of the minds, in this committee are made up as to how you are going to vote in accordance with your own beliefs and your own convictions.

So I would only appeal to your sense of reasonableness to cut off debate and let's have a vote on this question. I realize I cannot move that, and I am only asking, Mr. Chairman. Thank you.

CHAIRMAN BAGINSKI: Mr. Hanna.

MR. W. F. HANNA: Mr. Chairman, I wish to direct a question to Mr. Prettie. Mr. Prettie, you asked for a short course from Dr. Nord and he mentioned a third way in which evidence may be seized when it is about to be moved, et cetera. My question to you is this. Can that rule be written into this section in such a manner that it would erase the objections to personal search and seizure or search upon the streets to which various delegates referred; and if the officer could show that the evidence he uncovered could be disposed of unless he seized it at that minute, would this not answer all problems raised here and reconcile our 2 positions?

MR. PRETTIE: Mr. Hanna and Mr. Chairman, if you are asking me whether I could write such language without further study of Dr. Nord's suggestions, I would say that I cannot at this moment. I would say further that it seems to me that this subject has for 25 years had very deliberate consideration by those who framed the amendment in the first place, those who drafted the amendment in 1952, the voters who by a chorus of 5 to 1 voted upon it, and had there been a better approach to the problem you suggest I think it might better have been evolved during the past 25 years than — hopefully — within the next few moments. I cannot write such language as you suggest at this time.

CHAIRMAN BAGINSKI: The question now is on the amendment offered by Miss Donnelly and Mr. Bledsoe. As many as are in favor of the amendment will signify by saying aye. Those opposed?

A DELEGATE: Division.

CHAIRMAN BAGINSKI: Is there support for the request for a division? Please rise. There are more than 10 up. The Chair will order the use of the machine.

As many as are in favor —

Mr. Ford.

MR. FORD: Mr. Chairman, on a point of order, I do not know if it is proper to raise this question at this time, but let me say this — I would ask the indulgence of the Chair for just a moment — in view of the importance of this issue and in view of the fact that we have been discussing it for 2 days, I think we should have an opportunity to have the vote of every delegate who is reasonably close to the committee floor. Could we take just a minute in which to give these people who are absent a chance to enter the hall and vote? It would just take a moment and it would give these people a chance to come in, take their seats and vote.

CHAIRMAN BAGINSKI: Those in favor of the Donnelly, Bledsoe amendment will vote aye. Those opposed, no.

SECRETARY CHASE: Have you all voted? The machine is now locked and the tally will be taken.

The vote on the Bledsoe, Donnelly amendment: yeas, 62; nays, 70.

CHAIRMAN BAGINSKI: The amendment is not adopted. Are there any further amendments to section 10 at this time?

SECRETARY CHASE: Mr. Habermehl has filed an amendment to strike out all of lines 6 and 7 on page 3. The secretary would suggest that the amendment proposed by Mr. Prettie has already accomplished that.

CHAIRMAN BAGINSKI: Mr. Habermehl.

MR. HABERMEHL: I agree, Mr. Chairman, that the Prettie amendment has somewhat affected the amendment that I offered. (laughter) In that case, Mr. Chairman, I would move the adoption — as a substitute for the matter as it is now — but the adoption only of the first 2 sentences of section 10 as it is now, as it was contained in the committee report. That would read:

> The person, houses, papers and possessions of every person shall be secure from unreasonable searches and seizures. No warrant to search any place or to seize any person or things shall issue without describing them, nor without probable cause, supported by oath or affirmation.

SECRETARY CHASE: Mr. Habermehl has offered the following amendment to section 10:

1. Amend page 2, line 28, after "affirmation.", by striking out the balance of section 10; so the language of the section would read:

> The person, houses, papers and possessions of every person shall be secure from unreasonable searches and seizures. No warrant to search any place or to seize any person or things shall issue without describing them, nor without probable cause, supported by oath or affirmation.

CHAIRMAN BAGINSKI: Mr. Prettie.

MR. PRETTIE: Mr. Chairman, I rise to a parliamentary inquiry. The amendment which I proposed and which we have so long debated was adopted. The effect of the amendment just proposed by Delegate Habermehl would be to delete all of the amendment so adopted.

I inquire as to whether this is not tantamount to a reconsideration of the vote by which the amendment was adopted and whether a motion to reconsider is in order in committee of the whole?

CHAIRMAN BAGINSKI: Mr. Prettie, members of the committee of the whole, I am informed by the secretary that the rules do deal with this particular situation and the amendment is not in order.

Are there any further amendments to section 10 at this time?

SECRETARY CHASE: Mr. Hubbs has offered the following amendment:

1. Amend page 2, line 28, after "affirmation.", by inserting "Any inspection, by governmental authority, of corporate or personal business records without a search warrant properly obtained shall be a violation of this section.".

CHAIRMAN BAGINSKI: Mr. Hubbs.

MR. HUBBS: Mr. Chairman, fellow delegates, what I intend to say will be very brief and we will not be delayed much longer.

My basic purpose in offering this amendment when I did 2 days ago was to illustrate a point. And I intend to illustrate it even though the Prettie amendment which I favored has carried, because as I see it there are a great many people here who believe that the Prettie amendment is an unfair intrusion on the rights of people.

I would like to point out to you that as a small businessman, statutes grant certain agencies of the state power to effect police authority and to come into my place of business, flip open their pocketbooks, show me a badge, and demand to see my records of the automobiles I have sold, and inspect my business records. From my point of view, they should have no more right to do this than a police officer should have to stop a car on the highway and search illegally. As far as I

am concerned, when one of these people shows up and searches my records in this way, my back gets up because they impugn my integrity and my honesty in the conduct of my business.

And the people of Michigan, apparently, have seen fit to give them this police authority which is the same thing which we, in effect have granted, with regard to dope and narcotics.

I make the following statement. We have adopted the Prettie amendment and I am happy that we have, and as long as we have adopted the Prettie amendment to control criminals engaged in the traffic of narcotics and firearms, as an innocent businessman I am happy to submit to regulation also. Thank you.

CHAIRMAN BAGINSKI: Mr. Ostrow.

MR. OSTROW: If I understand Mr. Hubb's amendment, Mr. Chairman, I oppose it, if this amendment means what I think it means. If it means that sales tax people could not come in to audit your records or any other governmental agency could not come in to audit your records, then I certainly oppose it and I think most of the delegates here would, too, especially if we get a state income tax. (laughter) In that case we would certainly want to audit your records, and those of everyone else, no matter how honest they are. Despite Mr. Hubbs' honesty, there are other people who are not quite as honest.

CHAIRMAN BAGINSKI: Dr. Pollock.

MR. POLLOCK: Mr. Chairman, as the chairman of the committee on declaration of rights, suffrage and elections, I feel it is my duty, without expressing an opinion as to the merits or demerits of this amendment, to say that although Mr. Hubbs was a member of the committee, he did not submit to the committee this amendment during the course of its many meetings.

CHAIRMAN BAGINSKI: Mr. Walker.

MR. WALKER: Mr. Chairman, I rise only to say that although I do not agree with Mr. Hubbs, I daresay that Mr. Hoffa would. (laughter)

CHAIRMAN BAGINSKI: Mr. Hubbs.

MR. HUBBS: Mr. Chairman, I think it has been several years since I left the navy, and the good doctor and those in authority can no longer issue demerits relating to my conduct.

As I said when I first started to speak, I was trying to illustrate a point. We have heard much discussion today about protecting the rights of individuals against unreasonable searches and seizures, and as far as I am concerned, I feel that my rights are being unfairly violated.

As far as I am concerned, if we had adopted section 10 without the proviso, from the standpoint of the protection of business people against unreasonable intrusion into our business affairs, that would be a hollow shell — it would give me no protection whatsoever.

Under the circumstances, I concluded my remarks by saying that as long as this committee had seen fit to regulate criminals, I, as an honest businessman, would also be willing to be regulated, and I therefore withdraw my amendment. (laughter)

CHAIRMAN BAGINSKI: Dr. Pollock.

MR. POLLOCK: Mr. Chairman, I move that the committee of the whole do now rise and report to the convention.

CHAIRMAN BAGINSKI: Dr. Pollock, are we quite through with section 10?

MR. POLLOCK: I beg your pardon. I retract that. I assumed we had completed but we have not. Will you put the question, Mr. Chairman, and then I will make my motion.

CHAIRMAN BAGINSKI: I am sorry, but I am informed that there are 2 more amendments.

SECRETARY CHASE: May the secretary make this statement. Following the listing of the amendments that you have here, there have since been filed 2 other amendments to section 10, one by Judge Mosier and one by Dr. Nord.

CHAIRMAN BAGINSKI: Dr. Pollock.

MR. POLLOCK: Mr. Chairman, I think we should dispose of these 2 amendments, if we can do so quickly. If not, I will make my motion again.

CHAIRMAN BAGINSKI: Mr. Mosier.

MR. MOSIER: Mr. Chairman, my amendment was filed before I knew that there was on file the Bledsoe, Donnelly amendment. The question raised by my amendment has been thoroughly disposed of by the committee, and I therefore will withdraw my amendment. (applause)

CHAIRMAN BAGINSKI: Are there any further amendments to section 10?

SECRETARY CHASE: Dr. Nord has offered the following amendment:

1. Amend page 2, following line 24, by striking out all of section 10.

CHAIRMAN BAGINSKI: Dr. Nord.

MR. NORD: Mr. Chairman, Judge Mosier here has been so gracious as to withdraw his amendment, and I am going to withdraw Mr. Prettie's amendment — not mine. (laughter)

Mr. Chairman, I believe when I move to strike every single word — every single word — of the search and seizure section of our constitution, you can detect that I think we are in trouble with it. And I also think that we will have to rely on the federal constitution.

I believe the position in which we have left ourselves is this. Having what we have now in the constitution is worse than having nothing because it adds no rights and it tends to subtract from them.

It was pointed out by someone else that the only purpose of the bill of rights of Michigan, if any at all, is to increase the liberties of individuals. If it does not increase but tends to decrease, we ought to take it out, I believe. This would certainly be a drastic step. I realize that. But that is the situation in which we find ourselves, I submit. We are in a position wherein we are actually better off without a section than we are with what we have under the Prettie amendment.

If we take the position — I think we would recognize fully and I think we should recognize fully — that when it comes to simple liberties — the basic civil liberties and civil rights — it is a lucky thing there is the United States constitution, because that is where we must place our faith. We cannot place it in the Michigan constitution, evidently, so we must place it in the federal constitution.

I will say one other thing. The only reason for the Prettie amendment — for the proviso — is this, that certain language in it is said to cause a certain construction which they wish to remove. All it says in the Prettie amendment is this, "Provided however, That the provisions of this section shall not be construed in a certain way". Obviously, if there were no section, there would be no need for the proviso. There would be nothing to construe either way.

The harm that Mr. Prettie fears, that the language in the beginning of the section will be construed in a certain way, will be obliterated. There will be no construction of the section, because there will be no section.

I therefore urge that as a desperation move we rely on the place where we can rely and we remove these dangerous things that are now in this constitution.

CHAIRMAN BAGINSKI: Mr. Kuhn.

MR. KUHN: Mr. Chairman, on a point of order, I think by the words of Delegate Nord he has already told us that his amendment is out of order. He says that if this amendment were to pass we would be controlled by the unlawful search and seizure amendment of the federal constitution, which is correct. That amendment was the Bledsoe, Donnelly amendment which we have defeated. Therefore, it would be out of order to bring it up by indirection.

MR. NORD: Mr. Chairman, may I reply?

CHAIRMAN BAGINSKI: Dr. Nord.

MR. NORD: Obviously, if I would move to insert the language in the Michigan constitution that was offered by Mr. Bledsoe and Miss Donnelly that would be correct. I am not. I hope that is clear. I am not urging to insert anything. I am urging the removal of something. And there has been no such question on the floor.

CHAIRMAN BAGINSKI: In answer to Mr. Kuhn through the Chair, it is in order.

Mr. Prettie.

MR. PRETTIE: Mr. Chairman, since the Chair has ruled

this amendment in order, I want only to say that I cannot in conscience agree that the amendment which this committee has adopted vitiates and destroys this entire section.

The historic sanctity of the home, to which section 10 speaks, is there as it always has been. I urge you to defeat the amendment now before you.

CHAIRMAN BAGINSKI: The question now is on the Nord amendment. As many as are in favor will signify by saying aye. Those opposed?

The amendment is not adopted.

Dr. Pollock?

MR. POLLOCK: Is the Chair now prepared to put the final motion?

CHAIRMAN BAGINSKI: Are there any further amendments to section 10?

Mr. Faxon.

MR. FAXON: Mr. Chairman, I am hungry, too — I didn't eat lunch, either. But let me say this. In view of the fact that we are now going to pass on a proposal which the rights committee did not report out, and in view of the fact that there has been a tremendous concern expressed over this and over the wording of the section, and in view of the fact that delegates have attempted to bring about some sort of a compromise position that would put at rest the fears of certain other delegates, I would like therefore to move that this be referred back to the committee so that they could consider the new language and make a recommendation in the light of the requests and discussion of the delegates here.

CHAIRMAN BAGINSKI: The Chair will advise that the committee of the whole does not have the authority to do so.

MR. FAXON: Then I would like to move the recommendation that this be referred back. Am I not able to do that?

CHAIRMAN BAGINSKI: The question is on the motion of Mr. Faxon that the recommendation be made after the committee of the whole rises that the proposal be rereferred to the committee. As many as are in favor of the motion will signify by saying aye. Those opposed?

The motion does not prevail.

Are there any further amendments to section 10? If not, it will be passed.

Section 10, as amended, is passed. (applause)

Dr. Pollock.

MR. POLLOCK: Mr. Chairman, I move that the committee now rise.

CHAIRMAN BAGINSKI: The motion of Dr. Pollock is that the committee of the whole rise and report progress to the convention. As many as are in favor of the motion will signify by saying aye. Opposed?

The motion prevails.

[Whereupon, the committee of the whole having risen, Vice President Romney assumed the Chair.]

VICE PRESIDENT ROMNEY: While we are waiting for the report of the committee, may I announce that the president had to keep an appointment at 5:30 in Howell along with Mr. Hutchinson and that is why he is not here.

May we have a report, Mr. Baginski?

MR. BAGINSKI: Mr. President, the committee of the whole had under consideration one proposal and the secretary will make a detailed report thereon.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 15** and has come to no final resolution thereon.

This completes the report of the committee of the whole.

VICE PRESIDENT ROMNEY: Announcements.

SECRETARY CHASE: The secretary has the following announcements:

The class in speed reading will not be held tonight. (laughter)

Mr. Brake requests the following announcement to be made: the committee on finance and taxation will meet in room E this evening at 8:00 o'clock.

The subcommittee on annexation of the committee on local government will meet in the conference room Thursday, tomorrow, at 9:00 o'clock in the morning. Mr. Follo, chairman.

The committee on administration will meet in the conference room tomorrow at 12:30 p.m. Mr. DeVries, chairman.

The committee on legislative powers will meet in room H tomorrow at 8:30 a.m. Mr. Hoxie, chairman.

The committee on legislative organization will meet tomorrow at 8:30 a.m. in room D. Mr. J. A. Hannah, chairman.

The remaining announcements are found in the composite calendar.

There is this additional announcement: the subcommittee on higher education, Mr. Bonisteel, chairman, will go immediately to Kellogg center for their meeting.

VICE PRESIDENT ROMNEY: Dr. Anspach.

MR. ANSPACH: Mr. President and fellow delegates, it has been a very, very good session. Some have gained, some have lost. I would like to remind all of you, however, that there are always 2 chances.

This individual walking down the street with a downcast expression met his friend who said, "What's the matter, Bill?" He said, "I've been drafted." The friend asked, "Don't you like that?" He said, "No." "Well," said his friend, "it isn't so bad; you always have 2 chances. They might keep you at home or send you across the United States. If they keep you at home, you'll like that; if they send you across the United States, you have 2 chances. They'll either keep you in this country, or they'll send you across. If they keep you here, that'll be fine; if they send you across, you have 2 chances. They'll keep you back of the lines, or send you up to the lines. If they keep you back of the lines, that's good; if they send you up to the lines, you've got 2 chances. Either you'll be killed or your life will be saved. If you are saved, it's fine; and if you're killed, you still have 2 chances." (laughter)

SECRETARY CHASE: There are a few requests for leave of absence. Mr. Everett requests leave of absence from the session of tomorrow. Mr. Follo requests leave of absence from Friday morning's session, having been asked by the state board of libraries to meet with them.

VICE PRESIDENT ROMNEY: If there is no objection, they will be excused.

Mr. Erickson?

MR. ERICKSON: Mr. President, I move that the convention do now adjourn.

VICE PRESIDENT ROMNEY: The motion is for adjournment. Those in favor say aye. Opposed?

The motion prevails. We are adjourned until tomorrow afternoon at 2:00 o'clock.

[Whereupon, at 6:40 o'clock p.m., the convention adjourned until 2:00 o'clock p.m., Thursday, January 11, 1962.]

FIFTY-FIFTH DAY

Thursday, January 11, 1962, 2:00 o'clock p.m.

PROCEEDINGS

PRESIDENT NISBET: The convention will please come to order.

Our invocation today will be given by the Reverend Ed C. Crandell, of the West Lansing Church of Christ. Mr. Crandell happens to be the pastor of Mr. Chase's church, so we are especially happy to welcome him today.

Will you please rise.

REVEREND CRANDELL: Our gracious Father, we thank Thee that Thou in Thy divine providence hast ordained that law and order be maintained by men whom Thou hast created. We express our deep appreciation for the noble and genuine forces for good that have brought us thus far in our quest for truth, justice, and freedom.

We now ask that Thou wilt invoke Thy blessing and make Thy divine power and providence felt in the deliberations of this great gathering. May all that are here assembled be made to feel that their ultimate and deepest obligation is not to those who have chosen them to serve, but to Thee, our Creator, Sustainer, and Redeemer. Through Jesus Christ we pray. Amen.

PRESIDENT NISBET: The roll call will be taken by the secretary. Those present, please vote aye.

SECRETARY CHASE: Have you all voted?

Mr. President, a quorum of the convention is present.

Prior to today's session, the secretary received the following request for leave: Mr. Marshall, from the afternoon session.

PRESIDENT NISBET: Without objection, the request is granted.

SECRETARY CHASE: Absent with leave: Messrs. Marshall and Thomson.

Absent without leave: None.

PRESIDENT NISBET: **Reports of standing committees.**

SECRETARY CHASE: The committee on administration, by Mr. DeVries, chairman, recommends to the president for his consideration the appointment of Mr. George Sidwell as research consultant.

Walter DeVries, chairman.

PRESIDENT NISBET: Without objection, the recommendation will be concurred in.

SECRETARY CHASE: **The president appoints,** pursuant to authorization by the convention, and with the approval of the committee on administration, the aforenamed person to the position indicated.

PRESIDENT NISBET: Without objection, Mr. Sidwell will be appointed research consultant. Hearing none, he is appointed.

SECRETARY CHASE: Mr. Hoxie, for the committee on legislative powers, introduces

Committee Proposal 20, A proposal to provide that no law shall be enacted providing for the penalty of death. Amends article V, by adding a new section;

with the recommendation that it pass.

T. Jefferson Hoxie, chairman.

For Committee Proposal 20 and the reasons submitted in support thereof, see below, page 595.

PRESIDENT NISBET: Referred to the committee of the whole and placed on general orders.

SECRETARY CHASE: Mr. Erickson, for the committee on miscellaneous provisions and schedule, introduces

Exclusion Report 2006, A report recommending the exclusion of article XII, sections 1, 2, 3, 5, 6, 7 and 8.

Claud R. Erickson, chairman.

For Exclusion Report 2006 and the reasons submitted in support thereof, see below, page 598.

PRESIDENT NISBET: Referred to the committee of the whole and placed on general orders.

SECRETARY CHASE: That is all of the standing committee reports.

PRESIDENT NISBET: Reports of select committees.

SECRETARY CHASE: None.

PRESIDENT NISBET: Communications from state officers.

SECRETARY CHASE: None.

PRESIDENT NISBET: Second reading of proposals.

SECRETARY CHASE: Nothing on that calendar.

PRESIDENT NISBET: Third reading.

SECRETARY CHASE: Nothing on that calendar.

PRESIDENT NISBET: Motions and resolutions.

SECRETARY CHASE: No resolutions on file.

PRESIDENT NISBET: Unfinished business.

SECRETARY CHASE: None.

PRESIDENT NISBET: Special orders.

SECRETARY CHASE: None.

PRESIDENT NISBET: **General orders.**

Mr. Baginski.

MR. BAGINSKI: Mr. President, I move the convention resolve itself into committee of the whole for the purpose of considering several proposals.

PRESIDENT NISBET: The question is on the motion of Mr. Baginski. Those in favor, say aye. Opposed, no.

The motion prevails.

Mr. Baginski, will you take the Chair?

[Whereupon, Mr. Baginski assumed the Chair to preside as chairman of the **committee of the whole.**]

CHAIRMAN BAGINSKI: The committee of the whole will be in order. The secretary will read.

SECRETARY CHASE: From the committee on declaration of rights, suffrage and elections, by Mr. Pollock, chairman, **Committee Proposal 15,** A proposal to amend article II pertaining to the declaration of rights. The first 10 sections have been read and several amendments have been adopted thereto.

For last previous action by the committee of the whole on Committee Proposal 15, see above, page 506.

CHAIRMAN BAGINSKI: Mr. Pollock.

MR. POLLOCK: Mr. Chairman, before resuming consideration of the remaining sections under the bill of rights, I want to be sure that this committee did not make a mistake yesterday. This was on a very serious matter. It was a very close vote and I believe under the rules, I have the right now to move a reconsideration of the vote by which section 10 was amended, and I do so move.

CHAIRMAN BAGINSKI: The Chair will advise that the motion will be in order.

Mr. Van Dusen.

MR. VAN DUSEN: Parliamentary inquiry, Mr. Chairman. Rule 40 provides that a motion to reconsider shall be in order in the committee of the whole by a majority vote of those present before the committee shall rise. Is it the interpretation of the Chair that the committee has not yet risen with respect to the matter in question?

CHAIRMAN BAGINSKI: That's right. The Chair is advised by the secretary that the motion to reconsider may be made now or be made before the committee of the whole rises.

I understand that Dr. Pollock chooses to make that motion at this time.

Mr. Prettie.

MR. PRETTIE: I invite the Chair's attention to the journal of yesterday's proceedings, page 303, line 9. The journal reads, and I quote:

> Mr. Pollock moved the committee rise.
>
> The motion prevailed.

CHAIRMAN BAGINSKI: The Chair is somewhat in doubt as to what Mr. Prettie intends. However, we are still in the committee of the whole on this particular proposal and therefore, just a continuation as if this were yesterday.

The question is on the motion made by Dr. Pollock that the vote by which the amendments to section 10 were adopted be reconsidered. Those in favor of the motion will signify by saying aye. Those opposed, no.

A DELEGATE: Division.

CHAIRMAN BAGINSKI: A division has been demanded. Is there sufficient support?

Sufficient number up. As many as are in favor of the motion —

Mr. Ford.

MR. FORD: Mr. Chairman, continuing the procedure that we used yesterday, I would ask that the machine be used when a division is asked for in the committee of the whole.

CHAIRMAN BAGINSKI: I understand the machine isn't working today. (laughter)

MR. FORD: I move we adjourn until it is ready then. (laughter)

CHAIRMAN BAGINSKI: We can't adjourn the committee of the whole, Mr. Ford. However, the machine might be used if there is a demand for it and we can count the lights.

MR. FORD: That might be more satisfactory than depending on hands waving around out here.

CHAIRMAN BAGINSKI: Those in favor of the motion to reconsider will vote aye, those opposed will vote no.

SECRETARY CHASE: Has everyone voted? The machine is now locked and we will count.

According to the secretary's count, the yeas are 67, the nays are 69.

CHAIRMAN BAGINSKI: The motion to reconsider does not prevail.

MR. POLLOCK: Mr. Chairman, continuing our presentation of the sections of the bill of rights, I think we will now be ready to come to section 11 which will be explained by the first vice chairman, Mr. Stevens.

SECRETARY CHASE: Section 11.

[Sec. 11 was read by the secretary. For text, see above, page 465.]

MR. A. G. ELLIOTT: Point of information, Mr. Chairman.

CHAIRMAN BAGINSKI: State your point, Mr. Elliott.

MR. A. G. ELLIOTT: Just so I will clearly understand where we are, it is possible at any time before this proposal is reported out of the committee of the whole for any section of the proposal to be amended, or is that not correct?

CHAIRMAN BAGINSKI: After we're through, yes. After we're through with all of the sections and then we get to the body of the proposal.

Mr. Stevens.

MR. STEVENS: Mr. Chairman, may I suggest that all delegates turn to Journal 50 of January 4, page 279, section 11. In this section 11, which is quite brief, we have done one thing in the committee. We have inserted the word "insurrection". Let's read it the way it was originally:

> The privilege of the writ of habeas corpus shall not be suspended unless in case of rebellion or invasion the public safety may require it.

As the committee presents it, we add the word "insurrection" so it reads:

> The privilege of the writ of habeas corpus shall not be suspended unless in case of rebellion, insurrection or invasion the public safety may require it.

In other words, we add the word "insurrection."

The purpose of the committee in doing this, which followed after the research on this word by our very able, competent and efficient researchers, was to give the governor possibly a little bit more leeway, a little bit more power in the use of this very rare action, the suspension of the writ of habeas corpus.

We have very little precedent in this matter — practically none — within the state for the governor. In the case of the federal government there is some precedent but not much. In the case of the suspension of the writ by the president on a couple of occasions the supreme court later ruled that it was not within his power under the conditions. We feel that if he is to have the power under any conditions to suspend a writ of habeas corpus, it should not be too limited. We feel that the word "rebellion" is perhaps a little bit too restrictive; that it implies establishment of some kind of a government such as the confederacy during the civil war, or something comparable to that, as distinguished from an organized riot or an invasion into the capitol to seize control of the offices or something, possibly without any intent of setting up a rebellious government, or it might mean seizing certain buildings, either governmental or otherwise, and holding them against the authority of the government.

I understand that an amendment will be offered to delete this from our proposal. We do not feel too deeply on the point but we feel that under the circumstances, it might be well to make this matter a little broader to give the governor just a little bit more flexibility if he should need to use it.

I don't have any information that this writ has been suspended by the governor in Michigan.

CHAIRMAN BAGINSKI: Mr. Yeager.

MR. YEAGER: Mr. Chairman, I would like to ask Mr. Stevens a question which he has partially answered. I would like to know if we could have a little more precise definition of the difference between "rebellion" and "insurrection".

MR. STEVENS: Well, I think I assumed something I should not have assumed. We have the explanation here in the journal and I had asked you to read that. I quote:

> Technically in law "rebellion" implies a state of belligerency and public war such as that alluded to by the supreme court in the Prize Cases (1863) and in Texas v. White (1866). Disturbances which close the courts and require suppression by military force may require suspension . . .

notice that the word is "may"

> . . . of the writ of habeas corpus and yet not be rebellion in the sense that the confederacy constituted such.

If you want some citations, which you probably don't, there is ex parte Merryman, 9 Fed. Cases, 487 (1861). Does that answer your question?

MR. YEAGER: Thank you very much.

CHAIRMAN BAGINSKI: Are there any amendments to section 11?

CHAIRMAN BAGINSKI: Mr. Hutchinson.

MR. HUTCHINSON: I would like to ask Mr. Stevens a question. I haven't done any research on this point and I am sure that others have. My question to Mr. Stevens is this, in reading the language which he cited in the committee report, it says that when you have a situation where the civil courts are closed, that you might not have a full fledged rebellion. In that case you would have a situation of martial law, wouldn't you? If the civil courts cannot act, then you have a martial law situation, and if you are operating under martial law, of course there wouldn't be any writ of habeas corpus available because you wouldn't have any civil courts to grant it or to go to. The whole thing would be run by the military.

As a matter of fact, what we have in actual legal fact at the present time is that there is a suspension of the writ of habeas corpus in cases of rebellion or invasion and also when there is an actual state of martial law. Now if I am wrong, will you just correct me because, as I say, I made no research. This is just my thinking on the matter.

MR. STEVENS: The idea here of an "insurrection" would not necessarily depend on the courts being closed. I suppose it would be more proper to cite an example where the courts

were not closed but the governor felt it essential under a system of partial martial law to suspend the writ. I am not sure, but I believe that was done on the federal level to a certain degree in the recent Rock Island situation. I may be wrong about that. But anyway, under some such situation the governor might feel compelled to do that. Of course, if the courts are not open, obviously you couldn't get a writ anyhow. I think maybe the explanation here is a little bit weak on that point. But if the courts are open and the governor wanted to, at his discretion, presumably he could issue such an order. In other words, he could suspend the right to a writ.

We do not feel that it adds greatly to the governor's power to do this. We do not feel it is very apt to happen, I do not yet know what the objection was on the part of the judicial committee.

Have I answered your question, Delegate Hutchinson?

MR. HUTCHINSON: Yes.

CHAIRMAN BAGINSKI: Mrs. Cushman.

MRS. CUSHMAN: My question concerns the question of who declares when the writ of habeas corpus is to be suspended. From the discussion I have heard I assume it is the governor. However, it isn't stated in here clearly and not having a legal background, I wasn't entirely clear.

MR. STEVENS: Mrs. Cushman, I can assure you it is the governor. The governor would be the only person who would have that authority, the reason being, of course, in suspending a writ of habeas corpus you take it out of the hands of the court. This is an old established provision. There is no question about it except possibly the addition of this word.

MRS. CUSHMAN: Thank you.

CHAIRMAN BAGINSKI: Are there any amendments to section 11?

SECRETARY CHASE: Mr. Danhof, on behalf of the committee on the judicial branch, offers the following amendment to section 11:

1. Amend page 3, line 10, after "rebellion" by striking out the comma and "insurrection"; so the language will then read:

The privilege of the writ of habeas corpus shall not be suspended unless in case of rebellion or invasion the public safety may require it.

CHAIRMAN BAGINSKI: Mr. Danhof.

MR. DANHOF: Mr. Chairman and members of the committee, the amendment offered is based upon the action taken by the committee on judicial branch, which committee was assigned — I don't like to particularly use the word "concurrent" — but which was required under the rules of the procedure of the convention, to consider sections 11 through 19. At the time that my committee considered it, it basically took the position that Mr. Stevens has stated, that we have lived with this particular section in its present form for well over 100 years; that it was not sure what, if anything, was added by the use of the word "insurrection". Consequently, the committee was of the opinion that with the judicial interpretations that have been made — and they are very few — that the present section adequately covered the needs of the public and the needs of the state and would protect society in case the suspension of the writ of habeas corpus became necessary.

The amendment offered is not necessarily mine, personally, but is offered on behalf of the committee on judicial branch, which feels that the present wording of the 1908 section is adequate and should remain as is. It is to be noted that some 26 states in addition to the state of Michigan use the language as it is contained in the present 1908 constitution. We admit that simply because somebody else does it, it does not necessarily make it correct.

We were also somewhat concerned with the use and the definition of "insurrection" and what it might or might not entail. If you look in a dictionary — and I have not a complete dictionary here but a Webster's collegiate dictionary — and if you check the word insurrection, it says an armed resistance to authority; a limited rebellion. And you check "rebellion" and it is quoted as saying an armed revolt; a spirit of resistance to authority.

We simply felt that the word rebellion adequately covered the situation; that the courts had interpreted this and had lived with it, so to speak, over these numerous years, and that unless there was some compelling reason to broaden, or for the addition of the word insurrection, that it best be left out.

Now, this being a committee action, with the consent of the Chair and the committee, I would like to yield to the second vice chairman of my committee, Mr. Ford, who has some further comments to make.

CHAIRMAN BAGINSKI: Mr. Ford.

MR. FORD: In considering this addition of the word, it should be noted that although 26 other states use the identical language that we use in our constitution, as a matter of fact all of the states use substantially the same language as we use, and the ability of the governor, or in some cases the legislature, to suspend for temporary periods the right of habeas corpus is limited to the key words of "rebellion" or "invasion". Only one state in the United States presently uses the word insurrection and that is the state of South Carolina, which has never been noted, in my personal opinion, for its liberal tendencies.

The lawyers on this committee were concerned about the fact, at the time that we considered it, that it might be construed by a court at some time in the future as a modification of a very basic right, the right of habeas corpus, which I am sure all of us recognize as something that goes all the way back. Yesterday we went all the way back to 1791, and I think we are moving to the stage where we can go back to the magna carta. Now that we have amended the United States constitution, we can start on the magna carta. This is one of the things that they wanted at the time of the magna carta. It is one of the things we inherited with our system of justice.

I am more alarmed today than I was when we considered this in the committee, by Mr. Stevens' remark that is now in this record, that it was the intention of the committee on rights, suffrage and elections to broaden the power of the governor, whoever he might be from time to time, to suspend this very valuable right. And with that in mind, as an individual member of the committee, I would appraise the action of the committee to be that we probably would be more disturbed with that statement than with the language itself because I think the sense of the committee, as I observed it, was that they felt that this language had been thoroughly construed by the courts that this was a right that shouldn't be tampered with.

To use Mr. Lawrence's words of yesterday, this would be a right that should in no way be watered down and we should look upon the possibility of expanding it with a word that is not capable of clear definition, such as "insurrection" as a possible opening of the door for abuse in the future. And as a practical matter, an appeal to the supreme court after your right of habeas corpus has been denied you really is not much of a remedy because it is one of these things that you have to have right now or it isn't worth anything.

CHAIRMAN BAGINSKI: Mr. Faxon.

MR. FAXON: Fellow delegates, I want to support Mr. Danhof and the judicial committee in their recommendation that the word "insurrection" be deleted. I also looked through other state constitutions and, as Mr. Ford just pointed out, there is only one other state constitution which provides for insertion of the word insurrection. Some state constitutions actually say that the writ will never be suspended, but our constitution in its present form simply repeats the words of the federal constitution, which have had some interpretation in the courts.

I read the Prize Cases and the decision of Judge Greer in deciding on them in 1863, dealing with the civil war, and yesterday I was trying to get some people to translate Latin expressions for me because this particular case is quite loaded with a lot of language which perhaps present day lawyers aren't as familiar with. But essentially, the Prize Case that is alluded to dealt with the legal status of ships captured in their attempt to run the blockade which had been imposed by the union government. And Lincoln had, of course, not declared

war because of the legal status that a war would involve and he called the uprising in the south an "insurrection". But when the courts dealt with the Prize Cases and later in Texas vs. White, very briefly — and I am not going to trouble you to read from the actual decision — I think their position was more or less "A rose by any other name would smell as sweet." And whether you call it an insurrection or a rebellion or a war, it's there anyhow and you're required to take certain actions.

As far as defining the word is concerned, I could give a little more of a definition — at least the one that was taken out of my constitutional history text — that an insurrection is an organized and armed uprising for public political purpose. It may seek to overthrow the government or it may seek merely to suppress certain laws or to alter administrative practice. I don't think the court decisions where this came up during the civil war period were really clear on the definitions of insurrection. There were several cases where this came up. In addition to Texas vs. White it also came up in the case of ex parte Merryman, ex parte Valandingham and ex parte Milligan. In these separate cases the courts, in very close decisions — 5 to 4 in 2 cases — sort of vacillated around it because the exigencies of war had required certain actions that were illegal but you couldn't get away from the fact that they were necessary.

I am saying this partially to give some understanding as to the brief committee report and the allusions to the cases there dealing with the court interpretation. But I think the point has been well made by Mr. Danhof and Mr. Ford, that the definition is not a clear one at all and that a rebellion is an insurrection. I feel we are very safe in keeping the present wording of our own constitution which has been the wording of the past in addition to the wording which is in the present federal constitution, and which is the same wording in all the other state constitutions.

And so, without getting into more technicalities on the cases, because I marked all sorts of places where I could read the judges' decisions, I will rest at this point.

CHAIRMAN BAGINSKI: Mr. Downs.

MR. DOWNS: Mr. Chairman, I wish to speak in favor of the amendment of Mr. Danhof which strikes the word insurrection. I think I shall try to match my high school Latin with that of Judge Gadola of yesterday. My loose construction is that the writ of habeas corpus means in general terms: deliver the body. The normal use, or rather abnormal use, is in the case where the police make an arrest which may be legal or illegal but do not let the arrested person get before the judge in the proper time. Then the attorney, if he can locate the police official with the arrested person, can, by getting a writ of habeas corpus, get the body of the arrested person from the police or executive branch of government into the judicial branch and before the judge. I think that, as has been stated, this is one of our very basic rights. It is a right to see that the individual gets into the hands of the judiciary when he is accused of any illegal action. It does not decide his innocence or guilt but simply gets him before a judge. Now, this is sound.

I think the only time, theoretically, this should be suspended is when the courts as a practical matter are not functioning, such as the case of rebellion or invasion. I think the committee could even use the words, "The writ of habeas corpus shall be denied only when courts are not functioning." I think these terms "rebellion" and "invasion" have historic definitions.

What I am concerned with — and I will be frank, I don't know what the word insurrection means — I assume if this got to a court, a court would assume we meant something by it and it would be a further reason for limiting the writ of habeas corpus. I think the present provisions are good. They have proved historically sound and I think we should do, above all, those things that see that the individual has the opportunity, if arrested or detained, to get before the judicial branch of government and have his day in court.

Therefore, I support the Danhof amendment which strikes the word insurrection. Thank you.

CHAIRMAN BAGINSKI: Mr. Norris.

MR. NORRIS: Mr. Chairman, ladies and gentlemen of the committee of the whole, I rise also in favor of the Danhof amendment. You will notice in the comment on the report of the committee on rights, suffrage and elections, the vote was 13 to 2, and I was one of the 2 on the committee that voted against insertion of this language.

On the whole, the committee report is an excellent report and this is about the only place where I wish to record a dissent but I do so because what we are dealing with here, after all, is a declaration of rights. I think the emphasis of the proposed language is one that emphasizes the limitation on the right and not the substantive character of the right. We are talking about the privilege or right of habeas corpus. This is the ancient writ of liberty. This is a writ which, as Mr. Downs has suggested, means an order of a court commanding anybody who has any other person in his custody to bring that person before the court so that the court can examine into the reasons for the arrest and the reasons for the detention to see whether those reasons for the arrest and for the detention are sufficient in law. If they are sufficient in law, then the person is bound over and held in custody. If they are insufficient in law, during the hearing on writ of habeas corpus, then the person is released.

This is the only way we have of seeing that the question is adjudicated in a court of law by a judge trained to see whether or not the entire action of those who have the person in custody is lawful. This has been since the habeas corpus act and I see no reason why we ought to change it under the contingencies that have been described in the committee report. I think there is no showing of any particular need for this limitation on this basic right which we are here in this particular report supposed to declare and not limit.

I think, also, there is this very important fact to be considered, sometimes history is a little more important than logic. The logic may be that when the courts are closed you can't have the writ to issue, but the fact is that I foresee and I am apprehensive of the kind of series of contingencies where this power on the part of the executive authority to suspend a writ might be abused. I refer specifically to the area of labor disputes. I think that you have a situation, regardless of the merits or the demerits of any particular difficulty between labor and management. It may be that the size of the dispute may be considered by some, and repeatedly in our history under certain circumstances has been regarded, as an insurrection. This would mean that those who may be participating in the labor dispute and engaging in otherwise lawful activity with regard to picketing situations might be taken into custody. These people in such a situation would not have available to them petition on a writ of habeas corpus under the language this is proposed here in this article.

I think that we have here to examine with great circumspection and deliberation the fact that it is precisely in the situations of extremity and situations of communal difficulty that we have to be more circumspect rather than less circumspect with regard to the protection of rights involved because it is precisely in those situations where you do have the abuse of the rights which gives rise to petitions of writs of habeas corpus.

I think this is a fundamental area in which we ought to be very, very careful. I don't think there has been a demonstrable showing to indicate that we ought to change the language which has served this state for so many years and I accordingly urge the people here to support the Danhof amendment.

CHAIRMAN BAGINSKI: Mr. Stevens.

MR. STEVENS: Mr. Chairman and fellow delegates, as I said in the beginning, we do not have too deep a feeling on this matter, but we did think that since the only person who could suspend a writ of habeas corpus — the right of a person to ask a court to bring his body before it for consideration — the only person who could and would do that was the governor, we ought not to make it unusually difficult for him if the necessity required it.

Whatever definition you might give to a situation in which the safety of the government and the safety of the people per-

haps might be endangered — whether it's an insurrection or a rebellion — isn't going to make too much difference for the immediate situation. Certainly, if the governor suspended the right to a writ of habeas corpus it would be an immediate action and the person would be held at least until such times as the matter might be adjudicated in a court. It isn't a question where it can wait. The governor can't go to court on the matter. It is his responsibility. He is governed by the constitution just as much as the court is governed by the constitution. He, the governor, must make this decision and make it promptly.

Obviously we haven't had any experience where this has actually come about, although there have been one or two cases which closely approach that. This was not intended by the committee as having anything to do with an ordinary labor dispute. Obviously, if it became an insurrection, it would be so whether it were a labor dispute or some other action. But we did not have in mind, certainly, that pickets would be picked up because they were involved in an insurrection.

CHAIRMAN BAGINSKI: Mr. Brown.

MR. T. S. BROWN: I just wanted to add, Mr. Chairman, in support of Mr. Danhof's amendment, Mr. Ambrose Bierce, probably America's greatest satirist, at the turn of the century in his Devil's Dictionary, described insurrection as any unsuccessful revolution, and thereby showed his disdain for the loose terminology of the phrase even back in those days. I think since that time the phrase has lost whatever meaning it once held.

CHAIRMAN BAGINSKI: The question now is on the Danhof amendment.

Mr. Faxon.

MR. FAXON: This is just one quote from that decision. It's such a nice one I think we can all listen to it. It's just one paragraph from ex parte Milligan — the court spoke in 1866. In referring to the constitution and the suspension of the writ of habeas corpus, the court said:

> The illustrious men who framed that instrument were guarding the foundations of civil liberty against the abuses of unlimited power; they were full of wisdom, and the lessons of history informed them that a trial by an established court, assisted by an impartial jury, was the only sure way of protecting the citizen against oppression and wrong.

CHAIRMAN BAGINSKI: Mr. Lawrence.

MR. LAWRENCE: Mr. Chairman and members of the committee, I would like to speak in favor of the amendment of the judiciary committee. I've used the writ of habeas corpus a few times. I think it might be just a matter of interest for you to know — and we have some former circuit judges here — that it is the one time when you can get a judge up out of bed in the middle of the night and he is duty bound to come down and open court and listen. I haven't done that, however, in our county. I don't think it would be very politic. But the point is that it is a very basic right. It is a right as basic as any we have. "Insurrection" doesn't add anything to the right. It deprives or perhaps could be construed to limit that right.

I think that the right is so basic, so fundamental, and so American as we use it, that any effort to change it would be frowned upon by all of us and I know that there was no effort to do that here but it could be construed that way. The addition of a word doesn't, I'm sure, help any. It doesn't make it any clearer and it could become a word of limitation that any of us, I might say, might ourselves not want. It could happen to any of us.

CHAIRMAN BAGINSKI: Mr. Hutchinson.

MR. HUTCHINSON: Mr. Chairman, I think that I would just like to add one further point to those already made by Mr. Lawrence. I hope that every one of us really appreciates what happens when the writ of habaes corpus is suspended. Let us assume that the writ of habeas corpus is suspended and a citizen is then thrown into jail and there he languishes. We don't tell him what he is charged with, if anything, and the writ of habeas corpus has been suspended and there isn't any way for him to further his cause. He simply languishes in jail or in a compound of some sort.

Now, I think that this is a very fundamental right of American citizens and I don't think that the power to suspend the writ should be broadened. I feel so very strongly about that that I am fearful about including this word insurrection. I think we know by tradition and by judicial interpretation and so on what the meaning of the language is as it has stood all these years and to make a change in it, perhaps we would, unwittingly, be restricting the freedom of American citizens.

After all, the bill of rights is to protect the individual — the minority of one — against the will, if you please, of everybody else in the country. One of those very basic rights is the right to be taken before a judge to find out upon what ground they are holding you, and that's it.

CHAIRMAN BAGINSKI: Mr. Perras.

MR. PERRAS: Mr. Chairman, point of information. I would like to ask of Mr. Norris or anyone that might be able to answer this question, if the word insurrection were inserted, according to this proposal, could this in any way be construed by court or by justices that it would pertain to the rights of people to strike, such as in labor disputes?

CHAIRMAN BAGINSKI: Does anyone care to answer? Mr. Norris.

MR. NORRIS: Mr. Chairman, in response to the question, I am not sure that I expressed in the course of my brief exposition an apprehension that there was this possibility, and because of that, I felt that the right ought not to be limited by this particular term.

I think a student of labor history in the United States the last 100 or 150 years since the Cordwainer's case in 1832 in Philadelphia and the rise of collective bargaining and trade unions, could cite a number of instances where there was difficulty of a communal nature in which the word insurrection was used to characterize the particular difficulty, and certain legal consequences flowed from that and I think that the answer to that question might very well be yes.

I think we ought to emphasize and discuss in here that there is no limitation contemplated by the removal of the word insurrection upon the power of the governor to protect the public safety in the case of difficulty. There is the power to maintain law and order. All we are talking about is whether or not the writ of habeas corpus should be suspended under certain circumstances and I wholeheartedly subscribe to the formulations of Delegate Hutchinson on that.

MR. PERRAS: That being the case, I support the Danhof amendment.

CHAIRMAN BAGINSKI: The question is now on the Danhof amendment.

Mr. Stevens.

MR. STEVENS: Mr. Chairman, I certainly want to say the committee does not wish to belabor this matter. It is somewhat surprising that these delegates have read so much possibility into the word. We weren't able to find out exactly what the objection was from the judiciary committee until we heard it here today. We do not wish to prolong the argument.

CHAIRMAN BAGINSKI: The question is now on the Danhof amendment. As many as are in favor of the amendment will signify by saying aye. Opposed, no.

The amendment is adopted.

Are there any further amendments to section 11?

SECRETARY CHASE: None on file, Mr. Chairman.

CHAIRMAN BAGINSKI: If not, it will pass.

Section 11, as amended, is passed.

Dr. Pollock.

MR. POLLOCK: Mr. Chairman, before coming to section 12 I would like to call the attention of the delegates to page 283 of the Journal of January 4, the appendix to our report, which indicates the concurrent action of the committee on judicial branch. Perhaps, Mr. Chairman, this might expedite the discussion and we might not have quite as many arguments about these other amendments.

And now, section 12, which will be explained by Mr. Stevens.

SECRETARY CHASE: Section 12.

[Sec. 12 was read by the secretary. For text, see above, page 465.]

CHAIRMAN BAGINSKI: Mr. Stevens.

MR. STEVENS: Mr. Chairman and fellow delegates, this is a result of my personal proposal to delete 2 words, "or agent" from this for a very simple reason. At the time I proposed it, I considered it would probably be the shortest and least controversial proposal in the convention. I was soon made to realize that that was not necessarily so. I had no intention to do anything except to take out that word "agent" which the Supreme Court of Michigan has said in effect is merely a repetition, a synonym for the word "attorney".

At the present time — I think most of you know this by now — a person may not practice law in a court of record unless he is an attorney admitted to the bar in Michigan. The only purpose I had here was to make this clear to the layman reading this provision in the constitution because I knew the question had often been asked by people, "Why can't I send my brother in law in?" It says not only attorney, but agent.

Now, to call your attention to the fact this does not otherwise change it, any person may defend himself or prosecute his own case, if he so desires in any court in Michigan. This does not necessarily affect the justice courts.

The deletion of the words "of his choice" was a suggestion of the judiciary committee. Now, as I said before, I didn't think it was controversial but I found the judiciary committee suspected that I was trying to make it easier or make it possible for laymen to practice law and that some of the laymen thought I was trying to establish some sort of a monopoly for the attorneys. Neither one was my purpose. As I said, it was to clarify the existing provision. That's all there is to it. The judiciary committee made its suggestion. We accepted it. The 2 committees concurred.

CHAIRMAN BAGINSKI: Are there any amendments to section 12? If not, it will be passed.

Section 12 is passed.

Section 13.

MR. STEVENS: Is the secretary going to read section 13?

SECRETARY CHASE: Section 13.

[Sec. 13 was read by the secretary. For text, see above, page 465.]

CHAIRMAN BAGINSKI: Mr. Stevens.

MR. STEVENS: Mr. Chairman and fellow delegates, I am sure that even the laymen here have some appreciation of the anglo American system of trial by jury. This grants to all persons in Michigan the right of trial by jury.

In practice, every person is entitled to a jury if he wants it. That means a common law jury of 12 men except where the law otherwise provides it, as it does in the constitution for lesser courts, where it may be 6 men. In practice, a person may waive a jury in a criminal case only in writing. In a civil case a jury is deemed to be waived if neither party asks for it. This guarantees to everybody in every case a jury trial.

We have done nothing with this. It remains as it was. The right to a trial by jury will be the same as it was if you pass this.

CHAIRMAN BAGINSKI: Are there any amendments to section 13?

Mr. Yeager.

MR. YEAGER: I'd like to ask Mr. Stevens perhaps a pretty naive question, but I would like to know where in law or where in the constitution does it define what size a jury should be?

MR. STEVENS: You will find that in the bill of rights. Further down it speaks of 12 persons. If you will read section 19, Delegate Yeager, you will notice there has been an amendment to change the word "men" to "jurors". That was in consideration of the ladies. Does that answer your question?

MR. YEAGER: What about grand juries?

MR. STEVENS: This has nothing to do with grand juries.

MR. YEAGER: I know that but what about them?

MR. STEVENS: You want me to go into a discussion of grand juries? That's not relevant to the question here.

MR. YEAGER: Is a grand jury part of a trial? Is that considered part of a trial?

MR. STEVENS: No. A grand jury is for the purpose of indictment to bring a person to trial. Having been indicted by a grand jury, he is then entitled to a jury trial. It would be a criminal case. In case of indictment, he gets a jury trial unless he waives it in writing. This isn't concerning grand juries. This is the right to a trial by jury.

I want to make this clear if there is any question about it. I didn't think there was. Delegate Yeager, have I made that matter clear?

MR. YEAGER: Yes.

CHAIRMAN BAGINSKI: Are there any amendments to section 13? If not, it will be passed.

Section 13 is passed.

SECRETARY CHASE: Section 14.

[Sec. 14 was read by the secretary. For text, see above, page 465.]

CHAIRMAN BAGINSKI: Mr. Stevens.

MR. STEVENS: Mr. Chairman and delegates, the original wording of this was: "No person, after acquittal upon the merits, shall be tried for the same offense." The Supreme Court of Michigan, however, has virtually held that this means the same thing as the provision in the federal constitution, which is what we have put in: "No person shall be subject for the same offense to be twice put in jeopardy."

It is true that in the opinion of some of the jurists of the state this might make it a little bit easier for the state to appeal in some cases. Otherwise it makes no difference except it brings the provision of the constitution more clearly into the practice of this state. This was brought to us and suggested by one of the judges in Detroit and Mr. Buback introduced it. I joined with him to sponsor this proposal.

CHAIRMAN BAGINSKI: Judge Dehnke.

MR. DEHNKE: Mr. Chairman and delegates, I think perhaps the record is sufficient with what Mr. Stevens has already said. There is a change in language here which I personally would interpret as making no change in the rule we have hitherto had and I would like to have Mr. Stevens state that as the conclusion of the committee for clarifying the record.

MR. STEVENS: That was the opinion of the committee.

CHAIRMAN BAGINSKI: Miss Donnelly.

MISS DONNELLY: Mr. Stevens, I would like to pose this query. You envision this change of language to allow the prosecutors to appeal a not guilty conviction under some cases. Would you care to enlarge on that opinion? In what cases do you want them to be able to appeal the not guilty conviction?

MR. STEVENS: I do not feel competent to do that, Miss Donnelly. This was brought to us by a judge. It's the language of the United States constitution. We could not see where it would probably make much of any change, possibly none. Perhaps one of the judges could answer your question better than I could. I think perhaps it has already been answered; but Judge Dehnke, I'd be glad to yield to you.

MR. DEHNKE: Well, the provision we are dealing with is the one which protects an individual, who has been once put on trial, from being prosecuted a second time for the same offense. In practice in this state, and I think in all others, except possibly one, that has meant that if he is acquitted at the first trial — even if the supreme court later holds on appeal by the prosecution that an error prejudicial to the people was committed during the trial — that he cannot be tried again.

It was a surprise to me — and it may be to some other of the attorneys here — when I found a case that arose in the state of Connecticut in which the first trial had ended in an acquittal, the state took an appeal to the state supreme court, which found prejudicial error that had hurt the prosecution, reversed the case on that ground and sent it back for retrial.

On the second trial the defendant was convicted and took an appeal upon the ground that he had been twice put in jeopardy. The Connecticut supreme court ruled no, the second trial was merely a continuation of the first one; that the state was entitled to a fair trial as well as the defendant, and had not had it. The United States supreme court upheld the state supreme court. That is one of the references that I carry around with me because it was so out of the ordinary as I had understood the rule to be. This case is found in 58 Supreme Court Reports 149.

CHAIRMAN BAGINSKI: Mr. Danhof.

MR. DANHOF: The committee will note that the judiciary committee had in mind a little bit different approach in language but as we point out, we do not differ in intent. I put it to the committee the other day and they did not believe it advisable to enter an amendment to the committee on style and drafting to determine which language they are in favor of.

I note that there is a case in the state of Michigan, if you will turn to page 235, where it says that although the constitution does not make use of the word "jeopardy" providing instead that "No person, after acquittal . . ." this court as a general proposition is committed to the views upon this subject to former jeopardy adopted by the federal courts under the United States constitution. The wording which we propose is that which is found in the vast majority of state constitutions. It is perhaps a little smoother than that used in the United States constitution and also the committee struck from the language of the United States constitution the words "life or limb" which do not pertain to the idea of jeopardy but actually pertain to the punishment.

Accordingly our committee, as reported in the appendix, concurs in the intent and we believe that if there is any differential in language it could best be handled by the committee on style and drafting.

Thank you, Mr. Chairman.

CHAIRMAN BAGINSKI: Mr. Gover.

MR. GOVER: Mr. Chairman, as a layman, I am still at a loss on this provision. I went through it the other night and it just seemed like it is rather ambiguous or something. The original proposal has the word "trial" or "tried" in it and this has left it out entirely. There is nothing that refers back to the trial of the person.

There is another thing that also bothers me and that is this second paragraph of the comments, the committee said:

> The committee also believes that the new provision will permit the courts an appropriate degree of latitude in defining and restricting the concept of jeopardy so as to permit retrial of a defendant in certain instances in which some minor mechanical legal flaw in indictment or procedure permits a guilty person to escape without punishment.

I'd like a little more explanation on that, Mr. Chairman.

CHAIRMAN BAGINSKI: Mr. Stevens.

MR. STEVENS: Mr. Chairman, before answering his question, may I apologize for not mentioning the deletion of those 2 terms "life" and "limb". This was suggested by the judiciary committee and concurred in by the committee on rights and suffrage because they were held to be archaic and not in any way affecting the rights of the individual.

As to the other, there is no question in law but what the right not to be twice put in jeopardy is the equivalent of the right not to be tried over again with the possible exception of this Connecticut case which the judge cited. Certainly in Michigan I don't think there would be any question about it. Some of the judges seem to think there might be some possible appeal, where some is now present, if the case had not been heard. But let me explain this again. In the state of Michigan, the case cannot be appealed after the jury has been drawn and the case started. There is no appeal by the prosecution. If the man is acquitted, that's it. It wouldn't change that. Does that answer your question or not?

MR. GOVER: Not entirely, no.

MR. STEVENS: Do you want to repeat the question?

MR. GOVER: It just doesn't seem that the language of this sentence is quite clear. Maybe it's just my not being an attorney but it's that same paragraph:

> The committee also believes that the new provision will permit the courts an appropriate degree of latitude in defining and restricting the concept of jeopardy. . . .

I want a little more explanation on that.

MR. STEVENS: Here is the point: generally a person is put in jeopardy when the jury is drawn and the trial is started. Is that the question you have?

You would think from reading this, probably—and that is a matter of clarification—a layman might think that only after a person has been acquitted on the merits has he been put in jeopardy. That is not the fact under the decisions of the Michigan supreme court. He is better protected than that. There is nothing in here that I believe can be construed to in any way delete or reduce the rights of the defendant.

MR. GOVER: Mr. Stevens, if the word "tried" or "trial" was in there somewhere, wouldn't that explain it a little bit better? It doesn't refer back to that, that I can see.

MR. STEVENS: It would except for the supreme court decision that it virtually means the same thing as the provision that we put in. We put this in so it would be clarified. We thought people would understand better what the supreme court says it means.

MR. GOVER: If the word "acquittal" then, was put in to take care of that any place—

MR. STEVENS: Well, "twice put in jeopardy" certainly refers to acquittal. If the person is convicted, he can appeal. There is no question about that.

MR. GOVER: Of course, in your jeopardy there, you can be in jeopardy if you step on a race track and get in front of a car. You can be in jeopardy there. But it doesn't say anything about a trial in this thing.

MR. STEVENS: We're talking about jeopardy of a defendant in a court.

MR. GOVER: It doesn't mention it in that sentence of the section.

MR. STEVENS: This has been interpreted since the United States constitution was written. I don't think there is any difficulty in that.

MR. GOVER: There's a judge over there. Maybe he can explain it a little bit better to me.

MR. STEVENS: I yield to Judge Pugsley.

MR. FORD: Mr. Chairman, I rise to a point of privilege.

CHAIRMAN BAGINSKI: The Chair recognizes Mr. Ford.

MR. FORD: I think that it should be made clear on this record—and I am speaking now as a member of the judiciary committee after a brief conference with our chairman—that the comments that Mr. Gover has been referring to were in no way authored by the judiciary committee, directly or indirectly. We took no action with respect to the comments contained in this. We discussed in our committee only the proposed section and now, speaking as an individual, I have to say that I have—

MR. STEVENS: Mr. Chairman, I rise to a point of order. I think I had the floor and I yielded to Judge Pugsley. I'll be glad to hear anything from the judiciary committee.

MR. FORD: I'll yield to Judge Pugsley too.

MR. PUGSLEY: I'm willing to yield to Delegate Ford until he has completed his remarks. (laughter)

MR. FORD: Thank you, Judge Pugsley. I simply wanted to say that since the judiciary committee hadn't discussed this section, I would invite, as Mr. Gover did, someone to explain what the committee meant by its comment. I know what the section means, I think, but I'd like to know what the committee intended by the paragraph that Mr. Gover is talking about.

MR. PUGSLEY: In answer to the inquiry that has been made by Delegate Gover, I wish to say this. This takes me back a good many years to one of the first cases which I was called upon to try as a prosecuting attorney and I learned then, very much to my embarrassment, a definition of "jeopardy".

I had placed upon trial a man who was accused of taking indecent liberties with a small girl. I had been very much

interested in that particular case. Defense counsel shrewdly remained quiet until after the jury had been sworn, and one witness was placed upon the stand, whereupon I was confronted with a motion to dismiss the case because the preliminary proceedings did not comply with the law. And I was embarrassed to find that the motion was well founded. The respondent was discharged and I was prevented from bringing another prosecution because this man had been placed once in jeopardy and could not be placed in jeopardy the second time for the same offense.

I didn't make the same mistake the second time. I learned, as I say, the hard way. In other words, this amendment which has been offered here to the original language of the section has been made to comply with the rulings which have been made by our supreme court on the matter of jeopardy. In other words, it is not necessary that a trial be completed on its merits in order to put the defendant in jeopardy. As has been stated by Delegate Stevens, he is in jeopardy the minute a jury has been empaneled, and in my case it was further when the witness had taken the stand, even though the case never proceeded to trial on its merits.

Does that satisfy your inquiry?

MR. GOVER: Does that satisfy the committee language then on that explanation? From what Mr. Ford brought up, it doesn't seem to explain that just exactly. I guess I'm thick headed today but I just can't seem to get it.

MR. PUGSLEY: I think the explanation is also found in the comments in the following language:

> The committee also believes that the new provision will permit the courts an appropriate degree of latitude in defining and restricting the concept of jeopardy so as to permit retrial of a defendant in certain instances in which some minor mechanical legal flaw in indictment or procedure permits a guilty person to escape without punishment.

CHAIRMAN BAGINSKI: Are there any amendments to section 14? If not, it will be passed, it is passed.

Mr. Nord.

MR. NORD: Mr. Chairman, I would like to continue, if I may, the remarks made by Mr. Gover because now that he has brought them up I see why he is troubled and I wasn't before. There is a problem here. It didn't seem so at first; it isn't in the language of the section itself. That's why I didn't observe it. But the comment in the report, it seems to me, is abominable. The report, the comment, is not good and I don't think it should be left on the record. It is definitely in conflict with the answer given by Mr. Stevens. I would like to point that out and after I do, I would like to move that the entire comment to section 14 be stricken from the record.

There are 2 things in the comment which I now see Mr. Gover has uncovered. (laughter) One of them says this: "The new language thus appears to be more consistent with the actual practice. . . ." It doesn't say it's the same as the actual practice of the courts. I understand the answer of the committee and in my opinion as well, it isn't just more consistent. It's identical with the actual practice but the language we have here throws some doubt about whether it is identical.

Secondly, the final paragraph, I think, throws even more doubt. It states that the committee believes that the new language will permit the courts an appropriate degree of latitude, so on and so forth. It doesn't state—but it implies to me—that it will increase the latitude of the court in redefining. It doesn't say redefining but it implies that there will be more power in the court to restrict the concept of jeopardy. As far as I can understand it, there never has been any intention to do that because of the answer to the question given—I believe the question was by Judge Dehnke—whether there is any change whatever intended by this new language.

Mr. Chairman, am I in order to move that this part of the report, the entire comment following section 14, be stricken from the record?

CHAIRMAN BAGINSKI: The Chair will rule that you can't make an amendment to the committee report. However, a motion to correct the journal may be offered here. That's a proper matter.

MR. NORD: I move that when the committee of the whole rises, it recommend that the entire committee comment following section 14 be stricken from the record.

MR. STEVENS: Mr. Chairman, we are not adverse to striking some of this from the record but I wonder if Dr. Nord wants us to strike out the explanation of deleting the words "life or limb" and the use of the term "double jeopardy". The committee doesn't object to striking those things to which he objects but I don't see the point of striking out the other.

MR. NORD: Mr. Chairman, Mr. Stevens' point is well taken. I would like to repeat in different language. I would like to strike only those portions of the comment which begin at the bottom of page 280 in the left hand column with the words, "The new language . . ."—from there until the end of the comment.

MR. STEVENS: The committee does not object to striking that material.

CHAIRMAN BAGINSKI: The Chair understands that Mr. Nord wants to amend the words of the committee report—

MR. NORD: To strike all words of the committee report starting with "The new language . . ."

CHAIRMAN BAGINSKI: You are not dealing with the section? You are dealing with the words of the comment in the committee report?

MR. NORD: I am dealing only with the words of this comment in the committee report.

Mr. Chairman, if I may, we have had many reports given to us from committees and we have always dealt with them in some fashion. Now the question I asked you originally was whether I am in order to amend the committee comment as such. I understood you to say that I was.

CHAIRMAN BAGINSKI: The Chair feels that the comments made by the committee that reported this proposal—it is their privilege—and if Mr. Nord cares to make some comment about the wording of this report, that is his privilege.

Mr. Stevens.

MR. STEVENS: Mr. Chairman, Delegate Nord has made his comment. I would like to yield to Judge Dehnke if he has any reply relative to this. The committee is not averse to striking some of this comment if it is objectionable. I don't know whether it is in order or not.

CHAIRMAN BAGINSKI: Mr. Dehnke.

MR. DEHNKE: Mr. Chairman, I doubt very much whether the committee of the whole has any authority to strike any part of the committee report but the originating committee, as Mr. Stevens has suggested, can withdraw any part of the report it desires or the committee of the whole can express its disagreement with any such statement in the report which it thinks is possibly dangerous.

CHAIRMAN BAGINSKI: The Chair would like to ask the chairman of the committee that made this report if they are averse to making this change.

MR. STEVENS: Mr. Chairman, we will be glad to modify the report to meet the objections of Delegate Nord. That, I suppose, would take care of the situation?

CHAIRMAN BAGINSKI: That is correct.

SECRETARY CHASE: Is the secretary then to understand that Mr. Stevens, on behalf of the committee, is asking to withdraw the following language of the comments in its report on page 280 beginning at the bottom of column 1, and reading:

> The new language thus appears to be more consistent with the actual practice of the courts in Michigan.
>
> The committee also believes that the new provision will permit the courts an appropriate degree of latitude in defining and restricting the concept of jeopardy so as to permit retrial of a defendant in certain instances in which some minor mechanical legal flaw in indictment or procedure permits a guilty person to escape without punishment.

MR. STEVENS: Mr. Chairman and Dr. Nord, would it not be better to leave in that statement that the committee believes that this is more consistent with the present practice in Michigan, to meet the rest of it?

CHAIRMAN BAGINSKI: Dr. Nord.

MR. NORD: Mr. Chairman and Mr. Stevens, I wonder what you would say to this. Suppose we would only strike out the word "more" before the word "consistent".

MR. STEVENS: The committee agrees to that.

MR. NORD: I think that would be better. Can we work that deal? Cross out only the word "more" in that sentence and all of the final paragraph.

MR. STEVENS: Mr. Chairman, the committee will revise this and strike that portion.

Do you want to read it again, Mr. Secretary?

SECRETARY CHASE: The secretary then understands the agreement is that in this sentence, "The new language thus appears to be more consistent. . . ." that the word "more" be stricken.

What about the last paragraph following that?

MR. NORD: Entirely stricken is what I suggested.

MR. STEVENS: Entirely stricken.

CHAIRMAN BAGINSKI: It will be so ordered unless there are objections.

Miss Donnelly.

MISS DONNELLY: I just wanted to make an inquiry. Will this action also appear in the journal record, not just our action but will the reasons be printed in our journal? Because without this I must vote against this suggested change in our constitutional language. Because of this belief of the committee I must always be 100 per cent opposed to it. Will this show in the action journal and printing?

CHAIRMAN BAGINSKI: Miss Donnelly, I am advised it will.

Mr. Doty.

MR. DEAN DOTY: Mr. Chairman, I am not half as concerned with removing the comment as I am the interpretation of the comment and whether or not it wouldn't be smarter to go back to the old language. This makes me a little nervous as a layman since I see no comments on the part of the judiciary committee and they are the ones who recommend the change. I'd be interested in their comments on these comments, whether they are right or wrong. Are we making a severe change here?

CHAIRMAN BAGINSKI: Mr. Danhof.

MR. DANHOF: On page 283 it was the original recommendation of the committee on judicial branch that the first sentence of the section be changed so as to read, "No person shall be put in jeopardy twice for the same offense." And we go on:

> It is pointed out that this is a change from the present section and is a change in the wording of the recommendation of the committee on declaration of rights but is, in essence, only the deletion of the words "life or limb", as found in the U.S. constitution which this committee believes to be obsolete. This committee concurs in the intent expressed by the committee on declaration of rights in the change made from the present section.

The committee concurred unanimously in the remaining portion.

Now, it was the opinion of the judiciary committee that the words recommended by the judiciary committee, as I have just read, were in line with the law as it now stands in the state of Michigan and that in so stating, we would be changing nothing substantive in the law because the words "trial upon the merits" have not, by court interpretation, meant the completion to acquittal, as Judge Pugsley has pointed out. It may be that the Convention of 1908 wished in essence to try to state that no man had been in jeopardy until he had been acquitted upon the merits. But the court did not in fact go along with this, and it never has. The way it stands now, you could leave it the way it is and it never would say that in order to be in jeopardy you have to go all the way to an acquittal or a conviction. As Judge Pugsley stated, it has to be interpreted to mean that you are in jeopardy when the jury is sworn or when a witness is sworn and if for some reason the trial is not concluded—as in his case—you cannot bring the man back for retrial.

It also deals with something that if you are tried for murder and found guilty of a lesser offense such as manslaughter, you can not be retried for murder. Now, it does not apply to a hung jury because the idea is that you go on with the same case, but I think I express the opinion of the judiciary committee that no change was being made in the substantive law.

As Mr. Ford pointed out, on this last comment that we have been talking about we did not concern ourselves with the comments of the committee on rights. We concerned ourselves with what they did. We felt that what they did was correct. Now, we suggested the wording be somewhat changed. As I previously stated, we will leave this to style and drafting. We think the wording means the same thing and we concur in the intent; but, to my way of thinking, so far as granting more or less latitude for the rights of the states, while it may be in there, it is doubtful whether the court would consider it.

We can't grant or decrease what is or is not somebody's constitutional right or increase one iota, by way of comment, the idea of whether or not the state might appeal. Now, I can see the reasoning for it. Whether or not we ever develop a school of law that allows the state to appeal is something we get into when we consider what may constitute jeopardy. But this is historic language. It has been interpreted. It is now in line with what our supreme court in the state has said is involved in jeopardy, as Judge Pugsley has pointed out. And I think it gets rid of language which causes a lot of confusion, especially after acquittal upon the merits. It just doesn't mean that.

I think now with the comment out, we hope the supreme court, when it reads this fourth grade English—as the chief justice said he wanted—will not be confused as to what we meant. This is my interpretation of what we meant in the judiciary committee. But again I point out that there was a motion passed—which unfortunately did not get printed correctly in the journal and perhaps we can correct it—in which the judiciary committee said that where we concur in the changes made in the substantive portions to go in the constitution, we do not always concur in the reason therefor stated by the committee on declaration of rights, suffrage and elections. They have their reasons. We were not asked, nor did we have the time, nor under the rules of the convention, if we have concurrence, do we print a separate reasoning for it. This idea comes to us—they did the primary work, they had their reasons—we concurred in what they did, not always in the reasons therefor. What was attached in the appendix to the bottom of our comments on section 19 should have applied and does apply to the entire sections that we considered. This was a motion made by Mr. Ostrow and passed by the committee. It got typed up a little differently. We will make a correction. It should refer to all of the sections. This was our thinking on the matter.

CHAIRMAN BAGINSKI: Mr. Brown.

MR. T. S BROWN: I should like to remind the delegation that this again concerns a point that I brought up Monday night—perhaps in an unfortunate manner—with Dr. DeVries. But the point is essentially the same, and that is that the supreme court will hundreds of times in the future, during the life of the document that we are working on now, be looking to the comments of the issuing committees and these statements and general consensus expressed on the floor in support of the terminology in question.

Now, without talking on the merits of what we have been discussing here this afternoon, I think the point is doubly emphasized and becomes doubly important because apparently we have had conflicting opinions—or at least, in some way, unclear opinions—issued by one or both of the committees exercising concurrent jurisdiction on the same terminology.

Especially for the laymen in the delegation you must understand that when the supreme court looks at the language, they understand, as well as all of us do, that anything is possible with words and words can mean a thousand different things, even in the same order, in the same structure and within a sentence; and they necessarily always look to the real intention of what we are doing. And I think that as a result of today's unfortunate mixup we should have some standardized procedure so that we will all understand that the committee

report, the committee comments, are just as important in this sense as what we actually vote upon as going into the constitution because we are, by voting on the particular section and not saying anything about the committee comments, actually acquiescing in the intention and the meaning and the various nuances of the phrasing within the comments. I do think that some sort of structure ought to be set up so that we will realize the import and the intent of the actual words we are using.

CHAIRMAN BAGINSKI: Mr. Gust.

MR. GUST: Mr. Chairman, I'd just like to make one brief comment for whatever it is worth for posterity and style and drafting, and I understand the chairman of style and drafting is also on the judicial committee. I think the language that was proposed by the judicial committee is far more understandable and less clumsy than that that was proposed by the committee on rights, suffrage and elections, and I'd like to bring that to the attention of the style and drafting committee rather than making it in the form of an amendment because I understand from the comments made by the chairman of the judiciary committee that this is the way it prefers to do it.

CHAIRMAN BAGINSKI: Mr. Heideman.

MR. HEIDEMAN: I was going to speak on the same thing, that is, the difference in language between the recommendation of the committee on rights, suffrage and elections and the judiciary committee and whether the judiciary committee was going to put that to a vote. The idea then is to pass that on to the style and drafting committee?

CHAIRMAN BAGINSKI: Do you care to answer that, Mr. Ford?

MR. FORD: Mr. Chairman, if it will help in perfecting this record, I made the motion in the judiciary committee but I claim no authorship of this because we got it directly from the Alaska constitution, which duplicates the language in 24 constitutions of the United States and is in line with the federal constitution. One of the things that appealed, at least to me, in making the motion— and I think was persuasive with the committee—was that by adopting the exact language that was in vogue in the constitutions of some 24 states and is modified slightly in several others, we were taking safe language that was not open to semantic differences of opinion or construction and we have the exact words in the exact order that they have been used for many years and construed by many courts and this is the only difference between our language and the language of the committee on rights and suffrage, which in my humble opinion says exactly the same thing.

We don't feel that ours is any more palatable than theirs or does anything that theirs doesn't do. And as a matter of fact, our committee determined amongst ourselves that although we had a little different language, we were satisfied with what they had done.

CHAIRMAN BAGINSKI: Mr. Mahinske.

MR. MAHINSKE: As I understand it now, on stipulation between the 2 sides here, this last paragraph under section 14 has been stricken from the record or is to be stricken from the record plus some words from the preceding paragraph. Is this correct?

CHAIRMAN BAGINSKI: That's correct.

MR. MAHINSKE: I would like to ask Mr. Stevens or anyone else who dealt with this item, does the last paragraph still set forth their intent in the change of the wording in this section of the bill of rights here?

CHAIRMAN BAGINSKI: Do you care to answer, Mr. Stevens?

MR. STEVENS: Yes. Mr. Chairman and delegates, I have no doubt that the moving force of the committee on this recommendation, which was sent to us from a member of the judiciary, was to bring the language of the constitution within keeping with the practice existing today. It is very similar to my idea of deleting the words "or agent" in section 12. We didn't propose to change anything. We just thought when somebody reads this constitution it will be much more clear to him if we can say something to him what is anyway the law of the state. It has been explained here several times that this does not change the law of the state as it is now. However, if you read the original provision, it might be difficult to understand why the supreme court has ruled that it means what we are putting in here now. In other words, it all probably revolves around the fact that the supreme court says when a jury has been sworn or a witness has been sworn, he is in jeopardy, and he is in jeopardy whether you change the language or not, in fact. Does that answer your question?

MR. MAHINSKE: You are now saying that your remarks in the last paragraph where you say that it is to permit latitude and so forth and retrial of a defendant in certain instances and so forth, is no longer your intent? Whether it is stricken from the record or not, this is no longer your intent?

MR. STEVENS: This was suggested when the matter was given to the committee. Whether it would make any difference there I am not prepared to say. Possibly it would, as Judge Pugsley just pointed out. Certainly it does not dilute the rights of the defendant; at least, we don't think it does. In accepting this idea, the committee thought we ought, if we could, to say the thing that would most likely be clear to anyone who read it. Apparently we haven't done so entirely. There seems to be some argument. But I don't think there is any question as to the fact that the law is now fixed and it would not be changed in substance by any change in language which we have here.

MR. MAHINSKE: I have a question to direct to Mr. Danhof of the judiciary committee, based upon exactly the same lines that appear in the comment under section 14.

CHAIRMAN BAGINSKI: I don't believe Mr. Danhof is in the hall.

MR. MAHINSKE: Or anyone else from the judiciary committee who would care to comment on this. I think Mr. Ford has been taking the floor on behalf of the committee here. In your report on section 14 you say, "This committee concurs in the intent expressed by the committee on declaration of rights. . . ." Down in section 19, you say, "Concurs with the recommendation of declaration of rights committee, but not necessarily for the reasons given in that committee's report." Just what do you mean by this?

CHAIRMAN BAGINSKI: Does anyone care to answer that?

Mr. Leibrand.

MR. LEIBRAND: If Mr. Mahinske would care to retain his question for a few minutes, Mr. Danhof has gone down to the committee office to get the committee letter. It appears there is a misprint in section 19.

CHAIRMAN BAGINSKI: Mr. Kuhn.

MR. KUHN: Mr. Chairman, I was going to ask Mr. Stevens a question but I think he has answered it. But this is so important and so vital to the rights of the accused that I would like it as a matter of record so no prosecutor, or anyone else, will be confused, that you in no way intend to allow the state to appeal on matters of error in a criminal case. I'd like the record to state that in light of the Connecticut case which was read to us earlier.

MR. STEVENS: We have a statement from the judge that he thought that in case of such a technicality as Judge Pugsley brought out here, it might give the state some right of appeal. Certainly, under the present law and under this provision, there is no idea that once the jury has been sworn, that the state would have a right of appeal.

MR. KUHN: Another question I want to be sure we get an answer on is whether or not it is the intention to give the state any further rights or is it that you are hoping to open up the field?

MR. STEVENS: No.

MR. KUHN: Thank you.

CHAIRMAN BAGINSKI: Mr. Boothby.

MR. BOOTHBY: I'd like to ask Mr. Stevens a question, Mr. Chairman. As I understand the word "jeopardy", just to define this for some of the laymen, is it not true that jeopardy attaches when a jury has been sworn in a criminal case?

MR. STEVENS: That is true. It has been pointed out 2 or 3 times.

MR. BOOTHBY: And the wording of the present constitution would indicate that "jeopardy" under the literal interpretation of the present constitution would not attach unless there was an acquittal.

MR. STEVENS: That would seem to be what it says; but the Supreme Court of the State of Michigan doesn't agree with your intention so we want to make the constitution read the way the supreme court says it does read.

MR. BOOTHBY: So this is a distinction that you are actually trying to make, to make the jeopardy attach at the time the jury is sworn rather than later on in the trial. Actually you are extending the rights of the individual?

MR. STEVENS: We are not doing anything in that regard. We are simply trying to state the matter in such a way that even a layman might understand that jeopardy does attach.

MR. BOOTHBY: I am going to ask one further question. Under the literal interpretation of the present constitution — and I don't mean what the courts have decided — but under the literal interpretation of the words, if the prosecutor began a criminal case and the jury was empaneled, but on the motion of the prosecutor himself the case was dismissed — under the literal interpretation — a person could be tried again, is that not correct under the literal interpretation?

MR. STEVENS: That is correct, if I know what you mean by literal interpretation. That's what it seems to say.

MR. BOOTHBY: So the changing of words to comply with the federal constitution would not allow the prosecutor to drop the case in the middle of a criminal case and allow him to begin the prosecution over again; is that correct?

MR. STEVENS: That is correct.

CHAIRMAN BAGINSKI: Miss Donnelly.

MISS DONNELLY: I understand recently in reply to Delegate Kuhn's statement you unequivocally said that you had no intention to open the door to any interpretation of the state to allow the state to appeal on not guilty. Is that correct?

MR. STEVENS: If I understand your question, it is correct.

MISS DONNELLY: If that was your intent at that time and now you have changed your position, in my opinion, since you filed your report, would the committee object to amending their report to so state that that is not the intention and that is the direction they wish to foreclose?

MR. STEVENS: Subject to any comment or objection of any member of the committee, I would say yes.

MISS DONNELLY: I'd like to request that your committee then do that.

CHAIRMAN BAGINSKI: Judge Dehnke.

MR. DEHNKE: Mr. Chairman, I don't know whether this is connected or not. There is one thing that we need to watch. We do have the practice in some cases of the prosecutor being allowed to take an appeal to the supreme court to review a judgment or decision or ruling that the court made during the trial, which the prosecutor thinks was erroneous. And I think that is a good practice. The purpose of that is not to send the case back for another trial but to obtain a ruling of the supreme court so that if the supreme court says the ruling was wrong, that some mistakes will not be made in later cases in other courts or the same court.

So I think what we desire is to make sure that after an acquittal, even in a case in which the trial judge made error prejudicial to the prosecution, the defendant shall not be put on trial again. That may allow a person really guilty to escape once in a great while but the alternative is the possibility of letting it run into what people would call a persecution by continual appeals and retrials.

I have no desire to see anything go into this constitution which would make it possible to compel an individual who has once been acquitted or put on trial in such a way that he has been in jeopardy to be tried again. But I do think the door ought to be left open for appeals by the prosecutor so that erroneous rulings by the court can be checked by the supreme court and so marked.

To guard against another possible misunderstanding that has been touched on perhaps not quite sufficiently, if a mistrial occurs; if a juror becomes sick and the defendant is not agreeable or the prosecutor is not agreeable to completing the trial with the remaining jurors; if it is found out during the trial that some juror who has been accepted was in fact disqualified; if something else occurs which justifies the court, for good reason, declaring a mistrial, that is not necessarily the end of the case. A new jury can be empaneled and the case then carried on and completed.

I think we need to be pretty careful as to what we put into the language of this amended comment.

CHAIRMAN BAGINSKI: The Chair would like to suggest, if it is agreeable to the committees that handled this report, and in order to avoid any further confusion and loss of time, that they prepare a new report.

MR. STEVENS: The committee would be glad to prepare a new report. We would appreciate the privilege of having a little time to do it.

CHAIRMAN BAGINSKI: The report would not necessarily have to be made and prepared today but it could be included in the action journal as to what the comments were on the proposal.

MR. STEVENS: The committee would be more than glad to rewrite the report.

CHAIRMAN BAGINSKI: Miss Donnelly, does that satisfy your feelings in the matter?

MISS DONNELLY: Yes, generally. However, I would like to go on record as saying, in my opinion, a person who has been acquitted has never been guilty and you can't thus let a guilty person go free because he was not guilty.

MR. STEVENS: We don't need to put that in the report, do we? (laughter)

CHAIRMAN BAGINSKI: Mr. Mahinske.

MR. MAHINSKE: In view of the fact, Mr. Chairman, that the committee is going to rewrite their report, I would assume the judiciary committee will rewrite their report. These reports are tied in pretty solidly with the committee proposals themselves. I think it would be in order to move at this time that when the committee rise, we take no action on this section of the bill until we have the new reports before us.

MR. LUNDGREN: Mr. Chairman, a point of order.

CHAIRMAN BAGINSKI: State your point, Mr. Lundgren.

MR. LUNDGREN: Wouldn't it be prefectly proper to pass this particular portion by and move on to the next section?

CHAIRMAN BAGINSKI: Is that satisfactory to you, Mr. Mahinske, that we temporarily pass section 14, proceed to the other sections and come back to this one later?

MR. MAHINSKE: When we have the new committee reports in front of us.

MR. STEVENS: It's agreeable to the committee, Mr. Chairman.

CHAIRMAN BAGINSKE: Mr. Higgs.

MR. HIGGS: Mr. Chairman, as a matter of procedure — and I agree with Mr. Mahinske, I don't think we are in a position to act on this section until the committee report is complete — we had very little time to consider this in our judiciary committee under the concurrent jurisdiction. We were under great pressure to act immediately and to much of this no attention was given, and I'm on the judiciary committee. But I wonder what the procedure is that we are following here now. If the committee report is going to be rewritten, will it go back to the judiciary committee? Or what is going to happen?

CHAIRMAN BAGINSKI: It would seem to me that Dr. Pollock, who handled the proposal, would make contact with the judiciary committee and get together and make a proper report.

Dr. Pollock.

MR. POLLOCK: Mr. Chairman, as I understand it, the committee, through Mr. Stevens, has now promised to rewrite the report and since that has been requested and will be done, there is no point now in going any longer in the discussion on this section. We can pass this section and come back to it with

a new comment in front of you and then I hope it can be speedily disposed of.

CHAIRMAN BAGINSKI: Unless there are objections, we will pass temporarily section 14 and proceed with section 15.

The secretary will read section 15.

SECRETARY CHASE: Section 15.

[Sec. 15 was read by the secretary. For text, see above, page 465.]

CHAIRMAN BAGINSKI: Mr. Stevens.

MR. STEVENS: Mr. Chairman and fellow delegates, I am going to read the comment here in order that I may not say something that I did not intend to say. I don't expect any controversy here. We have not changed this. We simply say:

> The committee believes that these guarantees against a requirement of excessive bail, excessive fine, cruel or unusual punishment, and the unreasonable detention of witnesses are satisfactory as now stated and require no change from the present constitution.

The judiciary committee concurred in this.

CHAIRMAN BAGINSKI: Are there any amendments to section 15? If not, it will be passed.

Section 15 is passed.

Section 16.

Dr. Pollock.

MR. POLLOCK: Mr. Chairman, I move that the committee do now rise and report to the convention.

CHAIRMAN BAGINSKI: It has been moved that the committee do now rise. As many as are in favor of the motion will signify by saying aye. Opposed, no.

The motion does not prevail.

The secretary will read.

SECRETARY CHASE: Section 16.

[Sec. 16 was read by the secretary. For text, see above, page 465.]

CHAIRMAN BAGINSKI: Mr. Stevens.

MR. STEVENS: Mr. Chairman, if you will look at your section 16 in the journal, please, I would like to yield to Professor Norris to explain the change which we made, the addition which we have made to this provision.

CHAIRMAN BAGINSKI: Mr. Norris.

MR. NORRIS: Mr. Chairman and ladies and gentlemen of the committee of the whole, with regard to the recommended change of the committee on declaration of rights, suffrage and elections, I'd like to make these observations: first of all, the proposed language is a very slight modification of a comparable provision in the recently adopted Alaska constitution. The judiciary committee concurred in principle and added 2 words which were incorporated in the language which is now before the house. Secondly, I'd like to say that this morning we were notified by the civil liberties committee of the state bar of Michigan that they also concurred with the principle of this particular proposition now before us.

May I say by way of elucidation — because I suspect that if this should meet with the favorable consideration of this body the courts might construe this — I have given this considerable attention. I want to read this very brief statement with regard to this proposal.

It is the purpose of this additional language to facilitate the important and valuable function of legislative and executive investigations by protecting the right of all persons to fair and just treatment in the course of such investigations. It is through procedural rules that the individual is protected against arbitrary governmental action. The quintessence of liberty is the protection of the individual against arbitrary application of the collective powers of the state. It is submitted that there is need for such fair and just treatment and, when fair and just treatment is accorded to all persons, there is a greater disposition to assist such legislative and executive investigations in the discharge of their lawful duties. Dean Griswold of the Harvard law school has placed the problem in these terms:

> Now let us turn to the question which has been constantly recurring in recent days. Does this basic idea have any application to legislative investigations? Do these investigations always measure up to our ideal of due process of law? I think it fair to say that a large section of the public has from time to time felt a sense of injustice with respect to some of these hearings; and if they have, then there is a situation where the ancient ideal of due process is involved.
>
> A failure to appreciate the intimate relation between sound procedure and the preservation of liberty is implicit, may I say, in that saddest and most short sighted remark of our times, "I don't like the methods, but . . ." For methods and procedures are the essence of due process and are of vital importance to liberty. As Mr. Justice Brandeis wrote some 30 years ago, ". . . in the development of our liberty insistence on procedural regularity has been a large factor." More recently Mr. Justice Frankfurter has put the same truth in these words, "The history of liberty has largely been the history of observance of procedural safeguards."

Fair and just procedures are the basis for effective investigations. Chief Justice Warren has summarized the basic policy considerations on this relationship in the Watkins Case, 354 U.S. 178 (1957). He said:

> The power of the congress to conduct investigations is inherent in the legislative process. That power is broad. It encompasses inquiries concerning the administration of existing laws as well as proposed or possibly needed statutes. It includes surveys of defects in our social, economic or political system for the purpose of enabling the congress to remedy them. It comprehends probes into departments of the federal government to expose corruption, inefficiency or waste. But, broad as is this power of inquiry, it is not unlimited.
>
> There is no general authority to expose the private affairs of individuals without justification in terms of the function of the congress. This was freely conceded by the solicitor general in his argument of the Watkins Case. Nor is the congress a law enforcement or trial agency. These are functions of the executive and judicial departments of government. No inquiry is an end in itself; it must be related to, and in furtherance of, a legitimate task of the congress. Investigations conducted solely for the personal aggrandizement of the investigators or to punish those investigated are indefensible.

Moreover, Justice Warren points out that it is unquestionably the duty of citizens

> . . . to cooperate with the congress in its efforts to obtain the facts needed for intelligent legislative action. It is their unremitting obligation to respond to subpoenas, to respect the dignity of the congress and its committees and to testify fully with respect to matters within the province of proper investigation.

But, Justice Warren points out that the investigations and the duty of citizens to cooperate

> . . . assumes that the constitutional rights of witnesses will be respected by the congress as they are in a court of justice. The bill of rights is applicable to investigations as to all forms of government action. Witnesses cannot be compelled, for example, to give evidence against themselves. They cannot be subjected to unreasonable search and seizure. Nor can the first amendment freedoms of speech, press, religion, or political belief and associations be abridged, . . .

by such investigations. Justice Warren continues:

> But the power to investigate, broad as it may be, is also subject to recognized limitations. It cannot be used to inquire into private affairs unrelated to a valid legislative purpose. Nor does it extend to an area in which congress is forbidden to legislate. Similarly, the power to investigate must not be confused with any of the powers of law enforcement; those powers are assigned under our constitution to the executive and the judiciary. Still further limitations on the power to investigate are found in

the specific individual guarantees of the bill of rights, such as the fifth amendment's privilege against self incrimination which is in issue here.

In short, Chief Justice Warren declares that some "specific individual guarantees" of the bill of rights apply to the investigative process. Hence, it is germane that in the bill of rights of the Michigan constitution the people may properly seek to protect the individual against unfair and unjust conduct by legislative and judicial investigations.

It may be asked, does not the due process clause protect the individual against unfair and unjust treatment? Yes, but not in executive or legislative investigations. The fact is that the due process safeguards of a criminal trial have not been interpreted to apply to legislative or executive investigations. While many investigations have unfairly and unjustly assumed the character of a criminal trial and abused the prestige of government, the rights of individuals, and our concept of separation of powers in so doing, the normal rights of an accused have not been judicially accorded to a witness in an investigation. In a criminal trial a defendant has at least the following rights:

The right to notice of the nature of the accusation; the right to confront and question witnesses; the right to counsel; the right to subpoena witnesses; the right to take the stand in one's own defense; the right not to take the stand, or decline to answer incriminating questions, without adverse comment; the right to rules of evidence; and the right to a prompt public and fair trial.

But the courts have held that only some specific guarantees of the bill of rights apply to legislative hearings. The specific guarantees protected in legislative hearings have been the right of a witness not to answer self incriminating questions, the right not to be subject to unreasonable search and seizure, and the right not to answer questions invading first amendment freedoms of speech and association. The courts have also held that questions propounded in such hearings must be pertinent to the mandate of the inquiry. While there has been language in some decisions that go beyond these protections the specific holdings have been confined, in the main, to the specific guarantees outlined above. The court has not held that the due process clause applies to legislative or executive investigations.

The need for fair and just treatment may be summarized as follows: while due process generally means simply fairness, experience with many legislative and executive investigations — federal and state — across the land in recent years, amply indicate that even the fairness in elemental due process has been wanting. The privilege against self incrimination protects only against punishment; it does not protect against defamation of character — and such defamation, imputations and charges have been made under the auspices of such investigations — nor does it protect against the imputation of unfair business practices or, indeed, a charge of treason.

The court decisions to date have not protected individuals against being charged with innumerable offenses, offenses not proved nor intended to be proved. Investigators have assumed a right to ridicule, expose, demean, deprecate and intimidate witnesses with impunity. The witness usually has only a limited right to counsel, no right to submit a prepared statement, does not have a clear right to a clear definition of the scope of each inquiry, no right to a transcript of the proceedings, no influence on executive or open sessions, no opportunity to restrain the issuance of public statements by committee members, no right to confront witnesses, cross-examine witnesses, or call rebuttal witnesses, no right to decline appearances on radio or television, and no right to appear before subcommittees composed of more than one person.

Moreover, nonwitnesses, who are the subject of adverse hearsay comment, identification or charges at such hearings, with great resultant irreparable damage to their reputation and livelihood, are usually not permitted the right to appear, answer or rebut.

Mr. William T. Gossett, vice president and general counsel, Ford motor company, arrived at conclusions precisely pertinent here in an address delivered before the Michigan judges' association meeting at the Dearborn inn on September 4, 1952. Mr. Gossett said — and I quote:

> . . . We should be the first to recognize that there is a proposition at the heart of American life which is the constant and overriding preoccupation of the people; and that the people seem to give their confidence and praise to those who endeavor to protect this proposition from substantial impairment.
>
> The proposition is that, no matter how complex society may be or become, the individual must be the focus of all public and private efforts. It is the belief that the human being has that divine spark which alone insures progress toward a better world. It is the belief that because of this divine spark, every individual, however cantankerous or sinful he may be, has basic rights which the self interest of society demands be protected and expanded, consistent, of course, with the rights of the group of which he is a part. Consider, for example —

Mr. Gossett continued

> — current developments in the conduct of congressional investigations and similar quasi judicial processes. They have proliferated in recent years and, like the printing of cheap money, have debased the original coin. This once honorable device is today being used in ways that cannot fail to provoke deep concern about maintaining the rights of the individual.
>
> Congressional investigation is essential, of course, to the proper functioning of our government machinery. It has been sanctioned by usage and upheld by judicial decision. No thoughtful person would withhold from lawmakers their right, indeed their duty, to investigate. Public airing of matters relevant to the creation of new law and enforcement of existing law is vital to democracy.
>
> But manifestly it is not essential to the investigative process that a person summoned before a legislative committee be denied constitutional rights: the right to cross examine those who have testified against him; the right to call witnesses in his own behalf; and the right to answer then and there the accusations made against him.
>
> It is not essential, moreover, that individuals whose beliefs or conduct are under scrutiny be subjected to public pillory or be slandered with impunity by investigators who are secure in the knowledge that there can be no retaliation in court. And last, but by no means least, there is no need to compound the inherent invasion of indivi-ual privacy or the damage to reputation by televising the proceedings. In the light of the abuses which have sprung up in the investigative process, the possible injury to the individual is multiplied many times when his ordeal is projected into the homes of millions of his fellow citizens.

End of Mr. Gossett's quote.

It is not suggested that all of the abuses of executive and legislative hearings can be corrected, or be corrected completely, by any one branch of government. Varied and delicate problems are presented and each coordinate branch does not have the sole responsibility for the proper conduct of government. But each branch — the courts, the legislature, and the executive — should have a duty to protect and promote fair and just procedures in investigations. The urge for reform of past and current procedures cannot be denied. There is nationwide interest. What then can move each to assume its proper and unique function in protecting the rights of every person to fair and just executive or legislative hearing?

I conclude that it is submitted that each branch can evolve within its own proper sphere appropriate measures to deal with this problem. But the absent impulse and incentive must be provided. This incentive can best be provided by a constitutional mandate. While Michigan has not had an objectively measurable record of the abuses in legislative and executive hearings, the power and capability exist.

Parenthetically I might refer to several proceedings. I had my attention brought in the judiciary committee by Delegate

Ford, for example, to the investigation of the J.P.s, a situation where in the morning an investigation was conducted of an individual and in the afternoon the gentleman committed suicide. There has been the Callahan committee; there has been the Francis committee; there have been a whole host of committees in which there have been abuses. My attention was invited by one delegate to this convention to the fact that he resigned from one of our own committees because of the conduct of the chairman. I am sure that we could recite instances which would indicate that this is a Michigan concern as well as a federal concern.

Such was the view indeed of the people of our newest state, Alaska, in adopting the language of this particular submission. Alaska's experience in this regard, like that of Michigan, was limited. But Alaska realized that the way to such abuses exists, and hence the will to such abuses must be denied. The experience of the nation, of other states, indeed, of other nations, can and should be taken into account by delegates drawing up a new Michigan constitution.

Justice Cardozo said that a constitution must be based on principles, not only for the passing hour but for the future. Both the passing hour and the future require that the right of all persons to fair and just treatment in the course of legislative and executive investigation shall not be infringed. It is the precise purpose of a bill of rights to foresee and forestall arbitrary, unfair and unjust conduct of government against all persons.

And for these reasons we respectfully recommend that you favorably consider the recommendations of the committee.

CHAIRMAN BAGINSKI: Mr. Leibrand.

MR. LEIBRAND: Mr. Chairman, may I address a question to Delegate Stevens? Delegate Stevens, you yielded to Delegate Norris. I am wondering if we are to consider the statement or report made by Delegate Norris just completed as part of the official report of the committee on rights, suffrage and elections, or is it merely his individual statement?

MR. STEVENS: Judge Leibrand, the official report of the committee is contained in the journal. The statements recently made by Professor Norris are those that he used before the committee in introducing and sponsoring this proposal. Am I not right, Professor Norris?

MR. NORRIS: That's right, Mr. Stevens. However, I don't feel there is anything inconsistent between what I said and what is in the comment that is appended to this section of the report.

MR. STEVENS: That was not the question. Judge Leibrand asked me a question. I want to be sure I answered it correctly.

MR. NORRIS: I think it is an appropriate elucidation of the reasons which motivated the submission, sir.

MR. STEVENS: Have I answered your question, Judge Leibrand?

MR. LEIBRAND: I was very happy to have you do so.

CHAIRMAN BAGINSKI: Mr. Heideman.

MR. HEIDEMAN: Mr. Chairman and fellow delegates, I'd just like to read something and pose a question. The proposed language, or additional language, reads, "The right of all persons to fair and just treatment in the course of legislative and executive proceedings, investigations, and hearings shall not be infringed." The committee comment reads like this:

> . . . . The language proposed by the committee does not in any sense impose categorically the guarantees of procedural due process upon such investigations. Instead, it leaves to the legislature, the executive and finally to the courts, the task of developing fair rules of procedure appropriate to such investigations and hearings. . . .

Well, it's like starting to take a hot bath and you turn on so much cold water you end up in a cold bath. I mean, what does this mean? It says ". . . shall not be infringed." And the committee comment says, "Well, after all, we don't mean what we said we meant. This is the constitutional language."

MR. STEVENS: I think I can speak for the committee as a whole. We were convinced that it was well to put into the constitution a provision which might guide the courts, the legislature, the governor, the administrative board in these hearings where they bring in witnesses or in some cases defendants. All we want to do to put it as simply as possible is try and guarantee fairness in the hearing. Does that answer your question?

MR. HEIDEMAN: No, Delegate Stevens, it doesn't because now you use the term "guarantee" and the language says that it does not in any sense "impose categorically the guarantees of procedural due process investigations." Instead, it leaves it to the legislature. Why put it in? The executive, in particular. We don't generally think of the executive as laying down the rules of fair procedure.

MR. STEVENS: Probably I didn't make myself clear on that, Dr. Heideman. I meant to say we hoped that the constitution, as we changed it, would be a guide not only to the courts but to the legislature and administrative bodies to be fair and just. It is not expected that due process of law in the sense which it would apply in a court would necessarily apply in an administrative hearing or in a legislative hearing. It never has and it isn't intended that it should.

MR. HEIDEMAN: Then shouldn't the language be modified?

MR. STEVENS: Which language are you talking about?

MR. HEIDEMAN: "Infringed."

MR. STEVENS: No. I think all it says is "The right . . . to fair and just treatment . . . shall not be infringed." It doesn't say that due process of law is required or shall not be infringed.

CHAIRMAN BAGINSKI: Are there any amendments to section 16?

SECRETARY CHASE: Mr. Cudlip has offered the following amendment:

1. Amend page 4, line 4, after "all" by striking out "persons" and inserting "individuals, firms and corporations"; so the language will then read:

> The right of all individuals, firms and corporations to fair and just treatment in the course of legislative and executive proceedings, investigations, and hearings shall not be infringed.

CHAIRMAN BAGINSKI: Mr. Cudlip.

MR. CUDLIP: Mr. Chairman and members, I think the committee is to be praised for its insight and perception in proposing this change and making it a part of Michigan constitutional architecture. As Member Norris has said, these hearings at all levels of government are increasing and sometimes seem to be oppressive.

It is true in my experience that the people that appear before these hearings appear in large measure as representatives of groups and not in their individual capacities. The purpose of my amendment, if this section 16 is adopted, is to make it very clear that persons not only means individuals but also means firms and corporations, such as universities, private business corporations, labor unions and all other artificial persons.

Now, why the suggestion? Simply to avoid future argument, litigation, expense and nuisances. The first sentence of section 16, which is unchanged and which provides all of us with ancient rights, uses the word "person." This sentence contains a mixture of rights which we are entitled to constitutionally. "Person" in that sentence has been defined by our supreme court in the case of the privilege against self incrimination to include only the individual. That was recently established in the case of St. John vs. General Motors, 308 Michigan Reports, 333, where the corporation was not entitled to invoke that privilege, but only the individual working for the corporation if he were guilty.

Now, on the other hand, the same first sentence, in speaking about due process of law, which Mr. Norris carefully defined for us again, does apply to corporations, cities, labor unions, charitable organizations, universities, firms, etc. Therefore, I say that I think if the section is to be adopted, we can avoid lots of expense and lots of argument if we make it clear that we intend that individuals, firms and corpora-

tions covering all the entities I have mentioned, are to be protected and not simply the individual who appears in his own right. Thank you, Mr. Chairman.

CHAIRMAN BAGINSKI: Mr. Danhof.

MR. DANHOF: Mr. Chairman, in order to clear up a slight matter of confusion, I would like to have the delegates turn to page 283 of the Journal 50 in the appendix wherein there is contained a report of recommendations and decisions of the judiciary committee. At the time we considered this matter we were passing it along to the rights committee practically as fast as we voted on it. The section marked section 16 should read as follows:

> This committee concurs with the recommendations of the rights committee as they are contained in sentence 1 of said section. The judicial committee concurs, in principle, with the recommendations set forth in the second sentence of this section but recommends that, in addition to the word "investigations", there should be included the words "proceedings and hearings".

This was in fact done after the report back and the rights committee corrected it. Further —

> The committee was of the opinion also that the word "persons" might be expanded to include corporations and business entities in addition to natural persons.

This now deals with the amendment that Mr. Cudlip, who is a member of my committee, made.

If I might go on further, since the idea in section 19 was brought up. As I transmitted it back to Dr. Pollock — and I say that it is not his fault or anybody's fault; he was in there when we took the vote and they went out and the official written report arrived later — the report should read this way, and I would ask that it be printed in the journal tomorrow to correct any misapprehension:

> This committee concurs in the recommendations contained in this section and approves of the word "jurors" in place of the word "citizens" which latter word was the original choice of the committee on rights prior to consultation with the committee on judicial branch.

This has been done.

> It was the considered opinion of the committee that this would eliminate any confusion and would leave to the legislature the manner of determining the qualifications of jurors.

This suggestion was likewise incorporated in the final report and the final committee proposal that we are now considering. And further, the following motion was likewise passed —

CHAIRMAN BAGINSKI: Mr. Danhof, the Chair would like to suggest that you wait until the committee rises and then submit that statement and it will appear in the journal tomorrow.

MR. DANHOF: I wanted in particular—since we are discussing section 16—to bring out what we had there.

CHAIRMAN BAGINSKI: That will be done. But you see, you are in section 16.

MR. DANHOF: I went over to 19. But go ahead. That's all right.

CHAIRMAN BAGINSKI: Mr. Stevens.

MR. STEVENS: Mr. Chairman, the rights and suffrage committee has no objection to the amendment.

CHAIRMAN BAGINSKI: Mr. Higgs.

MR. HIGGS: Mr. Chairman and fellow delegates, I also am on the judiciary committee and it is true that the committee concurred after a very brief consideration of this matter in principle. Now I think there are some very serious questions that should be asked of the committee in this particular connection and perhaps Delegate Norris would be kind enough to answer some of these.

The first question I have deals with that part of the comment that reads — and I am reading from page 280 of the journal —:

> Instead, it leaves to the legislature, the executive and finally to the courts, the task of developing fair rules of procedure appropriate to such investigations and hearings. . . .

Now, would I be correct in assuming, in view of the comment, that all legislative and executive proceedings, investigations and hearings then would be subject in the final determination as to the rules of procedure where the rights of persons are involved to the rules of the court? That would be the Michigan supreme court, would it, Mr. Norris?

CHAIRMAN BAGINSKI: Mr. Norris.

MR. NORRIS: The thinking behind the proposal and the submission before you was that there was, if you will, a concurrent jurisdiction on the part of the coordinate branches of government to evolve such just and fair rules as would reach that objective for all people coming before such investigations or proceedings or hearings. And, if this were passed, it would be a duty in the first instance upon the legislature to evolve codes and statutes, it would be a duty on the part of the executive department to promulgate such rules for the conduct of executive investigations as would comport with fair and just treatment and also the court would review this and evolve the fair and just rules.

Now, we have to understand that we are not talking about due process for a very important reason. We do not wish to encourage the trend of regarding legislative hearings as quasi criminal trials. We want to get away from that and get them to think in terms of the purpose of the investigation or the hearing, which is to get facts upon which to predicate remedial legislation. That's why we do not use the words due process. We're talking in terms of fair and just treatment and we recognize a rather tender and sensitive area in the separation of powers doctrine.

That's why we were thinking in type of language.

MR. HIGGS: I'm very interested in that feature of it. When you mention separation, I presume you are speaking of separation of the executive, legislative and judicial branches of government. When you use the words here, "Instead, it leaves to the legislature, the executive and finally to the courts, the task of developing fair rules of procedure appropriate. . . ." we are speaking of all legislative and executive proceedings—all of them, all investigations and all hearings. We're going to leave it to the courts to determine how these branches of government are going to do business; is that correct?

MR. NORRIS: I think the intent is to relate what we are thinking about to the investigative hearings and proceedings.

MR. HIGGS: That's not what is said here.

MR. NORRIS: I appreciate the point that you are making. There is a question there. I don't think it is the intent of this language to say the courts would review the rules by which the legislature conducts itself in its own proceedings. I think that what it is related to is with reference to the public in its investigative operations, particularly with regard to hearings before committees and executive hearings brought to the public.

MR. HIGGS: Mr. Chairman and fellow delegates, I would like to speak, then, in opposition to both the Cudlip amendment and the committee report inasmuch as in the first place the language covers every possible kind of proceeding of the coordinate branches of government. We are not talking about concurrent jurisdiction; we are talking about finally leaving to the courts how they are going to do business.

Now, I'd like to call to your attention in this connection the fact that on the Supreme Court of Michigan, which theoretically is an elective body, 5 of the members of our supreme court were appointed and placed on that court solely by appointment of the governor and the sixth member of the court also came to the court by appointment. Now, this is reaching a long way from the electorate. It says "finally to the court." If we are going to place finally in the courts the very broad and uncertain idea of what is fair and just in the conduct of their proceedings, investigations and hearings, I think that's going too far.

We've seen, I think yesterday, how a court divided 5 to 4, with one man swinging one way or the other can determine ultimately the final disposition of a matter in the face of the electorate of Michigan; and I think that this is a very dangerous doctrine to put in our constitution. Especially you

will note that under section 16 the first sentence is dealing with an entirely different matter and I don't understand and you might answer, Mr. Norris, why this is incorporated in that particular section. What is the effect of it? How far will this go?

MR. NORRIS: First of all, may I make this observation. The words ". . . and finally to the courts . . ." are an interpretation in the comment and are not in the language of section 16. The idea here is to create a constitutional duty upon each of the coordinate branches of government to deal fairly and justly as far as investigative hearings of proceedings are concerned and I don't see that there is that confusion.

With regard to the proposition that this particular proposed language in its relation to the due process law and self incrimination laws, I think these are all elements of fairness and justness in proceedings. To be sure, the first 2 relate principally to criminal matters, but not only to criminal matters, and similarly with regard to the investigations. I think it is indigenous and I think our sister state, Alaska, recognized that when they put this particular provision in similar form in this particular area of concern. I think it is germane and related and serves a useful purpose in that juncture. I don't know what your point is with regard to the courts involved.

MR. HIGGS: Let me ask this further question then, if what you mean is concurrent jurisdiction, doesn't the legislature now have the power to establish rules for fair and just treatment and doesn't the executive have power to establish such rules? And if you leave it finally to the courts, aren't you placing the ultimate responsibility there?

MR. NORRIS: I'm sure they have the power but we here, as a declaration of rights, are declaring the right of the persons not to have fair and just treatment infringed. So that when you speak of power, I think that's unrelated to what we are talking about. If the legislature had exercised this power to promulgate rules for fair hearings and things of that kind, both on a statewide and federal basis, perhaps there would be less need for this particular proposal. But the fact is that you have found the use of the collective power of the state to abuse witnesses and nonwitnesses, which has created the need for a declaration of the right, which is promulgated in this particular recommended language.

MR. HIGGS: Mr. Chairman and fellow delegates, I am not going to presume any further upon the time of this committee to express my particular viewpoints, but I do urge you to examine this very carefully. I'd like to hear from other delegates on it but it seems to me that Delegate Norris is aiming at a national and federal situation rather than at our problem in Michigan.

CHAIRMAN BAGINSKI: Mr. Stevens.

MR. STEVENS: Mr. Chairman, the committee did not intend and does not think it said anything which would mean necessarily a court review of all these things that you seem to have in mind.

It is true the committee recognized that the problem with which this deals is mostly a federal problem but wanted to make the application to the state if the matter should appear. It is also true that the committee recognized the fact that the consequent witnesses sometimes irritate members of committees and commissions and perhaps lead them to actions which are not proper and right but we didn't feel there was much we could do about that. We simply thought a person called by subpoena or certainly one who appears voluntarily should be treated with courtesy and fairness, that his personal reputation should not be impugned if he is there merely to make statements to the committee — certainly so long as he voluntarily cooperates with the committee. I don't follow your construction which you give on this. Certainly the committee had no intention of that.

CHAIRMAN BAGINSKI: The question now is on the Cudlip amendment and the Chair will recognize Mr. Lundgren, if he would care to speak.

MR. LUNDGREN: Thank you. I rise in objection to the committee report and I'd rather see the original language of the section here retained as is because I believe and concur with my friend here that we are going beyond the state of Michigan and getting involved in federal processes. I do not think we are here to do our business in that position. I hate to be in objection to Mr. Cudlip's amendment but if we adopt the committee's report, then I'd support the amendment. But I do object to our getting into fields of national legislation, which I think the federal government should take care of properly. We should stick to the business of this section as it was originally intended and take care of the state of Michigan.

I would ask this question of the committee and Mr. Stevens, just how many problems has Michigan had in this particular condition that made you change the language of the original section?

MR. STEVENS: We didn't change any language except we added to it.

MR. LUNDGREN: Your additions, that's right.

MR. STEVENS: We had no intention to try to control practices in the federal government, Delegate Lundgren. Our only purpose was to guide us if it should be necessary 20 or 25 years from now or any other time in the state of Michigan. It would have no effect whatever on anything of that sort in the federal government. We have no jurisdiction over the federal government.

MR. LUNDGREN: I realize that, but all through the comment you allude to the problems of the quasi judicial hearings at the federal level and things like that. I believe we should stick to the state problem.

MR. STEVENS: The allusion to the federal government is one of comparison. I was a little bit reluctant to put them in myself for fear somebody would object, just as you have. We used them only as a matter of comparison. We do not feel that there has been any very great abuse in Michigan; however, we do not feel that if the matter should come up in the future we are doing anybody any harm by asking that a witness be entitled to fair and just treatment.

MR. LUNDGREN: Thank you very much. Then you achieve by your statement just what I am objecting to.

CHAIRMAN BAGINSKI: The question is on the Cudlip amendment. The Chair will ask Mr. Gover and future speakers to confine themselves to the amendment.

MR. GOVER: Mr. Chairman, mine isn't entirely on the Cudlip amendment. I was on my feet when Mr. Stevens made some statements a few minutes ago in his preliminary statements and I wanted to question him in regard to that. May I proceed?

CHAIRMAN BAGINSKI: Proceed.

MR. GOVER: Mr. Stevens, in your preliminary remarks you referred to administrative boards and administrative bodies and yet in your new wording you do not have those mentioned. Where do they come in with regard to the legislative or executive proceedings?

MR. STEVENS: The purpose was to try to give any person called as a witness to give information, whether before a board, commission, legislative committee, any state organization of that sort — not a court — fair and just treatment. That was all.

MR. GOVER: Then Mr. Stevens, shouldn't we have an amendment in your wording there, "The right of all persons to fair and just treatment in the course of . . ." and insert in there "administrative, legislative and executive proceedings"? Shouldn't the word "administrative" be in there in that case as you use the words "administrative boards and administrative bodies" in your statements?

MR. STEVENS: We understand that the judiciary committee has a provision at the present time that it is considering to deal with administrative boards.

MR. GOVER: O.K., thank you.

CHAIRMAN BAGINSKI: Dr. Nord.

MR. NORD: I have some comments to make. One of them has been partly anticipated by Mr. Gover and I'm not certain whether it's been cleared up entirely. There is nothing about administrative law in the language that I see here in this section. However, it has been mentioned a few times that this

is intended to cover administrative law and I would like to ask Mr. Stevens a question on that. I note that it was mentioned and it is mentioned in the report that due process is not intended to be guaranteed in the cases listed in the new language. As I understand it — and I'm not an expert on administrative law — but I believe I am correct in saying that in administrative law there is due process. Do you happen to know the answer to that, sir?

MR. STEVENS: My answer would be our purpose is to provide for just and fair treatment by any executive organization. We do not by this intend to take away the right of due process where it exists.

MR. NORD: Thank you very much. That satisfies me entirely on that point.

The only other point was raised, I believe, when Mr. Higgs raised a worthwhile problem that we ought to consider further. I might add that Mr. Cudlip's amendment is a point well taken and the committee report as a whole is good, but nevertheless, there is this problem raised by Mr. Higgs.

The problem has to do, I believe, with the word "proceedings." I note in the first part of the report it talks about investigations and towards the end of the report it says "investigations and hearings." But in the body of the section it says 3 things, "investigations, hearings and proceedings" in different order. I also note that the word "proceedings" was not originally in the proposal as the committee on rights drafted it and I gather the word "proceedings" was put in by the judiciary committee and has apparently caused some problem. But the problem that was pointed out by Mr. Higgs is that if you read this extremely broadly, you'll get into that question of whether the judiciary could possibly tell the legislature how to conduct its hearings. I really don't think it's a terrible problem because it states in the beginning, "The right of all persons to fair and just treatment in the course of . . . proceedings." Of course, in the ordinary proceedings of the legislature, individual persons would not be involved.

Nevertheless, I wonder whether you think, Mr. Stevens, that there would be any advantage in taking the word "proceedings" out in order to satisfy any objections that have been raised.

MR. STEVENS: As you have indicated, Dr. Nord, that was suggested by the judiciary committee. We acceded to their request. I think I would like to yield to Delegate Danhof on the matter. Our committee accepted the suggestion of the judiciary committee in this matter.

CHAIRMAN BAGINSKI: Mr. Danhof.

MR. DANHOF: I might state that I think, as I recall the discussion — and I do not have the transcript, although we have it on tape — that investigations could be interpreted to be extremely narrow and might be limited to prehearing activity on the part of any particular committee in the legislature or as they have it, in the executive, and that adding the words "proceedings and hearings" broadens the activity from not only the investigating stage, but through the actual public hearings and the proceedings before some legislative committee. As I recall, Brother Cudlip of the committee also had some comments on this. I am trying to reconstruct in my mind specifically who talked on this point and proposed the recommendation. I know that he also raised the problem of "persons", which he has raised today and it seems to me that if Delegate Cudlip can recall, maybe he can enlighten us further. Excuse me, I guess it was Mr. Cudlip on the "persons" and Mr. Ostrow on "proceedings and hearings". Mr. Ostrow can proceed.

CHAIRMAN BAGINSKI: Mr. Ostrow.

MR. OSTROW: All the discussion so far has been about legislative investigations. My understanding of this article and the reason I voted for it in the judiciary committee was that it was much broader than that. It is not just a hope; it is a guarantee, or at least that is my understanding.

Now, the principal idea in back of this "proceeding" was that anybody that has to submit to a proceeding, investigation or hearing, regardless of what you call it — and they'll call it different things in different departments — is entitled to fair and just treatment. Everybody is entitled to fair and just treatment, no matter what business they have with government. It's a rule of ordinary decent human conduct and there is no reason why people in government shouldn't be ordinary decent human beings. Now, the legal distinction between "fair and just treatment" and your present rule making power is this: on review of a rule of any administrative agency — and they are part of the executive department — the only question is whether that department has the authority to make the rules and, if they have the authority to make the rules, the court can't do anything about it if the rules aren't fair and just.

With the growth of all the administrative agencies and with the growth of proceedings — some formal and some just by a letter calling you in to the office — they can do you more damage than the most formal investigation. People are entitled to ordinary decent, fair and just treatment. And this was intended — at least on my part — to cover the whole gamut of both the legislative and executive departments.

You can be called in to one department by a simple letter. If you come there with an attorney and the attorney begins to say, "Now what is he charged with and who are the witnesses?" they say, "Well, this is not a formal hearing." But when they get through with this thing that they don't call a formal hearing or an investigation — and that's why we used the word "proceeding" — the end result is that somebody's license is cancelled or something is done to him.

Now, fair and just treatment is an ordinary rule of decent human conduct and there is no reason why the government and all its agencies shouldn't be subjected to the same rules. (applause)

CHAIRMAN BAGINSKI: Mr. Stevens.

MR. STEVENS: I would like to thank Delegate Ostrow for his very fine presentation of this matter. In substance, at least, it agrees entirely with the idea our committee had in mind in proposing this addition to this section.

CHAIRMAN BAGINSKI: Mr. Hutchinson.

MR. HUTCHINSON: Mr. Chairman, I do not desire to speak to the Cudlip amendment which is on the floor and I will yield until we get to the main question.

CHAIRMAN BAGINSKI: Mr. Pellow.

MR. PELLOW: Mr. Chairman and delegates, I concur in the remarks of Delegate Ostrow and the only question in my mind is whether or not this language is mandatory and binding on the legislature. From reading the language that is the way that I interpret it and that is the reason that I am standing so that the record will show that this language is mandatory on the legislature to act.

CHAIRMAN BAGINSKI: The question is on the Cudlip amendment.

Mr. King.

MR. KING: I will yield until we vote on the Cudlip amendment. I want to speak on the general question.

CHAIRMAN BAGINSKI: Mr. Austin.

MR. AUSTIN: I would like to ask Mr. Cudlip, in proposing the inclusion of the language "individuals, firms and corporations," whether it is his intention to include only legally constituted entities or other entities such as civic organizations, clubs, political organizations, and then there are trusts and estates that might be covered too.

CHAIRMAN BAGINSKI: Would you care to answer, Mr. Cudlip?

MR. CUDLIP: Mr. Chairman and Member Austin, I was using words that in legal phraseology are supposed to cover the orbit which I described. But certainly, I have no objection if you want to put in "voluntary associations, joint stock companies, partnerships" and all the rest. I think myself that these 3 words are generally regarded by lawyers and courts as covering about all the entities you can think of. There are voluntary associations which aren't even profit or nonprofit corporations, such as the chamber of commerce, as it was pointed out. That's all I can say to the matter. Thank you.

CHAIRMAN BAGINSKI: The question is on the Cudlip amendment.

Mr. Habermehl.

MR. HABERMEHL: Mr. Chairman, as Mr. Cudlip stated, I don't believe that he has any objection to the addition of the words voluntary associations and I think it might well take away any doubt about their right or their standing before such an investigative body. I believe Mr. Austin's point was well taken. "Voluntary associations" would cover fraternal or civic groups, or anything that has not been incorporated as a nonprofit corporation. I would move to amend the amendment by adding the 2 words voluntary associations.

CHAIRMAN BAGINSKI: The Chair would like to know where you want to put them, Mr. Habermehl. (laughter)

MR. HABERMEHL: I don't care.

CHAIRMAN BAGINSKI: Would you advise the Chair just about where you want to place the words?

MR. HABERHEML: After the word "corporations".

SECRETARY CHASE: Mr. Habermehl offers the following amendment to the Cudlip amendment:

1. Amend the amendment after "corporations" by inserting "and voluntary associations".

CHAIRMAN BAGINSKI: The question now is on the Habermehl amendment to the amendment.

Mr. Hutchinson.

MR. HUTCHINSON: Mr. Chairman, I'd like to speak to that. It seems to me, ladies and gentlemen of the committee, that one of the things we have to be careful about in writing a constitutional provision is that we don't try — by spelling out a long list of things — to make it look and read just like a statute.

I think we go a long way when we add firms and corporations but when you begin to talk about voluntary associations, which are not legal entities in and of themselves, it seems to me as though that, for all practical purposes, reverts back to "persons." All you are talking about here anyway is the right of fair and just treatment. Really, neither a corporation nor a firm or any other kind of a group can appear or act or anything of the sort except through persons. Really, it's the rights of persons that we are concerned with here.

I wouldn't want to raise objection to Mr. Cudlip's original amendment, although I disagreed with it, but I didn't think there was any point in splitting hairs. But when you add voluntary associations, then somebody else will think up some other kind of entity and after you get all through you'll have the thing reading just like a statute, and that is not good constitutional practice, nor is there any need for it for the reason, as I say, that basically this thing has to do with the right of persons to fair and just treatment. And I say, any other kind of entity can act only through persons.

CHAIRMAN BAGINSKI: Mr. Cudlip.

MR. CUDLIP: Mr. Chairman, I disagree with Member Hutchinson. I don't know whether he was in the hall when I spoke. We are concerned here with the careful use of language to avoid a lot of litigation and I repeat that in the first unchanged sentence of this section, the word "persons" is used and it has different meaning, depending upon the application of the mixture of rights in that first sentence. And if the committee wishes to adopt the proposed change, I simply was pointing out that there was no use in the same section in putting on our courts the problem of interpretation. If we mean these things, let's say them. Because if I were a judge I'd be a bit confused if a body — a legislature or a convention such as this — gave me in 50 words the use of the word "persons" twice when they meant different things in the use of the word "persons".

CHAIRMAN BAGINSKI: Mr. Hutchinson.

MR. HUTCHINSON: Mr. Chairman, I'd like to point out again that obviously the courts came to the right decision in interpreting the old original language in referring to a person as being an individual in the first right guaranteed the witness against himself. And it came to the right conclusion with regard to the second right, referring to life, liberty and property without due process of law, because it is true that an entity can hold property, but an entity doesn't have life and I don't think it has liberty. It has property.

But now, then, we are talking about the treatment before investigations, proceedings and hearings. And I say to you again, a fair expectation is that in interpreting the words "persons" there, the courts would revert to the concept of the individual again because it is only the individual that this sentence can actually apply to.

CHAIRMAN BAGINSKI: The Chair recognizes Mr. Austin on the Habermehl amendment to the Cudlip amendment.

MR. AUSTIN: I am inclined to agree with Delegate Hutchinson and I am wondering if the language of the Cudlip amendment is necessary inasmuch as these entities are represented by individuals or persons. So I am wondering if Mr. Hutchinson would like to suggest along with me that perhaps we ought to get along without this additional language.

MR. HUTCHINSON: Yes.

MR. AUSTIN: I would be inclined then to oppose the Cudlip amendment.

CHAIRMAN BAGINSKI: The question is on the Habermehl amendment to the Cudlip amendment.

The Chair recognizes Mr. Ford.

MR. FORD: If it is in order, I want to support the Cudlip amendment and disagree respectfully with Senator Hutchinson on the question that he raises about a corporation or legal entity not being subject to the same sort of abuses we are talking about here.

I don't want to appear to be pleading the case of corporations but I can visualize situations — and I think this is one of the things that came to light while we were talking about the word "proceedings" — when, for example, a state agency is establishing rates for utilities and, although the individuals representing the utility company appearing before the agency may themselves be treated fairly, it's entirely possible that the proceedings might take a turn where the business reputation of the corporation is affected in a way that cannot be successfully defended against.

And when you get to the unincorporated associations and the others — I remember not so long ago in this state when we were reading a lot of stories about our state university that were disturbing to us and arose out of hearings that were being held over here in the legislature. And I don't know what the rights of the university as an entity might be in that case, but if there is a way that we can be sure that when the reputation of something such as one of our universities or a corporation, if you please, for private profit is impaired by the nature of the proceedings and we can do something here to prevent this as indicated by the Cudlip amendment, I think we should support it.

CHAIRMAN BAGINSKI: The Chair recognizes Mr. Ostrow for the purpose of discussing the Habermehl amendment to the Cudlip amendment.

MR. OSTROW: I disagree with Mr. Hutchinson because a corporation can be unjustly treated by any one of a dozen different administrative departments in the matter of issuing licenses or cancelling licenses or assessing penalties in this day and age when so many small businesses are incorporated. We're not just talking about large corporations. We're talking about the little ones too. They can be pushed around. It's just as important that they receive fair and just treatment.

CHAIRMAN BAGINSKI: Mr. Habermehl.

MR. HABERMEHL: I just wanted to ask Delegate Hutchinson a question as to whether or not he didn't believe that a witness before such a body could be treated with the utmost courtesy but be required to do an act that would be grossly unfair to the organization that he represents.

MR. HUTCHINSON: Will you give me a hypothetical illustration?

MR. HABERMEHL: I will. I can recall a certain organization that was asked to submit the entire list of its membership. Certainly, that could not have been — had it been done politely — an unfair treatment of the individual that was appearing. But I believe the courts held it was unfair to the organization.

MR. HUTCHINSON: Mr. Chairman, I'd like to reply that apparently that matter was something that was taken care of

without this additional language in the constitution. The courts found an unfairness, even though we didn't spell it out in the constitution. Then maybe it's not necessary to spell it out in the constitution.

CHAIRMAN BAGINSKI: Mr. Wanger.

MR. WANGER: Mr. Chairman and members of the committee, I wish to ask a question of Mr. Habermehl regarding his amendment, and that is this: as I understand it, a voluntary association is never a legal entity; it's merely a descriptive phrase used to define an association of individuals, and as such, no voluntary association can sue or be sued except by listing all of the names of the individuals. I raise that question with the thought in mind that perhaps the word "persons" alone is sufficient to cover voluntary associations.

MR. HABERMEHL: Technically, Mr. Wanger, a voluntary association is a partnership. You are right in that it couldn't sue or be sued but I assume that it could be called before one of these investigatory bodies and be asked questions concerning the entire organization.

MR. WANGER: If they are a partnership, then would not the word firm be sufficient to cover that?

MR. HABERMEHL: I don't know the legal definition of the word firm.

MR. WANGER: I remain at the microphone merely for the purpose, Mr. Chairman, of raising a point of order should any subsequent speaker fail to confine himself to the Habermehl amendment before it is acted on.

CHAIRMAN BAGINSKI: The Chair will try to accede to that request.

Mr. Allen.

MR. ALLEN: Mr. Chairman, it seems to me what we are bogged down here with is choosing the right words after we have a pretty well understood idea of what the consensus of the committee is, and I take it that the consensus of the committee is that the protection afforded should go not only to individuals but to all types of business entities. The only problem is we don't know how to describe them. Perhaps if we did try to describe them, we start running into too many words and we start reading like a statute rather than a constitution.

Now, I know when we try and work these things out immediately on the floor — we had this problem before, last week, when we tried to do this — we just don't have enough time or enough immediate knowledge. And I am wondering, as a practical matter, when the style and drafting committee knows what the intent of the group is — and it is only a case of putting in the right words — if we can't save a lot of time in this kind of situation, both right here today and on ones we will have in the future, if we could pass the proposal and allow style and drafting, which has to come back to us, to make the necessary corrections and rely upon the judgment of style and drafting that if they feel that the words as passed don't represent the feeling of the committee, to call it to our attention, because under the rules it may do so. Because I fear that as this committee goes along, if we don't do something like this, we are going to have many cases where we know what we want but we don't how to say it. And if we try to work it out on the floor, we will be here for a long, long time.

Now, I might also say that a similar problem came up on the construction of the fourteenth amendment to the federal constitution where the word "citizens" as referring to equal protection of the laws and the word "persons" as referring to due process were used. And I know that the courts have construed a person as a corporation under the due process and I am inclined to feel that Senator Hutchinson is right in this case but since we don't really know, I think we ought to refer this matter to the style and drafting committee.

MR. WANGER: Point of order, Mr. Chairman.

CHAIRMAN BAGINSKI: What is your point?

MR. WANGER: I respectfully raise the point of order that the delegate is not speaking now on the subject of the Habermehl amendment but rather on the Cudlip amendment.

CHAIRMAN BAGINSKI: Have you any comment to make?

MR. ALLEN: I think it applies to both. In other words, I think we are working out words here.

CHAIRMAN BAGINSKI: Continue, Mr. Allen.

MR. ALLEN: That was all I had anyway. (laughter)

CHAIRMAN BAGINSKI: The Chair will recognize Miss Donnelly on the Habermehl amendment.

MISS DONNELLY: Well, I would like to first support the Habermehl amendment but more substantially to support the Cudlip amendment, and I must take exception with our good senator because I do feel that corporations may be substantially injured and that it is —

MR. WANGER: Point of order.

CHAIRMAN BAGINSKI: What is your point?

MR. WANGER: The speaker is not confining herself to the Habermehl amendment, which is the subject before the committee.

CHAIRMAN BAGINSKI: The point is well taken. The question is on the Habermehl amendment. Miss Donnelly, do you care to continue on the Habermehl amendment?

MISS DONNELLY: I yield to Mr. Cudlip.

CHAIRMAN BAGINSKI: Mr. Cudlip.

MR. CUDLIP: I wish to speak to the Habermehl amendment because I think I know what I want to say in the amendment. Mr. Habermehl wants to say something else and that's fine with me. But I do want to point out that these voluntary associations which he refers to are common law associations; they have no corporate status. Most of our trade associations are not incorporated; they are voluntary common law associations. They can sue and be sued as such without listing all the members. I just want to make that observation. It is my opinion as a lawyer, pertinent to the point raised by Mr. Habermehl.

CHAIRMAN BAGINSKI: The Chair recognizes Mr. Tubbs on the Habermehl amendment.

MR. TUBBS: Mr. Chairman, I want to speak to all amendments. It seems to me that this is a pioneering piece of constitutional literature. We are trying to throw a cloak around the shoulders of witnesses. If we can't throw a cloak, let's at least give them a fig leaf. After all, that's the pioneering piece of protective clothing, isn't it? (laughter)

CHAIRMAN BAGINSKI: The Chair recognizes Mr. Mahinske on the Habermehl amendment.

MR. MAHINSKE: As I understand the remarks just made by Mr. Cudlip, he has no objection to the Habermehl amendment and I have no objections to the Habermehl amendment. It seems to me we are all talking about the same thing. I was wondering if Mr. Habermehl would yield to a substitution of his amendment and include the words after "person", "natural or otherwise," which would be all inclusive, and go on from this point.

CHAIRMAN BAGINSKI: Do you care to answer, Mr. Habermehl?

MR. HABERMEHL: Mr. Mahinske, probably you can inform me on this. Would that cover anything but persons and corporations who would be covered under your language? Would it cover voluntary associations?

MR. MAHINSKE: I think it would because we had the argument from Mr. Ostrow and Senator Hutchinson here where we talk about the voluntary associations that have no legal identity as such. We are still talking about persons, whether they are called in as persons or as a natural person or otherwise, and they are covered under any construction of what their entity amounts to here.

MR. HABERMEHL: If that is so, I have no particular pride of authorship in the words "voluntary associations". I would yield, however, to Mr. Cudlip. Of course, this would affect his amendment too.

CHAIRMAN BAGINSKI: Mr. Cudlip.

MR. CUDLIP: I don't believe you are talking about my matter now. (laughter)

CHAIRMAN BAGINSKI: The question is on the Habermehl amendment to the Cudlip amendment.

Mr. Austin.

MR. AUSTIN: Mr. Chairman, I am in favor of the Habermehl amendment because the subject matter was something that I raised. The only reason why I suggested that perhaps

we might avoid all of this language is that it does appear that it is persons who do appear before these organizations, that is, these governmental organizations representing other organizations. But if we are going to have the Cudlip amendment, I certainly feel that the Habermehl amendment is appropriate.

I would like also to address just a few remarks to the remarks made by Mr. Cudlip in regard to the right of unincorporated groups to sue and be sued and so on. We are not talking about the courts now, as I understand it. We are talking about appearances before governmental agencies and it is not just a matter of whether they can be sued or not be sued. I believe that these voluntary organizations or associations do need to be included. Just as an example, I would like to remind you that there are such things as neighborhood clubs that may want to appear before zoning boards and so on and they are certainly entitled to proper consideration.

CHAIRMAN BAGINSKI: The question is on the Habermehl amendment to the Cudlip amendment.

As many as are in favor of the Habermehl amendment to the Cudlip amendment will signify by saying aye. Opposed, no.

The amendment to the amendment is adopted.

The question now is on the Cudlip amendment as amended. As many as are in favor of the Cudlip amendment will signify by saying aye. Those opposed, no.

The amendment, as amended, is adopted.

SECRETARY CHASE: Mr. Lundgren offers the following amendment to section 16:

1. Amend page 4, line 4, after "law.", by striking out the balance of the section.

CHAIRMAN BAGINSKI: The question is on the Lundgren amendment.

Mr. Lundgren.

MR. LUNDGREN: Mr. Chairman, I offer that as a substitute for the following purpose; with all the discussion we've had here this afternoon, I feel that the language of the original section should be carried forward and the new language deleted that the committee has brought forth. So far this afternoon, I've heard no substantial argument that changes my opinion that the old section was proper. The courts have interpreted it many times, they have found favor with it. Therefore, I just ask that we delete the new language and revert back to the old section. Thank you.

CHAIRMAN BAGINSKI: The question is on the Lundgren amendment.

As many as are in favor of the amendment will signify by saying aye. Opposed, no.

The amendment is not adopted.

Are there any further amendments?

SECRETARY CHASE: That is all of the amendments on file to section 16, Mr. Chairman.

CHAIRMAN BAGINSKI: If not, section 16 will be passed.

Section 16, as amended, is passed.

MR. HUTCHINSON: Mr. Chairman, I do not wish to interpose any will of mine here but it is obvious that we are not going to be able to complete all of the consideration of the bill of rights at this sitting. I was wondering if, in view of the hour, the chairman of the committee might not think that it was time that the committee did rise. (laughter)

CHAIRMAN BAGINSKI: Dr. Pollock.

MR. POLLOCK: Mr. Chairman, I was hoping that we could finish 2 more sections before we adjourned. I see no reason to be in any hurry. (laughter and applause)

CHAIRMAN BAGINSKI: The secretary will read section 17.

SECRETARY CHASE: Section 17.

[Sec. 17 was read by the secretary. For text, see above, page 465.]

CHAIRMAN BAGINSKI: Mr. Stevens.

MR. STEVENS: Mr. Chairman and fellow delegates, here is one in which we do not anticipate any amount of argument. (laughter) We feel that it is purely noncontroversial. The purpose of this provision is merely to provide that no person shall be disqualified to testify in court because of any religious belief or lack of belief. A person who cannot take an oath because of his religion or lack of religion is of course permitted to testify after an affirmation. This has been in a long time. We think it is sufficient. It has nothing to do with religious liberty and so forth. That is why we did not see fit to attach it to section 3. This has to do with witnesses in court, their qualifications, nothing else. With those few remarks, I think the matter should be settled.

CHAIRMAN BAGINSKI: Are there any amendments to Section 17?

SECRETARY CHASE: None on file, Mr. Chairman.

CHAIRMAN BAGINSKI: If not, it will be passed.

Section 17 is passed.

SECRETARY CHASE: Section 18.

[Sec. 18 was read by the secretary. For text, see above, page 465.]

CHAIRMAN BAGINSKI: Mr. Stevens.

MR. STEVENS: Mr. Chairman and fellow delegates, in this case we did have suggestions of amendments. If you will read your comment there:

[The comment to Sec. 18 was read by Mr. Stevens. For text see above, page 465.]

In other words, we recommend the retention of the present provision of the 1908 Constitution.

CHAIRMAN BAGINSKI: Are there any amendments to section 18?

SECRETARY CHASE: Mr. Nord has the following amendment:

1. Amend page 4, line 14, after "true" by striking out "and" and inserting "or"; so the language will then read, ". . . and, if it shall appear to the jury that the matter charged as libelous is true or was published with good motives. . . ."

CHAIRMAN BAGINSKI: Dr. Nord.

MR. NORD: Mr. Chairman, the suggestion I have to make here is not a change in language, really, even though it has been performed in one word. It is a substantive matter and I might say that it has been called to the attention of all the delegates by virtue of the Comparative Analysis of the Michigan Constitution put out by the citizens research council, which in volume 1, part 2, on page 4, makes this comment:

> Probably no change is necessary although there are good reasons for eliminating the requirement that the jury must find in truth that it was published with good motives and justifiable ends before acquitting the accused.

The question is, why require more burdensome defense in a criminal libel case than in a civil libel case? That is the exact question I would like to address myself to.

First of all, I would like to point out that in the committee report there seems to be an unquestioning assumption which on the other hand is unquestionably not so. It is made twice and is incorrect. The 2 points in the comment — first of all it is stated that the committee carefully considered removing the entire subject of criminal libel. Now, I did not make that motion. I don't know who did. But I notice right after that it says this, "But it believes that the defenses of truth, good motives and justifiable ends constitute an adequate protection . . ." and it goes on. The point is that it says "the defenses", in the plural. It lists 3 defenses: truth is a defense, good motives is a defense, and justifiable ends is a defense. And it is made perfectly clear that they mean them, they assume them to be 3 separate defenses because not only is the word defenses used, which is the plural, but then they say constitute, which is also the plural form of the verb.

Finally, in the last paragraph of the comment we again have similar language:

> "Again, the guarantees of the section with respect to defenses of truth, motives and justifiable ends appear to be adequate for this purpose also."

My comment is this, if there were defenses of that type, there is no question in my mind that the language would be

all right; that this section would be all right. But the trouble is there are no such defenses. There is no defense of truth to criminal libel; there is no defense of good motives and there is no defense of justifiable ends. There is only one defense which requires all 3 jointly to be present. That's quite a big difference.

Criminal libel, as pointed out by the citizens research — and I checked that myself; I checked all the cases on criminal libel, there are actually very few — and there is actually no holding one way or the other. It is mere dictum. But it has always been construed the same way in this state and many states which have the same kind of provision; that the defense to criminal libel with language of this type is not just truth but truth plus a good motive or truth plus a good motive and good justifiable end as we have here.

Therefore, in uniform construction language of this type there is substantive law which says in the case of criminal libel, when you have language of this type, truth is not a defense. If you told the truth and if in addition to telling the truth, you had a good motive but you didn't have a good justifiable end, that is to say, there was no reason for you to say so — you said the truth because you thought the truth should be said, but actually it need not have been said, there was no reason objectively to say it — if any one of those 3 things is missing, even though you have one or two of them, you are guilty of criminal libel.

Now, in retortive libel in civil law that's not so. In retortive libel and slander, truth is a defense. I checked the civil law in Michigan on that too. Strangely enough, I didn't find any cases which established that point firmly. There are very few cases in the supreme court, either on criminal or civil law in Michigan, but in all the textbooks, for example, Prosser on Torts, it is stated categorically as it is by the citizens research council, that truth is a defense to civil libel and in criminal libel, truth is not a defense.

It seems to me this is not a trivial matter. If truth is not a defense in a criminal case, it means if you tell the truth you can be punished criminally. Why that should be I haven't got the slightest idea. I don't know that anybody knows why you should be punished when you tell the truth; why you can't be punished civilly and yet you can be punished criminally. This, of course, has never been done as far as I know in this state.

But there is the language. There is no law and it is a terrific blow to freedom of speech. It is a very grave impairment of freedom of speech. And I note that this is in the constitution in the bill of rights, which purports to increase or to guarantee and secure the rights of the individual and here actually it tends to reduce it.

I believe that the committee is correct in saying that if there are those 3 defenses, there certainly should be a crime for criminal libel. But if there are not those 3 defenses, there should not be. I don't believe it is necessary that there be 3 separate defenses. I think the law should be the same in criminal and civil libel. That could be done by only changing one of the "ands" to "or" and not the other.

The language that I suggested would do this, it would establish 2 defenses. The first defense would be truth. If a statement is true you could not be charged with criminal libel. The other defense requires 2 things, just as in civil law: good motive and justifiable ends. In the civil law of libel or slander, you have a qualified privilege to state things that even are not true, provided you had good motive and there were justifiable ends. In criminal law, the result would be the same, provided this one word was the same.

Therefore, in view of the fact that the committee relies on the fact that truth is a defense and in view of the fact that truth is not a defense and in view of the fact that as I see it, truth ought to be a defense, we need to make some change, in my opinion, not just in the language but in the law, and it could be accomplished the way I suggested. Thank you.

CHAIRMAN BAGINSKI: Mr. Stevens.

MR. STEVENS: Mr. Chairman, the committee realizes this situation. This has been the law for a long time. About the only use made of it is where somebody has used this libel or slander against the government, usually when they desire to overthrow the government.

Now, what Dr. Nord suggests would, to some extent at least, change this provision which we have had for all this time which is not much used. There are few cases on it because the question has seldom been raised. I don't think the committee at this time is willing to agree to the change. Of course, that does not prevent him from offering an amendment.

CHAIRMAN BAGINSKI: The Chair recognizes Mr. Van Dusen on the Nord amendment.

MR. VAN DUSEN: Mr. Chairman and members of the committee, I could go part of the way with Dr. Nord. I think it might be sufficient that the statement was true to make it a defense, but I would be extremely reluctant to create the alternative defense which he now suggests: that a statement which was made with the knowledge that it was false would nevertheless be immune from prosecution if it were made with good motive and for justifiable ends. I think in effect what that defense would be is that the end justifies the means and I would be extremely reluctant to go that far. For that reason, in its present form I would have to oppose the Nord amendment.

CHAIRMAN BAGINSKI: Dr. Nord.

MR. NORD: Mr. Chairman, I believe Mr. Van Dusen's point is well taken and I think that the proper form—and I would ask leave of the Chair to amend or revise my amendment and rather than changing the word "and" to "or", I would move to strike in lines 14 and 15 the following words: "and was published with good motives and for justifiable ends". I believe Mr. Van Dusen's point is well taken. This would satisfy him and it would satisfy me. I believe it would be a step in the right direction.

CHAIRMAN BAGINSKI: Mr. Van Dusen.

MR. VAN DUSEN: Mr. Chairman and Dr. Nord, this would indeed satisfy me.

CHAIRMAN BAGINSKI: Mr. Stevens.

MR. STEVENS: Mr. Chairman, the committee is not prepared to accept or to recommend adoption of the amendment.

CHAIRMAN BAGINSKI: Mr. Young, did you care to speak?

MR. YOUNG: Mr. Van Dusen raised my objection.

SECRETARY CHASE: Mr. Nord has withdrawn his first amendment and in lieu thereof offers this one:

1. Amend page 4, line 14, after "true" by striking out "and was published with good motives and justifiable ends"; so the language will then read, ". . . and, if it shall appear to the jury that the matter charged as libelous is true, the accused shall be acquitted."

CHAIRMAN BAGINSKI: The question now is on the Nord amendment.

Mr. Wanger.

MR. WANGER: I must state respectfully that the amendment does not satisfy me and I would oppose it for the following reasons, as indicated by Mr. Stevens: the history of criminal prosecution for libel is almost entirely confined to statements which are made when the security of the state itself is in peril.

It is possible for someone to give a statement which, taken out of context, is true; but which, if it was stated or if it was published not out of good motive or justifiable ends, could very seriously jeopardize the security of the state. While this does not often occur in a society such as we know it, it occurred very frequently in the society of our forefathers. I suggest therefore, on that basis, that we should leave all 3 of these requirements in the amendment. On those perhaps rare occasions when criminal prosecutions for libel are brought for the slandering of individuals, I would like to state that I think again in that case it is only brought when pursuant to a law which clearly indicates that those individuals have been slandered in a particularly gross or unusual way and would call to mind the statement, I believe, of the poet who said:

> He who steals my purse steals trash; but he who filches from me my good name takes that which not enriches him but makes me poor indeed.

CHAIRMAN BAGINSKI: The Chair recognizes Mr. Brown on the Nord amendment.

MR. T. S. BROWN: For the sake of brevity, Mr. Chairman, I agree with Mr. Wanger. He stated my arguments.

CHAIRMAN BAGINSKI: The Chair recognizes Mr. Ford on the Nord amendment.

MR. FORD: I'd like to follow Ted and agree with Mr. Wanger and call Mr. Nord's attention to the fact that apparently now he would limit this by saying that once you've proved it's true — it doesn't matter for what purpose — you publish it and you are home free. And I submit very briefly that if Mr. Nord had participated in small town politics for very long he might not be agreeable to letting certain irresponsible people get off the hook that easily with some of the things they put out sometimes in the heat of battle.

I can think very quickly of numerous instances, but something we should have before us when we think about this is this: that the statute establishing criminal libel is rather limited and I can't recite it because I haven't had this in front of me since I was a justice of the peace, but it is something that comes up frequently as a method of stopping trouble between people who are wrangling and you sometimes get these people in and explain the law of criminal libel to them and they quit the name calling across the back fence.

So it is something that doesn't get to the supreme court but it is something that is discussed at the local level quite frequently and it is limited to, as I recall, impugning a person's professional reputation, impugning to a person the fact that he has committed a crime, suggesting that a person has a loathsome disease, I believe is the expression they use — oh yes, and protecting, of course, the good name of a female. You can't suggest that a woman is unchaste (laughter) c-h-a-s-t-e. (laughter)

Now, if we look at this defense of truth alone being enough with just these instances in mind, I think you'll see that it's not unreasonable. I'm a little bit surprised also, Mel, because generally you take the position of being the outstanding defender of the individual and really, here the liberal point of view in my mind is to defend the person who is libeled against more strenuously than the person who is prone to make the libel or publish the libel. When people talk, I think it is a legitimate exercise of the police power to guarantee use against irresponsible language, as Mr. Wanger has pointed out, that deprives us of that which is most valuable to us.

CHAIRMAN BAGINSKI: Dr. Nord.

MR. NORD: Mr. Chairman, I would like to point out that the definition of libel given by Mr. Ford is no different from the definition of libel in civil law and in civil law the same remark, if true, is not actionable. I don't know why there is any place in the world whatever — this place or any place else — why something that is not a civil wrong should be a crime. If it is perfectly O.K. in civil law, why should the same remark be punished by criminal penalty?

I might say I forgot to bring my badge marked "liberal" today. It is difficult for me to tell anyone whether something is liberal or not. I figure if I say it, it turns out to be liberal, but not vice versa. (laughter) I can't tell that way. (laughter)

The point I am making is this, what I am trying to do is protect a person against the state. In criminal libel the state is the one that is getting excited, not some person. If a person is injured, he brings his own lawsuit and he loses in this case because the remark is true; but the state doesn't lose. They go ahead and bring the suit and they exercise the power of the state over the individual and the individual will lose. Not only will he lose — he wins in civil law — but he ends up in jail.

Now, there is nothing in the definition of criminal libel which says it is restricted to remarks against the government. As far as I can recall, all the cases in Michigan — the few that have been brought on criminal libel — have nothing to do with the government at all. They were just private remarks and I believe they were, as far as I can recall, against public officials running for office or in office. They were not against the government and they were cases of criminal libel.

The point is this, it is a fortunate thing that we live in a state where the state has never attempted to abuse this right. I don't foresee any case where they would. This is not a campaign to stop an existing abuse. But I see it as a wrong principle. It's a principle that says if the state wishes, it may put you in jail simply for telling the truth. Why should the state be able to put you in jail simply for telling the truth? That passes my understanding.

CHAIRMAN BAGINSKI: Miss Donnelly.

MISS DONNELLY: Strange as it may seem, I am in opposition to Mr. Nord on this when I've been supporting him throughout, but I will agree with Mr. Ford and Mr. Wanger that I think this is an entirely different issue, that when we are getting into the burden of the state and the civil, the difference is, you forget in the civil you have to prove damages. I will certainly stipulate as Mr. Ford has indicated — the 4 actions he has stated as libel, per se, presume damages. Beyond there you have a burden of proof for some kind of damages sufficient to collect something.

In this instance when it has been printed sufficiently to harm an individual, they have been able to go forward to such a degree that the individual who has been so libeled cannot say a retraction is sufficient because how many retractions have you ever seen that are as big and as blatant as the original publication? So I believe that this language should be best left as it is and in addition to that, again historically, this is rather well expressed, defined and understood.

CHAIRMAN BAGINSKI: Mr. Everett.

MR. EVERETT: Mr. Chairman, I rise to support Mr. Nord's amendment and to welcome him to the fold too. I think the truth should be a defense against the state or against an individual. I see no reason why speculation or guesswork about the motive should be indulged in. I think the amendment is proper.

CHAIRMAN BAGINSKI: The question is on the amendment.

Mr. Nord.

MR. NORD: I think the right question for me to ask is, how do I get into the Republican caucus? But I won't ask that question. (laughter) But I would like to answer Miss Donnelly. Miss Donnelly and I are usually in agreement and she says this time she is not and I hate to see a woman in the wrong. But she is. Not only that, she's wrong twice. I believe she said that damages need to be proved in a civil case of libel. I believe I understood her to say that. As I understand the law of libel — and I will say I looked this one up too — and it is not clear in Michigan but the common law — and I believe it is the same in Michigan, I've seen nothing to the contrary — is that no damages need to be proved in a civil case of libel nor do they, of course, in a criminal case. There is no difference as far as I can make out there.

I wouldn't like to deceive you. There is a difference someplace else. I think it would be unfair not to mention it now that I have mentioned this point. There is a difference, of course, and the difference is this: in civil law, libel does not require any wrongful intent whatever. It doesn't even require an intentional publication. It could be even a negligent publication. In criminal libel it is true that there is a higher requirement. You must have mens rea. That is to say, you must intend to commit the wrong. There is some difference but not on the point of damage.

Also, there is no difference with respect to retraction. Retraction is not a defense either in civil or criminal law. There are differences, of course, it's true, the main difference being that you cannot be convicted of a criminal libel if you didn't intentionally make the statement and if you didn't intend to do wrong. Actually you must intend to do wrong. There must be mens rea in libel. But nevertheless, the question still is: suppose you intend to do wrong. That really is what it boils down to. Suppose you do have an improper motive, intend to do wrong. Let's face it. You intend to do wrong but you tell the truth. Should the government be able to stop you from telling the truth even if you have a wrongful motive? That is really the issue. And I think if you think the reverse of the

way I do, you could decide the opposite way. But the issue does boil down to that. If you have a wrongful motive and tell the truth, should you be put in prison or should you be subject to be put in prison?

CHAIRMAN BAGINSKI: Mr. Higgs.

MR. HIGGS: Mr. Chairman, since Delegate Everett rose here it gave me a little courage because I raised this point in the judicial committee and was asked where I went to law school. I am in agreement with Delegate Nord. It seems to me inconsistent to have a higher burden of proof on the defense in a criminal proceeding than it is in a civil. The real question here is where the burden of proof is and the degree to which it is required.

CHAIRMAN BAGINSKI: Mr. Norris.

MR. NORRIS: Mr. Chairman, I rise to oppose the proposition advanced by Mr. Nord. (laughter) You know, we live across the street and we share a community of interest and geographical proximity in this convention and I can only say we have been very objective with each other all through the convention and we are trying to do so now.

The main idea, as I see it, is the area in which this particular problem most frequently arises, namely in relation to newspaper attacks upon individuals. It seems to me that newspapers could publish a list of those who commit a felony and then say, "Well, we were able to prove that the man committed a felony," and therefore they don't have to be put in a position of proving they did it with good motives and justifiable ends. And I think this is the main area in which we ought to appraise this particular problem, in the light of experience, and not merely the precise laudable logic that Mr. Nord has on this and many other matters.

I think that I would support the propositions that were advanced by Delegates Ford and Brown and urge that the committee recommendation be accepted in this connection.

CHAIRMAN BAGINSKI: Mr. Brown.

MR. G. E. BROWN: Mr. Chairman, just a point of information of Dr. Nord, and of Mr. Van Dusen insofar as he spoke on the subject. Would the change in the language that you have talked to, change the burden of proof in a sense from ". . . and was published without malicious motive or intent, the accused shall be acquitted?"

MR. NORD: In my opinion, the burden of proof is still on the prosecution in any event. It has been stated here that the burden of proof is greater on the defense. There is no real burden of proof on the defense in a criminal case. The point is, though, that in order to succeed, the defendant will have to turn out, even though the prosecution has the burden of proof beyond a reasonable doubt, and the prosecution will not have to negative as many things.

In the present law the prosecution only has to negative one thing, any one of those 3 things. It has to negative that the statement was true or that it was made with fair motives, or whatever the third thing is—justifiable purpose. It only has to negative any one of those beyond a reasonable doubt. Under the provision as we have it before us now, it would have to make it a negative one, one specific one, not any other one. True. So it is not a question of shifting the burden of proof.

I would say further in connection with the remarks of Mr. Norris, whom I was expecting to have dinner with this evening before he spoke (laughter) — that there is protection for people who are in the position that he mentioned. If a newspaper should make a list of persons who previously committed felonies with no reason whatever, Mr. Justice Brandeis has solved the problem, I believe, a long time ago. He invented a tort special for that kind of a case — the invasion of privacy — so the individual will have recourse in civil law. I think what we have to take into account is that there is a menace here with the state acting against an individual just because they don't like him when he has told the truth. I don't think we should ignore that.

CHAIRMAN BAGINSKI: Dr. Pollock.

MR. POLLOCK: I am prepared to offer a motion, Mr. Chairman, if there is some chance of disposing of this briefly but I won't make the motion until I am satisfied that this section can be disposed of.

CHAIRMAN BAGINSKI: Three more delegates have requested to speak on the Nord amendment.

MR. POLLOCK: Briefly? (laughter)

CHAIRMAN BAGINSKI: The Chair hopes.

Mr. King.

MR. KING: Mr. Chairman and fellow delegates, I'll try to be brief. I'm inclined to agree with Professor Nord except that it seems to me that there is a definite inconsistency between the laws of criminal libel and civil libel and specifically I think that the area where the correction is needed is in the area of civil libel. Now, he has mentioned this right of privacy, which is an emerging field of law and I don't think it has emerged very far in the state of Michigan but perhaps there is hope in that area. My other comment was with regard to the burden of proof; of course, in a criminal case this is entirely different and negates much of what Dr. Nord said, but it was also brought to our attention by Dr. Nord. Beyond that, I don't think I'll prolong the debate. Thank you.

CHAIRMAN BAGINSKI: The question now is on the Nord amendment. As many as are in favor of the amendment will signify by saying aye. Opposed?

The amendment is not adopted.

Dr. Pollock.

MR. POLLOCK: What about the motion now on the section?

CHAIRMAN BAGINSKI: Will you wait just a minute, please? Are there any further amendments to section 18? If not, it will be passed.

Section 18 is passed.

Dr. Pollock.

MR. POLLOCK: Mr. Chairman, would you correct me if I am wrong? I did not hear you put the final question on section 16 as amended. Do you have a record at the desk there of having done that? We adopted the Cudlip amendment and I didn't hear you put the final motion on section 16.

CHAIRMAN BAGINSKI: Section 16, as amended, has been passed.

MR. POLLOCK: Thank you. That means then that we have passed everything up to section 19.

DELEGATES: No.

MR. POLLOCK: Yes, we passed over one, I understand. And since section 19 is likely to be another field day for the legal profession, (laughter) I move, Mr. Chairman, that the committee do now rise and report to the convention.

CHAIRMAN BAGINSKI: Mr. Pollock, before we put the motion, are you going to prepare the revised comments for section 14?

MR. POLLOCK: Yes. That is in process now.

CHAIRMAN BAGINSKI: As many as are in favor of the motion that the committee do now rise, signify by saying aye. Opposed?

The motion prevails.

[Whereupon, the committee of the whole having risen, Vice President Hutchinson assumed the Chair.]

VICE PRESIDENT HUTCHINSON: Mr. Baginski.

MR. BAGINSKI: Mr. President, the committee of the whole has had under consideration a certain proposal. They made several amendments thereto and the secretary will make a detailed report.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 15,** made several amendments thereto, and come to no final resolution thereon.

The committee of the whole recommends that the reasons supporting Committee Proposal 15, relative to section 14 of article II, be revised by the committee on declaration of rights, suffrage and elections.

This completes the report of the committee of the whole.

VICE PRESIDENT HUTCHINSON: Without objection, the recommendation is concurred in and the revision so ordered.

The Chair would like to make one announcement. The Chair would like to announce that today our secretary resigned as

secretary of the senate. Faced with the choice of serving us or serving the senate for a thirtieth year as secretary, Mr. Chase chose to continue as secretary of this convention.

[Whereupon Secretary Chase was given a standing ovation.]

SECRETARY CHASE: Thank you, ladies and gentlemen. After the vote that you gave me on October 3, I didn't see how I could do otherwise.

I have the following announcements:

The committee on executive branch will meet immediately following the adjournment of this session this afternoon. Dan Karn, first vice chairman.

The committee on public information will meet Monday immediately following the session. Ink White, chairman.

The committee on judicial branch will meet Friday at 8:00 in the morning. The meeting scheduled for today is cancelled.

The committee on local government will meet in room A Friday afternoon and evening, all day Saturday and all day Monday, if necessary. Arthur Elliott, chairman.

The committee on finance and taxation will meet in room E January 12, tomorrow, at 8:00 o'clock a.m. D. Hale Brake, chairman. In addition to its regular schedule, the committee on finance and taxation will meet at 9:00 o'clock a.m. on Wednesday, January 17 and carry through until 12:00 o'clock.

Due to the lateness of the hour, the subcommittee on metropolitan government, committee of local government, will not meet today. They have a meeting scheduled for tomorrow at 8:30 in the morning.

VICE PRESIDENT HUTCHINSON: Mr. Beaman.

MR. BEAMAN: I would just like to make an announcement. I just had word from Jackson that Delegate Jim Thomson is feeling better today but will have to remain in the hospital for another week. He is at Mercy Hospital in Jackson.

VICE PRESIDENT HUTCHINSON: Thank you, Mr. Beaman. Without objection, Mr. Thomson will be excused from the sessions of next week. The Chair hears no objection. It is so ordered.

SECRETARY CHASE: We have the following requests for leaves of absence:

Mr. Snyder wishes to be excused from the session of next Monday; Mr. Lawrence from the session of tomorrow; Mr. Bentley from the session of Monday. Mr. Nisbet would like to be excused from the session tomorrow. He is scheduled to speak at a state wide school administration meeting in Grand Rapids tonight and 2 groups in western Michigan tomorrow. Mr. Kelsey and Mr. Liberato request leave from tomorrow's session. Mr. McAllister wishes to be excused from the session of tomorrow to attend a special meeting of the Huron county board of supervisors to discuss constitutional questions.

VICE PRESIDENT HUTCHINSON: Without objection, the several requests will be granted. The Chair hears no objection and it is so ordered.

Are there any further announcements?

SECRETARY CHASE: That is all of the announcements, Mr. President.

VICE PRESIDENT HUTCHINSON: Mr. Farnsworth.

MR. FARNSWORTH: Mr. President, I would like to anticipate favorable action on the motion I am about to make. I do now move that this convention adjourn.

VICE PRESIDENT HUTCHINSON: Mr. Farnsworth moves that the convention do now adjourn. As many as are in favor, say aye. Those opposed will say no.

The motion prevails. The convention stands adjourned until tomorrow morning at 10:00 a.m.

[Whereupon, at 5:55 o'clock p.m., the convention adjourned until 10:00 o'clock a.m., Friday, January 12, 1962.]

FIFTY-SIXTH DAY

Friday, January 12, 1962, 10:00 o'clock a.m.

PROCEEDINGS

VICE PRESIDENT DOWNS: The convention will please come to order. Would the delegates please be seated.

The invocation will be given by the Right Reverend Monsignor Jerome V. MacEachin of St. Thomas Aquinas Church, East Lansing.

MONSIGNOR MacEACHIN: O God, divine protector of all who place their trust in Thee, accept this humble homage of our love and of our faith. Direct by Thy holy inspiration, this constitutional convention. Dedicate it to the noble purpose of preserving and extending the blessings of life, liberty, and the pursuit of happiness to all the people of this sovereign state of Michigan.

O Holy Spirit of God, grant divine wisdom to the delegates to know and to understand their duties to Thee and to the people whom they represent. Give them unflinching courage to humbly and effectively translate responsibility into dedicated work, to the final accomplishment of the unfinished task which they have so nobly begun. Protect them from vain complacency, from foolish compromise, from false enthusiasm, from loss of respect for human dignity. Inflame their hearts with such zeal for God's honor and glory and our country's welfare that in all their deliberations and endeavors they shall seek to render to Caesar the things that are Caesar's and to God the things that are God's. These blessings we ask through God the Father, God the Son and God the Holy Spirit. Amen.

VICE PRESIDENT DOWNS: Thank you. The roll call will be taken. All those present, vote aye.

SECRETARY CHASE: Has everyone voted?

Mr. President, a quorum of the convention is present.

Prior to today's session, the secretary received the following requests for leave:

Messrs. Garvin and Kuhn; from today's session.

VICE PRESIDENT DOWNS: Without objection, the requests are granted.

SECRETARY CHASE: Absent with leave: Messrs. Garvin, Kelsey, Mrs. Koeze, Messrs. Kuhn, Liberato, Martin, McAllister, Nisbet and Thomson.

Absent without leave: Mr. Marshall.

VICE PRESIDENT DOWNS: Without objection, Mr. Marshall is excused.

Reports of standing committees.

SECRETARY CHASE: Mr. Erickson, for the committee on miscellaneous provisions and schedule, introduces Committee Proposal 21, A proposal pertaining to the division of the powers of government. Amends article IV; with the recommendation that it pass.

Claud R. Erickson, chairman.

For Committee Proposal 21 and the reasons submitted in support thereof, see below, page 600.

VICE PRESIDENT DOWNS: Referred to the committee of the whole and placed on general orders.

SECRETARY CHASE: Mr. Martin, for the committee on executive branch, introduces

Committee Proposal 22, A proposal pertaining to state civil service. Amends article VI, section 22;

with the recommendation that it pass.

John B. Martin, chairman.

For Committee Proposal 22 and the reasons submitted in support thereof, see below, page 637.

VICE PRESIDENT DOWNS: Referred to the committee of the whole and placed on general orders.

SECRETARY CHASE: Mr. Brake, for the committee on finance and taxation, introduces

Committee Proposal 23, A proposal to prohibit the issuance of evidences of state indebtedness, except as authorized by the constitution, to authorize state borrowing and prescribe the method therefor, to limit the use of state credit and to permit the loaning of state funds to school districts under certain conditions, and covering the general subject matter found in sections 11, 10, 12 and 28 of article X of the 1908 constitution;

with the recommendation that it pass.

D. Hale Brake, chairman.

For Committee Proposal 23 and the reasons submitted in support thereof, see below, page 602.

VICE PRESIDENT DOWNS: Referred to the committee of the whole and placed on general orders.

SECRETARY CHASE: Mr. Brake, for the committee on finance and taxation, introduces

Exclusion Report 2007, A report recommending the exclusion of article X, section 27.

D. Hale Brake, chairman.

For Exclusion Report 2007 and the reasons submitted in support thereof, see below, page 707.

VICE PRESIDENT DOWNS: Referred to the committee of the whole and placed on general orders.

SECRETARY CHASE: The committee on administration, by Mr. DeVries, chairman, submits the following report to the constitutional convention and recommends its adoption:

1. That the budget be amended by adding item **"0. Michigan constitutional convention handbooks — $2,086.60"**, that the **Contingency fund** of $23,897.68 be reduced by this amount leaving a balance of $21,811.08.

2. That the following transfers be made to the **Contingency fund** from:

B.	**Office supplies and printed matter**	
	2. Journal (Speaker-Hines and Thomas)	$25,000
C.	**Rental and lease of building**	
	1. Civic center	3,000
D.	**Other contractual services**	
	5. Convention reporter	5,000
	6. Police	2,000
F.	**Telephone**	
	2. Toll calls	5,000
G.	**Fees and compensation**	
	1. Mileage and subpoena fees for persons called before convention committees	4,000
I.	**Travel and subsistence**	
	2. Reimbursement for committee trips	26,000
J.	**Educational supplies and library**	
	2. Additional materials	800
	Eisenhower fund balance	256.75
	Total transfers	**71,056.75**
	Contingency fund balance	**21,811.08**
	Total	**$92,867.83**

3. That the following transfers be made from the **Contingency fund** to:

A.	**Rental, lease and purchase of equipment**	$19,000
B.	**Office supplies and printed matter**	
	3. Office supplies	7,500
D.	**Other contractual services**	
	2. Sound system	4,000
	3. Clipping service	100
	4. Freight for chairs	700
H.	**Maintenance services**	1,500
	Total transfers	**32,800**
	Contingency fund balance	**$60,067.83**

Walter DeVries, chairman.

VICE PRESIDENT DOWNS: Mr. DeVries.

MR. DeVRIES: Mr. President and fellow delegates, the committee on administration, not to be outdone by Governor Swainson and President Kennedy, has prepared for you its "state of the budget" message. We are happy to report to you in the second annual budget message that: one, we have a balanced budget. Our appropriations are within our revenues. We have $920,000 earmarked for operations. We have spent as of December 31, $447,211.00, for a balance of $472,789.00. Our economy is sound and we have projected our budget to May 15, as we did at the beginning of the convention.

What we are asking you to do today is to transfer some line items in our budget in order that we can bring the budget into balance. We have overexpended in some line items. Item 2 in the report on your desk is designed to accomplish that, to take some money from the contingency fund and place it into these various items, so that the budget will be balanced.

The second thing we are asking you to do is to transfer into the contingency fund excess moneys which resulted from economies effected by the convention and the committee on administration.

Mr. President, I move the adoption of this report.

VICE PRESIDENT DOWNS: The question is on concurring in the committee recommendation. All those in favor, signify by saying aye. Opposed, no.

The recommendation is concurred in and the budget changes adopted.

Mr. DeVries.

MR. DeVRIES: Mr. President, I would further move that the budget analysis which accompanies this, that is in Secretary Chase's hands, be considered read and printed in the journal for the benefit and the information of the delegates.

VICE PRESIDENT DOWNS: Without objection, it will be so ordered.

Following is the budget analysis as submitted by the committee on administration:

Item Budgeted	Amount Budgeted	Transfer	Amount Expended	Balance
I. Salaries and wages—delegates	**$1,080,000.00**	**$**	**$ 432,000.00**	**$ 648,000.00**
II. Other salaries, wages, contractual services, supplies, materials, rent and equipment				
A. Rental, lease and purchase of equipment	130,622.64	19,000.00	145,385.31	4,237.33
B. Office supplies and printed matter				
1. Delegates' stationery (Wellman Press)	2,011.83		2,492.99	—481.16
2. Journal (Speaker-Hines and Thomas)	101,950.00	—25,000.00	12,115.90	64,834.10
3. Office supplies	8,175.00	7,500.00	9,769.51	5,905.49
C. Rental and lease of building				
Civic center	114,200.00	—3,000.00	77,900.43	33,299.57
D. Other contractual services				
1. TV—closed circuit	4,200.00		3,000.00	1,200.00
2. Sound system	8,000.00	4,000.00	3,889.00	8,111.00
3. Clipping service	400.00	100.00	112.26	387.74
4. Freight for chairs	458.48	700.00	1,115.70	42.78
5. Convention reporter	25,000.00	—5,000.00	1,636.05	18,363.95
6. Police	17,600.00	—2,000.00	8,169.37	7,430.63
E. Postage	15,000.00		8,007.30	6,992.70
F. Telephone	20,000.00	—5,000.00	3,843.70	11,156.30
G. Fees and compensation	6,000.00	—4,000.00	1,265.09	734.91
H. Maintenance services	450.00	1,500.00	1,289.31	660.69
I. Travel and subsistence				
1. Delegates—2 monthly trips	46,012.40		23,044.60	22,967.80
2. Reimbursement for committee trips	31,000.00	—26,000.00	2,642.00	2,358.00
J. Educational supplies and library				
1. Purchase for library	2,203.90			2,203.90
2. Additional materials	1,000.00	—800.00	76.00	124.00
K. Insurance and bond				
1. Fire 2. Comprehensive general liability 3. Bond for finance clerk and secretary of the convention 4. Workmen's compensation on employees	4,455.00		1,963.25	2,491.75
5. Social security — employer	9,879.20		3,040.39	6,838.81
L. Other salaries and wages	329,306.52		129,880.08	199,426.44
M. Contingency fund balance—12/31/61	22,131.38		320.30	60,067.83
N. Office of public information	17,557.05	17,557.05	4,122.61	13,434.44
O. Michigan constitutional convention handbooks	2,086.60	2,086.60	2,086.60	
Eisenhower fund	300.00	—256.75	43.25	
Subtotal—Category II—12/31/61	**920,000.00**		**447,211.00**	**472,789.00**
Grand total	**$2,000,000.00**		**$ 899,347.90**	**$1,100,652.10**

SECRETARY CHASE: That is all of the standing committee reports, Mr. President.

VICE PRESIDENT DOWNS: Reports of select committees.

SECRETARY CHASE: None.

VICE PRESIDENT DOWNS: Communications from state officers.

SECRETARY CHASE: None.

VICE PRESIDENT DOWNS: Second reading of proposals.

SECRETARY CHASE: Nothing on that calendar.

VICE PRESIDENT DOWNS: Third reading of proposals.

SECRETARY CHASE: Nothing on that calendar.

VICE PRESIDENT DOWNS: Motions and resolutions. Dr. Pollock.

MR. POLLOCK: Mr. President, in accordance with the desire of the convention in the discussion of section 14, the committee on rights and the judiciary committee have now worked over the language in accordance with the desire of the convention, and I should like to move the language which the secretary has in his hands. I might explain before he reads it that it merely eliminates the objectionable part and leaves in the part to which there was no objection. Will the secretary please read.

SECRETARY CHASE: Mr. Pollock moves that the journal of January 4, page 280, be corrected by striking out the comment relating to section 14 appearing between the language of sections 14 and 15 and inserting:

"Comment: The foregoing change in section 14 involves the substitution of the double jeopardy provision from the Constitution of the United States (except for the deletion of the obsolete words of "life or limb") in place of the original provision which merely prohibits retrial after "acquittal upon the merits." The former language, the committee points out, has been consistently construed by the Michigan supreme court to mean something quite different than the words on the surface appear to connote. Taken literally, the words appear to say that there is no double jeopardy until a trial has run its course complete to acquittal. In fact, however, the Michigan courts have followed the federal rule on double jeopardy. The new language thus appears to be consistent with the actual practice of the courts in Michigan.".

VICE PRESIDENT DOWNS: Dr. Pollock has moved that the journal be corrected. Do you wish to speak on the motion, Dr. Pollock?

MR. POLLOCK: No, I merely wanted to explain that it was the last part of the comment that has been eliminated, as you will notice, if you followed the reading.

VICE PRESIDENT DOWNS: The question is on the motion. All those in favor will signify by saying aye. Those opposed, no.

The motion prevails and it is so ordered.

[Correction made, see above, page 468.]

Do you have something to say, Mr. Prettie?

MR. PRETTIE: Not at this point, Mr. President.

VICE PRESIDENT DOWNS: Thank you, Mr. Prettie.

Any other motions or resolutions?

Mr. Danhof.

MR. DANHOF: Mr. President, yesterday I spoke concerning the appendix to the report of the rights committee as it is contained on page 283 of the journal of January 4 regarding Committee Proposal 15. I would like at this time to replace, under sections 16 and 19, the comment contained therein, with the following — and I might point out that this came about because at the time that we actually voted on this, the rights committee was awaiting anxiously our final determination to put forth their report. It was not an error but it was a time element.

I would move to strike out our comments regarding sections 16 and 19 under "Appendix" and insert the following, as I read yesterday when we were in the committee of the whole:

"Sec. 16. This committee concurs with the recommendations of the rights committee as they are contained in sentence 1 of said section.

The judicial committee concurs, in principle, with the recommendations set forth in the second sentence of this section but recommends that, in addition to the word "investigations", there should be included the words "proceedings and hearings". The committee was of the opinion, also, that the word "persons" might be expanded to include corporations and business entities in addition to natural persons.

Sec. 19. This committee concurs in the recommendations contained in this section and approves of the word "jurors" in place of the word "citizens" which latter word was the original choice of the committee on rights prior to consultation with the committee on judicial branch. It was the considered opinion of the committee that this would eliminate any confusion and would leave to the legislature the manner of determining the qualifications of jurors.

The following motion was likewise passed by the committee on judicial branch:

"That, by approving or concurring in the recommendations, or any part thereof, of the committee on rights, suffrage and elections, the committee on judicial branch does not necessarily concur in, or agree to, all of the reasons and grounds contained in the report of the committee on rights, suffrage and elections". ".

That should be printed and I request and move the correction be made and that it be printed in the journal.

VICE PRESIDENT DOWNS: The question is on the motion. All those in favor, will signify by saying aye. All those opposed, by no.

The motion prevails and it is so ordered.

[Correction made, see above, page 470.]

Any other motions or resolutions?

General orders. Mr. Baginski.

MR. BAGINSKI: Mr. President, I move the convention resolve itself into committee of the whole for the purpose of considering certain proposals.

VICE PRESIDENT DOWNS: I think that Mr. Prettie had the floor also.

MR. PRETTIE: For a point of order on the motion now before us, sir.

VICE PRESIDENT DOWNS: Will you state your point of order.

MR. PRETTIE: Mr. President and fellow delegates, I rise to a point of order which I think is pertinent to the motion under consideration and more pertinent to the guidance of us in our future deliberations. To state this point, I must beg the indulgence of this body in referring briefly to excerpts from our journals.

In our proceedings of January 10, at the conclusion of the work of the committee of the whole, the journal reads:

> Mr. Pollock moved the committee rise.
>
> The motion prevailed.
>
> Acting President Romney having assumed the Chair in the absence of the president, the committee, through its chairman, Mr. Baginski, reported back to the convention that it had had under consideration the following entitled committee proposal, had adopted certain amendments thereto and had come to no final resolution thereon:
>
> Committee Proposal 15, A proposal to amend article II pertaining to the declaration of rights.

Passing now to page 308 of the journal of this convention's proceedings for yesterday, January 11, just below the top of the lefthand column, I quote:

> General orders.
>
> Mr. Baginski moved that the convention resolve itself into committee of the whole for consideration of the general orders.
>
> The motion prevailed, and the president designated Mr. Baginski as chairman.

There follows language which I think not pertinent to the point so I will omit until slightly below the middle of that column. I then quote:

> Mr. Pollock moved to reconsider the vote by which the amendments to section 10 were adopted by the committee of the whole yesterday.
>
> The question being on the motion,
>
> Mr. Van Dusen made a parliamentary inquiry as to whether the motion was in order inasmuch as under rule 40 a motion to reconsider in the committee of the whole shall be in order before the committee shall rise.
>
> The Chair ruled that a motion to reconsider may be made now or before the committee rise, since the committee of the whole has not completed its consideration of Committee Proposal 15.
>
> The question being on the motion to reconsider,
>
> The motion did not prevail on a division vote. (Yeas 67, nays 69).

I think the immediately following language is not pertinent to the point I wish to make. But passing to page 309 at the termination of the deliberations of the committee of the whole, about 2/3 of the way down the lefthand column, I quote:

> Mr. Pollock moved the committee rise.
>
> The motion prevailed.
>
> Acting President Hutchinson, having assumed the Chair in the absence of the president, the committee, through its chairman, Mr. Baginski, reported back to the convention that it had had under consideration the following entitled committee proposal, had adopted certain amendments thereto and had come to no final resolution thereon:
>
> Committee Proposal 15.

Referring now to rule 40, to which Mr. Van Dusen invited attention yesterday, which is found in the rules of this convention at page 47, the rule reads:

> A motion to reconsider shall be in order in the committee of the whole by a majority vote of those present and voting, before the committee shall rise.

Mr. President and ladies and gentlemen of the convention, I will recognize that the problem with which we are faced as to whether this committee has risen or not derives from the fact that we have before us for consideration a proposal containing some 22 sections. The problem would not have arisen had we had a committee proposal containing one section.

I am not clear as to whether, as to sections 1 through 18, I believe, upon which we completed deliberations, we have, according to the record — the portions that I have quoted — risen as to those sections or whether if we have not risen. I question whether pending motion to resolve is in order.

VICE PRESIDENT DOWNS: If the Chair understands you, Mr. Prettie, your point of order is that the motion to resolve is not in order?

MR. PRETTIE: That is the point of order that I raise because I am concerned as to whether we have risen under the ruling of the Chair in the committee of the whole as recorded in our journals and which I quoted.

VICE PRESIDENT DOWNS: The Chair rules that the motion of Mr. Baginski to resolve into the committee of the whole is in order.

MR. PRETTIE: I then ask, sir, whether we are now about to resolve into committee of the whole for consideration of those portions of Committee Proposal 15 which have not already been considered adopted or adopted as amended or whether we are still open to consideration of all of the work that we have done in the committee of the whole this week.

VICE PRESIDENT DOWNS: The Chair will rule that we are going through the proposal section by section. When we have completed each section in the proposal, then the entire proposal, as amended within the committee of the whole, is before the committee of the whole for any further action the committee of the whole may or may not wish to take.

MR. PRETTIE: I then wish to appeal from the decision of the Chair and request a division.

VICE PRESIDENT DOWNS: An appeal from the decision of the Chair has been made. The question is: "Shall the judgment of the Chair stand as the judgment of the convention?" Mr. Hutchinson.

MR. HUTCHINSON: Mr. President, speaking to the appeal, Mr. President, I would just like to caution the convention that in handling these appeals, you are writing precedents and it is good practice, let me warn you, to follow proper parliamentary procedure because if you, by your precedents, write some poor law, so to speak, it will come back to plague you on further matters in this convention.

I think that the ruling of the Chair is based upon sound parliamentary practice and it has been advised by our secretary, who is without doubt the outstanding parliamentarian in the state of Michigan. And while it is within the power of this body to overturn that ruling, if you do it and thereby write a precedent, then the next time your precedent now made will bind you and I say it can well come back to plague you.

VICE PRESIDENT DOWNS: Mr. Romney.

MR. ROMNEY: Mr. President, if I may, I'd like to ask Mr. Hutchinson a question, if he would be so kind as to answer. Mr. Hutchinson, I'd like to ask your understanding of the ruling of the Chair. As I understand the Chair, the Chair indicated that we were considering Committee Proposal 15 section by section and then when we had completed the consideration of Committee Proposal 15, section by section, then the proposal would be subject to reconsideration. Now, I am not clear whether that means that at any time during the consideration of Committee Proposal 15 we can move for reconsideration of sections previously acted upon or whether it means that at the conclusion of the consideration of all sections, the entire proposal is then subject to reconsideration. It would be helpful to me, at least, to know the meaning of the ruling in that respect.

VICE PRESIDENT DOWNS: Mr. Hutchinson.

MR. HUTCHINSON: Mr. President, in answer to the inquiry of Mr. Romney, let us keep in mind the fact that the committee of the whole, by a majority vote of those voting on a question, can direct the procedure of the committee of the whole; that at any time during the consideration of a proposal or any part thereof, when another motion is not on the floor, a motion to reconsider and go back to a part already considered can be properly made and it can be done. The committee can go back at any time it wants to, to reconsider anything that it has done as to any part of a proposal so long as that proposal is before the committee of the whole.

The procedure is, however, that suppose you don't make any motions to return to any part of it. Then after you get through the whole thing, section by section, the question then is: are there any amendments to Committee Proposal 15? And it is then in order to make further amendments to any part of it.

Now, I don't think that there is an inconsistency there, Mr. Romney. I think the Chair's ruling means that, of course, the Chair recognizes that at any time while Committee Proposal 15 is before the committee of the whole, the committee may by a majority vote take any part of that proposal or go back to any part that it desires; and the meaning of rule 40 is, after you complete the whole proposal, the committee then has risen with regard to that whole proposal. The proposal then is reported back to the convention. Then, of course, the committee can do nothing further with it.

I hope I have made myself clear, Mr. Romney.

MR. ROMNEY: You have, and I appreciate that very much. It has clarified the meaning of the rule a great deal for me.

MR. BENTLEY: Mr. President —

VICE PRESIDENT DOWNS: Mr. Hoxie had asked for the floor first, and then Mr. Bentley.

MR. HOXIE: Mr. President and fellow delegates, I am in sympathy with Mr. Prettie's position. I think it is the same question that I raised and received a similar ruling the other day from the Chair.

I also appreciate the importance of the remarks of Delegate Hutchinson that it is unwise for this body to start the practice of overriding the ruling of the Chair. I am not in sympathy with the idea of being in a position to rehash, redebate everything that has been done so far in this convention.

I would like to make a suggestion that we do not indicate our desire to override the Chair and that the rules and resolutions committee consider some possible solution to this question and that is, when we have a proposal with many sections, such as we have before us today, that there is a method whereby debate on those sections that have been considered and adopted by the committee of the whole cannot be reconsidered until a later date on third reading.

VICE PRESIDENT DOWNS: Mr. Bentley.

MR. BENTLEY: Mr. President, I think it might be helpful to call the attention of the delegates to rule 53 on page 51 of your handbooks, which says in part, "Any delegate may move for a reconsideration of any question at the same or next succeeding session of the convention. . . ."
The rest of the sentence is not pertinent.

> A motion to reconsider shall take precedence of all other questions, except a motion to fix the time to which to adjourn, a motion to adjourn and a motion to recess. No motion to reconsider shall be renewed on the same day.

VICE PRESIDENT DOWNS: Mr. Elliott.

MR. A. G. ELLIOTT: From a practical standpoint I would just like to point out to this convention that this is the first time that we have had a detailed article introduced as one proposal. You might be interested to know that as the chairman of the committee on local government, having talked to some of our subcommittee chairmen and the vice chairmen, you will not have this problem. We will introduce our article, proposal by proposal, with only 1 or 2 sections at the most within each proposal so that it can be taken care of on the day on which it is passed.

VICE PRESIDENT DOWNS: Mr. Prettie.

MR. PRETTIE: Mr. President and fellow delegates, the astute remarks of persons far wiser than I in matters of parliamentary procedure have convinced me that, as Senator Hutchinson said, our action on my appeal may come back to plague us. The problem, as I mentioned when I raised the question, is one that arises through a committee proposal having many subdivisions. I am in accord with the suggestion made by Mr. Hoxie, whose legislative experience I respect and I request permission to withdraw my appeal and point of order.

VICE PRESIDENT DOWNS: Mr. Prettie has withdrawn his appeal and so the decision of the Chair stands.

The question now is on Mr. Baginski's motion that we resolve into committee of the whole.

Mr. Brake.

MR. BRAKE: Mr. President, I just want to agree with Mr. Hoxie and join him in the request that we have a clarification of the rule, if that is deemed advisable by the rules committee. The committee on finance and taxation has before you for Monday night's discussion a proposal with, I think, 5 sections and we shall probably continue to report all those sections dealing with the given subject matter. We don't wish to go back and rehash every day when we meet what we completed the day before.

VICE PRESIDENT DOWNS: The question is on the motion of Mr. Baginski. All those in favor, signify by saying aye. All those opposed, by no.

The ayes have it and Mr. Baginski will chair the committee of the whole.

[Whereupon, Mr. Baginski assumed the Chair to preside as chairman of the committee of the whole.]

CHAIRMAN BAGINSKI: The committee of the whole will be in order. The secretary will read.

SECRETARY CHASE: From the committee on declaration of rights, suffrage and elections, by Mr. Pollock, chairman, **Committee Proposal 15,** A proposal to amend article II pertaining to the declaration of rights.

The committee has progressed as far as section 19, having completed section 18 yesterday.

For last previous action by the committee of the whole on Committee Proposal 15, see above, page 534.

Section 19.

[Section 19 was read by the secretary. For text, see above, page 465.]

CHAIRMAN BAGINSKI: Dr. Pollock.

MR. POLLOCK: This section will be briefly explained by our Vice Chairman Norris, but before yielding to him, I must say I didn't quite understand what Mr. Elliott meant. Our committee is not apologizing for giving you a whole article together.

CHAIRMAN BAGINSKI: Mr. Norris.

MR. NORRIS: Mr. Chairman, there are 2 changes in this section. I think the first one requires very little elaboration. It is merely to change the word "men" to "jurors" to take into account certain facts of political life in this nation and this state since the Constitution of 1908 and to recognize that women serve as jurors as they are electors in the state of Michigan.

The larger section of this particular matter now on our agenda relates to the right of appeal in a criminal case; and with regard to that, I think we ought to recognize we are dealing here with what is necessary to comport with the watchwords of our constitutional faith, namely, equal justice under law. Now, the defendant's right of appeal in a criminal case is basic to our system of justice. The opportunity for an appeal in a criminal proceeding is a basic feature which has been generally regarded throughout the country as a right. Professor Orfield in a leading study conducted at the Harvard University law school stated:

> In the conduct of a criminal proceeding certain steps are regarded as essential. The accused must be brought before the court. There must be a preliminary investigation to insure that the case is one which should be prosecuted. Notice must be given to the accused of the offense charged. He must have an opportunity to prepare for trial, procure witnesses, and make needed investigations. He should have a speedy trial. He should have a fair trial before an impartial tribunal. Finally, there should be one review of the case as a whole by a suitable appellate tribunal. The principle of the right to appeal in criminal cases is well established in the United States. It is not, however, a requirement of due process of law.

Incorporating the right of appeal into the constitution of Michigan would give greater effect to at least the following 3 functions of an appeal in a criminal case:

First, the chief function of an appeal in a criminal case is to see that justice is done to the public and to the appellant. An innocent defendant should be released. A defendant who did not secure a fair trial should have another trial. The mere existence of the right of appeal in a criminal case causes the trial judge to exercise greater care in the conduct of a trial and all proceedings in his court.

In other words, a criminal appeal should be one of the procedural safeguards provided by the law to protect the rights of the accused. The guarantee of a fair trial strengthens the confidence of the public in the administration of justice and in democratic government.

A second and important function of appeals is to determine and maintain consistent standards in the trial courts. The taking of appeals assures that the same rules of substantive and procedural law will be applicable in all courts of the state, and that the disparity in sentences is based on certain determination as to the substance. A criminal offense, or at least the wider range of disparity, may be reduced in cases involving substantially similar offenses and offenders.

A third function of appeals is to work out or develop the law of the jurisdiction. The maintenance of uniform interpretations and trial standards is encouraged by the right of appeal. Greater control over substantive and procedural law can be exercised by the appellate court with the appeal in a criminal case as a matter of right.

Now, one of the basic inequities that we find existing in the state of Michigan is the relationship between appeal in a civil case as against appeal in a criminal case. Under the present law in Michigan, the dignity and sanctity of a right is accorded to an appeal in a civil case involving the sum of $500 or more.

In Michigan, a person who is deprived, however, in a criminal case for a term of years, or for life, has no such right of appeal. This anomolous and inequitable condition requires amelioration. It is submitted that the most effective and enduring way to accomplish this is by accepting the recommendation of the right of a criminal trial and by amending section 16 as proposed by the committee.

Now, in addition to that, there is the fact that 4 states in the United States have in their constitutions the right of appeal as a matter of constitutional right. About 30 states have them both by statute and by court rule. I think these are probative with regard to our consideration of this matter.

I think some data with regard to the present instance of appeals in Michigan in a criminal case would be in order. You may have received a part of a series of memoranda that I distributed to each of the delegates. One of the memoranda dealt with criminal appeals. I received a communication from Mr. Donald Winters, clerk of the Michigan supreme court, with regard to a question I posed to him in November in regard to this fact. He reported that at present about 13 per cent of the applications for leave to appeal in criminal cases are granted by the Michigan supreme court. The most recent data, as expressed by his letter, for a 12 month period indicate that 29 out of 218 applications for appeal were granted. There is little reason to assume that the November 1, 1960 to November 1, 1961 period which Mr. Winters used was not a representative year.

Hence, if the past experience is at least a partial guide to the future, the number of appeals in criminal cases may not be said to be of such a quantity as to outweigh the probative reasons for granting an appeal in a criminal case as a matter of right.

In addition to that, there has been some ambiguity in certain recent decisions with regard to the relation of the supreme court to the right of appeal. You may recall that the judicature act was passed recently and there was some interpretation of

it in a case called People vs. Stanley, and in that case the court stated as follows:

> At the outset, in consideration of the motion to dismiss, it must be made plain that the court is not passing upon the defendant's right of appeal, and to have in this court a review of his conviction and sentence. The question here relates to procedure. It involves the questions whether this court has constitutional (as well as statutory) authority to promulgate and enforce rules governing the procedure whereby we obtain jurisdiction to review a conviction and the sentence in a criminal case; whether we have made such rules; and whether their procedure has been followed in the instant case.

It may reasonably be argued from this statement that the court is of the opinion that it has the constitutional power over the existence, as well as the form, of criminal appeals. It is therefore reasonable to recommend that as to the existence of the right of appeal in a criminal case, the people through their constitution ought to vouchsafe for themselves this right so strategic to the administration of justice.

I want to invite your attention to the fact that while there have been many matters which are the subject of a great dispute in the state bar of Michigan, the matter of right of appeal in a criminal case has been the subject of considerable unanimous judgment over a period of years, both in the civil liberties committee of the state bar, the committee on criminal jurisprudence, by the board of governors of the state bar and also by the annual meetings of the state bar. As a matter of fact, the committee on criminal jurisprudence has put it this way:

> It had been widely felt that it was a striking injustice to allow appeal of right in civil cases from a judgment of $500.00 while leave was required in all criminal cases, however serious the penalty or sentence. . . . The need for review is not limited to serious felony convictions. Today's traffic convictions imperil one's right to drive and often involve his livelihood; a misdemeanor conviction for drunkenness or obscene conduct may cause one's discharge from a position of prominence and trust; and conviction for assualt and battery may be the springboard for a damage suit of staggering proportions. Denial to defendants in misdemeanor categories of leave to appeal may also be fraught with dire consequences.

While the committee on criminal jurisprudence of the state bar has advocated an intermediate court of criminal appeal, it is the recommendation of our committee that this particular insertion of this article II, section 19, be considered a constitutional right, independent of the means which this convention or the legislature might develop to implement the right.

It is possible to have an intermediate court of appeal; it is possible to have an intermediate court of criminal appeal; it is possible to increase the number of supreme court justices; it is possible to maintain the present number of supreme court justices and still deal with this particular problem as discretion and wisdom may so indicate.

We felt as a declaration of rights, bearing in mind the ancient and mandatory injunction that we have equal justice under law, that we ought to grant and record as one of the rights of the accused, in this particular section, the right of appeal in a criminal case, and the committee on declaration of rights, suffrage and elections so recommends, Mr. Chairman.

CHAIRMAN BAGINSKI: Mr. Pugsley.

MR. PUGSLEY: Mr. Chairman and delegates, at this convention it has been suggested that some of us who have had some experience in these matters should make our views known. I, for one, am not opposed to an appeal as a matter of right but I wish the record to show that I do not subscribe either to the necessity for or agree with all of the reasons that have been assigned. I don't believe that they should appear as being influential upon any bodies who may have this matter under consideration in the future. I merely wish to state that I am not opposed to the right of appeal as a matter of right and I think the matter should stop there.

CHAIRMAN BAGINSKI: Judge Leibrand.

MR. LEIBRAND: Mr. Chairman, may I direct an inquiry to Delegate Norris? The word "appeal" may be a general term or it may be a specific term. We have presently in our state system of courts 3 tiers; the federal system has 3 tiers. I wish to inquire of Mr. Norris whether it is the intent of the committee to give a convicted defendant, as a matter of right, an appeal throughout this entire system of courts which might mean 5 appeals, or whether it is the intent of the committee to give, as a matter of right, one appeal from the trial court in which he was convicted.

CHAIRMAN BAGINSKI: Mr. Norris.

MR. NORRIS: Mr. Chairman, Mr. Leibrand, I believe the general theory that animates this proposal and the subscription of the committee is that there be one suitable appellate review of a conviction and to see that there is an appraisal of all the pertinent rules of evidence and that a fair trial was accorded; and I don't think it necessarily follows that you go through the entire tier of appellate review. It doesn't mean that in my judgment — I think I speak for the committee in that — and I stated that in the statement that I made before, when I referred to Professor Orfield as saying that there ought to be one suitable appellate review of a conviction in a criminal case.

MR. LEIBRAND: Thank you.

CHAIRMAN BAGINSKI: Mr. King.

MR. KING: I should like to direct a question to Delegate Norris, if I might. Delegate Norris, is it your understanding that under this constitutional provision providing for the employment of counsel, that this counsel must of necessity be provided for at the expense of the public in the event that the accused is not able to hire his own counsel?

MR. NORRIS: All I can say to that, Mr. King, is that there are certain supreme court decisions, United States supreme court decisions, particularly Griffin v. Illinois, with regard to the extent of the participation of the state in giving effect to the right in the federal constitution to assistance of counsel, and insofar as that particular right would be applicable, then it would have some effect on what you are now questioning. I don't think, however, there has been any state court decision which has gone farther than what the federal court has provided. So, no matter what we say here, it wouldn't go beyond what the United States supreme court now requires.

MR. KING: Don't you feel that the Supreme Court of Michigan has affirmatively taken a position with regard to this matter to the effect that counsel need not be provided to an accused who cannot afford to hire counsel?

MR. NORRIS: Counsel need not be provided for an appeal? Is that what you are saying?

MR. KING: Not for an appeal; for trial.

MR. NORRIS: Well, it doesn't apply to all cases. It applies to capital cases. It doesn't apply to misdemeanors. You don't have the right to assistance of counsel at county expense in misdemeanors.

MR. KING: How about felonies?

MR. NORRIS: Yes, it does apply to felonies, as I understand it.

MR. KING: That is not my understanding and I wondered if the committee had reviewed this particular problem. I can cite Michigan supreme court cases — People v. Williams and People v. Crandall — which both indicate that the provision of this section of the Michigan constitution securing an accused the right to have counsel for his defense is a guarantee of a right to employ and have counsel, but does not mean that he shall have counsel at public expense.

MR. NORRIS: All I can say is that under Powell v. Alabama, the United States supreme court and the practice as I have seen it in 15 years of practicing, that particularly in general practice, including criminal courts, is this is what has been followed and I understand it is required by the law.

The fact that a person has a right to employ counsel doesn't necessarily mean that persons who may be indigent don't also have the right to assistance of counsel as prescribed by law, and that has occurred.

But I think what we are talking about here is the right of an appeal in a criminal case — to carry forward what you are saying — those who have the right to employ counsel also have the right to proceed to an appeal. However, if you will notice the part of article II, section 19, which goes on to say something about the courts may assist: . . . "and in courts of record, when the trial court shall so order, to have such reasonable assistance as may be necessary to perfect and prosecute an appeal." To that degree there is an affirmative duty on the part of the court to assist persons who may have the right to an appeal.

MR. KING: I would agree with that. I was not directing my question as to what the committee has done so much as to what they have not done.

MR. NORRIS: What is it you wish us to do that we have not done?

MR. KING: Provide for counsel, whether the accused can hire counsel or not.

MR. NORRIS: If you wish to make an amendment on the floor, I suspect that might be one matter which the wisdom of this body might be called upon to express; but that isn't what the committee is saying here, sir.

MR. KING: That was what I was trying to determine. I don't wish to make an amendment if the committee has given careful consideration to what I think is a problem.

MR. NORRIS: This is as far as the committee wished to express itself, sir. I think what we are trying to say is that because of the reasons that were advanced in the comment, we want to have favorable consideration by this body of the right of appeal in a criminal case.

MR. KING: Thank you.

CHAIRMAN BAGINSKI: Mr. Sharpe.

MR. SHARPE: Mr. Chairman and Delegate Norris, I would like to have you tell me if these words not having been in the constitution in the past has worked a hardship on a lot of people. Has this been a detriment to the criminal? (laughter)

MR. NORRIS: The question is whether or not this has been a detriment to the criminal. (laughter) I assume that what Mr. Sharpe is getting at is a fundamental question. Perhaps he phrased it inartfully but the question was very well taken, however, and that is: is there a particular showing of the need for such a constitutional right?

It seems to me that you have manifestly an iniquitous and "inequitous" condition where you can say that a person has a right to appeal in a civil case in a matter involving $500 but when a person is deprived of life, or given life imprisonment, or has a term of years visited upon him as a result of a particular adjudication, that he does not have that same right.

It seems to me what is involved here is a matter of equal justice under law and in order that we might accomplish that particular ancient and revered injunction, we ought to give persons who are involved in a criminal case a constitutional right of appeal in order to remedy this kind of condition.

I can only say to you that I am a bit disturbed by saying that perhaps there isn't any showing. You have, even within the statistics that have been given to us, quite a large number of people who just receive, on the basis of an appeal, a 2 word sentence from the Michigan supreme court when they appeal "Application denied," with no particular exposition for the reasons. It seems to me that a full, fair day in court includes not only the appraisal by the trial court but also by an appellate court.

As Judge Leibrand asked the question before, what is involved here is having one suitable appellate review of a conviction. I am certain that Delegate Sharpe would want, if he were so accused and convicted, the right to have one suitable review and that would apply to all the 8 million people in the state of Michigan.

MR. SHARPE: Just a minute, Delegate Norris. That wasn't my primary question. I'm sorry I phrased it the way I did. The thing that I am interested in is this, I can see where possibly this might be a burden on the taxpayers in our circuit courts. I can see also where this might possibly load the court docket up so that in my particular case we could no longer have a circuit judge from a 2 county circuit. We might have to have a circuit judge from a 1 county circuit. I am wondering if this is important as long as we haven't had this for 100 years in our constitution and if it might not lead to maybe some abuse. This was my primary question and I didn't expect that you were going to talk 15 minutes on the first one. (laughter) Maybe you can answer this one in less time.

MR. NORRIS: I appreciate the questions and they are equally pertinent and I think they ought to be answered, sir.

I think that it is reasonable to anticipate that there are always costs for justice. The very provisions of courts, jurors, of the rights of the accused; indeed, the very declaration of rights itself imposes certain costs to the taxpayers. The question is whether or not this is necessary for the administration of justice, whether or not this is necessary for equal justice under law. It is a question of a value judgment. We seek by this action — the committee does — to declare a constitutional right of appeal in a criminal case, because in our judgment it remedies inequitable conditions as they exist today and provides and enhances the greater prospect for a fair trial in criminal cases.

I might also say that you have, as I indicated, 4 states with this as a constitutional right. You also have some 30 states which have right of appeal in a criminal case as a matter of statute and as a matter of court rule. But if you put it in the constitution, then it cannot be altered by court rule and it cannot be altered by statute. It serves a very useful purpose in the judgment of the committee.

MR. SHARPE: Delegate Norris, does this pertain to circuit courts or does it not?

MR. NORRIS: Yes, it pertains to circuit courts.

MR. SHARPE: This was my understanding. Now, Delegate Norris, would you like to answer the question: is this quite liable to be a burden on the taxpayers and is it a possibility that it might load the court docket to the degree that would be uncomfortable?

MR. NORRIS: Whether it's a burden or not is a value judgment. There is bound to be some cost involved. But whether or not it is a burden depends upon whether or not you think, weighing the reasons for and against this particular proposal, the reasons outweigh in one direction or another. I don't think here that the committee makes an assessment of burden. What we say is that the reasons for this proposal far outweigh any particular cost that might be involved.

MR. SHARPE: Thank you. Now would you like to answer one more question for me and then I'll sit down. Can you give me any reason why in the last 100 years this has not been attempted to be put into this section before?

MR. NORRIS: Well, I'm not sure, sir, that your question is based upon fact. There have been numerous attempts to secure this as a matter of court rule and as a matter of statute. As a matter of fact, the statute that I cited was one which incorporated a right of appeal in a criminal case and it wasn't interpreted to permit that because of other infirmities in the inartful draftsmanship of the statute. They said that the statute didn't conform to the title of the act; People v. Stanley, the case I cited. There has been evidence that there has been the intent apparently of the legislature to move in that direction. I understand there also is some contemplation by the justices of the supreme court at present to deal with this matter as a matter of court rule, but it is the concept of the committee that this matter is so important that there ought to be the dignity and sanctity of a constitutional right accorded to the right of appeal in a criminal case.

CHAIRMAN BAGINSKI: Mr. Brake.

MR. BRAKE: Mr. Chairman, Mr. Norris, if we set up an intermediate court of criminal jurisdiction, appeal from that

court to the supreme court should certainly be by leave, should it not?

MR. NORRIS: I would agree, sir.

MR. BRAKE: Your language does not make that clear.

MR. NORRIS: I appreciate what you are saying, sir. I am not so sure that we can make provision for all the contingencies in the rights-of-accused section. What we talk about is to have an appeal as a matter of right. And I think that is about as far as we could go with regard to the matter. But I think it is the committee's understanding that if there should be an intermediate court of appeal or an intermediate court of criminal appeal, that the right would apply to this court; it would be one suitable appellate review. That appeal from the intermediate appellate court to the supreme court would be as a matter of leave.

CHAIRMAN BAGINSKI: Are there any amendments to section 19?

SECRETARY CHASE: Mr. Dehnke submits the following amendment:

1. Amend page 4, line 23, after "right" by inserting "to the court having immediate appellate jurisdiction"; so that the language will read, ". . . to have an appeal as a matter of right to the court having immediate appellate jurisdiction."

CHAIRMAN BAGINSKI: Judge Dehnke.

MR. DEHNKE: Mr. Chairman and gentlemen of the committee, I think the amendment explains itself. It covers the point that was raised by Judge Leibrand and answered by Professor Norris. This will remove it from the field of doubt or speculation.

CHAIRMAN BAGINSKI: Mr. Wanger, do you want to speak on the Dehnke amendment?

MR. WANGER: No sir, I did not but I would like to ask a question regarding the amendment which is now before us. Does this mean that in every case an accused would have an appeal to the court above it?

CHAIRMAN BAGINSKI: Judge Dehnke.

MR. DEHNKE: That is the simplest way that I could think of on the spur of the moment to cover that point. We have justice courts. This would give right of appeal to the circuit court. If we have an appellate court, the circuit court conviction — if that were the court of trial — would give appeal as a matter of right to the intermediate appellate court. As I understand it, it is not proposed that the intermediate appellate court shall try cases de novo, but that would still leave it possible to have an appeal to the supreme court by the present process of applying for leave to appeal. It may be possible that Mr. Danhof and others have language which clarifies this in a better way than my amendment. I have no pride of authorship in the wording.

CHAIRMAN BAGINSKI: Judge Pugsley.

MR. PUGSLEY: I am in harmony with the amendment that has been proposed for the reasons stated. I wish further to state, supplementing what I said before, that I have no objection to a matter of right, but I have taken into consideration also the further language, ". . . when the trial court shall so order . . ." which has reference to the appointment of counsel. I believe that is an important matter and is one which I took into consideration in my first remarks. I believe that that is a matter that is of importance and of interest to the taxpaying public. The courts should have some control over the expenditures that are ordered by the court in these appeals and in the appointment of counsel.

CHAIRMAN BAGINSKI: Mr. Danhof.

MR. DANHOF: I might state in answer to Mr. Brake that my committee viewed this matter right now as a rights problem; that this is a matter that the convention should consider as a matter of civil rights; that if it passes or is rejected the committee on judicial branch will bear this in mind when setting up a court structure and what impact it would have on the court structure as we now have it, or whether we should make allowance for additional cases. We subscribe to the view of Mr. Norris that the 2 are not necessarily tied together; that one is a matter of right; the other is a matter of setting up a facility to handle the right, and that it was therefore the recommendation or the thought of the committee, that we concur in the recommendation of the rights committee.

As to the matter that Mr. King spoke to, I think that there are additional sections that would cover this as to the assistance which could be ordered by the trial court.

Now addressing myself to Judge Dehnke's amendment — and as Judge Pugsley has stated, he is in sympathy — and I might state that this particular idea was again advanced in my committee on judicial branch. I think we had a motion, if I recall, in the committee to amend it very substantially, as Judge Dehnke has, and wanted to make it one appeal, and we finally went back and concurred in leaving the matter as it now stands.

The basic consideration at least in my opinion, was this: that it is possible that the matters which will be handled by a court, which we will now just designate as a municipal court, might at some future date, by reason of legislative action or action of this convention, contemplate more serious matters and have a greater degree of severity than is now handled by our so called inferior courts. And by inferior, I do not mean the personnel thereof. That in addition, when an appeal is taken now from a municipal court to a circuit court, it is an appeal de novo. In fact, it is a retrial. It is not an appeal on the record.

If this language were inserted and you had an appeal from a so called high misdemeanor, which could carry a fairly substantial sentence, it might be interpreted that after the case were tried in a municipal court or some type of court of inferior jurisdiction, and retried then in — as what we know it now to be — the circuit court, the appeal would be taken care of, although you would have had actually a trial de novo in the circuit court and there could arise, in the trial de novo, error which perhaps should be scrutinized by an appellate tribunal who was not reviewing the trial de novo on the facts and sitting perhaps with a jury but strictly on the record. That by leaving the language as it is now constituted, it would leave it to the legislature or to the supreme court rule.

I submit that a procedure of appealing cases could be promulgated which would meet the standard of granting an appeal as we know it. I have no great quarrel with the amendment but I do feel that if we allow it to stand as it now is written, we will allow to the supreme court, the rule making power, and to the legislature, a method of setting forth the procedure which will comply with the mandate of the people or of the constitution. And for that reason, I would concur in the recommendation of the rights committee to allow the language to remain as they have written it. Thank you.

CHAIRMAN BAGINSKI: Mr. Brown.

MR. G. E. BROWN: Mr. Chairman, speaking to the Dehnke amendment, I have an amendment on the desk of the secretary, which would read as follows for the language in question. It would be to have a suitable appellate review as a matter of right. It seems to me that this is language that has been used here. It is the understanding of the learned jurists who are here that it would leave to the legislature or to the judiciary, or by court rule, determination of whether a suitable appeal is a trial de novo or one in the nature of an appeal, as we know it, to the supreme court. It also does not in any way determine which court it shall be, such as the immediately higher court, and I think that it better states the substance and the thinking of the delegates here that have spoken on this question by saying a suitable appellate review, and then through these things, through the legislature, the judiciary, or by court rule, that suitable appellate review can be determined. Thank you.

CHAIRMAN BAGINSKI: Are there any amendments to section 19?

SECRETARY CHASE: Mr. Dehnke has offered the amendment to amend page 4, line 23, after "right" by inserting "to the court having immediate appellate jurisdiction".

CHAIRMAN BAGINSKI: Mr. Rush.

MR. RUSH: I have a question. Sometimes we have had rather lengthy explanations of these various articles and to a layman they may convey just a little different meaning than the section may indicate. My question is this: just how much weight or consideration will these explanations get in the interpretation of the constitution we write? I understand these explanations are all being recorded and I'd just like to have somebody answer that question for me.

CHAIRMAN BAGINSKI: Does anyone care to answer Mr. Rush?

Mr. Ostrow.

MR. OSTROW: Yes, I'll answer. Well, if the language is clear and unambiguous — and the supreme court decides whether the language is clear and unambiguous — they do not go back of the language. You mean what you say and you say what you mean. If the supreme court says the language is not clear or is ambiguous, then they can go back of the actual language, to the committee report, or any of the other proceedings.

CHAIRMAN BAGINSKI: The Chair is informed that Mr. Brown offered an amendment that might perhaps clarify the language that Judge Dehnke offered and we are asking Mr. Brown to confer with Judge Dehnke to see if they can't get together on this amendment.

Judge Dehnke.

MR. DEHNKE: Has it been submitted to the desk?

SECRETARY CHASE: Mr. G. E. Brown has filed this amendment for consideration following Judge Dehnke's amendment,

1. Amend page 4, line 23, after "have" by striking out "an appeal" and inserting "a suitable appellate review"; so the language will read, ". . . to have a suitable appellate review as a matter of right . . ."

MR. DEHNKE: I wondered, did he also state under rules adopted by the supreme court?

SECRETARY CHASE: He did not.

CHAIRMAN BAGINSKI: Mr. Brown is right in back of you, Judge Dehnke.

MR. DEHNKE: Would that be acceptable under the rules of the supreme court, Mr. Brown?

MR. G. E. BROWN: Judge Dehnke, I have no great objection to this but I think through the judicature act and other things that the legislature may be acting upon, that we may not want to limit this suitable appellate review to the supreme court rule. I think this leaves it free to the legislature. This is a fundamental law. Let's leave to the legislature, to the judiciary, to court rules, and so forth, the determination of a suitable appellate review.

MR. DEHNKE: Mr. Chairman, if it is agreeable to Mr. Brown, I am agreeable to accepting the addition of his language to my amendment.

CHAIRMAN BAGINSKI: The secretary will read the new matter.

SECRETARY CHASE: The matter seems to the secretary to be that in addition to Judge Dehnke's amendment, which is after the words "matter of right" to insert "to the court having immediate appellate jurisdiction". Mr. Brown's amendment is to strike out the words "an appeal" and insert "a suitable appellate review" so that if both amendments were adopted, the language would then read, ". . . to have a suitable appellate review as a matter of right to the court having immediate appellate jurisdiction".

MR. DEHNKE: I am asking leave, Mr. Chairman, to withdraw my amendment and I will support Mr. Brown's amendment.

MR. G. E. BROWN: Thank you, Judge Dehnke.

CHAIRMAN BAGINSKI: Mr. Dehnke withdraws his amendment.

SECRETARY CHASE: Mr. G. E. Brown has offered the following amendment:

1. Amend page 4, line 23, after "have" by striking out "an appeal" and inserting "a suitable appellate review"; so the language will then read, ". . . to have a suitable appellate review as a matter of right. . . ".

CHAIRMAN BAGINSKI: The question now is on the Brown amendment. The Chair recognizes Mr. Van Dusen.

MR. VAN DUSEN: Mr. Chairman and members of the committee, I rise simply to say that I was persuaded by the remarks of Mr. Danhof on the Dehnke amendment that it was wise to support the committee report as submitted. I have not changed that view with respect to Mr. Brown's amendment, though I have great respect for the sponsors of both amendments. In my judgment, the committee on declaration of rights and the committee on judiciary have both given careful consideration to the language, which is clear and unambiguous. I support the committee proposal and would vote no on the amendment.

CHAIRMAN BAGINSKI: Judge Leibrand.

MR. LEIBRAND: Mr. Chairman, delegates, as I understand the Brown amendment then, either the legislature or the supreme court could grant an absolute right or make rules for an absolute right of appeal through 4 or 5 or 6 tiers of courts, with the public, in indigent cases, paying the shot.

CHAIRMAN BAGINSKI: Mr. Brown.

MR. G. E. BROWN: I don't think that's a fair interpretation of it. This is a suitable appellate review. Now, I can't believe that this connotes suitable appellate review. If the legislature and the courts should so determine and that becomes the law, then I think that's when it should be the law. And if we have by judicial interpretation later on through once again maybe federal enactments — there may be something more than a simple review — a denial of an application for leave to appeal is all that is necessary — if something more is done, something should be done. I don't think our constitution should go so far as to attempt to detail legislatively in effect on every possible situation that might result out of this or stem from this language.

MR. LEIBRAND: Mr. Chairman, might I inquire of Mr. Brown? Mr. Brown, would you define your word "suitable"? Could it not be extended to mean 4 or 5 or 6 appeals?

MR. G. E. BROWN: I think, Judge Leibrand, it certainly could. I think it is very possible. But I think an appeal as drafted by the committee could also be interpreted as meaning 4 or 5 appeals because an appeal is an appeal is an appeal. A suitable appellate review, I think, only leaves it a little bit more in the discretion of those who have jurisdiction over these matters insofar as the writing of details is concerned. This is a fundamental law. This is not a court rule.

CHAIRMAN BAGINSKI: Mr. Ford on the Brown amendment.

MR. FORD: Could I have the language of the section as it would read in full now with the Brown amendment?

SECRETARY CHASE: The language of the section with the Brown amendment would read as follows:

> Section 19. In every criminal prosecution, the accused shall have the right to a speedy and public trial by an impartial jury, which may consist of less than 12 jurors in all courts not of record; to be informed of the nature of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; to have the assistance of counsel for his defense; to have a suitable appellate review as a matter of right; and in courts of record, when the trial court shall so order, to have such reasonable assistance as may be necessary to perfect and prosecute an appeal.

CHAIRMAN BAGINSKI: Mr. Ford.

MR. FORD: The only question I raise is, that to have a suitable appellate review as a matter of right becomes so broad that I question whether we ought to add anything at all to this section. If we amend it as Mr. Brown now proposes, it doesn't do anything that we don't have. We now in Michigan have a suitable judicial review as a matter of right and it has been determined up until now that suitable appellate review — and I don't think anybody questions the constitutionality of the law as it is now in Michigan, unless we

change this constitution — that in civil matters involving $500 and upwards you can appeal to the supreme court as a matter of right. But in a criminal matter, you must first apply to the court for its permission to appeal. This is a suitable appellate review now, and it could be a suitable appellate review with the proposed committee language adopted with the Brown amendment but if you adopt the Brown amendment you will vitiate what the rights committee was trying to do and what we concurred in on the judiciary committee. I advocate that you bear with us on this one and support the position of the rights committee and the judiciary committee in the language as it is in the committee report.

CHAIRMAN BAGINSKI: Mr. Hodges.

MR. HODGES: Speaking against the Brown amendment and for the committee report, I think we are losing sight of some things here. First of all, right now the legislature or the courts, by rules, can give all the appeals they want, if they want to change the rules. So, answering Judge Leibrand's criticisms, I don't think, really, it pertains to this. What we are interested in is the right to appeal as a matter of right, one time at least. We have made this intent clear. I think it can be made clear through the proceedings of this convention that this is the intent of this convention and I don't think we have to try and find lengthy descriptions of this or try some way to explain it in the body of the constitution. This can be done by intent.

CHAIRMAN BAGINSKI: Mr. King.

MR. KING: I rise to support the committee recommendation and point out that my understanding of the constitution is somewhat similar to Mr. Hutchinson's understanding of the constitution. It is a limitation upon what the legislature can do.

In the area of the bill of rights we are particularly trying to say that human beings, individuals, have this much right. I find myself in a position where I can't understand someone who wants to say in the bill of rights we will limit the rights of the individual. Let's provide for at least one appeal. If the legislature wants to provide for 5 appeals — I don't think they can do that because the supreme court of the United States would have something to say about appeals to the federal court — then, let them go ahead and do it, but basically, what we are talking about is providing for at least certain rights in the bill of rights for the individual citizens of our state, and I think we have gone far afield from that point.

CHAIRMAN BAGINSKI: Mr. Sharpe.

MR. SHARPE: Mr. Chairman, I have asked Delegate Norris a couple of questions to clarify in my mind, and I'd like to ask him to clarify it on the record. Delegate Norris, would this phraseology permit a complete new trial?

MR. NORRIS: Delegate Sharpe, I believe the general observation is not necessarily germane to the amendment but to the whole concept of an appeal.

Delegate Sharpe suggests that to some minds the idea of an appeal means a new trial; that is, an entirely new proceeding. All I can suggest to him is that an appeal in terms of what we have stated on the record here is a suitable appellate review, which means an appeal on the record, that is that which comes before an appeal court, a transcript, statement of facts, opinion of the court below, and it is appraised by the appellate court in terms of whether or not there is a fair trial and the general conduct of the trial in accordance with law. It is not a new trial, that is, in terms of new evidence, what we call in law, a trial de novo. That doesn't mean another trial.

I understand that Mr. Sharpe was concerned about duplicating the performance, so that would mean additional expense. That is not what we are contemplating by virtue of an appeal. It may be, however, that as a result of an appellate review the court might send it back for a new trial but that does not necessarily mean that every time you have an appeal you have a new trial.

I don't know whether I can speak for the committee with regard to it, except to say that I am certain the committee would support its own report and the observations made by Mr. Danhof as chairman and Mr. Ford as vice chairman of the judiciary committee, which I believe is the substance of our position, and that the wording recommended by the declaration of rights report is earnestly recommended to this body.

CHAIRMAN BAGINSKI: Mr. Youngblood.

MR. YOUNGBLOOD: Up until now I notice that the majority of the speakers are attorneys. I, as a layman, think that I understand very clearly the original language put out by the committee. Therefore, I wish to support the original language.

CHAIRMAN BAGINSKI: Are there any amendments? Mr. Brown.

MR. G. E. BROWN: Mr. Chairman, I'll be very brief. I have no great brief for the language that I have suggested because it is my language. The only thing that I would like to draw to the attention of those present is that an appeal as such — that the criticisms that have been raised here to the wording "a suitable appellate review" are just as applicable to an appeal. You now have an appeal to the supreme court. Of course, this is in the form of an application for leave to appeal. Appeal is an artful word. It doesn't constitute a review. Other than that, I shall be quiet.

CHAIRMAN BAGINSKI: The question is on the amendment by Mr. Brown. As many as are in favor of the amendment will signify by saying aye. Opposed, no.

The amendment is not adopted.

SECRETARY CHASE: Mr. Madar offers the following amendment:

1. Amend page 4, line 23, after "have" by striking out "an" and inserting "one"; so that it will read, ". . . to have one appeal as a matter of right;".

CHAIRMAN BAGINSKI: Mr. Madar.

MR. MADAR: Mr. Chairman, I just wanted to bring this up because it seems we've been having an awful lot of discussion here on just what we do want. It seems that everybody agrees that we have one appeal. Now, it seems that they just don't seem to understand this so, in good laymen's language, let's just include the word "one". Then we're certain of what we're doing; everybody understands it.

CHAIRMAN BAGINSKI: Mr. Hodges.

MR. HODGES: Speaking in opposition to the Madar amendment, I think we again find ourselves with the same problem. We would be limiting the legislature's right to set up further appeals if they want. We are not here in the bill of rights trying to set up limitation of rights but rather to give rights. We are setting a floor here by saying an appeal is a matter of right. If the legislature wants to give more than one later on, that's their prerogative. What we are interested in is giving an appeal as a matter of right.

CHAIRMAN BAGINSKI: Mr. Ford.

MR. FORD: Mr. Chairman, Mr. Madar's language is certainly clear and it occurred to the judiciary committee almost immediately when we had this before us and it was dispatched almost immediately for the reason that when you start talking of one appeal, we all agree that we wanted one appeal and I think there is pretty much general agreement on the judiciary committee that we want that one appeal when you finally get to a court of record.

But the difficulty is that you overlook the fact that you have another stratum below the court of record, the justice court now, and municipal court, and we may call it a county court or something else in the future, but there isn't any question that there will be in the court strata some sort of a local court or court inferior to the circuit court.

Now, it is our desire not to limit this right of appeal to a point where the taking of the appeal that you now have as a matter of right from this lower court or middle court into the first court of record of trial jurisdiction would satisfy the requirement of the constitution and thereby stop you. So we wanted to leave it to the wisdom of the supreme court, within the framework set by the legislature, to determine how this appellate process would work. I think really, Mr. Madar, we mean one appeal but we mean one appeal after

you get to a certain level and if you just use the word "one" the way you are doing it now, it's going to lead to confusion about what happens to these cases that originate below the court of record level.

CHAIRMAN BAGINSKI: Mr. Higgs.

MR. HIGGS: Mr. Chairman and fellow delegates, I support the committee recommendation in the comment that says, "We desire to grant status of a categorical constitutional right to at least one appeal in a criminal case."

I was one of those on the judiciary committee to whom it occurred that we might include the words "one appeal" and upon reflection, I prefer the committee language because it occurred to me that the appellate review might order a new trial and upon the second conviction I don't think I'd want to restrict the defendant from having an appeal from the second conviction upon a new trial. I think the committee language is fine.

In response to an inquiry of Mr. Rush, I don't think it was answered and I think Mr. Van Dusen can answer it. I've been looking through the resolutions, I do know we have a resolution — and I can't find it immediately — that states that the committee report shall be determinative of constitutional intent. I think it is a very important resolution and perhaps we can put our finger on it.

CHAIRMAN BAGINSKI: The question is on the amendment by Mr. Madar. As many as are in favor of the amendment will signify by saying aye. Opposed, no.

The amendment is not adopted.

Mrs. Hatcher.

MRS. HATCHER: Mr. Chairman and fellow delegates, I rise to speak to the point of the change in words of "12 men" to "12 jurors." It may not be considered necessary by some of the delegates here but for the purpose of clarification and acknowledgment of the progress made in the last 50 years, I would like to make these few remarks.

In several places in our constitution we have found similar language stating 12 men or men or women who are property owners may have the right to vote. There have been several proposals submitted to change the wording, since presently in Michigan women do have the right to serve on jury duty and to exercise their full political rights.

Significantly, it is now taken for granted that women have political rights in Michigan and throughout the United States. And of course, I am very pleased to see that this is not a controversy in this convention and especially under this section that we are discussing presently.

Unlike the Constitution of 1908, women had not received the franchise; therefore none were delegates to the convention in 1908. I am gratified with the equality of participation in this convention and it has been a true expression of democracy through our deliberations.

To recognize the subject further, on December 14, 1961, President John Kennedy issued an executive order to establish a commission on the status of women. With your indulgence, I would like to read 2 excerpts from the president's statement in establishing this new commission on the status of women. These 2 excerpts are taken from a release issued by the white house press secretary. The first excerpt is:

> Forty-one years have passed since the first national election in which women were permitted to vote.
>
> As was foreseen by the early leaders, women have brought into public affairs great sensitivity to human need and opposition to selfish and corrupt purposes. These political contributions and the manifold activities of women in American communities are the outgrowth of a long tradition of pioneering by American women. They stand as an encouraging example to countries in which women are only now achieving equal political and social status.

The second excerpt is:

> Women have basic rights which should be respected and fostered as part of our nation's commitment to human dignity, freedom and democracy.

In conclusion, Mr. Chairman and fellow delegates, I felt moved to share with my delegate friends here this information because I honestly feel that no American citizen in America or in this troubled world can afford ever to take his or her rights for granted.

CHAIRMAN BAGINSKI: Are there any further amendments to section 19? If not, it will be passed.

Section 19 is passed.

SECRETARY CHASE: Section 20.

[Section 20 was read by the secretary. For full text see above, page 465.]

CHAIRMAN BAGINSKI: Dr. Pollock.

MR. POLLOCK: I will ask Mr. Norris to explain this section briefly. (laughter)

CHAIRMAN BAGINSKI: Mr. Norris.

MR. NORRIS: Mr. Chairman, the general idea here is to reaffirm the prohibition against imprisonment for debt and to elaborate upon the fact that the imprisonment for debt ought not to be effected on the basis of an action or a debt that was founded upon a tort, that is, a wrong or a judgment that was entered by a court on behalf of an actionable wrong. And I believe the description here in the comment is self-explanatory and it is merely a carrying forward of all the kinds of considerations that motivated the inclusion of this particular section in the 1908 and previous constitutions.

CHAIRMAN BAGINSKI: Are there any amendments to section 20? If not, it will be passed.

Section 20 is passed.

SECRETARY CHASE: Section 21.

[Section 21 was read by the secretary. For text, see above, page 465.]

CHAIRMAN BAGINSKI: Mr. Stevens.

MR. STEVENS: Mr. Chairman and fellow delegates, this is the same wording you find in the United States constitution except, of course, this applies to the state of Michigan rather than to the United States.

We realize that the matter of treason against the United States is probably not within our jurisdiction. That is not the point. We still believe there is a possibility, though not a probability, that under certain unusual circumstances which we may not now be able to determine, this possibility still exists.

The reason for having this in the bill of rights is to reduce the treason as it existed in common law. It limits the meaning of treason in common law. That is the purpose in the United States constitution; it is the purpose here and I see no point in belaboring this longer. I think you understand it, so I'll say no more about it.

CHAIRMAN BAGINSKI: Are there any amendments to section 21? If not, it will be passed.

Section 21 is passed.

SECRETARY CHASE: Section 22. The language of the section has been deleted completely by the committee on rights, suffrage and elections.

CHAIRMAN BAGINSKI: Mr. Stevens.

MR. STEVENS: Mr. Chairman and fellow delegates, this is not such a simple question as section 21. We considered this matter carefully. We looked at the wording as it was. We were confused as to its meaning. We found it impossible to know exactly what it was intended to say.

It was not difficult to know what the legislature and the people wanted to do. It was to provide a law which would make subversion a crime and to define subversion. This, we believe, is the function of the legislature. It has the power to do that and probably undoubtedly the duty to do it.

In the latter part of this provision, however, it provides that the right of freedom of speech as provided in our state constitution shall not be abatable as a defense in this action. The difficulty here is to interpret what is meant by this provision. Certainly, there is and has been a limitation upon the

right of freedom of speech. People have been put in jail for interfering with the draft in federal cases. I don't know that there are any Michigan cases. There haven't been any Michigan cases under this provision. But it is clearly determined that a person, by his speech under certain circumstances, may be convicted of sedition in the federal courts. If that is what the provision is intended to say, it isn't necessary. If it is intended to say that a person may not introduce into evidence his right to freedom of speech at the time the charge is brought against him, then, of course, the thing which is to be tried, was his speech the cause of this action or was it the cause of subversion or was it the cause of a riot or something else? The question is: was what he said the cause? Well, if you can't use that defense at all in the beginning, how are you going to determine the fact as to whether or not it was the cause?

It is quite clear under many court decisions — at least in the federal courts and presumably in the state court, if a matter should come before it — that there is a limitation to the right of freedom of speech in this respect. Therefore, we believe that what should happen is that this should be deleted and that the legislature should do this.

Now, in regard to this, we intend to offer at the proper time a resolution. In this resolution we shall ask that it will be sent as a memorial to the legislature. The resolution which we shall offer at the proper time is:

[Mr. Stevens read the resolution. For text, see above, page 471.]

CHAIRMAN BAGINSKI: Mr. Bentley.

MR. BENTLEY: Mr. Chairman, Mr. Stevens has partly anticipated the question that I intend to ask. He has been reading, of course, the text of the proposed memorial attached to the report of the committee on Committee Proposal 15. I just want Mr. Stevens, if he will, to corroborate the fact that this proposed resolution will be introduced separately and presumably referred to the rules and resolutions committee before the convention takes action. It is merely included here as a part of the comment on the proposed deletion of section 22 and the action of the committee of the whole now on section 22 will in no way construe approval or disapproval of the proposed resolution. Is that correct, Mr. Stevens?

MR. STEVENS: That is correct.

CHAIRMAN BAGINSKI: Judge Leibrand.

MR. LEIBRAND: I support the deletion of section 22 as a useless appendage.

CHAIRMAN BAGINSKI: Are there any objections to the deletion of section 22? If not, it will be deleted.

Section 22 is deleted.

SECRETARY CHASE: At the end of Committee Proposal 15:

Sec. —. The enumeration in this constitution of certain rights shall not be construed to deny or disparage others retained by the people.

CHAIRMAN BAGINSKI: Mr. Stevens.

MR. STEVENS: Mr. Chairman and fellow delegates, I think most of you will recognize — if you don't recognize, you should — that this is taken from the federal constitution. The enumeration of these rights shall not be construed to disparage others retained by the people.

This is for perhaps 2 reasons. First, we cannot anticipate in any declaration or bill of rights all of the things which perhaps should be said. Second, we do not intend that the statements that we have made here as to the rights of our people shall be limited by the fact that we did not state something which has always been considered such a right. We have put no section number on this because this is to be a new section in the declaration of rights if it is passed.

CHAIRMAN BAGINSKI: Are there any amendments to this section? If not, it will be passed.

The section is passed.

Dr. Pollock.

MR. POLLOCK: Mr. Chairman, this now completes the list of so called traditional rights and I just want to raise with the Chair the first paragraph which the committee has in its report, in which we recommend that this former article II now become article I in the new constitution. We do not want to preempt the powers of the committee on style and drafting but we do think that by elevating it to position as article I it would be in its proper place because of the importance of the subject. Is it necessary to make a motion or is the record sufficient direction to the committee on style and drafting so that it can act?

CHAIRMAN BAGINSKI: I am advised, Dr. Pollock, by the secretary that the committee on style and drafting will take that into consideration. However, I want to call the attention of the delegates that we did pass over one section. Section 14 was temporarily passed.

Dr. Pollock.

MR. POLLOCK: No. It was only the comment that was passed over and I corrected that this morning by bringing in a new comment. Section 14 itself was passed. It was the language of the comment that the committee objected to. However, if there is any doubt, let's go back to section 14 and pass it.

I am advised the journal shows this is passed.

CHAIRMAN BAGINSKI: Mr. Mahinske.

MR. MAHINSKE: Mr. Chairman, I would like to mention that I was the mover at that time and it was my understanding that we were passing over 14 and we would not consider 14 until we had the corrected committee comment in the journal. The corrected committee comment was read to us today but this was not the intention of the motion at the time.

SECRETARY CHASE: May the secretary call the attention of the committee to page 308 of the journal, column 2:

Mr. Lundgren moved that consideration of section 14 be passed temporarily.

Without objection, it was so ordered.

CHAIRMAN BAGINSKI: Dr. Pollock.

MR. POLLOCK: I move it be put again.

CHAIRMAN BAGINSKI: Any amendments to section 14? If not, it will be passed.

Section 14 is passed.

Are there any amendments to the body of the proposal?

SECRETARY CHASE: Mr. Nord offers the following amendment:

1. Amend page 5, after line 20 by inserting a new section to read as follows:

"Sec. —. In the event that any officer or agent of the state or its political subdivisions shall in the performance or under color of authority of his duties violate the rights of any person under this article, said officer or agent shall be liable in an action at law for the damages proximately caused thereby, and the corresponding unit of government shall be jointly and severally liable and have no immunity from such liability: Provided further, That the court in any such action shall also have the power and discretion to prohibit said officer or agent from wilfully committing similar violations against any person in the future under pain of penalty for contempt of court and of the Constitution of the State of Michigan.".

CHAIRMAN BAGINSKI: Dr. Nord.

MR. NORD: Mr. Chairman, I realize that this is quite a lengthy amendment and if there is a procedural way of getting this considered in more detail, I will try to find that method. I might say that I have prepared copies for all the delegates which can be distributed but even with that, I don't think that we are in a position to fully weigh the merits of this provision entirely at this point. What I would like to do is to explain briefly what the object is without going into any details at this point and try to find a procedure whereby the delegates can have a complete opportunity to examine the text.

What I do have in mind eventually — I don't want to move it yet — but I do have in mind that this particular

amendment be offered to the committee on rights and that they consider it. I would simply like to state at this point the purpose of it so we will be clear on that.

I will say frankly that the object of this thing and my feeling is that we should heal up the division that we created during the week on the search and seizure provision. I think it would be a healthy sign if we could find a way to do that. I would not want anyone to have the feeling that we were playing cops and robbers: on the one side was the cops and on the other side the robbers; on one the good guys and the other, the bad guys. I want everyone to know my feeling in this matter is that there is great merit on both sides and that is the reason there was such an even split. If there had been no even split, it would probably be because we were not thinking.

The difficulty with the search and seizure problem is this, the logical difficulty is when a police officer does something wrong, the remedy that is provided is a wrong remedy. The remedy provided by the United States supreme court is to prevent the evidence from being admitted and that injures the public. The right remedy should be to try to prevent the search and seizure. Now, that hasn't been possible to do. My idea here — and I know a number of people are thinking along somewhat similar lines — is to see if there is any way that we could provide a real remedy, an effective remedy.

The object of this amendment that I am offering would be simply, first of all, to restate the fact that the police officer is liable but, in addition to that, to state further that so is the unit of government which has employed him. Now, that never has been the law until recently. The recent decision of the United States supreme court which removes the immunity of municipalities, it seems to me, opens up this possibility but it isn't certain whether they will go that far or not. We could make that certain if we were to enact this provision, that not only is the officer liable, as he is now, but so is the municipality or county, whatever it might be, that has employed him. The reason for doing that is, of course, in that case the person bringing the suit has real hope that he can make a collection, that he can recover judgment and collect, because a jury would not be so unsympathetic in a case like that when they know the community will pay the damages, and not the officer.

Mr. Chairman, is it in order to move that this amendment be referred, or that the committee of the whole recommend that this amendment be referred to the committee on rights, suffrage and elections?

CHAIRMAN BAGINSKI: Mr. Bentley.

MR. BENTLEY: Mr. Chairman, I move this amendment be laid on the table.

CHAIRMAN BAGINSKI: The question is on the motion by Mr. Bentley. As many as are in favor of the motion will signify by saying aye. Opposed, no.

The motion prevails.

Are there any amendments to the body of the proposal?

SECRETARY CHASE: Mr. A. G. Elliott offers the following amendment to the body of Committee Proposal 15:

1. Amend page 2, line 6, after "radio" by striking out the comma and inserting "and" and after "television" by striking out "or other means of communication"; so the language will then read, "or of the press, radio and television."

CHAIRMAN BAGINSKI: Mr. Elliott, do you care to talk on it?

Mr. Heideman is recognized. I understand you want to ask to be excused?

MR. HEIDEMAN: Mr. Chairman and fellow delegates, I do not stand to ask for a constitutional right, but to pray for your indulgence. I would like to board a plane for the north country. I have not seen my family in 2 weeks. Thank you.

CHAIRMAN BAGINSKI: Mr. Hutchinson.

MR. HUTCHINSON: Mr. Chairman, I don't wish to raise any objection to Mr. Heideman's request, but I would like to point out that the committee of the whole has no power to grant an excuse, so if he just leaves — have a good time. (laughter)

CHAIRMAN BAGINSKI: Mr. Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, I was persuaded by the debate that we had on this particular section 2 or 3 days ago that these last words confuse the issue and confuse the minds of a major percentage of this committee, and it is on that basis that I submit the amendment.

CHAIRMAN BAGINSKI: The question is on the amendment.

Mr. King.

MR. KING: Mr. Chairman, I am not quite sure of my parliamentary procedure but I would like an interpretation from the Chair as to what is the effect of Mr. Bentley's motion to lay on the table in the committee of the whole? Is my understanding correct that when the committee rises, the amendment is dead?

CHAIRMAN BAGINSKI: The answer to this, Mr. King, is when the committee rises, it will recommend that Dr. Nord's amendment be laid on the table.

MR. KING: I'd like to hear Mr. Bentley speak to the point.

CHAIRMAN BAGINSKI: Mr. Bentley.

MR. BENTLEY: Mr. Chairman, I believe that at any future time any delegate has the privilege of moving that this be taken from the table of the committee of the whole. Is that not correct?

CHAIRMAN BAGINSKI: In answer to Mr. Bentley, the Chair would like to address himself to Mr. Nord and ask that he withdraw his amendment and present his amendment or your section, whichever it would be, to the committee on rights.

MR. NORD: Mr. Chairman, I have just completed writing a note to the chairman of the committee on rights, suffrage and elections as a suggestion to the committee but I am not withdrawing my amendment from the floor on the basis that I was advised by Mr. Bentley that my amendment is tabled and can be referred to at a later date.

CHAIRMAN BAGINSKI: The reason the Chair offers this advice is there is some doubt here as to whether an amendment can be tabled while we are in committee of the whole. I wonder if Mr. Van Dusen can give us some help on this.

MR. VAN DUSEN: One means, Mr. Chairman, in my opinion, for accomplishing the result suggested by Mr. Bentley is for the committee of the whole to recommend that when the committee rise, the proposed amendment lie on the table. In that event it would be lying on the convention table and any member of the convention could move to take it from the table and refer it to the committee of the whole.

CHAIRMAN BAGINSKI: Are you referring to any particular rule at this time, Mr. Van Dusen?

MR. VAN DUSEN: I am referring to that penultimate authority, Mr. Hutchinson, who happens on this point to agree with me, I think. (laughter)

CHAIRMAN BAGINSKI: Mr. Nord, the Chair would like to address you again. The question seems this: that since this is your amendment, if it is tabled, you take the entire proposal with it.

MR. NORD: I don't want the entire proposal to be tabled with this and I would like to ask the Chair, would it be possible for me to withdraw the amendment until we get back into the convention session, make the motion to amend at that point and have it tabled at that point and so on? Would that be in order?

CHAIRMAN BAGINSKI: That can be done.

MR. NORD: With that understanding, I will withdraw the amendment.

CHAIRMAN BAGINSKI: After we get back into convention, Mr. Nord, what are your intentions with regard to this?

MR. NORD: I would offer the amendment in the convention and then if there were a motion to table it, it would be tabled at that point.

CHAIRMAN BAGINSKI: Then you table the entire proposal there.

MR. NORD: Mr. Chairman, suppose I were, in the convention session, to offer a certain amendment and move to refer the amendment to the committee of the whole whenever the committee of the whole shall be sitting?

CHAIRMAN BAGINSKI: The Chair might advise Mr. Nord that when the committee rises, we get back in the convention, and you could then move that this amendment be referred to the committee on rights.

MR. NORD: If that is the decision of the Chair, that is what I will do.

CHAIRMAN BAGINSKI: Then are you withdrawing your amendment?

MR. NORD: I do, yes.

CHAIRMAN BAGINSKI: Are there any further amendments to the body of the proposal?

SECRETARY CHASE: Mr. A. G. Elliott has offered the following amendment:

1. Amend page 2, line 6, after "radio" by striking out the comma and inserting "and" and after "television" by striking out "or other means of communication"; so the language will then read, "or of the press, radio and television."

CHAIRMAN BAGINSKI: Dr. Hannah.

MR. J. A. HANNAH: Mr. Chairman, I rise to make a statement because too many people are concerned about the possible length of the section with which we are now involved. I feel, as I am sure all of us do, that it was unfortunate that we have had as much feeling exhibited in some of the sessions this week as we have. It has been called to my attention that there is a possibility that the judiciary committee or some group of this convention may be able to work out in the next day or two some agreement that will answer the desires of both of the groups that are disturbed, and when this committee rises and we return to the convention, I propose to move that we defer consideration of the vote on the amendments offered to section 10 on Wednesday until the session of Tuesday.

I make this statement at this time so that we may plan our procedure for the rest of the day, hoping that this may result in a better situation all the way around.

CHAIRMAN BAGINSKI: Mr. Hannah, you will then make that motion after we rise?

MR. J. A. HANNAH: Yes.

CHAIRMAN BAGINSKI: Mr. Leppien.

MR. LEPPIEN: Mr. Chairman and delegates, for the record, shouldn't Mr. Bentley's motion to lay on the table be withdrawn also?

CHAIRMAN BAGINSKI: Unless there is objection, it will be so ordered.

The motion to table is withdrawn.

Mr. Hodges.

MR. HODGES: Speaking in opposition to the Elliott amendment, I voted against the original amendments to the committee report because I felt that what was happening by specifying here, we were restricting the possibility of rights. I felt that when the committee put the word "express" in, the purpose was to encompass the various means of communication that have arisen and will arise in the future.

I am not happy with the amendments that have been made but, certainly, I think Mr. Elliott's amendment again makes further restriction in it by putting in the words "other means of communication." We are realizing that in fact today there are other means of communication besides radio and television and printed matter and that in the future there may be even more and I don't think that when we are writing a constitution that we hope will exist for some time to come, we should further restrict the rights. Again, I think what we should be interested in is broadening rights, not restricting them. Although I think that the intent of Mr. Plank's amendment was to broaden it, I fear this will not be done.

CHAIRMAN BAGINSKI: Mr. Wanger.

MR. WANGER: Mr. Chairman, could I ask the secretary to please read the section as it would read if this amendment is adopted?

SECRETARY CHASE: There were agreed to by the committee of the whole 2 amendments, one by Mr. Wanger and one by Mr. Plank. Mr. Wanger's amendment, after the word "press" inserted a comma and the words, "which liberty shall include". Following that, Mr. Plank's amendment added the words, "radio, television, or other means of communication"; so that, as amended presently, section 4 now reads:

> Every person may freely speak, write, express, and publish his views on all subjects, being responsible for the abuse of such right; and no law shall be passed to restrain or abridge the liberty of speech or of the press, which liberty shall include radio, television, or other means of communication.

Mr. Elliott has offered an amendment to strike out the comma after the word "radio" and insert the word "and" and after "television" strike out the words "or other means of communication"; so the language would then read in part:

> . . . and no law shall be passed to restrain or abridge the liberty of speech or of the press, which liberty shall include radio and television.

MR. WANGER: Thank you.

CHAIRMAN BAGINSKI: Mr. DeVries.

MR. DeVRIES: Mr. Chairman and members of the committee, I have offered an amendment to Mr. Elliott's amendment, to which he has agreed, as has Mr. Plank. It is essentially what Mr. Upton suggested; that we amend this to read, "including radio or television or other news media." This will allow for the development of other news media in this constitution. I think it removes some of the doubt of the present language since it removes doubt of methods of communication.

SECRETARY CHASE: Does the secretary understand that Mr. Elliott has agreed to the amendment to strike out the words "or other means of communication" and insert "or other news media"? The amendment, as revised, would be as follows:

1. Amend page 2, line 6, after "radio" by striking out the comma and inserting "and"; and after "television,", by striking out "or other means of communication" and inserting "or other news media"; so that the language will read, ". . . . or of the press, radio and television, or other news media.".

CHAIRMAN BAGINSKI: The Chair recognizes Mr. Lesinski on the Elliott amendment, as revised.

MR. LESINSKI: I don't know if this is on the Elliott amendment but this is a query. Since this section has been opened for debate, I'd like to know what are the definitions of the words "speech and press"? I believe the words "radio and television" are not germane with the word "press", as radio and television are only methods of conveyance of the spoken word.

CHAIRMAN BAGINSKI: Mr. Hodges.

MR. HODGES: Well, briefly a remark to Mr. Lesinski, I would agree with his remarks but I am again in opposition to the new language because it is restrictive. Not everything that is communication is news media. We are trying to protect the rights of individuals to express themselves and, if we are going to try limiting it to a court to define it only in terms of news media, we are giving ourselves some problems and I think we should vote this amendment down.

CHAIRMAN BAGINSKI: Mr. Van Dusen.

MR. VAN DUSEN: Mr. Chairman and members of the committee, speaking very briefly on this, I certainly subscribe to the general purport of the Elliott amendment as revised, which eliminates the rather vague language "or other means of communication." I don't think that the committee was fully aware the other evening when this amendment was adopted just exactly what we were saying. The language as amended would read:

> . . . and no law shall be passed to restrain or abridge the liberty of speech or of the press, which liberty shall include radio, television, or other means of communication.

In the last session of the legislature I think you will recall some rather considerable dispute and discussion and controversy over a bill regulating billboards along the highways of this state. That discussion and controversy would have been completely a nullity had this language been adopted

because the legislature could not have passed a law which would have restrained billboards. They are a means of communication.

Mr. Gover the other night, I believe, made the very valid point that no municipality could, if this language were adopted in its present form, restrain the use of sound trucks on the streets. Those are means of communication. And I could lengthen the list considerably, indicating the type of perfectly valid legislative or municipal restriction on the means of communication adopted for the benefit of the people as a whole without in any way restricting the freedom of speech or of the press as we have known it for many years. For that reason, I would heartily support the Elliott amendment as revised and urge its adoption.

CHAIRMAN BAGINSKI: Mr. Brown.

MR. T. S. BROWN: I would like to speak in favor of the Elliott amendment with the DeVries revision and concur in what Mr. Van Dusen said for these additional reasons: I think historically and currently the idea of freedom of the press is to encourage a free reign in the traditional means of communication so that ideas of the significance and the progress of mankind should not be curtailed.

In the traditional methods of communication originally with the press, and now through radio and TV, we have an open type of communication in which people have ideas or view news events and attempt to portray them to us in a somewhat open manner.

Now, recently, with the advances in science, in the field of communication — and if you've read about cybernetics, and if you know what the boys at the IBM corporation are doing, and if you know what is going on in the top drawer levels of MIT and similar institutions — you realize that the possibility of several things elucidated in the novel, "1984", for instance, and so on, is rather close to us, and the probability that the actual thought of mankind and the actual thought of us as individuals can be controlled by methods, the exact mechanism of which we are unaware, is very close. And it is possible, as I mentioned the other night — more in jest than anything else — the idea of subliminal communication. This and other fields are proceeding at such a rapid rate that I wonder if we should not draw a distinction between traditional, open, conscious, obvious means of communication and those means of communication which may possibly be used in derogation of our individual and collective rights.

Now, if we continue with the terminology that we have presently, which says ". . . and other means of communication," I think this would open the door to any group or any organization that were to actually seize upon the exact secret of thought-think to perpetuate their ideas at the expense of the rest of us without our being aware of it. And I do want to indicate the scientific possibility of means of communication of which we are unaware being used against the total good of society. Therefore, this terminology seems to me a little dangerous.

CHAIRMAN BAGINSKI: Mr. Allen.

MR. ALLEN: Mr. Chairman, I also would like to speak in favor of the Elliott amendment. I think that the constitutional guarantee as it stood probably was adequate because the word "press" referred to the printed word and the word "speech" to the spoken word and "radio and television" are either the printed or the spoken word. However, I think that the new industry of television and radio had a point in wanting to be recognized and the amendment which was passed did do it. But it bothered me because it added this phrase which the Elliott amendment would take out, "and other means of communication."

I know in our city of Kalamazoo — and this is true in all cities — we have had reasonable regulations on the use of sound trucks and if we hadn't had them we would have sound trucks running up and down our streets blaring all the time. We also have — and other cities have — reasonable regulations on the use of placing loudspeaking devices in store windows or store doorways which blare out in the street. Now, the courts have allowed us, under today's law, to make these restraints but the courts have also used the existing provisions of the state constitution to see that a city or a municipality could not do this so it would abridge the freedom of speech.

Now, I have been afraid that when we added the phrase "and other means of communication" we would take away the right to protect the public from this type of regulation which has been done in the public interest, has been sanctioned by the supreme court, and yet we haven't deprived anyone of any liberties.

So, Mr. Hodges, I don't think we are taking anything away here. We may be granting something in addition by what we have done. I am not so sure that we have but I think what we will be doing by adding the words or keeping the words in, "other means of communication," we really will be taking a right away from the public to be protected in its right of privacy.

CHAIRMAN BAGINSKI: The question is on the Elliott amendment, as revised, and the Chair will recognize Mr. Upton.

MR. UPTON: I am certainly glad to hear all the support we are receiving on this news media. The other night I thought it was the most important thing for us to consider. As Glenn has said, you must protect the public as well as the individual's rights. We are working for the entire state. I believe this amendment of Mr. Elliott's will do this. In our means of communication we are talking about the news media, which we are protecting and granting to the rights of the people. Thank you.

CHAIRMAN BAGINSKI: Mr. Hanna.

MR. W. F. HANNA: First a question, Mr. Chairman. I have a further amendment. Will this be read before the Elliott amendment is passed on or will the Elliott amendment be disposed of?

CHAIRMAN BAGINSKI: We will first dispose of the Elliott amendment.

MR. W. F. HANNA: I would like then to support somewhat Mr. Hodge's position. I am worried about the right of the pamphleteer or the individual, and the word "press" as we are now attempting to describe it as being limited, I am afraid, to the established news media. I am certain that the original use of the word "press" meant the printed word. My amendment — and I merely want to call it to your attention — simply strikes out "of speech or press" and after the word "abridge" says that no law shall ever be passed to restrain or abridge these liberties, leaving it that no law ever will be passed interfering with the right to speak, write, express or publish one's views.

I am sure that this is the classical concept of our freedom of speech. It is not limited to news media but is limited to my right to write an individual letter or individual pamphlet. And if we insert the words "news media", we are tending to get into the field of limiting the right of Thomas Paine and others, and I respect that right, subject to reasonable police regulation, as city ordinances go, that I can't dirty the streets or plug your ears with sound media.

CHAIRMAN BAGINSKI: Mr. Hodges.

MR. HODGES: I was only getting up for the purpose of replying as a point of clarification of my remarks since my name was mentioned. I was going to point out that sound cars can be used for news media too. So this doesn't really answer that problem.

I am totally concerned again — and I understand there is an amendment on the secretary's desk which would go back to the original language of the committee which I think is wise — because I think we are now seeing the complexities we get ourselves into when we are trying to specify these various means of communication.

Again, I just point out for all practical purposes, everything under radio and TV are handled by the federal government and we would have very little that we could restrict anyway.

CHAIRMAN BAGINSKI: Dr. Pollock.

MR. POLLOCK: Mr. Chairman, this discussion almost

convinces me that I should move a reconsideration of the vote by which this section was adopted so we can go back to the language which the committee very carefully recommended to you. If there is a strong sentiment in this direction, I would be glad to make such a motion. In other words, we have already indicated here that we are getting into trouble by the amendment which was put in. The committee advised that that is exactly what we were doing. Now it seems it is pretty well demonstrated here on the floor.

CHAIRMAN BAGINSKI: The Chair would like to advise Dr. Pollock that we have a number of amendments here. We would like to dispose of those first before we take up your motion to reconsider.

Mr. Habermehl.

MR. HABERMEHL: Mr. Chairman, may I ask the secretary to read the section as amended by Mr. Hanna's amendment?

SECRETARY CHASE: Mr. Hanna has filed an amendment, which is not now for consideration. It will be taken up a little later. His amendment would, on page 2, line 6, after "abridge" strike out the remainder of the language in the section and insert the words "these liberties"; so the language would then read, ". . . and no law shall be passed to restrain or abridge these liberties." Presently pending, however, is the amendment offered by Mr. Elliott and revised by Mr. DeVries.

CHAIRMAN BAGINSKI: The question is on the amendment, as revised, offered by Mr. Elliott.

Mr. Madar.

MR. MADAR: I would like to support Delegate Hodges in his thought that there are other forms of news media and I want to take into consideration something that's happening right here at the present time. I, for instance, have introduced a proposal within a subcommittee which will affect the public utilities and the rate payers of these utilities' services. Now, I have submitted copies of my proposal to the news media — newspapers, radio stations and various others. Now, this started approximately a week or 10 days ago. I haven't seen a line nor a word regarding this proposal, though this proposal is as important to the people as I would say 98 per cent of the proposals which they have published.

I realize that if this proposal is published and if the people — and I am now talking of the citizens of this state — were to see, they would storm down on the delegates of this constitutional convention and insist that the proposal be passed. I can see how this would not be very good for advertising agencies or things of this sort.

Now, I want to say this: that I would like, so that I could get this across to the people at least in my district, to get out my loudspeaking system — and possibly I don't need one with as good a voice as I have — (laughter). However, I am going to try to take care of my throat by using that loudspeaker, if I can. However, cities like Grosse Pointe say, "Oh no, Mr. Madar, you can't use a loudspeaker in our town, no matter if it is news media." And so they are immediately cutting off free speech. (laughter)

Laugh, if you will, gentlemen and ladies, but just think about this. This may occur to you some day and let's not stifle free speech.

CHAIRMAN BAGINSKI: The question is on the Elliott amendment, as revised.

Mr. Van Dusen.

MR. VAN DUSEN: Mr. Chairman, I can't refrain from commenting that perhaps the news media felt that Mr. Madar's remarks did not require further amplification. (laughter)

The reason I rise, however, is to say that while I would prefer the committee language, or the language suggested by Mr. Hanna, to the language of the Elliott amendment, I nevertheless greatly prefer the language of the Elliott amendment to the section in its present form. Therefore, I would urge you to vote yes on the Elliott amendment and then if you can further improve it, proceed to do so.

CHAIRMAN BAGINSKI: Mr. Lesinski.

MR. LESINSKI: Mr. Chairman, perhaps we are confused because we are chiefly concerned with basic rights and not with the media used for these basic rights.

CHAIRMAN BAGINSKI: Mr. Ford.

MR. FORD: Mr. Chairman, we have before the secretary a jointly sponsored amendment by Mr. Danhof and myself that would strike all of the verbiage that has been added to this section and go back to the language as recommended by the committee and I'd like to offer it at this time.

CHAIRMAN BAGINSKI: Dr. Pollock.

MR. POLLOCK: Mr. Chairman, I move the committee do now rise and report to the convention.

CHAIRMAN BAGINSKI: The question is on the motion that the committee rise. As many as are in favor, signify by saying aye. Opposed, no.

The motion prevails.

[Whereupon, the committee of the whole having risen, Vice President Downs resumed the Chair.]

VICE PRESIDENT DOWNS: Mr. Baginski.

MR. BAGINSKI: Mr. President, the committee of the whole has under consideration one proposal and made certain amendments thereto. The secretary will make a detailed report.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 15,** A proposal to amend article II pertaining to the declaration of rights. It made several amendments thereto and has come to no final resolution thereon.

This completes the report of the committee of the whole.

VICE PRESIDENT DOWNS: Dr. Hannah.

MR. J. A. HANNAH: Mr. President, would it be in order for me at this time to make the motion that I indicated I wanted to make earlier or is it necessary to wait until the whole section is concluded?

VICE PRESIDENT DOWNS: I am advised that that would be in order when the committee of the whole has reported the entire article or proposal to the floor and not at the present time.

Are there any announcements?

Mr. Elliott.

MR. A. G. ELLIOTT: Mr. President, I merely wish to remind the committee on local government that under our schedule, when we do adjourn we will reconvene for lunch 15 minutes thereafter, across the street at the Mason cafeteria, and that provisions have been made for a separate table for our committee.

VICE PRESIDENT DOWNS: Mr. Brake.

MR. BRAKE: Mr. President and ladies and gentlemen of the convention, I think a word of explanation is needed. You have noticed on your desks a committee proposal and comment thereon. Our report was submitted this morning. It involves state credit and state borrowing and is a matter of some slight consequence. Members of the committee reminded us that this will not appear in the journal until Monday. Many of you will not get back until late Monday. It will be eligible for consideration Monday night and yet you will have had no opportunity to examine it. Therefore, we have placed on each of your desks an exact copy of what will appear in the journal on Monday, so that if you wish to amuse yourselves in the field of finance over the weekend, you have the opportunity to be prepared for whatever may happen Monday night.

VICE PRESIDENT DOWNS: Judge Dehnke.

MR. DEHNKE: Mr. President and gentlemen and ladies of the convention, I intended to make this statement yesterday and did not get the opportunity. I desire to clarify the record of Wednesday's proceedings in order to guard against possible misinterpretation. My observations were not occasioned by anything that had been said by my long time and good friend Delegate Bledsoe; quite the contrary. The protests which were voiced by several other delegates arose out of statements emanating from an entirely different source. Mr. Bledsoe spoke with eloquence, warmth and persuasiveness, but free

from anything that could reasonably be considered offensive, and I wish to make sure that the record is clear on this point. Thank you.

VICE PRESIDENT DOWNS: Are there any other announcements?

SECRETARY CHASE: Following the announcements of the committee meetings that the secretary has at hand, he also has available here the latest weather report.

The committee on administration will meet in the conference room next Wednesday, January 17, at 1:00 o'clock. Walter DeVries, chairman.

The committee on finance and taxation will meet in room E January 15, Monday, at 6:00 o'clock.

The committee on judicial branch will meet in room B Monday, January 15, at 3:00 o'clock in the afternoon. Mr. Danhof, chairman.

The meeting of the subcommittee on higher education is invited to meet with the subcommittee on primary and secondary education at 4:00 p.m. Monday in room J to consider matters relating to the state board of education. Roscoe Bonisteel, chairman.

The committee on education will meet Tuesday, January 16, at 8:30; Wednesday, the seventeenth, immediately following the session; and Thursday, the eighteenth, at 10:30 in the morning. Full committee meetings to consider subcommittee reports.

The weather report: fairly clear; snowing over most of the lower peninsula. Route 131 is questionable; bad in spots only. Driving conditions are generally fair.

Those are all of the announcements, Mr. President.

VICE PRESIDENT DOWNS: Dr. Anspach.

MR. ANSPACH: Mr. President and fellow delegates, for the last 3 days we have had some very interesting discussions on a very fundamental basis of our American life. I think we should pay tribute to a person who brought about, or helped to bring about, this convention. I am referring to Paul Revere and his ride. To refresh your memories of that ride, I quote the words of the youngster who wrote the essay on Paul Revere. He described it as follows:

Clopp, clopp, clopp — knock, knock, knock.
Who's there?
Paul.
Paul who?
Paul Revere.
Come in, Paul. Hello, Paul.
Hello, Sam.
Have a cup of coffee?
No, I'm in a hurry.
You're in a hurry?
Yeh. The British are coming.
The British are coming?
Yeh.
Goodbye, Paul.
Goodbye, Sam.
Clopp, clopp, clopp. (laughter and applause)

VICE PRESIDENT DOWNS: Thank you, Mr. Anspach. Mr. Faxon.

MR. FAXON: Before I make the customary motion at this time, I want to announce that one of our delegates has just had another grandchild. Mrs. Lillian Hatcher has a baby grandson who was born last week, the son of Mr. and Mrs. James Williams, Mrs. Williams being the daughter of Mrs. Hatcher. I know you can't believe that she could actually have any grandchildren because she always looks so young. (applause)

In view of Mrs. Hatcher's statement on the women earlier, I just thought I'd mention that on this day in the year 1932 the state of Arkansas elected Hattie Carroway the first woman senator to serve in the senate.

With that comment, I move that we adjourn.

VICE PRESIDENT DOWNS: All those in favor, signify by saying aye. Opposed, by no.

The convention is adjourned until next Monday at 8:00 p.m.

[Whereupon, at 12:40 o'clock p.m., the convention adjourned until 8:00 o'clock p.m., Monday, January 15, 1962.]

FIFTY-SEVENTH DAY

Monday, January 15, 1962, 8:00 o'clock p.m.

PROCEEDINGS

PRESIDENT NISBET: The convention will please come to order.

The **invocation** tonight will be given by one of our delegates, Mrs. Koeze.

Will you please rise.

MRS. KOEZE: Almighty God, who has given us this good land for our heritage, we humbly beseech Thee that we may always prove ourselves a people mindful of Thy favor and glad to do Thy will. Bless our land with honorable industry, sound learning, and pure manners. Save us from violence, discord, and confusion; from pride and arrogancy, and from every evil way. Defend our liberties, and fashion into one united people the multitudes brought hither out of many kindreds and tongues. Endue with the spirit of wisdom those to whom in Thy name we entrust the authority of government, that there may be justice and peace at home and that, through obedience to Thy law, we may show forth Thy praise among the nations of the earth.

In the time of prosperity, fill our hearts with thankfulness, and in the day of trouble suffer not our trust in Thee to fail; all which we ask through Jesus Christ our Lord. Amen.

PRESIDENT NISBET: The **roll call** will be taken by the secretary. Those present, please vote aye.

SECRETARY CHASE: Have you all voted? The voting machine is now locked, and the attendance will be recorded.

Mr. President, a quorum of the convention is present.

Prior to today's session, the secretary received the following requests for leave:

Mr. Anspach called from Mt. Pleasant to report that Mrs. Anspach caught her heel, fell down some stairs, and is presently in the hospital. The surgeon thinks there are no fractures, but he wishes to make sure. He wishes to be excused from tonight's session.

Mr. Heideman called from Hancock. His scheduled plane, which he expected to take in time to be here, will not take off until 7:25 because of weather conditions. He wishes to be excused.

Mr. Woolfenden phoned from Detroit. He has a previous speaking engagement that must be filled and asked to be excused.

PRESIDENT NISBET: Without objection, the requests are granted.

SECRETARY CHASE: Absent with leave: Messrs. Anspach, Bentley, Heideman, Snyder, Thomson and Woolfenden.

Absent without leave: Messrs. T. S. Brown and Gust.

PRESIDENT NISBET: Without objection, the delegates are excused.

Reports of standing committees.

SECRETARY CHASE: There are no standing committee reports on file, Mr. President.

PRESIDENT NISBET: Mr. DeVries.

MR. DeVRIES: Mr. President, may I make an oral report on behalf of the committee on administration? Upon the request of many of the delegates, the committee on administration is happy to announce the opening of the constitution hall restaurant service for delegates and staff. It features international cuisine of sandwiches, milk and coffee. The hours are as follows: Monday, 5:30 to 7:30, Tuesday, Wednesday and Thursday from 11:30 to 1:30, and 5:30 to 7:30 in the evening and on Friday, 11:30 to 1:30. That concludes our report.

PRESIDENT NISBET: Thank you, Mr. DeVries.

Reports of select committees.

SECRETARY CHASE: None.

PRESIDENT NISBET: Communications from state officers.

SECRETARY CHASE: None.

PRESIDENT NISBET: Second reading of proposals.

SECRETARY CHASE: Nothing on that calendar.

PRESIDENT NISBET: Third reading of proposals.

SECRETARY CHASE: Nothing on that calendar.

PRESIDENT NISBET: **Motions and resolutions.**

SECRETARY CHASE: Mr. Pollock, on behalf of the committee on declaration of rights, suffrage and elections offers **Resolution 64,** A resolution to memorialize the legislature in the matter of the deletion of section 22 of article II of the 1908 constitution.

Following is Resolution 64 as offered:

Resolved, That the legislature be informed that the deletion of section 22 of article II is not to be construed as opposing the definition of subversion by the legislature, or providing a statutory crime of subversion; and be it further

Resolved, That the last paragraph is held to be of extremely doubtful constitutionality as a denial of due process of law and that such a provision would not, in any case, be within the powers of the legislature; and be it further

Resolved, That the provision is held to be so poorly drafted that its exact meaning cannot be determined; and be it further

Resolved, That copies of this resolution be transmitted to the legislature.

PRESIDENT NISBET: Referred to the committee on rules and resolutions.

Mr. DeVries.

MR. DeVRIES: Mr. President, I move that the reasons submitted by the committee on miscellaneous provisions and schedule in support of Committee Proposal 19 as appears on page 301, Journal 54, paragraph 5, be corrected in the following manner. The report reads: "While the power for a sovereign state to defend itself is clear, . . ."

We would like to strike out "even absent provision in the constitution, without" and then insert "without a constitutional"; so that the language will then read, "While the power for a sovereign state to defend itself is clear, without a constitutional provision it would not be clear in what branch of government the power resided."

PRESIDENT NISBET: Unless there is objection, a correction will be made in the journal. Hearing no objection, it is ordered corrected.

[Correction made, see below, page 593.]

Unfinished business.

SECRETARY CHASE: Nothing on that calendar.

PRESIDENT NISBET: Special orders of the day.

SECRETARY CHASE: Nothing on that calendar.

PRESIDENT NISBET: **General orders.**

Mr. Baginski.

MR. BAGINSKI: Mr. President, I move the convention resolve itself into committee of the whole for the purpose of considering proposals on the general orders calendar.

PRESIDENT NISBET: The question is on the motion of Mr. Baginski. All in favor say aye. Opposed, no.

The motion prevails.

[Whereupon, Mr. Baginski assumed the Chair to preside as chairman of the committee of the whole.]

CHAIRMAN BAGINSKI: The committee will be in order. The Chair recognizes Mr. Iverson.

MR. IVERSON: Mr. Chairman, if I am in order at this time, I would like to move that consideration of section 10 of the first order of business on general orders be placed on special orders for Friday of this week. If I am not in order, I will move that further consideration of the whole article be placed on special orders for Friday of this week.

CHAIRMAN BAGINSKI: Mr. Pollock.

MR. POLLOCK: Section 10 has already been considered. The motion to reconsider was turned down. So I am afraid I don't understand Mr. Iverson's motion. Could he give some reason why this should be done?

CHAIRMAN BAGINSKI: Do you care to explain, Mr. Iverson?

MR. IVERSON: I think this matter was explained to the chairman of this committee. The delegates will remember that at the close of the session, I believe, Friday, Mr. W.F. Hanna suggested that this matter ought to be discussed as to whether or not there was a possibility of a compromise which would be satisfactory to everyone, and I would certainly see no objection to surveying that possibility.

CHAIRMAN BAGINSKI: Mr. Iverson, the Chair might suggest that this motion be made after the committee of the whole rises.

MR. IVERSON: I don't think so. I think that is improper because we have this matter before us at this time. I think it is entirely proper at this time as to whether or not the committee of the whole takes action to place this on special orders on Friday, as I have requested.

CHAIRMAN BAGINSKI: Dr. Pollock.

MR. POLLOCK: Why Friday? Why not Tuesday, Wednesday, Thursday?

MR. IVERSON: Make it any time you want to.

CHAIRMAN BAGINSKI: The Chair would like to ask Mr. Iverson: Mr. Iverson, do you want to preclude any further consideration of the other sections of the body of the Proposal?

MR. IVERSON: I made the first motion, if it were in order, that the consideration of section 10 be placed on special orders for Friday. If that is not in order, then I move that further consideration of the entire article be postponed until Friday on special orders.

CHAIRMAN BAGINSKI: Mr. Iverson, I am advised that if you will permit consideration of all the other parts of the proposal, then, after we are through, we will take up the matter of section 10 and make that a special order for a certain day.

MR. IVERSON: I have no objection to that. I would assume, then, that the complete article would not be voted out of the committee of the whole.

CHAIRMAN BAGINSKI: No, because you would have section 10 under consideration and that would take it with it.

MR. IVERSON: I have no objection.

CHAIRMAN BAGINSKI: Mr. Downs.

MR. DOWNS: I wonder if I could ask, through the Chair, if Mr. Iverson would agree to either Tuesday, Wednesday or Thursday instead of Friday. My reason for asking it, Mr. Iverson, is that I believe Delegate DeVries had a rather unfortunate experience presenting something to the convention on Friday. I thought it may be better to do it on one of the other days. I have no objection to the matter being held over.

MR. IVERSON: I have no objection, except that I don't want to delay it any longer than necessary.

MR. DOWNS: I meant Tuesday, Wednesday or Thursday before this coming Friday.

MR. IVERSON: I would agree to some date next week.

MR. DOWNS: No. That would be this week. I think your suggestion was Friday of this week. Could I ask of Mr. Iverson if he would agree to Thursday of this week?

MR. IVERSON: I thought you said of next week.

MR. DOWNS: No. I am sorry. I misspoke myself if I did. I meant one of the days before Friday of this week.

MR. IVERSON: No, I have no objection.

CHAIRMAN BAGINSKI: Could I inquire then, if either Wednesday or Thursday is agreeable to Mr. Iverson?

MR. IVERSON: In view of your suggestion, Tom, I would suggest Thursday, but we will renew the motion when consideration of the rest of this article is made.

CHAIRMAN BAGINSKI: The secretary will read.

SECRETARY CHASE: From the committee on declaration of rights, suffrage and elections, by Mr. Pollock, chairman, **Committee Proposal 15,** A proposal to amend article II pertaining to the declaration of rights.

For last previous action by the committee of the whole on Committee Proposal 15, see above, page 562.

This has been under consideration in the committee of the whole, and at the time the committee rose last Friday there was an amendment pending to section 4, on page 2, line 6. The language of the amendment offered by Mr. A. G. Elliott had been revised and was as follows:

[The amendment was again read by the secretary. For text, see above, page 571.]

CHAIRMAN BAGINSKI: The question is on the amendment by Mr. Elliott as revised by Mr. DeVries. As many as are in favor of the amendment will signify by saying aye. Opposed, no.

The amendment, as revised, is not adopted.

The secretary will read.

SECRETARY CHASE: There has been filed with the secretary an amendment by Messrs. Ford and Danhof as follows:

1. Amend page 2, line 6, after "press" by striking out the remainder of the section and inserting a period; so that the language will then read:

> Sec. 4. Every person may freely speak, write, express, and publish his views on all subjects, being responsible for the abuse of such right; and no law shall be passed to restrain or abridge the liberty of speech or of the press.

CHAIRMAN BAGINSKI: The question is on the amendment by Messrs. Ford and Danhof.

Mr. Danhof.

MR. DANHOF: I would like to bring to the attention of the delegates that there is on their desks—at least I found one on mine, and I think all of them have it—a memorandum prepared by Dr. Kelly regarding this particular section.

I would imagine that this matter was prepared somewhat indirectly at the behest of myself when I spoke to Mr. Stevens and suggested that, after the committee of the whole had adopted the previous amendment, it would be well to have somebody research the matter, and particularly to endeavor to point out to this committee that there is an historical difference between radio-television and the spoken and written word. Dr. Kelly is quite frank to admit that it is the argument of the paper that this is of dubious value.

I state this not because of any matter or any animosity that I have for the radio and TV; quite the contrary. But I do feel that if the committee does not delete the language we added previously, we will, in effect, be doing a great deal of harm rather than good. It seems clear to me at the present time that radio and television are controlled almost completely, if not 100 per cent, by the federal government. However, the time may arrive, that none of us can foresee, when the states may be returned a certain part of control of the radio and

television media and that regulatory laws and statutes will become necessary.

You will note that in the federal government field there has always been a great deal of restraint over radio and television which has not been present pertaining to newspapers, books, periodicals, and magazines; that due to the nature of the media and the monopolistic status of the same, the fact that there are only so many television channels available, and the fact that there are only so many bands available on the radio, it is felt that rather than have open competition, there is regulation. I feel that rather than to raise television and radio, as I think the hopes of this amendment were, we might well be allowing for regulation of the press by putting them all on an equal plane.

I submit this is a long memorandum but, if you will read the first and second sentences and glance through it, you will find that there is a great deal of difference.

You can write and you can speak many more things than you are able to transmit over the air waves. Radio and television are required to give equal time to various sides of a political question. This is not true historically as applies to the press. I think this committee should realize that press is not to be construed in the narrow sense as we sometime use it, meaning only the commercial newspaper industry in this country. The press means the right of you and I to write a pamphlet and prepare a brochure in any particular field. I think that this memorandum sets it forth in very precise terms and I would urge a favorable vote.

CHAIRMAN BAGINSKI: The question is on the amendment.

Mr. Plank.

MR. PLANK: Mr. Chairman, fellow delegates, inasmuch as this was just now placed on my desk, I would like to have further time for consideration of it. With all due respect to Dr. Kelly, he and I disagree in several sections of this paper. But if the committee would prefer, I think I would subscribe to Mr. Hanna's amendment and would urge that you support that if you don't want to give me further time to give a little study to Dr. Kelly's release.

CHAIRMAN BAGINSKI: The Chair recognizes Mr. Ford.

MR. FORD: Mr. Chairman, the purpose of the amendment was to return us to the language originally proposed by the committee, which was considered by the body before the amendments were made to it, and this would bring us back closer to the language of the federal constitution.

It is the view of some of us that by adding the language that has been proposed here, rather than broadening the protection of free speech, we would be limiting it because we would be identifying it with the rather narrow concept of communication rather than the broad concept that it now has by reason of the many favorable decisions which have been rendered with respect to the federal provisions and decisions rendered with respect to state laws. For this reason we feel that this is a move toward returning to a well defined area of the law, and is the safe course in view of the fact that radio and television have been ruled upon in numerous cases and have been more than adequately protected in the same manner as the press and other means of communication under the present language.

CHAIRMAN BAGINSKI: The Chair recognizes Mr. Downs.

MR. DOWNS: Mr. Chairman, I wish to say that I think the committee report which the Danhof and Ford amendment would have us support is preferable to the additions we made. I feel that by adding radio and television and the other terms, we may have inadvertently weakened the original intent. This does have the historic terms "liberty of speech and press." I am inclined to think that Delegate Hanna's amendment, using the word liberty, is grammatically a little better form, though I do have an emotional attachment to the "liberty of speech or press" term.

If Mr. Plank wishes to carry this over and have an opportunity to read the memo, I certainly would have no objection to that but I think either the Danhof and Ford amendment or the Hanna amendment will get at the intent of what we were trying to discuss last week.

CHAIRMAN BAGINSKI: The Chair recognizes Mr. Plank.

MR. PLANK: As I said earlier, if the committee would like to vote favorably on Mr. Hanna's amendment, I believe I would rest my case there.

CHAIRMAN BAGINSKI: The question is on the Ford and Danhof amendment. As many as are in favor of the amendment will signify by saying aye. Opposed, no.

The amendment is adopted.

Mr. Plank.

MR. PLANK: Mr. Chairman, I believe I would like a division on that last vote. From where I sit it didn't seem like it carried.

CHAIRMAN BAGINSKI: Is there support for division? Will you rise? Sufficient number up. As many as are in favor of the Ford and Danhof amendment will rise.

SECRETARY CHASE: Seventy-four.

CHAIRMAN BAGINSKI: Those opposed. I am advised 74 is a majority of the complete membership.

Therefore the amendment is adopted.

SECRETARY CHASE: Mr. W. F. Hanna has filed the following amendment:

1. Amend page 2, line 6, after "abridge" by striking out the balance of the section and inserting "these liberties."; so the language will then read, "...and no law shall be passed to restrain or abridge these liberties.".

CHAIRMAN BAGINSKI: Mr. Hanna.

MR. W. F. HANNA: Mr. Chairman, the reason for doing this is not to change the intent of the federal constitution, but to solve what has developed historically now that we have means of communication other than speech or press, to-wit: the dramatic arts or movies and television.

Now, the words "these liberties," refer back to the words in the first, in the third and fourth lines, "speak, write, express, and publish", and we eliminate the egotistical argument that radio and TV should be treated equally with press, when press is construed purely as newspaper. I think the liberties that we want to protect are my right as a rebel to speak, write, express or publish my views at any time and I believe that if the founding fathers were faced with the various means of communication that we are now confronted with and the development of the newspaper as a commercial enterprise, as we now have it, rather than the private newspaper of the period of the revolution, this language might well have been written by our founding fathers rather than the words "speech or press."

CHAIRMAN BAGINSKI: The question is on the amendment.

Dr. Norris.

MR. NORRIS: Mr. Chairman, I rise to oppose the Hanna amendment because I believe the words which are sought to be stricken are words that have been the ancient liberties of the American people and the people of England. They indicate not so much speech and press in a technical sense as they indicate the spoken word and the written word and I think that by limiting them we do not declare this as a declaration of rights, we limit this as a declaration of rights. And for this which I believe a cogent reason, we ought to vote against the Hanna amendment.

CHAIRMAN BAGINSKI: The question is now on the Hanna amendment. As many as are in favor of the amendment will signify by saying aye. Opposed, no.

The Chair is in doubt. Those in favor will—

Mr. Brown.

MR. G. E. BROWN: Mr. Chairman, it occurs to me, in accordance with the order of the Chair previously, that this amendment, although I may be sympathetic to it, is not in order due to the fact that it is contradictory to the one just adopted.

CHAIRMAN BAGINSKI: Would you explain that further?

MR. G. E. BROWN: Mr. Chairman, having adopted the Danhof and Ford amendment, it is inconsistent with the Hanna amendment, and therefore would not be properly before the body, since it is in conflict with the Danhof and Ford amendment just adopted.

CHAIRMAN BAGINSKI: Mr. Brown, will you tell us more about this? (laughter)

The question was on the amendment.

Mr. Plank.

MR. PLANK: Did the Chair rule we are going to vote on the amendment?

CHAIRMAN BAGINSKI: Well, we did vote on the amendment—not on the Hanna amendment. The Chair rules the Hanna amendment is in order.

Now the question is on the adoption of the Hanna amendment.

MR. PLANK: Mr. Chairman, would you be kind enough to have the secretary read the amendment again, please?

SECRETARY CHASE: Mr. Hanna has offered the following amendment:

[The amendment was again read by the secretary. For text, see above, page 577.]

CHAIRMAN BAGINSKI: Those that are in favor of the Hanna amendment will please rise.

SECRETARY CHASE: Sixty.

CHAIRMAN BAGINSKI: Those opposed.

SECRETARY CHASE: Fifty-six.

CHAIRMAN BAGINSKI: The amendment is adopted.

Are there any further amendments?

SECRETARY CHASE: Mr. Faxon has filed the following amendment:

1. Amend page 2, line 6, after "abridge the" by striking out "liberty" and inserting "freedom".

CHAIRMAN BAGINSKI: Mr. Faxon.

MR. FAXON: Fellow delegates, I just insert this word because we do talk about this in terms of freedom of speech and freedom of the press. The federal constitution refers to it as freedom of speech and refers to this as freedom. The other constitutions of the states that made up the old northwest, Ohio, Indiana, Wisconsin and Illinois, refer to it as freedom and I think it is much more consistent with the language to refer to this in terms of freedom rather than liberty.

It is a small point, but I though we might consider it here. Freedom is the word that has been used more frequently and we do talk about this as freedom, the freedom of speech. That is all.

CHAIRMAN BAGINSKI: Mr. Stevens.

MR. STEVENS: Mr. Chairman, the committee has no strong feelings on this point. We simply used the word that was in the Michigan constitution. We have felt all along that there is no point in changing words unless there is some strong reason for it. Our only point is that if Delegate Faxon thinks this is a better word, the burden is upon him to prove that it should be freedom and not liberty. I don't think it is going to change the meaning in any respect.

CHAIRMAN BAGINSKI: The Chair recognizes Mr. Van Dusen.

MR. VAN DUSEN: Mr. Chairman, a point of order. I am not exactly sure what Delegate Faxon now asks us to vote on in view of the action of the committee in adopting the Hanna amendment.

CHAIRMAN BAGINSKI: Mr. Faxon.

MR. FAXON: I think now it would be freedoms rather than the freedom of speech as I had originally thought it would be if the original committee report were adopted. So it would be "abridge these freedoms."

SECRETARY CHASE: Mr. Faxon has revised his amendment to read as follows:

1. Amend page 2, line 6, after "abridge these" by striking out "liberties" and inserting "freedoms"; so the language will then read, ". . . and no law shall be passed to restrain or abridge these freedoms."

CHAIRMAN BAGINSKI: The Chair recognizes Senator Hutchinson.

MR. HUTCHINSON: Thank you, Mr. Chairman. Mr. Van Dusen raised the same point I wanted to.

CHAIRMAN BAGINSKI: Mr. Brown.

MR. G. E. BROWN: A point of information. I am now confused as to exactly where we stand. As I recall, we adopted the Danhof amendment by 74 votes. We have now adopted the Hanna amendment by 60 votes. Where do we stand on this proposal at this particular moment?

CHAIRMAN BAGINSKI: Mr. Stevens.

MR. STEVENS: It is a very simple matter. Delegate Faxon likes the word freedom rather than liberty, so he wants to change the word liberty to freedom. I don't think it would change the meaning. He wants to follow the federal constitution and some other states. The committee saw fit to follow the Michigan constitution which has used this word all these years, we thought, with satisfaction. That's all there is to it. Do you want to change the wording from the word liberty or liberties, as it is in the journal, to freedom? The committee sees no point to it unless Delegate Faxon wants to support his argument by sufficient reasons.

CHAIRMAN BAGINSKI: The Chair recognizes Mr. Norris.

MR. NORRIS: Mr. Chairman, I rise to support the suggestion made by Mr. Faxon. I believe there is a syntactical question here. You are creating a right of freely speaking, freely writing, freely expressing, freely publishing, and certainly it seems to be consistent with the spirit of the Hanna amendment to change the terms in the first sentence of this particular section, because you are thinking in those terms in the first sentence of this particular section.

CHAIRMAN BAGINSKI: Mr. Faxon.

MR. FAXON: Just an additional word: liberty, of course, is from the Latin liber, and freedom is from the anglo saxon derivation, and so it is more in our tradition of American anglo saxon tradition to use the word freedom of speech. I think this can be shown as you go a little further back.

CHAIRMAN BAGINSKI: Mr. Hutchinson.

MR. HUTCHINSON: Mr. Chairman, I would like to suggest to the committee seriously—when we now spend all of our time arguing about the meaning of words—that we have a committee on style and drafting for that. Why waste the time of the committee of the whole arguing on a point of this nature? Make your argument before the committee on style and drafting and then it will come back for a second reading and you can debate the substance of it then.

CHAIRMAN BAGINSKI: The question is on the Faxon amendment. Mr. Stevens.

MR. STEVENS: Mr. Chairman, the committee supports Delegate Hutchinson's idea that these things should go to the committee on style and drafting and be reported back, at which time, if the words aren't satisfactory to the delegates, they still have another chance.

CHAIRMAN BAGINSKI: The question is on the Faxon amendment. All in favor signify by saying aye. Opposed, no.

The amendment is not adopted.

Any further amendments?

SECRETARY CHASE: That is all of the amendments that have been filed, Mr. Chairman.

CHAIRMAN BAGINSKI: Are there any further amendments to the body of the proposal?

Mr. Iverson.

MR. IVERSON: I renew my motion at this point.

CHAIRMAN BAGINSKI: Mr. Iverson moves that any further consideration of this proposal be postponed until Thursday, January 18. As many as are in favor of the motion, signify by saying aye. Opposed, no.

The motion prevails.

CHAIRMAN BAGINSKI: Mr. Elliott.

MR. A. G. ELLIOTT: In the adoption, or in the proposed amendment, should we not have passed upon that section before? You didn't rule that that section had passed, as I understand it.

CHAIRMAN BAGINSKI: Section 4?

MR. A. G. ELLIOTT: Yes, section 4 as amended.

CHAIRMAN BAGINSKI: Are there any amendments to section 4, as amended? If not, it will pass.

Section 4, as amended, is passed.

The Chair will advise now that the motion to postpone until Thursday has prevailed.

Dr. Pollock.

MR. POLLOCK: A parliamentary inquiry, Mr. Chairman. Does that mean this committee does not report out to the convention the proposal as finally amended?

CHAIRMAN BAGINSKI: That is correct.

MR. POLLOCK: Section 10 of article II?

CHAIRMAN BAGINSKI: That is right.

MR. POLLOCK: In other words, that remains in the committee of the whole?

CHAIRMAN BAGINSKI: That is right.

SECRETARY CHASE: From the committee on executive branch, by Mr. Martin, chairman, **Committee Proposal 16, A** proposal to permit the governor to grant reprieves, commutations and pardons and to delegate this power according to law. Amends article VI, section 9.

Following is Committee Proposal 16 as read by the secretary, and the reasons submitted in support thereof:

The committee recommends that the following be included in the constitution:

[He may] THE GOVERNOR SHALL HAVE POWER TO grant reprieves, commutations and pardons after convictions for all offenses, except [treason and] cases of impeachment[,]. [upon such conditions and with such restrictions and limitations as he may think proper, subject to regulations provided by law relative to the manner of applying for pardons.] HE MAY DELEGATE SUCH POWERS SUBJECT TO SUCH PROCEDURES AS PRESCRIBED BY LAW. [Upon conviction for treason, he may suspend the execution of the sentence until the case shall be reported to the legislature at its next session, when the legislature shall either pardon or commute the sentence, direct the execution of the sentence or grant a further reprieve.] He shall communicate to the legislature at each session information of each case of reprieve, commutation or pardon granted and the reasons therefor.

Mr. Martin, chairman of the committee on executive branch, submits the following reasons in support of Committee Proposal 16:

It is felt that the governor should not be required personally to handle all applications for reprieves, commutations or pardons; but should be allowed to delegate this to a statutory authority. In fact, that has been the method of procedure since 1893 when a board of pardons with advisory functions was established in Michigan by statute. The general functions of this board are now carried on by the parole board in the department of corrections. While its powers are still advisory, its hearings and recommendations to the governor are generally accepted and followed. The governor's duties are too strenuous to require him to handle all the details of this function in person.

The crime of treason is defined by the present state constitution (article II, section 21), and the committee on rights, suffrage and elections has recommended retention of this provision. The legislature has full power to provide for the punishment of treason. The federal government does, however, operate almost exclusively in this area. The definition of treason in the United States constitution and the Michigan constitution are essentially the same. The committee believes that treason should be treated in the same manner as other crimes and offenses, insofar as reprieves, commutations, and pardons are concerned, and has so provided.

CHAIRMAN BAGINSKI: The Chair recognizes Mr. Martin.

MR. MARTIN: Mr. Chairman, the committee on executive branch feels that the present provision in the constitution is unduly detailed and restrictive so far as questions of parole and commutation of sentences are concerned.

The general practice is today, and has been for many years, to delegate these functions to another body so that the governor doesn't have to carry out all these detailed functions himself. The committee felt that this practice should be recognized.

The committee also felt that the crime of treason, which is defined in the constitution in the same way as it is in the federal constitution, and with respect to which the legislature has full power to provide punishment, and also power to provide a limitation on pardons if it wishes to do so, might properly be left to the decision of the legislature.

That is the reason behind the committee proposal.

CHAIRMAN BAGINSKI: Are there any amendments to Proposal 16? If not, it will be passed.

Mr. Hutchinson.

MR. HUTCHINSON: Mr. Chairman, I would like to raise one point in regard to this. I am a little bit disturbed about this idea that the governor shall be permitted to delegate his power of pardon. I recognize the problem; that is that in this day and age the governor has to receive the recommendation of a parole board and whatnot. That's already contemplated in our present constitution, where it says: ". . . subject to regulation provided by law relative to the manner of applying for pardon." But the constitution doesn't, at least in its present language, connote in my mind that the governor has the power to delegate this responsibility. If he delegates the responsibility to some other person or body, then, of course, he escapes the responsibility himself.

I admit I haven't had the benefit of the careful examination and the thought the committee gave to this but I wish that Mr. Martin could elucidate a little bit further about the wisdom of permitting the governor to delegate a responsibility. As I say, once a responsibility is delegated to others, then it is no longer his.

CHAIRMAN BAGINSKI: Mr. Martin.

MR. MARTIN: Mr. Hutchinson, the authority is permissive. The legislature can provide as it sees fit in that regard and the governor is not required to delegate in any given instance. If he wishes, however, to delegate, he would be permitted to do so under this provision.

MR. HUTCHINSON: That is what I understand, Mr. Martin. My point is I don't think it is a good policy to permit him to delegate. I think it is a very necessary policy to provide that he shall have a board or some other group making recommendations to him but I don't think that that constitutes a delegation of power and I feel quite strongly at the moment that to delegate the power, using the word delegate in the constitution, would go much further than we go now. I wonder why it is necessary to go so far.

MR. MARTIN: Well, the thought of the committee was that thorough and careful study is given to these problems by people who are assigned to them and work with them all the time and that the question should rest with those who are most familiar with the background of the individuals involved and their response to treatment and their general evidence of rehabilitation and of repentance.

MR. HUTCHINSON: Mr. Chairman, it would appear that what is in mind here is that there will be and continue to be a parole board which, working with the prison officials and examining all these records in detail, will make recommendations to the governor. My question is whether, in Mr. Martin's mind, the words "recommending to the governor" mean the same thing as a delegation by the governor to the parole board in this regard. Do we have the same thing in mind, and are we using different words?

MR. MARTIN: I am not sure that we do. I think that your interpretation is correct; that the governor could delegate, particularly with respect to lesser offenses—if he saw fit to delegate—the full responsibility to the parole board, and to take action with respect to parole or reprieve and commutation.

MR. HUTCHINSON: Mr. Martin, is this the concept that is common in many state constitutions?

MR. MARTIN: I can't answer that, Mr. Hutchinson, as to whether it is a common concept. The committee did feel, after considerable discussion, that we have had extensive experience with the course of reviewing the backgrounds of those who have been committed to prison and that we have enough ex-

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Explanation—Matter within [ ] is stricken, matter in capitals is new.

perience with that so that we can properly entrust this responsibility to those people who are most familiar with the backgrounds of the individuals involved.

MR. HUTCHINSON: Mr. Chairman, it occurs to me that we are here making a departure from a very historic function of the chief executive; that the power of the chief executive, the governor, or the president in the federal system, over the function of paroles and pardons—well, it goes way back to the very beginning. I wonder whether we want, in this day and age, to remove from the governor that final responsibility in this area. I am frank to say at the moment that I am not persuaded that we should do it.

CHAIRMAN BAGINSKI: Are there any amendments to Committee Proposal 16?

SECRETARY CHASE: Miss Donnelly has offered the following amendment:

1. Amend page 1 and the language of lines 8 to 11 by striking out of line 10 the words "He may delegate such powers subject to such procedures as prescribed by law", and reinserting the language as it appears in lines 8 and 9, which read, "Upon such conditions and with such restrictions and limitations as he may think proper, subject to regulations provided by law relative to the manner of applying for pardons".

CHAIRMAN BAGINSKI: Mr. Norris, do you care to speak on this amendment?

MR. NORRIS: No, Mr. Chairman, my original point in standing was to ask a question of the committee chairman which may have some relevance to the Donnelly amendment. I wondered if I might ask her, Mr. Chairman, Mr. Martin, just what kinds of cases or what kinds of problems has experience indicated to justify the proposal?

I appear to understand, in terms of your colloquy with Mr. Hutchinson, that it is just a general proposition here that you address yourself to, a general principle. I wondered what pragmatic history has led to this proposal. Is there a set of facts or set of cases, particular conditions involved in situations where perhaps the power of pardon wasn't properly exercised?

MR. MARTIN: No. The matter is not addressed to any particular case or series of cases or particular injustices. It relates to the experience of the state government over the past 60 years in the handling of these matters and the fact that we have had rather extensive experience in handling the matter through a parole board.

It is possible Mr. Millard may be able to give us more information and may want to make some comment on this. While he was a member of our committee he was chairman of the subcommittee which worked on this proposal. Mr. Millard, do you want to enlighten the delegates any further on this point?

CHAIRMAN BAGINSKI: Mr. Millard.

MR. MILLARD: Mr. Chairman and members of the committee, it was felt by the committee that since the power of commutation of sentences and reprieve is something that is extra curricular for the executive, it primarily should be more in the judicial area. However, according to most of the states, this power of pardon, reprieve and commutation of sentences is lodged in the executive. The executive, however, doesn't have the time to investigate all of the circumstances surrounding the sentencing of any person and consequently doesn't have the time to make such an investigation. Therefore it has been delegated since 1893 to a pardon and parole board, which makes the investigation and reports its facts and findings to the executive. He takes that and acts on it in a position of advisory capacity. Now, he has been doing this all these years, and the committee felt when I was with them—and I am just talking now; I haven't reviewed this since I discussed it in the committee—but the committee felt that inasmuch as the pardon and parole board does the actual work, that it should have the power, or the power should be delegated to it officially to do it. It doesn't have it now except by statute, but it certainly would give it constitutional status so that it will be in a better position to be an adviser to the governor.

As stated in the proposal, it is subject to legislative action, and the legislature will set forth all the necessary rules and procedures governing this pardon and parole board.

CHAIRMAN BAGINSKI: The Chair recognizes Mr. Stevens on the Donnelly amendment.

MR. STEVENS: Mr. Chairman, I wish to ask—

CHAIRMAN BAGINSKI: Mr. Stevens, just a second. There is a correction to be made.

SECRETARY CHASE: The secretary asks Miss Donnelly's pardon for misinterpreting the amendment she offered. Her amendment is:

1. Amend page 1 by striking out all of lines 6 through 15 and inserting the original language of section 9, article VI of the Constitution of 1908.

CHAIRMAN BAGINSKI: Mr. Stevens.

MR. STEVENS: Well, perhaps this would not be on the Donnelly amendment. I wanted to ask why, in the case of something so important as pardon, we should deviate from the usually accepted practice both in the state and federal government of making the chief executive responsible for these things. He doesn't do the work but he does have the responsibility. I agree with things Delegate Hutchinson said about this. I think the governor should keep that responsibility. If that is the nature of this amendment, I would support it.

CHAIRMAN BAGINSKI: The Chair recognizes Mr. Mahinske on the Donnelly amendment.

MR. MAHINSKE: First of all, a point of information. Does the Donnelly amendment attempt to reinsert the language of lines 11, 12, 13 and 14?

SECRETARY CHASE: Miss Donnelly's amendment was to strike out the new material printed in capital letters in the proposal and reinsert the entire present language of the section as it appears in the Constitution of 1908.

MR. MAHINSKE: Now, before I can decide which side of this I am on, I would like to ask either Mr. Millard or Mr. Martin a question relating to the mechanics of instituting this new language. Which would come first, the delegation of powers absolutely and then the legislative act, or a tentative delegation of powers subject to review of the legislative act, and then an absolute delegation of powers in conformance with the legislative act, or just exactly what are the mechanics you had in mind here?

MR. MARTIN: I believe that, under the language you now have proposed, the legislature would have to pass legislation providing for the procedure to be followed and under such legislation the governor would then have the authority to delegate action on such cases as he thought desirable.

MR. MAHINSKE: My question is, would the legislation be binding on the governor if it came back objectionable to the governor?

MR. MARTIN: The legislation would be binding on the governor if passed and approved by the legislature and approved by the governor; not vetoed by the governor.

MR. MAHINSKE: In reality, what we would have is the governor saying to the legislature, I want to delegate my power of parole and you take it from there, and they could delegate this to something other than the parole board—the probation department. They could set up a new kind of commission, if they wanted to, or handle it themselves.

MR. MARTIN: No, I think the governor is not obligated. The legislation, the provision, is permissive. It says he may delegate. It doesn't require him to delegate. Unless there was some implementing legislation, it would not now be possible to delegate.

MR. MAHINSKE: Should the governor specify in his delegation prior to the legislation being enacted, exactly what program he had in mind?

MR. MARTIN: He could make recommendation to the legislature as to what kind of legislation he wants but he couldn't prescribe the legislation.

CHAIRMAN BAGINSKI: The Chair recognizes Mr. Hubbs on the Donnelly amendment.

MR. HUBBS: Mr. Chairman, my fellow delegates, in the event this question should revolve on a legal proposition, I would like to bring this to the attention of the delegates who are not attorneys. I have come to the conclusion that the committee, although seriously interested in doing a good job,

has overlooked the condition whereby, in the event somebody was applying for a pardon or reprieve, they might apply to this board or commission and be turned down; but since this consists of a number of people, they would never be able to put the finger right on the any particular man and say, "Are you for this thing or against it?"

I think even though this board or commission does all the work in deciding whether a man should be pardoned or reprieved, the final say of yes or no should rest with one man so the buck could not be passed any further than that. And at this point I think the governor should say yes, this man shall be pardoned or no, he shall not be pardoned. And my point of view is from the standpoint of getting a final say-so, and the final authority should rest with one man; in this case the governor. And I therefore support the Donnelly amendment.

CHAIRMAN BAGINSKI: The Chair recognizes Mr. Perras.

MR. PERRAS: I pass.

CHAIRMAN BAGINSKI: Senator Hutchinson.

MR. HUTCHINSON: I pass.

CHAIRMAN BAGINSKI: Mr. Faxon.

MR. FAXON: I would like to ask Miss Donnelly a question.

MR. DEHNKE: I have asked for the floor.

MR. FAXON: I yield.

CHAIRMAN BAGINSKI: You yield to Judge Dehnke?

MR. FAXON: Yes. I just wanted to ask Miss Donnelly a question. I will yield to him.

CHAIRMAN BAGINSKI: The Chair recognizes Judge Dehnke.

MR. DEHNKE: Mr. Chairman and members of the committee, I am afraid I cannot interpret this language in the way it has been interpreted here now, that the legislature could restrict the governor. This says he may delegate such powers subject to such procedures as may be prescribed by law. In order to provide for the other, it should read he may delegate such powers subject to such restrictions as may be prescribed by law.

It occurs to me that it may be safe enough to delegate this power relative to those who are serving short sentences but it would hardly be advisable to take this responsibility from the governor's shoulders as to life terms or terms for long numbers of years.

It has been said that, under the procedure as we have it now, the governor usually acts upon the recommendation of the parole board. Nevertheless, he must, under our practice, take the final responsibility. On that same theory we have probation officers who make investigations for the courts and recommendations as to what they think the sentence should be. On this theory, they might be asked to delegate to the probation officer the imposition of the sentence.

CHAIRMAN BAGINSKI: Mr. Faxon.

MR. FAXON: I would like to ask Miss Donnelly a question through the Chair: why she is including lines 11, 12 and 13, and part of 14, if by line 7 there is a deletion of the word treason? Why include that in her amendment?

CHAIRMAN BAGINSKI: Miss Donnelly.

MISS DONNELLY: Because your preface is incorrect. There is no deletion of treason in line 7 in my amendment.

CHAIRMAN BAGINSKI: Mr. King.

MR. KING: Mr. Chairman, fellow delegates, I thought I would bring to your attention a couple of paragraphs from the Comparative Analysis of the Michigan Constitution which might shed some light on the discussion. I have no particular point of view I am supporting. It states:

> The important powers here dealt with are somewhat judicial in nature, although usually conferred upon the executive with or without restriction. They are generally unrelated to the governor's major area of responsibility in executive administrative matters.

Then it gives a brief rundown of how it is handled in other states. In approximately 1/3 of the states the governor alone may not exercise the power. In most instances it is shared with the board. In some 14 states the legislature may regulate the procedure by law. In the remaining ones—that is, the states—16 including Michigan, the governor's power is relatively unrestricted, with the lawmaking process governing only the manner of applying the pardons.

I don't think it was the intent of the subcommittee, of which I was a member, to take any power away from the governor and I don't think we have done that. We have only provided that power may be delegated and then not by the governor alone but by the legislature.

Now obviously, if the governor wishes under the present system to delegate this power, he can. He can delegate it to his brother-in-law and all he has to do is, when his brother-in-law comes up with the final recommendation, accept it and read it and endorse it. Now, if it is merely a matter of fixing a final responsibility, say in capital cases, upon the governor, I certainly would not object to that, if that is what a majority of the committee would want.

CHAIRMAN BAGINSKI: The question is now upon the Donnelly amendment.

Mr. Martin.

MR. MARTIN: Mr. Chairman, Miss Donnelly's amendment covers 2 matters. It covers the question of whether the legislature should have authority to determine the handling of treason cases as it does murder cases and other cases of serious type, and it also deals with this question of delegation of powers to grant reprieves and pardons. I wonder if it would be possible to consider those 2 questions separately?

If the delegate wishes to do so, lines 8 and 9 relate to this problem of delegation relating to the new language inserted in the middle of that section. The rest of the provision relates to the problem of whether you should treat treason on an entirely separate basis.

CHAIRMAN BAGINSKI: Any comments, Miss Donnelly?

MISS DONNELLY: If I understood him, and I am not sure I did, his thought was, one, decide whether this committee wishes the governor to have any power to delegate; two, how they are going to treat treason. Is that correct?

MR. MARTIN: That is correct, yes.

MISS DONNELLY: I am not at all sure why he feels that this is proper, necessary, or even worthwhile. In other words, I am somewhat opposed to it. If you could give me a better argument, I might have to go along, but on the face of it, I cannot see any justification for it. I am sorry if I misunderstood the point.

MR. MARTIN: Mr. Chairman, is it possible to divide the question in that way?

CHAIRMAN BAGINSKI: The Chair wishes to advise it is Miss Donnelly's amendment and she doesn't care to divide the question.

MISS DONNELLY: I don't care to at this point because I cannot see any reason for it. If he can enlarge upon his grounds, I might be perfectly willing to go along with it. Right now I cannot see any reason.

CHAIRMAN BAGINSKI: The question is on the amendment of Miss Donnelly. The Chair recognizes Mr. Hanna.

MR. W. F. HANNA: Question, Mr. Chairman, of Mr. Martin. Mr. Martin, if an amendment were offered to the committee report to clearly put before us the question of the governor's power, if you change on line 10 the words "may delegate" to "shall exercise", so that it would read "He shall exercise such powers subject to procedures as prescribed by law," would this clearly put before this committee the issue posed by Mr. Hutchinson and yourself, and yet retain the better language of the committee?

MR. MARTIN: That is correct.

CHAIRMAN BAGINSKI: The question is now on the Donnelly amendment. As many as are in favor of the amendment signify by saying aye. Opposed, no.

The amendment is adopted.

DELEGATES: Division.

CHAIRMAN BAGINSKI: A division has been called for. Is there support? A sufficient number are up. As many as are in favor of the Donnelly amendment will rise.

SECRETARY CHASE: Fifty.

CHAIRMAN BAGINSKI: Those opposed.

SECRETARY CHASE: Seventy.

CHAIRMAN BAGINSKI: The amendment is not adopted.

Judge Dehnke.

MR. DEHNKE: I sent an amendment to the secretary's desk which I will ask him to read.

CHAIRMAN BAGINSKI: Are there any further amendments to Committee Proposal 16?

SECRETARY CHASE: Mr. Dehnke offers the following amendment:

1. Amend page 1, line 10 after "to such" by inserting "limitations and"; so the language will then read, "He may delegate such powers, subject to such limitations and procedures as prescribed by law."

MR. DEHNKE: Mr. Chairman, that will accomplish, I think, very clearly what the committee seems to have had in mind. It removes any possibility of this amendment being adopted with the thought in mind that the legislature could control it. As it is now worded, they can control only the procedure. With the amendment that I have offered it will read, to repeat: "He may delegate such powers subject to such limitations and procedures as prescribed by law."

CHAIRMAN BAGINSKI: Mr. Martin.

MR. MARTIN: Mr. Chairman, the committee would have no objection to that amendment.

CHAIRMAN BAGINSKI: The question now is on the Dehnke amendment. The Chair would like to make this statement before it calls for the vote.

It is very difficult here at times to make an exact determination whether the ayes or nays have it because of some state of lethargy that we get into as we vote and then when the division is called for we get a different situation. So when we call for the vote, let's have the ayes and nays.

Mr. Hodges.

MR. HODGES: Mr. Chairman, I am somewhat confused on this, myself. I would like to ask—of Judge Dehnke, perhaps—does this mean then, that a governor could decide to delegate power, the legislature passes statutes to that effect—for example, anything excepting capital offenses could be decided by a parole board without the governor being involved—and then this would be a limitation on the governor that from here on out he would not have the inherent power to provide a pardon or anything the legislature provided he could delegate?

CHAIRMAN BAGINSKI: Judge Dehnke.

MR. DEHNKE: It would restrict only his authority to delegate. It says he may delegate these powers to grant reprieves, commutations and pardons subject to such limitations and procedures as the legislature may require.

MR. HODGES: This would in no way affect the inherent power of the governor to at any time, at any place, grant a reprieve, commutation or pardon?

MR. DEHNKE: I don't see how that question could possibly be raised.

CHAIRMAN BAGINSKI: The question is on Mr. Dehnke's amendment.

Mr. Mahinske.

MR. MAHINSKE: Judge Dehnke, this is not a delegation of the power but a sharing of the power, is that correct? The governor would still retain his inherent power to pardon?

MR. DEHNKE: Yes, but his authority to delegate would be subject to such limitations as the legislature might prescribe or impose.

MR. MAHINSKE: Then we could have the situation where the legislature could tell him he could not delegate power.

MR. DEHNKE: Then he would have to act on his own responsibility in that case and in that type of case.

MR. MAHINSKE: Under the wording of this provision here, would he be able to recall any power once delegated?

MR. DEHNKE: I think that could be construed. That is an entirely different question.

MR. MAHINSKE: In the event he would delegate his power and it was being abused, he would have no right to recall his power?

MR. DEHNKE: I think where he is authorized to delegate powers, he can take them back. That is the general rule. No limitation here.

MR. MAHINSKE: It certainly doesn't say that. It says he shall delegate his power or be empowered to delegate it.

MR. DEHNKE: It says he may.

MR. MAHINSKE: He may; but then, I am asking, if he does, can he absolutely recall his powers?

MR. DEHNKE: I would say so. I don't see any possibility of that being questioned. He probably would delegate that power in any individual case.

MR. MAHINSKE: At the same time retain the exact power that he has delegated. In other words, if a so called commission had refused to commute a sentence, the governor could override the commission and commute the sentence on his own inherent power?

MR. DEHNKE: I would say yes, in the light of the history of that power in the federal government and the state government. His power to grant pardons, reprieves and commutations is supreme. The only thing this would do would be to provide that in certain types of cases he could delegate that to other boards and individuals within such limitations as the legislature might prescribe.

MR. MAHINSKE: If the legislation prescribed an absolute spectrum here for him to delegate and he delegated an absolute power of commutation and pardon, at the same time you are saying he retains an absolute power, inherently.

MR. DEHNKE: I think I have answered this to the best of my ability, Mr. Mahinske. I think the power is supremely in the governor. This is an attempt to authorize him to relieve himself of that responsibility, at least to some extent, and the committee, by voting adversely on the Donnelly amendment, indicated that it was not out of sympathy with such an attempt.

This motion is made for amendment so as to give the legislature some authority to impose limitations. This is an important power of the governor. In my experience, at least one governor, I think admittedly, was defeated for renomination by his own party because of the public's dissatisfaction with the manner in which he had handled this power. I question very much whether the people of the state want to have this question administered in such a way that the responsibility will rest on a board or a group or some other individual rather than on the governor himself.

MR. MAHINSKE: But then, under the proposed change in the constitutional article itself, subject to your amendment, the governor would still have this power himself?

MR. DEHNKE: I don't think there is any doubt about it.

MR. MAHINSKE: Thank you.

CHAIRMAN BAGINSKI: Mr. Hanna.

MR. W. F. HANNA: Judge Dehnke, if the current governor, under this provision of the constitution, asked the legislature to pass a bill—it says in here as by law—that all persons sentenced to 10 years or less could be handled by the power of pardon to be granted to the board of pardons; my first question is, could a subsequent governor, without a new enactment of the legislature, get this power back?

MR. DEHNKE: The form of the statute would be that the governor be authorized to delegate this power as to those cases where the sentences are less than a certain number of years.

MR. W. F. HANNA: Supposing that the governor asks that the legislature authorize him and the bill is so passed that this power is delegated to the board of pardons and parole and a subsequent governor wants to get the power back; can he get it back without a new enactment of the legislature?

MR. DEHNKE: I think all the legislature can do is authorize the governor to delegate if he wishes to.

MR. W. F. HANNA: Second question. If he delegates the power, can he override the board of pardons if he feels it made a mistake either by granting a pardon or refusing to grant a pardon?

MR. DEHNKE: That, I think, would be left to us as in the nature of work for lawyers to do.

CHAIRMAN BAGINSKI: The Chair recognizes Mr. Tubbs.

MR. TUBBS: Mr. Chairman, this is a little bit mixed up to me. We are supposed to be dealing with the constitution, about a government that is divided into 3 parts. Article IV seems to indicate that and it also says that there may be some intermingling.

Here is a man who is convicted in a court of law under the judicial branch. Now the governor, under the executive branch, is going to pardon him but the legislature is going to tell him what to do and how to do it. I suspect we ought to leave this to the executive branch. If he wants to delegate the power, let him. But Mr. Dehnke's amendment would not be a procedural amendment as it is in the committee's report, but would also be a matter of substance, and the legislature could bar his right to delegate.

CHAIRMAN BAGINSKI: The Chair recognizes Mr. Everett.

MR. EVERETT: I am inclined to agree with Mr. Tubbs. I think that we are confusing the power and the responsibility of pardons with the mechanics of carrying it out. We all recognize that the governor does use the assistance of others in determining when to grant pardons and when not to. I note on page 345 of this large volume that as long ago as 1901 the attorney general of the state ruled that the governor had implied power to employ such assistance as may be required to carry out the pardoning power by investigation and the like; indicating that without this language the governor has the power to use assistants in arriving at a decision without yielding his power or his responsibility.

I agree with Mr. Tubbs that this would give a division of responsibility. It seems to me that it would be better to strike the language entirely, because he has the power to use assistants, and yet the responsibility remains with him, where it should.

CHAIRMAN BAGINSKI: Mr. Dehnke.

MR. DEHNKE: Mr. Chairman and members of the committee, I think that brings us back to the very point Mr. Hutchinson raised in opening the discussion. This is not an easy duty and it is not one that would look attractive to any governor. And to pass this in the way it is presented would enable the governor to shift the responsibility in all cases, without qualifications, to somebody else or to some board. The only authority given to the legislature is to prescribe the procedure. That is as far as that goes in the form that it is presented. I think if we are going to adopt it at all, we should have some restriction on it so that he cannot delegate it in all cases, at least.

CHAIRMAN BAGINSKI: The question now is on the Dehnke amendment. The secretary will read the amendment.

SECRETARY CHASE: The Dehnke amendment is as follows:

[The amendment was again read by the secretary. For text, see above, page 582.]

CHAIRMAN BAGINSKI: The question now is on the Dehnke amendment. As many as are in favor may signify by saying aye. Opposed, no.

The amendment is adopted.

Are there any further amendments to Committee Proposal 16?

SECRETARY CHASE: Mr. Hutchinson has filed the following amendment:

1. Amend page 1, line 10, after "may" by striking out "delegate" and inserting "exercise".

CHAIRMAN BAGINSKI: The Chair recognizes Senator Hutchinson.

MR. HUTCHINSON: Mr. Chairman, I offered this amendment because I sense that in this modern day and age a good many people think that the governor hasn't got time to do this and they want to delegate the power. I don't think the power should be delegated. I think that if the legislature is to provide the restrictions and the procedures, then the governor should exercise the power only in accordance with these restrictions and procedures.

CHAIRMAN BAGINSKI: The Chair recognizes Mr. King.

MR. KING: Mr. Chairman, fellow delegates, this word "exercise" bothers me a little bit. It seems to me now that we are limiting the power of the governor and I don't think that is what Senator Hutchinson intended, but that is the way I understood it, and I would like to have him explain it, if he would.

MR. HUTCHINSON: Mr. Chairman, as I read this, it starts out with one sentence that says, "The governor shall have the power to grant reprieves, commutations and pardons after convictions for all offenses, except cases of impeachment." Now he has that power. As it stands now, the proposal says, "He may delegate such powers subject to such limitations and procedures as prescribed by law."

My feeling is that he ought not to be permitted to delegate the power. If he is going to be governed by restrictions and procedures as prescribed by law, then—if those restrictions and procedures are to mean anything at all—he will have to exercise his power only in accordance with them. If you don't do that, why, there isn't any use in writing a lot of statutes having to do with restrictions and procedures. If you write a lot of statutes relative to restrictions and procedures and then say, well, the governor has the power to grant reprieves, commutations and pardons irrespective of them, we would be much better off to simply say he has the power to grant reprieves, commutations and pardons period, and recognize that it is his power.

CHAIRMAN BAGINSKI: The Chair recognizes Mr. Mahinske.

MR. MAHINSKE: Maybe the confusion lies in this:

Senator Hutchinson, on line 10 are the first 2 words on this sheet he may or he shall?

MR. HUTCHINSON: He may.

MR. MAHINSKE: Then if we institute your amendment, we are taking the power away from the governor now, isn't this true?

MR. HUTCHINSON: My sheet says he may delegate. I want to say he may exercise.

MR. MAHINSKE: If we say he may exercise such powers, are we making him subject to the legislative limitations as of the adoption of this new language?

MR. HUTCHINSON: That is absolutely true, Mr. Mahinske, but the committee has already, apparently, indicated support for language which is going to provide for restrictions and procedures.

MR. MAHINSKE: But, as I understand it, the restrictions are on limitations of procedures and will only come into play in the event that the governor would exercise his discretionary power to delegate the power. He may now exercise the power but under this language we are taking the power away from him.

MR. HUTCHINSON: Well then, in that case, Mr. Mahinske, if the legislature should set up a parole board, as it has, and if the legislature has provided that the parole board shall make all these investigations and these recommendations and whatnot to the governor, then, under the language as it now stands, there wouldn't be any place in the picture at all for a parole board, because the only place in which a parole board enters into the picture under the language as it is now proposed would be only as to whether the governor should delegate the power or not.

MR. MAHINSKE: That is the understanding that I have.

MR. HUTCHINSON: I don't think that is a very good policy, Mr. Mahinske.

MR. MAHINSKE: Isn't this the existing procedure we now have, that the parole board only makes recommendations to the governor?

MR. HUTCHINSON: Yes, they make recommendations but they don't recommend to him whether he delegates his power or not. They recommend to him as to whether or not he issues the pardon.

MR. MAHINSKE: Well, I wonder, on this last point you make, if this is the intent of the committee, that the parole board has any say-so as far as the governor is concerned in the delegation of his power.

MR. HUTCHINSON: I would submit to you that if the proposal stands as it is now, that is where you would be relegating the function of the parole board, because under the present constitution the governor has the power to grant these things, subject to such limitations as he may think proper, subject to regulations provided by law relative to the manner

of applying for pardons; now, then, that is the basis for the present power of the parole board, to make recommendations; but then, you strike all that out and you end up with saying that the parole board shall have power to advise the governor whether he should delegate his power to somebody else.

MR. MAHINSKE: I don't have this understanding, myself. The understanding I have now is the governor may, subject to limitations on procedures and so on, set up by the legislature, delegate the power of parole; in this particular instance we would say to the parole board itself; that the parole board could pardon or parole a person without any further contact with the governor at all. This is the understanding I have.

MR. HUTCHINSON: I don't think they should be given that power, to grant that without any further contact with the governor. I think it is necessary to keep the governor in the picture. I feel that, very clearly, the power of the governor in this field admittedly is not executive; admittedly it is judicial, but it is one of those historic checks and balances in our system and I would want to keep it there.

MR. MAHINSKE: This is exactly my feeling on the subject but, with respect to the new words that are put in here, I would hate to go any further than we are going now. With your alteration of going further, we are taking it absolutely out of his hands. Would you agree that possibly we should strike all of line 10 and the first 2 words of line 11 as proposed by the committee here?

MR. HUTCHINSON: Mr. Chairman, who does Mr. Mahinske direct his question to?

MR. MAHINSKE: To you, yourself.

MR. HUTCHINSON: To me. You ask if we should strike out the new language?

MR. MAHINSKE: I mean, would this be your sentiment?

MR. HUTCHINSON: And that leaves nothing, just strike it out entirely and say nothing else?

MR. MAHINSKE: Well, I think we possibly both voted the same way here, to strike this language.

MR. HUTCHINSON: Well, we did.

MR. MAHINSKE: Correct. I am not satisfied with what we have here over and above what we voted for and I think that your alteration would go even further than we have gone now; which is distasteful to you and me.

CHAIRMAN BAGINSKI: Mr. Martin.

MR. MARTIN: Mr. Chairman, I don't suppose it is my responsibility to clarify Mr. Hutchinson's point but I think his amendment clearly presents the difference of opinion; because if we do not have the word "delegate" in there, the governor obviously cannot delegate. Therefore, his amendment, which would insert the word "exercise" states the difference of opinion clearly, and I think that if the committee can vote on that point it will arrive at a sound solution; either his or the committee's original report.

CHAIRMAN BAGINSKI: The Chair recognizes Mr. Downs.

MR. DOWNS: Mr. Chairman, I would like to ask Mr. Hutchinson if I understand his reasoning correctly. As I see the present constitution, the governor has absolute power to grant these pardons and so forth, with the only limitation being the regulation by law as to the manner of applying for a pardon. Or, it is assumed that the legislature could not prohibit the application of pardon but could make appropriate regulation.

If we change "may" to "exercise" it would seem to me that then the governor could exercise only those powers that he now has, subject to procedures that go beyond the manner of applying for pardons. In other words, changing "delegate" to "exercise" would make a limitation on the governor he does not now have.

I can see that this is difficult language to construe, but I just wanted to get Mr. Hutchinson's further thinking, if he would care to give it.

MR. HUTCHINSON: Mr. Chairman, I would like to reply to Mr. Downs in this way. As I understand the practical meaning of the present provision, the governor, while he may, as a theoretical thing, have the power to simply sign a pardon without any previous investigation, or whatnot, still the law says—the laws which have been enacted to carry out this phase, subject to regulations provided by law relative to the manner of applying for pardons—that since there is a law regulating the manner of applying for pardons, the governor's power is thereby limited. He can act upon an application for pardon only if that application has been submitted in accordance with the procedures set forth in law. That is what it says here now.

MR. DOWNS: Isn't there the additional limitation where your language says he may exercise such powers which provide for legislative limitations beyond the manner of applying for the pardon?

MR. HUTCHINSON: Mr. Chairman, of course, here we are. We are writing a constitution, and it is very wise to consider these things in every aspect. It really should require a lot of very serious thought. All I can say is that, as I see it right now, and after listening to the debate, and after reading what we have here, and after remembering what the statutes have to say implementing the present provisions, I do not think that the actual power of the governor under my proposed amendment would be any less than it is today.

CHAIRMAN BAGINSKI: The Chair recognizes Mr. Hanna.

MR. W. F. HANNA: Mr. Hutchinson, before you sit down. Would not the language be better if it read that he "shall" exercise rather than "may" and strike out the language added by Judge Dehnke's amendment, so that it clearly reads that he shall exercise such power according to procedures established by law? Isn't this clearly stating your position; that he shall exercise them; that it is his sole power and responsibility; that the sole power of the legislature is to prescribe procedures?

If the legislature is also allowed to prescribe restrictions, I would agree with Judge Dehnke's amendment if we delete the word delegate, but if we say he will exercise or shall exercise subject to restrictions by law, it is conceivable that the restrictions make the power a nullity. All we want to do is give the legislature power to provide for orderly procedures, not restrictions. Am I correct?

MR. HUTCHINSON: I think you are stating my case very clearly. I am impressed with the persuasiveness of your argument. However, as the ball bounced here, Judge Dehnke's amendment came up ahead of mine.

MR. W. F. HANNA: Mr. Hutchinson, I have an amendment here which is very similar to yours, and that is why I raise it.

MR. HUTCHINSON: I will withdraw mine.

MR. W. F. HANNA: Mine merely says "shall". If you would consent to amend yours, we could dispose of the 2 of them at once.

MR. HUTCHINSON: How would you take care of Judge Dehnke's amendment?

MR. W. F. HANNA: I would ask Mr. Chase to quickly write in to remove the language added by Judge Dehnke. (laughter)

CHAIRMAN BAGINSKI: Judge Dehnke.

MR. DEHNKE: In honesty to the committee, I have to say if you adopt the amendment prepared by Mr. Hutchinson you should strike out my amendment because, if it is left in that form, you would enable the legislature to take away the governor's power to grant reprieves, commutations and pardons.

SECRETARY CHASE: Does the secretary, then, understand that the agreement is between Messrs. Hutchinson and Hanna to revise the amendment so that it will read:

1. Amend page 1, line 10, after "He" by striking out "may delegate" and inserting "shall exercise"; and after "to such" by striking out "limitations and"; so the language will then read, "He shall exercise such powers subject to such procedures as prescribed by law.".

CHAIRMAN BAGINSKI: Does the Chair understand that Senator Hutchinson withdraws his amendment and we are now on the Hanna amendment? It would be Hanna and Hutchinson in the revised form.

The Chair recognizes Mr. Binkowski.

MR. BINKOWSKI: Mr. Chairman, Mr. Martin, calling your

attention to page 129, respecting the case in article VI, section 9, in 334 Michigan 306, it says, "The power of pardon and commutation of sentence is vested exclusively in the governor, and any law restricting such power is unconstitutional." Would not the committee's proposal weaken the power of the governor in this area, Mr. Martin?

CHAIRMAN BAGINSKI: Mr. Martin.

MR. MARTIN: The committee's proposal, in our opinion, does not weaken the governor's authority but it does give the governor authority to delegate. Mr. Hutchinson's amendment has been perfected by Mr. Hanna's amendment, and clearly presents the other point of view which would not permit the governor to delegate but would allow the legislature to provide procedures as to whatever action he does take within the scope of his power.

MR. BINKOWSKI: Well, Mr. Martin, are you implying that the attorney general's opinion is wrong in that the governor does not have the implied power to seek assistance in this area?

MR. MARTIN: I think he has the implied power, but the original amendment, the original provision had specifications to make it clear as to what authority he has to get additional information and dig into the thing. I see no harm in that.

MR. BINKOWSKI: Well then, is the committee's proposal to give the legislature more power and authority in this area, which they did not have?

MR. MARTIN: The committee didn't put the provisions of limitation in, but the committee's proposal did give the legislature general authority to lay down the procedures if the governor is allowed to delegate that authority.

The difference is that, in the one case, he can actually delegate some portion of that authority; he could delegate it all. We want to make that clear. Under Mr. Hanna's amendment he could not delegate the ultimate responsibility, but he could operate through the parole board and have them gather whatever information he needs.

MR. BINKOWSKI: Mr. Martin, there is a difference between power and authority, and I am wondering if the terms are being confused, or am I being confused by the use of these terms?

MR. MARTIN: I don't think so, but I do think Mr. Hutchinson and Mr. Hanna's amendment clearly states the question.

MR. BINKOWSKI: On the basis of what has been said, I would favor the Hutchinson-Hanna amendment.

MR. BAGINSKI: Mr. Bledsoe.

MR. BLEDSOE: I would like to ask Mr. Martin if his committee can inform the delegation as to where the applications are filed now under the present system.

MR. MARTIN: I believe they are filed with the parole board.

MR. BLEDSOE: And from there where do they go?

MR. MARTIN: Well, they go into a process of investigation. I am not an expert on this procedure.

MR. BLEDSOE: Don't you think that is the answer to our problem?

MR. MARTIN: I think a recommendation is made to the governor.

MR. BLEDSOE: That is right. The governor exercises the authority if the petitions are filed with the correct institution, the parole board. That's your procedure. Isn't that taken care of now, presently, by legislative enactment?

MR. MARTIN: We wanted to make it clear that the governor has authority to lean on the parole board in this way. I don't think this takes any power away or adds any power.

MR. BLEDSOE: Not at all.

CHAIRMAN BAGINSKI: Mr. Cudlip.

MR. CUDLIP: Mr. Chairman, I hesitate to arise because of all this debate, but let's get the issue before us again. The committee, in its report, states clearly, and that is its privilege, that it desires that this power be delegated by the chief executive to another body to determine the matter of reprieves and commutations. That is not now the law. The only thing, they say as prescribed by law.

The present constitution only gives the legislature the power to determine the law with respect to the manner, the mechanics of applying for the pardon. Otherwise, the chief executive is supreme in the field, just like Governor Pat Brown was when he labored those many nights and days in connection with that famous California case. Mr. Hutchinson started this debate by saying he thinks that power should be retained. The committee believes to the contrary.

We have had a lot of discussion, and good discussion, about what these words do in lines 10 and 11. There have been amendments; they have been withdrawn, as was in the case suggested by Judge Dehnke—withdrawn in view of the Hanna amendment—because that would limit those that wished to have the governor retain this fundamental power, and keep awake nights deciding the fate of man or woman.

It seems to me that there is no answer to this thing, and we've got to grind these things out; to say that if you take out the word "limitations" and leave in the words "procedures as prescribed by law" in lines 10 and 11, even though you insert the word "exercise," because it stands for new meaning as to the right of the legislature to curb the power of the chief executive, if you want him to have that life and death power. Because, as I pointed out, in lines 8 and 9 of the present constitution the legislature has no such power. It is limited to prescribing some rules as to how a man applies mechanically for a pardon.

Now, as to treason, the committee's report clearly states that we should deal with that crime—and I don't say the recommendation is wrong—as we do any other crime, because it is taken care of by federal law, et cetera. But that is the point the committee makes with respect to treason. So, putting that aside for the moment, we are down to a question, as I understand the progress of this debate, as to whether we can settle this by leaving in the words, for example, "the governor," or "he may exercise such powers subject to such procedures as prescribed by law." We have eliminated—we will assume we have—the word "limitations," but that still leaves me in a cloudy position if I were on the side of the chief executive having the full final responsibility, because it changes the meaning of the present constitution, which now gives the legislature only that power as respects the mechanical procedure as to how one gets a pardon.

I am simply again making an observation as I understand the facts.

CHAIRMAN BAGINSKI: Mr. Upton.

MR. UPTON: Mr. Chairman, as a layman, I am a little confused by all this discussion. I personally hope I am never called before the pardon board, and I think that in my terminology and thinking the governor should and shall have the right of pardon and not have to be restricted by the legislature, which I feel this amendment does.

Personally, I would rather see lines 10 and 11 taken out altogether, and I have an amendment with the secretary on this matter. Therefore I would oppose this amendment, which I feel does water down the governor's power of pardon.

CHAIRMAN BAGINSKI: The Chair recognizes Mr. Everett.

MR. EVERETT: I pass.

CHAIRMAN BAGINSKI: The Chair recognizes Mr. Higgs.

MR. HIGGS: Fellow delegates, I believe that I would support the committee's proposal as amended by Judge Dehnke, and I think he stated it fairly clearly when he was explaining it the first time. As I understand it, this does not limit the power of the governor to pardon; it only limits him if he chooses to delegate it. It limits the power to delegate, not the power to pardon. If he chooses to exercise, in his discretion, the power to delegate, then he only can do so upon such limitations and procedures as prescribed by the legislature, which I think is proper. I think also that the governor could certainly say to the legislature: This is the kind of a law that I want, because if I don't get it I won't exercise my power to delegate it.

I think the governor would have a very strong voice in determining the type of legislation that would be passed, because if the legislature did not pass the kind of procedures that he wanted, then he could choose not to exercise his power to delegate.

But if I am correct in understanding Judge Dehnke's explanation the first time—am I correct, Judge?

CHAIRMAN BAGINSKI: Judge Dehnke.

MR. DEHNKE: Mr. Chairman and Mr. Higgs, the conflict of ideas on this amendment is whether or not the governor shall be allowed to delegate the power to pardon in any case.

If you put in the language now proposed, that he may exercise such power subject to such procedures as prescribed by law, then the procedure is prescribed, but he has no authority to delegate even with the consent of the legislature. That is the real issue on this amendment, as I see it. Do we want to give him the power to delegate it in such cases as the legislature approves, or do we want to require him to take the full responsibility in all cases, subject merely to the procedural rules the legislature may adopt?

MR. HIGGS: Then, Judge Dehnke, I think what you are saying is that, in speaking to the Hutchinson amendment, this would be the effect of changing the word "delegate" to "exercise," but if we retain the words "he may delegate," then we are not actually restricting the power of the governor at all; we are enlarging his power.

MR. DEHNKE: The Hutchinson amendment is withdrawn; but I understand the amendment that is now pending is essentially the same thing. That is the real issue, whether he is to be required to exercise the authority on his own responsibility in every case, or whether he shall be allowed to delegate it in such cases as the legislature authorizes.

CHAIRMAN BAGINSKI: The Chair feels there may be some misunderstanding as to the wording in this amendment. The secretary will read it.

SECRETARY CHASE: The amendment as proposed by Messrs. Hutchinson and Hanna is as follows:

1. Amend page 1, line 10, after "He" strike out the words "may delegate" and insert "shall exercise"; and after the words "to such" strike out "limitations and"; so that the language will read, "He shall exercise such powers subject to such procedures as prescribed by law."

CHAIRMAN BAGINSKI: The Chair recognizes Miss Donnelly.

MISS DONNELLY: I would like to take issue with Judge Dehnke and agree with Bill Cudlip. Under the language herein contained, "He shall exercise such powers subject to such procedures . . .", the legislature could enact procedures which would make it almost impossible to perfect an application for a pardon, or whatever instrument you are interested in, for reprieve or commutation of sentence.

I wonder if Mr. Hanna would feel it would do great harm to his amendment to reinstate the original language and in line 9 say, "He shall exercise such power subject to regulations provided by law relative to the manner of applying for pardon." That is one place in our law which is subject to such procedures. You could have so many procedures you couldn't do it.

MR. W. F. HANNA: Miss Donnelly, I think "procedures" is one word for all of line 9.

MISS DONNELLY: You don't think the word procedure is broader than the language in line 9? I can't agree.

CHAIRMAN BAGINSKI: Mr. Martin.

MR. MARTIN: Mr. Chairman, could I reply to Miss Donnelly's question? The word "procedures" is a little broader than the provision "manner of applying for pardon", but it does give the legislature clear authority to set up a parole board. Now if the words "shall exercise" are put in there, then clearly the governor cannot delegate his authority, but he can use the parole board and whatever machinery the legislature wants to set up for it.

CHAIRMAN BAGINSKI: Miss Donnelly.

MISS DONNELLY: I would like to ask Mr. Martin one thing. Is there anywhere in this language any limitation on the setting up of a parole board? I think we are going off on this parole board and that isn't the issue. The issue before us is shall the governor delegate or shall he not be allowed to delegate? The parole board, I think, takes us off the main issue. This doesn't limit the establishment of a parole board, does it?

MR. MARTIN: It clarifies a situation in which the position of the parole board has always been under some question.

MISS DONNELLY: You mean without your language you think there is a question about whether we could have a parole board or not?

CHAIRMAN BAGINSKI: The Chair recognizes Mr. Ford.

MR. FORD: I want to agree with Bill Cudlip without taking issue with Judge Dehnke. The real problem that is presented by Mr. Hutchinson's change in wording is that presently the provision as presented by the committee would say that in addition to his general powers of pardon the governor shall be able to delegate this power subject to restrictions set by the legislature. But now, when we take out the words "he may delegate" and say "he shall exercise", then the modification contained later in that sentence says that the legislature has the power to prescribe the manner in which he shall exercise his power for the granting of pardons and paroles.

Now, what this means is the legislature could conceivably pass a statute saying the governor can only pardon somebody after he has done steps 1, 2 and 3, or after the man has done steps 1, 2 and 3 or any number of conceivable conditions that would be stricken down by the court as being totally unreasonable, and, as a matter of fact, not only are we taking away the governor's power to delegate—or not giving him the power to delegate, rather, as the committee originally intended—but we are, in addition to that, limiting the present power that the governor has to pardon on the spot, so to speak, by saying he shall only be able to pardon under such conditions, and this means upon such rules as the legislature may prescribe. This is a lot less than the power of the governor presently to grant pardons and paroles, and this is very dangerous.

CHAIRMAN BAGINSKI: The Chair recognizes Mr. Pellow.

MR. PELLOW: Mr. Chairman, I would like to ask Mr. Martin a question. Am I correct in assuming that Michigan would be the only state in the union to shift the burden of responsibility from the governor to a parole board if this committee's proposal is adopted?

MR. MARTIN: The answer to that is no. This is the case in several states. In certain states it is the responsibility of the board of pardons, of which the governor is a member, and in 2 states it is a matter for the board of paroles. In one or two states it apparently is the power of the legislature.

MR. PELLOW: Apparently we have different authorities on that. That is why I raise the question. However, it seems to me, also, that this is going to establish a dangerous precedent. If, for example, you have a first degree murder conviction and you are going to allow a parole board to assume the responsibility of the governor, who is elected by and responsible to the people of the state of Michigan, I can see cases where a weak governor takes office, and wants to shift the burden of responsibility from himself to another body, and I think for that reason this proposal should be defeated.

CHAIRMAN BAGINSKI: The Chair recognizes Mr. Hubbs.

MR. HUBBS: I spoke earlier in support of the Donnelly amendment and apparently, I gather since, the reason her amendment didn't carry was because it was somewhat too sweetened and it left in the reference to treason and upon conviction of treason. I think that if we here could settle down on the words starting with

> The governor shall have power to grant reprieves, commutations and pardons after convictions for all offenses, except cases of impeachment, subject to regulations provided by law relative to the manner of applying for pardons. He shall communicate to the legislature . . .

and so on. In other words, Mr. Cudlip stated it quite forcefully that we have got to leave that part in, I think, and prevent the governor from delegating away his pardoning authority.

When we can reach words to that effect, I would vote in favor of it.

CHAIRMAN BAGINSKI: The Chair recognizes Mr. Nord.

MR. NORD: Mr. Chairman, first of all, I would like to

point out that it is not so clear in my mind that we have reached the issue in the form we wish to get to it.

I think there is no doubt that the issue is, should the governor be allowed to get rid of his responsibility absolutely as he wishes to? I believe that most of us do not wish him to have that power. We wish him to have an absolute power to grant reprieves, commutations and pardons, and we wish him not to be able to get rid of it and I think we all got what we wished. I believe that is the question, whether that is what we wish or not.

Now, the question that is before us is not quite the same question. The question that is before us in the Hanna amendment is whether the language now proposed will do that—whether we raise that exact issue. Mr. Martin has said that it will. I believe some other people said that it will, also. But others have said, and I believe quite correctly, that the issue as framed now would only strike a glancing blow at the main issue, and do a lot of harm. The language that is proposed now is that he shall exercise such powers subject to something or other. That means that he can only exercise such powers subject to something or other, and not otherwise. Therefore, there is no question in my mind that there is some limit now, if the Hanna amendment is adopted, that the governor would have less power than he had before. His power would be limited. It is true, presumably, it would only be limited procedurally, but we don't exactly know how many procedures might be placed on the governor.

In any event, it certainly is not enlarging the governor's power, and it is not even keeping it even. It is definitely reducing it. That is, I believe, not what we wish to accomplish. What we wish to accomplish is to keep the governor's power exactly where it was; not to reduce it and not to increase it, but to make sure that he has the responsibility and that he bears it.

The reason I rise at this point is not only to point out that the Hanna amendment would not quite do it, but there is another way which would quite do it. I think Mr. Hubbs hit the nail on the head when he spoke a minute ago, and Mr. Cudlip, too, that when we voted, we voted on a double issue. When Mr. Martin asked Miss Donnelly whether she would divide the question and she refused to do so, we had to vote on 2 issues at once. We are not positive what the results would be if we had voted on the only issue we debated for about 2 hours.

I believe the correct procedure at this point, if we can get to it, is to do what Mr. Hubbs suggested—and, I might add, I have an amendment pending, or it will be pending soon, which will do the same thing. That is, it will strike all the language as it is presented in lines 10 and 11 and reinstate all the language in lines 8 and 9. That would give us a chance to vote exactly on the issue that I believe we wish to vote on, and I believe that if we settle for the language that is now before us, we would actually be doing harm. It seems to me we ought to have a right to vote on that issue in a bare sense, so to speak.

CHAIRMAN BAGINSKI: Senator Hutchinson.

MR. HUTCHINSON: Mr. Chairman, in order that we might get to this—and I know there is an amendment presently on the desk to accomplish just what Mr. Nord mentioned because Mr. Hubbs sent it up—I would like to ask Mr. Hanna if he would agree with me that we can, at this time, withdraw this joint amendment that we offered and remind Mr. Hanna that if the reinsertion of the present language in lines 8 and 9 are, in his opinion, unduly wordy, that both he and I are on the style and drafting committee and we can argue it out there.

CHAIRMAN BAGINSKI: Mr. Hanna.

MR. W. F. HANNA: Mr. Hutchinson, I have no objection to withdrawing mine. We could withdraw the amendment which we styled and drafted on the floor here by substituting "subject to such regulations as shall be prescribed," in line 9, so that it would read, simply, "grant reprieves," and so forth, "subject to regulations provided by law relative to the manner of applying for pardons."

MR. HUTCHINSON: Mr. Chairman, I would just like to suggest that, in an effort to get on with this—and keeping in mind there seems to be quite a lot of sentiment on the floor, at the moment at least, for reinstating both lines 8 and 9—if we would agree to let that go through, Mr. Hanna, and then if you think that the wording in line 8 is unnecessary for some reason or other, we can draft this thing in style and drafting like we think it ought to be. (laughter)

MR. W. F. HANNA: Mr. Hutchinson, I cannot understand. In line 8 you say "upon such conditions and with such restrictions and limitations," and then it says, "as he may think proper." Now, if those refer strictly to the governor—I think the issue we want to place before the committee is—the governor alone shall have the power, and the legislature shall only have power to make regulations as to the manner of applying for a pardon.

MR. HUTCHINSON: You are right.

MR. W. F. HANNA: I object to the language in line 8, "upon such conditions and with such restrictions."

MR. HUTCHINSON: Now if you want to debate upon the value of the language in line 8, "upon such conditions and with such restrictions and limitations as he may think proper,"—

MR. W. F. HANNA: I think that language is superfluous.

MR. HUTCHINSON: If it is superfluous, wouldn't you think you and I can knock it out in style and drafting?

MR. W. F. HANNA: And then somebody will accuse us of changing the substance of the meaning of the committee's report.

MR. HUTCHINSON: Well, it wouldn't be if it is superfluous.

CHAIRMAN BAGINSKI: The Chair recognizes Mr. Marshall.

MR. MARSHALL: I will withdraw my amendment which is on the secretary's desk to get the position clearly before the body.

SECRETARY CHASE: The secretary, then, understands that the amendment offered by Senator Hutchinson and Mr. Hanna has been withdrawn.

The next amendment on file on the secretary's desk is one offered by Mr. Everett.

CHAIRMAN BAGINSKI: Mr. Everett.

MR. EVERETT: I will withdraw that.

SECRETARY CHASE: Mr. Everett withdraws his amendment.

Mr. Faxon has offered an amendment:

1. Strike out lines 10, 11, 12 and 13, and the first 2 words of line 14, and reinsert lines 8 and 9.

CHAIRMAN BAGINSKI: Mr. Faxon.

MR. FAXON: After all this discussion, I think this is the direction in which we ought to go. I filed this amendment after Miss Donnelly didn't want to split the question.

I think the wording in the 1908 constitution, in lines 8 and 9, is really the subject in which we seem to be interested, and I think this language is quite clear.

In a comment made by a previous speaker, reference was made to the fact that since 1894 this power has been with the parole board. It was in the light of that experience that the delegates to the 1907-08 Constitutional Convention inserted the language which my amendment would reinsert in the committee proposal. Since this has been the practice in Michigan for so many years, I don't see any need for changing this provision now and would therefore urge you to reinsert the old language contained in lines 8 and 9.

SECRETARY CHASE: May the secretary point out that the language of Mr. Faxon's amendment on the desk is incorrect, in that the stricken language in lines 11, 12, 13 and 14 is already out of the section, so the amendment should read:

1. Amend page 1, line 7, after "impeachment" by changing the period to a comma, and by striking out all of lines 10 and 11 and reinserting "upon such conditions and with such restrictions and limitations as he may think proper, subject to regulations provided by law relative to the manner of applying for pardons.".

MR. FAXON: Yes, and in the last sentence too. I didn't do anything about that. I still have the last sentence.

SECRETARY CHASE: The last sentence, of course, as printed in lines 14 and 15, still remains in the section.

CHAIRMAN BAGINSKI: Mr. Mahinske.

MR. MAHINSKE: Mr. Chairman, I would like to ask Mr. Faxon—the thing is, there are other amendments that are identical to his except in one instance—if he is willing to strike in line 7 the words "treason and"?

MR. FAXON: That I agree to.

MR. MAHINSKE: Then you want lines 6 and 7 to remain as proposed, and reinsert 8 and 9, strike 10, 11, 12 and 13, and the first 2 words in 14, and leave the remainder of 14 and 15 in?

MR. FAXON: Yes, that is correct. Just reinsert lines 8 and 9 and delete the rest.

CHAIRMAN BAGINSKI: Mr. Iverson.

MR. IVERSON: Mr. Chairman, I believe that Mr. Hubbs would agree that the language of Mr. Faxon's amendment is in substance what he proposed. May I further point out that I believe the words in line 8 are important and should be left in.

Let me call your attention to certain conditions and restrictions which the governor may want to place upon a pardon or a reprieve or a commutation. Particularly on pardons, he may pardon a man for the purpose of being sent back to another country. On reprieves or commutations, he may place conditions upon those reprieves or commutations by way of certain methods of conduct on the part of that prisoner, and I think it is important that that language remain in there. I don't foresee any possibility that style and drafting will have any trouble with respect to that language. I rise to support this amendment.

CHAIRMAN BAGINSKI: The question is on the Faxon amendment. Mr. Marshall, do you want to talk on that?

MR. MARSHALL: No. This is identical to the amendment that Mr. Mahinske and I had, Mr. Chairman.

CHAIRMAN BAGINSKI: The question now is on the Faxon amendment. As many as are in favor of the amendment will say aye. Opposed, no.

The amendment is adopted.

Any further amendments?

SECRETARY CHASE: That likewise takes care of the amendment offered by Mr. Upton, which is now withdrawn; Mr. Nord's amendment; and the amendment by Messrs. Marshall and Mahinske; and by Mr. Hubbs. I believe that is all the amendments that are on file for this particular proposal.

CHAIRMAN BAGINSKI: Are there any further amendments to Committee Proposal 16? If not, it will be passed.

Committee Proposal 16, as amended, is passed.

SECRETARY CHASE: Committee Proposal 17.

CHAIRMAN BAGINSKI: Mr. Yeager.

MR. YEAGER: Mr. Chairman, I move that the committee do now rise.

CHAIRMAN BAGINSKI: As many as are in favor of the motion that the committee do now rise, will signify by saying aye. Opposed, no.

The motion prevails.

[Whereupon, the committee of the whole having risen, President Nisbet resumed the Chair.]

PRESIDENT NISBET: The Chair recognizes Mr. Baginski.

MR. BAGINSKI: Mr. President, the committee of the whole has had under consideration certain proposals and made several amendments thereto, and the secretary will make a detailed report.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 15,** A proposal to amend article II pertaining to the declaration of rights; has adopted an amendment thereto, and in committee has postponed consideration of this proposal until Thursday, January 18.

The committee of the whole has also had under consideration **Committee Proposal 16,** A proposal to permit the governor to grant reprieves, commutations and pardons and to delegate this power according to law. It reports this proposal back to the convention with an amendment, recommending the amendment be agreed to and the proposal as thus amended be passed.

[The following is the amendment recommended by the committee of the whole:

1. Amend page 1, line 7, after "impeachment" by changing the period to a comma and by striking out all of lines 10 and 11 and reinserting "upon such conditions and with such restrictions and limitations as he may think proper, subject to regulations provided by law relative to the manner of applying for pardons.".]

PRESIDENT NISBET: The question is on the amendment recommended by the committee of the whole. Those in favor say aye. Opposed, no.

The amendment is agreed to.

Committee Proposal 16, as amended, is referred to the committee on style and drafting.

Following is Committee Proposal 16 as amended and referred to the committee on style and drafting:

The committee recommends that the following be included in the constitution:

The governor shall have power to grant reprieves, commutations and pardons after convictions for all offenses, except cases of impeachment, upon such conditions and with such restrictions and limitations as he may think proper, subject to regulations provided by law relative to the manner of applying for pardon. He shall communicate to the legislature at each session information of each case of reprieve, commutation or pardon granted and the reasons therefor.

SECRETARY CHASE: That completes the report of the committee of the whole, Mr. President.

PRESIDENT NISBET: Announcements.

SECRETARY CHASE: The committee on judicial branch will meet in room B tomorrow at 10:30 a.m. Robert Danhof, chairman.

The meeting of the committee on public information scheduled for this evening after the session has been postponed.

The committee on legislative powers will meet in room H immediately following this evening's session and tomorrow in room H immediately after the session. T. Jefferson Hoxie, chairman.

The committee on finance and taxation will meet in room E tomorrow at 8:30 a.m. D. Hale Brake, chairman.

The other meetings scheduled on the composite calendar are as stated, except that the select committee on the visits of the former presidents scheduled for after the session tonight has been cancelled.

Mr. Buback and Miss McGowan have a 3 hole paper punch they loaned. They do not recall whom they loaned it to. Will the users please return it.

The following announcement will be of interest to all the delegates. Tomorrow afternoon, Tuesday, at 1:30, Mr. James Hare, secretary of state; the Michigan historical commission; members of the Michigan historical society; and others will be present in the lounge of the convention hall to unveil the original copies of the 3 previous constitutions of the state of Michigan. These documents will be housed in the newly constructed case in which they will be permanently kept. They will be on display in the lounge until the conclusion of the convention. All delegates interested in viewing this unveiling are invited to be present at 1:30 tomorrow.

Mr. Lawrence asks to be excused from the session of tomorrow, January 16.

PRESIDENT NISBET: Without objection, he will be excused.

SECRETARY CHASE: That is all the announcements and requests for leave of absence, Mr. President.

PRESIDENT NISBET: Mr. Finch.

MR. FINCH: Mr. President, I move the convention adjourn.

PRESIDENT NISBET: The question is on the motion to adjourn. All in favor say aye. Opposed, no.

The convention is adjourned until 2:00 o'clock tomorrow afternoon.

[Whereupon, at 10:15 o'clock p.m., the convention adjourned until 2:00 o'clock p.m., Tuesday, January 16, 1962.]

FIFTY-EIGHTH DAY

Tuesday, January 16, 1962, 2:00 o'clock p.m.

PROCEEDINGS

PRESIDENT NISBET: The convention will please **come to order.**

Our **invocation** today will be given by the Reverend Floyd Fitch, Pastor of the Central Methodist Church, Lake Odessa. Will you please rise.

REVEREND FITCH: Our heavenly Father, we come to Thee because Thou art the source of all righteousness and good will, Thou who holdest the security and destiny of men in Thy hand.

We thank Thee for our state in the commonwealth of the nations, for her beauty, her natural resources, and her people. We thank Thee that we can call it home.

We would ask Thy blessing on our state, and on these delegates charged with a grave responsibility. Help them to put away selfish interests and personal ambitions and to give themselves to the just and honorable task that is before them. Help them forget themselves in their concern for the welfare of the people of our state.

Strengthen those who need special help, we pray, and give to us all, delegates and people alike, a sense of Thy presence as we alike live and serve for the good of our fellowmen. We ask all in the name of God our Father and of Jesus Christ our Lord. Amen.

PRESIDENT NISBET: The **roll call** will be taken by the secretary. All present, please vote aye.

SECRETARY CHASE: Have you all voted?

The voting machine is now locked and the attendance will be recorded.

Mr. President, a quorum of the convention is present.

Absent with leave: Messrs. Lawrence and Thomson.

Absent without leave: Mr. Binkowski is the only unexcused delegate, Mr. President.

PRESIDENT NISBET: Without objection he will be excused.

There was a rather interesting event happened this noon — I am sorry more of you were not able to be present — and that was when the secretary of state presented to the convention the 3 former state constitutions that will be housed in this building during our convention. I have asked Mr. Hare, who is the custodian of these documents, if he will say a word to us at this time about them and about his entrusting them to us.

Mr. Hare. (applause)

SECRETARY OF STATE HARE: Thank you, President Nisbet.

Some 3 or 4 months ago some officers and members from both the convention and from the Michigan historical commission met in my office to discuss the possibility of bringing the 3 existing constitutions, as they were originally written, out of our archives vault and putting them in a showcase for people to see. After some substantial difficulties and, indeed, some slight financial problems, we did raise enough money to bring forth a case that you will see out in the foyer.

Steve Nisbet, in accepting the display for the convention, promised me one thing that I hope will come forth. He promised me that, while we are delivering to you in the case 3 copies of the existing constitutions, when it is returned back to the archives of the state, it will be returned with 4 of them in there, and I hope this is true. I know I can commend this to your care. Thank you very much. (applause)

PRESIDENT NISBET: I hope you will help me to live up to that.

Mr. Walker.

MR. WALKER: I had no comment on this, Mr. President, but I did want to ask that Mr. Binkowski specifically be excused today; that he was speaking in Eaton Rapids on the constitutional convention and expected to be back in time, and therefore did not ask to be excused.

PRESIDENT NISBET: Thank you, Mr. Walker. He is excused.

Reports of standing committees.

SECRETARY CHASE: The committee on rules and resolutions, by Mr. Van Dusen, chairman, reports back to the convention **Resolution 62,** A resolution expressing appreciation of services provided by the Michigan state medical society and the Ingham county medical society; without amendment, and with the recommendation that the resolution be adopted.

R. C. Van Dusen, chairman.

For Resolution 62 as offered, see above, page 409.

PRESIDENT NISBET: The question is on the adoption of the resolution.

Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, members of the convention, the resolution has the authorship, which some of you may have recognized, of Dr. DeVries. His prose is typically delightful and, I think, suitably laudatory of the activities of the 2 medical societies. The committee urges the adoption of the resolution.

PRESIDENT NISBET: The question is on the adoption of the resolution. Those in favor say aye; opposed, no.

The resolution is adopted.

SECRETARY CHASE: That is the only standing committee report, Mr. President.

PRESIDENT NISBET: **Reports of select committees.**

Mr. Romney.

MR. ROMNEY: Mr. President and fellow delegates, I regret to report, and I am sure you will regret to hear, that our expectation of hearing all the former presidents of the United States has not materialized. I would like to read to you the 2 letters received by President Nisbet following the extending of an official invitation to former President Truman. Mr. Truman wrote on December 26:

> Dear Mr. Nisbet:
>
> I have not, as yet, been able to straighten out my schedule for the appearance before your convention.
>
> I sincerely hope that that can be done after the first of the year. As I told you before, I would appreciate it if you will get in touch with me again sometime after the first of the year.
>
> Sincerely yours, Harry S. Truman.

And then on January 12, Mr. Truman wrote Mr. Nisbet:

> Dear Mr. Nisbet:
>
> It is unfortunate that so much confusion and misunderstanding should have arisen with regard to my hoped for appearance at Detroit and the Michigan constitutional convention.
>
> My normally crowded schedule became even more complicated, by reason of some personal circumstances, and I have had to beg off of some firm commitments that I had previously made and to decline all tentative commitments.
>
> I hope that this will clear up the situation for all concerned.
>
> Sincerely yours, Harry S. Truman.

I am sure we all regret that personal considerations have prevented him from accepting the official invitation, and to my knowledge, Mr. President, this would complete the assignment of our committee under the circumstances; Mr. Hoover having previously indicated that because of his advanced age and

doctor's orders he was not in a position to travel as he had been doing in previous years. Thank you.

PRESIDENT NISBET: Communications from state officers.

SECRETARY CHASE: From the Office of the Governor, Lansing, January 16, 1962:

The Honorable Stephen S. Nisbet, President
Michigan Constitutional Convention, Constitution Hall
Civic Center, Lansing, Michigan

Dear Mr. President:

Transmitted to you with this letter is my Message to the Fifth Michigan Constitutional Convention on the subject of economic development.

Sincerely yours,
John B. Swainson, governor.

Following is the message from the governor, as received:

January 16, 1962.

Ladies and gentlemen of the constitutional convention:

In the days that have passed since the opening of Michigan's constitutional convention, you have received officially a great many proposals for your consideration in reconstructing an acceptable constitution for the people of our state. These proposals have embraced an almost endless range of constitutional policy matters, each of which adds additional weight to the tremendous public responsibility borne by you as convention delegates.

This agenda of proposals will continue to grow, I am sure, with the progress of the convention, as will the growing appreciation of the magnitude of your labors in behalf of Michigan's citizens.

With full appreciation for the scope of your task, I commend to your attention for consideration certain proposals bearing on the relationship of public policy and economic development. The present and future vitality of the Michigan economy has been a subject of great importance in recent years.

The fact that our economy is in a stage of transition from one based heavily on the manufacture of durable goods to one of greater diversity is well known.

The fact that our economy has been hypersensitive to the fluctuations of the national economy is equally well known.

In addition to current efforts to speed economic growth and diversification, certain legislative measures have been proposed to provide added strength to these efforts. These measures are, however, impossible to implement under the present constitution. It is for this reason that I commend the following proposals to you:

1. Amendment of the existing article X, section 12, to the end that the credit of the state might be granted to or in aid of nonprofit public benefit corporations with legislative approval for the purpose of financing industrial, manufacturing and/or municipal development projects.

Implementation of this proposal would open a variety of avenues of public efforts toward the ultimate goal of full employment. Under such a constitutional provision the state could establish a program to insure mortgage payments on property devoted to manufacturing projects and industrial research projects.

The repayment of loans to industry made by private financial institutions could be insured with the state acting as guarantor on the loan. State operating funds for the program would be provided through premiums collected by the state. The purpose of such an operation, commonly referred to as an industrial FHA program, would be the encouragement of private investment for the expansion of Michigan's industrial base. The overall goal would be the achievement of full employment.

Another possibility presented by such an amendment to article X, section 12, is that of direct state participation in the financing of private industrial expansion. This type of approach was recommended by me to the 1961 session of the legislature in the form of the greater Michigan authority. This authority would administer state financial participation in development projects, drawing upon funds deposited by the state in a greater Michigan revolving fund which would be maintained through appropriations by the legislature.

Loans could then be made from such a fund to nonprofit community industrial development corporations, to regional industrial development corporations and to local units of government in critical economic areas of the state. As in the case of the industrial FHA proposal, the overall goal of this type of assistance would be the achievement of full employment.

A third possibility would be that of granting the legislature authority to permit local units of government to purchase land and effect improvements thereupon for the purpose of developing industrial parks. This type of approach has received a great deal of attention in recent years in Michigan and certainly deserves serious consideration. Perhaps the strongest argument in support of such an approach is that it would provide communities a tool behind which local initiative for economic development could be mobilized.

2. Elimination of existing constitutional article XII, section 5, which restricts corporate real estate investment in Michigan.

Currently, this section of the constitution provides that "No corporation shall hold any real estate for a longer period than 10 years, except such real estate as shall be actually occupied by such corporation in the exercise of its franchises." The original intent of this provision, it appears, was to prevent excessive real estate holdings for other than corporate purposes.

Today, however, in view of the changes in land values, the cost of acquiring and paying taxes on excessive real estate holdings serves as an effective ban against such holdings. On the other hand, the existing constitutional limitation is now discouraging certain investments necessary for our continued economic development.

Because of this restriction, Michigan is at a competitive disadvantage in terms of attracting corporate investment of equity capital in the financing of housing and urban renewal projects and other kinds of longterm capital projects. Certain corporations, particularly insurance companies, have been extremely reluctant to involve their capital in Michigan real estate holdings as a result of this restriction.

Elimination of the present article XII, section 5, certainly holds a potential for additional stimulation of our economy and it is for this reason that I commend this proposal to your attention.

Each of the proposals suggested herein has received careful study and subsequent favorable recommendation by the governor's special commission on industrial development legislation, a fine group of Michigan men and women from the fields of industry, finance and government and active in civic affairs. This special commission was appointed March 16, 1961, to assist in the expansion of opportunities for employment in our state — to study and recommend the necessary tools of the industrial development trade. In performing this public service, they have had one goal in mind, that of insuring that Michigan has and will continue to have a vital, thriving economy. Their recommendations are certainly worthy of your attention.

Although it has been stated before from various platforms, I would like to express once again my sincere conviction that there is no task of greater urgency than that of putting our vast resources and capabilities to work toward the achievement of economic strength and well being. To the extent that this task can be accomplished under constitutional provisions without jeopardizing the priority that must be retained by the public interest, your consideration is respectfully directed to the suggestions contained in this message.

PRESIDENT NISBET: The message will be printed in the journal.

Second reading of proposals.

SECRETARY CHASE: Nothing on that calendar.

PRESIDENT NISBET: Third reading of proposals.

SECRETARY CHASE: Nothing on that calendar.

PRESIDENT NISBET: Motions and resolutions.

SECRETARY CHASE: There are no resolutions on file.

PRESIDENT NISBET: Unfinished business.

SECRETARY CHASE: None.

PRESIDENT NISBET: Special orders of the day.

SECRETARY CHASE: No special orders.

PRESIDENT NISBET: **General orders** of the day.

The Chair recognizes Mr. Hutchinson.

MR. HUTCHINSON: Mr. President, I move the convention resolve itself into committee of the whole to consider matters on the general orders calendar.

PRESIDENT NISBET: The question is on the motion of Mr. Hutchinson. All in favor say aye. Those opposed, no.

The motion prevails. Mr. Hutchinson, will you please come forward.

[Whereupon, Mr. Hutchinson assumed the Chair to preside as chairman of the **committee of the whole.**]

CHAIRMAN HUTCHINSON: The committee will be in order, and the secretary will read the first item of business for today, item 2 on the general orders calendar.

SECRETARY CHASE: From the committee on executive branch, by Mr. Martin, chairman, **Committee Proposal 17,** A proposal respecting eligibility for the offices of governor and lieutenant governor. Amends article VI, section 13.

Following is Committee Proposal 17 as read by the secretary, and the reasons submitted in support thereof:

The committee recommends that the following be included in the constitution:

[No person shall be eligible to the office of governor or lieutenant governor who shall not have attained the age of 30 years and who has not been 5 years a citizen of the United States and a resident of this state 2 years next preceding his election.] ANY REGISTERED VOTER OF THE STATE WHO IS AT LEAST 30 YEARS OF AGE SHALL BE ELIGIBLE TO THE OFFICES OF GOVERNOR OR LIEUTENANT GOVERNOR.

Mr. Martin, chairman of the committee on executive branch, submits the following reasons in support of Committee Proposal 17:

The committee on executive branch proposes to delete the present requirement that only persons who have been citizens of the United States for 5 years and residents of Michigan for 2 years preceding the election be eligible for the office of governor or lieutenant governor. The committee feels that such eligibility requirements are unnecessary and that it is sufficient to require a candidate for governor or lieutenant governor to be at least 30 years of age and in addition that he be a registered voter in lieu of requirements with respect to citizenship and residence within the state.

CHAIRMAN HUTCHINSON: On the proposal, the Chair recognizes the chairman of the committee, Mr. Martin.

MR. MARTIN: Mr. Chairman, the committee proposal before you is in the journal on page 300, and is brief.

The committee considered the eligibility rules of governor and lieutenant governor, and it felt that it was not necessary to specify in quite as much detail with respect to citizenship and with respect to a long period of residence in the state, but rather that it was sufficient to provide that any registered voter of the state who is at least 30 years of age shall be eligible to the office of governor or lieutenant governor.

Explanation—Matter within [ ] is stricken, matter in capitals is new.

There was some discussion in the committee, and some members of the committee inclined to the view that it was not necessary to specify 30 years of age. It was pointed out, I believe, that the first governor of Michigan was considerably younger than this. But the committee did conclude that there should be an age limit, and retained the 30 year provision.

Although it was not placed there for that purpose, the requirement that any person to be eligible must be a registered voter does, in effect, provide a citizenship requirement, because he could not be a registered voter unless he was a citizen; and it also, in effect, provides a 6 month residence requirement, because he could not be a registered voter unless he had been a resident of the state of Michigan for at least 6 months.

So that there is in the provision that he be a registered voter, a citizenship and residence requirement, in addition to the 30 year requirement.

CHAIRMAN HUTCHINSON: Mr. Bentley.

MR. BENTLEY: I wonder if the chairman would advise as to whether or not that eligibility could be met by the time that he actually took office? Would that be appropriate? In other words, he would not have to be a registered voter technically, perhaps, even when he filed his petition, but if he was a registered voter at the time he took office the requirement of the provision would be fulfilled.

MR. MARTIN: It is possible, but I believe the requirement really requires that he be a registered voter at the time he files his petition, because I think it is now required that this be stated on the petition.

MR. BENTLEY: Thank you. I wanted to bring that point out.

CHAIRMAN HUTCHINSON: Are there any amendments to the body of the proposal?

SECRETARY CHASE: Mr. Perras offers the following amendment:

1. Amend page 1, line 9, after "age" by inserting "and who has been a resident of this state for 5 years"; so the language will read:

Any registered voter of the state who is at least 30 years of age and who has been a resident of this state for 5 years shall be eligible to the offices of governor or lieutenant governor.

CHAIRMAN HUTCHINSON: Mr. Perras.

MR. PERRAS: Mr. Chairman, fellow delegates, I speak against the wording of Committee Proposal 17 because I think that we are leaving this thing too wide open. I believe that any man who is going to become the governor of this state should have lived here at least 5 years so he would know the problems of this state. This leaves it where anyone can come in within 6 months and be elected a governor. That is why I rise against this proposal.

CHAIRMAN HUTCHINSON: The question is on the amendment offered by Mr. Perras.

MR. MARTIN: Mr. Chairman, the committee considered that question, and the committee's action was unanimous. It felt that the voters could adequately judge whether the candidate had the necessary knowledge of state affairs or not. Incidentally, this amendment would increase the residency requirement, even the residency requirement of the present constitution. It would increase it from 2 to 5 years.

CHAIRMAN HUTCHINSON: The question is upon the amendment offered by Mr. Perras that the qualifications for governor include also residence in the state for 5 years. Mr. Ford.

MR. FORD: Mr. Chairman, I would like to direct a question to the committee. I notice that in section 1 of article III the qualifications of an elector of the state are set forth, and there have been numerous decisions in this state making a finite but definite distinction between an elector and a voter, and I wondered if the committee had considered the use of the word "elector" rather than the word "voter."

MR. MARTIN: The committee did not consider the word "elector," but it did consider, however, the use of the term "qualified voter" and decided against that in favor of the language used here.

MR. FORD: In that case, if we don't amend it here, I suppose this is probably something that style and drafting could do, but I would like to commend to their attention the court interpretation of the meaning of these 2 words, "elector" and "voter," which sometimes gets us in a little trouble.

CHAIRMAN HUTCHINSON: Well, the question is upon Mr. Perras' amendment. If there is no further discussion upon that amendment, all those in favor will say aye—

Pardon me. Mr. Norris.

MR. NORRIS: Mr. Chairman, I feel moved to express my judgment with regard to this particular proposal. I rise to support the Perras amendment. I do believe that the requirement of residence should be a requirement for selection to this office. I don't see how any person can familiarize himself with the problems even to present himself to the voters. I do think that this is a matter which indicates an important indicia of qualifications for this office, and I therefore support the amendment.

CHAIRMAN HUTCHINSON: Mr. Martin, do you desire to speak further?

MR. MARTIN: No.

CHAIRMAN HUTCHINSON: All those in favor of the Perras amendment will say aye. Those opposed, no. The Chair is in doubt. As many as are in favor will rise.

SECRETARY CHASE: Sixty-six.

CHAIRMAN HUTCHINSON: Those opposed will rise.

SECRETARY CHASE: Sixty-six.

CHAIRMAN HUTCHINSON: The amendment is not adopted on a tie vote.

Are there any further amendments to the body of the proposal? Mr. Hoxie.

MR. HOXIE: I have a question which is bothering me a little bit—perhaps some of my legal brethren will help me—and that is the distinction between the words "resident" and "resident voter", which is a matter of election on the part of the individual if he can claim that he receives his mail at a certain location or he hangs his hat there on occasion, and may actually, constructively, reside in some other area outside the state of Michigan. I am wondering, Mr. Martin, did the committee, in their consideration, consider any distinction between the word "resident", by which most of us mean that that is where we reside permanently, and the matter of a registered voter who may not constructively or actually reside within the state of Michigan?

MR. MARTIN: Mr. Hoxie, the question of residence, of course, from a legal standpoint, is simply a question of where the voter intends to reside and does in fact reside. The requirement, however, is no different for residence for a registered voter than it is for someone who is just a resident. Again the requirement is exactly the same. It has been said, of course, that some people who claim residence are not really residents here; they may have claimed residence for years and actually not been in the state for years. But, they may, of course, still vote here.

CHAIRMAN HUTCHINSON: Well, the question has been decided by the committee. Are there any further amendments to the body of the proposal?

SECRETARY CHASE: Mr. Faxon offers the following amendment:

1. Amend page 1, line 9, after "age" by inserting "and who has been a resident of this state for 2 years".

CHAIRMAN HUTCHINSON: The question is upon the amendment offered by Mr. Faxon to require that the governor be a resident of this state for 2 years prior to his election. Any discussion upon that amendment? Mr. Faxon.

MR. FAXON: This is the provision that was in the 1835, 1850, and 1908 constitutions. It seems to have served well over the past 100 years, and I don't see any need to delete this passage from the present. So I insert the original language of 2 years' requirement.

CHAIRMAN HUTCHINSON: Mr. Hodges.

MR. HODGES: Speaking in opposition to the amendment, and in support of the committee's report, I think that the voters are the best judge of this, and it seems to me there may be conceivable circumstances in which a person might be holding—conceivably even the president of the United States or some other federal official might come back to his state, where he had been out of the state for the preceding years, and yet still would be an attractive and eligible candidate. I think the voters are the best judge of this, and it can be left to their discretion. It seems very doubtful that a candidate who had not been living here would be able to get sufficient support.

CHAIRMAN HUTCHINSON: The question is upon the amendment offered by Mr. Faxon.

Mr. Martin.

MR. MARTIN: I would only add that there are numerous provisions in the constitution that have been there a long time. The length of time they are there is not necessarily a reason for or against the retaining of them. The question is, are they desirable as of this date?

CHAIRMAN HUTCHINSON: All those in favor of the Faxon amendment will say aye. Those opposed, no. The Chair is in doubt. All those in favor of the Faxon amendment will rise.

SECRETARY CHASE: Fifty-three.

CHAIRMAN HUTCHINSON: Those opposed will rise.

SECRETARY CHASE: Sixty-eight.

CHAIRMAN HUTCHINSON: The amendment is not adopted.

Are there any further amendments to the body of the proposal?

SECRETARY CHASE: Messrs. Ford and Iverson offer the following amendment:

1. Amend page 1, line 9, after "registered" by striking out "voter" and inserting "qualified elector"; so the language will read, "Any registered qualified elector of the state who is at least 30 years of age shall be eligible to the offices of governor or lieutenant governor."

CHAIRMAN HUTCHINSON: On the Ford amendment, Mr. Ford.

MR. FORD: The only reason for this change in language is to make this section, which formerly did not refer to either a voter or elector, consistent with section 1, article III, which very clearly and definitely defines the language that we would now be using, so there would be no confusion in the future. For those who do not have the constitution before them, I might read:

> In all elections every inhabitant of this state being a citizen of the United States; and every inhabitant of indian descent, a native of the United States, shall be an elector and entitled to vote; but no one shall be an elector and entitled to vote at any election, unless he or she shall be above the age of 21 years and has resided in this state 6 months, and in the city or township in which he or she offers to vote 30 days next preceding such election: Provided, That a registered qualified elector who shall move into another city or township in this state within said 30 day period. . . .

and so on through the section these words are used repeatedly.

CHAIRMAN HUTCHINSON: On the Ford-Iverson amendment, Mr. Martin.

MR. MARTIN: Mr. Chairman, I wonder if the secretary would read that as it now is.

SECRETARY CHASE: Messrs. Ford and Iverson have offered an amendment to line 9, after "registered" by striking out "voter" and inserting "qualified elector"; so the language will read, "Any registered qualified elector of the state . . . ."

MR. MARTIN: Mr. Chairman, I think the committee would have no objection to that amendment.

CHAIRMAN HUTCHINSON: The question is upon the Ford-Iverson amendment. All those in favor will say aye. Those opposed, no.

The amendment is adopted.

Are there any further amendments to the body of the proposal? If not, it will pass.

Committee Proposal 17, as amended, is passed.

The secretary will read the next proposal.

SECRETARY CHASE: Item 3 on the calendar, from the committee on executive branch, by Mr. Martin, chairman, **Committee Proposal 18,** A proposal to provide for a great seal of the state and to authorize its use. A substitution for article VI, sections 11 and 12.

Following is Committee Proposal 18 as read by the secretary, and the reasons submitted in support thereof:

The committee recommends that the following be included in the constitution:

THERE SHALL BE A GREAT SEAL OF THE STATE OF MICHIGAN AND ITS USE SHALL BE PRESCRIBED BY LAW.

Mr. Martin, chairman of the committee on executive branch, submits the following reasons in support of Committee Proposal 18:

Both sections 11 and 12 in our present constitution provide for the use of the great seal of Michigan in great detail. Both sections are unduly mandatory in their provisions as to the use of the seal. Most states provide for a great seal in their constitutions and the committee felt that a great seal of Michigan is necessary and it should be given the dignity of a constitutional provision. It is believed, however, that the use of the seal should not be so explicitly detailed as in the present sections 11 and 12 and that the use of the seal should be prescribed by law.

The committee believes that the legislature can and will provide for the use of the great seal in a proper manner.

CHAIRMAN HUTCHINSON: On the committee proposal, Mr. Martin.

MR. MARTIN: Mr. Chairman, the sections which are involved here are sections 11 and 12 of the present constitution, and they deal in considerable detail with the use of the great seal. The committee gave this considerable attention. They felt that the state certainly should have a great seal as it now hangs on the rostrum wall above the chairman's head, and that there may be other uses to which the great seal should be put than those specified in the constitution. The committee felt that it was sufficient to provide that there shall be a great seal of Michigan, and that its use shall be prescribed by law. This would permit the legislature to provide for its use in the various ways in which it is now specified in these 2 sections, and in such other ways as it may think necessary and appropriate.

CHAIRMAN HUTCHINSON: Are there any amendments to the body of this proposal? If not, it will pass.

Committee Proposal 18 is passed.

The secretary will read the next proposal.

SECRETARY CHASE: Item 4 on the calendar, from the committee on miscellaneous provisions and schedule, by Mr. Erickson, chairman, **Committee Proposal 19,** A proposal to provide for a state militia. A substitute for all of article XV.

Following is Committee Proposal 19 as read by the secretary, and the reasons submitted in support thereof:

The committee recommends that the following be included in the constitution:

THE MILITIA SHALL BE ORGANIZED, EQUIPPED AND DISCIPLINED AS PROVIDED BY LAW.

Mr. Erickson, chairman of the committee on miscellaneous provisions and schedule, submits the following reasons in support of Committee Proposal 19:

The committee on miscellaneous provisions and schedule recommends the adoption of the proposed single sentence in lieu of the existing article XV. It is felt that there is need to provide for a militia in the proposed constitution, but the present language is too inflexible and contains several matters which are strictly of legislative concern.

The need for a militia is clear. Even though the state is not or may not be in danger at the present time the need may arise at any time in the future.

While the power of a sovereign state to defend itself is clear, without constitutional provision it would not be clear in what branch of government the power resided.

There are sections on the executive branch which declare the governor to be commander in chief. The proposed provision would indicate that while the governor has the power to call out the militia, it is the duty of the legislature to provide laws for its organization, composition, equipment, and discipline. The proposed section would then vitiate any possible conflict of executive and legislative powers on the subject.

The present provisions of article XV tie the legislature down to an outmoded concept of what the militia should be. In the interest of flexibility and with the distinct possibility that concepts of the militia will change in the future, the legislature should not be forced to recognize requirements such as age, which are geared to 1908 conditions.

The proposed amendment would in no manner interfere with the federal constitution and law empowering congress to call forth the militia. The United States supreme court has held that jurisdiction in the area is concurrent.

It is suggested by the committee that the committee on style and drafting should consider a proposal incorporating the proposed section, if passed, into article V, since it deals with legislative power and there is little to be gained in allowing the single proposed sentence to stand alone.

Explanation—Matter within [ ] is stricken, matter in capitals is new.

CHAIRMAN HUTCHINSON: On the proposal, the committee chairman, Mr. Erickson.

MR. ERICKSON: This report contemplates reducing 117 words in the present constitution down to 12, and I would like to yield at this time to Delegate DeVries, along with other members of the subcommittee who prepared this report.

CHAIRMAN HUTCHINSON: Mr. DeVries.

MR. DeVRIES: Mr. Chairman and members of the committee, the subcommittee on militia consisted of these former enlisted men: Corporals DeVries, Binkowski, Mahinske and Chief Petty Officer Leppien, and Miss Donnelly.

The subcommittee heard or solicited testimony from about 15 witnesses, including 5 generals and 1 colonel. After viewing the whole problem with Olympian detachment, we decided on 1 of 3 alternatives: 1, to delete the entire article — no reference at all to militia; 2, to revise the language of the article into a compact sentence — this is what we have done in order to give us flexibility — or 3, to retain the article with the amendments suggested by the military establishment.

The subcommittee decided on the second alternative. You will find the report in the journal on page 301, and I will just briefly read it to you:

[The supporting reasons were read by Mr. DeVries. For text, see above.]

I would urge the support of the committee's report and its recommendation.

CHAIRMAN HUTCHINSON: Mr. Norris.

MR. NORRIS: Mr. Chairman, may I address a question, through the Chair to Mr. DeVries?

CHAIRMAN HUTCHINSON: If the gentleman cares to answer, you may.

MR. NORRIS: I note that there is omitted, both from the section to which the report is addressed and from the comment, any reference to the right — or at least the privilege — which is stated in section 1:

> . . . but all such citizens of any religious denomination, who, from scruples of conscience, may be averse to bearing arms, shall be excused therefrom upon such conditions as shall be prescribed by law.

That section is omitted, and, as I say, also omitted from the comment. I wondered if it is the intent of the committee that this provision shall not be accorded the same weight as it has been accorded under the 1908 constitution, which is that these rights of conscience be respected also as prescribed by law, by the legislature.

CHAIRMAN HUTCHINSON: Mr. DeVries.

MR. DeVRIES: It is the committee's intent, Mr. Chairman, Dr. Norris, that this would be covered in legislation, as I believe it is in the 1909 act, and in no way is this an attempt to take away the rights of a conscientious objector.

CHAIRMAN HUTCHINSON: Are there any amendments to the body of the proposal?

If not, it will pass.

Committee Proposal 19 is passed.

The secretary will read the next item.

SECRETARY CHASE: Item 5 on the calendar, from the committee on finance and taxation, by Mr. Brake, chairman, **Exclusion Report 2003,** A report recommending the exclusion of article X, section 20.

Following is Exclusion Report 2003 as read by the secretary, and the reasons submitted in support thereof:

The committee on finance and taxation recommends that article X, section 20, of the present constitution be excluded entirely from the new constitution.

Mr. Brake, chairman of the committee on finance and taxation, submits the following reasons in support of Exclusion Report 2003:

The committee on finance and taxation, as to section 20 of article X of the constitution, says that from the reading of this section it is apparent that it was designed to meet a specific problem existing at one time in the state's history but that the problem no longer exists and that therefore there is no reason for continuing it in the constitution.

CHAIRMAN HUTCHINSON: Mr. Brake.

MR. BRAKE: Mr. Chairman, I don't know how we got back into this. The last I heard of this report it had been referred by this committee of the whole to the committee on legislative powers. How we got it back, or when, I know nothing about.

SECRETARY CHASE: Perhaps the secretary could interpolate here by stating that the exclusion report, on its face, came originally from the committee on finance and taxation, and the secretary neglected to point out that the committee on legislative powers had reported it back.

For last previous action on Exclusion Report 2003, see above, page 430.

CHAIRMAN HUTCHINSON: The secretary will read the report, unless Mr. Hoxie wants to consider it read, and I will recognize Mr. Hoxie.

MR. HOXIE: Mr. Chairman and fellow delegates, I do so move, and at this time I would like to call on Mr. Wanger to give a report of our findings to the committee.

CHAIRMAN HUTCHINSON: Without objection, the exclusion report will be considered read, and the Chair recognizes Mr. Wanger.

MR. WANGER: Mr. Chairman, members of the committee, I direct your attention to that part of the constitution which is section 20 of article X. It is perhaps a unique section, and its scope of operation is admittedly very narrow. It says

> It shall be competent for the state to acquire, purchase, take, hold and operate any railroad, or railroad property, belonging to any railroad or railway company in this state heretofore organized under a special charter still in force and effect and constituting a contract between the state and said company, wherein the right to purchase or acquire has been reserved to the state, whenever in the judgment of the legislature such acquisition or purchasing is necessary to protect and conserve the rights and interests of the state under such charter or contract. Any and all debts or obligations of such company constituting a lien upon such railroad, or railroad property, may be assumed by the state, and such road or property may be leased, sold or disposed of in such manner as may be provided by law.

This was amended into our constitution by a vote of the people on April 2, 1917.

I call your attention to the fact that it is very narrow in its operation. It says, of course, that the state may buy or operate and subsequently sell railroad property belonging to any railroad company, first in this state, second, heretofore organized — that is prior to the 1917 vote — third, under a special charter still in force and effect, fourth, which constitutes a contract between the state and said company, and fifth, wherein the right to purchase or acquire has been reserved to the state.

Over the holidays, when we were at home, I asked Dr. George May, of the Michigan historical commission, to prepare a history of this section for me. I quote from his signed memorandum:

> This amendment to the Constitution of 1908 originated with the attorney general, Alex J. Groesbeck.
>
> An article in the Lansing State Journal, January 24, 1917, explained the amendment was directed at the Detroit, Grand Haven and Milwaukee branch of the Grand Trunk.
>
> Under its charter, which dated back to 1834, the DGH&M paid an annual tax of 1 per cent of its capital stock. The railroad for years has successfully resisted efforts of the state to tax it on an ad valorem basis, as other railroads were taxed.
>
> As a result, the railroad was paying an annual tax of only $25,000 in Michigan, whereas the state claimed it should be paying $150,000.
>
> When he became attorney general in January, 1917, Groesbeck took an active interest in this controversy. He noted that the said charter of 1834, which the railroad was using to protect itself from having to pay more taxes, also provided that after a period of years the state of Michigan could purchase the railroad at a cost to be set by a commission to be appointed by the governor and the legislature.
>
> Groesbeck reasoned that if the state threatened to assert the right given it by the charter to purchase the DGH&M, the railroad would relinquish its special privilege as regards to taxation. If the railroad did not do this, however, Groesbeck declared the state could purchase the railroad, sell it to private operators, and then collect taxes on an ad valorem basis.
>
> However, under the 1908 constitution the state could not acquire public utilities. Thus, Groesbeck proposed that the constitution be amended to enable the state to take advantage of this clause in the DGH&M charter.
>
> The State Journal, on the following day, January 25, reported the Groesbeck proposal had met with excellent and enthusiastic reception among the state officials and members of the legislature.
>
> Groesbeck further explained his position. His proposal, he emphasized, "is not intended to change the constitution so as to enable the state to own and operate and pledge railroads within the state, nor is it intended to authorize the building of railroads."
>
> His proposal, if approved, "will merely place the state in such a position that it can, with the necessary supplementary legislation, avail itself of its contractual rights, and thus protect the public interest."

At the conclusion of that memorandum, Dr. May states:

> Although this amendment was proposed and adopted during the period of world war I, the United States was not yet in the war at the time of its adoption and there does not appear to be any evidence that the amendment, as Roy Barlow asserts in Taxation and Fiscal Policy in the Michigan Constitution, was at all related to any wartime "concern over a possible need for public operation

of railroads." Rather, it was an outgrowth of a long standing dispute between the state of Michigan and the grand trunk railroad over the taxes of that railroad branch line, the Detroit, Grand Haven and Milwaukee.

Upon your desk yesterday you found copies of 2 letters. One was from the attorney or general counsel of the Grand Trunk Western railroad company. In part, that letter said:

> About the middle of the nineteenth century when the state of Michigan was interested in having an east-west railroad built across the state, the legislature decided to give some incentive to the promoters and builders of such a road by way of a tax concession.

The letter, as you know, goes on to point out the history of the situation, and finally states, on page 2:

> So far as I know, the mentioned section of article X of the 1908 constitution was specifically adopted to cover the Milwaukee railway company. Mr. H. V. Spike, my predecessor with the railroad company, was intimately connected with these matters for many years, and I have checked with him today, and he advises me that, so far as he knows, my understanding is correct and that there is no other railroad company in the state of Michigan involved in this particular kind of situation.

As the letter also points out regarding the special charter:

> The charter was surrendered and ever since that time the regular taxes have been paid.

That letter is personally signed, and I also have a signed letter from the aforesaid Mr. H. Victor Spike. I quote in part from that, from page 3:

> "On January 1, 1949, the properties became subject to the general railroad tax laws of the state."

I have no hesitancy in saying that the special charter of the Detroit, Grand Haven and Milwaukee railroad company has completely gone out of existence, and neither the state nor the railroad company nor its successor, Grand Trunk Western railway company, have any rights or privileges whatever thereunder, or under section 20 of article X of the constitution, and I do not know of any other railroad in this state which was organized under a special charter prior to the adoption of section 20 of article X of the Constitution of 1908, which charter constituted a contract between the state and such company, wherein the state has a right to purchase for acquisition, as stated in said section 20. In other words, section 20 of article X can safely be left out of the proposed new constitution.

You also have a letter to a similar effect from James Inglis, which was prepared and placed on your desks yesterday, dated January 4.

Finally, I have received a letter from Mr. Edward W. Kane, secretary of the Michigan state tax commission, dated January 11. I quote in part, as follows:

> There is no cognizance taken by the state board of assessors of the provision of section 20, article X, in evaluating railroads for taxation purposes.

At another point I quote, selectively:

> There is no further purpose in retaining the provision of section 20, article X of the Constitution of the State of Michigan.

CHAIRMAN HUTCHINSON: Are there any amendments to the body of the exclusion report? If not, it will pass.

Exclusion Report 2003 is passed.

The next item.

SECRETARY CHASE: Item 6, from the committee on legislative powers, by Mr. Hoxie, chairman, **Committee Proposal 20,** A proposal to provide that no law shall be enacted providing for the penalty of death. Amends article V by adding a new section.

Following is Committee Proposal 20 as read by the secretary, and the reasons submitted in support thereof:

The committee recommends that the following be included in the constitution:

Sec. a. NO LAW SHALL BE ENACTED PROVIDING FOR THE PENALTY OF DEATH.

Mr. Hoxie, chairman of the committee on legislative powers, submits the following reasons in support of Committee Proposal 20:

Michigan in 1846 was the first American state and the first governmental jurisdiction in the English speaking world to legislate against capital punishment. Except for treason, which today is clearly more a matter of federal rather than state significance, our state has not had the death penalty since that time.

The compelling arguments against capital punishment were succinctly restated in the Journal of the American Judicature Society of October, 1958, as follows:

1. The evidence clearly shows that execution does not act as a deterrent to capital crimes.
2. The serious offenses are committed, except in rare instances, by those suffering from mental disturbances; are impulsive in nature; and are not the acts of the "criminal" class.
3. Conviction of the innocent does occur and death makes a miscarriage of justice irrevocable. Human judgment cannot be infallible.
4. When the death sentence is removed as a possible punishment, more convictions are possible with less delays.
5. Unequal application of the law takes place because those executed are often the poor, the ignorant, and the unfortunate without resources.
6. The state sets a bad example when it takes a life. Imitative crimes and murder are stimulated by executions.
7. Legally taking a life is useless and demoralizing to the general public. It is also demoralizing to the public officials who, dedicated to rehabilitating individuals, must callously put a man to death. The effect upon fellow prisoners can be imagined.
8. A trial where a life may be at stake is highly sensationalized, adversely affects the administration of justice, and is bad for the community.
9. Society is amply protected by a sentence of life imprisonment.

Since 1926 there have been 8 times that a majority of one of the houses of our legislature voted in favor of the death penalty. Thus there is potential danger, particularly after a sensational crime, of such legislation being adopted.

The committee believes that it is both fitting and opportune for Michigan to step forward in the tradition which we began over 115 years ago and that the adoption of this provision would be a significant contribution to the concept of civilized justice which all of us seek to serve.

CHAIRMAN HUTCHINSON: The Chair recognizes the chairman of the committee, Mr. Hoxie.

MR. HOXIE: Mr. Chairman and fellow delegates, this, to me, is one of the most serious proposals that we will have before this committee. It is not only clear but it is concise. There cannot be any misunderstanding as to its intent and purpose.

To me it is twofold. The question that you have got to settle in your minds is: do you think it is right for the state to take a human life? The other is: do you feel that this is an undue restriction upon the legislature?

Our committee considered this. We have secured a lot of data on it, both the arguments pro and con, and at this time I would yield to Mr. Millard, who will furnish that information to the delegates.

CHAIRMAN HUTCHINSON: The Chair recognizes Mr. Millard.

MR. MILLARD: Mr. Chairman, members of the committee, this is a proposed new section to the proposed new constitution, but it is not a new concept in the jurisprudence of this state. In 1848 the first statute was passed prohibiting execution of the death penalty in the state of Michigan. There

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Explanation—Matter within [ ] is stricken, matter in capitals is new.

are a great many reasons why the committee voted to put out this proposal, and one was for the many times that this question arises and is proposed as a legislative matter to our state legislators.

I might say that in my own personal experience over a great many years as a practicing lawyer, each time a heinous and atrocious crime was committed in the state of Michigan there were some people who immediately advocated the death penalty, even though it wouldn't be retroactive and take charge of that particular case. And so many, many, many times there have been bills presented to the legislature to provide for the death penalty.

When I was attorney general there was a bill introduced every single year, and I think we will have that discussed by one of the other members of the committee to give you just an idea as to how far back these legislative proposals have gone. However, I heard a great many of the arguments both for and against capital punishment in those days, and as you probably all know the elective officials in those days would go around to "government days" held in high schools all over the state, and generally one of the questions that was asked was: "What do you think of capital punishment?" and it fell upon me to make the answers. So I had to look up some of the statistics, some of the things that prompted me to come to the conclusion that capital punishment is not the solution to crime.

In fact, all of these statistics show that crime is greater in a percentage factor according to population in states that do have capital punishment than those that do not.

I want to read here some of the compelling arguments which have been compiled and restated in the Journal of the American Judicature Society of 1958 as follows:

1. The evidence clearly shows that execution does not act as a deterrent to capital crimes.

2. The serious offenses are committed, except in rare instances, by those suffering from mental disturbances; are impulsive in nature; and are not the acts of the "criminal" class.

I believe if all of you will think back to some of the worst crimes you know, you will find that the statement will be verified in your own experience.

3. Conviction of the innocent does occur and death makes a miscarriage of justice irrevocable. Human judgment cannot be infallible.

4. When the death sentence is removed as a possible punishment, more convictions are possible with less delay.

5. Unequal application of the law takes place because those executed are often the poor, the ignorant, and the unfortunate without resources.

That will be enlarged upon by one of the other members of the committee. It is very, very important as far as the humanitarian aspect is concerned.

6. The state sets a bad example when it takes a life. Imitative crimes and murder are stimulated by executions.

7. Legally taking a life is useless and demoralizing to the general public. It is also demoralizing to the public officials who, dedicated to rehabilitating individuals, must callously put a man to death. The effect upon fellow prisoners can be imagined.

8. A trial where a life may be at stake is highly sensationalized, adversely affects the administration of justice and is bad for the community.

And, finally,

9. Society is amply protected by a sentence of life imprisonment.

Those are the general reasons, and now I would like to have the privilege of calling upon my committee, if the chairman will so let me yield the floor to the members of my subcommittee, and first I would like to call upon Mr. Wanger.

CHAIRMAN HUTCHINSON: Mr. Millard yields to Mr. Wanger.

MR. WANGER: Thank you, Mr. Millard. Mr. Chairman, members of the committee, this recommendation carries the unanimous vote of the committee on legislative powers, and its report stating these reasons, as you know, appears in the journal on page 305.

The committee believes that it is both fitting and opportune for Michigan to step forward in the tradition which she began, as Mr. Millard pointed out, over 115 years ago; and that the adoption of this provision would be a significant contribution to the concept of civilized justice which all of us seek to serve.

The arguments have been very well stated in the committee's report, but I would like to enlarge particularly upon the fourth one, which, as pointed out, is that when the death sentence is removed as a possible punishment, more convictions are possible with less delay.

I received a letter on December 15 from Dr. LeMoyne Snyder, a former resident of the Lansing area, and a nationally recognized authority in the field of legal medicine. He writes as follows from California, where he now resides:

> Within the last week I have returned from a murder trial in Oklahoma, and during the past 30 years I have been involved in murder trials in a great many different states — most of them with capital punishment.
>
> One fact that few people realize is the ease and speed with which a murder trial is conducted in Michigan or other states which do not have capital punishment. In fact, a sizeable proportion of the case in noncapital punishment states require no trial at all because you have a plea of guilty to start with, which rarely happens where capital punishment is involved.
>
> Here in California at the present time there are 35 inmates of death row awaiting execution. Some of them have been there for years and within the past year one person was executed after 12 years. In fact it isn't far from the truth that Chessman served both a life sentence and a death sentence but, whether he was guilty or not, the fact remains that his conviction and execution required an enormous amount of time, trouble and expense.
>
> You may know that in this state, as well as in several others, the jury makes 2 entirely separate determinations — first a finding of whether the defendant is guilty or not. If the jury finds him guilty, they then listen to several days of testimony as to whether the death sentence should be inflicted. It happens quite often that the jury will find him guilty and then disagree on the punishment. This requires that a new jury be empaneled just to determine the punishment and it requires retrying the entire case over again.
>
> One of the greatest benefits of not having capital punishment is the fact that the ends of justice are attained swiftly, easily and at little expense and, all in all, justice is much better served.

CHAIRMAN HUTCHINSON: Mr. Millard.

MR. MILLARD: Mr. Chairman, I would like now to call upon Mr. Downs, who will take it from the legislative angle.

CHAIRMAN HUTCHINSON: Mr. Millard yields to Mr. Downs.

MR. DOWNS: Mr. Millard, Mr. Chairman, delegates to the convention, I rise to speak in favor of the committee proposal which has, as was mentioned, a unanimous recommendation.

As was pointed out by other speakers, Michigan has a proud history in being the first state by law to eliminate capital punishment. However, from the year 1903 through 1956 there were 25 bills and resolutions dealing with capital punishment. In 8 cases proposals for capital punishment passed at least one house. In 1929 it passed both houses, to be vetoed by Governor Green. In 1931 the capital punishment provision passed both houses, was signed by the governor, with the proviso for a referendum, and the people defeated this by a vote of 352,000 to 269,000. So capital punishment did not become the law.

I think perhaps that Mr. Wanger has summarized the position of the committee best when he says that this recommendation is another step forward in civilized justice; a step that Michigan can historically be proud of, and I hope this committee will support the report of our committee.

CHAIRMAN HUTCHINSON: Mr. Millard.

MR. MILLARD: Mr. Chairman, I would like to call upon the next member of my subcommittee, Mrs. Koeze.

CHAIRMAN HUTCHINSON: Mr. Millard yields to Mrs. Koeze.

MRS. KOEZE: Ladies and gentlemen, I would just like to have you refer to journal, page 306, argument 5 of the committee report.

Warden Lewis E. Lawes, of Sing Sing prison, a most eminent authority who knows first hand whereof he speaks, said of the 150 offenders that he was required to escort to the death chamber:

> In one respect they were all alike. All were poor and most of them friendless. Juries do not intentionally favor the rich — the law is theoretically impartial — but the defendant with ample means is able to have his case presented with every favorable aspect, while the poor defendant often has a lawyer assigned by the courts. Usually the lawyer assigned has had no experience in a capital case.
>
> Thus it is seldom that it happens that a person who is able to have eminent defense attorneys is convicted of murder in the first degree, and very rare indeed that such a person is executed.

Ladies and gentlemen, I think this points up very, very thoroughly what we have facing us here, and I do hope that this committee will give serious consideration to this section that we in the legislative powers committee deemed absolutely necessary to put in the Michigan constitution. Thank you.

MR. MILLARD: Mr. Chairman, just a final word. As has been stated, the legislative powers committee was unanimous in this recommendation that this proposal be adopted. I think it has been pointed out very clearly that capital punishment does not deter crime. Furthermore, there have been instances of innocent men being convicted, and if one is put to death there can be no appeal from that sentence.

I hope that the committee will adopt this proposal. Mr. Millard yields the floor.

CHAIRMAN HUTCHINSON: Mr. Bentley.

MR. BENTLEY: Mr. Chairman, at the outset I would like to say I am sympathetic to the committee's proposal, but there are certain portions of the committee report which tend to disturb me. I wonder if Mr. Millard would indicate whether or not the adoption of this report might be taken as criticism by this convention of any jurisdiction which does inflict capital punishment for any reason whatsoever?

MR. MILLARD: Nowhere have we indicated that any other jurisdiction should be criticized. We made the general statement that capital punishment has not proven a deterrent in crime in other states, and the statistics will bear that out. We are not criticizing; we are just citing facts.

MR. BENTLEY: I wonder if Mr. Millard, then, would indicate as to whether or not the committee might feel that the federal government errs in taking lives in cases of, for example, espionage and similar situations where the death penalty is invoked.

MR. MILLARD: A crime against the patriotism of the country, and a crime against our country, should be punished by death. But we don't have that in this state. The federal government has preempted treason, and I am all for the death penalty as far as treason and espionage, and anything that has to do with the welfare and safety of our country.

MR. BENTLEY: Then, in other words, Mr. Chairman, the reasons adduced here by the subcommittee for taking a position against capital punishment would certainly not apply, in their opinion, to crime against the state or the nation, whether in this country or any other country.

MR. MILLARD: Certainly not. Not against our country, no, sir.

MR. BENTLEY: Thank you.

CHAIRMAN HUTCHINSON: Are there any amendments to the body of the proposal? Mr. Martin.

MR. MARTIN: I just want to comment on this proposal, because I served in the legislature when one or more of these proposals to adopt capital punishment in the state of Michigan came before us. They always come when there has been a particularly serious crime and when emotion is at its highest. I think it is significant that after the legislation has been considered and the people have cooled a little bit, particularly in the case where it was submitted to the people, the people have turned it down.

I also had the privilege of serving for some years as chairman of the Michigan crime and delinquency council, which is an arm of the national council on crime and delinquency, and the opinion of that body, and of the many experts who serve it, including many judges who work with the council, is, I think, uniform that the arguments advanced by the committee are sound and that the death penalty is not a deterrent to crime.

It seems to me I remember also from studies we saw that in England, when the death penalty was given for matters as small as stealing a loaf of bread — in fact, it was used on all kinds of situations — crime was never higher. This is in the earlier history of England, so it seems quite clear it doesn't act as a deterrent and that it is only an act of vengeance on the part of the public.

It seems to me that this is a splendid proposal; that it is completely sound, and particularly sound because it is being considered at a time when we don't happen to be subject to some of the high emotion that affects this question from time to time. I think it is a good time for the people of Michigan to settle once and for all the question of capital punishment.

CHAIRMAN HUTCHINSON: Mr. Norris.

MR. NORRIS: Mr. Chairman, I rise also to support the committee, and I just want to make one statement. I support the right of every person in Michigan not to be put to death under the death penalty. I think that is a right which is stated here conversely in the proscription against a law in this field.

CHAIRMAN HUTCHINSON: Mr. Cudlip.

MR. CUDLIP: Mr. Chairman, I would like to ask Mr. Millard a question just so I can clear my mind. Am I correct in assuming that by statute today treason in Michigan is punishable by death?

MR. MILLARD: I don't know whether I can answer that.

MR. CUDLIP: Well, I recall a few years ago, that there was a bank robbery, and I believe it was in Midland, and in connection with that there were some killings and, of course, the federal government took charge, and the convicted were hung at Milan because the federal law said the punishment should be that highest punishment afforded by the law of the state in which the crime occurred.

I am in favor of this proposal, but I have heard talk here about Michigan's leadership, and last night we adopted a proposal which said that in connection with commutations, reprieves and so forth, treason would be dealt with as other crimes. That is not too germane, but it is somewhat germane, but, if my memory serves me, treason against Michigan is now punishable by death, and I suppose if we adopt this, that would go off the books, and that is all right with me. But I think that is an interesting point, and I just wondered what the answer was.

CHAIRMAN HUTCHINSON: Mr. Danhof.

MR. DANHOF: Mr. Chairman, to answer Mr. Cudlip, I think the federal government has made provision in this regard that where it calls for the death penalty, as in the case that he speaks of — a murder took place in a federally insured bank — there may be executed a death penalty, and it provides that the execution shall be carried out by the U.S. marshal in the same manner as provided by the state laws; except that if there is no such provision in the state law, it shall be as the court shall prescribe.

If what you are concerned with is the fact that we might be infringing — have to have a federal amendment — this is not necessarily the case. It merely is that if it is found that the death penalty in the state law provides for execution by the electric chair, that will be used; or by hanging, or in some states they even have firing squads yet. But it provides also that in case there is no death penalty, then the court shall prescribe, and I think the method prescribed — if it is not in the statute — is by hanging.

There is no connection any more between the two.

CHAIRMAN HUTCHINSON: Mr. Wanger.

MR. WANGER: In reply also to your question, Mr. Cudlip, treason is punishable by death under Michigan Statutes Annotated 28.812. Also the case of '37, the Chebatoris case was tried under the national bank robbery act. It was the first case there tried, and it was done entirely pursuant to federal law as far as the conviction was concerned. I would merely add that if a situation should arise where Michigan's prohibition of the death penalty, as is here proposed, should make it inconvenient or impossible to execute a federally imposed sentence of death within the confines of the state of Michigan, that would be no great loss.

MR. CUDLIP: Mr. Chairman, was Mr. Wanger's answer that Michigan does now presently punish treason by death?

MR. WANGER: By statute.

MR. CUDLIP: Thank you. That is the information I wanted. I am in favor of the proposal.

CHAIRMAN HUTCHINSON: Are there any amendments to the body of the proposal? If not, it will pass.

Committee Proposal 20 is passed.

The secretary will read the next item.

SECRETARY CHASE: Item 7 on the calendar, from the committee on miscellaneous provisions and schedule, by Mr. Erickson, chairman, **Exclusion Report 2006,** A report recommending the exclusion of article XII, sections 1, 2, 3, 5, 6, 7 and 8.

Following is Exclusion Report 2006 as read by the secretary, and the reasons submitted in support thereof:

The committee on miscellaneous provisions and schedule recommends that article XII, sections 1, 2, 3, 5, 6, 7 and 8 of the present constitution be excluded from the new constitution.

Mr. Erickson, chairman of the committee on miscellaneous provisions and schedule, submits the following reasons in support of Exclusion Report 2006:

The committee has carefully reviewed the constitutional convention preparatory commission's study on Corporations and the Michigan Constitution, prepared under the direction of Professor Alfred F. Conard of the University of Michigan law school.

The committee has heard the Michigan corporation and securities commissioner, the executive director of the Michigan economic development commission, the deputy attorney general of Michigan, the general counsel of the Michigan state AFL-CIO, the general counsel of the Michigan manufacturers' association, and has received the recommendations of the corporation committee of the state bar of Michigan.

Section 1. The method of incorporating by general law is little more than 100 years old. The first sentence of section 1 requiring that corporations be formed only by general law first appeared as article XV, section 1 of the Michigan Constitution of 1850. Today there is no need for the retention of such a provision inasmuch as the statutes providing for free incorporation will remain on the books even without an express constitutional mandate. The substance of this provision is presently covered elsewhere in the constitution (article V, section 30) and the committee has been advised that the committee on legislative powers will recommend retention of the substance of that section in the new constitution.

The second sentence of section 1, generally known as the "reserved power" clause, was inserted in many state constitutions in the midnineteenth century as a direct result of the Dartmouth College case in which the U. S. supreme court held that the charter of a corporation was a contract, between the state and the corporation, which was protected from subsequent alteration or repeal by the contracts clause of the federal constitution. Now that corporations are almost universally formed under general incorporation laws, the rationale behind the "contract theory" of the Dartmouth College case has been weakened. The effect of these general incorporation laws, including the statutes of Michigan, make the corporate charter a grant, to numerous individuals, of a franchise, a privilege to conduct business in a certain way, which privilege, as a matter of sound policy, entails liability to public regulation.

Section 2. The first sentence is substantially the same provision as was contained in the Michigan Constitution of 1850. This sentence is not in fact a definition but a mandate that the definition of corporations shall be construed to include all associations and joint stock companies having the powers and privileges of corporations. However, the Michigan supreme court has held that the use of the word "corporations" in legislation, (e.g., having to do with taxation) need not necessarily include associations and joint stock companies. In fact a definition is considered unnecessary in light of the generally accepted definition of corporation at common law and by statute.

The second sentence of section 2 has been carried over unchanged from the Michigan Constitution of 1850. The power to sue and liability to suit are among the corporate attributes first recognized by the common law. Corporations have been recognized as judicial persons by the Supreme Court of Michigan as well as by the courts of most major commercial states.

It seems apparent to the committee that neither the definitional sentence nor the sentence giving corporations the capacity to sue and be sued serves any useful purpose.

Section 3. This provision limiting corporate life to 30 years had its origin in the Michigan Constitution of 1850, although it was amended in 1889 to substantially the form in which it was adopted in the Michigan Constitution of 1908. No other state retains a similar constitutional limitation on the life of a corporation. Since this provision permits expiring corporations to renew their charters whenever most of the shareholders desire it, it offers no real check on the power of large corporations. It merely requires the expensive nuisance of an election for those corporations served by adequate legal counsel, and creates a danger of considerable embarrassment and expense for those who overlook legal technicalities and allow their charters to expire. It poses a serious problem for corporations who seek capital through the issuance of bonds or notes having a maturity date longer in the future than the expiration of the corporate charter. It is one of the factors which have induced Michigan enterprises to incorporate in Delaware or some other state having no such provision and pay their organization taxes there instead of in Michigan.

Section 5. This provision is substantially identical to article XV, section 12 of the Michigan Constitution of 1850. In the Michigan Constitutional Convention of 1850, there was no debate with reference to the advisability of including this section in the constitution. However, the existence of "anti corporate sentiment" in that convention was recognized by the Michigan supreme court in 1872. This provision has in fact been a deterrent to the organization of corporations in Michigan and the executive director of the Michigan economic development commission strongly recommends its deletion from the constitution. It is readily circumvented and under the decision of the Michigan supreme court it is in fact a dead letter.

Section 6. This provision is a substitute for article XV, section 8 of the Michigan Constitution of 1850 and one of the reasons for its inclusion at the time is quite clear, because for the first time the Michigan Constitution of 1850 required incorporation by general law only. It is doubtful whether this provision was even necessary in the Michigan Constitution of 1908 since there were very few corporations in existence at that time which had been created by special act. Its retention would serve no more useful purpose than the retention of the first sentence of section 1 and accordingly the committee recommends its deletion.

Section 7. This section is obsolete. The Michigan supreme court has decided that the legislature does not need constitutional authority in order to delegate rate fixing powers to the railroad commission. This decision, coupled with the U. S. supreme court's interpretation of the state's police power, combined to render this section almost completely ineffective. It no longer serves as a source of the legislature's power to fix rates railroads may charge for passenger and freight transportation, for it is well settled that the legislature has the inherent power to regulate public utilities and common carriers. The committee therefore recommends its deletion.

Section 8. This section was added to the Michigan Constitution of 1850 as an amendment pursuant to joint resolution of the legislature which was ratified at the election of 1870. This provision is now obsolete. The interstate commerce commission has been given authority by congress to approve mergers, consolidations and acquisition of control of one carrier by another whenever such combining would be in the public interest. The authority of congress to regulate commerce comes from the U. S. constitution. Retention of this provision could not be dismissed as harmless even though it is a dead letter. Since it states a principle directly in conflict with federal law and policy, it deceives the reader and invites fruitless controversy. The committee recommends that it be deleted.

The committee has noted that the August 4, 1961, draft of the model state constitution, published by the national municipal league, contains no provisions whatsoever on the subject of corporations.

The committee has observed that there is no corporation article in the newest 3 state constitutions, (Alaska, Hawaii, Connecticut — revised) and none in the U. S. constitution.

The committee's decision to recommend exclusion of article XII, sections 1, 2, 3, 5, 6, 7 and 8 was reached by unanimous vote of the members of the committee.

CHAIRMAN HUTCHINSON: The chairman of the committee, Mr. Erickson.

MR. ERICKSON: This committee report was prepared by Mr. Woolfenden as chairman, Mr. Binkowski as vice chairman, Mr. Lawrence, Mr. Hutchinson and Mr. Mahinske.

The adoption of this report would reduce the present constitution by 460 words, and I now yield to Delegate Woolfenden.

CHAIRMAN HUTCHINSON: Mr. Erickson yields to Mr. Woolfenden.

MR. WOOLFENDEN: This exclusion report is found on page 306 of the journal.

The subcommittee, the members of which were just mentioned by Chairman Erickson, has had the benefit of a comprehensive memorandum from the governor's preparatory commission which was prepared by Dr. Alfred F. Conard, of the law school of the University of Michigan. Dr. Conard, who is a professor of corporations of the University of Michigan, also appeared before the committee.

In addition, the committee had the benefit of appearances by the corporation and securities commissioner of the state, the executive director of the Michigan economic development commission, the deputy attorney general of Michigan, the general counsel of the Michigan state AFL-CIO, the general counsel of the Michigan manufacturers' association, and a recommendation from the corporations committee of the state bar of Michigan.

The subcommittee report, or decision, I should say, recommending this exclusion report was unanimous. The decision of the miscellaneous committee, the whole committee, was unanimous.

The report in the journal sets forth the reasons why each of these sections, in the unanimous opinion of the committee, should be excluded from the new constitution. I would treat briefly the reasons behind the recommendation covering the first 3 sections, and other members of the subcommittee will cover the balance of the sections. We will welcome any questions on the part of any delegate as to any phase of our report.

Section 1 sets forth substantially that corporations should not be incorporated by special act, but should be incorporated under a general act. Section 30 of article V already covers this same problem, and I will read the pertinent language from that section. Section 30, article V of the constitution reads:

> The legislature shall pass no local or special act in any case where a general act can be made applicable, and whether a general act can be made applicable shall be a judicial question.

That substantially covers the first sentence of section 1 of article XII.

[The supporting reasons for sections 1, 2 and 3 were read by Mr. Woolfenden. For text, see above, page 598.]

We feel that this provision particularly has been detrimental to the best interests of the state of Michigan, and has adversely affected the business climate in Michigan. The witnesses before our committee all agreed that it serves no useful purpose today; that it has been bad for the state in specific instances in the past, which were cited to the committee, and again the committee unanimously recommends that this section be deleted.

Now I would like to yield the floor to a member of our subcommittee, Delegate Binkowski, who will discuss section 5.

CHAIRMAN HUTCHINSON: Mr. Woolfenden yields to Mr. Binkowski.

MR. BINKOWSKI: Section 5 of the corporation section, of course, deals with the 10 year limitation upon the ownership of land by corporations.

Starting out with one of our studies, the citizens research council states consideration might well be given to omitting this restriction from the constitution. Professor Conard, who put out the very extensive legal study under the auspices of the Michigan constitutional convention study, commented that under the beneficent interpretation of the supreme court, it — referring to section 5 — is a dead letter.

As Mr. Woolfenden already indicated, we had testimony from the counsel of the Michigan manufacturers' association, and I would like to quote you very briefly his statement regarding section 5.

> Under the interpretation which the supreme court has placed on present section 5, it has become, for all practical purposes, a dead letter. For example, it has been held that life insurance companies "actually occupy" apartment houses which they buy and rent to tenants.
>
> I think that this dead wood could profitably be pruned.

Therefore, on the basis of our legal authorities, we thought that section 5 could be omitted. However, we did not stop there. We had further testimony from Mr. Don Weeks, who at that time was the executive director of the Michigan department of economic development, who also indicated that section 5 should be omitted.

For the benefit of the committee, I would very briefly like to go into the reasons for the adoption of section 5 by the Constitutional Convention of 1850, as Mr. Weeks indicated.

1. Corporate speculators in agricultural land, limiting the opportunity of the common man, without the payment of speculative land prices, to acquire cutover land and thereby hasten the development of the state.
2. Distrust of corporations and the possible undue influence large land owning corporations might have on state and local government.
3. As corporation franchises are renewable, such land ownership might be perpetual — not subject to a change in ownership as takes place at the death of an individual.

I think, based upon our experience, we have not seen any of these fears actually realized.

Now, the reasons for retaining section 5 in the Constitution of 1908 very briefly:

1. Holding unimproved land indefinitely adjacent to land now used by the corporation and preventing its development by others.

2. This provision had been in the constitution for over 50 years and it should be retained until such time as it can be shown that corporations suffer losses therefrom.

I think, on the basis of our experience, we have seen corporations show losses.

I would like to quote very briefly just a few more statements from Mr. Don Weeks, because I think it reflects the business attitude toward section 5.

As a result, Michigan's economy is handicapped in competition with other states. The Detroit board of commerce adopted the report of its legislative committee of October 3, 1961 which states that many million dollars of financing have been lost to Michigan because of this section in Michigan's constitution.

The industrial development advisory committee of the Michigan economic development commission, at its meeting on December 28, 1951, stated, "It is obvious that we are at a disadvantage with respect to other states on this question of long term investments by insurance companies."

This is confirmed by managers of mortgage loan and real estate investment branches of large insurance companies. They state that their investment activities in this state would increase materially if article XII, section 5, were deleted from the constitution.

Therefore, on the basis of our legal authority, on the basis of our business people, we thought we could help improve Michigan's economic climate by recommending to this convention the deletion of section 5.

CHAIRMAN HUTCHINSON: Mr. Woolfenden.

MR. WOOLFENDEN: For a discussion of the reasons behind the unanimous committee recommendation for the deletion of sections 6, 7 and 8, I yield to Delegate Mahinske.

CHAIRMAN HUTCHINSON: Mr. Woolfenden yields to Mr. Mahinske.

MR. MAHINSKE: With reference to section 6 in the existing constitution, you will note that the rule is laid down that the legislature shall pass no law renewing or extending any special act of incorporation heretofore granted. Now, the original appearance of this item in the constitution goes back to section 8, article XV of the 1850 constitution for the reason that at this time, 1850, for the first time the state of Michigan required incorporation by general law only. This provision was put in as a saving clause to any incorporated bodies we had at that time that were incorporated under special acts of the legislature. It appears from our investigation in this area that probably in 1908 this provision was not necessary, but for one reason or another it was inserted. The general opinion of the committee at this time is that there are none of these corporations in existence, and if there are, the exclusion of section 6 would not jeopardize them at all.

Going on to section 7, which is entitled Passenger Fares and Freight Rates, it was concluded by the committee when we went over this section that the section is also obsolete. It has been determined by court cases and otherwise that the legislature does not need constitutional authority in order to delegate rate fixing power to a railroad commission, which we have in this state, and it no longer serves as a source of the legislature's power to fix rates. Also we have determined that the legislature has the inherent power to regulate public utilities and common carriers, and for these reasons we feel this section is no longer needed. There are other provisions in the constitution permitting the establishment of such bodies as the Michigan public service commission and so forth which we have in existence now that handles this area.

Section 8, we feel, is in absolute conflict with the federal laws in the area; section 8 being entitled Consolidation of Railroads. This area of section 8 is taken care of by the interstate commerce commission, by the federal government. Federal laws have been set up, and there is even federal constitutional authority giving jurisdiction in this area to the federal body. For these particular reasons the committee feels this is an obsolete section and there is no point in retaining it in the constitution.

CHAIRMAN HUTCHINSON: Mr. Woolfenden.

MR. WOOLFENDEN: For the reasons which have been submitted to the convention, we recommend that this exclusion report be adopted. Support for the committee's recommendation is found in the action of other constitutional conventions in connection with the 3 most recently adopted state constitutions, and I refer to the constitutions of Alaska, Hawaii and the Connecticut revised constitution. In none of those constitutions is there any corporation article, and the model state constitution published by the national municipal league also contains no corporation article.

I would like to supplement what Delegate Mahinske has said with respect to special charters. There are probably some special charters still in existence. However, neither by the recommended deletion of section 3 or section 6 will any organization which does have a special charter antedating 1908 be adversely affected. We have been into that question with Dr. Conard and with the counsel for these organizations that we mentioned, and we are satisfied that the legislation — the special legislation — creating those charters is not affected in any way by this proposed deletion. Therefore, Mr. Chairman, we recommend that these sections 1, 2, 3, 5, 6, 7 and 8 of article XII be excluded from the new constitution.

CHAIRMAN HUTCHINSON: Mr. Woolfenden yields the floor.

The Chair recognizes Mr. Hatch.

MR. HATCH: Mr. Chairman, I would like to direct a question to Mr. Binkowski in connection with section 5. It seems to me that the reasons which Mr. Binkowski has given are most laudable, but I wonder whether the committee has considered the possibility of something other than a bona fide corporation organized for profit; in other words, a corporation organized by a given individual for the sole purpose of maintaining title to the land in that corporation indefinitely. What I am getting at is whether the committee considered the possibility of elimination of this provision in some way affecting the rule against perpetuities; in other words, tying up land.

CHAIRMAN HUTCHINSON: Mr. Binkowski.

MR. BINKOWSKI: Mr. Hatch, I think that on the basis of our study, and on the basis of what we have been reading, we feel that the supreme court has rendered this section of the constitution a dead letter, and that it is of no force and effect. I think on that basis the committee did not feel that a corporation would be in any better position, so to speak, to violate the law against perpetuity than an individual. I myself do not see how a corporation would be in that position.

CHAIRMAN HUTCHINSON: Mr. Prettie.

MR. PRETTIE: Mr. Chairman, I would like to direct a question to Delegate Woolfenden, whom I believe discussed section 3. My question is this: we have now thousands of Michigan corporations existing under the present general corporation act within the constitution, article XII, section 3. What will be their legal status under this proposed exclusion? Will their life automatically be extended indefinitely?

MR. WOOLFENDEN: Frankly, I am not in a position to answer that authoritatively. I believe that the attorney general, at the conclusion of this convention — should the constitution be adopted — will have to give an opinion on that. My own thought is that corporations presently in existence would have their charters extended indefinitely by the adoption of the constitution. If not, upon their first renewal they could then renew for an indefinite period.

MR. PRETTIE: Thank you, sir. I merely wanted the record clear.

CHAIRMAN HUTCHINSON: Are there any amendments to the body of the exclusion report? If not, it will pass.

Exclusion Report 2006 is passed.

The secretary will read the next proposal.

SECRETARY CHASE: Item 8 on the calendar, from the committee on miscellaneous provisions and schedule, by Mr. Erickson, chairman, **Committee Proposal 21,** A proposal per-

taining to the division of the powers of government. Amends article IV.

Following is Committee Proposal 21 as read by the secretary, and the reasons submitted in support thereof:

The committee recommends that the following be included in the constitution:

The powers of government are divided into 3 [departments] BRANCHES: The legislative, executive and judicial.

No person belonging to 1 [department] BRANCH shall exercise the powers properly belonging to another, except in the cases expressly provided in this constitution.

Mr. Erickson, chairman of the committee on miscellaneous provisions and schedule, submits the following reasons in support of Committee Proposal 21:

This is the doctrine of the separation of powers, a principle quite fundamental in our system of government. It is this principle which distinguishes the foundations of our American governments from the parliamentary systems of Britain and western Europe.

The apportionment of powers to 1 of the 3 coordinate branches is understood to be a prohibition of its exercise by either of the others. By a system of checks and balances of government, each is a restraint upon the rest. The 3 branches are equal under our constitution and are to be kept as distinct as possible.

The powers of 1 branch cannot be extended to another otherwise than by explicit language or by necessary implication, to be discovered in the constitution itself.

The doctrine of the separation of powers prevents the collection of governmental powers into the hands of 1 man, thus protecting the rights of the people. It is as old as our American governmental system, and was devised by our founding fathers, greatly influenced by the French political theorist, Montesquieu. Desirous of protecting a free people, their idea was that if, somehow, the powers of government could be divided, it could not grow so large as to enslave them.

Basically the doctrine means that he who makes a law shall not enforce it, nor sit in judgment upon it; that he who enforces a law shall not make or change it nor shall he judge of its violation; and he who sits in judgment shall have neither made the law nor enforced it.

This doctrine is so much accepted in our system, that it is unexpressed in the Constitution of the United States and in at least 10 of our sister state constitutions. Without exception, the doctrine is found within those constitutions, from the structure of government created.

It may be conceded, therefore, that the substance of article IV of the Constitution of 1908 could be excluded from a new constitution without risk of weakening the doctrine. But the doctrine has been expressed in all of Michigan's earlier constitutions and it is the recommendation of the committee that it should be reexpressed in a new one.

The committee has substituted the word BRANCH for the word DEPARTMENT, for the reason that in modern usage the word "department" means a division of the executive branch, as the department of state, treasury department, department of conservation, etc.

This report is concurred in by the committee on judicial branch, the committee on legislative powers and the committee on executive branch.

CHAIRMAN HUTCHINSON: The Chair recognizes the chairman of the committee, Mr. Erickson.

MR. ERICKSON: This report is for the entire article IV. This report was prepared by Delegate Hutchinson along with his committee, and obviously I can't yield to him this afternoon. This report that he and his committee prepared really reads like a text book. The only change in this takes out the words "department and departments" and substitutes the words "branch and branches."

[The supporting reasons for Committee Proposal 21 were read by Mr. Erickson. For text, see above.]

To me, the most important part of this report is the phrase "Basically, the doctrine means that he who makes a law shall not enforce it." I recommend the adoption of the report.

CHAIRMAN HUTCHINSON: Are there any amendments to the body of the proposal? Mr. Heideman.

MR. HEIDEMAN: Mr. Chairman, fellow delegates, I would just like to make a statement in connection with this historic document. I taught American government, constitutional history and some constitutional law for a long time, and I used to say rather jokingly to my students that some day I should like to have the honor of being elected to a constitutional convention to make a correction in the historical records.

I have on my desk 6 documents, I believe, which purport to contain the Michigan constitution, and reference in all of them is to the doctrine of division of powers, not separation of powers — all except the Comparative Analysis of the Michigan Constitution by the citizens research council. That refers to the doctrine of separation of powers. Now, of course, there is the question of the caption. That is descriptive and not part of article IV itself.

I introduced a proposal which I believe the committee took into consideration, because part of my proposal was adopted. The part that was adopted was the substitution of the word "branch" for the word "department" on the grounds that Chairman Erickson read from the report.

By the way, I would like to say that I think that this is a masterful and brief presentation of the doctrine of separation of powers; the presentation as it is contained in this committee report, and though I have read on this for many years and many places, I enjoyed reading it very much.

Now, in my proposal I suggested, in addition to changing the word "department" to "branch," also the substitution of the word "separated" for "divided." It would have then read, "The powers of government are separated into 3 branches."

Now, perhaps it is a better expression to say "divided." I will not raise any point about that. I would like, however, for the record, a change to be made in future references to this doctrine as the doctrine of the separation of powers; one of the world's most famous doctrines in the history of the development of constitutional government and human liberty.

The doctrine of the division of powers is the doctrine which refers to the distribution of power between the federal government and the state governments, whether delegated expressly or by implication.

I would like to call attention also to the accompanying terms "checks and balances," "coordinate branches of government," that is, executive, legislative and judicial branches, along with this doctrine and terminology, "separation of powers," and I would like to end up with a quotation from a very famous constitution in which I believe this is most felicitously expressed; the famous Constitution of Massachusetts of 1780 by John Adams. I will not read the whole constitution, just the felicitous expressions.

> In the government of this commonwealth the legislative department shall never exercise the executive and judicial powers, or either of them; the executive shall never exercise the legislative and judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them; to the end it may be a government of laws and not of men.

That haunts me, that expression.

CHAIRMAN HUTCHINSON: Are there any amendments to the body of the proposal?

Mr. Higgs.

MR. HIGGS: Mr. Chairman, I would like to direct a question to Mr. Erickson. I noticed in the committee report which you read it states:

> Basically the doctrine means that he who makes a law

Explanation—Matter within [ ] is stricken, matter in capitals is new.

shall not enforce it, nor sit in judgment upon it; that he who enforces a law shall not make or change it nor shall he judge of its violation; and he who sits in judgment shall have neither made the law nor enforced it.

and that this is much accepted in our system.

For the record, I wonder, Mr. Erickson, if by this statement, and in the field of the administrative agencies, if you would care to comment upon what the intention would be with regard to the passage of regulations by such an agency and the subsequent enforcement and judgment of the violation?

CHAIRMAN HUTCHINSON: Mr. Erickson.

MR. ERICKSON: That is a subject that was discussed in committee at considerable length. We even thought that it might be desirable to add another section in there dealing with this administrative law, but we wanted to wait and see what some of the other committees come up with. We knew that legislative powers was discussing it, the executive branch, judicial branch, and also the committee on emerging problems. I think all 4 of them have this problem under consideration. I am reasonably sure that before we get through, somebody is going to come up with something dealing with this problem of administrative law.

CHAIRMAN HUTCHINSON: Are there any amendments to the body of the proposal?

Mr. Stevens.

MR. STEVENS: Mr. Chairman, like Dr. Heideman, I am also an ex teacher of government. Like Dr. Heideman, I am sure this proposal would make it much easier for teachers of government in high schools as well as in colleges and universities to explain the doctrine of separation of powers.

CHAIRMAN HUTCHINSON: Any amendments to the body of the proposal? If not, it will pass.

Committee Proposal 21 is passed.

The secretary will read the next proposal, **Committee Proposal 22.**

Mr. Hatch.

MR. HATCH: Mr. Chairman, the next matter of business before the committee of the whole is Committee Proposal 22, which is a proposal pertaining to the state civil service. There has been filed with the secretary a minority report which did not appear until yesterday in the journal, which I imagine a great number of delegates have not had an opportunity to view as yet.

Based on this fact, and because I feel that this is a matter which should receive the serious deliberation of this body, I would move, as was moved yesterday by Mr. Iverson, that consideration of Committee Proposal 22 in the committee of the whole be postponed until Friday, January 19, 1962.

CHAIRMAN HUTCHINSON: Mr. Hatch moves that further consideration of item 9 on the general orders calendar, being Committee Proposal 22 relative to civil service, be postponed until Friday next.

Mr. Martin.

MR. MARTIN: Mr. Chairman, it is desirable that the delegates have an opportunity, of course, to read the minority report as well as the majority report and the committee, I am sure, has no objection to postponement. But I am wondering whether it is necessary to postpone it that long. I wonder if we couldn't postpone it until, say, tomorrow or Thursday. Mr. Hatch, do you have any special feeling about moving it to Friday?

MR. HATCH: My only thought was that we had postponed this other matter until Thursday, and because that day may be taken up with considerable debate on Committee Proposal 15, Friday might be preferable.

MR. MARTIN: Suppose we postpone it to Thursday. The other matter will take precedence, and if we do get to this, fine; if we don't, we can carry it over until Friday. Would that be satisfactory?

MR. HATCH: In other words, until Thursday, and if we do get to it, fine, but —

MR. MARTIN: I suggest that we postpone it until Thursday. The other matter would take precedence on Thursday, but if there is time to discuss the civil service proposal we could get started on it and carry the discussion until Friday.

MR. HATCH: I would have no objection to that.

CHAIRMAN HUTCHINSON: Mr. Hatch amends his motion and states it to call for a postponement until Thursday next.

Mr. Downs.

MR. DOWNS: I certainly want to agree with Mr. Hatch, if the delegates want to carry over a minority report for time for the other delegates to speak on it. I also agree with Delegate Martin that Friday is usually not the best day to discuss. I just raise the question, if he would like to take this up tomorrow, or do you feel that would be too soon? I don't feel too strongly about it.

MR. MARTIN: It will be entirely satisfactory with the committee to take it up tomorrow, if Mr. Hatch is ready and feels that his people have an opportunity to look over the minority report.

MR. HATCH: I would prefer Thursday, which would give the usual 3 days from the date of submission.

MR. DOWNS: There is no objection.

MR. MARTIN: That is satisfactory with the committee.

CHAIRMAN HUTCHINSON: Mr. Hatch moves that further consideration of item 9 on the general orders calendar, being Committee Proposal 22, be postponed until Thursday. All those in favor, say aye. Those opposed, no.

The motion prevails.

SECRETARY CHASE: Item 10 on the calendar, from the committee on finance and taxation, by Mr. Brake, chairman, **Committee Proposal 23,** A proposal to prohibit the issuance of evidences of state indebtedness, except as authorized by the constitution, to authorize state borrowing and prescribe the method therefor, to limit the use of state credit and to permit the loaning of state funds to school districts under certain conditions, and covering the general subject matter found in sections 11, 10, 12 and 28 of article X of the 1908 constitution.

Following is Committee Proposal 23 as read by the secretary, and the reasons submitted in support thereof:

The committee recommends that the following be included in the constitution:

Sec. a. [No scrip, certificate or other evidence of state indebtedness shall be issued, except for such debts as are expressly authorized in this constitution.] NO EVIDENCE OF STATE INDEBTEDNESS SHALL BE ISSUED, EXCEPT FOR SUCH DEBTS AS ARE EXPRESSLY AUTHORIZED IN OR PURSUANT TO THE PROVISIONS OF THIS CONSTITUTION.

Sec. b. [The state may contract debts to meet deficits in revenue, but such debts shall not in the aggregate at any time, exceed $250,000. The state may also contract debts to repel invasion, suppress insurrection, defend the state or aid the United States in time of war. The money so raised shall be applied to the purposes for which it is raised or to the payment of the debts contracted. The state may borrow not to exceed $50 million for the improvement of highways and pledge its credit, and issue bonds therefor on such terms as shall be provided by law.] THE LEGISLATURE, FOR THE PURPOSE OF MEETING ITS APPROPRIATIONS FOR ANY FISCAL YEAR, MAY BY LAW AUTHORIZE THE STATE TO ISSUE ITS NOTES PLEDGING ITS FAITH AND CREDIT FOR THE PURPOSE OF BORROWING MONEY IN ANTICIPATION OF THE RECEIPT OF ANY UNDEDICATED REVENUES TO BE RECEIVED WITHIN THE SAME FISCAL YEAR WHICH SHALL BE PLEDGED FOR THE PAYMENT OF SUCH BORROWINGS. SUCH BORROWING IN ANY FISCAL YEAR SHALL NOT EXCEED 15 PER CENT OF ALL UNDEDICATED REVENUES RECEIVED BY THE STATE DURING THE PRECEDING FISCAL YEAR AND SHALL BE REPAID AT THE TIME THE REVENUES SO

Explanation—Matter within [ ] is stricken, matter in capitals is new.

PLEDGED ARE RECEIVED, BUT NOT LATER THAN THE END OF THE SAME FISCAL YEAR.

THE STATE MAY BORROW MONEY FOR SUCH OTHER SPECIFIC PURPOSES AND IN SUCH AMOUNTS AS MAY BE PROPOSED BY THE LEGISLATURE BY THE AFFIRMATIVE VOTE OF 2/3 OF THE MEMBERS ELECT OF BOTH HOUSES, AND APPROVED BY A MAJORITY OF THE ELECTORS VOTING THEREON AT ANY GENERAL ELECTION. THE QUESTION SUBMITTED TO THE ELECTORS SHALL STATE THE AMOUNT PROPOSED TO BE BORROWED, THE SPECIFIC PURPOSE TO WHICH THE FUNDS SHALL BE DEVOTED, AND THE METHOD OF REPAYMENT.

Sec. c. The credit of the state shall not be granted to, nor in aid of any person, association or corporation, public or private, EXCEPT AS AUTHORIZED IN THIS CONSTITUTION.

THIS SECTION SHALL NOT BE CONSTRUED SO AS TO PROHIBIT THE INVESTMENT OF PUBLIC FUNDS UNTIL NEEDED FOR CURRENT REQUIREMENTS IN SUCH MANNER AS MAY BE PROVIDED BY GENERAL LAW.

Sec. d. The state, in addition to any other borrowing power, may borrow from time to time such amounts as shall be required, pledge its faith and credit and issue its notes or bonds therefor, for the purpose of making loans to school districts as provided in this section.

If the minimum amount which it would otherwise be necessary for a school district to levy in any year to pay principal and interest on its qualified bonds, including any necessary allowances for estimated tax delinquencies, exceeds 13 mills on each dollar of its assessed valuation as last equalized by the state, or such lower millage as the legislature may prescribe, then the school district may elect to borrow all or any part of the excess from the state. In that event the state shall loan the excess amount to the school district for the payment of principal and interest. If for any reason any school district will be or is unable to pay the principal and interest on its qualified bonds when due, then the school district shall borrow and the state shall loan to it an amount sufficient to enable the school district to make the payment.

The term "qualified bonds" means general obligation bonds of school districts issued for capital expenditures, including refunding bonds, issued [(1)] prior to May 4, 1955, [(2) on or after May 4, 1955 but prior to July 1, 1962, only if, and to the extent that, such bonds shall have been qualified as provided by law pursuant to section 27 of this article, and (3) on or after July 1, 1962, but prior to July 1, 1972, if such bonds shall be qualified as provided by law pursuant to this section] OR ISSUED THEREAFTER AND QUALIFIED AS PROVIDED BY LAW PURSUANT TO SECTION 27 OR SECTION 28, ARTICLE X OF THE CONSTITUTION OF 1908, OR PURSUANT TO THIS SECTION.

After a school district has received loans from the state, each year thereafter it shall levy for debt service, exclusive of levies for nonqualified bonds, not less than 13 mills or such lower millage as the legislature may prescribe, until the amount loaned has been repaid, and any tax collections therefrom in any year over and above the minimum requirements for principal and interest on qualified bonds shall be used towards the repayment of state loans. In any year when such a levy would produce an amount in excess of the requirements and the amount due to the state, the levy may be reduced by the amount of the excess.

Subject to the foregoing provisions, the legislature shall have the power to prescribe and/or limit the procedure, terms and conditions for the qualification of bonds, for obtaining and making state loans, and for the repayment of loans.

The power to tax for the payment of principal and interest on bonds hereafter issued which are the general obligations of any school district, including refunding bonds, and for repayment of any state loans made [pursuant to this section] TO SCHOOL DISTRICTS, shall be without limitation as to rate or amount.

All rights acquired under [section 27 of this article] SECTIONS 27 AND 28, ARTICLE X OF THE CONSTITUTION OF 1908, by holders of bonds [issued prior to July 1, 1962] HERETOFORE ISSUED, AND ALL OBLIGATIONS ASSUMED BY THE STATE OR ANY SCHOOL DISTRICT UNDER SAID SECTIONS, shall remain unimpaired.

[This section shall take effect on July 1, 1962.]

Mr. Brake, chairman of the committee on finance and taxation, submits the following reasons in support of Committee Proposal 23:

Sec. a. The effect of this section, which is substantially the same as section 11 of article X of the 1908 constitution, is to limit state borrowing on full faith and credit to the borrowing expressly authorized by the constitution. The provision is not intended to interfere, for instance, with the highway department's borrowing on tax anticipation bonds, the borrowing on revenue bonds, or any other of the forms of borrowing that have been used but does not involve the faith and credit of the state.

Sec. b. The purpose of this section is to give the state greater flexibility in meeting cash crises within the general fund and to replace with short term borrowing the present practice of "borrowing" from the state's creditors and the local governments by late payment. The state's income flow is irregular and not necessarily correlated as to time with its disbursements. For instance, at the present time the corporate franchise fee which brings in between $65 and $70 million a year is all received during the last part of the fiscal year.

The committee believes such short term borrowing should be limited to approximately $60 million under the present size of the state's general fund budget. The state treasurer testified that this would be a realistic figure. In order to provide flexibility, however, the limitation has been expressed in terms of a percentage of the undedicated revenues of the state.

The section provides that any borrowing must be in anticipation of revenues to be received within the same fiscal year which shall be pledged for the payment of such borrowing and must be repaid in full at the time such pledged revenues are received. The purpose of this provision is to prevent the state from borrowing up to its limit and then merely renewing the loan from year to year, thus defeating the purpose for which the section is intended.

It is to be noted that even limited borrowing can be done only when authorized by the legislature.

This proposed section deals with long term borrowing such as we used when we paid bonuses to the veterans of 3 wars, when we borrowed for hospital construction, and in the decade of the '20s, borrowed on full faith and credit for highway construction. The legislature is not empowered to authorize any such borrowing without the approval of the voters of the state, but this section provides a method that can be used without cluttering up the constitution with amendments, authorizing the borrowing as we have had to do in the past. The voting will be the same, a 2/3 vote in both houses of the legislature on a bill, but the bill will carry a referendum provision and will not be effective unless and until approved by a majority of the people who vote on the proposition. The voting is, therefore, the same as that under the present constitution for a constitutional amendment but it avoids the necessity of amending the constitution.

Insofar as section 10 of article X of the 1908 constitution deals with state borrowing, the subject matter is covered by sections b and c of the committee's proposal.

Explanation—Matter within [ ] is stricken, matter in capitals is new.

The committee gave careful attention to the provision in section 10 that the state might borrow to repel invasion, suppress insurrection, defend the state or aid the United States in time of war. Since this provision is something that was not used in the Spanish American war, 2 world wars, or the Korean war, and the matter of defense of any kind has become so thoroughly a federal problem it is the feeling of the committee that there is no reason for continuing this language in the new constitution.

The last sentence of section 10 in the present constitution providing state borrowing of $50 million for highway construction, has been completely executed and need not be included in the new constitution. The money was borrowed, the roads built, the bonds have been paid, the sinking fund liquidated, and there is nothing remaining to be done under the authority of that sentence. The borrowing took place in the decade of the '20s. The last of the bonds were retired and the sinking fund liquidated in the early part of the decade of the '40s.

We were asked to authorize the legislature upon the finding of appropriate facts to authorize the issuance of general obligation bonds to refund all or any part of the revenue bonds issued by agencies of the state. The request came particularly from the Mackinac bridge authority, but it was the conclusion of the committee that if and when any such move is desirable and feasible the procedure in this section should be used, and that the legislature should be required to obtain a favorable vote of the people of the state in addition to their own vote of a 2/3 majority.

Sec. c. The first sentence of this section is the language of section 12 of article X of the 1908 constitution except that it has added at the end these words, "EXCEPT AS AUTHORIZED IN THIS CONSTITUTION." This exception is needed, of course, to put our section having to do with school borrowing and this section in harmony. The second sentence adds new language designed to avoid any possible interpretation of the "loan of credit" provision as precluding the investments of idle funds of the state and its political subdivisions until needed for current requirements. The evils sought to be avoided by the "loan of credit" provision did not include the prudent, businesslike investments for the purpose of deriving revenue from idle public funds. However, attorneys for public bodies in this state have been reluctant to authorize any investments except in federal securities in the face of the language of the present constitution. The attorney general recently in an informal opinion raised a question as to the constitutionality of certain statutory provisions authorizing investments of public funds. The section lets the legislature authorize such investment under appropriate safeguards.

The committee did not overlook the several proposals referred to it, which asked that we make an exception of the use of credit in order to facilitate economic development within the state. Those proposals were turned down because of the belief on the part of the committee that they do not represent sound procedure. Neither did the committee overlook the desire of many people in the state to make an exception to the section by adding the words "EXCEPT FOR PURPOSES OF HEALTH, SAFETY, OR GENERAL WELFARE." The committee rejected that idea as being entirely too inclusive.

Sec. d. This section continues in substance the provisions relating to school bond financing which are presently contained in sections 27 and 28 of article X. Section 28, which was voted by the electors as recently as November, 1960, is not to take effect until July 1, 1962, when section 27 expires.

These provisions which would be continued accomplish 3 principal objectives:

1. The state is authorized to borrow money for the purpose of making loans to school districts where necessary to provide support for school district bonds.

2. School districts are permitted to obtain such state loans only to prevent default in payment of their "qualified" bonds or to avoid having to levy more than 13 mills (or a lower millage if the legislature so provides) to pay principal and interest on such bonds. In order to be qualified for this purpose, bonds must have been issued before May 4, 1955, or must have been or hereafter be approved by the superintendent of public instruction as meeting certain standards. This provision for state loans, which according to the present section 28 would expire in 1972, would have no expiration date in the new section.

3. School district bonds are removed from the 15 mill tax limitation but, of course, still have to be voted by the electors as provided by law.

Continuation of these provisions is regarded as desirable not only because they were so recently approved by the electors but also because they enable school districts to finance needed construction without incurring excessive tax burdens and at lower interest rates than would otherwise prevail. It is significant that actual state lending has been held to a minimum — the advantages being the result of availability of state support rather than in actual lending.

The conclusion of the committee has the concurrence of the committee on education.

[Section a was read by the secretary. For text, see above, page 602.]

CHAIRMAN HUTCHINSON: Mr. Brake.

MR. BRAKE: Mr. Chairman, ladies and gentlemen of the committee, this proposal covers the general subject matter found in sections 11, 10, 12 and 28 of article X of the present constitution, and covers the whole field of state borrowing and the use of state credit.

I think all of us are familiar with the fact that under the present constitution the state is authorized to borrow only the sum of $250,000 and that whenever we have wished to borrow more money than that we had to do it by a constitutional amendment. In this proposal we are suggesting to you, and I hope that anyone who has not read the report will not jump to any conclusions until this has been explained, borrowing to the extent of $50 or $60 million without even a vote of the people; and authorization by the legislature only. That we wish to explain.

But in going from a limitation of $250,000 to $50 or $60 million, to say nothing about the power for long term borrowing in addition, I think we ought to get the setting involved in the 2 periods of 1908, when the one constitution was adopted, and the present time when we are talking about a new constitution.

I asked some of the members of my committee, just to get a part of this picture, if they would check in their respective communities some of the tax values and the taxes being paid at the time the 1908 constitution was drawn. They brought me so many figures that I can't possibly give you all of them, but I think it may be worthwhile to just add this in order to get the difference in the economy of that day and this. Mr. Seyferth brought back from Muskegon a resident property assessed in 1908 at $9,000, which is now assessed at $21,100. The tax at that time was $257.13. At this time it is $1,096.77. And a business block assessed then at $50,000, now at $182,200; a tax of $1,428.50 in 1908, $9,470.76 at this time. My own residence property, in our little town — which I didn't own in 1908, but the description can be identified — was assessed at that time at $1400, and it included the lot with the house on it and two vacant lots. The one lot with the house on it is assessed now at $7,200. The tax then was $45.22. The tax now is $253. I will be very glad to have a lot of you move in to Stanton because I realize that is a very modest tax under the conditions we have now.

For the agriculturists of this convention, I would like to translate that into language that we can understand. That

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Explanation—Matter within [ ] is stricken, matter in capitals is new.

tax in 1908 meant 3½ 200 pound hogs, or ¾ of a 1,000 pound steer. At the present time it means 7 hogs and a steer and 2/10. I didn't realize we had all the agriculturists concentrated in this part of the room. Mr. Haskill, from Lapeer county, told us about a farm property assessed at $2,850 in 1907, $5,200 now. Tax, $41.50 then, $276 now. A town property, $4700 then, $8500 now. Tax, $121 then and now $328.

I was interested in the fact that of all the figures we got back, there has been the least change in Manistee county, where the assessments have been just about doubled; whereas in most of the other territories they have multiplied by 4 or 5. But the taxes are running the same rate of 4 or 5 times in Manistee, in spite of the little change in assessed value.

But he brought this figure I think you will be interested in. In 1908 the percentage of the property tax that was used by the schools was 4.6 This year 70 per cent.

Perhaps that is enough of that, but here is a figure that I am sure you would like to have, bearing in mind that the legislative appropriation in this state is now running $500 million. The state's total budget, total expense — I didn't get the 1908 — but for 1906-1907 it was $5,118,675.67. Five million dollars in 1908, when we drew the constitution and a half billion, approximately, today, depending on the items you put in it.

Coming down, you will remember — those of you who are in the law business — that the corporate franchise tax was a very nominal figure until comparatively recently. I asked Governor Groesbeck one time, long after the event, why they set that tax at so low a figure, and the reason I am telling you this is because of the answer I got, which I haven't heard since, "That was all the money we needed."

Now, taking up the proposal, I shall yield to some members of the committee as we go along through this. But the first section is the one which limits state borrowing. It is the one which keeps the door from being wide open. We changed the wording. I don't think we have changed the meaning. It says, "No evidence of state indebtedness shall be issued, except for such debts as are expressly authorized in or pursuant to the provisions of this constitution." Bear in mind as you consider this that we are talking here only about general obligation indebtedness. This does not apply and is not intended to apply to the various forms of borrowing used in connection with state government but not actually by state government.

The state highway department is borrowing, and the amount is somewhere about $300 million, on tax anticipation bonds. The dormitories at our universities and colleges, with the figure of somewhere about $120 million, are borrowing on revenue bonds. The Mackinac bridge, at just $200,000 less than $100 million, all of which is still outstanding, is on revenue bonds.

This building across the street where we go for lunch doesn't belong to the state. We have to pay some $4 million more before it belongs to the state. It was built by an authority, with money borrowed without the use of the state's full credit.

I think, Mr. Chairman, that is perhaps a sufficient explanation as to the first section, and I will yield for questions on it.

CHAIRMAN HUTCHINSON: Are there any amendments to the section first read? Any questions of the chairman of the committee?

Mr. Downs.

MR. DOWNS: I just ask a question of procedure, Mr. Chairman. Are we going through this section by section, and then will each section be passed after we go through it?

CHAIRMAN HUTCHINSON: That is the way the Chair thought that probably we were going to proceed. The Chair would like to remind the committee that it may proceed in any fashion that it directs. Unless it otherwise directs, we will handle this section by section.

MR. DOWNS: I had a general question, and if it applies more to a later section, I will withhold the question. Here is the problem that I am trying to look at, Mr. Brake, "No evidence of state indebtedness shall be issued. . . ." Looking realistically at the situation we are now in, wherein I understand there are many millions of dollars owed, even though the borrowing power, as you pointed out, is only a quarter of a million dollars, my question is, under this provision could the state have, in fact, gone into debt for the purpose that we used in the financial crisis in the last period of time?

MR. BRAKE: Because of this provision, we have been able to borrow, Mr. Downs, only by making use of a constitutional amendment each time we needed to make a loan. But we do not speak of the deficit as a state debt. We talk only of the borrowed money.

MR. DOWNS: Perhaps I used the wrong term. I was referring more to the state deficit, in fact, the indebtedness that was done in spite of a $250,000 debt limit. Would the language the committee has in section a prevent the deficit from being created that was created?

MR. BRAKE: Not as we keep our books. We have the deficit because we just didn't pay and are overdrawn. It is not regarded as a state debt.

MR. DOWNS: So that this proposal would not affect the deficit one way or another either at present or in the future?

MR. BRAKE: That is right. You may be interested in knowing what that outstanding indebtedness is. Of the world war II bonus, $51,993 is still outstanding. Of the hospital building where we procured $65 million, $36,250,000 is still outstanding. Of the Korean bonus, $54 million is still out.

CHAIRMAN HUTCHINSON: Are there any amendments to the first section of the proposal which has been read and been explained by the chairman of the committee? If not, that section will pass.

Section a is passed. The secretary will read the next section.

SECRETARY CHASE: Section b.

[Section b was read by the secretary. For text, see above, page 602.]

CHAIRMAN HUTCHINSON: Mr. Brake.

MR. BRAKE: I will take up first, Mr. Chairman, the matter that is excluded, because the subject matter is included in the section just read. The language, much of it — practically all of it — is deleted. That takes care of the $250,000 limit we had, and then follows the provision that the state could borrow to repel invasion, suppress insurrection, defend the state or aid the United States in time of war. That was given consideration by the committee. It was something that was not used. It was not used in the Spanish war, neither of the 2 world wars or the Korean war and the committee considered it need not be carried forward into the new constitution.

Then there is the other provision, in which Senator Hutchinson was interested on another occasion, of the $50 million borrowed for highway purposes. That borrowing took place back in the '20s, and the bonds were finally retired and the sinking fund liquidated in the early part of the decade of the '40s. So that has entirely served its purpose. There is no reason for carrying it forward. I am speaking entirely from memory, and not going back to recheck the figures, but you may be interested in them. As I recall it, when we had that interest all paid, and the principal repaid, we had paid $94 million for that $50 million deal. The interest rate, of course, was very high.

Now, for the next material, we had divided this into 2 sections. The drafting division apparently disagreed with us and put it together, but we will separate it, if we may, for the benefit of discussion. The first paragraph relates to short term borrowing, and for that I will yield to Delegate Staiger.

CHAIRMAN HUTCHINSON: Mr. Brake yields to Mr. Staiger.

MR. STAIGER: Mr. Chairman, on this section — and I am speaking of the first paragraph of section b, which we refer to as the short term borrowing section — I think it would be well, at the outset, if we all understand the problem we are addressing ourselves to in this case. This is short term operating capital borrowing. There are 2 different ways generally, or needs, for operating capital borrowing. The obvious one is that revenues do not come up to meet expenditures for the

year. If a deficit is created there would be a need for additional money. This is not the problem we are addressing our borrowing to. The committee went into this, and felt very strongly that this type of deficit should be met not by borrowing, but rather by appropriating additional revenue to meet expenditures.

There is another problem, however, that the committee went into and designed this section to cover; that is the situation where the legislature has appropriated sufficient revenue, but because of the timing, expenditures — if you stop and think for a minute, payroll goes on during the fiscal year fairly evenly. So much per week has to be paid out. Whereas the nature of our taxes, some of those come in not every week but, rather, all at once, maybe at the end of the year. Actually some of these taxes come in, as in the case of the corporate franchise tax, very near the end of the fiscal year, sometime in May. That represents approximately, as we say in our report, $65 or $70 million. With expenditures going on evenly toward the year, revenue coming in, some of it evenly and some toward the end of the year, this creates a cash crisis during the year. This is the problem that this section is addressed to help, to give some flexibility within the year to permit short term borrowing so that, in anticipation of these revenues, expenditures can be made when due, and yet picked up at the time and repaid at the time the taxes come in during the fiscal year.

The committee, in studying this, first agreed that such a provision should have the following principles: first, it should be a grant of authority to the legislature to provide for such borrowing if they so desire rather than being a self executing provision; and second, it should be limited to approximately $50 or $60 million under the present size of the state general fund. This primarily was the testimony we received from the state treasurer, that this was approximately the amount that he would need in order to meet the expenditures as they came due, and would like to be able to borrow in that area, in that amount.

Rather than putting a fixed figure — which we realized would be adequate only under the present size of the state general fund — into this section, we felt that we should use a percentage of the general fund; so that as the general fund grows, obviously the cash crisis problem would grow at the same time and by putting in a percentage it would be flexible as time went on. So we used 15 per cent of the undedicated state funds for the preceding fiscal year, which is just another way of saying at the present time $60 million would be the authorized total for this purpose. We also decided that such borrowing should be limited to within the fiscal year and to the extent possible this provision is drafted to prevent the state from defeating the purpose of this provision by borrowing up to its limit and then merely renewing the loan from year to year. As I said, the reason for this section is to provide flexibility so that when they need the cash they will be able to borrow, and they won't use up the whole limit. They will be able to borrow the money, make the expenditure, and then pick up the money when the tax comes in.

Now, the problem we have is, if we just put a flat limit and said it shall be repaid within 12 months or within the fiscal year, they could run the loan right up to the end of the fiscal year, up to the maximum of the debt limit, and just merely renew it for the next year. So that you really wouldn't have short term borrowing; you would have long term borrowing and renewals from year to year. So, for that purpose, we have made some provision in this section to tie it to a pledge of specific practice, and say that it must be repaid at the time those taxes come due.

I would like also to point out that this is full faith and credit borrowing. It does require, however, the pledge of a specific revenue to be received within that fiscal year. As I said before, it is limited to 15 per cent of the undedicated funds received within the preceding fiscal year, and must be repaid when the pledged revenues are received; and then with the additional limitation on there, in no case later than the end of the fiscal year.

Just so we have the problem we have addressed ourselves to clearly in mind at this time, I would yield for any questions that you might have.

CHAIRMAN HUTCHINSON: Mr. Perras.

MR. PERRAS: I would like to ask one question pertaining to local school districts. How is it that because of the shortage of money from the state on dedicated funds, or state aid, the local districts have to go to the local banks, borrow the money and then pay the interest out of the operating capital? With this proposal, would this eliminate the need for local districts spending their money for interest to the local banks, or would the state be able to take care of it directly?

MR. STAIGER: Well, it would all depend. As I understand, the reason the state hasn't made the payments when due now is that they had appropriated adequate revenue but it hadn't come in yet during the fiscal year. Under this proposal they could borrow this to pay it. But, as I understand, where the school is really given the pinch is that the legislature provides for a deficit appropriation or an emergency appropriation at the end of the year to come up with the state money. Now, if they haven't appropriated enough revenue, or have enough revenue to provide for that, they've got a deficit at the end of the year. Something has to give there, and it is the schools that they aren't able to pay because it is coming right at the end of the year.

This provision is not designed to take care of that type of a deficit, if it is something that goes beyond the end of the fiscal year. The cure there, we feel, is to appropriate enough money to take care of this.

MR. PERRAS: In my 10 years on the board of education it seems that we were always waiting for sales tax money or something else to come in.

MR. STAIGER: If it is something where enough appropriation has been made, this will allow them to make the payment, but if it is something where there has been a failure to appropriate enough to meet expenditures, it won't help.

CHAIRMAN HUTCHINSON: Mr. Mahinske.

MR. MAHINSKE: Perhaps Mr. Brake or Mr. Staiger could answer this. The sentence, line 7,

> Such borrowing in any fiscal year shall not exceed 15 per cent of all undedicated revenues received by the state during the preceding fiscal year. . . .

as Mr. Staiger pointed out, and perhaps I interpreted you wrong, when you set this 15 per cent, possibly this year, does this become a dedicated fund this year? What about in reference to next year when you are borrowing; does the 15 per cent which you dedicated this year go out of the undedicated fund for next year? Because it seems to me after a period of years, possibly 5 or 6, in preceding years your undedicated fund will be cut down by 15 per cent each year that you do set up your maximum.

MR. STAIGER: No. This 15 per cent is not a dedication in itself. It is merely a yardstick to be used as a limit on their borrowing. For instance, right now, this year, say, if the legislature right now realized they were running short on cash they have appropriated, they have this corporate franchise coming in in May. So they want to borrow against that to meet present expenditures, to meet expenditures now, when they are due. They could borrow up to the amount of 15 per cent of the undedicated revenue for last year, or the general fund for last year. That is the yardstick of the maximum on the borrowing. It in no way dedicates any fund.

MR. MAHINSKE: Well, then, later on, you say at the end of line 9, ". . . and shall be repaid at the time the revenues so pledged are received. . . ." Now, are different words than "pledged" used on dedicated procedures?

MR. STAIGER: Yes, "pledged" is used to refer to — say the corporate franchise fee is coming in in May, if they want to borrow money, they would have to pledge their corporate franchise fee for the repayment to the extent of the borrowing.

MR. MAHINSKE: But that 15 per cent pledged this year would still be considered as undedicated funds next year?

MR. STAIGER: Well, by next year it would have been repaid.

MR. MAHINSKE: What I am getting at is, in time, if you keep cutting this down, if the pledged funds become the dedi-

cated funds, you can't draw 15 per cent of that amount on credit next year.

MR. STAIGER: Mr. Mahinske, think of it this way. If we borrow now against the corporate franchise fee coming due in May, and pledge that tax for the payment of this borrowing, come May, when that tax came in, that loan would be repaid. Now, the next fiscal year starts in June. By that time there is no pledge of revenue under this provision, and we would start out with 15 per cent for next year of the general fund for this year.

MR. MAHINSKE: But then, in the event it were not repaid within the fiscal year, it would not be taken into consideration as a basis for the succeeding year?

MR. STAIGER: The provision is that it must be repaid or else it is in default.

MR. MAHINSKE: But, what I am getting at is, this pledged amount, does it become a dedicated amount?

MR. STAIGER: No, not under that section.

CHAIRMAN HUTCHINSON: Mr. Yeager.

MR. YEAGER: Mr. Chairman, the question that I have — I don't know the degree of germaneness to this thing, but since we are talking about the question of appropriations here in the first sentence, I would like to ask Mr. Brake more or less a general question, since this will perhaps come up at a later time. I think one of the problems we have had in Michigan, at least financially speaking, has been the fact that the legislature has been appropriating funds based on an inaccurate or overrated estimate of revenue to be received.

The state of Oklahoma has in its constitution, I believe, a provision which prohibits the legislature from appropriating more funds than the average of the previous 3 years' income. I wondered if the committee gave any thought to this approach to appropriations, which may have some effect on short term borrowing?

MR. BRAKE: The problem that you are talking about lies in the jurisdiction of 3 committees. It is being handled primarily by the committee on executive branch, but the committee on legislative powers is involved and the finance and taxation committee is involved; and we have not arrived at an agreement among the 3. But we have a meeting for that purpose tomorrow. It is a problem that is being studied.

CHAIRMAN HUTCHINSON: Mr. Shackleton.

MR. SHACKLETON: Mr. Chairman, may I ask a question of Mr. Brake, please. Mr. Brake, the day we recessed before the Christmas holidays, we had under discussion money matters, commingling of funds. If that was successful, as the committee proposed at that time, would that still make necessary this provision for borrowing for temporary uses?

MR. BRAKE: I remember that event very well, Mr. Shackleton. You can take it either way. If that had carried, or if it still carries, it would make less necessary this provision for temporary borrowing. The other way around, this provision for temporary borrowing makes less necessary the provision that we had before us at that other occasion, the commingling of funds. The ideas are mutually helpful to each other.

MR. SHACKLETON: Then, in your opinion and the opinion of the committee, it would be well if that were successful, to continue this one also?

MR. BRAKE: I think so. We will be back with something having to do with that subject matter probably next week. Maybe this week.

CHAIRMAN HUTCHINSON: Mr. Bledsoe.

MR. BLEDSOE: I would like to ask Mr. Brake a question. Am I in error when I engage in the thinking that in the suggested financing system here in this proposal, you are asking this body to participate in continuing financial crises?

MR. BRAKE: Not at all, Mr. Bledsoe, but we are dealing with a state that carries through its treasury in the course of a year about $1,200 million. That is a lot of money. The income can't be evenly divided; the expenditures can't be evenly divided so that every month it balances up. Even if we were on a pretty level keel, and had very little in the way of a deficit, or perhaps none, there might well be periods when you would have to have a little extra money, the same as any business corporation has to have a little extra money once in awhile.

MR. BLEDSOE: May I ask another question? And may I preface it with a matter here that is contained in the program for Michigan tax reform adopted by the citizens for Michigan in December of 1961, which reads as follows:

> The circumstance that gave birth to this study — indeed to the organization of citizens for Michigan itself — was the state financial crisis of 1959 that produced payless paydays, an unparalleled deficit of $95.5 million in the general fund at the end of the fiscal year, June 30, and national embarrassment for Michigan.
>
> In the intervening 2 years, 3 legislative moves were made which provided stopgap relief. The first was the liquidation of the veterans' trust fund, which produced about $40 million and helped reduce the general fund deficit to $64 million by June 30, 1960. The second was the imposition of certain temporary taxes which produced about $50 million in revenue during the 1960-61 fiscal year and were allowed to expire June 30, 1961. The third was an increase in the state sales tax from 3 per cent to 4 per cent, effective January 1, 1961.

Now, in view of this program, are we meeting this problem by the process suggested here in this proposal?

MR. BRAKE: Not completely. Of course not. We are endeavoring to.

MR. BLEDSOE: Do you feel that we here — that that is a part of our duty? Is it paramount that we do that?

MR. BRAKE: Mr. Bledsoe, we can't present to you a complete program in one proposal or in one constitutional convention.

MR. BLEDSOE: Then I take it this is another stopgap, is that it?

MR. BRAKE: No, it is not a stopgap. It is just a help to get along at any time, whether we are in a financial crisis or not.

Mr. Austin would like to comment on something if you will permit, Mr. Staiger.

CHAIRMAN HUTCHINSON: Mr. Staiger has the floor.

MR. STAIGER: I yield to Mr. Austin.

CHAIRMAN HUTCHINSON: Mr. Austin.

MR. AUSTIN: Mr. Chairman and members of the committee, there are really 2 subjects on the floor that I would like to comment on. The first is related to the question of the commingling of the earmarkings. At the time we had the debate on that subject it was felt that the delegates were not clear in regard to what the committee had in mind as to what it would do about earmarking. Therefore they were a little worried about our getting involved in commingling without knowing what the ultimate disposition would be of earmarking. The committee is at this point considering what to do about earmarking, and when we have completed those deliberations we will get back to the other subject of the commingling.

Now, as to the question raised by Mr. Bledsoe, if you will consider that the state of Michigan is receiving approximately $1,200 million a year in tax receipts, you will realize that the state is receiving approximately $100 million monthly, and the appropriations are based upon these receipts of $100 million monthly. The tax revenue does not actually come into the treasury evenly, at the rate of $100 million monthly. There are some months in which no money is received from certain tax revenues. As was pointed out, the franchise tax produces approximately $65 to $70 million annually. That money does not come in evenly throughout the year. It comes in in the month of May. Appropriations are based on the receipt of that money as though it did come in evenly throughout the year.

The purpose of this proposal is to give the treasury the right to go to the bank, to borrow money earlier than the receipt of the corporate franchise tax, to have the money in its treasury to meet the appropriations that would normally be met by the receipt of that money. When the money is received from the corporate franchise tax the loan will be paid off.

MR. BLEDSOE: Mr. Austin, may I ask you this question, what is necessary to correct the financial narrative that you have just given?

MR. AUSTIN: Mr. Bledsoe, there is one other problem which should be mentioned at this time, and you are concerned about that problem, and that is —

MR. BLEDSOE: I think we are concerned.

MR. AUSTIN: — the problem of whether the total revenues of the state are adequate to meet the full appropriations —

MR. BLEDSOE: What does that call for?

MR. AUSTIN: — and over a period of years the revenues of the state have been somewhat short of meeting the full appropriations, and that is how we accumulate the deficit. Now, that is a problem for the legislature to solve. The legislature has to levy enough tax revenue to meet our appropriations; and as long as the legislature is failing to levy enough taxation to meet the appropriations, we are going to have a deficit.

MR. BLEDSOE: Then I take it you are asking us to usurp the functions of the legislature?

MR. AUSTIN: No, no, this problem that we are discussing now would exist even if the legislature were levying enough taxation to meet our appropriations. Let me make it clear, Mr. Bledsoe. If the legislature were levying $1,200 million of taxation each year it would be, in effect, levying enough taxation to take care of our appropriations, because our appropriations are equal to $1,200 million. Is that clear?

MR. BLEDSOE: Isn't the fact, Mr. Austin, that what we really need to do is lay a foundation for a complete financial tax structure for our state? Isn't that what is needed?

MR. AUSTIN: Mr. Bledsoe —

MR. BLEDSOE: You can answer that yes or no.

MR. AUSTIN: No, Mr. Bledsoe, only the legislature can levy the taxation that is needed.

MR. BLEDSOE: The solving of that problem, then, becomes the duty of this body?

MR. AUSTIN: No.

MR. BLEDSOE: Then, where does it fall?

MR. AUSTIN: We are not here to solve that problem.

CHAIRMAN HUTCHINSON: Gentlemen, the Chair has been very lenient, but Mr. Staiger has the floor, and the Chair noted that Mr. Stevens desires, I suppose, to ask Mr. Staiger a question.

MR. STEVENS: Mr. Chairman, Mr. Staiger, I have something here that is bothering me. On line 13, the statement reads ". . . affirmative vote of 2/3 of the members elect of both houses . . ." Should not that read "members elected"?

MR. STAIGER: Mr. Stevens, we have another member of the committee that is going to take this up in a second. On that second paragraph, section 3, we will get to that in a moment, if you could postpone the question until we have an explanation on that.

MR. STEVENS: May I ask this of the gentleman who makes the next report?

CHAIRMAN HUTCHINSON: All right.

Mr. Higgs.

MR. HIGGS: Mr. Chairman, Delegate Staiger, I am sure that this committee has given this consideration. I may have missed it during some of the discussion, but I am interested in the last clause, "not later than the end of the same fiscal year", and in particular, I assume that you have given consideration as to the relative need for tax moneys during the course of the fiscal year, and that you have chosen this language advisedly rather than saying "but not later than 12 months after the time of borrowing." I wonder if you would care to comment upon that?

MR. STAIGER: I would be glad to. In fact, that provision and the provision that it must be repaid as the revenue so pledged is received — which, if you check back, is revenue received during the fiscal year — is really a double limitation on that. We did this specifically to meet the type of problem that Mr. Bledsoe is raising.

If you could borrow beyond the end of the fiscal year, the tendency then would be for the governor and the legislature, on the budget — at least there would be the temptation — to borrow to meet present appropriations for the fiscal year, rather than appropriate new taxes. This is exactly the thing we don't want to do. We want to fix the responsibility for a balanced budget right where it should be, in the governor and the legislature, and merely provide for borrowing within the fiscal year when and only to the extent that they actually have to have sufficient revenue coming in.

We drafted this specifically so there wouldn't be this type of borrowing which, in effect, is deficit borrowing because there was not adequate revenue. This is not the case where you do not have adequate revenue, but it is the case where the revenue comes in at different times, and does not come in at the same time of expenditures.

MR. HIGGS: Then, as a practical matter, in the tenth month of a fiscal year you could not borrow money inasmuch as you have only 2 months to pay it, is that right?

MR. STAIGER: You could if you have the taxes coming due within those next 2 months. If you start borrowing against next year, then you are getting into deficit financing; a situation which should be met by appropriate additional revenue and not by borrowing.

MR. HIGGS: I am not meaning to quarrel with you, and I favor this kind of limitation, you understand, but I wonder if you would tell us, for the record, during what particular months the need is greatest and what particular months the money is abundant?

MR. STAIGER: I don't have the figures on that. I know that taxes do come in at different times, and particularly right now on this corporate franchise tax, right at the end and, of course, by that time most of the expenditures that were appropriated to meet should have been met. I know that there are other instances. When we had State Treasurer Brown before the committee, he pointed out this fact that we have the different taxes that come in annually and at different times and, as a result, revenues do come in unevenly and expenditures go on rather evenly. This is the reason we need this type of flexibility in the system. Does that satisfy your question?

MR. HIGGS: I think it is fairly critical, if we are going to solve the problem, to know just how we are solving it. As I read it, Mr. Chairman, as a practical matter our borrowing is limited to the earliest part of the year. I wonder if Mr. Brake could answer that question?

CHAIRMAN HUTCHINSON: Mr. Staiger yields to Mr. Brake to answer Mr. Higgs' question?

MR. STAIGER: Yes.

CHAIRMAN HUTCHINSON: Mr. Brake.

MR. BRAKE: I can't go through the 12 months of the year, Mr. Higgs, and tell you which months are high and which are low. One thing that they wait a little while for is the corporate franchise tax, which, of course, is paid in May. Your intangibles tax, with what the state gets from it — of course, intangibles are divided — comes in in April, or at the end of March and the beginning of April. There isn't the idea at all, on the part of the committee, that this is something that is going to be used every day. It takes legislative authority, and it will be used only when the legislature authorizes it, and it will be used whenever it is needed if the legislature authorizes it. It is a safety measure more than anything else.

CHAIRMAN HUTCHINSON: Mr. Ostrow.

MR. OSTROW: Reducing this to terms of everyday life of people, this is like a man borrowing $20 until payday. So instead of the kids going hungry and having to eat beans and then turkey on payday, they can eat during the week, spending the money that they will receive at the end of the week. Or, in the case of a businessman, he's got $10,000 in accounts receivable coming in at the end of the month, but he has payroll and other expenses coming in at the beginning of the month. He borrows $1500 or $2,000 from the bank and takes care of his immediate needs.

It is not going to produce any more money. There is not going to be any more revenue. Nobody claims there will.

But there won't be the feast and famine. It will just level it out and you can spend it when you have to spend it. You won't spend any more. You won't take in any more. But it will alleviate the situation where you have no money for a long time and then a lot of money, and a lot of people have to wait for their money.

CHAIRMAN HUTCHINSON: Mr. Staiger.

MR. STAIGER: I have no further comments. I yield the floor to Mr. Hoxie.

CHAIRMAN HUTCHINSON: Mr. Hoxie.

MR. HOXIE: Mr. Chairman, I would like to address a question to Mr. Brake. In reading this proposal, it refers to anticipation of receipt of any undedicated revenue to be received within the same fiscal year. Now, we have heard the figure mentioned of $1,200 million of appropriation — something of that nature, Mr. Brake, is that correct?

MR. BRAKE: No, that is not correct. Mr. Austin was not using quite the correct terms when he spoke of collecting $1,200 million in taxes. The figure I used, $1,200 million was the money that goes through the state treasury in the course of a year, which includes some federal money.

MR. HOXIE: We are getting to the point now, Mr. Brake, that I would like to have some enlightenment on. When we are talking of 15 per cent, and also referring to undedicated funds, do we consider federal funds that are not due to be appropriated at the time received? Are we considering we can borrow against those, or only such general revenue, money of general government of the state of Michigan?

MR. BRAKE: As a member of the ways and means committee for years, you don't need any enlightenment at all. You know that what we are talking about is money that is ours, and that is not dedicated to a specific purpose. This excludes the highway money, the dedicated sales tax, and anything else that is dedicated to a specific purpose, and the percentage is figured only on what is left.

MR. HOXIE: Thank you. That is the answer I wanted.

CHAIRMAN HUTCHINSON: Mr. Martin.

MR. MARTIN: Mr. Chairman, I just want to make a brief comment on this, and that is that this is the provision that I had hoped Mr. Brake's committee would bring out when we were discussing the earlier matter before the Christmas recess. It is a very useful device for leveling out this unequal flow of income and uneven flow of expenditure. It doesn't solve any long term problems at all, but if we had had it when I was auditor general, I think we would have avoided the very crisis that we got into and I think it is a very useful provision. It is a short term matter, and it does not solve any of our long term problems.

CHAIRMAN HUTCHINSON: Mr. Staiger.

MR. STAIGER: If there are no further questions, I will yield the floor to Mr. Brake on this matter. I guess we take this all in one paragraph, these 2 sections.

CHAIRMAN HUTCHINSON: Mr. Brake.

MR. BRAKE: The other part of the section, the second paragraph, has to do with the long term borrowing. As I mentioned to you, in the past when we have needed to do some long term borrowing, as we have 5 times, as I recall, since 1908, we had to resort to a constitutional amendment. It is generally proposed by the legislature by a 2/3 vote, and then approved by the people. We have the same protection written into this section that we have had through those years. It still will require a 2/3 vote of each house of the legislature and approval by the people, but not the encumbering of the constitution by an amendment which the next constitutional convention will have to get rid of. This is to be by bill, requiring a 2/3 vote, requiring the approval of the people. It is a simple thing. This will not prevent the people, of course, from borrowing by a constitutional amendment if they so desire, and if we build a constitution which permits amendment. But it is a better method because it doesn't encumber the constitution.

I think you should have, before your questions, something that we didn't do. We were asked, particularly by the Mackinac bridge authority, to provide the necessary provision for refunding the other kinds of bonds that are outstanding by agencies of the state. Of course, they were interested in a possible refunding of the Mackinac bridge bonds. But the proposal that they brought to us would have permitted a refunding of the university dormitory bonds, this proposition across the street, and anything else, including the tax anticipation bonds of the highway department. They wanted that possible by action of the legislature, when certain facts were found, without a vote of the people. We have rejected that. Our decision, of course, is subject to your decision. But we rejected it, and believe that if there comes a time when they can profitably refund any of those bonds, and wish to do so, they should be required to use this long term provision, 2/3 vote of the legislature and referendum to the people.

CHAIRMAN HUTCHINSON: Are there any amendments to the body of section b in this proposal?

Mr. Marshall.

MR. MARSHALL: Mr. Chairman, just a point of inquiry. The provision seems to me an excellent one and will enable us to borrow by a vote of the legislature and a vote of the people without putting in a constitutional amendment, but I wonder if the committee inquired of the bonding attorneys as to whether the absence of this provision as a constitutional provision would affect the cost of borrowing, would make the cost of borrowing higher by doing it just by bill? Does that have any effect on it at all?

MR. BRAKE: I think not. We had plenty of experts before the committee, and we had a member of the committee who is a member of a firm that handles a tremendous amount of this business, and I think we are entirely safe in that regard; the same vote, the same securities.

MR. MARSHALL: The bill approved by the people would have the same effect, exactly, as the constitutional amendment?

MR. BRAKE: Yes.

CHAIRMAN HUTCHINSON: Mr. Stevens.

MR. STEVENS: Mr. Chairman, Mr. Brake, once again my question, should not the third and fourth words on line 14 read "members elected"?

MR. BRAKE: Mr. Stevens, there are many here who have been in the legislature since I, but as I remember, the terms "senators elect," "house members elect," have always been used.

MR. STEVENS: Mr. Brake, I am reading from the Constitution of the State of Michigan of 1908, where it says ". . . will prevent a majority of the members elected from discharging —" and so forth. All through the constitution you see that term "members elected." It is my construction that the term "members elect" refers to persons who have not been sworn in.

MR. BRAKE: I think it is used the other way in the statute and in the legislature, in contrast, of course, with "members present and voting". That is the purpose.

MR. STEVENS: I am only raising the question because it will come up in style and drafting.

MR. BRAKE: They will have a chance to look at it, I hope. (laughter)

CHAIRMAN HUTCHINSON: Mr. Powell.

MR. POWELL: Mr. Chairman and ladies and gentlemen of the committee, I want to make a little inquiry about this provision we are just talking about here expressed in lines 12, 13, 14 and 15. It is my understanding that the proposal is that this action would be by a bill or statute rather than an amendment to the constitution. But in reading it, I don't find anything about bill or act or statute, or anything, nor do I find that this proposition would be submitted to the governor. I wonder if this is a sort of different type of action than we now have, or whether that was just taken for granted?

MR. BRAKE: It would be a bill. It would be submitted to the governor. It would be subjected to veto, but having been passed by the number of votes that it takes to override a veto, you would hardly expect a governor to veto it.

MR. POWELL: I was just wondering as I read this, for instance, in line 13, after it says, ". . . proposed by the legislature . . ." if you would like some language like "a

bill passed by an affirmative vote of 2/3" or something — maybe it is entirely clear to everybody else, but in reading it, where we don't find any reference to bill or act, or that the governor has any hand in the matter — it talks about the 2/3 vote and then going directly to a referendum. I wondered if there was something behind the scenes that I didn't understand.

MR. BRAKE: The legislature acts by bill or joint resolution. It acts by joint resolution only when it is proposing an amendment on the ballot for people to vote upon.

CHAIRMAN HUTCHINSON: Mr. Van Dusen, do you desire the floor?

MR. VAN DUSEN: I don't like, Mr. Chairman, to take issue with the distinguished chairman of our committee. However, I don't think it is entirely clear that this would be by bill, in view of the fact that the language is almost identical with the language of the present section dealing with amendment of the constitution, and I believe it was our intention that the process would be the same as is presently followed in the amendment of the constitution. Therefore, the action would be by joint resolution rather than by bill.

MR. BRAKE: I can't see that it would make any particular difference, Mr. Van Dusen, but I think it would be by bill, because you would either have a statute or you would have a constitutional amendment, and this would not be a constitutional amendment.

MR. VAN DUSEN: I bow to the superior wisdom of our chairman.

CHAIRMAN HUTCHINSON: Are there any amendments to the body of section b of this proposal?

Mr. Woolfenden.

MR. WOOLFENDEN: I would like to ask Mr. Brake a question. Since this procedure involves an election following the legislative action, why is it necessary to require a 2/3 vote of the entire membership of the legislature instead of just a simple majority? It would seem to me that the public interest is amply safeguarded if the legislative action, whether by bill or joint resolution, is followed by an election. It seems that this is a needless limitation on the legislature.

MR. BRAKE: I think you would probably call us conservative, Mr. Woolfenden. We have provided the same conservative vote that we have always required for constitutional amendment by which we have abided in the past. Mr. Woolfenden sent over a note that I didn't answer. He asked whether the action of the committee on these matters has been unanimous. My memory may be slightly wrong; I think not. As I recall it, there was no negative vote on any part of this proposal. I think on one or two parts there were a couple who abstained.

CHAIRMAN HUTCHINSON: There is an amendment on the secretary's desk which the secretary will read.

SECRETARY CHASE: Mr. Downs offers the following amendment:

1. Amend page 2, line 13, after "legislature by" by striking out "the affirmative vote of 2/3 of the" and inserting "a simple majority of"; so the language will read:

> The state may borrow money for such other specific purposes and in such amounts as may be proposed by the legislature by a simple majority of members elect of both houses.

CHAIRMAN HUTCHINSON: Mr. Downs.

MR. DOWNS: Mr. Chairman, I believe Mr. Woolfenden, in a sense, made the comment I was going to make, I noticed the model state constitution provides that

> No debt shall be contracted by and in behalf of the state unless such debt shall be authorized by law for a single project or object distinctly specified therein.

That does not provide for any check by the people.

It seems to me that there is some merit to using the "simple majority". I was going to ask the legislative organization committee what a simple majority was going to mean before the convention closes. But I think in some cases, such as the Mackinac bridge, if I understand correctly, that by putting the full faith and credit of the state behind the project we could save as much as 1 per cent — which could mean a $1 million a year if it is a $100 million bond issue — and while this is not a major issue, I do think it might make the long range borrowing a little more flexible.

I did have another question of Mr. Brake, but it is not germane to the amendment, and I will hold that in mind until the amendment is voted on.

MR. BRAKE: There is no question about the fact that a simple majority would make it easier to get the question submitted to the people. Our view of it is that this is something which should be used very, very seldom, and only in case of urgent and unusual need. Five times we have done it, for bonuses for 3 wars, one highway construction program, and once for a hospital construction program. It is just a question of whether you wish to make it easy or whether you wish to be sure that there is a real need before you let the people vote on the question of borrowing money.

CHAIRMAN HUTCHINSON: Mr. Stevens.

MR. STEVENS: Mr. Chairman, Mr. Brake, or whoever wants to, can answer. I did not notice in the amendment any statement of either members elect or members elected. I am afraid I didn't make my question quite clear to Mr. Brake. I am aware of the fact that all through the state constitution it requires these elections to be by members elected, in the past tense. My objection to the language in this proposal was it is in the present tense; it is not "elected," it is "elect." In the amendment there doesn't seem to be required anything except a simple majority of those voting on it, if I heard the amendment correctly.

MR. BRAKE: ". . . of an affirmative vote of 2/3 of members elect of both houses."

MR. STEVENS: Yes. I quote here from section 15 of article V:

> Each house, except as otherwise provided in this constitution, shall choose its own officers and determine the rules of its proceedings, but shall not adopt any rule that will prevent a majority of the members elected from discharging —

MR. BRAKE: I told you, Mr. Stevens, I speak as a legislator where we have used those terms repeatedly. Help us get this to the committee on style and drafting and let them handle it.

CHAIRMAN HUTCHINSON: The question is on Mr. Downs' amendment. Mr. Nord.

MR. NORD: I have a question for Mr. Downs. I note that before this amendment the question arose whether or not the governor's approval was required, and the answer was it was a 2/3 vote. Now, if we had a simple majority it would mean yes, the governor's approval is required, and therefore I would like to know whether Mr. Downs' amendment contemplates whether the governor's approval would be required or whether it would not?

MR. DOWNS: The amendment just applies to replacing the 2/3 with "a simple majority". If the amendment passes, it would then reopen the question that Mr. Brake said was moot if the 2/3 majority was required, and I would suggest that after this is voted upon we then go into the other question. But I believe it is more in order to limit our discussion to the amendment that is before us.

CHAIRMAN HUTCHINSON: Mr. Stafseth.

MR. STAFSETH: I happen to be a member of this committee, and we discussed this very proposition of the 2/3 vote. We took the language that is exactly as it is for the constitutional amendment. We also considered the situation of an initiative referendum. We decided to leave that as it is, and you can still do it. I would speak against Mr. Downs' amendment because I think what we get into, if you use just a simple majority, might be a very good way for the legislature to not face up to their current responsibility and get a simple majority, and then the people, not knowing the real facts, would vote it in, and would just create continual indebtedness, and keep right on going.

CHAIRMAN HUTCHINSON: Mr. Davis.

MR. DAVIS: Mr. Chairman, I too would like to oppose the amendment and support the committee's proposal. I believe

that this proposal, as it comes from the committee, lends an orderly and businesslike means of transacting government business. I think that also contained in it is something which lends itself to fiscal integrity, one thing I think all these citizens have a desire for.

CHAIRMAN HUTCHINSON: Mr. Upton.

MR. UPTON: I would like to speak against this amendment as a member of the committee. We did consider this. I feel that the legislature should have the responsibility to determine when they want to have long term borrowing. They should very definitely consider it as an entire body, and a simple majority could confuse the people many, many times. So I feel a 2/3 majority is necessary for good, stable financial management in our state.

CHAIRMAN HUTCHINSON: Mr. Faxon.

MR. FAXON: I would like to ask Delegate Brake a question. Is this, the 2/3 vote, the only time in which the full faith and credit of the state is pledged as security for borrowing?

MR. BRAKE: No. The short term borrowing.

MR. FAXON: But that isn't in the 1908 — this would be under this proposal, but it isn't in the 1908 constitution. In the 1908 constitution you can't borrow on anticipated revenue.

MR. BRAKE: You can borrow $250,000 on the full faith and credit of the state.

MR. FAXON: And under this now we would be able to add 15 per cent to the undedicated funds, plus whatever would be approved by the 2/3 vote and the vote of the people?

MR. BRAKE: That is right.

CHAIRMAN HUTCHINSON: Mr. Van Dusen.

MR. VAN DUSEN: Mr. Chairman, members of the committee, I too would like to speak in opposition to the amendment. Our purpose here was not really to make it easier to borrow money than it has been under the present constitution, but simply to provide the same procedural steps and to avoid the cluttering up of the constitution with repeated amendments referring to specific bond issues which might long since have been paid off. We do not intend to encourage profligacy on the part of the state. We simply intend to keep the constitution free from specific reference to bond issues.

CHAIRMAN HUTCHINSON: The question is on the amendment. All those in favor, say aye. Those opposed, say no.

The amendment is not adopted.

Are there any further amendments to the body of the proposal? If not, it will pass — I beg your pardon, gentlemen, the Chair is in error.

Mr. Howes.

MR. HOWES: Mr. Chairman, this section could very well be used by the legislature and the people of the state of Michigan to issue full faith and credit bonds to buy back the Mackinac bridge authority bonds at an opportune time. Senator Prentiss Brown explained to our committee that full faith and credit bonds would actually save the state about $1 million per year in interest, and would allow a substantial reduction in toll rates across the Mackinac bridge. In the opinion of some good authorities, the toll rates across the bridge are high enough that they are lessening traffic across the bridge, especially truck traffic. The substantial reduction of toll rates on the bridge would be an economic aid to both the upper and lower peninsulas of Michigan. I believe the people who use the Mackinac bridge need this $1 million per year, and could use it possibly to better advantage than the bond lawyers from the New York bond market.

The full committee, with the help of the most capable people and the best information available to us, gave this proposal very long and deliberative study before voting to approve this in its present form, and I now urge the delegates convened here to carefully consider this, and then to approve this proposal as it is now written.

CHAIRMAN HUTCHINSON: Mr. Brake.

MR. BRAKE: Mr. Chairman, I move the committee do now rise.

CHAIRMAN HUTCHINSON: Mr. Brake moves the committee do now rise. The motion is not debatable. All those in favor, say aye. Those opposed, say no.

The motion prevails. The committee has risen.

[Whereupon, the committee of the whole having risen, President Nisbet resumed the Chair.]

PRESIDENT NISBET: The Chair recognizes Mr. Hutchinson.

MR. HUTCHINSON: Mr. President, the committee of the whole has had under consideration several proposals, on which the secretary will make a detailed report.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 18,** A proposal to provide for a great seal of the state and to authorize its use; **Committee Proposal 19,** A proposal to provide for a state militia; **Committee Proposal 20,** A proposal to provide that no law shall be enacted providing for the penalty of death; and **Committee Proposal 21,** A proposal pertaining to the division of the powers of government; and reports these proposals back to the convention without amendment and with the recommendation that they be passed.

PRESIDENT NISBET: The **Committee Proposals 18, 19, 20** and **21** are referred to the committee on style and drafting.

For Committee Proposal 18 as referred to the committee on style and drafting, see above, page 593.

For Committee Proposal 19 as referred to the committee on style and drafting, see above, page 593.

For Committee Proposal 20 as referred to the committee on style and drafting, see above, page 595.

For Committee Proposal 21 as referred to the committee on style and drafting, see above, page 600.

SECRETARY CHASE: The committee of the whole has also had under consideration **Committee Proposal 17,** A proposal respecting eligibility for the offices of governor and lieutenant governor; reports this proposal back to the convention with an amendment, recommending the amendment be agreed to and the proposal as amended do pass.

[The following is the amendment recommended by the committee of the whole:

1. Amend page 1, line 9, after "registered" by striking out "voter" and inserting "qualified elector".]

PRESIDENT NISBET: The question is on agreeing to the amendment to Committee Proposal 17. Those in favor, say aye. Those opposed, no.

The amendment is adopted.

Committee Proposal 17, as amended, is referred to the committee on style and drafting.

Following is Committee Proposal 17 as amended and referred to the committee on style and drafting:

The committee recommends that the following be included in the constitution:

Any registered qualified elector of the state who is at least 30 years of age shall be eligible to the offices of governor or lieutenant governor.

SECRETARY CHASE: The committee of the whole has also had under consideration **Exclusion Report 2003,** A report recommending the exclusion of article X, section 20; and **Exclusion Report 2006,** A report recommending the exclusion of article XII, sections 1, 2, 3, 5, 6, 7 and 8; and reports these 2 exclusion reports back to the convention without amendment and recommends the adoption thereof.

PRESIDENT NISBET: The question is on the adoption of the exclusion reports. Those in favor, say aye. Opposed, no.

Exclusion Reports 2003 and **2006** are adopted and referred to the committee on style and drafting.

For Exclusion Report 2003 as referred to the committee on style and drafting, see above, page 594.

For Exclusion Report 2006 as referred to the committee on style and drafting, see above, page 598.

SECRETARY CHASE: The committee of the whole has also had under consideration **Committee Proposal 22,** A proposal pertaining to state civil service; and in committee has postponed consideration of this proposal until Thursday, January 18.

PRESIDENT NISBET: It will be on the general orders calendar on Thursday.

SECRETARY CHASE: The committee of the whole has also had under consideration **Committee Proposal 23,** and has come to no final resolution thereon.

This completes the report of the committee of the whole, Mr. President.

PRESIDENT NISBET: Announcements.

SECRETARY CHASE: The following committee announcements:

The miscellaneous provisions and schedule committee meeting, scheduled for after this session, is cancelled and will be held at 10:30 tomorrow morning in committee room G. Several subcommittee reports have been completed and will be discussed. Claud Erickson, chairman.

The committee on judicial branch will meet in room B Wednesday at 8:30. Mr. Danhof, chairman.

The subcommittee on higher education will meet Thursday at 9:00 o'clock. Anyone who has a proposal relative to higher education may appear at this time. Roscoe Bonisteel, chairman.

The committee on legislative powers will meet in room H Wednesday at 8:30 a.m., and on Thursday, 8:30 a.m. T. Jefferson Hoxie, chairman.

The committee on style and drafting will meet at 2:00 p.m. on Monday, January 22. Mr. Cudlip, chairman.

The committee on administration will meet tomorrow in the conference room at 1:00 o'clock. Walter DeVries, chairman.

The remaining announcements appear in the composite calendar.

The apples today were furnished by Mr. Turner. (applause)

PRESIDENT NISBET: Mr. Norris.

MR. NORRIS: Mr. President, earlier in the proceedings we had a report from Delegate Romney with respect to the present status of invitations which were accorded to President Truman and President Hoover. In view of the report, I would like to know whether I might direct a question to you, as presiding officer, and through you to Delegate Romney, as to whether or not, in view of the present status of these invitations and the declinations, it may be appropriate to renew or initiate the invitation to President Kennedy to appear and to ask whether or not appropriate steps might be undertaken to implement that invitation.

PRESIDENT NISBET: Mr. Romney.

MR. ROMNEY: Mr. President and Delegate Norris, I would personally favor a renewal. We made 2 efforts to get President Kennedy, and they preceded his trip to South America. At the time it was indicated that he might also have to go to Europe sometime early in the year. I think that looks less likely now, because there doesn't appear to be a likelihood of an early summit conference. Personally I would be in favor of renewing the invitation, if it is the wish of the convention to do so, and if the convention wants the special committee to consider this question, we could have a meeting for that purpose.

PRESIDENT NISBET: Mr. Norris.

MR. NORRIS: I so move, Mr. President, if it is appropriate at this time, that the convention extend that invitation to President Kennedy to appear.

PRESIDENT NISBET: The question is on the motion of Mr. Norris that the special committee extend an invitation to President Kennedy to appear before the convention. Those in favor say aye. Opposed, no.

The motion prevails.

Mr. Romney.

MR. ROMNEY: Mr. President, that motion having passed, I would like to call a meeting of the members of the special committee immediately following this session so that we can implement this action promptly. We will meet in the office of the administration committee, unless the administration committee is planning to use the room following the session. Would that be all right, Mr. DeVries?

MR. DeVRIES: Yes.

MR. ROMNEY: Very good.

SECRETARY CHASE: I have the following request for leave of absence: Delegate Goebel would like to be excused from Friday's session to attend a meeting of the board of regents of the University of Michigan.

PRESIDENT NISBET: Without objection, he will be excused. Any further business? Mr. Ford.

MR. FORD: I move that the convention adjourn.

PRESIDENT NISBET: The question is on adjournment. All in favor say aye. Opposed, no.

The convention is adjourned until 2:00 p.m. tomorrow.

[Whereupon, at 5:15 o'clock p.m., the convention adjourned until 2:00 p.m., Wednesday, January 17, 1962.]

FIFTY-NINTH DAY

Wednesday, January 17, 1962, 2:00 o'clock p.m.

PROCEEDINGS

PRESIDENT NISBET: The convention will please come to order.

Our invocation today is to be given by the pastor of one of our delegates, Mrs. Anne Conklin. He is the Reverend William Whitledge, Pastor of St. Paul's Presbyterian Church in Livonia. Will you please rise.

REVEREND WHITLEDGE: Almighty God, who art the author and giver of law, from whom all just designs and righteous judgments proceed, and who hast taught us that righteousness doth exalt a nation; we beseech Thee to guide and govern the minds of these delegates in wisdom, sincerity and judgment; that, being called upon to put into the written form the guide of law for the people of this state, they may both understand the sacredness of this trust and the eagerness with which the people follow their actions.

To Thee, O Lord, we do commend our state and nation, for which Thou hast done so much in days of old, that in the days to come we, Thy stewards, may walk in the way of righteousness and truth. We beseech Thee to abolish here all mean desire and motive, let none be deceived by glittering promises or vain words, cleanse all thoughts and uplift all minds that the things considered this day may be with singleness of heart and honesty of motive for the good of the state and the honor of Thy name. Amen.

PRESIDENT NISBET: The roll call will be taken by the secretary. Those present, please vote aye.

SECRETARY CHASE: Has everyone voted? The machine is now locked and the attendance will be recorded.

Mr. President, a quorum of the convention is present.

Absent with leave: Mr. Thomson.

Absent without leave: Mr. Douglas.

PRESIDENT NISBET: Without objection, Mr. Douglas is excused.

Reports of standing committees.

SECRETARY CHASE: Mr. Hoxie, for the committee on legislative powers, introduces

Committee Proposal 24, A proposal pertaining to inclusion of section 39 of article V in the constitution;

with the recommendation that it pass.

T. Jefferson Hoxie, chairman.

For Committee Proposal 24 and the reasons submitted in support thereof, see below, page 707.

PRESIDENT NISBET: It will be referred to the committee of the whole and placed on the general orders calendar.

SECRETARY CHASE: Mr. Hoxie, for the committee on legislative powers, introduces

Exclusion Report 2008, A report recommending the exclusion of article V, section 31.

T. Jefferson Hoxie, chairman.

For Exclusion Report 2008 and the reasons submitted in support thereof, see below, page 708.

PRESIDENT NISBET: Referred to the committee of the whole and placed on the general orders calendar.

SECRETARY CHASE: That is all of the standing committee reports.

PRESIDENT NISBET: Reports of select committees.

SECRETARY CHASE: None.

PRESIDENT NISBET: Communications from state officers.

SECRETARY CHASE: None.

PRESIDENT NISBET: Second reading of proposals.

SECRETARY CHASE: Nothing on that calendar.

PRESIDENT NISBET: Third reading of proposals.

SECRETARY CHASE: Nothing there.

PRESIDENT NISBET: Motions and resolutions.

SECRETARY CHASE: Mr. Danhof moves that the subcommittee assignments for the committee on judicial branch be printed in the journal.

PRESIDENT NISBET: Without objection, they will be included in the journal. I hear none, it is so ordered.

Following are the subcommittee assignments for the committee on judicial branch:

Subcommittee on legislative matters:
Mr. Prettie, chairman
Miss McGowan
Mr. Everett

Subcommittee on administrative agencies:
Mr. Leibrand
Mr. Krolikowski
Mr. Iverson

SECRETARY CHASE: There are no resolutions.

PRESIDENT NISBET: Unfinished business.

SECRETARY CHASE: None.

PRESIDENT NISBET: Special orders of the day.

SECRETARY CHASE: None.

PRESIDENT NISBET: **General orders of the day.** Mr. Hutchinson.

MR. HUTCHINSON: Mr. President, I move the convention resolve itself into committee of the whole for consideration of items on the general orders calendar.

PRESIDENT NISBET: The question is on the motion of Mr. Hutchinson. All in favor, say aye. Opposed, no.

The motion prevails.

Mr. Tubbs.

MR. TUBBS: Mr. President, before we resolve ourselves, may I rise to a point of personal privilege?

PRESIDENT NISBET: Without objection, you may.

MR. TUBBS: On page 3 of the Detroit Free Press this morning, I was singled out for some sort of honor, I guess, because I seem to be a lone dissenter on the judicial committee. I am not unaccustomed to that spot, so it doesn't bother me too much; but, in the interest of accuracy, I would like to have the Free Press and the record show that I had company. Don Lawrence was the other dissenter and his vote apparently did not get recorded by the man who represented the Free Press; but this was a vote that wasn't recorded by the committee either, so I cannot correct the record officially. But I would like to have the members here, who may have read the Free Press, know that I had company. I also made the remark that if Mr. Woolfenden had been present he would have joined in the dissent. (laughter)

[Whereupon, Mr. Hutchinson assumed the Chair to preside as chairman of the committee of the whole.]

CHAIRMAN HUTCHINSON: The committee will be in order.

The secretary will read the item which is first before us.

SECRETARY CHASE: From the committee on finance and taxation, by Mr. Brake, chairman, **Committee Proposal 23,** A proposal to prohibit the issuance of evidences of state indebtedness, except as authorized by the constitution, to authorize state borrowing and prescribe the method therefor, to limit the use of state credit and to permit the loaning of state funds to school districts under certain conditions, and

covering the general subject matter found in sections 11, 10, 12 and 28 of article X of the 1908 constitution; which was under consideration on yesterday, and section b was under consideration.

For last previous action by the committee of the whole on Committee Proposal 23, see above, page 602.

Mr. Faxon has filed the following amendment to section b:

1. Amend page 2, line 13, after "proposed by" by striking out "the legislature by" and inserting "an act of the legislature requiring"; so the language will then read:

The state may borrow money for such other specific purposes and in such amounts as may be proposed by an act of the legislature requiring the affirmative vote of 2/3 of the members elect of both houses. . . .

CHAIRMAN HUTCHINSON: The question is upon the amendment. Mr. Faxon.

MR. FAXON: I offered this yesterday because I had heard, at the time, there was some confusion as to whether this was to be a joint resolution or an act, and I would like to ask Mr. Brake whether he feels it would be any clearer with this language; and if he feels not, I will withdraw the amendment.

CHAIRMAN HUTCHINSON: Mr. Brake.

MR. BRAKE: Amendments aren't generally made with those conditions attached, Mr. Faxon, and I appreciate it. Let me read to you a section, section 19 of article V of the present constitution: "All legislation by the legislature shall be by bill and may originate in either house of the legislature." I think my answer yesterday was completely correct, but the very fact that the question has been raised by members of this convention, I think, makes it acceptable, at least, that the language be clarified so that no one can misunderstand it; I have no objection to your amendment.

MR. FAXON: Then I will keep it. Thank you.

CHAIRMAN HUTCHINSON: The question is upon the amendment of Mr. Faxon. All those in favor will say aye; those opposed, no.

The amendment is adopted. Are there any further amendments?

SECRETARY CHASE: Messrs. Binkowski, Perlich, and Perras offer the following amendment:

1. Amend page 2, after line 17, by inserting the following paragraph:

"The legislature is authorized by general law or laws to irrevocably pledge the full faith and credit of the state of Michigan for the payment of the principal of and interest on bonds or refunding bonds to be issued by the state, or any of its officers, boards, agencies, commissions, departments, or special authorities pursuant to law, and payable out of specific taxes, tolls, fees, charges or other specifically designated and earmarked revenues. Such law or laws may also provide that the specific taxes, tolls, fees, charges or other specifically designated and earmarked revenues out of which said bonds are payable shall be continued and used to the extent necessary to provide reimbursement to the state for any money paid by it pursuant to said full faith and credit pledge.".

CHAIRMAN HUTCHINSON: The question is upon the amendment. Mr. Binkowski.

MR. BINKOWSKI: Mr. Chairman and members of the committee, the amendment is being offered in response to some of the comments made by Mr. Howes at the closing of the meeting. I have a statement. I would just, very briefly, like to restate his position respecting the testimony by former U. S. Senator Prentiss M. Brown regarding the use of full faith and credit bonds, for the fact that it possibly will save $1 million in interest and allow a substantial reduction in toll rates across the Mackinac bridge.

Now I am offering this amendment because I believe that the full committee should consider some of the testimony and some of the comments made by the chairman of the Mackinac bridge authority, and I hope that my chairman and the members of my committee will not misconstrue this and believe that I am opposing any of their actions; but I think that because of the fact that Mr. Brown did come all the way from St. Ignace down here to testify before the committee, and the fact that this would possibly result in a savings of $1 million a year, it is worth a few minutes of the committee's time, and therefore, I would like to quote a few statements — with your indulgence — made before the committee on finance and taxation by Prentiss M. Brown, the chairman. He said:

It is essential at the very outset that I put to rest any rumors or speculation that the Mackinac bridge is in any financial or physical difficulty. Also, it should be made clear that our appearance before this committee should not be interpreted as an effort on the part of the bridge authority to have the state of Michigan take over Mackinac bridge authority indebtedness. That this could happen is true, depending upon the will of this convention, the people and the legislature, and as my remarks will bear out, would be advisable; but I do want it understood that the authority is prepared to carry on under its present obligations.

However, I would be remiss in my duty, both as a public official and as a private citizen, if I did not take this opportunity to point out that through comparatively simple means and with proper safeguards, the people of this state can save literally millions of dollars every year in the management of its financial obligations, particularly with reference to borrowed funds.

Because I am familiar at this time with Mackinac bridge financial operations, I will use the bridge as an example of how these savings can be accomplished. Please bear in mind that what I say about the bridge indebtedness could apply just as well to many other state facilities financed by revenue type bonds, such as dormitories, highways, buildings and such.

Ever since the opening of the Mackinac bridge, the primary objective of the members of the authority has been to make it toll free. We have tried to keep abreast of all possible methods and suggestions such as the proposed reimbursement for the interstate highway system of which the bridge is a part. Notwithstanding our efforts in this direction, we have had no success and very little encouragement. As a corollary of our objective for a toll free crossing, we are equally desirous of obtaining any possible reduction in tolls. Since nearly 100 per cent of our revenues are used for interest payments and reserves, it is therefore obvious that to reduce tolls, short of legislative or other subsidies which appear impractical, it will be necessary to reduce interest payment requirements.

It was nearly 8 years ago at the time of the Mackinac bridge financing, that the chairman of this committee, namely Mr. Brake, stated with great accuracy that if the state issued the bridge bonds, backed by the credit of the state after a popular vote of the people, the project could be built and financed for $64 million less than it will ultimately cost under revenue bond financing, the difference being in the payment of interest charges. This statement is as true today as it was in December of 1953. We differed with the chairman at that time over whether or not the people would have approved a general obligation bond issue for a bridge at the straits of Mackinac, which many persons at that time were certain could not be financed and, if financed, could not be built.

Now the bridge is built. It is certainly a physical triumph of linking our 2 peninsulas. We know that even in this current recession year, its net earnings will be over $5 million. We fully expect to place $½ million in our reserve funds during 1961. With these 2 factors — physical and financial feasibility — proven, it then seems sound, reasonable, economical and just plain good common sense to make every effort to reduce interest costs,

particularly when such a move can be made with no jeopardy to the state general fund and, practically speaking, no possibility that the general tax sources of the state will be called upon to financially support the structure.

We submit a suggested section for inclusion in the constitution which would permit the legislature to pledge the full faith and credit of the state of Michigan for the payment of the principal of and the interest on refunding bonds to be issued by the state or any of its several instrumentalities, with the provision that tolls, fees, charges, and such designated and earmarked revenues out of which said bonds are payable, shall be continued and used to pay off the indebtedness.

In the case of the Mackinac bridge, it would be my suggestion to wait at least until January 1, 1964, when the call premium on our bonds will be reduced from 8 per cent to 5 per cent. The authority is now paying approximately 4¼ per cent interest on its 2 series of bonds. We now have over $5 million in reserves and will have substantially more by 1964, so that we are certain that with our reserves our outstanding bonds could be refunded with an issue of $100 million or less. We would wait for the most favorable market, issue serial bonds, and aim at an interest rate of about 3¼ per cent.

Now on the basis of the recommendation made by our committee with respect to long term borrowing, the question is: why adopt something like this? I think, essentially, the judgment which the committee has to make is that as a practical matter it is rather difficult to get 2/3 of the legislature to agree upon anything. That is number one. Whereas, if this provision were adopted, it would at least permit a majority of the legislature to do this. And again, I want to emphasize the fact that this is permissive. It is not mandatory. The legislature would not have to do it. It would depend upon the circumstances.

And secondly, we have a situation here, like the Mackinac bridge, which has proved that it is a paying proposition. I wonder, what would the vote of the people indicate in this matter? And I wonder, too, if the legislature would not be in a better position to decide this question without the vote of the people. And, therefore, I submit this amendment for your consideration.

CHAIRMAN HUTCHINSON: Mr. Brake.

MR. BRAKE: Mr. Chairman, ladies and gentlemen of the committee, I invited this kind of an amendment, of course, yesterday when I mentioned to you that we had been requested to include this in the financial article of the constitution.

I think there is nobody in this convention who doesn't take the opportunity to take a pot shot at me in connection with the Mackinac bridge whenever he gets a chance. I have one facetious and somewhat satirical friend who said that he was going to paint a big sign on both ends of the bridge, "'I told you so.' D. Hale Brake." I am glad to have Senator Brown's testimonial to the accuracy of my prophecy, if you call it that, many years ago.

Now, this is something of a serious nature, and since it has been raised again I want to take time to go into what it means. If we had borrowed the money for the Mackinac bridge on the full faith and credit of this state, at the time we borrowed it we could have had the money for between 2 per cent and 2.10 per cent. There is no question about that, because we were borrowing on highway anticipation bonds at that very time for 2.12 per cent. Our computation disagrees a little with the Senator's. We figured that we were actually paying 4.34 per cent, as the money was borrowed for the bridge; but take it at 4.25, as he says. Four and ¼ per cent interest at that time was an outrageous rate of interest. It is not so outrageous now. But even now, if those bonds were in position to be refunded, with the market as it is now, there could be a saving, very possibly, of 1 per cent or near 1 per cent.

Now, they are not in a position — they haven't gone long enough — they don't know what their financial future is enough for refunding now, and the Senator admitted that when he appeared before the committee. He was talking about getting in position by 1965 or 1966, depending on the bond market and depending on the experience of the bridge, to get the legislature to authorize the refunding providing the bonds could be sold so as to make a saving. This is a fair proposition for consideration and, believe me, the committee didn't pass it over lightly.

That, however, is not all that there is in the proposed amendment, either as he made it or as Mr. Binkowski has made it today. He has suggested that we authorize the legislature to authorize the refunding of all these outstanding bonds of the agencies of the state, whether they are revenue bonds, whether they are tax anticipation bonds, whether they are dormitory bonds, or what have you.

I called your attention to the fact yesterday that that is approaching $1 billion. If you want the job of going to the people of this state and selling them the idea that the legislature of this state should be authorized to put them under $1 billion of indebtedness without any vote on their part, you do it; I don't want it. I don't think they will buy it and I don't think they ought to buy it.

Remember, this proposition is not with the vote of the people. This is a proposition that the legislature can authorize, without any vote of the people. I told them at the time that if they wanted pretty serious consideration of it, they better include only the Mackinac bridge. They thought they ought not to do that. Of course, that change can be made now.

It seems to me that we might better leave it for action under the proposal we have submitted to you. If it is clear, at any time, that this refunding can be made with profit to the state, 2/3 vote of the legislature, and the people themselves, can authorize it. The people are not so completely ignorant of the taxes they pay that they won't save themselves some money. I am still convinced that if we had asked the people back in those years when we were borrowing this money, they would have saved themselves 2 per cent interest and authorized the building of the bridge on general obligation. But we didn't do it and we can't cry about it now. It is too late.

Suppose we don't do anything of this kind. Suppose somewhere, in some agency of the state, the bonds go sour. We have no legal obligation to meet the payment of those bonds on the bridge, on the dormitories, on this building across the street, anywhere; no legal obligation. I think, maybe, you can say that there is no moral obligation. We haven't guaranteed anybody, either by full promise or half promise, that we will pick up any sour bonds. I do think that we've got what you might call a policy obligation. We don't dare let any of those things go sour. The credit of the state is something that we've got to preserve. If the bridge should get in trouble, if the dormitories should get in trouble, if the road bonds should get in trouble, we will pick them up because we've got to preserve the credit of this state.

We did it once and we will do it again if we have to do it, but personally I don't want the responsibility of trying to persuade the people of this state that the legislature should be able to put $¾ billion or $1 billion, depending on when you do it, of general obligations upon them without a vote that they pass upon it themselves.

CHAIRMAN HUTCHINSON: The question is upon the amendment. Mrs. Butler.

MRS. BUTLER: I would like to speak on this amendment and ask that it be changed, that the Mackinac bridge tab be picked up by the state. For years I have heard about the help to the economy of the upper peninsula that the Mackinac bridge was going to give. But has it been? Has it helped us? The fees, instead of being decreased, have been increased at least twice. Why not give the upper peninsula a toll free access to the rest of the state? The only toll road in the state of Michigan is the Mackinac bridge. We are paying for it, but paying for it at the cost of the upper peninsula economy.

CHAIRMAN HUTCHINSON: Mr. Leibrand.

MR. LEIBRAND: Mr. Chairman, may I request that the secretary read the proposed amendment again?

CHAIRMAN HUTCHINSON: The secretary will read the amendment.

SECRETARY CHASE: Messrs. Binkowski, Perlich and Perras offered the following amendment:

[The amendment was again read by the secretary. For text, see above, page 614.]

CHAIRMAN HUTCHINSON: The question is upon the amendment. Mr. Pellow.

MR. PELLOW: Mr. Chairman, fellow delegates, I would like to speak in favor of this amendment. Mr. Brake has raised the argument that we should wait and see whether or not the legislature would put this proposition on the ballot under our long term borrowing provision that we have presently before this convention. As you all will recall, this will take a 2/3 vote of the senate, as well as of the house. And most people of this state know that where the senate refused to take $20 million in federal money, they would certainly be not likely to place this issue before the people at that time.

I would suggest that this could be placed on as a separate proposal and if the people can save $1 million a year, I certainly would suggest that this convention owes it to the people to place this before them and allow the people themselves to decide this issue.

Mr. Brake said that he doesn't want to sell it to the people. Well, there are many of us that do want to sell it, and in the upper peninsula we certainly need this. I think that this committee and the convention owes a duty to the people of the upper peninsula to support this amendment as a proposal and to place it before the people of the state of Michigan.

CHAIRMAN HUTCHINSON: Mr. Hanna.

MR. W. F. HANNA: I would like to ask one of the sponsors of this amendment — maybe the Chair can answer this. As I heard it read, it did not provide for any vote of the people, but a mere act of the legislature to issue the so called refunding bonds; am I correct?

CHAIRMAN HUTCHINSON: The Chair so understands the amendment.

MR. W. F. HANNA: I would like to ask the sponsors, then, if you aren't opening Pandora's box, for the reason that the state could immediately build, under your proposition, any number of buildings, provide for the original financing by revenue bonds and the payment of rent, as is common in the highway building. Within one year or less — in fact, it is your proposition as I understand it, the minute the bonds were issued, the legislature by an act, could convert them into general obligation bonds. Am I correct?

MR. BRAKE: You are correct.

MR. W. F. HANNA: The trouble with revenue bond financing and building capital buildings at present is the circumvention of the people's right to approve indebtedness on one side, and the very thing that Mr. Bledsoe recognized yesterday, the shirking of the legislative body, whether it is the state legislature or the board of supervisors, of having intestinal fortitude enough to levy taxes to build capital improvements.

MR. BRAKE: The legislature has authorized the issuance of various kinds of bonds by agencies of the state, if that is what you mean.

MR. W. F. HANNA: But they could have saved money had they taken the bull by the horns and built them either by general tax revenues or general obligation bonds; am I right, Mr. Brake?

MR. BRAKE: Always, but you should address your statement to the city councils, boards of supervisors, township boards, and everybody up and down the line.

MR. W. F. HANNA: I recognize that the problem is not alone with the senate and house of the state of Michigan, but exists in cities, townships, and —

But the same problem of overpaying when you appropriate direct — in Musekgon county we went through this on the court house. Why, revenue bonds would have cost approximately twice as much as it did to levy the general obligation tax of 1 mill.

MR. BRAKE: There shouldn't be that much difference, but the cheapest way to borrow money is always on general obligation bonds.

CHAIRMAN HUTCHINSON: Mr. Van Dusen.

MR. VAN DUSEN: Mr. Chairman, I rose, really, to raise the point raised by Mr. Hanna. This committee yesterday took the position, I thought rather authoritatively, that we wanted long term general obligation borrowing in the state of Michigan to be approved, in the first instance, by 2/3 vote of the members of both houses of the legislature, and then by the affirmative vote of the people.

What Mr. Hanna suggests is entirely correct: that this amendment would totally vitiate that safeguard. It would enable revenue bonds to be issued one year with nothing but a vote of the legislature, simple majority vote, no vote of the people, and be refunded, on a general obligation basis, the next year by a simple majority vote of the legislature and no vote of the people.

Now, either you want your general obligation long term borrowing in the state of Michigan approved under the safeguards recommended in the committee proposal or you don't. It is as simple as that. For that reason, I would oppose the amendment offered by Mr. Binkowski.

CHAIRMAN HUTCHINSON: Mr. Pellow, did I cut you off?

MR. PELLOW: No, sir. I haven't had an opportunity to speak.

CHAIRMAN HUTCHINSON: You may proceed.

MR. PELLOW: I would suggest to this committee that we certainly have the issue before us now of whether or not we want to trust the people of the state of Michigan. If this proposal is placed on the ballot by the constitutional convention, then the people themselves will have the right to vote on this issue and not 2/3, determined by the senate or by the house, over there, sitting in the capitol. I say to this committee that the people, when they have a chance to vote on this constitution, if they want this, they should have the right to vote in favor of it. I would strongly suggest that even if this convention will not place it on in the total package, they would at least have the courtesy to the people of the upper peninsula to place it on as a separate proposition.

CHAIRMAN HUTCHINSON: Mr. Hodges.

MR. HODGES: I think Mr. Brake pointed out that this, for all practical purposes, is a fiction; even though it is a legal reality, it is a practical fiction. We know, as a practical experience, that the state of Michigan is not going to let its revenue bonds, if they are in default in any place, default, because they can't afford to, because the credit of the state would be still in jeopardy if we were to do so. So, as a practical matter, we are always going to meet our obligations.

The harder we make it to pledge the full faith and credit, the easier we are going to do and the more facility it is going to be to just go on revenue bonds, and we know what happens. What we are talking about is ½ per cent to 1 per cent interest difference that we are going to continually be paying. As long as, as a practical effect, Mr. Brake admitted the state is not going to let revenue bonds default, they are, in effect, as a practical matter, actually backed by the full faith and credit of the state, even though, as a legal significance, this is not true. I think this is what is involved.

Therefore, it seems to me that we should take advantage of this, allow the full faith and credit of the state to be legally applied and save the money that we can save.

CHAIRMAN HUTCHINSON: Mr. Ford.

MR. FORD: I don't rise to disagree with Mr. Brake, but I think Mr. Hanna injected something that was confusing to me. Mr. Brake answered it quickly yes, but along with something else. Mr. Hanna started off on the proposition that this amendment would authorize the state of Michigan, itself, through the act of the legislature, directly, to begin issuing

revenue bonds of various kinds. If this is true, then I would want to see this changed in some manner. But it is my understanding of the purport of this amendment that what it would actually do with respect to the Mackinac bridge authority, for example, would be to permit the Mackinac bridge authority to refinance, if it became wise to do so by reason of the 2 factors that Mr. Brake has mentioned, the principal one being the condition, from time to time, of the bond market, but without going back to a constitutional amendment.

It has been stated here that we would be moving with some temerity to approach the people and ask them to permit the "unlimited borrowing" of $100 million.

You are going to consider, as the next item on the agenda, as I see it, a proposition that was placed before the people in 1955 to do just that, with respect to the lending of the state's credit to the sale of school bonds for capital improvements, and this expired in July; and again, in November of 1960, the people voted to do the same thing, but without the $100 million limitation, as I read it. There is no longer any $100 million limitation. If this could be tied down in the same manner as the present conditions of sections 27 and 28 of article X, so that there would be no question in the people's minds of the purpose for which it was intended, I wouldn't have any objection and I don't believe that you could find any substantial objection by the people, because in both instances, on the adoption of both sections 27 and 28, I am informed that the people overwhelmingly approved the use of the state's credit behind the borrowing power of school districts.

I don't think it should be left here as an impression that it is intended to say to the legislature, "You can go out and start issuing revenue bonds that you cannot now issue." It is simply a matter of permitting them, as a legal proposition, to become a guarantor — if you will — on the note of the Mackinac bridge authority, or the Mason building authority — or whatever it is called, however they are constituted over there.

Perhaps if we explored the possibility by referring it back to the committee on finance and taxation, of placing similar limitations to this thing, it might become more palatable.

CHAIRMAN HUTCHINSON: Mr. Staiger

MR. STAIGER: In reply to Mr. Hodges, first, that this is a fiction, the committee on finance and taxation did take considerable time to seriously study this whole question. If it was a fiction, I think that you would find it wouldn't make any difference in the bond rate. However, the bondholders are willing, as you state, to take it at a considerably lower interest to have the full faith and credit. I do think that it is not there now, and if we had it it would be something different than what we have now. You are not getting something for nothing in exchange for a lower rate. You are also placing all of the state's resources behind it.

By using the vehicle that we have, and also the 2/3 of the majority vote of the people, this would permit it to be selective. It may be that the people, rather than the broad involvement that the amendment would have, which would mean that all of these revenue bonds which are now getting close to a $1 billion, would then be free to pledge the full faith and credit upon the vote of the legislature. This will allow the people to be selective and, maybe, on the Mackinac bridge, there is reason in the near future that they would want to. On some other bond, well, maybe they will decide that they do not want the full faith and credit. This will permit the people to decide on them one at a time, by using the vehicle of the 2/3, and then a majority vote of the people. This is part of the reason that the committee came to the conclusion that they did on this question, I guess.

CHAIRMAN HUTCHINSON: Mrs. Butler.

MRS. BUTLER: I just want to say, Mr. Chairman, that about finance and taxation I know very little, except that I have been a long time taxpayer of real and personal and all the other taxes, so that I am not judging either of these proposals as really understanding them. But I would like to see the Mackinac bridge go on a separate proposal, and I sure would like to see that toll taken off of the upper peninsula.

CHAIRMAN HUTCHINSON: Mrs. Butler, are you wanting to offer an amendment at this time?

MRS. BUTLER: I would like to amend to have the Mackinac bridge considered as a separate proposal, taking the toll off.

CHAIRMAN HUTCHINSON: Do I understand, then, that you want to make that as a separate proposal? In that case, the amendment, at this time, would not be in order.

Mr. Martin.

MR. MARTIN: Mr. Chairman, at the time that this Mackinac bridge was built, I was in the senate and I did everything I could to see that it was built and that proper financing was undertaken. It wasn't finally approved until I was no longer there, but those of us on the administrative board did have something to do with the approval of the bonds which were finally issued.

This is a project which is one of the great prides of the state of Michigan. There isn't any more likelihood that we are going to let the bonds of the Mackinac bridge go bad than there is that we are not here today. There is no question, it seems to me, but what we ought, if we can, to do whatever we can to make it possible for people to get to and from the upper peninsula at the lowest possible fee. The bridge has been there long enough and the operation has been successful enough so that it, unquestionably, can be refinanced at this time with a substantial drop in the interest cost. This is a perfectly good time for us to take that question up.

The present amendment is altogether too broad. It includes all kinds of other things which might or might not be properly handled in this way. But the Mackinac bridge, taken alone, is certainly a sound proposition. It seems to me, while I would vote against the amendment that has been proposed, if an amendment were proposed to include solely the Mackinac bridge, I would vote for it, because the legislature could properly authorize the refinancing of those bonds at this time. The upper peninsula would benefit greatly and the state of Michigan would be in absolutely no danger of having to do anything which it doesn't have to do at the present time.

CHAIRMAN HUTCHINSON: Mr. Stafseth.

MR. STAFSETH: I would like to just answer one thing that Mrs. Butler, I think, implied that I think is a little bit of a misunderstanding. In the committee when we discussed the Mackinac bridge, it was given very serious consideration. However, if the state did refund the bonds by special constitutional amendment so that when the people voted for the constitution they wouldn't have to vote on it again; actually, in order to finance these bonds, I think you would find — and I I think I am pretty accurate in this — that the rates would be substantially the same. You couldn't very well reduce the rates appreciably. You would have a savings in interest — there is no question about that — probably, as Mr. Brown stated, in about 4 years, if you did the refinancing then.

The purpose of the language which we propose, is to substitute for the constitutional amendment borrowing which, in the past years in our state, we used for most of our veterans' bond borrowing for world war I, world war II, the Korean war, and the hospital bonds, and then this case of the school bonds. Now, as I understand the school proposition, what the state was doing, it was loaning the credit to school districts where, when they had a bond issue — this is the case in all programs — in their setting up of their millage, in order to retire the bonds they couldn't do it because they had to go above 13 mills and this would take them out of the 15 mill limitation. But by putting the state's credit behind the bonds, then they could get a fair rate and extend the length of time to pay it back, so it was a loaning of the credit.

Now, that was the reason that these things were done. I think actually, now, that the legislature would do the very same thing. This is just to simplify it so you wouldn't have another constitutional amendment in the constitution and clutter it up with those things.

CHAIRMAN HUTCHINSON: Mr. Richards, of the Marquette district.

MR. L. W. RICHARDS: You called upon me representing Marquette county, and that is very good, Mr. Chairman. Cer-

tainly anything that is for the good of the U. P. — we delegates from the U.P. realize we are outnumbered 134 to 10 — we are certainly going to have to rely on the support of our good friends and delegates from the lower peninsula.

I am a little disturbed, and this is the first time that I was aware of this amendment. I am not too well acquainted with it. Certainly, as Mr. Martin has stated here, the possibility of handling this particular proposition individually, if that was a possibility, I would like to have it referred back to finance and taxation, as Mr. Ford has suggested. And I realize we are very disturbed when we keep referring these things. We like to get these things accomplished as we proceed with them. But the economy of the upper peninsula is very important to us, and I might add that it does disturb me greatly when I come back into the lower peninsula and pay $3.75, and I enjoy it somewhat when I pay the $3.75 to go back into the U.P. We like to get that angle in there.

But I would certainly, and if it is in order, like to make a motion when the committee rises, to have it referred to finance and taxation for further study where this could get separate consideration.

CHAIRMAN HUTCHINSON: Mr. Richards of Marquette moves that when the committee rise, it recommend that the proposal now before us be referred to the committee on finance and taxation. On that motion, Mr. Brake.

MR. BRAKE: I certainly oppose the motion. The committee has given this very careful consideration and I have no idea whatsoever that the committee would change its mind upon it. Mr. Martin and you, Mr. Richards, I think are working under considerable misapprehension. The bridge is there. They even let the people from the upper peninsula cross it. If you think that that bridge is going to be run without any tolls and that the people of this state are going to pay $100 million plus interest from general taxation, not attempting to get any of it from the tolls, you are certainly taking a long, long chance.

CHAIRMAN HUTCHINSON: The Chair would like to state that the Chair was in error. The practice in this convention differs, in some respects, from the practice in the legislature, and this is one of them. Under our rules, I am advised that a motion to commit is subservient to amendments to the proposal. In other words, the question before the committee at this time continues to be the amendment offered by Mr. Binkowski, which we have been debating. So that on the amendment of Mr. Binkowski, the Chair would next recognize Mr. Perras.

MR. PERRAS: I want to quote something that was given to the committee on education at Marquette by Mr. Holloway concerning the mighty bridge. He had this and everybody seemed to enjoy it, and I thought it might inject something here. He said that it is intended to make people think twice about the subject of equality and opportunity and fairness of representation.

> Let us rewrite article I, section 2 of the constitution to move the seat of government from Lansing, where it is now established, to the straits of Mackinac, the geographical center of the state, where the senate will reside in Mackinaw City and the house of representatives in St. Ignace, at each end of the mighty Mackinac bridge. I am sure that the legislature would soon be impressed by the $3.75 toll charge placed upon each person who attends a conference in southern Michigan. While millions of dollars worth of toll free bridges and highways carry our southern compatriots leisurely from meeting to meeting, we not only must travel great distances but also pay a $3.75 fee for the privilege.
>
> Needless to say we do not object to the return charge because we know it is worth it to return to that area of the state where it is first said, "If you seek a beautiful peninsula, look about you." (laughter)

CHAIRMAN HUTCHINSON: Mr. Hodges.

MR. HODGES: In answer to Mr. Staiger's comment about a fiction, I think we come back to what Mr. Martin just said a minute ago. The people of Michigan certainly are not going to let, whether they are revenue bonds or faith and credit bonds, a default of the bridge bonds come about. But I think this is equally true to the other bonds. They are given to purposes that are necessary for this state, such as building dormitories and the Mason building, and so on. Certainly no one in this state is going to, in the legislature or elsewhere, let a default occur on these bonds, and that is the only realistic picture.

Certainly, I suppose, in some states, there would be a justification for doubting the sincerity or the wisdom of taking revenue bonds, and because of this you have a disparity in interest rates. This is something that I don't think exists in the state of Michigan, and I think we should try, if at all possible, to get the lowest interest rates possible, even if it means puting everything under full faith and credit bonds.

CHAIRMAN HUTCHINSON: Miss Donnelly.

MISS DONNELLY: I would like to ask D. Hale Brake, through the Chair, this question: part of this argument is particularly about Mackinac bridge — which I am sure we are all interested in and we all want to help the upper peninsula — but as I understand it, the committee proposal, the committee proposal as adopted, and assuming the constitution is adopted, would allow this very issue to be placed in front of the voters in 1964, and take care of the refinancing at the time they think it should be done; is this correct, Mr. Brake?

MR. BRAKE: As we have the proposed amendment before us, it would permit the legislature to act as soon as the constitution is adopted. Replying not only to you, but to Mr. Martin, the authority itself said it was not ready for refunding, that some time, some years, maybe '65, '66, somewhere along there, they might be ready for an attempt at refunding. If, at that time, it is advisable, the legislature can submit the question to the people, and if there is money to be saved I think they have no reason to fear that the people will go along on it.

MISS DONNELLY: Well then, in effect, your committee proposal, without any of this amendment, will take care of this at the time it is necessary to have it refunded, is that not right?

MR. BRAKE: That is the judgment of the committee.

CHAIRMAN HUTCHINSON: Mr. Van Dusen.

MR. VAN DUSEN: I have risen, Mr. Chairman, only to make the precise point which Miss Donnelly and Mr. Brake have now covered.

CHAIRMAN HUTCHINSON: Mrs. Butler.

MRS. BUTLER: I just want to restate that there are many 4 lane highways in the lower peninsula. We have one short 4 lane highway in the upper peninsula, and the plans up to 1968, I think, are for still this one 50 mile 4 lane highway. There are no tolls on the highways in the lower peninsula and to wait until the Mackinac bridge authority gets around to it in '66, '67 or '68 is a long time to wait for the economy to change. I would like to at this time support Mr. Martin's suggestion.

CHAIRMAN HUTCHINSON: The question is upon the amendment offered by Mr. Binkowski. Mr. Pellow.

MR. PELLOW: I would agree with the chairman of our committee that there isn't any sense in sending it back to the committee, since this was argued before the committee by the chairman and it apparently was the consensus of opinion among the majority of Republicans that there wasn't any use to place this issue before the people at this time, but to wait and rely on their good judgment at a future date. I say to this committee that the time is here and now to place this issue on the ballot before the people so that they will have an opportunity to vote on it, and then the Mackinac bridge authority can ready themselves and take care of this issue in order to have it all set for the ballot. I have no argument with Mr. Martin. I think he makes a good point, and I would support Mr. Martin's suggested amendment to Mr. Binkowski's amendment, that the Mackinac bridge authority be placed on as a separate proposal, and that this committee act on it now.

CHAIRMAN HUTCHINSON: The Chair does not understand that Mr. Martin has offered an amendment. Has he?

MR. MARTIN: No, Mr. Chairman, Mr. Martin has no

amendment. He only wanted to correct an impression that Mr. Brake suggested that I might think that this would make a toll free bridge. Of course, it wouldn't make a toll free bridge. It only reduces the amount of interest paid and the fees of the bridge have to be determined by how much is required for interest and payment on principal in the establishment of a reserve. The less we have to pay on that, the lower the cost of financing, the lower the fees can be, as I understand it. I don't have the terms of the bond indenture in front of me, but I believe that is the situation.

MR. BRAKE: Mr. Chairman, I want to protest against what Mr. Pellow just said. This was not a Republican vote. There was no politics in the committee in connection with this matter whatsoever. I would like to yield to Mr. Austin.

CHAIRMAN HUTCHINSON: Mr. Brake yields to Mr. Austin.

MR. AUSTIN: Mr. Chairman and members of the committee, I would like to confirm Mr. Brake's comment, that this was not a partisan issue within the committee.

CHAIRMAN HUTCHINSON: Mr. Richards.

MR. L. W. RICHARDS: Mr. Chairman, one of the points I wanted to clear up, that Mr. Brake interpreted my remarks to mean that I was endeavoring to have a toll free bridge. It was something in the clarification Mr. Martin has made, but I will have to admit that at times I am working under misapprehension.

CHAIRMAN HUTCHINSON: Mr. Ostrow.

MR. OSTROW: Mr. Chairman, I think I am somewhat responsible for the beginning of this issue; this is not a Mackinac bridge issue. It started originally when we had our first public hearing on earmarking of funds. At that time it developed that the state was paying 3.9 per cent interest on highway revenue bonds. In the testimony we elicited the fact that had those been full faith and credit bonds, the interest rate would have been 3.40 per cent. There is still $190 million in highway bonds to be issued, and I asked why we couldn't make those full faith and credit bonds to save the state ½ of 1 per cent of interest a year. That was prior to the time that Prentiss Brown appeared before our committee.

In the discussions before the committee, it was pointed out that we had this Stevens T. Mason building. We had other revenue bond issues outstanding. Prentiss Brown testified, and then Dean Doty and I introduced a proposal which was substantially in the form of Mr. Binkowski's amendment. What we were trying to do — and it was not just for Mackinac bridge — realizing that the state of Michigan would not let its bonds go into default, was save the people of the state of Michigan the difference between the rates they were paying and the rates they would pay on full faith and credit bonds.

In the working out of the mechanics of that, the consensus of opinion within the committee was that this form of proposal would be best; that this is not an upper peninsula matter, nor is it a Mackinac bridge matter. It relates, at least that was my understanding in the committee, to all of this type of bond issue.

CHAIRMAN HUTCHINSON: Mr. Dell.

MR. DELL: Mr. Chairman, I should be in sympathy with this discussion because I live in the upper peninsula but I don't see this entirely as an upper peninsula project. The bridge was built for the state of Michigan. It seems to me that the committee proposal is opening up the opportunity to give us an opportunity to present this to the people later on as an issue in itself and not confuse it with the entire constitution.

For that reason, I will go along with the committee proposal. I think, too, that possibly over the past years, I know pretty well the history of this entire project. I have lived it for a good many years. I am happy to see the bridge there. I appreciate that we must pay tolls and that the revenue bonds — let this committee proposal go through and then we will take this up — what has been said on the floor here — at a later date. Thank you.

CHAIRMAN HUTCHINSON: Mr. Lundgren.

MR. LUNDGREN: I rise in support of the committee proposal here today and against the amendment because, as Mr. Dell has just so ably stated it, he comes from St. Ignace, right at the end of the bridge; he knows the history of the whole bridge. And I, just in retrospect, would like to tell you people, when I ran for the constitutional convention my opponent's main cry and the main amount of money that he spent for advertising, both on radio, the newspaper — I saw and heard it all over the 7 counties — was the issue of making the Mackinac bridge toll free. And I got quite scared about that and I traveled around quite a bit. But come the day when the election votes were in, I won by 4,000 votes. So therefore, making the bridge toll free, in our area, was not quite the issue that we thought it might be. So I would just like to let the people here know about that, and support the committee with what Mr. Brake said, that in the future, when the time comes — as I know it is going to come as well as Mr. Brown knows it is going to come — we will have to have another look see at the bridge but now is not the time.

CHAIRMAN HUTCHINSON: Mr. Doty of Eaton.

MR. DEAN DOTY: Mr. Chairman and members of the committee, I rise to urge you to support the committee report. I would like to remind you that this is not a partisan issue. Mr. Ostrow and I introduced this proposal that he spoke about. It has been taken care of by the committee. We have full confidence in this provision doing the job, and I urge you to support the committee report.

CHAIRMAN HUTCHINSON: Dr. Nord.

MR. NORD: Mr. Chairman, first of all, I would like to say that I am generally very much in accord with the committee position, and I would not be in favor of the Binkowski amendment in its broad form. I am persuaded by some of the remarks made by the delegates that we ought, at least, at this convention raise the question in a separate form as to the Mackinac bridge, so that we can determine what our position is on that. I gather that Mrs. Butler would have made such an amendment, and maybe some others would have offered this amendment just so that we could determine what our position is on that.

The reason, I gather, that it has not been forwarded is that nobody has the exact text before them; it is difficult to do. Therefore, what I am proposing to do now is to offer an amendment which would be, let's say, an inartfully drawn amendment, but at least it would put before you the objective and then, in the event that it should be adopted, it could be straightened out by the style and drafting committee. I realize the style and drafting committee is not enthusiastic about doing that, but the intention would be absolutely clear.

The amendment I would offer and I do offer — and I will forward it to the desk in a moment — would be this inartfully drawn language:

1. Amend the amendment after the last word "pledge" by inserting a colon and "Provided however, That this provision shall apply only to Mackinac bridge authority bonds".

As I say, my purpose in offering this amendment to the Binkowski amendment is to give the members of this committee an opportunity to vote on the separate issue, without worrying about the details of the language. If it should be adopted, I am sure that the intention will be crystal clear. It could be then handed to the style and drafting committee.

As to the merits of this amendment, it seems to me that the broad proposal, the broad amendment before us, is too big. It does, in effect, support everything that went before. But the question then is whether there is any reason to take a special look at the Mackinac bridge, and it seems to me there is a reason to do that. The reason is that that is the link between one part of the state and the other, and there is no other analogous situation that I am aware of.

I do think we want to strengthen the link between those two to make it possible to have freer transportation back and forth and I agree, I am certain there is no partisan problem involved here. But I believe we ought to have a chance to vote on this issue, and I would further urge that you accept the amendment to the amendment.

CHAIRMAN HUTCHINSON: Mr. Nord offers an amend-

ment to the amendment of Mr. Binkowski, the sense of which, as the Chair understands it, would limit the proposition to the Mackinac bridge. Mr. Upton.

MR. UPTON: I would speak against this amendment, as I planned to speak against the amendment of Mr. Binkowski. To me, this is putting in strictly language that should be handled by our legislature. I believe that the language that we have put in before this committee of the whole will cover any item that the legislature or the people wish to take under consideration for long term borrowing.

Just one other comment, in reviewing our action journal of December 20 of our committee, it shows that Mr. Pellow did vote for this proposal as presented by the committee.

CHAIRMAN HUTCHINSON: Mr. Brake.

MR. BRAKE: This is a much more reasonable proposition than that offered by Mr. Binkowski but I still oppose it. I am sure that the committee still opposes it. I do agree with what Mr. Nord said, if we are to vote, we should vote on the general idea and not send it back to committee in order to get refined language.

If you are in favor of this proposition, the language can be taken care of by maybe one day's delay. But, bear in mind while this is just the bridge, it is $99,800,000 now. Interest for possibly 40 years hence, that is a lot of money. Even in the economy at the present time, it is a lot of money. It is not going to result in a toll free bridge at all. You are still going to have to pay those tolls. Let's let the people have a chance to say whether or not they want to burden themselves with that kind of an obligation.

CHAIRMAN HUTCHINSON: The Chair noted that Mr. Downs was seeking recognition. Do you desire to speak on the amendment to the amendment?

MR. DOWNS: No, I wish to speak on the original amendment. I do have a point of parliamentary inquiry, Mr. Chairman, if I may state it at this time. As I understand it, we first vote on the amendment to the amendment and then the amendment.

CHAIRMAN HUTCHINSON: That is correct.

MR. DOWNS: Would it be in order to make a motion that we vote on the amendment first? The reason I say that is I, for one, would favor the amendment that was introduced and, if that lost, I would favor the narrower provision, namely, the Mackinac bridge. If a motion is in order to vote on the amendment first, I would make such a motion. If it is not in order, I will not make it.

CHAIRMAN HUTCHINSON: The Chair would rule that it would not be in order for the reason that if the course of action proposed by the gentleman should be followed, and the original amendment should fail, you see, there would be nothing for the amendment to fasten to.

Mr. Hanna.

MR. W. F. HANNA: I would like to address a question to Mr. Brake, when he is free or maybe some other member of the finance committee could answer it. Mr. Brake, in your committee on finance and taxation, have you explored at all the possibility of issuing revenue bonds to which the full faith and credit of the state of Michigan is attached, which is, in effect, saying dedicated revenue in another language, but with a vote of the people?

Now, what perturbs me, in both the amendments, whether it is the Mackinac bridge or Mr. Binkowski's, is the ability to issue, in effect, general obligation bonds without a vote of the people. We want to give the legislature power to issue general obligation bonds in the first instance, without any vote of the people; then it seems to me that your whole paragraph preceding this falls. If we limit this to full faith and credit of revenue bonds or if we limit this to revenue bonds that are outstanding but insist in the Binkowski amendment that any refunding be subject to the approval of the people, have we accomplished the safeguard, even though those revenue bonds, the question of refunding under general obligation bonds, was submitted to the people only by a majority vote?

MR. BRAKE: You would have safety if you regard the liability for 3/4 of $1 million to be safe. That is about where we stand now. You could prevent the use of full faith and credit in connection with revenue bonds in the future or you could permit it.

MR. W. F. HANNA: Let me ask you a second question. Would you have any objection to the Binkowski amendment if it were amended to provide that the revenue refunding bonds would be general obligations, if approved by a majority of the legislature and by the people?

MR. BRAKE: We don't object to any borrowing that the people want to approve. That's what we've got here.

MR. W. F. HANNA: You are not insisting on the 2/3 majority of the house or legislature to submit the question of refunding revenue bonds by G. O.'s? If it is subject to the vote of the people, would you still require a 2/3 majority of both houses?

MR. BRAKE: That specific question in that form was not considered by the committee. Personally, I would oppose it. I think that there should always be a 2/3 vote of the legislature before this kind of a proposition goes to the people.

MR. W. F. HANNA: Mr. Brake, do you allow revenue bonds or authorities to be issued, authorities to be established with power to issue revenue bonds? In that respect, do you require a 2/3 vote?

MR. BRAKE: No. That is done by general act of the legislature.

MR. W. F. HANNA: Wouldn't you think, then, that if the bonds were at a refunding, I mean, if this were limited to refunding of revenue bonds, and you have a practical matter of the call put in there, that upon refunding of outstanding revenue bonds a majority of the legislature, subject to a vote of the people, would be sufficient?

MR. BRAKE: I think not.

CHAIRMAN HUTCHINSON: The question is upon the amendment offered by Mr. Nord to the amendment of Mr. Binkowski, the sense of which, as the Chair understands it, would limit the amendment to the Mackinac bridge. Mr. Rush.

MR. RUSH: I rise to support what Mr. Brake has just stated. I believe we have the machinery set up in the committee report that will take care of this matter, and therefore I am very much opposed to both the amendment and the amendment to the amendment.

CHAIRMAN HUTCHINSON: Mr. Tubbs.

MR. TUBBS: Mr. Chairman, it seems to me that I ought to rise to a point of information. I think there is some misunderstanding in the reports that have been given here. As I understand it, this will apply only to revenue bonds, and I would like to ask Mr. Brake if this is not true; that these revenue bonds will remain as they are. They are simply going to be guaranteed by the full faith and credit of the state of Michigan.

MR. BRAKE: In the first place, the first part of your statement is not correct. All of these outstanding bonds of the other agencies of the state are not revenue bonds. The more than $300 million of highway bonds are not revenue bonds; they are tax anticipation bonds.

MR. TUBBS: Well, a tax anticipation bond means that the person who is going to pay the money has to collect it from a certain fund, certain taxes that are anticipated or certain revenues from something else.

MR. BRAKE: That is right.

MR. TUBBS: So that the money of the state of Michigan, which might be raised by the taxpayers, is only a secondary obligation.

MR. BRAKE: It would be expected, I would assume, in case of any refunding, that the source of revenue would be continued.

MR. TUBBS: So that the Mackinac bridge authority would still have to pay for these bonds out of revenues derived from the bridge.

MR. BRAKE: If the revenues were sufficient, I should think that they—

MR. TUBBS: But aren't they required under the terms of the bonds to make the revenue sufficient to pay them?

MR. BRAKE: Yes, they are.

MR. TUBBS: Well, then, all we are doing is guaranteeing that the bridge authority will pay for these bonds out of the revenues derived from the bonds.

MR. BRAKE: And guaranteeing that if the revenues are insufficient, we will raise tax money to make the difference.

MR. TUBBS: That is, we are guaranteeing that the authority, if it does not increase the revenue of the bridge enough to pay for the bonds, the state of Michigan will pay for them.

MR. BRAKE: Right.

MR. TUBBS: We would have a remedy, however, against the bridge authority, would we not?

MR. BRAKE: I wouldn't know how the state would sue the bridge authority.

MR. TUBBS: Don't you think the state of Michigan could compel the bridge authority, as the bondholders can, to raise revenue enough to pay for these bonds?

MR. BRAKE: It might be impossible.

MR. TUBBS: You mean the bridge might go kaput.

CHAIRMAN HUTCHINSON: Mr. Habermehl, on the amendment to the amendment.

MR. HABERMEHL: Yes, Mr. Chairman. If I understand this correctly, the real contention seems to be on the question of a 2/3 vote of the members elect of both houses. There is no question but that under the language of the committee proposal, the question of the Mackinac bridge refunding can be submitted to the people, and I believe there have been several suggestions here that this be placed as a separate section before the people for adoption. I suggest that the vote on that would be precisely the same, on precisely the same question, as it would if an action or a proposal were made under the committee's language. Therefore, the only difference that there could be is that one would require a majority vote under Mr. Binkowski's amendment, and under Dr. Nord's amendment, the other would require a 2/3 vote.

MR. BRAKE: Mr. Habermehl, you have not correctly reached your conclusion. The difference and the main difference is that under Mr. Binkowski's amendment and under Dr. Nord's amendment there would be no vote of the people.

MR. HABERMEHL: Except for the idea that they want to submit this as a separate section of the constitution for adoption by the people.

MR. BRAKE: Their amendment does not include a vote of the people at any time or in any way. It is legislative action pure and simple.

MR. HABERMEHL: I would like to, in addition, ask a question of Mr. Brake, though. These building authorities, which is the method of financing some of these capital improvements, require only passage by the legislature, do they not?

MR. BRAKE: I assume you are talking about the court house in Delta county and St. Clair and so forth? They operate under a general statute, not one that is passed for each particular place.

MR. HABERMEHL: Requiring only a majority vote?

MR. BRAKE: A general statute that is passed by a majority vote.

MR. HABERMEHL: I would oppose both amendments, first of all on the grounds that whenever money is going to be raised, it seems to me fundamental that the people ought to have a voice in the matter, and on the second ground, that I believe the proposers of these amendments can accomplish what they wish to under the language proposed by the committee.

CHAIRMAN HUTCHINSON: Mr. Higgs.

MR. HIGGS: I believe, Mr. Chairman, that what I had expected to speak upon has just been clarified and established by the discussion between Mr. Habermehl and Mr. Brake, and for those same reasons I would oppose the Nord amendment and the Binkowski amendment.

CHAIRMAN HUTCHINSON: The question is upon the amendment to the amendment. Mr. Goebel.

MR. GOEBEL: Mr. Chairman, I object to the Binkowski amendment and the amendment to the amendment by Mr. Nord. This involves, in my judgment, if I read the amendment correctly, the question of putting about $900 million of revenue bonds under a general obligation bond issue and I do not feel that we should do that very lightly.

We have, for a great many years, provided in our constitution for a provision which would make it rather difficult, you might say, in order for the state to accept a general obligation bond. If we adopt the Binkowski amendment, also Dr. Nord's as far as that is concerned, we will be making about $900 million, or roughly that amount of money, a general obligation of the state; and referring specifically to Mr. Nord's amendment, the Mackinac bridge, in my judgment, for what it is worth, is not in a position yet, where the bonds should be refunded, and I think that under the provisions as submitted by this committee, we can, at any time that it is deemed necessary, have a vote of the people on the Mackinac bridge and provide for a general obligation. That is by a vote of the people, as provided for in the long term borrowing provision of the committee, which has just been presented to you.

CHAIRMAN HUTCHINSON: On Mr. Nord's amendment to the Binkowski amendment, all those in favor will say aye. Those opposed will say no.

The amendment to the amendment is not adopted.

The question is upon the original amendment offered by Mr. Binkowski. All those in favor will say aye. All those opposed will say no.

The amendment is not adopted.

The question now is upon the motion made by Mr. Richards of Marquette. Mr. Richards.

MR. L. W. RICHARDS: I will withdraw that motion, seeing the results of the other two.

CHAIRMAN HUTCHINSON: Have we got some other amendments? The secretary will present the next amendment.

Mr. Hoxie.

MR. HOXIE: Mr. Chairman and fellow delegates, I don't think it ought to go unnoticed, as long as we are discussing this bridge question, that perhaps the father of the bridge, who was a bachelor at the time, is presiding over this session. (laughter and applause)

CHAIRMAN HUTCHINSON: The Chair regrets that it is unable to respond to that. When I get on the floor, I can elucidate further. I don't claim to be the father of the bridge.

Mr. Habermehl.

MR. HABERMEHL: Mr. Chairman, I am still concerned with one matter of the committee proposal. I think the argument this afternoon developed the fact that revenue bonds, authorized by a simple majority vote of both houses, are seldom a very good answer to the state's financing of capital improvements.

I asked Mr. Brake a question about these authorities, which is another method, actually, of financing capital improvements. This method also was adopted by majority vote of both houses, and it, again, has some very serious financial defects. Aside from the fact that they are financed by revenue bonds with a higher rate of interest, in addition, you have the cost of administration of the building authority itself, which can be, in some instances, a pretty serious item.

In view of that, I wonder why we make it more difficult to get before the people the question of a G. O. bond or general obligation bond, as we do in this proposal? To the end of not putting a general obligation bond or not making a general obligation bond more difficult as a method of financing than a revenue bond or a building authority, I would move for reconsideration of Mr. Down's motion, or amendment, made yesterday, which would require only a simply majority of both houses.

CHAIRMAN HUTCHINSON: Mr. Brake.

MR. BRAKE: In the first place, may I say, Mr. Habermehl, that you are finding fault with the method of financing that is the prevalent method of financing on every level of government from the state down to the township at the present time. Townships, cities, villages, everybody is using revenue bonds. If you are going to upset part of that, you will need to upset the whole thing.

As far as a 2/3 majority is concerned, I think I have stated my position. It isn't the intent that this shall be used often. It is for unusual situations, emergencies, times when we must have considerable money, and it ought to be done on a conservative basis.

CHAIRMAN HUTCHINSON: The question, as the Chair understands it, is now upon the motion of Mr. Habermehl to reconsider the vote by which Mr. Downs' amendment of yesterday — which the secretary will now read — was defeated. The Chair would say that the question is properly upon the subject of reconsideration and not properly upon the merits of the amendment. Mr. Hodges.

MR. HODGES: Speaking in favor of the reconsideration, I think Mr. Habermehl's point is well taken, and it is what I suggested a few moments ago; that by making it more and more difficult, by setting up 2/3 and a vote of the people to take full faith and credit bonds, we force the state into more and more revenue bond financing at a higher interest rate, and in the long run, we are costing the people of the state of Michigan much more money than necessary, and for that reason I support the Habermehl motion for reconsideration.

CHAIRMAN HUTCHINSON: The secretary will now read the amendment which Mr. Habermehl now moves to reconsider.

SECRETARY CHASE: Mr. Downs, on yesterday, offered the following amendment:

[The amendment was again read by the secretary. For text, see above, page 610.]

CHAIRMAN HUTCHINSON: The question now is not properly upon that amendment. The question is upon whether we shall reconsider it. Mr. Staiger.

MR. STAIGER: I will start out by saying, on this question of reconsidering, this would not make it that much easier to make any difference in revenue bonds, because you still, on full faith and credit, have the vote of the people, so with that hurdle in mind, just by making it a majority and then a vote of the people, compared to revenue bonds, which is by a simple majority of the legislature and no vote of the people, you are not going to discourage revenue bonds by that type of an amendment, in my opinion.

CHAIRMAN HUTCHINSON: The question is shall we reconsider? Mr. Faxon.

MR. FAXON: Mr. Chairman, the secretary did not read the proposed reconsideration with the amendment that was already adopted earlier by the committee of the whole. Could he read that with the amendment? There was some confusion on that when he read it.

SECRETARY CHASE: Thank you, Mr. Faxon. The amendment, previously adopted, was in line 13 after "proposed by" by striking out "the legislature by" and inserting "an act of the legislature requiring," which the secretary does not see as being affected by this amendment that is being reconsidered.

CHAIRMAN HUTCHINSON: The reconsideration of the amendment now before the committee would not, in any way, carry with or affect the amendment which the committee has heretofore adopted, upon your offer. The question is the reconsideration of this amendment. All those in favor of reconsidering will say aye. Those opposed will say no.

The motion to reconsider does not prevail.

SECRETARY CHASE: Mr. Stevens offers the following amendment:

1. Amend page 2, line 14, after "members" by striking out "elect" and inserting "elected".

CHAIRMAN HUTCHINSON: Mr. Stevens.

MR. STEVENS: Mr. Chairman and members of the committee, I didn't get much consideration when I asked about this yesterday. I intended to leave it to style and drafting, but inasmuch as we are taking the time to put in things which in no way change it as it was in the beginning, I thought we might as well make this correction in grammar and make it consistent with the 1908 constitution. I refer you to article V, sections 15, 36 and 24. There are 3 pages where this term is used, and in each one the word is in the past tense, so that it reads, "either 2/3 or majority of the members elected."

CHAIRMAN HUTCHINSON: The question is on the amendment of Mr. Stevens. Mr. Van Dusen.

MR. VAN DUSEN: Mr. Chairman, if we are to follow the suggestion of Mr. Stevens and correct the grammar and make the language consistent with the 1908 constitution, we should then change the following word, which is now "of" to "to".

CHAIRMAN HUTCHINSON: I would judge that that would not be a proper amendment to the amendment that is now before the committee.

MR. VAN DUSEN: Might I ask, Mr. Chairman, if Mr. Stevens would incorporate that in his amendment, in view of his concern for consistency in grammar?

MR. STEVENS: I have no objection. I think either one is right. I agree with you, Mr. Van Dusen, that should be "to".

CHAIRMAN HUTCHINSON: Mr. Stevens revises his amendment to:

1. Amend page 2, line 14, after "members" by striking out "elect of" and inserting "elected to".

All those in favor will say aye. Those opposed, no.

The amendment is adopted.

Are there any further amendments to section b of this proposal? If not, section b will pass. Oh, there is another one.

SECRETARY CHASE: Mr. Mahinske has filed the following amendment:

1. Amend page 2, line 13, after "affirmative" by striking out "2/3" and inserting "a majority".

CHAIRMAN HUTCHINSON: Mr. Mahinske.

MR. MAHINSKE: In reality, Mr. Chairman, this is putting to a vote exactly what we have just voted down reconsideration of, except that I dropped the word "simple" here. I think that this will cure the looseness of the Binkowski amendment, and at the same time cure the strictness of the committee proposal. What this will, in essence, call for is a majority vote of both houses and then the proposition shall be submitted to the people.

CHAIRMAN HUTCHINSON: The Chair will rule that the committee has just decided this question by refusal to reconsider, and therefore does not think that the amendment is in order. The committee has already decided this question.

MR. MAHINSKE: Is this the ruling of the Chair?

CHAIRMAN HUTCHINSON: This is the ruling of the Chair.

Are there any further amendments to section b?

SECRETARY CHASE: None on file, Mr. Chairman.

CHAIRMAN HUTCHINSON: Mr. Shanahan.

MR. SHANAHAN: Mr. Chairman and delegates, I would just like to point out in this last amendment that we just made, we said "elected to both houses." I don't believe anybody is elected to both houses. I would like to amend from "both" to "each".

CHAIRMAN HUTCHINSON: Judge Dehnke.

MR. DEHNKE: I just want to point out, yesterday and today we spent a considerable amount of time on something that clearly belongs to the jurisdiction of the committee on style and drafting.

CHAIRMAN HUTCHINSON: Does Mr. Shanahan insist on his amendment? Mr. Shanahan withdraws his amendment.

Are there any further amendments to section b?

If not, it will pass.

Section b, as amended, is passed and the secretary will read the next section.

SECRETARY CHASE: Section c:

[Section c was read by the secretary. For text, see above, page 603.]

CHAIRMAN HUTCHINSON: Mr. Brake.

MR. BRAKE: Mr. Chairman, ladies and gentlemen of the committee, the language, the first part of the language, as you note, is the old provision from the constitution. We have added the words "except as authorized in this constitution," because, since 1952 the state has loaned its credit in con-

nection with the school districts. That matter will come up after this present section and will be fully discussed.

We have added a paragraph there of new language, saying that it shall not be construed to prevent investment of idle funds. I am not sure that that clause is necessary. All over the state, local units of government invest idle funds. I know that for 12 years, the state didn't hesitate for a minute to keep every possible dollar invested in short term securities in order to earn as much interest as possible. It has been pointed out to us, however, that there are attorneys for cities, and I think some prosecuting attorneys, who have advised that the investment of these idle funds, short term investments, are not in harmony with this provision of the constitution, and that is the reason for the language here. I think it makes it completely clear that there is no objection, that it is the thing to be encouraged rather than discouraged. That is why that language is there.

In spite of the controversy that perhaps I invited by calling attention to things we were asked to do and we did not do, I shall follow the same procedure this time. I think it is fair that you should know what the delegates asked us to do that we have not done.

One thing that we were asked to do that we have not done was to so change this wording that it would not prevent the loaning of state credit for the purpose of improving, bringing in industry and making industrial inducements. That was carefully considered by the committee. It was ruled out. We don't think it is sound policy. We know that we have competitors that use it, but we don't think that we should add to that situation by permitting Michigan to get into the same category. We realize that is something upon which people differ in their opinions, and since we have been talking about authorities, one of the persons who asked us to take that step was a rather prominent citizen of the state, Congressman Griffin, from Traverse City. It is the judgment of the committee, however, that that is a policy that we should not enter.

Then there were a couple of others, and they have the support of some very imposing names in this convention. Here is one of them, that we should add at the end of the old language the words, "except for purposes of health, safety, and general welfare." That is so broad, those terms are interpreted so broadly that you might just as well take the provision out of the constitution. There is very, very little that the state would want to do that you cannot include under the words "health, safety, and general welfare." We had an idea on the committee that what the people who sponsored this proposal really wanted was a rather limited thing, but they offered it in language that was almost completely unlimited, and we were not willing to go that far.

We have another, and we had a good deal of controversy over it. As I recall it, there was no difference when we came to a vote. I may be wrong about that, but I think not. That is that we should say this:

> Money or property received from the United States shall be redistributed for the purpose designated by the United States. Such money or property shall not be denied any person because of race, religion or national origin.

There was no controversy, no question, as to the last sentence. The question was entirely as to the first sentence. This would not compel the state to accept federal money, but if it did accept federal money, it would compel the state to administer it just as congress had dictated in the congressional act, not this year, perhaps for 50 years in the future. We asked the sponsors if they thought congress would always be infallible, that the direction from Lansing or from Washington would always be right. They thought it would. There are members of the committee who were not so sure of the infallibility of congress. This is a very crude expression, and applied to a serious subject, but it appeared to us to be something like "buying a pig in the poke", I believe the old saying is. On sight unseen, we were not willing to buy federal programs for maybe 50 or 100 years in advance.

Those are the principal items that were turned down by the committee. We think the proposal is necessary. We believe we have added something that is important and that it is in good form as we have proposed it to you.

CHAIRMAN HUTCHINSON: Are there any amendments to section c of the proposal?

SECRETARY CHASE: Messrs. Ford, Hodges, Perlich, Pellow, Perras, Sablich, Binkowski and Marshall offer the following amendment to section c:

1. Amend page 2, after line 23 by inserting the following paragraph:

"The credit of the state, up to a sum of $100,000,000, may be pledged or granted to or in aid of public benefit corporations, for the purpose of financing industrial, manufacturing and municipal development projects in this state: Provided however, That any such extension of credit shall require for approval a formal act of the legislature.".

CHAIRMAN HUTCHINSON: The question is upon the amendment. Mr. Hodges.

MR. HODGES: Mr. Chairman, speaking in favor of the amendment, yesterday's journal contains in it a letter from the governor of this state to the constitutional convention requesting language of this nature. We all know the question of the economic climate in Michigan has been one that has been readily debated for the past few years. He says:

[Paragraphs 4 through 11 of the governor's message were read by Mr. Hodges. For text, see above, page 590.]

Mr. Chairman, this is not a new type of proposition. It has been adopted by several states already and it has helped those states, and I not only refer to southern states — many times this has been offered as a way of trying to compete with southern states.

I don't think that we, in Michigan, want to try and compete in terms of low labor and so on with the states that take runaway industries. But in other industrial states this has been used, and I would just give you a short history of what has happened in the state of Pennsylvania with their experience on a state loan plan. This method was first used in Pennsylvania when the legislature authorized the establishment of a Pennsylvania industrial development authority in 1956, and initially appropriated $5 million for the revolving fund. Since then, the fund has been replenished several times with additional appropriations. As of June 28, 1961, the authority had made loans of $18,737,393 on 159 projects costing $16,104,624, which, when all completed, will provide factory employment of 28,124, with payrolls at full, normal operations of $100,112,058 per year. On the basis of this data, it requires a loan of about $640 to provide one job, not including any territory employment resulting therefrom.

These projects are located in 79 Pennsylvania communities and 43 counties. They include 49 relocations from other states, 30 branch plants of out of state firms, 14 branch plants of Pennsylvania plants, and 52 expansions of existing plants with 14 listed as miscellaneous, including such projects as reconstructions after fire.

Among the well known companies that have taken advantage of state loans in Pennsylvania are: Chrysler corporation; Fruehauf trailer company of Detroit, 2 plants; Frontier Homes of Nebraska, 2 plants; Gar Wood industries of Detroit; General Foam corporation of New York, 2 plants; Highway Trailer company of Delaware; New Moon Homes of Alma, Michigan; Phillips Van Heusen corporation of New York; Radio Corporation of America, 2 plants; and Textron of Rhode Island. The state loans range from $6,600 to $1,071,000 on any one project. The total state loans made on properties operated by Fruehauf trailer company are $1,701,000 and RCA, $1,644,000, and on Chrysler corporation, $845,000. I think it is interesting to note of those corporations listed, the number that are home based Michigan corporations.

This is not an attempt to bring in fly by night industry to compete with well, stable industry, but to give the same advantage to Michigan which other, large industrial states

of this union are taking on their own. I am afraid if we don't come up with something like this we are going to see this continual drift of large corporations. These are responsible corporations, not fly by night corporations, which have asked for these loans and have gotten them.

I could go on with Maine's experience in this very same field, but because of the time, and I think the point has already been made, the governor of our state, and the economic development commission, feel this is necessary in Michigan to implement our expansion and industrial growth, and therefore I will support the amendment.

CHAIRMAN HUTCHINSON: Mr. Van Dusen.

MR. VAN DUSEN: Mr. Chairman, members of the committee, I would defer, of course, to Mr. Brake on this. I just happened to be on my feet. This matter, of course, was discussed at length in the committee. The type of amendment which is suggested here is, in effect, a gimmick designed to attract industry. I think on the merits of it, you have to recognize that recent statistical studies indicate that 80 per cent of plant expansion in Michigan or 80 per cent of the new plant construction in Michigan is the result of expansion of existing plants. This means that, essentially, this public money is going to be devoted to enabling one Michigan city to compete with another Michigan city for the industry which is already located here. This is not really a particularly desirable sort of economic activity. Companies which come in as a result of this kind of preferential treatment don't have the same kind of stake or investment in the location which they choose as those who come in with a desire to be here permanently, investing their own funds, becoming a taxpaying, important part of the community.

Finally, I know that there are those who seem to set great store by this kind of an argument. Precisely, this kind of proposal was presented to the people of the state of Michigan in the 1960 election, the figure then being, as I recall it, $50 million instead of $100 million; and it was rejected by a vote of the people. I think there is no reason to believe that the people are any more enthusiastic about it now than they were then.

For that reason, because of the careful consideration of the matter by the committee, its determination that this was not substantively desirable, the immediate past rejection of the matter by the people of the state of Michigan, I would urge you to vote no on the amendment.

CHAIRMAN HUTCHINSON: Mr. Yeager.

MR. YEAGER: Mr. Chairman, Mr. Van Dusen has already used my script, thank you.

CHAIRMAN HUTCHINSON: Mr. Brake.

MR. BRAKE: Likewise, he has used my script.

CHAIRMAN HUTCHINSON: Mr. Downs.

MR. DOWNS: Mr. Chairman, I wish to state definitely that if properly used this is not a gimmick. It is a means of accentuating a wholesome economic development of the whole state, as part of our national economy. It is not a move to outArkansas Arkansas, or out some other state. The approach is to see that we do what we can to further a sound economic base in the state.

I shall try to be brief, but I think if we try to put ourselves in the place of our 1907 and 1908 predecessors, they were facing an economy where the great upsurge was the change of transportation, namely the auto industry. We are in a different kind of an economy. One of the real developments is going to be the St. Lawrence seaway and the waterway developments. The kind of transportation that will combine 2 or 3 countries. In making use of these, we do not have a situation where one industry, by itself, is in a financial position to do that, but rather there will be the semi public type of corporation to help develop port facilities and other things.

I, for one, think looking ahead toward the next 50 years, that one of our great developments is going to be our research and industrial expansion around our great universities in the field of scientific, electronic, medicine and various areas, much as is being done at M.I.T. and at California.

This, too, is the kind of economic change where it is not one small plant by itself making these changes, but rather a community wide development which will include the need for additional transportation facilities, additional research facilities, additional industrial park developments to see that these necessities for the modern economy are present. I can cite, for example, the new power plant going up near Charlevoix, an entirely new type of energy. It may be that, as time goes on, in the next 50 years there will be the need for some kind of public investment to see that the greatest utilization is made of that by both public and private, as well as the changes within the iron ore industry and so on.

The point I wish to make is that we are drawing a constitution and not a statute. A constitution looking ahead, and the only real, economic certainty we have is the uncertainty of the economic and technological changes. This is designed to set up a framework within which the state can meet the opportunities of a changing economy. It does provide the check by providing the individual cases needed to be authorized by the legislature, so that while we are creating the framework for what we hope are the next decades, we are having the mechanics of that done through the legislative process, to assure that it will be properly done and there will be a year to year control within the framework we establish. I think while this is not the entire answer to Michigan's economic problems, it can be one of the significant steps coming out of this convention to encourage a sound, wholesome development of our economic life. Thank you.

CHAIRMAN HUTCHINSON: Mr. Walker.

MR. WALKER: Mr. Chairman, I, too, just happened to be on my feet, and it appears to me that if this were a gimmick, it is a gimmick for moving forward, not a gimmick for standing pat and standing fast, such as our cure all for everything, the cure all that was pointed out to us was going to stop all further taxation, like the additional 1 per cent sales tax. This will move us forward and not hold us pat.

CHAIRMAN HUTCHINSON: Mr. Shackleton.

MR. SHACKLETON: Mr. Chairman and delegates, there is one large company which moved south under the gimmick; they bought all of the bonds with which to have the plant built. That was a tax free investment. They sublet part of the plant, so they are getting their plant for nothing, even at a profit.

I would like to remind you that the guaranteeing of mortgages prior to the 1930-'33 depression resulted in the failure of trust companies and insurance companies — 2 large ones — when called upon to meet their guarantees. This resulted in tremendous losses to creditors and investors. The state could ill afford to absorb losses which might and often do result when the time comes to make good on guarantees, and no one can be assured, even the state, that demands under guarantees might not sometimes be required to be met. This was called the industrial FHA. Since the inception of the FHA, our economy has, in the main, been one of inflation and on a general upward trend. Even so, congress has repeatedly appropriated funds to continue the FHA program, which it was generally thought would be self supporting. The final chapter of the FHA program has not yet been written. If not entirely successful, the experiment will come out of the taxpayers.

The suggested program is another one to rely on government to do what private enterprise does not have enough confidence to do. The composite judgment of private enterprise is not always wrong. Because private enterprise does not move into a situation until it is assured of being a sound project is no reason for government to supersede their combined judgments.

Many Michigan companies have moved to other states where state or municipal subsidies, in one form or another, have been authorized. They are subsidized by taxpayers of these other states. The citizens, voting for such programs will, someday, realize that they are supporting the popular "something for nothing" program at their own expense. The best securities have to be met by our own efforts. If that is sup-

plied by others, the more we support subsidies the harder it becomes to make our own security because we must attempt to make others secure at our own expense. I would heartily oppose the amendment.

CHAIRMAN HUTCHINSON: Mr. Hodges.

MR. HODGES: In answer to Mr. Van Dusen, I thought we had laid to rest this fly by night. I think it is amply clear from Pennsylvania's experience and other states that in the large, industrial states that have used this, that it is substantial, good employers that use this. We are not trying to compete with 50 cent an hour labor and all the other things that are offered in the south, but just setting up a competitive basis with the large, industrial states. I point out that the state of New York, with the support of Governor Rockefeller, just adopted a similar plan this past year.

I would just, again, agree with Mr. Downs, that what is really needed here is new industry, and we are not talking about nickel or dime industries, but new industries that are just coming on the brink of discovery, and those that may have trouble, because of the nature of our industrial complex, getting adequate financing for research. We all know that this state's main trouble, in terms of its economic growth, is how it has lost out to other states such as California, which have had a breakthrough in the technological fields of electronics and aircraft and so on. It is on this type of basis we have got to compete, and for many jobs, not for runaway air rifle companies that go south, but for the real, purposeful type of industry that we want to bring to this state.

CHAIRMAN HUTCHINSON: Mr. Wanger.

MR. WANGER: Mr. Chairman, may I direct a question to either Mr. Van Dusen or Mr. Brake on this subject? Without this amendment, the additional paragraph to section c, in lines 21 to 23 says:

> This section shall not be construed so as to prohibit the investment of public funds until needed for current requirements in such manner as may be provided by general law.

Perhaps I am missing something, but doesn't this allow the legislature, by general law, to provide for exactly the types of development corporations and projects that the amendment seeks to add?

CHAIRMAN HUTCHINSON: Mr. Norris.

MR. NORRIS: With regard to the point that Mr. Wanger just asked, I wonder whether or not that is covered in the sentence prior to that, ". . . except as authorized in this constitution." As I understand it, the issue is whether or not the credit of the state shall not be granted to or in aid of any person, association or corporation. That is the point, I believe, to which Mr. Downs' statement was addressed. I should like to rise in support of that proposition.

I think we ought to be mindful, Mr. Chairman, members of the committee, that we have a tremendous job problem in this state, and that the prospect of the impact, intimate and pervasive, upon every family, of automation and all of the tremendous technological developments that we can see now on the horizon, imposes a tremendous challenge upon this convention. I don't see that the negative approach that is implicit in the committee report and the statement that was just made by Mr. Shackleton is, in any way, commensurate with the realities of the twentieth century.

We have not only the question of attracting industry, as Mr. Van Dusen suggested; we have the problem of creating industry, and if we are going to develop and enhance the concept of creative government, of government that does not sit idly by while problems multiply, and people become immobilized and lose faith and credit, if you will, in their government — and that is involved in this particular matter. There are people walking the streets today, who look upon the government and ask for action, that do not find it being taken in appropriate quantity and quality.

I just look upon this amendment, this proposal which has been advanced, as something more than merely a method to meet a problem today. It is a method to meet the problems that we know are on the horizon. And if this convention is to lift itself and have a perspective commensurate with the realities of the future, we have to, it seems to me, support this particular proposition. I am disturbed only because the discussion seems to reflect that the government has no function in the stimulation and fostering of private enterprise. I believe it does, and I believe that is exactly what this particular amendment seeks to do. It is not to conflict with private enterprise; it is not to set anything against it; it is to add a helping hand in the public interest. And if we don't address ourselves to this problem, I submit that what we are actually doing is telling the people of this state the government has no function in this field. I submit that it most certainly does, and I want to support the amendment.

CHAIRMAN HUTCHINSON: Mr. Hubbs.

MR. HUBBS: Mr. Chairman and my fellow delegates, I would like to reply to Mr. Hodges and Mr. Norris, both. I think what we are concerned here with is the matter of fundamental economic law and political philosophy. As far as I am concerned, to get the government further into the free enterprise field, through the lending of money to so called "stimulate" business, is an entirely wrong approach. If we want to improve the economic climate of Michigan, the best thing we could do is to get the government as far out of business as we possibly could. If we want to stimulate sound growth in Michigan, and sound business, let the free enterprise system do this through fundamental economic law and not through the form of government meddling and socialization. (applause)

CHAIRMAN HUTCHINSON: Mr. Van Dusen.

MR. VAN DUSEN: Mr. Chairman, a few moments ago Mr. Wanger put a question which, I think, deserves a response, regarding the authorization for the investment of public funds until needed for current requirements. It was not the intention of the committee that this language authorize anything more than the temporary investment of idle public funds. I think the committee report clearly indicates that the only purpose of this was to avoid the concern expressed by some city attorneys and prosecuting attorneys relating to the right of municipalities to temporarily employ their idle funds through interest bearing investments, so as to conduct their affairs in a prudent fiscal manner.

Responding briefly, further, to points raised by Mr. Norris, the solution to Michigan's financial and economic problem lies, in my judgment, not in some occasional bright bauble, some gimmick designed to temporarily stimulate occasional plant construction, but rather in the kind of progressive step that we took yesterday when Mr. Binkowski, I believe, explained the removal of the 10 year limitation on corporate ownership of real estate in this state. I submit to you that the action we took yesterday in excluding that provision from our constitution will do more to bring new investment, new capital into the state of Michigan than any 5 of these economic development gimmicks, such as the one proposed by this amendment.

I simply remind you again, this precise proposal was put to the people in 1960, just a few months ago, and it was rejected.

CHAIRMAN HUTCHINSON: Mr. Higgs.

MR. HIGGS: Fellow delegates, I, too, would like to speak in opposition to this amendment and in support of what Delegate Hubbs had to say and Delegate Van Dusen, and I further would like to say that I feel that the spirit of this amendment is a negative one, as opposed to the positive spirit of this convention. We are here seeking positive answers to the problems of our state, and I feel that we have the capability here to do it.

Our problems will not be solved by getting into what Delegate Hodges describes as an industrial FHA program, which seems to be more properly a form of a crutch — and a costly one, at that. That this great state of Michigan, endowed as it is with its great wealth of natural resources — agricultural, mineral, industrial — in the presence of an adequate labor supply and industrial facilities, should get involved in a program such as this is beyond my comprehension. It seems to

me to lack, basically, a faith in the future of Michigan and in the capabilities of our people. The soundest and most wholesome economic development will not be an artificially stimulated state industrial subsidy, which is what this would be, but one based on a positive, forward looking leadership, sound government and free enterprise. Thank you.

CHAIRMAN HUTCHINSON: Mr. Nord.

MR. NORD: Mr. Chairman, I came into this debate without having heard of the issue before and I have gradually become convinced, largely on the basis of Mr. Norris' remarks, that he isn't always wrong, and in this case, that he is right. It seems to me that some of the remarks that have been made missed the point. The remarks that have been made — and I might say, in addition, I object to the language that has been used, which has, to a certain extent, been rather derisive, such as, these are gimmicks, and these are bright baubles, and so on. I think that this loses sight of the fact that there is something very serious at stake.

It has been pointed out that this kind of proposal indicates lack of faith in Michigan and the people. But it seems to me we miss the point of what is at stake in this amendment. As I understand it — I may be mistaken — but as I understand the amendment, and I don't have the text before me, it was that what is being asked is to authorize the legislature to do something. If I am mistaken on that, then my conclusion will be wrong, too. If I am correct that what is being asked is to authorize the legislature to do something, then why is that a negative approach? The approach of those who are opposed to the amendment is not to allow the legislature to do something. It seems to me that the negative and the affirmative have been mixed up.

Not only that, I would point out that the attitude of most people on this issue seems to be reversed from what it was at the beginning of the convention. At the beginning of the convention, many people started out by saying we should give the legislature as much power as possible. Some of the people objected to that on the basis that we couldn't trust the legislature. Now it looks like almost everybody is on the opposite side of that issue from where they were before.

Before, I know I argued that we couldn't trust the legislature to do certain things. Other people said, "Oh, yes you can." Now on this issue we are on the reverse side; the people who then said, "We can trust the legislature," now say, "No, we cannot trust the legislature on this issue." And I say we can. We can trust the legislature on this issue.

I would like to point out why there seems to be this reversal of views. When we wanted certain specific action to be taken, then we thought we should not leave it to the legislature but we should just go ahead and do it. Now that we only want to take away the restriction on the legislature, which is placed in the present constitution as to what the legislature can do, in that case it seems to me we are not faced with a situation where the legislature has refused to do something which it should have done or which it would have done. What we are asking now is to allow the legislature to do something which it never could have done before. It certainly could not be said to have failed in not doing what it could not do before.

So we are in an opposite position, and the question at hand, it seems to me, is only this, shall we anticipate the future of the next 50 years, shall we be so sure as to what the legislature needs to do in the economic area that we will make it impossible for them to do what they might need to do?

We have to be absolutely certain in our minds, if we leave the constitution as it is or as it has been proposed by the committee — to leave it that way we must be 100 per cent certain that in the next 50 years this power will not be needed. Maybe I shouldn't say we need to be 100 per cent certain, because we could get it by constitutional amendment. But we need to be quite certain, anyway. We need to be quite certain that this power will not be needed. Now, how can we be quite certain that this power won't be needed or some such power as this? It seems to me that we cannot anticipate — economic situations cannot be forecast in 50 years. As far as I know, they can't be forecast at all. If we look back at the last 50 years, we have been through some terrible times and it would be nice for the legislature to have the power to cure them if the situation requires it.

I would say further it is not a moot point. This is not a question that something might happen in the next 50 years; this is something which is likely to happen.

I believe that the problem of automation is one which is a severe problem. It is a tremendous problem, in fact, and is a problem which somebody will have to face. It isn't a problem, in my opinion, where sooner or later the business of earning a living by having a job will become less and less possible, because there won't be that much work required to build the goods that we need. Even though we produce more goods, the trend is towards labor saving devices which make it possible to produce those goods and still give every person more and more time away from work. Therefore, that means there is less work per person. If we ignore this and if we lock the situation up so nothing can be done about it, we take a terrific risk.

I think in this case what we should do is to trust the legislature over the next 50 years to find out whether there is any solution it can present. I don't think we can present the legislature with a dictate: do the following. But I do think we can give the legislature the power to meet a crisis if it occurs.

CHAIRMAN HUTCHINSON: Mr. Seyferth.

MR. SEYFERTH: Mr. Chairman, fellow delegates, this has really developed into a full blown discussion as I view it. When Congressman Griffin appeared before the finance and taxation committee he presented to us a proposal wherein we would, in effect, place into our constitution the support of the state of Michigan to entice industrial complexes into the state of Michigan. This proposal of Congressman Griffin's really had its genesis in Muskegon with the moving out of the state of the Norge corporation.

Right at the time this happened, of course, it created quite an emotional problem. We envisioned great disaster, loss of a lot of employment; up into thousands. I think it was 1,200, to be exact, in the Norge plant itself, plus other subsidiary supplying companies in the town. However, what has happened? Somehow or other we have seemed, in the greater Muskegon area, to correct that situation without any outside help. We are still having some bleeding spots. We are still sore. But we can see corrective therapy taking its proper place.

How was that corrective therapy applied? The local greater Muskegon area has what is known as the greater Muskegon industrial fund. This is a locally sponsored fund rolling over about a half million dollars, and this half million dollars is used in the same manner, but on a smaller scale, than is now being proposed before this committee to be done on a state level.

The people of the greater Muskegon area, who were directly affected by this Norge situation, do not prescribe to the state participation, in fact, in the so called gimmick arrangement in order to compete with other states who are offering at the present time this lucrative lure. It won't be long before all states will have the same situation, the same lure, so that we will not be in an advantageous position at all.

Out of this local participation, we have been able to increase many jobs. We have been able to increase plant facilities and jobs of existing industries. Therein lies the big problem, insofar as we are concerned, as a local unit of government. If this is put on a state basis, then counties are going to be competing against counties, state against state, and local governments against local governments for the same possible plant. This we have seen operate too many times in our local territories. We feel very strongly that this should be handled at the local level, at the will of the local people.

Therefore, in view of our participation in the Norge project and the state project, insofar as Congressman Griffin has presented, we vote — I vote against the amendment as presented and I certainly request support.

CHAIRMAN HUTCHINSON: Mr. Brown, of Kalamazoo.

MR. G. E. BROWN: Mr. Chairman, I have listened rather patiently, I believe, to the arguments that have been presented

here, and it seems to me that if we analyze the amendment that has been proposed, the exercise of this function that necessitates the amendment is, of course, section c that says that the state's credit, and so on, shall not be advanced on behalf of private purpose.

Certainly, I don't think that any of those who are supporting this amendment would feel that to act to create an incentive, a financial incentive for industry to come to this state should be put at a higher level or less restrictive basis than a refunding, for instance, of the Mackinac bridge or any other project of that nature. There is nothing in the committee proposal, as it presently stands, that makes it more difficult to have the incentive, the financial incentive that is suggested by the amendment, than is presently applicable to a refunding program.

The refunding program, you will recall, and the borrowing of money for specific purposes other than the ones set forth in the report, starting at line 12 of the report, provides for a 2/3 vote of the house and senate. It provides for an affirmative vote of the electorate. This is all that is required for a constitutional amendment, which will put this amendment in the constitution if the people want to change their mind and put it back in. It is no more difficult to do this than it is to do a refunding program, and I think that certainly the amendment to put in this financial incentive should not be less difficult than the refunding of state indebtedness.

CHAIRMAN HUTCHINSON: Mr. Austin.

MR. AUSTIN: Mr. Chairman, I would like to make a few remarks in favor of this amendment, and I would like to add that these are a few remarks that I made in the committee when the subject was under discussion. I would like to remind you of something that President Eisenhower said when he spoke to us. He spoke of the necessity for facing up to our responsibilities, otherwise we are going to find our local governments turning more and more to the federal government for services and assistance that ought to be rendered, perhaps, by our state.

We are living in a changing economy. There is no question but there is a decentralization of the large industry that is operating in our state. There has been a decline in the heavy metals and durable goods industries. What is before us is that in order to fill these pockets of unemployed people and unemployable and to create the jobs that are necessary in Michigan, is to put American ingenuity, Michigan ingenuity, if you prefer, back at work. We have got to encourage creative initiative. No one can foretell exactly how the state should proceed to do this. All we are saying is that in writing a constitution we should give recognition to the need to do something about it.

On this matter of subsidy, it cetainly is not appropriate to build a permanent subsidy in our tax system. This is the type of thing that has been advocated so often by those who contend that no other forms of subsidy are in order. If we are going to give subsidies, then let's know what we are doing. Let's specifically provide for those subsidies and not build them into our tax structure.

CHAIRMAN HUTCHINSON: Mr. Hodges.

MR. HODGES: First, Mr. Seyferth states that pretty soon all states will have this, therefore there will be no advantage to Michigan. I submit if all states are going to have this and Michigan doesn't, that certainly we will be at a disadvantage. I am glad to see that many of our delegates here are saying there is nothing wrong with Michigan. Maybe if some of their brothers in their parties had said that a couple of years ago, some of Michigan's problems wouldn't exist today. I would also submit that those who are against this would also be against the minimum wage law of a dollar and a quarter an hour in this state, for one reason: they would rather compete at the workers' expense than at the expense of helping improve the climate of the state of Michigan.

CHAIRMAN HUTCHINSON: Mr. Staiger.

MR. STAIGER: This discussion has taken a different turn than I expected on this point, but I would like to go back to the testimony we had by Congressman Griffin and point out that while he did recommend that we take a good look at this in our committee, and he wanted to bring some of the facts that he had to us, he stated, strongly, that the real solution to this competition between states of offering more and more through a municipal bond — really at the expense of the federal government because they are a tax free bond — is some action by congress. He stated — and actually gave us a copy of the bill that he had introduced — that there were a couple more bills introduced to see if they could not remedy this situation of the competition between states on this question.

CHAIRMAN HUTCHINSON: Mr. Plank.

MR. PLANK: I am sorry Mr. Hodges wasn't more active in his own party about 3 years ago when there was an extremely big debate on the position of Michigan as far as being favorable to industry is concerned. People of my party were advocating that we needed 125,000 jobs a year and the people of his party were advocating there wasn't anything wrong with Michigan. Now, it has come to be, and all of a sudden he says the only way to answer this is to subsidize industry in the state of Michigan to keep up employment. All I have to say is that there is no such thing as a free lunch.

CHAIRMAN HUTCHINSON: Mr. Iverson.

MR. IVERSON: Mr. Chairman and members of the committee, I rise to oppose this amendment, and I call your attention to, perhaps, something that many of you haven't thought of, perhaps. We are writing a constitution here, and I think it would be a grave mistake for us to place in bond issue after bond issue, or matters which would create a situation which would make this document unacceptable to the people of the state of Michigan.

One of the reasons I would and did oppose the placing of the Mackinac bridge matter in this thing is for that very reason. I think it is dangerous for us to do it, in the first place, and I see no reason, especially in view of the fact — why we should encumber this document with this matter at this time, in view of the fact that within the past, I believe, 2 years, the people have voted upon this matter.

I call your attention, further, to the fact that they use, as a basis for an argument for this amendment, that we should get in step with other states. It is my recollection that those states that have used this type of assistance, have done it on a municipality basis, and not on a state basis. I know of none where it is done on a state basis. I don't know that it would make much difference but I call your attention to those cases where it has been called to the attention of the people of Michigan, where they claim they have stolen our industry, it was municipalities which acted on this matter, not a state.

I think it would be dangerous, if for no other reason than we would be cluttering our document and finding opposition from people who should be passing upon the basic law. I call your attention, again, to the fact that the people have just recently voted on this question and if, in the near future, this is a matter which the people feel could well be placed before the people again, that is another thing, but it could be done under the present language as it is presently written.

CHAIRMAN HUTCHINSON: Mr. Haskill.

MR. HASKILL: Mr. Chairman and members of this delegation, being a member of the finance and taxation committee, we have studied this program quite severely. We have considered it from both sides and I don't think that the real reason why industry is leaving this state has been touched upon. It appears to me, from what information I can gather, it has not been credit. I am sure that every one of the industries, if they had wished to build another factory in this state, had credit to do it with.

We haven't mentioned what it is, but I think it is taxation. I think it is somewhere down the tax line that most of these industries will have left this state for other states, for the reason that they got a much better benefit from the state on taxes, whether it be personal, property — personal or property taxes. That seems to be the thing in this state that we can do to benefit industry somewhere, to make it

much healthier for industry to survive in this state. I think it is something we really haven't taken a look at yet. It will probably be coming out in the future, but I think if you want to help and do something for industry to create more jobs we have got to look at this taxing of industry in this state and the amount we have been pulling out of them.

I think, whether it is for education or local government or what not, the people of this state have got to begin to bear the responsibility themselves instead of trying to shove the taxation off on some industry to the point that you are forcing them out of this state. I urge that you vote against this amendment.

CHAIRMAN HUTCHINSON: Mr. Pellow.

MR. PELLOW: I rise to support this proposed amendment. We in the upper peninsula have a severe economic depression that has been created by the mining industries. It is alright to talk about industry and what they are doing for the people, but it seems to me that throughout the state there is one thing that comes to my attention: the poor are getting poorer and the rich are getting richer. I think that it is time to take care of all of the people of the state of Michigan, including the unemployed people.

I say to this committee, an amendment like this is completely in order. What good is it for the federal government to give money away to Yugoslavia or communist countries to take care of those countries? Do we have to go to Berlin and Japan to allow our people to work in this country? Aren't they entitled to industry and more development here? I say that it is time to consider this problem seriously and take care of all of the people of the state of Michigan.

CHAIRMAN HUTCHINSON: Mr. Hodges.

MR. HODGES: In response to Mr. Iverson, that no state has done this but only on a municipal level, I merely point out that I already indicated 2 states, large industrial states, Pennsylvania and New York have already adopted it. I think there is the very danger of what Mr. Seyferth is talking about happening. I, for one, would not want to see municipalities and local units get involved in this at the local level, because if this happens we are going to have competition within the state of Michigan for industry. And I think this would be very bad, if Muskegon starts competing with Detroit for jobs, or Berrien county.

CHAIRMAN HUTCHINSON: Mr. Brown of Kalamazoo.

MR. G. E. BROWN: Mr. Chairman, I spoke once before on this point, and I think that the delegates here are not paying attention to the point. First of all, the amendment provides this shall require a formal act of the legislature. To me this means that this shall be done as prescribed by law. The legislature certainly is not going to put a lesser requirement on the passing of a proposition of this nature than it does on the refunding of indebtedness. That proposal, you will recall, as it is presently incorporated in the committee report, requires a 2/3 vote of both houses and a referendum by the people. I suggest to those who are supporting this amendment — and I am opposing it in case there is any question in anyone's mind —that that is exactly the requirement that is made of a constitutional amendment. It requires a 2/3 vote of both houses. It requires a referendum of the people.

So, whether the amendment passes or not, nothing has been accomplished. It is still the legislature that puts the requirements on. It is not going to put a lesser requirement than is presently required for a refunding of indebtedness, otherwise, a 2/3 vote of both houses and a referendum by the people. This is what is required for a constitutional amendment. It is the same requirement. And so, of what effect is the amendment?

I suggest that we stop further discussion on this matter and vote upon it.

CHAIRMAN HUTCHINSON: Mr. Gover.

MR. GOVER: Mr. Chairman, fellow delegates, I've got to speak in opposition to this amendment. During my campaign, I referred to the Arkansas amendment in their statute and brought it up for debate and discussion at one of my meetings and I was almost thrown out of the meeting because they were entirely against that proposition. For that reason I will have to go on record for my area, at least, in supporting the committee report and not the amendment.

CHAIRMAN HUTCHINSON: Mr. Ford.

MR. FORD: I have to agree with Mr. Brown that we seem to be discussing everything else here but the point at issue. But as one of the sponsors of this amendment who feels that all of the pertinent arguments have been presented, I do feel that I should rise — and a few moments ago I was angry when I wanted to rise, and now I am a little calmer — but it does disturb me for Mr. Van Dusen to take the cavalier attitude that something as important as this is a gimmick and let the record of this convention and the people who are here, stand with this misconception — the word socialist was also used over here, and socialism — and this one is particularly bothersome when someone with a name like mine, because I can picture a newspaper headline "Ford sponsoring a socialistic bill," causing some concern in some quarters of my home territory, not to mention damage to my own nervous system.

But lest we be too quick in dismissing this as a quick scheme, I would like to remind you that a well known congressman from a party not my own has sponsored this and pointed out — and perhaps this is one of the areas that is going to shift over to the federal government — and the governor of this state has very seriously sponsored it as recently as his letter to us yesterday; and perhaps the combination of these 2 gentlemen might explain, somewhat, the discomfort of Mr. Van Dusen with the proposed amendment. But, nevertheless, the legislature has — as it is now constituted — very recently voted by a 2/3 majority in each house, to submit to the people a constitutional amendment that would, in fact, give them permission to use this. And I submit that this demonstrates on their part an intention to attempt to take this constitutional restriction off of them. I don't think that you can suggest that either house or both of those houses over there got the 2/3 vote thinking that they were supporting either a gimmick or a socialistic move.

CHAIRMAN HUTCHINSON: Mr. Van Dusen.

MR. VAN DUSEN: Mr. Chairman, I hope this may be the last comment on this. I do not like to take credit unduly for the phraseology into which I lapsed and, therefore, I should point out that it was Mr. Ostrow, with his inimitable gift for felicitous phrasing, who suggested in the committee on finance and taxation that this type of proposal was "a gimmick".

CHAIRMAN HUTCHINSON: Mr. Hubbs.

MR. HUBBS: Mr. Chairman, I think that earlier in this discussion it was said that this would help sound, responsible business get established in Michigan, and I submit that this will place the load of supporting sound business on the backs of small taxpayers, and that the poor will get poorer through excessive taxation. And I also say that the gentleman who lives in a so called economically depressed area should probably move where the rich are. It is a well known fact that if you seek economic opportunity, you are not going to find it selling iceboxes to eskimos, and when the expedition leaves the south pole this year, they are going to leave an economically distressed area.

Now, I don't have any distaste for the upper peninsula — far from it. I think the upper peninsula is a great place, but if I lived up there and I couldn't find anything to do and I considered myself poor, I would take that old adage to heart which says, not "go waste" but "go west, young man." The one in Washington now is "go waste."

CHAIRMAN HUTCHINSON: Mr. McAllister.

MR. McALLISTER: Mr. Chairman and fellow delegates and particularly Delegate Pellow, I agree with Delegate Pellow's statement that we are spending too much money on Yugoslavia and other communist areas, and I think that Mr. Pellow has a friend in Washington who can relieve this situation, and probably if he does it will create a lot of employment and this $100 million won't be necessary.

CHAIRMAN HUTCHINSON: Mr. Marshall.

MR. MARSHALL: Mr. Chairman and members of the committee, as one of the supporters of this amendment, I rise to

speak in support of it. I am going to refrain — and I am somewhat in the same position as Delegate Ford was, I had to sit until I could calm myself down some before I rose to speak — I am not going to indulge in the type of facetious remarks and asinine statements that have appeared here on the floor today. I am not going to attempt to turn this into a political debate. We are here to write a constitution. I will participate in the political debate in the political campaign side by side with all the rest of you.

It is obvious to me that we got away from the discussion of the amendment and we started throwing charges and countercharges. I would hope that you would refrain from this type of action, for whether it is upon the part of one or the other on the floor of the convention, I am not so sure that it is conducive to the type of atmosphere that is necessary to soberly and sensibly and sanely discuss these proposals.

I am not going to take exception to the statement of Mr. Van Dusen, referring to the amendment as a gimmick. I will, however, defend it. It is not a gimmick. When I attached my signature to the amendment I was dead serious. When the legislature put the amendment on the ballot at the last election, I actively campaigned for a yes vote on the amendment in the election, and it only failed to carry by a small vote. It wasn't an overwhelming rejection. There was a problem, I think, in getting the full intent of the proposed amendment and the story over to the electorate at the time they were called upon to vote on it.

This is a serious problem that we have here in the state of Michigan. I think all of us recognize it. We may disagree on the approach to it. We may have different ideas as to how we should go about the job. Be that as it may, that is understandable. But if we have these different ideas and the different approaches to the problem, we are not going to solve it in the next 100 years if we are going to continue to throw charges and countercharges, particularly in this all important area.

I would ask you to give consideration, in my closing remarks, to favorable action because this does not, in any way, bind the state. You still have a right to submit it to a vote of the people, and with that I am going to close. I think that I refrained from getting involved in any political controversy, Mr. Chairman, unless I am forced to get into it. Then I will sit down.

CHAIRMAN HUTCHINSON: Mr. Brake.

MR. BRAKE: Mr. Chairman, ladies and gentlemen, I can't imagine anything that could possibly be said on either side of this question that hasn't been already said, and most of the things that have been said have been said at least 6 or 7 times on the same point. Can't we, please, stop talking and vote? If we can, I will make you a promise, the next time the finance and taxation committee comes before you, we'll give you something to fight about.

CHAIRMAN HUTCHINSON: The question is on the amendment offered by Mr. Ford and others. I think it is clear to everybody. All those in favor will say aye. Those opposed will say no. Division has been called for. All those in favor of the amendment will rise.

SECRETARY CHASE: Thirty-nine.

CHAIRMAN HUTCHINSON: All those opposed will rise.

SECRETARY CHASE: Eighty-four.

CHAIRMAN HUTCHINSON: The amendment is not adopted.

Are there any further amendments to section c?

SECRETARY CHASE: Mr. DeVries offers the following amendment to section c —

CHAIRMAN HUTCHINSON: Mr. Wanger, do you desire to be recognized on something other than an amendment?

MR. WANGER: Yes, but I yield to Mr. DeVries.

CHAIRMAN HUTCHINSON: The reason the Chair recognizes you at this time is because I recognized that you were getting up at the time that we started the last amendment some 2 hours ago. If you yield to Mr. DeVries, then you will wait until after the disposition of this amendment before you are recognized on your question. Is that agreeable to you?

MR. WANGER: Yes, sir, it is.

CHAIRMAN HUTCHINSON: All right, the secretary will read the amendment offered by Mr. DeVries.

SECRETARY CHASE: Mr. DeVries offers the following amendment:

1. Amend page 2, line 20, after "authorized" by striking out "in this constitution" and inserting "by law".

CHAIRMAN HUTCHINSON: Dr. DeVries.

MR. DeVRIES: Mr. Chairman and members of the committee, I feel that by inserting this language we give flexibility and we allow the legislature to decide if we will loan money to private industry or any other private institution that it desires to.

CHAIRMAN HUTCHINSON: The question is upon the amendment offered by Dr. DeVries. Mr. Brake.

MR. BRAKE: May we have it read again, please?

SECRETARY CHASE: The amendment is:

[The amendment was again read by the secretary. For text, see above.]

MR. BRAKE: I think that that is perfectly understandable to everybody. It is a question of whether you want the protection of a constitutional restriction or whether you simply want to leave it to the legislature to say for what purpose the state may loan its credit. It seems to me that the place for that is in the constitution, that we do not want the state's credit thrown around loosely and I am opposed to the amendment.

CHAIRMAN HUTCHINSON: Mr. Van Dusen.

MR. VAN DUSEN: I would simply join Mr. Brake and point out that this is really the exception that swallows the rule and if the DeVries amendment were adopted, the entire section would be virtually meaningless.

CHAIRMAN HUTCHINSON: Mr. Brown.

MR. G. E. BROWN: Mr. Chairman, I would like to direct a question to Mr. Brake, that question being that if this language is used, is it his interpretation that it would be then covered by the preceding paragraph relative to a 2/3 vote in both houses plus a referendum by the people? And —

MR. BRAKE: I don't think so.

MR. G. E. BROWN: — if so, why not?

MR. BRAKE: This is a matter of loaning the state's credit, backing up something; not a matter of the state borrowing the money, necessarily, if it could get it in other ways.

CHAIRMAN HUTCHINSON: Mr. Nord.

MR. NORD: I simply would like to say that I agree with what Mr. Van Dusen and Mr. Brake have said.

CHAIRMAN HUTCHINSON: The question is upon the amendment. Mr. Upton.

MR. UPTON: I feel strongly about this. If you do adopt this amendment, you might as well write the whole language out of the constitution pertaining to this particular fact. I oppose Mr. DeVries' amendment.

CHAIRMAN HUTCHINSON: Dr. DeVries.

MR. DeVRIES: Mr. Chairman and members of the committee, I have faith in the legislature that they won't extend our credit. If it takes a 2/3 vote, I think they will do the right thing. I have implicit trust in the legislature.

CHAIRMAN HUTCHINSON: The question is on the amendment offered by Mr. DeVries. All those in favor will say aye. Opposed will say no.

The amendment is not adopted.

Mr. Wanger.

MR. WANGER: Mr. Chairman, I notice in the language of this provision referring to the investment of public funds, that they may be invested as provided by general law. Perhaps this is not a proper time to debate this, but I wonder, under this section, would not this permit the legislature to authorize the investment of several hundreds of millions of public funds in voting securities, and if it would permit the investment of public funds in voting securities — that is to say securities which, at certain times it can be voted to control the progress of the corporation, private enterprise of this state — whether or not this raises very, very serious implications to our economy.

MR. BRAKE: I think that Mr. Van Dusen fully answered what you have asked. This is not a matter of authorizing the local units of government to go into any long term propositions at all. It is a matter of the idle funds that are available for a short time and might just as well earn a little interest during that short time. And, it is not a matter of the legislature saying, "You may do this," or "You may do that." It is a matter of a general law laying down the rules under which these investments can be made, including what they may be made in.

CHAIRMAN HUTCHINSON: Mr. Van Dusen.

MR. VAN DUSEN: If I might simply elaborate briefly on Mr. Brake's response, I think that Mr. Wanger's point would be particularly well taken if this section stood alone in the constitution. However, in another section of the present article X, it prohibits the investment of public funds in common stocks. So, I think the language is that the state shall not be interested in the stock of any corporations. I think that this language would preclude the legislature from authorizing, pursuant to this section, any investment in voting securities of a corporation.

I think you may recall that the language of the section to which I have just referred is incorporated in an earlier report by this committee, to which the committee suggests only 2 exceptions: the investment of public funds held for pension and retirement funds, and the investment of public funds held for endowment funds by universities in common stocks. I think that taking the 2 sections together, there is necessarily a prohibition against any legislative enactment which would authorize the investment of public funds pursuant to this section, in voting securities of a corporation, except those public funds held for pension and endowment purposes.

CHAIRMAN HUTCHINSON: Mr. Wanger.

MR. WANGER: I am not as familiar with the securities market and the legal aspects of securities issues as many of the people in this delegation, but I know that section 13 of article X, to which Mr. Van Dusen refers, says the state shall not subscribe to nor be interested in the stock of any company, association or corporation.

I wonder if there may not be voting securities which are not included in the words, "stock of any company, association or corporation." And, certainly, I suggest that when they are either in a pension fund or even in the general treasury, there are hundreds of millions available, but it is possible to have a situation where one of these funds might be invested, say, in 5 per cent or 10 per cent of the stock of some company. And I suggest further that such a percentage is often enough to control that company, to place certain people on the board of directors of such a company.

And, while I do not wish a protracted debate on this, in light of the fact that there is another section under which it might more properly be considered, I would like to ask the chairman of the committee if there is any intention that when we reach the point of discussing section 13, that the committee desires that the state should be able to invest in any voting securities of any kind?

MR. BRAKE: You have answered your own question. That matter will be before us, the section that Mr. Van Dusen referred to, and if you don't like it at that time, you certainly have the opportunity to propose an amendment to that section. We can't present everything in the constitution at once.

CHAIRMAN HUTCHINSON: Are there any further amendments to section c? If not, it will pass.

Section c is passed.

Mr. Brake.

MR. BRAKE: Mr. Chairman, we have, as a member of the finance and taxation committee, one who was in the legislature of 1952, Mr. Van Dusen, and who was one of the sponsors, one of the active supporters of the provision that was written into our constitution by popular vote that year, in authorizing the state to back up, with its credit, certain school districts. I yield to Mr. Van Dusen for the purpose of explaining what we have done, and again try and promise, if we don't run into too much controversy, we might get through today.

CHAIRMAN HUTCHINSON: The Chair will recognize Mr. Van Dusen, but will call your attention to the fact that under the rules, the secretary should read section d first, unless the committee otherwise directs.

MR. VAN DUSEN: Because of its length, Mr. Chairman, I move that it be considered read, unless there is some objection.

CHAIRMAN HUTCHINSON: Is there objection to it being considered read?

The Chair hears no objection, and it is so considered, and the Chair recognizes Mr. Van Dusen.

[For section d, see above, page 603.]

MR. VAN DUSEN: I would like to correct Mr. Brake in just one minor particular, that it was 1955 rather than 1952, when the language of section 27 of the present constitution was considered in the legislature and proposed for a vote of the people. The school districts of the state were then confronted with the impact of 2 developments of the last decade. One, the beginning of what we have come to know as the population explosion; the other, the beginning of a substantial shift in the population around our metropolitan centers from the core cities out into the suburbs. This confronted many school districts with overwhelming problems of school building construction.

The problem of finding adequate funds to finance school construction in the early '50s had its roots in 3 different constitutional provisions.

One of these was the 15 mill limit which precluded any additional millage beyond the 15 mill limit being levied for a period longer than 20 years, and this imposed a serious limitation on the ability of any school district to enter into long term borrowing for the purpose of school construction. The fact that its borrowing had, necessarily, to be on a fairly short term basis, meant that the amortization of principal proceeded at a rapid rate, and therefore a very substantial percentage of the schools' total income had to be devoted to the retirement of any debt incurred for school construction; a retirement of that indebtedness which took place over much less than the total life of the facilities which it was incurred to construct. So that the 15 mill limit presented a positive impediment to sound school construction financing and made it very difficult for districts which had, in particular, a low base of assessment to provide, even through borrowing, adequate funds for school construction. There were 2 other constitutional impediments to this. The state has an interest and a desire to advance money to the school districts to assist them in solving this problem, but it could not do so; first, for the reason that the section which we have just considered prohibits the use of the state credit in support of any public corporation, including a school district; and second, for the reason that the state itself had insufficient funds to do so without borrowing and it could not borrow without a constitutional amendment.

Therefore, these 3 constitutional problems, the 15 mill limit, the limitation on the use of the state's credit in support of another public corporation, and the limitation on the state's right to borrow, all were considered in the provisions of section 27 proposed in 1955 by the legislature as an amendment to the constitution. The state, under the provisions of that amendment, could borrow up to $100 million to make loans — to use its credit — to support local school districts, provided those school districts engaged in a particular kind of financing for their school construction, and entered into qualified bonding contracts with lenders of money.

These qualified bonds had to have a maturity longer than the 20 year period prescribed by the 15 mill limit, and therefore these bonds were made supportable by unlimited tax funds. In other words, the 15 mill limit was not applied to them. This amendment was proposed and was adopted by the people in 1955, but had a termination date, providing that the entire provision would come to an end in 1962.

Well, it proved very successful, and in large measure it solved the problem of providing funds for school construction

in Michigan's school districts. And it became apparent in 1960 that its provisions should be renewed. Therefore, the legislature proposed its extension for a 10 year period beginning in July of 1962 and running through July of 1972. They took off the $100 million limit because during the entire period, only a figure under $2 million had been borrowed by the state and loaned to school districts in support of their bonds, and made certain other minor changes. This amendment was adopted by the people, overwhelmingly, in the fall of 1960.

What this committee now proposes is a consolidation of sections 27 and 28 into a single section, continuing the provisions of section 28, as adopted by the people in 1960, with only one change, that being the elimination of the termination date in 1972. It is the feeling of the committee that if this system is good, and 5 years' experience has proved it to be, then it should continue for the foreseeable future, and rather than putting the legislature and the people to the problem of reenacting it and extending it in 1972, it would be better to simply put it in without any terminal date and, if it eventually outlives its usefulness, it can be removed by constitutional amendment. The committee strongly supports its adoption.

CHAIRMAN HUTCHINSON: Are there any amendments to section d? Mr. Marshall.

MR. MARSHALL: May I ask a question of Mr. Van Dusen? Dick, this is rather complicated for me, but I can go along with it if I can have your assurance it isn't a gimmick.

MR. VAN DUSEN: You have my assurance. I wish Mr. Ostrow would come back so he could give you his.

CHAIRMAN HUTCHINSON: Mr. Habermehl.

MR. HABERMEHL: Mr. Chairman, I just have a couple of questions to address to Mr. Van Dusen. I have had some experience in this field, Mr. Van Dusen, and is it true that on not more than a half dozen occasions, these loans have actually been made to school districts?

MR. VAN DUSEN: I think the number is a very modest one. I can't quote the actual figures. As I indicated, the total dollar amount is less than $2 million.

MR. HABERMEHL: Was the committee aware, too, that in the sale of school bonds now, the market for such bonds is diminished unless the bonds have been qualified as provided by this section?

MR. VAN DUSEN: Virtually all bonds of a type which you and I would like to see issued are qualified, Mr. Habermehl.

MR. HABERMEHL: And the department of public instruction, of course, imposes a fee for such qualifications running from a minimum of $200, I believe, up to about $500.

MR. VAN DUSEN: I think the committee did not get into the details of the fee charged by the department of public instruction. I trust it is not a revenue issue on the department's part but simply a method to recoup its cost on reviewing them.

MR. HABERMEHL: I simply asked the questions to see if those matters had been considered by the committee. I have no objection to the proposal.

CHAIRMAN HUTCHINSON: Are there any proposed amendments to section d of the proposal? If not, it will pass.

Section d is passed.

Are there any further amendments to the body of the proposal? If not, it will pass.

Committee Proposal 23, as amended, is passed.

Mr. Brake.

MR. BRAKE: May I thank the ladies and gentlemen of the committee for their consideration, and I move that the committee rise.

CHAIRMAN HUTCHINSON: The question is upon the motion made by Mr. Brake that the committee do now rise. All those in favor will say aye. Those opposed will say no.

The motion prevails. The committee has risen.

[Whereupon, the committee of the whole having risen, President Nisbet resumed the Chair.]

PRESIDENT NISBET: The Chair recognizes Mr. Hutchinson.

MR. HUTCHINSON: Mr. President, the committee of the whole has had under consideration a certain proposal on which the secretary will make a detailed report.

SECRETARY CHASE: The committee of the whole, Mr. President, has had under consideration **Committee Proposal 23**, A proposal to prohibit the issuance of evidences of state indebtedness, except as authorized by the constitution, to authorize state borrowing and prescribe the method therefor, to limit the use of state credit and to permit the loaning of state funds to school districts under certain conditions, and covering the general subject matter found in sections 11, 10, 12 and 28 of article X of the 1908 constitution; reports this proposal back to the convention with amendments, recommending the amendments be agreed to and the proposal, as thus amended, do pass.

[The following are the amendments recommended by the committee of the whole:

1. Amend page 2, line 13, after "proposed by" by striking out "the legislature by" and inserting "an act of the legislature requiring".

2. Amend page 2, line 14, after "members" by striking out "elect of" and inserting "elected to".]

PRESIDENT NISBET: The question is on agreeing to the amendments. Mr. Downs.

MR. DOWNS: I ask that section b and section c be divided.

PRESIDENT NISBET: The question is on the — Mr. Downs, do you wish to make another amendment?

MR. DOWNS: I believe another amendment is on the secretary's desk.

PRESIDENT NISBET: Mr. Chase informs me that the question would be on the approval of these amendments, and then if you care to make a subsequent amendment, that is your privilege. The vote should be, first, on the committee amendments.

MR. DOWNS: Mr. President, I just want to be sure on the parliamentary procedure. I understand that there are amendments on section b and section c on the secretary's desk, and your ruling is that we vote on the committee amendments first and then we will have the opportunity to vote on the amendments that have been filed with the secretary, is that correct?

PRESIDENT NISBET: That is correct.

The question is on agreeing to the amendments made by the committee of the whole. Those in favor say aye. Opposed, no.

The amendments are agreed to.

SECRETARY CHASE: The first amendment, by Mr. Perlich:

1. Amend page 2, line 17, after the end of line 17, by adding the following paragraph:

"The legislature is authorized by general law or laws to irrevocably pledge the full faith and credit of the state of Michigan for the payment of the principal of and interest on bonds or refunding bonds to be issued by the state, or any of its officers, boards, agencies, commissions, departments, or special authorities pursuant to law, and payable out of specific taxes, tolls, fees, charges or other specifically designated and earmarked revenues. Such law or laws may also provide that the specific taxes, tolls, fees, charges or other specifically designated and earmarked revenues out of which said bonds are payable shall be continued and used to the extent necessary to provide reimbursement to the state for any money paid by it pursuant to said full faith and credit pledge: Provided however, That this provision shall apply only to the Mackinac bridge authority bonds.".

PRESIDENT NISBET: Mr. Perlich.

MR. PERLICH: Because of the extensive discussion on this subject, there is nothing more for me to add, and I ask for a roll call vote.

PRESIDENT NISBET: Mr. Perlich has asked for a roll call vote. Is the demand seconded? There is sufficient number up.

Those in favor of the amendment as proposed by Mr. Perlich, will vote aye. Those opposed will vote no.

SECRETARY CHASE: Has everyone voted? The machine is now locked and the vote will be recorded.

The roll was called and the delegates voted as follows:

YEAS — 46

Austin	Greene	Murphy
Baginski	Hart, Miss	Nord
Balcer	Hatcher, Mrs.	Norris
Barthwell	Hodges	Pellow
Binkowski	Hood	Perlich
Bledsoe	Kelsey	Rajkovich
Brown, T. S.	Krolikowski	Richards, L. W.
Buback	Lesinski	Sablich
Cushman, Mrs.	Liberato	Snyder
Dell	Madar	Spitler
Downs	Mahinske	Stopczynski
Elliott, Mrs. Daisy	Marshall	Suzore
Faxon	Martin	Wilkowski
Follo	McCauley	Young
Ford	McGowan, Miss	Youngblood
Garvin		

NAYS — 85

Allen	Hannah, J. A.	Pollock
Andrus, Miss	Haskill	Powell
Anspach	Hatch	Prettie
Batchelor	Heideman	Pugsley
Beaman	Higgs	Radka
Bentley	Howes	Richards, J. B.
Bonisteel	Hoxie	Rood
Boothby	Hubbs	Rush
Brake	Hutchinson	Seyferth
Brown, G. E.	Iverson	Shackleton
Butler, Mrs.	Judd, Mrs.	Shaffer
Conklin, Mrs.	Karn	Shanahan
Danhof	King	Sharpe
Davis	Kirk, S.	Sleder
Dehnke	Knirk, B.	Stafseth
DeVries	Koeze, Mrs.	Staiger
Donnelly, Miss	Kuhn	Stamm
Doty, Donald	Lawrence	Sterrett
Erickson	Leibrand	Stevens
Everett	Leppien	Tubbs
Farnsworth	Lundgren	Turner
Figy	McAllister	Tweedie
Finch	McLogan	Upton
Gadola	Millard	Van Dusen
Goebel	Mosier	Wanger
Gover	Page	Wood
Gust	Perras	Woolfenden
Habermehl	Plank	Yeager
Hanna, W. F.		

On the question of the adoption of the amendment offered by Mr. Perlich, the yeas are 46; the nays are 85.

PRESIDENT NISBET: The amendment is not adopted. Mr. Powell.

MR. POWELL: Mr. President and fellow delegates, I suppose I must be much confused here, because the wiser heads are saying nothing, but it was my understanding that after the committee of the whole rose and its action was voted on, the next procedure was that the proposal went to the committee on style and drafting. I am glancing at the rules. The place that I looked at was the middle of page 52, here, where it talks about the order of consideration. I didn't realize that after the action of the committee of the whole had been ratified or rejected by the convention, that the proposal was once more open for debate or amendment here on the floor. There is later a second reading and a third reading. Are we in order in what we are doing at this time? I would like a ruling from the Chair.

PRESIDENT NISBET: I understand, Mr. Powell, under the nature of the rules of order, after the report of the committee of the whole, the proposal may be amended on the floor.

SECRETARY CHASE: Mr. Hodges offers the following amendment to Committee Proposal 23, section c:

1. Amend page 2, line 23, after the end of the paragraph, by adding another paragraph as follows:

"The credit of the state, up to a sum of $100,000,000, may be pledged or granted to or in aid of public benefit corporations, for the purpose of financing industrial, manufacturing and municipal development projects in this state: Provided however, That any such extension of credit shall require for approval a formal act of the legislature.".

PRESIDENT NISBET: Mr. Hodges requests a record roll call vote. Is the demand seconded? Those in favor will rise. There is sufficient number up.

Those in favor of the amendment will vote aye. Those opposed will vote no.

SECRETARY CHASE: Have you all voted? The machine is locked and the vote will be recorded.

The roll was called and the delegates voted as follows:

YEAS — 40

Austin	Greene	McGowan, Miss
Baginski	Hart, Miss	Murphy
Balcer	Hatcher, Mrs.	Nord
Barthwell	Hodges	Norris
Binkowski	Hood	Pellow
Bledsoe	Kelsey	Perlich
Brown, T. S.	Krolikowski	Sablich
Buback	Lesinski	Snyder
Dade	Liberato	Stopczynski
Downs	Madar	Suzore
Elliott, Mrs. Daisy	Mahinske	Wilkowski
Follo	Marshall	Young
Ford	McCauley	Youngblood
Garvin		

NAYS — 93

Allen	Gust	Pollock
Andrus, Miss	Habermehl	Powell
Anspach	Hanna, W. F.	Prettie
Batchelor	Hannah, J. A.	Pugsley
Beaman	Haskill	Radka
Bentley	Hatch	Rajkovich
Blandford	Heideman	Richards, J. B.
Bonisteel	Higgs	Richards, L. W.
Boothby	Howes	Rood
Brake	Hoxie	Rush
Brown, G. E.	Hubbs	Seyferth
Conklin, Mrs.	Hutchinson	Shackleton
Cudlip	Iverson	Shaffer
Cushman, Mrs.	Judd, Mrs.	Shanahan
Danhof	Karn	Sharpe
Davis	Kirk, S.	Sleder
Dehnke	Knirk, B.	Spitler
Dell	Koeze, Mrs.	Stafseth
DeVries	Kuhn	Staiger
Donnelly, Miss	Lawrence	Stamm
Doty, Donald	Leibrand	Sterrett
Durst	Leppien	Stevens
Erickson	Lundgren	Tubbs
Everett	Martin	Turner
Farnsworth	McAllister	Tweedie
Faxon	McLogan	Upton
Figy	Millard	Van Dusen
Finch	Mosier	Wanger
Gadola	Page	Wood
Goebel	Perras	Woolfenden
Gover	Plank	Yeager

On the adoption of the amendment offered by Mr. Hodges, the yeas are 40; the nays are 93.

PRESIDENT NISBET: The amendment is not adopted. Are there any other amendments?

SECRETARY CHASE: I have none on file, Mr. President.

PRESIDENT NISBET: If not, Committee Proposal 23, as amended, is referred to the committee on style and drafting.

Following is Committee Proposal 23 as amended and referred to the committee on style and drafting:

The committee recommends that the following be included in the constitution:

Sec. a. No evidence of state indebtedness shall be issued, except for such debts as are expressly authorized in or pursuant to the provisions of this constitution.

Sec. b. The legislature, for the purpose of meeting its appropriations for any fiscal year, may by law authorize the state to issue its notes pledging its faith and credit for the purpose of borrowing money in anticipation of the receipt of any undedicated revenues to be received within the same fiscal year which shall be pledged for the payment of such borrowings. Such borrowing in any fiscal year shall not exceed 15 per cent of all undedicated revenues received by the state during the preceding fiscal year and shall be repaid at the time the revenues so pledged are received, but not later than the end of the same fiscal year.

The state may borrow money for such other specific purposes and in such amounts as may be proposed by an act of the legislature requiring the affirmative vote of 2/3 of the members elected to both houses, and approved by a majority of the electors voting thereon at any general election. The question submitted to the electors shall state the amount proposed to be borrowed, the specific purpose to which the funds shall be devoted, and the method of repayment.

Sec. c. The credit of the state shall not be granted to, nor in aid of any person, association or corporation, public or private, except as authorized in this constitution.

This section shall not be construed so as to prohibit the investment of public funds until needed for current requirements in such manner as may be provided by general law.

Sec. d. The state, in addition to any other borrowing power, may borrow from time to time such amounts as shall be required, pledge its faith and credit and issue its notes or bonds therefor, for the purpose of making loans to school districts as provided in this section.

If the minimum amount which it would otherwise be necessary for a school district to levy in any year to pay principal and interest on its qualified bonds, including any necessary allowances for estimated tax delinquencies, exceeds 13 mills on each dollar of its assessed valuation as last equalized by the state, or such lower millage as the legislature may prescribe, then the school district may elect to borrow all or any part of the excess from the state. In that event the state shall loan the excess amount to the school district for the payment of principal and interest. If for any reason any school district will be or is unable to pay the principal and interest on its qualified bonds when due, then the school district shall borrow and the state shall loan to it an amount sufficient to enable the school district to make the payment.

The term "qualified bonds" means general obligation bonds of school districts issued for capital expenditures, including refunding bonds, issued prior to May 4, 1955, or issued thereafter and qualified as provided by law pursuant to section 27 or section 28, article X of the Constitution of 1908, or pursuant to this section.

After a school district has received loans from the state, each year thereafter it shall levy for debt service, exclusive of levies for nonqualified bonds, not less than 13 mills or such lower millage as the legislature may prescribe, until the amount loaned has been repaid, and any tax collections therefrom in any year over and above the minimum requirements for principal and interest on qualified bonds shall be used towards the repayment of state loans. In any year when such a levy would produce an amount in excess of the requirements and the amount due to the state, the levy may be reduced by the amount of the excess.

Subject to the foregoing provisions, the legislature shall have the power to prescribe and/or limit the procedure, terms and conditions for the qualification of bonds, for obtaining and making state loans, and for the repayment of loans.

The power to tax for the payment of principal and interest on bonds hereafter issued which are the general obligations of any school district, including refunding bonds, and for repayment of any state loans made to school districts, shall be without limitation as to rate or amount.

All rights acquired under sections 27 and 28, article X of the Constitution of 1908, by holders of bonds heretofore issued, and all obligations assumed by the state or any school district under said sections, shall remain unimpaired.

SECRETARY CHASE: That completes the report of the committee of the whole, Mr. President.

PRESIDENT NISBET: Announcements.

SECRETARY CHASE: The special committee appointed relative to the extending of an invitation to the president to address the convention will meet immediately after the session in the conference room. Mr. Romney, chairman.

The scheduled meeting of the miscellaneous provisions and schedule committee will begin at 8:30 tomorrow morning instead of 9:00 o'clock as previously announced. Mr. Erickson, chairman.

You are reminded that at the meeting of the subcommittee on higher education, Thursday, tomorrow morning, any delegate wishing to appear on behalf of his or her proposal will be welcome at 9:00 a.m. in room J. Mr. Bonisteel, chairman.

The committee on finance and taxation will meet in room E tomorrow at 10:30 a.m. D. Hale Brake, chairman.

The committee on local government will meet at 7:30 p.m. this evening, room A; 8:30 a.m. tomorrow; 1:00 o'clock p.m. on Friday. Arthur Elliott, chairman.

The committee on administration will meet Friday, right after the session. Walter DeVries, chairman.

PRESIDENT NISBET: Mr. Bentley.

MR. BENTLEY: Mr. President, there will be no meeting of the education committee after the session today.

Mr. President, I sent to the desk certain subcommittee reassignments for the committee on education and ask unanimous consent to have them printed in the journal.

PRESIDENT NISBET: Without objection, they will be printed in the journal.

Following are the subcommittee reassignments for the committee on education:

Subcommittee reassignments:

Miss Vera Andrus (libraries) — higher education

Theodore S. Brown (libraries) — higher education

Richard D. Kuhn (libraries)—elementary and secondary education

Bert M. Heideman (libraries) — higher education

H. Carl Spitler (elementary and secondary education)—school finance

Jack Faxon (libraries)—elementary and secondary education

The subcommittee on libraries and other provisions has been dissolved.

SECRETARY CHASE: We have the following request for leave: Mr. Romney requests to be excused from the sessions of Thursday and Friday, January 18 and 19, to keep long time commitments in Argentina and South America.

PRESIDENT NISBET: Without objection, he will be excused.

Judge Gadola.

MR. GADOLA: Mr. President, sometimes it becomes incumbent upon one to make a motion before a body that brings down the wrath of the organization upon his head. However, there is one very pleasant motion that can be made and I will make that motion now, that we adjourn.

PRESIDENT NISBET: The question is on adjournment. Those in favor say aye. Those opposed, no.

We are adjourned until tomorrow at 2:00 o'clock.

[Whereupon, at 5:15 o'clock p.m., the convention adjourned until 2:00 o'clock p.m., Thursday, January 18, 1962.]

SIXTIETH DAY

Thursday, January 18, 1962, 2:00 o'clock p.m.

PROCEEDINGS

PRESIDENT NISBET: The convention will please come to order.

Our invocation will be given by the Reverend Dr. Seth C. Morrow, Pastor of the First Presbyterian Church of Lansing. Will you please rise.

DR. MORROW: Eternal God, our heavenly Father, save this moment from being merely a gesture to custom or convention; make it a real experience for each of us in this place, as we call uopn Thee for guidance and for help.

Grant to the members of this convention a sacred moment of quiet ere they take up their duties. Let them not think, when this prayer is said, that their dependence upon Thee is over, and forget Thy counsels for the rest of the day. Rather from these moments of heart searching, may there come such a sweetness of disposition that all may know that Thou art in this place, the unseen delegate, present and voting. Speak to these men and women, O Christ, that what they say, and what they do may be in accordance with Thy will for this great state; and through their dependence on Thee, may they have wisdom in their decisions, understanding in their thinking, love in their attitudes, and mercy in their judgments. So help us all this day, through Jesus Christ, our Lord. Amen.

PRESIDENT NISBET: The roll call will be taken by the secretary. Those present please vote aye.

SECRETARY CHASE: Has everyone voted? The machine is locked and the attendance will be recorded.

Mr. President, a quorum of the convention is present.

Absent with leave: Messrs. Romney and Thomson.

Absent without leave: None.

PRESIDENT NISBET: Reports of standing committees.

SECRETARY CHASE: The committee on administration, by Mr. DeVries, chairman, submits the following report and recommends its adoption:

1. That the constitutional convention prepare a single convention record which would include the verbatim proceedings and debates plus those portions of the daily action journal needed to make the convention record complete.

PRESIDENT NISBET: Mr. DeVries.

MR. DeVRIES: Mr. President, may we vote on these recommendations separately, please?

PRESIDENT NISBET: If you care to.

MR. DeVRIES: Mr. President and members of the convention, to give you the background on this recommendation, the 1907 and '08 convention printed 2 records of their activities. One was called an action journal; another a verbatim journal.

At present in this convention we will have 3 records. We will have a daily action journal that you receive every day; we will have a corrected action journal, and then a verbatim journal which includes the debates of this convention in plenary session. The decision of the committee on administration to combine all 3 of these, thereby having a complete record of all the spoken and written words of this convention in plenary session, is to synchronize in logical sequence everything that we have done on the floor of this convention. We estimate that this will go to 3 volumes. I move the adoption of this recommendation of the committee on administration.

PRESIDENT NISBET: The question is on the recommendation of the committee. All in favor, please say aye. Opposed, no.

Mr. Wanger.

MR. WANGER: I just wanted to ask, this does not mean we will not continue every day to get our action journal as we are now, does it?

MR. DeVRIES: Mr. President, Mr. Wanger, this refers to the record of convention after adjournment.

PRESIDENT NISBET: The question is on the motion of Dr. DeVries. Those in favor say aye. Opposed, no.

Mr. Norris.

MR. NORRIS: I don't want to interfere with the motion. I just want to ask a question. Is there a contemplated action of the committee regarding the distribution of such copies, the number of copies and all the rest of it?

MR. DeVRIES: Mr. President and fellow delegates, that is the third recommendation, Dr. Norris.

PRESIDENT NISBET: The first recommendation is concurred in. Mr. Chase?

SECRETARY CHASE: 2. That the constitutional convention include in the preface to the convention record a section presenting the pictures of the delegates and staff, and a short biography of each delegate.

MR. DeVRIES: Mr. President and fellow delegates the 1907 and '08 convention published a manual, and this is it right here. And in the manual is a copy of the constitution and a picture and biography of all the members of that convention. There were 1,250 copies distributed. Now, the committee on administration felt that we should do the same, but we shouldn't publish a separate manual, so we have provided in this recommendation that in the preface of the convention record would be a picture and a biography of each of the delegates, and pictures of the staff with their titles. This would be, as I said, put into the preface to the record. You will have a choice of the picture to go into this convention record. If you do not have a picture and you want one taken, we have made arrangements with a commercial photographer to take a new picture—or to retouch an old one. (laughter) I move the adoption.

PRESIDENT NISBET: The question is on the second recommendation of the committee.

Mr. Walker.

MR. WALKER: Mr. President, I question the desirability of including pictures of the delegates in the manual. It appears that there is a definite, good, valid reason for having a biography. If a historian in years to come should want to look back to see what our background was to ascertain why we took a certain stand, he can do so from our biography. But it appears to me that a picture of each delegate would only serve a very vain purpose of each delegate wanting to have his face before people in the future. I can see no desirability in spending the taxpayers' money for this kind of a thing.

MR. DeVRIES: Mr. President, fellow delegates, Mr. Walker, we did consider this problem carefully. Mr. Beaman noted that he would like to have his picture omitted if this constitutional draft did not pass. (laughter)

PRESIDENT NISBET: The question is on the second recommendation of the committee. All in favor please say aye. Opposed, no.

The second recommendation is concurred in.

SECRETARY CHASE: 3. That the constitutional convention produce at least 3,000 copies of the convention record by letter press printing.

[Walter DeVries, chairman.]

MR. DeVRIES: Mr. President and fellow delegates, the committee has tentatively decided on the distribution of 3,000 copies of the convention record. Briefly, they would go to these institutions or people: 4 year college and university libraries, county law libraries, public libraries, the state libraries; delegates would receive up to 5; staff would get 1; legislators, supreme court justices, executive officers, circuit judges and miscellaneous. This would leave for sale 1,230 copies of the convention record. I move the adoption of the committee recommendation.

PRESIDENT NISBET: The question is concurring in the third recommendation of the committee. Is there any discussion? Mr. Lesinski.

MR. LESINSKI: Mr. Chairman, I suggest you change the words "letter press" to "publish" so any means can be used. A broader word, "publish."

MR. DeVRIES: Mr. President and fellow delegates, Mr. Lesinski, the constitution requires that this record be printed.

PRESIDENT NISBET: Is there any further discussion? If not, all in favor of the recommendation say aye. Opposed, no.

The third recommendation is concurred in.

MR. DeVRIES: Mr. President and fellow delegates, if I may make an oral report on behalf of the committee for information purposes, the committee has authorized the purchase of an alarm system to be used in notifying delegates when a session is about to start or when we are about to reconvene after a recess or when a vote is to be taken. We hope to have this installed by Monday. It will extend to every corner of constitution hall. The secretary will make a detailed explanation of the signals to be used in this system. Thank you.

PRESIDENT NISBET: Mr. Chase, any further report?

SECRETARY CHASE: Following the installation of this bell warning system, the signals to notify the delegates of pending business will be as follows: 3 rings will be given about 2 minutes in advance, which will indicate the calling of the convention to order either at the opening of a daily session or before the termination of a recess; 2 rings will indicate the committee of the whole is about to rise and make its report; and 1 ring will indicate that a record roll call vote is about to be taken.

Mr. Erickson, for the committee on miscellaneous provisions and schedule introduces

Committee Proposal 25, A proposal to amend article XVI, section 2 of the present constitution pertaining to oath of office; with the recommendation that it pass.

Claud R. Erickson, chairman.

For Committee Proposal 25 and the reasons submitted in support thereof, see below, page 708.

PRESIDENT NISBET: Referred to the committee of the whole and placed on the general orders calendar.

SECRETARY CHASE: That is all of the standing committee reports.

PRESIDENT NISBET: Reports of select committees.

SECRETARY CHASE: None.

PRESIDENT NISBET: Some time ago this convention passed a resolution inviting former presidents of the United States to speak to our convention. Included in those was President Hoover, who notified the convention that because of his age and difficulty, he did not think it wise to attend, upon advice of his physician. At that time he was asked to send some communication to us in the form of advice or suggestions. It has been received. It has been in the hands of the committee and this afternoon, with your permission, I would like to ask Vice President Hutchinson to read this letter from former President Hoover. Mr. Hutchinson.

MR. HUTCHINSON: Mr. President, members of the constitutional convention, the following letter was received by the president from former President Hoover:

The Waldorf Astoria Towers
New York 22, New York
January 15, 1962

Mr. Stephen S. Nisbet
President
Michigan constitutional convention
Constitution Hall
Lansing, Michigan

My dear Mr. Nisbet:

I have before me your invitation on behalf of the Michigan constitutional convention to attend its sessions. I regret that the limitations of 87 years, plus, prevent me from accepting that great honor.

From your vice president, Mr. George Romney, I have received a request that if I cannot attend I should send some suggestions on the matters before the convention. It is with some diffidence that I make suggestions to such an able body of delegates. And no doubt, any suggestions of mine are already before you. However, I respond by touching upon certain basic concepts of representative government.

I

The overriding need is to create a succinct, flexible document of guiding principles which will enable their expansion by legislative action.

The separation of powers is of course essential to any American constitution. In this light I suggest that the convention avoid the so called "referendums" now current in certain state constitutions. One result of such procedures is confusion of legislative and executive powers, and to clutter the constitution by legislative actions based on emotion and propaganda, which circumvents the safeguards of legislative consideration and any check by the governor of the state.

II

Restatement of a bill of rights

Some of the rights of the individual are no doubt inherited from the Declaration of Independence. The actual Bill of Rights in the Constitution of the United States was adopted from the Constitution of the State of Virginia, and all state constitutions have given leadership to the nation in this field. But since the original federal declaration and your state Constitution of 1908, these rights have been expanded, and in some particulars they have been curtailed.

I suggest that it would be a service to the whole country if you would reexamine our basic "rights" and reenumerate them in your constitution.

I also suggest that consideration should be given by you to the definition of an additional right. That is, that there should be no inhibitions to the right of any individual to choose or to practice his calling, trade, or profession. No doubt, in certain callings, such as teaching or medicine, the state must reserve the right to determine the fitness of individuals to enter upon such a profession but this is no limitation on such a right by competent persons.

III

Restatement of state rights

Obviously state government involves constant problems arising from the relations of the states to the federal government. I do not need to state that it is vital to the public welfare that the efficiency and vigor of state and local government be preserved.

Since the Constitution of the United States was adopted, these rights have been greatly limited by constitutional and legislative action of the federal government. I suggest that a concise restatement of the present rights of the states would also be of service to the whole nation.

Further, a public statement from your convention as to prospective encroachments by federal legislative action, such as control of the public schools, would give leadership to our country.

IV

Administrative problems amid the changing American life

Our problems of government are steadily increasing because of the growth and movement of population, and because of new scientific discoveries, inventions and ideas. All of these forces impose new complexities on the government of the state.

These complexities demand men and women of more and more experience in administration. These administrators obviously fall into 2 groups: first, the elected officials and second, officials selected to administer the special agencies which may be created to meet these problems.

As to elected officials, no doubt you will consider the extension of terms of office and the privileges of reelection.

As to special agencies dealing with the promotion of economic and social welfare such as education, support of the needy, advancement of scientific, agricultural and mineral production, I suggest that experience shows that these agencies should not be created in your constitution, but that full authority to do so should be vested in the legislative arm.

In passing, I may mention that their legislative creations should so far as possible stipulate nonpartisan administration. Furthermore, while the creation of advisory boards is often desirable, the administration of such special agencies should not be placed in the hands of boards or commissions except in the regulatory field. The top officials of such agencies as I have mentioned should be appointed by the governor and confirmed by the state senate, and should be continued in office so long as they prove competent.

V

Law enforcement

Our law enforcement machinery has been steadily undermined by legislative action or judicial decisions until it is no longer a deterrent to crime. Crime is increasing steadily —and faster than the population. Only a minor percentage of the persons arrested reach actual conviction and punishment. I suggest that in the creation of law enforcement agencies in your constitution, you give consideration to the tortuous delays of legal procedures, the practices of suspended sentences, pardons, and paroles. Our system of law enforcement came from the English common law. The British still make it work. We need to get tough.

With good wishes and great respect,

Yours faithfully,
Herbert Hoover.

(applause)

PRESIDENT NISBET: Thank you very much, Senator Hutchinson.

Second reading of proposals.

SECRETARY CHASE: Nothing on that calendar.

PRESIDENT NISBET: Third reading of proposals.

SECRETARY CHASE: Nothing there.

PRESIDENT NISBET: **Motions and resolutions.** Mr. Iverson.

MR. IVERSON: Mr. President, I would like to move that item 1 on general orders, **Committee Proposal 15,** be placed on special orders for Monday of next week, January 22.

PRESIDENT NISBET: The question is on the motion of Mr. Iverson. Dr. Pollock.

MR. POLLOCK: Mr. President, the committee has no objection to this, but I would like the record to show that our report was ready to be presented to the floor of the convention December 15. At the request of the president it was put over until after the holidays. It was debated thoroughly here. Now is the second time of postponement, and I believe it is now January 18. I just want the record to show that.

PRESIDENT NISBET: Thank you, Dr. Pollock.

The question is on the motion of Mr. Iverson. All in favor say aye. Opposed, no.

The motion prevails.

Are there any further motions or resolutions?

SECRETARY CHASE: Mr. DeVries offers **Resolution 65,** A resolution of the constitutional convention requesting action by the legislature pertaining to the orderly completion of convention business in the carrying out of the convention's obligations after adjournment.

Following is Resolution 65 as offered:

Whereas, The constitutional convention has constitutional and statutory obligations after it adjourns to do the following things:

a. Carry out the convention's constitutional obligations to provide "for the printing and distribution of its documents, journals, and proceedings";

b. Provide for the dissemination of information about, and an explanation of, the proposed constitution to the people of the state (address to the people);

c. Make all necessary arrangements and perform all necessary duties in order to restore the civic center in accordance with the terms of the lease by which it is occupied;

d. Take such other steps as may be necessary and desirable to bring the "business of the convention" to orderly completion and preserve its records, documents and papers; and

e. Employ staff to perform the tasks and obligations herein described and compensate such staff and convention delegates designated by convention resolution to perform the tasks herein set out; now therefore be it

Resolved, That the convention request the legislature to enact legislation:

1. To create a constitutional convention post adjournment commission, consisting of the president of the convention as the chairman, the vice presidents of the convention, and 6 additional convention delegates, to be appointed by the president of the convention; that the commission be authorized by law to carry out tasks and obligations stated above after the convention adjourns; that the life of the commission expire on the date of the election on the proposed constitution;

2. To permit the constitutional convention post adjournment commission to expend any balance remaining at the time of the adjournment of the convention from the appropriation heretofore granted the convention to carry out the tasks and obligations heretofore stated;

3. To permit the constitutional convention post adjournment commission to dispose of property acquired by the convention in such manner as may be determined by the commission so as to insure a fair and reasonable return for the property disposed of and to permit the commission to use the funds thus received to carry out the tasks and obligations heretofore stated; and

4. To provide that moneys not expended or obligated at the time of the termination of the life of the constitutional convention post adjournment commission revert to the general fund of the state; and be it further

Resolved, That copies of this resolution be transmitted to the president of the senate and the speaker of the house of representatives.

PRESIDENT NISBET: The resolution is referred to the committee on administration.

SECRETARY CHASE: That is the only resolution on file, Mr. President.

PRESIDENT NISBET: Mrs. Butler.

MRS. BUTLER: Mr. President, I rise to a point of personal privilege. Yesterday, when we were discussing the upper peninsula and the Mackinac bridge, one of my colleagues suggested that those who couldn't make a living in the upper peninsula better move west. (laughter) This bothered me quite a little, not being a squatter, but being a fourth generation homeowner. Last evening I gave this matter a great deal of consideration, so I have a new plan for the upper peninsula, and I am sure it will receive favorable comment. I feel that we should secede from Michigan and the nation and set up the United States of Superior. (laughter) As such we would be a foreign country and eligible for foreign aid. (laughter and applause) So under those conditions we would get a free bridge and all our financial troubles would be over. Thank you. (laughter and applause)

PRESIDENT NISBET: Mr. Lundgren.

MR. LUNDGREN: I rise to support my good friend, Mrs. Butler. (laughter)

PRESIDENT NISBET: It is nice to have comments like that before we get into real serious material. (laughter)

Unfinished business.

SECRETARY CHASE: None.

PRESIDENT NISBET: Special orders of the day.

SECRETARY CHASE: Nothing on that calendar for today.

PRESIDENT NISBET: **General orders of the day.** Mr. DeVries.

MR. DeVRIES: Mr. President, I move that the convention resolve itself into committee of the whole for consideration of certain items on the general orders calendar.

PRESIDENT NISBET: The question is on the motion of Mr. DeVries. All in favor say aye. Opposed, no.

The motion prevails.

[Whereupon, Mr. DeVries assumed the Chair to preside as chairman of the **committee of the whole.**]

CHAIRMAN DeVRIES: The committee will come to order and the secretary will read.

SECRETARY CHASE: Item 2 on the calendar, from the committee on executive branch, by Mr. Martin, chairman, **Committee Proposal 22,** A proposal pertaining to state civil service. Amends article VI, section 22.

Following is Committee Proposal 22 as read by the secretary and the reasons submitted in support thereof:

The committee recommends that the following be included in the constitution:

The state civil service shall consist of all positions in the state service except those filled by popular election, heads of departments, members of boards and commissions AND THE CHIEF EXECUTIVE OFFICER THEREOF, employees of courts of record, of the legislature, of the higher STATE educational institutions [recognized by the state constitution], all persons in the [military and naval forces] ARMED FORCES of the state, 8 EXEMPT POSITIONS IN THE OFFICE OF GOVERNOR, [and not to exceed 2 other exempt positions for each elected administrative officer, and each department, board and commission,] AND WITHIN EACH DEPARTMENT, WHEN REQUESTED BY THE DEPARTMENT HEAD, 2 OTHER EXEMPT POSITIONS, ONE OF WHICH SHALL BE POLICY MAKING. THREE ADDITIONAL POSITIONS OF A POLICY MAKING NATURE MAY BE EXEMPTED WITHIN EACH DEPARTMENT AS DETERMINED TO BE NECESSARY BY THE CIVIL SERVICE COMMISSION.

There is hereby created a nonsalaried civil service commission to consist of 4 persons, not more than 2 of whom shall be members of the same political party, appointed by the governor for 8 year, overlapping terms[,]. [the 4 original appointments to be for 2, 4, 6 and 8 years respectively. This commission shall supersede all existing state personnel agencies and succeed to their appropriations, records, supplies, equipment, and other property.]

The commission shall classify all positions in the state civil service according to their respective duties and responsibilities, fix rates of compensation for all classes of positions, approve or disapprove disbursement for all personnel services, determine by competitive performance exclusively on the basis of merit, efficiency and fitness the qualifications of all candidates for positions in the state civil service, make rules and regulations covering all personnel transactions, and regulate all conditions of employment in the state civil service. THE CIVIL SERVICE COMMISSION SHALL RECOMMEND TO THE GOVERNOR AND TO THE LEGISLATURE RATES OF COMPENSATION FOR ALL APPOINTED UNCLASSIFIED POSITIONS WITHIN THE EXECUTIVE DEPARTMENT. No person shall be appointed to or promoted in the state civil service who has not been certified as so qualified for such appointment or promotion by the commission. [No removals from or demotions in the state civil service shall be made for partisan, racial or religious consideration.] THE EXECUTIVE MAY CREATE OR ABOLISH POSITIONS FOR REASONS OF ADMINISTRATIVE EFFICIENCY WITHOUT THE APPROVAL OF THE COMMISSION. NO REMOVALS, DEMOTIONS, APPOINTMENTS OR PROMOTIONS IN THE STATE CIVIL SERVICE SHALL BE MADE FOR PARTISAN, RACIAL OR RELIGIOUS CONSIDERATIONS. NOR SHALL THE CREATION OR ABOLITION OF POSITIONS BE MADE FOR SUCH CONSIDERATIONS.

The administration of the commission's powers shall be vested in a state personnel director who shall be a member of the state civil service and who shall be responsible to and selected by the commission after open competitive examination.

To enable the commission to [execute] EXERCISE these powers, the legislature [shall appropriate for the 6 months period ending June 30, 1941, a sum of not less than ½ of 1 per cent, and for each and every subsequent fiscal year, a sum not less than 1 per cent, of the aggregate annual payroll of the state service for the preceding fiscal year as certified to by the commission.], AT THE FIRST REGULAR SESSION SUBSEQUENT TO THE ADOPTION OF THIS CONSTITUTION AND AT EACH SUCCEEDING REGULAR SESSION, SHALL APPROPRIATE TO THE COMMISSION FOR THE ENSUING FISCAL PERIOD A SUM NOT LESS THAN 1 PER CENT OF THE AGGREGATE ANNUAL PAYROLL OF THE STATE CIVIL SERVICE FOR THE PRECEDING FISCAL PERIOD, AS CERTIFIED TO BY THE COMMISSION. THE COMMISSION SHALL RETURN TO THE STATE TREASURY WITHIN 6 MONTHS ALL FUNDS UNEXPENDED AFTER THE CONCLUSION OF THE FISCAL PERIOD.

[After August 1, 1941,] No payment for personal services shall be made or authorized until the provisions of this amendment have been complied with in every particular. Violation of any of the provisions hereof may be restrained or observance compelled by injunctive or mandamus proceedings brought by any citizen of the state.

[This amendment shall take effect on the first day of January following the approval thereof.]

THE COMMISSION SHALL FURNISH REPORTS OF EXPENDITURES, AT LEAST ANNUALLY, TO THE GOVERNOR AND THE LEGISLATURE AND SHALL BE SUBJECT TO ANNUAL AUDIT AS PROVIDED BY LAW.

Mr. Martin, chairman of the committee on executive branch, submits the following reasons in support of Committee Proposal 22:

The proposed revision of the civil service section of the constitution now before the convention is the product of a thorough inquiry by the committee into the history, the philosophy, and the day to day operation of civil service in state government.

At the outset it should be understood that when our inquiry started, one or 2 members of the committee viewed civil service with reverence but a majority viewed it with skepticism and inquisitiveness. A majority of the members of the committee approached the task with a feeling there were abuses in the Michigan system which needed correction. From those who maintained the contrary, we demanded proof. In most cases, proof which was given satisfied the majority of the committee. In those cases where it did not satisfy the majority, changes were approved.

The committee, over a 2 month period, questioned more than 40 witnesses, with reference to civil service, including officials of the civil service commission, former governors and administrative board members, past and present members of the legislature, representatives of state employee organizations, state administrators, and experts from other states.

All witnesses advised and the committee was unanimous in deciding that the civil service merit system should be retained and that the Michigan constitution should contain a detailed civil service provision.

The proposed revision is designed to continue Michigan's national leadership among the states in public personnel

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Explanation—Matter within [ ] is stricken, matter in capitals is new.

practice, and to foster and encourage a career service in state government, effecting rigid limitations on political patronage, yet strengthening the role of the chief executive and the administrator.

* * * * *

"Sec. 22. The state civil service shall consist of all positions in the state service except those filled by popular election, heads of departments, members of boards and commissions AND THE CHIEF EXECUTIVE OFFICER THEREOF,".

Line 7, page 1:

Because of an ambiguity in the constitution, the civil service commission classified the chief administrative officers of 9 boards or commissions at the request of these boards or commissions. This language will permanently prevent such classification and reserve these positions for political appointment without tenure.

"employees of courts of record, of the legislature, of the higher STATE educational institutions [recognized by the state constitution], all persons in the [military and naval forces] ARMED FORCES of the state, 8 EXEMPT POSITIONS IN THE OFFICE OF GOVERNOR,".

Line 8, page 1:

No state higher educational institution not recognized in the constitution is presently operating under the state civil service system. The proposed change in language merely brings the constitution into line with existing practice. The committee recognizes that all present higher state educational institutions may be recognized in the new constitution. Nevertheless, the committee recommends the present revision in order to provide for future educational institutions.

Line 10, page 1:

The committee is not aware of any dissent from the principle that the governor's office should be staffed with policy personnel of the governor's choice. In the past, the governor's staff (with the exception of the 2 exempt positions allowed under the present constitution) has been given provisional civil service appointments. After such appointments are made all parties concerned have winked at the constitution by not requiring such provisional employees to obtain permanent civil service status through examinations as would seem to be required by the present constitution. The committee is not overly critical of the practice but we do feel that such situations should not be continued. Therefore, the committee recommends the suggested new language to make the constitution accord with practice.

Eight exemptions are adequate in the committee's best judgment. The figure corresponds with the general practice of the governor's office in the last few years. Language such as "all positions in the office of the governor" was rejected because such an open end arrangement invites abuse in the form of a mushrooming expansion of functions in the governor's office.

"[and not to exceed 2 other exempt positions for each elected administrative officer, and each department, board and commission,] AND WITHIN EACH DEPARTMENT, WHEN REQUESTED BY THE DEPARTMENT HEAD, 2 OTHER EXEMPT POSITIONS, ONE OF WHICH SHALL BE POLICY MAKING. THREE ADDITIONAL POSITIONS OF A POLICY MAKING NATURE MAY BE EXEMPTED WITHIN EACH DEPARTMENT AS DETERMINED TO BE NECESSARY BY THE CIVIL SERVICE COMMISSION.".

Lines 12-16, page 1:

The whole exemption section as proposed is based upon the presumption that administrative agencies and departments will be mandatorily reduced from the present 120 to a figure in the vicinity of 20. The initial question centers around the 2 exempt positions. Should there be 2 exempt positions which cannot be classified? Keeping such positions unclassified would provide personnel sensitive to policy changes. Weighed against this obviously desirable result are the following:

1. It is conceivable some departments would not need this many nontenure personnel.

2. It is difficult in some technical areas such as mental health to get a nonpolitical deputy unless tenure can be offered. This applies particularly to personnel that would be brought in from outside the state of Michigan.

In allowing any department head to have 2 exempt positions on a request instead of required basis we are attempting to escape the evils involved in a mandatory number of exemptions and yet provide flexibility in order to facilitate response to policy changes.

The requirement here that one of the exempt positions be policy making is a further attempt to insure that the exemption is used for an important position. No restriction is placed on the other exemption in order to allow the department head to select a confidential secretary if one is desired.

It was felt that there should be some flexibility in the number of policy making exemptions in order to take into account variances in size and types of the departments. Discretion in this matter could be given to the governor, legislature, department heads, or the civil service commission. None of the above have indicated any great interest in being given this chore. The committee felt that the civil service commission was the best equipped and the most desirable agency to handle this responsibility.

The figure of 3 is a consensus view of the committee. Some members of the committee feel the number is too lenient; and some favor a limited expansion. It should be realized that consolidation of departments with a vertical integration of function requires fewer policy personnel as opposed to the horizontal organization presently experienced in Michigan. Commissioner Mackie, head of the department most often mentioned in connection with increased exemptions, testified before our committee that 5 or 6 exempt personnel would be adequate for his department.

"There is hereby created a nonsalaried civil service commission to consist of 4 persons, not more than 2 of whom shall be members of the same political party, appointed by the governor for 8 year, overlapping terms [,]. [the 4 original appointments to be for 2, 4, 6 and 8 years respectively. This commission shall supersede all existing state personnel agencies and succeed to their appropriations, records, supplies, equipment, and other property.]".

Line 19, page 1:

The stricken language is transitional material which was necessary when the amendment was adopted but is no longer required.

"The commission shall classify all positions in the state civil service according to their respective duties and responsibilities, fix rates of compensation for all classes of positions, approve or disapprove disbursements for all personnel services, determine by competitive performance exclusively on the basis of merit, efficiency and fitness the qualifications of all candidates for positions in the state civil service, make rules and regulations covering all personnel transactions, and regulate all conditions of employment in the state civil service. THE CIVIL SERVICE COMMISSION SHALL RECOMMEND TO THE GOVERNOR AND TO THE LEGISLATURE RATES OF COMPENSATION FOR ALL APPOINTED UNCLASSIFIED POSITIONS WITHIN THE EXECUTIVE DEPARTMENT.".

Line 2, page 2:

A substantial majority of the committee recommends that no additional provision leading to direct legislative control or veto of wage determinations be added. The legislature has control, as it properly should, of appropriations. Thus there is a control on the total number of dollars expended on salaries for state classified employees.

Explanation—Matter within [ ] is stricken, matter in capitals is new.

It is not a question of economy, as many would suggest, but rather a question of objective. Is our objective a civil service of quantity or quality? When necessity requires, we live within our budget by holding wages down and the number of employees constant or we allow necessary wage increments to keep wage rates competitive and live within the amount of available dollars by adjusting the number of employees. That either of the alternatives is necessary is unfortunate. Reality dictates that they must be considered.

It has been claimed the present amendment forces the legislature to appropriate money for pay raises. The best refutation of that argument is the performance of the 1961 legislature, which in fact did just the opposite and struck out of the governor's general fund budget items for a 3 per cent pay raise. In this case, a number of agencies financed by general fund moneys had to cut back either in employees or through other economies to fill the gap.

The committee believes that quality is preferable to quantity. This the present system tends to accomplish. The feeling is evident, though not absolutely provable, that legislative control of wage rates would ultimately result in the opposite, i.e., the quantity principle being predominant. The 1936 civil service study commission found that the quantity principle was the general Michigan policy in 1936 and prior thereto when wage rates were set by the legislature. Present and former state legislators appearing before the committee also expressed the view that direct legislative control of wage rates was undesirable because it was likely to result in a chronically depressed wage scale. A modification was proposed to the committee which would establish a system whereby the legislature could veto or adjust by a 2/3 vote of both houses any wage scale established by the civil service commission. A large majority of the committee felt, however, that this concept of direct legislative control is in conflict with the type of civil service system which Michigan wants and needs. It can be legitimately asked whether the 2/3 proposal pays any more than lip service to the principle. In a state with nearly equal political division, a 2/3 vote in both houses on a question of salaries for civil service employees would be very exceptional. It may then be legitimately asked that if the 2/3 vote idea does no harm and yet gives some recognition to the principle of legislative control, why not put it in.

The committee members had many complicated and varied reasons for their stand. Certainly, the feeling was strong that ultimately the 2/3 requirement would be lowered as a result of political pressure to a majority with the consequent damage to the system discussed above.

Line 3, page 2:

It is the majority view of the committee that the civil service commission should have authority to establish geographic wage differentials. The present amendment makes no mention of geographic wage differentials. There is a 1945 attorney general's opinion which interprets the word "classes" in line 3 so as to prohibit geographic wage differentials.

The committee feels the matter can be handled without adding additional language by the convention specifically recording itself as intending that the language of the section does give discretion and authority to the civil service commission to establish geographic wage differentials and that the word "classes" used in the section is not intended to prohibit such geographic wage differentials.

"No person shall be appointed to or promoted in the state civil service who has not been certified as so qualified for such appointment or promotion by the commission. [No removals from or demotions in the state civil service shall be made for partisan, racial or religious consideration.] THE EXECUTIVE MAY CREATE OR ABOLISH POSITIONS FOR REASONS OF ADMINISTRATIVE EFFICIENCY WITHOUT THE APPROVAL OF THE COMMISSION. NO REMOVALS, DEMOTIONS, APPOINTMENTS OR PROMOTIONS IN THE STATE CIVIL SERVICE SHALL BE MADE FOR PARTISAN, RACIAL OR RELIGIOUS CONSIDERATIONS. NOR SHALL THE CREATION OR ABOLITION OF POSITIONS BE MADE FOR SUCH CONSIDERATIONS.".

Lines 13-18, page 2:

Under the authority of the case of Kunzig vs. Liquor Control Commission, 327 Michigan 474, all changes in numbers and types of positions are subject to the advance approval of the civil service commission. As it now stands under the Kunzig case, state agencies must demonstrate that the desired abolition of a position is not for any racial, religious or partisan reason. The effect of the new language is to allow the administrator greater leeway in the establishment or abolition of positions. Under the new language, abolition or creation of positions for partisan, racial or religious considerations is still absolutely prohibited. No member of the committee disputes the idea that there should be vigorous enforcement of this section which prohibits changes for partisan, racial or religious considerations. The committee has also provided that no appointment or promotion shall be made for partisan, racial or religious consideration.

"The administration of the commission's powers shall be vested in a state personnel director who shall be a member of the state civil service and who shall be responsible to and selected by the commission after open competitive examination.

To enable the commission to [execute] EXERCISE these powers, the legislature [shall appropriate for the 6 months period ending June 30, 1941, a sum of not less than ½ of 1 per cent, and for each and every subsequent fiscal year, a sum not less than 1 per cent, of the aggregate annual payroll of the state service for the preceding fiscal year as certified to by the commission.], AT THE FIRST REGULAR SESSION SUBSEQUENT TO THE ADOPTION OF THIS CONSTITUTION AND AT EACH SUCCEEDING REGULAR SESSION, SHALL APPROPRIATE TO THE COMMISSION FOR THE ENSUING FISCAL PERIOD A SUM NOT LESS THAN 1 PER CENT OF THE AGGREGATE ANNUAL PAYROLL OF THE STATE CIVIL SERVICE FOR THE PRECEDING FISCAL PERIOD, AS CERTIFIED TO BY THE COMMISSION. THE COMMISSION SHALL RETURN TO THE STATE TREASURY WITHIN 6 MONTHS ALL FUNDS UNEXPENDED AFTER THE CONCLUSION OF THE FISCAL PERIOD.".

Line 26, page 2:

No substantive change is intended here. Unneeded transitional material has been stricken and new language added to put this section into operation. A substantial majority of the committee approached the matter of the civil service appropriation in a searching manner. The burden of proof, so to speak, was on the civil service system to justify the present provision. The committee, individually and collectively, studied the civil service budget, made cost comparisons with other states, and inspected the civil service quarters. Everything pointed to an efficiently operated civil service system.

Present figures indicate that civil service is operating on approximately .85 per cent of the aggregate annual payroll. The percentage figure has dropped as the size of the state payroll has increased, reflecting a spreading of fixed overhead costs. Undoubtedly the obvious reaction under these circumstances is to cut the constitutional appropriation to accord with actual usage. The committee, however, reasoned to the contrary that the preservation of the .15 per cent margin was desirable. The commission does not appear to have abused its extraordinary privilege of a mandatory appropriation. It has acted, as far as can be determined, very conscientiously. Its restraint in the handling of its appropriation should not be rewarded by hamstringing its budget for the future.

It should be further understood that the unexpended

Explanation—Matter within [ ] is stricken, matter in capitals is new.

balance of the civil service appropriation is a "paper balance" on the books of the department of administration. In other words, the commission does not collect its 1 per cent appropriation at the start of the year, thus draining the state treasury.

The requirement that the commission return any unexpended funds within 6 months after the end of the fiscal period was felt by a majority of the committee to eliminate one possible abuse. In practice the commission has regularly released its unexpended balances.

It seems reasonable to assume that reduction of the civil service appropriation could result in the commission forcing itself to spend the whole appropriation every year in order to prevent its economic operation from being rewarded in the future by a further constitutional cut in its appropriation. The committee believes that a reduction could well be a "penny wise, pound foolish" proposition.

"[After August 1, 1941,] No payment for personal services shall be made or authorized until the provisions of this amendment have been complied with in every particular. Violation of any of the provisions hereof may be restrained or observance compelled by injunctive or mandamus proceedings brought by any citizen of the state.

[This amendment shall take effect on the first day of January following the approval thereof.]

THE COMMISSION SHALL FURNISH REPORTS OF EXPENDITURES, AT LEAST ANNUALLY, TO THE GOVERNOR AND THE LEGISLATURE AND SHALL BE SUBJECT TO ANNUAL AUDIT AS PROVIDED BY LAW.".

Line 10, page 3:

Although there was no testimony to this effect, a number of the committee members were informally advised the civil service commission expended its money without any accountability. We found, however, that they have an annual audit by the state agency division of the auditor general's department and that further they do their purchasing through standard channels in the department of administration. However, because of the unique manner in which they receive their appropriation, it was felt this section would be desirable to close the door to any possible future abuse.

Following is the minority report to Committee Proposal 22 as offered, and the reasons submitted in support thereof:

Messrs. Hatch, Shackleton and Shaffer, a minority of the committee on executive branch, submit the following minority report to Committee Proposal 22:

We propose that the following language be inserted in the so called civil service amendment (article VI, section 22) following the language "conditions of employment in the state civil service.", on page 2, line 7, of Committee Proposal 22:

A minority of the committee recommends that the following be included in the constitution:

INCREASES IN RATES OF COMPENSATION IN THE STATE CIVIL SERVICE SHALL BE PROPOSED BY THE COMMISSION AND WILL BECOME EFFECTIVE UNLESS REJECTED, MODIFIED, OR REDUCED BY 2/3 VOTE OF THE MEMBERS ELECT OF BOTH HOUSES OF THE LEGISLATURE WITHIN 60 DAYS AFTER SUBMISSION OF SUCH PROPOSED INCREASES TO THE LEGISLATURE. NO INCREASES IN RATES OF COMPENSATION SHALL TAKE EFFECT UNTIL THE FIRST DAY OF THE FISCAL YEAR FOLLOWING SUBMISSION OF SUCH PROPOSED INCREASES TO THE LEGISLATURE. SUCH PROPOSED INCREASES MUST BE SUBMITTED TO THE LEGISLATURE AS PART OF THE GOVERNOR'S BUDGET FOR A FISCAL YEAR IN ORDER TO BE EFFECTIVE ON THE FIRST DAY OF SUCH FISCAL YEAR. THE LEGISLATURE MAY NOT REDUCE RATES OF COMPENSATION BELOW THOSE IN EFFECT AT THE TIME OF THE SUBMISSION OF A PROPOSED INCREASE.

Messrs. Hatch, Shackleton and Shaffer, a minority of the committee on executive branch, submit the following reasons in support of the foregoing minority report, which accompanied Committee Proposal 22:

Testimony has been heard by the committee on executive branch to the effect that no change should be made in the rate fixing powers of the civil service commission. There has also been testimony to the effect that fixing rates of compensation for classified personnel is a legislative function. The undersigned minority of said committee recommend amendment of the committee proposal as hereinafter indicated, in the belief that there should be some accountability to the legislature with respect to the rate fixing process.

To those who believe civil service should be accountable to the legislature, this accountability is provided by granting the legislature a "veto" power over rate increases proposed by civil service. For those who favor retention of this power by civil service it should be pointed out that civil service retains the initiating power to raise rates under the proposed language. Also, as a practical proposition, the requirement of a 2/3 vote of both houses to reject, modify or reduce the commission's recommendations, means that the veto power could not be exercised readily, and would undoubtedly be exercised only in the event of a real abuse by the commission. Additionally, the legislature is prohibited from reducing salaries below those existing at the time of the proposal for increase.

The proposed amendment also requires that proposed rate increases be submitted to the legislature along with the governor's budget. This would give constitutional affirmation to the practice followed by the commission during the past few years, and also ensure that the commission did not lapse into practices followed earlier of declaring a pay raise at any time. It is not intended that the governor would have the power to control pay rates by virtue of the requirement that proposed increases be included as part of his budget. Only an orderly procedure is sought and intended.

The amendment is not offered as a means of undercutting the merit system, nor should it be construed as an attempt to return to the spoils or patronage system. On the contrary, it is believed that the merit system must be maintained, and that it has proven itself a valuable asset to the state. The amendment is offered in the spirit of providing accountability to the legislature, and to the people, by a fourth branch of our government which heretofore has not in many respects been susceptible to the normal checks and balances. It is our hope that if adopted, this language would lead to a greater understanding between civil service and the legislature, and ultimately mutual respect for one another, which apparently has been lacking in the past.

SECRETARY CHASE (continuing): The secretary would like to announce that there have been filed with the secretary 2 amendments that are proposed by the committee on executive branch, an amendment by Messrs. Hatch, Shackleton and Shaffer, in accordance with their minority report; an amendment by Mr. Yeager; an amendment by Mr. Tubbs; an amendment by Mr. Marshall; and 2 amendments by Mr. Downs.

CHAIRMAN DeVRIES: Without objection, they will be considered in that order. I hear none.

SECRETARY CHASE: The committee recommends that the following be included in the constitution:

[Committee Proposal 22 was read by the secretary. During the reading, Mr. Baginski moved that the proposal be considered read, to which motion Mr. Martin objected.]

CHAIRMAN DeVRIES: Mr. Martin.

MR. MARTIN: Mr. Chairman, if I might make a statement on this proposal, I would like to do so. It is Committee Proposal 22, section 22 of article VI of the constitution. By way

Explanation—Matter within [ ] is stricken, matter in capitals is new.

of history, the matter was first brought up at our last constitutional convention and was rejected. Some 30 years later we established a civil service commission by statute that lasted one year and then the ripper bill tore out about half of the state civil service employees and reduced the appropriation from $250,000 to something like $75,000. A year later the citizens of the state, with leadership from various people, at least 2 of whom are in this convention as delegates, passed the civil service amendment, and since then we have had over 20 years of operation under the present amendment.

It has not been without controversy. On something like 14 occasions the legislature has endeavored to in some way alter the situation by legislation of one kind or another. In general, the supreme court has upheld the position and responsibility of the commission, including its right to a mandatory appropriation, and its power to fix rates of pay. At one time such pay raises were made without reference to whether appropriation bills had been acted upon or not, or rather without regard to what the state of the appropriations was at that time. This created a great deal of friction—battling between the legislature and the civil service commission.

In recent times there has been a different practice — since about 1956—and I want to give you just a word on this because it is not fully understood as to what that practice is today. The commission has a staff which makes continuing studies of the rates of pay in private enterprise and in public service both inside and outside the state of Michigan. Those studies go on at all times for the purpose of preparing material for the commission itself so they can judge as to whether the rates of pay in particular parts of the civil service in Michigan are comparable with the rates of pay for comparable work in both private enterprise and in public service outside the state of Michigan. The object of this — and this is important—is to attract and retain qualified personnel for state service and to maintain a stable work force with a minimum turnover. And for that reason it is the policy of the commission to maintain the compensation of state employees at a level which is comparable to and competitive with private enterprise, with the federal government and with the other states. The purpose, of course, is to prevent raiding and to prevent qualified employees from being drawn off into other service. The reason is that good employees are hard to get, and new employees are costly to train. The turnover before the civil service provisions were placed in the constitution, according to the study made by the civil service study commission which went into this matter rather carefully, was about 25 per cent each year.

I can't give you all of the testimony which we had before the committee on this matter, but it ran through some 40 witnesses of all kinds: government employees, members of the commission, former governors, former state administrative board members, present board members, members of employee organizations and experts on the subject of civil service from this state and from other states, but I can quote to you very briefly some figures from the report which was made in 1936 on this subject:

The turnover in the state service averaged 25 per cent a year, and this figure held for years when there was no party change, and even for years when there was no change in the governor.

Turnover was due to politics, to low pay, to lack of security or lack of opportunity for advancement, poor conditions of work, to absence of retirement plans.

Nepotism was rampant. One in 5 employees had relatives in the service.

Political activity took much of the employee's time. Contributions to the "flower fund" were a must no matter how meager the pay.

Only 56 per cent of the employees had reached the twelfth grade in school. Twenty-five per cent had not gone beyond the eighth grade.

In experience, 20 per cent had never worked anywhere before, and 53 per cent had less than 5 years' experience before entering the state service.

There was no pay plan. Each department was a law unto itself. With wide inequalities in pay for equal work, the person with the most political backing got the best pay.

We found great laxity in payroll procedures, few deductions for lost time, no supervision of sick leaves, vacations or hours of work. The employee was paid a straight salary, and the check kept coming until a dismissal order came through. Payroll padding was always a possibility.

And then just this additional. All this added up to a great financial loss to the taxpayer. Conservative estimates of the cost of breaking in new employees every year was half a million dollars. Today, with over 30,000 employees, the cost could run to perhaps $2 million.

Double salaries for the same job were paid for weeks and months at a time, as the outgoing employee was held over to train the new one. Other costs to the taxpayer resulting from the spoils system came from loose payroll practices, time lost in political activities, excessive salaries to political favorites and excessive numbers of jobs.

I only quote that little bit to indicate that we are dealing with a matter which today we don't fully realize was as serious as it was then.

Now, the practice today, then, is that after these studies are made by the commission, if adjustments are found to be necessary, the commission communicates whatever adjustments it thinks are required, either blanket raises or individual adjustments in individual departments, to the budget division, and it does this in November or December, as early as it can. The figures transmitted are then included in the budget, because they are there in plenty of time to be included in it, and they are submitted to the legislature not later than the date on which the budget is submitted by the governor. This enables the legislature to plan forward, because the proposed adjustments do not come into effect until the following July first. This gives the legislature some 4 to 6 months to do its planning. The result has been that friction has been largely eliminated, and that relations between the commission and the legislature are, by general agreement, vastly improved.

Now, this again is important, the legislature can do one of two things with this information. The legislature can approve the requested increase or it may hold the total available for personnel, either across the board or in particular departments, to the preceding level, or it may reduce that total, so that the result is that the individual agency has to absorb, if that is done, the increase in pay raises. It can do this either by not filling jobs which fall vacant, or it can do it by laying off employees. The alternative to that, of course, is to place the general control of pay rates in the hands of the legislature. But, as we will point out in connection with the minority report, we feel that the present method of control is a better one than turning the problem of pay rates over to the legislature.

The conclusions which the committee reached were these: after as thorough and searching a study as we could make—and in doing that, we listened to every possible complaint and criticism that we could find, and examined it as carefully as we could—we concluded, first, that no one on the committee, certainly, and we don't really believe anyone in this convention wanted to return to the spoils system as we had it in 1936. Second, we were impressed with the kind of system that we have, because we concluded from the testimony that the Michigan civil service system is outstanding in the United States and that it is one of the 2 or 3 best systems in the country. Third, we concluded that this is true because it has constitutional protection, not in general terms but in some detail. Fourth, that this system had vastly improved the quality of state service, and that it had reduced to a fraction the enormous amount of time formerly spent by department heads dealing with job hunters and their proponents. Fifth, that it has enabled the state to both get and keep good personnel, because state salaries are on a level with those in private enterprise and in other government activity; that a good civil service system is not cheap—we don't think this is an inexpensive operation—but that Michigan's system has not been extravagant, and in

fact has saved large amounts of money in preventing heavy turnover, reduced efficiency and the high cost of training new personnel. Finally, the committee concluded that there were certain changes which should be made, which are set forth in the committee proposal, which we believe improve the operation of the system but which do not in any way threaten the excellence of the program.

The committee, as the secretary has said, has 2 committee amendments on the secretary's desk which were made in consultation with the committee after the matter had been reported out to the floor because of matters called to our attention at that time. And with that, Mr. Chairman, I would like to yield either to Dr. Pollock, if he wishes to make a statement at this time, or to Mr. Durst, who will explain the various items of the committee proposal.

CHAIRMAN DeVRIES: The secretary will read the committee amendments.

SECRETARY CHASE: Mr. Durst, on behalf of the committee on executive branch, offers the first amendment:

1. Amend page 1, line 6, after "commissions" by striking out "and" and inserting a comma; and line 7, after "officer" by striking out "thereof" and inserting "of boards and commissions heading principal departments"; so that the language will then read:

> The state civil service shall consist of all positions in the state service except those filled by popular election, heads of departments, members of boards and commissions, the chief executive officer of boards and commissions heading principal departments, employees of courts of record",

and so forth.

CHAIRMAN DeVRIES: The gentleman from Adrian, Mr. Durst, speaking on the committee amendment.

MR. DURST: Thank you, Mr. DeVries. I would like, if I may, to make a preliminary statement and then take up the civil service proposal in the sections in which it is printed in the journal. Mr. Chairman, members of the committee, the proposed revision which you have before you on civil service is made to you and recommended to you by the committee on executive branch after a very thorough inquiry. As Mr. Martin has indicated, we have looked into the history and the philosophy and the day to day operation of the civil service system in Michigan. I would like to make it clear at the outset that this inquiry was a very searching one and a very critical inquiry of civil service. I say this even though on the committee on executive branch we have 2 very eminent gentlemen who came to Lansing with extensive experience in civil service and with a preconceived idea that we should keep the system pretty much as it was. I refer here to Dr. Pollock, who is regarded by many as the father of civil service in Michigan, and also to Mr. William Marshall, who has had extensive experience in the personnel practices in many areas and also with state employees. I think it is fair to say that a majority of the committee—if not the balance of the committee—when they came down here, had reservations about what should be done in the area of civil service and thought there should be some changes.

I know, speaking personally—although I had no great knowledge of civil service—I was generally under the impression that there should be some changes to correct what I thought were abuses, and I know during the election I was asked by civil service employees in my area to make a commitment that I would back the civil service amendment as it presently exists, and this I refused to do. Yet, after listening to the extensive testimony and making some rather thorough personal investigations, which many members of the committee made, I think many of my opinions and conceptions of civil service have changed. In this regard I would like just briefly to thank the civil service commission, Personnel Director Franklin DeWald and his staff for their great cooperation. I know we have been demanding over the months. Hardly a week went by through the fall when some member of our committee did not request the civil service commission to supply us with this piece of information or that piece of information, and I can well imagine it became rather vexing to them and their patience grew thin. But they have always cooperated very cheerfully with whatever we requested.

Now, as Mr. Martin pointed out, the committee has reached certain basic decisions, and 2 of these — which were unanimous, I am sure — were that we should have a civil service merit system in Michigan; and, second, that the Michigan constitution should contain a detailed civil service provision. I think we might pause a minute and give the reasons why we have reached that conclusion. Mr. Martin has given you some of them. Characteristic of the testimony on the question of whether or not we should have a civil service merit system in Michigan was that which we received from Mr. Clarence Lock, present commissioner of the department of revenue in Michigan. Mr. Lock in the late '30s was director of the state land office. And in part the statement he gave to our committee went as follows:

> It became my duty as the executive head of the department to interview literally hundreds of applicants for these positions, most of whom brought with them recommendations and endorsements from the governor's office, from various state officials, from legislators or from county chairmen of the respective counties. One can readily recognize the pressures which were exerted, particularly when the department in turn had to seek appropriations from the legislature whose members were interested in finding jobs for their constituents.
>
> During this period I became acquainted with the operation of the state board of tax administration, which was the predecessor of the department of revenue. This department came into being in 1933 with the adoption of the sales tax. During the '30s it was administered by political appointees.
>
> During this period of time there were recurring scandals; audits of certain taxpayers mysteriously disappeared; and some taxpayers' files even disappeared entirely. It was common gossip that audits could be settled by proper contact with certain individuals.

We had lots of testimony to this effect.

Delegate Brake, who sits real close to me here, appeared before our committee, and while I must be careful in quoting him since he is present, I think the gist of his testimony in this regard was that during the time he was in state service in the '30s, that he was besieged by office seekers, which took up a good deal of his time that he would have preferred to give to other more important state business.

Along this same line I might just briefly quote from the same report which Mr. Martin referred to, the 1936 civil service study commission, which was composed of several individuals appointed by the late Governor Frank Fitzgerald. Two delegates to this convention, Dr. Pollock and Mrs. Judd, were members. That report is long, but in a brief summary, in describing the conditions that existed before the advent of civil service in Michigan, I might just take a moment and go over it. The report says:

> Political considerations were preeminent. Administrators spend an extraordinary and valuable part of their time dealing with patronage problems and then are rewarded for their pains with incompetent employees who owe allegiance and feel responsibility not to the administrators but to the political influence that obtained their jobs for them. Former Governor Comstock testified at one of our hearings that he had about 3 hours of irritating contact with job hunters every day.
>
> Competent employees, of whom there are many, are prevented from giving full service to their work by their harrowing worry of constant insecurity and political interference. It is impossible to estimate how much time is lost to the state because employees get their jobs politically, are expected and required to repay these favors by working for their political sponsors even during working hours, but the loss is considerable. Morale is of the lowest order. Officials who have no sympathy for the system are nevertheless caught in its meshes. No official, no matter however high minded, can change the rules of the political

game. In the final analysis it is a system for which citizens are principally to blame, and which they alone can rectify.

This is characteristic of the kind of facts and information that was presented to us.

I don't believe there was any witness, even those who were critical of the civil service operation, who wanted to suggest that we do away with the merit system in principle which we have in Michigan.

Now, the second question we might answer is why a detailed provision such as we have here, which in many ways is legislative in character? Probably the answer to this lies in the history of civil service in the state, and in part the history of civil service in the other states of this union. I have no desire to bore this committee with facts which are probably well known to many of you; however, I must confess that, since these events happened some 20 to 25 years ago, they were not well known to me, and I suspect that there are a few delegates that are in the same boat. So if I may, just briefly, I would like to quote from the testimony which Mrs. Judd gave before our committee which very concisely sets forth the history of this affair. These are just excerpts from her testimony. She says:

Here in Michigan, Dr. Pollock continued his years of quiet prodding, "When are you going to do something about civil service?"

Then one day from a most unexpected source came official support for the merit system. Governor Fitzgerald, exasperated, as he said, with job seekers' cigar ashes in his coffee, stated in a speech that Michigan must have the merit system in its civil service.

Next day the Michigan league of women voters invited him to join a nationwide radio hookup to promote the merit system, an invitation he obligingly accepted.

Soon Governor Fitzgerald called Dr. Pollock, and from there the Michigan civil service study commission was developed with Pollock as chairman. From their work developed the model civil service bill which passed in 1937 during Governor Murphy's administration.

Thereby hangs a thrilling tale of citizen action I won't take your time to relate, except to mention the 10,000 individually signed postcards arriving in one week on the desk of a reluctant senator from Grand Rapids.

The civil service commission of Michigan's leading citizens was appointed. One of the country's most experienced civil service directors was employed. Seventeen thousand qualifying exams were given to the state's current employees.

But in 1939 the legislature had a change of heart as they saw the spoils system fading away, and they passed the ripper bill removing nearly half the state jobs from the merit system and cutting the appropriation from $250,000 to $75,000.

The commissioners whose terms had not expired resigned, and the merit system association had to start its job anew.

Dr. Pollock and Dr. Upson drafted a constitutional amendment.

The league of women voters did the work on the initiatory petitions. The people adopted the amendment in November, 1940. Strong, almost universal newspaper support throughout the state accounted in great measure for its success.

I might just add to that what Mr. Martin mentioned a little earlier. There have been since then, I believe he said, 14 attempts by the state legislature to circumvent one way or another the provisions of the present civil service amendment.

Now, if this were all, if it were unique just to Michigan, this type of history, we might say it was time to disregard it and maybe time had passed the problem by, but as we look around at other states in this nation, we find the problem is not unique to Michigan. Many states have had a similar experience. Just to mention a few, in Montana in the early '50s, a civil service system was inaugurated, and to date the legislature of Montana has refused to appropriate any funds to operate the system. Illinois, which had a functioning system of civil service, ended up at one time with almost half of its employees declassified and room made for political appointees. Oklahoma, which, after a great campaign or a strenuous campaign by its governor, set up a civil service system, but finds itself still with no money appropriated by the legislature to run it; in fact, a repealer bill presently is before the Oklahoma legislature.

I think it is safe to characterize all the testimony which we heard as indicating that everybody, even those critical of civil service, believe that it is necesary to have a detailed provision in the constitution, and again, referring to Mr. Brake, it was his opinion that it would be unwise, even at this date, to dispense with a detailed provision on civil service.

Now there, in brief, you have the reasons why our committee unanimously decided that it was necessary to draft and continue a detailed constitutional provision guaranteeing a merit system in Michigan. I would like to say that it was the general conclusion of people who appeared before our committee — and as far as I can determine and the committee can determine from what personal investigations we have made — that at the present time Michigan ranks with the states of New York and California as having one of the finest civil service systems in the nation. It is our hope that the proposal that we have before you will continue that system.

I would like now, Mr. Chairman, to move to the specific provisions, and if it is in order, I would like to have them taken up as they appear in the committee's report in the journal in phrasing. Is that permissible?

CHAIRMAN DeVRIES: Do you want to offer the amendments at this time?

MR. DURST: One has already been offered, Mr. Chairman, and that is to the first section.

CHAIRMAN DeVRIES: Are you speaking on the amendment?

MR. DURST: No, in the report we have broken up the proposal so we don't consider the whole thing, at least initially, as one unit, so we can do it piece by piece and discuss the various issues. Rule 38 reads that we will consider the proposal by clauses, and I submit that as it is broken down in the journal, in the committee report, that would be a more proper way of considering the matter; page 312 of the journal.

CHAIRMAN DeVRIES: The secretary will read the amendment, Mr. Durst.

SECRETARY CHASE: Page 312 of the journal, column 2. The entire proposal is listed there, Mr. Durst.

MR. DURST: Well, in the committee comment on the proposal, Mr. Chase.

SECRETARY CHASE: At the bottom of page 313?

MR. DURST: It is impossible to break this section up into sections as they say the bill of rights was, but if we could take the phrasing of the first clause where separated by comment and consider them one at a time, it would be very helpful.

SECRETARY CHASE: On page 313, beginning at the bottom of the second column:

[Paragraph 1 of the comment was read by the secretary. For text, see above, page 638.]

MR. DURST: What I had in mind, Mr. Chase, was not necessarily reading the committee report, but may we take that part of the phrase that precedes that comment at this time and then move on to the next one?

SECRETARY CHASE: Thank you. It begins with the first paragraph in the proposal.

CHAIRMAN DeVRIES: Mr. Hatch.

MR. HATCH: Mr. Chairman, parliamentary inquiry. Is it the intent of the Chair to take the committee proposal paragraph by paragraph, as has been done in the past, or each proposed change which the committee recommends? I would submit that rather than take each proposed change which the committee recommends and vote on each change, it would be more orderly to take each paragraph and then have any other amendments which affect the separate paragraphs considered at the time of the consideration of the paragraph under discussion.

CHAIRMAN DeVRIES: Mr. Hatch, it is the Chair's understanding that the committee has 2 amendments to offer to the body of the proposal, and I thought we were considering those. Mr. Durst.

MR. DURST: I would prefer to take, as it appears in the committee comment or in the committee report, the first clause. Whatever amendments there are to that, let's consider that as a unit and then pass on to the next clause.

CHAIRMAN DeVRIES: Mr. Martin.

MR. MARTIN: Mr. Chairman, I wonder if you would let Mr. Durst review the committee amendments in the first paragraph, and then the committee could just simply indicate there their purpose, and then we can consider the committee amendments and any other amendments to that paragraph and proceed down in that way.

CHAIRMAN DeVRIES: The Chair understands that in Committee Proposal 22 we will consider it paragraph by paragraph, and at this time you want to consider the first paragraph of the proposal?

MR. MARTIN: Consider the first paragraph from line 5 to line 16, if Mr. Durst would review the explanation for those changes, and then we will consider the committee amendment, and then after that any other amendments which are offered to that paragraph.

CHAIRMAN DeVRIES: Mr. Allen.

MR. ALLEN: Mr. Martin may have answered the question I was going to raise. Delegate Durst referred to looking at the printed journal, but so far in our procedure whenever we have had an amendment come in and we have discussed anything, we have referred to the committee proposal itself as is given to us on the green sheets. I think we are going to get awfully confused if we start considering any amendments in terms of looking at the journal, Mr. Durst. We can read our comments in the journal, but when we are talking about the amendments, refer back to this.

MR. DURST: That is fine, Mr. Allen. All I would like to do is break it up in consideration as it is in the committee report of reasons, because if we get all changes at one time, we won't know what we are going to be talking about. It is broken down in major areas in the report.

CHAIRMAN DeVRIES: Mr. Durst, I think Mr. Allen's point is well taken. We should stick with the established procedure and use the committee proposal on green paper as the basis for our discussion.

MR. DURST: You want to do it paragraph by paragraph; is that it?

CHAIRMAN DeVRIES: We are discussing lines 5 through 16 of the first paragraph in the committee proposal.

MR. DURST: All right. The secretary will read the paragraph then.

SECRETARY CHASE: The first paragraph:

[Paragraph 1 of Committee Proposal 22 was read by the secretary. For text, see above, page 637.]

MR. DURST: We have had the committee amendment offered already, haven't we, Mr. Chairman?

SECRETARY CHASE: The committee amendment is as follows:

[The amendment was again read by the secretary. For text, see above, page 642.]

CHAIRMAN DeVRIES: Mr. Durst, speaking on the committee amendment.

MR. DURST: Mr. Chairman, the first change which has been made here is to add to the group of people who are exempt from being covered by civil service the chief executive officer of boards and commissions heading principal departments.

We should first of all realize that the committee is making a presumption here. We face the same problem the committee on finance and taxation had, that it is impossible to submit everything to the floor at one time. But we do have under consideration in our committee a proposal which would require executive reorganization, mandatorily require the reduction of the present 120 agencies of the state to a figure somewhere in the vicinity of 20, we will say. If this committee or the convention does not adopt that proposal and require executive reorganization, then it will be necessary to reconsider these proposals in light of what we do later, but this civil service amendment is drafted with the idea in mind that that executive reorganization will ultimately be put into the new constitution.

So what we have in mind here is where we have a board or commission which heads a principal department — if there are 20 departments or 30 departments, some of these may be made up of boards or commissions — that the chief executive officer would be a political appointee. He would not be able to be classified under civil service, and would be exempt as are the heads of departments. Now, we have limited it by the amendment to the boards or commissions heading principal departments. It was called to our attention that it is possible under this reorganization that you might have all types of little minor commissions under principal departments. It was not the intention of the committee to open up this whole field to exempting the officer from civil service, but it is our desire — and we recommend to you — that the chief executive officer of these boards and commissions be exempt.

Now, the second change on line 8 provides that the —

CHAIRMAN DeVRIES: Mr. Durst, would you like the committee to vote on your first amendment before we proceed to the second?

MR. DURST: All right.

CHAIRMAN DeVRIES: Mr. Ostrow.

MR. OSTROW: I would like to ask a question before you vote on it. And I want to preface it by saying I am for civil service. I helped Governor Murphy put it in and get it going in '37, and I have no quarrel with the benefits of civil service for the employees of the state. My question is, taking for example the University of Michigan, last year I think we paid $35 million in support of the University of Michigan. Why shouldn't the janitor at the University of Michigan — I am speaking of the nonteaching employees; we don't want to influence the teaching there — have the same job security and the same benefits of civil service as a janitor in the state capitol?

CHAIRMAN DeVRIES: Mr. Ostrow, are you addressing that question to the Chair, Mr. Durst, or Dr. Pollock?

MR. OSTROW: Anybody that wants to answer it. I have been trying to get the answer since 1937. (laughter)

MR. DURST: I don't know. Maybe Dr. Pollock can give a better answer, Mr. Ostrow, but I would say that as it presently stands, there is no school of higher education operated by the state of Michigan which has its employees under civil service. All of them do have, to my knowledge, separate merit systems of their own. Certainly the University of Michigan does and I am sure Michigan State does. None of these people from any of these institutions have made any request whatsoever to our committee to be included, and as far as we can determine, they are perfectly happy under the systems they have now.

MR. OSTROW: That may or may not be. I want to know why they are exempted.

MR. DURST: Dr. Hannah, do you want to make a comment?

MR. J. A. HANNAH: I would only say that when you are talking about nonteaching employees, a university has a great many employees that are technically trained. The only folks that we regard as teaching employees are those that come in the ranks of professors, associate professors, assistant professors or instructors. There are a great many technical employees that are research assistants, technicians of all kinds in the sciences and elsewhere, and it would certainly hamper us in our operations if we were required to have these people operate through the state civil service system.

The response that you have made with reference to the University of Michigan, Michigan State and Wayne — and I assume it is true at the other institutions — is we do have a classified service, and I think that our people feel that those in the classified service are at least as well off as they are under state civil service. They have many opportunities that those

under the state civil service system do not get. There has been no demand at all on the part of our employees for it. I am sure they are better off as they are taken care of now. They have all the protection and job security they would have under the state civil service commission.

MR. OSTROW: May I ask you, Dr. Hannah, how permanent is that security that they have? Do they have a right to it as they do under this constitution?

MR. J. A. HANNAH: Well, I think they have all of the rights. I know of no personnel policies that are more secure or deeply entrenched than those in universities, often to the embarrassment of the institutions themselves.

CHAIRMAN DeVRIES: Dr. Pollock.

MR. POLLOCK: Mr. Chairman, I can only add the historical reason when the amendment was originally drafted. We took, of course, the best advice and experience that existed in the country, and we were persuaded at that time that all institutions of higher learning should be exempted entirely from the operation of civil sevice. This has continued to be the policy throughout the country. And, as Mr. Durst has indicated, the experience under it has been entirely satisfactory. There has been no request from these institutions to include any of their employees under civil service.

MR. OSTROW: What would be the objection to including them?

MR. POLLOCK: I think it would be the question of running employees outside of Lansing from Lansing.

MR. OSTROW: Don't you have that with the state institutions all over the state of Michigan?

MR. POLLOCK: Yes, but again I have said educational institutions have always been considered to be in a different category, and the preservation of their independence is always considered to be a very great necessity.

MR. OSTROW: You mean a janitor has to be independent or a clerk has to be independent?

MR. POLLOCK: No, no, obviously not, but those employees are already taken care of and managed properly by their own systems in each one of these institutions.

CHAIRMAN DeVRIES: Gentlemen, may I suggest that you submit your remarks through the Chair. The question is on the amendment of the committee on executive branch and offered by Mr. Durst. Is there any further discussion on the amendment? If not, all those in favor will say aye. Those opposed, no.

The amendment is adopted. The secretary will read.

MR. DURST: He read the whole paragraph. Do you wish to proceed then, Mr. Chairman?

CHAIRMAN DeVRIES: Do you wish to discuss the paragraph further before we pass on that?

MR. DURST: I take it what you want to do is go to the next committee amendment. Is that right?

CHAIRMAN DeVRIES: It was your suggestion, Mr. Durst, or it was the Chair's ruling, that we take this paragraph by paragraph and approve each paragraph.

MR. DURST: Right. Well, we have no further amendments. Do you wish to have the rest of this paragraph explained at this time?

CHAIRMAN DeVRIES: I will ask if there are any further amendments to be made to the first paragraph of Committee Proposal 22.

MR. DURST: You don't want the changes explained?

CHAIRMAN DeVRIES: We just adopted the amendment you offered to the first paragraph, Mr. Durst.

MR. DURST: What about the rest of the substantive changes in the paragraph? Do you wish to adopt them without discussion?

CHAIRMAN DeVRIES: You want to explain the committee's position on the rest of the paragraph; is that correct?

Mr. Martin.

MR. MARTIN: Mr. Chairman, that is what I would like to have done, if Mr. Durst would go ahead and explain the position, the reasons for these later changes in the rest of the paragraph, then if there are other amendments to the paragraph, we will take them and act on them.

MR. DURST: Is that agreeable, Mr. Chairman?

CHAIRMAN DeVRIES: Yes, sir.

MR. DURST: We have already discussed Mr. Ostrow's question, the second change made there. We have eliminated state institutions recognized by the state constitution, so it will cover any state higher educational institution regardless of whether it is recognized in the constitution or not.

Now, we have made a change, changing "military and naval forces" to "armed forces." This is merely to accord with the language previously adopted by this committee in regard to this matter.

We have exempted 8 positions in the office of the governor. Now, no one seriously questioned, of those we came in contact with, the idea that the governor should have staff in his office which were of his own choice. In the past the constitution required, really, that these people be civil service personnel except for the 2 exempt positions. What they have done, apparently, since the adoption of civil service is make provisional appointments as the governor might suggest, and then they just never got around to giving the qualifying examination and giving the employee permanent civil service status. While we are not here to be critical of what has been done—it apparently was done with the concurrence of all parties—we do feel it is desirable to make the constitution accord with practice, and therefore we are putting a provision in specifically exempting positions in the governor's office.

Now, we picked the figure of 8 because this seems to accord with the practice of the last few years in the governor's office. This seems to be the number of personnel which he needs of this policy type. Now, he can have, of course, civil service personnel, if he wants typists and other personnel of that sort, above and beyond the exemption.

We did consider a provision which would read that all positions in the governor's office should be exempt, and this was rejected on the ground that it opens the field up, because it is possible to put all kinds of functions in the governor's office. This has happened — not to evade civil service — in New York under their reorganization. When they have a new agency, they put it in the governor's office, and the executive office of the governor became a very large establishment. And this could happen here, either inadvertently or specifically to escape the provisions of civil service. This is why the language is so specific. Now, the exemptions that you have there, as I say, must be considered in light of impending provisions requiring executive reorganization.

The first question we had is, should there be 2 exempt positions which cannot be classified? As I am sure most of you are aware, at the present time civil service has classified several employees who were in previously exempt positions, just as they have classified some chief executive officers of agencies. There have been requests from departments to classify more and more of these people, so that you have some departments operating today that have no employees exempt from civil service. Now, certainly, if you keep these positions exempt, you have the advantage of always having positions which are sensitive to policy changes, whether in the same administration or a change of administration. The weight against this is the argument that some agencies just do not need unclassified personnel. This was the argument made to us by Mr. Lock in regard to his department of revenue. Just briefly, he claimed that the department of revenue is purely an administrative agency. He went on to say that they had no policy making functions in his department. He said some proposals have been made to enlarge the number of unclassified positions in various state departments.

> Insofar as the department of revenue is concerned, I wish to voice my objections to these proposals. If you would take 5, 7 or 10 employees of the department of revenue occupying the key positions and authorize their appointments to be made on partisan considerations, it would completely wreck the morale of the department as it now exists.

He further said:

> It should likewise be pointed out that there is no place for political determinations in the revenue department

administering state taxes. There should never be a situation where a change in the administration of state government would result in the substitution of a hard policy or a soft policy in tax determinations or vice versa.

Now, this is one consideration. The other was that there are some departments whose deputies and top administrators are really technical personnel such as in the department of mental health where often the top deputy will be a very qualified psychiatrist. These people are difficult to obtain on a political basis in a nontenure job. So there is some argument on the other side that it should not always be mandatory that you have these 2 exempt positions at the top.

So what we have tried to do here is to give it flexibility, trying to preserve the idea of being able to change with policy changes but still be able to give job security to the top administrators if necessary, so that the way this system works is that all the personnel in the department, other than the department head, may be classified under civil service but the top administrator may, if he so desires, bring in 2 exempt positions whenever he should find it necessary. Now, we have required mandatorily that one of these positions be policy making. This, of course, is an attempt to keep this exempt position for important positions. We have left the other one open because we feel it is desirable that the administrator have the right, if he so desires, to have a confidential secretary. We realize this could be subject to some abuse, but it seemed under all the circumstances to be desirable.

Now, the last provision there of the exemption section is an attempt to give some flexibility. There was a great deal of testimony that to require, rigidly, 2 exemptions for each department does not meet the needs of the various departments of the state; that there are many departments which have a need for more exempt personnel, and some less.

So what we have done is allow for the appointment of 3 additional policy making positions on exempt basis and left the determination of when this should be established to the civil service commission. We could have given this power to the governor; we could give it to the legislature; we could give it to the department heads. Frankly, the present governor said he wasn't interested in having it, and by the same token the present civil service commission said they were not interested in having this power. But in the total decision of the committee, it seemed preferable that this power be given to this commission which is normally charged with the responsibilities in this area.

Now, how we arrived at the figure of 3. There has been some criticism here of people just arriving at a consensus view such as on the exemption section that the committee on legislative powers brought forth. There is no book you can turn to and say, "What shall this figure be?" We did have testimony from Commissioner Mackie that 5 or 6 exempt positions were all that he felt were necessary in his department. He has perhaps the department which is not necessarily the largest but the one that is mentioned most often as needing more exempt personnel. So this provision would give him 5, and it was felt to be sufficient under all circumstances.

CHAIRMAN DeVRIES: Mr. Wanger.

MR. WANGER: Mr. Chairman and members of the committee, I have a question of the committee about the first paragraph regarding the words "chief executive officer." First of all, I have looked at it and I have studied it and I have looked at the present language and I am a little bit confused as to what the words chief executive officer mean precisely. The committee report on page 313 of the journal talks about chief administrative officers. It goes through in that regard. It would seem that administrative is a little bit more clear, and I would like to have that clarified.

And then the second question I have in this regard is simply that if the intent and perhaps the meaning of this word executive officer is that of administrative officer, I would like to ask isn't that exactly the type of position that we want to keep classified? The professional administrator who from years of experience and work knows the workings of one of these departments so that he can be the professional key man; and the appointee, the head of the department, can be the policy or political key man in the running of these departments. That is the second question, and I yield for the answer.

CHAIRMAN DeVRIES: Mr. Durst.

MR. DURST: Mr. Wanger, I would say that this chief executive officer first of all applies only where you have a board or commission, and it is the feeling of the committee that where you have this situation, the chief executive officer really is the head of the department. While he doesn't have control of the department, I suppose, he still is making a great many policy decisions, and we felt he should be exempt and subject to being appointed by that board as it saw fit without being classified in civil service.

As to your suggestion that it read chief administrative officer rather than chief executive officer, the words, I think, to the committee mean the same, and if this whole committee feels the word administrative is better than executive we would have no objection.

CHAIRMAN DeVRIES: Mr. Wanger.

MR. WANGER: I was wondering if in some cases the chief administrative officer or executive, as one would call him, actually is the head of the department, actually does make policy decisions. If this is the case, is this any failure on his part, or is it not perhaps the fact that the man who was politically appointed as head of the department is inadequate?

MR. DURST: If I may, Mr. Chairman, it is not a man appointed head of the department; it is a commission. Now, some commissions are very strong. Some commissions are not so strong. But I submit that when you have a commission, that ultimately the chief administrative or executive officer, whatever you want to call him, will have a great deal of responsibility, and he should be exempt. This, at least, is the committee's recommendation.

CHAIRMAN DeVRIES: Mr. Hutchinson.

MR. HUTCHINSON: Mr. Chairman, following along on this same problem, I would like to raise this aspect of it. Mr. Durst's reference to Mr. Lock reminded me of a problem. I think that Mr. Lock is under civil service as commissioner of revenue. Mr. Maxey, as the chief executive or administrative officer of the social welfare department, is under civil service. Now, I think they are both there by legislative act. My question, which I think is an aspect of this same question Mr. Wanger raises, is, would it be within the power of the legislature to place under civil service the head of a department such as the department of revenue, or the chief executive officer of a principal department, such as I assume the department of social welfare would continue to be?

CHAIRMAN DeVRIES: Mr. Martin.

MR. MARTIN: Mr. Chairman, I think that under this provision it would not be in the hands of the legislature to make such determination. Mr. Lock and Mr. Maxey are there under different provisions. As I understand it, I think Mr. Lock is there under a legislative act, although the statute or the constitution says that the head of a department shall be exempt. I don't know what the legal status of the legislative act in that case would be, but I believe Mr. Maxey is there by direct classification by the civil service commission on request of the social welfare commission.

CHAIRMAN DeVRIES: Mr. Hutchinson.

MR. HUTCHINSON: Mr. Chairman, to respond to the answer, do you think that Mr. Maxey is there by decision of the social welfare commission?

MR. MARTIN: No, by request of the social welfare commission to the civil service commission.

MR. HUTCHINSON: My recollection of it was that he was there pursuant to legislative act just like Mr. Lock is, but assuming that that is the true situation, ought it not be within the power of the legislature at its own discretion, to place the heads of some departments under civil service? Certainly in both cases illustrated there is a wealth of good reasons why both of those officers should have the protection of civil service. It gives them a certain independence in fields which otherwise might be subjected to a great deal of, shall we just bluntly call it, pressure.

MR. MARTIN: It seems to me that they should either all be there or perhaps none of them should be there. The committee made a decision one way rather than the other. But if the legislature is empowered to place various jobs under civil service, I think you would find all kinds of pressures and perhaps jockeying to bring about the appointment of other chief executive officers of other boards and commissions to a civil service status.

CHAIRMAN DeVRIES: Delegate Durst, do you wish to speak to this point?

MR. DURST: Yes, I do, Mr. Chairman. I would like to say, Mr. Hutchinson, I disagree just a little bit with Mr. Martin, if I may. Mr. Lock is not under civil service. He is appointed by the civil service commission pursuant to a legislative act. Now, maybe it amounts to the same thing, but he is not covered by this constitutional provision. It has been an act of the legislature which says the civil service commission shall appoint him and they shall set his pay. I don't know whether they set his pay or not, but at least that is how he gets under civil service. He is not appointed by the governor. Mr. Maxey, of course, has been classified by the commission at the agency's request. Mr. Maxey's job, under this provision, if that is a principal department of the state government, would not be subject to being classified under civil service, but I still assume that it would be possible for the legislature to pass an act, as they have in Mr. Lock's case, to set up their own little civil service, if you will, in regard to a department head.

CHAIRMAN DeVRIES: Mr. Hutchinson.

MR. HUTCHINSON: Mr. Chairman, in response to that, may I say I would sincerely hope that it would be within the power of the legislature to do that in its wisdom, and this is an interesting twist. The presentation and the history and everything indicates that everybody would assume the legislature was very antagonistic to placing anybody under civil service, so that if the legislature finally was induced to do it, why, there certainly would be very clear and cogent reasons.

As a matter of fact, I wouldn't agree with the premise that the legislature is antagonistic to civil service, certainly not in these days. I won't go into that further because it isn't precisely on the point before us. But I wanted to put this in the record — and I hope somehow or other to clear it up — that this would not be construed as a limitation upon the legislature to increase the scope of civil service if it saw fit.

CHAIRMAN DeVRIES: Mr. Martin.

MR. MARTIN: Well, Mr. Chairman, I am not sure that we would object to that interpretation as long as it wasn't an interpretation put on the record giving the legislature authority to do away with any of these jobs. If it is a matter of adding to civil service personnel, I see no strong objection to it.

CHAIRMAN DeVRIES: Mr. Wanger.

MR. WANGER: Mr. Chairman, members of the committee, I am a little bit confused by Mr. Martin's reply to Mr. Hutchinson's question. If, say, the department of revenue, for example, or some other large department, was made one of the principal departments, would the legislature have any room to act in that field with regard to its chief executive or chief administrative officer if the proposal is adopted as you now propose it? I don't see where the legislature could act in that particular department.

CHAIRMAN DeVRIES: Mr. Martin.

MR. MARTIN: Well, Mr. Chairman, Mr. Wanger, that was Mr. Hutchinson's interpretation of it. I said I was willing to let that stand as his interpretation. If there is a question on that point, my own interpretation is that it does not permit legislative action to either enlarge or contract the civil service positions.

CHAIRMAN DeVRIES: Mr. Hodges.

MR. HODGES: If I am clear on what Mr. Hutchinson was referring to, I think I would take issue with it and support the committee, because I think it would be really opening the door if every time you had a change of administration, the legislature could then blanket under civil service these top positions and top department heads. I think this would be defeating the whole purpose of allowing some flexibility for policy making decisions at the top.

CHAIRMAN DeVRIES: Mr. Iverson.

MR. IVERSON: Mr. Chairman, I have 3 questions. I am not sure whether Mr. Martin or Mr. Durst wants to answer them. Wouldn't the language which the committee proposes to place in here "and the chief executive officer thereof" in effect take Mr. Maxey out from under civil service and make him a noncivil service employee?

CHAIRMAN DeVRIES: Mr. Martin.

MR. MARTIN: Mr. Chairman, Mr. Iverson, I think that this is correct. The committee did not make its decision on the question of whether one or another employee would be in or out. We tried to make a decision based upon the total picture, and we were influenced by the fact that in a number of cases boards and commissions had moved to bring their executive officers under civil service. The commission has classified them in certain cases. The result has then been that there were no exempt positions in the department, and that a new board or commission which might not want this particular executive officer had no power or authority to select anyone else. So we did not make our decision with regard to any particular person holding a particular job because we felt we have a broader problem than that.

MR. IVERSON: Mr. Chairman, my second question is, am I right in assuming that placing the word "state" before "educational institutions" and eliminating the language "recognized by the state constitution" would have the effect of removing from protection of the civil service all employees of all state colleges and universities, many of which now are covered by civil service?

MR. MARTIN: I will have to defer to Dr. Pollock on that one as to whether the other institutions of higher learning are in fact covered by state civil service.

CHAIRMAN DeVRIES: Mr. Martin yields to Dr. Pollock.

MR. POLLOCK: Mr. Chairman, I think that Mr. Nisbet could give the exact answer on that from his own experience.

CHAIRMAN DeVRIES: Dr. Pollock yields to Mr. Nisbet.

MR. NISBET: I will defer to Dr. Hannah. I think he knows the answer better than I do. (laughter)

CHAIRMAN DeVRIES: Mr. Nisbet yields to Dr. Hannah.

MR. J. A. HANNAH: This looks like we are handing a hot potato from one to another, but as a matter of fact, I do not know, except for the brief constitutional provision. Mr. Anspach, former president of one that isn't constitutional, could tell us exactly.

CHAIRMAN DeVRIES: Dr. Hannah yields to Dr. Anspach. (laughter)

MR. ANSPACH: This is getting into the game of animals. The youngster went to school and the teacher said — (laughter) — the teacher said, "What games do you play at home?" He said, "Dad and mother play a game of animals." The teacher said, "What is that?" "Well," he said, "he passes the buck to mother and he gets her goat." (laughter)

So this is passing the buck back and forth. The answer to it is: just before I came into this state in 1939, I believe it was, the institutions other than the 3 major universities were exempt from civil service. Now, how that was done and so forth I do not have the background to explain, but at the present time the educational institutions of the state are not under civil service. They were prior to '39. What happened in '39 I will have to defer, I think, to my colleague from Michigan State. I can't give the background.

But when I came to this state, the institutions of higher education in the state were exempt from civil service. Each institution, as far as I know, has its own code adopted by its board. For instance, President Nisbet was president of the board of education for a period of 18 years. Sixteen of those years we worked together. During that time the 4 colleges — universities now — under the control of the state board of education set up a complete system of classifications, salary schedule, method of appointment, method of dismissal, right of appeal. This was done in those days because we had some difficulty in the matter of defining positions; we were always referring back to the civil service. As a result, Mr. Reid, whom many of you know, who was quite active in the AFL at that

time, was one person I conferred with as well as others. He suggested that the colleges should draw up a code to more or less parallel civil service, which was adopted by the board. Mr. Nisbet was president of the board. And the colleges operate under that code now.

CHAIRMAN DeVRIES: Have the pedagogues satisfactorily answered your question, Mr. Iverson?

MR. IVERSON: I think so. I assume then that the committee is clarifying a situation which has gone on for a number of years.

CHAIRMAN DeVRIES: That is correct.

MR. IVERSON: Now, my third and last question, Mr. Chairman, is on the last amendment, which apparently adds 3 additional exempt positions to each department which I assume exempts them from civil service, the department head and 5 additional ones. Is this proposed in light of the fact that this convention is perhaps going to adopt a proposal which cuts the number of departments to, say, 20 or thereabouts, and if it does not cut it to 20, do you still propose to exempt 5 or 6 employees of 120 or 130 departments?

CHAIRMAN DeVRIES: Mr. Martin.

MR. MARTIN: Mr. Chairman, Mr. Iverson has stated the proposition correctly. It is based on the idea of a consolidation which has been approved in our committee and which will be submitted to the constitutional convention. We couldn't decide all the questions at once. If it develops that that proposal is not adopted, then the committee will subsequently offer an amendment to delete the 3 additional positions and leave it as it is now.

CHAIRMAN DeVRIES: Mr. King.

MR. KING: Mr. Chairman and fellow delegates, as a member of the committee on executive branch and as a member of the subcommittee which worked on this particular problem, the subcommittee concerning civil service, I would like to respond to the remarks by Senator Hutchinson by pointing out that it is my understanding as a member of this subcommittee that the first sentence on page 314 expresses the position of the committee, and that is, "This language will permanently prevent such classification and reserve these positions for political appointment without tenure." Now, with regard to Mr. Lock specifically, it is not my understanding that he has civil service status. He was selected by civil service, I believe, at the request of the legislature, but he does not have civil service status. I want to make it very clear that I don't want the legislature or anyone else to interfere with these 2 exempt positions along with the head of the department or the executive director of the board or commission. That is my position, and if Mr. Martin is in disagreement with that, I would like the record to so show.

CHAIRMAN DeVRIES: Mr. Martin.

MR. MARTIN: Mr. Chairman, I might add that by the phrasing now prepared by the committee, a board or commission could not request an executive officer be made nonexempt.

CHAIRMAN DeVRIES: Mr. Downs.

MR. DOWNS: Mr. Chairman and delegates, Mr. King made the comments I was going to make, so I will try to be extremely brief. I believe that in the committee report you will find that the sentence, before the one Mr. King read on page 313, says:

> Because of an ambiguity in the constitution, the civil service commission classified the chief administrative officers of 9 boards or commissions at the request of these boards or commissions.

And then the language that follows is that that Mr. King read to the committee. My construction of this is that the committee strengthened what I think was the original intent of the civil service amendment by the language that was added.

I think then we get into a very basic concept of government. We did the other day readopt the principle of separation of powers. That principle provides that the legislature adopt the laws and that the governor be the chief executive officer for their administration. And I submit that to hold the governor responsible for the sound administration of government, he should have the power to make these key appointments, and that the other operation of government is properly done through a career civil service. This language, which Mr. King read, seems to me to point out very clearly that the intent is that the position that is the chief executive or administrative head, or the chief administrative officer—or the chief executive officer—as spelled out in line 7, provides that the governor would have the responsibility for making that appointment, and that that power of the governor could not be taken away by the legislative branch. Thank you.

CHAIRMAN DeVRIES: Mr. Wanger.

MR. WANGER: I would like to ask a question, Mr. Chairman. Mr. Chairman and members of the committee, although we hear so much about the "ripper bill" of 1939 and consider the legislature in that regard, I think we all, upon reflection, fully realize that the temptation for spoils is not abolished, and furthermore that that temptation applies with full force to the executive branch, as it does to the legislative branch as a general rule. And I ask, suppose we get a situation where the admittedly political appointee, the chief administrative officer of the section, is not well qualified to carry out the task of actually running that particular department. That seems to be the premise on which it is based. What will that do to the morale of the people in the department who are trying to work their way up to the top, and what will it do to the efficiency of the administration of state government? This is a possibility. We don't know what is going to happen in the future, but we do know that this makes them political appointees, and if there are 20 departments which are headed by boards or commissions, whether salaried or nonsalaried, this will mean 20 political appointees which can be changed with every election, and these will be the men who will be actually controlling the real work and administration of these departments.

CHAIRMAN DeVRIES: Are you addressing your question to Mr. Martin, Delegate Wanger?

MR. WANGER: Mr. Martin or Mr. Durst.

CHAIRMAN DeVRIES: Mr. Martin.

MR. MARTIN: Mr. Wanger, these are important policy making men. In spite of the fact that they have a board or commission over them, we all realize that they do make policy, that they are very close to the top of the governmental operation, and that their policy is presumably expected to reflect the views of the administrative branch. At the present time you have this possibility for 120 of these boards and commissions, but that is precisely the idea: that at the very top where you have policy making positions, you do not apply the civil service requirement.

CHAIRMAN DeVRIES: Does this answer the gentleman's inquiry?

MR. WANGER: No. You mentioned policy making positions. Well, the report speaks entirely of administrative officers, administrative aspects of this. It is printed on page 313 of the journal. And my presumption was that it is possible in government to make some distinction, at least a rough one, between policy and administration, and that the people who would now be made political appointees would actually be the chief administrators of this particular department and would require in many cases great expertise in the field.

CHAIRMAN DeVRIES: Dr. Hannah.

MR. J. A. HANNAH: Mr. Chairman, I have noticed that for the past several days when we get into committee of the whole, we go on to extended debate for several hours and other matters that are of considerable importance. It has been my observation by watching the delegates that we get tired and possibly we don't give quite as good attention as we might just because we are tired. I raise the question with the Chair as to whether or not it is possible to get a 5 or a 10 minute recess. They tell me that is not within the rules, but it is appropriate to move that we rise for a period of 10 minutes, and that is what I am proposing now, sir, that we rise for a recess of 10 minutes, then to return to the business before us, and I would hope that this may become a custom. I think we will get much better work done and have much better attention.

CHAIRMAN DeVRIES: Delegate Hannah moves that the committee of the whole rise for a 10 minute recess. The Chair will rule that that motion is in order. All those in favor of a 10 minute recess will say aye. Those opposed, no.

We are recessed for 10 minutes, and we will reconvene at 4:00 o'clock.

MR. HUTCHINSON: Point of order, Mr. Chairman. You have to go back to the president of the convention. Only the convention can recess.

CHAIRMAN DeVRIES: Without objection the committee will rise. It is so ordered.

[Whereupon, the committee of the whole having risen, President Nisbet resumed the Chair.]

PRESIDENT NISBET: Let me have your attention for just a moment, please. This matter was proposed by Dr. Hannah a few days ago. We have a committee now working on a procedure to do the very thing that he is proposing. That committee will report, and we think it can be done in an orderly and a systematic way without having to return to the convention itself, so if you would bear with us, we will have a report on that by Monday night.

Mr. Hutchinson.

MR. HUTCHINSON: Mr. President, I move that the report of the committee of the whole be temporarily dispensed with, and that the convention stand in recess for 10 minutes.

PRESIDENT NISBET: The question is on the motion of Mr. Hutchinson. All in favor say aye. Opposed, no.

The motion prevails and we are recessed until 4.00 o'clock.

[Whereupon, at 3:50 o'clock p.m., the convention recessed; and, at 4:00 o'clock p.m., reconvened.]

The convention will please come to order.

I hope that we will have Dr. Hannah's suggestions smoothed out for you so it will be orderly next week, and I am sure it will.

Mr. DeVries.

MR. DeVRIES: Mr. President, I move that the convention now resolve itself into committee of the whole to consider items on the **general orders** calendar.

PRESIDENT NISBET: The question is on the motion of Mr. DeVries. Those in favor say aye. Those opposed, no.

The motion prevails.

[Whereupon, Mr. DeVries assumed the Chair to preside as chairman of the **committee of the whole.**]

CHAIRMAN DeVRIES: The committee will be in order. We are considering the first paragraph of **Committee Proposal 22.** The Chair will recognize Delegate Balcer from Detroit.

MR. BALCER: Mr. Chairman, this is a question for Mr. Martin. Under the present constitution, is there any provision made for war veterans or widows of war veterans?

CHAIRMAN DeVRIES: Mr. Martin.

MR. MARTIN: Mr. Chairman, there is no special provision for veterans or war veterans in the constitution now, in this section, or in the amendments, Mr. Balcer. The commission, I believe, has certain rules with regard to preferences on examinations but this is a matter of the commission rules and is not in the constitution.

MR. BALCER: It is not in the statute either?

MR. MARTIN: I don't know whether that is statutory or not, but I believe it is the commission rule or regulation.

CHAIRMAN DeVRIES: Dr. Pollock, did you wish to address yourself to that question?

MR. POLLOCK: Yes. It is a commission regulation.

MR. BALCER: Thank you, Dr. Pollock.

CHAIRMAN DeVRIES: Mr. Hutchinson.

MR. HUTCHINSON: Mr. Chairman, I wanted to raise another question in regard to this. As I put 2 provisions together, one where we have 8 exemptions in the governor's office and another provision where it says that there may be 3 additional exemptions at the will of civil service, I take it then that in practical language that will mean that there will be 11 exempt positions in the governor's office. Am I interpreting it right? And I would say that is perfectly agreeable with me, but I think that really what we have here is a total of 11 instead of a total of 8.

CHAIRMAN DeVRIES: Mr. Martin.

MR. MARTIN: Mr. Chairman, it is not intended so. It is intended to provide only 8 positions in the governor's office. Of course, the governor himself is exempt, but these are not intended to be added together. If it is not clear, we may have to make that clear.

MR. HUTCHINSON: Well, all right. Mr. Chairman, it just seems obvious to me that they would consider the office of the governor as a department, and it says that 3 additional positions of a policy making nature may be exempted within each department as determined to be necessary by the civil service commission. The governor will appoint the civil service commission. I doubt very much that there would be any question about it. If the governor wanted those 3 additional, he would get them. As I say, I think it is all right so far as I am concerned. I am just raising the point on the record to get the chairman's interpretation of it. He says that he thinks it means only 8. All right.

CHAIRMAN DeVRIES: Mr. Higgs.

MR. HIGGS: Mr. Chairman, I have a question for any member of the committee. I am not certain it can be answered at this time in view of the fact that they are contemplating another section reducing the overall number of boards, commissions and agencies, but my question has to do with line 12, "when requested by the department head," and I am wondering whether that request is made by the chief executive officer or the board and commission heading the department, or by the head of the department provided for under line 6.

CHAIRMAN DeVRIES: Mr. Martin.

MR. MARTIN: Mr. Chairman, the intention of the committee is that this should be the head of the department whether it is a single head or whether it is the board or commission which heads the department.

MR. HIGGS: That would not apply, then, to the chief executive officer, is that correct?

MR. MARTIN: No, it would not.

MR. HIGGS: Thank you.

CHAIRMAN DeVRIES: Mr. King.

MR. KING: Mr. Chairman and fellow delegates, I would like to call to your attention what might be construed to be ambiguous in the report and suggest that it be amended. At the bottom of page 313 it says:

> Because of an ambiguity in the constitution, the civil service commission classified the chief administrative officers of 9 boards or commissions at the request of these boards or commissions.

Then it goes on to say what I quoted before, that this language would permanently prevent such classification.

It has been called to my attention that this might be misleading, and I would suggest that before the first sentence on the top of page 314, we add the words: "Should these 9 boards and commissions become principal departments. . . . This language will permanently prevent such classification and reserve these positions for political appointment without tenure." In other words, this would be true only in the event that these 9 boards or commissions became 9 of the 20, if that is what we decide upon as principal departments.

CHAIRMAN DeVRIES: Mr. King, the secretary informs me that a motion to correct the journal is not in order in committee of the whole.

Mr. Sterrett.

MR. STERRETT: Mr. Chairman and delegates, with regard to Mr. Hutchinson's comment of the possibility of 11 exempted positions in the governor's office, I would like to go further than Chairman Martin's statement and point out that in the verbiage of the proposal, we specifically state "the office of governor"; there is the word "and" which separates "the office of governor" and the other departments where we say "within each depart-

ment." If we wanted to specifically point out each department in this — and this is for the intent and for the records — we would name other departments. However, because there are 8 exempt positions and more than other departments, we have specifically pointed out the governor's office.

CHAIRMAN DeVRIES: Mr. Hatch.

MR. HATCH: Mr. Chairman, also in response to Delegate Hutchinson's question as to the possibility of there being 11 exempt positions in the office of the governor, in connection with the proposal which the committee on the executive branch has considered concerning reducing the number of boards, agencies and commissions to 20, there is excepted from the 20 limitation the offices of the governor and the lieutenant governor, so they would not be considered a department. I think this is further indication that the governor's office would be limited to 8.

CHAIRMAN DeVRIES: Are there any further amendments to paragraph 1, lines 5 through 16 in Committee Proposal 22?

SECRETARY CHASE: None on file, Mr. Chairman.

CHAIRMAN DeVRIES: If not, we will move on to paragraph 2. The secretary will read.

SECRETARY CHASE: Second paragraph, line 17 through 22, is as follows:

[Paragraph 2 of Committee Proposal 22 was again read by the secretary. For text, see above, page 637.]

CHAIRMAN DeVRIES: Are there any amendments to this paragraph? Mr. Yeager.

MR. YEAGER: Mr. Chairman, the secretary has an amendment to be read.

SECRETARY CHASE: Mr. Yeager offers the following amendment to this paragraph:

1. Amend page 1, line 19, after "governor" by inserting a comma and "upon recommendation of the respective political parties,"; so the language will read:

> There is hereby created a nonsalaried civil service commission to consist of 4 persons, not more than 2 of whom shall be members of the same political party, appointed by the governor, upon recommendation of the respective political parties, for 8 year, overlapping terms.

CHAIRMAN DeVRIES: Mr. Yeager.

MR. YEAGER: Mr. Chairman, the committee report indicates, I think fairly clearly, that this is a bipartisan commission. Now, I believe a bipartisan commission is certainly the right approach to this, and it has been quite effective for quite a long time, but in the state of Michigan we do not have a closed primary and we do not have a good way of identifying political parties, and I don't feel that it is right that a Republican governor, for example, should be able to choose accurately a Democrat for this position or vice versa. I think if we are going to maintain the bipartisan idea, that we should permit the political parties to at least have some recommendation relating to this particular department or commission.

CHAIRMAN DeVRIES: Mr. Durst.

MR. DURST: Mr. Chairman, I would say that the committee on the executive branch did consider, in regard to this proposal, requiring that there be 2 Republicans and 2 Democrats, which I take it is impliedly meant by the language. We rejected this type of a specific provision because it is obvious that what has been intended in the civil service commission is a high quality type of administration as far removed from politics as possible, although it does not necessarily completely approach the problem from a nonpolitical point of view, but to make this a political appointment, as Mr. Yeager's amendment suggests, I think would lower the quality and the type of commission that we have had in the past which has worked so well, and I think the committee on executive branch would oppose the amendment as Mr. Yeager has suggested.

CHAIRMAN DeVRIES: Mr. Hodges.

MR. HODGES: In opposition to the amendment, we have had Republican governors and Democratic governors under this provision making appointments. We have had no trouble. The system has worked very well since 1939. I move that we support the committee report.

CHAIRMAN DeVRIES: Mr. Wanger.

MR. WANGER: Mr. Chairman, members of the committee, with respect to Mr. Yeager, I think his intention was, of course, merely to assure that it would be real Democrats and real Republicans who would be chosen so it would be very clear that it was the person of the particular political party, but I am afraid the effect of that amendment would go much farther and actually make the state central committees really a clearing house for the state civil service commission, and I suggest that this in the future could very well be the tendency, and therefore I also respectfully oppose the amendment.

CHAIRMAN DeVRIES: Mr. Martin.

MR. MARTIN: Mr. Chairman, I think that the committee would feel, if asked in regard to this amendment, that this was moving in the direction of putting the selection of these commissioners who have this very tough and difficult responsibility — really essentially taking the appointment away from the governor entirely, and I don't think that, partisan though I am, the committee would be agreeable to this kind of change.

CHAIRMAN DeVRIES: The question before the committee is the Yeager amendment. Is there any further discussion on this amendment? Dr. Pollock.

MR. POLLOCK: I merely would like to add that the method proposed by Mr. Yeager is the system used in the selection of the members of the board of state canvassers, and I just ask you to make the comparison between the civil service commission and the board of state canvassers. (laughter)

CHAIRMAN DeVRIES: Mr. Habermehl.

MR. HABERMEHL: I think the amendment posed, Mr. Chairman, by Mr. Yeager points up a real problem in this section. He states that the governor shall appoint the commission, and not more than 2 shall be members of the same political party. Since there is no way in the state of Michigan of exactly identifying people in regard to political parties, just what basis does the governor use to make that determination?

CHAIRMAN DeVRIES: Is there any further discussion on the Yeager amendment? Mr. Brake.

MR. BRAKE: Why do we talk in abstract things? For Mr. Hodges' benefit and anybody else who doesn't know it — if there is anybody else — don't you know that at one time we had a commission consisting of 2 Democrats, 1 Republican and 1 who denied that he was a member of the Republican party or any other party? And what I would like to ask of the chairman of the commitee is, why do you not make these subject to confirmation or advice and consent of the senate?

CHAIRMAN DeVRIES: Does the delegate care to answer? Mr. Martin.

MR. MARTIN: Mr. Chairman, as far as I know, there was no discussion in the committee of the question of advice and consent on the appointment of civil service commissioners. I can't tell you what the view of the committee would be because there was no discussion of the use of advice and consent. There was, however, discussion, as Mr. Durst has said, of the matter of specifically stating there should be 2 Democrats and 2 Republicans. Mr. Brake appeared before our committee and did discuss this problem of making sure that they were good Republicans and good Democrats, but we did not discuss the question of advice and consent.

CHAIRMAN DeVRIES: Mr. Hutchinson.

MR. HUTCHINSON: Mr. Chairman, I would like to just report as a matter of history, for whatever it is worth, that when Governor Williams first appointed Mr. Higgins a member of the civil service commission, he sent his nomination in to the senate. It became my duty to respectfully return the nomination to the governor with the advice that the senate didn't have that power, much as we would have liked to exercise it.

I would like to say that I had it in mind to bring up this question of advice and consent, but I am apprehensive that it would be very controversial and that perhaps it could be more reasonably argued on another section of the constitution than on this. (laughter) If the convention finally decides that the senate is going to have its proper historical function of advice and consent, and if we can figure out some way so that people will be reasonably sure that the senate will live up to its re-

sponsibility, then under those circumstances perhaps the committee on style and drafting (laughter) might be able to reconcile any inconsistency. (laughter)

CHAIRMAN DeVRIES: The question before the committee is the adoption of the Yeager amendment to line 19, paragraph 2 of the committee proposal. As many as are in favor of the amendment will say aye. Those opposed, no.

The amendment is not adopted.

SECRETARY CHASE: Mr. Downs offers the following amendment to this paragraph:

1. Amend page 1, line 17, after "a" by striking out "nonsalaried"; and after "commission" by inserting a comma and "to receive per diem compensation as provided by law,"; so the language will then read, "There is hereby created a civil service commission to receive per diem compensation as provided by law."

CHAIRMAN DeVRIES: Mr. Downs.

MR. DOWNS: Mr. Chairman, the objective of this is a very simple one and I believe almost self explanatory. In trying to look ahead for the next 40 or 50 years I think we should do everything possible to see that the people, through the governor, have the widest possible selection of people to serve on a civil service commission. I can visualize situations in the future where a person might be very desirous of serving, very well qualified, a governor wished to appoint him, but that he could not make the financial sacrifice necessary to perform these functions. The objective of this amendment is simply to say that the person could receive a per diem as established by law so that there would be a broader possible selection of people to serve on the commission. I think this is a desirable amendment and I think it is one that looks toward the future. Thank you.

CHAIRMAN DeVRIES: Mr. King.

MR. KING: Mr. Chairman, fellow delegates, I would just rise in opposition to the suggested amendment and point out that the committee did consider this, that they asked each of the present commissioners whether they thought it would be beneficial. At the present time these commissioners are granted expenses, and it was felt by the commissioners and by the committee that this would be sufficient and perhaps would be in the best interests of a noninfluenceable, perhaps I should say, commission.

I know Mr. Downs has great faith in the legislature and knows fully well that they would not conceive of the device of paying a commissioner quite a lot of money and then at a later date lowering it in order to put some pressure on him, but this too was suggested. And all in all, I think that the present system, where these people serve because they want to serve the community and not with any idea of personal gain, is perhaps the best system. I would only point out that the committee did give this point very careful consideration.

CHAIRMAN DeVRIES: The question before the committee is Mr. Downs' amendments. Mr. Hodges.

MR. HODGES: Mr. Chairman, in answer to Mr. King's point about the commissioners that are now there, it might be that they are in a good position to do this, but I think Mr. Downs' point is well taken. We should try to broaden, if at all possible, the type of people that can serve on these types of commissions.

CHAIRMAN DeVRIES: Mr. Durst.

MR. DURST: Mr. Chairman, Mr. Hodges, I might point out that it is not true that all members of the commission are necessarily at this time in a position to say they don't want compensation. Miss Robinson, who was a school teacher, I believe, for many years, was very, very emphatic, and the most emphatic of any member of the commission, that she did not feel there should be compensation for the commissioners; that this would change the entire character and image of the commission. She felt it would be detrimental to the work of the commission to provide compensation for them. She thought it was a public service and should be continued that way.

CHAIRMAN DeVRIES: Mr. Sterrett.

MR. STERRETT: Mr. Chairman, I would like to direct my statement to Mr. Hodges. Evidently he wasn't listening to Mr. King, because Mr. King did say they are reimbursed for expenses.

CHAIRMAN DeVRIES: Mr. Downs.

MR. DOWNS: I would like to say to Delegate King that if he wished to add an amendment to my amendment that the per diem could not be reduced during the term of office, I would not object. However, I do not believe that safeguard is necessary. I think that, again looking 50 years down the road, I cannot visualize that blatant an attempt. Even if it were done, the person would be no worse off than today.

The objective, I say again, is to broaden the number of citizens from whom a selection could be made for this important position. We hear much about added participation in government. I am for this. I believe that the added participation in government means that people should have a chance to participate in this vital aspect of government without having an economic roadblock due to the financial loss standing in the way. The assumption would be that the per diem would not be one where the person would make money, but rather would try to keep him in about the same financial position as though he did not have the position. That too would be left up to legislative action in the future.

CHAIRMAN DeVRIES: The question before the committee is consideration of the Downs amendment to line 17 of paragraph 2 of Committee Proposal 22.

DELEGATES: Division.

CHAIRMAN DeVRIES: As many as are in favor of the amendment will vote aye. Those opposed vote no.

SECRETARY CHASE: On the amendment the yeas are 56; the nays, 69.

CHAIRMAN DeVRIES: The amendment is not adopted.

Are there any further amendments to paragraph 2 of Committee Proposal 22?

SECRETARY CHASE: There are none on file with the secretary, Mr. Chairman.

CHAIRMAN DeVRIES: Without objection the committee will proceed to the third paragraph of the report, page 2 of the proposal, lines 1 through 18.

Mr. Durst.

MR. DURST: Mr. Chairman, are we passing these sections as we go along, or are you going to wait for the whole —

CHAIRMAN DeVRIES: That would be my understanding, Mr. Durst.

MR. DURST: You say you are passing them?

CHAIRMAN DeVRIES: Not passing them; we are moving on through the report without objection. The secretary will read the third paragraph of the proposal on page 2.

SECRETARY CHASE: The next paragraph on page 2, lines 1 through 18:

[The third paragraph was read by the secretary. For text, see above, page 637.]

CHAIRMAN DeVRIES: Mr. Durst, for the committee's explanation of this paragraph.

MR. DURST: Mr. Chairman, we have a minority report here. What is the practice; to present that as an amendment first?

CHAIRMAN DeVRIES: The committee amendments will come first, and then the minority report as an amendment to the body of the proposal.

MR. DURST: All right. We have one amendment to this section then, if the secretary would read.

SECRETARY CHASE: Mr. Durst, on behalf of the committee on executive branch, offers the following amendment:

1. Amend page 2, line 13, after "the" by striking out "executive" and inserting "appointing authorities"; so the language will read, "The appointing authorities may create or abolish positions for reasons of administrative efficiency, . . ."

CHAIRMAN DeVRIES: Mr. Durst on the amendment.

MR. DURST: All the amendment does, Mr. Chairman, is make clear what we mean when we say "The executive." Some question was raised. It was our intention to include the whole

executive department. By changing the words to "appointing authorities," I think we clarify the point without any question.

CHAIRMAN DeVRIES: The question before the committee is the committee amendment, paragraph, 3 line 13. As many as are in favor of the amendment will vote aye. Those opposed will vote no.

The amendment is adopted.

Mr. Durst, do you wish to make a further explanation of this paragraph? Are there any further amendments to paragraph 3 of the committee proposal?

SECRETARY CHASE: Pursuant to their minority report, Messrs. Hatch, Shackleton and Shaffer offer the following amendment which is the text of the minority report:

1. Amend page 2, line 7, after "service.", by inserting "Increases in rates of compensation in the state civil service shall be proposed by the commission and will become effective unless rejected, modified, or reduced by 2/3 vote of the members elect of both houses of the legislature within 60 days after submission of such proposed increases to the legislature. No increases in rates of compensation shall take effect until the first day of the fiscal year following submission of such proposed increases to the legislature. Such proposed increases must be submitted to the legislature as part of the governor's budget for a fiscal year in order to be effective on the first day of such fiscal year. The legislature may not reduce rates of compensation below those in effect at the time of the submission of a proposed increase.".

CHAIRMAN DeVRIES: The question before the committee is the minority report amendment. Mr. Hatch.

MR. HATCH: Mr. Chairman and members of the committee, I would direct your attention to the journal on page 325, I believe it is, and you will find there printed the text of the minority report which we at this time offer as an amendment. This is the first, and I hope, very frankly, the last minority report of this convention. (laughter) And I would like to state at the outset that I hope this will not be construed as an expression of lack of faith in our committee, but rather our action should be considered merely a method of presenting our views in what we considered the most effective manner to the entire convention. In any event, I feel that I am in excellent company with Judge Shaffer and Mr. Shackleton.

First, I would like to explain briefly just what this amendment would do. As you will see, it only affects increases in rates of compensation for classified personnel. Presently, the civil service commission has the absolute power to fix rates of compensation in any amount and at any time it desires, free from legislative control or accountability.

This amendment would require several things. First of all, it would require that any proposed increases made by the civil service commission be submitted with the governor's budget. Now, this has been the practice for the past 2 or 3 years. However, we are dealing primarily here in what I would consider statutory language. There is nothing in the present constitution to require the commission to continue the practice that they followed in the past few years, or to prevent them from reverting to the practice of declaring a pay raise at any time. This would make it crystal clear that any proposed increases in rates of compensation must be submitted with the governor's budget.

Then these rates or increased rates would take effect only at the beginning of the next fiscal year. In other words, if a proposed increase were submitted with the governor's budget in January, it would not take effect until July 1 of that year. Also the rates would take effect, upon the failure of the legislature, within 60 days after submission of this recommendation, to either reject, modify or reduce the amount recommended by the commission.

The amendment gives the legislature this power to reject, modify or reduce increases in rates of compensation where there is a 2/3 vote of the members elected, if you will, in each house. In other words, in order to defeat a recommendation of the civil service commission as to pay raises, 2/3 of the senate would have to reject it, 2/3 of the house would have to reject, modify or reduce it.

Additionally, the amendment would prohibit the legislature from reducing rates of compensation in effect at the time of the submission of the commission's recommendations to the legislature. In other words, the legislature would not be given the authority, even with a 2/3 vote, of going below those rates of compensation which are in effect at the time of a proposed increase.

Now, it is sincerely believed that this proposed amendment is not a drastic one; it is not a radical one, but it is offered for the following reasons:

It is believed that no governmental unit should be free from the time tested and proven checks and balances inherent in our constitutional form of government. Since the civil service commissioners are appointed for 8 year terms, they truly are not accountable to the governor, particularly a governor of short duration. Although the legislature presently has the power to fix the total appropriation within a given agency, it has no method of controlling abuses in a salary classification which could occur in the future. In recognition of the fact that commissioners are but mere human beings and, as such, subject to error, it is felt that they should be accountable to the people for their actions, and this, I believe, is accomplished through giving the legislature a veto power. Now, for those who favor retention of this power by the civil service commission—in other words, the right to fix compensation—it should be pointed out that civil service retains the initiating power to raise rates under the proposed language. Also, as a practical proposition, the requirement of a 2/3 vote of both houses to reject, modify or reduce the commission's recommendation means that the veto power could not be exercised readily, and would undoubtedly be exercised only in the event of a real abuse by the commission.

This amendment is not offered as a means of undercutting the merit system, nor should it be construed as an attempt to return to the spoils or patronage system. I certainly agree wholeheartedly with what Mr. Durst and the chairman of our committee, Mr. Martin, have said concerning the spoils system and the patronage system which existed prior to the 1940 amendment. On the contrary, it is believed that the merit system must be maintained and that it has proven itself a valuable asset to the state. The amendment is offered in the spirit of providing accountability to the legislature and, I might add, importantly to the people by a fourth branch of our government which heretofore has not in many respects been susceptible to the normal checks and balances. It is our hope that this language would lead to greater understanding between civil service and the legislature, and ultimately mutual respect for one another, which apparently has been lacking in the past.

This, briefly, states what the amendment would do, and I would at this time like to yield the floor, Mr. Chairman, to Delegate Shackleton.

CHAIRMAN DeVRIES: Mr. Shackleton.

MR. SHACKLETON: Mr. Chairman, members of the committee, as has already been stated, the 1907-08 constitutional convention had a proposal introducing a merit system similar to the provisions of the New York constitution. The committee to which it was assigned refused to report it out and an attempt to refer it to the committee of the whole was rejected. It was felt to be a legislative matter, that it would be an "experiment", and that the convention should not "tie the hands of the legislature for 50 years."

The Michigan legislature created a civil service in 1938 through public act 346, 1937, effective January 1, 1938. In 1939, the powers of the commission were largely taken away by statutory reduction in appropriations and statutory provisions for a widespread removal of the provisions from the classified service. This tampering resulted in a proposed amendment initiated by petition in 1940 which became section 22, article VI. This article is generally conceded to be a statutory provision in our constitution which set up a civil service commission with a large degree of independence from the legislative and executive branches of our state government. The commission's powers, after much judicial litigation, impinged upon areas of activity normally associated with the executive

and legislative branches. This apparently is one reason for the extensive litigation. Numerous court decisions have construed the powers of the commission. The courts hold that the commission has absolute power to create or abolish classified positions and full authority to fix rates of compensation for those classified positions. The only control the legislature has is to control total amounts of funds to be spent for personal services. Appropriations for personal services for each department or agency cannot be detailed by the legislature to the extent that they would infringe upon the compensation fixing powers of the commission.

Only 13 states have constitutional provisions for a civil service system and for the most part are not specific and detailed.

The result of section 22 was the creation of a fourth branch of government that is not generally recognized as such, for it has powers beyond the reach of the legislative or executive branches, 2 of the 3 recognized branches or divisions of our state government, which this committee has already adopted.

All of this has been created because the people felt sure the legislature did not, might not, or would not create a satisfactory merit or civil service system and the procedure for such. Thus has been created a commission with authority which may more and more result in the tail wagging the dog, an empire within our government which is untouchable.

This is not to say Michigan's experience with civil service is all bad, but in its present entrenched position, it could result in serious consequences to the financial structure of our state and to so called empire building irrespective of over all state problems. It is essentially the only part of our government which has no checks whereas other branches and departments do have checks and balances. It has been said many times in this assembly that the constitution itself is a restrictive document. It repeatedly provides for checks in the bill of rights, legislative powers, in tax and finance, in local government, in the executive branch, and in essentially every article except section 22 of article VI.

The legislature must provide for raising funds to defray expenditures necessary to operate our state and to determine expenditures that are to be made, with one exception—salaries for classified employees—which now covers over 33,000 employees on the direct state payroll for sums in excess of $175 million.

Most people concede business conditions affect state income. Many believe state expenditures affect our economy even to deficit spending. Undeniably, taxes affect individuals and corporations. There seems to be much evidence of retirees being induced to change residence from Michigan to other states where taxes are less severe when incomes are reduced and economic reasons do not require residency in Michigan. Expenditures for new plant and equipment in Michigan since 1950 have been reduced from 8 per cent of the national total to about 6 per cent. A population increase from 1950 to 1960 of 22.8 per cent has resulted in only about 12 per cent added value through manufacture. By 1958, Michigan expenditures for new plant and equipment were 20 per cent below 1951 to produce jobs for an increased population. These 3 important indices of our economic conditions, which show sharp reduction in new plant and equipment, value added through manufacturing, and employment since 1950, showed marked reductions, all affecting personal income and the ability of both individuals and corporations to pay more and more taxes. Michigan pays more taxes than 6 comparable competing states for (1) a $1,000 added value through manufacturing; (2) per 1,000 on payrolls; (3) per $1,000 personal income from manufacturing; (4) by manufacturers per employee; and (5) by manufacturers per 1,000 production worker man hours. Of 8 competing states, taxes on businesses in Michigan are the highest by a substantial margin. If the civil service commission wishes to ignore the business climate, the economic indices, the income available from taxes which may become harder to come by, it may do so, even though already state and local taxes in Michigan exceed those of 7 competing states as well as exceeding the U. S. average on personal income. There is no effective check against this.

Thus, we find ourselves with a commission composed of 4 appointees whose decisions as to rates of compensation and classification of positions are not subject to review, except judicial review on an appeal of employees only, and cannot be reached by executive or legislative authority. The legislature must raise the money for wages as well as other expenditures. The suggested amendment, permitting the legislature by 2/3 vote of each house, would only control increases in wages, not wages as a whole, and only in a small way would give a slight check over an all powerful commission that can and may refuse to recognize the ability of the legislature to make receipts meet expenditures and in a very small way preserves the check and balance theory adopted in all other branches of our government.

CHAIRMAN DeVRIES: Mr. Wanger.

MR. WANGER: Mr. Chairman, members of the committee, I must respectfully oppose this amendment because I think the issue of whether or not we are to guarantee a strong continuing state merit civil service system is now before us. I am sure that the people in this delegation fully realize from their political experience the tremendous temptation which the opportunity for job patronage affords even the best legislator, even the best politician. Why? For the very simple reason that job patronage is a splendid reward for political assistance; and that in our society, unfortunately, public apathy often means a few able campaigners can spell the difference between political victory and defeat. That temptation can still be just as strong as it was before the civil service amendment was adopted.

We have, however, today, in our society, for better or for worse, a government which is much larger than the government which we knew 30 or 40 years ago, which has extended itself in a much more sophisticated and a more technical manner into the details of our every day life, and in all probability the size and complexity of that government will remain. That size and that problem means that today we can no longer afford to return to a spoils system. There is no question of the spoils system being reprehensible and pernicious, but today it is dangerous as never before, because political hack appointees, however good campaigners they may be, cannot adequately administer the government which we have.

Now, what would this amendment do? This amendment, as you know, would require, or make it possible for a 2/3 vote of the legislature to stop increases in the state civil service compensation. This does not mean that they can reduce them, as Mr. Hatch pointed out. It does mean, however, that they can refuse to permit them, and if inflation would continue, and if the door would be closed to future increases, we conceive very clearly a manner in which pressure could be applied to the commission or to other areas of our government to open the door to political patronage which the commission was created to close.

Mr. Hatch points out, however, that it is a 2/3 vote which is required, and that it would be very unlikely that this would happen because of the large vote requirement. I would like to point out, ladies and gentlemen, that back in 1939, under the white light of publicity, the ripper bill, house bill 253, was passed in the senate of this state by a 2/3 vote. And I suggest that when the people of this state, after the campaign to establish a civil service, were thwarted and again came back and established a civil service amendment, they wished to repudiate the principle that to the winner belongs the spoils of victory. I say let's keep that door closed today.

CHAIRMAN DeVRIES: May the Chair point out that I have the names of 6 people who were on their feet, and I will call on them in order. Delegate Sterrett.

MR. STERRETT: Mr. Chairman, delegates, as a member of the committee on executive branch, I opposed this amendment in our committee. After careful consideration and deliberation, I now would like to support this amendment in committee of the whole. I will not go further to explain why, because Mr. Hatch and Mr. Shackleton have done a very good job, in my opinion. I would like to point this out to Mr. Wanger with his theme of political patronage. My idea of political

patronage is not particularly stopping increases in salaries, but it is giving jobs in exempt positions, and I think we have already taken care of that.

CHAIRMAN DeVRIES: Mr. Marshall.

MR. MARSHALL: Mr. Chairman and members of the committee, as a member of the committee on executive branch, and also as a member of the subcommittee which was charged with the responsibility of trying to come up with a compromise proposal on civil service—and I do say "compromise" because, as Delegate Durst said, there were large differences of opinion when we commenced this task—I was one of those who felt very strongly that there should be no change whatsoever in the present civil service provision. There were others, of course, on the committee who had an opposing viewpoint, in all due respect to Delegate Hatch, Judge Shaffer and Mr. Shackleton. They too worked hard on the committee with the rest of us, and I do believe that they are sincere and forthright. I think that they think their amendment would be good. I respect their positions. But I rise to oppose the amendment and to support the recommendation of the committee.

Now, someone mentioned here the fact of so called differences and animosities that exist or have existed between the legislature and the civil service commission. I have not seen too much evidence of that, and neither was there any testimony, as I recall, before our committee to this effect. A statement was made about civil service ignoring the economic facts of life. I would like to attempt to refute this by pointing out that there has been no evidence—nor has anyone come forth with any statements—to the effect that civil service has abused the authority that rests with them.

On the contrary, there was considerable testimony regarding the number of studies they make, comparisons, analyses on rates, and compensation in private industry in the state for comparable work in order to be able to compete with private industry to get capable and qualified employees, and I think that it is essential that they have a very thorough study of all of these different rates from time to time. And on many occasions I believe that we had testimony to the effect that the legislature had asked the civil service commission to make studies and analyses and recommend wage rates on unclassified positions. That was within the control of the legislature. You have your checks and balances, and the legislature does have, I believe, sufficient control in that it controls the appropriations, and even if the civil service commission sets a rate and the legislature does not appropriate, then the civil service commission has only one alternative. They have to reduce, cut services.

I think that the purpose of the civil service and the overriding factor involved when civil service was brought into being was to discard once and for all the spoils system. I agree that you might not be in as much danger of going back to the spoils system as we knew it under a 2/3 as you would a majority, but I think Delegate Wanger explained that very ably, and I am not going to be repetitious and repeat him; but the sole purpose was to remove the spoils system by removing the state employees as far from politics as you possibly could, and the best provision that we could have that they are not forced to in any way become involved, was that they would not be put in a position—the state employees—where they would feel insecure; because if they should be put into this position, then I think that you will not only be unable to secure the best, capable and qualified employees; I think that the morale of the state employees would be greatly dampened.

I have talked to many state employees and also people in executive positions who administer under civil service, and all that I have talked to tell me that this would be a serious mistake and a step backward. So in closing, I want to support the report of the committee, Mr. Chairman.

CHAIRMAN DeVRIES: The Chair will recognize the chairman of the committee, Mr. Martin.

MR. MARTIN: Mr. Chairman, this is a matter to which the committee gave a great deal of attention because it could be the heart of a real argument. Frankly, if the legislature had no real control over the situation, I think I and many members of the committee might have been tempted by this type of amendment. If the state were really at the mercy of the civil service commission, we certainly would have been tempted to accept it. But the fact is that there is control, and it is solid control and it is better control than this amendment would introduce in the picture.

The best illustration of that is what happened in 1960 when the civil service commission decided that it was time, on the basis of their studies, for a 3 per cent across the board increase. The legislature considered it and decided that it did not have the money to make that increase at the time, and so it exercised its unquestioned responsibility and authority to determine that there should be no increase, and simply told the boards and commissions and departments that they would have to absorb the civil service increase. Now, what this meant was that some of them had to reduce personnel where that was feasible, some of them had to not fill certain jobs which fell vacant. In a particular instance, for example, where the revenue department found that this absorption would actually injure the functioning of the agency, and came before the appropriating committees, it was granted an additional $60 or $70 thousand to enable it to take the increase and to carry on its functions without absorbing it.

Now, this is a control where the control ought to be, and it is well established by the supreme court, which in 1942, in the case of Civil Service Commission vs. The Auditor General, clearly stated that

> It is within the power of the legislature to fix the amount it will appropriate for personal services in any state department or agency, but the power to fix rates of compensation for all classes of civil service positions is vested in the civil service commission.

And what you do by this amendment, if it is effective—that is, if the legislature does use its 2/3 vote—is to put the legislature into the business of determining wage rates, and this is not the kind of thing that the legislature is geared to doing. The legislature is properly geared to determining how much money should be spent, and that it has full authority to do under the present civil service structure. But to get the legislature into the business of rate fixing puts it into a job which it does not have the background for, nor is it geared to handle that.

So it appears to us that the amendment either does too little —in other words, it would be completely ineffective—or else it does too much in that it would put the legislature into the business of rate fixing and would subject the civil service system to the thing that some people have expressed fear of. For that reason the committee does not favor the amendment, and we hope that you will support the committee position. If there are no other persons, Mr. Chairman, on your list, I would yield to Mr. Durst.

CHAIRMAN DeVRIES: Mr. Martin yields to Delegate Durst.

MR. DURST: I might inquire, Mr. Chairman, whether or not the Chair would think it appropriate to rise at this time or whether you would think it appropriate to continue.

CHAIRMAN DeVRIES: I would suggest, Mr. Durst, that would be a matter for the committee chairman to decide. Mr. Martin?

MR. MARTIN: Mr. Chairman, I think it would be better, if the delegates are willing to stay and are not too tired, to go along until we get at least this particular question decided.

CHAIRMAN DeVRIES: Delegate Durst?

MR. DURST: I will yield to Mrs. Judd.

CHAIRMAN DeVRIES: Delegate Durst yields to Delegate Judd.

MRS. JUDD: I have to put in my 2 cents worth on this. I want to say that I am in full sympathy with the legislative control of expenditures and, as Mr. Martin has stated, they do control expenditures. Also that I am confident that the proposers of this amendment have no intention—as they state—to destroy the merit system, and I would not question the motives of any delegate here in that direction, but I want to point out the potential consequences of this amendment.

The personnel system in government is a different sort of animal from most of the functions of government. It has some

very peculiar and unique features. While today its chief objective, to be sure, is to secure better service to the public, nevertheless the fact still holds true that those who would destroy the merit system deliberately attack it not because they object to it on technical grounds but because it is an obstacle to the attainment of political power. To the self seeking politician, a spoils system is not an end in itself but a tool for securing and holding that power and all the amenities that go with it.

Those of us who had the privilege of presiding over the birth of the Michigan merit system probed the then existing spoils system to its depths. No one who remembers that picture could wish to drive the smallest wedge into the bulwark that protects us from it today, and I am confident that many legislators who think they desire some power over the rate system are secretly grateful that they are protected from the pressures of job seekers from among their constituents. I would not accuse the delegates who prepared this amendment of having the slightest intention of driving such a wedge, but I must point out that the power of the legislature which they propose to "reject, modify, or reduce the compensation plan" could do just that.

Let me remind you that a compensation plan is a plan. It is a pattern. Equal pay for equal work, no matter in what department, is the horizontal pattern. Ladders, each of whose rungs represent different degrees of skills, experience, and responsibility, are the vertical pattern.

I am therefore objecting to the amendment on 2 grounds: one political and one technical.

On political grounds, the pay plan is the keystone in the merit system arch. To prove my point, let me tell you a story. My city of Grand Rapids has had civil service in its charter since 1916. For 20 years of what I call the preGoebel era, the civil service provision in the charter was a smokescreen for the spoils system. The league of women voters finally forced the city commission to have a classification and pay plan made. The city commission adopted the classification plan but would not accept the pay plan. From then on, as I went my rounds among my friends in the city hall, they would whisper to me, "You may have the classification plan, but as long as the commission sets salaries, the spoils system is still in effect."

My technical objection is, what do the words "reject, modify, reduce" mean? Even with the best of motives, how can the legislature do this without destroying the pattern of the compensation plan and its purposes? If they make across the board reductions they may lower the rates below the competitive rates in industry. The result will be a loss of employees to private enterprise, and the loss will come from among the best and most energetic of the employees.

Under the present plan, as has already been described, if the appropriations are insufficient, the layoffs are made, according to civil service rules, by seniority and merit, and the names of these employees would go back on reemployment lists, and many of them would finally return to the service. If they are to modify, how do they do it? Do they select one department, or do they do it job by job? In this case the fairness in the pay plan is lost. You no longer have equal pay for equal work. The career service is cut in two. Competent young people whom the service now attracts on the bottom rung of the ladder because they see an opportunity for promotion and ultimate careers will look elsewhere for their careers.

In other words, I can see no technical way in which the legislature could reject, modify or reduce the pay plan without damaging the quality of the state civil service. But I do see a crack in the bulwark against a return to the manning of our public service with ward heelers and through them the rebuilding of unprincipled power politics.

It is no argument that 13 states have constitutional provisions that are simple and not detailed. It is also true that other states envy our government and wish that they had what we have. We have met in this convention to put Michigan in the forefront of political and economic progress, and in the field of personnel in the state service, Michigan is already in the forefront. Why go backwards?

CHAIRMAN DeVRIES: Mr. Van Dusen.

MR. VAN DUSEN: Mr. Chairman, members of the committee, I will be very brief. I think the amendment proposed by the minority report contemplates 2 separate and distinct propositions. First, the legislative power to reject, modify or reduce a proposed pay increase and, second, provisions relating to the presentation of a proposed pay increase to the legislature. The second of these propositions, the method of presentation of the proposed pay increase to the legislature, is, it seems to me, a particularly salutary one.

My experience in the legislature was in the period when the civil service commission typically just dropped its pay increases into the legislative lap without any regard to the posture which the legislative session was then experiencing, and consequently the budget could be half completed, and it would just have to be torn apart at the whim of the civil service commission. I think it imposes no hardship, for the practice presently is as the minority report proposes.

Consequently, Mr. Chairman, I call for a division of the question, and ask you to put the matter contemplated by the second 2 sentences, the second and third sentences of the proposed amendment, separately from the matter contemplated by the first and last sentences.

CHAIRMAN DeVRIES: Where would this division be, Mr. Van Dusen?

MR. VAN DUSEN: At the end of the first sentence, I would ask that the second 2 sentences beginning "No increases in rates of compensation shall take effect until the first day of the fiscal year following submission of such proposed increases to the legislature."; and the third sentence, "Such proposed increases must be submitted to the legislature as part of the governor's budget for a fiscal year in order to be effective on the first day of such fiscal year."; be put separately from the first and fourth sentences. Now, the first and the fourth sentences contemplate a second and distinct proposition. I don't care in which order they are put, but I do call for a division of the question.

CHAIRMAN DeVRIES: Mr. Van Dusen, the secretary informs me that when we do put the question, it will be so divided.

Mr. Rajkovich.

MR. RAJKOVICH: Mr. Chairman, fellow delegates, I had a long speech ready on this, but the preceding 5 speakers said just about everything I was going to say. First, in answer to Mr. Van Dusen, this is already being done. Increases are already being submitted with the governor's budget. So I see no need there. In the second place, the pay increases don't go into effect until the first of July anyway. That is the present practice. Further, most everybody here is in favor of a good civil service. The state of Michigan has one of the best civil service systems in the United States, perhaps the best—at least it is rated one of the 3 best and we know how we got there. We got there by having just what we have at present.

Now, to me the issue on this amendment is just simply this: who is better qualified to determine wages and salary rates? Is it the civil service commission or is it the state legislature? And, as already pointed out, the state legislature is not equipped and not ready to establish fair wage rates and fair salaries.

I also understand that the civil service commission does have a research staff whose job it is to determine what is adequate pay, and that the civil service commission in Michigan does make a regular study of over 400 different types of businesses, industries, both private and public, to decide what is fair pay, what is a fair wage. Now, this matter of adequate pay may mean different things to different people. To the civil service commission it means just one thing, that the state employees should be paid a comparable wage, whether this wage be in private or in public business.

Therefore, I would like to support the committee proposal and oppose the amendment. Also, I might add here, too, that last December the civil service commission did turn down a request for pay increases after making a study and comparing

what our civil service people were getting as far as other employees in public service and private industry were getting. Thank you.

MR. DOWNS: Point of order, Mr. Chairman.

CHAIRMAN DeVRIES: What is your point of order, Mr. Downs?

MR. DOWNS: Since the question has been divided, should not the discussion be divided? And I ask what is before the body at this point?

CHAIRMAN DeVRIES: The question before the body is the minority report amendment offered by Delegates Hatch, Shackleton and Shaffer, which amends paragraph 3 of the committee proposal. I think the Chair said that when we got to vote on the amendment, we would split or divide the question as Mr. Van Dusen requested.

MR. DOWNS: Well, I wish to speak on the second and third sentences when that is in order.

CHAIRMAN DeVRIES: Can I put your name on the list? We have 10 people who are ahead of you, Mr. Downs. (laughter)

MR. DOWNS: Thank you.

CHAIRMAN DeVRIES: The Chair recognizes the delegate from Detroit, Mr. Barthwell.

MR. BARTHWELL: Thank you, Mr. Chairman. My speech too has been made, but I think I had better summarize it just so we can make more emphatic the points that have been made. The first thing that is of importance to me is the morale of the employees, and I think that it is of great consequence as to their morale for us to leave the pay adjusting function with the commission. The other is the fact that the state has invested large sums of money into the training of some of these people, and we don't want to lose them because we, by a lot of time and technicalities, take too long to keep their pay in line with the going pay for the types of jobs that they are doing. And the final point that I want to call to your attention: I can never forget the federal situation with the postal workers. Every so often I have to be bothered with a lot of these people wanting me to send telegrams and letters to my congressmen because whether they get a raise or not rests with congress. Therefore, I want to urge the delegates to vote for the committee's proposal rather than the amendment.

CHAIRMAN DeVRIES: Members of the committee, the secretary suggests that we divide the question now and then recognize the people who have asked for recognition. The secretary will read the question as divided, requested by Mr. Van Dusen.

SECRETARY CHASE: The request of Mr. Van Dusen is that we first consider the insertion of the second and third sentences of the proposed amendment, which read as follows:

> No increases in rates of compensation shall take effect until the first day of the fiscal year following submission of such proposed increases to the legislature. Such proposed increases must be submitted to the legislature as part of the governor's budget for a fiscal year in order to be effective on the first day of such fiscal year.

CHAIRMAN DeVRIES: The Chair respectfully requests that we confine our debate to that portion of the amendment, and that the first vote on this amendment will take place on these 2 sentences.

The Chair recognizes Delegate Brake. Mr. Brake yields to Mr. Martin.

MR. MARTIN: Mr. Chairman, if we are voting on those 2 sentences only: "No increases in rates of compensation shall take effect until the first day of the fiscal year following submission of such proposed increases to the legislature," and "Such proposed increases must be submitted to the legislature as part of the governor's budget for a fiscal year in order to be effective on the first day of such fiscal year," the committee has no objection.

CHAIRMAN DeVRIES: Is there any further discussion of this part of the amendment? Mr. Wanger.

MR. WANGER: Mr. Chairman, it seems to me that in light of the practice which seems to be going on at the present time that to make this a constitutional requirement would be superfluous. You will note further that the language says that it must be submitted as part of the governor's budget. Now, I merely suggest that we may be breeding litigation if we enact these words, for the simple reason there may be a question as to who controls the makeup of the governor's budget, and that we may possibly and inadvertently lead to a weakening of the civil service commission's authority by adopting these sentences. Certainly if we would adopt the first sentence, I would agree, then, that we should probably adopt the rest of them, but I do not believe that the sponsors of this amendment, for whom, I would like to add, I have the highest personal regard, intended a division of this matter at the time that they prepared it.

CHAIRMAN DeVRIES: Mr. Wanger, the secretary informs me that it doesn't make any difference. Any delegate has the right under the rules to demand a division of the question.

The Chair will now recognize Delegate Hutchinson.

MR. HUTCHINSON: Mr. Chairman, I would like to say that if the committee is disposed to go along with these 2 middle sentences, I certainly rise in support of them—in fact, I would have anyway—and I will take issue with Mr. Wanger, for this reason: it may be that the present policy of the civil service commission is to do just what these 2 sentences contemplate, but it hasn't always been so, nor have we any assurance that it always will be so.

Now, as an abstract basic principle, I am one of those who does not like to see all this detail written into the constitution. But we start out with the proposition that in this area we find it necessary to write a very detailed provision into the constitution to protect the civil service against threats of weakening and whatnot. Now then, it is therefore incumbent for us to write these things in there in the best detailed way that we can because—let's face it—we are actually handling statutory material right in the constitution. But since that is what seems to be the case here, let's proceed that way.

Now, I would like to say, categorically, that the legislature—at least during my tenure—never aspired to fix rates of increases, but that the trouble always did arise, in the early '50s and until the present policy of the civil service commission came into effect, because the civil service commission seemed to appreciate no problem on the legislature's part. They raised pay scales right in the middle of a fiscal year. They completely upset budgets right in the middle of a legislative session without regard—as has been mentioned on this floor heretofore—for the point to which the budget had gotten in the legislative process. And then, of course, they always took the attitude, "Well, legislature, we are simply telling you the cost of your labor. Now, you can buy as much or as little of this personal service as you want to buy." And that is a very laudable, clear expression, except that it is impractical from this standpoint: we need a certain minimum number of attendants in state mental hospitals; we need a certain minimum number of guards in state prisons; we need a certain minimum number of employees in the several departments of the state government, regardless of what the cost is. And so the civil service commission, while it was saying it was simply citing the cost of labor, wasn't very realistic in its assertion that we could buy as little or as much as we saw fit, because we couldn't do that. We had to buy a certain amount of it in order that the service might be performed. You can't let the prisons go unguarded or the mental patients go uncared for.

Now, the trouble always arose because of the timing of the civil service commission's activity with regard to the legislative session and, as I say, since we are writing all of this thing of proper legislative import into this constitution within this area, let us be realistic and assure that in the performance of its function, the civil service commission will be required to respect budgetary and legislative procedures. Otherwise, the legislature is unable to do anything except act in confusion.

Now, that is why I support these 2 sentences. I have much more I could say about the general subject of civil service, and I assure you that I agree with it. I want to see a strong civil service system in Michigan, but I don't think that we should assume—and I will say this as a parting shot—that the civil

service system that we have has completely eliminated the spoils system. I say that we still have a spoils system in Michigan through the—I don't know how they work it, but a system of provisional appointments, and I know from my experience in the legislature and out of it that in order to get a provisional appointment, it is necessary now for an employee to at least get the approval and the blessing of the Democratic county chairman. Now, there is the spoils system right there, and they make most of their appointments provisionally that way.

CHAIRMAN DeVRIES: Delegate Blandford, did you wish to address your remarks to this portion of the amendment?

MR. BLANDFORD: Mr. Chairman, I feel that we are getting a little emotional on this problem of pay raises and the approval of them, or of this amendment as has been recommended. I cannot see, myself, how merely a check on pay raises leads to the spoils system. I served for 6 years on the city commission in the city of Grand Rapids that has this pay plan and classification plan, and it worked well.

But one thing that Mrs. Judd did not tell you was this: the city commission of the city of Grand Rapids, the elective body, is the one that determines if there are any pay raises, and it is done, I think, in practically every other city in Michigan. I will say that we have a good pay plan in the city of Grand Rapids, and the easiest decision any commissioner ever makes, if the money is available, is to raise salaries for the employees. It is a very easy decision for anybody to make. It is a very political decision to make. So I am very much in favor of the amendment, and I cannot see how it will lead to the spoils system. I think people are talking spoils system here. It has no bearing whatsoever upon the legislature merely having a check, and I believe they should have a check upon pay raises running wild. I am very much in favor of the amendment.

CHAIRMAN DeVRIES: The Chair recognizes the chairman of the committee, Mr. Martin.

MR. MARTIN: Mr. Chairman, I thought we could dispose of this matter, but time gets later and later and I believe there are still people that want to speak, so I move that the committee do now rise.

CHAIRMAN DeVRIES: Mr. Martin moves that the committee of the whole do now rise. All those in favor say aye. Opposed, no.

The motion prevails. The committee has risen.

[Whereupon, the committee of the whole having risen, Vice President Hutchinson assumed the Chair.]

VICE PRESIDENT HUTCHINSON: The delegate from Kent, Mr. DeVries.

MR. DeVRIES: Mr. President, the committee of the whole has had several items under consideration, and the secretary will make a detailed report.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 22,** A proposal pertaining to state civil service. It has made certain amendments thereto and has come to no final resolution thereon. This completes the report of the committee of the whole.

VICE PRESIDENT HUTCHINSON: Mr. Downs.

MR. DOWNS: I had planned to wait to raise this until I was to speak in order in committee of the whole, and I do not wish to take unfair advantage of the fact that you are in the Chair. I think a serious statement was made regarding the operation of civil service, and I feel that while that was not particularly germane to the question before us, that when a charge of that nature is made, then either in committee of the whole or at some appropriate place, the civil service commission side should be presented too. I do not wish at this point to get into a floor debate on the question. I think more properly that type of discussion should be within the confines of the committee which is studying the subject. But I did not wish to let the statement go unchallenged, and I had planned to bring it up when I was in order and speaking in committee of the whole. Thank you.

VICE PRESIDENT HUTCHINSON: Announcements.

SECRETARY CHASE: The committee on judicial branch will not meet today after the session but will meet tomorrow, Friday, at 8:30 a.m. Mr. Danhof, chairman.

Here is an announcement of particular interest to the committee on legislative organization. President Hannah had to leave for a meeting of his board of trustees at 6:00 o'clock. He requests this announcement be made: The committee on legislative organization will hold its weekend sessions in rooms 103-A and 103-B at Kellogg center. The first session will begin at 2:00 p.m. Friday, tomorrow, or in the event that the general session of the convention does not adjourn by noon, approximately 2 hours after the adjournment of the general session. There will be a morning and afternoon session on Saturday, January 20, and a session beginning at 12:00 o'clock noon on Monday, January 22. The sessions are open meetings, open to the public and press, with a convention page in attendance.

The committee on administration will meet tomorrow after the session. Walter DeVries, chairman.

Committee on legislative powers will meet in room H tomorrow at 9:00 o'clock a.m. T. Jefferson Hoxie, chairman.

Mr. Millard moves that the changes made in subcommittee assignments for the committee on emerging problems be considered read and printed in the journal.

VICE PRESIDENT HUTCHINSON: Without objection, the designations will be considered read and will be printed in the journal. The Chair hears no objection and it is so ordered.

Following are the subcommittee assignments for the committee on emerging problems:

Subcommittee 3, administrative procedures
Chairman: Earl C. Pugsley
Melvin Nord
Weldon O. Yeager

Subcommittee 4, intergovernmental relations
Chairman: Raymond L. King
Paul G. Goebel
Mrs. Daisy Elliott

SECRETARY CHASE: We have the following requests for leave of absence: Mr. John Hannah requests to be excused from tomorrow's session, the Michigan State University board of trustees meets tonight and tomorrow through noon. Mr. McAllister is required to be in court in Bad Axe on 2 matters which were set before Friday sessions were ordered, which matters cannot be adjourned, he asks to be excused from Friday's session. Mr. Gust asks to be excused from Friday's session. Mr. Page requests that he be excused from the sessions of Friday, to keep 2 speaking engagements; Monday, to keep a speaking engagement; and Tuesday, to attend an annual meeting of an organization by which he is employed. Dr. Pollock requests to be excused from tomorrow's session so that he may keep a speaking engagement.

That is all of the announcements and requests, Mr. President.

VICE PRESIDENT HUTCHINSON: Without objection the several requests are granted.

What is the pleasure of the convention? Mr. Garvin.

MR. GARVIN: Mr. President, I wish to make a motion that there shouldn't be too much argument about, I move that we adjourn.

VICE PRESIDENT HUTCHINSON: Mr. Garvin moves that the convention do now adjourn. All those in favor will say aye. Those opposed will say no.

The motion prevails, and the convention stands adjourned until tomorrow morning at 10:00 a.m.

[Whereupon, at 5:40 o'clock p.m., the convention adjourned until 10:00 o'clock a.m., Friday, January 19, 1962.]

SIXTY-FIRST DAY

Friday, January 19, 1962, 10:00 o'clock a.m.

PROCEEDINGS

PRESIDENT NISBET: The convention will please come to order.

Our invocation this morning is to be given by the Reverend H. B. Loomis, Pastor of the First Congregational Church of Charlotte. He is a former pastor of mine at Fremont, so I am doubly glad to welcome him to this convention this morning. Will you please rise while he gives the invocation.

REVEREND LOOMIS: Let us pray. Almighty God, who in Thy providence has made us citizens of a land great in privilege and great in opportunity, we give Thee thanks that we are called in our generation to serve.

We thank Thee for the ideals of faith and freedom which brought our fathers to these shores, and for those who through the years have striven to maintain these ideals untarnished and that faith bright and strong, for all who in state and church and school and home and business have sought to serve and preserve their spirit as an instrument of Thy will.

Thou hast given us this good land for our heritage. We humbly beseech Thee that we may always prove ourselves a people mindful of Thy favor and glad to do Thy will.

Bless out state with honorable industry, sound learning; save us from discord and confusion, from pride and from arrogance. Defend our liberties and fashion into one united people those who come here out of many kindreds and tongues.

Endue with the spirit of wisdom these to whom in Thy name we entrust the authority of government, that there may be justice and equity through obedience to Thy law. In time of prosperity, fill our hearts with thankfulness and leave us not to our own thoughts and to our own ways in any hour, be it of triumph or of trial. Amen.

PRESIDENT NISBET: The roll call will be taken by the secretary. Those present please vote aye.

SECRETARY CHASE: Have you all voted? The machine is now locked and the attendance will be recorded.

Mr. President, a quorum of the convention is present.

Prior to today's session, the secretary received the following request for leave: Mr. Norris requests to be excused from today's session because he is giving the final exams in law school.

PRESIDENT NISBET: Without objection, the request is granted.

SECRETARY CHASE: Absent with leave: Messrs. Goebel, Gust, J. A. Hannah, McAllister, Norris, Page, Romney and Thomson.

Absent without leave: None.

PRESIDENT NISBET: Reports of standing committees.

SECRETARY CHASE: Mr. Pollock, for the committee on declaration of rights, suffrage and elections, introduces Committee Proposal 26, A proposal for a section in the declaration of rights incorporating in the declaration of rights an "equal protection" clause and a guarantee against discrimination in civil and political rights because of race, religion, sex or national origin;
with the recommendation that it pass.

James K. Pollock, chairman.

For Committee Proposal 26 and the reasons submitted in support thereof, see below, page 739.

PRESIDENT NISBET: Referred to the committee of the whole and placed on the general orders calendar.

SECRETARY CHASE: Mr. Hoxie, for the committee on legislative powers, introduces Committee Proposal 27, A proposal to provide for liquor control, excise taxes and local option by counties. Amends article XVI, section 11;
with the recommendation that it pass.

T. Jefferson Hoxie, chairman.

For Committee Proposal 27 and the reasons submitted in support thereof, see below, page 709.

PRESIDENT NISBET: Referred to the committee of the whole and placed on the general orders calendar.

SECRETARY CHASE: That is all of the standing committee reports.

PRESIDENT NISBET: Reports of select committees.

SECRETARY CHASE: None.

PRESIDENT NISBET: Communications.

SECRETARY CHASE: None.

PRESIDENT NISBET: Second reading of proposals.

SECRETARY CHASE: Nothing on that calendar.

PRESIDENT NISBET: Third reading of proposals.

SECRETARY CHASE: Nothing on that calendar.

PRESIDENT NISBET: Motions and resolutions.

SECRETARY CHASE: There are no resolutions on file.

PRESIDENT NISBET: Unfinished business.

SECRETARY CHASE: None.

PRESIDENT NISBET: Special orders of the day.

SECRETARY CHASE: None.

PRESIDENT NISBET: General orders of the day. Mr. DeVries.

MR. DeVRIES: Mr. President, I move that the convention resolve itself into committee of the whole for consideration of certain items on the general orders calendar.

PRESIDENT NISBET: The question is on the motion of Mr. DeVries. All in favor say aye; opposed, no.

The motion prevails.

[Whereupon, Mr. DeVries assumed the Chair to preside as chairman of the committee of the whole.]

CHAIRMAN DeVRIES: The committee will come to order.

Ladies and gentlemen of the committee, when the committee of the whole rose yesterday afternoon, the question before the committee was a minority report amendment offered by Delegates Hatch, Shackleton and Shaffer to paragraph 3 of Committee Proposal 22. Mr. Van Dusen requested a division of the amendment and the request was granted.

For last previous action by the committee of the whole on Committee Proposal 22, see above, page 637.

The committee will now consider the second and third sentences of the minority amendment which is on page 325 of the journal, to which Mr. Wanger has offered an amendment. The secretary will read Mr. Wanger's amendment.

SECRETARY CHASE: Presently pending are the second and third sentences of the minority amendment, which read:

> No increases in rates of compensation shall take effect until the first day of the fiscal year following submission of such proposed increases to the legislature. Such proposed increases must be submitted to the legislature as part of the governor's budget for a fiscal year in order to be effective on the first day of such fiscal year.

Mr. Wanger has offered an amendment to the minority amendment:

1. Amend the third sentence of the amendment after "submitted to the legislature" by striking out "as part of" and inserting "with"; so that the language will then read:

Such proposed increases must be submitted to the legislature with the governor's budget for a fiscal year in order to be effective on the first day of such fiscal year.

CHAIRMAN DeVRIES: The gentleman from Lansing, Delegate Wanger.

MR. WANGER: Mr. Chairman and members of the committee, this, I trust, does not work any change in the substance, although it does remove the possible danger that the language "as part of the governor's budget" might at some future time be interpreted to require approval by the governor or some other appointee of his in charge of the budget of civil service recommendations. At the same time, it leaves sufficient flexibility so that the proposal of the civil service commission on the increases may still be printed in the governor's budget, because I have been assured by those who know far better than myself that this is a matter of great expediency; that both the salaries and the other budgetary items be allowed to be printed in the same document for the consideration of the legislature.

CHAIRMAN DeVRIES: Mr. Downs.

MR. DOWNS: A point of information. Could I ask the chairman to ask the secretary to read the amendment again, please?

CHAIRMAN DeVRIES: The secretary will again read the amendment to the minority report amendment.

SECRETARY CHASE: Mr. Wanger's amendment is:

[The amendment to the amendment was again read by the secretary. For text, see above, page 658.]

CHAIRMAN DeVRIES: The Chair will recognize the gentleman from Quincy, Mr. Knirk.

MR. KNIRK: Thank you, Mr. Chairman. I would like to rise to support definitely the amendment in its entirety, not just the 2 sentences, because I think as delegates here to this convention, we very definitely have a responsibility to the people to try to keep from eroding the dollar. Now I bring this point up here because I feel that as we raise taxes we are just helping to increase the spiral and causing the dollar to be of less value.

I have served on the boards of directors of several corporations here within the city of Lansing, and I live in Branch county near Coldwater; and in serving here on these boards of directors and on the executive committee of several corporations here in Lansing, time and again the personnel director has come to our board and said, "We must increase the clerical and secretarial wages of our 500 employees because civil service has increased their wages for their people." Secondly, he would add, "Also, the college has followed civil service." Now I bring this out at this time particularly because yesterday we were told of the surveys that are being made continuously at the suggestion of the legislature to find out whether or not compensation is proper.

Now I think this is just another factor in increasing and adding to the eroding of the dollar or, in other words, we are in a vicious circle here trying to see who can do what, and I certainly think it is high time that the legislature itself is given the opportunity not only to go over the budget of the commission but also approve the wage and scale program of civil service.

I, too, want to say that I endorse civil service 100 per cent as far as making sure we do not have any part of the spoils system, but I think we have to have some fiscal sanity, and I hope this convention that is assembled here, and the delegates, will consider this very seriously so as not to permit another arm of government — and I feel it is an arm of government, not only the judicial and executive and legislative, but it is another arm of government when they do not have to be responsible to the legislature. Thank you.

CHAIRMAN DeVRIES: The Chair recognizes the chairman of the committee, Mr. Martin.

MR. MARTIN: Speaking on Mr. Wanger's amendment and hoping that we can confine our discussion to these 2 sentences for the moment, I have talked to Mr. Wanger with regard to this amendment and he changed the wording only to the extent of saying "with" instead of "as part of" the governor's budget.

Now the committee is working on — with the finance and taxation committee and legislative powers committee — the terms of an executive budget, and we specifically want to see that there is included in the budget all items that affect the budget. At the present time, any civil service increase is made a part of the budget and should be made a part of the budget. For that reason the language in this particular sentence is better, in our opinion, as it stands than it would be if changed to "with the governor's budget." So we would oppose Mr. Wanger's amendment.

CHAIRMAN DeVRIES: The delegate from Marshall, Mr. Hatch.

MR. HATCH: Gentlemen, I would merely point out that in the minority report is the statement, "It is not intended that the governor would have the power to control pay rates by virtue of the requirement that proposed increases be included as part of his budget. Only an orderly procedure is sought and intended." I think perhaps with this explanation, the objection or the matter raised by Mr. Wanger, is covered and the language as stated can remain.

MR. HIGGS: I have a point of order.

CHAIRMAN DeVRIES: On a point of order, Mr. Higgs.

MR. HIGGS: I understood Mr. Wanger to say that this was not a matter of substance but a matter of form. Now Mr. Hatch has raised another question which I had in my mind also, but I felt that it was a matter of form rather than substance. I wonder if an amendment is in order which does not go to the substance?

CHAIRMAN DeVRIES: Mr. Higgs, the Chair and the secretary inform you that the amendment to the amendment is in order and the committee of the whole will decide whether it is a matter of substance or just form by its vote.

The Chair will recognize the gentleman from Lansing, Delegate Wanger.

MR. WANGER: I think the difficulty has not been solved by the objections to my proposed amendment. My proposed amendment was merely to make it quite clear that although these increases of the commission would have to be submitted to the legislature and although it was appropriate that they be printed right along with the governor's budget, nevertheless, we should avoid language which could be construed even by an extreme interpretation as giving the governor or anyone in the executive branch other, of course, than the independent civil service commission, the power to say to the commission, "Well, in order to become effective, this has to go to the legislature as part of the governor's budget and, since our department controls the governor's budget, you have got to get our approval before those rates you want can become effective." Let us just prevent any such interpretation. We know that probably is not the intent of anybody present in this room so far as that particular part of the minority report amendment is concerned. Let us just make it clear.

CHAIRMAN DeVRIES: The gentleman from Detroit, Delegate Downs.

MR. DOWNS: Mr. Chairman, this sentence is of extreme importance. I agree largely with Mr. Wanger's analysis, but I am not sure what the solution is. I would like to take the time of the committee to read the sentence and ask the delegates to give it the clear and unequivocal interpretation of the sentence by itself. This sentence says: "Such proposed increases must be submitted to the legislature as part of —" or, as in Mr. Wanger's amendment "with" — "the governor's budget for a fiscal year in order to be effective on the first day of such fiscal year."

Now what is the clear meaning of this sentence? It simply says the governor shall submit it, and if it is not submitted what happens? The governor cannot be mandamused. The governor or a chief executive could not be penalized, but the pay increases would not be effective. Let us look 50 years ahead and not 5 years behind. We would have a situation where a civil service commission could say, "There should be a 5 per cent cost of living increase," and if the governor

did not want that to take effect, all he would have to do would be to refuse to put it in the budget message, and then who would be penalized? — the innocent state employees that civil service had decided should have a pay increase.

Now I oppose the restriction of the legislature on civil service by permitting the 2/3 veto. I equally oppose the right of a governor to veto the pay raise granted by civil service. Those of us who believe in the concept of civil service believe it should be isolated from either legislative or executive control, as far as setting pay rates. I plead with the committee, let us either have civil service or don't have it. I am concerned that this language as written could permit a governor to veto or even bargain with a civil service commission as to what the pay rates should be, and I urge the committee to reject the amendments and support on its part the committee's report as it came out of the committee.

CHAIRMAN DeVRIES: The delegate from Stanton, Delegate Brake.

MR. BRAKE: I thought I was trying to disagree with Mr. Downs, but I find I don't. I intended to speak on that part of the amendment, but in the meantime I want to endorse what Mr. Martin has just said. We have in our constitution at the present time no outline for the budgetary procedure. It is purely statutory. We are trying — and I mean 3 committees are trying—to agree, and we have, I think, practically agreed upon language which will make an orderly procedure in the submission to the legislature of not half a dozen budgets or different items but one budget backed up by bills. I would oppose Mr. Wanger's amendment. I think the minority's language is correct.

CHAIRMAN DeVRIES: The chairman of the committee, Mr. Martin.

MR. MARTIN: Mr. Chairman, the words used in that sentence are "must be submitted." If the governor did not submit these, he would be clearly violating his constitutional obligation, and the word "must" is as strong as you can make it. I think Mr. Downs' fears are entirely ungrounded. I do not think that any governor could possibly refuse to submit the proposals of the civil service commission as part of his budget under this amendment.

CHAIRMAN DeVRIES: The delegate from Detroit, Dr. Nord.

MR. NORD: First of all, I would like to say that I agree with the interpretation of Mr. Downs. I would like to say that I wanted to speak before Mr. Downs made that point, because I felt that if that language was being put in there, there must be some reason. I could not see the reason, and I was against putting the language in before I could see the reason. Now that I can see the reason, I am doubly against putting this language in.

First of all, as to Mr. Martin's comment, I would like to say 2 things about that — unless I can think of a third while I am speaking. The first is that as the governor he cannot be mandamused — they say he cannot, but what if he does not? The second thing is that I am kind of amazed at Mr. Martin's position. I understood this subject came before his committee and he turned it down. Then on the floor he said otherwise —

MR. IVERSON: Point of order, Mr. Chairman.

CHAIRMAN DeVRIES: On a point of order, Mr. Iverson.

MR. IVERSON: Mr. Chairman, Dr. Nord should restrict his comments to the Wanger amendment.

CHAIRMAN DeVRIES: Dr. Nord will restrict his comment to the Wanger amendment to the minority amendment.

MR. NORD: My question, Mr. Chairman, is this, does the Wanger amendment cure any defect in the committee proposal? May I speak on that?

CHAIRMAN DeVRIES: Yes, sir.

MR. NORD: In order to do that, I must find out if there is any defect in the Wanger amendment. May I speak on that? (laughter)

CHAIRMAN DeVRIES: I would say with discretion, yes, Dr. Nord.

MR. NORD: I assume that means without many words. (laughter) Of course, as I say, Mr. Martin, as head of his committee, has changed his mind on the floor. I do not know whether Mr. Martin's committee has voted on it, but they originally refused it.

Now my point on the amendment that it does not cure the defect is this: whenever any language is to be inserted, whether it be in the Wanger amendment or the underlying amendment, there should be some reason for it. We should not put things into the constitution unless there is a reason for it. Whoever suggests putting in language, whether it is in Mr. Wanger's or in the underlying amendment, has the burden of proof to establish that there is a reason, a need.

It seems to me that the constitution is a conservative document and, whether I am conservative or not, I agree that as such it is a conservative document. It has to be a conservative document. That is the whole purpose of having a constitution — to conserve certain things, to leave certain things alone; and I believe we should always take into account when any committee proposal comes out, if it has not changed anything, prima facie it is correct; if it has changed something, it needs to prove that it is correct. I have not seen any proof that either the underlying amendment is correct or that Mr. Wanger's amendment will cure it. I believe we should take a very conservative motto on everything in the constitution, that it needs the burden of proof in order to change it. In other words, "When in doubt, leave it out."

CHAIRMAN DeVRIES: The gentleman from Marshall, Delegate Hatch.

MR. HATCH: I would like to respond to Delegate Nord's comment that now the reason is apparent to him, he is opposed to it. Frankly, I do not particularly like the implication that there is some hidden meaning behind this language written in the minority report. We explicitly state that it is not the intent that the governor would have a veto power over this or that he could control pay raises. The purpose for this is as stated, to require an orderly procedure to prevent the civil service commission from lapsing back into the practice that existed several years ago of declaring a pay raise at any time, and certainly the intent is not to give the governor a veto. I do not know how you can state it any clearer than it is in the minority report.

CHAIRMAN DeVRIES: The Chair recognizes the filer of the amendment, Mr. Wanger.

MR. WANGER: I would like to say, first that I agree with Dr. Nord's argument that those who make the change should certainly bear the burden of proof. I would certainly like to say that when I wrote this improvement — what I thought to be an improvement to the minority report amendment, in this part of it, I hope I did not imply that I was firmly convinced that as an amendment it should be adopted as is, but I think if it is going to be adopted it should be adopted in a form which avoids the construction which I suggest it avoid.

Delegate Hatch has just stated that the intent of the minority of the committee is not this, and that should solve the problem. Well, I think Delegate Ostrow several days ago very succinctly stated the legal problem which is involved here. The court, when it is going to construe something, looks to what the word says. It looks to precisely what it says and then it interprets that, and if it should find some ambiguity, then in its discretion it may turn to the debates, to the committee reports and take what it believes to be the intent, if that can be found readily and clearly in the debates and the reports, and then it may use that as the deciding factor. I think it is our obligation to put the greatest possible thought into what is said by the words which we adopt in the constitution itself, and that only in that way can we be fully served.

CHAIRMAN DeVRIES: The delegate from Bay City, Mr. Higgs.

MR. HIGGS: Mr. Chairman and fellow delegates, I think I probably would support the Wanger amendment except that I do not think it solves the problem. I find the problem in the last clause of that sentence. I had noted this question yesterday and did not raise it, because I still feel this is a matter of form rather than substance. I think that in the minority

report, and I am reading from page 326 of the journal, the intent is clearly expressed in the first column in the second paragraph from the bottom, "It is not intended that the governor would have the power to control pay rates by virtue of the requirement. . . ."

Now I would like to hear more from Mr. Wanger and Mr. Hatch and possibly Mr. Martin and the committee on style and drafting so that we can solve this problem, but I do not think the problem is solved by the changing of the words "as part of" to "with," because I think the problem is in the last paragraph. I hesitate to speak again on this, but I think we are running into difficulty in trying to control the style and form. I would favor voting down the Wanger amendment and relying upon the committee to have this language conform with the clearly expressed intent.

CHAIRMAN DeVRIES: The gentleman from Detroit, Delegate Ostrow.

MR. OSTROW: If the legislature finds itself in the frustrating position of not being able to do anything about civil service, it has only itself to blame. We would not be arguing about civil service here and there would be no constitutional provision regarding civil service if it was not for what the legislature did to civil service in 1939. Without bothering about the details of this particular amendment or about what the legislature did to civil service in 1939, the less the legislature has to do with civil service the better off we will be.

CHAIRMAN DeVRIES: The lady from Highland Park, Delegate Donnelly.

MISS DONNELLY: Since the drafting seems to be the problem with Delegate Wanger, I wonder if he would accept this amendment. This goes to the language "Any proposed increase must be submitted to the legislature prior to the commencement of the session in order to be effective on the first day following the fiscal year." My intent is just to give the legislature notice, not control but just notice. This takes the governor out, so you do not have any trouble.

CHAIRMAN DeVRIES: The Chair says, Miss Donnelly, that that would have to be submitted as a separate amendment. It cannot be submitted as a part of the Wanger amendment to the minority report amendment. It can be submitted later after we vote on this amendment.

Dr. Pollock, did you wish to speak on the amendment to the amendment?

MR. POLLOCK: Mr. Chairman, I will only say a very few words. I have followed the course of this debate with great care, as I have followed all other debates of this committee, and I observe one thing today as I have observed it before. The committee usually gets itself nicely tangled up not on the proposal submitted by the committee, which has been carefully deliberated, but usually on some amendment, however well intentioned, when it comes to the floor. Then there are other amendments and pretty soon we are in a stalemate.

This report came to this committee from the committee on executive branch. It was carefully deliberated there. It was agreed to there except by a few members of the committee who now exercise their privilege, of course, of moving an amendment on the floor. I have heard nothing in this debate which convinces me that they have made out any case for their proposed amendments to the committee report. On the other hand, I have heard a good many arguments the other way. We have heard fears raised regarding the possible intrusion of the legislature into this essentially technical matter. We have heard fears raised with reference to getting the executive into the picture as part of the budgetary process. These are fears, however well founded, that it is a little difficult at this time to decide. The arguments in favor, however, of this amendment are not at all impressive and they do, in my view — and I view this, obviously, differently than Mr. Hatch and the other delegates who have supported the so called Hatch amendment — I view this as a matter of some danger, some possible danger, to the preservation of a strong civil service system. It seems to me it is a wedge driven into the civil service structure. It may not split that structure, but it has the possibility of doing so. I think, therefore, that this amendment as proposed should be rejected and the members of this committee should support the report of the committee as presented by Mr. Martin.

CHAIRMAN DeVRIES: Delegate Wanger.

MR. WANGER: I had merely intended to comment upon Miss Donnelly's suggestion but, since that was ruled out of order, at this time I have nothing further to say.

CHAIRMAN DeVRIES: The question before the committee of the whole is the adoption of the Wanger amendment to the minority report amendment. The secretary will read the amendment to the amendment.

SECRETARY CHASE: Mr. Wanger has offered the amendment to the minority amendment:

[The amendment to the amendment was again read by the secretary. For text, see above, page 658.]

CHAIRMAN DeVRIES: Any further discussion of the Wanger amendment? If not, all those in favor will say aye; opposed, no.

The amendment to the amendment is not adopted.

The question now is on the adoption of the 2 sentences from the middle of the minority report amendment, and the secretary will read.

SECRETARY CHASE: This is the insertion on page 2, line 7, after "state civil service.", of the language of the 2 middle sentences of the minority report amendment, which sentences read:

> No increase in rates of compensation shall take effect until the first day of the fiscal year following submission of such proposed increases to the legislature. Such proposed increases must be submitted to the legislature as part of the governor's budget for a fiscal year in order to be effective on the first day of such fiscal year.

CHAIRMAN DeVRIES: Is there any further discussion on this portion of the proposed minority report amendment? Delegate Knirk.

MR. KNIRK: Mr. Chairman, I think that the learned Dr. Pollock has a right to his opinion, but I think, also, that the convention here very definitely should try to get some fiscal sanity in our government. I don't think that we should be setting up a separate section of government, as I believe the civil service is. I am for civil service, but I think that the legislature is the one that should be appropriating and have the power to tax, and it should have something to do with it.

CHAIRMAN DeVRIES: The question is on the 2 sentences of the minority report amendment. Delegate Sterrett.

MR. STERRETT: Mr. Chairman and delegates, I would like to mention that I am not an attorney but a businessman. I am responsible for a department, and it would certainly be wonderful if I could run my department without having to be accountable to anybody or without having to get any sanction for pay raises.

CHAIRMAN DeVRIES: Any further discussion of the amendment? Dr. Pollock.

MR. POLLOCK: Replying to Mr. Sterrett, I did not dignify this argument which I have heard on the floor based upon the effect of pay raises on the economy of this state, because I doubt if any economist would consider that worthy of very much discussion. It isn't a case of irresponsible control over the finances of the state. It has been demonstrated here that the legislature has control of the purse. They demonstrated this effectively when they reduced appropriations this last year, and this is the basic problem: when policy making bodies begin to monkey around with details, they get into trouble.

The fact is that this job of fixing rates of compensation has been well done. I defy anybody to find a set of scales any better for public employees, and they compare also with a great many of the better sets of scales for private industry. We have something here which is working. It has worked well for 20 years. For 20 years we have developed a civil service that now ranks with the best in the country. Some of us find that to be indispensable to the successful operation of the

government of this state. This is one institution in this state that we can be very proud of. It seems to me there are plenty of old barnacles around that you can play around with, but let's don't play around with this. (laughter)

CHAIRMAN DeVRIES: Delegate Yeager requests a division vote. Is it supported?

The request for division is supported. The question now is on the 2 middle sentences of the minority report amendment offered to Committee Proposal 22. As many as are in favor will rise.

The secretary will read that part of the amendment again.

SECRETARY CHASE: Immediately pending is the insertion of the second and third sentences which read:

[The 2 sentences of the amendment were again read by the secretary. For text, see above, page 661.]

CHAIRMAN DeVRIES: As many as are in favor of that part of the amendment will rise.

SECRETARY CHASE: Sixty.

CHAIRMAN DeVRIES: As many as are opposed will rise.

SECRETARY CHASE: Fifty-seven.

CHAIRMAN DeVRIES: There are 60 yeas, 57 nays.

The second and third sentences of the amendment are adopted.

SECRETARY CHASE: Now pending are the first and fourth sentences of the minority report amendment, which read as follows:

"Increases in rates of compensation in the state civil service shall be proposed by the commission and will become effective unless rejected, modified, or reduced by 2/3 vote of the members elect of both houses of the legislature within 60 days after submission of such proposed increases to the legislature. [Second and third sentences considered separately and adopted.] The legislature may not reduce rates of compensation below those in effect at the time of the submission of a proposed increase.".

CHAIRMAN DeVRIES: The question now is on the adoption of this part of the minority report amendment. The Chair recognizes Mr. Martin.

MR. MARTIN: When we concluded our discussion yesterday, some question was raised with regard to political influence in the civil service system. I did not discuss that at the time, but I must say that there probably is no system in the world that can be devised without some political influence affecting it. However, the committee did consider this matter. They had before it among other things the testimony of the director of the civil service commission, which bears on this point, and I thought that the delegates might wish to have that before them as a body. It is short and I would like to read it to you. This is not my statement, of course; it is the statement of the director of the civil service commission, but I am reading it for whatever weight you wish to give it. Mr. DeWald said:

> Believe me when I say that spoilsmanship is a continuing threat. It is currently practiced in modified form at the county level in Michigan counties and in many of our cities. Inevitable pressure for patronage is constantly on people in the state's public life in both the executive and legislative branches of government and in both political parties. It comes in obvious and direct forms and in exceedingly devious forms. It comes from legislators who want constituents hired or promoted. It comes from agency heads who, for various reasons, want to get around the rules. It comes from politicians who constantly fight to lower minimum standards we set on education and experience for applicants for state jobs. It comes from 100 different sources that would both surprise and amaze you.
>
> The language of our present constitution affords Michigan the strongest protection of any of the states against these pressures. Even at that there is still room for an extremely limited amount of patronage and this should be clear at the outset.

One popular misconception about civil service is that it eliminates all politics. It does not and it cannot. It does, however, keep it to a minimum. The late Dr. Lent Upson, who was director of the Detroit bureau of governmental research, best said it 20 years ago when the present amendment was being argued before the voters. In answer to the question, "Will the merit proposal completely remove state employment from politics?" he replied:

> No statute can ever guarantee against all political interference in public administration in any field, but these provisions go as far as is humanly possible to protect civil service against politics.
>
> There are 3 areas where political considerations on the part of agency heads inclined to use them might develop. They are in the selection from the top 3 names on an employment list, the so called "rule of 3", in provisional appointments made when no adequate list is available; and, conceivably, in the promotional examination process. But we have an appeal process set up to guard against abuse, and it is equally true this system severely limits such considerations, yet still leaves the elected official or agency head some voice and latitude in the selection of personnel and, in the case of provisional hires, if political considerations are used by an agency head, the system also makes sure merit is involved because the candidate must meet minimum requirements to even get a temporary appointment and must, finally, face competitive examination.

Another popular fallacy about civil service is that the sole reason for the system is to eliminate politics from state employment. It is an important reason but it is far from the only or even, perhaps, the most important reason. Certainly equally important but generally unnoticed, at least in the public mind, is that this amendment is the backbone of one of the most modern personnel systems in America designed to provide us with a framework for a career service which can attract and retain capable public employees.

None of us, I am sure, believes the constitutional document this convention submits to the voters will in itself by some magic solve Michigan's governmental problems. Performance of government is only as good as the caliber of the people it attracts and retains as employees. A lifetime in public personnel work establishes one truism for me. This is that even the most clumsy framework of government will work quite well if you have the personnel tools to attract and retain the best employees; even the best framework will produce poor government if you cannot get career people to make it work.

I would only add to that this — and in this I am talking from experience — I served for 4 years with a civil service staff. Everyone on my staff except my deputy and my secretary were civil service employees. I never knew or asked about the politics of any one of them. I never asked any one of them to perform a political service for me and none of them ever did; but I can testify to the fact that they were the highest caliber, the finest group of people and the most dedicated, most willing to work long hours without regard to rules as to what hours they should work that I have ever worked with in government or out, and I have worked in several different situations. They were of the best, and I can only attribute this to the fact that they were appointed under the present civil service system.

This is the best testimony I know to the fact that the system works and that the proposal as the committee has presented it to you with the changes which it has made is a sound proposal and good for the people of the state of Michigan.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Stanton, Delegate Brake.

MR. BRAKE: Mr. Chairman, ladies and gentlemen of the committee, the problem we are discussing is one that lends itself very readily to flights, oratorical flights into outer space and we have had them. It is not remotely connected with the

spoils system or any tendency to go towards the spoils system. Civil service in Michigan has been a very good thing. It has done a lot for us. There isn't any question about it.

I lived in state government before we had civil service and after we had civil service. To go back to what we had before civil service is simply unthinkable. Nobody would do it. But there is the situation of one who stands off at a distance and theorizes about civil service. It is completely different from one who has been part of it, worked in it and with it, and has had some little opportunity to see what goes on.

We have had a — and it has been promoted — an unfortunate attitude in the state and with those who have stood outside and told us what we ought to have, in that we have made 2 departments, 2 departments of our state government sort of sacred cows that you dare not criticize. If you try to point out any defects either in the operation or in the setup of civil service, you are immediately branded as a spoilsman, that you want to go back to the spoils system, which is absolutely false. We haven't been able to turn on civil service the public criticism, the public scrutiny, that every department in state government and in any other government needs. Nothing is perfect in government. Every part should be subject to improvement, subject to criticism when it is wrong. I hope that sometime we can get away from that attitude and treat this department as we treat all others.

It has been good. Its greatest service has been in that it is classified employment. It has seen to it that people doing similar work get similar pay, that their working conditions are the same. It has brought system where before we had chaos, and that has been the greatest service it has done. Its greatest service is not in its method of selecting employees, although there it is much better, of course, than what we had before.

Perhaps its greatest deficiency as an operating matter is in the result that we carry on the payroll some deadwood that any employer would eliminate if he were free to do so. I think they call that the "closed door policy." It is a serious problem. It is not a large percentage; most of the state employees are excellent, but when you get one who is not a thief or a highwayman or a murderer or something of that kind but who is just a little lazy, a little inattentive, he is not quite efficient, he does not give the public the — let's see, the word is "image" now, isn't it — (laughter) — you are stuck with him. You are absolutely stuck with him. If you decide to get rid of him, you are on trial, not the employee. That is not too large a part of the problem because, generally, they are not that kind of people.

We have had no opportunity, no fair opportunity since this civil service system was put into our constitution to get rid of the bugs in it. There have been many abuses. Most of them are administrative abuses that could be corrected administratively. In other words, they are the fault of the people, not the fault of the law, but there are bugs in the law — have been.

I was interested in what Mr. Martin said yesterday that in the legislature some 14 or 15 times somebody introduced a proposed constitutional amendment to make a change. Universally, those proposed changes went too far. I talked several times with the sponsors trying to get them to be reasonable, to make corrections and not to weaken civil service. They were never willing to do so, but the comforting thing about it, the assurance that the legislature has no intention, no wish of destroying or weakening civil service, is that on 14 or 15 proposals that went too far, the legislature would not go along once. Every time they were turned down as they should have been. You do not have too much to fear on the part of the legislature.

Now, getting to the particular thing that is involved in this first sentence, the matter of accepting or vetoing a proposed across the board raise. Nobody is suggesting that the legislature should set salaries. Nobody is suggesting that the legislature should interfere with a particular salary or a particular class of salaries. The minority proposal is that when a bomb is thrown into the budget, in season or out of season, that the legislature, by a 2/3 vote — which is almost impossible — can say no, or it can say it is too much, or it can change it, but it cannot go below present salary schedules.

Have you followed in mind just what it is that we do have? We have one body of people, an administrative body not responsible to the people in any sense, not even responsible to the governor except in that he appoints them; one body of people with complete control over the cost of personnel service, the big item in any budget — complete control: sets salaries, sets wages, establishes all the working conditions, vacation time, sick time, everything that has to do with the cost of personnel, but no power to raise any money; another body with complete power to raise money but no effective control over the cost of personnel service. That is screwy, absolutely screwy. (laughter)

If we have a principle in government of any free people — whether English speaking or some other speaking — if we have a principle of government that is sound and that ought to be kept sound, it is that the control of the purse strings must be in the legislative branch of government. I know what Mr. Martin said yesterday and what Dr. Pollock has just said about the fact there is control. Is there control? There certainly is nothing that you can use as control.

Suppose, as has happened time after time, you get one of these bombs thrown into the budget, in season and out of season, and there is no control of the season — the boys have been pretty good lately but will they be good tomorrow? — $7 million — after it is too late to try to raise the money. What is the legislature's choice? Either knuckle in and take it, as it always has but once — it has grumbled, it has complained, but it has always knuckled in and taken it but once — it is a choice of doing that or saying, "We will fire $7 million worth of employees," assuming that the departments have correctly informed the legislature as to the amount of their budgets. That is not effective control.

Now what is proposed in this amendment is a tremendously small thing: just a check by a 2/3 vote on a general increase across the board, not on a particular individual or a particular class. That is all, and it means just this: that all the civil service commission has to do in order to get the increase that they think ought to be is to persuade 1/3 of the legislature that they are right, and that certainly is a simple task.

CHAIRMAN DeVRIES: The Chair will recognize the gentleman from Marshall, Delegate Hatch, and informs Delegate Wanger that there are 6 on the list of those waiting to be recognized.

MR. HATCH: Mr. Chairman, I would like to make a few comments on some of the arguments that were made yesterday. Injected into the argument on this particular amendment yesterday was the question of returning to the spoils system, and I submit that this is a completely inappropriate and improper argument with respect to this amendment, and I say this for several reasons. First of all this amendment does not affect most of the powers of the civil service commission. In other words, this amendment does not affect the power of the commission to classify all positions in state civil service according to their respective duties and responsibilities. It does not affect the power of the commission to approve or disapprove disbursements for all personnel services. It does not affect the power of the commission to determine by competitive performance exclusively on the basis of merit, efficiency, and fitness the qualifications of all candidates for positions in state civil service. It does not affect the power of the civil service commission to make rules and regulations governing all personnel transactions and regulate all conditions of employment in the state civil service. It does not affect the right of an aggrieved person to claim that his position was abolished or he was denied a promotion or an appointment because of partisan, racial or religious considerations. All this does is give some small check on the salary fixing powers of the commission.

Another reason why this amendment does not in any way get back to the spoils system or throw this thing back into the political arena is that the 2/3 requirement under this amendment certainly insures that in a state that is as equally divided politically as Michigan, rejections will not be made on a political basis. Rather, any rejection that is made must of necessity be bipartisan.

Third, I would like to point out that the committee on executive branch, the majority of the committee on executive branch, recognize in their report that this amendment does not throw us back to the spoils system or into the political arena. The reason stated for rejecting this amendment in the committee report is that the feeling was strong that ultimately the 2/3 requirement would be lowered as a result of political pressure to a majority, with the consequent damage to the system discussed above, in other words returning to the spoils system. This amendment does not require a majority vote. If this amendment were adopted the 2/3 provision would be present therein. The only way you could possibly make it a majority vote would be by a constitutional amendment passed by the people.

Now the argument has been made that the legislature should not get into the salary fixing business, that this is a matter for the civil service experts. I submit that this amendment does not put the legislature in a salary fixing business but rather in the salary reviewing business. It has also been said that the pay plan is the heart of a civil service system, that there must be equal pay for equal work. Well, these arguments: equal pay for equal work, that the legislature should not get in the salary fixing business, all start with one basic premise, namely, that in each and every instance the civil service commission is going to be right and that any change that is made will be wrong. What if the plan of the civil service commission does not provide equal pay for equal work? How are the people of this state to insure that this is done unless there is a review by the representatives of the people?

Lastly, I would like to delve into a philosophical matter as to just what is the function of a governmental agency. To my mind the function of any governmental agency is to serve the people, and how can we be certain that an agency will continue to serve the people — as I sincerely feel that the civil service commission has done in the past — when that agency is not subject to some control by the people? I sincerely believe that if this veto power is given to the legislature that the residents of the state of Michigan can be assured that the civil service commission will continue to exercise their prerogative of initiating pay raises carefully and properly.

CHAIRMAN DeVRIES: The Chair will recognize the gentleman from Battle Creek, Delegate Everett.

MR. EVERETT: Mr. Chairman, it has been suggested to us today that we are in treacherous waters when we offer amendments to committee proposals, and I suspect there is a great deal of merit in that. We all know from personal experience how hard working, how conscientious the committees are, but I would remind the members of this committee that the very proposal before us, Committee Proposal 22, has had added to it 2 committee amendments that were offered here on the floor, not minority report amendments but amendments of the committee itself, which is an indication to me that despite hard work and careful consideration a second look sometimes reveals defects which were not apparent the first time around. I think that is what we are asking for here: simply a second look, and a very well guarded second look, at the work of the civil service commission.

I do not think any of us — I am certain I, myself, would not suggest they are not conscientious, hard working, and as objective as they can be, but they are not infallible, and an opportunity for the representatives of the people to look carefully, with the safeguards which this amendment provides for the work of the commission, is to me a second look and a very proper one and one we should support.

CHAIRMAN DeVRIES: The Chair will recognize the delegate from Birmingham, Delegate Van Dusen.

MR. VAN DUSEN: Mr. Chairman and members of the committee, yesterday I moved to divide the minority report amendment so that we could look at it separately. Obviously, one of my reasons for doing this was because I felt very strongly that the wording we had now adopted was desirable. I still feel that way. I am mindful and somewhat persuaded by the arguments of Delegates Brake and Hatch this morning but, nevertheless, I am also persuaded that the committee has given this matter very careful consideration and that its views are entitled to considerable weight. For that reason, on this section of the minority report amendment I will support the committee.

CHAIRMAN DeVRIES: The Chair will recognize the gentleman from Owosso, Delegate Bentley.

MR. BENTLEY: Mr. Chairman and members of the committee, I would like to say that I have the greatest of sympathy for the objectives of my good friends and colleagues, Mr. Hatch, Judge Shaffer and Mr. Shackleton. I certainly am not one who believes that if the Hatch amendment prevailed that it would mean a return to the spoils system. Likewise, I share the viewpoint expressed by other delegates here that the civil service system in Michigan is certainly not sacrosanct and should be, rather, willing to bear close scrutiny and examination; but I feel compelled, Mr. Chairman, to speak briefly on what happens when a legislative body becomes directly involved and concerned with the question of pay scales or pay raises or wage rates in a civil service system.

As a member of a legislative body for 8 years in Washington that directly was involved in civil service and postal pay scales, I may say that — again, from personal experience — the amount of pressure brought on the members of congress by employee unions, both the postal union and the civil service, the regular federal employee union, was little short of scandalous. I would not wish that amount of pressure to be exerted on my worst enemy, and I can tell you that it happened only as a result of the fact that the congress is directly involved, as I say, in settling those matters.

I sympathize very greatly with the objectives of the gentlemen who prepared the minority report but I do feel constrained to support the committee in this matter, because I do not wish to see similar pressure exerted on our legislature such as has been going on for a great many years in the congress and which has forced the executive — both President Eisenhower and President Kennedy — to exercise their executive privilege of veto when pay scales, rammed through a congress by one of the most active and potentially powerful lobbies that is on the national level, prevailed and would have threatened to throw the entire executive budget completely out of balance.

Therefore, since this is not a partisan matter and since the legislative body with which I have most experience has shown how amenable it can be to pressures and influences from employee unions, I would like to spare the legislature here in Lansing that type of pressure if at all possible.

CHAIRMAN DeVRIES: The Chair will recognize the gentleman from Saginaw, Delegate Shackleton.

MR. SHACKLETON: Mr. Chairman and members of the committee, it seems obvious that most of the verbiage of the so called yesterday's and today's debates is concerning things which are not in the proposed amendment. Mr. Brake has very carefully pointed out there is nothing in there concerning the spoils system. There is nothing in there concerning rates of pay by classes. There is nothing in there interfering with the administration of the civil service commission.

Yesterday, mention was made of the ripper bill under the present constitution or the proposed article. The ripper bill could not be passed. If that were still not true, in the enlightment of today it would be impossible, because of public sentiment, to ever pass such a bill again.

The 3 principal things in this amendment, the one which we have voted on, is to make sure that the civil service commission must put in along with the governor's budget its request, which certainly can be unreasonable — and it has been pointed out by several, in the past it was unreasonable — when such increases were injected after it was too late to try to do anything about it as far as raising the funds was concerned to meet it. Tied right in with that is the other part of the minority proposal which gives the legislature a look so that they may be in a better position to try to balance receipts and expenditures which, as taxes become harder and harder to come by, seems to be an essential part of a legislative function. Thirdly, primarily, if this check is not inserted, we should go back and recognize 4 divisions of government instead of the

gubernatorial, legislative, and the judicial, because very apparently, in its present form, this is a fourth branch of government.

CHAIRMAN DeVRIES: The Chair will recognize the gentleman from Ypsilanti, Delegate Lawrence.

MR. LAWRENCE: Mr. Chairman and fellow delegates, I am beginning to wonder, after 2 days of this, if, maybe, we are not in the position of either not meaning what we say or not saying what we mean. Now, I have not heard anybody state that he is against this system. I have not heard anybody state that it has not worked well. I have not heard anyone even supporting these amendments say anything but that it has brought order out of chaos and has raised morale, and yet we are being asked by this amendment, in my opinion, to insert into the Michigan constitution the very thing that has ruined the civil service systems in several states in this country. Now, if we have got a system which everybody admits works well, has worked well, why do we have to continue tinkering with it?

I am opposed to the amendment and, unless we want to get ourselves in the position that has been brought about in other states, I think we should vote against this amendment.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Lansing, Delegate Wanger.

MR. WANGER: Mr. Chairman and members of the committee, I have heard it said not only today but also yesterday and between our 2 sessions that this amendment has nothing to do with the spoils system; it has no tendency — at least, those were the words that were just used this morning — no tendency whatsoever to lean towards the spoils system. Now, I think yesterday we heard the argument that it has nothing to do with the spoils system, first of all because we have some patronage now. I think Mr. Martin has answered that argument much more eloquently than I could even attempt to do.

Now, the second argument which is used is, of course, that this has only to do with pay increases. A delegate who spoke a few minutes ago suggested that because of this limitation there was no danger whatsoever of any tendency to go back to the system where jobs were handed out on the basis of political party or political campaigning rather than on merit and just consideration. However, that delegate also went on to point out that there were several abuses or what he considered in his judgment and experience to be abuses in the present system, or imperfections, and I suppose the logical conclusion would be, since he was speaking in favor of this amendment, that these abuses could be perhaps corrected with a little pressure from the legislature if 2/3 of the members of the houses of that body would be willing to exercise it. Pressure, of course, can be used for many purposes. It can be particularly used to point out to a body such as the civil service commission that several well qualified applicants for public jobs from that particular legislator's district had not been given jobs and that this, perhaps, is an abuse of the civil service or the merit system.

Well, I think we realize that the success of the civil service system depends to some extent upon keeping the salary scale up in some relation to the cost of living and that, while it is true that the taxpayer is hurt when an error is made in giving too much money in salary and compensation, we should also be fully aware that the taxpayer is hurt and seriously hurt when too little is given for the kind of service that our government demands today.

Two-thirds is considered by some of the delegates favoring this amendment to be a protection. I think yesterday I said that the ripper bill itself passed one of the houses of our legislature by a 2/3 vote. I was a bit in error on that. It actually passed the house by in excess of a 3/4 vote.

Well, I don't like to be negative in speaking against something without trying to agree on one basic point, the one basic motive which I know has motivated the sponsors of this amendment and, I hope, all of those who have supported this amendment to the committee's report. Economy in government and efficiency in government are vital, and are probably things about which you could say in the long run there is nothing more important taken alone. At present we know that the legislature has a great deal of control over this or a great deal of power, at least, in their ability to control the appropriations which they make to departments and to agencies over which the civil service system has no control whatsoever and, secondly, in those branches or departments which are supported with earmarked revenues, whether earmarked by statute or by the constitution, by controlling the rate under which those revenues which are so earmarked are collected and levied. So there is one aspect where the legislature has the power which sometimes, I admit, requires courage to exercise.

There is a second way, however, and a way in which I hope in later days this convention will find to be a persuasive and a strong one, in which this efficiency and economy in government can be promoted, and that abuses wherever they may exist — whether any be found in the civil service commission or any other branch or department or agency of government — can be ferreted out; and that is the proposals which have been introduced and are being considered by 2 committees of this convention to create the office of a legislative auditor, who would be a professional appointed by the legislature with full and sweeping investigatory powers over all state departments and agencies whether they be constitutionally established or established by statute, and that with such professional assistance that the legislature will be able to get the facts and with the facts will be able to correct the abuses which they complain of at the present time.

For these reasons, then, I urge you not to support the amendment before us and in this particular to go along with the committee's report.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Detroit, Mr. Downs.

MR. DOWNS: Mr. Chairman, I shall be very brief. The question has been raised on the floor about the matter of state employees being discharged. I wish to make it very clear, I am not in favor of people being arbitrarily discharged; however, I think the record does show that approximately 6,800 people have been discharged in 20 years. Now, a sound civil service procedure provides that the individual employee, too, must be protected, and the hearing setup is designed to make a balance between the right of management to do a supervisory job and the right of employees not to be arbitrarily handled. I think it should be pointed out that the civil service commission does have established procedure to see that management can perform its function and at the same time to see that the individual is protected — and that individuals have been discharged from the state employment for other than fraud. I think it should be pointed out that a good personnel system has an absolute minimum of discharges but, rather, a wholesome personnel development.

CHAIRMAN DeVRIES: The Chair will recognize the gentleman from Quincy, Delegate Knirk.

MR. KNIRK: Mr. Chairman and delegates, again I would like to refer to Mr. Bentley — I guess he is not in here presently — but he made the statement that civil service was not necessarily partisan or is not partisan. I would just like to relate a little experience that I had last summer. I hope no one else had this experience; but I requested the privilege of meeting before the civil service group through the union where there are 800 employees in my own county, which is one of the largest organizations, employing organizations, within the county, and I was denied this privilege, yet my opponent very definitely was given this opportunity and from the meeting the next day I was told that they determined that I was against civil service. This, to me, has some connotations of partisanship.

Now I still would have to add that I do not think there is a businessman in this room or a person who has ever met a payroll or who has ever had a position of responsibility in any corporation, large or small, that has just taken the checkbook and endorsed a blank check and handed it to any department. I did not happen to catch the gentleman's name who said he would not do it in his business. I would not do it in my

business, and I do not think there is a responsible person in this room who would do it in his business. Thank you.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Flint, Delegate McLogan.

MR. McLOGAN: Mr. Chairman and delegates, I think there is one factor which has not been properly emphasized here and that is this: what the average voter or what people think to be true can have as damning a result as opinions based on full and proper understanding. In this instance I submit that the people may feel or be led by others to feel that a serious breach has been made in the matter of civil service. Admittedly, our civil service in Michigan is working well. In this instance, I say let well enough alone.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Detroit, Delegate Bledsoe.

MR. BLEDSOE: Mr. Chairman and fellow delegates, there have been statements made here on the floor that I am certain have aroused in your minds a great deal of apprehension as to whether or not the law affecting our civil service has within it the proper safeguards. Just to disabuse your minds of that, I hope that you will just bear with me for a moment while I call your attention to the Michigan Legislative Handbook. I am reading now from the article providing for civil service. Now it has been said here, both directly and by inference, that there is no regulation, that civil service is just running hither, thither and yon without proper safeguards — I am going to read this to you:

> After August 1, 1941, no payment for personal services shall be made or authorized until the provisions of this amendment have been complied with in every particular. Violation of any of the provisions hereof may be restrained or observance compelled by injunctive or mandamus proceedings brought by any citizen of the state.

I think that — in other words — if there are any abuses of such violent nature as by inference have been mentioned on this floor, no one has stated that it has been ever necessary to approach constituted authority for the correction of them.

And I want to say to you here as a matter of my personal experience — and I have been in politics — that I was against civil service, frankly. I was opposed to it. I was a spoilsman. I didn't want it. In fact I quarreled with a member of the legislature who was a client of mine who voted for it; but since it has come, my mind has completely changed — just as Saul who was on his way to Damascus to persecute the Christians. And I don't want to see civil service disturbed. We have a host of fine men and women running that department. I have appeared before the commission on complaints. Sometimes they have agreed that there were reasons and they have modified them, and then on other occasions they have thrown me out on my ear. I think we ought to let them alone; they are doing a good job; and if they are not, the method to reach it is right here in this little book.

CHAIRMAN DeVRIES: The question is on the first and fourth sentences of the minority report amendment offered by Delegates Hatch, Shackleton and Shaffer.

The Chair will recognize the delegate from Grand Haven, Mr. Stafseth.

MR. STAFSETH: Thank you, Mr. Chairman. I would just like to give a few of my views. I have 4 points and I will make them as briefly as possible. I fundamentally agree with Mr. Brake. For the 9 years that I have been a public administrator, I have had the problem of negotiating wages with employees through a union or through an association. I think we kind of lose sight of one thing, and that is that the employees are generally more interested in stability than they are in wages.

Now if the legislature has the power, as the committee has shown now, to cut a budget and thereby to require that civil service lets go its employees, I think if you asked all the employees they would rather not have the wage raise and keep the employees. I think this is an important point to consider and, in that light, I think that the legislative control of the area of modification would be more important than just being able to cut the appropriation.

As to Mr. Bentley's statement about the civil service pressure on congress, I might remind you that I think in our case, here, it is a little bit different. The representatives of the legislature are from all over the state and the employees are generally concentrated in just a few areas, so it would be very difficult for them to bring pressure on our legislature as constituents.

And fourth, one thing that kind of amazes me — and this reminds me of a statement that the president of Harvard University made back in 1929, "The whole tone of our society today is that everything is going to continue to go up." I will never forget that he stated in 1929 that we were destined for the highest economy that we ever had. Now I don't think that we have learned yet how to avoid panics, and I think that some day a depression or a panic will come and I think there should be some measure that the legislature could exercise and control to reduce wages so that it would fit the needs of the state.

CHAIRMAN DeVRIES: The Chair will recognize the gentleman from Gladwin, Delegate Hubbs.

MR. HUBBS: Gentlemen, I have been sitting over here in the corner for some time, and I have made up my mind how I am going to vote on this issue, and when I sit down I hope that we will vote. (laughter and applause) In conclusion I would like to say, also — (laughter) — that serious consideration is being given to limiting debate in this committee of the whole. I don't particularly like this idea and so I would suggest that those of you who disagree with me would not talk so much and then we could get this thing done. (laughter)

CHAIRMAN DeVRIES: The Chair will recognize the gentleman from Muskegon, Delegate Seyferth, for the purpose of offering an amendment to the minority report amendment, and the secretary will read Mr. Seyferth's amendment.

SECRETARY CHASE: Mr. Seyferth offers the following amendment to the pending amendment:

1. Amend the first sentence of the amendment after "increases in" by striking out "rates of compensation in" and inserting "the total salary budget of"; so that the sentence will read, "Increases in the total salary budget of the state civil service shall be proposed by the commission and will become effective unless rejected, . . ." and so forth.

CHAIRMAN DeVRIES: The question before the committee is the adoption of the Seyferth amendment to the minority report amendment. Delegate Seyferth.

MR. SEYFERTH: Mr. Chairman and delegates, I think this amendment is self explanatory. However, for review, I feel very definitely — based on what I have heard on this floor this morning — that the concern is that the legislature may get into determining specific rates for specific classifications. This I do not feel is the intent of the minority report amendment. I feel that what is required and what is desired in this area is to provide a harmonious relationship between the civil service, in this instance, and the legislature to respectfully review increases in budgets, and in this interest I present the amendment just read.

This, then, will provide for a positive check upon the civil service by the legislature and it will also provide a positive check upon the civil service commission themselves in the area of budget responsibility. I realize that the legislature does at this moment have the comparable power to reduce the budget by merely ignoring or just slicing. This amendment, I feel, lends dignity to the relationship between the 2 bodies.

CHAIRMAN DeVRIES: The question before the committee is the adoption of the Seyferth amendment to the minority report amendment. The chairman of the committee, Mr. Martin.

MR. MARTIN: Mr. Chairman, I am not quite sure what the import of the amendment is, but as I read to you yesterday from the headnote to the supreme court case decided in 1942 between the civil service commission and the auditor general, specifically, the court held there that it is within the power of the legislature to fix the amount it will appropriate for personnel services in any state department or agency. So

it sounds to me as though this amendment seems to go right back to what the court approved except that it will require a 2/3 vote. I do not think the amendment is going to improve the situation at all, and I am sure the committee would feel that that amendment ought not to pass.

CHAIRMAN DeVRIES: The Chair will recognize the gentleman from Fennville, Delegate Hutchinson.

MR. HUTCHINSON: Mr. Chairman, I am glad to be recognized as from Fennville but, really, I represent the eighth senatorial district which is much larger than my little city of Fennville. Mr. Chairman, I rise to express some concern about Mr. Seyferth's amendment, because I don't think that his amendment accomplishes the purpose that he seeks. As I hear his amendment, I believe what he has in mind is that he thinks that the legislative function should be on a total salary basis rather than rates of compensation.

But please understand, increases in rates of compensation in a state civil service shall be proposed by the commission and that is its proper function. It is to deal in the rates of compensation, it does not deal in total salary budget, and I think that your concept of total budget for salaries is something that you have got to work in somewhere down there where they start to talk about the legislature and not up in the beginning of it where we are properly concerned about the function of the civil service commission which, in this case, is designed to increase the rates of compensation in the classified service.

CHAIRMAN DeVRIES: The question before the committee is on the adoption of the Seyferth amendment to the minority report amendment. The secretary will read the amendment.

SECRETARY CHASE: Mr. Seyferth's amendment is:

[The amendment to the amendment was again read by the secretary. For text, see above, page 666.]

CHAIRMAN DeVRIES: Is there any further discussion on the amendment? Delegate Seyferth.

MR. SEYFERTH: Just a point of clarity regarding Senator Hutchinson's comment. My intent is that the civil service commission itself shall determine the individual rates for the individual classification but will propose it to the legislature upon which it will act in a 2/3 manner. The legislature will consider the total budget and not the individual rates and classification.

CHAIRMAN DeVRIES: Is there any further discussion on the Seyferth amendment? If not, all those in favor will say aye; those opposed, say no.

The amendment to the amendment is not adopted.

The question before the committee is now the first and fourth sentences of the minority report amendment offered by Messrs. Hatch, Shackleton and Shaffer in paragraph 3 of Committee Proposal 22. Is there any further discussion on this amendment? Mr. Yeager.

MR. YEAGER: I request a division.

CHAIRMAN DeVRIES: Delegate Yeager requests a division. Is there support for the division vote?

There is support. For what purpose did the gentleman rise, Delegate Kelsey?

MR. KELSEY: Mr. Chairman, I would like to request that we use the machine on the division because the last vote was pretty close.

CHAIRMAN DeVRIES: Delegate Kelsey requests the use of the voting machine. The Chair will rule that we will use the voting machine.

As many as are in favor of the adoption of the remaining portion of the minority report amendment offered by Messrs. Hatch, Shackleton and Shaffer will vote aye; those opposed will vote no.

SECRETARY CHASE: Has everyone voted? The machine is locked and the totals will be taken.

On the adoption of the amendment, the yeas are 43 and the nays are 88.

CHAIRMAN DeVRIES: That portion of the amendment is not adopted.

Are there any — Mrs. Cushman.

MRS. CUSHMAN: Mr. Chairman, I would like to move reconsideration of the vote on the amendment on the submission of the proposed increases as part of the governor's budget.

CHAIRMAN DeVRIES: You wish to reconsider the entire amendment offered by the delegates?

MRS. CUSHMAN: No.

CHAIRMAN DeVRIES: Delegate Cushman moves that the committee of the whole reconsider the vote by which it adopted that part of the minority report amendment which reads, "No increases in rates of compensation shall take effect until the first day of the fiscal year . . ." and so on. Is that correct?

MRS. CUSHMAN: That's right.

CHAIRMAN DeVRIES: Is there support for the motion for reconsideration?

The question is on the motion of Delegate Cushman that we reconsider the vote by which that part of the amendment was adopted. Miss Donnelly.

MISS DONNELLY: A point of order. Would it be proper if we did this immediately and then put my amendment in, because it is on that issue?

CHAIRMAN DeVRIES: That amendment will not be before us until we reconsider.

Delegate Martin, for what purpose did the gentleman rise?

MR. MARTIN: Simply to say that I think we had the matter fully presented and we had an opportunity for careful consideration and I think that the motion for reconsideration should be defeated.

CHAIRMAN DeVRIES: Mr. Mahinske.

MR. MAHINSKE: A point of information, Mr. Chairman. What is the status of the reconsideration now? Has it passed or not passed?

CHAIRMAN DeVRIES: We have not voted on it, Mr. Mahinske.

Dr. Nord, for what purpose did the gentleman rise?

MR. NORD: Are we permitted to debate this question or not — whether there should be reconsideration? I believe the debate has started, and I only inquire whether it is debatable or not. If it is, I wish to speak; if it is not, I wish to sit down. (laughter) I do not wish to do both. (laughter)

CHAIRMAN DeVRIES: Members of the committee, the secretary will read a citation from Mason's manual.

SECRETARY CHASE: Section 471 of Mason's manual: "A motion to reconsider is debatable except when the motion which it is proposed to reconsider is undebatable. . . ."

CHAIRMAN DeVRIES: The Chair rules that the amendment was debatable; therefore, the motion to reconsider is debatable.

MR. NORD: Mr. Chairman, I will only debate for about 1 minute or less. The point has been raised that this question has been considered fully, and I agree; therefore, normally, there should not be reconsideration. I believe there is a justification in this case, however. That is that only 117 people voted and there are about, I believe, 130 or 135 people here, and it was a very close vote. For that reason I think it is justified that we do reconsider.

CHAIRMAN DeVRIES: The Chair recognizes Delegate Brown.

MR. T. S. BROWN: I just want to add something to what Mr. Martin said in saying that this matter was carefully considered previously by indicating that there were 3 careful reconsiderers down in the men's room at the time of the first vote and I am, therefore, in favor of reconsideration.

CHAIRMAN DeVRIES: The Chair recognizes Delegate Hood.

MR. HOOD: I request a roll call vote by the board, please.

CHAIRMAN DeVRIES: Mr. Hood requests a division with the use of the board. Is there support for the request? There is support. Delegate Knirk.

MR. KNIRK: I would just like to say that I certainly hope that as long as Mr. Martin, chairman of the committee, has stated previously that he thought these 2 sentences would be proper within their report, I certainly hope that the delegate

body here will support and keep those in the report and definitely not allow a bombshell to drop upon the legislature at about the time they adjourn. That is what I think we are toying with. I don't know who is scared of civil service; I am not. I am for it but not scared of it.

CHAIRMAN DeVRIES: The question before the committee is the motion to reconsider. As many as are in favor will vote aye; as many as are opposed, will vote no.

SECRETARY CHASE: Has everyone voted? The machine is now locked and the totals will be taken.

On the question of reconsideration, the yeas are 54, the nays are 75.

CHAIRMAN DeVRIES: The motion to reconsider does not prevail.

Are there any further amendments to paragraph 3 of Committee Proposal 22?

SECRETARY CHASE: Mr. Martin, on behalf of the committee on executive branch, offers the following amendment:

1. Amend page 2, line 15, after "commission.", by inserting "Any employee considering himself aggrieved by any such abolition shall have an immediate right of appeal to the commission and the courts through established grievance procedures.".

CHAIRMAN DeVRIES: Mr. Martin, chairman of the committee.

MR. MARTIN: Mr. Chairman, I wonder if we could follow this procedure: I would like to have the amendment explained to the body. I do not think we will have time to debate it at length, but I do want to be sure that you understand the purport of the new language and, if we can have it explained, I will yield to one of the members of the committee for that purpose. Then, thereafter, I will move that the committee rise and this will give us an opportunity to familiarize ourselves with the language and consider the matter over the weekend, and we will have an opportunity then to move forward with the consideration of the entire committee proposal.

CHAIRMAN DeVRIES: To whom do you yield, Mr. Martin?

MR. MARTIN: Mr. Durst, Mr. Chairman.

CHAIRMAN DeVRIES: Delegate Martin yields to Delegate Durst.

MR. DURST: Mr. Chairman, Mr. Martin and members of the committee, besides explaining to you the import of the amendment which Mr. Martin has offered, I would like to explain the remaining elements in this paragraph which the committee has changed. In lines 7, 8, 9 and 10 of the proposal, you see the language:

> The civil service commission shall recommend to the governor and to the legislature rates of compensation for all appointed unclassified positions within the executive department.

This is merely a recommendation and there is nothing binding on the legislature. It is our understanding that the legislature has, for the last couple of years, requested this service from the civil service commission; this merely makes it mandatory that they furnish this service to the legislature.

Now, more important, and a very significant part of the committee report is the language which is contained in lines 13, 14, 15, 17 and 18 of page 2. It provides that the appointing authorities may create or abolish positions for reasons of administrative efficiency without the approval of the commission. Now, as the committee report emphasizes, this language is put into this proposed section to change the present situation in Michigan which was occasioned by the decision given by the Michigan supreme court in the case of Kunzig vs. Liquor Control Commission. Now this case involved the attempt by the liquor control commission to abolish the position of business director which was held by Mr. Kunzig. The eventual decision of the court held that the civil service commission has absolute authority to determine when a position may be abolished or when a position may be created, but in order for any executive agency of the government of the state of Michigan to make any change in their administrative setup, they must first obtain the permission of the civil service commission.

Now there is quite a bit of dissent on this particular proposal. The argument in behalf of the committee proposal has been presented, I think, more ably than I can do by Mr. Justice Dethmers in the dissent in the Kunzig case. I would not propose to read the whole thing. Mr. Dethmers went at length for 16 pages to present a very cogent argument, a detailed argument. The opinion and citation of the case is set forth in the committee report if anyone wishes to familiarize himself with the whole thing. But I would like to point out a few brief remarks which Justice Dethmers made in support of the proposition which we set forth here in this proposed change. Now I have given you the rough facts of the case and I realize that when one reads it, it is difficult to follow, but this is a very important point and this is probably the most significant change that we have made in this section, and if you can follow it, it would be appreciated. Mr. Dethmers says in part:

> At the outset, stock should be taken of precisely what is involved in the answer to the above question —

That is, the civil service commission having this authority — and what its implications may be. The liquor control commission says that a holding that it may not abolish a position in its agency except with the approval of the civil service commission would mean that the civil service amendment has constituted the civil service commission the final arbiter and administrative authority on the question of whether appointing authorities may from time to time reorganize their departments, increase or curtail their services to the public, or add to or dispense with certain functions, if, in so doing, positions in the classified civil service are, as a result, created or abolished. . . .

> Granted that the civil service commission does not claim the authority to establish or abolish positions, the fact remains that this case is before us solely because this commission does insist that it has authority to approve or disapprove such creations or abolishments by appointing authorities and that they are invalid without its approval. Inherent in such veto power is the power to control administrative policies.

He gives a few examples, one of which is:

> Suppose the attorney general decides as a matter of policy to restrict the giving of legal opinions to a narrower circle than that to which they are now available, obviating the need for the services of 2 of his assistants, or that the liquor control commission decides, as a matter of economy or increased efficiency or for whatever reason of its own, to decrease the number of liquor stores in a city from 4 to 3, thus rendering the services of one liquor store manager unnecessary. If the commission has the right to approve or disapprove the abolishment of the positions involved, does it not actually exert control over administrative policy and procedure? Anent this subject, we find in the civil service commission's brief the following:
>
> > The civil service commission defies anyone to point to an instance in the nearly 9 years of its existence where it has refused to approve the abolition and consequent layoff of an unneeded civil service employee where the layoff rules of the commission were complied with, and in this connection this commission states now, and always has taken the position, that it is entirely in favor of economy in state government as long as it is commensurate with the rendition of efficient service.

And Mr. Justice Dethmers underlines the last phrase.

> In the quoted statement the civil service commission reveals, wittingly or otherwise, its view that it has the power to disapprove abolishments of positions attempted by appointing authorities for reasons of economy and particularly so if, in the civil service commission's opinion, abolishment would not be "commensurate with the rendition of efficient service." What clearer claim could be made to power to determine the kind and amount of service to be rendered to the public in any field of administrative activity? And for the civil service commission to claim otherwise would be utterly inconsistant with the

claim it makes herein to the power to approve or disapprove the creation or abolishment of positions by appointing authorities. I am unable to agree with the statement that the power of the commission to veto abolishments of positions would not affect the power of the liquor control commission to "reorganize its department, assign specific functions to its employees, formulate policies", et cetera, or to "open or close liquor stores or otherwise regulate the purchase, transportation or sale of intoxicating liquor." . . . On the other hand, if the liquor control commission and other appointing authorities may not so reorganize, assign functions and duties to their employees or formulate policies with the results indicated above, without the commission's consent, then indeed, has the civil service commission been enthroned as supreme arbiter on questions of administrative policies, practices and procedures. . . .

In adopting the amendment, the people intended to bring about a betterment in administration of state employment... by putting an end to the turnover of personnel upon each change of administration and substituting therefor continuity and security in positions, so long as they continued to exist, for employees whose qualifications and performance merited it. This was calculated to increase efficiency and to further economy. The ultimate object was not, however, increased benefits to employees, but, rather, by means of such benefits, the improvement of the state service. There is nothing to indicate that it was the thought of the people that government jobs should exist for the benefit of employees, as distinguished from the concept that positions exist and are filled for the purpose of serving and benefiting the public, or that the people desired that employees should be continued in positions after appointing authorities have determined that the need therefor has ended. . . . Neither does it appear that there was a public demand of clamor at the time for subjecting administrative policies, in the manner hereinbefore considered, to the approval or disapproval of the civil service commission.

The civil service commission raises the hue and cry that a holding that appointing authorities may create and abolish positions without the commission's approval would serve to emasculate civil service and bring the inevitable return of the spoils system. . . . In the same vein, the civil service commission says that, if the appointing authority may abolish one position without the commission's approval, then "5, 10 or 1,000 positions likewise may be abolished and replacements made with those who stand in favor with the then administration." The answer to that dire prediction is to be found in the civil service commission's brief, as follows:

> It may have been possible that the reason for the withdrawal of the resolution of August 4 —

They are referring here to the fact that the liquor control commission had first asked the commission to approve the abolishment of the position for Mr. Kunzig but, when it became apparent that they might not approve, they just withdrew the request and abolished the position on their own

> — which contained the set up for the new position was brought about because of appellant's —

the liquor control commission's

> — realization that if the old position were abolished and the new position were established that the prior incumbent, under the rules of civil service, would have been entitled to appointment to the new position.

Suppose that an appointing authority should create 1, 5, 10 or 1,000 positions without the civil service commission's approval. Under the amendment the commission would classify the positions, fix rates of pay and furnish the candidates therefor. How is civil service thus emasculated and the spoils system restored? Or suppose that an appointing authority abolishes 1, 5, 10 or 1,000 positions without the commission's approval and thereafter creates the same or other positions with like duties and functions and seeks to cause them to be filled, as the commission prophesies, with those who stand in well with the then administration. The moment such positions are recreated or the similar positions created the commission will classify, fix rates of pay and control the matter of who shall fill the positions. The last quoted portion from the commission's brief indicates that under its rules the former incumbents of abolished positions are the ones who would forthwith be installed in the newly created positions. Wherein lies the emasculation of civil service and the return to the spoils system? . . .

Finally, it is urged (1) that a holding that appointing authorities may create and abolish positions without the commission's approval would result in a practice of fraud and subterfuge under which the civil service amendment would be circumvented and appointing authorities would use the power to abolish positions as a ruse for getting rid of employees not in favor with the then administration and (2) that, therefore, an abolishment must be submitted to the commission for approval, if for no other reason, at least for a determination of whether it was made in good faith or was a mere ruse, fraud or subterfuge. There can be no doubt that powers permissible when exercised for legitimate purposes are to be denied when exercised for the purpose of achieving an illegal result. . . .

He goes on to point out several cases which have occurred in Michigan and other places where the court has looked into the matter of good faith.

> The function of determining the existence of fraud or subterfuge in connection with the abolishment of a position is, however, not administrative but judicial. The commission is a part of the executive department of the state government. . . . Fraud is a conclusion of law from facts. . . . Drawing conclusions of law is a judicial and not an executive function. It is not within the province of the civil service commission. . . . For cases in which this court has taken cognizance of the presence or absence of bad faith, fraud or subterfuge as the means of defeating the veteran's preference or civil service rights of an employee and in which we have indicated the same to be a factor in the determination of the extent of such rights in connection with the abolishment of a position. . . .

He cites 6 cases in which the court has acted. He concludes:

> Employees affected by abolishments of positions have recourse to the courts for the purpose of trying the good faith thereof. There are indications in the record that it was plaintiff's position before the commission that the abolishment of the position of business manager was not bona fide or in good faith. The way is open to plaintiff to present that claim and to test the validity of the abolishment by appropriate proceedings in a court of competent jurisdiction.

And those are the reasons set forth by Justice Dethmers for his dissent in the Kunzig case, and it was the decision of your committee — there was some dissent from this proposition — that the civil service commission should not have the authority and the power to control the actions of the executive department that are taken in good faith for reasons of administrative efficiency. It should not be their decision as a super board to determine whether or not the executive department of this state is properly organizing and carrying on its functions. And we have proposed this addition to the civil service section, to remove that judisdiction from the civil service commission.

Now the amendment which the secretary read has been added to insure that there is an orderly procedure of appeal, first to the commission, if the employee wishes, and then to the courts to determine whether or not good faith has been used in abolishing the position. But, as Justice Dethmers points out, we do maintain in Michigan a layoff list, so that if any employee is forced to be laid off because his position is no longer necessary in state government, he is first in line for appointment to any opening and, if the appointing authorities should attempt the subterfuge of abolishing a position to get rid of an employee, if they try to reestablish the position, that same employee is the one who is going to be presented to them by the civil service commission to fill the position.

Now we have continued and we have made no change in the language which prohibits any removal or demotion for partisan, racial or religious considerations and we have added the language that there shall also be no appointments or promotions for partisan, racial or religious considerations; which, while I think the question raised by Mr. Hutchinson and a few others yesterday is thoroughly covered by the present section, very emphatically states it in the positive. There shall be no appointments or promotions for partisan, racial or religious considerations. The section is very clear on the point. If there are infractions because of what people do, then it is our duty to step forward and be counted and prevent them, but the provision itself is very clear on the point.

I think, Mr. Chairman, that that covers the explanation the committee would like to make of the changes they have made, and I yield the floor back to Mr. Martin.

CHAIRMAN DeVRIES: The question is on the amendment offered by Delegate Martin, on behalf of the committee on executive branch.

MR. TUBBS: Mr. Chairman, a point of order.

CHAIRMAN DeVRIES: The gentleman from Grand Rapids, Delegate Tubbs.

MR. TUBBS: I had an amendment to this section on the desk before Mr. Martin's amendment was placed there. Perhaps the committee amendment takes precedence over mine; I don't know; but before we rise, I would like to suggest to the delegates here that my amendment would remove the sentence beginning on line 13. The now appointing authority, as originally given, would give "The executive may create or abolish positions", and so forth, down to the word "commission" where the period obtains. That is the amendment that was suggested by a member of the civil service commission. This amendment is one to head off my amendment, and I thought in quickly reading it this morning it answered the question but it doesn't. I submit that if we do rise, that we will answer this question again next Monday evening.

CHAIRMAN DeVRIES: Upon conference, it is the understanding of the Chair that committee amendments take precedence.

MR. TUBBS: Thank you very much.

CHAIRMAN DeVRIES: Delegate Martin.

MR. MARTIN: Mr. Chairman, with that explanation, I now move that the committee rise and give us a chance to think the matter over during the weekend.

CHAIRMAN DeVRIES: Delegate Martin moves that the committee of the whole do now rise. As many as are in favor will say aye; opposed, no.

The motion prevails. The committee has risen.

[Whereupon, the committee of the whole having risen, President Nisbet resumed the Chair.]

PRESIDENT NISBET: The Chair recognizes Mr. DeVries.

MR. DeVRIES: Mr. President, the committee of the whole has had several matters under consideration and the secretary will give a detailed report.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 22,** A proposal pertaining to state civil service. It has adopted some amendments thereto; and has come to no final resolution thereon. This completes the report of the committee of the whole.

PRESIDENT NISBET: Mr. Downs.

MR. DOWNS: Could I ask that the secretary prepare copies of the amendments that have been submitted and they be mimeographed for distribution Monday.

SECRETARY CHASE: I will be glad to.

PRESIDENT NISBET: That will be done and they will be on your desks Monday.

Announcements — Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, might I ask unanimous consent to return briefly to the order of motions and resolutions for the sole purpose of introducing a resolution to be referred to a committee?

PRESIDENT NISBET: Without objection — there is objection. Do you make the motion, Mr. Van Dusen?

MR. VAN DUSEN: In that event, Mr. President, I move to suspend the rules for the purpose of returning to the order of motions and resolutions.

PRESIDENT NISBET: The question is on the motion of Mr. Van Dusen that we return to the order of motions and resolutions. Those in favor say aye; those opposed, no.

The motion prevails, Mr. Van Dusen. We are returned to the order of **motions and resolutions.**

SECRETARY CHASE: Messrs. Van Dusen, Hutchinson and Bentley offer

Resolution 66, A resolution to provide for the limitation for debate in committee of the whole.

Following is Resolution 66 as offered:

Whereas, Full debate on all issues before the convention requires that debate on any individual matter be subject to reasonable limitations; now therefore be it

Resolved, That the committee of the whole may, by the vote of a majority of the members present, at any time after general debate on a proposal has proceeded for one hour and after debate has begun upon proposed amendments to any section or paragraph on this proposal, close all debate at a time certain upon such section or paragraph or, at its election, upon the pending amendments only (which motion shall be decided without debate); but this shall not preclude further amendment, to be decided without debate.

PRESIDENT NISBET: It will be referred to the committee on rules and resolutions.

Without objection, we will also return to the order of **reports of standing committees,** in order to get them on the calendar. Hearing no objection, Mr. Chase.

SECRETARY CHASE: Mr. Hoxie, for the committee on legislative powers, introduces

Committee Proposal 28, A proposal to provide for compensation of the legislature. Amends article V, section 9;
with the recommendation that it pass.

T. Jefferson Hoxie, chairman.

For Committee Proposal 28 and the reasons submitted in support thereof, see below, page 760.

PRESIDENT NISBET: Referred to the committee of the whole and placed on the general orders calendar.

SECRETARY CHASE: Mr. Hoxie, for the committee on legislative powers, introduces

Committee Proposal 29, A proposal to provide for the form of laws. Retains article V, section 20;
with the recommendation that it pass.

T. Jefferson Hoxie, chairman.

For Committee Proposal 29 and the reasons submitted in support thereof, see below, page 761.

PRESIDENT NISBET: Referred to the committee of the whole and placed on the general orders calendar.

SECRETARY CHASE: Mr. Hoxie, for the committee on legislative powers, introduces

Exclusion Report 2009, A report recommending that article V, section 10 of the present constitution be excluded.

T. Jefferson Hoxie, chairman.

For Exclusion Report 2009 and the reasons submitted in support thereof, see below, page 761.

PRESIDENT NISBET: Referred to the committee of the whole and placed on the general orders calendar.

SECRETARY CHASE: Mr. Hoxie, for the committee on legislative powers, introduces

Exclusion Report 2010, A report recommending the exclusion of article V, section 11.

T. Jefferson Hoxie, chairman.

For Exclusion Report 2010 and the reasons submitted in support thereof, see below, page 761.

PRESIDENT NISBET: Referred to the committee of the whole and placed on the general orders calendar.

SECRETARY CHASE: Mr. Hoxie, for the committee on legislative powers, introduces

Exclusion Report 2011, A report recommending the exclusion of article V, section 32.

T. Jefferson Hoxie, chairman.

For Exclusion Report 2011 and the reasons submitted in support thereof, see below, page 762.

PRESIDENT NISBET: Referred to the committee of the whole and placed on the general orders calendar.

SECRETARY CHASE: Mr. Hoxie, for the committee on legislative powers, introduces

Exclusion Report 2012, A report recommending the exclusion of article V, section 35.

T. Jefferson Hoxie, chairman.

For Exclusion Report 2012 and the reasons submitted in support thereof, see below, page 762.

PRESIDENT NISBET: Referred to the committee of the whole and placed on the general orders calendar.

SECRETARY CHASE: That is all of the reports of standing committees, Mr. President.

PRESIDENT NISBET: Announcements.

SECRETARY CHASE: The following committee meeting announcements:

A short meeting of the subcommittee of the executive branch, on executive budget and fiscal management, immediately following adjournment today. Mr. Karn, chairman.

Subcommittee on elementary and secondary education will meet in room J, Monday, at 4:00 p.m.

Committee on finance and taxation will meet in room E, Monday, at 6:00 p.m. D. Hale Brake, chairman.

Committee on legislative powers will meet in room H, on Monday, at 4:00 o'clock p.m. T. Jefferson Hoxie, chairman.

The remainder of the committee meeting announcements are in the composite calendar.

PRESIDENT NISBET: Mr. Martin.

MR. MARTIN: Mr. President, I would like to have the committee on executive branch meet very briefly right after this session.

PRESIDENT NISBET: Mr. DeVries.

MR. DeVRIES: It is requested, Mr. President, that the committee on administration have a brief meeting right after the session.

PRESIDENT NISBET: Any requests for leave, Mr. Chase?

SECRETARY CHASE: Mr. Dehnke requests leave of absence from the committee sessions scheduled for today and tomorrow because of illness in the family; and Mr. Danhof wishes to be excused from the session of Monday in order to fulfill a speaking engagement of long standing.

PRESIDENT NISBET: Without objection, they will be so excused.

SECRETARY CHASE: That is all of the requests, Mr. President.

PRESIDENT NISBET: May I just make a comment or two in the interest of efficient operation. I think when the delegates came to this convention, none of us had any idea that it would entail the work and the time and effort that it has.

Consequently, I have the feeling, I have sensed that at least toward the end of the week we get tired, we are less efficient. I don't think we think as clearly. Sometimes emotions and tempers get the better of us, and I don't think we are giving the close deliberation and scrutiny to the matters under our hands that we should.

Consequently, I have asked Mr. Van Dusen and his committee on Monday night if he will make a few suggestions along this line that I wish you would consider. First, that — as Dr. Pollock mentioned this morning — we try to develop some greater simplicity in the presentation of amendments to be considered, so they may not be quite so confusing. Second — and Mr. Hood and Dr. Hannah both make this suggestion — that we develop some easier procedure for taking a rest period when the committee of the whole operates rather than have to go through the procedure we did yesterday. And, third, that you would consider that after we have completed the deliberation on the 2 proposals now before the committee that it might be well to postpone further work in committee of the whole so that the substantive committees can complete their work.

Now all the committee chairmen did inform me that they would have their work completed by the end of January but, since that time, through our deliberations in the committee of the whole, we have taken away from the committees at least one session a day; so, consequently, they have not been able to do their work; and, second, many of them call special meetings and it has created a great deal of confusion.

So, if we can do that, they can go back to their regular committee schedules, get their work done on time, and I think it would be a little more orderly procedure.

Mr. Van Dusen has told me that he would try to have something along that line, so, would you please give it some thought for our meeting on Monday night.

The Chair recognizes Mr. Everett.

MR. EVERETT: Mr. President, I move that we adjourn.

PRESIDENT NISBET: The question is on adjournment. Those in favor say aye; opposed, no.

We are adjourned until 8:00 o'clock Monday night.

[Whereupon, at 12:15 o'clock p.m., the convention adjourned until 8:00 o'clock p.m., Monday, January 22, 1962.]

SIXTY-SECOND DAY

Monday, January 22, 1962, 8:00 o'clock p.m.

PROCEEDINGS

VICE PRESIDENT HUTCHINSON: The convention will come to order.

The invocation this evening will be delivered by the Reverend Dorr Garrett, Pastor of the First Methodish Church of Quincy. Reverend Garrett is the Pastor of Delegate Blaque Knirk.

REVEREND GARRETT: Let us pray. Our gracious, heavenly Father, we pause in the midst of our fretful and almost frantic procedures, so it seems, to recognize Thy unfailing grace and mercy manifested to us in so many ways. We rejoice in Thy providential care which is so evident in the manifold blessings that are ours to enjoy, both material and spiritual. We want to thank Thee for these, and many which we are so apt to take for granted, such as the common everyday blessings of food, clothing and shelter.

We also pause to thank Thee for the blessings and privileges that are ours as citizens of these United States, and, particularly, for the privilege of living in this good state of Michigan. Truly, we are recipients of Thy bounties above all peoples of the earth. We recognize these blessings, as not only the benefits of the recognition of Thy way of life; of Thy life for us, but to ask Thee to help us never forget that they have come from our forefathers and their recognition of Thee and Thy way of life for them. Help us to never forget this. Grant that these faithful citizens who represent us and are gathered here now in this great task before them, may have Thy wisdom and guidance as they are determining the destiny and future welfare of the people of this fair state of ours. This we ask humbly, yet confidently, in the name of Thy Son, Jesus Christ, our Savior and Redeemer and coming King. Amen.

VICE PRESIDENT HUTCHINSON: The roll call will be taken by the secretary. All those present will vote aye. Have you all voted? If so, the secretary will lock the machine and take the roll.

SECRETARY CHASE: Mr. President, a quorum of the convention is present.

VICE PRESIDENT HUTCHINSON: Mr. Beaman.

MR. BEAMAN: I move that Mr. Thomson be excused indefinitely due to illness.

VICE PRESIDENT HUTCHINSON: The motion prevails.

SECRETARY CHASE: Prior to this evening's session, the secretary received the following requests for leave:

Mr. Ostrow, because an unexpected business appointment came in; and Mr. Nisbet had a speaking engagement this evening.

VICE PRESIDENT HUTCHINSON: Without objection, the requests are granted.

SECRETARY CHASE: Absent with leave: Messrs. Nisbet, Ostrow, Page and Thomson.

Absent without leave: Mr. G. E. Brown.

VICE PRESIDENT HUTCHINSON: Without objection, Mr. Brown is excused.

Reports of standing committees.

SECRETARY CHASE: The committee on administration, by Mr. DeVries, chairman, reports back to the convention **Resolution 65,** A resolution of the constitutional convention requesting action by the legislature pertaining to the orderly completion of convention business in the carrying out of the convention's obligations after adjournment; with amendments, recommending that the resolution and the amendments be referred to the committee on rules and resolutions.

[Following are the amendments recommended by the committee:

1. Amend resolving clause 1, item 1, after "chairman" by striking out the comma and "the vice presidents of the convention, and 6" and inserting "and 14".

2. Amend resolving clause 1, item 2, after "from the" by striking out "appropriation heretofore" and inserting "appropriations".

3. Amend resolving clause 1, item 3, after "determined by the commission" by striking out "so as to insure a fair and reasonable return for the property disposed of" and inserting "to insure reasonable disposition of the property".

4. Amend resolving clause 2, after "representatives" by inserting "and all other members of the legislature".]

Walter DeVries, chairman.

For Resolution 65 as offered, see above, page 636.

VICE PRESIDENT HUTCHINSON: The question is upon the recommendation of the committee on administration that the resolution and amendments be referred to the committee on rules and resolutions. All those in favor will say aye. Those opposed will say no.

The ayes have it. The recommendation is concurred in and the resolution and amendments are so referred.

SECRETARY CHASE: That's all of the committee reports, Mr. President.

VICE PRESIDENT HUTCHINSON: Reports of select committees.

SECRETARY CHASE: None.

VICE PRESIDENT HUTCHINSON: Communications from state officers.

SECRETARY CHASE: None.

VICE PRESIDENT HUTCHINSON: Second reading of proposals.

SECRETARY CHASE: Nothing on that calendar.

VICE PRESIDENT HUTCHINSON: Third reading of proposals.

SECRETARY CHASE: Nothing on that calendar.

VICE PRESIDENT HUTCHINSON: Motions and resolutions.

SECRETARY CHASE: There are no resolutions on file, Mr. President.

VICE PRESIDENT HUTCHINSON: Unfinished business.

SECRETARY CHASE: None.

VICE PRESIDENT HUTCHINSON: **Special orders of the day.** The delegate from Wayne, Mr. Baginski.

MR. BAGINSKI: Mr. President, I move the convention resolve itself into committee of the whole for the purpose of considering a proposal on special orders of the day.

VICE PRESIDENT HUTCHINSON: The question is upon the motion of the delegate from Wayne. All those in favor will say aye. Those opposed will say no.

The motion prevails. The delegate from Wayne, Mr. Baginski, will preside.

[Whereupon, Mr. Baginski assumed the Chair to preside as chairman of the committee of the whole.]

CHAIRMAN BAGINSKI: The committee will be in order.

The Chair would like to explain that we are in special orders on general orders for the purpose of considering **Committee Proposal 15,** A proposal to amend article II pertaining to the declaration of rights. Five amendments have been adopted. The question now is, are there any further amendments to the body of the proposal?

For last previous action by the committee of the whole on Committee Proposal 15, see above, page 576.

Dr. Pollock.

MR. POLLOCK: Mr. Chairman, I merely want to say where we are as a setting for our discussion in committee of the whole. Of the 23 sections submitted by our committee, amendments were adopted to section 4, section 10 and section 19. The amendments adopted to section 4 and section 10 were not in accordance with the report of the committee. Section 19 was

amended without any objection from the committee. Now that we have the matter still before us, I have no amendments to propose but I should like to yield the floor to my colleague on the committee, Mr. Ink White, for an appropriate motion.

CHAIRMAN BAGINSKI: The Chair will recognize Mr. Ink White.

MR. WHITE: Mr. Chairman and delegates, I have been sitting here quietly through several sessions of this committee while a matter quite important to me and my profession has been discussed, altered, amended and generally rendered quite ineffective in some respects. I refer to our action on section 4 of the declaration of rights which we voted upon in last Monday's meeting in the committee of the whole. I point out that we emasculated a traditional freedom, that of the press, by a timid rising vote of 60 to 56 — not even a majority of the delegates present at that session.

As a newspaper man, I have no desire to limit in any way the freedom of my brethren in radio, television and allied fields. However, in this instance, it appears to me that in failing to recognize individual media specifically, we receded to the position where we would penalize the print and the other means of communication by eliminating the phrase "liberty of speech or of the press" from the constitution. I point out to you that these words are traditional, historic and meaningful to Michigan people and to citizens generally throughout the nation. I point out further that a considerable body of legal precedent hangs upon the judicial interpretation of these words.

Just because we don't find it appropriate to give specific recognition to individual media, I see no reason to eliminate the generic terms, "press and speech", which your earlier action had accomplished. This, I submit, leaves us with an anemic declaration of rights in this regard and represents a compromise which finds no favor among constitutional authorities and the people who are closely associated with news media.

If I am in order, sir, I shall move that we reconsider our action on the Hanna amendment to section 4, and should such a motion prevail, it is my understanding of the rules that we would return to the original language of the committee on rights' proposal.

CHAIRMAN BAGINSKI: Is that so, Mr. Secretary?

SECRETARY CHASE: The motion on the part of Mr. White is to reconsider the vote by which the amendment to section 4 was adopted. This amendment is as follows:

1. Amend page 2, line 6, after "abridge" by striking out "the liberty of speech or of the press" and inserting "these liberties".

Mr. White's motion is to reconsider the vote on this so that this amendment may again be voted upon.

CHAIRMAN BAGINSKI: The question now is the reconsideration of the vote on the Hanna amendment. As many as are in favor of reconsideration will signify by saying aye. Those opposed?

The motion prevails.

The question now is on the adoption of the Hanna amendment. As many as are in favor of the amendment will signify by saying aye.

MR. BENTLEY: Mr. Chairman, a parliamentary inquiry. Can we have that amendment read? I don't think many people know what they are voting on at this point.

SECRETARY CHASE: The vote is now and for the second time upon the Hanna amendment, which is page 2, line 6, after "abridge" by striking out "the liberty of speech or of the press" and inserting "these liberties".

May the secretary interpolate that if this amendment is voted down, the language will be restored to the form in which it was submitted from the committee.

CHAIRMAN BAGINSKI: The question is now on the Hanna amendment. As many as are in favor will signify by saying aye. Opposed, no.

The amendment is not adopted. Mr. Secretary.

SECRETARY CHASE: Messrs. Habermehl and King offer the following amendment —

MR. HABERMEHL: Mr. Chairman, that amendment is to be offered when we rise rather than at this time.

CHAIRMAN BAGINSKI: Any further amendments?

SECRETARY CHASE: Mr. Bledsoe and Miss Donnelly offer the following amendment:

1. Amend pages 2 and 3 by striking out all of section 10 and inserting a new section 10 to read as follows:

"Sec. 10. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.".

CHAIRMAN BAGINSKI: The question now is on the adoption of the Donnelly-Bledsoe amendment.

MR. PRETTIE: Mr. Chairman, a parliamentary inquiry, sir. It occurs to me that this matter was before this committee. I can't at the moment get the citation in our journal, but I am certain that this was the language of the federal constitution which was before us for our consideration in the committee of the whole in a previous sitting and that this is tantamount to a motion to reconsider. Am I correct in that?

CHAIRMAN BAGINSKI: That is correct. The Chair might answer, Mr. Prettie, that if you care to make a point of order on this, you can, because this amendment was once voted down.

MR. PRETTIE: I rise to such a point.

CHAIRMAN BAGINSKI: The Chair sustains the point of order. It was previously voted down. Therefore, it is not in order.

Are there any further amendments to the body of the proposal?

SECRETARY CHASE: There are none on file, Mr. Chairman.

CHAIRMAN BAGINSKI: Dr. Pollock.

MR. POLLOCK: Mr. Chairman, I merely point out that the committee did not ask for this postponement and therefore, there are no committee amendments and I wonder why the postponement was brought about, if there are no amendments.

CHAIRMAN BAGINSKI: Dr. Pollock, the Chair doesn't understand the question.

MR. POLLOCK: I recall on 2 previous occasions Mr. Iverson asked for a postponement presumably for some reason, presumably to introduce amendments or changes in the provision as it had been passed in the committee of the whole. We are apparently still in that same condition. Nobody has offered any amendment. The Prettie amendment was adopted by the committee of the whole. I have heard no other amendments. Therefore, as far as the committee is concerned, we can pass on to some other item of business.

CHAIRMAN BAGINSKI: The Chair might advise Dr. Pollock that we are in committee of the whole on Committee Proposal 15 and the next order is: are there any amendments to the body of the proposal? If not, it will be passed.

Mr. Iverson.

MR. IVERSON: Mr. Chairman, inasmuch as Mr. Pollock has raised the question, I did ask to have this put over for the purpose of any amendments which anybody wished to propose. If there are no amendments in the committee, then I think the chairman is exactly correct.

CHAIRMAN BAGINSKI: And the Chair says, are there any further amendments to the body of the proposal?

Dr. Pollock.

MR. POLLOCK: The committee has no amendments to propose but I do give notice that when the committee rises, on behalf of the committee, I shall ask that the convention do not concur in the amendment made to section 10.

CHAIRMAN BAGINSKI: That is the privilege of the delegate.

Mr. Kuhn.

MR. KUHN: At this time, since we can dispose of this matter once and for all, I'd like that the committee rise so that we can get rid of these roll call votes which they want to get rid of and then we can come back and get on to the business at hand.

Therefore, at this time I move that the committee rise in order that we can finish this subject matter.

CHAIRMAN BAGINSKI: The Chair might advise, Mr. Kuhn, we just have one more question. That is, the Chair asks, are there any further amendments to the body of the proposal? If not, it will be passed.

Committee Proposal 15, as amended, is passed.

Mr. Kuhn.

MR. KUHN: I move that the committee rise.

CHAIRMAN BAGINSKI: Those in favor that the committee rise, say aye. Opposed, no.

The motion prevails.

[Whereupon, the committee of the whole having risen, Vice President Hutchinson resumed the Chair.]

VICE PRESIDENT HUTCHINSON: The delegate from Wayne, Mr. Baginski.

MR. BAGINSKI: Mr. President, the committee of the whole has had under consideration one proposal on special orders and the secretary will make a detailed report.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 15,** A proposal to amend article II pertaining to the declaration of rights; and reports this proposal back to the convention with 4 amendments, recommending the amendments be agreed to and the proposal as thus amended be passed.

The committee of the whole further recommends that, pursuant to the recommendation of the committee on declaration of rights, suffrage and elections, section 22 of article II of the present constitution be deleted from the new constitution.

VICE PRESIDENT HUTCHINSON: Without objection, the further recommendation of the committee of the whole relative to the deletion of section 22 of article II will be concurred in. I hear no objection, it is so ordered.

SECRETARY CHASE: Following are the amendments recommended by the committee of the whole:

1. Amend page 1, line 23, after "diminished" by inserting "or enlarged".

2. Amend page 2, line 28, after " affirmation" by striking out the period and on page 3, line 6, by striking out "Evidence obtained in violation of this section shall not be used except as authorized by law.", and inserting a colon and "Provided however, That the provisions of this section shall not be construed to bar from evidence in any court of criminal jurisdiction, in any criminal proceeding or preliminary examination any narcotic drug or drugs, any firearm, bomb, explosive, or any other dangerous weapon, seized by any peace officer outside the curtilage of any dwelling house in this state.".

3. Amend page 3, line 10, after "rebellion" by striking out the comma and "insurrection".

4. Amend page 4, line 4, after "all" by striking out "persons" and inserting "individuals, firms and corporations and voluntary associations".

VICE PRESIDENT HUTCHINSON: The question is upon agreeing to the amendments made by the committee of the whole. Dr. Pollock.

MR. POLLOCK: Mr. President, will you explain to the convention the effect of not concurring with any specified amendment, which motion I might make?

VICE PRESIDENT HUTCHINSON: If the convention shall not concur with an amendment made by the committee of the whole, then the form of the proposal will revert to the form in which it was reported by the standing committee.

MR. POLLOCK: Thank you. I now move that the convention do not concur in the amendment made to section 10.

VICE PRESIDENT HUTCHINSON: The question is upon concurring. Mr. Bentley.

MR. BENTLEY: Mr. President, I suggest that we vote on all the amendments with the exception of the amendment to which the chairman of the committee objects. Then we can vote on that separately.

VICE PRESIDENT HUTCHINSON: Mr. Bentley requests that the question be divided and that a separate vote be taken upon the amendment to section 10. Dr. Pollock.

MR. POLLOCK: I have no objection, Mr. President.

VICE PRESIDENT HUTCHINSON: The question then is upon concurring in the several amendments made to the proposal other than the amendment made to section 10, amendments 1, 3 and 4. All those in favor of concurring will say aye. Those opposed will say no.

The amendments, 1, 3 and 4, are concurred in.

The question now is upon concurring in amendment 2 made by the committee of the whole to section 10.

VICE PRESIDENT HUTCHINSON: Mr. Prettie.

MR. PRETTIE: Mr. President and fellow delegates, I rise in support of the report and recommendation for adoption of the action taken in the committee of the whole on section 10 of Committee Proposal 15.

I wish to submit that the only question before this assembly at this moment is whether we shall adopt this report as amended and reconsideration of which has already been defeated in the committee of the whole. I submit that what we do here and now will establish a precedent for this assembly and if what we do is wrong, it will, to quote the delegate from Fennville now in our Chair, "come back to plague us."

I further submit that the blood and sweat and tears extended over hours of debate in the committee of the whole should not be repeated on this floor if we hope to achieve the completion of our task by March 31 of this year. In that debate I think the civil rights issue was shown to have had no relevance to the matter we have under consideration.

I'd like to point out that if we had received with the declaration of rights the now pending Committee Proposal 26, providing for equal protection of the law to all persons without discrimination, the relevant issue of civil rights would never have become entangled in our debate on the subject of search and seizure.

Third, I would say that if we are to heed the admonition of 2 former presidents of these United States, we must approve the first step we have taken toward building a stronger state government resisting federal encroachment by the federal executive, legislative or judicial branches upon the reserve power of this sovereign state.

Fourth, I submit that we must continue the protection that we have had for 25 years for our law abiding millions against the lawless few.

Fifth, that the proviso of section 10 is an essential tool in the hands of our law enforcement officers granted them more than 25 years ago and strengthened to meet changing conditions by a vote of more than 5 to 1 only 9 short years ago.

Fellow delegates, I should, perhaps, conclude my remarks at this point. I beg, however, your further indulgence. I have timed this and it will not take over 15 minutes. I do this for the reason that I had this floor only briefly during the deliberations in committee of the whole and for the further reason that in the debate and in the press, the work accomplished by the committee of the whole has been referred to as "the Prettie amendment."

For these reasons I owe to 143 fellow delegates here an obligation to extend my remarks somewhat so that you may know my motives and my purpose in presenting this amendment that has been adopted by the committee of the whole.

To do this, may I ask you to recall that on January 8 I spoke to you at some length under the order of personal privilege and discussed some, to me, basic legal concepts. In that statement, found on page 289 of the journal, I made specific reference to the declaration of rights then soon to come before us and to the provisions specifically of section 10 of that great document.

At that time I pointed out that the law is not precise and is not static. And to this I would add:

The law cannot be accurately weighed. Our courts are not penny arcades where you put a penny in the slot and out comes a card with your weight and fate — guilty — not guilty; judgment for the plaintiff, $50,000 — judgment for the defendant; and so forth.

While lawyers speak of the weight of evidence and the scales of justice, they are not in fact talking about scales at all. The statues and the paintings that you see in our court houses and our court rooms depict justice blindfolded with a balance, not a scale in her hand. It is this delicate balance of the rights

of the individual and the rights of society; the delicate balance between lawfulness and lawlessness that we have had under consideration off and on for these past 10 days. Whose civil rights shall we protect? Are not the law abiding entitled to due process? We have been trying to balance these ideas and arguments. These are philosophical concepts, hard to take hold of; sometimes impossible to reconcile.

Last week at dinner, I listened to 2 fine lawyers, partners in one of this state's leading law firms, honestly and sincerely disagreeing on what this committee has done, and whether what it has done should be undone as is now proposed. While I was listening to this legal discussion, another lawyer friend, a member of the legislature, called me from my table and said in effect: "Prettie, quit beating your brains out for what is right. The only important thing is, 'have you got the votes?'" I think these 2 almost simultaneous conversations point up the difference between principle and politics. When I became a candidate I believed that principle would be the overriding determinant in this convention. And I still believe so. We have demonstrated that in matters of deep conviction, honest delegates honestly vote. We have demonstrated this not only with reference to section 10, but also section 4 of this bill of rights. Liberty of speech and freedom of press, too, are concepts, but when we try to spell them out, they cause us trouble which we corrected here tonight. This is perhaps because these rights, I submit, are not balanced with corresponding duties.

We hear much about the freedom of the press, but as was pointed out on the floor, nothing about its duty to publish all the news. A free press screams against any censorship, and yet some papers impose a most rigorous control of what shall be printed.

We all came to this convention with our first duty performed for us by the newspapers. They had placed in nomination 4 names as candidates for the high office of president of this assembly and they considered the nominations closed. It was heartening to me to see the delegates reopen the nominations and start thinking and acting and leading instead of being lead.

We have seen our free press try and convict citizens, including labor leaders, in the court of public opinion, where there is no presumption of innocence; but when the same charges were brought in a court of law, the accused was found not guilty. We have seen our free press forecast the victory or defeat of candidates for high office — only to have these predictions reversed by the voters at the polls.

My interest in the subject of search and seizure was further whetted in the December 26, 1961 issue of the Detroit Free Press, an editorial entitled, Amending Search Laws Would Endanger Society. I wrote Lee Hills commending him on this vigorous editorial. But on the day after the committee of the whole of this convention had acted, several metropolitan papers, including the same Free Press, predicted editorially in their news reports of our action that pressures would cause these elected representatives of the people of this state to reverse their action and run for cover. I raise the question as to whether this is free press or a pressure press. A week ago I furnished each delegate with a copy of an editorial which posed the question, "Who is tampering with America's soul?" I now ask the question, "Who is tampering with Michigan's soul?"

After election to this convention I tried to lay down some guide lines for my thought and action here. Briefly stated they are: I will view our present constitution with a desire to keep that which is good; discard that which is bad; clarify that which is ambiguous; and modernize that which is outmoded. I applied these tests to the proviso of section 10 of the bill of rights, and found it good, but verbose. It needed to be clarified without sacrificing the principle stated. I found it modern — it had been enacted only 25 years ago to meet a need, strengthened and affirmed only 9 years ago by an overwhelming affirmative vote in every one of Michigan's 83 counties, and statewide by a vote of over 5 to 1. It was after reaching these conclusions that I presented the amendment which the committee of the whole has now adopted.

Please believe me when I say that I have given every consideration to the argument so ably advanced by my long time and very respected friend, Judge Carl Mosier. If I understand his argument correctly, he believes that the Mapp doctrine will be extended to our Michigan constitutional proviso, while 3 other former judges take the opposite view. Judge Mosier further argues that the present constitution as sustained and construed by our Michigan supreme court places a mandate upon the trial courts of this state to admit in evidence contraband seized outside of the curtilage of any dwelling. Judge Mosier's objection is that no such rule should interfere with the judicial discretion.

As every delegate knows, there are many statutes that impose similar mandates upon our courts. Notable among these are the rule prohibiting testimony as to matters equally within the knowledge of the deceased; and the statute of frauds prohibiting evidence not complying therewith.

It may be said, however, that these are exclusions. They are statutory mandates saying, thou shalt not, and hence are not the same as the proviso of section 10 which says, thou shalt admit in evidence certain items under certain circumstances. May I remind this assembly that the Ten Commandments, themselves, are partially affirmative and partially negative. They enjoin, "Thou shalt not kill," but they also command, "Honor thy father and mother."

While I, with the utmost respect, esteem Judge Mosier's superior knowledge and understand his position as a former member of the bench, I must point out that law is not a perfect thing and throughout our history the people in their constitutions and statutes have laid down certain rules which the courts are bound to observe. Again, it is a balancing of rights.

That honest men and former judges and present judges may differ in their views in this matter is to me fully understandable. If all men agreed, we would have no need for lawsuits or lawyers, or courts. Even the supreme court of this land divided 5-3-1 in the Mapp case in reversing what had been settled law for the previous 170 years.

May I further point out that the personnel of courts change, and with it, the case law changes. We have often seen this in recent years in Michigan. It may happen in the United States supreme court before any test case from Michigan can reach that court. May I reiterate that I, for one, cannot presume to prejudge what the United States supreme court may do when a proper case under our Michigan constitution reaches it.

And whatever that court does, the resultant effect, my fellow delegates, on the protection of the law abiding citizens of this state will be charged to that high court and not to this convention. Its action will not result in our frustration and the defeat of the work we do here. We in this convention must give due regard to the mandate of the people so clearly given in 1952, and to the testimony of our law enforcement officers that this is a tool they need to perform their duties as the enforcers of our laws, and the protectors of the rights of law abiding citizens.

We hear much these days of rights — but what of duty? Our governments provide security to supplant industry. We provide aid to replace ambition. I repeat, "Who is tampering with America's soul?"

Now to the point. The valid point has been made that Michigan alone has this constitutional proviso. And why do we need it? The answer is that in about half the states the same rule exists by reason of court made rules of evidence. When our Michigan courts adopted the exclusionary rule, the wrong was righted by our law abiding citizens writing it into the constitution. I submit that the fact that it is unique does not prove that it is bad.

Is there anyone here who would deprive our police officers of their right to carry arms? I ask you? In some societies this is true. This summer in London I observed, as I had read, that the British police officers performed their duties without bearing side arms. Three weeks later I was in the city of the "Prince of Peace" where Arab police, armed with rifles, faced Israeli police similarly armed, across barbed wire

entanglements. A month later, I was in Japan where one of the world's greatest police states collapsed, and its now law abiding democratic people are adequately policed there by unarmed officers.

But may I point out that this country of 98 million had over 60 million employables, and less than one per cent — one per cent — fellow delegates, were unemployed. Holdups, bank robberies, burglaries, the killing of auto service and filling station attendants and similar crimes were practically unknown. What is the point? Simply this, that the tools required by those charged with the duty of protecting the law abiding citizens must be appropriate to the time and the society in which they serve. The citizens of Michigan 25 years ago determined, and 9 years ago affirmed, that the tool given by the proviso in section 10 of the bill of rights was, and still is, needed in our present state of social development in the state of Michigan.

I plead with you that you not take this tool from their hands by striking down what has been done in our committee of the whole and reverting to a principle that I submit isn't sound.

Following the dinner last week of which I spoke, I spent over 2 hours with 4 other lawyer delegates of this convention who do not agree with what the committee of the whole has done and wanted me to join in a compromise. We tried to define what is an unreasonable search. Again, this is a concept which, like liberty and justice and morality, almost defies definition in any document, to say nothing of this constitution.

We also canvassed the possibility suggested a week ago of writing a proviso limited to contraband seized from vehicles. These matters we discussed for 2 long hours, and in my heart I could not agree that they were in accord with what my constituents or yours wanted. If our present proviso is federally unconstitutional — a weakened version of it will be all the more likely to be struck down. On matters of principle I cannot compromise.

I am soon to come to an end. May I respectfully suggest that the difference of thinking that bogged us down for several hours is basically one of logic. I early learned in high school that when one reasons from a sound premise, he arrives at a sound conclusion and conversely, if one reasons from an unsound hypothesis, he will arrive at one or many contradictory but uniformly unsound conclusions.

The sound premise, my fellow delegates, is this: we do not know what the United States supreme court will do when a proper case from Michigan under our constitutional proviso reaches that court. This is documented by the rights committee's report, pages 278 and 279 of our journal. From this I draw what I conceive to be a sound conclusion that our present proviso and the one we have adopted is a valid one under federal law unless and until the United States supreme court holds otherwise in a proper case from Michigan.

Equally sincere and honest delegates argue, from the hypothesis of "the apparent sweeping impact" of the dicta in Mapp, that they are able to prejudge what that court may someday decide regarding the Michigan search and seizure proviso and that it will be struck down. We could also start from the same false hypothesis and reason that under different and less violent facts and under a state constitutional provision instead of a statute, Mapp could be distinguished — or the court might change its mind and return to the long established law of Wolf vs. Colorado. Either conclusion, I submit, is equally unsound because it is based on a false premise.

It was this argument in which we engaged for so many hours. But, prolonged as it has been, the time devoted to this debate, I submit, is not out of proportion to the importance of the subject. Nor has the time been wasted. We have delved into some very basic philosophies and we have helped to clarify our thinking. It will help us to act with greater knowledge and dispatch when we come to Committee Proposal 26 prohibiting discrimination and guaranteeing equal protection under the law.

A vital question has been asked. Is this law really needed? That is a valid point and I have documented it by furnishing to each delegate, with a covering letter from me, selected instances from many, many cases that I might have given you and which, I submit, the facts bear out without any possible question that this tool is needed for the protection of the law abiding citizens. The actual cases that I furnished you, of course, differ in the facts. Let us combine the many factors involved into an hypothetical case to make the problem clear.

Come into my private office, if you will, while I consult with Mr. Jones, a dope peddler and a very smart one. He wants to have me defend him on a CCW charge and a charge of unlawful possession of narcotics. He is free on $10,000 bond awaiting preliminary examination.

As I question him, I develop the following factual background. He is the owner of a 2 motored Cessna for which he has a license and is himself a pilot. He lives in a respectable neighborhood in Chicago and operates a small retail establishment as a front for his real occupation which is that of flying pure, uncut heroin from Chicago to Detroit. There it is cut and sold — as it is described in a recent newspaper series. Mr. Jones is careful on these flights to carry his pilot's license. Last week while making his regular monthly "business trip" to Detroit, he ran into icing conditions, lost altitude and was forced to land in a plowed field on a farm in my county. The landing was rough; his pilot's seat broke loose and he was violently thrown against the cowling, sustaining head injuries that rendered him unconscious.

Occupants of the farm house heard the low flying aircraft and saw it crash. They called the police, notified them of the accident, then went to give aid. The police arrived at the farm and found Mr. Jones seriously injured and still unconscious. They radioed for an ambulance, gave first aid, and assisted in loading him, still unconscious, into the ambulance for transportation to the hospital. Up to this point there was no known law violation or even a suspicion thereof. The police then began a routine examination of the aircraft and found secreted therein a .38 caliber revolver and a substantial quantity of what proved on laboratory analysis to be 98 per cent pure heroin.

Complaint was filed of CCW and illegal possession of narcotics. Warrant issued and Mr. Jones was placed under police guard in the hospital. Upon release he was taken before the nearest convenient magistrate and demanded examination. His question to me is, has he a defense against the charge by reason of the unreasonable search of his aircraft and the seizure of the heroin and weapon?

I advise him of his rights particularly under section 10 of the Michigan constitution bill of rights and its proviso and of the holdings of the Michigan supreme court and the recent United States supreme court decision in Mapp.

He then asks me what he should do, and I tell him Dr. Anspach's story about 2 chances. And I apply it to Michigan procedure.

He has already made his first choice: he has demanded examination.

On examination he has 2 chances: a motion to suppress from evidence the weapon and the narcotics may be granted, and he is free; or it may be denied and he still has 2 chances.

The examination having proceeded, he still has 2 chances. The magistrate may decide under Mapp to release him or bind him over to the circuit court for trial, and he still has 2 chances. Or examination may proceed and he may or may not be bound over for trial.

In the circuit court, a renewed motion to suppress may be granted or denied. At the conclusion of the people's case, a motion for a directed verdict may be granted or denied. At the conclusion of the defendant's case a similar motion may be granted or denied. When the case goes to jury, Jones may be found guilty or not guilty.

If found guilty, he may appeal to the supreme court of Michigan and his conviction may be reversed or affirmed.

The federal constitutional question having been raised and fully briefed, appeal now lies to the federal court hierarchy, and all along the line Mr. Jones still has 2 chances. When it finally reaches the Supreme Court of the United States, the proviso of section 10 may be struck down as federally unconstitutional, or it may be sustained under article X of the federal

bill of rights, as constitutionally enacted by the people of the state under the reserved powers clause. But this is the end of Mr. Jones' chances.

The attorney general of the state of Michigan files an amicus brief in this case. The American civil liberties union, with no great enthusiasm, feels constrained to file a brief amicus curiae to sustain what it has won in the Mapp case.

It is now 5 years later and Mr. Jones, being free on bond all this time, has continued dope peddling and is extremely wealthy.

My fellow delegates, at this moment place yourself in the position of the United States supreme court. Now there squarely before you is the question of the federal constitutionality of the Michigan rule of evidence under the proviso of section 10. How do you find? In my heart I know you will find for the people of the state of Michigan.

VICE PRESIDENT HUTCHINSON: Mr. Lawrence, did you seek the floor?

MR. LAWRENCE: Mr. President and fellow delegates, I would like to talk to you a few minutes about a situation in this case that I think has been entirely avoided in the last argument. It was forcibly called to my attention when one of our delegates, whom I admire and like and am very fond of, wrote me a note the other day and said, "I'm very disappointed in you that you will not help protect our children."

Now, I know that that was a sincere remark and I thought maybe it was time to do a little self examination. Now, whether you know it or not, I come from Washtenaw county. Washtenaw county has its ordinary number of young people, many of them in industry, working. We have 3 GM plants and 2 Ford plants. We have the usual number of high school students that you would find in a county of 200,000. But more than that, we have, for 9 or 10 or 11 months out of the year, 30,000 approximately, young people in their late teens and early 20s who are attending Eastern Michigan University in Ypsilanti and the University of Michigan. And I can tell you — and I don't think anybody will be able to refute it — that Washtenaw county is one of the counties that has less vice and fewer crimes of violence — no gangsterism or anything of that nature — and is probably as clean a county as there is in the state, and yet the temptation for numbers and other types of vice and crime are very potent there and would be very lucrative. And why is it clean? Because we have good police officers and we have good courts.

Now, it was interesting that all 3 of the delegates from Washtenaw county voted against the Prettie amendment; for the Bledsoe-Donnelly amendment; and, in other words, in support of the committee proposal, and I can say this truthfully and it will be, I am certain, approved by my 2 colleagues, that those votes were taken without any consultation between us previously, none of us knowing how the others would vote.

Let me first say this and merely to make the point regarding the children — protecting the children: one of the delegates from Washtenaw county is a former regent of the University of Michigan, a former regent of Wayne State University, is a grandfather with 23 grandchildren. Another delegate is a professor, has been head of the political science department in the university, a teacher for years of students and young people and is a grandfather twice over. The third delegate is not a grandfather but he does have a son who is a senior in the university law school and has been and is interested in protecting children. Now, the 2 of them were attorneys and 1 was a school teacher, and yet, independently, all 3 of them voted against the Prettie amendment and for the Bledsoe-Donnelly amendment. So I think that we can, maybe, sort of discount the fact that we are not interested in protecting children — or let's take the converse — that we are interested in seeing crime and disorder flourish.

Now I'll tell you what disturbs me about this Prettie amendment. I don't think that anybody can argue that any of us here — and I haven't seen a delegate here who would care to see a criminal go free if lawfully, legally and constitutionally convicted. But there are some of us who take the bill of rights seriously enough that we do not feel that convictions should be obtained unlawfully, illegally and unconstitutionally and, as I see it, that is what the Prettie amendment proposes.

I asked research to look up something for me and I received this short memorandum: Within the last 7 weeks, 3 circuit court justices in Michigan have ruled that the decision of the United States supreme court in Mapp vs. Ohio is controlling as against the weapons and narcotics proviso in article II, section 10 of the Michigan constitution. The cases are as follows:

1. In People vs. George Washington, docket X-235, decided in opinion by Judge Carl F. Zick, of the second judicial circuit, sitting at St. Joseph, Michigan on November 28, 1961. Judge Zick held, with reference to a narcotics seizure outside the curtilage in an unreasonable search, that in the light of Mapp vs. Ohio, the admissibility of the evidence in question would be in violation of the due process clause of the fourteenth amendment. No jury was empaneled and the opinion of Judge Zick is on appeal to the state supreme court.

2. In People vs. Lawrence Bell, docket number 13-25, Judge Lee Fox of the ninth judicial circuit, sitting at Kalamazoo, ruled to the same effect in an opinion dated January 11, 1962, just a few days ago. The case involved a car search conducted in part with the assent of the defendant. Citing the Mapp case, Judge Fox held that a gun found on the defendant could not be admitted into evidence and that the Mapp case was controlling despite the proviso, which was now set aside by the ruling of the United States supreme court. "Some guilty must go free as the price of liberty," says the opinion — and incidentally, that is a quote from Mapp vs. Ohio.

3. A few days earlier, Judge Lucien Sweet, also of the ninth judicial circuit, sitting at Kalamazoo, ruled to the same effect in a similar case, exact case title and docket number unknown.

Now, you understand that these 3 cases found by research that I asked to have located have been decided under the present constitutional provision which contains substantially these provisions of the Prettie amendment. In other words, the prosecutors are going into court now with illegally obtained evidence and the courts are knocking them down with the Mapp decision — and I think rightly so. For after all, on page 1090 of the law edition of the Mapp case — this is a direct quote from that case, and this is the holding of the case — when they say it doesn't apply because it's a rule of evidence or anything else — just listen to this language. "We hold that all evidence" — and I'd like to repeat that word "evidence" because it's been said this was just a rule of evidence, this constitutional provision, and I'd like to start again and remember the word "evidence". "We hold that all evidence obtained by searches and seizures in violation of the constitution is by that same authority inadmissible in a state court."

I don't see how anything could be any plainer than that.

Let me read you just a portion of the committee proposal, if your consciences are bothering you that you may be fostering crime — and that's the last part — it's on page 275 of our journal, the righthand column and it's the part in capital letters: "Evidence obtained in violation of this section shall not be used except as authorized by law."

In other words, the committee is not asking you to rule invalid or to hold invalid by your wording in the constitution the use of such evidence. What the committee is trying to say to you is this: don't put a provision in the constitution that appears to be unconstitutional under the direct wording of the United States supreme court, and I think it has a right to say that, regardless of whether it was a unanimous vote by which this constitutional amendment was adopted, or by a 5 to 1 majority. If it is unconstitutional under the United States supreme court decision and under the federal constitution, don't put that new provision in our state constitution. And particularly when — if this is such a terrible thing that is being done, and this is going to hamper our officers — the present constitution has that provision or substantially that provision in it now and that constitution is going to be in effect until the constitution we are working on is adopted, if ever. And if it is adopted, there will be plenty of time between the

present and the time it is adopted for the legislature to pass an act that will protect the people of this state, if by eliminating that language from the constitution we are hampering the enforcement of law in any way that is not proper.

I have one other thing for you to think about. Let's assume that in all good faith this convention adopts the Prettie amendment. Let's assume that a case under that goes to the United States supreme court and it is held unconstitutional or our state supreme court holds that it violates the federal constitution. Then that provision becomes invalid and there is nothing — there isn't even a provision except as provided by law. If, however, the Mapp case is held by the courts to be circumscribed in a smaller area than it now appears, and if it would be possible to make searches, say, of automobiles, although, of course, that isn't what it's limited to; they can stop you on the street as long as you're outside your home, your curtilage. And if it is not in the constitution, but it is in the new constitution, except as provided by law, there is constitutional authority for the legislature of this state over in the capitol to pass a valid law that will give the police officers everything they are entitled to and the people of Michigan everything they are entitled to.

If you pass the Prettie amendment and if it is held unconstitutional, either in the supreme court here or in Washington, you have nothing, and it would then require something that would allow a statute to be passed that would temper the wording they object to that the United States has in its constitution, in effect.

I think it is rather remarkable — don't you — that a model police system such as the FBI has been able to exist, flourish and capably represent us without any such provision as we are being asked to pass? I think that the answer to this is — and very frankly, and in due deference to the retired members of the court, I am not including them — if our courts would get a little nerve and say that, for instance, this is the ordinary case that our prosecuting attorney tells us: at 2:00 o'clock a tip on narcotics comes to the office; they say a plane is coming in from Chicago or New York; there's a man with a blue coat and a gray hat, about 6 feet tall, he's going to be carrying a load of heroin or marijuana or something — it may be half an hour; they don't have time; they don't even know his name; but they go out to the airport; they stop a man answering that description; and marijuana is found on him.

Now, other than the rule that an anonymous tip does not constitute reasonable grounds for the issuance of a warrant, the courts have said it can't be used. If they'd get a little nerve and this thing would say that such a tip is reasonable grounds, you wouldn't need any such provision in the constitution because I think it's rather obvious to at least a practicing member of the bar and I think to the ordinary layman — maybe not to a court — that if an anonymous tip is received that a man is carrying marijuana, a search is made on that tip and the marijuana is found, that apparently the officers had reasonable grounds. At least, it seems so to me. And I think that if you pass a constitutional provision here, the courts will ultimately come around by their decisions and the things that you are trying to do in the constitution — I predict, and others, I think here, predict — will ultimately be held unconstitutional.

Now, we all like law and order. We all want law and order. We all recognize this problem. But it can be handled and handled constitutionally by court decision. It can be handled by statute if such a provision is constitutional.

If it is so important — you know, Michigan, after all, is a wonderful state but it isn't the only state that has crime; I think that probably all 50 states have crime — if there is such an impelling need for the provision that is in the Prettie amendment, why haven't we got a movement on to amend the federal constitution and settle this once and for all? It should receive the unanimous support of the 50 states if it is such a good provision. But in the absence of that being done, I beg of you, please do not do what seems to be an absurdity; pass an unconstitutional provision in our new constitution. Thank you very much.

VICE PRESIDENT HUTCHINSON: The delegate from Wayne, Mr. Norris.

MR. NORRIS: Mr. President, ladies and gentlemen of the convention, if I may, I would like to address myself briefly to 2 points. First, the issue as I see it, and second, a few observations regarding law enforcement. I shall try to be brief. I rise in support of the motion that we do not concur in the amendment offered, which I understand is the parliamentary posture of the matter before us.

With regard to the issue, I say this — the issue in Michigan is simply this: whether police officers are to be given the constitutional power to search any one of 8 million persons and any one of 3 million cars without probable cause. Once the availability of the search and the admissibility of the evidence depend upon what is found, the way is certainly open to make ineffective the constitutional prohibition against unreasonable searches and seizures. Reduced to its simplest terms, those who want to eliminate the present proviso and substitute the Bledsoe-Donnelly amendment and the rights committee recommendation want to protect a person walking down the street and riding in his automobile against unreasonable searches and seizures to the same degree that a house is protected. I submit that it is more important to protect the security of all the innocent, even if a few guilty escape.

In value the Prettie amendment places law enforcement, to reach a few guilty, far above what Justice Brandeis called the most comprehensive right of civilized man — the right to be left alone. And it is precisely this right, the right to privacy which we seek to protect by the motion that, I believe, Chairman Pollock has made. Now, with regard to the question of the right to privacy and protecting the core of individual security, I submit that this is intrinsic and necessary for effective law enforcement; that constitutional law enforcement is the most effective law enforcement. It isn't a question of placing on the one hand the rights of society and on the other hand the right of the individual and juxtaposing them as being inimical to each other.

We have in this state some 8 million people. We have about 10,000 police officers. The 10,000 police officers can't superintend the conduct of 8 million people without the cooperation of the 8 million people. But how is that cooperation secured? It is secured by a scrupulous regard for the constitutional rights of each individual. The respect, trust and confidence that law officers need in order to reduce the hazardous nature of their jobs depends upon the cooperation they receive from people, and you get that cooperation by earning it, by protecting the constitutional rights of all the individuals in this state. And I think that that's the sum and substance of the committee proposal and of the Bledsoe-Donnelly amendment.

I submit to you that in Detroit the great value of the recent change in our police department of the appointment of Supreme Court Justice Edwards is that he will secure for the police department of that community a greater degree of cooperation than ever has been received before for the police job of law enforcement by a greater guarantee that there will be more protection and a scrupulous regard for the constitutional rights of individuals.

It is not a question of saying on the one hand we protect society and on the other hand we only protect the individuals and these 2 things are opposed. By protecting the rights of each individual we protect the security of the whole society. I think that we must remember that the bill of rights was not written by timid people, by people who exalted order at the expense of liberty.

I submit to you that, in support of this motion, we must remember we are all the keepers of our brother's liberty, and we are all the keepers of our brother's security, and I urge the support of the motion before us.

VICE PRESIDENT HUTCHINSON: The delegate from Wayne, Mr. Sterrett.

MR. BENTLEY: Mr. President, I have a preferential motion.

VICE PRESIDENT HUTCHINSON: The Chair will recognize Mr. Bentley for the consideration of a preferential motion.

MR. BENTLEY: Mr. President, I have a preferential motion at the desk, which the secretary will read.

SECRETARY CHASE: Mr. Bentley moves that all debate on the pending amendment and all amendments thereto terminate at 10:00 o'clock p.m.

VICE PRESIDENT HUTCHINSON: The question is on the motion that the debate upon the question of concurring in and all amendments to the committee of the whole report terminate at 10:00 o'clock p.m. And the motion is not debatable. All those in favor — Mr. Iverson.

MR. IVERSON: Question, Mr. President. Will you please advise us how many people have asked to speak on this?

VICE PRESIDENT HUTCHINSON: This motion will not terminate debate until 10:00 o'clock p.m.

MR. IVERSON: That isn't the question I asked. Will you please advise —

VICE PRESIDENT HUTCHINSON: The Chair has knowledge of 4 more delegates who desire to speak upon the question of concurring.

MR. IVERSON: Will you state the names of them, please?

VICE PRESIDENT HUTCHINSON: The Chair recognized Mr. Sterrett and has recognized Miss McGowan, Mr. Woolfenden and Judge Leibrand.

MR. BLEDSOE: Mr. President, I certainly have attempted to get your attention at least on 3 occasions but out of courtesy both to the Chair and my colleagues, I have tried not to be obstreperous.

VICE PRESIDENT HUTCHINSON: Mr. Bledsoe would also seek to be recognized. But the question is upon Mr. Bentley's motion to limit debate by terminating it at 10:00 o'clock p.m. and it is not a debatable motion.

MR. BLEDSOE: Mr. President, I'd like to ask a question.

VICE PRESIDENT HUTCHINSON: On the motion of Mr. Bentley?

MR. BLEDSOE: Just a question.

VICE PRESIDENT HUTCHINSON: What is your question?

MR. BLEDSOE: Will Mr. Bentley state his reason for that?

VICE PRESIDENT HUTCHINSON: No. The question is not debatable. The question — For what purpose does the gentleman rise, Mr. Downs?

MR. DOWNS: I wanted to ask if the Chair would tell us how many amendments are filed with the secretary and if the motion would in any way divide the time on which discussion can be held on the amendments.

VICE PRESIDENT HUTCHINSON: If the Chair understands the motion, all debate would be terminated at 10:00 o'clock p.m. and that would be upon the main question as well as upon any amendments. Any amendments on the desk would thereafter be read and disposed of without debate. There are 2 amendments on the secretary's desk.

MR. GARVIN: Mr. President —

MR. BLEDSOE: Can I ask another question?

VICE PRESIDENT HUTCHINSON: Mr. Garvin.

MR. GARVIN: Did I understand your answer to Delegate Downs that we just debate the amendments and not the main question? Ordinarily the amendments come first, do they not?

VICE PRESIDENT HUTCHINSON: The motion of Mr. Bentley is simply to limit debate. It is entirely up to this convention as to whether or not debate shall be limited but it would completely do away with any reason for the limitation. If this question itself is debatable and if, for instance, the convention should now decide to limit debate at 10:00 o'clock, every minute here is simply eating up that time.

I am going to put the question.

MR. GARVIN: Just a moment, Mr. President. Limit debate on what? The amendments or the main question?

VICE PRESIDENT HUTCHINSON: I will have the secretary read Mr. Bentley's motion again.

MR. GARVIN: Yes, please.

SECRETARY CHASE: Mr. Bentley moves that all debate on the pending amendment and all amendments thereto terminate at 10:00 o'clock p.m.

MR. GARVIN: Then that doesn't include the main question?

VICE PRESIDENT HUTCHINSON: It does, indeed. The question is not debatable and I cannot recognize the gentleman for pursuing the matter. I will put the question. All those in favor of terminating debate at 10:00 o'clock will say aye. Those opposed will say no.

The motion does not prevail.

DELEGATES: Division.

VICE PRESIDENT HUTCHINSON: A division has been called for. Is the demand for a division supported? All those in favor will rise.

SECRETARY CHASE: Sufficient number up.

VICE PRESIDENT HUTCHINSON: A sufficient number is up. All those in favor of Mr. Bentley's motion to terminate debate at 10:00 o'clock p.m. will rise.

SECRETARY CHASE: Sixty-two.

VICE PRESIDENT HUTCHINSON: Those opposed will rise.

SECRETARY CHASE: Sixty-seven.

VICE PRESIDENT HUTCHINSON: The motion does not prevail.

The chair recognizes the gentleman from Wayne, Mr. Sterrett.

MR. STERRETT: Mr. President and delegates, I have listened to debate hour after hour without expressing my opinion in this matter. I have heard about the U.S. supreme court cases and other state supreme court cases and I have heard reasons for the amendments to the proviso that should take precedence in this convention. This has caused me to consider this situation very carefully.

I would like to ask each delegate in this hall to do the same as I have. I would like to ask that they fully realize that pressure has been put on many delegates from both sides of the issue. The Republican delegates had a caucus and I know the Democrat delegates also had a caucus. It was very fortunate on the last vote that people voted as they saw fit because it was a bipartisan issue, as indicated by the vote. I hope it will not change at this time.

We have heard from very respected individuals giving their true opinions. At this point it is time to present the situation as it is in the state of Michigan for which we are writing a constitution. A particular case I have in mind is a teenage high school student. This student, with a group of others, was apprehended as a suspect for obtaining narcotics. They were acting very peculiarly, but evidence was lacking in the group. However, an officer of the law was alert and noticed a white mark in the nostril of this student. Have you ever heard of heroin and milk sugar? This is a very coy way of taking narcotics, generally without evidence of doing so. It generally dissolves after it is sniffed through the nostrils. There aren't any needle marks. This officer scraped the white mark from the high school student's nostril and under the authorized and legal method submitted this to laboratory tests. Yes, it was dope.

How many of us have children that are high school students, or will be some day, that could be subject to this filthy low type of social destruction of the citizens we must rely on tomorrow? Some say that the Prettie amendment is unconstitutional with respect to the United States constitution. I will not debate this one way or another because we have only had one major case tested and this is being appealed. However, without a question of a doubt — and I am sure there must be some doubt in all our minds — we should think of our own people in the state of Michigan — to protect them from this type of scum that can infiltrate our society and do more damage than a constitutional convention could ever correct.

If I were a law enforcement officer — and here is a point I feel that has been twisted around the wrong way — we feel we are protecting the law enforcement officer for invasion of an automobile to look for narcotics or weapons. If I were a law enforcement officer, I would be glad if I didn't have to search a vehicle for weapons or narcotics. I'd just drive my patrol car and give the normal traffic tickets as they came about. And I am sure there are many law enforcement officers that feel this way. It would be much safer for the officer. But, as a citizen, a parent, and a constitutional convention delegate,

representing the people that believe in me as their representative, I cannot sanction the advancement of degeneration of our people through the peddling of narcotics or the endangering of our society from hoodlums with dangerous weapons.

I am not asking that you vote one way or another but I am asking you to consider what I have said and vote as your conscience guides you.

VICE PRESIDENT HUTCHINSON: The delegate from Wayne, Miss McGowan.

MISS McGOWAN: Mr. President and fellow delegates, I rise in support of the Prettie amendment. As I stated before, I am convinced by my experience as an assistant prosecutor and as a defense lawyer, that the Prettie amendment is vitally necessary for effective law enforcement and for the protection of our children and society as a whole.

I state without a doubt that the Prettie amendment is not racial; nor is it intended to be racial. To be specific, it is not aimed at negroes. To say that this amendment is aimed at negroes, or that this amendment has any racial overtones or undertones, is to say that only negroes carry guns and push narcotics. This has not been said. This cannot be said. Therefore, I feel that in this regard we should dismiss the racial question from our thinking. Information has come to my attention to the effect that it is thought that in defending the inclusion of the words of the Prettie amendment in section 10, that I am somehow deserting my own people and the Democratic party.

I wish to state publicly that I am well aware of the fact that I am a negro; and that I will always be a negro; that I firmly believe that my people must follow good leadership whatever the race, religion or national origin of the leader might be. To do otherwise would be sheer foolishness, which would become more and more apparent as time goes by. At this point in our negro history, we are still fighting for our rights as United States citizens. However, the time is quickly approaching when negroes must fight more and more for the rights of all good people and put more accent on the obligations which we have as citizens. To paraphrase our great president, we should not always be asking what our state can do for us; but we should more and more ask what we can do for our state.

If in the minds of some asking that the words contained in the Prettie amendment be kept in section 10 of article II proves to them that I am deserting the cause of the negro or the Democratic party, I can only state that this is an assertion which is freely made; and I as freely deny it. I believe that it has not been established legally; and, in the immediate future there is no case pending which clearly establishes that putting the words of the Prettie amendment in the section mentioned would be inserting a phrase which would be legally meaningless. People on our public streets and public highways have some rights too. It has been brought to my attention that the good citizen who does not carry either guns or narcotics in his car or on his person would not be disturbed about this search; whereas the one who has some reason to carry such things without just cause has great reason to be upset. We believe in America that a man's home is his castle. Those who would tear down the walls of that castle would more than likely be people who deal in or take narcotics or illegally transport firearms.

I realize that it is better to allow 10 criminals to go free than to unjustly condemn an innocent person; but I also realize that though evil and erroneous men have rights, evil and error have no rights; and society should do its best to restrain evil when it hurts society, and correct errors when these can upset society. I am appreciative, too, of the fact that in our pluralistic society it is difficult to determine officially what is evil and what is error. Finally, I understand that though narcotics and guns in themselves are not evil, the misuse of them is evil. No one dares deny this. The person who transports them, without good cause, on his person or in his car should be prepared to suffer the consequences.

I have heard some discussion as to treatment accorded negroes or minorities by law enforcement officers. To my mind, that would come under the heading of discourtesy and/or brutality. In the event that there are over zealous law enforcement officers, it is my belief that such over zealousness is a local law enforcement administration problem and should be and will be handled at that level.

Dr. John Hannah said in his volume entitled, Justice — book 5 — at page 82:

> Court action of a criminal or civil nature is not the only method of dealing with unlawful police violence. The most direct controls are found within the organization of the state and local police agencies. Police chiefs, being the commanders of these highly disciplined organizations, are in a position to exercise control on their men and to discourage police brutality and connivance in private violence. Perhaps the single most potent weapon against unlawful police activity is a police commander who will not tolerate it.

Those individuals who carry guns and/or push narcotics are not selective as to the victims of their ruthlessness. The victims may be any hue, any age, any sex, and in any station of life. The rights of our children and society must be protected. We do not say that the rights of the individual must be overlooked. We must weigh the equities and in weighing the equities we will find that the greater equities are on the side of our children and society as a whole.

I fully realize that minorities have problems, as well as those who are not in an economically advantageous position. I have spent the greater portion of my adult years as a lawyer doing volunteer work with many minority groups, which include negroes, Mexicans, Puerto Ricans; together with those who are at an economic disadvantage. I feel that the problems of the unfortunate cannot and should not be solved by abolishing the proper safeguards for all of our children and for society. I have seen narcotic pushers. I have talked with narcotic pushers. I have talked with persons addicted to narcotics. I have talked to those who would do anything to get narcotics — even murder. They are hard and ruthless. It has been well said that getting evidence to convict those who traffic in narcotics is a challenge beyond description. I have talked with gunmen and murderers. They play for keeps. It is a sad, pitiful and pitiable picture.

We must do our part to help law enforcement, thereby protecting our children and society. I am intense about law enforcement and I am sincere in asking you to retain the Prettie amendment. Thank you. (applause)

VICE PRESIDENT HUTCHINSON: The delegate from Oakland, Mr. Woolfenden.

MR. WOOLFENDEN: Mr. President and fellow delegates, I rise to support the Prettie amendment. I have heard it said here — as all you delegates have — that the United States supreme court, by its decision in the Mapp case, has made this language, which is substantially in our present constitution, unconstitutional under our federal constitution. I deny that. The division of lawyers on that subject in this convention goes right through the lawyer delegates here. Men I respect have a contrary opinion to mine. I hope I enjoy professionally the respect of those who disagree with me. But, be that as it may, I think it is our responsibility, as delegates to this state convention, to draft our constitution in accordance with our conscience and our best judgment as to what will best protect the citizens of Michigan, and in that connection I invite your attention to statements made within the last 2 months by 2 of the wisest men of our age, and I refer specifically to President Eisenhower and President Hoover. President Eisenhower, in his statement to this convention, stated, and I quote:

> So, as you set about the rewriting of your constitution, it seems to me that you must take account of other governmental changes in our nation. Such an examination is timely and I have felt — and surely you have felt — that there are tendencies developing that affect adversely our cherished ideas of government and tend to revise the structure built by those who preceded us. Of those principles I refer specifically to one drawn from the colonists' bitter struggle against tyranny and from man's progress from

serfdom to liberty and to self government. That principle is this: those who would be and who would stay free must stand eternal watch against undue centralization of power in government. Faithful to that principle, our founders saw to it that governmental authority would be diffused — counter balanced — checked, hedged about, and restrained so as to minimize the possibility of its abuse. In that principle and in those precautions, we have believed, was established the true anchor of our freedom.

And former President Hoover gave us as thought provoking a statement as I believe we will have during this convention, when he concluded his letter of January 15, 1962 with these words:

Law enforcement.

Our law enforcement machinery has been steadily undermined by legislative action or judicial decisions until it is no longer a deterrent to crime. Crime is increasing steadily — and faster than the population. Only a minor percentage of the persons arrested reach actual conviction and punishment. I suggest that in the creation of law enforcement agencies in your constitution, you give consideration to the tortuous delays of legal procedures, the practices of suspended sentences, pardons, and paroles. Our system of law enforcement came from the English common law. The British still make it work. We need to get tough.

Fellow delegates, I urge you to support the Prettie amendment.

VICE PRESIDENT HUTCHINSON: The Chair recognizes the delegate from the twenty-fourth district, Judge Leibrand.

MR. LEIBRAND: Mr. President and fellow delegates, I also rise to support the Prettie amendment. I do so by commenting briefly upon the remarks of my friend to the left of me here, the delegate from Washtenaw. He has stated that he and his associates, his fellow delegates from Washtenaw county, cannot in all good conscience vote for the Prettie amendment.

Now, I feel — I felt when I came into this convention and I still feel, and I always will feel — that I am not a Moses coming down from the mountain with some inscriptions upon a tablet of stone. I am a delegate representing in part the people of my twenty-fourth senatorial district and representing in part the people of all of the state of Michigan. And I would like to call to the attention of my good friend, the delegate from Washtenaw, the fact that in 1952, when the voters of Washtenaw last had an opportunity to express their opinion of whether or not they needed the protection that is embodied in the principles of the Prettie amendment, they voted 37,639 votes for and 6,930 votes against. I have no reason to believe that they have changed their opinion since 1952.

This body is not, I say to you sincerely, a court. This body is here as representatives of the people, endeavoring to give them what they want. If anything that we give them is challenged in the courts, let the courts settle it. We are not set up as a court. We are delegates — representatives and agents of the people.

I continue my support of the Prettie amendment.

VICE PRESIDENT HUTCHINSON: The delegate from Wayne, Mr. Bledsoe.

MR. BLEDSOE: Mr. President, —

VICE PRESIDENT HUTCHINSON: Mr. Bledsoe, you understand the question at the moment is on the Prettie amendment, not your own, because we haven't gotten to yours yet.

MR. BLEDSOE: I realize that. That's why I'm here. (laughter) Mr. President and members of this delegation, despite all of the reasons that you have heard here tonight, I am against the Prettie amendment for one reason — just one — because it is in conflict with the Constitution of the United States. I can't stand anywhere else. I don't know where he is standing. Those who have known me for the past 37 years as an officer of the courts of this state know that I have defended the Constitution of the United States. It is the greatest bulwark within the gift of a free people. I know something about how it came about. As I stand here and look into your faces, apparently some of us have forgotten what happened and how our ancestors brought this document about, why our ancestors sought this land, why they made such a great sacrifice to build this nation, why we are sending our sons and daughters all over the world to impress people that we have found a society, a way of life that all men, if they follow us, can abide by. And that is the rule of law laid in the Constitution of the United States.

I want you to know that I have no brief for law violations. How could I stand up here and attempt to answer all of these statements of criminal pursuits and criminal conduct? I want to say in one sweep I agree with everything you've said but I have noticed that you have avoided taking a position on the Constitution of the United States. That's the only question that's involved here.

If we need some other legislation, as my good colleague from Washtenaw county has said here, have we lost faith in our legislature? If we want to augment our criminal laws to use evidence in our courts, the legislature is in session right across the road. You can step over there tomorrow and introduce a bill.

I can think of some things worse and I'm going to tell you one. I think one of the most terrifying things that I can think of is when I board an airplane and I am wondering whether some sensitive person is going to collect the insurance while I'm going through the air at 650 miles an hour. Has that ever occurred to you? They say they can't catch an automobile because people have criminal intent. How are you going to catch airplanes? I was going to Texas the other day to see my father and the man said he was going 600 miles an hour. There's only one way to do it, search everybody before they get on the plane. Do you see what I mean? You can't do that under our constitution. We're here to write a constitution; not to write media and proof of evidentiary value that we use in our courts. They're 2 separate and distinct things. I say to you members of this convention there is only one thing involved here, and that's the Constitution of the United States.

I want to read to you from the Michigan Manual just one line or two. I am reading to you now from article VI:

The constitution and the laws of the United States which shall be made in pursuance thereof and all treaties made or which shall be made under the authority of the United States shall be the supreme law of the land.

Now I wonder, can we agree on that? Can we agree on that? We're committed to it.

The judicial officers both of the United States and the several states shall be bound by oaths or affirmation to support the constitution. The judges of every state shall be bound thereby, anything in the constitutional laws of any state to the contrary notwithstanding.

Have you heard of that before? I notice — the Prettie people, I don't think they've heard — the Prettie amendment doesn't contain that. I wonder if it's ever been read to them.

Now, these are the things that you're going against. And I say to you and I want those of you to hear what I'm saying. Do you know that this matter was debated in the committee of the whole for 7½ hours? My amendment was beaten, but by such a narrow vote, the opposition sought to hold this over because their conscience was bothering them and they didn't want to close this matter out with such a narrow vote. I can understand their worry. I've been flooded with police information. Narrations of crime, of the most sordid crime, have come to my desk, all of which we are all against.

Let me tell you — I just simply want to recall this to your memory — we compromised with the Constitution of the United States a good many years ago and I have only to remind you what happened. We compromised and that compromise may be referred to as the Missouri compromise, and following that compromise on the Constitution of the United States, the blood of free men who were fighting to consummate the gains that they had made in rebuilding this nation and the blood of their sons flowed up and down the streets of this country for 4½ years. I wonder if you know about that. When you begin to compromise your basic laws, you are forgetting your heritage. We are the heirs of free men.

I still say I agree with all of the harrowing stories. This thing has no race connotations. I think it's positively ridiculous

to try to drag people of different races into this thing. The facts speak for themselves. It has nothing to do with it. We are all seeking the same objective. Sure, I've got 6 grandchildren. But I don't want any more for my grandchildren than I want for any neighbor or any other citizens' grandchildren in the world. I don't think any less of them. I've reared and educated 3 children. And do you know how I did it? I did it with the help of the American people, with people right here. This is a community. And I thank God for the help of the free institutions that helped me rear and educate and to earn a living for my family. And I think that it is a fine heritage for every American that has been given us. We are the heirs of it and it all happened under the constitution.

I am going to close here by suggesting that every objective under the Prettie amendment that it is entitled to measured by the Constitution of the United States can be obtained across the street — and Mr. Prettie is a fine lawyer; he knows it — all he's got to do is to go over there and he can have a bill introduced on that floor before the week is out. But it will be measured by the law; and we are governed by laws and not by men and police. (applause)

VICE PRESIDENT HUTCHINSON: The delegate from Wayne, Miss Donnelly.

MISS DONNELLY: I believe more than adequate things have been said. I certainly concur in every way with my colleague on the amendment, Mr. Bledsoe, and with J. Don Lawrence. I'd like to recall to everybody's mind that this problem can be handled. We are only talking about illegal searches and seizures — not legal ones. This is not going to help the criminals. I'd like to remind everybody that there are more law abiding people in this land and in this state and in every county than there are unlawful people.

VICE PRESIDENT HUTCHINSON: The delegate from Kent, Mr. Blandford.

MR. BLANDFORD: Mr. President, I will have to confess that at the start of this discussion some few days ago, I wasn't too concerned. I felt it was a legal argument. However, as the discussion progressed, I began to get the feeling that it was more than that. I began to hear charges and counter charges against police departments and law enforcement. I began to feel that police departments were on trial here. That is when I became very interested and very concerned. I cannot speak as a policeman but I can speak for policemen. For 6 years I was closely associated with city government in the city of Grand Rapids and I have come to some definite conclusions on policemen, police departments and police work. Fellow delegates, your police departments are almost in an untenable position at the present time. You have on one hand the city councilmen who are continually telling them to go soft on law enforcement and they wink at such things as after hours drinking places, bingo and a few other things that are being operated illegally throughout the state. On the other hand, you have the less than courageous judges who oftentimes will let these men off with a light slap on the wrist. I have personally shared the frustration of the police department that has worked months to break a numbers racket in the city of Grand Rapids, only to see guilty persons — admittedly guilty — go off with a light slap on the wrist.

The thing I'd like to hear answered today which I haven't heard answered is: how many burglaries have been solved? How many narcotics peddlers have been arrested? And how many mothers have been put behind bars because of the search and seizure provision as it is in our present constitution?

In order to substantiate some of my own thinking, I asked the chief of police of the city of Grand Rapids to give me some cases, if he had some, where he felt these would apply. He wrote me this letter:

> The attached represent several instances wherein the present constitutional provision affecting police officers operating without a warrant have proven beneficial to the Grand Rapids police department.

I'll read these 3 cases. They will only take a brief minute:

> On January 8, 1958 at 10:15 p.m. officers were alerted by police broadcast of an armed robbery at 939 Fourth street, Grand Rapids. Investigating officers observed 2 young men about to enter a car about 4 blocks from the reported robbery. Their actions were of such a nature that police investigation followed. A search of the car disclosed a 25 calibre automatic hidden under the front seat of the car which was used in the armed robbery. Both men were arrested for armed robbery and were found guilty of the crime in the Superior Court of Grand Rapids, Michigan.

The second case — now, I realize lawyers in this crowd will say some are on point and some are not on point. But I can assure you this: that the eyes and the hearts of the police department of Grand Rapids indicate they are definitely on point.

> On May 24, 1958, 2 men were observed by officers sitting in their car at the rear of 512 Division avenue south, Grand Rapids. Police investigation revealed that both men were smoking marijuana cigarettes. Marijuana tobacco was found in the car, and in their possession. Both men were arrested for possession and use of marijuana, pled guilty to the charge in Superior Court of Grand Rapids.

And the third case:

> On February 10, 1959, a police broadcast was put out relevant to a certain make and model of car. Vice officers supplied additional information in regard to this car being involved in narcotic activities. Police investigation revealed that 2 men were the occupants of the car, and were under the influence of a narcotic. Marijuana tobacco was found in the car and in the possession of both men. Both men pleaded guilty to a charge of possession of marijuana in the Superior Court of Grand Rapids.

Now, as to section 10, I'd like to recommend this for your consideration: I think that one thing this convention can do is to stay on the side of helping and not hindering our police departments. I think we should give serious thought to strengthening the police departments' position in courts and not weakening it. I think that this convention can well serve notice to the country and the supreme court that we in Michigan stand firm for bolstering and not bucking our police departments. Remember, you cannot successfully combat crime by continually weakening law enforcement.

I favor the Prettie amendment.

VICE PRESIDENT HUTCHINSON: The delegate from the thirtieth senatorial district, Mr. Lundgren.

MR. LUNDGREN: Mr. President, I speak very quietly and firmly for the amendment before us tonight. I come from an area which voted in the 1952 election, in some areas of my particular district, over 8 to 1 in support of the new amendment. Therefore, I feel I am on very firm ground as I stand up here and say that my area will stand very much for and behind the Prettie amendment that is before us here this evening.

I might speak just one moment about a particular part of this so called search and seizure law that we are well informed of up in our area, and that's the game violation that is part of this law. We have many cases — we have a case right now going to the supreme court from my county. And let me tell you what one of the lawyers involved in this particular case said to me just 2 weeks ago. He said, "Kent, we'd be very foolish to emasculate the present law into a law of the lessening of the language as the original committee report had, even though," he said, "I'm a participant in many of these game violation cases." He said, "The police officers need this law."

My brother, who was the prosecuting attorney in our county, and others have also come to me and told me the very same story. It's a very clear indication that our people want the Prettie amendment and we are going to support that. Therefore, I say to you that the legal people who do day to day work on these type of cases — and regardless if you do upset the vote on the Prettie amendment here, you lawyers in this room know as well as I do that in the next week and the week after, the month after, will come both to that same court and to the same legal authorities, cases involving the same type of question.

Search and seizure will ever be with us. And let's keep the protective part to our police officers that the Prettie amendment gives us tonight. Therefore, I rise in support of the Prettie amendment.

VICE PRESIDENT HUTCHINSON: The delegate from Saginaw, Mr. Turner.

MR. TURNER: Mr. President, I rise to speak to the Prettie amendment. This is a free country but it is not completely free. I have the right and freedom to speak as long as it isn't profane. I have the freedom to write as long as it isn't obscene. I have the freedom to travel whenever and wherever I wish as long as I obey the law. We have laws to protect the safety and the well being of our citizens.

But in this city of Lansing in 1961 there were 18,834 violations of traffic. Six people lost their lives during this same time. What would it be like if there were no regulations? In 1961, 6 juveniles were found to be carrying concealed weapons in this city. Isn't it better to apprehend them before they become hardened criminals?

Destroy the right to search and we will be faced with a wave of crime. We can and we must maintain safety for society.

I urge you to vote for the Prettie amendment.

VICE PRESIDENT HUTCHINSON: The delegate from the twenty-fifth senatorial district, Mr. Brake.

MR. BRAKE: Mr. President and ladies and gentlemen of the convention, I realize that we have talked and talked on this amendment, perhaps too much. But there have been a couple of things that I think have not been completely covered and I wish to cover them.

May I in the first place assure Mr. Bledsoe and Mr. Lawrence that my conscience is not bothering me in the least in the position I take on this particular thing. I couldn't follow Mr. Lawrence all the way through. He was so happy about the prosperity of the FBI. I wonder if he is equally happy over the fact that month by month and year by year the crime rate in this country is increasing and has gotten to a point where it exceeds that that we had in the worst days of prohibition under the gangster regime. And then I was puzzled a little by this: he is so concerned about the dictum in the Mapp case but perfectly willing to overrule the supreme court of this state in another rule of evidence. He used an imaginary case of somebody coming in with an airplane.

Let me give you a case that's not imaginary and we'll see something about the background under which police officers work, and I refer to one of the 3 cases in which the well established law of this state was upset by our own supreme court, making it so much more difficult for law enforcement officers to protect us, the Zeigler case. The chief of police in Bangor called the state police and said, "There's a man here picking up gambling tickets. He has such and such kind of a car, license number and the whole business. He is going to Kalamazoo when he leaves here." So the state police watched for him. They spotted the car and they followed him. He ran a stop sign, so they arrested him. He consented to the search of the car and his overcoat but that's as far as he would go. They went on and searched the rest of the way and found the gambling tickets they were looking for. Does that constitute probable cause so that the police were right in their making the search that they made? Not at all. Why? Because nobody testified who told the chief of police that the fellow was picking up the gambling tickets. It's not a new rule, Mr. Lawrence. It's well established in the law of Michigan. Anonymous information won't do. What is the police chief to do? What is the prosecutor to do? If the police chief had said, "John Doe told me. He's a business man here. I've known him for years. I can rely on what he says." That would have done the trick in that case; but that would be the last information the police would ever get from John Doe. When you disclose information that you get that way, you dry up the source, and from then on you get no information. The supreme court recognizes that but still says it won't do. The search was illegal and it wasn't sent back for a new trial. The guy went Scott free. Case dismissed.

Then there's another thing that's been said here. He can consent to the search. Sure, you can search a car if the driver or whoever is in charge of it consents. But that isn't all there is to it. Before he gives his consent you've got to tell him, "Now, you don't have to consent. You've got the constitutional right not to. And if you do consent, anything that is found will be used against you." If you don't tell him that, and all that you say is "Can I search your car?" and he says, "Yes," you might just as well have him say "No," because the search will be illegal unless you've warned him of his rights. And if you warn him of his rights, if he's got an ounce of brains, he isn't going to consent if there's anything there to find. So this consent business doesn't do any good. And again, let me point out that this rule of evidence is not based on the unreliability of the information you get. In a confession, sure, because confessions are often not true; but the evidence you find when you search a car and find guns and ammunition and bombs doesn't lie.

I use those just to point out to you the great care — and I agree with it — the great care that we use in English speaking countries in protecting one who is charged with crime from every possible angle. We lean over backwards to do it. As I pointed out to you when I spoke on this before, good government depends on a proper balance between protecting the rights of the individual and protecting the rights of society in general. Maybe we're not in good balance now, but for goodness sakes, let's not, as constitutional convention delegates, go on making the balance farther off than it is at the present time.

Sure, we can pass a statute — the legislature could — but this case will come before the Supreme Court of the United States sooner or later for a decision that is a decision, and not dictum, and when it does, we'll be in a much stronger position if we have a part of our constitution for them to throw out than we will if they have a mere statute to throw out. This is not a case of the people against the policemen. This is a case of the people against dangerous criminals. And anybody who runs around with bombs and guns and narcotics in his car is a dangerous criminal. There's only one language that he understands and that's the language in which we'd better talk to him if we ever want to stop this increase in crime. (applause)

VICE PRESIDENT HUTCHINSON: The delegate from Wayne, Mr. Garvin.

MR. GARVIN: Mr. President and delegates, first, in reply to Delegate Brake, I want to mention that it is true and I say it is not a matter of the people versus criminals. What this delegation is trying to do right now is to make it a matter of the people of the state of Michigan — making it a matter of the delegates of the state of Michigan against the United States supreme court, meaning by that, that of all the millions of people of these United States, we are going to take it in our hands to change the law, the basic law that has been for hundreds and hundreds of years. This I don't agree with. I don't think that it ought to be.

So you will understand that I am not here talking about any particular group, and I want you to know my feeling that this is not a matter of race, as one of the delegates brought up through the prepared statement. It doesn't concern it. This concerns basic law before there was any question of race. It concerns us as far back as the declaration of independence. This is not a racial question whatever — I don't care what kind of prepared statement is read — it is not that, and I don't believe that there are any delegates other than the one who believes it to be so. One of the things that you might have noticed here is that the persons who have pointed out particular items — even Delegate Blandford went back to 1958 — are isolated incidents, even going back to the year of 1958 to find some statement by the police department of why they had a case and why this law was good.

I submit to you, ladies and gentlemen of the delegation, that the law is improper; it is not right; and it is not based upon the Mapp case. The Mapp case can be either one way or the other. I am telling you right now it is just a matter of the Constitution of the United States that everybody has been satisfied with and been living under and has been growing under and been prospering under and been receiving all the benefits from all of their lives for every delegate here. Now, it's no good as far as this is concerned.

One of the delegates mentioned President Eisenhower's statement and I took it out here because I did remember — not by words, but his general idea, which I agreed in — that the states are going too far away from the federal government and therefore the federal government must step in and stop them. So, in a statement here he stated:

> So, as you set about the rewriting of your constitution, it seems to me you must take account of other governmental changes in our nation. Such an examination is timely and I have felt — and surely you have felt — that there are tendencies developing that affect adversely our cherished ideas of government and tend to revise the structure built by those who preceded us. Of those principles I refer specifically to one drawn from the colonists' bitter struggle against tyranny and from man's progress from serfdom to liberty and to self government.

That was during the time that the question of race was not involved. I don't believe the question of religion was much involved during that time that President Eisenhower was speaking of.

> That principle is this: those who would be and would stay free must stand eternal watch against undue centralization of power in government.

Now, following that, during some subsequent paragraph, he stated that centralization of government resulted from just what this constitutional convention is trying to do: usurp the powers and the laws of the United States of America.

If the various delegates had given us any idea, or some concrete evidence of things that are happening now, instead of going back to 1958, a case here, a case there, it might be well considered; but the very fact that there is just one case here and there after writing to the police chiefs is enough to know that these out of the millions of people, these isolated incidents, do not merit enough to change the Constitution of the United States.

Now, we talk about the amendment in 1952. I wanted to say this: did any of you — any one of you — know the 14 items that were included in that amendment? No, because the freedom of the press told you it was to stop dope, period; protect the children, period. They didn't tell you what it was all about. That was the right of the freedom of the press which we have already granted here by the first amendment. And I think Dr. Nord made a significant statement. After the press came out in December of 1951, arguing this — that it should be done, it should be retained — he gave, in a statement concerning his attitude, 4 basic reasons why it should not be retained in the constitution. But the press didn't find a reason to publish that. Now, whether you live in what county it might be, or the upper peninsula or the west or the east, I submit to you that the press caused the 1952 constitutional amendment to be passed — not that it's wrong. Maybe I might say so later on because the press is being minimized each day, as you know: Cleveland, Detroit, Los Angeles and Chicago, but it's just a matter that you should take into consideration regarding these persons or the persons and the delegates who continue to talk about what happened in 1952 when no one knew but one side of it.

So I am urging you to vote against the Prettie amendment. These things might not be rampant in some counties. Perhaps the Hillsdale delegate has been reading the papers too. He might write one, I don't know. But whatever the case might be, it is not true that we need to usurp the Constitution of the United States in order to further cause this state to be derogated because of this amendment. Thank you.

VICE PRESIDENT HUTCHINSON: Mr. Habermehl desires to offer an amendment?

MR. HABERMEHL: Mr. President, yes. The amendment is on the secretary's desk.

VICE PRESIDENT HUTCHINSON: The secretary will read the amendment.

SECRETARY CHASE: Messrs. Habermehl and King offer the following as a substitute for the Prettie amendment:

1. Amend page 2, line 28, after "affirmation.", by striking out the balance of the section and inserting —

MR. YEAGER: Inquiry, Mr. President, I thought the question was on the concurrence of the recommendation.

VICE PRESIDENT HUTCHINSON: The main question is upon the concurrence of the recommendation. It is in order to offer amendments or substitutes to the recommendation of the committee of the whole. If the convention saw fit to adopt the substitute, or to otherwise amend the recommendation of the committee of the whole, it is in order at this time. After that substitute or the amendment is adopted — if it is — the question would still be upon concurring in the recommendation made by the committee of the whole, either as substituted or as amended, you see.

In the opinion of the Chair, it is in order to offer a substitute at this time and to dispose of the substitute and to treat any other amendments that might be offered. If all substitutes and all amendments are voted down, we return to the original recommendation of the committee of the whole.

The secretary will read the proposed substitute.

SECRETARY CHASE: By Messrs. Habermehl and King:

1. Amend page 2, line 28, after "affirmation.", by striking out the balance of the section and inserting "Evidence secured as a result of searches made in violation of this section shall not be admitted in any criminal proceeding: Provided however, That nothing in this section shall prevent the introduction into evidence, in any criminal proceeding, of any article, seized by any peace officer, unlawfully in the possession of any person in any type of vehicle found in any public place.".

VICE PRESIDENT HUTCHINSON: On the substitute, Mr. Habermehl.

MR. HABERMEHL: I apologize to the delegates for not having had time to distribute this in writing to each of the delegates. I had also, as Mr. Lawrence had, asked our research department to check out the possible constitutionality of this substitute amendment and I was unable to get an answer until too late to have this duplicated so it would be on each of your desks.

It does appear to me here that we have a very solid controversy. On one side we have those of us that are much concerned over the infringement of a constitutional right. I think it is worthwhile noting that we passed 22 sections in this proposal. Of those, we did not limit or infringe upon the guarantees made except in one case. In all of the rest of the constitutional guarantees, we either adopted them as they were, or actually expanded the rights of the individual, gave them more guarantees against the power of government than they had prior to our adoption of these other 21 sections. Now, on the other hand, we have this worry of most of the delegates that the police may be handicapped in the valid exercise of the police power of the state in apprehending criminals. And I grant the sincerity of each of those delegates that so believe. Of the two, I would prefer, myself, to hamper the police rather than take away a guarantee of a single individual citizen.

We propose this language, however, as a substitute that we hope will be acceptable to both points of view. I would ask you to note the language, "nothing in this section shall prevent the introduction into evidence, in any criminal proceeding . . ." and I believe that is as far as we have to go, for all court proceedings taken in connection with a criminal case are criminal proceedings ". . . of any article. . . ." This is not limited to narcotics and guns. It would cover the gambling equipment mentioned by Mr. Brake. It would cover stolen goods in case of a burglary. It would cover any article seized by any peace officer unlawfully in the possession of any person in any type of vehicle, which would cover both airplanes, helicopters — whatever you might wish or could think of — found in any public place. It would not, of course, permit the invasion of any private property or person, actually. It would prevent the personal search that has in so many cases debased the dignity of individuals.

Now, its constitutionality, I think, is beyond question. If any of you have ever traveled to the state of California, you will know that when you reach the California border, you are stopped; your car is searched; the trunk is opened; and I think that the car is even sprayed underneath. That's a valid exer-

cise of the police power of the state of California. It is not a violation of a constitutional right and this substitute that we offer is not a violation of a constitutional right. It is a condition upon the privilege of operating a motor vehicle on a public highway or having it occupy a public space.

I think it will strengthen the hand of the law enforcement officers. The case mentioned by Mr. Brake, you must remember, arose when the present proviso in the constitution was there. It was a case of the supreme court limiting the right to search after a valid arrest. You will note that this provision does not require any arrest. It only requires that the evidence be found in a motor vehicle, seized by a peace officer, and that the motor vehicle be in a public place. It will actually undercut the decision of the supreme court; it will take the ground out from under the decision of the supreme court in the case of the People vs. Zeigler and in other cases, because it will not require an arrest in order to search a motor vehicle. Obviously, the peace officer cannot act in an unreasonable manner. On mere suspicion, he can't go in and lift up the cushions and toss them out on the highway, without subjecting himself to action. This would, I believe, remove the thing that would be with us if the amendment proposed by Delegate Prettie were to wind up in our constitution.

If the language proposed by Delegate Prettie were found to be unconstitutional — and remember, 3 circuit judges, in very recent dates, have so found it — we would be left with nothing in the constitution. If this is adopted, any police officer, any prosecutor, can argue that this is a valid exercise of the police power, that all that is attempted by this language is to condition the privilege of operating a motor vehicle, which there is no question but what the state may do.

I'll again give you the important parts of this substitute amendment. It would permit the introduction in evidence in any criminal proceeding of any article seized by any peace officer, unlawfully in possession of any person in any type of vehicle found in any public place. It certainly should satisfy any peace officer in the state of Michigan.

VICE PRESIDENT HUTCHINSON: The question is on the substitute amendment offered by Messrs. Habermehl and King. Mr. Nord?

MR. NORD: Mr. President, I would like to speak briefly against the Habermehl-King substitute amendment for this reason: as I see it, the question before us is a constitutional question and not a question of ordinary law, that is to say legislative law or judicial law. The only question that we have to determine is simply this: should we in our constitution say or permit or imply that unreasonably seized evidence should be admitted? It appears to me that the answer to that question is no. If it is unreasonably seized evidence, it is obviously unconstitutional and should not be admitted. The question that the sponsors have injected is a different question. It is by no means a constitutional question. The question that they have brought before us is a different one, namely: what is reasonable? What is a reasonable search and seizure? They will attempt to define what a reasonable search and seizure is.

Now, I pointed out when the original debate occurred, that this is a sound approach and I still believe that it is a sound approach to try to define what is reasonable, but that is not a sound approach in the constitution. For one thing, what is reasonable will depend on what the legislature provides and what the court determines and it is partially on the basis of the facts of each case. You cannot put in the constitution something that makes something reasonable. It either is reasonable or it isn't reasonable. The constitution cannot say such and such is reasonable. The constitution can say if it's unreasonable, it should not be admitted or that there shall be no unreasonable searches and seizures. In other words, the point I make is this: If Messrs. Habermehl and King are correct — and they may very well be — that such a provision would be constitutional, then there is no harm in providing that by legislation. If on the other hand it's unconstitutional, there is no point in putting it in the constitution.

In other words, there is no gain by putting this in the constitution. It would be an abortive effort in any event, I believe, to say that such and such shall be a reasonable search. That will always be a question for the courts to determine. What we should do is stick to the fundamental principles and not get into a side issue. The fundamental issue is: shall unreasonable searches and seizures and the evidence thereof be introduced in evidence? I believe we should say the answer to that question is no.

VICE PRESIDENT HUTCHINSON: The Chair would like to remind Delegate Habermehl that under the rules he may speak only twice and anyone else may speak only once on this amendment. If the delegate would desire to speak a second time at this point, the Chair will recognize him for the purpose.

MR. HABERMEHL: Yes, Mr. Chairman, I am aware of the rule. I simply would like to answer Dr. Nord in saying that theoretically I agree with him. The language used is statutory. And perhaps if it were not for this dispute we find ourselves in, it well might appear in the statute. However, in view of the dispute that we have, I think it might well satisfy both sides to this dispute. And for that reason, I see no real objection to putting it in the constitution. We will be faced many times with the necessity of putting statutory language in the constitution. I agree that the final determination of what is reasonable and unreasonable is a judicial question and one that we cannot decide here. But we can here very carefully point out upon what we base the right of the officer to search and seize the property. If we base it upon the condition of the privilege of driving an automobile rather than upon an infringement of a constitutional guarantee, then I think the courts must take cognizance, must recognize, that it is simply a condition upon the privilege of driving an automobile.

VICE PRESIDENT HUTCHINSON: The delegate from Hillsdale, Mr. Prettie, on the Habermehl-King substitute.

MR. PRETTIE: I wish to apologize for again taking the floor. I thought I had made my position clear when in my opening statement I said that I had conversed for 2 long hours with one of the delegates proposing this amendment — although I did not mention him by name — and others, a proviso of limiting seizure of contraband from vehicles only. My reasons for opposition are briefly 2, and I shall sit down. You know and I know that crimes are committed, filling station attendants killed, banks held up, places burglarized, supermarkets knocked over by people who run away. They may some day get to a car or they may hitch a bus, they may ride a bicycle. And by those far more knowledgeable in the field than I, I am advised that this would not reach the subject so much discussed in this debate on the traffic in narcotics, where automobiles are seldom used. I find myself in agreement with Dr. Nord, for different reasons perhaps. I am happy to have the opportunity to be on his side at this early stage of our debates. (laughter)

VICE PRESIDENT HUTCHINSON: The delegate from the fourteenth district, Dr. Hannah.

MR. J. A. HANNAH: Mr. President, when we were discussing this section last week, I made a statement with considerable conviction. Subsequently it has been suggested that I may have inadvertently introduced into the discussion the race issue. It was not my intention. I intended at that time to point out that as a result of my work as chairman of the federal commission on civil rights, I have become convinced that there is a different standard for the administration of justice extended to some people because of their color and to others because of their economic status. And I was particularly concerned by what I consider to be the wrong kind of administration of justice by the seizure of large numbers of citizens outside of their homes and yards, walking on the street, standing on the street corners, sometimes in their automobiles. I indicated that I had as much interest in protection of police officers, giving them what they need to carry forward their responsibility as any member of this convention, and emphasized that at the university I have the honor to be connected with, we have had a program for more than 30 years in police administration and have trained a great many of the leading officials in the FBI, in the state police, in police departments all over this country and all over the world.

I was concerned, however, by the division and by the many lawyers, and others in this convention for whom I have great respect, that felt so strongly that the provision known as the

Prettie amendment should be included in this constitution. I discussed it with police officials in whom I have great confidence and all of them emphasized that what they are concerned with is the kind of situation described by Mr. Blandford and Mr. Brake, where crimes have been committed and someone has gone off with an automobile and someone has some reason to suspect that persons in automobiles are guilty of crime. So I participated in the delay of this issue, from last week for 2 or 3 days and finally until tonight, in the hope that my colleagues who are lawyers might come up with some provision that would give police officers what they think they need in making it possible for them to use evidence taken from automobiles perhaps illegally searched.

I thought this was about to be accomplished and Mr. Prettie indicated twice this evening that he was unable to accept these compromises that were worked out by members of this convention who are lawyers in whom I have confidence. When this position was rejected, it left me no alternative but to favor the motion that was before us before the Habermehl-King substitute amendment, and that is not to concur in the Prettie amendment.

I rise now to speak in support of the Habermehl-King substitute amendment in the hope that it will satisfy those who feel so strongly that police officers must be given some opportunity to use evidence taken from moving vehicles. If this does not prevail, of course, I shall have no alternative but to go along with the chairman of the committee, Mr. Pollock, in supporting the motion not to concur in the Prettie amendment.

Gentlemen and ladies, I hope that the majority of this convention will support and approve the Habermehl-King substitute amendment. I believe it gives the police officers everything that they seek — not everything all of them seek — but everything they can reasonably seek. And before I sit down I want to say again what I said the other day in that I feel with deep conviction — the good lady from Detroit quoted me from the report of the federal commission on civil rights that emphasized — that the real cure is administrators of police forces that direct their officers to use the kind of tactics that you or I, or most of us would like to see them use. But they do not always do so. And I am as certain as I am standing here before you this evening, that in this state and in others, members of minority groups and white people who are economically disadvantaged are many times taken advantage of by police officers. And this bothers me very much, as I hope it bothers you too. (applause)

VICE PRESIDENT HUTCHINSON: The delegate from Washtenaw, Dr. Pollock.

MR. POLLOCK: Mr. President, I have no desire to terminate the debate unreasonably but I have reached the point, I think reached a long time ago by that great Chief Justice John Marshall — with apologies to my good friend, Dr. Anspach, I should like to relate that story — when, as an old man, after he had become extremely great and celebrated, they gave him a dinner. The young speaker was extolling the virtues of the great chief justice and in the course of his remarks he began to say, "You, Mr. Chief Justice, you, who have reached the acme of judicial distinction . . ." and he repeated that 2 or 3 times. And finally, Marshall put up his hand and he said, "Young man, do you know what the acme of judicial distinction is?" The young man was quite taken aback and he said, "No." Well, he said, "To sit on the bench and listen to the arguments of lawyers for 4 hours and not hear a damn word they say." (laughter)

I think we have almost reached that point here. I think we have deliberated on this matter. I listened with great patience for weeks in the committee. I listened a long time in the committee of the whole. I've listened a long time now. The issue is a little beclouded by the Habermehl-King substitute amendment but I still think that the basic issue is the Prettie amendment and I hope we can have a straight vote on this.

As the chairman of the substantive committee responsible for this matter, I feel it was my duty to move that the convention not concur in the amendment put in by the committee of the whole, namely, the Prettie amendment. I did that because it was a close vote in committee of the whole. It was an exceedingly important matter. The majority of the committee felt that a proposal similar to the Prettie amendment was unconstitutional, and we said so in our report, and therefore I would be derelict in my duty representing the majority of the substantive committee if I had not made that motion.

Having said so much, Mr. President, if it is in order I should like to move the previous question on the Habermehl-King substitute amendment which, I believe, when disposed of reverts to the other amendment too. Am I correct?

VICE PRESIDENT HUTCHINSON: If you are limiting your motion to the Habermehl-King substitute amendment, the motion will reach only that substitute amendment.

MR. POLLOCK: No. I apply it to all matters before the convention at this time on the issue of section 10.

VICE PRESIDENT HUTCHINSON: All right.

For what purpose does the gentleman rise, Mr. Martin?

MR. MARTIN: A point of order, Mr. President — I am sorry; I thought we were still on general orders and that the motion for the previous question was not in order, but I realize now we are out of general orders.

VICE PRESIDENT HUTCHINSON: Is the demand for the previous question supported? All those in favor will rise.

The demand is supported. The question now is: shall the main question be put? As many as are in favor will say aye. Those opposed will say no. The motion prevails. The previous question is ordered. The question now is upon the Habermehl-King substitute. All those in favor will say aye. Those opposed will say no.

The substitute amendment is not adopted.

The secretary will read a further amendment upon the desk which will not now be subject to debate.

SECRETARY CHASE: Mr. Bledsoe and Miss Donnelly offer the following amendment as a substitute for amendment 2 of the committee of the whole:

1. Amend pages 2 and 3, by striking out all of section 10 and inserting a new section 10 to read as follows:

"Sec. 10. The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.".

MR. HODGES: Mr. President.

VICE PRESIDENT HUTCHINSON: For what purpose does the gentleman rise, Mr. Hodges?

MR. HODGES: To request a recorded roll call vote.

VICE PRESIDENT HUTCHINSON: On the amendment?

MR. HODGES: Yes, sir.

VICE PRESIDENT HUTCHINSON: Is the demand for the yeas and nays supported? As many as are in favor will rise. Sufficient number up. The yeas and nays on this amendment have been demanded. As many as are in favor of the amendment will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and record the vote.

The roll was called and the delegates voted as follows:

Yeas — 54

Austin	Ford	Liberato
Baginski	Gadola	Madar
Balcer	Garvin	Marshall
Barthwell	Greene	Mosier
Binkowski	Habermehl	Murphy
Bledsoe	Hannah, J. A.	Nord
Brown, T. S.	Hart, Miss	Norris
Buback	Hatch	Pellow
Cushman, Mrs.	Hatcher, Mrs.	Perlich
Dade	Heideman	Sablich
DeVries	Hodges	Snyder
Donnelly, Miss	Hood	Staiger
Douglas	Judd, Mrs.	Stopczynski
Downs	Kelsey	Suzore
Durst	King	Walker
Elliott, Mrs. Daisy	Krolikowski	Wilkowski

Faxon	Lawrence	Young
Follo	Lesinski	Youngblood

Nays — 81

Allen	Higgs	Rajkovich
Anspach	Howes	Richards, J. B.
Batchelor	Hoxie	Richards, L. W.
Beaman	Hubbs	Romney
Bentley	Iverson	Rood
Blandford	Karn	Rush
Bonisteel	Kirk, S.	Seyferth
Boothby	Knirk, B.	Shackleton
Brake	Koeze, Mrs.	Shaffer
Butler, Mrs.	Kuhn	Shanahan
Conklin, Mrs.	Leibrand	Sharpe
Cudlip	Leppien	Sleder
Danhof	Lundgren	Spitler
Davis	Mahinske	Stafseth
Dehnke	Martin	Stamm
Dell	McAllister	Sterrett
Doty, Dean	McCauley	Stevens
Doty, Donald	McGowan, Miss	Tubbs
Elliott, A. G.	McLogan	Turner
Erickson	Millard	Tweedie
Everett	Perras	Upton
Farnsworth	Plank	Van Dusen
Figy	Pollock	Wanger
Finch	Powell	White
Goebel	Prettie	Wood
Gover	Pugsley	Woolfenden
Haskill	Radka	Yeager

SECRETARY CHASE: On the adoption of the Bledsoe-Donnelly substitute, the yeas are 54; the nays 81.

VICE PRESIDENT HUTCHINSON: The amendment in the form of a susbtitute is not adopted. The question now is upon concurring in the amendment recommended by the committee of the whole. And the Chair wants to make this very clear: the question is upon concurring. In other words, those delegates who are in favor of the Prettie amendment would vote yes; those opposed would vote no; because the question is upon concurring in the recommendation made by the committee of the whole. All those in favor will say aye. Mr. Boothby?

MR. BOOTHBY: Mr. President, I'd like to request a roll call vote on this question, please.

VICE PRESIDENT HUTCHINSON: Mr. Boothby demands the yeas and nays. Is the demand supported? All those in favor will rise. A sufficient number up.

Mr. Pollock.

MR. POLLOCK: Mr. President, would you please repeat your instructions? Some of us are a little bit confused. My motion was not to concur.

VICE PRESIDENT HUTCHINSON: Mr. Pollock, your motion was not in order. The question is upon concurring. The Chair never recognized your motion because your motion is not in order.

Those delegates who are in favor of the Prettie amendment will vote yes; those who are opposed will vote no. Have you all voted? If so, the secretary will lock the machine and record the vote.

The roll was called and the delegates voted as follows:

Yeas — 76

Anspach	Hoxie	Richards, J. B.
Batchelor	Hubbs	Richards, L. W.
Beaman	Iverson	Romney
Bentley	Karn	Rood
Blandford	Kelsey	Rush
Boothby	Kirk, S.	Seyferth
Brake	Knirk, B.	Shackleton
Butler, Mrs.	Koeze, Mrs.	Shaffer
Conklin, Mrs.	Kuhn	Shanahan
Cudlip	Leibrand	Sharpe
Danhof	Leppien	Sleder
Davis	Liberato	Spitler
Dehnke	Lundgren	Stafseth
Dell	Mahinske	Sterrett
Doty, Dean	Martin	Stevens
Doty, Donald	McAllister	Tubbs
Elliott, A. G.	McCauley	Turner
Erickson	McGowan, Miss	Tweedie
Everett	Perras	Upton
Figy	Plank	Van Dusen
Finch	Powell	Wanger
Goebel	Prettie	Wilkowski
Gover	Pugsley	Wood
Haskill	Radka	Woolfenden
Higgs	Rajkovich	Yeager
Howes		

Nays — 61

Allen	Follo	Marshall
Andrus, Miss	Ford	McLogan
Austin	Gadola	Millard
Baginski	Garvin	Mosier
Balcer	Greene	Murphy
Barthwell	Gust	Nord
Binkowski	Habermehl	Norris
Bledsoe	Hannah, J. A.	Pellow
Bonisteel	Hart, Miss	Perlich
Brown, T. S.	Hatch	Pollock
Buback	Hatcher, Mrs.	Sablich
Cushman, Mrs.	Heideman	Snyder
Dade	Hodges	Staiger
DeVries	Hood	Stamm
Donnelly, Miss	Judd, Mrs.	Stopczynski
Douglas	King	Suzore
Downs	Krolikowski	Walker
Durst	Lawrence	White
Elliott, Mrs. Daisy	Lesinski	Young
Farnsworth	Madar	Youngblood
Faxon		

SECRETARY CHASE: On the question of concurring in the remaining recommendation of the committee of the whole, namely, the Prettie amendment, the yeas are 76; the nays are 61.

VICE PRESIDENT HUTCHINSON: The recommendation of the committee of the whole is concurred in and **Committee Proposal 15,** A proposal to amend article II pertaining to the declaration of rights, as amended, is referred to the committee on style and drafting.

Following is Committee Proposal 15 as amended and referred to the committee on style and drafting:

The committee recommends that the following be included in the constitution:

Article I

Declaration of rights

Political power

Sec. 1. All political power is inherent in the people. Government is instituted for their equal benefit, security and protection.

Right of assembly and petition

Sec. 2. The people have the right peaceably to assemble, to consult for the common good, to instruct their representatives and to petition the government for redress of grievances.

Freedom of worship; disabilities

Sec. 3. Every person shall be at liberty to worship God according to the dictates of his own conscience. No person shall be compelled to attend, or, against his consent, to contribute to the erection or support of any place of religious worship; or to pay tithes, taxes or other rates for the support of any minister of the gospel or teacher of religion. No money shall be appropriated or drawn from the treasury for the benefit of any religious sect or society, theological or religious seminary; nor shall property belonging to the state be appropriated for any such purpose. The civil and political rights, privileges and capacities of no person shall be diminished or enlarged on account of his religious belief.

Liberty of speech and press

Sec. 4. Every person may freely speak, write, express, and publish his views on all subjects, being responsible for the abuse of such right; and no law shall be passed to restrain or abridge the liberty of speech or of the press.

Right to bear arms

Sec. 5. Every person has a right to bear arms for the defense of himself and the state.

Civil power supreme

Sec. 6. The military shall in all cases and at all times be in strict subordination to the civil power.

Quartering of soldiers

Sec. 7. No soldier shall, in time of peace, be quartered in any house without the consent of the owner or occupant, nor in time of war, except in a manner prescribed by law.

Slavery prohibited

Sec. 8. Neither slavery, nor involuntary servitude unless for the punishment of crime, shall ever be tolerated in this state.

Attainder; ex post facto laws; impairment of contracts

Sec. 9. No bill of attainder, ex post facto law or law impairing the obligation of contracts shall be passed.

Searches and seizures

Sec. 10. The person, houses, papers and possessions of every person shall be secure from unreasonable searches and seizures. No warrant to search any place or to seize any person or things shall issue without describing them, nor without probable cause, supported by oath or affirmation: Provided however, That the provisions of this section shall not be construed to bar from evidence in any court of criminal jurisdiction, in any criminal proceeding or preliminary examination any narcotic drug or drugs, any firearm, bomb, explosive, or any other dangerous weapon, seized by any peace officer outside the curtilage of any dwelling house in this state.

Habeas corpus

Sec. 11. The privilege of the writ of habeas corpus shall not be suspended unless in case of rebellion or invasion the public safety may require it.

Appearance in person or by counsel

Sec. 12. Any suitor in any court of this state shall have the right to prosecute or defend his suit, either in his own proper person or by an attorney.

Jury trial

Sec. 13. The right of trial by jury shall remain, but shall be deemed to be waived in all civil cases unless demanded by one of the parties in such manner as shall be prescribed by law.

Former jeopardy; bailable offenses

Sec. 14. No person shall be subject for the same offense to be twice put in jeopardy. All persons shall, before conviction, be bailable by sufficient sureties, except for murder and treason when the proof is evident or the presumption great.

Bail; fines; punishment; detention of witnesses

Sec. 15. Excessive bail shall not be required; excessive fines shall not be imposed; cruel or unusual punishment shall not be inflicted; nor shall witnesses be unreasonably detained.

Self incrimination; due process of law

Sec. 16. No person shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law. The right of all individuals, firms and corporations and voluntary associations to fair and just treatment in the course of legislative and executive proceedings, investigations, and hearings shall not be infringed.

Competency of witnesses

Sec. 17. No person shall be rendered incompetent to be a witness on account of his opinions on matters of religious belief.

Libels; truth as defense

Sec. 18. In all prosecutions for libels the truth may be given in evidence to the jury; and, if it shall appear to the jury that the matter charged as libelous is true and was published with good motives and for justifiable ends, the accused shall be acquitted.

Rights of accused

Sec. 19. In every criminal prosecution, the accused shall have the right to a speedy and public trial by an impartial jury, which may consist of less than 12 jurors in all courts not of record; to be informed of the nature of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; to have the assistance of counsel for his defense; to have an appeal as a matter of right; and in courts of record, when the trial court shall so order, to have such reasonable assistance as may be necessary to perfect and prosecute an appeal.

Imprisonment for debt or military fine

Sec. 20. No person shall be imprisoned for debt arising out of, or founded on a tort or a contract, express or implied, except in cases of fraud or breach of trust, or of moneys collected by public officers or in any professional employment.

Treason; definition, evidence

Sec. 21. Treason against the state shall consist only in levying war against it or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason unless upon the testimony of 2 witnesses to the same overt act, or on confession in open court.

Subversion; definition, penalty; rights not valid as defense

Sec. ... The enumeration in this constitution of certain rights shall not be construed to deny or disparage others retained by the people.

VICE PRESIDENT HUTCHINSON (continuing): General orders of the day. Dr. Pollock.

MR. POLLOCK: Mr. President, a parliamentary inquiry. Would you please inform me about the status of all of the recommendations of the committee of the whole on article II. Are they all referred to the committee on style?

VICE PRESIDENT HUTCHINSON: The recommendations of the committee of the whole as to article II, that is to say everything that is in Committee Proposal 15, have now been referred to the committee on style and drafting.

MR. POLLOCK: Thank you.

VICE PRESIDENT HUTCHINSON: Mr. DeVries.

MR. DeVRIES: Mr. President I move that the order of general orders be passed for the day.

VICE PRESIDENT HUTCHINSON: The delegate moves that the order of general orders be now passed for the day. All those in favor will say aye. Those opposed will say no.

The motion prevails and it is so ordered.

Announcements.

SECRETARY CHASE: We have the following announcements of committee meetings in addition to the announcements that are on the composite calendar—

VICE PRESIDENT HUTCHINSON: May we have order, please.

SECRETARY CHASE: The committee on education will meet Wednesday after the session in room J, also Thursday at 10:30 a.m. in room J.

The committee on emerging problems will meet in room I Wednesday at 1:00 o'clock p.m. Frank Millard, chairman.

The committee on legislative powers will meet in room H tomorrow, Tuesday, immediately after the session. T. Jefferson Hoxie, chairman.

The committee on finance and taxation will meet in room E tomorrow at 8:30 a.m. D. Hale Brake, chairman.

The committee on administration will meet Wednesday at 1:15 p.m. Walter DeVries, chairman.

The following announcement, the rapid reading course has slowed down. (laughter) The last class will be next Monday evening instead of this Wednesday.

Apples tonight were furnished by Delegate J. Burton Richards. (applause)

VICE PRESIDENT HUTCHINSON: Further announcements? Mr. Elliott.

MR. A. G. ELLIOTT: Mr. President and members of the local government committee, tomorrow at 10:30 when we meet in room A, I wish you would all bring with you — because we have no extra copies — the report returned to you by the research division of work that we have done to date.

VICE PRESIDENT HUTCHINSON: The delegate from Oakland, Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, despite the lateness of the hour, the committee on rules and resolutions will meet immediately following the session in room I.

VICE PRESIDENT HUTCHINSON: Mr. White.

MR. WHITE: Likewise, Mr. President, the committee on public information will meet very briefly in room 2.

SECRETARY CHASE: Mr. Gust requests to be excused from tomorrow's session and Mr. J. Burton Richards wishes to be excused from tomorrow's session.

VICE PRESIDENT HUTCHINSON: Without objection, Mr. Richards of Berrien and Mr. Gust will be excused from tomorrow's session. Is there objection? The Chair hears no objection and it is so ordered.

The delegate from Gratiot, Mr. Hoxie.

MR. HOXIE: Mr. President, point of information. I may be in error but it is my understanding we have not completed our deliberations in the committee of the whole on the civil service proposal. So, with this in mind, I believe it was announced by President Nisbet last week that this week would be devoted to committee hearings and our sessions would be rather short. Now the question in mind is: are we going to go into general orders tomorrow—I am only asking this question with relationship to our committee meetings—or are we going to pass further consideration of the civil service proposal which has already been partially considered in the committee of the whole or are we going to lose tomorrow afternoon as far as committee work is concerned?

VICE PRESIDENT HUTCHINSON: The delegate from Wayne, Mr. Iverson.

MR. IVERSON: Mr. President, I think that it was the understanding that, unless there was some great objection from the committee chairmen, we would pass committee of the whole after tonight—unless there is objection from the chairman of the committee handling that proposal.

VICE PRESIDENT HUTCHINSON: Is the delegate from Gratiot satisfied with the answer? The Chair would say, of course, it's entirely up to the convention; that it is in order each and every day as the order of general orders occurs, for a motion to be made that the order be passed for the day. The Chair would state further that it is the Chair's understanding that such will be done.

The secretary has one further request for leave.

SECRETARY CHASE: Mr. Garvin requests to be excused from the session of tomorrow.

VICE PRESIDENT HUTCHINSON: Without objection the excuse will be granted. The Chair hears no objection and it is so ordered.

Are there any further announcements? What is the pleasure of the convention?

The delegate from the twenty-second district, Mr. Figy.

MR. FIGY: Mr. President, I move we do now adjourn.

VICE PRESIDENT HUTCHINSON: All those in favor of adjourning will say aye. Those opposed will say no.

The motion prevails. The convention stands adjourned until tomorrow afternoon at 2:00 p.m.

[Whereupon, at 10:50 o'clock p.m., the convention adjourned until 2:00 o'clock, p.m. Tuesday, January 23, 1962.]

SIXTY-THIRD DAY

Tuesday, January 23, 1962, 2:00 o'clock p.m.

PROCEEDINGS

PRESIDENT NISBET: The convention will please come to order.

Our invocation today will be given by the Reverend Louie H. Calaway, Assembly of God Church, Troy. Will you please rise.

REVEREND CALAWAY: Let us bow our heads for prayer. O Lord, our God, it is with thankful hearts that we bow our heads before Thee to give thanks for the many blessings that Thou hast bestowed upon us. Because of Thy bountiful provisions, we have enjoyed peace, liberty, and the pursuit of happiness. Thou hast provided the needs of our bodies and the salvation of our souls through Jesus Christ, our Lord. We thank Thee for this great land of ours and the state in which we live. We thank Thee for these men and women that have chosen to serve us.

As Thou didst bless our forebears and didst provide wise leadership, once again draw nigh unto us in this hour. We pray that Thou wilt help us to know our limitations. Thou hast instructed, by inspiration, that if any man lack wisdom, let him ask of God who giveth liberally and upbraideth not. We have come together today from various backgrounds, spheres of influence, and convictions. Therefore, it is most likely that there will be disagreement concerning some things, but we pray that our discord will be temporal; let our unity be eternal. Let us not be selfish nor narrow in our decisions. Let us bear in mind that our decisions will not only affect us but all future generations. Thou, and Thou alone, knowest what the future holds. Therefore, we ask that Thou wilt direct us in all of our deliberations.

O God, we live in a world that is full of tension. We are under pressure in our busy lives. So, we are thankful for these few moments that have been set aside to beseech Thee, even as Thou hast said through the prophet, "Be still and know that I am God." And once again, "They that wait upon the Lord shall renew their strength."

Now bless the executive officers of this convention and direct the committees and the delegates so that all they do may bring honor and glory to Thy name and shall be for the good of our state. Grant these things, we pray, and we shall be most careful to give Thee the praise both now and in days to come. In the name of Jesus Christ, our Lord, we pray. Amen.

PRESIDENT NISBET: Thank you very much.

The roll call will be taken by the secretary. Those present please vote aye.

SECRETARY CHASE: Have you all voted? The machine is now locked and the attendance will be recorded.

Mr. President, a quorum of the convention is present.

Prior to today's session, the secretary received the following request for leave: Mr. King called to say he will be delayed and hopes to be here before the session is over.

PRESIDENT NISBET: Without objection Mr. King will be excused. Hearing none, he is excused.

SECRETARY CHASE: Absent with leave: Messrs. Garvin, King, Page and Thomson.

Absent without leave: Messrs. McAllister and Norris.

PRESIDENT NISBET: Without objection, those absent from today's session will be excused. Hearing no objection, they are excused.

Reports of standing committees.

SECRETARY CHASE: Mr. Bentley, for the committee on education, introduces

Committee Proposal 30, A proposal pertaining to free public and elementary schools. Replaces article XI, section 9; with the recommendation that it pass.

Alvin M. Bentley, chairman.

For Committee Proposal 30 and the reasons submitted in support thereof, see below, page 762.

PRESIDENT NISBET: Referred to the committee of the whole and placed on the general orders calendar.

SECRETARY CHASE: Mr. Danhof, for the committee on judicial branch, introduces

Exclusion Report 2013, A report recommending the exclusion of article VII, section 3.

Robert J. Danhof, chairman.

For Exclusion Report 2013 and the reasons submitted in support thereof, see below, page 763.

PRESIDENT NISBET: It will be referred to the committee of the whole and placed on the general orders calendar.

SECRETARY CHASE: Mr. Danhof, for the committee on judicial branch, introduces

Exclusion Report 2014, A report recommending the exclusion of article VII, section 18.

Robert J. Danhof, chairman.

For Exclusion Report 2014 and the reasons submitted in support thereof, see below, page 763.

PRESIDENT NISBET: It will be referred to the committee of the whole and placed on the general orders calendar.

SECRETARY CHASE: Mr. Danhof, for the committee on judicial branch, introduces

Exclusion Report 2015, A report recommending the exclusion of article VII, section 22.

Robert J. Danhof, chairman.

For Exclusion Report 2015 and the reasons submitted in support thereof, see below, page 764.

PRESIDENT NISBET: It will be referred to the committee of the whole and placed on the general orders calendar.

SECRETARY CHASE: The committee on rules and resolutions, by Mr. Van Dusen, chairman, reports back to the convention **Resolution 65,** A resolution of the constitutional convention requesting action by the legislature pertaining to the orderly completion of convention business in the carrying out of the convention's obligations after adjournment; with 4 amendments, recommending the amendments be agreed to and the resolution, as thus amended, be adopted.

Richard C. Van Dusen, chairman.

For last previous action on Resolution 65, see above, page 672.

[Resolution 65 was read by the secretary. For text, see above, page 636.]

The following are the amendments recommended by the committee:

1. Amend resolving clause 1, item 1, after "chairman" by striking out the comma and "the vice presidents of the convention, and 6" and inserting "and 14"; so the language will then read:

> 1. To create a constitutional convention post adjournment commission, consisting of the president of the convention as the chairman and 14 additional convention delegates, to be appointed by the president of the convention. . . .

2. Amend resolving clause 1, item 2, after "from the" by striking out "appropriation heretofore" and inserting "appropriations"; so that it will read:

> 2. To permit the constitutional convention post adjournment commission to expend any balance remaining at the time of the adjournment of the convention from the appropriations granted the convention to carry out the tasks and obligations heretofore stated.

3. Amend resolving clause 1, item 3, after "determined by the commission" by striking out "so as to insure a fair and reasonable return for the property disposed of" and inserting "to insure reasonable disposition of the property"; so that it will read:

> 3. To permit the constitutional convention post adjournment commission to dispose of property acquired by the convention in such manner as may be determined by the commission to insure reasonable disposition of the property and to permit the commission to use the funds thus received to carry out the tasks and obligations heretofore stated.

4. Amend resolving clause 2, after "representatives" by inserting "and all other members of the legislature"; so that the last resolving clause would then read:

> Resolved, That copies of this resolution be transmitted to the president of the senate and the speaker of the house of representatives and all other members of the legislature.

PRESIDENT NISBET: The question is on the amendments. Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, a few brief words about the resolution itself and then perhaps a few comments on the amendments. As you know, it is contemplated that this convention will adjourn finally on or about March 31 of this year. Thereafter the convention will have, however, certain continuing responsibilities enumerated in paragraphs "a" through "e" of the "whereas" clause of the resolution. None of us will have, however, continuing delegate status. We will be private citizens. Therefore, there exists some questions as to the authority of the convention prior to its adjournment to make adequate provision for the carrying out by its own delegate personnel of these responsibilities. For this reason — after considerable consultation with our own research staff — the committee on administration, in consultation with the rules committee and the committee on public information, has concluded that the legislature should be requested to make a specific grant of authority to the convention to enable it to carry out these responsibilities and, in addition, to enable the convention to expend any unexpended balance of our current appropriation in carrying out these responsibilities.

The method suggested by the resolution, the appointment of a constitutional convention post adjournment commission consisting of delegates and the granting to them of authority to carry out these responsibilities, including the disposition of property and to spend such portion of the appropriation as it may be necessary for that purpose is all quite self explanatory.

Last week the president of the convention and the committee designated by him met with leaders of both houses of the legislature and discussed this method of granting to the convention the necessary authority to carry out its work after adjournment and the members of the legislature were most cooperative and urged that the convention adopt a resolution, making specific recommendations as to the kind of authority we thought we would require, and that this resolution should then be presented to the legislature and the legislature would then introduce appropriate legislation implementing the resolution.

A few comments on the amendments. The first one deals with the size and composition of the committee. Fifteen seemed to be a sensible size in order to preserve our ordinary 2 to 1 ratio and to give adequate representation from throughout the membership of the delegation. The amendment with respect to the appropriation reflects the fact that there are 2 appropriations: one, a line item appropriation for salaries and the other a line item appropriation for operations; and we want to be sure that the resolution adequately covers both of those appropriations. The amendment dealing with the disposition of property, I think is self explanatory as is the amendment dealing with circulation of the resolution to all of the members of the legislature.

This resolution was introduced first by Dr. DeVries as chairman of the committee on administration. It has the unanimous recommendation of his committee. His committee proposed the 4 amendments which are now before us.

The committee on rules and resolutions considered the resolution and the amendments last night and the resolution and the amendments have its unanimous recommendation.

I would move the adoption of the amendments, Mr. President, and would suggest that if the delegates have any questions, both Dr. DeVries and myself are available to respond.

PRESIDENT NISBET: The question is on the adoption of the amendments. Mr. Downs.

MR. DOWNS: Mr. President, I'm sorry. My question is about the body of the resolution. I will withhold it until the amendments have been acted upon.

PRESIDENT NISBET: The question is on the adoption of the amendments. Any discussion? If not, all in favor say aye. Opposed, no.

The amendments are adopted.

Mr. Downs.

MR. DOWNS: Mr. President, there is one point on second reading that has concerned me and I would like to ask of the chairman of the committee or Mr. DeVries — perhaps they can answer it — on page 2 we refer to "any balance" and then on page 1, item "b", we talk about providing for dissemination of information. Could we have a situation where if, of the $2 million appropriated by the legislature for this convention, only $1,600,000 were used up to our sine die adjournment, leaving $400,000, and then if $100,000 were used for making the address to the people, for printing the proceedings and journals, that that might leave a sum in the neighborhood of $300,000 for the dissemination of information about and explanation of the proposed constitution?

The reason I raise this is that I think that we need to be very careful to see that we carry out our constitutional obligations to apprise the people of what our proposed new document is, that our journals and proceedings are printed, are readily available to libraries and others that are interested in seeing them, that there are proceedings and films available, but still not leave the possibility that there would be a large sum that could be construed as just our using it to put forth one side of what we do rather than do it in an educational viewpoint.

I realize it is always difficult to draw a line between an informational educational job and an advertising job, but I know in discussion this question has come up and I would like a clarification for the benefit of the delegates.

PRESIDENT NISBET: Mr. Van Dusen.

MR. VAN DUSEN: I would prefer that Dr. DeVries respond with respect to the anticipated available funds and the possible manner of their expenditure. I think it is highly unlikely that there would be a sum of the size Mr. Downs mentions available within our current appropriation, even assuming, as we do, our adjournment on March 31 and the availability, therefore, of a substantial amount not necessarily for salaries. However, I would also point out that in the first place, the expenditure of this sum is to be entrusted to a committee of this convention which would presumably use it wisely, and second, that item 4 of the resolution specifies that moneys not expended or obligated would revert to the general fund. So there is no contemplation that simply because it is available it must be spent. I would defer to Dr. DeVries for the purpose of discussing detailed figures, however.

PRESIDENT NISBET: Dr. DeVries.

MR. DeVRIES: Mr. President, fellow delegates and Mr. Downs, this resolution is based upon the premise that the convention adjourns March 31. The committee on administration intends to sponsor, perhaps 3 weeks before adjournment date, some resolutions with specifics on how the money remaining in our appropriation would be spent. The convention would then decide on how this money would be expended.

We need this authority because we have 2 line items in our appropriation. One is for delegates' salaries of $1,080,000. The other is for expenses of $920,000. The department of administration interprets our appropriation this way, we cannot transfer money from the delegates' account to expenses; we can transfer money from the expense account to the delegates'. What we are asking here is that we be given flexibility in this appropriation so that if we adjourn March 31, we can use the money left in the delegate line item for other purposes. But we will spell out, 3 or 4 weeks before the convention adjourns, just how this money would be spent.

I can give you my interpretation on what dissemination of information means. It means just that, dissemination of information about the address to the people. Before this convention can adjourn, it must approve an address to the people, that is, the delegates here must approve that. Then it would seem to me that the only public information function we have at that point is to distribute what is included in that address from the reports that accompany committee proposals that are adopted on this floor. The research department and the committee on administration interprets "address to the people" generically. It doesn't mean to us just a printed document like the one in 1908. It could mean radio tapes or the distribution of the sound motion picture documentary that we are producing, as well as other things. But it would be limited to what this convention approved in the address to the people which would be taken from the reports that accompany the committee proposals adopted by the convention. Does that answer your question, Mr. Downs?

MR. DOWNS: Yes.

PRESIDENT NISBET: The question is on the adoption of the resolution, as amended.

The secretary has an amendment.

SECRETARY CHASE: Mr. Ford offers the following amendment:

Amend the resolving clause, item 1, after "To create a" by inserting "bipartisan"; so the language will read, "1. To create a bipartisan constitutional convention post adjournment commission. . . ."

PRESIDENT NISBET: The question is on the amendment of Mr. Ford. Mr. Van Dusen.

MR. VAN DUSEN: Speaking for the committee on rules and resolutions, I am sure we have no objection to that amendment.

PRESIDENT NISBET: Mr. DeVries.

MR. DeVRIES: Speaking on behalf of the committee on administration, we have no objection to that amendment.

PRESIDENT NISBET: The question is on Mr. Ford's amendment. Any further remarks? If not, all in favor, please say aye. Opposed, no.

The amendment is adopted.

The question is now on the resolution as amended. Those in favor, please say aye. Opposed, no.

The resolution, as amended, is adopted.

Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, because this resolution is to be transmitted to the legislature, on behalf of the convention, I would move at this time that the sponsorship of the resolution be changed to read, "President Nisbet, on behalf of the constitutional convention, offers the following resolution:"

PRESIDENT NISBET: The question is on the motion of Mr. Van Dusen. All in favor, say aye. Opposed, no.

The motion prevails.

Following is Resolution 65 as amended and adopted by the convention:

President Nisbet, on behalf of the entire membership of the convention, offered the following resolution:

Resolution 65.

A resolution of the constitutional convention requesting action by the legislature pertaining to the orderly completion of convention business in the carrying out of the convention's obligations after adjournment.

Whereas, The constitutional convention has constitutional and statutory obligations after it adjourns to do the following things:

a. Carry out the convention's constitutional obligations to provide "for the printing and distribution of its docu-

ments, journals, and proceedings";

b. Provide for the dissemination of information about, and an explanation of, the proposed constitution to the people of the state (address to the people);

c. Make all necessary arrangements and perform all necessary duties in order to restore the civic center in accordance with the terms of the lease by which it is occupied;

d. Take such other steps as may be necessary and desirable to bring the "business of the convention" to orderly completion and preserve its records, documents and papers; and

e. Employ staff to perform the tasks and obligations herein described and compensate such staff and convention delegates designated by convention resolution to perform the tasks herein set out; now therefore be it

Resolved, That the convention request the legislature to enact legislation:

1. To create a bipartisan constitutional convention post adjournment commission, consisting of the president of the convention as the chairman and 14 additional convention delegates, to be appointed by the president of the convention; that the commission be authorized by law to carry out tasks and obligations stated above after the convention adjourns; that the life of the commission expire on the date of the election on the proposed constitution;

2. To permit the constitutional convention post adjournment commission to expend any balance remaining at the time of the adjournment of the convention from the appropriations granted the convention to carry out the tasks and obligations heretofore stated;

3. To permit the constitutional convention post adjournment commission to dispose of property acquired by the convention in such manner as may be determined by the commission to insure reasonable disposition of the property and to permit the commission to use the funds thus received to carry out the tasks and obligations heretofore stated; and

4. To provide that moneys not expended or obligated at the time of the termination of the life of the constitutional convention post adjournment commission revert to the general fund of the state; and be it further

Resolved, That copies of this resolution be transmitted to the president of the senate and the speaker of the house of representatives and all other members of the legislature.

SECRETARY CHASE: That concludes the reports of standing committees.

PRESIDENT NISBET: Reports of select committees.

SECRETARY CHASE: None.

PRESIDENT NISBET: Communications from state officers.

SECRETARY CHASE: None.

PRESIDENT NISBET: Second reading of proposals.

SECRETARY CHASE: Nothing on that calendar.

PRESIDENT NISBET: Third reading of proposals.

SECRETARY CHASE: Nothing on that calendar.

PRESIDENT NISBET: **Motions and resolutions.**

SECRETARY CHASE: Messrs. Davis, Erickson, J. A. Hannah and Wanger move that the president, on behalf of the convention, be requested to extend the condolences of the convention to the family of Representative Ralph H. Young of the second Ingham county district, who passed away this morning.

PRESIDENT NISBET: The question is on the motion. Those in favor, please rise.

We will have 15 seconds of silence.

[Whereupon, the delegates stood in silent tribute for 15 seconds.]

The motion is approved and condolences will be forwarded.

SECRETARY CHASE: There are no resolutions on file, Mr. President.

PRESIDENT NISBET: Special orders of the day.

SECRETARY CHASE: None.

PRESIDENT NISBET: General orders of the day. Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, in order that the several committees can complete their work in a most orderly fashion, I would move at this time that we pass the order of general orders of the day for the balance of the week. In support of the motion, I would simply elaborate to this extent: that it is contemplated that on Monday evening next we would return to the order of general orders and, of course, the first order of business would be the civil service proposal which we had under debate at the conclusion of general orders last Friday. It is my understanding that the committee on executive branch has no objection to proceeding in this fashion.

I would urge further that, assuming the convention adopts this motion, it would be of considerable importance that the committees adhere carefully to the regular schedule of committee work so that no committee would have difficulty in obtaining a quorum. There has been in recent weeks considerable deviation from the prescribed committee schedule, which has been perhaps necessary. However, as we approach this important decisional phase, I think it is important that as little conflict in meeting times as possible be incurred. Therefore, I would certainly urge all committee chairmen to schedule the meetings of their committees in accordance with the regularly prescribed schedule.

PRESIDENT NISBET: The question is on the adoption of the motion of Mr. Van Dusen. Mr. Baginski.

MR. BAGINSKI: Mr. President and ladies and gentlemen of the convention, I'd like to ask Mr. Van Dusen if he wouldn't amend his motion to permit general orders to be conducted each day for one hour so that we may provide the committee on style and drafting with a continuous supply of proposals in order that they may have enough before them so that eventually we won't get into an awful jam here during the last 2 or 3 weeks of the convention. I don't mean to set an hour or just 60 minutes, but there are some proposals here that are noncontroversial — (laughter) — and maintain this constant flow. Now, the eyes of the state are on us and again they'll say we met for 10 minutes or 15 minutes and we're back in again. Let's continue the cycle and keep the wheels turning.

PRESIDENT NISBET: Mr. Van Dusen.

MR. VAN DUSEN: Mr. President and Mr. Baginski, the suggestion which you now advance, in my personal judgment, would be an inefficient use of our time — and I don't make that statement critically. But we have seen time and time again general orders begin on supposedly noncontroversial matter, debate would get nicely going, and then it became necessary for the committee to rise. Now, I think that this stop and go driving in the committee of the whole consumes an awful lot more energy than would be justified by the production of the committee and I think the time could be far better devoted to committee work during this week. If there are noncontroversial proposals to which you allude, I am confident that we will be able to clear enough of them on general orders next Monday night to keep style and drafting's hopper full all next week.

MR. BAGINSKI: Mr. President, Mr. Van Dusen, I just want to call to your attention that it's 2:30. If we were on general orders until 3:30, then from 3:30 to 5:00 would be an ideal time for committee meetings. Two hours is enough for committee meetings.

PRESIDENT NISBET: Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, Mr. Baginski, I think I've really said all I can say on this point. I continue respectfully to disagree with my distinguished colleague, Mr. Baginski, and would urge your favorable vote on the motion.

PRESIDENT NISBET: Mr. Barthwell.

MR. BARTHWELL: Mr. President, I too fail to see what we are going to accomplish by suspending general orders because all it's going to do is drive the committees at an unreasonable pace and there are feelings and tensions, they're tired, and we don't do as good a job — and in the meantime we're just creating a backlog and we already have plenty of work to do. So the committees could complete their task, and

not necessarily by a deadline, but without inconveniencing the closing time for the convention. I can't see the necessity of this.

PRESIDENT NISBET: Mr. Nord.

MR. NORD: Mr. President, I would simply like to suggest to the mover and to anyone else who has in mind to make motions — and I don't wish to make one — the possibility that perhaps we could do something of the type Mr. Baginski suggested if there were a certain amount of, let's say, advance guidance by the president. For example, it might be that the president could pick out exclusion reports and some other things that are not long in themselves — that are short, and no language is to be added at all, only language to be taken out — and possibly some other things, where all we want to do is keep the same language in the constitution. Possibly by selecting a few such things we could make use of the next hour each day. It wouldn't have any harmful effect on the committees and maybe everybody can be satisfied. I don't suggest that as a motion but simply if anyone cares to use that technique, we would be able to do it.

PRESIDENT NISBET: The question is on the motion of Mr. Van Dusen. Any further discussion? Those in favor, please say aye. Opposed, no.

The motion prevails.

MR. MADAR: Division.

PRESIDENT NISBET: Is the demand seconded? Those in favor of the motion by Mr. Van Dusen will vote aye. Those opposed will vote no.

SECRETARY CHASE: Has everyone voted? The machine is now locked and the tally will be taken.

On the motion of Mr. Van Dusen, the yeas are 73; and the nays are 58.

PRESIDENT NISBET: The motion prevails.

Announcements.

SECRETARY CHASE: The legislative powers committee will meet at 10:30 tomorrow morning in committee room H. T. Jefferson Hoxie, chairman.

The committee on legislative organization will meet in room D this afternoon immediately following the session. John Hannah, chairman.

The subcommittee on higher education will meet Wednesday morning at 9:00 o'clock in room J. Anyone wishing to appear before the committee is invited to do so. Roscoe Bonisteel, chairman.

The remaining announcements are found on the composite calendar.

For the information of all the delegates, the W-2 forms were mailed yesterday to the home address of each delegate by the department of administration.

We have the following requests for leave: Mr. Haskill asks to be excused from tomorrow's session to attend a funeral; Mr. Donald Doty wishes to be excused from tomorrow's session; and Mr. Shanahan asks to be excused from Thursday's session because of 2 speaking engagements.

PRESIDENT NISBET: Without objection, they will be excused.

SECRETARY CHASE: That's all the items on the secretary's desk, Mr. President.

PRESIDENT NISBET: The president appoints the following special committee to meet with the legislature as has been outlined today: Walter DeVries, Martin Baginski, Tom Downs, Edward Hutchinson, Richard Van Dusen and Ink White. Without objection, they are approved.

Mr. Hoxie.

MR. HOXIE: Mr. President, for fear that some of the members of the legislative powers committee can't read, we're meeting immediately following adjournment here and coffee is served.

PRESIDENT NISBET: The Chair recognizes Mr. Follo.

MR. FOLLO: Mr. President, I move that the convention adjourn.

PRESIDENT NISBET: The question is on adjournment. All those in favor, say aye. Opposed, no.

We are adjourned until 2:00 o'clock tomorrow.

[Whereupon, at 2:35 o'clock p.m., the convention adjourned until 2:00 o'clock p.m. Wednesday, January 24, 1962.]

SIXTY-FOURTH DAY

Wednesday, January 24, 1962, 2:00 o'clock p.m.

PROCEEDINGS

PRESIDENT NISBET: The convention will please come to order.

Our invocation this afternoon will be given by Judge Benjamin Stanczyk of the common pleas court of Detroit. Judge Stanczyk. Will you please rise.

JUDGE STANCZYK: Let us pray. We praise Thee, O Lord our God, for the mercies and blessings bestowed upon this generous and fruitful country, the United States of America; for the wisdom, forbearance and prudence imparted to our president, our governor and our officials in their work; for peace, prosperity and good will among men.

We give Thee thanks for preserving our nation, a nation in which freedoms and opportunities are available to all its members, regardless of color, creed or station in life.

Today, when fear and doubt walk hand in hand with material progress, we need more than ever to have trust in Thy divine providence, and faith in Thy guiding hand.

And we pray Thee, our God, that the members of this august body, Thy servants selected to serve the Michigan constitutional convention, be given light to see and power to do their tasks according to Thy will. Amen.

PRESIDENT NISBET: Thank you, Judge Stanczyk.

The roll call will be taken by the secretary. All those present, please vote aye.

SECRETARY CHASE: Has everyone voted? The machine is now locked and the attendance will be recorded.

Mr. President, a quorum of the convention is present.

Prior to today's session, the secretary received the following request for leave: Mr. Knirk, from today's session.

PRESIDENT NISBET: Without objection, Mr. Knirk is excused.

SECRETARY CHASE: Absent with leave: Messrs. Donald Doty, Haskill, Knirk, Nord and Thomson.

Absent without leave: Messrs. Hodges and Krolikowski.

PRESIDENT NISBET: Without objection, the delegates are excused.

The president would like to recognize one of our delegates, Roscoe Bonisteel. Mr. Bonisteel is also president of the Michigan historical society. Mr. Bonisteel.

MR. BONISTEEL: Mr. President and fellow delegates, you have on your desk a copy of a recently published book, Alex J. Groesbeck—Portrait of a Public Man, a biography of former Governor Alex J. Groesbeck, written by Mr. Frank B. Woodford, chief editorial writer for the Detroit Free Press. This biography is being presented to you by the historical society of Michigan, through the courtesy of the Michigan Life Insurance Company. Governor Groesbeck was the first president of the company and he remained in that office until his death. This is presented in his memory as a great public servant.

I am happy to make the presentation for 2 reasons: one, the author, Mr. Woodford, has contributed greatly to the perpetuation of historical events in Michigan history through his publications; The Last Jeffersonian, A Biography of Louis Cass, Father Gabriel Richard, Frontier Ambassador, Mr. Jefferson's Disciples, A Biography of Augustus D. Woodward, Father Abrams' Children, a story of Michigan men in the civil war, and now the biography of Governor Groesbeck. These books cover the period from the territorial days of Michigan until almost now. All these books are well written and make excellent reading. My second reason for being pleased in making this presentation is that the book is a biography of a dedicated man, Alex J. Groesbeck. The governor was dedicated to his profession and his government. As we talk about administrative boards, we can think of him because he set them up. When we discuss civil service, we can recall his speeches in 1934 when he advocated it for Michigan. And in 1941, he was appointed by Governor Murray D. Van Wagoner to the civil service commission and he became the chairman in 1943. He sponsored our highway system and built the first real highways in Michigan. You can read all about it in this biography, and much more.

We have heard here in committees some very distinguished former governors of Michigan. Alex J. Groesbeck is not here to speak to us but we can, through this biography we have before us today, learn something of his ideas about government, of his greatness and of his love for Michigan. I believe that the spirit of Governor Groesbeck is in the hearts of the men and women in this convention hall, and those here who knew him in his lifetime will agree that his public service was objective, progressive, constructive, selfless and completely loyal to the tasks before him. And I am sure if he could testify in person he would say to you and to me, "God speed you in your task for the good of the state of Michigan." (applause)

PRESIDENT NISBET: Thank you, Mr. Bonisteel.

Reports of standing committees.

SECRETARY CHASE: Mr. Bentley, for the committee on education, introduces

Committee Proposal 31, A proposal to amend article XI, section 14 of the present constitution pertaining to public libraries; with the recommendation that it pass.

Alvin M. Bentley, chairman.

For Committee Proposal 31 and the reasons submitted in support thereof, see below, page 822.

PRESIDENT NISBET: Referred to the committee of the whole and placed on the general orders calendar.

SECRETARY CHASE: Mr. Hoxie, for the committee on legislative powers, introduces

Committee Proposal 32, A proposal to provide for eligibility to serve in the legislature. Retains article V, section 5; with the recommendation that it pass.

T. Jefferson Hoxie, chairman.

For Committee Proposal 32 and the reasons submitted in support thereof, see below, page 764.

PRESIDENT NISBET: It will be referred to the committee of the whole and placed on the general orders calendar.

SECRETARY CHASE: Mr. Hoxie, for the committee on legislative powers, introduces

Committee Proposal 33, A proposal to provide for immunity of legislators from arrest during sessions except for certain crimes. Amends article V, section 8; with the recommendation that it pass.

T. Jefferson Hoxie, chairman.

For Committee Proposal 33 and the reasons submitted in support thereof, see below, page 765.

PRESIDENT NISBET: Referred to the committee of the whole and placed on the general orders calendar.

SECRETARY CHASE: Mr. Hoxie, for the committee on legislative powers, introduces

Committee Proposal 34, A proposal to provide for quorums of the house and senate and the right of these bodies to compel attendance. Amends article V, section 14; with the recommendation that it pass.

T. Jefferson Hoxie, chairman.

For Committee Proposal 34 and the reasons submitted in support thereof, see below, page 765.

PRESIDENT NISBET: It will be referred to the committee of the whole and placed on the general orders calendar.

SECRETARY CHASE: Mr. Hoxie, for the committee on legislative powers, introduces

Committee Proposal 35, A proposal to provide that the form of legislation shall be by bill. Retains article V, section 19; with the recommendation that it pass.

T. Jefferson Hoxie, chairman.

For Committee Proposal 35 and the reasons submitted in support thereof, see below, page 766.

PRESIDENT NISBET: Referred to the committee of the whole and placed on the general orders calendar.

SECRETARY CHASE: That is all of the standing committee reports, Mr. President.

PRESIDENT NISBET: Reports of select committees.

SECRETARY CHASE: None.

PRESIDENT NISBET: Communications from state officers.

SECRETARY CHASE: None.

PRESIDENT NISBET: Second reading of proposals.

SECRETARY CHASE: Nothing on that calendar.

PRESIDENT NISBET: Third reading of proposals.

SECRETARY CHASE: Nothing on that calendar.

PRESIDENT NISBET: Motions and resolutions.

SECRETARY CHASE: There are no resolutions on file, Mr. President.

PRESIDENT NISBET: Unfinished business.

SECRETARY CHASE: None.

PRESIDENT NISBET: Special orders of the day.

SECRETARY CHASE: None.

PRESIDENT NISBET: Announcements.

SECRETARY CHASE: The meeting of the miscellaneous provisions and schedule committee will start at 8:30 tomorrow morning, January 25, instead of 9:00 o'clock a.m. as indicated on the calendar. Claud Erickson, chairman.

The appellate court subcommittee of the committee on judicial branch will meet in committee room C after the session today. Robert Tubbs, chairman.

The committee on finance and taxation will meet 10 minutes after adjournment today in room E. D. Hale Brake, chairman.

The committee on legislative powers will meet in room H Thursday, 8:30 a.m. T. Jefferson Hoxie, chairman.

The committee on legislative powers, subcommittee 2, will meet in room H this afternoon immediately following the session. Stanley Powell, chairman.

The committee on style and drafting will meet next Monday, January 29, at 4:00 o'clock p.m. in room K. Mr. Cudlip, chairman.

The remaining committee meeting announcements appear on the composite calendar.

I have the following requests for leave of absence: Mr. Balcer requests to be excused from tomorrow's session so that he may attend the graduation of his daughter; Mr. Shackleton requests excuse from the sessions of Thursday and Friday; Mr. L. W. Richards requests leave from the session of Friday to attend a board of education meeting in Negaunee; Messrs. Pellow, Perlich, Perras and Sablich request leave from Friday's session; Mr. Dade requests excuse from the session of Friday to attend a meeting of the administrative board of the Wayne county training school, of which he is chairman; and Mr. Douglas requests leave of absence from the session of tomorrow.

PRESIDENT NISBET: Without objection, those who have requested leave of absence will be excused from tomorrow's session or as they have requested.

SECRETARY CHASE: That's all the items on the secretary's desk, Mr. President.

PRESIDENT NISBET: May I mention to our guests in the gallery that our meeting is short today because of the necessity of our convention to work in committees. You are welcome to attend any of our committee meetings. If you will talk to our guides or any one of our pages, they will tell you where the committee meetings are held and what committees will be meeting. We hope you will avail yourselves of the opportunity to attend.

Mr. Goebel.

MR. GOEBEL: Mr. President, I move that we do now adjourn.

PRESIDENT NISBET: The question is on adjournment. Those in favor, say aye. Opposed, no.

We are adjourned until 2:00 o'clock tomorrow afternoon.

[Whereupon, at 2:15 o'clock p.m., the convention adjourned until 2:00 o'clock p.m., Thursday, January 25, 1962.]

SIXTY-FIFTH DAY

Thursday, January 25, 1962, 2:00 o'clock p.m.

PROCEEDINGS

PRESIDENT NISBET: The convention will please **come to order.**

Our **invocation** today will be given by Father William J. Koenigsknecht of the St. Therese church of Lansing.

FATHER KOENIGSKNECHT: In the name of the Father and of the Son and of the Holy Spirit. Amen.

Direct, we beseech Thee, O Lord, our actions by Thy inspiration, and further them with Thy continual help; that every prayer and work of ours may always begin from Thee, and through Thee be brought to an end.

Assist us with Thy heavenly grace, that we may be able to fulfill our most sacred duty and stewardship. Teach us both what to give and what to withhold; when to reprove and when to forbear; make us considerate and watchful; and deliver us equally from the weakness of indulgence, and the excess of severity; grant that, both by word and example, we may be careful to lead in the ways of wisdom and true piety.

In the name of the Father and of the Son and of the Holy Spirit. Amen.

PRESIDENT NISBET: The **roll call** will be taken by the secretary. Those present, please vote aye.

SECRETARY CHASE: Has everyone voted? The machine is now locked and the attendance will be recorded.

Mr. President, a quorum of the convention is present.

Prior to today's session, the secretary received the following requests for leave:

Messrs. J. B. Richards and Habermehl, from today's session; and Mr. McCauley, from today's session as well as Friday and possibly Monday, due to a death in his immediate family.

PRESIDENT NISBET: Without objection, the requests are granted.

SECRETARY CHASE: Absent with leave: Messrs. Balcer, Douglas, Habermehl, McCauley, J. B. Richards, Shackleton, Shanahan and Thomson.

Absent without leave: Mr. Hodges.

PRESIDENT NISBET: Without objection, Mr. Hodges is excused.

Reports of standing committees.

SECRETARY CHASE: Mr. Brake, for the committee on finance and taxation, introduces

Committee Proposal 36, A proposal with reference to the use to be made of the primary school interest fund, covering the subject matter now found in article X, section 1 of the 1908 constitution;

with the recommendation that it pass.

D. Hale Brake, chairman.

For Committee Proposal 36 and the reasons submitted in support thereof, see below, page 818.

PRESIDENT NISBET: It will be referred to the committee of the whole and place on the general orders calendar.

SECRETARY CHASE: Mr. Brake, for the committee on finance and taxation, introduces

Committee Proposal 37, A proposal to provide for care and control of state funds, accounting for public moneys, audits, and publication of reports, and covering the general subject matter found in sections 15, 16, 17, 18 and 13 of article X of the 1908 constitution;

with the recommendation that it pass.

D. Hale Brake, chairman.

For Committee Proposal 37 and the reasons submitted in support thereof, see below, page 766.

PRESIDENT NISBET: Referred to the committee of the whole and placed on the general orders calendar.

SECRETARY CHASE: Mr. Brake, for the committee on finance and taxation, introduces

Committee Proposal 38, A proposal with reference to the earmarking of the gas and weight taxes for highway purposes covering the subject matter of article X, section 22 of the 1908 constitution;

with the recommendation that it pass.

D. Hale Brake, chairman.

For Committee Proposal 38 and the reasons submitted in support thereof, see below, pages 775 or 780.

PRESIDENT NISBET: Referred to the committee of the whole and placed on the general orders calendar.

SECRETARY CHASE: Mr. Brake, for the committee on finance and taxation, introduces

Committee Proposal 39, A proposal with reference to the earmarking of sales tax revenues covering the subject matter of section 23 of article X of the 1908 constitution;

with the recommendation that it pass.

D. Hale Brake, chairman.

For Committee Proposal 39 and the reasons submitted in support thereof, see below, page 785.

PRESIDENT NISBET: Referred to the committee of the whole and placed on the general orders calendar.

SECRETARY CHASE: Mr. Brake, for the committee on finance and taxation, introduces

Committee Proposal 40, A proposal with reference to public retirement systems. Amends article X by adding a section;

with the recommendation that it pass.

D. Hale Brake, chairman.

For Committee Proposal 40 and the reasons submitted in support thereof, see below, page 770.

PRESIDENT NISBET: Referred to the committee of the whole and placed on the general orders calendar.

SECRETARY CHASE: Mr. Hoxie, for the committee on legislative powers, introduces

Committee Proposal 41, A proposal to provide for a 2/3 vote of the legislature for nongovernmental appropriations. Retains article V, section 24;

with the recommendation that it pass.

T. Jefferson Hoxie, chairman.

For Committee Proposal 41 and the reasons submitted in support thereof, see below, page 837.

PRESIDENT NISBET: Referred to the committee of the whole and placed on the general orders calendar.

SECRETARY CHASE: Mr. Hoxie, for the committee on legislative powers, introduces

Committee Proposal 42, A proposal to include in the constitution all of sections 1, 2, 3, 4 and 8 of article IX entitled "impeachments and removals from office";

with the recommendation that it pass.

T. Jefferson Hoxie, chairman.

For Committee Proposal 42 and the reasons submitted in support thereof, see below, page 837.

PRESIDENT NISBET: Referred to the committee of the whole and placed on the general orders calendar.

SECRETARY CHASE: Mr. Erickson, for the committee on miscellaneous provisions and schedule, introduces

Committee Proposal 43, A proposal pertaining to aliens and property rights. Retains article XVI, section 9;
with the recommendation that it pass.

Claud R. Erickson, chairman.

For Committee Proposal 43 and the reasons submitted in support thereof, see below, page 845.

PRESIDENT NISBET: Referred to the committee of the whole and placed on the general orders calendar.

SECRETARY CHASE: Mr. Erickson, for the committee on miscellaneous provisions and schedule, introduces

Exclusion Report 2016, A report recommending the exclusion of article XVI, section 4.

Claud R. Erickson, chairman.

For Exclusion Report 2016 and the reasons submitted in support thereof, see below, page 845.

PRESIDENT NISBET: Referred to the committee of the whole and placed on the general orders calendar.

SECRETARY CHASE: Mr. Erickson, for the committee on miscellaneous provisions and schedule, introduces

Exclusion Report 2017, A report recommending the exclusion of article XVI, section 10.

Claud R. Erickson, chairman.

For Exclusion Report 2017 and the reasons submitted in support thereof, see below, page 846.

PRESIDENT NISBET: Referred to the committee of the whole and placed on the general orders calendar.

SECRETARY CHASE: Mr. Brake, for the committee on finance and taxation, introduces

Exclusion Report 2018, A report recommending the exclusion of article X, sections 17 and 18 of the 1908 constitution.

D. Hale Brake, chairman.

For Exclusion Report 2018 and the reasons submitted in support thereof, see below, page 846.

PRESIDENT NISBET: Referred to the committee of the whole and placed on the general orders calendar.

SECRETARY CHASE: That's all the standing committee reports presently on file.

PRESIDENT NISBET: Reports of select committees.

SECRETARY CHASE: None.

PRESIDENT NISBET: Communications from state officers.

SECRETARY CHASE: None.

PRESIDENT NISBET: Second reading of proposals.

SECRETARY CHASE: Nothing on that calendar.

PRESIDENT NISBET: Third reading of proposals.

SECRETARY CHASE: Nothing on that calendar.

PRESIDENT NISBET: Motions and resolutions.

SECRETARY CHASE: There are no resolutions on file, Mr. President.

PRESIDENT NISBET: Unfinished business.

SECRETARY CHASE: None.

PRESIDENT NISBET: Special orders of the day.

SECRETARY CHASE: There are no special orders.

PRESIDENT NISBET: Announcements.

SECRETARY CHASE: The miscellaneous provisions and schedule committee will meet immediately after the session next Tuesday, January 30, and will continue in session until all the committee reports are completed. Claud Erickson, chairman.

The subcommittee on eminent domain will meet in room G Monday after the general session. Paul Mahinske, subcommittee chairman.

There will be a meeting of the committee on declaration of rights, suffrage and elections tomorrow, Friday morning, at 9:00 a.m. James K. Pollock, chairman.

The committee on finance and taxation will meet in room E tomorrow at 8:00 a.m. and tomorrow at 1:00 o'clock p.m. D. Hale Brake, chairman.

The committee on legislative organization will meet in room D tomorrow, Friday, at 8:30 a.m. John Hannah, chairman.

The committee on education will meet in room J at 8:30 a.m. tomorrow, Friday, also in the afternoon after the session, if necessary. Alvin Bentley, chairman.

The committee on judicial branch will meet tomorrow, Friday, immediately after the session in room B. Robert Danhof, chairman.

The committee on legislative powers, subcommittee 1, will meet in room H today immediately after the session. Richard Kuhn, chairman of the subcommittee.

The committee on legislative powers will meet in room H Friday, tomorrow, at 8:30 a.m. T. Jefferson Hoxie, chairman.

The committee on finance and taxation will meet tomorrow at 1:00 o'clock or one hour after the session, in room A.

The committee on local government will meet Monday in room A at 1:00 o'clock p.m.

The secretary has been requested by the committee on administration to make the following announcement: a review of the long distance calls made by delegates indicates that some delegates apparently are not aware that the state has direct trunklines to Detroit. These trunklines can be used by delegates at no cost to the convention. To use the trunklines, all that is necessary is to place the call through the convention switchboard operator and notify her that it is a Detroit call.

That is all of the committee meeting announcements, Mr. President.

We have the following requests for leaves of absence: Mr. Snyder wishes to be excused from the session of next Monday; Mr. Suzore wishes to be excused from next Monday's session; Mr. Walker wishes to be excused from the session of tomorrow; and Mr. Nisbet wishes to be excused from the session of tomorrow.

PRESIDENT NISBET: Without objection, the requests for leave will be granted. Hearing none, they are granted.

Again today I would like to mention to our guests in the balcony that due to the necessity of committee work because committee reports are due next week, our sessions this week and part of next week are necessarily short. You are very welcome, however, to attend any of the committee meetings that are being held immediately after the session. And if you will consult the bulletin board or the pages, they will show you where these meetings are being held and you are very welcome to be there.

Mr. Gover.

MR. GOVER: Mr. President, I move we adjourn.

PRESIDENT NISBET: The question is on adjournment. Those in favor, say aye. Opposed, no.

We are adjourned until tomorrow at 10:00 o'clock.

[Whereupon, at 2:15 o'clock p.m., the convention adjourned until 10:00 o'clock a.m., Friday, January 26, 1962.]

SIXTY-SIXTH DAY

Friday, January 26, 1962, 10:00 o'clock a.m.

PROCEEDINGS

VICE PRESIDENT DOWNS: The convention will please come to order.

The invocation will be given by the Reverend James P. Martin of the First Presbyterian Church, Jackson, who is the Pastor of Delegate Karn.

REVEREND MARTIN: Almighty and eternal God, our Father, we thank Thee for Thy power, for Thy majesty, for Thy wisdom. We beseech Thee now that Thou wilt come in a very special way upon this convention. Grant to them wisdom and guidance. May they have not only a vision for this day but a vision for the days to come that we may rely heavily upon Thee and seek our wisdom in Thee.

We are grateful, our Father, for the freedoms which we enjoy and pray that we may so live now and so act that these freedoms may be ours forever and may be passed on to our children and our children's children. So grant Thy spirit ever in this place and guide them in their deliberations and their work as we pray through Jesus Christ, our Lord. Amen.

VICE PRESIDENT DOWNS: Thank you, Reverend Martin.

We will now have the roll call. All those present, vote aye.

SECRETARY CHASE: Has everyone voted? The machine is locked and the attendance will be recorded.

Mr. President, a quorum of the convention is present.

Prior to today's session, the secretary received the following requests for leave:

Miss Hart wishes to be excused from this morning's session to attend a meeting of the mental health commission; and Mr. Leppien wishes to be excused due to a prior engagement in Saginaw.

VICE PRESIDENT DOWNS: Without objection, the requests are granted.

MR. MARSHALL: Mr. President, Delegate Hodges was supposed to be excused. He is ill. He is sick in bed and he has been for about 2 or 3 days now. I just wanted the record to show that he is ill and at home in bed, so that he is excused because of illness, not just ordinary being absent.

VICE PRESIDENT DOWNS: Without objection, the secretary will have the record show that the delegate is ill.

SECRETARY CHASE: Absent with leave: Mr. Dade, Miss Hart, Messrs. Hodges, Leppien, McCauley, Nisbet, L. W. Richards, Shackleton, Thomson and Walker.

Absent without leave: None.

Reports of standing committees.

SECRETARY CHASE: There are no standing committee reports on file, Mr. President.

VICE PRESIDENT DOWNS: Reports of select committees.

SECRETARY CHASE: None.

VICE PRESIDENT DOWNS: Communications from state officers.

SECRETARY CHASE: None.

VICE PRESIDENT DOWNS: Second reading of proposals.

SECRETARY CHASE: Nothing on that calendar.

VICE PRESIDENT DOWNS: Third reading of proposals.

SECRETARY CHASE: Nothing on that calendar.

VICE PRESIDENT DOWNS: Motions and resolutions.

SECRETARY CHASE: Messrs. White, DeVries and Bonisteel offer:

Resolution 67, A resolution to commemorate the one hundred twenty-fifth anniversary of the admission of Michigan into the union.

VICE PRESIDENT DOWNS: Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, because of the nature of this resolution and because it should probably be acted upon today, I move to suspend the rules for the purpose of its immediate consideration.

VICE PRESIDENT DOWNS: There has been a motion to suspend the rules for the purpose of consideration of this resolution. Are there any objections? Hearing none, the rules will be suspended for the purpose of considering this resolution.

The secretary will read the resolution.

SECRETARY CHASE: Resolution 67, a resolution to commemorate the one hundred twenty-fifth anniversary of the admission of Michigan into the union.

Whereas, This day, January 26, 1962, marks the one hundred twenty-fifth anniversary of Michigan's statehood; and

Whereas, On January 26, 1837, the act of congress declaring the state of Michigan "to be one of the United States of America, and admitted into the union on an equal footing with the original states, in all respects whatever," was given final approval, paving the way for its growth and prosperity; now therefore be it

Resolved, That this constitutional convention pay tribute to the wisdom and foresight of our predecessors who a century and a quarter ago devised the blueprint which guided the state of Michigan through its pioneer struggles to become a national leader among the states of the nation.

VICE PRESIDENT DOWNS: The question is on the adoption of the resolution. Is there any discussion? All those in favor, signify by saying aye. Those opposed, by no.

The resolution is adopted.

Any other motions and resolutions?

SECRETARY CHASE: That is the only resolution on file, Mr. President.

VICE PRESIDENT DOWNS: Unfinished business.

SECRETARY CHASE: None.

VICE PRESIDENT DOWNS: Special orders of the day.

SECRETARY CHASE: None.

VICE PRESIDENT DOWNS: Announcements.

SECRETARY CHASE: The committee on legislative powers will meet in room H today immediately after the session and Monday, January 29, at 4:00 o'clock p.m. in room H. T. Jefferson Hoxie, chairman.

The committee on education will meet in room J 15 minutes after adjournment of today's session. It will also meet in room J at 3:00 o'clock p.m. Monday afternoon. Alvin M. Bentley, chairman.

The committee on style and drafting will meet in committee room K, January 29, at 4:00 o'clock p.m., to consider pending committee proposals before the committee which include 16, 23 and 15, the bill of rights. William B. Cudlip, chairman.

The remaining committee meeting announcements appear on the composite calendar.

I have the following requests for excuse from the session: Mr. Nisbet requests to be excused from the sessions of Monday and Tuesday of next week due to a company directors' meeting and a speaking engagement on the convention in Benton Harbor; and Mr. Woolfenden asks to be excused from the sessions of January 29, 30 and 31 because of professional commitments in Detroit and Washington, D. C., which were made prior to the convening of the convention.

VICE PRESIDENT DOWNS: Without objection, the requests will be granted.

SECRETARY CHASE: That is all of the announcements and requests, Mr. President.

VICE PRESIDENT DOWNS: Thank you. I would like to announce to the visitors of the convention that we are certainly very pleased to have you with us. We are particularly pleased with the young people because the constitution we are preparing will serve your lives longer than it will ours. We

are not having what is called the committee of the whole or discussions on proposals this week because our committees have been working overtime to get the reports ready for the full convention. However, there will be committee meetings after the session. These are open to the public and you are very welcome to attend. You can check with the guides or on the bulletin board for the time and place of the meetings and we shall certainly be pleased to have you attend those meetings that are held today or next week or any other time, for that matter.

Mr. Greene.

MR. GREENE: Mr. President, I move that the convention do now adjourn.

VICE PRESIDENT DOWNS: All those in favor, signify by saying aye. Those opposed, by nay.

The ayes have it and the convention is adjourned until Monday at 8:00 p.m.

[Whereupon, at 10:10 o'clock a.m., the convention adjourned until 8:00 o'clock p.m., Monday, January 29, 1962.]

SIXTY-SEVENTH DAY

Monday, January 29, 1962, 8:00 o'clock p.m.

PROCEEDINGS

VICE PRESIDENT ROMNEY: The convention will come to order.

The invocation this evening will be offered by Delegate Charles Anspach.

MR. ANSPACH: Our Father, who art the origin of all that is good and fair and true, unto Thee we lift up our souls. Let Thy spirit enter our hearts. We pray we may not separate ourselves from Thee through selfish thoughts and deeds. Aid us in so directing our lives that we do not deprecate or injure others. Help us to understand that we are all children of Thine; may we govern ourselves accordingly. May we judge not or overlook the beam in our own eye before looking for the mote in our brother's eye. May Thy thoughts be our thoughts. May Thy spirit fill us so that others through us may see Thee.

Bless those who direct the affairs of our nation; may they include Thee in their deliberations so that wisdom may be theirs. Bless our state. Accept our gratitude for the blessings Thou hast showered upon us.

We pray that the work of this convention may meet Thy approval and be a blessing to the citizens of this state. Forgive our mistakes, grant us wisdom and bless our deliberations. Amen.

VICE PRESIDENT ROMNEY: The roll call will be taken by the secretary. Will all those present vote aye.

SECRETARY CHASE: Has everyone voted? The machine is locked and the attendance will be recorded.

Mr. President, a quorum of the convention is present.

Prior to today's session, the secretary received the following requests for leave: Mr. Lawrence, from tonight's session; Mr. Walker has the flu and would like to be excused from the sessions of this evening and tomorrow.

VICE PRESIDENT ROMNEY: Without objection, the requests are granted.

SECRETARY CHASE: Absent with leave: Messrs. Lawrence, Nisbet, Suzore, Thomson and Walker.

Absent without leave: None.

VICE PRESIDENT ROMNEY: Reports of standing committees.

SECRETARY CHASE: The committee on legislative powers, by Mr. Hoxie, chairman, reports back to the convention **Exclusion Report 2001,** A report recommending the exclusion of article VI, section 14; and **Exclusion Report 2002,** A report recommending the exclusion of article VI, section 15; with the recommendation that they be referred to the committee on executive branch.

T. Jefferson Hoxie, chairman.

For Exclusion Reports 2001 and 2002, see above, page 380.

VICE PRESIDENT ROMNEY: Referred to the committee on executive branch.

SECRETARY CHASE: Mr. Erickson, for the committee on miscellaneous provisions and schedule, introduces **Committee Proposal 44,** A proposal pertaining to the schedule. Amends sections 1 and 8 of the schedule and adds 2 sections; with the recommendation that it pass.

Claud R. Erickson, chairman.

For Committee Proposal 44 and the reasons submitted in support thereof, see below, page 846.

VICE PRESIDENT ROMNEY: Referred to the committee of the whole and placed on general orders.

SECRETARY CHASE: That's all of the standing committee reports, Mr. President.

VICE PRESIDENT ROMNEY: Reports of select committees.

SECRETARY CHASE: None.

VICE PRESIDENT ROMNEY: Communications from state officers.

SECRETARY CHASE: None.

VICE PRESIDENT ROMNEY: Second reading of proposals.

SECRETARY CHASE: Nothing on that calendar.

VICE PRESIDENT ROMNEY: Third reading of proposals.

SECRETARY CHASE: Nothing on that calendar.

VICE PRESIDENT ROMNEY: Motions and resolutions.

SECRETARY CHASE: Mr. Van Dusen offers **Resolution 68,** A resolution establishing the time of daily sessions.

Following is Resolution 68 as offered:

Resolved, That beginning February 1 the convention shall meet at 2:00 o'clock p.m. on Monday, and at 9:00 o'clock a.m. on Tuesday, Wednesday, Thursday and Friday, such schedule to continue until changed by the convention.

VICE PRESIDENT ROMNEY: Referred to the committee on rules and resolutions.

Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, just one comment, first, about this resolution. As you know, on Wednesday of this week we will complete the reporting by committees and thereafter it will not be necessary for the committees to meet on their regular schedules. We will have, however, beginning on Thursday of this week, a very full calendar on general orders which we must complete by February 21. Accordingly, the resolution which has just been offered recommends a change in the time of our daily general convention sessions.

It is proposed that our sessions on Thursday and Friday of this week and Thursday and Friday thereafter until further notice be held at 9:00 o'clock in the morning, the plan being to meet beginning at 9:00 and through the morning, recessing for lunch and reconvening in the afternoon and meeting all afternoon. The full schedule which is proposed by this resolution on a weekly basis contemplates meeting at 2:00 o'clock in the afternoon on Mondays so that we can have an afternoon session and an evening session on Mondays, and at 9:00 o'clock in the morning on Tuesdays, Wednesdays, Thursdays and Fridays so that we can devote the full day to debate in committee of the whole on each of those weekdays.

I do not ask for any action on the resolution at this time because it has been referred to the committee on rules and resolutions. It will be before you shortly, I hope, and I thought perhaps in planning your own schedules this advance notice might be helpful.

Second, Mr. President, I move at this time that the order of general orders be passed on Tuesday and Wednesday of this week, so that the committees can complete their work.

VICE PRESIDENT ROMNEY: You have heard the motion. Those in favor say aye; opposed.

The motion prevails.

Mr. Van Dusen.

MR. VAN DUSEN: Now, Mr. President, I have one further matter which may be appropriate at this particular point. As you may recall, President Nisbet some time ago requested that I give some thought to the expediting of our work in committee of the whole and, as we approach on Thursday of this week a time when we will be in almost continuous session of the committee of the whole, perhaps these observations may be helpful to us in completing our work. Most of them have been discussed with the committee on rules and resolutions and have the concurrence of that committee.

First, I think it would be desirable for all of us to make better use of our calendars than we have been up to now. As you know, each of us has on our desk a calendar indicating the order of business in committee of the whole, and it will let us know for many days to come the matters which will be under discussion, the points in the journal at which proposals and reports can be found, and so forth.

Now, much of our problem in expeditiously and efficiently conducting the work of the committee of the whole has resulted, in my judgment, from a lack of homework on the part of all of us, generally. If we will each make it a point to study the committee proposals well in advance, study the committee reports well in advance, we will be better prepared to undertake consideration of those proposals in committee of the whole.

Where that study indicates to any delegate the desirability of the presentation of an amendment to that committee proposal, let me suggest this: it would be desirable if after preparing an amendment you took it to the chairman of the substantive committee reporting the proposal, discussed it with him or with the member of the committee to whom he may refer you, so that you will have the benefit of the thinking of the committee with respect to that proposal, and you may find that the amendment which you have proposed was carefully considered in the committee and was rejected for a reason which may seem good and sufficient to you. If your position still appeals to you and you wish to persist in the amendment, then make sure that the amendment is carefully drafted, that the committee chairman knows it is coming, that he has an opportunity to integrate the amendment into the language of the committee proposal, so that we do not get into long arguments about style and language — and consider your amendment with the research and drafting staff, so that we don't get this flurry of amendments drafted in haste and repented at leisure.

Now, another thing which will be very helpful to all of us will be that if you have amendments, you submit them to the secretary, preferably a day in advance of the consideration of that proposal in committee of the whole. If the secretary can then prepare for all of us a list of the proposed amendments with their language, you may find that your amendment is duplicated by amendments proposed by 2 or 3 other delegates and the various proponents of amendments can then consolidate their forces, agree on the particular language which meets with your general approval, and the time which we devote to the consideration of separate amendments will thereby be shortened and the thoughtful attention of all of the delegates can be given to the language which they will have before them in printed form, and they won't be relying on the reading of it by the secretary and hastily scribbled notes on their committee proposals. So much for the area of homework and advance preparation and how it can be helpful to all of us.

Another suggestion to which I think we ought to give careful consideration is confining amendments proposed in committee of the whole to matters of substance. I think that we have frequently found ourselves engaged in a competition among the many of us who are lawyers to see who can develop the most articulate expression, the most artistic expression of a particular thought; and we, therefore, debate style at length, giving substance shorter shrift than it deserves. If, when you have an amendment which is a matter of style and a matter of style only, you can refer it directly to the committee on style and drafting, you will do much to expedite the conduct of the substantive business of the committee of the whole, and I think that your amendment dealing with style will be given careful consideration by the committee on style and drafting.

If we are confronted with a proliferation of amendments dealing only with style, it may become necessary for the rules committee to advance some rule which would put out of order in committee of the whole amendments which deal only with style and they, if offered, would simply be referred along with the committee proposal to the committee on style and drafting.

I think this is an unnecessarily harsh approach. I think the voluntary work of each of us in trying to confine amendments offered in committee of the whole to matters of substance, not of form, would be helpful.

One further suggestion is this: very frequently we have found ourselves debating at length on an amendment — at least nominally on an amendment of the entire subject matter of the proposal. If in seeking recognition you will confine yourselves strictly to the point currently under discussion that, I am sure, will do much for the good will of the chairman of the committee of the whole and will help the entire body in getting its work done.

Just one final point which may prove necessary: if all of these suggestions go unheeded, the committee on rules and resolutions has in its possession a resolution to limit debate, with which it will deal this evening but, quite frankly, that is the least desirable way in which to expedite the business of the committee of the whole. What we want is a full, complete and orderly discussion of matters of substance, and with your cooperation I am sure we will have it. Thank you very much.

VICE PRESIDENT ROMNEY: Thank you, Mr. Van Dusen.

SECRETARY CHASE: Mr. Austin offers

Resolution 69, A resolution proposing certain business to be included in the windup of convention affairs by the special windup committee.

Whereas, The constitutional convention has anticipated the necessity for careful and comprehensive windup of the affairs of the convention and of the delegates as they relate to the convention, and has therefore established a committee to jointly assume these responsibilities along with a similar committee from the legislature; now therefore be it

Resolved, That in addition to the plans for disposition of the physical property of the convention, that plans be made by the windup committee and funds set aside to assist handicapped delegates to make the transition from delegate to useful member of society; (laughter) and be it further

Resolved, That there be established a rest home and rehabilitation center for retired con con delegates to provide the following services:

1. Refuge for those who lack the courage to face their constituents with the final document.

2. Medical and nursing care to correct nervous and digestive disorders.

3. Counseling in family relations to assist in restoring personal domestic tranquility.

4. Special training in the art of fast talking to enable ex-delegates to defend themselves when called upon to improve upon the vague resemblance between their campaign promises and the provisions of the final document.

5. Retraining in some new vocation to replace the position or profession which was allowed to deteriorate while serving as a constitutional convention delegate; and be it further

Resolved, That in cases where rehabilitation efforts fail, the casualties should be furnished a pair of dark glasses, a cane, a sign, a tin cup, and a supply of pencils, then assigned a busy corner. The sign should read: "I was a con con delegate." (laughter and applause)

VICE PRESIDENT ROMNEY: The Chair will refer the resolution to the committee on emerging problems. (laughter)

Unfinished business.

SECRETARY CHASE: None, Mr. President.

VICE PRESIDENT ROMNEY: Special orders of the day.

SECRETARY CHASE: None.

VICE PRESIDENT ROMNEY: **General orders of the day.** Delegate DeVries.

MR. DeVRIES: Mr. President, I move that the convention resolve itself into committee of the whole for consideration of certain items on the general orders calendar.

VICE PRESIDENT ROMNEY: You have heard the motion. Those in favor say aye; opposed.

The motion prevails and Delegate DeVries will preside.

[Whereupon, Mr. DeVries assumed the Chair to preside as chairman of the **committee of the whole.**]

CHAIRMAN DeVRIES: The committee will come to order. When the committee last met we were considering **Committee Proposal 22,** A proposal pertaining to state civil service. The committee had earlier decided to proceed through the committee proposal paragraph by paragraph.

[For last previous action by the committee of the whole on Committee Proposal 22, see above, page 658.]

The committee is now considering an amendment offered by Delegate Martin, on behalf of the committee on executive branch. The secretary will read the amendment.

SECRETARY CHASE: Mr. Martin's amendment, for the committee, is as follows:

1. Amend page 2, line 15, after "commission.", by inserting "Any employee considering himself aggrieved by any such abolition shall have an immediate right of appeal to the commission and the courts through established grievance procedures.".

CHAIRMAN DeVRIES: The Chair recognizes the delegate from East Grand Rapids, the chairman of the committee, Mr. Martin.

MR. MARTIN: Mr. Chairman, the sole purpose of this amendment is to make it clear that the usual procedures for appeal of any question with regard to the abolishment or creation of a job, or removals or demotions, appointments or promotions, all are available to any employee who considers himself aggrieved. We wanted to make that perfectly clear simply for clarification purposes.

CHAIRMAN DeVRIES: Any further discussion of the amendment? If not, all those in favor will say aye; opposed, no.

The amendment is adopted.

Are there any further amendments?

SECRETARY CHASE: Mr. Marshall offers the following amendment:

1. Amend page 2, line 14, after "efficiency" by striking out "without" and inserting "with"; so that the language will then read:

The appointing authorities may create or abolish positions for reasons of administrative efficiency with the approval of the commission.

CHAIRMAN DeVRIES: The Chair recognizes the delegate from Taylor, Mr. Marshall.

MR. MARSHALL: Mr. Chairman and fellow delegates, the reason for this amendment — the main reason that I offered the amendment — is so that the commission will have authority in this area in order to forestall abolishment of positions by subterfuge to effect removal of a state employee for partisan, racial, religious, personal, or other considerations. Review of such matters as this by the civil service commission will restrain all possible abuse without infringement upon traditional executive authority to create or abolish positions for efficiency or other reasons. I offer this very brief statement in support of this amendment, and I hope that the delegates will give consideration to my amendment. Thank you.

CHAIRMAN DeVRIES: Delegate Martin.

MR. MARTIN: Mr. Chairman, the committee considered this matter at considerable length. It is opposed to the amendment.

The purpose of the language as now proposed in the committee proposal is to make it clear that the head of a department does have the authority to create or abolish jobs for reasons of economy or administrative efficiency. This is the position taken by Judge Dethmers in the Kunzig case, which was reviewed for you by Mr. Durst at some length. It is the feeling of the committee that the head of an administrative agency must have authority to determine how many employees he shall have or how few, how those functions shall be grouped, and what jobs are needed and what jobs are not needed. This, of course, has nothing to do with the abolishment of jobs for racial, religious, or reasons of that type, but it does give authority to create or abolish jobs if the reason is solely one of greater efficiency or greater economy, and that is the minimum that any administrative agency can expect to have and still function properly.

CHAIRMAN DeVRIES: Delegate Marshall.

MR. MARSHALL: Mr. Chairman and fellow delegates, I don't wish to belabor this issue too long. All that my amendment does is allow for a review by the civil service commission. It is my understanding that there has been no problem in the past nor is there a problem now in the abolishment or creation of positions for efficiency purposes. I submit, however, that the language that has been proposed by the committee will then make it possible for an appointing authority to abolish or create positions at will without a review by anyone, other than the additional amendment which the chairman of our committee explained to me, which will give him a right to appeal through the courts.

Again, I think that the amendment that I offer is reasonable and I think that it is in order and I think it is deserving of consideration by this committee. I do not want to see us get in a situation where positions can be abolished for personal reasons in order to get rid of an individual that might be undesirable for personal reasons and not because of efficiency. I submit that the amendment that I offer, which merely changes one word, would not prohibit the abolishment of a position for efficiency purposes; it only provides for a review by the civil service commission. Thank you.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from St. Clair Shores, Delegate Snyder.

MR. SNYDER: Thank you, Mr. Chairman. I rise to support the amendment offered by Mr. Marshall. I do not believe that any of us has any serious reservation or question as to the intent of the committee. The language is quite clear and the explanation of the chairman is quite clear.

However, I would like to point out to the delegates that such language which appears to be crystal clear to us at times of no emotion, of no upheaval, oftentimes becomes misunderstood and does create a problem. I believe we have all been in situations in which we had language of a general nature of

this sort that, because of circumstances, can be interpreted in other manners than which it is presented. I feel that the intent of the civil service program would be seriously undermined if we did permit a move of this sort to erode the protection it does give the employees. I seriously urge the delegates to consider this: that there may be times when the emotions may rise to the point that people may have the opportunity to exercise a privilege which certainly we as delegates do not wish to grant.

CHAIRMAN DeVRIES: The Chair will recognize the gentleman from Detroit, Delegate Yeager.

MR. YEAGER: Mr. Chairman, I would like to ask Mr. Martin a question. Assuming an employee were supposedly relieved on the basis of efficiency, I assume if he felt that it was for partisan reasons, he would have the right of appeal. Upon whom would the burden of proof be?

MR. MARTIN: Well, the burden of studying the matter, of course, if he appealed, would be upon the commission. The burden is not on the commission; the matter of the decision is with the commission and ultimately, of course, if necessary, with the courts. This is true no matter whether you take the committee's language or the language that Mr. Marshall proposes.

CHAIRMAN DeVRIES: Delegate Yeager.

MR. YEAGER: Well, actually, then, the commission would have a right to intervene in the event it felt that another determination should be made.

MR. MARTIN: That is right.

MR. YEAGER: Thank you.

MR. MARTIN: If the employee considers himself aggrieved, he immediately takes his matter through the usual grievance procedures and that's all that's involved.

I sat down with Mr. Seaman, one of the members of the commission, who is an attorney, and reviewed this matter with him. He suggested an amendment which Mr. Tubbs, I believe, has on the secretary's desk, which makes it doubly clear that this involves only reasons of administrative efficiency or economy, and that amendment is agreeable to the committee, I am sure, but we wanted to be sure that we were not doing something which would cause the commission difficulty in this matter, and for that reason we consulted with Mr. Seaman and we're satisfied that he's satisfied.

CHAIRMAN DeVRIES: Delegate Marshall.

MR. MARSHALL: Mr. Chairman and fellow delegates, having had considerable experience with grievances over a long period of years, it has been my practice to try to eliminate those things that bring about grievances, in order that we don't have quite so many grievances. Now, what the chairman of our committee says is true: the employee has a right of appeal. There is a procedure that he goes through. It places all the burden, however, upon the employee.

All that my amendment does is give a review of the matter by the commission. It in no way prohibits the abolition of positions for efficiency reasons, nor is it intended to. It is only intended to provide a review by the commission. Let them determine whether or not it is for efficiency reasons or for other reasons, thereby avoiding the grievances or the person being aggrieved — as the chairman stated — having to follow a long set of procedures. That is the intent of the amendment. Thank you.

CHAIRMAN DeVRIES: The gentleman from Detroit, Vice President Downs.

MR. DOWNS: Mr. Chairman, it may be that Mr. Martin is satisfied and it may be that a member of the civil service commission is satisfied, but I am not sure that the employees who would operate under this provision would be satisfied.

I would like to ask the chairman of the committee, where he has the language:

> Any employee considering himself aggrieved by any such abolition shall have an immediate right of appeal to the commission and the courts through established grievance procedures,

how long it would take the unemployed civil servant to get those rights exercised.

CHAIRMAN DeVRIES: Delegate Martin.

MR. MARTIN: Whatever the usual procedure is and whatever the usual length of time.

What Mr. Marshall is contending for, however, and what Mr. Downs is contending for is that the commission should have the power to determine whether all the administrative agencies in the state have the right to decrease or increase their employees or make changes which are for economy and efficiency purposes, and this we think the commission should not have. The proposal, the committee language, is to establish that fact clearly.

CHAIRMAN DeVRIES: Mr. Downs.

MR. DOWNS: Mr. Chairman, through the Chair, could I ask what the term "usual procedures" means. Does it mean a week, a month, 6 months or a year?

CHAIRMAN DeVRIES: Does the gentleman care to answer?

MR. MARTIN: I don't know the precise length of time. The commission has established its rules and regulations for bringing these matters to its attention and for getting them decided.

MR. DOWNS: This means not only the commission but also the courts. I wonder if the chairman of the committee would acquiesce to any time limit under which the employee would have to wait to get his rights determined.

CHAIRMAN DeVRIES: Delegate Martin?

MR. MARTIN: I don't think the committee considered the question of a time limit, Mr. Downs. The position of the committee was that on reasons of economy or efficiency this was not a determination for the civil service commission because this was an administrative determination which should be made by the head of the administrative agency and not by the civil service commission whose job is to determine the qualifications of employees and, of course, to prevent any discrimination on the basis of racial, religious or partisan reasons and not to get into the business of determining whether an agency needs more employees or less employees.

CHAIRMAN DeVRIES: Delegate Downs.

MR. DOWNS: I think, Mr. Chairman and members of the committee, what we are dealing with here is a very important matter in the operation of government and the rights of individuals, and that is the change of the word from "without" to "with." It determines the whole concept of the burden of proof. Under the language that the committee has, it says that the agency can eliminate the job without the approval of the commission. Then, after the employee is summarily out of the position, he then has the debatable right of going to the commission for redress and, as the chairman of the committee — and I believe I am not putting words in his mouth — stated that he did not know what that concept of "usual" time meant, it means that the individual — the individual who is out of his position — has to, without a paycheck, try to fight to get back into the system; whereas, the recommendation of Delegate Marshall says that the agency must go to the commission, get the justification and then, getting that, the position can be eliminated.

It is a question, really, of the individual being forced to fight city hall or having civil service be in a position to approve the agency's recommendation but make the review before the position is eliminated. And I say that in our modern society when we are so concerned about an over extension of the powers of control of the state, we have here a recommendation that would pit the individual who was out of his position against the whole state system of employment. That is not even a David and Goliath battle.

I think the recommendation of Delegate Marshall is that the agency has the right, for purposes of efficiency, to eliminate, change and transfer positions, but the only requisite is that there be a prior approval by the commission. Then such action could be taken. I think from the important concept of the burden of proof, this simply means that if we adopt the Marshall amendment the agency would need to justify this to the commission rather than have the individual without a paycheck try to fight to get his position back. I urge the adoption of the Marshall amendment.

The only case apparently, that has been mentioned in dispute was the Kunzig one of many years back. I would not like to see us penalize the prerogatives of employees for the next 50 years because of debating the interpretation of the Kunzig case of many years ago. I believe that the present operation has been sound. I see no reason for this change and I hope the committee will support the Marshall amendment.

CHAIRMAN DeVRIES: The lady from Detroit, Delegate Hart.

MISS HART: Mr. Chairman, Mr. Martin has said that Mr. Seaman, a member of the civil service commission, is in accord with this provision. I had a call this morning from Miss Sarah Robinson, who has been a member of this commission for some 10 years and is now chairman of the commission for the second or third time. She spent about 45 minutes this morning talking with me about this provision, and she is extremely fearful of its consequences. I think the committee should know that the commission is not united in its estimate of the effects of this particular proposal.

CHAIRMAN DeVRIES: Delegate Martin.

MR. MARTIN: I would only add that if there is a real question of discrimination and the employee is concerned to prevent it, he can get a temporary injunction within a matter of a couple of hours; so this is not a matter that takes days and months. A dismissal can be stopped by way of court action in no time at all, if it's necessary. Ordinarily it would not be necessary; but he can handle it that way, if it's necessary.

CHAIRMAN DeVRIES: The question is on the adoption of the Marshall amendment. The delegate from Detroit, Delegate Norris.

MR. NORRIS: I should like to address a question, through the Chair, to the committee chairman. The amendment which we passed indicated that:

> Any employee considering himself aggrieved by any such abolition shall have an immediate right of appeal to the commission and the courts through established grievance procedures.

Now when there is, then, the fact of an abolition, this particular amendment we passed creates a right of appeal to the commission, but if the commission itself does not have any authority to approve this matter of abolition for reasons of administrative efficiency, then, actually, the appeal is without any basis or any point. Do I understand that correctly?

MR. MARTIN: The language is broad because it was thought that the employee might consider that the abolition had been made for racial, partisan or religious reasons and, therefore, would want to take advantage of his rights in that regard.

MR. NORRIS: Then the question of the appeal would only have to be — in order to be based on something appealable — on the reasons of partisanship or race or religion, or things of that kind, and not on the basis of the abolition.

MR. MARTIN: Well, if the commission felt that it did not have the authority to decide the appeal, it would, of course, then pass the matter on to the courts.

MR. NORRIS: But then the matter of the appealability, based upon reasons other than the ones particularized, would be without any point. There would not be any purport to it.

MR. MARTIN: He is free to go wherever is most necessary. I say we made the language broad because of the possibility that there might be questions of racial or religious discrimination, in which case he would deal directly with the commission. We felt if there were questions with regard to administrative efficiency, he might decide to go direct to the courts.

MR. NORRIS: Of course, there is a question of fact as to whether or not the efficiency is mixed up with the other matters. There could be that question?

MR. MARTIN: There could be that question, yes.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Detroit, Delegate Sterrett.

MR STERRETT: Mr. Chairman and delegates, the committee has considered this very carefully and, as a member of the committee, I agree with our chairman. Mr. Martin, our chairman, has said that the commission does have something to say about the matter of efficiency. Mr. Marshall has agreed with our committee chairman. Mr. Downs doubts our committee chairman in the "ordinary process." I would like to ask Mr. Downs if he knows what the ordinary process is. This commission is divided as far as Miss Hart is concerned. The commission is divided in their ideas and this, therefore, should be another good reason for voting in favor of the committee proposal.

CHAIRMAN DeVRIES: Did you address a question to Vice President Downs, Mr. Sterrett?

MR. STERRETT: I made statements and the only question was to Vice President Downs, yes.

CHAIRMAN DeVRIES: Mr. Downs.

MR. DOWNS: As I understand, the question was whether I knew what the ordinary process was. Frankly I didn't; I was trying to find that out from the chairman of the committee, because I do not know in terms of time what the ordinary process is. But the chairman of the committee said the employee who is now out of work, with no pay check, gets an attorney — I assume on a contingency fee — who gets an injunction. I am not quite sure whether he can get an injunction or whether he must exhaust his remedies first. I must confess my ignorance further; I don't know if he must first go to the hearing board of the civil service commission or the full civil service commission; I do not know if he gets the injunction from a circuit court judge, the state supreme court or from a justice of the peace. I do not know those things and I am not the one that is advocating the change.

I think the burden is on those who are advocating change, and I speak as one who is usually advocating change and is told that in order to support the change there are 3 things I must show: one, what is wrong with the status quo? two, what is my improvement or cure for the disease? and three, is the cure worse than the disease? I propound that applying those standards the only evil that has been demonstrated is the Kunzig case of 5 years ago and that can be debated.

The recommended change? I can say it throws out the baby with the bath by pitting the employee without a pay check against the state that no matter how large the deficit is does have management — the people that are getting their pay checks — and then we tell the individual without the pay check that he must go and get an attorney, go to court, go to the civil service commission and eventually get his remedies righted in the ordinary process, the ordinary grievance process, which I say may take weeks, months or, with court action, conceivably a year or longer. Those are the questions I have asked; I still do not have the answers.

CHAIRMAN DeVRIES: The Chair recognizes Delegate Marshall.

MR. MARSHALL: Mr. Chairman, I think Vice President Downs covered the question I wanted to raise with the chairman of our committee, and that was the statement that an employee so aggrieved could get an injunction in a matter of a couple of hours. I guess I have had about as much experience as anyone in this committee with injunctions and I haven't seen many that you got in a couple of hours; I have seen judges gotten out of bed at 2:00 o'clock in the morning to issue them but it usually took a little longer than 2 hours, and in recent years you don't get them that fast any longer.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Detroit, Delegate Nord.

MR. NORD: Mr. Chairman, I would like to address 2 questions to the committee chairman. The first question has to do with the result of such an appeal based on the grievance procedure. Let us assume, Mr. Martin, that there is no partisan, racial or religious consideration but that the appointing authority abolishes a position for reasons of administrative efficiency or for reasons that he believes are for administrative efficiency. Now, he does that and — am I correct, Mr. Martin, assuming that there is an appeal to the commission and the courts to raise the question of whether the reason really is in the interest of administrative efficiency — is that part of the appeal or not?

CHAIRMAN DeVRIES: Delegate Martin.

MR. MARTIN: I think the question would be raised first with the commission. Then if the commission felt that it did not have jurisdiction of the matter, the matter would then go to the court.

MR. NORD: Well, the question I have in mind in this particular is this: does the commission or does the court have the power to reverse the decision of the appointing authorities in view of the fact that the language here says point blank, "The appointing authorities may create or abolish positions for reasons of administrative efficiency without the approval of the commission." Now, as far as the commission is concerned, it would seem to me they have no jurisdiction at all on that matter, and I don't know how the court might have any. I don't know whether the court does or not, but am I correct in assuming the commission has no jurisdiction on such a question?

CHAIRMAN DeVRIES: Delegate Martin.

MR. MARTIN: The commission, under this language, would not have the authority to make the final determination on whether the job had been abolished for reasons of administrative efficiency or not, but it would certainly have the right to consider the question as to whether this was the reason involved. If there were other factors involved, it could pass on those, of course.

MR. NORD: Then I believe I understand — if I am not mistaken — that the commission could not reverse a ruling of an appointing authority on that single question of administrative efficiency.

Now the other question I ask, Mr. Martin, if I may, is this: why is it necessary that the appointing authorities have this power to create or abolish positions without the approval of civil service? What is the harm in letting the commission have the power to approve? What is the reason for the difference?

CHAIRMAN DeVRIES: Delegate Martin.

MR. MARTIN: The reason for it is that, in the view of the committee, the power in the commission to determine whether jobs can be created or abolished when questions of economy or efficiency are concerned puts the commission in control of the entire administrative machinery of state government. It gives the commission the authority and the power to say, "You cannot have less jobs; we don't consider these are reasons of efficiency. We consider that there is some other reason." So you thereby put the commission into control of the whole of state government by this device, which it now claims the authority to exercise on the strength of the Kunzig case. The committee does not feel that this is a proper responsibility or function for the commission.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Ann Arbor, Delegate Pollock.

MR. POLLOCK: Mr. Chairman, I was merely going to say that I think there is no use getting mixed up any more on this problem. The committee, as Chairman Martin has just indicated, was concerned primarily with straightening out lines of administrative responsibility. The civil service commission exists for the purpose of preventing discrimination or unfair removals. There is nothing in this amendment which denies them that same privilege and right which they have always had; it merely makes very clear — and I might say to Dr. Nord: over a period of 20 years it has often been very unclear — whether a department head who might not be quite as courageous as some department heads ought to be would occasionally shift to the civil service commission the excuse for not firing somebody whom he found to be inefficient.

This committee amendment is calculated to establish the responsibility for administrative inefficiency, to fix it rather definitely without, in my opinion, in any way interfering with the normal and proper protection of the employee. In other words, it is based upon improving the efficiency of the service; it is not based, however much it may be misconstrued, in any way to injure the employees of the state.

CHAIRMAN DeVRIES: The question is on the adoption of the Marshall amendment. The secretary will read the amendment.

SECRETARY CHASE: Mr. Marshall's amendment:

[The amendment was again read by the secretary. For text, see above, page 701.]

CHAIRMAN DeVRIES: Is there any further discussion of the Marshall amendment? If not, all those in favor will say aye; opposed, no.

The amendment is not adopted.

Are there any further amendments?

SECRETARY CHASE: Mr. Downs has offered the following amendment:

1. Amend page 2, line 8, by striking out "recommend to the governor and to the legislature" and inserting "determine"; so the language will then read, "The civil service commission shall determine rates of compensation for all appointed unclassified positions within the executive department."

CHAIRMAN DeVRIES: The Chair recognizes Vice President Downs.

MR. DOWNS: Mr. Chairman, members of the committee, before speaking in favor of what this amendment is, I would like to take a few minutes to say what it is not. It is not the most important amendment before the committee; I do not even feel particularly strongly on it, as I have on other amendments to the civil service provisions. However, what this does do is make a stronger governmental administration.

At the present time we have in state government many cases where the head of the department has his pay established by statute. Then he may be in an unclassified position, yet the people who are classified under him, his deputy or other capacity, may through civil service receive a higher remuneration than the head of the agency does. One of the results of this is the tendency for the head of the agency to be placed under civil service and not in a classified position, not for any theory of government but simply to see if he could end up with his pay in line with that of his deputy.

Now I feel this problem has been aggravated by the amendments we have already adopted. On the first page we did — and I supported this — increase the number of exempt positions. That, I believe, provides that the head, the executive head of the major agencies be in an exempt or unclassified position. I feel that granting civil service the right to set the remuneration for these positions would simply mean that they were in line with the general sound pay scale. I believe it was said last week that the legislature by its nature as a deliberative body is not in as good a position to set actual rates of pay as is the civil service commission and the matter of the career determination of what wage rates or professional salaries should be.

I think this would be a minor improvement. I think it would result in a little bit sounder governmental operation, and I think it would put the matter of wage rates and remuneration determinations into one body in state government. I think for those reasons it is sound but, as I said at the first, I do not consider this the major amendment before the committee or even under civil service. Thank you.

CHAIRMAN DeVRIES: Is there any further discussion of the Downs amendment? Chairman Martin.

MR. MARTIN: Mr. Chairman, the committee did consider this question at some length, and we realize that there are some jobs in the upper levels in which the base pay of the top man in the department may be less than the pay of some member of his department. On the other hand, the committee felt that there should be a line drawn between the responsibilities of the civil service commission, which responsibilities are to handle the civil service employees, and those employees who are specifically made exempt from the civil service provisions and thereby made the responsibility of the legislature; and for that reason the committee determined that the provision would merely go so far as to require the commission to submit recommendations as to what these salaries should be in the light of what certain civil service salaries might be but should not get itself into the position of determining what the salaries should be, since these are noncivil service jobs.

CHAIRMAN DeVRIES: The question is on the adoption of the Downs amendment. The secretary will read the amendment once more.

SECRETARY CHASE: Mr. Downs' amendment is as follows:

[The amendment was again read by the secretary. For text, see above, page 704.]

CHAIRMAN DeVRIES: Is there any further discussion of the Downs amendment? If not, all those in favor will say aye; opposed, no.

The amendment is not adopted.

Are there any further amendments?

SECRETARY CHASE: Mr. Tubbs offers the following amendment:

1. Amend page 2, line 18, after "made" by striking out "for such considerations" and inserting "except for reasons of administrative efficiency"; so that the language will read, "Nor shall the creation or abolition of positions be made except for reasons of administrative efficiency."

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Grand Rapids, "Senator" Tubbs.

MR. TUBBS: Mr. Chairman, this is just to add emphasis. I think it is possible that the committee may accept the amendment.

CHAIRMAN DeVRIES: The chairman of the committee, Delegate Martin.

MR. MARTIN: Mr. Chairman, the committee does accept this amendment and thinks that it is a desirable one. It clarifies the question of administrative efficiency.

CHAIRMAN DeVRIES: Is there any further discussion on the Tubbs amendment? Delegate Ford.

MR. FORD: I would like to ask Mr. Martin a question. I was not too alarmed a few minutes ago when we lost the Marshall amendment here until Dr. Pollock explained this to us and then I became concerned, because I understood his definition of "administrative efficiency" to include a case where the executives determined that a particular individual was "inefficient" as distinguished from a situation where they might determine that they had certain clerical positions, for example, that because of the cessation of a certain operation in a department, were no longer necessary to the continued function of the department. I construed — until Dr. Pollock explained it — administrative efficiency to be an impersonal thing that did not go to the personality or capability of an individual employee but to a question of whether the position as such was necessary.

MR. MARTIN: As far as the individual employee and his personal efficiency or failure to do his job are concerned, this does not change the picture in any way, shape or manner. If he is inefficient and he has been given the proper inefficiency ratings as he went along, the head of his department, of course, is in a position to fire him, but the question comes before the commission in the usual way for determination of whether there was a proper basis for that.

The Tubbs amendment relates to exactly what you are talking about and that is the broad question of whether a department can be reorganized by the head of the department without asking the civil service commission whether he can reorganize his department or not.

CHAIRMAN DeVRIES: Delegate Ford.

MR. FORD: Well, then does administrative efficiency, as it would now appear in the Tubbs amendment, mean something different than administrative efficiency in the first committee amendment above it?

MR. MARTIN: No, it means exactly the same thing.

MR. FORD: Then am I correct in assuming from what you say that you don't agree with Dr. Pollock in what administrative efficiency means?

MR. MARTIN: No, I think you misunderstood what Dr. Pollock said. Dr. Pollock said that this does not change the picture as far as the individual is concerned, so far as individual inefficiency is concerned. Also, it does make clear that where it is a question of reorganizing a department, of increasing it or decreasing it in size, of shifting functions, and so on, that the administrative head of the department shall have the right to do this without asking the civil service commission if he can do it.

MR. FORD: This has been a long day and I am having difficulty following you, but I thought that Dr. Pollock stated rather clearly that this would cover the situation where a department head determined that John Doe was inefficient in performing a certain job, and that this was what we were talking about when we discussed the Marshall amendment a few moments ago.

MR. MARTIN: Well, maybe Dr. Pollock might like to express himself on that, but my understanding is as I have stated it.

CHAIRMAN DeVRIES: Dr. Pollock will clarify the matter.

MR. POLLOCK: I entirely agree with the chairman of the committee on the broad question. I spoke particularly about the employee because it seemed as if a number of delegates were concerned about the rights, the protection, of the employee. I did not emphasize the other side, but the other side was also present, as the chairman has indicated. We hope to overcome the difficulty which undoubtedly has existed in matters involving administrative efficiency, not merely of the employee but in any move within a department for administrative efficiency purposes. We wanted to remove the uncertainty which certainly has existed these past few years with reference to this matter. I was, of course, concerned about refuting the fears which were expressed around the chamber that the employee was going to suffer, but I also concur with the explanation of the chairman.

CHAIRMAN DeVRIES: The question is on the adoption of the Tubbs amendment. The secretary will read the amendment.

SECRETARY CHASE: Mr. Tubbs' amendment is as follows:

1. Amend page 2, line 18, after "made" by striking out "for such considerations" and inserting "except for reasons of administrative efficiency"; so that the language will read, "Nor shall the creation or abolition of positions be made except for reasons of administrative efficiency."

CHAIRMAN DeVRIES: Is there any further discussion of the Tubbs amendment? If not, all those in favor will say aye; opposed, no.

The amendment is adopted.

Are there any further amendments?

SECRETARY CHASE: Mr. Hatch offers an amendment to follow the amendment that was adopted by the committee of the whole to page 2, line 7, which reads after "state civil service" insert 2 sentences as follows:

> No increases in rates of compensation shall take effect until the first day of the fiscal year following submission of such proposed increases to the legislature. Such proposed increases must be submitted to the legislature as part of the governor's budget for a fiscal year in order to be effective on the first day of such fiscal year.

The amendment now proposed by Mr. Hatch is to add following that language, "The requirements of the 2 preceding sentences may be waived by majority vote of the members of both houses of the legislature.".

CHAIRMAN DeVRIES: The gentleman from Marshall, Delegate Hatch.

MR. HATCH: Mr. Chairman, Delegate Durst this evening called to my attention a letter dated January 22, 1962, from the personnel director of the civil service commission pointing out the rigidity of the language which was adopted by amendment on January 19. The personnel director has recommended that this language be given some flexibility in the event of emergency situations. I therefore offer this language which would authorize the legislature to waive the requirements of the 2 preceding sentences by a majority vote of the members of both houses. I feel that this in no way affects the merits or demerits of the amendment as adopted and does provide a desirable flexibility.

CHAIRMAN DeVRIES: The gentleman from Birmingham, Delegate Van Dusen.

MR. VAN DUSEN: Mr. Chairman and members of the commitee, I think I spoke in favor of the sentences which this would slightly modify when this matter was before the committee earlier, and I would also support this Hatch amendment.

CHAIRMAN DeVRIES: Vice President Downs.

MR. DOWNS: Mr. Chairman, members of the committee, I must confess that at this stage I really am confused and I want to see if I understand the English language correctly.

I was under the impression that civil service was by itself — and independent of both the executive and legislative branches — empowered to establish wage rates; but apparently I was wrong, because now in the amendment that we adopted earlier — and I am speaking of the second one — we provided that if the governor did not submit the pay increase recommended by civil service, the pay increase would not be effective on the first day of such fiscal year. In other words, if the civil service commission granted a 3 per cent cost of living increase, the governor could unilaterally veto that by just not submitting that pay increase in his budget message to the legislature. Well, that is bad enough to grant the executive veto.

Now, apparently, if the governor does grant or deny that increase through omitting to put it in the message, we say that the legislature can restore it by having those requirements waived by a majority vote of the 2 houses — I don't know if that means members elect; I assume it does — so we are in the situation where there could be a 3 step process in wage rate. First, the civil service commission could grant the increase. Second, the governor could refuse to put it in the message; and third, the legislature by a majority vote of each house could put it back in.

I say that that would not only make confusion, it would make pandemonium. And instead of having the civil service or the governor or the legislature determine pay rates, we would have a situation where the civil service commission, the governor and the legislature would all be in the process of setting pay rates, except for one thing: that the pay rate granted originally by the civil service commission would be a ceiling and we would have a one way street whereby the governor could cut the pay and the legislature then could up it, but no higher than civil service had originally granted. Now I cannot believe this is the intent.

I urge the delegates, when we rise, to oppose the original one. I say that this is just a patch on a patch and will not do the job satisfactorily.

CHAIRMAN DeVRIES: The chairman of the committee, Delegate Martin.

MR. MARTIN: Mr. Chairman, the only purpose of this amendment was to take care of some situations that have arisen very rarely but which the commission wanted to be able to anticipate if they did arise, particularly situations such as arose in the Korean war and one or two other times where they had to hire large numbers of people rapidly and had to increase wage rates in order to prevent the rapidly rising wage rates in private industry from stripping the employment rolls of the state. Under these circumstances the legislature might see fit not to require that this increase be submitted approximately 6 months in advance, as this provision now requires. That is the sole purpose of it. It has nothing to do with the governor's refusing to submit the proposed increase to the legislature — which he does not have the authority to do under this provision in any event. It is solely to make it possible for the legislature, if wages outside rise so rapidly under war conditions or something of that sort that the state needs to make a rapid increase or make an increase in its own wage rates sooner than under this procedure, that it would be able to do so with the consent of the legislature. That is all there is to it.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Detroit, Dr. Nord.

MR. NORD: Mr. Chairman, this particular provision of this section has had a very peculiar history. First, it was part of a larger section which, as I understood, the committee turned down. The next thing that happened, it was divorced from the minority report, as I recall — this piece of it — and the committee said it would accept it, said it on the floor, without asking for — as far as I know — the opinion of the members of the committee.

At that point I remember taking the floor and saying that there was no showing why this language should be put into the constitution and that "when in doubt, leave it out." Now I take the same position again.

When language is snatched from mid air for the middle of a paragraph and nobody knows why it is being put in — originally it was thought it ought not to be in, then in a rush it was decided it ought to be in — we always run into the same problem. This is not the first time. When we take language without thinking, especially when we add language to the constitution, we just do the same thing over and over again: we goof. We are not smart enough to be able to keep on adding language on the spur of the moment. We seem to be suffering from changitis. We want to change where there is no need to change.

Now this language that we have, the committee said was perfectly all right. The proponents said it was all right. Many of us expressed doubt; we said, "leave it out when you're in doubt." Now the proponents of this language say there is something wrong with it — whatever it may be, I don't know — there is something wrong with it and it ought to be changed. My opinion is this: if we add this language we may run into the same problem all over again. Maybe this language will produce another problem. What need is there for any of this language? There was no need for the original language in the first place; there is no need for the second language in the second place.

Mr. Chairman, am I in order to move as a substitute motion to strike the language that has just been offered, together with the language to which it is related?

CHAIRMAN DeVRIES: Dr. Nord, the secretary points out to me that the committee refused to reconsider the amendment that was adopted a week and a half ago. Therefore, the secretary feels it would be out of order.

MR. NORD: May I ask whether this would be in order when the entire proposal has been acted upon?

CHAIRMAN DeVRIES: Upon the acceptance of the report of the committee of the whole?

MR. NORD: In committee of the whole, before we accept the entire report, will we be able to reconsider this section?

CHAIRMAN DeVRIES: The secretary tells me if we adopt the amendment, then we could reconsider the entire section.

MR. NORD: Then am I correct, assuming that we —

CHAIRMAN DeVRIES: If we adopt the Hatch amendment.

MR. NORD: — we could reconsider it, not now, not immediately after the amendment is adopted, but only —

CHAIRMAN DeVRIES: We could reconsider it immediately after the Hatch amendment is adopted, if it is adopted.

MR. NORD: Thank you.

CHAIRMAN DeVRIES: The question is on the Hatch amendment. The secretary will read the amendment.

SECRETARY CHASE: The amendment offered by Mr. Hatch is:

1. Amend page 2, line 7, at the end of the amendment adopted in committee of the whole, after "such fiscal year.", by inserting "The requirements of the 2 preceding sentences may be waived by majority vote of the members of both houses of the legislature.".

CHAIRMAN DeVRIES: Is there any further discussion of the Hatch amendment? If not, all those in favor will say aye; opposed, no. The Chair is in doubt. All those in favor will rise.

SECRETARY CHASE: Seventy.

CHAIRMAN DeVRIES: All those opposed will rise.

SECRETARY CHASE: Fifty-one.

CHAIRMAN DeVRIES: Seventy aye votes, 51 no votes. The amendment is adopted.

Dr. Nord.

MR. NORD: Mr. Chairman, if I understood you correctly, I am now in order to move to strike this amendment plus the amendment to which it would relate; and I so move.

CHAIRMAN DeVRIES: Dr. Nord, the proper motion would be a motion to reconsider the vote by which the amendments were adopted.

MR. NORD: I make that motion then, Mr. Chairman.

CHAIRMAN DeVRIES: Delegate Nord moves that the committee of the whole reconsider the vote by which the amendments were adopted, and the secretary will read the amendments.

SECRETARY CHASE: The amendment that Dr. Nord proposes to reconsider is as follows:

1. Amend page 2, line 7, after "state civil service.", by inserting "No increases in rates of compensation shall take effect until the first day of the fiscal year following submission of such proposed increases to the legislature. Such proposed increases must be submitted to the legislature as part of the governor's budget for a fiscal year in order to be effective on the first day of such fiscal year. The requirements of the 2 preceding sentences may be waived by majority vote of the members of both houses of the legislature.".

CHAIRMAN DeVRIES: The question is on the Nord motion to reconsider. Delegate Martin.

MR. MARTIN: The motion to reconsider involves the entire amendment, as you heard from the secretary's reading. It would not only strike out the amendment last adopted but it would strike out the earlier 2 sentences which the committee adopted and which in effect simply state the present practice of the civil service commission. That is all they do; they state the present practice of the civil service commission and they give it some constitutional status so that these matters will be considered, put into the budget, and presented to the legislature at the earliest reasonable time and will not come into effect until the following July. So I would oppose Dr. Nord's motion.

CHAIRMAN DeVRIES: The question is on the Nord motion to reconsider. Is there any further discussion? If not, all those in favor will say aye. Opposed, no.

The motion to reconsider does not prevail.

Are there any further amendments?

SECRETARY CHASE: There are no further amendments on file to this paragraph, Mr. Chairman.

CHAIRMAN DeVRIES: Are there any further amendments to paragraph 3? If not, the secretary will read paragraph 4 of Committee Proposal 22.

SECRETARY CHASE: Page 2, paragraph 4:

[Paragraph 4 was read by the secretary. For text, see above, page 637.]

CHAIRMAN DeVRIES: Are there any amendments to paragraph 4, lines 19 through 21? If not, the secretary will read paragraph 5.

SECRETARY CHASE: Beginning on line 22:

[Paragraph 5 was read by the secretary. For text, see above, page 637.]

CHAIRMAN DeVRIES: Are there any amendments to paragraph 5. If not, the secretary will read paragraph 6.

SECRETARY CHASE: Page 3, line 4:

[Paragraph 6 was read by the secretary. For text, see above, page 637.]

CHAIRMAN DeVRIES: Are there any amendments to paragraph 6; If not, the secretary will read paragraph 7.

SECRETARY CHASE: Page 3, line 10:

[Paragraph 7 was read by the secretary. For text, see above, page 637.]

CHAIRMAN DeVRIES: Are there any further amendments to the body of Committee Proposal 22? If not, it will pass.

Committee Proposal 22, as amended, is passed.

The secretary will read.

SECRETARY CHASE: From the committee on finance and taxation, by Mr. Brake, chairman, **Exclusion Report 2007, A** report recommending the exclusion of article X, section 27.

Following is Exclusion Report 2007 as read by the secretary, and the reasons submitted in support thereof:

The committee on finance and taxation recommends that article X, section 27 of the present constitution be excluded from the new constitution.

Mr. Brake, chairman of the committee on finance and taxation, submits the following reasons in support of Exclusion Report 2007:

The committee on finance and taxation, as to article X, section 27 of the constitution, says there are rights and obligations under article X, section 27 of the 1908 constitution which are still alive but they are being protected by amendments proposed in section 28 of the same article. Any transactions that could be handled under section 27 will be handled under section 28, (section d of our proposal) as it becomes effective on July 1, 1962. There will, therefore, be no reason for the inclusion of section 27 in the new constitution.

CHAIRMAN DeVRIES: The question is on the exclusion report. Delegate Brake.

MR. BRAKE: I move that the reading of the section be waived, if that is necessary.

CHAIRMAN DeVRIES: It is not necessary, Delegate Brake. The question is on the exclusion report. Delegate Van Dusen.

MR. VAN DUSEN: I would simply advise the committee that the subject matter of section 27 of the present constitution is completely covered in a proposal which passed the committee of the whole last week dealing with school bond financing.

CHAIRMAN DeVRIES: The question is on Exclusion Report 2007. As many as are in favor say aye; opposed, no.

The exclusion report is adopted and passed without amendment.

The secretary will read.

SECRETARY CHASE: From the committee on legislative powers, by Mr. Hoxie, chairman, **Committee Proposal 24, A** proposal pertaining to inclusion of section 39 of article V in the constitution.

Following is Committee Proposal 24 as read by the secretary, and the reasons submitted in support thereof:

The committee recommends that the following be included in the constitution:

All laws enacted at any session of the legislature shall be published in book form within 60 days after the final adjournment of the session, and shall be distributed in such manner as shall be provided by law. The speedy publication of such judicial decisions as may be deemed expedient shall also be provided for by law. All laws and judicial decisions shall be free for publication by any person.

Mr. Hoxie, chairman of the committee on legislative powers, submits the following reasons in support of Committee Proposal 24:

The governor's advisory committee which studied and recommended relative to constitutional provisions pertaining to the legislative branch of state government, recommended retention of this section without change.

The comments of the report of the citizens research council of Michigan relative to the provisions embodied in this section are also favorable.

We feel that all 3 portions of this section, dealing with the publication of laws, the distribution of laws, and the publication of judicial decisions, are desirable, and should be retained in the new constitution.

CHAIRMAN DeVRIES: The question is on Committee Proposal 24. Are there any amendments to the body of the proposal? The chairman of the committee, Mr. Hoxie.

MR. HOXIE: Mr. Chairman, I will yield to my subcommittee chairman, Mr. Powell.

CHAIRMAN DeVRIES: Mr. Hoxie yields to Delegate Powell.

MR. POWELL: Mr. Chairman and ladies and gentlemen of the committee, the comment that accompanied this report is found on page 337 of the journal. It is very brief. It reads as follows:

[The supporting reasons for Committee Proposal 24 were read by Mr. Powell. For text, see above, page 707.]

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Fennville and the eighth senatorial district, Vice President Hutchinson.

MR. HUTCHINSON: Mr. Chairman, on this matter I suppose that, unless you are what you might call a purist on constitutional provisions, this wouldn't disturb anyone very much; but it disturbs me. It seems to me as though this is a matter that in most states, if not in all of them, is properly handled by pure legislative act and I don't understand why it cannot be so considered and treated in Michigan. The legislature could pass a law which would provide for the publication of its acts and the publication of the judicial decisions and could provide everything that is set forth in this section by legislative act, and I don't understand why it is necessary to freeze it into the constitution. If anything is a pure legislative matter, this is an example.

CHAIRMAN DeVRIES: Delegate Powell.

MR. POWELL: I feel a little bit like Delegate Downs awhile ago when he said there are other things on which he feels more strongly than this. I did serve on the governor's preparatory commission last summer. We spent quite a little time on this and it was the consensus of the ladies and gentlemen that served on that commission that this was something that should be retained and the citizens research council spends quite a little space — which I don't have right in my hands here — coming to the conclusion that this is a desirable feature and should be retained, and I am perfectly glad to leave it to the good judgment of the members of this committee of the whole whether you go along with the recommendations of our committee on legislative powers or not.

CHAIRMAN DeVRIES: Are there any amendments to the body of the proposal? If not it will pass.

Committee Proposal 24 is passed.

The secretary will read.

SECRETARY CHASE: From the committee on legislative powers, by Mr. Hoxie, chairman, **Exclusion Report 2008,** A report recommending the exclusion of article V, section 31.

Following is Exclusion Report 2008 as read by the secretary, and the reasons submitted in support thereof:

The committee on legislative powers recommends that article V, section 31 of the present constitution be excluded entirely from the new constitution.

Mr. Hoxie, chairman of the committee on legislative powers, submits the following reasons in support of Exclusion Report 2008:

The constitutions of only 2 other states contain provisions of this type. We regard this as unnecessary detail. Possible abuse in this area is not only restrained by the 2/3 vote requirement for special acts in section 30, but it would also probably be a violation of the due process clauses of the Michigan constitution, article II, section 16, and of the federal constitution.

CHAIRMAN DeVRIES: The question is on the exclusion report. The chairman of the committee, Mr. Hoxie.

MR. HOXIE: Mr. Chairman and fellow delegates, once again this falls within the premise of our subcommittee 2, headed by Mr. Powell, who will make the necessary explanation.

CHAIRMAN DeVRIES: Delegate Powell.

MR. POWELL: Mr. Chairman, ladies and gentlemen of the committee, I think on some of these it might be well to see what it is we are considering. I believe this has to do with section 31 and that relates to the sale of real estate. The present language in the constitution says, "The legislature shall not authorize by private or special law the sale or conveyance of any real estate belonging to any person."

The report of our committee, found at the top of page 338 of the journal states:

[The supporting reasons for Exclusion Report 2008 were read by Mr. Powell. For text, see above.]

I might add here that our committee on legislative powers is coming in with an affirmative recommendation relative to section 30, so we think that that amply takes care of this situation.

CHAIRMAN DeVRIES: The question is on the adoption of the exclusion report. As many as are in favor will say aye; opposed, no.

The exclusion report is adopted and passed without amendment.

The secretary will read.

SECRETARY CHASE: From the committee on miscellaneous provisions and schedule, by Mr. Erickson, chairman, **Committee Proposal 25,** A proposal to amend article XVI, section 2 of the present constitution pertaining to oath of office.

Following is Committee Proposal 25 as read by the secretary, and the reasons submitted in support thereof:

The committee recommends that the following be included in the constitution:

Sec. a. Members of the legislature and all officers, executive and judicial, [except such officers as may by law be exempted,] shall, before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm) that I will support the constitution of the United States and the constitution of this state, and that I will faithfully discharge the duties of the office of .... according to the best of my ability." No other oath, declaration or test shall be required as a qualification for any office or public trust.

Mr. Erickson, chairman of the committee on miscellaneous provisions and schedule, submits the following reasons in support of Committee Proposal 25:

The present constitution purports to empower the legislature to exempt officers from the requirement of an oath. In view of the provisions of article VI of the Constitution of the United States that "the members of the several state legislatures and the executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support" that constitution, the committee is of the opinion that the legislature is without power to exempt any officer in either of the 3 branches of government, and language purporting to grant a power to exempt is meaningless.

It is the opinion of the committee that an oath of office as set forth herein, and providing that no other test may be required, would not require an appeal to the Diety. See 225 Michigan 246. The last sentence of the proposal would be broad enough to include a prohibition against a religious test as a qualification to office.

CHAIRMAN DeVRIES: The Chair recognizes the delegate from Lansing, the chairman of the committee, Mr. Erickson.

MR. ERICKSON: I would like to yield to Mr. Hutchinson, whose subcommittee prepared this report.

CHAIRMAN DeVRIES: Delegate Erickson yields to Vice President Hutchinson.

MR. HUTCHINSON: Mr. Chairman, as the matter came out of committee, it proposes to retain the same form of the oath of office that is in the present constitution, and there is only one change between the proposed constitutional provision and the present one. In the present constitutional provision,

Explanation—Matter within [ ] is stricken, matter in capitals is new.

there are words which would presume that the legislature might by law excuse certain officers from taking an oath of office. Now, the Constitution of the United States says that every officer of every state, both judicial, legislative and executive, shall be bound to support the Constitution of the United States. Therefore, it seems to us that it would not be competent for the legislature to excuse anybody from taking the necessary oath of office and that that language in the present constitution is inoperative and mere surplusage. Therefore, in the new proposal we simply strike that exception out, so that every officer will have to take and subscribe to the oath of office as the Constitution of the United States has implied that it would be necessary for him to do.

CHAIRMAN DeVRIES: Are there any amendments to the body of the proposal? If not, it will pass.

Committee Proposal 25 is passed.

The secretary will read.

SECRETARY CHASE: From the committee on declaration of rights, suffrage and elections, by Mr. Pollock, chairman, **Committee Proposal 26,** A proposal for a section in the declaration of rights incorporating in the declaration of rights an "equal protection" clause and a guarantee against discrimination in civil and political rights because of race, religion, sex or national origin.

For Committee Proposal 26 and the reasons submitted in support thereof, see below, page 739.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Ann Arbor, the chairman of the committee, Dr. Pollock.

MR. POLLOCK: Mr. Chairman, I move that we pass this for today.

CHAIRMAN DeVRIES: Dr. Pollock moves that this be passed for the day. All those in favor say aye; opposed, no.

Committee Proposal 26 is passed for the day.

The secretary will read.

SECRETARY CHASE: From the committee on legislative powers, by Mr. Hoxie, chairman, **Committee Proposal 27,** A proposal to provide for liquor control, excise taxes and local option by counties. Amends article XVI, section 11.

Following is Committee Proposal 27 as read by the secretary, and the reasons submitted in support thereof:

The committee recommends that the following be included in the constitution:

The legislature may by law establish a liquor control commission, [who,] WHICH, subject to statutory limitations, shall exercise complete control of the alcoholic beverage traffic within this state, including the retail sales thereof; and the legislature may also provide for an excise tax on such sales: Providing however, That neither the legislature nor such commission may authorize the manufacture or sale of alcoholic beverages in any county in which the electors thereof, by a majority vote, shall prohibit the same.

Mr. Hoxie, chairman of the committee on legislative powers, submits the following reasons in support of Committee Proposal 27:

The constitution as adopted in 1908 had no provisions pertaining to liquor. After the repeal of the prohibition amendment to the federal constitution, the present language as stated above was proposed by initiatory petition as an amendment to the constitution and was ratified at the November election in 1932.

This language of the constitutional provision is sufficiently broad to permit the legislature to set up a state monopoly system, an open state system, or to establish a system with a mixture of the features of the two. It is well known that the legislature, under this provision, has set up a state monopoly system which has been operating since 1933.

Several hearings were held and many witnesses were heard, including the members of the liquor control commission and its directors, and your committee is of the opinion that the statutes under which the liquor control commission is operated are sufficient for an efficient operation. There were proposals which would put in the constitution provisions to allow local option by counties to determine hours of closing and also the sale of liquor on Sundays and holidays. Your committee feels that this is not subject matter that should be in the constitution but should be regulated by statute and that the legislature has sufficient power under the present constitutional provision to make such rules and regulations.

It will be noted that the only restriction to legislative power is in the proviso of the above mentioned section that there can be local option for the prohibition of the manufacture and sale of alcoholic beverages by county. Although it is conceded that the legislature has inherent power to provide for liquor control, without specific constitutional provision it is felt that this proviso sets up a necessary safeguard which should be included in any new constitution. It is, therefore, recommended that the proposal be adopted as part of the new constitution.

CHAIRMAN DeVRIES: Are there any amendments to the body of Committee Proposal 27? The chairman of the committee, Mr. Hoxie.

MR. HOXIE: Mr. Chairman and fellow delegates, this is one of the proposals on which your committee on legislative powers spent considerable time hearing testimony of various people and the direct responsibility for this particular section was assigned to our subcommittee 4, of which Mr. Millard is chairman, and he will make the necessary explanation.

CHAIRMAN DeVRIES: Delegate Hoxie yields to Delegate Millard.

MR. MILLARD: Mr. Chairman and members of the committee, I think it is important that we look at the section in question, which is section 11 of article XVI, and I want to read it:

> The legislature may by law establish a liquor control commission, who, subject to statutory limitations, shall exercise complete control of the alcoholic beverage traffic within this state, including the retail sales thereof; and the legislature may also provide for an excise tax on such sales: Providing, however, That neither the legislature nor such commission may authorize the manufacture or sale of alcoholic beverages in any county in which the electors thereof, by a majority vote, shall prohibit the same.

The legislative powers committee of this constitutional convention has had under consideration a constitutional amendment of 1933, which was the basis for the establishment of an act of the legislature that created the Michigan liquor control commission and gave to the Michigan liquor control commission the power to function within statutory limitations as expressed by the liquor control act. The committee has conducted a thorough and exhaustive study of the aforementioned amendment, the legislation adopted relative thereto, and the operation of the Michigan liquor control commission within the confines and limitations prescribed by the amendments and statute, and reports thereon as follows:

It is the considered opinion of the committee that the best interests of the people of the state of Michigan will be served if the present language of the amendment, with a minor change in terminology, be retained and the Michigan liquor control commission continues to operate as a monopoly or a controlled state function. As the term "monopoly" or "control" implies, sole authority to purchase and sell alcoholic beverages is vested in the state commission with the revenues derived therefrom deposited in the state general fund. These revenues are used to help defray the general operating expenses of the state. The revenues realized from the merchandising operation of the Michigan liquor control commission since its inception in 1933 are in the neighborhood of $1 billion net. The average net annual return for the past several years, exclusive of excise tax, has been $50 million

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Explanation—Matter within [ ] is stricken, matter in capitals is new.

realized from the sale of alcoholic beverages in the state of Michigan. The commission operates 3 warehouses and administration centers as well as 93 state stores in its merchandising complex. These warehouses and stores service not only the general public but some 11,000 licensees who purchase their alcoholic beverages directly from these state outlets at a uniform price established by the Michigan liquor control commission.

An important factor considered by the committee in reaching its decision was that complete state control over merchandising and distribution serves to eliminate undesirable elements that would be quick to seek control over privately owned distributorships because of the high rate of profit to be gained in the sale of alcoholic beverages. The committee also discovered in its deliberations that the controlled state operation traditionally lends itself much more effectively to proper licensing techniques and control than the so called "open" states. Our study of the Michigan control system disclosed that all applicants for licensing must undergo intensive examination and investigation to determine that they are of good character and are financially able to operate a licensed establishment. It was further shown that far greater supervision and control are exercised over controlled state licensees than over open state licensees, thus insuring much more effective compliance with the law and regulations relative thereto.

In the field of enforcement it has also been established that the controlled states function far more effectively than the open states in the investigation and prosecution of violators of the state liquor laws. One has only to travel to a neighboring open state to see conditions in licensed establishments that would not be tolerated in a controlled state. In our own state we have 90 highly trained investigators whose sole function is to secure complete compliance with the Michigan liquor control act. This group conducts all licensing investigations and, in conjunction and cooperation with state and local police agencies, polices all license activities. Offending licensees are cited before the commission by these investigators and penalized for infractions of the state liquor act.

In the course of our investigation, members of the committee interviewed state officials, members of the industry, temperance groups, and all those who evinced an interest in this amendment, and the following conclusions evolved: in interviewing state officials it was discovered that effective controls are established and maintained over licensees and rigid accounting techniques and controls reduce the possibility of wrongful acts by commission employees to the minimum. It was the position of the temperance groups that, as long as the people of the state had by constitutional amendment made legal the sale of alcoholic beverages, then the temperance groups by far favored the continuance of a controlled state operation inasmuch as it was the feeling of their memberships that the rights of those that favored temperance would be seriously jeopardized if the state were to abandon its controlled status and institute an open operation in the merchandising and distribution of alcoholic beverages. Interviews with members and past members of the legislature who had been members of interim committees studying the Michigan liquor control commission revealed that in their opinion the controlled operation was by far better suited to the needs and wishes of the citizens of this state, and they strongly urged the retention of the amendment and the liquor control act that had been construed within its framework.

It was the feeling of a group of industry leaders that as far as the state itself was concerned the controlled operation was to its great advantage. They pointed out that a major source of revenue would be lost to the state if it were to abandon the controlled operation. Further, they stated that a controlled state was in a position by warranty to purchase alcoholic beverages directly from the distillery at the lowest possible price and that the uniform price feature of the state liquor control act negated the possibility of price wars and the introduction of undesirable elements in the merchandising process. The language of the constitutional provision is specifically broad to permit the legislature to set up a state monopoly system, an open state system, or to establish a system with a mixture of the features of the two. It is our considered opinion that the controlled operation now in effect carries out the intent of the legislature and is best suited to the needs of the state.

During the course of our proceedings, several delegate proposals were presented to the committee in the form of additions to the present amendment. While many of these had merit, it was the feeling of the committee that they were proper subject matter for the legislative process and the proper forum for these proposals is the legislature itself.

As a result of the foregoing, it is our firm conviction that it is to the interest of the general public to continue the operation of the Michigan liquor control commission in its present form, subject to any limitations the legislature may wish to impose from time to time. Therefore, it is our recommendation that the section in its present form be retained with this following minor exception: probably we are encroaching upon style and drafting, but we recommend, in the interest of proper terminology, that the word "who" in line 7 of the proposal be deleted and the word "which" be substituted therefor. The committee on legislative powers respectfully submits the foregoing and earnestly recommends its adoption.

CHAIRMAN DeVRIES: The Chair recognizes Vice President Hutchinson.

MR. HUTCHINSON: Mr. Chairman, I yield to Delegate Danhof.

CHAIRMAN DeVRIES: Mr. Hutchinson yields to Delegate Danhof.

MR. DANHOF: Mr. Chairman, Mr. Millard, if I understand your statement correctly, the provision as you now have it would allow, would it not, the legislature to abandon the liquor control commission and the controlled type of operation which we now have. Is that right?

CHAIRMAN DeVRIES: Delegate Millard.

MR. MILLARD: Mr. Chairman, Mr. Danhof, that is correct. That has been true ever since this amendment has been in effect, since 1933.

CHAIRMAN DeVRIES: The gentleman from Muskegon, Delegate Danhof.

MR. DANHOF: I wish to state at the outset that I favor the controlled type of operation that we now have, but I get back to solely what was said by Dr. Pollock way at the opening of this convention: what, if anything, does the first sentence up to the "providing however" either add or detract from the power of the legislature? Now in the last sentence I can see that neither the legislature nor the commission may authorize the manufacture or sale in any county which, by the electors thereof, has voted to prohibit the same. This I can see is a limitation of their power.

I merely rise to state that whether or not we actually need it; whether there is anything in the first part which prohibits the legislature from doing what it could do or restricts it from abandoning the controlled type commission — which I favor and which apparently the committee favors — if the legislature could abandon it, I inquire as to the reason for continuing the language.

CHAIRMAN DeVRIES: Delegate Millard.

MR. MILLARD: Mr. Chairman and Mr. Danhof, go back to the history and I think 1 of the 4 reasons for the calling of the 1908 convention was the liquor question. It was discussed in that convention and nothing was done about it. There was no mention made of liquor in the 1908 constitution. Not until 1916 was there an amendment adopted to the constitution involving liquor.

In answer specifically to your question, you are absolutely correct. The first sentence down to the colon before the word "providing" does not add anything to the power of the legislature to control the liquor traffic in the state of Michigan. It, however, expresses the intent of the people that there should be a liquor control commission. It is only advisory and is not compulsory upon the legislature. However, the proviso does add something because it restricts the legislature in giving out licenses for sale and manufacture. It states that:

> . . . neither the legislature nor such commission may authorize the manufacture or sale of alcoholic beverages

in any county in which the electors thereof, by a majority vote, shall prohibit the same.

That is a restriction upon the power of the legislature; but as far as the power is concerned, it has all the power and that is the only thing that this section does is to restrict it as far as county control is concerned.

MR. DANHOF: Thank you, Mr. Millard.

CHAIRMAN DeVRIES: Are there any amendments to Committee Proposal 27?

SECRETARY CHASE: Mr. Powell offers the following amendment:

1. Amend page 1, following line 13, by inserting 2 paragraphs to read as follows:

"The commission may issue licenses to sell alcoholic beverages at retail, with the approval of local governing bodies, except that in the case of an application for the renewal of an existing license, where no objection to a renewal has been filed with the commission by the local legislative body, the approval of the local legislative body shall not be required.

In carrying out the duties imposed on the commission under the law, it shall be their aim to exercise a control of the liquor industry in such a way that alcoholic beverages may be made available to those people who are desirous of obtaining same and yet the licensing and operation of the licensed establishments throughout the state would provide a minimum of offense to those persons who are inherently opposed to the liquor traffic.".

CHAIRMAN DeVRIES: The question is on the adoption of the Powell amendment. Delegate Powell.

MR. POWELL: Mr. Chairman, ladies and gentlemen of the committee, Mr. Frank Millard, on behalf of the committee on legislative powers, has made a very scholarly and comprehensive report on this whole matter. I think he did unusually well in view of the fact that actually there isn't much in the proposal. (laughter) In the first place, the first paragraph, the first half, you might say, doesn't really mean anything. It just says the legislature may and, of course, they would have that power anyway. I am not suggesting that this provision should be dropped but I am insinuating that down to the colon it is pretty futile to say the legislature may do something yet again they may not.

Now, this other part; Delegate Danhof brought out that it does have some significance — the proviso on the end — because it is a definite restriction; but that, too, is pretty meaningless because, although this provision has been in our constitution for some 46 years, we do not have a single, solitary dry county. So to say what they cannot do in a dry county when we haven't got any dry counties, that, too, is almost silly; and I thought this could be greatly strengthened by these 2 paragraphs which I propose to add and which the secretary has read. Maybe I could read them again with you. The first one gives some authority in this field of local option. Now that is a sort of a hazy situation right now as to the power of the local governing body to approve applications for liquor licenses, and the upshot of my amendment is that in the first instance they would have that power and thereafter the licenses would be renewed automatically if there were no protests filed by the governing body. The exact language is this:

> The commission may issue licenses to sell alcoholic beverages at retail, with the approval of local governing bodies, except that in the case of an application for the renewal of an existing license, where no objection to a renewal has been filed with the commission by the local legislative body, the approval of the local legislative body shall not be required.

That is comparable, as I understand it, to the way tavern licenses are handled at the present time.

Now this next paragraph seeks to establish some sort of a philosophy or an interpretation as to what the position of the state is in this whole business; what we are trying to do and what we are trying not to do by our present method of control:

> In carrying out the duties imposed on the commission under the law, it shall be their aim to exercise a control of the liquor industry in such a way that alcoholic beverages may be made available to those people who are desirous of obtaining same and yet the licensing and operation of the licensed establishments throughout the state would provide a minimum of offense to those persons who are inherently opposed to the liquor traffic.

CHAIRMAN DeVRIES: The question is on the adoption of the amendment offered by the gentleman from Ionia. Delegate Millard.

MR. MILLARD: This amendment of Mr. Powell's was submitted to the committee and we discussed it very thoroughly. The first sentence is, "The commission may issue licenses to sell alcoholic beverages at retail . . . ." This would include both the sale of alcoholic beverages for consumption on the premises and off premise sales, the take out sales. The legislature has passed an act implementing this constitutional provision and in regard to the consumption on the premises the statute provides as follows:

> All applications for licenses to sell beer and wine or spirits for consumption on the premises except in counties of one million population or over shall be approved by the local legislative body in which such applicant's place of business is located before being granted the license by the commission.

This does not mention take out sales. However, I am informed — and the members of the commission and the director of the commission, Mr. Burke, who has been there for a great many years, testified — that it is a rule of the commission that all take out licenses have to be approved by the commission.

Now Mr. Powell will rise and say that in one or two instances that has been violated. The commission agreed that, after the 1960 census, they had the privilege under the law of giving some more licenses and that they did issue, I think, 4 licenses without the approval of the local body but that they received protests and that the rule has gone back into effect and is being followed rigidly.

I maintain that this is a legislative matter. This is for the legislature to embody in a statute. It has no place in the constitution. As far as that second paragraph is concerned, I really think that we — well, we started out to take a lot of verbiage out of the constitution, and we certainly are putting a lot of verbiage that doesn't mean very much in, in the second paragraph. As I said before, the committee considered this amendment, decided that it was a legislative matter and, therefore, the committee is opposed to the amendment and hopes that you will vote it down.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from St. Clair Shores, Delegate Snyder.

MR. SNYDER: Mr. Chairman, Delegate Millard has already related the bulk of the comments that I did want to make and I am in agreement with him on the matter of the local government responsibility in this thing, and I would like to point out that recently in our community we had the occasion to receive this directive from the liquor control commission: we did have a lengthy discussion on this thing and we felt that the local government did have the responsibility, and even the directive was too loose. We did not agree that the directive was too loose, but certainly if it is a matter of directive I certainly would hate to see it incorporated in our constitution, because I feel that the local government does have a responsibility here that they just cannot pass and give automatic approval for a renewal of a license, and I feel that an inclusion of this language in the constitution would almost be tacit approval that the local governing body could close their eyes to the things that could go on, and we could get into situations where the language of the constitution would work in opposition to the best interests of the community. I will say that Mr. Millard has objectively pointed out what we feel is the basic objection to this language on the local level.

CHAIRMAN DeVRIES: The question before the committee is the adoption of the Powell amendment.

The secretary will read it.

SECRETARY CHASE: Mr. Powell's amendment is to add to the language of the proposal these 2 paragraphs:

[The amendment was again read by the secretary. For text, see above, page 711.]

CHAIRMAN DeVries: Is there any further discussion of the Powell amendment? If not, as many as are in favor will say aye; those opposed, no.

The amendment is not adopted.

Are there any more amendments to Committee Proposal 27?

SECRETARY CHASE: Mr. Perras and Mr. Binkowski offer the following amendment:

1. Amend page 1, following line 13, by inserting 2 paragraphs to read as follows:

"The commission may issue licenses to sell alcoholic beverages at retail, with the approval of local governing bodies, except that in the case of an application for the renewal of an existing license, where no objection to a renewal has been filed with the commission by the local legislative body, the approval of the local legislative body shall not be required.

In carrying out the duties imposed on the commission under the law, it shall be their aim to exercise a control of the liquor industry in such a way that alcoholic beverages may be made available to those people who are desirous of obtaining same on Sunday by local option, and yet the licensing and operation of the licensed establishments throughout the state would provide a minimum of offense to those persons who are inherently opposed to the liquor traffic.".

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from the upper peninsula, Delegate Perras.

MR. PERRAS: I speak in favor of this amendment because it has been stated that it is strictly a legislative process but for 28 years the people of the state of Michigan — I won't say all of the people but some — have been desirous of having the chance to consume alcoholic spirits on Sundays. The proponents of education should really be behind this because 6 per cent of the money that is spent for alcoholic beverages in this state — (laughter) — is earmarked for education. I am not interested in making the entire state do this, but this is by local option and I speak mainly in reference to the upper peninsula and border areas.

Now the governor has just proposed some $800,000 for the purpose of ski resorts in the Ironwood district; but we bring the people into the upper peninsula and then they have to go into Wisconsin to eat, because all the eating places up in that area are closed on Sunday because of lack of spirits. Wayne county, I think, is interested in this too and now I will yield to Delegate Binkowski.

CHAIRMAN DeVRIES: Delegate Perras yields to Delegate Binkowski.

MR. BINKOWSKI: Mr. Chairman, ladies and gentlemen of the committee, I hope, if you have been reading the Detroit Free Press in particular, you have been reading about our problems in Detroit with respect to Cobo hall. We are trying to turn Detroit into a convention city and in order to do this we must compete with other cities throughout the country, and I think one of the advantages, of course, of allowing liquor to be sold on Sunday would be to allow us to compete with other cities throughout the country. Again, as Delegate Perras has emphasized, we believe that this principle of local option is democracy reduced to the local level. We don't intend to impose this type of habit — if you will — upon anyone in any part of the country or throughout Michigan if they do not desire this, but in our county in order to meet competition, in order to turn Detroit into a convention city, we think that this is most desirable.

Mr. Perras touched very briefly upon the aspect of taxes, and I think that you would have to be keenly aware that there is a great deal of revenue derived from the sale of alcoholic beverages and the state does benefit in this sense. Now another aspect which I am going to just touch on briefly is the aspect of economy. I think that if you ever had liquor on Sunday you certainly would be able to reduce the number of local civil servants in the enforcement division of the liquor control commission. I think they spend a great deal of their time, again, in bars on Sunday trying to catch local tavern owners serving spirits on Sunday.

Now much has been made about the fact that this is a legislative matter and perhaps, technically speaking, it is a legislative matter. However, we have had a long history in this area where the legislature has not acted, and I say that one of the reasons why we are here is that the legislature has not acted. I am not saying this in a disparaging way. There are various reasons, perhaps justifiable reasons why the legislature in its wisdom has sought not to act. I do not think that because they have not acted that we, too, should close our ears and eyes to this problem.

CHAIRMAN DeVRIES: The question is on the adoption of the Perras-Binkowski amendment to Committee Proposal 27. Delegate Millard.

MR. MILLARD: Mr. Chairman and members of the committee, in reply to Delegate Binkowski I just want to say that the committee took extensive and exhaustive testimony on this question of hours. There was a group in Detroit that was in favor of it, but we also had a large group that was opposed to it. The liquor control commission was opposed to it. The temperance people were opposed to it. It is a legislative matter in the opinion of your committee. I am not here to argue the merits for or against Sunday sales of liquor or keeping it open after 2:00 o'clock at night. It seems to me that that is purely and strictly a legislative matter and we should leave it to the legislature and not put it into the constitution. Therefore, I ask you to vote against the amendment.

CHAIRMAN DeVRIES: The question is on the adoption of the Perras-Binkowski amendment.

The secretary will read the pertinent part of the amendment.

SECRETARY CHASE: This amendment is identical to the one offered by Mr. Powell with the addition of the words "on Sunday by local option" in the second paragraph of the amendment.

CHAIRMAN DeVRIES: Is there any further discussion of the Perras-Binkowski amendment? (laughter)

MR. PERRAS: Division, Mr. Chairman.

CHAIRMAN DeVRIES: Mr. Perras requests a division. Is there support? There is support. Those in favor of the amendment will vote aye; those opposed will vote no.

SECRETARY CHASE: Have you all voted? The machine is locked and the totals will be recorded.

On the adoption of the amendment offered by Messrs. Perras and Binkowski, the yeas are 20, the nays are 96.

CHAIRMAN DeVRIES: The amendment is not adopted.

Are there any further amendments to the body of Committee Proposal 27?

SECRETARY CHASE: Messrs. Marshall, Faxon and Mahinske offer the following amendment:

1. Amend page 1, line 13, after "same" by inserting a colon and "Provided however, That the counties of Wayne, Oakland, Macomb, and Genesee shall be prohibited from the sale or traffic of any alcoholic beverages". (laughter)

CHAIRMAN DeVRIES: The Chair recognizes Delegate Marshall.

MR. MARSHALL: Mr. Chairman, since I have brought myself in agreement with Mr. Millard and Delegate Hutchinson in that we should not put too much statutory language into the constitution, that the language that has been submitted is sufficient, I think the legislature could very well handle this amendment that we offered and particularly since we finally broke the party line vote up on the board on this last one, we would like to withdraw our amendment. (laughter)

CHAIRMAN DeVRIES: Messrs. Marshall, Faxon and Mahinske withdraw the amendment. Are there any further amendments to Committee Proposal 27?

SECRETARY CHASE: Mr. Binkowski offers the following amendment:

1. Amend page 1, line 13, after "same" by inserting a colon and "Provided further, That those people who are desirous of obtaining alcoholic spirits on Sunday, by local option, shall be able to vote on this question in all counties located in the upper peninsula and those counties having a population in excess of one million". (laughter)

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Detroit, Delegate Binkowski.

MR. BINKOWSKI: Thank you, Mr. Marshall, for your comments. We will not withdraw this amendment because I think the amendment is very evident that if you throughout the state do not want to give your people the right to vote upon this question, at least let us do it in the upper peninsula as well as in Wayne county.

CHAIRMAN DeVRIES: The question is on the adoption of the Binkowski amendment. Delegate Millard.

MR. MILLARD: I would like to say that the committee would be opposed to that amendment also.

CHAIRMAN DeVRIES: The question is on the adoption of the Binkowski amendment.

The secretary will read it.

[The amendment was again read by the secretary. For text, see above, page 712.]

CHAIRMAN DeVRIES: The question is on the adoption of the amendment. Mr. Binkowski requests a division. Is there support for a division? There is support. All those in favor will vote aye; those opposed will vote no.

SECRETARY CHASE: Have you all voted? The voting machine is locked and the tally will be taken.

On the adoption of the amendment offered by Mr. Binkowski, the yeas are 29, the nays are 100.

CHAIRMAN DeVRIES: The amendment is not adopted.

Are there any further amendments to the body of Committee Proposal 27?

SECRETARY CHASE: None on file, Mr. Chairman.

CHAIRMAN DeVRIES: If not, it will pass.

Committee Proposal 27 is passed.

The Chair recognizes the delegate from East Lansing, Dr. Hannah.

MR. J. A. HANNAH: Mr. Chairman, it is well after 10:00 o'clock. I think we have passed the point of diminishing returns and I move that the committee now rise.

CHAIRMAN DeVRIES: Delegate Hannah moves that the committee do now rise. All those in favor will say aye; opposed, no.

The motion prevails and the committee has risen.

[Whereupon, the committee of the whole having risen, Vice President Romney resumed the Chair.]

VICE PRESIDENT ROMNEY: Delegate DeVries.

MR. DeVRIES: Mr. President, the committee of the whole has had under consideration several items on which the secretary will give a detailed report.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 24,** A proposal pertaining to inclusion of section 39 of article V in the constitution; **Committee Proposal 25,** A proposal to amend article XVI, section 2 of the present constitution pertaining to oath of office; and **Committee Proposal 27,** A proposal to provide for liquor control, excise taxes and local option by counties. It reports these 3 committee proposals back to the convention without amendment and with the recommendation that they pass.

VICE PRESIDENT ROMNEY: **Committee Proposals 24, 25** and 27 are referred to the committee on style and drafting.

For Committee Proposal 24 as referred to the committee on style and drafting, see above, page 707.

For Committee Proposal 25 as referred to the committee on style and drafting, see above, page 708.

For Committee Proposal 27 as referred to the committee on style and drafting, see above, page 709.

SECRETARY CHASE: Mr. President, the committee of the whole has also had under consideration **Committee Proposal 22,** A proposal pertaining to state civil service. It reports this proposal back to the convention with several amendments, recommending the amendments be agreed to and the committee proposal as thus amended do pass.

[The following are the amendments recommended by the committee of the whole:

1. Amend page 1, line 6, after "commissions", by striking out "and" and inserting a comma; and line 7, after "officer" by striking out "thereof" and inserting "of boards and commissions heading principal departments".

2. Amend page 2, line 13, after "the", by striking out "executive" and inserting "appointing authorities".

3. Amend page 2, line 7, after "state civil service.", by inserting "No increases in rates of compensation shall take effect until the first day of the fiscal year following submission of such proposed increases to the legislature. Such proposed increases must be submitted to the legislature as part of the governor's budget for a fiscal year in order to be effective on the first day of such fiscal year. The requirements of the 2 preceding sentences may be waived by majority vote of the members of both houses of the legislature.".

4. Amend page 2, line 15, after "commission.", by inserting "Any employee considering himself aggrieved by any such abolition shall have an immediate right of appeal to the commission and the courts through established grievance procedures.".

5. Amend page 2, line 18, after "made", by striking out "for such considerations" and inserting "except for reasons of administrative efficiency".]

PRESIDENT ROMNEY: The question is on agreeing to the amendments. Mr. Downs.

MR. DOWNS: I ask that the socalled Hatch amendment — that is amendment 3 — be voted upon separately, and that the Marshall amendment also be separated and voted upon separately, and that the other amendments do be agreed to.

SECRETARY CHASE: Mr. President, according to the secretary's record, the amendment offered by Mr. Marshall was not adopted, so that is not before us at this time.

MR. DOWNS: Well, I will see to it that it is before us when we are done, and I am sorry. I ask, then, that the amendments be agreed to except the Hatch amendment, as amended, amendment 3, and that a separate vote be taken on that.

VICE PRESIDENT ROMNEY: There will be a separate vote on the Hatch amendment. The question is on agreeing with all of the other amendments except the Hatch amendment. Those in favor, say aye. Opposed, no.

They are agreed to.

Now the Hatch amendment. Delegate Downs.

MR. DOWNS: I move that the Hatch amendment, as amended, be rejected. I call for a division and a recorded roll call vote.

VICE PRESIDENT ROMNEY: The question is on agreeing to the amendment. Those in favor of agreeing with the amendment, vote aye. Those opposed to agreeing with the amendment, vote no.

A DELEGATE: Mr. President, you did not ask if there was support for a division.

VICE PRESIDENT ROMNEY: Pardon? Oh, I am sorry. You are correct. He is asking for a roll call vote, as I understand it. Delegate Downs, is that right?

MR. DOWNS: Yes.

VICE PRESIDENT ROMNEY: A roll call vote. Is there support for a roll call vote?

SECRETARY CHASE: Mr. President, 43.

VICE PRESIDENT ROMNEY: A sufficient number.

Delegate Martin.

MR. MARTIN: As I understand this, the question is on agreeing to the amendments. Therefore, those who favor the amendment as it now is in the body of the committee proposal will vote yes. Those who oppose it will vote no.

VICE PRESIDENT ROMNEY: That is correct.

MR. MARTIN: Therefore, I suggest that those who favor the committee position will vote yes.

VICE PRESIDENT ROMNEY: Those in favor, vote aye, and those opposed, vote no.

SECRETARY CHASE: Have you all voted? The machine is locked and the vote will be recorded.

The roll was called and the delegates voted as follows:

Yeas — 87

Allen	Goebel	Perras
Andrus, Miss	Gover	Plank
Anspach	Gust	Pugsley
Batchelor	Habermehl	Radka
Beaman	Hanna, W. F.	Rajkovich
Bentley	Hannah, J. A.	Richards, J. B.
Blandford	Haskill	Richards, L. W.
Bledsoe	Hatch	Romney
Bonisteel	Heideman	Rood
Boothby	Higgs	Rush
Brake	Howes	Seyferth
Brown, G. E.	Hoxie	Shackleton
Butler, Mrs.	Hubbs	Shaffer
Conklin, Mrs.	Hutchinson	Shanahan
Cudlip	Iverson	Sharpe
Danhof	Karn	Sleder
Davis	Kirk, S.	Spitler
Dehnke	Knirk, B.	Stafseth
Dell	Koeze, Mrs.	Staiger
DeVries	Kuhn	Stamm
Donnelly, Miss	Leibrand	Tubbs
Doty, Donald	Leppien	Turner
Durst	Lundgren	Tweedie
Elliott, A. G.	Martin	Upton
Everett	McAllister	Van Dusen
Farnsworth	McLogan	Wanger
Figy	Millard	White
Finch	Mosier	Wood
Gadola	Page	Yeager

Nays — 47

Austin	Garvin	McGowan, Miss
Baginski	Greene	Murphy
Balcer	Hart, Miss	Nord
Barthwell	Hatcher, Mrs.	Ostrow
Binkowski	Hodges	Pellow
Brown, T. S.	Hood	Perlich
Buback	Judd, Mrs.	Pollock
Cushman, Mrs.	Kelsey	Powell
Dade	King	Sablich
Douglas	Krolikowski	Snyder
Downs	Lesinski	Sterrett
Elliott, Mrs. Daisy	Liberato	Stopczynski
Erickson	Madar	Wilkowski
Faxon	Mahinske	Young
Follo	Marshall	Youngblood
Ford	McCauley	

On agreeing to the Hatch amendment, as amended, the yeas are 87; the nays are 47.

VICE PRESIDENT ROMNEY: The amendment is agreed to.

SECRETARY CHASE: Mr. Marshall now offers the following amendment:

1. Amend page 2, line 14, after "efficiency" by striking out "without" and inserting "with"; so the language will then read, "The appointing authorities may create or abolish positions for reasons of administrative efficiency with the approval of the commission."

VICE PRESIDENT ROMNEY: Delegate Hatch.

MR. HATCH: I rise to a point of order. Has not the convention already acted on the balance of this report?

VICE PRESIDENT ROMNEY: The amendment is in order. While the amendment was offered in the committee of the whole, the amendment was rejected and the convention has no knowledge of it, I am told by the secretary. (laughter) The amendment is in order. Delegate Martin.

MR. MARTIN: Mr. President, this is the same amendment which was offered in committee of the whole, and I urge that you vote no on it.

VICE PRESIDENT ROMNEY: Delegate King.

MR. KING: Mr. President, I think that the question raised by Mr. Hatch is one worth considering. Didn't the convention already pass all of the rest of the body of Committee Proposal 22?

VICE PRESIDENT ROMNEY: I am advised it is true that we have acted on all of the committee report — we have followed this same procedure in connection with other committee proposals — but we have not yet passed the complete proposal. Therefore, the question is on the amendment. Mr. Hood.

MR. HOOD: Mr. President, I would like to request a recorded roll call vote.

VICE PRESIDENT ROMNEY: All those in favor of a recorded vote, please indicate. Sufficient number. Those in favor vote aye; those opposed, vote no. The secretary will read the amendment again.

SECRETARY CHASE: The amendment presently under consideration, by Mr. Marshall, is as follows:

[The amendment was again read by the secretary. For text, see above.]

VICE PRESIDENT ROMNEY: Those in favor vote aye and those opposed, no.

SECRETARY CHASE: Has everyone voted? The machine is locked and the vote will be recorded.

The roll was called and the delegates voted as follows:

YEAS — 45

Austin	Garvin	McGowan, Miss
Baginski	Greene	Murphy
Balcer	Hart, Miss	Nord
Barthwell	Hatcher, Mrs.	Ostrow
Binkowski	Hodges	Pellow
Bledsoe	Hood	Perlich
Brown, T. S.	Kelsey	Perras
Buback	Krolikowski	Powell
Cushman, Mrs.	Leppien	Richards, L. W.
Dade	Lesinski	Sablich
Douglas	Liberato	Snyder
Downs	Madar	Stopczynski
Elliott, Mrs. Daisy	Mahinske	Wilkowski
Faxon	Marshall	Young
Ford	McCauley	Youngblood

NAYS — 90

Allen	Goebel	Plank
Andrus, Miss	Gover	Pollock
Anspach	Gust	Prettie
Batchelor	Habermehl	Pugsley
Beaman	Hanna, W. F.	Radka
Bentley	Hannah, J. A.	Rajkovich
Blandford	Haskill	Richards, J. B.
Bonisteel	Hatch	Romney
Boothby	Heideman	Rood
Brake	Higgs	Rush
Brown, G. E.	Howes	Seyferth
Butler, Mrs.	Hoxie	Shackleton
Conklin, Mrs.	Hubbs	Shaffer
Cudlip	Hutchinson	Shanahan
Danhof	Iverson	Sharpe
Davis	Judd, Mrs.	Sleder
Dehnke	Karn	Spitler
Dell	King	Stafseth
DeVries	Kirk, S.	Staiger
Donnelly, Miss	Knirk, B.	Stamm
Doty, Donald	Koeze, Mrs.	Sterrett
Durst	Kuhn	Tubbs
Elliott, A. G.	Leibrand	Turner
Erickson	Lundgren	Tweedie
Everett	Martin	Upton
Farnsworth	McAllister	Van Dusen
Figy	McLogan	Wanger
Finch	Millard	White
Follo	Mosier	Wood
Gadola	Page	Yeager

On the adoption of the amendment offered by Mr. Marshall, the yeas are 45; the nays are 90.

VICE PRESIDENT ROMNEY: The amendment is not adopted.

Committee Proposal 22, as amended, is referred to the committee on style and drafting.

Following is Committee Proposal 22 as amended and referred to the committee on style and drafting:

The committee recommends that the following be included in the constitution:

The state civil service shall consist of all positions in the state service except those filled by popular election, heads of departments, members of boards and commissions, the chief executive officer of boards and commissions heading principal departments, employees of courts of record, of the legislature, of the higher state educational institutions, all persons in the armed forces of the state, 8 exempt positions in the office of governor, and within each department, when requested by the department head, 2 other exempt positions, one of which shall be policy making. Three additional positions of a policy making nature may be exempted within each department as determined to be necessary by the civil service commission.

There is hereby created a nonsalaried civil service commission to consist of 4 persons, not more than 2 of whom shall be members of the same political party, appointed by the governor for 8 year, overlapping terms.

The commission shall classify all positions in the state civil service according to their respective duties and responsibilities, fix rates of compensation for all classes of positions, approve or disapprove disbursements for all personnel services, determine by competitive performance exclusively on the basis of merit, efficiency and fitness the qualifications of all candidates for positions in the state civil service, make rules and regulations covering all personnel transactions, and regulate all conditions of employment in the state civil service. No increases in rates of compensation shall take effect until the first day of the fiscal year following submission of such proposed increases to the legislature. Such proposed increases must be submitted to the legislature as part of the governor's budget for a fiscal year in order to be effective on the first day of such fiscal year. The requirements of the 2 preceding sentences may be waived by majority vote of the members of both houses of the legislature. The civil service commission shall recommend to the governor and to the legislature rates of compensation for all appointed unclassified positions within the executive department. No person shall be appointed to or promoted in the state civil service who has not been certified as so qualified for such appointment or promotion by the commission. The appointing authorities may create or abolish positions for reasons of administrative efficiency without the approval of the commission. Any employee considering himself aggrieved by any such abolition shall have an immediate right of appeal to the commission and the courts through established grievance procedures. No removals, demotions, appointments, or promotions in the state civil service shall be made for partisan, racial or religious considerations. Nor shall the creation or abolition of positions be made except for reasons of administrative efficiency.

The administration of the commission's powers shall be vested in a state personnel director who shall be a member of the state civil service and who shall be responsible to and selected by the commission after open competitive examination.

To enable the commission to exercise these powers, the legislature, at the first regular session subsequent to the adoption of this constitution and at each succeeding regular session, shall appropriate to the commission for the ensuing fiscal period a sum not less than 1 per cent of the aggregate annual payroll of the state civil service for the preceding fiscal period, as certified to by the commission. The commission shall return to the state treasury within 6 months all funds unexpended after the conclusion of the fiscal period.

No payment for personal services shall be made or authorized until the provisions of this amendment have been complied with in every particular. Violation of any of the provisions hereof may be restrained or observance compelled by injunctive or mandamus proceedings brought by any citizen of the state.

The commission shall furnish reports of expenditures, at least annually, to the governor and the legislature and shall be subject to annual audit as provided by law.

SECRETARY CHASE: The committee of the whole has also had under consideration **Exclusion Report 2007,** A report recommending the exclusion of article X, section 27; and **Exclusion Report 2008,** A report recommending the exclusion of article V, section 31. It reports these 2 exclusion reports back to the convention without amendment and with the recommendation that they be adopted.

VICE PRESIDENT ROMNEY: Those in favor say aye. Opposed, no.

Exclusion Reports 2007 and 2008 are adopted and referred to the committee on style and drafting.

For Exclusion Report 2007 as referred to the committee on style and drafting, see above, page 707.

For Exclusion Report 2008 as referred to the committee on style and drafting, see above, page 708.

SECRETARY CHASE: That completes the report of the committee of the whole, Mr. President.

VICE PRESIDENT ROMNEY: Announcements.

SECRETARY CHASE: Yes, sir, the following notices of committee meetings: the committee on legislative organization will meet in room D tomorrow at 9:00 o'clock. John Hannah, chairman.

The committee on legislative powers, subcommittee 3, will meet in room H at 9:00 o'clock a.m. Claude L. Wood, subcommittee chairman.

The committee on legislative powers, subcommittee 1, will meet in room H tomorrow at 10:30 a.m. Richard D. Kuhn, subcommittee chairman.

The committee on legislative powers, the full committee, will meet in room H tomorrow immediately after the session. T. Jefferson Hoxie, chairman.

The committee on education will meet tomorrow morning at 8:30. Alvin M. Bentley, chairman.

The committee on emerging problems will meet Wednesday in committee room I, at 1:00 o'clock p.m. Frank Millard, chairman.

The committee on public information will meet this evening immediately after the session. Ink White, chairman.

The committee on finance and taxation will meet in room E tomorrow at 8:30 a.m. D. Hale Brake, chairman.

The subcommittee on eminent domain will meet in room G tomorrow morning at 9:00 a.m. Paul R. Mahinske, subcommittee chairman.

The committee on rules and resolutions will meet tonight after the session in room I.

The remaining committee announcements are contained in the composite calendar.

There are the following additional announcements:

The apples today are from Mr. Rush. (applause)

Delegate Prettie wishes the delegates to be reminded of his request for an indication of their views on the method of selecting supreme court justices. Delegates who wish to indicate their desires are requested to turn in their notations to Delegate Prettie's mailbox this evening.

A further announcement: a copy of the 1961-62 Michigan Manual — it is a red book — has been provided through the courtesy of the Honorable James M. Hare, secretary of state. You will find your copy in the drawer of your desk.

That is all of the announcements, Mr. President.

VICE PRESIDENT ROMNEY: Without objection, we will return to **reports of standing committees.**

SECRETARY CHASE: Mr. Erickson, for the committee on miscellaneous provisions and schedule, introduces **Exclusion Report 2019,** A report recommending the exclusion of sections 2, 3, 4, 5 and 7 of the schedule.

Claud R. Erickson, chairman.

For Exclusion Report 2019 and the reasons submitted in support thereof, see below, page 850.

VICE PRESIDENT ROMNEY: Referred to the committee of the whole and placed on general orders.

Delegate Marshall.

MR. MARSHALL: Mr. President, I rise to a point of personal privilege to make a suggestion, if I am in order, to the committees. In the committee on the executive branch, we labored many long hours to arrive at a bipartisan compromise on the civil service provision. As I have stated previously, many of us had different viewpoints. We did arrive at a compromise after many long hours of work. On the floor of the convention here, some sweeping amendments were accepted to this proposal by the chairman of our committee in the name of the committee. I don't know what members of the committee he discussed this with; I know that I was not in accord on it.

It seems to me that if we would give proper thought to these proposals in the committee — now I am not saying that someone should not offer an amendment or that anyone doesn't have a right to offer an amendment — but when we accept or agree to something in the committee and it comes on the floor, I think we ought to be prepared to defend it and that we ought to know what we want in the proposal before we report it out of the committee.

The only amendment I offered covered what I objected to in the committee. There were a couple of other points that I objected to which I did not offer an amendment to. I feel very strongly that if we give more consideration to what we are doing in the committee, once we make the report — if we did not object in the committee — I personally feel that if I don't object in the committee that I should not be objecting on the floor.

VICE PRESIDENT ROMNEY: Delegate Martin.

MR. MARTIN: The committee did consider a good many amendments including one which Mr. Marshall made on the floor; however, the committee cannot anticipate all of the amendments which might come up. Some of these amendments were made on the floor and the committee chairman has to use his best judgment as to whether they are within the sense of the committee action or whether they are not.

In this instance there were some matters which might have come up and which would have been discussed with the various members of the committee on the executive branch if some of the members had not insisted on terminating the meeting of the committee at its last session; and so there might have been some further discussion of some of these amendments at that time. However, I have no apology to make for the amendments which I indicated I thought were the opinion of the majority of the committee on the executive branch.

VICE PRESIDENT ROMNEY: Delegate Marshall.

MR. MARSHALL: Well I just want to set the record straight, Mr. Martin. When the committee terminated its work, I thought all of the committee terminated its work, and at that time the civil service report was already in the hands of the committee of the whole and was not under discussion. There was another topic altogether under discussion at that time.

VICE PRESIDENT ROMNEY: Delegate Van Dusen.

MR. VAN DUSEN: The committee on rules and resolutions will meet immediately following the session in room I.

VICE PRESIDENT ROMNEY: Delegate Hoxie.

MR. HOXIE: Mr. President, I believe we have completed our work; is that correct?

VICE PRESIDENT ROMNEY: To my knowledge we have completed our work.

MR. HOXIE: I move we adjourn.

VICE PRESIDENT ROMNEY: Those in favor —

Delegate Snyder.

MR. SNYDER: I would like to make a parliamentary inquiry, Mr. President. I will be confronted pretty much with the same problem that we had arise tonight. In view of the accelerated pace that we —

VICE PRESIDENT ROMNEY: I am sorry, Delegate Snyder. You are really out of order, because we have a motion to adjourn, and I understand it is not debatable.

MR. SNYDER: I'm sorry. I thought I had the floor before. However, I will hold my point until tomorrow.

VICE PRESIDENT ROMNEY: I thought you did, too, but I was incorrect, I am informed. The question, therefore, is on the motion to adjourn. Those in favor say aye; opposed, no.

We are adjourned until 2:00 o'clock tomorrow afternoon.

[Whereupon, at 10:35 o'clock p.m., the convention adjourned until 2:00 o'clock p.m. Tuesday, January 30, 1962.]

SIXTY-EIGHTH DAY

Tuesday, January 30, 1962, 2:00 o'clock p.m.

PROCEEDINGS

VICE PRESIDENT ROMNEY: The convention will come to order.

For the first time during our convention, the father of one of our delegates will offer the invocation. The invocation will be offered by the Reverend Robert Boothby of the Seventh Day Adventist Church of Niles, Michigan. Reverend Boothby is the father of Lee Boothby.

REVEREND BOOTHBY: O Thou great Architect of the Universe and our most wonderful heavenly Father, we pray for a large measure of Thy blessings upon these delegates chosen by this, our state of Michigan. We are aware that these are days of multitudinous perplexities that are most difficult to solve, but we are also reminded that Thou dost have perfect understanding of these times and Thou hast invited us to receive of Thee knowledge for every duty. Our hearts are often filled with gratitude as we retrospect how Thou didst guide our forefathers in conceiving and bringing forth a constitution that has made our beloved America a land of liberty for all. We have confidence to believe that Thou wilt be equally merciful in giving direction and wisdom to these assembled, chosen men and women, that they may forge a constitution that will preserve these blessings for every man and woman in every section of our state.

Free every member of this elect body, we pray, from all selfish interest, and we pray that each may approach every decision with teachable humility and yet with indomitable courage to protect the rights and freedoms of all. So bless them all and each of us, we pray. Amen.

VICE PRESIDENT ROMNEY: The roll call will be taken by the secretary. Will all those present vote aye on the voting machine.

SECRETARY CHASE: Has everyone voted? The machine is locked and the attendance will be recorded.

Mr. President, a quorum of the convention is present.

Prior to the session today, Mr. King filed a request to be excused from the afternoon session.

VICE PRESIDENT ROMNEY: Without objection, it is so ordered.

SECRETARY CHASE: Absent with leave: Mr. King, Mr. Nisbet, Mr. Thomson, Mr. Walker and Mr. Woolfenden.

Absent without leave: None.

VICE PRESIDENT ROMNEY: Reports of standing committees.

SECRETARY CHASE: Mr. Erickson, for the committee on miscellaneous provisions and schedule, introduces
Exclusion Report 2020, A report recommending the exclusion of section 9 of the schedule.

Claud R. Erickson, chairman.

For Exclusion Report 2020 and the reasons submitteed in support thereof, see below, page 850.

VICE PRESIDENT ROMNEY: Referred to the committee of the whole and placed on general orders.

SECRETARY CHASE: Mr. Pollock, for the committee on declaration of rights, suffrage and elections, introduces
Committee Proposal 45, A proposal to guarantee the right of disposition to the owner of real property. Amends article II by adding a new section;
with the recommendation that it pass.

James K. Pollock, chairman.

For Committee Proposal 45 and the reasons submitted in support thereof, see below under date of April 10.

VICE PRESIDENT ROMNEY: Referred to the committee of the whole and placed on general orders.

SECRETARY CHASE: Mr. Pollock, for the committee on declaration of rights, suffrage and elections, introduces
Exclusion Report 2021, A report recommending the exclusion of article III, sections 2 and 3.

James K. Pollock, chairman.

For Exclusion Report 2021 and the reasons submitted in support thereof, see below, page 851.

VICE PRESIDENT ROMNEY: Referred to the committee of the whole and placed on general orders.

SECRETARY CHASE: Mr. Pollock, for the committee on declaration of rights, suffrage and elections, introduces
Exclusion Report 2022, A report recommending the exclusion of article III, section 5.

James K. Pollock, chairman.

For Exclusion Report 2022 and the reasons submitted in support thereof, see below, page 851.

VICE PRESIDENT ROMNEY: Referred to the committee of the whole and placed on general orders.

SECRETARY CHASE: Mr. Pollock, for the committee on declaration of rights, suffrage and elections, introduces
Exclusion Report 2023, A report recommending the exclusion of article III, section 6.

James K. Pollock, chairman.

For Exclusion Report 2023 and the reasons submitted in support thereof, see below, page 851.

VICE PRESIDENT ROMNEY: Referred to the committee of the whole and placed on general orders.

SECRETARY CHASE: Mr. Pollock, for the committee on declaration of rights, suffrage and elections, introduces
Exclusion Report 2024, A report recommending the exclusion of article III, section 7.

James K. Pollock, chairman.

For Exclusion Report 2024 and the reasons submitted in support thereof, see below, page 851.

VICE PRESIDENT ROMNEY: Referred to the committee of the whole and placed on general orders.

SECRETARY CHASE: That is all of the committee reports presently on file, Mr. President.

VICE PRESIDENT ROMNEY: Last night, following the motion for adjournment, the Chair improperly recognized Delegate Snyder. The Chair will again recognize Delegate Snyder at this time.

MR. SNYDER: Thank you very much, Mr. President. I rise to a point of inquiry either from the Chair or possibly from the chairman of the rules and resolutions committee. I, along with many other delegates, have submitted proposals which we felt were very important to us and to our constituents and to the people of the state of Michigan. It was my understanding that during the course of the committee meetings we would have an opportunity to present our point of view and our arguments in committee. I felt that this was something that we should do because it is much easier to explain your problems to a small committee and, in addition to this, it does tend to keep the convention from being cluttered up with trivia or minutiae. (laughter) I find, however, that not only has the period of time elapsed when the delegates can

speak in favor of their proposals, but, what concerns me even more deeply now is that the committees will cease to function in committee, and we as delegates who feel very strongly on problems have only the alternative of having a very weak and ineffective device at our disposal to present this as an amendment.

Now, what recourse do we have other than this, Mr. President, to present our points of view? I have one problem in particular that affects 200,000 people in my immediate district and 500,000 people in my county, and I did pledge I would bring this matter to the attention of the committee dealing with this problem. At this particular point I haven't been summoned. I have been available. I have offered. I have made several steps. Where do I go from here?

VICE PRESIDENT ROMNEY: Mr. Van Dusen, would you care to comment?

MR. VAN DUSEN: Mr. President, Mr. Snyder, it seems to me that the committees have now been meeting for 4 months and there has been ample opportunity in every committee with which I am familiar for individual delegates seeking to be heard on their proposals to do so. If they have not availed themselves of that opportunity up to now, it seems that the recourse available to them is to offer their proposals as amendments on the floor to such committee proposals as they may be germane to—pardon me for ending the sentence with a proposition — (laughter) — preposition — (laughter)

MR. SNYDER: The only thing is, I have made myself available. I have been down there and I have been told that my proposition wasn't under discussion, that I would be advised, and here we are again. I am not in disagreement, Dick. We've got to vote, but we have got the problem; so where do we go to from here?

VICE PRESIDENT ROMNEY: Do you have any further comments, Mr. Van Dusen?

MR. VAN DUSEN: Mr. Snyder, are you talking about more than one committee or one committee?

MR. SNYDER: This is one specific committee.

VICE PRESIDENT ROMNEY: Would you care to direct your question to the chairman of the committee?

MR. SNYDER: Yes, I will—to Mr. D. Hale Brake, the chairman of the committee on finance and taxation. (laughter)

VICE PRESIDENT ROMNEY: Mr. Brake.

MR. BRAKE: Mr. Snyder, we are meeting immediately following this session. Come down.

MR. SNYDER: Thank you. I will be there. (laughter)

VICE PRESIDENT ROMNEY: Delegate Conklin is recognized.

MRS. CONKLIN: Mr. President, a point of personal privilege. A statement was made here last night to which I would like to take exception. I am referring to the statement made by Delegate Marshall when he commented that he, as a member of the minority party here, had "finally broken into" the vote of the majority party. I would like to point out that an examination of the voting records clearly documents that the claims of Delegate Marshall lack any sort of substantiation. For example, recorded roll call votes of 80 to 50, 76 to 61, 81 to 54, and division of votes in the committee of the whole such as 69 to 67, 66 to 66, 68 to 53, and so forth, would indicate to all unbiased persons that there has been bipartisan support many times prior to last night.

I personally resent the implication of Mr. Marshall that if I vote with him I am showing good judgment but if I oppose him I am being dictated to. I would suggest that if Mr. Marshall will first check the record he will not make such wild claims in the future even for the purpose of grandstanding. (applause)

VICE PRESIDENT ROMNEY: Delegate Marshall.

MR. MARSHALL: Mr. President and fellow delegates, if I offended Delegate Conklin I will apologize to her. As she will recall, the time I made the statement was when we were taking the series of votes on whether or not we were going to have local option for the sale of alcoholic beverages, et cetera. Myself, along with 2 other delegates, had introduced an amendment which would have excluded Wayne, Oakland and Macomb from selling alcoholic beverages, and I think anyone on the floor of the convention yesterday afternoon that was sitting here should know that I made the statement at the time in a jocular fashion and I was being facetious. (laughter) If the delegate took offense, I am sorry.

VICE PRESIDENT ROMNEY: Delegate Conklin.

MRS. CONKLIN: I would just like to thank Mr. Marshall for his comments.

VICE PRESIDENT ROMNEY: Reports of select committees.

SECRETARY CHASE: There are none on file, Mr. President.

VICE PRESIDENT ROMNEY: Communications from state officers.

SECRETARY CHASE: None.

VICE PRESIDENT ROMNEY: Second reading of proposals.

SECRETARY CHASE: Nothing on that calendar.

VICE PRESIDENT ROMNEY: Third reading of proposals.

SECRETARY CHASE: There is no item on that calendar.

VICE PRESIDENT ROMNEY: Motions and resolutions.

SECRETARY CHASE: There are no resolutions on file.

VICE PRESIDENT ROMNEY: Unfinished business.

SECRETARY CHASE: None.

VICE PRESIDENT ROMNEY: Special orders of the day.

SECRETARY CHASE: There are no special orders for the day.

VICE PRESIDENT ROMNEY: General orders of the day.

SECRETARY CHASE: They have been postponed until Thursday.

VICE PRESIDENT ROMNEY: Announcements.

SECRETARY CHASE: The committee on finance and taxation will meet in room E today immediately following the session. D Hale Brake, chairman.

The committee on judicial branch will meet in room B today immediately after the session. Robert J. Danhof, chairman.

The other committee meeting announcements are found on the composite calendar with no further announcement of them necessary.

VICE PRESIDENT ROMNEY: Delegate DeVries.

MR. DeVRIES: Mr. President and members of the convention, the committee on administration will meet tomorrow at 1:00 o'clock. We have invited Franklin DeWald, the civil service director, to come in and talk about employment opportunities for staff members after the convention.

VICE PRESIDENT ROMNEY: Delegate Gust is recognized —but before you make your motion, Delegate Gust—requests for leaves of absence.

SECRETARY CHASE: Mrs. Butler requests to be excused from the session of Friday; and Mr. Romney wishes to be excused from the Wednesday session, due to unavoidable business matters in New York.

VICE PRESIDENT ROMNEY: Without objection, the requests for leaves of absence will be granted.

For the information of those in the gallery, tomorrow is the deadline for committee reports and, in consequence, the general orders of the day which would occasion discussion and debate have been deferred to permit the committees to complete their work.

Delegate Millard.

MR. MILLARD: I would like to make an announcement. I just looked on the calendar and it was not there. The committee on emerging problems will meet tomorrow noon at 1:00 o'clock in room I. Thank you.

VICE PRESIDENT ROMNEY: Delegate Gust.

MR. GUST: Mr. President, it is my privilege at this time to make the motion to adjourn, but because this has been a very short and rapid session and because many of our guests have come some distance, before the Chair calls for a vote on it, I respectfully request that I be allowed to yield the floor to Dr. Charles Anspach for a few pertinent remarks before we leave.

VICE PRESIDENT ROMNEY: Delegate Anspach.

MR. ANSPACH: Mr. President and fellow delegates, as a delegate to this convention, I compliment Mr. Gust on this very

appropriate motion of his, because it expresses concern for our welfare and for our physical good. Last night Mr. Austin presented a resolution also expressing his concern for our good. Inasmuch as we are about to go into committee sessions, I think that you should be aware of the importance of taking care of yourself; otherwise, you will end up and will have to avail yourself of the services Mr. Austin proposed in his resolution.

This man went to the physician for a physical examination. The doctor had a profile chart. Each time he would find something wrong with his patient, he would perforate the chart. When he was through with the examination, he found the chart was pretty well perforated. There was an old player piano there, so he wondered what would happen if he put it on the player piano. He put it on the player piano and it played, "Nearer, My God, to Thee." (laughter)

VICE PRESIDENT ROMNEY: Delegate Martin is recognized.

MR. MARTIN: Mr. President, just a matter of information that may be important to other chairmen and committee members: tomorrow being the last day for the introduction of these committee proposals, do I understand that the convention, after it meets tomorrow, will recess from time to time to give the balance of the day for the introduction of proposals, or just how is that to be done? Can we have a little information on that?

VICE PRESIDENT ROMNEY: Mr. Van Dusen.

MR. VAN DUSEN: Mr. Martin, I speak only for myself, but it is a matter to which, as chairman of the rules committee, I have given some thought. I think in order to give the committees the full benefit of tomorrow in order to get their work completed, it would be appropriate for the convention, following the completion of its business at the 2:00 p.m. session, to recess for such time as to permit the committees to complete their work tomorrow.

VICE PRESIDENT ROMNEY: Delegate Sterrett.

MR. STERRETT: In view of the fact that tomorrow is the deadline for the committee proposals, is it still possible to submit minority reports to the convention after tomorrow?

VICE PRESIDENT ROMNEY: Mr. Van Dusen.

MR. VAN DUSEN: Taking the mantle of authority again, Mr. President, Mr. Sterrett, minority reports are governed by the same rules in terms of presentation as majority reports. They would be in order up until the deadline or the time for submission of regular committee proposals and reports.

VICE PRESIDENT ROMNEY: Delegate Hannah.

MR. J. A. HANNAH: Mr. President, members of the convention, I would like to express the hope that the committees have all day tomorrow and on until midnight tomorrow night. The committee that I have been the chairman of as yet has not been able to agree—no 11 members of the committee have been able to agree—and I would hope that we might have all day tomorrow and that somehow or other the rules committee will work it out so that any reports that are returned to the desk by midnight tomorrow night would be accepted. Otherwise, I think it is going to be very unfair both to the committees and to minority members if they want to present minority reports.

VICE PRESIDENT ROMNEY: Mr. Van Dusen, I assume that the request made by Delegate Hannah is in order and will be recognized.

MR. VAN DUSEN: It is and it will be, providing the convention supports it, as I think it should.

VICE PRESIDENT ROMNEY: And as I understand it, the general order of business will be passed tomorrow as well to permit committees to concentrate on committee reports?

MR. VAN DUSEN: That is correct. Just to amplify my earlier statement, Mr. President, I would assume that following the completion of our regular order of business tomorrow the convention would recess until an appropriate hour, perhaps 8:00 p.m., to see how the committees were situated at that point. If they still had not completed their work, the convention could further recess until 10:00 p.m. and so on as necessary.

VICE PRESIDENT ROMNEY: Delegate Mahinske.

MR. MAHINSKE: I would like to direct this question to either the Chair or Mr. Van Dusen. In the event that a committee does not report out all the work that it has by midnight tomorrow night, what is the status of the committee's jurisdiction as a committee over those items? Does it lose it automatically, or what?

VICE PRESIDENT ROMNEY: Mr. Van Dusen.

MR. VAN DUSEN: This would be up to the convention, Mr. Mahinske.

VICE PRESIDENT ROMNEY: Delegate Nord.

MR. NORD: Mr. President, I would like to make this comment: in the event that there is a minority report from any committee, it seems to me that the people who prepare that report need to know what the majority report will be, first. They may wish to make some comment on the majority report. They may wish to dissent from it. They cannot possibly do so until they see it, until they see the text. Now, for that reason —that is one of the reasons I am going to make a certain motion, and another reason is this: any minority report—or any majority report, for that matter—that comes out of a committee on Wednesday under our rules could not possibly be acted on under any circumstances before Monday. Similarly, anything that comes to the convention by Friday, also, would not be able to be acted upon before Monday. Therefore, there is no difference, insofar as being able to act, as to whether a proposal reaches the floor Friday or Monday or Wednesday; and, in view of those 2 reasons: one, that no harm can be done by allowing 2 extra days for minority reports and two, that there is a reason why extra time is required; I would like to move, and I do move, that minority reports be accepted any time until Friday midnight.

VICE PRESIDENT ROMNEY: Mr. Van Dusen.

MR. VAN DUSEN: I am able to speak only for myself, of course, but I think Dr. Nord's motion is a reasonable one and I would urge concurrence.

VICE PRESIDENT ROMNEY: Do other delegates wish to address themselves to this motion? Delegate Madar.

MR. MADAR: Mr. President, I just wanted to amend that to make it Monday evening because, for instance, I want to bring out a minority report and I have asked the research department to assist me, and that has been approximately a week or 10 days ago and I still haven't got that completed. Now it may take the rest of this week for all I know. I am still waiting for them to put it in my box.

VICE PRESIDENT ROMNEY: You are making a motion?

MR. MADAR: I would like to amend that to read, give us until Monday evening, the Monday evening session.

VICE PRESIDENT ROMNEY: Is there other comment on this motion and the amendment? Delegate Mahinske.

MR. MAHINSKE: Shouldn't we properly suspend the rules first before we even go into debate on this?

VICE PRESIDENT ROMNEY: No, the question is on the amendment. The amendment is to permit minority reports to be filed through Monday. Delegate Ford.

MR. FORD: I would like to address this question to Mr. Van Dusen or anyone else who can answer it. I am a little bit confused again. What is the authority, Mr. Van Dusen, for this specific time that you have been giving us here? I understood that we adopted a resolution which was a "tentative proposal" for time to accomplish these things. Has this now been reduced to the status of a rule of the convention or enlarged, rather, to the status of a rule?

MR. VAN DUSEN: Mr. President, Mr. Ford, the status of the resolution has neither been enlarged nor contracted. It was a resolution establishing a deadline which stands as such.

MR. FORD: Would you tell me the number of the resolution, Mr. Van Dusen?

MR. VAN DUSEN: My recollection at present, Mr. President and Mr. Ford, is that it is Resolution 41, but I am not positive of that.

VICE PRESIDENT ROMNEY: The Chair would like to recognize delegates who want to address themselves to the motion rather than to other matters; so, if we may, let's

complete action on this amendment first. Does Delegate Erickson want to address himself to the amendment?

MR. ERICKSON: I want to support Delegate Nord's motion, but I don't think it is quite liberal enough. Now I don't see any reason why we cannot let some of these minority reports come in for maybe another week or 10 days, because they are not going to be coming on general orders until that time and we are going to have plenty of time to be put on notice what they are. I know in our group there are—I think I know of 2 minority reports — and they aren't going to have time to get those in, and I don't know why we cannot be practical about the situation. Nothing will be hurt by lengthening the time because these items will not be coming up on general orders for some time yet.

VICE PRESIDENT ROMNEY: The question is on the amendment of Mr. Madar. Those in favor of the amendment to the motion say aye; opposed, no.

The amendment is adopted.

The question is now on the motion by Delegate Nord, as amended. Those in favor say aye; opposed, no.

The motion as amended, prevails.

Delegate Hannah.

MR. J. A. HANNAH: Mr. President, I would now like to move—if a motion is necessary—that instead of resorting to the gimmick of having the convention recess from hour to hour tomorrow that we suspend the rules, if that is necessary, so that committee reports received on the desk of the secretary by midnight tomorrow night are regarded as meeting the deadline already established by this convention.

VICE PRESIDENT ROMNEY: You have heard the motion. Delagate Van Dusen.

MR. VAN DUSEN: I simply rise, Mr. President, in support of Dr. Hannah's motion.

VICE PRESIDENT ROMNEY: Delegate Brake, do you want to speak to this motion?

MR. BRAKE: Yes, I think so. I am concerned with another phase of this matter of getting the reports in even by midnight. It looks to me as if there is going to be a terrific jam in our drafting and research division. Suppose a committee has completed its work on the proposition, everything done that a committee can do as a committee, but, because of stenographic difficulties, drafting difficulties, we cannot get the report in. Are we barred out?

VICE PRESIDENT ROMNEY: Is there anything in the rules on that, Mr. Van Dusen?

MR. VAN DUSEN: There is nothing, Mr. President, in the rule or the resolution, but, as General Grant said to President Lincoln, "Let's cross Fox Creek when we come to it." (laughter)

VICE PRESIDENT ROMNEY: Delegate Hoxie, do you wish to address yourself to the motion? The motion is the motion of Delegate Hannah that any committee report filed with the secretary by midnight tomorrow night be accepted as having met the deadline. Delegate Mahinske, do you want to address yourself to this motion?

MR. MAHINSKE: Well, I agree with Mr. Brake, and I think we are at Fox Creek right now. If we cannot get it typed up and we cannot get it to the desk, it is not submitted.

VICE PRESIDENT ROMNEY: The question is on the motion of Delegate Hannah.

MR. MAHINSKE: Frankly, I do not see what is so magic about a Wednesday just because it happens to be the thirty-first.

VICE PRESIDENT ROMNEY: Delegate Tubbs.

MR. TUBBS: Mr. President, I move an amendment that we determine midnight by this clock on the wall, so we can stop it at 5 minutes of, if we have to. (laughter)

VICE PRESIDENT ROMNEY: Delegate Hutchinson.

MR. HUTCHINSON: Mr. President, I just cannot refrain from making an observation to the suggestion last made about stopping the clock. You know the legislature did that for years, and finally the legislature overcame that habit. I hope that the constitutional convention doesn't fall into the same thing. Might I suggest to you that I think we are quite a lot like the legislature, but I think there are a lot of you here that thought we were going to be a lot different. I think you are getting more like the legislature every day. (laughter)

VICE PRESIDENT ROMNEY: The Chair would like to make a statement to see if it will be helpful. Without objection, the Chair would like to indicate that it is the sense of this motion that if the chairman of the committee notifies the secretary that the committee has completed action on a proposal and on the substance of the report for the proposal, that notification shall constitute a filing of the report with the secretary in conformance with the deadline. Is there objection to that interpretation of the Hannah motion? Delegate Mahinske?

MR. MAHINSKE: Mr. President, we have one other mild problem here and this is the question of concurrent jurisdiction on some of these proposals. Now they have to be submitted to the chairmen and the committees of the concurrent jurisdiction committees. How are we going to handle this?

VICE PRESIDENT ROMNEY: All right, that will be comprehended by the motion here. It would require the indication by the 2 committees, as I understand it. Is that correct, Mr. Van Dusen, it would have to have notification by the 2 committee chairmen?

MR. VAN DUSEN: Mr. President, there is nothing in the official resolutions of the convention with respect to concurrent jurisdiction. It is a device which we have uniformly adopted as between committees and, therefore, the question of concurrence is not affected by the deadline tomorrow.

VICE PRESIDENT ROMNEY: Without objection, the interpretation will apply to the chairman of the committee of original jurisdiction.

Delegate Nord.

MR. NORD: Mr. President, am I safe in assuming that the motion before us will apply to minority reports as well as to the committee reports per se?

VICE PRESIDENT ROMNEY: Well, this motion does not relate to minority reports, Delegate Nord. That was an earlier motion then, your motion as amended, and that set a deadline of Monday night.

MR. NORD: No, the question I had in mind was would you say that when it is tendered, or when there is notification to the secretary that there is a report —

VICE PRESIDENT ROMNEY: Dr. Nord, I think we might deal with that after we dispose of this motion, but you would certainly be in order to raise that question as soon as we dispose of this motion.

MR. NORD: Thank you.

VICE PRESIDENT ROMNEY: Delegate Pollock.

MR. POLLOCK: Mr. President, complying with your ruling, I take great pleasure, on behalf of the committee on declaration of rights, suffrage and elections, in saying that our reports on all business before us are in the hands of the secretary. (applause)

VICE PRESIDENT ROMNEY: The question is on the motion of Delegate Hannah. Those in favor of the motion, say aye. Opposed, no.

The motion prevails.

Delegate Nord is recognized.

MR. NORD: Mr. President, I would like to move the exact same motion with respect to minority reports; namely, that any 3 or more persons who intend to file a minority report and have decided what it shall be, shall notify the secretary within the deadline that has been provided and that that be regarded as a filing of the minority report. Am I correct in stating the motion now?

VICE PRESIDENT ROMNEY: You have heard the motion, which is really an interpretation of the earlier motion. Delegate Van Dusen.

MR. VAN DUSEN: Mr. President, I must respectfully oppose Dr. Nord's motion. I think the time for submission of minority reports was extended for the purpose of permitting them to be completely prepared, and it seems to me that 4 days, which is the time involved, should be amply sufficient for that purpose.

VICE PRESIDENT ROMNEY: Delegate Nord.

MR. NORD: Well, Mr. President, I would like to point this

out: that in the event that the majority report is going to be delayed in this manner—that is to say, the text will not be available on the right date—then the minority report will really be in trouble unless the same rule applies; and, therefore, as long as the majority proposal will have this extension, it seems to me that you must have the same extension for the minority proposal.

VICE PRESIDENT ROMNEY: Is there objection to an interpretation of the Nord motion that it will provide those filing minority reports 3 calendar days following the filing and the availability of the text of the majority report?

MR. MARTIN: I object, Mr. President.

VICE PRESIDENT ROMNEY: Delegate Martin.

MR. MARTIN: The only problem here is that the simple notification that they are going to file a minority report leaves the question entirely open as to when the minority report gets in, and there is an advantage to everybody in having these minority reports as early as we can in relation to the majority report, so that we don't have a minority report coming in the last day before we get into discussion of the majority report. So that it is desirable that the minority get their reports in, if they have them, within a time as close as possible to these majority reports.

VICE PRESIDENT ROMNEY: The suggestion was that the filers of minority reports be given 3 days following the availability of the written text of the majority report.

MR. MARTIN: This I don't object to, but I am only objecting to Dr. Nord's proposal that if they just notify the secretary that they are going to have a minority report, then they have an unlimited time to file it. That is what it amounts to.

VICE PRESIDENT ROMNEY: The interpretation that was made for the purpose of seeing if there was objection was that they have 3 days following the availability of the written report. Is there an objection to that?

MR. MARTIN: No, I have no objection to that.

VICE PRESIDENT ROMNEY: Then let me be specific on that. That means that if the majority report became available Monday night then the minority would have 3 calendar days beyond that in which to file their minority report.

If there is no objection, it is so ordered.

Delegate Hoxie.

MR. HOXIE: Mr. President and fellow delegates, I can anticipate one problem that we are going to be faced with in our various committees. Our legislative powers committee is, I think, in good shape to meet the deadline, with this proviso: the question arose some time ago that we had a schedule set up for committee meetings which the various chairmen were requested to follow. I find that that schedule is not being complied with. Now we are going into a marathon proposition. We do have some items in our committee that need consideration. Are we going to follow our schedule so that when we have the committee meetings that we can depend upon Mr. Baginski, who is on another committee, or Mr. Hubbs or Mr. Powell, and we follow the schedule; are the other committees also going to follow the schedule, so they will not take our members away from each other? I think that is a really serious problem in this marathon, and we might as well face up to it and find a solution at this time.

VICE PRESIDENT ROMNEY: The Chair would suggest that the committee chairmen adhere to the schedule to the fullest extent possible. Now some committees have completed their work to my knowledge, but certainly this would be a desirable thing to do.

Delegate Binkowski.

MR. BINKOWSKI: In support of Mr. Hoxie's statement, I would like to point out to this convention that before the committee on miscellaneous provisions and schedule we have 15 sections that we have not made any decision with respect to. We will be meeting in this marathon meeting right after the convention adjourns. I am also on the committee on finance and taxation, which will be meeting after this convention adjourns.

There are a couple of minority reports which we have indicated that we would like to get out of the committee on finance and taxation. I am sure there will be some minority reports with respect to the committee on miscellaneous provisions and schedule. I don't see how we are going to be able to comply with this, let alone how our stenographic pool will be able to type and prepare all this material within the time specified.

VICE PRESIDENT ROMNEY: Judge Leibrand.

MR. LEIBRAND: I point out the problem that will rise if a completed and drafted majority proposal is filed on Friday. Our 3 days will expire on Monday and we will not have an opportunity to do the work.

VICE PRESIDENT ROMNEY: Delegate Prettie.

MR. PRETTIE: Thank you. Mr. President and fellow delegates, I invite attention to our journal, page 190, Resolution 45, which is the resolution having to do with the timetable. Subsection 3 of that resolution reads:

> All substantive committee proposals and supporting reports shall be submitted to the convention and placed on general orders in accordance with rule 57, paragraph 2, on or before January 31, 1962.

I also invite attention to rule 68 of this convention having to do with the amendment or suspension of rules which requires a vote of 2/3 of the delegates shown to be present by the journal entries.

In order that our record on this matter may be clear, I move, sir, that the rules be suspended and that sub-paragraph 3 of Resolution 45 be amended to provide the interpretations that have been discussed and ruled upon by the Chair permitting the filing of majority reports up until the deadline stated with the following provision for the filing of minority reports or dissenting therefrom.

VICE PRESIDENT ROMNEY: Is there objection? The Chair hears none.

It is so ordered.

Delegate Erickson.

MR. ERICKSON: Well, I am looking for trouble right now. I see the judiciary has called a meeting after this and the finance and taxation. This has happened on many occasions before. Our committee has had to adjourn. We were going to meet on Friday. We were going to meet on last Monday, but other committees beat us to it, so we had this notice for quite awhile and I notice that other people are preempting this time on us.

I believe that these folks that have these minority reports should be respected and I cannot see any reason why they should not be, from a practical viewpoint. These proposals are going on general orders in committee of the whole; they will not be up for at least 2 weeks, many of them. I would like to move that all minority reports be accepted up to February 13.

VICE PRESIDENT ROMNEY: You have heard the motion. Delegate Cudlip.

MR. CUDLIP: Mr. President, I would like to make an observation: the timetable is being upset and maybe that is necessary in some respects, but, looking through the rule book here, rule 33, as I read it, requires that the minority reports by 3 or more delegates be reported and printed in the same manner as the majority reports. It goes on to say that they are treated as amendments or substitutes offered to or for the report of the committee. Now, maybe I am wrong in my construction, but it seems to me that we cannot act on any of these things—and maybe it isn't important—until we get that minority report, because, actually, as an amendment or a substitute, it would be first considered. I point it out, if I am correct, only to show that the delay on all these minority reports—and I can see the reason therefor—is going to delay consideration of the majority report for the reason that I am reading.

VICE PRESIDENT ROMNEY: Delegate Lundgren.

MR. LUNDGREN: I would just like to be doubly sure, now, before we go any further, that if Friday is the last date for publication of the majority report of a committee then the first calendar date for the minority report is Monday, the second is Tuesday and the third is Wednesday. Is that the proper interpretation?

VICE PRESIDENT ROMNEY: The interpretation is that the proponents of a minority report shall have 3 calendar

days following the availability of the text of the majority report to file their report.

Delegate Van Dusen.

MR. VAN DUSEN: Mr. President, I think you very clearly stated the provision of the resolutions currently adopted by the convention. It seems to me that Mr. Cudlip's point is very well taken and, for that reason, I would strongly oppose Mr. Erickson's motion. As long as the proponents of a minority report have 3 days within which to consider the published majority report before their report must be filed, it seems to me that they are given ample time.

VICE PRESIDENT ROMNEY: The Chair will advise the delegates that in line with the action taken on previous motions, as suggested by Delegate Prettie, the rules require a 2/3 vote to suspend the rules and to pass the Erickson motion.

Delegate Hutchinson.

MR. HUTCHINSON: Mr. President, I do not understand that the resolution adopted by the convention relative to these deadlines has the solemnity and the formality of a rule, and it seems to me as though the resolution was subject to amendment by the motion made on the floor. I would not have understood that we were faced with the necessity of suspending any rules here.

I do want to say this: that I must disagree with Chairman Erickson, much as he desires to meet the problem in that way, because, might I point out, again, that if we wait until February 13 for the receipt of all minority reports, that means that nothing much can come on the floor until after that time because anybody can get up and say, "Well, we proposed a minority report and you have not had time to see our minority report." Therefore, the work of the convention will be delayed another 2 weeks.

VICE PRESIDENT ROMNEY: Delegate Hutchinson has persuaded the secretary and the Chair that the previous ruling was incorrect and that a majority vote is all that is required to pass the Erickson amendment.

Delegate Mahinske.

MR. MAHINSKE: A point of information. When you responded to Delegate Lundgren's question, you kept mentioning 3 calendar days. Now are you talking about convention calendar days?

VICE PRESIDENT ROMNEY: That is correct.

MR. MAHINSKE: On which there would be sessions?

VICE PRESIDENT ROMNEY: No. Calendar days.

MR. MAHINSKE: You are talking about the succeeding—

VICE PRESIDENT ROMNEY: I am talking about calendar days.

MR. MAHINSKE: The subsequent 72 hours, whether they fall on weekends or not?

VICE PRESIDENT ROMNEY: That's right.

MR. MAHINSKE: And not session days?

VICE PRESIDENT ROMNEY: That's right. Not session days.

Delegate Donnelly.

MISS DONNELLY: I would like to move to include session days, not calendar days, to take care of the Friday to Monday situation for the minority reports.

VICE PRESIDENT ROMNEY: We have before us, Miss Donnelly, a motion by Delegate Erickson to extend the time to February 13. I don't believe your amendment would apply to his motion but, rather, would come later, unless you want to amend his motion to be 3 session days rather than February 13. Is that your motion?

MISS DONNELLY: Yes, Mr. President.

VICE PRESIDENT ROMNEY: Delegate Donnelly amends Delegate Erickson's motion to provide that the proponents of minority reports shall have 3 session days following the availability of the written majority report. The question is on the amendment to the motion. Those in favor of the amendment to the motion, say aye; opposed, no.

The amendment is adopted.

Those in favor of the motion as amended, say aye; opposed, no.

The motion, as amended, prevails.

DELEGATES: Division.

VICE PRESIDENT ROMNEY: A division is asked for. The motion, as amended, is a motion to provide that proponents of minority reports shall have 3 session days following the availability of the written majority reports in which to file their minority report. If the motion, as amended, is adopted, then the proponents of minority reports will have 3 session days. If the motion is defeated — Mr. Secretary, what is the situation there?

The secretary rules that the adoption of the amendment took out reference to February 13, and, therefore, the question is on the adoption of the motion, as amended. Division has been requested. We are voting on the question of whether we will adopt the motion providing 3 session days following the availability of the written majority report for the filing of a minority report; 3 session days. Mr. Faxon.

MR. FAXON: A point of order, Mr. President. I thought Miss Donnelly's motion to amend Mr. Erickson's motion wasn't in order at the time because you said it came afterwards.

VICE PRESIDENT ROMNEY: The Chair rules the point of order comes too late. (laughter)

A division has been requested. Delegate Hoxie.

MR. HOXIE: Mr. President, a point of information on the motion on which we are voting, which I believe is in order. You referred to the availability of the report of the committee. I would like an explanation of what you refer to as "availability". Does that mean after it has been delivered to the desk?

VICE PRESIDENT ROMNEY: After it has been filed in writing with the secretary.

MR. HOXIE: Is that it?

VICE PRESIDENT ROMNEY: The secretary interprets "availability" as meaning printed in the journal. Delegate Martin.

MR. MARTIN: If I understand this, then if the motion is voted for, if you vote yes, the minority will have 3 session days. If they vote no, the original motion will obtain, that is, 3 calendar days.

VICE PRESIDENT ROMNEY: That is correct. It is a question of 3 session days or 3 calendar days. A division has been demanded. Those in favor vote aye; opposed, vote no. Has everyone voted?

SECRETARY CHASE: The machine is now locked and the totals will be recorded.

On the motion, as amended, the yeas are 98; the nays are 32.

VICE PRESIDENT ROMNEY: The motion prevails.

Delegate Gust is recognized.

MR. GUST: Mr. President, some time ago I made a motion here that takes precedence over all others. I said to myself mentally I shall never yield the floor again, but Dr. Anspach said he would like to make one last remark, so I will yield the floor to Dr. Anspach. (applause)

VICE PRESIDENT ROMNEY: Delegate Anspach.

MR. ANSPACH: Mr. President and fellow delegates, a while ago we expressed concern for your physical welfare and physical well being. I have a way to beat the deadline.

This woman asked her mistress for 3 days off because she needed to bury her husband. Within the time, she came back and she was very happy, singing and whistling, and the good lady said, "I can't understand it. Three days ago you asked to be off in order to bury your husband; here you are the happiest I have ever seen you. Why?" "Well," she said, "you know Sam wasn't a very good person. He wasn't very faithful to us. He didn't work. He didn't support the family. Now I've got him doing something I've never been able to do before, for after he died I had him cremated, I put his ashes in an hourglass, put it on a revolving drum, and now I've got him working 24 hours a day." (laughter)

VICE PRESIDENT ROMNEY: The secretary has an announcement.

SECRETARY CHASE: The committee on legislative organization will meet in room D immediately after the session.

VICE PRESIDENT ROMNEY: Delegate Gust.

MR. GUST: I move we adjourn.

VICE PRESIDENT ROMNEY: The question is on the motion of Mr. Gust that we adjourn. Those in favor say aye.

We are adjourned until 2:00 tomorrow afternoon.

[Whereupon, at 2:55 o'clock p.m. the convention adjourned until 2:00 o'clock p.m., Wednesday, January 31, 1962.]

SIXTY-NINTH DAY

Wednesday, January 31, 1962, 2:00 o'clock p.m.

PROCEEDINGS

PRESIDENT NISBET: The convention will please come to order.

Our invocation today is to be given by the Reverend Halley B. Oliver of the First Congregational Church of Owosso. Mr. Oliver is Delegate Bentley's pastor. Today he is using the same prayer that he used to open the United States House of Representatives in 1960. Mr. Oliver. Will you please rise.

REVEREND OLIVER: Our gracious heavenly Father, we pause before Thee to seek the blessing of Thy guidance for the work of this day.

May, O Lord, those prayers made by Thy churches and people for this nation and these Thy servants prepare hearts and minds for the working of Thy Holy Spirit.

We so often pray for Thy wisdom, Thy Spirit and Thy love; yet it is too high. We cannot attain unto it. Make us, therefore, aware that we have wisdom from Thee; help us to use it, that we have felt Thy Spirit; grant that we be receptive to it.

We know the conditions of Thy love and that it casteth out fear. May mercy and justice be shown.

Give these Thy servants the understanding that the nation and state honor them and look to their work. May what is done be pleasing in Thy sight. We pray in the name of the Master. Amen.

PRESIDENT NISBET: The roll call will be taken by the secretary. Those present, please vote aye.

SECRETARY CHASE: Has everyone voted? The machine is now locked and the attendance will be recorded.

Mr. President, a quorum of the convention is present.

Prior to the session today, we were in receipt of 2 requests to be excused from today's session: Mr. Walker, because of illness; and Dr. Hannah wishes to be excused from today's session.

PRESIDENT NISBET: Without objection, they will be excused.

SECRETARY CHASE: Absent with leave: Mr. J. A. Hannah, Mr. Romney, Mr. Thomson, Mr. Walker and Mr. Woolfenden.

Absent without leave: Mr. Greene.

PRESIDENT NISBET: Without objection, Mr. Greene is excused.

Reports of standing committees.

SECRETARY CHASE: Mr. Bentley, for the committee on education, introduces

Exclusion Report 2025, A report recommending the exclusion of article XI, sections 2 and 6.

Alvin M. Bentley, chairman.

For Exclusion Report 2025 and the reasons submitted in support thereof, see below under date of February 7.

PRESIDENT NISBET: Referred to the committee of the whole and placed on the general orders calendar.

SECRETARY CHASE: Mr. Bentley, for the committee on education, also introduces

Exclusion Report 2026, A report recommending the exclusion of article XI, sections 3, 4, 5, 7, 8, 10 and 16.

Alvin M. Bentley, chairman.

For Exclusion Report 2026 and the reasons submitted in support thereof, see below under date of February 7.

PRESIDENT NISBET: Referred to the committee of the whole and placed on the general orders calendar.

SECRETARY CHASE: Mr. Martin, for the committee on executive branch, introduces

Committee Proposal 46, A proposal pertaining to the executive budget and item veto. Amends article VI;
with the recommendation that it pass.

John B. Martin, chairman.

For Committee Proposal 46 and the reasons submitted in support thereof, see below under date of March 14.

PRESIDENT NISBET: Referred to the committee of the whole and placed on the general orders calendar.

SECRETARY CHASE: Mr. Bentley, for the committee on education, introduces

Committee Proposal 47, A proposal to replace sections 2 and 6 of article XI;
with the recommendation that it pass.

Alvin M. Bentley, chairman.

For Committee Proposal 47 and the reasons submitted in support thereof, see below under date of February 20.

PRESIDENT NISBET: Referred to the committee of the whole and placed on the general orders calendar.

SECRETARY CHASE: Mr. Martin, for the committee on executive branch, introduces

Committee Proposal 48, A provision pertaining to ineligibility to hold office. A substitute for article VI, sections 14 and 15;
with the recommendation that it pass.

John B. Martin, chairman.

For Committee Proposal 48 and the reasons submitted in support thereof, see below under date of March 19.

PRESIDENT NISBET: Referred to the committee of the whole and placed on the general orders calendar.

SECRETARY CHASE: Mr. Brake, for the committee on finance and taxation, introduces

Committee Proposal 49, A proposal with reference to the borrowing of money by public corporations and bodies. Amends article VIII by adding a section;
with the recommendation that it pass.

D. Hale Brake, chairman.

For Committee Proposal 49 and the reasons submitted in support thereof, see below under date of February 7.

PRESIDENT NISBET: Referred to the committee of the whole and placed on the general orders calendar.

SECRETARY CHASE: Mr. Brake, for the committee on finance and taxation, also introduces

Committee Proposal 50, A proposal to require the legislature to provide sufficient taxes to meet the state's expenses covering the substance of section 2, article X of the 1908 constitution; with the recommendation that it pass.

D. Hale Brake, chairman.

For Committee Proposal 50 and the reasons submitted in support thereof, see below under date of February 7.

PRESIDENT NISBET: Referred to the committee of the whole and placed on the general orders calendar.

SECRETARY CHASE: Mr. Brake, for the committee on finance and taxation, also introduces

Committee Proposal 51, A proposal setting up the uniform rule of taxation for providing for equalization a maximum limit for assessments, prohibiting a graduated income tax, and covering the subject matter of sections 3, 4, 7 and 8 of article X of the 1908 constitution;
with the recommendation that it pass.

D. Hale Brake, chairman.

For Committee Proposal 51 and the reasons submitted in support thereof, see below under date of February 7.

PRESIDENT NISBET: Referred to the committee of the whole and placed on the general orders calendar.

SECRETARY CHASE: Mr. Brake, for the committee on finance and taxation, also introduces

Committee Proposal 52, A proposal with reference to the taxation of certain utilities, covering the material in article X, section 5 of the 1908 constitution;
with the recommendation that it pass.

D. Hale Brake, chairman.

For Committee Proposal 52 and the reasons submitted in support thereof, see below under date of February 8.

PRESIDENT NISBET: Referred to the committee of the whole and placed on the general orders calendar.

SECRETARY CHASE: Mr. Brake, for the committee on finance and taxation, also introduces

Committee Proposal 53, A proposal to require that every tax law shall distinctly describe the tax, covering article X, section 6 of the present constitution;
with the recommendation that it pass.

D. Hale Brake, chairman.

For Committee Proposal 53 and the reasons submitted in support thereof, see below under date of February 8.

PRESIDENT NISBET: Referred to the committee of the whole and placed on the general orders calendar.

SECRETARY CHASE: Mr. Brake, for the committee on finance and taxation, also introduces

Committee Proposal 54, A proposal that the power of taxation shall never be surrendered, suspended, or contracted away, covering the material in article X, section 9 of the present constitution;
with the recommendation that it pass.

D. Hale Brake, chairman.

For Committee Proposal 54 and the reasons submitted in support thereof, see below under date of February 8.

PRESIDENT NISBET: Referred to the committee of the whole and placed on the general orders calendar.

SECRETARY CHASE: Mr. Brake, for the committee on finance and taxation, also introduces

Committee Proposal 55, A proposal to include article X, section 19 of the 1908 constitution in the new constitution;
with the recommendation that it pass.

D. Hale Brake, chairman.

For Committee Proposal 55 and the reasons submitted in support thereof, see below under date of February 8.

PRESIDENT NISBET: Referred to the committee of the whole and placed on the general orders calendar.

SECRETARY CHASE: Mr. Brake, for the committee on finance and taxation, also introduces

Committee Proposal 56, A proposal to limit the ad valorem taxation of property covering the subject matter of section 21, article X of the 1908 constitution, commonly known as the 15 mill limitation;
with the recommendation that it pass.

D. Hale Brake, chairman.

For Committee Proposal 56 and the reasons submitted in support thereof, see below under date of February 8.

PRESIDENT NISBET: Referred to the committee of the whole and placed on the general orders calendar.

SECRETARY CHASE: Mr. Brake, for the committee on finance and taxation, also introduces

Committee Proposal 57, A proposal to require a public hearing on all budgets of local units of government before the budgets are approved. Amends article X by adding a section;
with the recommendation that it pass.

D. Hale Brake, chairman.

For Committee Proposal 57 and the reasons submitted in support thereof, see below under date of February 9.

PRESIDENT NISBET: Referred to the committee of the whole and placed on the general orders calendar.

SECRETARY CHASE: Mr. Martin, for the committee on executive branch, introduces

Exclusion Report 2027, A report recommending the exclusion of article VI, sections 14 and 15. Substitute for Exclusion Reports 2001 and 2002.

John B. Martin, chairman.

For Exclusion Report 2027 and the reasons submitted in support thereof, see below under date of March 19.

PRESIDENT NISBET: Referred to the committee of the whole and placed on the general orders calendar.

SECRETARY CHASE: Mr. Brake, for the committee on finance and taxation, introduces

Exclusion Report 2028, A report recommending the exclusion of sections 3, 4, 5, 7 and 8 of article X.

D. Hale Brake, chairman.

For Exclusion Report 2028 and the reasons submitted in support thereof, see below under date of February 9.

PRESIDENT NISBET: Referred to the committee of the whole and placed on the general orders calendar.

SECRETARY CHASE: Mr. Pollock, for the committee on declaration of rights, suffrage and elections, introduces

Committee Proposal 58, A proposal pertaining to the elective franchise. A substitute for article III amending sections 4, 8, 9 and substituting new language for the other sections thereof; with the recommendation that it pass.

James K. Pollock, chairman.

For Committee Proposal 58 and the reasons submitted in support thereof, see below under date of April 6.

PRESIDENT NISBET: Referred to the committee of the whole and placed on the general orders calendar.

SECRETARY CHASE: The committee on legislative powers, by Mr. Hoxie, chairman, reports back to the convention

Delegate Proposal 1340, A proposal to limit the power of sale and disposition of certain public property and to require state officers under certain circumstances to resist condemnation by the United States government. Amends article V by adding a new section thereto; with the recommendation that the proposal be referred to the committee on emerging problems.

T. Jefferson Hoxie, chairman.

PRESIDENT NISBET: Without objection, it will be referred to the committee on emerging problems.

Hearing none, it is referred.

SECRETARY CHASE: That is all of the standing committee reports at this time, Mr. President.

PRESIDENT NISBET: Reports of select committees.

SECRETARY CHASE: None.

PRESIDENT NISBET: Communications from state officers.

SECRETARY CHASE: None.

PRESIDENT NISBET: Second reading of proposals.

SECRETARY CHASE: Nothing on that calendar.

PRESIDENT NISBET: Third reading of proposals.

SECRETARY CHASE: Nothing on that calendar.

PRESIDENT NISBET: Motions and resolutions.

SECRETARY CHASE: There are no resolutions on file.

PRESIDENT NISBET: Unfinished business.

SECRETARY CHASE: None.

PRESIDENT NISBET: Special orders of the day.

SECRETARY CHASE: There are no special orders.

PRESIDENT NISBET: Mr. Binkowski.

MR. BINKOWSKI: Mr. President, ladies and gentlemen of the convention, I would like to make a humorous observation—and I mean it to be humorous. At this point I would like to apologize to Dr. Anspach because I know I shall never be able to measure up to his humor.

Thus far it perhaps has been rather difficult to determine the achievements and contributions of our convention. However, in today's editorial in the Detroit Free Press, I think that we have found one. Before the convention I always read about "B" girls, but now I find that we have "B" boys, and, if you are a proponent of county home rule, I surmise that the "B" boys are almost as bad as the "B" girls. (laughter and applause)

PRESIDENT NISBET: Dr. Anspach, do you want to defend yourself? (laughter)

Announcements.

SECRETARY CHASE: The committee on administration will meet in the conference room tomorrow, February 1, at 1:00 p.m. Walter DeVries, chairman.

The committee on judicial branch will meet in room B immediately after the session today. Robert Danhof, chairman.

The committee on rules and resolutions will meet in room 5 immediately after the session today.

The remaining committee meeting announcements are found on the composite calendar.

PRESIDENT NISBET: Mr. Brake.

MR. BRAKE: Mr. President, ladies and gentlemen of the convention, this is not rebuttal. The committee on finance and taxation will meet tomorrow morning at its usual time, 10:30; the business at hand will be taking of a photograph. I want to get this done before the committee disintegrates or is annihilated—(laughter) and would like every member of the committee present, please.

SECRETARY CHASE: We have the following requests for leaves of absence: Mr. McAllister requests to be excused from Monday's session; Dr. Anspach wishes to be excused from the sessions of Thursday and Friday, February 8 and 9. He is asking to be excused in order to keep an engagement to speak at the Arizona State University, where he has been asked to give a convocation address at the dedication of a new school of education.

PRESIDENT NISBET: Without objection, they will be excused.

It is usually not the practice to present guests, but we have a rather unusual situation today in that the school of government from the city of Detroit — there are 62 members, a nonpartisan group interested in studying government — is here today with their educational director, Mrs. Rucker. We are very happy to welcome you and we are sorry there was not room for you. They plan to attend one of the committee sessions. (applause)

The Chair recognizes Mr. Habermehl.

MR. HABERMEHL: Mr. President, I move we adjourn.

PRESIDENT NISBET: The question is on adjournment. Those in favor say aye; opposed, no.

We are adjourned until 2:00 o'clock tomorrow afternoon.

[Whereupon, at 2:15 o'clock p.m., the convention adjourned until 2:00 o'clock p.m., Thursday, February 1, 1962.]

SEVENTIETH DAY

Thursday, February 1, 1962, 2:00 o'clock p.m.

PROCEEDINGS

VICE PRESIDENT HUTCHINSON: The convention will come to order.

The invocation today will be delivered by the Reverend J. H. Johnson of the Greater Middle Baptist Church, Royal Oak township. Reverend Johnson.

REVEREND JOHNSON: Our Father in heaven, again in Thy presence we come to Thee to give thanks and give adoration to Thy blessed name for Thy goodness and for Thy kindness and for Thy mercy towards the sons of men. We thank Thee for this privilege even to be in this session, to have the opportunity even to offer a word of prayer in this, another convention. We pray Lord, as they come together to bring about a better condition of life, that Thou wilt instill into their hearts and minds the better things to do in life. We pray for this constitutional convention. We pray that Thou wouldst lift the heads and hearts of the many that now are thus engaged. Help us and bless us. These words we ask in Thy name. Amen.

VICE PRESIDENT HUTCHINSON: The roll call will be taken by the secretary. All those present will vote aye. Have you all voted? If so, the secretary will lock the machine and record the vote.

SECRETARY CHASE: Mr. President, a quorum of the convention is present.

Prior to today's session, the secretary received the following requests for leave:

Messrs. Allen, Bonisteel, Nisbet and Powell from today's session; and Mr. Greene, indefinitely, due to illness.

VICE PRESIDENT HUTCHINSON: Without objection, the several requests for excuse will be granted. I hear no objections; it is so ordered.

SECRETARY CHASE: Absent with leave: Messrs. Allen, Bonisteel, Greene, Nisbet, Powell and Thomson.

Absent without leave: None.

[During the proceedings, the following delegates entered the chamber and took their seats: Messrs. Bonisteel and Powell.]

VICE PRESIDENT HUTCHINSON: Reports of standing committees.

SECRETARY CHASE: The committee on rules and resolutions, by Mr. Van Dusen, chairman, reports back to the convention **Resolution 68,** A resolution establishing the time of daily sessions. The committee reports the resolution with an amendment, recommending that the amendment be agreed to and the resolution as thus amended be adopted.

The committee amendment is as follows:

1. Amend the resolving clause, line 1, after "February" by striking out "1" and inserting "2".

R. C. Van Dusen, chairman.

Following is the language as it would read:

Resolved, that beginning February 1 the convention shall meet at 2:00 o'clock p.m. on Monday, and at 9:00 o'clock a.m. on Tuesday, Wednesday, Thursday and Friday, such schedule to continue until changed by the convention.

VICE PRESIDENT HUTCHINSON: The delegate from Oakland, Mr. Van Dusen.

MR. VAN DUSEN: Mr. President and members of the convention, the amendment, of course, is self explanatory. Today being February 1, we obviously cannot begin on February 1 holding sessions at 9:00 o'clock in the morning. The committee therefore has suggested we begin this tomorrow.

One general comment on the matter of scheduling. I think the resolution itself is perfectly self explanatory, and now that the committee work is over, and we have a very heavy general orders calendar to work through, it is the opinion of the rules committee that we should begin meeting on Monday at 2:00 o'clock in the afternoon instead of 8:00, and on Tuesday through Friday at 9:00 o'clock in the morning. This would permit 2 sessions a day on each of these days; on Monday at 2:00 p.m. and 8:00 p.m. and the balance of the week at 9:00 o'clock in the morning and 2:00 o'clock in the afternoon.

Now, a couple of comments about the first few days of this schedule. First, I think it is recognized that many of the delegates perhaps made plans for tomorrow afternoon which would make it difficult for them to attend the session then, and I think in all likelihood there would be no session tomorrow afternoon. We would simply meet at 9:00 o'clock tomorrow morning and run through noon and then adjourn. On Monday afternoon, if any of you have made commitments which would necessitate your being absent, and you are interested in particular matters on the calendar, I would urge you to contact the committee chairman involved in that particular report, and I am sure there would be no difficulty in having it passed temporarily so it wouldn't be reached until evening. The committee gave careful attention to these times. They accommodate as nearly as possible the needs of our work schedule and all of the delegates, and I would urge, first, the adoption of the amendment, and second, the adoption of the resolution.

VICE PRESIDENT HUTCHINSON: The question is upon the amendment recommended by the committee to the resolution. The delegate from Washtenaw, Mr. Pollock.

MR. POLLOCK: I would like to hear the amendment to the resolution.

VICE PRESIDENT HUTCHINSON: The amendment to the resolution offered by the committee is to strike out "beginning February 1" and insert in lieu thereof "beginning February 2."

All those in favor of the committee amendment say aye. Those opposed, say no.

The amendment is adopted.

Dr. Pollock.

MR. POLLOCK: I do not have the resolution in front of me, but I should like to move an amendment to the resolution, to strike 9:00 o'clock and substitute 10:00, and in the process of doing so to tell a story of one of our famous professors at Ann Arbor who used to say that he didn't mind 8:00 o'clock classes because you could stay up until then, but it was 9:00 o'clock classes that bothered him. (laughter)

I think we will get more done, Mr. President, by meeting at 10:00 o'clock to 12:00 and 2:00 until the late afternoon than by starting at 9:00, and I make this motion.

VICE PRESIDENT HUTCHINSON: The delegate from Washtenaw, Mr. Pollock, offers to amend the resolution as follows:

1. Amend the resolving clause, line 2, after "and at" by striking out "9" and inserting "10".

This would commence daily sessions on Tuesday, Wednesday, Thursday and Friday at 10:00 o'clock in the forenoon rather than 9:00 o'clock. On that amendment, Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, this is the first I had realized that Dr. Pollock was a 10:00 o'clock scholar. (laughter) I would mention that the committee gave this careful consideration and in our opinion it was a more satisfactory proposal to meet at 9:00 so that everybody gets here and gets down to work and then if there appears to be need for some free time for meetings, or for other matters later in the day, a recess earlier in the morning than noon would accomplish that purpose. For that reason I would oppose Dr. Pollock's amendment.

VICE PRESIDENT HUTCHINSON: On the amendment offered by Dr. Pollock, Mr. Nord.

MR. NORD: Mr. President, I would speak in support of the amendment offered by Dr. Pollock, and I would like to

point out that as to this particular committee report — I have no knowledge whether it was unanimous or not for this reason: even though I am a member of the committee and I spoke to Mr. Van Dusen — he knew that I was opposed to some parts of it — there was nothing I could do about that or nothing he could do about that because I had to be in a different committee at the exact same time, namely, the legislative organization committee. This rules committee met at an unusual time, and I requested that it meet at that time, but then the legislative organization committee decided that it would meet at that time too and as a result I appeared at the legislative organization committee and when that committee finished its deliberations I asked to be excused—they were not finished, only partly finished—to attend the rules committee meeting, and found out that had been terminated.

The reason I mentioned this is not to bring up a sad story of this particular case, but simply to point out that this is the very kind of thing that is causing trouble in the convention, and that the schedule that we are about to adopt is going to continue that kind of trouble. The kind of trouble I mean is this: you must be in at least 2 places at the same time. Now, I find that I can be in approximately 1½ places at the same time but no more. I just can't quite make it. I can't be in 2 places at the same time.

Now, I would like to point this out, Mr. President: that what we are doing now is basically to take into account that we would not be in committee meetings and therefore we can be in plenary session. But I have spoken to a great many people on this point, and consulted with my own physique and mental condition too, and I found out there is some limit to how long you can debate any subject. I might add that I don't intend to find out what that limit is right this minute. But there is a limit. Many people have told me that after 2 hours they cannot understand what is going on. I noticed several times Dr. Hannah took the floor and basically said so; said that people were leaving and people couldn't tell what was happening and I believe he said in his experience 2 hours was the limit. I have taught many classes that were longer than 2 hours, 3 hours, for example, and I believe Dr. Hannah's observation on that point is exactly correct: 2 hours is the limit.

Now, another point is this: if we start at 9:00 o'clock—and I presume we would end as late as we can stay awake, 5:00 or 6:00 o'clock — there will be no time for anything whatever except the deliberation.

Now, I ask the convention to consider this question: if we do nothing but talk, that is, nothing but debate, how good will the debate be? We will have to do all our thinking on the floor. We will have no time for preparation. We will have time to prepare only while we are sitting here listening to somebody else. The debate will not be good. It will be repetitious. It will not be well organized. It will be like going into a lawsuit and being handed the brief and the information, affidavits and testimony for the first time when you walk into court. You cannot do a quick and efficient job that way. This is particularly the case right now; when the debate will be organized. Right now the majority reports are being produced, minority reports will have to be produced in response thereto, and a certain amount of time and some place is required for the preparation of those reports. A certain amount of time and some place is required further for the preparation of the debate.

Now, in my opinion, I believe Dr. Pollock is exactly correct in stating that we ought to allow some time in the morning to do something besides come in here and pop off the first thing that comes into our minds. We should have an hour, an hour and a half to do some thinking, some writing, some research. I think that the fact that this particular resolution has come up in the way it has come up — the resolution itself came up in a rush. The people could not even be there to express their views in the committee. The same thing is going to happen here. Therefore, I believe Dr. Pollock is correct and he ought to be supported.

VICE PRESIDENT HUTCHINSON: The delegate from Wayne, Mr. Mahinske.

MR. MAHINSKE: I would like to add to the remarks that we have heard. I am in support of the amendment for 10:00 o'clock for the simple reason that our daily journal for the prior day, which we rely on, is not delivered until 9:00 o'clock in the morning at the earliest, and if we start to convene at 9:00 o'clock in the morning we won't have the benefit of the information in the daily journal pertaining to the sessions of the day previous. For that reason alone — not alone, but in addition to other reasons — I would support Dr. Pollock's amendment.

VICE PRESIDENT HUTCHINSON: The delegate from Allegan, Mr. Farnsworth.

MR. FARNSWORTH: Mr. President and delegates, I would like to support the committee's position in this matter. Nine o'clock is not an unreasonable hour. Reference was made to the fact that we could not be in 2 places at one time. With that I agree. I would suggest that we be here on the job, the place that we are being paid to be, and let's get down to work, ladies and gentlemen, and get going. Nine o'clock is not unreasonable at all. I stay at the same hotel that Dr. Pollock does, and if he needs me to get him up, I would be glad to accommodate him. (laughter)

VICE PRESIDENT HUTCHINSON: The delegate from Bay, Mr. Higgs.

MR. HIGGS: I would like to support Dr. Pollock. I think we would save more time if we have available to us the extra hour in the morning. It is my recollection that the chairman of the rules committee advised us that by doing our homework and having our amendments prepared in advance of the session, and preparing for the debate, we could shorten the time, and I agree with him. But we need this hour in the morning from 9:00 to 10:00. I don't think that the secretaries—we need the secretarial time to prepare these amendments in writing, to consult with the committee chairmen, and I think we will have a more meaningful and well thought out debate than some that we have had in the past. For that reason I support Dr. Pollock.

VICE PRESIDENT HUTCHINSON: The delegate from Wayne, Mr. Bledsoe.

MR. BLEDSOE: Mr. President, my fellow delegates, time is important. Nine o'clock isn't too late and it isn't too early. It all depends upon what you are going to do. Now, sometimes on the farm 9:00 o'clock is too early because the hay is wet and you can't work it. Five o'clock is too late to cut it because it gets tough. (laughter) We've got to have time here in this deliberation. It depends on what you are doing. This is a very important job here. There must be time to prepare your rebuttal arguments that take place here on the floor. Now, it just depends on what you want to do. If we want to just steamroll this constitution down the people of Michigan's throats, why, we can come here at 6:00 o'clock. That is time to milk. (laughter) Just ram this thing down the people's throats.

In other words, it all depends on just what you want to do. I would like to go along with Dr. Pollock because if you come here in the morning—I know these committee people; just look at the coat rack at 8:30 and 9:00 o'clock in the morning—people are here working, trying to get their committee work done. Now, give us some chance. I think we all need it; those of us who really came here to do a job that we are expected to do.

VICE PRESIDENT HUTCHINSON: Does the delegate from Oakland, Mr. Van Dusen, now desire to speak a second time? The chairman of the committee is entitled to speak twice.

MR. VAN DUSEN: Mr. President, I will defer to those who now seek recognition until they have completed their remarks.

VICE PRESIDENT HUTCHINSON: The delegate from Wayne, Mrs. Hatcher.

MRS. HATCHER: Thank you, Mr. President. Mr. Bledsoe just appealed to the farmers and those who believe in the early hour. At this time I would like to appeal to the city folk and those who are also interested in efficiency. I believe and agree with Dr. Pollock and I am very pleased that he brought up the subject of starting at 10:00 rather

than 9:00. I believe that the hour before 10:00, between 9:00 and 10:00, or 8:00 and 10:00—2 hours between 8:00 and 10:00—would certainly offer an opportunity to make appointments and to do other things rather than come to the convention perhaps unprepared. So, for that reason, I rise in support of the 10:00 o'clock starting because I believe people are far more efficient at 10:00 o'clock in the morning than they are at 9:00.

VICE PRESIDENT HUTCHINSON: The delegate from Gratiot, Mr. Hoxie.

MR. HOXIE: Mr. President and fellow delegates, I am not going to be repetitious. I think everything has been said on this matter that can be said. I think the arguments in favor of the Pollock amendment far outweigh any justification for us neglecting our responsibility other than voting on matters in this convention. I rise to support the Pollock amendment.

VICE PRESIDENT HUTCHINSON: The delegate from St. Clair, Mr. Tweedie.

MR. TWEEDIE: Could we perhaps reach a compromise by agreeing upon 9:30 in the morning? (laughter)

VICE PRESIDENT HUTCHINSON: The question is upon the amendment offered by Dr. Pollock, that the time of meeting be 10:00 a.m. The delegate from Quincy, Mr. Knirk.

MR. KNIRK: Mr. President, I think as I came in here today I noticed the sun was shining very bright, and I got to thinking right away, gee, it won't be long until corn planting time. We had better get this thing moving. I think that if we are going to adhere to Dr. Pollock's suggestion of 10:00 o'clock in the morning, I would like to move an amendment to the amendment that we start at 8:00 o'clock in the evening and put in 2 hours. I hate to think of going beyond the thirty-first day of March.

VICE PRESIDENT HUTCHINSON: The Chair would have to rule that amendment not in order because that amendment couldn't be applied germanely to the morning starting time.

MR. KNIRK: I just certainly hope that we don't lose sight of the fact that we have a lot of work to do between now and March 31.

VICE PRESIDENT HUTCHINSON: The delegate from the seventeeth district, Mr. Martin.

MR. MARTIN: Mr. President, I think the committee needs some support and I think the delegates ought to give it to them. I don't think Mr. Van Dusen ought to have to carry the whole weight of this committee's recommendation. I think we ought to get here at 9:00 o'clock and get going and then if we need time to deliberate—we don't have to deliberate solidly from 9:00 to 5:00 in the afternoon—we can recess from time to time, or as needed, for meetings or anything else.

VICE PRESIDENT HUTCHINSON: The delegate from Oakland, Mr. Van Dusen.

MR. VAN DUSEN: At this point I would remind the delegates that this convention is now on schedule. It is not on schedule without some very considerably hard work and without the benefit of many meetings that began at 8:30 in the morning, and some at 8:00 o'clock in the morning.

The result of the amendment currently before you would be to deprive this convention of 4 hours a week of time available for general session. I think that the convention, if it is to allow ample time for debate, owes it to itself to reserve those hours available for our use. I think 9:00 o'clock is none too early to get at the work which is before us if we are to stay on schedule. I would oppose the amendment, and ask for a record roll call.

VICE PRESIDENT HUTCHINSON: The question is upon the amendment of Dr. Pollock, upon which Mr. Van Dusen demands the yeas and nays. Is the demand for the yeas and nays supported? All those in favor, say aye. The demand is supported.

The question is upon the amendment of Dr. Pollock. The gentleman from Wayne, Mr. Iverson.

MR. IVERSON: Mr. President, I urge you—

A DELEGATE: I have already voted, Mr. President.

VICE PRESIDENT HUTCHINSON: The Chair has never put the motion. I simply stated it.

The Chair would like to remind the delegates that unless they are anxious to show everybody in advance how they propose to vote on things, that they need not vote until the Chair says "As many as are in favor will vote aye."

Mr. Iverson.

MR. IVERSON: Mr. President and fellow delegates, whether the delegates, many of them, realize or not, an awful lot of thought has been put into attempting to keep the operation of this convention on an even keel, and, again, if we adopt this amendment which is proposed by Dr. Pollock, it will, as Mr. Van Dusen has said, throw us off schedule completely. I hope that you will vote against the amendment of Dr. Pollock.

VICE PRESIDENT HUTCHINSON: The delegate from Oakland, Mr. Kuhn.

MR. KUHN: Mr. President, I have a suggestion in regard to the remark you made just a moment ago. I worry about everybody looking at those lights too and I don't ever want anybody to think that I am looking at any lights. I would hope that we could figure out a way that these lights do not go on. We can read where it says yea and nay and turn the lights on after you lock the machine, and then we will get an honest vote. (laughter and applause)

VICE PRESIDENT HUTCHINSON: The delegate from Menominee, Mr. Lundgren.

MR. LUNDGREN: I would ask through the Chair to our chairman, Mr. Van Dusen—this thing seems to be getting quite controversial—Mr. Van Dusen, have you any limitation on the evening hours if we are going to start at 9:00 o'clock in the morning? That wasn't brought up in the committee.

MR. VAN DUSEN: Mr. President, if I may respond to Mr. Lundgren's question, one of the reasons for beginning at 9:00 o'clock in the morning was the hope of the committee on rules that we would not have to have evening sessions. If we begin late, we may have to work late. That's all there is to it.

VICE PRESIDENT HUTCHINSON: The question is upon the amendment offered by Dr. Pollock that the morning starting hour on Tuesday, Wednesday, Thursday and Friday be at 10:00 a.m. As many as are in favor will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and take the vote.

The roll was called and the delegates voted as follows:

Yeas—70

Austin	Hannah, J. A.	Murphy
Baginski	Hart, Miss	Nord
Balcer	Hatcher, Mrs.	Norris
Barthwell	Heideman	Ostrow
Beaman	Higgs	Page
Binkowski	Hodges	Pellow
Blandford	Hood	Perlich
Bledsoe	Howes	Perras
Brown, T. S.	Hoxie	Pollock
Buback	Hubbs	Richards, J. B.
Butler, Mrs.	Kelsey	Sablich
Conklin, Mrs.	King	Shaffer
Dade	Krolikowski	Snyder
Dehnke	Kuhn	Stamm
DeVries	Lawrence	Sterrett
Doty, Donald	Leibrand	Stevens
Douglas	Lesinski	Stopczynski
Elliott, Mrs. Daisy	Liberato	Suzore
Faxon	Madar	Walker
Follo	Mahinske	Wilkowski
Ford	Marshall	Wood
Garvin	McAllister	Yeager
Gust	Millard	Young
Habermehl		

Nays—64

Andrus, Miss	Gover	Rajkovich
Anspach	Hanna, W. F.	Richards, L. W.
Batchelor	Haskill	Romney
Bentley	Hatch	Rood
Boothby	Hutchinson	Rush
Brake	Iverson	Seyferth
Brown, G. E.	Judd, Mrs.	Shackleton

Cudlip	Karn	Shanahan
Cushman, Mrs.	Kirk, S.	Sharpe
Danhof	Knirk, B.	Sleder
Davis	Koeze, Mrs.	Spitler
Dell	Leppien	Stafseth
Doty, Dean	Martin	Staiger
Durst	McCauley	Tubbs
Elliott, A. G.	McGowan, Miss	Turner
Erickson	McLogan	Tweedie
Everett	Mosier	Upton
Farnsworth	Plank	Van Dusen
Figy	Prettie	Wanger
Finch	Pugsley	White
Gadola	Radka	Woolfenden
Goebel		

SECRETARY CHASE: On the amendment of Dr. Pollock, the yeas are 70, the nays are 64.

VICE PRESIDENT HUTCHINSON: The amendment is adopted.

The question now is upon the resolution as amended. Mr. Elliott of Oakland.

MR. A. G. ELLIOTT: I would like to offer an amendment to strike 10:00 o'clock and insert 9:30 a.m.

VICE PRESIDENT HUTCHINSON: The delegate from Oakland, Mr. Elliott, moves to amend the resolution as follows:

1. Amend the resolving clause, line 2, after "and at" by striking out "10" and inserting "9:30".

This would establish a meeting hour of 9:30 in the morning. The question is upon that amendment. Mr. Elliott.

MR. A. G. ELLIOTT: Mr. President, I would just like to make this comment: this is not done in any spirit of facetiousness, Mr. Marshall, but because I am very concerned about the fact that we do have a job to do. I can recognize that the convention as a whole decided that the 9:00 o'clock time was apparently not wise. They had no other choice than to vote for the amendment of 10:00 o'clock. I think that the extra half hour in the morning would give us an opportunity to adjourn soon enough before lunch to get some of the work out of the way that will be required to be done during the daytime hours, so that our staff of girls that are downstairs will not be expected to be here every evening to meet the requirements of the delegates. We have dictation, we have meetings—(laughter) I was thinking primarily—(laughter) I would like to suggest that this half hour earlier time in the morning will give an opportunity for the lunch hour to be long enough so that there can be the meetings that will be required, and that the dictation and other items of business can be accomplished.

VICE PRESIDENT HUTCHINSON: The gentleman from Ingham, Mr. Wanger.

MR. WANGER: I support Mr. Elliott's amendment for 9:30. Nine-thirty will be ample time for the current journal to arrive and be placed on our desks. It will also give us at least 2 additional session hours each week.

VICE PRESIDENT HUTCHINSON: The question is upon the amendment offered by the gentleman from Oakland, Mr. Elliott, that the starting time on Tuesdays, Wednesdays, Thursdays and Fridays be at 9:30 in the forenoon. Mr. Wilkowski.

MR. WILKOWSKI: I demand the yeas and nays.

VICE PRESIDENT HUTCHINSON: A record roll call vote is demanded by Mr. Wilkowski. Is the demand supported? The demand is supported. All those in favor of the 9:30 starting hour will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and record the vote.

The roll was called and the delegates voted as follows:

Yeas—71

Andrus, Miss	Goebel	Rajkovich
Anspach	Gover	Richards, J. B.
Batchelor	Gust	Richards, L. W.
Beaman	Hanna, W. F.	Romney
Bentley	Haskill	Rood
Bonisteel	Hatch	Rush
Boothby	Hutchinson	Seyferth
Brake	Iverson	Shackleton
Brown, G. E.	Judd, Mrs.	Shaffer
Cudlip	Karn	Shanahan
Cushman, Mrs.	Kirk, S.	Sharpe
Danhof	Knirk, B.	Sleder
Davis	Koeze, Mrs.	Spitler
Dehnke	Krolikowski	Stafseth
Dell	Leppien	Staiger
Donnelly, Miss	Martin	Tubbs
Doty, Dean	McGowan, Miss	Turner
Durst	McLogan	Tweedie
Elliott, A. G.	Mosier	Upton
Erickson	Page	Van Dusen
Everett	Powell	Wanger
Farnsworth	Prettie	White
Finch	Pugsley	Woolfenden
Gadola	Radka	

Nays—68

Austin	Hannah, J. A.	Millard
Baginski	Hart, Miss	Murphy
Balcer	Hatcher, Mrs.	Nord
Barthwell	Heideman	Norris
Binkowski	Higgs	Ostrow
Blandford	Hodges	Pellow
Bledsoe	Hood	Perlich
Brown, T. S.	Howes	Perras
Buback	Hoxie	Plank
Butler, Mrs.	Hubbs	Pollock
Conklin, Mrs.	Kelsey	Sablich
Dade	King	Snyder
DeVries	Kuhn	Stamm
Doty, Donald	Lawrence	Sterrett
Douglas	Leibrand	Stevens
Downs	Lesinski	Stopczynski
Elliott, Mrs. Daisy	Liberato	Suzore
Faxon	Lundgren	Walker
Figy	Madar	Wilkowski
Follo	Mahinske	Wood
Ford	Marshall	Yeager
Garvin	McAllister	Young
Habermehl	McCauley	

The secretary will announce the vote.

SECRETARY CHASE: On the amendment to set the hour at 9:30, the yeas are 71, the nays are 68.

VICE PRESIDENT HUTCHINSON: The amendment is adopted. (applause)

The question now is upon the resolution as amended. The gentleman from Wayne, Mr. Nord.

MR. NORD: Mr. President, it occurred to me that possibly there are some certain other hours that also have not been considered, such as 10:15 and 9:45, and so on. However, I will not move those.

I have in mind another amendment. The amendment I would like to offer at this time relates to the Monday afternoon or evening session. As we now have the resolution, it states, I believe, that the session will begin Monday at 2:00 p.m. Now, I believe that there are many delegates who told me that they want to have some time on Monday, and some time on Friday — if they are not going to have any time during the week, Tuesday, Wednesday and Thursday — they want some time at the end of the week just the way we had it in the beginning of the convention.

Now I would point out, as to Monday and Friday we never do have any committee meetings, or at least no regular, scheduled committee meetings. Therefore, if all we are doing is replacing the committee meetings with general sessions, there is no reason to change the Monday time to afternoon, nor is there any reason to change the Friday time to the afternoon. The Friday time is not before us. The Monday time, however, is. There is a change suggested by the committee as to 2:00 p.m.

Now, it seems to me that now that we have been deprived, basically, of any time during Tuesday, Wednesday, and Thursday to do anything except meet here in session, and in caucus during lunchtime — presumably, if there ever will be any — and in caucus in the evening, we need some time at the beginning of the week, sometime at the end of the week to see each other, to review the work that is before us

and the work that we have completed, the work we need to do the next week, and to see our constituents.

There is one other thing I think we could do if we had some time on Monday and some time on Friday, or at least on one day — so I would say Monday — and that is we could see each other. Now we will not be in committee meetings any more. We will be in session and in session you can only see approximately 4 people; the 4 people that are around you. If we are going to get any bipartisan conclaves set up, which seems to me to be indispensable in order to solve the problems before us, we have got to have some time for people wearing Republican buttons and people wearing Democrat buttons to see each other, to talk to each other, and try to iron out problems which the committee has not ironed out.

Therefore, while we won't have committee meetings, we do have to have something. We have to have something other than just sessions. We have to have some time to try to work out solutions which the committee didn't work out. I therefore move, Mr. President, that the Monday session begin at 8:00 p.m. instead of 2:00 p.m.

VICE PRESIDENT HUTCHINSON: The gentleman from Wayne, Mr. Nord, offers the following amendment:

1. Amend the resolving clause, line 2, by striking out "2" and inserting "8".

This would provide that the time for meeting on Monday be reestablished at 8:00 p.m. On the amendment so offered, the gentleman from Oakland, Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, from time to time many of the delegates have complained about the burden of night work to which committee work has from time to time subjected them during the past few months. One of the reasons for the proposal of the committee calling for a session at 2:00 in the afternoon on Monday is to enable us to complete more of our work during the daytime hours to avoid, if at all possible, night sessions during the balance of the week. Here again the convention, which is now on schedule, is being asked to sacrifice 3 hours of time available for work in general session. If we give away this time hour by hour, the only result can be to put the convention behind schedule; to result in a rush as various deadlines approach. The purpose of this resolution is to give us ample and adequate time to complete our deliberations in an orderly fashion. I strongly oppose the amendment offered by Dr. Nord.

VICE PRESIDENT HUTCHINSON: On the amendment offered by Dr. Nord, the gentleman from Wayne, Mr. Hodges.

MR. HODGES: Mr. President, I believe that the committee work of the last week trying to meet this deadline is the best reason in support of this amendment. In trying to meet this time schedule, I think that many of us feel that the work that has been done in the committee has been inconclusive and poorly done, and it is going to have to necessitate much more discussion on the floor because in many instances people are voting on things merely to get them out to meet a deadline, and not because they believe in them. If we are to transfer this, do the same thing on the floor, we will come up with a constitution which is going to be as indefensible as many of the committee reports. For that reason, I support the amendment.

VICE PRESIDENT HUTCHINSON: The gentleman from Wayne, Mr. Ford.

MR. FORD: Mr. President, I have to agree with Mr. Van Dusen that we seem to be on schedule, but I am one of the delegates that is a little bit concerned about what we have sacrificed in order to make this schedule. I think that during the last week we have seen months of very hard work on the part of a great many people in this constitutional convention resolved by quick decisions in the committee. That came about as the result of a desire to get something done on time.

It appears to me that although we are on schedule, we are all a little bit like the engineer of the old steam locomotive days, who was proud of the fact that he had never left the station behind schedule, only to discover, to his embarrassment, one day when he got 10 miles out of town he had left without the rest of the train. In all deference to Mr. Farnsworth, he recalls to me what was said about the incident when a very famous admiral, engaged in battle on Lake Erie, was asked by the British commander if he would surrender, and he said, "Surrender, hell. We have not yet begun to fight," and one of the poor sailors down in the scuppers, who had been swabbing the overheated cannon, looked up wearily and said, "There's always some guy that doesn't get the word." (laughter)

I submit that we have been working and running at full pace, but we have reached the stage where our efficiency is very seriously impaired. I don't think that we want to hastily jump into an acceleration here that is going to further impair the efficiency. I think that we are at the very critical stage of this constitution now, and if we want to make anything come out of the hard work that has been put into it, both before the convention started and since we have been here, I think that we ought to slow down a little bit so the rest of the train catches up, and sit down and really work this thing out; and that giving us a little time to get together, as has been suggested by Dr. Nord, would go a long way toward coming to some real understanding without a lot of unnecessary battling on the floor.

VICE PRESIDENT HUTCHINSON: The gentleman from Wayne, Mr. Sterrett.

MR. STERRETT: Mr. President, so far I have heard a lot about trains and time tables, but I have yet to hear a whistle. I would like to oppose the Nord amendment for the particular reason that Mr. Hodges mentioned. We will have very much discussion on the floor, and by cutting out this time as proposed in the amendment, I would like to thoroughly oppose it.

VICE PRESIDENT HUTCHINSON: The Chair recognizes the gentleman from Jackson, Mr. Karn.

MR. KARN: Mr. President, I also want to oppose the amendment. There is much work to be done. I think we can do it more efficiently in the daytime than we can at night sessions, and unless we settle down to work we will have night sessions. I oppose the amendment.

VICE PRESIDENT HUTCHINSON: The gentleman from Oakland, Mr. Van Dusen.

MR. VAN DUSEN: I rise simply to ask for a record roll call, Mr. President.

VICE PRESIDENT HUTCHINSON: Mr. Van Dusen demands the yeas and nays on the Nord amendment. Is the demand supported? A sufficient number is up. Mr. Snyder, do you desire recognition on the amendment?

MR. SNYDER: Just a question of Mr. Van Dusen. Will this mean both an afternoon and an evening session on Monday?

MR. VAN DUSEN: Yes.

VICE PRESIDENT HUTCHINSON: The gentleman from Ionia, Mr. Powell.

MR. POWELL: Mr. President and fellow delegates, that answers my question. There seems to have been an inference on the part of some of the delegates in their remarks that this afternoon session would replace the evening session, and it was not so understood by me, and I just thought we should know what we are doing and what the picture would be and what the alternatives are before we act. It is now my understanding, from what has been said, that it is the thought to meet both in the afternoon and in the evening, and, if so, I am favorable to that program.

VICE PRESIDENT HUTCHINSON: The lady from Wayne, Mrs. Conklin.

MRS. CONKLIN: May I ask Mr. Van Dusen a question? Do you intend to have an adjournment at 5:00 o'clock set? If we meet at 2:00, will we adjourn at a given hour before we return at 8:00?

VICE PRESIDENT HUTCHINSON: Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, Mrs. Conklin, the convention would presumably recess for an appropriate period for dinner. I would imagine that the exact time of the recess would depend upon the stage of the debate, rather than having a fixed time in which the debate would terminate in mid sentence.

VICE PRESIDENT HUTCHINSON: The question is upon the amendment offered by Mr. Nord that the time of the meeting on Monday be at 8:00 o'clock p.m. A record roll call has been demanded. Mr. Austin.

MR. AUSTIN: At the risk of some embarrassment, I think that perhaps I should express some concern for the delegates. Now, we have worked very hard in committees to maintain the schedule that was set for us. Some of us are serving at this convention at a material economic disadvantage. I think that it is to the advantage of the people of Michigan that we do have a good cross section of persons representing them at this convention. I know that there are some delegates who are going to return to their normal pursuits when this convention is over. There are others who will probably become full time politicians. For those, I am sure there is no disadvantage to continuing an accelerated schedule. But for those who do have the responsibility of returning to normal pursuits, there is some necessity for maintaining contact; contact not only with those enterprises that are deteriorating—and I would like to remind those of my resolution of the other day, the possible need for retraining of some of us to replace the work that we are letting deteriorate while we are serving here—there is a very definite need to maintain contact not only with our businesses and professions, but also with our constituents. As we go into debate, it is going to be necessary to consult with our constituents as we arrive at conclusions. I am afraid that if we do maintain this accelerated schedule, there will be less opportunity for maintaining contact with our constituents and with some of our responsibilities that we will have to return to when this is over.

Now, if it should develop as the deliberations progress that we need to accelerate our efforts, we could just as easily do that on the days we are here full time: Mondays, Tuesdays, Wednesdays, Thursdays, and possibly even Fridays. So, I am certainly going to vote for the Nord amendment, and I sincerely hope that those of you who have the same concern that I have will do likewise.

VICE PRESIDENT HUTCHINSON: The gentleman from Oakland, Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, responding to Mr. Austin's comment, I would say that the effort to complete this convention on schedule is designed to permit those of us who serve here at an economic disadvantage to return to the full time practice of our professions at the earliest possible moment. I therefore, for the precise reason Mr. Austin gave, oppose the Nord amendment, and urge a no vote.

VICE PRESIDENT HUTCHINSON: Mr. Lesinski.

MR. LESINSKI: Mr. President, I would like to ask a question. When will the committee on style and drafting meet?

VICE PRESIDENT HUTCHINSON: Does the chairman of the committee on style and drafting desire to answer the question?

MR. CUDLIP: Yes. Mr. President, the next meeting of the committee on style and drafting is next Wednesday, in the evening. The reason for this delay is because the problems this week prevented research and drafting from doing our work, and you know the rest.

VICE PRESIDENT HUTCHINSON: The question is upon the amendment offered by Mr. Nord, that the time of the meeting on Monday be at 8:00 o'clock p.m. A record roll call has been demanded and supported. All those in favor of meeting at 8:00 on Monday will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and record the vote.

The roll was called and the delegates voted as follows:

Yeas—57

Austin	Garvin	Murphy
Baginski	Hannah, J. A.	Nord
Balcer	Hatcher, Mrs.	Norris
Barthwell	Higgs	Ostrow
Binkowski	Hodges	Page
Blandford	Hood	Pellow
Bledsoe	Howes	Perlich
Brown, T. S.	Hoxie	Perras
Buback	Kelsey	Sablich
Dade	Kuhn	Sieder
Dehnke	Lawrence	Snyder
Dell	Leibrand	Spitler
Donnelly, Miss	Lesinski	Stopczynski
Douglas	Liberato	Suzore
Downs	Madar	Walker
Elliott, Mrs. Daisy	Mahinske	Wilkowski
Faxon	Marshall	Wood
Follo	McAllister	Yeager
Ford	McLogan	Young

Nays—79

Andrus, Miss	Gover	Pugsley
Anspach	Gust	Radka
Batchelor	Habermehl	Rajkovich
Beaman	Hanna, W. F.	Richards, J. B.
Bentley	Haskill	Richards, L. W.
Bonisteel	Hatch	Romney
Boothby	Hubbs	Rood
Brake	Hutchinson	Rush
Brown, G. E.	Iverson	Seyferth
Butler, Mrs.	Judd, Mrs.	Shackleton
Conklin, Mrs.	Karn	Shaffer
Cudlip	King	Shanahan
Cushman, Mrs.	Kirk, S.	Sharpe
Danhof	Knirk, B.	Stafseth
Davis	Koeze, Mrs.	Staiger
DeVries	Leppien	Stamm
Doty, Dean	Lundgren	Sterrett
Doty, Donald	Martin	Stevens
Durst	McCauley	Tubbs
Elliott, A. G.	McGowan, Miss	Turner
Erickson	Millard	Tweedle
Everett	Mosier	Upton
Farnsworth	Plank	Van Dusen
Figy	Pollock	Wanger
Finch	Powell	White
Gadola	Prettie	Woolfenden
Goebel		

SECRETARY CHASE: On the amendment to establish the time of the meeting on Monday at 8:00 o'clock p.m., the yeas are 57; the nays are 79.

VICE PRESIDENT HUTCHINSON: The amendment is not adopted.

The gentleman from Wayne, Mr. Madar.

MR. MADAR: Mr. President, at this time I would like to move an amendment to set the time at 6:00 o'clock Monday evening. This will give us an additional 2 hours to work, and I believe that what everybody wants to do is get in the time.

We won't do any more than get in about 2 hours in the afternoon, and all we are going to do is just do an awful lot of rushing to get here at 2:00, and then get out of here in time for dinner, then come back at 8:00 o'clock and work a couple more hours. If we get in here by 6:00, this does give 56 delegates in this convention the opportunity to carry on a law practice, because I know personally that the judges throughout this state are setting cases on Monday so that these attorneys can carry on their practice. I also know this, too: that there are people who are interested in their business and want a little time. Frankly, I will be honest with you and tell you I, too, would like to get in one day when we are not in here when I can compensate for some of the expense of being here, and I am losing money by being here. We can all do this to help each other, and we will get in that time that you want. So let's have some time and be honest with ourselves.

At this time I would like to move for a 6:00 o'clock starting time on Monday evening.

VICE PRESIDENT HUTCHINSON: Mr. Madar offers the following amendment:

1. Amend the resolving clause, line 2, by striking out "2" and inserting "6".

This would set the starting time on Monday evening at 6:00 p.m. On the amendment, Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, fellow delegates, I would simply point out what Mr. Madar is asking for is a very long

single sitting. That is something which is unproductive, generally. Two sittings of reasonable length will accomplish a great deal more. I oppose the amendment.

VICE PRESIDENT HUTCHINSON: Mr. Bledsoe.

MR. BLEDSOE: Mr. President, I happen to be one of those lawyers in these particular cases involved, in which I became engaged and had received retainers prior to my election here. Both of them are major felonies. One of them is a murder case, and one of them is in Marquette, the upper peninsula. I got 2 of the judges to accommodate me so that I could leave Friday and get there and get back here by Monday. That was done last summer. I would hate very much to absent myself for any reason from any session of this convention.

VICE PRESIDENT HUTCHINSON: The question is upon the amendment offered by Mr. Madar that the time of the meeting on Monday be set at 6:00 p.m. Mr. Van Dusen.

MR. VAN DUSEN: Record roll call, please.

VICE PRESIDENT HUTCHINSON: Upon which amendment Mr. Van Dusen demands the yeas and nays. Is the demand supported? All those in favor will rise. The demand is supported. All those in favor of Mr. Madar's amendment to start at 6:00 in the evening on Monday will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and record the vote. Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, I ask for the vote of the Chair, please.

VICE PRESIDENT HUTCHINSON: The Chair has voted. The Chair votes no.

The roll was called and the delegates voted as follows:

Yeas—72

Austin	Hatcher, Mrs.	Ostrow
Baginski	Heideman	Page
Balcer	Higgs	Pellow
Barthwell	Hodges	Perlich
Batchelor	Hood	Perras
Binkowski	Howes	Plank
Blandford	Hoxie	Radka
Bledsoe	Hubbs	Richards, L. W.
Brown, T. S.	Kelsey	Rush
Buback	King	Sablich
Dade	Kuhn	Sleder
Dehnke	Lawrence	Snyder
Donnelly, Miss	Leibrand	Spitler
Doty, Donald	Lesinski	Stafseth
Douglas	Liberato	Stamm
Downs	Madar	Stopczynski
Durst	Mahinske	Suzore
Elliott, Mrs. Daisy	Marshall	Tubbs
Faxon	McAllister	Tweedie
Follo	McCauley	Upton
Ford	McLogan	Walker
Garvin	Murphy	Wilkowski
Habermehl	Nord	Wood
Hart, Miss	Norris	Young

Nays—64

Andrus, Miss	Gadola	Powell
Anspach	Goebel	Prettie
Beaman	Gover	Pugsley
Bentley	Gust	Rajkovich
Bonisteel	Hanna, W. F.	Richards, J. B.
Boothby	Haskill	Romney
Brake	Hatch	Rood
Brown, G. E.	Hutchinson	Seyferth
Butler, Mrs.	Iverson	Shackleton
Conklin, Mrs.	Judd, Mrs.	Shaffer
Cudlip	Karn	Shanahan
Cushman, Mrs.	Kirk, S.	Sharpe
Danhof	Knirk, B.	Staiger
Davis	Koeze, Mrs.	Sterrett
Dell	Leppien	Stevens
DeVries	Lundgren	Turner
Doty, Dean	Martin	Van Dusen
Elliott, A. G.	McGowan, Miss	Wanger
Erickson	Millard	White
Everett	Mosier	Woolfenden
Farnsworth	Pollock	Yeager
Finch		

SECRETARY CHASE: On the amendment offered by Mr. Madar to set the starting time on Monday at 6:00 o'clock, the yeas are 72 and the nays are 64.

VICE PRESIDENT HUTCHINSON: The amendment is adopted.

Are there any further amendments to the body of the resolution?

Dr. Nord.

MR. NORD: I would like to offer a further amendment to the committee's resolution, and that is with regard to the length of the sessions. We now have provided that we will have sessions most of these days beginning at 9:30 in the morning and I know we understand they will terminate at some time or another. At least I believe we expect them to terminate, because otherwise we couldn't get started again at 9:30 the next morning. It would be the same session.

The question is when they will terminate. I think we should take into account the facts of life; that people require refueling from time to time, and possibly the converse as well. (laughter) I believe we ought to make some schedule which is as definite as can be without being rigid. I believe it is conducive to meeting with other people. We know we are going to have lunch. If we are going to have lunch, we could make use of that time to meet with people and discuss things if we know what time we are going to have lunch. We should be able to make appointments during the day.

I suggest we ought to provide two things: one, a definite time for lunch, which I would state should be between 12:00 and 2:00 p.m. each day where there is a morning session. There should be an adjournment for lunch, except to this extent: that the adjournment should begin at 12:00 p.m. or as near as may be in the discretion of the chairman of the convention or the committee of the whole, whichever is in session. That should begin at 12:00, or as near as may be, and should end at 2:00. At the sessions which are held in the afternoon, they should end at 5:00 or as near as may be in the discretion of the Chair, whichever it may be, in the convention or the committee of the whole, and that further, any session that lasts 2 hours, at the end of 2 hours there should be a 15 minute recess; again the exact time to be determined by the Chair, whatever it may be, the chairman of the session or of the committee of the whole.

To recapitulate, my amendments are as follows: "On each day on which we meet in the morning and afternoon sessions, it will be 12:00 to 2:00, adjournment as near as may be, and at the end of any 2 hour period there be a 15 minute recess, again, as near as may be.".

VICE PRESIDENT HUTCHINSON: The Chair would state to Mr. Nord that in order to permit the working in of his amendments in line with the body of the resolution, it is requested that he should submit those amendments in writing.

MR. NORD: Does the Chair have any opposition to having a vote on the thing while I prepare the writing? There is no point in waiting for me to sit down while I compose a document. If you wish to have a recess for 10 or 15 minutes — I don't think that is required. My understanding is as long as it is supplied in writing we could vote on it in the meantime. Am I correct or incorrect?

VICE PRESIDENT HUTCHINSON: Of course, the Chair is interested in being sure that the records of the proceedings accurately reflect the intent of the delegates. All I can say is that the Chair will not demand that the matter be placed in writing ahead of voting on it, unless some delegate here thinks he doesn't understand exactly what is intended. Is there opposition to consideration of these amendments before they are reduced to writing?

A DELEGATE: I object, Mr. President.

VICE PRESIDENT HUTCHINSON: Objection is heard.

MR. NORD: Mr. President, may I be permitted, as a point of personal privilege, to dictate to the secretary and, in that way, get it in writing? Is that permissible?

VICE PRESIDENT HUTCHINSON: Yes, you may dictate it that way.

MR. NORD: All right. It may take me quite a long

time because I am not much of a dictator, but I will attempt it. (laughter)

1. Amend the resolving clause, line 4, after "convention" by inserting a colon and "Provided however, That any session which lasts 2 hours shall be interrupted by a recess for 15 minutes, the beginning thereof to be determined at the discretion of the Chair and as near as may be to the end of said 2 hour period: Provided further, That on all days in which there should be both a morning and an afternoon session, there shall be an adjournment between the hours of 12:00 o'clock noon and 2:00 o'clock p.m., as nearly as may be, at the discretion of the Chair.".

VICE PRESIDENT HUTCHINSON: The question is upon the amendment offered by Dr. Nord. The gentleman from Oakland, Mr. Van Dusen.

MR. VAN DUSEN: I will not protract the debate, Mr. President. I will simply say I oppose it.

VICE PRESIDENT HUTCHINSON: The question is upon the amendment. All those in favor — Mr. Iverson.

MR. IVERSON: I demand the yeas and nays.

VICE PRESIDENT HUTCHINSON: Mr. Iverson demands a record roll call vote upon the amendment of Mr. Nord. Is the demand supported? The demand is supported. All those in favor of Mr. Nord's amendment will vote aye. Those opposed will vote no. The Chair votes no. Have you all voted? If so, the secretary will lock the machine and record the vote.

The roll was called and the delegates voted as follows:

Yeas—52

Austin	Gadola	McAllister
Baginski	Garvin	Murphy
Balcer	Hannah, J. A.	Nord
Barthwell	Hart, Miss	Norris
Binkowski	Hatcher, Mrs.	Ostrow
Bledsoe	Hodges	Pellow
Brown, T. S.	Hood	Perlich
Buback	Howes	Pollock
Butler, Mrs.	Hoxie	Sablich
Dade	Judd, Mrs.	Shackleton
Donnelly, Miss	Kelsey	Shaffer
Doty, Donald	Leibrand	Snyder
Douglas	Lesinski	Stopczynski
Downs	Liberato	Suzore
Elliott, Mrs. Daisy	Madar	Walker
Faxon	Mahinske	Yeager
Follo	Marshall	Young
Ford		

Nays—79

Andrus, Miss	Haskill	Pugsley
Anspach	Hatch	Radka
Batchelor	Heideman	Rajkovich
Beaman	Higgs	Richards, J. B.
Bentley	Hubbs	Richards, L. W.
Blandford	Hutchinson	Romney
Bonisteel	Iverson	Rood
Boothby	Karn	Rush
Brake	Kirk, S.	Seyferth
Brown, G. E.	Knirk, B.	Shanahan
Conklin, Mrs.	Koeze, Mrs.	Sharpe
Cudlip	Kuhn	Sieder
Cushman, Mrs.	Lawrence	Spitler
Danhof	Leppien	Stafseth
Davis	Lundgren	Staiger
Dehnke	Martin	Stamm
DeVries	McCauley	Sterrett
Doty, Dean	McGowan, Miss	Stevens
Durst	McLogan	Tubbs
Elliott, A. G.	Millard	Turner
Erickson	Mosier	Tweedie
Everett	Page	Upton
Farnsworth	Perras	Van Dusen
Finch	Plank	Wanger
Goebel	Powell	White
Gover	Prettie	Woolfenden
Gust		

SECRETARY CHASE: On the amendment by Dr. Nord, the yeas are 52, the nays are 79.

VICE PRESIDENT HUTCHINSON: The amendment is not adopted.

Are there any further amendments?

MR. KUHN: Parliamentary inquiry, Mr. President.

VICE PRESIDENT HUTCHINSON: Mr. Kuhn.

MR. KUHN: My parliamentary inquiry is this: under what authority did we set up the rules Monday night at 8:00 o'clock; Tuesday, Wednesday and Thursday, 2:00 p.m.; and Friday, 10:00 a.m.?

VICE PRESIDENT HUTCHINSON: The resolution of the convention so determined, Mr. Kuhn.

MR. KUHN: Is that controlled by the proposition that this type of a resolution would have to have a majority vote of those elected to this convention to change or not?

VICE PRESIDENT HUTCHINSON: The Chair understands it requires only a majority of those voting.

MR. KUHN: Thank you.

VICE PRESIDENT HUTCHINSON: Mr. Woolfenden.

MR. WOOLFENDEN: Mr. President, I wish to make an amendment and the secretary has it.

SECRETARY CHASE: Mr. Woolfenden offers the following amendment:

1. Amend the resolving clause, line 2, by striking out "6" and inserting "4".

VICE PRESIDENT HUTCHINSON: The question is upon the amendment offered by Mr. Woolfenden that the hour of meeting on Monday be 4:00 o'clock p.m. On the amendment, the Chair recognizes Mr. Woolfenden.

MR. WOOLFENDEN: Mr. President and fellow delegates, I believe that we delegates have a very sober responsibility in this convention, part of which is a responsibility to secure approval by the electors of the state of Michigan on the product of this convention.

In the debate so far an inference has been drawn, or an inference has been left by the speeches of some of the delegates, that the deadline of April 1 has been capriciously or arbitrarily arrived at. That is certainly not the fact. It is a self imposed deadline, imposed by the delegates themselves to meet a situation resulting from an opinion of the attorney general that if this constitution is to go on the ballot in November, we must complete our work by April 1. In order to complete our work, it is essential that we avail ourselves of every possible reasonable hour in which to do our work.

I am one of those 56 self employed professional men that Mr. Austin referred to. I feel myself that it is the responsibility of every one of us to get this job done, and I do not believe in a long session starting from 6:00 o'clock and lasting until midnight on Monday. I think that we should amend that to provide for an afternoon session on Monday and 4:00 o'clock seems to me to be a reasonable compromise. It will let every professional man in the state at least get in a few licks at his office before he comes here on Monday. I earnestly hope that you will support the amendment.

VICE PRESIDENT HUTCHINSON: On the amendment of Mr. Woolfenden, Mr. Madar.

MR. MADAR: Mr. President, I do believe that there isn't a delegate in this convention who believes that I ever just infer anything. (laughter) When I have anything to say, I usually say it and I speak out because I believe in everything that I do say, and I try to find out whether I am right or not before I get up to speak, and so I also try to figure out just what effect it will have on everyone else. I am not an old man, and I'm not retired, and I haven't a large business firm, nor have I a large law firm wherein I may give my assistants or some of my partners my work to do. Everything that I do I must do myself, and I pride myself on the fact that I do, and I am sure that at least 90 per cent of the delegates in this organization feel the same way. When I say 90 per cent, I am just stating that figure. It doesn't really mean anything because I feel that we all are proud of what we do.

If we met at 4:00 o'clock Monday afternoon we would have to recess for dinner. I know some of you will ask why. I figured that somebody would ask that question facetiously. I do believe, though, that we will take some time out to have dinner. So, right away we lose at least 1½ to 2 hours. So why come here at 4:00 o'clock? If we get here by 6:00, we

can go through from 6:00 o'clock until 10:00 or 11:00, with possibly a break of 10 or 15 minutes. We can accomplish the things that we wish to accomplish and I defy anyone, I defy anybody to say that we can't finish by the first of April if we want to finish by the first of April, and I can assure you that I do; because the sooner I get back to my desk at the Detroit health department, the better I am going to like it. But before I go back there I want to do everything I possibly can for the people of my district and for the people of this state, and to do this I don't believe that I ought to have anything else to worry me, and I don't believe I ought to go ahead and waste time or to rush things, but to do them properly. Ladies and gentlemen of this constitutional convention, I ask you to turn down the 4:00 o'clock amendment.

MR. HIGGS: Point of order, Mr. President.

VICE PRESIDENT HUTCHINSON: Will the gentleman state the point, Mr. Higgs.

MR. HIGGS: I question, and will ask for a ruling from the Chair, as to whether Mr. Woolfenden's motion is in order. We have voted on 2:00 o'clock and we have voted on 6:00 o'clock, and I would think it would require a motion to reconsider.

VICE PRESIDENT HUTCHINSON: It is the opinion of the Chair that the amendment is in order.

The gentleman from Ingham, Mr. Wanger.

MR. WANGER: I support Mr. Woolfenden's amendment. I think a lot of delegates may be under the impression, from the words, "accelerated schedule" that have been used, if we adopt more general session time, that we are going to have to work harder than we are now. I call to the delegates' attention the fact that our committee meetings which have been taking so much of our time are going to take little, if any, of our time during the future. I also think that it is inefficient for us to come here, to meet at 6:00 o'clock, as Mr. Madar suggests, for 5 hours, with only a 10 minute break, from 6:00 to 11:00. I don't think that can be done. I believe that the good of the state demands that we get this extra time in general session and that we get it efficiently, and I think that in that case the good of the state should be placed above the personal economic consideration of any delegate at this convention.

VICE PRESIDENT HUTCHINSON: The gentleman from the twenty-fifth district, Mr. Brake.

MR. BRAKE: Mr. President, ladies and gentlemen of the convention, I think every answer to every question that has been raised, every argument that has been given for time off is answered by a glance at either one of these clocks on the wall of this hall. There is a short month here. There are only a limited number of hours in which we can work each day. We have a lot to do and we have spent 73 minutes and are not yet in general orders. (applause)

VICE PRESIDENT HUTCHINSON: The gentleman from Ottawa, Mr. Stafseth.

MR. STAFSETH: Mr. President, I move the previous question.

VICE PRESIDENT HUTCHINSON: Is the demand for the previous question supported? The demand is supported. The question now is: Shall the main question now be put? All those in favor will say aye. All those opposed will say no.

The previous question is ordered. The question is upon the amendment of Mr. Woolfenden. Mr. Van Dusen.

MR. VAN DUSEN: I demand the yeas and nays.

VICE PRESIDENT HUTCHINSON: Is the demand for the yeas and nays supported? The demand is supported.

For what purpose does the gentleman from Wayne arise?

MR. NORD: Am I correct in recalling that a motion to limit debate would take precedence over the motion to move the previous question?

VICE PRESIDENT HUTCHINSON: It does.

MR. NORD: I move we limit debate for 15 minutes rather than terminate debate.

VICE PRESIDENT HUTCHINSON: The question is upon the motion of Mr. Nord that debate upon this amendment be limited to 15 additional minutes, which motion takes precedence. All those in favor of limiting debate say aye. Those opposed, say no.

The motion does not prevail. The previous question is ordered, and the yeas and nays have been ordered. As many as are in favor of Mr. Woolfenden's amendment that the time of meeting be at 4:00 o'clock on Monday afternoon will vote aye. Those opposed will vote no. The Chair votes aye. Has everyone voted? If so, the secretary will lock the machine and record the vote.

The roll was called and the delegates voted as follows:

Yeas—71

Andrus, Miss	Gust	Rajkovich
Anspach	Haskill	Richards, J. B.
Batchelor	Hatch	Romney
Beaman	Hoxie	Rood
Bentley	Hubbs	Rush
Bonisteel	Hutchinson	Seyferth
Boothby	Iverson	Shaffer
Brake	Judd, Mrs.	Shanahan
Butler, Mrs.	Karn	Sharpe
Conklin, Mrs.	Kirk, S.	Spitler
Cudlip	Knirk, B.	Stafseth
Cushman, Mrs.	Koeze, Mrs.	Staiger
Danhof	Lawrence	Stamm
Davis	Leppien	Sterrett
DeVries	Lundgren	Stevens
Doty, Dean	Martin	Tubbs
Elliott, A. G.	McGowan, Miss	Turner
Erickson	Millard	Upton
Everett	Mosier	Van Dusen
Farnsworth	Plank	Wanger
Finch	Pollock	White
Gadola	Powell	Woolfenden
Goebel	Prettie	Yeager
Gover	Radka	

Nays—63

Austin	Garvin	Murphy
Baginski	Hannah, J. A.	Nord
Balcer	Hart, Miss	Norris
Barthwell	Hatcher, Mrs.	Ostrow
Binkowski	Heideman	Page
Blandford	Higgs	Pellow
Bledsoe	Hodges	Perlich
Brown, G. E.	Hood	Perras
Brown, T. S.	Howes	Pugsley
Buback	Kelsey	Richards, L. W.
Dade	King	Sablich
Dehnke	Kuhn	Shackleton
Dell	Leibrand	Sieder
Donnelly, Miss	Lesinski	Snyder
Doty, Donald	Liberato	Stopczynski
Douglas	Madar	Suzore
Downs	Mahinske	Tweedie
Durst	Marshall	Walker
Elliott, Mrs. Daisy	McAllister	Wilkowski
Faxon	McCauley	Wood
Ford	McLogan	Young

For what purpose does the gentleman arise, Mr. Madar?

MR. MADAR: Just being up so that I will be ready whenever they turn this down. (laughter)

VICE PRESIDENT HUTCHINSON: The secretary will announce the vote.

SECRETARY CHASE: On the amendment offered by Mr. Woolfenden, the yeas are 71 and the nays are 63.

VICE PRESIDENT HUTCHINSON: The amendment is adopted.

The question is upon the adoption of the resolution as amended. Mr. Kuhn.

MR. KUHN: Mr. President, I am having a hard time trying to find out the real wishes of this convention. They voted down 8:00, passed 6:00 o'clock, now they passed 4:00 o'clock. So I think it would be in order to find out just what we mean. Therefore, I think we might as well try, say 5:30, (laughter) and I therefore offer the following amendment:

1. Amend the resolving clause, line 2, by striking out "4" and inserting "5:30".

VICE PRESIDENT HUTCHINSON: The Chair is of the opinion that the process of this convention—simply reaching out trying one time after another, is thoroughly dilatory. In the opinion of the Chair, the convention has made a determination upon this matter, and if you want to spend all afternoon quarrelling about this matter, it is up to the convention.

Mr. Bentley.

MR. BENTLEY: Mr. President, I move the previous question on the resolution.

VICE PRESIDENT HUTCHINSON: Mr. Bentley moves the previous question upon the resolution. Is the demand for the previous question supported? The demand is supported.

MR. HIGGS: Point of order, Mr. President.

VICE PRESIDENT HUTCHINSON: What is the point of order, Mr. Higgs?

MR. HIGGS: I understand there is a motion before the house offered by Delegate Kuhn.

VICE PRESIDENT HUTCHINSON: Do you insist upon your amendment, Mr. Kuhn?

MR. KUHN: Mr. President, I disagree with you wholeheartedly. If anyone is trying to be dilatory it is the 4:00 o'clock amendment. We turned down the 8:00 o'clock, and in all good conscience we accepted the 6:00 o'clock. Now you are saying we don't know what we mean when we say 6:00 o'clock; let's go to 4:00 o'clock. I am in agreement with Mr. Higgs. The 4:00 o'clock should have been ruled out of order. I therefore think we are in order, and I think we should settle this.

VICE PRESIDENT HUTCHINSON: Upon this matter, however, Mr. Bentley has moved the previous question.

MR. BENTLEY: And all amendments thereto.

VICE PRESIDENT HUTCHINSON: The Chair has not recognized the amendment as yet.

Mr. Faxon, for what purpose does the gentleman arise?

MR. FAXON: Point of information, Mr. President. Do we have a text of this resolution on which we are voting?

VICE PRESIDENT HUTCHINSON: Yes. The text is on the secretary's desk. The secretary will read the resolution after we determine whether or not we are going to order the previous question. The question is upon Mr. Bentley's motion to order the previous question. Is the demand supported? It is supported. All those in favor of the previous question say aye. Those opposed, no.

The motion prevails. The previous question is ordered. The question is upon the resolution.

MR. MADAR: Point of order! Point of order! Mr. President, have we got a gag rule?

VICE PRESIDENT HUTCHINSON: The previous question has been ordered. Mr. Kuhn has offered an amendment, which is in order. The amendment is recognized but it is not debatable. Mr. Kuhn's amendment is that the — the gentleman will state his amendment again.

MR. KUHN: Well, now, I want to be sure we understand parliamentary procedure. I thought I did, and Mr. Chase just corrected me. The previous question means you cannot debate, but it doesn't mean you cannot offer an amendment, is that right, Mr. Chase? Then I will talk from there.

VICE PRESIDENT HUTCHINSON: The question is upon your amendment, Mr. Kuhn, but your amendment is not debatable.

MR. KUHN: That is correct.

VICE PRESIDENT HUTCHINSON: And your amendment is to start the work at 5:30 Monday afternoon?

MR. KUHN: Correct.

VICE PRESIDENT HUTCHINSON: All those in favor of commencing at 5:30 — Mr. Van Dusen.

MR. VAN DUSEN: I demand the yeas and nays.

VICE PRESIDENT HUTCHINSON: Is the demand for a record roll call supported? It is supported. As many as are in favor of starting at 5:30 on Monday afternoon will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and record the vote.

For what purpose does the gentleman from Wayne, Mr. Marshall, arise?

MR. MARSHALL: Mr. President, I rise to a point of personal privilege.

VICE PRESIDENT HUTCHINSON: Will you please wait until after the roll call is completed.

The roll was called and the delegates voted as follows:

Yeas — 53

Austin	Hannah, J. A.	Murphy
Baginski	Hatcher, Mrs.	Nord
Balcer	Heideman	Norris
Barthwell	Higgs	Ostrow
Binkowski	Hodges	Page
Blandford	Hood	Pellow
Brown, T. S.	Howes	Perlich
Buback	Kelsey	Perras
Dehnke	King	Richards, L. W.
Donnelly, Miss	Kuhn	Sleder
Doty, Donald	Leibrand	Snyder
Douglas	Liberato	Stopczynski
Downs	Madar	Tweedie
Durst	Mahinske	Walker
Elliott, Mrs. Daisy	Marshall	Wilkowski
Faxon	McAllister	Wood
Ford	McCauley	Young
Garvin	McLogan	

Nays — 79

Andrus, Miss	Gover	Radka
Anspach	Gust	Rajkovich
Batchelor	Hanna, W. F.	Richards, J. B.
Beaman	Haskill	Romney
Bentley	Hatch	Rood
Bledsoe	Hoxie	Sablich
Bonisteel	Hubbs	Seyferth
Boothby	Hutchinson	Shackleton
Brake	Iverson	Shaffer
Brown, G. E.	Judd, Mrs.	Shanahan
Butler, Mrs.	Karn	Sharpe
Conklin, Mrs.	Kirk, S.	Spitler
Cudlip	Knirk, B.	Stafseth
Cushman, Mrs.	Koeze, Mrs.	Staiger
Dade	Lawrence	Stamm
Danhof	Leppien	Sterrett
Dell	Lundgren	Stevens
DeVries	Martin	Suzore
Doty, Dean	McGowan, Miss	Tubbs
Elliott, A. G.	Millard	Turner
Erickson	Mosier	Upton
Everett	Plank	Van Dusen
Farnsworth	Pollock	Wanger
Figy	Powell	White
Finch	Prettie	Woolfenden
Gadola	Pugsley	Yeager
Goebel		

The secretary will announce the vote.

SECRETARY CHASE: On the adoption of the amendment, the yeas are 53; the nays are 79.

VICE PRESIDENT HUTCHINSON: The amendment is not adopted.

The question is upon the resolution as amended. The previous question has been ordered. As many as are favor of the adoption of the resolution —

The secretary will read the resolution as it now stands.

SECRETARY CHASE: The full text of the resolution as originally offered will be found in the journal, page 387. It is as follows, as now amended:

> Resolved, that beginning February 2 the convention shall meet at 4:00 o'clock p.m. on Monday, and at 9:30 o'clock a.m. on Tuesday, Wednesday, Thursday and Friday, such schedule to continue until changed by the convention.

MR. FAXON: Point of order, Mr. President.

VICE PRESIDENT HUTCHINSON: Mr. Faxon raises a point of order. What is your point of order, Mr. Faxon?

MR. FAXON: Did the Chair rule that any amendments that were offered would still be voted upon without debate?

VICE PRESIDENT HUTCHINSON: The Chair understands the rule to require that when the previous question is ordered, those amendments already on the desk are in order, but that other amendments are out of order. The amendment

of Mr. Kuhn was received prior to the previous question being ordered, and therefore it was in order. There are no further amendments in order except those that were filed previous to that time with the secretary, and he advises me that there are none.

Mr. Van Dusen.

MR. VAN DUSEN: I demand the yeas and nays.

VICE PRESIDENT HUTCHINSON: The question is upon the resolution as amended, and the yeas and nays have been demanded. Is the demand supported? The demand is supported. All those in favor of the resolution as amended will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and record the vote.

The roll was called and the delegates voted as follows:

Yeas — 95

Andrus, Miss	Habermehl	Powell
Anspach	Hanna, W. F.	Prettie
Batchelor	Hannah, J. A.	Pugsley
Beaman	Haskill	Radka
Bentley	Hatch	Rajkovich
Blandford	Howes	Richards, J. B.
Bonisteel	Hoxie	Richards, L. W.
Boothby	Hubbs	Romney
Brake	Hutchinson	Rood
Brown, G. E.	Iverson	Rush
Butler, Mrs.	Judd, Mrs.	Seyferth
Conklin, Mrs.	Karn	Shackleton
Cudlip	Kirk, S.	Shaffer
Cushman, Mrs.	Knirk, B.	Shanahan
Danhof	Koeze, Mrs.	Sharpe
Dehnke	Kuhn	Sleder
Dell	Lawrence	Spitler
DeVries	Leibrand	Stafseth
Donnelly, Miss	Leppien	Staiger
Doty, Dean	Lundgren	Stamm
Doty, Donald	Mahinske	Sterrett
Durst	Martin	Stevens
Elliott, A. G.	McAllister	Tubbs
Erickson	McCauley	Turner
Everett	McGowan, Miss	Tweedie
Farnsworth	McLogan	Upton
Figy	Millard	Van Dusen
Finch	Mosier	Wanger
Gadola	Page	White
Goebel	Perras	Woolfenden
Gover	Plank	Yeager
Gust	Pollock	

Nays — 40

Austin	Hart, Miss	Nord
Baginski	Hatcher, Mrs.	Norris
Balcer	Heideman	Ostrow
Barthwell	Higgs	Pellow
Binkowski	Hodges	Perlich
Brown, T. S.	Hood	Sablich
Buback	Kelsey	Snyder
Dade	King	Stopczynski
Douglas	Lesinski	Suzore
Downs	Liberato	Walker
Elliott, Mrs. Daisy	Madar	Wilkowski
Faxon	Marshall	Wood
Ford	Murphy	Young
Garvin		

SECRETARY CHASE: On the adoption of the resolution, the yeas are 95; the nays are 40.

VICE PRESIDENT HUTCHINSON: The resolution, as amended, is adopted.

Following is Resolution 68 as amended and adopted:

A resolution establishing the time of daily sessions.

Resolved, That beginning February 2 the convention shall meet at 4:00 o'clock p.m. on Monday, and at 9:30 o'clock a.m. on Tuesday, Wednesday, Thursday and Friday, such schedule to continue until changed by the convention.

The gentleman from Wayne, Mr. Marshall.

MR. MARSHALL: Mr. President, I want to ask a question as to how you go about obtaining the floor. I was on the floor and there were at least 2, and I think 3, who went to the mike after I did, who were recognized. The question is, do we get the floor by walking up to the mike and standing there, or do we get recognition on the floor by jumping up and down and shouting? When I asked for the floor I wanted to support the remarks of Mr. Brake, because I felt, and I still feel, we have all looked ridiculous here in the last few minutes and at this time, Mr. Elliott, I don't know who is being facetious and who isn't. I do know that it seems that a lot of us like to hear ourselves talk over the microphone, and the only thing I can say is that I would like to know if I can obtain the floor by orderly procedure or do I jump up and down and shout like a few of the previous speakers did, trying to obtain the mike? The least that I can say, not knowing who is being facetious and who isn't, is that many of the previous speakers certainly were awfully spenorious, (laughter) and for the benefit of those who do not know the correct definition of spenorious: that is an orator who is speaking when his brain and mouth aren't functioning simultaneously. (laughter and applause)

VICE PRESIDENT HUTCHINSON: The gentleman from Washtenaw, Mr. Lawrence.

MR. LAWRENCE: Mr. President, I would like to rise on a point of personal privilege.

VICE PRESIDENT HUTCHINSON: You are recognized for the purpose.

MR. LAWRENCE: What I have to say, I assure you, fellow delegates, I say this in the best of good will — perhaps with tongue in cheek slightly, and maybe with sort of puckish satisfaction. Some of you may recall that a week ago Monday night, on January 22, it was my privilege to speak to you. After I had concluded and while we were in the convention, so I had no opportunity to reply, 2 of my good friends referred to me by name, and it is to the remarks made by them that I would like at this time to reply; for I have early learned in the practice of law that the rule is if you want to dish it out, you've got to be able to take it. It works both ways.

The remarks of the distinguished delegate, statesman and constitutional lawyer from Stanton, in which he stated that I gave a hypothetical case and he gave actual cases, is the first one I would like to reply to. For the benefit of any of you who have the paper or care to refer to it, either for verification or to keep it for future reference, I am referring to the Wednesday, January 31 issue of the Detroit News. The issue I have is the late final edition. The item is on page 5-B. I would like to read it. It will only take me a minute. It is headed Seizure of Gun In Car Ruled Out By O'Hara. It goes on:

> A portion of the state constitution giving police the right to seize as evidence guns found in automobiles was held invalid today by Executive Circuit Judge Chester P. O'Hara. The ruling grew out of the August arrest of James Kendrick, 3478 Onaway, and Lee C. Burnell, 30240 Pierce, both of Inkster, on a charge of carrying a concealed weapon in an automobile without a permit.
>
> The facts are not disputed. State police stopped a car driven by Kendrick when they saw him driving left of the center of Beverly road, Romulus township.
>
> When both Kendrick and Burnell, a passenger, got out of the car at the request of the police, an unloaded 38 caliber revolver was found under a paper bag on the front seat. Both Kendrick and Burnell were then arrested on the concealed weapons charge. "No ticket was issued for the alleged traffic violation," O'Hara said, "although the car was actually stopped for this offense."
>
> He noted that the police had no knowledge of the defendants violating any other law.
>
> O'Hara granted a motion by George C. Parsons, attorney for the men, to suppress the gun as evidence. At this, Edward S. Ferris, chief of the criminal division of the prosecutor's office, said the case against the men would be dropped.

O'Hara, quoting a ruling last June by the U. S. supreme court growing out of an Ohio case:

> We hold that all evidence obtained by searches and seizures in violation of the federal constitution is, by that same authority, inadmissable in a state court.

For the record, I would like to state that this is not a hypothetical case involving hypothetical people by a hypothetical court in a hypothetical newspaper, and if the words quoted sound fairly familiar, you will find them on page 1090 of the July advance sheets of the United States Supreme Court Reports, law edition.

The second reference in which my name was used was by my distinguished friend, colleague, ex jurist, the man whom I have the honor of sitting across the aisle from. (laughter) He told the convention that I was unable to count in reference to a 37,000 to 6,000 vote in Washtenaw county. Well, I was never very good in higher mathematics, fellow delegates, but I have found out one thing: I at least am able to read and understand what I have read. Thank you.

VICE PRESIDENT HUTCHINSON: Reports of standing committees.

The gentleman from Isabella, Dr. Anspach.

MR. ANSPACH: I rise to a point of personal privilege for comments.

We had quite a session this afternoon. I think that we can profit, perhaps, by this story of the teacher who, in the fall of the year, went out to a pasture, and she was dirty and tired and weary. She came to a beautiful stream that went down through the pasture. So she thought she would go swimming, but she had no bathing suit. After a while she decided she would go bathing because there was nobody within 2 miles of the place. So she went swimming. After a while she looked up, hearing a noise, and saw some youngsters tying knots in her clothing. She tried to shoo them away and frighten them away, but they wouldn't shoo and frighten. Moving around under water she stubbed her toe on something, reached down and discovered it was a tub. She brought the tub up and placed it in front of her in this fashion [indicating] and advanced on these youngsters, with her eyes blazing. She said, "You know what I think?" One kid said, "Yes. You think there's a bottom in the tub." (laughter)

[President Nisbet entered the chamber and assumed the Chair.]

PRESIDENT NISBET: Thank you, Mr. Hutchinson, for taking charge for me while I was away.

Mr. Chase, **reports of standing committees.**

SECRETARY CHASE: The committee on administration, by Mr. DeVries, chairman, recommends to the president the following person for appointment to the staff of the constitutional convention: Miss Patricia Arber as convention guide.

Walter DeVries, chairman.

PRESIDENT NISBET: Without objection, the recommendation is concurred in.

SECRETARY CHASE: **The president appoints,** pursuant to authorization by the convention, and with the approval of the committee on administration, the aforenamed person to the position indicated.

PRESIDENT NISBET: Without objection, the appointment is approved.

SECRETARY CHASE: Mr. Martin, for the committee on executive branch, introduces

Committee Proposal 59, A proposal pertaining to vacancies in the office of governor. Amends article VI, section 16; with the recommendation that it pass.

John B. Martin, chairman.

For Committee Proposal 59 and the reasons submitted in support thereof, see below under date of March 29.

PRESIDENT NISBET: Referred to the committee of the whole and placed on the general orders calendar.

SECRETARY CHASE: Mr. Martin, for the committee on executive branch, introduces

Committee Proposal 60, A proposal pertaining to succession to the governorship. Amends article VI, section 17; with the recommendation that it pass.

John B. Martin, chairman.

For Committee Proposal 60 and the reasons submitted in support thereof, see below under date of March 29.

PRESIDENT NISBET: Referred to the committee of the whole and placed on the general orders calendar.

SECRETARY CHASE: Mr. Erickson, for the committee on miscellaneous provisions and schedule, introduces

Committee Proposal 61, A proposal pertaining to terms of public officers. Retains section 1, article XVI; with the recommendation that it pass.

Claud R. Erickson, chairman.

For Committee Proposal 61 and the reasons submitted in support thereof, see below under date of April 16.

PRESIDENT NISBET: Referred to the committee of the whole and placed on the general orders calendar.

Mr. Hanna.

MR. W. F. HANNA: Mr. President, I move that the committee reports be considered read, referred to the committee of the whole and placed on the general orders in view of the fact that they will be published in the journal. And in view of our great deliberation over hours, I doubt whether we will be able to understand or comprehend the stack that Mr. Chase has before him.

PRESIDENT NISBET: The question is on the motion of Mr. Hanna that the reports be considered read, referred to the committee of the whole and placed on the general orders calendar. Any discussion? Is there objection? If not, all in favor will say aye. Opposed, no.

The motion prevails and it is so ordered.

Following are the committee proposals introduced February 1, 1962, which were considered read, referred to the committee of the whole and placed on general orders:

Mr. Erickson, for the committee on miscellaneous provisions and schedule, introduced

Committee Proposal 62, A proposal pertaining to grants of extra compensation. Amends the first sentence of section 3, article XVI; with the recommendation that it pass.

Claud R. Erickson, chairman.

For Committee Proposal 62 and the reasons submitted in support thereof, see below under date of April 16.

Mr. Erickson, for the committee on miscellaneous provisions and schedule, introduced

Committee Proposal 63, A proposal pertaining to estates of married women. Retains section 8, article XVI; with the recommendation that it pass.

Claud R. Erickson, chairman.

For Committee Proposal 63 and the reasons submitted in support thereof, see below under date of April 13.

Mr. Erickson, for the committee on miscellaneous provisions and schedule, introduced

Committee Proposal 64, A proposal to amend article XVII, section 1 of the present constitution pertaining to amendment to the constitution; proposal by legislature and submission to electors; with the recommendation that it pass.

Claud R. Erickson, chairman.

For Committee Proposal 64 and the reasons submitted in support thereof, see below under date of April 16.

Mr. Erickson, for the committee on miscellaneous provisions and schedule, introduced

Committee Proposal 65, A proposal to amend article XVII, sections 2 and 3, pertaining to amendment and revision of the constitution;
with the recommendation that it pass.

Claud R. Erickson, chairman.

For Committee Proposal 65 and the reasons submitted in support thereof, see below under date of April 16.

Mr. Erickson, for the committee on miscellaneous provisions and schedule, introduced
Committee Proposal 66, A proposal relative to amendment and revision. Amends section 4 of article XVII;
with the recommendation that it pass.

Claud R. Erickson, chairman.

For Committee Proposal 66 and the reasons submitted in support thereof, see below under date of April 16.

Mr. Erickson, for the committee on miscellaneous provisions and schedule, introduced
Committee Proposal 68, A proposal pertaining to the schedule. Amends sections 10, 6 and 11 of the schedule;
with the recommendation that it pass.

Claud R. Erickson, chairman.

For Committee Proposal 68 and the reasons submitted in support thereof, see below under date of April 16.

Mr. Erickson, for the committee on miscellaneous provisions and schedule, introduced
Committee Proposal 69, A proposal pertaining to the boundaries of the state of Michigan. Substitute for article I, section 1;
with the recommendation that it pass.

Claud R. Erickson, chairman.

For Committee Proposal 69 and the reasons submitted in support thereof, see below under date of April 13.

Messrs. Hoxie and Martin, for the committees on legislative powers and executive branch, introduced
Committee Proposal 70, A proposal to revise provisions of section 36 of article V regarding the veto power of the governor;
with the recommendation that it pass.

T. Jefferson Hoxie, chairman, committee on legislative powers.
John B. Martin, chairman, committee on executive branch.

For Committee Proposal 70 and the reasons submitted in support thereof, see below under date of March 19.

Mr. Martin, for the committee on executive branch, introduced
Committee Proposal 72, A proposal to provide for compensation of acting governor. Retains section 18 of article VI;
with the recommendation that it pass.

John B. Martin, chairman.

For Committee Proposal 72 and the reasons submitted in support thereof, see below under date of March 29.

Mr. Martin, for the committee on executive branch, introduced
Committee Proposal 74, A proposal to provide by law for the administration of claims against the state, escheats and escheated property, and the investment of state funds. Revises article VI, section 20;
with the recommendation that it pass.

John B. Martin, chairman.

For Committee Proposal 74 and the reasons submitted in support thereof, see below under date of March 19.

Mr. Martin, for the committee on executive branch, introduced
Committee Proposal 75, A proposal to provide for compensation of state officers. Amends article VI, section 21;
with the recommendation that it pass.

John B. Martin, chairman.

For Committee Proposal 75 and the reasons submitted in support thereof, see below under date of March 19.

Mr. Martin, for the committee on executive branch, introduced
Committee Proposal 76, A proposal pertaining to the passage of permissive legislation to allow civil divisions of the state to establish local civil service systems and to receive assistance from the state civil service system. Amends article VI;
with the recommendation that it pass.

John B. Martin, chairman.

For Committee Proposal 76 and the reasons submitted in support thereof, see below under date of March 20.

Messrs. Hoxie and Martin, for the committees on legislative powers and executive branch, introduced
Committee Proposal 78, A proposal to provide for the office of legislative auditor general. Adds a new section to article V;
with the recommendation that it pass.

T. Jefferson Hoxie, chairman, committee on legislative powers.
John B. Martin, chairman, committee on executive branch.

For Committee Proposal 78 and the reasons submitted in support thereof, see below under date of March 15.

Mr. A. G. Elliott, for the committee on local government, introduced
Committee Proposal 81, A proposal pertaining to county government. Amends article VIII, sections 1, 2, 3, 4, 5, 7, 8, 9, 12, 13, 14 and 15;
with the recommendation that it pass.

Arthur G. Elliott, chairman.

For Committee Proposal 81 and the reasons submitted in support thereof, see below under date of February 9.

Mr. A. G. Elliott, for the committee on local government, introduced
Committee Proposal 82, A proposal pertaining to townships. Amends article VIII, sections 16, 17, 18 and 19;
with the recommendation that it pass.

Arthur G. Elliott, chairman.

For Committee Proposal 82 and the reasons submitted in support thereof, see below under date of February 12.

Mr. A. G. Elliott, for the committee on local government, introduced
Committee Proposal 83, A proposal pertaining to cities and villages. Amends article VIII, sections 20, 21, 22, 23 and 25;
with the recommendation that it pass.

Arthur G. Elliott, chairman.

For Committee Proposal 83 and the reasons submitted in support thereof, see below under date of February 13.

Mr. A. G. Elliott, for the committee on local government, introduced
Committee Proposal 84, A proposal to provide for liberal construction of provisions concerning municipal corporations. Amends article VIII;
with the recommendation that it pass.

Arthur G. Elliott, chairman.

For Committee Proposal 84 and the reasons submitted in support thereof, see below under date of February 14.

Mr. A. G. Elliott, for the committee on local government, introduced

Committee Proposal 85, A proposal to provide that public utilities may use public property with consent of local authorities and a limitation on the length of franchise. Amends article VIII, sections 28 and 29; with the recommendation that it pass.

Arthur G. Elliott, chairman.

For Committee Proposal 85 and the reasons submitted in support thereof, see below under date of February 14.

PRESIDENT NISBET (continuing): Reports of select committees.

SECRETARY CHASE: None.

PRESIDENT NISBET: **Communications from state officers.**

SECRETARY CHASE: Office of the Governor, Lansing.

January 31, 1962.

The Honorable Stephen S. Nisbet, President
Michigan Constitutional Convention
Constitution Hall
Civic Center
Lansing, Michigan

Dear Mr. President:

Transmitted to you with this letter is my Message to the Fifth Michigan Constitutional Convention on the subject of Property Tax Assessments.

Sincerely yours,
John B. Swainson,
governor.

PRESIDENT NISBET: Without objection, it will be printed in the journal. Hearing none, it is so ordered.

Following is the message:

Ladies and gentlemen of the constitutional convention:

I am in receipt of a report and recommendation from a study committee of my special commission on industrial development legislation concerning nonuniformity of property taxation in the state of Michigan. The findings and recommendation of the committee were endorsed by the commission and are matters which should be called to your attention and considered in your deliberations on the subject of property taxes.

It was the unanimous finding of the committee that an unhealthy lack of uniformity in property taxation exists in Michigan and the primary basis for this condition is the wide variation of assessments. There are no professional qualifications for assessing officers and standards for the performance of their duties are practically nonexistent.

This situation has an impact on the economic development of Michigan because it is impossible under these conditions to assure an industry seeking to settle in this state that it will be treated equitably in the matter of property taxes. The training, technique, and skill of the assessor are so varied in this state that in some instances it has been a deterrent to new industry.

Dr. Harvey E. Brazer, of the University of Michigan, an eminent authority in this field, has stated that a study of a typical Michigan county revealed that some properties were assessed at less than 2 per cent of market value, and others were assessed as high as 175 per cent of their sales price. In one of our large metropolitan counties we have witnessed the practice of assessing inventories at 80 per cent of book value, machinery and equipment at 100 per cent of depreciated value, and real property assessed at 50 per cent of current value. These examples graphically demonstrate the discriminatory practices we encounter in real and personal property taxation in Michigan.

The recommendation of the study committee which was adopted by the commission states:

> The constitutional convention should direct the state tax commission to make all assessments of real and personal property which values should be used by local units of government.

I am convinced that unless some such plan as the foregoing is prescribed by the convention or made a requirement of legislation in this area, uniformity of assessment and taxation in this state will not be assured.

In the event the convention desires the testimony and counsel of the study committee members, I am sure these gentlemen would respond without hesitation.

Members of the committee are Edwin O. George, vice president, Detroit Edison company, who was chairman; W. D. McDonnell, president, Great Lakes Steel corporation; H. A. Sanders, vice president and general manager, Grand Trunk western railroad; Albert Bush, executive vice president, Hackley Union National Bank and Trust company; and Arnold M. Lumbers, Victory Machine company, inc.

Second reading of proposals.

SECRETARY CHASE: Nothing on that calendar.

PRESIDENT NISBET: Third reading of proposals.

SECRETARY CHASE: Nothing on that calendar.

PRESIDENT NISBET: Motions and resolutions.

SECRETARY CHASE: There are no resolutions.

PRESIDENT NISBET: Unfinished business.

SECRETARY CHASE: None.

PRESIDENT NISBET: Special orders.

SECRETARY CHASE: None.

PRESIDENT NISBET: **General orders of the day.** The Chair recognizes Mr. Martin.

MR. MARTIN: Mr. President, I move that the convention resolve itself into committee of the whole for consideration of items on the general orders calendar.

PRESIDENT NISBET: The question is on the motion of Mr. Martin. All those in favor, say aye. Opposed, no.

The motion prevails. Mr. Martin, will you please take the Chair.

[Whereupon, Mr. Martin assumed the Chair to preside as chairman of the committee of the whole.]

CHAIRMAN MARTIN: The committee will be in order and the secretary will read.

SECRETARY CHASE: The calendar you have on your desk is for last Monday. There has not been the opportunity to prepare a new one. The first 5 items on the calendar have been considered and reported and referred to the committee on style and drafting; and item 7 has likewise been so treated. The next item for consideration today, from the committee on declaration of rights, suffrage and elections, by Mr. Pollock, chairman, **Committee Proposal 26,** A proposal for a section in the declaration of rights incorporating in the declaration of rights an "equal protection" clause and a guarantee against discrimination in civil and political rights because of race, religion, sex or national origin.

Following is Committee Proposal 26 as read by the secretary, and the reasons submitted in support thereof:

The committee recommends that the following be included in the constitution:

NO PERSON SHALL BE DENIED THE EQUAL PROTECTION OF THE LAWS; NOR SHALL ANY PERSON BE DENIED THE ENJOYMENT OF HIS CIVIL OR POLITICAL RIGHTS OR BE DISCRIMINATED AGAINST IN THE EXERCISE THEREOF BECAUSE OF RACE, RELIGION, SEX OR NATIONAL ORIGIN. THE LEGISLATURE SHALL IMPLEMENT THIS SECTION BY APPROPRIATE LEGISLATION.

Mr. Pollock, chairman of the committee on declaration of rights, suffrage and elections, submits the following reasons in support of Committee Proposal 26:

This proposal has the unanimous support of all members of the committee on declaration of rights, suffrage and elections. Five members of the committee, as will be seen from the accompanying minority "preference report", would have preferred to report out the text of Delegate Proposal

1621, which they consider to be more adequate in certain respects. But they wish to emphasize that they also support the present committee recommendation.

The present proposal is a modification and synthesis of the civil rights provision in the recently adopted Hawaiian constitution incorporated in the second paragraph of Delegate Proposal 1455, introduced by Mr. J. A. Hannah, and Delegate Proposal 1014, introduced by Mr. Norris. It will be observed that the committee draft adds an equal protection clause to the Hawaiian language. The committee, in recognition of the modern doctrine of the equality of women, has also incorporated a guarantee against discrimination on account of sex.

Several factors have impressed the committee with the advisability of incorporating an equal protection and civil rights section in the new constitution. Delegate John Hannah, who, it will be observed, is the chairman of the United States commission on civil rights, gave impressive and moving testimony before the committee upon the wisdom and necessity of such a clause, to protect negroes and other minorities against discrimination in housing, employment, education and the like. In this connection, the attention of the delegates is called to the recently published reports of the Michigan advisory commission on civil rights to the United States civil rights commission, setting forth in some detail the situation in certain Michigan communities. Delegates will recollect, also, the impressive and moving advice President Eisenhower tendered to the convention upon the need for state constitutional civil rights guarantees, emphasizing the matter of states retaining and preserving the reserved powers. Appropriate data in support of the same objective were submitted by numerous citizen groups. As Mr. Hannah stated in his paper to the committee, "Civil rights as used herein means guarantees to protect against discrimination and segregation because of race, color, religion, ancestry or national origin. . . ." The principal, but not exclusive, areas of concern are equal opportunities in employment, education, housing, and public accommodations.

The committee noted, also, that there has been a distinct trend in recent state constitutions to incorporate equal protection or civil rights clauses to apply to all persons as well as those singled out for special attention because of more apparent discrimination. New York, New Jersey, Wyoming, Arkansas, Hawaii and Alaska all have provisions in this category. In short, the incorporation of civil rights provisions is in accord with the contemporary trend in state constitution writing.

Following is the minority report to Committee Proposal 26, as offered, and the reasons submitted in support thereof:

Messrs. Norris, Dade, Mrs. Hatcher, Messrs. Hodges and Buback, a minority of the committee on declaration of rights, suffrage and elections, submit the following minority report to Committee Proposal 26:

A minority of the committee recommends that the following be included in the constitution:

EACH PERSON IN MICHIGAN SHALL ENJOY THE EQUAL PROTECTION OF THE LAW. NO PERSON SHALL, BECAUSE OF HIS RACE, COLOR, RELIGION, NATIONAL ORIGIN OR ANCESTRY, BE DISCRIMINATED AGAINST IN EMPLOYMENT, HOUSING, PUBLIC ACCOMMODATIONS, EDUCATION, OR IN HIS ENJOYMENT OF ALL OTHER OF HIS CIVIL RIGHTS, BY THE STATE OR ANY POLITICAL OR CIVIL SUBDIVISION THEREOF, OR ANY FIRM, CORPORATION, INSTITUTION, LABOR ORGANIZATION OR ANY OTHER PERSON.

Messrs. Norris, Dade, Mrs. Hatcher, Messrs. Hodges and Buback, a minority of the committee on declaration of rights, suffrage and elections, submit the following reasons in support of the foregoing minority report, which accompanied Committee Proposal 22:

Explanation—Matter within [ ] is stricken, matter in capitals is new.

The minority wishes to stress that its report is one of "preference" rather than "opposition" to the committee civil rights proposal. We simply prefer Delegate Proposal 1621 as being a more adequate declaration of rights in the light of contemporary reality than the committee formulation. We wish to promote the committee recommendation as well, as we assisted, in common with all members of the committee, in its formulation and support. If the proposal we prefer is not adopted, we respectfully urge the adoption of the committee recommendation.

We urge the adoption of the language of Delegate Proposal 1621 because it contains 2 fundamental and strategic propositions not clearly or adequately delineated in the committee proposal.

In our view both propositions, one creating certain rights, and one imposing certain duties, are essential to an adequate declaration of rights on behalf of full citizenship for all persons in Michigan.

The first proposition contained in Delegate Proposal 1621 and not expressed in the committee proposal is the declaration of the right of all persons to equal opportunity to secure employment, housing, education and public accommodations as explicit political and civil rights. This explicit declaration in Delegate Proposal 1621 is for the purpose of specificity and enforceability, and the enumeration does not connote limitation.

The second proposition contained in Delegate Proposal 1621 and not expressed in the committee proposal is the imposition of a duty of nondiscrimination on private as well as public or state agencies in the exercise or enjoyment by all persons of political and civil rights.

Thus, the 2 propositions supplement each other and mean that discrimination is unlawful if based on the irrelevant criterion of "race, color, religion, national origin or ancestry" by the "state or political subdivision thereof or any firm, corporation, institution, labor organization or any other person" in relation to the exercise by any person of such political or civil rights as the right to equal opportunity to secure "employment, housing, public accommodations and education." In short, public or private discrimination is only proscribed in the area of, and in relation to, political and civil rights, and not in areas not related thereto.

A. Reasons for an explicit declaration of certain rights.

The fourteenth amendment prohibits a state from denying to any person within its jurisdiction the equal protection of the laws. "It does not, however," said Chief Justice Waite, "add anything to the rights which one citizen has under the constitution against another. . . . Every republican government is in duty bound to protect all its citizens in the enjoyment of equality of right. . . . That duty was originally assumed by the states, and it still remains there."; U.S. v. Cruikshank, 92 U.S. 542. Hence, the duty of adding or declaring and enforcing civil and political rights is a duty of the state of Michigan. Delegate Proposal 1621 is a proposed constitutional expression and implementation of that duty.

The need for compliance with that duty by the state of Michigan was demonstrated by the quantity of segregation and discrimination disclosed by official reports and by testimony before our committee. The reports of the United States civil rights commission, of which Dr. John Hannah is chairman, and of the Michigan advisory committee to the commission, of which Mr. Charles E. Wilson was chairman, have described in detail the dimensions of discrimination in Michigan in the areas of employment, housing, education, and public accommodations. Committee testimony produced similar conclusions. The present and foreseeable period moved Mr. Harry J. Kelly of Grand Rapids, chairman of Michigan's fair employment practices commission, to relate the constitution and civil rights in this statement to our committee hearing:

The constitution is an instrument of high purpose which protects the individual against the encroachment of the corporate structure of the state as well as

the corporate structures which are conceived for the benefit of segments of the population. It protects the fundamental rights of the individual. Employment, housing, public accommodations and education are fundamental rights in our complex society. Without equal access to the enjoyment of these rights the individual is deprived of his full stature as a man and is deprived of his right of full equality as a citizen. We recognize that the constitution is a blueprint, that it is not meant to supply the bricks and mortar but if the blueprint is deficient in its general specifications, the structure which results will be faulty and may threaten the safety and welfare of those who must use it. We know that a constitution is a statement of goals and not a detailing of means, but surely our goals must include the intent that each of our citizens, all of our citizens, shall enjoy equal protection of the law in all areas of living which involve fundamental human rights, fundamental civil rights in this our beloved state of Michigan.

Such intent, the intent that each of Michigan's citizens have "equal access" to the "fundamental rights in our complex society" to "employment, housing, public accommodations and education" should in our opinion be stated simply and clearly as a matter of constitutional policy. Because such rights are "fundamental" and prerequisite to full equality and dignity as a citizen, the state should declare them so in its constitution. This would be in keeping with the most modern and authoritative statement of our purpose and objectives as a nation. President Eisenhower's commission on national goals declared in 1960:

> Respect for the individual means respect for every individual. Every man and woman must have equal rights before the law, and an equal opportunity to vote . . . to be educated, to get a job . . . to buy a home. . . . These goals, which are at the core of our system must be achieved by action at all levels.

B. Reasons for imposing a duty of nondiscrimination on both public and private conduct.

The fourteenth amendment to the federal constitution has been construed to apply to acts of discrimination practiced by the state itself and not to acts of individuals. Chief Justice Warren declared recently that

> Since the decision of this court in the civil rights cases, the principle has become firmly embedded in our constitutional law that the action inhibited by the first section of the fourteenth amendment is only such action as may fairly be said to be that of the states. That amendment erects no shield against merely private conduct, however discriminatory or wrongful. . . .

Shelley v. Kraemer, 334 U.S. 1, 13.

Hence, if a shield of constitutional protection is to be constructed against discrimination by private agencies, that shield can be constructed by the states. To construct that shield, the 1938 Constitution of the State of New York proscribed discriminatory conduct by both state and private agencies, and, in this regard, substantially identical language has been incorporated in Delegate Proposal 1621, to wit: ". . . by the state or any political or civil subdivision thereof, or any firm, corporation, institution, labor organization or any other person." If, as Justice Cardozo has stated, "a constitution should not only deal with matters of the passing hour, but with principles of the future," it is fitting and necessary that the largest agency of discrimination, present and future, namely that of private conduct, be the subject matter of constitutional attention. Moreover, to those who contend that private discriminatory conduct should remain free of constitutional prohibition, Justice Frankfurter has supplied this pertinent answer:

> Of course a state may leave abstention from such discrimination to the conscience of individuals. On the other hand, a state may choose to put its authority behind one of the cherished aims of American feeling by forbidding indulgence in racial or religious prejudice to another's hurt. To use the fourteenth amendment as a sword against such state power would stultify that amendment. Certainly the insistence by individuals on their private prejudices as to race, color or creed, in relations like those now before us, ought not to have a higher constitutional sanction than the determination of a state to extend the area of nondiscrimination beyond that which the constitution itself exacts.

Railway Mail Association v. Corsi, 326 U.S. 88, 98 (1945).

Conclusion

Accordingly, because the committee proposal does not make explicit the propositions contained in Delegate Proposal 1621, and because we think the declaration of rights as part of the Michigan constitution ought to state these fundamental rights more adequately and explicitly, we prefer and recommend the adoption of the language of Delegate Proposal 1621.

CHAIRMAN MARTIN: Dr. Pollock.

MR. POLLOCK: Mr. Chairman, on behalf of the committee on rights, suffrage and elections, I should like to make just a brief introduction to this proposal in addition to the comment which you will find in Journal 61, page 353. I hope we can approach this matter calmly and seriously because, in my opinion, this is one of the most progressive and momentous decisions we will have to make. In order to put the matter in proper historical perspective, I should like to present, for just a few moments, as background, Michigan's constitutional and legislative civil rights history. It is a good history. Michigan has always been in the lead in this field, and it is the purpose of our proposal to keep Michigan in a leading position.

I establish this by reference to these facts: in the first Michigan Constitution of 1835, qualified electors were limited to white male citizens. The word "white" was eliminated in the Constitution of 1850. This constitution also provided that neither slavery nor involuntary servitude, unless for the punishment of crime, shall ever be tolerated in this state. The Constitution of 1908 reestablished this section.

The equal protection clause of the 1908 constitution read as follows, "All political power is inherent in the people. Government is instituted for their equal benefit, security and protection."

By amendment approved on November 5, 1940, a section of civil service was added to the Michigan Constitution of 1908 containing this clause, "No removal from or demotion in the state civil service shall be made for partisan, racial or religious considerations." So much for the constitutional history up to date on this matter.

The first civil rights legislation passed in Michigan was in 1867, when segregation in public education was banned. In 1869 the legislature prohibited life insurance companies doing business within the state from making any distinction or discrimination between white and colored persons. The ban against miscegenation was removed in 1883. In 1885 the Michigan state legislature prohibited racial discrimination in public places of accommodation, amusement and recreation, and in the selection and qualification of jurors. This statute was also reenacted in the penal code of 1931, and strengthened in 1937, 1952 and 1956. The 1952 amendment extended its coverage to government public housing. In 1955 the Michigan fair employment practices act was placed on the statute books.

You can see, therefore, that the Michigan record has been a good one and a progressively good one.

The committee, in studying this matter, had several choices. We paid attention, of course, to what had been the constitutional trend in those states which have recently adopted new constitutions; notably New Jersey, New York, Alaska and Hawaii. As a result of our deliberations on this matter, we have now come forth with a proposal which is more similar, I believe, to the recent Hawaiian proposal than to any other. We felt that, in the event we wanted to have a specific nondiscrimination clause, it would be better to state as a general policy of the constitution that there shall be no discrimination based on race, religion or national origin in the enjoyment of

political or civil rights, and that the legislature should have the power to enforce this by appropriate legislation.

This seemed to be the preferred type of nondiscrimination clause. It defines on the one hand the general policy of this state and also makes it clear that this is not a directly enforceable provision in regard to private persons, but will depend upon legislation which will then have to define what is meant by political and civil rights, the extent to which discrimination will be considered a violation and the appropriate sanctions to be applied. The majority of the committee considered this preferable, both because, as a general proposition, constitutional limitations should serve to restrain governmental action and not to define private duties, and because the areas in which private discrimination should be forbidden, the extent to which discrimination is prohibited, and the sanctions to be applied are matters that we think are appropriately left for legislation. As we say in the comment to our proposal, the proposal has the unanimous support of all the members of the committee. Five members of the committee — as will be seen from the accompanying minority report — would have preferred to report out the text of Delegate Proposal 1621, which they considered to be more adequate in certain respects. But they wished to emphasize that they also support the present committee recommendation.

Our proposal, then, is a modification and synthesis of the civil rights provision in the recently adopted Hawaiian constitution incorporated in the second paragraph of Delegate Proposal 1455, introduced by Mr. J. A. Hannah, and Delegate Proposal 1014, introduced by Mr. Norris. It will be observed that the committee draft also adds an equal protection clause to the Hawaiian language. The committee, in recognition of the modern doctrine, also, of the equality of women, has also incorporated a guarantee against discrimination on account of sex.

I hope you will find this a workmanlike job, and one which will appeal to you as being significant, as it is to us.

CHAIRMAN MARTIN: Thank you, Dr. Pollock. Are there any amendments to the body of the proposal?

SECRETARY CHASE: Pursuant to the minority report of Messrs. Norris, Dade, Mrs. Hatcher, Messrs. Hodges and Buback,

Mr. Norris offers the following substitute for Committee Proposal 26:

A proposal for a section in the declaration of rights incorporating in the declaration of rights an "equal protection" clause and a guarantee against discrimination in civil and political rights because of race, religion, sex or national origin.

The committee recommends that the following be included in the constitution:

Each person in Michigan shall enjoy the equal protection of the law. No person shall, because of his race, color, religion, national origin or ancestry, be discriminated against in employment, housing, public accommodations, education, or in his enjoyment of all other of his civil rights, by the state or any political or civil subdivision thereof, or any firm, corporation, institution, labor organization or any other person.

CHAIRMAN MARTIN: Mr. Norris.

MR. NORRIS: Mr. Chairman, ladies and gentlemen of the committee of the whole, as the secretary has indicated, there are 2 reports and 2 proposals: one, the committee report which you will find in Journal 61, beginning on page 353 — and the minority report of preference, which you will find in Journal 62 on pages 360 through 362. The matter which we have before us, on which I move the substitution, is a grave matter, and one in which I am certain there is tremendous interest in our state. The minority, in this case a minority report of preference, wants to underscore the fact that we contributed to the formulation which Dr. Pollock has put upon the floor, and we do not oppose it. We prefer, however, Delegate Proposal 1621 as being a more adequate declaration of rights, in the light of contemporary reality, than the committee formulation. We wish to promote the committee recommendation as well, as we assisted, in common with all the praiseworthy efforts of all members of that committee, in its formulation and support. If the proposal we prefer is not adopted, we respectfully urge the adoption of the committee recommendation.

Now, we urge the adoption of the language of Delegate Proposal 1621 because it contains 2 fundamental and strategic propositions not clearly or adequately delineated in the committee proposal. In our view both propositions, one proposition creating certain rights, and one proposition imposing certain duties, are essential to an adequate declaration of rights on behalf of full citizenship for all persons in Michigan. The first proposition contained in Delegate Proposal 1621 and not expressed adequately in the committee proposal is the declaration of the right of all persons to equal opportunity to secure employment, housing, education and public accommodations as explicit political and civil rights. This explicit declaration in Delegate Proposal 1621 is for the purpose of specificity and enforceability, and this enumeration does not connote limitation. You will note in Professor Pollock's statement that he felt that this ought to be left to the legislature. It is the submission of those who have subscribed to this report, Father Dade, Lillian Hatcher, Robert Hodges, Peter Buback and myself, that we ought to spell out these rights in specific form. The second proposition contained in Delegate Proposal 1621 and not adequately expressed in the committee proposal is the imposition of a duty of nondiscrimination on private as well as public or state agencies in the exercise or enjoyment by all persons of political and civil rights.

Now, these 2 propositions, in our judgment, complement each other and supplement each other. They mean that discrimination is to be proscribed if based on the irrelevant criterion of race, color, religion, national origin or ancestry by state or political subdivision thereof or any firm, corporation, institution, labor organization or any other person. This proscription is in relation to the exercise by any person of such political or civil rights as the right to equal opportunity to secure employment, housing, public accommodations and education. In short, public or private discrimination is only proscribed in the area of, and in relation to, political and civil rights, and not in areas not related thereto.

As Dr. Pollock has pointed out, we have had considerable testimony before our committee from statewide organizations; the Michigan coordinating council of civil rights; you have received a publication from them and from other organizations, and we have also had before us the most recent and authoritative publication of the United States civil rights commission, of which Dr. John Hannah is chairman, and of the Michigan advisory committee to the commission, of which the late Mr. Charles Wilson was chairman. These reports have described in detail the quantity and quality of discrimination and segregation in Michigan, particularly in the areas of employment, housing, education and public accommodations, and their testimony was buttressed with preciseness and clarity before our committee by Mr. Harry J. Kelly, of Grand Rapids, the chairman of the Michigan fair employment practices commission. I want to suggest to you that he projected to us the basic premise of Delegate Proposal 1621, and that is this: that employment, housing, public accommodations and education are fundamental rights in our complex society. Without equal access — and I underscore that, equal access — to the enjoyment of these rights the individual is deprived of his full stature as a man and is deprived of his right of full equality as a citizen.

Now, we know that a constitution is a statement of goals and not a detailing of means, but surely our goals must include the intent that each of our citizens, all of our citizens, shall enjoy equal protection of the law in those particular areas of living which involve fundamental human rights, fundamental civil rights, in our state. Such intent, the intent that each of Michigan's citizens have equal access to the fundamental rights to employment, housing, public accommodation and education, should, in our opinion, be stated simply, clearly and enforceably as a matter of constitutional policy. Because such rights are fundamental and prerequisite to full equality and dignity as a citizen, the state should declare

them so in a declaration of rights in its constitution. Now, this straightforward declaration would be in keeping with the most modern and authoritative statement of our purpose and objectives as a nation.

President Eisenhower appointed a commission on national goals, and in 1960 that commission declared, with particular relevance to the matter now at hand,

> Respect for the individual means respect for every individual. Every man and woman must have equal rights before the law, and an equal opportunity to vote . . . to be educated, to get a job . . . to buy a home. . . . These goals, which are at the core of our system, must be achieved by action at all levels.

I submit that at this level, that is, from the high ground of constitution writing, we ought to be able to survey the sweep of history. We ought to note the provision in this category in the constitutions of New York, New Jersey, Wyoming, Arkansas and Alaska and Hawaii. We ought to be able to see that human rights in specific forms are the goals of people throughout the world. We ought to be mindful that the Charter of the United Nations — to which the United States is a signatory nation — has declared that certain human rights are inviolate and every member is to promote and take action for "close uniform respect and observance of human rights as fundamental freedoms for all without distinction as to race, sex, language and religion." Now, in many treaties the United States has committed itself, as it did in the interAmerican conference of 1945, "to make every effort to prevent all acts which provoke discrimination among individuals because of race or religion." Now, if we are to write a constitution in the twentieth century, we ought to declare in our declaration of rights a twentieth century appraisal of human rights.

May I conclude this portion of what I have to say by stressing this proposition: that the central premise of the American nation is the dignity and worth of every individual. It is the theory of this nation that its progress on behalf of all mankind is best promoted by regarding every individual on the basis of merit and character. Stemming from this premise is the obligation to constitutionally protect that dignity by promoting equality — the specific means of equality — by stating simply, clearly and enforceably the right to equal opportunity of each to be educated, to get a job, to buy a home. To the degree that we strengthen this right for each, to that degree do we secure this right for all. We ought, as President Eisenhower stated to this group when he appeared before us, to stand 4 square on this principle. May I, in humility and in deepest respect for the conscience of every delegate present, urge your support for the preferred recommendation contained in the substitute proposal contained in the minority report.

Mr. Chairman, in support of the minority report several of the people who have subscribed thereto have asked to speak and, I believe, have a contribution to make to this discussion. I refer specifically to Father Dade, Mrs. Lillian Hatcher and Mr. Buback. I wonder if they might be called on at this time.

MR. STEVENS: Mr. Chairman.

CHAIRMAN MARTIN: Mr. Stevens.

MR. STEVENS: Mr. Chairman, as a member of the committee who participated in this, and who listened to the speeches, and who spent more time listening to this one proposal than any other one, I wish to endorse the committee's proposal. We feel that we have covered all the necessary things. We felt, in fact, that the mere equal protection clause would, in itself, cover it, but realizing that it was something of a special case, we made the concession to this end: that we would specify that we would put into the constitution certain specific things which would apply to the persons mentioned therein: persons should not be discriminated against because of sex, religion, color, race or national origin. To that end, we decided, or a majority decided, that it was neither wise, proper nor desirable that we should apply this to individual persons, or that we should attempt to legislate in the constitution. We provided all the background the legislature might possibly need. The legislature has already, over the years, made — and we feel will continue to make — any provisions necessary in regard to places of business open to the public, such as theaters, hotels, stores, and so forth, and we feel that it is not necessary to enumerate such things in the constitution.

We also had in mind protecting, to some degree, the rights of property owners whom we thought should not, as individuals, particularly home owners, be required by law to sell their property to any person to whom they did not wish to sell without having to defend themselves thereon. In connection with that there will be offered later a proposal to that end. The point is that the committee feels that it has done everything necessary and proper to take care of this problem. We do recognize the problem. We feel we gave it a lot of time. We feel that we have given the legislature any powers it may need hereon. Thank you.

CHAIRMAN MARTIN: The question is on the minority report. Father Dade.

MR. DADE: Mr. Chairman, members of the committee, I address you, ladies and gentlemen of the committee, to urge that you vote yes in favor of the substitute proposal commonly called 1621.

You know, it's one thing to look at this problem in an academic way, to look at it in a philosophical way; it is another thing to look at it in a way which no one in this committee — no one in this convention — can look at it as I can look at it. A short time ago it was my misfortune to be attacked by a mob. I was attacked by a mob because I was exercising a simple act of decency, and this mob would have beaten me, mauled me, trampled me down. I am here this afternoon because of the courage of a lone white woman who momentarily cowered this mob and together with a negro porter called for help. Now, ladies and gentlemen, I mention this for one fact: that the people who came before us in the public hearing, which some of the committee had called pressure groups, in the eyes and the voices of those people I saw the same kind of courage, the same kind of Christian declaration of extending to individuals, regardless of their race, color or creed, the basic rights which should be accorded to every citizen. I speak specifically of the monsignor representing the roman catholic diocese of Saginaw; I speak of that single capable woman representing the 3300 members of the league of women voters; I speak of the Republican industrialist from Grand Rapids; I speak of a lone young woman who so captivated this committee that the previous speaker went down and further talked with her about the difficulty she was experiencing in public accommodations. These people came before this committee and they said, "We want 1621." And so I speak for them, which I call a report, not on preference alone but, in my book, a report on priority.

In the second place, I want to make a report. I went back — not into my district, but to talk to people. I said, "Look at these 2 proposals. Tell me what you think of them." They looked at the proposals and here is what they said. They are just down to earth, grass roots people. Here is what they said: "We don't want any kind of 'let George do it, leave it to the legislature, pass the buck'. We want it spelled out in the constitution. We feel that if a right is to be enjoyed, it is to be enjoyed now or not at all. We don't want it left to the future. We want it spelled out right now." I said, "Well, what about the possibility it might hurt somebody else?" They said, "Bosh! Isn't it true that the basic property rights of every individual is protected? No one is compelled to convey his property to anyone else if he doesn't want to." I said, "I thought that." And then I said, "Well, what about what I heard at the convention, that you may be receiving special treatment?" They said, "Tell the convention, remind them, of the constitution where it spells out involuntary servitude, and tell them that therein it mentions no race, no group; it speaks of individuals, and we as individuals are asking that we be treated as individuals, and that this be spelled out in the constitution, in the law of this state of ours."

Ladies and gentlemen of this committee, I feel that this is a simple matter of basic justice, freedom and equality; and that basic justice and freedom and equality cannot be divided — they are indivisible. I wish I could repeat the words of the president, President Eisenhower. Put it this way: when you take away the freedom of equality or justice of any individual, you all suffer. I remember a short time ago, a few

years ago, having an audience with the ambassador to London under the Eisenhower administration, and I, as an American citizen, was ashamed to have him confess to this American group that the one thing he found himself continually humiliated by was the fact that he could not explain away discrimination in his own country.

And so I say to you, ladies and gentlemen, vote aye, vote for this substitute proposal. Spell it out — spell it out so we can all see it — that these basic rights should be accorded to all people. I am standing here this afternoon — I am not speaking because I happen to be black — I am standing here speaking, not for black alone, nor white, nor protestant, nor catholic, nor quaker, nor mormon, but I am standing here speaking for what I have always stood for, for the rights of people, for the elementary decent rights of people that I think should be spelled out in this constitution we are writing today. And, there are those who say I should be more patient, and to them I say: time is running out. I say the map of the world has had a repaint job, and that those who have repainted are asking that we match our practice with our precept, and they want it spelled out. I would remind you that today's majority may be tomorrow's minority. And for these reasons I urge that you vote aye on the language of 1621, and send out a light of hope and brotherhood that will reach far beyond the borders of this great state of ours.

CHAIRMAN MARTIN: Mrs. Hatcher.

MRS. HATCHER: Mr. Chairman and fellow delegates, I rise in support of the minority report as a matter of preference of 1621. I would like at this time to extend my remarks and compliments to the remarks of Mr. Norris, the vice chairman of our declaration of rights, suffrage and elections committee, and the remarks made by Father Dade, the previous speaker. Let me, first of all and foremost, make it clear that I voted in support of the majority report. I voted in favor of the majority report because I feel that it is a very good report. However, I favored and preferred the language of 1621 because of the contents and the quality that it embraced. I also want to take this opportunity to compliment the chairman of the declaration of rights, suffrage and elections committee, Dr. James Pollock, who, in my opinion, offered very sound and constructive leadership in attempting to bring the committee members through the days of deliberation, of examining article II of our constitution, and guiding us through the very difficult period of trying to have a meeting of minds; realizing that this was the very first time that 15 people who are citizens of the state of Michigan had had the opportunity to sit down and discuss the very fundamental issues that were before us in the constitutional article II.

I feel that the majority of the members of that committee dealt with the subject forthrightly and in honesty — in all honesty — based on experience that they had had in the various fields that perhaps complemented their activities as members of the committee. However, there were many times we were in basic disagreement on matters that were discussed, but at no time did we ever lose our dignity or respect for each other as individuals. I believe that the fact that we did have such a subject matter of the magnitude as the discussion of civil rights and the question of equal protection perhaps made our committee a little more distinctive than some of the others were. Because, despite how important the other matters before other committees were, we were dealing with the fundamental principles of human relationship and human dignity, which, I believe, transcend all other elements that this convention may be confronted with at this time. I have been more or less guided by my own individual opinion as to how citizens of Michigan are concerned about the image that we will set forth here in this constitution, and just how concerned are the people in Michigan — how concerned are they — with the question of human dignity.

I want to say that, throughout the world, people are constantly on the move attempting to try to seek a greater degree of security and peace, and despite the lack of personal experience that one may have in the field of civil rights, or equal protection or lack of equal protection, I don't believe that any person in this constitutional delegation, or in the state of Michigan, or in the world, as a matter of fact, who can read or hear, can deny the fact that the problems that seem to beset the people of color is one of significant importance. Every news media, TV, radio, slick page magazines and daily publications are constantly reporting to the people of the United States, the state of Michigan, the city of Detroit and Lansing, the problems that are confronting them. Many organizations have taken special interest in attempting to try to study and understand the problems that beset people of color. Women's clubs have adopted as part of their agenda the importance of discussing human relations and human values, and the importance of human understanding. Civic groups have likewise stepped up their programs throughout the state of Michigan and throughout the United States in an effort to try to bring together a better degree of understanding. Religious bodies all over the nation and the world are concerned about the question of color. It has been on the convention agenda of many denominational groups as to whether or not they will accept black citizens as members of their organization, their church group, as well as other members, and this has been a major and splitting problem among church and religious groups throughout our country. Likewise, governmental agencies are doing more to insure equal protection and equal opportunity to people of color and of religious differences. Also, school boards have found it necessary to do something more in terms of trying to afford equality of opportunity in education. It is well to say, in addition, that the Republican party and the Democratic party in their convention platforms that they run on every 4 years when they are seeking the top positions of the nation, mainly, the standard bearer of the office of president, usually refer to and include in their platform a section dealing with civil rights; and I am beginning to wonder just how sincere these 2 parties are when it comes to the question of really putting into effect the things that they say in the Democratic platform as well as in the Republican platform.

I don't imagine my comments here will persuade the opinion of many people here, but I believe the facts and the issues of the day certainly are subjects with which the diplomats and the ambassadors and the leadership of our nation are concerned. For that reason I trust that the delegates will bear with me in these reflections that I would like to leave as a matter of concern to this delegation.

I am also concerned about how this document that we are attempting to write will be received by the people. It is true that there are those of us in this convention who have ambitions beyond this convention, whether they are political, economic or whatever they happen to be. I believe that we have a responsibility to bring back to the people something more than perhaps they had in the last constitution, because I think that the document ought to reflect progress and future achievement, rather than taking away from the people some of the rights that we presently are enjoying. I think, and I certainly know, that the responsibility of delegates to this convention was first of all to review and revise and to possibly improve the constitution in many areas, — not just in the area of declaration of rights, but in many other areas.

I might say, going back to my committee's role for just a moment, that the declaration of rights, suffrage and elections committee voted unanimously to support a resolution to hold hearings in other sections of the state in order that other citizens throughout the state could have the opportunity to discuss problems of concern regarding civil rights with the committee directly. We heard people in Lansing, Detroit, Saginaw and Flint, as well as people who journeyed from other sections, like Muskegon, Ann Arbor, Grand Rapids, and various other sections of our state; at which time the majority of the people were either representing themselves as individuals, an organization, or they were a part of the coordinating council, and each of the representatives who spoke representing the coordinating council supported Delegate Proposal 1621, and that was my reason, and it is still my reason, for rising at this time in support of the minority report presented by Mr. Norris. I feel that the minority report is one of preference because it goes further, in many ways, in spelling out the

content and the problem that we have involved in the area of civil rights, and I would like to at this time endorse the coordinating council on civil rights, the proposal that they presented at the time that we held hearings in Detroit relative to the question of an equal protection clause. Their reasons were ing 8 sections:

1. Discrimination is a major evil in the United States and in Michigan.
2. The people of Michigan have the affirmative responsibility to place civil rights protection in the highest law of the state, their constitution.
3. The securing of these rights should not be dependent on changing interpretations of the federal and state courts.
4. The present Michigan constitutional civil rights guarantees are fragmentary and incomplete.
5. Adequate protection is not provided by the thirteenth, fourteenth or fifteenth amendments to the federal constitution nor by federal civil rights laws.
6. Other states have recently included civil rights protection sections in their constitutions.
7. Michigan policy and a swiftly growing public concern supports civil rights guarantees.
8. Delegate Proposal 1621 provides equal protection of the law, recognizing as a civil right freedom from discrimination in key areas of modern life, and prohibits discrimination by the state or other agencies or persons.

I could perhaps take more time of the committee — I haven't used up the number of words that one delegate said we are all accorded — but I believe I have more or less said to you many of the things that I felt were important to say at this time, and other colleagues of mine, members of the committee, I am sure are anxious to make their remarks as well.

I feel that the committee's report, supporting the proposal submitted by our chairman, Dr. Pollock, is one that I can feel very secure and confident of. I participated in the discussion regarding that proposal, and I feel that it was done in good faith. However, my preference still remains with the substance of 1621; but it was not possible for us to secure that, and I wanted to make my position clear concerning this matter. So that is the reason I rise to give these few comments. Thank you, Mr. Chairman.

CHAIRMAN MARTIN: Thank you, Mrs. Hatcher. Mr. Buback.

MR. BUBACK: I yield to Mrs. Butler.

CHAIRMAN MARTIN: Mrs. Butler.

MRS. BUTLER: Mr. Chairman, fellow delegates, as a member of the committee on declaration of rights, suffrage and elections, I rise to support the committee report. In our study of this section, we felt that the wording of our proposal covered all the rights enumerated by the minority. I urge your support of the committee proposal.

CHAIRMAN MARTIN: Mr. Buback.

MR. BUBACK: Mr. Chairman and fellow delegates, I rise in support of the minority report of preference. As a member of the committee on declaration of rights, suffrage and elections, I wish to state that in our visits to the cities of Detroit, Saginaw and Flint, where public hearings were held, much of the testimony we heard was in behalf of Delegate Proposal 1621, which had the support and backing of the coordinating council of Michigan, consisting of some 31 organizations. I would be remiss in my duty if I didn't speak in behalf of this minority report of preference. May I just take a moment of your time to read one of the many letters and telegrams that I have received relative to the minority report of preference?

Dear Mr. Buback:

I would like to have you know that I feel very strongly that Proposal 1621 should have a place in our new constitution. I believe that discrimination because of race, color, religion or national origin is both immoral and a stumbling block in the path of progress, and that the specific guarantees of civil rights contained in Proposal 1621 should be written into our basic law, the constitution of Michigan.

I feel Michigan should take its place amongst the states which have included civil rights protection in their constitutions.

Sincerely,
Mrs. Cora Madison,
A white citizen.

Now, ladies and gentlemen of the committee, I urge your support for the minority report of preference.

In closing, I wish to commend the committee on declaration of rights and suffrage, and all the members who worked as a group. I also voted for the majority report. I think it is a good report, but I just think the minority report of preference goes a little step further. I think Dr. Pollock did an excellent job as chairman of our committee, and I also wish to commend him. Thank you.

CHAIRMAN MARTIN: Mr. Beaman.

MR. BEAMAN: Mr. Chairman and delegates, as a member of the committee, I want to agree with Dr. Norris and Mrs. Hatcher, that we did give very sober and conscientious consideration to this matter, and I feel that Michigan has made a great step forward in the area of discrimination in the majority report. So I rise to support the majority report of this committee.

CHAIRMAN MARTIN: Mr. Binkowski.

MR. BINKOWSKI: Mr. Chairman, I wish to rise in support of the minority report. Before I entered high school in 1943 I was somewhat experienced in racial matters due to the race riot in Detroit in 1943. Shortly thereafter Detroit common council formed our Detroit commission on community relations. Since that time I have had the opportunity of making the acquaintance at Wayne State University of one of its commissioners, Mr. Wallace A. Witkowski. Mr. Witkowski and his teams were a part of the Polish underground who fought the nazis. He came here not too long ago, and presently he is one of the commissioners of the Detroit commission on community relations. He testified before the committee on declaration of rights, suffrage and elections, and with your indulgence, I would like to take a few minutes to read some of the more pertinent parts of his very short speech. He starts out:

Having been born and raised on the continent, I am a part and product of the generation which witnessed persecution, torture and death inflicted upon the millions of men by parties, societies and governments simply because the victims were of a different nationality, race, religion or ancestry.

The Detroit commission on community relations was formed upon petition by the shocked citizens of our community less than 20 years ago. It was created to redress and prevent grave wrongs and injustices which caused death, violence and destruction of property within Detroit's city limits, and, above all, resulted in destruction of the image of a free and unprejudiced society around us. It all happened within our generation.

The existence of our commission, the enormous task it faces, its efforts, difficulties and history over the past 18 years are the most dramatic proof of the lack of and the need for a broad statement of the principles of equality of all men to be placed in our new constitution, guaranteeing under law equal protection against discrimination and equal opportunities.

These principles should be plainly stated and the legislature charged with their implementation by appropriate legislation.

There are those who feel that there is no need to spell out in our constitution the rights of every citizen. We have learned that when principles are involved we must put them in our laws, our ideas and our deeds. We must state them again and again. We must remember them every day, and must remind every citizen of this state not only of the rights he has but of the rights he must respect in another man, in his fellowman. Without clear statement of such rights, without implementation by legislative enactments of our beliefs in equality under the law, in equal opportunities and freedom from discrimination, in the words of Dr. Seymour Lipset:

the self perpetuating mechanism of prejudice existing in every society, stemming from the ignorance and selfishness of man, will infringe upon, limit, restrict and erode our freedom until there will be none.

Man's mind is a repository not only of hopes and dreams and ideals of mankind, but also, as someone said recently, of all the misconceptions, biases, false traditions, fables, myths and falsehoods of centuries of ignorance and hatred.

We must educate, we must preach, we must restate the principles of equality, and must remind everyone, every time and everywhere, of them. The constitution is where it should begin. People must unlearn wrong ideas and false ideas, and the constitution must point the way.

Ours is a generation that has the ambitious aspiration to create a good society free of inequities and political handicaps. And yet, this is the generation that has killed men based on the accidental difference of their birth. Others have been threatened for the simple act of moving into homes that their incomes and tastes warrant. It was in our city that 3,000 men walked out of the factory because 3 negroes were upgraded on the assembly line. This happened and happens in this city in this generation.

During this past year in several areas in northwest Detroit we witnessed both destruction of property and harassment, because of their color, of families that sought peaceably to occupy homes which they had purchased.

It is in our city today that we have organizations created ostensibly to protect the economic value and character of the neighborhoods but which in effect violate man's most cherished rights.

Prejudice exists today in our midst in both the open and notorious form as well as the more subtle and sophisticated one.

It is up to you members of the constitutional convention, this sovereign body, repository of all the powers of self government that people have ever had on earth, the beholder of all our noble principles and ideals, it is up to you to recognize the need for a strong, resolute and bold restatement of the principles on which this country has been founded.

It is up to you to include in the new constitution the statement of an individual's rights to equal protection of the law, to freedom from discrimination by anyone because of race, color, religion, national origin or ancestry, to equal opportunities and enjoyment of civil and political rights, and to provide for legislative implementation of these principles.

Will we do this?

CHAIRMAN MARTIN: Mr. Romney.

MR. ROMNEY: Mr. Chairman, I recognize the difference between the committee's report and the proposal of the minority report, the preference proposal. I realize that the committee's report does, in general language, what the minority preference proposal provides in more specific language. I realize that the preferred proposal of the minority is, to some extent, statutory in character, and normally I would oppose the inclusion of such statutory language. However, for many years I have stood 4 square in support of equal recognition before the law and equal rights.

To my knowledge, my company was the only major company that in 1955 publicly supported the enactment of the fair employment practices act. I think that we are dealing with an unusual problem. We are dealing with a problem that is of importance not only in the state of Michigan, but it is important throughout the world. This country will not be able to communicate its ideals and hopes effectively to the rest of the peoples of the world until we eliminate from within the type of discrimination that does exist, and I think that it justifies highlighting in the constitution of Michigan this problem in a more specific way than would be true ordinarily.

I realize that this language is subject to some abuse. After all, with civil rights we can abuse rights. But I think that the risk of such abuse is not sufficient reason to fail to do what can be done to correct the problem that is long overdue in its correction. Therefore, I urge you to support the preferred minority proposal. I think it justifies the risk of abuse, and I think it also desirable to be more specific in this case in the constitution because of the urgency of dealing with this problem promptly and thus taking steps that are important to harmony within our state, and to the understanding of our true attitude and position in the world. (applause)

CHAIRMAN MARTIN: Mr. Murphy.

MR. MURPHY: Mr. Chairman and delegates, I rise in support of the minority preference report to the committee report of rights, suffrage and elections. In doing so I am not at all unmindful of the fact that certain personal considerations might be affecting my judgment. On the other hand, however, there seems to me certain cogent reasons why the proposal contained in the minority report should be adopted, and it is to these reasons that I should like to address myself.

First and foremost, the problem of racial inequality in the United States is no longer a purely domestic issue, for it vitally affects our foreign relations. Let me hasten to add that I recognize that the delegates to this convention cannot legislate for our country as a whole, but I am equally certain that what we do here in the next few weeks will be watched by the world and will have its impact for good or for bad.

In 1959 as national committeeman for the young Democratic clubs of Michigan, representing the young Democratic clubs of America, along with young Republicans of America, it was my privilege to attend a NATO conference in Paris, and Tours, France. Before embarking upon that conference we were briefed in Washington about what to expect and how we should conduct ourselves. Economic considerations played a large part in that briefing. During our rather extensive tour of the NATO countries, however, I found a grass roots concern not with economic problems but with problems of human relations. The people of those countries seemed much more interested in the fact that our group was traveling, living and eating together in Europe while these basic human needs could not always be satisfactorily achieved in our own country. Throughout Europe these people raised questions about racial segregation and the denial of equal opportunity within our borders.

Few aspects of American life are more highly publicized throughout the world than our denial of equal opportunity, and this attack is difficult to counter because of the element of truth in it. And every action, either by a state or by an individual, that deprives other individuals, because of their race or color, of rights and privileges enjoyed by others in some measure burdens the nation in its cold war struggle. In the struggle between the free world and the communist bloc for the allegiance of the so called "uncommitted peoples," almost all of whom are nonwhite, the United States is seriously handicapped by its continued practice of the denial of equal opportunity because of race, religion or color. In this struggle we should be impressing upon the world our genuine respect for the dignity of human beings regardless of the color of their skin; and certainly a strong, unequivocal and broad declaration of such respect in our own Michigan constitution is a good place to begin.

There are other reasons for my preference for an equal protection clause which treats the areas of employment, housing, public accommodations and education. These are the areas where discrimination falls most heavily on the persons discriminated against; consequently, these areas ought to be spelled out in our equal protection provision. Many people doubt the possibility of promoting racial equality by law, but if law can be used to enforce discrimination, it can be employed to promote equal rights. It is also often said that social customs cannot be legislated. Proponents of this argument cite the failure of prohibition laws and the nonenforcement of many state laws against discrimination during the latter part of the last century. These legislative failures certainly demonstrate that a mere passage of legislation is no infallible cure, but they do not justify our failure to be as specific in this area as we can. Laws can be a potent force for changing social habits and modifying attitudes. Of more importance, however, we should note that the proposal contained in the minority report

does not require any person to change any attitude, but to refrain from certain discriminatory acts particularly in the areas spelled out.

Now, Mr. Chairman, let me move on to my reasons for preferring the minority proposal, which covers discrimination by individuals, firms, corporations and labor organizations. Individuals may be discriminated against by the state, on the one hand, or by private conduct on the other. Ever since the civil rights cases in 1896, the United States supreme court has consistently held that the fourteenth amendment to the federal constitution prohibits only the denial of equal protection by the states or their political subdivisions, or officers acting under color of state law. As the minority report indicates, Chief Justice Warren recently indicated that the amendment erects no shield against merely private conduct however discriminatory or wrongful. I submit to you the proposition that to proscribe state discrimination while at the same time permitting private discrimination is to make one only half free. Consequently, to bring about that equality envisioned — that Mr. Norris mentioned a few minutes ago — in President Eisenhower's report, the state must bridge the gap by prohibiting private conduct which discriminates on the basis of race, color, religion or national origin.

It is often stated that to accord equal treatment to members of a minority is to violate the rights of others such as the right to associate with persons of one's choice, or the right to choose one's neighbors, or the right to dispose of one's property. There is no doubt that there is a potential conflict, but the resolution of conflicts is precisely the business of government. And so, in the sphere of private conduct, we must resolve the potential conflict between the right of an individual to practice racial discrimination, morally reprehensible as it is, and the right of the state to curtail this freedom for the good of the whole. Individual liberties are never absolute, and are always curtailed when it can be justified by persuasive demonstration of a public good to be served.

The report of the commission on race and housing, University of California Press, 1958, points out very succinctly 3 principal grounds in the American tradition for restricting individual liberty. They are:

1. Private activities affected by a public interest. When private activities, because of their nature or scope, affect the welfare of large numbers of people, they cease to be purely private and may justifiably be subject to control in the public interest. Certainly housing, employment, public accommodations, and education are areas in which conduct by private persons must acknowledge a responsibility to the public.

2. The second area in which we have consistently curtailed individual freedom is where there has been an inequality of private power. Respect for individual freedom is a principle that rests upon an assumption of substantial equality of power among individuals. Whenever marked inequalities of private power have developed, they have always generated a demand for correction. Again, may I point out that where discrimination is practiced, the minority individual is confronted not merely with the prejudices of private persons but with the power of organized groups to determine where he shall live, work or go to school.

3. The third area in which individual liberty is curtailed is where we do so for the express purpose of preserving and extending freedom itself. In many ways the enforcement of limitations on the freedom of minority persons brings restrictions on the freedom and opportunities of others as well.

By way of conclusion, let me briefly state my reasons for supporting the minority proposal. First, it will improve our image abroad by stating the core of our system in which every man shall be afforded the equal protection of the law. Secondly, it will enhance the accomplishment of our national goals. Third, it prohibits discrimination in that broad area in which discrimination is now practiced, and which is now proscribed by the fourteenth amendment to the United States constitution. And, fourth, because the curtailment on private discriminatory conduct is a reasonable one for the enhancement of the public good. For these reasons, Mr. Chairman, I support the minority report.

CHAIRMAN MARTIN: Thank you, Mr. Murphy. Mr. Leppien.

MR. LEPPIEN: Mr. Chairman, fellow delegates, I rise in support of the majority report for the following reasons. They will be very brief. I think we have all agreed that the committee has heard a great deal of testimony. The committee has worked diligently, and has come to an agreement that nobody is against anything, but we are all for something. This is, if we could use the phrase used in this convention and applied to the other committees, a continuing emerging problem. I don't think anyone will disagree with that fact. The very fact that it is a continuing emerging problem and based on a question asked in our committee as to a specific word in the minority report, namely, housing—did this mean depriving the individual property owner of his right to dispose of his property as he saw fit? No real estate agent, nobody else involved, just the individual citizen living in his homestead? And the answer was yes, that this would prohibit him from disposing of his property as he saw fit. Now, then, that brings us to the point that here we have an emerging problem and I think that all the previous speakers have agreed, at least in part, or in total, that this is something that is not going to be cured today or tomorrow. It is going to take time.

In the short span of my lifetime we have seen a great deal of progress in Michigan. We have seen a great deal of progress in my own home city, where we have a human relations commission that is doing a beautiful job, as was testified to at the hearing held in Saginaw on December 19 before this committee.

I simply point out to you that the majority report leaves the details to be expanded as long as the constitution of the state of Michigan that we are writing, and which we hope and pray will be adopted when submitted to the people, will then be in a position to go even beyond the restricted clauses found in the minority report. Mr. Chairman, members of the delegation, I support the majority report. Thank you.

CHAIRMAN MARTIN: Thank you, Mr. Leppien. Mr. Hubbs.

MR. HUBBS: Mr. Chairman, fellow delegates, I am also a member of the committee on declaration of rights, suffrage and elections and for the past 3 months we have been developing a bill of rights. In the process of developing that bill of rights we have come up with a proposal that we consider to be a satisfactory addition to the bill of rights. I would like to point out to you, in support of the majority report, that the minority report goes much too far in its attempt to preserve individual freedom. And I suggest to you it goes so far that individual freedom would be infringed to the nth degree. And I would like to point out to you the final phrase of the substitute proposal, "or any other person." I still believe that individuals in this country would like to have some degree of freedom. I would like to have freedom, and I know that the people who are battling for this minority report would like to have freedom also. I respect their integrity, I respect their wishes, and I respect their position, and I have listened patiently and long, but I feel that in their zeal to get what they consider a victory, they will have injured everyone in our free society. I urge you to support the majority report and truly preserve individual freedom. Thank you.

CHAIRMAN MARTIN: Mr. White.

MR. WHITE: Mr. Chairman, fellow delegates, as one of 15 members who has sat through 4 months of, I think, rather high level deliberation on this and other matters having to do with human relations and civil rights, I rise, respectfully, to oppose the minority report and support the committee's proposal. I have a keen sympathy for and an understanding of the problems involved, I think, and I sincerely believe that the committee's proposal meets our requirements. It is a fair and equitable civil rights provision, and a broad and bold statement on equality. I urge its adoption by the committee. Thank you.

CHAIRMAN MARTIN: The question is on the adoption of the minority substitute proposal. Mr. Bentley.

MR. BENTLEY: Mr. Chairman, I have an amendment to the substitute proposal at the desk.

CHAIRMAN MARTIN: The secretary will read the amendment.

SECRETARY CHASE: Mr. Bentley offers the following amendment to the minority substitute:

1. Amend page 1, line 8, after "employment,", by striking out "housing, public" and inserting "public housing and", so the language will read, ". . . be discriminated against in employment, public housing and accommodations, education, or in his enjoyment of all other of his civil rights. . . ."

CHAIRMAN MARTIN: Mr. Bentley.

MR. BENTLEY: Mr. Chairman, ladies and gentlemen, I have read with considerable sympathy and interest the committee proposal and the supporting reasons thereof, and find myself in agreement. I have also read with equal sympathy and interest the minority proposal and the supporting reasons thereof, and find myself likewise in basic agreement. I would venture, Mr. Chairman, that the vast majority of the delegates assembled in this hall are in sympathy with the objectives contained in both proposals, and I might say at this time that I would hope that the final action on whatever decision the committee takes will be done as it should be done, by an overwhelming vote of all the delegates assembled in this hall on so important a proposal as we have before us at this time.

Mr. Chairman, if there is one possible area of controversy within the minority proposal it occurs, I believe, within the area just referred to by the gentleman from Saginaw, Mr. Leppien, which would be in the field of so called nonpublic or private housing. I think this area, which everyone knows is extremely controversial as to interpretation, should probably be left to both judicial and statutory action for its implementation. It is not my purpose to evade controversy. It is not my purpose to evade issues or areas of the entire field of civil rights which should be thrashed out by this committee and by the convention as a whole. But I do feel it is so important to endeavor to obtain, if possible, an overwhelming majority vote, and to prevent division, whether partisan or otherwise, in disposing of this issue, that I offer this amendment, in the utmost sincerity and good faith, in an effort to, perhaps, resolve one possible area of controversy which may arise in consideration of this particular matter. My purpose, I say, is to try to command a large majority of support, which I think is as it should be. I would be very frank to say that if this amendment is adopted I would support the minority proposal with pleasure, just as I would support the committee's proposal if that were the final vote insofar as this committee is concerned.

Actually, I find myself in the position of the minority. I support the committee's proposal. I would prefer, perhaps, the minority because of its specific reference with the exception of this one possible area to which my amendment refers. So far as the question of discrimination in employment and measures taken to prevent it, I feel there is little or no division within this committee. So far as the question of discrimination in the field of education, and measures taken to prevent it, I likewise feel there is no division within this committee. As a matter of fact, the committee on education, of which I am chairman, has a proposal already on general orders that is very similar to the lines of the minority proposal insofar as the question of education is concerned. In the field of public accommodations, I likewise feel that there is little or no division within the committee of the whole on this matter. I sincerely believe that it is only possibly with respect to this one area of housing that there may be sharp and honest difference of opinion within the group which we have assembled here. Therefore, I offer, as I say, this amendment in sincere good faith, in an endeavor to resolve a possible area of controversy which I think might prevent what should result, and that is an overwhelming vote of approval for a civil rights proposal in our constitution.

I might add, Mr. Chairman, that in this record of endeavoring to prevent discrimination in public housing my own position is historically clear. I believe it was when I was in congress about 3 years ago I offered an amendment in the house of representatives to forbid — this was an amendment to the house amendment to the housing act of 1959 — the use of federal funds in any form in any type of public supported housing at the federal level where discrimination might or could be practiced. That amendment was voted down. I remember being sharply criticized by the chairman of the committee who was handling the bill on the floor — a gentleman from the fine state of Alabama — Mr. Rains, that I was offering that amendment at that time in the spirit of attempting to kill the entire housing bill because he termed it a "Powell" type of amendment. That accusation, I may say to my regret, was reechoed in the editorial column in one of our metropolitan newspapers. My purpose in offering that amendment at that time was sincere. My purpose in offering the amendment at this time, ladies and gentlemen, is imbued with equal sincerity, and although I am not trying to evade any stand on the question of discrimination in the field of nonpublic or private housing — and I'll be glad to state my own belief, if I am asked to do so — I do believe that if the committee, or rather the minority, might wish to accept this particular amendment to their substitute proposal, it would result in removing a great area of possible controversy, possible misinterpretation, possible doubt; and I think we could then have a civil rights proposal that the majority of the delegates would all support in good faith and conscience. At least I trust so. Thank you.

CHAIRMAN MARTIN: Thank you, Mr. Bentley. Dr. Pollock.

MR. POLLOCK: Mr. Chairman, I trust that we will not get into this tedious job of amending 2 carefully drafted alternatives. The decision can be made very clearly. If you like the minority report, vote for the minority report. It was also carefully considered by the committee, as well as the majority report. The way to get unity, if I may suggest it, is not to propose other amendments, but to vote down the minority report, because the minority have already indicated that they are in favor of the majority report, too, and I see no reason in the world why the original proposal of the committee cannot secure the unanimous support of this committee easier than any one which is tinkered with, be it either the minority one or the other one.

CHAIRMAN MARTIN: The question is on the Bentley amendment to the substitute proposal. Mr. Downs.

MR. DOWNS: Mr. Chairman, fellow delegates, I rise in opposition to the amendment. Normally in a deliberative matter of this kind, where feelings are strong, I would go along with a compromise for the sake of unanimity, and I wish to say I have no question whatsoever as to the motives or integrity or sincerity of the delegate who offered the amendment. I can respect those motives and yet I can disagree with the amendment.

The reason I disagree with it is that the matter of housing is so vital to the matter of segregation. Our first proposal was that religion, morality and knowledge be part of our educational process, and I believe in that and support it. But if we do not eliminate segregation in housing, we then have segregation in schools, and when we have segregated schools we have inferior schools, and when we have inferior schools we are dooming those children to inequality of education. This is for those that are doomed to be in segregated schools. We have 2 kinds; one that is segregated with only minorities and one that is segregated with what we call majorities. In this day and age I am not quite sure what a majority or minority is. I speak now as a parent, and I want, in a civilized society, the children of my wife and myself to have the opportunity to be in an integrated school in the first grade and kindergarten, so that our children can begin to feel the basic dignity and equality of people, rather than to wait until they are fortunate enough to take a course in anthropology or psychology in college and learn that they were wrong when as children they had impressions that some races were superior and others were otherwise.

I believe that if we really want to get at the heart of this — and I speak to those of us who are a little critical sometimes of the people in the deep south wrestling with their problems — we too must face this problem openly and honestly. In conclusion I would say that in preparing a document here we are preparing a document that reflects our hopes and not our fears;

our hopes for the life to come of our children and our children's children. Thank you.

CHAIRMAN MARTIN: Mr. Shanahan.

MR. SHANAHAN: I want to talk to the minority report.

CHAIRMAN MARTIN: The question is on Mr. Bentley's amendment. Is there further discussion? Mr. Bentley.

MR. BENTLEY: Mr. Chairman, I ask that it be read, and then I ask for a division.

CHAIRMAN MARTIN: The secretary will read.

SECRETARY CHASE: Mr. Bentley's amendment to the minority report is as follows:

1. Amend page 1, line 8, after "employment,", by striking out "housing, public" and inserting "public housing and", so that the language will then read, beginning in the second sentence:

> No person shall, because of his race, color, religion, national origin or ancestry, be discriminated against in employment, public housing and accommodations, education, or in his enjoyment of all other of his civil rights, . . .

CHAIRMAN MARTIN: Mr. Hannah.

MR. J. A. HANNAH: Mr. Chairman, I assume that the Chair might rule my comments out of order since they are only by indirection applicable to the amendment before us. I had expected to remain quiet on this issue because a few weeks ago some folks thought that I intruded a matter of civil rights into another matter. I see in this discussion in the last few minutes, however, well intentioned people in the process of dividing themselves on an issue where there need be no division. The people of Michigan have a very good record in the field of civil rights — not as good as it should be, but good by comparison to most other states and areas.

When I was elected as a delegate to this convention, I asked the staff of the federal commission on civil rights in Washington — and they have devoted more time and attention and thought to this problem, I am sure, than any individual in this hall — I asked them to give serious consideration to the words that they thought would be appropriate to make for the maximum progress in the area that we are now talking about, civil rights, and appropriate to be included in a state constitution. Those words were included in my Delegate Proposal 1455, referred to by Dr. Pollock in the committee report. After you leave the section that had to do with inherent rights, the staff of our commission on civil rights thought that everything that needed to be said to adequately protect the civil rights of people and to make it possible for a state like Michigan to make the greatest progress that can be made are these simple words:

> Civil rights. No person is to be denied the enjoyment of any civil or political right because of race, color, religion, ancestry or national origin. The legislature shall implement this section.

The committee has changed it a little. They have added some words, they have left out a word or two. But essentially this is what they have included.

Now, you see in the speeches that have recently been made; in the well intentioned amendment by Mr. Bentley; what happens when you try to provide for every possible contingency. I speak now against the Bentley amendment — against the minority proposal — because I believe, with great sincerity and conviction, that the words prepared by our staff are about all that are essential, necessary or desirable, and I am afraid you are going to divide in an area where no well intentioned people should divide themselves.

CHAIRMAN MARTIN: Mr. Shanahan.

MR. SHANAHAN: I wanted to talk after the Bentley amendment is disposed of.

CHAIRMAN MARTIN: Mr. Hodges, do you want to speak on the Bentley amendment?

MR. HODGES: I would like to speak in opposition to the Bentley amendment. I would just like to read a paragraph here.

> We observe that in our state today the only commodity that an individual family cannot buy on a free and open market is a house. This in turn creates school and community segregation and generates prejudice. It causes crowding, lower civilian morale, and makes for substandard living conditions.
>
> We pledge that we will work for constructive legislation aimed at abolishing discrimination in the sale or rental of housing, and that we will make for an open housing market in this state.

That is the Republican state platform of last year.

Now, what Mr. Bentley's well intentioned amendment would do is foreclose, for the next 50 years if this constitution is adopted, the field of private housing. I do not think any of us here today want to say how far in the future we will go in this field. There are many other areas, other than the individual home owner, when we raise the question of private housing. There are multiple dwellings. There are large tracts where 500 and 1,000 homes are sold at one crack. There may well be a time when appropriate legislation in these areas will be thought necessary, and by deliberately excluding, as this amendment would do, the field of housing, we would be doing a disservice by stating for all time, at least for the great life of this constitution, that we do not feel that this is a proper area. I do not feel that this is something we should do. Therefore, I oppose the amendment, and remind the delegates of both party platforms in this regard.

CHAIRMAN MARTIN: The question is on the Bentley amendment. Mr. Habermehl, do you wish to speak on that?

MR. HABERMEHL: Yes, Mr. Chairman. I believe like Dr. Hannah. I feel there might be a feeling here that there are issues involved where there are no actual issues. This does directly affect, I believe, the Bentley amendment.

The language of the majority report reads: "The legislature shall implement this section." I think it worthwhile calling to the attention of the delegates that this is not a matter of passing the buck or evading legislative action. The legislature has already implemented the section, and has since the year 1885. I think it may be worthwhile to read the statute. It's a very short one:

> All persons within the jurisdiction of this state shall be entitled to full and equal accommodations, advantages, facilities and privileges of any restaurants, eating houses, barber shops, public conveyances on land and water, theaters, motion picture houses, and all other places of public accommodations, amusement and recreation, and all public educational institutions of this state, subject only to the conditions and limitations established by law and applicable alike to all citizens.

It is a criminal statute which provides criminal penalty for its violation.

On the question of employment mentioned in the minority report, of course, the act is the fair employment practices act, act 251 of 1955, which makes any discriminatory policy by employer or employee representative — in other words, labor unions — an unfair labor practice. I would not want the delegates to feel that this is something that the legislature must implement in the future. It has already been implemented.

CHAIRMAN MARTIN: The question is on the Bentley amendment to the substitute proposal. A division has been requested. Is the demand seconded?

A sufficient number is up. As many as are in favor of the Bentley amendment will rise.

Mr. Lundgren.

MR. LUNDGREN: Mr. Chairman, just a point of order. It seems we were going to install buzzers for letting people know when we were going to vote. I know there are some people downstairs.

CHAIRMAN MARTIN: Is that the buzzer? It's all news to me. (laughter) Do we have a rule on this, Mr. Van Dusen, about buzzers?

MR. VAN DUSEN: We have no rule, Mr. Chairman, on buzzers. There is a buzzer system on which Dr. DeVries is the authority. (laughter)

CHAIRMAN MARTIN: Dr. DeVries, are you the buzzer expert?

MR. DeVRIES: Mr. Chairman, members of the committee, I will yield to the secretary. He set up the alarm system. I forgot what it is. (laughter)

SECRETARY CHASE: On page 345, Journal 60, Mr. DeVries reported that the committee on administration had arranged for the installation of a bell warning system to convey signals to all areas of the convention where delegates might be meeting, and asked the secretary to specify how such warning system would be used. The secretary spelled out 3 different systems here, but the one in particular that would apply to this has not yet been figured out. So I rang the bell just once just now.

CHAIRMAN MARTIN: Those in favor of the Bentley amendment will rise. Those opposed will rise.

[Yeas, 8; nays 80.]

The amendment is not adopted.

The question now is on the minority report substitute. Mr. Shanahan.

MR. SHANAHAN: Mr. Chairman, fellow delegates, I too am a member of the committee on the declaration of rights, suffrage and elections. This has been given extensive consideration. The majority felt very strongly that the majority report, in which the minority concurred 100 per cent, was adequate, was sufficiently detailed, and said what was needed to be said. When you analyze as to why we are here, beyond a doubt the most important thing is that of the protection of minorities. In the final analysis, again, everyone is a member of a minority. I have asked various times if anyone knows anyone who is not a member of a minority, and I have never been able to find a single person that says he knows somebody that is not a member of a minority. In the final analysis, again, every person is a minority of one. So why we are here is to protect the rights of minorities.

Sometimes in an attempt to correct an evil a greater evil is created, and I believe there is the possibility of that in the minority preference. I therefore strongly urge that the minority report not be adopted, and that the committee proposal be adopted.

CHAIRMAN MARTIN: Thank you, Mr. Shanahan. Mrs. Butler.

MRS. BUTLER: Mr. Chairman and members of the committee, I want to urge the dames to vote against the substitute because there's no sex in it. (laughter)

CHAIRMAN MARTIN: Judge Gadola.

MR. GADOLA: Mr. Chairman and delegates, I am the only member of this civil rights committee that hasn't spoken. I have kept silent, listening to the different dissertations upon this proposition from the members of the committee and from those not members of the committee. We had a very exhaustive study of this question. We had a great many witnesses before us on this matter. I, of course, voted with all the rest of the committee for the committee report. It was a unanimous report. And then, of course, they filed this supplemental report, or a minority report. I am very sorry they did, because I have been fearful that by their minority report they might hurt the adoption of the majority report. The majority report is the proper report. We worked it out.

We held all these different meetings, and so forth, and in the city of Flint, when we had that meeting, I pointed out to the members of this committee how the city of Flint was. They have 143 negro teachers in the Flint city schools, and they are not in a segregated area because there is no segregated area in Flint. They work in the shops, and I pointed out to them that the Chevrolet factory in Flint is 1/3 negro in its employees. So, I myself might be a member of a discriminated group. Peculiarly, I ran for office a good many times, you know, and I pointed out to our committee and the members of this committee the points on that: when the colored people of the city of Flint went out saying, "Don't vote for him. He is a catholic." But I didn't resent that. It was their privilege. It was their right. If they wanted to hate me, they could hate me. That was all right. I didn't hate them for it, and I don't, and I believe in according them their rights and privileges just the same as I ask for myself.

Therefore we, after careful consideration, adopted this majority report, and we urge that it will answer the question, and we urge it upon this committee to adopt it as part of the constitution of the state of Michigan establishing the absolute rights and privileges of every member of every group of any kind or nature in the state of Michigan.

CHAIRMAN MARTIN: The question is on the minority report substitute. Father Dade.

MR. DADE: I don't want to get into a squabble over who voted and how, but I was under the impression I did not vote to make the majority report a unanimous report, and I specifically said the minority report, for me, was a report of preference and priority.

I want to make one observation that might be of interest; that the young white woman who saved my life in the south some months ago was a roman catholic girl.

CHAIRMAN MARTIN: The question is on the minority report substitute for the committee proposal. As many as are in favor will say aye.

A DELEGATE: Division.

CHAIRMAN MARTIN: A request for a division. Is the demand supported? A sufficient number up. The question is on the substitute for the committee proposal. As many as are in favor will rise.

MR. POLLOCK: Mr. Chairman, the question is on the substitute proposal of Mr. Norris, which is explained in the minority report.

CHAIRMAN MARTIN: My understanding, Dr. Pollock, is that a minority report is offered as an amendment to the committee report. So we are considering it as an amendment or substitute.

MR. POLLOCK: That's right, and as chairman of the committee I urge you to vote no on that question.

CHAIRMAN MARTIN: As many as are in favor will vote aye. As many as are opposed will vote no. Have you all voted? If so, the machine will be locked and the secretary will take the tally.

Mr. Gust.

MR. GUST: Mr. Chairman, it might be more political good judgment on my part to wait and see what Mr. Chase has as a tally before I rise to correct my vote; and much as I would like to vote both ways on this for many political reasons, I feel constrained to follow my leader in the chairman of the committee on rights, suffrage and elections and I choose to have my yes/no vote recorded as a no vote.

SECRETARY CHASE: On the adoption of the substitute proposed by the minority, the yeas are 50; the nays are 80.

CHAIRMAN MARTIN: The substitute is not adopted.

The question now is on the committee report, Committee Proposal 26. Mr. Seyferth has 2 amendments. Mr. Seyferth.

MR. SEYFERTH: Mr. Chairman, in view of the hour being late, and we have been sitting and listening for a long time, I move that the committee do rise.

CHAIRMAN MARTIN: Mr. Seyferth moves that the committee do now rise. The question is on Mr. Seyferth's motion. As many as are in favor will say aye. As many as are opposed will say no.

The motion does not prevail.

A DELEGATE: A division.

CHAIRMAN MARTIN: A division is requested. Is the demand supported? Sufficient number up. The question, then, is on whether the committee shall rise. As many as are in favor will rise.

SECRETARY CHASE: Thirty-one.

CHAIRMAN MARTIN: As many as are opposed will rise.

SECRETARY CHASE: Seventy-three.

CHAIRMAN MARTIN: The motion does not prevail.

Dr. Pollock.

MR. POLLOCK: I ask for the question now on the committee proposal.

CHAIRMAN MARTIN: Mr. Seyferth has 2 amendments, Dr. Pollock. The secretary will read the amendments.

SECRETARY CHASE: Mr. Seyferth offers the following amendment:

1. Amend page 1, line 13, by striking out "religion, sex or

national origin" and inserting, "color, religion, national origin or ancestry", so that the language will then read:

. . . nor shall any person be denied the enjoyment of his civil or political rights or be discriminated against in the exercise thereof because of race, color, religion, national origin or ancestry.

CHAIRMAN MARTIN: Mr. Seyferth.

MR. SEYFERTH: Mr. Chairman, fellow delegates, I think you now see the reason why I would like to have blown this place when we have to talk about sex at this late hour. (laughter) In all sincerity, I feel that the use of the words in the amendment now on the secretary's desk more justly lends dignity to a much deserved area of dignity, and that the use of race, creed, color or national origin is more fitting than that which the proposal contains. I am not against sex. I feel that the verbiage of the committee proposal does not differentiate between feminine or masculine gender, but it is implied that the feminine gender is as protected in civil rights as in the masculine gender. Therefore my amendment.

CHAIRMAN MARTIN: The question is on the Seyferth amendment. Mr. Stevens.

MR. STEVENS: Mr. Chairman, as a member of the committee and on behalf of the committee, we would like to oppose the amendment. We gave great consideration to this matter. We did not feel so much it was necessary, but the ladies wanted it in. They felt they might be discriminated against as a minority group or as a group. We studied the matter and the committee felt that there was no reason to believe that this would in any way interfere with the statutory or constitutional rights which have been provided for women. It would simply provide that they would have the same protection as certain other minorities.

CHAIRMAN MARTIN: The question is on the Seyferth amendment. As many as are in favor will say aye. As many as are opposed will say no.

The amendment is not adopted.

SECRETARY CHASE: Mr. Seyferth offers the following amendment:

1. Amend page 1, line 13, after "origin.", by inserting "The equal protection of the laws shall be defined to mean, among other things, that no private corporation or association of any kind or individual shall enter into any agreement, written or oral, which excludes any person from employment because of membership or nonmembership in any labor organization or be compelled to pay dues, fees or charges of any kind to any labor organization as a requirement of employment or as a condition of continuing employment.".

CHAIRMAN MARTIN: Mr. Seyferth.

MR. SEYFERTH: Mr. Chairman, fellow delegates, I would like to impose on your valuable time for the next few minutes to explain this amendment as best I am capable of explaining. At the outset, let it be known that the amendment now before you for consideration is a right to work proposal.

On January 6, I appeared before the committee on rights, suffrage and elections to present my Delegate Proposal 1562, right to work. In time the committee, according to their action journal, decided by a majority vote that right to work should be a legislative action and not a constitutional provision. Technically, the committee decision is correct. Right to work can be handled as a statute but it also can be a constitutional provision. On this committee decision I respectfully disagree and I speak now through amendment procedure and privilege in support of the amendment now before you.

The substantive content of the amendment answers in fact whether compulsory union membership should be authorized and fostered in Michigan or should compulsory union membership be banned in the interest of protecting individual rights, and freedom of choice. Today, the right of Michigan workers to join a union is protected by law. This is as it should be. However, a Michigan worker's right to refrain from joining a union is not protected by law. This is not as it should be.

The Taft-Hartley act of 1947 provided for the union shop legal stature. A union shop is one where a union has bargaining authority and all employees must join the union to hold their job; hence, compulsory unionism. The Taft-Hartley act also provides, under the now very famous section 14(b), that each state can forbid said compulsory union shop contracts if the people of that state so desire. Tangible expression of this desire must be through a constitutional provision or a legislative act. Nineteen states now have right to work laws of this kind. Seven states are by constitutional provision and 12 states take the form of statutes. These laws have been upheld as consistent with federal and state constitutions. The Taft-Hartley act then provides that the right of the employee to join a union is a basic right protected by law and the Taft-Hartley act also provides, through individual state action, that the right of the employee not to join or support a union if he so chooses can be equally protected.

The state of Michigan enjoys a predominant industrial complex which in turn supports a vocal labor union membership. This formidable wall of opposition to the principles of right to work could conceivably present to a legislature a very convincing argument against right to work laws so that the rights, suffrage and election committee's reasoning — leave it to the legislature — in my humble opinion will not handle the question fairly in behalf of the people of the state of Michigan. The import of this expression of individual freedom demands the dignity of constitutional status.

We are writing a new state constitution. This is the time and the place to consider presentation to the people of the state of Michigan of a constitutional provision as exemplified in this amendment now before us. So much for the mechanical and technical side.

Now let us discuss the touchy aspect of right to work and here we do not have to look very far for material. In this area, we find strong emotional pros and cons of the issue before us. Let's take a look at this right to work amendment and see what it really means.

First, let it be known that all of the people of the state of Michigan and of the United States should be sick from shame for having allowed ourselves to be conned into this situation through ill conceived federal legislation which now makes it necessary for each state to pass laws or effect constitutional changes in order to protect or reprotect, if you please, our God given, constitutionally supported individual rights.

From this position right to work laws must be considered an unfortunate necessity to restore balance between management, the individual and the union. A right to work provision provides an employee freedom to choose either membership or nonmembership in a labor union. Right to work means that an employee cannot be forced to join or pay money to a labor union — or any other private organization — in order to obtain or retain a job.

The federal bill of rights, our state declaration of rights are dedicated to the protection of individual liberties, equal protection under the laws, freedom for the individual, including his right to choose or reject so long as the right of others are not infringed upon.

The right to work principle does not interfere in any way with legitimate union activity. It does not restrict the right of employees to organize or bargain collectively with their employers.

Organized labor claims union busting, lower pay, free riders and other objectionable conditions follow in states where right to work provisions have been adopted. This is not true. Evidence to the contrary is well documented to indicate that unions have not been broken, pay rates have not deteriorated, collective bargaining has not broken down. What does happen is that labor unions lose their monopoly power over their membership. The right to work provision returns to the individual employee his freedom of action and freedom of choice. The labor leaders then find themselves having to sell their product for a change, based on merit and value and no longer to a captive audience. This, incidentally, is the American way.

No other segment of our Michigan economy has as much unbridled legal monopoly power as labor unions. Is there any doubt why unions object so strongly to the right to work provisions? This monopoly power breeds objectionable byproducts, such as coercion, power and the misuse of power. But these

byproducts are the direct result of any monopoly power concentrated in any segment of our economic or social complex whenever freedom controls are relaxed or abandoned.

Labor unions, actively supported through a membership based on free individual choice, are fundamentally necessary in our modern Michigan industrial complex. If this industrial complex is to provide all of the jobs required and necessary for the success of our state's future, then we today had better decide equal ground rules applicable to all the members playing on the same side towards a common goal.

Bear in mind, that for the labor unions to have obtained their monopoly status through compulsory unionism, our government and management and the people with labor had to agree collectively to abrogate and foreclose on the freedom and rights of the Michigan worker. The union could not have done it alone. No, this freedom steal is not all by union bad guys. It had to be helped by management not looking and not collectively objecting and by government through political logrolling for the labor vote block.

Now here we sit as elected delegates to write a new state constitution. We have the power — yes, and the privilege — to restore to Michigan workers their individual freedom of action and equal protection under law. This then is the equalizing ground rule needed to put Michigan's great industrial complex back in the game of providing jobs and more jobs for our dynamic future.

A final thought. Compelling a man to join any organization is denying him his freedom. Freedom depends on choice and when choice is denied, freedom is then denied. To deny freedom of choice is to deny freedom to the minority. In order to deny freedom to the minority in any organization, there must be compulsion.

Force applied in this manner is an enemy of freedom and, of course, morally wrong and certainly contrary to our dedicated individual rights. And for the people of the state of Michigan, we can set into motion action that will correct this condition.

In this interest, I urge your support of the amendment before you and the committee proposal to follow.

CHAIRMAN MARTIN: Dr. Pollock.

MR. POLLOCK: We had all hoped we could get a unanimous vote on the committee proposal. This amendment by Mr. Seyferth is obviously not germane to our proposal. I would consider it a rider, and without regard to the merits of the subject he is talking about one way or the other, it is a separate issue. I therefore urge you, without regard to your feeling on the question of the right to work — the committee considered this, and it considered it as a separate matter, and it considered it as a statutory matter and not one of constitutional nature. That was the decision of the committee. And even if the committee had proposed it as a constitutional section, it never would be put in this section. Therefore, I urge you to defeat the amendment.

CHAIRMAN MARTIN: The question is on Mr. Seyferth's amendment. Mr. Boothby.

MR. BOOTHBY: Mr. Chairman, the time is late, I realize, and I would at this time be willing to yield to Mr. Pollock if he wanted to ask that the committee now rise. However, if that is not the case, I would proceed.

CHAIRMAN MARTIN: Dr. Pollock?

MR. POLLOCK: I do not so wish.

CHAIRMAN MARTIN: Do you have a long statement, Mr. Boothby?

MR. BOOTHBY: I have a rather long statement, yes.

CHAIRMAN MARTIN: The chairman of the committee does not wish to move that the committee rise, so I think you may proceed.

Mr. Iverson.

MR. IVERSON: I hate to do this, but I must remind most of the delegates that we have a meeting within a few minutes. For that reason, I move that the committee do now rise.

CHAIRMAN MARTIN: Mr. Iverson moves that the committee do now rise. The question is on Mr. Iverson's motion. As many as are in favor will say aye. As many as are opposed will say no. The Chair is in doubt. As many as are in favor will rise.

SECRETARY CHASE: Sixty-five.

CHAIRMAN MARTIN: As many as are opposed will rise.

SECRETARY CHASE: Forty.

CHAIRMAN MARTIN: The motion prevails. The committee will rise.

[Whereupon, the committee of the whole having risen, President Nisbet resumed the Chair.]

PRESIDENT NISBET: The Chair recognizes Mr. Martin.

MR. MARTIN: Mr. President, the committee of the whole has had under consideration various matters on which the secretary will give a report.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 26,** has considered this committee proposal, and has come to no final resolution thereon. This completes the report of the committee of the whole, Mr. President.

Pursuant to the deadline established for filing of committee proposals and supporting reports under the terms of Resolution 45, and in accordance with the understanding of the convention relative thereto, as suggested by the vice president and agreed to by unanimous consent on January 30, the secretary announced that the following notices of committee proposals and exclusion reports had been filed on yesterday, January 31:

Committee Proposal 67.

Mr. Erickson, chairman, committee on miscellaneous provisions and schedule.

A proposal to amend article XIII, sections 1, 2, 3, 4 and 5, pertaining to eminent domain, of the present constitution.

Committee Proposal 71.

Mr. Martin, chairman, committee on executive branch.

A proposal to provide for the election, term and duties of state officers; allocation of departments, administrative reorganization, appointment and removal of department heads, supervision of departments, appointments to fill vacancies, provisional appointments, and removal or suspension from office by the governor. Amends or replaces article VI, sections 1, 3, 10 and 19, and article IX, sections 5 and 7.

Committee Proposal 73. [Withdrawn.]

Mr. Martin, chairman, committee on executive branch.

Lieutenant governor as president of senate. Article VI, section 19.

Committee Proposal 77.

Mr. Martin, chairman, committee on executive branch.

A proposal to provide a suitable residence for the governor and to authorize an allowance for maintenance. Amends article VI.

Committee Proposal 79.

Mr. J. A. Hannah, chairman, committee on legislative organization.

A proposal pertaining to a commission on legislative apportionment. Replaces article V, section 4.

Committee Proposal 80.

Mr. J. A. Hannah, chairman, committee on legislative organization.

A proposal pertaining to the reapportionment of the legislature: (a) the senate; (b) the house of representatives; (c) districting of territories annexed to cities and municipalities. Replaces article V, sections 2 and 3.

Committee Proposal 86.

Mr. A. G. Elliott, chairman, committee on local government.

A proposal pertaining to highways and their maintenance. Amends article VIII, sections 26 and 27.

Committee Proposal 87.

Mr. A. G. Elliott, chairman, committee on local government.

A proposal relating to ports and port districts. Retains section 30 of article VIII unchanged.

Committee Proposal 88.

Mr. A. G. Elliott, chairman, committee on local government.

A proposal pertaining to metropolitan areas. Amends article VIII.

Committee Proposal 89.

Mr. A. G. Elliott, chairman, committee on local government.

A proposal pertaining to county home rule. Amends article VIII.

Committee Proposal 90.

Mr. Danhof, chairman, committee on judicial branch.

A proposal pertaining to the judicial branch. A substitute for section 1 of article VII.

Committee Proposal 91.

Mr. Danhof, chairman, committee on judicial branch.

A proposal pertaining to the supreme court. A substitute for sections 2, 4, 5, 6 and 7 of article VII.

Committee Proposal 92.

Mr. Danhof, chairman, committee on judicial branch.

A proposal pertaining to a court of appeals. Amends article VII.

Committee Proposal 93.

Mr. Danhof, chairman, committee on judicial branch.

A proposal pertaining to the circuit court. A substitute for sections 8, 9, 10 and 11 of article VII.

Committee Proposal 94.

Mr. Danhof, chairman, committee on judicial branch.

A proposal pertaining to the probate court. A substitute for sections 13 and 14 of article VII.

Committee Proposal 95.

Mr. Danhof, chairman, committee on judicial branch.

A proposal pertaining to appeals from administrative tribunals. Adds a new section to article VII.

Committee Proposal 96.

Mr. Danhof, chairman, committee on judicial branch.

A proposal pertaining to general and special provisions relative to the courts of the state. A substitute for sections 17, 19, 20 and 23 of article VII.

Committee Proposal 97.

Mr. Bentley, chairman, committee on education.

A proposal to amend article XI by adding a new section pertaining to the arts and recreation.

Committee Proposal 98.

Mr. Bentley, chairman, committee on education.

A proposal pertaining to the educational institutions of the state. Replaces sections 3, 4, 5, 7, 8, 10 and 16 of article XI.

Committee Proposal 99.

Mr. Hoxie, chairman, committee on legislative powers.

A proposal to provide that the legislature may provide for a jury of less than 12 in civil cases. Amends article V, section 27.

Committee Proposal 100.

Mr. Hoxie, chairman, committee on legislative powers.

A proposal to provide that the legislature shall not authorize lotteries or the sale of lottery tickets. Retains article V, section 33.

Committee Proposal 101.

Mr. Hoxie, chairman, committee on legislative powers.

A proposal to provide that the state shall not engage in internal improvements except in certain specified areas and except that the legislature may empower local subdivisions to act in the area of internal improvements. Amends article X, section 14.

Committee Proposal 102.

Mr. Hoxie, chairman, committee on legislative powers.

A proposal to provide that each house of the legislature may choose its officers, determine its rules, judge qualifications of its members and other matters. Amends article V, section 15.

Committee Proposal 103.

Mr. Hoxie, chairman, committee on legislative powers.

A proposal to provide that sessions of the legislature be open and that a concurrent resolution is necessary for adjournment for more than 3 days. Amends article V, section 18.

Committee Proposal 104.

Mr. Hoxie, chairman, committee on legislative powers.

A proposal to provide for 3 readings of a bill before passage and for passage of bills by a majority of the members elected. Retains article V, section 23.

Committee Proposal 105.

Mr. Hoxie, chairman, committee on legislative powers.

A proposal to provide that bills must be printed 5 days prior to passage and for limitation of extraordinary sessions. Amends article V, section 22.

Committee Proposal 106.

Mr. Hoxie, chairman, committee on legislative powers.

A proposal to allow the legislature to pass laws regarding indeterminate sentences. Retains article V, section 28.

Committee Proposal 107.

Mr. Hoxie, chairman, committee on legislative powers.

A proposal to provide that legislators shall be elected on the first Tuesday after the first Monday in November. Amends article V, section 12.

Committee Proposal 108.

Mr. Hoxie, chairman, committee on legislative powers.

A proposal to provide a limitation against general revision of the laws and a method of compilation. Amends article V, section 40.

Committee Proposal 109.

Mr. Hoxie, chairman, committee on legislative powers.

A proposal to provide that the legislature may enact laws whereby public employment disputes can be settled. Amends article XVI, section 7.

Committee Proposal 110.

Mr. Hoxie, chairman, committee on legislative powers.

A proposal to provide that the legislature may enact laws relative to hours and condition of employment. Retains article V, section 29.

Committee Proposal 111.

Mr. Hoxie, chairman, committee on legislative powers.

A proposal pertaining to the employment of chaplains. Amends article V, section 26.

Committee Proposal 112.

Mr. Hoxie, chairman, committee on legislative powers.

A proposal to provide that certain office holders shall be ineligible for the legislature. Amends article V, section 6.

Committee Proposal 113.

Mr. Hoxie, chairman, committee on legislative powers.

A proposal to provide that the legislature may submit bills to the people for referendum. Retains article V, section 38.

Committee Proposal 114.

Mr. Hoxie, chairman, committee on legislative powers.

A proposal to provide that each house of the legislature shall keep a journal and the yeas and nays be recorded on a demand of 1/5 of the members present. Amends article V, section 16.

Committee Proposal 115.

Mr. Hoxie, chairman, committee on legislative powers.

A proposal to provide that no member of the legislature or state officer shall have a substantial conflict of interest with the state. Amends article V, section 25.

Committee Proposal 116.

Mr. Hoxie, chairman, committee on legislative powers.

A proposal to provide time and place of legislative sessions and that bills and resolutions pending at the end of a session shall be considered introduced at the next session. Amends article V, section 13.

Committee Proposal 117.

Mr. Hoxie, chairman, committee on legislative powers.

A proposal to provide that votes on elections and nominations in the legislature be recorded. Amends article V, section 17.

Committee Proposal 118.

Mr. Hoxie, chairman, committee on legislative powers.

A proposal to provide for vesting the legislative power

in the senate and house of representatives and to reserve the power of initiative and referendum to the people. Amends article V, section 1.

Committee Proposal 119.

Mr. Hoxie, chairman, committee on legislative powers.

A proposal to provide that the legislature shall not pass local acts when general acts can be made applicable and that local acts require a 2/3 vote of the legislature. Amends article V, section 30.

Committee Proposal 120.

Mr. Hoxie, chairman, committee on legislative powers.

A proposal to provide that a member of the legislature shall not be appointed to certain other offices during the term for which he is elected. Amends article V, section 7.

Committee Proposal 121.

Mr. Hoxie, chairman, committee on legislative powers.

A proposal to provide that no law shall embrace more than one object and that no act shall take effect until 90 days from the end of a session and other incidental matters. Amends article V, section 21.

Committee Proposal 122.

Mr. Hoxie, chairman, committee on legislative powers.

A proposal to include in the constitution the substance of section 5 of article XVI, entitled "vacancies in office; continuity of government in emergencies."

Committee Proposal 123.

Mr. Hoxie, chairman, committee on legislative powers.

A proposal to permit administrative agencies to promulgate rules and regulations and to provide for legislative review thereof, and for judicial review of the findings of such agencies. Amends article V by adding a new section.

Committee Proposal 124.

Mr. Erickson, chairman, committee on miscellaneous provisions and schedule.

A proposal pertaining to increase and decrease in the salaries of officials. Amends the second sentence of section 3, article XVI.

Exclusion Report 2029.

Mr. Erickson, chairman, committee on miscellaneous provisions and schedule.

A report recommending the exclusion of article XVI, section 6.

Exclusion Report 2030.

Mr. Erickson, chairman, committee on miscellaneous provisions and schedule.

A report recommending the exclusion of article XIII, section 2.

Exclusion Report 2031.

Mr. Erickson, chairman, committee on miscellaneous provisions and schedule.

A report recommending the exclusion of article XIII, section 4.

Exclusion Report 2032.

Mr. Erickson, chairman, committee on miscellaneous provisions and schedule.

A report recommending the exclusion of article XIII, section 5.

Exclusion Report 2033.

Mr. Erickson, chairman, committee on miscellaneous provisions and schedule.

A report recommending the exclusion of article XII, section 4.

Exclusion Report 2034.

Mr. Erickson, chairman, committee on miscellaneous provisions and schedule.

A report recommending the exclusion of article I, section 1.

Exclusion Report 2035.

Mr. A. G. Elliott, chairman, committee on local government.

A report recommending the exclusion of article VIII, section 6, regarding jury commissioners.

Exclusion Report 2036.

Mr. A. G. Elliott, chairman, committee on local government.

A report recommending the exclusion of article VIII, section 10.

Exclusion Report 2037.

Mr. A. G. Elliott, chairman, committee on local government.

A report recommending the exclusion of article VIII, section 11.

Exclusion Report 2038.

Mr. A. G. Elliott, chairman, committee on local government.

A report recommending the exclusion of article VIII, section 15a, regarding drainage district bonds.

Exclusion Report 2039.

Mr. A. G. Elliott, chairman, committee on local government.

A report recommending the exclusion of article VIII, section 24.

Exclusion Report 2040.

Mr. A. G. Elliott, chairman, committee on local government.

A report recommending the exclusion of article VIII, section 31.

Exclusion Report 2041.

Mr. Pollock, chairman, committee on declaration of rights, suffrage and elections.

A report recommending the exclusion of article III, section 1.

Exclusion Report 2042.

Mr. Danhof, chairman, committee on judicial branch.

A report recommending the exclusion of article VII, sections 15, 16 and 21.

Exclusion Report 2043.

Mr. Danhof, chairman, committee on judicial branch.

A report recommending the exclusion of article VII, sections 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 17, 19, 20 and 23.

Exclusion Report 2044 [Withdrawn.]

Mr. Hoxie, chairman, committee on legislative powers.

A report recommending the exclusion of article XVI, section 7.

Exclusion Report 2045.

Mr. Hoxie, chairman, committee on legislative powers.

A report recommending the exclusion of article V, section 34.

Exclusion Report 2046.

Mr. J. A. Hannah, chairman, committee on legislative organization.

A report recommending the exclusion of article V, sections 2, 3 and 4.

PRESIDENT NISBET: Announcements.

SECRETARY CHASE: Mr. Madar requests that the delegates who have not done so please sign his copy of Mason's manual.

The following announcement from the director of public information, Mr. Stuart Kirvan: NBC-TV news called us last night and informed us that the 8:00 to 8:30 a.m. segment of the Wednesday, February 7 "Today" show will be devoted to the Michigan constitutional convention. "Today" is carried in the Detroit area by WWJ-TV, channel 4, and in the Lansing area by WILX-TV, channel 10.

PRESIDENT NISBET: Mr. Yeager.

MR. YEAGER: I would like to make one inquiry of the secretary through the Chair. Now that we are on early hours for session at 9:30, will the secretarial staff be available from 9:00 or earlier?

PRESIDENT NISBET: I think that is Mr. DeVries' — I don't see Mr. DeVries here. Let me suggest that the secretary take this inquiry and discuss it with Mr. DeVries, and have an answer for you tomorrow morning.

MR. YEAGER: Thank you.

PRESIDENT NISBET: Mr. Kuhn.

MR. KUHN: I move that we reconsider the vote on the resolution setting the times when our convention is going to meet. There was a very close vote. One vote was recorded 71 to 68 by roll call. We had a yea vote cast where the gentleman was not in the building. It's an error that I hope we can correct in the future. It could have changed the whole vote. It was done by accident. Someone voted yes at 10:00 o'clock and they left the building and no one turned the machine off. So when the 9:30 amendment came up, automatically they voted yes. Therefore, I move at this time to reconsider and request a roll call vote to settle the question.

PRESIDENT NISBET: The question is on Mr. Kuhn's motion to reconsider.

MR. VAN DUSEN: Mr. President, I have a preferential motion. I move we adjourn.

PRESIDENT NISBET: The question is on adjournment. Those in favor, say aye. Opposed, no.

The motion prevails. We are adjourned until 9:30 tomorrow morning.

[Whereupon, and in pursuance of Resolution 68, at 5:45 o'clock p.m., the convention adjourned until 9:30 o'clock a.m., Friday, February 2, 1962.]

SEVENTY-FIRST DAY

Friday, February 2, 1962, 9:30 o'clock a.m.

PROCEEDINGS

PRESIDENT NISBET: The convention will please come to order.

Our invocation this morning will be given by the Reverend Leonard Rowell of the Methodist Church of Alto. Will you please rise.

REVEREND ROWELL: Let us pray. Almighty God, in whom mercy and power are united, hear the thoughts of Thy people among whom power and mercy are mixed and disordered. Temper with compassion the power we hold or seek, that concord and justice may be our goal. Enliven our mercy and compassion with power, that this end may be obtained.

Make us aware of our limitations that, reaching this point, we may not forge further in senseless hindrance. Remind us of our common frailties, that stubborn pride may not be confused with persistence, nor personal prestige with entrusted privilege. Allow to each one of us that step beyond self interest which is constantly needed, lest division come for vanity's sake.

Stir within us the living knowledge that we have abundantly received. With hearty thanks, let us set the course of our days that others may not fare less because of us. In all our labors we pray for Thy guidance, for integrity in deliberation and dedication in decision. Through Jesus Christ, our Lord. Amen.

PRESIDENT NISBET: The roll call will be taken by the secretary. Those present please vote aye.

SECRETARY CHASE: Has everyone voted? The machine is locked, and the attendance will be recorded.

Mr. President, a quorum of the convention is present.

Prior to today's session, the secretary received the following requests for leave: Miss Hart, Messrs. G. E. Brown, Higgs and Mosier from today's session; Mr. Heideman from the sessions of today and Monday.

PRESIDENT NISBET: Without objection, the requests are granted.

SECRETARY CHASE: Absent with leave: Mr. G. E. Brown, Mrs. Butler, Miss Hart, Messrs. Heideman, Higgs, Mosier and Thomson.

Absent without leave: Messrs. T. S. Brown, Dean Doty, Lawrence and Pugsley.

PRESIDENT NISBET: Without objection, the delegates are excused.

[During the proceedings, the following delegates entered the chamber and took their seats: Messrs. T. S. Brown, Dean Doty, Lawrence and Pugsley.]

The Chair recognizes Mr. Kuhn.

MR. KUHN: Mr. President, if no one moves we adjourn this morning, I would like to make another motion that we reconsider the vote on the question of what times we should meet during the week; and I think we can conclude this whole subject within 5 minutes. I do not want to go through my little speech which I made yesterday about the machine recording votes wrong by accident, and things of that nature. Therefore I move the previous question on that subject.

PRESIDENT NISBET: The question is on the motion of Mr. Kuhn that the vote on Resolution 68, adopted yesterday, be reconsidered. He also moves the previous question. Is the previous question seconded? Those in favor please rise.

There is a sufficient number up.

The question now is: Shall the main question now be put? Those in favor say aye. Opposed, no.

The motion prevails and the previous question is ordered.

Mr. King.

MR. KING: Mr. President, would it be proper to ask that the question be divided into two parts, one concerning Monday night, and the other concerning Tuesday, Wednesday, Thursday and Friday?

PRESIDENT NISBET: The question has not yet been put on reconsidering, Mr. King. The question is now on reconsidering the vote of yesterday. Mr. Van Dusen.

MR. VAN DUSEN: I will ask for a record roll call, Mr. President.

PRESIDENT NISBET: The question is on a record roll call. Is there a sufficient number up? There is a sufficient number up. Those in favor of reconsidering the vote of the resolution yesterday — Do you want to read that, Mr. Chase.

SECRETARY CHASE: The resolution is as follows:

> Resolved, That beginning February 2 the convention shall meet at 4:00 o'clock p.m. on Monday, and at 9:30 o'clock a.m. on Tuesday, Wednesday, Thursday and Friday, such schedule to continue until changed by the convention.

PRESIDENT NISBET: Those in favor of reconsidering the vote on that resolution will vote aye. Those opposed to reconsidering will vote nay.

SECRETARY CHASE: Have you all voted? The machine is locked, and the vote will be recorded.

The roll was called and the delegates voted as follows:

Yeas — 60

Austin	Garvin	Murphy
Baginski	Greene	Nord
Balcer	Habermehl	Norris
Barthwell	Hatcher, Mrs.	Ostrow
Binkowski	Hodges	Pellow
Blandford	Hood	Perlich
Bledsoe	Howes	Perras
Bonisteel	Hoxie	Plank
Buback	Kelsey	Radka
Dade	King	Rajkovich

Dehnke	Krolikowski	Sablich
DeVries	Kuhn	Sieder
Donnelly, Miss	Leibrand	Snyder
Doty, Donald	Lesinski	Stopczynski
Douglas	Liberato	Suzore
Downs	Lundgren	Walker
Elliott, Mrs. Daisy	Madar	Wilkowski
Faxon	Mahinske	Wood
Follo	Marshall	Young
Ford	McAllister	Youngblood

Nays — 71

Allen	Gust	Richards, L. W.
Andrus, Miss	Hannah, J. A.	Romney
Anspach	Haskill	Rood
Batchelor	Hatch	Rush
Beaman	Hubbs	Seyferth
Bentley	Hutchinson	Shackleton
Boothby	Iverson	Shaffer
Brake	Judd, Mrs.	Shanahan
Conklin, Mrs.	Karn	Sharpe
Cudlip	Kirk, S.	Spitler
Cushman, Mrs.	Knirk, B.	Stafseth
Danhof	Koeze, Mrs.	Staiger
Davis	Leppien	Sterrett
Dell	Martin	Stevens
Durst	McCauley	Tubbs
Elliott, A. G.	McGowan, Miss	Turner
Erickson	McLogan	Tweedie
Everett	Millard	Upton
Farnsworth	Nisbet	Van Dusen
Figy	Page	Wanger
Finch	Pollock	White
Gadola	Powell	Woolfenden
Goebel	Prettie	Yeager
Gover	Richards, J. B.	

On the motion to reconsider, the yeas are 60; the nays are 71.

PRESIDENT NISBET: The motion does not prevail.

Reports of standing committees.

SECRETARY CHASE: The secretary would like to suggest that, without objection, all of the remaining committee reports will have been processed this afternoon, and if it is agreeable with the convention, could be included in the journal of today, so that they will be on the general orders calendar for Monday.

PRESIDENT NISBET: Without objection, they will be so included in the journal, considered read, referred to the committee of the whole and placed on general orders.

Following are the remaining committee proposals and exclusion reports introduced January 31, 1962, which were considered read, referred to the committee of the whole and placed on general orders:

Mr. Erickson, for the committee on miscellaneous provisions and schedule, introduced

Committee Proposal 67, A proposal to amend article XIII, sections 1, 2, 3, 4 and 5, pertaining to eminent domain, of the present constitution;
with the recommendation that it pass.

Claud R. Erickson, chairman.

For Committee Proposal 67 and the reasons submitted in support thereof, see below under date of April 18.

Mr. Martin, for the committee on executive branch, introduced

Committee Proposal 71, A proposal to provide for the election, term and duties of state officers; allocation of departments, administrative reorganization, appointment and removal of department heads, supervision of departments, appointments to fill vacancies, provisional appointments, and removal or suspension from office by the governor. Amends or replaces article VI, sections 1, 3, 10 and 19, and article IX, sections 5 and 7; with the recommendation that it pass.

John B. Martin, chairman.

For Committee Proposal 71 and the reasons submitted in support thereof, see below under date of March 20.

[Committee Proposal 73 withdrawn by committee.]

Mr. Martin, for the committee on executive branch, introduced

Committee Proposal 77, A proposal to provide a suitable residence for the governor and to authorize an allowance for maintenance. Amends article VI;
with the recommendation that it pass.

John B. Martin, chairman.

For Committee Proposal 77 and the reasons submitted in support thereof, see below under date of March 19.

Mr. John Hannah, for the committee on legislative organization, introduced

Committee Proposal 79, A proposal pertaining to a commission on legislative apportionment. Replaces article V, section 4; with the recommendation that it pass.

John A. Hannah, chairman.

For Committee Proposal 79 and the reasons submitted in support thereof, see below under date of March 30.

Mr. John Hannah, for the committee on legislative organization, introduced

Committee Proposal 80, A proposal pertaining to the reapportionment of the legislature: (a) the senate; (b) the house of representatives; (c) districting of territories annexed to cities and municipalities. Replaces article V, sections 2 and 3;
with the recommendation that it pass.

John A. Hannah, chairman.

For Committee Proposal 80 and the reasons submitted in support thereof, see below under date of April 2.

Mr. A. G. Elliott, for the committee on local government, introduced

Committee Proposal 86, A proposal pertaining to highways and their maintenance. Amends article VIII, sections 26 and 27;
with the recommendation that it pass.

Arthur G. Elliott, chairman.

For Committee Proposal 86 and the reasons submitted in support thereof, see below under date of February 14.

Mr. A. G. Elliott, for the committee on local government, introduced

Committee Proposal 87, A proposal relating to ports and port districts. Retains section 30 of article VIII unchanged;
with the recommendation that it pass.

Arthur G. Elliott, chairman.

For Committee Proposal 87 and the reasons submitted in support thereof, see below under date of February 14.

Mr. A. G. Elliott, for the committee on local government, introduced

Committee Proposal 88, A proposal pertaining to metropolitan areas. Amends article VIII;
with the recommendation that it pass.

Arthur G. Elliott, chairman.

For Committee Proposal 88 and the reasons submitted in support thereof, see below under date of February 14.

Mr. A. G. Elliott, for the committee on local government, introduced

Committee Proposal 89, A proposal pertaining to county home rule. Amends article VIII;
with the recommendation that it pass.

Arthur G. Elliott, chairman.

For Committee Proposal 89 and the reasons submitted in support thereof, see below under date of February 15.

Mr. Danhof, for the committee on judicial branch, introduced **Committee Proposal 90,** A proposal pertaining to the judicial branch. A substitute for section 1 of article VII;
with the recommendation that it pass.

Robert J. Danhof, chairman.

For Committee Proposal 90 and the reasons submitted in support thereof, see below under date of February 22.

Mr. Danhof, for the committee on judicial branch, introduced **Committee Proposal 91,** A proposal pertaining to the supreme court. A substitute for sections 2, 4, 5, 6 and 7 of article VII;
with the recommendation that it pass.

Robert J. Danhof, chairman.

For Committee Proposal 91 and the reasons submitted in support thereof, see below under date of February 22.

Mr. Danhof, for the committee on judicial branch, introduced **Committee Proposal 92,** A proposal pertaining to a court of appeals. Amends article VII;
with the recommendation that it pass.

Robert J. Danhof, chairman.

For Committee Proposal 92 and the reasons submitted in support thereof, see below under date of March 13.

Mr. Danhof, for the committee on judicial branch, introduced **Committee Proposal 93,** A proposal pertaining to the circuit court. A substitute for sections 8, 9, 10 and 11 of article VII;
with the recommendation that it pass.

Robert J. Danhof, chairman.

For Committee Proposal 93 and the reasons submitted in support thereof, see below under date of February 28.

Mr. Danhof, for the committee on judicial branch, introduced **Committee Proposal 94,** A proposal pertaining to the probate court. A substitute for sections 13 and 14 of article VII;
with the recommendation that it pass.

Robert J. Danhof, chairman.

For Committee Proposal 94 and the reasons submitted in support thereof, see below under date of March 1.

Mr. Danhof, for the committee on judicial branch, introduced **Committee Proposal 95,** A proposal pertaining to appeals from administrative tribunals. Adds a new section to article VII;
with the recommendation that it pass.

Robert J. Danhof, chairman.

For Committee Proposal 95 and the reasons submitted in support thereof, see below under date of March 5.

Mr. Danhof, for the committee on judicial branch, introduced **Committee Proposal 96,** A proposal pertaining to general and special provisions relative to the courts of the state. A substitute for sections 17, 19, 20 and 23 of article VII;
with the recommendation that it pass.

Robert J. Danhof, chairman.

For Committee Proposal 96 and the reasons submitted in support thereof, see below under date of March 6.

Mr. Bentley, for the committee on education, introduced **Committee Proposal 97,** A proposal to amend article XI by adding a new section pertaining to the arts and recreation;
with the recommendation that it pass.

Alvin M. Bentley, chairman.

For Committee Proposal 97 and the reasons submitted in support thereof, see below under date of February 22.

Mr. Bentley, for the committee on education, introduced **Committee Proposal 98,** A proposal pertaining to the educational institutions of the state. Replaces sections 3, 4, 5, 7, 8, 10 and 16 of article XI;
with the recommendation that it pass.

Alvin M. Bentley, chairman.

For Committee Proposal 98 and the reasons submitted in support thereof, see below under date of February 16.

Mr. Hoxie, for the committee on legislative powers, introduced **Committee Proposal 99,** A proposal to provide that the legislature may provide for a jury of less than 12 in civil cases. Amends article V, section 27;
with the recommendation that it pass.

T. Jefferson Hoxie, chairman.

For Committee Proposal 99 and the reasons submitted in support thereof, see below under date of April 11.

Mr. Hoxie, for the committee on legislative powers, introduced **Committee Proposal 100,** A proposal to provide that the legislature shall not authorize lotteries or the sale of lottery tickets. Retains article V, section 33;
with the recommendation that it pass.

T. Jefferson Hoxie, chairman.

For Committee Proposal 100 and the reasons submitted in support thereof, see below under date of April 11.

Mr. Hoxie, for the committee on legislative powers, introduced **Committee Proposal 101,** A proposal to provide that the state shall not engage in internal improvements except in certain specified areas and except that the legislature may empower local subdivisions to act in the area of internal improvements. Amends article X, section 14;
with the recommendation that it pass.

T. Jefferson Hoxie, chairman.

For Committee Proposal 101 and the reasons submitted in support thereof, see below under date of April 11.

Mr. Hoxie, for the committee on legislative powers, introduced **Committee Proposal 102,** A proposal to provide that each house of the legislature may choose its officers, determine its rules, judge qualifications of its members and other matters. Amends article V, section 15;
with the recommendation that it pass.

T. Jefferson Hoxie, chairman.

For Committee Proposal 102 and the reasons submitted in support thereof, see below under date of April 12.

Mr. Hoxie, for the committee on legislative powers, introduced **Committee Proposal 103,** A proposal to provide that sessions of the legislature be open and that a concurrent resolution is necessary for adjournment for more than 3 days. Amends article V, section 18;
with the recommendation that it pass.

T. Jefferson Hoxie, chairman.

For Committee Proposal 103 and the reasons submitted in support thereof, see below under date of April 11.

Mr. Hoxie, for the committee on legislative powers, introduced **Committee Proposal 104,** A proposal to provide for 3 readings of a bill before passage and for passage of bills by a majority of the members elected. Retains article V, section 23;
with the recommendation that it pass.

T. Jefferson Hoxie, chairman.

For Committee Proposal 104 and the reasons submitted in support thereof, see below under date of April 11.

Mr. Hoxie, for the committee on legislative powers, introduced **Committee Proposal 105,** A proposal to provide that bills must

be printed 5 days prior to passage and for limitation of extraordinary sessions. Amends article V, section 22;
with the recommendation that it pass.

T. Jefferson Hoxie, chairman.

For Committee Proposal 105 and the reasons submitted in support thereof, see below under date of April 11.

Mr. Hoxie, for the committee on legislative powers, introduced **Committee Proposal 106,** A proposal to allow the legislature to pass laws regarding indeterminate sentences. Retains article V, section 28;
with the recommendation that it pass.

T. Jefferson Hoxie, chairman.

For Committee Proposal 106 and the reasons submitted in support thereof, see below under date of April 11.

Mr. Hoxie, for the committee on legislative powers, introduced **Committee Proposal 107,** A proposal to provide that legislators shall be elected on the first Tuesday after the first Monday in November. Amends article V, section 12;
with the recommendation that it pass.

T. Jefferson Hoxie, chairman.

For Committee Proposal 107 and the reasons submitted in support thereof, see below under date of April 11.

Mr. Hoxie, for the committee on legislative powers, introduced **Committee Proposal 108,** A proposal to provide a limitation against general revision of the laws and a method of compilation. Amends article V, section 40;
with the recommendation that it pass.

T. Jefferson Hoxie, chairman.

For Committee Proposal 108 and the reasons submitted in support thereof, see below under date of April 11.

Mr. Hoxie, for the committee on legislative powers, introduced **Committee Proposal 109,** A proposal to provide that the legislature may enact laws whereby public employment disputes can be settled. Amends article XVI, section 7;
with the recommendation that it pass.

T. Jefferson Hoxie, chairman.

For Committee Proposal 109 and the reasons submitted in support thereof, see below under date of April 11.

Mr. Hoxie, for the committee on legislative powers, introduced
Committee Proposal 110, A proposal to provide that the legislature may enact laws relative to hours and condition of employment. Retains article V, section 29;
with the recommendation that it pass.

T. Jefferson Hoxie, chairman.

For Committee Proposal 110 and the reasons submitted in support thereof, see below under date of April 11.

Mr. Hoxie, for the committee on legislative powers, introduced
Committee Proposal 111, A proposal pertaining to the employment of chaplains. Amends article V, section 26;
with the recommendation that it pass.

T. Jefferson Hoxie, chairman.

For Committee Proposal 111 and the reasons submitted in support thereof, see below under date of April 11.

Mr. Hoxie, for the committee on legislative powers, introduced
Committee Proposal 112, A proposal to provide that certain office holders shall be ineligible for the legislature. Amends article V, section 6;
with the recommendation that it pass.

T. Jefferson Hoxie, chairman.

For Committee Proposal 112 and the reasons submitted in support thereof, see below under date of April 11.

Mr. Hoxie, for the committee on legislative powers introduced **Committee Proposal 113,** A proposal to provide that the legislature may submit bills to the people for referendum. Retains article V, section 38;
with the recommendation that it pass.

T. Jefferson Hoxie, chairman.

For Committee Proposal 113 and the reasons submitted in support thereof, see below under date of April 12.

Mr. Hoxie, for the committee on legislative powers, introduced **Committee Proposal 114,** A proposal to provide that each house of the legislature shall keep a journal and the yeas and nays be recorded on a demand of 1/5 of the members present. Amends article V, section 16;
with the recommendation that it pass.

T. Jefferson Hoxie, chairman.

For Committee Proposal 114 and the reasons submitted in support thereof, see below under date of April 12.

Mr. Hoxie, for the committee on legislative powers, introduced **Committee Proposal 115,** A proposal to provide that no member of the legislature or state officer shall have a substantial conflict of interest with the state. Amends article V, section 25;
with the recommendation that it pass.

T. Jefferson Hoxie, chairman.

For Committee Proposal 115 and the reasons submitted in support thereof, see below under date of April 12.

Mr. Hoxie, for the committee on legislative powers, introduced **Committee Proposal 116,** A proposal to provide time and place of legislative sessions and that bills and resolutions pending at the end of a session shall be considered introduced at the next session. Amends article V, section 13;
with the recommendation that it pass.

T. Jefferson Hoxie, chairman.

For Committee Proposal 116 and the reasons submitted in support thereof, see below under date of April 12.

Mr. Hoxie, for the committee on legislative powers, introduced **Committee Proposal 117,** A proposal to provide that votes on elections and nominations in the legislature be recorded. Amends article V, section 17;
with the recommendation that it pass.

T. Jefferson Hoxie, chairman.

For Committee Proposal 117 and the reasons submitted in support thereof, see below under date of April 12.

Mr. Hoxie, for the committee on legislative powers, introduced **Committee Proposal 118,** A proposal to provide for vesting the legislative power in the senate and house of representatives and to reserve the power of initiative and referendum to the people. Amends article V, section 1;
with the recommendation that it pass.

T. Jefferson Hoxie, chairman.

For Committee Proposal 118 and the reasons submitted in support thereof, see below under date of April 12.

Mr. Hoxie, for the committee on legislative powers, introduced **Committee Proposal 119,** A proposal to provide that the legislature shall not pass local acts when general acts can be made applicable and that local acts require a 2/3 vote of the legislature. Amends article V, section 30;
with the recommendation that it pass.

T. Jefferson Hoxie, chairman.

For Committee Proposal 119 and the reasons submitted in support thereof, see below under date of April 13.

Mr. Hoxie, for the committee on legislative powers, introduced
Committee Proposal 120, A proposal to provide that a member of the legislature shall not be appointed to certain other offices during the term for which he is elected. Amends article V, section 7;
with the recommendation that it pass.

T. Jefferson Hoxie, chairman.

For Committee Proposal 120 and the reasons submitted in support thereof, see below under date of April 13.

Mr. Hoxie, for the committee on legislative powers, introduced
Committee Proposal 121, A proposal to provide that no law shall embrace more than one object and that no act shall take effect until 90 days from the end of a session and other incidental matters. Amends article V, section 21;
with the recommendation that it pass.

T. Jefferson Hoxie, chairman.

For Committee Proposal 121 and the reasons submitted in support thereof, see below under date of April 13.

Mr. Hoxie, for the committee on legislative powers, introduced
Committee Proposal 122, A proposal to include in the constitution the substance of section 5 of article XVI, entitled "Vacancies in office; continuity of government in emergencies.";
with the recommendation that it pass.

T. Jefferson Hoxie, chairman.

For Committee Proposal 122 and the reasons submitted in support thereof, see below under date of April 13.

Mr. Hoxie, for the committee on legislative powers, introduced
Committee Proposal 123, A proposal to permit administrative agencies to promulgate rules and regulations and to provide for legislative review thereof, and for judicial review of the findings of such agencies. Amends article V by adding a new section;
with the recommendation that it pass.

T. Jefferson Hoxie, chairman.

For Committee Proposal 123 and the reasons submitted in support thereof, see below under date of April 13.

Mr. Erickson, for the committee on miscellaneous provisions and schedule, introduced
Committee Proposal 124, A proposal pertaining to increase and decrease in the salaries of officials. Amends the second sentence of section 3, article XVI;
with the recommendation that it pass.

Claud R. Erickson, chairman.

For Committee Proposal 124 and the reasons submitted in support thereof, see below under date of April 16.

Mr. Erickson, for the committee on miscellaneous provisions and schedule, introduced
Exclusion Report 2029, A report recommending the exclusion of article XVI, section 6.

Claud R. Erickson, chairman.

For Exclusion Report 2029 and the reasons submitted in support thereof, see below under date of April 13.

Mr. Erickson, for the committee on miscellaneous provisions and schedule, introduced
Exclusion Report 2030, A report recommending the exclusion of article XIII, section 2.

Claud R. Erickson, chairman.

For Exclusion Report 2030 and the reasons submitted in support thereof, see below under date of April 13.

Mr. Erickson, for the committee on miscellaneous provisions and schedule, introduced
Exclusion Report 2031, A report recommending the exclusion of article XIII, section 4.

Claud R. Erickson, chairman.

For Exclusion Report 2031 and the reasons submitted in support thereof, see below under date of April 13.

Mr. Erickson, for the committee on miscellaneous provisions and schedule, introduced
Exclusion Report 2032, A report recommending the exclusion of article XIII, section 5.

Claud R. Erickson, chairman.

For Exclusion Report 2032 and the reasons submitted in support thereof, see below under date of April 13.

Mr. Erickson, for the committee on miscellaneous provisions and schedule, introduced
Exclusion Report 2033, A report recommending the exclusion of article XII, section 4.

Claud R. Erickson, chairman.

For Exclusion Report 2033 and the reasons submitted in support thereof, see below under date of April 16.

Mr. Erickson, for the committee on miscellaneous provisions and schedule, introduced
Exclusion Report 2034, A report recommending the exclusion of article I, section 1.

Claud R. Erickson, chairman.

For Exclusion Report 2034 and the reasons submitted in support thereof, see below under date of April 13.

Mr. A. G. Elliott, for the committee on local government, introduced
Exclusion Report 2035, A report recommending the exclusion of article VIII, section 6, regarding jury commissioners.

Arthur G. Elliott, chairman.

For Exclusion Report 2035 and the reasons submitted in support thereof, see below under date of February 16.

Mr. A. G. Elliott, for the committee on local government, introduced
Exclusion Report 2036, A report recommending the exclusion of article VIII, section 10.

Arthur G. Elliott, chairman.

For Exclusion Report 2036 and the reasons submitted in support thereof, see below under date of February 16.

Mr. A. G. Elliott, for the committee on local government, introduced
Exclusion Report 2037, A report recommending the exclusion of article VIII, section 11.

Arthur G. Elliott, chairman.

For Exclusion Report 2037 and the reasons submitted in support thereof, see below under date of February 16.

Mr. A. G. Elliott, for the committee on local government, introduced
Exclusion Report 2038, A report recommending the exclusion of article VIII, section 15a, regarding drainage district bonds.

Arthur G. Elliott, chairman.

For Exclusion Report 2038 and the reasons submitted in support thereof, see below under date of February 16.

Mr. A. G. Elliott, for the committee on local government, introduced

Exclusion Report 2039, A report recommending the exclusion of article VIII, section 24.

Arthur G. Elliott, chairman.

For Exclusion Report 2039 and the reasons submitted in support thereof, see below under date of February 16.

Mr. A. G. Elliott, for the committee on local government, introduced

Exclusion Report 2040, A report recommending the exclusion of article VIII, section 31.

Arthur G. Elliott, chairman.

For Exclusion Report 2040 and the reasons submitted in support thereof, see below under date of February 16.

Mr. Pollock, for the committee on declaration of rights, suffrage and elections, introduced

Exclusion Report 2041, A report recommending the exclusion of article III, section 1.

James K. Pollock, chairman.

For Exclusion Report 2041 and the reasons submitted in support thereof, see below under date of April 10.

Mr. Danhof, for the committee on judicial branch, introduced

Exclusion Report 2042, A report recommending the exclusion of article VII, sections 15, 16 and 21.

Robert J. Danhof, chairman.

For Exclusion Report 2042 and the reasons submitted in support thereof, see below under date of March 13.

Mr. Danhof, for the committee on judicial branch, introduced

Exclusion Report 2043, A report recommending the exclusion of article VII, sections 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 17, 19, 20 and 23.

Robert J. Danhof, chairman.

For Exclusion Report 2043 and the reasons submitted in support thereof, see below under date of March 13.

[Exclusion Report 2044 withdrawn by committee.]

Mr. Hoxie, for the committee on legislative powers, introduced

Exclusion Report 2045, A report recommending the exclusion of article V, section 34.

T. Jefferson Hoxie, chairman.

For Exclusion Report 2045 and the reasons submitted in support thereof, see below under date of April 13.

Mr. J. A. Hannah, for the committee on legislative organization, introduced

Exclusion Report 2046, A report recommending the exclusion of article V, sections 2, 3 and 4.

John A. Hannah, chairman.

For Exclusion Report 2046 and the reasons submitted in support thereof, see below under date of April 5.

PRESIDENT NISBET (continuing): Reports of select committees.

SECRETARY CHASE: None.

PRESIDENT NISBET: Communications from state officers.

SECRETARY CHASE: None.

PRESIDENT NISBET: Second reading of proposals.

SECRETARY CHASE: Nothing on that calendar.

PRESIDENT NISBET: Third reading of proposals.

SECRETARY CHASE: Nothing on that calendar.

PRESIDENT NISBET: Motions and resolutions.

SECRETARY CHASE: There are no resolutions on file.

PRESIDENT NISBET: Unfinished business.

SECRETARY CHASE: None.

PRESIDENT NISBET: Special orders.

SECRETARY CHASE: None.

PRESIDENT NISBET: **General orders of the day.** The Chair recognizes Mr. Martin.

MR. MARTIN: Mr. President, I move the convention resolve itself into committee of the whole for consideration of items on the general orders calendar.

PRESIDENT NISBET: The question is on the motion of Mr. Martin. Those in favor say aye. Opposed, no.

The motion prevails.

[Whereupon, Mr. Martin assumed the Chair to preside as chairman of the **committee of the whole.**]

CHAIRMAN MARTIN: The committee will be in order. The secretary will read the matter which was being last considered when we rose from the committee of the whole yesterday afternoon.

SECRETARY CHASE: Presently under consideration is **Committee Proposal 26,** A proposal for a section in the declaration of rights incorporating in the declaration of rights an "equal protection" clause and a guarantee against discrimination in civil and political rights because of race, religion, sex or national origin.

For last previous action by the committee of the whole on Committee Proposal 26, see above, page 739.

Pending at the time the committee rose was an amendment offered by Mr. Seyferth as follows:

1. Amend page 1, line 13, after "origin.", by inserting "The equal protection of the laws shall be defined to mean, among other things, that no private corporation or association of any kind or individual shall enter into any agreement, written or oral, which excludes any person from employment because of membership or nonmembership in any labor organization or be compelled to pay dues, fees or charges of any kind to any labor organization as a requirement of employment or as a condition of continuing employment.".

CHAIRMAN MARTIN: When the committee rose Mr. Boothby had been recognized, and I recognize Mr. Boothby at this time.

MR. BOOTHBY: Mr. Chairman, I yield to the distinguished delegate from Muskegon, Mr. Seyferth.

CHAIRMAN MARTIN: Mr. Seyferth.

MR. SEYFERTH: Fellow delegates, in the interests of presenting to the people of the state of Michigan a concerted, well thought out civil rights proposal, I request the privilege of withdrawing the amendment now before us.

CHAIRMAN MARTIN: The amendment is withdrawn.

Are there any other amendments to the body of the proposal? If not, it will be passed.

Committee Proposal 26 is passed.

The secretary will read the next order of business on the general orders calendar.

SECRETARY CHASE: Item 8 on the calendar as you have it on your desk, from the committee on legislative powers, by Mr. Hoxie, chairman, **Committee Proposal 28,** A proposal to provide for compensation of the legislature. Amends article V, section 9.

Following is Committee Proposal 28 as read by the secretary, and the reasons submitted in support thereof:

The committee recommends that the following be included in the constitution:

The compensation and expenses of the members of the legislature shall be determined by law: Provided, That no change in compensation or expenses shall be effective during the term of office for which the legislature making the change was elected. [Each member shall be entitled to 1 copy of the laws, journals and documents of the legislature of which he is a member, but shall not receive, at the

Explanation—Matter within [ ] is stricken, matter in capitals is new.

expense of the state, books, newspapers or perquisites of the office not expressly authorized by this constitution.]

Mr. Hoxie, chairman of the committee on legislative powers, submits the following reasons in support of Committee Proposal 28:

It is the opinion of the committee that the part of the section deleted is surplusage and does not deserve inclusion in the constitution. The right of members to have journals and other documents may be provided by rules of the respective houses.

The committee felt it was proper to allow the legislature to continue to fix their compensation. This is in conformity with the federal constitution and those of many other states.

CHAIRMAN MARTIN: Mr. Hoxie.

MR. HOXIE: Mr. Chairman and fellow delegates, under our organization of the committee on legislative powers, this proposal and the next 3 proposals were assigned to our subcommittee 1, Richard Kuhn as chairman, Charles Youngblood, Cliff Perras and Lewis Hubbs. I would like at this time to yield to Mr. Kuhn, the subcommittee chairman.

CHAIRMAN MARTIN: Mr. Kuhn.

MR. KUHN: Mr. Chairman, the committee recommends the retention of the first part, which leaves the pay of the legislators to their own discretion. And we are following the federal constitution and the constitutions of most states. We are also following the recommendation of the model state constitution. We had some delegate proposals that asked us to set a floor on salaries, and also to put in some specific salaries. As the delegates may well know, in 1835, in our first constitution, it was left to the discretion of the legislators to set their pay, and then they changed it in 1850 and 1908. But this worked out in such an inefficient manner that they had to amend it twice between 1908 and the present time. Therefore, it is our recommendation that we leave it up to their discretion. And it is also well known that they cannot change their pay during the term for which they were elected.

Now, as far as the balance of the section is concerned, it was the opinion of the committee that the part of the section deleted is surplusage, and does not deserve inclusion in the constitution. The right of members to have journals and other documents may be provided for by the rules of the respective houses. That's all we have to say at this time.

CHAIRMAN MARTIN: Any amendments to the body of the proposal? If not, it will pass.

Committee Proposal 28 is passed.

SECRETARY CHASE: Item 9 on the calendar, from the committee on legislative powers, by Mr. Hoxie, chairman, **Committee Proposal 29,** A proposal to provide for the form of laws. Retains article V, section 20.

Following is Committee Proposal 29 as read by the secretary, and the reasons submitted in support thereof:

The committee recommends that the following be included in the constitution:

The style of the laws shall be: "The people of the state of Michigan enact."

Mr. Hoxie, chairman of the committee on legislative powers, submits the following reasons in support of Committee Proposal 29:

The committee recommends the retention of the section unchanged. Since 1835 the constitution has contained a provision on the style of laws. The present form originated in 1850. It has been held by the courts that every bill must have an enacting clause. A single form will provide consistency.

The use of the term, "The people" indicates the source of all laws in our society, even though action is through the legislature.

CHAIRMAN MARTIN: Mr. Kuhn.

MR. KUHN: Mr. Chairman:

[The reasons submitted in support of Committee Proposal 29 were read by Mr. Kuhn. For text, see above.]

Therefore, we ask that this be retained as is.

CHAIRMAN MARTIN: Any amendments to the body of the proposal? If not, it will pass.

Committee Proposal 29 is passed.

The secretary will read.

SECRETARY CHASE: Item 10 on the calendar, from the committee on legislative powers, by Mr. Hoxie, chairman, **Exclusion Report 2009,** A report recommending that article V, section 10 of the present constitution be excluded from the new constitution.

Following is Exclusion Report 2009 as read by the secretary, and the reasons submitted in support thereof:

The committee on legislative powers recommends that article V, section 10 of the present constitution be excluded from the new constitution.

Mr. Hoxie, chairman of the committee on legislative powers, submits the following reasons in support of Exclusion Report 2009:

The committee has discovered that the section does not conform to practice. Both officers receive $1,000.00 more than salary for expenses which are inherent in the offices held.

Proposed section 9, it is felt, will allow the legislature to provide additional compensation for these offices. It appears proper to the committee that the legislature be allowed to determine such matters.

CHAIRMAN MARTIN: Mr. Kuhn.

MR. KUHN: Mr. Chairman, I would like to call to the delegates' attention that the full text on these sections can be found in Journal 61, on page 357. This section, Mr. Chairman, has to do with the compensation for the president and speaker. It is the recommendation of the committtee that this be deleted. It is the committee's opinion that the legislature should also have complete control over this section, and they should have complete control over the pay of the speaker and the president of the senate. Today, under this section, it says that they should not receive any more than a member of the legislature. We know as a matter of fact that they do give them an extra $1,000 for expenses. We have no recommendation whether they should receive more pay or not, but we do feel that it should be left to the sound discretion of the legislature. This is also in conformity with our federal constitution and the constitutions of most states.

CHAIRMAN MARTIN: Any amendments to the body of the exclusion report? If not, it will pass.

Exclusion Report 2009 is passed.

The secretary will read.

SECRETARY CHASE: Item 11 on the calendar, from the committee on legislative powers, by Mr. Hoxie, chairman, **Exclusion Report 2010,** A report recommending the exclusion of article V, section 11.

Following is Exclusion Report 2010 as read by the secretary, and the reasons submitted in support thereof:

The committee on legislative powers recommends that article V, section 11 of the present constitution be excluded from the new constitution.

Mr. Hoxie, chairman of the committee on legislative powers, submits the following reasons in support of Exclusion Report 2010:

This section has been deleted because it is the opinion of the committee that it is not a matter of constitutional importance, and is a matter that can without problem be resolved by law or by the rules of the respective houses.

There is, as a practical concern, no need for this provision since the legislature will not authorize the payment of salary to any person until he has been seated. The provision is unusual in state constitutions and, at best, demonstrates only ancient distrust of the legislature.

CHAIRMAN MARTIN: Mr. Kuhn.

MR. KUHN: Mr. Chairman, once again we are asking for

Explanation—Matter within [ ] is stricken, matter in capitals is new.

this section to be deleted. This has to do with contested elections, and says that only the one that is declared to be seated should be paid and receive compensation for his travel. This is not a matter that the committee feels should be in our constitution, and we once again feel that this should be left to the sound discretion of our legislature.

CHAIRMAN MARTIN: Any amendments to the body of the exclusion report? If not, it will be passed.

Exclusion Report 2010 is passed.

The secretary will read.

SECRETARY CHASE: Item 12 on the calendar, from the committee on legislative powers, by Mr. Hoxie, chairman, **Exclusion Report 2011,** A report recommending the exclusion of article V, section 32.

Following is Exclusion Report 2011 as read by the secretary, and the reasons submitted in support thereof:

The committee on legislative powers recommends that article V, section 32 of the present constitution be excluded entirely from the new constitution.

Mr. Hoxie, chairman of the committee on legislative powers, submits the following reasons in support of Exclusion Report 2011:

We see no necessity for this provision in a new constitution. We cannot conceive that the legislature would become involved in the granting of divorces and we are assuming that the new constitution will have restrictions against local and special acts.

CHAIRMAN MARTIN: Mr. Hoxie.

MR. HOXIE: Mr. Chairman and fellow delegates, the next 2 items on the calendar fall in the jurisdiction of our subcommittee composed of Stanley Powell as chairman, Martin Baginski, Don Habermehl and Raymond Murphy. I yield to Mr. Powell.

CHAIRMAN MARTIN: Mr. Powell.

MR. POWELL: Mr. Chairman and fellow delegates, perhaps I should read section 32, which is a very brief sentence. "Divorces shall not be granted by the legislature." You will notice on the same page on which we recommend the exclusion, we explain our position in this way:

[The reasons submitted in support of Exclusion Report 2011 were read by Mr. Powell. For text, see above.]

Mr. Chairman, that is provided in another section of our report.

CHAIRMAN MARTIN: Any amendments to the body of the exclusion report? If not, it will be passed.

Exclusion Report 2011 is passed.

The secretary will read.

SECRETARY CHASE: Item 13 on the calendar, from the committee on legislative powers, by Mr. Hoxie, chairman, **Exclusion Report 2012,** A report recommending the exclusion of article V, section 35.

Following is Exclusion Report 2012 as read by the secretary, and the reasons submitted in support thereof:

The committee on legislative powers recommends that article V, section 35 of the present constitution be excluded entirely from the new constitution.

Mr. Hoxie, chairman of the committee on legislative powers, submits the following reasons in support of Exclusion Report 2012:

This provision appears to be unique among state constitutions. Since there is a strong trend in the United States against the establishment of official newspapers of the type prohibited by section 35, we feel that this provision is entirely unnecessary and unsuitable for constitutional status.

CHAIRMAN MARTIN: Mr. Powell.

MR. POWELL: Mr. Chairman and fellow delegates, this section 35 is also an exceedingly brief section, reading, "The legislature shall not establish a state paper."

[Exclusion Report 2012 and the reasons submitted in support thereof were read by Mr. Powell. For text, see above.]

CHAIRMAN MARTIN: Any amendments to the body of the exclusion report? If not, it will be passed.

Exclusion Report 2012 is passed.

The secretary will read the next item.

SECRETARY CHASE: Item 14 on the calendar, from the committee on education, by Mr. Bentley, chairman, **Committee Proposal 30,** A proposal pertaining to free public and elementary schools. Replaces article XI, section 9.

Following is Committee Proposal 30 as read by the secretary, and the reasons submitted in support thereof:

The committee recommends that the following be included in the constitution:

Sec. a. The legislature shall [continue] MAINTAIN AND SUPPORT a system of [primary] FREE PUBLIC ELEMENTARY AND SECONDARY schools[,]. [whereby] Every school district [in the state] shall provide for the education of its pupils without [charge for tuition;] DISCRIMINATION AS TO RACE, CREED, COLOR, OR NATIONAL ORIGIN. [and all instruction in such schools shall be conducted in the English language. If any school district shall neglect to maintain a school within its borders as prescribed by law for at least 5 months in each year, or to provide for the education of its pupils in another district or districts for an equal period, it shall be deprived for the ensuing year of its proportion of the primary school interest fund. If any school district shall, on the second Monday in July of any year, have on hand a sufficient amount of money in the primary school interest fund to pay its teachers for the next ensuing 2 years as determined from the pay roll of said district for the last school year, and in case of a primary district, all tuition for the next ensuing 2 years, based upon the then enrollment in the seventh and eighth grades in said school district, the children in said district shall not be counted in making the next apportionment of primary school money by the superintendent of public instruction; nor shall such children be counted in making such apportionment until the amount of money in the primary school interest fund in said district shall be insufficient to pay teachers' wages or tuition as herein set forth for the next ensuing 2 years.]

Mr. Bentley, chairman of the committee on education, submits the following reasons in support of Committee Proposal 30:

This section is written to replace section 9 of article XI. It is the recommendation of the committee that it be placed in the education article so as to directly follow the "Religion, morality and knowledge . . ." clause.

Section 9 of article XI in the 1908 constitution fixed responsibility on the legislature to provide "primary" education. The term "primary" is too limiting for present day practice. Since the Kalamazoo case, this term has been interpreted broadly to allow the support of "elementary and secondary" (kindergarten through grade 12) education and therefore these new terms have been used in our proposed new section. It is not the intention of this committee to force every school district into a kindergarten through grade 12 program, since the committee feels this is a legislative determination.

The remainder of section 9 of the 1908 constitution is being excluded because restrictions as to finance and definitions as to basic qualifications needed to be eligible for state aid might better be determined by the legislature through a state aid formula.

The anti discrimination clause is placed in this section with the full knowledge that some may say it is unnecessary because of the rights established in our federal constitution and United States supreme court decisions.

Explanation—Matter within [ ] is stricken, matter in capitals is new.

The committee feels this concept is so important to the preservation of our democracy that it wishes to leave no doubt as to where Michigan stands on this question.

The committee on finance and taxation has waived its concurrent jurisdiction.

CHAIRMAN MARTIN: Mr. Bentley.

MR. BENTLEY: Mr. Chairman, members of the committee, in dealing with section 9 of the education article in the present constitution, the committee on education decided to delete a large part of this particular section, provisions of which are in a great part obsolete, and provisions which the committee thought are properly legislative rather than constitutional in nature. However, the committee on education, in reaffirming its belief that the legislature is responsible for the maintenance and support of a system of free public elementary and secondary schools, also felt it desirable to include a specific provision, in light of recent developments—not necessarily in Michigan, but more particularly elsewhere in this country—that such free public education should be provided without any discrimination, very much along the lines of the proposal that the committee was concerned with yesterday.

At this time, Mr. Chairman, without yielding the floor, I would like to yield for appropriate remarks to the chairman of the subcommittee which handled this particular matter, the distinguished vice president of the convention, the gentleman from Bloomfield Hills, Mr. Romney.

CHAIRMAN MARTIN: Mr. Romney.

MR. ROMNEY: Mr. Chairman and fellow delegates, if you will turn to page 367 of the journal, you will find not only the language of the committee proposal, but also the deleted language; and following that the committee reasons, which I would like to read.

[The reasons submitted in support of Committee Proposal 30 were read by Mr. Romney. For text, see above, page 762.]

In other words, the language, as explained in the first 2 paragraphs, permits school districts to arrange for the education of their children in other school districts, but it does require them to make provision for education of their children from the kindergarten through grade 12.

This, in substance, is the committee report, and I think it very well indicates the strengthening of this language in the proposed constitution by requiring a provision for education of children from kindergarten through grade 12 without discrimination.

CHAIRMAN MARTIN: Mr. Bentley.

MR. BENTLEY: Mr. Chairman, I would be glad to yield for any questions at this time. If there are no questions, I will be glad to yield the floor.

CHAIRMAN MARTIN: Mr. Wanger.

MR. WANGER: Mr. Bentley, I noticed the word "continue" is deleted, and the words "maintain and support" are inserted. Does this raise a question as to whether or not the state is obligated to pay for all of these schools, rather than the financing by the local units?

MR. BENTLEY: I think not, Mr. Chairman. The committee took this language from the provision in the model state constitution, which is in chapter 11, on page 10 of your citizens research council book, and which reads: "The legislature shall provide for the maintenance and support of a system of free public schools open to all children in the state." I believe that no such interpretation, Mr. Chairman, can reasonably be placed upon this language.

CHAIRMAN MARTIN: Any further questions? If not, are there any amendments to the body of the proposal? Hearing none, the proposal will be passed.

Committee Proposal 30 is passed.

The secretary will read.

SECRETARY CHASE: Item 15 on the calendar, from the committee on judicial branch, by Mr. Danhof, chairman, **Exclusion Report 2013,** A report recommending the exclusion of article VII, section 3.

Following is Exclusion Report 2013 as read by the secretary, and the reasons submitted in support thereof:

The committee on judicial branch recommends that article VII, section 3 of the present constitution be excluded from the new constitution.

Mr. Danhof, chairman of the committee on judicial branch, submits the following reasons in support of Exclusion Report 2013:

The committee is unanimously of the opinion that the subject matter covered in section 3 can best be left to the discretion of the court to be determined by court rule. It would appear likely that in the future it will be necessary to either increase or decrease the terms of the supreme court. As a matter of practice, the supreme court sets its cases for hearing as rapidly as possible and the committee is of the opinion that to fix a certain number of terms within a constitution does not serve a useful purpose.

CHAIRMAN MARTIN: Mr. Danhof.

MR. DANHOF: Mr. Chairman and members of the committee, very early in our deliberations in the committee, in going through article VII, the judicial article, it was unanimously agreed that the constitutional requirement of 4 terms annually for the supreme court was, in this day and age, unnecessary and unneeded in the constitution. The committee was unanimously of the opinion that this matter should be left to the rules of the court to set the terms as may be needed, which may be either more or less in the future. It was certainly felt that this was not a matter to be left in the constitution. Therefore, we recommend exclusion.

CHAIRMAN MARTIN: Any amendments to the body of the exclusion report? If not, it will be passed.

Exclusion Report 2013 is passed.

The secretary will read.

SECRETARY CHASE: Item 16 on the calendar, from the committee on judicial branch, by Mr. Danhof, chairman, **Exclusion Report 2014,** A report recommending the exclusion of article VII, section 18.

Following is Exclusion Report 2014 as read by the secretary, and the reasons submitted in support thereof:

The committee on judicial branch recommends that article VII, section 18 of the present constitution be excluded from the new constitution.

Mr. Danhof, chairman of the committee on judicial branch, submits the following reasons in support of Exclusion Report 2014:

The committee has carefully reviewed the provisions of article VII, section 18 and is unanimously of the opinion that the provisions contained therein should not be included in a new constitution. The purpose of this provision is not clear and investigation by the research department has failed to bring to light any reasons why it was continued in the 1908 constitution except that it appeared in the 1850 constitution and was continued without change except as to phraseology. The purpose would appear to be that judicial officials named in the section may make arrests within their respective jurisdiction. The committee is of the opinion that a judicial officer should not be an arresting officer and this should be left to the police agency or arms of the executive branch.

It was the further opinion of the committee that the section is statutory in nature and can be enacted by the legislature if needed. The vote of the committee to exclude this provision and the idea contained therein was unanimous.

CHAIRMAN MARTIN: Mr. Danhof.

MR. DANHOF: Mr. Chairman, once again the committee was practically of the same opinion as has previously been stated. We endeavored to ascertain the history of section 18—its purpose. Research was unable to develop a clear reason, except that it was retained from the former constitution. The purpose seemed to be to allow certain judges or justices to

have arresting power within their respective jurisdictions. The comments by the 3 gentlemen who have served upon the bench of this state was that it had not been used, and was a matter that could be better left to the law enforcement agencies, and should be divorced from the judiciary. Hence we recommended the exclusion.

CHAIRMAN MARTIN: Any amendments to the body of the exclusion report? If not, it will be passed.

Exclusion Report 2014 is passed.

SECRETARY CHASE: Item 17 on the calendar, from the committee on judicial branch, by Mr. Danhof, chairman, **Exclusion Report 2015,** A report recommending the exclusion of article VII, section 22.

Following is Exclusion Report 2015 as read by the secretary, and the reasons submitted in support thereof:

The committee on judicial branch recommends that article VII, section 22 of the present constitution be excluded from the new constitution.

Mr. Danhof, chairman of the committee on judicial branch, submits the following reasons in support of Exclusion Report 2015:

The committee carefully reviewed the provision of article VII, section 22, and concluded that the subject matter of the section is presently handled by court rule which is entirely proper. The provisions contained in the section are procedural, not substantive, and relate solely to the form in which an indictment should be drawn.

It is possible that in the future the style should be changed and therefore a certain amount of flexibility should be maintained. Accordingly, the committee unanimously voted that the provisions of section 22 and the subject matter contained therein be excluded from the new constitution.

CHAIRMAN MARTIN: Mr. Danhof.

MR. DANHOF: Mr. Chairman and fellow delegates, once again, this was felt to be a legislative or rule making item and, consequently, not required to be contained in the constitution. The committee again unanimously recommended exclusion.

CHAIRMAN MARTIN: Any amendments to the body of the exclusion report? If not, it will be passed.

Exclusion Report 2015 is passed.

The secretary will read.

SECRETARY CHASE: Item 18 on the calendar, from the committee on education, by Mr. Bentley, chairman, **Committee Proposal 31,** A proposal to amend article XI, section 14 of the present constitution pertaining to public libraries.

[Committee Proposal 31 was read by the secretary. For full text, see below, page 822.]

CHAIRMAN MARTIN: Mr. Bentley.

MR. BENTLEY: Mr. Chairman, a parliamentary inquiry. It is the desire of the committee on education to have this proposal passed over until other items now on general orders are considered and disposed of. The parliamentary inquiry is: would it be in order to ask unanimous consent for the placing of this proposal on general orders following certain other proposals which are now on this matter?

CHAIRMAN MARTIN: It is in order, without objection.

MR. BENTLEY: Then, Mr. Chairman, if I may, I ask consent that this item on general orders, Committee Proposal 31, not be considered in committee of the whole until the committee has dealt with Committee Proposals 38 and 39, which are items 25 and 26 on the general orders calendar.

CHAIRMAN MARTIN: Without objection—I hear none—it is so ordered.

The secretary will read the next item of business.

SECRETARY CHASE: Item 19 on the calendar, from the committee on legislative powers, by Mr. Hoxie, chairman, **Committee Proposal 32,** A proposal to provide for eligibility to serve in the legislature. Retains article V, section 5.

Following is Committee Proposal 32 as read by the secretary, and the reasons submitted in support thereof:

The committee recommends that the following be included in the constitution:

Sec. a. Each senator and representative shall be a citizen of the United States, at least 21 years of age, and a qualified elector of the district he represents, and his removal from the district shall be deemed a vacation of the office. No person who has been convicted of subversion or of a felony involving a breach of public trust shall be eligible for either house of the legislature.

Mr. Hoxie, chairman of the committee on legislative powers, submits the following reasons in support of Committee Proposal 32:

The committee feels that there is no reason to change the existing section. With the changes proposed in article VI, section 13, the 2 clauses become consistent.

Most states have eligibility requirements for their legislators within their constitutions. Michigan has had requirements since 1835. The last amendment was in 1956. This amendment contained the age requirement and added the sentence providing ineligibility because of conviction for subversion or for certain felonies.

The requirement of residence clearly enhances a legislator's concern for local matters and the committee feels that a legislator should represent those who elected him. The 1956 amendment is a recent expression of popular will and there is no need to change it.

CHAIRMAN MARTIN: Mr. Hoxie.

MR. HOXIE: Mr. Chairman, fellow delegates, once again this item and the next 3 on the calendar fall under the jurisdiction of our subcommittee 1, chairman Dick Kuhn. I yield to Mr. Kuhn.

CHAIRMAN MARTIN: Mr. Kuhn.

MR. KUHN: Mr. Chairman, members of the committee, the committee on legislative powers thought that there should be no change in this section. This section requires that any representative or state senator must be a qualified elector of the district he represents. There was an amendment added to our constitution in 1956 which provided, "No person who has been convicted of subversion or of a felony involving a breach of public trust shall be eligible for either house of the legislature." It was the committee's thought that this should be retained.

CHAIRMAN MARTIN: Any amendments to the body of the proposal? Mr. Lundgren.

MR. LUNDGREN: I don't have an amendment. I just want to pose a question to the committee. Is that proper now?

CHAIRMAN MARTIN: Yes.

MR. LUNDGREN: Yesterday, in our organization committee, we were talking about annexation, and the problem came up: what about a person who might be a representative or senator in an annexed area? In what category does he fall, or how do we protect him?

MR. KUHN: I would say, Mr. Lundgren, the only thing I could put down is that you would have to live in the district you represent. If you do not—if you moved out or it was switched on you—you would vacate that office. Now, if they do switch any lines, obviously it would not take effect until the next legislative session. So I think anyone who would be in a district would be protected if they switched lines.

MR. LUNDGREN: I'm just wondering if it ought to be more specific and more explicit than that.

MR. KUHN: I think it is very clear. I would like to read this:

Each senator and representative shall be a citizen of the United States, at least 21 years of age, and a qualified elector of the district he represents, and his removal from the district shall be deemed a vacation of the office.

MR. LUNDGREN: I would still say it's a tricky question.

CHAIRMAN MARTIN: Mr. Dehnke.

MR. DEHNKE: Mr. Chairman, I would like to remind Mr.

Lundgren that in the report of the committee on legislative organization, which was filed yesterday or today, we deal with that question by providing that where the area in which the senator or representative resides is annexed to an area outside, that he shall not be thereby prevented from continuing to serve until the end of the term for which he was elected. I think this can be disposed of when we reach that section.

CHAIRMAN MARTIN: Thank you, Judge Dehnke.

Mr. Wanger.

MR. WANGER: I was just going to add, Mr. Chairman, that I believe an annexation does not change the political district lines; it takes further action to change the political district lines.

CHAIRMAN MARTIN: Mr. Mahinske.

MR. MAHINSKE: I would like to ask Mr. Kuhn if his committee has interpreted the words "qualified elector" to mean a registered voter?

MR. KUHN: Yes, we have. And, as you know, Mr. Mahinske, this language "registered elector" was used in the executive section of the constitution, and that's why we didn't even change it. Because now it is consistent throughout the constitution.

MR. MAHINSKE: You are not saying "registered" here. You are saying "qualified elector."

MR. KUHN: That's the language they use, "qualified elector." You asked me if I interpreted it to mean that, and I said, yes, that's the way I interpreted it.

MR. MAHINSKE: Well, I notice that other committees have changed the language "qualified elector," because a constitutional convention delegate is a qualified elector, but doesn't necessarily have to be a registered voter. This is how the courts have interpreted this. We have changed the language in a number of articles to read "registered voter."

MR. KUHN: Well, I understood that they did the direct opposite. If you check the executive section on this for the governor, and so forth, they used the words "qualified elector."

CHAIRMAN MARTIN: The Chair might furnish the information that the provision now reads "qualified registered elector." Both words are now used in the amendment that was made on the floor.

MR. KUHN: We have no objection to such an amendment.

CHAIRMAN MARTIN: Perhaps the matter could be left to style and drafting. If not taken care of there, it could be taken care of at a subsequent time.

Are there any other amendments to the body of the proposal? If not, it will be passed.

Committee Proposal 32 is passed.

SECRETARY CHASE: Item 20 on the calendar, from the committee on legislative powers, by Mr. Hoxie, chairman, **Committee Proposal 33,** A proposal to provide for immunity of legislators from arrest during sessions except for certain crimes. Amends article V, section 8.

Following is Committee Proposal 33 as read by the secretary, and the reasons submitted in support thereof:

The committee recommends that the following be included in the constitution:

Sec. a. Senators and representatives shall in all cases, except for treason, felony or breach of the peace, be privileged from arrest during sessions of the legislature and for [15] 5 days next before the commencement and after the termination thereof. They shall not be subject to any civil process during the same period. They shall not be questioned in any other place for any speech in either house.

Mr. Hoxie, chairman of the committee on legislative powers, submits the following reasons in support of Committee Proposal 33:

The committee recommends the retention of this section with only one minor change. This provision, or ones similar to it, have appeared in the constitution since 1835. Its purpose was to prevent harassment of legislators.

While this consideration may not be of prime importance at present, its long standing tradition and occasional use would warrant its continuance.

Legislators should be allowed to represent the people who elected them, if at all possible, and should be exempt for reasonable periods to allow the carrying out of their duties.

The one change is a shortening of the immunity before and after the session from 15 to 5 days. This recognizes the benefits of modern travel.

CHAIRMAN MARTIN: Mr. Kuhn.

MR. KUHN: Mr. Chairman, the committee's comments can be found in Journal 64 on page 373.

[The reasons submitted in support of Committee Proposal 33 were read by Mr. Kuhn. For text, see above.]

CHAIRMAN MARTIN: Any amendments to the body of the proposal? If not, it will be passed.

Committee Proposal 33 is passed.

The secretary will read.

SECRETARY CHASE: Item 21 on the calendar, from the committee on legislative powers, by Mr. Hoxie, chairman, **Committee Proposal 34,** A proposal to provide for quorums of the house and senate and the right of these bodies to compel attendance. Amends article V, section 14.

Following is Committee Proposal 34 as read by the secretary, and the reasons submitted in support thereof:

The committee recommends that the following be included in the constitution:

Sec. a. A majority of THE MEMBERS ELECTED AND SERVING IN each house shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may compel the attendance of absent members in such manner and under such penalties as each house may prescribe.

Mr. Hoxie, chairman of the committee on legislative powers, submits the following reasons in support of Committee Proposal 34:

The committee feels that this section, which has been in its present form since 1850, should remain in the proposed constitution with only minor clarification.

The proposed wording takes care of any ambiguity in the term "majority." It is felt by the committee that "majority" should be computed only upon the number of members that can serve. This means where a legislative seat has been vacated for any reason, and not filled, it shall not be counted in computing a quorum.

Almost all state constitutions have similar provisions. Especially prevalent is the clause allowing a number smaller than a quorum to adjourn from day to day. This, of course, allows temporary adjournment after a session has opened. If this provision were deleted, no adjournment could take place from day to day without the presence of a majority.

The right to compel attendance is important in that legislators cannot, by remaining away, thwart the business of the legislature.

CHAIRMAN MARTIN: Mr. Kuhn.

MR. KUHN: Mr. Chairman, a provision of this kind is in most constitutions. And the only change here is in the first sentence, where it says, "A majority of the members elected and serving in each house shall constitute a quorum . . . ." This is Senator Hutchinson's proposal, which received the unanimous agreement of our committee. It takes into account the fact that there could be a disaster, or something could happen, and would simplify reaching a quorum. It would help the legislature to proceed in case of any real disaster.

CHAIRMAN MARTIN: Any amendments to the body of the proposal? If not, it will be passed.

Explanation—Matter within [ ] is stricken, matter in capitals is new.

Committee Proposal 34 is passed.

The secretary will read.

SECRETARY CHASE: Item 22 on the calendar, from the committee on legislative powers, by Mr. Hoxie, chairman, **Committee Proposal 35,** A proposal to provide that the form of legislation shall be by bill. Retains article V, section 19.

Following is Committee Proposal 35 as read by the secretary, and the reasons submitted in support thereof:

The committee recommends that the following be included in the constitution:

Sec. a. All legislation by the legislature shall be by bill and may originate in either house of the legislature.

Mr. Hoxie, chairman of the committee on legislative powers, submits the following reasons in support of Committee Proposal 35:

The committee recommends the retention of this section. It first appeared in the 1908 constitution. Prior to that time the legislature used concurrent and joint resolutions in the lawmaking process to such an extent that it was deemed to have been abused.

Allowing legislation to originate in either house of the legislature has been part of the Michigan constitution since 1835. A similar provision appears in about half of the state constitutions.

CHAIRMAN MARTIN: Mr. Kuhn.

MR. KUHN: Mr. Chairman, the committee recommends the retention of this section. It first appeared in the 1908 constitution. Prior to that time the legislature used to use concurrent and joint resolutions in order to get around the governor's signature in order to make laws. So this clause was put in to enable them only to make laws that would have to cross the governor's desk.

Allowing legislation to originate in either house of the legislature has been part of the Michigan constitution since 1835. A similar provision appears in about half of the state constitutions.

I would like to say that we did have one recommendation that revenue bills start in the house of representatives. This is the federal practice. The committee did not feel that we should put this in our constitution.

CHAIRMAN MARTIN: Any amendments to the body of the proposal? If not, it will pass.

Committee Proposal 35 is passed.

SECRETARY CHASE: Item 23 on the calendar, from the committee on finance and taxation, by Mr. Brake, chairman, **Committee Proposal 36,** A proposal with reference to the use to be made of the primary school interest fund, covering the subject matter now found in article X, section 1 of the 1908 constitution.

[Committee Proposal 36 was read by the secretary. For full text, see below, page 818.]

CHAIRMAN MARTIN: Mr. Brake.

MR. BRAKE: Mr. Chairman, the next 5 items on the calendar are items from the finance and taxation committee. I move that they be taken up in the following order: 37, 40, 38, 39 and 36.

SECRETARY CHASE: Mr. Brake has asked that the items be taken up in this order, Committee Proposals 37, 40, 38, 39 and 36.

CHAIRMAN MARTIN: Without objection, and I hear none, it is so ordered.

SECRETARY CHASE: Item 24 on the calendar, from the committee on finance and taxation, by Mr. Brake, chairman, **Committee Proposal 37,** A proposal to provide for care and control of state funds, accounting for public moneys, audits, and publication of reports, and covering the general subject matter found in sections 15, 16, 17, 18 and 13 of article X of the 1908 constitution.

Following is Committee Proposal 37 as read by the secretary, and the reasons submitted in support thereof:

The committee recommends that the following be included in the constitution:

Sec. a. No state money shall be deposited in banks other than those organized under the national or state banking laws. No state money shall be deposited in any bank in excess of 50 per cent of the capital and surplus of such bank. Any bank receiving deposits of state money shall show the amount of state money so deposited as a separate item in all published statements.

Sec. b. No money shall be paid out of the state treasury except in pursuance of appropriations made by law.

Sec. c. THE LEGISLATURE SHALL PROVIDE BY LAW FOR THE ANNUAL ACCOUNTING FOR ALL PUBLIC MONEYS, STATE AND LOCAL, AND MAY ALSO PROVIDE BY LAW FOR INTERIM ACCOUNTING. THE LEGISLATURE SHALL PROVIDE BY LAW FOR THE AUDIT OF STATE AND COUNTY ACCOUNTS BY COMPETENT STATE AUTHORITY, AND MAY ALSO PROVIDE FOR THE AUDIT OF ANY OTHER PUBLIC ACCOUNTS.

ALL ACCOUNTINGS, RECORDS, AUDIT REPORTS AND OTHER REPORTS OF PUBLIC MONEYS SHALL BE PUBLIC RECORDS AND OPEN TO INSPECTION. A DETAILED STATEMENT OF ALL REVENUES AND EXPENDITURES OF PUBLIC MONEYS SHALL BE PUBLISHED AND DISTRIBUTED ANNUALLY AS PRESCRIBED BY LAW.

Sec. d. The state shall not subscribe to, nor be interested in the stock of any company, association or corporation, EXCEPT THAT FUNDS ACCUMULATED TO PROVIDE RETIREMENT OR PENSION BENEFITS FOR PUBLIC OFFICIALS AND EMPLOYEES MAY BE INVESTED AS PROVIDED BY LAW; AND EXCEPT THAT ENDOWMENT FUNDS CREATED FOR CHARITABLE OR EDUCATIONAL PURPOSES MAY BE INVESTED AS PROVIDED BY LAW GOVERNING THE INVESTMENT OF FUNDS HELD IN TRUST BY TRUSTEES.

Mr. Brake, chairman of the committee on finance and taxation, submits the following reasons in support of Committee Proposal 37:

Sec. a. The first paragraph of the proposal dealing with state deposits in banks is section 15, article X of the present constitution unchanged. In the opinion of the committee and of the fiscal officers of the state it is adequate and satisfactory.

Sec. b. This section is section 16 of article X of the 1908 constitution unchanged. The committee's former proposal for the management of state funds in a more essential manner than that now provided by law, was the one that ran into trouble on the floor of the convention. In part the need for the proposal formerly submitted by the committee has been met by the short term borrowing provisions which passed through the committee of the whole, and is now in committee on style and drafting. While the majority of the committee still feels that there should be authorization for such fund management, a constitutional provision to that effect, which excepted earmarked funds, would be useless. The committee simply yields to the apparent thinking of the convention that it does not wish to expressly authorize any commingling of earmarked funds in the constitution.

Sec. c. The committee recommends adoption of the third and fourth paragraphs of this proposal to provide adequately for accounting for public moneys, audits, and publication of reports. Sections 17 and 18 of article X of the present constitution have provided the framework for these functions in the past.

Section 17 of the present constitution, which relates to the publication of reports, is ambiguous.

Section 18 was first introduced into the Michigan con-

Explanation—Matter within [ ] is stricken, matter in capitals is new.

stitution in 1908 as a way to force the legislature to make suitable provision for uniform accounts and audits. When appraised against this background it does not appear to perform a useful purpose in the new constitution. A uniform accounting law was passed in 1919 which contains considerable detail in prescribing accounting and auditing responsibilities and duties. Moreover, accounting and auditing concepts and techniques have advanced to the point where a body of generally accepted standards of uniformity, consistency and competence is available as a guide.

Section 18, which provides for the keeping of uniform records and the supervision, audit and inspection thereof, includes legislative detail which is no longer needed in the constitution. The language is so restrictive as to fail to accomplish its purpose. Substantively, the only changes proposed are that the legislature is given authority to provide for interim accountings where desirable and broader authority to provide for the audit of public accounts.

Sec. d. Section 13 of article X of the present constitution, which is revised by the committee proposal, has the desirable object of preventing state ownership of private business. However, it has some other results which the committee believes are unduly restrictive. The development, since the adoption of the present constitution, of substantial public employee retirement funds and university endowment funds, has made necessary reexamination of the type of investments available for such funds. The committee believes that if these funds are to earn the best return and are to be protected against inflation, the legislature should have the power to permit, under appropriate restrictions as to quality and amount, investment of these funds (but not other public funds) in such things as share accounts in savings and loan associations, and high grade corporate securities.

[Section a was read by the secretary. For text, see above, page 766.]

CHAIRMAN MARTIN: Mr. Brake.

MR. BRAKE: Mr. Chairman, ladies and gentlemen of the committee, this is the language of the present constitution. It is the opinion of the committee and of the fiscal officers of the state at present that it is needed in the constitution, that it is adequate, and that it should be adopted unchanged.

CHAIRMAN MARTIN: Are there any amendments to the section? Mr. Secretary, do you have an amendment?

SECRETARY CHASE: I have none to this section, Mr. Chairman.

CHAIRMAN MARTIN: All right. If there are no amendments, it will be passed.

Section a is passed.

SECRETARY CHASE: Section b.

[Section b was read by the secretary. For text, see above, page 766.]

CHAIRMAN MARTIN: Mr. Brake.

MR. BRAKE: Mr. Chairman, this is the section that produced a furor when we had it before the committee of the whole on another occasion, and which was sent back to committee. The usual legislative practice when a proposal is sent back to committee is it is for one of two purposes: either to make a considerable change in it or to kill it. The fund management proposals that we had before you at that time we still think were advisable, and that they would have produced a more workable management of state funds. But there was considerable disagreement on the floor, and the need for that fund management is lessened if other provisions of the committee's recommendations are finally accepted.

You have already approved—and it has gone to style and drafting—a proposal for short term borrowing that makes what we have in this section before you less necessary, at least. We have proposed to you a change in the sales tax amendment to the constitution—that will, perhaps, be before us today—which also makes less necessary the language that we presented to you on that other occasion.

What we have here now is simply the language of the present constitution; that no money shall be paid out of the state treasury unless it is appropriated by the legislature. That certainly is needed as a minimum.

CHAIRMAN MARTIN: Any amendments to this section? If not, it will be passed.

Section b is passed.

SECRETARY CHASE: Section c.

[Section c was read by the secretary. For text, see above, page 766.]

CHAIRMAN MARTIN: Mr. Brake.

MR. BRAKE: Mr. Chairman, for an explanation of these sections having to do with accounting and reporting, I yield the floor to our vice chairman of the committee, Mr. Austin.

CHAIRMAN MARTIN: Mr. Austin.

MR. AUSTIN: Mr. Chairman, the last time I was on the floor in regard to this section I think we had quite a debate, and I think my job today should be a lot easier, because we have not returned the item that caused most of the controversy.

At the time we discussed the commingling section, I also gave an explanation of the need for some change in sections 17 and 18. I don't think it is necessary to repeat what I said at that time, because even then there did not seem to be any need to review in detail the language that was proposed by the committee. I will say simply this: that section 17, which now provides for the publication of reports, is somewhat ambiguous, and needs to be changed. The recommended language is found at the end of the second paragraph of section c of the proposal. I think you will find that that language is a lot more clear and certainly serves the purpose better. It gives the legislature a little more freedom.

The second paragraph of this proposal is a rewriting of the language that is found in section 18, which provides for public accountings. The only substantive changes that we have made are that the legislature is given authority to provide for interim accountings where desirable, and broader authority to provide for the audit of public accounts. I would rather not go into detail on these sections unless there are questions.

CHAIRMAN MARTIN: Any questions? If not, the section will be passed.

Section c is passed.

The secretary will read.

SECRETARY CHASE: Section d.

[Section d was read by the secretary. For text, see above, page 766.]

CHAIRMAN MARTIN: Mr. Brake.

MR. BRAKE: Mr. Chairman, the final section of this proposal has to do with investments, and for an explanation of that I yield the floor to Mr. Van Dusen.

CHAIRMAN MARTIN: Mr. Van Dusen.

MR. VAN DUSEN: Mr. Chairman and members of the committee, I think this can be explained rather simply. The present constitution provides, as I believe you all know, that the state shall not subscribe to nor be interested in the stock of any company, association or corporation. This section has the very desirable objective of keeping the state out of private business. However, in considering the consequences of the section, the committee concluded that it had 2 somewhat undesirably restrictive consequences. There are 2 kinds of very substantial funds held for long term purposes by state authorities: one, the pension and retirement funds; the other, the endowment funds held to provide income for our major state universities. It was believed by the committee that it would be desirable to permit, under restrictions imposed by the legislature, the investment of these long term funds in securities, including the equity securities of corporations, if the legislature felt that was desirable. This is a protection against inflation. It provides for a balanced portfolio. It would permit universities to retain securities which were given, for example, to the university.

One of the problems that we have had in our retirement funds has been that the money that was put in in the 1930s is worth only half as much now as it was when it was put in. Consequently, the capital funds of these pension funds have suffered materially from inflation.

Accordingly, it is the recommendation of the committee that an exception be created to the general prohibition against the state being interested in the stock of a corporation; an exception, first, that funds accumulated to provide retirement or pension benefits for public officials and employees may be invested as provided by law. And an exception, second, that endowment funds created for charitable or educational purposes may be invested as provided by law governing the investment of funds held in trust by trustees. Now, the reason for the separate exceptions is this: our state universities currently hold very large endowment funds which, in the absence of some enabling statute, are subject to question as to their right to do so. The reference in the constitutional provision to the law governing the investment of trust funds by trustees is simply a reference to existing law and, therefore, with the adoption of this constitutional provision, the university endowment funds could be held and managed pursuant to the existing law governing the investment of trust funds, which is the "prudent man" rule.

The committee believes that these are sensible changes in the present constitution, designed to take account of changing economic conditions. We recommend their adoption.

CHAIRMAN MARTIN: Any amendments to the provisions of the section? Mr. Bentley.

MR. BENTLEY: Mr. Chairman, I would just like to ask the gentleman from Birmingham a question. Does this section have a direct relationship upon the next order of business? That is, Committee Proposal 40?

MR. VAN DUSEN: Mr. Chairman and Mr. Bentley, there is a relationship to the extent, of course, that both sections deal with retirement funds maintained for the benefit of public employees. I don't believe there is any direct relationship, but quite obviously they both deal with certain aspects of the problems which have arisen since the adoption of the 1908 constitution as a result of the growth of public employee retirement funds.

MR. BENTLEY: My further question to the gentleman then would be this: in adopting this section, the committee will not be prejudging its action on the ensuing proposal? It will not, will it?

MR. VAN DUSEN: Mr. Chairman and Mr. Bentley, that's quite correct. The committee on finance and taxation would strongly urge the adoption of this proposal, regardless of what action is taken on the immediately following one.

CHAIRMAN MARTIN: Mr. Ford.

MR. FORD: With regard to public employees' retirement plans and funds that back them, it has been traditional to be very restrictive in the manner of the investment of such a fund. Would this change, Mr. Van Dusen, in any way make it possible for the legislature to permit the investment of such funds in private corporation stock to the extent that they could become involved in the speculation of business trends, as distinguished from the kind of investments they now make?

MR. VAN DUSEN: Mr. Chairman and Mr. Ford, quite obviously the purpose of the provision is to broaden the authority for state investment of pension funds beyond what is now permitted. However, there will be no change in the investment powers of the managers of these pension funds unless specifically authorized by the legislature. And it is contemplated by the committee, as expressed in our committee's report, that the legislature would adopt appropriate restrictions both as to quantity and quality of investments of these funds in the future.

MR. FORD: I hope you don't suggest that by making reference to the trust requirements, that there's now built into the law some protection that is going to guarantee the wisdom of the investments. This merely goes to the standard of care to be used by the trustee, doesn't it?

MR. VAN DUSEN: Mr. Chairman and Mr. Ford, that is why there are separate provisions with respect to the law governing the investment of pension funds and the law governing the investment of endowment funds. In the case of endowment funds, very frequently the universities are given large blocks of stock which would not in the ordinary course have been purchased as part of an investment program. Frequently the terms of the gift require the retention of that particular security; and if the university wants the benefit of the gift, it takes it with the strings attached.

Now, the same considerations do not obtain in the case of public employee retirement funds, where the 2 sources of the funds are: one, the contributions of the employees themselves; and two, public tax funds. And there the standard of care and the standard of conservatism in investment would certainly in my judgment have to be a good deal higher. Consequently, we did not prescribe simply the trust standard for those funds, but left it to the legislature to establish the requirements which in my judgment would probably be considerably more restrictive than those applicable just to trust funds.

MR. FORD: Then let me ask this: did anyone representing municipal or governmental employee organizations indicate to you their feelings about freeing the legislature in the matter of investing the funds that fund retirement plans, for example? I notice that you treat them separately here, and you are talking primarily about the desirability of being able to use this large pool of money in endowments. Now, that's one thing. But a fund that has been set up and has been contributed to jointly by a municipality, for example, or a county and its employees, has been, up until now, treated very restrictively in the matter of investment. As a matter of fact, I don't believe that we presently are allowed to invest these funds in anything except governmental securities.

MR. VAN DUSEN: Mr. Chairman and Mr. Ford, that, of course, is correct. And it was for that reason that the committee recommended this change. The public employees who have contributed to the pension funds and the taxpayers who have contributed to these pension funds have seen the capital funds which they have put into these funds shrink as the result of inflation, because of the restriction of the investment powers to government securities, which obviously are subject to the hazards of inflation.

Now, it's not the intention of this provision to put the persons managing pension funds out into the stock market engaging in speculation. However, it is believed that if these funds are given, under controls imposed by the legislature, reasonable freedom to develop a balanced portfolio, then the funds which were put in in the '30s will to some extent have current value greater than that they could have under the present provision.

MR. FORD: I understand that. The only thing that concerns me is that presently we are limited to what are considered to be very conservative investments, and by being conservative and guaranteeing a return, they at the same time guarantee the stability of the retirement plan. The retirement plan is only as good as the money that is available there to pay it when it is needed. Now, as I understand this language, it would permit, whether intentionally or inadvertently, the legislature to adopt at any given time a law that would permit the investment of retirement funds in common stock in a private corporation that could be wiped out overnight. Now, if this is wrong, I hope you will correct me. I'll sit down and not belabor the subject.

MR. VAN DUSEN: Your question, Mr. Ford, is quite correct, and the answer is quite correct. The legislature could, if it chose to do so, under this provision, permit the investment of pension funds in common stock. It is deemed appropriate to leave this matter up to the legislature. Unless the legislature affirmatively acted, no such investments could be made. But the reason for the provision is to protect these funds, not the reverse.

CHAIRMAN MARTIN: Mr. Hanna.

MR. W. F. HANNA: Mr. Van Dusen, isn't this essentially the same power that the legislature has in governing investments of insurance companies, where we have the same problem of providing for adequate security of insurance policies?

MR. VAN DUSEN: Mr. Chairman and Mr. Hanna, that's correct.

CHAIRMAN MARTIN: Are there any amendments to the section?

SECRETARY CHASE: Mr. Wanger offers the following amendment to section d:

1. Amend page 2, line 9, after "invested" by inserting "in nonvoting securities"; so the language will then read:

. . . except that funds accumulated to provide retirement or pension benefits for public officials and employees may be invested in nonvoting securities as provided by law. . . .

CHAIRMAN MARTIN: Mr. Wanger.

MR. WANGER: I believe, Mr. Chairman, I raised a question when this matter was before us on a previous occasion, and attempted to make the point that there are hundreds of millions involved in these funds; that these funds are almost always under the control of a pubic official in his capacity as fund manager or trustee, or something else; that voting stock or any type of a voting security controls the destiny of private enterprises; and that it would be best that these funds not be invested in voting securities and giving these officials control, because many times far less than 50 per cent of the stock of a company is a controlling factor in determining its management and its board of directors.

Even with this amendment in the provision, should it be adopted, the funds will have a great deal more latitude than they have now for making investments. They will be able to invest in preferreds and nonvoting common, if such exist today; in private bonds; in mortgage investments and indentures of these companies only so long as they are securities which are nonvoting in nature.

CHAIRMAN MARTIN: Mr. Van Dusen.

MR. VAN DUSEN: Mr. Chairman and Mr. Wanger, the committee considered a number of different types of specific restrictions which might have been imposed, and concluded in the case of each that it would be wiser to leave to the legislature the determination and prescription of the type of investment. Now, if Mr. Wanger's amendment were to be adopted, it would in very large measure defeat the purpose of the proposal because the great majority of the securities which might be made available would be voting securities.

CHAIRMAN MARTIN: Mr. Wanger.

MR. WANGER: Since the purpose of the section seems to be to get these funds into voting securities, I am more against it than before, and I urge your support for the amendment.

CHAIRMAN MARTIN: Mr. Ford.

MR. FORD: I would like to agree with Mr. Wanger. I would like to support his amendment if in fact it will prevent investment in those securities connected with private business which are generally considered, regardless of the stability or the age of the company, to be of a speculative nature, as opposed to those that are secured, such as the debentures mentioned, by something more than the financial outcome of the current year. As an example, I would gather from this that Mr. Wanger's amendment would permit the investment in utility stocks of the preferred type, with a guaranteed return of interest, which right now and for a number of years has been very good in this state, and far superior to that which we receive when we invest these funds at the local level in such things as short term notes of the United States government, and other forms of municipal bonds.

Since we don't have a tax problem at the local level when we are thinking of these funds in terms of investment, the limitation that now is on us to invest them solely in government securities is not nearly as desirable as it is for private capital. But when we get to the point where we can contemplate the possibility of an investment in what appears today to be a very sound and substantial company, looking back on what has happened in even what we considered relatively good times over the past 10 years, one of the major automobile companies that was one of the stalwart backbones of the city of Detroit for many years just isn't there anymore. I think they are even tearing the building down. I don't think 10 years ago anybody believed that there would ever be a time when we wouldn't have a Packard automobile on the street. This may have been considered by the people in the legislature 10 or 15 years ago to have been the kind of thing they would let them invest in. And I wonder where we would be in some of the small communities with our pension plans if our people had been permitted to invest in that type of stock. I support the Wanger amendment.

CHAIRMAN MARTIN: Mr. Austin.

MR. AUSTIN: Mr. Chairman, I would like to offer one or two comments, and then ask Mr. Wanger a question about his amendment.

First of all, I think it should be noted that even under the present provisions of the constitution, where these funds can invest in nonvoting securities, there have been some bad investments. In other words, voting securities are not the only speculative investments. Some mortgages go sour. Another point is that there is a strong feeling that these funds ought to be able to deposit or invest in savings and loan organizations. This is the big area.

My question to Mr. Wanger is whether he realizes that his amendment would preclude investment in savings and loan organizations.

MR. WANGER: No, I did not realize this. This is the first that I realized that that would be the case. I intend that they not be invested in any voting stock in a company. As I understand, a savings and loan is a mortgage organization, where you deposit money and the interest is paid and divided up among the depositors. But I wish this had been previously made plain, because I wrote a letter to the committee prior to the time that this was introduced on the floor. How would this prevent investment in mortgage investments?

MR. AUSTIN: Mr. Chairman, I would like to suggest that Mr. Van Dusen elaborate.

CHAIRMAN MARTIN: Mr. Van Dusen.

MR. VAN DUSEN: Mr. Chairman, Mr. Wanger, your amendment would not prevent the investment in mortgage investments. As Mr. Austin points out, those investments could be made by these funds now. However, your amendment would prevent the investment of pension funds in share accounts in savings and loan institutions which — contrary to the regular banking function — when you put your money in, you are buying shares, and those are voting shares which entitle you to a voice in the election of the management of savings and loan institutions. Therefore, where it's highly desirable for some long term money which is intended to be kept reasonably liquid to be invested by these funds, particularly the small funds, in the share accounts of savings and loan institutions, your amendment would preclude it, because of the voting rights which are inherent in the ownership of a share account in a savings and loan institution.

And as pointed out in the committee report published in the journal, the intention of the committee here is that the legislature should have the power to permit, under appropriate restrictions as to quality and amount, the investment of these funds in such things as share accounts in savings and loan associations.

CHAIRMAN MARTIN: The question is now on the Wanger amendment.

CHAIRMAN MARTIN: Mr. Binkowski.

MR. BINKOWSKI: Mr. Chairman, ladies and gentlemen of the committee, Mr. Ford and Mr. Wanger, I think you should be aware that there were representatives of the public employees retirement systems there who consulted with us, and that this language meets with their approval. I also want to point out the fact that we are dealing with the constitution, and it is supposed to be a basic law. It is supposed to last 50 or 75 years. I think that we need flexibility, and this provision would provide flexibility. Therefore, I speak against the Wanger amendment.

CHAIRMAN MARTIN: The question is on the Wanger amendment. Mr. Goebel.

MR. GOEBEL: Mr. Chairman, I completely agree with Mr. Binkowski that the legislature needs flexibility; that this constitution may last a long time. I don't think that there's anyone in this room or anyone in the legislature at the present time who would insist that pension funds be invested in equities at this time. But over the next 40 or 50 years things may change; the financial picture may change. And I think that it is wise

on our part to leave to the discretion of the legislature the power to invest these pension funds. I therefore oppose the amendment.

CHAIRMAN MARTIN: Mr. Stafseth.

MR. STAFSETH: I also was a member of the committee, and I know one of the most complicated things we had was to try and figure out if we could impose any restrictions. I remember one thing in particular—not getting into retirement funds—we got down to where we were talking about how we would handle moneys in perpetual funds for cemeteries, and this got to be complicated. It became very obvious to us that we had to have something flexible, so we left it to the power of the legislature. So I support the committee report and oppose the Wanger amendment.

CHAIRMAN MARTIN: Mr. Madar.

MR. MADAR: Mr. Chairman, being a member of the board of trustees of the pension system of Detroit, I have discussed this with several people that deal with our investments. And there have been some who appeared before the committee. They feel that this is a step in the right direction. I therefore oppose the Wanger amendment.

CHAIRMAN MARTIN: Mr. Romney.

MR. ROMNEY: Mr. Chairman, the question has been raised as to funds that are managed by employee organizations as well as management of firms, and I can state on the basis of personal knowledge that most of those funds now provide the type of flexibility that we are suggesing here for these public retirement funds. Most of them do include some common stocks of a high grade and this is a result of the joint judgment of the unions and the management people involved.

It does seem to me that what Mr. Goebel has just said, and others, is right, and that we should support the committee in providing this flexibility to protect the long range interest of public employees.

CHAIRMAN MARTIN: The question is on the Wanger amendment. Mr. Karn.

MR. KARN: Mr. Chairman, I would like to call attention to the fact that I would think a substantial percentage of the large, major trust companies today recommend in the case of pension funds a flexibility that is granted by this provision, and I would also want to object to the Wanger amendment on that account.

CHAIRMAN MARTIN: Mr. Wanger.

MR. WANGER: Mr. Chairman, in light of the confusion which the language which I proposed has caused, I would like to withdraw this amendment. I am very much opposed to the state getting into the control of any private enterprise, regardless of whether it is a savings and loan organization or anything else. But it was not my intent to put something in which would unduly restrict the investment, and in light of the people who have spoken, I think probably that the flexibility would not be abused.

CHAIRMAN MARTIN: The amendment is withdrawn. Are there any other amendments to the section? If not, it will be passed.

Section d is passed.

The question now is on the body of the proposal. Are there any amendments to the body of the proposal? If not, it will be passed.

Committee Proposal 37 is passed.

The secretary will read item 27 on your calendar.

SECRETARY CHASE: Item 27 on the calendar, from the committee on finance and taxation, by Mr. Brake, chairman, **Committee Proposal 40,** A proposal with reference to public retirement systems. Amends article X by adding a section.

Following is Committee Proposal 40 as read by the secretary, and the reasons submitted in support thereof:

The committee recommends that the following be included in the constitution:

Sec. a. THE ACCRUED FINANCIAL BENEFITS OF EACH PENSION PLAN AND RETIREMENT SYSTEM OF THE STATE AND ITS POLITICAL SUBDIVISIONS SHALL BE A CONTRACTUAL OBLIGATION THEREOF, WHICH SHALL NOT BE DIMINISHED OR IMPAIRED THEREBY.

ALL SUCH BENEFITS ARISING ON ACCOUNT OF SERVICE RENDERED IN EACH FISCAL YEAR SHALL BE FUNDED DURING THAT YEAR AND SUCH FUNDING SHALL NOT BE USABLE FOR FINANCING UNFUNDED ACCRUED LIABILITIES.

Mr. Brake, chairman of the committee on finance and taxation, submits the following reasons in support of Committee Proposal 40:

The problem here is extremely difficult. Any public system that is set up should have put into it each year sufficient money to meet all of the liability accrued during that year. If that is done from the very beginning, the system is not an excessive burden; but when you go for years without putting in enough money to cover the liability accruing each year, then to try to catch up for the past deficiency becomes a problem of magnitude. On the state level the 2 retirement systems for public school employees are pitiful examples of what results when the state simply puts in for a long period just enough money to meet the payments for retirees due each year.

It is estimated that it would take $424,688,598.00 to make the outstate employees' system actuarially sound and $151,679,334.00 to make the Detroit system actuarially sound. This kind of money is not easily found. We were asked to retain in the constitution, section 23 of article X, the constitutional guarantee of not less than 5 per cent, nor more than 7½ per cent of the payrolls from the schools' share of the sales tax. This was not done. The 7½ per cent does not even meet the liability accruing during each year, to say nothing about catching up for the past. To meet the accrued and accruing liability each year would take about 12¼ per cent of the payroll for the outstate system and 15½ per cent for the Detroit system, so instead of putting in any fixed percentage, we have provided for these 2 systems, and all others—state or municipal—a requirement that in each fiscal year the accruing liability shall be funded during that year, thus keeping any of these systems from getting farther behind than they are now.

This is not all that ought to be done but we think it is the maximum requirement that should be written into the constitution. Fortunately many of the systems, and particularly those starting in recent years, have kept sound from the very beginning.

CHAIRMAN MARTIN: Mr. Brake.

MR. BRAKE: Mr. Chairman, ladies and gentlemen, we didn't want to disappoint anybody by going through a session without a battle. Let me assure you that there are more coming up.

At the time of the 1908 constitution, retirement funds for public employees were not a problem. There was therefore no section in the finance article dealing with them. Now they are a problem, in tremendous number, and with tremendous amounts of money involved; and situations have arisen in some of them that seem to make it desirable that there be some protections and some restrictions in the constitution. We have therefore proposed a new section, and for a detailed explanation of it I again yield to Mr. Van Dusen.

CHAIRMAN MARTIN: Mr. Van Dusen.

MR. VAN DUSEN: Mr. Chairman and members of the committee, this proposal by the committee is designed to do 2 things: first, to give to the employees participating in these plans a security which they do not now enjoy, by making the accrued financial benefits of the plans contractual rights. This, you might think, would go without saying, but several judicial determinations have been made to the effect that participants in pension plans for public employees have no vested interest in the benefits which they believe they have earned; that the municipalities and the state authorities which provide these plans provide them as a gratuity, and therefore it is within the province of the municipality or the other public employer to

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Explanation—Matter within [ ] is stricken, matter in capitals is new.

terminate the plan at will without regard to the benefits which have been, in the judgment of the employees, earned.

Now, it is the belief of the committee that the benefits of pension plans are in a sense deferred compensation for work performed. And with respect to work performed, it is the opinion of the committee that the public employee should have a contractual right to benefits of the pension plan, which should not be diminished by the employing unit after the service has been performed. Now, this does not mean that a municipality or other public employing unit could not change the benefit structure of its pension plan so far as future employment is concerned. But what it does mean is that once an employee has performed the service in reliance upon the then prescribed level of benefits, the employee has the contractual right to receive those benefits under the terms of the statute or ordinance prescribing the plan. This is the first section. It confers the contractual right. It should confer upon public employees a considerably greater degree of security with respect to the knowledge that they will receive the benefits when the time comes.

Now, the second provision of this proposal deals with the financial aspects of the maintenance of pension plans. There are 2 kinds of problems in the funding of any pension plan. One is past service benefits which have not been adequately funded. And in the case of many of our public employee retirement systems, years have gone by when insufficient money has been put into the fund to take care of the future benefits which would in due course accrue to persons retiring from public employment.

The committee recognizes that if the proposal were to tell every public employing unit right now that you must put into these funds enough to take care of all of your sins of omission in the past, this would create a financial burden on municipalities and on the state which would be overwhelming, and which would be totally disruptive to the financial picture of the state for the immediately foreseeable future, and without any attendant real benefit to any of our citizens, including those who are participating in retirement plans. However, the committee did believe that it would be appropriate for the constitution to prescribe some ground rules so far as the future is concerned, and therefore the second paragraph of this proposal requires every public employing unit providing a pension plan or retirement system to currently fund current service benefits.

In other words, in each year, when a certain number of employees are employed who can be expected at some future point to retire and draw upon the fund for the benefits which would be contractually theirs, in each year it will be incumbent, under this provision, upon the employing unit to put into the fund enough money to provide those benefits when they accrue. This is designed to take care of not any one specific public employees' retirement fund, of which there are many in the state, but to take care of all of them: the school employees' retirement funds, the state employees' retirement funds, the police and firemen's funds, the probate judges' retirement funds, and so on. All of the pension plans and retirement systems maintained by the state and its political subdivisions will be subject, if this proposal is adopted, to the requirement that in every year the public employer must put into the fund enough money to currently fund the benefits attendant upon service rendered by its employees in that year. This is as far as we believe we can reasonably go in mandating municipalities to do what they should have been doing for many years past, but which they have not been doing for many years past.

We believe that this constitution must be a forward looking document; that it must take cognizance of the problem; that it must spell out for the future the manner in which these funds should be managed, so that our children will not, 50 years hence, suffer from the fact that we failed to put in enough money to take care of the benefits attendant upon the service currently performed by public employees.

CHAIRMAN MARTIN: Mr. Bentley.

MR. BENTLEY: Mr. Chairman, I think the opening sentence of the committee's supporting reasons, "The problem here is extremely difficult," is probably the understatement of the session, as far as I am concerned.

I might say, Mr. Chairman, that while this proposal was not referred for concurrence to the committee on education, the committee nevertheless felt, because it did affect section 23 of article X, over which we do have concurrent jurisdiction, that we should consider the matter. The question was raised for the first time at our committee meeting only the day before yesterday. In view of the absence, as most of the committee felt, of sufficient information to reach a decision, the matter was laid on the table before the committee. Nevertheless, many members of the committee on education felt extreme reservations about the second paragraph of the particular proposal. I think there was general acceptance of the first paragraph. The amount, according to the committee on finance and taxation, of nearly $600 million to make the 2 retirement systems for public school employees actuarially sound came to many of us as a very considerable shock.

My question, specifically, of the gentleman from Birmingham, Mr. Chairman, would be this. First of all, I might say, as I explained, the committee on education at the moment has no suggestions to make with respect to this proposal, although naturally we reserve the right on future readings to offer amendments if it seems to us desirable. But in view of the fact, Mr. Van Dusen, that the 7½ per cent which is provided for in the present constitution has been taken from the school aid funds, what would be the effect on the school aid funds if the second paragraph were adopted, in view of your committee's statement that merely to meet the accrued and accruing liability will require 12¼ per cent outstate and 15½ per cent in Detroit? I would like to know whether you can give the committee any idea of what the effect would be on the school aid funds—whether this money would be entirely from the school aid funds, as is now the case with the 7½ per cent.

MR. VAN DUSEN: Mr. Chairman and Mr. Bentley, the legislature could—and here we have to couple this proposal with the one which follows—take all or any part of the money required to be allocated for school employees' retirement systems from the school aid fund. The only requirement of this proposal is that the legislature would have to provide enough money to fund current service benefits. That is substantially the 7½ per cent, although just a little bit more, I think, than the 7½ per cent currently taken from the school aid fund under the present section 23 of article X. But this would leave the legislature free to take it all from the school aid fund or to take any part of it from the school aid fund. The source would not be material. The constitutional mandate would be that the current service benefits be currently funded, something which has not occurred over the history of the school employees' retirement fund since 1917.

MR. BENTLEY: One additional question, Mr. Van Dusen, if I may. Assuming that the legislature continued to deduct from the school aid fund the 7½ per cent which is now constitutionally required, then, do I understand it that in the Detroit area, for example, the legislature would have to find the remaining 7 per cent or 8 per cent actually from sources other than the school aid fund? Does the gentleman think that the legislature really could provide this with our present fiscal situation the way it is in the state?

MR. VAN DUSEN: I think the answer, Mr. Bentley, is yes. The constitution presently provides, with respect to the sales tax, that not less than 5 or more than 7½ per cent of the school payrolls be taken from the 2 cents of the sales tax which is earmarked for schools and set aside for retirement systems. This is designed to give to those particular public employee retirement systems a protection similar to but not as great as that provided by the general proposal here recommended by the committee.

The committee believes that because we should deal with this problem in the large—not just aiming at one particular public employee retirement system, but dealing with all public employee retirement systems as a whole—the general provision is the appropriate one to adopt. But the committee also feels that in retaining the earmarked funds for school districts, it is also appropriate to permit the legislature to continue to use a portion of the earmarked sales tax funds for retirement purposes, and our proposal so states without limitation as to amount.

That would mean that the legislature would be free, as I said earlier, to take all of the retirement money required by this proposal from the school aid fund, or it could take a part. And since the legislature has in each of the last 4 years been appropriating to school districts and to retirement systems substantially greater sums than those which are currently constitutionally earmarked for that purpose, I don't believe that this provision would have any effect on a lower limit with respect to funds going into retirement systems. In effect, it would increase them.

CHAIRMAN MARTIN: Mr. Bentley.

MR. BENTLEY: Mr. Chairman, I thank the gentleman for his presentation. I have one more question. It will be very brief. That is this: I assume, Mr. Van Dusen, that the 12¼ per cent and the 15½ per cent figures contained in this committee report are based on present salary scales both outstate and in the Detroit area. If those salary scales in either system were substantially increased, I presume that those figures which you have given here would have to be revised upward?

MR. VAN DUSEN: I think probably not, Mr. Bentley, because they are percentages of payroll.

MR. BENTLEY: I thank the gentleman. Mr. Chairman, as I said earlier, there were members of the committee on education that did have some reservations on this question. I hope that if any of them feel compelled to speak, they will take this opportunity to do so.

CHAIRMAN MARTIN: May the Chair say he has noted the various people who want to speak and listed their names, and he will call on them in due course. So you can be seated if you want to.

Mr. Brake.

MR. BRAKE: I was going to emphasize, with Mr. Bentley, the fact that as to the Detroit system, our second paragraph requires approximately twice what is being put into their fund by the state at the present time; and as to the outstate system, substantially more. I thought the other delegates might be interested in the specific figures that shocked Mr. Bentley and his committee and shocked us. You can get different figures from different people when you get to these retirement systems. It is a complicated accounting system. But the figures coming from Jerry Gable, of Detroit, who is the actuary employed by both systems, are these: to make the outstate public school employees' fund actuarially sound would require $366,517,242; to make the Detroit system actuarially sound would require $148,975,941.

Always, when you mention figures like that, some teacher begins to get uneasy and thinks she or he is not going to be paid. It doesn't mean that at all. These systems have been paying, and they will continue to pay, and there are too many voters involved for the legislature to ever forget how many voters are involved as far as meeting the payments. This is not talking about meeting the payments. It is talking about better preparing the fund so it will be nearer sound, and our requirement is that they at least go no further behind than they now are.

CHAIRMAN MARTIN: Mr. Stafseth.

MR. STAFSETH: I think there's one thing that the members of the committee of the whole—and the convention—should consider in this problem: that probably this is the greatest area in our government today in the state of Michigan and at the federal level of where we are having what we call "back door" spending. As Mr. Bentley pointed out, the accrued benefits that have not been funded or paid is around $600 million. Our state indebtedness is around $100 million. All we are saying, in effect, in this proposal is: one, that the retirement that was promised any employee which he has lived long enough to earn shall not be impaired or diminished; and two, that from now on all retirement funds that are promised by employers shall be funded properly. In other words, they should put enough money in there so when they retire the money is there. And there was a very specific purpose for this. I was one of the ones that pushed it. I wanted employers, legislative bodies and city councils to be very aware of what they were spending when they gave a person, a public employee, a retirement program. In other words, how much did it cost per year?

Now, what we have done in this paragraph is to say, also, that this indebtedness of around $600 million or maybe more doesn't have to be paid up tomorrow; all we say is it has to be paid, and that's up to the various governing bodies to figure out. But from now on any governmental body cannot avoid paying for a retirement fund that they promise an employee. They've got to make those payments annually, on time.

CHAIRMAN MARTIN: Mr. Rush.

MR. RUSH: Mr. Chairman, as a member of both the education and the finance and taxation committees, I was deeply concerned about the wording of this section. Mr. Brake and Mr. Stafseth have both said some of the things that I intended to say. But I believe the wording of this section guarantees to our teachers and other recipients of these funds much more than the wording in the old constitution. If this is followed by the legislature, it will guarantee almost twice what the old constitution provided, a ceiling of 7½ per cent.

We have had the wording of this section checked by Mr. Christie and other managers of funds and they have felt that it is adequate and provides what is necessary. I just wanted to add that. I support the report of the committee on finance and taxation.

CHAIRMAN MARTIN: Mr. Erickson.

MR. ERICKSON: Mr. Chairman, I believe this is a very healthy provision in the constitution. In the past we have noticed many pension plans that have gotten out of hand; the employees have been able to get too high a pension; and in a few years they've found that the pension plans might run 25 to 30 per cent of the payroll.

I have just one question to ask the committee. That is in regard to the statute for circuit judges. I believe that statute provides that no payments can be made from the general fund for the circuit judges' retirement system. I was just wondering what the effect of that would be on this section.

CHAIRMAN MARTIN: Mr. Brake.

MR. BRAKE: I'm sure this section would in no way change that. The circuit judges' retirement system, as far as the state is concerned, is financed by making everyone who starts a lawsuit pay into that fund as part of the entry fee of the case which he pays to the county clerk. This would make no change in it.

CHAIRMAN MARTIN: Mr. Spitler.

MR. SPITLER: I would like to ask Mr. Van Dusen a question. First of all, I would like to say that I think the committee has offered here a sound statement regarding our retirement systems, and I want to say that I will support it. But I do have one question that I would like to ask Mr. Van Dusen. Under the present teachers' retirement, as he has stated, it requires that 7½ per cent of the money collected under the 2 cent sales tax shall be paid over to the retirement fund. That would be done in 6 payments at the time they make the payments to the school districts. The question I have—and it's not just a fear, because during the last few sessions of the legislature an attempt has been made to remove this payment and pass it back to the local school districts.

We have nearly 2,000 school districts. And if the legislature refused to make this appropriation and passed all the 2 cent sales tax back to the local school districts with the intention that they should make these payments, then we would have our retirement fund board dealing with 2,000 school districts, instead of taking the payment out of the funds as it comes into the state, and made over to them in 6 payments. It would be much more costly. It would be difficult as far as accounting is concerned, because of the many different kinds of boards of education that we have and the school districts that we have.

Let me say again that I will support this, and I think it is putting our retirement system on a sound basis. But I do have that question, because it has been introduced in the legislature in the last 2 or 3 sessions.

MR. VAN DUSEN: Mr. Chairman and Mr. Spitler, your question, of course, Mr. Spitler, is a sound one. It is not contemplated that this would have that effect. I recognize that to the extent that a school district is the employing and contracting unit, it would share with the state the obligation for making the pension benefits available when due, and would

share with the state the obligation for current funding. But it is an obligation which has increasingly in the past been assumed by the state, and it would be the expectation of the committee that it would continue in that fashion.

CHAIRMAN MARTIN: Mr. Spitler.

MR. SPITLER: Could that be included in the accompanying report, that that is the intention of the committee?

MR. VAN DUSEN: I see no reason, Mr. Spitler, why that couldn't be added. We couldn't, of course, anticipate every question on the floor and cover it. It is now, to the extent that this verbatim record is a part of the proceedings of the convention, expressed as the intention of the committee.

CHAIRMAN MARTIN: Mr. Iverson.

MR. IVERSON: Mr. Chairman, I would like to ask Mr. Van Dusen a question, and I don't believe it has been answered. In the case of a municipality which presently has a pension plan, if the people of that municipality finally decided they no longer wanted it, would this language in the first paragraph be sufficient to permit them to dispense with the future operation of a pension plan?

MR. VAN DUSEN: Mr. Iverson, there's no question but that a municipality could in the future dispense with its pension plan, so long as it did not in so doing diminish or impair the benefits which had accrued to employees who had performed service in the past.

MR. IVERSON: So that the present language was intended then to protect the accrual of benefits to the time that any municipality might dispense with a pension plan?

MR. VAN DUSEN: That is correct. This was simply designed to put pension benefits earned in public service on the same basis as deferred compensation earned in private employment. It is a contractual right.

CHAIRMAN MARTIN: Mr. Austin.

MR. AUSTIN: Mr. Chairman, it is my hope that I will be able to clarify the issue here so that there will be no misunderstanding about what is before us. I have a feeling that our discussion of the 7½ per cent retirement requirement in Committee Proposal 39—that is, the earmarking of the sales tax—may have confused the issue a little with regard to Committee Proposal 40. I think we are all in favor of Committee Proposal 40, because it guarantees for the employees who are covered by all public employee pension plans, not just the school plans, that their benefits will be properly funded. And I think it is desirable that we get this proposal passed.

Now, with regard to the 7½ per cent earmarking which is covered under section 23 and which we will take up in Committee Proposal 39, we can at that time decide whether we want to earmark any portion of our funds for this purpose. I think we should agree, first of all, that we want them properly funded, and that is the purpose of Committee Proposal 40. Then, when we get to the other proposal, we can decide whether we want to earmark any money.

CHAIRMAN MARTIN: Mr. Binkowski.

MR. BINKOWSKI: Mr. Chairman and ladies and gentlemen of the committee, as a member of the committee on finance and taxation, I would like to speak in favor of our committee proposal. I think that most of the reasons for the proposal have been brought out, but I would like to touch upon them very briefly. One of the reasons that has been expressed for making the accrued benefits contractual is the fact that the supreme court decisions have ruled that the pension or retirement systems are a gratuity. And this has been held true today in spite of the fact that we have our concept of deferred compensation. And, many of you who are living in the metropolitan areas, if you will pick up the newspapers over the weekend and read the ads by the Detroit civil service or the Wayne county civil service, or any of the other municipalities, you will find that in their ads they play up the aspect of liberal pensions. And there is no question that when an employee today takes employment with a governmental unit, he does so with the idea that there is a pension plan or retirement system involved. And, in order to protect them, we believe that the first paragraph is necessary.

I believe that Mr. Stafseth has already spoken upon the necessity to make the legislative bodies responsible in this area, and also to prevent "back door" borrowing. Of course, we in the city of Detroit have recently seen an example of this stopped by a ruling of a circuit court judge in demanding that the moneys set aside for the Detroit firemen and policemen's pensions be placed in a fund and not be used for current operating expenditures. Therefore, I favor this proposal.

CHAIRMAN MARTIN: Mr. Shanahan.

MR. SHANAHAN: Mr. Chairman and fellow delegates, as the discussion has developed, I think I see what the words mean. When I first read it I was completely lost in the bog of antecedents. Now, my only reason for arising at this time to discuss this is to present a plea that the section be written in such a way that I would not have difficulty in trying to explain what it means to somebody who would ask me. One of the criticisms I've heard of the 1908 constitution was that some people couldn't make head nor tail out of it without a lawyer's degree. And as I read this, I feel the same way about this—that this is not an improvement. I found it very heavy reading just trying to follow the thought from beginning to end. I am not here to propose an amendment, because I wouldn't know exactly how to start. I am just wondering if there is some way in which this could be rephrased so as to say the same thing, but be readily comprehensible to the average high school graduate.

CHAIRMAN MARTIN: Mr. Downs.

MR. DOWNS: Mr. Chairman, I would like to ask a question, either of Mr. Stafseth or the chairman of the committee, and I believe that his remarks did help clarify this. I speak primarily from ignorance. When the term "the accrued financial benefits" is used, as I understand from Mr. Stafseth, the purpose is to see that instead of using a pay as you go system, there would be a funded system from now on, with some plan to pick up what had not been properly funded. Now, I assume from that that if a governmental unit sets aside so much money for the funding of a pension plan, that that money could not then be used for any other purpose; and if there were an attempt to, the individual employee could use some kind of court action—injunction or mandamus—to prevent that. And, if I'm wrong, I wish the committee chairman or somebody would apprise me.

The second question and the real question that I have is: if the legislative body does not appropriate enough money for proper funding, would there be any way for the employee or the employees' organization to compel the local unit of government, or whoever is responsible, to put aside enough money each year for the proper funding?

CHAIRMAN MARTIN: Mr. Brake.

MR. BRAKE: Answering the first part of your question, I think your understanding is entirely correct. It is the intention that we will put in each year enough in every fund to take care of the liability occurring during that year, so it will not go farther and farther behind.

On the second part of your question, there is no way to compel the legislature to appropriate money. There is no way that I know of to compel a city council to raise more money. We have to put some faith in somebody, and this is being put in the legislature.

Now, I would like to say just a word, Mr. Chairman, to what Mr. Shanahan has just said. We could of course enlarge this, and very greatly enlarge it, by putting it into nontechnical language so that a layman could better understand it. The committee has been economical in the use of words. We think that we should be, in the constitution. These words that we have used and that Mr. Shanahan had some trouble in interpreting are the words understood by accountants and actuaries, who will be dealing with this problem; and always, as every lawyer knows, there's more certainty when you use technical, well defined words known to the profession involved, even though they are not quite so familiar to the general public.

CHAIRMAN MARTIN: Mr. Van Dusen.

MR. VAN DUSEN: Mr. Chairman, if I may elaborate briefly on Mr. Brake's answer to Mr. Downs' question, I would like to indicate that the words "accrued financial benefits" were used designedly, so that the contractual right of the employee would be limited to the deferred compensation embodied in any pension plan, and that we hope to avoid thereby a pro-

liferation of litigation by individual participants in retirement systems talking about the general benefits structure, or something other than his specific right to receive benefits. It is not intended that an individual employee should, as a result of this language, be given the right to sue the employing unit to require the actuarial funding of past service benefits, or anything of that nature. What it is designed to do is to say that when his benefits come due, he's got a contractual right to receive them.

And, in answer to your second question, he has the contractual right to sue for them. So that he has no particular interest in the funding of somebody else's benefits as long as he has the contractual right to sue for his.

CHAIRMAN MARTIN: Mr. Downs.

MR. DOWNS: I appreciate Mr. Van Dusen's comments. Again, I want to see if I understand this. Then he would not have a remedy of legally forcing the legislative body each year to set aside the appropriate amount, but when the money did come due this would be a contractual right for which he could sue a ministerial officer that could be mandamused or enjoined; is that correct?

MR. VAN DUSEN: That's my understanding, Mr. Downs.

MR. DOWNS: And there would not be any immunity because of it being a governmental unit?

MR. VAN DUSEN: That's further my understanding.

MR. DOWNS: The other question I have, then: if the legislative body wanted to increase the pension rights, such as lowering the age at which a person would be eligible for benefits, and so on, could an additional contractual right be bestowed, or could that apply only in the future to a new financial system?

MR. VAN DUSEN: Mr. Chairman and Mr. Downs, the more hypothetical the questions get, the tougher the answer is, as I'm sure Mr. Downs appreciates. However, what we are trying to deal with here are those financial benefits which have accrued. Once the employee, by working pursuant to an understanding that this is the benefit structure presently provided, has worked in reliance thereon, he has the contractual right to those benefits which may not be diminished or impaired. As far as his future service is concerned, he remains, as does any other employee, subject to the terms of employment prescribed by his employer.

CHAIRMAN MARTIN: Mr. Downs.

MR. DOWNS: May I ask, through the Chair, another question? Then, if I understand this right, if he has the contractual right of, say, retirement at such and such a year, on a certain basis, that could not be diminished? Am I correct on that?

MR. VAN DUSEN: That is correct.

MR. DOWNS: Now, could the other be true? For example, could a cost of living increment or something else be put on to amend that contract, as any other contract could be amended?

MR. VAN DUSEN: Mr. Chairman, I'm not entirely sure I understand Mr. Downs' question.

MR. DOWNS: For example, let's say there were a pension setup that would amount to $60 a month. Then could the legislative body later on say that this shall be increased 5 per cent because of a cost of living increase? Or would that be a new matter that would either be a gratuity or would have to be established on a new principle?

MR. VAN DUSEN: Certainly there's nothing here to prohibit the employer from increasing the benefit structure. The extent to which the benefit structure having been increased after the employee had completed his service and had retired might create a contractual right would be, I think, beyond the purview of this proposal. This proposal only talks about that which he has earned by working in reliance thereon.

MR. DOWNS: Then this proposal would not limit or expand the other activities by the legislative body?

MR. VAN DUSEN: That's correct.

MR. DOWNS: Thank you very much.

CHAIRMAN MARTIN: Mr. Shackleton.

MR. SHACKLETON: Mr. Chairman, a question to one of the committee, if I may. If a new fund were created by a present political subdivision, or should in the future a new political subdivision be created and want to set up a pension fund, would they have to that first year put in funds sufficient to take care of past service? If not, how would past service funds be accumulated?

CHAIRMAN MARTIN: Mr. Van Dusen.

MR. VAN DUSEN: The answer, Mr. Chairman, to Mr. Shackleton's first question is no, they would not have to immediately fund past service benefits. They would have to put in enough to currently fund current service benefits. And I would think that they would not consider the adoption of such a plan without making some provision in a regular and orderly fashion for funding the accrued past benefits. This is a problem which, of course, has occurred repeatedly in private industry over the course of the last 15 years in particular, and in each case provision has been made for funding past service benefits over a period of years. In that respect a public employer would be in no different situation than a private employer. The only constitutional requirement would be the current funding of current service benefits.

MR. SHACKLETON: If they did not properly take care of the past service then, where would your contractual obligation come out?

MR. VAN DUSEN: An employee who continued in the service of the public employer in reliance upon the benefits which the plan says he would receive would have the contractual right to receive those benefits, and would have the entire assets of the employer at his disposal from which to realize those benefits.

CHAIRMAN MARTIN: Mr. Leppien.

MR. LEPPIEN: Mr. Chairman and members of the committee, maybe we can reduce this to ordinary layman's language quickly and attempt to enlighten ourselves on the discussion. To begin with, I think we ought to recognize that "accrued benefits" means also years of prior service before some unit of government—county, township, school district, what have you—wishes to create and bring into being a pension plan for the employees. Pension plans get into trouble when the local unit, through the legislative body which provides the money, does not provide sufficient money to cover past services. In other words, you have a person who has been on your payroll for 20 years. You are putting in a pension plan, and you want to go back 20 years to take care of that person. Now, actuarially, the state plan and other plans of like kind have all been figured out as to what per cent of the total payroll it is going to cost to take care of that prior service. And that is a funded plan, spread over—in the main—40 years. Our county, in adopting a pension plan, did just that.

Where the pension plan gets into trouble is when they have a locally administered plan and the legislative body says, well, we won't pay this today, we will pay it next week, or next month, and then eventually it isn't paid, and then you are in trouble. Whereas under the state operated plan which is in force in Michigan and available to all units, the state says you must pay it when due to the local unit, to the legislative body, because you contracted to do this. And then everybody is covered fully. In answer to Mr. Shackleton's question, I think we can quickly say this: that if the plan as adopted would start from scratch today and did not take in any prior service, that's one way. But when you go back to the service of the valued employee who has been with you 20 years, or 25—and there are those people in government—then of course you take care of them, and that is done on what is called an actuarially sound basis as arrived at by actuaries who know their figures. I think that clears us up.

CHAIRMAN MARTIN: Dr. Anspach.

MR. ANSPACH: Mr. Chairman and members of the committee, most of my questions have been answered. I had some reservations to Committee Proposal 40, but those reservations have been resolved. I think it is a good proposal, and deserves our support.

CHAIRMAN MARTIN: Mr. Gover.

MR. GOVER: Mr. Chairman and members of the committee, I would like some member of the committee to answer a question I have on the last line there, and see if I'm understanding it correctly. Could this conceivably hurt cities, and so forth, who have been borrowing from such funds?

CHAIRMAN MARTIN: Mr. Van Dusen.

MR. VAN DUSEN: Mr. Chairman and Mr. Gover, it is designed to prevent cities from in the future using the funds which are put into a pension fund to take care of current service benefits for any other purpose. If a city has become addicted to this practice, I would think the discontinuance of the habit might be a difficult experience for the city, at least briefly. It shouldn't hurt, however, too much. (laughter)

MR. GOVER: Just what do you mean by not hurting too much?

MR. VAN DUSEN: I think I can give a clearer answer to Mr. Gover's question than I did. This is designed to see that money that is put into a pension fund to service currently accruing benefits is used for no other purpose. Any city that has been putting it in with one hand and taking it out with the other has got to stop. And if that hurts, why, it hurts.

CHAIRMAN MARTIN: The question is on the committee proposal. Are there any amendments to the body of the proposal?

SECRETARY CHASE: Mr. Brake offers the following committee amendment —

CHAIRMAN MARTIN: Mr. Hanna.

MR. W. F. HANNA: Mr. Van Dusen, this would not prevent the pension fund, however—the moneys actually in the pension fund—from investing in the city's own special assessment, revenue or general obligation bonds; am I correct?

MR. VAN DUSEN: Mr. Chairman and Mr. Hanna, I think you are quite correct, yes. And Mr. Shackleton had previously made that observation to me across the aisle. It just means that they couldn't take it out and use it for current expenses.

CHAIRMAN MARTIN: Mr. Brake.

MR. BRAKE: In taking a final look at this, we came to the conclusion that the word "such" in line 9 might be confusing. It is not necessary. We mean "all benefits," and need no qualifying word between. My amendment simply takes that word out.

SECRETARY CHASE: Mr. Brake, on behalf of the committee on finance and taxation, offers the following amendment:

1. Amend page 1, line 9, after "All" by striking out "such"; so the language will read, "All benefits arising on account of service. . . ."

CHAIRMAN MARTIN: The question is on the committee amendment. All those in favor will say aye. Those opposed will say no.

The amendment is adopted. Are there any further amendments to the committee proposal?

SECRETARY CHASE: There are none, Mr. Chairman.

CHAIRMAN MARTIN: If not, it will pass.

Committee Proposal 40, as amended, is passed.

SECRETARY CHASE: Item 25 on the calendar, from the committee on finance and taxation, by Mr. Brake, chairman, **Committee Proposal 38,** A proposal with reference to the earmarking of the gas and weight taxes for highway purposes covering the subject matter of article X, section 22 of the 1908 constitution.

Following is Committee Proposal 38 as read by the secretary, and the reasons submitted in support thereof:

The committee recommends that the following be included in the constitution:

Sec. a. All taxes imposed directly or indirectly upon gasoline and like fuels sold or used to propel motor vehicles upon the highways of this state, and on all motor vehicles registered in this state, shall, after the payment of the necessary expenses of collection thereof, be used exclusively for highway purposes, AS DEFINED BY LAW, including the payment of public debts incurred therefor, and shall not be diverted nor appropriated to any other purpose: Provided, The legislature may provide by law a method of licensing, registering, and transferring motor vehicles and their certificates of title, and licensing and regulating motor vehicle dealers and operators; and may prescribe charges sufficient to pay for the enforcement thereof. The provisions of this section shall not apply to the general sales tax, the use tax, the fees and taxes collected under the auto theft and operators' and chauffeurs' license laws which are used for regulatory purposes; the application fees and mileage fees appropriated to the Michigan public utilities commission by [act 254 of 1933] LAW; the franchise or privilege fees payable generally by corporations organized for profit; nor to ad valorem taxes payable generally by manufacturers, refiners, importers, storage companies, and wholesale distributors on gasoline and like fuels held in stock or bond, and by manufacturers and dealers on motor vehicles in stock or bond.

Mr. Brake, chairman of the committee on finance and taxation, submits the following reasons in support of Committee Proposal 38:

The committee has made but 2 changes in the language of the present section 22. Following the words "highway purposes" the committee has added the words "as defined by law," thus giving to the legislature the power to define and limit the meaning of the term "highway purposes". It has also stricken the words "act 254 of 1933" and substituted the word "law".

The committee recognizes that the retention in the constitution of this or any other earmarking is controversial but because of the fact that this is a use tax it is much less controversial than is, for instance, the earmarking of sales tax. It is the feeling of the committee that there is no possibility of taking the earmarking of the gasoline and weight taxes out of the constitution by this convention and most of the members of the committee are in agreement with the idea that this earmarking should be retained.

CHAIRMAN MARTIN: Mr. Brake.

MR. BRAKE: Mr. Chairman and ladies and gentlemen of the committee, we come now to a slightly controversial item, the matter of constitutional earmarking of state collected money. I think that before we get into this specific earmarking for highway purposes, perhaps a little background in this whole matter of earmarking of state funds will be very much in order.

We found in another meeting of some of the delegates in this convention awhile ago that with some of us our philosophies and our votes do not lead in exactly the same direction. I am led to make some remarks particularly because of things that have been said for years, but more particularly in connection with the campaign for calling this convention. Some of the organizations working for the calling of the convention said and more generally inferred that the state financial difficulty was largely due to the earmarking of funds. Newspaper editors are constantly making that inference.

The inference is not correct. I don't want anyone to jump out of his chair before I get through with this next statement, because I'm not going to be as political as you may think when I start. There has to be a cause for such a financial period as we got into in 1959, and it's a very proper thing to try to decide what that cause was, and to remedy it. But the cause for that trouble did not occur just in 1959. It was a buildup through a period of years. And the cause was just this: the inability of the governor and the legislature to agree upon a fiscal program. Now, some of us will blame one; some will blame the other. Whom you blame is your business. Whom I blame I think is my business. And I'm not arguing that here now at all. But it was the inability of those 2 bodies, both having authority, to agree and to work together that caused that financial crisis in 1959, and it was not the earmarking of funds.

I don't want to stop there with that generality. I want to analyze this picture just a little bit. I think we will be better prepared to act correctly on these 3 items that are just ahead of us if we have a little of the background involved. Let's take first these funds, the road funds. There never was a time, from the time that this earmarking was put on, until 1959, when there was any danger whatsoever of using any of those funds for anything except road purposes. An attempt was made 2 or 3 times to broaden the interpretation of what high-

Explanation—Matter within [ ] is stricken, matter in capitals is new.

way use meant by including the patrolling of the roads by the state police, some safety measures, and I think at least once something having to do with street lighting—and you can build a legitimate argument that those were highway uses—but they failed. The legislature refused to go even to that extent. There never was a serious question, any time, until 1959, about taking any of these road funds and using them for some other purpose. Therefore, that was not a contributing cause of the trouble.

Now, it is possible that in 1959, in desperation, the legislature, if it had had the power, might have then used some of this money, but that would have been as a cure, and not as the cause of the 1959 crisis. Well, that's simple, and hardly a matter of opinion. There was a time—as a matter of fact, there were several times—when the opposite was true; when the road people tried to get general fund appropriations for road purposes, and on one occasion they succeeded. In the Murphy administration, they got an appropriation for road purposes out of the general fund of the state for $5 million, which was then considerable money. The governor in some way—and I never understood just how—stopped them before they got it all spent. But the legislature appropriated $5 million out of the general fund for road purposes.

All right. That is comparatively simple. When you get to the matter of the sales tax, you have to use opinion. But I would suggest that it is not just a wild guess. The big bite, of course, out of the sales tax that was earmarked was for school purposes—2 cents. It is my opinion that the schools during the period involved got less money from the state because of this amendment than they would have had without it. I think probably for the first 2 or 3 years they got a little more, but for the next several years that followed that I'm very sure that they got less. Because many legislators took the position that the schools having grabbed this money and pegged it for their own use, regardless of what else the state had before it, they would let them lie in the bed they had made, and refused to give them anything in addition, even though the need was becoming more and more acute. Finally, of course, in the last 4 years, that ended, and they have had general appropriation money in addition to the 2 cents. So that very certainly, very certainly, the tying up of that 2 cents did not contribute to the coming about of that financial crisis in 1959. And in 1959, remember, the legislature went beyond the 2 cents and appropriated additional money.

That brings us to the question of the ½ cent going to cities, villages and townships. And here one is farther out in the field of opinion than he is in connection with the schools. But I think here, too, there has been very little additional cost to the state, and therefore very little bearing on the crisis of 1959. Take first the cities, and include villages with the cities. The cities in the '40s were really in trouble. The tax study commission of the first Kelly administration, of which I was the working head, but not the honorary head, recommended the payment by the state to the cities at that time of substantially the same money they got under the sales tax amendment. If the committee's recommendation had been followed, we never would have had the sales tax diversion amendment. Because it was the cities that started that drive, and not the schools. The governor, however, would not go for any program of aid to the cities unless it was based upon the showing of need by each city. And when that was the picture, the cities lost interest. So that I feel certain that the legislature would have made grants to the cities without this amendment, if their need was serious, because there are a lot of voters in the cities, and I'm confident that that has cost us very little, if anything, by having that—and by "cost us," I mean through state financing.

When you get to the townships you have a little different picture. I doubt very much if the legislature would have gone for any grants in aid to townships. But the townships' part is a minor part, and when you have said that you have not come to the end of the argument. Down through the years since the sales tax diversion and until the last 2 or 3 years, about half of the townships in the state received no millage out of the 15 mills whatsoever. Many of them did not ask for it. With their sales tax money they were able to get along. Many of those who did ask for it were refused by the allocation boards, and they couldn't get it. It was only after the change in the law 2 or 3 years ago, maybe as far back as 1957, I don't remember for sure, that the larger part of the townships were given the 1 mill that the law requires if they need it. There are still some not getting it. Now, if they had not had this sales tax money, they would have had to have millage if they were to stay alive and perform the functions they have. And if they had to have millage, where would they get it? Out of the schools' share. The counties are held to rock bottom. If we had had to give the townships more millage, the schools would have had less millage. And what would they have done? What could they have done? They would have come to the legislature for greater grants, and they would have had them. So that all of the money that has been paid to the townships under the sales tax diversion has not meant that much more money out of the state treasury. Probably it has meant some more money out of the state treasury, but only a minor amount. And their total is a minor amount. I think on that basis one can say very certainly that the diversion of sales tax money was not a primary or a major cause of the trouble we had in 1959. Now, that leaves only one—the primary school money. Nobody ever mentions that as being a cause of our trouble. Historically, it has been in the picture so long, and in the beginning, of course, came from a federal grant, that that is not blamed, and certainly it is not blamable. Because had the schools not had it, there again they would have had to have larger grants from the state.

I don't know whether we wish to go on at this time, but if we do, may I call on Mr. Stafseth for a detailed explanation, going back now just to the weight and gas tax.

CHAIRMAN MARTIN: Mr. Brake, would you care to carry the matter over to the next session, or would you like to carry forward at this time?

MR. BRAKE: I am no more hungry than the other delegates, but I'm sure they are hungry, and I move that the committee rise.

CHAIRMAN MARTIN: Mr. Brake moves that the committee do now rise. All those in favor will signify by saying aye. Opposed, no.

The committee will now rise.

[Whereupon, the committee of the whole having risen, President Nisbet resumed the Chair.]

PRESIDENT NISBET: The Chair recognizes Mr. Martin.

MR. MARTIN: Mr. President, the committee of the whole has had under consideration certain matters with respect to which the secretary will give a report.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 26**, A proposal for a section in the declaration of rights incorporating in the declaration of rights an "equal protection" clause and a guarantee against discrimination in civil and political rights because of race, religion, sex or national origin; **Committee Proposal 28**, A proposal to provide for compensation of the legislature; **Committee Proposal 29**, A proposal to provide for the form of laws; **Committee Proposal 30**, A proposal pertaining to free public and elementary schools; **Committee Proposal 32**, A proposal to provide for eligibility to serve in the legislature; **Committee Proposal 33**, A proposal to provide for immunity of legislators from arrest during sessions except for certain crimes; **Committee Proposal 34**, A proposal to provide for quorums of the house and senate and the right of these bodies to compel attendance; **Committee Proposal 35**, A proposal to provide that the form of legislation shall be by bill; and **Committee Proposal 37**, A proposal to provide for care and control of state funds, accounting for public moneys, audits, and publication of reports, and covering the general subject matter found in sections 15, 16, 17, 18 and 13 of article X of the 1908 constitution. The committee of the whole reports these proposals back to the convention without amendment, and with the recommendation that they do pass.

PRESIDENT NISBET: Mr. Bentley.

MR. BENTLEY: Mr. President, I ask for a separate vote

approving the action of the committee of the whole on Committe Proposal 30, pertaining to free public and elementary schools, and demand the yeas and nays thereon.

PRESIDENT NISBET: Committee Proposal 26, **Committee Proposals 28, 29, 32, 33, 34, 35 and 37 are referred to the committee on style and drafting.**

For Committee Proposal 28 as referred to the committee on style and drafting, see above, page 760.

For Committee Proposal 29 as referred to the committee on style and drafting, see above, page 761.

For Committee Proposal 32 as referred to the committee on style and drafting, see above, page 764.

For Committee Proposal 33 as referred to the committee on style and drafting, see above, page 765.

For Committee Proposal 34 as referred to the committee on style and drafting, see above, page 765.

For Committee Proposal 35 as referred to the committee on style and drafting, see above, page 766.

For Committee Proposal 37 as referred to the committee on style and drafting, see above, page 766.

The secretary will read.

SECRETARY CHASE: Committee Proposal 30, from the committee on education, A proposal pertaining to free public and elementary schools. Replaces article XI, section 9.

PRESIDENT NISBET: The question is on the recommendation of the committee of the whole that Committee Proposal 30 pass. A record vote has been called for. Will those in favor please vote aye, and those opposed please vote no.

SECRETARY CHASE: Has everyone voted? The machine is now locked, and the vote will be recorded.

The roll was called and the delegates voted as follows:

Yeas—126

Allen	Gadola	Norris
Andrus, Miss	Garvin	Page
Anspach	Goebel	Plank
Austin	Gover	Pollock
Baginski	Greene	Powell
Balcer	Gust	Prettie
Barthwell	Habermehl	Pugsley
Batchelor	Hanna, W. F.	Radka
Beaman	Haskill	Rajkovich
Bentley	Hatch	Richards, J. B.
Binkowski	Hatcher, Mrs.	Richards, L. W.
Blandford	Hodges	Romney
Bledsoe	Hood	Rood
Bonisteel	Howes	Rush
Boothby	Hoxie	Seyferth
Brake	Hubbs	Shackleton
Buback	Hutchinson	Shaffer
Conklin, Mrs.	Iverson	Shanahan
Cudlip	Judd, Mrs.	Sharpe
Cushman, Mrs.	Karn	Sleder
Dade	Kelsey	Snyder
Danhof	King	Spitler
Davis	Knirk, B.	Stafseth
Dehnke	Koeze, Mrs.	Staiger
Dell	Krolikowski	Stamm
DeVries	Kuhn	Sterrett
Donnelly, Miss	Leibrand	Stevens
Doty, Dean	Leppien	Stopczynski
Doty, Donald	Lesinski	Suzore
Douglas	Lundgren	Tubbs
Downs	Madar	Turner
Durst	Mahinske	Tweedie
Elliott, A. G.	Marshall	Upton
Elliott, Mrs. Daisy	Martin	Van Dusen
Erickson	McAllister	Walker
Everett	McCauley	Wanger
Farnsworth	McGowan, Miss	White
Faxon	McLogan	Wilkowski
Figy	Millard	Wood
Finch	Murphy	Woolfenden
Follo	Nisbet	Young
Ford	Nord	Youngblood

Nays—0

PRESIDENT NISBET: Mr. Lundgren.

MR. LUNDGREN: Mr. President, again, a point of order. I brought this up yesterday. I can see that the bell isn't summoning us quickly enough for a vote. I hope between now and Monday we will get a proper ruling from the Chair on the time limit, because some of us might be downstairs, and we're going to have a lot of these votes coming up.

PRESIDENT NISBET: Mr. Lundgren, we will get that smoothed out, I hope, by Monday.

PRESIDENT NISBET: Mr. Woolfenden.

MR. WOOLFENDEN: Mr. President, if I'm in order, I would like to ask when the delegates may anticipate receiving the journal for yesterday. I think most of us would like to have it before we go home for the weekend.

SECRETARY CHASE: We got a report just a few minutes ago that it will be after lunch.

MR. WOOLFENDEN: Do you know what time?

SECRETARY CHASE: After lunch—this afternoon.

MR. WOOLFENDEN: One minute after lunch, or 3 hours after lunch? (laughter)

SECRETARY CHASE: How long is the lunch period? (laughter)

PRESIDENT NISBET: I'm sure, Mr. Woolfenden, the delay is because of the large number of reports yesterday. I hope they get here right after lunch.

SECRETARY CHASE: The yeas are 126; the nays are none.

PRESIDENT NISBET: The recommendation of the committee of the whole is concurred in and **Committee Proposal 30** is referred to the committee on style and drafting.

For Committee Proposal 30 as referred to the committee on style and drafting, see above, page 762.

Father Dade.

MR. DADE: Mr. President, I would like to ask of the Chair how we would go about making unanimous the approval of this convention on the majority report on civil rights.

I think that we have written into the law of the state of Michigan a concept of democracy that is very fundamental and very gratifying. I also feel that this concept we have just written represents the unanimous opinion of this body. I think it would be a very historic occasion if on this measure we could vote not as a party, but as the convention. I'm asking you, sir, how that can be done.

PRESIDENT NISBET: Mr. Chase will explain.

SECRETARY CHASE. The secretary would like to suggest —on this proposal, as well as upon the one we just voted on— that all of these proposals will again be before the convention as a report from the committee on style and drafting. They will be up on second reading in the convention, at which time anyone can demand a record roll call vote on the proposal, or upon any amendments that may be offered to it.

PRESIDENT NISBET: Mr. Ford.

MR. FORD: Mr. President, in conferring with my colleagues in this corner, there seems to be a difference of opinion on the rule we arrived at the other day with regard to the time for filing minority reports. It is my understanding that we have 3 session days after the printing of the majority report in the journal. All of the delegates in this corner do not agree with me. I wonder if you might set us straight.

PRESIDENT NISBET: Mr. Chase says that is correct.

Mr. King.

MR. KING: Mr. President, in an effort to answer Father Dade's request, I would like to move the nonconcurrence of everything that we passed this morning, and reserve the right to vote contrary to my motion. And I demand a record roll call vote.

PRESIDENT NISBET: Mr. King, would you come up, please. Mr. King, is your request that we revert back to Committee Proposal 26?

MR. KING: Specifically, yes.

PRESIDENT NISBET: The question Mr. King asks is for us to go back to the consideration of the report of the committee of the whole on Committee Proposal 26 for the purpose of having a record vote. Is there objection?

Hearing no objection, those in favor of agreeing to the committee of the whole's recommendation on Committee Proposal 26 please vote aye — Father Dade.

MR. DADE: Mr. President, could I very graciously tell my colleagues that this has to do with civil rights.

PRESIDENT NISBET: Those in favor of concurring in the recommendation of the committee of the whole on Committee Proposal 26 will vote aye. Those opposed, vote nay.

SECRETARY CHASE: Please, all vote before we lock the machine. Has everyone voted? The machine is now locked, and the vote will be recorded.

The roll was called and the delegates voted as follows:

Yeas—126

Allen	Gadola	Norris
Andrus, Miss	Garvin	Page
Anspach	Goebel	Plank
Austin	Gover	Powell
Baginski	Greene	Pollock
Balcer	Gust	Prettie
Barthwell	Habermehl	Pugsley
Batchelor	Hanna, W. F.	Radka
Beaman	Haskill	Rajkovich
Bentley	Hatch	Richards, J. B.
Binkowski	Hatcher, Mrs.	Richards, L. W.
Blandford	Hodges	Romney
Bledsoe	Hood	Rood
Bonisteel	Howes	Rush
Boothby	Hoxie	Seyferth
Brake	Hubbs	Shackleton
Buback	Hutchinson	Shaffer
Conklin, Mrs.	Iverson	Shanahan
Cudlip	Judd, Mrs.	Sharpe
Cushman, Mrs.	Karn	Sleder
Dade	Kelsey	Snyder
Danhof	King	Spitler
Davis	Knirk, B.	Stafseth
Dehnke	Koeze, Mrs.	Staiger
Dell	Krolikowski	Stamm
DeVries	Kuhn	Sterrett
Donnelly, Miss	Leibrand	Stevens
Doty, Dean	Leppien	Stopczynski
Doty, Donald	Lesinski	Suzore
Douglas	Lundgren	Tubbs
Downs	Madar	Turner
Durst	Mahinske	Tweedie
Elliott, A. G.	Marshall	Upton
Elliott, Mrs. Daisy	Martin	Van Dusen
Erickson	McAllister	Walker
Everett	McCauley	Wanger
Farnsworth	McGowan, Miss	White
Faxon	McLogan	Wilkowski
Figy	Millard	Wood
Finch	Murphy	Woolfenden
Follo	Nisbet	Young
Ford	Nord	Youngblood

Nays—0

On the question of concurring in the recommendation of the committee of the whole with regard to Committee Proposal 26, the yeas are 126 and the nays are none.

PRESIDENT NISBET: It is concurred in and **Committee Proposal 26** is referred to the committee on style and drafting. (applause)

For Committee Proposal 26 as referred to the committee on style and drafting, see above, page 739.

SECRETARY CHASE: Mr. President, the committee of the whole has also had under consideration **Committee Proposal 40**, A proposal with reference to public retirement systems. It reports this proposal back to the convention with one minor amendment:

1. Amend page 1, line 9, after "All" by striking out "such".

It is the recommendation that the amendment be agreed to and the proposal as thus amended do pass.

PRESIDENT NISBET: The question is on agreeing to the amendment. Those in favor say aye. Opposed, no.

The amendment is agreed to.

Committee Proposal 40, as amended, is referred to the committee on style and drafting.

Following is Committee Proposal 40 as amended and referred to the committee on style and drafting:

The committee recommends that the following be included in the constitution:

Sec. a. The accrued financial benefits of each pension plan and retirement system of the state and its political subdivisions shall be a contractual obligation thereof, which shall not be diminished or impaired thereby.

All benefits arising on account of service rendered in each fiscal year shall be funded during that year and such funding shall not be usable for financing unfunded accrued liabilities.

SECRETARY CHASE: Mr. President, the committee of the whole has also had under consideration: **Exclusion Report 2009,** A report recommending that article V, section 10 of the present constitution be excluded from the new constitution; **Exclusion Report 2010,** A report recommending the exclusion of article V, section 11; **Exclusion Report 2011,** A report recommending the exclusion of article V, section 32; **Exclusion Report 2012,** A report recommending the exclusion of article V, section 35; **Exclusion Report 2013,** A report recommending the exclusion of article VII, section 3; **Exclusion Report 2014,** A report recommending the exclusion of article VII, section 18; and **Exclusion Report 2015,** A report recommending the exclusion of article VII, section 22. The committee reports these exclusion reports back to the convention with the recommendation that they be adopted.

PRESIDENT NISBET: The question is on the approval of the exclusion reports. Those in favor say aye. Opposed, no.

Exclusion Reports 2009, 2010, 2011, 2012, 2013, 2014 and **2015** are adopted and are referred to the committee on style and drafting.

For Exclusion Report 2009 as referred to the committee on style and drafting, see above, page 761.

For Exclusion Report 2010 as referred to the committee on style and drafting, see above, page 761.

For Exclusion Report 2011 as referred to the committee on style and drafting, see above, page 762.

For Exclusion Report 2012 as referred to the committee on style and drafting, see above, page 762.

For Exclusion Report 2013 as referred to the committee on style and drafting, see above, page 763.

For Exclusion Report 2014 as referred to the committee on style and drafting, see above, page 763.

For Exclusion Report 2015 as referred to the committee on style and drafting, see above, page 764.

SECRETARY CHASE: Mr. President, the committee of the whole has also had under consideration **Committee Proposal 38,** and has come to no final resolution thereon. This completes the report of the committee of the whole.

PRESIDENT NISBET: Mr. Leppien.

MR. LEPPIEN: I wish to rise to a point of order, Mr. President. A moment ago this convention witnessed one of the delegates rising and asking for a unanimous vote on a certain proposal. No explanation was given, except that they would be referred, and on second reading they would again be brought back and at that time a recorded vote could be had. Then, another delegate raises the same question, there is a conference had, the ruling is then reversed, and the delegate who arose the second time—not a member of the committee who considered this proposal and helped bring it through this convention—then is recorded as having made the request.

It seems to me, in fairness to the entire picture, that the

delegate who first raised the question, though he didn't pursue his point far enough, should be given credit for having asked for a recorded vote on this particular proposal. I refer to the gentleman from Detroit, Father Dade.

PRESIDENT NISBET: Without objection, it will so be recorded. Hearing none, it is recorded.

Mr. King.

MR. KING: I have no objection whatsoever to withdrawing. As a matter of parliamentary procedure, it was I who suggested the device whereby I thought it could be accomplished. He merely requested information from the Chair. But it would be my great pleasure to have Father Dade recorded as the moving party.

PRESIDENT NISBET: Thank you. Mr. Dade.

MR. DADE: Mr. President, I would like to say that this graciousness and kindness almost takes my appetite, and I feel no longer hungry. (laughter)

SECRETARY CHASE: We have the following announcement: the committee on emerging problems will hold a public hearing next Tuesday, February 6, at 7:30 p.m. in committee room I on the third floor. Appearing will be Mr. Maclin from Merrill Lynch, Pierce, Fenner and Smith. He will be speaking on pensions. Also, Mr. Alfred Hewitt, from the Michigan national bank of Grand Rapids, will be speaking on the investment and security of pension funds. Frank Millard, chairman.

We have the following requests for leave: Mr. Wilkowski requests to be excused from Monday's session; Mr. McLogan requests to be excused from the sessions of Monday and Tuesday due to urgent business in Chicago; Mr. Snyder, from Monday's session; Mr. DeVries, from Monday's session, to keep a speaking engagement; Mr. Suzore, from Monday's session; Mr. Cudlip, from the sessions of Monday and Tuesday, because of a lawsuit which has been set for trial on those dates in which he is a party; Mr. Barthwell, from the sessions of February 6, 7, 8 and 9; Mr. William Hanna, from the session of Monday; Mr. Rood, from the session of Monday, to make a talk concerning the work of the convention; and Mr. Stamm, from the sessions of February 9, 12, 13 and 14, so that he may be in New York to participate in an annual meeting, the commitment for which was made several months ago.

PRESIDENT NISBET: Mr. Gover.

MR. GOVER: Mr. President, I have a dental appointment for Monday. May I be excused from the session?

PRESIDENT NISBET: Without objection, those who have requested to be excused will be excused.

Any other announcements?

SECRETARY CHASE: Those are the announcements, Mr. President.

PRESIDENT NISBET: The Chair recognizes Mr. Hanna.

MR. W. F. HANNA: Mr. President, I move we adjourn.

PRESIDENT NISBET: The question is on adjournment. Those in favor say aye. Opposed, no.

We are adjourned until 4:00 o'clock Monday.

[Whereupon, at 12:15 o'clock p.m., the convention adjourned until 4:00 o'clock p.m., Monday, February 5, 1962.]

SEVENTY-SECOND DAY

Monday, February 5, 1962, 4:00 o'clock p.m.

PROCEEDINGS

PRESIDENT NISBET: The convention will please come to order.

Our invocation this afternoon will be given by one of our own delegates, Marjorie McGowan. Please rise.

MISS McGOWAN: In the name of the Father, and of the Son, and of the Holy Ghost. Amen. O God, who sees beyond our eyes, seeing things not given man to see, aid us in these deliberations. Give us the virtue of prudence. Let us see our mistake before we make it; know our position before we state it; correct our error before it harms those about us.

Give us the virtue of justice, that we might render to every man his due; that we may not consider what is due to us, 'til we have rendered what is due to Thee and those Thou hast created. Give us fortitude, that we might stand up for the right and oppose the wrong; that we might face up to evil and be the backbone for good. Give us temperance, that we might always steer a true course and fail neither by excess nor defect, being neither too scrupulous nor too lax.

Dear Lord, we ask all this of Thee: prudence; justice; fortitude; temperance. We ask it that we might do Thy will more effectively, that we might serve our fellow man more efficiently, that we might save our souls more certainly. In the name of the Father, and of the Son, and of the Holy Ghost. Amen.

PRESIDENT NISBET: The roll call will be taken by the secretary. Those present please vote aye.

SECRETARY CHASE: Has everyone voted? The machine is locked and the attendance will be recorded.

Mr. President, a quorum of the convention is present.

Prior to today's session, the secretary received the following requests for leave:

Messrs. Dade, King, Marshall and Rush, from today's session.

Mr. Habermehl, indefinitely, due to illness.

PRESIDENT NISBET: Without objection, the requests are granted.

SECRETARY CHASE: Absent with leave: Messrs. Cudlip, Dade, DeVries, Habermehl, Heideman, King, Marshall, McAllister, McLogan, Rood, Rush, Snyder, Suzore, Thomson and Wilkowski.

Absent without leave: Messrs. Bledsoe, Garvin and Hutchinson.

PRESIDENT NISBET: Without objection, the delegates are excused.

[During the proceedings, the following delegates entered the chamber and took their seats: Messrs. Bledsoe, Dade and Hutchinson.]

Reports of standing committees.

SECRETARY CHASE: No committee reports, Mr. President.

PRESIDENT NISBET: Communications from state officers.

SECRETARY CHASE: None.

PRESIDENT NISBET: Second reading of proposals.

SECRETARY CHASE: Nothing on that calendar.

PRESIDENT NISBET: Third reading.

SECRETARY CHASE: Nothing on that calendar.

PRESIDENT NISBET: Motions and resolutions.

SECRETARY CHASE: There are no resolutions on file.

PRESIDENT NISBET: Unfinished business.

SECRETARY CHASE: None.

PRESIDENT NISBET: Special orders.

SECRETARY CHASE: None.

PRESIDENT NISBET: General orders. The Chair recognizes Mr. Martin.

MR. MARTIN: Mr. President, I move that the convention

resolve itself into committee of the whole for consideration of items on the general orders calendar.

PRESIDENT NISBET: The question is on the motion of Mr. Martin. Those in favor say aye. Opposed, no.

The motion prevails.

[Whereupon, Mr. Martin assumed the Chair to preside as chairman of the committee of the whole.]

CHAIRMAN MARTIN: The committee will be in order. The secretary will read.

SECRETARY CHASE: Item 1 on the calendar for this week, from the committee on finance and taxation, by Mr. Brake, chairman, **Committee Proposal 38**, A proposal with reference to the earmarking of the gas and weight taxes for highway purposes covering the subject matter of article X, section 22 of the 1908 constitution.

Following is Committee Proposal 38 as read by the secretary, and the reasons submitted in support thereof:

The committee recommends that the following be included in the constitution:

Sec. a. All taxes imposed directly or indirectly upon gasoline and like fuels sold or used to propel motor vehicles upon the highways of this state, and on all motor vehicles registered in this state, shall, after the payment of the necessary expenses of collection thereof, be used exclusively for highway purposes, AS DEFINED BY LAW, including the payment of public debts incurred therefor, and shall not be diverted nor appropriated to any other purpose: Provided, The legislature may provide by law a method of licensing, registering, and transferring motor vehicles and their certificates of title, and licensing and regulating motor vehicle dealers and operators; and may prescribe charges sufficient to pay for the enforcement thereof. The provisions of this section shall not apply to the general sales tax, the use tax, the fees and taxes collected under the auto theft and operators' and chauffeurs' license laws which are used for regulatory purposes; the application fees and mileage fees appropriated to the Michigan public utilities commission by [act 254 of 1933] LAW; the franchise or privilege fees payable generally by corporations organized for profit; nor to ad valorem taxes payable generally by manufacturers, refiners, importers, storage companies, and wholesale distributors on gasoline and like fuels held in stock or bond, and by manufacturers and dealers on motor vehicles in stock or bond.

Mr. Brake, chairman of the committee on finance and taxation, submits the following reasons in support of Committee Proposal 38:

The committee has made but 2 changes in the language of the present section 22. Following the words "highway purposes" the committee has added the words "as defined by law," thus giving to the legislature the power to define and limit the meaning of the term "highway purposes." It has also stricken the words "act 254 of 1933" and substituted the word "law".

The committee recognizes that the retention in the constitution of this, or any other earmarking, is controversial but because of the fact that this is a use tax it is much less controversial than is, for instance, the earmarking of sales tax. It is the feeling of the committee that there is no possibility of taking the earmarking of the gasoline and weight taxes out of the constitution by this convention and most of the members of the committee are in agreement with the idea that this earmarking should be retained.

CHAIRMAN MARTIN: Mr. Brake.

MR. BRAKE: Mr. Chairman, ladies and gentlemen of the committee, we were ready when we adjourned Friday to start into the question of the earmarking of funds by constitutional provision and had just reached the proposal having to do with weight and gas taxes. For a discussion of that proposal, I yield to Henry Stafseth.

CHAIRMAN MARTIN: Mr. Stafseth.

MR. STAFSETH: Thank you, Mr. Chairman. First I think it would be well to explain to the members of the committee that in the highway industry the engineers look at the highway system as a utility, much like a railroad or a water utility, and in their thinking they have attempted to derive a tax structure that would be directly related to the amount of use that you make of the highways.

There are 2 major factors that contribute to the wear and tear of highways. One is the weight of the vehicle, and the other is the amount of use or the frequency or the amount of traffic on the highways. So in the design of the tax structure, you can plainly see if you have a gasoline tax that is on a per gallon use basis, you have a tax that will take care of the frequency.

In the case of the weight tax or the licensing fee, you have a tax structure that is based proportionately on the amount of weight of the vehicle. Currently now we have a 35 cents per hundred pound license fee, so the larger the truck the greater the tax they pay which is related to the weight, and weight is one of the major factors in the deterioration of the highway. There is one other thing: the weight tax can be considered quite similarly to the fee that you have in the case of a water utility system. You have a ready to serve charge or a meter charge, so a license fee is much the same as that for this utilitarian purpose.

There is one thing that I think we have to bear in mind, and that is since world war II we have been very mindful of the fact that highways do have a very realistic life span. They do wear out. The more the use the shorter the span. This is particularly true when you get in around large cities, where I imagine the pot holes are in pretty good shape this weekend.

Now, with this in mind, when you come to the proposition of Committee Proposal 38, which is fundamentally the same as it has been since 1938, you will note that in this proposal the earmarking only says that these taxes shall be used for highway purposes. It gives the legislature the latitude to raise the gas or weight tax to increase revenues; to maintain them or lower them. And I might mention that actually in the case of the weight tax, the weight tax has been lowered. It was 55 cents per hundred back just before the war or during the war, and now it is down to 35. So the legislature has the right to raise and lower this according to the needs of the highway.

With this in mind, we ought to also take a look at what the other states are doing in relation to earmarking. In the case of the gas and weight tax, there are currently 27 states that have constitutional provisions that earmark these funds. In the case of Utah, they are voting in the November election on a constitutional amendment, so if this passed, this would make 28. Currently there are 10 states that have statutory provisions which require that these funds are used for highway purposes.

In the latter part of Committee Proposal 38, you will notice that there are exceptions which allow sales tax to be applied to gasoline on a per dollar basis and on automobiles on a per dollar basis, so actually these things that are used on the highway, the automobile and the gasoline and the rest of it, do pay the same amount of sales tax as any other commercial product used by the state, which goes, of course, to the general government and all the services that the sales tax takes care of.

Now, the committee, when they considered this problem, unanimously approved the principle of earmarking gas and weight tax for highway purposes. They have made 2 changes in the existing constitutional paragraph. One is on line 10, where they have added after "highway purposes" the words "as defined by law." It was the committee's thinking that by adding these words, this will allow the legislature to define what highway purposes are. Actually, if those words were not in this paragraph, it would be up to the courts to define them. I think the committee felt that if the legisla-

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Explanation—Matter within [ ] is stricken, matter in capitals is new.

ture could do this, inasmuch as they raise the funds, if there was any facet of this that wasn't clear, it would be a simple proposition to correct it.

The other change is in line 20, the last word. We struck out "act 254 of 1933." When this constitutional amendment was first proposed and voted on by the people, reference was made to a specific act, because at that time the fees that were charged by the Michigan public utilities commission — 60 per cent of them — were put in the highway fund, so, inasmuch as that was directly related to a formula, it was necessary to relate to the specific act. But on research of this problem, we find out now that the legislature can change this, so we struck out the reference to an act and just put in the word "law", which takes care of it and it doesn't make a specific reference to a legislative act. I think that pretty much summarizes the situation.

There is one committee amendment which I have on the secretary's desk, and if he will read the amendment, then I will explain it.

CHAIRMAN MARTIN: The secretary will read the proposal first.

MR. STAFSETH: Excuse me.

SECRETARY CHASE: Section a.

[Committee Proposal 38 was read by the secretary. For text, see above, page 780.]

Mr. Stafseth, for the committee on finance and taxation, offers the following amendment:

1. Amend page 1, line 20, after "public" by striking out "utilities" and inserting "service"; so the language will read, ". . . appropriated to the Michigan public service commission".

CHAIRMAN MARTIN: Mr. Stafseth.

MR. STAFSETH: Mr. Chairman, the reason for this amendment is that the public utilities commission was discontinued in Fitzgerald's second term of office, and since then it has been the service commission, so it just brings it up to date. This was an oversight.

CHAIRMAN MARTIN: The question is on the amendment submitted by the committee.

Are there any further amendments? Are there any further amendments to this amendment?

SECRETARY CHASE: No.

CHAIRMAN MARTIN: All those in favor of the amendment will signify by saying aye. Opposed, no.

The amendment is adopted.

Are there any further amendments?

SECRETARY CHASE: Mrs. Cushman offers the following amendment:

1. Amend page 1, line 6, by striking out the entire section. (laughter)

CHAIRMAN MARTIN: Mrs. Cushman.

MRS. CUSHMAN: Ever since I decided to speak and offer an amendment on the subject of earmarking, I have been wondering why. The policy on this matter, as far as most members of this convention are concerned, was apparently set some time ago. I have spoken to a number of delegates and the answers have been discouraging. "I'm against earmarking but," they usually say. "I'm against earmarking but if I said so my school friends would not understand." Or "I'm against earmarking but I'm sure the highway people will get it through anyway." Or "I'm against earmarking but I don't want to speak until I think I will be more effective." But there are people in this state who are against earmarking, period. In behalf of these people and because earmarking is so vital to the future of Michigan, I feel someone should point out the dangers of the path we are following. Let it be on the record of this convention that the problem was clearly considered.

For over 16 years I have studied one aspect or another of state taxation as a member of the league of women voters. Every time my fellow members and I came to the same conclusion: earmarking is not the way to meet Michigan's financial needs. Why? There are many reasons but I must stick to 3.

First, it prevents the legislature and the governor from doing their respective jobs. When 70 to 80 per cent of state receipts are in effect put aside before they get to the treasury, the legislature cannot examine the needs of state government and decide how best they are to be met, nor can the governor spell out a meaningful executive budget. Some of the needs are already taken care of and only 20 to 30 per cent of the revenue is left to take care of the rest. I do not mean to imply that the schools or the libraries or the local governments or the highways are getting more money overall than they should. There may, indeed, be worthwhile ways for them to spend much more. But unfortunately the problem is not how much money can they spend in a useful way. The problem is, in any given year, what do we need most in state government? Where can the inadequate amounts that we have do the most good? This problem is always with us. It will not be solved simply by passing an income tax, though I have no doubt that one is needed. The things we citizens are asking our state governments to do for us are increasing so rapidly that we can never catch up with them completely.

The second reason for being against earmarking is that it doesn't work in the long run. No doubt friends of libraries thought they had their problems solved when they were given penal fines in our first state constitution, the Constitution of 1835. But legal decisions and other changes have made penal fines woefully inadequate today. The schools thought they were set when 2 cents of the sales tax was earmarked for them. But 3 years ago the formula set up by the legislature could no longer be met from earmarked funds; since then the legislature has paid out millions from the general fund to meet the formula. Persons in whom I have confidence tell me that with the present spending and bonding policy of roads, it will not be too many years before the earmarked revenues will be used chiefly to pay off debt, and additional moneys will be needed from the general fund to build roads.

The third reason that earmarking is bad, in my opinion, is that earmarking leads to more earmarking. No other state has anywhere near as much as Michigan. Some states prohibit earmarking in their constitutions because it is like marijuana or salted peanuts: once you start, you take more and more. It has been said that it is only logical to use gas and weight taxes for roads because in this way the users pay for the roads. If we were to carry this theory into other fields, schools would be supported by tuition. We all pay for public schools because we all benefit from them, and in the same way we all benefit from roads. Every item in the state budget is there because it is for a "public purpose"; it benefits all of us, directly or indirectly. Every item should be on the same basis. When it becomes evident that earmarking leads to preferential status, even temporarily, more and more pressure groups try to get earmarked funds for their interests. They are almost forced into it, because the pressure on the rest of the budget becomes so intense.

Taxpayers generally come to think of new taxes as having to be linked with certain purposes. The whole philosophy of taxes becomes confused for the general public. Receiving adequate financial support becomes a question of selling your program to the voters of the whole state. Some necessary items which are not especially appealing, such as general administration or prisons, may be overlooked.

One of the chief reasons why we are here today is because of the 1959 financial crisis in Michigan. The forecast is for a debt of $100 million for the state by the end of this fiscal year. The people of the state expect us to do something to solve these problems.

This section continues a rigid system of financial management which was one of the chief causes of our state's problems. I therefore urge you to think carefully before you vote, and I urge you to vote for the amendment to delete this section in the interests of a flexible constitution and good financial management. Thank you.

CHAIRMAN MARTIN: Mr. Stafseth.

MR. STAFSETH: I would rise, Mr. Chairman, to speak against the amendment. I think there are several things that

should be brought to mind. Mr. Brake in his opening remarks last Friday pointed out one problem that the committee became very aware of. I know that in all the testimony we had, in some cases the league of women voters spoke up against earmarking, and in every case I asked them if they felt that it would solve the financial crisis if earmarking were taken off, and they weren't able to answer it, and they said they didn't think so, if I remember correctly. But I know from all the testimony we got there was no question about the fact that the financial crisis in Michigan was caused very simply, as Mr. Brake pointed out, by the fact that the appropriations of the state weren't sufficient to meet the expenditures.

And I also point out that this anti diversion protection for the gallon of gas tax and the weight tax is being protected in 38 of the 50 states, so I can't see that we are creating any new precedents. As a matter of fact, in Michigan we have 24 per cent of our general fund diverted for gas and weight tax, as compared to the other 27 states with constitutional amendment, 22.8 per cent, so we are very much in line. So I would urge a no vote on the amendment.

CHAIRMAN MARTIN: The question is on the Cushman amendment. Mr. Downs.

MR. DOWNS: Mr. Chairman and delegates, I wish, too, to rise to urge a no vote on the amendment. I wish, too, to compliment Delegate Cushman for bringing this to the attention of the delegates because I too think a question as basic as this should receive the full discussion and attention of the delegation. I think that we must look at earmarking not so much as a theory but really a condition of life; that the constitutional earmarking in many cases — and I assume we're, by the nature of the amendment, discussing not only this but must touch on the general field of earmarking — was gotten into in many cases by the action of the people themselves to meet their needs; that the removal of earmarking would not make one more red cent available for the people of the state of Michigan. And I think there are those that in good belief say, "Well, look, here is a new highway bridge. Do we need a school more? Do we divert the one to the other?"

But the historic proof of this state has been that earmarking has guaranteed minimal incomes for certain state services. And without touching on the jurisdiction of Dr. Hannah's committee on legislative organization, I think we can only point out that one of the reasons for earmarking was, in effect, to bypass the legislative process and to see that certain moneys were received in taxes and were allocated separate from the whole legislative process. The result has been that there were more moneys available for the specific purposes the people wanted.

I think each of us may disagree as to the emphasis of what should have more money spent on it than others, but with the legislature organized the way it was, the people found this very effective avenue. I think the result has been that we have had improved services throughout the state. The people have demonstrated their support for it, and I urge that we continue the principle of earmarking and support the principles of the committee's report.

CHAIRMAN MARTIN: Mr. Upton.

MR. UPTON: I would rise to support the amendment of Mrs. Cushman. I feel that we, as delegates, have a basic responsibility to try to guide our legislature as to the basic tenets of good financial management in our state.

We say that earmarking would not give another cent to the schools or the highways. We already know that the legislature is giving more money to schools than is called for by the state constitution. We know that the highway is getting its full share of the tax and weight money. But I ask you: is this going to remain the same for the years to come? Can you and I judge today what the people need tomorrow?

In many large states similar to Michigan, they have no earmarking at all. They have not had the financial problem we have had. You can't say for sure that this has been the case, but I think that you and I should try to give the responsibility to our elected representatives, and it is not up to you nor me to decide where this money is to be spent next year. New York, Illinois, Wisconsin, Indiana, New Jersey, all similar states to Michigan, do not have one cent of constitutional earmarking. The latest states to adopt constitutions, Alaska and Hawaii, have not had constitutional earmarking.

Ladies and gentlemen of the committee, I believe it is up to you and me to set the tone for our financial management in the future. This was a unanimous decision of our committee, but only because we felt: what is the use? And talking in the halls and talking among the delegates, we felt this decision was already made. But perhaps it is not. Perhaps you have reconsidered this point. I would urge you to think very seriously and vote for this amendment to give our legislature the responsibility it deserves, the responsibility you and I give it when we cast our ballot for members. I urge you to support Mrs. Cushman's amendment. Thank you.

CHAIRMAN MARTIN: Thank you, Mr. Upton. Mr. Staiger.

MR. STAIGER: Because this is 1 of 3 sections we are now getting into on earmarking, I think it would be worth our time to take a minute just to get our thinking straight on what we are talking about. Earmarking as such really doesn't mean anything specifically. You have to go a step further and see how it is earmarked in the constitution.

On the finance and taxation committee, I am sure that all of us would agree, once we got into this question, you find that there is a great variety of earmarking and types of earmarking. This being so, it is necessary to analyze each one to see if the good points outweigh the bad points. You can't just say that you are for earmarking or you are against earmarking.

When you get into the highway earmarking, you will find that there are some great differences there as compared to, say, the 2 cents for schools. Number one, on highway earmarking, the rate is not specified in the constitution. It merely says that all gas and weight taxes shall be used for highway purposes. Now, when you analyze that, this means that the flexibility is there with the legislature to set what the gas and weight taxes shall be. If the legislature determines that too much money is going for roads, it can lower the rate. If there is not enough, it can raise it. But the basic responsibility is still left to the legislature.

Secondly, "highway purposes" is a broad category. The legislature has authority to say how much will go for state highway purposes, how much for local roads, so that they do have this flexibility.

On the other side of the highway earmarking, there are some definite advantages that I think have to be pointed out, and there are some good points that flow from earmarking. Number one — by its nature, highway planning is long range in nature. Having set revenue for that purpose aids in this long range planning. Also, from the standpoint of the financing rates, highways take large capital investments. By having this constitutional designation as far as gas and weight taxes, they have been able to finance at lower rates of interest than they would otherwise, short of general obligation, which is something we haven't been willing to go to, but it certainly is better than it would be by a statutory pledge of revenues for this purpose. So there are advantages. The disadvantages are not as great as under some of the other sections. It is flexible. And for that reason, myself and many other members on the committee voted for it.

But the basic thing I am trying to point out is, you can't say earmarking as such is good or bad. It is necessary to take each section of the constitution and analyze it to see how much inflexibility is caused by the section and what good can come from it.

CHAIRMAN MARTIN: Mr. Madar.

MR. MADAR: Mr. Chairman, I am not going to say that I am either for or against the amendment. I just want to bring out a little information. When I do hear examples used here, I wish that they gave out all the information. In the state of Michigan we don't have toll roads, but I want you to note that in one of the delegate's examples, he used

states to which we have paid an enormous amount of tolls in using their highways: New York, Indiana, New Jersey, Pennsylvania. So whenever you get thinking about these problems, just remember that they don't earmark funds for their highways; they do earmark your funds.

CHAIRMAN MARTIN: Mr. Farnsworth.

MR. FARNSWORTH: Mr. Chairman and delegates to the convention, I would like to say just one short word about this particular amendment in speaking against it. It was not many days ago that this committee considered tacking on to a measure that was going through here something to try to improve the business climate in Michigan. Now, I might just point out to you that the automobile industry is the number one industry in Michigan, and I believe it follows that the tourist business is the second. I want to tell you that nationally 1 out of every 7 people who are gainfully employed are employed in the automobile business, either the manufacturing or allied industries.

Now, how does that relate to highway earmarking? Simply this: you don't build automobiles and you don't sell automobiles unless you have good roads for them to run on. We have proven that in the past. The industry goes up and up and up as you have roads and facilities to handle that traffic. So you build those roads; the sales follow; the employment follows that. One out of every 7 are employed in that industry.

I am strictly against Mrs. Cushman's amendment, and I certainly recommend that this committee adopt the highway earmarking funds. And I like to call it this, Mr. Stafseth: not earmarking, but anti diversionary. In other words, they can't divert the funds.

Now, we have been through this fight years and years ago when our roads were mud, and we finally got the taxes passed, and we finally found that they were not getting on the highways; they were diverting them to other uses. This is a specific tax for a specific purpose. The result of the amendment will be to see that the funds go to that particular purpose, and that is good roads in Michigan.

CHAIRMAN MARTIN: Thank you, Mr. Farnsworth. Mrs. Butler.

MRS. BUTLER: I would just like to ask when you are talking about the diversion of moneys, that you divert a few of these off of that state bridge and let us get over it. (laughter)

CHAIRMAN MARTIN: Dr. Hannah.

MR. J. A. HANNAH: Mr. Chairman, I have no objection to the gas tax and the weight tax and the use of the funds that are gathered from that source for the building of roads. We need roads, and it is as fair a way as I know to pay for them. But I think Mrs. Cushman has made a useful contribution in bringing before us, as we pass on the first of the diversionary sections, that if we are going to approve this one and then later we are going to talk about whether or not we shall retain in the constitution the diversion of portions of the sales tax for the public schools and other areas; if we are for the committee recommendation, some of us are going to find it very difficult indeed if at some later date someone is going to raise the question whether it is desirable that we give the legislature the responsibility to handle the state's resources for all the reasons that Mrs. Cushman indicated.

So whether or not you vote for her amendment, if you do not vote for it, so far as many of us are concerned, then this is a closed issue for the balance of this convention.

CHAIRMAN MARTIN: Thank you, Dr. Hannah. Mr. Binkowski.

MR. BINKOWSKI: I would like to go along with Dr. Hannah in his sentiments here, because this is the way I feel. I voted for earmarking and I will continue to vote for it as far as education is concerned, as well as for libraries. I am not very convinced of the arguments advanced with respect to the user theory, and I think I have had a great deal of difficulty convincing my constituents of it.

Now, Mrs. Cushman, I would be very happy to go along with you and remove all the earmarking as per the model state constitution if we had had different experiences in the past. However, based upon our experiences in Michigan, I believe that the earmarking is essential. Now, if we saw some kind of a change with respect to the legislature — we have a more responsive legislature — then I would be willing to go along and eliminate all earmarking.

CHAIRMAN MARTIN: Mr. Faxon.

MR. FAXON: I just can't help but comment that every civilization has had its monuments to the past. We start out with the Egyptians. We see their great pyramids. We look at the Greeks and we see their fine temples. So in future generations, when they look to see our great American civilization, they will be able to see the roads that we built that lasted for years and years. I just think that we ought to be aware that this will, I think, be one of our monuments to the future. (laughter)

CHAIRMAN MARTIN: Mr. Young.

MR. YOUNG: Mr. Chairman, I guess I am one of those "I'm against earmarking but" people that Mrs. Cushman referred to, and I think the discussion of this issue, earmarking, has brought us squarely to the central issue before this convention, namely, the question of reapportionment. I noticed over the weekend that some questions were raised in the newspapers as to whether or not we were wasting $2 million of the people's money. I think that is a very good question. It is my firm belief that unless we face squarely the necessity for returning control of the legislature to the people, we might as well go home now. Every issue we discuss will revert directly to the basic issue of reapportionment.

And so I am against earmarking — I agree with Mrs. Cushman — but unless and until we get a responsive and responsible legislature, I am forced to continue earmarking in the constitution.

CHAIRMAN MARTIN: Thank you, Mr. Young. Mr. Sterrett.

MR. STERRETT: Mr. Chairman and delegates, I think we have missed the major point on this earmarking of funds for highways. I am principally against earmarking of funds, and I would be against earmarking of funds for highways, but being back in the city of Detroit, I have discussed this situation with quite a few people.

First of all, we have to realize in order to have highways, we must have some underwriter underwrite bonds so we can get some money. Then we pay back these bonds. And the bond underwriters — and I won't mention any specifically — have said that without the diversion of this tax for highway funds, it would be practically impossible for the state of Michigan to get any bonds for new highways in the present fiscal state that it is in.

Therefore, I would be against the amendment until we can straighten out the other fiscal responsibility of the state of Michigan. However, in future earmarking that we are to take up, I would like to go on record that I do not feel that this particular situation has anything to do with future earmarking of funds, as Dr. Hannah expressed. I would disagree with that.

CHAIRMAN MARTIN: Thank you, Mr. Sterrett. Mr. Hubbs.

MR. HUBBS: Mr. Chairman, my fellow delegates, I would like to respond briefly to 2 statements made here by Mr. Binkowski and Mr. Young. Both of these gentlemen referred to the so called unresponsiveness of the legislature to the people.

I would like to submit to you that the trouble with the government today, both at the federal and state level, is that the legislatures are too responsive to the people in their spendthrift desires, and the reason we need to retain earmarking of funds is because these legislators are so interested in getting reelected that they are going to spend us into destruction if we are not careful, and we need to have earmarking of funds to protect ourselves against that sort of thing.

I am against the amendment. I favor earmarking of funds, and I am completely in disagreement with these people who keep talking about the unresponsiveness of the legislature. As far as I am concerned, the legislature is responsible. It is the people in general, occasionally expressed through pres-

sure groups, who are unresponsible. If the masses of the people could control, and not pressure groups, we would have good government. Thank you. (applause)

CHAIRMAN MARTIN: The question is on the Cushman amendment. As many as are in favor will say aye. As many as are opposed will say no.

The amendment is not adopted.

A DELEGATE: Division.

CHAIRMAN MARTIN: Division is called for. Is the demand seconded? Those in favor will rise. Not a sufficient number up.

SECRETARY CHASE: Mrs. Cushman offers the following amendment:

1. Amend page 1, line 12, after "purpose" by inserting a colon and "Provided, That there shall be no dedication of gas and weight taxes beyond rates now being levied for any purpose".

CHAIRMAN MARTIN: The question is on the Cushman amendment. Mrs. Cushman.

MRS. CUSHMAN: It has been often remarked that the rates of the present gas and weight taxes are not specified in the constitution; consequently, the legislature is free to vary these. This amendment would simply provide that if they were to be increased beyond the present rates, this additional amount would not be subject to earmarking.

CHAIRMAN MARTIN: Mr. Stafseth.

MR. STAFSETH: I rise, Mr. Chairman, to speak against the amendment. I tried to bring out in the beginning of my remarks that highways are fundamentally a utility, much as a water system or a railroad system. And inflation being the way it is, there is no way of predicting what conditions will be tomorrow. This amendment in effect would put a freeze on the gas and weight taxes at their current level.

It appears and I think this could be better answered about a year from now — we have a need study that is almost completed; it will be completed probably in the next several months — but it appears that the building boom on the highway system we have now has probably gone past the high point and is getting to a point where it levels off. I do point out, as I mentioned in my opening remarks, that there have been times when this tax has been reduced, and I certainly don't feel on something that is a utility — it would be just like setting your water rates and saying you can't go any higher — that the legislature should determine what these fair rates should be. They are based on a use basis.

I point out that it would be unfair to use these moneys for general government, because a man that used his car, drove it 50,000 miles, would pay 5 times as much as a man that drove it 10,000 miles, so it certainly is geared as a fee for services rendered as a utility, and the legislature should be left flexible to raise or lower it as the needs indicate.

Now, in these needs studies, we do prepare them and they are subject to review by economists. This isn't an arbitrary decision. We have to go through a very elaborate report which is completely reviewed by experts in the financial economic field before it is presented back to the legislature. And the good roads federation, which is probably our sounding board, is made up of users, of people in the road business, farm bureau, municipal league, every facet of society that we can get represented, and if we can't get past that, we can't get past the legislature.

CHAIRMAN MARTIN: Mr. Turner.

MR. TURNER: Mr. Chairman, I rise to speak against the amendment and for the committee proposal. I think we are missing a point here in the fact that our tourist business is number 2 in the state and that a great many people come in here using our highways and buying gasoline in this state, and therefore they would be paying directly to support and build our highways.

CHAIRMAN MARTIN: The question is on the Cushman amendment. The secretary will read the amendment.

SECRETARY CHASE: Mrs. Cushman has offered the following amendment:

[The amendment was again read by the secretary. For text, see above, page 781.]

CHAIRMAN MARTIN: Mrs. Butler.

MRS. BUTLER: I would like to ask Mr. Stafseth, before I vote on this, if in the plans for the highway, that 1970 plan is all that is going to be planned for highways in the upper peninsula. That is sent out in the report of the state highway department, and I would just like to know if that's frozen in.

CHAIRMAN MARTIN: Mr. Stafseth.

MR. STAFSETH: Well, all I can do is make a very general statement that what they have proposed in their plan for 1970 includes all that you have up until that time, but this wouldn't prevent anything beyond that time, and I can't very well speak for John Mackie, the state highway commissioner.

MRS. BUTLER: There is only one short 4 lane highway up there and that is the plan to 1970, so I don't know why we should vote for more money.

CHAIRMAN MARTIN: Mr. Brake.

MR. BRAKE: Mr. Chairman, speaking directly to Mrs. Cushman's present amendment, I don't know just how much expediency weighs with each delegate here, but I think as far as the finance and taxation committee is concerned, everybody on it thinks that we are going to be able to draw a constitution that will be worth keeping, and we know we won't keep it unless we can get the votes to adopt it after we are through with it.

Now, if you are looking at it from that viewpoint at all, why appease or please the road people by keeping earmarking, and then alienate every single one of them in the state by saying that if you go any higher, it is for something else besides roads?

CHAIRMAN MARTIN: Mr. Lesinski.

MR. LESINSKI: Mr. Chairman, I wish to point out that the amendment has no meaning as it does not specify any date. When is "now"?

CHAIRMAN MARTIN: The question is on the Cushman amendment. As many as are in favor will say aye. As many as opposed will say no.

The amendment is not adopted. Are there any further amendments?

SECRETARY CHASE: There are none on file, Mr. Chairman.

CHAIRMAN MARTIN: Are there any amendments to the body of the proposal? If not—

Mr. Downs, do you rise?

MR. DOWNS: There are no amendments before us now, are there, Mr. Chairman?

CHAIRMAN MARTIN: There are no amendments.

MR. DOWNS: I wish to ask either Mr. Stafseth or the chairman, Mr. Brake, a little bit more about the addition of the words "as defined by law." Is that discussion in order at this point?

CHAIRMAN MARTIN: It is in order.

MR. DOWNS: I believe that the chairman of the committee pointed out that at one time there had been a question whether highway funds could be diverted for state police patrol. I wondered if he would want to go into that a little further. I am wondering if "as defined by law" could be expanded to include state parks besides highways, or could it be limited to mean only the roads as such? I realize that as it now stands, it is up to the courts as to what the meaning is, and it would seem to me that "as defined by law" might expand this meaning. If so, I would like to know how much it expands the meaning.

CHAIRMAN MARTIN: Mr. Brake.

MR. BRAKE: Mr. Chairman, Mr. Downs and ladies and gentlemen, there was a general feeling in the committee at the beginning of our discussion on this subject that the term "highway use" ought to be more closely defined than in the present constitution, and we started with proposals introduced by road people themselves, road organizations, spelling out in considerable detail just what a highway use was. It mentioned construction, maintenance and so forth. And then we got to asking the questions that you have just asked, Mr. Downs. How about a tourist information booth at New Buffalo or down by Toledo?

What about the roadside parks? How about state police for patrol work? Are these highway uses or are they not highway uses?

And our conclusion was that instead of writing those specific items into the constitution of this state, we might better leave it to the legislature to make the definition so that from time to time as needs change, the definition could be changed. And due to the fact that down through the years the legislature has beaten down every attempt to use highway funds on questionable items, we thought that it was perfectly safe to leave that matter in their hands.

CHAIRMAN MARTIN: Mr. Faxon.

MR. FAXON: I had the same question, Mr. Brake, and I was thinking, now in terms of the wording as it is presently in the constitution or in the proposed amendment, could it be construed, for instance, to mean, say, driver education classes? And then if the legislature were to so define, then it would be up to the courts to determine whether this is in the context of highway use?

CHAIRMAN MARTIN: Mr. Brake.

MR. BRAKE: I think the courts would have very little to do in that connection if the legislature specifically stated that that was a highway use. This leaves it to the legislature to define it.

MR. FAXON: Would you think, then, that driver education could be, conceivably, a part of this?

MR. BRAKE: I cannot forecast what the legislature might do except by looking at what it has refused to do in the past. On that basis I would say they would not do it.

MR. FAXON: I just want to support driver education. (laughter)

CHAIRMAN MARTIN: Mr. Allen.

MR. ALLEN: Mr. Chairman, I would like to ask Mr. Brake a similar question and probably receive a similar answer. The question has come up from time to time in connection, Mr. Brake, with possible diversion of gas and weight taxes to cities for the purpose of assisting a municipality that is having difficulty in keeping its mass transit system. This has come before the legislature from time to time. And I wonder if this point was discussed in your committee, and whether or not you would think that under the proposed language, the legislature, if it saw fit to do so, would be permitted to divert gas and weight taxes to assist cities that were having difficulty with the mass transit system.

MR. BRAKE: Well, the proposals, Mr. Allen, in the legislature as I remember it, have not been to divert it exactly, but to excuse the bus lines from paying at least as high a rate for weight and gas as other people do. I would say very certainly that kind of thing would be within the power of the legislature to define. Now, to take the money and give it to a transportation system as a sort of a bonus might be more questionable, and that has not been the approach in the legislature.

MR. ALLEN: This is why I raised the question, because I know both types have been suggested, but the one type of excusing the weight taxes was given more receptive consideration by the legislature than the other.

CHAIRMAN MARTIN: Mr. Pollock.

MR. POLLOCK: Mr. Chairman, a question for the chairman of the committee, please. Since so many people have expressed their opposition to earmarking as such, and since we are concerned here not with next year but with the decades which are ahead of us, I was wondering if the committee considered the possibility of attaching to such earmarking provisions a time limit within which the legislature could then get us back on a more normal basis.

CHAIRMAN MARTIN: Mr. Brake.

MR. BRAKE: We did consider that in connection with the sales tax, Dr. Pollock, not with the weight and gas tax. We figure that there is just no use in butting our head against a stone wall on this.

CHAIRMAN MARTIN: Mr. Stafseth.

MR. STAFSETH: I might point out, Dr. Pollock, that actually in this road business you have a continuous maintenance proposition that you can't get away from so you have to have a continuing tax. You could never discontinue some form of income or we wouldn't have roads within a very short time.

CHAIRMAN MARTIN: Are there any amendments to the body of the proposal? If not, it will be passed.

Committee Proposal 38 is passed.

SECRETARY CHASE: Item 2 on the calendar, from the committee on finance and taxation, by Mr. Brake, chairman, **Committee Proposal 39,** A proposal with reference to the earmarking of sales tax revenues covering the subject matter of section 23 of article X of the 1908 constitution.

Following is Committee Proposal 39 as read by the secretary, and the reasons submitted in support thereof:

The committee recommends that the following be included in the constitution:

Sec. a. [There shall be returned to local governmental units by the method hereinafter set forth, ½ cent of a state sales tax levy on each dollar of sales of tangible personal property on the 1946 statutory base (not rate). The state disbursing authority shall remit to counties as a whole on a population basis and payment shall be made to the county treasurer who shall remit to the respective cities, townships and villages within the county on a per capita basis. Population computation shall be based on the last and each succeeding statewide federal census for purposes of division among counties and upon the same basis or upon any special federal countywide census, whichever is later, for intracounty division purposes. There shall be excluded from such computation 50 per cent of the total number of persons who are wards, patients or convicts committed to or domiciled in any city institution located outside the boundaries of said city or committed to or domiciled in any county, state or federal tax supported institution, provided such persons were included in said federal census. All remittances provided shall be made on a quarterly basis.] THERE SHALL BE RETURNED TO CITIES, TOWNSHIPS AND VILLAGES ON A POPULATION BASIS, AS PROVIDED BY LAW, ½ CENT OF A STATE SALES TAX LEVY ON EACH DOLLAR OF SALES OF TANGIBLE PERSONAL PROPERTY.

There shall be set aside for the school districts 2 cents of a state sales tax levy on each dollar of sales of tangible personal property [on the 1946 statutory base (not rate)], to be allocated among said school districts by law. Such taxes so collected shall be [deposited in a special school aid fund and be] expendable only by legislative appropriations for aid to the school districts and school employees' retirement purposes as shall be provided by law. [Said school aid fund shall be separate and distinct from the state general fund.]

Prior to any division or allocation of the sales tax, the cost of collection as determined by the department of revenue shall be deducted from total collections and credited to the general fund of the state.

[The legislature shall by law appropriate from the school aid fund for such public school employees' retirement systems as shall from time to time be in effect under the laws of this state an amount which shall not be less than 5 per cent nor more than 7½ per cent of the salaries of school district employees participating in the respective retirement systems. Such percentages shall apply only to that portion of salary as may be provided by law. At no time shall the legislature levy a sales tax of more than 4 per cent.] AT NO TIME SHALL THE LEGISLATURE LEVY A SALES TAX ON RETAILERS AT A RATE OF MORE THAN 4 PER CENT OF THEIR GROSS TAXABLE SALES OF TANGIBLE PERSONAL PROPERTY.

Mr. Brake, chairman of the committee on finance and taxation, submits the following reasons in support of Committee Proposal 39:

The committee proposes, by a majority vote, to retain the earmarking of sales tax money and to retain the dis-

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Explanation—Matter within [ ] is stricken, matter in capitals is new.

tribution thereof, now prevailing. The decision of the committee was not unanimous.

A great part of the language of the present section 23 has been eliminated as unnecessary. It was the feeling of the committee that the stricken language was properly statutory and not constitutional, and that the legislature should be left with the power to supply any detail not provided for in an abbreviated statement in the new constitution.

There was a general recognition by the committee, that as a matter of theory, this is not the best way to run a government, but the majority of the committee reasoned that upon this subject the people had spoken—and had done so recently—and that when the people speak they are the "boss". The members of the committee feel that we are drawing a constitution that will be worth keeping, and are not unmindful of the fact that it will not be kept unless the voters approve it.

So far as the 2 cents for the schools are concerned, the provision is placing no additional burden on the state. For 4 years in succession the legislature has appropriated to the schools substantially more than the 2 cents and is certain to do so in the foreseeable future.

As to the ½ cent distributed to the local units of government, were this amount taken away from a city it would have to be replaced. On the average we are advised that the sales tax amounts to from 12 to 15 per cent of the cities' budgets. They are not in position to reduce their expenditures by that amount. While it may be that this convention will broaden the tax base of the municipalities it will take time before the cities are able to make use of that authority, and it may be impracticable for the smaller cities to make great use of this authority.

As to the townships the percentage of the budget coming from the sales tax is, of course, much larger, and for the ordinary township any other kind of tax other than the property tax is impracticable. They can get under our present system only a very small allocation of millage. Were they to lose the sales tax, millage would have to be given to them to replace it, and the counties are operating at minimum as it is. The extra millage to the township would come almost entirely out of the share of the 15 mills now received by the schools with the net result that the schools would be claiming so much more state aid.

Following is minority report A to Committee Proposal 39 as offered and the reasons submitted in support thereof:

Messrs. Austin, Binkowski, Ostrow, Pellow, Stopczynski, Walker and Young, a minority of the committee on finance and taxation, submit the following minority report A to Committee Proposal 39:

A minority of the committee recommends that the following be included in the constitution:

Sec. a. [There shall be returned to local governmental units by the method hereinafter set forth, ½ cent of a state sales tax levy on each dollar of sales of tangible personal property on the 1946 statutory base (not rate). The state disbursing authority shall remit to counties as a whole on a population basis and payment shall be made to the county treasurer who shall remit to the respective cities, townships and villages within the county on a per capita basis. Population computation shall be based on the last and each succeeding statewide federal census for purposes of division among counties and upon the same basis or upon any special federal countywide census, whichever is later, for intracounty division purposes. There shall be excluded from such computation 50 per cent of the total number of persons who are wards, patients or convicts committed to or domiciled in any city institution located outside the boundaries of said city or committed to or domiciled in any county, state or federal tax supported institution, provided such persons were included in said federal census. All remittances provided shall be made on a quarterly basis.] THERE SHALL BE RETURNED TO CITIES, TOWNSHIPS AND VILLAGES ON A POPULATION BASIS, AS PROVIDED BY LAW, ½ CENT OF A STATE SALES TAX LEVY ON EACH DOLLAR OF SALES OF TANGIBLE PERSONAL PROPERTY ON THE 1946 STATUTORY BASE (NOT RATE).

There shall be set aside for the school districts 2 cents of a state sales tax levy on each dollar of sales of tangible personal property on the 1946 statutory base (not rate), to be allocated among said school districts by law. Such taxes so collected shall be [deposited in a special school aid fund and be] expendable only by legislative appropriations for aid to the school districts and school employees' retirement purposes as shall be provided by law. [Said school aid fund shall be separate and distinct from the state general fund.]

Prior to any division or allocation of the sales tax, the cost of collection as determined by the department of revenue shall be deducted from total collections and credited to the general fund of the state.

[The legislature shall by law appropriate from the school aid fund for such public school employees' retirement systems as shall from time to time be in effect under the laws of this state an amount which shall not be less than 5 per cent nor more than 7½ per cent of the salaries of school district employees participating in the respective retirement systems. Such percentages shall apply only to that portion of salary as may be provided by law. At no time shall the legislature levy a sales tax of more than 4 per cent.] AT NO TIME SHALL THE LEGISLATURE LEVY A SALES TAX ON RETAILERS AT A RATE OF MORE THAN 4 PER CENT OF THEIR GROSS TAXABLE SALES OF TANGIBLE PERSONAL PROPERTY.

Messrs. Austin, Binkowski, Ostrow, Pellow, Stopczynski, Walker and Young, a minority of the committee on finance and taxation, submit the following reasons in support of the foregoing minority report, which accompanied Committee Proposal 39:

The committee on finance and taxation has submitted Committee Proposal 39 to retain in effect the dedication of sales tax revenue provided in section 23, article X of the present constitution.

Section 23 requires distribution of sales tax revenue to local governments and school districts in amounts determined "on the 1946 statutory base (not rate)". The quoted language was included in the 1954 amendment to section 23 to place a floor under the base of allocations to the recipients. Even if the legislature could be persuaded to remove segments or classes of sales from the sales tax base, it could not thereby reduce the amount of distributions to local governments and school districts below that which would have been distributable had the tax base remained as it was in 1946.

The committee decided to delete from section 23 the language quoted above which requires distributions in amounts determined "on the 1946 statutory base (not rate)". Deletion of this language as provided by the committee proposal tends to place the guaranteed minimum base of support in jeopardy.

The sponsors of the attached amendment to the report of the committee on finance and taxation, seeking to retain the quoted language deleted by the committee's report, submit the following comments in support of their appeal for retention:

1. The purpose of the constitutional provision for dedication of 2 cents of each 4 cents of sales tax collected for distribution to school districts and ½ cent for local governments is to assure a minimum guarantee of state support for these units. If the guarantee is to remain reasonably effective it is essential that the tax base upon which distributions are to be determined be specified in the constitution to designate and assure the level of benefits sought to be accomplished. A base date (the original 1946 date is satisfactory) therefore should be included to prevent legislative reduction of the support.

Explanation—Matter within [ ] is stricken, matter in capitals is new.

2. There have been numerous recommendations from various sources to remove by legislation food and drugs from the sales tax base—which would result in a revenue reduction of more than $90 million annually. The impact on distributions resulting from the removal of these items from the sales tax would be as follows:

	Under present constitution (and per this amendment) (in millions)	Under the committee proposal (in millions)
Estimated sales tax revenue, fiscal 1961-62	$440	$440
Loss of revenue through exemption of food and drugs (approximate)	90	90
Estimated revenue, assuming food and drugs exempt)	350	350
Approximate distribution to local units of government—		
½ cent—1946 base		
½ cent—new base	55	43.75
Approximate distribution to school districts—		
2 cents—1946 base		
2 cents—new base	220	175

Even if the state general fund recovered the lost sales tax revenue from another source, the school funds under the committee proposal are tied to sales tax revenue. The base guarantee would be absent with no adequate guarantee to replace. As long as the 1946 base exists, the legislature is responsible for continuing the full guarantee regardless of the source and this is supported by the attorney general's opinion which has not been challenged. (Attorney general's opinion (1956) 2470).

3. With the costs of school maintenance and local government services on the incline, it does not seem appropriate to be tinkering with the minimum base of their state support.

4. Since the public support of the schools was so overwhelmingly expressed in constitutional amendments, a firm precedent has been established. School districts now depend on this guaranteed revenue base. What is sought by this amendment is continuation of this guarantee, now familiar and understood. No one quarrels with the idea that it might be possible to find substitute formulae to ensure that guarantee. But the committee's present wording does not provide such substitutes, just makes the base vulnerable to reduction by legislation.

The committee decision in effect, therefore, vitiates the deduction of sales tax for schools and local governments and amounts to a "back door" approach to weaken such earmarking.

A base is absolutely necessary to guarantee the minimum amounts insured by the present constitutional provision and by the minority report.

Without such a base, the budgets of local units of government and school districts throughout the state may be seriously endangered.

Following is minority report B to Committee Proposal 39 as offered and the reasons submitted in support thereof:

Messrs. Upton, Davis and Seyferth, a minority of the committee on finance and taxation, submit the following minority report B to Committee Proposal 39:

A minority of the committee recommends that the following be included in the constitution:

IN EACH OF THE 5 FISCAL YEARS FOLLOWING THE ADOPTION OF THIS CONSTITUTION, THE LEGISLATURE SHALL APPROPRIATE ½ CENT OF A STATE SALES TAX TO THE CITIES, VILLAGES AND TOWNSHIPS ON THE BASIS PROVIDED IN THE CONSTITUTION OF 1908. STATE SUPPORT FOR CITIES, VILLAGES AND TOWNSHIPS MAY BE CONTINUED THEREAFTER.

THE LEGISLATURE SHALL APPROPRIATE ANNUALLY TO THE SCHOOL DISTRICTS OF THIS STATE, TO SUPPLEMENT FUNDS RAISED LOCALLY, SUFFICIENT FUNDS TO ASSURE ADEQUATE OPPORTUNITY FOR PRIMARY AND SECONDARY EDUCATION IN EVERY SCHOOL DISTRICT.

Messrs. Upton, Davis and Seyferth, a minority of the committee on finance and taxation, submit the following reasons in support of the foregoing minority report, which accompanied Committee Proposal 39:

This minority report on the question of constitutional dedication of particular funds, otherwise known as "earmarking", is submitted because of the fundamental character of the issue involved, the clear division of opinion within the committee on finance and taxation, and the fact that the convention should have an opportunity to consider and vote upon the matter.

This report relates only to Committee Proposals 36 and 39 dealing with taxes earmarked for the primary school interest fund and the sales tax. The report does not apply to Committee Proposal 38 dealing with the earmarking of motor fuel and weight taxes for highway purposes. The amendments set forth above are presented as a complete substitute for Committee Proposals 36 and 39.

As demonstrated by their suggested amendment to the committee proposal the above named members of the finance and taxation committee believe in state support for local education to supplement funds raised locally. Furthermore, we do not object to state collection of taxes all or part of which may be redistributed by the legislature to local units of government.

We firmly believe, however, that the appropriation of state revenues is and should be the responsibility of the legislature. One of the most important functions of a legislature in a system of representative government is to review, weigh and pass upon the multitude of conflicting demands for public funds. A constitution which removes from legislative control the proceeds of 12 different state taxes (sales tax, motor fuel tax, auto weight tax, inheritance tax, corporation organization tax, foreign insurance company tax, railroad tax, telephone and telegraph tax, car loaning tax, express company tax, escheats), involving over 60 per cent of total state revenues, negatives the principle of representative government, and leaves little real power or responsibility in the hands of the elected representatives. If the legislature is to be strong, effective and responsive it must be given not only the responsibility but the flexibility and power to deal with the state's fiscal problems.

The following arguments have been made in support of the continued earmarking of the sales tax and of the taxes contributed to the primary school interest fund:

1. It is argued that without earmarking, the legislature will not appropriate enough money to local school districts. However, the fact is that in each of the last 5 fiscal years the legislature has appropriated more money in the support of local school districts than the constitution now requires. The groups interested in continued earmarking are unanimous in their insistence that the earmarked funds alone are not enough.

2. It is argued that although the legislature for several years has appropriated more than the earmarked funds it would not continue to do so in the event the state were in financial difficulty. However, in 1959 when the state's fiscal situation was so perilous that a public payroll was not met, the school districts nevertheless received more than the constitutionally earmarked funds.

3. It is argued that the earmarking does no harm. While there is no positive present evidence of harm, nevertheless it is apparent that Michigan needs major revision of its tax structure. Obviously the fact that so much of

Explanation—Matter within [ ] is stricken, matter in capitals is new.

the present financial structure is inflexibly frozen in the constitution can only be an impediment to overall tax reform. The argument was made in 1954 that the 3 per cent limit on the sales tax would do no harm. However, the problems of 1959 and 1960 demonstrated the error of that prediction.

4. It is argued that the people voted for earmarking and therefore it should be retained. The people have not voted on the earmarking of taxes contributed to the primary school interest fund since 1908. With respect to the sales tax earmarking we submit that the popular support for these amendments in 1946 and 1954 was not so much for the principle of earmarking as for the principle of adequate state support for local education. It is noteworthy that among the principal proponents of the argument that popular initiation and approval of this constitutional provision should render it immune to change are those who advocate most strongly rejection of the apportionment system initiated and adopted by the people in 1952. Such an argument might be fairly paraphrased, "The people are always right except when they disagree with me."

5. It is argued that while constitutional earmarking is unsound in principle it would be discriminatory to eliminate the earmarking to which this report is directed while retaining the earmarking of highway funds. Those of us submitting this report believe that the earmarking of gasoline and weight taxes for highway purposes can be justified on the basis of the logical relationship between the source of the funds and the dedicated purpose. No similar relationship exists for example between the foreign insurance company tax and primary education, or between the sales tax and support of junior colleges or school employees' retirement systems.

6. It is argued that to eliminate constitutionally earmarked support for local units of government and for schools districts would create immediate hardship. The amendments proposed by this minority report contemplate continued state support for school districts. With respect to local units of government the present earmarking would be continued for 5 years and might be continued by statute thereafter. It is believed that 5 years should be sufficient time to enable cities and villages in particular to utilize the additional tax authority granted to them by the proposal of the committee on local government. In the case of townships, some support might be required indefinitely, but the legislature could at least make a more intelligent distribution than under the present arbitrary and inflexible system.

If Michigan's new constitution is to be a truly progressive, constructive document, setting a national example, it must be more than a rubber stamp of the 1908 constitution with all of its cluttering amendments. It should be simple and flexible, and should give to the legislature in particular broad responsibility and powers for the solution of state problems. The retention of earmarking does not meet these standards.

As a final point, the undersigned should emphasize that the committee proposals are not wholly free from progress. While we object to the retention of earmarking we believe that if it is to be retained, the language of the committee proposals represents a significant improvement over the language of the present constitution. Accordingly, if the amendments recommended by the undersigned are not adopted, we would strongly urge the support of the committee proposals.

CHAIRMAN MARTIN: Mr. Brake.

MR. BRAKE: Mr. Chairman, ladies and gentlemen of the committee, I think there is no one on the finance and taxation committee who doesn't believe that the constitutional tagging of major sources of state revenue for specific purposes is not the best way to run a government. Certainly that has been my thinking. When this question of tagging the sales tax came on in 1946, I campaigned against it from one end of the state to the other. I had charts and literature, made speeches everywhere I got a chance, but the people said I was wrong, that that was the way they wanted to do it, and they have reaffirmed their position in that connection as recently as 1960. I pointed out to you on Friday that it is not costing us anything as far as the big bite for the schools is concerned. The majority of our committee is not willing to tell the 8 million people, almost, who are our bosses that they are wrong in their method of financing.

Now, we know this is controversial. We know there will be a lot of amendments. I would ask one thing in this connection: there is a minority report which has just been passed to you having to do with those words about the 1946 base. The explanation of that, the comment upon it, is not yet available to you. I trust that we will deal with amendments to other parts, if you have amendments, and discussion of other points, if you have such discussion, pending the receipt of those comments. Delay that part of it as much as we can.

Now, for a detailed discussion of what we have tried to do in connection with this proposal, I call upon Mr. Staiger.

CHAIRMAN MARTIN: Mr. Staiger.

MR. STAIGER: I attempted to point out a few minutes ago that each one of these sections, to me anyway, has to be analyzed separately to see what are the good points, if any, or the bad points, and that they cannot be taken as a whole one way or the other. Now, with this section, which is section 23 of the present article X of the constitution, I would like to analyze what the changes are, basically, that the committee has made. Really, it is divided into 2 types of so called earmarking.

You first have the ½ cent of the total of 4 cents as it now stands, ½ cent that goes back to cities, townships and villages. This is distributed, under the present constitution, on a population basis that is outlined in detail in the present constitution. The first change the committee made was as to the ½ cent, to just say that it shall go back to these local units of government on a population basis. I think this whole section is a good example of what you get into when you try to write tax legislation by amendment to the constitution. We have an awful lot of detail in this section. Even if you agree that we should have the earmarking, this detail has no place in the constitution. Just going through it, you see that we spell out what census shall be used in the old constitution, and even go into the basis on which you shall count the wards or persons in institutions, on a 50 per cent computation. All of this the committee believes can be left to the legislature, and this being so, we have provided that it simply shall be returned to the cities, villages and townships on a population basis as provided by law. That is the first change.

Now, the second change has to do with removal of the 1946 base. There is a minority report which you just received, filed by Messrs. Austin, Binkowski, Ostrow, Pellow, Stopczynski, Walker and Young, on which the comments are not available as yet, so it is my understanding that we will pass over the question of the '46 base as far as their minority report is concerned until those comments are in. I don't know what the procedure is going to be on that. Mr. Austin, do you have something you want to say at this time on that?

CHAIRMAN MARTIN: Mr. Austin.

MR. AUSTIN: Mr. Chairman, Mr. Staiger, my understanding is that those comments will be delivered to you sometime during the session, and as soon as they are available, we will be ready to discuss our amendment.

MR. STAIGER: I will keep going, then, until somebody stops me. (laughter) The second change — that is, on the 1946 base for the ½ cent going back to local units of government — now, what the constitution did in effect was to freeze the sales tax. Not only the ½ cent must go to local units of government, but also that this must be done on the 1946 base. There is an attorney general's opinion, ruling that while the distribution must be made on the basis of the 1946 base, it would be possible for the legislature to exempt certain items that were included in that base, just so they didn't change the amount of revenue going back to the local units of government. In other words, they could exempt, say, food from the base, but in doing so, the net revenue could not be reduced going back to the local

units of government. All he is saying is the distribution must be made on that basis, but the tax must not be levied. This is an attorney general's opinion. I have noticed recently there have been some questions raised as to that interpretation by the members of the legislature. That is the ½ cent for local units of government.

The second part of section 23 deals with schools. There again it says that 2 cents shall be returned for schools. Under that section, again they tie in the 1946 base. It shall be returned on the basis of the 1946 base. The committee removed that provision, and they also removed the language in which it states that this, as to schools, shall be deposited in a special school aid fund, said fund to be distinct from the state general fund. We removed that language. This in effect puts it on the same basis as your highway earmarking, which does not state and spell out that this has to be physically segregated in a special fund. It also puts it on the same basis as your ½ cent for local government, which does not contain that language. We removed that language so that while we are earmarking, we are not spelling out that it has to be physically segregated, at least by the constitution.

The third change that the committee made you will find in your report down in lines 14 through 19 on page 2. This dealt with the school employees' retirement systems, and stated that not less than 5 per cent nor more than 7½ per cent of the salaries of the school district employees participating shall be returned for retirement purposes. We removed that language, but kept in the provision that part of this 2 cents could be used for school employees' retirement purposes, as provided by law. This, again, was an attempt to take some of the disadvantages, we felt, out of the section; to give some flexibility to the legislature, but to allow them to use a part of the 2 cents for that purpose if they so wish.

The final change that we made was with regard to the 4 cent maximum sales tax that can be levied, and there you had a problem under the old language, which reads, "At no time shall the legislature levy a sales tax of more than 4 per cent". This has been interpreted so that in your different levels of sales, the amount collected on a sale could not be more than 4 cents, charged to the purchaser. It created some inequities, especially among small retail merchants who had a large volume of small sales, and in their mix, as they call it, if they had a small number of sales, in order to collect not more than 4 per cent on any one sale, they were finding that they were collecting less from the purchaser than they actually had to pay to the state. They were losing money on the sales tax. It was never the intent, I am sure, of the draftees of the sales tax language to cause this problem for small merchants, and this language has been changed so it is clear as it now reads—so that it is a maximum of 4 per cent on the gross taxable sales of tangible personal property. This corrects it so that the small sales merchant will be able to reimburse himself for the tax that he must pay to the state.

Those, basically, are the changes that we made.

I think in analyzing the whole question, particularly as to the 2 cents for schools, it should be pointed out that this section, while possibly not doing a great deal of harm—because the basic harm that it could do is if the legislature wanted to remove the sales tax and couldn't remove it—it wasn't too realistic that the state would ever be without a sales tax. On the other side, it doesn't do an awful lot of good, because for the last 4 years the legislature has had to appropriate a considerable amount over and above the 2 cents for schools, as Mr. Brake pointed out the other day. In the '59-'60 fiscal year this appropriation was over $21 million, and for '60-'61, it was over $36 million.

So there is no question on the other side that the 2 cents is ever going to be too much for schools. This would be one harm that could come from earmarking. The legislature has had to appropriate over this. The testimony was that never in the foreseeable future, certainly in the next 50 years, will the 2 cents of sales tax ever be enough for schools under the present population increase that we are having in the state, so for that purpose, it is only—as the school people say—something that they will always have as a floor to fall back on.

We were willing to leave it in at the 2 cents, but felt that in doing so, we should also take out some of the inflexibility on it which is caused by the 1946 base being tied in there so that they can't provide different exemptions, and also as far as the requirement where it was spelled out 5 to 7½ per cent shall be returned for retirement. We've left the earmarking as far as schools are concerned, but we have made it more flexible for the legislature. Are there any questions at this time?

CHAIRMAN MARTIN: Mr. Hanna.

MR. W. F. HANNA: I would like to address a question to Mr. Staiger, if I may. Mr. Staiger, why do you provide in the sales tax that it will be allocated back to local school districts by law, and then you go to your report on the primary interest school fund and you say that should be allocated back by law? Why do you not merely give this 2 cents over to the primary school fund and have one allocation formula and statute?

The second question is why do you not say in this that the 2 cents shall be in full payment of the state's obligation for primary and secondary education?

CHAIRMAN MARTIN: Mr. Staiger.

MR. STAIGER: Well, with regard to the first question, I think that there is some drafting that can be done, probably, by style and drafting on this section. This was an extremely close question in our committee. I think both sides felt that they were willing to leave it just as it was without raising the question again. Every time we raised it, we got a different vote on some of these issues, so that we didn't actually get into trying to rewrite the whole language of that section. We knocked out what we thought were some of the substantive things that needed to be changed, but didn't try to spend too much time on some of the other language. Now, what was the second question, Mr. Hanna? That you wanted to make this a limit, a maximum?

MR. W. F. HANNA: Yes.

MR. STAIGER: I think, clearly, if it doesn't give enough money for schools under the present system and it was going to be a maximum, it would be totally unsatisfactory to the schools. It would also put a great deal more inflexibility into the provision, which we are trying to get away from.

CHAIRMAN MARTIN: Mr. Iverson.

MR. IVERSON: Mr. Chairman, I would like to ask Mr. Staiger a question. In the first place, the language of the original constitutional provision is not too plain, although it's been interpreted to some degree by the supreme court. Did your committee give any consideration, in changing the provisions in line 20 and adding lines 21, 22 and 23 on page 2, to the question of whether this would in effect permit the legislature to levy a different type of sales tax in addition to this one?

MR. STAIGER: Our intent there was clearly to eliminate the inequities caused. I am not sure how, under these words, you can levy any—you mean a tax on the merchants rather than on the retail sales? You think that is the question that might come up under it?

MR. IVERSON: The present tax is a tax on retailers.

MR. STAIGER: Yes.

MR. IVERSON: And the present provision in the constitution says, "At no time shall the legislature levy a sales tax of more than 4 per cent." Now, so far as I am concerned, I am in favor of the new added language. I believe that some merchants should be granted some consideration where the sales tax presently costs them a considerable amount of money. But I am wondering whether or not in putting that language in and eliminating the previous line, you are not thereby opening the door to the levy of additional taxes on the consumer, additional sales taxes.

MR. STAIGER: I don't think so. It certainly wasn't our intent when we checked this language over, and I think that it is clear from our comments that we are only changing it to meet this question of the small, high volume, low sale type of retailer who was actually not able to collect, under the present limitations, as much as he had to pay to the state. That was the situation we were trying to get at, and I think it is clear from our comments that that is all we were intending to change.

CHAIRMAN MARTIN: Judge Leibrand.

MR. LEIBRAND: Mr. Chairman, may I direct a question to Mr. Staiger? I refer now to line 22, on page 2 of Committee Proposal 39, which recites that the sales tax is on retailers. I am wondering if the committee considered what effect that recital that it is on retailers might have, if any, on the right of the ultimate purchaser presently to get a deduction under federal income taxes. The general federal rule is that a tax is deductible only by the party who is primarily liable. Had you considered that, Mr. Staiger?

MR. STAIGER: No, we didn't go into that question. Certainly as implemented by the statute, though, it is clear that he has the right and shall collect this or reimburse himself from the customer. We didn't research the federal deduction question on that.

CHAIRMAN MARTIN: Mr. Van Dusen.

MR. VAN DUSEN: Mr. Chairman, perhaps Mr. Austin was going to cover this. I was simply going to say that Judge Leibrand's question is answered by the internal revenue code and the regulations issued thereunder, which makes it clear that the sales tax deduction is available even though the tax is imposed upon the retailer, so that this would make no change in the ability of a Michigan taxpayer, paying the sales tax as a consumer, to deduct it for federal income tax purposes. That is covered in the internal revenue code and the regulations thereunder.

CHAIRMAN MARTIN: Mr. Austin.

MR. AUSTIN: Mr. Chairman, I would like to add some additional information on the same point, and that is that the present sales tax law as it was originally passed provides for a tax on the retailer, and we have merely conformed the constitution to the act as it was originally passed. Now, the act also gives the retailer the right to collect the tax from the consumer, and because the consumer is required to pay it, the federal government does allow it as a deduction in arriving at the federal income tax liability.

CHAIRMAN MARTIN: Mr. Danhof.

MR. DANHOF: Mr. Chairman, Mr. Staiger, your statement of a few moments ago as related to the 2 cents diverted to the schools indicated that, in the opinion of the committee, this would provide at least a floor or a minimum amount for educational purposes. Did the committee go into the proposition, if this be true, as to what percentage or proportion of the cost of educating a child should be borne by the local government and by the state? That is, should it be 40 per cent or 30 per cent or 75 per cent?

And if you did reach a percentage, then this necessarily might vary from year to year, and as distinguished from what we have for the highway fund, where at least the legislature has the opportunity to raise or lower the tax as the need may be required, you have frozen a 4 per cent levy. Is 2 per cent the determination of your committee as a minimum requirement that the state should put forth in educating the children? Or if it should be more, maybe we should raise it to 3 cents or maybe we should lower it to 1½ cents. I would like to know if the committee considered this in any detail.

MR. STAIGER: First, I should make it clear that it was just those that supported keeping the 2 cents in that felt that it was a floor; that is, primarily the education people who testified before us felt that while it did not give enough for education at the state level at this time, that it at least provided a floor that the legislature could not go below. We made no determination directly on what percentage the state should be providing for local schools or for schools, but I think indirectly by saying 2 per cent, we are saying that they shouldn't go below this amount.

CHAIRMAN MARTIN: Mr. Brake.

MR. BRAKE: Mr. Danhof, we didn't make any such determination and we shouldn't make any such determination. The sales tax provision is inflexible enough without our adding anything to it. The question that you raise is certainly a question for the legislature.

CHAIRMAN MARTIN: The question is on the committee proposal. Mr. Austin.

MR. AUSTIN: Mr. Chairman, I would at this time like to propose an amendment in the form of a minority report. I think that every delegate now has a copy of the minority proposal and also the comment. There is an error in the comment, which I will comment on later. Is it appropriate for the secretary to read the amendment at this time, or shall I proceed?

CHAIRMAN MARTIN: The secretary will read the amendment.

SECRETARY CHASE: Pursuant to the minority report of Messrs. Austin, Binkowski, Ostrow, Pellow, Stopczynski, Walker and Young,

Mr. Austin offers the following amendment — as a substitute, is it, Mr. Austin?

MR. AUSTIN: The way the drafting staff has drawn this, it is a little confusing. All that we are seeking to do is to reinsert the language "on the 1946 statutory base" in the 2 places where it was deleted, and I don't think it is necessary to read the whole proposal as it is written here, but merely to refer to the committee proposal and to indicate the changes that we are suggesting. So my personal view is we ought to refer back to the committee proposal and indicate where the changes are to be made. On page 2 of Committee Proposal 39, on line 3, the words "on the 1946 statutory base (not rate)" have been deleted. The minority report would reinsert those words.

CHAIRMAN MARTIN: And on page 1 do you also reinsert?

MR. AUSTIN: On the very last line, after the word "property" would be inserted the same words, "on the 1946 statutory base (not rate)". Those are the 2 changes.

SECRETARY CHASE: Mr. Austin, then, on behalf of the minority, offers the following amendments:

1. Amend page 1, line 24, after "property" by inserting "on the 1946 statutory base (not rate)".

2. Amend page 2, line 3, after "property" by reinserting "on the 1946 statutory base (not rate)".

CHAIRMAN MARTIN: Mr. Austin.

MR. AUSTIN: I would like to refer you now to the material which has just been passed out, the comment on the minority report. That is, on line 2, it refers to the committee on declaration of rights, suffrage and elections. Actually it is the committee on finance and taxation.

[Correction made. See above, page 786.]

And we submit these comments, and I think that it might be appropriate for me to read, since you have just got this material.

[Paragraphs 1 and 2 of the supporting reasons were read by Mr. Austin. For text, see above, page 786.]

I think this is rather obvious. The purpose of that '46 base language was to make sure that the school districts and the local governments got, in effect, what they would have received under the '46 base even if items were subsequently removed from the sales tax base.

[Paragraph 3 to the table of the supporting reasons was read by Mr. Austin. For text, see above, page 786.]

Now, this table has 2 columns of figures. The first column shows what would happen under the present constitution and under the amendment as proposed by the minority. The second column indicates what would happen under the committtee proposal.

Let's consider first the estimated sales tax revenue for the coming fiscal year or the present fiscal year, approximately $440 million. It would be the same in either case. The loss of revenue through exemption of food, and if we use the $90 million figure, we will get estimated revenue, assuming food and drugs exempt, of $350 million.

Now, what will be the distribution to the local units of government under the 2 proposals? Under the minority report or proposal, and also under the present constitution, it would be necessary to continue to distribute to these local units of government the same amount they would have received had

nothing been removed from the sales tax base. In other words, the computation would still have to be made upon the 1946 base, or $55 million. Under the committee proposal, this would be reduced to $43,750,000.

Now we come to the schools. The amount to be distributed to the schools under the '46 base arrangement would be $220 million and under the new base, or under a base which would be reduced by the elimination of food and drugs from the base, it would be $175 million. As you can see, there is quite a difference.

Even if the state general fund recovered the lost sales tax revenue from another source—let's assume for a moment that in removing the food and drugs from the base, that the state would at the same time enact a new type of tax such as an income tax. The general fund would certainly recover the money through the new taxation, but there would still be no requirement that the same money be sent back to the schools and the local units of government.

[The remainder of the supporting reasons, following the table, was read by Mr. Austin. For text, see above, page 787.]

Mr. Chairman, we move that the minority amendments be adopted.

CHAIRMAN MARTIN: Mr. Van Dusen.

MR. VAN DUSEN: Mr. Chairman and members of the committee, my purpose is simply to explain to you in a little more detail what the amendment does and my reasons for opposing it. I think that it should be quite clear that the purpose of the committee proposal is to give the legislature greater flexibility in solving Michigan's tax problems, greater flexibility than it can possibly enjoy if this constitution is to contain such legislative detail as the incorporation by reference of the entire sales tax as it existed in 1946.

Now, the minority report suggests in some manner that the citizens of this state can have their cake and eat it too. I think it should be clear that it is a practical impossibility to retain the language requiring the imposition of the tax on the 1946 base (not rate) and to expect that the legislature would under any circumstances exempt major segments of that base from the imposition of the tax.

I don't challenge the attorney general's opinion to which Mr. Austin referred. I simply put it to you that the legislature, confronted with the necessity for appropriating money based upon tax collection on the 1946 base, has no practical choice but to continue the 1946 base. How is the legislature going to determine how much money would have been produced by a sales tax on the 1946 base unless the tax is continued on that base? There isn't any way to determine, for example, what sales tax would have been produced by the imposition of a tax on food unless you continue the tax on food.

Therefore, I think it should be very clear to each of the delegates that if you vote for the Austin amendment, what you are doing is locking into the constitution a sales tax on food and a sales tax on drugs for the foreseeable future. There is simply no way in which you can have your cake and eat it too. If you want to give the legislature the opportunity to determine on what items the sales tax should be imposed, then you will support the committee. If you want to freeze into the constitution the present items subject to the sales tax — and that includes food and drugs — you will vote for the minority report.

I think the legislature ought to have the flexibility to remove food from the tax base if it chooses to do so in the future. For that reason, I strongly urge that you vote no on this amendment.

CHAIRMAN MARTIN: Mr. Van Dusen, may the Chair inquire, just clarifying his own understanding: when you refer to the statutory base, are you referring to the kinds of things on which it is levied, or are you referring to an amount which was the amount of sales tax collected in 1946? I am not clear on that. Perhaps others are not.

MR. VAN DUSEN: Mr. Austin may wish to elaborate on this, but it is the opinion, I believe, of the committee that the words "statutory base" refer to the subjects of taxation: food, drugs, automobiles, any other tangible personal property sold at retail on which the tax is levied and computed.

CHAIRMAN MARTIN: Mr. Austin.

MR. AUSTIN: I think he has made it rather clear. It is the subjects of taxation. When we refer to "base" that is what is meant.

CHAIRMAN MARTIN: I see. The question is on the minority —

MR. AUSTIN: Mr. Chairman, may I respond to one or two comments made by Mr. Van Dusen?

CHAIRMAN MARTIN: Mr. Austin.

MR. AUSTIN: Mr. Van Dusen has indicated that food and drugs are now locked into the base. I don't believe that is the case, and I am sure that you will agree with me that the legislature now has the authority to remove any item from the base; not only food and drugs but it can make other exemptions from the present base.

What would happen, of course, is that if these items were removed from the base, the legislature would have to find the moneys to be distributed to the schools and local governments from another source. But this provision does not lock anything into the sales tax base.

And one other point that should be made is: remember that this is the way the people put it into the constitution. This is the way they voted it. They voted for that 1946 base because they wanted it as a minimum base.

CHAIRMAN MARTIN: Mr. Binkowski.

MR. BINKOWSKI: Mr. Chairman, ladies and gentlemen of the committee, thank you, Mr. Austin, for clarifying that point with respect to so called locking in the food and drug tax. I certainly do not believe that this is the case as stated by Mr. Van Dusen.

I think that the basic issue before the committee is whether we want to earmark funds for schools or not. It is just that. Now, there are many here who believe that this type of earmarking should not be continued, and if so, they will gladly go along voting against the minority amendment, because it does eliminate a substantial portion of the present amount of sales tax for schools and for distribution to school districts.

Now, there is no question that if you don't want earmarking, and if you want more flexibility within the legislature, then let's go all the way and eliminate this provision entirely. Let's not go half way. And I submit that the committee report without the 1946 statutory base just goes half way toward the elimination of earmarking of funds for schools and for the local districts.

I believe that is the issue. You either want to continue your dedicated funds for schools or you don't. I don't think we should go half way and again mislead the people.

CHAIRMAN MARTIN: Mr. Brake.

MR. BRAKE: Mr. Chairman, either Mr. Austin and Mr. Binkowski missed the point of Mr. Van Dusen's argument or else I did. As I understood it, Mr. Van Dusen was not arguing that legally food and drugs, for instance, could not be taken out from under the sales tax. What he said, as I understood him, was that the economic pressure, the need for money would make it very certain that they would not be reducing the base of the sales tax. So frequently we worry ourselves about something that possibly could happen but just never will.

CHAIRMAN MARTIN: Mr. Van Dusen.

MR. VAN DUSEN: Mr. Chairman, I would only add to what Mr. Brake has just said that not only the economic pressure but the administrative complexity of trying to calculate an artificial base upon which no tax is imposed make it a practical impossibility that if this amendment is adopted, food will ever be exempted from the sales tax.

Legally, Mr. Austin and Mr. Binkowski are quite right. Practically, they are quite wrong.

CHAIRMAN MARTIN: Mr. Howes.

MR. HOWES: I rise to oppose this amendment. If the words "1946 statutory base" were not removed from this section, the state would not, if enough of the articles now under the sales tax were removed, be able to collect enough money

on a 4 cent sales tax to pay the amount required to be paid to the schools alone.

The words "1946 statutory base" mean that all articles under the sales tax at that time shall be used in considering the 2 cents to be paid to the schools. If we leave these words in, and if what Governor Swainson is asking for at the present time were to come to pass — that is, that food and some other items were removed from the sales tax — the state would be paying to the schools a much larger portion of the money collected under the 4 cent sales tax than it is at the present time.

CHAIRMAN MARTIN: Mr. Bentley.

MR. BENTLEY: Mr. Chairman, I offer an amendment to the Austin amendment which is on the secretary's desk.

CHAIRMAN MARTIN: The secretary will read the amendment.

SECRETARY CHASE: Mr. Bentley, on behalf of the committee on education, offers the following amendments to the amendments:

1. Amend page 2, line 3, after "property" by inserting "on the 1946 statutory base (not rate)".

2. Amend page 2, line 4, after "shall be" by inserting "deposited in a special school aid fund and be".

3. Amend page 2, line 7, after "law.", by inserting "Said school aid fund shall be separate and distinct from the state general fund.".

CHAIRMAN MARTIN: Mr. Bentley.

MR. BENTLEY: Mr. Chairman, the amendments which I offer also include the second portion of the Austin amendment, and that is to reinsert the words "on the 1946 statutory base (not rate)" which is why I offered it as an amendment to his amendment rather than as a separate amendment. We do not refer in this particular amendment to the question of "the 1946 statutory base (not rate)" insofar as the ½ cent on the sales tax going to local government is concerned.

Mr. Chairman, I should explain that after Committee Proposal 39 was referred by the committee on finance and taxation to the committee on education, it was the vote within the education committee — a vote of 16 to 1 — that the language, as presently in the constitution, of the first paragraph on page 2 of the committee proposal should be retained intact. The amendment which I have offered on behalf of the committee on education would reinsert the deletions in that particular paragraph which have been made by the committee on finance and taxation.

I might add that the reason, within the committee on education, for reinserting the references to the special school aid fund was the strong belief of the overwhelming majority of the committee on education that that language should be retained in the constitution. And I might add that nearly 2 months ago, when we submitted exclusion reports on sections 11, 12 and 13 of the education article — these reports, I believe, were, incidentally, referred to the committee on finance and taxation — we suggested at that time that all moneys earmarked for schools in the constitution which would be continued in the new constitution should be placed in a special school fund. Therefore, I feel that the committee on education is being consistent in recommending that references to this special school aid fund be replaced.

Other than that we do support the minority report insofar as the replacement of "the 1946 statutory base (not rate)" is concerned. I am speaking for myself, and I would assume the majority of the members of the committee on education likewise subscribe wholeheartedly to the supporting reasons advanced by the minority in this connection.

CHAIRMAN MARTIN: Mr. Staiger.

MR. STAIGER: Let me point out again, just so we have this in its proper perspective, that what we are talking about is 2 cents for schools which does not now and never will in the future be, under the testimony we had, enough money for schools. We are talking about a minimum which is not a satisfactory minimum. From that standpoint, right now the schools had to rely on the legislature to the amount of about $36 million for the '60-'61 budget. They had to. They say that the 2 cent school tax does not now and never will in the future again give enough money for schools.

I think it is safe to assume in this state that we are heading for a complete tax revision and it is going to be rather wide in scope. To do that, the committee felt that the least we could do is to clear away some of the roadblocks in the way of the legislature in this area so that they could have a legitimate tax revision.

Schools now rely on the legislature. By putting this language back in, particularly as to the '46 base, you are just freezing something in there that is not now giving enough money for schools. Therefore, we oppose the Austin amendment.

With regard to the amendment by Mr. Bentley of setting it aside in a separate and distinct fund, the highway fund does not have this. They have been able to satisfactorily earmark their money. The local government money does not have this special provision to segregate it physically into a separate fund, and there is no reason to put this in as far as the schools are concerned, as far as the majority of the committee is concerned.

CHAIRMAN MARTIN: Mr. Woolfenden.

MR. WOOLFENDEN: Mr. Chairman, I would like to ask Mr. Austin a question. How would it be possible to administratively determine what the '46 base would be if, in fact, food and drugs and perhaps other items are eliminated from the sales tax? How do you conceive it possible to know what it would be with those back in if there is no report being made on them?

MR. AUSTIN: Mr. Chairman, Mr. Woolfenden, it is my feeling that this would be done by statistical analysis. Just as it is possible now to determine how much revenue we lost through removal of food and drugs from the base, it would be possible then to determine what the total tax revenue would be with those items retained in the base.

MR. WOOLFENDEN: But, Mr. Austin, it is easy to make a determination of how much will be lost if they are removed because they are presently being reported, but once removed, then there is no sales tax report covering them, and it would be just conjecture as to what it amounted to, would it not?

MR. AUSTIN: I am not disputing your statement as to conjecture. It would be what we would consider to be a statistical determination. Now, whether it is conjecture or whether it is the best available information, I am not sure, but remember that this is for determination of how much is to be distributed under the sales tax amendment; that is, how much is to be distributed to the local governments. It does not affect the total revenue in any way, only the amount that is actually being distributed to the local units of government, and if the amount is not accurately determined, I don't believe any great harm would be done.

MR. WOOLFENDEN: Who would make the determination?

MR. AUSTIN: I would assume that either the legislature would have that determination made or the department of administration. As it is now, the state controller makes these estimates from time to time.

Mr. Chairman, I would like to suggest that the amendment made by Mr. Bentley be considered separately from the amendment of the minority, for the simple reason that it is different subject matter and I am not too sure that it would be appropriate to vote on both of these at the same time. This is not to say that I have any serious objection to his amendments.

CHAIRMAN MARTIN: The Chair will rule the question is first on the minority amendment and then on the Bentley amendment in order to avoid confusion.

Mr. Iverson.

MR. IVERSON: I was a little confused, Mr. Chairman. I wondered if Mr. Bentley meant to amend the original committee report or the minority report.

CHAIRMAN MARTIN: I think he offered his amendment because the education committee had in mind that it wanted to include the '46 statutory base in the same way that the minority amendment did, but I wonder, Mr. Bentley, if for

any reason your amendment can't be offered satisfactorily after the determination of this minority amendment.

MR. BENTLEY: Mr. Chairman, the only reason for my offering it as an amendment to the amendment by Mr. Austin was that the first part of our amendment does cover the same portion as the second portion of the Austin amendment; that is, the restoration of the 1946 statutory base, referring to the sales tax diversion for the schools. We do not mention the question of the 1946 statutory base as far as local government is concerned.

Insofar as I personally am concerned, the Chair's ruling is perfectly satisfactory. We can dispose of the Austin amendment. But since we did have the overlapping in this one portion, I felt that it might be appropriate to offer it as an amendment to his amendment. If the Chair rules that the vote will come first on his amendment, that is perfectly satisfactory to me.

CHAIRMAN MARTIN: Mr. Faxon.

MR. FAXON: Mr. Chairman, members of the committee, I rise to support the minority report here. As a member of the committee on education, we have been hearing from many educators for several months as to what they would like to see in the constitution with regard to a minimum basis of support for the education of the state. I heard reference a little over an hour ago when dealing with the previous proposal, Committee Proposal 38, that we run into a stone wall when we attempt to tackle highways. Well, I think when we attempt to weaken the base of support for education, we run into a human wall of many, many people throughout the state who are vitally and deeply concerned with guaranteeing a minimum level of support.

Now, I agree with Mr. Staiger that the 2 cents doesn't provide that, but at least, as far as the educators are concerned, it provides a floor, a floor that isn't a sinking floor, and I refer to this majority proposal as a quicksand, because what you are doing is making it possible for the base to be changed, and therefore you are eating away at least at this minimum floor.

As a member of the committee on education, I think the sense of the committee was that we should do as little as we could to tamper with this very vital question of support for education, and so I wish to urge the members of the committee here to support the minority report.

CHAIRMAN MARTIN: Mr. Leslie Richards.

MR. L. W. RICHARDS: Mr. Chairman, I want to rise in support of the Bentley amendment. Due to the fact you have ruled otherwise at the present time, I would refrain from remarks.

But I did feel while I sat here, if it was in order, I would like to make a motion to rise and let's have a bite to eat at this time.

CHAIRMAN MARTIN: The motion is that the committee do now rise. I wonder, Mr. Richards, if we could ask the chairman of the committee for his comment.

MR. BRAKE: I was hoping, Mr. Chairman, that we could vote on this one minority report and then I had intended to make the motion that Mr. Richards has now made.

MR. L. W. RICHARDS: I will withdraw then on the strength of that, Mr. Chairman.

CHAIRMAN MARTIN: Thank you, Mr. Richards.

Mr. Nord, did you want to be heard on the minority amendments?

MR. NORD: I do, Mr. Chairman, but I believe Mr. Bill Hanna is before me, if I am not mistaken. I would like to speak as soon as he is finished, if I may.

CHAIRMAN MARTIN: Mr. Hanna.

MR. W. F. HANNA: Mr. Chairman, I would like to address a couple of questions to Mr. Austin concerning his amendments. Mr. Austin, in a general overhaul of the financial taxation picture of Michigan, if the general overhaul provided for a local income or payroll tax or a local income or payroll tax on a county level for the support of primary and secondary education, would your amendments not require the legislature to appropriate money equal to the sales tax base, and require an overall state income tax rather than local option to county school districts as such, or cities and townships in the line of a payroll tax?

MR. AUSTIN: Mr. Chairman, I am not sure that I know exactly how the passing or the enactment of local supplements would affect what we are proposing here. What we are proposing here is exactly what is in the constitution now, and if local units of government or school districts are in need of additional revenue which would be supplied through local supplements, then I don't see how that should affect the amount to be distributed to them under the sales tax diversion amendment.

MR. W. F. HANNA: Let me be specific, Mr. Austin. Supposing that the legislature removed from the sales tax base food and drugs, and recognizing that cities, townships and villages would thereby lose revenues, they would in the same act provide that cities, townships and villages could levy a payroll tax to make up the shortage by the exemption of food and drugs from the sales tax. Your amendments would require that the legislature continue to appropriate that lost revenue, would they not?

MR. AUSTIN: That is correct. The legislature would still be required to remit to local units of government as well as to the school districts 2 cents of the sales tax on the '46 base.

MR. W. F. HANNA: Would your amendments not restrict a general overhaul of the tax structure of Michigan by the legislature because of the compulsory appropriation factor that you have here?

MR. AUSTIN: This is what I don't see.

CHAIRMAN MARTIN: Mr. Nord.

MR. NORD: Mr. Chairman, I feel somewhat akin to the feeling that has been expressed by nonlawyers when they hear lawyers talk. Now we are hearing finance and taxation people, and I am quite puzzled myself. We have heard quite a few contradictory remarks from various people. In fact, we have heard remarks on the same side of the question which contradict each other, and I believe that we ought to get some clarification of that. We have had one group of remarks from people which are to the effect, on the one side, that if we were to adopt the minority report, the legislature, in case foods and drugs were exempted from the base, would not have enough money to provide the funds that are required to provide for schools, and therefore presumably they would not provide them. They would not provide them. That was one argument that was made, and that was summarized by saying you cannot have your cake and eat it. The legislature wouldn't provide it because they wouldn't have it. That was Mr. Van Dusen's point. As a practical matter they would not have it. That means that the schools would lose.

We also heard a remark from another gentleman — I have forgotten who it was — which said, in support of the same general conclusion, that the reverse would be true; that there is no need to worry; that the schools will certainly have enough money because the money for the schools doesn't come out of the earmarked funds anyway; it comes out of the appropriation of the legislature. And they always have done it in the past; therefore, they will do it in the future.

Both of those arguments, which run exactly contrary to each other, were in support of the proposition that, as a practical matter, you cannot leave this 1946 base in the constitution, one, because the legislature will not provide money for schools; and the other one because it would provide money for schools. I submit that at least one of those two must be wrong, and quite possibly both.

The other argument that was made in opposition to the minority report, which also seems to me to be a rather peculiar argument, is this: that, as a practical matter, there is just no way you could do this; that if you wanted to leave the 1946 base in there, you couldn't do it. You might try, but you couldn't succeed in doing it. Now, that is one of those arguments that my children are always making to me. "I wish I could do it, daddy, but I can't." Somehow or other, when you don't wish to do something, it seems you cannot do it.

Well, what was suggested by Mr. Van Dusen was this: he says, "I don't know how we would know how much money would have come in from the tax on the sale of food and drugs, because we are not taxing it. Therefore, we don't know. Therefore, we are stuck." Not being a finance and taxation expert, I don't feel too stuck. For example, the legislature is not powerless to solve this problem. If the legislature wanted to exempt food and drugs or any other items, it could do so in this way, just as one example: it could require that those people that sell food and drugs report the amount of the sales of food and drugs. It could do that if it wished to. Instead of paying the tax on the food and drugs, it could report that. There are a great many statistical surveys always being made in the state, and statistical surveys could be made on this basis. The legislature could approach it that way. If you know the amount of sales, you multiply by the percentage of the sales tax and you know what the tax would have been. If the legislature doesn't feel like doing that, it could provide other methods. It isn't necessary for us to present all of the solution. It could provide in the law when it exempts food and drugs a statistical measure to determine what the tax presumably would have been. Now, if it does that in a fair way, attempting to meet the requirement of the constitution, it will not be an unconstitutional statute and the statute will be effective and the tax base will be secure.

Therefore, let's not get mixed up on the theory that this thing simply cannot be done. Whether it is desirable to be done is one thing. But whether it can be done is an entirely different thing. It certainly can be done.

As to whether it is desirable to retain the 1946 base, my opinion is that it is desirable. This provision is a provision which would retain the security of earmarked funds for schools. My feeling is that the people in the schools and the parents of children insist on having the retention in its present form of the school fund earmarking. Now, if we want to do that, we can do so. We don't need to make any changes. I think that the minority report is sound and should be accepted.

CHAIRMAN MARTIN: Mr. Brake.

MR. BRAKE: Mr. Chairman, I move that the committee rise.

CHAIRMAN MARTIN: The motion is that the committee now rise. All those in favor signify by saying aye. Opposed? The committee will rise.

[Whereupon, the committee of the whole having risen, President Nisbet resumed the Chair.]

PRESIDENT NISBET: The convention will please come to order. Mr. Martin?

MR. MARTIN: Mr. President, the committee of the whole has had under consideration certain matters on which the secretary will now give a report.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 38,** A proposal with reference to the earmarking of the gas and weight taxes for highway purposes covering the subject matter of article X, section 22 of the 1908 constitution; reports this proposal back with an amendment to change the designation of the public utilities commission to the public service commission; recommending that the amendment be agreed to and the proposal as thus amended do pass.

[The following is the amendment recommended by the committee of the whole:

1. Amend page 1, line 20, after "public" by striking out "utilities" and inserting "service".]

PRESIDENT NISBET: The question is on the amendment. Those in favor will please say aye. Opposed, no.

The amendment is adopted.

Committee Proposal 38, as amended, is referred to the committee on style and drafting.

Following is Committee Proposal 38 as amended and referred to the committee on style and drafting:

The committee recommends that the following be included in the constitution:

Sec. a. All taxes imposed directly or indirectly upon gasoline and like fuels sold or used to propel motor vehicles upon the highways of this state, and on all motor vehicles registered in this state, shall, after the payment of the necessary expenses of collection thereof, be used exclusively for highway purposes, as defined by law, including the payment of public debts incurred therefor, and shall not be diverted nor appropriated to any other purpose: Provided, The legislature may provide by law a method of licensing, registering, and transferring motor vehicles and their certificates of title, and licensing and regulating motor vehicle dealers and operators; and may prescribe charges sufficient to pay for the enforcement thereof. The provisions of this section shall not apply to the general sales tax, the use tax, the fees and taxes collected under the auto theft and operators' and chauffeurs' license laws which are used for regulatory purposes; the application fees and mileage fees appropriated to the Michigan public service commission by law; the franchise or privilege fees payable generally by corporations organized for profit; nor to ad valorem taxes payable generally by manufacturers, refiners, importers, storage companies, and wholesale distributors on gasoline and like fuels held in stock or bond, and by manufacturers and dealers on motor vehicles in stock or bond.

SECRETARY CHASE: The committee of the whole has also had under consideration **Committee Proposal 39,** A proposal with reference to the earmarking of sales tax revenues covering the subject matter of section 23 of article X of the 1908 constitution; and has come to no final resolution thereon. This completes the report of the committee of the whole, Mr. President.

PRESIDENT NISBET: The Chair recognizes Dr. Hannah.

MR. J. A. HANNAH: Mr. President, I move that the convention now recess until 8:00 o'clock this evening.

PRESIDENT NISBET: The question is on the motion of Dr. Hannah. Those in favor say aye. Opposed, no.

The motion prevails; we are recessed until 8:00 o'clock.

[Whereupon, at 6:00 o'clock p.m., the convention recessed; and, at 8:00 o'clock p.m., reconvened.]

The convention will please come to order.

SECRETARY CHASE: Mr. President, a quorum of the convention is present.

PRESIDENT NISBET: The Chair recognizes Mr. Madar.

MR. MADAR: Mr. President, I would like to rise to a point of special privilege. In reading the Detroit News Saturday I noted that Delegate Van Dusen made a remark from which the newspaper reporter seemed to infer that the Democrats were dragging their heels. This, I believe, was due to the fact we had some discussion as to whether this convention should start at 4:00 o'clock or 6:00 o'clock on Monday evenings. Now, as I understood it when I went to school, from 4:00 to 6:00 and then from 8:00 to about 10:00, or if you wish to make it to 12:00, would be 4 or 6 hours. If we started at 6:00 and went on until 10:00 or 12:00, it would still be 4 or 6 hours. Now, where we were dragging our heels I don't know, or where we might be dragging our heels I don't know, and I believe that I am speaking for the Democratic party as a whole because it was the Democratic party and the Democratic delegates whom Mr. Van Dusen was supposed to have claimed were dragging their heels. Well, anyway, the 6:00 o'clock amendment finally lost and the 4:00 o'clock amendment went through, and I wondered just who the people were who were dragging their heels, because as I looked at this board over here those people who seemed to change from 6:00 o'clock to 4:00 o'clock were not so much

Democrats as Republicans, because I happened to notice names such as Mr. DeVries, Mr. Romney, Mr. Rood, Mr. Rush and several others.

And I would just like to say this, Mr. President: that when anybody gets to making inferences, they better stop and think a little bit, because we can come back, and we won't make inferences; we'll tell the truth. (applause)

PRESIDENT NISBET: Mr. Romney.

MR. ROMNEY: Mr. President, I would just like to correct the gentleman's statement. I did not vote for 6:00 o'clock; I voted for 4:00 o'clock.

MR. MADAR: That's right. You did vote for 4:00 o'clock, but you weren't here until after 4:00. You were late again, Mr. Romney. (laughter)

MR. ROMNEY: I didn't quite get your point. My plane was late today and I got here as fast as I could. I was a few minutes late.

MR. MADAR: I was only driving an automobile, Mr. Romney. (laughter)

PRESIDENT NISBET: The Chair recognizes Mr. Martin.

MR. MARTIN: Mr. President, I move that the convention now resolve itself into committee of the whole for consideration of matters on **general orders.**

PRESIDENT NISBET: The question is on the motion of Mr. Martin. Those in favor say aye. Opposed, no.

The motion prevails.

[Whereupon, Mr. Martin assumed the Chair to preside as chairman of the **committee of the whole.**]

CHAIRMAN MARTIN: The committee will be in order. The secretary will read.

SECRETARY CHASE: When the committee rose this afternoon, there was under consideration **Committee Proposal 39,** A proposal with reference to the earmarking of sales tax revenues covering the subject matter of section 23 of article X of the 1908 constitution. Immediately pending were the 2 amendments offered by reason of the minority report, which 2 amendments were as follows:

[The amendments were again read by the secretary. For text, see above, page 790.]

CHAIRMAN MARTIN: The Chair will say that at the time we rose, he had the following names listed: Mr. Van Dusen, Mr. Stafseth, Mr. Downs, Mr. Goebel and Mr. Seyferth. We will proceed in that order, with any others who may wish to speak. Mr. Van Dusen.

MR. VAN DUSEN: Mr. Chairman, I think the only point I felt had not been made here that I wished to add was simply that the 1946 base is a limitation on the increase in items which might be subject to the sales tax returned to schools, as well as a limitation on decrease. All of the conversation has been to the effect that if you eliminate this language, the legislature might reduce the base. I think it's important to recognize that if you eliminate the language, the legislature might increase the base, so that this is a 2 edged sword.

CHAIRMAN MARTIN: Mr. Stafseth.

MR. STAFSETH: Mr. Chairman, there are a couple of points I would like to make. One is that actually I think the purpose of taking out the 1946 base — at least this is the thought of the committee, and I support the committee proposal — is to keep the thing flexible and not make it complicated. In other words, you make the computations very complicated, and you make it so that actually you encourage the legislature not to take off some items such as food and drugs, because if they did take it off, the schools and the cities and the municipalities would still get the same money, but the money that goes to the general fund would be reduced. So by leaving it in, it would make less money for the general government and then it would handicap the legislature.

The other thing, Mr. Faxon in his comments was concerned about the committee's attitude on the 2 cent diversion for schools. The committee was very much in favor of the 2 cents for schools. It is just that they wanted to take out these extra legislative or statutory provisions that are within the constitutional amendment.

And thirdly, actually under the present gas and weight tax constitutional provision, the legislature tomorrow, if it saw fit — I don't think it would — could reduce the gas and weight tax to nothing. It could cut it out completely. So that in the gas and weight tax diversion, it has the right to raise it; it has the right to lower it. All we are doing is attempting to make it easier for the legislature to write a tax reform and not handicap it with statutory matter in a constitutional provision.

CHAIRMAN MARTIN: Mr. Downs.

MR. DOWNS: Mr. Chairman, in discussing the matter of financing our schools and cities, I am sure it will be very clear I am not speaking as a tax expert, but rather from the viewpoint of the concern of keeping a minimum standard or base of income into our cities and schools, and I therefore rise in favor of Mr. Austin's amendments, because I think this will provide — while it may not be adequate funds — a certain minimum base from which we can do our financing.

I am very concerned that if we remove these standards, then we may pit each city against the other, not for satisfactory services but to get lower services. I think this is particularly a problem in the hard core areas of our large cities. I am speaking not only of Detroit but our other industrial areas where we find the movements to the suburbs. While these problems cannot all be solved in the constitution, I, for one, feel it will be much more difficult to solve them if we take the presently assured revenues from our industrial areas and not be sure how to replace them. I think this provision will in fact facilitate tax reform rather than impede it, because I believe while most of us feel there should be major fiscal reform, that to get it done satisfactorily we need still to guarantee these minimums to the schools and cities, and this provision of the Austin amendments, as I understand it, will preserve those minimum sources of income and revenue, but still permit flexibility in shifting the sources of our tax revenue. Thank you.

CHAIRMAN MARTIN: Mr. Goebel.

MR. GOEBEL: Mr. Chairman, I have the feeling that perhaps we may decide this issue on the basis of fear of reduction of the number of items that will be subject to this base, and I submit to you that the record shows that in the 15 years that this amendment has been in force, the legislature has not done anything to remove from the base any subject that was taxable in 1946, so there are 15 years gone by where the legislature has not taken out of this legislation any items subject to the sales tax.

And further than that, while we have been discussing here — those that favor the minority report — the fact that there is a possibility that some items may be removed from the '46 base, I submit to you that there has been as much talk, if not more, on the matter of including other items that are not subject to the '46 base in this proposal, such as perhaps laundry, dry cleaning, services of doctors, lawyers and so on and so forth. I also think history indicates that when one tax is levied, it is pretty hard to get it off the books, that it is increased rather than decreased.

And I think, further, that the fact that the state legislature for the last 4 years, I believe, has contributed an amount of money over and above the 2 cents that goes to the school aid fund—as a matter of fact, last year I think a matter of around $40 million, I'm careless with my figures—it seems to me that any fear that the legislature will not recognize its responsibilities to schools has been pretty well dissipated, because it has been demonstrated over this period of time that the 1946 base has not been adequate to take care of the school needs as determined by the legislature itself.

Therefore, I see little chance myself that any substantial change will be made by the legislature, and I believe that any possible disadvantage, as little as it might be, certainly does not offset the possibility that the legislature shall have more flexibility and, I believe, an opportunity to overhaul our tax

system. So I speak, as a member of the committee on finance and taxation, against the Austin amendments and for the committee proposal. Thank you.

CHAIRMAN MARTIN: Mr. Austin.

MR. AUSTIN: Mr. Chairman, we are concerned about maintaining a minimum base, as Mr. Downs has pointed out and I think he pointed it out very well. Now, as to the calculated risk on possible increases to the base, I should remind the delegates that the legislature has added items to the base since 1946, but it has very scrupulously added these to the use tax base. Instead of adding them to the sales tax, where the money would be distributed in the manner prescribed by section 23 of the constitution, these additions have been added as use tax base items, with the result that this additional money has been going into the general fund.

CHAIRMAN MARTIN: Mr. Seyferth.

MR. SEYFERTH: Mr. Chairman, fellow delegates, much has been said on the subject, and I will hold my remarks to the minimum. First of all, I rise to speak against the Austin amendments and in favor of the committee proposal. It seems that it boils down to a very simple Q.E.D. that we are providing in the committee proposal a freedom of action for the legislature, in the years to come, to fit the requirements of the particular interested units of government under the sales tax at the moment into the then responsible fiscal management of our state government, and if we bind them in a constitutional provision, the obvious is certainly upon us. And I again reiterate the support of the committee proposal and speak against the Austin amendments.

CHAIRMAN MARTIN: Mr. Hanna.

MR. W. F. HANNA: Mr. Chairman, Mr. Austin has literally made the argument that I wanted to make against the adoption of the minority amendment. He mentioned that any change in the tax base has been made by the use of the use tax, and if you read this language, you are clearly flying in the face of the governor's proposed tax reform, any tax reform advocated by any civic organization that would remove food and drugs from the sales tax, because this says that you freeze the base as it existed in the statute of 1946. The item can neither be changed, added to nor detracted from. This is why the legislature has used the vehicle of the use tax to enlarge those items that are subject to the sales tax.

And if we are to have an income tax in addition to a sales tax, in all fairness to the people who are on limited incomes, who have a limited amount of resources saved and available to sell, then it certainly behooves us not to freeze into this tax structure the taxation of food and drugs, as would be done under the minority amendments.

CHAIRMAN MARTIN: Mr. Page.

MR. PAGE: Mr. Chairman, members of the committee, I rise in support of the Austin amendments, and I wouldn't attempt to duplicate the eloquent oratory that has taken place in the past hour or hour and a quarter. I think it is rather interesting, however, to look back and see what the popular support over the years has been for this language maintaining the 1946 base (not rate). The original sales tax diversion in which the language first appeared was adopted by a vote of 864,000 to 584,000. A year or two later the legislature decided that the people didn't know what they had adopted, so by joint resolution they proposed a repeal of the sales tax diversion which in 1948 drew 343,000 yes votes and 1,446,000 no votes. And then again in 1954 when the 2 cents was set up, the yes vote on the joint resolution proposal was 1,182,000 to 443,000. I think the voters of this state have demonstrated that they like the language that was in the 1946 sales tax diversion amendment and they have reiterated it and kept it over the years.

CHAIRMAN MARTIN: Dr. Anspach.

MR. ANSPACH: Mr. Chairman and members of the committee, reference has been made to the fact that the people of Michigan have voted on this matter and have expressed themselves rather forcibly. As a member of the committee on education, we had a large number of people in, and no one who appeared before the committee, as I recall, had anything to say about eliminating any reference to or eliminating this diversion of the tax or tampering with it in any way. The testimony was all in favor of retention.

Because all the arguments have been in favor and because I support the Austin amendments, I presume I could save some time as this man did. He had a copy of the Lord's Prayer put up on the wall, so at night all he had to do was point to it and say, "Lord, those are my sentiments," and get in bed. (laughter)

Now, when a person speaks, he generally adds up to the fact he is either going to say no or yes. That is about it. So I say yes.

But before I sit down, I want to read you some statements. This is a statement from the central Michigan school administrators' research association which is made up of representatives of school systems, Mt. Pleasant north to the straits.

> Earmarking of revenues for public education should be continued at not less than the present total levels of returns. The manner of distribution of such revenues to the schools should be on a membership basis defined by the legislature.

Second, a telegram, January 10—not today—from the Michigan association of school administrators, which is an association made up of all administrators and school superintendents in the state of Michigan:

> MASA council in convention at Grand Rapids this date unanimously approved this resolution. MASA is clearly and firmly in favor of the continuance of constitutionally earmarked funds for public school education. Further, MASA is unalterably opposed to any attempt to tamper with these dedicated funds.

Now I quote from a bulletin of the Michigan educational association:

> The board of directors adopted a resolution reaffirming their support for earmarked funds for education sufficient to the degree that the state educational programs will in no way be impaired beneath its present level and urge and encourage adequate earmarking of funds to improve greatly the existing program.

Someone may say that this merely supports the earmarking of funds; had nothing to do with the 1946 base. A while ago I called a person who was head of a professional organization, and he assured me it is essential that the 1946 base be retained.

CHAIRMAN MARTIN: Mr. Austin.

MR. AUSTIN: Mr. Chairman, I should probably quit while I am ahead, but there is one point that I should clear up. Mr. Hanna made the point that the 1946 base could not be reduced by the legislature. I think the point was made much earlier that the legislature does have the right to remove items from the base. That language in the constitution refers only to the distribution that is to be made, and does not refer to the tax base.

CHAIRMAN MARTIN: Mr. Staiger.

MR. STAIGER: I would just like to point out on this argument we have that the people have put this in, that I think it is a matter of reviewing all of the different issues and language in this amendment as adopted, and to say that the people were for one alone, or that they could single out one and be opposed to that before another, is just impossible. It was a package that was submitted to the people. This is the only chance and the first chance that any group has had to review each item independently and have an opportunity to take out those things that are not needed. Before, when the people voted on it, it was either yes or no. You are in favor of support for schools or you are against it is about what the amendment was as a package. Now we have a chance to clean up some of this language, keep the good points, remove the parts that we think are unduly restrictive on the legislature.

This is exactly what the committee has attempted to do, and I urge your support of the committee proposal and am against the Austin amendments.

CHAIRMAN MARTIN: Mr. Hutchinson.

MR. HUTCHINSON: Mr. Chairman, I was interested in what Mr. Austin just got through saying. As I understood him, he said that he understood that the 1946 base had to do only with the distribution of money that went to the support

of the schools and the local units of government, and it did not prohibit the legislature from reducing the base. Now, I would just like to know how in the world that would work. If, for instance, the legislature should take the sales tax off of food, then how are you going to measure the tax which goes to the schools? You see, if you take the tax off, how are you going to estimate how much money would come in when you don't have a tax on the item? I think the argument is really not very practical. I think that the situation is that actually the legislature is without power to remove anything out of that 1946 base, and I oppose the Austin amendments on that ground.

I think we are acting in a very shortsighted manner if we proceed to write this kind of statutory restrictive material into a constitution. If we are of a mind to expect the legislature to meet the fiscal problems of this state, we have to give the legislature flexibility, and you aren't going to give the legislature flexibility in this particular field if you say that whatever was taxed in 1946 has to be continued to be taxed no matter what happens. I still can't follow Mr. Austin when he says, "Well, the legislature could take something out of that base, because we can still take it out and then you would still make the distribution just as though the tax had not been removed"—because I don't see how in the world you can measuer a tax that isn't there.

CHAIRMAN MARTIN: Mr. Brake.

MR. BRAKE: I have been puzzled by a lot of this argument. I am accustomed to flexibility of lawyers' viewpoints, but not to this much flexibility in laymen's viewpoints. We have heard one person after another who has always advocated the taking of the sales tax off foods now scared to death for fear the schools are going to lose some money because the sales tax will be taken off from food. I can't reconcile the 2 viewpoints.

I wonder, Mr. Chairman, if we haven't said everything that can be said on these particular amendments. I am sure there are a dozen more in connection with this proposal. I wonder if we can't vote pretty soon.

CHAIRMAN MARTIN: Mr. Binkowski, I call on you next.

MR. BINKOWSKI: Mr. Chairman, I share Mr. Brake's viewpoint regarding this flexibility, and if those people are urging flexibility in the area of the legislature, I wonder why we don't just eliminate all earmarking, number one. But also I am wondering what these people are going to say when we come up for discussion on the prohibition of a graduated income tax. I wonder if in that area they will want to leave the hands of the legislature untied and provide for all of this flexibility.

CHAIRMAN MARTIN: Mr. Austin.

MR. AUSTIN: Mr. Chairman, in answer to Mr. Hutchinson, I would like to quote from the Michigan Tax Study Staff Papers, 1958, which I think most of the delegates are familiar with. I am reading from page 426:

> Article X, section 23, contains provisions requiring that a certain amount "of a state sales tax levy on each dollar of sales of tangible personal property on the 1946 statutory base (not rate)" shall be returned to local governmental units (½ cent) and school districts (2 cents). The meaning of the phrase "on the 1946 statutory base (not rate)" is most obscure. For instance, does it prevent the legislature from altering the 1946 base by exempting sales of food from the sales tax? In 1956 the attorney general tendered the opinion that an attempt to carve out such an exemption would be constitutional.

and it refers to opinion 2470, opinions of the Michigan attorney general.

CHAIRMAN MARTIN: Mr. Bonisteel.

MR. BONISTEEL: Mr. Chairman and fellow delegates, I shall be very brief. I am speaking in favor of the minority report. First of all, I wish to state that I support what Delegate Bentley had to say about the vote of 16 to 1. It is reminiscent of the Bryan days, but nevertheless, that was the vote that was taken in the education committee to retain the present language in the constitution. Secondly, the witnesses that appeared before our committee were, all of them, unanimous in the retention of the present language, so far as I know and as far as I can remember. The people have voted 3 times on this, and once a very definite vote to repeal, making a total of 4 times this matter has been voted upon, and on each occasion the language which we are now discussing was contained in the provisions voted upon.

If we are to do away with all earmarking, that is one thing. But if we are only going to do away with the earmarking here or with a provision which I believe is the sustaining base of the earmarking for schools and municipalities, then I think it would be highly discriminatory. I believe that the submission of this article without a base makes possible a withdrawal of base components without adequate substitution.

Then I agree also with the point of view that has been expressed here that we will be well advised to retain the language which is in this minority report if we are to follow the direction of the people, particularly when it comes to the adoption of whatever document we submit to them as a result of this convention. Again I wish to reiterate I support the minority report.

CHAIRMAN MARTIN: Mr. Doty.

MR. DEAN DOTY: Mr. Chairman, I was just sitting here thinking about an income tax in the state of Michigan, with a deductible millage formula to take care of the schools and another pattern to take care of the townships and local government, mixed with the sales tax diversion amendment and a few others, reminded of the votes of the people over the years and of one last fall calling for a state constitutional convention. Are we here to write a new document or to put back all the old language? I wonder where all these people are who have been hollering for tax reform. I hope they are with us. I endorse the committee report.

CHAIRMAN MARTIN: Mr. Iverson.

MR. IVERSON: Mr. Chairman, members of the committee, I would like to ask Mr. Austin 2 questions. Mr. Austin, would you say that the legislature under the present constitutional provision could repeal the sales tax law?

MR. AUSTIN: I believe the legislature could repeal the sales tax law, because the present constitution merely sets a maximum on the rate. The legislature could levy up to 4 per cent, but any amount under that, including zero.

MR. IVERSON: Then assuming that is so, if it seemed desirable for a tax renovation or whatever you want to call it, wouldn't your amendment in effect amount to a constitutional appropriation if the legislature repealed the sales tax law and decided to go on with something else?

MR. AUSTIN: I think that is correct.

MR. IVERSON: All right. One more question: I believe you talked about the question of exempting food and drugs, and I assume that your amendments are sort of contingent upon some such proposal being introduced in the legislature, if not here. Are you familiar with an attorney general's opinion of about 1936 which held that they could not exempt food and drugs as such?

MR. AUSTIN: No, I am not familiar with such an opinion.

MR. IVERSON: Well, there is such an opinion, and it held that if the legislature wanted to exempt specified items of food and drugs, they could do so, but so long as you have a uniform method of taxation provided in the constitution, it is utterly impossible to exempt food and drugs as such.

MR. AUSTIN: Mr. Chairman, Mr. Iverson, my understanding is that the legislature can remove any items from the base, as the law is now set up on the books. It is possible for the legislature to exempt materials used in industrial processing and in agricultural processing. It does not exempt purchases made by manufacturers or by farmers that are used by these processors in other operations. Now, there is no reason why at some later date, in order to improve the industrial climate of Michigan, that we might decide that all sales to industrial manufacturers might be exempt, just as we are concerned about possibly exempting personal property used by industrial manufacturers. If any of these items are removed from the base, they will tend to reduce the amount distributed to schools and to local units of government.

MR. IVERSON: Well, may I conclude then, Mr. Chairman, by saying that apparently Mr. Austin is not familiar with

what I believe is the last opinion on this matter from the attorney general, and in view of the fact that the amendments submitted by the minority would in effect constitute a constitutional appropriation if the legislature decided to rearrange our tax structure, then I feel that we should oppose these amendments and support the committee report.

MR. AUSTIN: Mr. Chairman, in answer to Mr. Iverson, I don't think there is any question that the people intended that this should be a minimum appropriation for the support of schools and for the support of local units of government. I think that all that was intended, and that the issue before us now is whether we shall maintain this minimum base of state support, and I believe that is what the people intended, and I think we ought to vote for these amendments.

CHAIRMAN MARTIN: Mr. Upton.

MR. UPTON: Mr. Chairman, I would like to rise in opposition to the Austin amendments. I feel that the people are looking for financial reform. They voted last year for a 1 cent increase in sales tax. They didn't ask for this to be earmarked. People are not looking for additional funds to be earmarked.

The legislature in the last 5 years has given to the schools a greater sum than was, say, due them—if you wish to use this word—by constitutional amendment. The legislature is taking on its responsibility in the supporting of schools. In my opinion we don't need any earmarking.

But believe me, they should have the right to select a broad based tax that they may wish to impose, let's say, on us, and part of the sales tax may not be part of their picture 10 years from now or even next year, and if we insist upon putting in such things as we are calling for in this minority report, the legislature's hands are going to be tied in determining what taxes are going to support our government, both state and local, and the schools in the long run for your children and mine will suffer, and suffer to the end, because the legislature has not taken on the responsibility to give them the tax reform that they should have. I would strongly oppose the minority amendment.

CHAIRMAN MARTIN: Mr. Ford.

MR. FORD: Mr. Chairman, there has been a red herring, I think, dragged across our path here. Several people have made mention of the fact that in the 4 or 5 years just past the legislature has in fact appropriated more money than the minimum prescribed by the earmarking clause. I would like to ask these people 2 questions: number one, would the legislature have appropriated the amount of money that it appropriated if the appropriation was starting from zero and going to the figure they reached rather than starting from the base and going to the figure they reached? Secondly, have you ever heard anybody in the field of education in this state indicate that the legislature has in fact appropriated enough money for what they consider the basic necessary needs of the education system of this state in the last 4 years or at any time in the last 20 years?

CHAIRMAN MARTIN: The question is on the minority amendments. All those in favor will say aye. All those opposed will say no.

A DELEGATE: Division.

CHAIRMAN MARTIN: Division is asked for. Is the demand supported? A sufficient number up. All those in favor of the minority amendments will vote aye on the board. Those opposed will vote no.

SECRETARY CHASE: Has everyone voted? The machine is locked and the totals will be recorded. On the adoption of the amendments proposed by Messrs. Austin, Binkowski, Ostrow, Pellow, Stopczynski, Walker and Young, the yeas are 59; the nays are 67.

CHAIRMAN MARTIN: The amendments are not adopted.

SECRETARY CHASE: Mr. Bentley now offers the following amendments:

1. Amend page 2, line 3, after "property" by inserting "on the 1946 statutory base (not rate)".

2. Amend page 2, line 4, after "shall be" by inserting "deposited in a special school aid fund and be".

3. Amend page 2, line 7, after "law.", by inserting "Said school aid fund shall be separate and distinct from the state general fund."; so that the paragraph at the top of page 2 beginning in line 1 will read:

There shall be set aside for the school districts 2 cents of a state sales tax levy on each dollar of sales of tangible personal property on the 1946 statutory base (not rate) to be allocated among said school districts by law. Such taxes so collected shall be deposited in a special school aid fund and be expendable only by legislative appropriations for aid to the school districts and school employees' retirement purposes, as shall be provided by law. Said school aid fund shall be separate and distinct from the state general fund.

CHAIRMAN MARTIN: Mr. Bentley.

MR. BENTLEY: Mr. Chairman, I ask unanimous consent to withdraw that portion of the amendment which the secretary has just read and which has already been covered by the Austin amendments on which the committee has spoken its will. In other words, if the unanimous consent request is approved, the amendment would merely refer to the school aid fund and not to the 1946 statutory base.

SECRETARY CHASE: Mr. Bentley in effect has offered 3 amendments. He is withdrawing the first one. So his amendments now are as follows:

2. Amend page 2, line 4, after "shall be" by inserting "deposited in a special school aid fund and be".

3. Amend page 2, line 7, after "law.", by inserting "Said school aid fund shall be separate and distinct from the state general fund.".

CHAIRMAN MARTIN: The question is on the Bentley amendments. Mr. Bentley, do you wish to comment further?

MR. BENTLEY: Mr. Chairman, I already explained at the afternoon session that this reflects the vote of 16 out of 17 members of the education committee that voted on this subject. The vote was 16 to 1. And, as I said also this afternoon, the education committee earlier in its recommendations for the exclusion of certain sections made reference to a special school aid fund which the committee is very strong in believing should be retained in the constitution.

CHAIRMAN MARTIN: Mr. Brake.

MR. BRAKE: Mr. Chairman, ladies and gentlemen of the committee, I think we might just as well get right down to brass tacks on this proposition. You will recall that some time ago we did bring before you and tried to get you to accept a plan for the management of state funds that would bring some system, much better practice into the handling of those funds. You didn't see fit to go along at that time. I told you Friday that there was a change in the sales tax leading in that direction. What we are trying to do is to put the school money on the same basis as the road money so far as handling is concerned in the state treasury. It takes out the words that this shall be a special fund.

You will recall that the legislature has enacted a statute which authorizes the fiscal officers to commingle the funds to the extent of meeting emergencies—not for the permanent use of the funds for any other than their specified purpose, but to manage them. That has not been possible with the school fund because of this restriction in the constitution. In other words, the treasurer has been allowed to take road money to pay the schools on time. He has not been allowed, in case of emergency for a few days, to take school money to pay the roads on time. It has been a one way street. That is the purpose for this change.

It is not a matter of using school moneys permanently for any other purpose or road money for any other purpose permanently, but a matter of management of the funds as we go along. The need is not so great, probably, after the short term borrowing provision that you have approved, but there still is need for it, still need for some management of the funds as they would be managed by a business corporation or any other business institution, and we are, as a committee, opposed to the Bentley amendments.

CHAIRMAN MARTIN: The question is on the Bentley amendments. Mr. Richards.

MR. L. W. RICHARDS: I would like to rise in support of the Bentley amendments. I had supported the minority report,

hoping we would have that base rate, and it would disturb me a lot if we lost the separation of funds. Certainly I feel the money for education should be kept in a separate fund. It is a need. And I realize that one of the most important factors in our state is the education of our children, and if we are going to disturb this fund to a point where we will not separate the moneys, I think reaction of the people of the state of Michigan will be such, it will be very important to us tonight to consider to make sure we have this fund separated.

CHAIRMAN MARTIN: Mr. Hutchinson.

MR. HUTCHINSON: Mr. Chairman, the constitutional creation of a fund called "school aid fund" was introduced first into the picture in 1954 by the so called Conlin amendment. Prior to the Conlin amendment, there was no special fund set up in the constitution which set aside school moneys. Back before the Conlin amendment, the sales tax money was distributed to schools not on a current basis but upon the basis of the receipts earned in the last completed fiscal year. Back in the days before the Conlin amendment, then, the schools knew, even before the legislative bill was introduced, how many dollars there were to be distributed in a particular year through the school aid formula. They knew that because they already knew—it was a matter of public record—as to the amount of money which the sales tax had produced in the last completed fiscal year. In that system prior to the Conlin amendment, then, at least there was a factor of knowledge and certainty, and school boards could govern themselves accordingly. The only risk they ran was that the legislature might, during a particular session, so radically change the school aid formula that what they had gotten the year before might be greatly changed because the legislature might change the formula.

The schools thought it desirable, and many of us did also,—I supported the Conlin amendment in the legislature— to put the schools on a current basis, and to do that, the Conlin amendment in 1954 was submitted to the people. They, among other things, not only put the matter on a current basis, but they also created the special school aid fund in the constitution. This arrangement has certainly not proved beneficial, really, either to the schools or to the state treasury. It has introduced a rigidity so far as the treasury is concerned, and on the other hand has made it absolutely impossible for the several school districts in the state to know how much money they are going to get at the time when the school boards have to decide upon their budgets.

Upon further reflection on my part, I think that there were a good many features in the Conlin amendment which proved to be a mistake, and one of the features in the Conlin amendment which I accepted very reluctantly at the time is one which I always thought was wrong in principle and I reiterate it again now. I think it wrong in principle to set up constitutional funds in the state treasury. The road money is not constitutionally set up in a fund. The highway fund is not a constitutionally created fund. I think it was a mistake to create a school aid fund in the constitution as a matter of principle, and for that reason, and because of the experience which I believe we have had under the Conlin amendment, I cannot support the amendments now before you, and hope that the committee will vote them down.

CHAIRMAN MARTIN: The question is on the Bentley amendments. All those in favor will signify by saying aye. All those opposed will say no.

A DELEGATE: Division.

CHAIRMAN MARTIN: Division is called for. Is the demand seconded? A sufficient number up. All those in favor will use the voting machine and will vote aye. Those opposing the Bentley amendments will vote no.

SECRETARY CHASE: Has everyone voted? The machine is locked and the totals will be recorded. On the 2 amendments offered by Mr. Bentley, the yeas are 46; the nays are 76.

CHAIRMAN MARTIN: The amendments are not adopted. The question is on the committee proposal. Are there any other amendments, Mr. Secretary?

SECRETARY CHASE: Messrs. Spitler and Anspach offer the following amendment:

1. Amend page 2, lines 1 and 4, after "districts" by inserting "and public school employees' retirement systems"; and amend page 2, line 6, after "districts and" by striking out "school employees' retirement purposes as shall be provided by law" and inserting "such public school employees' retirement systems as shall from time to time be in effect"; so the language will read:

> There shall be set aside for the school districts and public school employees' retirement systems 2 cents of a state sales tax levy on each dollar of sales of tangible personal property, to be allocated among said school districts and public school employees' retirement systems by law. Such taxes so collected shall be expendable only by legislative appropriations for aid to the school districts and such public school employees' retirement systems as shall from time to time be in effect.

CHAIRMAN MARTIN: Mr. Spitler.

MR. SPITLER: Mr. Chairman and delegates, it is not the purpose of this amendment to change the intent of the committee report. I spoke on this last Friday, and I would like to say just a word concerning it again. The intent of this is that it will make it possible for the payment to be made directly to the public school retirement systems and not to the separate school boards.

There have been during the past few years efforts made in the legislature to remove this requirement and to make payments directly to the various school districts. Now, we have nearly 2,000 of those school districts. If each of those 2,000 school districts had to make payments regarding the retirement system directly to the retirement fund board, it would cost considerably more than it does now and it would be very, very complicated. I am not so concerned about the large school districts that have the funds and have the equipment and have the personnel to take care of that, but I am concerned about the small rural school districts where the financing is not done as well as it is in the larger school districts.

It simply means that they would make 1 payment a year, or 6 payments as they are making now, directly to the public school retirement systems rather than paying it directly to the various school districts. It is not the purpose of this amendment to change the intent of the committtee proposal.

CHAIRMAN MARTIN: Mr. Brake.

MR. BRAKE: It seems to me, Mr. Chairman, ladies and gentlemen, that the spokesmen for the schools are very generous. We went over this matter very carefully, and we intentionally did not put in the retirement systems where you have inserted it by your amendment because we didn't wish to tell the legislature that they must appropriate the retirement money out of the schools' share of the sales tax.

As you know, we just Friday approved a proposal which will require the state to pay a great deal more into the retirement systems than they have been paying before, and now you are, it seems to me, practically telling the legislature to take that money out of the schools' share of the sales tax. We didn't do that. We didn't want to do that. But we still certainly provided the language under which they can pay directly into the retirement systems. Notice this:

> such taxes so collected shall be expendable only by legislative appropriations for aid to the school districts and school employees' retirement purposes as shall be provided by law.

We had no intention—and I think the language doesn't justify the idea—that we were going to have the school districts paying that money.

CHAIRMAN MARTIN: The question is on the Spitler amendment. Mr. Austin.

MR. AUSTIN: I would like to ask Chairman Brake one question, Mr. Chairman. We have, as of last Friday, provided for compulsory funding on a current basis of retirement moneys for all retirement systems—all public retirement systems—including the school retirement. The question that I want to ask is whether this provision will require the legislature to fund these retirement benefits for school employees, realizing that the legislature cannot be mandamused or forced in any way to provide moneys. I just want to make sure that the record

shows exactly what the committee had in mind in regard to school retirement.

MR. BRAKE: Mr. Austin, that is going back to what we decided last Friday and not the proposal we have before us. It certainly is our intention, and very clearly expressed, I am sure, that the legislature must fund each year each of those retirement systems.

CHAIRMAN MARTIN: Mr. Spitler.

MR. SPITLER: Well, it is the intent of the amendment that whatever money is appropriated by the legislature to the retirement school systems shall be paid directly to the retirement school systems and not to the school districts. That is the intent of the amendment.

CHAIRMAN MARTIN: The question is on the Spitler amendment. All those in favor will signify by saying aye. All those opposed will say no.

A DELEGATE: Division.

CHAIRMAN MARTIN: Division has been called for. Is the demand seconded? Those in favor will rise. I believe there is a sufficient number up. All those in favor of the Spitler amendment will vote aye on the voting machine. Those opposed will vote no.

SECRETARY CHASE: Has everyone voted? The machine is locked and the totals will be recorded. On the adoption of the amendment offered by Mr. Spitler and Mr. Anspach, the yeas are 50; the nays are 70.

CHAIRMAN MARTIN: The amendment is not adopted. Are there any other amendments to the body of the proposal?

SECRETARY CHASE: Pursuant to their minority report, Messrs. Upton, Davis and Seyferth offer the following amendment:

1. Amend page 1, line 6, after "Sec. a.", by striking out the balance of the proposal and inserting:

"In each of the 5 fiscal years following the adoption of the constitution, the legislature shall appropriate ½ cent of a state sales tax to the cities, villages and townships on the basis provided in the Constitution of 1908. State support for cities, villages and townships may be continued thereafter.

The legislature shall appropriate annually to the school districts of this state, to supplement funds raised locally, sufficient funds to assure adequate opportunity for primary and secondary education in every school district.".

CHAIRMAN MARTIN: Mr. Upton.

MR. UPTON: Mr. Chairman, in speaking for the minority on the tax and finance committee, I first would like to state that this amendment is a complete substitute for Committee Proposal 39 and not to be added at the end of the proposal.

[The supporting reasons were read by Mr. Upton. For text, see above, page 787.]

Mr. Chairman, I would like to yield to Mr. Davis.

CHAIRMAN MARTIN: Mr. Davis.

MR. DAVIS: Mr. Chairman, members of the committee, as a member of the committee on finance and taxation, as Mr. Upton has just stated, there was some substantial division upon this matter which is before us, and I would like to consider this question tonight in perhaps a little different light than what it has previously been considered. I think we all recognize that Michigan as such is engaged in big business. We are now handling over a billion dollars a year, and I thought that it might be perhaps appropriate to consider this matter somewhat from a business standpoint as long as it pertains to the handling of money.

In the first place—and it has been stated here previously—better than half of the revenues of the state of Michigan are controlled within our constitution or statutory earmarking. I might say that if I owned stock in any business in which the stockholders by their bylaws or the constitution controlled better than half of the money and decided how it was to be funded, I wouldn't be able to get to a telephone quick enough to sell that stock. I believe this because I think that the management of money is important to efficient and economical handling, and to do this there needs to be flexibility and delegation of authority.

Now, many times during this convention and on numerous occasions I have noted that this convention has looked back into history, so to speak. I think that this was particularly manifest in the discussion which took place relative to the bill of rights and where, with great, meticulous care, we examined the wording in the bill of rights, examined supreme court decisions, and I felt that that was a very high level of debate and I felt that the matter was handled in a very appropriate manner.

However, in the field of business there is perhaps a little different technique used, in which you stress your major emphasis upon the future. In other words, you glance over your shoulder at the past, you take a couple of looks at the present, and with the same meticulous care you examine those things which you believe are assumptions or probabilities as to what will happen in the future. Now, I believe that this is recognized both by large business, small business, and even organizations as a valid method of determining the future. Therefore, I am not afraid to make some decisions based upon assumptions, because I think we all recognize that, as you view the future, you cannot base decisions solely upon facts because you don't have all the facts.

Therefore, at this time I would like to make a few assumptions which I believe will probably occur in this state, and I will say that assumptions are something which you can neither prove nor disprove, but which you believe are probably those things which will occur. One, I believe that there will be a major tax structure revision in Michigan; two, Michigan will levy a flat rate income tax; and three, there will be a broader tax base at the local level besides property for the support of local government and education, or else local government and education at the local level will share in state funds based upon an equitable formula, either one or the other or both, and probably both.

The major portion which is covered under the sales tax diversion amendment is that money which goes to education to the amount of 2 cents. I think that the future needs of education in the state of Michigan can be more adequately met by tax structure revision than they can be by the sales tax diversion amendment.

I will list another assumption: namely, that education at the primary and secondary level in this state will not be satisfied, nor will it be sufficient to supply the needs of education in this state in the future. We have heard it mentioned here before—and I will not dwell on it—that during the last 4 years there has been appropriated by the legislature an amount over and above all of the earmarked funds for education, and I want to point out one year specifically—the year of 1959, when we had what some consider the worst financial crisis in Michigan's history—that the state of Michigan appropriated and paid out to schools more than what these funds amounted to.

Now, I think that it seems to be apparent here that a person has to represent his views somewhat on the basis of what you like or what you don't like. I can't see how this is particularly pertinent, but I might say that I have served in this county upon local boards of education and upon the county board of education, and there have been numerous occasions when I have put my pocketbook where my mouth was in the support of education, and that is one way of determining what an individual really thinks. Also, in the election which took place last fall, the individual who was opposing me made the statement in public that if it hadn't been for my efforts on the county board of education at a critical time, we would not have had a special education program within this county. Now, I'm not going to comment upon his statement, but I will say this: that on my own time I investigated special education because I didn't know much about it. I visited schools. I went out of the county and I came back. And over the protest of some of the property owners in this county, I voted for and supported that measure. Now, in my judgment, in that I did something to support education. And I can come over here to my desk tonight and flip this switch and say, "I am supporting earmarked funds in the constitution for education; I am a good friend to it, in my judgment." It amounts to just about the flip of the switch.

I am going to say just another word on this because it was motivated by a comment which was made previously. I think that education is a good business investment. I realize that there are other points, but I cannot see it as otherwise. I was intrigued by the term "creative industry" which Delegate Norris used some time ago, and if he was thinking what I was thinking, then I like what he was thinking, (laughter) because in my judgment, in the future of the state—and we are already in a space age—there is a wonderful opportunity to develop new industry in the state of Michigan, in which education certainly will play a very important part, and I think we have some concrete evidence of this in some of the new industries which are locating on the east and west coasts, and they are located around the Massachusetts Institute of Technology and Harvard and around the University of Southern California, and I think that the reason that they are there is because of the excellence of their educational institutions, and I submit that the future of Michigan and its business climate will be somewhat determined upon the cooperation between education and industry, and I think that they can supplement each other.

And so, in general, I will take this attitude as far as education is concerned: I prefer that education face the future based upon faith and confidence, rather than preferring a position of dubious security based upon obsolescence.

Now, as far as local government is concerned and this ½ cent of sales tax, you will notice that there is a provision in this minority report which provides for local government on the same basis for the next 5 years. I might mention that Dr. Pollock raised this question, and I felt appropriately so, when he suggested if there was anything in our thinking as to whether we might do the same thing for education. And let me say that, as a member of the group which submitted this proposal, I would have no objections to putting in a minimum base for education to be taken off some time in the future. Frankly, I didn't give much consideration to it because I felt that if in the last 4 or 5 years it had not been adequate, I didn't see how it would be in the future, and I couldn't quite see the use of so much security.

In connection with my own profession, I might say that we are not quite accustomed to so much security. I never planted a crop in my life that I knew what I was going to get for it when I planted it; how much I was going to get for it, what the quality would be, whether there would be drought or flood or hail, and I have had all of them. And if I wanted to look at all of the things that might happen, I never would even buy a bag of seed to plant, let alone ever go ahead and plant it.

Now, I think that in some respects the economy of this state and the government itself have been somewhat dormant. I think that most of us recognize that where there is a progress, there must, of necessity, be change, but we likewise recognize that progress is not always steady or continuous; it comes in surges, and we have noted this many times in the history of this country.

And I will now make another assumption: I believe that there is, rising up from the grass roots of the people of the state of Michigan, a willingness and a desire to have some kind of tax reform in this state which will grant some relief to property owners, some relief to business, and can help to stimulate the general economy. This is an assumption which I can't prove, but I think that there are some straws in the wind which indicate that this is the general direction.

I would like to mention about the point of tax legislation because it has been voted into the constitution. In my judgment, I do not believe that tax legislation which is voted into the constitution is particularly good or sacred just because it has been placed there. I think that the reason these amendments were placed in our constitution is because the people wanted to support education to a higher degree than what it was. They wished to support local government more, and in some instances they were wanting to take some of the pressure off of property taxes, and I think that the reason it is found here is because some people in state government either lacked the courage or the understanding to initiate changes when changes were needed.

And I might say as a delegate I would feel a little ill at ease in pointing fingers at anyone in state government, past or present, who is unwilling to accept some changes based upon valid assumptions and facts. I would be a little reluctant to do that unless I were willing to do it myself. And I might say that in the committee on finance and taxation—and I presented somewhat the same view—one of my good friends upon the committee said, "Well, your argument makes sense, but don't you know that in government you can't do things this way? You have to figure up what everybody likes and what all the organizations think and so forth." I would like to say that I have never run for an elective position in government before, but I couldn't see how I could add to the tax structure and come up with a sound, reasonable conclusion if I had to base it upon politics, apportionment, present content of the legislature; how many people have voted for it in the past, how many people voted against it, how many organizations are for it now and how many are against it, and how many there are in each one; and, by far the greater in my judgment, the people in the state who may not particularly be members of any representative group. Now, this idea of trying to incorporate all of this into the tax structure of this state really distressed me, and the fact is that to try it would make me mad. Probably if I were a progressive thinker, I could add all of these things in, but I couldn't get my thinking apparatus to incorporate so much territory, so I decided to go ahead and do it as I have been accustomed to doing it.

For that reason, then, I would like to say that I recognize that this is somewhat, perhaps, a voice in the wilderness, and I am not unaware of the fact that the voice in the wilderness lost his head, but I will say that as far as I am concerned, the conclusions which I have reached have not been reached on the basis of like or dislike, nor from a position of fear, nor from a position of seeking favor, but from what I have added up to be the facts as I have been able to determine them after considerable study in our committee, and assumptions as to what I believe are valid, and that is where they came out.

And I would like to summarize with 4 brief points as to why I think our constitution can be improved by the adoption of this minority report. Before doing this, I would just like to make this one comment: that I recognize that perhaps there is a matter of consistency, and I personally don't see much use in being consistent just for the sake of being consistent, and I submit that sometimes it is better to be inconsistent. For example, I think it is better to be inconsistently bad than consistently bad (laughter) and if anyone should draw a parallel to this situation, why, so be it. (laughter) I think that the constitution would be better with the provisions of this minority report in it for 4 principal reasons; one, the tax structure of a state should be flexible to meet changing conditions; 2, the major part of the sales tax diversion amendment is not functional and probably won't be in the future; 3, removal will stimulate encouragement to tax structure revision in this state; and 4,—and possibly the most important, at least in my opinion—elimination will evidence faith and confidence in the state of Michigan. (applause)

CHAIRMAN MARTIN: Mr. Bentley.

MR. BENTLEY: Mr. Chairman, following the eloquent remarks of the 2 preceding speakers, it would be a brave man who would attempt to make a speech, and it is not my intention to do so. I have one question to be directed to either one of the 2 previous speakers, 2 of the signers of this minority report. If I understand the intent of this minority proposal, its adoption would mean the following: the indefinite retention of earmarking on highways; the elimination, after 5 years, of the earmarking for the local government units; and the immediate elimination of earmarking for our schools. Is that correct?

CHAIRMAN MARTIN: Mr. Upton.

MR. UPTON: That would be the intent, yes, sir.

MR. BENTLEY: Thank you.

CHAIRMAN MARTIN: Mr. Seyferth.

MR. SEYFERTH: Mr. Chairman, delegates, any remarks after that speech of Delegate Davis would be an anti climax to the subject at hand. You missed your calling, Charlie. (laughter) To qualify my remarks, I direct this statement to

Dr. Hannah. I did, Dr. Hannah, vote in favor of Mrs. Cushman's amendment. The basic purpose for this presentation on the minority report on the subject at hand has to do, in a sense, with the same interest that Mrs. Cushman presented, in that this is an important enough subject for the people of the state of Michigan to debate freely on this floor as a forum. Whether or not we agree with the principle of elimination of earmarking is our personal conviction, but there are enough people in the state of Michigan who do firmly believe that earmarking as such should be eliminated, and it certainly should be the prerogative of this convention, then, to provide for those people and for the opposing side an intelligent debate on the subject. We had such within our own committee, and we had some interesting splits when we separated the individual earmarking funds.

As individuals signing the minority report, we take this position also: that to view earmarking or all of the bad points of earmarking or the good points of earmarking currently is not placing ourselves in the proper perspective for future evaluation of our fiscal overall responsibilities. That has become a trite phrase on this floor, fiscal responsibilities, but certainly it is our obligation to look forward in the years to come to determine whether or not our action now is properly serving the future when it comes to the state of Michigan and its fiscal responsibilites.

The meaning of this minority report is just as Delegate Bentley indicated. We were outnumbered, outmaneuvered on the highway tax. As an individual I am in favor of the elimination of all of the earmarking of funds and giving to the legislature the full responsibility to determine where the budgeted income should go to meet the budgeted outgo. That is why we elect legislatures, and if we are not satisfied with the handling of the fiscal situation of the state of Michigan now or in the future, then, of course, it is our prerogative to change those faces on the floor. I speak very definitely, Mr. Chairman and delegates, in support of the minority position.

CHAIRMAN MARTIN: Mr. Brake.

MR. BRAKE: Mr. Chairman, ladies and gentlemen of the committee, you have noticed, of course, that the amendments proposed, except for the one, came from members of the finance and taxation committee. I want you all to know, however, that in every instance those who have suggested these changes suggested them in committee; let the whole committee understand exactly where they stood. There has been no surprise. I don't know what Mr. Seyferth meant just now when he said they were outmaneuvered on the road taxes. But the committee has been well organized. We knew what was coming. It is a matter of an honest difference of opinion as to what the policy ought to be. The argument on both sides has been very complete.

You have been told that the people ordered this, not the legislature; that they reaffirmed their position as recently as November, 1960. You have been told that it isn't costing much money, and that most of the members of the committee—not quite all, but most of the members of the committee—believe very firmly that if we were to take all earmarking out, we would be wasting the $3½ million [which includes the cost of 2 special elections] that this constitution is going to cost. We are not prepared as a committee to go in that direction. I trust that the finding of the majority of the committee will be the finding of the committee of the whole.

CHAIRMAN MARTIN: Mr. Yeager.

MR. YEAGER: Mr. Chairman and ladies and gentlemen of the committee, I rise to support the position of flexibility and sound fiscal management as far as the state of Michigan is concerned. Flexibility is sort of like the weather: everybody seems to talk about it but very few people are willing to do anything about it.

Now, the first part of the minority report substitute relates to local government. We had a presentation made before the convention by President Eisenhower. We have heard Dr. Pollock speak on this subject, and many other people in the convention have mentioned the fact that one of the problems we face in this country is that local governments are bypassing their state governments, and state governments themselves are going to the federal level to try to solve problems of finance and other matters. It seems to me that when we go to other units of government to solve financial problems, by the time the money gets back to the unit of use, there seems to be something lost in the translation. I submit that by allowing the local governments to begin to fend for themselves at the end of 5 years, giving them sufficient authority to do so is not an unreasonable approach.

The second part of this relates to the earmarking for schools. There has been a lot of talk of the minimum base which everybody admits is woefully inadequate. I think that school financing will be hurt in the long run by maintaining this base with the so called benchmark. I think that we will begin to think in terms of an increase of X dollars above the benchmark rather than the total need of schools. I therefore urge your support of the minority report substitute.

CHAIRMAN MARTIN: Mr. Faxon.

MR. FAXON: Speaking in opposition to the minority report, I have heard several speakers refer to the fact that this base is hurting the schools. Now, as an educator, and having heard many of the people in education come before the committee on education, this is the first time I have ever heard any reference made to the fact that this minimum basis of support is hurting schools. It is actually meant as a support for the schools. It is not hurting education or not hurting educators, and there is no one in the field of education that would affirm that.

I, furthermore, am a little bit troubled by the attitude that we are not to look back at all in terms of the previous decisions of the people regarding the history of our country and our state respecting the whole field of education. I would have hoped that some of the remarks that have been made with regard to attacking school funds could have been made on the idea of earmarking when we were dealing with highways, when some of these voices weren't raised at all. When it comes to education, everybody seems to have a field day. We are dealing here not only with the section under earmarking but, as I understand it, this proposal refers also to the primary school interest fund, and this is something that I haven't yet heard anyone reach, at least in terms of its historical development.

But we are dealing with a fund which has as its basis the Ordinance of 1787, its subsequent development in our state. It has been a base of support in the Constitutions of 1835, 1850 and 1907. Now, all of a sudden, in a few short minutes we are asked to turn our back upon a whole history of development of support for public education in this state, and we are asked to turn our back to the votes of the people in 1946, in 1954 and in 1960 with regard to school support.

I don't think we are in a position to refute our tradition and our heritage with regard to school support and our responsibilities to maintain that support.

CHAIRMAN MARTIN: Mr. Sterrett.

MR. STERRETT: Mr. Chairman, members of the committee, I rise in support of the minority report. I am sure that you are all aware that in order for a builder to build a building, he must have adequate blueprints. In my opinion, the committee proposal provides the blueprints for the basement. The minority report would be the blueprint for a very fine building, and that would be the state of Michigan, a very fine, sound, economic state.

I am sure parents will think we are against their children having an education. Well, this is not true, because as soon as these people across the street here ever go below the appropriations, our good jury up here on the left [the press] will never let them forget it.

It has been said that the legislature has appropriated more than the earmarking. As Delegate Hutchinson said, we should give our legislators more flexibility. Also, he said the school aid fund provided in the committee report as well as the first minority report sets up an undesirable rigidity.

For instance, the sales tax diversion: Mr. Austin feels that the legislature can repeal the sales tax. Where do these words leave us with the committee report if the sales tax is repealed? What if we should go into an income tax?

We should be prompted here to write a modern constitution that is workable without any stone walls in the way of the state; and the state should be able to operate in any manner of taxation that is set out to the people. Therefore, I support this minority report because I feel it is sound and sensible.

CHAIRMAN MARTIN: Mr. Prettie.

MR. PRETTIE: Mr. Chairman and fellow delegates, I came to this convention dedicated to the proposition that it was my responsibility to present here the views of the constituents who so honored me. Very shortly after my election as a delegate here, the superintendents of schools in my own community and in the adjacent community called for an appointment, and asked for the opportunity to voice their views to me. I was prepared then to hear an argument strongly in favor of the continuance of earmarking, particularly as it related to the sales tax diversion in favor of our schools. I had a conference lasting about an hour and a half with these 2 gentlemen, and learned they were speaking not only on behalf of themselves and the systems that they represented, but on behalf of the southeastern Michigan school representatives, and by that I do not mean to include Wayne county. To my utter astonishment, they said, in substance, that they were not particularly concerned that earmarking should be continued in our constitution because, as has been pointed out here in this debate, additional funds have been required and have been granted over the several years immediately past.

I asked them to place in writing to me their recommendations in this and other regards. I have in my hand a letter dated November 30, 1961, to which is attached a copy of a resolution adopted by the southeastern Michigan association of school administrators, covering the areas of Monroe, Lenawee, Hillsdale and Washtenaw counties. This report deals with many subjects other than that with which we are presently concerned. I will not deal with those at this time. Their tenth recommendation is this:

> We would agree to the elimination of earmarking of funds if all earmarking of funds is eliminated. However, if there is any earmarking of funds, school funds should also be earmarked, or constitutional guarantees insofar as school funds are concerned should be given.

The clear line of demarcation between the principle of earmarking as to highway funds, the sources of which come from those who use the highways, has been clearly pointed out in our debate here this afternoon. I think the proposal of the minority is within the recommendation of the school administrators for whom I speak here, and I support the report of the minority.

CHAIRMAN MARTIN: Mr. Hanna.

MR. W. F. HANNA: Mr. Chairman, in reply to the remarks by Mr. Faxon, as a parent of 5 children and interested in education, and knowing that Mr. Faxon is a member of the education committee, I question whether or not the earmarking under the sales tax amendment is necessary under the proposal adopted by this committee with regard to Committee Proposal 30, which says that the legislature shall maintain and support a system of free public elementary and secondary education. The minority report submitted by Messrs. Davis, Seyferth and Upton repeats that language.

To talk about retaining the sales tax diversion amendment of 2 cents for educational purposes is to laugh at and make a mockery of what this committee has adopted and what the education committee adopted under Committee Proposal 30. If you believe what we said in Committee Proposal 30, then you believe the last part of the minority report with regard to financing.

Certainly it is important that the legislature and the governor, whoever he may be, and of whatever political party, have the right to determine how the money will be raised for education and to determine how that money will be extracted from your pocket and mine resulting in doing the least damage to the total economic structure of Michigan.

Secondly, to those people who wish to earmark specific moneys for education, let me say that we have spent a great deal of time arguing about discrimination. Are we to discriminate in favor of those people who can go to public schools at the expense of those unfortunate children that are confined to mental hospitals, those people that are in sanatoriums, the aged? Are school children—are my children any better than the crippled or injured adults or children? We have talked a lot about discrimination, and now the education people wish to discriminate in the spending of public funds to the total lack of consideration of all the needs of Michigan.

I believe that the minority report assures education a fair share of Michigan's economic wealth, and coupled with Committee Proposal 30, insures for my children and any other children in this state a good, fair, well supported, public, free elementary and secondary education. I support the minority report.

CHAIRMAN MARTIN: Miss Hart.

MISS HART: Mr. Chairman, I am sure that if we could persuade the majority members of this convention to adopt Dr. John Hannah's proposal for apportionment of the house, and Dr. Pollock's first proposal for apportionment of the senate, we would then have complete confidence that we would have fiscal reform in the state of Michigan, and that the welfare of the children we are worrying about now would be properly taken care of, and I am sure then that the minority would be perfectly willing to remove all requests for earmarking of funds for schools come 1970 when Dr. Pollock's proposal would then take further effect.

CHAIRMAN MARTIN: Miss Donnelly.

MISS DONNELLY: I rise to support the minority report, for the simple reason that I feel the majority report has so weakened and infringed upon the basic attitude that was originally written into this amendment, there is very little left except its appearance. The minority report squarely gives it to the legislature to take care of the issue, and I think with the other basic proposals that this committee has given to this convention, we will have a better overall fiscal policy, and therefore I urge support of the minority report.

CHAIRMAN MARTIN: Mr. Tubbs.

MR. TUBBS: Mr. Chairman, I am especially happy to be able to concur in the stand of 2 former members of the judiciary committee. I think it is the first time we have all agreed on anything. (laughter) I want to support what has been said by Mr. Prettie and by Miss Donnelly, but for a different reason. I speak as an educator, I think—I hope I do. I spent 3 years on the board of education of the county, and then 12 years on the board of education of Grand Rapids, the last 2 as president. And as president of a board of education of a second class city, I had veto power, which is more power than Mayor Paul Goebel had when he was mayor of the city of Grand Rapids. And I think I can say that I came here to vote my convictions. I did not come here to maintain and support a constitution which is outmoded. And I don't care if it was voted on yesterday by the people of Michigan; if it is wrong in principle, I am going to be against it, and earmarking funds is wrong in principle.

CHAIRMAN MARTIN: Mr. Allen.

MR. ALLEN: Mr. Chairman, I would like to speak on the first part of the minority proposal, because it is this portion that pertains to local units of government. I would like to take you back to 1946 and tell you a story. Governor Kelly was then governor of Michigan. The state had a great deal of money which it had accumulated during the war. At that time there were many cities which were under the 15 mill limitation. Not only was the school and the county under it, but many cities were also, and these cities felt distressed, and they came up to see the governor and they asked that they have appropriated to them certain funds. Well, Governor Kelly was not running for reelection, and he turned the cities down. It happened that there was a former mayor of Grand Rapids by the name of George Welch, and George Welch wanted this money, so Mr. Welch started an initiated amendment, and he started out with the cities, and he said, "We are going to earmark some funds from the sales tax." He wanted ½ cent. And after he had gone a little while, he decided he didn't have enough votes, so he thought he would join the townships, and he joined the townships. And then he thought he didn't have quite enough votes, so he really fixed it up and

he went and got the schools. So the combination of the schools, the cities and the townships all joined together.

Now, it happened that not all cities agreed to this, and I remember in 1946 there was a debate over the radio station in Grand Rapids. Mr. Welch was arguing in favor of it. The program was put on, I believe, by the junior chamber of commerce. There were 2 other speakers who came to that debate. One of them happened to be myself. I was the vice mayor then in Kalamazoo. And I spoke against it. There was a third person on the program. He also spoke against the Welch proposal. And that third person is now the chairman of your finance committee. (laughter) Now, I know a lot of water has gone over the dam, but I believe what I said then is still true; that if we took this money from the state and earmarked it for the cities and the villages, something bad would happen to the state. Well, it took about 12 years and it happened.

I think if the legislature would free the local units of government, and I think if the local units of government would be courageous enough not to always pass the buck to Lansing—and I am afraid that this was part of the trouble in 1946—then we could do better and we would solve our own problems. But I think it is bad to earmark in our constitution an inflexible sum for the support of local governments. I thought it was bad in 1946. I still think it is bad. I know the chairman of the finance committee thought so in 1946. I would hope he would think it was bad today.

CHAIRMAN MARTIN: Mr. Faxon.

MR. FAXON: I must respond to this because I, too, feel that we could have handled this. First of all, if all the people felt this way about throwing all this open to the legislature, then they should have done this with the highway fund. And I voted with Mrs. Cushman and her amendment at that time, but I certainly wouldn't feel right in saying it is all right to earmark our highway fund but when it comes to education, we'll trust the legislature—but not for the highways. Now, it has been automatically assumed that highways are a legitimate tax to earmark because they are a user tax. I might point out—and I am sure that the people who are on that committee are aware of the fact—that in some states highway funds are not earmarked specifically for highways but are also used for educational purposes, and I, for one, see no objection to that. So I don't want it to be understood that any type of a user tax is necessarily the best sort of thing for earmarking, because, by that token, we would earmark our cigarette taxes for TB sanatoriums, and our liquor taxes for alcoholics anonymous, and we could go down a whole list of user taxes if you want to earmark it on that basis. (laughter) But if you want to eliminate earmarking and trust your legislature, then don't just pick on the schools; pick on the rest of the full gamut of things and not just on education.

I want to refer specifically to Mr. Hanna. He referred back to me and said that the committee proposal which the education committee recommended and which was accepted by this convention—so far the committee of the whole—deals with support for the public schools, and that this also is an assurance, and it says in the language of the minority report here that the legislature shall appropriate annually to the school districts of this state, to supplement funds raised locally, sufficient funds to assure adequate opportunity for primary and secondary education. We have a lot of nice language: "maintain and support"; "adequate opportunity." This language sounds wonderful. But when it gets down to dollars and cents, that is where the differences begin to appear, and that is why the educators wanted a basis of support, a minimum basis of support, not in terms of very nice and flowery language but in terms of actual dollars and cents, and that is what the sales tax earmarking does.

Now, if we are going ahead and eliminating the earmarking on schools and trusting the legislature, I would say wonderful, if I could have full confidence that the legislature has in the past demonstrated its ability to meet the needs of the school districts and it would do so in the future. But history hasn't shown that. When it has had the opportunity in 1945, there was quarreling and whatnot. I have reference to the whole story of how this got into the constitution, but we have already heard this. Mr. Brake has given a very fine report on this. I don't have to repeat that there have been some differences of opinion between members of the legislature and local school districts as to what constitutes an adequate level of support.

Then the people took it to themselves to get this constitutional amendment put in. Now, I maintain that the people of this state are very much concerned with education and not with just the fine language that we put into the constitution about maintaining and supporting, but they are concerned with the dollar and cents level of support for education. We may trust the legislature or we may not trust the legislature. I think of a statement that Dr. Brownell made to this committee on education—I think it has been said before—that he trusts his relatives implicitly, yet he makes out a will. And I think this has reference to why we retain earmarking in the constitution for education. We trust the legislature to a certain extent, but we want this minimum level of support guaranteed, and I think that the schools in this state and the people who send their children to schools in this state are concerned with this guarantee, and the words alone are not enough. The dollars and cents allocation by the sales tax earmarking is the kind of guarantee that means something, because it actually puts the money back in the school district where it belongs.

CHAIRMAN MARTIN: Mr. Young.

MR. YOUNG: I have listened very attentively to all the eloquent arguments, and I hope that the previous speakers know what they are doing, but I would hate to see this convention go down in history as the body that built the big, fancy, divided lane, super highways, complete with cloverleafs and over and underpasses all the way to the little red schoolhouse, and then tore the building down. (laughter)

CHAIRMAN MARTIN: Mr. Upton.

MR. UPTON: Mr. Bentley asked a few minutes ago whether or not the minority report called for the end of earmarking of funds for schools. In my estimation, this report gives stronger support for schools than we now currently have in our earmarked clause. In reviewing the booket which we have all received from the citizens research council of Michigan, Constitutional Earmarking of State Revenues, we find that the states with the outstanding educational systems do not have earmarking for schools. The states who have earmarking for schools are states like Georgia, Louisiana, South Carolina, Texas, Utah, Wyoming and, above all, Michigan.

I believe we do have one of the finest systems of education anywhere in the country, but it is not because of earmarked funds; it is because you and I as citizens believe education is one of the prime purposes of living in this state, of educating our children, and our legislators, Delegate Faxon and other delegates, are not going to forget this and they are not going to ignore the needs for education, and they are going to keep education on the high plane we have. But I feel that budgeting by the constitution is not the thing that we as delegates should do.

CHAIRMAN MARTIN: Mr. Nord.

MR. NORD: Mr. Chairman, we have heard a great deal about the principle of no earmarking as though there is some principle that earmarking is good or earmarking is bad. What principle is there from which you deduce that earmarking is good or that earmarking is bad? Is this a matter of conscience? Is this a matter of basic principle? Is this a matter of morality? What kind of principle is at stake? I suggest to you that what is at stake here is not a matter of conscience, not a matter of basic principle. What is involved is a matter of expedience.

The question is not what is a moral solution; the question is: what will work? Now, what will work will be one thing under one set of circumstances and will be another thing under another set of circumstances. If you asked many of the delegates here, maybe all the delegates here, do they believe in earmarking as an abstract principle, I believe that most of them, maybe all, would say no, they do not. I do not. I don't think much of earmarking at all. I don't think much of earmarking —similarly I don't think much of the noise in this room.

Mr. Chairman, what we are dealing with is an important matter, but it is not a matter of principle or conscience. It is a matter of expedience. As I said, if we were inventing a new

state, I would not be in favor of earmarking, and I am not in favor of earmarking even now. If we accept earmarking, it must be because we feel that under the circumstances and in a particular case it is better to do it than not to do it. Now, as between highway earmarking and earmarking for schools, it seems to me there is a tremendous difference. I believe we would be ashamed to go back from this convention, look people in the eye and say, "We thought that highways were so important we had to guarantee that they would be built; that schools were not that important and that we did not have to guarantee that they would be built." If there is to be a question of priorities, it is absolutely clear in my mind if there is to be any earmarking whatever, it must be for schools.

Now, as I said, if I were starting a new state or if we were in a state which was just being organized, I would not favor any earmarking. It think it is ludicrous to spend money on highways, for example, when people in mental institutions are not being properly cared for. It is a terrible mismanagement of our affairs. I have no doubt about that. In the abstract or in a vacuum, earmarking is bad. It is bad because it is not good common sense. It is not good common sense to tie yourself up so that you must spend money for something you may not need and not be able to spend money for something you may need. Therefore, as I say, in the abstract, in a vacuum, earmarking is bad. But that is not the question. The question isn't whether it is bad in a vacuum. The question is this: is it bad in Michigan for schools at this time?

Now, in order to answer that question, as I said before, I don't know any principle from which you could deduce the answer. You have to look at the facts, look at the experience and find out whether it has been necessary to take this basically unsatisfactory position. We know that normally we would like the legislature to have power to handle this matter, just as if we were at home and we had money coming in, we would hate to be hobbled with rules that we must spend a certain amount of money for clothes when we really need food. We would think it silly. We don't like that principle. It is true we don't like earmarking. We like freedom for the legislature and freedom for every person to spend money as he needs. But does that mean that that principle, so to speak, should be followed to its ultimate limit no matter what the consequences?

And I ask you whether you have ever heard of a case where we take away from a person the power to handle the disposition of his money. Is there ever such a case with a sane person? The answer is yes, there is. It is quite a common situation. When people leave money to an improvident person, a person who is not in fact capable of handling his own affairs, they invent a spendthrift trust. He gets the benefit but he doesn't get the control. Now, similarly with the legislature. We have had experience with this question. Have they been willing and able to do everything that is needed for the schools? In my opinion, the answer is no. It doesn't really matter what my opinion is. This is the opinion of the majority of the people of the state, a great majority of the people of the state who have thought this matter over, over and over again. They are satisfied that if you leave this matter to the legislature that we have in Michigan, that it will not respond to the wishes of the people. We are not dealing with a vacuum; we are dealing with the Michigan legislature. They have not been responsive to the needs of the people on this matter. That is the verdict of the people. And I don't say that we should do it just because the people voted that way, but because that is all of our experience. We know that the legislature has not behaved properly.

The question has been raised in this body over and over again: do we trust the legislature? Half the time some of us do; half the time the same people do not. It all depends on whose ox is being gored. I don't think we can really say that we do or that we don't trust the legislature as an abstract matter. Do we trust the legislature to this extent, that we would allow them to have the power either to have or not to have a graduated income tax? Presumably the answer to that question will turn out to be no. Do we trust the legislature enough, for example, so that we would have been willing to come here as delegates with no guarantee of any pay? Would we be willing to say, "We don't need to worry; the legislature will provide for us"? Ask yourself that question. If you think the answer is yes, that you trust the legislature to handle money that way, then you are in a good position to say that no earmarking is necessary of any sort. I wouldn't answer that question the same way. I would say that whether or not you could trust the legislature depends on the particular problem at hand, and with the schools the answer has been no, you cannot trust the legislature. I realize that they have appropriated some money beyond the earmark level. I understand that. I am not satisfied that if you remove the entire earmarked funds that they will continue to do the same thing. You have to realize the amount of money that they would need to appropriate for schools if there were no earmarked funds would be a tremendous amount of money. It would be tremendous enough so that in my opinion you could be quite certain it would not be fully appropriated. They would have a 10 per cent across the board cut right from the start, probably, and schools would suffer.

Therefore, let us not get mixed up on abstract questions. Let's not say the legislature should have power on this matter. Let us just take a look at this particular problem. And in this particular case let us stick to the judgment of history on this matter, and on this matter we know the legislature is not an adequate safeguard of schools, and the only adequate safeguard is the one that people have insisted upon and do insist upon, and that is earmarked school funds.

CHAIRMAN MARTIN: Mr. Seyferth.

MR. SEYFERTH: Mr. Chairman, just one or two remarks regarding Mr. Faxon's concern over highway funds. I feel at this point that I am quite well versed in the use of highway funds, and I find that the highway funds are controlled by the legislature in this manner: the extent of the tax and the amount of the tax is controlled by the legislature. The only concern is that moneys that are collected through gas and weight taxes must be put into the highway purposes such as building roads, but the legislature does control the amount of moneys. I have heard this "Brownell will" story 2 or 3 times. I have a different slant on that. I think that Dr. Brownell is a smart man; he draws up a will to save taxes, not to bypass relations.

I think the basic assumption must be made—and it is more than an assumption; it has to be a truism—that the people of the state of Michigan are willing and able and ready to support a satisfactory educational system for their primary and secondary schools, and this sense of responsibility must be given to the legislature to fulfill.

The minority report is not a device to bypass the responsibility of the citizens of the state of Michigan to support an adequate and proud school system.

CHAIRMAN MARTIN: Mr. Higgs.

MR. HIGGS: Mr. Chairman, fellow delegates, at least 4 of the previous speakers have expressed some negative kind of thinking with regard to faith in our legislature. And I, as the father of 4 children, 2 in school and 2 of preschool age, would like to say this: I believe that we must at this convention take a positive, forward looking view of our legislature as presently constituted and as it may be constituted under any apportionment plan that we may adopt, and I would like to say to you that I have every bit of confidence that in the field of education, they will continue to do what they have done in the past, and that is support a fine educational system. Certainly I believe that among our sister states there are very few states that have done as well by their children as ours has done. I think that is all I would like to say.

CHAIRMAN MARTIN: Mr. Van Dusen.

MR. VAN DUSEN: I will be very brief, Mr. Chairman. I think when the sales tax diversion amendment was adopted in 1946, it was necessary. However, I think it has demonstrably served its purpose and has demonstrably outlived its usefulness. I applaud the eloquence and the courage of those who have offered this amendment and those who have supported it. I think it represents the difference between mere progress and

a new constitution of genuine distinction. I am proud to stand with them in support of this amendment.

CHAIRMAN MARTIN: Mr. Brake.

MR. BRAKE: Have you other speakers on the list?

CHAIRMAN MARTIN: I have no other speaker, Mr. Brake.

MR. BRAKE: I will delay the motion that the committee rise if they are ready to vote. Otherwise I will have to make it.

CHAIRMAN MARTIN: All right. The question is on the Davis-Seyferth-Upton minority amendment. All those—

MR. STEVENS: Mr. Chairman.

CHAIRMAN MARTIN: Mr. Stevens.

MR. STEVENS: Mr. Chairman, I believe I was on the list, wasn't I?

CHAIRMAN MARTIN: I didn't have you on the list, Mr. Stevens. I didn't see you. I'm sorry.

MR. STEVENS: I wanted to speak merely on the subject of earmarking of the primary school interest fund in the constitution. It has been stated that this was not a moral issue. In the case of the primary school interest fund, I feel that it is a moral issue. I am not talking about earmarking sales taxes.

But since some of you were not required to take a course in the history of education, I would like to go quickly back to the history of the primary school interest fund in Michigan. Most of you know it came from the land, the sixteenth section of each township, which the federal government gave the state of Michigan. The land was to be sold, the money to go into the primary school interest fund. This was to be invested, and the interest from this fund to go into the primary school interest fund. Years and years ago the legislature spent the money out of the primary school interest fund and promised, morally if not legally, that this fund would be maintained by proper taxes. Considering this a moral promise, it was written into the constitution that certain taxes should be earmarked for this fund. That is the reason the primary school interest fund comes from earmarked taxes. Thank you.

CHAIRMAN MARTIN: The question is on the Davis-Seyferth-Upton minority amendment. Mr. Austin.

MR. AUSTIN: Mr. Chairman, I would like to speak in opposition to the amendment. Reference has been made to what has been done to this section, the fact that it has been emasculated, and for that reason we should probably let it go.

As one of those who fought—I don't know whether valiantly or not—for maintaining the base as solidly as possible, I don't mind admitting that although we were not able to maintain the base as I would like to have seen it, I certainly hate to see what we do have go. I would also like to remind the delegates that in our concern for developing our state economically, we must be concerned about the development of our human resources. Our people have spoken several times as to how they would like to have the development of our human resources assured in our constitution. I hope that we will not forget what the people have asked for.

CHAIRMAN MARTIN: The question is on the Davis-Seyferth-Upton minority amendment. Mr. Yeager.

MR. YEAGER: Division requested, Mr. Chairman.

CHAIRMAN MARTIN: A division is requested. Is the demand seconded? A sufficient number up. All those in favor of the Davis-Seyferth-Upton minority amendment will vote aye, and all those opposed will vote no.

SECRETARY CHASE: Has everyone voted? The machine is locked and the totals will be recorded. On the amendment offered by Messrs. Davis, Seyferth and Upton, the yeas are 43; the nays are 83.

CHAIRMAN MARTIN: Mr. Hodges.

MR. HODGES: Mr. Chairman, I request to change my vote from aye to nay. I usually watch to see how Mr. Lundgren votes and I vote opposite. This time he faked me out and voted the way I was going to, and we got all mixed up. (laughter)

CHAIRMAN MARTIN: Mr. Lundgren.

MR. LUNDGREN: A little rebuttal: I was just getting up. I had my hand up to change my vote to nay. (laughter)

CHAIRMAN MARTIN: The Chair might suggest you 2 pick out somebody else to watch next time. (laughter)

SECRETARY CHASE: Accepting the statement of Mr. Hodges, the yeas are 42; the nays are 84. There are other amendments on the desk.

CHAIRMAN MARTIN: The Upton-Davis-Seyferth minority amendment is not adopted.

Mr. Brake.

MR. BRAKE: I move the committee rise.

CHAIRMAN MARTIN: The question is on the motion that the committee do now rise. All those in favor signify by saying aye. All those opposed, no.

The committee has risen.

[Whereupon, the committee of the whole having risen, President Nisbet resumed the Chair.]

PRESIDENT NISBET: The Chair recognizes Mr. Martin.

MR. MARTIN: Mr. President, the committee of the whole has had under consideration certain matters on which the secretary will now give a report.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 39, A** proposal with reference to the earmarking of sales tax revenues covering the subject matter of section 23 of article X of the 1908 constitution; has considered several amendments to this proposal; and has come to no final resolution thereon. This completes the report of the committee of the whole, Mr. President.

PRESIDENT NISBET: Announcements.

SECRETARY CHASE: The following announcements of committee meetings:

The committee on finance and taxation will meet in room E tomorrow at 9:00 o'clock a.m. D. Hale Brake, chairman.

The committee on public information will meet in the conference room Wednesday, February 7, at 7:30 p.m. Mr. Ink White, chairman.

The committee meeting announced for the committee on rules and resolutions immediately after the session this evening has been postponed until Wednesday, February 7, at 1:00 o'clock p.m.

The following announcement for the information of the delegates: the schedule in the stenographers' pool has been altered as a result of the change in session time. Hereafter, the stenographers' pool schedule will be as follows: Monday, 1:00 o'clock p.m. until ½ hour after session. Tuesday, Wednesday, Thursday and Friday, 8:30 a.m. until 5:00 p.m., or ½ hour after session, whichever is later. The present policy of the stenographers remaining as long as any delegate needs them will, of course, continue. (laughter)

The meeting of the committee on style and drafting will be Wednesday evening, February 7, at 8:00 o'clock in committee room K. Consideration will be given to all committee proposals pending before the committee that can be covered during the time of the meeting. William B. Cudlip, chairman.

The apples today are from Mr. Turner. (applause)

During the session this evening the secretary was in receipt of the following special delivery letter from Mr. Garvin:

> I have not been able to change my February 5 appointment, so as a result I must request to be excused from the session of February 5. After looking at my calendar, it seems that there will be other Mondays that I will not be able to change so that I can be at the 4:00 o'clock session.
>
> Very truly yours, Wynne C. Garvin.

PRESIDENT NISBET: Without objection, he will be excused.

SECRETARY CHASE: That is all of the announcements.

PRESIDENT NISBET: Miss Hart.

MISS HART: Mr. President, this is one I can win. I move we adjourn. (laughter)

PRESIDENT NISBET: The question is on adjournment. Those in favor say aye. Opposed, no.

We are adjourned to 9:30 tomorrow morning.

[Whereupon, at 10:25 o'clock p.m., the convention adjourned until 9:30 o'clock a.m., Tuesday, February 6, 1952.]

SEVENTY-THIRD DAY

Tuesday, February 6, 1962, 9:30 o'clock a.m.

PROCEEDINGS

PRESIDENT NISBET: The convention will please come to order.

Our invocation this morning will be given by the Reverend Robert Ward, pastor of the First Methodist Church of Ypsilanti. Will you please rise.

REVEREND WARD: Let us pray. Almighty God, upon whom we are dependent for every good thing and every good thought, help these, Thy servants, to think clearly today. Grant them tolerance of those whose opinions they do not share. Grant them honest criticism of those with whom they agree. In their differences may they be kind; in their agreements may they be right. Amid all the pressures that are brought upon them, may they follow Thy guidance that Thy will be done in this state through them. Amen.

PRESIDENT NISBET: The roll call will be taken by the secretary. All present, please vote aye.

SECRETARY CHASE: Has everyone voted? The machine is locked and the attendance will be recorded.

Mr. President, a quorum of the convention is present.

Prior to today's session, the secretary received the following requests for leave: Messrs. Danhof and Heideman, from today's session.

PRESIDENT NISBET: Without objection, the requests are granted.

SECRETARY CHASE: Absent with leave: Messrs. Barthwell, Cudlip, Danhof, Habermehl, Heideman and McLogan.

Absent without leave: None.

[During the proceedings, Mr. Danhof entered the chamber and took his seat.]

PRESIDENT NISBET: I am sure I speak for all the delegates when I say we are very happy to welcome back our delegate from Jackson, Mr. James Thomson, who has been ill. Jim, we are glad to have you back. (applause)

Reports of standing committees.

SECRETARY CHASE: None.

PRESIDENT NISBET: Reports of select committees.

SECRETARY CHASE: None.

PRESIDENT NISBET: Communications from state officers.

SECRETARY CHASE: None.

PRESIDENT NISBET: Mr. Norris.

MR. NORRIS: Mr. President, I rise at this point on a point of personal privilege, at least for the purpose of making a suggestion. Yesterday, prior to adjournment, I was on the floor but I wasn't recognized. I thought that I had what, in my judgment, was a constructive suggestion and that was, on the general orders calendar, in the publication we receive, that there ought to be noted with each subject matter the presence of a minority report when such minority report is filed, so that when we go through general orders, we can note not only the committee report but a minority report on the particular subject matter.

I think that will add to our deliberations, Mr. President. I don't mean by this a criticism of Mr. Chase or his staff, who have been most helpful under adverse circumstances, but I do think it would be helpful to the delegates.

PRESIDENT NISBET: Thank you, Mr. Norris.

SECRETARY CHASE: May the secretary suggest that since our calendar has been printed, as rapidly as we can we will correct that situation, but in the meantime when minority reports have been filed, we will make an announcement from the desk as to the page in the journal in which they may be found.

PRESIDENT NISBET: Second reading of proposals.

SECRETARY CHASE: Nothing.

PRESIDENT NISBET: Third reading.

SECRETARY CHASE: Nothing.

PRESIDENT NISBET: Motions and resolutions.

SECRETARY CHASE: There are no motions or resolutions.

PRESIDENT NISBET: Unfinished business.

SECRETARY CHASE: I have none.

PRESIDENT NISBET: Special orders.

SECRETARY CHASE: None.

PRESIDENT NISBET: General orders of the day. The Chair recognizes Mr. Martin.

MR. MARTIN: Mr. President, I move the convention resolve itself into committee of the whole for consideration of matters on the general orders calendar.

PRESIDENT NISBET: The question is on the motion of Mr. Martin. Those in favor, say aye; those opposed, no.

The motion prevails.

[Whereupon, Mr. Martin assumed the Chair to preside as chairman of the committee of the whole.]

CHAIRMAN MARTIN: The committee will come to order. The secretary will read.

SECRETARY CHASE: Item 2 on the calendar, from the committee on finance and taxation, by Mr. Brake, chairman, Committee Proposal 39, A proposal with reference to the earmarking of sales tax revenues covering the subject matter of section 23 of article X of the 1908 constitution.

For last previous action by the committee of the whole on Committee Proposal 39, see above, page 785.

Several amendments have been considered. The amendment immediately on file for consideration at this time is the one by Messrs. Hodges, Ford and T. S. Brown as follows:

1. Amend page 2, line 23, after "property" by inserting a colon and "Provided however, That no sales tax shall be levied on foods or medicines".

CHAIRMAN MARTIN: Mr. Hodges.

MR. HODGES: At yesterday's debate I was somewhat overwhelmed by the amount of concern expressed by many individuals for persons paying taxes on food and drugs. I, myself, share that concern. I believe this is a matter of morality and ethics. To me there is something immoral about taxing the very life substance that individuals depend on. I think we all know the factors involved, the question of the unfair regressive nature of a sales tax, to begin with, but when you lump upon it by taxing food, which hits those that are unemployed, those of low income groups equally as hard, just about, as the most wealthy citizens of our state, we can see that this is a tremendous burden on the low income groups.

Now, many individuals here express their concern, and I would hope they would vote for this amendment. I am sure somebody is going to get on the floor and point out that this is restrictive of the legislature and therefore they could do it, and why don't we leave this to them. I merely point out that this is directed at a restrictive—already restrictive—part of this article which has a limitation on the 4 cent sales tax. All this does is further restrict it in terms of putting it on food and drugs. I might also add that I would hope that those that are advocating flexibility, if they can't see their way clear to voting on this amendment, would then also vote down the 4 cent sales tax limitation and, much more importantly, the prohibition of a graduated income tax.

I think, in the name of honesty and sincerity, those that advocate absolute flexibility should feel constrained to do so.

However, if they do feel that it is proper to put some limitations upon what should be taxed and what should not be taxed, and especially for those that advocate a prohibition and a graduated income tax, I ask you to give some thought to those at the other end of the scale who, through no fault of their own, are not in a position to pay the taxes they are asked on the very most essential things in life. Mr. Chairman, I move the adoption of this amendment. I am sorry. That is out of order. I recommend it.

CHAIRMAN MARTIN: Mr. Staiger.

MR. STAIGER: On behalf of the committee, I am sure we would oppose this amendment. I think that there is an honest difference of opinion in the committee and on the floor. If food and drugs should be exempted, I think it would certainly be or should be almost unanimous in the consideration that this is not something that we want to try to fix for 50 years into the constitution. We are talking here about a complicated tax structure of the state of Michigan, and to knock out one item—freeze it out at this point—just is not good government. We have cleared the way so that the state can in any revision exempt food, if it is going to levy other broad base taxes. This is not the place, and it is in no way appropriate to put such an exclusion into the constitution.

CHAIRMAN MARTIN: Mr. Hodges.

MR. HODGES: Mr. Chairman, may I answer that?

I would only ask Mr. Staiger if he voted for the 4 cent limitation on sales tax, and if he also voted for the prohibition on a graduated income tax, and ask him if this is not inconsistency and tying the hands of the legislature for the next 50 years.

MR. STAIGER: Well, we left the 4 cents in there. I was one of the minority that was willing to take it out. On a graduated income tax, yes, I did vote against the prohibition on that. And I think when we get to that we will be able to develop reasons for that. I don't think that the same reasons apply here, and I cannot see any reason for freezing such an exemption into the constitution.

MR. HODGES: But you can concerning the graduated income tax; is that right?

MR. STAIGER: When we get there, I will meet that issue for you.

MR. HODGES: Then it is whose ox is being gored, is that right?

MR. STAIGER: I don't think this—excuse me, Mr. Chairman.

CHAIRMAN MARTIN: The question is on the Hodges amendment. Mr. Ford.

MR. FORD: Mr. Chairman, as Bob has already indicated, I don't think that there is any student of taxation who has not been told, or anyone who has taken basic economics in college, who has not read that we are talking about perhaps the most regressive form of taxation that was ever devised for the public. This has been recognized ever since sales taxes first came into vogue in this country, and it has also been recognized that taxes being something in the nature of a necessary evil or a necessary burden, that you have to rationalize certain taxes and rationalize inequities of them, and that is what we do every time we raise the sales tax a little bit. We rationalize as we go out and tell people that they ought to vote for the sales tax because, after all, it is painless. You don't have to fill out a return at the end of the year. You don't have to go to a lot of trouble. It is cheap for the state of Michigan to collect it. They are already collecting 2 cents; why not 3? Three; why not 4, and on ad infinitum. So finally we reach a point where we say, provided, however, that there shall be no tax of this kind in excess of 4 per cent. The question comes up, however, why no more than 4. Why not more than 3½ or 4½? The answer is that the taxation committee is faced with the realities of life that although we started out with a regressive tax and it has been no less regressive, the tax has reached its saturation point.

Now, a lot of people in this convention have been talking about the urgency and the need for tax reform, and this suggested constitutional amendment would, in the opinion of those who originally put it in as a delegate proposal and last night revised it after we heard people like Mr. Van Dusen expressing their concern for the possibility of doing this, and what we took to be their preference for being able to do this in the near future as a part of an overall tax reform program, this encouraged us and we revived it in the form of this amendment. Now, I am informed that what this would amount to at the present time would be a reduction in sales tax income of approximately ¼. This would have the almost immediate effect, if we leave the earmarking as it is, of giving a form of relief to a segment of the population that would remove from the tax pot that last penny that was put on. The tax would stay the same, but the net effect to the general fund of the state of Michigan would be affected in the same manner as removing the last penny. There is no sense in anybody assuming that by giving this sort of tax relief we are not going to take a serious bite out of the general fund.

Who are we talking about taking care of? Starting out with a regressive tax, we make it even more regressive when we are one of the states that makes no exception for the basic necessities of life. Mr. Staiger has indicated that he would object to this sort of a provision being in the constitution because he says: why freeze in, for the next 50 years, this sort of a restriction? Well, I submit to you that if there is anyone in this room who can come up with the wildest possible dream that will say that we are going to have something to replace the necessity for food, regardless of your condition and status in life, in the next 50 years, then I will ask my cosponsors to withdraw this amendment. I think that we are here talking about something that is as constant as life and death. I know that we are going to have the same needs in the next 50 years.

The one possible change would be in some tremendous miraculous conversion that would result in the people of the state spending an infinitesimal amount of their total income for food. This is not the case, however. The vast majority of the people in the lower income levels spend a major portion of their money for food, for the basic necessities of their families, and one of the places that they take the biggest single bite out of their weekly budgets is in the grocery store. Now, we say that we want to encourage industry, so we exempt property to be used in industrial processes. We say we want to encourage agriculture so we exempt products to be used in agriculture, and then we turn around and tax those products at the consumer level, and in many instances, tax them in such a fashion as to impose unfairly and unjustly on people who can ill afford it, a percentage reduction of the effective tax dollar that they have for necessities.

Who does it hit the hardest? One of the delegates yesterday was talking seriously about the plight of the people with a fixed income, and when I think of the people with a fixed income I think not only of the governmental employees who have relatively fixed incomes, but the people who really have fixed incomes, that is the pensioners. These people are living on dollars that were calculated several years ago, many of them; they are living on basic subsistence levels, and we are saying to them, "You have your home paid for, you have all of the other things you need, you are now at the age where your biggest expense is providing for food for yourself and your family, but we are going to continue taxing you at the same rate as all of the rest of us." This is not in any way recognizing what I think we inevitably have to come to in this convention, as they are coming to over on capitol hill, that whatever new tax form you come up with is going to have to, in some way, relate itself to the ability to pay that tax; that we can't keep levying taxes indefinitely without regard to the ability of the person against whom the tax is levied to pay the tax.

I think that Dr. Hannah came up with a phrase that I had not heard before he used it. He talked about the economically disadvantaged people in this state. I am not really sure that Dr. Hannah and I have the same definition in mind, but I think that we have many economically disadvantaged people in this state who are being further disadvantaged by continuance of the sales tax on food, and although the amendment in its present language is a little broader,

it was originally our intent to restrict it to prescription drugs, which I think is a distinction that everyone would perhaps grasp at immediately.

I think now we have a chance to determine whether or not we want to start the tax in fiscal reform in the state by saying to the legislature, "Here is a limit of 4 cents. You can't go further on this sales tax." Not only that, we are going to say to you that it is far past time that you take this off of food and prescription drugs and give this recommendation, and now you find a way to come up with a tax program that this state really needs.

There are many people in this room who are intimately familiar with various forms of a tax reform that are given very little consideration over there because it is much easier, over on capitol hill, to slide by by putting another penny on the sales tax, or putting a few cents on cigars and what have you, than it is to really face up to the problem. If you want to really give these fellows a chance to take the problem by the scruff of the neck and do something with it, let's indicate it. This is one way to do it.

CHAIRMAN MARTIN: Mr. Brake.

MR. BRAKE: Mr. Chairman, ladies and gentlemen, we are again falling into the very common error of judging a tax just by itself. That always leads to wrong conclusions. If the sales tax were our sole source of revenue, it would indeed be unfair, unfair to the little fellow; but it is not the sole source of revenue. If the property tax were the only source of revenue, as it was 50 years ago, it would be atrocious, but it is not the only source of revenue. The only way to judge a tax fairly is to judge it just as part of the entire tax system. One part of it may be too hard on the little fellow, another part of it may be too hard on the big fellow. To judge it fairly we need to see how it fits in, and when you take all of the taxes together, then is the little fellow unfairly treated, are the big fellows unfairly treated? Where do we need to make the change? To take out 25 to 30 per cent of the state's income from the sales tax without replacing it is simply out of the question.

In the constitution, we set out to lay down the broad rules within which the legislature must work. The time may come when the legislature is in a position to take the tax off of food and replace it immediately with something else. It should be left to them to do, not here.

CHAIRMAN MARTIN: Mr. Gover.

MR. GOVER: Mr. Chairman, ladies and gentlemen of the committee, and directing this to Mr. Hodges particularly, as a former merchant I would be remiss if I didn't call the attention of the committee to the complications involved in bookkeeping by taking part of your inventory out of taxation and leaving the other part in. Most of the smaller merchants are trying to operate as efficiently as possible within their budgets, and many of these items, when you exclude part of them from the tax and leave part of them taxed, requires more bookkeeping and more help. Of course, that makes more payroll too but it is one of those things that it is difficult for a small merchant to work with. I know at the time when I was in the store, certain agricultural articles were exempted — and they still are — and there was always a complication in keeping track of the bookkeeping on those things. Thank you.

CHAIRMAN MARTIN: Mr. Hodges.

MR. HODGES: Mr. Chairman, I appreciate Mr. Gover's concern for the merchants. I would only point out that other states do exempt it and they seem to be able to do it with the least amount of difficulty. It seems to me, when we measure the inconvenience of the merchants against the dire need of an unemployed person that is asked to pay taxes with no revenue coming in, this is a small price to pay, indeed. And as long as we are directing questions, I would just direct a simple question to Mr. Brake.

Sir, do you feel that any type of taxation on a person who has been unemployed through no fault of his own can, at all, be equitable?

MR. BRAKE: Everyone should contribute something to the support of his government.

MR. HODGES: Including those that have no revenue whatsoever?

MR. BRAKE: If they have no revenue whatsoever they are on welfare.

MR. HODGES: Well, I shouldn't bring this in, I suppose, but I have a father who is 59 years old who has been unemployed since March of 1961. He pays sales tax on food. He pays his property taxes, and yet, has exhausted even his unemployment benefits as of 6 months ago. Now, I realize that as the child of that parent I have obligations to him, but I also point out the unfairness of asking individuals such as this, who have worked for the same corporation in this state for some 27 years and have been laid off, through no fault of their own, to try to pick up the excess burden of taxation on the necessities of life.

CHAIRMAN MARTIN: Miss Hart.

MISS HART: Mr. Chairman, I have always been puzzled, and I would like an answer, if I could get it here. I teach in an area where large numbers of the parents of the children I teach are on welfare or on ADC, and I am always puzzled as to what the state gains or local government gains in giving these people money on which to live and then taking it back in sales tax.

CHAIRMAN MARTIN: Mr. Binkowski.

MR. BINKOWSKI: Mr. Chairman and ladies and gentlemen of the committee, I am glad that Mr. Brake brought up the question of the total tax picture because I would just like to quote 2 sentences from what I believe to be an impartial study put out by the institute of public administration of the University of Michigan, entitled Taxation in Michigan, an Appraisal, by Mr. Harvey E. Bretscher. I believe Mr. Bretscher is probably the best tax authority on Michigan tax structure and tax problems that we have. He said that Michigan's state and local tax structure appears to be substantially regressive in the income range up to $10,000 and progressive thereafter. This characteristic is attributable to the heavy reliance upon general and selective sales taxes and the property tax and, for families with incomes in excess of $10,000, the progressive impact of the federal tax system.

Therefore, it seems to me, coming from the area which I represent, consisting of a high proportion of people in the lower income groups, consisting of a great number of people who are unemployed, and consisting of a great proportion of people on fixed incomes — that is, pensioners — it seems to me that this amendment would lock into the constitution some tax relief for these people and therefore I would favor this amendment.

CHAIRMAN MARTIN: Mr. Upton.

MR. UPTON: I would like to say just a few words. The words this morning remind me of some of the arguments we had last night. We are trying to devise a program for complete tax reform. Just by taking out foods and drugs does not allow the legislature enough room to work in. If we took out the 4 per cent limit, let them, if they have to, take out foods and drugs but perhaps raise the sales tax limit to 5 per cent or 6 per cent on other items, you might have a program. But here again you are only talking about one thing. I think if we wish to give the legislature a complete package to work with we should look at all the facts and not just one angle. So I would oppose this particular amendment, but I think if you wish to go into a more complete picture perhaps we should tie this in with, maybe, taking off the 4 per cent limit. This would allow the legislature to adjust the tax picture in any year in which they would operate to the best advantage for all the people. So, again, we are getting into specifics when we should be looking into the general program of taxes.

CHAIRMAN MARTIN: Mr. Iverson.

MR. IVERSON: Mr. Chairman, I would like to ask the sponsors of this amendment if they propose to exempt the sale of foods in restaurants, taverns, other public places? Would someone answer that?

CHAIRMAN MARTIN: Mr. Hodges.

MR. HODGES: This is not my intention, Mr. Iverson, and I would hope that if this amendment is adopted, we would

write that into the report regarding it, and also guidelines for statutory implementation of what would be considered and not considered. I would not consider restaurants in this matter.

MR. IVERSON: Mr. Chairman, I submit that the amendment was submitted by the delegates and they must have intended to include food, which the proposers of the amendment and myself buy at the Jack Tar and other places.

MR. HODGES: This may seem rather heartless, Mr. Iverson, but I am not particularly concerned with people of your economic level in this taxation. (laughter)

MR. IVERSON: Mr. Chairman, incidentally, the same is true so far as Mr. Hodges is concerned. (laughter)

CHAIRMAN MARTIN: The delegates will please refrain from personal references to each other. Mr. Brown.

MR. T. S. BROWN: Mr. Chairman, it seems to me, as one of the signatories on this particular amendment, that the sole question we are really going to answer by our vote is whether or not the legislative tiger can be expected to change his stripes. We have had many fond hopes expressed, especially yesterday, when we entered upon this general subject matter, about the possibility — and yes, the probability — that the legislature in the coming session would overhaul the entire tax structure of the state of Michigan and come up with something that was more meaningful in our time. The proponents of this particular hope have also been encouraging us to free the hands of the legislature, to give them a little freer reign so that they may have more flexibility; I believe they used the words "flexibility to revamp this structure". Now, too often, from my point of view, flexibility and freedom do not necessarily mean the intrinsic right to be left alone, but flexibility and freedom mean the intrinsic right to aggrandize yourself or your group at the expense of other people or groups, and this is why we have had the polarization of the philosophies on the matters in question.

Now, I don't think that we can reasonably expect the old legislative tiger to change his stripes and I think since Mr. Hutchinson has indicated, say, a week ago that we are becoming more and more like the legislature — and I hope not; I hope not, personally, but perhaps we are and perhaps I am contributing to that; it is a rather insidious process and I don't really know where we stand at this juncture — but, if we are the alter ego of the legislature, since we are a product of what I consider a malapportioned legislature, and we are therefore a malapportioned body, I think this particular vote on this matter will give an indication of whether or not the legislature can really, hopefully be entrusted to overhaul the fiscal structure of the state of Michigan.

CHAIRMAN MARTIN: Mr. Young.

MR. YOUNG: Mr. Chairman, I think Mr. Brake made a valid point when he said that we should consider the past structure as a whole. I have heard great concern expressed here about restrictions on the legislature. Now, as a member of the committee on finance and taxation, I will state that we are prepared to make 2 recommendations to this body, both of which have to do with restricting the legislature and both of which tend to give tax concessions to the so called "big guys". One, the flat prohibition against a graduated income tax, and 2, the reduction of the assessment on all property, real and personal, to a 50 per cent level, as opposed to the ad valorem cash value in the present constitution.

Now, if we are willing to make these 2 restrictions on the legislature in relation to the "big guys", it seems to me that we should be willing to make one concession, even within the recognized 2 to 1 relationship, to the little guys. I think 2 to 1 is only fair.

CHAIRMAN MARTIN: The question is on the Hodges amendment. As many as are in favor will signify by saying aye. As many as are opposed will say no.

A DELEGATE: Division.

CHAIRMAN MARTIN: Division is called for. Is the demand seconded? Sufficient number up. The secretary will read the amendment.

SECRETARY CHASE: The amendment offered by Messrs. Hodges, Ford and T. S. Brown is as follows:

1. Amend page 2, line 23, after "property" by inserting a colon and "Provided however, That no sales tax shall be levied on food or medicines".

CHAIRMAN MARTIN: The question is on the amendment. As many as are in favor will vote aye and as many as are opposed will vote no.

SECRETARY CHASE: Has everyone voted? The machine is locked and the totals will be recorded.

MR. HODGES: Mr. Chairman, I request the chairman's vote.

CHAIRMAN MARTIN: The chairman votes no.

SECRETARY CHASE: On the adoption of the amendment by Messrs. Hodges, Ford and T. S. Brown, the yeas are 48; the nays are 79.

CHAIRMAN MARTIN: The amendment is not adopted. The secretary will read the next amendment.

SECRETARY CHASE: Mr. William F. Hanna offers the following amendment:

1. Amend page 1, line 24, after "property.", by inserting "There shall be returned to the counties on a population basis, as provided by law, ¼ cent of a state sales tax levy on each dollar of sales of tangible personal property.".

CHAIRMAN MARTIN: Mr. Hanna.

MR. W. F. HANNA: Mr. Chairman, in brief support of my amendment, it appears that the forgotten person or the forgotten local government in a state collected and distributed back to local government source of revenue is the counties, and I know of no other unit of government in which the state, by state law, imposes more duties and yet gives no state supported revenues. The county government is responsible, in a large measure, for welfare, courts, jails, sheriffs' departments and other services, all of which are dependent upon the population both within a particular county and throughout the state. And, while, due to our poorly organized county government, we have no direct spokesman for county government as such, in a legislative function, the members of the board of supervisors have a primary liability to the cities and townships first, and to their counties second. I believe that of all the units of government that need relief from the property tax burden to the small home owner, it is the county government. And therefore I feel that if we are going to continue the policy of a state selected nonproperty tax revenue, certainly the counties ought to share in the distribution, as my amendment will provide.

CHAIRMAN MARTIN: Mr. Brake.

MR. BRAKE: Mr. Chairman and ladies and gentlemen, there is no question but what there is force in what Mr. Hanna says, but the committee, as I recall it, is unanimously opposed to any additional earmarking. As you witnessed last night, there are many members of the committee that think we have altogether too much already. They are opposed to any addition to what we have.

CHAIRMAN MARTIN: The question is on the Hanna amendment. As many as are for, will say aye. As many as are opposed will say no.

The amendment is not adopted.

SECRETARY CHASE: Mr. Hutchinson offers the following amendment:

1. Amend page 1, line 22, after "villages" by striking out "on a population basis"; so that the language will then read:

There shall be returned to cities, townships and villages, as provided by law, ½ cent of a state sales tax levy on each dollar of sales of tangible personal property.

CHAIRMAN MARTIN: Mr. Hutchinson.

MR. HUTCHINSON: Mr. Chairman, in offering this amendment to strike out the reference to a population basis, as regards the formula for sending this money back to local units of government, I do it because I cannot understand how, if we say it must be on a population basis, the legislature could send it back on any other kind of a basis. It seems to me as though on a population basis, population is population. One of the problems that came up back in 1954 was whether it was really fair to send back to the township where the southern Michigan prison is located, or to the cities

and the townships where the various mental institutions are located, a sales tax attributable to the population of those institutions. You will note that the final decision back in those days was to split the problem in half and give them credit for only half of the populations in those institutions.

Now, if we adopt the committee recommendation here, it seems to me that we will be going back to the same situation that we had prior to 1954, and it doesn't seem to me to be a very good constitutional policy to so restrict, if you please, the matter in the constitution. If we send this back to cities, townships and villages, as provided by law, then, as conditions change and as times change and so on, we will have the necessary flexibility. Perhaps it should go back on a population basis. Perhaps it should go back on a need basis. Perhaps it should go back on some other kind of a basis that doesn't now occur to me, but if we permit those decisions to be made by statute law, this provision will not become obsolete as times change, but it can be accommodated to the times. This is, I believe, in the true concept of a constitution, to provide the flexibility. Just think what would have happened to the Constitution of the United States if it had been written in such restrictive language as we are writing into this constitution of Michigan. It would have been impossible of breadth and expansion, even by judicial interpretation.

I understand the wisdom of including this phrase, "as provided by law" in here, and I am led to believe that the committee thought that if we said "on a population basis as provided by law" that then the legislature would be able to define what "population" is. I disagree. I don't think that the courts would say that the legislature could define population, because population is quite specific. The legislature might be able to say as of what time the population shall be counted. In the old language it was on a decennial census basis. That might be unwise, and it might be that the committee's intention was that the legislature might provide by law for special censuses sometime within the 10 year period in order to readjust this distribution as populations change. But, nevertheless, we get right back to this: if you say "on a population basis", it has got to be according to a count of people. I submit that we walk right into the difficulty that we found ourselves in back in 1954 when, by the mere circumstances that the state government, in its wisdom, had placed certain large state institutions in certain communities, they were getting a vast amount of sales tax revenue back based upon the population in those institutions when, as a matter of fact, I think it is debatable, for instance, as to whether the population in both institutions really causes that much more demand for service upon the communities involved. Service to those institutions remains a state responsibility all the way through. It is for those reasons that I offer this amendment to strike out this phrase, "on a population basis", hoping that we will thereby have a truly constitutional flexibility and a constitutional provision which will be able to serve the state as the times and the needs and the conditions change.

CHAIRMAN MARTIN: Mr. Van Dusen.

MR. VAN DUSEN: Mr. Chairman, speaking on this matter for the committee, I think it's important that we all realize that Mr. Hutchinson's proposed amendment does make a major substantive change. As he points out, if the words "on a population basis" were stricken, the legislature would have, then, complete authority to determine how the half cent of sales tax earmarked for cities, townships and villages should be allocated, and they could allocate it all to one city or all to another, depending upon the exigencies at the moment.

This is a major substantive change, one that the committee on finance and taxation was unwilling to make. The changes which we have recommended are those which, in our judgment, clean up the mechanics of the system of distribution, and let me just outline for you a little bit of the history which motivated this change. We have seen in the course of the last 10 years, the 10 years between the 1950 decennial census and the 1960 decennial census natural shifts in population, particularly in the metropolitan areas where we have seen moves out of the core city into suburban communities. As a consequence, along about midpoint between the 1950 decennial census and the 1960 decennial census, some communities were getting much more than their share on a population basis. Others were getting much less than their share, but because of the inflexibility built into the present constitutional language, nothing could be done about it in the absence of a special federal census. As a consequence, we felt it was highly desirable to let the legislature have the freedom to deal with the situation so that population could be counted on a more current basis than the present constitution would permit.

It's not, I believe, correct to say that population means just population and nothing else, as Mr. Hutchinson suggested. I think the present constitution which takes 10 lines or upwards of that of your proposal to define population, belies the statement and indicates the desirability of leaving this matter up to the legislature to determine what is population, where the population is, and when. Any of our 56 lawyers knows the difficulty of defining domicile and residence. This is an inherent problem in the determination of where the population is at any given time. It is one we feel ought to be left to the legislature.

CHAIRMAN MARTIN: Mr. Downs.

MR. DOWNS: I rise to speak both in favor of and against the Hutchinson amendment. (laughter) I believe I am in complete agreement with the objective he speaks about, that the populations in the state institutions should not be included in sales tax diversion. If he would rephrase the amendment to use such term as "populations excluding those in state institutions", "populations who are residing on a voluntary basis", or some other such term, I would be in complete agreement. However, when he strikes the whole term "on a population basis," I am afraid we may be throwing out the baby with the bath.

Without making a prolonged speech, I think we should review, just for a minute, the history and the reasons that we got this earmarking provision in. Speaking very candidly and frankly, one of the reasons was to bypass the legislative process and, in effect, to use earmarking and constitutionally raised and allocated money to both raise revenue and to distribute it. Without being too cynical, I am very concerned that unless there is a legislature based on population, there may not be a distribution based on population. And if the convention is willing to postpone this question until the legislative organization committee has reported, I would be very glad to review it at that time. But unless the legislature is based on population, there is a real concern that the distribution will not be on population. For that reason, I would rather see the language stand as it is now, to guarantee the population distribution.

If it is in order, Mr. Chairman, I would like to amend Senator Hutchinson's amendment to provide that the term be reinstated and say "on a population basis, except for those in state institutions". I am sorry I haven't prepared that form but I just heard the Senator's amendment read, and I believe that would take care of the legitimate problem.

CHAIRMAN MARTIN: Mr. Downs, you are reinserting all of the language which he is proposing to strike out.

MR. DOWNS: No, I am doing more than that, Mr. Chairman.

CHAIRMAN MARTIN: You are adding some additional, I know.

MR. DOWNS: I am getting a different concept. It would then read "on a population basis, excluding those in state institutions", and I belive that is a different concept and not just reinstatement.

CHAIRMAN MARTIN: I wonder if you will defer your amendment to his amendment and then submit it as a separate amendment, if you wish to do so. I think we will get a fairer vote on the matter.

MR. DOWNS: All right, I will do so.

CHAIRMAN MARTIN: Mr. Hoxie.

MR. HOXIE: Mr. Chairman and fellow delegates, I am in complete accord with what Mr. Hutchinson intends by his

amendment. I also see certain dangers that might arise, as pointed out by Mr. Van Dusen, in opposition to this. I am happy that Brother Downs is both for and against, and there is an amendment on the desk, Mr. Downs, which, I think, will satisfy you and give all the protection that Mr. Van Dusen thinks there should be.

CHAIRMAN MARTIN: The question is on the Hutchinson amendment. Mr. Staiger.

MR. STAIGER: I would just like to point out that we are getting into the question of drafting again. The committee, as stated by Mr. Van Dusen, feels that this language does provide for the flexibility the legislature needs to exclude partially or completely wards or people in state institutions. This is our intent. We think that it does provide for this. Now we are getting into a question of if the language adequately provides for it, and the interpretation. This is a matter that is drafting and if there is a question on this, let's leave it to the style and drafting committee to take a look at. There is no question as to our intent here, we are arguing over the meaning of words and this is something that style and drafting, I think, would adequately take a look at and bring back at second reading. I would oppose the Hutchinson amendment and the Downs amendment.

CHAIRMAN MARTIN: The question is on the Hutchinson amendment. As many as are in favor will say aye. As many as are opposed will say no.

A DELEGATE: Division.

CHAIRMAN MARTIN: Division is requested. Is the demand supported? The demand is not supported.

The Chair rules that the amendment is not adopted.

SECRETARY CHASE: Mr. Hutchinson offers the following amendment:

1. Amend page 2 by striking out all of lines 21, 22 and 23, which read, "At no time shall the legislature levy a sales tax on retailers at a rate of more than 4 per cent of their gross taxable sales of tangible personal property."

CHAIRMAN MARTIN: Mr. Hutchinson.

MR. HUTCHINSON: Mr. Chairman, I now rise on a matter of principle. I commend the committee of the whole and the standing committee which reported this matter in striking out any reference to a base. Now if we really wanted to do the kind of a job which in my opinion, at least, good constitutional practice requires, we should also strike out the reference to a limitation upon rate. If there is anything that is short sighted it is to so restrict and hobble the sources of taxation, either as to trying to define the tax base or the tax rate, that you eventually force the particular source to—well, not exactly dry out, but it becomes inadequate. There are only 3 types of taxation, as has already been pointed out on this floor before; you can either tax property, or you can tax the transactions upon property or you can tax the income of property, and if the constitution so restricts all 3 of those sources of taxation, then I wonder just exactly how we, as a state, are going to be expected to meet our responsibilities.

I think that when we write the limitations of tax rates and tax bases into the constitution, we contribute to the people running down to Washington and asking the federal government to do that which they cannot do themselves because they are financially unable to do it. This is a matter of principle with me. I offer this because I felt certain that, just as I always had in the legislature at every opportunity, I would do it here too to try to remove from this constitution those matters which are so restrictive that it ends up with our not having the tools sufficient with which to meet not only the problems of today but the problems of the future.

CHAIRMAN MARTIN: Mr. Brake.

MR. BRAKE: Mr. Chairman and ladies and gentlemen, this brings us again to the direct clash between theory and public acceptance. The people established this 4 cent limit in November of 1960. I wonder if there is anyone in this committee who thinks that the people would have voted favorably on that proposition had there been no limit, simply authorizing the legislature to raise the sales tax.

CHAIRMAN MARTIN: Mr. Farnsworth.

MR. FARNSWORTH: Mr. Chairman and members of the delegation, it is not often, of course, I find myself in disagreement with my colleague from Allegan county, Senator Hutchinson, but I do have to take issue with him on this, not as a matter of principle but as a matter of personal experience. It so happens that the commodity that I make my living at in the retail sales business is subject to what you might call a sales tax at the federal level. They happen to call it an excise tax. It was one of those taxes that was put on in world war I as a temporary measure. Now it so happened that that continued until Andrew Mellon was secretary of the treasury and it was taken off on the basis it was no longer needed. That particular tax stayed off from this commodity for almost 6 months. The Hoover administration found it necessary to put it back on on a temporary basis at 3 per cent. That temporary 3 per cent tax grew to 7 per cent during the Roosevelt administration. It grew to 10 per cent during the Truman administration. It remains today at 10 per cent. Now, after you have lived through a personal experience of that kind—taxation on a commodity that you are handling—you most certainly, not as a matter of principle but simply as a matter of personal experience, must insist on keeping the 4 per cent limitation in, insofar as the state's ability to tax any retail sale. I oppose the amendment.

CHAIRMAN MARTIN: The question is on the Hutchinson amendment. Mr. Madar.

MR. MADAR: As I said yesterday, I always want to make sure that when we are getting information on anything, to always make sure that we get good information and get every bit of it. We must also remember that that tax remained for 8 years while Eisenhower was president.

CHAIRMAN MARTIN: The question is on the Hutchinson amendment. As many as are in favor will say aye. As many as are opposed will say no.

The Chair rules that the amendment is not adopted.

SECRETARY CHASE: Mr. Faxon offers the following amendment:

1. Amend page 2, line 1, after "school districts" by striking out "2" and inserting "2½"; so the language will then read, "There shall be set aside for the school districts 2½ cents of a state sales tax levy on each dollar of sales of tangible personal property."

CHAIRMAN MARTIN: Mr. Faxon.

MR. FAXON: Mr. Chairman and fellow delegates, yesterday Mr. Danhof raised a very good question with regard to whether the base was an adequate support for education. Mr. Staiger, Mr. Upton and other members of the finance and taxation committee made the point that the present 2 cents is not an adequate base of support and that it is necessary for supplemental funds to be provided by the legislature. I don't want to belabor this point. I simply wish to, first of all, indicate that the additional ½ cent would provide an adequate basis of support in line with, I think, what the people intended back in 1946 when they first put this amendment into the constitution. At that time the 2 cents was considered an adequate amount of support. It worked for a few years, then it was not. If we really want to update the 2 cents to an actual figure that would be more practical in terms of the cost of education, we would raise it to 2½ cents. Also, I thought of this amendment with regard to the fact that we remove the 1946 base, which, by adding the extra ½ cent, would insure the making up of the deficiency of funds that might occur if the base were changed. But, in view of the comments that have been expressed, I would like to withdraw this amendment and wait for another one to speak on, Mr. Chairman.

CHAIRMAN MARTIN: The amendment is withdrawn.

SECRETARY CHASE: Mr. Hoxie offers the following amendment:

1. Amend page 1, line 24, after "property" by inserting a colon and "Provided, There shall be excluded from such population basis of computation 50 per cent of the total number of persons who are wards, patients or convicts committed to or domiciled in any city institution located outside the boundaries of said city or committed to or domiciled in any county, state or federal tax supported institution, provided such persons were included in said federal census".

CHAIRMAN MARTIN: The question is on the Hoxie amendment. Mr. Hoxie.

MR. HOXIE: Mr. Chairman and fellow delegates, this amendment was proposed to cure a situation that the legislature found itself in when they submitted this amendment to the people in 1954. I might say that I have talked to the chairman of the finance and taxation committee, called this to his attention, and my fears as to what the end result would be, of the wording as we have it in the proposal.

For a little history—which I think the delegates might consider—prior to the census of 1950, the populations of our various institutions were counted in the place from whence they came. In other words, their residence. But with a change of the rules of the census bureau, those individuals confined in our state institutions were counted and credited as residents of that particular community. For instance, at Jackson prison we had located in Blackman township some 6,000 people and Blackman township, of course, got a bonanza. But you must remember that in the distribution of this money, when you siphon off those individuals living in those areas where they do have a state institution, then you are penalizing all the other units of government in the state of Michigan.

My conclusion, in reading this proposal referring to a population basis—and I don't know of any other basis that you can take than the federal census as a basis for distribution of this money—then we are right back, in my opinion, where we will be distributing to such places as Blackman township, Traverse City, because of the location of the Traverse City state hospital, and so forth, money which, in my opinion and in the opinion of the legislature, when we submitted this amendment, they were not entitled to or there was no way that you could consider that they should, with any degree of justice, receive.

I also might advise you that there was considerable argument in the legislature whether they should be given any special treatment because of the location of that institution. It was a compromise. We did reduce it from a complete count to a 50 per cent, and perhaps that could be justified on the basis that where those institutions are located they do take off from the tax roll that property that's owned by the state. So I think if you want to be careful, if you want to be sure, I think there is only one way that you can do it and that is by the adoption of the amendment I have offered. I don't think the legislature or the courts, in interpretation of this language, can draw any other conclusion but the population basis will be on the basis of the census, and I certainly urge you to adopt this amendment, if for no other reason than to make sure that we clarify the intent of this constitutional convention. I would like to also add that in the comments in relationship to this proposal there is no mention of this important phase or factor of our proposed amendment.

CHAIRMAN MARTIN: Mr. Staiger.

MR. STAIGER: Speaking again on behalf of the committee, we would oppose this amendment. I think that once more we are getting back into specifics and putting specifics back into the constitution. If we are going to worry about how we count inmates of institutions, how about the problems of students attending universities? They count patients at hospitals for long terms. How are they going to be counted? All of those things do create some inequities in where we are going to count them. This is best, in the judgment of the committee, left up to the legislature. As Mr. Van Dusen indicated earlier, we feel that as we provided on a population basis, as provided by law, gives the legislature the freedom to determine where these individuals shall be counted.

The prior language did tie in the federal census, and so, under the present section, as it now stands in the 1908 constitution, there was no question that they are bound by the determination of the federal census. This we have not tied in with the federal census. We have said "on a population basis as provided by law", not tying it into the federal census. We feel that this gives the legislature the leeway, the freedom to decide all of these problems, and there are many more too besides the question—which is actually a small part of the overall part of it—of inmates in state institutions.

CHAIRMAN MARTIN: Mr. Hubbs.

MR. HUBBS: Mr. Chairman, ladies and gentlemen, generally speaking, I rise also to speak against the Hoxie amendment for basically the same reasons that Mr. Staiger just mentioned. I would like to say, however, I also have an amendment which I think will accomplish the purpose that we want to accomplish. If it will be in order, I will withdraw until we have voted on the Hoxie amendment.

CHAIRMAN MARTIN: Mr. Hoxie.

MR. HOXIE: I would add just one remark in answer to the question that has been raised. My interpretation—and I think the interpretation of a majority of the lawyers—would be that this only indicates, as it is now worded, "There shall be returned to cities, townships and villages on a population basis, as provided by law". In other words, it is descriptive of the fact that this money is returned to the towns, cities, and villages on a population basis. To me, there is only one interpretation that you can make when you refer to a population basis —I don't know, as I said before, how the legislature could, by law, arrive at any other basis of population than by the census. The descriptive words "as provided by law" would be the method whereby this money is distributed back to local units of government. So consider it carefully, gentlemen, because I think you are going to make a bad mistake if you don't define this in some manner so that it is settled as to how this money is to go back, as far as the population factor is concerned.

I see Dr. Anspach looking at me. This in no way affects educational units of higher learning.

CHAIRMAN MARTIN: The quesion is on the Hoxie amendment. As many as are in favor will say aye. As many as are opposed will say no.

The amendment is not adopted. The secretary will read the next amendment.

SECRETARY CHASE: Mr. DeVries offers the following amendment to Committee Proposal 39:

1. Amend page 1 by striking out all of lines 21, 22, 23 and 24; and on page 2 by striking out all of lines 1 through 13.

CHAIRMAN MARTIN: Mr. DeVries:

MR. DeVRIES: Mr. Chairman, I offered that amendment on Friday and I was not here yesterday when, I understand, you discussed the intent of the amendment. This would do away with the earmarking of the sales tax for schools and local units of government. I wanted to be on the record for this, and I withdraw the amendment at this time.

CHAIRMAN MARTIN: The amendment is withdrawn. The secretary will read the next amendment.

SECRETARY CHASE: Messrs. Austin, Binkowski, Ostrow, Pellow, Stopczynski, Walker and Young offer the following amendment:

1. Amend page 2, line 7, after "law.", by inserting "For this purpose there shall be allocated from these funds, to such public school employees' retirement systems as shall be in effect from time to time under the laws of this state, not less than 7½ per cent of the salaries of school district employees participating in the respective retirement systems.".

CHAIRMAN MARTIN: Mr. Austin.

MR. AUSTIN: Mr. Chairman and ladies and gentlemen of the committee, I am reminded of an admonition of Sam Ostrow last night about the horse that went to drink too often. I hope that I am not talking on this subject too often, but I do feel compelled to raise this one last issue. I am also impressed with the remarks of Dr. Hannah, when he said that when we voted for the highway earmarking, we had passed the point of no return on this question of earmarking. I am also impressed with the remarks of Dr. Nord, when he stated that this question of earmarking, particularly for schools, is not a question of, necessarily, a principle, but one of expediency. These provisions were written into the constitution to provide some guarantees. And also of Mr. Brake when he said we can't overlook the practical aspect of the problem of earmarking.

I am also impressed with Committee Proposal 40, which in effect provides for a contractual relationship for the beneficiaries of retirement funds and also provides for current funding of the benefits of these funds on an actuarial basis. I believe that

Committee Proposal 40 was desirable and I am quite pleased, as the rest of the delegates are, that we were successful in getting this convention to approve that proposal, because it not only provides a better arrangement for the school retirement funds, but also for all public retirement funds. There is one other aspect of this which we have got to consider and that is although Committee Proposal 40 provides for a contractual relationship, and also requires that current benefits be funded currently, there is still no assurance that the legislature will provide the money.

Section 23, as presently drawn, does provide for a minimum amount of contribution to the school retirement funds, and we are seeking to retain some minimum guarantee out of this earmarking. The committee on finance and taxation has recognized the bare minimum aspects of present provisions. It should follow that any weakening of this minimum guarantee jeopardizes the system. Even the requirement in the constitution of funding accruing liability during a fiscal year is, in effect, to risk shifting of presently guaranteed legislative responsibility.

The sponsors of the amendment, seeking to retain a minimal percentage provision and to support public school employment retirement systems, urge consideration of the following. This is not an earmarking of funds, it is merely a segregation of funds already agreed on to retain such earmarked funds. It does not add one cent to earmarked funds; it merely retains the status quo of the agreed on earmarking.

Involved is the security of 130,000 school employees. Both retired and active school employees have a stake in this item. They need assurance that their contributions and their right to a retirement allowance have, at least, a basic security. Placing a contractual relationship on service is not enough. This is fine, but it does not provide money with which to finance the contract. Providing that the legislature shall finance current service on a current basis is not enough. In itself, it is good. It should be extended to cover the past service of persons still in service, and all the service of persons already retired. If this isn't done, the actual provision is not as good as the one now in the constitution.

Even with full financing of all service and constitutional provisions, the constitutional provisions should be kept. Providing that the legislature shall do certain things does not constitute doing them. No one can mandamus the legislature. To remove the present guarantee without providing a better one is to pull the rug from under the security of school employees. The present guarantee should be kept as a base, with improved provisions to assure adequate financing within a reasonable time. The new constitutional guarantee does not conflict with providing adequate financing, and this point should be made clear: there is no conflict between what is requested here and the provisions of, I think, Committee Proposal 40.

The present provision merely states—or at least the recommended provision merely states—that 7½ per cent of school district payrolls shall be allocated from already earmarked funds to the retirement systems of school employees. This does not preclude additional provision for the retirement system from the general fund and is not at all in conflict with proposals for additional financing. It merely seeks to retain a basic, even though inadequate, financing until a better basis is provided. There is no need to destroy this basic assurance for 130,000 school employees. This does not provide additional or new constitutional guarantees for a special interest group. The money is already earmarked in the school aid fund. The persons served are the same persons for whom earmarking has been approved, and the same money is involved.

Retirement is deferred salary. School aid money is used for salaries, and the portion segregated for the retirement system is merely a division of that money already provided for the salaries, so that a portion of it will be paid as deferred salary on retirement allowances. A review of the history of financing for the Michigan school employees' retirement system discloses that the legislature has shown a reluctance to appropriate to meet current funding requirements. Before adoption of the 1954 guaranteeing amendment to the constitution, the legislature had never appropriated more than $9 million in a single year for school employees' retirement. Under the provisions of the guaranteeing amendment, the school retirement system received over $38 million in fiscal 1960-61. At no time has the percentage provided been sufficient to meet the obligations of the fund. However, it has been a better basic financing than the system ever had before. It is not enough but it should be improved, not discarded. It provides a base and psychological reassurance which is vital at present. To remove the base of that for retirees is hitting below the belt. I move that this amendment be adopted.

CHAIRMAN MARTIN: Mr. Staiger.

MR. STAIGER: Speaking on behalf of the committee, I would like to point out, first, that we are now, on this question, leaving the field of education and talking about employees. In this field I submit that educational employees should not be any different than any other state employees. This amendment would single out for special treatment educational employees and give them something over and above the broad general provisions which the committee has recommended and which we feel adequately provides the fundamental guarantees that are needed for our present retirement systems. That section has already been passed by this body. We see no reason to single out the educational employees, as such, for something over and above this. For that reason we oppose it.

Also, tracing the history of how this came into the constitution, section 23, as we pointed out earlier, was a multiple issue amendment to the constitution. It was either take it all or not at all. This was one small section of the whole package. It did pass by a substantial majority but to say that this one section was something that the people were in favor of or opposed to is just impossible to do at this time. We feel that this language can be taken out now. We have provided that 2 cents can be used for teachers' retirement systems but, with the broad general guarantees that we have already provided, we do not feel that we have to be this specific in this section of this constitution.

CHAIRMAN MARTIN: Mr. Bentley.

MR. BENTLEY: Mr. Chairman, I must confess that I am a little puzzled by the remarks and inference left by the distinguished gentleman from Detroit, Mr. Austin. Last week we passed Committee Proposal 40 which, in its second paragraph—referring to these accrued financial benefits—said specifically:

> All benefits arising on account of service rendered in each fiscal year shall be funded during that year and such funding shall not be usable for financing unfunded accrued liabilities.

In supporting reasons from the committee on finance and taxation, they stated, and I quote:

> . . . we have provided for these 2 systems, and all others—state or municipal—a requirement that in each fiscal year the accruing liabilities shall be funded during that year, thus keeping any of these systems from getting farther behind than they are now.

My question to the gentleman from Detroit would be: since I understood that both Committee Proposal 40 and the supporting reasons had the pretty much unanimous support of the committee on finance and taxation, and since it was stated several times during the discussion of this section that this would absolutely require the legislature, beyond any shadow of a doubt, to provide for current liabilities or current funding, as they may arise, the gentleman's amendment now would seem to indicate that he and others have doubts that Committee Proposal 40 and the supporting reasons mean what they say, and they want to write in a supporter to further strengthen it. Is that a correct interpretation, Mr. Austin?

CHAIRMAN MARTIN: Mr. Austin.

MR. AUSTIN: That is a correct interpretation. There are 2 contingencies involved. I should mention, first of all, that according to section 2 of the present constitution, the legislature is required to levy sufficient taxes to pay the estimated expenses of government. This the legislature has not done. Even though there is a requirement in the constitution that the legislature do certain things, it has not always done them. You cannot mandamus the legislature. That is my first point. Even though Committee Proposal 40, which was highly desir-

able, states that these accruing benefits should be funded on a current basis, there is still no assurance that the legislature will do it.

Secondly, it is within the legislature's power to shift the burden of responsibility, if it desires to do so, back to the school districts. What we are seeking to do is merely guarantee in the constitution what is already there, that at least 7½ per cent of the payrolls be earmarked or set aside from the 2 cents of sales tax that is earmarked.

CHAIRMAN MARTIN: Mr. Bentley.

MR. BENTLEY: Mr. Chairman, if I can respond again to the gentleman; in the first place, as I recall the discussion of last week there was no positive assurance that the entire amount—and I believe the figures quoted were 11¼ per cent outstate and 15½ per cent in Detroit—there was no positive assurance given that the entire amount might not conceivably come from the school districts, although it was deemed unlikely, and I agree with that interpretation. But secondly, Mr. Chairman, it seems to me that we have reached a point in our discussions here which goes far beyond the scope of the Austin amendment, and that is to the effect, is it possible for this convention to write anything into the constitution which will absolutely require the legislature to take certain actions or, if we are to agree with the remarks of the gentleman from Detroit, Mr. Austin, since we can't specifically force the legislature to do anything in this constitution, have we got to review all of our actions and require, in every particular case, some compelling reason that the legislature could not ignore, even if it so desired. It seems to me that that is what we are up against at this point.

MR. AUSTIN: I don't believe we are attempting to go quite that far. All we are attempting to do is say that this money shall be used for this purpose, just as we are saying that gas and weight taxes shall be used for highways. We are saying that 2 cents of the sales tax shall be set aside for schools, of which a certain portion is for retirement. Now, when we earmark these items, it simply means that the legislature shall not spend these moneys for another purpose. We are not actually trying to mandamus the legislature. We are confessing that we can't mandamus the legislature, we merely want to earmark this money.

MR. BENTLEY: Nevertheless, Mr. Chairman, I submit to my distinguished friend that what we are actually doing, if his amendment were adopted, is to say that we have already written in a specific proviso that the legislature shall do thus and so and then we are saying in effect, "We still don't trust you and we are going on and making sure you do it by putting in a separate earmarking provision."

CHAIRMAN MARTIN: Mr. Van Dusen.

MR. VAN DUSEN: Mr. Chairman and members of the committee, just a few more comments on this in support of the committee proposal and in opposition to the amendment. As Mr. Staiger pointed out, this committee of the whole last Friday adopted a general proposal with respect to public employee retirement systems, which is broad in its application and covers all public employees, whether they are employees of the state or of a school district or of a municipality. That being the case, it seems not only unnecessary but undesirable to single out one category of public employees—public school employees—and make a specific provision for them in the constitution. If you are going to make specific provision for public school employees, why not specific provision for policemen, for firemen, for probate judges, for circuit judges, for any other category of public employees whose security is no less important than that of the category we are now talking about. In other words, because we have adopted a broad and general proposal, it seems highly undesirable to tack on a specific one for one category.

Second, I think it was very generally agreed last Friday that the broad proposal is a good and desirable one which provides first a contractual right on the part of public employees to receive their deferred compensation, and second, mandates the legislature to currently fund the pension system so that that money will be available. The proposition which is embodied in this amendment is admittedly, by its sponsors, inadequate, and what I submit they suggest is that having put a Buick in the front yard they now want to keep the horse and buggy in the garage just in case. I think that is undesirable.

Finally, I would simply point out what should be obvious, that this is simply earmarking on top of earmarking and if earmarking in the first place is not desirable, as Dr. Nord pointed out last night, earmarking on top of earmarking is even less desirable.

CHAIRMAN MARTIN: Mr. Tubbs.

MR. TUBBS: I concur with Mr. Van Dusen, Mr. Chairman. I am not very facile with figures, but I would like to give Mr. Austin just a few. Since he is an accountant, I am sure a few more won't bother him a bit. I understand from latest available figures that we are increasing our school population approximately 50,000 pupils a year. That means we will have 2,000 new teachers a year with approximately 1,700 new classrooms a year, and total employees of 2,210 a year getting salaries of approximately $10 million or $11 million a year, 7½ per cent of which is about $828,000. If this is supposed to be an amendment for schools, the employees soon are going to crowd the schools out of the picture.

CHAIRMAN MARTIN: Mr. Austin.

MR. AUSTIN: Mr. Chairman, several remarks have been directed to me and I think I would like to respond with some figures. I would like to quote just a few figures that indicate what the legislature has done for the state retirement fund over the past few years. In 1945 or fiscal '45-'46 the legislature appropriated $2,500,000 for pensions; in 1946-47, $2,500,000; in 1947-48, $3,800,000; in 1948-49, $6,400,000; in 1949-50, $6,500,000; in 1950-51, $6,600,000; and in 1951-52, it dropped back to $4,800,000; 1952-53, $4,500,000; 1953-54, $4,500,000; and in 1954-55, $4,600,000. And then following the Conlin amendment, which was passed in 1954 and provided for earmarking of sales tax for school retirement, this same fund received $11,842,000; in 1956-57, $14,700,000; in 1957-58, $20,700,000; in 1958-59, $26,850,000; in 1959-60, $26 million; and in 1960-61, $36 million. These are the amounts that have gone into the school retirement fund since the diversion amendment was enacted—or let's say the Conlin amendment in 1955. Now, were it not for the Conlin amendment, I think we would all agree that the amounts that the legislature in all probability would have appropriated would have ranged around $6 million for this fund.

CHAIRMAN MARTIN: The question is on the amendment. Mr. Anspach.

MR. ANSPACH: Mr. Chairman, I would like to direct a question, if I may, to Mr. Van Dusen. It has to do with the reference to the fact that in this case the teachers be a preferred group. Isn't it so that some of the retirement funds of the state were funded from the first? If so, where are we a preferred group?

CHAIRMAN MARTIN: Mr. Van Dusen.

MR. VAN DUSEN: Mr. Chairman, I think there are only 2 of many public employee retirement systems which on any actuarial basis have been properly funded from the start. Most of the public employee retirement systems of the state are not much better funded than those of the teachers. In particular, the municipal employees' retirement systems, as witnessed in recent litigation in Detroit, are not properly funded and are not being properly funded currently.

CHAIRMAN MARTIN: Mr. Binkowski.

MR. BINKOWSKI: Mr. Chairman, in response to Mr. Van Dusen's point, this last point, I think that we should be aware of the fact that we are not starting from the beginning. It is unfortunate that we cannot write into the constitution protection for the firemen and the policemen. However, the public school employees—and this includes teachers but is much broader than simply teachers—have this protection at the present time under the present constitution. By the acceptance of the majority report we are depriving them of this protection and I wonder how they will be reacting to it.

I would like to direct a question to Mr. Bentley because last Friday I thought he raised a very cogent point, and that was the problem of shifting this burden to the local school districts

from the legislature. I ask Mr. Bentley, if we don't have some provision like this, will not that burden be shifted from the state back to these local school districts?

CHAIRMAN MARTIN: Mr. Bentley.

MR. BENTLEY: In reply to the gentleman whom I am unfortunately unable to see, but whom I assume is one of the cosponsors of the amendment, Mr. Binkowski, it is my understanding that we did receive assurances during the discussions last Friday on this matter but it was felt that for obvious reasons the state or the legislature would not increase the burden on the school districts beyond what it is now. It might even alleviate it. I would have to refresh my memory as far as the transcript is concerned, but I do point out that I would be hopeful that the legislature would take action to keep these liabilities currently funded without creating any more hardships for the individual school districts than they already have in many cases.

CHAIRMAN MARTIN: Mr. Brake.

MR. BRAKE: Mr. Chairman, ladies and gentlemen, it seems to me that the position taken by Mr. Austin and the others on this amendment is bad psychology from the viewpoint of friends of the schools. Mr. Austin should remember that we did not in those years that he gave us the figures from, where they were appropriating insignificant sums, have any constitutional command that they should do otherwise; all they had was statutory. And now, if our Committee Proposal 40 goes through, we are to have a constitutional mandate saying "you shall". Now, if you say to the legislature, "You shall put in what now amounts to 12¼ per cent of the payroll in the outstate system" and then at the same time we shall express the doubt that it is going to follow the constitution and say, "Anyway, you must put in 7½ per cent," aren't you slightly inviting the legislature to disregard your top figure and pay attention to the bottom one?

CHAIRMAN MARTIN: Mr. Spitler, do you wish to speak?

MR. SPITLER: Mr. Chairman and delegates, I feel that I should say a word on this in support of the amendment and I want to say the reason for that. I have stated here 2 or 3 times during the last 2 or 3 days, and I don't want to belabor that point, but I do feel that I should take a stand for it. The fear that I have is the one that I have expressed often here, that this will be passed back to the local school districts. I know the theory has been advanced here that we should allow all funds to go into a general fund, that the legislature then could consider all these and allocate as the need might be. You who have had any experience at the legislature know it just doesn't happen that way. When we get down to the last few days of the sessions of the legislature, it is a matter of who can exert the most pressure. There are pressures exerted from every source to secure a cut in that revenue. I am sure, and I feel definitely that when we earmark certain funds for a certain purpose the people have determined that we are removing at least a large share of those funds from this battle that occurs in the last session days of the legislature.

When the 2 cent sales tax was passed, it included this 7½ per cent for the retirement fund, and it was included not only that it would provide money, as Mr. Austin has said, but it was also included that it might encourage and almost require that the legislature appropriate those funds directly to the 2 retirement systems, and that is the danger that I am most fearful of. I have worked in this for 40 years. I know the problems back on the local school district level. If you are going to return, as the legislature may do when they get into the last days of the session and say, "We just don't have enough funds, we are going to return the entire 2 cents to the school districts and we are going to let them take care of the retirement," and where you have nearly 2,000 school districts, and when you know those districts as I know them and know the manner of accounting that they take care of, I am sure that you are endangering a fund here provided for schools and you are endangering a fund for those school teachers who are teaching in districts where there is poor accounting.

I am speaking in favor of the amendment for the reason that I feel we should still require the legislature, that we should encourage—and if at all possible require—the legislature to make those payments directly to the 2 retirement funds in 1 payment or 6 payments, as they are doing it now, and remove this danger of having to go back to 2,000 school districts, some which might meet this requirement and some which might not. I am in favor of the amendment.

CHAIRMAN MARTIN: Mr. Austin.

MR. AUSTIN: Mr. Chairman, in response to the remarks of my distinguished chairman, Mr. Brake, he criticized, I think, the psychological aspect of this proposition. I would like to respond by saying that we are requiring in this constitution that the state or that schools shall be encouraged and that funds shall be provided for the maintenance of schools. At the same time we are asking that 2 cents of the sales tax be set aside as a minimum guarantee for their support. I hold that the psychology involved in asking for the minimum base for the retirement is no different from the minimum base that we are asking for the school support.

CHAIRMAN MARTIN: Mr. Binkowski.

MR. BINKOWSKI: I don't want to engage in any argument. I would just like to clear up a point, Mr. Bentley, and that is this: that the committee on finance and taxation, in recommending Committee Proposal 40, which was adopted last week, certainly did not intend that the legislature should shift that burden back to the local school districts, but I think that you should be keenly aware, and everyone here should be keenly aware of the fact that under the present provisions there would be nothing in the constitution which would prevent the legislature from doing so if in its ultimate wisdom it desired to do so. This is a distinct possibility without the adoption of our amendment.

CHAIRMAN MARTIN: The question is on the Austin-Binkowski amendment. Those in favor say aye. Those opposed will say no.

A DELEGATE: Division.

CHAIRMAN MARTIN: A division is requested. Is the demand supported? Sufficient number up. Those in favor will vote aye. Those opposed will vote no. Will the secretary reread the amendment, please, so you are familiar with it.

SECRETARY CHASE: Mr. Austin and others have offered the following amendment:

[The amendment was again read by the secretary. For text, see above, page 813.]

CHAIRMAN MARTIN: Those in favor will vote aye. Those opposed will vote no. Have you all voted? Mr. Madar.

MR. MADAR: Mr. Chairman, I believe it would be a good idea if we get the pages to go down through the hall announcing that we are taking a vote on this. This is of extreme importance and I think the delegates all would like to vote on it.

CHAIRMAN MARTIN: We have a great many important questions coming up and it is the responsibility of the delegates to be here when the votes are called. We will ring the bell as we have been doing.

SECRETARY CHASE: Has everyone voted? The machine is now locked and the totals will be recorded. On the adoption of the amendment offered by Messrs. Austin and others, the yeas are 66, the nays are 66.

CHAIRMAN MARTIN: The amendment is not adopted.

SECRETARY CHASE: Mr. Faxon offers the following amendment:

1. Amend page 2, line 7, after "law.", by inserting "There shall be set aside for the public universities, colleges, junior and community colleges, ½ cent of a state sales tax levy on each dollar of sales of tangible personal property to be allocated on a membership basis as shall be prescribed by law.".

CHAIRMAN MARTIN: Mr. Faxon.

MR. FAXON: I hate to follow this other close vote here, but yesterday the members of this committee were in favor of earmarking a certain basic minimum support for the public elementary and secondary schools in our state. I think that our commitment to a minimum support of education is a wonderful thing and ought to be extended—extended to the higher institutions of learning, junior community colleges and the

universities. I know that the additional ½ cent here is not going to provide the support itself, but in terms of our total commitment to education and in terms of being consistent with our previous action, it would seem to be in keeping with both of these features if we maintained the same and did provide for a minimum amount of support for the public higher institutions of learning. I take into account the fact that Mr. Brake feels that we don't want to add any more earmarking to the sales tax levy and if we had eliminated earmarking entirely then we wouldn't be in the process of attempting to divide it up to take care of the future interests of the state. But we are engaged in the process of dividing it up. We have already committed it to a 2½ cent diversion and if it seems that we are here concerned with giving a minimum support to higher education, we would be equally concerned with adding another ½ cent to that appropriation. And so I offer this amendment in terms of being consistent with supporting elementary and secondary education. We oughth to give some minimum support to higher education.

CHAIRMAN MARTIN: Mr. Brake.

MR. BRAKE: Mr. Faxon has stated the committee's position exactly. We are opposed to any additional earmarking.

CHAIRMAN MARTIN: The question is on the Faxon amendment. As many as are in favor will say aye. As many as are opposed will say no.

The amendment is not adopted.

SECRETARY CHASE: Mr. Tubbs has filed with the secretary the following amendment:

1. Amend page 1, line 24, after "property" by inserting "and the balance thereof shall be distributed to all inhabitants as of December 25 each year". (laughter)

CHAIRMAN MARTIN: The Chair was about to rule that the delegate must be present to have his amendment presented. Mr. Tubbs is here now. Mr. Tubbs, do you wish to speak on this amendment?

MR. TUBBS: I am sorry, Mr. Chairman, I was in the research department for a moment. (laughter) I wanted to be sure that December 25 was still Christmas. (laughter) We have shown so much concern for the voters of the state of Michigan in this convention that I thought we really ought to do something that would win their applause. Thank you.

CHAIRMAN MARTIN: The question is on the Tubbs amendment. All those in favor will vote aye. Those opposed will vote no.

The amendment is not adopted.

SECRETARY CHASE: Mr. Hubbs offers the following amendment:

1. Amend page 1, line 22, after "villages on a" by striking out "population basis" and inserting "basis related to population"; so that the language will read:

> There shall be returned to cities, townships and villages on a basis related to population, as provided by law, ½ cent of a state sales tax levy on each dollar of sales of tangible personal property.

CHAIRMAN MARTIN: Mr. Hubbs.

MR. HUBBS: Mr. Chairman, members of the committee, I would like to first congratulate Delegate Tubbs on his sense of humor. The second thing that I would like to do is try and point out a problem which I think might expedite our maneuvers a little bit. I offered my amendment earlier when Mr. Hoxie's amendment was being considered and Mr. Hutchinson's amendment, but because it was related to mine, it was deferred and held over until we had considered a number of other problems. I would like to inquire at this time if it is not possible for the secretary to group amendments when they come up so that those bearing on a particular point under discussion at the moment could be disposed of before we depart and go to another area within the same proposal in the future. I think this would be helpful because we don't have to switch gears so often to go back and forth.

However, I would like to get back to the subject. I completely agree with Senator Hutchinson's proposition that the population should be deleted entirely and give the legislature the authority to do this distributing on a basis as provided by law. However, like Mr. Downs, I also feel that population should be a very considerable factor in that distribution. I also agree with Mr. Hoxie about 50 per cent, because I don't think that inmates in state institutions which do not have any bearing on local problems should be considered in this distribution, and so I would like to change the wording to read, "basis related to population." I have put one word in which may be considered by some to be indefinite, but at the same time it will indicate to those who will interpret the constitution that we would want the distribution to be on a basis related to population and leave the door open to the legislature to define by law exactly how they will do the distributing. So I would therefore ask that you support my amendment and I think that it will accomplish a purpose which we all desire.

CHAIRMAN MARTIN: Mr. Staiger.

MR. STAIGER: Replying on behalf of the committee, this is once more an attempt to do a drafting job in the committee of the whole. As we stated before, the committee feels the intent is the same as Mr. Hubbs feels would be accomplished by his amendment. We think it already provides for that. If it does not, they are certainly going to have a chance to review it in style and drafting, and I think that is the place to do this type of work, where we are agreed on the intent and it is just a question of the words that we are talking about. We would oppose this and any other amendments to this section until we have had a chance to review it, until style and drafting has had a chance to review this question.

CHAIRMAN MARTIN: Mr. Hodges.

MR. HODGES: Mr. Chairman, I would move to make it an 80-20 formula, make it an 80 per cent population, 20 per cent land, which is the one we seem to be going to use in apportionment, and this would therefore be consistent.

CHAIRMAN MARTIN: Mr. Hubbs.

MR. HUBBS: Mr. Chairman and delegates, I think earlier in the agreement concerning Senator Hutchinson's proposition it was said that this was a definite, substantive change, and I cannot understand now how the committee reverses its position and says that it's a matter for style and drafting. If earlier in the argument it was a substantive change, it is still a substantive change, and I think that the words that I propose will eliminate the doubt as to what the legislature can do. If Mr. Hutchinson says—he being an eminent constitutional authority—that this limits the legislature, then I think that my wording would tend to loosen it up a little bit so that they could make the decision the way it should be made.

CHAIRMAN MARTIN: Mr. Van Dusen.

MR. VAN DUSEN: I would simply state in response to Mr. Hubbs, Mr. Chairman, that Mr. Hutchinson's amendment proposed to delete population entirely as a criterion and Mr. Hubbs' amendment simply makes it clear, as the committee proposal intends to, that the legislature is to determine the population basis for distribution.

CHAIRMAN MARTIN: Mr. Brake.

MR. BRAKE: Mr. Hubbs has stated my exact reason for opposing what he says. He says it will loosen it up for the legislature. I certainly think it will loosen it up for the legislature. What the word "related" means is so indefinite that the legislature could go most anywhere and with the facility that the courts have for traveling off the beam in these days, the 2 of them together would have a field day. (laughter)

CHAIRMAN MARTIN: The question is on the Hubbs amendment. As many as are in favor will say aye. As many as are opposed will say no.

The amendment is not adopted.

SECRETARY CHASE: Mr. Downs offers the following amendment:

1. Amend page 1, line 22, after "law,", by inserting "excluding those in state institutions other than those of higher education,"; so the language will read:

> There shall be returned to cities, townships and villages on a population basis, as provided by law, excluding those in state institutions other than those of higher education, ½ cent of a state sales tax levy on each dollar of sales of tangible personal property.

CHAIRMAN MARTIN: Mr. Downs.

MR. DOWNS: I believe this amendment, in a sense, is an argument against trying to do things on the floor—after the original suggestion was brought to my attention that the wording would have excluded universities where people do spend money and receive services. This would exclude people in state institutions, such as patients in mental institutions, which Senator Hutchinson mentioned earlier today. I think it is along the principles of the amendment offered by Delegate Hoxie, and if this is adopted I would be very glad to have style and drafting do some improving on the language, but the principle here is sound. It does provide that the sales tax would be returned on a population basis, and we would exclude those exceptional situations, such as the prisoners. I urge its support.

CHAIRMAN MARTIN: The question is on the Downs amendment. As many as are in favor will say aye. As many as are opposed will say no.

A DELEGATE: Division.

CHAIRMAN MARTIN: A division is requested. Is the demand supported? Sufficient number up. As many as are in favor of Mr. Downs' amendment will vote aye. As many as are opposed will vote no.

SECRETARY CHASE: Has everyone voted? The machine is locked and the totals will be recorded. On the adoption of the amendment proposed by Mr. Downs, the yeas are 56; the nays are 66.

CHAIRMAN MARTIN: The amendment is not adopted. Are there further amendments, Mr. Secretary?

SECRETARY CHASE: These are all the amendments on file, Mr. Chairman.

CHAIRMAN MARTIN: Are there any amendments to the body of the proposal? If not, it will be passed.

Committee Proposal 39 is passed.

Mr. Hoxie.

MR. HOXIE: Mr. Chairman, I rise for a parliamentary inquiry. I would like a ruling whether it is proper to request or demand the vote of the Chair in the committee of the whole.

CHAIRMAN MARTIN: I will have to consult the secretary. Mr. Hoxie, there is nothing in the rules, as far as I know, which permits the vote of the Chair to be demanded, but there is also nothing in the rules which prevents the Chair from voting. My understanding, just as a matter of general practice, is that if the Chair wants to express himself on matters before the committee of the whole, that he relinquishes the Chair, but on the matter of a vote, it is my understanding that he can vote or not, as he pleases; that his vote cannot be demanded.

CHAIRMAN MARTIN: Dr. Anspach.

MR. ANSPACH: I rise on a point of personal privilege for a comment that might be of assistance to Chairman Brake. These 2 duck hunters were out. They had fine shooting all day, excellent shooting, but they missed all the ducks. Along about 6:00 o'clock at night, Bill said, "Joe, we have had fine shooting all day long but we haven't bagged a duck." He said, "That's right. Tell you what we'll do; we'll miss 2 more and then we'll go home." (laughter)

CHAIRMAN MARTIN: Mr. Mahinske.

MR. MAHINSKE: I would like to direct this question to the Chair or the secretary. It seems that this is the first time that this has happened, but we have been considering for the past 2 or 3 days, a committee report that on the floor does not have a majority of the committee itself. We have had a minority report signed by 7 people against the committee proposal, an additional minority report signed by 3 other people against the committee report, and 1 member of the committee not present when the vote was taken. So the 20 man committee had 20 members; we have 10 people from the committee signing the minority report, and one additional person, who has signed neither of the minority reports, standing up and supporting one of the minority reports; so we have 11 people out of 20 not supporting the committee proposal, and I wonder what kind of a position this puts us in.

CHAIRMAN MARTIN: Mr. Brake.

MR. BRAKE: Your difficulty, sir, is that the minorities were not the same on the various phases of the problem. There has been nothing reported to the floor that didn't have 11 or more votes on each specific proposition. Your minorities were not the same people in connection with the different parts of the question.

CHAIRMAN MARTIN: Mr. Mahinske.

MR. MAHINSKE: I may stand corrected, but I thought that both minority reports were complete substitutions for the committee proposals. In fact, I thought one of the Republican minority reports made that pretty clear.

MR. BRAKE: I wish that you wouldn't put that name in there at all. There wasn't a single division that was based on party politics in this whole issue.

MR. MAHINSKE: I would be willing to have that stricken. This is just a means of identification here, but in the report signed by the 3 members rather than the 7 members, I thought they pointed out definitely that this was in substitution.

CHAIRMAN MARTIN: Mr. Mahinske, my understanding is that a majority of the committee signs the entire committee proposal, and this is, I believe, in accordance with the rules. Of course, the rules do permit minority reports by any 3 members of the committee on any phase of the committee report. Therefore, on certain occasions members of the committee may vote to report out a committee proposal but may reserve their right to put in a minority report on some particular phase of it as has been done here on the floor.

SECRETARY CHASE: Item 3 on the calendar, from the committee on finance and taxation, by Mr. Brake, chairman, **Committee Proposal 36,** A proposal with reference to the use to be made of the primary school interest fund, covering the subject matter now found in article X, section 1 of the 1908 constitution.

Following is Committee Proposal 36 as read by the secretary, and the reasons submitted in support thereof:

The committee recommends that the following be included in the constitution:

Sec. a. THE REVENUE DERIVED FROM all subjects of taxation now contributing to the primary school interest fund [under present laws shall continue to contribute to that fund, and all taxes from such subject shall be first applied in paying the interest upon the primary school, university and other educational funds in the order herein named, after which the surplus of such moneys shall be added to and become a part of the primary school interest fund.] SHALL BE USED EXCLUSIVELY FOR AND INCLUDED IN THE ANNUAL LEGISLATIVE APPROPRIATION FOR STATE AID TO PUBLIC EDUCATION.

Mr. Brake, chairman of the committee on finance and taxation, submits the following reasons in support of Committee Proposal 36:

The primary school interest fund originated from the sale of the sixteenth section of each township, which was given to the state by the federal government for the support of public schools. The fund so originated was never kept intact, but instead interest has been paid by the state as if there were actually a fund, but to that interest has been added the revenues derived from the inheritance tax, corporation organization fees, foreign insurance companies tax and the ad valorem taxes on railroads, telephone and telegraph, car loaning, express companies and escheats. The amount has grown rapidly and is now running around the amount of $60 million per year.

So far under the requirements of the law this money has been distributed to the school districts of the state on a school population basis, not on a membership basis. We are advised by an opinion of the attorney general that there is nothing in the relationship of the federal government and the state, or otherwise, which prohibits a different form of distribution, or in fact prohibits the abolition of these taxes altogether. We are therefore recommending that the funds be retained for schools but that the distri-

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Explanation—Matter within [ ] is stricken, matter in capitals is new.

bution be under the school aid formula, which rests in part upon a membership rather than a school census basis.

Actually this makes no difference as by statute at the present time the primary school interest money is a deductible item in each district. That is to say that in determining what each school district is to receive from the state in order to bring its resources up to the standard established by the legislature—$205 per student as of now—the primary school interest money as well as the deductible millage are both deductible items. The plan of putting the primary school interest money, therefore, into the school aid appropriations simplifies the procedure but does not change the dollar amount to which the district is entitled from the state.

CHAIRMAN MARTIN: Mr. Brake.

MR. BRAKE: Mr. Chairman, ladies and gentlemen of the committee, while this proposal was not before us yesterday, at least 2 of the speakers included it in what they had to say, and Mr. Stevens made it unnecessary for me to make part of what would otherwise have been a speech in this connection. This has to do with the primary school interest fund. As we pointed out yesterday, it is a fund only in the books, not in actual existence.

A delegate outside the hall asked me a question the other night and I was slow in the answer. He said, "Why are you making this apply only to public education and not specifically to the schools?" The answer to that is that there are others involved. The original funds coming from the sale of section 16 in each township was not owned—if you want to put it that way—exclusively by the public schools. The University of Michigan and Michigan State University, and I believe Eastern Michigan University all have an interest in it. As of now, the University of Michigan receives interest on $548,984.40; $38,428.91, I think, was the 1960 payment. Michigan State University draws interest on $1,059,378.78, and that, in '61, amounted to $71,175. Eastern draws interest on $69,366.

All of this interest taken together, of course, is a very minor part of what is paid to public education through the primary fund. That is running now around $60 million a year and is contributed on a school census basis. This includes all the youngsters from 5 to 19, regardless of whether they are in school or not in school. Back in earlier years that meant a tremendous advantage to a public school which had a lot of parochial youngsters in the district. It is no longer true because at the present time the primary fund distributed to any district is a deductible item in the school aid, the same as the 3¼ mills constitutes a deductible item, so that the dollars that go to the school district are just the same. The attorney general was consulted as to whether our relationship with the federal government, because of this grant of the sixteenth section, prevented a change in the method of distributing, and his ruling is that it does not. He went on, gratuitously, and said that the legislature has the full power to take away from the primary school fund any of the public utilities or other corporations that are taxed to make up the fund. For instance, there is nothing to prevent the legislature from stopping the taxation of the railroads, but if they are taxed, then the money received must go into this fund under the present constitution and under our proposal.

While we have taken out a lot of language and simplified the proposal, the only real change that we have made is to say that this money shall be distributed under the school aid formula along with the 2 cents of the sales tax and any supplement that the legislature puts on. This doesn't mean a change in dollars. It does mean a simplified procedure. That is the proposal that we have before you. It is earmarking. It is the most venerable of all the earmarking we have—for many, many years, the only earmarking we had—and that was true until Senator Turner of Morley got through the legislature—I believe it was in 1931—the first school aid bill outside of the primary school fund.

Incidentally, if any of you drive 131 between Grand Rapids and Big Rapids, go through that little village of Morley and on the east side see that school house. You can attribute to it the beginning of school aid, because it was the fact that that school district was so hard put to it, after they built that building, that Senator Turner got through the first school aid bill.

CHAIRMAN MARTIN: Mr. Bentley.

MR. BENTLEY: I would just like to say that the committee on education has unanimously concurred in Committee Proposal 36 from the committee on finance and taxation. We do have concurrent jurisdiction.

CHAIRMAN MARTIN: Are there any amendments to the body of the proposal? Mr. Hatch.

MR. HATCH: Mr. Chairman, I have a question. Where the language of the section says that all subjects of taxation shall be turned into this fund, does that mean if a different type of tax, such as income tax, say, were levied against the railroads or these utilities, that the revenue derived from an income tax would then also go into this fund?

MR. BRAKE: I think so, if it were specifically applied to those utilities that contribute. We are following there the language that was used in 1908. They simply said those subjects contributing are to continue to contribute.

MR. HATCH: So subjects does mean the utility involved and not the type of taxation?

MR. BRAKE: I think so.

CHAIRMAN MARTIN: Mr. Higgs.

MR. HIGGS: Mr. Chairman, I have a question. I wonder if Delegate Brake would explain with regard to the committee report what is meant by this sentence:

> We are therefore recommending that the funds be retained for schools but that the distribution be under the school aid formula, which rests in part upon a membership rather than a school census basis.

And he goes on to say actually this makes no difference.

I don't know whether I am particularly dense or what, but I don't understand what is meant by the school aid formula membership rather than school census basis and why it makes no difference.

MR. BRAKE: Perhaps I didn't go into sufficient detail. I just tried to explain that. The primary money has been and is yet distributed on a school census basis. That means every youngster—and it doesn't make any difference whether he goes to school or not—if he is between 5 and 19 years, draws so much primary money for his district.

The school aid formula, as it is ordinarily spoken of, is a legislative formula and it is changed from time to time in the legislature by which the great bulk is distributed to the schools, and there they do not go on a census basis; they go on the basis of the kids that are actually in school; in other words, a membership basis. There are other items in the formula, but the bulk of it is on the basis of membership in the school. Why doesn't it make any difference? Because in the determination of what each school is entitled to under the state aid, you set your figure in the first place, at the present time, at $205 for each youngster in school. That changes. The legislature raises it from time to time. I guess they never have lowered it, but they raise it. But at the present time it is $205. So, for this district you multiply the number of kids in school by $205. That is the minimum amount that the school ought to have. Now, you take away from that the 3¼ mills that they must raise locally. Also you take away from it the amount that they get under the primary school fund, and then you pay them what you have left, the difference in order to bring that up to $205 per youngster. There are things about transportation and so forth that enter into it but, by and large, what I have told you is the method of determining what state aid shall go to each school district.

MR. HIGGS: One further question: when you speak of the 3¼ mills, can you clarify that?

MR. BRAKE: Yes. That is what we call the deductible millage. It is an attempt, and I guess everybody agrees it is not a 100 per cent successful attempt, to equalize between the rich districts—that is, the districts that have a big tax base—and the poorer ones, between the districts that have factories and so forth and those that are the so called "bedroom" dis-

tricts. If your equalization is low, what you deduct at 3¼ mills is, of course, a small figure. There the state pays more. The objective is that every youngster in the state should have equal opportunity for primary and secondary education, and this deduction of millage is supposed to equalize as between rich districts and poor districts so that the kids will have the same treatment without any argument; it doesn't just exactly achieve that but that's the objective.

CHAIRMAN MARTIN: Mr. Lesinski.

MR. LESINSKI: Mr. Chairman, we come across the word "now" again. You have omitted "under present laws," so the word standing alone, I believe, doesn't mean anything.

CHAIRMAN MARTIN: Mr. Brake.

MR. BRAKE: I think when that question was raised yesterday, I intended to cover it. I think the word "now", I hope, means 30 days after the first Tuesday following the first Monday of November of 1962, which is the time that our new constitution should go into effect. I hope it does.

CHAIRMAN MARTIN: Mr. Lesinski.

MR. LESINSKI: Mr. Chairman, but in the old constitution you have the words "now under present laws". It has a reference, and Mr. Brake only expressed a hope and did not include a reference here.

CHAIRMAN MARTIN: Mr. Brake.

MR. BRAKE: If that hope isn't fulfilled, what we say here will never make any difference; we will still be under the 1908 constitution.

SECRETARY CHASE: Mr. Upton offers the following amendment:

1. Amend page 1, line 7, after "Sec. a.", by striking out "The revenue derived from all subjects of taxation now contributing to the primary school interest fund" and inserting "One-half cent of the sales tax"; so the language will read, "One-half cent of the sales tax shall be used exclusively for and included in the annual legislative appropriation for state aid to public education.

CHAIRMAN MARTIN: Mr. Upton.

MR. UPTON: Mr. Chairman, delegates, this is again realizing that earmarking of funds is required and requested by our delegates. When you think of what the primary school interest fund consists of—the inheritance tax, the corporation organization tax, the foreign insurance company tax, the railroad tax, telephone and telegraph tax, car loading tax, express company tax, et cetera — these taxes can be varied from time to time, perhaps by the desire to have a broader base; if we wish to appropriate and keep maintained the sense of the primary school interest fund, currently these taxes approximate $60 million, which would currently amount to ½ of the sales tax. It appears to me if we wish to support education by earmarking of funds it would be much easier for our state administration to have all the earmarking coming from one area and allowing the legislature to then deal with the other taxes as they see fit.

To me, this would keep the earmarking for educational purposes from coming from one area. Therefore, the primary school interest fund would be maintained as it has been with the certain revenues coming from the sales tax and not from a variety of taxes, but can go up and down, which in the future may need to be changed by the legislature. I feel this, in a sense, would maintain the sense of the primary school interest fund.

CHAIRMAN MARTIN: The question is on the Upton amendment. The secretary will read the amendment, please.

SECRETARY CHASE: Mr. Upton's amendment is:

[The amendment was again read by the secretary. For text, see above.]

CHAIRMAN MARTIN: The question is on the Upton amendment. As many as are in favor—Mr. Stevens.

MR. STEVENS: Mr. Chairman, members of the committee, this change would, of course, change the traditional law of Michigan which has dedicated these funds for so many years it is beyond my memory, and probably the memory of all of us. I think we should hesitate before we do something of that sort.

CHAIRMAN MARTIN: The question is on the Upton amendment. As many as are in favor will say aye. As many as are opposed will say no.

The amendment is not adopted. Are there any further amendments to the body of the proposal? If not, it will be passed.

Committee Proposal 36 is passed.

Mr. Brake.

MR. BRAKE: Mr. Chairman, I move the committee rise.

CHAIRMAN MARTIN: The question is on the motion that the committee now rise. As many as are in favor will say aye. As many as are opposed will say no.

The motion prevails and the committee will now rise.

[Whereupon, the committee of the whole having risen, President Nisbet resumed the Chair.]

PRESIDENT NISBET: The Chair recognizes Mr. Martin.

MR. MARTIN: Mr. President, the committee of the whole has had under consideration certain matters on which the secretary will give a detailed report.

PRESIDENT NISBET: Mr. Chase.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 39**, A proposal with reference to the earmarking of sales tax revenues covering the subject matter of section 23 of article X of the 1908 constitution. The committee of the whole reports the proposal back to the convention without amendment and with the recommendation that it do pass.

Mr. Hodges, Mr. Ford and Mr. T. S. Brown offer the following amendment to the proposal:

1. Amend page 2, line 23, after "property" by inserting a colon and "Provided however, That no sales tax shall be levied on food or medicines".

PRESIDENT NISBET: Mr. Hodges.

MR. HODGES: Mr. President, I request a recorded roll call vote on this.

PRESIDENT NISBET: The question is on the amendment of Mr. Hodges. The yeas and nays have been demanded. Is the demand seconded? Sufficient number up.

SECRETARY CHASE: The amendment is as follows: Amend page 2, line 23, after "property" by inserting a colon and the proviso: "Provided however, That no sales tax shall be levied on food or medicines".

PRESIDENT NISBET: Mr. Brake.

MR. BRAKE: Mr. President, I move we adjourn.

PRESIDENT NISBET: The question is on adjournment. Those in favor say aye. Those opposed, say no.

The motion does not prevail.

The question is on the amendment of Mr. Hodges. Those in favor of the amendment will vote aye. Those opposed will vote no.

The roll was called and the delegates voted as follows:

Yeas—46

Austin	Garvin	Nord
Baginski	Greene	Norris
Balcer	Hart, Miss	Ostrow
Binkowski	Hatcher, Mrs.	Pellow
Bledsoe	Hodges	Perlich
Brown, T. S.	Hood	Richards, L. W.
Buback	Kelsey	Sablich
Cushman, Mrs.	Krolikowski	Snyder
Dade	Lesinski	Stopczynski
Douglas	Liberato	Suzore
Downs	Madar	Walker
Durst	Marshall	Wilkowski
Elliott, Mrs. Daisy	McCauley	Yeager
Faxon	McGowan, Miss	Young
Follo	Murphy	Youngblood
Ford		

Nays—79

Allen	Hatch	Pugsley
Anspach	Higgs	Radka
Batchelor	Howes	Rajkovich
Beaman	Hoxie	Richards, J. B.
Bentley	Hubbs	Rood
Blandford	Hutchinson	Rush

Bonisteel	Iverson	Seyferth
Brake	Judd, Mrs.	Shackleton
Conklin, Mrs.	Karn	Shaffer
Davis	Kirk, S.	Shanahan
Dehnke	Knirk, B.	Sharpe
Dell	Koeze, Mrs.	Spitler
DeVries	Leibrand	Stafseth
Donnelly, Miss	Leppien	Staiger
Doty, Dean	Lundgren	Stamm
Doty, Donald	Mahinske	Sterrett
Elliott, A. G.	Martin	Stevens
Erickson	McAllister	Thomson
Everett	Millard	Turner
Farnsworth	Mosier	Tweedie
Figy	Nisbet	Upton
Finch	Page	Van Dusen
Gadola	Perras	Wanger
Goebel	Plank	White
Gover	Powell	Wood
Hanna, W. F.	Prettie	Woolfenden
Haskill		

SECRETARY CHASE: On the adoption of the amendment offered by Messrs. Hodges, Ford and T. S. Brown, the yeas are 46; the nays are 79.

PRESIDENT NISBET: The amendment is not adopted.

Mr. Upton.

MR. UPTON: Mr. President, is it in order to ask for a roll call vote on the amendment as voted upon last night by the committee of the whole on the substitute proposal of the minority of 3?

PRESIDENT NISBET: Do you have something on the desk, Mr. Upton?

MR. UPTON: No, sir. I move to have our minority report placed before the convention as a whole.

PRESIDENT NISBET: We have 3 other amendments, Mr. Upton. Would you please prepare yours?

Mr. Marshall.

MR. MARSHALL: Mr. President, I move that the convention recess until 2:00 o'clock.

PRESIDENT NISBET: The question is on the motion to recess. Those in favor vote aye. Those opposed will vote no. The motion prevails and we are recessed until 2:00 o'clock.

[Whereupon, at 12:05 o'clock p.m., the convention recessed; and, at 2:00 o'clock p.m., reconvened.]

The convention will please come to order.

SECRETARY CHASE: Mr. President, a quorum of the convention is present.

PRESIDENT NISBET: Before we recessed for lunch we had under consideration the report of the committee of the whole, on Committee Proposal 39. One amendment had been proposed, which was defeated. There are other amendments on the desk. I will ask the secretary to read them.

SECRETARY CHASE: Messrs. Binkowski, Austin, Ostrow, Walker and Young offer the following amendment:

1. Amend page 1, line 24, after "property" by inserting "on the 1946 statutory base (not rate)"; and page 2, line 3, after "property" by reinserting "on the 1946 statutory base (not rate)".

PRESIDENT NISBET: Mr. Binkowski.

MR. BINKOWSKI: Mr. President, ladies and gentlemen of the convention, I believe that we have debated this point at length. I think that you are pretty familiar at this point with the pros and cons. The proponents of this amendment believe that this will retain the present strength of our schools, and of course the opponents don't feel that this is necessary. I won't belabor the point. I would like, of course, to request a record roll call vote on this and unless someone else would like to speak upon it, I would move the previous question. However, if someone does wish to speak further, I would withdraw that motion.

PRESIDENT NISBET: The demand for the yeas and nays has been made. Is that demand seconded? Sufficient number up. Those who are in favor of the amendment will vote aye. Those opposed will vote no.

The roll was called and the delegates voted as follows:

Yeas—56

Andrus, Miss	Faxon	Nord
Anspach	Follo	Norris
Austin	Ford	Ostrow
Baginski	Garvin	Page
Balcer	Greene	Pellow
Bentley	Hart, Miss	Perlich
Binkowski	Hatcher, Mrs.	Pollock
Bledsoe	Hodges	Rajkovich
Bonisteel	Hood	Richards, L. W.
Brown, T. S.	Kelsey	Rush
Buback	Krolikowski	Sablich
Conklin, Mrs.	Lawrence	Snyder
Cushman, Mrs.	Lesinski	Spitler
Dade	Madar	Stopczynski
Dehnke	Mahinske	Suzore
Doty, Donald	Marshall	Walker
Douglas	McCauley	Young
Downs	McGowan, Miss	Youngblood
Elliott, Mrs. Daisy	Murphy	

Nays—74

Allen	Hatch	Radka
Batchelor	Higgs	Richards, J. B.
Beaman	Howes	Romney
Blandford	Hoxie	Rood
Boothby	Hubbs	Seyferth
Brake	Hutchinson	Shackleton
Brown, G. E.	Iverson	Shaffer
Danhof	Judd, Mrs.	Shanahan
Davis	Karn	Sharpe
Dell	King	Stafseth
DeVries	Kirk, S.	Staiger
Doty, Dean	Knirk, B.	Stamm
Durst	Koeze, Mrs.	Stevens
Elliott, A. G.	Kuhn	Thomson
Erickson	Leibrand	Tubbs
Everett	Leppien	Turner
Farnsworth	Lundgren	Tweedie
Figy	Martin	Upton
Finch	Millard	Van Dusen
Gadola	Mosier	Wanger
Goebel	Nisbet	White
Gover	Perras	Wood
Gust	Plank	Woolfenden
Hanna, W. F.	Prettie	Yeager
Haskill	Pugsley	

SECRETARY CHASE: On the amendment offered by Messrs. Binkowski, Austin, Ostrow, Walker and Young, the yeas are 56; the nays are 74.

PRESIDENT NISBET: The amendment is not adopted.

SECRETARY CHASE: Messrs. Austin, Binkowski, Ostrow, Pellow, Stopczynski, Walker and Young offer the following amendment:

1. Amend page 2, line 7, after "law.", by inserting "For this purpose there shall be allocated from these funds, to such public school employees' retirement systems as shall be in effect from time to time under the laws of this state, not less than 7½ per cent of the salaries of school district employees participating in the respective retirement systems.".

PRESIDENT NISBET: Mr. Austin.

MR. AUSTIN: Mr. President, ladies and gentlemen of the convention, we debated this issue rather extensively this morning and I am quite sure that you are familiar with what is intended. I don't think it is necessary to elaborate any further. The vote was rather close. Some of the delegates were absent and I am hopeful that the amendment will be adopted. I would respectfully request a record roll call vote.

PRESIDENT NISBET: The yeas and nays have been demanded. Is the demand seconded? Sufficient number up.

Mr. Staiger.

MR. STAIGER: Mr. President, on behalf of the committee I would just like to remind you that the committee opposed this in the committee of the whole. It had been considered in the committee before we made our proposal and we hope that you will defeat the Austin amendment.

PRESIDENT NISBET: The question is on the Austin

amendment. Those in favor of the Austin amendment will vote yes. Those opposed will vote no.

The roll was called and the delegates voted as follows:

Yeas—63

Andrus, Miss	Follo	Nord
Anspach	Ford	Norris
Austin	Garvin	Page
Baginski	Greene	Pellow
Balcer	Hart, Miss	Perlich
Batchelor	Hatcher, Mrs.	Perras
Bentley	Hodges	Pollock
Binkowski	Hood	Powell
Bledsoe	Judd, Mrs.	Rajkovich
Bonisteel	Kelsey	Richards, L. W.
Brown, T. S.	King	Romney
Buback	Krolikowski	Sablich
Conklin, Mrs.	Kuhn	Snyder
Cushman, Mrs.	Lawrence	Spitler
Dade	Lesinski	Stevens
Dehnke	Madar	Stopczynski
Douglas	Mahinske	Suzore
Downs	Marshall	Walker
Durst	McCauley	Yeager
Elliott, Mrs. Daisy	McGowan, Miss	Young
Faxon	Murphy	Youngblood

Nays—69

Allen	Haskill	Radka
Beaman	Hatch	Richards, J. B.
Blandford	Higgs	Rood
Boothby	Howes	Rush
Brake	Hoxie	Seyferth
Brown, G. E.	Hubbs	Shackleton
Danhof	Hutchinson	Shaffer
Davis	Iverson	Shanahan
Dell	Karn	Sharpe
DeVries	Kirk, S.	Sleder
Doty, Dean	Knirk, B.	Stafseth
Doty, Donald	Koeze, Mrs.	Staiger
Elliott, A. G.	Leibrand	Stamm
Erickson	Leppien	Thomson
Everett	Lundgren	Tubbs
Farnsworth	Martin	Turner
Figy	McAllister	Tweedie
Finch	Millard	Upton
Gadola	Mosier	Van Dusen
Goebel	Nisbet	Wanger
Gover	Plank	White
Gust	Prettie	Wood
Hanna, W. F.	Pugsley	Woolfenden

SECRETARY CHASE: On the proposed amendment, the yeas are 63; the nays are 69.

PRESIDENT NISBET: The amendment is not adopted.

SECRETARY CHASE: There are no other amendments on the desk, Mr. President.

PRESIDENT NISBET: There are no other amendments. **Committee Proposal 39** is referred to the committee on style and drafting.

For Committee Proposal 39 as referred to the committee on style and drafting, see above, page 785.

SECRETARY CHASE: The committee of the whole, Mr. President, has also had under consideration **Committee Proposal 36,** A proposal with reference to the use to be made of the primary school interest fund, covering the subject matter now found in article X, section 1 of the 1908 constitution. The committee of the whole reports this proposal back to the convention without amendment, with the recommendation that it do pass.

PRESIDENT NISBET: **Committee Proposal 36** is referred to the committee on style and drafting.

For Committee Proposal 36 as referred to the committee on style and drafting, see above, page 818.

SECRETARY CHASE: That completes the report of the committee of the whole, Mr. President.

PRESIDENT NISBET: We will return to the calendar and refer to **general orders.** Mr. Powell.

MR. POWELL: Mr. President, I move the convention resolve itself into committee of the whole for consideration of proposals on the general orders calendar.

PRESIDENT NISBET: The question is on the motion of Mr. Powell. Those in favor will say aye. Those opposed will vote no.

The motion prevails. Mr. Powell, will you preside?

[Whereupon, Mr. Powell assumed the Chair to preside as chairman of the **committee of the whole.**]

CHAIRMAN POWELL: The committee will be in order. The secretary will read the first proposal.

SECRETARY CHASE: Item 4 on the calendar, from the committee on education, by Mr. Bentley, chairman, **Committee Proposal 31,** A proposal to amend article XI, section 14 of the present constitution pertaining to public libraries.

Following is Committee Proposal 31 as read by the secretary, and the reasons submitted in support thereof:

The committee recommends that the following be included in the constitution:

Sec. a. The legislature shall provide by law for the establishment [of at least 1 library in each township and city;] AND SUPPORT OF PUBLIC LIBRARIES WHICH SHALL BE AVAILABLE TO ALL RESIDENTS OF THE STATE. [and] All fines assessed and collected in the several counties, cities and townships for any breach of the penal laws shall be exclusively applied to the support of such PUBLIC libraries[.], AS PROVIDED BY LAW.

Mr. Bentley, chairman of the committee on education, submits the following reasons in support of Committee Proposal 31:

This section continues the fine Michigan tradition of encouragement and support of public libraries throughout the state, but it does attempt to eliminate some of the confusing elements of the present article XI of section 14. The 1908 constitution states: "The legislature shall provide by law for the establishment of at least 1 library in each township and city; . . ." This has never been adhered to as a matter of practice. Today, only 1 out of 15 townships has a library.

The present language emphasizes that "public" libraries will be "available" to residents without fixing how or where the libraries themselves shall be organized. The committee presumes that legislation may be written so that each library may make reasonable rules for the use and control of its books.

Under this proposal present libraries will be retained. But to make libraries more available to the people their services may be expanded through cooperation, consolidation, branches and bookmobiles.

The word "support" has been included because there is a growing need for statewide support for public libraries. Our legislature has recognized this and since 1937 has been appropriating limited funds on a regular basis.

Penal fines for support of libraries have been continued. There appears to be a great deal of controversy surrounding the use of these fines but much that has been said is the result of misinformation rather than fact. State supreme court decisions have clarified the fines that may be used for library purposes and from a legal viewpoint the present plan is operating satisfactorily. The committee realizes that these fines do not adequately support libraries and that they must be supplemented by state and local funds but there is a long tradition connected with their use and they are one of the few sources of revenue collected locally outside the property tax.

The term "public libraries" has been used to further clarify eligibility for state and local support. While su-

Explanation—Matter within [ ] is stricken, matter in capitals is new.

preme court decisions have determined that the word libraries means public libraries and that the legislature may establish qualifications for support of these libraries, the new language makes it a matter of constitutional record.

The committee on finance and taxation has concurrent jurisdiction over this section but has not apparently acted in this matter.

CHAIRMAN POWELL: The Chair recognizes Delegate Bentley.

MR. BENTLEY: Mr. Chairman, ladies and gentlemen, with this proposal, the committee on education makes its own modest contribution to that delightful and fascinating subject known as earmarking funds. I think, Mr. Chairman, I would like to constitution, and then to indicate the 2 principal changes which read this very short section as it now appears in our present the committee on education has made. As contained in our present constitution, section 14 of article XI reads as follows:

> The legislature shall provide by law for the establishment of at least 1 library in each township and city; and all fines assessed and collected in the several counties, cities and townships for any breach of the penal laws shall be exclusively applied to the support of such libraries.

Mr. Chairman, the committee proposal and the supporting reasons may be found on pages 371 and 372 of Journal 64 dated January 24. The committee has made these 2 changes: we have taken out the obsolete and unobserved provision that a library has to be found in every township or city. That provision, of course, is not now being followed literally. We have instead inserted the language which we believe to be a great improvement insofar as the intent of the constitutional convention—and we hope, the people of this state—are concerned, "The legislature shall provide . . . for the establishment and support," because the old language merely provided for the legislature to be responsible for the establishment and not the support. We have definitely inserted the word "support" which implies a continuing responsibility on the part of the legislature, even after the library has been established. Then we go on to say "of the public libraries which shall be available to all residents of the state", and the intent of the committee on education, Mr. Chairman, is just exactly what those words imply.

The only other change we have made is to insert the word "public" again before "libraries" in line 12 and to add, "as provided by law", so that the legislature in its wisdom may take whatever steps it deems necessary to provide for the continuation of penal fines going to the support of our public libraries.

Without yielding the floor at this time, Mr. Chairman, I would like to yield, for whatever remarks she may care to make, to the chairman of the subcommittee on libraries of the committee on education, the lady from Port Huron, Miss Andrus.

CHAIRMAN POWELL: Miss Andrus.

MISS ANDRUS: Mr. Chairman and members of the committee, Mr. Bentley has told you some of the things that I had planned to say. Our first constitution in 1835 provided for these libraries. As he said, there was to be a library in each township and in each city. Very few of the townships, however, have been able to provide these libraries. Only about 1 out of 15 have been able to provide libraries. Most of the cities have done so. As he said, there was a provision made in this first constitution for the support of these libraries. It was to be what is called "penal fines". Now, perhaps most of you people know what penal fines are. Most of our committee did not. The members of my subcommittee, of which I was chairman, have learned a great deal in the last 3 or 4 months about libraries. We have had a great many people up here before us. We have had many letters and we know quite a little about penal fines now.

I don't know how much you should know to vote intelligently on this question, but there are a couple of points I would like to bring out and then you may have questions that you would like to ask. Many of you have asked me individually. The penal fines are fines collected when someone is arrested for violating state laws. These state laws were chiefly violations of game laws, things of that sort, but it included traffic and as the years have gone on, of course, we have had a great many traffic violations. I think that makes clear what we mean by penal fines in general.

There are 2 things that have happened: as cities became charter cities or home rule cities, and as some townships have become chartered, they are able to pass what are called "parallel ordinances". So a traffic law in a city, when a fine is paid, is not turned in as a penal fine. That is kept in the city treasury or in the township where they have these parallel ordinances. The result then has been a considerable decline in the amount that would be coming in. We would expect much more to be coming in to this fund as we have more and more automobiles. That has not been the case because of the parallel ordinances.

Now, another thing that you attorneys—many of you—have asked me, the supreme court has interpreted a law library—and all of the counties have law libraries—as a state library and coming under the penal fines. So first, all of the penal fines —which, by the way are sent to the county treasurer—all penal fines go into the county treasury and then are distributed to the libraries according to a census. Since a regular census is taken only every 10 years, they have been using what we call the school census, which is taken each year, as a basis for the distribution of these fines. First, they take out the amount that is needed for the law library. In the upper peninsula, when our education committee was up there, we found that often the law library gets most of it. They need money and they get it first. Then the other, as I said, is distributed.

Now, I would like to have you notice that this was in our first constitution. The people of the state of Michigan, most of them, were settlers from New England, New York state, who were interested in education and having their children have privileges which, coming out to the wilderness, were not as available as they had been back home. So they provided for this primary school fund, and they provided for libraries. They wanted those things right at the beginning for their state. There was no question at all in the 1850 constitution of retaining this or in the 1908. Our subcommittee, after studying this for a long time, was unanimous in recommending that this be retained in the constitution. We presented it to the full committee and the full committee voted unanimously to ask that this be retained.

However, as Mr. Bentley told you, we have made 2 changes. You may wish to understand a little more clearly the reasons for our recommending them. We feel, since so many of the townships have not been able to support libraries, and also I think this is a point that impressed us very much, today our reading is not so much of fiction and matters of that sort as it is for improvement. We have, with automation today, for instance, and with the very accelerated means of production, adults who want to find out more about newer lines of work. We find young people are very anxious to get information, and those books aren't ones that you can use year after year for 20 years or until they wear out. You must have the later books, the more modern books for reference. And so we had conferences and hearings with the state library board, the state association of libraries, the librarians from Detroit and other cities, from small libraries; we got all the evidence we could. They said we should have a larger base.

Most of the townships have not been able to support a library and so we feel, let's not ask each city and township to have a library in the future, as we have in the other constitutions, but we are asking for public libraries which shall be available to all residents of the state. Now, several people have asked us about this. Does that mean if someone else doesn't have a library, are they going to be able to use our books that we have had to pay for? So we have made this as clear as we can in speaking to people. The libraries will be kept as they are now or as you wish them, but near Detroit—perhaps some of you have read this in the Detroit papers—there are some small suburbs or communities which haven't been able, they have

felt, to support a library, and if they wanted to use books in the Detroit library they had to pay a very large fee. So Detroit has arranged with 3 of these communities that the community pays a certain amount to the Detroit library and then the Detroit library gives the residents of those areas library cards and they may use them. Birmingham is doing the same. I had a letter from the librarian in Birmingham and they are doing the same with neighboring communities who can't afford to keep the library that they would like. I also had a letter from Petoskey, I think it was. There are 5 communities around the Muskegon area who have gone in together so that they can purchase these more expensive books and have them available for their people. So it will be done in different ways but we hope by eliminating this particular provision—for instance, a village library can't get any state aid at present, it is just cities and townships the way we have it—we have eliminated any particular locality so anyone who wishes may have a library of their own. They may combine together the different ways in which they can do this.

Also I would like to leave this last word for you: in a way, this is not earmarking funds in the way we have been talking about the highway funds and the school and municipality funds. These are not taxes. No one pays these as taxes. These are fines that are collected by justices of the peace and so forth. We have provided in our first constitution that such fines shall be used for libraries. It isn't going to save anybody's taxes if this is done. Now, I think most of you know that the highways have up in the 200 millions of moneys which they get. The schools get a somewhat lower sum. The penal fines—and a number of people have asked me about this—come to $2½ million or $3 million, sometimes a little over a million, but usually about $3 million a year. These fines are ones that are paid by people who have violated laws. They are sent to the county treasurer, then they are passed out for the use of the libraries.

We have tried to find what the effect would be on the libraries if the penal fines were discontinued, and there are a great many libraries in the smaller, rural communities who would not be able to go on. In all communities, with the taking away of penal fines, libraries would have to call on their local township board or their local county or their city government for appropriations. Many of the city governments already appropriate money for their libraries, but they gladly accept the penal fines. So it means in every case of a library, there would have to be money raised and it would be out of the 15 mill funds, which limit our counties and our townships today. So every library which has contacted us, local officials, have all asked to have the penal fines retained, at least until there is some provision for replacing them.

A few weeks ago Mr. Van Dusen was speaking on something we put in the constitution. It was on this backing of school board loans. He said we should keep this for the time being. He urged us to vote for it and then he said if we don't need it later we can take it out. The way our committee feels about this, these penal fines—many libraries were filled up in the 1840s or 1850s, before the civil war on the basis of these fines and expected them to continue—until we have some other means, we urge you to keep this provision in the constitution.

CHAIRMAN POWELL: Thank you, Miss Andrus. Mr. Bentley.

MR. BENTLEY: Thank you, Miss Andrus. Mr. Chairman, I would like to commend the work of this particular subcommittee, not only the chairman, Miss Andrus, but the work of her members, the gentleman from Garden City, Mr. T. S. Brown, the gentleman from Pontiac, Mr. Kuhn, the gentleman from Detroit, Mr. Faxon, the gentleman from Hancock, Mr. Heideman. Mr. Chairman, at this time I would be glad to yield for questions to either Miss Andrus or myself. If there are no questions, I will be glad to yield the floor for the amendment procedure, if such is in order.

CHAIRMAN POWELL: Are there any questions to direct to the committee?

MR. BENTLEY: I yield the floor, Mr. Chairman.

CHAIRMAN POWELL: Mr. Bledsoe.

MR. BLEDSOE: Mr. Bentley, do these fines that are referred to by Miss Andrus include the fines from ordinance violations, too?

MR. BENTLEY: They only include the fines, Mr. Bledsoe, from state laws, not municipal ordinances. That has been so held, I understand, by the courts.

MR. BLEDSOE: Just one second. Do I understand that they include township ordinances?

MR. BENTLEY: I believe I am correct in saying I believe they do. I was referring most specifically, of course, to city. I am not sure about that though. Does Miss Andrus have the information on that?

CHAIRMAN POWELL: Did you get the question, Miss Andrus?

MR. BLEDSOE: May I add further—

MR. BENTLEY: May I have the answer to your first question, Mr. Bledsoe, if Miss Andrus knows it.

MR. BLEDSOE: Thank you.

MISS ANDRUS: Mr. Bledsoe, as I understand this, if a township is permitted to pass ordinances, those come under their own provisions, but in most of the townships the rules that impose fines for violations are paid into the county treasury. If, however, they have the power to pass a local ordinance, then that is a "parallel ordinance."

MR. BLEDSOE: Do I understand then that would be for revenue, fines for revenue? Would that be included? Would that make those fines for revenue? Can you answer that, Mr. Bentley?

MR. BENTLEY: As I understand, that would be the case, yes. But those fines that are so considered as violations of ordinances coming within the court interpretations are specifically earmarked for the support of the local libraries.

MR. BLEDSOE: Why were the traffic court fines in cities excluded?

MR. BENTLEY: Because of the interpretation again. It is my understanding violations of city ordinances would not be considered as penal fines within the present meaning of section 14.

MR. BLEDSOE: Do you have an opinion on that by somebody?

MR. BENTLEY: Well, I believe it has been held by the courts. I am sorry, Mr. Bledsoe, I don't seem to have a particular opinion to cite you on this case. It is my understanding that they have been held, however, not to be penal fines within the meaning of the section.

MR. BLEDSOE: Mr. Chairman, may I be permitted sufficient time to prepare an amendment?

CHAIRMAN POWELL: Ladies and gentlemen of the committee, I believe there are 2 delegates that have something to contribute. Mr. Ford has been on his feet for some time, and now, Mr. Kuhn. Mr. Ford, does yours relate to this matter, or do you have something to report?

MR. FORD: Mr. Chairman, first of all, I am a little bit appalled at the direct answer from both Mr. Bentley and Miss Andrus, which is incorrect. No township in the state of Michigan keeps one penny of any fine or costs collected by its courts. There isn't any equivocating about this. We have the power to pass almost any police type ordinance—in the townships over 5,000, at least—that a city can. I personally have drafted over 50 ordinances for townships now in effect, and I know of not one single penny that is returned. I wanted to set the record straight on this. The question of penal fines had been interpreted in this state to mean penal fines from the violation of a state statute, period.

Now, this has gone on, however, to townships because there isn't an inherent home rule situation such as you have in the cities; and because of the fact that a township has no inherent home rule powers, the court has held that even though it adopts an ordinance, this ordinance can in no way conflict with a state statute, and it is adopted pursuant to a state statute, and to a specific empowering ordinance, and the ultimate result is that the township pays all of the costs and all of the fines from its courts. If I might be privileged to take the floor again as soon as Mr. Bentley finishes, it happens that I have the actual statistics available—and have been waiting for some time to present them—to show exactly what this means in my county.

CHAIRMAN POWELL: Mr. Bentley.

MR. BENTLEY: Mr. Chairman, I appreciate the contribution of the distinguished expert on local government, the gentleman from Taylor township, Mr. Ford. May I ask him one question though, and that is this: since he is an expert on this particular matter, is it not true, Mr. Ford, that the fines collected in your township do go to the support of your county library?

CHAIRMAN POWELL: Mr. Ford.

MR. FORD: Yes. My township contributed last year $60,000 out of a total amount in the whole county of Wayne, including the city of Detroit, of $219,000.

CHAIRMAN POWELL: Miss Andrus.

MISS ANDRUS: I would like to say something to what Mr. Ford just said. Probably most of you are finding this a rather complicated problem. That is what our committee found, and there was much conflicting evidence. However, there are, as I understand, 3 townships which are called charter townships. There they may pass their own ordinances, as chartered cities may do. So if what I said caused some confusion, I didn't want to say all townships because there are 3, Mr. Ford, that are excepted.

CHAIRMAN POWELL: Thank you. Delegate Kuhn.

MR. KUHN: I was just going to say to Mr. Bledsoe, Mr. Chairman, that the case in question that gives the ruling is Delta County vs. the City of Gladstone, and in that case it said —like Miss Andrus says—if it is a charter township it can keep the money, and if it is a city with parallel ordinances, it can keep the money, but all other ordinances and state laws shall be used in support of these libraries and that will be spread out on a county basis to be divided. Does that answer your question, Mr. Bledsoe?

CHAIRMAN POWELL: Mr. Bledsoe.

MR. BLEDSOE: I presume that that is the interpretation as the law is now?

MR. KUHN: Yes, sir. That is correct.

CHAIRMAN POWELL: Delegate Bentley.

MR. BENTLEY: I believe, Mr. Kuhn, that was a supreme court ruling of 1943?

MR. KUHN: That is correct.

CHAIRMAN POWELL: Delegate Higgs had asked for the floor. I don't know whether this pertains to the same matter. Delegate Higgs.

MR. HIGGS: I beg your pardon, Mr. Chairman, did you ask me a question?

CHAIRMAN POWELL: I was asking whether your contribution related to the matter immediately under discussion. There seems to be this question here and Delegate Goebel was also on his feet.

MR. HIGGS: I will yield to Delegate Goebel. My comments have to do with an amendment that is with the secretary.

CHAIRMAN POWELL: Delegate Goebel.

MR. GOEBEL: Mr. Chairman, I would like to ask Delegate Bentley a question, through the Chair, just in order to make sure in my own mind. I am referring, Mr. Bentley, to the last clause in that particular section, "as provided by law". Could the legislature, by any chance, provide legislation that would call for the revenues from, or fines from parallel ordinances to be included and contributed to the libraries?

CHAIRMAN POWELL: Mr. Bentley.

MR. BENTLEY: I presume, Mr. Goebel—and I am not a lawyer—but it is my own personal opinion that if this section did not so specifically prohibit it and the legislature was so disposed, it could. I say I am not a lawyer and there may be some question of the home rule provision in here, but in my interpretation, if the legislature wanted to, in view of the language which we have suggested, it could do it.

MR. GOEBEL: Mr. Chairman, may I ask: is there an attorney in the hall who would care to express himself on this matter?

MR. BENTLEY: Mr. Chairman, we have a distinguished legal counsel on the committee on education and whether the gentleman from Ann Arbor, Mr. Bonisteel, feels called upon to speak on this or not, I don't know. We educators and non-educators always look to him for legal interpretations in our committee.

CHAIRMAN POWELL: Mr. Bonisteel.

MR. BONISTEEL: Mr. Chairman, I think we can shorten this up. Mr. Ford didn't mention the fact that there is an amendment on the secretary's desk to take care of this situation. It seems that we are perhaps wasting a lot of time on it.

CHAIRMAN POWELL: Thank you for that suggestion. I am advised that there are probably 3 or 4 amendments and the first in the sequence of filing is Delegate William Hanna's amendment. And so if Delegate Higgs will yield the floor until we dispose of this first one—Mr. Mosier.

MR. MOSIER: Before you go to an amendment, I have a question that I would like to present to the chairman of the committee. The proposal is as follows: "The legislature shall provide by law for the establishment and support of public libraries which shall be available to all residents of the state." It has been explained here, as we know, that the first moneys received by the county treasurer are devoted to the law libraries. They are the libraries in the court house that contain the law books, and the allocation of those funds, as you know, is by statute based upon population of the county. Now, the question that I am proposing to the chairman of the committee is this: is it intended that the law libraries are public libraries?

CHAIRMAN POWELL: Mr. Bentley.

MR. BENTLEY: Mr. Chairman, I will say to the gentleman from Dowagiac that the committee did not so intend it, but I would remind the gentleman that one of the pending amendments covers specifically that point, and he may wish to address himself further to the question after that particular amendment has been read.

MR. MOSIER: Thank you.

CHAIRMAN POWELL: In view of the comment by the chairman and the suggestions of Delegate Bonisteel, probably many of these matters that are being brought out in your questioning would be taken care of if we proceeded to consider the amendments which have been filed with the secretary. May we have the amendment by Delegate William Hanna.

SECRETARY CHASE: Mr. W. F. Hanna offers the following amendment:

1. Amend page 1, line 12, after "laws" by inserting "and municipal ordinances"; so the language will read:

> All fines assessed and collected in the several counties, cities and townships for any breach of the penal laws and municipal ordinances shall be exclusively applied to the support of such public libraries, as provided by law.

CHAIRMAN POWELL: Delegate Hanna.

MR. W. F. HANNA: Mr. Chairman, speaking to this amendment, the original history of this was in the early constitution at a time before we envisioned the effect of the home rule city provision of 1907. Now, we have enlarged that, the legislature has enlarged that to allow charter townships to retain their fines from the so called charter township ordinances in the same manner as cities. What is happening about the state is that townships are incorporating as cities, that the bulk of the penal fines are collected under city ordinances. Many of these city ordinances are merely copies of state law and under provisions of the state law are now adopted merely by reference. For instance, the state traffic code in a great many cities is merely adopted by reference and is a verbatim copy of the state traffic laws. This applies to many other ordinances. If we are to earmark penal fines, then we should return to the original philosophy and earmark penal fines whether by state law or local, municipal ordinances, and that is the purpose of this amendment, to put this clearly before us.

Now I know that the cities will holler because this in effect reduces the funds available to operate their police and other inspection departments. However, I see no reason why we at this convention should discriminate against townships and counties and allow the cities a special privilege with regard to the support of libraries. In all fairness, either this should be retained and applied to all penal fines—whether under state law or city ordinance—or it should be eliminated entirely and other means found, such as earmarking some of the sales tax for libraries.

CHAIRMAN POWELL: Delegate Ford.

MR. FORD: Mr. Chairman, the Hanna amendment, with a slight variation in language, is the intent and purpose of the amendment presented by Mr. Brown, Mr. Iverson and myself, and if Bill Hanna doesn't mind the unusual company, we would like to join with him in sponsoring his amendment and withdraw ours. (laughter)

I would like at this time to support this principle and present a few things for our thought here. First of all, the only way that I can form an opinion on the effect of this is to attempt to get some examples of what is actually happening. I might say that someone mentioned a few moments ago that they thought that this language in the statute was going to free the hands of the legislature to do something about establishing equity in this regard. I don't think there has been a session of the legislature in the last 10 years in which the townships have not appeared before the legislature, or at least before committees of the legislature, and asked it to do something similar to what we are doing here, either to require that all fines from all sources go to the libraries or that some kind of system be worked out so that the proportion of the fines going to the libraries is the same whether you are called a city or whether you are called a township.

Using Wayne as an example, I would like to point out what is actually happening. In Wayne county we have 30 municipalities; we have 14 townships and 25 cities, including the city of Detroit. Taking the 10 largest of the 14 townships, they contributed, in fines, to the library fund of the county of Wayne last year $125,176. The total contribution from all 30 municipalities is only $219,000. So you will see immediately that approximately ⅗ of the total income to the libraries in Wayne county from this source of revenue is coming out of townships which by the very nature of their large populations, cannot be expected to remain as either pure townships, short of charter townships, or stay away from becoming home rule cities. I can give you some more specific examples. I have the figures here indicating that in 16 of the municipal courts outside of the city of Detroit in western Wayne county, they grossed, last year in costs, $565,000. Now, if you take some of these cities—and I will take some that I don't represent as a delegate here—Allen Park, which last year took in someplace in the neighborhood of $122,000 in its municipal court, paid to the library fund $1,100. The city of Detroit which, by the testimony of Judge Watts before the judicial committee, last year turned over $5 million in its traffic and ordinance division, contributed to the library fund of Wayne county, $49,198 from the recorder's court and $18,279 from the traffic court. That's with a population of 1⅗ million people, while these little townships down here—and let me give you some of them—Taylor township last year gave as its portion of the total, $39,000; they gave a total in fines and costs to the county of $70,000, roughly $71,000; Redford township, $17,000; Nankin township, $25,000; Huron township—which has only 8,000 people in it—gave $2,055; the city of Dearborn, with 100,000 people, gave $1,134; and the the city of Lincoln Park gave $690.

Now, I heard somebody pop up over here and say, "But it's got its own library." I am informed that 5 of the municipalities in Wayne county have their own library, independent of the Wayne county library system. And I want to be fair and say that it is my understanding that the city of Detroit spent on library and allied facilities, very close to $4½ million. Mr. Iverson had the figures on this. So I am not saying that the city of Detroit is getting a free ride from the rest of the county because they maintain their own library. The city of Dearborn, I think, also maintains its own library, and before John McCauley gets up, the city of Wyandotte does too. I'd better take care of Highland Park. Now, this takes care of a few of the dissenters, I guess. The point that I think is most important to us here is not just a question of the inequity of the present language as it has been interpreted, but also the very serious question about whether we should allow the libraries to continue the false security of relying, particularly in our county, on a fund that is just going to extinguish itself.

Now, if you have any townships with the kind of population growth that is going on in the outcounty portion of Wayne county, you will recognize that the growth there is such that we are going to be forced into some kind of home rule that is going to put us in the same status with the rest of them. I don't argue that the city of Allen Park or Lincoln Park or any of the others should not be able to keep the fines and costs to maintain their police departments or to maintain their own local library, but it does seem to me to be very inequitable to have 25 out of 30 municipalities receiving the same per capita allocation for the maintenance of their local library through the county library system—if they want it, it is available to them—as the 10 townships that are actually carrying ⅘ of the total burden. In other words, in a county of 2¾ million people, you have got 234,000 people ostensibly carrying the ball on this. Admittedly, these are fast statistics, and like all statistics there are different points of view, and what value you place on them. But I don't think anybody can challenge the fact that what is happening in Wayne county now and what we know is going to happen in Wayne county in the next 5 to 10 years is going to happen in Macomb county and Oakland county and out in Genesee county and other places, and when we talk about earmarking and talk about earmarking fines with the same language we had in the 1908 constitution, we are kidding ourselves, because we are not earmarking much of anything.

As these areas become incorporated as cities, they no longer contribute and we are saying to the library people,

> Rely on this; don't go after some other form of legislation to support the libraries, take second best because the legislature will always answer your demands for more library funds by saying, "But you get the fines. Why worry?"

And then we are ready to fall into a situation where before this constitution is 10 years old, there will be at least 1 county where this library fund isn't going to amount to $5,000 a year. And this does not seem to me to be a farsighted approach to the solution of the problem that has existed for many years as a result of the provision now in the constitution, as warmed over, slightly modified, but significantly the same as presented to us here today.

CHAIRMAN POWELL: Ladies and gentlemen of the committee, for your information, as I understand it, Delegate Bentley has reserved the floor to answer questions through himself and Miss Andrus. I have other delegates whom I have noted arise, Delegates Mahinske, Ostrow, Mrs. Cushman, Faxon and Miss Andrus. I shall call upon them now and then Delegate Madar.

Delegate Mahinske, you are recognized.

MR. MAHINSKE: I am afraid that Mr. Bentley could not answer this question and I would have to direct it to either Mr. Danhof or Mr. Ford. Now, not too long ago I was down in the judiciary committee and we were talking about the 5 tier system of judicial courts that this committee was talking about setting up. As far as Wayne county was concerned, one of the basic rationales or justifications for setting up this new system was the fact that the division of recorder's court, at least, called the traffic court in the city of Detroit, would be thrown into the county system and all the revenue from that court would go to maintain the county judicial system. Under this proposal that we have here, the revenue from the traffic division of the recorder's court would be diverted to the library fund, and I just wonder what that does to the argument for the proposed plan that the judiciary committee plans to come out with.

CHAIRMAN POWELL: Judge Dehnke.

MR. DEHNKE: Mr. Chairman and members of the committee, there are thoughts I'd like to suggest; one is, I still haven't gotten over my surprise that I felt when I first realized that some people were thinking of this appropriation of penal fines to libraries as a form of earmarked funds. I realize, for the second point, the importance of what has been involved in these municipal ordinance fines, and I am a bit worried about that coming into this discussion. This related originally to the question of libraries, and it is true, as has been said by others, that the smaller libraries feel a deep interest in what happens on this proposal.

I am concerned, lest this little group of small libraries become buried and smothered to death under the contending titans that are now starting a big football game over whether or not municipal ordinance fines shall go into this fund too. I have heard that if that were done it would supply a much larger sum of money than is actually required for the support of libraries. So if that is to be done, perhaps there should be something else added which would give the legislature some discretion about applying those funds to the extent that they are reasonably necessary. But I hope, Mr. Chairman and delegates, that the libraries which were originally so deeply interested in maintaining this proviso, are not hurt by the controversy over these municipal ordinances.

CHAIRMAN POWELL: Before I recognize another speaker, may I direct a question to Delegate William Hanna? You may have heard the suggestion from Delegate Ford, I believe it was, that if acceptable to you they would join in sponsorship of your amendment. I believe there was an amendment filed by Delegates Ford, T. S. Brown and Iverson, which was in essence the same as yours, but did spell out more detail. Are you agreeable to accepting them as joint sponsors of your pending amendment?

MR. W. F. HANNA: Yes, sir.

CHAIRMAN POWELL: Then I believe Delegate Mahinske had the floor to ask certain questions. Are you satisfied with your answers, Mr. Mahinske?

MR. MAHINSKE: I had not received any answer.

CHAIRMAN POWELL: Mr. Iverson.

MR. IVERSON: I would like to attempt to answer Mr. Mahinske, and I think perhaps I can. I think your question, Mr. Mahinske, was—would you repeat it again so I know? I think I can answer it for you.

MR. MAHINSKE: When I was contesting what was proposed in the judiciary committee, as to taking the division of recorder's court, the traffic court, out of the city system and putting it in the county system because the county, overall, needed this revenue, the $5 million revenue from traffic court to take care of other contingencies and so forth, now we are not even making this available under this present proposal.

MR. IVERSON: The answer to that, Mr. Mahinske, it seems to me is this: you heard some discussion, but I think at the time you heard the discussion there were some changes in the setup of the lower level of courts in our committee, and that was left pretty much to the legislature, but with the suggestion that we still desired that fifth tier of courts. So far as Detroit is concerned—and I realize that this question came up in our committee—that the traffic court of the city of Detroit collects in fines something slightly in excess of $5 million, but I believe Mr. Ostrow was ready, with his book over there—and I had talked this over with him—and it seems to me to be no problem so far as Detroit is concerned, because if you notice their appropriation for libraries, it is some $4,600,000. So I see no problem so far as Detroit traffic court is concerned.

Now, the more important thing, it seems to me—and this discussion was had in the judicial committee—was the desire, and I don't think there was any dissenting vote among the members of that committee, to attempt to get our court structure in a position where it was not based upon fees or that there was no particular desire on the part of a judge, whether he was municipal or otherwise, to impose fines because of a particular reason other than that presumed by the statute or the ordinance and I believe I speak for all of that committee, that was primary in our minds. I think, so far as I am concerned personally, the important thing, so far as these fines are concerned, they should not be imposed for the purpose of creating revenue for the city or the state or any other branch of the government. And it seems to me—and that is one reason I let my name be on this amendment—only logical that these fines of municipal ordinances should go to the library fund, the same as those on the penal statutes of the state. I am not concerned about the fact, as the Judge raises here, that there will be too much money. I have my doubts about that, because it seems to me that the libraries, the law libraries and the individual libraries in the counties and cities need assistance, and I see no problem there at all.

MR. MAHINSKE: I wonder if either you or Mr. Ford have a distribution of the figures of the $5 million that traffic court turns over now. Just what is that money used for?

MR. IVERSON: Mr. Chairman, Mr. Ostrow has that.

MR. MAHINSKE: What I am trying to point out here is, is it merely going into the general fund that is being used for other purposes such as possibly welfare, public health, and so forth? Now by earmarking these—and this is what we are doing, we are earmarking these funds—at least these services that they are being used for now are going to have to be supplemented from somewhere else, and I am just wondering where this is going to come from.

CHAIRMAN POWELL: Mr. Ford.

MR. FORD: All right. Here is the breakdown of the roughly $5 million from Detroit. State cases, the kind of cases that we are talking about that would end up in front of a justice court or, as a matter of fact, in the recorder's court proper, for violations of a felony, there was $227,486 last year. That is broken down in this fashion: $196,000 of it was court costs, which goes to the county general fund; $49,000 and some odd dollars are actual fines, and that is the only part of this $227,000 that now finds its way to the library. There are city ordinance cases, general funds, city of Detroit, $4,589,000. Some place here, we should have a figure on the libraries, but it is my recollection that the city of Detroit now appropriates, out of its general fund, slightly in excess of this $4½ million for the maintenance of libraries and library services in the city of Detroit. So that as far as the city is concerned at this time, this would have no significant effect on it. In other words, you are putting it in the general fund and then you are allocating $4½ million. If we earmarked the money, it would go directly over there.

Now, the only way that this could be affected is if something happened in Detroit so that the amount of traffic fines suddenly went higher, you might end up with a surplus, but I might call your attention to the fact that as a result of a very efficient police department—and this is my opinion—and as a result of a very stringent traffic enforcement, this revenue is coming down a little bit each year, rather than going up in proportion to the population, and nobody questions the fact that the population in Detroit is not growing as fast as the rest of the area. So that there is no real sound reason to expect that this is liable to skyrocket out of proportion and result in a bonanza to the libraries to the detriment of other services in the city of Detroit.

MR. MAHINSKE: Except to the detriment of the services of the public libraries in the city of Detroit. By your very figures that you just gave, it seems to me that the city of Detroit is using all of its own ordinance fines for its home library system. In other words, they are taking the whole pie and they are using it because they need it. Now, if you are going to split this up with some 30 or 40 civil divisions of government in Wayne county, it seems to me that the city of Detroit is going to get something substantially less than the $4½ million that it needs for its own library system.

MR. FORD: I submit to you that you have a good hypothetical proposition, but if we adopt county home rule in Wayne county, this is exactly what they might end up with.

MR. MAHINSKE: This is based on "if" also.

MR. FORD: Well, there is another "if" involved. If we are going to abolish the justice of the peace in 5 years, then this $125,000 that I was talking to you about is out the window anyhow.

MR. MAHINSKE: But that still does not answer the immediate proposition that by adopting this amendment that we have in front of us, the city of Detroit would be turning over the $4½ million it is using, that we can assume that it needs, and getting somewhat less than that in return.

MR. FORD: Well, since the city of Detroit has a guaranteed majority on the board of supervisors, I can't conceive of a situation where that county is going to take $4½ million away from Detroit and give it to somebody else. I don't think they are going to leave the Wayne county library by itself.

The intent of the committee appeared to me to be the support of a statewide library system and not have a Dearborn library and a Detroit library, and a Taylor township library, but a library system available to all people of the state. If this is what they really meant, then we are saying, "Let's finance it equally by all people of the state," and let's quit having these artificial lines in between, and let's make the Detroit library system a part of the Wayne county library system, and make the people in the outcounty part of Wayne, surrounding Detroit, pay their fair share, along with the people of Detroit, for using the library.

MR. MAHINSKE: What you say you can't conceive of happening in Wayne county, we see is happening in the state as a whole, in the areas of contributions back on sales tax. We have Wayne, Oakland and Macomb county getting less back than they pay in and other counties getting up to 6 times as much back as they pay in. So this is no argument, as far as I am concerned, that you can't conceive of this happening in Wayne county.

MR. FORD: Let me point out to you that the money does not get paid into any kind of a state library fund. It goes directly to the Wayne county library. It doesn't get out of the county. You are not going to be sharing any Detroit revenues with anybody except the other residents of Wayne county.

MR. MAHINSKE: True, but then the Detroit library system just becomes another member of the Wayne county library system.

CHAIRMAN POWELL: Ladies and gentlemen of the committee, I have some 9 people listed who have sought recognition, but I believe that Delegate Hanna, who is the principal sponsor of the amendment, should have recognition. Do you wish to be heard, Delegate Hanna?

MR. W. F. HANNA: I would like to speak to Judge Dehnke's objection. I think if you read this language, it provides that this money will be used for library purposes as provided by law, and if this money becomes such a bonanza, as Mr. Ford mentioned, this says that a "library shall be available to all people." The legislature could by law provide that some of this money go into school libraries, which would be available to all people, and thus would help out and relieve some of the burden in the educational system and our universities and so forth. I am not perturbed about this.

To Mr. Mahinske's objection, I would appreciate it if the city of Detroit would remit a couple of fines that I paid to them for my local library, because I very seldom get to use the local library, but I occasionally pay a fine in the city of Detroit.

CHAIRMAN POWELL: Mr. Bentley.

MR. BENTLEY: Mr. Chairman, I am not going to prolong this debate. We are listening to a very interesting preview on the subject of home rule here. I am beginning to think that we should have deferred this proposal until the proposals from the committee on local government were finally disposed of once and for all.

What I am saying is this: I think all of us want to see public library services extended throughout the state. I think we all want to see these public library services available to the public, financed and supported by the legislature or local government in the best way possible. My only concern with respect to the Hanna amendment is this: we have, Mr. Hanna, about 12 cities—I think there were 15 cities surveyed—there are 12 of those cities within the medium population bracket, say 10,000 to 50,000, that do have city ordinances but that already contribute to their local libraries more than they get from all the collections of their city ordinances. My only fear, sir, is if your amendment prevails will these cities being thus forced to turn over the revenues from the violations of their own ordinances to libraries, then cut off all other forms of local support? I feel this is something neither you nor I would want to see happen.

CHAIRMAN POWELL: Next on the list that I had compiled here of those who desired to be heard was Delegate Ostrow.

MR. OSTROW: Everybody has quoted me so much that I have nothing left to say. (laughter)

CHAIRMAN POWELL: Mrs. Cushman.

MRS. CUSHMAN: Since there have been some facts raised about the Wayne county library financial setup, I thought I might try to clear it up somewhat. Actually, over half the revenue of the Wayne county library system comes from the general fund of the county, which would be over half, then, from the city of Detroit, in the way of revenue. Actually, the Wayne county library system is essentially a cooperative system, and many of the central services are paid for by these funds. The Detroit library is on quite a different basis, whereas it actually gets some of the millage from the 15 mill business and it is considered a school library and therefore that millage comes out of what others the schools would get in Detroit. It is a rather complicated setup and I don't think I want to go into all the details but in brief, I don't know whether it would clear up a few points or not. I don't want to defend penal fines as a fair thing.

I agree with some of the comments that have been made, and I don't want to defend them as being adequate for the libraries, but I think in many areas you have got to recognize that they are about all that the libraries had. I certainly am not going to defend earmarking as a principle, but it seems to me if we accept it for the roads and the local governments and the schools, that we are sort of straining at a gnat and swallowing a camel when it comes to these penal fines for libraries. As far as I am concerned, this is earmarking. But I would hate to see us in this convention appearing to go for earmarking for every single pressure group except libraries. It seems to me that this might leave us open to the charge that we took the earmarking off for the one group that was perhaps the most defenseless group, the one with the smallest lobby and, therefore, I would rise to support the committee's original proposal and let's leave it as it is without getting it more confused by any amendments.

CHAIRMAN POWELL: I am assuming that those who have asked recognition desire to speak with reference to the William Hanna amendment, and I will call on them in that order. If any of you have another contribution to make, you can reserve your time and I will leave you on the list. The next name I have is Delegate Faxon.

MR. FAXON: Thank you, Mr. Chairman. I am a member of the subcommittee that helped to draw up this proposal, and I just want to point out to you that this proposal was a product of much time and work, not only for members of the subcommittee, but we had people from the attorney general's staff, from the library commission, and the library commissioners and the librarians, and we went over this hassle many, many times, so that we would be very clear as to what we mean and as to what the intent would be behind it. I wouldn't feel right if I didn't in some way defend the Detroit public libraries here for what has been alluded to be a system whereby funds are being diverted for that library and Detroit wants a public library that just services the city of Detroit.

We heard from Mr. Ulveling, the director of the library, and I was interested in noting that the services of the Detroit public library are not only made available to the people in the county of Wayne, but they are made available to the entire state of Michigan; they conduct a considerable service for the whole state. He indicated that they loan out books to cities and to various other places, as far up as the upper part of the northern peninsula, so I just want to indicate that the Detroit public library service is a state service, and the amount of penal fines that actually go into it are very small compared to the total cost. If it is even $250,000 or $300,000, it is still a small part of the total $4½ million to $5 million budget.

The actual case in the penal fines, at least as far as our committee is concerned, is not so much a question of Wayne county suffering here, it is a question that there are many counties outside of Wayne that depend to a great extent for their support upon penal fines. And for those of you who are delegates representing counties such as Alcona, Branch, Cass, Genesee, Gladwin, Ingham, Iosco, Arenac, Jackson—and I could go down the whole list—you would find that a large percentage of the moneys that goes to support the libraries in those counties are derived from penal fines. So I don't want

you to just look at this as a question that concerns Wayne county. Certainly the penal fines are more important in their support of library systems where there is no other or, in many cases, where there is very small level of support in the out-county area, in the rural areas where penal fines do make up a large portion of the budgets for the libraries.

I would urge your support for the committee recommendation, because we did go over this question of municipal fines, and I am sure Miss Andrus will add to my comments on this question. I would urge your support for the committee proposal and opposition to the Hanna amendment.

CHAIRMAN POWELL: Miss Andrus.

MISS ANDRUS: Mr. Chairman and members, I asked to speak quite a while ago because there seemed to be a misunderstanding of 2 things about Wayne county. Mr. Iverson, however, has somewhat answered those.

I am not surprised that some of you are confused. Our committee was very confused about the penal fines until we had done a great deal of studying and investigating about them. I would like to say this—it is just filling out what Mr. Iverson said—I have figures here from the state library. For Detroit—I believe this was for the year 1959—they didn't separate the Detroit fines from the fees, as they are paid in. That is for Detroit ordinances. So all we know is that there were $5,-119,629 paid into the city treasury under fines and fees.

The city of Detroit or the board of education, as Mrs. Cushman said, supported by the taxpayers of Detroit, appropriated $3,988,253. They received in penal fines—that is the county fines—$132,318. Now, someone just said—and I don't know whether it was Mr. Ford and he misspoke himself, because he knows a lot about this, or whether it was some other delegate—the money was going to the Wayne county library. Now, they were talking about Detroit at the time, and Detroit gets $132,318 of the penal fines. You see, the penal fines don't go to the county library. As I said before, they go to the county treasurer and then the county treasurer allocates them among the different libraries.

I think it is quite clear from what has been said that most of the cities appropriate about as much to their library as they get in fines or much more. If they want a good library they have to appropriate more, and most of the cities are doing it. The difficulty today is with the small, rural libraries, the small communities who would have no service if we did not have this.

Now, I am really very interested in libraries. I think it would be fine to get more money for them. I had not planned to say this, but I think now I should: in the 1907 constitutional convention they argued this question of the city ordinance fines up and down for a long time. They decided against it. They thought it would be simpler to keep it the way it is. It is the small libraries, as Mr. Faxon said, who need these penal fines so badly.

I don't think it would matter if the cities wanted to do it, to have it all included, but I do feel that the cities are already, in most cases, appropriating as much from their general fund for their libraries as they get in the fines which they would be paying in. So our committee, I believe—though we haven't had a meeting since this amendment came up, we did discuss it—we felt it was better to leave it as it was in the 1835, the 1850 and the 1908 conventions. Three different conventions have thought about this and they have felt we should keep it this way. We would like to do the same.

CHAIRMAN POWELL: May the Chair reassure Delegate Judd that you are on my list, but there are 3 more ahead right at the moment. I still find folks rising. The next that I have is Delegate Madar.

MR. MADAR: Somebody just said I am off, so I guess I'll start. First, I would like to take up this little task with my friend, Mr. Ford from the township of Taylor, which I think wouldn't have as much to worry about today if they incorporated. In fact, I believe this is just about where this little green card sprung from.

CHAIRMAN POWELL: Let's not get into personalities, Delegate Madar.

MR. MADAR: We won't, Mr. Chairman. This has been going on for some time, as Mr. Elliott can vouch for. (laughter)

Mr. Chairman, I sometimes wonder what all the delegates think about. For a good many years all I ever heard was—and I am still hearing it—how rotten socialism and communism is, and do you know, we are sort of getting a taste of it here today. They say that when anybody has a lot, in socialism you must split it up amongst the rest, and this is about what we are being asked for here today.

You see, the city of Detroit is quite large and we have been paying for everything over the years in Wayne county—the taxpayers have been paying for all these things. We have been building up everything. This does come into county home rule, as Delegate Bentley stated. We have been paying for these things; building them up, and suddenly a lot of communities who don't like to pay, rather, the taxpayers in these communities that don't like to pay their share of everything that they should pay for, want to get just a little bit more for nothing. Of course, it looks good.

The city of Detroit takes in a lot of money. I grant you that. But we only take in because we are so much larger than all the rest of the communities around us, and we have that many more people. But we try to take care of those taxpayers and those citizens of our city. We give them a library. We have some wonderful libraries there and they cost us a lot of money to support. And what do they want to do? The out-county—a lot of the boys would love to take this away from us. They would like to start making the taxpayers foot the bills out of their own pockets, instead of out of these fines. Oh, yes, they say, "Well, you'll get it anyway." Get it anyway? Well, I have watched what has happened in Wayne county. And incidentally, I was hoping that this might be held over for 2 or 3 days because I am in hopes that in your box tonight you will find a brochure on what has been happening to the city of Detroit in the county of Wayne insofar as our taxes are concerned, to take care of libraries and everything else. We are being imposed on plenty. We don't like it any more than anybody else would, any more than you, if someone asked you to share what you have in your pocket when it doesn't belong to those that are asking for it. We don't ask the big corporations to go ahead and split it up with any other individual. They are asking us to. This brochure is going to tell you what is happening, and I was hoping that you might delay this.

We know that if this money got into the treasurer's office—these fines—do you think for one single minute, Detroit would get its $4,600,000 to take care of its libraries? Oh, no, they wouldn't, believe me. They would find some way to make sure we got $2,600,000, and the taxpayers could go jump in the river. They'd have to dig it out of their pockets. And I'm asking you to give us a little bit of help. Let's stick with what the committee came up with. They knew what was right, and let's vote down this amendment.

CHAIRMAN POWELL: Delegate Goebel, did you wish to speak now?

MR. GOEBEL: Mr. Chairman, I do not wish to prolong this debate, but I want to speak against the Hanna amendment by giving you an illustration of what might happen in my city of Grand Rapids, as well as a number of other cities throughout the state who maintain very fine and substantial library systems. We received, in the city of Grand Rapids, $58,000 in fines, which are contributed to the library system, and in addition to that, out of general tax funds the city supplies $358,000, to maintain a very fine library system.

Now, if the Hanna amendment is adopted, it will mean that $810,000, representing fines of local ordinances, would have to go to the library. In other words, $400,000 more than the city of Grand Rapids is spending at the present time for a very substantial and fine library system, and I submit to you people here in the delegation that if we do this, if we adopt the Hanna amendment, you will give the city library—a fine system as it is at the present time, we would like to make it better, so, we would like to make some of our other services better, but we have a good system—you will be handing the library system in Grand Rapids $400,000 more than it needs to take

care of a service that is as well handled as any service that the city of Grand Rapids has to offer to its citizens. If this is done, there will then be loaded an additional expense upon the taxpayers of the city of Grand Rapids, to the tune of $400,000, to maintain the other services which will be robbed by the donation of the $400,000 or the contribution of the $400,000 to the library system, which the library system does not need. I am not talking alone about Grand Rapids, because as I look over this list that same thing applies in perhaps different measure to many of these cities.

I do hope that this constitution will not impose such a restriction upon the city of Grand Rapids and other cities in the same boat, by adding a liability of cost or adding to the tax burden in the city of Grand Rapids, particularly, $400,000, by giving the library more than it needs to carry out a fine program, that they are doing right now. Thank you very much.

CHAIRMAN POWELL: The next 2 delegates on the list also come from Grand Rapids, and I wonder if they share the same point of view. Mrs. Judd.

MRS. JUDD: Mr. Chairman, members of the committee, it appears to me that this amendment is an effort to kill the libraries by kindness. I consider it an invasion of home rule, and I am not talking about county home rule, but city home rule. This would be an effort, by constitutional mandate, to require the cities to do certain things with their funds. This would be contrary to the home rule principle for cities that was set up in 1908.

I would like to express some concern and perhaps surprise for Taylor township. Mr. Ford, in the first page of his statement, complained that townships do not receive any penal fines, but about 2 pages later he tells us that the libraries in Wayne county would soon suffer because in some 5 years from now there won't be any townships to receive penal fines. This is very good news to those of us on the local government committee, because we have been trying to persuade Mr. Ford for about 3 months that his township of some 50,000 people could incorporate at any time, and he could get out from under some of these township handicaps.

I feel that we have listened to the troubles of Wayne county —and I find there are many different points of view with respect to Wayne county on the part of its own delegates— for a long time, and sometimes they predominate our discussion of statewide problems. I feel that this is a case where, from all the figures that have been quoted, Wayne county can very well take care of itself and we should turn our attention to the smaller townships throughout the state that have little or no other support besides penal fines. And I would like to ask Mr. Ford if he objects to these townships having their penal fines.

CHAIRMAN POWELL: Does the delegate care to answer, Delegate Ford?

MR. FORD: No, I don't object to any township having its penal fines. This would please me greatly, if you would remove this last section from this provision entirely and let us take care of our own library, because I am satisfied that we have reached a degree of civilization in this state where we no longer have to impose, by constitution, on the officeholders of this state a mandate that they must provide a library.

I might point out, however, that the language that the committee comes out with no longer guarantees—I am glad that I can agree with Mrs. Judd on at least part of what she said. She thinks that there is a tie in here with the home rule and the right of the people in a locality to govern their own affairs, and I agree wholeheartedly with her, and this stems out of the principles that that government is best that is the closest to the people—now, the present provision in the 1908 constitution guarantees that the people of my township, no matter how the county library wants to cut up the cake, are going to have the right to have a library in that township, but the new language presented by the committee would permit the county library to establish a library for my people in Lincoln Park, for example, several miles away, and this would be available to the people. But the guarantee that each township and each city would have a library is removed by the committee.

I would like to ask of the chairman, in that connection, if the committee gave any consideration to what the ultimate result will be if the recommendations of the majority of the judiciary committee are carried out, and the wishes that they are expressing are carried out by the legislature, to the end that they have a county court system that replaces all of the justice courts of the townships and places all of the courts into a single system in small counties that we are talking about.

MR. BENTLEY: Mr. Chairman, in reply to the gentleman from Taylor township, I would like to say this: the committee on education arrived at this proposal with no consultation with any other committee, except a request for concurrence from the committee on finance and taxation—which, unfortunately, was not forthcoming. We were not governed by what the judiciary committee, the committee on local government or any other committee had before it. We handled our own business as we saw fit. I would like to say, furthermore, with respect to the gentleman's remark about removing the provision that every township have a library, there is nothing in our proposal that would prohibit Taylor township or any other township having its library, but since today only 1 out of 15 townships in the state of Michigan does have a public library, we saw no reason to continue a constitutional provision which has not been enforced in any respect.

CHAIRMAN POWELL: If anyone else wishes to speak, cheer up—maybe we'll get to you. There are only 7 ahead now. (laughter) Delegate Martin.

MR. MARTIN: Mr. Chairman, Mr. Goebel and Mrs. Judd have said everything that I would say, and said it better than I could say it.

CHAIRMAN POWELL: Thank you. Delegate Seyferth.

MR. SEYFERTH: Mr. Chairman, I am forced to speak because my compatriot from the second district is the one that I have to oppose in this instance. I rise to oppose the Hanna amendment for obvious reasons, as has been well spelled out by Delegate Goebel from Grand Rapids. Muskegon's situation is identically the same. We support our own library through our fine systems and we also help support our police force through some of the fines that we generate in that manner, so I oppose the Hanna amendment.

CHAIRMAN POWELL: Delegate Follo.

MR. FOLLO: Mr. Chairman, members of the committee, I rise to ask you to defeat the Hanna and Ford amendment for this reason: I share with Judge Dehnke the fear that the battle of the giants or titans—whichever he called them—may lose us the support for small libraries, several of which I am acquainted with in the upper peninsula that need this very badly. This is "grass roots" democracy when we get people who are working together on a committee in a community to provide library service for themselves, and are helped by penal fines. In the city of Escanaba we spend about $42,000 a year on our library, which I think is more than we get in penal fines. I would urge you, for the sake of many small libraries in this state, to vote against the Hanna amendment.

CHAIRMAN POWELL: Delegate Bledsoe.

MR. BLEDSOE: Mr. Chairman, I have listened with a great deal of interest to my colleagues and I cannot refrain from calling their attention to the work that we are dedicated here to perform. I am going to begin my remarks—and they are going to be very brief—with article XI of our own constitution, and I wish you'd ponder it. This is the article that provides for encouragement of education, which reads as follows:

> Sec. 1. Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.

Now, to me, I cannot disassociate the means of education from libraries. I am amazed that this issue of socialism and division affecting the culture of our people should arise on this floor. If it should occur that any district has more money than it needs from these funds, what about the ugly image that is created in the great cultural states as ours where we have 1 library in 15 townships. That is the image now. Does that

not also coincide with the reason why we are a second class nation in the question of science? Aren't we contributing to that position that we are in today? We are struggling, trying to send a man to the moon or somewhere, and we have become an international second class nation.

I submit, my colleagues, that we are not writing township, necessarily, getting into this quarrel of home rule and so forth, we are blueprinting the constitution for the state of Michigan that will survive, we hope, if we can get past the electorate, for the next 50 years. And I submit that in the 2 positions that we have on the floor here today in the committee of the whole, I am persuaded to believe that the Hanna amendment will more nearly express the type of progress that we should go forth with, rather than to retain the abyss of 1835 and 1908. We must move forward and build libraries, big libraries, big schools, better schools, better libraries if we are to move forward and remove our nation from the position of a second class power in the field of science, and I take my stand here and now with that thesis.

CHAIRMAN POWELL: Mrs. Butler.

MRS. BUTLER: Mr. Chairman and members of the committee, I would like to ask a question, and please don't think I am trying to be funny, because I am not. We have in the village of Houghton, I think, one of the most difficult library systems in the state, and those people that have been working with libraries throughout the state will agree with me. I am wondering what would happen to the village of Houghton library if the penal fines were discontinued, and if you have the statistics, I would like to ask how much is received in Houghton county, Keweenaw county and Luce county in penal fines.

CHAIRMAN POWELL: As I understand it, this isn't exactly pertinent to the pending Hanna amendment.

MRS. BUTLER: Please defeat the Hanna amendment. (laughter)

CHAIRMAN POWELL: I notice that Delegate Andrus is looking through her tabulation there. If I understood the Hanna amendment, it was bringing in more money than less, but the Chair should not comment on pending questions. Does anybody wish to reply to the question or observation of Mrs. Butler? Miss Andrus.

MISS ANDRUS: I am very sorry, Mrs. Butler, Mr. Heideman had all that information and I can't find it here and he is not here.

MRS. BUTLER: May I say that we are not trying to take the money away from Detroit, because they seem to be afraid that we might get some from them. And we hope to retaliate when they try to take our apportionment away from us in the upper peninsula. (laughter)

CHAIRMAN POWELL: The next delegate on the list is Delegate Suzore.

MR. SUZORE: Since my colleague from Taylor has so often mentioned the name of the city of Lincoln Park, from which I come and which is one of the cities I represent, I would like to answer him by just mentioning to him that I feel that he is trying to attack a problem from behind. He is not happy, and I think the delegates all realize that, that townships now have to pay the penal fines into the library funds, and so he is trying to take the cities in with the townships. I think in being a member of the board of supervisors of Wayne county, and having talked to many of the supervisors of the townships—and most of the townships are in Mr. Ford's and my area of the county—very few, if any of them agree with the position that is taken by Mr. Ford and Mr. Hanna, and I ask, therefore, for the defeat of the amendment.

CHAIRMAN POWELL: Delegate Brown.

MR. T. S. BROWN: I am not going to read to you. Don't get frightened by the book here. I think perhaps a simple exposition of one man's point of view in this regard will clarify a lot of points. I was on the subcommittee for libraries and when we first got together we were all amazed, I think equally amazed, by the fact that pursuant to the terminology of the 1908 constitution the libraries in general within certain portions of the state were not getting a fair shake because the 1908 constitution—and if we start with that—was very explicit. It said, you will establish a library in every city, in every village, in every township. And then in the second portion it said that all penal fines should go from these various respective political entities into these library systems. Now, this was all very well and good, but since the passage of the 1908 constitution, we on the subcommittee were surprised—or least, I was—to find that since that time there have been several supreme court cases and attorney general's opinions indicating that those political entities that had achieved the status of cities were no longer subjected to this and need not participate if they did not want to in the county library system. Now, basically what happened after that was that you had the cities, when they achieved their independent status, establishing their own library systems. In most cases, I think as testified to by Mr. Goebel and people from Detroit, the city library systems have more than made up for whatever library system they would have had under the unaltered terminology of the 1908 constitution. In some cases, however, this is not true, especially in your rural areas. In your 1908 constitution, you have an exclusive direction that each township shall have a library, and we know, of course, this was never adhered to because as a practical matter each county has a different problem in regard to their libraries, and many areas don't have libraries in each township nor in each group of townships, nor in any particular place that has any logical, cogent reason behind its location.

Now, because each county solves the library problem in its own particular way, the committee on education felt that it would be advisable to generalize the language in the first portion of our proposal, and that was simply to say that because as a practical matter you are not having today a library in every township, we will simply say that we will extend library services so that they will be available throughout the state; that this will encompass those areas where they want to have a small, independent library, and also take care of those problems where they think perhaps a group or area library would be better suited for their needs.

The intent of the Hanna amendment certainly does not change that terminology in the least, and there has been some discussion about it in regard to whether or not this was taking away from the townships their right to have a library if they so choose. But it does not. The only thing that the Hanna amendment does, in all fairness, is take these exempted funds from the municipalities and put them back into the general pool. So that each county will be able to make its own determination as to how many libraries it wants, where they will be placed, and what they will do with the money. That is, in essence, what it does. Maybe, in most cases, it isn't necessary. Maybe, in the case of Wayne county or in the case of Kent county it isn't necessary. In some counties it may be necessary.

Now, someone has indicated that they have surpluses in the library fund within given cities which they use to pay for their police protection. It occurs to me that if a city has a surplus in the library fund which it uses to pay for police protection, it may be doing so at the expense of some other portions of the county. And let's face facts. We are all interrelated. We all depend upon one another. The city of Detroit cannot get along without the outcounty area and vice versa. If we approach the problem from a logical lead, in other words, what does any given county need for its library system, and we have a generalized fund, then I think the Hanna amendment more meets the specific needs, although I certainly have no objection to the committee proposal and I was a signatory to it.

If we simply understand the whole question here is whether or not we are going to allow the counties, as such, to plan on a total structure for their library systems, or whether we are going to allow it to proceed on a haphazard basis, then I think the issue is clear. There is no regression here. The Hanna amendment, I feel, is better than the committee proposal, but the committee proposal is certainly a step forward from the 1908 constitution, and none of the 3 are in conflict.

CHAIRMAN POWELL: Delegate Hoxie.

MR. HOXIE: Mr. Chairman and fellow delegates, I am wondering if we could ask ourselves how many votes have

been made or lost with all the extensive debate that we have had on this particular question. I am sure many of us have made up our minds as to how we are going to vote at least an hour ago, and I would like to say that even though I do not always agree with my kind Christian friend, Mr. Madar, this is one time when I think he is right. I hope you vote against the pending amendment.

CHAIRMAN POWELL: I had reserved a space on this list for Delegate McCauley. I do not see him in the chamber. I have passed his name by and if he is not present, would anybody be interested in hearing the pending amendment? The secretary will read the amendment.

SECRETARY CHASE: The amendment offered by Messrs. Hanna, Ford, T. S. Brown and Iverson is as follows:

1. Amend page 1, line 12, after "laws" by inserting "and municipal ordinances".

CHAIRMAN POWELL: The question is on the adoption of the amendment. As many as are in favor say aye. Opposed, no. The Chair is in doubt. (laughter) Just give us a second here for folks to respond to the bell.

Mr. Marshall.

MR. MARSHALL: If the Chair is in doubt on that one, I will loan you my hearing aid, Mr. Chairman. (laughter)

CHAIRMAN POWELL: Thank you, Delegate Marshall. All in favor of this amendment by Delegates Hanna, Ford, Brown and Iverson vote aye. Those opposed, vote no.

SECRETARY CHASE: Has everyone voted? The machine is locked and the totals will be recorded.

CHAIRMAN POWELL: The committee will be in order. The secretary will announce the result of the vote.

SECRETARY CHASE: On the adoption of the Hanna, Ford, Brown and Iverson amendment, the yeas are 37; the nays are 88.

CHAIRMAN POWELL: The amendment is not adopted. Delegate Marshall, the Chair stands corrected. Don't say I didn't try to help you. (laughter) The secretary will read the next amendment on the desk.

SECRETARY CHASE: Mr. Higgs offers the following amendment:

1. Amend page 1, line 13, after "libraries" by inserting "and county law libraries"; so the language will read:

> The legislature shall provide by law for the establishment and support of the public libraries which shall be available to all residents of the state. All fines assessed and collected in the several counties, cities and townships for any breach of the penal laws shall be exclusively applied to the support of such public libraries and county law libraries, as provided by law.

CHAIRMAN POWELL: Delegate Higgs, do you wish to comment on your amendment?

MR. HIGGS: Yes, Mr. Chairman. Speaking to this amendment, I feel that it is necessary to incorporate into the body of the proposal after the word "libraries" on line 13, "and county law libraries" for the reason that some years ago, and not too many—1945—the question came before the Michigan supreme court as to whether or not a county law library was a library within the meaning of the terms "library" or "such libraries" as these terms were contained in the 1908 constitutional provisions. This case is the County of Gratiot against Federspiel, and appears in volume 312 of the Michigan Reports at page 128. It appeared in that particular decision, and the trial court pointed out that the term "library" in the constitutional mandate is not qualified by any adjective and determined, from ordinary definitions of the word, that a law library satisfies the mandate. Now, the Michigan supreme court affirmed the holding of the trial court.

Inasmuch as the committee in its majority report has qualified the term "library" by the word "public", it leaves open the question, certainly, whether or not the county law library, as we know it, is presently within the terminology supplied by the committee. I think unquestionably that being the intent, as I understand it from Delegates Bentley and Andrus, we should make it very clear for the necessity of any future decision. I would say and I would like to anticipate an argument that very possibly a county law library is not a public library, in the sense in which the usage is implied in the body of the proposal.

The statute dealing with the penal fines and the county library is Michigan Statutes Annotated, 27.2224, and this statute provides that

> . . . every county treasurer shall keep an accurate account of all moneys paid to him on account of fines, penalties and forfeitures, and shall credit all fines for the violation of the penal laws to the library fund, and all other fines, penalties, and forfeitures to the general fund.

And the statute goes on—and I am omitting parts of it dealing with technicalities involving recognizances—that in each county the county treasurer shall credit, semiannually, to a fund to be known as the county law library fund, sums of money. The statute goes on to specify sums of money from the very small counties under 10,000, which is $750, and to larger counties up to a million of $4,000. So we are not really talking about a lot of money, but the amount of money involved is in that range, $750 to $4,000. The statute also provides with regard to the usage of the library, and I think this is very important to this particular provision:

> . . . for the purpose of establishing and maintaining a law library for the use of the circuit and probate courts of such county, and for the officers of such courts, and persons having business in such courts.

It seems to me that this is the proper usage of the law library. The reason for having the law library is to have it available to the circuit court, the probate court, the officers of the court, and the people having business with the court, and not necessarily members of the general public. I think that does not make it necessarily less of a public matter, but it certainly does not make it a pubic library in the general sense, because these books must be available during the trial of a case to the judge, to the lawyers, and to persons having business with that court in that particular proceeding. These books must be available when needed in the process of trial, so it is not all members of the general public that are really concerned with that particular matter or with that particular book. These books should not be subject to circulation in the same sense. I point out that because I think there is a very real question as to whether or not the court, faced with this change and I don't quarrel with the change as long as in the last sentence we can include county law libraries, because I think there is a danger that we would exclude them or, at the very least, we would make necessary another court decision in order to interpret what we intended. I would certainly like to hear from any judges or lawyers who might have something else to offer in that regard.

CHAIRMAN POWELL: Chairman Bentley has risen. Do you have a rejoinder?

MR. BENTLEY: Mr. Chairman, before replying to the gentleman from Bay City, I cannot refrain from making a brief comment on the result of the vote that has just been taken. Some day, Mr. Chairman, I am convinced that some historian will do a study on the various coalitions that have arisen during the life of this constitutional convention. I predict that the coalition which we have just seen in operation will be one that will form one of his most interesting subjects for research.

Mr. Chairman, with reply to the amendment offered by the gentleman from Bay City, it is true that in 1945, as a result of a court decision, county law libraries were held to be beneficiaries of penal fines. Actually, county law libraries have been authorized to use such penal fines as far back as 1921, but that was a statutory decision, I believe, not a judicial one. Mr. Chairman, I can say that the intent of the committee on education was definitely—insofar as I am aware of it—not to exclude county libraries now enjoying revenue from penal fines, from continuing to receive the benefits of such revenue. While I of course cannot speak for the entire committee, I would say that insofar as I am concerned, and since the Higgs amendment would merely clarify something that I believe to be the intent of the committee already, I, as an individual and not

as chairman of the committee, would be prepared to accept the Higgs amendment.

I may say, parenthetically, one word more, Mr. Chairman, and that is this: we have just passed through an interesting and stimulating discussion with advocates of various units of local government. I have not the slightest desire to spend the balance of the afternoon warring with the 56 lawyers who happen to be members of this convention. That is another, and perhaps even more compelling reason for accepting the Higgs amendment with respect to county law libraries. (laughter)

CHAIRMAN POWELL: Miss Andrus.

MISS ANDRUS: Mr. Chairman, may I add to what Mr. Bentley said? I was chairman of the subcommittee. We considered very carefully the question of the county law libraries. Perhaps no one here is familiar with a law library which is in somebody's desk or office locked up most of the time, but that is true in some of the counties in the upper part of the state. We talked this over quite thoroughly. We felt that the provision we have would include law libraries, just as much as it does in the 1908 constitution, but this word "public" might mean that any attorney or anyone who wished to look at these law books and the law publication would feel that he had a right, that they would be open to the public.

CHAIRMAN POWELL: Delegate Pugsley.

MR. PUGSLEY: Mr. Chairman and fellow delegates, I would like to be clear on whether Mr. Bentley is accepting the Higgs amendment. If they are accepting it, then there is no necessity for my taking any time.

CHAIRMAN POWELL: Delegate Bentley, I'll let you respond.

MR. BENTLEY: Mr. Chairman, I remind Judge Pugsley, I said I was only authorized to speak as an individual. I have not polled the committee on their own feelings, but I think that the intent of the committee was that county law libraries would remain included and if the Higgs amendment clarifies the committee intent, again, as I say, as an individual, I personally will accept it.

CHAIRMAN POWELL: Delegate Pugsley, you have the floor.

MR. PUGSLEY: I wish to say this: I am very familiar with the practical use that has been made of county law libraries in more than half of the circuits of the state of Michigan in which it had been my pleasure to preside during the 30 years of my incumbency as a circuit judge. When I went on the bench on January 1, 1930, to preside over the 3 counties of Mecosta, Newaygo and Oceana, I found that the serviceable libraries in those respective counties were very meager, and I soon realized that in the administration of justice it was necessary to have made available for the convenience of the court and for service to the litigants and for the convenience of attorneys and others who might be interested in the proceedings of the court, not a large library, but one that would make it possible for the court to have the references and the principles of law handy at hand. It expedites the work of the court. It is a saving to the taxpayers to have the courts act as expeditiously and as promptly and as accurately as it is possible to do. These libraries have been a wonderful convenience, and from the limited amount of money which has been set aside in the counties which I have served for the purchasing of law books, I feel that the people in those respective counties have received value in return.

We are all interested in the administration of justice, and if we expect our courts to perform their part, and for lawyers to do their duty, they must have the necessary libraries with which to proceed. I thank you. I rise in support of the Higgs amendment.

CHAIRMAN POWELL: Delegate Faxon.

MR. FAXON: Mr. Chairman, fellow members of the committee, I am not in favor of the inclusion of the words "county law library", not because we didn't consider this but because it is not necessary with the terminology that you have before you. We discussed this in committee of the whole, and if we in our determination here have made it quite clear that we are not eliminating the inclusion of county law libraries when we talk about public libraries as provided by law, then I don't see any need for us to spell this out. If the lawyers want to spell out county law libraries, maybe we should spell out an elementary school library and an adult library and a technicians' library and an engineering library, and a number of services that we mean when we talk about public libraries. I think the terminology of the committee proposal that is before you, "such public libraries as provided by law" is quite clear; that the exact definitions for what law libraries we mean will be left to the legislature to determine, and that public libraries will be provided for.

But I would object to the inclusion here of a specific form of library in the absence of others, and I would therefore, as a single member of the committee, urge the rejection with the understanding that we do mean the inclusion of law libraries but we do not have to spell it out in the constitution specifically.

CHAIRMAN POWELL: Delegate McAllister.

MR. McALLISTER: I would like to speak in support of Mr. Higgs' amendment. If it weren't for the mistakes we lawyers make in looking up the law in these libraries, there wouldn't be any funds with which to establish these law libraries. (laughter)

CHAIRMAN POWELL: Delegate King.

MR. KING: Mr. Chairman, ladies and gentlemen of the committee, my own concern is with this word "public". If Delegate Faxon can assure me that this does not mean that the county law libraries will be open to the public, in the normal sense of the word, then I would have no objection. But until he can assure me of that—and Delegate Andrus did not so assure me—then I would have to go along with the Higgs amendment. Would you care to comment on that, Mr. Faxon?

CHAIRMAN POWELL: Delegate Faxon.

MR. FAXON: You want an assurance that we meant to include the law libraries?

MR. KING: Yes, but not as public libraries. They are not so included at the present time.

MR. FAXON: We could take out the word "public" and leave the rest. We have the original language, "such libraries as provided by law" and that might solve the problem.

MR. KING: I think the problem here is not the idea of giving constitutional status to law libraries as such. The problem is the county law libraries are not ordinarily available to the general public, except as they are required by the public in working with the courts in a particular matter. In other words, if you are a defendant in a particular case, you are entitled to use the county law library, but it is not a reading room or a place to browse. I think that unless this is made clear—the only way I see of making it clear is to support the Higgs amendment, and I would so support it.

CHAIRMAN POWELL: Delegate Higgs is next.

MR. HIGGS: I think Delegate Faxon and Delegate King have brought out a good point. I had thought I had covered it but I would like to add to it again that the public interest involved in the county law library is somewhat different than the public interest involved in public libraries as included in the body of the proposal. Inasmuch as the public interest here is in having available to the court these books for the circuit and probate courts and for the officers of such courts and persons having business in such courts—in other words, during the trial of a case or the hearing of a motion or any other proceeding before the court, the public interest is in having those books immediately available, not only to the court but to any persons, with or without lawyers. The primary interest, then, is in having those books immediately available at the time that they may be required. I might have agreed with Delegate Faxon that it should be included within the word "public" as a public interest—I think it is public in that sense—but I sincerely believe that the supreme court decision which I reviewed previously raises some question as to construction, and therefore, rather than have the matter tested in court, it would be a simple matter for us to include these few words.

CHAIRMAN POWELL: Miss Andrus.

MISS ANDRUS: I am sorry to speak again. You are probably all tired of hearing me, but I would like to speak to Mr.

King. I thought that I made this very clear, but maybe he wasn't here at the time and maybe some of the rest of you weren't. I agree with Mr. Bentley that we could put those words in, but I think in every committee we have been trying to cut down on words. We have been trying to make things clear, but to have as few words as necessary. There is no doubt at all over the years that the law libraries are considered a part of this library system, and first, before any other money is taken, money is taken out by the county treasurer for the county law libraries.

As I said before, there are some counties where a judge has these references and he has his office locked, and we had complaints and we had evidence that they would like to have it known that any attorney or someone who wanted to use these books would be able to do so. We asked, "Is that going to cost money then? Would they have to build a building?" That wouldn't be necessary.

My county has a very fine law library. I use it a great deal. I am not a lawyer, but as a teacher of government I have used it and many other people do. Don't you lawyers think you are the only ones who are interested in law. The public is, and I think that it isn't necessary; but if you want to put it in, vote for it. It isn't necessary, but we do feel on this matter of "public" that anyone who wishes to use those books might do so there. That doesn't mean they are going to circulate so they are not available to other people, but they should be available to those who need and wish to use them.

CHAIRMAN POWELL: Delegate Higgs.

MR. HIGGS: I don't want to belabor this point, Delegate Andrus, but when you say that it has always been understood and very clear that this library was part of the system, that is where I take issue, because it has not been very clear and when the question came up, they had to go to the supreme court in order to determine that the county law library was a library in the absence of any adjective description. Now that we do have an adjective description, this raises a further doubt and might possibly precipitate another supreme court decision. I would only hope to avoid that. Inasmuch as you and I do not disagree as to what the intent or purpose is, and we have never had any problem, I don't think, in our county libraries, bar libraries, with the use of these books—members of the public do use them, and there hasn't really been any trouble about it—I do think that we have a chance to avoid going to the supreme court over it again.

CHAIRMAN POWELL: Delegate Young.

MR. YOUNG: Mr. Chairman, I merely wanted to ask a question in line with the present discussion: are we being asked here to authorize public funds for the use of a library which will not be available to the public? I address that to Mr. King or to any member sponsoring the amendment.

CHAIRMAN POWELL: Delegate King, do you wish to answer?

MR. KING: Well, I would only say that under the present interpretation of the supreme court decisions on the matter, as carefully reviewed by Mr. Higgs, county law libraries are not open to the public in the same sense that most libraries are, and I think that the reasons for that have also been carefully covered by Mr. Higgs, and I, for one, do not wish to do anything to disturb this particular minute element of the status quo.

CHAIRMAN POWELL: Mr. Bonisteel.

MR. BONISTEEL: Mr. Chairman and fellow delegates, I suppose that a confession is a good thing about this hour of the afternoon. I am probably the one that caused all this trouble you are having here today because I happen to have been in the Federspiel case, which is the one they are citing here, as to what is the meaning of "library." And, you don't like to say that you took a shellacking in the supreme court, but I took a shellacking in the supreme court in that particular case, so I think I can speak with at least some intimate knowledge about this.

I agree with the committee. I think that the supreme court would say unquestionably if the occasion should require it to be said, that a public library would include a county law library. But I don't see any point in continuing this argument. I have no objection to the use of the words "law library" if you want to insert it in there, but I still believe that the committee, in its original interpretation, is correct, and I think that the supreme court would sustain that. Of course, the object is not to have to go to the supreme court. So, if we are going to avoid it, without giving way on what I believe to be the opinion of this committee — which I think is sound — in order to end this argument, I would say that I would also agree, as a member of the committee, to allow the use of that language.

CHAIRMAN POWELL: Delegate Kuhn.

MR. KUHN: I concur in what Mr. Bonisteel had to say, and to eliminate this argument, I think we should accept the Higgs amendment.

CHAIRMAN POWELL: The question is on the adoption of the Higgs amendment. As many as are in favor, say aye. Opposed, no.

The ayes have it. The amendment is adopted. The secretary will read.

SECRETARY CHASE: Mr. Leibrand offers the following amendment:

1. Amend page 1, line 9, after "libraries" by striking out "which shall be available to all residents of the state"; so the language will read, "The legislature shall provide by law for the establishment and support of public libraries."

CHAIRMAN POWELL: Mr. Leibrand.

MR. LEIBRAND: Mr. Chairman and fellow delegates, I rise to speak to the purpose of this amendment. By implication at least, the phrase, "which shall be available to all residents of the state," means to me that the service of any library shall be available, free, to all residents of the state, or at least shall be available to everyone on the same terms as offered to the residents of the municipality which operates the library. Now, I feel that this may very well place an undue burden upon existing libraries.

For 14 or 15 years, I have been a member of the board of trustees of the Bay City public library, and this thing operates something like this: we get, for library purposes, in Bay City, about $108,000 a year, but only 20 per cent of that amount, approximately 20 per cent — it varies from year to year — comes from the penal fines. The other 80 per cent comes by appropriation of the city commission of the city of Bay City from taxable property within the city of Bay City.

Now, we have, adjoining us there in Bay City — and I am talking about other libraries where our situation is not unique. I think all of those who live in cities, particularly industrial cities of any size, will find themselves faced with the same proposition. We find ourselves with a small satellite city bordering on ours, the city of Essexville. We find ourselves fringed and hinged with 6 townships with a population of 30,000 or 35,000 people. Bay City itself has only 50,000. There is a constant demand by these adjoining townships and from the city of Essexville, to be given free library service, and it would be my opinion that under the language which I seek to delete, we might be obligated to provide free library service for these adjoining townships and the city of Essexville. This, with the city of Bay City paying 80 per cent of the operating costs, would be manifestly unfair.

I don't think any library would object to permitting a tourist or a traveling salesman to come into its reading room and look at a magazine or two, but the business of providing full time library service, with the circulation of books, is, as I say, an undue burden. Year after year I have gone to the city commission of the city of Bay City at their budget meeting, and one of the first questions that is always asked of our library committee is this: "Are you providing free service for any municipality other than the city of Bay City? If you are, we are going to reduce your budget because you are getting too much money. We, the city of Bay City, are not obligated to provide library service to these other municipalities, any more than we are obligated to provide fire department service or police department service".

So, I feel that there is a danger in the language that I seek to delete.

CHAIRMAN POWELL: Chairman Bentley.

MR. BENTLEY: Mr. Chairman, in reply to the amendment offered by my good friend from Bay City, I would like to say that the committee believed that this provision should be in this respect as broad and general in scope as possible. I would like to read to him that paragraph from the committee's supporting reasons which deals with this particular provision which he seeks to delete, and I quote:

> The present language emphasizes that public libraries will be available to residents without fixing how or where the libraries themselves shall be organized. The committee presumes that legislation may be written so that each library may make reasonable rules for the use and control of its books.

Mr. Chairman, I think that this matter, which I respect as a problem, perhaps, in Bay county and Bay City, should be handled by appropriate legislation in this respect. I do not think we have to spell it out in the constitution.

I support the language offered by the committee, by making free public library service available to all residents of the state, but obviously we recognize that there must be qualifications, there must be reservations, there must be individual problems which must be met. And I submit that we cannot and we should not try to meet them in this constitution. Let's leave that up to legislative and statutory action.

CHAIRMAN POWELL: Chairman of the subcommittee, Miss Andrus.

MISS ANDRUS: Mr. Chairman and members, I would like to recall to you what I said about 2 hours ago. We spent a great deal of time talking with the members of the state board for libraries, the state library association, or association of state librarians I believe is their title, librarians from different parts of the state. And I quoted certain cases. Perhaps some of you weren't here when I told this. Detroit is having certain of the communities nearby paying so much in to the Detroit library, and then the people there may have library cards. Birmingham is doing the same. It would be done that way by the surrounding communities paying a certain amount to your library, and all could use it, or they can charge — as Mr. Bentley just said — to the individuals who will use it.

One of the first problems that came up was, people said, "We don't want to have to pay for our library and then have other people use it." We don't mean that by this language. It is not considered, in any sense. That will be a matter to be worked out. As I said, there are 5 counties working together in the upper part of the state at the present time, all contributing to a common fund which can be utilized throughout that area. We want to get away from that township and city each having a library and having a broader base, which will be available. Would you say that answers your question?

MR. LEIBRAND: Miss Andrus, what I am trying to find out is if these libraries are going to be free libraries or if they are going to be pay libraries. And if they are going to be pay libraries, who is going to pay if, under the language of the constitution, a library could refuse to provide service to a resident of the state of Michigan if he didn't pay? That is my problem.

MISS ANDRUS: Yes, there is no doubt at all about that. The state board for libraries is working out arrangements between libraries, and as I have given you these illustrations of how it can be done, it will be done from the local. It is not going to be a state telling libraries what to do, but local libraries can combine and decide. Have you ever asked these townships and that other municipality to cooperate with you?

MR. LEIBRAND: Oh, yes, Miss Andrus. We're doing it now.

MISS ANDRUS: And they refused?

MR. LEIBRAND: No, some of them have refused and some are entering into contracts, but with the free service contemplated by your chairman's statement, I can't see where we can force a contract. We have a doctor from Essexville that for years has been threatening to sue us, and I think if this new language goes in, he sure enough will.

MISS ANDRUS: If it is available, but it doesn't say free.

CHAIRMAN POWELL: The question is on the adoption of the Leibrand amendment. Mr. Follo.

MR. FOLLO: I would like to direct my remarks, Mr. Chairman, to Mr. Leibrand's fear on this matter. I think we had plenty of legal advice to the effect that they did not think that this would happen, Judge. I know that you are a judge and used to interpreting these things, but one of the things we had in mind was this: that in addition to our local libraries, we also have a state library which furnishes library service to people all over the state. Also, the state library is interested in spreading library service to people in many parts of the state which do not now have it. They are interested in getting counties to set up county libraries so that more of the people of the state of Michigan will be covered by library service. They are interested in developing regional libraries where county libraries are not feasible. These are some of the things we had in mind when we put that language in there.

CHAIRMAN POWELL: Delegate William Hanna, did you seek the floor?

MR. W. F. HANNA: Mr. Chairman, I just can't resist the comment that the cities want to keep the fines, the city lawyers want to use the county law library, and now they want to charge us poor folks from the country to come in and use their library in addition. (laughter)

CHAIRMAN POWELL: Delegate Leibrand, you were seeking recognition.

MR. LEIBRAND: I would like to inquire if it was the sense of the committee that the language we find in this Committee Proposal 31 would continue to permit libraries to make contracts with other municipal units and would continue to permit libraries to charge for library card service in other municipal units?

CHAIRMAN POWELL: Delegate Bentley, can you commit the committee?

MR. BENTLEY: Well, Mr. Chairman, in reply to the gentleman from Bay City, I can say that the intent of the committee, insofar as I am aware of it, was not to make any change in the existing situation. And I again remind him of the language which I read earlier in the committee report: "The committee presumes that legislation may be written so that each library may make reasonable rules for the use and control of its books." I believe that covers the point which he has under consideration.

CHAIRMAN POWELL: I will say that it is recorded in the archives of this convention. I don't know how far it will get in court. (laughter) The next man I saw on his feet was Delegate Higgs.

MR. HIGGS: Mr. Chairman, I would like to direct a question to Mr. Bentley, and I would like to say that the consideration given this by Delegate Leibrand, from my city, here, also occured to me independently; this language "which shall be available to all residents of the state."

The first question is: is it not possible that this could be covered by legislation? Isn't what you are driving at, you want public libraries, period? Isn't the rest statutory?

CHAIRMAN POWELL: Chairman Bentley.

MR. BENTLEY: We think, Mr. Higgs, that a general statement of intent, such as we have included here, was desirable to show that the library services, whether intended through branch libraries, bookmobiles or what else you have, may be extended to those residents of the state who are not now adequately provided with library services. But I repeat, that so far as working out the rules for individual libraries to govern the use and control of their books, the committee felt that this matter was and should be statutory.

MR HIGGS: My question was whether or not this particular language which Delegate Leibrand seeks to strike is not possibly covered by statute. Isn't that perfectly possible to cover that by statute?

MR. BENTLEY: I suppose that it is possible to cover a great many things by statute, but the committee on education felt that a broad, general statement of encouraging the extension of library services throughout the state to all its residents, through various media, would be helpful, useful and timely to place in the constitution.

MR. HIGGS: I have a second question, Mr. Chairman, if I may direct it also: would it be your intention, if someone from some other part of the state, not Essexville, not a contiguous territory, perhaps Detroit, should be in Bay City or surrounding territory on vacation, would this be intended to apply to this person?

MR. BENTLEY: Well, I think you are speaking of a hypothetical case and I have no knowledge of how your library would handle it. Why don't we say this: why don't we let the Bay City library make whatever rules it desires for the residents of Bay City, or Bay county or Wayne county, or any other part of the state, and if somebody wants to challenge them, let them do so. I feel there is nothing in the constitution which would permit a resident of any other part of the state to come into your library in Bay City and demand services which were contrary to the regulations which you laid down yourself for the use and control of your books.

MR. HIGGS: Well, Mr. Bentley, neither the Bay City public library nor any other public library of the state would have any power whatsoever by regulation and neither would the legislature have any power to pass any statute which would contravene this language which we are placing in the constitution. When you say, "which shall be available to all residents of the state," that is pretty clear. I don't see how we could possibly deny the availability of any books to any resident of the state of Michigan. You mean the whole state, don't you?

MR. BENTLEY: What I am trying to explain, Mr. Higgs — and I am not a lawyer, as I have stated many times — but as long as a person from any part of the state can come up to your library and conform with your local regulations and rules, he can have that library and its services and its books made available to him. Would you say that that was covered?

MR. HIGGS: I would say that would be covered. I would say that when you say "which shall be available to all residents of the state" in the constitution, that you could not limit or qualify that in any way by the requirement of a deposit for the use of the book to guarantee its return or anything else. You say "It shall be available to all residents of the state." This is like saying in a criminal case, "You've got a right of appeal." When you say, "You've got a right of appeal," you've got that right whether you've got the money to pay for it or not. In fact, if you don't have the money to pay for it, the county has to provide it in that case, and I say in this case the same thing would apply.

MR. BENTLEY: I recognize your concern, Mr. Higgs, and that of Mr. Leibrand and others who may be faced with the same problem. I can only repeat that it is not the intention of the committee, as we tried to spell out in our supporting reasons, to circumscribe legislation or other rules which may be adopted by local libraries for use in the control of their books, and we have so stated specifically in the supporting reasons.

CHAIRMAN POWELL: Ladies and gentlemen, I have allowed a great deal of latitude here in the dialogue. I am advised by our secretary that there is filed and on his desk a proposed amendment by Judge Dehnke which might pretty well clear up much of the controversy we have been having for the last several moments. I do have other names that have sought recognition, including Mr. Kuhn, but may I have the unanimous consent of the committee that the secretary read the amendment that has been filed? Judge Dehnke.

MR. DEHNKE: Mr. Chairman, I would like to say a word before that is read. I think Mr. Higgs has put his finger on the precise question that ought to concern all of us. Where the constitution's language is unequivocal and specific, I am sure the supreme court will go by that language and not by what was said in the attached report, and this language, as it now reads, says, "which shall be available to all residents of the state," and is broad and definite and specific. Somebody might want to come in at an odd hour of the night; something has happened in his family, he would like to look in a book about that, he needs to know right away, and other things can happen, so that I think Judge Leibrand's concern is warranted. But the amendment that I have presented to the secretary would add to the language that is there now, "under reasonable regulations" — "which shall be available to all residents of the state, under reasonable regulations." That would at least give the library board the authority to lay down some regulations to set up the hours during which the library shall be considered open and all that sort of thing.

CHAIRMAN POWELL: Judge Leibrand, do you wish to comment on that amendment?

MR. LEIBRAND: Yes, if Judge Dehnke's amendment is before the committee.

CHAIRMAN POWELL: It is not.

MR. LEIBRAND: It is not?

CHAIRMAN POWELL: If you accept it.

MR. LEIBRAND: I will accept it and withdraw mine.

CHAIRMAN POWELL: Then I would rule that it is before the committee. I think possibly the secretary should read it in its entirety so that we see exactly what is being proposed.

SECRETARY CHASE: Judge Leibrand withdraws his amendment and Mr. Dehnke has offered the following amendment:

1. Amend page 1, line 10, after "state" by inserting "under reasonable regulations"; so the language will read:

> The legislature shall provide by law for the establishment and support of public libraries which shall be available to all residents of the state under reasonable regulations . . . .

CHAIRMAN POWELL: Delegate Kuhn.

MR. KUHN: Mr. Chairman, I would like to speak in opposition to this amendment. I think it is quite clear what the committee intends. Like Delegate Bentley said, the only thing that we are changing here is the fact that since it is not practical that every township have a library, we say that they shall be available to the citizens of the state of Michigan. Now, Delegate Higgs said, "Well, if you say they have an automatic right of appeal, and so forth, they can do it." But remember, they must live in the jurisdiction. There are a lot of things that they have to qualify. Just because we say that it is available doesn't mean that there are no standards. In order to get into a court you must live in that district; in order to get a divorce now, you must live in that county for 10 days, and things of that nature. I don't think we want every small detail put in our constitution; it is very clear.

I would like to answer Judge Leibrand's questions. Can he make these contracts? The answer is yes, without question he can make these contracts. We are not changing any of that. We don't want anybody to think we are. The fact that we say they shall be available to the people of the state of Michigan is just a broad, general statement. The argument that we should leave them open all night, we say we should have public education for the people of the state of Michigan; does that mean the schools should stay open all night? Someone might want to learn something at 3:00 o'clock in the morning?

I think we are carrying this too far and way out of proportion. I think the committee proposal is sound, reasonable, was well refined, and it is not out of place to change anything today.

CHAIRMAN POWELL: Miss Andrus.

MISS ANDRUS: We spent a great deal of time on this "little thing" in the constitution, and I had no idea we would spend so much time on it in the committee of the whole. Our committee doesn't think we need to put in "county law libraries" or to put this in, "under reasonable regulations," but if you want to put it in, if it will make you feel happier, we don't have any objection. It just makes the constitution longer and we were trying to make it as brief as we could.

CHAIRMAN POWELL: Delegate Bentley.

MR. BENTLEY: Mr. Chairman, I will reply as I replied to the first Higgs amendment. I don't think it is necessary. I think the intent is clear — crystal clear beyond any doubt — but for the sake of trying to save some time and some argument, speaking again as an individual — and I cannot speak for the committee because this question has not been before

them — since it is merely clarifying what the committee's original intent was, I, as an individual, will be willing to accept the words of the Dehnke amendment.

CHAIRMAN POWELL: Delegate Faxon.

MR. FAXON: I want to support Mr. Kuhn here also as a member of the same subcommittee. We seem to be getting up here and arguing. I think this question of "under reasonable regulations" is purely statutory. There is already a state board for libraries which sets up these regulations on library hours. I don't understand why there is such a need to get into such specificity with regard to this particular section when we've permitted other sections to get by in general language, and here we are demanding a detail, legislative detail if you like, in order to win the approval of the delegates. I would urge the delegates to keep the original proposed draft which came after long and careful consideration by the committee.

CHAIRMAN POWELL: Delegate Stevens.

MR. STEVENS: Mr. Chairman and fellow members, it is crystal clear what the committee intends. What is not crystal clear is what the court will interpret. The construction of the court, as has been pointed out, is based on the language. I see no objection to making it clear, even to the supreme court. (laughter)

CHAIRMAN POWELL: The question is on the adoption of Judge Dehnke's amendment. As many as are in favor will say aye. Opposed, no.

The ayes have it. The amendment is adopted. Are there any other amendments on file on the secretary's desk?

SECRETARY CHASE: There are none, Mr. Chairman.

CHAIRMAN POWELL: That completes the amendments on the secretary's desk. Are there any further amendments to the body of the proposal? If not, it will be passed.

Committee Proposal 31, as amended, is passed.

Delegate Madar.

MR. MADAR: Mr. Chairman, I just wanted to make one remark: I hope now that we've got this going, we are going to have some law libraries. Let's make sure that there are some good English textbooks there so that we can have this done properly, as Judge Dethmers asked us to; make it simple.

SECRETARY CHASE: Item 5 on the calendar from the committee on legislative powers, by Mr. Hoxie, chairman, **Committee Proposal 41,** A proposal to provide for a 2/3 vote of the legislature for nongovernmental appropriations. Retains article V, section 24.

Following is Committee Proposal 41 as read by the secretary, and the reasons submitted in support thereof:

The committee recommends that the following be included in the constitution:

Sec. a. The assent of 2/3 of the members elected to each house of the legislature shall be requisite to every bill appropriating the public money or property for local or private purposes.

Mr. Hoxie, chairman of the committee on legislative powers, submits the following reasons in support of Committee Proposal 41:

The committee recommends the retention of this section. It provides against possible misuse of the appropriation power for private gain.

The committee believes that a 2/3 vote of the members of each house of the legislature should be required for any bill appropriating public money or property for nongovernmental or nonpublic purposes, thereby protecting public funds.

CHAIRMAN POWELL: The chair will recognize Delegate Hoxie, chairman of the committee on legislative powers.

MR. HOXIE: Mr. Chairman and fellow delegates, we are very proud, in the legislative powers committee, that the individual selected to preside over this session is also chairman of the subcommittee that handled this particular proposal. Because it would be improper for him to explain it from the rostrum, I, at this time, yield to Mr. Baginski, who is also a member of that committee, and also Mr. Murphy.

CHAIRMAN POWELL: Delegate Baginski.

MR. BAGINSKI: Mr. Chairman and members of the committee of the whole, your committee on legislative powers submits Committee Proposal 41 with the recommendation that the language that has been in the constitution since 1850 be retained.

CHAIRMAN POWELL: Are there any amendments to the body of the proposal? Delegate Faxon.

MR. FAXON: Mr. Baginski, I would like to ask a question through the Chair. Just for my own purposes here — and I spoke with regard to this particular proposal before your subcommittee — where is there a need for the appropriations of public moneys for strictly private purposes?

CHAIRMAN POWELL: Mr. Baginski.

MR. BAGINSKI: Mr. Faxon, there are funds appropriated by the legislature for the veterans' service work. I believe some 4-H money is appropriated by the legislature, and that is a private purpose, you might call it. There is an aeronautical association that receives money from the legislature to carry on its work in aeronautics.

MR. FAXON: Are these moneys where the public gets no accounting as to how they are spent? Do we actually appropriate to private organizations here and they in turn spend it as they see fit?

MR. BAGINSKI: Yes, but these funds are audited and controlled by the legislature.

MR. FAXON: Then the state does get an accounting as to how this money is spent?

MR. BAGINSKI: That is right.

MR. FAXON: And there would be no mismanagement from this standpoint?

MR. BAGINSKI: I don't see how there could be.

MR. FAXON: And this has not been abused in the past in terms of excessive appropriations for private purposes?

MR. BAGINSKI: No, and as I said before, this language has been in the constitution since 1850 and in all these years there have been no embarrassing moments about it.

CHAIRMAN POWELL: Delegate Faxon, I might be pardoned if I say it is my understanding that also the appropriation for the tourists and resort associations might be construed as for a private purpose.

Delegate Madar, do you wish recognition?

MR. MADAR: I just wanted to mention something that I do happen to know something about. This is also used for convention purposes, and just to give you an idea of how that is taken care of, the VFW just returned, I believe it was, $5,000 of their appropriation. In fact, they did the same thing with Wayne county and the city of Detroit on their convention that they just had and this has certainly helped the entire state.

CHAIRMAN POWELL: I might say to the delegates that the chairman of the committee on legislative powers, T. Jefferson Hoxie, was for many years a member of the house committee on ways and means, and if there are any specific questions, he's well qualified to answer them.

The question is on the proposal. Are there any amendments to the body of the proposal? If not, it will be passed.

Committee Proposal 41 is passed. The secretary will read.

SECRETARY CHASE: The next item on the calendar, from the committee on legislative powers, by Mr. Hoxie, chairman, **Committee Proposal 42,** A proposal to include in the constitution all of sections 1, 2, 3, 4 and 8 of article IX entitled "impeachments and removals from office."

Following is Committee Proposal 42 as read by the secretary, and the reasons submitted in support thereof:

The committee recommends that the following be included in the constitution:

Sec. a. (1) The house of representatives shall have the sole power of impeaching civil officers for corrupt conduct in office, or for crimes or misdemeanors; but a

majority of the members elected shall be necessary to direct an impeachment.

Sec. b. (2) When an impeachment is directed, the house of representatives shall elect from its own body 3 members, whose duty it shall be to prosecute such impeachment. No impeachment shall be tried until the final adjournment of the legislature, when the senate shall proceed to try the same.

Sec. c. (3) Every impeachment shall be tried by the senate. When the governor or lieutenant governor is tried, the chief justice of the supreme court shall preside. When an impeachment is directed, the senate shall take an oath or affirmation truly and impartially to try and determine the same according to the evidence. No person shall be convicted without the concurrence of 2/3 of the members elected. Judgment in case of impeachment shall not extend further than removal from office, but the person convicted shall be liable to punishment according to law.

Sec. d. (4) No judicial officer shall exercise his office after an impeachment is directed until he is acquitted.

Sec. e. (8) Any officer elected by a county, city, village, township or school district may be removed from office in such manner and for such cause as shall be prescribed by law.

Mr. Hoxie, chairman of the committee on legislative powers, submits the following reasons in support of Committee Proposal 42:

Sections a, b and c, being sections 1, 2 and 3 of article IX, provisions for the basic process of impeachment and trial of civil officers, including judges, were carried over from the 1850 constitution into the 1908 constitution unchanged except for the reversal in sequence of sections 2 and 3. The 1850 provisions were implemented by legislation in 1872 by act 62 of the public acts of 1872, MSA 2.191-2.206 inclusive, and this legislation is still in effect. This statute of 1872 was in preparation for the impeachment trial of a commissioner of the state land office in that year. The officer was acquitted. A judge of probate was tried and removed from office in 1943, by the impeachment process.

This legislation provides that the trial must be at the state capitol; the senate has the power to compel attendance of members; upon the appearance of the officer impeached to answer the charge, he must receive a copy of the articles and be given a reasonable time to answer them; the managers of the prosecution and the officer impeached are entitled to process to compel the appearance of witnesses and records.

These provisions on the impeachment process seem to be generally adequate for their purpose. The impeachment process has been used infrequently, but might tend to be a more influential factor, if the term of office for elective executive state officers were lengthened.

The committee on legislative powers has sole jurisdiction over sections a and b and recommends their approval. The primary jurisdiction over section c is in the legislative powers committee with concurrent jurisdiction in the executive branch committee, which committee has concurred in the recommendation of the legislative powers committee as follows:

January 19, 1962

The committee on executive branch has considered the recommendation of the committee on legislative powers that section 3 of article IX respecting impeachment be reported to the convention for inclusion in the new constitution without change. The committee unanimously concurs in this recommendation.

It is therefore recommended that the above sections a, b and c be included in the new constitution without change, and it is also recommended that the style and drafting committee be requested to consider placing these 3 sections in the legislative branch article.

Section d. (4) This was carried over from the 1850 constitution unchanged and provides for the mandatory suspension of a judicial officer when impeached until acquitted. No change in this section is deemed necessary.

Primary jurisdiction to this section is in the legislative powers committee with concurrent jurisdiction in the judicial committee, and that committee has advised as follows:

By action taken this date, January 12, 1962, the committee on judicial branch recommends that the provisions of section 4, article IX of the 1908 constitution be retained in its present form in any new article.

It is therefore recommended that this section be included in the new constitution in its present form, but it is further recommended that the style and drafting committee be requested to consider placing this section in the judicial branch article.

Section e. (8) The 1835 constitution gave the legislature power to provide by law for the removal of justices of the peace and other county and township officers. The 1850 constitution made the same provision "for the removal of any officer elected by a county, township or school district."

The 1908 provision kept the 1850 specification of elected officers, but broadened the language to include those of cities and villages.

In addition to provisions for removal of local officers by local authority through laws and charters, statutes pursuant to this section have given the governor general power to remove the following elected local government officers for cause with notice of specific charges and hearing: county officers, MSA 6.1207, including auditors, MSA 6.1238, and road commissioners, MSA 6.1268; city officers, MSA 6.1327; justices of the peace and township officers, MSA 6.1369; and village officers, MSA 6.1383.

Removal of elective local officers "in such manner and for such cause as shall be prescribed by law," as presently provided in section 8, appears to be reasonably flexible. The legislature by statute has vested power in the governor to remove such officers for cause.

The committee on legislative powers has primary jurisdiction over this section with concurrent jurisdiction in the committee on local government. That committee has given its concurrence as follows:

January 18, 1962

The committee on local government has reviewed section 8 of article IX, and finds that there is no objection from our committee on its retention in its present language.

The committee on legislative powers therefore recommends that this section be included in the new constitution in its present form. It further recommends that consideration might be given by the style and drafting committee to transfer this section to the local government article.

CHAIRMAN POWELL: We will take this up by sections. Chairman Hoxie.

MR. HOXIE: Mr. Chairman and fellow delegates, our subcommittee that handled this particular proposal was composed of Messrs. Wood, Lesinski and Wanger. At this time I yield to Mr. Wood.

CHAIRMAN POWELL: Delegate Wood.

MR. WOOD: Mr. Chairman, fellow delegates, the section numbers which are in this proposal are just for identification purposes. You may find in Journal 65, page 380, the detail on this. I might add that, in considering and studying this proposal, we had the able help of our committee counsel, Delegate Millard.

[Sections a and b were read by Mr. Wood. For text, see above, page 837.]

CHAIRMAN POWELL: Delegate Wood, possibly we had better take these a section at a time. That was the understanding. The secretary had just read that portion of the committee report. We better confine our comments to that.

MR. WOOD: Well, in our comments, sections a, b and c are in one paragraph.

CHAIRMAN POWELL: If there is no objection, we will permit you to proceed.

MR. WOOD: Okay. With regard to the trial, conviction and judgment, section c:

[Section c was read by Mr. Wood. For text, see above, page 838.]

We can stop there. To support this:

[The reasons submitted in support of sections a, b and c were read by Mr. Wood. For text, see above, page 838.]

CHAIRMAN POWELL: Are there any amendments to these 3 sections of the proposal? Do you wish to discuss that further orally, Delegate Wood?

MR. WOOD: Well, it was the conclusion of the committee that they should be retained as they were. I think that was unanimous in our committee.

CHAIRMAN POWELL: Did you wish to comment on this part of the proposal, Delegate Martin?

MR. MARTIN: We are talking only about section a?

CHAIRMAN POWELL: We are taking up a, b and c, which are under consideration.

MR. MARTIN: I wish to comment on c, with which executive branch had a concurrent jurisdiction.

CHAIRMAN POWELL: You may do so at this time.

MR. MARTIN: Mr. Wood has reported that we did concur with it. This is a very cumbersome procedure, this procedure of impeachment. The house acts and then the senate has to conduct a trial and it involves tying up large numbers of people, obviously, for a substantial period of time. The subcommitte struggled with some better procedure that we could use for impeachment than is provided here, the possibility of setting up a separate court or selecting a panel to conduct the impeachment trial. We finally satisfied ourselves that we couldn't think of anything better than is now provided. It makes it most unlikely that an impeachment proceeding will ever be held. Probably there are other better means of removing all other officers than the governor or lieutenant governor. We left it as it was because we felt that impeachment should be very rarely used and only in the most desperate situations, so we left in this rather cumbersome machinery, as it is, without suggested change.

CHAIRMAN POWELL: I believe there is a proposed amendment by Delegate Doty. It will be read by the secretary.

SECRETARY CHASE: Mr. Dean Doty offers the following amendment to section c:

1. Amend page 1, line 19, after "office" by inserting "and disqualification from receiving benefits under public retirement system except return of said officer's contribution to such system over any embezzlement shown"; so that the language will read — beginning in line 18 — :

> Judgment in case of impeachment shall not extend further than removal from office and disqualification from receiving benefits under public retirement system except return of said officer's contribution to such system over any embezzlement shown, but the person convicted shall be liable to punishment according to law.

CHAIRMAN POWELL: The question is on the Dean Doty amendment. Mr. Doty.

MR. DEAN DOTY: Mr. Chairman, this will be the briefest explanation made on any amendment; it is self explanatory.

CHAIRMAN POWELL: Any comment? Delegate Mahinske.

MR. MAHINSKE: The insertion here would imply that in the case where an officer is being impeached for the charge of embezzlement, the senate is precluding a judgment in a criminal court as to his guilt, making him return the funds upon their own determination in the senate. I don't know if this is what you want to do here.

CHAIRMAN POWELL: Delegate Hoxie.

MR. HOXIE: I would just like to call the attention of the delegates to the matter of impeachment and removal from office. It is not a trial before a court. I am reminded of an elderly gentleman that was probate judge of one of our northern counties, who was removed from office because he did not properly take care of his accounts. He had been a very good probate judge through the years. He did not account for the moneys that came to his attention. However, when they investigated, they found it was a matter of neglect, that the money was in his safe. It was a matter of making the proper records. He was subject to impeachment and removal from office. I also might add that in the testimony they also found that the safe was a place to keep his spirits along with the money.

Is it the intent for an individual to be removed from office who had been capable, who had been a good servant of the public, without a trial by a court of law, and therefore be penalized any rights that he might have accumulated through the years in the way of pension? I think you have got to bear in mind, introducers of this amendment, that impeachment and removal from office do not entail conviction in a court of law. It could be removal for many minor things.

CHAIRMAN POWELL: Delegate Donnelly, do you wish to speak on this?

MISS DONNELLY: Yes, I rise to support it. It would seem to me that the original sentence, line 6, is "corrupt conduct" in office. Now, I don't think that is minor, or crimes are misdemeanors. Now, you are referring to the misdemeanor that he misfiled his funds. Does this mean he is going to be impeached when he did it? Does the impeachment mean removal?

This amendment merely says that if an individual is found to have been guilty of this corruption or misconduct in office, in addition to being removed he will lose his pension, but he will get the money back he put in originally. So all he loses from this is the benefit of the office, but the money he put in he gets back. As I say, originally, I think it is very clear. I don't understand Mr. Mahinske's question or attack on it. I would be happy to try and answer it if I could understand it.

MR. MAHINSKE: What you are doing here is you are presuming guilt before you prove it and for the total amount of money that you claim is being embezzled. Now, you know as well as I do that in most embezzlement cases all you have to do is prove the embezzlement of any amount of money and not necessarily the total amount of money that is lacking. What you are doing here, if you are claiming that this man embezzled $10,000, you are going to hold him responsible for the $10,000, but at a subsequent criminal proceeding on the $10,000 —

MISS DONNELLY: Mr. Mahinske, I am saying that you just return your pension. You don't get a pension. You just put it back. It has nothing to do with $10,000.

MR. MAHINSKE: Suppose at a subsequent criminal proceeding they do not prove this man guilty beyond a reasonable doubt, the jury comes in not guilty?

MISS DONNELLY: We still say he doesn't get the pension. He just gets back the money he paid into the pension fund. It's got nothing to do with the criminal aspect of it.

MR. MAHINSKE: He gives back $10,000 —

MISS DONNELLY: If anybody pays in $10,000 to the pension fund, yes.

MR. MAHINSKE: Say $1,000. You have withheld from this man's pay $1,000 on a contributing basis. Subsequently, at a criminal proceeding where this man is presumed innocent until proven otherwise, the jury comes in innocent, you have already taken his $1,000, under the amendment here, and the jury verdict means nothing.

MISS DONNELLY: No. He gets the return of said officer's contribution to such system over any embezzlement shown.

MR. MAHINSKE: Over the embezzlement shown, but shown where, in the senate or in a criminal proceeding?

MISS DONNELLY: Well, now I see what you mean — yes — all right. I would just strike "over any embezzlement shown" and just have him contribute, what his contribution was and return that part to him.

MR. MAHINSKE: Without bringing in this proposition of embezzlement?

MISS DONNELLY: I agree with you.

CHAIRMAN POWELL: Delegate Tubbs.

MR. TUBBS: Mr. Chairman, I suggest to the distinguished attorneys who drafted this amendment that they might read the clause in the federal constitution about vested rights and the inability of the states or any of their subdivisions to take those rights away from them. We spent several hours the other day making this pension a vested right, and I don't believe it can be taken away from the man who has earned it.

CHAIRMAN POWELL: Delegate Stevens.

MR. STEVENS: I think he said in effect what I was going to say. You are jeopardizing this provision under the due process clause in the fourteenth amendment of the United States constitution.

CHAIRMAN POWELL: The question is on the adoption of the Dean Doty amendment. Delegate Wanger.

MR. WANGER: Just briefly to speak in opposition to this amendment, I think there are historical reasons why the sentence was included which says, "Judgment in case of impeachment shall not extend further than removal from office." That was to make it clear that the only issue before the house or the senate would be the man's fitness for office. That was the sole consideration which should be in the minds of the members, either causing the impeachment or trying the impeachment, and that when we also bring into consideration money and finance, we bring in extraneous considerations which should not be made a part of a trial for impeachment.

CHAIRMAN POWELL: Dean Doty.

MR. DEAN DOTY: This is a good example of a layman getting in a battle with lawyers. You need 2 or 3 to help you. Mr. Wanger, are you trying to tell me that after this gentleman has been impeached, we should continue to provide him with a pension? That is all this amendment is trying to do, prohibit that.

MR. WANGER: I would say that in the first place there are all kinds of impeachments. I am sure some of us can think of cases where, in the past, impeachments carried or almost did carry that were unjust and were motivated by political reasons. We can also think of impeachments which were absolutely just and which no one in this convention would recommend the people pay a pension to the individual, and I know those are the ones which you have in mind. I suggest, however, that this is not a consideration for the trial of impeachments in the senate itself or in the house itself; that this should be taken care of by appropriate legislation, which could be done and could be passed by the legislature. If there is any question about vested rights to pensions, certainly we cannot change the rights of any pensions which may be vested in the past, but the legislature, in the future, can appropriately provide a clause, in any pension arrangement, which will take this into consideration and make it effective, if that is the best thing. But I think that as far as the actual trial itself is concerned, all history is on the side of limiting it to the sole matter before the senate of the state as to the man's fitness for the office itself.

CHAIRMAN POWELL: Delegate Madar.

MR. MADAR: Mr. Chairman, I just wish to say to Mr. Dean Doty, as one layman to another so we won't have to worry about getting the attorneys mixed up in this, that they do earn that pension and they earned it long before they got into this trouble and it is a vested interest, and it is just like buying a pension through an insurance company, and he does earn it and he should get it. And frankly, I am opposed to the amendment.

CHAIRMAN POWELL: The question is on the adoption of the Dean Doty amendment. Mr. Wood, do you want to comment?

MR. WOOD: Mr. Chairman, I would just like to say that the committee would be opposed to the amendment too.

CHAIRMAN POWELL: As many as are in favor of the Dean Doty amendment say aye; opposed, no.

The amendment is not adopted.

Are there any other amendments to these 3 sections? If not, they will pass.

Sections a, b and c are passed. The secretary will read the next section, and then Mr. Wood can present the explanation or comments.

SECRETARY CHASE: Section d:

[Section d was read by the secretary. For text, see above, page 838.]

CHAIRMAN POWELL: Mr. Wood.

MR. WOOD: The comments are as follows:

[The reasons submitted in support of section d were read by Mr. Wood, For text, see above, page 838.]

CHAIRMAN POWELL: Are there any amendments to section d? If not, it will be passed.

Section d is passed. The secretary will read.

SECRETARY CHASE: Section e:

[Section e was read by the secretary. For text, see above, page 838.]

CHAIRMAN POWELL: Delegate Wood.

MR. WOOD: The comments read:

[The reasons submitted in support of section e were read by Mr. Wood. For text, see above, page 838.]

CHAIRMAN POWELL: There are various folks wanting recognition. I believe I saw Delegate William Hanna first.

MR. W. F. HANNA: Mr. Chairman, I would like to address a question to Mr. Wood. Since 1907, we have had a government structure which is not included within county, city, village, township or school district, to wit: the metropolitan government or the metropolitan authority referred to. I wonder whether or not this language should be broadened to allow for the removal of persons elected to a metropolitan authority or metropolitan government. This is something developed in modern times and clearly not covered by this section.

MR. WOOD: Doesn't this cover it, removal of elective local officers in such manner and for such cause as shall be prescribed by law, as presently provided in section 8 and appears to be reasonably flexible? The legislature by statute has vested power in the governor to remove such officers for cause. It doesn't name those officers, but it would seem to me that they are covered.

CHAIRMAN POWELL: Possibly the question arose from the phraseology of this section e, with an 8 in parenthesis there. Chairman Hoxie, do you wish to comment?

MR. HOXIE: Well, Mr. Chairman and fellow delegates, I am the first to admit that I thought we had covered provisions for every type of officer elected. If there is any question in your mind, Mr. Hanna, we would welcome an amendment to include them, because that was the intent of the legislative powers committee. I can't speak for the local government committee. Perhaps we can have an expression from some member of that committee.

CHAIRMAN POWELL: The Chair would direct attention to the 3 lines on page 2, and if anyone cares to formulate an amendment to clarify that, you may do so. In the meantime, Delegate Madar has requested the floor.

MR. MADAR: I wanted to ask a question of Mr. Wood. I wondered whether the same provision would apply to this particular section as applied to the section that we spoke on previously, wherein they would not lose their vested interest in a pension.

MR. WOOD: They certainly would not, under this. There is nothing mentioned at all.

MR. MADAR: I just wanted to make sure of that, that they wouldn't lose it any more than any other official would.

MR. WOOD: That would certainly be true.

CHAIRMAN POWELL: Delegate Hanna.

MR. W. F. HANNA: Mr. Chairman, I'll withhold any amendments to this until after the second reading, until we

see what this metropolitan animal is called after we get through local government.

CHAIRMAN POWELL: Delegate Allen.

MR. ALLEN: I am not sure, Mr. Hanna, that you will know after we finish the metropolitan section. We ran into this problem in local government, and one suggestion was to make an all inclusive phrase; but this would be up to, I think, style and drafting to simply, instead of reciting "cities, townships, villages, school districts" and so on and so on, simply use the phrase "local units of government".

CHAIRMAN POWELL: Are there any amendments to this section of the committee proposal? If not, it will be passed.

Section e is passed.

Is there any amendment now to the body of Committee Proposal 42? If not, it will be passed.

Committee Proposal 42 is passed. The secretary will read.

Mr. Hoxie.

MR. HOXIE: Mr. Chairman, I am not sure what constitutes a reasonable work day. Mr. Marshall, will you agree that I should move that the committee do now rise? I so move.

CHAIRMAN POWELL: The question is on the motion of Delegate Hoxie that the committee do now rise. As many as are in favor signify by saying aye; opposed, no.

The ayes have it. The committee has risen.

[Whereupon, the committee of the whole having risen, Vice President Downs assumed the Chair.]

VICE PRESIDENT DOWNS: The convention will be in order. Delegate Powell.

MR. POWELL: Mr. President, the committee of the whole has had under consideration several committee proposals, of which the secretary will now make a detailed report.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 41,** A proposal to provide for a 2/3 vote of the legislature for nongovernmental appropriations; and **Committee Proposal 42,** A proposal to include in the constitution all of sections 1, 2, 3, 4 and 8 of article IX entitled "impeachments and removals from office"; reports these 2 committee proposals back to the convention without amendment and with the recommendation that they do pass.

VICE PRESIDENT DOWNS: **Committee Proposal 41** and **Committee Proposal 42** are referred to the committee on style and drafting.

For Committee Proposal 41 as referred to the committee on style and drafting, see above, page 837.

For Committee Proposal 42 as referred to the committee on style and drafting, see above, page 837.

SECRETARY CHASE: Mr. President, the committee of the whole has also had under consideration **Committee Proposal 31,** A proposal to amend article XI, section 14 of the present constitution pertaining to public libraries; reports this proposal back to the convention with 2 amendments, recommending the amendments be agreed to and that the committee proposal, as thus amended, do pass.

[Following are the amendments recommended by the committee of the whole:

1. Amend page 1, line 10, after "state" by inserting "under reasonable regulations".

2. Amend page 1, line 13, after "libraries" by inserting "and county law libraries".]

VICE PRESIDENT DOWNS: The question is on agreeing to the amendments recommended by the committee of the whole. Those agreeing will signify by saying aye; those opposed by nay.

The amendments are agreed to.

Committee Proposal 31, as amended, is referred to the committee on style and drafting.

Following is Committee Proposal 31 as amended and referred to the committee on style and drafting:

The committee recommends that the following be included in the constitution:

Sec. a. The legislature shall provide by law for the establishment and support of public libraries which shall be available to all residents of the state under reasonable regulations. All fines assessed and collected in the several counties, cities and townships for any breach of the penal laws shall be exclusively applied to the support of such public libraries and county law libraries, as provided by law.

SECRETARY CHASE: That completes the report of the committee of the whole, Mr. President.

VICE PRESIDENT DOWNS: Are there any announcements?

SECRETARY CHASE: We have several announcements that are of interest to every delegate.

First, the photographs for the convention record will be taken next Monday, Tuesday and Wednesday, February 12, 13 and 14, here in constitution hall. There will be no charge for these sittings. The photographer will be on the premises from 1:00 o'clock p.m. to 8:00 o'clock p.m. on each of these days. All delegates are strongly urged to have a new picture taken for the record rather than submitting an existing one. If the pictorial record is to be of maximum quality and uniformity, it is highly desirable that the photographs be made under the same controlled conditions. If the first set of proofs prove unsatisfactory to you, a second sitting will be scheduled. Additional portraits may be ordered at your own expense, if so desired.

There has been a change in the television program that has been announced. There will be 2 television receivers in the lobby tomorrow morning for the benefit of those delegates and staff members who would like to watch the "Today" show in this building. The constitutional convention will be featured from 7:00 to 7:30 a.m. Note the change of time on the show, tomorrow, Wednesday, February 7, 7:00 to 7:30 a.m. on the feature "Today".

There have been some questions raised as to the filing of minority reports. The president has indicated, by a statement that he has left with the secretary, that the minority reports on those proposals which are printed in the journal of last Thursday, Journal 70, and which were not available until Friday, 3 days will expire on Wednesday, and on the proposals that were printed in Journal 71, Friday's journal, which was not received until Monday, those minority reports will have until Thursday.

We have the following notices of committee meetings:

The committee on administration will meet tomorrow at 1:15 p.m. Walter DeVries, chairman.

The committee on judicial branch will meet in room B, tomorrow, Wednesday at 9:00 o'clock a.m. Robert Danhof, chairman.

The committee on finance and taxation will meet in room E tomorrow at 8:00 o'clock a.m. D. Hale Brake, chairman.

Tomorrow, immediately after the session, the committee on local government will meet in room A for 45 minutes. Mr. Arthur Elliott, chairman.

The committee on emerging problems wishes this emphasized again: it will hold a public hearing Tuesday, this evening, at 7:30 in committee room I on the third floor. Appearing will be Mr. Maclin of Merrill Lynch, Pierce, Fenner and Smith of New York. He will be speaking on pensions. Mr. Alfred Hewitt from the Michigan National Bank in Grand Rapids also speaking on the investment and security of pension funds. Frank G. Millard, chairman.

We have the following requests for leave of absence: Mr. Norris wishes to be excused from the morning session of tomorrow; Mr. Romney wishes to be excused from tomorrow's session for the annual meeting of stockholders, and Thursday's session for a meeting of the board of directors of American

Motors; Father Dade requests to be excused from the sessions of Monday, Tuesday and Wednesday next, February 12, 13 and 14, to attend the one hundred thirty-ninth annual convention of the diocese of Michigan; Mr. Powell requests to be excused from the forenoon session of tomorrow in order to fill a speaking engagement of long standing with the county teachers' institute, at which he is to discuss developments in the constitutional convention.

VICE PRESIDENT DOWNS: Hearing no objections, the excuses will be granted.

SECRETARY CHASE: That is all of the items on the secretary's desk, Mr. President.

VICE PRESIDENT DOWNS: If there is no more business to come before the Chair, the Chair recognizes Delegate Haskill.

MR. HASKILL: Mr. President, I move that this convention adjourn.

VICE PRESIDENT DOWNS: Is there a second to the motion? All those in favor signify by saying aye; opposed, by no.

The ayes have it and the convention is adjourned until 9:30 tomorrow morning.

[Whereupon, at 5:20 o'clock p.m., the convention adjourned until 9:30 o'clock a.m., Wednesday, February 7, 1962.]

SEVENTY-FOURTH DAY

Wednesday, February 7, 1962, 9:30 o'clock a.m.

PROCEEDINGS

PRESIDENT NISBET: The convention will please **come to order.**

Our **invocation** this morning will be given by the Reverend Father Kouklakis, of the Holy Trinity Greek Orthodox Church of Lansing. Will you please rise.

REVEREND KOUKLAKIS: Omnipotent God of the universe, we humbly gather here in Thy presence to do Thee honor. We are assembled here in common union, indicative of our loyalty and allegiance to this great democratic government of the United States of America and our desire to help and benefit the brotherhood of mankind. We join in silent praise to our country and all those who dwell herein, upon whom we implore Thy blessings. We acknowledge our dependence upon Thy divine grace for strength and enlightenment. Help these, Thy servants, to think clearly and speak wisely during the process of their meetings, and guide their actions and give them Thy divine counsel. We beseech Thee to bless these delegates of the constitutional convention and give them courage and strength to so conduct their future activities that they may be a credit to us and to the state and country in which we live. Help them to remain steadfast in their obligation and to do unto others as they would have others do unto them. Keep them in health and in peace until they again gather to pay Thee reverent homage and respect. These we ask in the name of our Lord and Savior, Jesus Christ. Amen.

PRESIDENT NISBET: The **roll call** will be taken by the secretary. Those present please vote aye.

SECRETARY CHASE: Has everyone voted? The machine is locked and the attendance will be recorded.

Mr. President, a quorum of the convention is present.

Absent with leave: Mr. Barthwell, Mr. Habermehl, Mr. Norris, Mr. Powell and Mr. Romney.

Absent without leave: None.

[During the proceedings, Messrs. Powell and Norris entered the chamber and took their seats.]

PRESIDENT NISBET: Reports of standing committees.
SECRETARY CHASE: None, Mr. President.
PRESIDENT NISBET: Select committees.
SECRETARY CHASE: None.
PRESIDENT NISBET: Communications.
SECRETARY CHASE: None.
PRESIDENT NISBET: Second reading.
SECRETARY CHASE: Nothing on that calendar.
PRESIDENT NISBET: Third reading.
SECRETARY CHASE: Nothing on that calendar.
PRESIDENT NISBET: Motions and resolutions.
SECRETARY CHASE: There are no resolutions on file.
PRESIDENT NISBET: Unfinished business.
SECRETARY CHASE: None.
PRESIDENT NISBET: Special orders.
SECRETARY CHASE: None.

PRESIDENT NISBET: **General orders.** The Chair recognizes Mr. Bentley.

MR. BENTLEY: Mr. President, I move the convention resolve itself into committee of the whole for consideration of items on the general orders calendar.

PRESIDENT NISBET: The question is on the motion of Mr. Bentley. Those in favor say aye. Those opposed, no.

The motion prevails. Mr. Bentley.

[Whereupon, Mr. Bentley assumed the Chair to preside as chairman of the **committee of the whole.**]

CHAIRMAN BENTLEY: The committee will be in order. The convention is in committee of the whole for consideration of items on the general orders calendar which the secretary will report.

The Chair recognizes the gentleman from Pleasant Ridge, Mr. Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, I move that Committee Proposals 81 through 89, being items 51, 52, 53, 54, 55 and 61 through 64 and Exclusion Reports 2035 through 2040, being items 106 through 111 on our calendar, be made special orders on general orders for Thursday, this week, February 9.

CHAIRMAN BENTLEY: The Chair would like to inquire of the gentleman from Pleasant Ridge, instead of making them a special order, would he prefer to have them advanced to the head of the calendar for those days?

MR. A. G. ELLIOTT: If it means that they would come under discussion on Thursday, that is what I would like to do.

CHAIRMAN BENTLEY: Is there discussion on the motion of the gentleman from Pleasant Ridge?

MR. MADAR: Yes, sir. (laughter)

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Detroit, Mr. Madar.

MR. MADAR: One thing I do like, I've always liked, and that's railroads. (laughter) However, I believe that they are outmoded and outdated, and I believe that the people of this country, and especially of our state, would like to see that each and every one of us here will be given an opportunity to try to get as good a constitution as we possibly can, and this can only be done when, as, and if we get the proper time to do it. Now, it will not be 3 days until today and tomorrow for

the journal, and we couldn't possibly get our minority report in there in time. In fact, one of the minority reports is right now lying on the desk in the research department, and if you bring this up tomorrow, we don't have the proper time to give this consideration, and I believe this is important to at least 2 millions of people, if not to all 8 millions of them.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Pleasant Ridge again.

MR. A. G. ELLIOTT: Mr. Chairman, I am sorry that I was unable to make this motion yesterday, and I am sorry that Mr. Madar and I had no opportunity for communication. However, it seems logical that we will have ample opportunity to discuss and to study the matter that he has under consideration. There is no attempt here to shortchange him in any way. It is an attempt to get some orderly procedure within the convention and the committee of the whole and to give us an opportunity to have some advance notice of the coming up on the calendar of this particular subject which I think we are all very interested in.

CHAIRMAN BENTLEY: Does the gentleman from Detroit, Mr. Madar, again desire recognition?

MR. MADAR: Mr. Chairman, I was here all day yesterday; I was available; never outside of this building except during lunch and during the dinner hour. I was here until after 6:00 o'clock last evening, after the session was over, available so that I could have been communicated with. And I don't see why we have to go into this. Now, it says that we want to do this in order. Order? Good heavens, it was item 52. We want to move it up above 7, 8, 9 and 10 and the rest. Why? That is not proper order. In fact, I can't understand why the rush suddenly on these particular items.

CHAIRMAN BENTLEY: Is there further discussion on the motion of the gentleman from Pleasant Ridge? The gentleman from Stanton, Mr. Brake.

MR. BRAKE: Mr. Chairman, I would like to inquire of the secretary as to probabilities of printing. One can't draw amendments and so forth very well for use here until we have these green sheets. Now, this morning I have on my desk Committee Proposals 69 and 79. When are we going to have Committee Proposal 81 on through the other local government's items on our desks?

CHAIRMAN BENTLEY: The secretary will respond.

SECRETARY CHASE: These items are downstairs now in the machine room ready to be run, and some of them have been run. They should be on your desks today.

CHAIRMAN BENTLEY: Is there further discussion on the motion of the gentleman from Pleasant Ridge? The Chair recognizes the gentleman from Detroit, Mr. Mahinske.

MR. MAHINSKE: Are they running these off in order, Mr. Secretary? There is quite a batch of these. I would like to look at the article as a whole rather than getting these proposals fed to me one at a time.

SECRETARY CHASE: We are trying to run them in order in the machine room.

MR. MAHINSKE: Well, I think this also works into what we have from local government here. We are going to want to look at these minority reports on top of the committee proposals.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Detroit, Mr. Nord.

MR. NORD: May I ask the Chair as to whether the secretary would read the exact list so that we could be sure we know what is on it.

CHAIRMAN BENTLEY: The secretary will read.

SECRETARY CHASE: These are items 51, 52, 53, 54 and 55. By the way, let us be sure that we are talking about the same calendar, on the calendar for Tuesday, February 6, are items 51 through 55 and items 61 through 64, and items 106 through 111, which are exclusion reports.

CHAIRMAN BENTLEY: Is there further discussion on the motion of the gentleman from Pleasant Ridge? The Chair recognizes the gentleman from Lincoln Park, Mr. Suzore.

MR. SUZORE: I would just like to ask Mr. Elliott, our chairman, being a member of the local government committee, as to the exact reason for advancing these on the calendar.

CHAIRMAN BENTLEY: The gentleman from Pleasant Ridge is recognized.

MR. A. G. ELLIOTT: It is pretty easy. President Nisbet asked me whether or not I thought we would be in order, and I said that I saw no reason why we couldn't, and he asked me if we would advance them. So that is why I did.

CHAIRMAN BENTLEY: Is there further discussion on the motion? If not, the Chair will put the question. All those in favor will say — The gentleman from Detroit, Mr. Madar.

MR. MADAR: Mr. Chairman, seeing as how Mr. Elliott now says Mr. Nisbet asked him, I would like to ask Mr. Nisbet, our president, why we need to do this. (laughter)

CHAIRMAN BENTLEY: The Chair will recognize the president of the convention.

MR. NISBET: Mr. Chairman, in endeavoring to schedule the activities for the next few weeks, there was discussion yesterday between people of both parties in an effort to arrive at a satisfactory arrangement for the program. Without either party committing themselves to caucus, I think, it was tentatively agreed that we would try to take local government this week, reapportionment and the report of the executive branch committee next week, in an effort to get these more difficult matters off our calendar before the deadline we had set for February 21. At that time there seemed to be no disposition to do otherwise. Consequently, I asked Mr. Elliott yesterday if his committee could be ready to report on the meeting tomorrow and Friday. It is just that simple.

CHAIRMAN BENTLEY: The gentleman from Detroit.

MR. MADAR: Then, Mr. Chairman, I would like to amend the motion of Mr. Elliott that we strike out section b of Committee Proposal 81, the one that deals with — have you that, Mr. Elliott? Because the rest of us don't seem to have it altogether yet.

MR. A. G. ELLIOTT: I have the same journal that you have.

MR. MADAR: It is the same journal, but you were interested in having it now, and we didn't know you were going to rush this. Section b is this portion where, "When any city has attained a population of 100,000 inhabitants, the legislature may organize it into a separate county, without reference to geographical extent." I would like to amend the motion to have this particular section, section b, stricken from the items that we are to take up, and that this not be taken up until Friday.

CHAIRMAN BENTLEY: The Chair wishes to advise the gentleman from Detroit that Committee Proposal 81 is not before the committee at the present time, and the Chair cannot accept the gentleman's amendment.

The gentleman from Eau Claire, Mr. Richards.

MR. J. B. RICHARDS: I wish to offer an amendment to the motion. The amendment is that these be put on general orders for next Tuesday. This will give us time to get the printed material out and to be prepared.

CHAIRMAN BENTLEY: Does the chairman of the committee wish to accept that amendment?

MR. A. G. ELLIOTT: Well, I didn't realize that I was going to start this morning off at 9:30 with this kind of discussion. Of course I could not accept the amendment. I feel that we have had these in our journal. All of the committee proposals were published in Journals 70 and 71, so they have been available to us. The minority reports have not, but as I recall the discussion yesterday, Mr. Austin found himself with an amendment and reasons therefor that were just being delivered at the time that he had to discuss it, and I am sure that we can do better than that with minority reports.

The fact of the matter is, the members of my committee know that there has been a meeting called for immediately after the session this afternoon so that we could have some discussion and try to resolve any problems that might be involved. Mr. Madar will be given full opportunity to discuss any minority report which he might have and be given every consideration. So I would not support the amendment offered by Mr. Richards.

CHAIRMAN BENTLEY: Is there discussion on the Richards amendment? The gentleman from Sheridan, Mr. Gover.

MR. GOVER: Mr. Chairman and delegates, for different reasons than Mr. Madar has, I still go along with him on some of these things — pushing these items way ahead on the calendar — and I would like to support Mr. Burton Richards' amendment postponing it until next Tuesday.

CHAIRMAN BENTLEY: Is there further discussion on the Richards amendment? If not, those in favor will say aye. Those opposed? The Chair is in doubt and will call for a division on the Richards amendment. Does anyone desire the amendment to be read again? The secretary will read the Richards amendment.

SECRETARY CHASE: Mr. Richards' amendment is as follows:

1. Amend the motion by striking out "Thursday, February 8" and inserting "Tuesday, February 13".

CHAIRMAN BENTLEY: As many as are in favor of the amendment will respond by voting aye; those opposed will vote no.

SECRETARY CHASE: Have you all voted? The machine is locked and the totals will be recorded. On the amendment offered by Mr. Richards, the yeas are 77; the nays are 50.

CHAIRMAN BENTLEY: The amendment, therefore, is adopted.

Before putting the question on the Elliott motion as amended, the Chair would like to advise Mr. Madar that if he wishes to offer an amendment to put this particular section b over until Friday, such an amendment would be in order, but not to strike it out. That would not be in order. Mr. Madar.

MR. MADAR: Mr. Chairman, if we vote for the motion as amended, it will give us plenty of time. Tuesday will be fine.

CHAIRMAN BENTLEY: The vote then occurs on the Elliott motion as amended by the Richards amendment to have these items put over on general orders for Tuesday. Those in favor will respond by — does the gentleman wish to be recognized again?

MR. A. G. ELLIOTT: Ladies and gentlemen of the committee, I think we ought to take a moment here to recognize the fact that yesterday the president of this convention met with certain people — I don't know who they were, but they were representatives of both parties — and that this was their recommendation, as I understand it, and that we should recognize the problems that are confronting us here, and that unless we have some order to this schedule, we are going to find ourselves in some extreme difficulty. I personally feel that there is no reason why our committee could not be prepared to do the job that they were asked to do on Thursday and Friday of this week. I think the delay is unnecessary, and I think it does not support the president and those who made the decision yesterday.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Detroit, Mr. Downs.

MR. DOWNS: Mr. Chairman, I wish to apprise the committee that the president, Mr. Nisbet, did talk to Miss Hart and me yesterday on the whole matter of trying to work out a schedule for the convention, and we did indicate that we thought as the president of the convention, it certainly was and is his prerogative to work out what is a good and orderly procedure, and we particularly commended him for trying to get the reports of the various committees on certain subject matter together, as was done in taxation earlier this week. The unfortunate thing was that I had, without thinking too much about it, assumed the minority reports and all the material would be together.

I do feel that when we discuss these very vital items, unless we have all the materials before us, both the majority and minority reports, and the delegates have an opportunity to review them and prepare their amendments at least a little bit in advance, we end up slowing the whole process up. It happened I went over to confer with the president, and apparently my button had still been on the aye from taking the roll. I offer that as no excuse. I should have had it upright while I was checking with the president.

But I do want the committee to know that the president did confer with both Miss Hart and me, and we did have general agreement on the idea of the president working out some orderly process, but I do feel that we should have these minority reports before us at the same time.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Schoolcraft, Mr. Garry Brown.

MR. G. E. BROWN: Mr. Chairman, delegates of the convention, in view of the fact that we are not certain as to the time that this material will be printed and all, I would move that we table this matter.

CHAIRMAN BENTLEY: Motion to table is nondebatable. As many as are in favor —

MR. MAHINSKE: Point of order, Mr. Chairman. Is this proper in committee of the whole?

CHAIRMAN BENTLEY: It is a proper motion in the committee of the whole to table a pending motion. It is not a debatable matter. Those in favor of the Brown motion to table will respond by saying aye. Those opposed, no.

The motion does not prevail. The Chair recognizes the gentleman from Grand Rapids, Mr. Martin.

MR. MARTIN: Mr. Chairman, the problem is this: we have 4 full days of debate ahead. We have Wednesday — today — Thursday, Friday and Monday. Now, unless we get some order in this and unless we proceed on some one of these general areas, we are simply going to run out of gas here — probably not out of gas; (laughter) there seems to be plenty of that (laughter) — but we are going to have a problem as to some reasonable grouping of these various subjects, and it makes a lot more sense to take them up in some grouped order of this sort.

If Thursday is too soon, I would move to amend the present motion to provide that debate on the local government sections begin on Friday and we can move along from there.

[Following is Mr. Martin's amendment:

1. Amend the motion by striking out "Tuesday, February 13" and inserting "Friday, February 9".]

CHAIRMAN BENTLEY: The gentleman from Grand Rapids moves to amend the Elliott motion as amended by providing for the debate on the proposals regarding local government to begin on Friday. Is there discussion on that amendment? The gentleman from Detroit, Mr. Madar.

MR. MADAR: I would just want to say that I certainly go along with this. Friday will give us time enough on the minority report. However, as I understand it from Delegate Gover, there are other reasons, and I certainly can't speak for them. But this would certainly take care of the minority report that I would like to get in.

CHAIRMAN BENTLEY: The Chair recognizes the lady from Highland Park, Miss Donnelly.

MISS DONNELLY: I think probably it has been taken care of. The whole problem seems to be printing, and I can see no reason, and I would ask Mr. Chase through the Chair if these orders and the things that are coming up cannot get first preference in the printing. It is very simple. The minority reports should come up. We should have them. It is only fair. Just print them first. And I would like to ask the question if that order just can't be issued.

CHAIRMAN BENTLEY: The secretary will respond.

SECRETARY CHASE: At the present time items through Committee Proposal 103, with one exception, have been printed.

CHAIRMAN BENTLEY: Is the gentleman from Pontiac seeking recognition? Mr. Kuhn.

MR. KUHN: I would like to make a parliamentary inquiry, Mr. Chairman. I am a little confused on the procedure here. It happened on our meeting times and now it is happening on days.

Mr. Elliott's motion was to bring this matter up on Thursday. The amendment was passed to bring it up on Tuesday. Now, it seemed to me that that would eliminate everything between Thursday and Tuesday. If it doesn't, then we can bring it up every single day. And the gentleman that was in the Chair presiding as president tried to tell me we had something like a dilatory motion that was up at one time. I want

to know how far we can carry this out. I would like the parliamentarian to rule on this: if there is a motion for Thursday and they go to Tuesday and it passes, whether or not this doesn't exclude everything between those days.

CHAIRMAN BENTLEY: The secretary will make the proper parliamentary reply. (laughter)

SECRETARY CHASE: Mr. Chairman, it seems to the secretary that the motion has been amended and it is now before us as a new motion, and is therefore available for additional amendment.

CHAIRMAN BENTLEY: And the Chair would so rule. The gentleman from Taylor, Mr. Ford.

MR. FORD: Mr. Chairman, I would just like to support Mr. Burton Richards' timing on this, and call to the attention of the delegation the fact that we are talking about the entire local government article of the constitution which has been dumped out almost en masse in 2 journals here. Friday is the last day for preparation of minority reports on the major portion of it.

I want to remind you that this is the largest committee in the convention by number of members, and that it deals with, I believe, the greatest number of sections of the constitution, and we are talking about every form of local government and all of its ramifications. And I can promise you from the experience we had in the last 2 weeks down there that you are going to have a record number of divergent opinions in the form of minority reports, and they don't have any party lines mixed into them or sectional lines, necessarily, but I think it is going to take us several days. Somebody seems to be operating on the theory that we are going to dispose of this whole article in 2 days, and without being accused of being guilty of prolonging it, I want to bet that we just don't do it.

CHAIRMAN BENTLEY: The Chair would remind the gentleman from Taylor that Thursday is the last day for minority reports. The gentleman from Ann Arbor, Mr. Bonisteel.

MR. BONISTEEL: Mr. Chairman and members of the committee, I think every one of us agrees with President Nisbet that we wish to proceed with the business of this convention as rapidly as possible, but I would like to direct your attention to the fact that we have spent almost ½ hour here this morning arguing over times and dates and periods when these things should be done.

The thing that disturbs me and has disturbed me for some time in this convention is the fact that there is a lack of communication to the delegates of the reasons and purposes that we desire to accomplish when these motions are made, and I believe if a satisfactory explanation had been made in the beginning as to why we sought to fix a date certain, that the delegates would have understood it and could have proceeded in an orderly manner and not have taken up ½ hour of the time already this morning in trying to fix upon a time which will be agreeable to everybody concerned. And I hope that in the future when these requests are made, at least some explanatory note will accompany these requests so that we may vote intelligently. We are, none of us, mind readers, and we can't understand these things unless someone tells us what the objective is that we seek to accomplish. I would like to remind the Chair and the members of the delegation that henceforth, if we do this, I would like an explanatory note so that each one of us may know how to vote, and how to vote intelligently. (applause)

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Birmingham, Mr. Van Dusen.

MR. VAN DUSEN: Mr. Chairman, I would just like to support Mr. Martin's amendment making this an order of business for Friday. It seems to me that in the ordinary course it might well be reached by then anyway. Mr. Madar has indicated that this will give him the time which he requires. I think it is a satisfactory compromise. I certainly support Mr. Martin's amendment and urge you to vote yes.

CHAIRMAN BENTLEY: Is there further discussion on the Martin amendment to the Elliott motion? If not, all those in favor will vote aye. Those opposed?

The ayes have it, and the amendment is adopted. The question now is on the motion as amended. Those in favor will vote aye. Those opposed, no.

The motion prevails and it is so ordered. The secretary will now read the first item on general orders for today.

SECRETARY CHASE: Item 6 on the calendar, from the committee on miscellaneous provisions and schedule, by Mr. Erickson, chairman, **Committee Proposal 43,** A proposal pertaining to aliens and property rights. Retains article XVI, section 9.

Following is Committee Proposal 43 as read by the secretary, and the reasons submitted in support thereof:

The committee recommends that the following be included in the constitution:

Sec. a. Aliens, who are or who may hereafter become bona fide residents of this state, shall enjoy the same rights in respect to the possession, enjoyment and inheritance of property as native born citizens.

Mr. Erickson, chairman of the committee on miscellaneous provisions and schedule, submits the following reasons in support of Committee Proposal 43:

This provision is carried forward without change from the 1908 constitution. The committee believes it necessary to continue these provisions because under the common law an alien had no right to own or inherit real property. It is to be noted that this provision assures this right only to aliens who are bona fide residents of this state. Thus, we are not prohibiting the government from protecting the title of our lands against the claims of the subjects of foreign powers, who are nonresidents of Michigan. The power of the government in this area will remain undiminished and will continue as it has existed since the Constitution of 1850.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Lansing, the chairman of the committee, Mr. Erickson.

MR. ERICKSON: I would like to yield the floor to Mr. Hutchinson for this and the next 2 committee reports.

CHAIRMAN BENTLEY: The gentleman from Lansing yields to the gentleman from Fennville, Mr. Hutchinson.

MR. HUTCHINSON: Mr. Chairman, the section immediately before you is the present section of the constitution assuring to aliens who are residents of this state the same right to inherit property as is the right of native born citizens.

We in the committee deemed it necessary and advisable to carry forward this provision of the constitution due to the fact that, under the common law, an alien has no right to inherit or to possess real property, and we doubt very much whether it would be good policy to deny to resident aliens the right to own and to inherit property in this state, and so think it necessary to carry this forward.

CHAIRMAN BENTLEY: Are there amendments to the body of the proposal? If not, it will be passed.

Committee Proposal 43 is passed and the secretary will read.

SECRETARY CHASE: Item 7 on the calendar, from the committee on miscellaneous provisions and schedule, by Mr. Erickson, chairman, **Exclusion Report 2016,** A report recommending the exclusion of article XVI, section 4.

Following is Exclusion Report 2016 as read by the secretary, and the reasons submitted in support thereof:

The committee on miscellaneous provisions and schedule recommends that article XVI, section 4 of the present constitution be excluded from the new constitution.

Mr. Erickson, chairman of the committee on miscellaneous provisions and schedule, submits the following reasons in support of Exclusion Report 2016:

The committee recommends that the substance of section 4 of article XVI of the Constitution of 1908 be deleted from the new constitution. This section presently empowers the board of state canvassers to conduct recounts under such laws as the legislature may prescribe, reserving

to the legislature itself the power of recount as to members of the legislature, in consonance with the constitutional provision that each house shall be the sole judge of the qualifications and elections of its members.

This material is, in the opinion of the committee, purely legislative in character. The matter of breaking tie votes and determining contested elections can be governed adequately by statute. As a matter of fact the present statutory law makes such provision in great detail. The power of the legislature to enact laws upon this subject matter is indisputable and we need not direct legislative action in this field.

The above referred to statute can be found in vol. 5, MSA, sec. 6.1851, being public act 351, 1925, part IV, chap. 17, or Callaghan's Michigan Digest, elections, sec. 63 and sec. 67.

The above statute provides the procedures and methods to be used in the event of a tie vote being determined after votes for certain offices are canvassed. In the event of a tie vote, this statute sets forth the procedures to be used to determine who shall fill the office by casting lots, and who shall supervise the determination by lot among the persons who have the right to the office.

CHAIRMAN BENTLEY: The gentleman from Fennville, Mr. Hutchinson.

MR. HUTCHINSON: Mr. Chairman, this provision has to do with that section of the constitution which says presently:

> In all cases of tie vote or contested election for any state office, except a member of the legislature, any recount or other determination thereof may be conducted by the board of state canvassers under such laws as the legislature may prescribe.

In our opinion, this is a matter better left to the legislature and unnecessary to be stated in the constitution. This material is all covered in the election laws at the present time. It will continue to be so covered and is unnecessary to have a constitutional reference in order to make it work. Therefore, we think that this can be excluded from the constitution very appropriately.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Detroit, Mr. Nord.

MR. NORD: I would simply like to ask Mr. Hutchinson this question: am I correct in assuming that the board of canvassers is provided for elsewhere in the constitution and it will still continue to exist? Is that so?

MR. HUTCHINSON: Mr. Chairman, I understand that the board of state canvassers is provided for in the article having to do with the general elections — I think it is article III — and I understand that the committee report would continue that board, although you and I may argue about the necessity for creating a constitutional status for the board of state canvassers.

CHAIRMAN BENTLEY: Are there any amendments to the exclusion report? If not, it will be passed.

Exclusion Report 2016 is passed and the secretary will read.

SECRETARY CHASE: Item 8, from the committee on miscellaneous provisions and schedule, by Mr. Erickson, chairman, **Exclusion Report 2017,** A report recommending the exclusion of article XVI, section 10.

Following is Exclusion Report 2017 as read by the secretary, and the reasons submitted in support thereof:

The committee on miscellaneous provisions and schedule recommends that article XVI, section 10 of the present constitution be excluded from the new constitution.

Mr. Erickson, chairman of the committee on miscellaneous provisions and schedule, submits the following reasons in support of Exclusion Report 2017:

The committee recommends that the substance of section 10 of article XVI of the Constitution of 1908 be deleted from the new constitution. This section limited the lease of land for agricultural purposes to a term of 12 years. The committee believes that the provision serves no useful purpose at this time. The provision applies only to agricultural lands. There seems to be no compelling reason why the lease of agricultural lands should be treated differently than other lands. The subject matter appears to be of legislative rather than constitutional import. If at any time in the future, the state should believe it necessary to limit in any way the power of alienation, it could do so by statute, which statute would be applicable to all conveyances thereafter made.

CHAIRMAN BENTLEY: The gentleman from Fennville, Mr. Hutchinson.

MR. HUTCHINSON: Mr. Chairman, this section is the old one having to do with agricultural land leases. It reads like this:

> No lease or grant of agricultural land for agricultural purposes for a longer period than 12 years, reserving any rent or service of any kind, shall be valid.

This provision seems entirely unnecessary in the middle twentieth century. We don't understand the necessity or the advisability any more of treating leases of agricultural land in any different manner than other leases of real estate, and inquiry of farm organizations in the state led us to believe that they are not concerned with this any longer. I would say again that any restriction on the right to lease property or to convey it and so on is a matter better left to statutory law, and this doesn't appear to be necessary in the constitution at all, so we recommend that it be excluded.

CHAIRMAN BENTLEY: Are there amendments to the exclusion report? If not, it will be passed.

Exclusion Report 2017 is passed and the secretary will read.

SECRETARY CHASE: Item 9 on the calendar, from the committee on finance and taxation, by Mr. Brake, chairman, **Exclusion Report 2018,** A report recommending the exclusion of article X, sections 17 and 18 of the 1908 constitution.

Following is Exclusion Report 2018 as read by the secretary, and the reasons submitted in support thereof:

The committee on finance and taxation recommends that article X, sections 17 and 18 of the present constitution, be excluded from the new constitution.

Mr. Brake, chairman of the committee on finance and taxation, submits the following reasons in support of Exclusion Report 2018:

The substance of sections 17 and 18 of article X has been included in section c of Committee Proposal 37.

CHAIRMAN BENTLEY: The gentleman from Stanton, the chairman of the committee, Mr. Brake.

MR. BRAKE: Mr. Chairman, ladies and gentlemen of the committee, sections 17 and 18 of article X cover the matter of accounting, record keeping, auditing and so forth. That material has been covered and, we believe, improved in the proposal that you approved in committee of the whole last week.

CHAIRMAN BENTLEY: Are there amendments to the exclusion report? If not, it will be passed.

Exclusion Report 2018 is passed and the secretary will read.

SECRETARY CHASE: Item 10 on the calendar, from the committee on miscellaneous provisions and schedule, by Mr. Erickson, chairman, **Committee Proposal 44,** A proposal pertaining to the schedule. Amends sections 1 and 8 of the schedule and adds 2 sections.

Following is Committee Proposal 44 as read by the secertary, and the reasons submitted in support thereof:

The committtee recommends that the following be included in the constitution:

That no inconveniene may arise from the changes in the constitution of this state, and in order to carry the same into complete operation, it is hereby declared that:

Sec. a. [The common law and the statute laws now in force,] ALL LAWS not repugnant to this constitution,

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Explanation—Matter within [ ] is stricken, matter in capitals is new.

shall remain in force until they expire by their own limitations, or are altered or repealed.

Sec. b. ALL WRITS, ACTIONS, SUITS, PROCEEDINGS, CIVIL OR CRIMINAL LIABILITIES, PROSECUTIONS, JUDGMENTS, SENTENCES, ORDERS, DECREES, APPEALS, CAUSES OF ACTION, CONTRACTS, CLAIMS, DEMANDS, TITLES AND RIGHTS OF INDIVIDUALS, BODIES CORPORATE, AND OF THIS STATE OR ANY SUBDIVISION OR AGENCY THEREOF, EXISTING ON THE EFFECTIVE DATE HEREOF SHALL CONTINUE UNAFFECTED EXCEPT AS MODIFIED IN ACCORDANCE WITH THE PROVISIONS OF THIS CONSTITUTION.

Sec. c. ALL OFFICERS FILLING ANY OFFICE BY ELECTION OR APPOINTMENT SHALL CONTINUE TO EXERCISE THE DUTIES THEREOF, ACCORDING TO THEIR RESPECTIVE COMMISSIONS OR APPOINTMENTS, UNTIL THEIR OFFICES SHALL HAVE BEEN ABOLISHED OR THEIR SUCCESSORS SELECTED AND QUALIFIED IN ACCORDANCE WITH THIS CONSTITUTION OR THE LAWS ENACTED PURSUANT THERETO.

Sec. d. The attorney general of the state shall [prepare and report] RECOMMEND to the legislature at the commencement of the next session such changes in existing laws as may be deemed necessary to adapt the same to this constitution.

Mr. Erickson, chairman of the committee on miscellaneous provisions and schedule, submits the following reasons in support of Committee Proposal 44:

Committee comment on section a: The committee has substituted the term "ALL LAWS" in place of the previous language which read, "The common law and the statute laws now in force". In so doing the committee has eliminated specific references to the "common law". It seemed to the committee that the general idea expressed in this section has a peculiar relevancy to statutory laws and that the notion of expiration by their own limitation or alteration or repeal is really not apt language to describe the common law of the state. In the absence of an express provision dealing with it, the law represented by the common law of the state will continue in force until repealed by statute or until modified or otherwise changed by the usual process of judicial decision. It seemed desirable to the committee to leave this to implication rather than to attempt to embrace the idea by a specific reference to the common law in this schedule.

Committee comment on section b: In this proposed section the committee has consolidated the language and the ideas previously contained in sections 2, 3 and 4 of the schedule of the Constitution of 1908. We have added to the generic terms included in section 2 the words "civil or criminal liabilities, contracts, claims, demands, titles and rights" which, in the opinion of the committee, adequately embrace all the specifics detailed in the old sections 3 and 4.

It is also to be noted here that this section allows a modification in accordance with the provisions of this constitution. This allows procedural changes to take place with respect to interests accrued or vested before the adoption of the revised constitution. This will allow, for instance, for the establishment at an early date of a new court system or for changes in the jurisdiction of courts or for procedural law changes. The committee feels there need be no fear that existing rights or liabilities would be modified in any substantial way because flexibility is written into this saving clause. It is clear that vested property and contract rights and other types of interest cannot substantially be impaired because of restrictions in the federal constitution, either under the contract clause or under the due process clause of the fourteenth amendment. Likewise, any changes in procedure and punishment with respect to crimes committed before the adoption of the revised constitution would be subject to ex post facto limitations under the federal constitution. In other words, permitting some modification in accordance with the provisions of this constitution would not open the door to retrospective impairment of substantive rights and liabilities but would preserve the opportunity for giving immediate effect to procedural and remedial changes consistent with the protection and continuation of accrued or vested rights and liabilities.

Committee comment on section c: The committee has consolidated into this section the concepts contained in the existing sections 5 and 7 of the 1908 constitution. The language, "ACCORDING TO THEIR RESPECTIVE COMMISSIONS OR APPOINTMENTS," includes necessarily the concept contained in the old section 7 concerning the compensation of public officers.

Committee comment on section d: The only change made by the committee in this particular section is to substitute the word "RECOMMEND" for the previous language "prepare and report". In recommending legislative changes the atttorney general may submit drafts he has prepared but the committee did not feel it was necessary to spell this out. The committee felt that the previous language might be interpreted as suggesting that legislative changes must originate with and be prepared by the attorney general. It is the committee's feeling that the revised wording adequately achieves the general purposes intended.

CHAIRMAN BENTLEY: The Chair recognizes the chairman of the committee, the gentleman from Lansing, Mr. Erickson.

MR. ERICKSON: I will yield to Delegate Durst who, along with his subcommittee, prepared this and the next 2 sections.

CHAIRMAN BENTLEY: The gentleman from Lansing yields to the gentleman from Adrian, Mr. Durst.

MR. DURST: Mr. Chairman, section a is merely what is called a "saving clause;" that is, it continues in force all the presently operative statutes in the state of Michigan until they are either changed by the legislature or expire. In fact, it just continues it pretty much as it was in the previous constitution.

CHAIRMAN BENTLEY: Are there any amendments to the first clause? Mr. Hutchinson.

MR. HUTCHINSON: Mr. Chairman, I would like to ask Mr. Durst this question, I'm a little bit disturbed by his explanation, because I understood him to say that this would continue in force all the statutes for the state of Michigan. I will ask the gentleman if, in his opinion, this also will continue in force the common law.

MR. DURST: I think, Mr. Hutchinson, the common law continues in force in and of itself by definition. The common law is a law which exists where there is no statute or any other law which defines—it takes place where there is nothing formally promulgated.

I would point out here this was a considerable point of discussion in committee whether or not the words "the common law" should be removed. The problem is this: what we have done is adopt the language used in the model code, and the problem arises in that the common law is considered by the courts to be a living law; that is, it is a law that can change as conditions change without any formal action being taken, and the language as it reads in the 1908 constitution would require that either it expire by its own limitations or that it be altered or repealed; that is, that there be a statute passed. This has caused quite a problem in the courts. I have the annotations here of this section. It is the only section of the schedule that there have ever been any court cases on. There have been quite a few in recent years, the claim being made that the courts cannot by interpretation change the common law, because this section continues it in force until it is altered or repealed.

Now, we had this discussion, so we turned it over to the research department, and we received Professor Joiner's concurrence that this was the proper way to change this thing;

Explanation—Matter within [ ] is stricken, matter in capitals is new.

that it had caused problems and this was a proper correction. We went further than that and submitted the question to Professor Kauper of the University of Michigan law school who is a professor of constitutional law and, I think it is safe to say, one of the finest experts on this subject in the United States. He gave us a very definitive discussion of the subject. I will just read his opening statement:

> I think the committee's action in drafting this section in this way so as to eliminate the specific reference to the common law as it appears in the 1908 constitution is wise and desirable.

He goes on to give a detailed analysis of his reasons. Most of these are set forth in the committee's report in the journal.

I do not think we are abrogating the common law, Mr. Hutchinson, in any way.

MR. HUTCHINSON: Mr. Chairman, I think it desirable that there be no question at all about the fact that it is our intent that the common law continue in effect except as it is altered and so on by statute, and I say that I think it is necessary that we make this clear because I don't agree with Mr. Durst that the common law simply exists. I know in my limited knowledge my recollection is that at least 1 state in the 50 is not a common law state, that being the state of Louisiana. Down in the state of Louisiana the common law doesn't exist. It exists in Michigan. I think it is our intent that it shall continue to exist in Michigan, and I think that Mr. Durst and I perhaps take different views as to the wisdom of using those words "the common law" in this particular point. If by the meaning of the phrase "all laws" it is universally understood that that includes the common law, then I wouldn't press this point any further. I wouldn't have raised the point except, as I say, in his explanation Mr. Durst simply indicated that, in his opinion, the words "all laws" referred only to statute law.

CHAIRMAN BENTLEY: Does the gentleman from Adrian yield to the gentleman from Lansing, Mr. Wanger, for a question?

MR. DURST: Yes, I will.

CHAIRMAN BENTLEY: Mr. Wanger.

MR. WANGER: Mr. Chairman, Mr. Durst, I merely wish to ask about these cases which you say raise the question as to whether or not the common law could be modified in the traditional manner. How did these cases decide the issue? Did the cases not resolve the problem favorably?

MR. DURST: Yes, the cases do resolve the problem, Mr. Wanger. They, in effect, interpret the constitution as not including the words "the common law" here. I mean they don't say so specifically, but they go on to say that this provision does not prevent the common law from changing in a normally accepted manner; that is, through customary practice and so forth.

MR. WANGER: One further question then. Would the change in language which you propose work any practical change whatsoever in the law as it stands at this time?

MR. DURST: It is not our understanding that it does. We would think that the section that we are continuing here is continued just as it has been interpreted in this state ever since the Constitution of 1908.

MR. WANGER: Would it be fair to say, then, it is the definite intention of the committee and the belief of the committee that this does not work any practical change on this matter whatsoever?

MR. DURST: That is correct.

CHAIRMAN BENTLEY: The gentleman from Detroit, Mr. Mahinske.

MR. MAHINSKE: Well, briefly, in response to Mr. Wanger's last question, this was not the unanimous opinion of the committee. There are those of us in the committee who feel otherwise, and the secretary has an amendment on his desk.

CHAIRMAN BENTLEY: The secretary will read the amendment.

SECRETARY CHASE: Mr. Mahinske and Miss Donnelly offer the following amendment to section a:

1. Amend page 1, line 8, after "Sec. a.", by reinserting "The common law and the statute laws now in force,"; and by striking out "All laws" in line 9; so that the section will read:

> Sec. a. The common law and the statute laws now in force, not repugnant to this constitution, shall remain in force until they expire by their own limitations, or are altered or repealed.

CHAIRMAN BENTLEY: The gentleman from Detroit is recognized in support of his amendment.

MR. MAHINSKE: Without repeating any of the statements made by Mr. Hutchinson and some of the thoughts alluded to by others, I think that we are in a highly technical area here. In the future someone is liable to look at the old constitution and the new constitution and see that we have definitely stricken the words "common law" and put in "all laws." It may raise some doubt in someone's mind. And I think for the value of striking 6 or 8 words here, the hardship that may be created in the future could be avoided by leaving the old language in. And secondly, the most important area that I feel that this language comes into play is the criminal law area where there is definite reversion back to common law in areas where we don't have statutes or we don't have fines or penalties set up for certain crimes.

And just to repeat one point, I think that we are taking a dangerous step here that could be implied or applied exactly the opposite of what Mr. Durst states here. He states himself that he feels that this proposal will produce absolutely no change over and above what we have now, but I think by interpretation it may in the future, and I would like to avoid this. And I think that the amendment would preclude any misinterpretation because we would be keeping the existing language as the 1908 constitution sets it forth now.

CHAIRMAN BENTLEY: The Chair recognizes the lady from Highland Park, cosponsor of the amendment, Miss Donnelly.

MISS DONNELLY: I would like to add to that to change this language and then to put forth in the report that "when we changed this language we didn't mean anything; we want it all to continue by implication" is an unnecessary act. If we mean what we say and what they said in 1908, in my opinion we should say it now, instead of saying "we don't mean anything by striking it, and by implication we mean the same thing." If we mean the same thing, we should say the same thing.

I definitely oppose the majority report in this instance, and move the adoption of the amendment.

CHAIRMAN BENTLEY: The gentleman from Adrian, Mr. Durst.

MR. DURST: I don't feel, Mr. Chairman, that this subject is one that requires a great amount of extensive debate, as the amendment itself would put us right back where we are now and the court interpretation would clear up the problem. The change has been made to make it conform to the way the courts have interpreted this section to read.

Now, as Mr. Mahinske said, this is a technical problem. Members of the subcommittee made their own decision. It was raised in the whole committee as to whether it was wise or not. We submitted it to research. We received the very confident opinion of Mr. Joiner. We went further and received the opinion of a man who spent many years in this particular field, Professor Kauper. You have their opinions.

If the committee wishes to replace the language as it was formerly, no great damage is going to be done, and I don't think we should spend an excessive amount of time on this.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from St. Clair Shores, Mr. Snyder.

MR. SNYDER: Thank you, Mr. Chairman. I am speaking in behalf of the 88 delegates who may have some difficulty in following the technical aspects of this thing. I will say that I am not in favor of the amendment, because when we worked the thing out in committee, we felt that we should reduce the language as much as possible in a manner that would permit all to understand. In fact, this led to a comment by Mr. Durst at the time that we have the language clarified to such a point that possibly all the laymen in the convention could

understand it but the attorneys may have some difficulty, and I feel this is where we are now.

So I will say, as a self elected spokesman for the 88 people who do not have the problem, that this is something that is going to have to be decided by the 56 people who are more qualified on the thing. We feel that the intent of our discussion was that we did not want to change the content of the language as far as the spirit or the motives are concerned. We did want to reduce the language, the scope of the language, and take away from the length of the thing and simply put it in terms that we could all understand.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Battle Creek, Mr. Everett.

MR. EVERETT: Mr. Chairman, fellow delegates, I rise to oppose the amendment and support the committee report. I would remind those who are lawyers among the group and also many that are nonlawyers of a very recent case which upset the doctrine of governmental immunity. The court itself divided on the question of whether this language in the 1908 constitution prevented the court from changing the common law, many of the members of the court saying that the language which is being eliminated did prevent that change.

Now, traditionally, lawyers and courts have always felt that the common law, as Mr. Durst has suggested, is a living law and does change. The committee report plus the explanation in the report itself clearly indicates that the common law remains but that it follows the traditional course it always has and can be changed either by statute or by court interpretation. I think it is a more accurate statement of what at least this lawyer has always believed that the law was, and I think it should be retained.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Detroit, Mr. Nord.

MR. NORD: Mr. Chairman, I oppose the amendment and support the committee report. I would like to point out, as has been mentioned, that the language in the constitution has caused trouble. I realize the trouble has been resolved by the court, but I believe that if we readopt the language, then the court will have to reconfirm its previous position. We are going to invite more lawsuits. It seems to me if we know that the language did cause trouble, the best thing is to make the language in such a form that it does not cause trouble.

As far as the common law is concerned, it seems to me there is no reason for using the words "common law" in the constitution at all. The common law does not arise because the constitution says so; it arises because of the necessities of the case when courts are required to make decisions. When they are required to make decisions, they use the common law because they invented it themselves. The constitution did not invent it. Therefore, I believe the committee is correct and that the advice it got from eminent professors is correct, and we ought to adhere to the committee report.

CHAIRMAN BENTLEY: Is there further discussion on the amendment offered by the gentleman from Detroit and the lady from Highland Park? If not, the Chair will put the question. All those in favor of the amendment will respond by saying aye. Those opposed?

A DELEGATE: Division.

CHAIRMAN BENTLEY: Division is demanded. Is it supported? A sufficient number up. Those in favor of the amendment will vote aye. Those opposed, no.

SECRETARY CHASE: Has everyone voted? The machine is locked and the totals will be recorded. On the vote on the Mahinske-Donnelly amendment, the yeas are 40; the nays are 75.

CHAIRMAN BENTLEY: The amendment is not adopted. If there are no further amendments to section a, it will pass.

Section a is passed and the secretary will read.

SECRETARY CHASE: Section b:

[Section b was read by the secretary. For text, see above, page 847.]

CHAIRMAN BENTLEY: The gentleman from Adrian, Mr. Durst.

MR. DURST: Mr. Chairman, this also is a saving clause for matters other than laws. It embraces all the generic terms that are listed there. What the committee has done is to consolidate the concepts previously contained in the old sections 2, 3 and 4 of the previous schedule of 1908. We have added to the generic terms which were previously in section 2 the words "civil or criminal liabilities, contracts, claims, demands, titles and rights." And it was the opinion of the committee — and I believe this was a unanimous conclusion — that the section as presented adequately embraces all the specifics detailed in the old sections 3 and 4. I don't need to get into these if there is no question.

The last sentence on lines 19 and 20 says, ". . . shall continue unaffected except as modified in accordance with the provisions of this constitution." It is the opinion of the committee that all this does is allow changes of a procedural nature. The federal constitution under the due process clause and the contracts clause prevents any infringement upon substantive rights that are existing at the time the new constitution is adopted, but this would allow any changes that we may make of a procedural nature such as the court system or so forth to take effect as soon as the new constitution provides.

CHAIRMAN BENTLEY: The gentleman from Bay City, Mr. Higgs.

MR. HIGGS: Mr. Chairman and delegates, I have a proposed amendment on the secretary's desk which I would ask him to read.

CHAIRMAN BENTLEY: The secretary will read the amendment.

SECRETARY CHASE: Mr. Higgs offers the following amendment to section b:

1. Amend page 1, line 16, after "individuals,", by inserting "partnerships,".

CHAIRMAN BENTLEY: The gentleman from Bay City is recognized in support of his amendment.

MR. HIGGS: In reading the committee reasons and the proposal and in discussing this just before the session, it seems to me that this is a necessary inclusion. Certainly if we exclude it, we raise certain questions, inasmuch as today partnerships may hold title to real estate, and there may be certain rights derivative out of this relationship which are not, in my opinion, rights of individuals or rights of bodies corporate.

CHAIRMAN BENTLEY: The gentleman from Adrian.

MR. DURST: Mr. Chairman, members of the committee, I would point out that these words that we have put in here are the same as in the 1908 constitution, ". . . rights of individuals, bodies corporate, and of this state. . . ." I don't wish to engage in a legal argument with Mr. Higgs, but it would seem to me that under our law, a partnership does not exist as a separate person, as a corporation, so there are grounds for putting in bodies corporate as something separate. The rights of an individual and the rights of a partnership, as I see it — and I am sure as the committee saw it — are one and the same thing. I would oppose the amendment on that ground.

CHAIRMAN BENTLEY: The gentleman from Bay City.

MR. HIGGS: Mr. Chairman and fellow delegates, I do wish to engage in some argument at this point. Inasmuch as we have had a changing growth in the body of partnership law since 1908, the fact that it does not appear in the 1908 constitution doesn't impress me at this particular moment. I do not see any reason for excluding it. I haven't been able to do a great deal of research in this particular matter or study it thoroughly, but I do know that today — and I don't know whether it was true in 1908 — partnerships do have a status as a legal entity beyond that of individuals. Certainly when you file an income tax return, you are taxed as an individual. The partnership is not an entity for federal tax purposes, but under the law of the state of Michigan, a partnership is an entity that may hold legal title, and there are certain rights that are derivative by creditors through this relationship. The exclusion of one word, I think, might cause some trouble. I would like to hear from some of the other lawyers on this.

CHAIRMAN BENTLEY: Is there further discussion on the Higgs amendment? If not, the Chair will put the question. All those in favor will respond by saying aye. Those opposed? The amendment is not adopted.

A DELEGATE: Division.

CHAIRMAN BENTLEY: Division is called for. Is the demand supported? A sufficient number. Those in favor of the Higgs amendment will vote aye. Those opposed, no.

SECRETARY CHASE: Has everyone voted? The machine is locked and the totals will be recorded. On the amendment offered by Mr. Higgs, the yeas are 38; the nays are 60.

CHAIRMAN BENTLEY: The amendment is not adopted. If there are no further amendments to section b, it will be passed.

Section b is passed and the secretary will read.

SECRETARY CHASE: Section c:

[Section c was read by the secretary. For text, see above, page 847.]

CHAIRMAN BENTLEY: The gentleman from Adrian.

MR. DURST: Mr. Chairman, this again is a saving clause. It would continue in office all members presently serving in state governments until such time as their terms naturally expire or they are replaced by terms of this constitution. This would be people like civil service commissioners. All members of the present boards and commissions would continue to fill their terms and their offices.

Now, we have added and consolidated here the previous sections 5 and 7 of the schedule. In the opinion of the committee, the words "according to their respective commissions or appointments" which is the language used in the model code, would be sufficient to continue the concept of compensation which is presently included in the old section 7.

CHAIRMAN BENTLEY: Are there any amendments to section c? If not, it will be passed.

Section c is passed and the secretary will read.

SECRETARY CHASE: Section d:

[Section d was read by the secretary. For text, see above, page 847.]

CHAIRMAN BENTLEY: The gentleman from Adrian.

MR. DURST: We intend no substantive change here, Mr. Chairman. The deletion of the words "prepare and report" and the insertion of the word "recommend" is just thought to be perhaps more proper language. There was some thought that perhaps the words "prepare and report" would mean that the attorney general would be preparing statutes and the legislature would be obligated to consider them or something of that sort. The word "recommend" is more what we have in mind, I believe, and we ask him to report on these matters.

CHAIRMAN BENTLEY: Are there any amendments to section d? If not, it will pass.

Section d is passed.

Are there any amendments to the body of the proposal? If not, it will pass.

Committee Proposal 44 is passed and the secretary will read.

SECRETARY CHASE: Item 11 on the calendar, from the committee on miscellaneous provisions and schedule, by Mr. Erickson, chairman, **Exclusion Report 2019,** A report recommending the exclusion of sections 2, 3, 4, 5 and 7 of the schedule.

Following is Exclusion Report 2019 as read by the secretary, and the reasons submitted in support thereof:

The committee on miscellaneous provisions and schedule recommends that sections 2, 3, 4, 5 and 7 of the schedule of the present constitution be excluded from the new constitution.

Mr. Erickson, chairman of the committee on miscellaneous provisions and schedule, submits the following reasons in support of Exclusion Report 2019:

The committee recommends that sections 2, 3, 4, 5 and 7 of the schedule be excluded because they are being consolidated into new language in Committee Proposal 44, sections b and c.

CHAIRMAN BENTLEY: Does the gentleman from Lansing wish recognition?

MR. ERICKSON: I have already yielded, for the next 2 reports, to Mr. Durst.

CHAIRMAN BENTLEY: Mr. Erickson yields to Mr. Durst.

MR. DURST: This exclusion report merely covers exclusion of the sections we have just passed. It excludes the old sections that we have replaced here.

CHAIRMAN BENTLEY: Are there any amendments to the exclusion report? If not, it will pass.

Exclusion Report 2019 is passed and the secretary will read.

SECRETARY CHASE: Item 12 on the calendar, from the committee on miscellaneous provisions and schedule, by Mr. Erickson, chairman, **Exclusion Report 2020,** A report recommending the exclusion of section 9 of the schedule.

Following is Exclusion Report 2020 as read by the secretary, and the reasons submitted in support thereof:

The committee on miscellaneous provisions and schedule recommends that section 9 of the schedule of the present constitution be excluded from the new constitution.

Mr. Erickson, chairman of the committee on miscellaneous provisions and schedule, submits the following reasons in support of Exclusion Report 2020:

The committee recommends that section 9 of the schedule be excluded. This provision was included in the 1850 constitution to cover those parts of the state land areas which had not been formally organized into a county. Apparently there were still parts of the state undeveloped in this regard in 1908, so the provision was carried over into the 1908 constitution. Now, all the land area of the state is included within the boundary of an organized county, eliminating any necessity for the provision.

CHAIRMAN BENTLEY: The gentleman from Adrian.

MR. DURST: Mr. Chairman, do we need to vote on these exclusion reports or should they just pass?

CHAIRMAN BENTLEY: They are passed.

MR. DURST: Without a vote?

CHAIRMAN BENTLEY: Yes.

MR. DURST: I yield to Mr. Snyder on this exclusion report.

CHAIRMAN BENTLEY: The gentleman from St. Clair Shores, Mr. Snyder.

MR. SNYDER: Mr. Chairman, this is in reference to Exclusion Report 2020, and the committee report as reported out is in the journal at page 395. We had meetings with Mr. Apol and Mr. Robert Montgomery of the elections division, and it was the unanimous conclusion that this provision was included in the 1850 constitution to cover those parts of the state land areas which had not been formally organized into a county. Apparently at that time there were still parts of the state undeveloped in this regard in 1908 so the provision was carried over in the 1908 constitution. Now all the land area of the state is included within the boundary of the organized counties, eliminating the necessity for this provision. In view of that, the committee felt that it was no longer necessary in the constitution, and they recommended the exclusion of that portion.

CHAIRMAN BENTLEY: Are there any amendments to the exclusion report? If not, it will pass.

Exclusion Report 2020 is passed and the secretary will read.

SECRETARY CHASE: Item 13 on the calendar, from the committee on declaration of rights, suffrage and elections, by Mr. Pollock, chairman, **Committee Proposal 45,** A proposal to guarantee the right of disposition to the owner of real property. Amends article II by adding a new section.

[Committee Proposal 45 was read by the secretary. For text, see below, under date of April 10.]

CHAIRMAN BENTLEY: The Chair recognizes the chairman of the committee, the gentleman from Ann Arbor, Mr. Pollock.

MR. POLLOCK: At the request of several delegates, I ask that this pass for the day.

CHAIRMAN BENTLEY: Is there objection to the unanimous consent request of the gentleman from Ann Arbor that this be passed for the day?

Hearing none, it is so ordered and the secretary will read.

SECRETARY CHASE: Item 14 on the calendar, from the committee on declaration of rights, suffrage and elections, by Mr. Pollock, chairman, **Exclusion Report 2021,** A report recommending the exclusion of article III, sections 2 and 3.

Following is Exclusion Report 2021 as read by the secretary, and the reasons submitted in support thereof:

The committee on declaration of rights, suffrage and elections recommends that article III, sections 2 and 3 of the present constitution be excluded from the new constitution.

Mr. Pollock, chairman of the committee on declaration of rights, suffrage and elections, submits the following reasons in support of Exclusion Report 2021:

The committee has decided that all matters pertaining to the definition of residence for voting purposes are essentially legislative matters, and should be deleted from the constitution. The legislature will be empowered to define residence for voting purposes. The attempt to define residence in the constitution, and to specify conditions under which it may be gained or lost, has not been successful in this or other states. In order to grant the necessary flexibility in dealing with this important aspect of election administration, it is important to give the legislature broad powers and responsibility to deal with emerging problems concerning residence.

CHAIRMAN BENTLEY: The chairman of the committee, the gentleman from Ann Arbor, Mr. Pollock.

MR. POLLOCK: Mr. Chairman and members of the committee, these exclusion reports that are coming up now, 21, 22, 23 and 24, are from our committee as a result of its study of the whole election process. As you will see in a later proposal, we have completely made over article III into a new article, and as a result of that new formulation of article III, the provisions of the various sections of article III we are recommending should be eliminated.

Regarding this one in particular, 2021, the committee has decided that all matters pertaining to the definition of residence for voting are essentially legislative matters and should be deleted from the constitution. The legislature will be empowered to define residence for voting purposes and the attempt to define residence in the constitution to specify conditions under which it may be gained or lost hasn't been successful in this state, or any other states, and in order to grant the necessary flexibility in dealing with this important aspect of election administration, it is important to give the legislature broad powers and responsibility to deal with emerging problems concerning residence. This is covered, in other words, in our new proposal.

CHAIRMAN BENTLEY: Are there amendments to the exclusion report? If not, it will pass.

Exclusion Report 2021 is passed and the secretary will read.

SECRETARY CHASE: Item 15 on the calendar, from the committee on declaration of rights, suffrage and elections, by Mr. Pollock, chairman, **Exclusion Report 2022,** A report recommending the exclusion of article III, section 5.

Following is Exclusion Report 2022 as read by the secretary, and the reasons submitted in support thereof:

The committee on declaration of rights, suffrage and elections recommends that article III, section 5 of the present constitution be excluded from the new constitution.

Mr. Pollock, chairman of the committee on declaration of rights, suffrage and elections, submits the following reasons in support of Exclusion Report 2022:

It is the feeling of the committee that the legislature, in carrying out its general responsibility for election administration, immunize electors from arrest if this is felt necessary or desirable. On the other hand, the committee does not believe that the danger either of legislative negligence or of abuse of police authority is important enough to demand a constitutional immunity for voters.

CHAIRMAN BENTLEY: The gentleman from Ann Arbor, Mr. Pollock.

MR. POLLOCK: We also feel that this section is no longer necessary in the constitution. We believe that it is adequately taken care of in our new and broader language.

CHAIRMAN BENTLEY: Are there amendments to the exclusion report? If not, it will pass.

Exclusion Report 2022 is passed and the secretary will read.

SECRETARY CHASE: Item 16 on the calendar, from the committee on declaration of rights, suffrage and elections, by Mr. Pollock, chairman, **Exclusion Report 2023,** A report recommending the exclusion of article III, section 6.

Following is Exclusion Report 2023 as read by the secretary, and the reasons submitted in support thereof:

The committee on declaration of rights, suffrage and elections recommends that article III, section 6 of the present constitution be excluded from the new constitution.

Mr. Pollock, chairman of the committee on declaration of rights, suffrage and elections, submits the following reasons in support of Exclusion Report 2023:

The excluded section contains obsolete language regarding militia duty. This language was written at a time when the term "militia" referred only to the able bodied male citizens, who might be called upon to drill from time to time. It seems to have no modern relevance. The exemption from required court attendance is one of the many details of election law which should, in the view of the committee, be left to the legislature.

CHAIRMAN BENTLEY: The gentleman from Ann Arbor, Mr. Pollock.

MR. POLLOCK: Mr. Chairman:

[The supporting reasons for Exclusion Report 2023 were read by Mr. Pollock. For text, see above.]

CHAIRMAN BENTLEY: Are there amendments to the exclusion report? If not, it will be passed.

Exclusion Report 2023 is passed and the secretary will read.

SECRETARY CHASE: Item 17 on the calendar, from the committee on declaration of rights, suffrage and elections, by Mr. Pollock, chairman, **Exclusion Report 2024,** A report recommending the exclusion of article III, section 7.

Following is Exclusion Report 2024 as read by the secretary, and the reasons submitted in support thereof:

The committee on declaration of rights, suffrage and elections recommends that article III, section 7 of the present constitution be excluded from the new constitution.

Mr. Pollock, chairman of the committee on declaration of rights, suffrage and elections, submits the following reasons in support of Exclusion Report 2024:

The first clause is designed to insure the secrecy of the ballot. This will be covered in another section of the proposed new article. The clause regarding township officers was evidently designed to allow township officers to be chosen by viva voce voting. Present legislation requires election of township officers by ballot (election laws, section 368). In the opinion of the committee, exclusion of this language would not interfere with nomination of township officers by caucus, if provided by law as at present.

CHAIRMAN BENTLEY: The gentleman from Ann Arbor, Mr. Pollock.

MR. POLLOCK: This section we also recommend be excluded, because we are covering the first part regarding secrecy in another section of our proposed new article, and the clause regarding township officers was evidently designed to allow township officers to be chosen by viva voce voting, and present legislation requires election of township officers by ballot. In the opinion of the committee, exclusion of this language would not interfere with nomination of township officers by caucus if provided by law as at present.

CHAIRMAN BENTLEY: Are there amendments to the exclusion report? If not, it will be passed.

Exclusion Report 2024 is passed and the secretary will read.

SECRETARY CHASE: Item 18 on page 2 of the calendar, from the committee on education, by Mr. Bentley, chairman, **Exclusion Report 2025,** A report recommending the exclusion of article XI, sections 2 and 6.

Following is Exclusion Report 2025 as read by the secretary, and the reasons submitted in support thereof:

The committee on education recommends that article XI, sections 2 and 6 of the present constitution be excluded from the new constitution.

Mr. Bentley, chairman of the committee on education, submits the following reasons in support of Exclusion Report 2025:

The committee on education believes that sections 2 and 6 of the present constitution should be excluded because of the fact that the committee is preparing entirely new sections to replace them.

CHAIRMAN BENTLEY: The Chair would like to recognize the gentleman from Mt. Pleasant, Dr. Anspach, as vice chairman of the committee, to read the reasons for the exclusion report. Page 399, Doctor.

MR. ANSPACH: Mr. Chairman and members of the committee, at this particular time when Chairman Bentley called on me, I was a mugwump. I suppose you know the definition of a mugwump. It's an old one. He's a bird that sits on the fence, and his mug's on one side and his wump's on the other. (laughter) So therefore, when he called on me unexpectedly, he got me over on the right side of the fence. (laughter)

The committee on education believes that sections 3, 4, 5, 7, 8, 10 and 16—

CHAIRMAN BENTLEY: Excuse me, Doctor. That is the next one. (laughter) Exclusion Report 2025.

MR. ANSPACH: I guess I'm still on the wrong side of the fence. Now I'm off for sure. You know, it's a good deal like that old story of a pointer dog I told you the other day. You get set, you finally get booted and get around all right. (laughter)

[The supporting reasons for Exclusion Report 2025 were read by Mr. Anspach. For text, see above.]

Thank you very much. (laughter)

CHAIRMAN BENTLEY: Are there amendments to the exclusion report? If not, it will pass.

Exclusion Report 2025 is passed and the secretary will read.

SECRETARY CHASE: Item 19 on the calendar, from the committee on education, by Mr. Bentley, chairman, **Exclusion Report 2026,** A report recommending the exclusion of article XI, sections 3, 4, 5, 7, 8, 10 and 16.

Following is Exclusion Report 2026 as read by the secretary, and the reasons submitted in support thereof:

The committee on education recommends that article XI, sections 3, 4, 5, 7, 8, 10 and 16 of the present constitution be excluded from the new constitution.

Mr. Bentley, chairman of the committee on education, submits the following reasons in support of Exclusion Report 2026:

The committee on education believes that sections 3, 4, 5, 7, 8, 10 and 16 of the present constitution should be excluded because of the fact that the committee is preparing entirely new sections to replace them.

CHAIRMAN BENTLEY: The gentleman from Mt. Pleasant, Dr. Anspach. The top of page 400. (laughter)

MR. ANSPACH: I was right in the first place. I started to read it awhile ago. (laughter)

[The supporting reasons for Exclusion Report 2026 were read by Mr. Anspach. For text, see above.]

CHAIRMAN BENTLEY: Thank you very much, Dr. Anspach. Are there amendments to the exclusion report? If not, it will pass.

Exclusion Report 2026 is passed and the secretary will read.

SECRETARY CHASE: Item 20 on the calendar, from the committee on executive branch, by Mr. Martin, chairman, **Committee Proposal 46,** A proposal pertaining to the executive budget and item veto. Amends article VI.

MR. MARTIN: Mr. Chairman.

CHAIRMAN BENTLEY: The gentleman from Grand Rapids, the chairman of the committee, Mr. Martin.

MR. MARTIN: Mr. Chairman, I would like to move at this time that this item and the following items be passed for the day and placed at the head of the calendar for discussion on Tuesday, February 13. The items are 20, 22, 32, 35, 36, 45, 46, 47, 48, 49, 57, 58 and going back, item 50, being Committee Proposals 46, 48, 59, 60, 70, 71, 72, 74, 75, 76, 77 and 78 and Exclusion Report 2027. Those items all relate to article VI or related problems affecting the executive branch, and we would like to discuss them in order. I will subsequently move for a slightly different order of consideration there so that we can take them up in a logical order.

CHAIRMAN BENTLEY: You have heard the motion of the gentleman from Grand Rapids. Is there discussion on the motion? If not, as many as are in favor will say aye. Those opposed?

The motion prevails, it is so ordered and the secretary will read.

SECRETARY CHASE: Item 21, from the committee on education, by Mr. Bentley, chairman, **Committee Proposal 47.**

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Mt. Pleasant, Dr. Anspach.

MR. ANSPACH: Mr. Chairman and members of the committee, I can't miss this one because I have a note. This was handed me. I suppose the chairman of the day heard of the absent minded professor who stepped out of his office and discovered he had forgotten a book; turned to go back to the office to get the book; saw a sign on the door that said "Be back at 3:00 o'clock," so he sat down and waited. (laughter) I ask permission of the committee, on behalf of the committee on education, to pass Committee Proposal 47 for the day.

CHAIRMAN BENTLEY: Is there objection to the request of the gentleman from Mt. Pleasant?

If not, hearing no objection, it is so ordered and the secretary will read.

SECRETARY CHASE: Item 23 on the calendar, from the committee on finance and taxation, by Mr. Brake, chairman, **Committee Proposal 49,** A proposal with reference to the borrowing of money by public corporations and bodies. Amends article VIII by adding a section.

Following is Committee Proposal 49 as read by the secretary, and the reasons submitted in support thereof:

The committee recommends that the following be included in the constitution:

Sec. a. PUBLIC CORPORATIONS AND PUBLIC BODIES SHALL HAVE POWER TO BORROW MONEY AND TO ISSUE THEIR SECURITIES EVIDENCING DEBT, SUBJECT TO CONSTITUTIONAL AND STATUTORY LIMITATIONS.

Mr. Brake, chairman of the committee on finance and

Explanation—Matter within [ ] is stricken, matter in capitals is new.

taxation, submits the following reasons in support of Committee Proposal 49:

One section that is being eliminated from article VIII of the 1908 constitution is 15a, which deals with drainage district bonds. The language of the proposal is broad so that it will serve as a catchall for anything omitted of a more specific nature including section 15a.

CHAIRMAN BENTLEY: The Chair recognizes the chairman of the committee, the gentleman from Stanton, Mr. Brake.

MR. BRAKE: Mr. Chairman, ladies and gentlemen of the committee, there has got to be somebody around here who doesn't pass. (laughter) For an explanation of this section, I yield to Delegate Don Seyferth.

CHAIRMAN BENTLEY: The gentleman from Stanton yields to the gentleman from Muskegon, Mr. Seyferth.

MR. SEYFERTH: Mr. Chairman, delegates, Committee Proposal 49 just read by the secretary replaces in article VIII, sections 10, 15a and 24. This proposal had the concurrent jurisdiction of local government, and we have mutual acceptance from both committees. Section 10 of article VIII has to do with the 1/10 of a mill on assessed valuation for borrowing purposes. Section 15a of the same article has to do with drainage districts established under provisions of the law. And section 24 has to do with city and village bonded indebtedness. We move that it be accepted.

CHAIRMAN BENTLEY: Is there discussion? Are there any amendments to the committee proposal? If not, it will pass.

Committee Proposal 49 is passed and the secretary will read.

SECRETARY CHASE: Item 24 on the calendar, from the committee on finance and taxation, by Mr. Brake, chairman, **Committee Proposal 50,** A proposal to require the legislature to provide sufficient taxes to meet the state's expenses covering the substance of section 2, article X of the 1908 constitution.

Following is Committee Proposal 50 as read by the secretary, and the reasons submitted in support thereof:

The committee recommends that the following be included in the constitution:

Sec. a. [The legislature shall provide by law for an annual tax sufficient with other resources to pay the estimated expenses of the state government, the interest on any state debt and such deficiency as may occur in the resources.] THE LEGISLATURE SHALL PROVIDE BY LAW TAXES SUFFICIENT WITH OTHER RESOURCES TO PAY THE EXPENSES OF STATE GOVERNMENT.

Mr. Brake, chairman of the committee on finance and taxation, submits the following reasons in support of Committee Proposal 50:

This section is a directive to the legislature to use its taxing power to assure the state sufficient revenues to pay its bills. The proposed language merely restates the substance of section 2 of the 1908 constitution in simpler language. The duty expressed in this section is undoubtedly inherent in the legislature without a constitutional grant. Most state constitutions, however, contain a similar provision. The principle is so fundamental to the operation of state government that the committee believes such a directive should be continued in the constitution.

CHAIRMAN BENTLEY: The gentleman from Stanton, Mr. Brake.

MR. BRAKE: Mr. Chairman, ladies and gentlemen of the committee, for this proposal I yield to our vice chairman, Dick Austin.

CHAIRMAN BENTLEY: The gentleman from Detroit, Mr. Austin, is recognized.

MR. AUSTIN: Mr. Chairman, members of the committee, this is perhaps the most important provision of article X. I wish there were some way that we could make it stronger, because it is in this area that our legislature has been somewhat derelict. This section is a directive to the legislature to use its taxing power to assure the state sufficient revenues to pay its bills. The proposed language merely restates the substance of section 2 of the 1908 constitution in simpler language.

The duty expressed in this section is undoubtedly inherent in the legislature without a constitutional grant. Most state constitutions, however, contain a similar provision. The principle is so fundamental to the operation of state government that the committee believes that such a directive should be continued in the constitution, and we move that it do pass.

CHAIRMAN BENTLEY: Are there any amendments to the body of the proposal? If not, it will pass.

Committee Proposal 50 is passed and the secretary will read.

The gentleman from Pontiac, Mr. King.

MR. KING: Mr. Chairman, I don't have an amendment. I would like to ask a question, though, if I could.

CHAIRMAN BENTLEY: The proposal has already been disposed of, Mr. King, but you are recognized for the purpose of a question.

MR. KING: Thank you. Mr. Austin, do you feel that it is necessary to put in any proviso here with regard to annually or each year? I notice that the old constitution used that word. You indicated you wish there were a way to make it stronger. Would that add anything, or do you think not?

MR. AUSTIN: I don't think it would, but I should explain that the annual tax referred to in the 1908 constitution had reference to the property tax which was levied at that time by the state. As a matter of fact, the principal state revenue at that time was an annual property tax, and I think this is what is referred to in the old language, and we do not refer to the annual tax now. We simply say that the legislature should provide sufficient taxes, along with other resources, to pay the expenses of state government.

MR. KING: But you think it is implicit in the wording that these taxes shall be provided for each and every year for the expenses of that year; is that right?

MR. AUSTIN: Such is the opinion of the committee.

MR. KING: Thank you.

CHAIRMAN BENTLEY: The secretary will read the next item on general orders.

SECRETARY CHASE: Item 25, from the committee on finance and taxation, by Mr. Brake, chairman, **Committee Proposal 51,** A proposal setting up the uniform rule of taxation for providing for equalization a maximum limit for assessments, prohibiting a graduated income tax, and covering the subject matter of sections 3, 4, 7 and 8 of article X of the 1908 constitution.

Following is Committee Proposal 51 as read by the secretary, and the reasons submitted in support thereof:

The committee recommends that the following be included in the constitution:

Sec. a. THE LEGISLATURE SHALL PROVIDE BY LAW A UNIFORM RULE GOVERNING THE GENERAL AD VALOREM TAXATION OF REAL PROPERTY AND TANGIBLE PERSONAL PROPERTY. THE LEGISLATURE SHALL PROVIDE BY LAW FOR THE DETERMINATION OF TRUE CASH VALUE OF SUCH PROPERTY AND SHALL SPECIFY THE PROPORTION OF TRUE CASH VALUE AT WHICH SUCH PROPERTY SHALL BE UNIFORMLY ASSESSED, WHICH SHALL NOT, AFTER JANUARY 1, 1966, EXCEED 50 PER CENT, AND SHALL PROVIDE BY LAW FOR A SYSTEM OF EQUALIZATION OF ASSESSMENTS. THE LEGISLATURE MAY PROVIDE BY LAW FOR EXEMPTION OF SUCH PROPERTY FROM TAXATION, OR FOR ALTERNATIVE MEANS OF TAXATION OF SUCH PROPERTY IN LIEU OF GENERAL AD VALOREM TAXATION, UNIFORM UPON THE CLASS OR CLASSES OF PROPERTY TO WHICH SUCH ALTERNATIVE MEANS ARE APPLIED.

EVERY OTHER TAX SHALL BE UNIFORM UPON THE CLASS ON WHICH IT OPERATES. NO INCOME TAX GRADUATED AS TO RATE OR BASE SHALL BE

Explanation—Matter within [ ] is stricken, matter in capitals is new.

IMPOSED BY THE STATE OR ANY OF ITS SUBDIVISIONS.

Mr. Brake, chairman of the committee on finance and taxation, submits the following reasons in support of Committee Proposal 51:

The first sentence of this section preserves the present uniformity clause of section 3 of article X, except as it presently applies to intangible personal property. Ad valorem taxation of the latter has proved unworkable, and it seems desirable to recognize this in the new constitution. Uniformity of assessment is the cornerstone of any system of general property taxation. There appears to be general agreement that while the present constitution requires uniformity, the requirement is frequently honored in the breach. The fact that uniformity has not been achieved in the past does not mean it is impossible to attain, but simply suggests the necessity for reaffirmation of the requirement and the discovery of new means to achieve it.

The first part of the second sentence of this section represents a major change, eliminating the present constitutional requirement of assessment at cash value found in section 7 of article X. The present cash value standard is almost universally ignored, but because of it a taxpayer whose property is assessed, for example, at 70 per cent of cash value has no judicial relief, in the absence of fraud, even though his neighbor's property is assessed at 30 per cent of cash value. At present, the court can simply state that since the former taxpayer is not assessed in excess of 100 per cent, the constitution affords no basis for relief. This unavailability of judicial relief has made the cash value standard a positive impediment to the achievement of uniform assessment.

To repeat, the important constitutional objective is uniformity of assessment, regardless of the level or standard at which property is commonly assessed. Permitting the legislature to fix the standard offers the possibility of moving to a more realistic standard such as, for example, the 50 per cent of cash value currently used by the state tax commission. On this basis actual uniformity could be achieved and a taxpayer aggrieved by an assessment over the level prescribed by law could obtain relief. A majority of the committee believes that the standard set by the legislature should not exceed 50 per cent. Recognizing that some jurisdictions currently assess some property in excess of 50 per cent, the committee has postponed the effective date of this limitation until 1966.

Another advantage of a standard of value fixed by law is the relative freedom with which the legislature could change the standard to reflect changes in the general price structure. Current inequities have resulted, in many cases, from the inability of assessors, with inadequate staffs, to keep up with changes in the dollar value of real property resulting from inflation, whereas personal property assessments have tended to follow inflationary trends far more rapidly.

The provision with respect to equalization is less detailed than that found in section 8 of the present article X, but nevertheless clearly imposes the requirement that assessments be equalized as between various assessing units.

The provision for exemption of property from taxation is clearly necessary and desirable.

The provision for alternative means of taxation of property, in lieu of general ad valorem taxation, is also necessary if such taxes as the automobile weight tax, the tax on boats, the severance tax on oil and gas, and state assessment and taxation of certain utilities' properties are to be maintained. This provision gives the legislature reasonable freedom to remove certain kinds of property from general property taxation and to provide alternative tax treatment of such property.

The last paragraph of the section replaces section 4 of the present article X. The uninformative designation of "specific" taxes has been dropped, and all taxes other than the general ad valorem property tax or alternative taxes based on property, are simply described as "other taxes".

The provision makes it clear that neither the state nor any local unit of government may impose a graduated income tax. The words "or base" are necessary to prevent "piggyback" taxation based on the federal tax liability. Without such language, a tax nominally imposed at a flat rate might actually adopt all of the graduation of the federal tax. A flat rate income tax is clearly permitted, and could, in the opinion of the committee, be imposed on a "piggyback" basis on income computed for federal tax purposes. The legislature could prescribe reasonable exemptions for a flat rate income tax.

The imposition of this limitation on legislative power seems desirable in order to avoid confiscatory taxation to avoid the use of a revenue measure as a device for social reform, and to prevent the entry by the state into a field largely preempted by the federal government. A further advantage of the limitation is that with it, a legislator who votes for an income tax will do so with the knowledge that it will fall proportionally as heavily on himself as upon others — a safeguard which a majority of the committee deems important.

Following is minority report A to Committee Proposal 51 as offered and the reasons submitted in support thereof:

Messrs. Austin, Binkowski, Pellow, Stopczynski, Walker, Young and Ostrow, a minority of the committee on finance and taxation, submit the following minority report to Committee Proposal 51:

A minority of the committee recommends that the following be excluded from the constitution:

Delete the last paragraph of the proposed new section.

Messrs. Austin, Binkowski, Pellow, Stopczynski, Walker, Young and Ostrow, a minority of the committee on finance and taxation, submit the following reasons in support of the foregoing minority report, which accompanied Committee Proposal 51:

The last paragraph of the proposal is being included in the constitution, as stated in the majority report,

to avoid confiscatory taxation, to avoid the use of a revenue measure as a device for social reform, and to prevent the entry by the state into a field largely preempted by the federal government.

The majority suggests as a further advantage:

a legislator who votes for an income tax will do so with the knowledge that it will fall proportionately as heavily on himself as upon others — a safeguard which the committee deems important.

The proponents of the minority report contend that the last paragraph should be omitted from the constitution and that the reasons stated by the majority do not justify its inclusion.

The principal objections raised against this paragraph, which includes the so called uniformity rule on all taxes other than property taxes and the prohibition against imposition of a graduated income tax, are stated below.

The proponents of this minority report do not, however, advocate that an income tax should be levied. This is a matter to be decided by the legislature.

The committee proposal raises some objections to the graduated income tax. Although the relative merits of a graduated versus flat rate income tax should not be presently at issue, the proponents of the minority position feel constrained to include some rebuttal.

The proponents for exclusion of the last paragraph of Committee Proposal 51 argue:

1. It freezes into the constitution unnecessary and undesirable restriction on the legislative power to levy taxes in the future. No authority has been cited for the advisability of inserting this unique provision into a state constitution. It does not make allowance for drastically changed circumstances beyond our present anticipation.

2. The prohibition of a graduated income tax, statutory in nature, does not have the faithful sanctity of the other restrictive measures written into the constitution, such as the sales tax rate limitation, achieved through prior approval of the people at the polls.

3. It freezes present and potential inequities in the Michigan tax structure by prohibiting the legislature from correcting them, should it desire to do so.

4. The majority committee report implies that graduation of tax bases is preempted by the federal government. There is no legal authority for this presumption.

If there is reason for concern over preemption by the federal government, such concern more properly is reflected in the comment of President Eisenhower — that many fields have been preempted by federal government because the states have failed to act in these areas. This is a far more vital area of concern than the technicality of whether graduation can be used at both federal and state levels.

5. Progressive taxation, accomplished through graduated rate structure, is not a device for social reform: on the contrary, it is a very equitable device for raising the maximum amount of revenues, without unduly burdening any individual taxpayer, on the basis of ability to pay.

Its effect does not need to be "soak the rich" or "pamper the poor". Experience actually proves these descriptions more propaganda than reality. However, there is obviously a basic difference between the majority and minority emphasis on the equity of the Michigan tax system, particularly in terms of the impact on low income and middle income families, pensioners and those on fixed incomes.

6. Ignored in the proposal is the experience of the overwhelming majority of the states which have income taxes, all but two (33 of the 35) having adopted graduated rate structures. Michigan would be placed in a unique category and at a potential disadvantage in relation to other states in its ability to raise revenue from income taxation.

The chart which follows reflects the experience in other states as well as the Michigan potential. It shows clearly that a low flat rate tax results in a continued higher contribution to the federal internal revenue. This, in turn, results in disproportionate support of federal projects in other states by Michigan taxpayers.

Comparative income tax on last $10,000 of a taxable income of $200,000

(assuming 2 different rates and state tax deductible in arriving at federal liability)

	State income tax	
	Assuming 1 per cent flat rate	Assuming graduated to maximum of 10 per cent
Federal income tax on the last $10,000 of income:		
Rate of tax in subject bracket	89 per cent	
Amount of federal income tax if there is no state income tax	$8,900	
State income tax:		
Amount of state income tax	$ 100	$ 1,000
Amount borne by federal government	$ 89	$ 890
Amount borne by taxpayer	11	110
Division of the last $10,000*		
Amount of tax going to federal government	$ 8,811	$ 8,010
Amount of tax going to state government	100	1,000
Amount of last $10,000 retained by taxpayer	1,089	990
Together	$10,000	$10,000

*By graduating the rate structure up to 10 per cent, assuming a beginning rate of 1 per cent, the revenue of the state is increased by $900 while the amount retained by the taxpayer is reduced by only $99. The contribution to the federal government is reduced by $801.

7. The experience with the federal income tax has been raised as one of the objections to a graduated rate structure. It is argued, to the contrary, that the existence of the steeply graduated federal rate structure could be one of the reasons for adopting a graduated structure at the state level. Because of the deductibility of state income tax in arriving at federal liability, the impact of the state tax at the higher income levels would be softened.

Consider, for example, the comparative impacts of the 1 per cent and 10 per cent state income tax rates, described in the chart.

Following is minority report B to Committee Proposal 51 as offered and the reasons submitted in support thereof:

Messrs. Austin, Binkowski, Pellow, Stopczynski, Walker and Young, a minority of the committee on finance and taxation, submit the following minority report to Committee Proposal 51:

A minority of the committee recommends that the following be excluded from the constitution:

On page 1, line 13, after the word "assessed" delete the comma and the following words, "which shall not, after January 1, 1966, exceed 50 per cent,".

Messrs. Austin, Binkowski, Pellow, Stopczynski, Walker and Young, a minority of the committee on finance and taxation, submit the following reasons in support of the foregoing minority report, which accompanied Committee Proposal 51:

The proponents of the minority report agree with the majority on the merits of providing that the standard of value for assessment of property be fixed by law, giving the legislature freedom to reflect changes in the general price index and to shift with inflationary trends. The minority do not agree, however, that there should be a constitutional limitation of 50 per cent of cash value.

The principal objections raised against the inclusion of the 50 per cent of cash value standard are as follows:

1. A 50 per cent of cash value standard proposed by the majority of the committee coupled with the tax rate limitations proposed in another part of the report, in effect imposes upon many communities an effective tax rate limit not of 15 mill but of 7½ mill, or half of whatever rate may apply to each unit of government under that proposal.

2. Since 1933 when the state itself abandoned the base of the property tax for its own purposes, the property tax has been mentioned as being the primary source of revenue for units of local government — to be levied and administered in accordance with the needs of each unit of local government. The local property tax has thus been administered within the broad limits of general law. The 50 per cent limitation proposed by the majority of the committee now proposes to leave to local units a tax source which they no longer will have any discretion over in its administration and effect. It is indeed a fact that the "full cash value" standard has given the local communities the discretion to fix assessments and effective rates in terms of their needs. The 50 per cent standard limits this discretion to such a degree as to nullify it.

3. While it is a fact that the state tax commission has found it desirable to adopt a 50 per cent level in the equalization process as between units of government, that level has been used because it represents a near average statewide level at which equalization as between units is reasonably equitable. It follows that if the 50 per cent

standard is adopted by constitutional provision, the state board of equalization in arriving at a statewide level for equalization conceivably will have to go below the 50 per cent and in a few years will arrive at an equalization standard of 30 per cent or even 25 per cent. The effect of this is too obvious to require further elaboration.

4. If indeed, the reason for going to a constitutional 50 per cent level is to relieve any particular segment of the business community from excessive burdens of property taxation, then such relief should be granted to that segment of the community by relief from certain taxes rather than by tampering with the machinery designed for the levy and administration of a local tax. And the decision to grant tax relief is a question which ought to be mediated and debated on the floor of the legislature. Such debate ought not to be restricted and tampered by restrictions imposed by the constitution which, though they do not actually forbid the legislature from dealing with the problem, effectively impose upon it the burden of dealing with the problem in a particular way.

5. Compliance with the new provision will have a devastating immediate effect on the fiscal affairs of some communities. Consider for example the remarks of Dr. Harvey E. Brazer in Michigan Pamphlet 30, Taxation in Michigan: An Appraisal, in which he says, page 20:

> The problem is particularly acute in Wayne county and the city of Detroit, where personal property is currently assessed at well above the 50 per cent of current market value standard applicable to realty. Under pressures imposed by the uniformity clause of the Michigan constitution and taxpayers' complaints, present practices in Detroit are being modified. However, on the basis of the 1959 tax levy, it is estimated that if all personal property were assessed at 50 per cent of its net book value the revenue loss to Detroit and its school district would amount to more than $30 million and the loss to the county, school districts, townships and municipalities in the rest of Wayne county would exceed $15 million. Obviously, unless some means of replacing the lost revenue were forthcoming, a reduction in tax receipts of these dimensions would produce a fiscal catastrophe for the governmental units involved.

6. In all related testimony before the committee on finance and taxation, it was disclosed that the mining industry is the only industry in which property is assessed at 100 per cent of cash value. It is obvious that the recommended provision, if adopted, would drastically reduce the revenues of communities depending on mining taxation.

7. Adoption of a constitutional 50 per cent cash value standard undoubtedly will have the effect of bringing about a material shift of property tax burden from commercial property to home owners. Unless other sources of revenue are availed, the forcing of assessments on certain personal property down to the 50 per cent level will force assessments on already overburdened home owners upward to the 50 per cent level.

8. The inclusion of an arbitrary 50 per cent limitation, statutory in nature, does not have the dignity of a mandate of the people, as does the sales tax rate limitation, expressed in a referendum.

Following is minority report C to Committee Proposal 51 as offered, and the reasons submitted in support thereof:

Messrs. Austin, Binkowski, Ostrow, Pellow, Stopczynski, Walker and Young, a minority of the committee on finance and taxation, submit the following minority report to Committee Proposal 51:

A minority of the committee recommends that the following be included in the constitution:

Delete the first sentence of the proposed new section and substitute therefore the following:

THE LEGISLATURE MAY BY LAW AUTHORIZE OR IMPOSE AD VALOREM AND OTHER TAXES WHICH SHALL BE UNIFORM WITHIN THE CLASSES OF PERSONS OR PROPERTY TO WHICH THEY ARE APPLIED.

Messrs. Austin, Binkowski, Ostrow, Pellow, Stopczynski, Walker and Young, a minority of the committee on finance and taxation, submit the following reasons in support of the foregoing minority report, which accompanied Committee Proposal 51:

The proponents of the minority report believe that the rigid uniformity clause prevents justice in taxation because the legislature cannot consider all of the problems within the various classes of real and personal property.

In other words, our present system demands that an elephant and a mouse be taxed uniformly.

Testimony taken before the committee on finance and taxation brought forth many problems which cannot be solved under the proposed uniformity clause. Some of these assets which cause assessment problems are as follows:

(a) Farm equipment which is only used a few months during the year, but taxed as if it is used every day of the year;

(b) Farm land which is located near a growing metropolitan area;

(c) The inventory of the grocer, druggist and other small businessmen;

(d) Dies, fixtures and other business equipment;

(e) The differences between residential, commercial and industrial property; and

(f) Stocks and bonds and other intangible property.

The many studies furnished the delegates indicate that the criticism of the present and proposed uniformity clauses fall into the following categories:

I. "The major controversy on uniformity is that it restricts the legislature's flexibility on tax choices and prevents the use of classified property tax." (*Some Suggested Revisions of the Constitution of the State of Michigan*, Donato J. Pugliese, University of Detroit, October 1961, p. II-41.)

II. ". . . It is contended that the legal uncertainties encountered by the legislature in using its specific tax powers have made that body hesitate to attempt any bold steps in improving the tax system." (*The Voter and the Michigan Constitution*, bureau of government, institute of public administration, University of Michigan, No. 29, 1960, pp. 89-90.)

III. "Constitutional requirements concerning uniform taxation are sometimes looked upon as unnecessary and the model state constitution contains no such provision." (*Comparative Analysis of the Michigan Constitution*, citizen's research council of Michigan, vol. II, p. X-13.)

In the first Michigan constitution, dated 1835, there were no provisions dealing with problems of uniformity in taxation.

The uniformity clause first appeared in the Constitution of 1850, but the constitutional convention debates throw little light on the reasons for inserting it. The committee on finance and taxation was directed to investigate the expediency of making all taxes 'equal,' and remarks throughout the debate indicate a feeling that the burden of taxation was not being imposed equally. The uniformity clause was present in the article on finance and taxation when it came from the committee, but it was subjected to no debate in the convention itself. Nor was there any debate on it at the conventions of 1867 and 1908.

According to a recent writer in 88 U. of Pa. L. R. 728, 1940, the adoption of uniformity clauses in so many of our state constitutions during the latter half of the nineteenth century was due to economic causes. As the wealth of the county was gradually shifted from

Explanation—Matter within [ ] is stricken, matter in capitals is new.

agriculture to industry, it came to consist more and more of intangibles. The general propery tax became insufficient for the needs of government. Intangible wealth was drawn under the taxing power, and state legislatures showed a tendency to classify property for taxation purposes. To some, especially the owners of real property, this seemed unfair, and it was feared that unlimited power of classification would permit excessive discrimination. Hence, the uniformity clauses were written into the state constitution.

(*Report of the Michigan Constitutional Revision Study Commission*, 1942, Pt. II, pp. 2-3.)

Presently, all taxes levied on real property and personal property must be uniform, or the same. There can be no distinction between the two. The legislature cannot classify homes differently from industrial property. Distinctions between personal property and inventories cannot be considered.

Why should the legislature be prevented from introducing equity into our tax structure?

> First, there should be unanimous agreement that the so called uniformity clause and the supplementary provisions dealing with particular rules of uniformity have produced, more than anything else, *confusion* and *litigation* (emphasis added). This has been accomplished without achieving to any substantial degree the ideal of "absolute uniformity" in the distribution of the property tax burden when such was the ideal. . . . Second, it should also be clear that no policy, whether it favors a strict or liberal limitation, has profited by the overlapping and redundant uniformity structures which were so often found. Too often there has been a tendency to clutter up the constitution with a prolix and complicated uniformity structure which still left many of the really hard problems unsolved.

(*Constitutional Uniformity and Equality in State Taxation*, Wade J. Newhouse, Michigan legal publications, 1959, pp. 767-768.)

A cursory reference to the preparatory studies for this constitutional convention indicate beyond any question that the present article X, section 3, should be broadened to provide flexibility and untie the hands of our legislature.

Both the citizens advisory committee report on taxation and finance and the league of women voters recommend deletion of section 3.

In the study prepared by Mr. Raleigh Barlowe in the series of Michigan constitutional convention studies, it was recommended that section 3 be revised and broadened in its scope. At page 23, it was stated, "Strong questions may be raised concerning the advisability of continuing the uniformity rule of section 3 in the new constitution."

Finally, the citizens research council concludes its comments with the following quotation:

> The Michigan constitutional revision commission of 1942, subcommittee on taxation and finance; June 27, 1942; recommended that . . . the uniformity clause in the Michigan constitution as now worded is an unnecessary obstacle to effective tax legislation, and that there would be great advantage to the state if sections 3 and 4 could be redrafted to permit the legislature to graduate and classify all types of taxes, both ad valorem and specific, providing, however, for uniformity within classes.

(*Comparative Analysis of the Michigan Constitution*, citizens research council of Michigan, Vol, II, p. X-14.)

Therefore, the proponents of the minority report believe its recommended language will provide the necessary flexibility to solve Michigan's fiscal problems.

CHAIRMAN BENTLEY: The gentleman from Stanton, Mr. Brake.

MR. BRAKE: Mr. Chairman, ladies and gentlemen of the committee, we had no expectation that things would go so smoothly for long. For a discussion of this proposal, I call on Dick Van Dusen, a member of the committee.

CHAIRMAN BENTLEY: The gentleman from Birmingham, Mr. Van Dusen.

MR. VAN DUSEN: Mr. Chairman and members of the committee, I should first call to your attention a misprint in the green sheet committee proposal which is before you and which may, if you simply cross out the duplicated language, make your understanding of the matter somewhat easier. Line 17 on page 1 should simply be stricken in its entirety including the carryover portion of the word "taxation" at the beginning of line 18, so that that sentence will then read:

> The legislature may provide by law for exemption of such property from taxation, or for alternative means of taxation of such property in lieu of general ad valorem taxation, and so forth.

[Correction made.]

Now, I should begin by saying that this section takes the place of all of sections 3 and 4 of the present article X. It makes some provisions with respect to matter covered in section 5 though a separate section is still retained for that purpose. It also covers all of what is presently contained in sections 7 and 8 of the present article X, and it covers rather broadly the field of property taxation and the field of nonproperty taxation.

Now, I think that it is easier to take this in pieces and to discuss first the application of the committee proposal to the field of property taxation. The basic provision of the present constitution is that the legislature shall provide by law a uniform rule of taxation. The present constitution further provides that all property shall be assessed at its true cash value, and provides that the legislature shall provide a system of equalization of assessments as between assessing authorities.

Now, in large measure the requirement of uniformity imposed by the present constitution is retained in the committee proposal. The committee heard from witnesses over and over and over again that uniformity of assessment as a basis for property taxation was a desirable objective; that it was an objective not achieved under the present constitutional language in any measure in our state; and that if we could find the means of achieving uniformity of assessment, we would be accomplishing some major feat. Our proposal is designed to move in that direction, and we hope that it will provide the means by which the legislature and the municipalities and school districts imposing property taxes in this state can accomplish uniformity of assessment which is, after all, the cornerstone of any system of general property taxation.

The proposal states at the beginning that "The legislature shall provide by law a uniform rule governing the general ad valorem taxation of real property and tangible personal property." This is a basic statement that all property, real and personal, subjected to general ad valorem taxation, must be assessed at the same standard of value. It wouldn't make any difference whether this were 25 per cent of true cash value or true cash value or 75 per cent of true cash value; the uniformity rule would require that all of it be assessed at the same level, and this, after all, is something which taxpayers should reasonably be able to expect if the burden of taxation is going to be spread equally.

We found that one of the major problems of the present constitutional provision is that it requires the assessment of property at its true cash value, i.e., 100 per cent, and that while the constitution has required this at least since 1908, no one in the assessing field in the state of Michigan, with perhaps one or two exceptions, has accomplished that constitutional objective. In other words, nobody assesses at 100 per cent of true cash value. You have great disparity between assessments. The state tax commission attempts to prescribe the assessment of property at 50 per cent. In some counties this is pretty well achieved. In other counties there is wide disparity, real property frequently being assessed at 35 to 45 per cent, personal property from 65 to 80 per cent, and there is wide variation. Therefore, what the committee has proposed is that

> The legislature shall provide by law for the determination of true cash value of such property and shall specify the proportion of true cash value at which such property shall be uniformly assessed, ...

In other words, the legislature could say that all property shall be assessed at 50 per cent of its cash value, letting the state tax commission and the assessing officers go to the level for which the state tax commission says it is now striving, or they could move to a level of 25 per cent or to a level of 35 per cent.

A majority of the committee felt, however, that this level prescribed by the legislature should not in any case exceed 50 per cent. The committee was divided on this point. Some felt that the legislature should have the complete scale between 0 and 100 per cent to prescribe if they wished, but the committee proposal specifies that it shall not exceed 50 per cent.

However, we recognize that in those counties which are currently assessing some of the property at a level substantially in excess of 50 per cent, it was going to take a while to get down to the maximum 50 per cent level. The state tax commission advises that, in particular in Wayne county where this is a major problem, in cooperation with the assessing officials in Wayne county, they expect to get down to 50 per cent within 3 years. They are now in the second year of a 5 year program, and it would take 3 years from now to get down to 50 per cent. For that reason the committee has allowed some tolerance. They have allowed a period of 4 years to get down to 50 per cent.

Now, it is recognized that not all property fits the pattern of general ad valorem taxation, taxation based on the value of the property. But the legislature years ago recognized that intangible property — securities, bonds, deposits in banks and so on — didn't fit this pattern and so it imposed the intangibles tax as a specific tax in lieu of general ad valorem taxation, and so we have recognized this and have said that the legislature shall provide by law a uniform rule for the general ad valorem taxation of real property and tangible personal property. This excepts intangible property automatically.

We have also recognized, however, that there may be kinds of property which should be subjected to ad valorem taxation, or taxation directed basically to property, which, nevertheless, doesn't fit the pattern of the general ad valorem tax picture, and so we have specified that the legislature may either exempt property or that it may provide for alternative means of taxation of property in lieu of general ad valorem taxation, and that this alternative taxation should be uniform upon the class or classes to which the alternative means are applied.

Let me give you 2 or 3 examples. One is the present system of special ad valorem taxation which is applied to the property of telephone companies. A building housing an office of the telephone company is not on the general property tax rolls of the community in which it is situated. It is assessed by the state tax commission. It is subject to a special state rate of taxation. Tax is paid into the state and it is distributed back to local school districts, and this is a form of alternative taxation of property in lieu of general ad valorem taxation. There are other taxes based on property which are not a part of the general property tax. For example, automobiles are subjected to a weight tax, which is in lieu of ad valorem property taxation. And the provision here for alternative means of taxation would permit the legislature to adopt to that extent the special classification of real or tangible personal property, taking it off the general ad valorem property tax rolls.

Now that, I think, Mr. Chairman, pretty generally covers the explanation of what the committee has attempted to do in the area of property taxation. Our objective is the achievement of uniformity, the establishment of uniform assessment at a level not in excess of 50 per cent of the true cash value of the property, and the conferring upon the legislature of reasonable flexibility in determining the types of taxation to which property will be subject. I think perhaps rather than going on at this point to the second section, which deals with other nonproperty taxes and in particular the question of a graduated income tax, it may be easier to stop here and try to answer questions or deal with amendments which relate to the first section.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Taylor, Mr. Marshall.

MR. MARSHALL: Mr. Chairman, just a point of information and parliamentary inquiry. It is my understanding under the rules that a minority report is supposed to be taken up first. Am I correct in this?

CHAIRMAN BENTLEY: The Chair would rule that committee amendments will be taken up first, then minority report amendments, and then any other amendments from the floor.

MR. MARSHALL: Thank you.

CHAIRMAN BENTLEY: Are there questions of the gentleman from Birmingham on the first paragraph of the proposal?

The gentleman from St. Louis, Mr. Hoxie.

MR. HOXIE: Mr. Chairman, it is not a question in relationship to the substance of the proposal, but it has occured to me that it has been the intention of this convention to keep a complete and accurate record of our proceedings, and it appears that Mr. Van Dusen suggested there was an error in the typing, which of course is not the fault of the committee, but I am wondering, for the benefit of the record, if it wouldn't be a better procedure, Mr. Van Dusen, to submit an amendment which will be printed in the journal, rather than to advise us of the striking or inclusion in these proposals from the floor.

MR. VAN DUSEN: Mr. Chairman, I think Mr. Hoxie's point is well taken, and if there is no objection to an oral amendment, I would move to strike the duplicated language starting on line 17.

SECRETARY CHASE: Mr. Van Dusen, on behalf of the committee on finance and taxation, offers the following amendment:

1. Amend page 1, line 17, by striking out "or for alternative means or taxation of such property from taxation,".

CHAIRMAN BENTLEY: Is there discussion on the amendment offered by the gentleman from Birmingham?

MR. SABLICH: Mr. Chairman, I have a question to ask Mr. Van Dusen.

CHAIRMAN BENTLEY: Is it on the amendment?

MR. SABLICH: It is not on the amendment, no.

CHAIRMAN BENTLEY: Will the gentleman suspend until we can dispose of the amendment.

Is there discussion on the amendment offered by the gentleman from Birmingham? If not, those in favor will say aye. Those opposed, no.

The amendment is adopted.

[This amendment treated as a correction. See above, page 857.]

The gentleman from Caspian, Mr. Sablich.

MR. SABLICH: I would like to ask Mr. Van Dusen to explain further why the committee decided on the 50 per cent limitation on the taxation of real property.

MR. AUSTIN: Point of order, Mr. Chairman.

CHAIRMAN BENTLEY: The gentleman will state his point of order.

MR. AUSTIN: There is a minority report on this section, and I think that the minority report ought to be taken at this time; that is, assuming that the Chair agrees.

CHAIRMAN BENTLEY: The Chair will state to the gentleman from Detroit that it was his understanding that the gentleman from Birmingham was yielding for the purpose of questions on the general proposal at this time. Does the gentleman desire to offer the minority report in the form of an amendment at this time?

MR. AUSTIN: Yes.

CHAIRMAN BENTLEY: Will the gentleman yield for that purpose?

MR. SABLICH: I will yield.

CHAIRMAN BENTLEY: The secretary will read the amendment.

MR. GUST: Mr. Chairman, point of information.

CHAIRMAN BENTLEY: The gentleman will state it.

MR. GUST: Mr. Chairman, I do not have a copy of this minority report. Has it been made available to the delegates? I would like to read it myself as the secretary reads. I will understand it better.

CHAIRMAN BENTLEY: The gentleman from Detroit, Mr. Austin.

MR. AUSTIN: Mr. Chairman, there are 3 minority reports on this proposal. All 3 are found in today's journal—that is, yesterday's journal which was distributed today—Journal 73, beginning on page 520. The minority report applicable to this first paragraph and the one which we ought to discuss at this time is the last of the 3, found on page 523.

CHAIRMAN BENTLEY: The secretary will read the proposed amendment at this time.

SECRETARY CHASE: Pursuant to minority report C of Messrs. Austin, Binkowski, Ostrow, Pellow, Stopczynski, Walker and Young,

Mr. Austin offers the following amendment:

1. Amend page 1, line 8, after "Sec. a.", by striking out "The legislature shall provide by law a uniform rule governing the general ad valorem taxation of real property and tangible personal property.", and inserting "The legislature may by law authorize or impose ad valorem and other taxes which shall be uniform within the classes of persons or property to which they are applied.".

CHAIRMAN BENTLEY: Is that the amendment the gentleman wishes to offer at this time?

MR. AUSTIN: That is the amendment.

CHAIRMAN BENTLEY: The gentleman is recognized in support of his amendment.

MR. AUSTIN: If you are interested in following me on this, you will turn to page 523 of the journal that was distributed this morning. The purpose of this amendment is to provide for classification of property for assessment purposes.

[The supporting reasons for minority report C to Committee Proposal 51 were read by Mr. Austin. For text, see above, page 856.]

There were some members of the minority who felt that the uniformity clause as it relates to property should be deleted from the constitution, but the language which is recommended is in the form of a compromise, feeling that if we are going to have uniformity, let's have uniformity within classes, but let's recognize that there are classes of property that ought to be assessed differently.

CHAIRMAN BENTLEY: Does the gentleman from Caspian desire to speak? Does the lady from Highland Park desire to speak on this amendment?

MR. AUSTIN: Mr. Chairman, I had not yet yielded the floor. I would like at this point to yield the floor to Mr. Binkowski for additional remarks.

CHAIRMAN BENTLEY: The gentleman yields to the gentleman from Detroit, Mr. Binkowski, for additional remarks.

MR. BINKOWSKI: Mr. Chairman, ladies and gentlemen of the committee, as I indicated to you previously in the discussion on earmarking we were going to bring up this question of flexibility again, I think the problem is before us presently.

I realize that this is a rather complicated section, and I don't know to what extent you have had the opportunity to review all of the studies that we in the committee on finance and taxation have been dealing with in the last several months, but I think again the question before us is: to what extent do you want to provide flexibility, and to what extent do you want to untie the hands of the legislature? Now, if you want to maintain the present system, then, of course, you will not be in favor of our minority report. And I am sorry, Mr. Upton, I can't find your speech, because I wanted to use it with respect to this item of flexibility.

CHAIRMAN BENTLEY: Does the lady from Highland Park desire to speak on the Austin amendment?

MISS DONNELLY: No. I think my question is directed more to the majority report, although it is somewhat pertinent to the minority. I would like to enlarge on why intangibles must be inflexible. I don't know why they can't be uniform, and there are conclusions all over the place that they can't be, but I would like to know why.

CHAIRMAN BENTLEY: Do you direct that question, Miss Donnelly, to any person?

MISS DONNELLY: Well, actually it was going to be directed to Mr. Van Dusen.

CHAIRMAN BENTLEY: The Chair will recognize Mr. Van Dusen for the purpose of answering the question and to speak in his own right.

MR. VAN DUSEN: Mr. Chairman, dealing first with Miss Donnelly's question, the minority report seems to suggest that under the majority proposal, the legislature could not deal separately with intangibles, stocks and bonds. I thought I made it reasonably clear that under the majority proposal, the uniform rule applying to general ad valorem taxation would not apply to intangibles. The reason is this: the rate of taxation applied to intangible property producing no income would amount to a capital levy. The legislature would simply extract a portion of the capital each year until the total amount of the capital was gone. And furthermore, intangibles have a way of escaping ad valorem taxation because it is a little bit difficult for the assessor to find 5 shares of American Telephone and Telegraph.

So, one, the great bulk of the intangibles were not being taxed under an ad valorem system; two, there was a considerable feeling on the part of the legislature when the intangibles tax was adopted that if the ad valorem tax structure were applied to intangibles, this would result, in effect, in a capital levy, and that the wiser way to tax intangibles was on a percentage of the income which they produced, which is the present system of intangible taxation. The majority proposal would permit the continuation of the present intangibles tax or some other means of the taxation of intangibles, as would the minority proposal.

Now let me, if I may, Mr. Chairman—well, perhaps it would be better to pursue Miss Donnelly's point.

CHAIRMAN BENTLEY: The lady from Highland Park still has the floor for purposes of her question.

MISS DONNELLY: But this intangible income producing is still being taxed uniformly?

MR. VAN DUSEN: Yes.

MISS DONNELLY: And your proposal does not mean that you do not wish it to be taxed uniformly?

MR. VAN DUSEN: By no means.

MISS DONNELLY: But it has allowed it perhaps not to be. Am I correct in that assumption? This is what disturbs me.

MR. VAN DUSEN: Mr. Chairman and Miss Donnelly, both the majority proposal and the minority proposal permit the classification of intangible property and the subjection of intangible property to special taxation uniform upon that class of property. That is the present system of taxation of intangible property. It would be continued under either the majority proposal or the minority proposal, unless the legislature chose, for example, to abolish the intangibles tax and adopt an income tax.

MISS DONNELLY: Thank you.

CHAIRMAN BENTLEY: Now the gentleman from Birmingham is recognized to speak in his own right, if he so desires.

MR. AUSTIN: Will you yield to comment on this?

MR. VAN DUSEN: In order to get continuity, I will yield to Mr. Austin for comment.

MR. AUSTIN: I would like to deal with this intangibles question while it is fresh in the minds of the delegates. I believe that the state and local governments attempted to tax intangibles property under the ad valorem rules prior to 1939, when it was finally concluded that the intangibles property should be removed from the ad valorem base and would be taxed by the state under a specific tax arrangement.

Now, I don't believe that any of us would at this moment be willing to admit or conclude that intangibles property is better taxed under the specific tax arrangement than it would be under ad valorem. There are some disadvantages in taxing intangibles under the specific tax arrangement, and I might add that intangibles property is not taxed uniformly. Intangi-

bles producing revenue are taxed differently from intangibles that do not produce revenue.

Now, as to the ad valorem taxation of intangibles, one of the problems in taxing intangibles, especially intangibles that do not have a par value, is that they are taxed at what is known as a stated value and they are not taxed at their real value if they do not produce any income, and many growth stocks do not pay dividends, so the state is unable to tax them on the basis of their dividends; it must tax them on their stated value. If they were taxed under ad valorem taxation, they could be taxed on their value, and I believe that the state would actually realize more revenue from the intangibles tax if they were being taxed under the ad valorem arrangement rather than under the present specific arrangement.

CHAIRMAN BENTLEY: The gentleman from Birmingham still has the floor.

MR. VAN DUSEN: Well, Mr. Chairman, I don't wish to engage with Mr. Austin in a lengthy debate of the desirability of the intangibles tax. I would like to point out, however, the practical impossibility of subjecting intangibles to our present ad valorem tax rate. Let's just take, for example, an individual that owns $1,000 worth of American Telephone and Telegraph company stock. That stock would have produced last year an income of something in the neighborhood of $35 for him in dividends. If he were subjected on that property to ad valorem taxation, and of course it would be assessed at its full 100 per cent cash value—let's take the typical community where the average tax rate may be 25 or 35 mills—he pays for the privilege of owning that stock on an ad valorem basis for all of his dividends in ad valorem property tax. This is why people didn't report their ownership of stocks for ad valorem taxation purposes. It is the reason that it didn't work. It is the reason that the legislature changed it.

Now, so much for the intangibles tax, because actually under either Mr. Austin's minority amendment or the majority proposal, that is a matter left completely up to the legislature, and the legislature has the complete flexibility and freedom to deal with it as a class no matter which of these proposals you were to adopt.

Let me just indicate that, in the first place, much of the minority report is directed not to the majority proposal which is before you, but to the present uniformity clause of the Michigan constitution, and what the majority proposal attempts to do is to introduce into the system of taxation of property in this state a greater degree of flexibility than is possible under the present uniformity clause without, however, permitting the unlimited classification which is suggested by the minority report.

Bear in mind that the opposite of uniformity, which is what the majority report seeks in property taxation, is discrimination. You either have uniformity or you have discrimination. Now, what the minority report suggests is that the legislature ought to have the unlimited right to discriminate in subjecting property to taxation. There just isn't any question about it. Classification is a form of discrimination.

Now, a majority of the committee was unwilling to permit the legislature that degree of flexibility, believing that it was in the interests of the taxpayers of this state that all who owned property be subjected to taxation on that property on the same basis — uniformity. This is the basic structural difference between the minority amendment which is now before you and the majority report. We found in our consideration of the matter that a wide degree of classification now exists without any constitutional sanction whatsoever.

As a matter of fact, in most Michigan communities it appears that an informal system of classification exists under which the property of voters is uniformly assessed at a rate considerably lower than the property belonging to nonvoters. This is the kind of discrimination in the imposition of the property tax which has caused industry to scream loud and long about the unfair burden of taxation which it bears in the city of Detroit. It is the kind of problem which the governor's tax program tries to alleviate within the framework of the present uniformity clause. It is the kind of discrimination which the citizens for Michigan tax program attempts to eliminate. It is the kind of discrimination which can be and we hope will be eliminated under the majority proposal.

For these reasons I would urge you not to support the minority amendment, to vote no on it, and to support the majority report.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Muskegon, Mr. Hanna.

MR. W. F. HANNA: Mr. Chairman, I would like to address a question or two to Mr. Austin, if I may. Mr. Austin, can you tell me the number of states that have classification of real property as would be permitted under your amendment?

MR. AUSTIN: I don't believe I can tell you how many have real property, but there are a good number of them that classify personal property. I would be willing to agree to some restriction on classifying real property, but none on the personal property.

MR. W. F. HANNA: Mr. Austin, is the minority familiar with the Minnesota tax study, where Minnesota permits classification of real property and assesses at various rates of true cash value? And if my recollection is correct, labor, farm and business joined in the Minnesota tax study in recommending that the classification of real property be dispensed with and that the uniformity rule be applied to real property.

MR. AUSTIN: I think this is correct. And, as I said before, I would have no objection to no classification of real property.

MR. W. F. HANNA: My third question, Mr. Austin: do you know the number of states that permit classification of personal property?

MR. AUSTIN: I can't give you the number of states.

MR. W. F. HANNA: Are you familiar with the Robert Taft constitutional amendment, passed around 1933-34, allowing classification of personal property in Ohio, and the Ohio experience with that classification?

MR. AUSTIN: Yes, I am.

MR. W. F. HANNA: Well, if we adopted classification, would we not have to take the second step of the Ohio experience and provide for the assessment of personal property by a state department rather than by each local township or city assessor?

MR. AUSTIN: I am not sure as to whether it would be necessary to have state assessment, but I think we would all agree that the assessment would be more equitable. Now, there is one difference between what is done in Ohio and what is suggested here. In Ohio the classifications are in the constitution. Here we are proposing that the legislature classify and the legislature may from time to time make adjustments in these classifications. But if we fix it in the constitution, we might be in trouble.

MR. W. F. HANNA: Well, Mr. Austin, after they concluded and put in the Ohio constitution a part of that proposal, after due consideration and study, they found that the individual assessors would have difficulty in classification and assessment, and I believe it was the conclusion at that time—and is still the conclusion in Ohio—that the assessing then, once you get into classification, must be made by trained personnel, and the source of such trained personnel usually is a state agency where a given person can specify and be an expert in oil wells or gas pumps, and so forth.

MR. AUSTIN: You would not object to trained personnel for assessing here in Michigan, would you?

MR. W. F. HANNA: If you limit your proposal to personal property and follow the Ohio practice to its end result, I will support you.

MR. AUSTIN: Very well. We are perfectly willing to agree to a change which would prohibit classification of real estate but permit classification of personal property.

CHAIRMAN BENTLEY: The Chair will ask the gentleman if he desires to amend his minority report amendment, and if so, if he has anything in writing.

MR. AUSTIN: No, I don't have anything in writing because this was just suggested on the floor.

CHAIRMAN BENTLEY: I wonder if the gentleman can prepare something while we continue with the recognition of other delegates. The Chair recognizes the gentleman from Bay City, Mr. Higgs, to speak on the Austin amendment.

MR. HIGGS: I have a question for Mr. Austin which I will defer until he gets finished with what he is doing.

CHAIRMAN BENTLEY: Do you desire to yield the floor?

MR. HIGGS: Yes.

CHAIRMAN BENTLEY: Mr. Austin.

MR. AUSTIN: I would like to suggest that Mr. Binkowski and Mr. Hanna get together on an amendment if it is possible to work one out. Meanwhile, I will try to answer some of these other questions on the floor.

CHAIRMAN BENTLEY: Is the chairman of the committee seeking recognition? The chairman is recognized.

MR. BRAKE: Mr. Chairman, ladies and gentlemen of the committee, I wish to comment on what Mr. Austin had to say on his minority proposal. We get down to a very clear cut question of whether or not we shall authorize the classification of property for ad valorem taxation. I want to admit in the first place that I came to the convention quite inclined to think that we might permit a limited classification, particularly a distinction between real property and tangible personal property, and the idea I had in that connection was that personal property was being taxed too high in many places and that a classification might permit a lower taxation of personal property. I thought — as I still think — that if there is any one tax being used in Michigan which has an adverse effect on our so called economic climate, it is the ad valorem taxation of tangible personal property.

We had a great many experts before the committee. Some of them thought that the classification of property, at least on a permissive basis to the legislature, was a good thing. A great many of them warned us that wherever it is tried it doesn't work, and that we ought not to go into it. But on one thing, so far as I was able to learn from their testimony, they universally agreed that what I had in mind wouldn't work out. If we were to permit classification of personal property on a different basis than real estate, instead of getting that personal property tax down, we were going to find it going up, and to that I certainly was opposed and I am still opposed.

We think that we have given the legislature everything that it needs to take care of certain kinds of personal property by a tax other than an ad valorem tax. If the legislature, for instance, should find that farm machinery that Mr. Austin has mentioned, which works only 2 or 3 or 4 days a year, should be subject to a specific tax instead of the ad valorem tax, that can be taken care of. If they find that our personal property tax is having an adverse effect on our industrial climate and wish to make a classification of tools and dies and tax them on a specific part of their cost or some other basis rather than ad valorem taxation, that they can do.

A majority of the committee is opposed to a general release from the uniformity clause and opposed to the ability on the part of the legislature or by constitutional provision to authorize classification of ad valorem taxation.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Detroit, Mr. Binkowski.

MR. BINKOWSKI: Mr. Chairman, ladies and gentlemen of the committee, I would like to emphasize the point that the minority is not advocating any particular type of classification or any particular type of program. Again, the issue is flexibility. We are writing a basic document, and the question is to what extent you want to tie the hands of the legislature.

Now, we don't want to get involved here with the merits or demerits of any particular type of Ohio classification. The question is whether you leave all these details to the legislature or not. Let them decide. They have more time and perhaps even better experts than we had in our committee on finance and taxation.

Now, we just spent a couple of months hitting some of the high points in these areas. So the question is not any particular type of classification or system or anything else. Again, the question is flexibility. Do you want to untie the hands of the legislature so that in the next 25 or 30 or 50 years some type of proposal or some type of program which has been found workable in another state or which can be devised will then be able to be put into effect? And we maintain that under the rigid uniformity rule which the majority has suggested, the legislature will not be able to do this.

Now, the second point with respect to discrimination: one of the points that we neglected to put in our report is that you have an equal protection clause both in the state constitution and in the federal constitution so that no one can discriminate against anyone within any class unreasonably. There will have to be a reasonable classification. And anyone who has studied this matter knows that those guarantees afforded by the equal protection clauses give you the type of protection that you need with respect to uniformity.

So again — I sound like a broken record — but the question is flexibility.

CHAIRMAN BENTLEY: Will the gentleman yield to the gentleman from Birmingham at this point? You have the floor, do you yield to the gentleman from Birmingham?

MR. BINKOWSKI: By all means.

MR. VAN DUSEN: I think, Mr. Chairman, Mr. Binkowski perhaps draws the issue rather sharply. I think that there is a question here as to how much unlimited flexibility you want to give the legislature in the area of taxation. I think that we all recognize that a constitution is a limiting document so far as the powers of the legislature are concerned, and certainly there is no area of legislative power which must be more carefully defined than the power to tax.

It is a cliche, but the power to tax is the power to destroy. Therefore, the people in establishing the basic document of the state should reasonably impose some limitations on that power, and the limitation requiring the legislature to impose taxation uniformly is, it seems to me, a highly desirable limitation.

CHAIRMAN BENTLEY: Is the gentleman from Bay City seeking recognition at this time, Mr. Higgs?

MR. HIGGS: Mr. Chairman, I have 2 questions that I would like to direct to Delegate Austin, and perhaps I had better direct the first one and yield to him and then direct the second. The first question has to do with the statement of Delegate Brake. I too feel that the personal property tax as it is presently being levied in Michigan is a burdensome and unfair tax and that some relief in this area would be desirable, but what do you say about the statement of Delegate Brake that this provision is likely to result in a revision upward of the personal property tax?

MR. AUSTIN: It would be left to the legislature to decide whether it wanted to lower or raise. It would be entirely up to the legislature. And let me remind you that when we talk about the taxation of personal property, we have to consider that there are all types of commercial enterprises that are involved. We like to make distinctions, for example, between those industries or commercial interests that are job producing and those that are not, and it is quite conceivable that the legislature may want to classify, for purposes of taxation, the personal property of job producing industry, particularly those that do not need to locate in Michigan but whom you may be interested in attracting to the state of Michigan, differently from the property of those businesses that must feed off the local economy.

And to be a little more specific, let us consider an automobile manufacturer who is thinking seriously of decentralizing his operations, and in order to be closer to markets may want to locate elsewhere. He may be encouraged to remain in Michigan if we are able to classify personal property so that there is some advantage given to him. On the other hand, let us consider a retailer, a department store. If a department store is to do business in a community, it must be located in that community, and there may not be the same reason for giving a similar type of concession. In other words, it is a matter of recognizing that there are different problems, different incentives, and we ought to leave it to the legislature to work them out and to make the best determination for all of the people of Michigan.

MR. HIGGS: My second question: in reading the committee proposal, section a, the first sentence provides for a uniform rule with regard to general ad valorem taxation. In line 21 the same proposal provides that every other tax shall be uniform upon the class in which it operates.

And I note that in your proposal, you state that your provision applies to ad valorem and other taxes which shall be uniform within the classes of persons or property to which they are applied. I would like to ask what other taxes—other than ad valorem taxes—are involved, and whether or not this would apply to the income tax.

MR. AUSTIN: Well, there is a separate minority report on the question of the income tax, and rather than get into a lengthy discussion of the income tax at this time, I would like to defer comment on it, except to say that the minority has no objection to uniformity within classes on any tax, whether it be specific tax or whether it be property tax. It is just that we don't feel that there should be general uniformity. We don't believe that you can apply a tax to all classes of property or all classes of subjects in exactly the same form, and I would like to just give you one brief example. I believe you are familiar with the inheritance tax. I think you are aware that there is a graduated rate structure in the inheritance tax. In designing the inheritance tax, it was concluded that it was advisable to have lower rates on lower amounts of property that are being transferred on death to other persons, and as the amounts increase, the rate is increased, and this, of course, has been established by the courts as being uniformity within classes, and we see no reason why this should not be continued.

MR. HIGGS: Mr. Chairman, just one final conclusion then that I would draw: if Delegate Austin's interpretation of the inheritance tax structure is correct as applied—this language as applied to that tax—it would seem the same conclusion would apply then to the income tax and that uniformity within classes would permit a graduated income tax, would it not?

MR. AUSTIN: Well, of course, it is very difficult for the minority to see how you can permit graduation under inheritance and not permit graduation under income. But again, may I suggest that we defer our discussion on the income tax until we get into that section, because that is going to be another long subject.

MR. HIGGS: Well, Mr. Chairman, then I would conclude with the fact that I would find it difficult to vote on this particular minority report amendment if we must defer discussion on that particular proposition.

CHAIRMAN BENTLEY: Does the gentleman from Bay City yield to the gentleman from Birmingham, who is seeking recognition, a member of the committee?

MR. HIGGS: Yes.

MR. VAN DUSEN: Mr. Chairman, I would just like to comment briefly. Mr. Austin raised the question of the inheritance tax and may have left the inference that if the committee proposal were adopted, the present inheritance tax could not be continued. This is, of course, not the case. The committee proposal envisions the continuation of the inheritance tax on exactly the same basis as it is presently imposed.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Detroit, Mr. Nord.

MR. NORD: Mr. Chairman, in an effort to get this discussion to a determinative phase, I would like to state the issues as I see them, what the issues are and also what the issues are not. As I see it, 2 issues have been raised by various different people. One issue is discrimination. The other is flexibility. I would like to make some comments about those 2 issues, and then I would like to comment on what is not the issue.

First of all, as to discrimination: Mr. Van Dusen has spoken in very glowing terms against discrimination. I join him in that noble motive. I don't believe in discrimination. I doubt whether anybody here will raise his hand and say that he supports discrimination. We already had 2 unanimous votes in this convention which indicate that we don't believe in discrimination, and if we did believe in discrimination, it would make no difference, as Mr. Binkowski pointed out; we are not permitted to discriminate because the federal constitution has a provision known as equal protection of the laws. It has had that for over 100 years. That has always been available to the people of the state.

I might say that I am very impressed with the equal protection of the laws clause in the United States constitution. There are suits pending right now which bear on some of the matters before us which relate specifically to that section, so you can be sure that I certainly support the idea of equal protection of the laws. But equal protection of the laws does not mean that the majority proposal is correct. It only requires uniformity within classes, not uniformity in every respect, provided the classes are reasonable, provided the distinction between one class and another is reasonable. If that is so, it does require uniformity within those classes.

Now, that is part of the federal law and it governs the state of Michigan. But I realize that up to this time, we did not have an equal protection of the laws clause within our own constitution, and if anyone wished to urge the equal protection of the laws, he would have to rely on the federal constitution. Of course, that did govern the state courts of Michigan in any event. But I would like to call to your attention that we have considered this very subject in this convention and we have decided to incorporate our own equal protection of the laws clause for the first time. We now have adopted an equal protection of the laws clause that is not in the Michigan Constitution of 1908. It will be in this constitution. Now, if we put that in, we don't need some things that were in before, and one of the things we don't need that was in before is this specific language that there must be uniformity, with no ifs, ands or buts.

The correct approach now under the equal protection of the laws clause is basically that suggested by the minority report. I noted that when Mr. Binkowski brought this question up about equal protection of the laws and pointed out that discrimination is not a question whatever here, Mr. Van Dusen, replying, implicitly agreed with him. He dropped the question of discrimination, which I think is the correct thing to do, and he limited his remarks to flexibility, and it seems to me that we can agree that discrimination is not the issue; flexibility is the issue.

Now, as to flexibility, this is one of the most baffling questions that comes before the convention. On one day some of us are in favor of flexibility and the next day we are against it and the next day we are for it. It seems to be some mysterious thing which drives us to alternate like an alternating current on this question. It seems to me that we ought to make up our minds whether we are for flexibility or whether we are not, and if we are for it, under what circumstances we are, and under what circumstances we are not. I recall in the questions about earmarking many of us said we did not want flexibility. Others said they did. I recall taking the floor on this subject myself, and I said, "To me, flexibility, or earmarking, which is an example of it, is not a basic principle of morals but it is a question of practicality and it depends on the facts." And I stated—I believe this is a correct approach — that we should always be for flexibility unless we have a darn good reason not to be in a specific case.

Now, when it comes to earmarking of school funds I thought that the history of this state and the experience of the people here showed that we had to have earmarking of school funds. I favored that. I opposed earmarking for highways because I didn't think experience dictated that we needed to do that.

Now, when it comes to this particular question of taxes and the fear that if there is flexibility, something will go wrong, I raise this question: is there any evidence to justify that fear? Has something gone wrong in the history of the state of Michigan with respect to something wrong that the legislature has sought to do or has done with respect to nonuniformity of taxes?

Here, it seems to me, we don't have any historical evidence to show that we should be afraid of flexibility and, in my opinion, when we have no reason to fear, based on experience, flexibility for the legislature, we should adhere to flexibility for the legislature. Now, I would like to point out what I believe

is not the issue. I stated that, in my opinion, discrimination had been raised as an issue but it has been removed. Flexibility remains the issue. What is not the issue? What is not the issue is what type of classification would be a nifty idea. Nobody knows what type of classification at this point would be a good idea, and as far as I know, no one has suggested a scheme for classification. That is not the issue.

The issue is whether the legislature within the next 50 years should have the opportunity to investigate that question and determine the answer for itself. I would also like to point out that we have to make certain calculations and deductions and guesses as to the future, the next 50 years, in order to be certain that the majority proposal is correct. We have to assume that there never can be a proper scheme of classification. We have to be sure that we know all the different kinds of property that will exist within the next 50 years, and that none of them will require separate classification. How are we going to be sure what kinds of properties, even, to say nothing of what kind of classification schemes might exist?

I noted that several delegates pointed out that certain kinds of property already ought to be thought of in different terms than other kinds. It was pointed out by some people that real property is not exactly to be treated the same as personal property. It was also pointed out by another delegate that tangible personal property ought not to be necessarily treated the same as intangible personal property.

I suggest that there are reasons to suspect that there may be these kinds of possible distinctions between one kind of property and another, and there might even be other kinds of property that we know nothing about which could exist within the next 50 years. When in doubt, and when there is no history to show a reason why we should fear giving the legislature the power, I think we should give it.

I think further that what we are faced with now is not a logical reason for the majority proposal. I know of no reason that has been advanced in favor of it except discrimination, but that has been removed, in my opinion, as an issue. What reason is left over after that? It seems to me only one reason is left over, and that is just plain fear. I don't believe that we should glorify fear for fear's sake. If there is a reason for fear, we should be fearful, but if not, let's not raise fear to a constitutional principle. I support the minority report amendment.

CHAIRMAN BENTLEY: The Chair recognizes the chairman of the committee, Mr. Brake.

MR. BRAKE: I move the committee rise.

CHAIRMAN BENTLEY: Before the Chair puts that motion, Mr. Brake, he would like to state that the following are on the list as having requested recognition: the gentleman from Hillsdale, Mr. Prettie; the gentleman from St. Clair Shores, Mr. Snyder; the gentleman from Detroit, Mr. Ostrow; the gentleman from Detroit, Mr. Ford; the gentleman from Ypsilanti, Mr. Lawrence; the gentleman from Ridgeway, Mr. Upton; the lady from Dearborn, Mrs. Cushman.

The motion is that the committee do now rise. All those in favor vote aye. Those opposed?

The motion prevails and the committee will rise.

[Whereupon, the committee of the whole having risen, President Nisbet resumed the Chair.]

PRESIDENT NISBEST: The Chair recognizes Mr. Bentley.

MR. BENTLEY: Mr. President, the committee of the whole has had under consideration several items on the general orders calendar on which the secretary will give a detailed report.

PRESIDENT NISBET: Mr. Chase.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 43,** A proposal pertaining to aliens and property rights; **Committee Proposal 44,** A proposal pertaining to the schedule; **Committee Proposal 49,** A proposal with reference to the borrowing of money by public corporations and bodies; and **Committee Proposal 50,** A proposal to require the legislature to provide sufficient taxes to meet the state's expenses covering the substance of section 2, article X of the 1908 constitution; reports these proposals back to the convention without amendment and with the recommendation that they do pass.

PRESIDENT NISBET: Without objection, **Committee Proposals 43, 44, 49** and **50** will be referred to the committee on style and drafting.

For Committee Proposal 43 as referred to the committee on style and drafting, see above, page 845.

For Committee Proposal 44, as later amended and referred to the committee on style and drafting, see below, page 866.

For Committee Proposal 49 as referred to the committee on style and drafting, see above, page 852.

For Committee Proposal 50 as referred to the committee on style and drafting, see above, page 853.

SECRETARY CHASE: The committee of the whole has also had under consideration **Exclusion Reports 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025** and **2026**; and reports these exclusion reports back to the convention without amendment and with the recommendation that they be adopted.

PRESIDENT NISBET: The question is on the adoption of the exclusion reports as listed. Those in favor say aye. Opposed, no.

Exclusion Reports 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025 and **2026** are adopted and referred to the committee on style and drafting.

For Exclusion Report 2016 as referred to the committee on style and drafting, see above, page 845.

For Exclusion Report 2017 as referred to the committee on style and drafting, see above, page 846.

For Exclusion Report 2018 as referred to the committee on style and drafting, see above, page 846.

For Exclusion Report 2019 as referred to the committee on style and drafting, see above, page 850.

For Exclusion Report 2020 as referred to the committee on style and drafting, see above, page 850.

For Exclusion Report 2021 as referred to the committee on style and drafting, see above, page 851.

For Exclusion Report 2022 as referred to the committee on style and drafting, see above, page 851.

For Exclusion Report 2023 as referred to the committee on style and drafting, see above, page 851.

For Exclusion Report 2024 as referred to the committee on style and drafting, see above, page 851.

For Exclusion Report 2025 as referred to the committee on style and drafting, see above, page 852.

For Exclusion Report 2026 as referred to the committee on style and drafting, see above, page 852.

Mr. Higgs.

MR. HIGGS: Mr. President, did we vote on Committee Proposal 44? It seemed to me that was referred to style and drafting without any vote in the convention. I have an amendment. I was seeking recognition at that time.

PRESIDENT NISBET: Without objection, we will return to the reference of **Committee Proposal 44** to committee and Mr. Higgs can offer his amendment.

MR. HIGGS: It is the same amendment which I made in the committee of the whole. I have another copy of it.

SECRETARY CHASE: This is a proposal from the committee on miscellaneous provisions and schedule, **Committee Proposal 44,** A proposal pertaining to the schedule.

Mr. Higgs offers the following amendment to the proposal:

1. Amend page 1, line 16, after "individuals,", by inserting "partnerships,".

MR. BOOTHBY: Mr. President, I move that we recess until 2:00 o'clock this afternoon.

PRESIDENT NISBET: The question is on the motion to recess until 2:00 o'clock. Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, I'd just like to remind the rules committee we have a meeting at 1:00 o'clock.

PRESIDENT NISBET: Mr. DeVries?

MR. DEVRIES: Mr. President, the committee on administration will meet at 1:30; not 1:15.

PRESIDENT NISBET: Thank you. The question is on the motion to recess until 2:00 o'clock. Those in favor say aye. Opposed, no.

The motion prevails and we are recessed until 2:00 o'clock.

[Whereupon, at 12:05 o'clock p.m., the convention recessed; and, at 2:00 o'clock p.m., reconvened.]

The convention will please come to order.

SECRETARY CHASE: Mr. President, a quorum of the convention is present.

PRESIDENT NISBET: The Chair recognizes Mr. Higgs.

MR. HIGGS: Mr. President, at the time we recessed, we were considering an amendment to Committee Proposal 44, which the secretary has at the desk. Would you like to read that?

PRESIDENT NISBET: The secretary will read the amendment.

SECRETARY CHASE: Mr. Higgs has offered:

[The amendment was again read by the secretary. For text, see above, page 863.]

PRESIDENT NISBET: Mr. Higgs.

MR. HIGGS: Well, Mr. President and fellow delegates, I think at the time we voted on this this morning, there were only 115 delegates present, and I would like to offer this amendment again at this time because I feel that it does go to substance and that it is quite important. And the premise upon which it is based is that the rights of individuals and corporations does not necessarily include the rights that may be involved in a partnership under the uniform partnership act. As you may or may not know, title to real estate acquired in the partnership name must be conveyed in the partnership name. There are also provisions in the uniform partnership act which provide for the assignment of assets of the partnership for benefit of creditors.

Now, if you can envisage the situation where an assignee may be in the position of suing for rents or profits in the use of real estate, he would have to do that in a derivative action. In other words, the action would be in the name of the partnership because it is a legal entity for certain purposes under the Michigan law. And without belaboring that point, I would like to have it considered further.

PRESIDENT NISBET: The question is on the amendment of Mr. Higgs. All those in favor of the amendment please say aye. Opposed, no.

The amendment is adopted.

A DELEGATE: Division.

PRESIDENT NISBET: Division has been asked for. Is the demand supported? Those in favor rise. A sufficient number up. Mr. Chase will read the amendment.

SECRETARY CHASE: Mr. Higgs has offered the following:

[The amendment was again read by the secretary. For text, see above, page 863.]

The language will then read:

All writs, actions, suits, proceedings, civil or criminal liabilities, prosecutions, judgments, sentences, orders, decrees, appeals, causes of action, contracts, claims, demands, titles and rights of individuals, partnerships, bodies corporate, and of this state or any subdivision or agency thereof existing on the effective date hereof shall continue unaffected except as modified in accordance with the provisions of this constitution.

PRESIDENT NISBET: Those in favor of the amendment will vote aye. Those opposed will vote no.

SECRETARY CHASE: Has everyone voted? The machine is locked and the totals will be recorded. On the adoption of the amendment proposed by Mr. Higgs, the yeas are 88; the nays are 26.

PRESIDENT NISBET: The amendment is adopted.

SECRETARY CHASE: Mr. Mahinske and Miss Donnelly offer the following amendment to Committee Proposal 44:

1. Amend page 1, line 8, after "Sec. a.", by reinserting "The common law and the statute laws now in force,"; and in line 9 by striking out "All laws"; so that the language will read:

The common law and the statute laws now in force, not repugnant to this constitution, shall remain in force until they expire by their own limitations, or are altered or repealed.

PRESIDENT NISBET: Mr. Mahinske.

MR. MAHINSKE: Mr. President, one of the reasons why I reinstated this amendment at this time was for the basic reason we reinstated the other; that there were some 25 or 30 people who did not cast a vote in committee of the whole on this. And based on the argument by which the committee proposal is substantiated, by inserting the new words that are inserted here, the committee report says that they are in no way intending to change what we had in the old constitution. Now, if this is the basis of the reinsertion of the new words, and they do not intend to change anything, then I say we should say exactly what we mean, and if we mean the common law, we should spell it out.

PRESIDENT NISBET: Mr. Durst.

MR. DURST: Mr. President, I would just remind the delegates that the committee recommends that this amendment not be adopted. I would also point out that we presented to you this morning the opinions of our research staff and of Professor Kauper of the University of Michigan law school that the amendment or the section as submitted to the convention was the proper way to do so.

We were attempting to correct a legal problem that has existed in this state for some time which has been taken care of by court interpretation, but we are making the constitution conform to the way the court has interpreted it to mean. We ask that the amendment be defeated.

PRESIDENT NISBET: Mr. Boothby.

MR. BOOTHBY: Mr. President, first I would like to have the amendment reread. Then I would like to comment on it, please.

PRESIDENT NISBET: The secretary will read.

SECRETARY CHASE: The amendment is:

[The amendment was again read by the secretary. For text, see above.]

PRESIDENT NISBET: Mr. Boothby.

MR. BOOTHBY: Mr. President and members of the convention, I rise to support the Mahinske-Donnelly amendment. I would like to make a few comments in that regard. When words are used in statutes or in constitutions, the courts make certain interpretations of these words and they then receive a certain specific meaning, because the courts have stated that they mean certain things. When phrases are used by certain legislative bodies or by constitutional bodies, when they are interpreted by the courts, they receive a certain specific meaning. And the same with regard to constitutional provisions: when they have been interpreted by the courts, they receive certain specific meanings.

Now, the present committee report, which would delete the reference to the common law, was what was in the 1835 constitution, but the 1850 and the 1908 constitutions added the words which the Donnelly-Mahinske amendment seeks to put back in, the reference to the common law.

Now, the reason why I am concerned is because the courts have adopted a certain rule of construction of statutory and constitutional language, and this rule of construction is, if a legislature has reincorporated certain words or if a constitu-

tional convention body has reincorporated certain words that were there prior thereto, and if these words had been reviewed by the courts and had been given certain specific meanings, when they reincorporate these words, it is indicated that they mean to reincorporate not only the words but also the meanings which the courts have given to them. Now, whenever you change the language which has been interpreted by the courts, then there is also a suspicion raised as to what the intent of the legislative or constitutional body is. I do not feel that we wish to raise any suspicion. This has been a part of our constitutional provisions since 1850. Incidentally, even the northwest ordinance made some reference to the common law and indicated that the people of Michigan would operate under the common law.

And for those people that are not lawyers, I would like to make this comment: the common law is a very important part of our law of the state. Many of our criminal provisions are not statutory law but common law, and many of our procedures are common law procedures and not statutory procedures.

If we make any deviation from this, it will seriously hamper the progress of criminal prosecution, I am quite sure, and many other phases of law. I hope that you will give detailed and considered consideration to this particular amendment and not dismiss this very lightly, because I feel that we may get into more litigation than we would like by adopting the committee report. I would like to ask some of the former members of the bench for their opinion, and I would like to call upon Judge Dehnke and ask his opinion.

PRESIDENT NISBET: Judge Dehnke.

MR. DEHNKE: Well, Mr. President and delegates, I have to remind you once again as I have before that curbstone opinions are usually worth about what they cost. But on this proposition, as far as my opinion goes, I agree with Mr. Boothby.

PRESIDENT NISBET: Mr. King.

MR. KING: Mr. President, I would like to direct a question to Mr. Boothby or Judge Dehnke. As I read this language, forgetting for a moment the words "statute laws now in force," it says that "The common law . . . not repugnant to this constitution, shall remain in force until they expire by their own limitations, or are altered or repealed." I don't know how a common law expires by its own limitation, and I don't know how it can be altered or repealed except by judicial interpretation.

Is it the intent of the sponsors of this amendment that the judicial shall not be entitled to interpret the common law so that we have a living common law, which is what I think we have now and what I think we ought to have in the future?

PRESIDENT NISBET: Judge Dehnke.

MR. DEHNKE: I think the conclusion is obvious. The legislature can change any rule of the common law whenever it reaches the conclusion that the rule ought to be changed.

MR. KING: I am aware of that, Judge. How about the Supreme Court of the state of Michigan?

MR. DEHNKE: Well, I think there are some limitations on that.

MR. KING: I oppose these implied limitations.

MR. DEHNKE: The law is, of course, a living organism. It must grow. I can conceive of individual situations in which the court, by reason of the complete change of circumstances and a completely different fact situation, might be justified in holding that the old common law rule ought not to be considered in force in this state any longer. But the other extreme is to use the method of an amendment by judicial decree to an extreme that I personally cannot justify.

MR. KING: I apologize for the personal exchange. I am aware that some people think that this is the way it ought to be. I just hope that by this brief exchange, the issue here has been perhaps somewhat clarified, because I think some people may not be aware of the complete implications of what they are trying to do by this amendment.

PRESIDENT NISBET: Mr. Iverson.

MR. IVERSON: Mr. President, I rise to support this amendment. I dislike to vote against the committee recommendation on this but, as I understood Mr. Durst, the only reason actually given for the change of this language was that research had come up with fewer words which they said meant the same thing. I don't think we had better take any chance on this, and I would judge that the committee is not too seriously opposed to the original language.

PRESIDENT NISBET: Mr. Durst.

MR. DURST: The reason, Mr. Iverson and Mr. President, is not for fewer words. All that have been eliminated are 2 or 3. It is to make this section conform to the way the supreme court of this state has interpreted this section to mean.

Now, if we put the same language back, they may continue with the same interpretation, but we raised here this morning that if we reinsert it the same way, it can be logically argued that we do not wish to adopt the interpretation which the supreme court has placed upon this language which does allow this common law to be a living law and to change as needs of the times require.

I think Judge Dehnke has adequately stated the issue. There are some people, lawyers and otherwise, who do not believe the supreme court should have the right to change the common law; this should be done by statute. This is an honest belief on their part. We have operated in this state under a common law that does change by judicial interpretation as the needs of the state require. This is what the committee thinks is a proper interpretation, and we have changed the language to conform to this interpretation.

PRESIDENT NISBET: Mr. Nord.

MR. NORD: Mr. President, I rise to support the committee proposal and to oppose the amendment for several reasons: it has been pointed out that the court decisions have settled the question and therefore there is no question. Therefore, it is better to leave the language alone. Normally I would think so, but in this case it seems to me that the language itself is ambiguous. The language we have at the present time, which we are trying to get rid of, is ambiguous. It has caused trouble in the past, and I suggest that if we readopted the same language, somebody will think that we mean exactly what we say and not what the supreme court has said before that we mean. We ought to say what we mean and not what somebody else has construed us to mean.

I call to your attention it is not unknown that supreme courts can change their decisions too. They may say it means a certain thing today; tomorrow they may say it means the opposite. We shouldn't give them the opportunity to do so. We should say what we mean, and what we mean is what is embodied in the committee proposal.

This question has been analyzed by the committee. They made a decision. It was analyzed by eminent professors. They made a decision. It was analyzed by the committee of the whole this morning. We made a decision. Now, I wonder if we are going to rehash the entire question over and over again. It seems to me that once the committee of the whole has made a decision, there is no need to rehash the entire subject matter. I understood the reason for raising the amendment here was that there was some question about whether there had been a large degree of support or a small degree of support. That can be determined by voting. There is no need to introduce new ideas, new arguments.

I think that the convention should sustain the committee of the whole and it should sustain the people who have analyzed this. We won't be sure that we are right if we change our opinion between this morning and this afternoon.

PRESIDENT NISBET: Mr. Brake.

MR. BRAKE: Mr. President, ladies and gentlemen, I suppose one of the reasons they call me a conservative is that I don't like to change just for the fun of it. I like changes that mean improvement. I can't see any improvement that can come from this change of language proposed by the committee. What the supreme court has said, from the reading of the clause in the past, to me is entirely satisfactory, and I would like to have it left that way.

PRESIDENT NISBET: Mr. Faxon.

MR. FAXON: I move the previous question, Mr. President.

PRESIDENT NISBET: The question is on ordering the

previous question. A division has been demanded. Is the demand supported? A sufficient number up.

The question now is: shall the previous question now be put? Those in favor say aye. Opposed, no.

The motion prevails. The question is now on the amendment. Those in favor will vote —

MR. BOOTHBY: Mr. President, I call for a record roll call vote.

PRESIDENT NISBET: A record roll call vote has been demanded. Is there a sufficient number up for that? A sufficient number up.

Now the question is on the amendment. Mr. Chase will read the amendment.

SECRETARY CHASE: Pending is the amendment:

[The amendment was again read by the secretary. For text, see above, page 864.]

PRESIDENT NISBET: Those in favor of the amendment will vote aye. Those opposed will vote no.

SECRETARY CHASE: Has everyone voted? The machine is locked and the votes will be recorded.

The roll was called and the delegates voted as follows:

Yeas—63

Anspach	Higgs	Richards, L. W.
Austin	Howes	Rood
Baginski	Hubbs	Rush
Blandford	Hutchinson	Shaffer
Bledsoe	Iverson	Shanahan
Bonisteel	Leibrand	Sharpe
Boothby	Liberato	Sieder
Brake	Lundgren	Spitler
Butler, Mrs.	Madar	Stafseth
Conklin, Mrs.	Mahinske	Sterrett
Cudlip	McAllister	Stevens
Dehnke	McCauley	Thomson
Donnelly, Miss	McLogan	Tubbs
Doty, Dean	Ostrow	Turner
Faxon	Pellow	Tweedie
Finch	Perlich	Upton
Garvin	Powell	Van Dusen
Gover	Prettie	Wanger
Greene	Pugsley	White
Gust	Radka	Wood
Heideman	Richards, J. B.	Yeager

Nays—67

Andrus, Miss	Follo	Millard
Batchelor	Gadola	Mosier
Beaman	Goebel	Murphy
Bentley	Hanna, W. F.	Nord
Binkowski	Hannah, J. A.	Page
Brown, G. E.	Hart, Miss	Perras
Brown, T. S.	Haskill	Plank
Buback	Hatch	Pollock
Cushman, Mrs.	Hodges	Rajkovich
Dade	Hood	Sablich
Danhof	Judd, Mrs.	Seyferth
Davis	Kelsey	Shackleton
DeVries	King	Snyder
Doty, Donald	Kirk, S.	Staiger
Douglas	Knirk, B.	Stamm
Downs	Koeze, Mrs.	Stopczynski
Durst	Krolikowski	Suzore
Elliott, A. G.	Kuhn	Walker
Elliott, Mrs. Daisy	Leppien	Wilkowski
Erickson	Lesinski	Woolfenden
Everett	Martin	Young
Farnsworth	McGowan, Miss	Youngblood
Figy		

On the amendment, the yeas are 63; the nays are 67.

PRESIDENT NISBET: The amendment is not adopted.

Committee Proposal 44, as amended, is referred to the committee on style and drafting.

Following is Committee Proposal 44 as amended and referred to the committee on style and drafting:

The committee recommends that the following be included in the constitution:

That no inconvenience may arise from the changes in the constitution of this state, and in order to carry the same into complete operation, it is hereby declared that:

Sec. a. All laws not repugnant to this constitution, shall remain in force until they expire by their own limitations, or are altered or repealed.

Sec. b. All writs, actions, suits, proceedings, civil or criminal liabilities, prosecutions, judgments, sentences, orders, decrees, appeals, causes of action, contracts, claims, demands, titles and rights of individuals, partnerships, bodies corporate, and of this state or any subdivision or agency thereof existing on the effective date hereof shall continue unaffected except as modified in accordance with the provisions of this constitution.

Sec. c. All officers filling any office by election or appointment shall continue to exercise the duties thereof, according to their respective commissions or appointments, until their offices shall have been abolished or their successors selected and qualified in accordance with this constitution or the laws enacted pursuant thereto.

Sec. d. The attorney general of the state shall recommend to the legislature at the commencement of the next session such changes in existing laws as may be deemed necessary to adapt the same to this constitution.

Mr. Chase will read.

SECRETARY CHASE: The committee of the whole, Mr. President, has also had under consideration **Committee Proposal 51**, and has come to no final resolution thereon. This completes the report of the committee of the whole.

PRESIDENT NISBET: It has been suggested that during the afternoon session, at approximately 3:20 or 3:30, in order to have a little relaxation and rest, the chairman of the committee of the whole will suggest that the committee stand at ease for 5 or 10 minutes. That will be his prerogative.

Mr. Bentley.

MR. BENTLEY: Mr. President, I move that the convention resolve itself into committee of the whole for consideration of items on the **general orders** calendar.

PRESIDENT NISBET: The question is on the motion of Mr. Bentley. Those in favor say aye. Opposed, no.

The motion prevails. Mr. Bentley.

[Whereupon, Mr. Bentley assumed the Chair to preside as chairman of the **committee of the whole.**]

CHAIRMAN BENTLEY: The committee will be in order. The pending business before the committee is **Committee Proposal 51**, the minority report c amendment of Mr. Austin and others to the committee proposal.

For minority report c, see above, page 856.

The Chair has several individuals who have been seeking recognition, but there has been a request from the sponsor of the pending amendment to clarify 1 or 2 items and, without objection, the gentleman from Detroit, Mr. Austin, will be recognized out of order at this time.

MR. AUSTIN: Thank you. Mr. Chairman, ladies and gentlemen of the committee, I would like you to refer to Journal 73, page 523, and Journal 69, page 404. The minority report is on page 523, and the minority proposal is that "The legislature may by law authorize or impose ad valorem and other taxes which shall be uniform within the classes of persons or property to which they are applied." A question has been raised by the inclusion of the language "and other taxes" at this point in the committee's proposal, and if you will refer back to page 404, the first sentence of the committee's proposal

which the minority proposal seeks to replace is as follows: "The legislature shall provide by law a uniform rule governing the general ad valorem taxation of real property and tangible personal property"; with no reference to "other taxes." The last paragraph of the committee proposal reads, "Every other tax shall be uniform upon the class on which it operates." This is language that the committee included to take care of taxes other than property taxes.

We have 3 minority reports on this same article or this same section. One of our minority report amendments seeks to delete that last paragraph, and since we are suggesting that the last paragraph be deleted, it was necessary that we include in our first sentence the reference to other taxes. I thought this point ought to be made clear because it was raised earlier as to why we did include other taxes in our substitute.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Hillsdale, Mr. Prettie.

MR. PRETTIE: Thank you. Mr. Chairman and fellow delegates, I have a question that I wish to address to Mr. Austin with reference to the minority report amendment that we have under consideration. I would also appreciate any comments that Mr. Van Dusen or other sponsors of the committee report might wish to make following Mr. Austin's comments or answer to my question. Probably in presenting this question, I will display my abysmal ignorance of the subject under consideration, but as I understand it, we are starting from sections 3, 4, 7 and 8 of our present constitution, which I have examined and which seem to refer to the subject of uniformity, either ad valorem or within classes as to specific taxes, on property.

We have had a very enlightening debate this morning on uniformity versus flexibility and classification versus discrimination. So far in this presentation I have heard discussion only as to the matter of classification as it applies to property, except possibly a rather oblique reference in a reply to a question by Mr. Higgs having to do with classification of personal property of industries versus those inventories and so on of stores and other business entities.

My question, Mr. Austin, is this: in your minority report you refer not only to classification of property but you refer also to classes of persons. Would you please elaborate on the meaning of that language in this minority report.

MR. AUSTIN: The reference to persons, again, applies to the last paragraph of the committee report, which states that "Every other tax shall be uniform upon the class on which it operates." The intention of the minority report is to indicate that, in reference to other taxes, there may be some necessity for including language which would indicate that these taxes must be uniform upon the classes of persons to whom they apply.

If, for example, we were going to levy an income tax, you had persons who had incomes, say, of $5,000 and persons with incomes of $10,000, you would be permitted to levy a different rate of tax upon persons in these different classes.

Now, I would certainly assume that anyone who opposes the so called graduated income tax would probably be opposed to uniformity within classes of persons, but this is to make clear what the intent is.

MR. PRETTIE: Thank you very much. Then, briefly stated, as I understand it, the language "classes of persons" is necessitated in order to be consistent with the other amendment providing for a graduated income tax?

MR. AUSTIN: Well, let us say it is necessary to the minority report amendment to make sure that a graduated income tax would not be prohibited.

MR. PRETTIE: Thank you, Mr. Austin. I am wondering if Mr. Van Dusen, as one of the sponsors and the speaker for the committee on the majority report, would care to comment on Mr. Austin's answer.

CHAIRMAN BENTLEY: The gentleman from Hillsdale yields to the gentleman from Birmingham.

MR. VAN DUSEN: I think my only comment, Mr. Chairman, would be that Mr. Prettie's question and Mr. Austin's answer point up the degree of classification and, in my judgment, discrimination which is contemplated by this minority report amendment. That is one of the reasons that the majority feels that uniformity in property taxation is desirable.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from St. Clair Shores, Mr. Snyder.

MR. SNYDER: Thank you, Mr. Chairman. I arise to support the position of the minority of the committee. I feel that their position is well taken. And I note with specific interest subsections a, b and c of their report. I feel that the matters contained in subsections a and b have already received some discussion, and I feel that I would like to confine my comments to subsection c, because this is one which I am a little bit more familiar with. We have here a question of encouraging economic climate in Michigan, and I will point out that when you attempt to encourage economic climate, you must recognize the entire scale. And I speak, coming back recently from my community in which last week members of the local chamber of commerce at one of their meetings asked what were we as delegates doing at the convention to attempt to encourage the smaller businessmen to withstand the rivers and the hazards of today's political and economic climate. I told them it was my opinion that we sincerely were going to try to look into these matters that affected them vitally.

And I feel that here we have one that cuts very close into the question of whether they will survive or not survive. I was very fortunate to have in my files a communication dated September 6, 1961, from Bill Crouchman, our city assessor. We didn't anticipate this problem, but we were exploring methods by which we could come in and present to the people at this convention some of the problems confronted by the folks back home. And as of this date, Bill Crouchman, our hometown local assessor, who at that time had, I am sure, no idea that he would appear in the official records of the convention and possibly even make a contribution, gave me a communication. This is addressed to myself from Bill Crouchman, the city assessor of the city of St. Clair Shores. Subject, personal property taxation. He starts out:

> The personal property tax includes such items as stocks, fixtures, furniture, signs, machinery and goods on consignment.

Then there is one paragraph here which I feel is pertinent. He says — and this is quoting Bill:

> Personal property tax seems unfair in many respects, such as neighborhood hardwares that must keep a stock of $20,000 to $30,000 to be successful and pay on this amount. Compare this with the real estate office, which perhaps has a total value of $500 to $800, and pays on that amount. By the end of the year, each may net the same profits, but the hardware man has a much larger investment to do so.
>
> Another example is stock in the process of being machined and must be claimed by the machine shop doing the machining although not owned by the same.
>
> If you have any further questions, I will be happy to answer them if possible.

Now, one of the arguments that was advanced by the speakers in opposition to the amendment today was the fact that a close look at this type of an assessment would require an assessor that was skilled and knew his job. I don't think that this is an argument that we should hold against this thing, because wherever possible we should encourage people who are doing the assessing work to be skilled and to do a job. I will admit that it may cause a temporary inconvenience to some, but I feel that it may mean survival to a very important segment of our economy, the fellow back home who many of us have contact with who is groping, seeking and searching for methods to survive under today's very difficult economic climate, and certainly I hope that you can take Bill Crouchman's word back home to your heart and try to give him, the small businessman, the relief that he so rightfully needs.

I feel that the minority report amendment does move along in this direction, and I would support it.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Detroit, Mr. Ostrow.

MR. OSTROW: Mr. Chairman, ladies and gentlemen of the committee, I am one of the delegates who signed the minority report, and as a matter of fact I was the one who made the motion in the taxation committee to have the minority report included in the present constitution. First I would like to point out that the subject under discussion in this minority report, the 50 per cent limitation on taxation and the prohibition against an income tax, are not interrelated in this discussion. Each was separately treated by the majority of the members, and each is separately treated by the minority reports.

Now, I would like to address myself to some of the statements that were made by previous speakers. Mr. Van Dusen said that most of the businesses that moved out of Detroit that he was familiar with moved out of Detroit because of discrimination in real estate taxes. That has not been my experience. In every instance that I know of where anybody moved out of Detroit because of taxes, it was because of the unfair burden of the personal property taxes.

Now, it is not just a Detroit problem; it is a state problem, and a lot of other states have the same problem with personal property taxes. There exists — or there did exist when I lived in California — a string of warehouses in Arizona whose sole purpose was to hold inventories for California merchants who found it economical to have inventories in Arizona to escape burdensome California personal property taxes.

Now, Mr. Van Dusen referred to the discrimination that might exist if we went to uniformity by classification. I submit that there is no such problem. As a matter of fact, from the standpoint of job producing industry, there is discrimination under the present system. If you invest a thousand dollars in stocks or bonds, you have a lower, more favorable intangibles tax rate, but if you invest that same thousand dollars in job producing machinery, you must pay the same tax that you pay on real estate. This is even more burdensome when you have either inventories or machinery that do not produce income, that are not used in manufacture. For example, I know of several instances where Ohio manufacturers of heavy equipment wanted to establish sales and service warehouses here, bring in equipment, put them under power, merely for the purpose of demonstration, but because of the burdensome personal property rate on that equipment here by comparison with Ohio, they found it more advantageous to keep them in Ohio. Let's assume, for example, you were a distributor or a wholesaler. You were serving Michigan, Ohio, Indiana — there are parts of the state where a matter of a few miles you are in one state or another. These warehouses, where you pay personal property tax on merchandise that just lies there waiting to be shipped, the difference in tax on that merchandise can make a difference in the choice of location of Michigan, Ohio and Indiana.

Now, some point was made of the fact that if you have uniformity by classifications with separate treatment of personal property, that you would have to have skilled assessors. We hope that in all property that is assessed, the assessors know their business, whether it is real property, personal property or any other property. The same property that is today being assessed will continue to be assessed, but by a different method. On an ad valorem basis it will not require any greater skill to assess it at a different rate than it requires today to assess it on the same rate as real estate because the valuation problem is the same. It is the rate that you apply to the valuation that might conceivably be different.

Now, if we are going to have fairness in taxation, as we are getting in to more and more different kinds of property, the legislature over the next 50 years must have the leeway to classify that property so that it is fair not only to the persons being taxed but to the persons in other classifications so that the tax, while resulting in income to the community, at the same time will not be a deterrent to the growth of our industry and our general business climate.

CHAIRMAN BENTLEY: Does the gentleman from Detroit desire to yield to the gentleman from Birmingham, Mr. Van Dusen, for a question or a reply?

MR. OSTROW: Yes.

MR. VAN DUSEN: Thank you, Mr. Ostrow. Mr. Chairman, I would just like to comment briefly, because Mr. Ostrow did comment on a couple of points which I had made, that I believe Mr. Ostrow has rather eloquently demonstrated the reason why a majority of the committee asserts the need for uniformity. I completely agree with Mr. Ostrow that the discrimination in Detroit is between real property and personal property, with personal property bearing a heavier burden of assessment and a heavier burden of taxation. Every industrial taxpayer who is subject to the personal property tax in the city of Detroit who came before our committee strongly urged uniformity of assessment as between real and personal property. I think that the examples Mr. Ostrow has given eloquently testify to the need for uniformity.

We have operated under a constitution which requires uniformity which has been honored in the breach, particularly in Wayne county — but it is not confined to Wayne county by any means — by an assessment practice which assesses real property at a considerably lower level than personal property. All we are asking is that they be put on a parity. This minority amendment would simply throw the mantle of respectability over the unconstitutional practice of discriminatory assessment which has prevailed for 20 years or more.

CHAIRMAN BENTLEY: The gentleman from Taylor, Mr. Ford, is recognized.

MR. FORD: I simply want to take issue with Mr. Van Dusen's conclusion that the practice has been unconstitutional. This has been tested. All of the local units of government around Wayne county have had the experience of being before the tax commission annually for a number of years now with Detroit Edison, Michigan Consolidated Gas, Ford Motor company and General Motors wherever they own property. We all have had the experience with Detroit Edison and Michigan Consolidated because they go into every community in Wayne county. And for years they have argued as Mr. Van Dusen is arguing now and they have been quite successful before the tax commission in making adjustments in their taxes.

What Mr. Van Dusen is saying in effect is that in those communities where it is now the practice to assess individual homes at a lower level of actual cash value than personal property, such as the inventory in the business and the machinery in an industry, and such as the gas lines in place and the poles and wires of the utilities, we will even this all up, and by evening it all up, he doesn't mean we are going to leave the utilities where they are and bring the others up to them; we will bring them down and we will make up the difference in financing local government by raising the taxes on the individual homeowner. That would be the end result of what the committee is seeking to do with this coupled with the other provision.

CHAIRMAN BENTLEY: Mr. Upton.

MR. UPTON: Speaking as a member of the taxation and finance committee, we have looked into this matter for many months. I would like to disagree with Dr. Nord's remarks that this is not a discriminatory idea. To me, Dick Austin brought out the point that we were all fearful of in our committee; namely, that a tax commission could give leeway to one industry and not another. If an industry wants to stay in Michigan, he says, we can give them tax relief. However, if he can't leave Michigan, we will tax them at a good rate. This is the thing that uniformity prevents, and I believe that the people of Michigan expect uniformity in the real estate and personal property taxes.

As you note in our committee report, we have attempted to eliminate the wide variety of taxes you can get in this limit by bringing it down to 50 per cent. I know we are not discussing that point at this time, but this is the purpose of the committee's report. The difference that a tax commission or tax authority would give to one business or another, I believe, would be a detriment to our business climate here in Michigan.

So therefore, I believe that it is a discriminatory item that we are concerned with and not just a plain flexibility one.

Yesterday I was arguing for flexibility. I am still arguing for flexibility, but we in this constitution must establish the guidelines for a tax base, and once those are established, then I would like to see our legislature have an entire flexibility to spend the revenues that will be coming in from these taxes that we have established as a guide and as a base. Therefore, I hope that the committee of the whole will oppose this minority report amendment.

CHAIRMAN BENTLEY: Does the gentleman from St. Joseph desire to yield to the gentleman from Detroit, Mr. Austin?

MR. UPTON: Yes, sir.

MR. AUSTIN: Thank you, Mr. Chairman, Mr. Upton. I do feel compelled to respond to Mr. Upton's remarks, because not only his remarks but some of the other remarks made on the floor have tended to confuse the intent of the minority amendment. What the minority amendment suggests is that the legislature may by law authorize or impose ad valorem taxes. This is not a matter to be left to the discretion of the local administrators. The problem today is that this is exactly what the case is. Under the present constitution, local administrators are in a position to discriminate, and the legislature — and I certainly want to be corrected on this if I am stating it incorrectly — is powerless to do anything about it.

What we are trying to do is to provide that the legislature may by law impose ad valorem taxes which shall be uniform upon classes, and not leave it to these administrators to discriminate. If there is any discrimination as such to be done, it would be done by the legislature.

CHAIRMAN BENTLEY: The Chair recognizes the lady from Dearborn, Mrs. Cushman.

MRS. CUSHMAN: I have a couple of questions I would like to ask both Mr. Brake and Mr. Austin. I am not quite clear about the effect of this third sentence here, "The legislature may provide by law for the exemption of such property from taxation, or for alternative means of taxation of such property in lieu of general ad valorem taxation, uniform upon the class or classes" and so forth, upon the first sentence, which provides that the legislature shall provide a uniform rule covering general ad valorem taxation of real and tangible personal property. Now, what exactly does this authorize the legislature to do? What effect does this have on the first sentence? And is this a good way to handle it if you are trying to accomplish something, or are there better ways?

CHAIRMAN BENTLEY: Whom do you desire to yield to, Mrs. Cushman?

MRS. CUSHMAN: Either one. Mr. Brake, I guess.

MR. BRAKE: As long as the tax, Mrs. Cushman, is an ad valorem tax, one that is upon property on the basis of its value, this uniformity clause would govern. It would have to be taxed at the same rate regardless of its nature. The provision authorizes the legislature, however, to exempt property from ad valorem taxation and if deemed advisable to tax it in some other way. I think probably the outstanding example that we already have of that is the exemption of the automobile from ad valorem taxes, and instead the placing upon automobiles of a specific tax not based on value. That concept is carried forward in this provision.

MRS. CUSHMAN: What is the advantage of this?

MR. BRAKE: It may be very desirable not to tax all property on the basis of its value, and I think again that is the best example you can have. We avoid the necessity of assessing each automobile as to its value. We go by its weight. It makes the tax very easy to collect. There is no difficulty in the assessment. It is a much more workable thing than it would be to tax it upon the basis of its value. And there may be other property that ought to be handled in the same way. This authorizes the legislature to do it.

MRS. CUSHMAN: Would Mr. Austin agree with this as an interpretation?

CHAIRMAN BENTLEY: Mrs. Cushman yields to Mr. Austin.

MR. AUSTIN: I do agree with this interpretation, and I would add that the minority did not criticize or attempt to change the remainder of this paragraph.

MRS. CUSHMAN: Do you feel this is an adequate way of handling the problem that you are after, or is there something beyond it that you are after that this cannot help solve?

MR. AUSTIN: It is the opinion of the minority that exempting certain properties from the ad valorem taxation does not solve all of the problems. There are some properties that might well be taxed under ad valorem taxation but classified.

And it has been pointed out — I don't want to get into this lengthy discussion about intangibles again, but simply to point out — that if we could classify property, we could classify intangible property and tax it under the ad valorem taxation. But since we are desirous of taxing intangibles at a lower rate than other property, we have to exempt it and then tax it under the specific taxation. But we could apply a lower rate to intangibles if we could classify intangibles for ad valorem tax purposes.

MRS. CUSHMAN: I wanted to get your reaction to this. I asked several people at home about their reaction to this thing, and particularly people in the schools because in Wayne county, as you know, we are already taxing certain kinds of property above this 50 per cent level. I did discuss it with several people, and they felt that this was a matter that could well be of concern to the schools, because they thought it was going to harm the tax base and the income that the schools would be receiving under millage, and this is of considerable concern to me. But I did want to know whether this was an adequate way of handling the particular problems that you run into. It seems to me this is a case where uniformity of treatment does not necessarily mean equality of treatment — just as you get into with sex sometimes. (laughter)

MR. AUSTIN: I think your concern is well founded, Mrs. Cushman.

CHAIRMAN BENTLEY: Mrs. Cushman, did you desire to yield further time to the gentleman from Birmingham, Mr. Van Dusen, for further reply?

MRS. CUSHMAN: Fine.

MR. VAN DUSEN: Mr. Chairman and Mrs. Cushman, just to add a few examples to those cited by Mr. Brake, let's take oil and gas, which are beneath the surface of the ground. Nobody knows how much is there. The general ad valorem basis of taxation is not at all appropriate when you can't tell how much property is there, and therefore it is exempted under the present law from the general ad valorem tax and is subjected to a severance tax. The constitution has in the past and at present made special provision for the assessment of utility properties on a statewide basis, and this is a special ad valorem tax because it is impossible to properly value a railroad just taking the segment of its track that runs through one school district to the segment of its track that runs through another. This is another kind of special taxation which could be accomplished under the alternative means suggested by the majority proposal.

Mr. Austin said that it would be necessary to have the minority amendment in order to clarify intangibles. I think this is not true, because quite clearly the majority proposal limits the uniform rule to general ad valorem taxation of real property and tangible personal property, so that intangible property would be a special class under the majority proposal.

Let's just take a little bit of a look at what could be accomplished, however, under the minority amendment and the degree of chaotic classification into which you could get. The legislature could decide, for example, that drug store inventories would be assessed and taxed at one rate, hardware store inventories would be assessed and taxed at another rate, that the property of lawyers would be assessed and taxed at another rate and so on ad infinitum. Anyone who is familiar with the system of personal property tax classification adopted in Ohio is aware that the opportunity for classification is limitless and it lends itself to the problem of the squeakiest wheel before the legislature getting the grease in terms of who gets

the favorable classification and who doesn't. That is why uniformity is desirable.

CHAIRMAN BENTLEY: Mrs. Cushman, you still have the floor. Do you desire to yield further?

MRS. CUSHMAN: Yes.

CHAIRMAN BENTLEY: The Chair recognizes Mr. Austin.

MR. AUSTIN: I think Mr. Van Dusen will recognize or at least will appreciate the nature of my remarks and what my intent is. I think that what he is actually doing is making a mockery of what the legislature might do if given the authority to classify. I don't believe that the legislature would make such ridiculous classifications as he has suggested.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Ypsilanti, Mr. Lawrence.

MR. LAWRENCE: I don't know whether the question should be addressed to Mr. Austin or Mr. Van Dusen or Mr. Brake, but I have a different angle on this problem, one that I have been interested in for some time. I don't want to get into problems of local government. I am not getting into desirability of annexation, but I am interested in the tax phase of it, and I am wondering if either or both the majority report or the minority would cover the situation where a municipality seeks to enlarge its borders by annexation, take in perhaps vacant land, land that is being used as farm land, perhaps a gas station or similar business, but is unable to extend its services to the area taken in immediately. For instance, it may be unable even to render police or fire protection. It may not be able to extend its water or sewer lines.

Under our present system a great deal of hardship has been caused to some people who even have been annexed unwillingly, because they were unable to prevent it. They have received no immediate benefit, and in some instances for several years found their taxes not multiplied once or twice, but as high, in some instances I know, as 5 times, and the local authorities were claiming that there was nothing they could do about it because it was necessary that that property be taxed on a uniform basis, and since it was within the city, all property within the city had to be treated the same.

I have seen different municipalities — that is, the township and cities within adjoining townships — get into very bitter disputes, fights. I have seen people get out to work against, say, the legitimate expansion of a municipality's borders if it involved their property, particularly because of the fact that they were getting no benefit whatever for their purposes from the annexation, who would, if they could, have some relief in this respect: in other words, be assessed as though they were still in the township until such time as development caught up with them or municipal improvements and services could be rendered.

Now, our cities apparently in various areas are growing. It is my understanding that in California — perhaps Mr. Ostrow may know about this — they can have a different rate of taxation where property does not receive the same benefit, we will say, that downtown or the area immediately surrounding downtown receives. The advantage to the municipality, of course, is that it enables the municipality to control the development. It enables it by zoning, by planning to arrange for the orderly development, the proper use of the property for everybody's benefit if something of this nature can be done.

As I say, I don't want to get into this matter of annexation. That is not my intent. What I am wondering is if either the majority report or the minority report enable a distinction to be made of this nature to help out the situation I speak of.

CHAIRMAN BENTLEY: Whom do you desire to yield to, Mr. Lawrence, for an answer?

MR. LAWRENCE: It doesn't make a bit of difference.

CHAIRMAN BENTLEY: Well, you have the floor.

MR. LAWRENCE: All right, Mr. Austin.

MR. AUSTIN: I will answer first. I am sure Mr. Van-Dusen will want to comment also. Mr. Chairman, Mr. Lawrence, I think you have made a very eloquent plea for the minority amendment. (laughter) Incidentally, California is one of my favorite subjects on the matter of taxation. It just happens that California has a number of the provisions that we are objecting to here in Michigan, and California, incidentally, is booming economically.

As to classification, I would say that classification is the answer to the very questions that you raised. Classification would permit orderly development. And I might add that there is a certain amount of classification that is done now which has been — well, I will put it this way: which has been admitted by many of the assessors and supervisors who testified before our committee, but the inference was that these are handled more or less by administration. In other words, there is some leeway that — well, let's say that it is exercised by local administrators on subjects of this kind. But what we are seeking to prevent is that kind of indiscriminate administration. What we would like to do is to put the matter squarely up to the legislature to work this problem out and to provide the types of classifications that are necessary so that it will become a matter of law.

CHAIRMAN BENTLEY: The gentleman yields to the gentleman from Birmingham.

MR. VAN DUSEN: Mr. Chairman, Mr. Lawrence, I think the answer to the problem which you have posed — and it is a very real problem — lies not in classification but in good assessment. Now, you suggest that here is property which does not have utilities, which does not have roads, which is not enjoying municipal service. Quite obviously it doesn't have the same value that property has which does have roads, sewers and other municipal services. The problem which you raise can and should be handled under a uniform system of taxation by assessing it at its proper value in relation to other properties which do enjoy the services which you describe.

Now, let's pose the other side of the coin, because this is something which the committee did consider very carefully. Let's suppose that classification is possible and that the legislature, or whatever other authority to whom the classification responsibility is given, determines that it does want to classify vacant and undeveloped land and have it assessed and taxed at a lower rate than developed land. This simply offers a tax subsidy to the land speculator because he is in a position then to simply hang on to his property which is enjoying a lower assessment and a lower tax rate until such time as he is surrounded by the utilities which you have described. His property is actually far more valuable than any assessment which it has under the system of classification and, in effect, all of the other taxpayers are simply subsidizing the land speculator.

MR. LAWRENCE: Mr. Van Dusen, I would like to ask you this question: is it better to have that land speculator stay outside of the city where the city has no control over him and the city gets none of the tax, and keep the land as farm land or vacant land, or is it better to have him within the city? In other words, until his property has increased in value, until those services are available so he can develop it, is there any harm done in taxing at a lower rate?

MR. VAN DUSEN: Mr. Chairman, I think, Mr. Lawrence, the answer is that if he is going to have his property fairly assessed, he isn't going to object to annexation. He is only going to object to annexation if the taxing authority is going to assess him as though he had municipal services when in fact he doesn't.

I don't want to protract this, Mr. Chairman, because I think the subject of annexation is one which has been dealt with in local government and will be at length.

MR. HATCH: Point of order, Mr. Chairman. I thought that Mr. Austin this morning agreed to an amendment which would exclude real estate from the minority report.

CHAIRMAN BENTLEY: Does the gentleman desire to respond to the point of order?

MR. AUSTIN: Yes, Mr. Chairman. Mr. Hatch, we did not agree to an amendment. There was a suggestion made that perhaps an amendment ought to be made, but we did not agree to an amendment.

MR. HATCH: I thought you stated that you would consent to such an amendment and you weren't concerned with land.

MR. AUSTIN: Well, I might say this: that we would rather get a decision on the present amendment before we get into any other amendments.

CHAIRMAN BENTLEY: Does the gentleman from Ypsilanti still desire the floor?

MR. LAWRENCE: Yes, I again would like to ask Mr. Van Dusen, if the majority report maintains the status quo, then I am afraid that the matter of assessment is not the answer. I shall give you one specific example. Outside of Belleville there was a farm. It continued to be used as a farm, and the city of Belleville wanted it. The owner was willing to bring that land in the city on one condition, that as long as it remained farm land until they got their sewage problems straightened out along the Huron river, that he would use it as a farm and it would be taxed as such. The city — I attended the meeting — agreed to that. The city in good faith agreed to that, they were so desirous for the property. But once he was in, they were told down at the Wayne county building by somebody, some assessor, some equalization group or something else, that they couldn't fulfill the agreement they made between themselves and keep it as farm land, and the man's taxes were raised 5 times as much with absolutely no benefit.

Now, all I am interested in knowing is, does either of these 2 plans allow that sort of thing? I want to know how to vote.

CHAIRMAN BENTLEY: Whom do you yield to, Mr. Lawrence?

MR. LAWRENCE: Mr. Van Dusen.

CHAIRMAN BENTLEY: The gentleman yields to the gentleman from Birmingham.

MR. VAN DUSEN: I would suggest, Mr. Lawrence, that the problem which you pose is one which probably deserved some more careful investigation prior to the annexation. But we gave this a lot of consideration in the committee. If the property which you have described was fairly assessed at its land value, then under the majority proposal what you have described would take place. If it was not fairly assessed, if the value which the city ascribed to it was not correct, then he would be also protected under the majority proposal.

But the majority proposal, I repeat, is one which would not permit the subsidization of a land use not related to the real value of the property. If the property has greater value, then it should be assessed at that value.

MR. LAWRENCE: I wonder if I may yield to Mr. Everett.

CHAIRMAN BENTLEY: You may yield to whomever you wish, Mr. Lawrence.

MR. EVERETT: Thank you, Mr. Lawrence. I would like to speak on the same point, because it seems to me Mr. Van-Dusen's answer is not a complete one.

In many suburban areas, the land values, particularly where they are improved, are greater than they are in the city, but it is the tax rate itself which has prevented annexation in many of these cases, the people recognizing that they are not, in the immediate future, going to receive the same services which those in the established community now receive. They may eventually and probably will eventually, but not immediately. So the mere difference in assessments or assessing standards does not solve the problem. For that reason it seems to me there is considerable value to the minority report amendment.

I think there are, however, parts of it which would make it impossible for many of us to vote for it. Mr. Austin himself has indicated because of its relationship with the last paragraph that it would permit a graduated income tax. Now, there are some of us who are caught in the middle here. We are not going to vote for a graduated income tax. In fact, we are going to vote against it. But we certainly don't feel that it has any relationship with this first sentence which the minority has submitted a separate amendment to.

MR. AUSTIN: Mr. Chairman.

CHAIRMAN BENTLEY: Mr. Lawrence, you still have the floor. Do you desire to yield to Mr. Austin?

MR. LAWRENCE: Yes.

MR. AUSTIN: Mr. Chairman, I am wondering if they would yield to an amendment which will put this matter squarely up to the delegation as to the subject at hand and to get this other problem of the income tax out of the present minority report amendment?

CHAIRMAN BENTLEY: Mr. Lawrence, do you desire to yield to Mr. Austin for the purpose of his offering an amendment to his amendment at this time?

MR. LAWRENCE: Yes.

MR. AUSTIN: Will the secretary read my amendment?

SECRETARY CHASE: Mr. Austin has offered an amendment to the minority amendment:

1. Amend the amendment after "ad valorem" by striking out "and other" and after "classes of" by striking out "persons or"; so that the language will then read, "The legislature may by law authorize or impose ad valorem taxes which shall be uniform within the classes of property to which they are applied."

CHAIRMAN BENTLEY: Mr. Lawrence, do you desire to yield further to Mr. Austin for the purpose of explaining his amendment?

MR. LAWRENCE: Yes, I do.

MR. AUSTIN: I believe the amendment is self explanatory. I would also like to apologize for not having seen to it that the delegates had copies of this amendment on the type of paper that we normally furnish to them with line numbers so they could make the changes on their copies. And I might ask, Mr. Secretary, will the delegates in the future be furnished copies of these minority reports where they can make the corrections?

CHAIRMAN BENTLEY: The secretary will respond.

SECRETARY CHASE: The secretary has been puzzled about this situation, Mr. Austin, because of the fact that these minority reports are printed in full in the journal, and in order to save some printing expense, we have resorted to the printing of only 200 copies of minority reports. Now, I have referred this matter to Mr. DeVries for the committee on administration to consider, and what their answer is going to be, I have no knowledge as yet, but we will try our best to dovetail these amendments into the amendments that you have in the journal so we hope you can follow it that way. That is the reason that I read your amendment in the form that I did.

MR. AUSTIN: Thank you, Mr. Secretary. I don't want to confuse the discussion with that subject matter, but I thought we ought to at least raise the point at this time.

I think the amendment is clear. We are simply attempting at this time to remove any reference at all to other taxes so that we have before us only the matter of classification of property, and I don't think that I will take any more of the time of the delegates to elaborate.

CHAIRMAN BENTLEY: The gentleman from Ypsilanti still retains the floor.

MR. LAWRENCE: I merely was unable to get the amendment. I wondered if you could help me, Mr. Chase.

SECRETARY CHASE: Thank you, Mr. Lawrence. After "ad valorem" strike out "and other", and after "classes of" strike out "persons or".

MR. LAWRENCE: Unfortunately I have the journal. Is that in the first paragraph?

SECRETARY CHASE: After "ad valorem" strike out "and other" and after "classes of" strike out "persons or"; so that the language will then read, "The legislature may by law authorize or impose ad valorem taxes which shall be uniform within the classes of property to which they are applied."

CHAIRMAN BENTLEY: Mr. Lawrence, do you yield the floor?

MR. LAWRENCE: Yes, thank you, Mr. Chairman.

CHAIRMAN BENTLEY: The question is on Mr. Austin's amendment to the minority amendment. Does anybody desire to speak on the Austin amendment? Mr. Ford, do you desire to speak on the amendment to the amendment?

MR. FORD: I just want to ask a question.

CHAIRMAN BENTLEY: You are recognized.

MR. FORD: As I understand it, the words "of persons or" are the words that were stricken, Dick?

SECRETARY CHASE: Just "persons or", so that it reads "classes of property."

MR. FORD: Is it the intent of this amendment, Mr. Austin, that we would be clearly talking about the ability of

local governments by legislative mandate or by legislative permission to classify real property as well as the others?

MR. AUSTIN: Mr. Chairman, Mr. Ford, under this amended language, the local government or, let us say, the legislature — it is the legislature that will provide the laws for doing this — will be able to classify real as well as personal property.

CHAIRMAN BENTLEY: Is there further discussion on the amendment to the amendment? If not, the Chair will put the question. All those in favor of the amendment to the amendment will respond by saying aye. Those opposed?

The amendment to the amendment is adopted.

The Chair is now ready to continue with recognition. He would like to remind the committee that only now are we beginning to recognize persons who requested recognition since 2:00 o'clock. All previous speakers had been recognized during the morning session. The Chair recognizes the gentleman from Onondaga, Mr. Davis.

MR. DAVIS: Mr. Chairman, members of the committee, as a member of the committee on finance and taxation I rise at this time to support the committee proposal and to oppose the minority amendment. I would like to say, however, that I do have respect for the minority amendment. We have discussed this matter at great length in our committee, and I believe that most of the committee was open minded about this particular matter. I don't think that there has been a point which we have heard on the floor but what was considered or something in relation to it within the committee. So I am briefly going to attempt to list a few of the reasons why I like the committee report.

In the first place, I think the property taxes have about gone their limit, particularly in some areas of this state. I think that this particular committee proposal places a ceiling which is realistic and which is meaningful. Second, it offers a means of legal recourse where there is inequity of assessment which is cheaper and easier to attain. Example: a store owner with inventory evaluated at 70 per cent on his personal property, beside the residence which is assessed at 35 per cent of cash value, under our present constitution has had difficulty in gaining any kind of a realistic or cheap solution to his problem. Fifty per cent cash value gives him something now which at least is a tangible means of bringing this back down where it should be.

This committee proposal does provide for exemptions or for alternative means of taxation. I am not going to comment upon this because I think Mr. Van Dusen has covered this in an excellent fashion. The minority amendment would likewise allow this, so this is not a particular difference.

The committee proposal does place some limits on the legislature for broad scale classification, and I think that this is desirable. We have heard exceptions, and I am glad that some of our city friends have recognized that in the case of assessing farm property next to subdivision developments, there is inequity there, and we have considered this in detail and we were quite familiar with this problem. I might say that there are other exceptions, and there are long lists of them. One of them, for example, industrial property which is not being used, has no source of income. And we could go ahead with a long list of these.

We have considered many of these exceptions, and I will not attempt at this time to list more. I would like to say that the uniformity clause as such is of a constitutional nature. It is found in our present constitution and it is present in many other state constitutions. After considering all of the exceptions, the majority opinion of the committee was that we were willing to go along with equality, and we think that this particular committee proposal does give some concrete means of attaining equality in taxation for ad valorem purposes in the state of Michigan. In fact, I think that it provides an orderly, a realistic and a workable approach for ad valorem taxation, and I would like to urge support of the committee proposal and defeat of the minority amendment.

CHAIRMAN BENTLEY: Acting on the earlier suggestion of President Nisbet, the Chair will declare an informal recess for 10 minutes. The committee will reconvene at 3:35. The gentleman from Fennville, Mr. Hutchinson.

MR. HUTCHINSON: Mr. Chairman, I simply want to raise my objection on the record to this procedure. I am opposed to the committee of the whole recessing for 10 minutes, because if it can recess for 10 minutes, it can recess for 10 hours.

The purpose of the committee of the whole is to keep working, and if the committee of the whole desires a recess, the committee of the whole's only proper action is to rise. Please keep in mind that the convention, acting in committee of the whole, acts, so long as it is in the committee of the whole, only by a greater number of votes for or against anything, and it also acts at the same time that the convention is supposed to be acting. Now, if we fall into what I deem to be the extremely poor parliamentary practice of permitting the committee of the whole to recess for 10 or 15 minutes, in parlimentary law it could completely delay the work of this convention.

I understand that the president stated that this is the course of action that would be taken. I want to object to it strenuously, and I move that the committee do now rise.

CHAIRMAN BENTLEY: The question is on the motion that the committee do now rise. All those in favor will say aye. Those opposed?

The ayes have it. The committee rises.

A DELEGATE: Division.

CHAIRMAN BENTLEY: A division is demanded. Not sufficient support. The committee has risen.

[Whereupon, the committee of the whole having risen, President Nisbet resumed the Chair.]

PRESIDENT NISBET: Mr. Bentley.

MR. BENTLEY: Mr. President, the committee of the whole has had under consideration certain items on the general orders calendar of which the secretary will give a detailed report.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 51** and has come to no final resolution thereon.

PRESIDENT NISBET: The Chair recognizes Mr. Elliott.

MR. A. G. ELLIOTT: I move we recess for 10 minutes.

PRESIDENT NISBET: The question is on the motion to recess. Those in favor say aye. Opposed, no.

We are recessed for 10 minutes.

[Whereupon, at 3:28 o'clock p.m., the convention recessed; and, at 3:38 o'clock p.m., reconvened.]

The convention will please come to order.

SECRETARY CHASE: Mr. President, a quorum of the convention is present.

PRESIDENT NISBET: The Chair recognizes Mr. Bentley.

MR. BENTLEY: Mr. President, I move the convention resolve itself into committee of the whole for further consideration of the items on the **general orders** calendar.

PRESIDENT NISBET: The question is on the motion of Mr. Bentley. Those in favor say aye. Opposed, no.

The motion prevails. Mr. Bentley.

[Whereupon, Mr. Bentley assumed the Chair to preside as chairman of the **committee of the whole.**]

CHAIRMAN BENTLEY: The committee will be in order. We will continue the discussion of **Committee Proposal 51.** The Chair recognizes the gentleman from Kalamazoo, Mr. Allen.

MR. ALLEN: Mr. Chairman and members of the committee, when I asked to be recognized early this afternoon, I did not know Mr. Lawrence was going to bring up the point which he raised and also that the matter of real estate was still left in the proposed amendment, so rather than talking on what I had first intended to speak on in support of the majority report, let me talk to Mr. Lawrence's problem. I think that at first it may appear that there is a great advantage in an old

city being able to entice or invite or encourage a new area to come in by having a differential tax base; for example, being able to say to this new area coming in, "We will only tax you at 7 mills and the rest of the city will be at 12" or "you at 10 and the rest at 14," and I suppose you might think that coming from a city, we would be very anxious to do this sort of a thing and make annexation easier. But I would like to tell you that it is the experience of the cities and my own feeling that it doesn't work this way. First, I don't think that it is quite moral or right to try and lure people in by promising something which may not work out and, secondly, I think it invites some problems which first don't meet the eye.

Let's take my own city, for example. We have done some substantial annexation and we still have the same millage rate for the whole city. We have to, under the present constitution and we would have to under the majority report. And, as I say, I favor the majority report on this phase of it. Now, we put in $6 million worth of storm and sanitary sewers. These were specially assessed to the extent of 1½ million, and 4½ million of the cost was shared by the general fund. Who pays out of the general fund? Who pays into the general fund? Well, it is the people of the whole city, and the people of the whole city are largely the old city, the city as it existed before any annexation. If you go in for a graduated tax rate as is the suggestion or the question of Mr. Lawrence, what you do is make the burden even greater on the old residents of the city. Now, it has been burden enough to have, in my city, for example, $4½ million paid out of the general fund, most of which comes from the old city, but what you would do by applying this split tax rate or this classification would be to add onto this burden. I think that this is going to cause as many problems as you think it will solve. Possibly it would turn these annexation votes right around where the outlying area would want to come in and the inside area will say, "No, we don't want you in because you are going to get a different tax rate".

Now, in addition to the problem that is raised in this connection, you have another problem that comes if you have a different classification on taxes. I don't think any city is uniformly street lighted, any city is uniformly street paved, any city has uniformly storm sewers and uniformly sanitary sewers. We still find that we have better street lighting in parts of the city than in the rest. Now, look at the problem that is going to come to your local council if you start having this classification. An area of the city is going to say, "Well, our street lights aren't as good. We want 1 mill less in taxes." Or a small section of the city will say, "Well, we only have a storm sewer and we don't have the sanitary sewer. We want a reduction of 1 mill on taxes." Or another part of the city is going to say, "You still haven't paved with curb and gutter our street, and we want a reduction on taxes." And somebody else says, "You have some parks in your part of the city and we don't over here, and we want a reduction." And I think you invite for your local council all kinds of problems when you invite a nonuniformity rule, and therefore I think on this phase of the report, the majority is right. We forget that the uniformity rule on real estate and personal property just didn't happen overnight. We have had a lot of experience with it. And I don't think we should lightly discard it.

I know it has been criticized, but the principal criticism on our taxation has been on personal property, and it has been because personal property has been assessed at higher rates than real estate — not because of the classification but the entire rate, and this can be corrected under the majority report. This is the evil, not the evil in classification, primarily. And, therefore, speaking to this point, I very strongly think that we would make a mistake and invite a lot of trouble that we don't first think about if we have separate classification for real and personal property.

CHAIRMAN BENTLEY: Does the gentleman from Kalamazoo desire to yield to the gentleman from Detroit, Mr. Faxon, who I believe is seeking recognition?

MR. ALLEN: Mr. Faxon saw me in the hall and said he has to catch a plane and asked if I would yield. I do.

CHAIRMAN BENTLEY: The gentleman yields.

MR. FAXON: Thank you, Mr. Allen. Mr. Chairman, members of the committee, I want to get my words in now before I leave because there are at least certain fundamental issues that have been raised that I would like to get my ideas expressed upon, and that is with regard to what we are doing on this whole tax article.

Now, I heard earlier this morning a reference made to the effect that historical constitutions always included some sort of prohibition upon the legislature with regard to what taxes it may or may not impose. And I like nothing better than to look back into the early charters and early colonial constitutions to see whether this in fact is the case or not.

And as I listen to the debate progress, I hear more and more reference to the evils that may ensue from a legislature that would haphazardly consider the provisions that are being advanced by the Austin amendments, and in this case we see all these evils and we are against it, and they are sort of setting up a strawman in the legislature that is going to go haywire in terms of how it is going to write tax law.

Now, I didn't view the task of constitutional convention delegates as getting into the specifics of tax law, and I would hope that we would find some confidence in the legislative process to insure that these people who are elected and representative of the people of the state — and are elected periodically for that purpose — would be able to write the tax law.

Just to look back into the Pennsylvania Charter of 1696, and, I just read this one sentence because I think this reflects the kind of feeling that people then had in legislative assemblies:

> . . . that the representatives of the free men who, met in assembly, shall have power to prepare and propose to the governor and council all such bills as they or the major part of them shall at any time see needful to be passed into law.

A general statement, nothing dealing with taxation as early as 1696.

We first get into tax reference in the Pennsylvania Constitution of 1776, and I just want to state this one paragraph of the whole charter, the whole constitution. They had just one paragraph dealing with taxation. And I would ask you to compare the historical past to the present with regard to this one paragraph. It says in section 41:

> No public tax, custom or contribution shall be imposed upon or paid by the people of this state except by a law for that purpose, and before any law be made for raising it, the purposes for which any tax is to be raised ought to appear clearly to the legislature to be of more service to the community than the money would be if not collected.

And here is the part I like particularly:

> . . . which, being well observed, taxes can never be burdens.

Now, this is a feeling expressed in the confidence of the legislature to use some wisdom with regard to the imposition of taxes, and that is all that constitution said.

And I looked into the constitutions of New York and New Jersey and North Carolina, and none of them have any reference to different types of taxation which may or may not be done. There was a general feeling of trust in the legislature for making these determinations.

And so I wish we could in some degree revert to some confidence in writing a constitution and not imposing restrictions and to permit flexibility, and what we get into when we don't is the problem of writing tax legislation here on the floor. So let me then in conclusion give my support, whatever that may be worth, to the Austin amendment, and in doing so, I ask that you consider the historic past and the tradition that has been set in early constitutions with permitting no restrictions upon the legislature in terms of tax legislation. Thank you, Mr. Chairman and the committee.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Gladwin, Mr. Hubbs.

MR. HUBBS: Mr. Chairman, members of the committee, I was quite interested a few moments ago in the words that Mr. Ostrow spoke with regard to personal property taxes, and I think Joe Snyder said some of the same things, and at that time I felt moved to come forward and express my views with

regard to personal property taxes. I am going to say this about them: I think that something has got to be done about them or small business is not going to exist in this country very long.

However, with reference to the point under discussion, uniformity of taxes, I am in complete support of the committee report. However, I don't think that the committee has done an adequate job of making it possible for the burden at the local level through personal property taxes to be somewhat eased, and I would support the committee report and ask you to vote against the minority amendment. You will hear from me later on personal property taxes again. Thank you.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Marshall, Mr. Hatch.

MR. HATCH: Mr. Chairman, like Mr. Hubbs, I sought recognition shortly after Mr. Ostrow and Mr. Snyder had spoken. If you will recall, I believe it was Mr. Ostrow who referred to the situation of the man owning the hardware store with $20,000 worth of inventory and the real estate broker who had maybe $800 worth of inventory; that the hardware dealer would pay a substantial personal property tax, whereas the real estate broker would not, and that both men were making substantially the same amount of money. Now, Mr. Ostrow's solution to this problem is to classify personal property.

Well, first of all, you have to look at the evil he was describing. Assuming there was an evil there present, the evil, to my mind, is not that they were both paying taxes based on personal property which was assessed at its fair market value or the same percentage of fair market value; the evils, if any, lie in the fact that both businessmen were making approximately the same amount of money and yet were paying different taxes.

Now, I submit that the solution to the evil is not in classification. Assume further now that there was another hardware store farther down the street that also had $20,000 worth of inventory but which was not making any net income whatsoever. Now if we assume that there were a classification, this of hardware inventories or some such classification, this wouldn't correct the evil which Mr. Ostrow was referring to, because you still would have a man making a considerable amount of money who was paying a given tax and a man making no money paying the same tax. So I submit that classification is not the solution to the evil referred to by Mr. Ostrow.

I think the committee report leaves it open to either exempt or to take certain property out and tax other incidents of that property, which may more directly correct the evil that Mr. Ostrow was referring to. If there is to be a tax on personal property, I think that a machine in one plant should be taxed the same as a machine in another plant, or a desk in a real estate office should be taxed the same as a desk in a hardware concern. So I support the committee report and oppose the minority amendment.

CHAIRMAN BENTLEY: The Chair recognizes the chairman of the committee, the gentleman from Stanton, Mr. Brake.

MR. BRAKE: Mr. Chairman, ladies and gentlemen of the committee, in a problem of this kind there are always 2 approaches that one, I think, should make. One is his philosophy of government, his principles, the thing he believes in in connection with a particular problem. The other is the matter of public acceptance. I think we would be very remiss if we didn't recognize that that matter of public acceptance is a part of every problem that comes before us.

I work with tax people from one end of this state to the other the year around when I am not in the convention. I don't know of anything in the tax field that would cause more of a shock to the people of this state than the word to go out from here that we have abandoned the uniformity clause. They have tied to that for so many years. We recognize it has never been 100 per cent effective, but we have depended on it, they have depended on it. They think it is something they can tie to, and the reaction is going to be bad if they find we have abandoned it. So much for that.

Now I would like to say something else to you. We have after today, 10 more days before we reach the February 21 deadline that we have set for ourselves. I went over the list last night of the things that I knew about that I think are going to be highly controversial on the floor of this convention and before the committee of the whole. There may be many more that I don't know about. And of course there are always what one may speak of as little things that he thinks are not controversial that turn out to be extremely controversial. I found 15 issues, 14 besides this one, that I thought would take as much time as this one will take, and we have 10 days after today—and it is now 4:00 o'clock today—in which to handle it.

It seems to me we have 1 of 2 choices: either we are going to subject ourselves to an arbitrary limitation of the time we can use, or we are going to have to discipline ourselves and when we have said what is necessary to say, to stop talking and go to voting. I am not saying that with any wish that there should be a lack of scrutiny on anything that comes out of the finance and taxation committee. We are not only willing to have you do it but we want you to do it. If there are bugs, we would rather you would find them here than to have somebody find them afterwards, which would be much more embarrassing. But if we can't discipline ourselves enough to avoid any unnecessary debate, we are either going to break our deadline or we are going to subject ourselves to something that is very arbitrary, and I am sure we always wish to avoid that. This is just one amendment on this thing. We know there are 2 more. I don't know how many others. We are up to 4:00 o'clock on one amendment. Let's say just what has got to be said and nothing more. (applause)

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Musekgon, Mr. Hanna.

MR. W. F. HANNA: I don't want to get shot by the chairman, but I will be as brief as I can, Mr. Brake. Mr. Austin said that by allowing the legislature to classify, we would eliminate the discretion to ignore the law as to the valuation placed on various classes of property which is now prevalent throughout the state. Business, labor and management all agree that in the Minnesota tax study, where classification ran rampant, this discretion was abused far more than in any state having a uniformity rule, and advocated uniformity.

Secondly, he implied, I think, that in California by classification of assessments, you solve a problem of farm land lying within an incorporated city having a different tax rate. I submit that an examination of the California practice will show that they have cities with multiple tax rates and what they call service districts where they assess for services, and the solution to the problem raised by Mr. Lawrence can be solved by 2 words in the home rule city act, which provides for assessment for public improvements, in adding the words thereafter "and for public services." This is the practice followed in townships, and this solves the problem very neatly. I don't think that we should mislead those people who have farms on the borders of cities that the state legislature under the minority amendment would pass a law which says that farm land subject to a 10 mill city tax will be assessed at 25 per cent of cash value, and that farm land that is subject to a 1 mill township tax will be assessed at 50 per cent of cash value.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Grand Ledge, Mr. Doty.

MR. DEAN DOTY: Mr. Chairman, I would just like to point out that Michigan has one of the finest state tax commissions in the country, and this tax commission in the last 10 to 15 years has done a tremendous job in improving and correcting inequities that existed within this state. I think that this is something we should all think about. Remember that a lot of work has been done in this area, and I would urge you to support the majority report.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Battle Creek, Mr. Everett.

MR. EVERETT: Mr. Chairman, fellow delegates, Mr. Brake makes a very tough man to follow, and I certainly shall try to be brief. I would suggest that we are overlooking one point. The uniformity clause in the present constitution is actually an illusion. Tax rates and tax assessments are not uniform in this state and have not been for a long time. Now, whether the first sentence of the majority or the minority report is accepted,

the balance of it would certainly tighten up this matter, and rightfully so.

In my own community in Battle Creek in 1957 we had a study made of the city and an adjoining township, and to quote very briefly from it, these outside experts found that the tax rate in the city on real property was based on 55 per cent of the 1953 replacement cost, while in the township it was 50 per cent of the 1941 replacement cost. Now, I need hardly remind anybody that the cost of building between 1941 and 1953 went up tremendously.

The assessment rate in the city was 80 per cent of cost on inventory; in the township, half of cost on inventory. In the city, 40 per cent of the cost on machinery and equipment; in the township, 25 per cent of the cost on machinery and equipment. In other words, there has been no uniformity.

To me there are certainly dangers in the minority amendment, but I think there is an overwhelming advantage to it. It does open the door to some effort to classify city services to break down the barriers which now prevent uniform and legitimate annexation. I am not saying this would be done easily. Mr. Allen has pointed out some real obstacles to it, and it would be a very difficult problem for the legislature to come up with classifications which would answer it, but at least we are leaving the door open so that in the future, as there is more experimentation in this field, more study of it and more knowledge of it, the opportunity is then there for classification in this area. I think if proper classification standards could be found and used, it would tend to solve much of the problem of annexation, which did not faze Kalamazoo but does faze most of our cities.

CHAIRMAN BENTLEY: Does the gentleman desire to yield to the gentleman from Detroit, Mr. Austin?

MR. EVERETT: I would.

MR. AUSTIN: Thank you. I believe that most of what is to be said on this subject has been said, and I feel also that perhaps the delegates are ready to vote. I would just like to make this one last comment. The minority report or amendment does not suggest that classifications be made; only that the legislature have the right to do so if in its wisdom it feels that it ought to be done.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Grand Rapids, Mr. Goebel.

MR. GOEBEL: Mr. Chairman, I shall try to be brief, upon orders from our chairman. I think our chairman, Mr. Brake, and Mr. Van Dusen have done a very fine job in presenting the committee's proposal. I want to say that I agree with Mr. Allen in his remarks because I do feel, as he does, that in trying to correct some of the problems that are in this area, we may be causing a lot of headaches in the future.

Now, this is a constitutional limitation, as it should be, but the committee feels—and I certainly feel—that there is adequate flexibility within the limitations of the committee proposal to allow the legislature to come up with a good tax program, and it is my feeling, and I think the feeling of the majority on the committee, that if we raise this limitation or are more generous with it, open it up beyond what the committee has offered, that we will open up a field of taxation which, at least in my judgment, will allow discrimination. The committee report, in my judgment at least, offers the needed flexibility to the legislature, but yet stops short of a situation where taxes could be discriminatory. I oppose the Austin amendment and I am for the committee proposal. Thank you, Mr. Chairman.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Detroit, Mr. Nord.

MR. NORD: Mr. Chairman, it appears that anyone who speaks after Mr. Brake does so at the risk of his displeasure (laughter) and I am going to risk his displeasure. I know I had lunch with him yesterday, and maybe I never will be able to again, (laughter) but I believe, nevertheless, that it isn't quite right of Mr. Brake or any other person to stand up repeatedly over and over again various different times and state that now that he is standing up, everyone else should sit down. I don't believe that I need to follow that dictum.

Now, several red herrings have been dragged across this issue repeatedly, and that is the reason I take the floor again, to get rid of the red herrings and find out what the real issue is. Mr. Brake states that we are going to shock a great many people if we abandon the uniformity clause. I have no statistics on the matter. He may be right and he may be wrong. I can't tell. But let's keep this in mind, even if we were to wipe out the uniformity clause entirely—which is not going to be done—it would not be just that that we do. We are adding something at the same time as we are taking something away. We are adding something that is bigger and better than the uniformity clause, and that is equal protection of the laws clause. We didn't have that in this constitution before. That is why we had the uniformity clause. Now we have the equal protection of the laws clause and now there is no need for the uniformity clause. Let's not get nervous that the people will be excited about that. When we explain to them that we have the same provision as the United States constitution—and the United States constitution has not been something undermining our security, as far as I know—people will not get nervous.

The other red herring that has been dragged across this debate is the question of classification, whether we are for classification or against classification. I can say for my part, without any fear of contradiction, that I haven't got the slightest idea whether I am for or against it. I don't know anything about it, and I am not being required to vote on that. We are not in the position to be determining now whether there should be a classification scheme. We are not being asked to write a tax program now that will be good for the state for the next 50 years. If we were asked to do so, we should refuse to do so. We don't know the answers to all the questions that will arise. We don't know how to solve the problems of these different people who have been mentioned on the floor in the last few minutes: little business, farmers, hardware store owners, real estate brokers and others. We are not going to solve all of their problems here. We are not going to solve any of their problems here. The only question is, are we going to set up a framework of government, or are we going to set up a framework of government which could possibly succeed in governing?

As Mr. Austin has pointed out, the issue is not classification. The issue only is whether we want the legislature to determine whether, at any time in the next 50 years, it needs some sort of classification. It seems to me, therefore, that the answer is simply this, the problem not being one of shocking the people by removing something without adding something better; the problem not being one of discrimination because of the equal protection of the laws clause; the problem not being one of classification, it boils down to one thing: flexibility.

Do we want to trust the legislature with anything at all or do we want to be so certain that we know everything that can ever happen in tax law that we are going to settle it all here and now? I believe we should give the legislature some flexibility when we can, and I believe here we can. The minority amendment ought to be adopted.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Niles, Mr. Boothby.

MR. BOOTHBY: Mr. Chairman, ladies and gentlemen, I will be brief because I am in proximity to the person who made the recent statement concerning briefness. I think that this whole issue of whether the constitution should be flexible in this regard or whether it should impose a limitation actually boils down to a very interesting point, and that is this: Senator Hutchinson has time and time again indicated that a constitution should be a limitation on power, and when we come into the area of legislative power, I would assume that it should be a limitation on the power of the legislature in certain areas, and that area, I think, is the power of being partial. And I believe that when you inject the question of flexibility, you are actually saying that the legislature should be so flexible that it can be partial. And I think that is what we must be very careful in considering at this point, whether we should allow the legislature to be so flexible that it can be partial to any group or faction in society.

I think it is very interesting to note a statement that has

been made by Mr. Madison in the Federalist Papers number 10, and that statement is this:

> The apportionment of taxes on the various descriptions of property is an act which seems to require the most exact impartiality; yet there is perhaps no legislative act in which greater opportunity and temptation are given to a predominant party to trample on the rules of justice. Every shilling with which they overburden the inferior number is a shilling saved to their own pockets.

I think that the whole question before us at the present time is, are we going to let the legislature be so flexible that it can be partial in the determination of taxes and the requirement that certain individuals pay a greater amount of taxes than other people? I think this is an important question that should be considered.

CHAIRMAN BENTLEY: Is the gentleman from Taylor, Mr. Ford, in the chamber? If not, the Chair will recognize the gentleman from Howell, Mr. Sharpe.

MR. SHARPE: Mr. Chairman, I agree with Mr. Brake. I don't think there is anything else that could be said that hasn't been said, except I feel a little bit bewildered, like the young fellow that went hunting ducks with his father, his father being a sharpshooter and never missing his mark. They sat all day in the boat, and along towards evening along came a couple of mallard ducks. The father raised up with his double barreled shotgun. Bang! Bang! Nothing happened. The ducks flew away. He turned around to the boy and he said, "Son, you have just witnessed something you will probably never witness again in your life." "What's that, Pop?" "Two dead ducks just flying away!" (laughter)

CHAIRMAN BENTLEY: The vote now occurs on the amendment. Mr. Bonisteel, the gentleman from Ann Arbor, is recognized.

MR. BONISTEEL: Mr. Chairman and fellow delegates, before we vote on this proposition, I think it might be well if we took a good look at the language that is being proposed here by the committee report. I want to read it. It will only take me about 2 minutes. I read it over many times since this debate started.

[The first 2 sentences of Committee Proposal 51 were read by Mr. Bonisteel. For text, see above, page 853.]

This is the part now that I want you to listen to:

[The balance of Committee Proposal 51 was read by Mr. Bonisteel. For text, see above, page 853.]

Now, it is my contention that the language that I read and which I said I wanted you to pay particular attention to is sufficiently broad enough to give this legislature leeway to do the thing that ought to be done, and certainly I don't want to stand in the way of broad discretionary powers, which I believe it has within a workable framework here, to permit it to do the thing that ought to be done by statute, and I think it has this power in the language which I have read to you.

In addition to that, I don't think it is a function of this convention to anticipate what interpretation the supreme court or the courts of this state are going to make upon such legislation as might be submitted for the people of this state by the legislature, and I am going to support the report of the committee.

CHAIRMAN BENTLEY: Does the gentleman from Taylor, Mr. Ford, desire recognition at this time, now that he has returned to the chamber? (laughter)

MR. FORD: I was out there dictating a series of minority reports. (laughter) I just wanted to rise to support the Austin amendment as now amended at the suggestion of Mr. Everett, and I am looking over here at Don Lawrence. This is one of the few times we have an opportunity to agree in the last 3 months, but I think that Don brought up a point that is very important to many of us, and although Mr. Van Dusen indicated that he didn't think that we should consider the local government aspect of this, I believe that many people in the state have considered it.

I represent a suburban area, as does Mr. McCauley and as do both of the Browns and some of the others here who are vitally concerned with what the future might be for us if the legislature was given the authority—and I don't believe that anything in history indicates that this would be flagrantly abused—to create some form of property classification. Now, Glenn Allen has indicated that the way this might apply would be for the residents of one part of a newly annexed territory to be assessed and have a millage of 5 mills and the rest of the city have 10 mills. This isn't what we would contemplate at all. What we would envision is the possibility of classifying, for example, acreage as farm property, and then reclassifying it at the time that it is subdivided and becomes the pawn in the game of real estate speculation that Mr. Van Dusen mentioned and at the time when the city services are extended to it, to the end that we can get out of the bind that some of the large urban townships are in now. We have areas that should and would become cities if it were not for the fact that a substantial part of their total area is occupied by people who are not receiving city services, don't anticipate them in the near future, and resist very violently being incorporated into and as a part of an ultimate city development at a time when they are still farming the land.

I might point out that I don't feel at all uncomfortable about being on the side of the farm bureau in this, but they have given it some consideration, and I would just like to read a short statement here that is contained in the 1962 Policies of the Farm Bureau:

> One of the most serious threats confronting farm owners in some sections of the state is that of becoming rather helplessly involved in annexation procedures which would place their property within the farflung municipal limits of some overly ambitious city or village.

I would like to say parenthetically I think they might well have added, "becoming incorporated into a new city."

> Many farmers are finding their property tax burdens almost confiscatory as a result of being taken into an enlarged school district with an expanding budget. A high tax rate, multiplied by a large assessment of a sizable and well equipped farm, frequently results in a school tax burden which siphons off most of the receipts of the farming enterprise. The situation becomes doubly serious when such a farm is absorbed into a city or village that has to pay added taxes for various municipal services which it may not receive and doesn't desire or doesn't need. Obviously, many cities and villages are continuing to grow and from time to time should absorb property being used for industrial, business and residential purposes. However, the steadfast position of the farm bureaus in matters of this sort is that of opposition to the inclusion of land which is being used solely for agricultural purposes in such annexation projects.

Now, this last sentence is the key to it. One of the things that is standing in the way of the orderly development of the suburban areas of the state of Michigan is the resistance that people in agriculture—understandably, if you look at it from this point of view—put up when we talk in terms of incorporating a township into a home rule city or annexing a sizable area, a sensibly sized area, into the city. The ultimate result of this is very frequently, and all too frequently in Wayne county, we have taken a township and in order to acquire this very desirable home rule status, cut it off from the rest of the township, and we end up with a lot of small cities, small in size and small in ultimate population and small in ultimate future, because there is nothing left in the way of planning. There is nothing left to plan for the future in the way of vacant land.

It is my opinion that if we were in a position down in Wayne county to establish a system of land classification so that the assessed valuation formula, not the millage formula but the assessed valuation formula, could be distinct and different as to the use to which the property is put, that you would very rapidly see the township pass out of existence as a unit of local government down there. And I am not saying that this is altogether a desirable end in and of itself, but for

the many problems we have in suburban Wayne county and many other suburbs, I think, around the state, this would be another step in the direction of solving the problem. It would be another way to permit the legislature to help us if it were so inclined.

At the present time there is no sense going to it with such a plan regardless of how well it may be conceived and, as has been said before, we are not asking in this amendment to put a self executing clause in here that says that property will be classified. All we are doing is asking that you permit the legislature at some time in the future when someone does devise a fair and equitable system, however limited it may be, to be in a position to do it and do it at a time when it is very badly needed, not after the next constitutional convention, we hope, 50 years from now.

CHAIRMAN BENTLEY: The question is on the Austin minority amendment as amended. Those in favor of the amendment as amended will respond by voting aye. Those opposed, nay.

A DELEGATE: Division.

CHAIRMAN BENTLEY: Division is called for. Is the demand for division supported? It is. The secretary will read the amendment as amended.

SECRETARY CHASE: The minority amendment as now proposed by Mr. Austin and others is as follows:

1. Amend page 1, line 8, after "Sec. a.", by striking out the first sentence of section a and inserting in lieu thereof the following: "The legislature may by law authorize or impose ad valorem taxes which shall be uniform within the classes of property to which they are applied.".

CHAIRMAN BENTLEY: Those in favor of the minority amendment as read will respond by voting aye. Those opposed by nay.

SECRETARY CHASE: Has everyone voted? The machine is locked and the totals will be recorded.

CHAIRMAN BENTLEY: Mr. Stopczynski.

MR. STOPCYNSKI: I would like to get the Chair's vote.

CHAIRMAN BENTLEY: The Chair does not vote in committee of the whole, but he will advise the gentleman that if he was sitting on the floor, he would vote no.

SECRETARY CHASE: On the adoption of the minority amendment proposed by Mr. Austin and others, the yeas are 50; the nays are 78.

CHAIRMAN BENTLEY: The amendment, as amended, is not adopted.

Does Mr. Austin desire to offer his next amendment to this paragraph at this time? He is recognized for this purpose.

MR. AUSTIN: Thank you, Mr. Chairman. As I stated earlier, there are 3 minority amendments to the committee proposal. The second deals with the question of the 50 per cent of cash value standard. I feel again that in order to save time and to get the issue squarely before you, it is probably best that I read the report which is very succinctly stated and does present the arguments as clearly as we can do it, and I would like to refer you to page 522 of the journal, and I am wondering if I can ask the secretary to read the amendment.

CHAIRMAN BENTLEY: Without objection, it will be read.

SECRETARY CHASE: Pursuant to minority report B of Messrs. Austin, Binkowski, Pellow, Stopczynski, Walker and Young,

Mr. Austin offers the following amendment:

1. Amend page 1, line 13, after "assessed" by striking out the comma and "which shall not, after January 1, 1966, exceed 50 per cent,".

MR. AUSTIN: Thank you, Mr. Secretary. The effect of this amendment is to delete reference to the 50 per cent limitation on assessments.

[The supporting reasons for minority report B to Committee Proposal 51 were read by Mr. Austin. For text, see above, page 855.]

It is well to point out that wherein there has been in some of our discussion some advocacy for retaining limitations on the legislature, these limitations were expressed by the people in referendums. I submit that this 50 per cent of cash value level does not have the dignity of that type of mandate, and I would move that the minority amendment, which seeks to amend the majority report, be adopted.

CHAIRMAN BENTLEY: The Chair recognizes the chairman of the committee, the gentleman from Stanton, Mr. Brake.

MR. BRAKE: Mr. Chairman, ladies and gentlemen of the committee, it is always unfortunate when you have either in the constitution or in the statutes a law that nobody follows, and I submit to you that at the present time it is absolutely impracticable for our present constitutional limitation to be reached. Were we to go from the 50 per cent at which the state board of equalization is now trying to hold us to the 100 per cent, doubling the tax on property, any advantage in owning property would be gone and we would have on our hands a tax strike of proportions immediately, to say nothing about a loss of property from those who couldn't pay.

As Mr. Austin has pointed out, the aim of the state tax commission and the state board of equalization in recent years has been definitely to fix the state equalized value at 50 per cent, not recognizing the 100 per cent that the constitution calls for.

In a few communities — and it is only a few communities — there has been a problem more difficult, more unfortunate than this, in that they have kept their assessments above the 50 per cent limit as to tangible personal property and below 50 per cent on real estate. Anyone who has felt himself aggrieved in his assessment and who has chosen to try it in court rather than an appeal to the state tax commission, complains that his property is 70 per cent or 80 per cent or 90 per cent, is met immediately by the fact that the law is being complied with. "You are not above 100 per cent. You have got no standing here."

We are trying to put this at a place where it can be followed and where the state tax commission and the board of equalization have been trying to follow it for some time. The fear that putting it at 50 per cent will mean you will go down to 25 per cent, I think, is fully answered by the need for the money which will keep it at 50 per cent. Recognizing that the communities that have been offending by assessing at 70 per cent or even more on tangible personal property can't immediately adjust themselves, this allows 5 years for that adjustment. And, as has been stated earlier in the day, in Wayne county they have been on that program in advance. They have been on a program to reduce, and 3 more years is supposed to get it down to the 50 per cent where it belongs.

I talked to one person who is an assessor of a rather sizable city of this state. Feeling that this was coming, his city didn't wait, but immediately took steps to get that personal property assessment down to where it was, and told us about 2 new industries already coming into the city, and he attributed it in large part to the fact that they had changed their tax program.

We think that what we are suggesting here is sound, that it is practical and that it will be entirely acceptable to the people in many parts of the state. The people have been insisting on this for some years without getting it. We think it is time they had it.

CHAIRMAN BENTLEY: The question occurs on the second Austin amendment, being minority report B. Those in favor will respond by saying aye. Those opposed?

The amendment is not adopted.

There being no additional amendments to the first paragraph, Mr. Austin is recognized for the purpose of offering his third minority report amendment, which is to the second paragraph of the committee proposal.

MR. AUSTIN: The third amendment offered by the minority is found on page 520 of the journal.

CHAIRMAN BENTLEY: Mr. Austin, if there is no objection, the secretary will read your amendment.

SECRETARY CHASE: Pursuant to minority report A of Messrs. Austin, Binkowski, Pellow, Stopczynski, Walker, Young and Ostrow,

Mr. Austin offers the following amendment:

1. Amend page 1 by striking out all of lines 21 and 22; and by striking out all of page 2.

CHAIRMAN BENTLEY: The gentleman is recognized in support of his amendment.

MR. AUSTIN: Mr. Chairman, before I proceed, I should mention that there is an amendment to the committee proposal which the committee had asked me to make on the floor of this committee, and I think it is probably appropriate that I make that amendment so that we will be talking about the proposal as the committee intends us to consider it, and I will tell you what that amendment is.

CHAIRMAN BENTLEY: Without objection, Mr. Austin, your amendment will be temporarily withdrawn, and you are recognized for the purpose of offering the committee amendment.

MR. AUSTIN: On line 21, after the word "class" insert "or classes".

CHAIRMAN BENTLEY: The secretary will read the proposed amendment.

SECRETARY CHASE: Mr. Austin, on behalf of the committee on finance and taxation, offers the following amendment:

1. Amend page 1, line 21, after "class" by inserting "or classes"; so that the language will then read, "Every other tax shall be uniform upon the class or classes on which it operates."

CHAIRMAN BENTLEY: Does the gentleman desire to speak on behalf of the committee amendment?

MR. AUSTIN: Yes, Mr. Chairman. It was discovered by the committee that by omitting the words "classes" we may be making 1 or 2 of our present statutes unconstitutional. I refer particularly to the inheritance tax and the chain store tax, both of which have a graduated rate structure, and there have been rulings to the effect that because we now refer to class or classes, these statutes are constitutional under the present language. And what the committee has done with the new language is simply to revise it or, let us say, to improve on the language without changing the substance. But it was necessary to include these 2 words to retain the substance of the present language in the constitution.

CHAIRMAN BENTLEY: The question is on the committee amendment. Those in favor will respond by saying aye. Those opposed?

The committee amendment is adopted.

The gentleman is now recognized in support of his minority amendment.

[For text of amendment, see above.]

MR. AUSTIN: I am now reading from page 520. I want to make sure I am getting this right:

[The supporting reasons for minority report A to Committee Proposal 51, with the exception of the table, were read by Mr. Austin. For text, see above, page 854.]

If the same opportunity is not available to the state of Michigan to graduate its rate structure, it is quite possible that Michigan taxpayers will find themselves contributing disproportionately to federal projects in other states.

I would like to review this chart with you. This is not a simple subject, and I hope that I will have your close attention as I attempt to analyze this chart. What we have provided here is a chart which shows the comparative income tax on the last $10,000 of a taxable income of $200,000. Now, $200,000 incomes are not unusual in the state of Michigan. We use the figure, though, so that no delegate would feel that we were picking on him. We also use the figure because at the higher income levels, the inference that we are making is very clear.

If we assume 2 different tax rates and that the state tax is deductible in arriving at the federal liability, the chart which follows will show what the relative impact will be of the state income tax and the federal tax on the last $10,000 of this $200,000 income. We are talking about the income above $190,000 for a $200,000 income taxpayer. The first column assumes 1 per cent flat rate and the second column assumes a graduated rate structure up to 10 per cent, a maximum of 10 per cent.

First, let's look at the federal income tax liability on this $10,000. The federal income tax on the last $10,000 of income would be $8,900. The rate of the bracket is 89 per cent. In other words, a taxpayer earning $200,000 pays $8,900 to the federal government from the last $10,000 of his income. If we were to levy a flat 1 per cent income tax at the state level, he would pay to the state $100. If we graduated the rate structure up to 10 per cent, he would pay the state $1,000. The amount borne by the federal government of the $100 would be $89, and the amount borne by the taxpayer would be $11.

If we graduated up to 10 per cent, the amount borne by the federal government would be $890, and the amount the taxpayer would actually pay out of his pocket would be $110.

Now, let's see how that $1,000 would be divided up. The amount going to the federal government under a 1 per cent rate would be $8,811. The state would get $100 and the taxpayer would have left $1,089. If we graduated the rate up to 10 per cent, the federal government would get $8,010. The amount going to the state would be $1,000. And the amount that the taxpayer would have left would be $990.

It was important to make this analysis because we here in our state government can do nothing about the steeply graduated federal rate structure. It is something we live with. And wherein we may have some opposition at the present moment to enacting a graduated income tax, it is quite conceivable that our legislature in the near future, in using the income tax for substantial tax reform, may find it advisable to graduate the rate structure in order to see that Michigan gets its fair share from income taxation. It is the view of the minority that the hands of the legislature should not be tied in this regard. I move that the minority amendment be adopted.

CHAIRMAN BENTLEY: Mr. Van Dusen.

MR. VAN DUSEN: Mr. Chairman, members of the committee, a majority of the committee obviously believes that this limitation, the prohibition against a graduated income tax, is one of the kinds of limitation which the people should impose in a constitution. Some of the reasons for the belief of the majority of the committee are expressed more eloquently than I can express them by an eminent historian, Professor C. Northcote Parkinson. Some of you may be familiar with Professor Parkinson. He is the author of "Parkinson's law." He is known perhaps most recently as a writer of humorous literature, but he is and has been for many years a noted historian. He holds a Ph.D. from the University of London. He has lectured on history all over the world, including some of our major American universities. One of his laws with which you may be familiar and of which we have seen recent demonstration is that the time devoted to debate in any parliamentary body varies inversely with the importance of the subject under discussion. (laughter) And I would suggest that perhaps our debate, operating on the basis of that law, might be quite brief on this topic because this is an important one.

Here are a few of the things that Professor Parkinson calls to our attention in his volume on Parkinson's Second Law — and Parkinson's Second Law, incidentally, is that expenditure rises to meet income, something with which we are all personally familiar, and familiar in terms of its applications in government — but Professor Parkinson discusses the history of the graduated income tax at some length in this volume, and he goes back to one of the early experiments of our federal government with the graduated income tax in 1862, and comments as follows — and this is brief:

> The importance of the act of 1862 lies in its differentiated incidence. In this act we see the beginning of disproportional or progressive taxation. Until that date, the congressman who voted for a tax did so in the knowledge that it would fall as heavily on himself as upon others, a safeguard some might think important, but that principle went in 1862.
>
> The significance of this was emphasized at about this

time by an economist, Mr. J. R. McColloch. He said tax graduation was an evil not to be paltered with, and the savages described by Montesquieu who, to get at the fruit, cut down the tree, are about as good financiers as the advocates of this sort of taxes. Wherever they are introduced, security is necessarily at an end.

Even if taxes on income or otherwise were most unexceptional, the adoption of the principle of graduation would make them among the very worst that could be devised. The moment you abandon, in the framing of such taxes, the cardinal principle of exacting from all individuals the same proportion of their income or their property, you are at sea without rudder or compass and there is no amount of injustice and folly you may not commit.

Just a few additional brief comments. Professor Parkinson says:

Taxes can be grouped, as we have seen, into 2 broad categories: those we impose on ourselves and those we inflict upon other people. Taxes in the first category, examples of which in history are extremely rare, are self limiting. They may rise in time of emergency, but once the crisis is passed, they should tend to fall. The United States in their earlier days offered an example of taxation falling within this category.

On the other hand, most taxes clearly come within the category of burdens imposed by some people upon others. The taxes decreed by ancient monarchies were all of this type, and so are the graduated taxes of today at all levels above the average, being voted indirectly at least by those to whom the heaviest rates will not apply.

One final comment:

The taxes inflicted by some people upon others will inevitably rise as expenditure rises, and expenditure will rise in accordance with Parkinson's second law. Their only limit is the point where the victim refuses to pay, and to that point they will rise by the principle which governs their growth.

That is nearly all I will have to say on the subject of a graduated income tax on behalf of the committee.

Just one final comment. I can think of nothing which we could do in this convention more beneficial to the general impression of Michigan as a state in which to do business than to prohibit the imposition of a graduated income tax.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Detroit, Mr. Hodges.

MR. HODGES: Mr. Chairman, I am somewhat confused. I was going to get up following Mr. Austin's remarks and state that I felt for the first time I was going to get up and speak for something that was going to pass, and I was going to figure that I had Mr. Van Dusen along with me on this proposition because, as I review the situation in the committee of taxation so far, I remember back when we were talking about keeping a 1946 base for the sales tax, at that time Mr. Van Dusen got up and said, "We don't go for this because, you know, if we got this, there may be a question whether we could take the sales tax off food and drugs." So I thought, gee, that was a very good idea. So I submitted that proposal, fully expecting to have some support on it from the majority party and from Mr. Van Dusen.

And much to my amazement, he came up and talked in terms of flexibility and said that we can't restrict or tie the hands of the legislature; that it has got to be free so it can decide on taxes. So even that made a pretty good argument, I thought, and it may be a good thing to have some flexibility, although I thought that this perhaps was some place that we could give a break, finally, to those in the lower income groups.

And then when we came to this, I thought, by gosh, now we can really go on the flexibility kick and knock this thing out, this outrageous limitation on the hands of the legislature. And yet, what do we find? The great proponents of flexibility coming in here and trying to nail down their philosophy in this constitutional convention. I can only say this: not only are they nailing their philosophy in; they are nailing the coffin on this constitution.

I believe that their clients and my constituents would disagree on this particular thing, but I would remind them of this, when it comes to voting on this constitution, there are more of the kind of constituents I represent than the clients that they are representing at this convention.

I urge you, I implore you, for those that we felt we couldn't take advantage of or give a little break to because we didn't want to tie the hands of the legislature, I now stand where Mr. Van Dusen stood yesterday, pleading and crying for flexibility. I hope I am not a voice in the wilderness and I hope we will vote for the minority amendment.

CHAIRMAN BENTLEY: The Chair recognizes the lady from Grand Rapids, Mrs. Judd.

MRS. JUDD: I imagine perhaps the best defense that can be made for this restriction is Parkinson's second law, but if we must resort to a humorist to defend the proposal, I am going to resort to Hutchinson's first law, which is that everything we put in the constitution is a restriction on the legislature, and it appears that everything in this whole tax program that has come before us is a restriction.

I am very much concerned about the future of Michigan. We are writing a constitution, we hope, for the next 50 years. We have been greatly impressed with the tremendous growing debt. We have been appalled at the problem of the pension funds. We heard a great deal about the problems of higher education. And so I am wondering what we are doing to solve those problems through the financial point of view. All that we have done so far is to put a ceiling on property tax assessment, is to restrict the kinds of taxes that can be put on property by the uniformity clause; and we have kept in the restrictions on the sales tax, given more than half of it away to local governments, and now we say the state cannot levy a graduated income tax.

I am not particularly in favor of a graduated income tax at this time, but I think that we are imposing a very dangerous restriction on the next 2 generations with the growing populations that we certainly must expect. So before I could vote against the amendment and in favor of forbidding an income tax, I would like to hear what positive proposals there are in the tax committee for solving our state's financial problems.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Detroit, Mr. Binkowski.

MR. BINKOWSKI: I would yield the floor to Mr. Brake or to Mr. Van Dusen if they wish to answer Mrs. Judd's remarks because I think they are very pertinent and very germane.

CHAIRMAN BENTLEY: The gentleman from Detroit yields to the gentleman from Birmingham.

MR. VAN DUSEN: Mr. Chairman, I am not prepared to replow the ground which we have plowed at some length this week. However, as one who favored the flexibility involved in the elimination of earmarking, as one who favored a general loosening of the uniformity clause embodied in the committee proposal which we have just adopted, as one who strongly supported the committee proposal with respect to the sales tax when the earmarking failed, which does greatly increase the legislature's flexibility in dealing with that problem, I feel that, in general, the recommendations of the committee on finance and taxation, while not exactly what I would have liked, do give to the legislature considerably greater freedom and flexibility in dealing with the state's financial problems now and in the future.

I think it is important that we bear in mind a distinction between limitations on the legislature's power to tax and limitations on the legislature's power to appropriate. In the case of limitations on the power to tax, we are imposing upon those who are elected to represent us the guidelines which we as citizens believe are necessary to protect us as a people, both majority and minority, from excessive, confiscatory, discriminatory or unreasonable taxation.

Each of the limitations which have been prescribed up until now are limitations which go back as far as 100 years in our history. The prohibition against the graduated income tax with which we are now dealing is one which has not been in our constitution up until now largely because the evil of the gradu-

ated income tax has not been as apparent until the last 20 years. The progressivity, the steep graduation of our federal system has taught us that this is a problem, and if there is to be some balance in our total tax structure—all of us, after all, are federal taxpayers as well as state taxpayers—this is a limitation which we as citizens of this state may reasonably impose upon our legislature.

CHAIRMAN BENTLEY: The gentleman from Detroit, Mr. Binkowski, has the floor.

MR. BINKOWSKI: In other words, Mrs. Judd, you don't have an answer to your question. I don't think there is any.

However, continuing on, we talked a great deal about flexibility, and we have been provided with a great number of studies by various groups in the hopes and expectations that we would come out with the best possible document. I think that this committee proposal, beyond any question, limits the legislature to a tax program for the next 50 or 75 years which will definitely be regressive in nature.

Someone has labeled this type of language as tax legislation. Well, this sentence, in my mind, is not simply a question of tax legislation; I say it is class legislation. This language of the prohibition of a graduated income tax will only help those people in the upper middle income groups. Furthermore, I think that, beyond any question, the prohibition of a graduated income tax—if you are going to generalize, I have to use a generalization—is nothing more than a scheme to insure that the rich get richer and the poor, poorer.

Now, Mr. Van Dusen brought out the question of the progressivity of the federal tax and it was this argument which I hoped that we would not have to get involved with, because the basic issue as I see it is a question of whether you want to tie the hands of the legislature or not. The merits of a progressive tax are not before us.

Now, last Friday—that is, February 2, 1962— in the Detroit Free Press there appeared an article by Sylvia Porter. I had it reproduced for each and every one of the delegates so that they could see and read and get the facts for themselves. These are not my opinions, but you have an opinion, based upon a very comprehensive study, that the rich people in this country have not lost anything through a federal progressive tax system. And there it is. And if you want to get involved with it, you can argue with the author, not me.

However, this provision not only extends on a state level but, importantly, to us in the Detroit area. Based upon a very exhaustive, very comprehensive, long study of our tax problems, our tax study committee concluded that first we should seek relief on a state level. It appears very doubtful that we will get relief on the state level. Their secondary conclusion was to have then a piggyback income tax. With this provision in our state constitution, the city of Detroit could not enact the type of program that our people thought was best. Now, you talk about local self government, and I say this provision is interfering with our local self government in Detroit.

Again, I am not advocating a graduated income tax. I don't know what the facts are. We haven't had any experience here with the flat rate income tax. But we can look to the over 30 states which do have a graduated income tax structure, and I think that one of the best arguments, if we are going to get involved in the merits, is that if you had a state graduated income tax, you deduct this from your federal income tax, and therefore this is a system and a method for retaining more of the money here in Michigan than sending it to Washington.

Now, the Michigan tax study staff papers are very comprehensive and some of you, I know, have read them, and I am not going to read everything, but I think that at page 505 they talk about the personal income tax, they talk about the mutual deductibility in terms of federal income tax, and I think you should be aware of these facts. I will quote:

> The Minnesota income tax as applied to a single taxpayer may be used as an illustration.

Incidentally, this is one of states that taxed the highest. That is, their graduated income tax goes up to, I think, about 11 per cent.

> In this state, although the statutory rate in the first bracket of taxable income is 1.1 per cent, mutual deductibility lowers the rate, in terms of net cost to the taxpayer, to .71 per cent. At the level of $20,000 of taxable income, the marginal statutory rate is 11 per cent, but mutual deductibility reduces the marginal effective rate to 2.2 per cent.

In other words, a person with a taxable income of $20,000 in terms of a state income tax only pays 2.2 per cent. Quoting further:

> As income rises, the additional tax rate which is attributable to the state tax rate continues to fall and is only 1/10 of 1 per cent at $200,000.

Now, I don't know if you need any more arguments with respect to this.

And again I come back to the basic argument: we are supposed to be writing a document which will allow flexibility in the future. By inserting this sentence, you not only tie the hands of local government but you tie the hands of the legislature. I think that this should be considered very seriously.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from St. Clair Shores, Mr. Snyder.

MR. SNYDER: Thank you very much, Mr. Chairman. I sincerely feel that the delegates here, following the analysis made by Mr. Austin and his minority group, couldn't have helped but be impressed by the effort, work and toil that has gone into the study. This was not a capricious approach to a very serious and fundamental problem; it was an attempt made by sincere people to resolve a problem confronted by us so that we could rise up to our responsibilities. And what was most important in my mind was the effort made by the committee to salvage for the people of this state with their formula a large part of the moneys that was already being lost. I feel that this effort to recoup this money was most admirable.

And I say, without malice, that it would be sheer folly for me to compare this report with the best seller that we are having on the market and one that was used in rebuttal to this very carefully planned report, and I can't see any justification when you counter the report made by Mr. Austin and his committee with the fact that it is a law that the expenditures rise to meet income. I haven't had the opportunity as yet to find time to read this best seller because I felt that my time must be devoted more to the mundane problems that we have facing us at the convention.

Certainly I feel that we have a responsibility here to our citizens, and I say that if you review the report of Mr. Austin, you will find that here is an opportunity to recoup, to bring back to the people at little or relatively low cost some of the money that is going out. We have a responsibility here, and I am only thankful that we have this report, and I have reasons to believe that this report was instituted much prior to this convention. I feel that the work and efforts that have gone into this report represents the cross thinking of many groups and many citizens in many communities in this state. And the report that we have today was a sort of a general feeling that all of the people or many of the people in the state of Michigan felt that this was what they should be having to resolve their problem, and I sincerely hope that you weigh the 2 volumes, Mr. Parkinson's and Mr. Austin's, and you evaluate which you feel would best resolve the problems that we have before us.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Bay City, Mr. Higgs.

MR. HIGGS: Mr. Chairman, and fellow delegates, I share some of the concern of Delegate Snyder as to that which is lost and I feel the need to salvage some of the money going to Washington. Delegate Binkowski also expressed this as a method of retaining part of the money which would be going to the federal government. And I note also that Delegate Austin in setting forth this schedule at page 522 refers to "amount borne by the federal government." It would seem as though, in reading these statistics, that a big part of this tax will be paid by the federal government. I think this is a form of self delusion. I would assume that if we graduated beyond 10 per cent, to perhaps 80 or 90 per cent, we could retain even more of that money; and the more money we keep back from Washington

I would assume would result in a lowering of the federal budget, if we want to carry the self delusion even further.

Now, I do believe that this report is the result of careful study, but I would be more impressed to have the figures compared if we did not make an assumption of graduation to 10 per cent, because that is not in issue—it is wide open as to what the graduation could be—but assume a graduation equal to the federal government and then see where we are.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Hillsdale, Mr. Prettie.

MR. PRETTIE: Mr. Higgs has touched somewhat upon the matter with which I wish to deal. I am impressed with Mr. Austin's very fine report, and particularly, in paragraph 5, his statement that this does not, in effect, need to be a soak the rich or pamper the poor provision. I find, however, that the only example given is on an assumed taxable income of $200,000. My question to Mr. Austin is whether you have made similar comparisons—which I have tried to do here very rapidly—on incomes of, say, $10,000, $20,000 or $30,000 with which I think we would find many more of our constituents concerned.

CHAIRMAN BENTLEY: Does the gentleman yield to Mr. Austin for a reply?

MR. PRETTIE: I do.

MR. AUSTIN: Mr. Chairman, Mr. Prettie, there are such statistics available, and I did not want to presume upon the time of the committee to quote a lot of statistics. I gave these 2 examples because I thought they expressed the principle that is involved. However, I have plenty of statistics, and I will be prepared in the morning to quote more of them.

MR. PRETTIE: I am wondering, Mr. Austin, if you could accommodate the delegates by making a table similar to the one appearing on pages 521 and 522 of our journal with reference to taxable incomes of, let us say, $10,000, $20,000 or $30,000, which would assume a maximum tax rate in the $20,000 figure of about 30 per cent, and I come up with the fact that the taxpayer is going to have approximately $810 less of keepable income. The federal government's reduction in tax by reason of the mutual deductibility would in that instance be approximately $70.

As an accountant, I would greatly appreciate your verifying my figures and giving us examples on, say, $10,000, $20,000 or $30,000, which I think is more realistic than the hard case that makes bad law that you have cited to us.

MR. AUSTIN: I am not sure that I know exactly what assumptions Mr. Prettie would like us to make in preparing the specific charts that he is interested in. Are you interested in the total liability or just the marginal income?

MR. PRETTIE: Parallel tables to those on pages 521 and 522 with only this change in assumption: a taxable income of $10,000, $20,000 and $30,000 instead of $200,000.

MR. AUSTIN: Very well.

CHAIRMAN BENTLEY: The Chair recognizes the chairman of the committee, Mr. Brake.

MR. BRAKE: Mr. Chairman, I move the committee rise.

CHAIRMAN BENTLEY: The motion is on the question of whether the committee shall rise. All those in favor will respond by saying aye. Those opposed, no.

The motion prevails and the committee will rise.

[Whereupon, the committee of the whole having risen, President Nisbet resumed the Chair.]

PRESIDENT NISBET: The Chair recognizes Mr. Bentley.

MR. BENTLEY: Mr. President, the committee of the whole has had under consideration certain items of which the secretary will give a detailed report.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 51,** has adopted 2 committee amendments thereto, and has come to no final resolution thereon. This completes the report of the committee of the whole.

PRESIDENT NISBET: Announcements.

SECRETARY CHASE: Following the morning session of Thursday, tomorrow, the subcommittee on eminent domain will meet in room G to hear representatives of the highway department. Mr. Paul Mahinske, chairman.

A meeting of the style and drafting committee announced again, 8:00 o'clock tonight in room K.

The committee on local government meeting, which was scheduled immediately after the session today, has been postponed until 1:00 o'clock tomorrow.

We have the following requests for leaves of absence: pursuant to doctor's orders, Mr. Thomson requests leave of absence from Thursday's and Friday's session; Mr. Faxon and Mrs. Conklin request leave from the sessions of Thursday and Friday. They have been invited to judge the ice sculpture contest at the Michigan College of Mining and Technology at the Houghton winter carnival; Mr. Goebel wishes to be excused from the session of tomorrow to attend to University of Michigan business in Ann Arbor; and Judge Leibrand asks to be excused from the convention sessions of Thursday and Friday because of a trial case which has been on call for 4 months and found impossible to adjourn the case to April 2.

PRESIDENT NISBET: Without objection, they will be excused.

Mr. Brake.

MR. BRAKE: Mr. President, the finance and taxation committee will meet tomorrow morning at 9:00 o'clock.

PRESIDENT NISBET: Mr. DeVries.

MR. DeVRIES: Mr. President, there will be a meeting of the president's select committee to cooperate with the legislature on postconstitutional convention business immediately following the session in the committee on administration room.

PRESIDENT NISBET: In reply to an inquiry, minority reports to committee reports appearing in last Thursday's journal now in the hands of research and drafting will be permitted to be filed as soon as prepared. Minority reports to committee reports appearing in last Monday's journal which are in the hands of research and drafting by the end of the session Thursday will be filed as soon as prepared.

The Chair recognizes Mr. Hatch.

MR. HATCH: Mr. President, I move we adjourn.

PRESIDENT NISBET: The question is on adjournment. Those in favor say aye. Opposed, no.

The motion prevails. We are adjourned until 9:30 tomorrow morning.

[Whereupon, at 5:30 o'clock p.m., the convention adjourned until 9:30 o'clock a.m., Thursday, February 8, 1962.]

SEVENTY-FIFTH DAY

Thursday, February 8, 1962, 9:30 o'clock a.m.

PROCEEDINGS

PRESIDENT NISBET: The convention will please come to order.

This morning for our invocation we are very happy to have the pastor of Delegate Durst's church, Reverend Doctor Oliver Collins of the First Methodist Church of Adrian. Will you please rise.

REVEREND COLLINS: Shall we pray. Our Father, we thank Thee for the gifts of heart and mind and spirit which have fashioned this state of Michigan which is our home; for the wisdom of the fathers who founded this society conceived in liberty and dedicated to the proposition that all men are created equal; for the strong and good men and women who established this state upon the enduring foundations of religion. We bless Thee for the skill of scientist, inventor, engineer, and all others who have helped to unlock the resources of this state to the end that all might benefit from nature's bounty; for the tenacity of educators who have trained and trusted the common man in order that a government of the people, by the people, for the people might be securely established and extended.

May we never forget the heritage that has come down to us, bought by the blood, toil and tears of others than our own. May we strive valiantly to keep the democracy which has been bequeathed to us by those who dreamed dreams of liberty and freedom and gave the last full measure of devotion to pass the torch on to our hands. For the great character which has been woven into the fabric of this state, blessed be Thy Name. For the great leaders in crucial times who have been lifted up to direct our paths, we thank Thee.

Help us today with clear vision to see the heroes and heroines who have had reverence for life and for Thy Name as a name above every other name. Steady our hands as we grasp the lamp of righteousness today. Make dependable and wise our minds in this constitutional convention to do for the good of the citizens of today and tomorrow that which ought to be done. Free us from partisan politics so we may cross party lines to do that which is best for the people of this state, nation and world. May every delegate sit in the place of every other delegate and try to see the reform measures through the eyes of each other.

O Spirit of the living God, we surrender ourselves and our standards to Thee for cleansing and healing, for Thou art the strengthener and cleanser of all races. We are strong only as we are pure. Today may Thy morality and spirituality become the alternate beats of our own heart and work in our very depths so that we may be safe, serene and secure. May nothing make us inadequate or afraid, for we are possessed where it counts at the center of our being by Thyself.

In all our deliberations today and all other days take our littleness and ally it with Thy greatness, our insignificance and ally it with Thy significance, our love and ally it with Thy love; so whatever changes we shall make in the constitution may be for the greatest good of the greatest number. In His Name we pray together as Thy children. Amen.

PRESIDENT NISBET: The roll call will be taken by the secretary; those present, please vote aye.

SECRETARY CHASE: Have you all voted? The machine is locked and the attendance will be recorded.

Mr. President, a quorum of the convention is present.

Prior to the session today, Mr. Mahinske asked to be excused because he was not feeling well.

PRESIDENT NISBET: Without objection he will be excused.

SECRETARY CHASE: Absent with leave: Dr. Anspach, Mr. Barthwell, Mrs. Conklin, Mr. Faxon, Mr. Goebel, Mr. Habermehl, Mr. Leibrand, Mr. Mahinske, Mr. Romney and Mr. Thomson.

Absent without leave: Mr. Nord.

PRESIDENT NISBET: Without objection, Mr. Nord will be excused.

[During the proceedings, Messrs. Mahinske and Nord entered the chamber and took their seats.]

This camera on the podium will be taking a motion picture this morning for the documentary film of the convention. It will be here for the morning session only and will be the only direct, head on view of the convention that will be included in this film. This camera crew is from Wayne State University, and Wayne is cooperating with the University of Michigan and Michigan State in producing the documentary film. I hope we can have your indulgence for this morning's session in order to get this film for documentary purposes.

Reports of standing committees.

SECRETARY CHASE: No committee reports, Mr. President.

PRESIDENT NISBET: Select committees.

SECRETARY CHASE: None.

PRESIDENT NISBET: Communications.

SECRETARY CHASE: None.

PRESIDENT NISBET: Second reading of proposals.

SECRETARY CHASE: Nothing on that calendar.

PRESIDENT NISBET: Third reading.

SECRETARY CHASE: Nothing on that calendar.

PRESIDENT NISBET: Motions and resolutions.

SECRETARY CHASE: There are no resolutions on file.

PRESIDENT NISBET: Unfinished business.

SECRETARY CHASE: None.

PRESIDENT NISBET: Special orders.

SECRETARY CHASE: None.

PRESIDENT NISBET: General orders of the day. The Chair recognizes Mr. Bentley.

MR. BENTLEY: Mr. President, I move the convention resolve itself into committee of the whole for the purpose of further consideration of items on the general orders calendar.

PRESIDENT NISBET: The question is on the motion of Mr. Bentley. Those in favor say aye. Opposed, no.

The motion prevails. Mr. Bentley.

[Whereupon, Mr. Bentley assumed the Chair to preside as chairman of the committee of the whole.]

CHAIRMAN BENTLEY: The committee will be in order. When the committee rose on yesterday, the pending business was Committee Proposal 51 to which 2 amendments have been adopted. The business immediately before the committee was the amendment, pursuant to minority report A, by the gentleman from Detroit, Mr. Austin, and others to delete the second paragraph of that proposal.

For last previous action by the committee of the whole on Committee Proposal 51 see above, page 853.

The Chair recognizes the chairman of the committee, the gentleman from Stanton, Mr. Brake.

MR. BRAKE: Mr. Chairman, ladies and gentlemen, before we start on the continuing debate on the amendments on 51, may I call your attention to the fact that you have on your desk a redraft of 56, which will be offered as a substitute for the 56 that you have in your books. The changes are

mostly just in language for clarity, but if you wish to look them over before we get to that item, which will be, I hope, not long, you will have them.

CHAIRMAN BENTLEY: At the time the committee rose on yesterday, the Chair had the following names of people who had requested recognition. Without objection, they will be recognized in this order: the gentleman from Marshall, Mr. Hatch; the gentleman from Grand Rapids, Mr. Martin; the gentleman from Detroit, Mr. Downs; the gentleman from Grand Rapids, Mr. Tubbs; the gentleman from Pontiac, Mr. King; the gentleman from Muskegon, Mr. Seyferth; the gentleman from Taylor, Mr. Marshall. Is the gentleman from Detroit seeking recognition at this time?

MR. AUSTIN: Yes, Mr. Chairman, for the purpose of offering a substitute amendment for the minority report amendment.

CHAIRMAN BENTLEY: The gentleman is recognized for that purpose.

MR. AUSTIN: Thank you. Will the secretary read the substitute amendment?

SECRETARY CHASE: Mr. Austin withdraws the previous amendment proposed by the minority report and in lieu thereof offers the following:

1. Amend page 1, line 22, after "operates.", by striking out the balance of the line and line 1 on page 2. This leaves in the language, "Every other tax shall be uniform upon the class or classes on which it operates."

CHAIRMAN BENTLEY: Without objection, the pending minority report amendment will be withdrawn and the gentleman is recognized in support of his new amendment.

MR. AUSTIN: Mr. Chairman, the purpose of the change is to retain the first sentence which will permit classification or will permit uniformity within classes. What we are objecting to principally is a constitutional prohibition to the graduated income tax, and I think by retaining the first sentence we do not alienate anyone who feels that we ought to have a uniformity statement in the constitution but who might otherwise feel that we should not have a prohibition to a graduated income tax; and I move that the amendment be adopted.

CHAIRMAN BENTLEY: Without objection, the Chair will now proceed to recognize those members who requested recognition yesterday in the order just read. The discussion will be on the new Austin amendment. The gentleman from Marshall, Mr. Hatch.

MR. HATCH: Mr. Chairman, I sought recognition yesterday for the purpose of suggesting the amendment to Mr. Austin which he has introduced as a substitute.

CHAIRMAN BENTLEY: The gentleman from Grand Rapids, Mr. Martin, is recognized.

MR. MARTIN: Mr. Chairman, the debate yesterday proceeded on the theory that it is always going to be possible to pass some of this income tax which might be approved here in the state of Michigan on to the federal government. It seems to me that we are operating under a real delusion here because, as the various states increase their state income taxes — and this seems absolutely inevitable — the federal government is going to be increasingly pressed because this reduces its income tax take and sooner or later we probably will find that the deduction for state taxes or for state income tax is no longer available to favor those who have to pay a state income tax. For that reason, I think we delude ourselves if we think that this state income tax is in any way going to be in the long run paid or collected at the expense of the federal government. The federal government just does not act that way in the long run.

I only want to comment briefly on this. The only way in which we can consider the tax burden of the average citizen is to consider his total tax burden. You cannot know what his tax burden is by just considering what state taxes he pays — whether state income tax or otherwise — or what federal income tax he pays; you have to consider the total picture, and the federal income tax which is based upon ability to pay is already used to the maximum possible extent here in this country. Its graduated rates, of course, rise to something like 90 per cent in the top bracket, but they rise very fast in the lower brackets and even in the lower brackets they start at 20 per cent. Now, we have to recognize that this type of graduation gives us in this country one of the most steeply graduated progressive taxes in the world today, and we have to consider that in considering this total tax burden. I think also we have to recognize that the expenses of state government are rising rapidly and will continue to rise in the future, and there is no reason to believe that ultimately state taxes may not be as heavy as the federal tax. If that is so and if the deduction for state taxes in the federal tax program is removed, we will have at far lower rates than we do today a completely confiscatory tax program, and this is the reason I introduced a proposal — and the committee has picked up the same idea — with respect to limitation on a prohibition on a graduated income tax here in Michigan.

I think we have to realize that this is a long range proposition — we are talking about the next 50 years. Taxes have a tendency to rise rapidly — and unfortunately that is true — and, if we have 2 graduated income taxes in the end here for people of this state to pay, and, this is the important thing, on neither of which are the rates fixed with any relation to the other tax, you can expect a level of taxation such as you have never dreamed would be possible here in this state. For that reason it seems to me not only desirable but completely equitable that we place such a prohibition in our state constitution, leaving the use of these highly progressive rates to the federal income tax system.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Detroit, Mr. Downs.

MR. DOWNS: Mr. Chairman, fellow delegates, I wish to rise in favor of the Austin amendment and in opposition to the majority report of the committee. I believe that Delegate Austin did an outstanding job in going into the technical details of tax legislation. For that reason and the fact that I do not qualify as a technical expert, I shall not speak in that area but, rather, try to limit myself to the general subject matter.

With all due deference to the other speakers, I think some of us get a little tired of the threadworn discussion about the 90 per cent federal income tax bracket. I believe the Harvard University business magazine recently had an article showing that very often what people would normally think would be in the 90 per cent income tax bracket got over into the long range, long term tax benefit bracket.

What we really have here — and I hope that the delegates will realize what so far we are doing on the tax proposals when we refuse to take off in the constitution the tax on food and drugs in the sales tax on the theory that that was a legislative matter — and from a certain logic I think it can be argued that was a legislative matter — but then we come around and say that we should put a limitation on the legislature in relation to a graduated income tax, which is equally a legislative matter. I am very concerned that this will end up giving the impression of a double standard and that the convention is acting more on its fears.

I believe that Delegate Judd from Grand Rapids very appropriately raised the question yesterday about the positive aspects of this convention. I feel very strongly that she did hit the nail on the head and that we must come out with some positive aspects rather than just the negative ones.

I think in the general field of taxation, we must realize that this is our government. I hope we get some apportionment and get more representation in taxation, but the real solutions to these problems are by what we as voters do, and I just caution those who wish to put the state's financial system in an undue strait jacket and remind such delegates and the public that to the extent we put the state in a financial strait jacket and people have needs that are unmet, we will be forcing people to turn to the federal government to get these problems solved. The overwhelming majority of the American people, I believe, are basically pragmatic, are not too concerned whether something be done by the local, the

state, or the federal government so long as it gets done, and if we put provisions in this constitution that will from a financial viewpoint preclude people from solving their problems through local and state government, then we will be forcing people to turn to the federal government for those solutions.

I may not be quite as concerned as others are; I don't happen to fear the federal government, but I do think that there are real responsibilities that can best be met by local and state government, and I hope that we will not preclude the people through our local and state governments from meeting those financial responsibilities. Thank you.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Grand Rapids, Mr. Tubbs.

MR. TUBBS: Mr. Chairman, I would like to rise to second what Mr. Downs has just said. I, too, think that Mrs. Judd gave the best speech on this taxation section yesterday that has been given.

I hope Mr. Hutchinson is still in the hall. I want to say that I do not subscribe to the Hutchinson law that was enunciated a long time ago by him and mentioned yesterday. A constitution is a grant of power. When you put limitations in it, you are telling the people to whom you grant the power that you don't trust them. Personally, I will trust the government, and I would like the well ventilated sentences of sections 2 and 4 of the present article X of the present constitution which, in direct language and without any frills and without any exceptions, grants to the legislature the power to raise money by taxes to run this government. I would like to see that in our new constitution.

Then I come to the statement of the chairman of the committee that we are between the horns of a dilemma, the second horn being public acceptance. Mr. Brake, I will say to you frankly, as a long time friend of yours, that I do not care whether the people accept what we do or not. I say, as I said day before yesterday, I would like to write an ideal constitution. If the people turn it down, it will be their fault and not ours.

Perhaps some of you remember the gentleman from New Jersey, who was a member of the Constitutional Convention of New Jersey of 1947, a judge of one of its courts, and had held other high positions, and he wanted on his tombstone the fact that he was a member of the New Jersey Constitutional Convention of 1947, and nothing else. I feel that I would not want that on my tombstone and, as we are going now, I do not think I would want my friends to know that I was here. (applause)

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Pontiac, Mr. King.

MR. KING: Mr. Chairman, ladies and gentleman of the committee. First of all, let me say that I favor a graduated income tax — at the federal level. I do not favor what was once known as the Connally amendment, the proposed twenty-third amendment, which now, I guess, will have to be a proposed twenty-fourth and eventually a proposed twenty-fifth, I suppose. I believe that the federal graduated income tax is here to stay.

But I am concerned about this argument concerning the little people. I want to be on the side of the little people, and so I would like to answer that particular type of argument. I would ask the self styled Robin Hoods to consider this point carefully: it is all right to talk about welfare — I think it is wonderful myself — but at best it is a poor substitute for full employment. Now, what will this prohibition do for the little people? That is the concern and should be the concern of each and every one of us as delegates. It will do this: it will serve notice upon the states of this union and the citizens of this union that we in Michigan do not favor a graduated income tax at the state level. This is going to encourage, I think, a sound economic climate here in the state of Michigan. It is going to encourage an atmosphere for the kind of economic growth that we want, and this kind of economic growth is what in effect and in fact really helps the little people.

We as a state are in competition with 49 other separate, sovereign, semi sovereign units of government. If the federal government levies a graduated tax — which, of course, it does and will continue to do — at least it is uniform. It is not discriminatory as between one state and another state, but if some states levy this kind of tax and others don't, I think you can see that people who have freedom of choice, which we still do have in this country, may be inclined to go to those states which offer the best tax advantage as they see it, and the effect of upsetting this competitive balance between the states will ultimately force — and I say force — the federal government into a socialistic position of absolute paternalism in order to provide for the needs of these little people that we are so concerned about. And in the end, these people, the working people of our state, are going to be hurt twice: one, they are not going to have jobs; and two, there is not going to be any source of taxation from which to adequately support the necessary welfare programs which are required when people are unemployed.

So I think we ought to give an awful lot of careful consideration to what we are proposing to do here by Delegate Austin's minority report. I think this is a constructive step forward — and I am assuming that we don't want this paternalistic socialism; I think that is a safe assumption; I think every one of us here can agree with that — I think that we can take a constructive step forward if we will just serve notice upon those who would want to do business in this fine state of ours that we are not in favor of a graduated income tax at the state level.

Now, let us talk about this tying the legislature's hands. I think too much emphasis is put on that: that we are going to tie the hands of the legislature for the next 50 years. Under our system of referendum and initiative petition, I do not think that we are doing that at all. We had a 3 per cent limit on the sales tax. Apparently, it proved inadequate. We went back to the people and raised it to 4. All we are really doing is saying that the people are going to have a voice in this particular matter, and I think that this is a sound, constructive step and I don't think an analogy between what we do at the state level in this regard with what we might do at the federal level, where we have only really had 13 amendments in the last 175 years, is at all valid.

A state constitution should be somewhat more restrictive, somewhat more detailed, and somewhat easier to change. All we are really doing is saying to the people, the little people and the big people — because they all vote — that they are going to have an opportunity to pass on this particular question before we go in that particular direction. I think it is sound.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Muskegon, Mr. Seyferth.

MR. SEYFERTH: Mr. Chairman, fellow delegates, the new amendment presented by the minority interest did not in effect, at least to my recollection, pull out of the journal the supporting information in regards to their position. In this supporting information found on 521 of Journal 73, we find almost paragraph by paragraph defending a graduated income tax. Now, by merely removing the last sentence on line 22, it does not then, in my estimation, change the picture whatsoever.

It seems to me that we are now talking about our personal beliefs and our personal philosophies, and it boils down simply to this: if our personal philosophies allow us to appreciate and believe in the present graduated federal income tax methods of paying for our country's bills, then we must be in sympathy with the minority report. By the same token, if our philosophies do not accept the graduated federal income tax base as a proper way of taxation, then we must follow the majority report of the committee.

It seems to me that we have all made up our minds based on our individual philosophies a long time ago. Any statement made on this subject for the last 2 or 3 hours, including the one I am making now, certainly is not changing any votes. I would suggest that we get on with the voting, ladies and gentlemen, and proceed.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Taylor, Mr. Marshall.

MR. MARSHALL: Mr. Chairman and fellow delegates, I want to echo the remarks made by Mr. Seyferth. I do believe that practically all of us — I am sure that most of us — have made up our minds as to what form of income tax that we would prefer if there is to be an income tax. I am not going to express on the floor my own viewpoint as to the form of taxation that I would prefer. I am going to infringe upon your time and patience, either, by any long, extensive remarks, because I believe everything that can be said on both sides of this argument has been said and said more than once.

I do object, however, and I have from the very beginning, and I have done this in committee and I do it here again on the floor and I will probably do it over and over again — I agree with Mr. Tubbs that I think we want to write a sound document, one containing basic, fundamental law. We are, I am afraid, and it is obvious to me and I think it is evident in many of the committee reports — and I think Delegate Hutchinson said it the other day and I agree with him 100 per cent when he said that all of you, well that may be a little too broad a statement but, let's say the overwhelming majority — were acting like legislators instead of writing a constitutional document.

I think it is a mistake to insert into a constitution any restriction, to try and insert into this constitution the philosophical viewpoints of an individual or a political party. At the rate we are going with the amount of restrictions we are placing in it, the do's and the don'ts, we might consider just abolishing the legislature and write everything out in the constitution from now to the next 100 years. I think that we should leave it up to the legislature from time to time to debate the question of taxation upon the needs at that time, leave it to the legislature to enact the form of taxation that they feel is necessary at that particular time.

I want to compliment the distinguished delegate from Birmingham for the very efficient way in which he has been able to insert his thinking and philosophical viewpoint into the committee reports. I might say that he is becoming so efficient that he is going to wind up like the efficiency expert who became so efficient that he only had to say a prayer on January first; the rest of the year he said "ditto" and hopped into bed. Thank you.

CHAIRMAN BENTLEY: The Chair recognizes the lady from Dearborn, Mrs. Cushman.

MRS. CUSHMAN: Mr. Chairman and delegates, once again I would like to rise and speak for a flexible constitution and good financial management. It seems to me that we are here writing a document that we — some of us at least — hoped would last for 50 or 60 years or more. When we look back over the past 50 or 60 years, we realize that we could not have foreseen the kind of changes that have taken place in the financial areas of state government. We have no more reason to believe that we could foresee the changes that are going to take place in the future in the financial management of this state.

It seems to me that we must realize that we should leave the legislature free to meet these changes as they occur in the best way that it can at that time. We do not know what is going to happen even 20 years in advance, let alone 50. Let us leave the matter of the type, the details, of this tax program to the legislature. Let us not put it into the constitution. Thank you.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Saginaw, Mr. Shackleton.

MR. SHACKLETON: Mr. Chairman, fellow delegates, it might be well to remember that the year 1909 was when congress first introduced the idea of a federal income tax. It was not until February 25, 1913, that 36 states had ratified that tax and made it operative. It took 4 years. One of the main objections after long, loquacious debating not only in congress but in the various states was the fact that, though they had suggested a 2 per cent tax and on a base much larger than $600, some day it might become too large. The proponents said, well, it might go up a little, possibly to 4 per cent.

Prior to world war II, 32 or 34 of the states had passed resolutions to try to get an amendment through that the tax could not exceed 25 per cent. The war came along and stopped that, since which, of course, it has gone up to 90. About the only relief has been the excess profits tax. One sure way to defeat an income tax would be to leave it wide open on a graduated basis even if you put a top of 10 or 11 per cent.

CHAIRMAN BENTLEY: The Chair recognizes the lady from Grand Rapids, Mrs. Judd.

MRS. JUDD: I just want to explain my vote on this issue when it comes up. I do not consider this just an issue on the question of an income tax or not. If I were voting in the legislature on this question, I would vote against a graduated income tax, but I want to speak a moment to Mr. King's point that this abolishing or prohibiting an income tax will make Michigan economically attractive. If any of you have read the publication from the Upjohn institute called Taxes in Economic Growth, which I think came to most of us before the convention, made up of essays by a number of tax authorities throughout the country, you will remember that almost all of them agreed that what made Michigan unattractive economically was not just its tax system but the friction that is going on within the state and the apparent inability of the state to solve its financial problems.

So my vote on this represents a protest against what seems to me the inadequacy of the tax committee's program for solving these financial problems for the state of Michigan.

CHAIRMAN BENTLEY: The Chair recognizes the chairman of the committee, the gentleman from Stanton, Mr. Brake.

MR. BRAKE: That is the second time that Mrs. Judd has brought up that point, and I think it must have an answer from the committee. It is not the business of a constitutional convention and it is not the business of a constitution to set forth a tax program. That is the legislature's business.

A constitution should set the limits, the restrictions — and they should be sound — within which the legislature shall work. I am fully aware that we have offended against that principle in 1 item. The sales tax ought to be a statutory matter; it is in the constitution, but the people put it there and, as has been said before, when they speak they are boss. Outside of that the committee has tried to keep in its own field: the laying down of rules within which the legislature shall act and, as everybody knows, from time to time they will have to act differently and we cannot foresee how they will need to act 25 or 50 years from now.

I think this should be said: the first determination when this topic came up in committee was this: that we must answer yes or no on the question of a graduated income tax. Our old constitution has left that matter hanging in the air. Attorneys over the state have disagreed for years as to whether the legislature could pass a graduated income tax. Attorneys general have ruled on both sides of the question. I think if here we were to determine that we are not going to prohibit a graduated income tax, we should expressly say that it is authorized if the legislature sees fit. There will be lawsuits enough in connection with the new constitution in spite of everything we can do; we ought not to invite lawsuits by intentionally not covering something that we know will be the subject of litigation. So if we are going to say, "No, we don't wish to prohibit it," we should say, "Yes, we expressly authorize the legislature to do it."

Just one other thing in connection with Mr. Tubbs' remarks. I am sorry for his concern about what goes on his tombstone. I suppose that somebody — some radical — will come along and write the word "conservative" on mine (laughter) but I am not fussy about that at all. The only thing that I am fussy about is that nobody shall write it on there too soon! (applause)

CHAIRMAN BENTLEY: The Chair recognizes the lady from Port Huron, Miss Andrus.

MISS ANDRUS: Mr. Chairman and members of the committee, I wanted to speak yesterday. I wanted to ask Mr. Van Dusen a question. Now, perhaps, I should ask it of Mr. Brake. Ever since the depression and the passage of the

15 mill tax limitation, I have followed — that is about 30 years ago — I have followed our state taxes both locally and in the state with a great deal of interest. The people of Michigan were desperate in 1932 and '33, and this 15 mill tax limitation was to assist them locally. The state generously said that they would go off from their tax on property and they would raise the taxes for their state expenses in some other way.

We, however, have not trusted the legislature. We have earmarked most of those funds. I was very interested in Mr. Van Dusen's statements over and over this week that we should trust the legislature, that we should remove restrictions from its hands and give it a free hand.

Now as I look back — and I did this yesterday during the debate — I saw that we had not restricted — removed these restrictions. We have kept them. We have said we cannot trust the legislature to provide for highways; we have got to have some special funds for highways. We cannot trust the legislature to provide for the cities and the townships. We cannot trust the legislature to provide for the schools. And so we end up — I think all of you realize we are keeping practically all of these restrictions, though many of us came here with an idea and a hope that we could in the future trust our legislature.

Now do any of you remember the one thing we are going to trust the legislature with? That is the teachers' retirement, (laughter) the one thing. And Mr. Van Dusen made a very great plea that we could trust the legislature. Now I want to tell you that the teachers' retirement law was passed many years ago, before 1933, and the legislature was supposed to get money —

CHAIRMAN BENTLEY: The Chair will have to advise the lady from Port Huron that she will be out of order unless she addresses herself to the pending amendment.

MISS ANDRUS: Yes. Well this has a bearing on it. I am sorry if I haven't made myself clear. — so we found we couldn't trust the legislature, that when it didn't have money it couldn't put it in the teachers' retirement fund. That was why, when we passed the sales tax diversion amendment, we provided that there should be a certain percentage of that 2 cents for schools put aside each year, so that when teachers retired there would be some money, if the legislature didn't have money, which so often it didn't seem to have.

Now that is the point that I want to make in connection with the graduated income tax proposal. I hope that most of you are beginning to see the connection now. We felt the other day — I think all of the teachers did — "Well, we are going to trust the legislature; we are surely going to have more money in the future, and the legislature will be able to put it in."

Yet as we earmarked or kept in all these other earmarks, it seems rather pathetic that the retirement fund cannot be kept as a fund. Mr. Spitler made that very clear the other day, I think, to all of you. The fund is something that the people, the taxpayers, put in. They put in a provision so that it would be paid. I think every teacher is grateful that the convention has voted for a definite provision for teachers from now on when the constitution goes into effect, but it does not provide — in fact, it has taken away — the fund which was provided by the people to take care of the teachers who have retired and go up to their retirement period.

Now this is what I would like to ask. We wanted to free the legislature's hands, to trust it. Now we are by our 50 per cent assessment limit saying local governments cannot raise as much — before it was 100 per cent, now it is 50 per cent — we do not trust the legislature to have it 50 or 60 or something. Then we say it cannot pass a graduated income tax. I think we ought to be logical. Either we want to trust the legislature and let it do what it should, or I hope later on you will reconsider. If we limit the legislature in everything except our teachers' retirement, I hope you will reconsider that sometime.

CHAIRMAN BENTLEY: The lady yields to the chairman of the committee for reply.

MR. BRAKE: I rose to answer the question and I didn't hear any, so I will sit down again. (laughter)

CHAIRMAN BENTLEY: The lady still has the floor.

MISS ANDRUS: If we are not going to trust the legislature, then we should keep in the limitations we had before — and my question of you or Mr. Van Dusen was: do you think we can trust the legislature?

MR. BRAKE: That varies from delegate to delegate. As a former legislator, I trust it a great deal. There are those who do not. Somebody said yesterday and I heard the statement that you cannot expect in politics that anybody is going to be consistent. Maybe this bears that out.

CHAIRMAN BENTLEY: Miss Andrus, before you take your seat, I believe there are 2 or 3 members seeking recognition. Do you yield either to Mr. Van Dusen or to Mr. Tubbs for further reply?

MISS ANDRUS: Yes. Whichever one rose first.

CHAIRMAN BENTLEY: Mr. Van Dusen, the gentleman from Birmingham. You still retain the floor, Miss Andrus.

MR. VAN DUSEN: Mr. Chairman and members of the committee, I am delighted to learn how many converts to flexibility we have made. I just wish we had made them a little earlier.

CHAIRMAN BENTLEY: Miss Andrus, do you yield to the gentleman from Grand Rapids, Mr. Tubbs?

MISS ANDRUS: Yes.

MR. TUBBS: I just rise to a question of personal privilege, Mr. Chairman. I think I am entitled to equal time with Mr. Brake about tombstones. He said something with which I wholly agree. (laughter)

CHAIRMAN BENTLEY: The gentleman from Hillsdale, Mr. Prettie, is seeking recognition.

MR. PRETTIE: Yesterday at the conclusion of our afternoon session, I had requested that Mr. Austin give us figures in lower income tax brackets than $200,000, so that we might compare the impact of a state graduated income tax with deductibility as we now have and hope we may have in the future for federal income tax purposes. Mr. Austin and I conferred concerning this subject this morning at breakfast. There has been distributed to each delegate a copy of such a schedule. I think it is informative to the delegates because I believe that more of us and more of our constituents are in the $5 to $50 thousand taxable income bracket than in the $200,000 income tax bracket, and I wish to express my personal thanks and I hope the thanks of all delegates to Mr. Austin for the work that this represents.

CHAIRMAN BENTLEY: The question is on the Austin amendment to the committee proposal. The gentleman from Ann Arbor is recognized.

MR. POLLOCK: Mr. Chairman, I want to associate myself with the remarks that have been made by the very gracious lady from Grand Rapids and with those made by Mr. Tubbs. I feel that this is an exceedingly important turning point in the work of the convention. Either we slide down the hill to reaction or we go forward on a hopeful note.

I confess to considerable disappointment that this issue, the income tax, has been intruded into the discussion. I don't believe this was necessary. It seems to me that it is not a question of whether we favor an income tax, a graduated income tax, or not; it seems to me it is a question of legislative power and fiscal capacity. In the situation in which the state of Michigan finds itself today, in great fiscal straits, for this convention to forbid the legislature any reasonable means of trying to cope with that situation seems to me to be the height of futility, and I certainly could not approve of it.

Likewise the argument, which I certainly couldn't follow, of Mr. Martin's that because the federal government has preempted this field and because of the interrelationships between state and federal tax systems, that we ought to somehow — I couldn't quite get the thread of the argument — prevent the state of Michigan from adopting a graduated income tax.

Now, I happen to have worked for quite awhile in the field of intergovernmental relations, and I realize full well that the tax problem in the United States is a very, very serious problem and that it is an extremely difficult one for the

states; but I think it does not take too much vision to look into the future and to realize that it is possible even with the federal system, for the federal government and the states and localities within our lifetime to work out some kind of a division of tax capacity in the taxation field which would be satisfactory to everybody. In unitary governments this has already been done, because it is somewhat easier; there has been a division. It seems to me that it is not going to help the solution of federal-state-local tax relationships to write into the constitution for the long haul the prohibition against the state legislature from ever enacting a graduating income tax, whether it is tied into the federal one or not.

I think, therefore, that we should vote on this issue not whether we believe in a graduated income tax or not — I am like Mrs. Judd — if I were in the legislature today I would not vote for a graduated income tax; I would vote for a flat rate income tax, in the present situation. But if I were in the legislature I would not want to be forbidden by this constitutional convention to vote any way that the facts seemed to point.

I think, therefore, that we are at a turning point in the convention, and I am sorry that the whole thrust of these proposals from the finance committee instead of looking forward have, as Mr. Brake said a good many times, been looking apparently at the ballot box: what the people will accept. Well, what the people will accept — often you come to the conclusion that you want to come to. I do not know where Mr. Brake is looking; he is not looking in the same direction I am, and I think my view is at least as broad as his. I think what the people of Michigan want us to do is to do the best that we can do. Acceptance will follow if we do a good job. (applause)

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Detroit, Mr. Austin.

MR. AUSTIN: Mr. Chairman, I had in mind responding to some of the remarks of Mr. Martin, but Dr. Pollock has done that a lot better than I could have done, and I want to thank Dr. Pollock. There has been distributed to you the chart which was requested by Delegate Prettie. I do not believe that you will have any questions, but I felt that I should make myself available to answer any questions that might arise in connection with it.

There is one little detail about this chart which I think you will find interesting. Down under the section "state income tax" on the last $1,000 of income, "amount borne by the taxpayer", in the first column we are dealing with the taxable income of $5,000. If we had a graduated rate structure which approximated that of New York or Minnesota — and I might say that one of the problems in developing a chart of this nature is that you have to make some assumptions as to how the rate structure would be graduated, and the graduations in tax structures throughout the various states are not uniform. In the first column we have $29.60 paid by the taxpayer out of his pocket. The federal government would pay $10.40 and the state would get $40, the sum of the 2. In other words, from a $5,000 income the state would take $40; $29.60 from the taxpayer and, in effect, $10.40 which would be borne by the federal government.

I move over to the last column on the $50,000 income. There the taxpayer would pay $25, the federal government would pay $75, and the state would wind up with $100. The $50,000 taxpayer would actually pay out of his pocket toward the state income tax less money than the $5,000 taxpayer but the state would get $100 in the one case and only $40 in the other case. I thought that that was an interesting observation.

CHAIRMAN BENTLEY: Is the gentleman from Detroit, Mr. Madar, seeking recognition?

MR. MADAR: Mr. Chairman, I am going to make my remarks brief: let's vote.

MR. AUSTIN: Mr. Chairman, I had not completed —

CHAIRMAN BENTLEY: I beg your pardon, Mr. Austin.

MR. AUSTIN: Mr. Chairman, a great deal has been said on this subject. However, I do feel constrained to make a few closing remarks. Inasmuch as it has been necessary for me to get involved in the technical aspects of this, I would like to present just a few comments in regard to the equity and the legislative freedom subjects about which there has been so much discussion.

Anyone — and I do not expect contradiction on this item of analysis — would be tempted to make sure that we write the proper taxes, the proper financial safeguards, into our constitution. This is one article of the constitution that tempts all of us to forget that the constitution is supposed to lay the groundwork for the operation of all branches of our government. One of the good causes for this temptation is part and parcel of the development of any constitution. Taxes pay the cost of government. The people have surprised their representatives by showing their willingness to pay the cost of government and they have used their power of initiative and referendum to prove not only their willingness but their concern as well.

Some of us favor earmarking of revenues; others oppose it. Some of us consider this a matter of good government principle while others regard it as an effect to be reckoned with because of the circumstances which brought about this effect and because this effect is not easily resolved. Regardless of where we stand on each governmental principle involved in each such issue, we will be neglecting our obligation if we fail to combine consideration of all factors of historic precedent, of future need, and yet we must not forget that the people make the final judgment on the new document.

The tax proposals and provisions for finances that have come before the committee on finance and taxation were numerous. They reflected our immediate circumstances. They have been aimed at small specific items and at large general items. They have urged tax relief for everyone. Many have tried to indicate new sources of revenue.

Our implied responsibility should be clear at this time. To succeed we must present within the revised constitution, first, a philosophy on which future fiscal policy shall be based.

We may take it for granted that our historic background rejects taxation without representation, but we should also remember that our historic background stresses equity as a principal ingredient in our fiscal philosophy. A tax structure is considered adequate when it yields sufficient revenue to meet rising costs for providing public service for a growing population and an expanding economy. Obviously, the Michigan tax structure has failed to meet this test. Equity or neutrality in taxation is achieved when equal treatment is given equals and when the distribution of tax burdens among income groups is regarded as fair or proper. The achievement of equity must be sought in consideration of the tax structure as a whole where some progressive levy may have to be included to offset the regressive nature of other taxes.

The Michigan tax and local structure abuses the concept of equity in a variety of ways. There are gross inequalities in the assessment of property for local tax purposes and its impact on business. The sales tax does not treat equals in like manner, because its impact depends on how a taxpayer spends his money; it violates both the concept of horizontal equity and vertical equity; nor does it do justice to low income families and large families. These are glaring inequalities and there are also inequalities in the business activities tax, the franchise tax, intangibles tax, insurance premiums, alcoholic beverages and cigarette taxes. The impact of state and local taxes on business and industry must not deter industrial growth or adversely influence industrial location decisions. Business taxes should be determinable with clarity, should bear some reasonable relation to the volume of public service utilized and should be imposed at a level consistent with that of other states.

Among us are those who are intensely concerned with preventing government encroachment and those who stress more local control and others who argue that services coordinated by the state are more economical. These are the positions that reflect the paradox of our times. To ignore or suppress them would be to ignore our times. But this is the important moment when we must do more. This is the time when we must admit imagination as to the respected participant in our deliberations. We can not know what will face the legislature 5 years from

now. To tie their hands would be not only unimaginative but also foolhardy.

The people we represent expect us to achieve the best possible philosophy, to protect their well being, to lay the best possible groundwork for the best possible legislation; but the people we represent also expect our conclusions will be just and fair and equitable and flexible and adaptable and serviceable to all the people, will help provide good government that does not go beyond its proper boundaries but is prepared to give good service whenever and wherever there is need. They have a right to expect this miracle. Thank you.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Bloomfield Hills, Mr. Woolfenden.

MR. WOOLFENDEN: I would like to ask Mr. Austin a question. Mr. Austin, in this chart which you distributed today and in the one which accompanied your minority report, you did not point out in your oral presentation that this evidence that it costs the big taxpayer less than the little taxpayer is directed only at the last thousand of income. Is that correct?

MR. AUSTIN: That is correct, Mr. Woolfenden.

MR. WOOLFENDEN: And would you say, would you agree with me that the last column, the $50,000 or the biggest one on the chart that you present this morning, is proof positive that the graduated income tax reaches a point of diminishing returns in the higher brackets?

MR. AUSTIN: I am not quite sure that I understand that question, Mr. Woolfenden.

MR. WOOLFENDEN: Well, in effect —

MR. AUSTIN: Pardon me. Just to make sure that you understand why I am confused. I do not know whether you mean diminishing returns to the state or diminishing returns to the federal government or to the taxpayer.

MR. WOOLFENDEN: The diminishing returns to government from the taxpayer — if, in other words, this thing constitutes an invasion of the federal revenue in the case of the larger taxpayer and relief to the larger taxpayer on the last dollar of income. Isn't that correct?

MR. AUSTIN: That is correct. We are talking about invasion of the federal preemption that has been stressed here on the floor. This is one example of how the state might invade that so called preemption by the federal of the — let's say the income of taxpayers for income taxation.

MR. WOOLFENDEN: Well, we're all citizens of the United States as well as the state of Michigan and these governments have to get their revenues from some place, and I think we are deluding ourselves when we think that we are producing revenue by taking it out of the federal treasury, long range, for the state. I think we reach a point of diminishing returns under a graduated income tax.

MR. AUSTIN: With apologies to the Chair for continuing this, I do not believe, Mr. Woolfenden, that this is a delusion. It is a fact. We have over 30 states that have graduated rate structures in their income tax programs. This is a fact which we cannot overlook. It is a fact that we can do nothing about. We can do nothing here, sitting in this constitutional convention, about the graduated rate structure of the federal income tax. This is a fact that we must live with.

Now, having these facts before us, we must consider whether it is advisable to make it possible for our state, our state legislature, to do exactly what the other states are doing in getting what we consider to be the fair share of the revenue from income taxation and to prevent the taxpayers of Michigan from contributing disproportionately to federal programs in other states. Now it is not for us to say here that this ought to be done. We are only interested in saying that we should not prevent the legislature from doing it if it should feel in its wisdom that it is desirable to do so.

MR. WOOLFENDEN: May I speak to the question?

CHAIRMAN BENTLEY: The gentleman from Bloomfield Hills has the floor.

MR. WOOLFENDEN: I welcome the opportunity to vote on the morality of a graduated income tax. This is the only time in my lifetime, probably, that I will have the opportunity to record my position on the morality of a graduated income tax.

I don't think 2 wrongs make a right, and that is why I don't think — why I am not impressed by the argument that competitively with other states we should have a graduated income tax if, in fact, it is morally wrong.

This country has been built, in my judgment, in my conviction, because of equality of opportunity and not because of legislative equality. If we want to make equal by legislation, then we should join some socialist government; but I am in favor of equality of opportunity, and I think a graduated income tax which says if my next door neighbor earns twice as much money as I do that he should not pay twice as much, he should pay 4 times as much, is essentially an immoral tax. I am absolutely opposed to it, and I am against this amendment and for the committee proposal. I do not believe we are hamstringing the legislature; I think we are merely stating the American philosophy of free enterprise and equality of opportunity. (applause)

CHAIRMAN BENTLEY: The Chair would like to announce, before recognizing the next speaker, that we have 5 more speakers scheduled to speak on this amendment and the secretary advises that there are 4 other pending amendments on the desk to this paragraph. The Chair recognizes the gentleman from St. Joseph, Mr. Upton.

MR. UPTON: We have heard a great deal about raising revenues to meet our expenditures. I think one of the things we have not talked about is how we can give direction to our legislature as the economy is in our state. Looking at the facts and figures of government finance put out by the tax foundation corporation, we find that Michigan is already paying $101.78 per capita in state taxes.

Ladies and gentlemen of this committee, this compares with our neighboring states of Ohio at $75.33 per capita; Minnesota, $96; Illinois, $75; Indiana, $81. These are our competing states that we are neighbors with, the states that are taking our industry away from Michigan; and if we add to the already overburdened per capita by even talking about a graduated income tax, in my estimation we are not helping our business climate. The people of Michigan have already spoken about their desires for not having an income tax when they voted last year for the 1 cent increase in sales tax. We were hopeful that this would take care of our state requirements but it has not. We should at least give direction to our legislature that the people do not wish it to pass a graduated income tax. This is why I am supporting the committee proposal.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Detroit, Mr. Binkowski.

MR. BINKOWSKI: Mr. Chairman, ladies and gentlemen of the committee, I would like to remind the committee that this proposal before us not only ties the hands of the legislature but ties the hands of all legislative bodies in the whole state of Michigan. I think that I tried to point out yesterday that the city of Detroit in its tax study recommended a piggyback income tax; that is, an individual would first determine his federal income tax and then, for example, take a 3 per cent flat rate of that federal income tax. Now, this proposal would prohibit the city of Detroit or any other local unit of government from doing this, and I submit to you that this proposal, then, interferes with the principle of local self government.

Mr. Woolfenden's plea for equality is, I think, kind of amusing, if you will excuse me, Mr. Woolfenden, for commenting thusly. When we get into the question of reapportionment, I think that we will be talking about equality, too, that is, the theory of one man, one vote. And it is interesting to note that it appears, I would say, that the majority here believe in equality of taxation: that is, everyone should pay the same amount of taxes — their vote should not be the same but they should be able to pay the same amount of taxes. Thank you.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Grosse Pointe Shores, Mr. Cudlip.

MR. CUDLIP: Mr. Chairman and members, I should like to address a question to Mr. Austin and then make a brief observation, if I may, through the Chair. Mr. Austin, suppose

that each of the 50 states of this union had a graduated income tax of the kind you advocate? Because of the legislative enactment and rates reasonably high — you don't know what they would do over a period of years — what would that do to federal finances? The present administration has a budget of $90 billion dollars per annum. We owe $300 billion.

As Mr. Woolfenden said, we are citizens of the federal government and citizens of each state, the state in which we reside. We are proud members of the United States, as well as being citizens of this state. It seems to me that if this thing is carried to its conclusion, the federal government will not have the money to carry on the wars, hot or cold, or to perform all the other services that they are required to perform because of the nature of that government.

MR. AUSTIN: Mr. Chairman, Mr. Cudlip, I do not believe that we should be concerned here at this convention about the federal budget and how funds should be raised for the federal government. Our major concern is for the taxpayers of the state of Michigan, and we are concerned to see that the taxpayers of Michigan do not contribute disproportionately to federal projects in other states.

Now, it is conceivable that if every state had a graduated income tax, it would materially reduce the amount of revenue going to the federal government, and it might be necessary for the federal government to take some offsetting measures. At the same time it is also conceivable that by raising additional revenue these states will be able to provide services for themselves that they now ask the federal government to provide.

MR. CUDLIP: Thank you very much, Mr. Austin, but I do not know how we are going to provide money for these services that only the federal government can perform, and one of those is the defense of our nation in these perilous times. We have been in cold wars and hot wars for years and I am very fearful that if we implant this doctrine in each sovereign state, we are going to have dire consequences as respects our federal government, which is our government too.

MR. AUSTIN: Mr. Chairman, if I may, just one more response?

CHAIRMAN BENTLEY: The gentleman has the floor. He may yield to you.

MR. CUDLIP: I yield.

MR. AUSTIN: Thank you. We have to remember that over half of our states have a graduated rate structure; over half. The precedent has already been set. It is not a matter of Michigan starting a stampede in this direction. It is merely a matter of Michigan — if I can put it this way — catching up.

MR. CUDLIP: Two wrongs don't make a right, and this proud state should not continue any lead that might affect the finances of our central government. Thank you.

MR. YOUNG: Mr. Chairman, would Mr. Cudlip yield? I would like to comment on that question.

CHAIRMAN BENTLEY: Do you want to yield to the gentleman from Detroit, Mr. Young?

MR. CUDLIP: I yield permanently.

CHAIRMAN BENTLEY: The gentleman is inclined to yield; he yields the floor, Mr. Young. You will be recognized in your turn. The Chair feels impelled to make a statement before recognizing the next speaker. He has often heard of the law of diminishing returns, but it certainly does not apply to the number of people who wish to speak. We still have 5 people scheduled on this amendment. The Chair recognizes the gentleman from Detroit, Mr. Downs.

MR. DOWNS: Mr. Chairman, there are 2 points I wish to make and I will try to make them very brief. The first is on the history of the sales tax. It is true that this was put into the constitution by the people. I think it was done in a period almost, shall we say, of economic desperation that all of us hope we don't return to. It was done in conjunction with limiting the property tax.

Now, I think in trying to look ahead that I would like briefly to comment on comments of 2 of the delegates in particular. I believe Delegate King from Oakland county made a very good point on the so called competitive factor and, if I understood him correctly, he pointed out that federal taxes — while people may not be enthusiastic about paying them — at least have the uniformity concept of taxes, so that no one state was put at an economic disadvantage.

I believe Dr. Pollock, in his usual manner of looking ahead, projected the concept that at some time there would be additional division of revenue between the federal and state and local governments, and I think those 2 concepts are not inconsistent even though they may look so at first blush.

My own thinking, for whatever it is worth, is that we will get to the point in our financing where we quit putting these watertight compartments about forms of taxes and be concerned more with function, specifically. I can see the day when we overcome the so called competitive factor among states that often tends to penalize the state trying to meet its problems by — and I hesitate, Mrs. Judd, to use the word "earmarking" but — perhaps reserving a certain amount of the income of corporation or other federal tax we pay to Washington for the purposes of the states and local communities. This would mean that then we would get revenues on a noncompetitive basis amongst the states and yet keep that state administrative control that is so near and dear to many people's hearts. I cite as an example the highways, and there has been a lot of discussion about roads, but the outstanding feature to one who drives a lot is that we are getting roads in Michigan, and one reason is not only our eminent highway director but is the fact that we have some uniform federal gas tax money coming into Michigan; and it doesn't matter what state we live in, we pay that same amount of federal gas tax so that the charge cannot be made that roads are putting one state at a competitive disadvantage with another.

Now, in writing this document, I do not pretend to spell out just what that federal-state relationship is that Dr. Pollock refers to. As I indicated, my own thinking is that it will be the direction where there are certain federal minimum standards, where there are certain federal assurances of a rebate of money that was collected in various states with the states and local communities handling the administration of the financing. But to do this, I plead with the convention not that we make that blueprint for 50 years ahead but at least that we have a constitution which will permit that type of organic development between the federal and state government that will end up best meeting the needs of the people. I do not know particularly what form it should take, but I do believe we should allow the leeway to have that federal-state relationship develop that Dr. Pollock mentioned. Thank you.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Detroit, Mr. Madar.

MR. MADAR: Mr. Chairman, I would like to bring out a couple of points, and I would like to give an answer to some of the things that have been said here. I sort of begin to worry a little bit myself about the worries of all these people around here who are thinking about socialism creeping into the state of Michigan.

Well, it seems to me that a lot of these people haven't been worrying about how much money they were going to take from Detroit. A couple of days ago they were willing to take it away because they thought that they ought to grab a share of that money that is down there, or a lot of that money that is there. They say that this is going to kill incentive. Kill it? Don't you ever think it is going to kill incentive. Believe me, these people who are worried about how much this is going to cost them and they may just as well quit trying to make any more money because they cannot keep it — believe me, you just step aside a little bit and watch your own brother start stepping into your shoes. They would like to take your place. In fact, if you don't move in a hurry, they are going to run over you, and they will pay that tax; they will pay it in a hurry.

You worry about taking moneys away from the federal government? How silly can you get? Here just a couple of months ago the legislature of this state refused to accept any money from the federal government. You said it was welfare. And when I say you said it was welfare, I would say there are a good many of you here who were telling your partners over in the legislature not to accept it. Well, let me tell you something. If the government had that kind of money to give to the state

of Michigan, I think you are mighty foolish, mighty, mighty foolish not to keep it here so that they don't have to give it to you in welfare. Let's keep it here, as I said, then it won't be welfare. Now, let us see what happens to this money when you do not take it. Well, they don't cut your taxes. In Michigan, we have been one of the highest paying tax states in this country. We have always been one of the highest taxpaying states in this country — not here, paying it to our government here; we have been sending it to Washington to give to those states where they will not pay any taxes, where they are doing what you are trying to establish here: where they refuse to pay for the government, their state government. They want the federal government to pay it, want you to pay it. How silly and stupid can you get? Thank you.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Jackson, Mr. Karn.

MR. KARN: Mr. Chairman and members of the committee, I only want to express my position by saying that I am in wholehearted agreement with the statement made by Mr. Woolfenden, and that I am voting in opposition to the amendment of Mr. Austin.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Romeo, Mr. Rush.

MR. RUSH: Mr. Chairman, ladies and gentlemen, I am going to be very brief. I just want to make one statement. I think it is obvious to most of us that our federal income tax has gotten out of hand. And why has that happened? Simply because we didn't put on proper safeguards. It is quite evident that any unit of government will find a way to spend all of the money that comes their way. We have tried to buy friends among all the nations of the world, even buy our enemies. So they will spend all the money they get. Today we are in a position to put in some proper safeguards so that doesn't happen on the state level. Thank you.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Detroit, Mr. Young.

MR. YOUNG: Mr. Chairman, as one of the sponsors of the minority report, I thought a few minutes ago to answer a question of Mr. Cudlip addressed in the direction of that report, and I am sorry that he did not see fit to yield at that time and, therefore, my reaction will be somewhat delayed. All I want to say in answer to his question is, what would happen if 50 states were to adopt a graduated income tax and thus take advantage of the reduction of the amount of money going to the federal government is that if we pass the proposal, it will be only 49 states because Michigan will be unable to take advantage of this tax rebate. In fact, what we are proposing is to permanently forbid the state of Michigan and the taxpayers of Michigan the possible opportunity of taking advantage of certain federal moneys that can be kept in the state while, at the same time, 33 out of 35 states that presently have an income tax take that advantage.

This is merely another way of increasing the tax burden on the people of Michigan and passing Michigan money out to the other 49 states. Now, that was the reaction to the question.

The other point I want to make, and I will be brief, is that we are now proceeding in the general article on finance to establish what seems to me a political philosophy: to freeze a certain direction of taxation. Now, if there is any legitimacy to the argument that has been advanced here that we need to encourage industry and that industry needs relief, then we must also recognize the fact that the lower income groups in Michigan need relief. I do not think that we should forevermore freeze the philosophy, a trickle down philosophy, into our constitution which is based on the theory that what is good for General Motors is good for Michigan. I think we should give some attention to the fact that there is a necessity for making the maximum amount of money available to those in the lower income brackets, so that they would have enough funds to purchase some of the products that industry seeks to distribute.

Now, in regards to a philosophy, Mr. Van Dusen has advanced Mr. Parkinson's law or laws. Now, I am not too familiar with Mr. Parkinson. I understand he is a full time humorist who in his spare time deals with economic matters, but it is my fond hope that in embracing Parkinson's laws we here in Michigan do not become infected with Parkinson's disease. (laughter)

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Niles, Mr. Boothby.

MR. BOOTHBY: Mr. Chairman, ladies and gentlemen, I think that this question now before us, the question of whether we are going to adopt the committee proposal or the minority amendment allowing for a graduated income tax, resolves itself to this basic problem and this basic principle: are we going to allow taxation to be used only for the legitimate needs of government or are we going to allow it to be used for the distribution of the wealth?

There are 2 uses of taxes. The one use is to take care of the legitimate needs of government and that is the legitimate use, and the other use that has been seized upon by some people is to use taxation for the principle of distributing wealth. This is what I call a Robin Hood style of government where you take it from the rich and give it to the poor. I do not believe this is the legitimate purpose of taxation and I feel that it is necessary to write into the constitution a prohibition against a government adopting this theory of taking it from the rich and distributing it and leveling all people to the same status in society.

I will say this, that if we allow for a graduated income tax you will never see a time where there will not be a demand for increased services. The only way you can control the demand for increased services is to prevent the adoption of a graduated income tax. I thought it was most interesting to note that 2,300 years ago the Greeks tried the so called progressive income tax—and there is nothing progressive about an income tax, it was tried 2,300 years ago by the Greeks, and a leading scholar of that day, Socrates, made this comment; he said:

> It would appear that success is to be punished; that exorbitant taxes have made it a crime for man to prosper. The end result of such order can only be removal of incentive, the discouragement of our people and the destruction of our free society.

When a few years later the Spartans came and attacked Athens, the Greeks did not seem to feel they had anything to fight for. Thank you very much.

CHAIRMAN BENTLEY: The Chair would make an announcement. There is one more speaker on the list. The Chair has been very flexible in allowing remarks on the pending amendment but, as the Chair understands the pending amendment, this is not over the merits or demerits of a graduated income tax; it is only whether or not there should be a constitutional prohibition against such tax. The Chair will feel compelled from now on to hold any future speeches strictly to that interpretation. The Chair recognizes the gentleman from Ann Arbor, Mr. Bonisteel.

MR. BONISTEEL: Mr. Chairman and fellow delegates, you would think that whatever we are going to do in adopting a provision in the constitution at this particular time prevents for all time something being done about a thing that may become apparent or may not become apparent in the years ahead. I want to direct the delegates' attention to the fact that I believe this convention will endorse and approve in the constitution the things we call initiative and referendum, and I believe if the people want to speak on a graduated income tax provision they can speak through the initiative and referendum, and I do not think that we are limiting in any sense the type and kind of taxation that the people of this state might want in the future, because we have the perfect device to answer that question. That is the position, I think, that the delegates should take here.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Hancock, Mr. Heideman.

MR. HEIDEMAN: Mr. Chairman, fellow delegates, I wish to oppose the inclusion of this prohibition against the graduated income tax in the constitution. There must be something with which we can entrust the legislature. We have been debating here as if we were passing an income tax. If I were

listening in on this, came in on this, I would think we were debating an income tax. Are we going to pass it now today? Are we voting on this subject? We are not voting on any such subject at all.

As a matter of fact, Woodrow Wilson, I think, made the observation that the supreme court is like a constitutional convention in continuous session. Well, maybe what we should do is decide to remain in continuous session at least until the last delegate dies to cover our tracks for mistakes we made by dating our constitution. I think if we put this thing in here, within a matter of 2 years or 5 years they will be tearing apart our constitution, and I think we should try to make it a document which will stand some test of time. Furthermore, in accordance with what President Eisenhower said, by leaving some authority to the legislature, why, we can help to maintain state government and maybe encourage the survival of our federal system of government rather than the unitary system, so that people can look to the state for some things.

I might add that, as somebody mentioned the fact about abolishing the legislature, maybe we should at least suspend it if we are so fearful of its actions. Now, this thing has to be debated and passed by the legislature. Reference has been made to the sales tax—

CHAIRMAN BENTLEY: The gentleman will be out of order unless he confines himself to the pending amendment.

MR. HEIDEMAN: Very well. I just wish to say that I think it would be a very foolish thing if we write this restrictive thing into the constitution.

CHAIRMAN BENTLEY: The question occurs upon the amendment of the gentleman from Detroit, Mr. Austin. As many as are in favor of the pending amendment will respond by saying aye. Those opposed will respond by saying no.

A DELEGATE: Division.

CHAIRMAN BENTLEY: There is a demand for division. Is the demand supported?

SECRETARY CHASE: There is a sufficient number.

CHAIRMAN BENTLEY: Those in favor of the Austin amendment will vote aye; those opposed will vote no.

SECRETARY CHASE: Has everyone voted? The machine is locked and the totals will be recorded.

CHAIRMAN BENTLEY: The secretary will announce the result.

SECRETARY CHASE: On the adoption of the amendment offered by Mr. Austin and other members of the minority, the yeas are 58, the nays are 66.

CHAIRMAN BENTLEY: The amendment is not adopted. Are there other amendments to this paragraph?

SECRETARY CHASE: We have some, Mr. Chairman. Mr. Hodges offers the following amendment:

1. Amend page 1, line 22, after "graduated" by inserting "more than 50 per cent"; so the language will read, "No income tax graduated more than 50 per cent as to rate or base shall be imposed by the state or any of its subdivisions."

CHAIRMAN BENTLEY: The gentleman from Detroit is recognized in support of his amendment.

MR. HODGES: Mr. Chairman, I offer this amendment because there seems to be some feeling we should have a limitation on this and, therefore, I feel it should be a reasonable limitation. I listened to a television show last Sunday in which the proponent talked about a new image for the Republican party, and yet we find the chief spear carriers for the new image voting the same traditional way as we would expect from the Republican party. Now, it seems to me that all this new image amounts to is trying to put the same old tripe in a new package.

A DELEGATE: Point of order, Mr. Chairman.

CHAIRMAN BENTLEY: The gentleman will state the point of order.

A DELEGATE: The speaker is getting into personalities, which are not only out of order but are far beneath the dignity of the committee.

CHAIRMAN BENTLEY: The gentleman will proceed in order.

MR. HODGES: I was just saying that the cellophane on the wrapper is pretty thin and we can see pretty much through it. I think Mr. Seyferth and Mr. Woolfenden stated the case clearly. It is for those who believe that even the federal progressive income tax, graduated income tax, is wrong.

A DELEGATE: Point of order.

CHAIRMAN BENTLEY: All right, there is a question as to whether the delegate is in order.

MR. HODGES: It was brought up during the debate, Mr. Chairman. I think there is a correlation.

CHAIRMAN BENTLEY: The Chair will rule the gentleman is proceeding in order but will caution him to confine his remarks to the pending amendment.

MR. HODGES: I would only state this, Mr. Chairman: I would hope we can at last get a vote on this thing and a reasonable one. I think those that have voted here recognize that they do not have the votes to return the federal government to the eighteenth century, but they hope to do so for Michigan. Mr. Chairman, I hope that if we cannot get a 50 per cent we can at least get some reasonable limitation on which the state can progress. I ask that the amendment be supported.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Detroit, Mr. Sterrett.

MR. STERRETT: Mr. Chairman, delegates, I happen to be in the party that Mr. Hodges referred to and I voted for the minority amendment last voted upon. Please put that in the record. Also, regarding the amendment of Mr. Hodges, because I voted the way I did on the last amendment, I will vote against this amendment, since, again, it is a restrictive item in this constitution and should therefore be voted down.

CHAIRMAN BENTLEY: The gentleman from Muskegon, Mr. Hanna.

MR. W. F. HANNA: Mr. Chairman, I hesitate to be in a cellophane wrapper for fear of embarrassment, but I will agree with Mr. Hodges' position and I will state the reason: because the committee—and I think most of us—believe that there should be some uniformity in taxation; but when we levy a sales tax in Michigan and then are in the future without a doubt to levy an income tax, it is apparent to many of us that if you examine your income there is a point at which you no longer expend your money in such a manner as to be subject to the sales tax. And as I progress into a higher income tax bracket, less and less of my income is subject to the sales tax. There is a point in the middle income tax bracket where I pay both an income tax and a sales tax, and if we continue the committee's proposal that there can be an income tax but uniform in rate, the income tax will bear most heavily on those people with incomes of approximately $5,000 to $10,000.

The Hodges amendment would allow the legislature to integrate the sales and income tax so that it would be a uniform deduction from my or your income whether taxed by means of the sales tax or the income tax, and it would alleviate the abuses which have crept into the use of the income tax for social purposes rather than revenue. In the interest of uniformity in extracting moneys from my income and yours, I believe the Hodges amendment is the proper procedure and should be adopted.

CHAIRMAN BENTLEY: The question is on the amendment offered by the gentleman from Detroit, Mr. Hodges. Is the gentleman from Detroit, Mr. Norris, seeking recognition?

MR. NORRIS: Yes, Mr. Chairman. I wondered, specifically, if we could have not only the language of the Hodges amendment but where it specifically goes in the proposal which we have before us.

CHAIRMAN BENTLEY: The secretary will so report.

SECRETARY CHASE: Mr. Hodges' amendment is as follows:

1. Amend page 1, line 22, after "graduated" by inserting "more than 50 per cent"; so the language will read, "No income tax graduated more than 50 per cent as to rate or base shall be imposed by the state or any of its subdivisions."

CHAIRMAN BENTLEY: As many as are in favor of the Hodges amendment will respond by saying aye; those opposed? The amendment is not adopted.

A DELEGATE: Division.

CHAIRMAN BENTLEY: Division has been called for. Is the demand for division supported?

SECRETARY CHASE: A sufficient number.

CHAIRMAN BENTLEY: Those in favor of the Hodges amendment will vote aye; those opposed will vote no.

SECRETARY CHASE: Has everyone voted?

The machine is locked and the totals will be recorded. On the adoption of the Hodges amendment the yeas are 47; the nays are 77.

CHAIRMAN BENTLEY: Then the amendment is not adopted. The secretary will report the next pending amendment.

SECRETARY CHASE: Mr. Hubbs offers the following amendment:

1. Amend page 2, line 1, after "subdivisions.", by inserting "Persons engaged in an occupation, the practice of which does not require substantial investment in personal property or inventory, excluding exempt items, shall be required to pay a city and county tax computed at the same rate as the personal property tax and on a base which shall be equal to the average personal property tax paid by individuals but not corporations, within the city or county where the taxpayer is resident. The herein provided tax shall be known as a fair tax. The legislature shall implement the objective of this section.".

CHAIRMAN BENTLEY: The gentleman from Gladwin is recognized in support of his amendment.

MR. HUBBS: Mr. Chairman, fellow delegates, we seem to have happily settled the progressive tax problem. I would like to start out by quoting a little known present day philosopher, "Lack of imagination is a hotbox on the railroad of progress."

To some of the legal minds present, this amendment may seem to be completely unworkable. I do not propose to defend the legal construction. I do desire to point out the gross inequity of the personal property tax with particular reference to its effect on small business and suggest that some remedy can be found to ease the burden of local taxes on business which are borne most unfairly at the local level. Personal property taxes on inventories are highly discriminatory, regressive and are not particularly related to the production of income.

Since there is apparently no hope of eliminating personal property taxes, the objective of this amendment to Committee Proposal 51 is to retain tax money at the local level being drained off to feed the bureaucratic monster in Washington. To retain some of this money at the local level is a plausible effort to reduce the load now being borne so unfairly by small business on the main street of every small town in Michigan.

Unrealistic depreciation schedules, unfair taxation, both state, federal and local, are the chief retardants of the economic growth and development of this state and the nation. I say in closing that one of the most unfair, discriminatory, and regressive taxes is the personal property tax at local level. Personal property taxes are sand in the gears and sugar in the gas, and if not removed or reduced to a fair level the economic machine is headed for the scrap heap.

CHAIRMAN BENTLEY: Is the gentleman from Grand Rapids, Mr. Tubbs, seeking recognition?

MR. TUBBS: Mr. Chairman, I hate to disagree with my almost namesake, but this amendment sounds like the doctor who, whenever he was in doubt about the condition of his patient, would give him a shot in the arm and when he was asked why he did that, he said, "Why that's to give him fits." "Well, why do you want to give him fits?" "I can cure fits." (laughter)

CHAIRMAN BENTLEY: The gentleman from Birmingham, Mr. Van Dusen.

MR. VAN DUSEN: Mr. Chairman, on behalf of the committee, we would oppose Mr. Hubbs' amendment and I would simply point out that the majority proposal does provide that the legislature may provide by law for exemption of property from taxation or for alternate means of taxation of such property in lieu of general ad valorem taxation uniform on the class or classes, and so forth. So that the objective which Mr. Hubbs seeks, of relief from discriminatory personal property taxation, is available through the means of the majority proposal.

CHAIRMAN BENTLEY: The question occurs on the amendment offered by the gentleman from Gladwin. As many as are in favor will respond by saying aye; those opposed?

The amendment is not adopted. The secretary will report the next pending amendment.

SECRETARY CHASE: Mr. T. S. Brown offers the following amendment:

1. Amend page 2, line 1, after "subdivisions.", by inserting "In addition, no minority of the people of the state shall impose any tax upon the majority of people of the state.". (laughter)

CHAIRMAN BENTLEY: The gentleman from Garden City is recognized in support of his amendment.

MR. T. S. BROWN: When you are through laughing, I would like to indicate in all sincerity that I am not trying to be cute. The terminology is very explicit. It means what it says and it says what it means. It is a very simple statement. You all recognize the implications of it. For those of you who don't, I would say that since taxes are expressed through our legislature that the minority of the people through their elected representatives cannot enact a tax oppressive or in any way a tax against the majority of the people acting through their elected representatives.

Now, the sole question is whether or not you believe in that particular principle, and I would not have troubled the committee with this particular amendment had the Austin amendment not failed. I would like to say this in further delineating and, I think, highlighting the dichotomy that exists between what we should be doing and what we are apparently doing and what we have done in the last 2 or 3 days in this convention by saying that if we follow Tom Downs' statement of how the argument regarding taxation has twisted and turned and if we recall when Mr. Ford and Mr. Hodges and I introduced the amendment concerning the elimination of the sales tax on food and drugs how Mr. Staiger said, "When we come to the income tax provision, we will find reasons;" and if you recall the reasons that Mr. Van Dusen urged upon us yesterday afternoon in regard to the limitation on the income tax—and, as you recall, the main thread of the argument was that people should not be allowed arbitrarily and indiscriminately to impose taxes on other people—then you will see that the real meaning of this particular amendment, I think, is in furtherance of the best local implications of the arguments that have been advanced on the other amendments.

I don't think this particular amendment requires a lot of conversation or a lot of debate. It is very explicit, and I am very, very much afraid that as a result of this morning's work, as Dr. Pollock has indicated, we are taking a turning point and the turning point is downhill, and I hope by this amendment and other things which will follow shortly that we may have a chance to begin uphill again.

CHAIRMAN BENTLEY: The question is on the amendment offered by the gentleman from Garden City. As many as are in favor will respond by saying aye. Those opposed?

The amendment is not adopted and the secretary will report the next pending amendment.

SECRETARY CHASE: Mr. Kuhn offers the following amendment:

1. Amend page 2, line 1, after "subdivisions.", by inserting "No governmental subdivision shall impose any income tax except on its own residents; the state, however, may preempt this field of taxation.".

CHAIRMAN BENTLEY: Mr. Kuhn.

MR. KUHN: Mr. Chairman, I am one who does not want to limit the cities or townships or counties as far as taxation, but I am one who can remember that we did have a revolution with our mother country over taxation without representation and so, while I do not want to restrict any of these units of government, I certainly want them to limit their taxes to the people who can vote them out of office if they are not happy with the way they determine the tax to be, and, therefore, I offer this amendment to protect everyone. We should have the

right to vote for those representatives who levy a tax on us. I think it is as simple as that, and I will not belabor this point.

CHAIRMAN BENTLEY: The gentleman from Detroit, Mr. Madar, is seeking recognition.

MR. MADAR: Mr. Chairman, I love this amendment. This is wonderful. I get quite a bang out of it, too. The poor city of Detroit. "C'mon boys, let's jump, they're lying under us right now. We can go ahead, we can build that new Chrysler highway that will extend all the way from Jefferson avenue, cut down along Dequindre avenue, up across the Eight Mile road, and on into Pontiac, where the boys will live"—another one of the bedroom cities. You know, I am not going to say anything much about that because I don't want you to call me out of order because, believe me, if I told you what they really ought to say about what happens out there, well, you would throw me out, you wouldn't just rule me out. (laughter)

Yes, "Mother city, please give us water. Mother city, please give us sewers. Mother city, please help us." You know, I sometimes wonder whether you are not all saying a prayer, those of you who submit these kind of amendments. I get quite a bang out of Mr.—well, the delegate, Mr. Kuhn, who last night told me he was going to throw a bombshell into this convention today. Do you know, he wasn't throwing any bombshell. Why, we have got at least 1½ million people in the city of Detroit who would tell you that this kind of bombshell would be thrown day in and day out—the only reason the rest of them do not believe that there would be this sort of thing happening is because they are too young yet to be able to speak or think for themselves. I am very much in opposition to this amendment. (laughter)

CHAIRMAN BENTLEY: Does the gentleman from Detroit, Mr. Madar, yield to the gentleman from Pontiac for the purpose of a reply?

MR. MADAR: Mr. Chairman, I am yielding the floor to any and all who wish to reply, but let's just use common sense when we vote.

CHAIRMAN BENTLEY: The gentleman declines to yield. The gentleman from Howell, Mr. Sharpe, is recognized.

MR. SHARPE: Mr. Chairman and fellow delegates, I am real pleased with Mr. Madar's attitude. This is a little different tone of voice than we have been hearing from Mr. Madar. (laughter and applause) I would like to say in regard to this Kuhn amendment that I must go on record in favor of this amendment.

I don't have any fight with the city of Detroit. I am not so sure that the city of Detroit gives too many things away. I understand that they do supply water for a fee, they do supply sewers for a fee to their subdivisions or their outcounty area, but I could never allow this amendment to go unspoken of by myself in regard to an income tax that a city could impose upon the people working there whether they lived there or didn't live there. Well, I do not believe that we should penalize people because they live in Livingston county or Shiawassee county if they work in Flint. I believe that these people have their obligations as far as their taxes are concerned in their own counties and in their own cities.

This, I believe, would be an unjust taxation upon the people and would be considered a penalty because they didn't live in the city. Now, I have not talked against the city of Detroit, and I don't really care if they become a county by themselves; this is all right with me; and if they want to annex themselves to Canada, that would be all right, too. I have no objection so long as the people do what they want to do down there. But I would object to them subjecting my people or the people outside of the city of Detroit to an income tax and thus would be penalizing them for not living in the city. Thank you.

CHAIRMAN BENTLEY: The gentleman from Kalamazoo, Mr. Allen.

MR. ALLEN: Mr. Chairman and members of the committee. Mr. Kuhn, if we fight about it now your proposed amendment is going to be fought all over again when local government reports, because if you will look on page 438 of the journal the whole subject comes up in connection with a proposal, a committee proposal, that pertains to cities and villages, and I really think if we get into a debate on this amendment now we are just simply going to have to do it all over again when we hit local government, and I would suggest if you would prefer not to withdraw it—and I hope that you would—that this committee might know because we are going to have to go over the whole thing and I think in more detail when we hit local government. In other words, I am suggesting that your proposed amendment would be more in order when we hit local government rather than battling local government, in effect, now. Let's try to finish taxation on the state level first.

CHAIRMAN BENTLEY: The gentleman from Pontiac, Mr. Kuhn, is recognized.

MR. KUHN: If I can have the assurance from the chairman of the committee on local government that this amendment would be in order when that subject comes up, I would be willing to withdraw it.

CHAIRMAN BENTLEY: The gentleman from Pontiac yields to the gentleman from Pleasant Ridge, Mr. Elliott.

MR. A. G. ELLIOTT: Mr. Kuhn, you have my assurance.

MR. KUHN: I will withdraw my amendment at this time.

CHAIRMAN BENTLEY: Without objection, the amendment is withdrawn. The secretary will report the next pending amendment.

SECRETARY CHASE: Mr. Hodges offers the following amendment:

1. Amend page 2, line 1, after "subdivisions.", by inserting "Further, the head of every family shall come to the state capitol and pay a head tax for every member of his family. The amount to be set by the legislature. Such tax to be uniformly applied.". (laughter)

CHAIRMAN BENTLEY: The gentleman from Detroit, Mr. Hodges, is recognized in support of his amendment.

MR. HODGES: Mr. Chairman, it just seems to me that I was trying to get the feeling of the philosophies of the various members of this convention, and I thought that this tax would best represent it. As you know—there was a little bit of noise and you probably did not hear the last part—this is to be applied uniformly; therefore, we can make sure that everybody pays their fair share, and I think there is a lot of historical precedent for this type of tax, as we remember this is what they went to Bethlehem about.

CHAIRMAN BENTLEY: The gentleman from Sheridan is recognized.

MR. GOVER: I would just like to tell Mr. Hodges that back a few decades, about 1933, that tax was declared unconstitutional, the head tax. I paid my $4 at that time and never got it back. (laughter)

CHAIRMAN BENTLEY: The question occurs on the amendment offered by the gentleman from Detroit, Mr. Hodges. As many as are in favor will say aye. Those opposed?

The amendment is not adopted, and the secretary will report the next pending amendment.

SECRETARY CHASE: Mr. Austin offers the following amendment:

1. Amend page 1, line 22, after "rate" by striking out "or base"; so the sentence will read, "No income tax graduated as to rate shall be imposed by the state or any of its subdivisions."

CHAIRMAN BENTLEY: The gentleman from Detroit is recognized in support of his amendment.

MR. AUSTIN: Mr. Chairman, I don't think I need to reiterate that I am opposed to the last sentence of this paragraph. However, if we are to retain that sentence, I think I should call attention to a danger that we have in the language. This question was raised in the committee and the committee sought to allay my fears by including something in the report, and I will refer to that in just a moment.

The purpose of this language as I understand it is to prohibit the state from levying a piggyback tax on the federal tax liability. There would be no prohibition to levying a tax or piggybacking a tax to the federal definition of income including the definition of the adjusted gross income as we know it and, possibly, the deductions. However, there is a possibility that through the use of this language we may be prohibiting exemptions. I checked this matter with some of the law professors at the University of Michigan over the weekend and they, too, were just a little concerned about this language "or base."

Now, to allay the fears of those who may be disturbed about our piggybacking to the federal tax liability which would include graduated rates, I think it well to say that the language without the words "or base" would accomplish that purpose, because if we say that no income tax graduated as to rate shall be imposed by the state or any of its subdivisions, I think we would by indirection forbid the imposition of a tax based on the federal liability which is arrived at through a graduated rate structure; and, since I have a grave fear that the use of the term "or base" might preclude the allowance of exemptions, I feel that the words "or base" should be deleted.

On page 405 of the journal, in the committee reasons it has added a sentence in its report that states, "The legislature could prescribe reasonable exemptions for a flat rate income tax." Now, this is in the report, but it is quite possible that although we have stated it in the report we may by this language be precluding the allowance of exemptions, and I therefore move that these words be stricken.

CHAIRMAN BENTLEY: The gentleman from Birmingham, Mr. Van Dusen, is recognized.

MR. VAN DUSEN: Mr. Chairman and members of the committee, this matter was considered at great length by the committee on finance and taxation, and the reasons for the words "or base" are explained in the committee report as Mr. Austin said. Without the words "or base" you do not really have any protection against an indirectly graduated state income tax, because a flat rate tax imposed upon the federal tax liability would simply pick up all of the graduation of the federal liability. Without these words "or base" there is no question but what in my judgment a nominally flat rate tax could be made a graduated income tax.

We made it very clear in the committee report that a flat rate income tax could be made the subject of exemptions by the legislature. I don't think that anyone has disputed it. The committee report is intended to make that crystal clear. I cannot imagine that any court construing the language in the light of the committee report would doubt or question the right of the legislature to grant reasonable exemptions.

CHAIRMAN BENTLEY: The question is on the amendment offered by the gentleman from Detroit, Mr. Austin. As many as are in favor will respond by saying aye. Those opposed?

The amendment is not adopted. The secretary will report the next pending amendment.

SECRETARY CHASE: Mr. Sharpe offers the following amendment:

1. Amend page 2, line 1, after "state" by striking out the balance of the line; so that the sentence will read, "No income tax graduated as to rate or base shall be imposed by the state."

CHAIRMAN BENTLEY: The gentleman from Howell is recognized in support of his amendment.

MR. SHARPE: In view of the fact that this issue will be taken care of in local government as pertains to cities, I would like the assurance now that it will be handled by local government and will not be put in this section. Mr. Allen spoke about the fact that this is going to be in local government, and I know it is, but we don't want—I am interested in not putting in the constitution that they may levy a tax. I would like to delete these last 6 words, and let us take care of this in the city government.

CHAIRMAN BENTLEY: The gentleman from Howell yields to the gentleman from Pleasant Ridge, Mr. Elliott?

MR. SHARPE: Yes, sir.

MR. A. G. ELLIOTT: Will the secretary read the amendment?

[The amendment was again read by the secretary. For text, see above.]

MR. A. G. ELLIOTT: The chairman of local government has no objection to Mr. Sharpe offering the proper amendment to the local government article, or the section that it applies to, at that time.

CHAIRMAN BENTLEY: Does the gentleman from Howell persist in his amendment?

MR. SHARPE: I would like to have this explained to me now. Mr. Allen can do it if he wants. I see he is on his feet. Is this going to interfere with anything that we might do in amending the article on local government?

CHAIRMAN BENTLEY: The gentleman from Howell yields to the gentleman from Kalamazoo, Mr. Allen.

MR. ALLEN: Mr. Chairman, I think as a practical matter, the political subdivision should not, for example, be allowed a graduated tax and the state not be permitted. I think that would be very bad and I don't think the convention would vote for it. I also feel that when we put a prohibition against a graduated tax in, that it will apply not only to the state but to all of its children which are the local units. So I think that what this committee has approved does pertain to the local units and that we shouldn't try and make a separation. I think we have made that decision and for practical purposes it means that issue is closed when we get to cities and villages and so on. In other words, I don't think this issue should come up in local government. I will yield to Mr. Van Dusen.

CHAIRMAN BENTLEY: The gentleman from Howell has the floor. Does the gentleman from Howell persist in offering his amendment?

MR. SHARPE: I will yield to Mr. Van Dusen.

CHAIRMAN BENTLEY: The gentleman yields to the gentleman from Birmingham.

MR. VAN DUSEN: Mr. Chairman and Mr. Sharpe, I think Mr. Allen has clearly indicated that in terms of whether or not you want anybody, any taxing authority in the state, to be permitted to levy a graduated income tax, this is the time to dispose of that question. If the committee proposal stands, why certainly, an amendment in the local government article which would permit a political subdivision of the state to levy a graduated income tax, being inconsistent with this, would be out of order; but this is the time to settle the issue in terms of a graduated tax. It doesn't deal with any other aspect of the taxing power of local units of government.

CHAIRMAN BENTLEY: The gentleman from Howell retains the floor. Does he persist in offering this amendment?

MR. SHARPE: I am not so sure, but I think I do. (laughter)

CHAIRMAN BENTLEY: All right, the gentleman's amendment is pending business. Does the gentleman desire to proceed?

MR. SHARPE: I think you understand what my fear is, Mr. Chairman, and if this is not substantial, then I will withdraw my amendment; but if it is a substantial fear, then I would not withdraw it.

CHAIRMAN BENTLEY: The Chair is in no position to rule upon the degree of the gentleman's fear. (laughter)

MR. SHARPE: I would like to ask Mr. Downs, here; he has a city mind.

CHAIRMAN BENTLEY: The gentleman has the floor. He yields to the gentleman from Detroit, Mr. Downs.

MR. DOWNS: Thank you, Mr. Chairman. If Mr. Sharpe does withdraw the amendment, I shall be glad to reintroduce it. I rise to support the amendment. I believe we should separate here the matter of state finances and local government. I believe the chairman of the finance committee very accurately says that if this amendment is not adopted, then for practical purposes local government would be precluded from discussing the pros and cons of whether a city, for example, has a right to adopt the piggyback tax. I think from the logical development of the convention the matter of the local taxes should more appropriately be taken up when we discuss local government.

I therefore support Mr. Sharpe's amendment and believe that our convention will function in a more orderly fashion if we discuss the subject matter under the subject of the local government report.

CHAIRMAN BENTLEY: The gentleman from Howell.

MR. SHARPE: Thank you, Mr. Downs. I am glad to find some support. Now, I am not an experienced politician and I have found that when a curve ball comes I can hardly distinguish it from a straight one. (laughter) So I think, Mr. Chairman, that I will insist on my amendment being voted on. I

think we should delete these words and then I am sure, as you all have been assured, that it will come back again in local government.

CHAIRMAN BENTLEY: The gentleman insists upon his amendment. The gentleman from Birmingham.

MR. VAN DUSEN: Mr. Chairman, on behalf of the committee, I would oppose the amendment. Mr. Allen clearly indicated that we should not make a distinction between state and local units of government in terms of permitting a local unit to graduate an income tax but prohibiting the state from doing so. The principle of graduation or nongraduation is, after all, the only question here and if this committee opposes the principle of a graduated income tax, it seems to me that consistently we must oppose it not only for the state but also for local units of government.

I would point out to Mr. Sharpe that this provision makes no difference at all in terms of the general taxing power of local units of government, and that question will be before us when we get to the local government section. The only question here is whether both the state and local units of government shall be prohibited from graduating any income tax which they seek to impose.

CHAIRMAN BENTLEY: Does the gentleman from Birmingham desire to yield to either the gentleman from Kalamazoo or the gentleman from Pleasant Ridge, who are seeking recognition?

MR. VAN DUSEN: I will yield first to the gentleman from Kalamazoo.

MR. ALLEN: Mr. Chairman, Mr. Van Dusen has practically given my speech. I think that we cannot have 2 sets of rates, 1 for the state and 1 for local units. We could constitutionally if Mr. Sharpe's amendment prevailed, but I think it would be very bad and once we have made the decision on the state level we better stay consistent, and I would oppose the Sharpe amendment.

CHAIRMAN BENTLEY: Does the gentleman yield to the gentleman from Pleasant Ridge?

MR. VAN DUSEN: I will so yield.

MR. A. G. ELLIOTT: I am persuaded that this particular item requires discussion and decision at this particular time and I would hope that when it is decided, whether we decide it favorably or unfavorably, that there will be no attempt to bring it up in the local government article. We are going to have enough on our hands as it is.

CHAIRMAN BENTLEY: Does the gentleman desire to proceed? If not, the gentleman from St. Clair Shores will be recognized, Mr. Snyder.

MR. SNYDER: Thank you, Mr. Chairman. I rise to support the position of Delegate Sharpe, and I want to assure him that this bipartisan support that he is getting is one that is motivated by a desire to work out a problem and not the desire to throw any straight balls or curve balls. We feel that we have a mutual problem here, and here is a problem that I feel in my mind is more sensitive and will be looked at more closely by more people when they evaluate the long range effect of this constitution than any other particular item that we have before us.

I would like to respectfully disagree with the members of the committee on local government that this is an issue that we should set aside. I have pointed out before that I have sponsored a proposal along these lines that Mr. Sharpe speaks of at this point and I didn't feel that I had had an opportunity to present, at the proper time, my feelings to the committee. I was granted an audience with the committee on finance and taxation that did review my matter; they listened very courteously to my argument; but I felt that the die had been cast and I was given an appearance for courtesy's sake.

I honestly feel that we must divide the issues here. The issues are much too complex to throw between these 2 matters. I feel that if we set aside the issue for a later date, the die will be so firmly cast, the decision will be so irrevocable, that we will not be able to make any changes, and I certainly support and appreciate the position of Mr. Sharpe. I feel that we must separate the issues so that we can take them up in their logical order.

CHAIRMAN BENTLEY: The lady from Highland Park is recognized.

MISS DONNELLY: While I am sympathetic with the intent that I believe Mr. Sharpe wishes to reach and be successful in in another instance, I don't think it is pertinent to this issue. This issue is not whether one resident of one city may tax the resident of another city; this issue is how they can be taxed any place in the state. Therefore, I rise to oppose his issue for this reason and wish to support the majority report.

CHAIRMAN BENTLEY: The gentleman from Howell, Mr. Sharpe, author of the amendment, is recognized.

MR. SHARPE: Now, this is a good, clear example of what this rush, rush, rush business is, in my opinion. Now, this material is coming to us so fast that this is not — to me, this taxation is a blind pig somewhere that I know very little about, and I will admit this, and I don't frequent blind pigs, either; (laughter) but I want to tell you this: that I had to put this amendment in until I knew what we were doing, and I am not so sure that I am so sure of what we are doing yet. But this is a real indication to me. Now, like yesterday, and with all of the reports that Mr. Austin gave — and I respect his judgment tremendously on taxation — I did not know exactly what I was doing and maybe I am the only one that didn't know what they were doing, but this is because I didn't get the minority report until after the minority had started their report. I didn't get a chance to study it. If this is any indication as to what is going to continue, I am sure that there are maybe many of us that will not be voting too intelligently.

Now, if this amendment that I have just offered does not prohibit in the future, before this convention is over, in the discussion on the local government committee proposals the opportunity to offer another amendment which will prohibit a mother city from taxing anyone outside of its own residents, then I will withdraw it; but if it does not, and I do not get this guarantee, then I won't withdraw it.

CHAIRMAN BENTLEY: Does the gentleman desire to yield to the chairman of the local government committee?

MR. SHARPE: I will be glad to yield to Mr. Brake first and then I will.

CHAIRMAN BENTLEY: The gentleman yields to Mr. Brake.

MR. BRAKE: I am afraid, Mr. Sharpe, that you have 2 issues completely confused. What you have offered has nothing to do with whether a mother city may tax the residents of outlying territories. What you are doing is saying any tax in the mother city may be a graduated income tax. You are striking out what we have said that any tax in the mother city may not be a graduated income tax. Your other issue of whether the city can tax nonresidents is not involved in what you propose at all.

MR. SHARPE: I begin to see the light. I am a little bit thick headed, maybe, today. We have had several night meetings here lately. As I am assured, then, Mr. Brake, that later I can offer this again, I withdraw this amendment now and will offer it later on in local government to prohibit the city from — or attempt to prohibit a mother city from taxing its outstate or outcity residents.

MR. BRAKE: All you are going to need is votes. (laughter)

MR. SHARPE: That is all I am going to need.

CHAIRMAN BENTLEY: The gentleman from Howell has the floor. Does he desire to yield further?

MR. SHARPE: I will yield to my good chairman on the local government committee.

CHAIRMAN BENTLEY: Mr. Elliott.

MR. A. G. ELLIOTT: Mr. Sharpe, I think your point is exactly the point that Mr. Kuhn was making, and I assured Mr. Kuhn that his amendment would be in order in the discussion of the local government article, and I assure you of the same thing.

MR. SHARPE: I wondered; it would be between Mr. Kuhn and myself. Mr. Kuhn may have been a little sharper this morning than I was. I did not quite catch the point so soon. I would like to yield to my friend over here.

CHAIRMAN BENTLEY: The gentleman yields to the gentleman from St. Clair Shores, Mr. Snyder.

MR. SNYDER: Thank you, Mr. Chairman and Mr. Sharpe. I do not have any strong feelings regarding where the difficult problem that we have before us will be settled. I feel that the conclusion that we arrive at, if we have the opportunity to debate and present our points of view in an uninhibited atmosphere, will be fine, as long as we have that opportunity; so I will withhold any strong feeling that I have of insisting that this matter be resolved at the present time with the assurance that we will have the opportunity to debate and speak on this matter at a later point, and certainly my withdrawal at this particular time will not be prejudicial to my position in the future. Thank you.

CHAIRMAN BENTLEY: The gentleman from Howell still retains the floor.

MR. SHARPE: I will at this time be glad to withdraw my amendment.

CHAIRMAN BENTLEY: Without objection it is withdrawn. The chairman of the committee, Mr. Brake.

MR. BRAKE: Mr. Chairman, I move the committee rise.

CHAIRMAN BENTLEY: Without objection, the motion prevails and the committee will rise.

[Whereupon, the committee of the whole having risen, President Nisbet resumed the Chair.]

PRESIDENT NISBET: Mr. Bentley.

MR. BENTLEY: Mr. President, the committee of the whole has had under consideration certain items on which the secretary will give a detailed report.

PRESIDENT NISBET: Mr. Chase.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 51,** has considered several amendments thereto and has come to no final resolution thereon. This completes the report of the committee of the whole.

Mr. Elliott has asked that the following announcement be made: the committee on local government will meet at 1:10 this afternoon, a very important meeting, in room A.

PRESIDENT NISBET: The Chair recognizes Mr. DeVries.

MR. DeVRIES: Mr. President and fellow delegates, the committee on administration has a very important meeting at 1:15 on the post constitutional convention budget. I urge all the committee members to attend.

PRESIDENT NISBET: Mr. Marshall.

MR. MARSHALL: Mr. President, a lot was said this morning about creating a new image, so I might tell you that if you want a truly new image I would consider making myself available as the candidate for governor on the Republican ticket. (laughter)

PRESIDENT NISBET: The chair recognizes Mr. Leppien.

MR. LEPPIEN: On behalf of the committee on miscellaneous provisions and schedules, I wish to announce that the subcommittee chairman on eminent domain is in the building although he was not in attendance this morning. We will have the meeting with the highway commissioner and other personnel from that department and it is urged that all members of the committee on miscellaneous provisions and schedule meet immediately following this session.

PRESIDENT NISBET: The Chair recognizes Mrs. Hatcher.

MRS. HATCHER: Mr. President, I would like to move that we recess until 2:00 o'clock.

PRESIDENT NISBET: The question is on the motion of Mrs. Hatcher. All in favor say aye.

The motion prevails and we are recessed until 2:00 o'clock.

[Whereupon, at 12:05 o'clock p.m., the convention recessed; and, at 2:00 o'clock p.m, reconvened.]

The convention will please come to order.

SECRETARY CHASE: Mr. President, a quorum of the convention is present.

During the recess Mr. Bledsoe filed with the secretary a request for leave of absence from the afternoon session of today and the session of tomorrow, Friday, since he must be in Marquette to fill a court obligation which was contracted for prior to the convention.

PRESIDENT NISBET: Without objection Mr. Bledsoe will be excused.

The Chair recognizes Mr. Bentley.

MR. BENTLEY: Mr. President, I move the convention resolve itself into committee of the whole for the consideration of items on the **general orders** calendar.

PRESIDENT NISBET: The question is on the motion of Mr. Bentley; those in favor say aye, those opposed no.

The motion prevails. Mr. Bentley.

[Whereupon, Mr. Bentley assumed the Chair to preside as chairman of the **committee of the whole.**]

CHAIRMAN BENTLEY: The committee will be in order.

MR. DADE: Mr. Chairman.

CHAIRMAN BENTLEY: For what purpose does the gentleman from Detroit wish to speak?

MR. DADE: A point of information, Mr. Chairman. I am wondering if the bell that rings to summon us back could — if there could be a perceptible pause between the time that the secretary says, "Are you ready to vote" and the bell rings. There may be certain business we may be engaged in from which we cannot come back with rapidity. (laughter)

CHAIRMAN BENTLEY: I think the secretary should answer that one in person, if he will, please.

SECRETARY CHASE: Thank you, Mr. Dade, for the suggestion, and we will do our best to comply with the request.

CHAIRMAN BENTLEY: The pending business before the committee is **Committee Proposal 51,** as amended. For what purpose does the gentleman from Grand Rapids, Mr. DeVries, arise?

MR. DeVRIES: A point of information. The committee on administration 2 days ago passed a motion suggesting to the secretary that we pause 1 minute between the time the bell rings and the vote is taken. I did not have a chance to pass on the information to you.

MR. DADE: Thank you, sir.

SECRETARY CHASE: Thank you, we will observe it.

CHAIRMAN BENTLEY: For what purpose does the gentleman from Detroit, Mr. Norris, arise?

MR. NORRIS: Mr. Chairman, I would like to request personal privilege at this point to address myself to a matter which has been called to my attention in the State Journal, the Lansing newspaper.

CHAIRMAN BENTLEY: Mr. Norris, the secretary believes that you should raise the point of personal privilege in the convention rather than in committee of the whole.

MR. NORRIS: All right.

CHAIRMAN BENTLEY: Are there amendments to the second paragraph of Committee Proposal 51?

SECRETARY CHASE: Mr. Snyder offers the following amendment:

1. Amend page 2, line 1, after "state" by striking out the balance of the line.

CHAIRMAN BENTLEY: The gentleman from St. Clair Shores is recognized in support of his amendment.

MR. SNYDER: Thank you, Mr. Chairman. I had the opportunity during my lunch period to take in some of the deliberative qualities I thought that this convention required, and I reviewed the matter that we had before us shortly before our recess and, in reviewing the matter, I was of the opinion that we had before us a 2 part problem; and the original decision that I made this morning to back off my problem I felt was one that did not recognize the first part of the problem. It is my feeling that we have before us, one, the question of whether a municipality shall tax the residences of nonresidents on their tax and, two, whether the municipality shall be restricted in its right to levy a certain tax.

Now, it was my intention this morning to take care of the first part by referring it to the committee on local government. I feel confident that I will be granted an audience and be given an opportunity to express to the 143 delegates other

than myself of this convention what I feel are some of the problems that we may have should the municipality be permitted to tax nonresidents. This, however, did not take into consideration the other part of the problem, and I must go on record to say that I feel at this time we as delegates have an obligation to all of the people of Michigan that we must recognize some of the problems they have in their immediate communities. I do not feel that we should write anything into the constitution so restrictive that should they desire to raise money within their communities properly they should be restricted in this sense.

So in view of this 2 hour deliberation I have had since our recess, I have resubmitted the amendment that Mr. Sharpe submitted and withdrew, and I urgently ask that the delegates to this convention separate the problem and give the suburban communities the opportunity to express their point of view to the committee on local government but, at the same time, recognize the other segments that need the money and remove from the proposed committee report the restrictive language. Thank you very much.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Birmingham, Mr. Van Dusen.

MR. VAN DUSEN: Mr. Chairman, I think the point was very clearly made this morning that the only question here is whether, having prohibited a graduated income tax for the state, you want to permit it at the local level. The committee would oppose it.

CHAIRMAN BENTLEY: The question is on the amendment offered by the gentleman from St. Clair Shores, Mr. Snyder. As many as are in favor will vote aye. Those opposed will vote nay.

The amendment is not adopted. The secretary will read the next pending amendment.

SECRETARY CHASE: Mr. DeVries and Mrs. Koeze offer the following amendment:

1. Amend page 1, line 20, after "applied.", by inserting "Exemptions from taxation may be granted only by general laws. Statutes providing for exemptions from taxation may be altered or repealed, except those statutes exempting from taxation real and personal property used exclusively for religious, educational, charitable or cemetery purposes, and owned by any corporation or association organized and conducted exclusively for one of those purposes and not operating for profit, or by an association, corporation, individual or other legal entity in trust for the use and benefit of any religious congregation or for the support, aid and maintenance of any hospital, almshouse, school, seminary, church, parsonage, or for burial grounds or other religious, educational or charitable purposes within this state.".

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Grand Rapids, Mr. DeVries.

MR. DeVRIES: Mr. Chairman, I would like permission to approach the rostrum to withdraw the amendment and offer a substitute without yielding the floor.

CHAIRMAN BENTLEY: Without objection, the permission will be so granted. The gentleman from Grand Rapids, without objection, has withdrawn the amendment and by unanimous consent offers the following as a substitute, which the secretary will read.

SECRETARY CHASE: Mr. DeVries and Mrs. Koeze offer the following amendment:

1. Amend page 1, line 20, after "applied.", by inserting "Property held by a nonprofit corporation, association or legal entity and used exclusively for religious, educational, charitable or cemetery purposes shall be exempt from real and personal property taxes.".

CHAIRMAN BENTLEY: The gentleman is recognized in support of his amendment.

MR. DeVRIES: Mr. Chairman and ladies and gentlemen of the committee, the first amendment that was withdrawn was the language of Delegate Proposal 1476. I received a good many notes from delegates who said they were willing to support the concept but that the language was too wordy and that it should be reduced, and that is what Mrs. Koeze and I have attempted to do in this substitute amendment. I would just like to make a brief statement on it. I hope we keep our debate on this short. I think you know exactly what the amendment proposes to do.

Michigan's property tax laws now exempt from taxation certain real and personal property owned by religious, charitable and educational institutions. The adoption of this amendment by the committee would give constitutional status to the exemptions that are now provided by statute. The statutory exemptions to charitable and educational organizations are properly justified, I feel, on the grounds that these institutions supply necessary services which the state would have to provide if they were not provided by these institutions. The exemption for religious organization is based upon the wise judgment that morality is necessary for the stability of government and religious organizations directly advance morality and thereby further the welfare of this state.

The same reasons which justify statutory exemptions are even more valid in support of constitutional exemptions. The constitution properly should concern itself with fundamental things. Protection of religious, educational and charitable institutions from taxation guarantees that the people's wholesome interest in these areas will not be encroached upon by any future legislative action. Constitutional status to these exemptions is consistent with the historical concern of the people that religious, educational and charitable institutions be encouraged and advanced whenever possible. I think that most of you are aware of the periodic attempts to pressure the legislature into discontinuing these worthwhile exemptions. Should such an attempt succeed, it would seriously affect the work of these now exempt institutions. While we do not believe that the legislators now in office will yield to attacks on these exemptions, it does not follow that some legislature in a future time might not use the power to tax to harass these institutions.

This amendment is very similar to a provision adopted by the New Jersey Constitutional Convention of 1947. This amendment is not inconsistent with the present uniformity provision of the state constitution. All it would do is to take a sound principle now expressed in statutory language, a principle which has withstood the test of time, and incorporate that principle into the constitution where it properly belongs. I respectfully urge the committee of the whole to favorably consider adopting this amendment to the committee proposal.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Birmingham, Mr. Van Dusen.

MR. VAN DUSEN: Mr. Chairman, quite obviously the committee has no quarrel with the objective of this amendment. The amendment in its original form was submitted to and considered at length by the committee, and the committee believed that the proposal was statutory in character and for that reason should not be included in the constitution. In its present form it is less objectionable from that standpoint, the wording having been reduced to a more concise statement of principle.

I think that gives you the background of the committee consideration of the matter. I am unable to speak further for the committee with respect to it. Perhaps Mr. Brake might wish to add something further.

CHAIRMAN BENTLEY: The Chair recognizes the chairman of the committee, the gentleman from Stanton, Mr. Brake.

MR. BRAKE: Mr. Chairman, ladies and gentlemen, there was absolutely no difference of opinion in the committee about the propriety of this, of these exemptions. I think every member of the committee agreed that the exemptions are proper and that they should be continued. It was the thinking of the committee that they were properly legislative. They are legislative now.

I call attention to the fact that these particular exemptions are among — my memory may be wrong — but 15 or 20 listed exemptions from taxation. Very likely Dr. DeVries is right in saying this is the most important of all, but there are some others that are rather close to people. A certain amount of your household goods are exempt. Certain animals that the farmer has which are supposed to furnish him with a

livelihood are exempt, and there are any number of other exemptions, all statutory. The only issue before us at all is whether or not these should be kept statutory or whether they should be written into the constitution.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Bay City, Mr. Higgs.

MR. HIGGS: I have a question for Delegate DeVries. Inasmuch as this amendment would incorporate by reference 15 to 20 statutes, if I understand correctly, into the constitution, I wonder whether you have a list of those statutes that we would be writing in or whether we could be supplied with the list. Whenever embarking upon an incorporation by reference, I really do think it is very important that we know exactly what we are doing.

CHAIRMAN BENTLEY: The gentleman from Bay City yields to the gentleman from Grand Rapids for a reply.

MR. DeVRIES: Mr. Chairman and Delegate Higgs, I don't think there is any reference involved in the amendment. Let me read it again. It is not 1476; it is the amendment that we are considering.

[The amendment was read by Mr. DeVries. For text, see above, page 897.]

I think it is more a statement of principle, of philosophy, Mr. Higgs, than it is of reference to ohetr legislation.

MR. HIGGS: One further question, if I may. Delegate DeVries, could you answer this question. Is the substance of the amendment which is being offered the existing statutory law?

MR. DeVRIES: Mr. Chairman and Delegate Higgs, I think it is the intent of the existing statutes, yes sir.

MR. HIGGS: I wonder then, if I could direct one further question to Delegate Brake?

CHAIRMAN BENTLEY: The gentleman may yield to whom he desires.

MR. HIGGS: Were your comments, Delegate Brake, directed at the amendment which has been read or the amendment which we have on our desks?

MR. BRAKE: The only thing that is before us now is the substitute amendment. If I am anticipating what you are thinking, I have not, of course, had time since this substitute was offered to get the statute and check and see if the wording is the same. Certainly the intent is the same and undoubtedly covers the same subject matter as the statute.

MR. HIGGS: Thank you.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Battle Creek, Mr. Everett.

MR. EVERETT: Mr. Chairman and delegates, I rise to support the amendment offered by Delegates DeVries and Koeze. I would suggest that this is not purely a statutory matter in that it does limit the right of the legislature to act to remove the exemptions. Dr. DeVries has indicated that it certainly is doubtful that such action would be taken, but it is a clear declaration on the part of the people of the state that they may not take this action whether they wish to or not.

As to the personal property exemptions which Mr. Brake has mentioned, it is true that they are now enumerated by statute but, where we have previously in this committee and in the convention adopted the principle of personal property exemptions, we have simply left to the legislature the idea of spelling out which items will fall within the exemptions. We have already acted to accord exemptions not from taxation—don't misunderstand me—but, as a matter of principle, the type of exemption which he has suggested we have already accorded in the area of real and personal property, exemption from civil process rather than taxation. I think that the amendment does offer a valid constitutional ground for enactment, and I would ask that we do enact it.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Detroit, Mr. Hodges.

MR. HODGES: I just want to question Mr. DeVries. Mr. DeVries, if a church was to own, say an office building in which, maybe, they just had part of their offices there and there was profit being taken off it, yet the profits were to go to the church or whatever nonprofit group, would this fall within the purview of this exemption?

CHAIRMAN BENTLEY: The gentleman from Detroit yields to the gentleman from Grand Rapids for the purpose of a reply.

MR. DeVRIES: Mr. Chairman and Delegate Hodges, again let me read the language. "Property held by a nonprofit corporation . . ." and so forth ". . . and used exclusively for religious, educational, charitable . . . purposes." Exclusively. I would go so far on this as: my church may purchase property in advance and everyone expects that we might gross something, and taxes are paid on this property until a church is established; so, I maintain that it has to be exclusively used for religious or educational purposes.

CHAIRMAN BENTLEY: Would the gentleman from Detroit care to yield to the gentleman from Birmingham for further reply?

MR. HODGES: Yes, I yield.

CHAIRMAN BENTLEY: The gentleman is recognized.

MR. VAN DUSEN: Mr. Chairman and Mr. Hodges, I would say that the question that Mr. Hodges raised is one of the things that concerned the committee when confronted with Delegate Proposal 1476, and the amendment in its present form has resolved that question at least in my mind.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Pontiac, Mr. King.

MR. KING: Mr. Chairman, my question was similar to the question raised by Delegate Hodges. I have some concern about this particular type of problem. At the present time, as you know, a religious fraternal organization has purchased yankee stadium and then sold it back or, rather, leased it back to the yankee baseball organization in order to avoid taxes. This is the sort of thing which I think is very dangerous and I am not quite as sure as the delegate from Birmingham that this could not be construed under the language that Delegate DeVries submits by way of amendment. I would be glad to yield to Delegate DeVries if he wants to clarify that particular point.

CHAIRMAN BENTLEY: The gentleman from Pontiac yields to the gentleman from Grand Rapids for a reply.

MR. DeVRIES: Mr. Chairman and Delegate King, again I can just say that this is a statement of intent, a philosophical restriction on the legislature: what it can do and what it cannot do. And, again, it says "exclusively" used for religious, educational and charitable institutions. I do not know how you could classify the yankee stadium; how you think you could classify it as religious, educational or charitable, or used exclusively for those purposes.

CHAIRMAN BENTLEY: The gentleman from Pontiac retains the floor.

MR. KING: I will yield to Miss Donnelly, who indicates that she could do that.

CHAIRMAN BENTLEY: The gentleman yields to the lady from Highland Park.

MISS DONNELLY: Well, I think a lot of people think that aiding athletic endeavor is aiding education, and I think they could aid athletic endeavor as going toward education.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Detroit, Mr. Ostrow.

MR. OSTROW: I think that we straightened out this problem following the Graystone ballroom case. At one time in the state of Michigan, any property owned by a university or a charitable organization was exempt from taxation. The University of Michigan owned the land on which the Graystone ballroom in the city of Detroit is now located, and after the lessees of the Graystone ballroom were successful after a decision by the supreme court, in avoiding real estate taxes on the ballroom, the legislature changed the law so that from that time on only property actually used for the particular religious or charitable purpose was exempt.

CHAIRMAN BENTLEY: The Chair recognizes the lady from Detroit, Miss McGowan.

MISS McGOWAN: Mr. Chairman and members of the committee, I rise to speak in favor of the DeVries and Koeze amendment and to ask your support of this amendment. We

believe that the basic concept of tax exemption is constitutional for, after all, our constitution should lay down broad, general principles. The matter of tax exemption is not a statutory question in the sense that if the state wishes to proclaim the broad, general principle that property owned by and devoted to charitable and religious purposes should be tax exempt and it cannot be done, there is no reason why tax exemption for religious and charitable institutions should not be placed in the constitution. The extent to which this matter may be statutory is as to what functions of the religious and charitable institution shall be tax exempt. For example, if a religious or charitable institution owned stock in General Motors on which it received dividends, there is a question as to whether that income should be tax exempt; or, if a charitable institution has a private enterprise, say, someone gives them a factory where they manufacture belts, there is a question as to whether that item should be tax exempt.

That aspect of tax exemption for charitable or religious purpose is statutory, but the broad, general principle that the property of charitable and religious institutions should be tax exempt is a basic constitutional provision, and I would like to go on record as being in favor of all churches and charitable organizations.

We feel that the DeVries and Koeze amendment would most assuredly give our churches and charitable organizations the measure of security they need to augment the work they are doing for the betterment of society, and I would ask your support of this amendment. Thank you.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Lansing, Mr. Wanger.

MR. WANGER: Mr. Chairman, I am sure every delegate is in favor of the principle of tax exemption of property which Mr. DeVries' and Mrs. Koeze's amendment would put into the constitution. I would think, however, that we should realize clearly if we adopt this, what we will in effect be doing. In addition to making it a constitutional mandate, we will be making the supreme court of the state rather than the legislature the interpreter of that principle as to just what property used exclusively for educational, religious or charitable purposes might be. I am sure that we all agree with that principle as we interpret it, but I would wonder if it might not be best to leave this to the legislature unless there is serious danger or might be serious danger in the future of these exemptions being abolished by the legislature. I would very much like to hear more if there is such danger at the present time or if there might have been in the recent past.

CHAIRMAN BENTLEY: Does the gentleman wish to yield for the purpose of a reply to the gentleman from Grand Rapids?

MR. WANGER: Yes, sir.

MR. DeVRIES: Mr. Chairman and Delegate Wagner, I think there is serious danger that in the next 10 years or 20 years there might be a significant attempt in the legislature to do this very thing. There have been attempts in the past few years to do this. I would like to have it stated in the constitution as a principle this convention favors a tax exemption for these institutions, as a statement, a philosophical statement, which is what we are doing. The legislature can interpret this; so can the supreme court. They do this with other laws and constitutional provisions as well.

MR. WANGER: I yield the floor.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Detroit, Mr. Austin.

MR. AUSTIN: Mr. Chairman, I would like to propose an amendment to the amendment suggested by Mr. DeVries.

SECRETARY CHASE: Mr. Austin offers the following amendment to the DeVries-Koeze amendment:

1. Amend the amendment at the end thereof, after "taxes" by inserting a colon and "Provided, There is no practice of discrimination against persons on account of race, creed or national origin".

CHAIRMAN BENTLEY: The gentleman is recognized in support of his amendment.

MR. AUSTIN: Mr. Chairman, I want to apologize for the form of the amendment. I had prepared an amendment of this sort in better form some time ago but for some reason my filing system is not working properly, so this is a rather hastily drafted amendment.

I appeared before the committee on legislative powers to discuss this subject of constitutional amendments for charitable organizations and at that time it was the feeling of that committee that this was more in the nature of a legislative matter than constitutional. The committee on finance and taxation came to the same conclusion. However, if this committee is going to consider this matter at this time, I think it is appropriate to make sure that this matter is taken up at the same time.

Tax exemption is a privilege. It is in the form of governmental subsidy to organizations rendering public service. The subsidy is in the form of furnishing government services free of charge. The cost of the government service is furnished free of charge, is paid out of tax revenue in which all persons participate regardless of their race, creed, color, or national origin. In other words, there is no discrimination of this kind in the payment of taxes. The tax money raised is used in support of these organizations through governmental subsidy or tax exemptions. Now I suggest that if tax money is to be used in the form of subsidy for these organizations, it is not fair that they be permitted to discriminate against persons on account of race, creed or color.

Now, to be more specific, there has been a rather serious problem among hospitals as to discrimination against persons on account of race, creed and color. These hospitals are granted property exemptions. They are granted exemptions from sales tax. They are granted exemptions from all forms of state taxes and, I might add, they are also granted exemptions from federal taxes and, in addition, contributions are made to these organizations that are tax exempt, or at least are tax deductible. The result is that there is a considerable amount of tax money supporting these institutions, and, if we are to grant constitutional exemption to them, I am certain that there should be a proviso that there be no discrimination on the basis of race, color or creed, and I move that the amendment to the amendment be adopted.

CHAIRMAN BENTLEY: The question is on the amendment offered by Mr. Austin to the amendment offered by Mr. DeVries and Mrs. Koeze, and the Chair will only entertain comment on the Austin amendment. Does the gentleman from Detroit care to yield to the gentleman from Grand Rapids?

MR. AUSTIN: I would be very happy to.

MR. DeVRIES: Mr. Chairman, ladies and gentlemen of the committee, I have no objection to this proviso. However, it seems to me that we provided a strong enough civil rights section in the bill of rights. I wonder if it is really relevant to the body of the amendment, Mr. Austin.

MR. AUSTIN: Mr. DeVries, Mr. Chairman, I do believe it is absolutely necessary, because exemptions are being granted now to these institutions and they are discriminating, and it is my firm hope that if we are going to go any further in granting exemptions, certainly in providing for these exemptions, constitutional limitation and constitutional authority, that there ought to be this proviso.

CHAIRMAN BENTLEY: The gentleman yields for the time.

MR. DeVRIES: Mr. Chairman and Delegate Austin, now that I believe I understand your amendment, I am opposed to it.

CHAIRMAN BENTLEY: Does the gentleman from Detroit wish to speak on the Austin amendment? Mr. Downs, Mr. Stevens was recognized first.

MR. DOWNS: I will be glad to yield to Mr. Stevens.

CHAIRMAN BENTLEY: The gentleman from Detroit, Mr. Downs, yields to the gentleman from Detroit, Mr. Stevens.

MR. STEVENS: Mr. Chairman and members of the committee, we thought we took care of this in the declaration of rights. We spent enough time on it. It was passed here unanimously. It would not seem to me to be necessary to repeat this constantly through the constitution. I believe the nondiscrimination provision of the declaration of rights amply takes care of all these things.

CHAIRMAN BENTLEY: The gentleman from Detroit, Mr. Downs, retains the floor.

MR. DOWNS: I would like to speak in favor of the Austin amendment to the amendment and if, without violating the rules, Mr. Chairman, I can say, parenthetically, in support of the amendment itself. I believe that this is a very sound provision. It is clear cut language and I just hope that Mr. DeVries will reconsider his earlier statement on the subject matter.

This matter of civil rights and equal opportunity is of such vital importance that I would rather it were stated once too often than once not often enough. This applies to the area of charitable and religious organizations, and I believe Delegate Wanger earlier raised the question of assuring an agency was charitable. I believe that the Austin amendment does make that assurance, and I feel that the feeling of the convention is that we certainly do not want to tax churches. This statutory right very properly should be frozen into the constitution.

I think the practical question that the amendment deals with is in the area which is not strictly a church service as such but gets into the area of a charitable function that may not be sponsored directly by a specific church but a nonprofit charitable organization that may branch over many nondenominational or other type of agency. I think this is a good protection and I urge support of this and of the DeVries amendment, also.

CHAIRMAN BENTLEY: Does the gentleman from Lansing, Mr. Erickson, desire to speak on the Austin amendment?

MR. ERICKSON: I just want to address the committee's attention to the word "creed." I am just fearful that if we let this thing go through that perhaps the Seventh Day Adventists or some other group could go into the Episcopal church and sort of take over, and I don't think that is the intention at all.

CHAIRMAN BENTLEY: Does the gentleman from Lansing desire to yield to the gentleman from Detroit?

MR. ERICKSON: I yield to the gentleman from Detroit.

MR. AUSTIN: Mr. Chairman, I have found the original draft of this amendment which I proposed to the committee on legislative powers, and I would like to read it because I think this will take care of some of the apprehension some of the delegates have.

> No charitable, educational or civic organization, otherwise qualifying as a nonprofit institution, which practices discrimination against persons on account of race, creed, religion, national origin, or ancestry in furnishing benefits, services, training or employment, shall be allowed an exemption from taxation: Provided, That this section shall not deprive religious organizations from giving preference, if they desire, to members of their own sects.

CHAIRMAN BENTLEY: Does the gentleman from Lansing desire to proceed? Mr. Tubbs.

MR. TUBBS: Is that offered as a substitute, Mr. Chairman, for the previous Austin amendment? I think it puts an entirely different light on our proposal.

CHAIRMAN BENTLEY: The gentleman from Detroit asks permission to offer the following as a substitute for the amendment to the amendment, which the secretary will read.

SECRETARY CHASE: Mr. Austin withdraws his previous amendment to the DeVries-Koeze amendment, and offers the following amendment to the amendment:

1. Amend the amendment at the end thereof, after "taxes.", by inserting "No charitable, educational or civic organization, otherwise qualifying as a nonprofit institution, which practices discrimination against persons on account of race, creed, religion, national origin or ancestry in furnishing benefits, services, training or employment, shall be allowed an exemption from taxation: Provided, That this section shall not deprive religious organizations from giving preference, if they desire, to members of their own sects.".

CHAIRMAN BENTLEY: Without objection, the amendment the secretary has just read will be accepted as the pending amendment. Does the lady from Highland Park desire to speak on the Austin amendment?

MISS DONNELLY: Well, I desired to speak on the first Austin amendment, in support thereto, and, if I understand all the ramifications of the second, I would support it.

CHAIRMAN BENTLEY: Does the gentleman from Grand Rapids desire to speak on the Austin amendment?

MR. TUBBS: I would say that this is still pretty restrictive, Mr. Chairman. I know of church organizations where separate organizations are formed to take care of elderly people. They do discriminate in a way; they give preference to the people of their own denomination. I think this amendment would bar that sort of practice.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Detroit, Mr. Norris, to speak on the Austin amendment.

MR. NORRIS: Mr. Chairman, a point was raised with regard to whether or not there is a political or civil right involved — the reason I say that that point was raised, I think Mr. Stevens made the observation that in his judgment the equal protection clause which was passed by this convention, at least its first reading, would cover the matter of the Austin amendment. I raise the question as to the validity of Mr. Stevens' observation. I raise the question because I don't believe that there is a political or civil right not to be discriminated against in any activity of a nonprofit or charitable institution. There is a very strong question in my mind as to whether that is covered, and, therefore, I think that the Austin amendment would be very much before the house as far as the merits of it are concerned.

I am not too sure, however, that the substituted Austin amendment doesn't raise more problems than the original Austin amendment, and I would ask that perhaps some reconsideration be made on that point and perhaps a stronger case could be made for the original — if only improvised — language that he offered.

CHAIRMAN BENTLEY: The Chair has ruled, Mr. Norris, that on the unanimous consent request by Mr. Austin, the original amendment was withdrawn and the language substituted, and that is the pending business before the committee. The Chair recognizes the gentleman from Birmingham, Mr. Van Dusen.

MR. VAN DUSEN: I have a question for Mr. Austin, Mr. Chairman. The language which we are currently considering is language which I have only heard the secretary read and have not had any opportunity to consider it in detail. Mr. Austin, is your amendment in effect a prohibition against action by the legislature granting tax exemption to any institution practicing discrimination? Is that its general sense?

CHAIRMAN BENTLEY: The gentleman from Birmingham yields to the gentleman from Detroit.

MR. AUSTIN: That is the intent, Mr. Van Dusen.

MR. VAN DUSEN: If I may continue, Mr. Chairman, then, your amendment does not purport to grant any exemption; your amendment simply restricts the legislative power to grant exemptions. Is that correct?

MR. AUSTIN: Exactly, Mr. Van Dusen.

CHAIRMAN BENTLEY: Does the gentleman from Detroit, Mr. Mahinske, desire to speak on the Austin amendment?

MR. MAHINSKE: Yes, I would like to ask Mr. Austin a question here. From the reading of the amendment, it seems to me that this could be interpreted to go into the very functions of the religions themselves as opposed to each other.

Now, if you are proposing that they may not discriminate for any purpose, that is including a religious purpose. Now where do we draw the line here? We have various religions where no one may speak from the pulpit except an ordained minister or a priest. We have other religions that any member of the congregation may speak from the pulpit. Now, does this mean that, the intermingling of these people, the fact that they will not be able to speak, will be a possible discrimination?

CHAIRMAN BENTLEY: The gentleman yields to the gentleman from Detroit for a reply.

MR. AUSTIN: Mr. Chairman, I think Mr. Mahinske should hear that amendment again. I think he is a little confused. Would you mind reading it?

CHAIRMAN BENTLEY: Without objection, the secretary will read the pending Austin amendment.

SECRETARY CHASE: May the secretary inquire first, Mr. Austin, if this is the language of Delegate Proposal 1448?

MR. AUSTIN: That is correct.

SECRETARY CHASE: This is the text of it:

[The amendment was again read by the secretary. For text, see above, page 900.]

MR. AUSTIN: Mr. Mahinske, does that clear the matter up for you?

MR. MAHINSKE: If the legislature should construe this type of activity as discrimination, then the legislature is not permitted to give these various religious groups any exemptions. Is this correct?

MR. AUSTIN: Only in connection with those services that are not religious, where they discriminate, do discriminate on account of race and so on.

MR. MAHINSKE: "And so on" includes religion. Now, let's assume that we have a hospital that is owned by a religious organization where you are required to go to mass to be a patient in this hospital; now if you are not of the faith of that particular hospital and you refuse to go to mass, this is a refusal on religious grounds; then aren't you being discriminated against or could this not be construed as being discriminated against?

MR. AUSTIN: Mr. Chairman, Mr. Mahinske, you are raising a question which, I think, the amendment seeks to avoid.

MR. MAHINSKE: Well, if your amendment does not meet any of the restrictions brought in here — in other words, these possibilities that I am mentioning are not brought within the purview of your amendment.

MR. AUSTIN: Mr. Chairman, Mr. Mahinske, I will go so far as to say that if the amendment as drawn creates the problem that you have raised, I would certainly be willing to have any change made in the draft which will accomplish the protection that you would like to have.

MR. MAHINSKE: Well, I am also thinking of some of the non Christian religions that, on the basis of sex, divide the congregation. Now, does this feature enter in here? Are these people to lose their exemptions which they have today because their congregation is divided along the lines of sex?

MR. AUSTIN: We are referring only to discrimination in supplying benefits, service, training or employment.

MR. MAHINSKE: Well, isn't religion itself a benefit to the people?

MR. AUSTIN: That would not be my interpretation.

CHAIRMAN BENTLEY: The Chair would inquire of the gentleman from Detroit, Mr. Mahinske, there are 2 other delegates who are seeking recognition: the gentleman from Grand Rapids, Mr. DeVries, and the gentleman from Birmingham, Mr. Van Dusen. Do you desire to yield to either one of them?

MR. MAHINSKE: I will yield to either of them.

CHAIRMAN BENTLEY: The Chair will recognize the gentleman from Birmingham, Mr. Van Dusen.

MR. VAN DUSEN: Mr. Chairman, I have another question for Mr. Austin. I think we are suffering here somewhat from the fact that this is a rather novel concept than one which many of us, perhaps, considered in relation to the proposal of the committee on finance and taxation which is now before us. Mr. Austin, was your proposal referred to a committee and considered by a committee?

MR. AUSTIN: Mr. Chairman and Mr. Van Dusen, my proposal was submitted to the committee on legislative powers. I even appeared before that committee and made a presentation, a written presentation. Later the matter was referred to the committee on finance and taxation. The committee on finance and taxation considered the matter of exemptions for charitable organizations at a time when I was absent. When I returned to the committee, I was informed that the committee had decided that the matter of exemptions for charitable organizations was legislative and not a constitutional matter and it, therefore, suggested that it be referred to the legislature and, at the time, I think I can remind you that I said I had an additional amendment to that, provided we were going to consider it; and, since we were not going to consider it, I would not raise my issue.

I feel the same way here. Since this matter has come up before this committee, I think it is appropriate to consider this along with it. Had this proposition not come up, I would not have offered — I was not even prepared for it, because I did not realize it was coming up.

CHAIRMAN BENTLEY: The gentleman from Birmingham has the floor.

MR. VAN DUSEN: Might I ask, Mr. Chairman, if any of the committee on legislative powers would like to indicate the nature and extent of their consideration and their reaction to this?

CHAIRMAN BENTLEY: The Chair will advise the gentleman from Birmingham that the chairman of the committee on legislative powers, the delegate from St. Louis, Mr. Hoxie, is seeking recognition. Do you yield to him?

MR. VAN DUSEN: I will yield to him, Mr. Chairman.

MR. HOXIE: Mr. Chairman and fellow delegates, Mr. Austin did state correctly that he appeared before our committee on the proposal. I would also like to advise the delegation that at the time of the consideration of the subject matter before us, it was discovered, in the opinion of our committee, that this was not a proper subject under our rules of assignment of responsibility and work of the convention. We were only dealing with that section of the constitution which pertained to exemptions from execution which we had already passed. Mr. Austin was advised that we did refer the proposal to the finance and taxation committee where we felt it properly belonged. That was several weeks ago. I believe Mr. Austin was advised in the hearing before our committee that that was our finding.

Now, I am a little concerned with the amendment. He refers to religious organizations. I can think of many other types of organizations that are nonprofit organizations. For instance, I happen to belong to the masonic lodge and in the city of Alma we have a masonic home. We have a hospital in connection with that. The individuals that live in that home are selected because of membership in the masonic lodge. Not all members of the masonic lodge are accepted in that home and there are certain restrictions such as giving up any property that they have and conveying it to the home.

Now, I am just wondering whether or not we are going to the point in this matter of discrimination, and we discriminate in that institution because you have to be a member of the masonic lodge to be there to begin with; we do not hold the institution out as far as its hospital for public use; it is for the use of our own organization, and when we say nonprofit organizations, do we have rights, do we have the privilege of using those? And may I say, in addition to that, that every member of the masonic lodge in the state of Michigan contributes, in addition to his regular dues for maintenance of his local lodge, an annual amount toward the support of this home. I am only using this as an example, because I know there are many such institutions. We have a gleaner home run by the gleaner organization. Would they be considered discriminatory if a nonmember of that home wanted to use their facilities, wanted to live in that home?

It is my understanding that what Mr. Austin was referring to was that if they discriminate under the terms of this language, then they would lose any benefits as a nonprofit corporation in the way of taxes, and I would like to ask Mr. Austin if it is his intent that the type of organization that I referred to would be guilty of discrimination under his proposed amendment.

CHAIRMAN BENTLEY: The gentleman from Birmingham has the floor. Would he care to yield to the gentleman from Detroit for his reply?

MR. VAN DUSEN: I will so yield.

CHAIRMAN BENTLEY: The gentleman will yield; however, the Chair is forced to recognize the gentleman from Grand Rapids, Mr. DeVries.

MR. DeVRIES: Well, Mr. Chairman, ladies and gentlemen of the committee, I apologize. I thought this was going to be a noncontroversial item. I think I know what the intent of Mr. Austin's amendment is, but I think when you look at the practical impact you get a little different picture. For example, the people in my church, the Christian Reformed Church, have a budget which amounts to about 10 per cent of their income. This budget is earmarked for institutions of the church. It is earmarked for Pine Rest Christian hospital, which is the third largest mental hospital in the country, privately owned. There is no discrimination against patients in Pine Rest hospital except that all of us in the church contribute to its support; so, therefore, if you are not a member of the church, you pay more money than you would if you were a member of the church. The same thing is true of the college where I teach; its tuition rates are based upon church membership and geography.

Now I think the effect of the amendment would be that somebody could come to Calvin College and say, "Well, I am not a member of this church but, nevertheless, you are discriminating against me and I want the same tuition rates." They could do the same thing at Pine Rest hospital, and Calvin College and Pine Rest hospital offer secular benefits and services and under this amendment it could be construed that way. That is why I opposed the first amendment and I oppose the second amendment.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Muskegon, Mr. Danhof, to speak on the Austin amendment.

MR. DANHOF: Mr. Chairman and Mr. Austin, originally, I am supporting Dr. DeVries' amendment, but I am wondering if we are not trying to take one right and perhaps trample it underfoot with another. I think Mr. Norris may have had the idea when he mentioned this that we are getting into something here that is extremely delicate and difficult.

Again, to reiterate somewhat what Dr. DeVries says, it was my privilege to serve on the board of a home for elderly people for a number of years. This one happened to be composed and supported by churches who were of 2 different denominations but of very similar backgrounds and, very frankly, we limited it solely to the people from those churches, first of all, and then if we had room — it was not a large institution — it was limited to people from other protestant evangelical denominations; and this, I think, is practiced not only by the particular denominations I belong to but all other religious organizations. I think of seminaries where, certainly, before you would be allowed to enter the seminary for instruction in the religion you'd have to be a member of the church.

It would appear to me that this amendment that has been offered by Mr. Austin, while it is laudable in character, I think perhaps is creating far more mountains than we are desirous of trying to climb at this particular time.

Dr. DeVries' original amendment was a direct statement stating a principle that charitable or religious organizations of whatever type or denomination or kind or creed should be granted tax privileges. I think this is a broad statement to go into the constitution. When we begin to restrict it, we find ourselves in trouble. If there could be some way that we could consider one without the other, I think this would be very beneficial and I would ask if this would be possible. Otherwise, I would feel constrained to vote against the Austin amendment to the amendment but in support of the original amendment.

CHAIRMAN BENTLEY: The Chair recognizes the lady from Highland Park, Miss Donnelly.

MISS DONNELLY: I would like to direct a question to either the chairman of the committee or to Mr. Van Dusen. I am beginning to gather that Mr. Austin's amendment was considered by this committee, and, the next question, I would like to know if the finance and taxation committee considered Dr. DeVries' amendment.

CHAIRMAN BENTLEY: The lady yields to whom?

MISS DONNELLY: To either, to the one who wishes to answer the question.

CHAIRMAN BENTLEY: The lady yields to the gentleman from Birmingham.

MR. VAN DUSEN: Mr. Chairman and Miss Donnelly, the DeVries amendment, Delegate Proposal 1476, was considered at some length in the committee on finance and taxation and, as I have indicated, because of its detail, because of its reference to existing statute, because of the questions raised by Delegates Hodges and King, and for other reasons because of its general content, we considered it a statutory matter, and we adjudicated that it should be left to the legislature and should not be included in the constitution.

Mr. Austin is quite correct in refreshing my recollection when he points out that he was not there at the time this Delegate Proposal 1476 was considered and upon his return he indicated that he had had a proposal along the same line but, since we weren't going to consider putting the general question of exemptions in the detail contemplated by 1476 into the constitution, he was not going to raise the point in our committee. Therefore, the specific amendment which Mr. Austin now offers was never considered by the committee on finance and taxation. Does this give you a reasonable history of our consideration of the one and not the other?

MISS DONNELLY: Yes, thank you. In that event, since they both have to a degree or at least substantively been considered by this committee, I would speak in opposition to both amendments at this time, believing that the committee, having considered them a longer length of time, is better equipped to determine the legislativeness. I think they are both legislative. I certainly feel if one is going to be in, the one in the best interests of all in the thought of passing a constitution would be Mr. Austin's, but if — I think they are both subject to the same criticism — they are both legislative, then in that case I must oppose both of them unless, if we are going to have one, I think Mr. Austin's amendment is in better taste for the general public.

CHAIRMAN BENTLEY: Does the lady desire to yield further to the gentleman from Birmingham?

MISS DONNELLY: I would be happy to.

MR. VAN DUSEN: Mr. Chairman, Miss Donnelly, I should perhaps amplify with respect to Delegate Proposal 1476 that we had it before the committee in the form in which it sits in writing on your desks. We did not have it before our committee in the form in which it has been offered by Dr. DeVries and Mrs. Koeze this afternoon and, as I indicated earlier, many of the objections which we raised with respect to Delegate Proposal 1476 have been obviated by the form of the amendment now presented by Dr. DeVries. I would not want to leave the impression that the committee was totally opposed to the present amendment because of its statutory character, because it has been reduced to a considerable extent to a statement of principle.

MISS DONNELLY: Is it a prohibition against the legislative act?

MR. VAN DUSEN: Well, the DeVries amendment is a direction to the legislature that it shall grant exemptions to certain organizations with respect to certain property used exclusively for certain purposes.

The Austin amendment goes the other way. It says the legislature shall not grant exemption to certain property used by certain organizations for certain purposes if they practice discrimination.

The DeVries amendment is an affirmative direction to the legislature: you shall exempt. The Austin amendment goes in the opposite direction and says: you shall not exempt.

MISS DONNELLY: Then in effect, isn't that it?

MR. VAN DUSEN: You shall not, if.

MISS DONNELLY: Yes.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Detroit, Mr. Downs.

MR. DOWNS: Mr. Chairman, I think we are in a situation where we often find ourselves in the convention when we are in substantial agreement but do not know quite how to get the language. If I am so presumptuous as to say I have the feeling that the sense of the convention — and if I say that, somebody will ask me why I can never get a motion

passed — but I feel that, first, we are in agreement that churches as such should not be taxed and should have a constitutional exemption for their charitable and religious functions.

I think, secondly, there is complete agreement here that nobody wants to try to use the constitution to tell a particular church how to run its internal affairs.

I think the third point that was raised very adequately by Delegate Austin is that if we grant tax exemption, the hospital or agency of that kind getting it should not itself abuse the concept of charity by discriminating in any manner on who gets the uses of the hospital facilities. This has nothing to do with the religious functions as such.

If those 3 ideas are right, I am just wondering — I know in committee of the whole there is difficulty in recessing or adjourning, but, without going through the formalities of the committee rising and then postponing or adjourning — if there is some parliamentary move whereby we could suggest that Delegates Austin and DeVries see if they can review this matter and bring it back to us later on this afternoon; because I do feel there is substantial agreement and I am afraid we are just going to be spinning our wheels here while people are trying to get language straightened out.

That really is a parliamentary inquiry, Mr. Chairman. If I am out of order, I apologize to the committee.

CHAIRMAN BENTLEY: In reply to the gentleman's parliamentary inquiry, the Chair would rule that the matter may be passed temporarily if the committee so desires and be returned to subsequently while we are still in committee of the whole.

MR. DOWNS: Well, I, Mr. Chairman, move the matter be passed temporarily.

CHAIRMAN BENTLEY: That motion will be in order. Is there any discussion on Mr. Downs' motion? If not —

MR. CUDLIP: Mr. Chairman, I would amend the motion to move that this matter be put over until the committee of the whole meets on Monday evening and take its order there if there is something that has prior attention. We can study the matter in the meantime.

CHAIRMAN BENTLEY: The Chair recognizes the chairman of the committee, Mr. Brake.

MR. BRAKE: Mr. Chairman, I called attention yesterday to the fact there were 10 days left and we have used pretty nearly all of one of those and there are only 9 left. This whole matter of the tax committee's material is before this committee, and I propose to move before we quit this afternoon that we stay here 'til midnight if it is necessary to finish it. I don't want anything put over having to do with this committee until Monday.

CHAIRMAN BENTLEY: The Downs' motion, as the Chair understands it, was that this be temporarily postponed and we return to it a little bit later. Is that correct?

MR. DOWNS: Yes. My intent, Mr. Chairman, was "temporarily", meaning perhaps a half hour or an hour, which would give people time to review the language. I did not mean to be rigid on that at all.

MR. AUSTIN: Mr. Chairman, I have a suggestion.

CHAIRMAN BENTLEY: The Chair will recognize the gentleman from Detroit, Mr. Austin.

MR. AUSTIN: Mr. Chairman, I am wondering if we could not pass this item now and take it up in the convention after the committee rises, as an amendment to the body of the proposal.

CHAIRMAN BENTLEY: The Chair will advise the gentleman from Detroit that he can withdraw his amendment but will also require that the gentleman from Grand Rapids, Mr. DeVries, will have to withdraw his amendment, then both will be offered in convention.

Mr. DeVries does not. The pending motion is that this be temporarily laid aside and that we proceed with the next order of business. As many as are in favor will vote aye. Those opposed?

The motion does not prevail. The Chair now recognizes the gentleman from Taylor, Mr. Marshall.

MR. MARSHALL: Mr. Chairman and members of the committee, I do not want to appear to be against churches or charitable organizations, but I am going to take issue with some of my distinguished colleagues that have spoken previously. We have spent a good deal of time discussing this issue. It is clearly — and I oppose both the amendment and the original amendment on the same basis that I opposed incorporating into this constitution a prohibition against any given form of income tax earlier today.

This is clearly, unquestionably, statutory in nature. The legislature, I would remind you, has already acted in this area; there is a statute on the books now governing this. I see no reason for us to continue to try and burden this constitutional convention or the document by spending endless hours discussing matters that have already been taken care of by the legislature, matters that can be changed and amended from time to time when necessity requires by the legislature, and it seems to me that we are wasting a lot of time on this one.

The thing that I am disturbed about is that when we take up this problem — you have heard all the discussion and I am not going to state the pros and cons of this amendment or the original amendment because it would only be repetitious — but I defy anyone to show me where this has any place in a constitution, to show me where the legislature has failed to act, and to show me why it should not continue to be able to act without it being mandated in the constitution that you have to continue what you are doing now and under no circumstances can it be revised or changed throughout the life of this constitution.

Now, the final thing that is disturbing me, and it disturbs me a great deal, is there are some important issues that I am vitally concerned with that are constitutional in nature: legislative organization, the local government report, and others; and I don't want to spend all of my time debating something that the legislature has already handled very ably, and then have someone come up and try to apply a gag rule to me when we get into the question of apportionment and debating it on this floor. So, for that reason, I am making it clear that I am not against churches or charitable organizations. I support my church financially and my wife sees that I go occasionally. I want that clear. But I am opposed to both the amendment and the amendment to the amendment and I will hope that we could end the debate here and vote on the question. Thank you, Mr. Chairman. (applause)

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Grand Rapids, Mr. DeVries.

MR. DeVRIES: Well, Mr. Chairman and Delegate Marshall, there was a time about October 3 when I would have believed all this about statutory language, but I will only call your attention or remind you of the section on civil service. If you can convince me that that is not statutory, and that you do not support that, then I will gladly withdraw my amendment; but I have a feeling that this amendment deals with a principle, a constitutional principle, that I would like to see in the constitution. I don't think it is statutory in the nature of some of the other things that we have adopted in committee of the whole.

MR. MARSHALL: May I reply, Mr. Chairman?

CHAIRMAN BENTLEY: If the gentleman cares to yield to you. The gentleman is recognized in his own right, but it must be on the Austin amendment.

MR. MARSHALL: Well, (laughter) I think that — Mr. Mahinske said I am ahead, stop — so I will stop.

MR. DeVRIES: Mr. Chairman, in the interest of solidarity, I will yield to Mr. Marshall. (laughter)

MR. MARSHALL: Should I sing one chorus of Solidarity Forever or get him to answer the question? Dr. DeVries, it is true I supported the civil service provision. I agree with you that it is a statutory provision. It is one, though, that has been with us for a long time. Historically, it was put in by the people themselves. It was one that was necessary because the legislature repeatedly, time and time again, failed to act in this area. I say to you that the amendment that you have here, that the legislature has acted and has given no indication that it will not continue to act in this area; and where we

have a situation where there has not been a problem, I see no need to debate an endless number of hours over statutory language.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Saginaw, Mr. Leppien, to speak on the Austin amendment.

MR. LEPPIEN: The Austin amendment, in my mind, is a matter that should not be considered here. The question of the original amendment should be considered here from the standpoint that the legislature has acted but in the opposite manner.

CHAIRMAN BENTLEY: The vote now occurs on the amendment offered by Mr. Austin to the amendment offered by Mr. DeVries. Those in favor of the Austin amendment will respond by saying aye. Those opposed will say nay.

The amendment is not adopted.

A DELEGATE: Division.

CHAIRMAN BENTLEY: The gentleman from Detroit asks for division. Is the demand supported?

SECRETARY CHASE: Sufficient number.

CHAIRMAN BENTLEY: Those in favor of the Austin amendment will vote aye; those opposed will vote no.

The secretary will lock the machine.

Mr. Marshall.

MR. MARSHALL: Mr. Chairman, for the record, I did not vote for the reasons previously stated.

CHAIRMAN BENTLEY: Mr. Marshall abstains.

SECRETARY CHASE: On the Austin amendment to the DeVries-Koeze amendment, the yeas are 33, the nays are 90.

CHAIRMAN BENTLEY: The amendment to the amendment is not adopted. The pending question now recurs to the DeVries-Koeze amendment and the Chair recognizes the lady from Dearborn, Mrs. Cushman.

MRS. CUSHMAN: It seems to me that Mr. DeVries really pointed out very clearly why it is that I consider this a matter not for the constitution but a statutory matter when he pointed out that it has been a statutory matter for many years now and that it was very clear from the action of the legislature that this was a matter being adequately taken care of; and, also, the fact that we have had this discussion here today I think points out the problems that we are going to get into in trying to get too many details into the constitution. Thank you.

MR. UPTON: Point of information, Mr. Chairman.

CHAIRMAN BENTLEY: The gentleman will state his point.

MR. UPTON: Would you have the secretary please read the amendment; it has been so long since we have heard it.

CHAIRMAN BENTLEY: Without objection, the secretary will read the DeVries-Koeze amendment.

SECRETARY CHASE: The amendment is:

[The amendment was again read by the secretary. For text, see above, page 897.]

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Grand Rapids, Mr. Martin.

MR. MARTIN: Mr. Chairman, I don't think there is much more that can be said; however, I do want to point out that this also covers property held for charitable purposes and this is a very wide range of subjects. Certainly, if there ever was a field where the legislature ought to be able to include some things and exclude other things and modify its position from time to time, this ought to be it. For that reason it seems very unwise to me to tie the legislature's hands. We all have our own charities, we all belong to churches, and so on, but this is not the thing that we ought to be doing as far as the constitution is concerned.

CHAIRMAN BENTLEY: Does Mr. Martin desire to yield to the gentleman from Grand Rapids, Mr. DeVries?

MR. MARTIN: Yes, certainly.

MR. DeVRIES: Mr. Chairman and ladies and gentlemen of the committee, first in response to Mrs. Cushman, there have been attempts in the past few years to take away these tax exemptions in the legislature. I would anticipate there will be more attempts in the next 5 years or 10 years or 20 years.

Again, to Mr. Martin, this is a statement of intent on behalf of the constitutional convention. We state philosophically that we think these institutions ought to be tax exempt. We leave to the legislature the definition of these terms. It seems to me nothing more than a statement of our intent, a philosophical statement of our intent, in the constitution.

CHAIRMAN BENTLEY: The gentleman has the floor.

MR. MARTIN: Mr. Chairman, it seems to me that the philosophical intent of the people is perfectly clear in the action which the legislature has taken in the past. It does not seem to me there is the slightest possibility — Mr. DeVries says that these have been endangered, but the mere fact that bills have been introduced does not create any danger; that happens all the time, and if there is one subject on which the legislature is not likely to start destroying the exemptions, this is it; because everybody inside and outside the legislature belongs to a church and this is just talking about the remotest kind of possibility and certainly is not necessary to protect either the churches or the charities.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from St. Ignace, Mr. Dell.

MR. DELL: Mr. Chairman, I think there has been enough said on this subject. I only got up to support the DeVries amendment, and I think plenty has been said.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Bay City, Mr. Higgs.

MR. HIGGS: I would like to direct one more question to Delegate DeVries, and I think I could go along with this amendment if you mean what you said. The last time you spoke I understood you to say that this was a statement of intention and that the definition of these matters will be left to the legislature. I am a little concerned about the broad language of associations for charitable purposes, and I think this is the thing: now, if you would accept as an amendment "as prescribed and defined by law," I could support your amendment. Could you accept such an amendment, "as prescribed and defined by law"? Then we would have a constitutional statement of intention and, as you have said — if I understood you — then it would be left to the legislature to define it.

CHAIRMAN BENTLEY: The gentleman yields to the gentleman from Grand Rapids.

MR. DeVRIES: May I respectfully request a meeting with the delegate?

MR. HIGGS: Yes.

CHAIRMAN BENTLEY: The Chair will recognize the gentleman from Taylor, Mr. Marshall.

MR. MARSHALL: Mr. Chairman, I want to agree with Mr. DeVries that there was some attempt in the legislature to do away with this exemption, but they did not get very far in the legislature and I still think there has been enough discussion on this. I think everyone has their minds made up on this question, and if the legislature should take this away — which I don't suspect that it will — I am sure that there would be some other con con delegate who would be willing to take his place in the legislature. (laughter)

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Fennville, Mr. Hutchinson.

MR. HUTCHINSON: Mr. Chairman, I was a little bit interested in Mr. DeVries' statement that he understood this amendment to be merely a directive to the legislature to do thus and so, and so I went over to his desk and looked at the words, and I will have to take issue with him. I think that the wording that he proposes is a statement in the constitution that certain types of institutions and property shall be exempt. Any attempt of the legislature to define it or to impose a tax upon something that somebody else thought fell within the exemption would be taken to court and it would be entirely up to what the court said as to whether or not this was the kind of property that fell within an exemption defined not by the legislature but by the constitution. I don't think that his wording, as he has offered it here, is a directive to the legislature at all. I think, as Mr. Wanger, I believe, pointed out earlier in the debate, what we have here is something that will

transfer this matter entirely out of the hands of the legislature and place it in the hands of the court.

Now, I don't know why we need to be so fearful of what the legislature might do and repose so much confidence in our courts. I think we should look with equal suspicion on both of them, but also with equal confidence in both of them, too. For that reason, while I — please do not misunderstand me — in the legislature would vote for bills to preserve these exemptions by legislative act, I don't think I could support any such categorical wide sweeping statement in the constitution as Mr. DeVries has offered.

CHAIRMAN BENTLEY: Does the gentleman yield to the gentleman from Grand Rapids for a reply?

MR. HUTCHINSON: I yield.

CHAIRMAN BENTLEY: The gentleman from Grand Rapids has the floor.

MR. DeVRIES: Mr. Chairman, Mr. Hutchinson, briefly, this is a directive to the legislature not to tax religious, charitable or educational institutions. That is correct.

MR. HUTCHINSON: Mr. Chairman, I would like to ask the delegate to point out to me where it says it is a directive to the legislature. Will you read this language — or ask the secretary to?

MR. DeVRIES: I will read the amendment, if it is all right, Mr. Chairman.

[The amendment was again read by Mr. DeVries. For text, see above, page 897.]

MR. HUTCHINSON: Very well, I would ask the delegate to tell me where there is any directive to the legislature in that language.

MR. DeVRIES: I think the prohibition is sufficient, Mr. Hutchinson, that the point is in the constitution.

MR. HUTCHINSON: Exactly. It is no directive to the legislature to pass any law at all. It is right there, and any attempt by the legislature to define any one of those terms or to use its judgment as to whether under a particular situation, the situation would fall within any one of those exemptions, is something that would be decided by the courts. There is no directive to the legislature to pass any laws at all; it is a constitutional exemption. I think my statement stands.

MR. VAN DUSEN: Mr. Chairman.

CHAIRMAN BENTLEY: Does the gentleman from Fennville desire to yield to the gentleman from Birmingham who is seeking recognition?

MR. HUTCHINSON: Mr. Chairman, I might say I am not quite used to this congressional practice yet. (laughter) I will yield to the gentleman from Birmingham.

CHAIRMAN BENTLEY: The Chair will point out to the gentleman from Fennville that he may need to be some day. (laughter and applause)

MR. VAN DUSEN: Mr. Chairman, Mr. Hutchinson's inquiry to Dr. DeVries has raised a question which should have occurred to me earlier. Dr. DeVries, would an educational institution operated for profit — take, for example, the typical secretarial school in the city of Detroit — qualify for tax exemption under your amendment?

MR. DeVRIES: Mr. Chairman and Mr. Van Dusen, again, perhaps the language of this amendment should have been on your desk, "Property held by a nonprofit corporation, association, or legal entity. . . ." Does that answer your question, Mr. Van Dusen?

MR. VAN DUSEN: "Nonprofit," I take it, modifies all the types of entity?

MR. DeVRIES: That is correct.

MR. VAN DUSEN: Excuse me. I should have listened more carefully.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Ypsilanti, Mr. Lawrence.

MR. LAWRENCE: I would like to oppose the amendment, and I would like to state briefly the reason. I am aware of the wording "used exclusively for religious" and so forth, but I am still wondering about this: suppose that one of the so called exempt organizations owned real estate that it rented, leased, but used the proceeds exclusively for educational or religious purposes. There is a good question as to whether or not that would be not exempt from taxation, that property. In other words, the trouble is that we are in the legislative field when we should be in the constitutional field.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Detroit, Mr. Downs.

MR. DOWNS: Mr. Chairman, I rise in support of the DeVries amendment, and I want to point out to the committee that while I would rather we had also had the Austin amendment as added protection, I feel that Committee Proposal 26 that came out of declaration of rights, suffrage and elections providing for equal protection of the laws would, I think, solve the problem that has been raised here. I would prefer Mr. Austin's language, which I think was more specific.

I think if I understood Mr. DeVries right, he made it clear that the intent of his language was for the nonprofit or charitable function and not for a private or profit function that a charitable organization might have. With those 2 protections, it would seem to me that this gets at what we do seem to agree upon. It may not be the language with the amendment I would have preferred, but that notwithstanding, I will support the amendment as it has now been presented by Mr. DeVries.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Pontiac, Mr. King.

MR. KING: Mr. Chairman, I would like to direct a question to Mr. DeVries. We have a fine institution of higher learning down in our part of the state known as the committee on political education. I wonder if this would qualify. I yield for an answer from Delegate DeVries. Does the committee on political education qualify under the terms of your amendment as a nonprofit educational institution?

CHAIRMAN BENTLEY: The gentleman yields to the gentleman from Grand Rapids for a reply.

MR. DeVRIES: I would like to yield, Mr. Chairman, but I cannot think to whom I should yield. (laughter) I do not think that is a corporation or association that is organized exclusively for religious, educational or charitable functions.

CHAIRMAN BENTLEY: Is the lady from Highland Park seeking recognition?

MISS DONNELLY: I want to just add that as an attorney, I appreciate litigation when it is worthwhile; but I cannot see increasing our courts with litigation on this issue when the legislature has acted repeatedly and, I think in everybody's opinion, properly, that there is no reason to put this in the constitution and swell the problems in litigation in not only our supreme court but all the lower courts until it gets there.

CHAIRMAN BENTLEY: The question is on the amendment offered by the gentleman — does the gentleman wish recognition?

MR. DeVRIES: Mr. Chairman and members of the committee, this does not nullify any legislation or court decisions on the books; it establishes a principle in the constitution. I don't understand what everybody is so concerned about.

CHAIRMAN BENTLEY: Does the gentleman from Detroit, Mr. Garvin, seek recognition?

MR. GARVIN: Mr. Chairman and delegates, I do not support the DeVries amendment for the reason of the declaration of rights amendment. I am not sure at this time which would receive precedence in the case of any legal matter concerning this thing. In the DeVries amendment, there is no way out; it must be.

Now, if, in the declaration of rights, there was discrimination in a hospital, or is, which of these acts would prevail? As long as there is a question about anything that is placed in the constitution, it shouldn't be there.

CHAIRMAN BENTLEY: The gentleman from Bay City, Mr. Higgs, is recognized.

MR. HIGGS: Mr. Chairman, if my understanding is correct, now — and I direct this question to Delegate DeVries — you would not accept an amendment of "as defined by law" after the word "purposes." Is that correct? Did I understand you

correctly before to say that this was merely a statement of intention?

MR. DeVRIES: Yes, correct. Mr. Chairman and Mr. Higgs, if you added that, you would have a redundancy and there is no need for the original amendment.

MR. HIGGS: I think I should offer this amendment at this time.

CHAIRMAN BENTLEY: The gentleman from Bay City desires to offer an amendment to the DeVries amendment, which the secretary will read.

SECRETARY CHASE: Mr. Higgs offers the following amendment to the amendment offered by Mr. DeVries and Mrs. Koeze:

1. Amend the amendment after "purposes" by inserting a comma and "as defined by law,"; so that the language will read:

Property held by a nonprofit corporation, association or legal entity and used exclusively for religious, educational, charitable or cemetery purposes, as defined by law, shall be exempt from real and personal property taxes.

CHAIRMAN BENTLEY: The gentleman is recognized in support of his amendment.

MR. HIGGS: Mr. Chairman and fellow delegates, I was impressed, first of all, by the statements of Delegate Wanger and subsequently by the statements of Delegate Hutchinson with regard to just exactly what we are doing. I had originally been impressed very favorably by the discussion of Delegate DeVries. I had understood him to say that what he intended was to include in the constitution a statement of intention with regard to this matter. Now, I, too, share many of the sentiments of Delegate Marshall in this matter. I don't want to be on record as opposed to education or opposed to religious organizations of any kind, or any charitable purpose, but the language that we are incorporating is so broad as to not make it, I think, a matter of a statement of intention but a matter that is mandatory, not directory, and would take away from the legislature any power to define what is meant by an association. In law, an association can include so many things, as we all know, and to extend to the association such an exemption in a mandatory manner with regard to another very broad purpose, the charitable purpose, is the part of this thing that seems to me very critical. If we add after the word "purposes," "as defined by law," I can vote for this.

By the way, if this is done, we still have a mandatory direction that such institutions be exempt from real and personal property; so we are really not cutting the heart out of the thing at all, but if we do permit the legislature to define these purposes we are giving some real meaning to it. Thank you.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Battle Creek, Mr. Everett, to speak on the Higgs amendment.

MR. EVERETT: Mr. Chairman, I would like to oppose the Higgs amendment. I think we have certainly made a mountain, if not out of a molehill, at least out of a small mountain to begin with, into a large one. We have a very clear cut issue here: either you believe that the exemption which now exists should be written into the constitution so that it cannot be removed by the legislature or you believe it should be left to the legislature. It is as simple as that. It seems to me that you can vote yes or no on it, but with the ambiguity of Mr. Higgs' language it means, then, that the legislature could do by indirection what, on one hand, we are saying they cannot do by direction. I would submit that we should defeat this amendment and then vote on the principal amendment and vote whatever your convictions may be, but let's vote them.

CHAIRMAN BENTLEY: The question is on the amendment offered by Mr. Higgs to the amendment offered by Mr. DeVries. Those in favor of the Higgs amendment will respond by voting aye. Those opposed?

The amendment is not adopted.

The question is now on the DeVries-Koeze amendment. As many as are in favor will vote aye. Those opposed?

A DELEGATE: Division.

CHAIRMAN BENTLEY: Division has been demanded. Is there support?

SECRETARY CHASE: A sufficient number.

CHAIRMAN BENTLEY: Those in favor of the DeVries amendment will vote aye. Those opposed will vote no. The machine will be locked.

SECRETARY CHASE: On the adoption of the amendment offered by Mr. DeVries and Mrs. Koeze, the yeas are 54; the nays are 65.

CHAIRMAN BENTLEY: The amendment is not adopted. Are there any amendments to the body of the proposal?

SECRETARY CHASE: There are no further amendments.

CHAIRMAN BENTLEY: If not, it will pass.

Committee Proposal 51, as amended, is passed. The secretary will read. (applause)

The gentleman from Pontiac, Mr. Kuhn.

MR. KUHN: For the purpose of afternoon recess, I move the committee do now rise.

CHAIRMAN BENTLEY: The motion is whether the committee shall rise. Those in favor of the motion will respond by voting aye. Those opposed?

The Chair rules the nays have it.

A DELEGATE: Division.

CHAIRMAN BENTLEY: Division is demanded. Is there support?

SECRETARY CHASE: A sufficient number.

CHAIRMAN BENTLEY: Those in favor of Mr. Kuhn's motion that the committee rise will vote aye. Those opposed will vote no. The secretary will lock the machine. The committee will be in order.

SECRETARY CHASE: On the motion that the committee rise, the yeas are 57 and the nays are 51.

CHAIRMAN BENTLEY: The committee will rise.

[Whereupon, the committee of the whole having risen, President Nisbet resumed the Chair.]

PRESIDENT NISBET: The convention will be in order. Mr. Bentley.

MR. BENTLEY: Mr. President, the committee of the whole has had under consideration certain items on the general orders calendar of which the secretary will give a detailed report.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 51,** A proposal setting up the uniform rule of taxation for providing for equalization a maximum limit for assessments, prohibiting a graduated income tax, and covering the subject matter of sections 3, 4, 7 and 8 of article X of the 1908 constitution; has adopted 2 committee amendments thereto; and recommends the amendments be agreed to and the proposal as thus amended do pass.

[*Following are the amendments recommended by the committee of the whole:*

1. Amend page 1, line 17, by striking out "or for alternative means of taxation of such property from taxation,".

2. Amend page 1, line 21, after "class" by inserting "or classes".]

PRESIDENT NISBET: The question is on agreeing to the amendments as recommended by the committee of the whole. Those in favor will say aye; opposed no.

The amendments are agreed to.

The proposal, as amended, is referred to the committee on —

MR. AUSTIN: Mr. President.

PRESIDENT NISBET: Mr. Austin.

MR. AUSTIN: Mr. President, just a moment, please. We would like to get some votes on these amendments.

SECRETARY CHASE: May the secretary inquire of Mr. Austin as to which amendments he wishes to offer?

MR. AUSTIN: All 3 of the amendments offered by the minority.

SECRETARY CHASE: Mr. Austin offers, first:

1. Amend page 1, line 8, after "Sec. a.", by striking out

"The legislature shall provide by law a uniform rule governing the general ad valorem taxation of real property and tangible personal property.", and inserting "The legislature may by law authorize or impose ad valorem taxes which shall be uniform within the classes of property to which they are applied.".

PRESIDENT NISBET: The question is on the Austin amendment.

MR. AUSTIN: Mr. President, I would request a roll call vote on all 3 amendments.

PRESIDENT NISBET: Is the demand supported? Those in favor rise. It is supported. Mr. Kuhn.

MR. KUHN: Preferential motion, please. I move that the convention now recess for 10 minutes.

PRESIDENT NISBET: The question is on the motion of Mr. Kuhn to recess. Those in favor will say aye. Those opposed, no.

The motion prevails. We will recess for 10 minutes.

[Whereupon, at 3:45 o'clock p.m., the convention recessed; and at 3:55 o'clock p.m., reconvened.]

The convention will please come to order.

SECRETARY CHASE: Mr. President, a quorum of the convention is present.

Mr. Austin offers the following amendment:

[The amendment was again read by the secretary. For text, see above, page 906.]

PRESIDENT NISBET: The question is on the Austin amendment. The yeas and nays have been demanded. Those in favor of the Austin amendment will vote aye. Those opposed to the Austin amendment will note no. The secretary will lock the machine and record the vote.

The roll was called and the delegates voted as follows:

Yeas—42

Andrus, Miss	Follo	Murphy
Austin	Greene	Norris
Baginski	Hart, Miss	Ostrow
Balcer	Hatcher, Mrs.	Pellow
Binkowski	Hodges	Perlich
Brown, T. S.	Hood	Pollock
Buback	Hoxie	Rajkovich
Cushman, Mrs.	Kelsey	Sablich
Dade	Krolikowski	Snyder
Doty, Donald	Lesinski	Stopczynski
Douglas	Madar	Walker
Downs	Mahinske	Wilkowski
Elliott, Mrs. Daisy	Marshall	Young
Everett	McCauley	Youngblood

Nays—83

Allen	Haskill	Richards, J. B.
Batchelor	Hatch	Richards, L. W.
Beaman	Higgs	Rood
Bentley	Howes	Rush
Blandford	Hubbs	Seyferth
Bonisteel	Hutchinson	Shackleton
Boothby	Iverson	Shaffer
Brake	Judd, Mrs.	Shanahan
Brown, G. E.	Karn	Sharpe
Butler, Mrs.	King	Sleder
Cudlip	Kirk, S.	Spitler
Danhof	Knirk, B.	Stafseth
Davis	Koeze, Mrs.	Staiger
Dehnke	Kuhn	Stamm
Dell	Lawrence	Sterrett
DeVries	Leppien	Stevens
Doty, Dean	Lundgren	Suzore
Durst	Martin	Tubbs
Elliott, A. G.	McLogan	Turner
Erickson	Mosier	Tweedie
Farnsworth	Nisbet	Upton
Figy	Page	Van Dusen
Finch	Perras	Wanger
Gadola	Plank	White
Gover	Powell	Wood
Gust	Prettie	Woolfenden
Hanna, W. F.	Pugsley	Yeager
Hannah, J. A.	Radka	

SECRETARY CHASE: On the adoption of the amendment proposed by Mr. Austin, the yeas are 42, the nays are 83.

PRESIDENT NISBET: The amendment is not adopted. The secretary will read.

SECRETARY CHASE: Mr. Austin offers the following amendment:

2. Amend page 1, line 13, after "assessed" by striking out the comma and "which shall not, after January 1, 1966, exceed 50 per cent,"; so that the language will then read:

The legislature shall provide by law for the determination of true cash value of such property and shall specify the proportion of true cash value at which such property shall be uniformly assessed and shall provide by law for a system of equalization of assessments.

PRESIDENT NISBET: Mr. Austin.

MR. AUSTIN: Thank you, Mr. President. I think it is appropriate for the delegates to know what they are voting on. The first — the amendment on which they have just voted — was the uniformity clause, and the one that is before them now is the 50 per cent of true cash value standard in regard to assessments.

PRESIDENT NISBET: Thank you, Mr. Austin.

SECRETARY CHASE: Will the delegates please clear their voting stations on the voting machine.

PRESIDENT NISBET: All in favor of the Austin amendment will vote aye. Those opposed to the Austin amendment will vote nay. The secretary will lock the machine and record the vote.

The roll was called and the delegates voted as follows:

Yeas—43

Allen	Hart, Miss	Norris
Andrus, Miss	Hatcher, Mrs.	Pellow
Austin	Hodges	Perlich
Baginski	Hood	Sablich
Balcer	Judd, Mrs.	Snyder
Binkowski	Kelsey	Stamm
Brown, T. S.	Krolikowski	Sterrett
Buback	Lesinski	Stopczynski
Cushman, Mrs.	Madar	Suzore
Dade	Mahinske	Van Dusen
Douglas	Marshall	Walker
Downs	McCauley	Wilkowski
Elliott, Mrs. Daisy	McLogan	Young
Follo	Murphy	Youngblood
Greene		

Nays—84

Batchelor	Hannah, J. A.	Powell
Beaman	Haskill	Prettie
Bentley	Hatch	Pugsley
Blandford	Heideman	Radka
Bonisteel	Higgs	Rajkovich
Boothby	Howes	Richards, J. B.
Brake	Hoxie	Richards, L. W.
Brown, G. E.	Hubbs	Rood
Butler, Mrs.	Hutchinson	Rush
Cudlip	Iverson	Seyferth
Danhof	Karn	Shackleton
Davis	King	Shaffer
Dehnke	Kirk, S.	Shanahan
Dell	Knirk, B.	Sharpe
DeVries	Koeze, Mrs.	Sleder
Doty, Dean	Kuhn	Spitler
Doty, Donald	Lawrence	Stafseth
Durst	Leppien	Staiger
Elliott, A. G.	Lundgren	Stevens
Erickson	Martin	Tubbs
Everett	McAllister	Turner
Farnsworth	Mosier	Tweedie
Figy	Nisbet	Upton
Finch	Ostrow	Wanger
Gadola	Page	White
Gover	Perras	Wood
Gust	Plank	Woolfenden
Hanna, W. F.	Pollock	Yeager

SECRETARY CHASE: On the adoption of the second

amendment offered by Mr. Austin, the yeas are 43, the nays are 84.

PRESIDENT NISBET: The amendment is not adopted. The secretary will read.

SECRETARY CHASE: Mr. Austin offers the following amendment:

3. Amend page 1 by striking out all of lines 21 and 22; and by striking out all of page 2.

PRESIDENT NISBET: Mr. Austin.

MR. AUSTIN: Mr. President, I would like to remind the delegates that we are not voting on an income tax nor are we voting on a graduated income tax. We are merely voting to determine whether the legislature shall be prohibited at any time from levying such a tax.

PRESIDENT NISBET: Thank you, Mr. Austin. The question is on the Austin amendment. Those in favor will vote aye. Those opposed will vote nay. The secretary will lock the machine and record the vote.

The roll was called and the delegates voted as follows:

Yeas—60

Allen	Haskill	Norris
Andrus, Miss	Hatch	Ostrow
Austin	Hatcher, Mrs.	Pellow
Baginski	Heideman	Perlich
Balcer	Hodges	Pollock
Bentley	Hood	Rajkovich
Binkowski	Howes	Richards, L. W.
Brown, T. S.	Judd, Mrs.	Sablich
Buback	Kelsey	Sleder
Butler, Mrs.	Koeze, Mrs.	Snyder
Cushman, Mrs.	Krolikowski	Spitler
Dade	Lawrence	Stamm
Davis	Lesinski	Sterrett
Doty, Dean	Madar	Stopczynski
Douglas	Mahinske	Suzore
Downs	Marshall	Tubbs
Elliott, Mrs. Daisy	McCauley	Walker
Follo	McLogan	Wilkowski
Greene	Murphy	Young
Hart, Miss	Nord	Youngblood

Nays—69

Batchelor	Gust	Prettie
Beaman	Hanna, W. F.	Pugsley
Blandford	Hannah, J. A.	Radka
Bonisteel	Higgs	Richards, J. B.
Boothby	Hoxie	Rood
Brake	Hubbs	Rush
Brown, G. E.	Hutchinson	Seyferth
Cudlip	Iverson	Shackleton
Danhof	Karn	Shaffer
Dehnke	King	Shanahan
Dell	Kirk, S.	Sharpe
DeVries	Knirk, B.	Stafseth
Donnelly, Miss	Kuhn	Staiger
Doty, Donald	Leppien	Stevens
Durst	Lundgren	Turner
Elliott, A. G.	Martin	Tweedie
Erickson	McAllister	Upton
Everett	Mosier	Van Dusen
Farnsworth	Nisbet	Wanger
Figy	Page	White
Finch	Perras	Wood
Gadola	Plank	Woolfenden
Gover	Powell	Yeager

SECRETARY CHASE: On the adoption of the third amendment offered by Mr. Austin, the yeas are 60, the nays are 69.

PRESIDENT NISBET: The amendment is not adopted. The secretary will read.

SECRETARY CHASE: Mr. DeVries and Mrs. Koeze offer the following amendment:

1. Amend page 1, line 20, after "applied.", by inserting "Property held by a nonprofit corporation, association or legal entity and used exclusively for religious, educational, charitable or cemetery purposes shall be exempt from real and personal property taxes.".

PRESIDENT NISBET: Mr. DeVries.

MR. DeVRIES: Mr. President, I respectfully request a record roll call vote.

SECRETARY CHASE: Mr. Higgs offers the following amendment to the amendment proposed by Mr. DeVries and Mrs. Koeze:

1. Amend the amendment after "purposes" by inserting a comma and "as defined by law,".

PRESIDENT NISBET: The question is on the Higgs amendment. Mr. Higgs.

MR. HIGGS: I would like to state again that my purpose in offering this amendment is so that I can vote for the DeVries amendment. If this amendment is adopted, I think that the DeVries amendment will then conform to what was the stated intention — the constitution would state the intention which he recommended. If it does not, then it takes away from the legislature the power to define what is an association or other legal entity for charitable purposes, and I think that is much too broad. In all conscience, I must — if this amendment fails — vote against the DeVries amendment.

PRESIDENT NISBET: Mr. DeVries.

MR. DeVRIES: Mr. President, I urge you not to adopt the amendment. I move the previous question on the Higgs amendment and on the DeVries amendment.

PRESIDENT NISBET: The question is on the previous question. Is the demand seconded?

SECRETARY CHASE: A sufficient number.

PRESIDENT NISBET: Shall the main question now be put? Those in favor say aye; opposed, no.

It is so ordered. The question is now on the Higgs amendment to the amendment. Those in favor of the Higgs amendment will say aye; opposed, no.

The amendment to the amendment is not adopted.

Those now in favor of the amendment by Mr. DeVries and Mrs. Koeze will vote aye. Those opposed will vote no. The secretary will lock the machine and record the vote.

Mr. Van Dusen.

MR. VAN DUSEN: I demand the vote of Mr. Marshall.

PRESIDENT NISBET: Mr. Marshall.

MR. MARSHALL: I think you need 4 other guys to demand my vote — I am not sure — and then I think I still have a right to abstain and then I will explain my reasons for abstaining. Am I incorrect, Mr. President?

PRESIDENT NISBET: Is he correct, Mr. Chase?

SECRETARY CHASE: Yes.

MR. MARSHALL: I don't think you want me to explain my reasons for abstaining because it would take me 45 minutes. (laughter)

MR. EVERETT: Point of order, Mr. President.

I would call the secretary's attention to rule 67, which says, "No delegate shall be entitled to abstain from voting in any roll call unless he shall have stated his intention to abstain before the voting starts." I submit that the delegate has no right to abstain.

PRESIDENT NISBET: Mr. Marshall.

MR. MARSHALL: I thought I did that in the committee of the whole. Maybe I am confused. If you want me to vote, I will vote and then explain my vote, Mr. President.

PRESIDENT NISBET: Mr. Lesinski.

MR. LESINSKI: Mr. President, why pick on Mr. Marshall when there are others who have not voted?

SECRETARY CHASE: Has everyone voted?

PRESIDENT NISBET: Mr. Kuhn.

MR. KUHN: Mr. President, Dr. Nord would like us to demand that he vote and Mr. Norris, and I request that he vote.

SECRETARY CHASE: The machine is locked.

PRESIDENT NISBET: If you have all finished, the machine is locked and the vote will now be recorded.

The roll was called and the delegates voted as follows:

Yeas—59

Baginski	Hodges	Perras
Balcer	Hood	Pugsley
Beaman	Howes	Radka
Bentley	Iverson	Rajkovich
Binkowski	Judd, Mrs.	Shackleton
Buback	Kelsey	Shaffer

Cudlip	Knirk, B.	Sharpe
Dade	Koeze, Mrs.	Sieder
Danhof	Krolikowski	Snyder
Dell	Leppien	Stamm
DeVries	Lesinski	Sterrett
Downs	Madar	Stevens
Elliott, Mrs. Daisy	Mahinske	Stopczynski
Erickson	Marshall	Suzore
Everett	McCauley	Tweedie
Gadola	McGowan, Miss	Walker
Gust	Murphy	White
Hannah, J. A.	Nisbet	Wilkowski
Hart, Miss	Pellow	Youngblood
Hatcher, Mrs.	Perlich	

Nays—67

Allen	Gover	Plank
Andrus, Miss	Greene	Pollock
Batchelor	Hanna, W. F.	Powell
Blandford	Haskill	Prettie
Bonisteel	Hatch	Richards, J. B.
Boothby	Heideman	Richards, L. W.
Brake	Higgs	Rood
Brown, G. E.	Hoxie	Rush
Butler, Mrs.	Hubbs	Sablich
Cushman, Mrs.	Hutchinson	Seyferth
Davis	Karn	Shanahan
Dehnke	King	Spitler
Donnelly, Miss	Kirk, S.	Stafseth
Doty, Dean	Kuhn	Staiger
Doty, Donald	Lawrence	Tubbs
Douglas	Lundgren	Turner
Durst	Martin	Upton
Elliott, A. G.	McAllister	Van Dusen
Farnsworth	McLogan	Wanger
Figy	Mosier	Wood
Finch	Ostrow	Woolfenden
Follo	Page	Yeager
Garvin		

SECRETARY CHASE: On the adoption of the amendment proposed by Mr. DeVries and Mrs. Koeze, the yeas are 59, the nays are 67.

PRESIDENT NISBET: The amendment is not adopted.

MR. MARSHALL: Mr. President.

PRESIDENT NISBET: Mr. Marshall.

MR. MARSHALL: Briefly, I want to explain by vote. I could have abstained —

MR. VAN DUSEN: Mr. President, a point of order. Does the gentleman have a right to explain a yes vote?

PRESIDENT NISBET: Mr. Marshall may proceed.

MR. MARSHALL: I want to explain my yes vote. I could have — I disagree with Mr. Van Dusen—I think I could have abstained from voting. It's true I should have announced my intention to abstain prior to the starting of the taking of the vote. I appreciate the fact that I was singled out for the signal honor of being the first delegate to have his vote demanded on the floor of the convention and, particularly, since it came from such a distinguished delegate as Mr. Van Dusen.

Now, to explain why I was abstaining, I thought I made it clear in the committee of the whole, and I will be very brief: I am not opposed to the principle of this amendment. I am opposed to the entire provision being incorporated into the constitution. As previously stated, it is statutory in nature.

PRESIDENT NISBET: **Committee Proposal 51**, as amended, is referred to the committee on style and drafting.

Following is Committee Proposal 51 as amended and referred to the committee on style and drafting:

The committee recommends that the following be included in the constitution:

Sec. a. The legislature shall provide by law a uniform rule governing the general ad valorem taxation of real property and tangible personal property. The legislature shall provide by law for the determination of true cash value of such property and shall specify the proportion of true cash value at which such property shall be uniformly assessed, which shall not, after January 1, 1966, exceed 50 per cent, and shall provide by law for a system of equalization of assessments. The legislature may provide by law for exemption of such property from taxation, or for alternative means of taxation of such property in lieu of general ad valorem taxation, uniform upon the class or classes of property to which such alternative means are applied.

Every other tax shall be uniform upon the class or classes on which it operates. No income tax graduated as to rate or base shall be imposed by the state or any of its subdivisions.

The Chair recognizes Mr. Bentley.

MR. BENTLEY: Mr. President, I move the convention do now resolve itself into committee of the whole for further consideration of items on the **general orders** calendar.

PRESIDENT NISBET: Mr. Bentley, will you hold your motion? Mr. Elliott has a comment. Then we will vote on it. Mr. Elliott.

MR. A. G. ELLIOTT: I became so interested, Mr. President, in this byplay of words — we haven't had any today — that I forgot that there was something that should be taken care of.

Mr. President, I would like to move that Journal 70, page 439, be corrected under Committee Proposal 83, section a, and under Committee Proposal 83, section b, and that this be published in tomorrow's journal so that you can have it and save some time here, and that we strike out all language in section b, column 2.

MR. FORD: Mr. President, a point of order.

PRESIDENT NISBET: Mr. Ford.

MR. FORD: I want to ask the delegate by what authority he is now amending the majority report of the committee on local government, since we have not met or voted on it at this stage. The members of the committee, I now understand, did meet on it. I was not privileged to be invited to this meeting.

MR. A. G. ELLIOTT: Mr. Ford, I am sorry, but this has nothing to do with the action that was taken in the committee. This is to correct some mistakes that were in the original majority report. I might just as well explain that in the printing of it, on the last page, some of the language was misplaced and I am just trying to get it in its proper place in the journal, Mr. Ford.

PRESIDENT NISBET: Without objection, the corrections that Mr. Elliott has asked for in his report will be made in the journal.

Is there any objection? Mr. Ford.

MR. FORD: I do not want to object to Mr. Elliott's changes in the language of the explanation. I will object to any change in the text of the proposal itself.

PRESIDENT NISBET: Mr. Elliott, as I understand it, you are only correcting the committee comments?

MR. A. G. ELLIOTT: These are just in the comments, the comments that were made. They are not in the proposal itself. The proposal itself has a change and that will be done by amendment when it is the proper time.

PRESIDENT NISBET: Without objection, the corrections will be made. They are made.

Following are the corrections:

Committee Proposal 83, section a comment — delete all language following the word "changes" in line 27 of column 1.

Committee Proposal 83, section b comment — strike the words "6 through 9" in line 8 of section b, column 1, and insert the words "19 through 22".

Strike all language following line 10 of section b, column 2, and insert the following:

"the right to control municipal wages and hours and administration. It is the feeling of a majority of the committee that certain categories of municipal employees are given preferred treatment by state laws to the detriment of other employees. The committee is of the opinion that wages and hours should be set by the local governing body

rather than by the legislature, except where state law deals with all persons, or all public employees. Local officials are better acquainted with their fiscal problems, and can more readily solve them than is likely to be the case with a legislator voting on a problem with which he is not familiar. The right of the municipality to decide on matters of wages and hours should be preserved in all cases except where the legislature determines that some statewide interest is involved, but its action in such cases should be limited to all persons or all public employees without favor or distinction among them.".

[Corrections made. See below, page 1006.]

The question is now on the motion of Delegate Bentley that we resolve ourselves into committee of the whole. All in favor say aye; opposed, no.

The motion prevails. Mr. Bentley.

[Whereupon, Mr. Bentley assumed the Chair to preside as chairman of the committee of the whole.]

CHAIRMAN BENTLEY: The committee will be in order. When the committee rose, it had completed action on Committee Proposal 51, item 25 on the convention calendar. The secretary will read.

SECRETARY CHASE: Item 26 on the calendar, from the committee on finance and taxation, by Mr. Brake, chairman, **Committee Proposal 52,** A proposal with reference to the taxation of certain utilities, covering the material in article X, section 5 of the 1908 constitution.

Following is Committee Proposal 52 as read by the secretary, and the reasons submitted in support thereof:

The committee recommends that the following be included in the constitution:

Sec. a. THE LEGISLATURE MAY PROVIDE BY LAW FOR THE ASSESSMENT BY THE STATE TAX COMMISSION OF THE PROPERTY WHOSE AD VALOREM TAXES ARE RESERVED TO STATE AID FOR PUBLIC EDUCATION BY SECTION 1 OF THIS ARTICLE X, AND OF SUCH OTHER PROPERTY AS THE LEGISLATURE MAY DESIGNATE, AND FOR THE LEVY AND COLLECTION OF TAXES THEREON. PROPERTY ASSESSED BY THE STATE TAX COMMISSION SHALL BE ASSESSED AT THE SAME PROPORTION OF ITS TRUE CASH VALUE AS THE LEGISLATURE SHALL SPECIFY FOR PROPERTY SUBJECT TO GENERAL AD VALOREM TAXATION, AND THE RATE OF TAXATION ON SUCH PROPERTY SHALL BE THE AVERAGE RATE LEVIED UPON OTHER PROPERTY UNDER THE GENERAL AD VALOREM TAX LAW, OR, IF THE LEGISLATURE SHALL SO PROVIDE, THE RATE OF TAX APPLICABLE TO THE PROPERTY OF EACH BUSINESS ENTERPRISE SO TAXED SHALL BE THE AVERAGE RATE OF AD VALOREM TAXATION LEVIED UPON OTHER PROPERTY IN ALL COUNTIES IN WHICH ANY OF SAID PROPERTY IS SITUATED.

Mr. Brake, chairman of the committee on finance and taxation, submits the following reasons in support of Committee Proposal 52:

This section permits the legislature to continue the present system of state assessment, collection and distribution of ad valorem taxes on the property of certain utilities, described in sections 3 and 5 of article X. It avoids the detailed listing of utilities, (e.g., telephone and telegraph companies, union depot companies, refrigeration car operators) found in the present constitution. It authorizes the legislature, as does the present constitution, to treat all utilities in the same manner. It does not require the legislature to do so, however, because the disruption to the tax base of communities which for over 50 years have been taxing electric utilities, for example, locally, would be too great. It attempts to facilitate uniformity in the method of utility taxation by authorizing such taxation at the average rate of the area in which the property is located, rather than the average state rate. The use of the average state rate would greatly increase the tax of some utilities, and reduce the tax of others.

The section recognizes that the assessing function is actually performed by the state tax commission, not the state board of assessors, and reflects the distribution of such taxes through the school aid appropriation, as recommended in an earlier proposal by the committee.

Explanation—Matter within [ ] is stricken, matter in capitals is new.

CHAIRMAN BENTLEY: The Chair recognizes the chairman of the committee, Mr. Brake.

MR. BRAKE: Mr. Chairman, ladies and gentlemen, I yield the floor to our committee member, Sam Ostrow.

CHAIRMAN BENTLEY: The gentleman yields to the gentleman from Detroit, Mr. Ostrow.

MR. OSTROW: This is Committee Proposal 52. It is found in Journal 69, and the reasons are given on page 406.

[The supporting reasons for Committee Proposal 52 were read by Mr. Ostrow. For text, see above.]

In short, this section neither forbids anything that the former section 5 did forbid nor does it permit anything that section 5 formerly permitted.

CHAIRMAN BENTLEY: Are there amendments to the body of the proposal?

SECRETARY CHASE: Mr. Hutchinson offers the following amendment:

1. Amend page 1, line 8, after "state" by striking out "tax commission"; and in line 12, after "state" by striking out "tax commission"; so that the language will read, "The legislature may provide by law for the assessment by the state of the property whose ad valorem taxes are reserved to state aid . . . ."; and, in line 12, "Property assessed by the state shall be assessed at the same proportion of its true cash value . . . ."

CHAIRMAN BENTLEY: The gentleman from Fennville is recognized in support of his amendment.

MR. HUTCHINSON: Mr. Chairman, I don't believe that it is very good policy to write into the constitution the name of a particular agency of the state. If we write in the state tax commission, as such, then forever and a day we have got a constitutional agency called the state tax commission. Now, I don't think that that was the important thing in this section at all, but there it is, and I suppose somebody might say, well, why didn't you take it out in style and drafting, but I am getting a little bit edgy about that; because, apparently, somebody might think that was a substantive change, so I am bringing it up now.

I think that in the organization of the state governmental structure, from time to time, maybe an agency which would perform this function would be created which would not be called the state tax commission, and I don't think that it is important to create by the constitution an agency called the state tax commission. That is the reason for this amendment at this time, leaving it, then, to the legislature to define the name of the agency which would perform this function. It will be done by the state, obviously, by some agency of the state, but that would be left up to the legislature.

CHAIRMAN BENTLEY: The Chair recognizes the chairman of the committee, the gentleman from Stanton, Mr. Brake.

MR. BRAKE: I, of course, have had no opportunity to poll the committee on this, but, personally, I can see no objection to the amendment. The old constitution says that it should be done by the state board of assessors and that included the governor. Well, the state board of assessors hasn't been doing it at all; it has been the state tax commission and in the foreseeable future will be the state tax commission, but certainly it might be changed sometime. I see no objection to the amendment.

CHAIRMAN BENTLEY: Does anybody desire to speak on the Hutchinson amendment? Was the gentleman from Detroit,

Mr. Lesinski, seeking recognition on the Hutchinson amendment?

MR. LESINSKI: Just a point of information, Mr. Chairman.

CHAIRMAN BENTLEY: The gentleman will state it.

MR. LESINSKI: It is in regard to a reference point in your committee proposal. It states by "section 1 of this article X" — of what constitution, 1908 or— ?

CHAIRMAN BENTLEY: The gentleman will defer that point of order until the Hutchinson amendment is disposed of. Does the gentleman from St. Clair Shores desire to speak on the Hutchinson amendment?

MR. SNYDER: Mr. Chairman, I arise on a point of information that either Mr. Brake or Mr. Hutchinson can advise me on; in fact, it may be well to get it from both. Now the present language, I would assume, would put the responsibility in the executive department, because this is a natural branch of the executive department. Now, with the removal of the specific department, would there be any confusion as to whether the authority would lie in the legislature or in the executive branch? I think that this is a very important point. It may be more than a mere omission of a few words; the future responsibility of the various departments may be involved.

CHAIRMAN BENTLEY: The gentleman yields to the gentleman from Fennville for an answer.

MR. HUTCHINSON: Mr. Chairman, certainly it is a legislative responsibility to provide the several departments of government. The legislature has the responsibility in creating those departments and, from time to time, it is desirable to change them and to reorganize them and so on. This reorganization has taken place before in our history. Governor Groesbeck undertook a great governmental reorganization, and so on. Now, as Mr. Brake pointed out, the Constitution of 1908 referred to the state board of assessors, and in 1908, I dare say that it was probably stated upon the floor of that convention that there was a function that was being done by the state board of assessors and in the foreseeable future would be done by the state board of assessors; but, you see, the times and the organization of the government have completely changed that, and it is actually being done by the state tax commission.

I think that, looking again into the future, we don't know how the organizational changes will come about and I think it is unwise to freeze into our constitution simply a department by name in the executive branch of the government. Mr. Snyder's point that he wonders if there might be some confusion about whether this would revert as a legislative responsibility or an executive responsibility — well, let me answer it this way. Obviously, it is an activity or function which must be performed within the executive branch of the government; but as to whether one department within that branch or another department within that branch shall undertake the duty is the responsibility, first, of the legislature to implement the organization of the government.

MR. SNYDER: Then I am to understand that the chain of command in this instance would not be changed by the exclusion of the words. Thank you very much. Mr. Hutchinson, I do not think that the record will show the nod of your head, so will you speak?

MR. HUTCHINSON: Mr. Chairman, I agree with the gentleman's interpretation.

CHAIRMAN BENTLEY: Does the gentleman from Detroit, Mr. Mahinske, desire to speak on the Hutchinson amendment?

MR. MAHINSKE: Yes. I would like to direct a question to Mr. Hutchinson. Do you believe, Mr. Hutchinson, in any way the elimination of this language would have anything to do with the existence of the state tax commission, or are you just taking away the constitutional delegation of this power to that commission?

CHAIRMAN BENTLEY: The gentleman yields to the gentleman from Fennville.

MR. HUTCHINSON: In answer, Mr. Mahinske, the state tax commission is now an agency created by statute. The statute will continue to exist. The agency will continue to exist. Its functions which are now devolved upon it by statute will continue to reside there, unless and until in a governmental reorganization brought about lawfully those functions should be transferred to some other department. The removal of reference to the state tax commission out of this article at this time will not abolish the state tax commission, sir.

MR. MAHINSKE: Your argument is just in reverse that by leaving this language in we would create for the life of this constitution, at least, a state tax commission?

MR. HUTCHINSON: You are right.

MR. MAHINSKE: Thank you.

CHAIRMAN BENTLEY: The question is on the amendment offered by the gentleman from Fennville, Mr. Hutchinson. As many as are in favor will respond by saying aye. Those opposed?

The amendment is adopted. Does the gentleman from Detroit, Mr. Lesinski, now desire to pursue his point of information?

MR. LESINSKI: Yes. I would make an amendment if I knew how, but I don't — I can't see to what constitution this section and article refers to.

CHAIRMAN BENTLEY: Does the gentleman care to yield to the chairman of the committee?

MR. LESINSKI: Yes.

MR. BRAKE: The reference to section 1 of article X is to the 1908 constitution. That is the section which specifies the basis of taxation that was to go into the primary school fund, which we handled the other day.

CHAIRMAN BENTLEY: The gentleman has the floor.

MR. LESINSKI: I am glad that I am here today, because, if I read it 10 years from now, would I know or would I be able to find out?

MR. BRAKE: You are talking about that word "now"?

MR. LESINSKI: No. The reference. It should state 1908 constitution.

MR. BRAKE: Now I know what you are talking about. We had to say something. Style and drafting, when they decide what the section numbers and article numbers are going to be, will put in the appropriate section and article. We don't know now what article this is going to be numbered or what section it is going to be.

CHAIRMAN BENTLEY: Are there any amendments to the body of the proposal? If not, it will pass.

Committee Proposal 52, as amended, is passed and the secretary will read.

SECRETARY CHASE: Item 27 on the calendar, from the committee on finance and taxation, by Mr. Brake, chairman, **Committee Proposal 53,** A proposal to require that every tax law shall distinctly describe the tax, covering article X, section 6 of the present constitution.

Following is Committee Proposal 53 as read by the secretary, and the reasons submitted in support thereof:

The committee recommends that the following be included in the constitution:

Sec. a. Every law which imposes, continues or revives a tax shall distinctly state the tax[, and the objects to which it is to be applied; and it shall not be sufficient to refer to any other law to fix such tax or object].

Mr. Brake, chairman of the committee on finance and taxation, submits the following reasons in support of Committee Proposal 53:

This section continues in part the present language of section 6 of article X. It requires no more than any taxpayer should expect, i.e., a distinct and clear statement of any tax imposed upon the citizens of this state.

The proposal eliminates the requirement that tax laws specify "the objects to which [the tax] is to be applied". This has been judicially construed to mean "the purpose for which the money is to be spent". In a complex system of taxation, when the proceeds of one general tax may be devoted to many different purposes, this seems obsolete.

The proposal also deletes the present statement that "it shall not be sufficient to refer to any other law to fix such tax". The committee believes that any question of the leg-

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Explanation—Matter within [ ] is stricken, matter in capitals is new.

islature's right to refer to income determined for federal tax purposes should be eliminated. However, the committee does not intend by this to permit any delegation of the power to fix a tax or tax base to another legislative authority.

CHAIRMAN BENTLEY: Mr. Brake.

MR. BRAKE: Mr. Chairman, I yield to our committee member, Dean Doty.

CHAIRMAN BENTLEY: The gentleman from Grand Ledge.

MR. DEAN DOTY: Mr. Chairman and members of the committee, I will refer you to Journal 69, page 406, the right-hand column.

[The supporting reasons to Committee Proposal 53 were read by Mr. Doty. For text, see above, page 911.]

CHAIRMAN BENTLEY: Are there any amendments to the body of the proposal? If not, it will pass.

Committee Proposal 53 is passed and the secretary will read.

SECRETARY CHASE: Item 28 on the calendar, from the committee on finance and taxation, by Mr. Brake, chairman, **Committee Proposal 54,** A proposal that the power of taxation shall never be surrendered, suspended, or contracted away, covering the material in article X, section 9 of the present constitution.

Following is Committee Proposal 54 as read by the secretary, and the reasons submitted in support thereof:

The committee recommends that the following be included in the constitution:

Sec. a. [The power of taxation shall never be surrendered or suspended by any grant or contract to which the state or any municipal corporation shall be a party.] THE POWER OF TAXATION SHALL NEVER BE SURRENDERED, SUSPENDED, OR CONTRACTED AWAY.

Mr. Brake, chairman of the committee on finance and taxation, submits the following reasons in support of Committee Proposal 54:

This proposal contains the substance of section 9, article X of the present constitution. It simplifies the language.

CHAIRMAN BENTLEY: The gentleman from Stanton.

MR. BRAKE: On this proposal, I yield to our committee member, Roy Howes.

CHAIRMAN BENTLEY: The gentleman from Copemish is recognized.

MR. HOWES: Mr. Chairman, fellow delegates, this is also in Journal 69, on page 407, "This proposal contains the substance of section 9, article X of the present constitution, but it simplifies the language." This simplified wording of this proposal is now the exact wording of article VI, section 1 of the Hawaiian constitution.

The power of taxation should reside perpetually with the state and its corporate districts and should never be surrendered, delegated or assigned to private parties. An important development in regard to this section in recent years has been the practice of some communities to give exemptions or other special incentives to lure industry to their areas. Potential problems arise when communities promise tax exemptions of 5, 10, or 20 years to new industries. Some of these industries remain only as long as these exemptions or other special incentives remain in force, and the long run value of this special treatment for new industries is questionable. These policies to some extent involve a contracting away of the taxing power and to this extent are construed by some to be in violation of this section.

This practice was used many times in English colonial history, but is one that is normally looked down upon in the United States today. We strongly recommend the adoption of this proposal into our constitution.

CHAIRMAN BENTLEY: Are there any amendments to the body of the proposal? If not, it will pass.

Explanation—Matter within [ ] is stricken, matter in capitals is new.

Committee Proposal 54 is passed and the secretary will read.

SECRETARY CHASE: Item 29 on the calendar, from the committee on finance and taxation, by Mr. Brake, chairman, **Committee Proposal 55,** A proposal to include article X, section 19 of the 1908 constitution in the new constituiton.

Following is Committee Proposal 55 as read by the secretary, and the reasons submitted in support thereof:

The committee recommends that the following be included in the constitution:

Sec. a. No collector, holder or disburser of public moneys shall have a seat in the legislature, nor be eligible to any office of trust or profit under this state, until he shall have accounted for and paid over, as provided by law, all sums for which he may be liable.

Mr. Brake, chairman of the committee on finance and taxation, submits the following reasons in support of Committee Proposal 55:

The committee recommends the inclusion of the present language of the 1908 constitution unchanged. The section actually contains 2 limitations. It provides that collectors or holders of public moneys are ineligible for membership in the legislature while continuing to be collector or holder, and prior to the time when proper accounting has been made.

It also provides that collectors or holders of public moneys are ineligible for office of trust or profit prior to the time when proper accounting has been made.

The citizens research council in its comparative analysis states, ". . . these provisions exclude all collectors, holders, or disbursers of public money and thus seek to avoid any question of incompatibility of interest. The lesson of history suggests the wisdom of protecting the integrity of handlers of public money." The governor's citizens advisory committee also recommended the section be retained as written.

The committee believes this section serves a very real and useful purpose and should be retained in the constitution.

CHAIRMAN BENTLEY: The gentleman from Stanton.

MR. BRAKE: For this proposal, I yield to our committee member, Dave Upton.

CHAIRMAN BENTLEY: The gentleman from St. Joseph.

MR. UPTON: I would like to refer the committee to, again, Journal 69, page 407:

[The supporting reasons to Committee Proposal 55 were read by Mr. Upton. For text, see above.]

CHAIRMAN BENTLEY: Are there any amendments to the body of the proposal? The gentleman from Muskegon Heights, Mr. Hanna.

MR. W. F. HANNA: Mr. Chairman, I would like to address a question to Mr. Upton. He used the words "disburser of public moneys." Would a person signing a warrant or a purchase order be construed to be a disburser of public moneys?

CHAIRMAN BENTLEY: The gentleman yields to the gentleman from St. Joseph for a reply.

MR. UPTON: This exact question did not come before our committee. It is a legal matter that I would not be prepared to answer.

MR. W. F. HANNA: My question, Mr. Chairman, possibly Mr. Brake, I know that it is common practice; this question is as to whether it is necessary or not for supervisors of various townships who sign warrants — by signing a warrant he is a disburser of public moneys, in my opinion. Would he then be barred from a seat in the legislature?

CHAIRMAN BENTLEY: The gentleman yields to the gentleman from Stanton.

MR. BRAKE: I think what we are talking about, Mr. Hanna, is the person who has the control, the custody of the money, and until he has made a proper accounting, that he is not eligible to a seat in the legislature. Now that very plainly,

I think, would not refer to the supervisor or to the township clerk, who draw the warrants, but to the treasurer who has the money.

CHAIRMAN BENTLEY: Does the gentleman from St. Joseph desire to proceed? Are there any amendments to the body of the proposal? If not, it will pass.

Committee Proposal 55 is passed and the secretary will read.

SECRETARY CHASE: Item 30 on the calendar, from the committee on finance and taxation, by Mr. Brake, chairman, **Committee Proposal 56,** A proposal to limit the ad valorem taxation of property covering the subject matter of section 21, article X of the 1908 constitution, commonly known as the 15 mill limitation.

Following is Committee Proposal 56 as read by the secretary, and the reasons submitted in support thereof:

The committee recommends that the following be included in the constitution:

Sec. a. [The total amount of taxes assessed against property for all purposes in any one year shall not exceed 1½ per cent of the assessed valuation of said property, except taxes levied for the payment of interest and principal on obligations heretofore incurred, which sums shall be separately assessed in all cases: Provided, That this limitation may be increased for a period of not to exceed 20 years at any one time, to not more than a total of 5 per cent of the assessed valuation, by a majority vote of the electors of any assessing district, or when provided for by the charter of a municipal corporation: Provided further, That this limitation shall not apply to taxes levied in the year 1932.] EACH COUNTY, TOWNSHIP, SCHOOL DISTRICT OR OTHER POLITICAL SUBDIVISION OF THE STATE SHALL HAVE POWER TO LEVY THE HIGHEST UNVOTED TAX RATE, BUT IN THE CASE OF TOWNSHIPS NOT LESS THAN 1 MILL, ALLOTTED TO IT BETWEEN JANUARY 1, 1957, AND DECEMBER 31, 1961; BUT SHALL LEVY NO GENERAL AD VALOREM PROPERTY TAX IN EXCESS THEREOF, EXCEPT AS OTHERWISE PROVIDED IN THIS CONSTITUTION. THIS LIMITATION SHALL NOT APPLY TO TAXES LEVIED FOR THE PAYMENT OF INTEREST AND PRINCIPAL ON OBLIGATIONS INCURRED PRIOR TO DECEMBER 8, 1932, WHICH SUMS SHALL BE SEPARATELY ASSESSED IN ALL CASES. THIS LIMITATION MAY BE INCREASED FOR NOT MORE THAN 20 YEARS FOR TAXES TO BE USED FOR THE PAYMENT OF PRINCIPAL AND INTEREST ON BONDS OR OTHER EVIDENCES OF INDEBTEDNESS OR FOR THE PURPOSE OF CAPITAL OUTLAY BY A MAJORITY VOTE OF THE ELECTORS OF THE TAXING DISTRICT WHO ARE QUALIFIED TO VOTE ON THE QUESTION OF ISSUING BONDS, VOTING THEREON AT ANY ELECTION. FOR ANY OTHER PURPOSE THE LIMITATION MAY BE INCREASED FOR NOT MORE THAN 20 YEARS BY A MAJORITY VOTE OF THE ELECTORS OF THE TAXING DISTRICT VOTING THEREON AT ANY ELECTION. THIS LIMITATION MAY BE INCREASED WHEN PROVIDED FOR BY THE CHARTER OF A MUNICIPAL CORPORATION.

THE AGGREGATE OF GENERAL AD VALOREM PROPERTY TAXES LEVIED BY EVERY TAXING AUTHORITY OTHER THAN A CITY OR VILLAGE SHALL NOT EXCEED 5 PER CENT.

ALL INCREASES HERETOFORE VOTED OR PROVIDED PURSUANT TO SECTION 21 OF ARTICLE X OF THE CONSTITUTION OF 1908 SHALL STAND AS INCREASES HEREUNDER, AND AS SUCH SHALL REMAIN IN EFFECT UNTIL THEY EXPIRE OR ARE REPEALED. THE TAXING POWER PLEDGED FOR THE PAYMENT OF ANY BONDS HERETOFORE ISSUED SHALL REMAIN UNIMPAIRED.

IN ANY SCHOOL DISTRICT WHICH EXTENDS INTO 2 OR MORE COUNTIES, THERE MAY BE LEVIED AND COLLECTED FOR SCHOOL PURPOSES THROUGHOUT THE DISTRICT PROPERTY TAXES AT THE HIGHEST RATE AVAILABLE IN THE YEARS 1957 THROUGH 1961 IN THE COUNTY WHICH CONTAINS THE GREATEST PART OF THE AREA OF THE DISTRICT.

Mr. Brake, chairman of the committee on finance and taxation, submits the following reasons in support of Committee Proposal 56:

This proposal continues the substance of the present 15 mill limit on property taxes now set forth in section 21 of article X. It is intended to eliminate the present competition between counties, townships and school districts for their share of the 15 mills, and to avoid diversion of voted millage by tax allocation boards to purposes not intended by the voters. It accomplishes this purpose by establishing separate tax limits for each taxing authority, giving each unit which has participated in the 15 mills the highest millage allocated to it during the 5 years ending December 31, 1961. Townships would receive a limit of not less than 1 mill. The aggregate unvoted millage may thus slightly exceed 15 mills in some taxing districts, but this is not considered significant in view of substantial voted millages in excess of the 15 mills in most areas.

As at present, the voters of any taxing district can vote additional millage, subject to the present 20 year limit and the overall 50 mill limit. Cities and villages are excepted, as at present, from the 15 mill limit, and the only limitation to which they will be subject is that established by charter or by vote of the people.

All electors may vote on millage increases for general purposes, but only property owners may vote on taxes to retire bond issues or for capital outlay.

Saving provisions are incorporated to protect present voted millage and outstanding bonds.

The final section, dealing with multicounty school districts, is intended to answer a problem involving 60 counties of this state. It provides that in any school district which crosses county lines, the tax limitation shall be that applicable in the portion of the school district situated in the county containing the largest portion of the school district.

CHAIRMAN BENTLEY: The Chair would ask the gentleman from Stanton, the chairman of the committee, how he wishes to divide this proposal for purposes of discussion; into paragraphs?

MR. BRAKE: I think so, Mr. Chairman.

CHAIRMAN BENTLEY: The gentleman is recognized on the first paragraph.

MR. BRAKE: Mr. Chairman, if I may, I would like to make the explanation pretty generally on the whole thing first, and then take it up a paragraph at a time. This one is not so easy. But take a word of comfort: this is the last one coming from finance and taxation committee which, as far as we know, has any dynamite in it. This one has plenty.

In 1932, when we the people decided that we wanted to limit property taxes to 15 mills, we made necessary some machinery for determining who would get the 15 mills, and what the division would be as among the units of government entitled to that money. At first it was thought to include cities, if they cared to be under it, but more recently that has meant the townships, the school districts, and the counties. The answer that was given to that problem was the town and county tax allocation boards, which were supposed to review the budgets of these 3 units and then decide upon how the 15 mills would be divided, assuming, of course, that the 3 units together would ask for more than 15 mills.

It has been something that nobody has liked, particularly the good men and women who had the responsibility for making the determination on the tax allocation boards. There have been all kinds of charges, all kinds of dissatisfaction. The county government people have quite frequently claimed that the boards were loaded in favor of the schools; the school peo-

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Explanation—Matter within [ ] is stricken, matter in capitals is new.

ple have very commonly claimed that the boards were loaded in favor of the county government; and townships have generally felt that they were ignored no matter what their needs were, and I think in some instances that was probably true. There has been general dissatisfaction.

A great many remedies have been suggested for the situation, and many were suggested to the committee. Many people — and this has been the object of resolutions by boards of supervisors and other bodies around the state — called for a fixed millage to each of these 3 units statewide: maybe 6 to counties, 8 to schools and 1 to townships. The committee has not been able to see how that is possible, because of the variety of situations that you have in your counties. We have one county, St. Joseph county, in this state which this year is running on 3.6 mills. We have 2 or 3 counties, Gogebic and Keweenaw are included and possibly Kalkaska, which are getting 10 mills, and if they were shut down to 3 mills or 4 mills, we would have to board up the windows of the court house. We have not been able to see how it is possible to have a fixed millage throughout the state for these units.

We came up with approval of a suggestion made by — that is, the fundamentals of it, at least — made by the municipal league, which is a fixed millage but not fixed statewide. We fully understand that we are out in dangerous territory, that we are in territory where we are going to have criticism, where we are going to have questions; but, in our judgment, it is a better answer than the allocation boards and certainly a better answer than the fixed millage statewide. What we have come up with means a springing of the 15 mill limitation in most places by a little.

The proposal that we have before you for your action would let each of the 3 units — not taking the schools or the townships countywide but each by itself — have the highest millage that it has had in the 5 years of '57 through '61. The county, of course, would be countywide; whatever year of those 5 that had the most millage would be its fixed millage hereafter. Each school district would have the highest that it had in those 5 years and the township the same. Because of the fact that the townships were denied any millage very frequently, especially until the recent change in the law, we have put a minimum in of 1 mill for the townships. If they had more than that, that would still continue.

Now, that will add up in most counties to something more than 15 mills, because the high that each unit had would not occur always in the same year, generally would not occur in the same year, probably could not occur in the same year. Some years the county would be high, and other years some township might be high, and another year the schools would be high. So that when you add those figures together you may get 16 mills, you may get 16½ — generally not any more than that — but in a few instances as high as 18 mills. So it is springing the 15 mills to some extent.

Generally speaking, it is not increasing the dollar amounts because, in most places and in recent years, the need for the funds has been such that there has been voted millage on top of the allocated 15 millage. I think I gave here, or at least I gave in the committee, the fact that the voted millage for schools, last year, I believe, was the time I quoted, exceeded the unvoted millage. In other words, they raised more money, taking the whole state together, by millage that they voted than by millage allotted to them under the 15 mills.

Now, before Dean Doty jumps up and starts making a speech, I will admit that that included capital outlay millage, not just operation. There will be some opposition to the increase but, generally, it doesn't mean an increase in dollars.

It is rigid. We thought and considered for some time the possibility of a periodic review, maybe every 5 years, but the machinery for that seemed to be as difficult to assemble satisfactorily as the allocation boards had been, and our conclusion was that the voted millage would furnish sufficient leeway. Any unit finding that its allotted millage, fixed millage, is insufficient has the power, as it always has had, to vote additional millage either for operating or for capital outlay, outside of cities and villages, up to a total of 50 mills, the same limitation that we have had in the past.

Cities and villages or other charter units, where their millage is fixed by their own charters, would not have that limitation, as I understand the interpretation of the law is that they do not have that limitation at the present time.

Well, so much for that. We have had some adverse mail. We have had quite a lot that is favorable. Most of the unfavorable response has been from people who did not understand what we were trying to do, much of it on the basis that we were saying the average, the average millage of the last 5 years, which is not the case; we are suggesting the high millage.

Now, there is a difference that you will find down in the body of the proposal as to who may vote on increasing millage, and there we have a conflict with a proposal that has come out of the committee on rights, suffrage and elections. This matter of who may vote on increased millage is covered in 2 different places in the constitution. We did not care to quarrel with the committee on rights, suffrage and elections about what they put out, but what we put out is inconsistent with it and somewhere along the line either in style and drafting — I think overcoming inconsistencies is one of their functions — somewhere that difference will need to be reconciled. The proposal that came out of rights, suffrage and elections says that to vote on any increased millage the voter must have the same qualifications as on voting on bond issues. In other words, he must appear on the tax roll or be the husband or the wife of one who appears on the tax roll.

We have gone to the same extent in this proposal as to capital outlay millage, which is likely to be long term millage, but we have not gone to that extent on operating millage, which is likely to be short term millage. The basis for the difference is the thinking that a renter while he pays is actually paying taxes in his rent but, when you come to the long term proposition — generally, a 20 year proposal — there may be many successive renters in that same property in that period of time, so that we thought there should be a distinction.

At the very end of the proposal — and we are talking about the proposal as it was handed to you this morning — we have tried to meet a problem that has been a serious one with the school people ever since the 15 mill limitation was adopted. That is the problem of school districts overlapping into 2 or more counties. As you probably understand, at the present time those school districts have been held down to a millage that they could get in the low county.

We have proposed here that when that occurs the millage may be collected throughout the district which the district had available to it in the county in which lay the larger part of its area. Now we will use there, so that everybody understands it, the outstanding illustration, I think, that we had in the committee: the Scottville school district up in Mason county, which overlaps into Lake county and Oceana county. There was available in Mason county 9 mills for schools. There was available in Oceana county 8.8 mills for schools. But in Lake county there was only available 6 mills for schools, because that is a poor county financially in its assets, taxable property, and the county takes so much that 6 was all that the schools could get. Well, that meant that throughout that entire district — most of this was outside of Lake county — they could levy for school operating only 6 mills, and every year they had to vote the 3 extra mills by popular vote. The voters went with them, but sometime the voters might refuse and then the school district would be in a very serious situation.

There are 60 counties, 60 counties in which there are these overlapping districts and some of them have 3 or 4 or 5 all in the same county. We asked the department of public instruction if they had any solution. The only solution they suggested — and they were very hesitant about it, they didn't come over here and lobby, they waited until we asked them — was a straight millage all over the state, and that we think is entirely unworkable.

We believe we have here a reasonable answer, although it means an increase in the limitation for parts of those districts. We think it is the only reasonable answer that we

can find and that the problem is so acute that we must have in this constitution an answer if we are going to have a millage limitation altogether.

Now, I think that gives you the general outline of what we propose. We know it is dynamite. We hope the debate won't run any more than 10 hours.

CHAIRMAN BENTLEY: The Chair would inquire of the committee chairman whether he requests unanimous consent to withdraw the original committee proposal and offer the substitute at this time.

MR. BRAKE: I forgot that, Mr. Chairman. I would like that consent.

CHAIRMAN BENTLEY: Without objection, it will be so ordered, and the pending business before the committee will be the substitute for Committee Proposal 56 offered by Mr. Brake on behalf of the committee on finance and taxation.

Following is the substitute for Committee Proposal 56 as offered:

A proposal to limit the ad valorem taxation of property covering the subject matter of section 21, article X of the 1908 constitution, commonly known as the 15 mill limitation.

The committee recommends that the following be included in the constitution:

Sec. a. [The total amount of taxes assessed against property for all purposes in any one year shall not exceed 1½ per cent of the assessed valuation of said property, except taxes levied for the payment of interest and principal on obligations heretofore incurred, which sums shall be separately assessed in all cases: Provided, That this limitation may be increased for a period of not to exceed 20 years at any one time, to not more than a total of 5 per cent of the assessed valuation, by a majority vote of the electors of any assessing district, or when provided for by the charter of a municipal corporation: Provided further, That this limitation shall not apply to taxes levied in the year 1932.] EACH COUNTY, TOWNSHIP, SCHOOL DISTRICT OR OTHER TAXING AUTHORITY OF THE STATE SHALL HAVE POWER TO LEVY THE HIGHEST UNVOTED TAX RATE ON PROPERY, BASED ON THE STATE EQUALIZED VALUATION THEREOF, BUT IN THE CASE OF TOWNSHIPS NOT LESS THAN 1 MILL, ALLOCATED TO IT BETWEEN JANUARY 1, 1957, AND DECEMBER 31, 1961; BUT SHALL LEVY NO GENERAL AD VALOREM PROPERTY TAX IN EXCESS THEREOF, EXCEPT AS OTHERWISE PROVIDED IN THIS CONSTITUTION.

THE LEGISLATURE SHALL PROVIDE BY LAW A METHOD OF ESTABLISHING MAXIMUM UNVOTED TAX RATE LIMITATIONS FOR SCHOOL DISTRICTS AND TOWNSHIPS COMING INTO EXISTENCE AFTER JANUARY 1, 1962.

WHERE THIS LIMITATION APPLIES IT MAY BE INCREASED FOR NOT MORE THAN 20 YEARS FOR TAXES TO BE USED FOR THE PAYMENT OF PRINCIPAL AND INTEREST ON BONDS OR FOR THE PURPOSE OF CAPITAL OUTLAY BY A MAJORITY VOTE OF THE ELECTORS OF THE TAXING DISTRICT WHO ARE QUALIFIED TO VOTE ON THE QUESTION OF ISSUING BONDS, VOTING THEREON AT ANY ELECTION. FOR ANY OTHER PURPOSE THE LIMITATION, WHERE IT APPLIES, MAY BE INCREASED FOR NOT MORE THAN 20 YEARS BY A MAJORITY VOTE OF THE ELECTORS OF THE TAXING DISTRICT VOTING THEREON AT ANY ELECTION. THIS LIMITATION SHALL NOT APPLY TO ANY CITY, VILLAGE, CHARTER TOWNSHIP OR OTHER CHARTER TAXING AUTHORITY TO WHICH A TAX RATE LIMITATION APPLIES PURSUANT TO ITS CHARTER.

THE AGGREGATE OF THE VOTED INCREASES IN GENERAL AD VALOREM PROPERTY TAXES LEVIED BY EVERY TAXING AUTHORITY SHALL NOT EXCEED 3.5 PER CENT ON STATE EQUALIZED VALUATION.

THIS LIMITATION SHALL NOT APPLY TO TAXES LEVIED FOR THE PAYMENT OF INTEREST AND PRINCIPAL ON OBLIGATIONS INCURRED PRIOR TO DECEMBER 8, 1932, WHICH SUMS SHALL BE SEPARATELY ASSESSED IN ALL CASES.

ALL INCREASES HERETOFORE VOTED OR PROVIDED PURSUANT TO SECTION 21 OF ARTICLE X OF THE CONSTITUTION OF 1908 SHALL STAND AS INCREASES HEREUNDER, AND AS SUCH SHALL REMAIN IN EFFECT UNTIL THEY EXPIRE OR ARE REPEALED. THE TAXING POWER PLEDGED FOR THE PAYMENT OF ANY BONDS HERETOFORE ISSUED SHALL REMAIN UNIMPAIRED.

IN ANY SCHOOL DISTRICT WHICH EXTENDS INTO 2 OR MORE COUNTIES, THERE MAY BE LEVIED AND COLLECTED FOR SCHOOL PURPOSES THROUGHOUT THE DISTRICT PROPERTY TAXES AT THE HIGHEST RATE AVAILABLE IN THE YEARS 1957 THROUGH 1961 IN THE COUNTY WHICH CONTAINS THE GREATEST PART OF THE AREA OF THE DISTRICT.

The Chair recognizes the gentleman from Port Huron, Mr. Staiger.

MR. STAIGER: I would like to just back up for a minute and go through the process that our committee went through on this. One, we first had the question if a tax limitation at all on property or a millage limitation was desirable. We first determined, and I believe it was unanimous — we will have somebody standing up if it wasn't; but my recollection was that we did decide unanimously that a property tax limitation of some type was desirable, the reason being for this, I think, that basically a property tax is not the most equitable type of tax, as we all realize. In the long run, we doubt that a limitation is desirable so that a means of taxation other than property will be used.

Once we determined that, then the next question we got to was: what is the best way to handle limitations? Now, the present 15 mill puts a limitation on 3 units of government — all within the same limitation. That is, townships, counties and school districts. The problem then is how do you allocate between those 3.

We looked at the history of home rule cities where they had a separate limitation for their single unit of government. By statute a home rule city can pass a charter giving a property limitation up to 20 mills. Charters vary all the way from 20 on down to 10 mills for cities; but, by having one limitation on each unit of government, you get away, first, from the problem of how you are going to divide the overall limitation of millage. The second question that you do get away from, at least within the county, is the question of variable millage where one unit where they overlap needs more millage, and then this means that across the board the other units have to suffer. For instance, in a county if one township were to ask for 1 mill and the other townships didn't want it, there has to be some "give" there to stay within the 15 mills for the other units of government. This can mean that the county all the way across the board is only able to levy 1 less mill — or the school districts that are in the township are only able to levy 1 less mill just because one township wants it.

Now, we approached this thinking that it would be more reasonable, if we were going to have a limitation — which we felt was desirable — to put it on each single unit of government.

Going from there, as Mr. Brake said, we looked first to see if we could put a certain millage on counties across the board, another one on townships, and another one on schools. This wasn't possible, as he said, because some counties now need, apparently, from their allocation boards up to 10 mills;

Explanation—Matter within [ ] is stricken, matter in capitals is new.

others are way down in the 3 point some odd per cent millage. There is a wide variance of need.

We decided that the reasonable thing to do was to capitalize on the experience of the allocation boards that has been hammered out over the years, take what they had decided in their local areas was the millage that was needed for these units, give them the high of the last 5 years for each unit and say, "This is your millage for each unit."

From there on each unit — the school district will know what its unvoted millage limitation is, the township will know, the county will know, and the issue will be strictly or directly with the people in that area. They will realize that they have this unvoted millage; if they need more, then they will have to go to the people for it. They can increase their millage by a vote of the people.

Now again, this is not a mandate to spend, so to speak, the total millage. Certainly if the needs of a county decrease, this does not mean that they have to spend the total millage that is being given to them. Certainly, under our elected representative process, the millage that is levied would and should be cut down.

One other problem that comes up indirectly is that some units — for instance, in many areas it is the schools — when the schools are given a certain millage, they then go to the — if this is not sufficient, they are forced to go for voted millage to the people. They have this millage voted then only to find next year that they have lost part of it in the allocation back to the counties or the townships.

This will place each unit of government squarely representing its people in its area with responsibility for the taxes to be levied within that unit.

Now, it is quite a change, as you can see, and is going to cause some adjustment. It is going to go above the 15 mills in some areas.

This would depend on if there has been any variation in the last — or in this 5 year period of the millage in your area. If the allocation board has been stable during that period, then you will be at the 15 mills, except if the township doesn't get 1, hadn't been getting 1, it may go up to 16 mills.

The best information we can get on this is the highest that there will be would be 18 or slightly under 18 mills given a certain combination of township, school district, and county that a person lives in. Most of them, from the information we have been able to gather, will be considerably below that and, as I say, only the 15 mills in most areas.

CHAIRMAN BENTLEY: I think in compliance with the suggestion of the committee chairman, the secretary will read the substitute proposal by paragraphs and the amendments will be accepted in that order. If an amendment should cover more than one paragraph, the Chair suggests that that amendment be offered at the time when the entire proposal has been read by paragraphs and the request is made if there are amendments to the body of the proposal.

The secretary will read the first paragraph covering lines 16 through 22 on page 1.

SECRETARY CHASE: Section a.

[Paragraph 1 of the substitute was read by the secretary. For text, see above, page 915.]

CHAIRMAN BENTLEY: For what purpose does the gentleman from Fennville arise?

MR. HUTCHINSON: Mr. Chairman, I arise in order to ask Mr. Staiger, if he is the one who is handling the proposition on the floor, a question. I would then like to state the question, Mr. Chairman. With reference to this phrase "unvoted tax rate" — unvoted taxes — we are mindful of the fact that in recent years school districts have been able to bond and if the bonds are for more than 25 years and so on they don't need to increase the 15 mill limitation in order to provide the millage with which to meet the bonds. So here is some extra unvoted millage. Does this unvoted millage enter into the picture? It is unvoted millage.

CHAIRMAN BENTLEY: The gentleman has yielded.

MR. STAIGER: I am not sure that I have your question correctly. Is it unvoted millage that has not been allocated to them by the allocation board?

MR. HUTCHINSON: No, it hasn't but — under the provisions of the present constitution and the law — the school district has gone to its property taxpayers and voters and asked them to bond the district, and they voted to bond the district and they issued the bonds for more than 25 year maturity, and, under the present constitution, it is not necessary for that school district to go to the people and ask them to increase the 15 mill limitation. The school district has the power, the school board has the power to levy whatever mills are necessary in order to pay off the bonds as they mature and the interest and so on. This is completely outside the 15 mills. It is unvoted millage. Admittedly, it isn't allocated, but the wording of the proposal here doesn't indicate that it has to be allocated to them by the allocation board. It is unvoted millage.

I raise the question seeking clarification, trying to point out a problem here where, perhaps, the committee of the whole may have to refine this language.

MR. STAIGER: Mr. Van Dusen will answer that one.

CHAIRMAN BENTLEY: Does the gentleman from Fennville yield to the gentleman from Birmingham?

MR. HUTCHINSON: I yield; I do, indeed.

MR. VAN DUSEN: Mr. Chairman and Mr. Hutchinson, the 2 key words are "unvoted" and "allocated", because this is not intended to refer in any sense to the unlimited taxing power which school districts have in support of bonds under the provisions of sections 28 and 27 of the present article X, which we have continued by previous action of this committee in this convention. This limitation refers only to unvoted millage allocated to the taxing authority during the 5 year period in question.

I think it is reasonably clear, Mr. Hutchinson, when you take it all of a piece. This language as contained in the substitute committee proposal has been reviewed by the attorney general's office and by bond counsel, and they pronounce it reasonably free from ambiguity.

MR. HUTCHINSON: Mr. Chairman, I would say that it would be even more reasonably free of ambiguity, then, if we made reference to the allocation in the amount of 15 mills.

I don't offer such an amendment to that effect at this time. I think, though, that if what is clearly intended is that you are talking about the unvoted millage allocated out of the 15 mill total, then that is what we should say.

MR. VAN DUSEN: Mr. Chairman, that is what is intended and, in view of the fact that the distinguished Senator Hutchinson sits on the committee on style and drafting, I think we can leave it to him to take care of it at the appropriate time.

CHAIRMAN BENTLEY: The secretary will report the first amendment to this paragraph.

SECRETARY CHASE: Messrs. Turner, Howes, Dean Doty, Davis and Haskill offer the following amendment to this section:

1. Amend lines 6 through 16 by reinserting the stricken language which reads:

"The total amount of taxes assessed against property for all purposes in any one year shall not exceed 1½ per cent of the assessed valuation of said property, except taxes levied for the payment of interest and principal on obligations heretofore incurred, which sums shall be separately assessed in all cases: Provided, That this limitation may be increased for a period of not to exceed 20 years at any one time, to not more than a total of 5 per cent of the assessed valuation, by a majority vote of the electors of any assessing district, or when provided for by the charter of a municipal corporation: Provided further, That this limitation shall not apply to taxes levied in the year 1932.".

MR. VAN DUSEN: A point of order, Mr. Chairman.

CHAIRMAN BENTLEY: The gentleman will state his point of order.

MR. VAN DUSEN: I thought, Mr. Chairman, we had generally agreed that an amendment which was going to completely replace the committee proposal would be acted upon

last. The amendment which the secretary just read would be a complete substitute for the committee proposal, and I would just like to suggest, if the sponsors of the amendment would have no objection, that we go through the committee proposal and perfect it first before considering the reinstatement of the present constitutional language.

CHAIRMAN BENTLEY: Is the pending amendment intended to strike out all of the committee proposal thereafter?

SECRETARY CHASE: The secretary, I beg your pardon, failed to read the amendment in its entirety. It is as follows:

1. Amend page 1, after "Sec. a.", by striking out the balance of the page and on page 2 by striking out lines 1 through 25, and reinserting:

"The total amount of taxes assessed against property for all purposes in any one year shall not exceed 1½ per cent of the assessed valuation of said property, except taxes levied for the payment of interest and principal on obligations heretofore incurred, which sums shall be separately assessed in all cases: Provided, That this limitation may be increased for a period of not to exceed 20 years at any one time, to not more than a total of 5 per cent of the assessed valuation, by a majority vote of the electors of any assessing district, or when provided for by the charter of a municipal corporation: Provided further, That this limitation shall not apply to taxes levied in the year 1932."; and on page 2, line 28, after "available" by striking out "in the years 1957 through 1961".

CHAIRMAN BENTLEY: I think the point of order is well taken, and if the sponsors have no objection we will proceed with the proposal on a paragraph by paragraph basis and then the Turner amendment will be accepted when amendments are in order to the body of the proposal.

Are there any amendments to the first paragraph of the substitute for the committee proposal? If not, the secretary will read paragraph 2, which is lines 1 through 3 on page 2.

SECRETARY CHASE: Page 2, line 1:

[Paragraph 2 was read by the secretary. For text, see above, page 915.]

CHAIRMAN BENTLEY: Are there any amendments to paragraph 2 of the substitute for the committee proposal? If not, the secretary will read paragraph 3, lines 4 through 14 on page 2.

SECRETARY CHASE: Line 4:

[Paragraph 3 was read by the secretary. For text, see above, page 915.]

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Ann Arbor, Mr. Pollock.

MR. POLLOCK: Mr. Chairman and members of the committee, as the chairman, Mr. Brake, indicated, the committee on rights, suffrage and elections gave careful consideration to the question of voting in elections involved here. We have come up with a definitive recommendation including a change. It is a divided committee and there is a minority report on it. I think it would waste the time of the committee to discuss this matter here. I don't know what the proper parliamentary procedure is, but I suggest that the language here accord with the language which we later decide upon when our proposal is before the committee. It would seem to me that that could be done, and we will then be debating an election matter within the frame of reference of elections rather than finance.

CHAIRMAN BENTLEY: The Chair will have to advise the gentleman from Ann Arbor that the only issue before the committee of the whole is the language which the secretary has just read and would suggest that the committee of the whole act on this language, and then if the proposal is referred to style and drafting together with another proposal containing dissimilar language that that committee is the proper one to resolve the discrepancy.

Mr. Brake.

MR. BRAKE: Well, Mr. Chairman, I agree certainly with Dr. Pollock that these 2 must harmonize, and I am not at all fussy about which time we do it. We can pass this if it is agreeable to the delegates of the convention with the understanding that the final determination will be made when Dr. Pollock's proposal comes before us, and if it is different than we have we will make the amendment on second reading or whenever it is convenient to do so.

MR. POLLOCK: That is agreeable to me, Mr. Chairman.

CHAIRMAN BENTLEY: If there are no amendments to the third paragraph of the committee substitute proposal, the secretary will read paragraph 4, lines 15 through 17 on page 2.

SECRETARY CHASE: Page 2, line 15:

[Paragraph 4 was read by the secretary. For text, see above, page 915.]

CHAIRMAN BENTLEY: Is the gentleman from Birmingham seeking recognition?

MR. VAN DUSEN: Only for the purpose of a brief explanation, Mr. Chairman. I think it perhaps ought to be made clear that, of course, the present 15 mill limit is broken down into two parts: there is a total of 50 mills, of which 15 is unvoted and 35 is voted, and this simply continues that 35 mill voted limit increase.

CHAIRMAN BENTLEY: If there are no amendments to the fourth paragraph of the committee proposal, the secretary will read the fifth paragraph, lines 18 through 20 on page 2.

SECRETARY CHASE: Line 18:

[Paragraph 5 was read by the secretary. For text, see above, page 915.]

CHAIRMAN BENTLEY: The gentleman from Birmingham.

MR. VAN DUSEN: Perhaps a brief explanation is also in order here, Mr. Chairman. This simply is designed to preserve the taxing power which is devoted to some very old bond issues of which there are still a few outstanding which will not mature until 1965.

CHAIRMAN BENTLEY: If there are no amendments to the fifth paragraph of the committee proposal, the secretary will read the sixth paragraph, lines 21 through 25 on page 2.

SECRETARY CHASE: Line 21:

[Paragraph 6 was read by the secretary. For text, see above, page 915.]

CHAIRMAN BENTLEY: The gentleman from Birmingham.

MR. VAN DUSEN: Here again, Mr. Chairman, a brief explanation. This is simply a saving provision just designed to protect all currently voted increases in effect in support of bond issues or otherwise.

CHAIRMAN BENTLEY: If there are no amendments to the sixth paragraph of the committee proposal, the secretary will read the seventh paragraph, line 26 on page 2, through line 2 on page 3.

SECRETARY CHASE: Line 26:

[Paragraph 7 was read by the secretary. For text, see above, page 915.]

CHAIRMAN BENTLEY: If there are no amendments to the seventh paragraph of the committee proposal, are there any amendments to the body of the proposal? The secretary will read the pending amendment offered by the gentleman from Saginaw and others.

SECRETARY CHASE: Mr. Turner and others offer the following amendment:

[The amendment was again read by the secretary. For text, see above, page 916.]

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Saginaw, Mr. Turner, in support of his amendment.

MR. TURNER: Mr. Chairman, I wish to speak in favor of this amendment.

The committee proposal does not make sense to me. First,

it gives 1 mill to townships whether they need it or not. It awards those areas that just happen to raise their millage for some reason in the last 5 years and penalizes those in areas that have tried to hold their millage at a lower figure.

In Committee Proposal 56 we find that the judgments of the allocation boards of this state have been used to set the future base of the local units of government, but the only purpose of this proposal I can find is to do away with these same adjusters of local tax problems.

I find that there are 19 counties that levy over 7 mills, some are at 10 mills and, also, I find that some of these counties have not been equalized by the state tax commission in the last 10 or 12 years. I find that 4 have not been visited for 16 years. I cannot find anyone that can prove to me that we are not opening the gates to higher taxes on these properties.

We speak of limitations in the constitution. I believe in some limitation. I wouldn't want to drive my car if it had no limiting device incorporated in it. The 15 mill limitation does not prohibit but it does bring the question of a millage increase directly before the people. Believe me, I didn't come down here with the idea of increasing property taxes. I urge you to retain the 15 mill limitation.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Onondaga, Mr. Davis.

MR. DAVIS: Mr. Chairman, members of the committee, I, too, wish to support this amendment. I might say that this general area is one in which our committee on finance and taxation has given considerable thought and time. This is one of these decisions, I think, which, like most committees have experienced, was very close. I cannot recall now how many times we had to vote in order to secure 11 favorable votes upon this matter.

I would like to compliment Mr. Brake upon his very objective talk relative to this matter as he presented the majority report from the committee.

I would like to add just a word to what Mr. Turner has said, in this respect, that I think that concern over the high level of property taxes in this state is both genuine and justifiable.

Now, I am not going to attempt to discuss the effectiveness or the ineffectiveness of the 15 mill limitation amendment, because I think that the 15 mill limitation amendment as such is well understood by the delegates within that committee.

I recognize that to those people particularly living in cities this is perhaps a relatively unimportant matter.

I might suggest that at one time in the deliberations during the formative period of our proposal which came out of this taxation committee, I made the suggestion that I was willing to remove the 15 mill limitation amendment if we were going in the direction of removing some of the restrictions from our present article X and to open this matter up, and I did so not without some pain, not because I think the 15 mill limitation is particularly good. The fact is, I don't think it really in some instances amounts to too much, and I don't have to read that out of books, I can look at my tax receipts, and that does it — however, I point out the fact that this particular substitute of the majority committee proposal is not headed in this direction. This retains a more rigid restriction than we have in our present constitution.

I am going to be brief here, but I am going to suggest a few reasons as to why I believe it preferable to return, as long as we are going in this direction, to the 15 mill limitation amendment. In the first place, the 15 mill limitation amendment is more flexible. It does allow by the use of the allocation board for adjustment at a local level. I recognize that in many instances there are arguments on allocation boards and that sometimes that is phrasing it too mildly; nevertheless, in my judgment, the work of the allocation board is not entirely bad.

I talked the other day with some of the people across the street over here, who are particularly knowledgeable in this matter and are familiar with it, and they said that while they recognized there were areas of opposition, in their judgment the allocation boards as such in the state of Michigan had been functioning in a very good manner generally speaking.

The third point which I would make is this. The people did vote for the 15 mill limitation amendment. The 15 mill limitation amendment is psychologically meaningful to many people in this state, and its removal will be viewed with concern by many.

I suggest that the amendment does provide for one of the problems for which we were seeking a solution in the committee by adding to the 15 mill limitation amendment the paragraph at the end which does provide for the problems which these fractional school districts have had in our state.

But this point is one in this connection which I consider quite important. The 15 mill limitation amendment is understood.

Questions have been raised relative to this committee report. They have been legitimate questions, and I am not going into all of these, but it would be less than truthful to say that we have been engaged in some problems in finding answers to some of these; and so, in conclusion, I am going to say this, that when we weigh the balances, weigh this matter in the balances, in my judgment it is preferable to return to the 15 mill limitation amendment and keep it in our constitution than to go to this substitute which is offered in the majority committee report.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Petoskey, Mr. Spitler.

MR. SPITLER: I wanted to ask if this amendment was simply returning to the old provision that was in the old constitution. I believe that has been answered that it does return to the old one; is that right, Mr. Davis?

CHAIRMAN BENTLEY: The gentleman yields the floor to the gentleman from Onondaga.

MR. DAVIS: Mr. Chairman and Delegate Spitler, this does replace the 15 mill limitation amendment which is in our present constitution, as written now, with the addition of the paragraph at the end of the majority report which provides for this exception in the case of fractional school districts, and that particular wording, I think, is quite self explanatory and it is in the majority committee report.

MR. SPITLER: Well, then, I would like to support to a large extent what Mr. Davis has said here. I am in sympathy with what the taxation and finance committee has attempted to do. I know some of the problems that are involved as far as an allocation board is concerned, perhaps as much as anyone in this delegation here. I have dealt with allocation boards from the time they were formed until about 3 years ago, and I have sympathy for the members who have served on these allocation boards. They have a real problem and it has created a problem within all of our communities. It has set county against school district, school district against county, and feelings have been very, very tense at times. Anything that could do away with the county allocation boards and could solve the question — I would be very much in favor of it.

I certainly want to approve what the committee has done here in its effort to do away with them; however, I think there are some limitations, and I think Mr. Brake has indicated those in the explanation of it at the beginning of the presentation.

We have counties that have received as low as 3 mills. We have counties that have received as high as 10 mills. We have schools that have received as low as 3 mills. We have had school districts that have received as high as 11 plus millage. The unfortunate part of that is that those school districts that have been receiving the high millage are the wealthy school districts. If they are in a county where the valuation is high, then the county needs to levy a small millage in order to take care of the county expenses and, as a result, that school district may get a high millage.

But in the counties — and we have many of them in the northern part of the state and in the upper peninsula — and I would say to you people who are from the upper peninsula that you had better consider this very carefully, where you have those mines that may not be operating — in the northern part of the state where we have counties of low valuation, it has been necessary for the county — at least, they have thought

so — to spend a large millage, and, as a result, the school districts had a very small millage.

We had this problem on the allocation boards, as Mr. Brake has indicated. There are some county allocation boards that are county minded. There are some county allocation boards that are school minded, and the amount of millage that they have been allocated over the last 4 or 5 years doesn't in many cases indicate the need of either the school district or the county, and we are freezing the school district at 3 mills or the county at 3 mills if that was the top millage that they had during the last 5 years. If the top millage that a school had was 11 mills and a county was 10 mills, we are freezing them at that 10 or 11 mills. You say they can vote extra millage. They can, but if that is done then you are exceeding the 15 mills by that much more.

There are other things that enter into this. Two or 3 school districts combine, organize a new school district. How is that to be covered? Also, if a school district annexes a township or a section of the county, if they have different millages, how are they to be covered? Not in different counties.

Then, there is still another where a large industry moves into a township or a county or a school district, or a large industry that has been operating within a school district or a township moves out and the valuation changes by millions of dollars in just a few days.

I would have to oppose this amendment because I feel that there are too many complications in it. I wish that I could go along with it, because it does remove the allocation board which presents a problem, but I am afraid that in removing that problem we are entering into so many more problems that we just cannot take care of them.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Copemish, Mr. Howes.

MR. HOWES: Mr. Chairman, fellow delegates, I have up to this point in this convention supported the proposals of our taxation and finance committee almost 100 per cent. I believe we have approved many sections that have been improved by this convention, which will more justly apply our tax laws and improve the financial situation and business climate of the state of Michigan, but this proposal to rigidly set the amount of millage which each department of government can use without a vote of the people, I cannot support.

In our committee hearings and from many other sources, we have been urged to give more flexibility in the management of funds than we have had before, and this we have tried to do. This proposal instead of giving us more flexibility would take all the flexibility which we have now from us at the county level by removing the allocation board and setting a rigid amount for the schools, counties and townships forever in our constitution.

I have served both as president of the school board and as chairman of the county board of supervisors, so that I hope and I believe I am looking at this proposal in fairness and without bias. I believe this proposal is supported by some county people and some school people who feel that they have not fared as they themselves felt that they should have at the hands of their local allocation board. I believe that in the great majority of cases the local county allocation boards have been fair and impartial in their work.

I see nothing in the 15 mill limitation which would prohibit the legislature from dividing the 15 mills among the units of government and abolishing the allocation board at any time that it deemed wise, and I say the authority to do this should be left with the legislature and not be frozen for all time in our constitution. The only thing which has been done here which the legislature could not have already done if it deemed wise is to change the section so that it can no longer be called the 15 mill limitation.

It has been said that the delegates here might far better be color blind than not to be able to tell a good law from a bad one, and I urge you now to take a good, long look at the color of this one before you help to write this complicated strait jacket into our constitution in place of our 15 mill limitation with its flexibility of funds governed by the county allocation boards.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Grand Ledge, Mr. Doty.

MR. DEAN DOTY: Mr. Chairman, we have been moving along at a comparatively rapid rate here and I would like to see it continue. My chairman wants to finish this section tonight and I am anxious to help him do it.

I just want to read briefly here the law as it applies to allocation boards:

> Each local unit as defined in this act shall prepare each year a budget containing an itemized statement of its proposed expenditures and estimated revenues covering all its departments and activities. Such budget shall cover that fiscal year for the local unit the expenditures in which year are to be met wholly or partly from the next tax levy. Items of proposed capital outlay, items for the payment of interest and principal on obligations incurred —

and it goes on with the requirements of the allocation board in explanation of their budget. Then it goes on with the duties in the allocation of the millage:

> If the board shall find that the total of all such taxes which would be required to be levied on property located within the area of any local unit exceeds the net limitation, it shall proceed accordingly.

Now I jump a portion of this and it says:

> The board shall divide the balance of the net limitation tax rate between all the local units after due consideration of the needs of the several local units and the importance to the public of functions of local units which might have to be curtailed.

Now in conjunction with this, I would like to point out in my own county that this has been the case. The county has gone from 5¾ up to 6¼ and back to 5.6, 5.8, and down to 5¼. There has been a definite trend here to work according to the budgets submitted to the allocation board.

I am very much concerned about the allocation boards' duty to review these budgets, and we propose later for a public hearing on these budgets. I am very much in favor of it. It will be coming up next. But I still feel we need this allocation board to study them and study them carefully.

Now, with all due respect to our chairman, who referred to the importance of earmarked funds and what they meant to the people, I repeat that the 15 mills means something to the people. With due respect to all the members of our committee who have been looking for flexibility, I repeat: there is flexibility with an allocation board that will not exist when these figures are frozen into the constitution. I think that the efforts of the committee have been well meant. I recognize what they are trying to accomplish, but I am afraid that the problems we will run into will be greater than the problems that we had with the 15 mill limitation and the allocation boards.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Romeo, Mr. Rush.

MR. RUSH: Mr. Chairman and ladies and gentlemen of the committee, I was away the day that this vote came up in committee and I was very much pleased at the decision the committee made. I felt that we had made a step to do something really constructive. I think it is a step in the right direction.

I have talked to many people in my home district. I have served on county boards of education, the local board of education, and I am now on the welfare board; so I should probably be inclined to view this as fairly as anyone, because I can see both sides of it, the county's needs and the school's needs.

I would like to say this for my friend, Carl Spitler, who is concerned about what may happen to the schools. I have seen this happen where schools have gone to the people for extra millage only to find that next year the allocation board would give away part of that millage to the other units of government. I think this is a protection for the schools. I think it is a step in the right direction.

Now, in regards to the new districts that somebody mentioned, that is treated in the first paragraph at the top of page 2. It provides for the legislature to take care of a newly formed district; so that the rigidity that they speak of is not going to

treat any new district unfairly. Frankly, I think this is a step in the right direction.

Also, I would like to say that I have the figures from our county and the increase is only a fraction over the 15 mills. The highest millage, taking the 5 year highs for the 3 units of government, would only come to 15.48 mills.

I know in some areas it would come a little larger than that, but I think we can afford to give a little bit on the 15 mills in order to accomplish what this does.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Grand Rapids, Mr. Martin.

MR. MARTIN: Mr. Chairman, I talked about this kind of a solution to the problems which we have had with friction between the various units of government in Kent county over the activities of the allocation board. I talked to various people who were involved in some of that friction during the campaign, and it was my impression that this type of solution that is proposed here would be most welcome to those various units and that it provides them a flexibility which they do not have at the present time, and particularly would relieve the situation involved in the constant squabble and struggle over who gets what portion of this 15 mills.

It seems to me the committee has done an admirable job of working out a better solution than the one we have now and that this is a good provision, one that is well worth putting into the constitution in place of the old provision which is proposed to be reinstated by Mr. Turner's amendment. I therefore would support the committee's position.

CHAIRMAN BENTLEY: The Chair recognizes the chairman of the committee, the gentleman from Stanton, Mr. Brake.

MR. BRAKE: Mr. Chairman, ladies and gentlemen, I had hoped that we could finish all of the finance committee's proposals tonight, but I find we have conflicts — something else has been set — so I move the committee rise.

CHAIRMAN BENTLEY: The question is on the motion that the committee shall rise. Those in favor will say aye. Those opposed?

The committee rises.

[Whereupon, the committee of the whole having risen, President Nisbet resumed the Chair.]

PRESIDENT NISBET: Mr. Bentley.

MR. BENTLEY: Mr. President, the committee of the whole has had under consideration certain items on the general orders calendar of which the secretary will give a detailed report.

PRESIDENT NISBET: The secretary will read.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 52,** A proposal with reference to the taxation of certain utilities, covering the material in article X, section 5 of the 1908 constitution. It reports this proposal back to the convention with an amendment thereto, recommending the amendment be agreed to and the proposal, as thus amended, do pass.

[The following is the amendment recommended by the committee of the whole:

1. Amend page 1, line 8, after "state" by striking out "tax commission"; and in line 12, after "state" by striking out "tax commission".]

PRESIDENT NISBET: The question is on agreeing to the amendment as proposed by the committee. Those in favor will say aye. Opposed, no.

The amendment is agreed to.

Committee Proposal 52, as amended, is referred to the committee on style and drafting.

Following is Committee Proposal 52 as amended and referred to the committee on style and drafting:

The committee recommends that the following be included in the constitution:

Sec. a. The legislature may provide by law for the assessment by the state of the property whose ad valorem taxes are reserved to state aid for public education by section 1 of this article X, and of such other property as the legislature may designate, and for the levy and collection of taxes thereon. Property assessed by the state shall be assessed at the same proportion of its true cash value as the legislature shall specify for property subject to general ad valorem taxation, and the rate of taxation on such property shall be the average rate levied upon other property under the general ad valorem tax law, or, if the legislature shall so provide, the rate of tax applicable to the property of each business enterprise so taxed shall be the average rate of ad valorem taxation levied upon other property in all counties in which any of said property is situated.

SECRETARY CHASE: The committee of the whole, Mr. President, has also had under consideration **Committee Proposal 53,** A proposal to require that every tax law shall distinctly describe the tax, covering article X, section 6 of the present constitution; **Committee Proposal 54,** A proposal that the power of taxation shall never be surrendered, suspended, or contracted away, covering the material in article X, section 9 of the present constitution; and **Committee Proposal 55,** A proposal to include article X, section 19 of the 1908 constitution in the new constitution. It reports these 3 proposals back to the convention without amendment and with the recommendation that they do pass.

PRESIDENT NISBET: **Committee Proposals 53, 54 and 55** are referred to the committee on style and drafting.

For Committee Proposal 53 as referred to the committee on style and drafting, see above, page 911.

For Committee Proposal 54 as referred to the committee on style and drafting, see above, page 912.

For Committee Proposal 55 as referred to the committee on style and drafting, see above, page 912.

SECRETARY CHASE: The committee of the whole, Mr. President, has also had under consideration **Committee Proposal 56,** and has come to no final resolution thereon. This completes the report of the committee of the whole.

PRESIDENT NISBET: Announcements.

SECRETARY CHASE: The committee on executive branch will meet in room C, tomorrow at 1:00 o'clock p.m. John Martin, chairman.

The committee on rules and resolutions will meet in room I, tomorrow at 8:30 a.m. Richard Van Dusen, chairman.

Mr. Norris requests excuse from tomorrow morning's session, and Mr. McAllister requests leave of absence from the session of next Monday.

PRESIDENT NISBET: Without objection they will be excused.

SECRETARY CHASE: That is all of the items on the secretary's desk, Mr. President.

PRESIDENT NISBET: The Chair recognizes Mr. Heideman.

MR. HEIDEMAN: Mr. President, I move that we adjourn.

PRESIDENT NISBET: The question is on adjournment. Those in favor will say aye. Opposed, no.

We are adjourned until 9:30 tomorrow morning.

[Whereupon, at 5:45 o'clock p.m., the convention adjourned until 9:30 o'clock a.m., Friday, February 9, 1962.]

SEVENTY-SIXTH DAY

Friday, February 9, 1962, 9:30 o'clock a.m.

PROCEEDINGS

PRESIDENT NISBET: The convention will please come to order.

Our invocation this morning will be given by the Reverend Charles E. Jacobs, of the Epworth Methodist Church, of Saginaw. Will you please rise.

REVEREND JACOBS: Let us pray. Eternal God, our heavenly Father, Thou who are the supreme ruler of us all. At the beginning of this day, we humbly bow in Thy presence. Because of Thee, far reaching values and consequences are the product of this day. We are conscious of our need of Thy help. Thou art the God of righteousness and of justice. Thou art full of wisdom and we, being human, have limitations. May righteousness and justice prevail. Endow the members of this convention with right understanding and noble purpose. Enable them in all of their deliberations today to rise above all self seeking and party zeal into the larger sentiments of public good and of human brotherhood. Because of the great possibilities both for good and for evil in this our day, we recognize the need of wisdom in this hour.

We appreciate so much the beauties of our great state and that which we share together that makes for so much of good and we desire its preservation. So grant to this body, we pray, wisdom in laying the foundations for a future that will be happy and productive of all human good. So endow each one with particular wisdom and with a sense of brotherhood that they need today. May Thy blessing rest upon this august body, in the name of Jesus Christ our Lord and Savior, we ask it. Amen.

PRESIDENT NISBET: The roll call will be taken by the secretary. Those present please vote aye.

SECRETARY CHASE: Has everyone voted?

PRESIDENT NISBET: I'm glad to see the lights go on more rapidly. Please vote if you are here.

SECRETARY CHASE: The machine is locked, and the attendance will be recorded.

Mr. President, a quorum of the convention is present.

Absent with leave: Messrs. Anspach, Barthwell, Bledsoe, Faxon, Habermehl, Leibrand, Norris and Stamm.

Absent without leave: Mr. Marshall and Mr. Wilkowski.

PRESIDENT NISBET: Without objection, the delegates are excused.

[During the proceedings, Mr. Norris entered the chamber and took his seat.]

Reports of standing committees.

SECRETARY CHASE: None.

PRESIDENT NISBET: Reports of select committees.

SECRETARY CHASE: None.

PRESIDENT NISBET: Communications.

SECRETARY CHASE: There are no communications.

PRESIDENT NISBET: Second reading of proposals.

SECRETARY CHASE: Nothing on that calendar.

PRESIDENT NISBET: Third reading of proposals.

SECRETARY CHASE: Nothing on that calendar.

PRESIDENT NISBET: Motions and resolutions.

SECRETARY CHASE: There are no resolutions on file.

PRESIDENT NISBET: Unfinished business.

SECRETARY CHASE: None.

PRESIDENT NISBET: Special orders.

SECRETARY CHASE: None.

PRESIDENT NISBET: General orders of the day. The Chair recognizes Mr. Bentley.

MR. BENTLEY: Mr. President, I move the convention resolve itself into committee of the whole for consideration of certain items on the general orders calendar.

PRESIDENT NISBET: The question is on the motion of Mr. Bentley. All in favor say aye. Those opposed?

The motion prevails. Mr. Bentley.

[Whereupon, Mr. Bentley assumed the Chair to preside as chairman of the committee of the whole.]

CHAIRMAN BENTLEY: The committee will be in order.

SECRETARY CHASE: The committee of the whole last evening had under consideration Committee Proposal 56, A proposal to limit the ad valorem taxation of property covering the subject matter of section 21, article X of the 1908 constitution, commonly known as the 15 mill limitation.

An amendment to the proposal had been offered by Mr. Turner and others.

For last previous action by the committee of the whole on Committee Proposal 56, see above, page 915. For text of pending amendment, see above, page 916.

CHAIRMAN BENTLEY: The Chair recognizes the chairman of the committee, the gentleman from Stanton, Mr. Brake.

MR. BRAKE: Mr. Chairman, ladies and gentlemen of the committee, the 4 gentlemen from the committee who yesterday presented the amendment have laid down the issue very clearly: whether or not we wish to continue with the 15 mill limitation as we have had it, or whether we wish to try the new plan submitted by the majority of the committee.

Mr. Turner mentioned one thing that I think I must answer — the question of a township that gets the millage under the new plan if it doesn't need it. There are very few such townships. If they need nothing else, they need some money for their local roads. Some of them have been generously stepping aside in favor of the schools, even when they had a legitimate need for themselves. There may be some hereafter who have that same attitude, but the machinery is already there. While their declining to take their 1 mill would not give it to the schools, they have the statutory power to turn over township money from the contingent fund to schools. True, it takes a vote of the people, not just of the township board; but the machinery is already established.

When you come to look at the 15 mill limitation as we have had it, just about everything is wrong with it that you could have wrong. In the first place, it "ain't what it used to be." It doesn't mean what it was intended to be used for. One justice of the supreme court, in a rather recent decision, said that it had been chipped away until there was practically nothing left; and it has been primarily the supreme court that has been doing the chipping away.

When we wrote that into the constitution, we said 15 mills on assessed valuation. Now, those were not unknown words. We had used the term assessed valuation for generations. We thought we knew what they meant. But in the course of time the supreme court said, "You didn't know what you were talking about when you said assessed value. You didn't mean assessed value, you meant state equalized value." So just at one stroke the 15 mill limitation became about a 30 mill limitation. And so the process has been going on, with different units taking out from under it.

The committee on finance and taxation has leaned to the conservative side. We think that is the proper leaning for a committee on finance and taxation. On everything else that we have proposed to you we feel that we have been on pretty safe ground. In this instance, we have gone farther out into the experimental field than we have on any other proposal that

we have suggested. We think we have offered an improvement on the 15 mill limitation.

But the issue is perfectly clear for your decision. It's the 15 mill limitation, or it's something which admittedly will not be 100 per cent perfect, but in the judgment of the committee is better than what we have.

CHAIRMAN BENTLEY: The Chair wishes to announce that when the committee rose yesterday the following gentlemen were seeking recognition and, without objection, will be recognized in this order: the gentleman from Allegan, Mr. Farnsworth; the gentleman from Detroit, Mr. Yeager; the gentleman from Charlevoix, Mr. Shanahan; the gentleman from Traverse City, Mr. Sleder; the gentleman from Lapeer, Mr. Haskill; and the gentleman from Marshall, Mr. Hatch.

The Chair recognizes the gentleman from Allegan, Mr. Farnsworth.

MR. FARNSWORTH: Mr. Chairman, members of the committee. First, I have a stop watch in my hand I'm going to give to Bob Hodges. And time me, Bob, as I don't want to spend over 5 minutes. But I do have something to say about these 2 proposals that are before us now.

I would like to make it clear from the start that I'm speaking in favor of the amendment which is a substitute for the committee proposal. That of course is not an easy position to take, because it's always easier to go along with the committee recommendation, as all of you know.

But in this case I think we should quite clearly analyze what the 2 of them would do for us. So if you would just think with me for a moment. The committee certainly had a tough job. I was in their committee room at the time they were trying to make some of these decisions, and they were having a tough time even getting a vote so that they could come out on the floor with something. We all appreciate that.

Now, it seems to me they were objective. Their aim was, first, to have an effective limitation on millage, quite similar to what we had before, and they have accomplished that. And they were endeavoring to do that and at the same time dispense with the controversial tax allocation board.

Now, I think that the committee report, as against the amendment, accomplishes these 2 things. I have no argument at all with the very slight difference between the committee report's limitation and the former 15 mill limitation. The millage is so slight in so few areas that no one can take exception to that, and I certainly would agree with Mr. Brake that the thing is not very effective anyway.

Now, both reports — both the proposed amendment and the committee report — are a distinct improvement in the one regard, in clearing up this thing of fractional school districts going over to another county. That certainly is sound and workable, and makes good sense. It is included in both of these choices that are before us.

As I see it, then, we get down to this. The committee report, as it was mentioned yesterday, certainly freezes the millage allocation to the units of government. Mr. Brake has discussed this briefly with me, and he admits — and he doesn't like this feature of it, I know — but he simply said, I believe, "We just haven't found any way to subject this thing to review."

So, admittedly, it freezes the allocation to the highest that unit of government had in a base 5 year period. Now, I want to say to you folks this morning that that not only freezes that, but, brother, it deep freezes it! You couldn't have frozen it any more solid if you had buried it at the north pole. That's there for all time until you change it with a constitutional amendment.

Now, that being the objective — to do away with the allocation board, plus the limitation — I submit to you that the old language we had does a better job of it. And I say it for this reason. If you want to get away from the allocation board, the only thing you have to do, in my opinion, is to go to the legislature and say to them: now, look, we have an argument about this thing every year, which we don't like. So would you please pass a law for us that says we are going to take a 5 year base, and we are going to take the highest millage that we had in any one of those 5 years, and that will be it. But in 5 years from now we would like to come back and review it with an allocation board.

I think then, Mr. Brake, you might have the flexibility you would like to have. Use the same language you have, use the same limitation, but instead of going to your allocation board every year, say to them, we're going to have it every 5 years or every 10. But don't deep freeze. Just don't deep freeze that allocation to the particular units.

I would certainly have to support the old language, which is the amendment, because I think it is much more flexible by statute.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Detroit, Mr. Yeager.

MR. YEAGER: Mr. Chairman, I would like to address a question to Mr. Brake. Under the committee report — and I believe this is repetition — it provides that the millage is decided for each of the 3 units, and it is arrived at by taking the highest in a defined 5 year base period. And as a result, I believe you stated yesterday that the total millage for some areas could go to 18 mills. Would this additional 3 mills have anything to do with the 50 mill total limitation? In other words, would some areas be entitled to say 53 mills under this, because the proposal, the majority report, on page 2, lines 15 through 17, says, "The aggregate of the voted increases in general ad valorem property taxes levied by every taxing authority shall not exceed 3.5 per cent"?

MR. BRAKE: You're right, I think, Mr. Yeager. I think it would be possible, because it's 3.5 above the voted millage. However, that is not, as we view it, a serious thing. The places that are exceeding the 50 mills are cities, where their charter fixes that at 20 mills, for instance, and then they go on up from there. I wouldn't think there would be, frequently, a place where the 50 mills would be reached, outside of an incorporated city. And there are only a very few places, as I understand it, in the state, where it would go to the extent of 18 plus 3.5. Generally it would be 16 or 16¼, right along in there.

MR. YEAGER: Thank you.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Charlevoix, Mr. Shanahan.

MR. SHANAHAN: Mr. Chairman, members of the committee, others before me have very eloquently expressed what I had in mind when I originally asked for recognition. I do favor the amendment.

Mr. Farnsworth has mentioned what I was going to mention about freezing the 15 mills in such a way that it would literally require a constitutional amendment to let any particular local unit change the allocation within the 15 mills, and it would not be uniform throughout the state at all.

I'm against it also because it does further fracture the 15 mill limitation. It is a little protection to the property owner, but this would further erode this particular bit of protection. And I cannot see a reason for shifting a local responsibility — I'm talking about the allocation board right now — to the constitution, simply because the allocation board has a difficult job. I don't believe that anybody is required to run for the office that eventually puts him on the allocation board. That is one of the things he does have to assume if he wants the office that he holds. So I will just conclude by saying that I very strongly favor the amendment.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Traverse City, Mr. Sleder.

MR. SLEDER: I would like to address my fellow delegates in opposition to the amendment. I feel we are missing one point in the amendment in reestablishing an allocation board. With the use of an allocation board dividing the 15 mills, we develop a contest between the board of supervisors and the school districts. And then we take 3 members off from each one of these teams and select 3 more at large to act as a referee. So then each team develops the best offense they can in the preparation of a budget that is many times unrealistic. Therefore, they try to prepare something that they can sell to the allocation board.

The allocation board is definitely in a very precarious position, and I must say on behalf of all allocation boards and all

people who have served on allocation boards that they have done a tremendous job and they have done a good job.

However, we have missed the one point that I feel is important. We have taken the responsibility away from our elected boards in setting the tax millage. And I feel under the majority report we are replacing or putting the responsibility on the people we put into these positions in placing the millage where they are responsible for it.

I, as a taxpayer, can go to the man that I placed on the board of supervisors or upon the school board and say that you are the man that is responsible for the millage that you are charging me on my taxes, not the allocation board. He cannot come to me and say: "Well, I had nothing to do with this; this millage was set by the allocation board." And I feel that we should, in view of good government, place the responsibility on the officials that we place on and elect to these boards.

In conclusion, I would like to say that if we are to establish harmony back in our local governments, this is the place we must do it. Because we have created an atmosphere in many counties where the board of supervisors are very, very critical of the school men, the school men are very critical of the board of supervisors. One is looking at the other and criticizing him for the amount they are paying for wages, when they buy a new fire truck or when they hire new teachers.

I think our local units of government should operate in cooperation, and I feel with the majority report each unit of government is responsible within their own limits of where they can set that millage, and they certainly can and certainly will set it lower if the people and the voters know they are responsible for setting this millage. And it will recreate a harmony among our governing units in our local government. Thank you.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Lapeer, Mr. Haskill.

MR. HASKILL: Mr. Chairman, I want to speak in favor of the Turner amendment. I'm not in favor of freezing this millage out here to the schools, the counties and the townships. I feel that there should be some flexibility left out there for those to decide. I've discussed this problem for quite some time with the people in my community, my area and my school district. There have been some arguments through the allocation board, I'll grant you, but so far there have been no fatalities. They have generally come out, maybe, with a few scratches, but they still understand the school budget, they understand what is going on, where the money is being spent.

It no doubt would be very good to have the hearing where the public can come in, but from what I have observed, most of the public that do come in are still very few in number. There's very few of the public that really attend these local meetings to see where the money is being spent. They still leave it up to the allocation board or to the supervisor.

One of the other things I'm certainly opposed to is the breaking of the 15 mill limitation. In some areas it doesn't break it, but in other areas it does break the 15 mill limitation. As Mr. Brake said, it doesn't mean much of anything today, but it still is a deterrent. It still is like a ditch along the road, and if you want to get over it, the people have to vote to get over and beyond that 15 mill limitation. That is one of the things that the people from my area certainly have felt has been of some help to them.

As far as farms are concerned and as far as a lot of this other property is concerned, they certainly feel that taxes have gone as high as they should go, as high as they really can go. If you continue to put much more on property, people are going to be more or less in a hurry to get rid of this property. So I'm going to urge you to vote for the Turner amendment. I believe that it has been proved in courts; that if there's any argument, that has been taken care of; and we certainly feel that it will still continue on in a very orderly manner.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Marshall, Mr. Hatch.

MR. HATCH: Mr. Chairman, it seems to me that the issue here is very clear, and I'm not going to take any more of the committee's time. I think that we are all about ready to vote on the matter.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Grand Haven, Mr. Stafseth.

MR. STAFSETH: Mr. Chairman, I might say that I was on the committee, and I support the committee's proposal and oppose the amendment. I'll say that in the beginning I voted twice against the committee proposal, and eventually I voted for it to get it on the floor, because I wasn't sure. This was a change; this was a substantial change. But when I went back and talked to some of our people in government — supervisors and school superintendents — and explained the workings of this thing, they said this was acceptable. The only problem you run into is that some of the units that probably didn't have as high a rate as they would like are going to gripe because they weren't high enough.

But this is just like the cities have now, in their charters. Any unit of government, the township or the county or the schools, can vote whatever millage allocation they want under this provision. This is what a city does when they adopt a charter. They can go up to 20 mills. They can vote either 10 mills, like the city of Grand Rapids, or more. In this case here, within the reasonable limits of the 50 mill limitation, or the 35 above the unvoted, they can vote whatever millage they want to use. It gives them flexibility.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Muskegon, Mr. Seyferth.

MR. SEYFERTH: Mr. Chairman, ladies and gentlemen, as a member of the finance and taxation committee, I speak in favor of the majority report, for these following reasons, in the main. First of all, the 15 mill amendment as proposed by the majority of the committee did not, in its origination, find reasons for increasing the 15 mills. The formula that we have adopted is the result of much study and much research to provide for the units of government as fair a limitation in millage as possibly could be conceived. This, admittedly, exceeds in some instances—and in most instances—the present 15 mill limitation by ½ a mill or possibly a mill on an average.

Also, it was not the intention of the committee by this action to eliminate the allocation board, even though we feel in the majority instance that the allocation board procedure is not in the best interests of the units of local government. But in applying the millage freeze, as the term has been used, the allocation board automatically ceases to exist.

Now, the basic premise of the thought behind the presentation of the majority of the committee is to provide for local units of government, and I have heard on this floor many times the desire of the local units of government to have more freedom, to have more individuality, and to have more control. This certainly is a step in the direction of providing for local units of government just exactly that which they feel they should have. But, by the same token, we are going to impose, if this is adopted, a sense of responsibility.

Now, the cities in the state of Michigan have been operating under this very system for a long period of time. Their charters freeze in their operating millages, the same as we are proposing in this majority committee recommendation that the local units of government — the schools, the counties and the townships — will have their millage frozen at a level which we believe in the best interests of the units of government will best permit them to operate. Now, if they want more, they vote for more. That is what we have been asking for — to put the responsibility back at the local level. If they do not need that which is given to them under this so called freeze, then let them act in the same manner as the cities do, and reduce their millage — and, believe me, cities do reduce their millages less than the charter requirements — and if they need more, they increase it.

So it boils down to being nothing more than a proviso to give to the schools and the townships and the county governments more individual freedom and expression and control. I support wholeheartedly the majority opinion, and urge you to vote against the amendment.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Grand Rapids, Mr. Tubbs.

MR. TUBBS: Mr. Chairman, I hope I am mature enough

to be able to agree with Hale Brake and his committee when I think they are right, and disagree with them when I think they are wrong. In this instance I think they have done a pretty good job. I agree that this whole business is a compromise, and perhaps will always be that way. But at least the units will know what they can do with this section.

A few years ago we had the situation in Grand Rapids where the county of Kent suddenly was faced with a large welfare addition to its needs, and the board of education needed more money. An additional mill, divided between the 2 units, would have meant the difference between meeting their budgets and not. So it was submitted to the people for a vote. The people out in the country weren't interested in education; the people in the city weren't interested in welfare; and it was defeated. If the matter had been put squarely before the taxpayers involved, the people in Grand Rapids would undoubtedly have voted additional millage for schools, and the other way around. I think this is not perfect, but I favor the majority report.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Grand Rapids, Mr. Goebel.

MR. GOEBEL: Mr. Chairman, I rise to speak against the amendment and for the majority proposal. Now, I appreciate that this does represent a change from what we have had, but sometimes a change can be good, and I believe that this is a good change. And I know that in my contacts with the various people who have had some experience with the allocation board, and officials of the 3 governing units that have been subjected to allocation boards, many of whom have a very conservative viewpoint, they state that they feel this is a good change. They approve it.

I want to talk specifically to Mr. Farnsworth's remarks, and I do not wish to say that Mr. Farnsworth is wrong in what he said, but he perhaps might have left an impression which may not be justified. First, that this freezes allocation. Now, I know what you meant, Mr. Farnsworth, and I think that in the main you are right. But it does not allocate. It only sets the limit of taxation for each of these 3 bodies, and then the governing board of the individual units sets the tax rate within that limitation, not the allocation board. Mr. Farnsworth also remarked that it would take a constitutional amendment to change this freezing of allocation.

Mr. Farnsworth, that could be done that way, you are correct. But there is a much easier method, under the proposal submitted by the committee, to do this, and that is by a vote of the people who pay the taxes within the 3 governmental units, which is a much easier way than changing the constitution.

And I agree with Mr. Seyferth in his remarks that all we are doing here for these 3 governmental units is setting a limitation beyond which the governing body cannot go, unless the people raise that limit — just exactly as is happening in the incorporated cities of the state of Michigan right now.

Mr. Shanahan said something about shifting the responsibility of the allocation board. This does shift the responsibility from the allocation board, and brings it right down to the governing boards of the 3 governmental units.

I want to say that I agree wholeheartedly with my friend, Mr. Sleder, when I say, as he says, that it does away with the irritations and feelings between these 3 governmental units in determining their millage under the allocation board. It will improve relations among 3 governmental units where cooperation is good in the best interests of all of the people in the county. And, to me, this is home rule in its purest sense. The people themselves decide the tax limits that are going to be imposed upon them — not the allocation board, but the people themselves.

For these reasons and many others I object to the amendment, and ask that you give the committee proposal your full hearted assent. Thank you very much, Mr. Chairman.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Quincy, Mr. Knirk.

MR. KNIRK: Thank you, Mr. Chairman. Ladies and gentlemen of the committee, I rise to support the Turner amendment, because I feel — and I would like to ask Mr. Brake a question — that the majority report would absolutely give the privilege of increasing our taxes. Isn't that correct, Mr. Brake? The majority report, Mr. Brake, absolutely gives the local units of government the power to increase our taxes automatically without our consent?

CHAIRMAN BENTLEY: Mr. Brake.

MR. BRAKE: In some places, it makes available the highest millage you have had in those years 1957 to 1961. Now, that may in your particular instance — and it may not in some other instance — permit an increase. That is not a compulsory increase. You don't have to go there if you don't wish.

MR. KNIRK: Well, I have had the privilege of appearing, Mr. Brake, before the allocation board for the past 4 or 5 years, and in our particular county we have changed from where the county was getting 7½ mills to where now the schools receive 8.3 mills, all within the last 6 years, and then the township's was 1 mill.

I called the local people in my county on this, and the very comment that came from one of the officials in the courthouse was: "Well, that would certainly do us a lot of good. We could have 7/10 of a mill more money to spend than we have had in the past." Yet just last year they had a $23,000 addition to their surplus. I'm referring to the schools. And when we appear before the allocation board, we take in our budget absolutely as we operate under, not padded. And I think any school or any segment of government that does differently is just kidding itself. And we have to vote 3, 4 mills extra operating millage.

Now, this 7/10 of a mill difference between the 15 and what the sum total would be in our particular county could, as I see it, go entirely back to the county, and the schools would still stand exactly where they are. Is that right?

MR. BRAKE: The fact that one unit did not use its millage would not give it to another unit. The townships can turn it over to the schools if they wish.

You are to be commended if your budget has never been padded. Unfortunately, a lot of the budgets that go to the allocation boards are padded, on the theory that they will get a cut anyway, so they might as well ask for what they want.

And, on your statement that that will give your county more than they have had, they don't have to spend it.

MR. KNIRK: I know they don't.

MR. BRAKE: And if I know boards of supervisors around the state, it will be a pretty hard job to find anybody more economy minded than those boards of supervisors.

MR. KNIRK: I wish I could agree with you on that, Mr. Brake. I just can't. I think it just absolutely would increase our taxes, and consequently would increase waste. And I would like to use one other example. Many of our townships in my community have received the 1 mill, and then they have made donations to every cause you can think of, including band uniforms in my own school — and I do not believe that is the way we should be spending this 1 mill.

MR. BRAKE: Well, you might go a little further than that and say you don't believe it is legal for them to do it. But it is legal for them to turn that extra money over to the schools.

MR. KNIRK: We go in for the fight, and I mean it's been a real tough battle. I would rather see the 15 mill limitation be retained, and then we will present our budget to the people, because we haven't lost on a single millage increase in our community for quite a number of years, rather than having an increased tax in the county and the township, and then still have to go to the people to get our millage.

That's what I feel is going to happen. Therefore I would certainly object to the majority report.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Saginaw, Mr. Turner.

MR. TURNER: Mr. Chairman, ladies and gentleman of the committee, I agree with Mr. Brake that the committee on finance and taxation is conservative, and I like it. And it has been proven that the committee is conservative, since Committee Proposal 56 could not get enough approval to get out of committee until some of us changed our vote so we could get it out to meet the deadline.

I agree that the 15 mill is not utopia. And I will not be satisfied with my work at this convention until I can find some way to improve the tax structure of this state. We have lived with the 15 mill limitation for some time, and it has been proven. And, believe me, ladies and gentlemen, we are putting our future in a capsule that is destined for the unknown if we go with Committee Proposal 56. Proposal 56, in my estimation, has not been thoroughly researched, and we cannot foresee all of the ramifications of the problems that we will be confronted with.

At this time I would like to yield to Mr. Leslie Richards, if possible.

CHAIRMAN BENTLEY: The gentleman yields to the gentleman from Negaunee.

MR. L. W. RICHARDS: Mr. Chairman and fellow delegates, I want to thank you, Herb, for giving me this opportunity. Probably Herb was aware of the fact that I would support his amendment, and he was very gracious in yielding.

I feel I'm a little behind in words with some of my fellow delegates, and I like to have an opportunity on occasion to rise and let you know I'm still here.

But, definitely, I do oppose the majority report. I feel, something like my good friend Jim Farnsworth, that we are freezing into the constitution the amount of millage, and to the fact that I don't believe any of us here can determine what the economic changes will be in the near future, and while this may be workable today in a certain area, when I think of our own upper peninsula I'm a little bit disturbed.

As our delegates yesterday went on record approving this 50 per cent of true cash value, probably realizing the need of industry for some of this recognition, I can also realize what that will do to our upper peninsula.

And as some of our people say, we are going back to local control when we place this directly in the constitution. I can't quite interpret it. I believe it's more local control when you do go down to your allocation board and discuss these things. And when the economic conditions change, you have a chance to vary these millages, and I think that's very important. Probably today the majority of the people and governments would benefit by this, but what would the situation be tomorrow? I believe that our economic situation could change.

By the action of these delegates, supposing we went to county home rule, where those people could get more money. If that did happen, with their extra millage they still could retain this millage in the constitution, and once again we would be in trouble due to the fact that I don't think it should be in the constitution. It has been on the statute books since 1932. It's been workable, with a little irritation. The biggest concern that everybody seems to have is this problem with the allocation board, where people get in each other's hair and discuss things. But, by the same token, folks, we have all gotten in each other's hair here on the floor, and if we're going to base it on that principle, we should not discuss things here. We should decide by voting, without discussion. By getting in each other's hair once in awhile and having a good healthy discussion, we make a more honest determination.

I would still retain the allocation board and the 15 mill distribution by that board. Thank you.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Petoskey, Mr. Spitler.

MR. SPITLER: Mr. Chairman and delegates, first of all I would like to ask a question of Mr. Brake, and then make a very short statement, because I think that this has been clearly debated pro and con, and I think we are about ready to vote upon it. In talking to some of the members of the committee, Mr. Brake, I've gotten different statements. In your earlier statement, in which you clearly explained this, did I understand you to say that the tax commission, the attorney general and the department of public instruction had approved of this plan? Did I understand that, or not?

MR. BRAKE: The attorney general would not be asked and was not asked whether he approved of the plan. He was asked to go over the language — as were some bond attorneys, and so forth, who were interested in this kind of thing — to see if we had said what we meant. We didn't ask either the bond attorneys or the attorney general whether they liked the general idea. I think some of them did express themselves, but that is out of their field. That wasn't what we were asking for.

MR. SPITLER: And on the other 2, the tax commission and the department of public instruction?

MR. BRAKE: Some of the members of the committee I think talked to the tax commission. The committee did not do that officially.

MR. SPITLER: I've got conflicting reports on that conversation with the tax commission. I just wondered —

MR. BRAKE: I wasn't there. You will have to talk with those who were.

MR. SPITLER: The same thing holds true for the department of public instruction?

MR. BRAKE: I think the same thing is true. I think some members talked to somebody over there about it. And of course some of us talked to your M.E.A. representatives. And the last conversation I had in that respect —

MR. SPITLER: They are not my M.E.A. representatives, Mr. Brake. (laughter) I would like to make a short statement, and let me say this, that as far as my own local school district is concerned, the one in which I have worked for many years, they would be very happy to have this. So if I were speaking for my own school district, I would support the majority report.

But I am supporting the Turner amendment, because I have worked in this field for many years and I know the implications that are involved. I want to be on record in this convention as opposing this majority report, so that anything that comes up in the next 5 or 6 years, I will be on record as supporting the Turner amendment.

And especially for the reason that Delegate Farnsworth has given here. You are writing into the constitution the freezing of millage from 3 mills to 11 mills. You can't justify that difference in millage. You're freezing it into the constitution. If this were to be done, I would agree with Delegate Farnsworth, let the legislature do it. Let it try it. Then it can be adjusted from year to year.

I've heard so many statements in this convention that we shouldn't be legislating in our constitution. And I certainly would agree with you on this point. I want to take the stand that if this is to be done, it should be done by the legislature, where it can be corrected; that you are writing something in here on which there are going to be many complications, many implications.

And I think if you were to confer with the tax commission, with the department of public instruction, they would support that. I'm going to support the Turner amendment.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Saginaw, Mr. Leppien.

MR. LEPPIEN: Mr. Chairman, members of the committee, we have heard a great deal on this proposal, plus the amendment.

I keep hearing it repeated and repeated and repeated that the budgets of the units will be reviewed at a public hearing. I wish to respectfully point out that questions asked by the allocation board, based on the experience of some 15 years with allocation boards, convince me that should the questions be asked of the representatives of the units involved — the city board of education, as we call it, the county board of supervisors, and township boards, as represented by whoever appears on behalf of those units — at a public hearing, you would have a riot within a very short time. Because no public hearing is controlled as to parliamentary procedure and as to the right person speaking at the right time, and in a public hearing, which is undisciplined, you would just naturally have chaos.

Would I be able to say: "a plague on both houses." Because I firmly believe that the committee has not come up

with the tax solution that this convention should come up with for the state of Michigan for the future years.

Ladies and gentlemen of the committee, I want to support wholeheartedly the amendment proposed by Delegate Turner and his people, for the reason that, with so much freezing, the preparation of budgets cannot be looked into by public hearings, and all the things that go with it. Mr. Chairman, I support the Turner amendment.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Port Huron, Mr. Staiger.

MR. STAIGER: I think we have spent plenty of time on this, and we are probably all ready to vote, but I just would like to make a couple of comments. One, with regard to the question that this could be handled by the legislature, that was clearly the first view we took when we took a look at it. But, in examining the 15 mill amendment, these problems are created by the constitution. I think it's obvious that the particular solution we have given could not be done by the legislature. When we reviewed it, we would have liked to stay within the 15 mills. In doing that, we ran into more problems than we were solving in trying to stay underneath the 15 mills and get some kind of an equitable limit on each unit of government.

On this variable millage problem, the legislature's hands are tied on that by the constitution and by the 15 mill amendment and the other provisions in the 1908 constitution.

If you are going to have a solution at least as good as the one we have here, you cannot do it with going under the 15 mills or doing it by statute. The problems are caused by the constitution, and this is the place that we are going to solve them, and we are going to have to try to solve it.

Two, on the question that Mr. Leppien raised regarding the public hearings, we do have a provision coming out that will require all public boards to have public hearings. It's coming up next. I will only point out that in considering that in connection with this, in almost every charter that has been written since 1935, cities have been required to have public hearings. They feel it serves a valuable purpose. The committee concurred in that, and they haven't had, as far as I know, any disturbances or riots in these public hearings.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Detroit, Mr. Madar.

MR. MADAR: Mr. Chairman, I couldn't help but remark, after having watched that clock over there for the past half hour, that I hope that the cloture rule isn't invoked this morning because of the long winded, one sided debate.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Detroit, Mr. Austin.

MR. AUSTIN: Mr. Chairman, ladies and gentleman of the committee, I am reluctant to talk on this subject, and it is not my intention to present any argument — just to impart some information. We have word this morning that there is some apprehension among the supervisors in Wayne county about the committee proposal, and the indication is that they would prefer that the status quo be retained until something else can be worked out; and the preference would be to remove the 15 mill limitation altogether. But the word from the supervisors is that they would prefer to retain the status quo.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Grand Rapids, Mr. Goebel.

MR. GOEBEL: Mr. Chairman, Mr. Staiger has said what I intended to say, with one exception. I would like to take just a couple of more minutes of your time, if I may, to reassure Mr. Knirk about his concern for the fact that the governing bodies might levy up to their limits in taxes, and thus dissipate the taxpayers' money. Now, if the governing body takes up to the limit and does not need that money, and levies those taxes upon the residents in the governing unit, and levies taxes above what that governing unit needs, I submit to Mr. Knirk and you gentlemen that the remedy is in the hands of the people themselves; not the allocation board, not the legislature, but in the hands of the people themselves. The people themselves can remove by vote the members of a governing board which levies taxes in excess of what they need.

Now, I agree with Mr. Brake 100 per cent in his statement where he said that the great majority of boards of supervisors are very frugal in levying taxes beyond what they need, and certainly the history in a great many of our cities which are operating under charters, as you know, is that most of them do not take up in taxes the limitation which is allowed them under their charter. I therefore again ask that you vote down the amendment, and vote on behalf of the committee proposal. Thank you.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Allegan, Mr. Farnsworth.

MR. FARNSWORTH: Mr. Chairman, my purpose in rising is to ask Mr. Austin to clear up the "status quo." Mr. Austin, I'm not clear which you are indicating that the Wayne county board of supervisors is in favor of, the amendment or the majority report.

CHAIRMAN BENTLEY: Mr. Austin.

MR. AUSTIN: May I make one correction, Mr. Chairman. I did not want to convey the impression that there had been a vote taken in the Wayne county board of supervisors. This is just a consensus that was taken to get some idea as to what the feeling was down there. The second point is that it would seem that the amendment would retain the status quo.

CHAIRMAN BENTLEY: The question is on the amendment offered by the gentleman from Saginaw, Mr. Turner, and others. As many as are in favor of the amendment will respond by voting aye. Those opposed?

The Chair rules the ayes have it.

MR. BRAKE: Division.

CHAIRMAN BENTLEY: The chairman of the committee asks for a division. Is the demand supported? There's a sufficient number. Those in favor of the Turner amendment will vote aye. Those opposed will vote no.

MR. ROMNEY: Mr. Chairman, could we have the amendment read?

CHAIRMAN BENTLEY: Without objection, the secretary will read the amendment.

SECRETARY CHASE: The amendment offered by Mr. Turner and others is:

[The amendment was again read by the secretary. For text, see above, page 916.]

CHAIRMAN BENTLEY: The machine will be locked. The committee will be in order. The difficulty at the desk in reporting this total is this. Some of the delegates have changed their votes without so indicating, and so the secretary is not certain that he has the correct total here.

Mr. Van Dusen.

MR. VAN DUSEN: Can the board be cleared and the vote taken again?

CHAIRMAN BENTLEY: Without objection, the board will be cleared and the vote will be rerecorded.

SECRETARY CHASE: Will everyone first clear their voting stations.

CHAIRMAN BENTLEY: Those in favor of the amendment will vote aye. Those opposed, no.

The machine will be locked. The committee will be in order.

SECRETARY CHASE: On the adoption of the amendment proposed by Mr. Turner and others, the yeas are 84 and the nays are 35.

CHAIRMAN BENTLEY: And the amendment is adopted. Are there further amendments to the body of the proposal?

SECRETARY CHASE: Mr. Powell offers the following amendment to the language that has just been adopted:

1. Amend page 1 (in the amendment) after "assessing district" by inserting "who have property assessed for taxes in any part of the district or territory affected by the result of such election or the lawful husband or wife of such person"; so that the language will then read, starting in line 13: . . . by a majority vote of the electors of any assessing

district who have property assessed for taxes in any part of the district or territory affected by the result of such election or the lawful husband or wife of such person . . . .

CHAIRMAN BENTLEY: The gentleman from Ionia is recognized in support of his amendment.

MR. POWELL: Mr. Chairman and ladies and gentlemen of the committee, attention was called yesterday to the fact that there was a discrepancy between the provision in this regard in this report and the report of the elections committee, which will be coming up shortly.

When the 15 mill amendment was first initiated, the requirement for raising millage above the 15 mill limit was a 2/3 vote of everyone, without regard to property owning qualifications. Later, when there was a liberalization of the provisions and the time was lengthened, the vote was cut down to a simple majority, but it was still left a simple majority of just the electors, without regard to property owning qualifications.

Now, it has always seemed to me that when you can vote to raise the millage above 15 for as long as 20 years as the result of one election, that is just as much an obligation, a virtual mortgage, if you please, against the real and personal property of the district affected as would a bond issue be. But the constitution in article III, section 4, if I recall correctly, has provided right along that the qualification for voting on a bond issue or the direct expenditure of public money was that the person had not only to be an elector in that district, but had to be a property owner or the spouse of a property owner.

And so, I think, to make it consistent, that this provision should be written in at this place, so that the same qualifications would prevail and provide in the case of raising millage above 15 as would apply for the approval of a bond issue. Because only those who have such property owning qualifications are the ones who will be responsible for making those payments over the term for which the rate has been increased.

MR. YOUNG: Mr. Chairman.

CHAIRMAN BENTLEY: For what purpose does the gentleman rise?

MR. YOUNG: On the amendment.

CHAIRMAN BENTLEY: The gentleman will be recognized as soon as the gentleman from Birmingham has been recognized.

MR. VAN DUSEN: Mr. Chairman, I would like to suggest that we deal with Mr. Powell's amendment, if he has no objection, in the same fashion as the conflict between the proposal of the committee on declaration of rights and the committee proposal were dealt with yesterday.

I have some technical objections, as well as substantive objections, to Mr. Powell's amendment. We discussed them briefly when he presented a similar amendment in the committee. I don't believe it does exactly what he thinks it does, but that's a matter of style that we can discuss at great length here without really making progress.

Mr. Powell, would you not be willing to let the decision on this abide the presentation of Dr. Pollock's report?

MR. POWELL: Yes, I have no objection to that. However, I want everyone to remember that this matter was raised now, and it is not something that we can take care of in style and drafting. This is very definitely a substantive matter which should have consideration on the floor here.

If it will, in your judgment, expedite procedure, I will be willing to withdraw the amendment at this time. I think everybody will agree that I have occupied very little time at this microphone. I have had plenty of things on my mind that I would have liked to have said, but other folks were saying them, and saying them at great length, so I have been staying away. But this is something that is tremendously important to me, and I do not want to see it neglected. However, I am willing that it be handled first in the other committee report. So I withdraw the amendment.

CHAIRMAN BENTLEY: Before the chairman recognizes the unanimous consent to withdraw the amendment, he will ask the gentleman from Detroit, Mr. Young, if he desires to speak on that subject.

MR. YOUNG: Mr. Chairman, I merely wanted to make the point that Mr. Van Dusen made. I'm in agreement with withdrawal.

CHAIRMAN BENTLEY: Without objection, the amendment will be withdrawn. Are there further amendments to the body of the proposal?

SECRETARY CHASE: Mr. McCauley offers the following amendment:

1. Amend page 1, line 6, after "Sec. a.", by striking out the balance of the committee proposal and inserting "The legislature shall by general law fix limits on the rates of ad valorem taxes which may be levied by counties, townships, school districts and other political subdivisions, except where such limits are provided by charter or other applicable home rule provisions.".

CHAIRMAN BENTLEY: The gentleman from Wyandotte, Mr. McCauley, is recognized in support of his amendment.

MR. McCAULEY: Mr. Chairman and ladies and gentlemen of the committee, the amendment means exactly what it says. For the sake of brevity, flexibility, and looking ahead 50 years, we are attempting to do something here that we can all be governed by.

By giving the legislature this power, I think that we will avoid some of the arguments that we get here as far as freezing things into the constitution. I realize politically this is bad for a lot of people, but there are a lot of things that are in this constitution that are politically bad, and I would just as soon try this thing. I feel confident that if we leave the legislature this power, it in its wisdom will grant to townships, counties and school districts sufficient millage to meet their operating expenses.

CHAIRMAN BENTLEY: The gentleman from Birmingham.

MR. VAN DUSEN: Mr. Chairman, I would like to make it clear that I speak now only for myself, and not for the committee on finance and taxation. But I would like to support strongly the amendment offered by Mr. McCauley. I think the present 15 mill limit is an abomination. It doesn't protect the taxpayer from excessive taxation. It doesn't do what it says. It creates problems in terms of municipal finance far beyond any worth which it has in protecting the taxpayer. It's just a nuisance which should be removed from the present constitution.

Now, I felt that the proposal of the majority of the committee was a sound and progressive step in dealing with the matter. I feel that Mr. McCauley's amendment is an even sounder and even more progressive step in dealing with the matter. I heartily support it, and urge all of you to do so.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Grand Ledge, Mr. Doty.

MR. DEAN DOTY: Mr. Chairman, Mr. McCauley has just offered an amendment that gives us something to look at and something to think about. Now, if you want to take this amendment and adopt it — and I like the idea — let's go on back and take the road funds, the school funds and all of the rest of the earmarked funds and treat them in the same manner. Let's start right in again and clean house. I won't guarantee we will pass the document, but I believe in it in principle. And if this is what they want, I'm all for it.

Now, as far as Mr. Van Dusen's statement is concerned, I support the position of the committee in their attempt to do something. But I'll go for 20 mills before I'll go for something that is so full of legal entanglements that even most attorneys turn and say, "What does it say?"

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Muskegon, Mr. Seyferth.

MR. SEYFERTH: Mr. Chairman, ladies and gentlemen, the McCauley amendment is a duplicate of mine, which is on the secretary's desk; and I, too, speak as an individual, and not as an official delegate of the finance and taxation committee.

The statement was made about the board of supervisors of Wayne county, and I quote from a letter received dated February 6:

> The board of supervisors of the county of Wayne today has endorsed and urged your most careful consideration of the principles embodied in the attached draft of 3 sections

suggested as appropriate for the taxation article of the new constitution.

Section 1 has been taken care of by this committee, and we have debated it at long length. Section 2 will, I know, come up later on; and section 3, the amendment that is now before us, which is exactly as Mr. McCauley has presented, is the one that we are now considering.

I wholeheartedly support the approach that we are now giving or considering giving to the counties, townships and school districts in the same manner as I specified in my last presentation at this microphone. We are now putting them on the same level as the cities, giving them the power to tax and the power to control. Thank you.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Pontiac, Mr. Kuhn.

MR. KUHN: Mr. Chairman, I must speak in opposition to this amendment. I agree that we should not have any earmarking of funds in our constitution. But the committee has not found itself to be in that position. Therefore, at this time I will vote against this amendment. I'm still hoping that maybe on the second reading we can change that thought and go forward. But as long as we are going to have an earmarking of funds, we must have this limitation in our constitution.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Bloomfield Hills, Mr. Romney.

MR. ROMNEY: When Mrs. Cushman offered her amendment that we eliminate the earmarking of highway funds, I supported that proposition vocally, and I raised my hand for a division. I think that the McCauley amendment should be supported.

I think that Mr. Dean Doty is right that we are retaining language in the constitution that in some instances is not meaningful and represents a sacred cow approach that becomes an obstacle, and that we should eliminate it and that we should provide this flexibility.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Allegan, Mr. Farnsworth.

MR. FARNSWORTH: Mr. Chairman, members of the committee, I would be the first to agree that the 15 mill limitation is not a very workable or a very effective instrument in the way of controlling taxes. I think any of us that know anything about government would recognize that.

It has been said on many occasions, however, that what people think about what we do here sometimes is going to be just as important as what we actually do, and it is on that basis that I speak in opposition to the pending amendment. People have in their minds that the 15 mill limitation does something for them. You take that out of the constitution and you're going to meet, I submit, a great amount of unnecessary opposition to whatever you do here. Again, I repeat, what people think sometimes is more important than what it actually does for them.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from East Lansing, Mr. Hannah.

MR. J. A. HANNAH: Mr. Chairman, members of the committee, I came this morning to this convention hall with the feeling that when we had finished Committee Proposal 57, I should like to say something that weighs heavily on my mind. Now, in view of the discussion before us, I am going to say it now, and make it fit the amendment before us.

I had the notion when we were talking about the calling of a constitutional convention that the chances of our writing a constitution in the best interests of all of the people of this state for the decades ahead would be greater if the members of this convention were not elected on a partisan basis.

What has been happening in this convention in recent days convinces me that the history to this point in the convention indicates that that's true. There are some issues that are not partisan political: education, taxes, many others. There are some issues before us that may be. Everyone has to pay taxes, regardless of his political suasion or his color or anything else.

What I had hoped to say was when we finished Committee Proposal 57, that the leadership of both parties in this convention get together between now and the time that this whole section comes back to us on second reading and see if they can't come up with some kind of an agreement that will answer or make it possible for this state to answer what has been its number one problem for more than 10 years, and that is some sort of an equitable taxing program.

In my view, the best talk made before this convention was the one made the other evening by Charlie Davis on this same subject, but he was then talking not about the 15 mill amendment, but about earmarking of school funds.

I would like to subscribe to the point I made Monday afternoon when we were talking about the earmarking of highway funds, when I indicated that in my view Mrs. Cushman had made a useful contribution in raising the question that she had raised, and when we crossed that bridge, we crossed it, and the tail might as well go with the hide.

Now, to make these remarks apropos. I would urge that we vote down the amendment now before us; that we go on with Committee Proposal 57; that the whole business go to the style and drafting committee, and then hope that the Republican leadership and the Democratic leadership might get together on some words that would make it possible to put into this constitution what's required to give the governor and the legislature the opportunity to solve this tax problem. Thank you. (applause)

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Detroit, Mr. Austin.

MR. AUSTIN: Mr. Chairman, I rise to argue briefly in favor of the McCauley amendment. I would just like to read one short paragraph:

> Inflexible overall tax rate limitations, such as that contained in section 21, article X of our present constitution, require impractical allocations among competing taxing districts. This amendment was adopted in the depths of a serious economic depression following an unprecedented real estate boom, and no longer represents an appropriate or effective control of property tax levies. Certainly it is unlikely to prove effective for the conditions which lie ahead during the probable life of the new constitution. Such inflexible restrictions commit the property tax to a more burdensome role in financing government than future conditions may indicate as desirable. Instead, limits on property taxes imposed by different units of government should be fixed by law so they may be changed by the legislature as conditions change.

I believe that this paragraph reflects my sentiments very well, that it would be better to leave this matter to the legislature.

And I would like to remind the delegates that in suggesting earlier that we reject the committee proposal, it was my feeling at that time that we should remove the 15 mill limitation altogether, but that retaining it in its present form was better than what the committee offered. I support the McCauley amendment.

CHAIRMAN BENTLEY: The question is on the amendment offered by the gentleman from Wyandotte. As many as are in favor will respond by saying aye. Those opposed. The Chair rules the nays have it.

A DELEGATE: Division.

CHAIRMAN BENTLEY: A division has been demanded. There are a sufficient number. Those in favor of the amendment offered by the gentleman from Wyandotte will vote aye. Those opposed will vote no. The machine will be locked. The secretary will announce the results.

SECRETARY CHASE: On the adoption of the amendment offered by Mr. McCauley, the yeas are 60, the nays are 58.

CHAIRMAN BENTLEY: The amendment is adopted.

Are there further amendments to the body of the proposal?

SECRETARY CHASE: None, Mr. Chairman.

CHAIRMAN BENTLEY: If not, the proposal will pass. Committee Proposal 56, as amended, is passed. The secretary will read.

SECRETARY CHASE: From the committee on finance and taxation, by Mr. Brake, chairman, **Committee Proposal 57,** A proposal to require a public hearing on all budgets of local units of government before the budgets are approved. Amends article X by adding a section.

Following is Committee Proposal 57 as read by the secretary, and the reasons submitted in support thereof:

The committee recommends that the following be included in the constitution:

Sec. a. ANY MUNICIPAL CORPORATION, COUNTY, TOWNSHIP OR SCHOOL DISTRICT EMPOWERED BY THE LEGISLATURE OR BY THIS CONSTITUTION TO PREPARE BUDGETS OF ESTIMATED EXPENDITURES AND REVENUES, SHALL ADOPT SAID BUDGETS ONLY AFTER A PUBLIC HEARING UNDER SUCH TERMS AND CONDITIONS AS THE LEGISLATURE SHALL ESTABLISH BY GENERAL LAW.

Mr. Brake, chairman of the committee on finance and taxation, submits the following reasons in support of Committee Proposal 57:

This proposal, new in language and substance, is self explanatory. A review of the budgets of the counties, townships and schools will no longer be required before the allocation board, if the committee's recommendation concerning the 15 mill limitation is adopted, which emphasizes the need for this requirement of a public hearing before adoption.

CHAIRMAN BENTLEY: The Chair recognizes the chairman of the committee, the gentleman from Stanton, Mr. Brake.

MR. BRAKE: Mr. Chairman, ladies and gentlemen, I yield to Herb Turner.

CHAIRMAN BENTLEY: The gentleman from Saginaw is recognized.

MR. TURNER: Mr. Chairman, I am slightly confused here. I understood that this language was to take care of the necessities for the original Committee Proposal 56, and now I would like to yield to Mr. Brake. (laughter)

CHAIRMAN BENTLEY: The gentleman from Stanton, the chairman of the committee, retains the floor.

MR. BRAKE: So far as I can see, Mr. Turner, the fact that the committee has been completely overturned in connection with the 15 mill does not do away with the necessity of a provision requiring public bodies that fix budgets to notify the public when that decision is going to be made or notify them before it is going to be made, so that the public has a chance to be heard.

The cities quite generally take care of that item under their charters. The public does have notice, and interested parties can appear. Some of the other units do, but most of them do not. And perhaps the worst offenders of all are the school districts. I think it will be a very healthful thing if all public bodies that have budgets to adopt are required to give notice of a time of hearing before that budget is adopted, and that any interested citizen shall have the right to appear and be heard.

CHAIRMAN BENTLEY: Are there any amendments to the body of the proposal? If not, it will pass.

Committee Proposal 57 is passed. The secretary will read.

SECRETARY CHASE: From the committee on finance and taxation, by Mr. Brake, chairman, **Exclusion Report 2028,** A report recommending the exclusion of sections 3, 4, 5, 7 and 8 of article X.

Following is Exclusion Report 2028 as read by the secretary, and the reasons submitted in support thereof:

The committee on finance and taxation recommends that sections 3, 4, 5, 7 and 8 of article X of the present constitution be excluded from the new constitution.

Mr. Brake, chairman of the committee on finance and taxation, submits the following reasons in support of Exclusion Report 2028:

The committee on finance and taxation feels that the subject matter of sections 3, 4, 7 and 8 of article X of the 1908 constitution is all covered by Committee Proposal 51, offered by the committee.

The committee feels that the subject matter of section 5 of the 1908 constitution is covered by Committee Proposal 52, dealing with the matter of taxation of certain utilities.

CHAIRMAN BENTLEY: The chairman of the committee is recognized.

MR. BRAKE: Mr. Chairman, ladies and gentlemen, those sections are the ones that were combined in the section on uniform taxation, which we passed. All of the material that is needed from the 4 sections was included in that section which has been approved by the committee.

CHAIRMAN BENTLEY: Are there any amendments to the exclusion report? If not, it will pass.

Exclusion Report 2028 is passed.

In accordance with the decision of the committee of the whole last Friday, the secretary will report item 5 on the general orders calendar.

SECRETARY CHASE: Item 5, from the committee on local government, by Mr. Arthur Elliott, chairman, **Committee Proposal 81,** A proposal pertaining to county government. Amends article VIII, sections 1, 2, 3, 4, 5, 7, 8, 9, 12, 13, 14 and 15.

Following is Committee Proposal 81 as read by the secretary, and the reasons submitted in support thereof:

The committee recommends that the following be included in the constitution:

Sec. a. Each organized county shall be a body corporate, with such powers and immunities as shall be established by law. [All suits and proceedings by or against a county shall be in the name thereof.]

Sec. b. No organized county shall be reduced by the organization of new counties to less than 16 townships as surveyed by the United States, unless in pursuance of law a majority of electors voting on the question in each county to be affected thereby shall so decide. [When any city has attained a population of 100,000 inhabitants, the legislature may organize it into a separate county without reference to geographical extent, if a majority of the electors of such city and of the remainder of the county in which such city may be situated voting on the question shall each determine in favor of organizing said city into a separate county.]

Sec. c. There shall be elected [biennially] FOR 4 YEAR TERMS in each organized county a sheriff, a county clerk, a county treasurer, a register of deeds and a prosecuting attorney, whose duties and powers shall be prescribed by law. The board of supervisors in any county may unite the offices of county clerk and register of deeds in one office or separate the same at pleasure.

Sec. d. The sheriff, county clerk, county treasurer, judge of probate and register of deeds shall hold their offices at the county seat.

Sec. e. [The sheriff shall hold no other office. He shall be elected at the general election for the term of 2 years. He] THE SHERIFF may be required by law to renew his security from time to time and in default of giving such security, his office shall be deemed vacant. The county shall never be responsible for his acts[.], EXCEPT THAT THE BOARD OF SUPERVISORS MAY PROTECT HIM AGAINST CLAIMS BY PRISONERS FOR ACCIDENTAL INJURIES RECEIVED WHILE IN HIS CUSTODY. HE SHALL NOT HOLD ANY OTHER OFFICE EXCEPT IN CONNECTION WITH CIVIL DEFENSE.

Sec. f. A board of supervisors, consisting of 1 from each organized township, shall be established in each county, with such powers as shall be prescribed by law. Cities shall have such representation in the boards of supervisors of the counties in which they are situated as may be provided by law.

Sec. g. The legislature may by general law confer upon the boards of supervisors of the several counties [such] powers of a local, legislative and administrative

Explanation—Matter within [ ] is stricken, matter in capitals is new.

character[,] not inconsistent with the provisions of this constitution. [, as it may deem proper.]

Sec. h. The boards of supervisors shall have exclusive power to fix the salaries and compensation of all county officials not otherwise provided for by law. [The boards of supervisors, or in counties having county auditors, such auditors, shall adjust all claims against their respective counties; appeals may be taken from such decisions of the boards of supervisors or auditors to the circuit court in such manner as shall be prescribed by law.]

Sec. i. No county shall incur any indebtedness which shall increase its total debt beyond [3] 10 per cent of its assessed valuation. [, except counties having an assessed valuation of $5 million or less, which counties may increase their total debt to 5 per cent of their assessed valuation.]

Sec. j. No county seat once established shall be removed until the place to which it is proposed to be removed shall be designated by 2/3 of the board of supervisors of the county, and a majority of the electors voting thereon shall have voted in favor of the proposed location, in such manner as shall be prescribed by law.

Sec. k. No navigable stream of this state shall be either bridged or dammed without permission granted by the board of supervisors of the county under the provisions of law, which permission shall be subject to such reasonable compensation and other conditions as may seem best suited to safeguard the rights and interests of the county and the municipalities therein. [No such law shall preclude the state from improving the navigation of any such stream, nor prejudice the right of individuals to the free navigation thereof.]

Sec. l. The board of supervisors of each organized county may organize and consolidate townships under such restrictions and limitations as shall be prescribed by law.

Sec. m. THE BOARD OF SUPERVISORS OF ANY COUNTY WITH A POPULATION OF 1 MILLION OR MORE SHALL HAVE THE POWER BY ORDINANCE TO ESTABLISH A MERIT SYSTEM FOR COUNTY EMPLOYMENT. THE ORDINANCE OR ANY AMENDMENTS THERETO SHALL BE APPROVED BY THE ELECTORS OF THE COUNTY.

Mr. Arthur Elliott, chairman of the committee on local government, submits the following reasons in support of Committee Proposal 81:

These proposed 12 sections of the article on local government provide for the government of counties. They apply to all counties except as provided in another report of this committee covering county home rule. We have taken the first 15 sections of article VIII in the present constitution as our point of departure. Our procedure has been: (1) To exclude those provisions which (a) have no application, or (b) are unnecessary in the light of legislative power; (2) To retain with the least possible change those provisions which are fundamental to our present form of county government.

Section a comments: The committee recommends the retention of this section with the deletion of the last sentence of section 1 in the interest of brevity and simplicity, and because the language is superfluous, adding nothing to meaning or legal effect.

Section b comments: The first sentence of section 2 of the present constitution is retained in the belief such assurance is desired by the citizens of many counties. Embodied in it is a remedy for situations where the retention by a county of 16 townships becomes unfeasable, the decision resting in the hands of the voters of the county. We assume this provision does not prevent consolidation of 2 or more counties if desired by the people. The second sentence is deleted. This provision, originally placed in the constitution in 1850 with the population minimum increased from time to time, has never been used.

Section c comments: This section remains the same as section 3 in the present constitution with the one change of extending the term of the elected county officers from 2 years to 4 years. The committee on declaration of rights, suffrage and elections, having concurrent jurisdiction, offers no objections.

Section d comments: This section remains the same as section 4 of the present constitution.

Section e comments: The first sentence of section 5 of the present constitution prohibits the sheriff from holding any other office. This has been modified to permit him to hold an office in connection with civil defense. The second sentence of section 5 was deleted as repetitious (see Sec. c.). To the last sentence of section 5 was added an exception permitting the board of supervisors to protect the sheriff against claims by prisoners. Such protection by the board of supervisors appears to be necessary as a means of reassuring the sheriff in his risks against accidental injuries to prisoners in his custody.

Section f comments: This provision is the same as the present section 7 in the present constitution.

Section g comments: This section is the same as section 8 of the present constitution except for elimination of unnecessary language.

Section h comments: The power of the board of supervisors over salaries is retained. The sentence with respect to claims against the county has been deleted because it is covered by statute.

Section i comments: The limitation in section 12 of the present constitution on the power of the county to incur debt is increased from 3 per cent to 10 per cent of its assessed valuation. The exception relating to counties of an assessed valuation of $5 million or less was deleted because there are no longer any such counties. The committee has increased the debt limit to give counties greater flexibility to meet current problems. Our counties are now extending their credit for both primary and secondary purposes. Secondary obligations are incurred by placing the full faith and credit of the county behind bonds of cities and townships to enable them to borrow at the lowest possible interest rate for the construction of water and sewage systems and other public works. The county also backs revenue bonds for airports. This secondary debt may easily exceed the 3 per cent limitation set in the present constitution. Such secondary debt is payable out of the revenues of the water works, sewage fees, airport activities, etc. The committee on finance and taxation, having concurrent jurisdiction, has no objection.

Section j comments: This section is retained as in section 13 of the present constitution.

Section k comments: The committee felt that the first sentence of section 14 of the present constitution should be retained. The last sentence has been deleted. The committee believes the phrase, "No such law shall preclude the state from improving the navigation of any such stream" added no power to the legislature it does not already possess and that it was highly unlikely the legislature would ever divest itself of such power. The committee believes the last phrase of the paragraph unduly restrictive in that it may prevent the use of streams for a public purpose of greater importance than navigation. The committee believes the rights of navigation can be adequately protected by statute.

Section l comments: Section 15 of the present constitution was retained in its present form.

Section m comments: This section transfers control of the merit system in civil service in counties of 1 million or more population from the legislature to the county's governing board upon approval of the electors of the county.

Following is minority report A to Committee Proposal 81 as offered, and the reasons submitted in support thereof:

Delegates Sharpe, Hatcher and Madar, a minority of the committee on local government, submit the following minority report A to Committee Proposal 81:

Explanation—Matter within [ ] is stricken, matter in capitals is new.

A minority of the committee recommends that the following be included in the constitution:

When [any] A city IN ANY COUNTY has attained a population of [100,000] 500,000 inhabitants, the legislature may organize it into a separate county without reference to geographical extent, if a majority of the electors of [such city and the remainder of the county] THE COUNTY voting on the question shall [each] determine in favor of organizing said city into a separate county.

Delegates Sharpe, Hatcher and Madar, a minority of the committee on local government, submit the following reasons in support of the foregoing minority report, which accompanied Committee Proposal 81:

The minority report will allow the city of Detroit, at the present time, and other growing cities in the future, the opportunity to use taxes paid by the city to benefit its residents.

At the present time between large cities and the county in which they are located there is much overlapping of functions and much waste.

In the Detroit-Wayne county area the following examples may be pointed to: 1) the county sheriff; 2) the county road commission; 3) the county general hospital. In each of these cases the city of Detroit provides adequate services for its own residents. However, the city which pays the bulk of county taxes must support these activities in areas of the county outside of the city limits. No benefit accrues to the city from these expenditures. What is being done is to use Detroit tax money to subsidize programs which are of benefit to the outcounty population.

The committee proposal takes away the right of a city to organize into a separate county when it has attained a certain size. The minority proposes to put this right back into the constitution. Moreover, the right of veto which the outcounty area retained in the present constitution, if it voted against the question of creation of a new county, is removed. The supporters of the minority report are of the opinion that a large city should not have to support projects from which no benefit accrues to it.

At the present time the city in effect is being used by the outcounty area for its own benefit in many areas. The city does receive benefit from county services, but these do not compensate for tax moneys paid where there is no benefit. The city can adequately provide for those services it would lose if it became a separate county.

Following is minority report B to Committee Proposal 81 as offered and the reasons submitted in support thereof:

Messrs. Madar, Baginski and Mrs. Hatcher, a minority of the committee on local government, submit the following Minority Report B to Committee Proposal 81:

A minority of the committee recommends that the following be included in the constitution:

THE LEGISLATURE SHALL PROVIDE PROCEDURES BY WHICH ANY COUNTY MAY, BY A MAJORITY VOTE OF THE ELECTORS, ADOPT A COUNTY SYSTEM OF ASSESSMENT. THE METHOD OF SELECTING A COUNTY ASSESSOR OR BOARD OF ASSESSORS SHALL BE DETERMINED BY LAW UNLESS OTHERWISE PROVIDED FOR BY THE CHARTER OF COUNTIES HAVING CHARTERS.

Messrs. Madar, Baginski and Mrs. Hatcher, a minority of the committee on local government, submit the following reasons in support of the foregoing minority report, which accompanied Committee Proposal 81:

We believe the constitution in article VIII should provide for a county assessor system on a permissive basis. Michigan is one of the few states in the union that does not use the counties, or the cities and counties as assessing units. In many parts of the state, we rely primarily — and unnecessarily — on an outmoded, often amateur method for deriving the valuation of real and personal property. Assessing, in fact, is primarily a technical task that should be performed by experts, for that is the only way that equity can be accorded to all. It would be a great mistake, if not a tragedy, should we write a constitution for the next generation or more and continue in effect assessment practices based on a social system characteristic of the nineteenth rather than the twentieth century.

The purpose of this minority report is to urge upon the convention the importance of adopting a professional, equitable, modern system of assessment, using the county as the assessing unit.

Explanation—Matter within [ ] is stricken, matter in capitals is new.

CHAIRMAN BENTLEY: The gentleman from Pleasant Ridge, the chairman of the committee, is recognized.

MR. A. G. ELLIOTT: Mr. Chairman, ladies and gentlemen of the committee, it would be an understatement to assert that the deliberations of the committee on local government were difficult. Behind each one of our proposals lies endless hours of research, testimony, debate, as well as soul searching. From the very beginning our entire committee displayed a keen insight into its many responsibilities, and endeavored to discharge those responsibilities in the best interests of the state of Michigan.

We approached our work from 3 basic standpoints. First, we recognized that with modern Michigan's rapid sociological changes, an effective constitutional provision on local government demanded a realistic approach toward the autonomy of local units of government. We felt that it was our responsibility to provide in the constitution that degree of autonomy which would enable local units to provide the most effective possible service to the community. In addition, we felt that any committee action in this regard should provide a flexibility that would stand the test of time.

Secondly, our committee, like all other substantive committees, was faced with the responsibility of eliminating from the present constitution many cumbersome provisions which have outlived their usefulness. This also applied to the wording of our proposals. In every instance we attempted to communicate the intent of the provision clearly and concisely, without room for ambiguity or misinterpretation.

And, finally, we felt that one of the major committee responsibilities was to positively reflect Michigan's growing problem of urbanization. This is something that was of relatively minor concern in the Constitution of 1907, but since that time the growing concentration of most of the state's population in urban communities has created unique problems that must be recognized in any effective constitution. This we endeavored to do.

And so, as we begin deliberations on these local government proposals, I would say only this. They are the product of a dedicated group of men and women who rose far beyond the call of duty, willing to give much of their time and effort to measuring up to their responsibilities. The proposals before you are the result of that dedication. Their desire has been to strengthen each unit of local government in a way that Michigan can move forward as rapidly as possible. As chairman of this committee, I'm proud of the work that they did.

The procedure that we will follow will be that the chairman will yield to various members of his committee, first to the subcommittee chairmen, and they in turn will yield to members of our committee who will discuss the proposals and the particular section in question.

It's with a great deal of pleasure that I yield at this time to Mrs. Judd, who is the subcommittee chairman on the county portion of our article.

CHAIRMAN BENTLEY: Before the gentleman yields, the Chair would like to ask the chairman of the committee if it is his intention to deal with the proposal in its entirety or on a section by section basis?

MR. A. G. ELLIOTT: The chairman feels that it would be better to deal with it on a section by section basis.

CHAIRMAN BENTLEY: In other words, section a is under consideration at this time?

MR. A. G. ELLIOTT: That is correct.

MR. YEAGER: Mr. Chairman, I would like to make a parliamentary inquiry.

CHAIRMAN BENTLEY: The gentleman will state it.

MR. YEAGER: I notice that we passed over item 4 on the calendar without reference. Could you explain that, please?

CHAIRMAN BENTLEY: The Chair will advise the gentleman from Detroit that in accordance with the decision adopted last Friday by the committee of the whole, it was decided that the first items on general orders for today would be the various proposals on local government. That was a decision taken in the committee of the whole last Friday.

MR. YEAGER: By vote?

CHAIRMAN BENTLEY: By vote. The gentleman from Pleasant Ridge yields to the lady from Grand Rapids.

MRS. JUDD: Mr. Chairman and members of the committee of the whole, it is with a great deal of pleasure that on behalf of the committee on local government I present to you these first sections of our present article VIII with respect to county government.

The citizens research analysis reminds us that the Northwest Ordinance of 1787 authorized the territorial governor to create counties and townships. The organization of counties began in Michigan in 1815, and by 1891 the 83 counties were organized. The territorial laws of 1825 and 1827 established the government of counties, with the townships, providing for the election of township and county officials. This form of government was first inserted into our constitution in 1850—apparently it was assumed by the Constitution of 1835—and it was repeated in the 1908 constitution. In fact, that convention made quite a good deal of the fact that in the revised constitution the old framework of government is most carefully preserved.

If you accept our proposals for the government of Michigan's 83 counties, we also of the 1962 convention can make much of the fact that the old framework of county government is most carefully preserved.

Let me make this very clear. Every county that is satisfied with its present form of government would, under our proposals, continue under the same form of government automatically, without any action required by their citizens to do so.

The committee policy in writing these sections has been: first, we have taken the sections in article VIII, the first 15 sections, as our point of departure. We have excluded those provisions which either were no longer applicable, or were unnecessary in the light of legislative power. We have retained, with the least possible change, those provisions that are fundamental to our present form of county government.

Mr. Chairman, would the secretary like to read the first section, section a, and then I will discuss it.

CHAIRMAN BENTLEY: Without objection, the secretary will report section a.

SECRETARY CHASE: Section a.

[Sec. a was read by the secretary. For text, see above, page 929.]

MRS. JUDD: This article established the county as a quasi municipal corporation, with only those powers conferred upon it by the legislature. That is, it has now and it will have under these provisions no powers which it may exercise of its own volition.

The last sentence in the old section, "All suits and proceedings by or against a county shall be in the name thereof," we have deleted, since we have been advised by the attorney general's office that the sentence is superfluous, it being, to quote the opinion, "characteristic of a body corporate that it can sue and be sued according to law."

CHAIRMAN BENTLEY: Are there any amendments to section a of Committee Proposal 81? If not, it will be passed.

Section a is passed. The secretary will report section b.

SECRETARY CHASE: Section b.

[Sec. b was read by the secretary. For text, see above, page 929.]

MRS. JUDD: Mr. Chairman, I would like to yield the floor to Mr. McLogan.

CHAIRMAN BENTLEY: The gentleman from Flint is recognized, Mr. McLogan.

MR. McLOGAN: Mr. Chairman, members of the committee, the first sentence of section 2 of the present constitution is retained in the belief such assurance is desired by the citizens of many counties. Embodied in it is a remedy for situations where the retention by a county of 16 townships may become unfeasible, the decision resting in the hands of the voters of the county. We assume this provision does not prevent consolidation of 2 or more counties if desired by the people.

The second sentence is deleted. This provision, originally placed in the constitution in 1850 with the population minimum increased from time to time, has never been used. For that reason we recommend the deletion.

SECRETARY CHASE: Pursuant to the minority report of Mr. Sharpe, Mrs. Hatcher and Mr. Madar,

1. Amend page 1, lines 14 through 19, by reinserting the stricken language amended to read as follows: "When a city in any county has attained a population of 500,000 inhabitants, the legislature may organize it into a separate county without reference to geographical extent, if a majority of the electors of the county voting on the question shall determine in favor of organizing said city into a separate county.".

CHAIRMAN BENTLEY: Does the gentleman from Detroit seek recognition?

MR. MADAR: Now, Mr. Chairman, all we are doing here in this minority report is taking the 100,000 population out of the portion which they asked to be excluded and changed that to 500,000; and then, where it states that the county and city, voting separately, shall determine in favor of organizing said county, we changed that to, "the county voting on the question shall determine in favor of organizing said city into a separate county."

Now, the reasons for this are many. I realize that the city of Detroit is the only city in the state of Michigan that has a population of over 500,000, so naturally this pertains only to Detroit.

If you have your copy of the brochure that I submitted several days ago, I want to read to you from page 1. That's just to take care of those who were so busy the last few days on taxation that they didn't get a chance to read it. I want to give you an idea as to just exactly what we have in Detroit and Wayne county, and why we in Detroit should get an opportunity to become a county in our own right. I'll start to read here from the paragraph marked 1. Specifically, in the Detroit-Wayne county area the obvious duplications are:

> (1) The city police department performs about the same functions that the county sheriff's office has. The city police department is a much larger organization. It must handle many more problems of a police nature. The sheriff's office devotes a great deal of time to the service of the courts. This function is not significant in the city police department.

However, we can take care of any courts in the city of Detroit from and through our police department.

> (2) The Wayne county road commission has functions that are very similar to the department of public works. Both departments are responsible for building and maintaining streets and roads, removal of snow from the streets and roads in the winter season. Each department builds bridges or contracts for their construction. The county road commission has taken on other functions which the department of public works does not handle such as maintaining a park system. In later years it has taken on the function of distributing water to numerous smaller communities outside the city of Detroit.

Now, I read this in its entirety to show what may happen between cities and counties, or between the cities in counties, such as we have in the city of Detroit.

I believe that those of you who read further found out what happens to a city like Detroit wherein the outcounty and the highway commission decided to build a water system at a great

expense to the city of Detroit, which the county would control and place in competition with Detroit's water system, where the rates are the lowest of any in the United States. In fact, they are even so low that other municipalities and units of government could build city halls — oh, they don't call them city halls, they call them water department buildings — out of the profits they make on the water that they buy from us. Of course, I might add, too, that you will find that the people who pay these bills in these other communities are told that Detroit charges an enormous amount for water rates, so those particular people over the years have been led to believe that we are monsters with many hands out to take everything we can from them, while the officials of those various municipalities and other local units of government can build up a wonderful reputation on how they save money for the communities by putting the charges into the water bills.

Now, I started telling you about what happens to us when they start building water systems at the expense of the city of Detroit. To give you an idea, the board of supervisors a few years ago decided that they ought to have a water system in the southwest portion of the county. This water system was to cost approximately $50 million to build. And $26 million of it was to come from revenue bonds, and $24 million of it from taxes levied on the taxpayers of the entire city of Detroit. At that time Detroit was paying 2/3 of the taxes, which in effect meant that the city of Detroit was paying $16 million to provide a water system for the outcounty.

Now, at the same time the city of Detroit was building a filtration plant on the west side of the city at a cost of $8 million to take care of the necessities of those other communities outside of the city of Detroit. Of course, the building of this was only being done so that they could eventually say, "Well, let's all get together now. We'll throw in our water system, you throw in yours, and we'll have a metropolitan water system." This is a good idea. I've always wondered whether or not I could get some bankers to go along with me and maybe they would take me in and throw in their banks and just call me a partner.

Since they started this, the city of Detroit of course has had to do something because of the fact that they were having troubles in building this system, and today we are buying back that water system at a cost of $58 million over a period of 30 years. Now, this isn't just the fault of the board of supervisors, because all of this information was given out at the time this was going on. I don't know why the taxpayers of Detroit couldn't get more information about this. In fact, I didn't see much in the newspapers about it either. There I felt it was their responsibility to show the taxpayers what was going on. However, at the time, even the newspapers advocated a favorable vote on the bond issues.

Now, to go on further, to give you an idea of other things that we have in Detroit that we are paying for outcounty, we each have a health department. And I can assure you that our health department is second to none in the United States. We have so many plaques for having the best health department that I don't believe Dr. Molner has room enough on one wall to hang them all.

We have a treasurer's office. We have a city clerk. We have everything that is necessary to operate a county. We just give them different names. And I don't believe that we should have to pay all these moneys to the county of Wayne when the moneys should stay right in the city.

To give you an idea how this can affect the entire state, let me point out to you that if the city of Detroit weren't paying this 2/3 of the cost of our Wayne county government, the state of Michigan wouldn't have to be supplying the moneys that we are asking for right now on welfare and other things. We would have the money.

We have our own hospitals. We don't need the others. However, if we have to remain as part of the county, Detroit is going to pay the majority of it — and for something that we don't need. We each have a welfare department. And we have every department represented. We have a library. I think you all heard about that the other day, and you heard quite a bit about it. We have a board of education that covers the entire city. Why we are paying for one in the county I don't know. Why we are paying for anything else out of the county I can't understand.

And I think that you who believe in fair government, you who don't like to have to pay taxes to support someone else when they should be made to support themselves, when they can, if they would; I know if you believe in this — and I'm sure you do — you will vote for the minority report amendment.

CHAIRMAN BENTLEY: The Chair is going to ask the gentleman from Detroit whether or not his pending amendment is confined strictly to section b.

MR. MADAR: It is confined to section b.

CHAIRMAN BENTLEY: Thank you. Is the gentleman from Ann Arbor seeking recognition?

MR. POLLOCK: Mr. Chairman, I should like to ask the committee a question first before I make any further observation. Did I understand the reason given by the committee for the deletion of the last part of this section is merely because it had never been used?

MRS. JUDD: Would Mr. McLogan like to answer that?

CHAIRMAN BENTLEY: The gentleman from Flint.

MR. POLLOCK: You had no other reason than that?

MR. McLOGAN: That was the only reason given, Dr. Pollock.

MR. POLLOCK: Thank you. I find myself, first of all, in agreement with Mr. Madar on this very important point which under his amendment, as I understand it, would restore in a somewhat different form, with just a change I believe in population, the part which has been recommended to be deleted by the committee.

I simply can't understand how people interested in economy and efficiency are not willing at least to permit the elimination of what is obviously sheer duplication. Mr. Madar's point, it seems to me, is irrefutable. And for us in the constitution to eliminate a provision which, if the people are willing, could result in the elimination of this expense and duplication, is to me inconceivable. I think, therefore, that this amendment should prevail.

I should like to go even further. I should like to ask the committee another question; whether they gave careful consideration to the problem of the consolidation of counties in Michigan, not merely the consolidation of the city of Detroit and the county of Wayne. Was any consideration given to this matter?

CHAIRMAN BENTLEY: The gentleman yields to the lady from Grand Rapids.

MRS. JUDD: May I yield to Mr. Allen?

CHAIRMAN BENTLEY: The gentleman from Kalamazoo.

MR. ALLEN: Dr. Pollock, yes, the committee did give consideration, and we were informed that consolidation would be possible under the present constitution. Now, I could go on and get into other points on this matter.

MR. POLLOCK: In other words, you could point to a specific section in the constitution that makes possible the consolidation of counties?

MR. ALLEN: No. There is nothing in the constitution that would prevent the legislature from allowing the consolidation of counties, so we are informed.

MR. POLLOCK: But you do not give that power to the electors of the individual counties?

MR. ALLEN: Yes. Whatever the legislature would provide as to a manner of consolidating counties is not prohibited by the constitution.

MR. POLLOCK: So the legislature may provide by law for such consolidation?

MR. ALLEN: Right.

MR. POLLOCK: The reason I raise the point, of course, is that it is quite conceivable within the life of the document that we are drawing that the counties we have will not be necessary. I'm not so sure we need 83 now. The last census showed I believe as many as 18 counties in Michigan losing population. If this continues the county areas as we have them now not only are outdated today, but will be exceedingly outdated 25 years from now.

And I just wanted to be sure that there was some adequate

way not prohibited by the constitution by which such consolidation could be brought about if circumstances required it. You can assure me that that is the case?

MR. ALLEN: I can, Dr. Pollock. And there are other things I would like to say in connection with the committee rationale, though I don't know whether it is in order, Mr. Chairman.

CHAIRMAN BENTLEY: The gentleman will be recognized in his own time to speak on the pending amendment. Not immediately. There is one preceding speaker.

MR. POLLOCK: Well, I will simply conclude my own observation by saying that I strongly support the amendment proposed by Mr. Madar. It is permissive in nature. I see no reason why this opportunity should be denied the people in the metropolitan area of Wayne county.

CHAIRMAN BENTLEY: The gentleman from Detroit, Mr. Yeager, is recognized to speak on the Madar amendment.

MR. YEAGER: Mr. Chairman, ladies and gentlemen of the committee, I rise to respectfully disagree with my colleague, Dr. Pollock, and would oppose this particular amendment. It seems to me that there has been no provision made under the Madar amendment for the cities which are included within the confines of the city of Detroit, such as Hamtramck, Highland Park and Grosse Pointe. If the city of Detroit is to become a separate county, these other cities within the boundaries of Detroit are going to be closed off from the rest of the county, geographically.

There is another part of this that is not quite clear, and it perhaps does not particularly apply to Wayne county, but since we are writing this in the constitution I think it should be considered. There is no stipulation as to the balance of the county's population requirements, since it will apparently be another county. In other words, you are making the city of Detroit into one county and the rest of Wayne county into another.

I do not agree that the water problems which Mr. Madar has referred to are as severe as he has pointed out. I know a couple of people on the water board in the city of Detroit, and that system is run quite effectively. They have never lost a nickel, so far as I can tell. If anything, I think they have made money on the situation. I think really that this problem can be better solved if we have a meaningful permissive home rule section for Wayne county, and allow Wayne county to set up a form of government that can meet all of these problems, without making Detroit a separate county.

As a resident of Detroit and Wayne county, I respectfully oppose the amendment.

CHAIRMAN BENTLEY: The gentleman from Kalamazoo is recognized to speak on the Madar amendment.

MR. ALLEN: Mr. Chairman and members of the committee, I hesitate to take on such an eminent political scientist as Dr. Pollock. However, speaking for the majority of the committee, I would like to disagree, and give some reasons in support of the majority proposal and against the Madar amendment.

The Madar amendment would create an eighty-fourth county in Michigan. In the committee discussions on it, it was felt that the direction that we ought to go in Michigan is not to more governmental units. We aren't seeking necessarily to eliminate existing governmental units, but we aren't anxious to encourage more fragmentization than we have now. That was one reason.

The second reason is that in this whole field of county government, metropolitan government, and so on, while there still is a lot of uncertainty about it, there is at least one thing most people do agree on. That is, we have had experience in the United States in several cases where a city has withdrawn and separated from the county to which it was attached and was a part of.

Now, we have had this experience in Denver, in San Francisco, in St. Louis and in Richmond, Virginia. And if there's anything that people who have studied the matter agree on, it's this: that it just plain doesn't work. It may be all right for a couple of years, but as time goes on it creates more problems than it cures. And I refer you to the pamphlet which was put out for the convention delegates, pamphlet research paper 5 on metropolitan government, and I'll read you a little statement from it on page 7:

> After reviewing the experiences of these other cities, in none of these cases has city-county separation proved the answer to the problem of government in the expanding urban area.

Then, also, to quote from a booklet put out by the council of state governments, of which Michigan is a member, which reviews this whole problem and talks about the experience in these other cities, it concludes by saying this:

> Separation usually increases the number of governmental units. Even more important, it removes the city from a position of influence in the county, which is a larger local government area.
>
> Yet, in practically every instance, the county from which the city has separated is now a part of the same metropolitan area. As an act of withdrawal, city-county separation is a step backward from attainment of governmental jurisdiction of metropolitan scope. It cannot be regarded as a generally effective approach to the metropolitan problem.

Now, I appreciate the frustrations which Delegate Madar has, coming from the central city. In a smaller way I have experienced some of the same. But I think we would be taking the wrong step, as the committee discussed this, if we took the step of breaking up an existing county into 2 units. We just live too much together. It doesn't work. It creates all sort of problems for both units. It would make an eighty-fourth county.

It has the further disadvantage, I think, in this case, that the vote by which it would be arrived at would be a vote of the county, and it happens in this case that the city of Detroit apparently has more votes than the balance of Wayne county. But that isn't the primary objection. The primary objection is that where this has been tried, and there has been enough experience, it hasn't worked.

CHAIRMAN BENTLEY: The Chair recognizes the lady from Dearborn, Mrs. Cushman, to speak on the Madar amendment.

MRS. CUSHMAN: I, too, rise to oppose the Madar amendment. As a resident of Wayne county, I feel that the most encouraging things that have been happening in a governmental sense in Wayne county are where we are working more closely together, rather than being more and more divided.

I would like to point to a couple of instances of where we are working together. Detroit and Wayne county joined, for example, in this city-county building, which is an example of the fact that we are working together down there.

We have a water system which actually is in the process of becoming a joint system. Detroit had its water system through various political events which are of no interest here. Wayne county then started to develop its own water system. It became evident that this duplication was not a wise one, nor an economical one. Therefore, it has been worked out now so that the city of Detroit has been taking over the Wayne county system. It will be completely owned by the city by the year 2000. This apparently is a solution which is satisfactory to the city of Detroit, because they didn't have to do this. It is something that has worked out jointly, and they apparently don't feel they are losing any money. I believe the records will show, in fact, that the city of Detroit water department has been a money earner.

I would also like to point, for example, to the projected consolidation of the city and county health departments. At the present time we have the same man serving as the health officer for Wayne county, for the city of Detroit and for the city of Dearborn.

This is an indication of what we can look for in the future, in my opinion, and it seems to me a very wholesome trend. I certainly would not want to see us do anything that would tend to discourage this trend.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Eau Claire, Mr. J. B. Richards, to speak on the Madar amendment.

MR. J. B. RICHARDS: Mr. Chairman, delegates, I wish to

support Mr. Madar's position. It seems as though the delegates in 1907 and '08, in their wisdom, thought that larger cities should have an opportunity to become individual counties. It seems as though perhaps cities, as they grow in size, would probably be more independent and be able to do their work much better and serve their people much better if they were set aside. I think you will find that in some of the sections coming before us soon we will have put before us an opportunity to vote on the right to contract between all local units of government.

I also have another motive, and I would like to illustrate this by a story. There was a farmer who died, leaving a will in his own handwriting. His neighbor was named the executor. And since this neighbor was a farmer, the day he came over to settle the estate he brought with him a cow, and tied it to the fence. They went along, doing quite well, because they had specific instructions. The farmer said that since he had 3 sons, one who was very ambitious, one who was just kind of lazy, and one who was very lazy, that he wished to divide his goods according to their ambition; and so he asked that one be given ½ of his goods, another ⅓, and the other ⅙.

When they came to the cows, I don't know what a lawyer would have done in this case, but the farmer, the executor, had the answer — There were 17 cows, and you can't divide that by ½, without butchering, of course, or ⅓, or ⅙ — So he brought in his cow and put it with the farmer's cows, and now they had 18. Then he divided them into ½, and 9 cows went to the son who was ambitious. Six, ⅓, went to the son who was not quite so ambitious. And 2, ⅙, went to the other son, who was quite lazy. And so the executor took his cow and went home. (laughter)

Now, my point is this, 83 counties can be divided by only 2 numbers, 1 and 83. If Detroit would become a county, we would have 84. And because I would like to see the senate apportioned on a county basis, and if 83 is too many and 1 is too few, it could be divisible by 2 or 3. (laughter) I certainly support Mr. Madar for many of the reasons he gave, and for this.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Ypsilanti, Mr. Lawrence, to speak on the Madar amendment.

MR. LAWRENCE: I merely would like to address an inquiry to someone. First, I think I should say that if it's permissive, I can see no objection to it. But I would like it explained to me how, if Detroit became a separate county, it would result in a lessening of duplication of services. I can see how, if the facilities Detroit furnishes perhaps to the entire county were suddenly cut off, it might cause more duplication.

But I don't quite understand how there would be say fewer city halls, or fewer fire departments, or fewer other municipal things in Wayne county and Detroit as 2 separate units rather than one.

CHAIRMAN BENTLEY: Does the gentleman desire to yield for a reply to his question?

MR. LAWRENCE: Yes, I would.

CHAIRMAN BENTLEY: The gentleman yields to the gentleman from Detroit.

MR. MADAR: Mr. Chairman, I don't believe that it is just exactly a reduction in the manner that Mr. Lawrence speaks of. Actually it is a reduction in the tremendous cost to the taxpayers of the city of Detroit, so that they wouldn't have to go to the state for a handout, but could use those moneys that they are supplying for outcounty to take care of their own needs within the city of Detroit.

After all, ⅔ of the cost of Wayne county government is an enormous amount of money, and we could very easily use that in the city of Detroit. And this would be a great reduction, Mr. Lawrence, and it would take an awful lot of taxes off of the outstate people, too.

MR. LAWRENCE: Then, as I understand it, it is not claimed that there would be a reduction of duplication of facilities, but just of costs to the city; is that right?

CHAIRMAN BENTLEY: The Chair recognizes the chairman of the committee, the gentleman from Pleasant Ridge.

MR. A. G. ELLIOTT: Mr. Chairman and fellow delegates, I might point out that our committee carefully considered this matter, and had exactly the same type of discussion that is going on here on this floor. After we had observed what had happened in other states with this kind of situation, and after we realized that the city of Detroit and the county of Wayne are combining services and are attempting to combine even more so they can avoid duplication and thus cut costs, it became perfectly clear that to retain this in the constitution would merely be a move in the direction of more confusion, rather than in the direction of less confusion. And it was for that reason that the committee voted almost unanimously to leave this sentence out of this portion of our article.

CHAIRMAN BENTLEY: Does the gentleman desire to yield to the gentleman from Ann Arbor, who is seeking recognition?

MR. A. G. ELLIOTT: Yes.

CHAIRMAN BENTLEY: Dr. Pollock.

MR. POLLOCK: Mr. Chairman, I was of course using the Madar amendment as the only proposal before us to discuss the question not of creating new counties, but of providing for city-county consolidation.

I, of course, recognize the points which Mr. Allen raised, and the Madar amendment in this respect I presume could be called defective. It was, however, a substitute for what was in the constitution, and if you took out what you felt was a defective instrument in the constitution, why didn't you put in one which was permissive of city-county consolidation? This is the point where there is clear avoidance of duplication.

CHAIRMAN BENTLEY: The gentleman has yielded the floor. The Chair recognizes the gentleman from St. Clair Shores, Mr. Snyder, to speak on the Madar amendment.

MR. SNYDER: Thank you, Mr. Chairman. I think we have here before us a very clearcut issue, and I want to say that I am speaking in support of the amendment, although when I do speak in support of the amendment I am not agreeing in full with some of the arguments that were advanced by the author of the amendment.

I feel that I should delineate my position on the thing, and at the same time not weaken my position on a matter that will be discussed at a later point, a matter that is being considered by the committee on local government, and that is the matter of the municipal payroll tax. I feel that we have here a reiteration of language that was inserted in the constitution a great while ago, and there have been several revisions. The minimum has been stepped up from 20,000 to 100,000. The present proposal would set it up to 500,000.

Here we have a question of the right of a group of this size to organize as a county. I do not think that we delegates can take away from a large segment of our population of 500,000 the right to organize as a county if they feel that they have the desire to do so.

I feel that the amendment also provides that the voters, when they act upon the matter, will factor into their decision the additional responsibilities that they will assume by going as a separate county. I'm sure that the proponents of the amendment will agree that although there may be some advantages to becoming a separate county, there are also additional responsibilities that they will assume.

I think that we have sufficient checks and balances so that, when we permit the voters to evaluate the situation, we will come up with something that will be good for the people in that community.

I do not feel that the action would be detrimental to the balance of the state. Because if Detroit does have these problems that they feel they can resolve by combining into a county, then by all means they should be given the opportunity to work out their problems. It is the American way of doing things to work out your own problems.

Now, just one very brief comment on the question of related community services. I feel that this is not an argument on this specific point. Because the example that was used, the Detroit water department, depends in part upon the fact that it can amortize not only upon its own residents, but in 51 participating communities. As a result of this, their bonds are classified as AA in the brokerage departments, and I think that

this is a very good rating. I think it is the amortization provided by the 51 communities that does make this possible.

I would sincerely request that the delegates give Detroit the right, if they should so desire — not only Detroit, but let's put it this way — give any community that has 500,000 inhabitants or more the right to organize into a county if they so desire to pick up the additional responsibilities and burdens that go along with the title of being a county.

CHAIRMAN BENTLEY: The Chair recognizes the lady from Highland Park, Miss Donnelly, to speak on the Madar amendment.

MISS DONNELLY: I would like to object to the Madar amendment, for numerous reasons. Initially, I think it is going in the wrong direction. It is going up to 500,000, and I think it should go down to about 40,000.

Now, Highland Park is surrounded by the city of Detroit. We may wish to become disassociated therewith. The direction this amendment goes does not give us this opportunity.

Now, we could perhaps build many tall apartments and get 500,000 eventually, but it would take a bit of time. So, being surrounded by this city — which incidentally does not supply us any water, any libraries, anything at all that I know of; we are rather self supporting — I think we should have the right to vote on the issue. The Madar amendment will not allow the individual cities and outskirts involved to vote, and I think we should have this right.

And I think the number should be reduced, so that we can go along and suggest that the city of Highland Park become a county, and we'll have lots of counties down there.

CHAIRMAN BENTLEY: The Chair recognizes the chairman of the committee, the gentleman from Pleasant Ridge, Mr. Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, I rather feel that the committee, as a whole, has heard the arguments on both sides.

I might point out to Mr. Madar and to the committee that in this consideration, this elimination does not make it impossible for the city of Detroit at any time to become a county if legislation so provides and if the people then support that. And it also does not prevent the legislature from making it possible to have hundreds of counties, if they should so desire. So that actually what we are doing here is not only removing something from the constitution which has not been used, but we are not preventing the proposition that Mr. Madar has suggested. I would urge that we now vote.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Detroit, Mr. Madar, to speak on his own amendment.

MR. MADAR: Mr. Chairman, what I want to do is just get a little opportunity here for a little rebuttal. I think I should have the right, so I decided to ask for permission to speak on this again.

To begin with, the remark was made that I had said that the city of Detroit's water system was not making money. That isn't true. I never said any such thing. I did say that we were being taken advantage of by the outcounty, in trying to build them a water system at a cost of $16 million to the taxpayers of the city of Detroit, and we wouldn't receive one single drop of water from that system.

Actually, in buying this system at $58 million over a period of 30 years, we are not going to have another water system. Actually, this is just a standby system. We can't even use it. We couldn't use the intake. Actually, the intake is so filthy, so dirty, from the sewage that floats down from all the others — yes, and some of ours — that it's going to be almost prohibitive to make the water potable if it's drawn from that particular source.

And, incidentally, I may say this so that it could be published. Because a lot of things haven't been printed that should have been. Because though newspapers have asked for freedom of the press, I have yet to see them take up all their responsibilities in giving all of the news all of the time. And I want to say this. Before this water system was started, health departments notified the county highway system and the county that they should not use this particular portion of the river. This isn't just idle talk; this is fact.

Now, let's see just what the philosophy of some of these people who spoke on this is. I know that one of the delegates, Mr. Allen, will be asking for the people to have a chance to vote on county home rule. All I have heard from Mr. Allen over the last month and a half or 2 months in local government was, "Let the people decide." Well, Mr. Allen and the rest of the delegates, that's exactly what I ask here. Let the people decide!

And Mr. Allen says, well, we have more voters in the city of Detroit than they have outcounty. Well, though I am sort of ashamed to say it, never at any time, even when it hurt the people of the city of Detroit, have the taxpayers of the city of Detroit outvoted the outcounty.

Now, I can understand how the rest of the speakers felt. Those who spoke against this amendment — who are they? The outcounty. You haven't heard but one speaker who spoke against this who lived outstate. You will find that those people who live outcounty certainly are going to worry if this amendment goes through. Because if the people of the city of Detroit took advantage of it, and they did vote as they should vote, then the outcounty would start having to meet their responsibilities. They would have to start paying taxes, as the taxpayers of Detroit have. This is what they are afraid of. And I say to you people outstate, cut down your taxes, so that you won't have to be paying for a lot of things in the city of Detroit that we could pay ourselves if we didn't have to pay the outcounty's share of their problems.

Now, I want to say to you again that I understand what the problems are for Hamtramck and Highland Park — and they do have problems. I might tell you this, that we haven't been trying to merge, we haven't been trying to annex, we haven't gone out and tried to take factories away from any of the outcounty. No siree, we don't do that. We don't believe in it. We believe in giving them a chance to live. All we are asking is that we be given the right to do the things we ought to. And even if we did try, you aren't going to get those big frogs in those little ponds to give up that dough that they're making, not on your life. You're not going to be able to do it.

CHAIRMAN BENTLEY: Before the next speaker is recognized, the Chair thinks it would be desirable at this time to have the secretary read rule 25 of the convention.

SECRETARY CHASE: Rule 25 of the rules of the convention reads as follows:

> Rule 25. While the president is putting any question, or while the roll is being called or taken by the secretary, no delegate shall walk out of or cross the constitution hall; nor in such case when a delegate is speaking, shall any delegate entertain private discourses or pass between the speaker and the Chair.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Detroit, Mr. Nord.

MR. NORD: Mr. Chairman, I was not intending to speak on the exact subject you just mentioned a minute ago, but I will, in any event.

CHAIRMAN BENTLEY: The gentleman is recognized to speak on the Madar amendment.

MR. NORD: I will speak on that, but first a point of order.

CHAIRMAN BENTLEY: The gentleman will state it.

MR. NORD: As I understand, the rule that was read applies to the convention, and not to the committee of the whole.

CHAIRMAN BENTLEY: The rule applies to the committee of the whole where applicable, and the Chair will so rule. The gentleman will speak on the Madar amendment.

MR. NORD: Mr. Chairman — or should I say Mr. President, because the text read related to the president.

Mr. President, I support the Madar amendment, not because I believe Detroit is dying to disassociate itself from some place else, or not that I know they have any wish or desire or right to do so, or that they are being injured. That is not the question. And the question isn't whether it is a good idea for Wayne county or some other county or for the city of Detroit or some other city to disassociate. That is not the question.

The question isn't, as some people have raised it, whether we should be in favor of that or against that. That is not the question.

The question is whether the city or the county that is involved should have the power to do a certain thing if they should see fit. That is the question. If they should see fit, should they have the power to do so? Not whether they should see fit. But, only if they should see fit, should they have the power?

I have heard no discussion which says that if they should see fit, they should not have the power. The only discussion has been of 2 kinds: one, they have not seen fit so far. To me that's irrelevant. They may see fit in 50 years. The other one is they should not see fit. I think that's also irrelevant. Let each case be judged by the people involved at the appropriate time.

For my own sake, I do agree that metropolitan government is better than separating into counties; but, as I say, that is not the issue. The issue only is this, should the people of a certain area of the state, which may include many other areas of the state within the next 50 years, have this power, or a power of this type, which they have had before? I have heard no reason why this power should be removed, except one, and that is that it hasn't been used. I don't understand that that is a reason to remove a power — because it has not been used. The question simply is, if it ever should be desired to be used, why remove it?

Now, some arguments have been raised during the course of the debate which were not in the majority report. Some arguments have been raised that we ought to increase the number beyond this, or decrease the number, or do something else different. That's perfectly okay. If anybody has those ideas, I assume they have brought that to the committee in question, and the committee has considered it, and a minority report has been asked. And if it has not been asked, and has not been given, I think we should not discuss it in any detail here. But the amendment that's before us by Mr. Madar was heard by the committee, I understand. It was heard by the people on the committee who deliberated for a number of months.

And although they are the minority, I think their position should not be attacked on the ground that it is not a perfect position. If somebody has a better position, or had one, they should have brought it to the committee. They should not detract from a position that is the best one that this minority could bring forward.

Now, another argument that was raised during the debate is this, that there's no need for having this right or this power in the constitution, because the legislature has the power anyhow. It seems to me this misses the point by a great distance. The legislature has the power, but that requires a majority of all the people of the state, in essence, to accomplish this result. But why should we need the majority of all the people of the state to determine whether some part of the state should have freedom to do a certain thing?

What you are requiring there is that somebody else who has no direct concern, really, with the issue, must decide. It seems to me it is better to leave the constitution as it is, basically, or the Madar form of that, because there the people that are concerned are the ones who decide, and not somebody else.

Basically, what you do when you say that only the legislators can do it, and not the people of the area concerned, is you make it more difficult to do. You make it almost impossible to do, perhaps.

There is no reason that I can see for introducing another straitjacket into the constitution. There was a little bit of flexibility in this area before. It hasn't been used much—not at all, actually — but there was some flexibility. The people of a certain area had the right to do a certain thing.

Now, the direction that we are moving is in the opposite direction. People in a certain area won't have the right to do that. No reason is advanced for doing that except that the people have not actually exercised that power, and that you don't think they ought to exercise that power; that if you were them, you wouldn't do it.

It seems to me neither one of those is a good argument. I think we should allow freedom of the people concerned to do what they please in this matter. We should allow flexibility, and not introduce more straitjackets. I support the Madar amendment.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Wyandotte, Mr. McCauley.

MR. McCAULEY: Mr. Chairman and members of the committee, I just rise to straighten out a few things that Mr. Madar has said. In the first place, you know, I don't think that the outcounty really have tried to take advantage of the city of Detroit. I would like to point out to this committee that the city of Detroit has 62 per cent of the population, it pays 62 per cent of the taxes, but receives 75 per cent of the benefits. Now, this can be borne out by the latest audit report of the board of supervisors.

Secondly, on this controversial water intake, I would like to point out to Mr. Madar that the board of supervisors, with the exception of 3 votes — namely, the supervisors from the city of Detroit — were opposed to the county selling this to the city of Detroit.

I further point out to the member from Detroit that the water intake that has caused so much controversy in his mind certainly has been a boon to the city of Detroit moneywise as well as the rest of the county, because at a certain time in Wayne county's development, as far as the water resources are concerned, at one end of town you could flush your toilet and you wouldn't be able to get a drink in the other end of the county. (laughter)

I would like to point out to the gentleman from Detroit that things that are benefiting outcounty through industrial development certainly are going to benefit the city of Detroit. And I would hate to be in the position of attempting to save Detroit from themselves, but if we permit this Madar amendment, that's the position that I'm going to have to take.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Ann Arbor, Mr. Pollock.

MR. POLLOCK: I merely want to say, Mr. Chairman, that my purpose in supporting Mr. Madar was not that I felt that it was a completely effective instrument. I wanted to indicate that we were taking away something that was in the constitution without the committee substituting something better. In other words, the whole idea of city-county consolidation now goes by the boards. This is an effective instrument to be used, and if they felt this one was defective, they could easily have put another one in which they felt was sound.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Taylor, Mr. Ford.

MR. FORD: There is an amendment on the secretary's desk.

CHAIRMAN BENTLEY: The secretary will report the amendment.

SECRETARY CHASE: Mr. Ford offers the following amendment to the Madar amendment:

1. Amend the amendment after "electors of" by reinserting "such city and the remainder of"; so the language will read:

> When a city in any county has attained a population of 500,000 inhabitants, the legislature may organize it into a separate county without reference to geographical extent, if a majority of the electors of such city and the remainder of the county voting on the question shall determine in favor of organizing said city into a separate county.

CHAIRMAN BENTLEY: The gentleman is recognized in support of his amendment.

MR. FORD: The result of this amendment would be to reinstate the language of the 1908 constitution, with Mr. Madar simply changing the 100,000 figure to 500,000, so there would be no question in anybody's mind that we were talking about Wayne county and Detroit only.

I would like to support Art on this, but I don't believe that there's any great ground swell of opinion in Wayne county that says that Detroit wants to cut loose from the rest of us. But I'd like to support Art if he would give the outcounty the opportunity, as Jack McCauley suggests, to save Detroit from itself by vetoing any attempt by Detroit to secede from the rest of the county.

I was inclined to go along with Art entirely at the beginning, but he has persuaded me somewhat that we have a golden goose laying golden eggs here, and I would hate like the devil to let it get away from us now. (laughter)

CHAIRMAN BENTLEY: The Chair recognizes the chairman of the committee, the gentleman from Pleasant Ridge, Mr. Elliott.

MR. A. G. ELLIOTT: May I ask the Chair how many other speakers there are on this subject?

CHAIRMAN BENTLEY: There are no other speakers listed at the moment on the Chair's desk.

MR. A. G. ELLIOTT: Does the secretary have any other amendments to this?

SECRETARY CHASE: This is the only one to this section.

MR. A. G. ELLIOTT: If there are no other speakers, I am then not going to make the motion that I was going to make, and maybe we can resolve this one before I make it.

CHAIRMAN BENTLEY: The lady from Detroit, Mrs. Hatcher, is recognized to speak on the amendment offered by Mr. Ford.

MRS. HATCHER: No, that's not it. I wanted to speak on the Madar amendment.

CHAIRMAN BENTLEY: I think we'd better dispose of the Ford amendment first. Without objection, the secretary will read the amendment to the Madar amendment.

SECRETARY CHASE: The amendment is:

[The amendment was again read by the secretary. For text, see above, page 937.]

CHAIRMAN BENTLEY: The vote occurs on the amendment offered by the gentleman from Taylor, Mr. Ford, to the amendment of the gentleman from Detroit, Mr. Madar. As many as are in favor of the Ford amendment will respond —

MR. MADAR: Mr. Chairman, I wish to speak on the Ford amendment.

MR. A. G. ELLIOTT: Mr. Chairman, I move that the committee rise.

CHAIRMAN BENTLEY: The question is whether the committee shall rise. Those in favor say aye. Those opposed, no. The committee will rise.

[Whereupon, the committee of the whole having risen, President Nisbet resumed the Chair.]

PRESIDENT NISBET: The Chair recognizes Mr. Bentley.

MR. BENTLEY: Mr. President, the committee of the whole has had under consideration certain items on the general orders calendar on which the secretary will give a detailed report.

PRESIDENT NISBET: The secretary will report.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 57,** A proposal to require a public hearing on all budgets of local units of government before the budgets are approved. It reports this Committee Proposal 57 back to the convention without amendment, with the recommendation that it do pass.

PRESIDENT NISBET: **Committee Proposal 57** is referred to the committee on style and drafting.

For Committee Proposal 57 as referred to the committee on style and drafting, see above, page 929.

SECRETARY CHASE: The committee of the whole, Mr. President, has also had under consideration **Exclusion Report 2028,** A report recommending the exclusion of sections 3, 4, 5, 7 and 8 of article X. It reports this exclusion report back to the convention with the recommendation that it be adopted.

PRESIDENT NISBET: The question is on the adoption of the exclusion report. Those in favor will say aye. Opposed, no. **Exclusion Report 2028** is adopted and referred to the committee on style and drafting.

For Exclusion Report 2028 as referred to the committee on style and drafting, see above, page 929.

SECRETARY CHASE: The committee of the whole, Mr. President, has also had under consideration **Committee Proposal 56,** A proposal to limit the ad valorem taxation of property covering the subject matter of section 21, article X of the 1908 constitution, commonly known as the 15 mill limitation. It reports this back to the convention with the following amendment:

1. Amend page 1, line 6, after "Sec. a.", by striking out the balance of the committee proposal and inserting:

"The legislature shall by general law fix limits on the rates of ad valorem taxes which may be levied by counties, townships, school districts and other political subdivisions, except where such limits are provided by charter or other applicable home rule provisions.".

PRESIDENT NISBET: The question is on the adoption of —

MR. KUHN: Mr. President, is this the McCauley amendment?

PRESIDENT NISBET: It is.

MR. KUHN: I ask for the yeas and nays.

PRESIDENT NISBET: Is the demand for the yeas and nays seconded? There is a sufficient number. The Chair recognizes Mr. Powell.

MR. POWELL: Mr. President, and ladies and gentlemen of the convention, I was on my feet to make the same request. I would like to comment very briefly that our finance and taxation committee wrestled with this problem of the 15 mill limit for months, and they came up with what was known as the majority report.

However, after that, we then very carefully debated at length, and there was favorable action on the Turner amendment for a time. The vote, if I recall, on the Turner amendment was 84 to 35. That was an amendment to retain the present 15 mill limitation. That was a vote of well over 2 to 1 in favor of retaining our 15 mill limitation.

Then, with a minimum of debate, and I think a good bit of snap judgment, we adopted the McCauley amendment by a vote of 60 to 58, and if my arithmetic is correct, there were some 26 people not recorded, either absentees, or out of the room, or something.

And so I feel that we very definitely should have a record vote at this time, and I think you all know that personally I hope we will not accept the McCauley amendment.

PRESIDENT NISBET: Mr. Davis.

MR. DAVIS: Mr. President and delegates, in connection with this particular matter I would just like to make this statement, and it will be brief. If we in this convention, as Republicans, as Democrats, whether we are from the rural or from the urban, are willing to take the attitude of removing restrictions relative to finance and taxation, I stand ready to do it. I have taken this position in the committee. I will go farther than I did in the committee.

But if there is an attempt to remove the 15 mill limitation amendment from this constitution, which in my judgment is very meaningful, and justifiably so, to many areas in rural Michigan, if there is an attempt to discriminate in this matter, then I certainly will oppose it.

But I will say this: that if we together are willing to face the future on a basis of equality, I will vote to remove the 15 mill limitation amendment.

If we are ready to go forward on the same basis with regard to the schools, the highways, and other matters in this constitution, then I stand ready to do it. And if we don't, then I don't like what we did this morning, and I'm going to vote to keep the 15 mill limitation in here until there is manifest on the part of this convention a desire to look at this thing in its entirety. And when we are ready to go in that direction, I stand ready to support it. And up until that time I will oppose it by picking this particular thing out as a method of doing it.

I support the request for a roll call vote.

PRESIDENT NISBET: Mr. Yeager.

MR. YEAGER: I move the previous question, Mr. President.

PRESIDENT NISBET: The demand for the previous question has been ordered. Is there a sufficient number up?

The question now is: shall the previous question be put? All those in favor say aye. Opposed?

The previous question has been ordered. The vote now is on the amendment. Mr. Chase, will you read the amendment.

SECRETARY CHASE: The amendment is:

[The amendment was again read by the secretary. For text, see above, page 938.]

PRESIDENT NISBET: Those in favor of that amendment will vote aye. Those opposed will vote nay. The machine will be locked, and the vote recorded.

The roll was called and the delegates voted as follows:

Yeas — 65

Allen	Garvin	Pollock
Andrus, Miss	Hanna, W. F.	Rajkovich
Austin	Hannah, J. A.	Romney
Baginski	Hart, Miss	Seyferth
Balcer	Hatcher, Mrs.	Snyder
Binkowski	Higgs	Spitler
Brown, T. S.	Hood	Staiger
Buback	Iverson	Sterrett
Conklin, Mrs.	Judd, Mrs.	Stevens
Cudlip	King	Stopczynski
Cushman, Mrs.	Krolikowski	Suzore
Dade	Lesinski	Tubbs
Danhof	Lundgren	Tweedie
DeVries	Madar	Upton
Douglas	Mahinske	Van Dusen
Downs	McCauley	Walker
Durst	McGowan, Miss	Wanger
Elliott, A. G.	McLogan	Woolfenden
Elliott, Mrs. Daisy	Millard	Yeager
Figy	Mosier	Young
Follo	Murphy	Youngblood
Ford	Nord	

Nays — 53

Batchelor	Greene	Powell
Bentley	Haskill	Prettie
Boothby	Hatch	Pugsley
Brake	Heideman	Richards, J. B.
Butler, Mrs.	Howes	Richards, L. W.
Davis	Hubbs	Rood
Dehnke	Hutchinson	Rush
Dell	Kelsey	Shackleton
Donnelly, Miss	Kirk, S.	Shaffer
Doty, Dean	Knirk, B.	Shanahan
Doty, Donald	Koeze, Mrs.	Sharpe
Erickson	Kuhn	Sleder
Everett	Leppien	Stafseth
Farnsworth	Martin	Thomson
Finch	McAllister	Turner
Gadola	Nisbet	White
Goebel	Page	Wood
Gover	Plank	

SECRETARY CHASE: On the adoption of the McCauley amendment, the yeas are 65, the nays are 53.

PRESIDENT NISBET: The amendment is adopted.

MR. A. G. ELLIOTT: Mr. President, a point of personal privilege.

PRESIDENT NISBET: Mr. Elliott.

MR. A. G. ELLIOTT: I would like to tell Mr. Davis that I completely agree with him, and my vote yea was an indication that when we get another chance, we're going to make this thing a flexible constitution. (applause)

PRESIDENT NISBET: The next amendment.

SECRETARY CHASE: Mr. Turner now offers the following amendment:

1. Amend page 1, after "Sec. a.", by striking out the balance of the committee proposal and inserting:

"The total amount of taxes assessed against property for all purposes in any one year shall not exceed 1½ per cent of the assessed valuation of said property, except taxes levied for the payment of interest and principal on obligations heretofore incurred, which sums shall be separately assessed in all cases: Provided, That this limitation may be increased for a period of not to exceed 20 years at any one time, to not more than a total of 5 per cent of the assessed valuation, by a majority vote of the electors of any assessing district, or when provided for by the charter of a municipal corporation: Provided further, That this limitation shall not apply to taxes levied in the year 1932.

In any school district which extends into 2 or more counties, there may be levied and collected for school purposes throughout the district property taxes at the highest rate available in the county which contains the greatest part of the area of the district.".

PRESIDENT NISBET: The question is on the Turner amendment. Those in favor say — Mr. Turner.

MR. TURNER: Mr. President, I think the sentiment has been shown here, and I would much rather withdraw my amendment and go back to work to find a much better way of constructing a better tax picture in this state. Thank you. (applause)

PRESIDENT NISBET: The amendment is withdrawn, and **Committee Proposal 56,** as amended, is referred to the committee on style and drafting.

Following is Committee Proposal 56 as amended and referred to the committee on style and drafting:

The committee recommends that the following be included in the constitution:

Sec. a. The legislature shall by general law fix limits on the rates of ad valorem taxes which may be levied by counties, townships, school districts and other political subdivisions, except where such limits are provided by charter or other applicable home rule provisions.

SECRETARY CHASE: The committee of the whole, Mr. President, has also had under consideration **Committee Proposal 81,** has considered amendments thereto, and has come to no final resolution thereon. This completes the report of the committee of the whole, Mr. President.

PRESIDENT NISBET: The Chair recognizes Mr. Higgs.

MR. HIGGS: Mr. President, I move that the convention now recess until 2:00 o'clock.

PRESIDENT NISBET: The question is on the motion of Mr. Higgs. Those in favor say aye. Those opposed.

The motion prevails. The convention is recessed until 2:00 o'clock.

[Whereupon, at 12:20 o'clock p.m., the convention recessed; and, at 2:00 o'clock p.m., reconvened. Vice President Hutchinson assumed the Chair.]

VICE PRESIDENT HUTCHINSON: The convention will be in order.

SECRETARY CHASE: Mr. President, a quorum of the convention is present.

Prior to the noon recess, Mr. Page filed a request with the secretary asking to be excused from the afternoon session.

VICE PRESIDENT HUTCHINSON: Without objection, Mr. Page will be excused. The Chair hears no objection, and it is so ordered.

The Chair recognizes the delegate from the fourteenth district, Dr. Hannah.

MR. J. A. HANNAH: Mr. President, I should like to move that Committee Proposals 79 and 80, the report of the committee on legislative organization, be made a special order on general orders for next Wednesday.

VICE PRESIDENT HUTCHINSON: You have heard the motion of the delegate that the reorganization proposals, Committee Proposals 79 and 80, be placed on the order of general orders for next Wednesday.

MR. STERRETT: Point of information, Mr. President.

VICE PRESIDENT HUTCHINSON: Mr. Sterrett.

MR. STERRETT: There is a general calendar that lists 79 and 80, but we received the general calendar today, Friday, February 9. What numbers would they be on that general calendar?

VICE PRESIDENT HUTCHINSON: These are proposal numbers. What are the order numbers on the calendar? Can the secretary advise?

SECRETARY CHASE: They are not on the calendar for today. They are Committee Proposals 79 and 80, which were items 59 and 60 on the previous calendar.

VICE PRESIDENT HUTCHINSON: The question is upon the motion made by Mr. Hannah. All those in favor will say aye. Those opposed will say no.

The ayes have it, the motion prevails, and it is so ordered.

The Chair recognizes the delegate from Gratiot, Mr. Hoxie.

MR. HOXIE: Mr. President, I would like to make a statement under personal privilege.

VICE PRESIDENT HUTCHINSON: You may state it.

MR. HOXIE: At the time we had under consideration Committee Proposal 56 in the committee of the whole, I voted against the McCauley amendment. At the time the vote was taken on the amendment, after the committee rose, I had been called from the convention floor to the legislative powers committee room on official convention business. Had I been present, I would have voted against the amendment and for the retention of the 15 mill tax limitation on real and personal property.

VICE PRESIDENT HUTCHINSON: The statement will be entered in the journal.

The Chair recognizes the delegate from the fifteenth district, Mr. Bentley.

MR. BENTLEY: Mr. President, I move that the convention resolve itself into committee of the whole for further consideration of items on the **general orders** calendar.

VICE PRESIDENT HUTCHINSON: The question is on the motion of Mr. Bentley. All those in favor will say aye. Those opposed will say no.

The ayes have it, the motion prevails, and the gentleman from the fifteenth district, Mr. Bentley, will preside.

[Whereupon, Mr. Bentley assumed the Chair to preside as chairman of the **committee of the whole.**]

CHAIRMAN BENTLEY: The committee will be in order. When the committee rose this morning, the Chair was preparing to recognize the gentleman from Detroit, Mr. Madar, to speak on the amendment offered by Mr. Ford to his amendment. Does the gentleman desire recognition at this time?

MR. MADAR: Yes. I would just like to state that I would be willing to accept Mr. Ford's amendment.

CHAIRMAN BENTLEY: The question is on the amendment offered by the gentleman from Taylor, Mr. Ford, to the amendment offered by the gentleman from Detroit, Mr. Madar. As many as are in favor of the amendment to the amendment will respond by saying aye. Those opposed.

The Chair rules the ayes have it, and the amendment to the amendment is adopted.

A DELEGATE: Division.

CHAIRMAN BENTLEY: Division has been demanded. Is the demand supported?

SECRETARY CHASE: There is a sufficient number.

CHAIRMAN BENTLEY: The secretary will read the Ford amendment to the Madar amendment.

SECRETARY CHASE: Mr. Ford's amendment is:

[The amendment was again read by the secretary. For text, see above, page 937.]

CHAIRMAN BENTLEY: Those in favor—

MISS DONNELLY: Point of order.

CHAIRMAN BENTLEY: The lady will state it.

MISS DONNELLY: If Mr. Madar accepted Mr. Ford's amendment, which I gather he did, then are we now not voting on a joint amendment to the committee proposal?

CHAIRMAN BENTLEY: The question is on the amendment to the amendment. The amendment offered by Mr. Ford is the question before the committee.

MISS DONNELLY: Not on Madar's?

CHAIRMAN BENTLEY: No.

The gentleman from Taylor, Mr. Ford.

MR. FORD: Mr. Chairman, during the recess Mr. Wanger called my attention to the fact that in attempting to reinstate the language of the 1908 constitution, I overlooked a deletion in the minority report in line 5. The word "each" would be deleted by Mr. Madar's amendment, and it was my intention to reinstate the language in toto as presently exists in the constitution, except for the 500,000 figure.

CHAIRMAN BENTLEY: Without objection, the Ford amendment will be so corrected.

The gentleman from Detroit, Mr. Madar.

MR. MADAR: Mr. Chairman, with the correction I cannot accept the amendment. This is nothing more nor less than a veto.

CHAIRMAN BENTLEY: The question recurs on the amendment offered by Mr. Ford, and the secretary will again read the amendment as perfected by Mr. Ford.

SECRETARY CHASE: Mr. Ford's revised amendment is as follows:

1. Amend the amendment after "electors of" by reinserting "such city and the remainder of"; and after "question shall" by reinserting "each"; so that the language will read:

> When a city in any county has attained a population of 500,000 inhabitants, the legislature may organize it into a separate county without reference to geographical extent, if a majority of the electors of such city and the remainder of the county voting on the question shall each determine in favor of organizing said city into a separate county.

CHAIRMAN BENTLEY: Those in favor of the Ford amendment to the Madar amendment will vote aye. Those opposed will vote nay.

MR. MADAR: Is this on the Madar amendment, or on the Ford amendment?

CHAIRMAN BENTLEY: This is on the Ford amendment only. The question is on the amendment to the amendment.

MR. MADAR: Mr. Chairman, I don't believe that everybody understands this; that when they vote for Mr. Ford's amendment right now, all they are doing is killing the entire amendment. Because it doesn't do any good at all.

CHAIRMAN BENTLEY: The Chair will restate the question for the last time. The vote is on the Ford amendment only to the Madar amendment, not on the Madar amendment. The machine will be locked.

SECRETARY CHASE: On the adoption of the Ford amendment to the Madar amendment, the yeas are 75, the nays are 35.

CHAIRMAN BENTLEY: Then the amendment to the amendment is adopted. The question now occurs on the Madar amendment, as amended, and the Chair recognizes the lady from Detroit, Mrs. Hatcher.

MRS. HATCHER: Mr. Chairman and delegates, as a cosponsor of the Madar amendment, I rise in support of the amendment, for the same reasons that Mr. Madar pointed out. As a resident in the city of Detroit, I believe that for a number of years we have been faced with many problems, of which certainly Detroit as a city alone has not been able to solve, as a city, or one of the 16 cities in the county. I believe that this type of move would offer an opportunity for the citizens of Detroit to enjoy the services that they are presently paying for. For that reason, and for other reasons that I do not care to take the time of the committee at the moment to state, I fully support the amendment.

CHAIRMAN BENTLEY: The Chair recognizes the chairman of the committee, the gentleman from Pleasant Ridge, Mr. Elliott.

MR. A. G. ELLIOTT: Mr. Chairman and ladies and gentlemen, I would merely like to remind you of the discussion we had before we recessed, and the comments made by Mr. Allen, by Mrs. Judd and others of the committee, and to remind you that what you now have is exactly the language which our committee worked on for quite a long time and decided in its wisdom should be deleted from the constitution. I urge you to oppose the amendment.

CHAIRMAN BENTLEY: The question occurs on the amendment, as amended, offered by the gentleman from Detroit,

Mr. Madar. As many as are in favor will respond by saying aye. Those opposed?

The amendment as amended is not adopted. Are there further amendments to section b?

SECRETARY CHASE: There are none on file, Mr. Chairman.

CHAIRMAN BENTLEY: If not, it will pass.

Section b is passed. The secretary will read section c.

SECRETARY CHASE: Section c.

[Sec. c was read by the secretary. For text, see above, page 929.]

CHAIRMAN BENTLEY: The lady from Grand Rapids is recognized, Mrs. Judd.

MRS. JUDD: Mr. Chairman, I would like to yield to Mr. Finch for this section and the following section.

CHAIRMAN BENTLEY: The gentleman from Mattawan is recognized.

MR. FINCH: Mr. Chairman and members of the committee, I don't think this section needs any long winded explanation. I think it is perfectly clear. The committee on declaration of rights, suffrage and elections had concurrent jurisdiction, and they offered no objection. I move its passage.

CHAIRMAN BENTLEY: Are there any amendments to section c of the committee proposal? If not, it will be passed.

Section c is passed. The secretary will read section d.

SECRETARY CHASE: Section d.

[Sec. d was read by the secretary. For text, see above, page 929.]

CHAIRMAN BENTLEY: Are there any amendments to section d of the committee proposal? The gentleman from Mattawan.

MR. FINCH: This is not a change; I just want to say this is left the same as it is in the present constitution.

CHAIRMAN BENTLEY: If there are no amendments to section d of the committee proposal —

The gentleman from Muskegon Heights, Mr. Hanna.

MR. W. F. HANNA: Mr. Chairman, through the Chair, I would like to address a question to Mr. Danhof. It's been my understanding — and I may be wrong — that the judiciary committee has recommended or is about to recommend that probate judges not be considered county officers, but be considered state officers; and the legislature be permitted to have probate judges sit on a circuit basis. If so, I would believe that you should delete "probate judge" from this provision as a county officer, and leave him over in the judicial section by itself.

CHAIRMAN BENTLEY: The gentleman from Muskegon, Mr. Danhof.

MR. DANHOF: Mr. Chairman and Mr. Hanna, the recommendations of the committee have been that in the wisdom of the legislature, they may district or circuitize probate courts as they have circuit courts. This particular matter was not discussed in great detail, but it was felt that perhaps it was harmonious in that, if and when the various counties were banded together in a judicial district, the requirement that the probate judge be at the county seat would not necessarily be in conflict. However, I think that perhaps if we finish the deliberations of this committee on the judicial article and the recommendations of the committee are adopted, any area of conflict could I'm sure be reconciled if Mr. Elliott would so agree.

We don't know for sure that we are going to adopt what has been recommended by the judiciary committee, and until we get through the first reading of these things, we may have certain conflicts that will develop. We would hope that the committee you serve on, Mr. Hanna, might find some of these. And this is one that we have noted. We noted it before we passed our article, but we felt that until we passed everything, we would have to do some of it this way.

CHAIRMAN BENTLEY: The gentleman from Fennville, Mr. Hutchinson.

MR. HUTCHINSON: Mr. Chairman, speaking to the same matter, I was going to raise the point from this angle. That in section c, we name these county officers who are to be elected for 4 year terms, and then in section d here is another officer who, heretofore, at least, in this article of the constitution, has not been mentioned; namely, a judge of probate. From that standpoint, it would seem to me as though the judge of probate could well be stricken from section d, and where he should hold his office and so on could better be handled in the judicial article.

CHAIRMAN BENTLEY: Is the gentleman from Mattawan seeking recognition? Mr. Finch.

MR. FINCH: I'd just like to say that the committee did discuss this somewhat. I don't know whether the fact that he is mentioned in the foregoing section or not makes too much difference. But they did talk about the possibility that if the probate judge was in a district of several counties, he should still have his office at the county seat.

CHAIRMAN BENTLEY: Are there any amendments to section d of the committee proposal? If not, it will be passed.

Section d is passed. The secretary will read section e.

SECRETARY CHASE: Section e.

[Sec. e was read by the secretary. For text, see above, page 929.]

CHAIRMAN BENTLEY: The Chair recognizes the lady from Grand Rapids, Mrs. Judd.

MRS. JUDD: Mr. Chairman and members of the committee, we have made quite a little change in this, and I would like to yield the floor to Mr. Brake, who can explain these changes to you.

CHAIRMAN BENTLEY: The gentleman from Stanton, Mr. Brake.

MR. BRAKE: Mr. Chairman, ladies and gentlemen, taking the old language, the first statement is, "The sheriff shall hold no other office." Generally speaking, that is certainly a good provision. The office of sheriff is sufficient in and of itself to keep him busy. But there are some counties in which the sheriff is very certainly the logical person to head up the civil defense organization. He has the radio communication, generally has radio cars, he has personnel around the county, and he is the one who ought to have it. Now, that's not true in every county, but in many counties it is true. So the language here will permit the sheriff to act as director of civil defense if that is advisable in his county. It is not compulsory. The provision as to his security I think is perfectly plain. The sheriff has to give a bond, and the bond runs to the people of the state of Michigan. So that anyone having a cause of action against the sheriff has the protection of that bond.

Now, the matter of his responsibility. "The county shall never be responsible for his acts." What they had in mind I'm sure when they put that statement in the 1835 constitution and carried it forward through the other two was that the sheriff, if the county were responsible for his acts, would constantly bring on the county lawsuits for false arrest, false imprisonment, and what have you, and it would be a very dangerous thing for the county to have liability there. So they make the sheriff give the bond, and they say the county shall not be responsible for his acts. I think that is entirely correct, as far as that kind of thing is concerned.

But there is another situation in which the sheriff is partly helpless. The board of supervisors, for instance, can tell him that he must take his prisoners and go out and work on the road, cutting brush, or whatever it is to be done along the roadside. If one of those prisoners gets hurt and can see some reason for saying the sheriff was negligent — maybe he put a city boy, not knowing how to handle a sharp axe, to cutting brush, and he cuts his foot — anything of that kind where there is a possible liability of the sheriff, he can bring a lawsuit against the sheriff. We have had numerous lawsuits in recent years. In one instance, the prisoner was washing windows, I think, or possibly painting on the outside of the jail, and the scaffold broke, and the man was hurt. I think the lawsuit was

for $40,000. There have been other instances where the sheriff has been sued.

Now, all this asks is that the county be allowed to protect him by insurance. At the beginning of this series of lawsuits there was no insurance policy available for that particular liability, but the sheriffs' association got one of the companies to draft a policy on purpose for the protection of sheriffs. Some of the county boards of supervisors evidenced a willingness to protect the sheriff and to guarantee him against loss for that kind of injury. But their prosecuting attorneys promptly ruled that they had no right to do it. And it is for the express purpose of permitting the county to pay for the insurance that this change is made.

CHAIRMAN BENTLEY: Will the gentleman from Stanton yield to the gentleman from Lansing, Mr. Wanger, for a question?

MR. BRAKE: Yes.

MR. WANGER: Mr. Chairman and Mr. Brake, the words "the board of supervisors may protect him against claims" I take it then do not authorize the board of supervisors to pass an ordinance or a rule which would give the sheriff immunity from suit?

MR. BRAKE: No indeed. That should not be done and is not done.

CHAIRMAN BENTLEY: Will the gentleman yield to the gentleman from Fennville, Mr. Hutchinson, for a question?

MR. BRAKE: Yes.

MR. HUTCHINSON: Mr. Chairman, I would like to ask Mr. Brake whether the cost of the bond that the sheriff must now furnish is to be paid for by the sheriff personally, or does the county pay that premium?

MR. BRAKE: Quite generally the county pays it.

MR. HUTCHINSON: Now, then, if the county can pay the premium for the sheriff's general security, why is it that they couldn't, without this additional language, pay the premium on the kind of insurance that you are talking about now?

MR. BRAKE: Well, I think the fact that that bond is the public's protection against the sheriff, and that there's no authority to sue the county at all, is part of that answer. The prosecuting attorneys, of course, have been the ones that have raised this point, claiming that the county couldn't pay for the insurance, in connection with the statement that the sheriff shall never be responsible for his acts.

MR. HUTCHINSON: That is, that the county shall never be responsible for the sheriff's acts.

MR. BRAKE: Yes.

MR. HUTCHINSON: Thank you, sir.

CHAIRMAN BENTLEY: Will the gentleman yield to the gentleman from Detroit, Mr. Norris, for a question?

MR. BRAKE: Yes.

MR. NORRIS: Mr. Brake, isn't the proposition that the county shall never be responsible for his acts, with the categorical statement "never," too strong, under the circumstances, and may not such responsibility be a matter left to the legislature?

MR. BRAKE: I think not. This puts me in a little strange position, but I wouldn't want the sheriffs down here lobbying on the legislature to change that. I think it should be in the constitution, and stay there solid.

MR. NORRIS: You mentioned that the purpose of the "never" in there is to cover such contingencies as may arise out of false arrest and false imprisonment?

MR. BRAKE: That is exactly what it was intended to cover, I'm sure, in the first place.

MR. NORRIS: Well, aren't there some debatable situations, to say the least, under which there might be occasions when the county ought to be responsible for lawless acts on the part of law enforcement agencies?

MR. BRAKE: No. I think the sheriff should be liable, and his bond should be liable; and I think that's enough. I don't think the county should be.

CHAIRMAN BENTLEY: Will the gentleman yield to the gentleman from Hancock, Mr. Heideman, for a question?

MR. BRAKE: Yes.

MR. HEIDEMAN: Mr. Brake, I was going to ask the same thing. Why isn't this statutory language? Why cannot this be kept in the statute, and out of the constitution, and thus help streamline the constitution?

MR. BRAKE: The people in connection with 3 previous constitutions thought they better put it where it wouldn't be changed, and I agree with the people.

CHAIRMAN BENTLEY: Are there any amendments to section e of the committee proposal? If not, it will be passed.

Section e is passed. The secretary will read section f.

SECRETARY CHASE: Section f.

[Sec. f was read by the secretary. For text, see above, page 929.]

CHAIRMAN BENTLEY: The Chair recognizes the lady from Grand Rapids, Mrs. Judd.

MRS. JUDD: Mr. Chairman, I would like to yield the floor to Mr. Farnsworth.

CHAIRMAN BENTLEY: The gentleman from Allegan, Mr. Farnsworth.

MR. FARNSWORTH: Mr. Chairman and ladies and gentlemen, as you recognize, this is the same language as you have in your present constitution. The committee felt that this arrangement had been working rather well, and saw no reason to change it. I would be glad to answer any questions you might have.

CHAIRMAN BENTLEY: Are there any amendments to section f of the committee proposal?

SECRETARY CHASE: Mr. W. F. Hanna offers the following amendment:

1. Amend page 2, line 12, after "consisting of 1" by inserting "or more"; and in line 13, after "township" by inserting "and city"; and in line 14, after "Cities" by inserting "and townships"; and after "such" by inserting "additional"; so the language will read:

> A board of supervisors, consisting of 1 or more from each organized township and city, shall be established in each county, with such powers as shall be prescribed by law. Cities and townships shall have such additional representation in the boards of supervisors of the counties in which they are situated as may be provided by law.

CHAIRMAN BENTLEY: The gentleman from Muskegon, Mr. Hanna, is recognized in support of his amendment.

MR. W. F. HANNA: Mr. Chairman, over a period of time a serious discrepancy has crept into this old provision with regard to the large suburban townships. There are not many of them in this state, but we do have the peculiar situation where a township of considerable population has only one representative, when a city of the same population may have 5, 6, 7 or 8.

For example, in the township of which I was supervisor, we have a population now approaching 20,000. Only the supervisor is a member of our county board. Out of that township, as originally surveyed, has been taken a city a mile square, and with its very meager population it has 2 representatives on the county board of supervisors. This is obviously unfair. Certainly the large townships surrounding the cities are entitled to equivalent representation with the small cities that exist throughout the county.

This merely allows the legislature to prescribe such additional representation after the initial one has been assigned to each city or township in such manner as will be prescribed by law, and will allow them to do as they have done with cities in the past: to classify counties so the boards of supervisors do not become unreasonably large. But it will treat the suburban township in the same manner.

Secondly, when the legislature was trying to create the chartered township act, the fact that they could do many things to free the chartered township and make it an intermediate step or an optional form of township government for those suburban townships that were neither all city nor all rural, but which needed an intermediate position while they were considering their metropolitan problems and their urban problems, the legislature found that they could not grant to chartered townships additional representation on the board of

supervisors because of this prohibition in the old 1907-'08 constitution.

Certainly, the intermediate step of chartered township should be entitled to equal representation on the board of supervisors with those cities now organized or as may be hereinafter organized.

The local government committee has not seen fit to grant township home rule, but I assume that chartered township government will be permitted, and this will erase one of the serious discriminations as concerns township boards of supervisors. The cities are adequately protected. The small townships are adequately protected. But the in between townships are definitely discriminated against.

I urge the adoption of the amendment.

CHAIRMAN BENTLEY: The gentleman from Pontiac, Mr. King, is recognized to speak on the Hanna amendment.

MR. KING: Mr. Chairman, ladies and gentlemen of the committee, I have, also, an amendment on the secretary's desk which is very similar to Mr. Hanna's, and if the secretary would read it and Mr. Hanna would be agreeable, I think we could merge our 2 amendments, and perhaps save some time.

SECRETARY CHASE: Mr. King has filed the following amendment:

1. Amend page 2, line 12, after "1" by inserting "or more members elected"; and in line 13 after "township" by inserting "or city".

CHAIRMAN BENTLEY: Does the gentleman yield to the gentleman from Muskegon for comment?

MR. KING: Yes.

MR. W. F. HANNA: Mr. King, if I understand the import, you are simply adding the word "elected," is that correct?

MR. KING: That's correct.

MR. W. F. HANNA: I have no objection to the merger of the 2 amendments.

CHAIRMAN BENTLEY: Is there objection to the 2 amendments being so merged? If not, it is so ordered and they are so merged. Is there objection? The chairman of the committee, Mr. Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, I think you moved a little faster than I could get out of that chair. I think because of the discussion that was had in our committee on this particular provision, I would like to ask that they not be merged.

CHAIRMAN BENTLEY: Objection is heard, and the 2 amendments will have to be considered separately.

MR. KING: In that event, Mr. Chairman, I will speak in favor of the Hanna amendment at this time, and depending upon the results of the committee's decision in that area, I will perhaps revise my own amendment. I think it is extremely important that we all recognize this great inequality with regard to representation of large townships on boards of supervisors.

Now, I'm not from a township. I'm from the city of Pontiac, and I represent no township. But I think that this is a situation whereby all people who believe in a degree of democracy can agree that townships of the size of say Mr. Kuhn's township, Waterford township, which is over 50,000 people, and Redford township, which is very close to the size of Pontiac, believe it or not, should be entitled to something more than the same amount of representation accorded a small township in the same county.

Now, I do think that every township ought to have at least one representative, and I don't have the apportionment planned for the counties any more than I do for the states, but at least let's untie the hands of the legislature so that if these inequities, as time goes on, become more and more severe, let's let it look into this situation and come up with a solution. I don't have the answer. All I ask is that large townships not be restricted to one member only. And I think that that is a reasonable request on behalf of the large townships. As I say, I don't represent one, but I think it is important.

CHAIRMAN BENTLEY: The gentleman from Detroit, Mr. Madar, is recognized to speak on the Hanna amendment.

MR. MADAR: Mr. Chairman, I'm speaking in behalf of the committee report and committee recommendation. We discussed this at great length in the committee, and I can't understand why Mr. Hanna or Mr. King might think that these large townships can't get more representation on the board of supervisors. In fact, nowhere does it say that they shouldn't get more representation. It's provided for, and has been, in our constitution and in our statutes, that the large urban townships can get as much representation as any other city of its size. All they have to do is become a city—and they do have the right to become a city. This is just one of these cases where we want to have our cake and eat it, too.

CHAIRMAN BENTLEY: The gentleman from Muskegon, Mr. Hanna.

MR. W. F. HANNA: Mr. Chairman and Mr. Madar, one of the problems of the suburban township is that it doesn't know for sure whether it wants to become annexed to the core city, whether it wants to be foolish and become a city of its own, or whether it wants to be less foolish and become a chartered township, or whether it wants to remain totally wise and remain a township. They are in a period of transition. And if they are not entitled to fair representation on the board of supervisors during this period of transition, they are like the newly organized counties back in 1850, about which you might have said a newly organized county should have no representation in the state legislature. But, if you recall, when Michigan was going through this transition period, it clearly provided that newly organized counties would have representation in the legislature.

All we are asking is, while they are in the transition period, before they become a city and while they are still a township, that they have fair representation on the board. If you are a supervisor of a metropolitan township, you simply cannot assume a major committee post or any other position, because you have to spread yourself so thin, because you have no one to backstop or help you.

CHAIRMAN BENTLEY: The gentleman from Detroit, Mr. Downs.

MR. DOWNS: I would like to speak in favor of the principle of Delegate Hanna's amendment. I believe that the matter of whether a unit of government is a township or a city should be considered separately from the matter of representation on the board of supervisors. I do have some amendments that are being drafted which will apply to Committee Proposal 89 dealing with the matter of change in charter home rule government. But, in the meantime, I do believe that the thinking of Delegate Hanna would permit a more representative and as a result a stronger and more responsible form of county government.

CHAIRMAN BENTLEY: The Chair would advise that he already has 10 members on the list seeking recognition on this amendment. The Chair recognizes the gentleman from Pontiac, Mr. Kuhn, to speak on the Hanna amendment.

MR. KUHN: Mr. Chairman, I rise in support of the Hanna amendment. As you know, we will be speaking about county home rule shortly, and there are plans devised which will have the board of supervisors come up with some recommendations which the people of this county or any county should adopt if they want this county home rule. I think it is only fair then that the board of supervisors be made up according to the population of that particular county, since they will be the ones drafting this charter that they would adopt.

I have an amendment pending which is very, very similar to Mr. Hanna's, and I'm wondering if he would accept the last 2 sentences as an amendment to his, which would do away with mine, and then we could do away with another amendment. I ask the secretary to read it.

CHAIRMAN BENTLEY: The secretary will read.

SECRETARY CHASE: Mr. Kuhn's amendment is as follows:

1. Amend page 2, by striking out lines 12 through 16 and inserting:

"Sec. f. A board of supervisors, consisting of at least 1 from each organized township and at least 1 from each city, may be established in each county, with such powers as shall be prescribed by law. The balance of the membership of the board of supervisors shall be selected upon a population basis as may be provided by law.".

CHAIRMAN BENTLEY: Is there objection? Does the gentleman desire to object?

MR. KING: Yes, Mr. Chairman. I think the wording "upon a population basis" would create further controversy.

CHAIRMAN BENTLEY: Objection is heard.

MR. KUHN: Mr. Chairman, I thought if you amended a person's amendment, it was up to the person who offered the amendment. But if I'm wrong, I will accept your ruling.

CHAIRMAN BENTLEY: The question still recurs on the Hanna amendment. The Chair recognizes the lady from Grand Rapids, Mrs. Judd, to speak on the Hanna amendment.

MRS. JUDD: I would like to yield the floor to Mr. Farnsworth on this.

CHAIRMAN BENTLEY: The gentleman from Allegan, Mr. Farnsworth.

MR. FARNSWORTH: Mr. Chairman, the committee would object to putting the 2 together. We would like them separately.

CHAIRMAN BENTLEY: The Chair recognizes the lady from Livonia, Mrs. Conklin, to speak on the Hanna amendment.

MRS. CONKLIN: I would like to rise in support of the Hanna amendment. I don't live there, but I represent Redford township, with 72,000 people, and I don't choose to decide whether they should become a city in order to get more representation on the board of supervisors. I would like to support the Hanna amendment.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Madison Heights, Mr. Walker, to speak on the Hanna amendment.

MR. WALKER: I rise to support the Hanna amendment. I find it most heartening to see Mr. Hanna, Mrs. Conklin, and all of our other distinguished delegates here supporting the principle of population as a means of representation rather than just area. I feel that in going along with this they are going to make it a possibility that this constitution will be acceptable to all of the people of the state of Michigan.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Kalamazoo, Mr. Allen, to speak on the Hanna amendment.

MR. ALLEN: Mr. Chairman, I'd like to rise and speak in objection to the Hanna amendment. Let me say at the beginning that I think that this discussion actually is going to be a little apportionment fight. That's what we found it was down in the local government committee. We really hashed this over backwards and forwards, and we got into all kinds of inconsistent positions.

Now, traditionally, county government has always been recognized as having its representation on sort of a district or area basis, and not on a population basis. This is why, for example, in Kalamazoo county, where my city has almost half the population, we only have 12 supervisors out of a board of 32.

Now, if you are going to start changing this concept—and this is what the Hanna amendment does; it changes the concept towards the population formula, but it doesn't change it all the way to the population formula—you can say that we get into some terribly inconsistent positions politically.

The Democrats—because they don't go all the way and have a population formula. If they did, Kalamazoo would have half the members of the board of supervisors. And the Republicans—because they don't stand on the position of the area or geographic representation.

Now, in addition to this problem that is raised, we get this. Let's take my county, for example. We have about half of the population. We have 12 supervisors. There are 16 townships. They have approximately the other half of the population. They have 16 votes, we have 12. Now, 2 of these townships are 20,000 or 21,000. When you start granting more, as the Hanna amendment would do, you see, what you do is increase the imbalance that exists.

And I think you will find in every county where this is done, where there is a large metropolitan township, the problem that the central city has is aggravated in the membership of the board of supervisors. Now, we tried to work it out in local government, but what you get into is the diversity in your 83 counties. There isn't a single formula that we could devise here, ladies and gentlemen, that would work for every county. The legislature has implemented the 1908 constitution so that the existing arrangement, while not totally satisfactory to everyone, isn't too bad. And it has taken a lot of effort.

Now, the Hanna amendment, you see, would do an imbalance to this; and it would create an additional representation from the metropolitan townships, and diminish the proportional amount that the cities have. Well, someone will say: "All right. The legislature can change the formula, and allow greater representation for the cities." Now, this would pull the thing back perhaps if the legislature would do it, but you run into the next objection. Our boards of supervisors, generally speaking, are getting too large across the state. That is, in the heavily populated counties. So that if you add more supervisors from the metropolitan townships and don't have the legislature increase them for the city, you create a greater imbalance. If the legislature corrects it by adding the representation to the city, you get more supervisors. And already in Wayne county you have a 108 man board. Oakland county, I think, is something like 65. In other words, you get too big and too cumbersome a board of supervisors.

Now, it was the conclusion of the local government committee, for these reasons: you either run into the objection that you are going to diminish the fair representation which a city should have, or you run into the objection that you are changing the classical formula of area representation—and if the Republican party now wants to go to a straight population on this matter, that's another matter—or you run into the objection that in order to compensate for the added representation of the metropolitan township, you then have to add members to the city, and you get too large a board, and they are too large generally speaking anyway. You run into so many problems that you are left with what we have. It is not completely satisfactory, but at least it's been worked out. And it's for these reasons that I support the committee proposal and oppose the Hanna amendment.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Taylor, Mr. Ford, to speak on the Hanna amendment.

MR. FORD: I want to support the Hanna amendment. First of all, in answer to some of the points that Glenn has just raised, these were all raised in the committee. Those of us who support this proposition don't purport to rewrite the present formula in any way. All we do is remove the restriction that is now on the legislature that absolutely prohibits a consideration of population for townships.

There is a population formula for cities. Now, all we are asking is that citizens of a county be considered as citizens of a county, and not as citizens of a township, village or a city when you are talking about the government of that county.

Glenn Allen happens to be one of the foremost exponents of a form of county home rule that would have a board—a much smaller board; perhaps a council type of situation—which I'm sure Glenn does not anticipate would be elected all from one city or all from cities or all from townships, or using city or township lines, for that matter. He wouldn't want to put that kind of rigidity into it. He talks for flexibility. This, he says, for example, is a small apportionment fight. Well, this is a small flexibility fight, too. Because all we are asking you to do is take the restriction out.

The language, the way it reads now, is tantamount to a restriction which says you can give the city as many representatives on the board of supervisors as you wish, but you can only give one to a township, regardless of whether you use area, population, or whatever you use as the formula. Just to give you a quick example, in Wayne county we have on our board of supervisors 108 people. Now, you can argue that 108 is too large, and 105 would be better. Some people would argue that 111 isn't too much, but that's the amount we have in the legislature. But I want to tell you what is going to happen in Wayne county if we don't change this. As it now stands, we have 14 townships left in Wayne county that are actual governmental townships. Two of those townships are almost totally taken up by a village, and there's another proposal to take care of those.

But, historically, in the last 20 years townships have not incorporated, in the majority of cases, in toto, as a single city. I give as an example Ecorse township, or what was left of Ecorse township. Ecorse township has been broken up into the city of Lincoln Park, the city of Ecorse, Melvindale, Allen Park and Southgate. Now, because this one township went from a township to all of these cities, and the cities have a population formula, and the city of Detroit is guaranteed by the population formula in effect that so long as it has a majority of the population of the county of Wayne, it shall always have a majority on the board of supervisors, by the incorporation of these cities, every time you add 3, which is what happens when you are dealing with these 30,000 population cities, you automatically add 4 to Detroit. So you put 7 people on the board of supervisors to replace 1.

And this is going on, and at the present rate of incorporation of townships, within the next 10 years the Wayne county board of supervisors will have 150 members, using the present formula. But, in the meantime, townships such as Nankin, which in the 1960 census had 96,000 people, have the same representation as the city of Belleville, with 1,921 people. This doesn't seem to make much sense on any basis. The 96,000 people in Nankin township are county citizens who pay county taxes and who want to participate with equal voice in the government of county affairs. They are not asking for the right to interfere with the affairs of Livonia or any other incorporated city. But they are asking, on the basis of governing their county affairs, that they be given equal voice.

And this is all that the Hanna amendment would make possible. The legislature will have to come up with a formula that could take care of our problem in Wayne county without interfering with the interests that Glenn wants to protect in Kalamazoo, and certainly this could be done if we left it to the legislature and we took this rigidity out of the section, making it possible to do so.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Pontiac, Mr. King, to speak on the Hanna amendment.

MR. KING: Mr. Chairman, I'll be very brief, because Mr. Ford mentioned most of the things that I wanted to point out with regard to what Mr. Allen had to say. We don't purport nor propose to change a single thing. We are devising no formulas. We are only suggesting that we free the hands of the legislature so that they, if the time comes when they deem it necessary, can do this. And as far as his comment that the present system isn't too bad, I submit that that's a point of personal opinion. Some people think it's pretty bad.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Traverse City, Mr. Sleder, to speak on the Hanna amendment.

MR. SLEDER: Mr. Chairman, fellow delegates, I should like to speak in opposition to the Hanna amendment. We have involved here a philosophy of county government, and we must realize that each township and each area receives a service from the county government. And when we distort the representation in the county on the board of supervisors, we then distort the type of service that each area shall receive from this county. Likewise, within a county, we may have an organized city. This city may have a population of say 5,000 people. They have provided their own fire protection, their own street repair, their own street improvements, their own police protection.

In the surrounding township there may be twice this population, 10,000 people, and the county is providing them with their roads, their streets, their fire protection and police protection. We therefore then give this area more representation than we have the city, which is providing its own services, but we have doubled the representation on the board from the township. Therefore, we get a distorted effect on the board of supervisors, in that this one township can and possibly would divert more services to their particular area than the remainder of the county, or the services that are being provided under an incorporated city.

Therefore, on this basis, if we are to adhere to the principles of the standard form of county government, you must defeat the Hanna amendment.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Niles, Mr. Boothby, to speak on the Hanna amendment.

MR. BOOTHBY: Mr. Chairman, I rise to support the Hanna amendment, and also to make plain my position on this matter so I will not be charged with inconsistency a little later on. The board of supervisors is actually a unicameral legislative body, and this has been so of course for many, many years.

What we actually have in the Hanna amendment is a recognition of a principle to which I completely subscribe, and that is that we will give to each unit of government, both the city and township, an individual representation on this legislative body; and also, in addition to that, we will allow population to have representation also. So it will allow the people that live within the city and township units to have a representation for their own individual problems that arise out of a consensus problem of the particular unit of government. It also recognizes the problem which the people at large residing in the county have, and I feel that this has a great degree of merit.

What I am surprised to find is that Mr. Madar wants equal representation only for the city people, and not for the township people. And this amuses me, to a great extent, and I'm wondering what his position will be later on.

I would like to point out just in my own county what the problem is. Niles township and the city of Niles of course are adjacent to one another. Niles township has 11,934 people living within its boundaries. The city of Niles has 13,842. They are very similar in their population. Niles township has 1 representative on the board of supervisors, and the city of Niles has 5 representatives. A little further down in Berrien county we have the city of Bridgeman, with a population of 1,454 people, with 1 representative.

I cannot understand Mr. Madar's position. I do support the Hanna amendment.

CHAIRMAN BENTLEY: Does the gentleman desire to yield to the gentleman from Detroit for a reply?

MR. BOOTHBY: Yes.

MR. MADAR: Thank you very much. I so far haven't said anything about not giving any of the townships representation by population. I think that all of you heard me say that I felt that we should all have representation by population—not alone in townships and in cities, but also in counties—yes, the state of Michigan, where we are getting a much fairer representation from the federal government than we in Wayne county are getting from the state. All I said was that the townships could get representation by population by incorporating, by becoming a city.

I'm sure that you have had enough schooling—in fact, you have had more than I, I'm positive of this, because as I understand it you are a college graduate — but when I went to school, what I said meant that they could get representation by population. All they have to do is become a city to get it. Now, that isn't too tough to do. The only thing is, you must be fair and willing to pay your fair and proportionate share of your taxes.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Allegan, Mr. Farnsworth, to speak on the Hanna amendment.

MR. FARNSWORTH: Mr. Chairman, I, of course, for the committee, would have to oppose the Hanna amendment. I'd like to say that we on the local government committee are quite well pleased to find that we have so many friends of townships here at the convention. We like that. This is like getting back into the committee work again. This has been gone over and over in committee. I would urge each and every one of you, when we vote—which I hope will be soon—that unless you have good and compelling reasons based on knowledge and fact, that you support the committee in their position, and vote down the Hanna amendment.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Escanaba, Mr. Follo, to speak on the Hanna amendment.

MR. FOLLO: Mr. Chairman and members of the committee, I don't get up very often to oppose or support anything, but I find in the last couple of days I've gotten up twice now to oppose amendments by Mr. Hanna, and I assure him this is not on account of any personal animus.

I feel this way. Much of what I was going to say has been said by Glenn Allen and Julius Sleder, but we have a problem up in Delta county. The city of Escanaba and the city of Gladstone have over 2/3 of the population of the county, and yet we have less than half of the membership on the board of supervisors. I'm afraid that what Mr. Hanna's amendment would do would be to throw it farther into imbalance. For this reason I would like to oppose the Hanna amendment.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Mattawan, Mr. Finch, to speak on the Hanna amendment.

MR. FINCH: Mr. Chairman, members of the committee, I would like to support the Hanna amendment. I would say that this sounds like committee room A back a few weeks ago.

Also, one other thing. That is that some cities in our area with I believe only 850 population have 2 members on the board of supervisors, and with Glenn Allen saying that some townships in his area with 20,000 or more only have 1, I think that there isn't any reason why this Hanna amendment couldn't pass.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Sheridan, Mr. Gover, to speak on the Hanna amendment.

MR. GOVER: Mr. Chairman, fellow delegates, I want to go on record as supporting the Hanna amendment. In our committee on local government I had a proposal in there to give representation on the board of supervisors to villages, which the committee saw fit to defeat. Many of these villages are large size, and they increase the population of the township. I was told on my proposal that the supervisors would represent all the townships that need to be represented. For that reason I've got to go on record as being in favor of the Hanna amendment, so that some of the larger townships can get more representation on the board of supervisors.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Bay City, Mr. Higgs, to speak on the Hanna amendment.

MR. HIGGS: Mr. Chairman, fellow delegates, I would like to speak in favor of the Hanna amendment. In particular, I would like to call attention to and support the argument that Delegate Hanna made in favor of the principle of the township which is in the transient stage, so to speak, unable to decide whether it should or should not become a chartered township, whether it should or should not become a city, for fear of tying itself to a form of government in a fairly permanent form.

Now, I say this although in my township of 107,000 I myself live in the city, and our city includes probably more than a majority of the inhabitants of the county. But I come here not as a representative of the city, but as a representative of the entire county. And I do know that there are several townships adjacent to my city that do favor and would look sympathetically upon permitting this flexibility, permitting the legislature to attempt to solve this problem.

CHAIRMAN BENTLEY: The Chair recognizes the chairman of the committee, the gentleman from Pleasant Ridge, Mr. Elliott.

MR. A. G. ELLIOTT: I assume, Mr. Chairman, that you have others to recognize on this thing. May I just urge the delegates of this committee of the whole to be careful, and unless they have new ideas to add to something that has been cooked over now for a half hour, that we move on, because we have some other items, and I know there are other amendments on the floor.

CHAIRMAN BENTLEY: The Chair recognizes the lady from Dearborn, Mrs. Cushman, to speak on the Hanna amendment.

MRS. CUSHMAN: I have an amendment to the Hanna amendment which I wonder if I could present now, and speak on it.

CHAIRMAN BENTLEY: Mrs. Cushman, the secretary advises me that your amendment is not properly an amendment to the Hanna amendment, since it is to add a proviso to the end of the section, and the Chair would suggest that you offer your amendment at the appropriate time.

MRS. CUSHMAN: I wanted to add it to this business of "1 or more."

CHAIRMAN BENTLEY: The secretary will read your amendment.

SECRETARY CHASE: Mrs. Cushman's amendment is:

1. Amend page 2, line 16, after "law" by changing the period to a colon and inserting "Provided, That each unit of government shall be entitled to representation in proportion to population.".

CHAIRMAN BENTLEY: The Chair will reverse his ruling and rule that the amendment to the amendment is in order, and Mrs. Cushman is recognized in support of her amendment to the amendment.

MRS. CUSHMAN: What I think my amendment to the amendment does here is point out the issue fairly clearly. The issue is one of whether we are going to stick with the type of representation in the county that we are used to at the present time, which is a combination—it's really an area basis for the townships and a population basis for the cities, limited—or are we going to go to something that is really on a strict population basis? I have heard a lot of discussion here from people favoring the Hanna amendment, which indicates that they favor a straight population basis. This would be achieved by this amendment.

Now, I don't claim that my amendment is very perfect. I haven't had much time to work out the details. It might lead to a few problems.

For example, we have in the state of Michigan 1,258 townships, as I recall. Now 129 of those townships have populations of less than 300 people. One township has a population of as little as 27 people. This township is still entitled to 1 representative on the board of supervisors.

Now, as I would see it, if we were going to take that particular county—and I can't recall now which county it is—as our sample county, then you would have to work it out so that if you were going to give that 1 unit of population in that township, 27, a representative, then you would have to give every other group of 27 in that county 1 representative.

Now, this would lead, I think, to quite a few people on the board of supervisors, but it would be strictly in proportion to population. And I think that this is apparently the intent of the people who have indicated that they want a straight population basis.

Now, as I say, it has some real problems here. But what I am trying to point out to you is that if you go to a straight population basis, you've got to consider the fact that we've got some mighty small townships which are now getting a full representation, as well as some mighty big ones.

The way that we have hoped that we could work this out, if the counties wished to, was through a real home rule type of situation, where they would be free to set up the type of government that they would need for their county, and set up their board of supervisors in such proportion and with such numbers as would most fairly represent the people of their county. Thank you.

CHAIRMAN BENTLEY: The question is now on the Cushman amendment to the Hanna amendment. The secretary will again read the Cushman amendment.

SECRETARY CHASE: The Cushman amendment is:

[The amendment was again read by the secretary. For text, see above.]

CHAIRMAN BENTLEY: Does the lady from Livonia, Mrs. Conklin, desire to speak on the Cushman amendment?

MRS. CONKLIN: Mr. Chairman, I'm not sure. I have a question that I would like to ask. I didn't mean to get involved in an apportionment problem here. I just simply can't seem to get an answer yet. I would like to direct the question to Mr. Allen, if I may, as to why cities should be handled any differ-

ently than townships. I think we've gotten awfully far afield from what I think the intent of the Hanna amendment was, in my opinion, and I would like to find out why cities should be handled any differently than townships.

CHAIRMAN BENTLEY: The lady yields to the gentleman from Kalamazoo for a reply.

MR. ALLEN: The reason, Mrs. Conklin, is that the constitution provides for 1 from each township, period. That's all that is in the constitution. Now, in order to get representation from the cities, this has been handled by legislation. And because your cities are generally much larger than townships, the legislature set the matter up this way.

While I'm answering, I might say that if there are those who feel that cities are overrepresented, particularly your small towns, the correction is not here in the constitution, but is over at the legislature. There they have some flexibility.

MR. KUHN: Point of order.

CHAIRMAN BENTLEY: Will the gentleman state it.

MR. KUHN: The way I understand the Cushman amendment, it is completely out of order, based on the Hanna amendment. The Hanna amendment says there shall be at least 1 supervisor from each township and city, and hers says that it must be strictly according to population at the end. This could leave a township or city without any, and therefore I say that it is inconsistent.

CHAIRMAN BENTLEY: Does the lady from Dearborn, Mrs. Cushman, desire to speak on the point of order?

MRS. CUSHMAN: Yes. I don't see that it would leave anybody without representation. In fact, I specifically put in there that every unit would be represented according to population. I don't see that there is any implication here to the contrary.

CHAIRMAN BENTLEY: The Chair rules that the amendment is consistent with the Hanna amendment, and the point of order is overruled.

Does the gentleman from Detroit, Mr. Stevens, desire to speak on the Cushman amendment?

MR. STEVENS: Mr. Chairman, members of the committee, it seems to me quite simple that what Mrs. Cushman is attempting to do will be provided for, I suppose, in a later proposal for county home rule. I don't see how you can get any thing as complicated as this in any other way. It would change the whole present system of county government.

CHAIRMAN BENTLEY: Does the gentleman from Allegan, Mr. Farnsworth, desire to speak on the Cushman amendment?

MR. FARNSWORTH: Mr. Chairman, I would, thank you. Now, I would like to get the Cushman amendment squarely before the committee. The Cushman amendment was to put the selection of the board of supervisors strictly on a population basis. So let's do a little arithmetic. We take 1 from each township. That is settled. We are all in agreement with that, that there will be 1 from each township.

So let's take this township that has 300 people in it. They would get 1, wouldn't they? Then let's take the township with 3,000 people, and they would get 10. Now we have this city that you have been talking about with 30,000 people in it, and they would send 100 people down there. Now, just how large a board of supervisors do we want? Don't you see how inconsistent some of these things get when you start tinkering with them! So I say, again, to you: vote down the Cushman amendment.

I hope it gets to be a habit with you, so that when you get to the Hanna amendment, you will vote that one down, too. (laughter) And, again, I must say to you, unless you have good and compelling reasons, based on facts and knowledge, let's vote these down and get going.

CHAIRMAN BENTLEY: Does the gentleman from Pontiac, Mr. King, desire to speak on the Cushman amendment?

MR. KING: Yes, I do. I also suggest that we vote down the Cushman amendment. I'm afraid the distinguished lady from Dearborn is using a devious means to kill a very worthwhile amendment, the Hanna amendment. And I suggest that we vote down the Cushman amendment, but not confuse the two. I think there is a great deal of merit in the Hanna amendment, because he is not proposing any formula or any apportionment or anything like that. We are merely giving to the legislature a power which I think any of us who believe in constitutional government would agree that they ought to have.

CHAIRMAN BENTLEY: Does the gentleman from Pontiac, Mr. Kuhn, desire to speak on the Cushman amendment?

MR. KUHN: Mr. Chairman, I would have to speak against the Cushman amendment, because I don't understand it, and because of the fact that I do not think it does what you are trying to tell me it does. Therefore I'm against it. (laughter)

CHAIRMAN BENTLEY: The gentleman from Muskegon, Mr. Hanna, is recognized to speak on the Cushman amendment.

MR. W. F. HANNA: Mr. Chairman and delegates, the Cushman amendment would completely change the present representation on the board of supervisors, not only as to townships, but as to cities. The representation by cities is by class of population, not in proportion to population. All the Cushman amendment does is scramble the eggs, but good. What my amendment did was to say in effect that the legislature shall have permission to classify townships of 5,000 to 10,000 population in the same bracket as cities of 5,000 to 10,000. I would trust the wisdom of the legislature. But to attempt to put them on straight population, as the Cushman amendment does, is to scramble the eggs of every board of supervisors, and not erase the discrepancies that exist because the board of supervisors is a representation of governmental units, as well as people.

CHAIRMAN BENTLEY: The question occurs on the amendment to the amendment offered by the lady from Dearborn, Mrs. Cushman. As many as are in favor of the amendment to the amendment will respond by saying aye. Those opposed.

The amendment to the amendment is not adopted.

The question now occurs on the amendment offered by the gentleman from Muskegon, Mr. Hanna. The Chair recognizes the chairman of the committee, the gentleman from Pleasant Ridge, Mr. Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, ladies and gentlemen, Mr. Hanna, as chairman of the committee on local government, I would be constrained to urge a no vote on the Hanna amendment—not because I don't believe that the intent of Mr. Hanna's amendment is a sound one, because I think that in his approach he was trying to reach a solution which our committee debated for a long time. We went through every argument that you have heard on this floor, and a few that I'm afraid you may hear before we rise, and when we got through we could not come to a decision. And we had the amendments that Mr. Hanna has introduced within our committee, and they were defeated. Finally, when we became fully aware of the fact that the problem was as complex as it now seems to be, we voted on retaining section 7 of article VIII of the 1908 constitution as it was, and our vote on that motion was unanimous.

MR. FORD: Point of personal privilege, Mr. Chairman.

CHAIRMAN BENTLEY: The gentleman will state it.

MR. FORD: As a member of the committee on local government, this must have been one of the meetings I wasn't invited to, because we did not vote unanimously at any time on the consideration of this issue.

MR. FINCH: Mr. Chairman, a point of personal privilege, also.

CHAIRMAN BENTLEY: The gentleman will state it.

MR. FINCH: The same thing is true. This was not a unanimous vote by my vote.

MR. A. G. ELLIOTT: I should have clarified it. Mr. Ford, Mr. Finch, I'm sorry; what I meant to say was that in the vote that was taken on this, in the final reading, the vote was unanimous. I could check to see whether these 2 gentlemen were there.

MR. MADAR: Mr. Chairman—

CHAIRMAN BENTLEY: For what purpose does the gentleman rise?

MR. MADAR: I just want to make a correction here. All of the committee members have always been invited to all of the meetings. It is a matter of record.

CHAIRMAN BENTLEY: The Chair recognizes the lady from Grand Rapids, Mrs. Judd, to speak on the Hanna amendment.

MRS. JUDD: I just want to second what Mr. Elliott has said. I think the experience on the floor has proved that it is impossible to write a formula in the constitution that will be satisfactory to every county. It would be equally impossible, I think, or almost so, for the legislature to write a general law that would be satisfactory to every county. This is a problem that has to be worked out in each county, and which could be done under a home rule amendment. This is the reason we have recommended this proposal. We know it isn't particularly good, but it is the best that we could work out for all counties.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Muskegon, Mr. Hanna, to speak on his amendment.

MR. W. F. HANNA: Mr. Chairman, I would like to address Mrs. Judd. Will you consent to changing the language to "there shall be 1 supervisor from each city and 1 supervisor from each township"? Because if it's so difficult to work out a formula for the metropolitan township, certainly the legislature, as you have classified them, could never work out a formula for the cities. The poor dears over there would struggle with it, and would never be able to arrive at any formula. Certainly, if they are intelligent enough to approach it as to a formula for cities, they are intelligent enough to approach it for the 100 townships or so that are faced with this problem. (applause)

CHAIRMAN BENTLEY: The gentleman yields to the lady from Grand Rapids, Mrs. Judd, for a reply.

MRS. JUDD: Of course, I have a great deal of respect and hope for the legislature, Mr. Hanna. However, I think that I will stick by the committee proposal, and I think it's just up to the convention to decide which one they like.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Pontiac, Mr. Kuhn, to speak on the Hanna amendment.

MR. KUHN: Mr. Chairman, first let me say that I agree 100 per cent with Bill Hanna. We are not attempting to write any formula. This is the same provision that is in the constitution today, except for one small, minute change, and that is: we take away the restriction that townships shall be limited to 1 member on the board of supervisors. We are not doing anything else but taking away that restriction.

The constitution today does not set a formula for the legislature as to how they should set up boards of supervisors as to city people. We are not asking them to do it now.

I would like to reply to one thing that Brother James Farnsworth had to say. He said that this committee had agreed we should follow the majority report, and gave great emphasis on the majority report. Several other delegates of that committee said the same. Then I happened to see on my desk a minority report from this same committee. I'll agree it's on another subject, but I understand that Mr. Farnsworth is also one of the leaders of that minority. (laughter) And I would like to add that not only did Mr. Farnsworth sign this minority report on Committee Proposal 89, but also Glenn Allen, James Farnsworth, Dorothy Judd, Julius Sleder and Charles Follo, all the people that spoke against the Hanna amendment. (applause)

CHAIRMAN BENTLEY: The committee will be in order. The Chair recognizes the gentleman from Traverse City, Mr. Sleder, to speak on the Hanna amendment.

MR. SLEDER: Fellow delegates, I feel we are losing the philosophy on county government. We are being carried away with an area here that doesn't apply to the standard form of county government.

And again I must refer to the fact of the reason why we have a county government, and that is for a certain type of service. And we must keep these services in balance. As soon as you distort the representation on the board of supervisors from the areas that supplement and support this form of government on the same basis, you are destroying the standard form of county government as we've known it in Michigan.

And this is important. As soon as we get more representation from one township that can ask for and receive more services from that same county, we then are spoiling our county form of government. Now, this is important, and this is what you must remember. And this is why you must defeat the Hanna amendment.

CHAIRMAN BENTLEY: The question occurs on the amendment offered by the gentleman from Muskegon, Mr. Hanna. As many as are in favor will respond by saying aye. Those opposed will say no.

The amendment is adopted.

A DELEGATE: Division.

CHAIRMAN BENTLEY: A division has been demanded. There is a sufficient number. Those in favor of the Hanna amendment will vote aye. Those opposed will vote no. The secretary will lock the machine.

SECRETARY CHASE: The vote on the adoption of the Hanna amendment is yeas, 52; nays, 58.

CHAIRMAN BENTLEY: The amendment is not adopted.

The secretary will report the next pending amendment to section f of the committee proposal.

SECRETARY CHASE: Mr. Kuhn has offered the following amendment:

1. Amend page 2, by striking out lines 12 through 16 and inserting "Sec. f. A board of supervisors, consisting of at least 1 from each organized township, and at least 1 from each city, may be established in each county, with such powers as shall be prescribed by law. The balance of the membership of the board of supervisors shall be selected upon a population basis as may be provided by law.".

CHAIRMAN BENTLEY: The gentleman from Pontiac, Mr. Kuhn, is recognized in support of his amendment.

MR. KUHN: I won't have very many words to say on this, except that this would put the townships on an equal basis with the cities in our county form of government.

CHAIRMAN BENTLEY: Is there discussion on the amendment offered by the gentleman from Pontiac? The Chair recognizes the gentleman from Allegan, Mr. Farnsworth.

MR. FARNSWORTH: Mr. Chairman, I make a point of order that that is essentially the same as what we just voted down.

CHAIRMAN BENTLEY: Does the gentleman from Pontiac desire to respond to the point of order raised by the gentleman from Allegan?

MR. KUHN: I raised the same point of order on Mrs. Cushman's amendment, and you told me that it was in order. And I tried to get my amendment up earlier, and you told me I was out of order. So I would think it goes without saying that we should have a vote on my amendment.

CHAIRMAN BENTLEY: The Chair finds that the amendment offered by the gentleman from Pontiac, Mr. Kuhn, contains these words, "The balance of the membership of the board of supervisors shall be selected upon a population basis as may be provided by law," and feels constrained to overrule the point of order. The amendment is accepted as being in order.

MR. KUHN: Mr. Chairman, in other words, you are saying that you were mistaken earlier when I raised this question? (laughter)

CHAIRMAN BENTLEY: The Chair has ruled that your amendment is in order, and the gentleman may proceed.

MR. KUHN: Thank you. I have no further comments.

CHAIRMAN BENTLEY: The gentleman from Allegan.

MR. FARNSWORTH: Mr. Chairman, for the same reasons that the committee has opposed the other amendments, they likewise would oppose this one, and urge that you not adopt it.

CHAIRMAN BENTLEY: The vote occurs on the amendment offered by the gentleman from Pontiac, Mr. Kuhn. As many as are in favor will respond by saying aye. Those opposed say no.

The amendment is not adopted.

MR. KUHN: Division.

CHAIRMAN BENTLEY: The gentleman demands a division. Is the demand supported?

SECRETARY CHASE: Ten.

CHAIRMAN BENTLEY: There's a sufficient number. Those in favor of the amendment by the gentleman from Pontiac will vote aye. Those opposed will vote no. The secretary will lock the machine.

SECRETARY CHASE: On the adoption of the amendment offered by Mr. Kuhn, the yeas are 28; the nays are 75.

CHAIRMAN BENTLEY: The amendment is not adopted. The secretary will report the next pending amendment to section f.

SECRETARY CHASE: Mr. King offers the following amendment:

1. Amend page 2, line 12, after "1" by inserting "or more members elected"; and in line 13 after "township" by inserting "or city"; so the language will then read, "A board of supervisors, consisting of 1 or more members elected from each organized township or city, shall be established in each county. . . ."

CHAIRMAN BENTLEY: The gentleman from Pontiac, Mr. King, is recognized in support of his amendment.

MR. FARNSWORTH: Mr. Chairman, point of order.

CHAIRMAN BENTLEY: The gentleman will state it.

MR. FARNSWORTH: We have just had the language of 1 or more from a township. We just got through voting on it.

CHAIRMAN BENTLEY: The Chair would have to rule that because of the insertion of the word "elected" the amendment does not contain the same language you just previously voted on, and overrules the point of order.

The gentleman is recognized.

MR. KING: Mr. Chairman, ladies and gentlemen of the delegation, I don't know just how to approach this problem, because we obviously have turned down the idea of any more than 1 supervisor being allowed from a township, no matter how large; and if we won't grant any kind of reasonable representation, I guess it would be quite a lot to expect that we allow the people to select these people. But I'll carry on anyway.

I really believe in the representative type of government that we have here in America, and I think it would be a nice idea if we could elect our representatives.

Now, in my city of Pontiac, I don't know my supervisors, and they don't know me, and I'm sure that they are not going to put themselves out to report back to me, inasmuch as I didn't put them on the board. They are appointed by the city commission, and they know who they are responsible to; they are responsible to the city commission. Maybe that's a good form of government, I don't know.

But, seriously, the argument that is going to be raised is that the cities and the counties ought to have the same people serving in both places. Now, our mayor, of course, is also on the county board of supervisors. I don't think this is a valid argument. I think we ought to have a separation between levels of government. I don't think that the supervisors should necessarily sit in the legislature. I don't think the governor should sit in the United States senate. I think that we ought to keep separate these various levels of government.

I think that the members of the county board of supervisors ought to be elected by and responsible to the people. And inasmuch as you have already decided that we are not even going to permit the legislature to have any kind of apportionment, I would like to withdraw these words "or more" and just leave the word "elected," if I may. I don't want to confuse the issue.

CHAIRMAN BENTLEY: Is there objection to the request of the gentleman that he be permitted to revise his amendment? Hearing none, it is so ordered.

The secretary will read the amendment as revised.

SECRETARY CHASE: The language of the amendment now offered by Mr. King is, "A board of supervisors, consisting of 1 member elected from each organized township or city. . . ." Is this what you are after, Mr. King?

MR. KING: That does point out the problems you get into when you try to deal with the degree of inequality between cities and townships, but that is not what I'm after.

Maybe I better sit down and try to draft it, but what I would like to say is that we ought to elect all of the supervisors, and I guess it's the decision of this group here that cities will be entitled to 1 or more, and townships will be entitled to 1 only. That's what I'm trying to arrive at, because I don't want to be paying for a dead horse, and Mr. Hanna's horse has already died. (laughter)

CHAIRMAN BENTLEY: The gentleman from Allegan, Mr. Farnsworth, is recognized.

MR. FARNSWORTH: Mr. Chairman, I must say at this point that the committee is somewhat confused as to exactly what Mr. King would like to have us vote on.

Mr. King, are you asking us to vote on the proposition as to whether we elect, as against appointment of city representation of supervisors?

MR. KING: Yes.

MR. FARNSWORTH: That is what you would like to have us vote on?

MR. KING: Yes.

MR. FARNSWORTH: All right. I understand it completely, now. Thank you very much.

Mr. Chairman and members of the committee: I might say, again, that this was explored at quite some length in the local government committee, and quite a lot of testimony was developed that some of the better members of the boards of supervisors coming from cities certainly are the appointed members. It was also brought out that in many, many cases these men would not be available to the boards if they had to run for election.

However, it is a good question, it should be settled, and we are quite willing to put it to a vote. But, again, we urge you, unless you have good and compelling reasons based on knowledge and facts, that you go along with the committee and vote down the amendment.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Detroit, Mr. Stevens, on the King amendment.

MR. STEVENS: Mr. Chairman and members of the committee, I should like to know what we in Wayne county, in the city of Detroit, would do if we had to elect over 60 members of the board of supervisors. Until such time as a board of supervisors is made smaller, it seems to me an impossible task. If you don't know your supervisors now, those of us in Detroit certainly would not know the candidates who might be on the ballot.

CHAIRMAN BENTLEY: The Chair recognizes the chairman of the committee, the gentleman from Pleasant Ridge, Mr. Elliott.

MR. A. G. ELLIOTT: Mr. Chairman and ladies and gentlemen of the committee, our committee spent almost as much time on this particular subject as we did on the one which we have just discussed. There is, however, one bit of information that Mr. King didn't tell the committee, which I think is important, and that is this: that those appointive members of the board of supervisors are only appointive because the charter under which their city is operated so states, and that those people that Mr. Kuhn was talking about were the ones that adopted the charter; and therefore it would be possible that any time any community wished to have an elective board of supervisors, they have the means available for them to so do.

And so, after all of the discussion was heard in our committee, we arrived at the decision that this section was as nearly proper as we could make it as it now reads in the 1908 constitution.

MR. PRETTIE: Point of order, Mr. Chairman.

CHAIRMAN BENTLEY: The gentleman will state it.

MR. PRETTIE: As I understand it, the parliamentary posture is that Mr. King has withdrawn his amendment, and we have nothing before us to consider.

CHAIRMAN BENTLEY: The gentleman has not yet asked permission to withdraw his amendment. Does he so ask permission?

MR. KING: Mr. Chairman, I'm sorry for this confusion. I have straightened the matter out and have given the proper wording to the secretary. I did not intend to withdraw it. I merely meant to try to sit down and clarify it, which I have done. And I think at this time, if the secretary could read my new amendment, it would clarify the situation.

MR. PRETTIE: I will withdraw my point of order.

SECRETARY CHASE: Mr. King's amendment, as revised, is now as follows:

1. Amend page 2, line 14, after "such" by inserting "elected"; so the sentence will read, "Cities shall have such elected representation in the boards of supervisors of the counties in which they are situated as may be provided by law.".

CHAIRMAN BENTLEY: Is there objection to the request of the gentleman to withdraw his amendment and insert the new language? Hearing none, it is so ordered.

The gentleman from Kalamazoo, Mr. Allen, is now recognized.

MR. ALLEN: Mr. King, let me ask you a question before I make some comments, to be sure I understand. I was a member of the board of supervisors, and still am. I was elected a city commissioner. By virtue of being a city commissioner, I went to the board of supervisors under our charter. Now, under your amendment, am I elected or not elected?

CHAIRMAN BENTLEY: The gentleman yields to the gentleman from Pontiac, Mr. King.

MR. KING: Mr. Chairman, Mr. Allen, under my amendment you would qualify.

MR. ALLEN: I would qualify?

MR. KING: Yes.

MR. ALLEN: All right. I raised the point because the same thing happens on a supervisor. A supervisor is elected a township supervisor. He is not elected a member of the board of supervisors. He is elected a township supervisor. By virtue of the statute he then is entitled to sit on the board of supervisors. Now, since we are only talking about people who are appointed from the city to the board of supervisors under your proposed amendment, as distinguished from their election, even though they may be elected as city commissioner or mayor or something like that, I think the committee should know that the charters of most of the large cities in Michigan, adopted by the people, have provided for appointed members. These are not by any means the majority. They are the minority. Our charter, for example, in Kalamazoo, provides that the city assessor and the city attorney are appointed members of the board of supervisors.

If your amendment prevails here, you are undoing the charters of the various cities. Now, maybe that's all right to do. But I want the committee to know it.

Secondly, I would like to say this. That in our case our city assessor is one of the most valuable members of the board of supervisors, particularly when it comes to equalized values, the valuations, assessments and county equalizations, and our city attorney is, too.

And thirdly, I know one city right now which has had such a dismal experience where they have elected their supervisor to the board of supervisors—he is not elected as a mayor, but he is elected as a supervisor—they have so little interest in the election, and so on, that they are thinking of revising their charter to go to some other system.

Now, I think this is the kind of problem that you run into under your amendment. You bar out the appointed member, and often that appointed member is there in a very, very useful and trained capacity.

MR. KING: Will the gentleman yield?

CHAIRMAN BENTLEY: Do you yield to the gentleman for a reply? The gentleman from Pontiac, Mr. King.

MR. KING: My only point in this regard is it seems as though what you are saying, Mr. Allen, is that regardless of how the counties want to run themselves, or how they think they ought to be run, or how the people in the counties want to run themselves, that the representation from the cities is up to the cities and up to the city charters. Now, I don't personally agree with this. But if you will assure me that we have some chance of getting some decent home rule, I'll withdraw my amendment and fight it out in my own home county.

MR. ALLEN: It depends on whether you accept the minority or the majority report. (laughter)

MR. KING: I don't accept the majority report.

CHAIRMAN BENTLEY: The gentleman from Grand Rapids, Mr. Blandford, is recognized to speak on the King amendment.

MR. BLANDFORD: Mr. Chairman, my points have been pretty well covered by Mr. Elliott and Mr. Allen. This is strictly a problem with cities, and the problem can be simply handled by cities, as has previously been mentioned, by changing their charters. It certainly should not be a part of this constitution.

We in Grand Rapids have a combination of methods. We elect some and appoint some. And any city can do the same thing if they merely change their charter.

This, I feel, certainly should not be a part of this constitution.

CHAIRMAN BENTLEY: Does the gentleman from Grand Rapids yield to the gentleman from Pontiac for a reply?

MR. KING: Mr. Chairman, I think that I have seen here today some of the reasons why we need home rule. Because of that, I'm going to withdraw my amendment, if there's no objection, and let's have it out on home rule and come up with something so that these problems can be solved.

CHAIRMAN BENTLEY: The gentleman asks unanimous consent to withdraw his amendment. Is there objection?

MR. DOWNS: I object.

CHAIRMAN BENTLEY: Objection is heard. The gentleman from Detroit, Mr. Yeager, is recognized to speak on the King amendment.

MR. YEAGER: Mr. Chairman, I can't help but ask the question, what has happened to all of the advocates of "one man, one vote"? It seems to me they are very silent on this question. You'll pardon the expression, but I think it boils down to whose gore is being oxed. (laughter)

CHAIRMAN BENTLEY: The gentleman from Detroit, Mr. Downs, is recognized to speak on the King amendment.

MR. DOWNS: I believe, Mr. Chairman, that my comments will answer the question raised by the earlier speaker. In fact, my raising the objection to withdraw the amendment was so that I could express myself rather freely, and I hope not too long.

I do, as I told the committee earlier, have some amendments which Miss Hart and I are in the process of preparing and having the research department review, which will be presented on Committee Proposal 89.

I do want to call to the delegates' attention that what we are talking about is a very basic element of government. A board of supervisors is a legislative body. The question here is, should a member of the legislative body be elected or be appointed? I stand 4 square that anybody serving in a legislative role should be elected to that position. And I further support the concept that he should be elected on a "one man, one vote" basis; and I will even go so far as to say: to assure it's a responsible form of government, it should be on a responsible partisan party basis. That may be beyond the immediate amendment.

But I believe that Mr. King's amendment is sound, in that it is a step in the direction of strengthening county government, and strengthening the board of supervisors. And I call the delegates' attention, particularly, to the fact that we are talking not only about a board of supervisors as we now have, but one that may have extended powers—powers to select the members of the executive branch of the county, the clerk, the treasurer, and so forth—and it is even more important that we see there is a board of supervisors that represents the people and is responsible to the people.

If the delegate from Kalamazoo wants assessor technicians, fine. You can hire them. But have them hired by a legislative body that is elected.

I do in fact think it would be an interesting constitutional question, and I don't believe it has ever been before the state supreme court, as to whether our present board of supervisors is in fact a constitutional body when there are members of that legislative body that are not now elected.

I hope I have made myself clear to my fellow delegate from Detroit that I favor an elected board of supervisors; I favor it on "one man, one vote." Thank you.

CHAIRMAN BENTLEY: Does the gentleman from Detroit care to yield to either Mr. Stevens or Mr. Wanger?

MR. DOWNS: I will yield to Mr. Wanger, and then to Mr. Stevens.

CHAIRMAN BENTLEY: Mr. Wanger.

MR. WANGER: Mr. Downs, I just wanted to ask, as I understand this amendment as it is now before us, this applies just to cities. That is, all the supervisors that come from any city must be elected, in such way as will be provided by law. Well, I just wondered. Our largest city is the city of Detroit, and during the campaign for the constitutional convention, and since then, we have heard about the bedsheet ballot, a long, long ballot, in our bigger cities. Now, everybody doesn't have this problem, but some of the big cities do. And I just ask, will this amendment, if adopted, increase that problem in the city of Detroit?

MR. DOWNS: Well, you give me a moment's pause on this one. Your question, as I understand it, is: if we elect supervisors from Detroit, would it make it a longer ballot or a shorter one? It could do it either way. I think this should be clear, and I would yield to Mr. King if I do not quote his amendment correctly. I spoke briefly to it.

As I understand, this would mean that the person would need to be elected, but if he were an elected council member, he could by virtue of that office also serve on the board of supervisors. The key would be election; it would not be appointment.

Now, if we went further and got equal representation, I think it would be up to the charter commission on the home rule situation to define how the areas would be divided. For example, if the city of Detroit were entitled to the same number of people on the board of supervisors as there are state representatives, each state representative district could also elect a member to the board of supervisors. This would make a longer ballot. I, for one, think a longer ballot is a small price to pay, in preference to having somebody appointed to serve in a legislative capacity. Does that answer your question?

MR. WANGER: Yes.

CHAIRMAN BENTLEY: Does the gentleman yield to Mr. Stevens?

MR. DOWNS: Yes, I yield to Mr. Stevens.

MR. STEVENS: Mr. Downs, so long as we have the conventional type county government, and so long as we must—even if about 12 officers serve ex officio—elect something like 50, do you still, for that time and under these conditions, favor election by the people of Detroit?

MR. DOWNS: I am wondering, through the Chair, if I could ask for the question to be repeated. I was not quite sure on the 50 and 12.

MR. STEVENS: I was being approximate. We have something like 62 supervisors, or members of the board of supervisors, on the Wayne county board. About 12 of them are ex officio. They are elected. That's the councilmen, the mayor, the city treasurer and city clerk. The rest of them, or at least most of them, are appointed by these persons who are ex officio. If they were all elected, we would have approximately 50 to elect. You speak about a commission type or a home rule type government, which obviously would probably reduce that number very considerably.

MR. DOWNS: Yes.

MR. STEVENS: I'm asking you, do you favor it under the present conditions?

MR. DOWNS: Let me put it this way. I always favor elected legislative officials over any form of appointed legislative officials. I want to make that clear.

Now, I think that the county of Wayne—and I believe it will be coming up on our later proposals—as other counties, should have the right to reduce the size. I believe there are now about 111 members on the board of supervisors of Wayne county. Personally, I think that's too big. I think that should be reduced. I think counties should have a maximum of flexibility of the size or the number of the members of the board of supervisors, but they should all be elected. But I am supporting—and I believe this is consistent with Mr. King's recommendation—that council members could no longer appoint members to the boards of supervisors.

MR. STEVENS: To go a little further, what I'm talking about is a present condition. I understand we are talking about the standard in conventional townships, not a township under home rule. That's something else. If the Wayne county voters want home rule, and want to set up a small board of supervisors, then what you have in mind is something else.

MR. DOWNS: Yes, I believe that the King amendment is limited to the matters of boards of supervisors representing cities; and, as such, this would simply provide that those would need to be elected, and could not be appointed. I believe the language is "elected as may be provided by law." It does not spell out the method, and that could be done by appropriate legislation.

CHAIRMAN BENTLEY: The Chair recognizes the lady from Port Huron, Miss Andrus, to speak on the King amendment.

MISS ANDRUS: Mr. Chairman and members of the committee, I asked for recognition long, long ago, and I think Mr. Allen pretty much answered what I wanted to ask. Then I thought this was going to be withdrawn. I understand it is not being withdrawn. I would like to ask Mr. King this question again. Perhaps Mr. Allen answered it satisfactorily or sufficiently, but I would like to know a little more. In my community we have 11 elected supervisors from precincts, and then we have 6 who are provided in our city charter, 3 of them ex officio—the city assessor, the city treasurer and the city attorney—and then the mayor appoints 3.

Now, in the past the mayor was always very modest. He didn't appoint himself. And as I have attended meetings of the board of supervisors, other communities had the mayor there. The townships had the supervisor. The supervisor is the administrative officer, and he could speak for his township. We had no one speaking for the city. Finally one mayor got up courage enough to appoint himself. We have been doing it since, and it has been much more satisfactory. It has made a much better representation on the board.

Now, the supervisor of the township is the administrative executive officer. Should you elect someone else to represent your township on the board of supervisors, or would you say the person who is elected—and we call him a supervisor—as an administrative officer should represent the township on the board?

CHAIRMAN BENTLEY: The lady yields to the gentleman from Pontiac, Mr. King, to reply.

MR. KING: I am perfectly happy, as long as somewhere, somehow, at some time these people are responsible to the citizens.

MISS ANDRUS: I mean, would you have 2 people elected? One is your township administrator, and then one to represent the people on this legislative body?

MR. KING: As a matter of personal opinion, I'm satisfied with the present system. My amendment does not touch in any way this present situation with regard to townships.

MISS ANDRUS: I thought that's what you meant. You elect somebody to be your county administrator, assessor and so forth, and then you will also represent the township on the board of supervisors. Now, in this matter of election of supervisors in the cities, would you expect that people who are elected or chosen by the city to be the mayor, to be the assessor, and to do things like that, would also serve on the board, or would we elect people especially to represent our city on the board?

MR. KING: Well, as long as they were elected mayor, then I would have no objection to their serving on the county board. But if you have an appointed assessor or an appointed city attorney, then I would object to that.

MISS ANDRUS: In other words, the township can have their assessor on, but the city couldn't unless they had them elected. Thank you.

MR. KING: Did you ask a question? Did you want a reply? Or did you just want to comment?

MISS ANDRUS: I thought you answered it. You said

if an assessor were elected, he would be on; but if he were appointed, he would not serve.

MR. KING: That's right. If the supervisor in the township is elected, he would also be eligible to serve on the county board.

MISS ANDRUS: But an assessor in the city would not, unless he were elected.

MR. KING: That's right.

MISS ANDRUS: Thank you.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Allegan, Mr. Farnsworth.

MR. FARNSWORTH: Mr. Chairman, members of the committee, I only want to call your attention again to what you are endeavoring to do here, and I don't believe this was the intention of Mr. King when he made the amendment, but it has this practical effect, it has the effect of restricting every city charter in the state of Michigan. It is attempting to do something that the legislature in its wisdom has not seen fit to do in over 50 years. Now, do we want to do that?

Mr. Downs is concerned somewhat about the people really having a choice. Now, they have expressed that choice through adopting a city charter, and under that city charter they have in some cases said that we will elect these supervisors; in other cases they have said we will appoint them, for various reasons.

Again, I want to emphasize that what you are doing, if you vote this amendment in, is restricting the option that local people have to frame their charters. We urge a vote against it.

CHAIRMAN BENTLEY: Does the gentleman yield to the gentleman from Pontiac, Mr. King?

MR. FARNSWORTH: I yield to Mrs. Judd from Grand Rapids.

MRS. JUDD: Mr. Chairman, I would like to develop just a little further the point that Mr. Stevens was talking about. I think we've gotten away from our realization that we are talking about the 83 counties of Michigan under the present form of government. We are not talking about a new form of government under home rule, under which a county might undertake to become not merely the administrative arm of the state, but also carry on municipal functions with a policy making job ahead of it.

Now, when you get into that kind of power, that is when you do need a policy making body accountable to the people. But we are still talking about the county as it is today; chiefly, the administrative arm of the state. Consequently, the question of election is not as vital as it would become under the changes that may be suggested later.

When we drafted this about 2 months ago, the convention was in a mood to accept all of the old language in the constitution, so we thought this was going to be a cinch. But you can see there's a new mood in the convention, and this is part of our difficulty. May I yield to Mr. Elliott?

CHAIRMAN BENTLEY: The gentleman from Allegan still has the floor. Does he desire to yield to his chairman?

MR. FARNSWORTH: Mr. Chairman, I yielded the floor.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Detroit, Mr. Nord, to speak on the King amendment.

MR. NORD: Mr. Chairman, my point has been made, and I will pass.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Detroit, Mr. Madar, to speak on the King amendment.

MR. MADAR: Mr. Chairman, my remarks will be brief, because I think that part of my statement was given by Mr. Allen when he said that you can get better members of the board of supervisors when you appoint heads of departments and men who have had a lot of experience, as we have had them in the city of Detroit, than some of those that we have elected.

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Rogers City, Mr. Radka, to speak on the King amendment.

MR. RADKA: Mr. Chairman, my remarks will be quite brief. I have heard it very wisely said that sometimes speakers are inclined to exhaust their audience before they exhaust their subject. I would just like to say that I'm exhausted. (laughter)

CHAIRMAN BENTLEY: The Chair recognizes the gentleman from Bloomfield Hills, Mr. Woolfenden, to speak on the King amendment.

MR. WOOLFENDEN: A parliamentary inquiry, Mr. Chairman.

CHAIRMAN BENTLEY: The gentleman will state it.

MR. WOOLFENDEN: Can the committee of the whole operate without a quorum? If not, I ask that there be a count of the delegates.

CHAIRMAN BENTLEY: Are you making a point of order that no quorum is present, Mr. Woolfenden?

MR. WOOLFENDEN: I question whether there is a quorum present. I just counted a few moments ago, and there was less than a quorum.

CHAIRMAN BENTLEY: The Chair will count.

MR. KUHN: Mr. Chairman, point of order.

CHAIRMAN BENTLEY: The gentleman will state it.

MR. KUHN: It has always been my impression that when you're in the committee of the whole you don't need the quorum that you need when you're in convention. I would like you to rule on that.

SECRETARY CHASE: There are 83 members present.

CHAIRMAN BENTLEY: A quorum, 83 members, is present. The question is on the amendment offered by the gentleman from Pontiac, Mr. King, who is seeking recognition.

MR. KING: Mr. Chairman, I still think I had a right to withdraw this. I'm disappointed that we are bogging down on this issue, and I would just as soon fight it out under the home rule section. So I think I have a right to withdraw it under rule 46, even though you ruled me out of order before.

CHAIRMAN BENTLEY: Do you make a point of order against the Chair's previous ruling?

MR. KING: Yes, I do.

CHAIRMAN BENTLEY: The Chair will sustain your point of order. He was quoting from Mason's, but upon being advised that rule 46 permits the withdrawal without a request for objections, the amendment is withdrawn. (applause)

Are there any pending amendments to this section?

SECRETARY CHASE: That is the last amendment that has been filed to this section, Mr. Chairman.

CHAIRMAN BENTLEY: Without further amendment, this section will pass.

Section f is passed. Mr. Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, I now move that the committee rise.

CHAIRMAN BENTLEY: The question is on the motion that the committee rise. All those in favor will respond by saying aye. Those opposed?

The committee has risen.

[Whereupon, the committee of the whole having risen, President Nisbet resumed the Chair.]

PRESIDENT NISBET: Mr. Bentley.

MR. BENTLEY: Mr. President, the committee of the whole has had under consideration certain items on the general orders calendar, of which the secretary will give a detailed report.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 81,** A proposal pertaining to county government. It has considered a number of amendments relative thereto, and has come to no final resolution thereon. This completes the report of the committee of the whole, Mr. President.

PRESIDENT NISBET: Mr. Woolfenden.

MR. WOOLFENDEN: Mr. President, on behalf of the committee on judicial branch, I ask unanimous consent to file with the secretary a committee amendment and the reasons therefor to Committee Proposal 96, so that it may be printed in the journal, with the explanation. The amendment is on the secretary's desk.

PRESIDENT NISBET: Without objection, it will be printed.

For the committee amendment and reasons therefor, see below under date of March 9.

Mr. Hanna.

MR. W. F. HANNA: Mr. President, a question of parliamentary procedure. I would like to renew my amendment in the convention. Should that be done after this is completely gone through and reported out, or at this time?

PRESIDENT NISBET: Afterwards.

Are there any announcements?

SECRETARY CHASE: I have the following announcements:

A meeting of the committee on executive branch scheduled for 1:00 o'clock today has been cancelled. (laughter)

The committee on style and drafting will meet in room K, February 13, next Tuesday, at 8:00 o'clock p.m. William B. Cudlip, chairman.

Notice of your convention record photograph appointment time has been placed on the desk of each delegate. Please make every effort to be punctual. If everyone keeps his appointment, no one need be absent from the floor of the convention for more than 10 minutes. Your full cooperation is earnestly requested.

We have the following requests for leave from convention sessions: Mr. Lawrence requests that he be excused from the meeting of Monday; Mr. Suzore requests to be excused from Monday's session; Mr. Wood requests to be excused from Monday's session to fill a speaking engagement; and Mr. Kirk requests to be excused from Monday's session.

PRESIDENT NISBET: Without objection, the excuses will be granted.

Mr. Shanahan.

MR. SHANAHAN: Mr. President, I request to be excused from Monday's session.

PRESIDENT NISBET: Without objection, it will be granted.

Mr. Walker.

MR. WALKER: Mr. President, I expect to be late for Monday's session, in that I will be taking the train, and it doesn't come in until 4:12.

PRESIDENT NISBET: The request will be granted.

The Chair recognizes Mr. Nord.

MR. NORD: Mr. President, I move we adjourn.

PRESIDENT NISBET: The question is on adjournment. Those in favor say aye. Opposed, no.

We are adjourned until 4:00 o'clock Monday. Have a good weekend.

[Whereupon, at 4:10 o'clock p.m., the convention adjourned until 4:00 o'clock p.m., Monday, February 12, 1962.]

SEVENTY-SEVENTH DAY

Monday, February 12, 1962, 4:00 o'clock p.m.

PROCEEDINGS

PRESIDENT NISBET: The convention will please come to order.

Our invocation for this session will be given by one of our own delegates, Robert Danhof of Muskegon. Will you please rise.

MR. DANHOF: Let us pray. Our eternal and heavenly Father, we come unto Thee again this day, mindful, O Lord, that Thou art the sovereign God of the universe and the Master of all mankind.

We thank Thee, O Lord, for the freedoms and for the opportunities that Thou hast given unto us in this land and especially for the opportunity that we have to gather here together as free men and free women to make determinations which shall affect all of the citizens of this state.

And now we ask, O Lord, throughout the days and the weeks to come that Thou wilt give unto us courage and wisdom and insight so that the decisions that we make may be in accordance with Thy will and in accordance with Thy eternal plan.

Watch over us throughout all this day and the weeks to come. Forgive us for all of our sins. In Jesus' name we ask it all. Amen.

PRESIDENT NISBET: The roll call will be taken by the secretary. Those present, please vote aye.

SECRETARY CHASE: Has everyone voted? The machine is locked and the attendance will be recorded.

Mr. President, a quorum of the convention is present.

Prior to today's session, the secretary received the following requests for leave: Mrs. Koeze, from today's session because of illness; Messrs. Heideman and Seyferth, from today's session, Mr. Seyferth to attend a city commission meeting; Mr. Martin from this evening's session; Miss McGowan indefinitely, due to illness; Mr. Page, because of emergency business developments and also the continued illness of Mrs. Page, has asked to be excused from the sessions of Monday, Tuesday and Wednesday of this week.

PRESIDENT NISBET: Without objection, the requests are granted.

SECRETARY CHASE: Absent with leave: Messrs. Dade, Garvin, Heideman, Kirk, Mrs. Koeze, Messrs. Lawrence, McAllister, Miss McGowan, Messrs. Page, Seyferth, Stamm, Suzore and Wood.

Absent without leave: Messrs. Bledsoe, G. E. Brown and Donald Doty.

PRESIDENT NISBET: Without objection, the delegates are excused.

[During the proceedings, the following delegates entered the chamber and took their seats: Messrs. Bledsoe, G. E. Brown, Donald Doty, Garvin, Lawrence and Seyferth.]

Mr. Romney.

MR. ROMNEY: Mr. President, I rise on a matter of personal privilege and I'd like to just make a brief statement.

While I have made a decision of a political character over the weekend, I premised it on completely fulfilling my responsibilities as a delegate to this convention and I will not depart from that commitment.

I still consider my responsibilities as a delegate superior to any other responsibility or consideration. And I still consider the results of this convention more important than any other single thing that can be done to insure the future welfare of this state. And I believe all of us are equally dedicated as delegates to the accomplishment of our task on that basis.

I am also more concerned about adequate and sound constitutional revision than in meeting a timetable. I think it's much more important for us to do a complete job and to take the prudent time required to do a complete and sound job than to permit any deadline to affect the quality of our work.

I believe the revision that we effect must be so significant that it will command the support of both political parties and of the citizens' groups who played such a key role in bringing about this convention. And I will do all I can to enable us to apply ourselves as conscientiously as we can in producing a document that will command the support of the people of the whole state. Thank you very much. (applause)

PRESIDENT NISBET: Ladies and gentlemen, as we start another week—and I know it is going to be a difficult week from the standpoint of time and discussion—I wonder if I could be allowed to make a few comments on the work of our convention.

I know that I am an optimist and an enthusiast. I believe that I am usually hopeful and confident as to the results of projects in which I find myself.

Today I must admit, however, that for the last 2 weeks, I have been less certain and a little more apprehensive as to the result of our convention. Somehow I had the feeling that we were losing some of our high dedication to the task before us; that we had become a little too personal in our thinking and discussion; that we were failing to keep the high objectives of our work.

But Friday as we closed a busy and difficult week, I sensed a new spirit emerging, a more constructive outlook, and a willingness to depart from old concepts and go into new imaginations and higher objectives. I hope I was right and I hope you as delegates felt that way too.

Three things have happened to me as a delegate since this convention started: one early in the convention; the second a few weeks ago; and the third only recently.

When I came to the convention, I knew the problems that needed to be solved. They were the problems of my city of Fremont and my county of Newaygo and really the only reason we had these problems was because the rest of you caused them for us. But I soon learned that other communities had their problems too and maybe to a greater degree than mine. And that solving my problems was not enough, or even if mine were solved, it might create even greater ones somewhere else. So I quickly had to adjust my thinking away from my own problems to that of our state of Michigan and its almost 8 million people. My outlook and vision had to be broader, and I had to give up selfishness for the good of all our people. I am very certain that all of you shared with me that same experience. We think bigger than we did 4 months ago.

Second, when I came here I wanted to satisfy the people of my district. I would vote for what they wanted. I would endeavor to protect their personal interests. But today I am endeavoring to think bigger because I have learned more about Michigan than I knew before, and I'm certain the people of my district would think as I do today if they had had the opportunity that I have had. I am not so sure that I can or should serve their interests alone.

What was it that made the Madisons and the Hamiltons, the Clays and the Calhouns, the Websters and the Adams, the Jacksons and the Marshalls? It was not that they were serving Virginia or New York or Kentucky or Carolina or Massachusetts or Tennessee. It was because they were representing their people—not for themselves alone, but to build a better and a stronger United States.

These were big people who have lived through our history because their objectives were greater than the purely local interests. They became, as someone wrote recently of Moss Hart, whose death left a void in the theater, "For in the theater and behind the scenes, with friends and with family,

he left footprints wherever he went, and they were too deep or too large to fill or disappear". That opportunity is ours in this convention if we will but accept that responsibility.

Third, I came to this convention to write a constitution that would include that material that would be acceptable to our Michigan citizens and on which we could get a favorable vote. Friday, I began to wonder; maybe, I thought, our duty is to write a document that is best for our people; that we definitely put principles of good government ahead of appeasement; that we put the right above the acceptable; that we put the long range good above the immediate advantages, so that even if the people of our state are not ready to accept this, it will set the standard for future progress. We have already seen some evidences that this is good.

This is, has been, and must continue to be a deliberative body. We can only accomplish as we are willing to compromise. Do any of us doubt that the problems brought to this convention by Mrs. Butler or Mr. Leslie Richards are different than those presented by Mr. Ford or Mr. Norris? That the problem of sections of our state are different in kind and amount? And the problems of both areas are very real; and the same solution is not sufficient for them. Both are honest in their thinking and right in their efforts to find a solution. But our problem is to find an answer for each.

We must find that answer of what is best for Michigan, not for the Democrats or the Republicans, not for Fremont or Detroit, not for education, labor, industry or agriculture, but what is best for our almost 8 million Michigan citizens. Our dedication must be to a larger thing. We must be able to find it and to see it. Someone has written:

To every man there openeth
A way and ways and a way
And the high soul climbs the high way
And the low soul gropes the low
And in between on the misty flats
The rest drift to and fro.
But to every man there openeth
A high way and a low,
And every man decideth
The way his soul shall go.

Which way will we choose for the rest of this convention?

To me Friday was a "change day". In the vernacular of the advertising slogan, now is the time for us "to come up, to come all the way up" to writing a document that will be a monumental one, one that will be a credit to the great people of this convention, one that will stand in our Michigan history as the foundation stone of a great state. Will you pray with me for guidance as we say:

Our kind and gracious heavenly Father, as we approach the critical time of this convention, give us wisdom to see our duty; give us knowledge to perform our tasks; give us confidence to think constructively; and give us the courage to do what is right. Give us guidance as we make the supreme effort to travel the high road of citizenship responsibility so that our state and its citizens will be forever grateful and appreciative of the work we do here. We have come near to the end of our own strength. From here on we need and ask for Thy guiding hand so that our duty and obligation will be adequately filled for our great state of Michigan.

Ladies and gentlemen of this constitutional convention, I urge that as Lincoln, whose birthday we celebrate today, said, "Let us take increased devotion" to this task before us.

That job can be done and we can do it if we only keep our mind and our effort on our real obligation, the welfare of Michigan and all of its citizens. Thank you very much. (applause)

The Chair recognizes Mr. Bonisteel.

MR. BONISTEEL: Mr. President and fellow delegates, as president of and on behalf of the historical society of Michigan, I have the honor to present this little booklet which has been placed on the desk of each one of the delegates. The title is, The Abiding Lincoln. It is appropriate to do this on this February 12, 1962. It is an address, in fact, the last major address of one of the great orators of America, Dr. Edgar DeWitt Jones, beloved by the people of Michigan in his lifetime and remembered by thousands today. It would please Dr. Jones to know that this address has been placed with each delegate of this convention and I am sure that somehow he will know. The little booklet is a collector's item and if you do not wish to keep it, I am sure that your local library will be pleased to add it to its collection. This address, The Abiding Lincoln, will fit in well with the splendid remarks made by our president just now.

PRESIDENT NISBET: Thank you very much, Mr. Bonisteel.

Returning to our order of business, **reports of standing committees.**

SECRETARY CHASE: The committee on style and drafting, by Mr. Cudlip, chairman, submits Report 2 of that committee, reporting back to the convention **Committee Proposal 1,** A proposal pertaining to the inclusion of section 1 of article XI in the constitution;
with the recommendation that the style and form be approved.
William B. Cudlip, chairman.

For Committee Proposal 1 as reported by the committee on style and drafting, see below under date of April 18.

PRESIDENT NISBET: The committee proposal is placed on the order of second reading of proposals.

SECRETARY CHASE: The committee on style and drafting, by Mr. Cudlip, chairman, submits Report 3 of that committee, reporting back to the convention **Committee Proposal 12,** A proposal pertaining to exemptions as a substitute for all of article XIV;
with the recommendation that the style and form be approved.
William B. Cudlip, chairman.

For Committee Proposal 12 as reported by the committee on style and drafting, see below under date of April 30.

PRESIDENT NISBET: The committee proposal is placed on the order of second reading of proposals.

SECRETARY CHASE: The committee on style and drafting, by Mr. Cudlip, chairman, submits Report 4 of that committee, reporting back to the convention **Committee Proposal 15,** A proposal to amend article II pertaining to the declaration of rights;
with the recommendation that the style and form be approved.
William B. Cudlip, chairman.

For Committee Proposal 15 as reported by the committee on style and drafting, see below under date of April 26.

PRESIDENT NISBET: The committee proposal is placed on the order of second reading of proposals.

SECRETARY CHASE: The committee on style and drafting, by Mr. Cudlip, chairman, submits Report 5 of that committee, reporting back to the convention **Committee Proposal 19,** A proposal to provide for a state militia;
with the recommendation that the style and form be approved.
William B. Cudlip, chairman.

For Committee Proposal 19 as reported by the committee on style and drafting, see below under date of April 30.

PRESIDENT NISBET: The committee proposal is placed on the order of second reading of proposals.

SECRETARY CHASE: The committee on style and drafting, by Mr. Cudlip, chairman, submits Report 6 of that committee, reporting back to the convention **Committee Proposal 26,** A proposal for a section in the declaration of rights incorporating in the declaration of rights an "equal protection" clause and a guarantee against discrimination in civil and political rights because of race, religion, sex or national origin;
with the recommendation that the style and form be approved.
William B. Cudlip, chairman.

For Committee Proposal 26 as reported by the committee on style and drafting, see below under date of April 26.

PRESIDENT NISBET: The committee proposal is placed on the order of second reading of proposals.

SECRETARY CHASE: The committee on administration, by Mr. DeVries, chairman, submits to the convention the following budget information and requests that it be printed in the journal. Walter DeVries, chairman.

PRESIDENT NISBET: Mr. DeVries.

MR. DeVRIES: Mr. President, this is a report regarding our present expenditures and anticipated expenditures as projected until May 15. It is filed by the committee on administration for information purposes. I move that it be considered read and placed in the journal.

PRESIDENT NISBET: Without objection, it will be considered read and placed in the journal. Hearing no objection, it is so ordered.

Michigan Constitutional Convention Budget

Item budgeted	Amount Budgeted	Amount Expended	12/31/61 Balance	Estimated 3/31/62 Balance	Estimated 4/30/62 Balance	Estimated 5/15/62 Balance
I. Salaries and wages—delegates	$1,080,000.00	$432,000.00	$648,000.00	$216,000.00	$ 72,000.00	———
II. Other salaries, wages, contractual services, supplies, materials, rent and equipment						
A. Rental, lease and purchase of equipment	149,622.64	145,520.31	4,102.33	2,216.33	1,584.33	1,255.33
B. Office supplies and printed matter						
1. Delegates' stationery (Wellman Press)	2,011.83	2,492.99	—481.16	—629.46	—629.46	—629.46
2. Journal (Speaker-Hines and Thomas)	76,950.00	12,115.90	64,834.10	24,665.10	10,665.10	2,665.10
3. Office supplies	15,675.00	11,203.12	4,471.88	971.88	—228.12	—828.12
C. Rental and lease of building						
1. Civic center	111,200.00	77,838.55	33,361.45	—1,482.53	—1,544.41	—1,575.35
D. Other contractual services						
1. TV—closed circuit	4,200.00	2,700.00	1,500.00	525.00	225.00	25.00
2. Sound system	12,000.00	4,264.00	7,736.00	2,435.00	182.00	—821.00
3. Clipping service	500.00	228.22	271.78	—88.22	—208.22	—268.22
4. Freight for chairs, etc.	1,158.48	1,115.70	42.78	42.78	42.78	42.78
5. Convention reporter	20,000.00	2,514.95	17,485.05	4,493.05	—6.95	—2,256.95
6. Police	15,600.00	9,321.37	6,278.63	2,478.63	1,178.63	528.63
E. Postage	15,000.00	8,100.54	6,899.46	6,599.46	6,299.46	6,149.46
F. Telephone	15,000.00	3,843.70	11,156.30	6,656.30	5,156.30	4,406.30
G. Fees and compensation	2,000.00	1,745.57	254.43	254.43	254.43	254.43
H. Maintenance services	1,950.00	1,342.63	607.37	307.37	207.37	107.37
I. Travel and subsistence						
1. Delegates—2 monthly trips	46,012.40	19,750.00	26,262.40	6,494.80	—94.40	—3,389.00
2. Reimbursement for committee trips	5,000.00	2,642.00	2,358.00	2,358.00	2,358.00	2,358.00
J. Educational supplies and library						
1. Purchased for library	2,203.90	———	2,203.90	———	———	———
2. Additional materials	200.00	76.00	124.00	24.00	———	———
K. Insurance and bond						
1. Fire 2. Comprehensive general liability 3. Bond for finance clerk and secretary of the convention 4. Workmen's compensation on employees	4,455.00	1,963.25	2,491.75	2,491.75	2,491.75	2,491.75
5. Social security—employer	9,879.20	2,489.58	7,389.62	2,871.16	1,337.88	571.24
L. Other salaries and wages	329,306.52	112,805.60	216,500.92	74,958.42	27,333.42	3,520.92
M. Contingency fund balance	60,388.13	320.30	60,067.83	60,067.83	60,067.83	60,067.83
N. Office of public information	17,557.05	5,364.05	12,193.00	1,605.00	535.00	———
O. Constitutional convention handbooks	2,086.60	2,086.60	———	———	———	———
Eisenhower fund	43.25	43.25	———	———	———	———
Sub Total—Category II—12/31/61	$ 920,000.00	$431,888.18	$488,111.82	$200,316.08	$117,207.72	$ 74,676.04

SECRETARY CHASE: That's all of the standing committee reports.

PRESIDENT NISBET: Reports of select committees.

SECRETARY CHASE: None.

PRESIDENT NISBET: Communications.

SECRETARY CHASE: None.

PRESIDENT NISBET: Second reading.

SECRETARY CHASE: Nothing on that calendar for today.

PRESIDENT NISBET: Third reading.

SECRETARY CHASE: Nothing on that calendar.

PRESIDENT NISBET: Motions and resolutions.

SECRETARY CHASE: There are no resolutions on file.

PRESIDENT NISBET: Unfinished business.

SECRETARY CHASE: None.

PRESIDENT NISBET: Special orders.

SECRETARY CHASE: There are no special orders for today.

PRESIDENT NISBET: Pursuant to the provisions of rule 8, the president designates Mr. Bentley to perform the duties of the Chair during such time as the Chair may be absent from today's session.

Mr. Elliott.

MR. A. G. ELLIOTT: Mr. President, I would like to move that the president's remarks made just a few moments previously be printed in the journal.

PRESIDENT: All those in favor, please say aye.

It is so ordered. Thank you. This is rather embarrassing.

Dr. Pollock.

MR. POLLOCK: Mr. President, before we go into committee of the whole and apropos of your very magnificent remarks and the reference in Mr. Romney's remarks to the same thing, I was wondering if something couldn't be done in the proper parliamentary or other way, to give effect to your thought that our first job is deliberative and not rushing. I am sure that many delegates feel as I do, that there has been entirely too much pressure and I feel that now that we are in a strictly deliberative stage, we don't need that pressure. I don't think it will make a bit of difference when we adjourn, whether we

say we're going to adjourn now or some other time as long as those tentative deadlines, which I remember Mr. Van Dusen calling very flexible in the beginning, seem now to be bearing down upon us pretty hard and causing, I think, unnecessary tension. That's one point.

The second point is that I think now that we are concerned with calendars so much, I've been confused and I know others have been confused in knowing just exactly what was coming up and when. We made special orders of a couple of important issues—in the case of one of them, local government—without, I think, giving delegates adequate time to study the proposals, since they were thrown in at the very last minute.

I would like to suggest, therefore, that something be done to explain more clearly to the delegates exactly what is coming up and some means be ascertained, some means be devised to make the order on the calendar and the reasons for the order a little bit clearer.

PRESIDENT NISBET: Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, if I may comment briefly on Professor Pollock's suggestion, which is an eminently wise one. The committee on rules has had under consideration the question of the order in which matters are to be taken up. Each of the committee chairmen has now submitted his list of proposals which remain before us on the calendar and the order in which they should most logically be considered by the committee of the whole and has asked the secretary to prepare a tentative calendar reflecting these suggestions and that calendar will be considered by the rules committee tomorrow; and the rules committee is meeting at 8:00 o'clock tomorrow morning and it will have an opportunity, I think, to present a complete calendar showing the entire business remaining before us on general orders at tomorrow's session.

In addition, I think it's perfectly clear that in order to conduct the work of the committee of the whole in an atmosphere of deliberation it is going to be necessary to extend the work of the committee of the whole beyond the February 21 date, which is presently scheduled. But until we have before us the schedule of the work remaining in its entirety and arranged in order, we won't know exactly what date should be suggested as the date for completion of the work of the committee of the whole. However, Mr. President, both of Professor Pollock's suggestions are good ones and the committee on rules and resolutions has taken steps designed to accomplish both the suggestions he has made.

PRESIDENT NISBET: Thank you. Dr. Pollock.

MR. POLLOCK: It occurs to me since Mr. Van Dusen's remarks, that something might well be done to explain to the people of the state the attitude of the convention with reference to what I have always felt was an artificial deadline. If we are not going to meet the deadline, people in the state don't need to feel that everything is going to go to pot; that there is a way out. And I see no reason why the rules committee or some appropriate committee, which I am sure has this matter under consideration, could not come out with some such statement.

PRESIDENT NISBET: Mr. Kelsey.

MR. KELSEY: Mr. President, I am happy to see that we have undisputed testimony on the record that now the candidate for the majority party, the manager, and one more member acknowledge that it is not the minority party that's dragging their heels. Thank you very kindly.

PRESIDENT NISBET: May I say that since this is a parliamentary inquiry by Dr. Pollock, this will be referred to the rules and resolutions committee.

General orders of the day. Mr. DeVries.

MR. DeVRIES: Mr. President, I move the convention resolve itself into committee of the whole for consideration of certain items on the general orders calendar.

PRESIDENT NISBET: The question is on the motion of Mr. DeVries. Those in favor, say aye. Opposed, no.

The motion prevails. Mr. DeVries.

[Whereupon, Mr. DeVries assumed the Chair to preside as chairman of the committee of the whole.]

CHAIRMAN DeVRIES: The committee will come to order.

When last this committee met it was considering **Committee Proposal 81,** A proposal pertaining to county government; from the committee on local government. We had completed discussion of section f.

For the last previous action by the committee of the whole on Committee Proposal 81, see above, page 929.

Pursuant to the request of the committee chairman on local government, we are considering this report section by section. The secretary will now read section g.

SECRETARY CHASE: Section g:

[Section g was read by the secretary. For text, see above, page 929.]

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Pleasant Ridge, chairman of the committee, Mr. Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, I yield to Mrs. Judd.

CHAIRMAN DeVRIES: Mrs. Judd.

MRS. JUDD: Mr. Chairman and members of the committee, I would remind you that we are in the process of writing the first few sections of the article on local government, these sections with respect to the government of all of the counties of the state. You may recall that I indicated last week that in writing these sections, we attempted to stick as closely as possible to the present form of county government, making some changes in the section to exclude matters that were no longer applicable or that were taken care of by legislation. Other than that, if you have your constitution handy, you may be interested to see how closely we have adhered to it. You will find that there are to be a few exclusions among these 15 sections of the present constitution and they will be treated later.

We are now looking at section g in the committee proposal and I would like just to read to you what the citizens research analysis has said about this section.

> This provision is a broad grant of power to the legislature to deal with the details of county government. It is the core of the legislature's power to deal with the civil subdivisions of the state. All other provisions dealing with county government are in effect limitations on this broad grant of power to the legislature.

We have kept it the same as it is in the present constitution except to omit the last 5 words, "as it may deem proper" because we didn't think the legislature would ever do anything that isn't proper.

CHAIRMAN DeVRIES: Are there any amendments to section g? If not, it will pass.

Section g is passed. The secretary will read section h.

SECRETARY CHASE: Section h:

[Section h was read by the secretary. For text, see above, page 929.]

CHAIRMAN DeVRIES: The Chair recognizes the lady from East Grand Rapids, Mrs. Judd.

MRS. JUDD: Mr. Chairman, I'd like to yield the floor to Delegate Kuhn.

CHAIRMAN DeVRIES: Delegate Kuhn.

MR. KUHN: Mr. Chairman and members of the committee, the language used here is the same as the first sentence in section 9 of the present constitution. It was felt that this power is properly in the board of supervisors and should remain there.

The second sentence of section 9 of the present constitution has been deleted due to the fact it is now covered by statute.

I recommend that this section be passed.

CHAIRMAN DeVRIES: Are there any amendments to section h? If not, it will pass.

Section h is passed. The secretary will read.

SECRETARY CHASE: Section i:

[Section i was read by the secretary. For text, see above, page 929.]

CHAIRMAN DeVRIES: The Chair recognizes the lady from East Grand Rapids, Delegate Judd.

MRS. JUDD: Mr. Chairman, on this section, I'd like to yield the floor to Mr. Buback.

CHAIRMAN DeVRIES: Delegate Buback.

MR. BUBACK: Mr. Chairman and members of the committee, the present constitutional limit on power of the county to incur debt is increased from 3 to 10 per cent of its assessed valuation. The exception relating to counties having an assessed valuation of $5 million or less was deleted because there are no longer any such counties. The committee has increased the debt limit to give counties greater flexibility to meet current problems. Our counties are not extending their credit for both primary and secondary purposes. Secondary obligations are incurred by placing the full faith and credit of the county behind the bonds of cities and townships to enable them to borrow at the lowest possible interest rate for the construction of water and sewer systems and other public works. The county also buys revenue bonds from airports. This secondary debt may easily exceed the 3 per cent limitation set in the present constitution. Such secondary debt is payable out of the revenues of the water works, sewage fees, airport activities and so forth.

The committee on finance and taxation, having concurrent jurisdiction, had no objections. We move that this be adopted in the present constitution.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Detroit, Delegate Yeager.

MR. YEAGER: Mr. Chairman, I'd like to ask Mr. Buback a question. How did the committee come to the figure of 10 per cent over 3 per cent, which is over 3 times as much?

MR. BUBACK: I'll leave this to the chairman of the committee.

CHAIRMAN DeVRIES: Mr. Buback yields to the chairman of the committee, Delegate Elliott.

MR. A. G. ELLIOTT: We had the distinct advantage of having Mr. Brake on our committee and whenever you are arriving at a figure of this type, Mr. Yeager, you have to do it based upon certain judgments. There is no rule of thumb by which you go. And it was the general consensus of the committee that increasing this amount to 10 per cent was proper and Mr. Brake, in review of this in his own committee, found this to be true.

We also had a controlling factor here, one I think is important, and that was that right at the present time many of our counties are finding themselves in the situation where the 3 per cent obviously is not meeting the requirements and in discussion both within the committee and outside the committee it was felt that the 10 per cent limitation, measured against the total assessed valuation, would accommodate those future needs even including the secondary obligations.

MR. YEAGER: Mr. Chairman, I'd like to ask Mr. Brake how he arrived at 10 per cent.

CHAIRMAN DeVRIES: Mr. Brake.

MR. BRAKE: It is to some extent arbitrary but we do have the precedent that that is the limit for the cities. And what is good for the cities ought to be good for the counties.

MR. YEAGER: That's so. Thank you. (laughter)

CHAIRMAN DeVRIES: The gentleman from Bessemer, Mr. Pellow.

MR. PELLOW: Mr. Chairman, I would just like to ask Mr. Elliott one question on this. By "assessed valuation" I take it that the committee on local government is referring to the state equalized valuation?

MR. A. G. ELLIOTT: This is correct.

CHAIRMAN DeVRIES: The gentleman from Detroit, Mr. Ford.

MR. FORD: Thanks for the promotion. Mr. Chairman, my question was on the last section that we passed so quickly. I think that it should be made clear in the record that I have no contention with regard to this matter but we passed very quickly over the last section on which we had considerable discussion in the committee and I think this record should be very clear as to our intent. If I could have the consent of the body, I'd like to discuss the preceding section, the language that has been deleted.

CHAIRMAN DeVRIES: Is there any objection to returning to section h? I hear none. We shall return to it.

MR. FORD: The language that concerned one or two of the lawyers besides myself on the committee, at least briefly, was in the last sentence, which is the sentence which provides that credit against the county will be considered by the auditor or board of auditors. That part is not much of a problem. But this sentence is a constitutional right to appeal from the decision of the county officials directly to the circuit court and it is provided that the appeal will be in a manner as prescribed by law.

Now, Mr. Tweedie stated that in the opinion of the committee an appeal to the court was provided by law but it is my fear that the kind of appeal that we have as a matter of right is by certiorari, which does not go into the record or go into the merits but merely passes on the legal formality of the proceedings, and I wonder if Mr. Tweedie could for the record tell us whether the statute does provide for the appeal or merely provides the manner of taking a constitutionally provided appeal from the board of auditors to the circuit court.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Port Huron, Delegate Tweedie.

MR. TWEEDIE: Would you repeat that question, please, Mr. Ford.

MR. FORD: Is it your belief that the present statute that you referred to in the comments of the majority report provides for the appeal or merely provides for the manner of the constitutionally provided appeal?

MR. TWEEDIE: The statute which I referred to is MSA 5.331 and it covers the auditing part of the sentence which we have deleted.

MR. FORD: Is it your opinion that that statute will continue the right to an appeal to the circuit court carte blanche from a decision of the board of auditors on a claim against the county?

MR. TWEEDIE: I would say not necessarily the circuit court but an appeal to some other body possibly, if necessary, a board or some administrative officer.

MR. FORD: Who does the statute provide an appeal to?

MR. TWEEDIE: It doesn't provide for the circuit court, if that's what you are asking.

MR. FORD: Does it provide for an appeal to anyone?

MR. TWEEDIE: I don't have the statute in front of me, Mr. Ford. I'd have to look it up. It would be up to the legislature to allow an appeal in this case.

CHAIRMAN DeVRIES: The Chair recognizes the delegate from Detroit, Delegate Norris.

MR. NORRIS: Mr. Chairman, I wonder if I might likewise direct a question to Mr. Tweedie on this proposition. I wondered if it was the intention of the deleted section here to in any way alter a recent supreme court decision regarding governmental immunity. I am concerned whether or not the regarding of this matter as legislative means that a claim against the county might be met with the defense that the county might not be able to be sued.

MR. TWEEDIE: I'll yield on that, Mr. Chairman, to someone who can answer the question.

CHAIRMAN DeVRIES: Mr. Tweedie will yield to Delegate Elliott.

MR. A. G. ELLIOTT: Mr. Norris, I can't give you the legal interpretation but I can tell you that our committee fully discussed that particular phase of it too, and it was not felt that the deletion of this in any way changed the picture on the immunity interpretation by the courts. Is that the answer that you—

MR. NORRIS: I am quite concerned and I appreciate your opinion on it, sir, but I raise the question as to whether or not a court in construing this section at a subsequent time might not feel that not only the appeal was weakened, as Mr. Ford suggests, but that the right to present and have a claim adjusted might itself also be made infirm by this deletion, particularly in view of the fact that you say that it is now

statutory and if the legislature should feel that it now being statutory, it might attempt to remove the prospect of presenting a claim and get back to immunity and overrule recent decisions.

Now, here you have, if not explicit, at least implicit, the proposition that an injured person might present a claim against the county and not only have an opportunity to present the claim but also have the matter heard on appeal by an appropriate body which is named in this deleted section. I am quite concerned about this. I am not prepared to offer any amendment but I did want to make inquiry and throw the attention of the body to something here that in my judgment means more than just meets the eye.

MR. A. G. ELLIOTT: Mr. Chairman, Mr. Norris, I appreciate your concern and I would again reiterate that the committee did give this thorough consideration and in addition, I am quite confident that the records will show that the matter was referred to our legal department for an opinion and that this deletion was after that legal report had been returned to the committee and we had had an opportunity to weigh that in making our final decision.

MR. NORRIS: I appreciate that point and I would like to have the opportunity of consulting the same document and if necessary, raise this point at a further reading.

CHAIRMAN DeVRIES: Does the gentleman from Port Huron wish to comment on this?

MR. TWEEDIE: No. I have the attorney general's opinion which we requested in this matter if anyone wants to see it or hear me read it.

CHAIRMAN DeVRIES: The Chair recognizes the lady from East Grand Rapids, Mrs. Judd.

MRS. JUDD: I suggest it be read into the record.

CHAIRMAN DeVRIES: Delegate Tweedie, the request is that you read the attorney general's statement into the record.

MR. TWEEDIE: The attorney general's opinion reads as follows:

> The provision on auditing is repeated in MSA 5.331. The statute does not depend on this section but if the provisions were dropped, the legislature could allow some other body or officer to pass on claims and could provide for appeal to other than the circuit court.

I believe that answers Mr. Ford's question. However, I am not sure that it covers Mr. Norris's question.

CHAIRMAN DeVRIES: Are there any amendments to section h or any further discussion of this section?

The lady from Highland Park has filed an amendment to section h. The secretary will read.

SECRETARY CHASE: Miss Donnelly offers the following amendment:

1. Amend page 2, line 23, after "law.", by inserting "The boards of supervisors shall adjust all claims against their respective counties; appeals may be taken from such decisions of the boards of supervisors to the circuit court in such manner as shall be prescribed by law.".

CHAIRMAN DeVRIES: Delegate Donnelly.

MISS DONNELLY: In view of the discussion that has been conducted today on this issue, I believe that we should not leave it in the air. It is very important to every citizen of every county to know how their right of appeal may lie. If there is any question of it going to one board from another as opposed to the circuit court, I believe the constitutional right to have it tested in that court should be preserved. Therefore, I offer this amendment to reinstate the constitutional language originally giving this claim of appeal and eliminating the question about auditors.

CHAIRMAN DeVRIES: The question is on the Donnelly amendment to section h. The secretary will read the amendment.

SECRETARY CHASE: Miss Donnelly's amendment, as the secretary understands it, is to reinsert the stricken language from lines 23 to 27, with the exception of that pertaining to county auditors, which language reads:

> The boards of supervisors shall adjust all claims against their respective counties; appeals may be taken from such decisions of the boards of supervisors to the circuit court in such manner as shall be prescribed by law.

CHAIRMAN DeVRIES: The question is on the adoption of the Donnelly amendment. The Chair recognizes the lady from East Grand Rapids.

MRS. JUDD: Mr. Chairman, as I recall our discussion in committee on this, the omission of "state boards of auditors" might make some difficulty. I believe that in Wayne the board of auditors does settle these claims at the present time. Isn't that so, Mr. Baginski? So if we are going to reinsert this language at all, perhaps we'd better reinsert all of it. Now, I may be wrong on this and perhaps you ought to communicate.

CHAIRMAN DeVRIES: Does the gentleman from Port Huron seek recognition on the Donnelly amendment?

MR. TWEEDIE: Yes, Mr. Chairman. Once again, by the Donnelly amendment we are restricting the legislature and what they can do by setting out in the constitution that appeals can only be taken to the circuit court. Perhaps the legislature would like a chance to say that the appeal can be taken to some other body or officer. If we are going to go in the general field of not restricting the legislature too much, this amendment should be defeated.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Pleasant Ridge, Delegate Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, Miss Donnelly, I hate to speak against Miss Donnelly's amendment but as chairman of the committee, I would feel that I would be neglecting my duty. We spent a lot of time in study on this and I guess that I didn't make that perfectly clear. The questions that have been raised were discussed in committee. We did get an attorney general's opinion. We did get opinions from the research and drafting department here in the convention. We also had the opinion of our own research consultant, Dr. Adrian. We feel that this language can be deleted from the constitution without endangering any of the rights and I urge the defeat of the amendment.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Taylor, Delegate Ford.

MR. FORD: Mr. Chairman, I think we should make it very clear that what is referred to here as an attorney general's opinion is an informal opinion from the deputy attorney general not subscribed to by anyone in charge of the office and not in the general form or usual form of an official opinion. It is a part of the series of comments by an assistant attorney general on a number of points. It is not supported by any kind of a brief or any case citations and the problem that arises now is the same one that we brought up in the committee.

Mr. Elliott indicates that we spent a lot of time considering this. We spent so much time down there that perhaps there was some confusion but it is my recollection, at least on the occasion when I was present when it was discussed, that when the subcommittee was asked why they deleted it, the first answer was, "Well, we couldn't think of any reason why we might need it." And the attorney general has indicated that the same thing could be done by statute. But if you listened carefully to what Mr. Tweedie said, the statute does not now provide an appeal. The deputy attorney general is merely saying that the legislature could provide for an appeal.

Mr. Norris has talked about one type of claim but I don't think that this is the kind of claim involved. I took the occasion to talk to someone in the civil division of the Wayne county prosecutor's office and the kind of claim that is contemplated here is one that is now pending and there has been newspaper publicity recently between the city of Detroit and the county of Wayne over alleged welfare funds due from the Wayne county general hospital fund for outpatient treatment given to county residents at Receiving hospital. This claim now has accumulated to several millions of dollars and realizing for one moment that you have a situation described to us the other day as to rural versus the core city problem of who has control of the board of supervisors—I didn't want to get into this but I am somewhat apprehensive about what might

happen when there is a claim that affects only the core city and its bankroll and the legislature doesn't get around to providing an appeal as a matter of right between the time that that claim is presented and finally allowed and the time has run out for taking it into the court subsequently when they pass a law to provide for the appeal.

Now, several millions of dollars could be voted upon by the board of supervisors or by the board of auditors and if it's not clear that you have a right to take their decision to the circuit court, I wonder where this leads to. This is why some of us are apprehensive about taking language out unless there is a real sound reason for making a deletion of something that's been there so long.

CHAIRMAN DeVRIES: The Chair recognizes the author of the amendment, Delegate Donnelly.

MISS DONNELLY: I would again like to state the reason for putting my amendment in. Mr. Tweedie's answer to me was not sufficient as to preserve the rights of any litigant to have an appeal to the circuit court. And to leave it to some other place that may be concocted eventually, disturbs me. I feel that the circuit court being the highest court that any county has in that county is the most logical, proper place to go in such litigation as this. And to visualize it going someplace else is very disturbing to me. If Mr. Tweedie can reassure me that my fears are groundless, I would certainly be more than happy to remove my amendment because of the fact that I would like to support the committee reports always.

CHAIRMAN DeVRIES: Delegate Donnelly yields to Delegate Tweedie.

MR. TWEEDIE: Mr. Chairman, Miss Donnelly, I can only tell you that we have to have a certain amount of trust in the legislature and that certainly they will provide for some appeal. If they feel it properly should go to an administrative body or some particular officer rather than the circuit court, why, I think we should allow them this leeway. Naturally, I can't say for sure, but I feel sure that they will provide for an appeal to some agency.

MISS DONNELLY: What type of appeal do you visualize in this, Mr. Tweedie? Are you talking about de novo or what?

MR. TWEEDIE: Well, I don't think I need to distinguish the type of appeal. Just say general appeal. If you would want to get into a legal discussion, this is not the place to have it. Let's go out in the hall and talk it over. (laughter)

CHAIRMAN DeVRIES: The Chair will recognize the gentleman from Grand Rapids, Delegate Tubbs.

MR. TUBBS: I'm not sure that this is adding anything that is of importance but I favor the committee report. I have had some litigation with various municipal bodies, among others, cases against the county. You don't appeal from anything. You start suit all over again. It's just as if you had a claim against the county of any other kind for defective highways or anything. And I think since the supreme court has opened the door to litigation against all municipal bodies, you may as well sue a city or a township or a school district. You start suit and let it go through.

CHAIRMAN DeVRIES: The Chair recognizes the delegate from Harrisville, Delegate Dehnke.

MR. DEHNKE: Mr. Chairman and delegates, I'm disturbed about this deletion also. There are many kinds of claims against the county. There was a time when the decision of the board of supervisors on some of those claims was final and this was put into the constitution. I don't have any doubt that the legislature could pass a law allowing an appeal but if this is taken out, there is nothing to compel them to pass such a law. The possibilities may be that they will pass a law leaving the decision to the boards of supervisors open to an appeal but the difference is that by putting it into the constitution there is no question about it. By leaving it out we do raise the possibility that there will be no such statute.

CHAIRMAN DeVRIES: The Chair recognizes the delegate from Saginaw, Delegate Leppien.

MR. LEPPIEN: Mr. Chairman and members of the committee, I'd like to request some information from Mr. Elliott. That is by deleting the language with reference to county boards of auditors, would that eliminate the county board of auditors adjusting the claims in the normal run of business and turn it over to a committee of the board of supervisors?

CHAIRMAN DeVRIES: The gentleman from Pleasant Ridge, Delegate Elliott.

MR. A. G. ELLIOTT: You have a case where a lamb fears to tread because I think you are asking for a legal interpretation. But in looking at the language as introduced by Miss Donnelly, I would think that perhaps what you are saying is correct unless there were some law added at some later date which would make it possible. But very frankly, I'm not sure.

Let me say this again to the committee. I've learned another lesson in parliamentary procedure. Once something is passed, leave it there and get it at some later time, because we have now been 20 minutes on this one particular subject. This was not treated lightly in the committee. This was given thorough discussion. These points were taken up. This was something that was done a long time ago in committee because it was at the early part of our article but it was given full attention.

Mr. Ford had the unfortunate responsibility of being also an important member of the judicial committee and therefore he had to divide his time between these 2. Sometimes, when I make these reports and indicate they were a full committee report, it may have been at a time when he unfortunately couldn't be there. But I would bring to the attention of the floor again that this was a full committee report and it was our considered judgment, having listened to the comments by Dr. Joiner and Dr. Adrian, the comments from the assistant attorney general—which were not, of course, formal comments, but merely an answer to the request which we made—that this could be eliminated without in any way destroying the effectiveness of this right.

MR. LEPPIEN: Mr. Chairman, with the permission of the Chair, I should like to direct my question to the proposed amendment by Delegate Donnelly regarding her remarks as to the deletion of the word "auditors" which affects the question that I raise.

CHAIRMAN DeVRIES: Delegate Leppien yields to Delegate Donnelly.

MISS DONNELLY: Delegate Leppien, if I understood and recall clearly your question, I think that it went into the boards of auditors particularly. The reason why I eliminated that was that I thought that was what the attorney general's opinion quoted to us was on and I could understand why that could be very clearly eliminated. It did not seem to me that it clearly set forth a right of appeal to the circuit court from all claims as I understood this language to be. This was what was concerning me and I wanted the circuit court to be the body to hear this. And I thought that this constitutional provision should be maintained. Frankly, my elimination of the "board of county auditors" was based on the committee report. That's my reason on that. I have no quarrel with it one way or the other. I was just going along with the committee on that.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Detroit, Delegate Mahinske.

MR. MAHINSKE: I'd like to ask Miss Donnelly or I'd like to pursue this thought that Mr. Leppien brought up. I think by excluding the reference to the county auditors we are cutting into the flexibility in those areas where we have both auditors and supervisors. The small claims, as I understand, are normally handled by the auditors. Without the auditor reference here we would have to go directly to the board. I think possibly in the small claims area, you'd get settlement a lot faster here.

MISS DONNELLY: Perhaps I read it too quickly but it would seem to be that within this, the board of supervisors should be able to delegate. Now maybe they can. Are you saying they cannot delegate to the auditors?

MR. MAHINSKE: I think we are bringing up enough questions here that this thought could be brought in if we exclude this language.

MISS DONNELLY: Well, as I say, I haven't studied this and perhaps I shouldn't say anything. But my quick reaction was that the supervisors could delegate to the auditors. But the point I want here is eventually to have a right to appeal

any decision definitely de novo to the circuit court and I don't want any question on that issue. Now, if there is some reason that this delegation of authority could not be made — I can't understand why it couldn't be made, either within the charter or the home rule in a broader section later. Now, I may be just destroying all of this.

CHAIRMAN DeVRIES: Does the lady from Highland Park yield to the chairman of the committee, Delegate Elliott?

MISS DONNELLY: Yes, unless Mr. Mahinske wishes to finish it, and I believe that was his question.

CHAIRMAN DeVRIES: Delegate Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, the committee has no desire to eliminate anything from the constitution that should be needed. May I suggest that inasmuch as this is something we came back to, that we pass over this for the moment. Let Mr. Tweedie contact Dr. Joiner and Dr. Adrian in the meantime, and see if we can get a review of this statute and come back with a clearer picture to the committee of the whole on this particular thing a little later on in our proceedings today.

I am not saying pass this, you understand. What I am saying is to pass over this section h for the moment and go on to sections i, j, k and l.

CHAIRMAN DeVRIES: Delegate Elliott moves that the committee of the whole pass temporarily section h. All those in favor, say aye. Opposed, no.

Section h is passed temporarily and the secretary will read section i.

SECRETARY CHASE: Section i:

[Section i was again read by the secretary. For text, see above, page 929.]

CHAIRMAN DeVRIES: The Chair recognizes the lady fram East Grand Rapids, Delegate Judd.

MRS. JUDD: Mr. Chairman, we did already start discussing this. Mr. Buback presented it to the committee. I can't recall how far we got in it.

CHAIRMAN DeVRIES: Are there any amendments to section i? If not, it will pass.

Section i is passed.

The secretary will read the next section.

SECRETARY CHASE: Section j:

[Section j was read by the secretary. For text, see above, page 929.]

CHAIRMAN DeVRIES: The Chair recognizes the lady from East Grand Rapids, Delegate Judd.

MRS. JUDD: Mr. Chairman, I'd like to yield the floor to Mr. Gover.

CHAIRMAN DeVRIES: Delegate Gover.

MR. GOVER: Mr. Chairman and delegates, this section of the constitution is left just the way it was in the 1908 constitution. The comment coming from our committee is that the section be retained the same as section 13 in our present constitution. I recommend this section be passed.

CHAIRMAN DeVRIES: The gentleman from Bessemer, Delegate Pellow.

MR. PELLOW: I have just one question. Assuming that there is a different method of selecting under the home rule provision for counties which will be introduced, as I understand it, Committee Proposal 89, will this have any effect on the method of changing the county seat?

CHAIRMAN DeVRIES: Delegate Pellow yields to Delegate Gover.

MR. GOVER: That is a question that I would have to yield to some other member of the committee on. Mr. Brake, could you answer that?

CHAIRMAN DeVRIES: Delegate Brake.

MR. BRAKE: It would have no effect whatsoever. It wouldn't apply to it.

CHAIRMAN DeVRIES: Are there any amendments to section j? If not, it will pass.

Section j is passed. The secretary will read.

SECRETARY CHASE: Section k:

[Section k was read by the secretary. For text, see above, page 929.]

CHAIRMAN DeVRIES: The Chair recognizes the lady from East Grand Rapids, Delegate Judd.

MRS. JUDD: Mr. Chairman, I'd like to yield the floor to Mr. Sharpe.

CHAIRMAN DeVRIES: Delegate Judd yields to Delegate Sharpe.

MR. SHARPE: Mr. Chairman, members of the committee:

[The supporting reasons for section k were read by Mr. Sharpe. For text, see above, page 929.]

We urge the passage of this section.

CHAIRMAN DeVRIES: Are there any amendments to section k? If not, it will pass.

Section k is passed. The secretary will read:

SECRETARY CHASE: Section l:

[Section l was read by the secretary. For text, see above, page 929.]

CHAIRMAN DeVRIES: The Chair recognizes the lady from East Grand Rapids, Delegate Judd.

MRS. JUDD: Mr. Chairman, I'd like to yield the floor to Mr. Burton Richards.

CHAIRMAN DeVRIES: Delegate Judd yields to Delegate Richards.

MR. J. B. RICHARDS: Mr. Chairman and members of the committee, this is section 15 of the present article VIII. There are no changes. It's the same authority we've had since 1908 and I think before that.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Muskegon, Delegate Hanna.

MR. W. F. HANNA: Question, Mr. Chairman, of Mr. Richards. Would that prevent the people of 2 adjoining townships from consolidating by local vote or referendum?

MR. J. B. RICHARDS: It is my understanding that this would have to be approved by the board of supervisors. I think that later on we will come to a place where they can contract together. It is still up to the board of supervisors.

MR. W. F. HANNA: Did the committee consider at all allowing townships to consolidate by their own vote?

MR. J. B. RICHARDS: No, we did not.

CHAIRMAN DeVRIES: Are there any amendments to section l? If not, it will pass.

Section l is passed. The secretary will read.

SECRETARY CHASE: Section m:

[Section m was read by the secretary. For text, see above, page 929.]

CHAIRMAN DeVRIES: The Chair recognizes the lady from East Grand Rapids, Delegate Judd.

MRS. JUDD: Mr. Chairman and members of the committee, by the size of the print you can see that this is new material and I would like to yield the floor to Delegate Baginski.

CHAIRMAN DeVRIES: Delegate Judd yields to Delegate Baginski.

MR. BAGINSKI: Mr. Chairman and delegates, this is new matter and the wording, of course, is:

[Section m and the supporting reasons were read by Mr. Baginski. For text, see above, page 929.]

We in Wayne have had a civil service or merit system for 19 years and it has been a success and we ask for the same privileges in our county civil service that we have in our state civil service. We want protection in the constitution so that there is no possibility of endangering our merit system in Wayne. I urge the adoption of this section.

CHAIRMAN DeVRIES: Are there any amendments to section m? Delegate Hanna.

MR. W. F. HANNA: Mr. Chairman, a question to Mr. Baginski. By the usual construction of such matters, would this exclude counties of under 1 million from adopting civil service or should this permission be specifically granted so that it is not clear that by establishing civil service for counties of 1 million or over, that you have forbidden the legislature from allowing civil service to be established in counties of lesser population?

CHAIRMAN DeVRIES: Delegate Baginski.

MR. BAGINSKI: Mr. Hanna and fellow delegates, it was the impression that we received in the committee that no other county cared to come under this provision. Therefore, we set the figure at 1 million.

MR. W. F. HANNA: Then you agree with the construction that the legislature could not under this provision provide for civil service either on a local option basis or otherwise for counties of under 1 million?

MR. BAGINSKI: The construction now is that it be set up and controlled by the board of supervisors.

MR. W. F. HANNA: But only in counties of over 1 million?

MR. BAGINSKI: That's right.

MR. W. F. HANNA: In counties of 1 million, the legislature could not grant to that county the power to establish civil service?

MR. BAGINSKI: Not according to the words here.

CHAIRMAN DeVRIES: The Chair recognizes the delegate from Lansing, Delegate Wanger.

MR. WANGER: A question for Mr. Baginski or any other member of the committee. I notice the final sentence of section m says, "The ordinance or any amendments thereto shall be approved by the electors of the county." Now, first of all, the electors — well, taken literally, I suppose that would mean all voters of the county. And again taken literally, that would mean a majority vote was not enough. You'd have to get a 100 per cent vote. Most places in the constitution, I think, always say by a majority of those voting on the subject. I just wondered what the intent was behind the committee proposal and what the consideration was behind this aspect of the committee proposal.

CHAIRMAN DeVRIES: Delegate Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, Mr. Baginski and Mr. Wanger, it just goes to prove to you that you need a committee of the whole (laughter) because this is not the intention of the committee at all to make this the requirement, the majority vote of all the electors, but merely of those voting on the issue. Whatever language Mr. Wanger or some member of our committee could submit to the Chair, I'm sure would clear that up once and for all.

Speaking on the other issue, if I may, as long as I'm on my feet, the question of Mr. Hanna from Muskegon, I do not concur in the report that Mr. Baginski gave because while he is correct that this says that they shall have the power by ordinance to establish, it was not our intention in the committee by this language to prevent the legislature from passing any general law which would make it possible for any county to establish a merit system should they want to.

MR. BAGINSKI: Mr. Chairman, I stand corrected.

CHAIRMAN DeVRIES: Does the gentleman from Eau Claire, Mr. Richards, seek recognition?

MR. J. B. RICHARDS: Mr. Chairman and fellow delegates, we first started this off with 300,000, thinking that probably there might be 6 or 7 or 8 counties in the state who would be interested in having a civil service or a merit system for their employees. There seemed to be no interest and so the population was moved up to a million to take care of it.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from East Grand Rapids, Delegate Martin.

MR. MARTIN: Mr. Chairman, I think it is quite clear that the language as now contained in the committee proposal does exclude any county which has a population of less than a million from having a merit system. I know that we have an amendment on the desk which would bear on this if it might be read.

CHAIRMAN DeVRIES: The secretary will read the amendment.

SECRETARY CHASE: Mr. Martin, Dr. Pollock, Mr. Faxon, Mrs. Cushman and Mr. W. F. Hanna have all filed the same identical amendment as follows:

1. Amend page 3, line 20, by striking out "with a population of 1 million or more"; so the language will read, "The board of supervisors of any county shall have the power by ordinance to establish a merit system for county employment."

CHAIRMAN DeVRIES: The Chair recognizes the author of the amendment, Delegate Martin.

MR. MARTIN: The amendment would make it possible for any county, regardless of population, to establish a merit system if it saw fit to do so, if its board of supervisors saw fit to do so, and if it were approved by the electorate of the county.

It would seem that we have to look a long way ahead in drafting this constitution. We are talking about 40 or 50 years perhaps and certainly many of these counties, before that time rolls by, will want to have a merit system in their counties. It seems undesirable to have any limitation by population as to whether a county can or cannot do it. I think we should leave this question to the judgment of the board of supervisors and the electors of the county. If they don't want it, they have no necessity for having it. But if they do want it, they certainly ought to have it possible to set up such a system and provide the necessary mechanics for making it work.

CHAIRMAN DeVRIES: Was the delegate from Pontiac, Mr. King, seeking recognition on the Martin, Faxon, et al, amendment?

MR. KING: Mr. Chairman, I would support the amendment. I just would like to state for the record that I do not agree with the interpretation that Mr. Baginski has placed upon the present language nor that that Mr. Martin has placed upon it, but rather that Mr. Elliott has placed upon it, that this does not preclude the legislature from acting in this area with regard to smaller counties. In the event that this is defeated, I think we ought to make that very clear on the record. But in the meantime I'll support Mr. Martin's amendment.

CHAIRMAN DeVRIES: The Chair recognizes the lady from East Grand Rapids, Delegate Judd.

MRS. JUDD: I would like to explain to the committee a little bit as to how we finally arrived at this proposal. We did start in talking about making it permissive for counties of every population to have civil service but then we also began going back to the policy we had been pursuing of making these provisions with respect to all 83 counties just as they are in the present constitution and leaving these privileges due to aspects of government, civil service and other matters that will come up later to those counties that might wish to reorganize their form of government under home rule.

We finally arrived at the Wayne county problem due to the difficulties that the county has had with its some 7,000 employees under civil service with the legislature changing their system in various details for many years. Therefore, we wished to transfer it to the Wayne county board of supervisors. It certainly was not our thought that that sentence would make it impossible for any other county to have civil service. If the best legal advice indicates that we were wrong in this assumption, I think we would be quite open to changing it later.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Detroit, Delegate Baginski.

MR. BAGINSKI: Mr. Chairman and delegates, as one of the proponents of this section, we would have no objection to the amendment offered that is on the desk to include all counties. Our concern here was that we would protect the 7,000 employees in Wayne county. However, if you care to amend it as the amendment is proposed, we have no objections.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Fennville, Vice President Hutchinson.

MR. HUTCHINSON: Mr. Chairman, I want to raise this line of thought with regard to this proposed section and the matter comes into more striking attention in my mind in view of Mr. Martin's amendment. It is that at the present time, with nothing in the constitution on the matter, we will concede that the legislature has the power to pass laws which provide

for merit systems in counties. The fact of the matter is they have done it as to Wayne county. It is the purpose of this proposal here to take that power away from the legislature and to vest it in the county boards of supervisors. Now then, suppose then that we left similar powers to create merit systems by county ordinance in the boards of supervisors of all counties in the state. This matter then will be completely taken away from the legislature with the result that there will be no uniformity of county merit systems. Maybe that isn't at all important now and maybe it wouldn't be in the future except that it occurs to me that in the future — let us keep in mind Wayne, Oakland and Macomb counties, for instance — it would seem as though it might in the future become desirable to have it possible perhaps to transfer seniority as between counties and among counties within the merit system. I don't know, but it might come about, particularly in the metropolitan areas of the state where the county lines are not quite as important, I think perhaps as maybe somewhere else. Well, then, if you vest a constitutional power in each one of 83 different boards of supervisors, they can write their merit systems completely independent of any other board of supervisors, with the result that there may be a complete lack of uniformity throughout the state, a complete lack — in fact, no ability whatever in the legislature to require a uniformity or to require any kind of a reciprocity or anything of the sort. Now this is the kind of a constitutional rigidity which I think we should steer clear of. I think in my own mind, we'd be much better off to leave this within the power of the legislature. I am aware of the fact that Wayne county perhaps is impatient from time to time with bills that are introduced in the legislature to change the details of the merit system down there but nevertheless, I think it is important to keep in mind this other aspect of it: that in the future, we may find it very desirable to have a uniformity as between these various municipal systems. That uniformity I think will be destroyed and any ability to make it uniform will be destroyed by this provision.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Pleasant Ridge, Delegate Elliott.

MR. A. G. ELLIOTT: This problem again also received considerable consideration within our committee. The problem of the merit system involving all 83 counties is a difficult one to decide and it became very evident it should not be constitutional in nature. On that point, we agree completely with Mr. Hutchinson. The point, however, that brought this to the committee's attention in the first place was that the legislature in its operation over the past several years had from time to time by law changed the merit system provisions in such a way that they have affected Wayne county and its employees to the detriment of the system. At least, there was a great deal of concern as to what these changes did. It was therefore decided in the committee that when a county having a merit system became as large as 1 million inhabitants, then at that time, it should have the freedom of controlling its own system with the adoption by a majority vote of its people.

That will give you a little better background. I don't think that the amendment as offered by Mr. Martin does at all what the committee in its wisdom wanted to do or wanted to suggest to you. I do think that the comment made by Mr. Wanger was appropriate and that language will have to be added to accommodate that particular situation which I believe one of the members of the committee already has on the desk. But as to the amendment of Mr. Martin, this was given serious consideration and it was felt that with the exception of counties when they reach the size of 1 million or more, the legislature should in its wisdom be able to develop a merit system which, perhaps as Mr. Hutchinson suggested, would have a certain uniformity and so forth. But that was the rationale.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Ionia, Delegate Powell.

MR. POWELL: Mr. Chairman, I would like to ask for a definition of "county employment". Does that include deputy sheriff, deputy treasurer, deputy clerk?

CHAIRMAN DeVRIES: The chairman of the committee, Delegate Elliott.

MR. A. G. ELLIOTT: I would like to bring to the gentleman's attention this merely allows the county to have control of its merit system under its charter and as adopted by the people so that if this were adopted, it would be within the province of Wayne county to establish its own rules and this would not in any way determine where the line would be drawn.

MR. POWELL: Well then, am I to understand that by this provision the sheriff could be brought into the county employment, the prosecutor blanketed in under a merit system?

MR. A. G. ELLIOTT: As to those elected officials, I would say that the answer is decidedly no. Those that are employed, the employables that are not elected, I would think that the answer would be that if their system so desired and if the people adopted it and passed it by a majority vote, then it would be within their province. We are giving to the county the freedom of adopting its own merit system in this proposal if they have a million or more people in the county.

MR. POWELL: If I understand the amendment, it would strike the 1 million or more and the only thing that I am referring to is this: assume that a sheriff comes in and he appoints his deputy sheriff. Now, after that sheriff goes out of office, if they adopt this merit system, they can blanket all deputy sheriffs and deputy clerks and do away with the democratic process of elections.

MR. A. G. ELLIOTT: It would not in any way do away with the democratic process of elections. It might very well do away with the democratic process of appointing your own deputies or something like that. However, I bring to Mr. Powell's attention that as chairman of this committee, I am speaking against the amendment because it does not express the intent of the committee. Our intent will give to those counties of a million or more the right of self determination in regard to their merit system and that all other counties should have whatever rights were provided for by law.

CHAIRMAN DeVRIES: The question before the committee is the amendment offered by Delegates Faxon, Cushman, Martin and Pollock. Delegate Martin.

MR. MARTIN: Mr. Chairman, Mr. Hutchinson has raised a very important point. The proposal as it now stands would clearly make it impossible for any county other than one of a million or more population to have a merit system. He points out that the amendment proposed, while it would extend the possibility of a merit system to other counties, would take the responsibility for general provisions on the merit system away from the legislature, and the committee on executive branch has a proposal pending before the committee of the whole on the general orders calendar which would provide that the legislature shall by law establish a system under which the civil divisions of the state, including cities and villages, may choose to provide for the merit principle in employment, such civil divisions' appointments and promotions under civil service shall be made according to merit and fitness to be ascertained as far as practicable by examination, which as far as practicable shall be competitive, and authorizes the state civil service commission to be of assistance to local civil divisions in setting up their own personnel systems.

If Mr. Hutchinson is correct, and this proposal actually would then take away from the legislature any authority with respect to the merit systems, I am opposed to it because we believe that there should be a permissive system for local units of government to set up their own civil service systems, if they want to do so.

Others who have offered the amendment may want to retain it, but I think on that basis, I would withdraw my amendment and vote against the proposal of the committee.

CHAIRMAN DeVRIES: The Chair recognizes the chairman of the committee, Delegate Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, Mr. Martin, I don't believe that the committee is out of sympathy with what the executive committee is going to offer when it gets its day in court. However, this does not, in our belief, eliminate from the right of the legislature to do just exactly what you say. The only thing that this does do — and I can repeat — is that it gives to the county of a million or more the opportunity of

making this a self determining feature and that it would eliminate them from any jurisdiction by the legislature in the future once the electors by a majority vote had so passed.

I don't believe that there has been anything here on the floor that has convinced me that we have eliminated or taken away from the legislature the power to enact laws which would cover all counties, including counties of a million or more until such time as that county of a million or more should by vote of its people determine to come under a charter or a merit system which they adopt and then from that date on, they would be free from legislative instruction or interference or whatever you want to call it. If, however, the legal minds of this convention find that the committee is wrong, I would suggest if you are in favor of the intent of the committee, that somebody suggest some language or amend some language which will make it perfectly clear that the legislature retains the right of law for all other counties.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Muskegon, Delegate Hanna.

MR. W. F. HANNA: Mr. Chairman, speaking to the amendment — and I would agree with Mr. Hutchinson that this may remove some of the legislature's power to establish uniform civil service for counties — I believe, however, that there is nothing wrong with each county being able to determine its own civil service if it wishes it, and if it wishes to make interchange or give credit for prior service within a state or other political subdivisions, be it city, county or township, that it could by its ordinance so do.

I think it is important — and I think most people would agree — that if you specifically grant a power by this constitution to a class of counties, you have thereby eliminated it as to all other counties. Certainly, this language has the implication that only in counties over 1 million or more does the board of supervisors have any power to pass a civil service or merit system. I would assume that the legislature could establish a merit system in detail for all the other counties, but I would assume that the legislature by this language could not grant to the board of supervisors or to the electorate of any other county having a population of 1 million or less, the power to establish a merit system. Certainly, in view of the general feeling that this constitution is for all the counties and not for only one county, we should provide a general provision that would give my county or any other county the power to pass on whether or not it wants civil service. If it wants to allow interchange and credit for experience in other systems, the local system may so provide. I urge the adoption of the amendment.

CHAIRMAN DeVRIES: The secretary will read the amendment offered by Delegates Faxon, Cushman, Martin, Pollock and Hanna.

SECRETARY CHASE: The amendment is as follows:

[The amendment was again read by the secretary. For text, see above, page 962.]

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from East Grand Rapids, Delegate Martin.

MR. MARTIN: Mr. Chairman, in the light of the discussion, I should like to add to my amendment by inserting the words "as provided by law" after the word "employment" in line 22, so that the proviso of the proposal would then read, "The board of supervisors of any county shall have the power by ordinance to establish a merit system for county employment, as provided by law." This will give the legislature the necessary authority to spell out a system whereby counties can establish that system that will make it possible for any county which wishes to do so to have a civil service system.

CHAIRMAN DeVRIES: Is the addition of the language acceptable to the other cosponsors of the amendment? Delegate Faxon?

MR. FAXON: I want it read as revised.

SECRETARY CHASE: 1. Amend page 3, line 20, by striking out "with a population of 1 million or more"; and in line 22, after "employment" by inserting "as provided by law"; so that it would then read:

The board of supervisors of any county shall have the power by ordinance to establish a merit system for county employment as provided by law. The ordinance or any amendments thereto shall be approved by the electors of the county.

CHAIRMAN DeVRIES: Do the cosponsors agree to the additional language? Delegate Faxon?

MR. FAXON: Yes sir.

CHAIRMAN DeVRIES: Delegate Cushman?

MRS. CUSHMAN: Yes, Mr. Chairman.

CHAIRMAN DeVRIES: Delegate Pollock?

MR. POLLOCK: Yes, sir.

CHAIRMAN DeVRIES: Delegate Hanna?

MR. W. F. HANNA: Of course.

CHAIRMAN DeVRIES: The question now is on the amendment, as revised, offered by Messrs. Martin, Pollock, Hanna, Mrs. Cushman and Mr. Faxon. The Chair recognizes Delegate Cudlip.

MR. CUDLIP: Mr. Chairman and members, in reading from previous sections that we have just adopted whereby pursuant to law these boards of supervisors may fix salaries and compensation for county officers, and up above that that they have such powers of administrative character and otherwise as may be provided by law, it looks to me as if we are going to start following this high road, that this has no place in this constitution. There is ample authority for all this sort of thing on a sensible uniform basis in the sections we have been over since 4:15.

CHAIRMAN DeVRIES: The Chair recognizes the delegate from Detroit, Mr. Mahinske.

MR. MAHINSKE: I would like to ask Mr. Martin under his proposed change who would have to act first?

CHAIRMAN DeVRIES: Delegate Martin.

MR. MARTIN: Well, it would mean that the legislature would have to set up a general statute under which such civil service systems could be provided.

MR. MAHINSKE: But then aren't we going right back, if there is nothing in here at all?

MR. MARTIN: What we want is to have it possible for the legislature to set up such a system so that individual counties, cities, villages and so on can establish their own merit systems.

MR. MAHINSKE: Thank you.

CHAIRMAN DeVRIES: Does the gentleman from Detroit, Delegate Madar, seek recognition on the amendment, as revised?

MR. MADAR: Well, all I wanted to do is speak on the general proposal and all I wanted to say is we wanted to do the same thing here for the county employees that the state employees now have and all city home rule units have. City home rule units can go ahead and establish a civil service system by going to the electors and we now want to do the same thing for the county. We want to make sure that we do this and the only reason that we didn't leave it at 100,000 or 200,000 was because we wanted to bring it up here before you people to protect these county employees. The only way we could get it up here was to put it at the 1 million mark.

CHAIRMAN DeVRIES: The Chair recognizes the delegate from Saginaw, Mr. Leppien.

MR. LEPPIEN: Mr. Chairman, I'd like to direct this question to the chairman of the committee, the gentleman from Pleasant Ridge, Mr. Elliott. Section g of this proposal reads as follows:

> The legislature may by general law confer upon the boards of supervisors of the several counties powers of a local, legislative and administrative character not inconsistent with the provisions of this constitution.

My question of the chairman is, sir, is it not true that this takes care of that without the proviso as far as the section under discussion with its attendant amendment?

CHAIRMAN DeVRIES: Delegate Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, Mr. Leppien, I think that you're right if you're putting it in the context of the legislature doing it. If I understand your question, though, it doesn't take care of the problem that we thought we were re-

solving and that is, that when the county gets such size as having a million people or more, that it then is of a size and stature that it should have complete freedom in decision on its merit system. Do you see the difference in the 2 provisions?

MR. LEPPIEN: That is correct. But without the amendment to section m of the proposal, this section g covers all other counties. Isn't that correct, sir?

MR. A. G. ELLIOTT: It was the feeling of the committee that it did and that we had this provision. But I point out to you that I am not a lawyer and I have heard lawyers say that it does and I've heard some say that it does not. But we had thought that this in no way precluded the legislature from granting to the counties of our state, provisions of the merit system within the framework of general law.

MR. LEPPIEN: Chairman Elliott, you also would agree that one of the attorneys in this committee did agree that it did and that was what Delegate Cudlip just said, if I understood his remarks correctly.

MR. A. G. ELLIOTT: Well, there have been attorneys on both sides of the issue. This is par for the course.

CHAIRMAN DeVRIES: The Chair will recognize an attorney, the delegate from Muskegon, Delegate Danhof.

MR. DANHOF: Mr. Chairman, I'd like to direct a question to Mr. Martin. As I understand it, there is presently on the books a civil service statute relating to counties relative to a million or more; that it was the obvious intent of the committee proposal in its original form to transfer the control of that system from the legislature to the Wayne county board of supervisors, as I understand Mr. Baginski. Is this right?

CHAIRMAN DeVRIES: Delegate Martin.

MR. MARTIN: I'm not sure I can answer that, Mr. Danhof. I don't know if there is a statute specifically providing for your civil service system in Wayne county. Maybe Mr. Baginski can answer that.

CHAIRMAN DeVRIES: Delegate Baginski.

MR. BAGINSKI: Mr. Chairman, in answer to this, we do have a special statute. We are now setting up civil service for a million or more.

MR. DANHOF: My next question is: is there anything that is in the present constitution that would prohibit, insofar as Mr. Martin is aware, the legislature from extending this down to the counties of 2,300 or more, which would include everybody, including Keweenaw? Do you think it would?

MR. MARTIN: Yes, Mr. Danhof. I think quite clearly if the original proposal here is adopted with regard to counties of a population of a million or more, by exclusion it would appear to mean that counties under that could not establish such a system. That is what brought about my amendment in the first place.

MR. DANHOF: What I wish to get to, Mr. Martin, with your amendment, are we not right back to the present constitution, that the board of supervisors of any county shall have the power to establish a merit system for county employment as provided by law? If they can do it by law now, why do we need the additional language that they shall? We all know that we cannot mandamus the legislature and if they do not do it, there isn't anything that a county employee could do if a system were not set up for all counties as provided by law. I fail to see — we are just adding words and accomplishing nothing.

I can see the original proposal and whether I am in agreement with it or not is one thing. I can see what they intended to accomplish but if we adopt the amendment, as revised, I think we are right back to where we were if we say nothing and the legislature can then pass such statutes as it desires, as it has done, for counties of a million or more. If it wants to amend the statute it can go down to 100,000.

CHAIRMAN DeVRIES: Are you asking a question of Delegate Martin?

MR. DANHOF: I would like to inquire from Mr. Martin what he feels the provision, assuming the revised amendment, adds to the power of legislature.

MR. MARTIN: I think Mr. Danhof is possibly right, that we are bringing it around to the power which the legislature has now. As a matter of fact, I think that there should be a directive to the legislature to pass such permissive legislation but I don't want the proposal as it stood without my amendment to go through because I think that will prevent the legislature from passing any legislation with respect to counties under a million.

CHAIRMAN DeVRIES: Is the lady from East Grand Rapids seeking recognition on this amendment? Delegate Judd.

MRS. JUDD: Mr. Chairman, I think that the difficulty the committee is having is exactly the difficulty that we had in the committee. That is, that we are trying to dictate to any 1 of the 83 counties the kind of system we think they ought to have and this we find extremely difficult to do. So we pursued the policy of not asking new things in the constitution of the 83 counties but hopefully of the setting up by a home rule provision whereby a county, when it does become something more than an arm of the state and does have more and more municipal functions, could draft its own charter and set up its own civil service system. I would presume that if Wayne county knew that they were going to have the opportunity for writing a home rule charter and could then write their own civil service system, that this provision would not be necessary. But we propose this now because of a particular situation in that county.

CHAIRMAN DeVRIES: Is the gentleman from Ann Arbor seeking recognition on the Martin amendment?

MR. POLLOCK: I was really wanting to repeat, Mr. Chairman, what Mr. Martin had indicated: that the committee on executive branch is already proposing to bring out a permissive framework law which would not only cover Wayne county but all counties on a permissive basis and if there is any conflict after Mr. Martin's amendment, if it is adopted, if there is any conflict between this amended provision and the new one, which is on general orders, it then becomes a matter of resolving that conflict here in the committee.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Ionia, Delegate Powell.

MR. POWELL: Mr. Chairman, just for the record, I would like to point this out then: that as far as I am concerned, my interpretation of this is that the committee is drawing a distinction between officials and employees and that this provision does not apply to section d or their appointed officials. Am I correct on that, Mr. Chairman?

CHAIRMAN DeVRIES: The Chair recognizes Delegate Elliott.

MR. A. G. ELLIOTT: I think the gentleman is asking for an interpretation that I am not prepared to make completely because the committee did not have this discussion. I will, however, make a comment of a personal nature. This obviously does not involve any elected officer. However, I do believe that it does involve any officer, anyone that is employed by the county, who within the framework of the merit system is included, and it would become incumbent upon that particular merit system to determine whether or not certain employment should be under the system or whether it should not.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Bay City, Delegate Higgs.

MR. HIGGS: Mr. Chairman and fellow delegates, the arguments that we are hearing here today sound familiar whenever we get into the area of legislative matters. I too can find things about section m that raise questions in my mind, such as: how will this be reconciled with the county home rule provision? Should you have some governing body other than a board of supervisors? Questions with regard to the manner of submission of this article to the electors; when would the amendment proposed by Delegate Martin — I think it clearly points out, as Delegate Danhof has stated, that's what we are doing. The legislature already has the power to establish merit systems.

I have on the desk an amendment which I would like to propose as a substitute for the committee proposal, striking out the entire section, if that is in order.

CHAIRMAN DeVRIES: Mr. Higgs, your amendment is not a substitute amendment. It is a motion to strike out the entire section and we will consider it after we have considered the amendment offered by Mr. Martin and the other delegates.

The Chair recognizes the gentleman from Detroit, Delegate Hodges.

MR. HODGES: Mr. Chairman, it seems what is involved here is the same thing we had when we were talking about state civil service. Are we going to trust the legislature to keep changing civil service? I think it was ably demonstrated through the discussion on that score that many people have grave reservations about the legislature and its power to change the civil service section. Apparently — I know in my county — the people would rather have the power to change left with the board of supervisors.

Now it seems to me that the original Martin amendment, before it was revised, is proper. This leaves it up to the people in each county whether they want it or not. But certainly, I would have to speak against this Martin amendment because it absolutely is of no value to the people that are most vitally concerned with this amendment. It's just throwing it back in the lap of the legislature where it is already by statute. For this reason, I urge you to oppose the amendment.

CHAIRMAN DeVRIES: Mr. Stevens.

MR. STEVENS: Mr. Chairman and members of the committee, I have 2 or 3 questions here. I don't know if I'm in order. First, on Mr. Powell's question, I certainly question the validity of the answer. I feel that a deputy clerk or a deputy sheriff might well be considered an official since he can perform the duties of his superior who appointed him.

The other thing, Mr. Wanger's statement regarding the last sentence I think is even more defective than that. It seems to say to me that all of the voters of the county must approve this. I suppose what it means is that the amendment shall not take effect until a majority of those voting thereon have voted for it.

CHAIRMAN DeVRIES: Delegate Elliott, do you wish to answer the question?

MR. A. G. ELLIOTT: Mr. Chairman, Mr. Stevens, I believe that my answer to Mr. Powell was certainly as correct as I could make it — and I would again repeat that it does not cover elected officials but that in my judgment it would cover all employees of the county if the system included their office, whether it be a deputy clerk or what, within the system. But much as the merit system of the state does now, it would be my assumption that the county merit system would probably have some exempt offices within each of the major departments. However, that is merely an assumption. Did you have a second question, Mr. Stevens?

MR. STEVENS: I doubt your opinion on that. It may be questionable but I think a deputy sheriff, let's say an undersheriff, might well be considered an official. It's a matter of law.

MR. A. G. ELLIOTT: I said an elected official and I will say elected officer and leave it at that. I can't disagree with you. I am merely making a statement that I think is consistent with where we are at this time. Was there another question?

MR. STEVENS: Is that last sentence to be rewritten?

MR. A. G. ELLIOTT: Yes. There are many amendments on the desk to correct the context of the last sentence.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from East Grand Rapids, Mr. Martin.

MR. MARTIN: Mr. Chairman, it would be my suggestion in the light of the discussion that you adopt the amendment which I offered. But, if you don't adopt the amendment which several of us have offered, that you then defeat the basic proposal. Because if you don't do that, you will certainly freeze into the constitution a provision which will prevent us from making permissive civil service in all these other counties under a million. So you either ought to have the committee proposal with the amendment that has been offered, or you ought not to have any proposal at all on that particular point.

CHAIRMAN DeVRIES: The question is on the adoption of the amendment offered by Delegates Faxon, Cushman, et al to section m and the secretary will read the amendment.

SECRETARY CHASE: The pending amendment is:

[The amendment was again read by the secretary. For text, see above, page 964.]

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Detroit, Delegate Baginski.

MR. BAGINSKI: Mr. Chairman and delegates, a motion may not be apropos, but I was going to ask the chairman of our committee if we couldn't make this a special order of business at the end of local government and come up with the proper language on this.

CHAIRMAN DeVRIES: Do you move that, Delegate Baginski?

MR.BAGINSKI: I do.

CHAIRMAN DeVRIES: Delegate Baginski, the secretary informs me we cannot make special orders in the committee of the whole. We can postpone this temporarily.

MR. A. G. ELLIOTT: Mr. Chairman, I would like to urge that we not postpone it, not because I don't support Mr. Baginski's position, but because I think Mr. Martin's amendment should be defeated and we should go on from that point.

I believe that the language here with the suggestion made by Mr. Wanger and by many others by this time is the language that the committee felt was sound and proper for the constitution and for the situation as we saw it. I am not convinced, even with my great respect for him, that the language prevents the legislature from passing legislation which would allow merit systems in other counties at any time. Therefore, I would urge the defeat of the amendment and the adoption of the committee proposal with the minor amendments which would follow.

CHAIRMAN DeVRIES: The Chair recognizes the lady from Livonia, Delegate Conklin.

MRS. CONKLIN: I just wanted to ask a question, Mr. Chairman. When this last amendment was read, were they leaving off the last sentence? Are they going to attack that separately? "The ordinance or any amendments thereto. . . ." and so forth. Were they leaving this off?

CHAIRMAN DeVRIES: The secretary informs me, Delegate Conklin, that there are amendments on the secretary's desk to the last sentence. The amendment we are considering now covers only the first sentence.

MRS. CONKLIN: In their suggested amendment, they are leaving that sentence off; am I right?

CHAIRMAN DeVRIES: No, that is not right.

MRS. CONKLIN: I didn't understand you to read that.

CHAIRMAN DeVRIES: Would you like the secretary to read the amendment again, Delegate Conklin? The secretary will read.

SECRETARY CHASE: The secretary might point out to the committee of the whole that all that is being considered at the present time is the amendment to the first sentence. This leaves the second sentence to be considered later.

CHAIRMAN DeVRIES: The Chair recognizes the delegate from Detroit, Delegate Faxon.

MR. FAXON: I am speaking on behalf of the amendment. I think we are generally agreed that the constitution should be one which is applicable to the entire state and I cannot see how we can go ahead and write into the constitution a figure or a number of people necessary to enjoy certain privileges and deny this to the rest of the state. So I would urge the delegates to keep in mind that we are not writing special legislation for any one county, but we want something to be uniform and for the whole state. In this case I would urge your support for the amendment.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Taylor, Delegate Marshall.

MR. MARSHALL: Mr. Chairman and fellow delegates, I am not opposed to the amendment nor am I opposed to what I believe is the intent of the committee proposal. I do think that there are some differences of opinion as to what the language means and as to whether or not it is the proper language. There seems to be the general consensus of opinion on this particular proposal that we want something in the constitution. I am not going to make any amendment at this

time. I would request that the delegates think over the suggestion of Delegate Baginski during the dinner period and give some consideration to postponing that one particular section and let Marty and Art Elliott get together and come up with the appropriate language.

At this time, while I am on the floor, I would like to move that the committee rise.

CHAIRMAN DeVRIES: Delegate Marshall moves that the committee of the whole do now rise. All those in favor say aye. Opposed, no.

The committee has risen.

[Whereupon, the committee of the whole having risen, Acting President Bentley assumed the Chair.]

ACTING PRESIDENT BENTLEY: The convention will be in order. The Chair recognizes the gentleman from Grand Rapids, Mr. DeVries.

MR. DeVRIES: Mr. President, the committee of the whole has had several items under consideration on which the secretary will give a detailed report.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 81,** A proposal pertaining to county government. It has considered several amendments thereto and has come to no final resolution thereon. This completes the report of the committee of the whole, Mr. President.

I have the following announcements:

The committee on emerging problems will meet Wednesday, February 14, in room I on the third floor at 1:00 o'clock p.m. Frank G. Millard, chairman.

The committee on education will meet in its committee room immediately after the morning session on Wednesday, the fourteenth.

The committee on rules and resolutions will meet tomorrow morning at 8:00 a.m. Richard Van Dusen, chairman.

The committee on style and drafting will meet in room K tomorrow at 8:00 o'clock p.m. William B. Cudlip, chairman.

ACTING PRESIDENT BENTLEY: The Chair recognizes the gentleman from Detroit, Mr. Hodges.

MR. HODGES: Mr. President, I move the convention now recess until 8:00 p.m.

ACTING PRESIDENT BENTLEY: Those in favor will respond by saying aye. Those opposed, no.

The motion prevails.

The convention will be recessed until 8:00 p.m. this evening.

[Whereupon, at 6:00 o'clock p.m., the convention recessed; and, at 8:00 o'clock p.m., reconvened.]

PRESIDENT NISBET: The convention will please come to order.

SECRETARY CHASE: Mr. President, a quorum of the convention is present.

PRESIDENT NISBET: The Chair recognizes Mr. DeVries.

MR. DeVRIES: Mr. President, I move the convention resolve itself into committee of the whole for the consideration of items on the order of **general orders.**

PRESIDENT NISBET: The question is on the motion of Mr. DeVries. All those in favor, say aye. Opposed, no.

The motion prevails.

[Whereupon, Mr. DeVries assumed the Chair to preside as chairman of the **committee of the whole.**]

CHAIRMAN DeVRIES: The committee will come to order. When last the committee met, it was considering **Committee Proposal 81,** section m, an amendment to the first sentence, which the secretary will read.

SECRETARY CHASE: Following is the amendment to section m that is presently pending:

1. Amend page 3, line 20, after "county" by striking out "with a population of 1 million or more"; and in line 22, after "employment" by inserting "as provided by law".

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Pleasant Ridge, Delegate Elliott.

MR. A. G. ELLIOTT: Mr. Chairman and delegates, during this recess, I have not reached all of the people who were on the amendment but the majority of them and it seems that the major problem here was one of interpretation. Mr. Martin felt that the way the committee language read it prevented other counties from having merit systems as provided by law.

Therefore, I have a suggestion to make to the makers of that amendment which may clear this up and that would be to leave the million count in there and add this language at the bottom: "All other counties may establish such merit systems as provided by law," leaving it as it is now, to the legislature. This should clear up any misinterpretation. I then have some additional language that would clear up the election procedure but that is not under discussion at this time.

The makers of this amendment originally were Messrs. Pollock, Martin, Faxon, Hanna and Mrs. Cushman. I talked to Mr. Martin and Mr. Faxon about this and they are agreeable to this substitution. If I felt we could reduce the discussion by having an agreement of that kind from Mrs. Cushman and Mr. Hanna and Dr. Pollock, I would introduce this as an amendment at this time.

CHAIRMAN DeVRIES: Do you introduce that as a substitute amendment?

MR. A. G. ELLIOTT: I would prefer to do it with the permission of the makers. If not, I think I'll just stand on these grounds and try to defeat the amendment as offered.

CHAIRMAN DeVRIES: Will Delegates Faxon, Cushman, Martin, Pollock and Hanna withdraw their amendment? Delegate Faxon.

MR. FAXON: There was some substantial degree of difference between the amendment and the proposition which Mr. Elliott refers to now and I've been thinking about it. As the statement now reads, you have any county of 1 million or over and then you're going to make a proviso that will project momentarily that the other counties will have merit systems that will be established by law by the legislature. "Any county of 1 million or over." Everybody knows what we're talking about, we know we are talking about Wayne county. I don't know whether there is an effort here to say it in any other way.

When I spoke before on the question, I felt that we should have all counties treated in a like manner insofar as the state is concerned. But I understand this is not a popular position; that there is a county that wants to be treated differently because of some experience that it may have had in the past with regard to the state legislature. If this is the case, I would wish for the proponents of the original proposal to more clearly spell out for me just what the difficulties have been over the past years that warrant 1 county getting special treatment in the constitution. This is what I would ask Mr. Elliott. If he could justify this for me, I would have no objection. I have objected to the idea of putting a number into the constitution to mean generally when we mean very specifically the county of Wayne. If I could have that cleared up, I might feel more amenable to the proposed suggestion.

CHAIRMAN DeVRIES: Delegate Faxon yields to Delegate Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, I thought we made our position completely clear that the committee, after a great deal of discussion on this, arrived at the conclusion that you are reaching, Mr. Faxon: that it was necessary and wise to make this a constitutional provision. We thought we were making it possible for the legislature to have complete flexibility except after a county reached a population of 1 million. If you are not satisfied, then I would not offer this as a substitute amendment at this time and would urge the committee of the whole to defeat the amendment and I would offer it as a separate amendment.

CHAIRMAN DeVRIES: Does the gentleman from Detroit, Mr. Faxon, wish to object to the substitute amendment?

MR. FAXON: I would prefer to see a vote on the pending amendment before I would be willing to withdraw it, Mr. Chairman. (laughter)

CHAIRMAN DeVRIES: The question is on the amendment

offered by Delegates Faxon, Martin, Cushman, Pollock and Hanna. The gentleman from Ann Arbor, Dr. Pollock.

MR. POLLOCK: Mr. Chairman, I think I would agree with Mr. Faxon with the additional proviso that Mr. Martin added "as provided by law". It still keeps the whole thing within the framework of law at the same time that it indicates that there can be a classification to take care of different population groups. I think the Martin amendment clarifies the situation sufficiently and although I don't feel strongly about this, if the people from Wayne county are so fearful of the legislature and so anxious to have this vested with their own board of supervisors, I wouldn't want to fight over that particularly.

CHAIRMAN DeVRIES: Mr. Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, I just would like to remind the delegates that the amendment that they have now before them completely changes the intent of the committee and I would urge its defeat.

CHAIRMAN DeVRIES: The question before the committee is the amendment offered by Delegates Faxon, Martin, Hanna, Pollock and Cushman and the secretary will read the amendment.

[The amendment was again read by the secretary. For text, see above, page 964.]

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Detroit, Delegate Baginski.

MR. BAGINSKI: Mr. Chairman and fellow delegates, we in Wayne, with 7,000 civil service employees, are not asking for any more than Dr. Pollock and some of the other gentlemen have asked for the state civil service commission. We are now regulated by statute and we are subject to possible ripping and tearing up of our rules in Wayne as the state civil service commission was and we are entitled to the same privileges. Wayne is the only county in the state of Michigan that has a civil service system.

We are not opposed to the amendment offered by Mr. Elliott allowing the other counties to have a civil service system by law, but we do have a system that is in operation at this time. It has been there for 19 years; it has been a success.

I do hope that the amendment will be voted down and we can consider the amendment that Mr. Elliott will offer after this amendment is voted down.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Muskegon, Delegate Hanna.

MR. W. F. HANNA: Mr. Chairman, if I may, I would like to have the question divided to vote on the "as provided by law" separate from giving county boards of supervisors power to set up civil service which would be the effect of the amendment that I put in.

I originally agreed with Mr. Martin's adding those words and I would like to withdraw that agreement, if permissible, because I think that there are 2 different things here. One is the question of whether or not the board of supervisors may of its own volition establish civil service. This is question one. If you divide them, it makes it a clear question of home rule powers.

CHAIRMAN DeVRIES: Delegate Hanna has requested that the question be divided. Is there objection? I hear none. The question will be divided. The secretary will read the first part of the question.

SECRETARY CHASE: The first amendment which is now being considered is as follows:

1. Amend page 3, line 20, by striking out "with a population of 1 million or more".

CHAIRMAN DeVRIES: The gentleman from Grand Rapids, Delegate Blandford.

MR. BLANDFORD: Mr. Chairman, I think that Bill Hanna and Art Elliott have pretty well covered this. We have 2 separate items that we are trying to discuss here. It is obvious to me that section m as it is now written is what the people of Wayne county desire and what they want and I think it should be passed as such. Now, the rest of the other 82 counties in the state of Michigan have a separate problem. If they are going to have civil service, it will be under the jurisdiction of the state legislature. I feel that there should probably be another section added to this, covering the other 82 counties. I think it is as simple as that.

We have been trying to combine both of these into 1 section. I think it is impossible to do. You've got 2 separate items. I therefore feel that Bill Hanna has come the closest to my way of thinking on this: that we do have 2 separate things here. I feel section m should be passed as it is; the amendment of Mr. Martin, which in my opinion negates section m, should not be passed. Then after we pass section m, if you want to write another section covering the other 82 counties, go ahead and do so. I think that's the proper way to proceed.

MR. KING: Point of order, Mr. Chairman.

CHAIRMAN DeVRIES: What is your point of order, Mr. King?

MR. KING: Mr. Chairman, it seems to me that we should be voting first on the Martin amendment. My understanding of parliamentary procedure is you vote on the last amendment which is proposed and when the question was divided, I thought we were back to where we were before. I would prefer to vote on the Martin amendment which concerns the "act provided by law" part before we vote on the amendment concerning the number of people that have to reside in the county.

CHAIRMAN DeVRIES: Delegate King, it is the Chair's understanding that we are voting on the Martin amendment as divided. The secretary will read the first part of the question on which we will vote.

SECRETARY CHASE: There are 2 sections to the amendment proposed by Mr. Martin. The first part of it was page 2, line 20, by striking out "with a population of 1 million or more". The second amendment was in line 22, after "employment" by inserting "as provided by law".

MR. KING: Wasn't that second part added on after the first part?

CHAIRMAN DeVRIES: Delegate Martin revised the language without objection of the cosponsors of the amendment. So we are working now on the Martin amendment and we have divided the question as the secretary has read. We will vote on the first sentence first. The Chair recognizes the gentleman from Escanaba, Delegate Follo.

MR. FOLLO: Mr. Chairman, members of the committee, I was a member of the minority that lost out on this particular section. I think I can speak for most of the minority when I say we favored extending this to the other counties of the state, but we were outvoted on it. Our chairman, who appears to be a very loyal chairman, and who like a good captain goes down with his ship, is protecting something which I think some of us would have no objection to: extending this to all the counties of the state, regardless of the population.

CHAIRMAN DeVRIES: Does Delegate Sharpe seek recognition on the question?

MR. SHARPE: Mr. Chairman, would it be permissible to ask Delegate Baginski a couple of questions?

CHAIRMAN DeVRIES: If the gentleman cares to answer.

MR. SHARPE: Being a member of the local government committee, Martin, you told us in the deliberations that there were specific reasons why you wanted this protection for the city of Detroit and I don't believe that you have expressed this to the delegation. I think if we divide this question up and we add to or subtract from it, we're going to defeat it and if it is something that the Detroit people need and want, I think they should have it and I don't think that the out-county people are against it. But I don't believe that you have told us the full story in regard to what the legislature has done in the past with some of your civil service employees. Maybe you'd like to do that.

CHAIRMAN DeVRIES: The Chair recognizes the delegate from Detroit, Delegate Baginski.

MR. BAGINSKI: Mr. Chairman and fellow delegates, the entire matter boils down to this: we have had a civil service system in Detroit for 19 years. This affords protection to career people who have devoted the past 19 years and perhaps even longer to work in the county—men who are trained for

specific work of this sort—and they are entitled to the protection that we can give them under civil service. We are asking for the continuation of this system in Wayne and Wayne only.

From what I could gather in the committee of 27 people on local government—and you were there, Mr. Sharpe, you know that we had to barter for this figure of 1 million—many of the committee members did not care to be included in the civil service proposal. So the local government committee said: "All right, we'll make it for a million."

Tonight on the floor, we are asking again that you allow us to have and continue our merit system in Wayne county; that you vote down all the other amendments and we have an amendment here that will make permissive for all the other 82 counties a civil service system if you want to have one, by law. Does that answer your question, Mr. Sharpe?

MR. SHARPE: Yes, I believe it does, Delegate Baginski.

Now I'd like to ask Delegate Hanna one question, if I could, Mr. Chairman. A few moments ago you mentioned something about home rule, Mr. Hanna. We are not in a home rule argument as yet and I am asking you now if you think that this amendment which would allow the city of Detroit to be recognized in the constitution would forever prohibit your county from having a civil service system if they so desired.

CHAIRMAN DeVRIES: The Chair recognizes the delegate from Muskegon, Delegate Hanna.

MR. W. F. HANNA: Not if the amendment which Mr. Baginski referred to and which Mr. Elliott referred to is adopted by this delegation.

MR. SHARPE: The original amendment?

MR. W. F. HANNA: The amendment that provides that counties under 1 million could have civil service as provided by law. At that point, I have no objection to the delegation adopting the amendment or the committee proposal word for word.

MR. SHARPE: I have no objections to the amendment.

CHAIRMAN DeVRIES: The question now is on the Martin amendment as divided. The secretary will read the amendment. Delegate Follo.

MR. FOLLO: May I suggest this: that the phraseology of that last part I proposed to the committee—I don't believe in getting up here and talking too much. I try not to and I haven't—but I suggested it to them to put it in so I certainly am in favor of it.

CHAIRMAN DeVRIES: The secretary will read the amendment as divided, the first part.

SECRETARY CHASE: The first part of the amendment:

[The first part of the amendment was again read by the secretary. For text, see above, page 968.]

CHAIRMAN DeVRIES: The question is on the amendment. All those in favor of the adoption of the first part of the amendment will say aye. Those opposed, no.

The amendment is not adopted. The secretary will read.

SECRETARY CHASE: The second part of the amendment is:

1. Amend page 3, line 22, after "employment" by inserting "as provided by law".

CHAIRMAN DeVRIES: The question is on the adoption of the second part of the amendment. Delegate Faxon, for what purpose does the gentleman rise?

MR. FAXON: I did not follow the way the question was to be divided. I understood when it was going to be divided we were going to get the Martin amendment first, that is "as provided by law."

CHAIRMAN DeVRIES: We are voting on the Martin amendment. We have not adopted the first half of the amendment. The question was divided. We are now voting on the second part of the Martin amendment. The secretary will read the amendment again.

SECRETARY CHASE: The second part of the Martin amendment presently under consideration is in line 22, after "employment" by inserting "as provided by law".

CHAIRMAN DeVRIES: The question is on the second part of the amendment. All those in favor say aye. Opposed, no.

The amendment is not adopted.

SECRETARY CHASE: Mr. Elliott now offers the following amendment:

1. Amend page 3, line 23, after "shall" by striking out the balance of the section and inserting "not take effect until approved by a majority of the registered voters voting thereon. All other counties may establish such merit systems as provided by law."; so that the language will then read:

> The ordinance or any amendment thereto shall not take effect until approved by a majority of the registered voters voting thereon. All other counties may establish such merit systems as provided by law.

CHAIRMAN DeVRIES: The question is on the Elliott amendment to section m. The Chair recognizes the gentleman from Detroit, Delegate Mahinske.

MR. MAHINSKE: I'd like to direct this to Mr. Elliott. How are these systems adopted in the other counties?

CHAIRMAN DeVRIES: Delegate Elliott.

MR. A. G. ELLIOTT: As provided by law. (laughter) The legislature will have the authority and will provide the procedure which will be followed.

CHAIRMAN DeVRIES: Delegate Pollock.

MR. POLLOCK: Mr. Mahinske, Mr. Martin this afternoon informed the committee that the committee on executive branch is bringing forth a provision on this subject.

CHAIRMAN DeVRIES: The question is on the Elliott amendment to section m. All those in favor, say aye. Opposed, no.

The amendment is adopted.

Are there any more amendments to section m?

SECRETARY CHASE: Mr. Faxon offers the following amendment:

1. Amend page 3, line 19, after "supervisors of" by striking out "any county with a population of 1 million or more" and inserting "Wayne county"; so the language will read, "The board of supervisors of Wayne county will have the power by ordinance to establish a merit system for county employment."

CHAIRMAN DeVRIES: The question is on the Faxon amendment. Delegate Faxon.

MR. FAXON: This is, in effect, what the proponents of the amendment here have said is for Wayne county. We say "any other county". You talk about any county. We are talking about Wayne county. When that's what they say it's for, why penalize other counties that may not feel this is an advisable means? We're putting the provision in. Call it what we say it is instead of deceiving it with language with regard to population figures. I think it's very misleading.

CHAIRMAN DeVRIES: The gentleman from Detroit, Delegate Stevens.

MR. STEVENS: I'm afraid Delegate Faxon needs a little lesson in civics. It is impossible under the law to pass a special act mentioning a county by name. That is the only reason that the population figure is used. This is a usual, common and ordinary practice in the legislature. It would apply to any other county if and when that county reaches the population of 1 million.

MR. FAXON: Mr. Chairman, I'll withdraw the amendment. I don't want to get Mr. Stevens upset about this amendment.

CHAIRMAN DeVRIES: Delegate Faxon withdraws the amendment.

The Chair recognizes the delegate from Grand Rapids, Delegate Tubbs.

MR. TUBBS: Mr. Chairman, it seems quite obvious that the intent of the committee report was to legalize or put into the constitution the statute which let Wayne county have the merit system. I objected the other day to an amendment which would have frozen into the constitution a statute that had been on the books for many years about tax exemptions. You may remember that it was Mr. DeVries' amendment. I object to this one on the same ground. But if we are going to vote for it, I suggest that everybody refrain from voting except those from Wayne county.

CHAIRMAN DeVRIES: Are there any further amendments to section m? The secretary will read.

SECRETARY CHASE: Mr. Higgs offers the following amendment:

1. Amend page 3 by striking out all of lines 19 through 24, inclusive, including the language just recently adopted.

CHAIRMAN DeVRIES: The Chair recognizes the sponsor of the amendment, Delegate Higgs.

MR. HIGGS: Mr. Chairman and fellow delegates, I think that the debate and discussion that we have had points out the problem with regard to special legislation being incorporated in the constitution. I feel that I was quite impressed first of all by the comments of Delegate Hutchinson when he said that by so restricting the legislature, we may be permitting a separate kind of merit system to be established in different counties. And I really believe that this would be a mistake.

I think that the proper way to develop a county merit system would be by general law applicable to all counties. I feel that this definitely should be left to the legislature. If my understanding is correct—and I would like to be corrected if I am wrong—the legislature now has the power to provide by general law for merit systems and they have done so for the benefit of Wayne county. Now we hear the people from Wayne county are here asking that we incorporate into the constitution something special to give constitutional recognition to a system that they have. I really feel that this is leading us into all kinds of difficulty.

And there are other things that could be raised with regard to this paragraph. We speak of the board of supervisors. I'm not certain under the county home rule provisions that that necessarily in all counties will be such; it may be a commission in some counties. In any event, I feel this is the proper time—I think we took a long step forward last week in recognizing that there were matters which should be left out of the constitution and that we should in the constitution lay out the broad, general framework where necessary.

Now, we did make an exception with regard to civil service at the state level. We recognize that this was contrary to good constitutional practice. I think that the proponents of civil service would so recognize today that this is contrary to good constitutional practice. However, we did it. But are we going to continue to do it? Are we going to take another step forward in incorporating into the constitution such a provision as this?

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Detroit, Delegate Binkowski.

MR. BINKOWSKI: Mr. Chairman, ladies and gentlemen, I'd like to speak against the Higgs amendment. I think that you have to remember that this provision is not the Wayne county as such. This is a very abstract concept. This is an opportunity to afford those thousands of civil servants who are employed by Wayne county the same type of protection that those civil servants at the state level have. I think that's very important. We have recognized the importance of the state civil service. Why not carry the idea forward and also constitutionally recognize those civil servants who are working for the county system?

Now, as to good form, I suggested and perhaps we will change; I don't know—but we have an awful lot of things in this new constitution to date which do not meet good constitutional form. This provision is a mere 45 or more words.

Secondly, we are discussing home rule. Now, what can be a better system for local self determination than to have the board of supervisors who are very close to problems, who know the problems and, of course, I think you all are fully aware that the problems of an urban community are distinct from those problems in a rural-urban or just strictly a rural community. And I suggest to you that there is no legislative body which is in a better position to experiment to determine those things in the County of Wayne than the board of supervisors or a legislative body which is located in that county. I think that this is a type of provision which will be most acceptable and provide the needed flexibility. Therefore, I am against the Higgs amendment.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Fennville, Vice President Hutchinson.

MR. HUTCHINSON: Mr. Chairman, I simply wanted to rise in support of the amendment, which Mr. Higgs now offers, to strike from the proposal this section m and for the reasons and arguments that I presented earlier in the day. I agree with Mr. Higgs that from the standpoint of proper constitutional considerations and what should properly go into a constitution, this does not belong there. I would hope that the committee would now strike it from the proposal.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Detroit, Delegate Norris.

MR. NORRIS: Mr. Chairman, I think what we really have here is a problem not of logic but of experience. Experience here demonstrates that it is proper for this convention to delegate to a particular legislative body the power to grant and to enforce civil service programs and what we are trying to do here is say that by virtue of the experience with the legislature with reference to merit systems, there is reasonable cause for skepticism and for some degree of alarm in terms of some 30 years of experience with the legislature in relation to the merit system. So that because of the apprehension in this regard, this convention can, without violating any precept of what constitutes a constitution or what is legislative, but merely on the basis of pragmatism and experience, say that the board of supervisors of this particular area ought to be able to deal with the precise problems in that particular area. And for that reason, I would urge that we vote against the Higgs amendment and for the committee proposal.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Detroit, Vice President Downs.

MR. DOWNS: Mr. Chairman and fellow delegates, I believe that we should support the principle of county civil service, and I would be glad to see this apply to all counties in the state. But I would not want us to deny the county employees of Wayne county this added protection. I think the argument has been made that we should only make a bare skeleton of a constitution, but I think we should remember that in writing a document that is a life and blood document that varies from model constitutions, depending on the feelings of people at the time, there is a strong feeling for preserving the concept of civil service as a constitutional right where it now exists in Wayne county. I think the classification of a million or more gives that protection. I urge the delegates not to take that away, but if it is amended, to amend it by strengthening it and making it more applicable to other counties in the state.

CHAIRMAN DeVRIES: The question before the committee is the Higgs amendment. The Chair recognizes the gentleman from Muskegon, Delegate Danhof.

MR. DANHOF: Mr. Chairman, the remarks of Mr. Binkowski have caused me a little difficulty. He thought that he wanted to have flexibility in allowing the board of supervisors to be able to change the civil service ordinance as it may deem fit to meet the changing times.

I submit that under the provision that is now before this committee, it is probably one of the most inflexible things that could be done for the reason that any time a change is desired—and I can sympathize with Mr. Baginski when he says that the legislature has made changes—but every time an amendment may be needed in view of the times regarding qualifications or rights of appeal or anything else, being technical or otherwise, it is going to necessitate a vote of the people of the county of Wayne as the matter now provides. And if I understand it, the gentlemen who are from Wayne are willing to go to the people every time they desire to make a change by deleting a small section or making some change in the civil service ordinance that is adopted. I may be mistaken when I said "amendment" but as I view it, it says the "ordinance" or "amendment" shall not become effective unless approved by a majority of the electorate. Now, you may have an original amendment or ordinance. This will be fine. But if you're going to require the vote of the people every time it is felt a change may be needed, I submit that you are tying yourself in a box from which you may find it very difficult to find a way out.

This is the way I read the proposal.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Detroit, Delegate Ostrow.

MR. OSTROW: Speaking with reference to Mr. Higgs' statement in which he objects to putting into the constitution provisions of a limited application, as in this case the application of this provision merely to Wayne county, I wanted to remind Delegate Higgs that at his insistence the judiciary committee included in Committee Proposal 94 a provision relating to probate judges in counties of less than 25,000 in order to take care of the needs of these small counties.

CHAIRMAN DeVRIES: The Chair recognizes the delegate from Detroit, Delegate Yeager.

MR. YEAGER: Mr. Chairman, ladies and gentlemen of the committee, everyone seems to agree that merit systems, as such, are desirable things for counties to have. But the question resolves itself down to how such merit systems shall be established. Shall they be established by statute through legislative authority or shall they have independent and constitutional authority? It seems to me the issue here is, we must decide which of these 2 should be applicable. If we decide that constitutional independent authority for establishing a merit system is the most desirable, then it would seem to me that it should rightfully apply to all counties in Michigan. In other words, you could paraphrase the statement: what is good for Wayne county, should be good for the rest of the state, if it is a sound basic principle.

It has been stated here a couple of times that for the past 19 years Wayne county has had a merit system. Now, the question to me has not been fully answered. What's wrong with the present system as it operates under legislative authority? Mr. Faxon raised that question much earlier and I don't think it's been sufficiently answered. Mr. Norris touched on it but he didn't bring out anything specific. If this is bad—if the legislature is unable to handle a merit system and the legislation surrounding it so that it operates effectively in a county—then this may be the wrong approach to having a merit system in a county. Therefore, we should adopt the independent constitutional authority.

The point I want to make is that if we adopt an independent constitutional authority for Wayne county, it should apply to the rest of the counties in the state. Thank you.

CHAIRMAN DeVRIES: The Chair recognizes the president of the convention for the purpose of making a preferential motion. President Nisbet.

MR. NISBET: Mr. Chairman, it has just come to my attention that the governor of our state is in the building tonight and sitting in the gallery. I would move that he be invited to come into convention hall and sit on the rostrum while we are in session.

CHAIRMAN DeVRIES: Without objection, it will be so ordered, and the governor is invited to the rostrum of the convention.

[Whereupon, Governor Swainson approached the rostrum, and received a standing ovation.]

On behalf of the delegates, I welcome Governor Swainson to our proceedings.

The Chair recognizes the gentleman from Detroit, Delegate Madar.

MR. MADAR: First I would like to make a comment about the remark that was just made about what is good for Wayne should be good for anybody else in the state. I wish he hadn't said that because the last time I heard a similar remark, it didn't go over very good in these United States. (laughter) I see there are some people who do read the papers and remember what happened a few years ago.

Anyway, Mr. Chairman, I just wanted to say in answer to Mr. Danhof that we know that the legislature and legislative bodies can pass legislation which gives departments and various enforcing agencies the right to set up rules and regulations and I just wanted to remind you that this does not take that same privilege away from the boards of supervisors. They can give the civil service system or the merit system the right to draw up rules and regulations as to how this merit system would be operated.

CHAIRMAN DeVRIES: The Chair recognizes the delegate from Saginaw, Delegate Shackleton.

MR. SHACKLETON: Mr. Chairman and delegates, I have no objection to trying to take care of Wayne county. If they have been trying to struggle with the legislature for 19 years and to get a law that is satisfactory to them, how many years will it take the legislature to get a law that will satisfy 82 other counties? I support Mr. Higgs in his amendment.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Bessemer, Delegate Pellow.

MR. PELLOW: Mr. Chairman, ladies and gentlemen of the committee, I rise to oppose the Higgs amendment. As an outstate delegate, I can appreciate the problem that Wayne county has here because of the legislature and if there is a real fear upon their part because of the way the reactionary senate has acted over the years, I believe that we should give Wayne county the right to have civil service.

CHAIRMAN DeVRIES: The Chair recognizes the chairman of the committee, Delegate Elliott.

MR. A. G. ELLIOTT: Mr. Chairman and fellow delegates, I would like to oppose the Higgs amendment for practically every reason that Mr. Pellow didn't say; that is that this committee of ours, as I mentioned to you before, worked hard over this particular point and felt that the solution that we found was a sound one, was proper for the constitution and with the corrections that have been made, more properly clarifies the position that I think the majority of the committee took in its deliberations.

CHAIRMAN DeVRIES: The question before the committee is the Higgs amendment to section m, and the secretary will read the amendment.

[The amendment was again read by the secretary. For text, see above, page 970.]

CHAIRMAN DeVRIES: The Chair recognizes Delegate Hatch.

MR. HATCH: The comment has been made that Wayne county wants the same protection which state employees have. Now, the solution to their problem appears to be to give the board of supervisors or the legislative body of that county complete control over their civil service. I would like to remind those who favor this amendment that in 1940, the people passed a constitutional amendment which took away from the legislature the right to deal with their own employees here in the state. In other words, if the amendment were to set up a county civil service commission with full power to grant increases in pay, to fix classifications, I would say that maybe they do want the same protection. But by merely granting this authority to the board of supervisors, the legislative body of that county, I think we're opening the door to patronage and a possible return to the spoils system where it could be used in Wayne county and I don't think they'd want that. (applause) So I support the Higgs amendment.

CHAIRMAN DeVRIES: The Chair recognizes the delegate from Detroit, Delegate Hodges.

MR. HODGES: In answer to Mr. Hatch, the way the last sentence reads, "The ordinance or any amendments thereto shall be approved by the electors of the county," I would conclude from that they could have the power to set up any type of board or commission they wanted through the election. I think what this resolves itself down to is spoilsmanship or civil service or good government.

Now, the people from Wayne county are quite willing to allow the other 82 counties to have anything they particularly want just so we have a determination here to protect the civil service of Wayne county. I'm sure that every member from Wayne county will be glad to give the opportunity to the other 82 counties to vote for civil service if they so desire. If this would please the rest of the committee, I think it would make much more sense to do it that way, but at all costs, at least let us protect our own civil service system.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Grand Haven, Delegate Stafseth, speaking on the Higgs amendment.

MR. STAFSETH: I rise to oppose the Higgs amendment. I've had the occasion in public office as administrator to study the civil service system that they have down there and I have a good deal of admiration for what they have. Now, if they want to protect what they have and lock it in so that they have this good ordinance and they have the safety of the vote of the people for any change, I think it would be a good thing to leave it that way. It may be a little bit legislative but I think we should give it to them.

CHAIRMAN DeVRIES: The question is on the Higgs amendment to section m. The Chair recognizes the gentleman from Detroit, Delegate Stevens.

MR. STEVENS: I think Mr. Stafseth has explained this quite fully. It is simply a question of whether or not we are to have constitutional protection for the system we now have in Wayne county. I don't see how anybody could object to it. Perhaps it could be objectionable from a purely technical standpoint but so are many other things. But as I see it, all the employees of Wayne county are asking for is to protect through the constitution the civil service which we now have there.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Bay City, the author of the amendment, Delegate Higgs.

MR. HIGGS: Mr. Chairman and fellow delegates, I would like to bring to your attention once again that what is involved here is a principle.

I went home over the weekend and spoke with my constituents and I explained to them why I voted against the 15 mill limitation. I read in the newspaper and in talking with other delegates, I sensed a new spirit within this convention, a spirit opposed to placing restrictions upon the legislature, a feeling that perhaps we would review and examine what we were doing with earmarked funds. I told my people that I would come back here and I would look forward in this convention to doing what I thought was right without regard to all of the special interest groups and I think that is what they expect us to do.

Now, we haven't heard much here today from the proponents of civil service. But, as we were told earlier, what we did with regard to the establishment of a state civil service commission in the constitution was contrary to good constitutional practice. Now, what we are doing here is taking a step forward. We are carrying poor constitutional practice a step further. We are doing it under the most difficult circumstances. We've had all kinds of wording proposed here on the floor. I don't think any of us have before us the exact words of what we have come up with. We are trying to frame in the legislative language provisions adaptable to Wayne county and provisions adaptable to 82 other counties.

We have not given consideration to some of the implications of devoloping separate civil service systems in the differing counties. Delegate Hutchinson mentioned one possibility of seniority rights and the transfer of counties that we have not considered further. Delegate Danhof has pointed out that we are adopting a more rigid kind of provision in that after we adopt this, the people from Wayne, when they want any amendment to their system, must have first, action from the board of supervisors, and second, must go to the people. There is nothing here about initiating anything from the people. It must come first from the board of supervisors and then they have to go to a vote. There are all kinds of possibilities in here.

Again, what we are doing is we are going forward, protecting what they already have. Now, I suggest that since we already have it, there is authority for the legislature to do what they have done. There is authority for the legislature to go further by general law. I apologize for having spoken twice on this but I will speak no further. Thank you.

CHAIRMAN DeVRIES: The question before the committee is the Higgs amendment to section m. The Chair recognizes the lady from Highland Park, Delegate Donnelly.

MISS DONNELLY: I'd like to direct a question to the chairman of this committee regarding Committee Proposal 83. Isn't that handling this sufficiently so you don't need this amendment in this section? Particularly to this degree, I'm in favor of Mr. Higgs' amendment on the theory it is particularly specialized, and it seems to me 83 gives you broad enough powers to handle it. Am I wrong?

MR. A. G. ELLIOTT: We did not think so.

MISS DONNELLY: I don't think that's sufficient answer for me, Mr. Elliott. That's a conclusion of a fact. I'd like you to be a little more explicit, if you could.

MR. A. G. ELLIOTT: Just a second. What section of Committee Proposal 83 are you talking about?

MISS DONNELLY: The part that relates to cities and villages. We're talking about the city of Detroit, if I understand it correctly.

MR. A. G. ELLIOTT: We're talking about the county of Wayne.

MISS DONNELLY: Yes, I know, but we're talking about the city of Detroit's merit system, aren't we?

MR. A. G. ELLIOTT: We're talking about the county of Wayne's merit system.

CHAIRMAN DeVRIES: Delegate Donnelly, the question before the committee is the Higgs amendment, not Committee Proposal 83. It is on the Higgs amendment to section m of Committee Proposal 81.

Delegate Richards.

MR. L. W. RICHARDS: Mr. Chairman, I believe it's been covered very well as far as concerns the merit system. On this particular subject, I was hoping it would be able to be voted on. I'd like to give my position on it while I'm on my feet. It isn't very often that Mr. Madar and I agree. But I believe as we discussed this in local government, we were giving Detroit special consideration. We thought it was justified. I'll keep that position now. I don't think it would be too disturbing to have it in the constitution. I look a little bit forward in the future when I hope our friend Tom Downs and a few more will be concerned about the U.P. when we get to certain other issues, Tom. We're still considering Detroit now and I hope you'll be just as considerate of the upper peninsula at that time. (applause)

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Detroit, Delegate Young.

MR. YOUNG: Brother Chairman, I am speaking in opposition to the Higgs amendment. As I understand it, the employees of Wayne county are the only civil service employees in the state who have no form of constitutional or charter protection. Now, we have various civil service systems throughout the state, either municipal or state. State employees are covered by constitutional amendment. Municipal employees are covered through charter. The Wayne county and home rule—the Wayne county civil service employees are the only ones who have no constitutional or charter protection whatsoever. We are merely asking in the committee report that these employees be given some minimum type of constitutional and/or charter security. I think that's a minimum and reasonable request.

CHAIRMAN DeVRIES: The Chair recognizes the lady from Highland Park, Delegate Donnelly.

MISS DONNELLY: I direct my question to Mr. Elliott on Committee Proposal 89. I misquoted your charts—you've been amending them—for your county home rule. Won't that cover it? My point being, aren't you covering it someplace else and you needn't do it now?

MR. A. G. ELLIOTT: In fact, you are not, because it might be possible that if we pass 89 as it is now written, or in any other form, the county of Wayne might not adopt it. This is a provision which accommodates one specific section and I think that it would be unwise to consider this in relation with any section or any proposal which is coming up later.

Mr. Chairman, I would like to move that the committee rise at this time for a brief moment so that we can hear a word from the governor.

CHAIRMAN DeVRIES: Delegate Elliott moves that the committee do now rise. All those in favor, say aye. Opposed, no.

The motion prevails. The committee has risen.

[Whereupon, the committee of the whole having risen, President Nisbet resumed the Chair.]

PRESIDENT NISBET: Without objection, the report of the committee of the whole will be dispensed with at this time.

I am very happy to present to you our governor, Governor Swainson. (applause)

GOVERNOR SWAINSON: Thank you very much. President Nisbet and ladies and gentlemen of the constitutional convention, members of the staff and ladies and gentleman in the gallery, I certainly appreciate this opportunity to address the 1961 Constitutional Convention and assure you that I did not expect that my visit this evening would provide this opportunity. It is very appreciated. And to show my appreciation, I shall limit my remarks because in this last few minutes I have found out that legislative bodies have not changed very much since I had the opportunity to serve in the Michigan senate. And the thing you need least is some more remarks of harangue to assault your ears this evening.

But I will say this: I have not had the opportunity to visit this chamber very often during your deliberations. I know a great many other people have not had the opportunity either. But your efforts are being marked well and the challenge that you face to arrive at a document that will be acceptable to the majority of the citizens of this state is an awesome one indeed, and each of us who do not have this opportunity to be present each day for the debate and to hear the subtleties—the very important subtleties—and discussions, still are going to be called upon to vote on this instrument. And so, if you would lend your efforts to helping us have a clearer understanding of what the intent is, you will have been doing a very fine service. And I hope, as each one of you hope, that your efforts here will be rewarded by an acceptance by the people of the state of Michigan of the document that you write. Thank you. (applause)

PRESIDENT NISBET: Without objection, the convention will convene in committee of the whole for **general orders.**

[Whereupon, Mr. DeVries assumed the Chair to preside as chairman of the **committee of the whole.**]

CHAIRMAN DeVRIES: The committee will come to order. When last the committee met, it was considering the Higgs amendment to **Committee Proposal 81.** The Chair recognizes the gentleman from Detroit, Delegate Binkowski.

MR. BINKOWSKI: Mr. Chairman, ladies and gentlemen, I'd just like to take a few more minutes to read this very brief summarization of the statement by Mr. Mathivet, Jr., of the civil service commission of the County of Wayne contained in Journal 30 of the committee on local government:

> Of the 83 counties in the state, Wayne county is the only one which has a civil service and merit system. With the advent of a merit system of employment, the county has been able to inaugurate many improvements in its employment conditions.
>
> It is the general feeling by all segments of our county that our civil service system has been a good step toward more efficient county government.
>
> It is the feeling of the civil service commission that the permanency of the county civil service and merit system should rest on a firmer foundation than merely statutory enactment. It is also felt that the board of supervisors should have permissive authority under the constitution to provide for a merit system in accordance with its local needs on the same basis that numerous city civil service systems are established in their respective city charters under the present constitutional provision. A choice should be permissible for each county as to whether it wants such a system or not and should not be obligatory.

Then there is one question and answer.

> Question: Just exactly why do you feel it has to be in the constitution?
>
> Answer: First, permanency of the system. Secondly, the general act of the legislature does not provide for individual needs.

Now, ladies and gentlemen of the committee, I submit that the arguments advanced by Mr. Higgs as to this not being a constitutional form has no merit if we decide that county civil service along with state civil service demands constitutional recognition and I believe it does. And since we are writing a document which is going to be permanent in nature, I think that this system then should have some permanency in our constitution.

I think I emphasized the second point, that is, that our board of supervisors would then have the opportunity to provide for our individual needs down in Wayne county. Thank you.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Detroit, Delegate Norris.

MR. NORRIS: Mr. Chairman, we have heard a great deal this evening to the effect that this particular proposal of the committee is an accommodation to the people of Wayne county. I submit to you that it is not merely a recognition of needs in that county but it is an implementation of a state purpose, a purpose which serves the people of all the state, namely, a purpose which we have incorporated in a constitutional provision regarding the merit system itself. We have declared it to be a constitutional policy of this state to favor a full implementation of the merit system. And what we are doing by this committee proposal is implementing that policy to see that when the people of a given community have supported it and wanted to nourish and maintain and secure a merit system, they ought to be accorded that opportunity in a way that is effective. And I think that that's the precise policy behind the committee proposal.

Now, much point has been made with regard to: "well, it's already there; there's not much sense in having a constitutional protection for it." I might submit to Mr. Higgs and others that the very fundamental bill of rights itself was argued by a number of people at the founding convention as not being necessary because after all, they were rights that belonged to all and didn't have to be spelled out. And we have a premise there where the logic of experience, where all kinds of fact situations have grown up to justify the adoption of a bill of rights in the constitution as necessary.

I submit that the experience with regard to civil service, the same experience which has led the people of this state to adopt the constitutional amendment, the same experience which has led this convention to adopt a constitutional provision regarding the merit system, is the experience which has led to the promulgation of the committee proposal and I urge its adoption and the rejection of the Higgs amendment.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Taylor, Delegate Marshall.

MR. MARSHALL: Mr. Chairman and fellow delegates, it seems to me that we have spent about as much time on this particular proposal as we should. We have now spent, counting the time that we spent this afternoon and the time that we have spent tonight, approximately 2½ to 3 hours on this one proposal. I think that everyone has pretty well made up their minds. I don't mind stating that I think the committee has done a good job on this particular proposal, as amended. I would therefore oppose the Higgs amendment. I would support the committee proposal as amended.

I will repeat a statement I made the other day on this floor. We can talk for a while and I can keep up with what is going on but after 3 or 4 hours, I begin to lose my trend of thought and then I am at a complete loss and I think again, many of the speakers, after they have spoken for 3 hours on 1 single section in a proposal, as we have on this one, and have had to listen to a repetition of the same old thing over and over, the speakers get spenorious [sic], Mr. Chairman, and I would hope that we would vote. (laughter)

CHAIRMAN DeVRIES: The delegate's point is well taken. The question before the committee is the adoption of the Higgs amendment. The secretary will read the amendment once more.

SECRETARY CHASE: Mr. Higgs' amendment: page 3, strike out all of section m.

CHAIRMAN DeVRIES: The question before the committee is the Higgs amendment. All those in favor, say aye. Those opposed, no.

The amendment is not adopted.

A DELEGATE: Division.

CHAIRMAN DeVRIES: A division has been called for. Is there support? There is support for a division vote. All those in favor of the Higgs amendment will vote aye. Those opposed will vote no.

The Chair votes no.

The secretary will lock the machine and tally the vote. The secretary will announce the vote.

SECRETARY CHASE: On the adoption of the amendment offered by Mr. Higgs, the yeas are 29; the nays are 100.

CHAIRMAN DeVRIES: The amendment is not adopted. Are there any further amendments to section m? If not, it will pass.

Section m, as amended, is passed.

The Chair recognizes the chairman of the committee, Delegate Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, I move we now take up section h and I would like to yield to Mr. Tweedie for the purpose of answering some of the questions that were asked of us on section h.

CHAIRMAN DeVRIES: Without objection, we shall return to section h. The gentleman from Port Huron, Delegate Tweedie.

MR. TWEEDIE: Mr. Chairman and members of the committee, I believe there is an amendment pending to this section to include the old language that is in section 9 of the constitution. I believe that was offered by Miss Donnelly. Due to the fact that she had fears that there might not be an appeal that could be taken to the circuit court, I'd like to cite MSA 5.522 and direct it particularly toward Miss Donnelly. It says:

> When a claim of any person, firm, or corporation against a county shall be disallowed in whole or in part by the board of supervisors or board of county auditors, such person, firm or corporation may appeal from the decision of such board to the circuit court for the same county, by causing a written notice. . . .

so forth and so forth. I hope that clears up the matter now and that the language can be deleted from the constitution as it is covered by statute.

CHAIRMAN DeVRIES: The question before the committee is the amendment offered by the lady from Highland Park, Delegate Donnelly. The secretary will read the amendment.

SECRETARY CHASE: Miss Donnelly's amendment is:

[The amendment was again read by the secretary. For text, see above, page 959.]

CHAIRMAN DeVRIES: The Chair recognizes the lady from Highland Park, Delegate Donnelly.

MISS DONNELLY: I regret to state that I was not here at the time that this language was beginning to be addressed to me and I hate to have everybody hear it again but I gathered at the end it seemed to me you are claiming—this is a very limited statute, isn't it? What does it refer to?

MR. TWEEDIE: It refers to:

[The statute was again read by Mr. Tweedie. For text, see above.]

MISS DONNELLY: This is any claim?

MR. TWEEDIE: Yes. "When a claim of any person, firm, or corporation. . . ."

MISS DONNELLY: For any nature of claim; we are not limiting it to wages or anything like that?

MR. TWEEDIE: No, any claim at all.

MISS DONNELLY: Your opinion would be that if we were to remove a constitutional provision, there would be no reason to fear that this would be removed?

MR. TWEEDIE: No, there is no reason to fear whatsoever. I mean—

MISS DONNELLY: But you are now somewhat reversing your earlier argument, are you not, saying it would be switched to some other board for appeal? I like this argument much better.

CHAIRMAN DeVRIES: Would you address your remarks through the Chair please, Miss Donnelly and Mr. Tweedie.

MISS DONNELLY: I think Mr. Tweedie can answer me.

MR. TWEEDIE: Mr. Chairman and Miss Donnelly, yes, I have found the statute with the help of the research departmen since our last discussion on the floor.

MISS DONNELLY: Well, I haven't had the opportunity to research it further but at this stage of the game, I am not so disturbed about it, quite frankly, although it still leaves it to the legislature to preserve this.

MR. TWEEDIE: Mr. Chairman, Miss Donnelly, yes, it leaves it to the legislature and they always could repeal this, but let's put some faith in them. (laughter)

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Detroit, Delegate Mahinske.

MR. MAHINSKE: I'd like to direct a question to Mr. Tweedie through the Chair.

CHAIRMAN DeVRIES: You may, if the gentleman cares to answer it.

MR. MAHINSKE: I was wondering from the initial reading of the statute if this statute is self executing or if it is based on the existing language of the constitution. Will the statute stand by itself?

MR. TWEEDIE: My opinion is that it will stand by itself, Mr. Mahinske, and I think —

MR. MAHINSKE: I wonder if you could give us the beginning phrases from the statute again.

MR. TWEEDIE: Well, I can start back from the enabling part.

[The statute was again read by Mr. Tweedie. For text, see above.]

MR. MAHINSKE: That's good enough up to that point. Now, the statute refers to the claim when it shall be allowed by the board of supervisors. Now I wonder if this is imposing an absolute right of a person to present their claim to the board of supervisors because of the language in the constitution or, if we take this language out of the constitution, will this right stand as such merely under the statute? This is the question I would like answered.

CHAIRMAN DeVRIES: Is your question addressed to Delegate Tweedie?

MR. MAHINSKE: Or anyone from the committee who cares to answer it.

MR. TWEEDIE: Mr. Chairman, Mr. Mahinske, perhaps I should go back to the statute. Section 5.331 authorizes the powers of the board of supervisors and says under "Salaries; claims":

> The board of supervisors shall have power to prescribe and fix the salaries and compensation of all employees of their respective counties where not fixed by law, to adjust all claims against their respective counties except in counties having a board of county auditors and the sums allowed and such adjustment of claims shall be subject to appeal as shall be provided by law.

And then you go on further to section 5.522 and it outlines the method of appeal.

MR. MAHINSKE: Then your first statute is restricted to wage claims.

MR. TWEEDIE: ". . . to prescribe and fix the salaries and compensation of all employees . . . , to adjust all claims against their respective counties . . . ."

MR. MAHINSKE: So it is all claims.

MR. TWEEDIE: All claims.

MR. MAHINSKE: Thank you.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Taylor, Delegate Ford.

MR. FORD: I'd like to address a question first to Miss Donnelly and then to Mr. Tweedie and retain the floor, if I might, for a comment. I'm a little bit confused, Miss Donnelly, did your amendment replace all of the language stricken by the committee in this section?

CHAIRMAN DeVRIES: The Chair recognizes the delegate from Highland Park.

MISS DONNELLY: No, the intent of my amendment was to replace the language to the degree that the board of supervisors shall adjust claims against their respective counties but my main point would be that appeals may be taken from such decision of the board of supervisors "to the circuit court in such manner as prescribed by law." The main point being to allow for appeal to the circuit court. It should eliminate "or auditors."

CHAIRMAN DeVRIES: Delegate Ford.

MR. FORD: And now to Mr. Tweedie. Mr. Tweedie, do I understand correctly that the statute that you read provides only for the procedure in the event that the claim is disallowed and does not provide for the taxpayer of the county who objects to the claim which he is allowed, in his opinion, improperly.

CHAIRMAN DeVRIES: Mr. Tweedie.

MR. TWEEDIE: According to the statute, that is correct, Mr. Ford.

MR. FORD: Now, it is not, however, the import of the language in the present constitution that this would be a one way street, an appeal only for the unhappy claimant rather than an appeal on behalf of the county by a taxpayer?

MR. TWEEDIE: The statute would make it a one way street according to your interpretation, Mr. Ford. I can find nothing that refers to the taxpayer's protection.

MR. FORD: I would like to move at this time, Mr. Chairman, as a substitute for the Donnelly amendment the replacement of the language stricken in lines 23, 24, 25, 26, and 27 so that section h will read the same as the present section 9 in the constitution. I'd like to call the attention of the members of the committee—

CHAIRMAN DeVRIES: Delegate Ford, the secretary informs me that Delegate Leppien has filed a similar amendment.

MR. FORD: Well, then I will defer to Delegate Leppien's amendment when it comes up. I'd like to call your attention to the report of the committee on submission and address to the people from the 1907 convention, the explanation given to the people for the change in section 9, or the language in section 9 of the present article VIII of the constitution.

> The above section takes the place of section 10, article X of the present constitution from which it differs in the following important particulars: It gives to boards of supervisors "exclusive power to fix the salaries" as well as provide compensation "of all county officials not otherwise provided for by law." This is a provision in extension of the right of home rule.

Now, this is where we get into the specific question we are talking about here:

> This section also introduces the provision that "appeals may be taken from such decisions of the boards of supervisors or auditors to the circuit court in such manner as shall be prescribed by law," this provision not being found in the existing constitution.

So the language we are talking about taking out here was put into the constitution in the Convention of 1907. They go on to state:

> It is the purpose of this provision to place counties on the same basis, respecting claims, as individuals and municipalities, such as townships, cities and villages, and to provide a less expensive and more adequate remedy of enforcing such claims than that of mandamus which now prevails.

Now, apparently at the time of the 1907 convention, the practice of appeal was not satisfactory and I think that the lawyers will immediately recognize that certiorari or one of the writs, such as mandamus, or in fact, I suppose even trying some form of injunctive relief, would be a very unsatisfactory substitute for an outright right of both the county and the claimant against the county to appeal from a decision of the board of auditors.

Now, I can envision with the kind of claims that come to my mind the very desirable or very necessary aspect of having this be a two way street so that after the board of auditors makes a decision which may or may not be predicated on sound judicial examination of the facts, you go directly into the circuit court with an appeal which is characterized by the present language of the present constitution in such a manner as to indicate to the legislature their intent to make this a general appeal and not an application to the court for one of its prerogative writs, which is a very unsatisfactory way in many instances of getting relief and particularly since when you get into the field of mandamus and you are dealing with a legislative body, you run smack into a brick wall in so many instances.

I think that something that was of the importance that it was when it was put in the constitution is something we should not lightly toss out unless we have an awfully good reason for doing so and I don't think that a partial relief by way of a statute that I am willing, without seeing it, to wager was passed after the 1908 constitution, is sufficient protection for the future.

CHAIRMAN DeVRIES: Will the gentleman from Taylor yield to the gentleman from Saginaw for the purpose of offering a substitute amendment?

MR. FORD: Yes, I will.

CHAIRMAN DeVRIES: The secretary will read the substitute amendment.

SECRETARY CHASE: Mr. Leppien's substitute amendment is:

1. Amend page 2, line 23, after "law.", by reinserting "The boards of supervisors or in counties having county auditors, such auditors, shall adjust all claims against their respective counties; appeals may be taken from such decisions of the boards of supervisors or auditors to the circuit court in such manner as shall be prescribed by law.".

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Saginaw, Delegate Leppien.

MR. LEPPIEN: Mr. Chairman and delegates, I do not wish to get into the appeal section of this because not being an attorney, I am not concerned with it in the sense of application to problems that we might have at hand. I am concerned with the fact that Wayne county is not the only county in Michigan that has an elected board of auditors. Bay county has it; our county has it; and I am sure that your St. Clair county has it; and there may be others. And I have had no satisfactory answer that by deleting the present language that is being proposed to be deleted and now proposed to be put back in in any way takes care of the auditors of our counties.

CHAIRMAN DeVRIES: The Chair recognizes the lady from Highland Park, Delegate Donnelly, speaking on the Leppien substitute amendment.

MISS DONNELLY: I was just waiting to regain the floor before Mr. Leppien got in. If I'm not out of order, I wanted to go back to the claims with Mr. Tweedie. If I am out of order, I will—

CHAIRMAN DeVRIES: The question is on the substitute amendment, Miss Donnelly. The Chair recognizes the delegate from Port Huron, Delegate Tweedie.

MR. TWEEDIE: I'd like to point out that section h refers only to salaries and compensation of all county officials. It refers only to county officers, not other persons. The first sentence in that section h points that out.

CHAIRMAN DeVRIES: Does the chairman of the committee desire recognition on the Leppien substitute amendment?

MR. A. G. ELLIOTT: Mr. Chairman, I would like to urge the committee to defeat the amendment. I am confident that the language of the statute adequately covers the questions that have been raised and, with the other items that we have been discussing for a long time, has been discussed in committee.

I think, Mr. Leppien, as to your worry as to whether or not a board of auditors could adjust claims in the future—as I un-

derstood your question, I think that is your question—I believe this is adequately taken care of in the fact that they could. If I understand correctly, your concern and the concern of the others should be adequately satisfied, I believe, by the language as given to you by Mr. Tweedie so that you would know that there would be the proper protection. This language is no longer needed and we would urge the defeat of the amendment.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Battle Creek, Delegate Everett.

MR. EVERETT: Mr. Chairman, I agree with Mr. Elliott that the language is no longer necessary and the committee should be supported in this regard. Principally the way this thing works in practice—at least in our county and I think in most counties or all counties—is that claims are presented to the board of supervisors or to the board of auditors, and this means all claims that are billed to the county. They are audited and paid if the county is satisfied that the bill was for some purchase or whatever it is. It is simply a matter of giving the board or which ever one it happens to be an opportunity to audit the bill. But if there is a dispute or if there is a tort claim, for example, arising out of an automobile accident, involving a county truck, this means that the person injured must go before the board of supervisors and try to collect that before they can sue. That's all that this actually does. It presents a barrier to the individual injured from going into the court. And as Bob Tubbs said earlier, the appeal is a lawsuit and that's all it is. He simply starts a suit but he cannot start it—the law doesn't permit him to start it—until such time as he has presented it to the supervisors with the hope that they will pay it. In our county they never pay it (laughter) and you simply waste your time. If you hire an attorney, you pay him to go through the needless act of appearing before the board of supervisors because the statute and the constitution says you must; then you start your lawsuit.

As a practical matter, I don't imagine that the legislature is very likely to change this procedure. But at least they ought to have the opportunity to do it and as counties grow and become more flexible, it is quite possible that the boards of supervisors won't want to pass on every single audit, every single claim which is made against the county, no matter how routine it may be. They may very well wish to delegate this power. Under the present constitution, they cannot. As a practical matter, they do it indirectly by creating auditing committees within themselves, but still the board must approve each bill or claim of any kind against the county, whether it's good, bad or indifferent.

This language is certainly outdated and by taking it out, we aren't changing the law at all. We are simply allowing the law to change as time goes on.

CHAIRMAN DeVRIES: Does the gentleman from Port Huron seek recognition on the Leppien substitute amendment?

MR. TWEEDIE: No.

CHAIRMAN DeVRIES: Delegate Tweedie yields to the delegate from Saginaw, Delegate Leppien.

MR. LEPPIEN: Mr. Chairman and delegates, I have no objection to the withdrawal of this language or the deletion of it except this: that I think the records should be very clear that it is not the intent of this convention to take away from counties having boards of auditors that the auditors shall have the power and the authority to audit claims against the county. I would like to direct a question to the chairman of the local government committee if that is his position in clear, concise language—not that he hasn't used it before—but for the record.

CHAIRMAN DeVRIES: The Chair recognizes the chairman of the committee, Chairman Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, Mr. Leppien, I'll try. It is, as I understand it—and let me make it more emphatic—the position of the committee not to take away from the board of supervisors or the auditors this provision of adjusting claims but that this provision is to take it out of the constitution because it is now covered within the statute.

MR. LEPPIEN: Mr. Chairman, would the chairman yield to a question, please?

MR. A. G. ELLIOTT: Yes.

MR. LEPPIEN: I'd like to ask this question: your statement is that the county board of auditors, where it exists, by election or appointment or as the case may be, has jurisdiction over claims coming into the county. Is that correct?

MR. A. G. ELLIOTT: Yes.

MR. LEPPIEN: That is your position? Thank you. Then I withdraw my amendment, Mr. Chairman.

CHAIRMAN DeVRIES: Mr. Leppien withdraws the substitute amendment.

The question now before the committee is the Donnelly amendment to section h. Is there any further discussion on this amendment? The gentleman from Taylor, Delegate Ford.

MR. FORD: Mr. Chairman, the reason that I withdrew my amendment a few minutes ago and yielded to Mr. Leppien was because I understood he had a substitute in. At this time, I'd like to move as a substitute to the Donnelly amendment the reinstatement of the language of the 1908 constitution which was deleted in the committee report.

CHAIRMAN DeVRIES: The question before the committee is the Ford substitute amendment for the Donnelly amendment.

SECRETARY CHASE: Mr. Ford's substitute is:

1. Amend page 2, line 23, after "law.", by reinserting "The boards of supervisors, or in counties having county auditors, such auditors, shall adjust all claims against their respective counties; appeals may be taken from such decisions of the boards of supervisors or auditors to the circuit court in such manner as shall be prescribed by law.".

CHAIRMAN DeVRIES: The question before the committee is the Ford substitute amendment. All those in favor will say aye. Opposed, no.

The amendment is not adopted.

A DELEGATE: Division.

CHAIRMAN DeVRIES: A division is requested on the Ford substitute amendment. Is there support for a division? There is support for a division. All those in favor of the Ford substitute amendment will vote aye. Those opposed will vote no. The secretary will lock the machine and tally the vote.

The Chair votes no.

The secretary will announce the vote.

SECRETARY CHASE: On the adoption of the Ford substitute for the Donnelly amendment, the yeas are 43; the nays are 81.

CHAIRMAN DeVRIES: The Ford substitute amendment is not adopted.

The question before the committee now is the Donnelly amendment. For what purpose does the lady rise, Miss Donnelly?

MISS DONNELLY: To try to finish my argument that I got up on before the other matter came up and to redirect a question to Mr. Tweedie. My original purpose for putting this in was so that the action would lie in the circuit court as opposed to an administrative body and to avoid the litigant having to exhaust numerous remedies which could easily be enacted before their day and their action could be finally tried. The amount of litigation to exhaust remedies often exhausts the litigant. And for the same reason that we felt these appeals should be set forward, I believe that in this instance the litigants can spend a great deal of time running around from one administrative board to another to finally end up here in circuit court and I don't want this remedy to the circuit court to be removed.

Now, I gather you feel that it would never be removed because the legislature would never do it. But originally, if I recall, Mr. Tweedie, your argument was to allow this remedy to go not to the circuit court, but to go to one administrative board to another. Is that not correct?

CHAIRMAN DeVRIES: Delegate Tweedie.

MR. TWEEDIE: Miss Donnelly, this statute which I read to you was enacted in 1915. It has never been changed or amended and I have no reason to suspect that it will be changed or deleted in the near future.

MISS DONNELLY: Then may I direct another question through the Chair? This must be the case that is cited in Bolster vs. County of Wayne, the only one that I had in the book, apparently, under which they seem to have great reliance in their subsection on this section of the constitution. This seems to direct the court's attention in that interpretation of this statute, as to go back to the constitution. Is that not correct?

MR. TWEEDIE: Bolster vs. County of Wayne, as I read it, is the question as to failure to appeal within the time specified in the statute.

MISS DONNELLY: Absolutely. But in the next section, do they not rely back on this constitutional language to interpret this action in the first instance?

CHAIRMAN DeVRIES: Will the committee please come to order. Delegate Tweedie.

MR. TWEEDIE: I don't understand your point, Miss Donnelly. I don't see where it reverts back to the statute.

CHAIRMAN DeVRIES: Will the lady state the question again.

MISS DONNELLY: My question was: did not the court—and from my gathering of it—use the constitutional language to interpret that section of the statute? If we remove it, will it not interfere if it goes back to 1915? And you are relying on that section.

MR. TWEEDIE: I'm sorry, Miss Donnelly.

CHAIRMAN DeVRIES: Miss Donnelly, will you please use this microphone?

MISS DONNELLY: I thought I was on. The way I gather this, this case relied in its construction of the statute, also on the constitutional language, although it did deal with the 20 day appeal to the circuit court.

MR. TWEEDIE: I can only interpret the Bolster case as referring to the failure to appeal within the specified time as set down by the statute. I see where it has nothing to do with the constitutional language.

CHAIRMAN DeVRIES: The question before the committee is the adoption of the Donnelly amendment to section h. The lady from Highland Park.

MISS DONNELLY: I would again urge the committee to support my amendment to the degree that it would preserve the rights of the litigant to this appeal without question as to what the statutory language could change, particularly against the potential of switching it to administrative boards.

CHAIRMAN DeVRIES: Delegate Tweedie.

MR. TWEEDIE: Mr. Chairman and members of the committee, I would urge that you vote against Miss Donnelly's amendment for the reasons that have been stated on the floor here. That the language that she proposes to put back into the constitution has been taken care of by statute enacted by the legislature and we have no reason to suspect that there will be any change in this language.

CHAIRMAN DeVRIES: The question before the committee is the Donnelly amendment. For what purpose does the gentleman rise, Mr. Boothby?

MR. BOOTHBY: Mr. Chairman, would you ask the secretary to reread the Donnelly amendment.

CHAIRMAN DeVRIES: The secretary will read the Donnelly amendment to section h.

SECRETARY CHASE: Miss Donnelly's amendment is:

[The amendment was again read by the secretary. For text, see above, page 959.]

CHAIRMAN DeVRIES: The question before the committee is the Donnelly amendment to section h. As many as are in favor of the Donnelly amendment will say aye. Those opposed will say no.

The amendment is not adopted. Are there any further amendments to section h of Committee Proposal 81? If not, it will pass.

Section h is passed. Are there any further amendments to the body of Committee Proposal 81?

SECRETARY CHASE: Pursuant to the minority report of Messrs. Madar, Baginski and Mrs. Hatcher, Mr. Madar offers the following amendment:

1. Amend page 3, following line 24, by inserting:

"Sec. n. The legislature shall provide procedures by which any county may, by a majority vote of the electors, adopt a county system of assessment. The method of selecting a county assessor or board of assessors shall be determined by law unless otherwise provided for by the charter of counties having charters.".

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Detroit, Delegate Madar.

MR. MADAR: Mr. Chairman, in support of the minority amendment: county assessor system on a permissive basis.

[The supporting reasons for minority report B were read by Mr. Madar. For text, see above, page 931.]

I urge the adoption of the minority report amendment.

CHAIRMAN DeVRIES: The question before the committee is the adoption of the amendment offered by Delegates Madar, Baginski and Mrs. Hatcher. The Chair recognizes Mr. Brake.

MR. BRAKE: Mr. Chairman, ladies and gentlemen of the committee, I oppose the minority report amendment for 3 reasons. In the first place, the matter was carefully considered in committee and rejected. In the second place, it is statutory. Under the present constitution, the legislature has full power to set up a county assessor system if it sees fit and we have had bills to that effect before the legislature now for the last 4 or 5 sessions. In the third place, we have found a better answer in the counties that have set up tax departments with professional people, not to displace the city assessors and township supervisors but to assist them. That is spreading over the state and it is working and is a better system in my judgment than the county assessor system.

CHAIRMAN DeVRIES: The question before the committee is the amendment offered by Delegates Madar, Baginski and Hatcher. The secretary will read the amendment.

SECRETARY CHASE: The minority report amendment is:

[The amendment was again read by the secretary. For text, see above.]

CHAIRMAN DeVRIES: The Chair recognizes the sponsor of the amendment, Delegate Madar.

MR. MADAR: Mr. Chairman, I can understand how Mr. Brake feels about this. We had discussed this in committee and we did discuss it to a great extent. We also listened to the gentlemen from the state on assessing and they were there and they were split on which was the best method. We had others—for instance, one of the finest, one of the greatest of experts in the country and acknowledged as such by most of the counties— I would say by practically all of the counties in this state and most states in the union—Mr. Champion. We also have had men like our board of tax assessors within the city of Detroit, men who were willing to give up their jobs to see something better.

Now, I can understand how we might think that just because the committee turned it down, we should. However, I've seen committees make mistakes before. I've seen men make mistakes before. I think we've all made some. But I don't think we're making a mistake when we're going to a better method, a more modern method of assessment.

We talk about our equalization here. I've heard it talked about time in and time out, and yet I defy anybody to show me a county within this state, bar none, which I can't go to and show you that you do not get equalized assessments throughout that county and I could then show that where we have experts on assessments, we will get much better assessments, much more equal assessments than you'll get from a board of equalization. And I defy anyone to show me different on this.

CHAIRMAN DeVRIES: The Chair recognizes the chairman of the committee, Delegate Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, Mr. Madar, you are much bigger than I am and I hate to take exception to what

you said, but I would bring to the attention of the committee that this is just another of the items that we have spent the last 3 months on and that we were in great sympathy with the approach that Mr. Madar wished to take, but after careful analysis, decided that it was something that is purely statutory.

We have asked our subcommittee which has the responsibility of making a report to the legislature for their benefit or use, as they might see fit, to include this in its initial report to our committee for further consideration.

So I would urge the defeat of the additional section.

CHAIRMAN DeVRIES: The question is on the adoption of the amendment offered by Delegates Madar, Baginski and Hatcher. The secretary will read the amendment once more.

SECRETARY CHASE: The amendment is:

[The amendment was again read by the secretary. For text, see above, page 977.]

CHAIRMAN DeVRIES: As many as are in favor of the minority report amendment will say aye. As many as are opposed, no.

The amendment is not adopted.

MR. MADAR: Division, Mr. Chairman.

CHAIRMAN DeVRIES: A division is requested. Is there support? It is supported. As many as are in favor of the minority amendment will vote aye. As many as are opposed will vote no.

The Chair votes no.

The secretary will lock the machine, tally and announce the vote.

SECRETARY CHASE: On the adoption of the minority report amendment proposed by Messrs. Madar, Baginski and Mrs. Hatcher, the yeas are 43; the nays are 76.

CHAIRMAN DeVRIES: The amendment is not adopted.

Are there any further amendments to the body of Committee Proposal 81? The gentleman from Lansing, Delegate Wanger.

MR. WANGER: Mr. Chairman, members of the committee, I do not rise to offer an amendment but rather to ask a question of the chairman of the committee. One of the changes made in this section is to increase the term of office of county officers from the present 2 years to 4 years. No reasons are given in the printed committee comment for this and I've heard nothing on the floor. It seems to me a very significant change affecting all of the counties in the state of Michigan. I would like to ask first of all, why was the term increased from 2 to 4 years? And I would like to ask secondly, if the term was changed, why then was the township officer's term given a flexibility? In Committee Proposal 83, I note that the change there says "for a term of not less than 2 years nor more than 4 years as provided by law." My second question is why should there be a flexibility in the township area and not in the county area?

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Pleasant Ridge, Delegate Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, Mr. Wanger, would it serve your purpose well if I gave you a personal explanation of this later so we could move on or do you want me to make it again? I have made it once. Apparently somebody behind me here also wants to hear it. I'll try.

The first question was the reason why we extended the term of office for the county officers to 4 years. We felt that this was very consistent with the pattern that has somewhat established itself not only here within this convention and other committees but also throughout the nation to give greater opportunity for effective administration of those types of services. We thought that this form of government could well afford the additional stability of elections being held once every 4 years instead of every 2 years. We weighed against this the problem of coming back to the people for approval of the work that they were doing and it was the conclusion of the committee that the advantages far outweighed the disadvantages and therefore in the area of county officers, that a 4 year term was a more proper term.

Now, to answer your second question why this was not continued in the area of the township level. It was not continued there because we felt the township government was getting a little closer to the people to where it was a better opportunity for them—and properly so—to express themselves on their most local form of government possible. However, you will notice that the committee, recognizing the trend and recognizing the need for effective administration, did make provisions for the future by making it possible for the legislature to increase the term of office should the future indicate that it is the proper wisdom to do so.

MR. WANGER: Thank you.

CHAIRMAN DeVRIES: Are there any further amendments to the body of Committee Proposal 81? The delegate from Muskegon, Mr. Hanna.

MR. W. F. HANNA: Mr. Chairman, I do not have any amendments. I'd like to address 2 questions to Mr. Elliott if he has time to answer them.

CHAIRMAN DeVRIES: He may, if he cares to answer them.

MR. A. G. ELLIOTT: Not knowing your questions, I can't tell you whether I have the time, but ask them. (laughter)

MR. W. F. HANNA: Mr. Elliott, in section g you provide that the legislature may by law confer upon the boards of supervisors powers of a local, legislative and administrative character. May I ask what you mean by the word "administrative"? Specifically, do you mean "executive?"

MR. A. G. ELLIOTT: I don't think we could interpret this to mean executive in the term which I believe you would like it to be interpreted. This language is language which was already in the constitution. It is not new language and therefore we were trying to maintain an existing pattern here and not trying to add anything to this form of government at this particular point.

MR. W. F. HANNA: Mr. Chairman, if I may continue. Mr. Elliott, we have previously, under Committee Proposal 21, said that the powers of government shall be divided into 3 branches: legislative, executive and judicial. Have we provided for the board of supervisors under these articles to act both in the legislative and executive positions?

MR. A. G. ELLIOTT: I think that because this starts to get into the field of legal interpretation, I would like to ask some of the attorneys on our committee to perhaps try to answer this.

I might point out to you once again the approach that our committee took to this particular proposal, and that was to strengthen the standard form of county government as we now know it, to give it additional emphasis through a repetition of language which had been in use for many, many years. It was not our intent, except where new language was used, to do anything that was a departure from what we had found throughout the state met the needs of most counties.

You will find later on in another proposal of this committee, language affecting counties which will accommodate the change which we think may be here upon us now and will accommodate the future.

CHAIRMAN DeVRIES: Delegate Elliott yields to one of the attorneys on the committee on local government. The gentleman from Kalamazoo, Delegate Allen.

MR. ALLEN: Mr. Chairman, Mr. Hanna, I think as you know, county government seems to be unique in government in the United States in that the classical separation of the 3 powers, the legislative, judicial and executive, is not retained. You've got more of the separation in city government where you have a difference between the legislative with a policy making elected council or city commission and executive. Now, you don't get that in county government. The judicial is separated through the court system.

As Mr. Elliott says, we did not make any change in this concept. Of course, it is possible under today's constitution, I believe, for the legislature to make this change. That is, to prescribe by general law, laws which would make a clear separation if the legislature chose to do so. The legislature hasn't chosen to do so. I won't say there has been no demand for it. There has been some demand for it. If there is to be any separation and a county wants it, it might be done through

some sort of provision on home rule. But on the standard county, it has not been done, though it could be done, and we did not change it.

MR. W. F. HANNA: Mr. Chairman, Mr. Allen, I recognize that it has not been done. I recognize that under Committee Proposal 21, we have changed the language. We have made no exception to county government. The judicial article does provide for county courts in the sense of a circuit court and in the same sense, of a probate court. It defines it in terms of counties. The only thing that perturbs me is, do we have a conflict with the statement in Committee Proposal 21? I admit this conflict has existed for some time. But as we have enlarged and will continue to enlarge the powers of the board of supervisors over the years, aren't we going to run into a challenge in the court that we are making the board of supervisors, which historically functions as a legislative body with no administrative powers, into a hybrid that is both legislative and executive? When you refer to Committee Proposal 21, are you referring to a proposal from the judicial branch?

MR. ALLEN: No sir.

MR. W. F. HANNA: Mr. Chairman, Mr. Allen, this says "The powers of government are divided into 3 branches: the legislative, executive and judicial.

No person belonging to one branch shall exercise the powers belonging to another. . . ."

CHAIRMAN DeVRIES: Does Delegate Allen yield to Delegate Elliott?

MR. ALLEN: I do.

CHAIRMAN DeVRIES: Delegate Elliott.

MR. A. G. ELLIOTT: I bring to the attention of Mr. Hanna that the only change in Committee Proposal 21 is to change the word from "departments" to "branches" and that therefore I don't see that there has been any new interpretation within the work that we've done either in this committee or in the committee on miscellaneous provisions. As far as I can see, the change from "departments" to "branches" was merely to correct some language to make it consistent with other language throughout the constitution. So I think that if there is a point, it is something that we ought not to belabor the committee of the whole with at this time; we will have ample opportunity to try to correct any of these things as we go along. This is something I would urge that we do.

CHAIRMAN DeVRIES: Delegate Hanna.

MR. W. F. HANNA: Mr. Chairman, Mr. Elliott, I will agree that we should not belabor this point. I want to raise this point because I think most men who are familiar with boards of supervisors recognize that the historical function of boards of supervisors are rapidly changing by reason of acts of the legislature. While we rely on something that was a good law in 1907 and the committee on local government merely readopts language which existed in the prior constitution, we may in the future create a problem and I would like some people familiar with county government to give this matter some thought.

My second question concerns one of style and drafting, Mr. Chairman, if I may address it to Mr. Elliott. As I read this entire proposal, it seems to me that we should somewhere in this add some language that these provisions throughout this proposal may be changed, altered or ignored in case of a home rule charter. There is nothing in this proposal that limits this to what we all may call conventional or standard counties. It specifically says that these proposals will not apply and will not have to be incorporated in a home rule charter or that a home rule charter shall be subject thereto. I raise this point now, Mr. Elliott, because I feel that in style and drafting, we will have to clearly and distinctly specify that these provisions shall apply to counties other than those adopting the home rule charter if this was the intention of the committee.

MR. A. G. ELLIOTT: Mr. Chairman, Mr. Hanna, I suggest that we wait and see what we do with the area of the home rule charter and see if your point is well taken at that time. If so, we will certainly have ample opportunity to adjust and I'm sure that we would be anxious to so do.

CHAIRMAN DeVRIES: The Chair recognizes the delegate from Taylor, Delegate Ford.

MR. FORD: Mr. Hanna, we went into what seems to be an irrational difference in language. If you look at section 17 of this chapter, you will find similar language but there you refer to the governmental entity, to wit, the township rather than to the governing board. But really, this language comes from the 1850 constitution, section 38 of article IV, where it formerly said:

> The legislature may confer upon organized townships, incorporated cities and villages, and upon the board of supervisors of the several counties, such powers of a local, legislative and administrative character as they may deem proper.

Now, ever since 1850, this has existed in Michigan and those of us who tried to trace it back were unable to find why in 1850 they referred to 3 governmental units and then in the fourth instance referred to the governing body of the governmental unit, because when you go back to the 1835 constitution, you don't find comparable language.

Now, when the 1908 constitution was written, sections 20 and 21 of article VIII were put in, which are commonly referred to as the city home rule sections, and this section and section 17 were separated from the others and you ended up with almost the same language as the 1850 constitution being used in one part with reference to the board of supervisors, in section 17 with reference to the township, and no similar reference continued for cities and villages because sections 20 and 21 then recognized them as separate, or what we refer to as home rule entities. So the best that we could come up with was that traditionally the board of supervisors was looked to in essence as the alter ego of the county as a unit of government and there doesn't seem to be any litigation cited in the annotations.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Caspian, Delegate Sablich.

MR. SABLICH: Mr. Chairman, I have a question to ask Mr. Elliott. In section c, you provide for 4 year terms for all elected county officers. Did your committee consider the special situation in the upper peninsula in which most counties —at least the counties in which there are metallic mineral mines—have by statute created the mine inspector. Have you considered giving this official the same term of office?

MR. A. G. ELLIOTT: The answer quickly is no, and I suppose the reason for it, sir, is because it is statutory and that can be done under statute.

MR. SABLICH: The point is this: the statute provides a 2 year term. In conformity with the general pattern for office-holders, or rather for elected officials, I am wondering if you would consider an amendment which would insert the mine inspector as one of the elected officials who would have a 4 year term of office?

CHAIRMAN DeVRIES: Have you offered the amendment?

MR. SABLICH: I have it in my possession. I wanted to get Delegate Elliott's opinion first.

MR. A. G. ELLIOTT: Mr. Chairman, Mr. Sablich, I would suggest that it not be submitted as an amendment, but that you present it to us and I will be happy to give it to the subcommittee that is making this report to the legislature and urge that it be given serious consideration at that time for the legislative act to be so amended.

MR. SABLICH: I don't intend to argue with Mr. Elliott but Mr. Richards, I believe, would have something to say about this. I would indicate this: that the mine inspector is an elected official. It so happens that he was created by statute for specialized situations involving properties in which metallic minerals are extracted from the ground. And for this reason, I believe that he should have the same status as any other elected official. And I would yield the floor to Mr. Richards.

CHAIRMAN DeVRIES: Delegate Sablich yields to the gentleman from Negaunee, Delegate Richards.

MR. L. W. RICHARDS: Mr. Chairman and fellow delegates, I am certainly happy that Delegate Sablich has raised this point. To me, the county mine inspector in our area up in the upper peninsula plays just as important a role as any

county officer and I would encourage Delegate Sablich to offer that amendment. And when it is offered, I would also encourage the support of all the delegates to include this in the group because I believe the county mine inspector plays a very important role in our fine operations of the U.P.

CHAIRMAN DeVRIES: The secretary will read the Sablich amendment.

SECRETARY CHASE: Mr. Sablich offers the following amendment to Committee Proposal 81:

1. Amend page 1, line 22, after "attorney,", by inserting "and such other elective officers as may be provided by law,".

CHAIRMAN DeVRIES: The question is on the Sablich amendment to section c. The Chair recognizes the gentleman from Fennville, Vice President Hutchinson.

MR. HUTCHINSON: Mr. Chairman, in listening to the language of the amendment offered, it doesn't refer to a mine inspector as such. I got up here to talk about that. My point that I wanted to make was to invite attention to the fact that there are other county officers whose existence are by reason of statute, such as county surveyors, county drain commissioners and so forth and they continue to be.

Now, I can't understand why it is necessary to add the phrase that Mr. Sablich now offers, "such other officers as may be provided by law," unless I take it that he wants to insure that it would be impossible for any county official to hold a term of less than 4 years. I don't understand the wisdom of that. Keep in mind that we are going to have to have elections in every county every 2 years anyway and it may follow that maybe the legislature might, in implementing this section of the statute, provide for the election of some county officers at one time and other county officers at another, even though they have 4 year terms. My point is that we are going to have to continue to have elections in every county every 2 years anyway, because under the Constitution of the United States, we have to elect congressmen every 2 years. So you aren't going to be able to avoid elections by this reason. And I don't understand the wisdom of writing into the constitution at this time that every officer that might be created by law in a county shall have a 4 year term, no less and no more. In other words, the legislature would be without power to create any kind of a county official having more than a 4 year term. Now, then, I don't know, maybe the judge of probate is to be considered a county officer and if so, my understanding is there is some talk about giving him a 6 year term and that would run in conflict with this. I can't support the amendment the way I look at it now.

CHAIRMAN DeVRIES: The gentleman from Caspian, Delegate Sablich, has the floor.

MR. SABLICH: Mr. Chairman and members of the committee, I just want to reemphasize that the mine inspector is a very important official in those upper peninsula counties in which metals and minerals are extracted. The man is elected. My amendment merely proposes that all elected officials—if the legislature does see fit to provide that the drain commissioners and other officials of the county are put on an elective basis—I cannot see why they should not have the security of a 4 year term as well as those that are enumerated here in section c. For that reason, I urge the adoption of the amendment.

CHAIRMAN DeVRIES: The question before the committee is the Sablich amendment to section c of Committee Proposal 81. All those in favor of the amendment will say aye. All those opposed, say no.

The amendment is not adopted.

A DELEGATE: Division.

CHAIRMAN DeVRIES: A division has been requested. Is there support for a division vote? There is support. All those in favor of the Sablich amendment will vote aye. All those opposed will vote no. The secretary will read the amendment once again.

SECRETARY CHASE: Mr. Sablich has offered the following amendment:

[The amendment was again read by the secretary. For text, see above.]

CHAIRMAN DeVRIES: All those in favor of the Sablich amendment will vote aye. Those opposed will vote no. The secretary will lock the machine and tally the vote. The secretary will announce the vote.

SECRETARY CHASE: On the adoption of the amendment offered by Mr. Sablich, the yeas are 45; the nays are 72.

CHAIRMAN DeVRIES: The amendment is not adopted.

Are there any further amendments to the body of Committee Proposal 81? If not, it will pass.

Committee Proposal 81, as amended, is passed.

Delegate Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, when I came to this convention some months ago, I didn't know what or who Parkinson was. I am not so sure that I do now but I understand he has one law that I would like to have changed to Elliott's law, which says something to the effect that debate within legislative bodies is in reverse proportion to the quality of the subject matter being debated. And while I can't say that the quality of this particular issue is always so bad, as I look back over the various sections that we have debated, it seems to me that those things which at least to the chairman seemed to be the most important, were the ones that got through with the least amount of discussion and those which we spent the most time on were those on which we could well have avoided a lot of discussion.

The second comment I would like to make is that Mr. Van Dusen asked me to prepare a schedule of the number of hours that I thought the committee on local government would be discussing the 9 proposals and 6 exclusions. I had the total number of hours planned—7 hours. We have now debated on the first proposal 7 hours and 15 minutes. Therefore, if my schedule is right, there is nothing more in local government. But I'm afraid that there is.

It is now 10:15 p.m. and I don't want us to be delayed too long. I am not going to urge that the committee rise at this time. I think that this next proposal is one that can be done most quickly. If I find to the contrary, I'll be happy to ask for the floor.

CHAIRMAN DeVRIES: The Chair might suggest to Delegate Elliott that he be careful to which one of the Parkinson's laws he affixes his name. The one he is talking about is called the law of triviality. (laughter)

MR. A. G. ELLIOTT: I thank you so much. (laughter) Maybe you will join me. (laughter)

CHAIRMAN DeVRIES: The secretary will read.

SECRETARY CHASE: From the committee on local government, by Mr. Elliott, chairman, **Committee Proposal 82,** A proposal pertaining to townships. Amends article VIII, sections 16, 17, 18 and 19.

Following is Committee Proposal 82 as read by the secretary, and the reasons submitted in support thereof:

The committee recommends that the following be included in the constitution:

Sec. a. Each organized township shall be a body corporate[,] with such powers and immunities as shall be prescribed by law. [All suits and proceedings by or against a township shall be in the name thereof.]

Sec. b. The legislature may by general law confer upon organized townships [such] powers of a local, legislative, and administrative character, not inconsistent with the provisions of this constitution. [, as it may deem proper.]

Sec. c. There shall be elected [on the first Monday of April in each odd numbered year] for a term NOT LESS THAN [of] 2 years NOR MORE THAN 4 YEARS AS PROVIDED BY LAW in each organized township: 1 TOWNSHIP supervisor[,]; 1 township clerk[,]; [1 commissioner of highways,] 1 township treasurer[,]; and, not to exceed 4 [constables] TOWNSHIP TRUSTEES, whose powers and duties shall be [prescribed] PROVIDED by law. [Justices of the peace shall be reclassified as shall be prescribed by the legislature to conform with the pro-

Explanation—Matter within [ ] is stricken, matter in capitals is new.

visions of this section providing for biennial township elections.]

Sec. d. WHENEVER THERE IS NO UNINCORPORATED TERRITORY WITHIN A TOWNSHIP, THE TOWNSHIP GOVERNMENT SHALL BE ABOLISHED IF A MAJORITY OF THOSE VOTING ON A REFERENDUM IN THE TOWNSHIP APPROVE. ITS FUNCTIONS SHALL THEN BE ASSUMED BY THE VILLAGE OR VILLAGES AS PROVIDED BY LAW. IN SUCH CASES, THE VILLAGE OR VILLAGES AFFECTED SHALL BE ENTITLED TO REPRESENTATION ON THE COUNTY BOARD OF SUPERVISORS AS PROVIDED BY LAW.

Sec. e. No township shall grant any public utility franchise which is not subject to revocation at the will of the township, unless such proposition shall have first received the affirmative vote of a majority of the electors of such township voting thereon at a regular or special election.

Mr. Arthur Elliott, chairman of the committee on local government, submits the following reasons in support of Committee Proposal 82:

Section a comment: The committee recommends the retention of this section with the deletion of the last sentence of section 16 in the interest of brevity and simplicity, and because the language is superfluous, added nothing to meaning or legal effect.

Section b comment: The committee recommends the deletion of the words "as it may deem proper" in the interest of brevity and simplicity, because the language is superfluous, added nothing to meaning or legal effect.

Section c comment: The time of the election of township officers is left to the article on elections. The committee recommends a minimum term of 2 years, permitting the legislature to extend the term to 4 years. The committee on declaration of rights, suffrage and elections has concurrent jurisdiction on this matter, and has no objection to our recommendation. The committee recommends elimination of the township highway commissioner as a constitutional officer since the township highway problem is no longer present. The committee recommends the elimination of constables as constitutional officers as the need for their services can be and is now provided for by statute. The committee recommends that the office of township trustee be established in the constitution since it is a basic part of township structure. We conclude that all active township officers should be provided for in the constitution. The committee recommends deletion of the following sentence, "Justices of the peace shall be reclassified as shall be prescribed by the legislature to conform with the provisions of this section providing for biennial township elections." Since justices of the peace no longer serve on township boards because the Michigan supreme court has determined they are judicial officers, we concluded that the problem of the justice of the peace is primarily a judicial committee problem and not a local government problem. Our recommendation shall not be construed to mean that we recommend the abolishment of the justice of the peace.

Section d comments: The committee recommends the inclusion of the above new section. The committee concluded that where no unincorporated territory remains within a township, there is no need that the township unit of government be retained since the village or villages could, when authorized by law, perform all township duties and assume all township responsibilities. Representation for these areas on the county board of supervisors would be preserved.

Section e comments: This section requires that the utility wanting an irrevocable franchise must submit the proposition to the people for approval. This gives the utility the privilege of operating with security. A majority vote is required for it to become effective. After study, the committee believes the majority vote for approval in a township should be retained even though a 3/5 majority is required in a city or village. The 3/5 figure appears to have worked satisfactorily in municipalities but might be unduly difficult to obtain, especially in townships which are partly urban and partly rural in character and in which the needs of each group differ. Furthermore, in townships of small population, a 3/5 majority might be difficult to obtain and a relatively few voters could block a franchise wanted by a majority of the people. This section was new in the 1908 constitution; no similar section existed in either the 1835 nor the 1850 constitution. It is necessary for this section to remain in the constitution because of the necessary control that a township must have over the ever increasing need and use of public utilities. This section has the approval of the committee on declaration of rights, suffrage and elections.

Following is the minority report to Committee Proposal 82 as offered and the reasons submitted in support thereof:

Messrs. Ford, Gover, Sharpe and J. B. Richards, a minority of the committee on local government, submit the following minority report to Committee Proposal 82:

A minority of the committee recommends that the following be included in the constitution:

The legislature [may] SHALL by general law confer upon organized townships such powers of a local, legislative and administrative character, not inconsistent with the provisions of this constitution as [it may deem proper.] SHALL BE NECESSARY FROM TIME TO TIME TO MAINTAIN AND CARRY OUT LOCAL GOVERNMENT FUNCTIONS WITHIN ORGANIZED TOWNSHIPS.

Messrs. Ford, Gover, Sharpe and J. B. Richards, a minority of the committee on local government, submit the following reasons in support of the foregoing minority report, which accompanied Committee Proposal 82:

The proponents of this minority report, believing that the principle often enunciated in this convention that, "government is best which is closest to the people and every governmental service should be performed by the smallest unit of government which can do so efficiently", also believe that the township is a necessary form of local governmental structure.

We believe that a long tradition in this state, when considered in light of the numerous and very detailed statutes conferring powers of local self government on townships, indicate the necessity for strengthening the integrity of the township governmental unit.

The Michigan supreme court has held in a case involving the issuance of bonds that townships have only such powers as statutes confer, and are subject to no obligations except such as are derived from statutory provisions. The court also held that the township board is of special and limited jurisdiction, having no power or authority by constitutional mandate, but deriving sole authority from the legislature which is authorized but not compelled by the constitution to delegate certain legislative powers to the township board.

We believe that substitution of the word "shall" for the word "may" is more consistent with the language of other sections concerning local units of government and would more clearly indicate our intention that the legislature be not only empowered but encouraged as well to confer necessary and reasonable powers of local self government upon township units. The above court decisions seem to indicate that the additional language here added to former section 17 would liberalize and strengthen enabling legislation concerning governmental functions and powers for townships.

CHAIRMAN DeVRIES: Is it the desire of the chairman to proceed section by section throughout this proposal?

MR. A. G. ELLIOTT: It is. I'd like to yield to Mr. Radka.

CHAIRMAN DeVRIES: The secretary will read section a.

SECRETARY CHASE: Section a.

Explanation—Matter within [ ] is stricken, matter in capitals is new.

[Sec. a was read by the secretary. For text, see above, page 980.]

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Rogers City, Delegate Radka.

MR. RADKA: At this hour, I'm not going to belabor the committee with the history of townships. We could start from 1850 and carry it forward to 1962. But I think that the less amount of background material that I give you, the less number of questions; it might lessen the quantity of speech making and it might limit the number of amendments. As I understand, there is only one minority report and just one amendment to this proposal. The subcommittee was made up of Bill Suzore, Bill Ford and Jim Farnsworth. The first section will be handled by Jim Farnsworth and I yield to Jim Farnsworth.

CHAIRMAN DeVRIES: Delegate Radka yields to Delegate Farnsworth.

MR. FARNSWORTH: Chairman DeVries and members of the committee, this language, of course, as you will recognize, has been in the constitution for quite some time. Your committee is recommending the deletion of the last sentence which said: "All suits and proceedings by or against a township shall be in the name thereof." The committee felt that the language was not needed; that it just naturally followed that that was true.

Since this was written, I think there is another proposal coming in which will say that in any court you will be represented by an attorney of your choice and further, we thought that any attorney would naturally know that if a suit was started against a township, that it would be in the name thereof. We just didn't think the language was necessary.

CHAIRMAN DeVRIES: Are there any amendments to section a?

SECRETARY CHASE: None, Mr. Chairman.

CHAIRMAN DeVRIES: If not, it will pass.

Section a is passed. The secretary will read section b. Mr. Elliott.

MR. A. G. ELLIOTT: I notice that section b is the section that has a minority report and I think since there may be some discussion on that, I'd like at this time to move that the committee rise.

CHAIRMAN DeVRIES: Delegate Elliott moves that the committee of the whole do now rise. All those in favor will say aye. Opposed, no.

The motion prevails and the committee will rise.

[Whereupon, the committee of the whole having risen, President Nisbet resumed the Chair.]

PRESIDENT NISBET: The Chair recognizes Mr. DeVries.

MR. DeVRIES: Mr. President, the committee of the whole has had under consideration several items on which the secretary will give a detailed report.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 81,** A proposal pertaining to county government; reports this back to the convention with an amendment, recommending the amendment be agreed to and the proposal as amended do pass.

[The following is the amendment recommended by the committee of the whole:

1. Amend page 3, line 23, after "shall" by striking out the balance of the section and inserting "not take effect until approved by a majority of the registered voters voting thereon. All other counties may establish such merit systems as provided by law.".]

PRESIDENT NISBET: The question is on agreeing to the amendment recommended by the committee of the whole. Those in favor say aye. Opposed, no.

The amendment is agreed to.

SECRETARY CHASE: Mr. W. F. Hanna offers the following amendment to the proposal:

1. Amend page 2, line 12, after "consisting of 1" by inserting "or more"; and in line 13, after "township" by inserting "and city"; and in line 14, after "Cities" by inserting "and townships"; and after "such" by inserting "additional"; so that the language of section f on page 2 would read:

> A board of supervisors, consisting of 1 or more from each organized township and city shall be established in each county with such powers as shall be prescribed by law. Cities and townships shall have such additional representation in the boards of supervisors of the counties in which they are situated as may be provided by law.

PRESIDENT NISBET: The question is on the amendment of Mr. Hanna. Mr. Hanna.

MR. W. F. HANNA: Mr. President, this matter was debated at some length in committee of the whole. The vote was close. This is merely an attempt to treat the large suburban townships that are in the crossroads of whether to become a city or to annex or merge or remain as they are, and grant to them effective representation on the board of supervisors as are granted to many of the smaller cities throughout the same county.

PRESIDENT NISBET: The question is on the amendment of Mr. Hanna. Mr. Farnsworth.

MR. FARNSWORTH: Mr. President, I would only call the convention's attention to the fact that I agree with Mr. Hanna, that this matter was debated in committee of the whole and we came to a decision on it and let me remind you once again that the local government committee strongly urges you to vote against this amendment. It has been very carefully considered and it is the recommendation of the local government committee that you vote the amendment down.

Mr. President, I move the previous question.

PRESIDENT NISBET: Is the demand for the previous question seconded? Those in favor say aye. Sufficient number up.

The question now is: Shall the previous question be put? Those in favor say aye. Opposed, no.

The motion prevails and the previous question is ordered.

The question is on the Hanna amendment. Those in favor will say aye—

Mr. Ford.

MR. FORD: Parliamentary inquiry. What is my status when I am standing at the mike waiting for recognition and someone moves the previous question?

PRESIDENT NISBET: The previous question is ordered, Mr. Ford.

MR. FORD: Will I be able to present an amendment when Mr. Hanna's amendment is voted on, assuming it doesn't pass?

PRESIDENT NISBET: Not unless it has been filed with the secretary, Mr. Ford, before the previous question was ordered.

MR. FORD: I just got it back from Mr. Hanna or it would have been filed. I had it written out some time ago.

PRESIDENT NISBET: I take it it has not been filed, Mr. Ford.

Mr. Farnsworth.

MR. FARNSWORTH: Mr. President, I do not want to shut Mr. Ford off from offering a proper amendment. If it is the pleasure of this convention, I'd be glad to withdraw my motion for the previous question.

PRESIDENT NISBET: The previous question has already been ordered, Mr. Farnsworth. The vote is on the Hanna amendment. Those in favor will say aye. Opposed, no.

The Chair is in doubt.

MR. W. F. HANNA: The yeas and nays, Mr. President.

PRESIDENT NISBET: The yeas and nays have been demanded. Is the demand supported. It is supported. Those in favor will vote aye. Those opposed will vote no. Have you all voted? If so, the machine will be locked and the vote will be recorded.

The roll was called and the delegates voted as follows:

Yeas—55

Balcer	Garvin	Liberato
Binkowski	Gover	Marshall
Bledsoe	Habermehl	Murphy
Boothby	Hanna, W. F.	Nord

Brake	Hannah, J. A.	Norris
Brown, G. E.	Hart, Miss	Pellow
Brown, T. S.	Hatch	Perlich
Butler, Mrs.	Hatcher, Mrs.	Powell
Conklin, Mrs.	Higgs	Richards, J. B.
Dehnke	Hodges	Rood
Donnelly, Miss	Hood	Sablich
Douglas	Hutchinson	Shanahan
Downs	Iverson	Sharpe
Elliott, Mrs. Daisy	King	Stafseth
Erickson	Kuhn	Sterrett
Everett	Leibrand	Yeager
Faxon	Leppien	Young
Finch	Lesinski	Youngblood
Ford		

Nays—67

Allen	Gust	Radka
Andrus, Miss	Haskill	Rajkovich
Austin	Howes	Richards, L. W.
Baginski	Hoxie	Romney
Barthwell	Hubbs	Seyferth
Batchelor	Judd, Mrs.	Shackleton
Beaman	Karn	Shaffer
Bentley	Kelsey	Sieder
Blandford	Knirk, B.	Snyder
Bonisteel	Krolikowski	Spitler
Buback	Lawrence	Staiger
Cudlip	Lundgren	Stevens
Cushman, Mrs.	Madar	Stopczynski
Danhof	Mahinske	Tubbs
Davis	McCauley	Turner
Dell	McLogan	Tweedie
DeVries	Millard	Upton
Durst	Mosier	Van Dusen
Elliott, A. G.	Ostrow	Wanger
Farnsworth	Perras	White
Figy	Plank	Wilkowski
Follo	Prettie	Woolfenden
Goebel		

MR. DOWNS: Parliamentary inquiry, Mr. President. Is Mr. Ford's amendment in order now?

PRESIDENT NISBET: It will be as soon as this is finished.

MR. DOWNS: Thank you.

MR. FORD: Parliamentary inquiry. When you say when this is finished, does this mean that we now move to the recommendation of the committee of the whole rather than considering a possible amendment to it?

PRESIDENT NISBET: The recommendation of the committee of the whole, Mr. Ford, has been agreed to. We are now considering amendments to the committee proposal.

SECRETARY CHASE: On the adoption of the amendment proposed by Mr. Hanna, the yeas are 55; the nays are 67.

PRESIDENT NISBET: The amendment is not adopted. Are there further amendments?

SECRETARY CHASE: Mr. Madar has filed the following amendment:

1. Amend page 1, lines 14 through 19, by reinserting the stricken language, amended to read as follows: "When a city in any county has attained a population of 500,000 inhabitants, the legislature may organize it into a separate county without reference to geographical extent, if a majority of the electors of the county voting on the question shall determine in favor of organizing said city into a separate county.".

PRESIDENT NISBET: The question is on the amendment of Mr. Madar. Those in favor of the amendment will say aye.

MR. MADAR: Mr. President, I'd like to have a roll call vote on this.

PRESIDENT NISBET: Is the demand seconded for a roll call vote? Sufficient number up. Those in favor of the Madar amendment will vote aye. Those opposed will vote no. Have you all voted? If so, the machine will be locked and the vote will be recorded.

The roll was called and the delegates voted as follows:

Yeas—23

Binkowski	Hood	Perlich
Bledsoe	Kelsey	Richards, J. B.
Erickson	Liberato	Sablich
Everett	Madar	Shanahan
Faxon	Mahinske	Sharpe
Gover	Nord	Snyder
Hatcher, Mrs.	Norris	Walker
Hodges	Pellow	

Nays—99

Allen	Finch	Mosier
Andrus, Miss	Follo	Murphy
Anspach	Ford	Ostrow
Austin	Garvin	Perras
Baginski	Goebel	Plank
Balcer	Gust	Powell
Barthwell	Habermehl	Prettie
Batchelor	Hanna, W. F.	Radka
Beaman	Hannah, J. A.	Rajkovich
Bentley	Hart, Miss	Richards, L. W.
Blandford	Haskill	Romney
Bonisteel	Hatch	Rood
Boothby	Higgs	Seyferth
Brake	Howes	Shackleton
Brown, G. E.	Hoxie	Shaffer
Brown, T. S.	Hubbs	Sieder
Buback	Hutchinson	Spitler
Conklin, Mrs.	Iverson	Stafseth
Cudlip	Judd, Mrs.	Staiger
Cushman, Mrs.	Karn	Sterrett
Danhof	King	Stevens
Davis	Knirk, B.	Stopczynski
Dehnke	Krolikowski	Tubbs
Dell	Kuhn	Turner
DeVries	Lawrence	Tweedie
Donnelly, Miss	Leibrand	Upton
Douglas	Leppien	Van Dusen
Downs	Lesinski	Wanger
Durst	Lundgren	White
Elliott, A. G.	Marshall	Woolfenden
Elliott, Mrs. Daisy	McCauley	Yeager
Farnsworth	McLogan	Young
Figy	Millard	Youngblood

SECRETARY CHASE: On the adoption of the amendment offered by Mr. Madar, the yeas are 23; the nays are 99.

PRESIDENT NISBET: The amendment is not adopted. There is one more amendment.

SECRETARY CHASE: Mr. Ford offers the following amendment to Committee Proposal 81:

1. Amend page 2, line 12, after "supervisors" by striking out the comma and "consisting of 1 from each organized township,"; and in line 14, after "Cities" by inserting "and townships"; and in line 16, after "law" by changing the period to a colon and inserting "Provided however, That representation on such board shall be on a population basis with each board member representing an equal number of citizens.".

PRESIDENT NISBET: The question is on the amendment of Mr. Ford. Mr. Ford.

MR. FORD: I think that this would now read—I don't have it written out here—that:

> A board of supervisors shall be established in each county, with such powers as shall be prescribed by law. Cities and townships shall have such representation in the boards of supervisors of the counties in which they are situated as may be provided by law.

And then I add the language which dictates that the law would have one factor in it and that is population. This was originally suggested by an amendment that Mrs. Cushman offered the other day. This would leave to the legislature entirely the question of how the members of the board of supervisors should be picked. The legislature could make it permissive on a county by county basis, if they wished; they could make one set of rules for Wayne county and one for the rest of the state, as they do now. But it lays clearly before us the question of whether or not you want to add the legislative body of the county picked on a population basis so that each person sitting on that board represents as nearly as possible an equal number of citizens of the county, whether they live in townships, cities or villages.

It was pointed out here the other day that there is some fear outstate that allowing a minimum of one person from a

township, or requiring a minimum of one representative from a township, plus population, might be disadvantageous to a place like Kalamazoo which feels that it doesn't have its fair voice on the board of supervisors. And I submit that if we got a straight population formula for the representation on the board of supervisors, we are recognizing a very fundamental principle that each citizen of the county is entitled to the same representation as every other citizen, regardless of where he lives in the county.

There is no way that either the cities or the villages can gain an unfair advantage on this because if the majority of the people in the county happen to live in cities, then it will follow that the majority of the representatives on the board of supervisors will be from the cities. If the majority do not live in the cities, then it should follow that the majority will be represented by a majority on the board not coming from the cities. And the single question involved here has nothing at all to do with the cities paying for the services of people living outside of the cities or anything of the kind. It lays squarely before this convention the question of whether we believe in one man, one vote when we are talking about the legislative body for a county.

PRESIDENT NISBET: Mr. Farnsworth.

MR. FARNSWORTH: Mr. President and members of the convention, I would like to again at this time take you through the little arithmetic lesson that we heard the other day. Mrs. Cushman clearly stated when she offered this in the committee of the whole that some townships had as little as 300 population. Now, that is true. So, one man, one vote. We must give those 300 people one supervisor. Bill is shaking his head no. What would you give them, 300?

MR. FORD: Nothing. We said straight population. It doesn't say anything about one representative from a township.

MR. FARNSWORTH: But I still say that you are going to have equal representation according to population; that you are going to give that smallest township at least one representative. You have to start with something. You will have to start with the smallest unit. The minute you do that, they have 300; then you have another city in that same county that has 3,000 population, I say you are going to have to give them 10 supervisors. And if you have another city in that county that has 30,000 people, I figure you are going to have to give them 100 supervisors. Mr. Ford, I don't see how you are going to do it any other way. You have to start somewhere. You have to start with a basic unit.

Again, I say to this convention: how many members do you want on your board of supervisors? I think it is just as simple as that and that we should vote down this Ford amendment.

PRESIDENT NISBET: Mr. Yeager.

MR. YEAGER: Mr. President, I request a recorded roll call vote and move the previous question.

PRESIDENT NISBET: Is there support for a roll call vote? Sufficient number up.

Is the demand seconded for the previous question? Sufficient number up. The question now is, shall the previous question be put? Those in favor will say aye. Opposed, no.

The previous question is ordered.

Those in favor of the Ford amendment will vote aye. Those opposed will vote no. Have you all voted? If so, the machine will be locked and the vote recorded.

The roll was called and the delegates voted as follows:

Yeas—28

Binkowski	Hart, Miss	Norris
Bledsoe	Hatcher, Mrs.	Pellow
Brown, T. S.	Hodges	Perlich
Cushman, Mrs.	Hood	Sablich
Donnelly, Miss	Iverson	Snyder
Douglas	Mahinske	Stopczynski
Downs	Marshall	Walker
Elliott, Mrs. Daisy	Murphy	Yeager
Faxon	Nord	Young
Ford		

Nays—96

Allen	Garvin	Ostrow
Andrus, Miss	Goebel	Perras
Anspach	Gover	Plank
Austin	Gust	Powell
Baginski	Habermehl	Prettie
Balcer	Hanna, W. F.	Radka
Barthwell	Hannah, J. A.	Rajkovich
Batchelor	Haskill	Richards, J. B.
Beaman	Hatch	Richards, L. W.
Bentley	Higgs	Romney
Blandford	Howes	Rood
Bonisteel	Hoxie	Seyferth
Boothby	Hubbs	Shackleton
Brake	Hutchinson	Shaffer
Brown, G. E.	Judd, Mrs.	Shanahan
Buback	Karn	Sharpe
Butler, Mrs.	Kelsey	Sieder
Conklin, Mrs.	King	Spitler
Cudlip	Knirk, B.	Stafseth
Danhof	Krolikowski	Staiger
Davis	Kuhn	Sterrett
Dehnke	Lawrence	Stevens
Dell	Leibrand	Tubbs
DeVries	Leppien	Turner
Durst	Lesinski	Tweedie
Elliott, A. G.	Liberato	Upton
Erickson	Lundgren	Van Dusen
Everett	Madar	Wanger
Farnsworth	McCauley	White
Figy	McLogan	Wilkowski
Finch	Millard	Woolfenden
Follo	Mosier	Youngblood

SECRETARY CHASE: On the adoption of the amendment offered by Mr. Ford, the yeas are 28; the nays are 96.

PRESIDENT NISBET: The amendment is not adopted. The secretary will read the next amendment.

SECRETARY CHASE: Mr. Kuhn offers the following amendment:

1. Amend page 2, by striking out lines 12 through 16 and inserting:

"Sec. f. A board of supervisors, consisting of at least 1 from each organized township, and at least 1 from each city, may be established in each county, with such powers as shall be prescribed by law. The balance of the membership of the board of supervisors shall be selected upon a population basis as may be provided by law.".

PRESIDENT NISBET: Mr. Kuhn.

MR. KUHN: Mr. President, my proposed amendment would not change the setup of our boards of supervisors as we know them today, except in 1 point, and that would be to allow our townships to be on an equal basis, based on population. We are not asking that we increase our boards of supervisors.

I'd like to make one response to what Mr. Farnsworth said. He said a township could have 300 and have to have a supervisor. That's what the constitution says today. But the legislature said that if a city has 300, they are entitled to 1 supervisor. In fact, if a city has 751 residents today, they are entitled to 2 supervisors. Therefore, we are not asking for anything except to be put on equal status with cities. It will be left up entirely to the legislature to set up the formula to increase boards of supervisors.

And since it is that simple, I would move the previous question and demand the yeas and nays.

PRESIDENT NISBET: Is there support for a roll call vote? Sufficient number up.

There has been a demand for the previous question. Is that demand seconded? Sufficient number up. The question now is, shall the previous question be put? All in favor say aye. Opposed, no.

The motion prevails and the previous question is ordered. The amendment will be read by Mr. Chase.

SECRETARY CHASE: Mr. Kuhn has offered the following amendment:

[The amendment was again read by the secretary. For text, see above, page 984.]

PRESIDENT NISBET: The question is on the amendment by Mr. Kuhn. Those in favor will vote aye. Those opposed will vote no. Have you all voted? If so, the machine will be locked and the vote recorded.

The roll was called and the delegates voted as follows:

Yeas—49

Binkowski	Habermehl	Nord
Bledsoe	Hanna, W. F.	Norris
Boothby	Hart, Miss	Radka
Brake	Haskill	Richards, J. B.
Brown, G. E.	Hatch	Richards, L. W.
Brown, T. S.	Hatcher, Mrs.	Sablich
Butler, Mrs.	Higgs	Shanahan
Conklin, Mrs.	Hodges	Sharpe
Donnelly, Miss	Hood	Snyder
Downs	Hubbs	Stafseth
Elliott, Mrs. Daisy	Hutchinson	Sterrett
Erickson	Iverson	Stopczynski
Everett	Kuhn	Walker
Faxon	Lawrence	Yeager
Finch	Lesinski	Young
Ford	Murphy	Youngblood
Gover		

Nays—71

Allen	Follo	Perlich
Andrus, Miss	Garvin	Perras
Anspach	Goebel	Plank
Austin	Gust	Powell
Baginski	Howes	Prettie
Balcer	Hoxie	Rajkovich
Barthwell	Judd, Mrs.	Romney
Batchelor	Karn	Rood
Beaman	Kelsey	Seyferth
Bentley	King	Shackleton
Blandford	Knirk, B.	Shaffer
Bonisteel	Krolikowski	Sleder
Buback	Leibrand	Spitler
Cudlip	Leppien	Staiger
Cushman, Mrs.	Liberato	Stevens
Danhof	Lundgren	Tubbs
Davis	Madar	Turner
Dehnke	Mahinske	Tweedie
Dell	McCauley	Upton
DeVries	McLogan	Van Dusen
Durst	Millard	White
Elliott, A. G.	Mosier	Wilkowski
Farnsworth	Ostrow	Woolfenden
Figy	Pellow	

SECRETARY CHASE: On the adoption of the amendment offered by Mr. Kuhn, the yeas are 49; the nays are 71.

PRESIDENT NISBET: The amendment is not adopted. There is one more amendment. The secretary will read.

SECRETARY CHASE: Messrs. Sablich, Pellow, Perlich and L. W. Richards offer the following amendment to Committee Proposal 81:

1. Amend page 1, line 22, after "attorney,", by inserting "and such other elective officers as may be provided by law,".

PRESIDENT NISBET: Mr. Sablich.

MR. SABLICH: No debate on this question, Mr. President. I just request a recorded roll call vote.

PRESIDENT NISBET: Is the demand for a roll call vote seconded? Sufficient number up. Those in favor of the amendment by Mr. Sablich will vote aye. Those opposed will vote no. Have you all voted? If so, the machine will be locked and the vote recorded.

The roll was called and the delegates voted as follows:

Yeas—55

Andrus, Miss	Ford	Perlich
Anspach	Garvin	Perras
Austin	Goebel	Plank
Baginski	Hart, Miss	Radka
Balcer	Hatcher, Mrs.	Rajkovich
Barthwell	Hodges	Richards, J. B.
Batchelor	Hood	Richards, L. W.
Binkowski	Kelsey	Sablich
Bledsoe	Lawrence	Snyder
Bonisteel	Lesinski	Stafseth
Brown, T. S.	Liberato	Sterrett
Buback	Lundgren	Stopczynski
Butler, Mrs.	Madar	Tubbs
Dell	Mahinske	Walker
Douglas	Murphy	Wilkowski
Downs	Nord	Woolfenden
Elliott, Mrs. Daisy	Norris	Young
Faxon	Pellow	Youngblood
Follo		

Nays—65

Allen	Gust	Mosier
Beaman	Habermehl	Ostrow
Bentley	Hanna, W. F.	Powell
Blandford	Haskill	Prettie
Boothby	Hatch	Romney
Brake	Higgs	Rood
Brown, G. E.	Howes	Seyferth
Conklin, Mrs.	Hoxie	Shackleton
Cushman, Mrs.	Hubbs	Shaffer
Danhof	Hutchinson	Sharpe
Davis	Iverson	Sleder
Dehnke	Judd, Mrs.	Spitler
DeVries	Karn	Staiger
Donnelly, Miss	King	Stevens
Durst	Knirk, B.	Turner
Elliott, A. G.	Krolikowski	Tweedie
Erickson	Kuhn	Upton
Everett	Leibrand	Van Dusen
Farnsworth	Leppien	Wanger
Figy	McCauley	White
Finch	McLogan	Yeager
Gover	Millard	

SECRETARY CHASE: On the adoption of the amendment offered by Messrs. Sablich, Pellow, Perlich and L. W. Richards, the yeas are 55; the nays are 65.

PRESIDENT NISBET: The amendment is not adopted.

SECRETARY CHASE: There are no further amendments on file, Mr. President.

PRESIDENT NISBET: If there are no further amendments, **Committee Proposal 81,** as amended, is referred to the committee on style and drafting.

Following is Committee Proposal 81 as amended and referred to the committee on style and drafting:

The committee recommends that the following be included in the constitution:

Sec. a. Each organized county shall be a body corporate, with such powers and immunities as shall be established by law.

Sec. b. No organized county shall be reduced by the organization of new counties to less than 16 townships as surveyed by the United States, unless in pursuance of law a majority of electors voting on the question in each county to be affected thereby shall so decide.

Sec. c. There shall be elected for 4 year terms in each organized county a sheriff, a county clerk, a county treasurer, a register of deeds and a prosecuting attorney, whose duties and powers shall be prescribed by law. The board of supervisors in any county may unite the offices of county clerk and register of deeds in one office or separate the same at pleasure.

Sec. d. The sheriff, county clerk, county treasurer, judge of probate and register of deeds shall hold their offices at the county seat.

Sec. e. The sheriff may be required by law to renew his security from time to time and in default of giving such security, his office shall be deemed vacant. The county shall never be responsible for his acts, except that the board of supervisors may protect him against claims by prisoners for accidental injuries received while in his custody. He shall not hold any other office except in connection with civil defense.

Sec. f. A board of supervisors, consisting of 1 from each organized township, shall be established in each

county, with such powers as shall be prescribed by law. Cities shall have such representation in the boards of supervisors of the counties in which they are situated as may be provided by law.

Sec. g. The legislature may by general law confer upon the boards of supervisors of the several counties powers of a local, legislative and administrative character not inconsistent with the provisions of this constitution.

Sec. h. The boards of supervisors shall have exclusive power to fix the salaries and compensation of all county officials not otherwise provided for by law.

Sec. i. No county shall incur any indebtedness which shall increase its total debt beyond 10 per cent of its assessed valuation.

Sec. j. No county seat once established shall be removed until the place to which it is proposed to be removed shall be designated by 2/3 of the board of supervisors of the county, and a majority of the electors voting thereon shall have voted in favor of the proposed location, in such manner as shall be prescribed by law.

Sec. k. No navigable stream of this state shall be either bridged or dammed without permission granted by the board of supervisors of the county under the provisions of law, which permission shall be subject to such reasonable compensation and other conditions as may seem best suited to safeguard the rights and interests of the county and the municipalities therein.

Sec. l. The board of supervisors of each organized county may organize and consolidate townships under such restrictions and limitations as shall be prescribed by law.

Sec. m. The board of supervisors of any county with a population of 1 million or more shall have the power by ordinance to establish a merit system for county employment. The ordinance or any amendments thereto shall not take effect until approved by a majority of the registered voters voting thereon. All other counties may establish such merit systems as provided by law.

SECRETARY CHASE: Mr. President, the committee of the whole has also had under consideration **Committee Proposal 82** and has come to no final resolution thereon. This completes the report of the committee of the whole, Mr. President.

PRESIDENT NISBET: Without objection, we will return to the order of **motions and resolutions.**

SECRETARY CHASE: Mr. DeVries offers **Resolution 70,** A resolution of the constitutional convention establishing a budget for post constitutional convention expenses.

Following is Resolution 70, as offered:

Whereas, It is necessary that the post convention commission meet on a regularly scheduled basis to formulate policy and make many decisions as to the disposition of the convention property and the printing and distribution of the official convention documents; and

Whereas, The commission will also be charged with informing Michigan's citizens of the work of the convention and a simplified explanation of the proposed document; and

Whereas, The commission will be assisted by an executive director who will supervise the administrative and housekeeping division, as well as coordinate all 3 divisions with the commission itself; and

Whereas, The executive director will supervise the renovation of the civic center in order that it may be returned in the same condition as leased and the disposition of convention property in a manner most beneficial to the state; and

Whereas, The other full time employees within the administrative and housekeeping division will be a secretary to both the executive director and the commission and a finance officer who will continue to handle the accounts of the convention and the commission; and

Whereas, The secretary's office will be in charge of preparing the official record and proceedings of the convention and the bound volumes of the daily action journal and the delegates' proposals, which record shall consist of a single convention record consisting of the verbatim proceedings, plus those portions of the daily action journal needed to make the record complete, will be prepared and 3,000 copies of this 3 volume work will be produced by letterpress printing. After distribution to delegates, colleges, universities, libraries, research centers, certain state officers and legislators, the remainder will be offered for public sale by the secretary of state. The 100 bound copies of the daily action journal and the 100 bound copies of the delegates' proposals will be distributed to libraries and research centers to make their records complete. The secretary's office estimates that it will take 3,000 man hours to prepare the convention proceedings for the printer. Bids will be accepted on the printing of the proceedings and other volumes; and

Whereas, The purpose of all post convention public information activities will be to prepare and distribute, through all possible media of communications, objective, factual data, of a purely informational character, on all aspects of the constitutional convention. This data will be prepared solely from the official convention record and the committee reports; and

Whereas, It is anticipated that the public information division's activities will embrace the following:

1. The preparation and distribution of 1 million copies of the 80 page official address to the people on the work of the convention;
2. The preparation and distribution of informational bulletins to all press media, interested civic groups, educational institutions, etc.;
3. The production of tape recorded informational bulletins to radio stations;
4. The production of suitable artwork, graphs, charts and other visual aids, to illustrate topics dealt with in informational bulletins;
5. Distribution of the documentary film on the work of the constitutional convention;
6. Assistance to working press members in preparing material on the constitutional convention;
7. Assistance to television stations in producing educational programs on the constitutional convention;
8. Fulfilling all requests for informational data from groups and private citizens; and
9. Providing all other necessary services of an informational character; now therefore be it

Resolved, That the convention adopt the following post constitutional convention commission budget:

For text of budget included as part of proposed Resolution 70, see below, page 1166.

PRESIDENT NISBET: Without objection, it will be referred to the committee on administration.

SECRETARY CHASE: I have the following announcements:

The committee on rules and resolutions will meet tomorrow morning at 8:00 a.m. in room I. (laughter) Richard Van Dusen, chairman.

The committee on administration will meet tomorrow at 1:30 in the conference room. The subject will be the post convention budget. Walter DeVries, chairman.

Mr. Bentley requests leave of absence from the morning and afternoon sessions of Thursday, February 15.

PRESIDENT NISBET: Without objection, he will be excused.

MR. HUTCHINSON: Mr. President, my recollection is that a motion was made sometime last week that, starting tomorrow in committee of the whole, we would take up the executive article. Is that the present understanding?

PRESIDENT NISBET: Is it, Mr. Van Dusen?

MR. VAN DUSEN: I think, Mr. President and Mr. Hutchinson, our practice has been that when we have started on one of these reports of a committee which has been brought to the head of the calendar, we have completed it before going on to the next business. Therefore, it would be my understanding that we would continue with local government tomorrow.

MR. HUTCHINSON: Mr. President, I won't quarrel with that. I just wanted to have an understanding because my recollection, I think, is correct that Mr. Martin moved and the motion carried, that the executive be placed at the head of the calendar tomorrow. But it's all right. We'll go on with local government.

SECRETARY CHASE: Will the convention delegates please retain the calendars that you have on your desk as of today. The only item that has been removed from it is item 1. (laughter)

PRESIDENT NISBET: Mr. Ford, did you want to be recognized?

MR. FORD: I'd like to make a parliamentary inquiry of the president. On page 579 of the Friday journal in the right hand column, there appears an amendment to the majority report of the committee on the judiciary which I had understood resulted from a piece of paper that was circulated through the hall last Friday on which we were asked to endorse our affirmance of this amendment and I don't know how many others did it, but I put a very emphatic "no" on it when it came to me. I feel very certain we will have a minority report because this touches on a very important part of the judiciary, the supreme court, and I wondered if we had the same 3 days as has been afforded, or at least some time to file a minority report to the amendment to the majority report.

PRESIDENT NISBET: You have 3 days from Friday, Mr. Ford, to submit your minority report.

MR. FORD: While I am at the mike, as a point of personal privilege, the language at the bottom of page 579 included by Mr. Woolfenden in special privilege indicates, "The committee was unanimous in its approval of this provision." I'd like to indicate that this member of the committee did not consent to the inclusion of this as an amendment to the majority.

PRESIDENT NISBET: It will be so indicated, Mr. Ford. The Chair recognizes Mr. Hood.

MR. HOOD: Mr. President, I move that we adjourn.

PRESIDENT NISBET: The question is on adjournment. Those in favor, say aye. Opposed, no.

We are adjourned until 9:30 tomorrow morning.

[Whereupon, at 10:50 o'clock p.m., the convention adjourned until 9:30 a.m., Tuesday, February 13, 1962.]

SEVENTY-EIGHTH DAY

Tuesday, February 13, 1962, 9:30 o'clock a.m.

PROCEEDINGS

PRESIDENT NISBET: The convention will please **come to order.**

Our **invocation** today will be given by the Reverend Leonard Weigel of St. Paul's United Church of Christ, from Taylor. Reverend Weigel is the pastor of Bill Ford's church.

REVEREND WEIGEL: Let us lift up our hearts and hands to God in prayer. Eternal God, so high above us that we cannot comprehend Thee and yet so deep within each of us that we cannot escape Thee, we come into Thy holy presence at this time for we know that we can do nothing of worth without Thy inspiration and guidance.

Help us, O Father, to understand fully the responsibilities which are ours as we deliberate on the matters which come before this constitutional convention. Grant unto us the humility and wisdom to acknowledge that we cannot discharge these responsibilities without Thy presence permeating our every thought, word and deed. Give unto each of us an awareness of the many people who rely upon us to serve the common welfare of man and who have put their trust in us to make here wise decisions which shall be just for all people. Help us to take a courageous stand for truth and guard us from letting truth become subservient to expediency.

Give us strength, O God, to be true to the highest hopes of the past, and yet make us brave and ready to break with tradition and custom when so doing will bring us into the light of the better and more righteous way. Almighty God, ceaseless Creator of the ever changing world, we are grateful that Thou hast made us in such a way that we are ever discontented with things as they are, urging us ever onward and upward toward the achievement of the eternal destiny of man, to be brothers one of the other under Thy guidance.

We pray this day, O God, for fresh courage to launch out in bold adventures of faith, adopting such new forms of law and principle which may be necessary to fulfill the larger purposes for which Thou didst bring our country and this state to birth.

Behold us, O Father, Thy servants gathered here and awaiting now Thy spirit, wisdom and will to come upon us in full measure. Forgive us our sins as we earnestly repent for them. Use us to Thy glory and the welfare of our fellowmen. In Jesus' name. Amen.

PRESIDENT NISBET: The **roll call** will be taken by the secretary. Those present, please vote aye.

SECRETARY CHASE: Has everyone voted? The machine is locked and the attendance will be recorded.

Mr. President, a quorum of the convention is present.

PRESIDENT NISBET: Mr. White.

MR. WHITE: Mr. President, I had a call from my colleague, Delegate Dean Doty, who is confined to his home with the flu. I move he be excused from today's session.

PRESIDENT NISBET: Without objection, the motion prevails and leave is granted.

SECRETARY CHASE: Absent with leave: Messrs. Dade, Dean Doty, Miss McGowan, Messrs. Page and Stamm.

Absent without leave: None.

[During the proceedings, Mr. Dean Doty entered the chamber and took his seat.]

PRESIDENT NISBET: The secretary has an announcement to make.

SECRETARY CHASE: This is of interest to all delegates. You are reminded that the photographer is down in committee room G, and will be here today and tomorrow to take pictures for the convention record. You are urged to keep your appointment promptly on schedule; if you cannot, please see Dr. Knapp for rescheduling.

PRESIDENT NISBET: Reports of standing committees.

SECRETARY CHASE: None.

PRESIDENT NISBET: Reports of select committees.

SECRETARY CHASE: None.

PRESIDENT NISBET: Communications from state officers.

SECRETARY CHASE: No communications.

PRESIDENT NISBET: Second reading of proposals. The Chair recognizes Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, I move that the order of second reading be passed for the week.

PRESIDENT NISBET: The question is on the motion of Mr. Van Dusen. Those in favor will say aye. Opposed, no.

The motion prevails.

Third reading.

SECRETARY CHASE: Nothing on that calendar.

PRESIDENT NISBET: Motions and resolutions.

SECRETARY CHASE: There are no resolutions on file.

PRESIDENT NISBET: Unfinished business.

SECRETARY CHASE: None.

PRESIDENT NISBET: Special orders of the day.

SECRETARY CHASE: No special orders.

PRESIDENT NISBET: **General orders of the day.** Dr. DeVries.

MR. DeVRIES: Mr. President, I move the convention resolve itself into committee of the whole for consideration of certain items on the general orders calendar.

PRESIDENT NISBET: The question is on the motion of Dr. DeVries. Those in favor will say aye. Opposed, no.

The motion prevails. Dr. DeVries.

[Whereupon, Mr. DeVries assumed the Chair to preside as chairman of the committee of the whole.]

CHAIRMAN DeVRIES: The committee will come to order. When last this committee met, it was considering **Committee Proposal 82.** Upon request of the chairman, we are proceeding section by section through the committee proposal. We have disposed of section a; we are now on section b.

For last previous action by the committee of the whole on Committee Proposal 82, see above, page 980.

The secretary will read section b.

SECRETARY CHASE: The secretary, before he reads section b, has one request to make of the delegates, and we earnestly entreat your cooperation. The staff was here until 10 minutes of 1:00 this morning. That is one of the reasons the journal has not yet been received. Will you please provide us with 3 copies of amendments. This will expedite the business at the desk and enable us to get the journal out a lot more rapidly.

[Sec. b. was read by the secretary. For text, see above, page 980.]

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Pleasant Ridge, the chairman of the committee, Delegate Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, I yield to the subcommittee chairman, Mr. Radka.

CHAIRMAN DeVRIES: Delegate Elliott yields to the gentleman from Rogers City, Delegate Radka.

MR. RADKA: Mr. Chairman, members of the committee, this section will be explained by the very capable delegate, Francis Finch.

CHAIRMAN DeVRIES: Delegate Radka yields to Delegate Finch.

MR. FINCH: Mr. Chairman and members of the committee, this section is essentially the same as it was in the 1908 constitution, except that the research and drafting department thought that this would clean up the language. I move its passage.

CHAIRMAN DeVRIES: Are there any amendments to section b of Committee Proposal 82?

SECRETARY CHASE: Pursuant to the minority report of Messrs. Ford, Gover, Sharpe and J. B. Richards,

Mr. Ford offers the following amendment:

1. Amend page 1 by striking out lines 10, 11, 12 and 13 and inserting

"Sec. b. The legislature shall by general law confer upon organized townships such powers of a local, legislative, and administrative character, not inconsistent with the provisions of this constitution as shall be necessary from time to time to maintain and carry out local government functions within organized townships.".

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Taylor, Delegate Ford.

MR. FORD: Mr. Chairman, members of the committee, the minority explanation is contained on page 550 of the journal, if you would like to follow it.

[The supporting reasons for the minority report were read by Mr. Ford. For text, see above, page 981.]

I would like to yield for questions before making any further comment.

CHAIRMAN DeVRIES: The Chair recognizes Delegate Powell.

MR. POWELL: I have a question of Mr. Ford. Mr. Ford, do you feel that this minority report amendment opens the door for home rule for townships? Is that the intention of it?

MR. FORD: I don't believe so, because it still leaves us in the position where there is no inherent power, merely such powers as the legislature shall from time to time confer upon the township. The essential home rule is contained in sections 20 and 21 of the 1908 constitution. The language is framed in a manner that indicates that these units of government, to wit: cities and villages, shall have powers, unless restricted by the legislature. This section, as it reads, still says that the township shall have such powers as are granted by the legislature.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Allegan, Delegate Farnsworth.

MR. FARNSWORTH: Mr. Chairman, I would like to direct a question to Delegate Ford through the Chair, please. Delegate Ford, you seem concerned about the legislature granting powers to the townships. You, apparently, are endeavoring to strengthen that particular section. Does the fact that we have a charter township law in Michigan, which was significantly strengthened in 1960—don't you think that that is all those townships need without any further language in that section?

MR. FORD: I want to point out that we do not, by changing the language in this section, confer any power on the township. What we are trying to do is modernize the rules of construction with respect to the powers granted.

When you get into the 2 cases that I mentioned here, you will find, in the citizens research council's Analysis of the 1908 Constitution, volume 2, page 23, this is a part of the beginning of this question of court construction. We most frequently get into it in zoning. I think the outstanding case, or the one that sets up the rule is Portage Township v. Full Salvation Union. It is not a new case, but it has been cited many, many times for the principle that since the legislature is not directed by the constitution to confer any powers, that when the legislature does, in fact, confer powers on a township or a county, the court is compelled to strictly construe the enabling statute, and this leads to what we consider to be a double standard of court interpretation, when you get into fields like zoning and planning, police and fire protection, building codes, plumbing codes, anything that you want to mention.

I want to point out to the delegate from Allegan that we have no worry, there is no one on this minority report who is at all concerned about the legislature conferring powers on the townships, because we have an entire volume here of Michigan Statutes Annotated with nothing else but powers being conferred on townships. Our only concern is that after they are conferred, we want to have a more definite rule of construction when we go to court on a question arising out of the conferring.

MR. FARNSWORTH: Mr. Chairman, another question for Mr. Ford, and I might say to the committee that this dialogue between Mr. Ford and myself is simply a repeat of what we have been over many times in the local government committee. Specifically, I would like to ask Mr. Ford—he is concerned, I believe, about liberal construction in court interpretations—

when we get to Committee Proposal 84, Mr. Ford, which I suppose we will adopt, it says:

> The provisions of this constitution and the laws of this state concerning municipal corporations shall be liberally construed in their favor. Powers granted to counties and townships by this constitution and the laws of the state of Michigan shall include those expressly granted or fairly implied and not inconsistent with nor prohibited by this constitution.

You will recall, Mr. Ford, that we put that in on your advice, and that that was intended to cover this very thing that you are talking about now. I realize that we have not adopted this yet, but we are coming to 84, and that is the language in it.

MR. FORD: I am familiar with 84 because I wrote it, but the problem is twofold here, Jim. We are talking, on the one hand, about construction. We are also talking about a concept here. I think that this is an opportunity to place squarely before the legislature a recognition of the fact that, unlike the prediction in 1908, the automobile has caused an exodus to the suburbs that has resulted in a situation where the township, as a unit of government, has more people living in it today than anybody, in their wildest dreams, would ever have conceived in 1908. I think it is evident from the fact that section 38 of article IV of the 1850 constitution, which we discussed here last evening, was split up in 1908 in such a manner as to indicate at that time that they predicted the 2 units of government at the local level that had the greatest future were cities and villages.

At the risk of incurring the wrath of the village people, I think it has been apparent that, since world war II, in the state of Michigan the village is an obsolete form of government —at least, if not obsolete, obsolescent—in that the village is still a part of the township; its taxes are collected by the township; its elections are conducted by the township, and most of its basic governmental functions are actually township functions, even though it is a village. I am not advocating that we abolish them, but I am pointing out that in this day and age, with the type of transportation we have, when we have people living 30 and 40 miles from their place of employment—and this is not uncommon in the Detroit area—the township has, since world war II, become a more complex and a more used unit of local government, and I think it would be shortsighted, at this time, to fail to recognize this.

I think that this language, as well as talking about construction, Mr. Farnsworth, would clearly indicate our recognition of this as a necessary, continuing form of local government in the state of Michigan.

MR. FARNSWORTH: Mr. Chairman, Mr. Ford, and members of the committee, we, of course, are gratified that Mr. Ford is and always has been a champion of township government, as a majority of us are on the local government committee, including myself.

Now as to this matter of automobiles and the density of population in townships, Mr. Ford, that you spoke of just a few minutes ago, I find that we have 1,061 townships in the state of Michigan, out of a total of 1,258, that have less than 3,000 people in them. I believe you are getting down to the category of the highly populated townships, which we discussed quite thoroughly in the subcommittee and the full committee on local government, and we felt that the law, as it exists now—we even had Mr. Brake in on our subcommittee discussion—and we agreed that charter townships had all the populace they needed, in these more populous areas; that we didn't need to change this language one bit in order to adequately protect them; that they can do everything they need to do.

Members of the committee, your local government committee just does not feel that this language is necessary or even desirable.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Rogers City, Delegate Radka.

MR. RADKA: Mr. Chairman and members of the committee, I would like to briefly explain what thinking went on in the subcommittee and the full committee. The subcommittee originally reported to the full committee that they proposed the acceptance of the change of the word "may" to "shall". This was their recommendation to the full committee on local government. This, I believe, was accepted by the full committee.

When we reconsidered the section the second time, Mr. Ford offered an amendment to add the last sentence. The committee then felt that changing the word "may" to "shall"—although we did not feel that it added anything as far as changing the legal effect of the section and adding the last sentence did not really, materially change the legal effect of the entire section—we decided that it would be unwise to add words or change words that wouldn't materially affect the interpretation of the section. Therefore, we moved to retain the present language of the constitution rather than just make changes that might not materially affect the legal interpretation of the section, and this is and was the position of the majority of the local government committee and is now the position of the majority of the subcommittee on townships of the local government committee.

CHAIRMAN DeVRIES: The question before the committee is the amendment offered by Delegates Ford, Gover, Sharpe and Richards. The Chair recognizes the gentleman from Kalamazoo, Delegate Brown.

MR. G. E. BROWN: Mr. Chairman, members of the committee, I would be happy to support the minority report amendment that has been offered by Mr. Ford. I believe, however, that the substance of what he wishes to accomplish would be accomplished by merely changing the initial verb of "may" to "shall", or I should say the mandatory provision of the word "shall" rather than the permissive provision of "may".

I would like to direct a question to Mr. Ford, as to whether or not he intended to eliminate the word "such" where it has been stricken in the majority report but has not been stricken in the minority report. I believe, once again, in this regard, by putting in the word "such", it tends to have a limiting effect.

MR. FORD: Mr. Chairman, I think Mr. Brown is correct. It was not my intention to reinsert the word "such". This would be inconsistent with what we have already done with respect to counties, putting the word "such" back in. I think that is a point well taken, and I would like to consider the minority report amendment—unless there is an objection from my cosponsors—so revised.

CHAIRMAN DeVRIES: Is there objection from Delegates Gover, Sharpe or J. B. Richards to the revision suggested by Delegate Ford? If not, it will be so revised without objection. The secretary will read the revised amendment.

SECRETARY CHASE: Mr. Ford, with the consent of Messrs. Gover, Sharpe and J. B. Richards, requests the amendment be revised to read as follows:

1. Amend page 1 by striking out lines 10, 11, 12 and 13 and inserting

"Sec. b. The legislature shall by general law confer upon organized townships powers of a local, legislative, and administrative character, not inconsistent with the provisions of this constitution as shall be necessary from time to time to maintain and carry out local government functions within organized townships.".

MR. G. E. BROWN: I would like to speak once again, Mr. Chairman, to the support of the Ford amendment, at least to the extent of the word "shall". I think what has been said here by Mr. Farnsworth and Mr. Ford points out the fact that there has been a lack of complete attention by the legislature to some of the township problems. I think that by putting mandatory language in the constitution, it would indicate, along with the section that Mr. Farnsworth mentioned in a subsequent proposal, that it is the intent of this convention that adequate legislation, empowering townships to adequately dispose of their problems, is contemplated by this constitutional convention. I, therefore, would support it.

I would further direct a question to Mr. Ford as to whether or not he would withdraw the additional language in his minority report amendment; that language extending beyond the word "constitution"?

MR. FORD: I have no particular brief to hold for the form of the last sentence in this provision, except that it merely, I suppose, reiterates the principle of the fact that we are talking about governmental powers. I assume, because of the location of this, and the context that it will be in, that this will be unnecessary. If I had the assurance, when this comes back from style and drafting, that by dropping this we have not, in any way, affected its substance, I would have no objection at all.

For the purpose of clearing up any question here this morning, I would accede to removal of the language we added at the end of the minority report amendment, because I don't think it is significant, except it limits what we are talking about here to governmental powers.

CHAIRMAN DeVRIES: Delegate Ford, are you offering to delete the last sentence of your amendment?

MR. FORD: Yes. So that there will be no misunderstanding, I am doing so on the assumption, at this point, that this withdrawal does not affect the substance of our minority report amendment.

CHAIRMAN DeVRIES: The Chair is hardly in a position to rule on that, Delegate Ford.

MR. FORD: I am not asking for a ruling. I merely wouldn't want to consent to it now and come back the next time around and move for an amendment and have it appear that we were acting in bad faith. I am consenting to this on the assumption, at this point, that Mr. Brown is correct. I have great confidence in his ability as a township attorney and an expert in this field.

CHAIRMAN DeVRIES: Do you wish to delete the sentence?

MR. FORD: Yes, I do.

CHAIRMAN DeVRIES: The sentence will be deleted with the agreement of the cosponsors. There being no objection, the sentence is deleted.

The secretary shall read the minority report amendment offered by Delegates Ford, Gover, Sharpe and J. B. Richards, as further revised by the cosponsor.

SECRETARY CHASE: Mr. Ford, with the consent of Messrs. Gover, Sharpe and J. B. Richards, requests the amendment be further revised to read as follows:

1. Amend page 1 by striking out lines 10, 11, 12 and 13 and inserting

"Sec. b. The legislature shall by general law confer upon organized townships powers of a local, legislative, and administrative character, not inconsistent with the provisions of this constitution.".

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Rogers City, Delegate Radka.

MR. RADKA: If you recall, I stated before that the subcommittee approved the language that you now have before you. The full committee on local government approved this language. They only objected to the last sentence. I am sure that they have not changed their minds; they would, undoubtedly, accept the language as it is now being presented.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Pleasant Ridge, Delegate Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, ladies and gentlemen of the committee, I believe, in substance, what Mr. Radka said is correct. However, I must point out that when we got into our full committee, I don't really believe that we had an opportunity to ever finally vote on the word "shall" as being the only change, because when Mr. Ford offered his amendment, he offered it at about the same time as he has done here, and that created the discussion for an hour or so, and at the end of that time we decided that it had so thoroughly confused the issue that we would defeat the amendment and leave the word as "may". That is what we ended up doing.

I think one of the reasons for leaving the word as "may" was because it then made it consistent with what we had just previously done in the standard county provision for a similar section where the word was left as "may". I don't think there is any reason—however, I only speak as an individual now and not as the chairman—why the word "shall" should not be a perfectly acceptable position for us to take, and, as an individual, I support it.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from East Grand Rapids, Delegate Martin.

MR. MARTIN: Mr. Chairman, just a matter of inquiry. We don't ordinarily change individual words of this kind, from "may" to "shall", unless we are trying to specifically do something here and direct the legislature to do something that it isn't already doing. My inquiry to Mr. Ford would be: what is it that we are now proposing to require the legislature to do which it isn't already doing?

MR. FORD: As I have already stated, we don't intend to direct the legislature to do anything that is is not doing. We are attempting to affect the attitude of the courts in interpreting what the legislature does after it does it with respect to townships.

We are also, at the same time, indicating an intent that the legislature shall recognize this unit of local government and confer upon it such powers as shall be necessary to function as a unit of local government, recognizing full well, that no one can mandamus the legislature to do anything, and recognizing also that since world war II and before, the legislature has conferred upon the township, on a permissive basis, practically all of the powers of local self government, and, as a matter of fact, we are now at a stage, with rather recent legislation, where I think we have practically all of the police powers of a city. So it is not a question of worrying about the legislature failing to come up with the adequate powers; it is a question of whether or not we want to be consistent.

I might point out, Mr. Martin, that, as we discussed last night, in 1908 we had a county, a township, a village and a city mentioned. In the last 3, we talked about the legislature conferring powers upon the unit of government, while with respect to the county we talked about conferring powers upon the legislative body of the unit of government. So, when we used the word "may" with respect to the counties last night, I made no objection because here we are talking about conferring powers on a legislative body rather than upon a unit of government, as such. At this point last night, we were still not recognizing the county as an integral unit of local government. I assume the reason for not wanting to do it in that section is because there is a home rule provision coming later.

There is no home rule provision coming for townships later. All we are saying here is, by using the word "shall" we then become consistent with the language in sections 20 and 21, and we recognize 3 basic units of local self government, to wit: the township, the village and the city.

MR. MARTIN: It just seems to me that the language which the committee has recommended here is entirely satisfactory language. As Mr. Ford says, under it the legislature has delegated or has provided complete legislation for townships. I still am not entirely clear about the reason for the change, and I think it may only involve further court confusion on the court's part as to what we meant when we made this change from "may" to "shall"; as to whether we were, in some way, saying that no action can be taken which might withdraw any of these powers or readjust any of these powers which the townships have. I don't say that we should be or we want to be, but I think it only creates confusion to make this particular change.

I think the committe's recommendation was a sound one.

CHAIRMAN DeVRIES: The question before the committee of the whole is the minority amendment to section b offered by Delegates Ford, Gover, Sharpe and Richards. The secretary will read the revised amendment.

SECRETARY CHASE: The amendment now is:

[The revised amendment was again read by the secretary. For text, see above.]

CHAIRMAN DeVRIES: The Chair recognizes the lady from Dearborn, Mrs. Cushman.

MRS. CUSHMAN: Mr. Chairman and delegates, the thing that I would like to speak to is this question of "may" or "shall". I, as you know, am not a lawyer, but I have checked

this out, and I think there would certainly be a clear implication of a change in our intent of handling townships if you change something that has been reading "may" to something that reads "shall".

I think, furthermore, we ought to recognize here that your problem apparently is with the more populous, the urban townships, and that they do have a remedy, in that they can become cities. Many of these townships have refused, more than once, to become cities. The only implication that you can draw from this is that they prefer their township status for some reason or other. If they prefer it, I don't see why we want to change this sort of thing. Thank you.

CHAIRMAN DeVRIES: The question before the committee is the Ford amendment. The Chair recognizes the gentleman from Taylor, Mr. Ford.

MR. FORD: I think there is almost a fear on the part of some of these people from the smaller cities towards the large townships that surround them. Mrs. Cushman happens to be joined by townships that are very close to inundating them in population and are certainly much larger in area at the same time. But the problem we are dealing with here has nothing to do with the peculiar problems of an urban township. It has to do with the issuance of any kind of bonds that a township might issue; it has to do with the question of leasing a piece of ground for a library—an experience that we recently had in our township. No one here is going to submit that only the urban townships are concerned about libraries and parks. I understand that some of them over along Lake Huron are in the business of providing marinas and things of this kind. These are the small townships that are doing it. This should not be considered, in any way, as a matter relating itself to one type of township or another.

By the same token, in fairness, I want to say that this would apply with equal force to a charter township, because, notwithstanding the fact it becomes a charter township, it is still governed by the general laws of the state as contained in this constitution with respect to townships.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Detroit, Delegate Madar.

MR. MADAR: Mr. Chairman, we had quite a discussion in the local government committee on this subject. In fact, I think we heard more about townships, and especially townships of a larger size.

I think I have studied government for a long enough period so that I understand what is archaic and what is modern. I can understand how a lot of people like to go along with old ideas, historical ideas, like to keep them with us, like to look at these old things. Frankly, I propose that we ought to do away with townships and villages and have 5 different classes of cities. I think it would have been a very good idea.

Mr. Ford, on a couple of occasions this morning, has stated that the smaller townships want this. It is rather strange to see that it is a township of approximately 40 some thousand that is so insistent on getting more power for townships. We also hear that the township of Taylor has done just about everything in its power to become a city. Yes, they have done everything in their power except cast enough votes to become a city. They want to remain a township. There are definite advantages in Wayne county for the larger townships to remain townships, and that definite advantage is that there are tax advantages, to a degree.

We hear Mr. Ford—and I am quite sure that after I get through he is going to say this so I might just as well say it to keep him from getting up, I imagine he is quite tired this morning—say that the township pays more taxes than the cities do. If that is the case, the only reason they are doing it is because they have to have the things that they are paying for, and they still need more.

The committee did vote for the word "shall". They voted to put it in. They took the word "may" out. Whether the legislature has to do anything or not, I don't know. I have always said that we are superior to the legislature and to the supreme court. It is my thought that the people elected us to come up here to tell the legislature what to do, to get this law established, and it is the basic law upon which they will work.

There are some 50 attorneys, as I understand it, in this convention. I think it is about 56, if I am not mistaken. However, I say this: that somehow or other, we ought to find a means of making the legislature do what this constitution says it shall do, and the word "shall" should mean that they must, absolutely must, and not just through a mandamus. In fact, if I were an attorney, some way I would find a way, or possibly I would have education enough so that I could say, "If you don't try to do it, at least try to do it, you will go to jail for not having tried."

I am in favor of the committee's proposal.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Howell, Delegate Sharpe.

MR. SHARPE: Mr. Chairman, Mr. Madar, I didn't know, for quite awhile, what side of the fence you were on. I would like to make an observation, and it seems that some people are worried about this township and are not willing to give it the necessary tools to do the necessary things that the people would like to have happen in a township.

If we are going to be consistent and we are going to go to home rule for counties, I believe that we should strengthen some of these townships. We have townships that are going to be damaged if we adopt a home rule for counties, in many counties in Michigan, especially in Macomb county. We have some townships in Macomb county—and I will refer this to Mr. Rush, if he desires to speak on it—where the lower 25 per cent of the area of the county can outvote the county and therefore they could institute a county home rule.

I believe that we should give the upper 2/3 of the counties some special consideration. I believe that these people may have imposed upon them a form of government that they would not want, and I am not talking against home rule. I would like to make my position definitely clear, that I believe we should be consistent in this convention and that we should strengthen local government whenever and wherever it is possible.

CHAIRMAN DeVRIES: The delegate from Howell yields to the gentleman from Romeo, Delegate Rush.

MR. RUSH: Mr. Chairman, ladies and gentlemen, we do have that situation in Macomb county that Mr. Sharpe has referred to. We have 9 townships in the north end of the county that are rural. The south end is metropolitan. If we should have a county home rule form of government and it was a vote of the people at large, the north end would get very little consideration.

I believe that any form of county home rule government should have some area provision in it. I believe the delegates here have recognized that necessity, as far as the state senate is concerned, to give consideration to area, and I believe there should be a provision of that nature in any form of county home rule government.

CHAIRMAN DeVRIES: The question before the committee is the minority amendment, as revised, offered by Delegates Ford, Gover, Sharpe and J. B. Richards, and the secretary will read the amendment once more.

SECRETARY CHASE: The amendment is:

[The revised amendment was again read by the secretary. For text, see above, page 990.]

CHAIRMAN DeVRIES: Does the delegate from Flint, Delegate McLogan, wish to speak on the amendment?

MR. McLOGAN: Mr. Chairman and members of the committee, I think that this one word change is important. I think that it is substantial or may be substantial. I think it implies a change or a desire for a change. I don't think that experience would dictate that greater power for townships is warranted or is desirable. I would agree with Mrs. Cushman that in the areas where more power is needed, the recourse is clear; urban townships can become cities.

I would support the position, as a member of the local government committee, of the majority opinion.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Howell, Delegate Sharpe.

MR. SHARPE: Mr. Chairman, all townships that we are referring to are not necessarily townships of 73,000 people. We have problems in townships of 5,000 people that couldn't possibly become cities and the people wouldn't want to become cities, anyway. I believe that we have a distinction here. I am quite certain that the people from the metropolitan areas, or the cities, such as Mr. McLogan and Mrs. Cushman, are primarily interested in these townships with fat populace, and this is not the entire concern. We are also concerned about the 4,000 and 5,000 population communities which are called townships.

CHAIRMAN DeVRIES: The Chair recognizes the chairman of the committee, Delegate Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, ladies and gentlemen of the committee, you now have heard the arguments of the local government committee in detail. I don't think there have been any left out, and, inasmuch as you now have gone through the entire substantive debate, along with us, for the last 45 minutes, I move that we vote.

MR. MADAR: Mr. Chairman, I rise to a point of order.

CHAIRMAN DeVRIES: State your point of order, Delegate Madar.

MR. MADAR: My point of order is I would like to make a correction here. Information has been given that townships of 12,000 cannot become cities. That is not correct. They may become cities if they so wish.

CHAIRMAN DeVRIES: That is not a point of order, Mr. Madar. The Chair recognizes the gentleman from Kalamazoo, Delegate Brown.

MR. G. E. BROWN: Mr. Chairman, delegates, I think that we have belabored this point enough. As was pointed out by the chairman of the committee, this was the language that was originally thought to be included in the proposition. We are only changing the word "may" to "shall". I would suggest that we vote, and I urge a yes vote on the amendment.

CHAIRMAN DeVRIES: The question before the committee of the whole is the amendment offered by Delegates Ford, et al, to section b. The secretary will read the revised amendment.

SECRETARY CHASE: The amendment is:

[The revised amendment was again read by the secretary. For text, see above, page 990.]

CHAIRMAN DeVRIES: The question is on the minority report amendment. All those in favor say aye. All those opposed, no.

The amendment, as revised, is adopted.

A DELEGATE: Division.

CHAIRMAN DeVRIES: A division is requested. Is there support for a division vote? There is support. All those in favor of the amendment, vote aye. All those opposed will vote no. This is the minority report amendment, as revised, offered by Delegates Ford, Gover, Sharpe and J. B. Richards to section b. The secretary will lock the machine and tally the vote.

The Chair votes no. The secretary will announce the vote.

SECRETARY CHASE: On the adoption of the amendment offered by Mr. Ford, the yeas are 63, the nays are 56.

CHAIRMAN DeVRIES: The amendment, as revised, is adopted. Are there any further amendments to section b of Committee Proposal 82? If not, it will pass.

Section b, as amended, is passed. The secretary will read section c.

SECRETARY CHASE: Section c.

[Sec. c. was read by the secretary. For text, see above, page 980.]

CHAIRMAN DeVRIES: The Chair recognizes Delegate Radka speaking on behalf of the committee.

MR. RADKA: Section c is section 18 of the present constitution, and this section will be explained by Delegate William Suzore, and I yield to Bill Suzore.

CHAIRMAN DeVRIES: Delegate Radka yields to Delegate Suzore.

MR. SUZORE: As you will note, the time of the holding of the election has been deleted from this section. The time of the election of the township officers has been left to the article on elections.

The committee recommends a minimum term of 2 years, permitting the legislature to extend the term to 4 years if they so desire. This is to give flexibility to those townships which might desire, if the legislature should so provide, to provide for a 4 year term for their township officers.

The committee on declaration of rights, suffrage and elections has concurrent jurisdiction on this matter, and has offered no objection to the recommendation of the subcommittee or the committee. The committee recommends the elimination of the township highway commissioner as a constitutional officer, since the township highway problem is no longer present. As you probably know, township highways are under the jurisdiction of the county highway commission.

The committee recommends the elimination of constables as constitutional officers, as the need for their services can be and is now provided for by statute.

The committee recommends that the office of township trustee be established in the constitution, since it is a basic part of the township structure. We concluded that all active township officers should be provided for in the constitution.

The committee recommends deletion of the following sentence, and you will note it struck out in your copy:

> Justices of the peace shall be reclassified as shall be prescribed by the legislature to conform with the provisions of this section providing for biennial township elections.

Since justices of the peace no longer serve on township boards because the Michigan supreme court has determined that they are judicial officers, we concluded that the problem of the justices of the peace is primarily a matter of the judicial committee and not a local government problem, and our recommendation is not to be construed to mean that we recommend the abolishment of the justices of the peace.

I would like, at this time, to yield to Delegate Ford of Taylor for any further comments he would like to make on this section.

CHAIRMAN DeVRIES: The gentleman from Lincoln Park yields to the gentleman from Taylor, Delegate Ford.

MR. FORD: It is my pleasure to agree with the majority on this section. However, we agreed on the conclusion without agreeing entirely on the reasons.

With respect to the question of the constables, I think it ties itself in very closely with the question of whether there is going to be a local court system in townships, because if this convention determines to permit the legislature to have a local court system, then we will have to leave the way open and provide for the continuance of the local court officer, who is the constable, in many parts of this state. I agreed with the committee in taking away the constitutional status of the constable, on the assumption that some place in this constitution, before we are finished, we will have a provision—perhaps under Mr. Erickson's section—that will continue officers who derive their original powers from the constitution, until such time as the legislature has an opportunity either to pick up these powers by statute or to discontinue them by conferring them upon someone else.

The reason that I bring this up and call it to your attention is that we would want to be very sure, when we have gone through the constitution completely on this first go round, that when we are through we have provided for this continuity, because it is my belief that although the statute now provides for the method and for most of the duties of the constable, his creation and being is as a result of being a creature of the constitution, and we would want to be sure that we are not abolishing his existence, while leaving his powers in the statute. This is exactly what happened in reverse with respect to the highway commissioner. He is in the constitution, but he has no duties. At least, we haven't been able to find any.

I would like to reemphasize what Bill said about the committee's removal of the language with respect to the justice of the peace. This language is language that had a very short

term meaning, and it came into the constitution as a result of an amendment in the middle '40s or early '40s, when the township board went from 1 year terms to 2 year terms, and was in the constitution solely for the purpose of making the transition because the justice of the peace was a 4 year term.

One more thing that isn't mentioned here is that presently, in the township, the trustees are statutory officers and they do have 4 year terms. The board of review has a 4 year term. The justices of the peace have 4 year terms. What this would do, in effect, would be to make it possible for the legislature to have all of the township officers run at the same time, and have concurrent terms, by making it possible to provide for the supervisor, clerk and treasurer—the only 2 year terms left now at the township level—to be put on the same basis as the others, or to, in fact, reduce the 4 year terms back to 2, if they thought it was a wise thing to do.

It provides some flexibility at the legislative level, with respect to this question of terms, that wasn't there before.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Detroit, Delegate Yeager.

MR. YEAGER: Mr. Chairman, ladies and gentlemen, I would like to ask a question or so of either Mr. Ford or Mr. Suzore. I understand that one of the functions that we have in this convention, that most people agree on, is that we are trying to strengthen local government, and in this regard I would like to ask that under the township set up at the present, I believe that the legislative function is performed not only by the trustees, but a vote in the legislative function is also had in most townships by the so called executive members, that is the treasurer and the clerk and so on.

The thing I want to know is, did the committee make any effort to discuss the possible separation of this and allow only a vote, in the legislative function of the township, to be to the trustees and the supervisor?

CHAIRMAN DeVRIES: Do you wish to yield to Delegate Ford?

MR. YEAGER: Yes, I will.

MR. FORD: I don't think that the committee formally considered this separation, but we are dealing with a traditional structure that is not unlike the county. There is, in what you say, a decided disadvantage, in that in the standard township you have no chief administrative office who is, by law, comparable to a mayor in a city, for example.

I have made the statement in the committee, and I think there are many who agree, that a township supervisor is, in many instances, about as strong an executive as his personality permits, because, while we do not confer powers upon him, we also do not conversely put the same restrictions on him that a mayor has. So, he acts as, in many instances, the chief administrative officer—and this is by reason of many statutes that specifically say he shall have the power to do thus and so—and he performs ministerial duties as well, and then, subsequently, he is a member of the legislative body.

The alternative to permitting the treasurer, clerk and supervisor, who are ministerial and executive officers, to vote on a township board, would be to provide for a larger group of trustees, because as the statute now reads, and as the constitution would continue to permit the statute to read, many townships have only a 5 member board: clerk, treasurer, supervisor and 2 trustees. They can, if they are, I believe, over 5,000, have a 7 man board, but this is an election they make at the local level, and in all of the larger townships, they do function with a 7 man board, and they have 4 trustees.

MR. YEAGER: Mr. Chairman and Mr. Ford, you don't believe that this is a vital point that should be gone into at greater length?

MR. FORD: It has been gone into by the court. In 1952, it was held, in the Township of Dearborn v. Dearborn Township Clerk, Glenn E. Dail, it was held that the township justices of the peace—there were formerly 4 justices of the peace in each township—were not only judges but they sat as members of the board, and in that Dail case, they held that this was a violation of the separation of powers doctrine, and held that the justice of the peace could no longer sit. So we went through a very short period where all the townships of the state had 3 man boards.

The governor called the legislature into special session, and they adopted a statute creating not less than 2 nor more than 4 trustees, at the option of the townships that were large enough to make the option. This is how we came to this at this point, but I don't believe that the commingling of the supervisor's executive duties with his legislative duties has ever been raised in any of the courts. I am not aware of any such case.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Lincoln Park, Delegate Suzore.

MR. SUZORE: Speaking to the point of Delegate Yeager, I might say that neither the subcommittee nor the committee considered the thinking of Delegate Yeager. I think probably he raises the question because at the present time, cities throughout the state, in their home rule charters, do not provide for the treasurer or the city clerk to have a voice or a vote in the council, or the governing body of the city, and I think that it was felt that this should be left in, that the treasurer and the township clerk should have a voice and vote so as to strengthen and to provide the historical value of the township board and the traditions that have gone with it over a number of years.

I think, also, that there is some thought among the people in the township group on our subcommittee that this should not be disturbed at this time.

CHAIRMAN DeVRIES: Delegate Yeager.

MR. YEAGER: Mr. Chairman, I should like to ask if some people here, that have been involved in township government outstate, would care to comment on this question.

CHAIRMAN DeVRIES: The gentleman from Muskegon, Delegate Hanna.

MR. W. F. HANNA: Mr. Chairman, Mr. Yeager, Mr. Suzore, I see nothing in this language that says that the township board or the legislative body of a township shall consist of the supervisor, clerk, treasurer, and not to exceed 4 trustees. The legislature could, by law, say that the legislative body of any township will consist of the supervisor and the elected trustees. This language merely defines the officers. It creates no legislative body. It leaves to the legislature the power to prescribe the duties under these. The legislature could, under this language, make the supervisor a clear cut executive of the township, and I believe they should so do.

But, we have not spelled out any prohibition or any requirement that the clerk and treasurer be a voting member of the legislative body. I believe that this language leaves to the legislature the power to define the executive department within the framework of an elective supervisor, clerk and treasurer, and also to define a legislative body within the framework of the 3 officers, plus such trustees as may be elected by law.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Lincoln Park, Delegate Suzore.

MR. SUZORE: That was the point that I wished to make. We made no change, and that was in answer to the question of Delegate Yeager.

CHAIRMAN DeVRIES: Are there any amendments to section c of Committee Proposal 82?

SECRETARY CHASE: None, Mr. Chairman.

CHAIRMAN DeVRIES: If not, it will pass.

Section c is passed and the secretary will read section d.

SECRETARY CHASE: Section d.

[Sec. d. was read by the secretary. For text, see above, page 980.]

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Rogers City, Delegate Radka.

MR. RADKA: The subject matter of this proposed section was submitted to our committee by a delegate proposal sponsored by Delegates Charles Follo and Mrs. Cushman. It received a great deal of consideration in the township government subcommittee and in the full committee. The substance of

the proposal has been refined, as you see it here in section d, and it is a proposed new section to the constitution.

I hereby yield to the illustrious delegate, Charles Follo, for explanation.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Escanaba, Delegate Follo.

MR. FOLLO: Mr. Chairman, members of the committee, I will do nothing more than read the comments that the committee prepared.

[The reasons for Sec. d were read by Mr. Follo. For text, see above, page 981.]

If my memory serves me correctly, this section was passed unanimously by the local government committee.

CHAIRMAN DeVRIES: Are there any amendments to section d of Committee Proposal 82?

SECRETARY CHASE: No amendments on file.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Kalamazoo, Delegate Brown.

MR. G. E. BROWN: Mr. Chairman, members of the committee, I would like to address a question to either the subcommittee chairman or Mr. Follo that has to do with, primarily, a matter of language. The committee proposal provides, "the township government shall be abolished if a majority of those voting on a referendum in the township approve." My question is as to what is meant by "if a majority of those voting . . . approve," and then, secondly is referendum a proper term? If so, what is the initial proposition which is being referred to the voters for approval?

CHAIRMAN DeVRIES: The delegate from Kalamazoo yields to Delegate Radka.

MR. RADKA: Here we go again trying to define these terms. I don't see what your question is, Mr. Brown, as far as the majority of those voting on a referendum. Would you point out your specific question?

CHAIRMAN DeVRIES: Would you rephrase your question.

MR. G. E. BROWN: Mr. Radka, let me put it this way: is it the intent of the subcommittee or the committee that this shall be approved upon a majority vote of the electors?

MR. RADKA: I don't recall if we ever took that particular question up. I will yield to our committee chairman, Mr. Elliott.

CHAIRMAN DeVRIES: Delegate Elliott.

MR. A. G. ELLIOTT: I think the intent of the committee was, Mr. Brown, although I will admit that we didn't get into great detailed discussion on this, that it should be a majority voting on the question when the vote was held.

MR. G. E. BROWN: I have no objection to the substance of the proposal, and therefore, if the committee will permit style and drafting to take care of this matter, why, I certainly would favor the proposition. But I think that it does, in its present language, create a great deal of ambiguity and would create problems, especially by the use of the words "of those voting" on the proposition, and by the use of the word "referendum".

MR. A. G. ELLIOTT: We would be perfectly satisfied, if my intent is the intent of the committee and I am confident that it is, if there needs to be some modification of the language to meet the intent, we would be happy to have style and drafting do it.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Fennville, Delegate Hutchinson.

MR. HUTCHINSON: Mr. Chairman, this section raises in my mind, some problems, which I want to point out. Maybe I can be better educated as a result of some explanation from someone who may know more about it, but it has always been my understanding that a village and a city differ primarily in these respects: both of them have municipal powers, but a city has, in addition to those municipal powers, certain governmental powers which a village does not have, and those basic fundamental, governmental powers which cities have and villages do not enjoy, I have always understood to be these: the matter of being represented as such on the board of supervisors; the matter of assessment and collection of county and school taxes; the matter of carrying on elections for the county and the state, and the matter of providing a system of inferior courts.

These functions, villages do not have. Cities have them, but villages do not. You do not have village justice courts or a village municipal court. A village, as such, does not carry on an election in the state election, biennial elections and so on. All it does is carry on its own village elections, but it doesn't perform for the county in that respect. It doesn't assess and collect county and school taxes, and, of course, it doesn't have any representation on the board of supervisors.

If, under this section here, the township is to be abolished, and all of these governmental functions are to be vested in the villages which comprise that township, what is the difference, then, between these villages and cities? In other words, haven't they, in effect, become cities, and why shouldn't they be required, somehow or other, to be designated as cities? It will be very complicated indeed, I should imagine, in the election laws of the state and in the assessment laws of the state, particularly, if we introduce into them this matter of what villages can do, certain villages.

It seems to me as though what the committee has done, by the text of this section here, is to create these villages into cities without calling them cities, and I just wondered whether it is very good policy to do that.

I am sympathetic with the goal to be attained, I am very sympathetic with the goal, but I think the committee could have, more wisely, perhaps, simply have provided some kind of a machinery whereby they, in those circumstances, would become cities when the township was abolished.

I might say this one thing further: I think there is another provision in the constitution which now empowers the boards of supervisors, constitutionally, to combine and to change, and so on, townships, and so I would suppose that the power now vests in the boards of supervisors to abolish the townships in those cases where there is no unincorporated property left. One reason that the board of supervisors doesn't do it is because of the problem that I have raised here, which would, in effect, then make those villages cities, and I think that is what you are doing here. Am I wrong?

CHAIRMAN DeVRIES: Vice President Hutchinson yields to the chairman of the committee, Delegate Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, Mr. Hutchinson, I think the points that you have made were well taken. Each and every point was discussed in committee. It was decided by our committee when we finally decided to include this as constitutional language, that while this problem is not going to be widespread, it does now occur, is now in effect, and it can easily become in effect, with greater regularity as a township becomes more populated and more incorporated.

It was therefore felt that we were not resolving this problem on a legislative basis, but on a constitutional basis, leaving to the legislature the exact procedures in which it should follow. We recognize that, depending upon the legislature, as it, in its wisdom, drafts its laws, it might, in effect, give in that specific instance the powers to a village that a city now has.

I call your attention to line 6 of this proposal which says "as provided by law", which is in connection with the functions that a township normally has, when it says that the function shall then be assumed by the village or villages as provided by law. Then, in the last sentence, we feel that we have accommodated the problem of representation on the county board of supervisors.

The overwhelming or compelling reason for including this language in the constitution was because of the present duplication of services that is existing which is causing additional tax burdens, and the fact that it could increase, and we felt that this language, while not doing the legislative job, did do the constitutional job as well as we could foresee at the time.

CHAIRMAN DeVRIES: The delegate from Muskegon, Mr. Hanna.

MR. W. F. HANNA: I would like to address a question to Mr. Elliott. As I look at this section, I don't see how it could ever go into effect in the situation which he talks about,

because the first line says, "Whenever there is no unincorporated territory within a township . . ." If you go back to section a, it says, "Each organized township shall be a body corporate . . ." If there is an organized township, there never would be any unincorporated territory within that township.

CHAIRMAN DeVRIES: The chairman of the committee, Delegate Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, Mr. Hanna, there is, at the present time, a township which has all of its territory incorporated, either as cities or villages, and because some of its territory is villages, it is carrying on its normal township functions. So that is the reason why we think that this would be effective, if the legislature implemented it.

MR. W. F. HANNA: Mr. Elliott, shouldn't your language then be that whenever all the territory of a township within an incorporated township is also included within incorporated villages, the township shall be abolished, rather than the language you use, because I am sure that you would have to say, in the case you are talking about, that all the territory within a township is, in fact, incorporated. It is incorporated both as a township and apparently is incorporated also as one of several villages.

MR. A. G. ELLIOTT: I yield to Mrs. Cushman.

CHAIRMAN DeVRIES: Delegate Elliott yields to Delegate Cushman.

MRS. CUSHMAN: This is a question I raised myself in the committee, and the answer I got was that in this particular case, they felt the term "unincorporated territory" would have the meaning that we were after. Whether this is a satisfactory answer or not is not up to me, but this is a problem that was discussed and this was the answer that was given.

CHAIRMAN DeVRIES: The Chair recognizes Delegate Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, I would like to make it perfectly clear then, so that there will be no misunderstanding, that what we are talking about here when we speak of unincorporated territory, we are speaking of a township within whose boundaries there is no unincorporated areas, so that all of its area is either within the boundaries of a city or a village.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Kalamazoo.

MR. G. E. BROWN: Will the secretary read the amendment, Mr. Chairman?

CHAIRMAN DeVRIES: The secretary will read the amendment.

SECRETARY CHASE: Mr. G. E. Brown offers the following amendment:

1. Amend page 2, line 1, after "Sec. d.", by striking out the balance of the section and inserting "The legislature shall provide by law for the elimination of township government whenever there is no unincorporated territory within such township.".

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Kalamazoo, Delegate Brown, speaking on his amendment.

MR. G. E. BROWN: I prepared this amendment very quickly, members of the committee. I think that Mr. Hanna's point is well taken, that technically, if we considered a township a body corporate, that even "township" would be incorporated, as such. And so, possibly, instead of "Whenever there is no unincorporated territory within a township," it should say "when no portion of the township is not included within a city or village."

CHAIRMAN DeVRIES: Do you wish to revise your amendment?

MR. G. E. BROWN: Mr. Chairman, here I think that the substance of the amendment is clear; that if style and drafting decides that we should not use the word "unincorporated", they can put in appropriate language. The substance of the amendment is that it will be left with the legislature, which will be in a position to deal with the immediate problems involved, which cannot be contemplated by the members of the convention at this time, and technically it would be a legislative function, anyway. The mere thing we are doing is to establish that there is no necessity for continuing a township board or township officers when the township, in effect, ceases to exist as a governmental unit performing services, administrative or otherwise, for the inhabitants.

CHAIRMAN DeVRIES: The gentleman does not wish to revise his amendment. Mr. Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, I would like to yield to Mr. Brake, and ask him to comment on the amendment, if he will.

CHAIRMAN DeVRIES: Delegate Elliott yields to Delegate Brake.

MR. BRAKE: Two or three of us have made one error in talking about this. We speak about a township as being part of a city. A township is never a part of a city. Any township territory that goes into a city is therefore city territory and not township territory. We use the word "incorporated" in different senses in different contexts. What we are using it here for means simply this: when no part of a township is outside a village—that is the exact meaning of that language—then something has to be done, unless you want your governmental functions to be duplicated.

CHAIRMAN DeVRIES: Delegate Elliott.

MR. A. G. ELLIOTT: Based upon the clarification that Mr. Brake has made, I would like to urge the committee to defeat the amendment and to adopt the committee language. I think that it does do the job that we originally intended. However, the committee holds no great pride of authorship with the language. All we want to do is to try to solve or give an opportunity for the solution of this within the constitution.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Taylor for the purpose of offering a substitute amendment. Delegate Ford.

MR. FORD: I don't know whether this is a substitute or not, Mr. Chairman. I think it is consistent with the committee's report and with Mr. Brown's attempt to satisfy what Mr. Hutchinson raises as a series of problems, and this might be accomplished by striking, in line 3, "shall be abolished", and inserting "may be abolished as provided by law," so that we would leave to the legislature the matter of abolishing, and also when you look at the committee language, if we leave the rest of it intact, it is going to be necessary for the legislature to, in transferring these township powers to the village, create some new kind of village, or at least to modify the present form of the village so that the functions could be taken in.

For example, there would have to be a classification system, because the clerk in this village would then be the clerk for the purpose of state and county elections, and you couldn't, very well, have a statute that says, "clerks of villages shall be clerks of state and county elections," that had statewide application in villages other than the kind that we are talking about here, without disrupting the entire machinery that presently exists for the conduct of elections.

This would make the language more permissive than the present language "shall be abolished", leaving it to the legislature to provide a method of abolition, and I believe that this was motivated, as Mr. Elliott said, by a situation that exists in Wayne county where we have one township and village that have exactly the same boundaries at the present time, with 2 sets of officers.

CHAIRMAN DeVRIES: The Ford amendment is not a substitute amendment, in that it perfects the language in the body of section d. The Brown amendment strikes the language. Because of this we shall consider the Ford amendment first. The secretary shall read the Ford amendment to section d.

SECRETARY CHASE: The Ford amendment is as follows:

1. Amend page 2, line 3, after "ment" by striking out "shall be abolished" and inserting "may be abolished as provided by law"; so that the language will then read:

> Whenever there is no unincorporated territory within a township, the township government may be abolished as provided by law, if a majority of those voting on a referendum in the township approve.

CHAIRMAN DeVRIES: The question before the committee is the Ford amendment to section d. The Chair recognizes the lady from Dearborn, Mrs. Cushman.

MRS. CUSHMAN: Personally, I think I like Mr. Brown's amendment a bit better. I think it is a little bit clearer. However, I would, if we had a chance, amend it further. Therefore, I would like to speak against the Ford amendment because I think that we can get better words using Mr. Brown's base.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Pontiac, Delegate King.

MR. KING: I would like to address, through the Chair, a question to Mr. Ford, if I might. I am concerned about the second word "shall" in line 5. "Its functions shall then be assumed by the village or villages as provided by law" in line 5. Isn't it also possible that these functions could also be assumed by a city?

MR. FORD: I have a circle drawn around this "shall". It presents a real question, when you get down to it, and this is the question that Senator Hutchinson raised, when you direct that the functions go to a village rather than to some other unit of government. As he indicated, perhaps the real flexibility would be a situation where, if anything, the legislature would provide that when you reach a status where you have no unincorporated territory left in a township, you become a fourth class city. This might be an easy way to solve the whole problem, because you then end up with one set of officers. You wouldn't have to go through the problem of adopting a charter, and you would be in pretty much the same status as the village would be, so that might help, if you took that whole sentence out, to accomplish that.

MR. KING: I will not suggest an amendment at this time because I think Senator Hutchinson or someone else will take care of it. I just raised the question. Thank you.

CHAIRMAN DeVRIES: The question before the committee is the Ford amendment. The secretary will read the amendment.

SECRETARY CHASE: Mr. Ford's amendment is:

[The amendment was again read by the secretary. For text, see above, page 995.]

CHAIRMAN DeVRIES: All those in favor of the Ford amendment will say aye. Those opposed, no.

The amendment is not adopted.

The question before the committee now is the amendment offered by Delegate Brown. The secretary will again read the amendment.

SECRETARY CHASE: Mr. Brown's amendment is as follows:

1. Amend page 2, line 1, after "Sec. d.", by striking out the balance of the section and inserting "The legislature shall provide by law for the elimination of township government whenever there is no unincorporated territory within such township.".

CHAIRMAN DeVRIES: The question before the committee is the Brown amendment. The Chair recognizes the gentleman from Muskegon, Delegate Hanna.

MR. W. F. HANNA: I wish to inquire, Mr. Chairman, of Delegate Brown, if he will change the language in the last part, "no unincorporated territory within such township," to language, "when all the territory of the township has been incorporated as villages"?

CHAIRMAN DeVRIES: Does the gentleman from Kalamazoo care to answer?

MR. G. E. BROWN: Mr. Chairman, Mr. Hanna, and members of the committee, it seems to me that here we, once again as Mr. Brake mentioned—and I think that contrary to Mr. Elliott's suggestion, Mr. Brake was not speaking against my amendment, but was attempting to clarify the language—are getting back to the question of whether or not, when we speak of unincorporated territory, we are talking about unincorporated in the sense of a government being a body corporate or we are speaking of incorporated in the sense of an incorporated village or city, and I therefore see no great necessity for the additional language at this time.

If style and drafting, of which Mr. Hanna, I believe, is a member, feels that this other language should be used, rather than the simple language of "unincorporated territory", I certainly would have no objection to style and drafting making that change. However, as stated, I think that the proposed wording of the amendment is valid and should be supported by the committee.

CHAIRMAN DeVRIES: The Chair recognizes Delegate Suzore.

MR. SUZORE: My only objection to the amendment of Mr. Brown is that it, in no way, provides for representation on the county board of supervisors, and I believe the only implication that it provides for representation for villages is that the legislature shall, by law, provide for it, and it doesn't actually say that. I oppose Mr. Brown's amendment on that point.

CHAIRMAN DeVRIES: The Chair recognizes Vice President Hutchinson.

MR. HUTCHINSON: Mr. Chairman, I rise in support of Mr. Brown's amendment. I think that the constitutional convention might be writing some rigidity into the constitution that maybe it has not well thought out, when it constitutionally directs that in case of the abolishing of the township under these circumstances, its functions would then be assumed by the village or villages.

Because of the reasons that have been pointed out already, there are some tremendous problems here, and I think that what will happen to these township functions under those circumstances should be left to the legislature, because the situation might differ from one part of the state to another.

As a matter of fact, my belief in this situation is that under these circumstances, you are actually creating these villages as cities and they should be so treated and so named. Under those circumstances, they should become cities, in which case they would have representation on the board of supervisors and they would perform these other governmental functions.

Your idea, in trying to save these villages as villages and at the same time vesting them with all the powers of the cities, is going to greatly complicate the structure of government in this state. For that reason, I support Mr. Brown's amendment, thinking that the matter can be best left up to the legislature after the thing has been very carefully worked out in all of its details.

CHAIRMAN DeVRIES: The Chair recognizes the lady from Dearborn, Delegate Cushman, for the purpose of offering an amendment to the Brown amendment.

SECRETARY CHASE: Mrs. Cushman offers the following amendment to Mr. Brown's amendment:

1. Amend the amendment after "there is no" by striking out "unincorporated territory" and inserting "territory which is not included within the borders of a village"; so that the language will read:

> The legislature shall provide by law for the elimination of township government whenever there is no territory which is not included within the borders of a village within such township.

CHAIRMAN DeVRIES: The Chair recognizes the lady from Dearborn, Delegate Cushman.

MRS. CUSHMAN: I think my purpose is clear here. I think it expresses better what, at least I, as the maker of the original proposal, or one of them, had in mind when we were talking about this, and I think it expresses better what the committee was talking about when we were working on it.

CHAIRMAN DeVRIES: The question before the committee of the whole is the adoption of the Cushman amendment to the Brown amendment to section d. The secretary will read the Cushman amendment.

SECRETARY CHASE: Mrs. Cushman's amendment is:

[The amendment was again read by the secretary. For text, see above.]

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Kalamazoo, Delegate Brown.

MR. G. E. BROWN: Mr. Chairman, members of the committee and Mrs. Cushman, I would only suggest that this includes a double negative and you should just say "when all territory is part of a village", if you are going to do this.

CHAIRMAN DeVRIES: The question is on the amendment offered by Delegate Cushman. The Chair recognizes the gentleman from Muskegon, Delegate Hanna.

MR. W. F. HANNA: Mr. Chairman, I belive that the Cushman amendment should be adopted. I think it answers Mr. Hutchinson's objection also in that it gives the legislature the alternative of then saying that these cities shall henceforth be designated as cities, or it would leave them the option of transferring the functions to the villages themselves, and I think this would clearly cover both objections from either side of this question. I believe it should be adopted.

CHAIRMAN DeVRIES: The Chair recognizes the chairman of the committee, Delegate Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, I believe the Cushman amendment to the Brown amendment expresses the opinion of the committee fully, and unless otherwise, I would urge its adoption.

CHAIRMAN DeVRIES: The question before the committee is the adoption of the Cushman amendment to the Brown amendment. The gentleman from Kalamazoo, Delegate Brown.

MR. G. E. BROWN: I would merely suggest to the members of the committee that in doing this, by saying 'included in a village", conceivably there would be a city within this township. The language, as it presently is written in the Cushman amendment, says that any territory which is not included in a village, which would include land which is included in a city.

CHAIRMAN DeVRIES: The secretary will read the amendment once more, Mr. Brown.

SECRETARY CHASE: The amendment is:

[The amendment was again read by the secretary. For text, see above, page 996.]

CHAIRMAN DeVRIES: The Chair recognizes the lady from Dearborn, Delegate Cushman.

MRS. CUSHMAN: I just wanted to say what Mr. Brake has already explained, that a city, when it becomes a city, is no longer part of the township. We don't have to worry about that.

CHAIRMAN DeVRIES: The question before the committee is the Cushman amendment to the Brown amendment. All those in favor of the Cushman amendment will say aye. Opposed, no.

The amendment to the amendment is adopted.

The question before the committee now is the amendment offered by Delegate Brown. The secretary will read the amendment as amended.

SECRETARY CHASE: Mr. Brown's amendment as now amended is to strike out the language of section d, lines 1 through 9 on page 2, and insert:

"The legislature shall provide by law for the elimination of township government whenever there is no territory which is not included within the borders of a village within such township.".

CHAIRMAN DeVRIES: The question before the committee is the Brown amendment as amended. As many as are in favor of the Brown amendment will say aye. Opposed, no.

The amendment, as amended, is adopted.

Are there any more amendments to section d of Committee Proposal 82?

SECRETARY CHASE: None, Mr. Chairman.

CHAIRMAN DeVRIES: If not, it will pass.

Section d, as amended, is passed. The secretary will read section e.

SECRETARY CHASE: Section e.

[Sec. e. was read by the secretary. For text, see above, page 980.]

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Rogers City, Delegate Radka.

MR. RADKA: This is section 19 of the present constitution, and it deals with public utilities.

I yield to the delegate from Traverse City, the chairman of the subcommittee on public utilities, Mr. Julius Sleder.

CHAIRMAN DeVRIES: Delegate Radka yields to Delegate Sleder.

MR. SLEDER: Mr. Chairman and fellow delegates, relative to the public utilities in the constitution, they are involved in several areas, so the plan is that we will take up each section as it is adaptable to each area, that is, to the village or township or city. However, before we discuss these individual sections, I would like to make a few remarks relative to public utilities, and when we speak of public utilities, we must think of utilities as those services which municipalities or private enterprise provides in order to better serve their citizens.

These utilities encompass water, light, heat, power, transportation, and perhaps sewage disposal. There is a possibility that, over the years this constitution is in effect, other new utilities may come into being, and we must realize that over time, utilities may change in importance.

For example, when the 1908 constitution was written, the utility of light and power was comparatively new. In its beginning years, it was not attractive to private capital to enter into the light and power business because of it being in an experimental and developmental state. Therefore, it became necessary for the municipalities to engage in this business so that it could better serve its people.

In many instances, in the beginning of this particular utility, it was not self supporting, as are many of our present day utilities. As the light and power business developed, it became attractive to private industry and private capital when it began to offer a very reasonable dividend on its investment. Therefore, today we find private capital engaged in the light and power business throughout the whole state, with a diminishing interest in public owned power plants. As we look ahead, in the years to come, we may find other utilities that may become attractive to private capital.

Transportation, over the next 50 or 60 years, through development and research, may become more attractive to private enterprise than it is today. The disposal of sewage or the distribution of heat may find new methods and force, which may change our present concept of this service.

We must, therefore, in writing these sections, be aware of the changing situations in order to do our best in controlling the public utilities for both the benefit of the public and municipal and privately owned utilities.

Our first section deals with the franchise in townships, of utilities in obtaining franchises in townships.

This is section e, and I should like to yield the floor to Delegate Burton Richards for the explanation of this section. I should like also to add that in the subcommittee on public utilities, serving with Delegate Burton Richards were Mrs. Hatcher and Mr. Madar.

CHAIRMAN DeVRIES: The delegate from Traverse City yields to the gentleman from Eau Claire, Delegate Richards. Delegate Richards is not in the hall at the present time.

Are there any amendments to section e of Committee Proposal 82? If not, it will pass.

MR. HIGGS: Mr. Chairman, I am seeking recognition.

CHAIRMAN DeVRIES: For what purposes does the delegate from Bay City rise?

MR. HIGGS: I have a question on section e. I do not propose an amendment, but I would like to get the understanding and intention of the committee. As I read that sentence, it says, "No township shall grant any public utility franchise which is not subject to revocation at the will of the township, unless such proposition shall have first received the affirmative vote. . . ." I am wondering if they intend that if it does receive an affirmative vote the township may grant a franchise which is not subject to revocation at the will of the township.

CHAIRMAN DeVRIES: Do you direct you question to delegate Sleder? Delegate Sleder.

MR. SLEDER: Mr. Chairman, I should like to withhold that question for a moment, if I may, and yield the floor to Mr. Madar. I was not aware that Mr. Burton Richards was not on the floor at this time, and I would like to have Mr. Madar cover the rationale on this section.

CHAIRMAN DeVRIES: Delegate Sleder yields to the gentleman from Detroit, Delegate Madar.

MR. MADAR: Mr. Chairman, this was up to Mr. Richards to take care of, and, in fact, I would much prefer he did, because I have a minority report in on that.

CHAIRMAN DeVRIES: Delegate Richards has entered the chamber, Delegate Sleder.

MR. SLEDER: Delegate Richards, would you want to cover the rationale for section e relative to township franchises?

CHAIRMAN DeVRIES: The Chair recognizes the delegate from Eau Claire, Delegate Richards.

MR. J. B. RICHARDS: I am sorry that I was outside at the time.

[The supporting reasons to Sec. e were read by Mr. Richards. For text, see above, page 981.]

Also, may I comment that many of the people may not get the services of the franchise for several years after the vote.

CHAIRMAN DeVRIES: Delegate Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, ladies and gentlemen, I am sorry there was a little confusion; however, I have been able to satisfy Mr. Higgs privately. There is, elsewhere in this article on local government, a provision which limits the length of term of franchises to 30 years.

CHAIRMAN DeVRIES: Are there any amendments to section e of Committee Proposal 82? If not, it will pass.

Section e is passed.

Are there any amendments to the body of Committee Proposal 82?

SECRETARY CHASE: Mr. Pollock offers the following amendment:

1. Amend page 1, line 6, after "Sec. a.", by striking out the balance of the committee proposal and inserting:

"The legislature may provide by general law for the organization and government, and for the dissolution, of political subdivisions other than counties, cities and villages. Each such political subdivision shall have such powers as may be prescribed by general law.".

CHAIRMAN DeVRIES: Mr. Pollock.

MR. POLLOCK: Mr. Chairman and members of the committee, I hope I can provide some contrast to the tedious and rather useless discussion we have had this morning on townships. I do this because I came here, and I think we all came here, for the purpose of trying to modernize our constitution and to strengthen state and local government, so that they could perform their functions more effectively within the federal system.

I still adhere to the idea that we need strong local government, and it seems to me that this is what we have not gotten from the committee in its presentation about townships. I had hoped that this would give us an opportunity to reexamine the whole structure of local government and to see what is wrong with it. There are, obviously, a good many things wrong with it, and I am sure that in the total presentation of the committee, a number of improvements are going to emerge.

But, so far as this section on townships, which we are now discussing, is concerned, it seems to me that we have done a little tinkering, a little pasting here, a little pasting there and have not really faced up to the problem presented by the townships.

I don't propose to make a speech attacking townships. I am not even proposing the elimination of townships, although this is something that I think at some time, certainly within our lifetime, will have to be considered. I am merely proposing what seems to me to be a sound procedure by which townships, instead of being embalmed in the constitution, shall die a natural death by statute. It seems to me, in other words, that this whole field is not now a proper field for constitutional action. I see no reason why the townships should be preserved in the constitution and we should worry about whether they are elected for 2 years or 4 years, and I do congratulate the committee that at least they eliminated the commissioner of highways, a position which hasn't existed, anyway, I believe, since 1934, although some townships, I understand, have still continued to choose commissioners of highways.

I congratulate them, too, on eliminating that old ancient relic known as the constable, but, after all, this was tinkering. This wasn't really facing up to the problem of what is a township, do we need a township, and is it necessary and is it helpful in the present local government situation? It seems to me, as I have said, that I think townships should not be given, in this constitution—this modern constitution we are drawing up—constitutional status.

I think the legislature should be free to consolidate their functions or to regulate their functions, but particularly to consolidate their functions into one of the other forms of local government. I certainly do not feel that we need 1,258 townships in addition to 83 counties. I do not feel that we need as many service oriented forms of government as we have at the present time. This involves villages as well.

I am interested to provide for the natural growth of a strong, vigorous local government. We are told that in a very short time, Michigan will have a city density, across the whole southern edge of the state. I doubt seriously if townships can be expected to cope with the service problems that will be created by this situation. I see no reason why cities need to be kept in their present straitjackets, at the same time the taxpayers continue to refuse to face up to their developmental responsibilities. I feel that the state needs to assert its legitimate and overriding interest in the health and economic future of all these growing areas.

Michigan's pressing need, at the present time, for a good industrial climate—which, after all, involves the availability of city type services to large areas of undeveloped land—demonstrates to me the urgency of the problem of local government in Michigan.

Our present population explosion is bound to accentuate the very acute needs that are already in the offing, in such matters as water conservation, sewage treatment, traffic control, urban renewal, airports and other huge governmental undertakings at the local level.

I think the new constitution has to empower local units to meet these tasks promptly and efficiently. Inherent in this solution it seems to me, would be a resolution of the present friction between cities and townships, friction which undoubtedly exists. These are the neighboring and, basically, I think, inconsistent forms of local government now prevailing in Michigan.

Cities are formed to govern and provide all kinds of services in areas having a high density of population. Normally, these areas have already accumulated the necessary central service facilities. They have an adequate tax base to provide the high level of services that are demanded. They have grown from natural drainage courses or basins. But townships were fashioned from surveyors' lines, without reference to the character of use given or its topography, in order to provide a minimum of governmental control, protection and record keeping.

As our growth from adjoining cities has taken place, rural areas have become urban, our legislature hasn't insisted upon political growth or accommodation, but it has adopted merely a patchwork of statutes conferring additional powers to permit townships, in some cases, to act like cities. This has weakened the cities a great deal. Also, large rural areas, I think, should not be forced into subservience to a populous suburban corner which obviously adjoins a nearby city from which it really grew.

I feel that the typical township is quite incapable of handling the vast demands of the native public. It hasn't any central plan, it has no topographical feasibility, it usually doesn't have a diverse tax base.

A mere recitation of all the needs and the complexities in high density areas, needs that are leaning upon units of local

government, I need not cite to you. But presently, city growth occurs rather naturally. It follows highways, it follows telephone, electricity and so on; but the trouble is, here we come into the difficult partitioning process, the problem of annexation, I believe—although I haven't yet had time to study all of the proposals put out by this committee—and I understand the very serious problem of annexation is dealt with in one of the proposals, and I pass over that. But this is a very serious problem. Cities are becoming stunted by what I would call the "township straitjacket", and they are expected to serve areas, but actually, because of this straitjacket, many times are not able to do so.

To be very brief, I merely want to present to this convention —I certainly couldn't sleep very well if I didn't know that the convention, at least, had an opportunity to pass on the broad problem involved here of whether we want a flexible constitution, whether we want to put into the constitution unnecessary material, and whether we feel that the problems of local government do require some modern treatment.

I feel, briefly, that we only need 2 areas, 2 forms of local government; that is the county, which is area oriented, and the city, which is service oriented. Consequently, I do not feel that we should embalm the townships in the constitution for another 50 years. I think the legislature should have the flexibility to handle the development of local government in a natural way.

Some 28 states of the union have gotten along without townships, despite the fact that we have now, I believe, 1,258 of them, with all the cost of maintaining them. A county sized unit could provide all the functions now performed by townships and do them in a more orderly and equitable fashion.

In other words, without moving to abolish townships—which would be a very shocking thing and perhaps even a disturbing thing to do—I am merely suggesting that we no longer need to preserve townships in the constitution and that we give the legislature the power to handle these and other related emerging problems by statute.

I am merely asking you to do a little basic rethinking of the role of cities and of the other forms of local government in outstate, and to take a somewhat fresh and flexible approach in the future. (applause)

CHAIRMAN DeVRIES: The question before the committee is the Pollock amendment to Committee Proposal 82. The Chair recognizes the chairman of the committee, Delegate Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, Dr. Pollock, members of the committee, I have a great deal of respect for Dr. Pollock and for his views, and I feel that if his points were taken at a constitutional convention where we had no history of government behind it, that the position might be well taken.

I would like to point out to the committee that this state of ours has, over the years, utilized to a high degree—particularly in our areas that are not as urban as the Doctor was talking about—this form of government, township government. It is satisfied with this form of government, and this form of government meets its needs.

Our committee on local government made quite exhaustive studies in the last 3 months, as to the various forms of government that are available to our people. It was our considered opinion that, with the other provisions that you have not yet had an opportunity to hear debated on this floor, we were strengthening the ability of the existing forms of government to meet the needs of its people, whether they be urban or whether they be rural.

I think when you are writing a constitution for people you have to also consider something besides the pure approach to structure. You have to consider the background, the temperament and the emotions of those who are involved. There are over 7,800,000 people in the state of Michigan, and many of them—not all—many of them are completely cognizant of the township form of government and are eminently well satisfied.

I respectfully disagree with the good Doctor in his resultant position, although I do agree in theory with some of the positions he took in his report, and I would like to urge the defeat of the amendment.

CHAIRMAN DeVRIES: Delegate Farnsworth.

MR. FARNSWORTH: Mr. Chairman, members of the committee, Dr. Pollock, I, of course, hesitate somewhat to take issue with the world renowned political scientist, our colleague from Ann Arbor, but I must do so. Dr. Pollock has mentioned embalming the townships. It is true he has said that he didn't want to embalm them at the moment, but I submit that he certainly is getting them scheduled for that very thing. He wants to kill them off, and as surely as he kills them, somebody is going to have embalm them.

Now, Dr. Pollock asks, "What is wrong with local government?" Well, one of the things, Dr. Pollock, that is characteristic with all government is that local government costs too much money. There isn't any question about that. And, "What is helpful about townships?" One of the things that is helpful about them is that they don't spend quite as much money as other units of government.

I am talking now about the 1,061 townships in the state of Michigan that have less than 3,000 people. As the chairman of the committee indicated, that government satisfies those people. It does an adequate job for those people. It does keep them interested in local government. They take their town meetings and they take their elections quite seriously. Out in our territory, they think quite a lot of that government; they don't want to give it up. And I submit to you that anything that keeps people interested in government at the local level is good.

We had a lot of testimony in our committee, and our advisor, Dr. Adrian, wrote to the Pennsylvania State University for some information about townships in the state of Pennsylvania. He got a return reply from a political scientist who is associate professor of political science and public administration at the Pennsylvania State University, and this is what the professor said in reply to Dr. Adrian's letter—and this is directed to Dr. Adrian:

> Any political scientist would be horrified at the structure form of the township. Traditionally, it lacks a strong executive, it possesses the kind of power dispersion of most rural forms of government,

and so on and so forth. He further says that,

> The structure could cause an observer to wonder why any community would wish to embrace such an archaic form,

and then he goes on to say,

> However, if the organizational structure is successful in providing basic services, people are probably disinclined to question the structural forms used in the process.

Then he ends up by saying,

> In general, then, the consensus of political judgment would tend to agree with this statement, "The township has succeeded in providing basic services to the suburban areas, in spite of, rather than because of what it is."

So, don't you see, you get conflicting opinions from political scientists, and we had a lot of them in our hearings on local government.

Now, I just say to you, these 1,061 townships—not the 1,258—that are in the predominantly rural areas—have less than 3,000 population in them, and they are the ones we are primarily concerned about; they do a good job for what they were designed to do; they are adequate; they keep the people interested in their local affairs, and we should not, by any means, provide any kind of a schedule that would eventually require embalming those townships.

CHAIRMAN DeVRIES: Does the gentleman from Howell, Delegate Sharpe, still seek recognition on the Pollock amendment?

MR. SHARPE: Yes, Mr. Chairman. Dr. Pollock, I would like to state this fact, that I am happy that we did please you to at least some small degree by abolishing some of the township officers which we do not use any more. However, I would like to also say that we, I believe, all came to this convention with the same purpose in mind, plus the fact that we would like to draft a document that would be acceptable to the people. I believe, sometimes, that we are losing sight

of the fact that the people are going to vote on it and not just this convention.

I am surprised that the state of Michigan has come along as well as it has for so many years with so many serious things wrong with our constitution. I cannot agree with Dr. Pollock with regard to the township not being able to handle its problems. It has done well so far.

In regard to the lower half of Michigan becoming a city, I can remember very distinctly, probably 30 to 35 years ago, when the pavement between Grand Rapids and Detroit was first laid out and paved, that the consensus of opinion then was that one of these days soon we will have Detroit reach out to Fowlerville. This has never happened. As a matter of fact, it hasn't even hardly gotten past Redford. I am not so sure that we are going to have a vast city in the lower half of Michigan.

In regard to this township business, I don't believe that any of us here will ever live long enough to see the day that the township is not a vital form of government within our community. It is a basis of your political parties and if you are interested in centralization—which I am strictly opposed to—than I would say that you might be interested in doing away with the township. But, as soon as you do away with a political organization, you are losing interest by the people.

I think, possibly, that this might be the motive of some people in this convention, and that is to create lack of interest in this political organization. I believe that we should maintain both political parties, very strongly and vigorously, and these things start at home, where everyone knows everyone, and they get around at the town meeting, and are really interested in their politics.

I say that argument for the sake of argument is good, as things, always good, come from a compromise.

I would wholeheartedly support the committee proposal, and absolutely like to have you all vote against Dr. Pollock's amendment.

CHAIRMAN DeVRIES: The question is on the amendment offered by Delegate Pollock. The Chair recognizes the gentleman from Bad Axe, Delegate McAllister.

MR. McALLISTER: I oppose Dr. Pollock's amendment and am in favor of the committee proposal. I don't claim to be any political theorist, but I do claim to have practical knowledge of township government. The township government is more than a matter of legislation. The township supervisor aids people in getting welfare, aids people in getting into the hospital, committed to institutions; in fact, he is, in effect, the advisor of the people in the area.

At the township level, on settlement day, why, everything is gone over with a magnifying glass, and I say it is the best form of government and the closest government of the people in Michigan.

I don't see how anybody can look through a crystal ball and see what is happening all over Michigan. I am definitely in favor of retaining the township.

Another thing, in township government you have your supervisor, and he is a part of our county government. So even the smallest unit of the county has representation there. I think the combined judgment of those people from the different areas of the township is far better than any other form of government, because those people are closely scrutinized, their county expenses are closely scrutinized, and taxes are not saddled on a smaller area to a greater extent than they are on a bigger area. Also, the benefits, where you have a township form of government and a board of supervisors, are pretty equally spread out throughout the county.

When we destroy township government, we are coming into centralized government. We have too much centralized government already. It seems to me that we have a group here who would like to make it more centralized. I have been outside of this country, in many areas, and have observed the governments, and where you have it centralized where townships don't exist, you may go to the courthouse 50 miles away from where you live and find that all the crew is out fishing. But, you won't have that as long as you maintain township government.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Detroit, Delegate Madar.

MR. MADAR: Mr. Chairman, fellow delegates, I don't think I have ever heard anybody talk about good government and actually speak the truth as well as I have heard it expressed this morning by Dr. Pollock. I have disagreed with Dr. Pollock on more than one occasion. I have disagreed with many of you people, the rest of the delegates, on more than one occasion, and I have been with you on occasions. One thing I don't think anybody can take away from me and that is that I do believe in a good, modern form of government.

Let's just see what is wrong. I don't believe that Dr. Pollock or I actually believe that we ought to cast out, completely, a small township form of government. Let's look at what we have here. Years ago, delegates met at a constitutional convention, just as you and I are doing today, and they felt that we must have a small, local unit of government, but that didn't mean that the township would have 15,000, 20,000, 30,000, 40,000, 45,000, or 80,000 people. They were thinking in units, local units of 500, 1,000, 1,500, 2,000 population, and that is what township government meant to them in those days. This is something we have completely forgotten. What we have done now, we have gone up to where a township is 80,000 population, 90,000, if you please.

Talk about centralizing government, aren't we centralizing government if we would call the city of Detroit the township of Detroit? What would be the difference in centralizing government? That would make it as bad as Russia or a lot of other places.

Just as you say that cities would centralize government—oh, let's be honest with ourselves. Some time ago, in local government, I was quite angry because I heard—yes, smile, if you please, I am angry now, but not as angry as you may think; this is my method of speaking. Frankly I am not as angry as much as I sympathize with you. I have sympathy for you, not sympathize with you because you are not thinking clearly. There are too many of you who are thinking strictly of, what have I got in this particular government which gives me something in this pocket which makes me a big shot.

When I said that the greatest deterrent to good government would be the big frogs in the little pond, and the petty politician who is striking out for himself—I say this. You may tell me that your people don't want this, but I say, take your petty politicians, take your big frogs out of that little pond; dump them on a big island out in the Pacific ocean and then let those people get 4 or 5 people on a committee and I will guarantee you that they would throw out your archaic government so fast that it would make your head swim, not you, trying to swim back from that island to the mainland to try to be a big boss in a little pond again.

CHAIRMAN DeVRIES: The Chair reminds the committee that we are discussing the Pollock amendment. The Chair would point out that there are 8 people seeking recognition, and the Chair will recognize the gentleman from Flint, Delegate McLogan.

MR. McLOGAN: Mr. Chairman, just one brief word here, without taking sides in this matter before us. As a member of the committee on local government, I would like to point out that we did not formally consider or debate such a proposition as Professor Pollock has just submitted. The local government committee did not take a vote on any such proposition as that. Therefore, I do not think that the committee of the whole should make any inference from the fact that there was no recommendation with regard to the proposition submitted by Professor Pollock, and I would say only one further word, that the Professor's proposition, as he so clearly outlined, does not destroy township government, it merely provides the flexibility and the change that we, day by day, give lip service to.

CHAIRMAN DeVRIES: The Chair recognizes the chairman of the committee, Delegate Elliott.

MR. A. G. ELLIOTT: Would the Chair tell me how many names you have on your list?

CHAIRMAN DeVRIES: At the present time, Delegate Elliott, there are 8 people seeking recognition.

MR. A. G. ELLIOTT: I move the committee rise.

CHAIRMAN DeVRIES: Delegate Elliott moves the the committee do now rise. All those in favor will say aye. Opposed, no.

The committee will rise.

[Whereupon, the committee of the whole having risen, President Nisbet resumed the Chair.]

PRESIDENT NISBET: The Chair recognizes Dr. DeVries.

MR. DeVRIES: Mr. President, the committee of the whole has had under consideration several items on which the secretary will give a more detailed report.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 82**; has considered several amendments thereto; and has come to no final resolution thereon. This completes the report of the committee of the whole.

PRESIDENT NISBET: Announcements.

MR. WOOLFENDEN: Mr. President, I would like to rise to a point of personal privilege.

PRESIDENT NISBET: You may proceed.

MR. WOOLFENDEN: Yesterday, at the conclusion of our session, Delegate Ford questioned the accuracy of a report that I had given to this convention and implied that the statement that I had made was not accurate with respect to the approval of the judicial branch committee on the committee's amendment to its own proposal which I presented for the committee last Friday. The report attached to the amendment stated that the action of the committee was unanimous.

I have in my hand the tally of the committee clerk on the action taken on February 7, which shows a unanimous vote of 16 members of the committee, then present, voting on the matter. Delegate Ford was absent from that session.

I would just like to correct the implication that the report which I gave was not accurate.

PRESIDENT NISBET: Thank you.

Mr. Elliott.

MR. A. G. ELLIOTT: Mr. President, is this the proper time to correct an error in the journal?

PRESIDENT NISBET: Yes.

MR. A. G. ELLIOTT: I would like to correct an error in Journal 71, page 494, in the second line, which reads: "has already been used for that reason," and it should read, "has rarely". The word "already" should have read "rarely".

PRESIDENT NISBET: Without objection, it will be corrected.

[Correction made, see below, page 1110.]

Mr. Chase, announcements?

SECRETARY CHASE: Mr. DeVries announces a meeting of the committee on administration at 1:30 this afternoon.

The committee on style and drafting will meet at 8:00 o'clock this evening, William B. Cudlip, chairman.

The committee on emerging problems will meet Wednesday in room I at 1:00 o'clock, Frank Millard, chairman.

That is all the announcements.

PRESIDENT NISBET: The Chair recognizes Mr. Howes.

MR. HOWES: Mr. President, I move that this convention recess until 2:00 o'clock today.

PRESIDENT NISBET: The question is on the motion of Mr. Howes that we recess. Those in favor will say aye. Opposed, no.

We are recessed until 2:00 o'clock p.m.

[Whereupon, at 11:55 o'clock a.m., the convention recessed; and at 2:00 o'clock p.m., reconvened.]

The convention will please come to order.

SECRETARY CHASE: Mr. President, a quorum of the convention is present.

PRESIDENT NISBET: The Chair recognizes Mr. DeVries.

MR. DeVRIES: Mr. President, I move the convention resolve itself into committee of the whole for consideration of certain items on the **general orders** calendar.

PRESIDENT NISBET: The question is on the motion of Mr. DeVries. All in favor say aye. Opposed, no.

The motion prevails.

[Whereupon, Mr. DeVries assumed the Chair to preside as chairman of the **committee of the whole.**]

CHAIRMAN DeVRIES: The committee will come to order. When last the committee met, it was considering **Committee Proposal 82**, and an amendment offered to it by the gentleman from Ann Arbor, Delegate Pollock. The Chair had Delegate Stafseth on the list for recognition, speaking on the Pollock amendment.

MR. STAFSETH: Mr. Chairman, would you read that amendment, please? It has been quite a long time and I can't remember it too well.

CHAIRMAN DeVRIES: The secretary will read the amendment offered by Mr. Pollock.

SECRETARY CHASE: The amendment is:

[The amendment was again read by the secretary. For text, see above, page 998.]

CHAIRMAN DeVRIES: Delegate Stafseth.

MR. STAFSETH: There are only 2 points that I would like to raise. One is my own personal experience in dealing with townships and counties and being in city government, but in the state of Michigan, with the type of topography we have, we are basically a flat, agricultural county or state, and inasmuch as we are that type of a state, the township type of organization fits our needs very well. It is a very effective part time reasonable government for a rural area.

In Dr. Pollock's statement, if you take the 28 other states of the United States that have eliminated the township form of government and review those 28 states, you will find that a majority of them, or a large majority of them, are states such as Pennsylvania, North Carolina, or ones with very rugged terrains, where, actually, a large part of the county is nothing more than the side of a mountain.

When you make a fair comparison of township government, where it exists in flat, agricultural land, and look at our neighboring states, you will see that the precedent still stands with this type of government.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Ann Arbor speaking on his amendment, Delegate Pollock.

MR. POLLOCK: Mr. Chairman. Mr. Stafseth, the answer to that question is very easy. Pennsylvania does have the township form, and despite what our friend, Mr. Farnsworth, said or implied this morning, Pennsylvania is finding townships very constricting. We got information following the information that was given to you. I happen to be a Pennsylvanian myself, and know something about that situation. We found that exactly what I said was the case, that the townships are putting the big, urban areas into a straitjacket.

But with reference to your question on topography, it might interest you to know, as you could have read in the citizens research study on this point, that Iowa, within the last decade, has eliminated the township form of government for the whole state. Iowa, I thought, is where the tall corn grows, and therefore, I can't see the point of its application to Michigan. Obviously, Iowa and Michigan are quite different. Michigan has, of course, its very important rural areas, but actually it is also a great industrial state.

Now that I am on my feet, Mr. Chairman, I don't intend and had no intention of prolonging this debate, but I ask you, you now have the text of this amendment, to put that beside the work of the committee, and I challenge anybody in this room to say that this is not better constitutional drafting.

This is the only issue I am asking you to vote on. I did not move to abolish townships. It rather hurts me when my friend over here says that I haven't the same tender feelings for township supervisors and the people who live in townships. They are the best people in the world. They are not just in

Sanilac county. We have them in Washtenaw county, and a lot of them voted for me.

This isn't the issue. This is sand in the eye, just like the remarks of the chairman, I thought, were a little offside, too, when he implied that there was something theoretical about this; the structure of government was one thing, emotions and feelings of people were another.

Now, I don't ever mind being called a theorist. I have been called many things worse—communist, professor, everything else. But, if you don't have a theory at a time when you are building a constitutional convention, what are you doing? You must be just taking it off the top of your head. If you don't have a theoretical framework within which to argue, what do you argue for? Of course I have a theoretical framework in which I am fitting all this, but theory, as it's been bandied about this floor, seems to overlook the fact that there isn't too much difference between theory and practice among intelligent people. If you find a lot of difference, where people simply argue without any frame of reference and without any experience or observation or study—and I insist that it isn't all experience, it is also a question of understanding the trend of the times.

What I said, therefore, about townships, I only said to make my case. The fact is, I believe, that since the Constitution of 1908 was adopted, townships have been on the decline. Whether they are withering on the vine or not, I wasn't saying.

As a matter of fact, I didn't have time to prepare a speech on townships. I am not talking exactly on the subject of whether we should have a township or whether we shouldn't. I am merely saying that in the future of this state, there has to be reasonable flexibility and adaptability in adjusting the forms of local government to the needs of the times, and empowering those local governments to do the jobs that we expect them to do. This is the only issue, and I don't want any more sand thrown in the eyes on that issue. It is merely a question, is my amendment better than the committee draft? If you think so, vote yes.

CHAIRMAN DeVRIES: Does the gentleman from Saginaw, Delegate Turner, seek recognition on the Pollock amendment?

MR. TURNER: Mr. Chairman, fellow delegates, I certainly appreciate Dr. Pollock's imagination. I think that imagination and initiative are qualities that everyone needs. But at this point we are talking about local government, government at the grass roots level; 1,258 areas with people in them handling their own affairs in the most economical way possible. This form of government reminds me of a log raft. It is slow, it is hard to direct sometimes, but you can't sink it.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Grand Rapids, Delegate Blandford.

MR. BLANDFORD: Fellow delegates, I find myself differing from Dr. Pollock in looking ahead to some of our upcoming items on apportionment. This may not be the last time that he and I will differ.

I would like to say that his amendment, although it does not abolish townships, does single out townships as the only agency that can be dissolved.

I feel that Dr. Pollock's thesis and the thesis that we are hearing from a lot of people at this convention is that large government is the best government, and I will have to confess that I subscribed to this idea once myself.

I come from the city of Grand Rapids, as you all know. I took kind of a dim view of township government. I did until I was elected to a Kent county board of supervisors and served 8 years there. On the board I found myself associated with men who, in my humble judgment, are dedicated, sincere, and give a lot of government for very little compensation. They give good government at a minimum cost. For the edification of my good friend, Mr. Madar, I might say that I got nothing from township government, and when I am through with this convention, I am going to run for just one thing: I am going to run for my lumber yard back in Grand Rapids.

I do feel, very sincerely, that large government is not the best government. I feel government closest to the people is the best government. I am one city delegate who stands very firm for the maintenance of township government. (applause)

CHAIRMAN DeVRIES: The Chair will recognize the lady from Detroit, Delegate Hatcher.

MRS. HATCHER: Mr. Chairman and fellow delegates, I rise to make a few brief comments concerning the Pollock amendment. As a delegate to this convention, I have had the opportunity of serving on the local government committee. The local government committee, as you perhaps know, consisted of 27 members. The majority of the members of the local government committee were people who participated daily in county or city activities as paid employees on leave from their various positions. I think there were only one or two of us on the committee who were not active officials in county or local government in some form or the other.

My reason for making these comments at this time is to, first of all, say that I regret that the committee did not have the opportunity of the thinking of Dr. Pollock at the outset of our deliberations in that particular session. I think the comments that he made are certainly ideal.

I think the fact that many of the people who served on the local government committee were dealing with real problems, perhaps, took away some of the imagination that they may have had if they had been dealing with the idea in mind that we were working on a projection, a document for the future and one that would benefit the entire state of Michigan.

I think that there was too much impulsive thinking. I was criticized, as a member of that committee, for not making more comments from time to time in the daily deliberations—not seriously criticized, but I felt that there were many people on the committee who had a greater degree of experience in the area of local government than, perhaps, what I had at the time.

I think that imagination is certainly the kind of thing that we, as delegates, ought to use more of, because, as a member of the minority party here, that is about all I can have at the moment, imagination.

I certainly think that the observations that Dr. Pollock made, in terms of what we can expect in local government, what we can expect in terms of population explosion and everything else in the state of Michigan, this is the type of thinking that I would have liked to have worked around and helped to guide me in my deliberations in the local government program.

Those are the remarks I would like to say. I still feel that the committee's report is the report that I must support, because I was a part of making that deliberation.

CHAIRMAN DeVRIES: Does the gentleman from Hancock, Delegate Heideman, still seek recognition on the Pollock amendment?

MR. HEIDEMAN: Mr. Chairman, fellow delegates, the township serves a very real purpose and fulfills a very real need in local self government in the state of Michigan. This is not only true today, but so far as one can intelligently predict, the township will be needed in the indefinite future. No one has shown us a better scheme or system to replace the township as a necessary part of good Michigan local government. I would like to uphold the township, not only as a matter of practice but as a matter of theory, and even idealism in government. I do not think it an exaggeration to say that I am interested in writing an ideal constitution.

It is difficult for me to picture life in my far away area, and many of the other areas of our state of over 600 miles in length, without the township as an essential unit of local self government.

I would like to review a story told about James A. Garfield, which I think is, in a way, apropos of the making of the constitution. He was president of Hiram College in Ohio for awhile, and while there he was approached by the father of a prospective student, who said, "Can't you simplify the courses? My boy will never take all that in. He wants to get through by a shorter route." "Certainly", answered Garfield, "I can arrange for that. It all depends, of course, on what you want to make of him. When God wants to make an oak, he takes 100 years, but when he wants to make a squash, he requires only a couple of months." I hope we don't end up making squashes here in Lansing.

I would like to uphold the committee proposal, but in the event that we have to amend, I would like to provide equality of treatment for the township by offering the following amendment: to amend Dr. Pollock's amendment in the third line by adding a comma after the word "cities", by striking the "and" and by adding "townships" after the word "villages", so it will read:

> The legislature may provide by general law for the organization and government, and for the dissolution, of political subdivisions other than counties, cities, villages, and townships.

Thank you.

CHAIRMAN DeVRIES: Delegate Heideman, would you submit your amendment in writing to the secretary?

The Chair recognizes the gentleman from Detroit, Delegate Madar, speaking on the Pollock amendment, until Mr. Heideman has a chance to submit his amendment.

MR. MADAR: Mr. Chairman, fellow delegates, I just wish to correct some impressions that have been left. First I want to correct the impression that we did not discuss the elimination of large townships or of cutting out large townships. Now, understand what I said, "large townships", not the township that your ancestors thought were townships years ago.

You see, I have always felt that a township ceased being a township after it once got above 5,000 population. I believe you, in your own minds, feel the same way. Don't let these others, who are now talking about 20,000, 30,000, 50,000, 80,000 population townships make you feel differently. Don't let them get you over on their side just to protect something nice that they have for their own personal use.

Incidentally, I would, after I get through speaking, like to have the chairman of the committee tell you whether or not we discussed this particular subject. In fact, I even discussed the subject of having 5 different classes of cities, starting after a township got to the point where it had 10,000 population. From there on it would graduate to a city and go on from there.

Now then, to mention something else, about Mr. Turner's thought: he was worried about size. So far as we are concerned, as I just got through saying, the only place we are thinking about size is in the townships of 5,000 or 10,000 population. We would like to see those stay in existence. I think it is a wonderful thing. It does make for a good form of government, but after they reach that size, let's do something about them.

Now to correct Mr. Blandford's thought and the impression that he left. So far as my thinking that big government is the best government, you are very wrong, Mr. Blandford, so wrong that, well, it is just all out of proportion with what I have had to say. So far as I am concerned, I wish we didn't have any big government at all. But, when you have large areas, large cities, as we have, and as we have there in Detroit, we must have big government. We can't do anything else. You certainly aren't going to cut us into wards and let each one rule itself separately.

I think if we just keep these impressions straight, we won't have any troubles. Let's not try to pull any screens over anybody's eyes. Instead, let's pull screens down over these scoreboards so that we don't have to see how somebody else is voting to know how we want to cast our votes.

CHAIRMAN DeVRIES: Mr. Farnsworth.

MR. FARNSWORTH: Mr. Chairman, I wonder if Mr. Madar would yield for a question?

CHAIRMAN DeVRIES: Would the delegate from Detroit yield for a question?

MR. MADAR: To answer a question? Sure.

MR. FARNSWORTH: Mr. Madar, the question is, how many townships are there in the city of Detroit?

MR. MADAR: Mr. Farnsworth, I believe that you understand that there are no townships within the city of Detroit, and I don't think you had to ask that question and waste our time.

MR. FARNSWORTH: Thank you.

CHAIRMAN DeVRIES: The Chair recognizes the delegate from Rogers City, Delegate Radka, speaking on the Pollock amendment.

MR. RADKA: My only question, Mr. Chairman, is how many speakers do you have remaining now?

CHAIRMAN DeVRIES: The Chair has 3 delegates waiting for recognition on the Pollock amendment, understanding that Delegate Heideman is about to submit an amendment to the Pollock amendment.

MR. RADKA: I would at this time yield to Delegate Heideman so that he may submit his amendment.

CHAIRMAN DeVRIES: The Chair might also point out that Delegate Boothby also has an amendment to the Pollock amendment.

The secretary will read the amendment offered by Delegate Heideman to the Pollock amendment.

SECRETARY CHASE: Mr. Heideman offers the following amendment to the amendment offered by Dr. Pollock:

1. Amend the amendment after "cities" by striking out "and" and inserting a comma and after "villages" by inserting "and townships"; so the language will read:

> The legislature may provide by general law for the organization and government, and for the dissolution, of political subdivisions other than counties, cities, villages and townships. Each such political subdivision shall have such powers as may be prescribed by general law.

MR. KING: Point of order, Mr. Chairman.

CHAIRMAN DeVRIES: State your point of order, Delegate King.

MR. KING: Mr. Chairman, we are just wasting a lot of time here by entertaining amendments which, obviously, in my opinion, are not in order. If he wants to move the whole thing as a substitute, that is one thing; but obviously this amendment contemplates a complete change in the meaning of Dr. Pollock's amendment. I am not speaking in favor of Dr. Pollock's amendment or against it, but I don't think we ought to entertain this type of an amendment at this time.

CHAIRMAN DeVRIES: Delegate King, the Chair rules that the amendment is in order. The question is on the Heideman amendment to the Pollock amendment to Committee Proposal 82. All those in favor of the Heideman amendment will say aye. Opposed, no.

The amendment to the amendment is not adopted.

The question before the committee now is the adoption of the Pollock amendment.

A division has been requested on the Heideman amendment —are you requesting a division on the Pollock amendment Mr. Heideman?

MR. HEIDEMAN: On my amendment.

CHAIRMAN DeVRIES: Delegate Heideman demands a division on the vote of the Heideman amendment to the Pollock amendment. Is there support for the demand?

SECRETARY CHASE: Sufficient number up.

CHAIRMAN DeVRIES: All those in favor of the Heideman amendment to the Pollock amendment will vote aye. Those opposed will vote no. The secretary will lock the machine and tally the vote. The secretary will announce the vote.

SECRETARY CHASE: On the adoption of the amendment offered by Mr. Heideman to the Pollock amendment, the yeas are 23, the nays are 90.

CHAIRMAN DeVRIES: The amendment is not adopted.

The Chair recognizes the gentleman from Niles, Delegate Boothby, for the purpose of offering an amendment. The secretary will read the amendment.

SECRETARY CHASE: Mr. Boothby offers the following amendment to the Pollock amendment:

1. Amend the amendment after "counties" by striking out the comma and "cities and villages"; so that the language will read:

> The legislature may provide by general law for the organization and government, and for the dissolution, of political subdivisions other than counties. Each such political subdivision shall have such powers as may be prescribed by general law.

CHAIRMAN DeVRIES: The Chair recognizes the author of the amendment, Delegate Boothby.

MR. BOOTHBY: Mr. Chairman, I will not belabor this point. I think it is self explanatory. However, I would note that I have great respect for cities, and I also have great respect for villages and townships. I do, however, feel that we should have equal protection of the law. I feel that townships are very much needed in our society, and I would take care of a possible error that was stated some few minutes ago. There are 11 midwestern states which have townships. We found that in the midwest it has been a very suitable political unit. I would argue in favor of the amendment which I have submitted to the Pollock amendment on the basis of more flexibility, and certainly this would be better constitutional drafting.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Ann Arbor, Dr. Pollock.

MR. POLLOCK: Mr. Chairman, I don't see how Mr. Boothby can feel that it is good constitutional drafting. Mine was very carefully studied and matured. It was an amendment to the section on townships. Yours is thrown in off the top of your head the last minute and should have been put in in connection with counties, if you want to put it in.

I don't know what your idea of constitutional drafting is, but this would be considered deficient and not an improving amendment.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Bessemer, Delegate Pellow.

MR. PELLOW: Mr. Chairman, ladies and gentlemen of this committee, I think that we are at a point where we must approach the fact that Mr. McAllister has truly drawn the line.

There are those here who would say this: Let us throw the townships to the wolves, but let's preserve the cities, let's preserve the townships, let's have the big bureaucracy government for the cities, let's blanket these people in, and as far as the small people are concerned, we are not concerned with whether or not they have the right to choose their own government.

I submit to this committee that there are enough of ivory towered intellectuals here, that would take away from the people the right to govern themselves. It is time that the people have the right, and I say, in all fairness to Delegate Madar, in all fairness to Delegate Pollock, in all fairness to the rights of all of the people in this convention, that here and now is the time to decide this; if we are going to destroy the elective process, if we are going to have one mob bureaucracy ruled by a centralized intellectual ivory tower, then let's do away with all elective officials, let's appoint the governor, the lieutenant governor, the representatives and every other elected official and forget the democratic process. (laughter and applause)

CHAIRMAN DeVRIES: The Chair would remind the committee to confine their remarks to the Boothby amendment to the Pollock amendment on Committee Proposal 82. The question before the committee is the Boothby amendment to the Pollock amendment. The secretary will read the Boothby amendment to the Pollock amendment.

SECRETARY CHASE: Mr. Boothby's amendment is:

[The amendment was again read by the secretary. For text, see above, page 1003.]

CHAIRMAN DeVRIES: The question before the committee is the Boothby amendment to the Pollock amendment. The Chair recognizes the gentleman from Niles, Delegate Boothby.

MR. BOOTHBY: Mr. Chairman, I ask for a division.

CHAIRMAN DeVRIES: Is there support for a division vote? Sufficient number up. All those in favor of the Boothby amendment to the Pollock amendment will vote aye. All those opposed will vote no. The secretary will lock the machine and tally the vote. The secretary will announce the vote.

SECRETARY CHASE: On the adoption of the amendment offered by Mr. Boothby, the yeas are 24, the nays are 92.

CHAIRMAN DeVRIES: The amendment to the amendment is not adopted.

The question before the committee now is the Pollock amendment to Committee Proposal 82. The secretary will read the Pollock amendment.

SECRETARY CHASE: Mr. Pollock's amendment is:

[The amendment was again read by the secretary. For text, see above, page 998.]

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Howell, Delegate Sharpe.

MR. SHARPE: Mr. Chairman, I would like to demand a division.

CHAIRMAN DeVRIES: Mr. Sharpe demands a division. Is there support? There is support for a division.

Delegate Downs.

MR. DOWNS: Mr. Chairman, are we now voting on the Pollock amendment?

CHAIRMAN DeVRIES: That is correct.

MR. DOWNS: I had asked sometime back to speak on the Pollock amendment and had been waiting very patiently.

CHAIRMAN DeVRIES: The Chair stands corrected, Vice President Downs. You were on the list and I skipped you inadvertently. The Chair recognizes the gentleman from Detroit, Vice President Downs.

MR. DOWNS: Mr. Chairman, I would like to say that I am in sympathy with the objective of not freezing the townships into the constitution. I would like to ask Dr. Pollock one or two questions, and I will be very brief.

CHAIRMAN DeVRIES: You may if the gentleman cares to answer.

MR. DOWNS: Dr. Pollock, am I correct that the intent here is neither to eliminate nor to freeze townships into the constitution, but to leave the matter up to the legislature?

MR. POLLOCK: Precisely.

MR. DOWNS: All right. What if the legislature would want to abolish a township or merge it into a new county government, would the people in the township have any protection in case they did not want that action taken?

MR. POLLOCK: Mr. Chairman, it seems to me that is a matter that should be left to the legislature and, I think, considering the composition of the legislature, the fact that it is likely to continue to have very adequate rural representation, you need not fear any catastrophe.

MR. DOWNS: I believe that last answers my question quite adequately. One of the real reasons I hesitate, while agreeing with the principle, to support this is that Delegate Hart and I have an amendment which provides for rather strict standards on county home rule, and I am sure if I vote for this, some delegate will remind me and charge inconsistency later on. So, I would prefer more careful—I won't say more careful to Dr. Pollock, I do have that concern, but I can see his point about the legislature's representation.

CHAIRMAN DeVRIES: Delegate Pollock.

MR. POLLOCK: Mr. Chairman, I would add that there is no reason that this should have any conflict with any adequate home rule provision. This will be deliberated later and it is going to be entirely a separate matter.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Madison Heights, Delegate Walker.

MR. WALKER: Prior to the vote on this, Mr. Chairman, would it be possible for us to hear the amendment and hear the section as amended one more time? It has been, once again, some time since we heard it.

CHAIRMAN DeVRIES: The Pollock amendment is a completely new section and the secretary will read the Pollock amendment.

SECRETARY CHASE: Dr. Pollock's amendment:

[The amendment was again read by the secretary. For text, see above, page 998.]

CHAIRMAN DeVRIES: The question before the committee is the Pollock amendment to Committee Proposal 82. A division vote has been requested. The Chair recognizes the gentleman from Lansing, Delegate Wanger.

MR. WANGER: Just a brief comment on the drafting. It says:

> The legislature may provide by general law for the organization and government, and for the dissolution, of political subdivisions other than counties, cities and villages . . .

so I presume they cannot provide, by law, for the organization of cities and villages under the amendment as it is before the committee at this time.

CHAIRMAN DeVRIES: The Chair recognizes the author of the amendment, Delegate Pollock.

MR. POLLOCK: I am sure that was a sincere question, but it doesn't seem to me to be an extremely important one. It says "may" in the first place. We have already provided other places in the constitution for counties. We are going on to provide for cities and villages, and this clearly allows the flexibility which other parts of the constitution allow.

CHAIRMAN DeVRIES: The question is on the Pollock amendment to Committee Proposal 82. A division vote has been requested. All those who are in favor of the Pollock amendment will vote aye. All those opposed will vote no. The secretary will lock the machine and tally the vote. The secretary will announce the vote.

SECRETARY CHASE: On the amendment offered by Dr. Pollock, the years are 41, the nays are 88.

CHAIRMAN DeVRIES: The amendment is not adopted. Are there any further amendments to the body of Committee Proposal 82?

SECRETARY CHASE: Mr. W. F. Hanna offers the following amendment to Committee Proposal 82:

1. Amend page 2, following line 14, by inserting:

"Sec. f. The legislature may by general law provide for an optional charter township form of township government which optional charter township shall have such officers selected in such manner as the optional charter township law shall provide.".

CHAIRMAN DeVRIES: The Chair recognizes the delegate from Muskegon, Delegate Hanna.

MR. W. F. HANNA: Mr. Chairman, I don't want to belabor this point, but this is an effort to give the legislature power to further improve the charter township act. This act is a start in the right direction. It is a rather effective act. Mr. Farnsworth referred to the amendments which the legislature has adopted since the original act was first passed by the legislature. Those amendments, for good or for bad, were authored by myself, along with some others that were not adopted by the legislature.

However, one of the stumbling blocks in the charter township act is the constitutional provision that you must elect a supervisor, clerk and treasurer for 2 year terms or for 4 year terms; that in respect to the charter township act, those provisions governing general townships must be complied with, in an effort to create a charter township act. This would remove the limitation from the charter township act and give to the legislature some flexibility with regard to the officers of a township.

We have gone farther in this constitution, by freezing 2 to 4 trustees in the term and, in turn, we have taken out the highway commissioner and the constables, which were part of the objectionable features. But this would, in the charter township act, allow the legislature full and complete jurisdiction to design a good optional charter township act and remove from the restrictions on the legislature the power to deal with township offices.

I urge the adoption.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Allegan, Delegate Farnsworth.

MR. FARNSWORTH: Mr. Chairman and members of the committee, I would like to make this presentation without any great amount of feeling one way or the other on this proposition of possibly unfreezing the township, elective township officers, when a township decides to become a charter township.

I would say, however that it was discussed in the committee and we came to the conclusion that obviously the township unit would be electing some kind of local officials and that would be their governing board. We thought it made very little difference whether they called it a town board or a township commission or town council or what have you. In any event, they were going to be electing a treasurer, a clerk, a supervisor, and at least 2 trustees.

As it is now, that is their town board. Under the charter township act, they have a right to hire a superintendent and many of them do. The supervisor has a right to hire assisting help, and many of them do. They have a right to pave streets, to install curbs and gutters and sidewalks. They may levy special assessments. They may levy millage, 5 mills over and above their regular 15 mill limitation. By a vote of the people they can levy 10 mills without adhering to the 15 mill limitation. They may borrow money. They may own land. They may establish libraries. They can have a fire department, a police department. In effect, they can do really anything that they need to do, under a charter form of township government, which is permissible by statute at the present time.

Again I say, I do not feel strongly about this, personally, but I can not see, for the life of me, what possible difference it makes whether you free up those particular constitutional officers or not. They are going to be electing some kind of a town board.

CHAIRMAN DeVRIES: The question is on the adoption of the Hanna amendment to Committee Proposal 82. The secretary will read the amendment.

SECRETARY CHASE: Mr. Hanna's amendment is:

[The amendment was again read by the secretary. For text, see above.]

CHAIRMAN DeVRIES: The question is on the adoption of the amendment. All those in favor of the Hanna amendment will say aye. Opposed, no.

The amendment is not adopted.

Are there any further amendments to the body of Committee Proposal 82? If not, it will pass.

Committee Proposal 82, as amended, is passed. The secretary will read Committee Proposal 83.

SECRETARY CHASE: Item 3 on the calendar, from the committee on local government, by Mr. Elliott, chairman, **Committee Proposal 83,** A proposal pertaining to cities and villages. Amends article VIII, sections 20, 21, 22, 23 and 25.

Following is Committee Proposal 83 as read by the secretary, and the reasons submitted in support thereof:

The committee recommends that the following be included in the constitution:

Sec. a. The legislature shall provide by a general law for the incorporation of cities[,] and [by a general law for the incorporation of] villages; such general laws shall limit their rate of GENERAL PROPERTY taxation for municipal purposes, and restrict their powers of borrowing money and contracting debts. EACH CITY AND VILLAGE IS HEREBY GRANTED POWER TO LEVY TAXES FOR PUBLIC PURPOSES SUBJECT TO LIMITATIONS AND PROHIBITIONS SET FORTH IN THIS CONSTITUTION OR LAW.

Sec. b. [Under such general laws] The electors of each city and village [shall have] ARE HEREBY GRANTED THE power and authority to frame, adopt, amend, AND REVISE its charter, and to amend, AND REVISE an existing charter of the city or village heretofore granted or passed by the legislature for the government of the city or village. [and, through its regularly constituted authority, to pass all laws and ordinances relating to its municipal concern, subject to the constitution and general laws of this state.] THE LEGISLATURE SHALL PROVIDE BY GENERAL LAW THE PROCEDURE FOR FRAMING, ADOPTING, AMENDING, AND REVISING SUCH CHARTERS.

Explanation—Matter within [ ] is stricken, matter in capitals is new.

EACH SUCH CITY AND VILLAGE IS HEREBY GRANTED FULL POWER TO PASS LAWS AND ORDINANCES RELATING TO ITS MUNICIPAL CONCERNS, PROPERTY, AND GOVERNMENT, BUT THE LEGISLATURE MAY ENACT LAWS OF STATEWIDE CONCERN WHICH WILL PREEMPT THE FIELD ONLY WHEN THIS INTENTION IS SO STATED THEREIN. NO ENUMERATION OF POWERS IN THIS CONSTITUTION SHALL BE DEEMED TO LIMIT OR RESTRICT THE GENERAL GRANT OF AUTHORITY HEREBY CONFERRED. SUCH CITIES AND VILLAGES SHALL HAVE EXCLUSIVE JURISDICTION OVER MATTERS OF LOCAL GOVERNMENTAL PERSONNEL AND ADMINISTRATION.

Sec. c. Any city or village may acquire, own, establish and maintain, either within or without its corporate limits, parks, boulevards, cemeteries, hospitals, [almshouses] and all works which involve the public health or safety.

Sec. d. EXCEPT AS OTHERWISE PROVIDED IN THIS CONSTITUTION, NO CITY OR VILLAGE SHALL HAVE THE POWER TO ASSESS, LEVY OR COLLECT ANY TAX OR ASSESSMENT FOR OTHER THAN A PUBLIC PURPOSE, OR TO LOAN ITS CREDIT FOR ANY PRIVATE PURPOSE OR FOR ANY PUBLIC PURPOSE EXCEPT AS AUTHORIZED BY LAW.

Sec. e. Subject to the provisions of this constitution, any city or village may acquire, own, and operate, either within or without its corporate limits, public utilities for supplying water, light, heat, power, SEWAGE DISPOSAL, and transportation to the municipality and the inhabitants thereof; and may also sell and deliver heat, power, and light without its corporate limits to an amount not to exceed 25 per cent of that furnished by it within the corporate limits, EXCEPT AS GREATER AMOUNTS MAY BE PERMITTED BY LAW; and may also sell and deliver water AND PROVIDE SEWAGE DISPOSAL, outside of its corporate limits in such amount as may be determined by the legislative body of the city or village; and may operate transportation lines without the municipality within such limits as may be prescribed by law. [: Provided, That the right to own or operate transportation facilities shall not extend to any city or village of less than 25,000 inhabitants.]

Sec. f. [No city or village shall have power to abridge the right of elective franchise, to loan its credit, nor to assess, levy or collect any tax or assessment for other than a public purpose. Nor shall any] NO city or village SHALL acquire any public utility or grant any public utility franchise which is not subject to revocation at the will of the city or village, unless such proposition shall have first received the affirmative vote of 3/5 of the electors of such city or village voting thereon at a regular or special municipal election. [; and upon such proposition women taxpayers having the qualifications of male electors shall be entitled to vote.] NOR SHALL ANY CITY OR VILLAGE SELL ANY PUBLIC UTILITY UNLESS SUCH PROPOSITION SHALL HAVE FIRST RECEIVED THE AFFIRMATIVE VOTE OF A MAJORITY OF THE ELECTORS OF SUCH CITY OR VILLAGE VOTING THEREON AT A REGULAR OR SPECIAL MUNICIPAL ELECTION.

Mr. Arthur Elliott, chairman of the committee on local government, submits the following reasons in support of Committee Proposal 83:

[The comment regarding sections a and b immediately following is the comment as originally submitted by the committee. This was ordered revised on February 8 (see above, page 909). The revised comment appears following this original comment.]

Section a comment. In 1908, this section was spelled out in great detail because the home rule concept was new and the delegates wanted to be as precise as possible. They therefore provided for a separate general law for cities and for villages. Home rule and the avoidance of special act charters is now established practice in Michigan and the change in the first sentence is made only for the sake of brevity and simplicity. In the third line, the term "general property" is used to be specific and to distinguish the limitation on property taxes from the new grant of power to levy nonproperty taxes in the last sentence. The grant of power for nonproperty taxes is added to permit cities and villages that wish to ease the burden on the property tax to act on the basis of clear constitutional authority, for legal opinion as to current taxing powers of cities and villages is conflicting. The committee proposal does not attempt to specify the taxes a municipality might or should adopt, but to make possible a local decision on such matters, subject to limitations and prohibitions contained in this constitution or general laws now existing or that might be adopted by a future legislature. The committee on finance and taxation has concurrent jurisdiction on this section and has no objection to these changes. The committee majority is of the opinion that wages and hours should be set by the local governing body rather than by the legislature. Local officials are better acquainted with their fiscal problems and can more readily solve them than is likely to be the case with a legislator voting on a problem with which he is not familiar. Cities and villages differ greatly in resources and their ability to finance wage and salary schedules and any general act of the legislature concerning these matters cannot take account of the diversity among local units of government.

Section b comments. The language change in the first paragraph is to achieve a more positive statement of the right of cities and villages to home rule. The only substantive change is to make it clear that the power to revise a charter exists along with the other rights named. This is to clear up a possible ambiguity. The language deleted in lines 6 through 9 is replaced by a more positive statement in the second paragraph. In addition, home rule cities and villages are guaranteed full power over their own property and government, and these powers cannot be limited except by deliberate statement of intent by the legislature. In the past, general laws of the state providing for a standard of service or performance have been held by the courts to make invalid municipal ordinances or charter provisions providing a higher standard. This is undesirable and this language will permit the municipal provisions to stand in the absence of deliberate intent by the legislature to set them aside. The last sentence of the second paragraph is intended to strengthen and clarify municipal home rule by granting the local legislative body the right to control local personnel and administration. It is the feeling of a majority of the committee that certain categories of municipal employees are given preferred treatment by state laws to the detriment of other employees. Nothing in this section would prohibit municipalities from applying standards and practices in current state laws to their municipal personnel. The general saving clause of this constitution will protect existing rights, but future changes in personnel regulations will be made by ordinance or charter.

Following is the comment regarding sections a and b as revised on February 8 (see above, page 909) by the committee on local government:

Section a comment. In 1908, this section was spelled out in great detail because the home rule concept was new and the delegates wanted to be as precise as possible. They therefore provided for a separate general law for cities and for villages. Home rule and the avoidance of special act charters is now established practice in Michigan and the change in the first sentence is made only for the sake of brevity and simplicity. In the third line, the term "general property" is used to be specific and to

Explanation—Matter within [ ] is stricken, matter in capitals is new.

distinguish the limitation on property taxes from the new grant of power to levy nonproperty taxes in the last sentence. The grant of power for nonproperty taxes is added to permit cities and villages that wish to ease the burden on the property tax to act on the basis of clear constitutional authority, for legal opinion as to current taxing powers of cities and villages is conflicting. The committee proposal does not attempt to specify the taxes a municipality might or should adopt, but to make possible a local decision on such matters, subject to limitations and prohibitions contained in this constitution or general law now existing or that might be adopted by a future legislature. The committee on finance and taxation has concurrent jurisdiction on this section and has no objection to these changes.

Section b comments. The language change in the first paragraph is to achieve a more positive statement of the right of cities and villages to home rule. The only substantive change is to make it clear that the power to revise a charter exists along with the other rights named. This is to clear up a possible ambiguity. The language deleted in lines 19 through 22 is replaced by a more positive statement in the second paragraph. In addition, home rule cities and villages are guaranteed full power over their own property and government, and these powers cannot be limited except by deliberate statement of intent by the legislature. In the past, general laws of the state providing for a standard of service or performance have been held by the courts to make invalid municipal ordinances or charter provisions providing a higher standard. This is undesirable and this language will permit the municipal provisions to stand in the absence of deliberate intent by the legislature to set them aside. The last sentence of the second paragraph is intended to strengthen and clarify municipal home rule by granting the local legislative body the right to control municipal wages and hours and administration. It is the feeling of a majority of the committee that certain categories of municipal employees are given preferred treatment by state laws to the detriment of other employees. The committee is of the opinion that wages and hours should be set by the local governing body rather than by the legislature, except where state law deals with all persons, or all public employees. Local officials are better acquainted with their fiscal problems, and can more readily solve them than is likely to be the case with a legislator voting on a problem with which he is not familiar. The right of the municipality to decide on matters of wages and hours should be preserved in all cases except where the legislature determines that some statewide interest in involved, but its action in such cases should be limited to all persons or all public employees without favor or distinction among them.

Section c comments. This section remains unchanged except for the deletion of the reference to "almshouses", which is obsolete. The enumeration here is not intended to restrict the powers of municipalities to the functions listed, but to guarantee their rights to perform certain functions either inside or outside of their corporate limits.

Section d comments. This section is a new section and presents in amended form the first sentence of section 25 in the present constitution. The limitation on the use of taxes for public purposes only is unchanged from the present constitution. The right to loan credit is broadened to permit this to be done for public purposes as authorized by the legislature. The legislature might, for example, permit 2 or more municipalities to loan their credit in order to finance a joint public works project by general obligation bonds, which would permit a lower interest rate than if revenue or special assessment bonds were used. It is the committee's opinion that this provision in no way conflicts with article X, section 12. The committee on finance and taxation has no objections to this language. This section deletes the reference to elective franchise as this matter has been referred to the committee on declaration of rights, suffrage and elections.

Section e comments. The courts have construed this section to mean that a city or village cannot engage in any business but must restrict itself to public utilities. The committee recommends 3 changes in the section. First, adding to the list of utilities, "sewage disposal", without wishing to raise the legal questions whether or not sewage disposal should be regarded as a public utility. It was felt that this function of local government should be listed here so as to make it indisputable that cities and villages can operate such plants either within or without their limits. Secondly, there should not be any limits to the sale of these utilities either within or without the corporate limits of municipality. The power granted municipalities to sell and deliver utility services without their corporate limits is designed to prevent the duplication of plants in contiguous localities and to allow the extension of the benefits of such improvement to territory not sufficiently populous to warrant the establishment of such activities as either a public or private enterprise. The present constitution contains a 25 per cent limitation on heat, power and light delivered outside the limits. It was felt that this limit was arbitrary and that the legislature should have the authority to authorize a higher figure. The committee felt this was desirable in a constitution that should, wherever possible, allow for future contingencies. Testimony was given in some instances that this figure should be larger. However, the committee felt that some control should be exercised relative to heat, light and power. Third, the committee recommends the deletion of the restriction of public transit facilities to cities and villages of over 25,000. The original purpose of this clause appears to have been to prevent small cities from entering into unwise transit ventures that could not retire their original capital outlays. Today, the unprofitability of public transit is known to all and this danger is small. There are also at least 2 positive reasons for deleting this clause. One is to permit the use by all municipalities of the plan whereby a city or village acquires a private transit system for a symbolic amount and then leases it to a private operating firm, thus minimizing taxes. This privilege should logically be available to all municipalities. The other reason is to permit municipalities in metropolitan areas including those of under 25,000 inhabitants to join together in a public transit system.

Section f comments. The committee recommends 3 changes in this section. It proposes to amend the first sentence and move it to a new section for it deals with subject matter not germane to this section. The last clause of the last sentence relative to women taxpayers is obsolete and should be deleted. The 3/5 affirmative vote of the electors for a city or village to acquire a public utility should be retained in this section. The committee proposes to add a new sentence relative to the sale of municipally owned utilities. It believes that a large investment such as that represented by a utility should not be disposed of without permission of a majority of the voters, who as taxpayers are owners. There is no constitutional restriction on such, relative to the sale of utilities in the present constitution. A 3/5 majority, which is required for purchase of a utility, seems to have been provided in 1908 because such a purchase implies a commitment to the making of a large investment which should not lightly be undertaken. The consideration involved is not the same in a sale but is largely restricted to the questions of whether most voters believe sale is desirable and the sale price is satisfactory. This section has the approval of the committee on declaration of rights, suffrage and elections and the committee on finance and taxation.

Following is minority report A to Committee Proposal 83 as offered and the reasons submitted in support thereof:

Messrs. Ford, Buback, Baginski, Mrs. Hatcher, Messrs.

Madar and Suzore, a minority of the committee on local government, submit the following minority report A to Committee Proposal 83:

A minority of the committee recommends that the last sentence of section b, Committee Proposal 83, be not adopted.

Messrs, Ford, Buback, Baginski, Mrs. Hatcher, Messrs. Madar and Suzore, a minority of the committee on local government, submit the following reasons in support of the foregoing minority report, which accompanied Committee Proposal 83:

As stated in the comments to the committee proposal contained in Journal 70, page 439, the purpose of this last sentence of section b is to prevent the legislature from adopting by general law statewide minimum standards concerning wages, hours or working conditions for municipal employees. The immediate effect of this prohibition would result in a condition wherein the legislature would be empowered by the constitution, as it has been in the past, to provide such minimum standards for all persons in the state except municipal employees.

The minority believes that the legislature has not burdened home rule cities and villages with unreasonable restrictions concerning municipal rights in this area and feels that statewide uniform minimum standards for municipal employees are fully as important as they may be for any other employees.

Following is minority report B to Committee Proposal 83 as offered (no reasons were submitted in support thereof):

Mrs. Hatcher, Messrs. Buback and Madar, a minority of the committee on local government, submit the following minority report B to Committee Proposal 83:

A minority of the committee recommends that the following be included in the constitution:

All of the following changes to be made on page 3.

Line 17: "city or village voting thereon at a regular [or special] municipal election".

Line 22: "TIVE VOTE OF [A MAJORITY] 3/5 OF THE ELECTORS OF SUCH CITY".

Line 23: "OR VILLAGE VOTING THEREON AT A REGULAR [OR SPECIAL]".

[Section a was read by the secretary. For text, see above, page 1005.]

CHAIRMAN DeVRIES: Mr. Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, ladies and gentlemen, now, after nearly 3 days completing the first 2 proposals, I want to tell you how grateful I am that we quickly went through the noncontroversial sections of local government. We now are going to get into a section which may cause some debate, and I would like to call upon the subcommittee chairman, Mr. McCauley, to handle this particular section, and I yield to him.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Wyandotte, Delegate McCauley.

MR. McCAULEY: Mr. Chairman and members of the committee, I might say in prefacing my remarks, that we are here getting into the home rule provision of cities, and eventually we hope to get into the home rule provision of counties, and I certainly hope that we are approaching new horizons and not lost horizons.

I might say that the members of the subcommittee were Mr. Leslie Richards from Negaunee and Clarence Dell from St. Ignace and "smart" Martin Tweedie from Port Huron.

Concerning ourselves now with section 20 of the old 1908 constitution, I would like to point out to the committee as follows:

Explanation—Matter within [ ] is stricken, matter in capitals is new.

[The revised supporting reasons to section a were read by Mr. McCauley. For text, see above, page 1006.]

I therefore move the adoption of the section.

CHAIRMAN DeVRIES: Are there any amendments to section a of Committee Proposal 83? Does the delegate from Howell, Delegate Sharpe, wish recognition?

MR. SHARPE: Yes, Mr. Chairman. I have an amendment on the secretary's desk, and I would like to have him read it at this time.

CHAIRMAN DeVRIES: The secretary will read the amendment.

SECRETARY CHASE: Messrs. Sharpe, Finch and Snyder offer the following amendment:

1. Amend page 1, line 13, after "law.", by inserting "However no unit of government shall have the power to levy a payroll tax upon a nonresident.".

CHAIRMAN DeVRIES: The question before the committee is the amendment offered by Delegate Sharpe. Mr. Sharpe.

MR. SHARPE: Mr. Chairman, I had a 21 page speech all made up, but I couldn't find it, and Mr. Snyder only has an 8 page speech, so I think that I will yield to him.

However, this amendment is quite self explanatory and I hope it will not provoke a long debate. I would like to make it perfectly clear that we are not against a city invoking any type of tax it so desires, as long as it is not on those who do not live within the city limits. We don't have any presumption of trying to stop them from taxing an industry or the profits thereon, or the profits on any bonds or anything else, except for the payroll of those people who do not live within the city limits or within the core city.

At this time, if it is permissible, I would like to yield to my friend with the 8 page speech, Mr. Snyder.

CHAIRMAN DeVRIES: Delegate Sharpe yields to the gentleman from St. Clair Shores, Delegate Snyder.

MR. SNYDER: Thank you very much. Mr. Chairman and fellow delegates, I certainly appreciate the opportunity of being able to present to you a problem that is causing much concern and consternation, not only in my district, but, in the discussion with delegates from other parts of the state of Michigan, concern in their districts also. I am very pleased that we can come up here with a bipartisan effort to resolve a very difficult problem, and I certainly feel that if, as delegates, we don't consciously and diligently look into this matter, we may create irreparable harm.

I would also like to point out that last Saturday, in the city of Detroit, members of the tricounty area from Macomb, Oakland and Wayne met at the invitation of the Detroit mayor, in his chambers, and after several hours of discussion on local government, we didn't get to the problem that we have at hand. It seems like the local government problems seem to have a tendency of attracting more discussion and debate than, sometimes, the bread and butter issues. However, we did make a sincere attempt, a sincere bipartisan attempt to relate to the chief executive of the city of Detroit that we were sympathetic to the problems of Detroit; that we wanted to work out the problems, but at the same time we couldn't resolve a problem there at the expense of creating larger and greater problems to the perimeter residents.

If I may have your indulgence, I would like to bring to you what I feel is the problem that we have before us. I would like to call your attention to some of the inequities I believe would develop if units of government are permitted to adopt and impose a payroll tax affecting those who work in but live outside the corporate limits. I submit that this kind of enforced collection is a clear cut case of taxation without representation. Obviously you are wrestling with the problems of furnishing local communities with enough money to furnish services the property tax no longer is capable of supporting, and I agree that the property tax is no longer capable of supporting these services, and I agree that property taxes, in many places, have reached confiscatory proportions, but I feel strongly that local payroll taxes on nonresidents are not the answer. First and foremost, such a move would trigger a chain reaction with community after community retaliating.

Any attempt to be equitable in that kind of a chaotic situation would be futile and monumental ill will would be generated.

If there must be a tax to supplement the property tax, then surely the place to start is at the state level. A piecemeal local tax would result in a crazyquilt patchwork structure, and large portions of the benefits derived would be lost in the overlapping and duplicated administrative cost. Instead of streamlining government, as is our responsibility, we would be creating potential confusion and chaos. Under some circumstances, with this local payroll method approved, people could be taxed both where they live and where they work—some people who reside as far away as Alpena, Grand Rapids, Lansing, and the far southwestern part of the state and work in Wayne county, room in Wayne county, but maintain their residence and families outstate—so this question of authorizing cities or counties to collect payroll tax can have far reaching effect, even in those areas which some of the delegates here might presume they have little or no interest in.

As you know, even the Michigan municipal league is pretty well split on this controversial issue. Suburban citizens and villages within the confines of the huge metropolitan area seem logical targets of this effort, and the impetus is furnished by core cities. While it is easy to understand the motivation, it is equally plain that this kind of taxing method represents a frantic effort to make quick changes without sufficient thought given to the long range effect. A municipal tax would impose a monumental burden on the wage earner and would completely ignore the income derived from stocks, bonds, interest and other investments. I sincerely question if the delegates to this convention would have selected Lansing as the site of this convention if Lansing had a payroll tax. I feel that this would have been given serious consideration. When you use this as a power, as a medium of measurement, this is something that other industries will also be doing.

Lansing governmental employees maintaining permanent residences in other portions of the state could also be subject to such a tax. Core cities point out that nonresidents overload their streets and parking facilities, without mentioning that these same streets and parking lots, public and private, represent significant income to the city.

Gas and weight rebates from the state are paid to the city, and the major interstate expressways are paid for 90 per cent by the federal government. Even this morning, I was able to obtain—and I believe that it is my duty to inform the delegates that this is available—a copy of the motor vehicle highway funds returned to the state and to the various communities involved, and even a cursory examination of this showed that in 1961, Detroit received, in addition to federal funds, $10,155,752.58 from the Michigan motor vehicle highway fund. There can be no question but that other than the core city residents contributed to this fund. Wayne county received $14,786,464.91 from the motor vehicle highway fund, and certainly, there is no dispute that others than the residents of that county contributed largely into this fund.

My city has an area of about 12 square miles. It is about 6 miles long and 2 miles wide. In the very near future we will have an expressway cutting through almost 6 lineal miles of our town, and this will be a major artery to service the core city and the other large communities of Mt. Clemens, Port Huron and the slum area, and I know of no community that has a greater proportion of its land destroyed by the expressway than will ours. Yet I feel that this is properly our obligation in my city and we must make this facility available to all people in this state.

An analysis of the tax allocation of a major core city reveals the following percentagewise distribution: 1. the public schools get 41.96; 2. the debt service, 14.44; 3. the public works, 9.22; 4. the pensions, 6.69; 5. the health and welfare, 3.79; 6. general government, 3.17; 7. public safety, 13.57; 8. the recreation, 2.76; 9. the library, 1.66; and 10. miscellaneous, 2.74. I haven't had the opportunity to research the various items composing the items of general government and miscellaneous. I think we all have an idea of what they might be, but the amount is not significant to be too concerned about, but I do feel that by this very makeup, it does point out that the services offered on this 100 per cent basis, the availability is very small to the residents of the perimeter communities.

I also submit that a local payroll tax would work against the best interests of industrial harmony. Employees of intracommunity corporations would compete against one another to gain positions in nontaxable communities. Certainly, corporations such as Bell telephone, the various food chains and others having employees in various communities would end up with a problem that the employees would want to select a community that did not have the payroll tax provision. This, in itself, would have a very deleterious effect on good employee-employer relationships.

I would like to review with you, very briefly, some of the advantages that I feel industry gives to a core community. First and foremost, plants and industries provide a broader tax base and personal property tax, in addition to the property tax. Secondly, plants and industry provide their own fire and police protection, eliminating the biggest cost of this service. Plants also provide their own related sanitation service, relieving government of this costly item. Third, the space occupied by industry does not contribute children, thereby eliminating school costs, one of the most costly facets of government. I am sure all of you who have problems in your school districts agree that if you are fortunate enough to have a piece of land occupied by industry this does take a tremendous load and tax burden off your community.

Municipal income taxes, once generally adopted by all communities, would compel cities to compete with each other in an attempt to lure industry to their town. A municipal income tax would create more hardship on suburban dwellers already hard pressed to provide the urgent services in newly developed communities. Of the payroll tax on nonresidents, Mr. Beasley of the manufacturers national bank of Detroit and a member of the economic club of Detroit recently said:

> It could result in double taxation for suburban residents and what many people don't realize is that nonresidents are giving Detroit as much as they're taking. They are paying for physical improvements where they live, and they would have to pay taxes in a core city without them assuming any responsibilities of their home communities.

Perimeter residents do not have an opportunity to voice their approval or objections of items that contribute to the cost of operating government in core communities. So, this quite obviously substantiates the position that this would be taxation without representation.

Now, what are the arguments? One of the arguments that you will be hearing is that the core cities provide service for the suburban areas. I have done a little preliminary research on this thing, and I have found that suburban residents buy services from core cities and pay fair premiums for use of intercepter sewers, water supplies, et cetera. For a specific example of how suburban communities help make a service profitable for a core city, let me quote briefly from a recent survey of the water development program for the metropolitan area.

> This water board is the only self supporting water utility in the country that has an AA investment rating. The financial stability of this system is the primary factor in maintaining this rating. The August 7 issue of the Weekly Bond Buyer, a leading national publication in the financial world, carries an article with high praise for the core city's financial operations. The article compares the water revenue bonds with those of Chicago and concludes that the difference in Detroit's AA rating and Chicago's A rating, results from 2 major basic factors: the greater protection offered holders of their bonds and the soundness of the policies that control this city's financial position.

I think it is also very interesting to note the contribution that the perimeter communities make in this respect. Here is another example:

> Plymouth township began using this water service in October to become the fifty-first outlying community served by this water board. This water was made available last year when the water board completed the $2,400,000 Ford

road main to Farmington road. The township has spent $1,200,000 for pumping and distribution facilities to this service which takes care of approximately ½ of these residents.

Obviously the suburban participation permits rapid amortization of the cost. This article compares this water revenue bond with those in Chicago, and obviously, the financial structure is praised.

Now, I would like to bring you another very recent example of how this sponsorship and hand in hand cooperation goes well. Another good example of suburban assistance to core city facilities is cited in the February 5 edition of the Detroit News. In an article entitled Profits on Suburban Runs Offset DSR Sunday Losses, under the by-line of Robert L. Wells, and this is a quote:

> The "sweetened" DSR Sunday service instituted by Mayor Cavanagh is causing a $12,000 a year loss, but James E. Bostick, acting general manager, said today this service will not be expanded to the point of bankrupting the system.
>
> Presently, Bostick explained, the loss being suffered from the reinstatement of 4 Sunday lines is offset by the profit from new suburban lines.
>
> The experiment with the new Sunday lines is the first phase of the "sweetened" service that Cavanagh promised DSR patrons in his campaign, and, as predicted, each line is operating at a great loss.
>
> "In my talks with Mayor Cavanagh," Bostick said, "I have stressed the need to keep the system operating at a profit. The mayor and the 3 DSR commissioners agree wholeheartedly."
>
> A pleasant surprise to the DSR officials are the fare receipts from the extension of bus lines into the downriver communities.
>
> The 2 major extensions were on the Michigan line to Dearborn, Inkster, Wayne, and Garden City, and the Fort line to Melvindale and Allen Park.
>
> Smith said the receipts from the Michigan and Fort extensions to the suburbs are showing a far greater profit than anticipated.
>
> Comparing the 7 day period ending last January 28 with that of January 29, 1961, the Michigan line showed an increase of 13,411 miles operated and a total revenue increase of $853,200.
>
> Bostick said the Michigan line last week operated at a 63 cents a mile revenue figure. The "out of pocket revenue" the system must recapture to break even is 50 cents on an operating mile.
>
> The Fort line extension to Melvindale and Allen Park, for the week ending January 21, showed an increase of mileage of 11,930 and a revenue jump of $6,087 for an average of 51 cents per mile in out of pocket revenue.

Now, this is very important to observe. Bostick said:

> I cannot stress too much how the service has been improved for Detroit riders by the extension of the lines to the suburban area.
>
> If you will remember that coaches formerly started to empty from the Wyoming-Michigan terminal, the new operation brings Michigan coaches to the Wyoming city limits nearly full.
>
> So we have had to increase the number of coaches in service and have cut the headway, or interval, between buses from 18 down to 14 minutes inside the city limits.
>
> The same thing has happened on Fort, because the headway in the base hours (from 9:30 a.m. to 3:30 p.m.) also has been cut from 18 to 14 minutes.

This very graphically demonstrates the participation by the perimeter cities; not only helps advertise the nub of the problem, but also provides increased service.

Now, in conclusion I would like to say that in view of the foregoing it is quite obvious that a payroll tax on nonresidents would sap the vitality of the suburbs and I submit to you that the long range success of a core city depends on the vitality and the health of the suburbs.

The document turned out by this convention will contain no provision more sensitive than that dealing with taxation, and it must be approved by a majority of the people. If those sections dealing with taxation appear to be less than equitable, seem weighted for some segments and against others, then the entire document could be lost.

I know that the problems faced by the delegates are many, large and complicated, and I know that the constitution we want to produce will outlast generations of men. To do that, it must be equitable in all of its provisions, but most of all in those sections dealing with taxation.

I hope that these views of mine may prove to be of some value to you as you ponder on the general question of taxation. I want to thank the delegates for their patience during the presentation of my report. It is one that is very important and significant, not only to myself but to many people in the convention.

I attempt to bring this matter to you objectively, with a full realization that our core cities and our core communities do have a problem, but this is one I feel that we cannot beckon to, we must waken to. We must recognize our problems, and at the same time, try to inspire the sort of economic challenge that will permit the core cities to maintain their place in the state of Michigan. Certainly we all want to go down this way united. Thank you very much.

CHAIRMAN DeVRIES: The question before the committee is the amendment offered by Messrs. Sharpe, Finch and Snyder. Does the gentleman from Pontiac, Delegate Kuhn, seek recognition on this amendment?

MR. KUHN: Mr. Chairman, I had an amendment very similar to this, and I think that I will wait until later on to make my statement.

CHAIRMAN DeVRIES: Delegate Kuhn yields to the delegate from Lincoln Park, Delegate Suzore.

MR. SUZORE: I would just like to rise in support of the amendment. Back as far as a month ago when this article was being written by the local government committee, I opposed the wording as it is now presented to you, and I would like to submit to you the fact that the newspaper which covers 50,000 homes in the suburban area of southwest Wayne county conducted a poll over the past 2 weeks, and you received a small, reduced size copy of it last week, 2 pages of it, in which they submitted to the delegates a copy of the coupon that was printed therein to be mailed back to the newspaper.

I might say that they indicated to me yesterday that they had never received so many coupons in return opposing a payroll tax on a city or county basis as they had received on this coupon. In other words, they had conducted many searches for the thinking of the people before on various issues, and in this issue, the people spoke out loud and plain against this type of tax.

I would say this. I would certainly not be against an income tax levied on a statewide basis, but I believe that this is unfair, inequitable, and that we should oppose the placing of an income tax or leaving a loophole open in the constitution so that any city or county might impose it upon the residents of some other city, a nonresident therein, and I would therefore ask the defeat of the general thinking of the committee and the support of the amendment.

CHAIRMAN DeVRIES: The Chair will recognize the gentleman from Mattawan, Delegate Finch.

MR. FINCH: Mr. Chairman and members of the committee, I think most everything that I was going to say has been said, with the exception of a couple or three things that I will mention. First, when this situation was first brought up in our committee, I thought this was a very admirable position for the people from the cities to take, to want to raise funds to support themselves, to help themselves, until I found out that they were giving us the business, and wanting to put on a payroll tax.

Of course, I am opposed to this, because my neighbors, living out there where I am, and many working in Kalamazoo or some other city, naturally do not want to pay a tax in that city and then reside outside, because they feel it is a tax without representation. Also, they spend the most of their

wages in the city. Most of the wages they receive are spent there.

Another thing that I am thinking about that could happen, and that is if this is allowed to stand as it is written and the cities should develop a payroll tax, this could become a major source of revenue and a major source of taxation for a city. Since probably ½ of their employees, or even 2/3 of them, might reside outside the city, they would say, "This is a good way of receiving a lot of revenue that is not coming out of our people in the city." So, I urge the adoption of this amendment.

I would also say one other thing to you, that I am perfectly willing that the city do anything that it wants to to further its own financial picture, so long as it does it and pays the bill itself. In other words, if Kalamazoo wants to build a mall, that is perfectly all right with me as long as Kalamazoo pays for it.

I would also like to say this to the delegates: that if Delegate Madar wants to raise more money for the city of Detroit, then let him raise his own taxes and not ours.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Wyandotte, Delegate McCauley.

MR. McCAULEY: Mr. Chairman and members of the committee, I might say the arguments that we have just heard, we listened to in the subcommittee on local government. Nothing new has been added here. The only thing that concerns me a little bit in reading this proposal—I had to look at it 2 or 3 times, I thought that we did mention payroll tax or income tax— and I would like to call it to the attention of the delegates, that all we are saying is "Each city and village is hereby granted power to levy taxes for public purposes subject to limitations and prohibitions set forth in this constitution or law."

I might remind the delegates that just the other day we went through this thing in the finance and taxation committee, whereby we were arguing whether or not there should be a graduated income tax or should there be a flat rate income tax. It is the feeling of the committee that the constitution is certainly no place to write this type of tax legislation. We are attempting to give flexibility to cities and villages.

And, let me say this: I am happy that Suzore's paper does not come into my town, but I certainly think that it was the feeling of the committee that we want the state to step in to take over this function; we realize that the state also has financial problems, and I think it was the committee's feeling that we are hoping that the state will preempt this field. Once the cities are given this power—if they are given it—some of the cities that I represent, I don't believe will know what to do with it.

I honestly feel that this is something that provides the flexibility in the constitution that is necessary, in the long range planning of good government for the next 50 or 60 years, and I might say that the committee is unalterably opposed to the amendment offered by Messrs. Snyder, Finch, Sharpe and Suzore.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Kalamazoo, Delegate Allen.

MR. ALLEN: Mr. Chairman and members of the committee, the question which we are discussing is whether or not the committee proposal, which would give broad powers of taxation to cities and villages, should, by an amendment which is proposed, be arbitrarily limited by the limitation that no payroll tax could be imposed on anyone unless he lived within the city.

Now, let's start out and ask ourselves if we really mean that? Why should we single this tax out rather than others? Let me give you an example. On the federal income tax level—and this is only a state tax of the same nature, at least the payroll part of it, as the federal—we have a lot of people that come over from Canada to Detroit, and yet those people pay United States income taxes, and this helps our federal government, and nobody objects. Do you want to establish a policy here, to be consistent, that these people who come from Canada and earn their living—and a good living—in the United States, should not contribute to our government? If you are going to be consistent, then you will be if you vote for this proposed amendment, because there is no difference, except the difference of one country to another, as compared with one city or one township to another city. Or do we want to be consistent on the property tax?

Why do we single out this income tax? I think there probably are a lot of delegates here who have a cottage somewhere up north, and you are a nonresident and on that cottage you pay a tax to support the schools of Petoskey or the schools of Cheboygan or the schools of the upper peninsula, and you pay for street lighting in the town in which your cabin is located, or the township, and yet you don't receive any direct service from it. Why do we limit this one tax, the income tax, and not limit the others?

Or let's take another example. Over in Toledo we have quite a few people who go from the southeastern part of Michigan, across the border and work in Toledo, and they pay an income tax to Ohio on the wages which they earn there. Do you want to perpetrate a system under which our Michigan people must pay in Ohio but Michigan cannot reciprocate? Or let's take the upper peninsula, if Wisconsin should do the same thing. Do you want to freeze into this constitution—and this is what you will be doing—a provision that our people must pay in Wisconsin, if they cross the border, but we don't have the right to reverse and do the same thing? I don't think we want to do it, and once we put it in the constitution, it is there and it is frozen.

Let's turn to another point where I think the amendment is weak. This isn't anything new. What we are talking about here is a field of experience where, fortunately, we can look at other states and see what they have done. For many years Ohio has had a provision similar to this. A number of municipalities, some 300 in Pennsylvania, have the same thing. Parts of California have the same thing, and these jurisdictions have learned to work this matter out one with the other, and they have learned that the best thing to do is not to make the limitation which is proposed here.

For example, Maumee and Toledo. Toledo first passed a payroll tax, and there is a little town of Maumee across the Maumee river. So finally Maumee got around to doing it, and what have they done? They have worked out a system under which half of the money from Maumee people who work in Toledo is returned to Maumee, and half of the money which comes from Toledo is returned to Toledo. This has been worked out and it works very well, and as a result of it, the city of Toledo, when this was first put in, reduced its real estate tax from around 11 mills to 6 mills.

I submit to you that when we freeze an artificial restraint in the constitution, we have made it difficult to change. That is the reason we put it there. This is inconsistent with the experience in other states where this sort of thing has been tried, and it really isn't fair. I think if we want to really destroy the purpose of this whole provision, which is to broaden the tax base so that we can have more elasticity in city and village funds so that we can reduce the property tax, we will be destroying it or going very close to destroying it, seriously hampering it, if we write into the constitution this kind of a limitation.

We are drawing a broad document here, and we have to learn from the experience in other jurisdictions. I personally feel that if cities start to legislate in the field of wages, wage taxes, payroll taxes, that necessarily the state of Michigan will step in and write the ground rules, and this is what we intend here. We give the broad power to tax in this provision and we make it self executing, but we also say that the legislature has the right to step in and write the ground rules. The legislature here will be the one that provides the elasticity, the one that is the regulator, the one that, from time to time, can make the adjustments.

We cannot foresee these adjustments for the next 50 years. I think that this amendment is bad; it is bad in the experience of other states; it isn't logical with what we do on property taxes or on our federal income taxes; it is going to penalize Michigan in relation to Ohio and to Wisconsin. Let's think of this thing in terms of the big picture and vote the amendment down. I don't think suburban cities have a great deal to

worry about, I sincerely don't. It will be no different when we all get through with it than in the other jurisdictions.

CHAIRMAN DeVRIES: For those people impatiently seeking recognition, the Chair will point out that there are 12 people on the list. The Chair will recognize next the gentleman from Detroit, Delegate Madar.

MR. MADAR: First I would like to make a couple of corrections—not a couple of corrections, but I would like to make a couple of statements about what Mr. Snyder had to say. To begin with, Detroit's water system was a success long before the builders out of Detroit decided to build a community out on the east side of the city of Detroit, and we were paying our bills, and we were successful and making money. I might say that we were a success before the other 51 townships and cities were buying water from us, and it was our water system.

Two, I would like to make a statement regarding the DSR. You know, to listen to Mr. Snyder tell you about what he read in the paper the other day, the city of Detroit is now making millions of dollars from the people out in the suburbs. Actually, we just started sending our buses to those suburbs approximately 4 or 5 weeks ago, at the very most, and already, without any criticism at all about our system, without telling us that there is something wrong, already 1 or 2 of the cities are now trying to get the rest of the cities and townships to pull the DSR out of the townships and cities and give the business to somebody else. Oh, yes, they help us.

I am not going to talk to you too long today about this, because I talked to you the other day when I told you about our "bedroom cities"—well, let's say "bedroom communities", thanks, Mr. Mahinske—but the thing that I wanted to say is that instead of me doing all the talking—I don't know too much about taxes, I am only thanking the Lord that I have the opportunity to pay taxes, and I can pay them, and frankly, I don't think that I pay anywhere near enough in this community. I hope that I can keep on paying them and more, if it is necessary.

There are very good reasons why we must pay taxes. As I said though, there are 33 others that can talk about this, about taxes, but I want to see what would happen to the city of Detroit—they talk about this core city, and that we have all of these factories, all of these plants where they come to to work. Yes, it is very true, they do come into the city of Detroit, but how long are you going to be able to come into the city of Detroit to work when, if we don't get the opportunity to raise money to support the services that everybody wants, when we have to raise the property taxes and everything else so high that those factories move to Arkansas, to Tennessee, to Georgia, to Alabama and everywhere else except Michigan, then what are you going to do? Remember, that you can't all, after you have worked in the city of Detroit, move out to some other city in Michigan, like some others have here, and are now just doing everything they can to ruin the city of Detroit, even though they made money enough to move outside the city. I am speaking now about some of the sponsors of the amendment. Oh, they are hurt terribly.

Mr. Finch, no doubt, sends a lot of Christmas trees to Detroit, and I am happy that he is able to do so. I am happy that he is able to stand up here and mention me. I hadn't said a word about this, but since he did, I would like to get back and tell him that if the people of the city of Detroit have to leave, he isn't going to send many Christmas trees into Detroit then. Mr. Finch, I don't think you will like it. I don't think that solidarity house will stay in the city of Detroit very long if the plants leave. I think they will leave. And I am afraid then that maybe Mr. Snyder will have to look for a job somewhere else.

CHAIRMAN DeVRIES: Mr. Madar, will you confine your comments to the amendment, please?

MR. MADAR: I am. This is on the amendment, as to why we should do something about defeating it.

Mr. Sharpe confided to me one day how he had worked in the city of Detroit. There isn't any doubt about it, most people have worked in the city of Detroit who are somewhere around here close to us. I am proud of the fact that they were able to do so. Whether you raise moneys or not isn't going to bother me too much, because if we don't get a chance to put across an income tax, we are going to have to do it some other way, and if we can't do it in some other method, then you are going to have to pay it outside of the city of Detroit, because somebody's got to support these things, somebody's going to pay these taxes, and I only hope that we can handle our own. I don't want to come to you. I would rather see us do it down there. Thank you very much.

CHAIRMAN DeVRIES: The question before the committee is the amendment offered by Messrs. Sharpe, Finch and Snyder, which the secretary will read.

SECRETARY CHASE: The amendment is:

[The amendment was again read by the secretary. For text, see above, page 1008.]

CHAIRMAN DeVRIES: The Chair recognizes the lady from Dearborn, Delegate Cushman.

MRS. CUSHMAN: Mr. Chairman and delegates, from a personal point of view, I suppose I should be favoring this amendment, because we are one of those families that lives outside the city but work inside the city, but I must say that I rise to oppose this amendment. I consider that it would be extremely ill advised to adopt any such amendment, such a restriction in our constitution.

I think, for one thing, we ought to realize what the effect on the central city would be. In the past 10 years we have seen a natural decline in the population of many of our central cities. Such a restriction would certainly increase the rate at which people are leaving the central city, and I consider that this is an unwise thing to advance.

The second point that I would like to make is that we are all tied together economically in the Detroit area, and, I am sure, in other metropolitan areas as well. We depend on the central city for many things, art museums, theaters, other cultural advantages; we depend on it for a place to shop, for a place to work, and in turn, it depends on us. One reason why this water system is covering the entire area and doing a good job of it is because it is on an area basis. It is not restricted to either outside the city or inside the city.

I think that this tax would recognize the fact that we are tied together, that we are economically interdependent. I am sure that the leaders of Detroit are aware of the many problems, and the solution of them they will do their best to find. If they have to put a payroll tax on, I am sure it will be because they need a payroll tax desperately.

The second thing is that if there is a problem that is of such statewide importance, there is a recourse to the legislature, which does retain overall control in this area as it should and as it does in many other areas. Thank you.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Romeo, Delegate Rush.

MR. RUSH: Mr. Chairman, fellow delegates, I rise to support the Snyder amendment. I would like to point out that we have no quarrel with the industrial areas if they want to levy payroll taxes or income taxes to take care of their own local form of government. But when they start levying those taxes upon residents of surrounding areas, we get into a lot of complications.

I would like to approach this matter from the standpoint of how it would affect our school districts. We know—especially those of us in the committee on education, having studied and talked about the wide variation in the valuation and wealth of the school districts throughout our state—and we find surrounding every industrial area, residential areas where the people in that area have great difficulty in providing just a fair, adequate school program. This matter, here, is only going to aggravate that situation. We have school districts in Michigan with less than $4,000 per assessed valuation per child. We have others well over $60,000. The low ones are the residential areas with no industry. The high ones are the areas where they have lots of industry. Now then, if we are going to allow those areas with the industry to put on payroll taxes, incomes taxes and so forth and levy them against the people of the surrounding areas who have no industry and

are having a hard time supporting their own schools, we are going to create a great injustice.

Mr. Allen pointed out how Maumee and Toledo reciprocate. That is fine where you have 2 areas like that that can do that sort of thing, but what about the area where there is no industry? What recourse has the area that has no industrial plant at all? They have their schools, of course, to support and they have their local government to support. If they have to pay payroll taxes, income taxes in the industrial areas and still keep up their own schools and their own local government, I think that is a great injustice. Thank you.

CHAIRMAN DeVRIES: Does the gentleman from Madison Heights, Delegate Walker, still seek recognition on this amendment?

MR. WALKER: Yes, Mr. Chairman. I would like to speak, as briefly as possible, in support of the Finch, Sharpe and Snyder amendment, and I would like to thank Mr. Madar for his contribution. My first thoughts on this, and first thoughts in support of this amendment were, I confess, selfish, being a resident of a suburban community. However, since then, investigation has shown that a suburban city could avenge itself, let us say, by passing a reciprocal tax. However, this whole thing spreads out like waves of a stone dropped in water, until it comes to the end point, the townships. And the townships, as I understand it, are not allowed to levy such a tax to protect themselves or to recoup some of the losses of their citizens to the core city, whether it be Detroit or whatever.

Therefore, I would again like to repeat that I speak in support of the amendment before us.

CHAIRMAN DeVRIES: The Chair recognizes the lady from Livonia, Delegate Conklin.

MRS. CONKLIN: Mr. Chairman, I would like to ask a question, if I could, and I guess, perhaps of Mr. Snyder.

CHAIRMAN DeVRIES: You may, if the gentleman cares to answer.

MRS. CONKLIN: I guess he isn't in the room. Mr. Sharpe, will you answer the question? As I understand this committee proposal before us, it says, on the end of line 13, "subject to limitations and prohibitions set forth in this constitution or law." As I understand this, right now there are no laws governing this type of tax. In other words, these cities can do this and there are no laws now appearing on the books which would govern it.

If this constitution should be adopted by the voters in November, 1962, it would seem to me then that the legislature wouldn't even get around to passing any laws governing this until their session in 1963, by which time every city in the state could have already indoctrinated such a procedure, assessing a payroll tax. I envision my city of Livonia suddenly coming up with the idea that we should then pass a payroll tax on all those people who live in Nankin township or elsewhere and work in Livonia. Now, is this protected or not? Are there any laws now appearing in any books anywhere which would govern this?

CHAIRMAN DeVRIES: Delegate Conklin yields to Delegate Sharpe for the purpose of answering the question. Delegate Sharpe.

MR. SHARPE: Delegate Conklin, I do not understand, entirely, your question. If I am correct in your thinking, you are assuming that we have no laws to govern a payroll tax.

MRS. CONKLIN: There is nothing to prevent them from doing it at this time.

MR. SHARPE: There is something to prevent a city. A city cannot invoke a payroll tax. There is a question of whether they can or not. The city of Detroit seems to think they can; however, there seems to be a question whether or not they can. This is something that maybe Mr. Snyder could answer a little more eloquently, and since you did ask for him first, and he is here at this time, I would like to yield to him.

MRS. CONKLIN: Mr. Chairman, may I ask Mr. Snyder the question?

CHAIRMAN DeVRIES: You may, if the gentleman cares to answer it.

MR. SNYDER: Mr. Chairman, in reply to the question, I can only say that there are probably 56 people, because of training, that have a better background to answer this thing. I do know that there is some area of doubt, and this would clarify it down to the point there would not be any doubt.

I would like to be a little bit more specific in one answer. The legislature, even in anticipation of an affirmative action of this body on this, has already several proposals in. I understand that Mr. Hungerford has introduced house bills 41, 42, 43, 44, 45 and 46 and they would eliminate certain portions of the payroll from municipal taxation. In other words, they are already starting to eliminate certain groups from taxation if this proposal would go through.

MRS. CONKLIN: If I understand you correctly then, in anticipation of our not preventing this, they are now preparing bills which will exempt some people from paying this payroll tax?

MR. SNYDER: Portions of their income would be exempted, from a very brief draft that was presented to me by the research department. I understand basically the problem is this: if a legislator, say, had $1,000 coming, and $100 went to a pension payment, only $900 of this would be considered as taxable income.

CHAIRMAN DeVRIES: Delegate Conklin, will you yield to the delegate from Kalamazoo for an answer to your question?

MRS. CONKLIN: Yes, sir.

CHAIRMAN DeVRIES: Delegate Allen.

MR. ALLEN: Delegate Conklin, you are right, there are no laws on the subject because it has been doubtful whether or not cities had this power. Now, cities don't have the power unless it is a city that has a charter which says it may collect excises. Detroit has such a charter. So does Kalamazoo, and so do a few others. If it has a charter which says it may collect excises, then most lawyers would say it may go out and levy a payroll tax. But not too many cities have this in their own charter. So this is why cities want the power, because they don't have anything, and secondly, where their charter says they have it, there is some legal doubt. As a result of it, the legislature has done nothing. But, as Delegate Snyder says, the legislature has been giving quite a bit of consideration to it. Though the constitution might be passed in November, it wouldn't go into effect until later, and I think the legislature would have time.

MRS. CONKLIN: I would just like to say I want to support the amendment of Mr. Snyder, Mr. Sharpe and Mr. Finch.

CHAIRMAN DeVRIES: Does the chairman of the committee on local government still seek recognition on the amendment?

MR. A. G. ELLIOTT: Mr. Chairman, if you have other names to speak on the amendment, I will wait.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Grand Rapids, Delegate Tubbs.

MR. TUBBS: Mr. Chairman, I wanted to second what Delegate Allen of Kalamazoo said awhile ago. I think we are here confused between constitutional principles and actual practice. It may be very unwise for any municipality to put on what is called here a payroll tax, but I certainly would want the constitution to give any municipality the power to do it if they wanted to.

I don't know where these people have been for the last 50 years. The home rule act, which was adopted after the 1908 constitution, gives cities the power to levy rents, tolls and excises, or at least it gives them the power to put it in their charters. It happens that I was city attorney of Grand Rapids and it has such power in its charter. I told the city commission, at one time, that they had the power to do it. They decided it was unwise to do it because the people would rise up in arms. But that is an entirely different question.

We ought to be dealing with power here, and not wisdom.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Detroit, Delegate Youngblood.

MR. YOUNGBLOOD: I have one question here. If the people living in the city of Detroit should work at the tank arsenal or outside of the county itself, how are they going to get them on the payroll tax?

CHAIRMAN DeVRIES: To whom do you direct your question, Delegate Youngblood?

MR. YOUNGBLOOD: To anyone who cares to answer, please.

CHAIRMAN DeVRIES: Do any of the sponsors of the amendment care to answer the question? Delegate Snyder.

MR. SNYDER: I would assume, Mr. Chairman, that the community would have to enact a reciprocity tax, because, as Mr. Allen has pointed out, you can't trade unless you are prepared to give something in return. So, this is one of the points that I wanted to make, for the community that did not have a payroll tax, in order to recover some of the money, they would have to put a tax on all of the residents of their community in order to get some of the money back. I don't know if anybody has come up with an idea that would give the community of the nonresidents a check every month. I haven't heard any yet, but I would assume that they would have to adopt a nonreciprocity tax.

I don't know whether I am permitted to do so, but I think Mr. Ford has a problem that might be complicated because in a township they do not have an opportunity to levy such a tax, and therefore this revenue would be completely lost to the townships.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Detroit, Delegate Mahinske.

MR. MAHINSKE: I rise to speak against the amendment to the committee proposal for the reason that as the amendment stands, it would freeze out a possible source of revenue for the life of the document itself. This I am against. I oppose the prohibition of any source of revenue for a local or state agency in the constitution. I don't believe that this is in good keeping with all the arguments that we have heard that tend to argue for fiscal flexibility.

The committee proposal provides for action from the legislature in the event that this method is either abused or, in fact, used in any given area. In the interest of fiscal flexibility at all levels of government, I must oppose the amendment as I would oppose any other prohibitions against possible sources of revenue in the constitution itself.

CHAIRMAN DeVRIES: The gentleman from Mattawan, Delegate Finch.

MR. FINCH: Mr. Chairman and members of the committee, first I would like to thank Mr. Madar for some free advertising. However, the Christmas trees do not go to Detroit.

In answer to Mr. Allen and the way they handle this in Ohio with half of the funds going back, or a portion of the funds going back to the local government in which the worker resides, I can see a nice thing happening out in our area where half the people might work in Kalamazoo and the other half are either self employed or work someplace else. Then half those people would be bringing money back to our treasury and the other half wouldn't be, and, boy, would there ever be a "free for all" going on there.

Also, let me remind you that the cities where these people are working have the industry, and the industry is paying a good share of their taxes, the city's taxes. I think that is it.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Taylor, Delegate Marshall.

MR. MARSHALL: Mr. Chairman and members of the legislature—I am sorry, I got confused as to whether I am in the constitutional convention or the legislature. However, I rise to oppose the amendment on the same grounds that I opposed the proposal that was passed in the committee of the whole here the other day when you incorporated into the constitution a prohibition against a graduated income tax. I want to make it clear, however, in the outset, that I am opposed to any form of local income tax or payroll tax.

I think this could become a very vicious cycle and you could create a chaotic condition, and if one or two of the more populous cities and counties in the state were permitted to enact an income tax or a payroll tax, you would make it, in my opinion, practically impossible to solve the entire financial problem in the state of Michigan. I think this is a matter that again, as I have argued heretofore, is purely statutory in nature. I think that the legislature should have freedom to operate in this area. The 1908 constitution, as a matter of fact, satisfies me because it was solid in this particular situation.

Even if you should enact a payroll tax and restrict it only to a given city, putting a prohibition in against applying it to those who do not live in the city, how would you apply the payroll tax to professional people, such as dentists, the groceryman, the salesman who works on a commission? No one has explained to me just exactly how this payroll tax would work and how it could be applied.

I think we are again, today, spending an untold number of hours, and I had not intended to speak because I am guilty of taking up the time also, of debating a question which is purely statutory, one in which everything that could be said has been said, and if every delegate in this constitutional convention should get up on the floor and speak on this amendment, on this issue, it would only be a repetition, maybe in different words, but the same thing would be said over and over and over again. Therefore, I oppose the amendment.

I want to see—and I am not quite sure at this time whether I am in favor of the committee proposal, as written, because the 1908 constitution satisfied me in this particular area—I do not want to see us get in a position whereby constitutional law would provide that a city can enact a payroll tax or an income tax, whether or not it applies only to the residents of that city or to the residents of the community as a whole or the county as a whole.

I know that I am not an expert in this field. I don't propose to be one. I say this, though: that there are experts in this hall, and I think that the experts in this constitutional convention will agree with a statement that I made a moment ago, that if any one large community or county or two enacted a payroll or an income tax, that we would not be able—it would hinder us in solving the financial difficulties of the state. In order to solve the problems, not only at the state level but at the local units of government, it has to be state money, it has to be a state tax enacted by the legislature, with the necessary provisions to make allocations back to the local unit of government.

Therefore, Mr. Chairman, I oppose the amendment.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Detroit, Delegate Austin.

MR. AUSTIN: Mr. Chairman, I too, am rather reluctant to talk on this subject, since so much has been said. Also, I would like to comment on Mr. Allen's remarks. I think that he said, pretty much, all that needed to be said, but I have a feeling that a great deal of what he said has been forgotten by now, and I would like to underscore some of the things that he said.

I am speaking in opposition to the amendment of Delegates Finch, Sharpe and Snyder, and in favor of the committee proposal. Before I do so, I would like to impart just a little bit of important information about municipal income taxes. There are 400 cities in our country today that levy a municipal income tax. Most of these taxes are levied on the residents of the community, that is on all income of the residents of the community, and on that portion of income of nonresidents earned in the city or municipality.

As Mr. Allen pointed out, where neighboring communities also levy the tax, there is a reciprocal arrangement worked out whereby, as a rule, both communities share to the extent of ½ of the revenue derived from the tax for a nonresident working in one city who happens to be a resident in the other. This is a highly desirable type of legislation or revenue for a city. When you consider that in the state of Michigan, almost 97 per cent of the revenue of local government is derived from the property tax, the property tax base is subject to many types of erosion, various types of exemptions, increase in the governmental use of property, taking property off the tax rolls, highway construction. The property tax base is actually diminishing, but it is still the only base on which cities may levy tax.

It is true that those who have home rule powers believe they have the right to levy an income tax, but it is highly desirable to clear the matter up in this constitution, and in

clearing it up, it does not seem appropriate to impose any more restrictions than we now have on our cities.

I might point out that the city of Detroit is the only major city in the United States that does not have a supplemental form of revenue, either in the form of an income tax or a sales tax. Detroit is the only major city in the country that does not have a supplemental source of revenue.

The other point that I would like to underscore, one made by Delegate Allen, is that we need not be concerned about the problem of taxation without representation, because taxation without representation is common in local government, certainly where property tax is involved. It is not uncommon for a city to derive a good deal of its tax revenue from property that is owned by nonresidents who do not have a vote in the community. We are accustomed, in this respect, at the local level, to taxation without representation.

I would like to point out also, that practically all of the municipalities, the 400 who now have municipal income taxes, have what is known as the reciprocal arrangement. They, as a rule, tax all of the income of residents, and that portion of the income of nonresidents earned in the city.

If we are going to impose a restriction on the cities or municipalities here in our state who levy this tax in such a way that they cannot levy on the income of nonresidents, I would say that we are putting them at a disadvantage. Let us not forget the remarks of Mrs. Cushman, when she said that core cities must continue to render a level of service for the metropolitan complex, even though they are losing property from their base. If they are going to get sufficient revenue to render the level of services that are necessary to the metropolitan complex, it is highly desirable that they be able to levy an income tax, and that they be able to extend it to the income of nonresidents who earn their living within the city limits.

I support the committee proposal and oppose the amendment.

CHAIRMAN DeVRIES: The question before the committee is the Sharpe amendment. The Chair recognizes the gentleman from Detroit, Vice President Downs.

MR. DOWNS: Mr. Chairman, fellow delegates, we have here another example of an attempt to limit taxing powers in the constitution. This is similar to what was done in the matter of the graduated income tax. I agree completely with Delegate Tubbs when he said we are dealing with powers and not with wisdom. I do suggest that if we end up just putting ceilings on taxes, we might as well then go all the way and get away from the subject of power and get truly into the matter of wisdom and legislative function, and see if we can then write a complete tax law right in the constitution.

For example, the matter of corporation and personal income taxes on a statewide basis with a rebate to communities. I hope that I do not formally put this in or any of us feel that we need to, but I do caution us that if we end up with a negative attitude of how communities in the state cannot provide tax revenue, then it may be that the other side of that coin is we will need to write those methods of taxation into the constitution.

I do feel that the real problem here is that our core cities and smaller units of government simply are not large enough to deal with our larger economic units, and that what we are going to come to is a matter of statewide taxes with rebates back to local communities. This should be a legislative matter. We should not try to write that for the next 50 years, and I plead with the delegates to make a minimum of limitations, so that there can be a maximum of tax freedom for developing the need in the years to come.

MR. SHARPE: Point of order, Mr. Chairman.

CHAIRMAN DeVRIES: What is your point of order, Delegate Sharpe?

MR. SHARPE: I wonder if it would be possible for us to stay germane to the amendment. Mr. Austin has been talking about an income tax, and Mr. Downs has been talking about an income tax, and we are not talking about an income tax but a payroll tax, and there is a distinct difference between a payroll tax and an income tax.

CHAIRMAN DeVRIES: Your point is well taken, Mr. Sharpe. The Chair recognizes the gentleman from Menominee, Delegate Lundgren.

MR. LUNDGREN: Thank you, Mr. Chairman. I would like to direct this question to either the committee or the proposers of the amendment because I think it is something germane. I went to the finance and taxation committee some time ago, thinking I was in the right "house", but after listening for 2 hours now to a great amount of debate on taxation, I realize now that I should have gone to the local government committee, because it seems that they are more confined to taxation than they are to anything else today.

My question is, from the particular part of the state that I am—and it is going to face other parts of Michigan, I feel, in the very near future—we do have, right now facing our constituents in Menominee, a payroll tax that is being withheld in Wisconsin, as of February 1. It is a tax without any representation because they get nothing. The people that live in Menominee and work in the sister city across the river in Wisconsin who are subject to the Wisconsin income tax which they have had for some time—but now, with a withholding feature, that is really raising the devil with the people in my area, as you can well imagine, living in Menominee and going to Marinette and working every day and having all their taxes deducted on Wisconsin's income tax rates, and they get nothing in return except the ride across the bridge every day.

I pose this question to any of the amendment people, or the committee on local finance and taxation, or whatever you want to call it: is there any provision in there for intrastate taxation in what you are talking about?

CHAIRMAN DeVRIES: To whom does the gentleman wish to yield?

MR. LUNDGREN: I will yield to anybody that can answer it.

CHAIRMAN DeVRIES: Delegate Lundgren yields to Delegate McCauley.

MR. McCAULEY: Any features of this tax, whether it be a payroll, income, excise or sales tax, the ground rules will be set by the legislature. I am sure that probably one of the things that they will consider, Mr. Lundgren, is the fact that the people in Michigan are being taxed in Wisconsin, and they will look over your area to see that there are some safeguards for the people in your community.

MR. LUNDGREN: That is something that I wanted you to be aware of, and that is why I brought it to the floor. I wish all 143 delegates were here to hear my plea, while I have said something for the position that my people are in right now.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Detroit, Delegate Sterrett.

MR. STERRETT: Mr. Chairman and members of the committee, we have been sitting here for quite awhile hearing both sides of this argument, call it a payroll tax, and they have been talking income tax, and we have heard elaborate debate. Just to show you, now, that we have reached a point of where it begins to get silly, it boils down to where those outside of a big city don't want a tax and those inside the big city want the revenue.

Mr. Marshall got up and said quite a few words of good intent. I would like to support them. Here is a delegate of the minority party, and I am a delegate of the majority; he is from a township, and I am from a city. I feel also that the taxation should be on a state level, and I would like to see if we could get a vote out of this.

CHAIRMAN DeVRIES: The question now is on the amendment to section a offered by Messrs. Sharpe, Finch and Snyder. As many as are in favor of the amendment will say aye. Does the gentleman from St. Clair Shores request a division?

MR. SNYDER: Yes.

CHAIRMAN DeVRIES: Delegate Snyder demands a division. Is there support for a division vote on the amendment? There is sufficient support. The secretary will read the amendment.

SECRETARY CHASE: The amendment is:

[The amendment was again read by the secretary. For text, see above, page 1008.]

CHAIRMAN DeVRIES: The question is on the amendment offered by Messrs. Sharpe, Finch and Snyder to Committee Proposal 83, section a. As many as are in favor of the amendment will vote aye, as many as are opposed will vote no. The secretary will lock the machine and tally the vote. The secretary will announce the vote.

SECRETARY CHASE: On the adoption of the amendment offered by Messrs. Sharpe, Finch and Snyder, the yeas are 27, the nays are 93.

CHAIRMAN DeVRIES: The amendment is not adopted.

Are there any further amendments to section a?

SECRETARY CHASE: Mr. Kuhn offers the following amendment:

1. Amend page 1, line 13, after "law.", by inserting "No governmental subdivision shall impose any income tax except on its own residents; the state, however, may preempt this field of taxation.".

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Pontiac, Delegate Kuhn.

MR. KUHN: Mr. Chairman and fellow delegates, this amendment is broader than the previous one in that it allows no income tax. In other words, anyone that owns their own business or is self employed could not be subject to this taxation without representation. I would like to read a few short passages from the Daily Tribune, Royal Oak, Michigan, dated December 5, 1961, in which it said:

> One of the causes of the American revolution was the fact that the American colonies were being taxed by the mother country, Great Britain, without any opportunity to have a say in how these taxes were spent. The colonies could not abide this taxation without representation, and were willing to go to war to support their point.
>
> One of the cornerstones of our American system of government is the insistence that those who are taxed shall have some control over how their taxes are spent. Yet Detroit's new mayor, Jerome Cavanagh, has brought up again the proposal made by the Detroit city council a year or so ago, that Detroit may derive added revenue by placing an income tax on everyone who works in the city of Detroit, regardless of where he lives.
>
> Such a tax would affect thousands of suburbanites who work in Detroit. They would be asked to pay such a tax to Detroit without any possibility of having any control over the taxing expenditures. Detroit, in effect, is contending that communities such as ours are leeches, or parasites, living off of Detroit, without contributing anything in return. This is a supposition without a basis.
>
> The city of Detroit claims that the suburbanites—

CHAIRMAN DeVRIES: For what purpose does the gentleman arise?

MR. HATCH: Point of order, Mr. Chairman.

CHAIRMAN DeVRIES: State your point of order.

MR. HATCH: It seems to me that this amendment is no different than the one we just voted down. The added language that "the state . . . may preempt this field . . ." certainly is included in the language of the original proposal, which says, "subject to limitations and prohibitions set forth in this constitution or law."

CHAIRMAN DeVRIES: Delegate Hatch, the Chair rules that your point of order is not well taken, this is a broader amendment than the one we previously discussed, and the delegate will continue.

DELEGATE KUHN: Thank you, Mr. Chairman.

> The city of Detroit claims that suburbanites, in traveling to and from their work in Detroit use Detroit's city facilities, particularly streets and expressways. Yet, who pays for these streets? Not the citizens of Detroit, exclusively, but many others.
>
> Detroit's share in the sales tax collections is made on a statewide basis. Detroit's share in the gasoline and weight tax is also collected on a statewide basis.
>
> Its expressways were built 90 per cent with federal funds, which come from taxpayers all over the country, and many other of its institutions are supported with either state or federal funds.

This means that everyone in the suburbs, who pays gas taxes or other taxes is already helping to support Detroit in their services.

The proposal also ignores the fact that people working in plants and businesses in Detroit are working for firms already paying property taxes and business taxes to the city of Detroit. They already are helping to support Detroit.

> Detroit is neither fair nor realistic in its payroll tax proposal. The only way in which the payroll tax could be fair would be to have it on a statewide basis. All communities would tax in the same manner and such tax would be prorated among them. Such would not be the case if Detroit, alone, were allowed to levy such a payroll tax.
>
> Unless the principle of giving those who are taxed a voice in what they are taxed for is upheld, the very basis of representative government is destroyed.

Now, Mr. Chairman, in offering this amendment, I would like to say that we are not opposed to the city of Detroit levying an income tax, but we are opposed to any tax which does not have some basis for representation to go along with it.

CHAIRMAN DeVRIES: The question before the committee of the whole is the adoption of the Kuhn amendment to section a of Committee Proposal 83. The Chair recognizes the gentleman from Detroit, Delegate Mahinske.

MR. MAHINSKE: I would like to direct a question to Mr. Kuhn through the Chair.

CHAIRMAN DeVRIES: You may, if the gentleman cares to answer it.

MR. MAHINSKE: In your remarks, you have mentioned that you are opposed to any taxes that are not represented by the people who are being levied on. Would you carry this further to the general area of Pontiac and the resort areas who are taxed by people who do not live in that area on their property?

CHAIRMAN DeVRIES: Delegate Kuhn.

MR. KUHN: The property tax is based on the situs or on the property itself, and I think that is equitable.

MR. MAHINSKE: But these people, for increases, have the right to vote on school bond issues?

MR. KUHN: The answer is obvious; they are not allowed to vote on it, but I think that is entirely a different type of situation. It is a tax based on the property itself.

MR. MAHINSKE: It is a different type of taxation without representation, then.

MR. KUHN: It is based on property, as I said earlier, and they know it when they buy it.

MR. MAHINSKE: You mentioned in your amendment, unless otherwise preempted by the state.

MR. KUHN: Correct.

MR. MAHINSKE: Haven't we preempted the state moving in certain areas of income taxation here by abolishing or prohibiting the graduated income tax already in the convention?

MR. KUHN: I don't quite get the import of that question.

MR. MAHINSKE: You are saying that no local unit of government shall be empowered to levy an income tax, and at the same time you are leaving an escape valve here that the state can preempt the field with an income tax, but we have already limited the state's operation in the income tax area by prohibiting the state to act in a graduated income tax area. So, in other words, it is practically meaningless, in view of what we said, unless we go back and undo some our other tax amendments here.

MR. KUHN: The state could pass a flat rate income tax. That is what I would like to see if they want to have an income tax. I am not advocating an income tax, but at least it would be fair. It would also be fair if all the cities could have one, so we could prorate it, but to allow just 1 specific city to do it, I think, is entirely unfair.

MR. MAHINSKE: In conclusion here, I would like to state that I would be opposed to the amendment for basically the

same reasons that we are prohibiting sources of revenue in the basic document here.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Detroit, Delegate Ostrow.

MR. OSTROW: I would just like to add one little bit of information to the general picture here. We have heard that our expressways are paid for by the state and federal government, that these suburban communities pay for gas and water, but nobody has mentioned one little thing: when you drive over these expressways, does it ever occur to you that $31 million in assessed valuation of real estate was removed from Detroit's tax base forever? Take the $31 million worth of real estate, visualize the homes, the offices, the stores, the personal property tax, the purchasing power, the jobs that were removed forever from Detroit. Fully half of these moved to these suburban communities, because with these expressways they can now come into Detroit in 20 or 25 minutes instead of an hour and ½.

The Detroit taxpayers, however, must carry the entire tax burden of Detroit, including what would have been the tax burden of this $31 million of assessed valuation. Maybe the solution is for Detroit to blow up its expressways and half of these people would move back into town.

CHAIRMAN DeVRIES: The question before the committee of the whole is the Kuhn amendment to section a of Committee Proposal 83. The secretary will read the amendment.

SECRETARY CHASE: Mr. Kuhn offers the following amendment:

[The amendment was again read by the secretary. For text, see above, page 1016.]

CHAIRMAN DeVRIES: The question before the committee is the Kuhn amendment. As many as are in favor of the Kuhn amendment will say aye. Those opposed say no.

The amendment is not adopted. Are there any further amendments to section a of Committee Proposal 83?

SECRETARY CHASE: Mr. Ford offers the following amendment:

1. Amend page 1, line 13, after "law.", by inserting "Provited however, That ½ of any sums collected by a city or village payroll or income tax from nonresident employees shall be paid to the city, village or township of his residence, as provided by law.".

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Taylor, Delegate Ford.

MR. FORD: I would like to say, at the outset, that I agree with Mr. Marshall and Mr. Downs and some of the other speakers that we have moved over into a field of legislation here, and I submit that the committee, by tampering with the language of section 20 — and I will admit that I didn't realize this while we were in committee, but it appears to me now that we have been maneuvered into a delicate position where we are now compelled to meet a problem that we shouldn't have to meet.

If you will take a look at section 20, as it originally appears in the Constitution of 1908, it says:

> The legislature shall provide by a general law for the incorporation of cities, and by a general law for the incorporation of villages; such general laws shall limit their rate of taxation for municipal purposes . . . .

Now, what the committee did was say, "such general laws shall limit their rate of property taxation," instead of the general proposition as it was presented before.

I think it is pretty well agreed — at least the people with whom I have talked including representatives of the corporation counsel's office of Detroit feel that the present home rule provision of the constitution would permit other forms of taxation than those now being collected, and that these would, in the case of the city of Detroit, include excise taxes and so on.

John McCauley may come from a city where, by virtue of their charter, they limit their activity, and instead of going back to his people and changing his charter so that they can levy another kind of tax, they are going to do it here by a constitutional provision that would grant carte blanche to all cities, whether their charter would prohibit otherwise or not, the right to levy taxes other than property taxes.

Once this is done, we move into the area of replacing the local option charter provisions with a constitutional provision to grant a power that maybe, at the time of the adoption of the charter, the people did not want. Having taken this step, then it seems that we are caught on the horns of a dilemma, because in order to meet the situation that is created by this, we have to dig deeper into the mud and get ourselves further into the field of legislation.

I put this amendment in because I think it puts squarely before you the question of whether or not there is an equitable redistribution involved, and, really, I think it has been said several times before, this is a field of taxation, the income tax, that can only be handled at the state level. But, the unfortunate thing now is that we have had a considerable amount of discussion, and it would appear to anyone who examines the record of this convention, that it was the intention of the committee, in changing the language in the way that it has been changed, to permit an income or payroll tax.

I submit that many cities already have this power, and we were informed, as late as Saturday, in a meeting which was attended by delegates from both parties in the city of Detroit, that the present administration of the city of Detroit is no longer interested in having a city income tax, so long as there is any remote hope of having a state or county income tax as such, and that they would fall back on the income tax as the very last and desperate resort. Much has been said about Detroit in this. I don't think Detroit is really the problem with many of us in Wayne county. I think, probably, we have as many people from the communities that I represent here living and working in Mrs. Cushman's town of Dearborn, and John McCauley's Wyandotte, and in Ecorse and River Rouge, where the steel mills are, as we have in the city of Detroit.

Glenn Allen intrigued me with his little story about Maumee and Toledo, and pointed out that if we start this thing with a city passing an income tax and then the adjoining city passing an income tax to offset it and so on, that what we do is force them into a situation where they start splitting 50-50. In other words, the city of Dearborn would give back to Detroit a portion of the tax collected from the Detroiters, and the city of Detroit would give back to Dearborn a portion of the collection from the tax. There is one weakness to this, however, in the state of Michigan, and that is that the taxing powers of all units of government in Michigan are not coequal, and there are 434,000 people living in Wayne county who live outside of cities and villages; they live in townships, and a township does not have a retaliatory taxing power. I wouldn't advocate that it should have a retaliatory taxing power because I think this is a ridiculous way to approach a tax program, to start retaliating.

But the city of Dearborn, for example, which already has a tremendous and enviable tax position because of the Ford motor company, now enjoys the benefit of a working force, a product. We have come to the point in this country where we recognize that the working man is a valuable part of the economy, and his home community, the community that supports him by his schools and so on, supplies to the economy a trained workman, if you will. The city of Dearborn already derives practically all of its taxes — and when I say practically all, I say it advisedly, there is one big industry that carries the whole load over there, primarily.

We have the children. We have to build the schools in the so called "bedroom communities", and we get no part of this back. A state income tax might conceivably bring us to a situation where you could take some of this tax money from the communities that have the large industry and redistribute it to the school districts that are supplying the schools and the bedrooms, if you will, for the working force that staffs these factories.

Now, we have ourselves in a terrible plate of spaghetti here, and can pick ends out of it all day and you are still going to have a mess, because when we seem to give constitutional sanction to a round robin of one city charging an income tax

and another city retaliating, I think that we are doing the people of this state a disservice. I think that we have reached a stage where I would be very happy to vote against the committee proposal, even if my amendment is adopted, on the ground that we should go back to the general home rule proposition, as we have it now. Don't restrict the cities in their present taxing powers, but let us not put language in the constitution which seems to indicate, on the basis of the interpretation that has been put on it here, that we are advocating that cities get into the income tax business.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Detroit, Delegate Mahinske.

MR. MAHINSKE: I would have to speak in opposition to the amendment for the simple reason that in the areas, if the amendment would go through, where a city imposes the tax, they know they have to give 50 per cent back to the residents of those other areas; so, simply, what are they going to do? They are going to impose a tax twice in size to what they need because they are only going to glean 50 per cent of this tax for themselves. In the meantime, they are going to stand the burden of the administrative costs of distributing this tax.

Who gets hurt in the meantime is the person who is subject to the taxation, because he is going to be taxed double what the taxing city intended on taxing him to begin with. If they only wanted $1, they will have to tax him somewhere around $2 to pay for the administration of the rebate here. I think, actually, this will do more harm to the out taxing authority people than it will do good for the taxing area from where these people reside.

Secondly, I don't think that this is what Mr. Ford intends, here; that the people who are being taxed in these cities will be taxed twice what the city would initially intend on taxing them.

For these reasons, I would oppose the amendment.

CHAIRMAN DeVRIES: The question is on the Ford amendment. The Chair recognizes the gentleman from Wyandotte, Delegate McCauley.

MR. McCAULEY: Mr. Chairman, members of the committee, if you can get through the smoke screen that Bill Ford just laid down, you will notice that he is attempting to put townships into the home rule provisions here. I submit to Mr. Ford, as far as the city of Detroit's concern over income tax, that is not my problem; I am not concerned about that. I am concerned with the language in the committee proposal. I further would like to state to Mr. Ford, as far as a definite ruling on income tax, payroll tax, to my knowledge, the only test case that has gone up involved the city of Saginaw. The case was thrown out on a technicality and they never did test the merits on this thing.

As far as what the city attorney for the city of Detroit, or the attorney general's opinion is on this matter, I'd say that is just the opinion of another attorney. But, we are attempting in this constitution to set a framework and guidelines for the state legislature to act in this particular field.

Therefore, I would oppose the amendment.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Kalamazoo, Delegate Allen.

MR. ALLEN: Mr. Chairman, just very briefly, I think that the Ford amendment is similar to the amendments we had before. What it basically is is an attempt to legislate and say "this is the solution today," when we are drawing a document for 50 years, in a field where we don't know for sure what is the best solution or whether there is any one solution. Therefore, I would oppose the amendment.

I think Delegate Ford also got off into other fields and left you with the impression that the townships wouldn't be able to do anything, but the legislature has the power, any day, to give townships this same power if the legislature would do so. So, I feel that there is no lack of protection there. Basically, here again is an amendment which is an attempt to legislate.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Detroit, Delegate Austin.

MR. AUSTIN: Mr. Chairman, again I want to confess that Delegate Allen has made my speech and Delegate McCauley did an excellent job, too. I, too, would like to oppose this amendment as being legislative in character, and to remind the delegates that the committee proposal provides for the power to be such as provided by the constitution or law, meaning, of course, that the legislature does have some power in this matter.

The committee proposal does one thing, which I think we should all remember, and that is that it clears the present constitution in regard to home rule powers, as it affects taxation.

There is one other point I want to make before I sit down, and that involves some misapprehension that seems to have crept into our discussions. The city of Detroit has a revenue shortage problem which has been indicated here on several occasions. Detroit has been forcing its tax assessments down and is losing revenue in the process. Even if the tax assessments were not being forced down — and remember that we have asked them to get down to 50 per cent by 1966 — they would still have a revenue shortage problem, and they must find some other source of revenue.

However, the point should be made very clear that the city of Detroit — and I am referring now to the mayor of the city of Detroit and the common council — has never advocated an income tax at the city level. In all instances, both the mayor and the common council — and I might add to that, a city income tax study committee which worked for 9 months on the problem, and of which I was a member — concluded also that the city of Detroit should avoid imposing an income tax.

It is felt that once the ball starts to roll it will be just like a snowball. It will begin to pick up momentum and all the communities surrounding will be in the field. The city of Detroit would certainly like to avoid going into an income tax, and I think everyone in the Detroit area is on record as being opposed to an income tax; that is, at the city level.

The present mayor is advocating one at the county level. There has been considerable advocacy for an income tax at the county level. But, all of those who are interested in the subject have advocated the income tax at the state level, and, if possible, to give local units of government an opportunity to supplement the state tax. This would be the better solution. I think that the record should be clear on indicating that no one down in the Detroit area is advocating an income tax at the city level. But, if no other relief is given to the city, it may have to resort to an income tax, but it would be a last resort for the city to look to.

CHAIRMAN DeVRIES: Does the gentleman from Muskegon, Delegate Hanna, request recognition?

MR. W. F. HANNA: Mr. Chairman, fellow delegates, it would seem that by the local government placing in, with regard to cities and villages, powers of taxation which should have been placed in the article on taxation, they have created a dilemma before this delegation. I ask the chairman of the local government committee whether or not it is possible to draw a good local government article dealing with counties or townships or cities and villages, leaving the taxation articles and provisions out of this section, to be placed in the taxation article, where it belongs, in the same manner that they did not attempt to spell out, for cities and villages or for townships, a judicial system, so that we could deal with government on a local level as government, and taxation in the taxation article as taxation, and courts in the judicial article as courts?

CHAIRMAN DeVRIES: The question before the committee is the Ford amendment to section a of Committee Proposal 83. The secretary will read the amendment.

SECRETARY CHASE: The amendment is:

[The amendment was again read by the secretary. For text, see above, page 1017.]

CHAIRMAN DeVRIES: As many as are in favor of the amendment will say aye. Opposed, no.

The amendment is not adopted. Are there any further amendments to section a of Committee Proposal 83?

SECRETARY CHASE: Mr. Rush offers the following amendment.

1. Amend page 1, line 10, after "debts.", by striking out the balance of the section.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Romeo, Delegate Rush.

MR. RUSH: Mr. Chairman, I think Delegate Marshall and Delegate Sterrett have pointed this up very concisely. I believe if we pursue this way of doing, we will end up with a hodge podge of retaliatory taxes. I think that this thing should be handled on a state level only. I think that last section should be stricken out.

CHAIRMAN DeVRIES: The question before the committee is the Rush amendment to section a.

The secretary will read the amendment.

SECRETARY CHASE: The amendment is:

[The amendment was again read by the secretary. For text, see above.]

CHAIRMAN DeVRIES: The question is on the Rush amendment. The Chair recognizes the gentleman from Stanton, Mr. Brake.

MR. BRAKE: Mr. Chairman and ladies and gentlemen of the committee, we have had for years the question of whether a city had the right to levy these other kinds of taxes. Sometimes, we have been told they have; sometimes we have been told they have not. This language, substantially, in this form, though not quite in the form that it appears in the section, was advanced by the municipal league, and had plenty of consideration from them. They think it is the thing that we need.

It may be that it doesn't fit everywhere. I realize what this problem is among the suburbanites but, as a general proposition and because of the recognition of the need by the municipal league, I think we should be pretty careful about throwing it out.

CHAIRMAN DeVRIES: The question is on the Rush amendment. The Chair recognizes the gentleman from Traverse City, Delegate Sleder.

MR. SLEDER: I should like to speak in opposition to the amendment and in favor of the committee proposal. This is a matter that was, I think, the core of the whole problem that we have been discussing all afternoon, that we should clear up the fact: do the cities and villages have the power to tax? Certainly, it is advocated by many that they do have the power. And, likewise, it is indicated that some feel they do not. I think in this sentence we can clear up the fact forever, that the cities do have this power and the villages, unless it is preempted by the state.

I, therefore, very definitely recommend that the amendment be turned down.

CHAIRMAN DeVRIES: The question before the committee is the adoption of the Rush amendment to section a. The secretary will read the amendment.

SECRETARY CHASE: The amendment:

[The amendment was again read by the secretary. For text, see above.]

CHAIRMAN DeVRIES: As many as are in favor of the Rush amendment will say aye. Opposed, no.

The amendment is not adopted. Are there any further amendments to section a?

SECRETARY CHASE: Miss Donnelly and Mr. Boothby offer the following amendment:

1. Amend page 1, line 8, after "rate of" by striking out "general property"; so the language will then read:

> The legislature shall provide by a general law for the incorporation of cities and villages; such general laws shall limit their rate of taxation for municipal purposes, and restrict their powers of borrowing money and contracting debts.

CHAIRMAN DeVRIES: The Chair recognizes the lady from Highland Park, Delegate Donnelly.

MISS DONNELLY: If I understood the reading, I think I put it in wrong. I just want to eliminate the lines "general property" that were added by the committee.

SECRETARY CHASE: That is what I said.

MISS DONNELLY: You did? I am sorry. I didn't listen to you. My point being on this that I think we spent a lot of time and energy arguing about income tax, payroll tax, and what have we, how it should be split up, and other residents taxing nonresidents, and what have you, and then the thought being basically to leave it up to the legislature to handle this.

I am very deeply concerned about whether the legislature may handle this because of this construction. The committee has said "The legislature shall provide by a general law . . ." and the "general laws shall limit their rate of general property taxation. . . ." Now to me, this could be a very definite limitation on the legislature's right to limit anything but general property taxation.

We are not, in this last few hours, concerned about general property taxation, but we are talking about payroll or income taxation. I think it is very possible that the last sentence, line 13, could not be construed to mean anything but general property. I am wondering if that was the intent of the committee, and I think their drafting has, perhaps, put them into a corner they didn't mean, because I do think that they want the legislature to be able to tax or control taxing on income, what have we. But, as it is set forth in this, the general property would only limit the legislature to general property.

I want the legislature to act; therefore, I would urge your support in removal of the words "general property" so that the legislature will have more power to control this generally, and there will not be any kind of a restriction on the legislature, which I think is the intent of the committee.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Wyandotte, Delegate McCauley.

MR. McCAULEY: The purpose of using the words "general property" is to be specific and distinguish the limitation on property taxes from the new grant of power to levy nonproperty taxes in the last sentence. If you take out "general property", you are defeating the whole idea of the proposal.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Kalamazoo, Delegate Allen.

MR. ALLEN: Mr. McCauley gave my speech.

CHAIRMAN DeVRIES: Delegate Donnelly.

MISS DONNELLY: Then, if I understand it, you only want the legislature to limit on general property. You do not want the legislature to be able to limit on income taxes or any other kind?

CHAIRMAN DeVRIES: Delegate McCauley.

MR. McCAULEY: The last new language added by the committee states that, "Each city and village is hereby granted power to levy taxes for public purposes subject to limitations and prohibitions set forth in this constitution or law." I would assume that to mean that they can limit this type of taxation also.

CHAIRMAN DeVRIES: Delegate Donnelly.

MISS DONNELLY: Then your assumption would be, through the Chair, that "or law" could never be construed to relate back to "such general laws shall limit their rate of general property taxation"? I think this is a rather serious issue.

CHAIRMAN DeVRIES: Delegate McCauley.

MR. McCAULEY: I would like to yield the floor.

CHAIRMAN DeVRIES: To whom do you wish to yield?

MR. McCAULEY: Delegate Allen.

CHAIRMAN DeVRIES: Delegate McCauley yields to Delegate Allen.

MR. ALLEN: Miss Donnelly, we thought the language was clear, and reading it here, as you make the point, I still think it is clear. It is a little difficult to see why it should trouble you. We tried to limit in both cases. If you had an ad valorem taxation of any kind, this is clearly limited by the sentence in which the words "general property" are used.

If you come over to anything that we commonly call excise taxes or specific taxes or these new kind of taxes, we say

this is also limited by the prohibitions; that is, it is subject to any limitations and prohibitions set forth in the constitution or law. So, the legislature makes the limitation in both sets of taxes, both ad valorem, general property, and specific. And, we wanted to do that. In fact, we went out of our way on the bottom part because we didn't want to have an unlimited rate of specific taxes.

If there is anything wrong with it and it isn't clear, the style and drafting committee can clear it up. Personally, I think it is clear, and the intent is to have a limitation on both.

CHAIRMAN DeVRIES: Delegate Donnelly.

MISS DONNELLY: Did you have this briefed out, as to this construction, if I may ask? I think, to me, the intent is not clear to allow them to limit on both. It seems to me you very specifically say — you have added new language, you have changed the constitution in the past, the constitution in the past said they had to limit their rate. You have now inserted "general property". They must use this insertion for some reason, and by inserting "general property", this must be construed to mean something. Then a few lines later, you say, "or law", it would mean to me to relate back to only general property law.

CHAIRMAN DeVRIES: The Chair recognizes the chairman of the committee, Delegate Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, Miss Donnelly, this language was given careful consideration by the committee in its deliberations, as well as being given to the research and drafting department for careful work. I am sure that what Mr. Allen has explained to you is what the language does; it is what we intended it to do, and because of those reasons, I would urge that we defeat the amendment. In fact, I don't think that you really want the amendment if you are satisfied that the language does what Mr. Allen has told you. Isn't that correct?

MISS DONNELLY: If your position is correct, I don't know why you object to the deletion, because then the deletion makes it absolutely clear, whereas, by leaving it in I think you put a large question as to whether it is true or not.

MR. A. G. ELLIOTT: Mr. Chairman, Miss Donnelly, this is a matter of interpretation. We wanted it to be perfectly clear and that is why this additional language was added.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Detroit, Delegate Austin.

MR. AUSTIN: Mr. Chairman, I am wondering if I could help Miss Donnelly by suggesting one word that we add to line 11. Miss Donnelly, would you follow me on this? In line 11, if we say — well, reading the whole sentence — "Each city and village is hereby granted power to levy other taxes . . . ", using the word "other", would that make it clear as to what the committee intended? ". . . levy other taxes for public purposes", the first part relating to general property.

I am wondering if Mr. McCauley would comment on that, and I will make that as an amendment.

CHAIRMAN DeVRIES: Delegate Austin yields to Delegate McCauley.

MR. McCAULEY: I would oppose it as an amendment, Dick. However, if style and drafting felt that this was necessary to clarify it and to put Miss Donnelly at ease, I am sure the committee certainly would have no objection.

CHAIRMAN DeVRIES: Delegate Austin.

MR. AUSTIN: I think, perhaps, that I should propose that as an amendment; that we amend line 11, by inserting the word "other" after the word "levy".

CHAIRMAN DeVRIES: Would you put your amendment in writing, Delegate Austin?

Delegate Donnelly.

MISS DONNELLY: I do think that that would help clarify it. I think the deletion makes it absolutely clear. If we want to make it short, the deletion is better. But certainly the addition of the word "other" does do a large measure to change the possible construction, in my opinion.

CHAIRMAN DeVRIES: The question before the committee is the amendment offered by Delegates Donnelly and Boothby to section a. The secretary will read the amendment.

SECRETARY CHASE: The amendment:

[The amendment was again read by the secretary. For text, see above, page 1019.]

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Detroit, Delegate Mahinske.

MR. MAHINSKE: I wonder if Miss Donnelly and Mr. Boothby want their amendment to go through, in view of the fact that we have tentatively agreed to add the word "other" in there. Now, we, if we are going to add the word "other" —

CHAIRMAN DeVRIES: Delegate Mahinske, the committee has not tentatively agreed to this. Delegate Austin hasn't submitted the amendment, as yet. Miss Donnelly has not withdrawn her amendment.

MR. MAHINSKE: But she has been asked this.

CHAIRMAN DeVRIES: Do you want to withdraw your amendment, Miss Donnelly?

MISS DONNELLY: On the condition that the other goes through, I will be very happy to.

CHAIRMAN DeVRIES: The Chair cannot guarantee that the other will go through, Miss Donnelly. Does the delegate from Highland Park wish to withdraw her amendment? Delegate Austin has submitted his.

MISS DONNELLY: I will be happy to temporarily withdraw it.

CHAIRMAN DeVRIES: Without objection, Delegate Donnelly happily withdraws her amendment. The question before the committee now is the amendment offered by Delegate Austin, which the secretary will read.

SECRETARY CHASE: Mr. Austin offers the following amendment:

1. Amend page 1, line 11, after "levy" by inserting "other"; so that the language will read: "Each city and village is hereby granted power to levy other taxes for public purposes subject to limitations and prohibitions set forth in this constitution or law."

CHAIRMAN DeVRIES: The question before the committee is the adoption of the Austin amendment. The Chair recognizes the chairman of the committee, Delegate Elliott.

MR. A. G. ELLIOTT: I would suggest we adopt the amendment.

CHAIRMAN DeVRIES: As many as are in favor of the Austin amendment will say aye. Opposed, no.

The amendment is adopted. Are there any further amendments to section a? If not, it will pass.

Section a, as amended, is passed and the secretary will read section b.

SECRETARY CHASE: Section b.

[Sec. b, paragraph one, was read by the secretary. For text, see above, page 1005.]

CHAIRMAN DeVRIES: The Chair recognizes Delegate McCauley, speaking on behalf of the committee.

MR. McCAULEY: Mr. Chairman, if there is no objection by the committee, I would just as soon have Mr. Chase read down and exclude the last sentence, because we feel that these are 2 areas that could be controversial, and we would like to take the rationale down to the last sentence, because there is a committee amendment to the last sentence.

CHAIRMAN DeVRIES: Without objection the section will be divided. Do you wish to speak to the first sentence of the section?

MR. McCAULEY: I would like the secretary to read the first 2 paragraphs and exclude the last sentence, and then speak to the first 2 paragraphs.

CHAIRMAN DeVRIES: The secretary will read.

SECRETARY CHASE: The second paragraph, exclusive of the last sentence, reads as follows:

> Each such city and village is hereby granted full power to pass laws and ordinances relating to its municipal concerns, property, and government, but the legislature may enact laws of statewide concern which will preempt the field only when this intention is so stated therein. No enumeration of powers in this constitution shall be deemed

to limit or restrict the general grant of authority hereby conferred.

CHAIRMAN DeVRIES: Delegate McCauley.

MR. McCAULEY: Mr. Chairman and members of the committee, the language change in the first paragraph is to achieve a more positive statement of the right of cities and villages to home rule. The only substantive change is to make it clear that the power to revise a charter exists along with the other rights named. This is to clear up a possible ambiguity. The language deleted in lines 6 through 9 is replaced by a more positive statement in the second paragraph. In addition, home rule cities and villages are guaranteed full power over their own property and government, and these powers cannot be limited except by deliberate statement of intent by the legislature. In the past, general laws of the state providing for a standard of service or performance have been held by the courts to make invalid municipal ordinances or charter provisions providing a higher standard. This is undesirable and this language will permit the municipal provisions to stand in the absence of deliberate intent by the legislature to set them aside.

CHAIRMAN DeVRIES: Are there any amendments to the first paragraph of section b?

SECRETARY CHASE: Mr. Sharpe offers the following amendment:

1. Amend page 1, line 14, after "Sec. b.", by reinserting "Under such general laws"; and in line 15, after "village" by striking out "are hereby granted" and reinserting "shall have"; so that the language will then be substantially restored as it stands in the present constitution and would read:

Under such general laws the electors of each city and village shall have the power and authority to frame, adopt, amend, and revise its charter, and to amend, and revise an existing charter of the city or village heretofore granted or passed by the legislature for the government of the city or village.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Howell, Delegate Sharpe.

MR. SHARPE: Mr. Chairman, now I would like to see just how much consistency we have with the people wanting the legislature to do so many things. It looks to me like some of the members of our committee have reached down and picked themselves up by their own bootstraps and allowed the cities to have this general power.

They have never given any consideration to the legislature on this particular section, section b, however, and I would like to see, now, what the reaction is. They were all together in favor of leaving everything in section a to the legislature. I am also in favor of doing the same thing in section b.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Wyandotte, Delegate McCauley.

MR. McCAULEY: Mr. Chairman, it certainly wasn't the intent of the committee to delete any language from this that would be granting cities more power or deleting it. It was the feeling of the committee, after consulting with the research department, that section a, whereby the cities are incorporated under such general law, following that down into section b, that this was just a repetition. That was the only purpose for deleting it.

CHAIRMAN DeVRIES: The question before the committee is the Sharpe amendment to the first paragraph of section b. The Chair recognizes the gentleman from Fennville, Vice President Hutchinson.

MR. HUTCHINSON: Mr. Chairman, all I wanted to say is that I am aware that there is some concern around convention hall that although the committee assures us it intended no substantive change by this language, that a substantive change has been effected by it.

Under the old statute, under the old provision, it is clearly stated that "under general laws" the electors could do thus and so, the electors of a city or village. The new language strikes out this reference to "under general laws" and, apparently, vests in them some kind of an inherent and independent power. I state that there is considerable concern in some part of the convention that you have accomplished a substantive change. Maybe you did not intend it. I would support the amendment.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Muskegon, Delegate Seyferth.

MR. SEYFERTH: My question, Mr. Chairman, is to one of the committee members. Is it not true that the last sentence of the paragraph, which says, "The legislature shall provide by general law the procedure for framing, adopting, amending, and revising such charters," takes care of striking out the first few words?

CHAIRMAN DeVRIES: Delegate Seyferth yields to Delegate McCauley.

MR. McCAULEY: That was our thinking, Delegate Seyferth.

CHAIRMAN DeVRIES: The Chair recognizes Vice President Hutchinson.

MR. HUTCHINSON: Mr. Chairman, I would like to point out that there is a difference here. The language that Mr. Seyferth reads says that "The legislature shall have the power . . . " to do what? Merely to provide the procedures of what goes into those charters; whereas the old language and the present home rule acts not only provide the procedures, but they also provide such things as this: "every city charter shall provide," and "every city charter may provide" other things.

In other words, under the present home rule system, within the framework of a general law, the state as a whole, if you please, the legislature, acting for the state as a whole, can, in a sense, define what must go into a charter and what may go into a charter. Now you are wiping all that out and simply saying the legislature has the power to provide the procedures whereby the people may revise and amend their charters.

Very obviously, you are taking away from the state any control over the substance of those charters, and I think that is a substantive change.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Ypsilanti, Delegate Lawrence.

MR. LAWRENCE: First I would like to ask a question. When this proposition was divided, was the first paragraph of section b taken alone, and we are not dealing with any part of the second paragraph of section b?

CHAIRMAN DeVRIES: That is the understanding of the Chair, Delegate Lawrence. We are dealing now with the first paragraph, as requested by the committee.

MR. LAWRENCE: I would have to agree with Delegate Hutchinson that the addition of the new last sentence to the first paragraph certainly does not leave the meaning of that paragraph unchanged from the present act. There is no need of repeating what he has said because that is what I had in mind.

This would seem to take the control of a general home rule act, as applicable to all of the cities in the state, away from them and would allow each municipality to go ahead and pass anything that it desired —

MR. McCAULEY: Point of order, Mr. Chairman.

CHAIRMAN DeVRIES: State your point of order.

MR. McCAULEY: Mr. Chairman, it was the intention, at least my intention, that we were taking the first 2 paragraphs together and separating the last sentence; that is all; so I would like Delegate Lawrence to think about the second paragraph, too, in light of Senator Hutchinson's remarks.

CHAIRMAN DeVRIES: The Chair stands corrected, and we shall consider the first 2 paragraphs, and divide the question and consider the last sentence after we have disposed of the first 2 paragraphs excluding the last sentence.

MR. LAWRENCE: I was trying to do a little research on this subject, and I thought something of that nature was passing my orbit. That is why I asked the question. If that is the case, I, at least, anticipate putting in an amendment to a portion of the second paragraph, the portion that would be under consideration, and I just didn't want to get myself in a position, if I could avoid it, where by this type of division I would suddenly find that everything down to the last sentence had been passed without my getting that amendment in. So I want to be sure that any rights I have, if any, are preserved.

I now want to get back to the subject at hand. It has always been the policy in Michigan, first, of course, to consider that cities are really creatures of the legislature and a part of the legislature; that they have no independent existence. In other words, they are arms of the legislature. To give to those cities complete authority, without any restriction, to pass these local acts, so to speak, or acts governing themselves, would seem to me to be a rather radical departure, and I wonder if we are quite ready to take it, because certain rights in certain individuals and otherwise have been created under the present system.

I would support the amendment and feel that the present wording will go far beyond, certainly, what has been our concept of municipal home rule or municipal government.

CHAIRMAN DeVRIES: The question before the committee is the Sharpe amendment. Delegate Donnelly.

MISS DONNELLY: If we are going to take the 2 paragraphs together, I will definitely support the amendment and agree with Senator Hutchinson because the second paragraph gets to the point that the legislature shall preempt the field, and then they specifically say that they preempt the field, which means that all the laws that they have on this now, in my opinion, would be wrong and they would have to reenact them if they have now preempted the field on this subject. If you put these 2 paragraphs together, it makes it even more so.

CHAIRMAN DeVRIES: The understanding of the Chair is that we are considering the paragraph on page 1, lines 14 through 22; on page 2, lines 1 through 11. The Chair recognizes the gentleman from Lansing, Delegate Wanger.

MR. WANGER: Mr. Chairman, I would like to direct a question to Mr. McCauley regarding these 2 paragraphs taken together, except for the last sentence of the second paragraph.

I gathered, from his previous comment, that he thought that the legislature, under the second paragraph, had the power to entirely preempt the field, so that they could establish general laws regarding any matter that they believed to be of statewide concern in connection with the government of cities or villages. Is that a correct interpretation of your remarks, Mr. McCauley?

CHAIRMAN DeVRIES: Delegate McCauley.

MR. McCAULEY: That is correct, concerning full power to pass laws and ordinances except as preempted by the state for statewide concern.

MR. WANGER: Yes. Now, as I read that, that power to preempt the field applies only to the power to pass laws and ordinances, and does not apply to the power to adopt or revise the charter; because the second paragraph deals entirely with the power of the city or village to pass laws and ordinances, and the first paragraph deals only with the power to adopt, amend or revise a charter. It, therefore, seems to me that you very clearly create a difficult problem of interpretation, which would undoubtedly have to be settled by the supreme court as to whether or not a city or village could put anything into its charter, any general laws of the state notwithstanding.

MR. McCAULEY: I think you make a pretty good agrument on that point. As I say again, it was the intention of the committee not to make a substantive change in the first paragraph. It was our feeling that the rest of the language in the section would grant the legislature powers to control the revision, adoption, amendment, and so on, of charters.

CHAIRMAN DeVRIES: The Chair recognizes Vice President Hutchinson.

MR. HUTCHINSON: Mr. Chairman, I would like to just make this situation clear. Maybe everybody on the committee floor here understands it, but let me state it, anyway. Under the present constitution the home rule powers of a city or a village are dependent upon a general law of the legislature, by which the legislature says what a charter may contain and what a charter shall contain, and the legislature is in the position then of controlling it, yes, to some extent from a general statewide picture.

Here is what these 2 paragraphs do, if I read them correctly, as the committee proposal stands. They turn the whole thing inside out. The city or the village shall have power to do anything that the legislature doesn't prohibit, so that the city's or village's powers are not powers resting upon a grant, but they have all powers except such as the state prohibits them.

Put yourself in the position of the legislature, if you please, for a minute, and think about what a tremendous job it is going to be for that legislature to try to anticipate and outguess everything that it does not want a municipality to do. It is almost impossible to try to anticipate things that some municipality might want to do, and anticipate them in advance and try to prohibit them. The chances are that the municipality will go ahead and do those things and then only after they are done will it come to statewide attention, with a great deal of confusion, bad policy, and everything else resulting. And, I tell you, you are putting the state authority, whether it be the legislature or the whole state government, in a very embarrassing position of trying to have to anticipate and outguess. The better policy, in my opinion, is the policy that we have had.

If, for any reason, the home rule acts now on the books are not adequate, it isn't an impossible thing to go to the legislature and get those acts amended to broaden those powers. But, in any event, in that case the legislature is in the position of having determined the positive question about what powers shall be granted instead of having, as I say, to try to anticipate and outguess what might be going on and have to prohibit them in advance.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Kalamazoo, Delegate Allen.

MR. ALLEN: I wonder, Mr. Hutchinson, if, in order to clarify this, you are speaking to the first part of the paragraph, which is the subject matter concerning the adoption of a charter and the amendment and revising, or are you referring also, or separately, to power to pass laws and ordinances relating to its municipal concern?

MR. HUTCHINSON: In answer, Mr. Allen, I would hope that we should have been discussing the first paragraph of this section. I think that is much more orderly than to try to take both paragraphs together. But since we were taking both paragraphs together, then, I thought it was probably in order to speak to the second paragraph. I am now addressing myself to this second paragraph, but I would much rather that we confine ourselves now to this first paragraph having to do with the charter itself.

MR. ALLEN: I didn't know which one to answer. I think we are all getting a little confused because we are considering them together.

Mr. Chairman, do you want to hold the committee to the first paragraph alone temporarily?

CHAIRMAN DeVRIES: Without objection from the chairman of the committee on local government, we will consider the first paragraph by itself. Is there any objection?

MR. MAHINSKE: Well, yes, I object.

CHAIRMAN DeVRIES: Delegate Mahinske objects.

MR. MAHINSKE: I don't think that we can divide these 2. To get any meaning out of either paragraph, I would have to read them both, myself, and I come up with the same answer that Mr. Hutchinson comes up with, that we are starting — the existing situation that we have now is the legislature lays down the general enabling statutes for cities and villages. It sets out the restrictions, and the villages and the cities set up their charters geared to these statutes. What we are now saying is the cities and the villages may set up their charters and when they reach a point that the legislature objects, the legislature shall preempt the field and restrict activity in certain areas.

This sounds to me like the same argument that we hear quite often from Mr. Hutchinson when we are talking about the constitution, from the legislature, that they set down restrictions only on the legislature, and they shall be able to do anything else that they are not restricted in. Frankly, I don't see any reason why the local government unit should be treated any other way.

CHAIRMAN DeVRIES: Will the gentleman from Detroit yield to the delegate from Kalamazoo? Delegate Allen.

MR. ALLEN: Mr. Chairman, I think for clarity these should be considered separately, and to bring that point to a head, I will move that the 2 paragraphs be divided.

CHAIRMAN DeVRIES: Delegate Allen moves that section b be divided, and that we consider each paragraph separately. All those in favor of the motion will say aye. Opposed, no.

The motion prevails.

Delegate Mahinske, do you wish to speak to the first paragraph?

MR. MAHINSKE: No.

CHAIRMAN DeVRIES: Delegate Allen.

MR. ALLEN: Mr. Chairman, the first paragraph pertains to the procedure and method by which a city frames, adopts or revises its charter. Delegate Hutchinson has called attention to the fact that the language appears to be turned around. I was not a member of the subcommittee which drew this, and so I don't exactly know why it was turned around, except, I think, that when the added language was added later on, it seemed to the research department that this was the best way to draft it. In other words, Senator Hutchinson, I don't believe, and I am not certain, that any intent was to somehow sneak some more powers in or doing something like that. I really think that this happened as a matter of style, although I am not positive of it.

I do know that under fourth class cities, there was an opinion by the attorney general which related to this point, and maybe this was turned around for that reason, but it only would affect a very small number of cities, if this was the reason. If that should be a major objection, as speaking for myself alone, I don't worry about following whatever suggestion Senator Hutchinson would want, rather than exactly the same language, and that would be the only comment I would like to make. There is certainly no intent here to increase power somehow without really making it obvious that it is being increased.

CHAIRMAN DeVRIES: Vice President Hutchinson.

MR. HUTCHINSON: Mr. Chairman, I am happy to have it stated on the record that the committee intended no change in that, and that the change in the phraseology was merely an effort at drafting. However, when you change language, the obvious first attempt always is to find out what difference in meaning there is, and, obviously, at least to me, I would say that this change in language had accomplished a substantive change which I pointed out, and for that reason I am supporting Mr. Sharpe's amendment, which would reinsert the present language.

CHAIRMAN DeVRIES: The Chair recognizes the chairman of the committee, Delegate Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, I am going to ask for the committee to rise in just a moment, but before we do that, I wonder if we couldn't read the amendment that Mr. Sharpe has offered. I think that it has been made crystal clear here that the committee, in this first paragraph in particular, had no desire to change the intent, and if I can hear it, I am going to perhaps, suggest its adoption, then urge the committee to rise.

CHAIRMAN DeVRIES: The secretary will read the Sharpe amendment.

SECRETARY CHASE: Mr. Sharpe's amendment is:

[The amendment was again read by the secretary. For text, see above, page 1021.]

CHAIRMAN DeVRIES: The question before the committee is the Sharpe amendment to the first paragraph of section b. Mr. Elliott.

MR. A. G. ELLIOTT: I don't believe that there is any objection to that amendment, and I would urge its adoption at this time.

CHAIRMAN DeVRIES: Delegate Martin.

MR. MARTIN: If you do adopt the Sharpe amendment, then you do not need the language at the end of the paragraph because that is a complete duplication. That language was put there to take the place of the phrase "under such general laws" that had been stricken out, so that it should be removed if you are going to adopt the Sharpe amendment. I think the Sharpe amendment simply does what the last sentence of the paragraph now proposes to do.

CHAIRMAN DeVRIES: Delegate Sharpe.

MR. SHARPE: Mr. Chairman, I have the amendment in my hand. It would do that, but I have learned from experience not to get too much done at one time, so I refrained from turning this in until we had the first amendment passed.

CHAIRMAN DeVRIES: Is it your intention to offer an amendment to strike that sentence?

MR. SHARPE: Yes, sir.

CHAIRMAN DeVRIES: Mr. Elliott.

MR. A. G. ELLIOTT: I would suggest that we add that to his amendment unless there are objections, and move on.

CHAIRMAN DeVRIES: Mr. Sharpe, will you bring your amendment to the desk, please?

SECRETARY CHASE: Mr. Sharpe is also offering a second amendment to page 1, line 22, by striking out "The legislature shall provide by general law the procedure for framing, adopting, amending, and revising such charters.".

CHAIRMAN DeVRIES: Without objection, we shall combine the 2 amendments into 1 amendment.

[The revised amendment is as follows:

1. Amend page 1, line 14, after "Sec. b.", by reinserting "Under such general laws"; and in line 15, after "village" by striking out "are hereby granted" and reinserting "shall have"; and by striking out all of line 22; and on page 2 by striking out all of lines 1 and 2.]

The question before the committee is on the adoption of the combined Sharpe amendments to the first paragraph of section b. As many as are in favor will say aye. Opposed, no.

The amendment, as revised, is adopted.

Delegate Elliott.

MR. A. G. ELLIOTT: I move that the committee do now rise.

CHAIRMAN DeVRIES: Delegate Elliott moves that the committee do now rise. All those in favor, say aye. Opposed, no. The committee will rise.

[Whereupon, the committee of the whole having risen, Vice President Romney assumed the Chair.]

VICE PRESIDENT ROMNEY: The convention will come to order. The Chair recognizes Mr. DeVries.

MR. DeVRIES: Mr. President, the committee of the whole has had under consideration several items on which the secretary will give a detailed report.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 82,** A proposal pertaining to townships; has adopted 2 amendments to the committee proposal; and recommends that these 2 amendments be agreed to and the proposal, as thus amended, do pass.

[The following are the amendments recommended by the committee of the whole:

1. Amend page 1 by striking out lines 10, 11, 12 and 13 and inserting

"Sec. b. The legislature shall by general law confer upon organized townships powers of a local, legislative, and administrative character, not inconsistent with the provisions of this constitution.

2. Amend page 2, line 1, after "Sec. d.", by striking out the balance of the section and inserting "The legislature shall provide by law for the elimination of township government whenever there is no territory which is not included within the borders of a village within such township.".]

VICE PRESIDENT ROMNEY: You have heard the report.

The question is on agreeing to the amendments. Those in favor say aye. Opposed?

The amendments are agreed to.

Committee Proposal 82, as amended, is referred to the committee on style and drafting.

Following is Committee Proposal 82 as amended and referred to the committee on style and drafting:

The committee recommends that the following be included in the constitution:

Sec. a. Each organized township shall be a body corporate with such powers and immunities as shall be prescribed by law.

Sec. b. The legislature shall by general law confer upon organized townships powers of a local, legislative, and administrative character, not inconsistent with the provisions of this constitution.

Sec. c. There shall be elected for a term not less than 2 years nor more than 4 years as provided by law in each organized township: 1 township supervisor; 1 township clerk; 1 township treasurer; and, not to exceed 4 township trustees, whose powers and duties shall be provided by law.

Sec. d. The legislature shall provide by law for the elimination of township government whenever there is no territory which is not included within the borders of a village within such township.

Sec. e. No township shall grant any public utility franchise which is not subject to revocation at the will of the township, unless such proposition shall have first received the affirmative vote of a majority of the electors of such township voting thereon at a regular or special election.

SECRETARY CHASE: Mr. President, the committee of the whole has also had under consideration **Committee Proposal 83,** A proposal pertaining to cities and villages; has considered several amendments relative thereto and has come to no final resolution thereon. This completes the report of the committee of the whole, Mr. President.

VICE PRESIDENT ROMNEY: Without objection, the convention will return to the order of **reports of standing committees.**

SECRETARY CHASE: The committee on administration, by Mr. DeVries, chairman, reports back to the convention **Resolution 70,** A resolution of the constitutional convention establishing a budget for post constitutional convention expenses; with 2 amendments, recommending that the amendments be agreed to and that the resolution, as thus amended, be adopted.

[The following are the amendments recommended by the committee:

1. Amend the eighth whereas clause, item 1, after "copies of the" by striking out "80 page".

2. Amend the resolving clause, in the **Post Constitutional Convention Commission Budget,** item **II,** sub-item E, after "Mileage to and from Lansing—commission" by inserting "(10 cents per mile)".]

Walter DeVries, chairman.

For Resolution 70 as offered, see above, page 986.

VICE PRESIDENT ROMNEY: Delegate DeVries.

MR. DeVRIES: Mr. President and fellow delegates, this resolution supplements one passed earlier by the convention, setting up the functions and duties of the post constitutional convention commission. The commission has not been appointed by the president, and probably won't be until the last week of the convention.

Ordinarily, this wouldn't come up until the end of the constitutional convention, but the legislature has requested from us certain budget information, and we need action on this at this time, and on the resolution.

Yesterday, the committee on administration submitted for your information a report which is found on page 588 of yesterday's journal, and I wish you would turn to that report so I could point out a few things about the budget of the convention.

The legislature appropriated $2 million for the convention and did it in 2 line items. If you look at "I. Salaries and wages—delegates," the amount budgeted there was $1,080,000. If you look at the fourth column, it is estimated—well, we know our balance for delegate salaries will be, on March 31, $216,000; on April 30, $72,000; and on May 15, nothing.

Now, if you look at item II, the second line item in the budget, subtotal, you will notice that in the fourth column, for the balance on March 31, in operations—now, this is exclusive of delegate salaries—it is anticipated if we adjourn March 31 we will have $200,316.08 left in that line item; April 30, $117,207.72; and on May 15, $74,676.04.

If you total the 2 line items, if we adjourn on March 31, we will have $416,316.08 left from our $2 million appropriation. If we adjourn April 30, we will have $189,207.72. If we adjourn May 15, we will have $74,676.04.

We do not need to take any action on this report. It is only submitted for your information.

Now, if you will, turn to page 595 of the journal to Resolution 70, and I will ask the secretary to read the resolution.

SECRETARY CHASE: Resolution is as follows:

[The resolution, to the budget detail, was read by the secretary. For text, see above, page 986; for budget detail, see below, page 1166.]

VICE PRESIDENT ROMNEY: Mr. DeVries.

MR. DeVRIES: Mr. President, if I may, I would like to proceed from this point and explain the rest of the budget and analysis. The resolution, up to this point, and throughout the rest of it, has the unanimous approval of the committee on administration, the committee on public information, and the officers of the convention.

If I may explain, the bottom half of page 596 is the summary of the projected budget for the post constitutional convention commission. There is a more detailed explanation that follows on the pages after the next chart.

If you will turn to the chart, there are a couple of errors in it. This is to depict the supervision of the commission over the staff, the staff we have now and the staff we anticipate for the commission once it is formed. The dotted lines are to indicate that these people will be on the staff anywhere from 1 week to 2 weeks, and in the case of the secretary's office, certain people will be on 5 to 6 months. That will be explained as we turn the page and look at salaries. The error to which I call your attention is under the office of public information. The director, the secretary, and the 2 clerk stenographers should be solid lines, indicating that they are part of the permanent commission staff.

[Correction made, see below, page 1167.]

If you will turn the page in the journal to page 598, you will see the post convention organization chart, and the permanent staff, which will consist of executive director, secretary, the finance clerk, director of public information, a secretary and 2 clerk stenographers. Everybody else on the staff, within the period of either 1 week to 6 months, in the case of the secretary's office, will be discharged.

Under salaries and wages, we provided a per diem and subsistence for the commissioners, 15 commissioners, at an estimated 20 meetings at $30 per diem. The $30 per diem is to cover the expenses of the commissioners.

Under salaries and wages, this is the breakdown, the anticipated breakdown, on the way that we will retain the staff after the convention adjourns. You have an executive director, for example, on item 1, who will be on for 7 months; the secretary to the president of the convention, ½ month, and so on.

If you will turn to page 599, under contractual service—supplies and materials, if you have any questions on the public information section, we can turn those over to Mr. White, the chairman of the committee on public information.

These are estimates based on 7 months of operation. Assuming the convention will at least adjourn on March 31, the commission would be in operation until election day, and so these estimates are based on 7 months.

A few of the items may need further explanation. For example, under postage we have provided for the distribution of the address to the people, $20,000. The committee on public information is asking for a million copies of this which will be sent out in bulk mail, and that is the estimate given to us by the committee on public information.

Under travel—mileage to and from Lansing by the commission, this is estimated at 10 cents a mile.

Contractual services, restoration of the civic center—our best estimate from the department of administration is that it will cost $30,000 to restore the civic center. Whether the commission will do this or whether the legislature will provide that that be done by the department of administration, we don't know at this time, until the legislature takes action on the bill.

Under office supplies and printed matter, address to the people, it is estimated that this will cost, for the art work and layout on the printing of a million copies of an estimated 80 page booklet, close to $83,000.

The convention record and proceedings—the convention has already authorized the printing of 3,000 copies, authorized 100 bound action journals, and has authorized 100 bound delegate proposals.

Turning the page to the last part of the budget, primarily this material is for public information, staffed within the post constitutional convention, and the last table shows the estimated monthly expenditures for the proposed constitutional convention commission.

Mr. Secretary, there are 2 amendments offered by the committee on administration, and I will ask the secretary at this time to read them, and then move their adoption.

SECRETARY CHASE: The 2 amendments recommended by the committee on administration are:

[The amendments were read by the secretary. For text, see above, page 1024.]

VICE PRESIDENT ROMNEY: Mr. DeVries.

MR. DeVRIES: The first amendment is recommended by the committee because we are not sure at this time if the address to the people will be 80 pages, and we didn't want to bind the committee on public information. Secondly, it was added to spell out that the commissioners would receive no more than 10 cents per mile for commission meetings in Lansing.

I move the adoption of the amendments.

VICE PRESIDENT ROMNEY: The question is on the amendments. Delegate Boothby.

MR. BOOTHBY: Mr. President, I would like to ask Mr. DeVries a question. I note under the post convention budget, section 2, contractual services, and particularly under subsection E, "mileage—staff" a total of $9,500.00. Could you tell me what this is pointing toward?

MR. DeVRIES: Mr. President and Delegate Boothby, that is the combined total, the $8,500 for the mileage for the commissioners, and $1,000 estimated staff expenses. Now, this was included because the secretary thought that perhaps this contract might be let outside of Lansing, for the printing of the convention record, and we might have to provide some expense money for the secretary's staff as well as for the public information staff. But that $9,500 is a combination of both figures.

MR. BOOTHBY: May I ask this question: how did you compute the need for $8,500 for mileage to and from Lansing for the commissioners, and the mileage for the staff at $1,000?

MR. DeVRIES: The committee on administration didn't know who would be appointed to the post constitutional convention commission, so we figured it geographically, Mr. Boothby, assuming that there would be delegates from various parts of the state, and, at best, this is an estimate.

MR. BOOTHBY: The reason why I raised the question, I noticed that if you use 10 cents a mile, that is 95,000 miles, and I haven't had an opportunity to figure this out, but it seems like a tremendous amount of miles.

MR. DeVRIES: I am sorry. You said 95,000 miles? It is based on 10 cents a mile, assuming that the delegates who serve on the commission will be scattered, geographically throughout the state, and estimated trips to and from Lansing, 20 trips for 20 commission meetings.

MR. BOOTHBY: What is the $1,000 for the staff?

MR. DeVRIES: Well, the $1,000 was included, I think, Mr. Boothby, for 2 reasons. One is that we thought that perhaps the contract for the printing might be let ouside of Lansing, and would necessitate travel by the secretary's staff, and it would also provide for the travel of the public information staff, if any.

MR. BOOTHBY: I have 2 or 3 other questions, if I may, Mr. President. I would like to ask the thinking of the committee on subsection F regarding the clipping service.

MR. DeVRIES: The thinking of the committee, Mr. President and Mr. Boothby, the convention contracted for clipping service when we started October 3. It provides us with a permanent historical record, and we felt that it would be very valuable to the commission to have a newspaper clipping record of the activities following the convention. It is a continuation of a contractual service we now have.

MR. BOOTHBY: I have one final question, and that is with regard to the weekly press mailing. What do you envision that this press mailing service will perform?

MR. DeVRIES: Mr. President and Delegate Boothby, again this is a continuation of a present contractual service with the Michigan press association, and the public information division now sends out weekly mailings to weekly newspapers throughout the state.

MR. BOOTHBY: That brings me to my next question. Is this informational service that will be operated by the public information division going to be in the nature of giving bulletins as to the work of the commission, the post convention commission, or what will they be giving these weekly bulletins on?

MR. DeVRIES: Mr. President and Mr. Boothby, if you will turn to page 596 on the resolution and look at the second paragraph in the lefthand column, I think it points out very clearly what the public information staff would do in the commission. The data which they will prepare and send out will be prepared solely from the official convention record and the committee reports. Their function, as I understand it, is to provide the people of this state with an explanation of what we have done, of how we have changed this constitution from the 1908 constitution; purely factual, purely informational, based purely on the convention record and the accompanying committee reports.

MR. BOOTHBY: Well, may I ask you, looking to page 596 of the journal, I notice that there is a statement that one of the functions of this committee will be, under 8, "fulfilling all requests for informational data from groups and private citizens." Have you provided for gasoline allowance for this particular purpose?

MR. DeVRIES: For fulfilling all requests for informational data from groups and private citizens?

MR. BOOTHBY: Yes, is this going to be speaking engagements, or only publications?

MR. DeVRIES: It is not anticipated that any member of this commission or its public relations information division will appear on any speaking engagements. What we are talking about here is mailing requests for information, mailing tapes about sound on film documents, or what have you.

MR. BOOTHBY: Then, my conclusion is that the efforts of this commission will not be in the nature of a propaganda commission?

MR. DeVRIES: I am glad you asked. That is correct.

VICE PRESIDENT ROMNEY: Delegate Binkowski.

MR. BINKOWSKI: Mr. President and Mr. DeVries, regarding the factual matters which you are going to submit

in your report, taken from the convention record, since we have a great number of minority reports in respect to the various issues, will both sides then be presented?

MR. DeVRIES: Mr. President and Mr. Binkowski, it is my understanding that the material that will be released by this commission, after we have adjourned, will only be taken from the official draft and the accompanying committee reports sustaining that section of the constitution.

MR. BINKOWSKI: In other words, the majority report.

MR. DeVRIES: The committee report, Mr. Binkowski.

MR. BINKOWSKI: As accepted by the majority of the members of this constitutional convention.

MR. DeVRIES: As accepted by the majority of the members of this constitutional convention.

VICE PRESIDENT ROMNEY: Delegate Hoxie.

MR. HOXIE: Mr. President and Mr. DeVries, I appreciate the work that your committee has done in trying to furnish to the delegates of this convention a breakdown of what you recommend should be done to preserve the records and to do all of the things that you have indicated. However, there is one thing that bothers me, Mr. DeVries, and that is the fact that it seems a little unfair that the delegates haven't had an opportunity to review it and to determine whether or not there are intelligent questions that we would like to ask the committee about this proposed budget. We are dealing with a considerable sum of money. At least, to me, a country boy from St. Louis, when we get to over ¼ of a million dollars, that is quite a lot of the people's money.

I am wondering if you would have any objection to laying this over for a day or so until we can make a study of it.

MR. DeVRIES: Mr. President and Mr. Hoxie, the only reason for some haste on this resolution is that the deadline for the introduction of bills in the legislature is February 21, and we would like to meet with the legislators sometime the end of this week, but we have no objection to laying this over until tomorrow morning. Would that be sufficient time, Mr. Hoxie?

MR. HOXIE; Well, Mr. DeVries, I would suggest tomorrow afternoon and give us a little opportunity. It is nearly 6:00 o'clock now, and we aren't going to be back here until 9:30 in the morning. I don't think it is such a rush that it couldn't wait until the afternoon session.

MR. DeVRIES: Mr. President, I move that the committee on administration's report be laid over until tomorrow afternoon at 2:00 p.m.

VICE PRESIDENT ROMNEY: You have heard the motion. Those in favor say aye. Opposed.

The motion prevails.

Delegate Van Dusen.

MR. VAN DUSEN: Mr. President, yesterday Dr. Pollock made a parliamentary inquiry asking the order in which the committee proposals remaining on our calendar would be considered, and after consultation with President Nisbet, the committee on rules and resolution reports to the convention that the secretary is now in the process of preparing the calendar, and showing the committee proposals by subject matter as follows:

First, local government, in which we are now engaged; then, education; then the judicial branch; then the executive branch; then the legislative organization; and then rights, suffrage and elections; then legislative powers; and finally miscellaneous provisions.

Hopefully, the secretary will have the calendar showing the proposals of these committees in detail in your hands tomorrow morning.

VICE PRESIDENT ROMNEY: Mr. Van Dusen, do you have any motion in connection with special orders for tomorrow?

MR. VAN DUSEN: I think, Mr. President, it probably would be in order, at this time, to move that the matter of legislative organization, Committee Proposals 79 and 80, which had been made a special order for tomorrow, be returned to its regular place in the calendar, as I have just outlined.

VICE PRESIDENT ROMNEY: The question is on the motion. Those in favor of the motion say aye. Opposed?

The motion prevails.

Delegate Downs.

MR. DOWNS: I ask through the Chair, Mr. Van Dusen, was the idea that all of these would be on general orders and each one would be completed before going on to the next?

MR. VAN DUSEN: Mr. President and Mr. Downs, that is certainly the intention of the committee on rules and resolutions, and I trust it meets with the approval of the convention.

VICE PRESIDENT ROMNEY: Delegate Hannah.

MR. J. A. HANNAH: Mr. President, I would like to ask if there isn't some device that we could use to speed up the rate with which we move when we are in the committee of the whole. I recognize all the reasons for unlimited debate, why no one should be hurried or denied the right to have his views heard, and I don't know as I am speaking for anyone but myself, but today has been a very discouraging day. We have moved very slowly. There have been many such days, but we don't seem to be improving ourselves. I thought we might get tired after awhile and people wouldn't talk quite so often and so long. I have raised the question as to whether the management of this convention couldn't do something about it; I have been assured that they couldn't, and I am going to make a motion—it may be out of order; you can rule it out of order if you want to. It may not work, but I would like to see it tried.

So I move that the management of this convention instigate, beginning tomorrow, compiling for each meeting of the committee of the whole, and including in the daily journal a list of the number of speeches and the total number of minutes used in speaking by each delegate during each day's sessions.

VICE PRESIDENT ROMNEY: Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, I move that the rules be suspended for the purpose of immediate consideration of Dr. Hannah's motion.

VICE PRESIDENT ROMNEY: Is there objection?

MR. FARNSWORTH: Point of information.

VICE PRESIDENT ROMNEY: Delegate Farnsworth.

MR. FARNSWORTH: Directed to Mr. Van Dusen, on our desks today was placed a proposed—I don't know whether it is proposed or not—but an instrument that might possibly limit debate on casual amendments. My point of information is, what do you expect to do about that?

MR. VAN DUSEN: Mr. President and Mr. Farnsworth, while this is not precisely on the point of Dr. Hannah's motion, nevertheless, it may be worthwhile to explain briefly the attention which the committee on rules and resolutions has been giving to attempting to solve the problem raised by Dr. Hannah.

Each delegate has today received a suggestion, which the committee on rules and resolution has under consideration, which we give you in a very gingerly fashion because of the concern which all of us feel about arbitrary limitations on debate, but I believe that many of the members of the rules committee believe that the principal problem with which the committee of the whole has been confronted has been what we have defined as the casual amendment, the amendment which is thrown in in the heat of debate, which is not on the desks of the delegates, to which no prior thought, apparently, has been given, and to which no prior thought could have been given by the delegates other than those offering the amendment. We then spend extended time in consideration of these amendments thrown in in the heat of debate.

If you will examine the suggestion carefully, you will note that what we have done is to suggest a device by which any delegate may obtain unlimited debate in the committee of the whole if he can obtain the support of 2 other delegates for his proposed amendment, and if he is sufficiently considerate to have his amendment duplicated and placed on the desks of the members in advance of the session at which his amendment is to be offered. If he will do these things, then his amendment is not subject to limitation of debate. If, however, the amendment is simply thrown in in the course of debate, then

it would be in order for the committee chairman or vice chairman or any signer of a minority report to which the amendment is offered to move to terminate debate at a time certain, nevertheless allowing not less than 5 minutes for the proponent of the amendment, and not less than 5 minutes for an opponent of the amendment, to consider it.

I would suggest, at this point, simply that each of the delegates give careful consideration to this kind of a suggestion. If it meets with your approval, let the members of the rules committee know it. If you have specific objection, let the members of the rules committee know. The committee on rules and resolutions proposes to meet at 8:30 a.m. on Thursday of this week at which time we will, once again, consider this subject. We would like to have the benefit of your guidance. We don't want to arbitrarily limit debate. On the other hand, it has been our impression increasingly that most of the delegates are not interested in protracted debate on the amendment which is thrown in without thoughtful prior consideration.

VICE PRESIDENT ROMNEY: Delegate Hutchinson.

MR. HUTCHINSON: Mr. President, now to get back to Dr. Hannah's motion, I would like to ask the Chair to inquire of the secretary as to whether the secretary is sufficiently and adequately staffed so that somebody can stand by with a stop watch and keep track of all of these minutes and all of these motions and do all of this research which is going to be necessary. All we are doing is doing a job of research here.

As I understand the sense of his motion, it is to tabulate in every journal all of the numbers of motions, and the number of minutes, and who talked how long, and I just want to know whether the secretary's office is adequately staffed to carry out that work.

SECRETARY CHASE: In response to the inquiry from Mr. Hutchinson, if we can borrow a stop watch somewhere, we will do our best to fulfill the requirements.

MR. HUTCHINSON: Mr. President, I would just like to say that I hope it won't hold up the journal.

Do you think it will hold up the journal, Mr. Chase?

SECRETARY CHASE: May the secretary read again the motion that is offered by Dr. Hannah?

> I move that the management of this convention instigate, beginning tomorrow, compiling for each meeting of the committee of the whole, and including in the daily journal a list of the number of speeches and the total number of minutes used in speaking by each delegate during each day's sessions.

I think this could possibly be done without too much difficulty.

VICE PRESIDENT ROMNEY: Delegate Hoxie.

MR. HOXIE: Mr. President and fellow delegates, I am in sympathy with what Dr. Hannah has in mind, however there is one question that I think we should consider and that is whether this same procedure should be followed on explanations on proposals that have been reported from committees, the answering of the questions from the delegates. I feel it is a little unfair, if it is some reflection on the committees who have presented to this convention a proposal in which, I am sure, the delegates want a full and complete explanation. Certainly there will be, from the legislative powers committee, various members of that committee who will answer questions that are asked by the delegates. Certainly we will not use up any more time in such explanations than the convention desires.

However, I don't believe that it was the intent of Dr. Hannah to make it appear as if committee members who are explaining the proposals before the committee of the whole should be so considered in a time proposition, to the extent where the people who receive these journals can only gather one inference, and that is that those people are taking too much time.

VICE PRESIDENT ROMNEY: Delegate Kuhn.

MR. KUHN: Mr. President, I would object because of the fact that no one has shown me the cost basis or anything else, and I think it is done in jest at this time of the evening, and I think it should be given greater study.

VICE PRESIDENT ROMNEY: The question is on Delegate Hannah's motion. Delegate Conklin.

MRS. CONKLIN: I would just like to say that I support the intent, and I would just hope that those delegates who haven't spoken very often, won't feel obliged now to rush out and start speaking so they can get recorded.

VICE PRESIDENT ROMNEY: Delegate Bentley.

MR. BENTLEY: Mr. President, I think that the point made by Dr. Hannah was well intended, but I question the seriousness of this and therefore I move to lay this motion on the table.

VICE PRESIDENT ROMNEY: The motion is to lay it on the table. Those in favor say aye. Opposed.

The motion prevails.

Delegate Anspach.

MR. ANSPACH: Mr. President and fellow delegates, I had a bit of admonition from a man sometime ago, when he said to his wife—and this might help here—he said to his wife, "Why don't you think before you speak?" She said, "How in the world do I know what I think until I hear what I have to say?" (laughter)

VICE PRESIDENT ROMNEY: Delegate Hatcher.

MRS. HATCHER: Mr. President and fellow delegates, I rise on a point of special privilege. I, for some weeks now, have sat here in this convention realizing the completely adequate and very fine facilities that we have here, but I feel that there is an oversight, or perhaps there is some lack of understanding about the air conditioning system here in this building. I have constantly gotten over one cold after the other, and at this very moment my feet and hands are very cold, and there are 2 women setting here now with coats on.

I think that somehow, some way, the air conditioning ought to be arranged so that people can sit in here and be properly ventilated without freezing. I have hesitated to bring this to the floor, and I am not putting it in the form of a motion, but I am calling it to the attention of the management of this convention, realizing that the facilities here are adequate, but I believe this particular point has been overlooked in terms of the human beings who have to sit here.

VICE PRESIDENT ROMNEY: Thank you, Mrs. Hatcher. This will be referred to the committee on administration.

Delegate DeVries.

MR. DeVRIES: I often thought, before I got here, that I would like to write a book about what I was going to do. I think what I should do is take all the notes that I have received since I have been chairman of the committee on administration. It would be a delightful collection of "antic" dotes. Today I received 7 notes about the temperature in constitution hall. Five of them said that it was much too warm and 2 said that it was too cold, and so we have tried to adjust the temperature. This morning it was 82, and this noon we got it down to 70. I don't know what it is now. And I regret, Mrs. Hatcher, that you find it is cool, but I find that I get the least number of complaints when we set the temperature at 70.

I notice, from the rostrum, certain delegates have a tendency to go to sleep early in the morning if the temperature is above 80 degrees, and so we have tried to keep it at 70 degrees rather than at 80 degrees. That is all I can say, and I apologize for your discomfort. If you want to make a motion to set the thermostat at a certain temperature, that is the best I can do, and I apologize for your discomfort, Mrs. Hatcher.

VICE PRESIDENT ROMNEY: Delegate Butler.

MRS. BUTLER: Mr. President, I think it is not just the temperature, it is the terrible draft. We sit right here in a breeze. It is a constant breeze. (laughter)

VICE PRESIDENT ROMNEY: The Chair would like to suggest that Delegate Anspach review the fable of the man, the boy, and the donkey and tell it to all of us someday.

Delegate Bentley.

MR. BENTLEY: Mr. President, if I could have the attention of the members of the committee on education, for just a second, I would remind them that we are having a com-

mittee photograph taken at our meeting immediately following the morning session tomorrow, and also to remind them that we have, by request, exchanged rooms with the committee on style and drafting, so we are in the room one further on than we were beforehand.

VICE PRESIDENT ROMNEY: Announcements, Mr. Secretary.

SECRETARY CHASE: The committee on style and drafting will meet in room K at 8:00 o'clock this evening, Mr. William B. Cudlip, chairman.

The committee on emerging problems will meet tomorrow, Wednesday evening, in committee room I at 1:00 o'clock p.m., Frank G. Millard, chairman.

I have the following request for leave of absence: Mr. Norris requests to be excused from the morning session tomorrow, Wednesday.

VICE PRESIDENT ROMNEY: Without objection, he will be excused.

Delegate Hubbs.

MR. HUBBS: Mr. President, I move the convention do now adjourn.

VICE PRESIDENT ROMNEY: All in favor say aye. Opposed?

The motion prevails. We are adjourned until tomorrow morning at 9:30 a.m.

[Whereupon, at 6:05 p.m., the convention adjourned until 9:30 o'clock a.m., Wednesday, February 14, 1962.]

SEVENTY-NINTH DAY

Wednesday, February 14, 1962, 9:30 o'clock a.m.

PROCEEDINGS

PRESIDENT NISBET: The convention will please come to order.

Our invocation this morning will be given by the Reverend C. Oscar Leonardson of the Grace Lutheran Church of Lansing. Please rise.

REVEREND LEONARDSON: Great God in heaven, we do thank Thee that we have the privilege of even another day, and we pray Thee that on this day which, in a special sense, is symbolized by the word "love," that that new dimension of love may take our hearts, and that as we ponder the knotty problems that come before us in trying to hammer out a new constitution, that we might have that broader dimension in our thinking.

Fill us, O Lord, with Thy holy spirit even today. Help us to call upon Thee, and help us to seek Thy will and Thy guidance in all that is done, for without Thee, O Lord, life and all of its dispensations become fruitless. We pray Thee, therefore, to look to each single delegate of the constitutional convention, and help that each one might call upon Thee for the guidance that is so necessary; that when we think of those problems that we are to face, we recognize that they are not always the easiest to solve, but that with Thee, with Thy direction and Thy guidance there isn't anything that is impossible.

So we do look to Thee for Thy help today, we look to Thee for Thy guidance, we look to Thee for Thy direction, we look to Thee for the help we need so that, whatever is done, when the constitution becomes final it may be said that this is the greatest and the best instrument for all of the people of this great and wonderful state.

And so, Lord, we do think of Thee, and we do ask for Thy guidance this morning, and we say, in the spirit of the songwriter: Blest be the tie that binds our hearts in Christian love, the fellowship of kindred minds is like to that above. Amen.

PRESIDENT NISBET: The roll call will be taken by the secretary. Those present please vote aye. Have you all voted?

SECRETARY CHASE: The machine is locked and the attendance will be recorded.

Mr. President, a quorum of the convention is present.

Absent with leave: Messrs. Dade, Norris, Page and Stamm.

Absent without leave: None.

[During the proceedings, Mr. Norris entered the chamber and took his seat.]

PRESIDENT NISBET: The Chair recognizes Mr. Turner.

MR. TURNER: Mr. President, delegates of the convention, one of the main topics of discussion around and about this convention hall is about the 15 mill limitation.

Ladies and gentlemen, the 15 Mill is dead! Yes, you heard me right. The 15 Mill is dead. Let me read the obituary.

> Well known 15 Mill died suddenly February 9, 1962. Cause of death is believed to be electrocution. Funeral will take place February 14, 9:45 a.m. Fifteen Mill served in the political field as a tax adjuster for 30 years and was well known throughout the state.

Members of the convention:

The 15 Mill has served its day.
It has done its job — gone on its way.
I'd like to tell you, if I may,
About the urge that makes me say:
At 2 a.m. or maybe 3
My conscience rose and said to me,
"I move we now arise."
I sat up straight and rubbed my eyes;
I said, "O Lord, please let me rest;
I am so comfy in my nest."
Then in the still before the dawn
I found my thinking cap was on
And then my conscience came and said:
"Your dear old 15 Mill is dead!
Wake up! Get up! And find a way
To fill this gap, do it today!
Go back to work and find the facts
There is a better way to tax.
Get Paul and Charles and Don and Frank
And Dean and Roy and Irv and Hank;
And then there's Richard, Hale and Dick —
They are the ones who make things tick.
Get all the rest that made this team
And tell them now: 'Get on the beam!'"
'Twas 1 quick stroke of McCauley's hand
That swept 15 Mill from the land.
The switches closed, the lights grew red
'Twas then I knew 15 Mill was dead.
That fateful day without intention
Was the turning point in the convention.
I believe this is the time and place
To take the problems that we face
And find a ground that's good for all
The people of this state next fall.

A ground where everyone can stand
And say, "This is the promised land."
And as of now I have no fear
That we'll not find the right way here,
And I can hear some voices shrill:
"Say, Grandpa, what's the 15 Mill?"
(applause)

PRESIDENT NISBET: Thank you, Mr. Turner, for your Valentine's day message.

Mr. Goebel.

MR. GOEBEL: Mr. President, I move that it be printed in the journal.

PRESIDENT NISBET: The question is on the motion of Mr. Goebel. Those in favor say aye. Opposed, no.

The motion prevails.

Reports of standing committees. Mr. DeVries.

MR. DeVRIES: Mr. President, fellow delegates, I have a weather bulletin on constitution hall this morning. The prognosis is that the temperature will range from 72 to 74. It is now 72. It will not go any higher than 74. The bulletin also says that during the day the situation will be cloudy and windy with gusts up to 150 words per minute. (laughter)

PRESIDENT NISBET: This promises to be a good day. (laughter) Any other committee reports?

SECRETARY CHASE: None on the desk, Mr. President.

PRESIDENT NISBET: Communications from state officers.

SECRETARY CHASE: None.

PRESIDENT NISBET: Second reading.

SECRETARY CHASE: Nothing on that calendar.

PRESIDENT NISBET: **Motions and resolutions.**

SECRETARY CHASE: Mr. Kuhn offers

Resolution 71, A resolution with respect to adjustment of the voting machine to eliminate visual registration of the vote until the machine has been locked.

Whereas, At present the voting machine, on a roll call vote, registers visually the vote of each delegate as soon as he operates his voting switch; and

Whereas, This detracts from the independence of the several delegates by enabling those of uncertain mind to refrain from voting until aware of the votes of other delegates; now therefore be it

Resolved, That a suitable adjustment be made on the voting machine to the end that, on a roll call vote, the machine will not register visually until the vote has been cast and the machine locked.

PRESIDENT NISBET: The resolution is referred to the committee on rules and resolutions.

Unfinished business.

SECRETARY CHASE: None.

PRESIDENT NISBET: Special orders.

SECRETARY CHASE: None.

PRESIDENT NISBET: **General orders.** Mr. DeVries.

MR. DeVRIES: Mr. President, I move the convention resolve itself into committee of the whole for consideration of certain items under the order of general orders of the day.

PRESIDENT NISBET: The question is on the motion of Mr. DeVries. All in favor say aye. Opposed, no.

The motion prevails. Mr. DeVries.

[Whereupon, Mr. DeVries assumed the Chair to preside as chairman of the **committee of the whole.**]

CHAIRMAN DeVRIES: The committee will come to order. When last the committee met it was considering **Committee Proposal 83,** A proposal pertaining to cities and villages; and certain amendments have been adopted. The secretary will read.

For last previous action by the committee of the whole on Committee Proposal 83, see above, page 1005.

SECRETARY CHASE: There are no further amendments on file to paragraph 1 of section b.

CHAIRMAN DeVRIES: The committee will proceed to the second paragraph of section b. Are there any amendments to the second paragraph of section b? The secretary will read the paragraph.

SECRETARY CHASE: Beginning on page 2, line 3:

[The second paragraph of section b was read by the secretary. For text, see above, page 1005.]

SECRETARY CHASE: Mr. Elliott, on behalf of the committee on local government, offers the following amendment:

1. Amend page 2, line 11, after "hereby conferred.", by striking out the balance of that section and inserting "Such cities and villages shall have exclusive jurisdiction over wages and hours and administration except for general laws applicable to all persons or all public employees alike.".

CHAIRMAN DeVRIES: The question before the committee is the Elliott amendment. The Chair recognizes the gentleman from Pleasant Ridge, Delegate Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, I would like to suggest —

MR. FORD: Point of order, Mr. Chairman.

CHAIRMAN DeVRIES: State your point of order, Delegate Ford.

MR. FORD: A minority report is on file, which I think would take precedence over the Elliott amendment.

CHAIRMAN DeVRIES: The Chair rules that the committee amendment takes priority over the minority report.

MR. FORD: This is not a committee amendment. This is Mr. Elliott's amendment.

MR. A. G. ELLIOTT: No. This is a committee amendment, Mr. Ford. This was an amendment that the committee passed upon at its session.

MR. FORD: Mr. Chairman —

CHAIRMAN DeVRIES: The Chair rules the Elliott amendment is in order. Proceed, Delegate Elliott.

MR. A. G. ELLIOTT: I wanted to suggest that in accordance with our procedure yesterday, that on this last paragraph we separate the last sentence from the balance of the paragraph because there are 2 different thoughts here that need some discussion.

CHAIRMAN DeVRIES: Delegate Elliott requests that the question be divided, and we shall consider, without objection, everything but the last sentence in paragraph 2 of subsection b.

Delegate Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, I yield to Mr. McCauley.

CHAIRMAN DeVRIES: Delegate Elliott yields to Delegate McCauley.

MR. MADAR: Mr. Chairman, I rise for a point of order.

CHAIRMAN DeVRIES: State your point of order, Mr. Madar.

MR. MADAR: On the amendment that Mr. Elliott speaks of and claims as a committee amendment — I happen to be on the local government committee, and until yesterday I knew nothing of this amendment, and if this is a committee amendment, surely the committee would know something about it. I haven't missed a meeting.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Allegan, Mr. Farnsworth.

MR. FARNSWORTH: Mr. Chairman, members of the committee, I was at the local government committee meeting. I will vouch for the fact that the committee passed on this particular amendment. What Mr. Elliott says about it is absolutely the truth.

CHAIRMAN DeVRIES: The gentleman from Wyandotte, Delegate McCauley.

MR. McCAULEY: Mr. Chairman and members of the committee, as I understand it now, we are concerning ourselves with the second paragraph of this proposal. We are not talking on the last sentence that has been amended.

CHAIRMAN DeVRIES: That is correct.

MR. McCAULEY: First of all, I would like to point out to the committee that this recommendation is concerned with the inadvertent taking over of a field of regulation by action of the state legislature through the imposition by state law

of regulations without a saving clause permitting concurrent local regulations; thus opening the door to judicial interpretation of such action as preempting the field to the state and voiding all local regulations.

There is no quarrel with the position that there may be areas of regulation in which uniformity is so necessary that the state should regulate exclusively. The intent of our recommendation is that if it desired on the part of the state legislature to so regulate exclusively, that they specifically so provide in the statute establishing such regulation.

It is a well accepted principle of municipal law that statutes and ordinances are to be reconciled where possible and effect given to both, but that where the legislative intent is to occupy the whole legislative field, if it is apparent from the statute, any ordinance with provisions to the contrary of those prescribed by the statute is invalid.

At the present time in Michigan we have a number of examples of statutes which have been interpreted by the courts as preempting a field and thus invalidating all or part of local regulations in the same field. Following are some examples. This particular example involves a motorboat regulation case in which the court, in considering the ordinance for the city of Howell regulating the use of motorboats on Thompson lake, while taking judicial notice of the fact that motorboats propelled by motors in excess of 5 horsepower will create noises likely to disturb the peace and quiet of those dwelling nearby, felt that however desirable it may be to preserve the peace of residents adjacent to Thompson lake, the city of Howell may not prohibit that which is permitted by state statute.

All we are attempting to do by this section is to ask the legislature, when they are passing a law of statewide concern and they want to preempt this field, that they so state in the statute and not leave it up to court interpretation.

CHAIRMAN DeVRIES: The question before the committee is the second paragraph, lines 3 to 11, Committee Proposal 83. The Chair recognizes the gentleman from Detroit, Delegate Nord.

MR. NORD: May I address, through the Chair, a question to Mr. McCauley?

CHAIRMAN DeVRIES: If the gentleman cares to answer.

MR. NORD: Mr. Chairman, Mr. McCauley, the language that you have before us raises this question in my mind: I suppose that I am correct, am I not, in assuming that when you speak about the fact that the legislature must state their wishes to preempt the field, that you are talking about cases where otherwise there would be concurrent power between the legislature and the local government? For example, you don't mean to imply that if the legislature passes a divorce law, or some such thing as that, it is necessary to state whether they do or don't wish to preempt the field, am I correct?

MR. McCAULEY: You are right, Dr. Nord. We are talking about only municipal concerned property and government, that is all; affecting municipal government directly.

MR. NORD: I would simply like to suggest that when this gets to style and drafting there is some language there that is a little bit broader perhaps than intended, and perhaps it could be cleared up.

MR. McCAULEY: We certainly would have no objection to that.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Lansing, Delegate Erickson.

MR. ERICKSON: I would like to address a question to Mr. McCauley.

CHAIRMAN DeVRIES: If the gentleman cares to answer.

MR. ERICKSON: Public act 219 of 1949 gave the state health department the authority to — a municipality can only use people to operate their filtration plants and water purification systems who are registered by the state health department. Would this vitiate that statute?

MR. McCAULEY: I didn't hear all of the question, Mr. Erickson. I am sorry.

MR. ERICKSON: Well, public act 219 of 1949 gave the state health department the authority to issue certificates, and that only people who have certificates can operate filtration plants and water purification. Would that take that right away?

MR. McCAULEY: Not in this particular section. There might be some question on that on the amendment that will be before the committee in the next discussion. But this particular section does not in any way do away with the rights established by that particular statute.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Ypsilanti, Delegate Lawrence.

MR. LAWRENCE: Mr. Chairman, I would like to raise a point of inquiry, or of information. You may recall that yesterday I made an inquiry as to the division of the paragraph and was told that it had been divided by separating the rest of the paragraph from the last sentence. Subsequently the first paragraph and the second paragraph were divided. Based on that, and on the fact that we weren't going through to the last sentence of the second paragraph, I then filed a proposed amendment to the second paragraph only. That proposed amendment was that after the word "concern" on line 7 the remainder of that sentence be deleted, and that the last sentence of the paragraph be deleted.

Now we have changed the rules, apparently, again and we are taking the last paragraph in the 2 divisions, and I would like to know where that leaves me with my amendment. If this new last sentence, we will say, is put in, then, provided it is understood that the amendment would apply to the new sentence, I can see no difficulty. But if it doesn't, then by changing this situation we have vitiated what I have done. Is that not correct?

CHAIRMAN DeVRIES: In that we have divided the paragraph, Delegate Lawrence, we probably would have to divide your amendment. The decision of the committee yesterday was to vote separately on both paragraphs, but this morning the chairman of the committee requested that we divide the question in lines 1 through 11 and then lines 12 through 14.

If you can submit 2 amendments, we can consider them that way, or we will have to divide the question on your amendment.

MR. LAWRENCE: Well, I am perfectly willing to do anything to get this along and to see that it is properly done. I would like a suggestion from the secretary or the Chair as to the best way of doing it.

CHAIRMAN DeVRIES: Can you divide your amendment?

MR. LAWRENCE: Under the rules and regulations can I do it on one or should I have two separate?

CHAIRMAN DeVRIES: We can divide it on the rostrum, Mr. Lawrence.

The Chair recognizes the gentleman from Kalamazoo, Delegate Allen.

MR. ALLEN: I was going to suggest to Mr. Lawrence that I believe his amendment could be easily divided by just separately considering that part of your amendment that proposes to drop the last sentence. Because, as I see it, Mr. Lawrence, what you want to do is strike all the language after the word "concerns" —

MR. LAWRENCE: No. You have the wrong "concern".

CHAIRMAN DeVRIES: Delegate Lawrence, the secretary will read your amendment.

SECRETARY CHASE: Mr. Lawrence offers the following amendment:

1. Amend page 2, line 7, after "concern" by striking out the balance of the sentence and inserting a period. In other words, by striking out "which will preempt the field only when this intention is so stated therein," and leave the first sentence then to read, "Each such city and village is hereby granted full power to pass laws and ordinances relating to its municipal concerns, property, and government, but the legislature may enact laws of statewide concern."

CHAIRMAN DeVRIES: The question before the committee is the adoption of the first part of the Lawrence amendment to lines 7 and 8 of Committee Proposal 83. The Chair recognizes the gentleman from Garden City, Delegate Brown.

MR. T. S. BROWN: I have some questions for Delegate McCauley through the Chair.

CHAIRMAN DeVRIES: You may if the gentleman cares to answer.

MR. T. S. BROWN: Mr. Chairman, Delegate McCauley, I am a little concerned here in the new language on our white sheet with the substitute terminology in the last portion of the paragraph, in that you say the "cities and villages shall have exclusive jurisdiction," and so forth, "except for general laws applicable to all persons or all public employees alike." This last phrase "all public employees alike," is what I am concerned about; perhaps needlessly.

MR. McCAULEY: Mr. Chairman, Mr. Brown, we are not on that.

MR. T. S. BROWN: That is separate?

MR. McCAULEY: This is separate from what we are talking about now. This will be taken up after dinner.

CHAIRMAN DeVRIES: The question before the committee is the proposed Lawrence amendment to lines 1 through 11 of the second paragraph of the proposal.

MR. T. S. BROWN: Then I will withhold my questions until that time.

CHAIRMAN DeVRIES: Delegate Brown yields. The Chair recognizes Delegate Lawrence.

MR. LAWRENCE: The purpose of deleting the words of that sentence after "concern" on line 7 would be to retain the present and past constructions that have been placed on the right of the legislature since the home rule provision was put in the constitution. In other words, it leaves to the legislature its time honored right and duty to pass laws either of a mandatory character or of a permissive character. That is, that such a law can or will apply to a municipality if adopted by the municipality, and would give the legislature the same right as it has had in the past. It is not intended to dilute the right of a municipality to pass proper ordinances and laws governing that municipality under the constitution and the statutes, but it does give the legislature the same control and guidance that it has had in the past.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Wyandotte, Delegate McCauley.

MR. McCAULEY: Mr. Chairman, members of the committee, I respectfully oppose the amendment. I think that experience has shown in the past that we are leaving a lot of the statutes up to judicial interpretation. They cannot read the minds of the legislators, nor can they read the minds of the city councils. The purpose of this language, as recommended by the municipal league, is to make it definitely clear that when the state is going to preempt a certain field they state so in their bill.

CHAIRMAN DeVRIES: The question before the committee is the Lawrence amendment, second paragraph, Committee Proposal 83. The secretary will read the amendment.

SECRETARY CHASE: Mr. Lawrence's amendment is:

[The amendment was again read by the secretary. For text, see above, page 1030.]

CHAIRMAN DeVRIES: The question before the committee is the Lawrence amendment. All those in favor of the amendment will say aye. Opposed, no.

The amendment is not adopted. Are there any further amendments to the second paragraph of Committee Proposal 83, lines 3 to 11?

SECRETARY CHASE: None on file, Mr. Chairman.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Fennville, Vice President Hutchinson.

MR. HUTCHINSON: Mr. Chairman, this language in these lines 3 to 11 is a very radical departure from what we have had before, as I see it, in this state, and I am quite concerned about it. I don't know just exactly what to do about it except perhaps when I have an opportunity, I will vote against it.

I am disturbed about it for this reason. We are going to vest a lot of inherent power in the cities and the villages, and instead of looking to the state law to find out what their powers are, hereafter we will have to look to state law to find out what they cannot do.

I know that somebody made reference to what they thought was an inconsistency on my part, because when I speak about the powers of the legislature and so on, I have been arguing, I think, quite strongly that it is the purpose of the state constitution with respect to the state government to say what it shall not do. Certainly it is not the — at least as I have always been told — it is not the proper relationship of local government to state government to assume that local government has a lot of inherent power. It is the state that has the inherent power and not the local government. The local governments are merely creatures of the state. They exist by reason of the fact that the state creates them. Their power should be limited by the state. Their power should be controlled by the state, and the experience of mankind indicates that the way to control something is to control it by grant; to spell out what a creature can do.

When you turn those tables around, as is here being done, you turn these tables around, and you place the state government in the position of having to outguess and anticipate what a municipality might be wanting to do, and thereby you have to write some prohibitions into the statutes.

I think it is very poor public policy. This point I made yesterday afternoon when for a time I thought we had gotten into this language then. I think we are making a grave mistake in turning these tables around. I don't know how broad this language is that says that the legislature has to declare a preemption.

As Mr. Nord brought out by way of illustration, suppose the legislature wanted to pass a divorce law, would the legislature have to declare preemption, and the committee says no, it isn't intended to go that far.

Maybe to get into an area of closer proximity to municipal concerns, suppose the legislature passed a criminal statute. Now, then, is that criminal statute going to be law within that city in the absence of a city ordinance on the matter unless the legislature says this law will positively control throughout the state of Michigan? It is to be presumed that every legislative law will be effective throughout the state of Michigan.

I just don't know where in the world we are going to end up if we introduce the philosophy which these lines in this section introduce into our laws. We are going to completely, absolutely and completely, change the character of our government. Instead of positively acting for the purpose of the whole state, the legislature is going to be having to constantly assert that each and every one of its acts is intended to apply in the municipalities as well as outside of them. I don't think I am wrong in this interpretation. I can't believe that the courts would interpret this language any other way than I am interpreting it.

Not only that, but as to whether a power is a — this power to pass laws and ordinances — and that is another thing that is distressing to me. I always felt that municipalities could pass ordinances and so forth, but to say to pass laws in a constitution would suggest they could pass the statutory law. It is ordinance law we are talking about.

But there is another problem. Suppose that a thing may or may not be within this great inherent grant of power; whether a particular ordinance of a city would fall within this great inherent grant of power would always be a judicial question, and you will have to keep hammering it out in the courts all the time. It is much better policy to have the legislature by law vest in these municipalities these powers than to turn around and put the state in the position of having to prohibit rather than to grant.

I wanted to make this statement because I am opposed to this in principle.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Lansing, Delegate Wanger.

MR. WANGER: Mr. Chairman, I share Mr. Hutchinson's concern over this primarily because of the great breadth of the language which is given inherently to each of these cities and villages in our state. It says "pass laws and ordinances relating to its municipal concerns, property, and government." As nearly as I can tell, the word "concerns"

relates to anything that the legislative body of the city or the municipality wants to be concerned about. If this is the case and if this was interpreted in that way, you have a situation that you can analogize to a ball park where you have got hundreds of cities and villages all up at bat at once, and the legislature is the sole outfielder trying to catch all the flies, and trying to put a label called preempting the field on practically an innumerable number of specific statutes.

I share the concern of Mr. Hutchinson that this, in the long run, instead of helping the cities and the villages may very well tend to create such a lack of uniformity that the cities and the villages will find it to be to their distinct disadvantage.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Kalamazoo, Delegate Allen.

MR. ALLEN: Mr. Chairman and members of the committee, I am afraid we are going to get too far afield here. I think I know what bothers Senator Hutchinson, but I think that he is a little too worried.

Now, if you look at the language which Mr. Wanger was just talking about, and criticizing the phrase "laws and ordinances relating to its municipal concerns," you will see that this is the identical language that was in the 1908 constitution. If you will look up about 5 lines above where the language is bracketed and was stricken out in the first part of section b, you will see that what we took out was exactly what in the second paragraph we put back.

We had to do this because we had revised the subject matter a little bit. You will notice that in 1908 the constitution read just as it reads now in the language which you are criticizing "and, through its regularly constituted authority, to pass all laws and ordinances," the words "laws and ordinances" were used relating to its municipal concerns. The only thing which was added here was the 2 words after "concerns," "property" and "government." I don't think that amounts to very much, but the reason that they were inserted, I believe, was because city government now has a lot more real estate than it used to have, and the word "government" means that — well, I don't know, really, why it was put in. But to this extent you see, both Mr. Hutchinson and Mr. Wanger, we aren't doing anything more than was done before.

Let me go on. I don't think it is correct, and we don't understand home rule government for a city, if we say that the city can do nothing unless it is given by the legislature. The idea of home rule was to give, on local affairs, some autonomy to the city to function, and the first case that came before the Supreme Court of Michigan came about 1909. It was called Gallup v. Saginaw. The supreme court in that case said this about this new system of home rule:

> The new system is one of a general grant of rights and powers subject only to enumerated restrictions instead of the old method of only granting enumerated rights and powers definitely specified.

Now, let me give you an example. There is a bill in the legislature now applying to townships, I believe, that says townships shall have the right to regulate diseased female box elder trees. Now, if you apply this to city home rule, are you saying that city home rule today means that a city government cannot regulate diseased male box elder trees, and the city has to go back and have the legislature pass a new law? Obviously not. This is what home rule is intended to do. Therefore, the criticism which the 2 of you are making here, I believe, goes too far. What you would do in your criticism is turn the clock back to where there is no home rule.

Now, let me make a constructive suggestion here. When these things get into style and drafting, as distinguished from ours — sometimes in the press of things they come out just a little bit different than maybe they should. Maybe there are improvements, and we shouldn't tamper with it. But I think we could clear up Senator Hutchinson's worries and everything else this way.

You will notice that in the 1908 constitution it said "and, through its regularly constituted authority, to pass all laws and ordinances relating to its municipal concerns," and that is the same as we have here, except we added the words "government and property," and then the old language had a comma, "subject to the constitution and general laws of this state." Now I think, Mr. Hutchinson, that if we added those words "subject to the constitution and general laws of this state," we would come out just the same as we do in the 1908 constitution, and I feel that might take care of your problem. Then the court could construe the whole thing just as it always has, and the only change would then be about this preemption matter, which I think is a separate matter, and we thought it through. In other words, I am trying to think of something that would eliminate your concern without, at the same time, going too far back and, in effect, doing away with the home rule concept.

CHAIRMAN DeVRIES: Would the gentleman from Kalamazoo yield to the vice president?

MR. HUTCHINSON: Mr. Chairman, I would say that I would accept the amendment, and then we will debate about the preemption matter afterwards. I am willing to take this thing a step at a time, and I think the amendment that you offer, to reinsert that phrase, "subject to", would be a great improvement, and I would endorse the amendment as far as it goes.

CHAIRMAN DeVRIES: Delegate Lawrence.

MR. LAWRENCE: Mr. Chairman, didn't we reinstate that language yesterday by vote on the Sharpe amendment? Wasn't the Sharpe amendment that, and didn't we pass it?

CHAIRMAN DeVRIES: That was the first paragraph of section b, Delegate Lawrence, not the second.

MR. LAWRENCE: What are we talking about?

CHAIRMAN DeVRIES: We are talking about the second paragraph, Delegate Lawrence. Are you offering the amendment, Delegate Allen?

MR. ALLEN: I don't have it written out, but if it is permissible, I will offer it.

CHAIRMAN DeVRIES: Could you step to the rostrum and have the secretary fill it out for you?

The Chair recognizes the gentleman from Ann Arbor, Delegate Bonisteel.

MR. BONISTEEL: Mr. Chairman and fellow delegates, I have been reluctant to take up too much time of this convention, but I shall be very brief here. I wish to say I support the sentiments of Vice President Hutchinson in relation to the matters which he has discussed, I believe, very ably. I have a great deal of respect for the delegate from Kalamazoo and his knowledge of municipal affairs, but I believe that to adopt the suggested proposal here that we have before us would be to bring chaos into municipal government in this state.

I don't speak just as a chap who has never had any experience in municipal affairs. I have had, and I believe that no one can interpret this language intelligently without getting away from complete uniformity in the operation of the municipal governments of this state, because as I interpret this, if there can be an interpretation made, it would merely mean that each municipality would be on its own, and there would be a vying here and there for this or that proposal or proposition until the courts of the state would be filled with litigation relating to the powers of these municipalities to carry on and do the things that they are proposing to do either under ordinances or under so called laws.

I wish to register a complete protest. As a matter of fact, before Delegate Allen made the suggestion I had marked here in the constitution the very thing that he has suggested, namely, "and, through its regularly constituted authority, to pass all laws and ordinances relating to its municipal concerns, subject to the constitution and the general laws of this state."

Now, any one of the lawyers present here in this convention must know that there was some source of satisfaction to go back to the charter of the statutory provision relating to these municipalities in the home rule act to find out what the powers were that were mandatory, what the powers were that

were permissive, and in all the experiences I have had I have never yet found a legislature which wasn't willing, when a proposition was placed before it for an amendment to the home rule, that the amendment wasn't adopted by the legislature in the interest of municipal government.

I think unless this matter is clarified here we are going to be in trouble, and I wish to support the suggestion made both by Delegate Hutchinson and Delegate Lawrence, and I hope that this committee will not just accept this because it happens to be submitted as a committee report. I have not made myself heard very much in this convention, but I am really concerned about this one because I can see the danger lights ahead and plenty of them.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Kalamazoo for the purpose of making a preferential motion. The secretary will read.

SECRETARY CHASE: Mr. Allen offers the following amendment:

1. Amend page 2, line 6, after "ment,", by inserting "subject to the constitution and general laws of this state,"; so that the language will read:

> Each such city and village is hereby granted full power to pass laws and ordinances relating to its municipal concerns, property, and government, subject to the constitution and general laws of this state, but the legislature may enact laws of statewide concern which will preempt the field only when this intention is so stated therein.

CHAIRMAN DeVRIES: The question before the committee is the adoption of the Allen amendment. Delegate Allen.

MR. ALLEN: I might say, Mr. Bonisteel, that I think that this will then come out, with the exception of this preemption which I think we will want to take up again after this, almost exactly the same as in 1908. In fact, it will be exactly the same except for the words "property and government." It is the same.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Grosse Pointe Shores, Delegate Cudlip.

MR. CUDLIP: Mr. Chairman and members, I understand the effect of this amendment, but it seems to me that this is patch work, and we should go back and include the language which, as I understand it, is eliminated in the first paragraph.

I subscribe wholly to the expressions of Delegates Wanger, Hutchinson and Bonisteel. What we have got before us is whether the home rule city is going to be one of complete power of government subject only to the veto of the legislature, or whether we are going to continue as a matter of grant as in the past.

The committee report, page 439, says that what they want to do — and this is a philosophy — I just want to make it clear that I understand what they are trying to do. They say that they want to have these home rule cities and villages guaranteed full power over their own property and government. Government means everything, and as Delegate Hutchinson says, that would be a complete reversal, and as Delegate Bonisteel said, and Delegate Wanger, we won't have uniformity.

I think we had better leave it as it is. Otherwise we are going to reverse the whole philosophy of home rule cities, and I don't know where that county pattern will lead us.

CHAIRMAN DeVRIES: The question before the committee is the Allen amendment, paragraph 2, section b. The secretary will read the language.

SECRETARY CHASE: Page 2, line 6:

[The amendment was again read by the secretary. For text, see above.]

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Ann Arbor, speaking on the Allen amendment.

MR. BONISTEEL: Mr. Chairman, fellow members, I wonder if we will have sufficient opportunity to analyze this after we make this amendment. I agree with what has just been said. I think that we ought to have in some way an opportunity to put it together and see exactly how it is going to come out. What has been suggested is certainly an excellent suggestion, but whether it fits into the language we already have I am not prepared to say.

I would like to feel that we had some freedom. After this is put together and we read it completely, and have had a chance to look at it, I would like to at least have an opportunity to present another point of view, if it becomes necessary. That is all I have to say.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from East Grand Rapids, Delegate Martin.

MR. MARTIN: Just this, Mr. Chairman, I think Mr. Cudlip may have gotten us confused here, but I think that the sole purpose of this amendment is to make the second paragraph subject to exactly the same provisions with respect to general laws in the constitution as the first paragraph which we doctored up yesterday, and it does the job, and I think it ought to be passed.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Menominee, Delegate Lundgren.

MR. LUNDGREN: Mr. Chairman, I believe we are now involved in something here that is confusing to some of us, but also very illustrative of the fact that we have now something before us that needs more attention. I feel that we can't fairly pass on this at the moment until we can get together on the proper wordage. I would make that motion.

CHAIRMAN DeVRIES: What is your motion, Delegate Lundgren?

MR. LUNDGREN: I move that we pass this section temporarily.

CHAIRMAN DeVRIES: Delegate Lundgren moves that we pass paragraph 2 of section b of Committee Proposal 83 temporarily.

MR. LUNDGREN: Until we can get the proper language together on this. I feel that both groups seem to want to get together, and I feel that we can get together and pass the proper section.

CHAIRMAN DeVRIES: Does the delegate from Highland Park wish to speak on the motion?

MISS DONNELLY: No. I just want a point of information; that we are going on to the preempt field next.

CHAIRMAN DeVRIES: The question before the committee is whether we shall pass this section temporarily.

MISS DONNELLY: I think that is a fine idea. You mean pass over it, when you say that?

CHAIRMAN DeVRIES: I beg your pardon.

MISS DONNELLY: Point of inquiry. When you say pass, you mean pass over it?

CHAIRMAN DeVRIES: I said pass temporarily. The Chair recognizes the gentleman from Detroit, Delegate Binkowski.

MR. BINKOWSKI: Mr. Chairman and members of the committee, I would just like to call your attention to the fact of the problem that is confronting us now, and I wondered if we had enacted the rules committee's suggestion with respect to casual amendments, whether we would be prohibited from doing this sort of thing now. I have no objection to the Lundgren motion, but I just want to bring this point to the attention of the entire committee.

CHAIRMAN DeVRIES: The question before the committee is the motion made by Delegate Lundgren that paragraph 2, section b, be passed temporarily. All those in favor of this will say aye. Opposed, no. The Chair is in doubt. All those in favor of Mr. Lundgren's motion to pass temporarily this section, please rise.

SECRETARY CHASE: More than 80, Mr. Chairman.

CHAIRMAN DeVRIES: The Chair is no longer in doubt. It is temporarily passed.

We will proceed to section c of Committee Proposal 83.

SECRETARY CHASE: Section c.

[Sec. c was read by the secretary. For text, see above, page 1005.]

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Wyandotte, Mr. McCauley, speaking on behalf of the committee.

MR. FORD: Point of order, Mr. Chairman.

CHAIRMAN DeVRIES: What is your point of order, Delegate Ford?

MR. FORD: I understand we had divided the previous section so that we were considering all but the last sentence.

CHAIRMAN DeVRIES: Mr. Lundgren's motion, Delegate Ford, was to pass the entire section temporarily.

MR. FORD: I didn't hear you use the word "entire" until just this moment. When I voted to pass the section, I voted to pass the portion that had been under discussion. The last sentence in the section has not been under discussion.

CHAIRMAN DeVRIES: It is the understanding of the Chair that he said the motion dealt with paragraph 2 of section b.

MR. FORD: We have been dealing with paragraph 2 of section b all morning, but only a part of it, and it has been made very explicit on the floor that we were under no circumstances to discuss the last sentence, and the last sentence was not directly related to the rest of it. When will it come before the group?

CHAIRMAN DeVRIES: When the committee again considers section b. The Chair rules the point of order is not well taken. The Chair recognizes the gentleman from Wyandotte, Delegate McCauley.

MR. McCAULEY: Mr. Chairman, I wish to yield to Delegate Dell.

CHAIRMAN DeVRIES: Delegate McCauley yields to the gentleman from St. Ignace, Delegate Dell.

MR. DELL: The chairman of my committee warned me yesterday morning that I would be called upon to take care of this section. It seems to me we are having quite a time getting to it.

The comments on this section by the committee were:

[The supporting reasons for section c were read by Mr. Dell. For text, see above, page 1006.]

Now this section, as I understand, was not incorporated in the Constitution of 1835, or 1850 but was incorporated in the 1908 constitution, presumably to supplement the powers of the home rule. The committee recommends that this pass.

CHAIRMAN DeVRIES: Are there any amendments to section c? The gentleman from Muskegon, Delegate Hanna.

MR. W. F. HANNA: Mr. Chairman, I would like to address a question to one of the members of the committee as to whether or not this section is at all necessary. It is literally the same power expressed in the city home rule act, and it seems to me that this adds nothing to the powers of cities that haven't been granted under home rule, and whether or not this language cannot be deleted. There are many other things the city can do outside its borders, such as enforce plumbing codes, at least according to the home rule acts that say they can, and I wonder if this section is at all necessary or adds anything to the power granted under the home rule act.

CHAIRMAN DeVRIES: Delegate Hanna yields to Delegate Dell for the purpose of answering the question.

MR. DELL: Delegate Hanna, as I stated, it was presumably placed in the Constitution of 1908 for the purpose of strengthening the section on home rule, and for that reason we see no reason why it should not be continued. The question of deleting is debatable, of course.

MR. W. F. HANNA: Mr. Chairman, may I address a question to Mr. Allen, who is well versed in this? Is this section at all necessary, Mr. Allen, in view of the permissive powers under the home rule act?

MR. ALLEN: I would say that it was, Delegate Hanna, and it seems as though we get into a problem where if we want to change anything someone thinks something is happening. So we had better leave it the same.

CHAIRMAN DeVRIES: Are there any amendments to section c of Committee Proposal 83? If not, it will pass.

Section c is passed and the secretary will read section d.

SECRETARY CHASE: Section d.

[Sec. d was read by the secretary. For text, see above, page 1005.]

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Wyandotte, speaking on behalf of the committee, Delegate McCauley.

MR. McCAULEY: Mr. Chairman, members of the committee, I would like to yield to Mr. Leslie Richards.

CHAIRMAN DeVRIES: Delegate McCauley yields to Delegate Richards.

MR. L. W. RICHARDS: Mr. Chairman, fellow delegates, as you may know, the comments on this particular section are found in Journal 70 on page 439 under section d.

[The supporting reasons to sec. d were read by Mr. L. W. Richards. For text, see above, page 1006.]

I might add that in behalf of our very intellectual, democratic chairman, Mr. John E. McCauley, we would like to have this passed and accepted.

CHAIRMAN DeVRIES: The question before the committee is: are there any amendments to section d of Committee Proposal 83? The gentleman from East Grand Rapids, Delegate Martin.

MR. MARTIN: Mr. Chairman, just a matter of clarification on this. The last portion of the sentence reads — the new language reads "or to loan its credit for any private purpose or any public purpose except as authorized by law," and the phrase "except as authorized by law,", although I am sure the committee didn't intend it so, may be taken to modify both private purpose and public purpose.

I haven't had an opportunity to prepare an amendment here, but it appears to me that the last part of the sentence should read "for any private purpose or, except as authorized by law for any public purpose." Otherwise it will modify both, and I am sure the committee doesn't intend that municipalities be able to authorize the loan of their credit for private purposes.

CHAIRMAN DeVRIES: The Chair recognizes the delegate from Negaunee, Delegate Richards.

MR. L. W. RICHARDS: That is exactly what I was discussing with our able subcommittee chairman here, and he feels there will be no objection, Mr. Martin, if that were added.

MR. MARTIN: Mr. Chairman, is it necessary for me to submit a written amendment?

CHAIRMAN DeVRIES: Would the delegate mind stepping to the rostrum to submit the amendment?

Mr. Arthur Elliott.

MR. A. G. ELLIOTT: I was just going to ask if this were something that could be handled in style and drafting, but if he feels an amendment is better, we can do that.

CHAIRMAN DeVRIES: The question before the committee is the amendment offered by Mr. Martin, and the secretary will read.

SECRETARY CHASE: Mr. Martin offers the following amendment:

1. Amend page 2, line 23, after "purpose or" by inserting a comma and "except as authorized by law"; and in line 24, after "purpose" by striking out "except as authorized by law"; so that the language will read, beginning in line 22, "or to loan its credit for any private purpose or, except as authorized by law for any public purpose."

CHAIRMAN DeVRIES: The question before the committee is the Martin amendment. As many as are in favor will say aye. Opposed, no.

The amendment is adopted. Are there any further amendments to section d of Committee Proposal 83? If not, it will pass.

Section d, as amended, is passed and the secretary will read section e.

SECRETARY CHASE: Section e.

[Sec. e was read by the secretary. For text, see above, page 1005.]

CHAIRMAN DeVRIES: The Chair recognizes Delegate Elliott, speaking on behalf of the committee.

MR. A. G. ELLIOTT: Mr. Chairman, I would like to yield to the subcommittee chairman on public utilities, Mr. Sleder.

CHAIRMAN DeVRIES: Delegate Elliott yields to the gentleman from Traverse City, Delegate Sleder.

MR. SLEDER: Mr. Chairman, fellow delegates, I should like to call on Mrs. Hatcher for the explanation of the section.

CHAIRMAN DeVRIES: Delegate Sleder yields to Delegate Hatcher.

MRS. HATCHER: Mr. Chairman and fellow delegates, the committee report on section e is as follows:

[The supporting reasons to sec. e were read by Mrs. Hatcher. For text, see above, page 1006.]

CHAIRMAN DeVRIES: Are there any amendments to section e? If not, it will pass.

Section e is passed and the secretary will read section f.

SECRETARY CHASE: Section f.

[Sec. f was read by the secretary. For text, see above, page 1005.]

CHAIRMAN DeVRIES: The Chair recognizes the chairman of the committee, Delegate Elliott.

MR. A. G. ELLIOTT: I yield to Mr. Sleder.

CHAIRMAN DeVRIES: Delegate Elliott yields to Delegate Sleder.

MR. SLEDER: The committee recommends:

[The supporting reasons to sec. f were read by Mr. Sleder. For text, see above, page 1006.]

CHAIRMAN DeVRIES: Are there any amendments to section f? The Chair recognizes the chairman of the committee, Delegate Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, in our committee work it was the intention of our committee not to restrict the right of charter, to have other restrictions beyond those that we have included in this language, and while I have not had a committee report, I am sure it is the feeling of our committee that in line 20, after the words "public utility" we would like to insert "in violation of its charter and," and I think the secretary has that amendment, and that would then more properly interpret the desire of the committee.

CHAIRMAN DeVRIES: The secretary will read the Elliott amendment.

SECRETARY CHASE: Mr. Elliott has offered the following amendment:

1. Amend page 3, line 20, after "utility" by inserting "in violation of its charter and"; so that the language will read "Nor shall any city or village sell any public utility in violation of its charter and unless such proposition shall have first received the affirmative vote . . . ."

CHAIRMAN DeVRIES: The question before the committee is the adoption of the Elliott amendment.

MR. MADAR: Mr. Chairman, I rise to a point of order. I believe the minority report has preference over this amendment of Mr. Elliott's. This is not a committee amendment.

CHAIRMAN DeVRIES: The Chair rules your point of order is well taken, and the secretary will read the minority report to section f.

SECRETARY CHASE: Pursuant to minority report B of Mrs. Hatcher, Messrs. Buback and Madar,

Mr. Madar — and Mr. Leibrand asks consent that his name likewise be added —

CHAIRMAN DeVRIES: It will be added without objection. I hear none.

SECRETARY CHASE: — offer the following amendment:

1. Amend page 3, line 17, after "regular" by striking out "or special"; and in line 22, after "vote of" by striking out "a majority" and inserting "3/5"; and in line 23, after "regular" by striking out "or special".

Mr. McAllister has also filed a like amendment on page 3, line 22, to change "majority" to "3/5".

CHAIRMAN DeVRIES: Delegate McAllister, for what purpose does the gentleman arise?

MR. McALLISTER: I would like to add my name to the minority report amendment.

CHAIRMAN DeVRIES: Without objection, his name will be added as a cosponsor of the minority report. I hear no objection; it is so ordered. Mr. Hoxie.

MR. HOXIE: Mr. Chairman, with the consent of Mr. Madar, I would like to add my name.

CHAIRMAN DeVRIES: Without objection, the name of Delegate Hoxie will be added as a cosponsor of the amendment. I hear no objection. It is so ordered. Mr. Madar.

MR. MADAR: Mr. Chairman, this particular section was discussed at great length. In fact, it was only by a couple of votes, one or two votes, that it did come to the floor with the change, that is, changed from the report as submitted by the subcommittee. The subcommittee voted on this unanimously, that it come out 3/5 to acquire or sell.

Now, I can't see why with the 3/5 being needed to acquire, why it shouldn't take the same amount of votes to sell the utility. For further rationale on this, I would like to yield the floor to Judge Leibrand.

CHAIRMAN DeVRIES: Delegate Madar yields to the gentleman from Bay City, Delegate Leibrand.

MR. LEIBRAND: Mr. Chairman and fellow delegates, I am very happy to support this minority amendment. I don't think that anyone in this convention can call me a radical. As a matter of fact, anyone who has followed the course of my voting, I think, would come to the conclusion that I am among the more conservative voters and delegates to this convention. But I support what Mr. Madar has said about the unfairness of the treatment of requiring a city to get a 3/5 affirmative vote in order to engage in a utility business, and then being permitted to sell it or dispose of it by only a mere majority vote.

I don't undertake at this time to speak at great length. I haven't done so in the convention, and I don't propose to do so in the future. Neither do I propose at this time to enter into the relative merits of public power as opposed to private power. I have my own opinion, but I don't think that enters into this at all. I think we are simply discussing here a good business transaction, good business practices.

Now, I don't know how many of these public utilities are operated by the municipalities in the state of Michigan. I am not an expert on the subject. I have been told, however, that there are quite a number. I do know that the steam and the power which alternately roasts us and freezes us in this convention hall are both provided by a municipal utility of the city of Lansing, and I don't blame the utilities for that. I think Consumers' electricity would do just as good or poor a job, whatever you may say.

But I do know that when we are talking about these municipal utilities, we are not talking about peanuts. I have been informed that the light and steam plant of the city of Lansing is conservatively valued at $100 million, which is many times greater than all the rest of the municipal property of the city of Lansing combined. I have been advised that this one utility unit is worth more than 3 times as much as the Oldsmobile and Fisher Body plants here in Lansing belonging to General Motors.

Now, the other plants in the state of Michigan, municipal plants, are not as large, but they are important to their smaller communities. And I do not think that any transaction of this kind, of this magnitude, involving up to $100 million in the city of Lansing should be subject to disposal at the whim of only a majority of the voters.

Now, it is not uncommon to give protection where large sums of money or large sums of property are concerned. It is not uncommon to give special protection. As we are aware, the banking laws of the state of Michigan require, I believe, a 2/3 majority to change, to induce debility in the financial structure.

The corporation laws, I won't go into detail on those, but they require 3/5 or 2/3 or 3/4, as the case may be, to dissolve

a corporation or to sell or dispose of all or a very substantial part of its property.

Now, to say a 3/5 majority of the voters is needed before the voters can acquire a plant, but to permit it to be sold on a bare majority, even at a special election, seems to me is darn poor business. On the one hand, when you buy, you are involving a $100 million transaction here in the city of Lansing; when you sell that plant, you are equally involved in a $100 million transaction in the city of Lansing. Now, we don't feel we are asking for anything unfair in this minority amendment. All we ask is to be put on the same status. If you want to make it a majority for acquisition, you can make it a majority for disposal. But if you are going to make it 3/5 for acquisition, we feel it is only fair that 3/5 be required for disposal.

It is my pleasure at this time to yield to the gentleman from St. Louis, Delegate Hoxie.

CHAIRMAN DeVRIES: Mr. Hoxie.

MR. HOXIE: Thank you, Judge. I rise to appeal to the fairness of this delegation. I believe it is very inconsistent to require a 3/5 majority to purchase a public utility and only require a simple majority to sell it. I am vitally interested in this because we happen to have an electric light plant in the city of St. Louis. It has been in existence since 1901; owned by the city. Although I do not subscribe to the theory that government should necessarily engage in business, many of the cities that have their own utilities were, in the first instance, forced to go into the utility business to secure the services that those little communities needed.

Why do I say that it is unfair to require 3/5 to purchase and a simple majority to sell? We have a friendly neighbor in the same field in the adjoining community. When you get into a campaign in a little community like St. Louis, with a sell out program sponsored by your competition, I still believe that in fairness to those people of the city of St. Louis, and all the other communities, the same rule should apply. We know that campaigns can be put on to dispose of a profitable operation, which it is in St. Louis — a very profitable operation. It helps us materially in our city government, and back during the depression years the municipal plant of St. Louis, because people were unable to pay taxes, materially helped to carry on our government in St. Louis. I think that is probably true in many localities where they do have their light plants. I certainly urge this delegation to support the principle of fairness, to support the Madar amendment.

At this time I would like to yield to Mr. Lundgren.

CHAIRMAN DeVRIES: Delegate Hoxie yields to the gentleman from Menominee, Delegate Lundgren.

MR. LUNDGREN: Mr. Chairman, I too rise in support of the minority amendment. I believe it has been pretty well stated here if you are going to have one fraction or percentage of people voting for acquiring a municipal plant, or whatever it may be, you certainly should provide, on the other hand, for the ability to sell it on the same basis that you acquired it. It would just make common sense.

But it is interesting to me you find that nowhere within the comments of the citizens research council or even of the committee reports the statement of any reason why you shouldn't have the same power to sell as you have to acquire. So I think it makes common sense that we insert the proper language, which would be that the number of people acquiring such a plant should be the same as the number of people selling a plant.

I do say that this has nothing to do in the private power fight or the public power fight, because I don't think that enters into this. As with the people that have testified and those that will testify later, we are on both sides of the fence on this particular thing, but we don't believe it belongs in this particular article. We just want to make the record consistent that if we buy at 75 per cent or ⅗, we are going to sell at the same price.

These plants are not acquired easily, and when you go to a ratio of ⅗, it takes an awful lot of people and an awful lot of fighting to acquire a utility. But by the same token, I would not like to see this hard fight bartered away by a simple majority.

Therefore, I rise to support the minority amendment, and I also yield at this time to Tom McAllister.

CHAIRMAN DeVRIES: The gentleman from Menominee yields to the gentleman from Bad Axe, Delegate McAllister. The Chair will inform those delegates seeking recognition that there are 6 people waiting for recognition.

MR. McALLISTER: Mr. Chairman, fellow delegates, we have a municipal power plant in my locality, in the village of Sebewaing. I might say before I go further that I have a considerable amount of utility stocks, so I may be speaking against my own interest. I think the subject matter here has pretty well been covered by the previous speakers, but it does seem to me that if there is a sale of a power plant, it should be held at a regular election so the greatest number of people in the community will be present, and it should be by a similar vote to that required to obtain a public utility. I might add further that I have been contacted by numerous municipalities and the Michigan municipal utilities association, and all of these communities are unanimously in favor of a ⅗ vote to sell a public utility, and therefore I support the Madar amendment. I had one of my own which I have withdrawn.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Detroit, Delegate Yeager.

MR. YEAGER: Mr. Chairman, ladies and gentlemen of the committee, I am going to take a very, apparently, unpopular position here and support the committee's report. I take exception to what Judge Leibrand said when he talked about a majority of the voters' whim with regard to selling a utility. I would recall that I suppose most of us are here, or all of us are here, by a bare majority of the voters' whim, and I suppose in that case this is not a majority of the voters' whim but deep seated judgment and careful thought.

I would like to leave one thought with you in this regard. What we are trying to do here is work out some basis on which a community can handle its own affairs in this particular category effectively. It seems to me that the inability to sell a utility is a greater hazard than the inability to buy a utility. Thank you.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Port Huron, Delegate Tweedie. Judge Pugsley, you are fourth on the list.

MR. TWEEDIE: Mr. Chairman and members of the committee, the subcommittee on cities also spent considerable time on this article. I think we had secondary jurisdiction over it. We felt that ⅗ certainly was not too much of a majority in order to acquire a public utility due to the fact that it involves a large investment by the city and the citizens of the city in getting such a thing, and certainly it should be more than a bare majority in order to spend this amount of money.

However, as years go by, in many cities the equipment becomes obsolete, and it becomes more expensive to run than a private utility could run it, and we felt that ½ was a fair amount. We certainly did not subscribe to the way it is now in many cities where the city council alone can sell a utility. We felt there should be some restriction upon it, and we thought 50 per cent was a very fair price because of the 2 groups that you have which want to keep the utility, even though it is expensive and obsolete. There is the one group who has a vested interest in it — either they work for it or have some other direct or indirect interest in it, and they can easily get their friends and neighbors and relatives to support their vote against selling the utility, even though it would be for their own good. And then we have the second interest, the citizens who have a personal pride in this thing because, well, it is their baby, it started there, and they feel they should keep it even though it is more expensive and out of date. So you have those 2 groups, and between the 2 of them they can easily get a 40 per cent vote, and that would be enough to defeat a ⅗ requirement in the constitution.

We support the committee report wholeheartedly, and we think that ½ should be the required amount. A majority should rule in this case to stop those who, even though it is for the good of the community, want to keep it there.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Escanaba, Delegate Follo.

MR. FOLLO: Mr. Chairman, delegates, I just want to give you this information: that the councils of 3 cities, the representatives of the people of Escanaba, Gladstone and Marquette have all communicated with me that they would like to see the 3/5 figure restored in the committee report. As a member of the minority who voted against this report, I would urge you to support the Madar amendment.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Allegan, Delegate Farnsworth.

MR. FARNSWORTH: Mr. Secretary, would you take that stopwatch out? I want only 4 minutes.

CHAIRMAN DeVRIES: The secretary will so do.

MR. FARNSWORTH: Mr. Chairman and members of the committee, Judge Leibrand, of course, mentioned good business, and I think that is the point I would like to address myself to for the next few minutes.

You have noticed probably that the minute you talk about some certain things in the convention it causes a lot of emotion. Now, those same things happen in any given community when they are talked about. It so happens that utilities is one of them. Utilities always stir up a great deal of emotion. I have seen an election establishing a utility where the emotions ran so high that tires were literally cut off from automobiles. Things that just don't normally happen. People really lose all sense of proportion.

Now, let's just take this matter of good business for a minute and inject it into this sort of an emotional atmosphere. Good business would dictate, individually or collectively, that you take a lot of precautions before you lay your investment on the line and enter into a business. Now, that is just as true for me, and I remember well when I went into business how carefully I considered it, how many weeks and months I considered it, how my relatives cautioned me against it, and all that sort of thing. You just stop and think a long time before you lay that investment on the line and take those risks, and now we talk about fairness. That is why we say to any community that you must have a 60 per cent vote before you take that risk. You must sit down and carefully think the thing over, and then if 60 per cent of you agree that it is a good sound proposition, you go into it.

All right. Now we get into the thing, and it is profitable, as my light plant happens to be, and we have no thought of selling it. It is profitable. But now the time comes when that utility becomes unprofitable, and it loses money, and so we tax the general public to subsidize it, and the city commission, or whatever the governing body is, knows that it is good business to sell that plant and get out of the business, because they can just no longer make a profit on it. I say to you that if you have a 3/5 requirement in order to sell it, that you literally have burned your bridges behind you, because invariably in this emotional atmosphere that you must hold this election in, you just can't possibly secure a 60 per cent vote.

So it is not only fair that you establish 3/5 on entering and only a majority on getting out of the business, but it likewise is just good business that you set that up.

CHAIRMAN DeVRIES: The secretary reports you met your request for 4 minutes, Mr. Farnsworth. Congratulations. The Chair recognizes the gentleman from Hart, Delegate Pugsley.

MR. PUGSLEY: Mr. Chairman and members of the committee, I hold in my hand a resolution which I just received from my home city of Hart. Many years ago, in the '20s, the city of Hart acquired a public utility known as the Hart Hydroelectric. It has operated since that time with the hydroelectric power and also supplemented by diesel engines. The city council has forwarded this resolution to me with instructions that I bring before this convention their idea that the sale should not be made without the affirmative vote of 3/5 of the people. It is in recognition of this message from the homeland that I present the content of this resolution without further comment.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Jackson, Delegate Karn.

MR. KARN: Mr. Chairman, members of the committee, needless to say, I didn't rise to support Mr. Madar's amendment or to ask for my name to be added to it. It is quite obvious that there has been quite a bit of campaigning going on around the state. It is quite evident, and I suppose it is in order, when you get to a subject that is as volatile as a public utility business. It seems to be attracting a great deal of attention always.

I think that it may be in order — I hope a lot of my friends get back in here. With the exception of 3 of you who have talked, I seem to be in the minority here. I hope some of my friends, if I have any left, might come back to just touch upon some of the things that have happened.

In 1908, when the constitution was drafted, they required a 3/5 vote of the people before a municipality could engage in the utility business. Of course, that was, as I understand it, an effort to protect the people at that time from an expenditure — protect them from making an expenditure that might not prove advantageous. There was no vote required in the 1908 convention for the sale of a plant. At that time, of course, the electric utility was comparatively young.

The principles of requiring a vote for the purchase of a plant and requiring a vote for the sale of a plant are entirely different. As a rule, utility plants owned by municipalities are not for sale until they have been worn out, depreciated and noneconomical, and it does seem that the citizens of a community, when they get to the point that it is no longer economical to operate a plant, should have the right to sell it, and the right of a reasonable vote where it can be done.

In 1909 the legislature imposed a requirement of a 3/5 vote for the sale of a municipal property. That was removed in 1923. In 1949, as a matter of fact, the cities were granted authority, under the home rule act, to sell any municipal property without a vote of the people, with the exception of parks and cemeteries, and even parks were permitted to be sold without a vote of the people unless they were a definite part of the community planning.

Now, it seems to me that the action of the state legislature in recent years has indicated that a majority vote of the people is adequate. For years, except where a provision was included in a charter, municipalities have been able to sell any municipal property without a vote.

Let me say this: my good friend and delegate from Bay City mentioned the Lansing municipal plant, and it is a good plant, and it is well operated, and Karl says they have over $100 million invested in it, and I think that is probably a low figure, but they are not contributing to the tax burden in Lansing as is Oldsmobile that he mentioned, because municipal plants do not pay federal taxes, and many of them pay very little local tax. However, some of them are making contributions to the cities for various purposes which is an offset to that.

The company that I was with for all my lifetime, all my working lifetime, in 1960 paid over $40 million in taxes, which certainly was a great contribution to the people in the state of Michigan and to the people in the United States, as far as that is concerned, through the payment of federal taxes.

But this is an emotional thing, and it is obvious that quite a bit of attention has been given to this item as a result of the telegrams and the letters that have been received from some of these folks.

If you impose a 3/5 vote on the sale of a plant, I think it goes without saying that the plant would not be sold even though a majority of the people would be very much in favor of it; even though they are not making money—and many of the small ones are not. I think you can realize that even though they are not paying taxes, that with the improvement that has been made in the generation and distribution of electrical energy through the increase in the size of the units, increase of the pressures and the temperatures, a small plant, especially an obsolete plant, cannot compete with it.

So that the people, if they want to sell, and they do — I know Consumers Power company, through a vote of the people, just recently acquired a plant in Grayling, and that in spite of some very definite opposition of the people who were living in other parts of the state who came there to help in trying to prevent this, but that is going on. A plant north of Cadillac, at Manton, was in trouble, and they decided to sell. So it is going on. But if you retain the 3/5 vote, that means

you are saying to the people that from now on they cannot sell a municipal electric plant even though it is no longer efficient and it is no longer in a position that they would like to have it operate.

I think that perhaps as far as I am concerned — I had nothing to do with the ⅗ vote on the purchase of a plant. I have had nothing to do — as a matter of fact, I haven't even talked with members of the committee about this. I would have no objection, and my friends here who have talked, most of them have said the vote should be the same in each case. I would have no objection to having a majority of the vote in each instance, the purchase of a plant or the sale of a plant.

I think the thing that the committee did was to follow the 1908 constitution in including the ⅗ vote, with the thought in mind that it is leading up to a great expenditure of funds and a greater majority of people than half should be entitled to vote on it or to adopt it. But I would have no objection if the committee wanted to change that to a majority vote in each case.

Another thing. Mr. Madar's amendment does away with the privilege of a special election. Well, all that does is to put up a delaying action again. If a municipality desires to sell, and the majority of the people apparently are for it, you might have to wait a year, a year and ½ or 2 years for a regular election. That does not seem fair and reasonable. If the utility is willing to pay for an election, the cost of an election, the people in the town are desirous of selling, I don't believe that it is quite fair and reasonable to have a restriction that in a small community — and these are small communities that we are talking about — a special election could not be called.

Mr. Chairman, I rise to oppose the Madar amendment, and I hope that the committee's proposal may prevail.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Pontiac, Delegate King.

MR. KING: Mr. Chairman, ladies and gentlemen of the delegation, I will try to confine my remarks to about a minute. Judge Leibrand states that his record here is one of conservatism. I don't know what my record is. Sometimes I think I am being conservative when I uphold the rights of the individual, but maybe I am not.

Two days ago we celebrated Lincoln's birthday, and I should like to paraphrase a quote that he once made. The government should do for the people those things which the people cannot or cannot as well do for themselves. Now, at the time many of these plants were formed the government had to step in and do these things. Today, in my opinion, many of these utilities are competing with private, legitimate private enterprise, and they should get out of this business.

Personally, if I had a business I could get out of that business if I wanted to, perhaps by going into bankruptcy; I might be forced out of business. Perhaps 3 of my creditors could force me out of business by putting me into involuntary bankruptcy. But I would just like to say for the record that I support any proposal which makes it more difficult for municipalities to compete, improperly in my opinion, with private enterprise, and I support any proposal which would make it easier for them to get out of this unbecoming position.

I support the committee report.

CHAIRMAN DeVRIES: The question before the committee is the amendment to section f offered by Delegates Hatcher, Buback, et al. The Chair recognizes the gentleman from Muskegon, Delegate Danhof.

MR. DANHOF: Mr. Chairman and members of the committee, I think I should take a couple of moments to explain my particular position on this matter. Mr. Karn has stated there are some items you are not aware of at a particular time that cause great emotional upheaval back home. I reside now in the city of Muskegon, which is served most adequately by one of the largest steam generating plants operated by the company which Mr. Karn served for so many years.

I have a second county in my district which might be known as a conservative county, but if Mr. Hoxie has one plant and Mr. Leibrand has one plant, then the county of Ottawa is unique in that while there are 5 cities in this county of Ottawa, 3 of them have municipally owned light plants, and I, too, received a good many telegrams, wires and resolutions and phone calls on this particular matter.

At the outset I felt that the proposal as proposed by the majority of the committee would take precedence over certain of the charters of the various cities which might have set forth a higher and a more stringent requirement for the sale of public utilities.

This morning Mr. Elliott attempted to offer, but has not as yet, and I assume he will offer it at the proper time, an amendment which would prohibit the sale of any particular power plant in violation of the charter.

I submit that if the various charters allow the sale by reason of the decision of only the governing body, be it the city commission or the council, or whatever you would call it, then what the majority of the committee has proposed is a greater safeguard than the people had prior thereto. Because at least now they can get a vote by a majority of the people where formerly it could be sold simply by vote of the legislative body.

On the other hand, I think that we should at this time, and I am so stating that I will, vote against the present amendment on the assumption that the amendment by Mr. Elliott which was ruled out of order will be renewed, but I wish to state that if that amendment is not adopted, or should it fail, then I think that the ⅗ should be returned. But I submit that to freeze in ⅗ requirement to sell is a violation of something that we have all decided we want, and that is home rule.

Now the committee has seen fit to state that at least a majority of the people should vote on it. I will support the proposition that if the charter said ⅗ or 75 or 80 per cent, this we ought to leave to the charter.

I have made contact with the board of public works in the city of Holland and also in the city of Zeeland, who both own municipal power plants, and I think fairly good plants — at least in 2 of the cities — and they are most agreeable to this particular type of amendment. Their main concern was that the adoption of the original majority proposal would vitiate the requirements of their charters, which do provide that they cannot be sold unless there be a vote of 60 per cent of the people. I think this is fair. I think to do otherwise would limit rather than expand home rule.

I submit that the gentlemen who want the ⅗, if they do not have the requirement in their charters, perhaps they should check and see if there is a requirement in their charters. If they do not have it, then the remedy lies in getting their charters amended rather than freezing it into the constitution.

The cities of Holland and Grand Haven have a good many millions of dollars invested in this, and they have taken steps to protect their investment.

I therefore state that I shall at this time oppose the minority amendment, that I shall support the Elliott amendment which was ruled out of order at this time.

CHAIRMAN DeVRIES: The Chair recognizes the chairman of the committee, Delegate Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, ladies and gentlemen, I wonder if I might have your attention just a moment. It seems to me we had better get into focus. We are writing a constitution, and we are not trying to legislate the future of any community or anything of that type. Now let's see what the committee did here. The committee, in its wisdom, was desirous of making sure that the people of these communities who have municipally owned power plants have something to say about their sale. In the testimony that was given pro and con on the matter of public utilities, it came to our attention that there are charters throughout the state which do not require this particular provision. Therefore, it was, in our wisdom, a wise thing to include in the constitutional language that we now have before you some language which would give to these people, the community, the inalienable right to vote.

Now, the discussion that you have had here is a discussion predicated upon the principle that if it takes so much to buy, it should take so much to sell. But some of the speakers before me have made this perfectly clear, that there is no restriction, if you defeat the minority report amendment and adopt the committee report with the amendment as suggested this morning, upon the communities involved to establish as rigid re-

quirements for sale as they so desire in their charter. This is within their province, and I would read to you something that was recited in the Address to the People in the 1908 constitution.

> The transfer of the powers of legislation from the state legislature to the people in municipalities, or their representatives, necessitated the imposition of certain checks and prohibitions designed to secure conservative action on the part of those to become responsible for the future conduct of such affairs. Whereas these checks and prohibitions have formerly been in the hands of the common councils relating to franchises and the acquiring of public utilities, they are now made subject to the vote of ⅗ of the electors of the municipalities.

We in the committee believe that in our proposal, as amended — which has not yet been given consideration by this group — that we are continuing the philosophy that is desired. We feel strongly that you are setting up restrictions in your constitution which will prevent any community from setting any lower restrictions, and that they are unnecessary.

As I have said before, the charter can make any requirement that is desired, but we have seen the need to give a guarantee to the people of the right of election or the right of selection by vote, and have required this majority vote to sell. We feel that it is adequate, and I would urge you, as chairman of the committee, to defeat the minority amendment, with the full recognition that I would urge you then to adopt the other amendment as presented and then adopt the majority report, which would strengthen the 1962 constitution in this regard, granting inalienable rights to the people to have something to say in the disposal of a publicly owned utility, even though the charter might not have any language on this subject.

CHAIRMAN DeVRIES: Does the gentleman from Negaunee, Delegate Richards, seek recognition on the amendment?

MR. L. W. RICHARDS: Mr. Chairman, fellow delegates, I rise, taking a very precarious position here, in open opposition to our chairman of local government. I would like to make one correction. The only time I voiced my opinion it was not under an emotional strain of any kind. It was due to the fact that it was the first time I recognized it was in the constitution, and when we studied it in our subcommittee — and I did take the position of one individual opposing it, asking for the ⅗ majority, and definitely it was no emotional setup with me. At that time I analyzed it; if it was good for buying it, it would be good for selling it.

In regard to my good friend and delegate, Mr. Farnsworth, I believe, Jim, as you sat and analyzed and decided whether or not you would go into business, I believe any local governing body would sit and analyze this in the same manner before purchasing, and it would do the same in selling it; and I honestly believe the group that would make that decision would be the commissioners or council, and they would lead in either making the decision to buy or dispose.

It seems a lot of people are greatly disturbed over the fact of requiring this ⅗ majority in selling. I would not be disturbed. I realize our people in the U.P. —and I am sure the good friends that I have met in the lower peninsula have as good a judgment as we have in the U.P., that I have met in this delegation, and any time that the U.P. people found that they had an inoperative plant that was not paying, they could very easily get ⅗ majority of the people to dispose of it.

I, too, like the good judge on my left, have had a communication from our people in Marquette asking to retain the ⅗ or have the ⅗ placed in the constitution. That arrived a long time after I made my decision.

I believe, folks, that we should support the Madar amendment. I believe it is good and I don't think we would have any difficulty in acquiring the ⅗ vote as soon as Jim — as they say, they put it on the tax rolls and support it, and when the people realize that, I think they would get the ⅗ very fast.

CHAIRMAN DeVRIES: Does the gentleman from Traverse City, Delegate Sleder, seek recognition on the amendment?

MR. SLEDER: I should like to speak very briefly. In my opening remarks yesterday on public utilities I tried to point out the fact that we are prone sometimes in the present day to think of only one utility, and when we speak of public utilities we must speak of the whole field of public utilities, such as transportation, water, sewage disposal, gas, and all these areas where they are publicly owned. And, of course, this amendment applies to all public utilities that are operated by a municipality. This I think we as delegates should keep in mind not for today but for the next 50 or 60 years relative to these utilities that may be coming into being as a profitable organization or enterprise.

I would also like to explain the committee work relative to the public utility subcommittee, and the same discussion prevailed there, and differences of opinions, and to express this our public utility subcommittee recommended to the committee on local government that the 3/5 factor be included in this provision. However, as explained by Delegate Tweedie, the city subcommittee had secondary jurisdiction on this, and recommended the majority.

This took considerable discussion in the committee. The committee as a whole decided on the majority factor. At the second reading of this provision in the committee, the 3/5 amendment was proposed and it was defeated.

So you can see, here we have differences of opinion. I think we can talk here until 5:00 o'clock this afternoon and we are certainly going to continue to have those differences of opinion. I think we each possibly should by now have heard all the discussion on the pros and cons of both of these issues, and I think that we should be about ready to vote on the issue, and I would like to prevail upon those speakers who are to follow, if they would confine their remarks, as much as possible, to the amendment and to factors that have not been discussed so we can bring this to a vote.

CHAIRMAN DeVRIES: The committee will come to order. Does the gentleman from Saginaw, Delegate Leppien, still seek recognition on the amendment?

MR. LEPPIEN: Mr. Chairman, fellow delegates, my remarks will be very brief. I speak against the minority report amendment for just one reason. We are taking away from the cities and villages the right to determine the sale of a utility that they might own, and let me just point out one thing. Aren't we hurting the tourist business of the state of Michigan by this? This is a field maybe we haven't looked at.

We have adopted a committee proposal, at least in part, to allow the cities to sell 25 per cent of their output. This may cover lake areas, resort areas and such, if you please, as was the case in a community where I have extremely good knowledge. If we had had to depend on the vote of the people by a 3/5 majority to sell, it might have been very difficult, when everybody involved, the resort people, the people of the city, as well as the leadership represented by the council, were very desirous of disposing of this because of its poor operating condition.

I urge you to defeat the 3/5 amendment as being written into this constitution.

CHAIRMAN DeVRIES: Does the gentleman from Morenci, Delegate Figy, still seek recognition on the amendment?

MR. FIGY: I certainly do. Mr. Chairman, fellow delegates, you will notice up to now I have only used a very small part of my 17,000 words. I think I've got to start in pretty soon if I'm going to get my quota in. You will remember, too, that the proposal requiring the vote of the people to sell a utility plant carried my name along with some others. This was discussed very carefully in the committee. It took a lot of time on it. I think the committee report is a compromise, because prior to this time the present constitution does not require a vote of the people. So our committee report is a compromise. For that reason, I will oppose the amendment and vote in favor of the committee report.

CHAIRMAN DeVRIES: Does the gentleman from Saginaw, Delegate Shackleton, still seek recognition on the amendment?

MR. SHACKLETON: Mr. Chairman and delegates, our form of government can only survive if we have strong competitive, individual initiative in our profit sharing system. We have seen around the world too many times where that has been destroyed, the forms of government have been destroyed

with it. We should make it easier to get government out of business rather than keeping them in or getting them in.

One other factor: that some of these utilities, particularly smaller public utilities, may very well become seriously involved in the next few years in the development of atomic energy, which might make their plants so obsolete they couldn't even give them away.

I certainly oppose the amendment.

CHAIRMAN DeVRIES: Does the gentleman from Bad Axe, Delegate McAllister, still seek recognition on the amendment?

MR. McALLISTER: Mr. Chairman, fellow delegates, I will be very brief. It appears from what we have heard here that the people of Michigan want this 3/5 in there to sell a power plant. Aren't we here to represent the people?

I also say that as a matter of good public relations I don't believe any public utility should want to buy a plant unless they have a decided majority. I want to say further that, talking about indebtedness, in regard to a city power plant or a municipal power plant, sometimes they operate at a loss, but they don't take into consideration when that loss is sustained that they are receiving tremendous services for which they would have to pay if it was a private utility.

I have had some experience along this line, and in our town we sold the power plant, and what we received for it from the utility company was that they blew the whistle 3 times a day. They are still doing it. In the first year after they acquired the power plant, if we had taken into consideration what it would cost to pay for our street lights and city services we would have operated at a loss during the period before it was sold to the public utility.

As I have said before, I own public utility stock, but the people have spoken overwhelmingly to the effect that they want this provision in the constitution, and I think we should regard the rights of the people when they have spoken unanimously in this way.

CHAIRMAN DeVRIES: The question before the committee is the amendment to section f offered by Delegates Hatcher, Buback, Madar, et al. The Chair recognizes the gentleman from Port Huron, Delegate Tweedie.

MR. TWEEDIE: Mr. Chairman, all we tried to do in the committee was put a bottom limit of 50 per cent on this. If Mr. McAllister or Mr. Leibrand want a higher limit than that, they should go along with this, and when Mr. Elliott presents his amendment saying the city charter prevails, then they should all go to their respective communities and work for a 4/5 majority to sell or a 100 per cent majority to sell. But why should we restrict those cities who only want 50 per cent? I don't feel there is any argument here at all, or there shouldn't be.

CHAIRMAN DeVRIES: The Chair recognizes one of the cosponsors of the amendment, the gentlemen from Detroit, Delegate Madar.

MR. MADAR: Mr. Chairman, I am not going to take long because I want to get this to a vote. I see that Mr. Elliott is all ready to pull his little stunt of moving to rise so that he gets a little better chance to talk to a few more delegates. All I want to say is that, frankly, I have no vested interest in this, and I have no stock either. All I want is legislation or, rather, I want a constitution that is not discriminatory. Why should we go ahead and put in an amendment which would take care of those who have this in their charter, the 3/5 in their charter, and not take care of those who haven't? Certainly this would be discriminatory. I feel that all we want to do is be fair. We are not hurting the utilities a bit. About the only thing we would be doing otherwise is giving a large utility a right and an easy way to take over some other cities' municipal public utility.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Grand Rapids, Delegate Goebel.

MR. GOEBEL: Mr. Chairman, since I originally asked for recognition, Delegates Farnsworth and Karn have very nicely expressed my feeling on this matter and have done a good job. We have had a situation in my home town where we had an electric generating plant, and eventually we were very, very happy to make a deal to get rid of it with advantage to the taxpayer. I will not repeat any of the remarks these 2 gentlemen made previous to me, other than to say that I think the minority report amendment should be defeated and the committee report approved. Thank you.

CHAIRMAN DeVRIES: Does the gentleman from Bay City, Delegate Leibrand, seek recognition on the amendment?

MR. LEIBRAND: Mr. Chairman, may I direct an inquiry to the chairman of the committee on local government?

CHAIRMAN DeVRIES: You may if he cares to answer.

MR. LEIBRAND: Delegate Elliott, I wish to inquire about your proposed amendment that would permit charters to prevail. Would your amendment permit a city under such a charter provision to buy a plant at 50 per cent? Or is your proposed amendment just going to apply to the selling?

CHAIRMAN DeVRIES: The Chair recognizes Delegate Elliott.

MR. A. G. ELLIOTT: It applies to the selling.

MR. LEIBRAND: Not to the buying?

MR. A. G. ELLIOTT: It only corrects the language that we had added, which had not been in the constitution before, Judge, to clear up a mistake in drafting.

CHAIRMAN DeVRIES: Now the question before the committee is the amendment to section f offered by Delegates Hatcher, Madar, Buback, et al. The delegate from Pontiac, Delegate Kuhn.

MR. KUHN: I would just like to ask a question or make a statement. It seems like Mr. Madar has confused me. I understood what Dan Karn said, and I thought I agreed with him 100 per cent, and I still think I do. But Mr. Madar says if we do not put in the 3/5 to sell, we are going to discriminate. We have a 3/5 to buy, but not a 3/5 to sell. That object I cannot follow. It seems to me if we put in a 3/5 vote to sell, which is not in the constitution today, we are then going to discriminate against the taxpayers in each community because of the fact that the employees and their families and friends in those communities might be fearful that they would lose their jobs and would tend to vote against it, and therefore you would be voting against the taxpayers' interest in not allowing them to sell a nonprofitable government function.

CHAIRMAN DeVRIES: The question before the committee is the minority report amendment to sec. f, which the secretary will read.

SECRETARY CHASE: The amendment as now offered by Delegates Madar, Buback, Hatcher, Hoxie, Leibrand and McAllister is as follows:

[The amendment was again read by the secretary. For text, see above, page 1035.]

CHAIRMAN DeVRIES: The question is on the amendment. As many as are in favor of the amendment will say aye. Opposed, no.

The amendment is not adopted.

DELEGATES: Division.

CHAIRMAN DeVRIES: A division vote has been requested. Is there support for the division? There is support. As many as are in favor of the amendment to section f will vote aye. As many as are opposed will vote no.

The Chair votes no.

The secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the adoption of the minority report amendment offered by Mr. Madar and others, the yeas are 52; the nays are 70.

CHAIRMAN DeVRIES: The amendment is not adopted.

SECRETARY CHASE: Mr. Arthur Elliott offers the following amendment:

1. Amend page 3, line 20, after "utility" by inserting "in violation of its charter"; so that the language there will read, "Nor shall any city or village sell any public utility in violation of its charter and unless such proposition shall have first received the affirmative vote. . . ."

CHAIRMAN DeVRIES: The question before the committee is the adoption of the Elliott amendment. The Chair recognizes the gentleman from Pleasant Ridge, Delegate Elliott.

MR. A. G. ELLIOTT: The intent of this language is to

make sure that charter provisions which may be more restrictive than the balance of this sentence will also be proper and will prevail, and I urge its adoption.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from St. Louis, Delegate Hoxie.

MR. HOXIE: Mr. Chairman, members of the committee, perhaps I can't read this amendment in proper form, but I think that the entire amendment should be read. I appreciate Mr. Elliott's still believing in home rule by allowing the charter to determine the method of selling the property. However, as I read the amendment, it is my belief it is inconsistent. Let's read it.

CHAIRMAN DeVRIES: The secretary will read the Elliott amendment in its entirety.

SECRETARY CHASE: The amendment offered by Mr. Elliott is:

1. Amend page 3, line 20, after "utility" by inserting "in violation of its charter and"; so that the language will read beginning in line 19 — was that where you wanted to start, Mr. Hoxie?

> Nor shall any city or village sell any public utility in violation of its charter and unless such proposition shall have first received the affirmative vote of the majority of the electors of such city or village voting thereon at a regular or special municipal election.

CHAIRMAN DeVRIES: Delegate Hoxie.

MR. HOXIE: Mr. Chairman, members of the committee, I don't know which amendment takes precedence. There has been the amendment that I offered, which has been on the secretary's desk since yesterday, which I believe is truly home rule. I am wondering if Mr. Elliott would object to the reading of the amendment I offered.

CHAIRMAN DeVRIES: The Chair recognizes the chairman of the committee, Delegate Elliott.

MR. A. G. ELLIOTT: I thought that perhaps there would be no other amendments.

I move that the committee rise, and Mr. Hoxie and I can talk during lunch.

CHAIRMAN DeVRIES: Delegate Elliott moves that the committee of the whole do now rise. As many as are in favor will say aye. Opposed, no.

The committee will rise.

[Whereupon, the committee of the whole having risen, President Nisbet resumed the Chair.]

PRESIDENT NISBET: The Chair recognizes Mr. DeVries.

MR. DeVRIES: Mr. President, the committee of the whole has had under consideration certain items on which the secretary will give a detailed report.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 83**, A proposal pertaining to cities and villages; has considered several amendments thereto; and has come to no final resolution thereon. This completes the report of the committee of the whole.

PRESIDENT NISBET: Mr. DeVries.

MR. DeVRIES: Mr. President, the committee on administration will have a special meeting at 1:30 this afternoon in its committee room.

PRESIDENT NISBET: The Chair recognizes Mr. Hutchinson.

MR. HUTCHINSON: Mr. President, I move the convention stand in recess until 2:00 o'clock.

PRESIDENT NISBET: The question is on the motion of Mr. Hutchinson. Those in favor will say aye. Opposed, no.

The motion prevails. We are recessed until 2:00 o'clock.

[Whereupon, at 11:55 o'clock a.m., the convention recessed; and, at 2:00 o'clock p.m., reconvened.]

The convention will please come to order.

SECRETARY CHASE: Mr. President, a quorum of the convention is present.

PRESIDENT NISBET: The Chair recognizes Mr. DeVries.

MR. DeVRIES: Mr. President, I move that the convention resolve itself into committee of the whole for consideration of certain items on the order of **general orders.**

PRESIDENT NISBET: The question is on the motion of Mr. DeVries. All those in favor will say aye. Those opposed, no.

The motion prevails. Mr. DeVries.

[Whereupon, Mr. DeVries assumed the Chair to preside as chairman of the **committee of the whole.**]

CHAIRMAN DeVRIES: The committee of the whole will come to order. When last the committee met it was considering **Committee Proposal 83,** and the Elliott amendment to the proposal. The delegate from Pleasant Ridge, Delegate Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, in an attempt to further clarify this, I would like to withdraw that amendment and substitute the amendment which the secretary has on his desk.

CHAIRMAN DeVRIES: Delegate Elliott withdraws his amendment and offers a substitute which the secretary will read.

MR. FORD: Point of order, Mr. Chairman.

CHAIRMAN DeVRIES: State your point of order, Delegate Ford.

MR. FORD: Mr. Chairman, we have a minority report. I have been trying all morning to get it on, and now we have another amendment coming on ahead of the minority report. I think that the first order of business should be the minority report, as an amendment.

CHAIRMAN DeVRIES: The Chair would question, to which minority report are you referring, Delegate Ford, the one offered by —

MR. FORD: To the last part of Committee Proposal 83 that we have been talking about.

CHAIRMAN DeVRIES: That minority report was acted on by the committee of the whole.

Mr. Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, there are 2 minority reports. This is not the wages and hours thing, Bill. We are still talking about this 3/5 vote.

SECRETARY CHASE: This is on page 3. Mr. Elliott has withdrawn his previously filed amendment and is offering the following amendment:

1. Amend page 3, line 22, after "majority" by inserting a comma and "or of a greater number if the charter shall so provide,"; so the language will then read:

> Nor shall any city or village sell any public utility unless such proposition shall have first received the affirmative vote of a majority, or of a greater number if the charter shall so provide, of the electors of such city or village voting thereon at a regular or special municipal election.

CHAIRMAN DeVRIES: The Chair recognizes the chairman of the committee, Delegate Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, I believe that this language now clarifies the point and makes it perfectly clear that if this is adopted, charters which require a greater vote than a majority vote will have the right to so do, and that will be the requirement within their community.

CHAIRMAN DeVRIES: The question is on the amendment offered by Delegate Elliott. The Chair recognizes the gentleman from St. Louis, Delegate Hoxie.

MR. HOXIE: Mr. Chairman, members of the committee, I endorse the amendment. I think it will take care of the situation that bothered a lot of us.

CHAIRMAN DeVRIES: The question before the committee is the Elliott amendment. As many as are in favor of the Elliott amendment will say aye. Opposed, no.

The amendment is adopted. Are there any further amendments to section f?

SECRETARY CHASE: Mr. Higgs has filed the following amendment:

1. Amend page 3, line 24, after "election" by adding "except

that this provision shall not nullify the presently existing provisions of any city or village charter".

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Bay City, Delegate Higgs.

MR. HIGGS: Mr. Chairman, I would like to withdraw that amendment, inasmuch as I think the Elliott amendment has already covered it.

CHAIRMAN DeVRIES: Delegate Higgs withdraws his amendment. Are there any further amendments to section f? Mr. Hoxie.

MR. HOXIE: Mr. Chairman, I would like to withdraw my amendment.

CHAIRMAN DeVRIES: Delegate Hoxie withdraws his amendment. Are there any further amendments to section f?

SECRETARY CHASE: Mr. Marshall offers the following amendment:

1. Amend page 3, line 16, after "vote of" by striking out "3/5" and inserting "a majority"; so that the language will then read, "unless such proposition shall have first received the affirmative vote of a majority of the electors of such city or village voting thereon."

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Taylor, Delegate Marshall.

MR. MARSHALL: Mr. Chairman and fellow delegates, the intent of my amendment is to make this proposal, this particular section, consistent, and I think we should be consistent in practice. If it requires 3/5 to sell — if a majority of the people can vote to determine to sell, then it should only require a majority to acquire. Therefore, that is the reason for my amendment.

CHAIRMAN DeVRIES: The question is on the Marshall amendment. The Chair recognizes Delegate Hodges.

MR. HODGES: Mr. Chairman, in support of the Marshall amendment, it seems to me that this is just basic democracy that people should be able to decide at a given time by 51 per cent of the vote whether they want to buy or sell something. These built in inequities, such as the figure of 3/5, are basically, in my opinion, undemocratic. You have got to allow people to make these determinations, and a minority should not be allowed to frustrate the will of the majority of the people. Therefore, I support the Marshall amendment.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Pleasant Ridge, Delegate Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, ladies and gentlemen of the committee, I wish Mr. Hodges and Mr. Marshall could have joined with our committee in the hours of debate that we had on this subject. The matter was thoroughly discussed. There has been a great deal of reasoning and rationale expressed this morning which supports the opinion of the committee, and I would urge the defeat of the amendment.

CHAIRMAN DeVRIES: Does the gentleman from Traverse City, Delegate Sleder, seek recognition?

MR. SLEDER: Mr. Chairman, fellow delegates, I wish to echo the remarks of Chairman Elliott. As chairman of the subcommittee on public utilities I wish to say that the committee completely discussed and studied this, and it is felt that the 3/5 majority is a necessary item to have in the constitution relative to the purchase of a public utility, and therefore we would urge the defeat of the amendment.

CHAIRMAN DeVRIES: The question before the committee is the Marshall amendment to section f. The delegate from Detroit, Mr. Hodges.

MR. HODGES: I submit that any rationality or rationale which states that a majority of the people cannot determine their own opinion on something and have it stand is an irrational rationality. (laughter)

CHAIRMAN DeVRIES: Now the question before the committee is the Marshall amendment to section f, which the secretary will read.

SECRETARY CHASE: Mr. Marshall's amendment is:

[The amendment was again read by the secretary. For text, see above.]

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Detroit, Delegate Austin, speaking on the amendment.

MR. AUSTIN: Mr. Chairman, I would like to ask a question of the chairman of the committee, or Mr. Sleder, for the benefit of those of us who are not on the local government committee, and who are not fully aware of what was discussed. I would like to know exactly why it is not logical to have a majority to make the decision for acquisition as well as the majority to make the decision for sale. I don't believe the reason has been given. They have only stated that the committee simply made the decision. I would like to hear the reason so that I can vote intelligently.

CHAIRMAN DeVRIES: Delegate Austin yields to Delegate Elliott.

MR. A. G. ELLIOTT: I yield to the chairman of the subcommittee.

CHAIRMAN DeVRIES: Delegate Elliott yields to Delegate Sleder.

MR. SLEDER: When we speak of public utilities, we speak of a type of enterprise that incorporates a large investment in capital. If we are speaking of light and power, or if we are speaking of the water department or transportation or heat or gas, all these types of enterprises involve a great deal of public funds invested for the engaging into this business. It is felt that when a tremendous amount of public funds are invested by the people into a type of business, it should therefore have a sound and thorough study by the people, and the people should — a good percentage of the people should — be able and willing to support this industry or this enterprise or public utility that this community is going to engage in.

If they spend a great deal of money, and a majority or 3/5, 60 per cent, of the people are not in favor of this and are not going to be willing to support it, the chances of the success of this utility are small. And to assure that the business will succeed, if it is a transportation business, if it is a light and power business, or whatever it may be, for the assurance that this will be a success to the community and to the area, it is felt that a 60 per cent vote of the people is necessary.

CHAIRMAN DeVRIES: The Chair will recognize the gentleman from Taylor, Delegate Marshall.

MR. MARSHALL: Mr. Chairman, I agree with the previous speaker, that it would involve a great deal, a large expenditure of money in acquiring a power plant or transit system, et cetera But, on the other hand, I still think that the same standard should apply to acquiring as to selling because under the proposal of the committee, a power company could go ahead and convince a village or city that its facilities and its plants were outmoded, outdated and dilapidated and almost to the point of collapsing; make a purchase at a price less than what the facilities were worth; make very few improvements and then operate the facilities at a profit.

I feel that what's fair for the goose is fair for the gander in this situation, and if we are going to have a majority to sell, we ought to only require a majority to acquire. Otherwise, let's put 3/5 in both; let's don't have a double standard.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Detroit, Delegate Madar.

MR. MADAR: Mr. Chairman, fellow delegates, when the other delegates get through discussing the amendment, I will start. Anyway, I want to first start out by telling you that I am opposed to the amendment. Now, not because I am opposed to municipalities or anyone else being able to purchase a public utility or start operating a public utility with just a simple majority vote. Actually I'm not worried so much about that as I am about the fact that in our previous amendment we did try to get 3/5, because I hate to think that someone might be able to actually swindle the voters out of a utility which they could operate at a profit.

This morning I heard people say that some of these utilities actually are run down and they can't possibly operate at a profit. This only happens in the case when you have men as public officials who think only of themselves, who are greedy,

who do not take care of their jobs. No other place do you ever see this happen, because when an official is doing what he should do, he makes certain that he has enough moneys put into reserve to take care of anything that might go wrong. He doesn't try to use those moneys, nor will he let the voters use them to go ahead and buy other things for the city without a battle. He makes sure that he has enough money in reserve to take care of this, just as the public utilities do in the state.

I am not talking about the private utilities, for the private utilities certainly have enough money in their reserve. Actually they have so much in reserve that on more than one occasion they have sent 50 to 150 people into a small town to go ahead and get these people to sell out. Why, it is actually a crime, and it is something that ought to be investigated more thoroughly throughout this state. Maybe we wouldn't have them making so much money. Maybe they wouldn't be spending so much on lobbyists, so much on public information, so much on advertising, and then charging this all back to the rate payers. In fact, we ought to start doing something about keeping the utilities from paying for their lobbying and advertising —

MR. YEAGER: Point of order, Mr. Chairman.

CHAIRMAN DeVRIES: Will the delegate from Detroit state his point of order?

MR. YEAGER: This doesn't seem to be relevant to the particular item under discussion at the moment, Mr. Chairman.

MR. MADAR: It is relevant to the taxpayers of the state, Mr. Chairman.

CHAIRMAN DeVRIES: If the Chair gets a chance, it will rule that Mr. Madar is in order.

The gentleman from Menominee, Delegate Lundgren.

MR. LUNDGREN: The only thing I came to the floor here for was this particular purpose: this morning we had the same group of people voting against the 3/5 of all the people voting on the authority to buy or not to buy, to sell or not to sell, and now this afternoon, in some sort of pious gesture, they are now attempting to take themselves into a different position; and I can't quite understand that unless this is another maneuver to take up a lot of time on the floor that to me is rather useless.

CHAIRMAN DeVRIES: The gentleman from Menominee yields to the gentleman from Taylor.

MR. MARSHALL: I guess the question wasn't directed to me by the gentleman from Menominee, but I did vote against the 3/5 this morning because I thought the majority was proper. That is why I offer the amendment to remove the 3/5 and insert the majority in the previous sentence.

CHAIRMAN DeVRIES: The chairman of the committee, Delegate Elliott.

MR. A. G. ELLIOTT: I urge the defeat of the amendment.

CHAIRMAN DeVRIES: The question before the committee of the whole is the Marshall amendment to section f, which the secretary will read.

SECRETARY CHASE: The Marshall amendment:

[The amendment was again read by the secretary. For text, see above, page 1042.]

CHAIRMAN DeVRIES: As many as are in favor of the amendment will say aye. Opposed, no.

The amendment is not adopted.

A DELEGATE: Division.

CHAIRMAN DeVRIES: Division is requested. Is there support for a division vote? There is sufficient support. All those in favor of the Marshall amendment will vote aye. All those opposed will vote no. The secretary will lock the machine and tally the vote. The secretary will announce the vote.

SECRETARY CHASE: On the adoption of the amendment offered by Mr. Marshall, the yeas are 35; the nays are 88.

CHAIRMAN DeVRIES: The amendment is not adopted. Are there any further amendments to section f of Committee Proposal 83?

SECRETARY CHASE: Mr. Marshall offers the following amendment:

1. Amend page 3, line 10, after "Sec. f.", by striking out the balance of the section and inserting "Cities and villages shall be permitted to acquire or sell any public utility and grant or revoke any public utility franchise pursuant to law, providing however, this provision shall not nullify any present charter provision.".

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Taylor, Delegate Marshall.

MR. MARSHALL: The purpose of the introduction of this amendment is that if we truly believe in home rule I think this amendment will go a long way toward establishing the fact that we do believe in true home rule, giving the people the right in the local communities to determine for themselves. It also is flexible enough that it can be changed by statute from time to time as economic conditions require.

I am not going to take a lot of time on speaking on this amendment. I think it is self explanatory, and with the few brief remarks I have made, if we believe in true home rule, and if we believe in making it flexible enough in order that it can be changed from time to time throughout the years as economic conditions require, I would urge your support of this amendment. Thank you.

CHAIRMAN DeVRIES: The question is on the Marshall amendment to section f. The Chair recognizes the chairman of the committee, Delegate Elliott.

MR. A. G. ELLIOTT: I urge the defeat of this amendment. The committee gave this, also, consideration. It was the feeling within the committee that the language — a strong feeling, as far as that goes, within the committee that the language that we have now presented is sound constitutional language and is helpful to the problem that is under discussion. The only discussion we had in committee was as to whether or not it should be a majority vote or a 3/5 vote. That seems to have been decided by this committee. I therefore would urge that this amendment be also defeated and the committee report be accepted.

CHAIRMAN DeVRIES: The Chair recognizes the lady from Dearborn, Delegate Cushman.

MRS. CUSHMAN: I am sorry to disagree with our chairman, but I think this is a very good amendment, and I think that leaving it to the city is a sound move. I have only one question about it, and that I would like Mr. Marshall to answer: that business about present charter provision in the last line. It seems to me that it leaves a question about what you would do about changing your charter in the future, and whether that would be possible under this thing.

CHAIRMAN DeVRIES: Delegate Cushman yields to Delegate Marshall for the purpose of answering the question.

MR. MARSHALL: I can't even read my own writing. I ran out of space. But the purpose for that, in my judgment on this, Mrs. Cushman, is that you could still change it by charter amendment at the local level any time that a change is necessary.

MRS. CUSHMAN: I would suggest you delete the word "present" in that case.

CHAIRMAN DeVRIES: Delegate Marshall.

MR. MARSHALL: I would have no objection to accepting the suggestion of Delegate Cushman to delete the word "present".

SECRETARY CHASE: The Marshall amendment, as revised, now reads as follows:

1. Amend page 3, line 10, after "Sec. f.", by striking out the balance of the section and inserting "Cities and villages shall be permitted to acquire or sell any public utility and grant or revoke any public utility franchise pursuant to law, providing however, this provision shall not nullify any charter provision.".

CHAIRMAN DeVRIES: Delegate Marshall.

MR. MARSHALL: Mr. Chairman, I believe this amendment gives the delegates an opportunity to vote on the principle of true home rule.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Taylor, Delegate Ford.

MR. FORD: I want to agree with Mrs. Cushman. I would like to call the committee's attention to the fact that there has been some newspaper publicity within the past few weeks; the serious discussion down in the Detroit area of setting up the municipal transit system or a transit system throughout Wayne county, and perhaps part of Oakland county area, with a series of cities joining together, and I wonder — I think that this question was asked and answered in the committee — I wonder if this provision of a 3/5 vote would mean that in order to buy out the franchises of competing small private transit systems within the area to be served by an area transit system, we would have to have a 3/5 vote of all the cities and villages involved. Perhaps Mr. Elliott could tell us if this would be the effect.

CHAIRMAN DeVRIES: The gentleman does not care to answer.

MR. FORD: Could anyone who advocated this tell me whether or not we would be prohibited from going into such a transit system in Wayne county if we didn't have a 3/5 vote of each of the cities and villages to become a part of it? In other words, could any one of the cities or villages that failed to get 3/5 cause us to lose out?

CHAIRMAN DeVRIES: Does the gentleman from Traverse City care to answer? Delegate Sleder.

MR. SLEDER: In my opinion, Delegate Ford, it would. Each community would have to have a 3/5 vote if it was going to contribute in a financial way to the support of this. If you are speaking of some sort of inter contract basis for the transportation system, and they were going to contribute financially to it, it would have to have a 3/5 vote of its electorate.

MR. FORD: I submit then for all practical purposes to have a rigid requirement like this in the constitution would prevent for all time in the future of Wayne county the creation of a metropolitan transit system. We are not arguing about whether it is desirable or not desirable. It has been talked about for so long that there are a substantial number of people down there who feel that they would like to be able to do it, and I would rather see something happen along the line that is now suggested, that would permit the legislature to set the rules and provide for flexibility, so that the cities within the framework of their own charters, and the villages, could approve the purchase of these franchises on whatever basis the local people thought was in their own best interest.

CHAIRMAN DeVRIES: The question before the committee is the adoption of the Marshall amendment, as revised, to section f. The secretary will read the amendment.

SECRETARY CHASE: Mr. Marshall's amendment, as revised:

[The amendment was again read by the secretary. For text, see above, page 1043.]

CHAIRMAN DeVRIES: The gentleman from Jackson, Delegate Karn.

MR. KARN: Mr. Chairman, ladies and gentlemen of the committee, I would like to call your attention to a situation which is brought out in this proposed amendment, and that is, at the present time, when franchises are ratified by the voters, they are irrevocable during their term. If this amendment should pass — I know I am speaking very frankly — I think it would do irreparable harm to the public utility industry as such. Because financing of utility expenditures where they had no franchises, or franchises could be revoked, would be extremely difficult. I urge your opposition to this amendment.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Traverse City, Delegate Sleder.

MR. SLEDER: Relative to Mr. Marshall's amendment, I should like to point out the section that we adopted previous to this in the constitution gives the power of cities and villages to enter into public utilities. This, I think, is important, that these cities and villages be given this privilege and the power to do. However, I do feel that if the constitution likewise instills them with this responsibility and this power, that in some areas there must be certain restrictions stated in the constitution as to what is necessary to enter into these utilities.

The section we are now discussing definitely states that 60 per cent of the voters must conform to the utility for this municipality to enter into it. While the constitution gives the communities, the cities and villages, the power to go into the utility business, it likewise, I feel, should also set up the requirements which they must meet in order to enter this field.

Therefore I would recommend defeating the Marshall amendment.

CHAIRMAN DeVRIES: The Chair recognizes the sponsor of the amendment, Delegate Marshall.

MR. MARSHALL: Well, again — and this will be the last time that I will infringe upon your time and patience to speak on this amendment, but I again urge its adoption. I have tried to be rather consistent throughout the convention, and have tried to leave as much trust in the legislature as possible. I have spoken on the floor numerous times about not burdening the constitution down with a lot of language that is statutory in nature.

It seems to me that many of the delegates want to trust the legislature when it suits their fancy; when it doesn't suit them they don't want to trust them. In the one breath many of the delegates advocate and talk in the corridor and after hours about strong county home rule or local home rule, but here you have an opportunity to vote for it and apparently we are hedging. Again I can see, in my judgment, where in this committee proposal there could be advantage to certain special interest groups. I don't think that should exist in the constitution, and I think this language leaves it squarely up to the people and to the legislative processes.

CHAIRMAN DeVRIES: The delegate from Detroit, Delegate Madar.

MR. MADAR: You would almost think that I were being paid to lobby against public utilities, as some here are paid to be delegates and possibly do some lobbying too for utilities.

CHAIRMAN DeVRIES: Mr. Madar, will you confine your remarks to the amendment offered by Mr. Marshall.

MR. MADAR: I intend to. I just wanted to say this: that we in the city of Detroit, and I know that the utilities in the city of Detroit, aren't worried about franchises. There we have day to day franchises. We have a wonderful relationship with the utilities. In fact, I don't think that it costs us as much for power or gas in the city of Detroit as it does anywhere else in the state. Actually they are cheaper in Detroit.

Now, I believe that this is a very, very good amendment. This is something that is necessary for the people. You see, it wasn't the cities and the government who first went into the power business; it was just a few people, and these few people who first started in getting the utilities together were given all sorts of rights and liberties to do just about as they wished. Yet they used our rivers, they dammed them up, they watered an awful lot of stock from those dams too. Actually they built up about 50 or 100 thousand to the point where today some of that 50 or 100 thousand has risen to a million. Oh, yes, check the records and you will find that the stock has been watered plenty and the rates are plenty high.

Frankly, all I ever want to do is to help get back to reason. I don't believe that we have got to give any long franchises to utilities, and I believe that the cities ought to be able to do something about them. I believe, too, that we shouldn't have the same thing — or, rather, continue the same thing as they have in Traverse City, where down one side of the street they have their own utility; on the other side they have a private utility, and all because they granted a franchise for life.

Frankly, I am in favor of the amendment, and I hope that it passes.

CHAIRMAN DeVRIES: The question before the committee is the adoption of the Marshall amendment, as revised. The gentleman from Detroit, Delegate Hodges.

MR. HODGES: I support the amendment because the committee report is anti democratic and pro private power.

CHAIRMAN DeVRIES: The question is the Marshall amendment, as revised. As many as are in favor of the Marshall amendment will say aye. Excuse me. The delegate from Kalamazoo, Mr. Allen.

MR. ALLEN: Mr. Marshall raises a point which we ought to think about in connection with transportation lines. Personally, I would oppose passage of this particular amendment because I think what we combine here are 2 things, the problem of bus lines and transportation and the old problem we have had about electric utilities, and I think that problem has run deep enough and gone along far enough that we cannot very well change the provisions which we have already adopted.

Now, Mr. Marshall, I wondered if we would be able to help you out on the metropolitan government section. We can in part, but we can't help you out as far as this 3/5 vote. Just as Mr. Sleder says, the 3/5 vote would be required by every unit if it is a city that would participate. It wouldn't require a 3/5 vote if it were by a township unit participating.

It seems to me that what we have got to do here in order to not get the 2 mixed up is to go ahead and pass the committee proposal, turn down this amendment, and give some thought later on to this particular problem which you raise about bus lines. It is too difficult a problem to work out immediately on the floor, but I can see if a group of cities wanted to go into the bus business and combine, the 3/5 vote would be a hindrance. I don't think this is the way to cure that problem. I think we can take it later.

CHAIRMAN DeVRIES: Mr. Marshall.

MR. MARSHALL: Delegate Allen, may I inquire: first of all, I didn't mention anything — I made no mention whatsoever of bus lines. I was more concerned — well, in the overall, but in my statement I didn't mention bus lines as such. I would not have offered this amendment had my original amendment carried. First of all, you would not be helping me. You said help me out. I think you would be helping the people.

I feel that if a power company can go into a community and purchase a power plant by a majority vote, the people likewise should be able to acquire one by a majority vote. I cannot see the double standard and had the amendment passed where you would have had a majority vote in both cases, I would not have offered this amendment. I still think this amendment is sound.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Ludington, Delegate Plank.

MR. PLANK: I would like to speak in favor of the committee proposal and against the amendment by Mr. Marshall. I would like to point out to you that giving a city or a village the power to allow or not allow a utility to operate in their area might be all right, and might be real good home rule, but it is not very practical.

One of the real reasons the utility can operate with the economy that they do operate with in our country is the fact that they not only have the opportunity to operate in the city but in a large area, and if you fix it so that they have to be on their guard at all times as to whether or not they will be able to operate in a given section, you will certainly do away with their economy and make it pretty difficult for all of us to exist. This is one of the reasons why we have utilities, and I would just point out to you that the proposal we have in the committee report takes care of this very nicely, and I would urge that you defeat the Marshall amendment.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Birmingham, Delegate Van Dusen.

MR. VAN DUSEN: Mr. Chairman, I don't wish to speak on this amendment. I just want to make an announcement which may shorten our proceedings this afternoon. Mr. Rudow has just informed me that the Detroit News and the Detroit Free Press have suspended publication. (laughter)

CHAIRMAN DeVRIES: The delegate's point is well taken. The Chair recognizes the gentleman from Detroit, Vice President Downs.

MR. DOWNS: Could I suggest that additional copies of the journal be printed and distributed in Detroit? (laughter)

MR. MADAR: Mr. Chairman, I might say that the World has gone into print.

CHAIRMAN DeVRIES: The question now before the committee is the Marshall amendment, as revised, to section f. As many as are in favor of the Marshall amendment will say aye. Opposed, no.

The amendment, as revised, is not adopted. Are there any further amendments to section f?

SECRETARY CHASE: None on the desk, Mr. Chairman.

CHAIRMAN DeVRIES: Without objection, then, the committee will return to section b which was passed temporarily this morning. We were considering the second paragraph, lines 3 through 11 on page 2. We were not considering the last sentence. At that time Delegate Allen had offered an amendment to the paragraph. The secretary will read the amendment.

SECRETARY CHASE: Mr. Allen had offered an amendment to:

1. Amend page 2, line 6, after "ment,", at the beginning of the line, by inserting "subject to the constitution and general laws of this state,".

CHAIRMAN DeVRIES: The question is on the Allen amendment. The Chair recognizes the gentleman from Kalamazoo, Delegate Allen.

MR. ALLEN: Later this morning, following the suggestion that came from the floor, Mr. Hutchinson, Mr. Bonisteel and I met. We have talked it over with the committee chairman since then. We have a different amendment that does a little more, which Mr. Hutchinson was to offer. I don't see him here. For the purpose of having it offered I will withdraw my amendment.

CHAIRMAN DeVRIES: Delegate Allen withdraws his amendment.

SECRETARY CHASE: Messrs. Hutchinson, Bonisteel and Allen offer the following amendment:

1. Amend page 2, by striking out lines 3 to 7 and line 8 through "therein.", and inserting "Each city and village shall have power to pass laws and ordinances relating to its municipal concerns, property and government subject to the constitution and general laws of this state.".

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Kalamazoo, Delegate Allen.

MR. ALLEN: Mr. Chairman, what this does is, as you will see, 2 things. It starts the sentence off exactly the way that it is printed and then adds the old qualification from the 1908 constitution which is "subject to the constitution and general laws of this state." It then goes ahead to omit this business about preemption. So the whole matter of preemption goes out.

While we could not talk with each member of the committee, we talked with the chairman, and I sensed from the talks no disagreement on the committee's part on this. I would like to have Mr. Elliott, if he is here, confirm this so that we may know that we have agreement before we go ahead on it.

CHAIRMAN DeVRIES: Delegate Allen yields to Delegate Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, Mr. Allen, delegates, the statement Mr. Allen has made is correct.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Fennville, Vice President Hutchinson.

MR. HUTCHINSON: Mr. Chairman, this is the amendment which we worked out after this matter was passed this morning temporarily, and I am very happy with the arrangement and compromise that has been effected. I hope that the committee will support it.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Detroit, Vice President Downs.

MR. DOWNS: Mr. Chairman, would Delegate Hutchinson yield for a question?

CHAIRMAN DeVRIES: The delegate yields?

MR. HUTCHINSON: I yield.

MR. DOWNS: Would we accomplish the same purpose by keeping lines 14 through "state", that is, 22, as the Sharpe amendment is, and then striking the rest of section b — that is, strike on page 2, lines 1 through 14? I am not in opposition to what you are trying to achieve.

CHAIRMAN DeVRIES: Vice President Hutchinson.

MR. HUTCHINSON: Mr. Chairman, in answer to the question of the gentleman, we would be accomplishing the same purpose by reinserting the old language down through and including line 8. Now, then, what happens beyond line 8 is another question.

MR. DOWNS: Perhaps my question, Mr. Chairman, if I can direct it again: if we took on page 1, section b, lines 14 through the word "state" in line 22?

MR. HUTCHINSON: Mr. Chairman, if I understand the question, it is this. Suppose that we took section b and reinserted the stricken language there, which is found on lines 19 through 22, and then struck out all of the new language, would we be accomplishing the same purpose?

MR. DOWNS: That is correct.

MR. HUTCHINSON: I say to the gentleman that we would be accomplishing the same purpose down to and including line 8, but after line 8 there is some new material which would not be — definitely which would be stricken out if we struck out all the new material, but we introduced some additional issues there which our compromising team was not able to satisfy.

MR. DOWNS: I think, Mr. Chairman, that Mr. Hutchinson's suggestion is inconsistent with lines 11 to 14 on page 2, and it would seem to me a much neater way to handle the whole problem would be to take lines 14 through the word "state" in 22, reinserting the language we did by the Sharpe amendment yesterday, and then strike the rest of section b, so that section b would be essentially as it was in the 1908 constitution with the grammatical corrections in the first few lines.

I am just raising this as a question to see if it would facilitate the proceedings.

CHAIRMAN DeVRIES: The question before the committee is the amendment offered by Delegates Hutchinson, Bonisteel and Allen to the second paragraph of section b. The Chair recognizes Delegate Elliott.

MR. A. G. ELLIOTT: As I understand the question, this would include lines 1 through 14 on page 2, and the committee at this time is not prepared to accept the point of view of Mr. Downs, and I would urge that we adopt the amendment as presented now, and then go ahead and complete our debate on the second paragraph.

MR. DOWNS: I will withdraw the question, and if it is pertinent, would like to again raise it after we finish line 14 on page 2.

CHAIRMAN DeVRIES: The question before the committee of the whole is the amendment of Delegates Hutchinson, Bonisteel and Allen to the second paragraph of Committee Proposal 83, section b. The secretary will read the amendment.

SECRETARY CHASE: The amendment is as follows:

[The amendment was again read by the secretary. For text, see above, page 1045.]

CHAIRMAN DeVRIES: The question is on the amendment. Does the gentleman from St. Louis, Delegate Hoxie, seek recognition?

MR. HOXIE: Mr. Chairman, I would like to ask Mr. Hutchinson a question.

CHAIRMAN DeVRIES: You may if the gentleman cares to answer.

MR. HOXIE: In reading the stricken material on page 1 of the committee report, "and, through its regularly constituted authority, to pass all laws and ordinances relating to its municipal concern, subject to the constitution and general laws of this state," that is the language that has been in the constitution for some time. I can't see where, under this proposed amendment, with the exception of the last sentence, but what it accomplishes the same thing as your amendment. Why reword the constitution when the same subject matter is covered?

CHAIRMAN DeVRIES: Delegate Hoxie yields to Vice President Hutchinson.

MR. HUTCHINSON: Mr. Chairman, my answer to that is, that when you start working on amendatory language in a spirit of seeking to obtain something close to unanimity you usually start with what you've got. Now, what we had is not the old language in the constitution, but the language from lines 3 to 8 on page 2, and I think that you and I will both agree that the language of the proposed amendment that is up here on the wall says the same thing as the stricken language.

CHAIRMAN DeVRIES: Delegate Hoxie.

MR. HOXIE: The only remark I have is I thought it was the intention of this body to try to keep the wording of the document that we submit to the people very brief, and I would like to call your attention to the fact that we have a little less than 3 lines and on the other I don't know how many, but certainly more than that to accomplish the same purpose.

CHAIRMAN DeVRIES: The question before the committee is the amendment offered by Messrs. Hutchinson, et al. The gentleman from Grosse Pointe Shores, Delegate Cudlip.

MR. CUDLIP: Mr. Chairman, members, I speak in favor of the amendment. I think the answer to Mr. Hoxie — if I can suggest that — the colloquy answer is this: the old language says "municipal concerns". This says "municipal concerns, government and property." The intent of the committee was to broaden this because of some supreme court decisions which stated municipalities were acquiring more property, and one thing or another. There is a change. The language has been relocated. Two words have been added, and this preemptive business, which is so confusing, is eliminated.

I expect to vote in favor of the amendment.

CHAIRMAN DeVRIES: The question is on the amendment. As many as are in favor of the amendment will say aye. Opposed, no.

The amendment is adopted. Are there any further amendments to section b, second paragraph, lines 3 through 11, inclusive?

SECRETARY CHASE: Mr. Arthur Elliott, on behalf of the committee on local government, offers the following amendment:

1. Amend page 2, line 11, after "conferred,", by striking out the balance of that section and inserting "Such cities and villages shall have exclusive jurisdiction over wages and hours and administration except for general laws applicable to all persons or all public employees alike.".

CHAIRMAN DeVRIES: The question is on the amendment. The Chair recognizes the chairman of the committee, Delegate Elliott.

MR. A. G. ELLIOTT: At about 9:35 this morning I explained this amendment merely as an attempt to clear up the language that we had originally, and it was done in committee with all members but 2 or 3 being present, and with all of them in favor of the amendment except one. I now would like to yield to Mr. Allen to discuss the matter.

CHAIRMAN DeVRIES: Delegate Elliott yields to Delegate Allen.

MR. ALLEN: Mr. Chairman, we have been running so far behind on our time and this —

MR. MAHINSKE: Point of order, Mr. Chairman. Didn't we have a minority report in this area that should be considered in preference to the committee report?

CHAIRMAN DeVRIES: The Chair asked if there were any amendments to lines 3 through 11. The secretary read an amendment to lines 11 through 14. Is there a minority report on it? Did Mr. Elliott offer the amendment on behalf of the committee?

MR. A. G. ELLIOTT: That I did.

CHAIRMAN DeVRIES: We will consider the committee amendment first. Mr. Elliott.

MR. A. G. ELLIOTT: There is a minority report and I believe that we would be in order to take it first. Mr. Ford, I believe if you would let Mr. Allen make his comments, it would satisfy your condition.

CHAIRMAN DeVRIES: The Chair will rule that the committee amendment is in order. The Chair recognizes Delegate Allen.

MR. ALLEN: Speaking on the committee amendment, because we have been running so far behind, and because we know this one sentence is going to start so large a floor fight,

and because the minority has a report which they propose to put in to strike the last sentence, no matter whether it is the way it was originally printed or whether it's in the form of the committee amendment, it is the feeling of the committee that rather than discuss this at length at this time, it would be better to drop the whole subject, let the minority report go through, strike the sentence, and then on second reading, if the committee felt disposed to do so, to bring this up again; but not at this time.

CHAIRMAN DeVRIES: Delegate Allen, the Chair does not understand. You are withdrawing the amendment offered by Delegate Elliott?

MR. ALLEN: I don't care which procedure is followed. He offered the amendment, so I would let him. We could either withdraw it, let the minority report go through, or the minority could vote this one in and then have their report go through.

CHAIRMAN DeVRIES: Delegate Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, parliamentary procedure is a little bit in the gray area as far as I am concerned at this moment. What we are anxious to do is to move along in our article on local government — I must tell Mr. Van Dusen that that number 7 that I put in there when I reported to you was not 7 hours but 7 days — what we would like to do is have the minority report be adopted at this time, reserving the right on second reading as all of us have.

CHAIRMAN DeVRIES: Do you withdraw the amendment?

MR. A. G. ELLIOTT: If that is the proper procedure, I will so do.

CHAIRMAN DeVRIES: Delegate Elliott withdraws the amendment. Are there any further amendments to section b? Delegate Madar.

MR. MADAR: I rise to a point of order. This is not Mr. Elliott's amendment. This is an amendment of the committee, and I don't believe he has the authority of the entire committee to withdraw it.

CHAIRMAN DeVRIES: Delegate Elliott is the sponsor of the amendment, Delegate Madar.

MR. MADAR: He said this morning it was a committee amendment, and you gave him the right to submit his over the minority report, if you will recall.

CHAIRMAN DeVRIES: The amendment is withdrawn.

SECRETARY CHASE: Pursuant to minority report A of Messrs. Ford, Buback, Baginski, Mrs. Hatcher, Messrs. Madar and Suzore,

Mr. Madar offers the following amendment:

1. Amend page 2, line 11, after "conferred.", by striking out the balance of the line and all of lines 12, 13 and 14.

CHAIRMAN DeVRIES: The question is on the amendment. The Chair recognizes the gentleman from Ypsilanti, Delegate Lawrence.

MR. LAWRENCE: Mr. President, in a spirit of complete cooperation I wonder if I can meld or weld or make the second part of my amendment sort of married into the minority report. In other words, as I understand it, they are identical. Is that not correct?

CHAIRMAN DeVRIES: You want to move to amend the amendment?

MR. LAWRENCE: No, no. Oh, no.

SECRETARY CHASE: The second part of the amendment offered by Mr. Lawrence this morning was to strike out this same sentence. In other words, Mr. Lawrence would like to join with the minority as a sponsor of the amendment.

CHAIRMAN DeVRIES: Without objection, it will be so ordered. I hear no objection. The Chair will recognize the gentleman from Grand Rapids, Delegate Martin.

MR. MARTIN: Mr. Chairman, I don't quite understand the procedure here, but I don't want the action of the committee in withdrawing its amendment and accepting the minority amendment to be taken to mean that this committee is endorsing in some way the minority report.

It seems to me that a far better way would be to go ahead and vote on the minority amendment and dispose of it at this time, but I realize the committee wants to economize on time, and so perhaps it is all right, but I think it should be made clear that those of us who are going along with this idea are not agreeing with this minority proposition to permanently eliminate this provision.

CHAIRMAN DeVRIES: Mr. Martin, the chairman of the committee has stated that amendments can be offered on second and third readings, and that was his intention. Is that correct, Delegate Elliott?

MR. A. G. ELLIOTT: Yes.

CHAIRMAN DeVRIES: The question before the committee is the minority report amendment offered by Messrs. Ford, Buback, Baginski, et al to section b. Delegate Ford.

MR. FORD: Mr. Chairman, I am very happy to see what at the first blush looked like agreement here, but I am not so sure that it is. I heard a little birdie whispering during the lunch hour there was a new rule under consideration with respect to the manner in which we would handle these things on the floor, and the method of debate available when we get to the second reading. If this is an oversuspicious fear on my part, I hope somebody will straighten me out, but it appears to me that we might be passing this thing over without benefit of debate, and then if such a rule is adopted, and there is either limited debate, or the previous question is permitted to be moved on second reading on the theory that all the debate that was necessary was had on first reading, we will not have any debate on this section. And for that reason I would resist at this time passing our amendment without the debate and passing it with any reservation — (laughter) This engenders some humor, but I think you will see that we are coming to the crossroads of a very important sort of parliamentary procedure here that could conceivably — I am sure by accident and not by design — place the minority in a very indelicate position, to say the very least.

When I see prominent members of the majority, whom I know disagree with the minority position, say we are going to accept it, but we are going to get you the next time around, I think you can understand that I get a little quivery.

CHAIRMAN DeVRIES: Mr. Ford, the question is on your amendment.

MR. FORD: Well, as a point of personal privilege, I want to make it clear to the committee that I will consider any attempt to eliminate debate, if an amendment is made to put the committee language back in on second reading, under any circumstances where full and complete debate in the same manner as is now available here, in the committee of the whole, is not afforded, as a deliberate attempt to prevent us from debating on this particular question. I hesitate to use language of this kind, but I want to be absolutely sure that nobody accuses us of crying after the milk has been spilt.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Ypsilanti, Delegate Lawrence.

MR. LAWRENCE: I merely would like to say to Delegate Ford, through the Chair, that if there is any such sort of subversive plot in the making I would like to disagree with him so we will have some grounds for debate, because I am not any part to that.

CHAIRMAN DeVRIES: The Chair might suggest we are engaging in argumentum heterendum and so we should confine our remarks to the amendment offered by Messrs. Ford and others. The Chair recognizes Mrs. Butler.

MRS. BUTLER: I would like to know in one syllable words what we mean.

CHAIRMAN DeVRIES: The point is well taken, but that might be quite difficult. The Chair recognizes the gentleman from Detroit, Delegate Binkowski.

MR. BINKOWSKI: Mr. Chairman, members of the committee, I share Mr. Ford's fears here, and I hope that we will not be engaging in some sort of a gimmick to limit debate. The only thing at this point I would like to remind the delegates is that you did receive a very comprehensive memorandum from the Michigan state fire fighters association. Their representative was out there yesterday and he's out there today, and they are very concerned about this language in the constitution because it would affect their rights. I would just like to remind the delegates that while the Detroit newspapers may not be publishing today, I don't think this will stop the fire fighters from being alert.

CHAIRMAN DeVRIES: The Chair recognizes the chairman of the committee, Delegate Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, Mr. Binkowski, it seems to me there was once a president who said "You have nothing to fear but fear itself," and I urge the adoption now of the minority report amendment under the reasons that we have stated.

CHAIRMAN DeVRIES: The question now is on the adoption of the amendment offered by Messrs. Ford, Buback, Baginski, Mrs. Hatcher, Messrs. Madar, Suzore and Lawrence to section b. As many as are in favor will say aye. Opposed, no.

The Chair is in doubt. All those in favor will rise.

A DELEGATE: Division.

CHAIRMAN DeVRIES: You request a division on this? A division has been requested. Is there support? There is adequate support for a division. All those in favor will vote aye. All those opposed, no. The secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the adoption of the amendment offered by the minority, the yeas are 89 and the nays are 21.

CHAIRMAN DeVRIES: The amendment is adopted. Are there any further amendments to section b of Committee Proposal 83? If not, it will pass.

Section b, as amended, is passed. Are there any further amendments to the body of Committee Proposal 83? If not, it will pass.

Committee Proposal 83, as amended, is passed and the secretary will read.

You have a question? The gentleman from Flint, Judge Gadola.

MR. GADOLA: I have a question, yes. In the amendment that was offered, it says "subject to this constitution and the general laws of the state." Are we to assume that there is any governmental function that is not subject to this constitution by putting such words in? I just pass that on as a question. Is it necessary to put it in, "subject to this constitution?"

CHAIRMAN DeVRIES: Do you direct the question to anybody in particular?

MR. GADOLA: No, just something to think over.

SECRETARY CHASE: Item 2 on the calendar, from the committee on local government, by Mr. Elliott, chairman, **Committee Proposal 84,** A proposal to provide for liberal construction of provisions concerning municipal corporations. Amends article VIII.

Following is Committee Proposal 84 as read by the secretary, and the reasons submitted in support thereof:

The committee recommends that the following be included in the constitution:

Sec. a. THE PROVISIONS OF THIS CONSTITUTION AND THE LAWS OF THIS STATE CONCERNING MUNICIPAL CORPORATIONS SHALL BE LIBERALLY CONSTRUED IN THEIR FAVOR. POWERS GRANTED TO COUNTIES AND TOWNSHIPS BY THIS CONSTITUTION AND THE LAWS OF THE STATE OF MICHIGAN SHALL INCLUDE THOSE EXPRESSLY GRANTED OR FAIRLY IMPLIED AND NOT INCONSISTENT WITH NOR PROHIBITED BY THIS CONSTITUTION.

Mr. Arthur Elliott, chairman of the committee on local government, submits the following reasons in support of Committee Proposal 84:

Sec. a. Much testimony before the committee on local government, together with the experience reported by many of the committee members, has indicated that a major problem in Michigan local government today relates to narrow court construction or interpretation of the statutory powers of counties and townships. This practice, which is traditional with the courts, results in great problems in the drafting of legislation and increases the length of statutes since even minor omissions from them may result in a lack of power wanted or needed by a county or township.

The intent of this section is to mandate the courts to give a liberal or broad construction to statutes and constitutional provisions concerning all local governments. It is the understanding of the committee that home rule cities and villages already enjoy a broad construction of their powers and it is not the intention of the committee to make this construction any less broad. The principal problem seems to rest with the powers of counties and townships, so the second sentence of this section proposes specifically to broaden their powers and seeks to give the courts some guidance as to the criteria to be used in interpreting the constitution and statutes relative to counties and townships.

The Alaska and New Jersey constitutions contain language designed to accomplish the purpose the committee here recommends.

CHAIRMAN DeVRIES: The Chair recognizes the chairman of the committee, Delegate Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, it is with pleasure that I yield to Mr. Ford to discuss this section with you.

CHAIRMAN DeVRIES: Delegate Elliott yields to Delegate Ford for the committee explanation.

MR. FORD: Mr. Chairman, I am having difficulty finding the majority report. I am inundated with minority reports here.

CHAIRMAN DeVRIES: The committee will stand at ease while Delegate Ford gets organized.

MR. FORD: Thanks to an assist from several fellow delegates, I have now found it. It is in the journal on page 440.

[The supporting reasons were read by Mr. Ford. For text, see above.]

I would like to say at the outset that perhaps our committee explanation is just a little bit misleading, in that the language that the committee intends to broaden the powers is used, because there is nothing in this section which, in and of itself, either creates any power or broadens any existing power. It is merely a constitutional rule for statutory and constitutional construction with respect to a particular type of law enactment.

This was taken from the New Jersey constitution which was adopted in 1947, and has been modified as slightly as we could to make it consistent with Michigan requirements, since our township and county situation in Michigan is comparable to the city and township situation in New Jersey, where home rule as we know it does not exist. This was put into the constitution in New Jersey in 1947, and has been used very extensively in the state since that time.

For the municipal attorneys here, they will agree with me, I am sure, that New Jersey has a reputation in the United States for being one of the front runners in modern zoning and planning decisions out of their courts, and in researching this I discovered a whole series of zoning cases coming out of New Jersey that are looked upon as landmark zoning cases throughout the rest of the country that have been tried since 1950 — most of them tried in the early '50s — where, as a matter of fact, the court relied upon substantially the same language as we are proposing here in sustaining the township and city zoning ordinances or village zoning ordinances.

I would like to yield for questions at this point without belaboring it further. I would be very happy to give the citations to the lawyers if they want them or the cases.

CHAIRMAN DeVRIES: Delegate Ford yields to the delegate from Bay City, Delegate Higgs.

MR. HIGGS: Mr. Chairman, Delegate Ford, in reading this last sentence, the words "nor prohibited by," give me some difficulty. I would like to know if you agree with this construction: "Powers granted to counties and townships by this constitution and the laws of the state of Michigan shall include those expressly granted or fairly implied and not inconsistent with nor prohibited by this constitution." Would

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Explanation—Matter within [ ] is stricken, matter in capitals is new.

that not be a grant of all power to the counties and townships which are not expressly prohibited in the constitution?

MR. FORD: No, it isn't. This argument is one that was raised, and I want to make it very clear that here we have a situation where we can actually see what the court is likely to say in Michigan about this section, because it has been recently enacted in another state and the court has spoken, and I might answer it by reading just a part from a New Jersey case, Fred v. Mayor and Council, of the Burrough of Old Tappan. This is a zoning case, and the question was raised by the municipality here in trying to sustain a zoning ordinance, and I will quote:

> The defendant contends that the authority to pass such an ordinance is conferred on it by article IV, section 7 —

and article IV, section 7 is substantially the same as our proposal —

> of the Constitution of 1947 which provides:

and the language is repeated —

> It is urged upon us that this clause of the Constitution of 1947, which had no counterpart in its predecessor constitution, introduced a new concept of home rule into the law of this state, being, in effect, a direct grant of the police power to all municipalities.

In support of its position the defendant refers to certain of the proceedings of the constitutional convention, and here again is an example of what we can expect in the future. The court, in construing this section, actually went into the debates of the convention to find out what they intended to do.

> We find no merit to this contention of the defendant. The quoted provision of the constitution on its face does not purport to be a grant of general police powers to all municipalities, its plain language is not susceptible of being so construed, the proceedings of the constitutional convention referred to do not indicate that it was so intended, and during the 5 years since its adoption our courts have never so interpreted it. On the contrary, it is well settled in this state that a municipality has only those powers granted to it by statute—

This is where the New Jersey situation comes squarely in line with the Michigan situation with reference to counties and townships as distinguished from the statutory construction rules for cities and villages.

> — albeit by virtue of the constitutional provision here under discussion those powers are to be liberally construed in favor of the municipality and express grants of power are to be deemed to include "those of necessary or fair implication, or incident to the powers expressly conferred, or essential thereto."

This case arose and was decided by the New Jersey supreme court in November of 1952, just 5 years after the constitution, and by that time they were in a position to cite as authority for this point of view 5 previous decisions of the New Jersey supreme court arising out of zoning cases, and this is the place that it gets to the supreme court most rapidly. It would have application to any kind of a grant of power, however.

CHAIRMAN DeVRIES: Will Delegate Ford yield to Delegate Higgs?

MR. FORD: Yes, sir.

CHAIRMAN DeVRIES: Delegate Higgs.

MR. HIGGS: Mr. Chairman and delegates, the citation of this case is some comfort to us, but I always have the feeling that when a section of law, constitutional or statutory, must go to the supreme court of the state in order to be construed, it is hard for me to feel that the language, in the first instance, was plain and clear. In other words, it seems unlikely and illogical to me to adopt verbatim the language from another state which was so unclear that it had to go to the supreme court of that state to be interpreted. We have no particular reason to believe that of necessity our court would reach the same conclusion. I do agree that that decision would undoubtedly carry weight if such an argument occurred before our court. But, can't we do better than that? Can't we adopt language which is plain and clear and will avoid the necessity of going to the supreme court in order to determine it?

I would like to ask if this is not a grant of power, why not strike the words "nor prohibited by"? What do they add to this section? Would you accept such an amendment?

CHAIRMAN DeVRIES: Delegate Ford.

MR. FORD: Well, Mr. Higgs, the language actually is a reiteration of part of Dillon's rule, which is a well established and well recognized — nationally recognized — common law rule of statutory construction with respect to the powers of units of government. And what it does is extend this implied powers concept to a unit of government which, by its nature, has no inherent power, but has only such powers as granted to it.

I might point out an example of how this works. There is a case in New Jersey squarely in point with one that I tried about 2 years ago, arising out of an interim zoning ordinance, and the legislature, in authorizing the passing of an interim zoning ordinance, did not specifically say that you could amend an interim zoning ordinance, and the court held that since the township has only such powers as are specifically delegated to it, and you cannot imply that the power to adopt an ordinance carries with it the power to either amend it or to repeal it entirely, unless the legislature says so — held that the amendment was invalid.

Now, in the New Jersey case, where the same set of circumstances occurred after 1947, the court said that the fact that the legislature hadn't expressly said that the power to pass the ordinance carried with it the power to amend it wasn't controlling because of this language in the constitution which said that in addition to the specific words that the legislature uses you must also look at what the legislature intended to do, and that common law rules with respect to statutory construction would ordinarily say that the power to adopt the law carries with it the comparable power to repeal it or to amend it.

CHAIRMAN DeVRIES: Delegate Higgs.

MR. HIGGS: Mr. Chairman, Mr. Ford, I wonder if you can answer the question of what the intention of the committee is. Did the committee intend to grant powers not prohibited by this constitution?

MR. FORD: No. It is the intention, the clear cut intention, of the committee that this section, in and of itself shall grant no powers; that this is merely a rule of construction to guide the court in construing either statutes or provisions of this constitution when a question comes up as to whether or not a municipality can do a certain thing.

CHAIRMAN DeVRIES: Delegate Ford yields to Delegate Brown from Schoolcraft.

MR. G. E. BROWN: Mr. Chairman, members of the committee, I had prepared an amendment which treated the language a little differently than has been done here. However, I would like to point out to the others who might have an amendment, and to Mr. Higgs, that I feel that the language which has presently been used by the committee adequately disposes of the problem. I think that we should put on record, however, the intent as has been expressed by Mr. Ford that we contemplate a judicial interpretation of this section comparable to that provided by the New Jersey courts, since our language is, in substance, identical as related to counties and townships as their language in the New Jersey constitution.

As I said before, the language could be changed somewhat, but I think it is adequate. I think we should move on to something else. Thank you.

CHAIRMAN DeVRIES: Delegate Ford yields to Delegate Norris from Detroit.

MR. NORRIS: Mr. Chairman, Delegate Ford, I would like to ask this question, if I may. There is a judicial axiom that there shall be greater latitude in construing a measure of the constitution than a statutory measure. Is it the intent of the committee in this instance, by this specific provision, to state that as regards townships and the powers enumerated there, there shall be greater latitude in constitutional construction in relation to townships as against any other provision of the constitution? In other words, are you saying here that here you have a document of some 10 or 11 articles with all the sections, and that as far as a liberal construction is

involved, with reference to accomplishing the purposes of the constitution because that can't be readily changed, that this is the only place it shall be liberally construed?

MR. FORD: No. I think what we have to do is separate—this is not a general doctrine of liberal construction. It is liberal construction of statutes conferring particular powers upon counties and townships. And one more thing I shouldn't overlook. The last part refers specifically to counties and townships, but the first sentence says that laws pertaining to all municipal corporations shall be liberally construed, and this means school districts with respect to examining the procedures they follow in adopting a bond issue; it means building authorities; it means any kind of a municipal corporation as that term shall be defined by the legislature and by the courts from time to time.

Now, it doesn't mean that when you say liberal construction, Mr. Norris, that we should liberally construe in favor of a particular unit of government its sections to the detriment of others. We have this concept already by reason of the home rule concept with respect to cities and villages. Without going to home rule, the only way that you can take a zoning ordinance from a township or a civil service enactment for policemen and firemen in a township into court and play by the same rules as you would if you were taking it in for a city is to have this kind of language.

CHAIRMAN DeVRIES: Delegate Ford yields to the gentleman from Taylor, Delegate Marshall.

MR. MARSHALL: I hate to disagree with the esteemed and distinguished attorney from Taylor township, and outstanding young man of the year, but Delegate Lundgren and I had a conference a moment ago, and we have a question to ask and a statement to make. Will you give us the legal definition of the word "liberally"?

MR. FORD: Well, I think I may be able to. When a lawyer is talking about liberal construction of a statute, you get into this area. There are statutes that are adopted that are in derogation of the common law, for example.

MR. MARSHALL: I think that answers it, Delegate Ford. Now, a brief statement. Delegate Lundgren and I have decided we don't want to speak against this amendment, but we do object to the word "liberal" being used in the constitution; and, among other reasons, it might be construed as being too restrictive.

CHAIRMAN DeVRIES: Delegate Ford yields to the gentleman from Lansing, Delegate Wanger.

MR. WANGER: Mr. Chairman, members of the committee, I have some very serious doubts about the advisability of this whole section in the constitution. It has been very ably pointed out by Delegate Ford that this is not a rule of law, it is a rule of construction, which is to be frozen into the constitution to affect every and any law of the state which relates to municipalities, or to cities—or, rather, to townships and to counties. He also states that this reverses a trend which rests upon the rule called Dillon's rule, which traditionally strictly construes such statutes, and what this requires is that if there is doubt as to whether or not a city, a village, a township or a county has power under one of these statutes the court is constrained to hold that it does not have that power, and then the city or the village or the unit has to go to the legislature and get the law amended.

This would reverse that, and while it is but a rule of construction, I think you can see that the practical effect would be to extend the powers of these units of government into a presently unknown area; because for years, assuming that Dillon's rule has been the case, it certainly is proper to surmise that the legislature has been passing laws empowering the various bodies of our units of our state government to exercise powers, and they have been passing these laws with the understanding that they would be strictly construed.

Now, I question whether or not we really know the problems which we may be opening the door to if we freeze a rule of construction of this kind into the state constitution. A hard case was pointed out where a court held that the power to pass an ordinance did not carry with it the power to amend that ordinance. However, I imagine there may be many other cases which would come up which should be stricken down on the basis that the language in the statute did not expressly confer the power upon the local unit of government to act as it did.

It seems to me that in addition to causing these problems, this language might also call into question cases which have already been settled and established under this so called Dillon's rule of construction, and the law that may have been settled for years under our city acts or our village acts or our township or county acts may now be subject to litigation in the courts again, and that this might breed a great deal of litigation in our courts.

I am also concerned as to one other aspect of this section. Often in statutes today the legislature will include a section saying, "This statute shall be liberally construed in favor of the purposes for which it is enacted," and of course that can be done at any time by the legislature on any of these county or township or city or village empowering acts. But I wonder if some time that the legislature might not want to add or perhaps has added a section saying rather, "This statute shall be strictly construed." It seems to me under the language we are putting into the constitution the legislature could never constitutionally add a section saying this statute shall be strictly construed. So I think that is an additional reason why we should very carefully question whether or not this entire section, a rule of construction for the courts, should be frozen into our constitution.

CHAIRMAN DeVRIES: Delegate Ford.

MR. FORD: I think there is now a rule of law for strict construction in some areas. Any statute that is on its face or in its purpose in derogation of the common law, comes under a rule of construction which says it must be strictly construed. Every "t" has to be crossed and every "I" has to be dotted. There is another whole area of powers that are involved in this, and that is any statute conferring a police power, such as the power to adopt a zoning ordinance, a building code, a plumbing code, a heating code, electrical codes—these are all exercises of the police power, and any ordinance conferring this kind of a power is subject to the statutory construction or strict construction.

CHAIRMAN DeVRIES: Delegate Ford yields to the gentleman from St. Louis, Delegate Hoxie.

MR. HOXIE: Mr. Chairman, fellow delegates, I don't know if it is quite in point with the matter before us, but I have a little notice here: At rest. Quiet. Do not disturb. It was on Delegate Faxon's desk. Of course, as a lawyer, coming back to the proposal, I shouldn't object to this because I can envision a whole line of supreme court decisions, and I am reminded of what Justice Dethmers told us at the Kellogg center, "Write it in simple language so there can't be any misunderstanding or misinterpretation."

In this particular matter before us, it refers and sets down the same rules applying to cities under the constitution or by law, and then it sets up a different yardstick for determining townships and counties for constitutions, by constitutional laws, and as far as the Massachusetts decision, I am sure, Mr. Ford, that you have no guarantee that the Supreme Court of the State of Michigan will follow the interpretation of the courts of Massachusetts.

Now, I haven't yet heard the explanation by you as a lawyer, the legal definition of what the difference is between the words "liberally construed" as relates to cities, and "fairly implied" as relates to counties and townships. Would you like to advise us of that?

CHAIRMAN DeVRIES: Delegate Ford.

MR. FORD: Are you asking what it would be if we were to adopt this, or what it is now?

MR. HOXIE: I am merely asking a question, under the proposal, what is your legal definition as it applies to cities by "liberally construed" and as it applies to counties and townships by "fairly implied". Would you give us a legal definition that would be applicable to those 2 units of government?

MR. FORD: Well, if in attempting to define it you are trying to find a difference, I can't agree with you that there is a difference. It is our intention to come up with a set

of rules to play baseball in the supreme court so that you play it with the same rules, whether you come from a township with a township matter or a county with a county matter, or you come from a city. This is all we are trying to do. We are not trying to give one preference over another. We are trying to get a uniform approach to the interpretation of statutes conferring powers on units of local government. Let me say again: this applies to school districts and any other municipal corporation.

CHAIRMAN DeVRIES: Delegate Ford yields to the delegate from Pontiac, Delegate King.

MR. KING: Mr. Chairman, ladies and gentlemen of the committee, I have serious reservations about this type of provision in the constitution. Mr. Ford is asking us to adopt a rule of construction in the constitution. Mr. Brown has even gone further than that. He has asked us to adopt the decision of the Supreme Court of New Jersey construing the rule of construction. I think we are treading on awfully dangerous ground. I personally think that the flexibility required of any fundamental document, state or national, is inherent in the power of the courts to so construe these statements and these principles that we are supposed to be writing. I think that this has no place in the Constitution of the state of Michigan, and I personally think that we are treading on awfully thin ice, and perhaps when we break through, we are going to get in way over our heads. I don't think there is anyone in this room who can predict the far reaching implications of writing a rule of construction into the constitution, and therefore I would have to oppose it.

CHAIRMAN DeVRIES: Delegate Ford.

MR. FORD: Well, it seems as though this is the time for us to become imaginative and forward looking, but let me say this: I think, Mr. King, if you would take the time to glance at these cases, you will find that the question of construction is disposed of very clearly and very succinctly, and the reason that this found itself in the supreme court so frequently was this. In one instance they upheld a zoning ordinance which zoned an area and provided for a square foot requirement, a minimum square foot requirement in residential buildings. Now, the Michigan supreme court has held that you can't do this, you see. They have held this with respect to townships. I don't know of any case that has gone up with respect to cities on this. The provision was used again on a lot area and lot size provision to sustain a lot size provision in one instance in a rural township of 5 acre minimum sized plots, and they held in New Jersey, which is a heavily populated state, that this was reasonable.

The statute is mentioned in these cases simply because you go back to the court with a long line of decisions that take you up to a certain point and say, now we have to stop here because our hands are tied; and the townships have gone back into the court in New Jersey and made new law by saying, now, look, your hands are no longer tied; we play with the same rule as Dillon's rule as applied throughout the country.

Dillon's rule did not apply in the state of New Jersey before this was adopted, and Dillon's rule in its entirety does not apply in Michigan with respect to townships and counties, and the reason it doesn't is because townships and counties are constitutionally created entities and you will notice the way we have created them here they have no inherent power whatsoever. They are presumed to have absolutely no inherent powers. They have only the powers that are specifically designated to them. They will continue, after this section is adopted, if it is adopted, to have only the powers specifically designated; except that you won't have a gasoline station next door to a church because somebody found a technical defect in the way the legislature drew the language of a particular section of the township rural zoning act now, which goes into pages and pages and pages.

If you examine the enabling statute for cities and the one for townships, you will find that the cities operate under a statute that occupies a half dozen pages, while the township rural zoning act is amended in almost every session of the legislature to patch up some little hole that they find. Every time somebody tries a lawsuit they find something wrong with the language, and this is brought about because of this rule on strict construction. We now have a statute covering zoning in townships that is very long and involved and very difficult to follow.

CHAIRMAN DeVRIES: Will Delegate Ford yield to Delegate King? Delegate King.

MR. KING: Mr. Chairman and Delegate Ford, I appreciate Dillon's rule of construction, and I am not opposed to it. I think that when we are talking about federal and state powers, that one rule of construction ought to apply, because there are inherent powers in those bodies. But when you take this power and diffuse it down to the local level, it seems to me perfectly reasonable that different rules of construction would apply. I personally think that they ought to. I see nothing wrong with the present construction. I am not a township attorney. I recognize that if I were a township attorney, perhaps I would feel differently about it. Maybe I am a plaintiff's attorney, and maybe we ought to have a rule in the constitution which will liberally construe the law with respect to the cases of plaintiffs. I don't really think it is a fit subject for constitutional deliberation and insertion.

CHAIRMAN DeVRIES: Will Delegate Ford yield to the gentleman from Marshall, Delegate Hatch? Delegate Hatch.

MR. HATCH: Mr. Chairman, I would like to direct a question to the Chair, if I may. I would like to know if it would be in order to move that the committee of the whole do not concur in the recommendations of the committee on local government with respect to Committee Proposal 84?

CHAIRMAN DeVRIES: Delegate Hatch, if you offer an amendment to strike out the entire proposal.

MR. HATCH: Is it necessary to do that?

CHAIRMAN DeVRIES: Yes, sir.

MR. HATCH: All right. I would merely like to state that I am in opposition to the proposal as written.

In the first place, I think that where we say that "these provisions shall be liberally construed," I think it is an admission on our part that we can't say what we mean in the first place. Secondly, I think that by attempting to write rules of construction particularly stating that they will be liberal rules of construction, we are issuing an invitation to judicial legislation.

I can recall some time ago when we were discussing another proposal where the sentiment was set forth that the courts are going too far in writing laws through their judicial interpretation. I think by virtue of this provision we are, in effect, inducing more judicial legislation. Once you reach that hurdle and call it judicial legislation, then if you do not agree with it, or the legislature does not agree with the interpretation placed by the court, how do they change it? They can't change it because they are construing a provision of the constitution.

Now, if this were a statutory provision, a statutory provision saying that our laws concerning townships or counties or cities shall be liberally construed, and the court construed them in a manner considered over liberal, they could then change the statute to say what they mean. But we are dealing here with a constitution, and the legislature could not change a judicial legislation, or interpretation, if you please. So I will prepare an amendment to strike the entire section.

CHAIRMAN DeVRIES: Delegate Hatch, you can move, if you so desire, that when the committee rise, that we rerefer this to the committee, or you can offer an amendment to strike the language of the proposal after the enacting clause. If you wish to submit an amendment, would you please bring it to the rostrum?

Does Delegate Ford wish to yield to the gentleman from Grand Rapids, Delegate Tubbs? Delegate Tubbs.

MR. TUBBS: Mr. Chairman, as I see it, I am greatly in sympathy with the problems which Bill Ford has mentioned, and there probably are 3 solutions. One would be a liberal home rule act for townships, but that would probably be strictly construed by the supreme court, so it wouldn't do

any good. So the second way to cure it is get a new supreme court, and that would probably mean some changes in the judicial branch section of this constitution. The third way, and this is my way, and as an old municipal attorney I will go this way, is to vote with Mr. Ford.

CHAIRMAN DeVRIES: Will Delegate Ford yield to the gentleman from Kalamazoo, Delegate Allen? Delegate Allen.

MR. ALLEN: Mr. Chairman, it hasn't been so often down in local government or here that I found myself on the same side as Mr. Ford, but I do on this one. Let me tell you why. The first thing is that despite what has been said here in opposition to it, because to so many it sounds so new, and it really isn't, the first sentence of this provision was adopted by the state of Alaska. It is taken right out of the Alaskan constitution word for word. I think there they said local units of government instead of municipal corporations, but it means the same thing. This was heralded as one of the fine and good and, in fact, almost the best constitution written in the United States. The second point is that the same problem was encountered in New Jersey, and New Jersey did the same thing. The language in New Jersey was different, but the political units and the powers of government there are different, and so it wouldn't apply. But the spirit of the New Jersey action, when New Jersey revised its constitution, is the same as we are doing here.

Personally, even though I have always been on the city side of things, I have learned that the townships and the counties have a serious problem when it comes to matters of judicial construction, and most legal authorities who have studied this matter have felt that the legal construction rules should be loosened up a bit, and the best language that constitutional lawyers have found to do it is the language in this committee recommendation. Now, I think we ought to not forget one other thing. We all decry the trend toward central government, and we all say: let's make our local units of government stronger. Now, this is what we are trying to do here. This isn't a grant of power, but it is of assistance, and now when we get right to it I sense the feeling: well, let's not do it. Well, now, we can't have both. I think we have got to work in the direction of strengthening our local units, and on the township and county level here is one place, among others, where we can do it.

There is nothing dangerous about this language. Alaska did it, New Jersey did it, and it has been recommended in New York. We have some precedent for it. I think that we would be going in the right direction if we go ahead here, and we will do something for our local units of government, and we won't be going too far.

CHAIRMAN DeVRIES: Will Delegate Ford yield to the gentleman from Stanton, Delegate Brake? Delegate Brake.

MR. BRAKE: Mr. Chairman, ladies and gentlemen, I am very strong for this proposal. Our townships and counties have been seriously handicapped by the strict construction of statutes granting them the powers that we have had from our courts.

Saying to Mr. Hatch: I tried to get done in the legislature exactly what you suggested. We have a whole string of rules of construction in the statutes established by the legislature, but the research bureau over there stopped me. They said we had to have a constitutional change. I don't know why. I never was able to follow their reasoning. But, anyhow, I couldn't get anywhere. This would take us somewhere, and the only place we want to go is to be in the same status as the home rule cities.

Let me just give you an illustration. Every session of the legislature we have 12 to 15 bills just putting in some little detail that somebody forgot before, but that the township can't do unless you can open the books and find the place that says you can do it. We have no township roads any more, but a few years ago the legislature felt that the township still ought to be able to build a sidewalk, even though they are not township roads. So they passed an act saying the township could build sidewalks. The first winter they found that the snow fell on the sidewalks the same as on the city sidewalks. So they had to come back and get a legislative act authorizing the township to take the snow off the sidewalks. The next year they found that a kid might get run over in a township just the same as in the city. So they had to come back and expressly get authority from the legislature for the township to build that sidewalk up over the road; an overpass, in other words. You wouldn't get that kind of foolishness in connection with the cities. You do get it in connection with townships. It is a serious handicap.

That same thing is true in the counties. The question came up the other day: suppose we fix millage for the counties so they would have more than they really needed in money; could they turn it over to the schools? No. Why? Not because it wouldn't be proper procedure but because the legislature hasn't said in just so many words you can do it.

All we are asking is a rule of construction that is on the same basis as your home rule city so we don't have to go back to the legislature session after session to get these little details. We haven't done very much for townships in this constitutional convention—some little improvements—and this would be a real improvement if we can get this written into the constitution.

CHAIRMAN DeVRIES: Will Delegate Ford yield to the gentleman from Lansing, Delegate Wanger? Delegate Wanger.

MR. WANGER: Mr. Chairman, members of the committee, I am not quite sure what was meant by Delegate Brake when he said this had to be in the constitution. It would seem to me that the legislature could at any time amend this act, or any of the acts granting powers to local units of government, saying that this act shall be liberally construed in favor of them, and that they have all powers which may be fairly implied from the powers expressly granted herein. Inasmuch as these local units of government get their entire power and authority from this legislative act, I fail to see why this would not be fully effective.

Now, the second point I would like to make is, I think, one which the discussion points up. The legislature evidently has not done this. In fact, there is a nationally recognized rule which has resulted in the opposite trend in construction. This indicates to me that nationwide experience, with the exception of 2 states which have been mentioned, is that it is better to have the local units of government go back to the legislature and have the amendment passed to give them the authority, rather than it is to let the legislature set out in general language what they may do and let the units of government then take the ball and run in any direction they desire from there.

I would like to close on this point by emphasizing that this rule of construction does not only apply to laws enacted after this constitution may be adopted, it also very clearly applies to all of the laws which are now in force granting powers to local units of government. These laws were obviously passed by a legislature under the impression that those laws would be strictly construed, with perhaps a couple of exceptions in a couple of areas that Delegate Ford pointed out, and I therefore suggest, although I do not claim to be an expert in the area of the law on municipal corporations, that putting this rule of construction into the constitution, while it may indeed solve some problems and help local governments in some areas, it may, in addition, be opening a Pandora's box of evils which in the long run would be far greater than the benefits conferred.

CHAIRMAN DeVRIES: Will Delegate Ford yield to the gentleman from Bay City, Delegate Higgs, for the purpose of making an amendment?

MR. FORD: I would like to make one observation before yielding, and that is that one of the most famous judges of our supreme court of all time, and one of the most famous writers of law in this state, Mr. Justice Thomas Cooley, listened to the argument that Mr. Wanger just gave in 1871 and adopted a rule that repudiates this for the state of Michigan. With respect to the home rule concept, the state of Michigan does not follow the trend, hasn't since 1871, and didn't in the 1908 convention, of getting away from inherent local government powers. The trend has been toward strengthening inherent local government powers, and Mr. Justice Cooley is given credit for being one of the men who led the judiciary of this state

in that direction. All we are trying to do now is permit our judiciary to continue in that direction.

CHAIRMAN DeVRIES: The Chair recognizes Delegate Higgs.

MR. HIGGS: Mr. Chairman and fellow delegates, I had hoped that I might possibly bring this up in the style and drafting committee. I consulted with the chairman of the committee and he suggested that we proceed with the amendment, nevertheless, inasmuch as it does go to substance and probably not form. I think possibly there may be a middle ground here.

CHAIRMAN DeVRIES: May the Chair suggest, Delegate Higgs, that the secretary read your amendment.

SECRETARY CHASE: Mr. Higgs has offered the following amendment to Committee Proposal 84:

1. Amend page 1, line 12, after "implied" by striking out "and not inconsistent with nor prohibited by this constitution".

CHAIRMAN DeVRIES: Delegate Higgs.

MR. HIGGS: When I asked Delegate Ford if it was the intention of the committee to grant powers to counties and townships not prohibited by this constitution, he said no. And if that is the intention of the committee, then I assume it would be the same intention that he would not intend to grant powers other than those expressly granted or fairly implied.

I am not an expert in this field, either. I am sympathetic with the arguments raised, and I am sure that the experience of Delegate Brake and Delegate Allen are more extensive than mine in this area, but I do think that the language should say what we mean. If we add these words "and not inconsistent with nor prohibited by this constitution," it seems to me, as a matter of grammar, that we are granting powers not inconsistent with nor prohibited by this constitution. That is a little broader than I think I want to go.

I am open to argument and persuasion, but it seems to me that that is the Pandora's box. I don't quarrel with a liberal construction, and I would like to hear from other delegates on this point.

CHAIRMAN DeVRIES: The Chair recognizes the lady from East Grand Rapids, Delegate Judd.

MRS. JUDD: I am sorry. I want to speak on the whole proposition, not just this amendment.

CHAIRMAN DeVRIES: Delegate Judd yields to the gentleman from Schoolcraft, Delegate Brown.

MR. G. E. BROWN: Mr. Chairman, Mr. Higgs, I am quite sure, insofar as my endorsement of the proposal goes, I would be happy to support the Higgs amendment for the striking of these last words, and I am quite sure that Mr. Ford would agree to the amendment of the committee proposal to that extent.

CHAIRMAN DeVRIES: The Chair recognizes Delegate Ford.

MR. FORD: I would like to say that I would very happily endorse it, but I think you are going to be unhappy later when you find out what you are doing. I wouldn't have had the nerve to do what Mr. Higgs has just done, and I am a strong advocate of broadening these powers.

This does not do what you think it will do, Mr. Higgs. You are taking out the qualifying language; you would leave the door open for the court to imply anything it pleased with respect to a statute. We don't intend that at all. We want it to imply only the things that can properly be implied as restricted by the law.

CHAIRMAN DeVRIES: Delegate Brown.

MR. G. E. BROWN: What Mr. Ford has said, I will agree with. I think that where Mr. Higgs possibly feels that his amendment is important is that he is applying it to all of the language of the paragraph, when really, I believe that the interpretation of the committee, of Mr. Ford and of myself is that, really, the "fairly implied" portion of it is to be that there shall not be a construction which is inconsistent with or prohibited by the constitution. In other words that by implication this may not be done.

CHAIRMAN DeVRIES: The Chair recognizes the author of the amendment, Delegate Higgs.

MR. HIGGS: Well, Mr. Chairman, Delegate Brown, I think you went right to the point of what was bothering me. If this is merely a matter of style and form it could be taken up in the style and drafting committee. It might be that we could include the words "expressly granted or fairly implied which are not," which might be the proper way to do that. But if you were to appear before that committee, unless there is someone who feels that this should be pursued, I would withdraw my amendment and take it up in style and drafting.

CHAIRMAN DeVRIES: Delegate Higgs withdraws his amendment. Are there any amendments to Committee Proposal 84? The Chair recognizes the lady from East Grand Rapids, Delegate Judd.

MRS. JUDD: I would like to speak to the proposal as a whole, if a layman dares to venture on this thin ice that really belongs to lawyers. But I was interested in the formulation of this in the local government committee, and I went into the matter somewhat.

Mr. Tubbs brought up the question of other possible remedies, particularly for townships and counties. I would like to say that the original proposal included cities, or at least municipal corporations, in the last sentence, and the municipal league was quite concerned that these words used in the last sentence describing the construction desired might even be narrowing with respect to the court construction that the cities have had through the years in Michigan. Construction in Michigan, I understand, has been very much more liberal than it has been in New York state and in New Jersey, where they have proposed this provision.

With respect to counties and townships, it would seem to me that as the townships become more and more urban, and therefore more concerned over this narrow construction, their remedy can be not only becoming a charter township with more liberal interpretation as a municipal corporation, but also can incorporate as cities and benefit by this more liberal court interpretation. The same might well become true with home rule counties when they receive charters. So I would think that the problem of townships and counties, which are still in areas where the need for liberal interpretation is not so great, could best get their solutions out of later incorporation under a charter.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Taylor, Delegate Ford.

MR. FORD: The only thing that I can say to that is that to follow Mrs. Judd's reasoning, there should be no zoning and no planning and no police power, or any of the other powers conferred upon townships until they become a city, and I submit that the bad law that is being made in this state from time to time in zoning is not being made by the cities; but I thought Glenn Allen was going to touch on this.

The municipal attorneys in this state for a long time have been concerned with helping small townships — not the larger ones with attorneys available all the time, but some of the small townships that have not put up a vigorous fight to try their cases when they get to the supreme court, because when the law is made on a question of zoning, the city sometimes finds itself stuck with dictum in a township zoning case that hurts everybody, whether they are in a city or not, and the problems that arise out of this one field of zoning, the bad mistakes that are made in the development of a community don't occur after the community is built up and you have a city, they occur when it is just building up, when they start moving the trailer courts and the junkyards and the slaughter houses and what have you into the fringes around the city, and there has to be a way to control them.

In our particular area, for example, we had a whole rash of litigation involving bulk oil storage tanks, and I don't think anybody who gets into that area would be happy about it. Maybe Glenn recalls, I think we have been, on both the city and the township level, on trailer court cases in the last 10 years probably 20 times in the supreme court, and most of those cases came out of townships, and frequently they have been lost because of technical strict construction, and in losing those cases we have made law that has hurt the control of this type of use in all kinds of municipalities.

CHAIRMAN DeVRIES: The Chair recognizes the gentle-

man from Marshall, Delegate Hatch, for the purpose of offering an amendment to the proposal, which the secretary will read.

SECRETARY CHASE: Mr. Hatch offers the following amendment:

1. Amend page 1 by striking out all of lines 6 through 13.

CHAIRMAN DeVRIES: The question is on the Hatch amendment. Delegate Hatch.

MR. HATCH: Mr. Chairman, I have already stated my reason for the amendment. One, I think as far as the constitution is concerned, this provision is an admission that we have not stated what we intend in the other provisions. Secondly, I think it is an inducement to judicial legislation, and, third, with respect to statutes, because this rule of construction applies not only to this constitution but also to any statutes enacted.

I don't see how any delegate can sit here and endorse a liberal construction of all statutes which may be enacted after this constitution, hopefully, is adopted. It would also prohibit the legislature from adopting a statute which they desire to be strictly construed. Therefore I urge support of the amendment.

CHAIRMAN DeVRIES: Does the gentleman from Schoolcraft, Delegate Brown, seek recognition on the amendment?

MR. G. E. BROWN: Yes, I do, Mr. Chairman. I think that what Mr. Hatch has said is slightly exaggerated or embellished. The legislature, of course, can grant in expressed terms, if it wants to, a particular power. Any power that it expressly denies certainly is not granted, and certainly from this language you could not fairly imply that a power was granted. It does not, in any way, put the legislature in a straitjacket; but, much to the contrary, in many of these areas that Mr. Ford has talked about, and that I have mentioned, it has been a problem of the legislature being willing, in effect, to have the statute construed in a broader sense, a more liberal sense, if you prefer, and it just hasn't been able to effect this through the courts.

I would also like to say to Mrs. Judd that the problems that I am familiar with do not arise out of the so called urban townships, such as may be the case of Mr. Ford, but rather from the rural townships, but many of these border upon cities with which there are problems of annexation sometimes, where there is a willingness to annex, and oftentimes it creates problems when you don't have planning and you don't have zoning because of the conditions that exist in an area to be annexed. So I don't think it is to the cities' benefit, particularly, to attempt to restrict the townships in a properly ordered planning and arrangement in zoning of township matters.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Pontiac, Delegate King.

MR. KING: Mr. Chairman, I would like to direct a question, if I could, to Mr. Ford which concerns the whole problem, whether we leave this in or take it out. It is almost inseparable, I suppose. Would that be permissible?

CHAIRMAN DeVRIES: You may if the gentleman cares to answer.

MR. KING: Mr. Chairman, Delegate Ford, I would like to know if you feel that this is the only remedy. I am impressed by the problem that apparently exists here, and I am certainly impressed by what Mr. Brake said, but I can't see why the legislature can't rectify the situation, and I would like to get your thoughts on that particular aspect of the problem.

CHAIRMAN DeVRIES: Delegate Ford.

MR. FORD: I might answer that by telling you how I got to this in the first place. We discuss this every time lawyers get together. I belong to the public corporation section of the state bar, and this is one of the problems that comes up there frequently. I am a member of the national institute of municipal law officers and a member of the zoning committee of that organization, and it has come up very frequently in recent years there, and when I was a city attorney it was discussed frequently with respect to this entire question of statutory construction with the municipal league attorneys.

We have a very fine little exposition here by Mr. Fryer of their point of view on this — not on this particular point, but on this question of construction. So I went to the office of NIMLO by correspondence, talked to Charlie Ryan, asked him if he could give me a little help, and he referred me to the chairman of the zoning committee, who happens to be the city attorney for Roseland, New Jersey, and 2 or 3 other small cities around Newark, and townships as well. It was he who presented me with the cases indicating the way that this had been applied, and what really intrigued me was that in New Jersey they had been famous, or infamous, depending on your point of view, for the fact that they had a very narrow construction rule with respect to all kinds of municipalities, including cities.

In 1908 we took care of the cities with the home rule provision, and I am satisfied that short of going to some form of home rule where you get into a concept of inherent powers except as restricted by the legislature, rather than only delegated power, and no power unless there is a delegation of power, that there is no other remedy available to us at this time.

MR. KING: Mr. Chairman, Mr. Ford, I would like to continue this and ask you if you do not think it is within the inherent power of the supreme court to reverse this decision?

MR. FORD: No. The supreme court must construe the law not as they see fit but as it evolves over a period of time. With respect to the construction of the statute — let me point out, for example, that we are not talking about statutes necessarily that, say, are passed for townships. For example, the civil service that policemen and firemen have throughout the state and townships is not contained in the township statute at all. What they did was to take the act which passed civil service for the cities and villages and simply added the word "township" to the definition of a municipality for the purpose of that statute, and this has been with regard to the planning act and numerous other things.

Now, where you get into problems is that in drafting that statute, the legislature was aware of the fact that they didn't have to spell every last little step out in the statute for a city because it had this home rule power. But then, when you start to apply this civil service you start running into gaps at the township level and, as Mr. Brake says, the township is constantly running up to the legislature because there is no way and has never been a way devised, and I think we have proved it here, to write a law covering a subject matter that is going to cover all the possible contingencies that might arise. So what you attempt to do is to write a law that will broadly cover the problem and make possible a solution of the contingencies that do arise, and some of them can't be solved except by statutory amendment.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Lansing, Delegate Wanger.

MR. WANGER: Mr. Chairman, members of the committee, I support the Hatch amendment. The subject of zoning powers has been mentioned so much I want to emphasize that this is only one aspect of the powers of cities, townships and villages and counties in the state, and that while zoning is obviously here to stay, it is, nevertheless, one of the most controversial subjects which you will find in any locality throughout the state as far as the extension of its powers is concerned.

I think it is obvious from the discussion that this section, if added to the constitution under the present laws which we have, would extend the township and other local units zoning powers along with many other powers to, at this time, an unknown extent and I suggest that we would do very well to, instead, leave this power under the control of the present statute, as the legislature may amend them. I also support the Hatch amendment for the reasons which Mr. Hatch himself so very well gave.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Muskegon, Delegate Hanna.

MR. W. F. HANNA: Mr. Chairman, I had hoped to sit here and not say anything after attempting to get a little bit of the discrimination between cities and townships out of this constitution when we were dealing with townships. However, I say to Mr. Wanger and Mr. Hatch, Mr. Ford and Mr. Brake are entirely correct. First, when you go to the legislature and ask for amendments to certain acts, you run into this rule.

Secondly, the legislature attempts to grant to townships certain powers or facilities to do a job by adding the word "township" to the planning act or other acts, and then you run into 2 entirely different constructions from then on. The legislature intends to give them the same general broad powers as the cities and villages have, but when you draft a statute pursuant thereto or attempt to enforce it, after you have got the ordinance enacted, you run into 2 different constructions as you proceed through the courts.

Any person who has spent any time as an attorney for a township or on a township board as a layman recognizes that any ordinance is completely open to the technical argument that there is no specific power, almost to the point of a comma being in the correct place or the "t" being crossed. To put this straitjacket and handicap on township government is to allow the cities to be surrounded by slums and catastrophes which they, I am sure, do not want.

All that this implies is that the same rules of construction apply to township ordinances as apply to city ordinances, and certainly we have had no fiasco with this rule of construction being applied to city ordinances. The bogeyman is not there that some of these men would worry about, and I ask that you, in all fairness to township people, to county people, give them the same rules, the same privileges when they enact an ordinance in the field of public welfare, that you now have in cities and villages. I urge you to defeat the Hatch amendment and adopt the committee proposal.

CHAIRMAN DeVRIES: The question before the committee of the whole is the Hatch amendment to Committee Proposal 84, which the secretary will read.

SECRETARY CHASE: The amendment is:

[The amendment was again read by the secretary. For text, see above, page 1054.]

CHAIRMAN DeVRIES: As many as are in favor — The secretary has just read the amendment. Do you want it read again, Mr. Ford? Are you requesting a division vote? Are you satisfied now? The chairman of the committee, Delegate Elliott.

MR. A. G. ELLIOTT: I would like to urge the defeat of this amendment.

CHAIRMAN DeVRIES: The question is on the Hatch amendment to Committee Proposal 84. As many as are in favor of the amendment say aye. As many as are opposed, say no.

The amendment is not adopted. Are there any further amendments to the body of Committee Proposal 84?

SECRETARY CHASE: None, Mr. Chairman.

CHAIRMAN DeVRIES: If not, it will pass.

Committee Proposal 84 is passed. The secretary will read.

SECRETARY CHASE: Item 3 on the calendar, from the committee on local government, by Mr. Arthur Elliott, chairman, **Committee Proposal 85,** A proposal to provide that public utilities may use public property with consent of local authorities and a limitation on the length of franchise. Amends article VIII, sections 28 and 29.

Following is Committee Proposal 85 as read by the secretary, and the reasons submitted in support thereof:

The committee recommends that the following be included in the constitution:

Sec. a. No person, partnership, association or corporation operating a public utility shall have the right to the use of the highways, streets, alleys or other public places of any COUNTY, city, village or township for wires, poles, pipes, tracks or conduits, OR OTHER UTILITY FACILITIES without the consent of the duly constituted [authorities] AUTHORITY of [such] THE COUNTY, city, village or township; [nor] OR to transact a local business therein without first obtaining a franchise [therefor] from [such] THE city, village or township. The right of all COUNTIES, cities, villages and townships to the reasonable control of their HIGHWAYS, streets, alleys and public places is hereby reserved to SAID [such] LOCAL UNITS OF GOVERNMENT. [cities, villages and townships.]

Sec. b. No franchise or license shall be granted by any municipality of this state for a longer period than 30 years.

Mr. Arthur Elliott, chairman of the committee on local government, submits the following reasons in support of Committee Proposal 85:

Sec. a. The committee recommends the insertion of county to the list of local governments which exercise control of public utilities occupying the right of ways of highways, streets, alleys and other public places.

In the 1908 constitution, permission was given counties to establish county road commissions. Previous to this time, all roads were under the jurisdiction of cities, villages and townships. The enabling legislation which established the county road system was act 283 of 1909, and all the counties adopted county road systems by the middle of the 1920s.

Act 130 of public acts of 1931 required that all roads in unincorporated areas be included in the county road system and be under the county's jurisdiction. This authority was continued by act 51 of 1951, as amended.

Since the county road commission has jurisdiction over all the roads outside of the incorporated areas within the county, they should exercise the right of granting permission as to the location of public utilities within the highway or road right of way.

The additional language concerning "other utility facilities" has been added to allow for the possibility of future technological changes in the utilities field. The committee here and elsewhere has been aware of the desirability of writing a constitution that can easily accommodate to the problems of future years.

The committee further recommends and emphasizes that the power of granting franchises for servicing an area be retained by the governing authority, which would be either the city, village or townships.

Sec. b. After considering several alternatives carefully, the committee has concluded that this section should remain unchanged.

Consideration was given to making some changes in order to allow the franchise to continue on a limited perpetuating basis. The need of the private utility to seek renewal of its franchise often seems to be an unnecessary formality and expense and also a disadvantage in the securing of capital. The committee did not find an alternative that would be fair and satisfactory to both the utilities and taxpayers.

It was felt that a franchise time limit of 30 years or approximately 1 generation is fair and has proved to be workable. It was also felt by the committee that the responsibility for and cost of securing a new franchise should be placed with the private utility and not with the electors.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Pleasant Ridge, Delegate Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, the last proposal we had before us was purely legal, and as I listened I realized it was only those legal experts that were discussing the point. Now I would like to bring to your attention something that will allow the other 87 experts of the convention to get their teeth back into the subject, because now we are going back into the more purely local government portion of our proposals, and I would like to at this time yield to Mr. Sleder for the discussion of this proposal.

CHAIRMAN DeVRIES: Delegate Elliott yields to the gentleman from Traverse City, Delegate Sleder.

MR. SLEDER: Mr. Chairman, in article VIII of the old constitution, section 28, we inserted the term "counties" in several areas.

Explanation—Matter within [ ] is stricken, matter in capitals is new.

[The supporting reasons to section a were read by Mr. Sleder. For text, see above, page 1055.]

CHAIRMAN DeVRIES: Are there any amendments to section a of Committee Proposal 85?

SECRETARY CHASE: Messrs. G. E. Brown and Ford offer the following amendment to Committee Proposal 85:

1. Amend page 1, line 7, after "corporation" by inserting a comma and "public or private,"; so the language will read, "No person, partnership, association or corporation, public or private, operating a public utility shall have the right to the use of the highways . . . ." and so forth.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Schoolcraft, Delegate Brown.

MR. G. E. BROWN: Mr. Chairman, members of the committee, this is a rather insignificant addition to the language, and I think that probably there is no need for debate on it, but I think it would be better to put this in for clarification purposes, though, that it applies to any public utility.

CHAIRMAN DeVRIES: The question is on the amendment offered by Delegates Brown and Ford to section a. Delegate Sleder.

MR. SLEDER: The committee, relative to the amendment, sees no objection to it. It goes further into detail.

CHAIRMAN DeVRIES: The secretary will read the amendment.

SECRETARY CHASE: The amendment is:

[The amendment was again read by the secretary. For text, see above.]

CHAIRMAN DeVRIES: The question is on the adoption of the amendment. Mr. Sleder.

MR. SLEDER: By "corporation," I don't know. I am not a legal attorney or anything. To me they are either public or private. I don't know.

CHAIRMAN DeVRIES: Delegate Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, this looks to me like it is merely an attempt to clarify. This was the intent of the committee, that no corporation, whether public or private, should have the right without the further provision. So I would see no objection to the amendment.

CHAIRMAN DeVRIES: The question is on the amendment offered by Delegates Brown and Ford. The Chair recognizes the gentleman from Grand Rapids, Delegate Tubbs.

MR. TUBBS: May I ask the mover of this amendment a question, sir?

CHAIRMAN DeVRIES: You may if the gentleman cares to answer.

MR. TUBBS: Would this apply to the municipality's own streets?

CHAIRMAN DeVRIES: Delegate Brown.

MR. G. E. BROWN: Well, of course, Mr. Chairman, Mr. Tubbs, this doesn't appear to be a problem in such a situation due to the fact that the same municipality would have the right of consent. I think this is a little bit like a petitioner signing his own petition. He consents to the granting of that petition, I am sure.

CHAIRMAN DeVRIES: The question is on the adoption of the amendment. As many as are in favor will say aye. Opposed, no.

The amendment is adopted. Are there any further amendments to section a of Committee Proposal 85? If not, it will pass.

Section a, as amended, is passed. The secretary will read section b.

SECRETARY CHASE: Section b.

[Section b was read by the secretary. For text, see above, page 1055.]

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Traverse City, Delegate Sleder.

MR. SLEDER: I should like to yield to Delegate Madar, a member of the subcommittee on public utilities.

CHAIRMAN DeVRIES: Delegate Sleder yields to Delegate Madar.

MR. MADAR: Mr. Chairman, fellow delegates, this is in Journal 70, on page 441, if you want to follow it:

[The supporting reasons to section b were read by Mr. Madar. For text, see above, page 1055.]

I move the proposal be adopted.

CHAIRMAN DeVRIES: Are there any amendments to Committee Proposal 85, section b? If not, the section will pass.

Section b is passed. Are there any amendments to the body of Committee Proposal 85?

SECRETARY CHASE: Mr. Mahinske offers the following amendment:

1. Amend page 1, following line 20, by inserting

"Sec. c. Any county, through its legislative body, shall have the authority to enter, or to intervene in any suit or certificate proceeding involving the service, charge or rate made by any public utility furnishing services or commodities to rate payers within the county.".

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Detroit, Delegate Mahinske.

MR. MAHINSKE: Mr. Chairman, this amendment is offered here in this section dealing basically with public utilities and basically with provisions dealing with cities and counties. This amendment would permit the counties, as a county unit, to enter into public utilities suits in the county where they are not users. Currently the counties are limited before the public service commission of the state to appear only as users in the various proceedings there. They are permitted to appear not necessarily as users but as a representative body in front of the federal power commission, which means that in the state the county has no standing other than as a user, but in the federal system the county does have a standing as a political unit.

Now, the counties that I have had contact with here would like to have this provision written into the constitution to bring the procedures both on the federal and the local level into uniform procedure here. The reason why this comes up now is that in 1955 there was a Michigan supreme court case that ruled that the counties as such, other than as a user, did not have standing in these procedures in front of the public service commission, and their argument was based on the fact that as you go back through the articles on local government, or the sections on local government in the constitution, by enumeration the supreme court felt that the counties were excluded from having this standing.

Now, we have just gone through a long argument here of Mr. Ford on Committee Proposal 84 that would call for a liberal construction of this present constitution. Now, this may have cured the situation that we have now in the old constitution, but we don't have it there, and under the strict constitutional construction procedure the supreme court has said that the county does not have standing, although the federal supreme court, the federal court of appeals, will listen to the counties in these areas. Now, I have some further facts, but if there are any questions I would attempt to answer them.

CHAIRMAN DeVRIES: Delegate Mahinske yields to the gentleman from Fennville, Vice President Hutchinson.

MR. HUTCHINSON: Mr. Chairman, I think maybe by the time the whole explanation was made he had answered my question. I understood him to say the Supreme Court of Michigan had relied upon the constitutional provision to say that counties could not appear as such unless they were users before the public service commission. He also points out that we have just previously passed a proposal which probably will cure the matter.

I am a little bit distressed in my own mind to have it pointed out — to realize that the Supreme Court of Michigan would deny to the legislature, apparently, the power to empower a municipal corporation to appear other than as a user before the public service commission. It seems to me that all the legislature would have to do, since the legislature created the commission, defines its powers and duties and

whatnot — certainly the legislature could define who would be a proper party before that commission. I am surprised that the supreme court found something in the constitution to prohibit it.

CHAIRMAN DeVRIES: Delegate Mahinske.

MR. MAHINSKE: In reply to Delegate Hutchinson's remarks, I would only add that in this case — I could give him the citation here — the supreme court went down all the way through sections 16, 17, 19, 23, 25, 28 of article VIII, and pointed out that villages and cities were specified in these various sections, and based the decision of their court on the fact that counties were not mentioned as such, and I think that the case went further to say that the legislature could not act in this area, that they practically had been precluded from acting because of the enumeration of certain forms of government here, and a specific absence of the counties as such ever being referred to except as users.

CHAIRMAN DeVRIES: Will the gentleman yield to the chairman of the committee, Delegate Elliott?

MR. MAHINSKE: Yes.

MR. A. G. ELLIOTT: Mr. Chairman, Mr. Mahinske, this is entirely new language now being suggested as an inclusion in the committee proposal from local government. I am not sure that we have any objections; I am not sure we don't have any objections. Of course, you can't have a meeting on the floor of 27 members. What I would suggest be done — I don't see on the surface any particular objection, but I do think that on something that is entirely new, that the committee should accept the responsibility and have the responsibility of at least some unified discussion, and I would suggest that this particular amendment be laid over until that opportunity is given us.

CHAIRMAN DeVRIES: Delegate Elliott, what is your motion?

MR. A. G. ELLIOTT: Not being a parliamentarian, I don't know just exactly what motion I need to do that, but if somebody will be kind enough to give me the language, that is what I would like to do.

CHAIRMAN DeVRIES: You move that Committee Proposal 85 be passed for today?

MR. FORD: Point of order.

CHAIRMAN DeVRIES: State your point of order, Delegate Ford.

MR. FORD: Maybe it is a parliamentary inquiry. I am sorry. Would it be in order to move to refer this to our committee? I think there is another matter, Mr. Elliott, we discussed; that perhaps we could discuss this annexation thing, because we are going to meet the same problem when we get to that.

CHAIRMAN DeVRIES: Delegate Ford, we have reached the deadline for reporting out proposals from committee. If we rerefer the committee proposal to the committee on local government, there is a question whether we can report it out again.

MR. A. G. ELLIOTT: How can we get a chance to — well, can we pass over this to a time certain if I so move?

CHAIRMAN DeVRIES: Yes, sir.

MR. A. G. ELLIOTT: I will move that we pass over this until 2:00 o'clock tomorrow afternoon.

CHAIRMAN DeVRIES: Delegate Elliott moves that Committee Proposal 85 be passed over until 2:00 o'clock tomorrow.

MR. MAHINSKE: I have no objection to this.

CHAIRMAN DeVRIES: All those in favor say aye. Opposed, no.

The motion prevails.

The secretary will read Committee Proposal 86.

SECRETARY CHASE: From the committee on local government, by Mr. Arthur Elliott, chairman, **Committee Proposal 86,** A proposal pertaining to highways and their maintenance. Amends article VIII, sections 26 and 27.

Following is Committee Proposal 86 as read by the secretary, and the reasons submitted in support thereof:

The committee recommends that the following be included in the constitution:

Sec. a. The legislature may by general law provide for the laying out, construction, improvement and maintenance of highways, bridges, and culverts by the state and by the counties and townships thereof; [and by road districts;] and may authorize counties [or districts] to take charge and control of any highway within their limits for such purposes. The legislature may also by general law prescribe the powers and duties of boards of supervisors in relation to highways, bridges, and culverts; may provide for county [and district] road commissioners to be appointed or elected, with such powers and duties as may be prescribed by law,[; and may change and abolish the powers and duties of township commissioners and overseers of highways. The legislature may provide by law for submitting the question of adopting the county road system to the electors of the counties, and such road system shall not go into operation in any county until approved by a majority of the electors thereof voting thereon.] The tax raised for road purposes by counties shall not exceed in any 1 year $5.00 upon each $1,000 of assessed valuation for the preceding year.

Sec. b. The legislature shall not vacate nor alter any road, STREET, ALLEY, OR PUBLIC GROUND laid out by [commissioners of highways, or any street, alley or public ground in] any COUNTY, TOWNSHIP, city or village or in any recorded [town] plat.

Mr. Arthur Elliott, chairman of the committee on local government, submits the following reasons in support of Committee Proposal 86:

Sec. a. This is section 26 of the present constitution adjusted to the present highway system. Road districts, as separate identities, are no longer needed. County road systems have been adopted in all counties. Therefore, the words and sentences referring to these matters have been deleted.

Reference to township commissioners is deleted to conform with the recommendations of the committee, as section 18, article VIII of the present constitution, the office of overseer of highways, is obsolete with the elimination of the road district system.

Sec. b. This section has been changed in order to delete reference to the commissioners of highways to make the section conform to the recommendations of the committee concerning section 18, article VIII of the present constitution. The reference to counties and townships is added to that of cities and villages so as to provide complete local control over public ways and public grounds.

CHAIRMAN DeVRIES: The Chair recognizes the chairman of the committee, Delegate Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, ladies and gentlemen of the committee, before yielding to the gentleman of our committee who will handle this, I would like to pay a special compliment to him as I did to our other vice chairman when he had an opportunity to present certain proposals to the floor. Mr. Figy has been extremely valuable to me as chairman, in serving in his capacity as vice chairman of this local government committee. Both he and Mr. Buback have been extremely loyal and as anxious as I to present to you as complete and accurate a picture of our proceedings as possible. And I would like at this time to yield to one of the vice chairmen of the committee on local government, Mr. Figy.

CHAIRMAN DeVRIES: Delegate Elliott yields to the gentleman from Morenci, Mr. Figy, for the committee explanation.

MR. FIGY: Mr. Chairman and fellow delegates, and first I want to thank the chairman of our committee, and notify him

Explanation—Matter within [ ] is stricken, matter in capitals is new.

I'm a little short of grocery money for the rest of the week. I will be seeing him later.

[The supporting reasons to section a were read by Mr. Figy. For text, see above, page 1057.]

CHAIRMAN DeVRIES: Are there any amendments to section a of Committee Proposal 86? If not, the secretary will read section b.

SECRETARY CHASE: Section b,

[Section b was read by the secretary. For text, see above, page 1057.]

CHAIRMAN DeVRIES: The Chair recognizes Delegate Figy.

MR. FIGY: Thank you.

[The supporting reasons to section b were read by Mr. Figy. For text, see above, page 1057.]

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Ypsilanti, Delegate Lawrence.

MR. LAWRENCE: I have a question just because I happen to have been involved in such a matter, and I heard reference to eliminating reference to townships and highways or streets, which I agree with. However, it was determined in one case that the townships still retain title in the streets, and I am wondering if anything that is done here is going to affect that situation. In the specific case, a city, because the highways had been taken over by the county, was authorized to extend its sewer and water lines out into the township, and for some reason the court saw fit to enjoin it, to stop it, because the title to those roads, although they are administered by that county, still remains in the township.

CHAIRMAN DeVRIES: Delegate Lawrence yields to Delegate Figy.

MR. FIGY: I think that is covered in another section, that matter of township control over certain roads in those townships. I would have to look it up. Yes, it is covered in another place.

MR. LAWRENCE: I just wanted to be sure.

CHAIRMAN DeVRIES: Are there any amendments to section b of Committee Proposal 86? Are there any amendments to the body of Committee Proposal 86? Mr. Hutchinson.

MR. HUTCHINSON: Mr. Chairman, I would like to ask Mr. Figy, or somebody on the committee, to tell me what the rationale was in leaving the last sentence of section a in the constitution; that is, lines 21 through 23 on page 1, "The tax raised for road purposes by counties shall not exceed in any 1 year $5.00 upon each $1,000 of assessed valuation for the preceding year"? Specifically I would like to ask why it is thought necessary to write such a restriction as this in the constitution rather than leaving it to the legislature?

MR. FIGY: It is in the constitution now. I think we just didn't see fit to take it out. It is not new language.

MR. HUTCHINSON: Mr. Chairman, in answer, I would agree with the gentleman that it is in the constitution now, but this was written back in a day when there seemed to be some property tax available for such things. Obviously there isn't now in any kind of a 15 mill system.

I understand what we did the other day to the 15 mills but, nevertheless, it would seem to me as though a matter of detail like this is something that could most properly be left to statute, to limit the power of counties to tax for one thing and another, and not to freeze it into the constitution.

CHAIRMAN DeVRIES: Delegate Figy.

MR. FIGY: I don't know the answer.

CHAIRMAN DeVRIES: Delegate Figy yields to Delegate Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, Vice President Hutchinson, this was given some consideration in our committee, as to whether or not to eliminate this last sentence, and it was felt that this limitation upon the counties as to the amount of taxes which they could raise for road purposes was reasonable and proper for constitutional language. This was discussed not officially but unofficially with the finance and taxation committee, and we were fortunate enough to have the chairman of that committee on our committee, and as a result of comments made in the committee in our discussion, it was determined that we would leave this language in.

We recognize the problem in that by doing this we are freezing in a certain rate for probably a considerable length of time and on that particular issue we were somewhat reluctant but it seemed, in weighing both sides of the issue, that this was the wiser procedure.

CHAIRMAN DeVRIES: Delegate Elliott yields to Vice President Hutchinson.

MR. HUTCHINSON: Mr. Chairman, in answer to that explanation, I appreciate the explanation, but I wish that some statement had been made as to the reasons which led you to the conclusion. You said that after discussion and so on you thought it was best to leave it, but I haven't heard any compelling argument in support of leaving it yet.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Grand Haven, Delegate Stafseth.

MR. STAFSETH: Mr. Hutchinson, I think maybe I can clarify it some. Actually today, in the current legislative enactment that the county roads operate under, we get a return of the gas and weight tax, and the legislature says that if any additional funds are needed they will have to come locally.

Now, with this 5 mill limitation they also have a statutory provision that parallels this and restricts it. I can't remember exactly how it goes, but in the sparsely populated counties you can go up to 5 mills and it graduates itself down until it gets to the county of Wayne, where they can only raise 1 mill.

In all the highway legislation that we have had for local roads in both cities and counties, in this case the counties, they have still left in this ability to take care of the roads at the local level. So, it is being done. There are counties within the state that are appropriating part of the money from the board of supervisors for the benefit of the roads. In our particular county they have appropriated from $175,000 down to $50,000. With this in here there certainly wouldn't be any conflict. I don't know whether it will go up to as high a level as it did back when this originally went in, but it may.

CHAIRMAN DeVRIES: Vice President Hutchinson.

MR. HUTCHINSON: Mr. Chairman, I would like to ask Mr. Stafseth if in view of the experiences of these latter years, where in some cases it has been held that the words "assessed valuation" mean assessed valuation as equalized, state equalized, would you so interpret this, that this $5 on $1,000 of assessed valuation is upon state equalized valuation?

MR. STAFSETH: Yes, I would assume that would be the case. I agree with you, with the 15 mill being used up pretty much it is going to be very difficult, but it may change.

MR. HUTCHINSON: That is all, thank you. I yield the floor.

CHAIRMAN DeVRIES: Delegate Figy.

MR. FIGY: Mr. Chairman, I think Mr. Brake has had this under consideration, too. Do you want to comment on this, Hale?

CHAIRMAN DeVRIES: Delegate Figy yields to the gentleman from Stanton, Delegate Brake.

MR. BRAKE: I think, Mr. Figy and Senator Hutchinson, that when this was put in, of course, the 15 mill limitation was not contemplated at all. It is one of several restrictions on county spending. Another one will be included when we get to it in an exclusion report; a restriction which says the county may only raise 1/10 of a mill a year for capital outlay, and may only borrow a same amount for like purposes. Those were restrictions put in before we had the 15 mill limitation. They would not have been necessary while we had the 15 mill limitation. I would like to suggest a premonition on the part of the local government committee of what you were going to do here on the floor with the 15 mill limitation.

CHAIRMAN DeVRIES: Are there any amendments to Committee Proposal 86? If not, it will pass.

Committee Proposal 86 is passed.

The secretary will read Committee Proposal 87.

SECRETARY CHASE: Item 5 on the calendar, from the committee on local government, by Mr. Arthur Elliott, chairman, **Committee Proposal 87,** A proposal relating to ports and port districts. Retains section 30 of article VIII unchanged.

Following is Committee Proposal 87 as read by the secretary, and the reasons submitted in support thereof:

The committee recommends that the following be included in the constitution:

Sec. a. The legislature may provide for the incorporation of ports and port districts, and confer power and authority upon them to engage in work of internal improvements in connection therewith.

Mr. Arthur Elliott, chairman of the committee on local government, submits the following reasons in support of Committee Proposal 87:

Sec. a. The committee recommends that article VIII, section 30, be retained as it is in the present constitution. A suggestion is made, however, to the committee on style and drafting that it consider whether this section should not be made a subsection of article X, section 14.

CHAIRMAN DeVRIES: The Chair recognizes the chairman of the committee, Delegate Elliott.

MR. A. G. Elliott: Mr. Chairman, I would like to yield to Mr. Batchelor.

CHAIRMAN DeVRIES: Delegate Elliott yields to Delegate Batchelor.

MR. BATCHELOR: Mr. Chairman, fellow delegates, I have 2 ears, 2 eyes, but only 1 mouth so this should be short. This will be found in Journal 71, on page 461, and is known as article VIII, section 30.

The legislature did not provide for this — the constitution did not provide for this. It did not appear in the 1835 or 1850 constitution, but was added by an amendment as a new section at the April, 1923 election. There have been no significant court decisions. The provision itself does not appear to have created any problems which may have been encountered by port districts in Michigan. The constitutional grant of authority to the legislature is comprehensive.

[The supporting reasons were read by Mr. Batchelor. For text, see above.]

CHAIRMAN DeVRIES: Are there any amendments to section a of Committee Proposal 87? Are there any amendments to the body of Committee Proposal 87? If not, it will pass.

Committee Proposal 87 is passed.

The secretary will read Committee Proposal 88.

SECRETARY CHASE: From the committee on local government, by Mr. Arthur Elliott, chairman, **Committee Proposal 88,** A proposal pertaining to metropolitan areas. Amends article VIII.

Following is Committee Proposal 88 as read by the secretary, and the reasons submitted in support thereof:

The committee recommends that the following be included in the constitution:

Sec. a. THE LEGISLATURE SHALL HAVE POWER TO ESTABLISH IN METROPOLITAN AREAS SUCH ADDITIONAL FORMS OF GOVERMENT OR AUTHORITIES WITH SUCH POWERS, DUTIES AND JURISDICTIONS AS THE LEGISLATURE SHALL DEEM NECESSARY.

WHEREVER POSSIBLE, SAID ADDITIONAL FORMS OF GOVERNMENT OR AUTHORITIES SHALL BE DESIGNED TO PERFORM MULTIPURPOSE FUNCTIONS RATHER THAN A SINGLE FUNCTION.

Sec. b. THE LEGISLATURE SHALL PROVIDE BY GENERAL LAW FOR THE EXERCISE OF LOCAL GOVERNMENT BY 2 OR MORE COUNTIES, CITIES, VILLAGES, TOWNSHIPS OR DISTRICTS, OR ANY COMBINATION OF 2 OR MORE OF SUCH UNITS OF LOCAL GOVERNMENT. UNDER SUCH GENERAL LAW SUCH UNITS OF LOCAL GOVERNMENT SHALL HAVE POWER:

(1) TO ENTER INTO CONTRACTUAL UNDERTAKINGS OR AGREEMENTS WITH ONE ANOTHER OR WITH THE STATE OR WITH ANY COMBINATION THEREOF FOR THE JOINT ADMINISTRATION OF ANY OF THE FUNCTIONS OR POWERS WHICH EACH LOCAL UNIT OF GOVERNMENT WOULD HAVE THE POWER TO PERFORM SEPARATELY;

(2) TO SHARE THE COSTS AND RESPONSIBILITIES OF FUNCTIONS AND SERVICES WITH ONE ANOTHER OR WITH THE STATE OR WITH ANY COMBINATION THEREOF WHICH EACH LOCAL UNIT OF GOVERNMENT WOULD HAVE THE POWER TO PERFORM SEPARATELY;

(3) TO TRANSFER TO EACH LOCAL UNIT OF GOVERNMENT OR COMBINATION THEREOF FUNCTIONS AND RESPONSIBILITIES OR BOTH UPON THE CONSENT OF EACH UNIT OF GOVERNMENT INVOLVED;

(4) JOINTLY TO COOPERATE WITH ONE ANOTHER AND WITH STATE GOVERNMENT AND INTERGOVERNMENTAL AGENCIES;

(5) TO LEND THEIR CREDIT IN A MANNER PRESCRIBED BY LAW IN CONNECTION WITH ANY PUBLICLY OWNED UNDERTAKING AUTHORIZED HEREIN.

ANY OTHER PROVISION OF THIS CONSTITUTION NOTWITHSTANDING, AN OFFICER OR EMPLOYEE OF ANY OF SAID UNITS OF GOVERNMENT OR SUBDIVISION OR AGENCY THEREOF MAY SERVE ON OR WITH ANY GOVERNMENTAL BODY ESTABLISHED FOR THE ABOVE PURPOSES AND SHALL NOT BE REQUIRED TO RELINQUISH HIS OFFICE OR EMPLOYMENT BY REASON OF SUCH SERVICE.

Mr. Arthur Elliott, chairman of the committee on local government, submits the following reasons in support of Committee Proposal 88:

Sec. a. This section is designed to replace existing section 31 which has been deleted. Section 31 has rarely been used, omits the county, is too complicated, and serves very little purpose. A number of specific forms for metropolitan government were proposed to the committee but each suffered the defect of being too specific. Rather than attempt to write into the constitution a definite plan for metropolitan government, the committee believed this section should be left broad and flexible. Therefore, the committee recommends that the legislature be permitted from time to time to establish such form or forms of metropolitan government as would best serve the purpose then existing. This committee was impressed with the fact that while there has been considerable discussion about metropolitan governmental problems, opinion has not yet jelled as to their solution. The committee recommends against the solution of each problem of government through the creation of a separate new governmental body. Therefore, the last sentence advises that when the legislature establishes a new unit of government for the solution of metropolitan problems, it should be established with sufficient jurisdiction and power to handle multipurpose functions rather than for single purpose. It is intended that this will prevent the creation of a number of separate governmental units, each serving one purpose only. While no specific mention is made of the fact, the committee was of the opinion that the county with its all inclusive jurisdiction was probably the most effective instrument through which to establish any new metropolitan form of government.

Explanation—Matter within [ ] is stricken, matter in capitals is new.

Sec. b. This section is designed to encourage the solution of metropolitan problems through existing units of government rather than creating a fourth layer of local government. Any combination of townships, cities, villages or counties are permitted under general law to join together through (a) contractual agreements to perform any function which each could separately perform, (b) share costs with one another or with the state, (c) transfer functions, (d) cooperate, and (e) lend credit in connection with any publicly owned undertaking. All of the powers given are by mutual agreement and consent of the local units of government involved and no local unit is forced or compelled to enter into any agreement without its consent. The powers granted are not self executing but require an act of the legislature which from time to time may add additional authority or may limit the same to prevent abuses. Thus flexibility and control is maintained. The last sentence of the section permits elected officials of counties, cities or townships of the state to serve on any board or governmental body without being forced to resign his elected position or being in conflict with the prohibitions of section 6 of article V of the present constitution.

Whether such arrangements can meet the needs of metropolitan districts will depend upon the powers and strength of each and every unit within the district.

CHAIRMAN DeVRIES: The Chair recognizes the chairman of the committee, Delegate Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, I would like to yield to the subcommittee chairman of metropolitan government and intergovernmental relations, Mr. Allen.

CHAIRMAN DeVRIES: Delegate Elliott yields to the gentleman from Kalamazoo, Delegate Allen.

MR. ALLEN: Mr. Chairman and members of the committee, this proposal and its comments will be found on pages 461 and 462 of the journal. Your subcommittee was composed of Mr. Brake, Mr. Sharpe, Mrs. Cushman and myself. Just very briefly before I turn the first section over to Mrs. Cushman for further explanation: metropolitan government, briefly, is a government which exists in densely populated areas, where there are many political subdivisions. We have about 10 areas classified in Michigan as being metropolitan areas.

Now, there is no one solution to the metropolitan governmental problem. There are many solutions, and some of them we have already gone through. For example, one solution is to strengthen your local units of government, and this in preceding sections your full committee has attempted to do. Another solution is to strengthen and free up your large unit of government, which is your county, and this will come later when we hit the problem of so called county home rule. Another solution is to permit freedom of action between the various political subdivisions in the state — that is the long part of this proposal, which will be explained in more detail — so as to allow them to freely work with one another rather than to be restricted. Another solution is to free up the state so as to take out anything that clutters up the power of the state to move in if state moving in appears to be necessary.

This is the reason why we are suggesting that the old section, section 31, be taken out. It all boils down to this: that metropolitan government is not what so many people think it is only, and that is a super government or a fourth layer of government which exists in addition to the city-township-county level of government which we have today. It may be necessary for the legislature to authorize such types of special corporations or districts, but it is a lot more than that. And with these comments, because I think that what we have already done, plus what we have here, is a genuine attempt to handle this problem of government in densely populated areas where there are many governmental units, I think collectively taken we have gone a long way to free up the legislature and the local units so that the problem can be better handled than it is under the 1908 constitution. I will call on Mrs. Cushman for an explanation of section a.

CHAIRMAN DeVRIES: Before the Chair calls on Mrs. Cushman, may the Chair request that you give the Chair time to recognize you and state your name? This is absolutely necessary for the accurate transcription of the verbatim debates of this convention. Delegate Allen yields to Delegate Cushman.

MRS. CUSHMAN: This first section is designed to replace section 31 of the present constitution, and that is covered by an exclusion report that we will get to later on. But when we looked into this question, we were impressed by the fact that section 31, which was added as an amendment to the constitution in 1927, hasn't been used. In fact, after 35 years there were only something like 5 metropolitan authorities operating under it. These are small in area and in population. It just proved too difficult to operate under this particular section. It is too complicated as to procedure. It doesn't include the counties at all, and it lists purposes very specifically so as to exclude others. The result has been that almost all the metropolitan authorities that we have had have been formed under a general law that was written in, I think '29, and also under special acts. One of these special acts was the one that was responsible for the Huron-Clinton metropolitan authority, which is one of the biggest we have and covers 5 counties in our part of the state for the purpose of providing park facilities for us all.

When it came to the question of what to put in place of this provision 31, we had several possible alternatives. There are several states that have provisions in this area that we might have sort of adapted to our use, but we felt that we — really, when we looked into it, we were impressed with the fact that there isn't enough experience, really, to know which type of a metropolitan authority would be the best for Michigan, if one were needed. Furthermore, we were impressed with the fact that every metropolitan authority should be adapted to the particular area in which it is to be used. Therefore we felt that we wanted to put something in here that was extremely broad and extremely flexible.

As Mr. Allen has said, he is going to cover other arrangements. This is just a sort of provision that allows the legislature to establish in metropolitan areas these additional forms of government or authorities with such powers and duties and jurisdictions as the legislature may deem necessary. I don't know whether there are any particular questions.

Oh, I want to say one thing. We do direct that whenever possible any authorities formed should be multipurpose; that is, we want to discourage as much as possible a lot of districts or a lot of authorities, each with a specific purpose in mind. We would like to encourage when possible districts or authorities which have more than one purpose, thus avoiding the duplication of units of government. If there are any questions, I am sure that I will do my best, or Mr. Allen will answer them.

CHAIRMAN DeVRIES: Delegate Cushman yields to the gentleman from Ann Arbor, Delegate Pollock.

MR. POLLOCK: Mr. Chairman, I would like to ask Mrs. Cushman these 2 questions: Mr. Allen referred to covering intergovernmental relations including the state. Now it happens to be in the local government section, and it seems to me that it has adequately covered relations within an area, a local government area, but do I understand that the state's interest in this matter is limited merely to the legislature's providing by law for this? It seems to me not to consider, maybe, the possible interest of the stake of the state itself in the metropolitan area, in addition to the interests of all its local units. The state at no place is mentioned except you say the legislature, which is obviously the organ of the state.

CHAIRMAN DeVRIES: Delegate Cushman.

MRS. CUSHMAN: I am sorry, I don't quite get what you mean. You aren't referring to section b? You are referring to section a?

MR. POLLOCK: Yes, I am referring to section a. In other words, intergovernmental relations, as you are well aware, is a broad subject. It involves not merely units of local govern-

ment, but it involves relationships between state and local government, states between themselves, and even a state with a foreign country. When I appeared before your committee, I proposed something that would cover all of these situations. Am I correct in understanding your proposal that this only relates to the relations within a metropolitan area?

MRS. CUSHMAN: Well, section a only relates to the power of the legislature to establish in metropolitan areas such additional forms of government or authorities as they may deem necessary. It doesn't relate to relations between these units of government at all. That is covered in b.

MR. POLLOCK: Let's assume, then, you have a problem relating to Detroit and Windsor. How does this proposal handle that?

MRS. CUSHMAN: Well, I still — I would like to yield to Mr. Allen on that, but this section a I don't feel covers that area at all. I think it is quite different.

CHAIRMAN DeVRIES: Delegate Cushman yields to Delegate Allen.

MR. ALLEN: Dr. Pollock, we will get into that when we hit section b. It is not covered in a. I think your question would be proper when we hit b.

MR. POLLOCK: Thank you. I couldn't discover it in b either. That is why I asked the question.

MR. ALLEN: You may be right on that.

CHAIRMAN DeVRIES: Will Delegate Cushman yield to Delegate Brake? Delegate Brake.

MR. BRAKE: Dr. Pollock, I got up before you started to go international, when you were just talking state, to suggest that unless in this constitution the state were forbidden to participate in a metropolitan area of government, it would certainly have the power to do so. For the local units we may have to specify that they have the power, but we certainly would not have to specify that power in the state because it surely has it.

CHAIRMAN DeVRIES: Dr. Pollock.

MR. POLLOCK: I think that is a very sufficient answer, and I have a second question. I take it then, that the committee, having this whole proposal of intergovernmental relations before it, did limit its consideration to the state of Michigan and local units, and did not attempt to get into the wider field of interstate or state-foreign. Am I correct?

MR. ALLEN: You are correct, Dr. Pollock.

MR. POLLOCK: And then this question presumably must be considered by some other committee, and somehow the convention must have the matter before it; otherwise we are omitting this important field.

MR. ALLEN: We knew we had a distinguished committee on emerging problems.

MR. POLLOCK: Thank you.

CHAIRMAN DeVRIES: Are there any amendments to section a of Committee Proposal 88? If not, it will pass.

Section a is passed. The secretary will read section b.

SECRETARY CHASE: Section b.

[Section b was read by the secretary. For text, see above page 1059.]

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Kalamazoo, Delegate Allen.

MR. ALLEN: Mr. Chairman, I think the comments on page 462 cover the subject matter pretty well, but just let me make a couple of other comments on this section. One thing you will notice that we have done here is that everything is voluntary. There is no compulsion. Every one of these subsections takes mutual agreement between the units which get together. It must be an agreement by contract, an agreement by contract to share costs, or to undertake a common undertaking, or to cooperate with one another, or to transfer services. There is nothing compulsory. The second point is that in order to prevent what you might call governmental leap frogging, the 2 units which get together must get together for a project or a function which each unit has the power to do. In other words, we aren't allowing a smaller unit of government which has no power to contract with a larger unit of government which does have power. If we did, some people think we might be doing what we call leap frogging. Now, if it is felt that this is too restrictive, you see, the legislature may step in and add to the power of one of the units which wishes to contract which may not have the power. So we have a regulator on this matter.

Now, at the bottom of the page you may wonder why we have all this verbiage about allowing an officer to serve on any intergovernmental or governmental bodies established for these purposes. The reason for this is that when you get governmental units together, you usually come up with something like, for example, a planning board, and it is very advantageous to have on this planning board a supervisor or the chairman of the board of supervisors or a city mayor or, if the state is involved in some way, someone from the state. It has been found in other states that the prohibition against holding more than 2 offices would prevent it. These aren't high salaried jobs by any means. They are usually either service free or on a per diem basis. So just in case that article V, section 30, I think it is, would prevent this, we have tried to clear the matter up in this latter language. I will be glad to answer any questions.

CHAIRMAN DeVRIES: Are there any amendments to section b of Committee Proposal 88? The gentleman from St. Louis, Delegate Hoxie.

MR. HOXIE: Mr. Chairman, fellow delegates, I am a little concerned about the language in section b. Just to make sure that the delegates fully appreciate what this proposal will do, I should call to your attention section 14 of article X, which relates to the subject of internal improvements. You have a proposal which will be up for consideration, which is Committee Proposal 101, on this particular subject, which, if you adopt this proposal and its intent, will completely eliminate and provide that the state can share in the cost of internal improvements at the local level.

Under our proposal, and under the constitution as it now stands, there is a prohibition against the state engaging in internal improvements. Then it is followed by 4 sections in which the state can engage in certain types of internal improvements. It was the thought of our committee that there should be certain safeguards against the legislature engaging in internal improvements in certain areas of the state that were not of a benefit to the entire state. We did in our proposal, however, provide that local units of government could join together and engage in internal improvements at their own expense. Now, under this proposal, if you read it, you will find that the state can engage in internal improvements in the local communities and pay part of the cost for those improvements in the local communities; they even can pledge the credit of the state in relation to those particular projects.

I think it is a basic problem that you are faced with. Do you want the state of Michigan to become involved in internal improvements that only affect a certain area, in other words, a county or a group of counties? I think those counties should have the right to do that. I think that phase of the proposal is correct. However, I do think the thing that you should consider is do you think it is proper for the legislature to become engaged in the expense of those internal improvements in local areas? This proposal we have, 101, will restrict the legislature from engaging in certain internal improvements, except those that are enumerated, but our proposal does grant to local units of government or combinations of counties, cities, or what not, the authority to engage in those internal improvements at their own expense. And that is the difference between our proposal and the proposal you have before you.

CHAIRMAN DeVRIES: Delegate Allen.

MR. ALLEN: Mr. Hoxie, I don't think, the way this is written, it will conflict; though I do think that this whole provision on internal improvements presents some problems, and I don't know how we are going to be able to work it out without working one of them out first. The reason I say I doubt that it conflicts is that if we start up at the top on section b it provides that the legislature, by general law, will provide for exercise of local government by 2 or more — and then it means the local units of government — counties, cities, villages, townships or districts, and you will notice there it

doesn't mention the state. And then it says that under this law these units will have power to do this, that and the other thing; and also provides that whatever they do it must be something that each may do.

Now, if the state is prevented by the internal improvement section of section 14 from entering into a contractual obligation, it couldn't be compelled to under this, because under this arrangement, you see, it has to be a power which each of the contracting parties would have, and if the state doesn't have it, I don't think that under this language it would occur. In other words, this is limited to the power which each of the contracting parties has. If the state doesn't have it, you don't run into the problem.

Now, it could be that someone will say, well, there should be that power, but we will have to battle that out when your committee comes in. As I construe this, we would not have the state entering in unless it had the power.

CHAIRMAN DeVRIES: Delegate Allen yields to Delegate Hoxie.

MR. HOXIE: Mr. Allen, it would appear to me that — let's assume that proposal is adopted, and Committee Proposal 101, relative to internal improvements, is adopted, which provision of the constitution, provided the constitution is adopted, would prevail? Now, I can't read the language any other way than when you provide that under such general laws such units of local government shall have power to — and enumerate the local units of government, or with the state, or any combination thereof — subsection 2 — to share the costs and responsibilities and functions and services. All the way through it is referring to all the units, the local units of government along with the state engaging in this type of activity with a sharing cost basis. I don't know how you can interpret anyway but what the state is involved, and again are bound to lend their credit and so forth.

MR. ALLEN: Well, you see, this is qualified, in which each local unit of government would have the power to perform separately. I suppose that you are going to say right back to me: all right, that says local unit; it doesn't say the state. Would it cure your objection if the word "local" was dropped out and "each unit"?

MR. HOXIE: Well, I don't think that makes any difference. I think the state is involved, with the adoption of this proposal, in entering into agreements and the functions of these various types of improvements, or whatever you might call them, and the state is involved financially, or can be under the wording of this provision. It opens the doors so the state can be involved financially. Are you agreeable to that, sir?

MR. ALLEN: I am not. I am not agreeable to that.

CHAIRMAN DeVRIES: For what purpose does the gentleman from Ann Arbor arise?

MR. POLLOCK: I would like to ask Mr. Hoxie and Mr. Allen a question.

CHAIRMAN DeVRIES: You may if they care to answer.

MR. POLLOCK: I appreciate Mr. Hoxie's question, and I think it is very important, because we must somewhere settle the power and place of the state, and I suggest that the proper place is in connection with the section which I believe he is presenting on internal improvements. But certainly, as we look into the future, if we are wanting to stop the continued intrusion of the federal government into local affairs we are going to have to involve the state more. And we want to be sure, too, that if there is federal money to be granted, it frequently is granted to the states for distribution to the localities, and I would want to be sure that in matters involving metropolitan affairs, that the state was there with power to act under the circumstances.

CHAIRMAN DeVRIES: Delegate Allen.

MR. ALLEN: I don't know where we go. We have sort of a dispute between what this says. It would seem to me, Delegate Hoxie, that if the state is precluded from entering into an agreement by your section, then it could not enter into an agreement under this section.

CHAIRMAN DeVRIES: Delegate Hoxie.

MR. HOXIE: No. Under the internal improvement section the state could not be a party to any work of internal improvement in carrying out such work. In other words, then, there are certain exceptions whereby they engage in public roads, harbors of refuge, waterways, airways, and so forth.

Now, I don't object to local units of government or areas of the state engaging in improvements, but I don't think that this constitution should open the door to the extent where every section of our state should come before the legislature and ask for a grant of money to carry out that improvement at the local level.

I might tell you a little story which Ed Hutchinson is very familiar with, just to emphasize what I am referring to. Some few years ago we had a proposal to submit to the people a bond issue for the sum of $65 million. Even though the bond proposal did not directly refer to any certain sum for tuberculosis bed space, in the senate there was that discussion of using $5 million. In fact, the original bond issue as passed by the house, or the proposal to submit to the people, was increased from $60 to $65 million. The end result was after the people endorsed the borrowing of $65 million for mental health, $5 million of that money was divided up among the various tuberculosis institutions in this state, and that is the county as well as the state, and the end result is today we have more tuberculosis beds than there is any need for.

That is just exactly how a jackpot can be divided up, and it is my opinion that if you open the doors wide enough and leave it completely up to the legislature, and take all restraints away, you will find that different groups will get together and say: you give me this over in my area and I will give you something in another area. In the testimony we had, they even went to the extent of considering the state going into the construction of buildings for the purpose of encouraging industry to come to Michigan; things of that nature.

Now, if you want the state to be financially responsible to engage in every type of activity, then you should adopt this proposal, and we will ask for our proposal to be killed when it comes up for consideration.

CHAIRMAN DeVRIES: Delegate Allen.

MR. ALLEN: Mr. Chairman, I think all this provision says is that the local units of government, if they care to do so, may enter into contracts with the state for any purpose which the state is empowered to enter into. In other words, this is not creating power for the state. The state, under the way you have written section 14 of article X, is permitted to do certain things, and it is not permitted to do other things. All this says is on those things which the state is permitted to do, if the state wants to do them in cooperation with the local units, they may do so. If they prefer to go it alone and take the whole cost alone, the state may do so, providing it is a function which the state may do under your section 14. In other words, I think the proper construction of this is not to grant power to the state, but only to allow the state to enter into arrangements with local units, if the state wants to, in a field which the state is permitted to do so. It does not create new fields to the state.

CHAIRMAN DeVRIES: Will Delegate Allen yield to the vice president, Delegate Hutchinson? Delegate Hutchinson.

MR. HUTCHINSON: Mr. Chairman, I wanted to raise another problem here in connection with section b. The chairman of the committee and I were here discussing it. I don't know whether he was trying to talk me out of presenting my point or not, but I am going to do it anyway. It is this, and I guess I can put it in these words. I want to compliment the committee on local government in writing a very good statute, and that is what I think it is when you begin to enumerate all these things that can take place by one of these combinations. There won't be anything left for the legislature to write into its law except simply to copy practically verbatim these 5 subdivisions of the paragraph, of the section.

Certainly the legislature would not feel itself empowered to enlarge upon those 5, nor could it deny any 1 of the 5, and all you have done here is write a statute. At that point, as I was pointing out to the chairman of the committee when I was recognized to make this argument, you might just as well not provide for the legislative motion of passing an act any-

way, since there won't be any decision for the legislature to make here at all, except the overall one as to whether or not there shall be any such act in the first place. But certainly, it is to be expected that anything with as great detail, and so on, in the constitution as this, it would be expected that the legislature will pass such an act. And I come back to my opening statement. I think that the committee has written a very good statute, and I don't like to see statutes written into the constitution.

I think that the first section here, section a, particularly the first paragraph, is excellent constitutional material, and I think, though, that section b could be immeasurably improved from a constitutional standpoint if it were rewritten with all of this legislative verbiage left out and maybe we could have a pretty good provision here. But I don't think it is good the way it stands.

CHAIRMAN DeVRIES: Mr. Allen.

MR. ALLEN: I think the main point we wanted to get across is that we wanted to encourage free cooperation and freedom of exchange of cost sharing, and transfer of functions and so on between the various units involved. I don't think our committee has any great pride of authorship. It seemed to our committee that this was the best way to get the thing out on the floor. And furthermore, not being experts in style and drafting, and knowing we have a fine committee on style and drafting, we thought, of course, that they might be able to improve it.

Now, I don't believe any of us object, Mr. Hutchinson, if you can take all of this and come out with the same result in fewer words. I don't believe any of us would have this objection as long as the essential ideas that we have here are covered. But our committee, whose members aren't experts in these things, went about it this way.

MR. HUTCHINSON: Well, in answer to that, Mr. Chairman, I would ask the gentleman if by his statement he would permit style and drafting to cut this down and to grant to the legislature the power to write a law?

MR. ALLEN: Well, to write a law doing what?

MR. HUTCHINSON: To accomplish the very fine purposes set forth at the beginning of the section.

MR. ALLEN: Yes, I think we would.

MR. HUTCHINSON: You wouldn't consider it a very terrible substantive change if we struck out all of those 5 provisions that you have listed there?

MR. ALLEN: Well, if the legislature is mandated —

CHAIRMAN DeVRIES: Will the gentleman from Kalamazoo yield to the chairman of the committee, Delegate Elliott?

MR. ALLEN: Right.

MR. A. G. ELLIOTT: Mr. Chairman and Mr. Hutchinson, I would be very happy to have the subcommittee chairman and myself meet with style and drafting to discuss this at some later time. However, there is one thing I think we have overlooked. While constitutional language is primarily for the purpose you say, Mr. Hutchinson, and I so agree, when you are getting into a new field such as this, there sometimes is a positive impact upon the units of government with whom you are dealing if you do delineate the responsibilities and the procedures which you want them to follow.

It was the thinking of this committee, not only was this sound to say, but it was also the thinking of the committee that it was sound to enumerate, so that we could perhaps awaken in the local units of government a sense of responsibility and opportunity which they may have in any event, but which had not been brought so forcibly to their attention. So, Mr. Hutchinson, in order to not delay the procedures of the convention, I would say that if you are satisfied to have the style and drafting committee, of which you are a member, meet with us, I think that as long as we both are agreed on the intent, that we can do something here which will meet everybody's satisfaction.

CHAIRMAN DeVRIES: I may inform the delegates seeking recognition there are 7 people seeking recognition at this time. Delegate Hutchinson.

MR. HUTCHINSON: Well, Mr. Chairman, I would like to point this out: that all of these things that Mr. Elliott points out can be very ably and just as effectively accomplished if after a proper grant of power to create these additional units is written into the constitution the people who desire to have it implemented will go to the legislature and write these same things into a statute; which, on that basis, the statute can be changed from time to time. You will be really better off than you are to freeze all these things in the constitution.

My point is this: that having enumerated these things, the legislature would probably be considered to be shorn of any constitutional power to add to the list of such powers, and certainly would be powerless to withdraw any of those powers. As I say, you can accomplish the same thing if you will delineate these things in statute, and that statute would have the same force of awakening all of these things in the local units of government that you speak about, as will this frozen, restricted, limiting constitutional provision.

If Mr. Elliott is speaking the will of the committee of the whole here, that we can thrash all of this out in style and drafting, and admitting there will be some substantive change, I will be happy to do it that way, but I want Mr. Elliott to understand that I will go into the style and drafting committee with that end in view.

CHAIRMAN DeVRIES: Delegate Elliott.

MR. A. G. ELLIOTT: Mr. Hutchinson, until you said substantive change, I was with you, but when you brought that up, you and I sort of departed company. I feel that this is something that our committee has spent a lot of time on. We think that this particular proposal is one of the most significant proposals on local government, and we would urge that unless you have an amendment to this proposal, that we go ahead and consider it on the basis as it is now before you.

CHAIRMAN DeVRIES: Delegate Allen.

MR. ALLEN: Mr. Chairman, I will stick with the chairman of the committee on this, except I would say to Senator Hutchinson, when you say substantive change, I don't think you mean that you are going to materially change it; I think what you are saying is that you are going to boil 'er down. Isn't that it?

MR. HUTCHINSON: I will agree with Mr. Allen that we will not materially change it. That is true. We will obtain the same objective and accomplish the same thing, but we won't be writing a statute into the constitution.

CHAIRMAN DeVRIES: Will the gentleman from Kalamazoo yield to the gentleman from Detroit, Delegate Austin?

MR. ALLEN: Yes.

MR. AUSTIN: Mr. Chairman, Mr. Allen, I am a little bit disturbed about the question of taxation involved in this metropolitan area government. I have 3 questions here that I am inclined to ask after reading the language, because I don't think the language is clear one way or the other. Can the legislature give taxing power to this metropolitan district should it be set up, or any one of these, let's say, cooperative efforts? Could these local units of government cooperate or join in levying an income tax together? That is, could, for example, 2 or 3 municipalities or other local units of government get together and cooperate on an income tax levy? And then, the third question is: may they transfer their taxing powers to this cooperative effort?

Now, here is the reason why I raise these questions: under section a on line 9 we say "authorities shall have such powers, duties and jurisdictions as the legislature shall deem necessary." It would appear here that the legislature may give them taxing powers. Going down to line 21, starting on line 21, I would like to read from there — or, let's start on line 20:

> Under such general law such units of local government shall have power:
>
> (1) To enter into contractual undertakings or agreements with one another or with the state or with any combination thereof for the joint administration of any of the functions or powers which each local unit of government would have the power to perform separately.

Of course, here is where I raise the question about joining together on an income tax levy, assuming that each of these units had that power separately. Then we move down to (3), on line 11:

To transfer to each local unit of government or combination thereof functions and responsibilities or both upon the consent of each unit of government involved.

And here I ask can they transfer their taxing powers to this cooperative effort? And, of course, (4) raises the same question. Now, under (5), you did specifically say that they could lend their credit. Now I ask what about taxing powers? What do you have in mind there?

CHAIRMAN DeVRIES: Delegate Allen.

MR. ALLEN: Mr. Austin, I think what you are doing is, you are getting section a tossed over into section b. Section b, where we have gone into the enumerations, refers to existing units of government and their existing powers. It doesn't call for any new unit of government — say a special district set up for a sewage disposal, to finance sewage disposal. Now, under a, this would be a separate district. Under a the legislature would say, what is its jurisdiction and what is its taxing power; what power does it have? That stands alone. This unit standing alone doesn't come into section b. The powers listed under section b are for existing units of government, things which they now are authorized to do.

So I think the answer to your first question is yes, on any new unit of government created by the legislature the legislature says what taxing power it has. But on whether or not these units may pool their taxing power, the answer is no. These are existing units of government. Unless, I suppose, the legislature should some day pass a law saying they could, and I would doubt it.

CHAIRMAN DeVRIES: Delegate Austin.

MR. AUSTIN: Mr. Chairman, Mr. Allen, am I to understand that under a, the legislature can give this metropolitan complex unlimited taxing power? You don't have any type of limit in mind?

MR. ALLEN: Whatever the legislature wishes to give, the way this is written.

MR. AUSTIN: I wish you were as kind to the cities as they are now set up. In other words, you are willing to give this metropolitan area that would be established under this section unlimited power, and yet we do have municipalities and other units of government with which we have had experience, and we are inclined to restrict them. Somehow there is a little inconsistency. I don't know whether you had in mind giving this unit unlimited taxing power. Did you?

MR. ALLEN: The committee had in mind giving it the power that the legislature wanted to give it, and trusting the legislature. I have a hunch you are making an argument not so much against the power for the new unit as for more power for the existing units.

MR. AUSTIN: No, I didn't really mean it that way. I am sorry if it sounded that way. I meant it just as I said it, that we do have experience with other local units of government, and we have seen fit on the basis of experience to limit their powers, but here we have got a unit that we have had no experience with, and yet we are inclined to give this unit unlimited power. That's what I had in mind.

MR. ALLEN: It's no different than what has been done from time to time. For example, the Clinton-Huron water authority, that is a special district. It isn't set up under section 31. The legislature has the power to do this unless it is restricted in the constitution. When it set up the ground rules for the Clinton-Huron water authority, it defined the taxing power. Now, we would envision that on any new authority set up, the legislature will do the same thing.

Put it another way: supposing we said, to get maximum flexibility — and your committee thought of this — let's just not have anything in the constitution. Just let's scrap everything. Now, if we did that, the legislature has all of its reserve power, and may do anything that is not prohibited. It could, if we had nothing in the constitution, come up with any form which it wished and set its taxing power. So, when you say give it unlimited authority, I think you tend to scare people, because they don't realize that is what the legislature can do under today's constitution.

CHAIRMAN DeVRIES: Delegate Austin.

MR. AUSTIN: Under section b, of course, my question was whether there was the right for these local units of government to cooperate on a tax levy. Did you envision that possibility? For example, could 2 or 3 units down in Wayne county, or across county lines, for that matter, cooperate on an income tax levy, assuming they did not want to levy it in one city alone?

MR. ALLEN: Well, we never thought about it. So, thinking about it now, I would say probably the answer is no. They may only get together for such purposes as each may do alone. Each alone may tax its own residents. So I doubt that they could go together unless the legislature passed this law, which it could do, saying that they might. They could do this if the legislature would authorize it.

MR. AUSTIN: Mr. Chairman, I would just like to talk with the chairman on this after the session is over. I don't think I want to take any more of the time on the floor. I feel that this new section should be a little more explicit about taxation one way or the other. Either it should prohibit it or permit it, and in some way specify how it permits it.

CHAIRMAN DeVRIES: Will the gentleman from Kalamazoo yield to the gentleman from Birmingham, Delegate Van Dusen?

MR. ALLEN: I will.

MR. VAN DUSEN: Mr. Chairman and members of the committee, I would just like to emphasize the negative answer which Mr. Allen gave to Mr. Austin on the question of pooled taxing powers. I think the proposal which this committee considered and adopted last week, to the effect that the power of taxation shall never be surrendered, suspended or contracted away, very clearly precludes a combination of municipal taxing powers. That provision applies not only to the state, but also to every political subdivision of the state, and I think the kind of thing Mr. Austin is talking about would clearly constitute either a surrender or a contracting away of the taxing power of the combining units.

CHAIRMAN DeVRIES: Will Delegate Allen yield to the gentleman from St. Clair Shores, Delegate Snyder?

MR. SNYDER: Thank you, Mr. Chairman. I am inclined to agree with Mr. Hutchinson. We are getting into some detail here which requires a little bit more scrutiny than ordinarily would cut the section off the first paragraph.

I don't know whether my problem would pertain more to section b or the second part of a, but again we get into this question of multiunits of government participation for multipurpose functions. We do have a situation that there is a statutory provision that does provide for the combination of the police and the fire protection. This is a statutory matter at the present time, and I feel that this should remain a statutory matter.

However, I have some real serious reservations whether this type of service should be included in the constitution, and make it almost mandatory that the legislature would provide for this particular type of combination of services. If this is the intent of the committee, or a provision that would be permitted under the proposed language here, I would feel inclined to speak against it. But until there is a clarification of any one member of the committee, I would reserve further comment.

CHAIRMAN DeVRIES: Will Delegate Allen yield to Delegate Elliott for the purpose of making a preferential motion? Delegate Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, I learned from the secretary there now is an amendment on the desk. This means more debate, and because of that, I now move that the committee rise.

CHAIRMAN DeVRIES: Delegate Elliott moves that the committee of the whole do now rise. All those in favor, say aye. Opposed, no.

The committee will rise.

[Whereupon, the committee of the whole having risen, Vice President Downs assumed the Chair.]

VICE PRESIDENT DOWNS: The convention will be in order. Delegate DeVries.

MR. DeVRIES: Mr. President, the committee of the whole has had under consideration certain items, of which the secretary will give a detailed report.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 84,** A proposal to provide for liberal construction of provisions concerning municipal corporations; **Committee Proposal 86,** A proposal pertaining to highways and their maintenance; **Committee Proposal 87,** A proposal relating to ports and port districts; reports these 3 committee proposals back to the convention without amendment, and with the recommendation that they do pass.

VICE PRESIDENT DOWNS: **Committee Proposals 84, 86 and 87** are referred to the committee on style and drafting.

For Committee Proposal 84 as referred to the committee on style and drafting, see above, page 1048.

For Committee Proposal 86 as referred to the committee on style and drafting, see above, page 1057.

For Committee Proposal 87 as referred to the committee on style and drafting, see above, page 1059.

SECRETARY CHASE: The committee of the whole, Mr. President, has also had under consideration **Committee Proposal 83,** A proposal pertaining to cities and villages; reports this back to the convention with several amendments agreed to by the committee of the whole, and recommends that the amendments be agreed to and that the committee proposal as thus amended do pass.

[The following are the amendments recommended by the committee of the whole:

1. Amend page 1, line 11, after "levy" by inserting "other".

2. Amend page 1, line 14, after "Sec. b.", by reinserting "Under such general laws"; and in line 15, after "village" by striking out "are hereby granted" and reinserting "shall have"; and by striking out all of line 22; and on page 2 by striking out all of lines 1 and 2.

3. Amend page 2, by striking out lines 3 to 7 and line 8 through the word "therein.", and inserting

"Each city and village shall have power to pass laws and ordinances relating to its municipal concerns, property and government subject to the constitution and general laws of this state.".

4. Amend page 2, line 11, after "conferred.", by striking out the balance of the line and all of lines 12, 13 and 14.

5. Amend page 2, line 23, after "purpose or" by inserting a comma and "except as authorized by law"; and in line 24, after "purpose" by striking out "except as authorized by law".

6. Amend page 3, line 22, after "majority" by inserting a comma and "or of a greater number if the charter shall so provide,".]

VICE PRESIDENT DOWNS: The question is on agreeing to the amendments recommended by the committee of the whole.

MR. MADAR: Mr. President, I believe that there is an amendment to 83.

VICE PRESIDENT DOWNS: We will take the amendments that were recommended by the committee of the whole first. Then we will act upon the amendments that have been filed with the secretary and are on the secretary's desk. The question is on agreeing to the amendments recommended by the committee of the whole. All those in favor —

Mr. Ford.

MR. FORD: I would like to request a record roll call vote on this.

VICE PRESIDENT DOWNS: You want a record roll call vote on the amendments that were agreed to by the committee of the whole?

MR. FORD: That is correct.

VICE PRESIDENT DOWNS: There has been a request for a record roll call vote. Let's see if there is sufficient number to request it. There is a sufficient number to request a record roll call vote. The question is now on agreeing to the amendments recommended by the committee of the whole. All those — Mr. Suzore.

MR. SUZORE: I would like to know what we are voting on specifically. I would like to have the amendments read.

VICE PRESIDENT DOWNS: We will ask the secretary to read the amendments recommended by the committee of the whole, on which there has been requested a record roll call vote.

SECRETARY CHASE: The amendments recommended by the committee of the whole to Committee Proposal 83 are as follows:

[The amendments were read by the secretary. For text, see above.]

Those are the amendments that have been recommended and agreed to by the committee of the whole.

VICE PRESIDENT DOWNS: The question is on the amendments recommended and agreed to by the committee of the whole. Those who are in favor will indicate by voting yea. Those who are opposed will indicate by voting nay.

MR. MADAR: Mr. President, are we voting on each one of them?

VICE PRESIDENT DOWNS: No, we are voting on them collectively.

MR. MADAR: Some of these amendments we are for and some we are against. I think we ought to separate them.

SECRETARY CHASE: May the secretary point out, Mr. Madar, that every one of these amendments has been adopted by the committee of the whole, the amendments which we have read.

MR. MADAR: Some of them we voted for in the committee of the whole, and some we didn't vote for. If we vote now one way it puts us on the spot so we are voting for something we didn't vote for before.

VICE PRESIDENT DOWNS: The vote has been called for. Those who are in favor will signify by voting aye, and those who are opposed by voting no. This is a recorded roll call vote. Delegate Walker.

MR. WALKER: I have been standing since before you ordered the vote the last time, and therefore would like to abstain from voting and to explain my reason for abstention. I do not feel I can honestly and in fairness to myself or my constituents vote either aye or nay on a question with this broad concept.

SECRETARY CHASE: Has everyone voted?

MR. MADAR: Mr. President, I am giving the same explanation for abstaining.

MR. MAHINSKE: Mr. President, I would also abstain from voting on a package like this.

MR. SNYDER: I have the same reason for abstaining.

VICE PRESIDENT DOWNS: Delegate Wanger.

MR. WANGER: Is there any parliamentary way, Mr. President, that we can divide the question, since so many people object to this? I am in favor of all of them, and I think the majority of the rest are too, but —

VICE PRESIDENT DOWNS: I am advised that the question could have been divided before it was put, and we could have voted on each one separately. Now I will consult with the secretary to see whether this can be reconsidered. However, the vote was called and technically, once the vote is called, I do not know how it can be divided. If you will pause just for a moment, I would like to check with the secretary for advice.

I am advised by the secretary that I was correct on the ruling that once the vote is called there is no other parliamentary action in order. However, after the vote has been taken, a reconsideration vote is in order, as it would be ordinarily. Delegate Leibrand.

MR. LEIBRAND: I have the same reason for abstaining. I can't vote on a package.

VICE PRESIDENT DOWNS: Delegate Marshall.

MR. MARSHALL: I move we table this until the first order of business tomorrow morning, Mr. President.

VICE PRESIDENT DOWNS: Would you wait just a moment? Mr. McAllister.

MR. McALLISTER: Mr. President, isn't that out of order? The vote has been called.

VICE PRESIDENT DOWNS: Will the convention please be in order. We will pause while I check with the secretary on the question of whether the motion to vote can be tabled.

The vote has been called, the secretary advises me, and the Chair rules that once the vote has been called, the motion to table is not in order. The parliamentary action that is in order is that after the vote is taken for reconsideration, the question could be divided. Mr. Marshall.

MR. MARSHALL: Then a motion to take each one of these amendments separately would not be in order either?

VICE PRESIDENT DOWNS: Not until after the vote is taken.

MR. MARSHALL: Then I will abstain from voting too, Mr. President, and members of the "legislature," because of the reasons previously stated.

MR. MADAR: Mr. President, just getting some information. I believe I am correct in stating that you must vote affirmatively on this to move to reconsider; am I right?

VICE PRESIDENT DOWNS: That is not correct. Under the rules of the convention you do not have to vote affirmatively in order later to vote to reconsider.

MR. MADAR: I am extremely sorry, Mr. President. My book of Mason's happens to be in the other room.

VICE PRESIDENT DOWNS: Delegate Murphy.

MR. MURPHY: Mr. President, I would like to say I am not voting for the same reasons.

VICE PRESIDENT DOWNS: Delegate Baginski.

MR. BAGINSKI: Mr. President, if this motion is put and carried, or whatever happens to it, I will have the privilege to ask to have it reconsidered, will I not?

VICE PRESIDENT DOWNS: That is correct. All right, those agreeing to the amendments — Mrs. Conklin.

MRS. CONKLIN: I wish to abstain from voting for the same reasons given.

VICE PRESIDENT DOWNS: Delegate Conklin was recognized for the purpose of abstaining. Delegate Hatcher.

MRS. HATCHER: I would like to abstain from voting.

VICE PRESIDENT DOWNS: Delegate Hatcher is recognized for abstaining. Delegate Hood.

MR. HOOD: Delegate Hood would also like to abstain from voting for the reasons expressed by the others.

VICE PRESIDENT DOWNS: Delegate McAllister.

MR. McALLISTER: I would also like to abstain for the same reasons.

VICE PRESIDENT DOWNS: Will the convention please be in order. We can go through with any person who so wants to abstain. Will the convention please be in order.

However, there is one other course of action. By unanimous consent we can refrain from having this vote and instead divide the question. It is entirely up to the convention. Is there any objection to unanimous consent to not have the vote on all the questions, but give the opportunity to divide the question? Is there any objection? Delegate Yeager.

MR. YEAGER: I think we ought to get one thing straight here. You have been ruling that the statements of abstention are in order, and under rule 67, since the vote has been called, they are not in order.

VICE PRESIDENT DOWNS: The question before the convention now is, is there objection to unanimous consent to go back to where we were and then divide the question? Is there objection?

MR. MARSHALL: Mr. President —

VICE PRESIDENT DOWNS: Do you rise to object?

MR. MARSHALL: The hour is now 6:00 o'clock. I move we adjourn.

VICE PRESIDENT DOWNS: The secretary advises me the motion to adjourn is in order.

MR. A. G. ELLIOTT: Point of order.

VICE PRESIDENT DOWNS: State your point of order, Mr. Elliott.

MR. A. G. ELLIOTT: Would the Chair please tell me where it is that an adjournment motion is in order when you have called for a vote?

VICE PRESIDENT DOWNS: The motion to adjourn is always in order.

All those in favor of adjournment will signify by saying aye. Those opposed by nay. The Chair is in doubt. Would those who are in favor raise their right hands.

SECRETARY CHASE: The yeas are 51.

VICE PRESIDENT DOWNS: Those who are opposed to adjourning will raise their right hands.

SECRETARY CHASE: Forty-eight.

VICE PRESIDENT DOWNS: The motion to adjourn has prevailed, and the convention is adjourned until 9:30 tomorrow morning.

[Whereupon, at 6:05 o'clock p.m., the convention adjourned until 9:30 o'clock a.m., Thursday, February 15, 1962.]

EIGHTIETH DAY

Thursday, February 15, 1962, 9:30 o'clock a.m.

PROCEEDINGS

PRESIDENT NISBET: The convention will please **come to order.**

Our **invocation** this morning will be given by one of our own delegates, Herb Turner, from Saginaw.

MR. TURNER: Our heavenly Father, please be our guide. Watch over us, O Lord. Our souls are infested with selfish interests, our hearts are filled with personal greed, our minds are torn by the weight of confusion. Give us the strength, O God, to stand strong and free of the factors that make us small and petty. Millions of people of this state of Michigan look toward us to create a miracle; may we heed their precautions and consider their desires. Instill in our hearts, O Lord, the will to do what is right for all; cleanse our souls and free our minds that we may stand tall and proud of what we do here. Lead us through these darkest hours, be with us now and forever. Amen.

PRESIDENT NISBET: The **roll call** will be taken by the secretary. Those present please vote aye.

SECRETARY CHASE: Has everyone voted? The machine is locked and the attendance will be recorded.

Mr. President, a quorum of the convention is present.

Prior to today's session, the secretary received the following requests for leave: Mr. Tubbs, from today's session; Mr. Page, from the sessions of today and Friday, due to illness; and Mr. Nord, indefinitely, due to illness.

PRESIDENT NISBET: Without objection, the requests are granted.

SECRETARY CHASE: Absent with leave: Messrs. Bentley, Nord, Ostrow, Page and Tubbs.

Absent without leave: Mr. Marshall.

PRESIDENT NISBET: Without objection, Mr. Marshall is excused.

[During the proceedings, the following delegates entered the chamber and took their seats: Messrs. Marshall and Ostrow.]

SECRETARY CHASE: We have a request for 2 announcements before we proceed with the order of business. The subcommittee on eminent domain will meet in room G today after the morning session. Paul Mahinske, chairman; and the committee on local government will meet at 11:45 or immediately after the recess this morning in room A. Arthur Elliott, chairman.

PRESIDENT NISBET: **Reports of standing committees.**

SECRETARY CHASE: The committee on administration, by Mr. DeVries, chairman, submits the following report and recommends to the president for appointment to the constitutional convention staff, Mr. William Sorrell, as research consultant on a part time basis, with the office of public information. Walter DeVries, chairman.

PRESIDENT NISBET: Without objection, the recommendation is concurred in.

SECRETARY CHASE: **The president appoints,** pursuant to authorization by the convention, and with the approval of the committee on administration, the aforenamed person to the position indicated.

PRESIDENT NISBET: Without objection, the appointment is approved.

SECRETARY CHASE: That is the only standing committee report, Mr. President.

PRESIDENT NISBET: Reports of select committees.

SECRETARY CHASE: None.

PRESIDENT NISBET: Communications from state officers.

SECRETARY CHASE: None.

PRESIDENT NISBET: **Second reading.**

SECRETARY CHASE: Nothing on that calendar.

PRESIDENT NISBET: **Third reading.**

SECRETARY CHASE: Nothing.

PRESIDENT NISBET: **Motions and resolutions.**

SECRETARY CHASE: Mr. Van Dusen offers **Resolution 72,** A resolution to amend rule 57 of the rules of the convention.

Following is Resolution 72 as offered:

Resolved, That rule 57 of the rules of the convention is hereby amended by striking out subsections 9 and 10 thereof.

PRESIDENT NISBET: It will be referred to the committee on rules and resolutions.

SECRETARY CHASE: Mrs. Daisy Elliott offers **Resolution 73,** A resolution pertaining to an extension of the convention deadline and the placing of the proposed constitution upon the ballot.

Following is Resolution 73 as offered:

Whereas, It has been stated on the floor of this convention by President Nisbet, Vice Presidents Romney and Downs, Dr. Pollock and many outstanding delegates that the primary concern of this constitutional convention is to take the necessary time to write a constructive constitution rather than meet an arbitrary and restrictive deadline for adjournment; and

Whereas, It has become apparent to all delegates that the time schedule relating to the April 1 deadline cannot be met if proper consideration is to be given to the many important matters before this body; and

Whereas, The pressure of the April 1 deadline is the result of an opinion of the attorney general that the convention must adjourn by April 1, 1962, in order to place the document on the November ballot; and

Whereas, The attorney general is not the final authority in this state on matters of constitutional law and this opinion may be disputed before the state supreme court and resolved by that body; and

Whereas, The question as to when the proposed constitution will be voted upon is not so important as to sacrifice the quality of the document; and

Whereas, The enabling legislation setting up this constitutional convention provided for a period until May 15, 1962, for the completion of the work of this convention; and

Whereas, The May 15 deadline seems to provide proper and more ample time for the adequate consideration and necessary deliberations required to produce a sound and equitable constitution; now therefore be it

Resolved, That this body instruct the committee on rules and resolutions to prepare a new schedule for the completion of the work by the convention on or before May 15, 1962, as provided in the enabling legislation; and be it further

Resolved, That all special and partisan interests be laid aside and subjugated by the delegates to the end that a constitution which will meet the needs of all the people of the state of Michigan in the coming decades be drafted; and be it further

Resolved, That the convention take the necessary steps to require the secretary of state to place the revised constitution on the November ballot for the consideration of the voters of Michigan at that time.

PRESIDENT NISBET: It will be referred to the committee on rules and resolutions.

SECRETARY CHASE: Mr. Wanger moves that for the balance of the general orders, except on Mondays, at approximately 10:40 a.m. and 3:40 p.m., the committee of the whole, by declaration of its chairman, rise; that the report of the committee of the whole be withheld; that the convention, without intervening business, then stand in recess for 10 minutes, at the end of which time the convention, without intervening business, will be resolved into committee of the whole.

He further moves that the rules be suspended for the immediate consideration of this motion.

PRESIDENT NISBET: Is there objection to the suspension of the rules for immediate consideration of Mr. Wanger's motion? I hear none. Mr. Wanger.

MR. WANGER: Thank you, Mr. President. I respectfully suggest to the convention that our experience in the past several weeks has shown it is of great convenience to the convention and in total will help our work if we can have a recess at about midpoint in the morning session and in the afternoon session. However, I think it is also clear that it is unrealistic to expect a chairman of the committee of the whole to arbitrarily interrupt business approximately at midpoint if a vote has not been taken without some moral authority of the convention behind him authorizing him to do so. Therefore, I make this motion in hopes that we can facilitate the work of the committee of the whole and promote a better result to send on to style and drafting.

PRESIDENT NISBET: Without objection, the rules are suspended, and the question is on the motion of Mr. Wanger. Those in favor will say aye. Opposed, no.

The motion prevails. Are there any further motions or resolutions?

SECRETARY CHASE: That is all of the motions and resolutions on file, Mr. President.

PRESIDENT NISBET: **Unfinished business.**

SECRETARY CHASE: Under the order of unfinished business, the president lays before the convention the report of the committee of the whole on **Committee Proposal 83,** A proposal pertaining to cities and villages. This report was not completed last night upon adjournment. The question at the time was agreeing to the 6 amendments recommended by the committee of the whole, which amendments will be found in the journal of this morning, beginning at the bottom of the lefthand column on page 615. The amendments are as follows:

[The amendments were again read by the secretary. For text, see above, page 1065.]

PRESIDENT NISBET: Mr. Leibrand.

MR. LEIBRAND: Mr. President, I request the proposed amendments be voted upon separately.

PRESIDENT NISBET: Without objection, we will vote on the amendments separately. Mr. Walker.

MR. WALKER: I ask a record roll call vote on each of the amendments.

PRESIDENT NISBET: Is the demand seconded for roll call vote?

SECRETARY CHASE: Not a sufficient number, Mr. President. It takes 1/5 of the delegates present.

PRESIDENT NISBET: Not a sufficient number up.

SECRETARY CHASE: Amendment 1.

[The amendment was again read by the secretary. For text, see above, page 1065.]

PRESIDENT NISBET: The question is on the amendment. Those in favor will say aye. Opposed, no.

The amendment is adopted.

SECRETARY CHASE: Amendment 2.

[The amendment was again read by the secretary. For text, see above, page 1065.]

PRESIDENT NISBET: The question is on amendment 2. Those in favor will say yes. Opposed, no.

The amendment is adopted.

SECRETARY CHASE: Amendment 3.

[The amendment was again read by the secretary. For text, see above, page 1065.]

PRESIDENT NISBET: The question is on amendment 3. Those in favor will say aye. Those opposed, no.

The amendment is adopted.

SECRETARY CHASE: Amendment 4.

[The amendment was again read by the secretary. For text, see above, page 1065.]

PRESIDENT NISBET: The question is on amendment 4. Those in favor will say aye. Those opposed will say no.

The amendment is adopted.

SECRETARY CHASE: Amendment 5.

[The amendment was again read by the secretary. For text, see above, page 1065.]

PRESIDENT NISBET: The question is on amendment 5. Those in favor will say aye. Opposed, no.

The amendment is adopted.

SECRETARY CHASE: Amendment 6.

[The amendment was again read by the secretary. For text, see above, page 1065.]

PRESIDENT NISBET: The question is on amendment 6. Mr. Leibrand.

MR. LEIBRAND: Mr. President, I move a record roll call vote on amendment 6.

PRESIDENT NISBET: Is the demand supported? Those in favor will rise. A sufficient number up. Those in favor of amendment 6 will vote aye. Those opposed will vote no. Have you all voted? If so, the machine will be locked and the vote recorded.

The roll was called and the delegates voted as follows:

Yeas—123

Allen	Goebel	Murphy
Andrus, Miss	Gover	Norris
Anspach	Greene	Pellow
Austin	Gust	Perlich
Baginski	Habermehl	Perras
Balcer	Hanna, W. F.	Powell
Barthwell	Hannah, J. A.	Prettie
Batchelor	Hart, Miss	Pugsley
Beaman	Haskill	Radka
Binkowski	Hatch	Rajkovich
Blandford	Hatcher, Mrs.	Richards, L. W.
Bledsoe	Heideman	Romney
Boothby	Higgs	Rood
Brake	Hodges	Rush
Brown, G. E.	Hood	Seyferth
Buback	Howes	Shackleton
Butler, Mrs.	Hoxie	Shaffer
Conklin, Mrs.	Hubbs	Shanahan
Cushman, Mrs.	Hutchinson	Sharpe
Dade	Iverson	Sieder
Danhof	Judd, Mrs.	Snyder
Davis	Karn	Spitler
Dehnke	Kelsey	Stafseth
Dell	King	Staiger
DeVries	Kirk, S.	Stamm
Donnelly, Miss	Knirk, B.	Sterrett
Doty, Dean	Koeze, Mrs.	Stevens
Doty, Donald	Krolikowski	Stopczynski
Douglas	Kuhn	Suzore
Downs	Lawrence	Thomson
Durst	Leibrand	Turner
Elliott, A. G.	Leppien	Tweedie
Elliott, Mrs. Daisy	Lesinski	Upton
Erickson	Liberato	Van Dusen
Everett	Madar	Walker

Farnsworth	Martin	Wanger
Figy	McCauley	White
Finch	McGowan, Miss	Wilkowski
Follo	McLogan	Wood
Gadola	Millard	Woolfenden
Garvin	Mosier	Yeager

Nays—9

Faxon	McAllister	Sablich
Lundgren	Plank	Young
Mahinske	Richards, J. B.	Youngblood

SECRETARY CHASE: On the question of agreeing to amendment 6 recommended by the committee of the whole, the yeas are 123, the nays are 9.

PRESIDENT NISBET: The amendment is adopted. Are there other amendments?

SECRETARY CHASE: There have been filed with the secretary some additional amendments, Mr. President.

Mr. Kuhn offers the following amendment:

1. Amend page 1, line 13, after "law.", by inserting "No governmental subdivision shall impose any income tax except on its own residents; the state, however, may preempt this field of taxation.".

PRESIDENT NISBET: The question is on the amendment of Mr. Kuhn. Mr. Kuhn.

MR. KUHN: I demand a roll call vote.

PRESIDENT NISBET: A demand for roll call vote has been made. Is the demand supported? A sufficient number up. Mr. Elliott.

MR. A. G. ELLIOTT: I urge that we defeat the amendment.

PRESIDENT NISBET: Mr. Gover.

MR. GOVER: What page is this? What proposal?

PRESIDENT NISBET: The secretary will read the amendment.

SECRETARY CHASE: This is Committee Proposal 83, A proposal pertaining to cities and villages. The amendments of the committee of the whole have just been agreed to. Mr. Kuhn now offers the following amendment:

[The amendment was again read by the secretary. For text, see above.]

PRESIDENT NISBET: The question is on the amendment of Mr. Kuhn. Those in favor will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and record the vote.

The roll was called and the delegates voted as follows:

Yeas—42

Anspach	Hoxie	Richards, J. B.
Boothby	Hubbs	Rush
Brake	Kelsey	Shaffer
Brown, G. E.	Kirk, S.	Shanahan
Butler, Mrs.	Kuhn	Sharpe
Conklin, Mrs.	Lawrence	Snyder
Dehnke	Liberato	Spitler
Donnelly, Miss	Martin	Stafseth
Doty, Dean	McAllister	Stamm
Doty, Donald	Pellow	Sterrett
Finch	Perlich	Suzore
Habermehl	Perras	Walker
Hanna, W. F.	Pollock	Wood
Howes	Powell	Yeager

Nays—91

Allen	Garvin	Millard
Andrus, Miss	Goebel	Mosier
Austin	Gover	Murphy
Baginski	Greene	Norris
Balcer	Gust	Plank
Barthwell	Hannah, J. A.	Prettie
Batchelor	Haskill	Pugsley
Beaman	Hatch	Radka
Binkowski	Hatcher, Mrs.	Rajkovich
Blandford	Heideman	Richards, L. W.
Bledsoe	Higgs	Romney
Buback	Hodges	Rood
Cudlip	Hood	Sablich
Cushman, Mrs.	Hutchinson	Seyferth
Dade	Iverson	Shackleton
Danhof	Judd, Mrs.	Sleder
Davis	Karn	Staiger
Dell	King	Stevens
DeVries	Knirk, B.	Stopczynski
Douglas	Koeze, Mrs.	Thomson
Downs	Krolikowski	Turner
Durst	Leibrand	Tweedie
Elliott, A. G.	Leppien	Upton
Elliott, Mrs. Daisy	Lesinski	Van Dusen
Erickson	Lundgren	Wanger
Everett	Madar	White
Farnsworth	Mahinske	Wilkowski
Faxon	McCauley	Woolfenden
Figy	McGowan, Miss	Young
Follo	McLogan	Youngblood
Gadola		

SECRETARY CHASE: On the amendment offered by Mr. Kuhn, the yeas are 42, the nays are 91.

PRESIDENT NISBET: The amendment is not adopted.

Following is explanation of nay vote submitted by Messrs. Austin, Baginski, Balcer, Binkowski, Buback, Douglas, Downs, Mrs. Daisy Elliott, Messrs. Faxon, Follo, Garvin, Greene, Hodges, Hood, Lesinski, Mahinske, McCauley, Murphy, Sablich, Wilkowski and Young:

In compliance with our rights as delineated in rule 65, we, the undersigned, hereby submit for publication in the journal our reasons for voting "nay" on the question of constitutional proposal to prohibit a municipality from levying a payroll tax.

In voting against the constitutional proposal to prohibit a municipality from levying a payroll tax, we were opposing any restrictions on a municipality to levy an income tax which should include taxes on wages as well as corporation profits, rents, and other income. We believe that the constitution should not include specific tax language for local communities.

We are consistent in favoring taxation at the state level with rebates to local communities in preference to any form of local income taxation.

If this were a legislative body, we would have voted against the payroll tax. We oppose a tax on income which would relate only to payrolls. Other income, including business and professional income, would have to be included in the tax base.

We would like to point out that our position is consistent with declarations made in the governor's tax program whereby needed assistance is given to hard pressed local units of government in meeting their own revenue requirements.

PRESIDENT NISBET (Continuing): The next amendment, Mr. Secretary.

SECRETARY CHASE: Mr. Suzore offers the following amendment:

1. Amend page 1, line 13, after "law" by inserting "except that no city shall impose a tax upon the income of any person".

PRESIDENT NISBET: The question is on the amendment by Mr. Suzore. Those in favor will say aye. Those opposed will say no.

The amendment is not adopted. The next amendment.

SECRETARY CHASE: Mr. Madar offers the following amendment:

1. Amend page 3, line 17, after "regular" by striking out "or special"; and in line 22, after "vote of" by striking out "a majority" and inserting "3/5"; and in line 23, after "regular" by striking out "or special".

PRESIDENT NISBET: The question is on the amendment. Mr. Madar.

MR. MADAR: Mr. President, I request a recorded roll call vote.

PRESIDENT NISBET: A roll call vote has been demanded. Is the demand seconded? A sufficient number up. Those in

favor of the amendment will vote aye. Those opposed will vote no. Have you all voted? If so, the machine will be locked and the vote recorded.

The roll was called and the delegates voted as follows:

Yeas—48

Austin	Hatcher, Mrs.	Perlich
Baginski	Heideman	Perras
Balcer	Hodges	Powell
Binkowski	Hood	Prettie
Bledsoe	Howes	Richards, L. W.
Buback	Hoxie	Sablich
Dade	Kelsey	Shanahan
Douglas	Krolikowski	Sharpe
Downs	Leibrand	Snyder
Elliott, Mrs. Daisy	Liberato	Spitler
Erickson	Madar	Stopczynski
Faxon	Mahinske	Walker
Follo	McAllister	Wilkowski
Garvin	Murphy	Wood
Greene	Norris	Young
Hart, Miss	Pellow	Youngblood

Nays—86

Allen	Goebel	Plank
Andrus, Miss	Gover	Pollock
Anspach	Gust	Pugsley
Barthwell	Habermehl	Radka
Batchelor	Hanna, W. F.	Rajkovich
Beaman	Hannah, J. A.	Richards, J. B.
Blandford	Haskill	Romney
Boothby	Hatch	Rood
Brake	Higgs	Rush
Brown, G. E.	Hubbs	Seyferth
Butler, Mrs.	Hutchinson	Shackleton
Conklin, Mrs.	Iverson	Shaffer
Cudlip	Judd, Mrs.	Sleder
Cushman, Mrs.	Karn	Stafseth
Danhof	King	Staiger
Davis	Kirk, S.	Stamm
Dehnke	Knirk, B.	Sterrett
Dell	Koeze, Mrs.	Stevens
DeVries	Kuhn	Suzore
Donnelly, Miss	Lawrence	Thomson
Doty, Dean	Leppien	Turner
Doty, Donald	Lesinski	Tweedie
Durst	Lundgren	Upton
Elliott, A. G.	Martin	Van Dusen
Everett	McCauley	Wanger
Farnsworth	McGowan, Miss	White
Figy	McLogan	Woolfenden
Finch	Millard	Yeager
Gadola	Mosier	

SECRETARY CHASE: On the amendment offered by Mr. Madar, the yeas are 48, the nays are 86.

PRESIDENT NISBET: The amendment is not adopted. The secretary will read the next amendment.

SECRETARY CHASE: Messrs. Sharpe, Finch and Snyder offer the following amendment:

1. Amend page 1, line 13, after "law.", by inserting "However no unit of government shall have the power to levy a payroll tax upon a nonresident.".

PRESIDENT NISBET: The question is on the amendment. Mr. Sharpe.

MR. SHARPE: Mr. President, I would like to request a roll call vote, please.

PRESIDENT NISBET: A roll call vote has been demanded. Is that demand seconded? A sufficient number up. Those in favor of the amendment will vote aye. Those opposed will vote no. Have you all voted? If so, the machine will be locked and the vote recorded. Mr. Madar.

MR. MADAR: Mr. President, before this roll call is completely recorded, I would like to know how Mr. Brake is voting, either yes or no.

PRESIDENT NISBET: Mr. Brake.

MR. BRAKE: I vote no.

MR. MADAR: Mr. President, I am not going to give anyone any preferential treatment. I would like to know how Miss Hart is voting. (laughter)

PRESIDENT NISBET: Miss Hart, you will have to make a statement because the machine is—

MISS HART: Excuse me. I tried to pull this thing. I shall vote yes. (laughter and applause)

The roll was called and the delegates voted as follows:

Yeas—37

Batchelor	Hart, Miss	Richards, L. W.
Boothby	Haskill	Rush
Brown, G. E.	Hubbs	Sablich
Butler, Mrs.	Kelsey	Shanahan
Conklin, Mrs.	Kirk, S.	Sharpe
Dehnke	Kuhn	Snyder
Dell	McAllister	Spitler
Donnelly, Miss	Pellow	Stafseth
Doty, Dean	Perlich	Stamm
Erickson	Plank	Sterrett
Finch	Powell	Walker
Gover	Richards, J. B.	Yeager
Habermehl		

Nays—94

Allen	Goebel	McLogan
Andrus, Miss	Greene	Millard
Anspach	Gust	Mosier
Austin	Hanna, W. F.	Murphy
Baginski	Hannah, J. A.	Norris
Balcer	Hatch	Perras
Barthwell	Hatcher, Mrs.	Pollock
Beaman	Heideman	Prettie
Binkowski	Higgs	Pugsley
Blandford	Hodges	Radka
Bledsoe	Hood	Rajkovich
Brake	Howes	Romney
Buback	Hoxie	Rood
Cudlip	Hutchinson	Seyferth
Cushman, Mrs.	Iverson	Shackleton
Dade	Judd, Mrs.	Shaffer
Danhof	Karn	Sleder
Davis	King	Staiger
DeVries	Knirk, B.	Stevens
Doty, Donald	Koeze, Mrs.	Stopczynski
Douglas	Krolikowski	Suzore
Downs	Lawrence	Thomson
Durst	Leibrand	Turner
Elliott, A. G.	Leppien	Tweedie
Elliott, Mrs. Daisy	Lesinski	Upton
Everett	Lundgren	Van Dusen
Farnsworth	Madar	Wanger
Faxon	Mahinske	White
Figy	Martin	Wilkowski
Follo	McCauley	Young
Gadola	McGowan, Miss	Youngblood
Garvin		

SECRETARY CHASE: On the amendment offered by Messrs. Sharpe, Finch and Snyder, the yeas are 37, the nays are 94.

PRESIDENT NISBET: The amendment is not adopted. Are there other amendments, Mr. Secretary?

SECRETARY CHASE: That is all of the amendments on file on the secretary's desk, Mr. President.

PRESIDENT NISBET: Do you want to talk on this, Mr. Madar?

MR. MADAR: No, sir. A point of personal privilege, Mr. President.

PRESIDENT NISBET: Mr. Madar, would you let Mr. Chase complete this report. Then we will call on you.

MR. MADAR: Yes, sir.

PRESIDENT NISBET: **Committee Proposal 83**, as amended, is referred to the committee on style and drafting.

Following is Committee Proposal 83 as amended and referred to the committee on style and drafting:

The committee recommends that the following be included in the constitution:

Sec. a. The legislature shall provide by general law for the incorporation of cities and villages; such general laws shall limit their rate of general property taxation for municipal purposes, and restrict their powers of borrowing

money and contracting debts. Each city and village is hereby granted power to levy other taxes for public purposes subject to limitations and prohibitions set forth in this constitution or law.

Sec. b. Under such general laws the electors of each city and village shall have the power and authority to frame, adopt, amend, and revise its charter, and to amend, and revise an existing charter of the city or village heretofore granted or passed by the legislature for the government of the city or village.

Each city and village shall have power to pass laws and ordinances relating to its municipal concerns, property and government subject to the constitution and general laws of this state. No enumeration of powers in this constitution shall be deemed to limit or restrict the general grant of authority hereby conferred.

Sec. c. Any city or village may acquire, own, establish and maintain, either within or without its corporate limits, parks, boulevards, cemeteries, hospitals, and all works which involve the public health or safety.

Sec. d. Except as otherwise provided in this constitution, no city or village shall have the power to assess, levy or collect any tax or assessment for other than a public purpose, or to loan its credit for any private purpose or, except as authorized by law for any public purpose.

Sec. e. Subject to the provisions of this constitution, any city or village may acquire, own, and operate, either within or without its corporate limits, public utilities for supplying water, light, heat, power, sewage disposal, and transportation to the municipality and the inhabitants thereof; and may also sell and deliver heat, power, and light without its corporate limits to an amount not to exceed 25 per cent of that furnished by it within the corporate limits, except as greater amounts may be permitted by law; and may also sell and deliver water and provide sewage disposal, outside of its corporate limits in such amount as may be determined by the legislative body of the city or village; and may operate transportation lines without the municipality within such limits as may be prescribed by law.

Sec. f. No city or village shall acquire any public utility or grant any public utility franchise which is not subject to revocation at the will of the city or village, unless such proposition shall have first received the affirmative vote of 3/5 of the electors of such city or village voting thereon at a regular or special municipal election. Nor shall any city or village sell any public utility unless such proposition shall have first received the affirmative vote of a majority, or of a greater number if the charter shall so provide, of the electors of such city or village voting thereon at a regular or special municipal election.

SECRETARY CHASE: Mr. President, the committee of the whole also had under consideration Committee Proposal 85.

MR. MADAR: Mr. President, it was on Committee Proposal 83 in which I was bringing up this point of personal privilege.

PRESIDENT NISBET: All right, Mr. Madar.

MR. MADAR: Yesterday, when Mr. Ford made a point of order that the minority report amendment filed with the secretary should be given precedence over the amendment filed by Mr. Elliott, Delegate DeVries ruled that the amendment filed by Mr. Elliott would take precedence, since it was filed in the name of Mr. Elliott on behalf of the committee on local government. Later, when this came up again, Mr. Elliott wished to withdraw the amendment, I rose to a point of order, stating that Mr. Elliott had no right to withdraw that amendment because it was not a "Delegate Elliott amendment"; it was a committee amendment, and he couldn't do this without the authority of the committee.

However, Mr. DeVries ruled against me that this was Mr. Elliott's amendment. And I just wish to point out here that he did not have any right to withdraw it. He only has a right to withdraw with the full approval of those who submitted the amendment.

PRESIDENT NISBET: Thank you, Mr. Madar.

SECRETARY CHASE: Mr. President, the committee of the whole yesterday also had under consideration **Committee Proposal 85,** A proposal to provide that public utilities may use public property with consent of local authorities and a limitation on the length of franchise; and in committee of the whole has postponed consideration of this proposal until the afternoon session today.

The committee of the whole had also had under consideration **Committee Proposal 88,** A proposal pertaining to metropolitan areas; and had come to no final resolution thereon.

This completes the report of the committee of the whole, Mr. President.

PRESIDENT NISBET: Special orders?

SECRETARY CHASE: None.

PRESIDENT NISBET: **General orders.** Mr. DeVries.

MR. DeVRIES: Mr. President, I move the convention resolve itself into committee of the whole for the consideration of certain items on the order of general orders.

PRESIDENT NISBET: The question is on the motion of Mr. DeVries. Those in favor will say aye. Those opposed? The motion prevails. Mr. DeVries.

[Whereupon, Mr. DeVries assumed the Chair to preside as chairman of the **committee of the whole.**]

CHAIRMAN DeVRIES: The committee of the whole will come to order. When last the committee met it was considering **Committee Proposal 88,** A proposal pertaining to metropolitan areas; section b, and the following delegates sought recognition on Section b: Delegates Downs, Martin, Hoxie, Pollock and Cushman.

For last previous action by the committee of the whole on Committee Proposal 88, see above, page 1059.

The secretary will read section b of Committee Proposal 88.

SECRETARY CHASE: Section b.

[Section b was again read by the secretary. For text, see above, page 1059.]

CHAIRMAN DeVRIES: Does the gentleman from Detroit, Vice President Downs, seek recognition?

MR. SNYDER: Point of order, Mr. Chairman, if I may.

CHAIRMAN DeVRIES: What is your point of order?

MR. SNYDER: Yesterday, just before the committee rose, I had the floor and Mr. Elliott, for the second time during this committee, shut off my utilities, and he told me last night he was going to turn the utilities on. However, he hasn't done it; so what are my rights? Do I still have the floor? I would address the question to the committee.

CHAIRMAN DeVRIES: Will Vice President Downs yield to the delegate from St. Clair Shores?

MR. DOWNS: I yield to the delegate from St. Clair Shores.

CHAIRMAN DeVRIES: Delegate Snyder.

MR. SNYDER: Mr. Chairman, yesterday, before the committee rose, we were discussing section b of Committee Proposal 88, and Mr. Hutchinson at that time had made what I felt was a very pertinent point; that after we had gone beyond section a of the proposed committee report, we were getting into considerable statutory detail. And my problem that I raised was this: the language as submitted at the present time does go into a field of statutory law that I feel should be flexible, and it should not be frozen into the constitution, and this has to do with the multipurpose functions of government rather than the single functions of government, and the specific question that I raised to the committee yesterday was how, under the proposed committee report, would this affect those functions of government such as, for instance, the police and the fire department. Would this make it mandatory for the units to be combined, or would there still be legislative jurisdiction in this thing?

I think this is a very important point. It will be a very sensitive issue. And if we don't have a proper interpretation

before we vote, I would be compelled to vote against the proposal as such.

CHAIRMAN DeVRIES: Delegate Snyder yields to Delegate Allen for the purpose of answering the question.

MR. ALLEN: Mr. Snyder, the answer is no to your question. There is nothing compulsory here, and the legislature will continue to act as the regulator.

MR. SNYDER: I am entirely satisfied with the remark, because I think it is a very categoric remark. There is no question in my mind that the legislature still has the control of this particular subject, and it will not be frozen into the constitution.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Detroit, Vice President Downs.

MR. DOWNS: Mr. Chairman, I wish to speak in favor of the principle of having metropolitan government available particularly to the industrial areas. However, I do have a question I wondered if I could ask Delegate Allen through the Chair.

CHAIRMAN DeVRIES: You may, if the gentleman cares to answer.

MR. DOWNS: Delegate Allen, I notice that the assumption of the proposal is that "The legislature shall." Did the committee give any consideration to having self executing provisions so that the metropolitan authorities could be created by the various communities without the need of state legislation?

MR. ALLEN: I think your question, Mr. Downs, is directed to section a on the creation of new districts. That is in section a.

MR. DOWNS: It is really, I think, in both sections a and b, because section b also has the language "The legislature shall . . . ."

MR. ALLEN: In section a, the legislature shall have the power to establish, but whether or not it establishes anything immediately or later is left up to the legislature.

In other words, the legislature, if this should pass, as we understand it, does not have to immediately act, but it has the power to act when the legislature feels that a new district or a new functional authority or a new corporation—the terms are all synonymous—needs to be established, at which time the legislature decides what is the best form and sets it up. There is one limitation on the legislature, and that is that when it is established, that it not be set up so that it will serve just one purpose. It might start out with one purpose, but it should be established so it can become multipurpose.

MR. DOWNS: Mr. Chairman and delegates, I think that the answer indicates the concern of some of us. I believe Delegate Austin yesterday raised some questions where we thought the legislature might go too far. I raised the other side of the coin where I am concerned that the legislature might not go far enough. I will probably end up supporting this more in the hopes that there will be the action.

Those of us—and I include myself—who vote for it may want to reconsider the action after the legislative organization committee has reported, because this really gets down to the question of the form and the responsiveness of the legislature to the needs of metropolitan areas. Thank you.

CHAIRMAN DeVRIES: Does the gentleman from St. Louis, Delegate Hoxie, still seek recognition? Delegate Hoxie.

MR. HOXIE: Mr. Chairman, members of the committee, yesterday I raised the question as to how far reaching this proposal would be in regard to the state becoming financially involved in the area of metropolitan authority which would affect certain limited sections of the state. It was my understanding from Mr. Allen that he did not believe the state would become financially responsible in those particular areas. Since then I have asked the legal authority of this convention to investigate this question. I will not read it but will give the pertinent information. In section b, paragraph 2 of the proposed local units, the other proposal, local units may share the cost of functions and services with the state.

In other words, gentlemen, I just want you to know that under this proposal as it is now written, the state would be involved in these functions at the local level.

CHAIRMAN DeVRIES: The Chair recognizes Delegate Allen.

MR. ALLEN: Mr. Chairman, did the legal authority, Mr. Hoxie, who gave you the opinion say that this language compelled the state to do this, or that the state was required to do something which other provisions of the constitution would not allow the state to do?

MR. HOXIE: You are correct. It isn't mandatory. But it was my understanding the state would not be involved financially. It was my understanding that that was your statement yesterday, which was incorrect according to our legal authority of this convention; that the state could become involved financially on these projects at the local level.

MR. ALLEN: My statement yesterday was that, first, there was nothing mandatory to require the state to do this, and secondly there was nothing in this proposal which was a grant of power to the state or which increased the power of the state, and said it had to do things which section 14, with which we are concerned, would say it could not do. In other words, all this is saying is the state may—it is not mandatory—enter into agreements with local units of government to the extent that the state has power under the constitution to enter into them. This creates no more power. In other words, under section 14 of article X, the state may do certain things and it may not. Now, on those things which the state may do, what we call internal improvements, it then may enter into arrangements with the local units, but on the things which the state is prohibited from doing under section 14, it still would be prohibited.

And I would suggest, Mr. Chairman, that if there is any ambiguity about it—and I think Mr. Hoxie raises a point which is good and which naturally will come up — that when we get around to considering section 14, the internal improvement section, the way to handle this so there will be no doubt would be to add to section 14 as it finally comes out some sort of language, if there is any doubt, saying in effect that the state power to contract and enter into arrangements with local units under article VIII is restricted to those things which the state is able to do, and does not include those things which the state is prohibited from doing under section 14.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Ann Arbor, Delegate Pollock.

MR. POLLOCK: Mr. Chairman, as I recall the discussion yesterday, we were going to refer this section to style and drafting with some freedom to put it into constitutional language. Am I correct about that?

CHAIRMAN DeVRIES: I don't think the committee resolved that, Dr. Pollock.

MR. POLLOCK: I had intended not to say anything about this subject because I was so pleased that the committee had finally brought forth something new and original that I didn't want to raise any objections. But now that Mr. Hutchinson has raised the question of constitutional language, I merely want to suggest—and Mr. Allen knows this—that I had presented this same idea in constitutional language with about half the length of the present proposal. I should be glad to resubmit the constitutional language I submitted in place of what has been criticized here as being too much statutory.

CHAIRMAN DeVRIES: The Chair recognizes the lady from Dearborn, Delegate Cushman. You were seeking recognition on this yesterday. Do you pass?

MRS. CUSHMAN: Yes, I will pass.

CHAIRMAN DeVRIES: Delegate Cushman passes.

The Chair recognizes the gentleman from Detroit, Delegate Austin.

MR. AUSTIN: Mr. Chairman, I raised several questions on the floor yesterday with respect to this proposal in regard to taxation. I did not feel it was appropriate to take the time of the committee of the whole to get complete answers. So since the session yesterday, I have talked with several members of the committee on local government and also some members of the committee on finance and taxation, and I feel that most of the questions I raised have been answered to my satisfaction.

I do not have any objection to the legislature having unlimited power to give taxing powers to these metropolitan districts. However, when the finance and taxation Committee Proposal 54—which states as follows: "The power of taxation shall never be surrendered, suspended or contracted away"—comes up on second reading, I will raise some question about the possibility of a restriction on the taxing power of these metropolitan districts. But at this point I will raise no more questions about taxation.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Bay City, Delegate Higgs.

MR. HIGGS: Mr. Chairman, I would like to direct a question to Delegate Allen with regard to subsection 3. As I read this, the question in my mind is with regard to what extent the consent of each unit of government involved is intended to apply. Since I am also a member of the style and drafting committee, I think it might be helpful for us to have an understanding of what your intention is in this connection.

CHAIRMAN DeVRIES: Delegate Allen.

MR. ALLEN: Complete consent, Delegate Higgs. In other words, no functions could be transferred without the unit from which the function would pass completely agreeing and the unit which would assume it completely agreeing. In other words, this is entirely voluntary, and it would be up to the governing authority of each unit to completely agree to this.

MR. HIGGS: Would it be your understanding then that section a would be qualified by this consent of each unit of government?

MR. ALLEN: No. Section a applies to a new governmental unit, if ever established.

MR. HIGGS: Then would it be your understanding that the legislature would have the power in the absence of the consent of each unit of government to set up the metropolitan authority with powers, duties and jurisdictions that the legislature feels necessary, without any consent of the individual units which may be involved within the area?

MR. ALLEN: I am not sure I understand your question, but I think, because this came up just a little while ago, we are dealing with 2 different things in sections a and b.

Now in section b, what we are dealing with is what we know as our existing units of government: our cities, our villages, our townships, our counties, and I guess even school districts. This allows them to intercontract with one another, to assume costs, share costs, transfer functions.

Section a is a political animal that yet does not exist. It may be that from time to time, as it has been in the past, it is necessary to solve some problem by the creation of some additional unit of government. This is generally called a special corporation. Sometimes it is called a metropolitan district or metropolitan corporation. The legislature would say how this could be established. When they say how it is to be established, it usually is established upon a vote of the people of the area affected, and it has the powers, including the taxing power, that the legislature gives it. This is a new political creature.

MR. HIGGS: I think I understand that aspect of it, that we have the power in the legislature to establish a metropolitan authority which is a new creature.

In reading section a and subsection 3 under section b, the problem that is in my mind is whether or not the legislature under section a could preempt the field of the local units without their consent. In other words, if the legislature under its authority in section a should grant power or duties or jurisdictions—I think maybe a key word is "jurisdiction"—to the metropolitan authority, that this might be a preemption of powers, duties or jurisdictions of local units within the area. And if this can be done under section a without the consent of each unit of government, I would like to know if that is the intention.

MR. ALLEN: No, it is not the intention. But I will say this: let's take today's constitution. The legislature has the power today under today's constitution to create a new unit of government, and it did in the Huron-Clinton water authority. There was no constitutional language that authorized this at all. This was an intercounty thing. The legislature had the power, and the legislature created it, and when they created it, they said, "It will depend upon a vote of the people."

Now, if we had nothing in the new constitution, we would be the same as in the old constitution, and there is the power of the legislature to do this. The power of the legislature to create and transfer functions by a new creature without a vote of the people runs head on into some of the home rule doctrine, and you get into some technical fields here, but I don't think that anything we are doing in this language on the problem you raise is any different than we have in today's constitution. In other words, we aren't creating more power to the legislature to take away functions from existing units of government than exist today. In fact, what we are trying to do is keep the legislature from having to do it, and we think if we can free up cooperation among existing units of government, we can slow down the establishment of these new special corporations.

MR. HIGGS: One further question then. In subsection 3, why do you provide that any consent of the local unit is required to transfer any power to a combination thereof if the metropolitan authority can be granted that power by the legislature without their consent under section a?

MR. ALLEN: Because we are thinking in section b entirely apart from any metropolitan authority. This is for existing units of government. And certainly if you are going to say that the health functions—and this can be done today, the example I am giving you—of the city can be transferred to the county, we aren't going to have it occur without the consent of the city that transfers these health functions to the county or the county that agrees to assume them.

MR. HIGGS: One more question. I do not mean to carry this on at length, but I am trying to understand.

What you are saying now, do I understand, is that in subsection 3, when we use the words "combination of local units" we are not speaking about a metropolitan authority; is that correct?

MR. ALLEN: We are talking about existing units of government, that is correct.

MR. HIGGS: Thank you.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Detroit, Delegate Binkowski.

MR. BINKOWSKI: Mr. Chairman, for the record, Delegate Hoxie, would you please identify the legal authority in this convention?

CHAIRMAN DeVRIES: Delegate Binkowski yields to Delegate Hoxie.

MR. HOXIE: The memorandum came from Dr. Charles Joiner. I understand the other members of the staff also reviewed this question that I asked them.

MR. BINKOWSKI: Thank you, Mr. Hoxie. Also for the record, Mr. Allen, it is my understanding that many of the supporting reasons for your language in section b are found in a report by the advisory commission on intergovernmental relations, of which I understand Dr. Pollock is vice chairman. If that is so, I wonder if you would also identify this for the record.

CHAIRMAN DeVRIES: Delegate Allen.

MR. ALLEN: Probably the best discussion of what we are doing here does occur in this pamphlet, which was in each one of the boxes of the delegates, from the intergovernmental relations commission in Washington. The pamphlet discusses many other problems. In one pamphlet is the best discussion of problems of metropolitan areas—in fact, I think it goes further than that; it gets into rural areas too—in a condensed way that there is. The ideas that are in section b are discussed more fully at page 25, at page 31, and in the appendix there is suggested language.

Our language is different than their language because we are writing a constitution. Their language pertains to recommendations to the state legislature. They also have a suggestion for constitutional language, and this is the single best discussion.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Pontiac, Delegate King.

MR. KING: Mr. Chairman, ladies and gentlemen of the committee, may I direct a question to Mr. Allen, please.

CHAIRMAN DeVRIES: You may if the gentleman cares to answer.

MR. KING: Delegate Allen, I am sure that your committee has given a lot of thought to the problem of purchasing utilities and transportation facilities. This problem came up just recently with regard to another area. Do you feel that there is any way in which, say, a group of cities could purchase a utility without receiving 3/5 of the vote of the people of each and every unit of government so participating?

CHAIRMAN DeVRIES: Delegate Allen.

MR. ALLEN: I wish that I did, but I don't. For example, it might be possible under this at first blush—and I have wondered about it—if the biggest unit of government could purchase with a 3/5 vote, and then the financing could be jointly shared under enabling legislation for intercontractual agreements, but you will notice that this is intercontractual agreements on matters which each unit or party to the contract has the power to enter into, and I would be pretty sure that the city attorneys would say that you can't help finance a bus line out of public moneys unless you have also had a 3/5 vote. So I don't think this section is going to help you on the 3/5 vote.

MR. KING: Mr. Chairman, Mr. Allen, referring to page 25, as Mr. Allen just referred us to, of the advisory commission, I just would quote one sentence, "The necessity for getting consent of each participant may impede proceedings and prevent solution of the problem on a comprehensive basis." Of course, this goes without saying. In this particular area, we are going a little further. We are requiring 3/5.

I am not opposing the change. I would just like to suggest some language and ask Mr. Allen what his opinion of it might be. It would be as follows: "The purchase of public utilities, the granting of public utility franchises shall be in a manner as provided by law and, notwithstanding constitutional provisions to the contrary, if approved by a majority of the voters voting thereon of each local unit of government involved."

MR. ALLEN: Delegate King, that might be a possibility if the committee would want to do it, but I would suggest that if we do it, it not be put in this section; it be put in as a separate section along with the utilities, or an added paragraph to the utilities section that we worked on, not on the intergovernmental cooperation. I think it belongs as an exception to the utilities section.

MR. KING: Committee Proposal 83 as opposed to Committee Proposal 88?

MR. ALLEN: Yes. I would suspect that this is something we couldn't act on immediately, but we might pick it up on second reading.

MR. KING: Thank you.

CHAIRMAN DeVRIES: Are there any amendments to section b of Committee Proposal 88?

SECRETARY CHASE: Mr. McAllister has filed the following amendment:

1. Amend page 1, line 16, by striking out all of section b.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Bad Axe, Delegate McAllister.

MR. McALLISTER: Mr. Chairman and fellow delegates, I have examined Committee Proposal 88 and propose that we delete section b entirely. Section a provides all the necessary machinery for the legislature to enact laws to accomplish the purposes that we desire to accomplish by this proposal.

Section b is strictly legislative, and we have from time to time here indicated that we want a constitution that is brief in form and which will give the authority without creating legislation, and that is what we are doing here. Apparently the sponsors, the committee here, are confused about what this section b will do. It would appear to me it would take years of court interpretation to determine exactly what powers are given in this section and that it would do nothing but create a state of confusion.

So I ask the committee, the delegates here, to support my amendment to delete section b, and I would like a record roll call vote because I would like the people in the area I come from to know how I voted and have it on record.

CHAIRMAN DeVRIES: Delegate McAllister, it is impossible to have a recorded roll call vote in the committee of the whole. You can ask for a division on the amendment. The question before the committee is the amendment offered by Delegate McAllister to section b of Committee Proposal 88. The delegate requests a division. Is there support for a division vote? There is support for a division vote.

The Chair recognizes the delegate from Fennville, Vice President Hutchinson.

MR. HUTCHINSON: Mr. Chairman, I rise in support of this amendment offered by Mr. McAllister, for the reason that I sincerely believe that the committee in section b, instead of granting or setting forth some guidelines as it believes it is doing for the legislature, is greatly restricting the power of the legislature in this field.

I am convinced in my own mind that each and every part of this section b could as effectively be accomplished by the people who desire the creation of these sorts of things in Michigan if they would go to the legislature. They could get through the legislature practically, I am sure, the same thing that they have in section b here. If there is anything that is legislative in character, it is section b.

In the belief that this convention really wants to write a constitution which is constitutional in character and not legislative in character, I support this amendment.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Pleasant Ridge, Delegate Elliott.

MR. A. G. ELLIOTT: I yield to Mr. Heideman.

CHAIRMAN DeVRIES: Delegate Elliott yields to Delegate Heideman.

MR. HEIDEMAN: Mr. Chairman, fellow delegates, I would like to support the amendment and to endorse the very able statements made in connection therewith by Delegate Hutchinson.

CHAIRMAN DeVRIES: Does the gentleman from Pleasant Ridge seek recognition?

MR. A. G. ELLIOTT: I yield to Judge Dehnke.

CHAIRMAN DeVRIES: Judge Dehnke.

MR. DEHNKE: Mr. Chairman and members of the committee, I can't take a position either way on this. I think I should call attention, however, to what this proposal means. As it now stands, it constitutes a command to the legislature to set up some form of metropolitan government. If section b is stricken, it is a matter entirely within the discretion of the legislature whether or not it will pass such a law.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Saginaw, Delegate Leppien.

MR. A. G. ELLIOTT: Mr. Chairman, I think I still have the floor.

CHAIRMAN DeVRIES: Will the delegate yield to the gentleman from Saginaw?

MR. A. G. ELLIOTT: I will yield.

CHAIRMAN DeVRIES: Delegate Leppien.

MR. LEPPIEN: Mr. Chairman, fellow delegates, the secretary has an amendment on the desk submitted by myself which is so much in keeping with the one just offered by Delegate McAllister that I will withdraw mine and support his amendment. If there is anything, delegates, that we have heard throughout the months that we have been sitting as a constitutional convention over and over and over and over, it is the fact that we should be not writing legislation into the constitution. I submit very frankly to you that from section b on through the end of the proposal, it is purely legislative in character and should be deleted.

CHAIRMAN DeVRIES: Delegate Leppien withdraws his amendment. Will the gentleman from Pleasant Ridge yield to the lady from East Grand Rapids, Delegate Judd?

MR. A. G. ELLIOTT: I will.

CHAIRMAN DeVRIES: Delegate Judd.

MRS. JUDD: Mr. Chairman and members of the committee, it may well be that some of you think of this material as

statutory, and if it is statutory, to be sure, it does not belong in the constitution. But I would like to warn this committee that if this constitution goes to the people in this era of great exploding population and increase of metropolitan area problems without any power in the local and state governments to solve these problems, that we will be doing our state a very great injury.

I think if there is need to reconsider this language, that some kind of procedure should be developed that will make that possible, and I am not enough of a parliamentarian to know what that procedure should be, but we must not at this moment close off the possibility of including in this constitution the assurance of power to our state and local governments to handle metropolitan problems.

CHAIRMAN DeVRIES: The Chair recognizes the chairman of the committee, Delegate Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, ladies and gentlemen of the committee, I would like to strongly urge the defeat of this amendment for reasons that have been put forth here for several hours. I will repeat them only briefly.

We consider in the committee that this is a major breakthrough in the area of establishing in the constitution language which will clearly enunciate the position in which we wish local government to function.

There is a distinct difference between sections a and b, I believe, in that section b does require the legislature to provide for these following things. Now, within that proviso, they can make them as restrictive as they desire. I think that it is fundamental that what the majority of people in this convention are after is not another layer of government on top of what we already have, but a strengthening of those layers of government with which we are familiar, making them more responsive to the needs of the people, making it possible for them to meet those needs. Now, it may be that in this second section, section b, there is some language that can be eliminated in style and drafting and still give us the same intent and the same impact. If so, I am sure that our committee will be most willing to support that change.

But I do not think that the committee on local government will support a change which will change the whole emphasis. This was not something that was casually thought of. This is, it seems to me, the heart and soul of the local government committee, this and the next proposal that you are going to get. We have taken those familiar forms of government, those with which each of you is familiar, and we have in the preceding sections strengthened them and bolstered them for the future. Here is the springboard with which you can do in the future the things that are needed.

And for those reasons — not being a lawyer and not being quite so concerned whether or not the language is purely constitutional — I would urge the defeat of the amendment, with the recognition that the committee is satisfied to sit down with the chairman of the committee on style and drafting, Mr. Cudlip, and the other members of his committee, and work out more satisfactory constitutional language, if needed. And I will once again urge the defeat of the amendment.

CHAIRMAN DeVRIES: The Chair had hoped that the committee of the whole might take a vote on the McAllister amendment, but there are 5 people seeking recognition.

Pursuant to the motion passed by the convention this morning, the Chair declares a recess for 10 minutes. We will reconvene at 10:55.

MR. HUTCHINSON: Mr. Chairman, the motion was that the committee would rise at this point. The Chair has no power to declare this committee in recess. If you will read the motion, that isn't what it says. It said that the committee would rise at this point, Mr. Chairman.

CHAIRMAN DeVRIES: The motion as I have it before me, Vice President Hutchinson, is that the committee of the whole by declaration of its chairman rises.

MR. HUTCHINSON: That is right. It rises, Mr. Chairman.

CHAIRMAN DeVRIES: Not recesses?

MR. HUTCHINSON: That is right, sir.

CHAIRMAN DeVRIES: The committee of the whole will rise for 10 minutes and reconvene at 10:55.

MR. HUTCHINSON: All right. Mr. Nisbet will take the Chair. (laughter)

[Whereupon, the committee of the whole having risen, President Nisbet resumed the Chair.]

PRESIDENT NISBET: There will be one announcement by the secretary, please.

SECRETARY CHASE: For the benefit of the delegates who have amendments to offer from here on, would you please take them to the secretary's office. The girls in my office will be very glad to prepare them for you, and in that form they can be projected on the wall and we will have here the necessary copies as well. Thank you.

PRESIDENT NISBET: Mr. Hutchinson is entirely right in his interpretation.

The convention recesses for 10 minutes.

[Whereupon, at 10:50 o'clock a.m., and in pursuance of the order previously made, the convention recessed; and, at 11:00 o'clock a.m., reconvened.]

The convention will please come to order. In order to make this practice, which is so necessary, I think, work, will the delegates please attempt to return when the bell rings so we can reconvene the convention.

SECRETARY CHASE: Mr. President, a quorum of the convention is present.

Mr. Mosier has filed with the secretary a request to be excused from the afternoon session so that he may attend a funeral of a relative in Battle Creek.

PRESIDENT NISBET: Without objection, Mr. Mosier will be exused.

The convention will now resolve into committee of the whole. Mr. DeVries.

[Whereupon, Mr. DeVries assumed the Chair to preside as chairman of the committee of the whole.]

CHAIRMAN DeVRIES: The committee will come to order.

The Chair recognizes the gentleman from Detroit, Delegate Iverson, speaking on the amendment offered by Delegate McAllister to Committee Proposal 88.

MR. IVERSON: Mr. Chairman and fellow delegates, I make simply this statement. I dislike to oppose the committee on any matters which are within reason, but I simply do not like legislative language. I must oppose, however, the amendment proposed by Mr. McAllister, because I don't think he intends to take away the power contained in the first part of section b, and I hope that someone at least will correct that situation after Mr. McAllister's amendment is voted on.

CHAIRMAN DeVRIES: The Chair recognizes the delegate from Bay City, Delegate Higgs.

MR. HIGGS: I dislike also to oppose the McAllister amendment, and I have some fears of sweeping away the entire section, and I am thinking particularly about subsection 3 and the consent of each unit of government involved, so I would like to see what can happen with this whole proposal between the first and second reading. So I will oppose the amendment.

CHAIRMAN DeVRIES: Delegate Allen.

MR. ALLEN: Mr. Chairman, I wonder if we really realize here what we are trying to do. I think that there are 2 points to keep in mind. I feel that Delegate McAllister's amendment to strike everything is because he wants nothing, and then you had a separate point, which probably will come later, that the language is statutory and therefore ought to be boiled down with something left.

The amendment before us is the first point to strike everything and nothing goes back in its place. What we are doing here is this: we are trying to prevent the Dade county situation where the legislature, because of frustrations in metropolitan areas, is forced to come in and do something quite drastic. And everyone who has studied the problem of metropolitan government says this: that if you can relieve the bottlenecks that exist between your several existing units of

government, and free them up so they can handle these things cooperatively, then you are going to get away from this super-government that many people don't like, and this is not only rural but this is also municipal units.

Now, we are attempting here to preserve the integrity of our existing units of government by mandating the legislature to pass statutes under which these units can share services, share costs, make intercontractual agreements, and it is all on a voluntary basis. I will point out to you that on this subcommittee that made this recommendation to the full committee, we had a rather diverse group. We had Mr. Sharpe and Mr. Brake and Mrs. Cushman and myself, and we represented real rural and real urban, and we agreed on this unanimously.

The whole point that we are driving at in b is to prevent the legislature finding the necessity of coming in and setting up some new type of government, or we are preventing the legislature coming in and something happening to force city-county consolidation.

I can positively guarantee you that if we don't get this loosening up between our existing units, which this provides, then we hasten the day — and you will find it coming — when something could happen in the Detroit area similar to what happened down in Dade county.

This is one of the creative good things that this convention has the opportunity to do, and now we have an amendment on the floor to strike it all. I think this would be a terrible mistake. It will do exactly what you think it won't do. It will hasten so called big government.

Now, I will concede that the language probably is somewhat statutory and long and the language which Dr. Pollock turned in got into the international field and everything else so we couldn't use that. There probably is a way this could be boiled down. I would be willing to allow style and drafting at least to try it, but I feel that to strike everything out as this amendment now before us would do, would be a terrible mistake and this committee would really be going backwards when we now have an opportunity to go forward. And this has been supported, as I say, by this subcommittee — in fact, the whole committee of local government. So I certainly urge a no vote on this.

SECRETARY CHASE: Mr. McAllister withdraws his amendment, and Mr. McAllister and Mr. Leppien jointly offer the following substitute amendment:

1. Amend page 1, line 20, after "government.", by striking out the balance of the committee proposal; which will leave section b to read as follows:

> Sec. b. The legislature shall provide by general law for the exercise of local government by 2 or more counties, cities, villages, townships or districts, or any combination of 2 or more of such units of local government.

CHAIRMAN DeVRIES: The McAllister amendment is withdrawn and a substitute is offered by Delegates McAllister and Leppien. The Chair recognizes the gentleman from Bad Axe, Delegate McAllister.

MR. McALLISTER: On checking over this section, it appears that the first sentence in section b should be left in the proposal, so that now the proposal will be section a and the first sentence in section b. While I am on the floor, I would like to say that I believe the strongest support for this amendment comes from the chairman of the committee and the other speakers who have indicated that they themselves don't believe this section is in proper form. They would like to sit down and discuss it.

But I think that the amendment I have offered here covers the entire situation, and gives the state legislature all the authority that is needed to do anything that may be necessary to establish metropolitan communities. And, as I said before, we have repeatedly stressed in this convention that we do not want to legislate; we want to draft a constitution and let the legislature do the legislating. Apparently here we want to mandate the legislature to do something that the committee itself is very doubtful about.

CHAIRMAN DeVRIES: The Chair recognizes the chairman of the committee, Delegate Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, ladies and gentlemen, Mr. McAllister, we are not doubtful at all about what we want, and I am very grateful to learn that the delegate from Bad Axe was not interested in absolutely reversing the trend that we had spent so many hours on. And I would like to yield to Mr. Allen.

CHAIRMAN DeVRIES: Delegate Elliott yields to Delegate Allen.

MR. ALLEN: Mr. Chairman, it seems to me that the spirit in which this amendment is offered is certainly much more helpful than the first amendment which was to kill everything, but I would say that the trouble with this amendment is that it doesn't say anything that we haven't already said. If we follow this amendment — and this probably is the result of having to work something out, you know, immediately on the floor — it simply says: "The legislature shall provide by general law for the exercise of local government by 2 or more of our existing units," period. Well, the legislature has already provided for the exercise of local government in all of the constitutional provisions that we have had, and this only says "of 2 or more." I don't think it says enough.

The important point in this thing is the point that is spelled out in these subsections we have; that is, the exercise of it by the power to intercontract, the power to transfer services, the power to share costs and to cooperate. So, Mr. McAllister, under your new amendment, it doesn't go far enough. What we want to say is that they shall do it and they have the power to do it, providing they each consent, in these specific ways, and this amendment doesn't go far enough.

Now, I don't care what kind of an amendment comes on the floor today — unless we get into a real style and drafting job and adjourn or recess for an hour or so — you are going to hit the same problems. I think the thing to do — we know what we are driving at — is to pass this as we have it — and subject to Mr. Elliott's agreeing to it; I can't do this unilaterally. If style and drafting can come up in a condensed way with something better, let them do it. But to try and work it out now, no.

Now, I know Mr. Hutchinson has said on style and drafting that it may make some substantive change and I don't know just how to handle it, just stick with this or let him bring it back. I don't know. I have alternate feelings. I think in view of the discussion we have had this morning I now feel: well, let style and drafting condense it even if they make some substantive changes, as long as they get these essential points in about intercontracting and sharing of costs and so on. But I would oppose the McAllister amendment — which I think is offered as a constructive measure — because it doesn't go far enough.

CHAIRMAN DeVRIES: Delegate Goebel.

MR. GOEBEL: Mr. Chairman, Mr. Elliott, I feel just exactly as Mr. Allen does about this. If the verbiage does not meet with the approval of some of the delegates on the floor, I believe, with Delegate Allen, that this can be taken care of very properly. But we do need the intent of this particular section in order that all the governmental units in a metropolitan area may do for themselves that which is best for all of them, and I therefore oppose the McAllister and Leppien amendment and urge that you vote for the committee proposal. Thank you.

CHAIRMAN DeVRIES: Delegate Leppien.

MR. LEPPIEN: Mr. Chairman, members of the committee, I think we all have agreed by what has been said here this morning that the legislature has all the power to do everything that has been contained in Committee Proposal 88. The intent of the committee seems to be, from what I read in it, to give direction to the legislature in a field that now to some degree is nonexistent, except there is some example or at least one about the state, the cooperation of various units of government, and therefore it seems to me that we are going far beyond the necessity for putting any language in beyond the point of the amendment offered.

I urge the adoption of the amendment.

CHAIRMAN DeVRIES: Delegate Davis.

MR. DAVIS: Mr. Chairman, delegates, I think that some of the thoughts that I have on this have already been expressed. Personally, I happen to be in favor of this committee proposal

and the idea that is contained in it, but I feel that some of the objections which have been raised in the manner in which Mr. Hutchinson, Mr. Bonisteel and others have raised them have caused doubt in my mind.

I am not a lawyer. Now, I think that there are many of us who were asked to put their stamp of approval or rejection upon some matters on which we talked at great length here in debate, and at this time I would like to say that I am going to vote along with the committee. If I thought this were the final thing, I frankly would vote against it because I have been persuaded by debate that this is not good language, and it would be my hopes that either style and drafting or someone else could handle this matter. And I think we have, frankly, taken up considerable time on this matter, so I will quit talking at this point.

CHAIRMAN DeVRIES: Delegate Prettie.

MR. PRETTIE: Mr. Chairman and fellow delegates, I am rather torn between 2 views. I have on the secretary's desk an amendment identical with Mr. McAllister's as to the first sentence. I also am impressed with the necessity of retaining the final language of this section for the reasons set forth in the report of the committee as to authority to serve in dual capacity. Now, I feel that the intervening language which the McAllister amendment would strike is language that certainly does not go far enough in full legislation and spelling out of the powers of the consolidating units. It should go further. But I don't think it is constitutional language. I think it should be written by the legislature after timely consideration.

I don't think that either this committee or the committee on style and drafting can do an adequate job, so I wish at this time to oppose the McAllister amendment, solely for the reason that I submit to you that the final language of this section following the subnumbered paragraphs is essential to the plan suggested by Mr. Allen and the committee on local government.

CHAIRMAN DeVRIES: Delegate Brake.

MR. BRAKE: Mr. Chairman, ladies and gentlemen, I don't wish to continue the debate indefinitely on this proposal. I want to agree, in the first place, with what Mr. Prettie just said. There is some language in that last paragraph which the amendment would strike that I think we ought to definitely retain. I don't know whether this constitution is going to have anything dealing with the incompatibility of 2 offices at the same time, but it is a troublesome question, one that bothers the attorney general continuously. This would clarify it. I think it should be there.

I want to answer just one statement made by Mr. McAllister, that we are creating confusion. The confusion, Mr. McAllister, is already there. Everybody, practically, recognizes that there has to be something done to meet these problems in the metropolitan area. Very, very few indeed have any idea as to what that something ought to be. This sets forth a pattern. It is statutory. Of course it is statutory. But it is a pattern and given with the dignity and the stature of a constitutional provision. It says: here is a way that you can follow in trying to meet that problem which everybody recognizes exists.

And I think it has the further purpose of trying to steer these metropolitan areas into the solution of their problem through the cooperation, the contracting, the sharing of costs of units already in existence instead of the creation of a fourth level of government. That is the conflict over the country — shall we do it with our present units, or shall we create additional units of government? I think everybody on our subcommittee agreed that the present units if it is possible at all, ought to handle the problem. This is at least an invitation, if nothing more, to try to meet the problem that way.

CHAIRMAN DeVRIES: Delegate Binkowski.

MR. BINKOWSKI: I would like to attempt to clarify the record here just in case of an adverse vote on this section. Mr. Leppien has, it seems to me, agreed the legislature has the power and the authority to establish the 5 — what shall we say? — powers as enumerated on page 1 beginning w'th "(1)" down through page 2 at the end of line 20, and I would, again for the record, ask Mr. McAllister if he agrees with that? In other words, the only thing that you are attempting to do is to eliminate the so called "statutory language" and you believe that the legislature has the full power and authority to do the enumerated powers set forth in pages 1 and 2?

CHAIRMAN DeVRIES: Delegate Binkowski yields to Delegate McAllister for the purpose of answering a question.

MR. McALLISTER: It is my opinion that the amendment offered gives the legislature full authority. It seems to me also, if the committee has some ideas, it can submit them to the legislature. This matter here, as I have said before, is so broad that it reminds me of a bucket full of nail holes. You don't know which one to repair first.

So it is my opinion that the amendment as now submitted by Mr. Leppien and myself is adequate to do anything that may be necessary to accomplish the purposes desired, and it is certainly not my intention by asking for this amendment to interfere with the establishment of metropolitan authorities. In fact, I am for them. But I think that we should know where we are going. As Mr. Brake has said, there is lots of confusion, but I don't know why we should stand on one foot at one time and limit constitutional provisions, and then enact, in effect, statutory law in the constitution at another time.

MR. BINKOWSKI: Mr. McAllister, again, I don't want to belabor this point, but I just want to find out your thinking as to the motivation for making this amendment, because someone in going over this record might, by implication, believe from your comments that you feel that the legislature might not have the authority to establish any one of these powers as set forth and as enumerated in Committee Proposal 88.

MR. McALLISTER: I hope I understand you. I feel that my amendment as originally introduced was adequate, but to remove any question about it, I have agreed with Mr. Leppien — and it was his idea — to add the additional sentence. Does that answer your question, Mr. Binkowski?

CHAIRMAN DeVRIES: Delegate Lundgren.

MR. LUNDGREN: The question I had — and it has been raised here several times this morning is that it appears that some people are beginning to feel that style and drafting is a different type of committee, and it has been said here by Mr. Allen that perhaps style and drafting can change the language around. But I didn't think that was the original intent of Mr. Cudlip's committee, and I don't think they want to take on that burden of writing something that the committee should write.

It appears that there are some confusing points on this. I agree very much with Mr. McAllister that we are for a new type of government within the larger municipal areas if they want it, but we have to give them the proper language from the floor here, and I don't believe style and drafting should be given that job.

If Mr. Cudlip would like to answer that, I am sure his committee doesn't want to take on this chore.

CHAIRMAN DeVRIES: Delegate Lundgren yields to Delegate Cudlip.

MR. CUDLIP: Mr. Chairman and members, the functions of our committee are clearly set forth in Journal 3, page 14, and we have plenty of work up there without added burdens. There are areas where we perhaps will make some suggestions to this body by way of recommendation, but we aren't usurping any functions.

While I am here, I would like to emphasize what Senator Brake said. The philosophy here is simply this on this paragraph b: it is a case of whether a mother and father tell the children, 5 or 6 of them — analogous to our political units — "Here are the guidelines; you have the power to do it"; or whether they have to come hat in hand on Sunday morning to get that permission. That is the difference in the philosophy here, and the sooner we get that in our minds and know what we are voting for, I think the better off we will be.

MR. LUNDGREN: I would just like to conclude that I agree with the McAllister amendment as modified here. I think it provides within the legislature the framework to create these new municipal governments that the larger areas want, and therefore I subscribe to the amended report.

CHAIRMAN DeVRIES: Delegate Hanna.

MR. W. F. HANNA: Mr. Chairman and delegates, I will support and want to support the McAllister-Leppien amend-

ment, and I will give you a specific reason. On page 2, paragraph 2, they set forth that in this joint function, whether by contract or by compact, that the only way the costs of operating that function can be accomplished is to share the cost and responsibilities of the functions or services one with another.

If we were in the Muskegon area to set up a metropolitan water or sewer or combination utility, there is no reason whatsoever why that utility should not have the right to be financed entirely by charges to the users thereof, and there should be no requirement that the costs and responsibilities — and especially the word "costs" — be referred back to each township, village and city and by them collected.

If you read this language, there is no provision for the metropolitan government to be a self financing unit. I call your attention to this because this is a danger of writing such detailed statutory language into a constitution. Were the legislature to say this, that they should share the cost, and the court say that therefore the metropolitan government could not bill the consumer direct because this requires the sharing of cost according to contract, and it says here "each local unit of government"; it does not say "the consumer thereof" — the legislature could correct such obvious oversight.

My construction may be overtechnical, but I call your attention to the fact that it says to share the costs one with another. Nowhere in this does it provide that the consumer can be required to pay or that the metropolitan unit or the jointly used function can be financed solely from the revenues. It must be billed back, as this language is written, to the local city and township.

CHAIRMAN DeVRIES: Delegate Elliott.

MR. A. G. ELLIOTT: I yield to Delegate Allen.

CHAIRMAN DeVRIES: Delegate Elliott yields to Delegate Allen.

MR. ALLEN: Mr. Hanna, I think you completely misunderstand that. There is nothing here that says that a city which puts up a water utility or sewage utility can't, if it wishes, continue to finance it from consumers' costs. There is nothing here at all that says that he can't do that. This simply says that if the city of Muskegon and Muskegon Heights want to go into a sewage disposal facility and share the costs together in some way, they may. But if the city of Muskegon wants to do it entirely by user charges, they can go ahead and do it this way. There is nothing compulsory here at all, and there is nothing that changes the existing way we are doing things.

In addition to that, this only refers to units of government which are now in existence. This doesn't preclude anything that now exists. This gives an additional right, but the additional right may only be exercised if both of the participating units want to exercise it.

MR. W. F. HANNA: Mr. Allen, this is the first time I have ever heard the word "cost" limited to capital expenditures. To me the cost of a function includes the operating expenses as well as the capital expenditures. And you have said "shall be shared." I am saying that as you have it, they could operate, I will agree with you, a wholesale function, but they would have to bill back to the local function, and the local function would have to bill the consumer. You have not provided that the joint function can be financed solely from the revenues thereof. And when I say "cost" I mean capital and expenditures.

MR. ALLEN: No, quite the opposite. This simply says if 2 units of government want to build a sewage disposal plant and finance the capital costs or any other costs, they may do so if they want. If they want to do it all on user charges, that is under the existing law. Nothing is changed in here, and there is nothing mandatory.

CHAIRMAN DeVRIES: Delegate Martin.

MR. MARTIN: Mr. Chairman, by the device of sitting quietly, it is possible to have everything said on this point that can possibly be said, with one exception perhaps, and that is that this is pioneering language and in a field where pioneering is absolutely necessary, and it seems to me this is one of the most important proposals that has been before this committee. If you strike out the language which Delegate McAllister wants to strike out, you eliminate the pioneering aspects of the thing entirely. And it seems to me that this is a case where some legislative language is in order, in order to give the sort of guidelines that Delegate Cudlip has referred to.

CHAIRMAN DeVRIES: Delegate Stevens.

MR. STEVENS: Mr. Chairman and members of the committee, and Mr. Elliott, I should like to ask through the Chair of the sponsors of this amendment, Delegate McAllister and Delegate Leppien, if they have any objections to the amendment which will be offered by Delegate Prettie.

CHAIRMAN DeVRIES: Delegate McAllister?

MR. McALLISTER: I have been apprised of the proposed amendment, and it meets with my approval, and I will support it.

MR. STEVENS: Then I would vote against this amendment with the idea of voting for the Prettie amendment.

CHAIRMAN DeVRIES: Delegate Heideman.

MR. HEIDEMAN: Mr. Chairman, fellow delegates, I first wish to say that I am heartily in accord with the objectives herein set forth. It just seemed to me that we were again faced with this question of what tasks are we going to assign or to leave to the legislature. Are we going to continue to write constitutional statutes, in effect, or are we going to try to write a constitution and leave the statutes to the legislature? So it is on that principle and not on the basis of trying to be against something here that I spoke. Thank you.

CHAIRMAN DeVRIES: Delegate Dehnke.

MR. DEHNKE: Mr. Chairman and delegates, the discussion we have just heard between Delegates Allen and Hanna points up the sort of difficulty that we are bound to get into if we undertake to put statutory requirements into a constitutional provision.

I do not live in an area personally that is interested in problems of this kind, but I do know those problems exist, and it is for that reason that I am willing to support the adoption of the first sentence of section b, but to go beyond that brings us into the field of legislation, and we have only touched upon the number of problems that can be raised in that connection. I was hoping that when the amendment to strike out all of section b was withdrawn and the present amendment was presented, the advocates of this type of constitutional provision would be satisfied. I think that is as far as they ought to expect the committee to go, to not only give the legislature power to set up such a statute, but section b places a duty upon the legislature to set up such a statute.

I have no objection to including the final paragraph, but I think it would be a mistake to include in a constitutional provision the specifications listed from 1 to 5. The question might even be raised that the legislature has no power to impose any other conditions except those set forth. Thank you.

CHAIRMAN DeVRIES: Was the gentleman from Midland, Delegate Rood, seeking recognition on the amendment? Delegate Rood.

MR. ROOD: Mr. Chairman, members of the committee, I think what we are doing here demonstrates graphically the impossibility of attempting to amend on the floor of this committee a matter as important as the one we are now dealing with. I am in favor of what is being attempted here in this committee proposal. However, I feel that the matter is so important that it deserves further consideration.

For that reason, and well knowing that the committee may not appreciate my making this motion, I am going to move that this proposal be passed until a time certain. Now, there is nothing magical about the time I am going to suggest, but I am going to suggest that it be passed until Monday at 4:00 o'clock.

CHAIRMAN DeVRIES: Delegate Rood moves that Committee Proposal 88 be passed until next Monday at 4:00 p.m. Mr. Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, I would urge that we not concur in Mr. Rood's motion. There are other amendments.

The fact of the matter is, Mr. Chairman, I now move that the committee rise.

CHAIRMAN DeVRIES: The question is on the motion of Delegate Elliott that the committee of the whole do now rise. As many as are in favor will say aye. As many as are opposed will say no.

The motion prevails and the committee will rise.

[Whereupon, the committee of the whole having risen, President Nisbet resumed the Chair.]

PRESIDENT NISBET: The Chair recognizes Mr. DeVries.

MR. DeVRIES: Mr. President, the committee of the whole has had under consideration certain items on which the secretary will give a detailed report.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 88**, A proposal pertaining to metropolitan areas; has considered several amendments thereto; has come to no final resolution thereon. This completes the report of the committee of the whole.

We have some announcements and requests, Mr. President.

PRESIDENT NISBET: Announcements.

SECRETARY CHASE: First of all, the apples recently furnished were by Mr. Burton Richards. (applause)

Mr. Arthur Elliott requests that the committee on local government meet at 11:45 in room A.

The subcommittee on eminent domain will meet in room G after the morning session. Mr. Paul Mahinske, subcommittee chairman.

The committee on administration will meet at 1:45 for the committee photograph.

The secretary has noticed some difficulty on the part of some of the delegates in adjusting the height of these microphones. Under the platform there is this little black collar. If you will use that, that will lower or raise it without difficulty.

We have the following requests for leave: Mr. Gust requests to be excused from tomorrow's session; and Mr. Goebel wishes to be excused from tomorrow's session to attend a meeting of the board of regents of the University of Michigan.

PRESIDENT NISBET: Without objection, the requests will be granted.

Further announcements, Mr. Chase?

SECRETARY CHASE: That is all, Mr. President.

PRESIDENT NISBET: Mrs. Conklin.

MRS. CONKLIN: Mr. President, I just want to ask a point of information. On Tuesday the administration committee submitted their report on the post convention expense of the post convention committee. It was put over until Wednesday at 2:00. What do we do with it?

PRESIDENT NISBET: Mr. DeVries, would you like to comment on it?

MR. DeVRIES: Mr. President, I move that **Resolution 70** be laid over until tomorrow afternoon at 2:00 o'clock. (laughter)

PRESIDENT NISBET: The question is on the motion of Mr. DeVries. Those in favor say aye. Those opposed, no.

The motion prevails. Mr. Iverson.

MR. IVERSON: Mr. President, I move we recess until 2:00 o'clock.

PRESIDENT NISBET: The question is on recess. Those in favor say aye. Opposed, no.

The motion prevails. We are recessed until 2:00 o'clock.

[Whereupon, at 11:40 o'clock a.m., the convention recessed; and at 2:00 o'clock p.m., reconvened.]

The convention will please come to order.

SECRETARY CHASE: Mr. President, a quorum of the convention is present.

PRESIDENT NISBET: We are now on the order of **general orders.** The Chair recognizes Dr. DeVries.

MR. DeVRIES: Mr. President, I move that the convention resolve itself into committee of the whole for the consideration of certain items on the order of general orders.

PRESIDENT NISBET: The question is on the motion of Mr. DeVries. Those in favor say aye. Opposed, no.

The motion prevails. Mr. DeVries.

[Whereupon, Mr. DeVries assumed the Chair to preside as chairman of the **committee of the whole.**]

CHAIRMAN DeVRIES: The committee of the whole will come to order.

When last the committee met, it was considering an amendment offered by Delegates McAllister and Leppien to section b of **Committee Proposal 88.** A division vote had been requested and supported. The Chair recognizes the chairman of the committee, Delegate Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, I would yield to Mr. Prettie.

CHAIRMAN DeVRIES: Delegate Elliott yields to Delegate Prettie.

MR. PRETTIE: Mr. Chairman, I request that the pending amendment of Messrs. McAllister and Leppien be revised by reinserting the language of Committee Proposal 88 appearing on page 2, lines 21 to 27.

CHAIRMAN DeVRIES: The secretary will read the revision.

SECRETARY CHASE: Mr. Prettie requests a revision of the amendment offered by Messrs. McAllister and Leppien, which amendment is:

1. Amend page 1, line 20, after "government.", by striking out the balance of the committee proposal.

Mr. Prettie requests the amendment be revised to read as follows:

1. Amend page 1, line 20, after "government.", by striking out the balance of the line and all of lines 21, 22 and 23; and on page 2, by striking out lines 1 through 20, inclusive; so section b would be left in the following form:

> Sec. b. The legislature shall provide by general law for the exercise of local government by 2 or more counties, cities, villages, townships or districts, or any combination of 2 or more of such units of local government.

With the revision, the rest of the section would be deleted down to line 21 on page 2, which reads:

> Any other provision of this constitution notwithstanding, an officer or employee of any of said units of government or subdivision or agency thereof may serve on or with any governmental body established for the above purposes and shall not be required to relinquish his office or employment by reason of such service.

CHAIRMAN DeVRIES: The question before the committee is the Prettie revision to the McAllister and Leppien amendment. Does the gentleman from Hillsdale desire recognition?

MR. PRETTIE: No, thank you, sir.

CHAIRMAN DeVRIES: Delegate Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, I yield to Mr. Leppien.

MR. LEPPIEN: I accept the Prettie revision to the amendment.

CHAIRMAN DeVRIES: Delegate McAllister?

MR. McALLISTER: I accept the Prettie revision.

CHAIRMAN DeVRIES: Delegate Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, I would, for all the reasons given before, urge the defeat of this amendment. I yield to Mr. Tweedie.

CHAIRMAN DeVRIES: Delegate Elliott yields to the gentleman from Port Huron, Delegate Tweedie.

MR. TWEEDIE: Mr. Chairman and members of the committee, our committee on local government didn't make a whole lot of changes and additions to the article because we didn't feel it was needed in most areas. However, this was one area where we felt there could be a real contribution and a real step forward in local government. I think everything we mentioned here was important. I don't think any of it should be eliminated. The committee was unanimous in its approval of this, and it is an area which is largely unexplored in this country. And I would oppose any amendments that would cut out any part of this proposal as it now stands before the com-

mittee, and I recommend that we adopt this just as it is, with any small changes in wording left up to style and drafting.

CHAIRMAN DeVRIES: Delegate Sleder.

MR. SLEDER: Mr. Chairman and fellow delegates, I should address a few remarks to the people who are non-lawyers. As I don't talk in terms of attorneys, I should like to address a few remarks to people who have come to this convention in the same manner in which I did. I feel that I represent the regular cross section of the twenty-seventh senatorial district. When I came to this convention, I felt, as we all felt, there were certain areas in this state government that needed improvement, and 1 of these was local government, and the 2 areas in local government that especially were in trouble were the metropolitan government and the counties.

Therefore, in our hearings that we held in local government, these items proved to be correct, and we have tried to correct these 2 items in Committee Proposal 88, which we are now considering, and the county one in Committee Proposal 89 which will be the next item on the agenda. In order to correct the problems in the metropolitan areas, which I think we all feel we want to correct and improve, we must take a new concept of that type of government, and this proposal sets out a new form, and when we set out a new form, our language must be new. We cannot draw upon any language that is in the existing constitution.

I realize that, as lawyers, when we do write new language, it is tested and it probably will be tested in the courts. However, if we are to move this state ahead as we as delegates of this state want to do, if we want to correct the problems which are facing this state, we must face up to them right here and right now, and as soon as we start taking away the strength of Committee Proposal 88, we are not facing up to the problems which we face here today in the state of Michigan.

I therefore urge every delegate to seriously consider the proposal that was made by the committee, Committee Proposal 88, and that they defeat every amendment that is placed before this committee relative to changing this proposal because, fellow delegates, we as a state must move. We must correct the troubles we are having in our metropolitan areas, and there is only one way we can do it and that is to go forward. The criticism, of course, is that some of this is legislative; it is new. Yes, it is new, so therefore we feel we have to lead the way. We placed things back into the constitution — civil service. That is purely legislative. It has been there already. We could have left that to the legislature; but no, we placed it back in the constitution. And here is an area where we must go ahead. We must lead the way for the legislature and all the people of the state of Michigan, and to do that, we must adopt this proposal, Committee Proposal 88. Thank you.

CHAIRMAN DeVRIES: Delegate Elliott.

MR. A. G. ELLIOTT: I would yield to Mrs. Cushman.

CHAIRMAN DeVRIES: Delegate Elliott yields to the lady from Dearborn, Delegate Cushman.

MRS. CUSHMAN: Mr. Chairman and delegates, one interesting thing about this is the fact that metropolitan government is not completely new. Many governments have already taken steps in this direction, but the steps that they have taken have merely indicated to them that there is need for something more in the constitution to help them out.

I would like to mention a couple of things along the line of attempts to meet the metropolitan problem. For example, we have the city of Detroit which now, as I think you probably are well aware, provides water for a considerable area outside the city of Detroit. This is an attempt to meet the metropolitan problem. But they run into some problems of financing in this area that they would feel that we could solve if we had a strong metropolitan government section in the constitution. We might point out too that the city of Detroit and the county of Wayne got together on this office building. Now here is another example where I guess they ran into some considerable financing problems on this in trying to work out some sort of a joint project and finance it adequately.

The intercounty supervisors committee is composed of representatives of the board of supervisors of 6 counties in southeastern Michigan, and they have done an outstanding job, as I think many people agree. However, their hands are comparatively tied when it comes to certain areas of taking action on the things that they have worked out. And also you have this Huron river situation where I think you had something like 8 counties or 4 counties, 8 townships and 12 cities and villages or something of the sort combining to try to make the Huron river valley a better valley, a planned economy in terms of the use of that water for recreation and for other purposes throughout that area. They did a fine job of planning, but when it came to taking action, they found themselves tremendously handicapped. In fact, they were prohibited under the constitution. And here again they feel that a strong metropolitan government section is something that is necessary in order to enable them to move ahead in these various areas. Thank you.

CHAIRMAN DeVRIES: Delegate Sharpe.

MR. SHARPE: Mr. Chairman, Mr. Elliott, when I ran for this office as a constitutional convention delegate, I knew that Livingston and Shiawassee counties had some problems, and I knew that Burns and Osceola townships had problems, but I didn't consider the problems that Wayne county might have had or that Taylor township might have had. As a matter of fact, I am not so sure that I was much interested in their problems as long as they didn't come out and mess up Livingston and Shiawassee counties. (laughter) Since I have been here, I am surprised at all the problems that everyone has, and you know you all have problems within your own territory.

I am not so sure that all this language is copacetic. I don't know. I am not an attorney. There are some things that might not be exactly what they should be. However, I believe that style and drafting can take care of this sort of a thing. Knowing Mr. Hutchinson is on the style and drafting committee, I am sure he will.

But I want to relate to you some of the troubles that they do have in the metropolitan area in relation to bus lines, sewers, water, park and recreation. This Detroit city has made an extensive study on a water development program with sewerage development where they have projected themselves out into the future, where there is a high possibility that one of these days they will be piping water out into Livingston county as far as Brighton and out into Ingham county as far as Stockbridge, and picking up raw sewerage and taking it back into the city of Detroit. Now, those of you that have not done your home work, if you will get out one of these maps that I didn't have a chance to unfold and take a look at the water development program that the city of Detroit has projected for the metropolitan area, you will see that they have gone a long ways out of their city and into the townships of many counties outlying Wayne county.

And I believe that this sort of a section that we have written into this constitution, or are attempting to write into it, would meet the demand of the metropolitan area which extends around Detroit. I am real conservative, as most of you know. When I came here, I thought I might be a little liberal, but I found out that I am ultra conservative, (laughter) and I believe that if we would just pass this Committee Proposal 88 through and wait for the second reading on it, after style and drafting have dotted the i's, that probably we will come up with something that we can all live with. And I would urge your support of Committee Proposal 88.

CHAIRMAN DeVRIES: Is there objection to incorporating the Prettie revision into the language of the amendment offered by Delegates McAllister and Leppien in that the sponsors have already accepted the amendment? I hear none. The question before the committee is on the adoption of the amendment offered by Delegates McAllister and Leppien as revised. The Chair recognizes Delegate Downs.

MR. DOWNS: I would like to speak in favor of the original committee report that came out of the committee. I believe that while it could be stronger in some ways, it is a definite step in the right direction. Metropolitan government is an important problem and I believe the language that some say is statutory in nature at least can serve as a mandate to the legislature and give the legislature needed

guidance as to what was wanted. I do not see this as a limitation on the legislature, because in no place does it say these are the only powers the legislature can exercise. I therefore support the committee report.

CHAIRMAN DeVRIES: Delegate Pellow.

MR. PELLOW: Ladies and gentlemen of this committee of the whole, I have a couple of questions that I would like to ask at this time, and in preface to that, while I don't have any objection to the people from Oakland and Kent and Wayne county and so forth shaping their own affairs in the future, I am wondering whether or not this language in this proposed Committee Proposal 88 does away with the requirement of elected officials, and I would like first an answer on that particular question, especially with reference to the fact as to whether or not the legislature may state that everyone shall be appointed.

CHAIRMAN DeVRIES: Delegate Pellow yields to Delegate Elliott.

MR. A. G. ELLIOTT: No.

MR. PELLOW: In other words, am I correct in assuming then, sir, for the purposes of the record, that every prosecutor, every sheriff, every clerk, every treasurer, every register of deeds will be elected by the people, and the people will have an opportunity to go to the polls to vote for the elected officials?

MR. A. G. ELLIOTT: Mr. Chairman, I can't do that one quite as shortly. This proposal in no way affects that particular provision and the provisions of the constitution which you refer to, so I think that the answer that I gave you originally is correct. You will have to interpret it from there.

MR. PELLOW: Thank you. In other words, everyone will be elected. Now, that is a very basic premise, and I appreciate the fact that the chairman of the local government committee stated that every officer that is now elected shall be elected in the future regardless of any action of the legislature. (laughter)

MR. BINKOWSKI: Mr. Chairman, point of order.

CHAIRMAN DeVRIES: What is your point of order?

MR. BINKOWSKI: I think, Mr. Pellow, that we are now on county home rule.

MR. PELLOW: Yes, sir, we are, Mr. Binkowski. Whether you realize it or not, we are talking about metropolitan Wayne county. But I am assuming what is going to happen to the outstate areas and I have a definite concern in that. That is why I raise this issue at this time.

Now, regarding page 2, section b, since everyone will be elected by the people as far as page 1 goes, I am questioning whether or not the committee has taken into consideration the fact that no party that may have an interest in contracts, no party that may be an employee of a large industrial concern will obtain a position not only on the board of supervisors, but on one of these agencies, and by the use of his influence obtain favorable contracts for his concern. Was that particular section gone over by the committee on local government? I know there are many cases citing the fact that an individual shall not be directly concerned with profits either directly or indirectly in any capacity when he represents the people, and I would suggest that this particular language seems to open the door to individuals obtaining positions in various governmental units who can adequately protect in the future their own particular needs.

MR. A. G. ELLIOTT: Mr. Chairman, Mr. Pellow, we feel that there is adequate protection for the people, and that the provisions of this last paragraph are provisions which are needed to give efficient operation of those combined services if they are shared by various communities.

MR. PELLOW: In other words, an individual may serve perhaps as an insurance agent and so forth, and then allow his company to sell insurance to the government; may have perhaps a factory and sell cars, or may do many other individual things that he gets upon a particular agency or unit of government; is that correct, sir?

MR. A. G. ELLIOTT: Mr. Chairman, Mr. Pellow, it is not correct.

CHAIRMAN DeVRIES: The question before the committee is the adoption of the amendment to section b. Delegate Elliott.

MR. A. G. ELLIOTT: I think we are not on the amendment right now, except that Mr. Pellow is in that last paragraph, and maybe I can resolve it rather quickly. The language says "an officer or employee of any of said units of government," which means that he is serving as an elected official or as an employee "may serve on or with any governmental body established." It doesn't say that he can do business with them privately. It merely says that he can serve on that body. And the purpose of it is, as you can well see, to give the talent of the various administrative officers or elected officials that are needed to an organization or a unit which is going to combine many different units of government.

MR. PELLOW: One more question then. In other words, the intent of this section is absolutely not to open the door to authorize one to do business with a unit of government?

MR. A. G. ELLIOTT: Mr. Chairman, Mr. Pellow, there was no such intent.

MR. PELLOW: Thank you.

CHAIRMAN DeVRIES: Delegate Heideman.

MR. HEIDEMAN: If there ever was a time when I would like to be able to vote 2 ways, this is it. As between my desire to write only constitutional language into the constitution and the very cogent eloquent arguments in favor of this modernization, I would like to read from a poem here, At Sea In Storm:

> What are all the storms of the sea beside the storm in the human breast,
> The whining of tackle and straining of mast
> Beside that voice that gives no rest?
> Not all the sea's wonders can be compared
> With these that wake and these that sleep,
> With these that live and these that die in your soul's unfathomed deep.

This happened to be from a collection of poems written by my sister.

And I am in the position where I am going to see conversion by voting for the committee and contrary to what I said before, although I still believe in the principle.

CHAIRMAN DeVRIES: Delegate McAllister.

MR. McALLISTER: It is a little difficult, Mr. Chairman and delegates, to reconcile the position of the committee with the position they took this morning. Mr. Elliott stated that the legislature can modify this; that the committee report was confusing; that something had to be done about it. I think that idea was expressed also by Mr. Allen and others. And now after lunch here, we have a position where no part of the document is to be changed. They have indicated that style and drafting can take care of any errors that appear in the committee report. We have already heard from the chairman of style and drafting, and if my memory serves me correctly, style and drafting can't change the wording in this particular proposal. The proposal would be substantially the same except to correct grammatical errors or something of that type.

There is no question here but what the amendment presently before the committee will give the legislature adequate authority to set up what is desired, and the position of the opposition here on this matter is strictly that they want this mandatory language in the constitution which in effect is a blank check to be endorsed by those who operate under this for any amount they want. And it seems to me it is about time that we should take into consideration the word "economy" in its strictest sense. It seems that time after time, in fact in over 4 months in this convention, the word "economy" as it is generally understood is a forgotten word.

I feel that the amendment before the committee is sound. It gives all the power that is needed. And why we wish to put this matter in such shape that it is mandatory for the legislature to do these things, I can't understand.

I might say that this certainly is not a lawyer's amendment. All the lawyers should be for the original committee report

if they are interested in it from a financial standpoint because we would probably be writing the next constitution before the language, which is so broad that it can encompass almost anything, will be interpreted by the court and I, as a lawyer, don't want to earn my money in that way. There is lots of business and we don't need to create something like this to create legal business.

CHAIRMAN DeVRIES: Delegate Brown.

MR. G. E. BROWN: Mr. Chairman, members of the committee, I think that we should attempt to analayze the arguments both pro and con on this issue and determine just exactly what the proposal purports to do. I think that what it does is that it unequivocally provides constitutional authority for legislative implementation where that authority may at present be doubtful at least. I assume from the conversations and the arguments that took place this morning that the committee has no great brief for the particular language that is presently in their proposal, that it will permit changing of the form, certainly, and changing of the particular words used. This I have always understood to be a proper function of the committee on style and drafting, and I assume it can be done here. I, for instance, have many objections to some of the language myself. I notice that it starts off in the very first and says "A proposal pertaining to metropolitan areas."

I think that section b is very interesting from my standpoint, because there are many areas where rural units of government, so to speak, could combine together and perform functions much more efficiently and much more advantageously than they presently can under the somewhat doubtful constitutional basis for legislation in this field, and consequently no legislation has resulted therefrom.

I hope that a mere matter of language and the fact that as presently drafted it might lead to serious problems insofar as judicial interpretation is concerned, that these arguments will not be posed at this time but can be raised, if they are still apropos, when this comes back for second reading.

I would therefore urge support of the committee proposal as it now stands, with the idea that if the language is still as subject to as many judicial interpretations as Mr. McAllister and others say it would be, that this will be raised at that second reading and not at this time, that we may move on to the other provisions of the local government committee's proposal.

CHAIRMAN DeVRIES: The question before the committee of the whole is the adoption of the amendment offered by Delegates McAllister and Leppien as revised by Delegate Prettie to section b of Committee Proposal 88. A division vote has been requested and supported. As many as are in favor of the amendment will vote aye. As many as are opposed will vote no. The secretary will lock the machine and tally the vote. The secretary will announce the vote.

SECRETARY CHASE: On the adoption of the amendment offered by Messrs. McAllister and Leppien, the yeas are 29; the nays are 95.

CHAIRMAN DeVRIES: The amendment, as revised, is not adopted. Are there any further amendments to section b of Committee Proposal 88?

SECRETARY CHASE: Mr. Hoxie offers the following amendment:

1. Amend page 1, line 23, after "another" by striking out "or with the state"; and on page 2, line 7, after "another" by striking out "or with the state"; so that the language in each case would read on page 1, item 1, "To enter into contractual undertakings or agreements with one another or with any combination thereof for the joint administration of any of the functions or powers. . . ."; and item 2, "To share the costs and responsibilities of functions and services with one another or with any combination thereof. . . ."

CHAIRMAN DeVRIES: The question is on the Hoxie amendment. The Chair recognizes the gentleman from St. Louis, Delegate Hoxie.

MR. HOXIE: Mr. Chairman, fellow delegates, I believe Mr. Upton has some identical amendments. It is our desire that they be joined, and I would like to yield to Mr. Upton.

CHAIRMAN DeVRIES: Delegate Hoxie yields to Delegate Upton.

MR. UPTON: Mr. Chairman, delegates, in reviewing the language of this committee proposal, I thought there had been much discussion already this morning of the part the state shall play in such developments. I personally feel that the state should be restricted in participating in such metropolitan organizations, or counties or townships working as a team. Therefore, I think the committee of the whole at this time should make its decision as to what part we want the state to play in this type of work.

And so I join with Mr. Hoxie in promoting this amendment.

CHAIRMAN DeVRIES: Without objection, Delegate Upton's amendment will be withdrawn and he will be added as a cosponsor with Delegate Hoxie to the amendment.

I hear no objection, it is so ordered.

The Chair recognizes Delegate Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, I yield to Mr. Allen.

CHAIRMAN DeVRIES: Delegate Elliott yields to Delegate Allen.

MR. ALLEN: Mr. Chairman, first let me say that I think Mr. Hoxie's amendment stems from the fact that he is worried about the internal improvement section of the constitution under article X. And as I stated this morning and others have stated, this grants no further power to the state than the power that otherwise in this constitution the state possesses, so there is no grant of power. We don't have to worry in that regard.

Secondly, there are many things that the state can do which are not related to internal improvements. And remember, what we are doing is drawing a document for 50 years. Now, we know that under this proposal there is nothing compulsory about making the state enter into any sort of arrangement with a local unit of government. It is entirely voluntary. It is up to the legislature in fields where the state has the authority.

Now, the state can't come in where it doesn't have the authority. But should we say today that we are going to shut out the state for the next 50 years? I think it is a good idea to have the state mentioned here in order that the state may work with local units in areas where the state might want to do it and where it might be very desirable to do it.

President Eisenhower came down here and he talked about strengthening state government. You aren't going to strengthen state government if you tie it up and say that they can't work with local units of government. If you say this, you are eventually going to be driven to go to Washington a lot sooner than you do now.

It seems to me this is a device where, within the powers which the constitution grants, first of all, the state may, if the legislature wishes — and I think there will be places where it does wish to do so — cooperate with local units of government. I think it would be a lot less expensive to the state in some fields to do it this way, because your local units of government may say: "Well, we don't have enough power to do it alone. We want some more money, some more earmarking, some more escrow funds, or we want you, the state, to do this alone rather than us sharing ½ or 2/3 or ¾ — or whatever it may be — of the costs." So I don't think now we should shut the state out, and we have the legislature as the regulator.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Schoolcraft, Delegate Brown.

MR. G. E. BROWN: Mr. Chairman, members of the committee, I would like to address a question to Mr. Hoxie through the Chair. That is, I am referring back to Committee Proposal 101, which was reported out by your committee, and in the very first section of that proposal, you refer to "The state shall not be a party to or be interested in any work of internal improvement, nor engage and carry on any such work except . . . ." and under (1) you have "in the development, improvement or control of, or aiding in the development, improvement and control of public roads, harbors," and so on. Now, my question is: what other local unit of government

other than those mentioned in Committee Proposal 88 would the state be aiding?

It seems to me that you by your very committee report have contemplated that in some areas the state will have to aid. Of course, this will be subject to a legislative enactment, so there will not be participation under Committee Proposal 88 that will not be permitted under Committee Proposal 101.

CHAIRMAN DeVRIES: Delegate Hoxie.

MR. HOXIE: Mr. Chairman, fellow delegates, Committee Proposal 101 deals with the state engaging in internal improvements. The first sentence of our present constitution prohibits the state from engaging in internal improvements. Those 4 subsections are exceptions. They are the type of internal improvement which was felt, in the adoption of the constitution before, to be of such statewide interest that there could be or should be exceptions in those fields: roads, airports, waterways and things of that nature.

Then, on the new language which the committee adopted and reported to the floor, we did allow local units of government to engage in other types of internal improvement at the local level at their own expense. That is the difference between our proposal as we submitted it to the floor and Committee Proposal 88, which clearly, according to the opinion of our research people and under the language that they have there now, by legislative act could involve the people of the state of Michigan helping to finance at the local level certain types of internal improvement that do not relate to the state of Michigan as a whole.

MR. G. E. BROWN: Mr. Hoxie, then are you saying that in Committee Proposal 88, this would authorize, in a sense, activities on behalf of the state; that the state could aid in the doing of these things under 88 which would be precluded under 101?

MR. HOXIE: Perhaps I did not make myself clear. Under Committee Proposal 88, the state of Michigan by legislative act could become financially involved in projects at the local level. Under Committee Proposal 101, the state could not become involved in projects at the local level, with the exception of such involvement being at their own expense.

Now, the problem we ran into — and perhaps this might clear it up — is that local units of government, because they are instrumentalities of the state, could not do anything that the state couldn't do. So as a result of that reasoning, we did have the additional paragraph in new language which would clearly spell out that local units of government could engage in those types of internal improvement at their own expense in which the state could not become involved.

Now, under this Committee Proposal 88, the state can become financially involved in carrying on all those types of programs that they are now prohibited from but which would be permissive under Committee Proposal 101. Do I make myself clear?

MR. G. E. BROWN: Well, I am not sure that you do, Mr. Hoxie. It seems to me that you were saying that 88 is so broad as to permit activity by the state which would be precluded by strict interpretation of 101.

Now, I can't believe that that is the interpretation that would ever be given to Committee Proposal 88. In each case you will notice it says "which each unit of government would have the power to perform separately." Now, if 101 would limit the legislature from participating in many of these things, they could not participate in these programs under 88, I would assume, and this is the only logical interpretation you can give to it, I believe.

MR. HOXIE: I think there is a little misunderstanding there, Mr. Brown. I think it is 2 different concepts. In 88 the concept is that the state may help finance projects at the local level. In 101 we recognize the problem of government at the local level or a combination of cities, counties, and whatnot, and we remove that restriction which under the court decisions have determined that being instrumentalities of the state, they would be prohibited from engaging in those other types of activity.

But with the new language in 101, that would give them the complete authority to engage in the type of activities indicated in 88, but the difference is, Mr. Brown, that it would be at the local unit's expense. And if you read the language in section b on the amendment relating to that section, I think you will clearly see that the state, as indicated by the opinion I quoted this morning, could become financially involved in the projects of local units of government, which I do not think is desirable.

CHAIRMAN DeVRIES: The question before the committee of the whole is the amendment offered by Delegates Hoxie and Upton to section b. As many as are in favor of the amendment —

MR. HOXIE: Division, please.

CHAIRMAN DeVRIES: Delegate Hoxie requests a division. Is there support for a division vote? There is sufficient support for a division vote. The question now is the adoption of the Hoxie-Upton amendment to section b, and the secretary will read the amendment.

SECRETARY CHASE: The amendment is:

[The amendment was again read by the secretary. For text, see above, page 1082.]

MR. HOXIE: Will you have the section with the amendments read now?

SECRETARY CHASE: The language of item 1 at the bottom of page 1 would then read:

(1) To enter into contractual undertakings or agreements with one another or with any combination thereof for the joint administration of any of the functions or powers which each local unit of government would have the power to perform separately;

and item 2 with the amendment would read:

(2) To share the costs and responsibilities of functions and services with one another or with any combination thereof which each local unit of government would have the power to perform separately. . . .

CHAIRMAN DeVRIES: The question before the committee is the adoption of the Hoxie-Upton amendment. As many as are in favor will vote aye. As many as are opposed will vote no. The secretary will lock the machine and tally the vote. The secretary will announce the vote.

SECRETARY CHASE: On the Hoxie-Upton amendment, the yeas are 25; the nays are 92.

CHAIRMAN DeVRIES: The amendment is not adopted. Are there any further amendments to section b of Committee Proposal 88?

SECRETARY CHASE: Mr. King offers the following amendment:

1. Amend page 2, following line 20, by inserting a new subsection (6) to read as follows:

"(6) The purchase of public utilities or granting of public utility franchises except in the fields of heat, power and light shall be in a manner as provided by law, notwithstanding constitutional provisions to the contrary, if approved by a majority of the voters voting thereon of each unit of government to be involved.".

CHAIRMAN DeVRIES: The question before the committee is the King amendment. The Chair recognizes the gentleman from Pontiac, Delegate King.

MR. KING: Mr. Chairman, ladies and gentlemen of the committee, I think that what I am trying to accomplish here in no way weakens the fine work of the committee on local government. It has occurred to me and to several others of us that what we did in Committee Proposal 83 the other day with regard to a 3/5 majority involving utilities was perhaps a very wise thing and I supported it to the effect that 3/5 of the voters had to agree, and I still find no objection to 3/5 of the voters of each and every unit of government who want to combine having to agree in the areas of heat, light and power, because there is, so far as I know, no shortage of commercial interests available to supply these commodities, and I don't really think that the government ought to get into this area unless it is absolutely necessary.

However, I am afraid that the word "utilities" could be construed to include transportation, water and sewage disposal,

among other things, and in this area it seems to me that if 20 communities wanted to get together and form a bus line or a water system, that we would be compounding their problems by requiring this 3/5 vote in each and every individual community to such an extent that they wouldn't possibly be able to do it. I hope that this is not going to provoke extended debate because I don't think it is worthy of extended debate, but I just toss it out.

If Mr. Allen or Mr. Elliott have serious objection to it, I would just as soon withdraw it now and try to put it in at a later date. But I think perhaps we ought to give a little bit of thought to it, and I wouldn't want to offer an amendment at a time when full debate was not permitted either. So with that kind of an introduction, I will leave it to the pleasure of the committee.

CHAIRMAN DeVRIES: The Chair recognizes the chairman of the committee, Delegate Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, Mr. King, I would like to urge the delegate to withdraw the amendment at this time and allow our committee to have an opportunity to do some research in this area, and I am sure that there will be no attempt to limit debate on this. You can speak as freely as you need to at the proper time.

MR. KING: I would be happy to withdraw it.

CHAIRMAN DeVRIES: Delegate King withdraws his amendment. Are there any further amendments to section b of Committee Proposal 88?

SECRETARY CHASE: Mr. Boothby offers the following amendment:

1. Amend page 1, line 17, after "of" by inserting "services of"; and on page 2, line 12, after "thereof" by inserting "such"; so the language will read:

> Sec. b. The legislature shall provide by general law for the exercise of services of local government by 2 or more counties, cities, villages,"

and so forth and item 3 would read:

> (3) To transfer to each local unit of government or combination thereof such functions and responsibilities or both upon the consent of each unit of government involved.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Niles, Delegate Boothby.

MR. BOOTHBY: Mr. Chairman and ladies and gentlemen of the committee, I must express that I have some considerable concern concerning section b of Committee Proposal 88, for as I read this particular section, I see that the committee has proposed that

> The legislature shall provide by general law for the exercise of local government by 2 or more counties, cities, villages, townships or districts, or any combination of 2 or more of such units of local government. Under such general law such units of local government shall have power:

and skipping over to page 2, after line 11

> To transfer to each local unit of government or combination thereof functions and responsibilities or both upon the consent of each unit of government involved.

My concern is this: first of all, we have suggested that we are going to allow the transfer by the local units of government not of services but actually of the functions of those local units to another body. In other words, we are allowing a local unit of government to delegate governmental functions, and it is not limited in any regard, so it is conceivable, reasoning to its fullest extent, that a county unit of the government could delegate every single function of its government to another body and only remain a county unit in shell form. It would delegate every single function of its responsibility.

Now, let me give you an example of how I think this might come about. I could conceive that the counties of Wayne, Oakland, Macomb and Genesee might some time determine that they don't want to have a situation like in Dade county, so therefore they would create a unit, a metropolitan authority, whereby they grant every single function that they have to this unit, and this 4 county unit then would carry on the responsibility of government for these 4 units.

And let me give you some of the problems that I can conceive might develop. When you allow this particular commission to carry out the functions of a local unit of government, they could conceivably carry out the election machinery. This complex governmental unit could create a situation where they would appoint a metropolitan manager, and he might manage this authority in whatever way he deemed proper. I could conceive that the 4 county metropolitan authority might develop a police force and a police department because, you see, in this grant of power — not only grant of power but mandate, because, as Mr. Downs pointed out, this is a mandate to the legislature — you have given them a mandate to provide a system whereby these county units of government can give over every single function of government which they have save none, and this concerns me when I think about a certain situation that now exists.

In Wayne county the board of supervisors is an appointive body. That means that an appointive body may delegate every single function of governmental responsibility to another unit of government, and I think this does what our friend has suggested that he didn't want to do. He has suggested he doesn't want a Dade county system of government. But, as a matter of fact, you are giving a mandate to the state legislature to create a situation where there can be set up a unit of government which looks very suspiciously to me like a Dade county unit of government.

I think this is a very serious problem, and especially when you take into consideration all the aspects of this particular wording. When you read imprimatur of the wording which allows the unit of government to delegate every single function of their responsibility to some other body, I would urge that we give great consideration to this and not move into some new type of governmental unit without giving a great deal of thought, and I urge the adoption of this amendment.

CHAIRMAN DeVRIES: The question before the committee is the Boothby amendment to section b. Delegate Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, I yield to Mr. Allen.

CHAIRMAN DeVRIES: Delegate Elliott yields to Delegate Allen.

MR. ALLEN: Mr. Chairman, I think Mr. Boothby has invented a bogeyman here. I don't see how in his example Wayne county could delegate all of its functions under this, because to whom would it delegate them? Are they going to delegate them to Taylor township and have Taylor township do it all? Or are they going to delegate them all to Bill Suzore's town? There is nobody there that can do it. That is number 1. The number 2 point is we are talking about existing units of government: our counties, our cities, our townships, our school districts. Now, I don't know what "service functions" means. If you write a limiting term like that in and we don't know what it means, you may have made this thing ineffective. That is the second point.

And the third point is this: the legislature under a general law says that local units of government are allowed to transfer services, to share costs and to enter into contracts, but the legislature can put such limitations and restrictions on this power as it wants. And here is a protection. This is a mandate to do this, but it permits the legislature to draw conditions and limitations and restrictions, and we have to have some regulator on this because there may be townships which will want to contract with a county, and under this they can't do it unless each has the power to perform the function that they are contracting about. The legislature could turn around and give this power to the township.

I can't see any place, Mr. Boothby, in all respect to your argument, where this horrible thing that you point out could happen, first because I don't think it is practical under existing units. Secondly, the legislature can put restrictions on it. And, thirdly, after all, the board of supervisors of Wayne county does have men on it of judgment and they are elected by the people, many of them. I can't conceive of the elective bodies just saying "We are going to dump all of Wayne county over to something else." I don't know what it would be.

MR. BOOTHBY: Mr. Chairman, Mr. Allen, I would like to direct 2 or 3 questions to Mr. Allen. Perhaps he can clear this up for me.

CHAIRMAN DeVRIES: You may if the gentleman cares to answer.

MR. BOOTHBY: Mr. Allen has suggested that he could not conceive of the county of Wayne delegating its responsibility to Mr. Suzore's township, and I cannot conceive of that either. I am wondering, however, if the county of Wayne might delegate its responsibility to a 4 county complex under the wording of section b.

MR. ALLEN: Yes, I think it could, if the 4 counties would agree to do it.

MR. BOOTHBY: Mr. Chairman, Mr. Allen, as I understand the Dade county situation, it arose out of a matter where the people of the Dade county area, even though retaining their local units of government, by vote of the people created a more or less super governmental agency.

MR. ALLEN: The people of Dade county under a state law voted to set up what was called a metropolitan, extremely strong, county government in which functions by charter were taken away from each of the existing districts.

MR. BOOTHBY: Mr. Chairman and Mr. Allen, under the wording of this provision whereby any unit can delegate all of its functions conceivably to a complex governmental unit, as you have suggested it could, could not then they create a situation looking very similar to Dade county?

MR. ALLEN: I don't think so. I think this is designed, Mr. Boothby, to stop it. On the Dade county situation, in a countywide vote, the people of the county actually voted for a charter which took many of the powers that the cities had in unincorporated territory — because I don't think they have townships in Florida — away and gave it to this sort of fourth layer of government.

Under the arrangement which we have proposed here, you are going to have to have every elected person on the board of supervisors — and I know from experience and I think you do too that elected members aren't going to lightly shed their responsibilities — approving of any transfer of service.

This is designed to allow, for example, a city — we can already do it, but it is a good example — to transfer our health functions to the county, and the county will take it on. It would allow a township to transfer a service to a county if the county wanted to do it, or theoretically a county to transfer to a township. If we don't provide this flexibility, I don't know where we are going to go, and if there is going to be an abuse of it, the legislature is allowed to step in and make limitations.

MR. BOOTHBY: Mr. Chairman, Mr. Allen, doesn't this provision in fact go further than what was provided for in Dade county, in that in Dade county the state law gave the right to the people to decide whether they were going into a complex metropolitan authority, where in effect this provision allows for certain representatives of the people, some of which are appointed, to go into this type of an authority?

MR. ALLEN: No. I think as a practical matter that the Dade county situation was easier to do, because it was a general vote of the area, and the large city of Miami could outvote the other units.

Here each unit would stand on its own with its own elected representative.

CHAIRMAN DeVRIES: Will the gentleman from Niles yield to the gentleman from Schoolcraft, Delegate Brown?

MR. BOOTHBY: Yes, I will, Mr. Chairman.

CHAIRMAN DeVRIES: Delegate Brown.

MR. G. E. BROWN: I rise to oppose the Boothby amendment because by the addition of the words "services of" as he has proposed, the substantial merit of the proposition, as I see it, from a particular area, especially the more rural areas, would do away with the possibility of smaller townships combining together to exercise police powers which are administrative in nature and not service in nature. This is where I see much of the benefit in a proposal of this nature such as in zoning, platting and what have you.

CHAIRMAN DeVRIES: Delegate Boothby.

MR. BOOTHBY: I would like to suggest that this particular proposal which we have before us does provide a machinery whereby we can create a situation such as Dade county. I don't know that we will, but they did it in one state.

I would feel very constrained to answer one argument which Mr. Allen has set out, and that is that the elected representatives would not delegate their responsibilities, and so this is a check upon such a system developing. Actually, in Dade county those officials didn't give up, many of them, their jobs and their salaries. All they did was to create another agency and give another agency an additional position in this particular area, so what they did was just to create another governmental body.

I feel that the amendment should be adopted and I urge its adoption by this body.

CHAIRMAN DeVRIES: The question before the committee is the Boothby amendment. The Chair recognizes Delegate Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, members of the committee, there are distinct differences here, and the first one is that in any law that the legislature may adopt, any restrictions that they desire to make can be made. The Dade county situation is not comparable in many respects, and I think Mr. Allen has made those eminently clear.

I would urge the defeat of the amendment.

CHAIRMAN DeVRIES: Will Delegate Elliott yield to the gentleman from Garden City, Mr. Brown?

MR. A. G. ELLIOTT: I will on that particular issue.

CHAIRMAN DeVRIES: Delegate Brown.

MR. T. S. BROWN: I just wanted to say in reference to Mr. Boothby's fear that I think it is ill founded, because it flies in the face of a universal law of nature. This universal law is that all organisms tend to perpetuate and aggrandize themselves. This is true when you are talking about one celled amoebas; and when you get into a complicated organism called the local politician, this particular organism is not likely to dissipate his particular power. As a matter of fact, he is going to try to aggrandize it. So you are not going to run into the dangerous situation of local units of government controlled by local politicians disseminating their power and diffusing it by pledging all of their responsibility and loyalty to some super form of government.

CHAIRMAN DeVRIES: Delegate Boothby.

MR. BOOTHBY: Mr. Chairman and Mr. Elliott, you have suggested, as I understand it, that the legislature can place on restrictions so that we won't run into a Dade county situation. But again I call the attention of the members of this committee to the fact that this is a mandatory provision, as Mr. Downs has pointed out, and the mandatory provision is very clear. It doesn't give any discretion as to what the legislature shall do in certain areas. It says that they shall have power to transfer to each local unit of government or combination thereof functions or responsibilities or both upon the consent of each unit of government involved, and when it refers to the types of units, you will note back on lines 18 and 19 that it refers to counties, cities, villages, townships or districts, or combinations thereof.

Now, in reply to Mr. Brown, he has cited a law of nature where people tend to stay in power. I am going to cite a law of government which I believe is universally true: that all governments tend to become more centralized and that governments tend to increase their power and authority as time goes on, and this is what I am worried about.

CHAIRMAN DeVRIES: Delegate Hodges.

MR. HODGES: I would just merely suggest that Mr. Boothby reserve his concern for the metropolitan areas when it comes to apportionment, and let us have the powers that we need at this time to do a job.

CHAIRMAN DeVRIES: The question before the committee is the amendment offered by Delegate Boothby to section b. As many as are in favor of the amendment will say aye.

MR. BOOTHBY: Division.

CHAIRMAN DeVRIES: Delegate Boothby requests a division vote. Is there support for a division? There is support. All those in favor of the amendment offered by Delegate Boothby to section b will vote aye. All those opposed will vote no.

The secretary will read the amendment.

SECRETARY CHASE: The amendment is:

[The amendment was again read by the secretary. For text, see above, page 1084.]

CHAIRMAN DeVRIES: The secretary will lock the machine and tally the vote.

MR. GADOLA: Mr. Chairman.

CHAIRMAN DeVRIES: For what purpose does the gentleman rise?

MR. GADOLA: For information. While he is recording the vote, I would like to have someone explain, because I am ignorant, how did Dade county get in here and what is it all about? (laughter)

CHAIRMAN DeVRIES: I wish the Chair could answer the inquiry, Delegate Gadola, but he can't. The secretary will announce the vote.

SECRETARY CHASE: On the amendment offered by Mr. Boothby, the yeas are 33; the nays are 87.

CHAIRMAN DeVRIES: The amendment is not adopted. Are there any further amendments to section b?

SECRETARY CHASE: Mr. Boothby offers the following amendment:

1. Amend page 2, line 13, by striking out "consent of" and inserting "approval of a majority of the electors voting thereon in"; so that item 3 will read:

> To transfer to each local unit of government or combination thereof functions and responsibilities or both upon the approval of a majority of the electors voting thereon in each unit of government involved.

CHAIRMAN DeVRIES: The Chair recognizes the sponsor of the amendment, Delegate Boothby.

MR. BOOTHBY: Mr. Chairman, members of the committee, this amendment would provide for the vote of the people to decide whether they are going to delegate their functions of government rather than to allow boards of supervisors or some other body to delegate this responsibility. It gives to the people the right to make the decision. I urge the adoption of this amendment.

CHAIRMAN DeVRIES: The question is on the adoption of the Boothby amendment to section b. The Chair recognizes Delegate Boothby.

MR. BOOTHBY: I was just going to ask for the yeas and nays when the matter is voted on.

CHAIRMAN DeVRIES: Delegate Boothby requests a division vote. Is the request supported?

MR. PELLOW: Mr. Chairman.

CHAIRMAN DeVRIES: Is the request supported?

MR. PELLOW: Mr. Chairman, I am seeking recognition, sir.

CHAIRMAN DeVRIES: You are out of order right now, Delegate Pellow.

Is there support for a division vote?

MR. PELLOW: What kind of a dictatorship is this when you rise to the floor and can't get the attention of the Chair?

CHAIRMAN DeVRIES: When the question of the division is settled, Delegate Pellow, the Chair will recognize you.

MR. PELLOW: Forget it.

CHAIRMAN DeVRIES: Is there support for a division vote? There is support for a division vote.

Now the Chair recognizes the gentleman from Bessemer, Delegate Pellow.

MR. PELLOW: Go ahead, run your show. We'll have ours in November.

CHAIRMAN DeVRIES: The question is on the amendment offered by Delegate Boothby to section b. A division vote has been requested. The secretary will read the amendment.

SECRETARY CHASE: The amendment is:

[The amendment was again read by the secretary. For text, see above.]

CHAIRMAN DeVRIES: The question is on the Boothby amendment. As many as are in favor will vote aye. As many as are opposed will vote no. The secretary will lock the machine and tally the vote. The secretary will announce the vote.

SECRETARY CHASE: On the adoption of the amendment offered by Mr. Boothby, the yeas are 39; the nays are 77.

CHAIRMAN DeVRIES: The amendment is not adopted. The Chair recognizes Delegate Habermehl.

MR. HABERMEHL: Mr. Allen has stated, Mr. Chairman, that there must be a regulator here and that the legislature would serve that purpose. I would like to ask the chairman of the committee or Mr. Allen where in the language adopted by the committee there would be any discretion whatsoever vested in the legislature.

CHAIRMAN DeVRIES: Delegate Allen.

MR. ALLEN: It is contemplated in the beginning under general law, and under such general law they shall have the power. It is contemplated here that the legislature can spell out the restrictions in the terms and the limitations.

MR. HABERMEHL: Mr. Chairman, Mr. Allen, except that if the legislature chooses to act, it must assign certain powers to the metropolitan authority, according to the subparagraphs. That, it would appear to me, is mandatory upon the legislature that those items must be included in the general law.

MR. ALLEN: Well, don't say "metropolitan authority," Delegate Habermehl. That is in section a. This is the existing units of government. Yes, the legislature when it passes the law must say, under any restrictions the legislature wants, that units have the right to contract, share costs, transfer services and cooperate. They can qualify it.

MR. HABERMEHL: One further question, if I may. How is it contemplated that the local units would act? By ordinance, regulation?

MR. ALLEN: By vote of their governing bodies.

MR. HABERMEHL: Not subject to referendum?

MR. ALLEN: When we discussed it, we didn't get into this point. I think that as long as this is done by the legislature, if the legislature wanted to, in certain fields if you had major transfers of power, the legislature could go ahead and put in a qualification of a vote, which would be Mr. Boothby's, but it wouldn't be a vote for every little thing under this.

MR. HABERMEHL: I am afraid that problem still concerns me rather greatly, that actually the power of the legislature here to act as a regulator has been largely taken away by the language.

CHAIRMAN DeVRIES: Are there any further amendments to section b of Committee Proposal 88?

SECRETARY CHASE: Mr. Boothby offers the following amendment:

1. Amend page 1, line 16, after "legislature" by striking out "shall" and inserting "may"; so that the language will read, "The legislature may provide by general law for the exercise of local government by 2 or more counties," and so forth.

CHAIRMAN DeVRIES: The question is on the Boothby amendment. The Chair recognizes Delegate Boothby.

MR. BOOTHBY: Mr. Chairman, I beg the indulgence of this committee. I know I have taken considerable time. This amendment would insert the word "may" where the word "shall" is now, so that it would read:

> The legislature may provide by general law for the exercise of local government by 2 or more counties, cities, villages, townships or districts, or any combination of 2 or more of such units of local government. Under such general law such units of local government shall have power:

Then they must provide these specific items if the legislature sees fit to act. This would be one of the regulators that we might place and give power to the legislature to exert.

I urge the adoption of this amendment.

CHAIRMAN DeVRIES: The question is on the amendment offered by Delegate Boothby to section b. Delegate Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, this would completely reverse the 4 hours of discussion or 5 hours that we have had today and the votes that have been taken. I urge the defeat of this amendment. I am sure that there are proper

protections here as have been outlined by Mr. Allen several different times.

CHAIRMAN DeVRIES: The question is on the amendment offered by Delegate Boothby to section b. The secretary will read the amendment.

SECRETARY CHASE: Mr. Boothby's amendment:

1. Amend page 1, line 16, after "legislature" by striking out "shall" and inserting "may".

MISS DONNELLY: Mr. Chairman, I request the yeas and nays.

CHAIRMAN DeVRIES: Delegate Donnelly requests a division vote. Is there support for a division vote? There is support. As many as are in favor of the Boothby amendment will vote aye. As many as are opposed will vote no. The secretary will lock the machine and tally the vote. The secretary will announce the vote.

SECRETARY CHASE: On the adoption of the amendment offered by Mr. Boothby, the yeas are 25; the nays are 86.

CHAIRMAN DeVRIES: The amendment is not adopted. Are there any further amendments to section b of Committee Proposal 88? The Chair recognizes the gentleman from Schoolcraft, Delegate Brown.

MR. G. E. BROWN: Mr. Chairman and members of the committee, I rise to a point of personal privilege. It seems to me that the vote on the previous Boothby amendment as it will appear in the action journal or in the verbatim journal of this convention very likely could be interpreted as tying the hands of the legislature and precluding the legislature from putting in any such act that, as to any aspect of the powers granted by this constitutional provision, they may not be determined by a vote of the electors. That certainly is not contemplated by me and I am sure it is not contemplated by the committee; that the legislature may see fit as to some aspect of the powers granted that this shall be by consent of the local unit of government, meaning vote of the electors rather than by resolution of the board. And I wanted to leave this to the legislature. I think this should be clearly put in, so far as my vote is concerned at least, that this was not a preempting of the idea that the legislature may put in such an act, a vote of the electors.

CHAIRMAN DeVRIES: The Chair recognizes Delegate Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, Mr. Brown, I am sure the intent of the committee was not to do that in the defeat of this amendment. We feel that within the provisions of this section, the legislature has the right to provide by general law to make whatever modifying requirements they may feel right and proper.

MR. G. E. BROWN: I was sure that this was the intent of the committee but I just wanted to make certain it was put in the record as such.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Lansing, Delegate Wanger.

MR. WANGER: Mr. Chairman, I have an amendment — I don't think it is one that should cause any controversy — which I request the secretary to read.

SECRETARY CHASE: Mr. Wanger offers the following amendment:

1. Amend page 1, line 20, after "government" by striking out the period and "Under such general law such units of local government shall have power" and inserting a semicolon and "which general law shall authorize such units of local government"; so the language will then read:

> Sec. b. The legislature shall provide by general law for the exercise of local government by 2 or more counties, cities, villages, townships or districts, or any combination of 2 or more such units of local government; which general law shall authorize such units of local government:

CHAIRMAN DeVRIES: The Chair recognizes the sponsor of the amendment, Delegate Wanger.

MR. WANGER: Mr. Chairman, members of the committee, briefly this amendment is merely to clarify an unfortunate ambiguity in the present language, and it is to bring that language into complete accord with the committee's intent as just expressed by Delegate Allen when he said that it was contemplated here that the legislature shall spell out the restrictions and limitations and so forth. But the words which are presently in this sentence, "Under such general law such units of local government shall have power," can be interpreted as automatically making all of the numbered subparagraphs self executing no matter what kind of a general law might be passed pursuant to the first sentence of the section. This would unduly restrict the legislature, and therefore I think this amendment will clear up that ambiguity.

CHAIRMAN DeVRIES: The Chair recognizes Delegate Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, I have no objection to the amendment. I think it does do what Mr. Wanger says, and we are grateful for it.

CHAIRMAN DeVRIES: The question before the committee is the Wanger amendment to section b. The secretary will read the amendment.

SECRETARY CHASE: Mr. Wanger's amendment is:

[The amendment was again read by the secretary. For text, see above.]

CHAIRMAN DeVRIES: The question is on the Wanger amendment. As many as are in favor will say aye. Opposed, no.

The amendment is adopted.

Pursuant to the motion passed by the convention this morning, the Chair will declare the committee of the whole will rise for the purpose of a 10 minute recess, and call the vice president to the Chair. Vice President Downs. (applause)

[Whereupon, the committee of the whole having risen, Vice President Downs assumed the Chair.]

VICE PRESIDENT DOWNS: The convention is in order. I think we can recess without any parliamentary problems.

We will recess for 10 minutes. No motion in order. (applause)

[Whereupon, at 3:25 o'clock p.m., in pursuance of the order previously made, the convention recessed; and, at 3:40 o'clock p.m., reconvened.]

The convention will be in order.

SECRETARY CHASE: Mr. President, a quorum of the convention is present.

VICE PRESIDENT DOWNS: The convention will resolve itself into committee of the whole with Delegate DeVries in the Chair.

[Whereupon, Mr. DeVries assumed the Chair to preside as chairman of the committee of the whole.]

CHAIRMAN DeVRIES: The committee of the whole will come to order.

Are there any other amendments to Committee Proposal 88?

SECRETARY CHASE: Mr. Habermehl has filed an amendment. Mr. Habermehl's amendment applies to the language that was in the proposal before the amendment of Mr. Wanger was adopted. It does not now apply, Mr. Habermehl.

MR. HABERMEHL: I don't know, Mr. Chase, where it would fit now, but the same language still remains in Mr. Wanger's amendment, the language "shall provide".

SECRETARY CHASE: The language now is "which general law shall authorize such units of local government:"

MR. HABERMEHL: My amendment would be directed at just before the subparagraphs where it says "such units shall have power". My amendment would strike the words "shall have" and substitute for them "may be granted power".

SECRETARY CHASE: Mr. Wanger's amendment struck out all of that language; struck out the entire language "Under such general law such units of local government shall

have power:" and inserted in lieu "which general law shall authorize such units of local government:"

MR. HABERMEHL: May I see Mr. Wanger's amendment?

Mr. Chairman, my amendment, as it would apply to the amendment of Mr. Wanger as adopted by the committee, would substitute the word "may" for the word "shall" before the word "authorize".

SECRETARY CHASE: Mr. Habermehl's amendment now is:

1. Amend page 1, line 20, after "general law" by striking out "shall" and inserting "may"; so that the language will then read, "which general law may authorize such units of local government:"

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Alpena speaking on the amendment.

MR. HABERMEHL: Mr. Chairman, I believe this would do what the committee on local government said that they want. It would give the legislature the opportunity to be the regulator to have discretionary power in this field. In view of the fact we have said that the state funds may be used in any of these projects, to then state that the legislature shall have no discretion but must provide these powers to local government actually deprives the state of any authority over the expenditure of that money.

This would simply give the legislature the power that belongs to the legislature and let them decide how it is to be expended.

CHAIRMAN DeVRIES: The Chair recognizes the chairman of the committee, Delegate Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, Delegate Habermehl, this does not conform with the committee approach to this problem, and I would urge its defeat.

CHAIRMAN DeVRIES: The question before the committee of the whole is the amendment offered by Delegate Habermehl to section b. The secretary will read the amendment.

SECRETARY CHASE: The amendment is:

[The amendment was again read by the secretary. For text, see above.]

MR. HABERMEHL: I ask a division on this, Mr. Chairman.

CHAIRMAN DeVRIES: Delegate Habermehl requests a division vote. Is the request supported? The request is supported. As many as are in favor of the Habermehl amendment will vote aye. As many as are opposed will vote no. The secretary will lock the machine and tally the vote. The secretary will announce the vote.

SECRETARY CHASE: On the adoption of the amendment offered by Mr. Habermehl, the yeas are 32; the nays are 74.

CHAIRMAN DeVRIES: The amendment is not adopted. Are there any further amendments to the body of Committee Proposal 88?

SECRETARY CHASE: Mr. Norris offers the following amendment to Committee Proposal 88 and the amendment offered by Mr. Wanger which has been agreed to:

1. Amend page 1, line 20, after "government" by inserting "among other things"; so the language will then read, "which general law shall authorize such units of local government among other things:" and going on (1) and (2) and so forth.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Detroit, Delegate Norris.

MR. NORRIS: Mr. Chairman, it was my apprehension as a result of the language that has been adopted that the legislature wouldn't have the power here, or at least it was susceptible to the argument that it might not have the power to provide for matters in addition to the entry of the various units into contractual undertakings and so forth, the 5 subparagraphs there, and to give that latitude and at the same time provide for the full implementation of that which the committee had in mind, I think that this would serve a useful purpose, particularly in light of a rule of construction whereby when you spell out things, the general idea is that you exclude other things, and I think this would serve the purpose here of guiding both the legislature and courts in the full implementation of that which the committee intended by this language.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Pleasant Ridge, Delegate Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, I have no objection to the amendment.

CHAIRMAN DeVRIES: The Chair recognizes the lady from East Grand Rapids, Delegate Judd.

MRS. JUDD: Well, I was just about to say that it seems to me we are demonstrating this afternoon a great lack of faith in the committee on style and drafting. What we are trying to do is to redraft this amendment, whereas those of us who favor it have already said that we would be willing to have the committee on style and drafting improve the verbiage.

CHAIRMAN DeVRIES: The question before the committee of the whole is the adoption of the amendment offered by Delegate Norris to section b. The secretary will read the amendment.

SECRETARY CHASE: The amendment is:

[The amendment was again read by the secretary. For text, see above.]

CHAIRMAN DeVRIES: As many as are in favor of the Norris amendment will say aye. Opposed, no.

The amendment is adopted. Are there any further amendments to the body of Committee Proposal 88? The gentleman from Taylor, Delegate Ford.

MR. FORD: Mr. Chairman, just before the recess, Mr. Allen made a suggestion that we should provide for the transfer of all the county powers in Wayne county to the township of Taylor. I conferred with my associate, Mr. Marshall, during the recess and we have decided that we would be agreeable to this if Glenn wants to make it as a motion; provided, however, that Mr. Marshall and I be the charter commission and the first office holders in the newly created kingdom. (laughter)

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Charlevoix, Delegate Shanahan.

MR. SHANAHAN: Mr. Chairman, I have a question here. On page 2, line 16, there occurs the term "intergovernmental agencies." I am just wondering what the scope of that term is. I haven't heard it discussed. I thought I had heard everything about this section, but that has not been discussed at all. I would like to know just what is intended by that term.

CHAIRMAN DeVRIES: Delegate Shanahan yields to Delegate Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, I yield to Mr. Allen.

CHAIRMAN DeVRIES: Delegate Elliott yields to Delegate Allen.

MR. ALLEN: Mr. Shanahan, supposing, for example, under this that several units get together and set up a planning body to do some planning for an overall area. This is done on a cooperative basis. This simply says that any of the existing units may jointly cooperate with this thing that is set up on a voluntary basis. In other words, it really restates what is happening in Detroit right now where existing units of government are voluntarily, on their own, cooperating with what is called the 6 county intercooperative committee.

MR. SHANAHAN: Well, I could understand that, but I was wondering if it went beyond the borders of the state of Michigan. Does it limit it to the state of Michigan or would it be possible to read into this authority to go beyond the boundaries of our state?

MR. ALLEN: It does not go beyond the boundaries of the state of Michigan. I do think there is some wisdom in the case of Detroit being able to do some things with across the water, but we didn't go that far and it is not in here.

MR. SHANAHAN: Where is it that this is limited just to the state of Michigan?

MR. ALLEN: It would have to refer in some way to a foreign government or to another government.

MR. SHANAHAN: Foreign government? You mean by that, we'll say, Canada?

MR. ALLEN: Canada, yes. This was the question which

Dr. Pollock asked me the first thing yesterday, and the answer to him was no; this didn't get into the international field.

MR. SHANAHAN: Well, does this get into the interstate field? I don't see anything in here any place yet that would limit it to the state of Michigan.

MR. ALLEN: No.

MR. SHANAHAN: Is it some place? I am not familiar with it. You have undoubtedly made a study of it.

MR. ALLEN: Well, as Mr. Downs said — and I thought the criticism of this proposal would be that it did too little rather than some people fearing that it does too much — I would say that this does not get into the interstate field, because if it did, we would have had to have mentioned other states by reference.

MR. SHANAHAN: I would like to see it tied down definitely. If I could be indulged, I would like to insert as an amendment "the state government and Michigan intergovernmental agencies" or equivalent words.

SECRETARY CHASE: Mr. Shanahan offers an amendment:

1. Amend page 2, line 16, after "and" by inserting "Michigan"; so the language will then read, "(4) Jointly to cooperate with one another and with state government and Michigan intergovernmental agencies;".

CHAIRMAN DeVRIES: The question before the committee is the adoption of the Shanahan amendment. Delegate Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, let's just stand pat for just ½ second, because I would like Mr. Allen to answer that. We are trying to get that gentleman in the back of the room all the way around there so Glenn can see a little message I sent him.

CHAIRMAN DeVRIES: Delegate Allen.

MR. ALLEN: Am I supposed to filibuster? Do I read it, Art? (laughter)

MR. A. G. ELLIOTT: It would be fine if you would.

MR. G. E. BROWN: You mean you haven't been? (laughter)

CHAIRMAN DeVRIES: Does the gentleman care to proceed?

MR. ALLEN: The note says "Intra instead of inter."

Mr. Shanahan, the only thing I would say is this: if we put in "Michigan" — and this is all right by me — since it is in the constitution, it might imply that we never could cooperate with anybody in Ohio or in Wisconsin. I don't think we want to shut that possibility out. For example, supposing that a township that borders Toledo wants to cooperate with the people in Ohio?

This section only refers to joint cooperation. There is no power involved at all in this section. And I would say that if you say "Michigan" you might imply that a township could do nothing cooperatively at all with someone across the border. I think it would be unwise.

MR. SHANAHAN: Well, I understand Mr. Allen got a note saying "intra instead of inter." I was wondering if that was a suggestion in regard to the use of a prefix to accomplish what I had in mind, or what is the purpose of that comment?

MR. ALLEN: I think it refers, Mr. Shanahan, to the word "intergovernmental" and make it "intra."

Mr. Elliott, would you explain this, because I don't know what we mean by "intra" here. Intra what?

CHAIRMAN DeVRIES: Delegate Allen yields to Delegate Elliott.

MR. A. G. ELLIOTT: Thank you, Glenn! (laughter) Mr. Chairman, this may not have done what I thought it would do. It was my thought that if we made it "intragovernmental" instead of "inter" it would indicate that it was within the governmental units.

However, I think Glenn has raised a good point here, Mr. Shanahan, that this is the portion of this proposal which talks about jointly to cooperate with. This does not have the same function as steps 1, 2, 3 or 5, and in that respect I don't think that we want to perhaps restrict any of our Michigan communities from the opportunity of cooperating with, as long as we aren't getting into these other areas.

CHAIRMAN DeVRIES: Delegate Lundgren.

MR. LUNDGREN: Now that you have raised the question, I would ask this one thing, because it becomes a very interesting situation to our particular locality with Menominee on one side of the river and Marinette adjacent by ¼ of a mile across the river, where in years past we have not been able to get together on some governmental activities, that this might open the door. Is that the view of the committee?

CHAIRMAN DeVRIES: Delegate Allen.

MR. ALLEN: Mr. Lundgren, as far as making any contracts is concerned, you wouldn't be able to do it under our language because it is limited to the local units in Michigan, but you would be able to cooperate. I suppose you may be cooperating anyway. I don't know whether you are. This would allow you to cooperate, but it doesn't allow you to cooperate to the extent that you can pay any costs or share costs or make intercontracts.

MR. LUNDGREN: Well, I don't know if that satisfies me entirely, because you are still leaving sort of a quasi feeling: how far can you go in this thing? I am thinking of sewage plants in the future, though we both have them now, but as you become bigger, as I am sure we are going to, just how far can we go? We have cooperated on bridges, but this is something different.

MR. ALLEN: Well, I think that since this doesn't take the whole power from the legislature by any means but only directs them to do it in certain cases, and particularly in view of the Norris amendment "among other things," the legislature could go out of its way to allow, in a special statute, you to do the very things that you want. But it wouldn't be done under this.

MR. LUNDGREN: Thank you.

CHAIRMAN DeVRIES: Delegate Donald Doty.

MR. DONALD DOTY: I wish to object to the changing of the wording from "inter" to "intra." We in Monroe county are at this time negotiating with Toledo for water facilities in southern Monroe county, and if this would in any way endanger this negotiation or this contract, I would object to the changing of the word.

CHAIRMAN DeVRIES: Delegate Doty, it is the understanding of the Chair that that has not been offered as an amendment. The question before the committee is the Shanahan amendment to section b. The Chair recognizes Delegate Shanahan.

MR. SHANAHAN: I believe that some other people want to talk on this.

CHAIRMAN DeVRIES: Will you yield to Delegate Cudlip?

MR. SHANAHAN: I am glad to yield to anyone wishing to talk on this. I am trying to get some information.

CHAIRMAN DeVRIES: Delegate Cudlip.

MR. CUDLIP: Mr. Chairman, Mr. Elliott, members and Mr. Shanahan, I don't think we should do anything here to preclude the units of government from cooperating with other states or foreign governments. I was interested to note soon after my good friend stood, to see Delegate Doty and Delegate Lundgren rise. They live in areas as I and others do where this problem is very important, to say nothing of the Soo and the Canadian Soo.

Right now in Detroit there is cooperation by the state and the city of Detroit and other communities there with Canada and with a joint commission which relates to air pollution and refuse disposal from the vessels. There are a number of problems like that, and I am sure they exist where our state abuts other states or the foreign country of Canada, and this language is clear and specific and necessary, and any preclusive language would defeat a very important purpose here.

CHAIRMAN DeVRIES: Delegate Pollock.

MR. POLLOCK: Mr. Chairman, I just want to repeat again that since these important interstate matters are not covered in this proposal, that it ought to be somebody's business to bring before the convention — presumably now the committee on emerging problems — a proper constitutional provision which would make possible and would facilitate interstate arrangements, which certainly are going to be more important rather than less important in the future.

CHAIRMAN DeVRIES: Delegate King.

MR. KING: Mr. Chairman and fellow delegates, in response to the comments by Dr. Pollock, I would only say that we are considering this problem, and to give you an idea of our direction, I will read to you a draft that our subcommittee is presently studying — very brief. It says:

> The legislature may provide by law for cooperation on the part of this state and its political subdivisions with the government of the United States for compacts and agreements with other states of the union in matters affecting the health, safety and general welfare.

So obviously we are interested in this particular area, and we would not want to see any sort of a limiting word placed in Committee Proposal 88 which might defeat our purpose, so I would not support the Shanahan amendment.

CHAIRMAN DeVRIES: The question is on the amendment offered by Delegate Shanahan.

CHAIRMAN DeVRIES: Delegate Shanahan.

MR. SHANAHAN: I am still wondering just what is the scope of intergovernmental agencies. I am not so concerned about whether my amendment is adopted or not. I am just wondering what we are getting into. I don't see anything in this to prevent, for instance, 2 townships perhaps joining into some agreement with such intergovernmental agencies as the United Nations or a part of the United Nations or perhaps NATO or some other international agency. I am wondering if this does or does not preclude such an interpretation.

CHAIRMAN DeVRIES: Are you addressing a question to one of the delegates?

MR. SHANAHAN: I am addressing a question to somebody that maybe can answer it.

CHAIRMAN DeVRIES: Mr. Shanahan yields to Delegate Allen.

MR. ALLEN: Yes, Mr. Shanahan, this does not contemplate anything that deals at all with any foreign country. If so, we would have to say so. We can't do it under this.

MR. SHANAHAN: Where does it say so?

MR. ALLEN: Well, it says so because in order to have the power, you would have to say "with a foreign government."

CHAIRMAN DeVRIES: The question before the committee is the adoption of the amendment offered by Delegate Shanahan to section b, which the secretary will read.

SECRETARY CHASE: Mr. Shanahan's amendment:

[The amendment was again read by the secretary. For text, see above, page 1089.]

CHAIRMAN DeVRIES: As many as are in favor of the amendment offered by Delegate Shanahan will say aye. As many as are opposed will say no.

The amendment is not adopted. Are there any further amendments to the body of Committee Proposal 88? If not, it will pass.

Committee Proposal 88, as amended, is passed. The secretary will read.

SECRETARY CHASE: Returning now to item 3 on the calendar which was under consideration yesterday, the consideration of which was postponed until the 2:00 o'clock session today, from the committee on local government, by Mr. Elliott, chairman, **Committee Proposal 85,** A proposal to provide that public utilities may use public property with consent of local authorities and a limitation on the length of franchise.

For last previous action by the committee of the whole on Committee Proposal 85, see above, page 1055.

At the time the matter was postponed, Mr. Mahinske had offered an amendment. He has now revised the amendment slightly so that it reads as follows:

1. Amend page 1, following line 20, by inserting a new section to read as follows:

"Sec. c. Any county, through its legislative body, shall have the authority to enter, or to intervene in any suit or certificate proceeding involving the service, charge or rate made by any privately owned public utility furnishing services or commodities to rate payers within the county.".

CHAIRMAN DeVRIES: The question is on the adoption of the amendment, as revised without objection, offered by Delegate Mahinske. The Chair recognizes the gentleman from Detroit, Delegate Mahinske.

MR. MAHINSKE: I just slightly altered this to take care of some thoughts that some people had with reference to publicly owned public utilities, and we have cleared up the language here that we are definitely talking about private utilities.

CHAIRMAN DeVRIES: The Chair recognizes the chairman of the committee, Delegate Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, members of the committee, our committee met and has no objection to this amendment.

CHAIRMAN DeVRIES: The question now is on the adoption of the amendment offered by Delegate Mahinske. The Chair recognizes Vice President Hutchinson.

MR. HUTCHINSON: Mr. Chairman, I would like to ask Mr. Mahinske why it is that his amendment would only authorize a county to do this. Can you explain why the other units are precluded, apparently?

CHAIRMAN DeVRIES: Delegate Mahinske.

MR. MAHINSKE: The other units, Delegate Hutchinson, are included in other committee proposals. This is adding an additional unit that may appear in these suits as a nonuser.

MR. HUTCHINSON: Do I understand then that in other provisions of the constitution, other units of government who are nonusers will be permitted to appear?

MR. MAHINSKE: Yes, villages, cities, townships, so forth.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Jackson, Delegate Karn.

MR. KARN: Mr. Chairman and members of the committee, I would like to say in connection with this proposed amendment that this is a duplication. At the present time any city, any township, any incorporated village which has issued a franchise has the right to intervene in any rate procedure or anything of that nature. Generally speaking, those 3 governmental groups, the cities, the villages and the townships, cover the entire county. So if this amendment should be passed, it merely imposes another governmental body on top of the 3 that have, you might say, jurisdiction, because the entire county as a rule is covered by all of the townships, and franchises exist.

This is a duplication. It means more people taking of their time to come in, and I think that the territory is completely covered at the present time and this should not be approved.

CHAIRMAN DeVRIES: The Chair recognizes Delegate Mahinske.

MR. MAHINSKE: I would like to point out to the previous speaker that this amendment is not intended and does not give the counties authority to issue franchises. This gives the counties authority through their legislative body to appear in these matters where they are a nonuser. Now, these long, protracted cases may be entirely too expensive for a local school district or a local township to take the burden on themselves. This would conform with the federal practice. The counties do have standing before the federal power commission, but because of the recent supreme court cases in Michigan, they do not have standing as a nonuser before the supreme court or the Michigan public service commission.

CHAIRMAN DeVRIES: Delegate Mahinske yields to Delegate Karn.

MR. KARN: Mr. Chairman, members of the committee, I just want to reiterate that all areas of the county are now provided the right to intervene and to appear in any cases before regulatory commissions, so that by adding the county, it puts another body in an area which is already entirely covered.

CHAIRMAN DeVRIES: Delegate Ford.

MR. FORD: Mr. Chairman, I would like to support Mr. Mahinske's amendment. I think that for a county like Wayne county, this is very important, and I want to indicate that

our people down there are rather anxious to have this relief. When you contemplate the present situation with 30 different municipalities, not counting the school districts and the villages, in Wayne county generally a utility question involves all of the municipalities within the county.

The prosecutor's office is staffed and in a position to do a much better job of representing the interests of the entire area in these matters than we individually can expect to do as individual communities, and what actually has happened is that the prosecutor's office has acted as a coordinator but has had to act through the vehicle of the individual communities, and in order to get a concerted action, you have to troop 25 or 30 people to the hearing, which is not a practical way to present your case. You have all sorts of parties added.

This would cut down the number of intervening parties in such proceedings, because the board of supervisors could provide for a method and for an officer of the county to represent all of us in this matter. It wouldn't preclude us from coming if we wanted to as individuals, but it would make it possible for us to be directly represented through the county level, and I think it would be a step toward a more efficient manner of coordinating the needs of the whole county with regard to utility rates and other matters that would be covered by these hearings.

CHAIRMAN DeVRIES: Delegate Wanger.

MR. WANGER: Mr. Chairman, Mr. Mahinske, the rights of the cities, the townships and the incorporated villages today rest upon statute or upon constitutional provision?

MR. MAHINSKE: The constitutional provisions.

MR. WANGER: Their right to intervene, then, in such suits depends entirely upon constitutional language.

MR. MAHINSKE: As interpreted by the 1955 decision of the Michigan supreme court.

MR. WANGER: Could it not be as well provided by statute as far as counties are concerned?

MR. MAHINSKE: The same decision of the supreme court said that by reference to certain designated municipalities in the present constitution and remaining silent in the area of counties. In the present constitution, by reference, counties have been excluded, and it could not be done by statute.

MR. WANGER: What is the reference? What is the case you speak of, please?

MR. MAHINSKE: It is the County of Wayne v. the Public Service Commission, 343 Michigan 144.

CHAIRMAN DeVRIES: Delegate Ford.

MR. FORD: I would like to point out to Mr. Wanger that Mr. Karn has already indicated the rule that delineates the county or takes the county out of the equal consideration. The counties do not issue franchises and have no contractual or direct relationship with the utilities. And at one stage the local government committee, I think, did consider adding counties as a franchising unit, and we determined that this would lead to duplication because you would then, for example, have to get a franchise within the city of Detroit from both the city and the county, and you might conceivably have the county issuing a franchise that would be in derogation of the wishes of the city people, so there is no other practical way to do it.

If we were to open the door by saying that counties could issue franchises, this would accomplish equal treatment, but it would be a rather severe way of doing it because it would bring other problems that would outweigh the benefits.

CHAIRMAN DEVRIES: The question now is on the amendment offered by Delegate Mahinske. The secretary will read the amendment.

SECRETARY CHASE: Mr. Mahinske's amendment is:

[The amendment was again read by the secretary. For text, see above, page 1090.]

CHAIRMAN DeVRIES: As many as are in favor of the Mahinske amendment will say aye. Opposed, no.

The amendment is adopted. Are there any further amendments to the body of Committee Proposal 85? If not, it will pass.

Committee Proposal 85, as amended, is passed. The secretary will read.

SECRETARY CHASE: Item 7 on the calendar, from the committee on local government, by Mr. Arthur Elliott, chairman, **Committee Proposal 89**, A proposal pertaining to county home rule. Amends article VIII.

Following is Committee Proposal 89 as read by the secretary, and the reasons submitted in support thereof:

The committee recommends that the following be included in the constitution:

Sec. a. THE LEGISLATURE SHALL PROVIDE BY GENERAL LAW THAT THE ELECTORS OF ANY COUNTY SHALL HAVE POWER AND AUTHORITY TO INITIATE, FRAME, ADOPT, AMEND OR REPEAL A COUNTY CHARTER AND THEREIN AUTHORIZE THE COUNTY, THROUGH ITS REGULARLY CONSTITUTED AUTHORITY, TO PASS ALL LAWS AND ORDINANCES RELATING TO ITS MUNICIPAL CONCERNS, AND SHALL LIMIT THEIR RATE OF TAXATION NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS CONSTITUTION.

A. NO COUNTY CHARTER SHALL BE ADOPTED, AMENDED, REPEALED OR REVISED UNTIL APPROVED BY A MAJORITY VOTE OF COUNTY ELECTORS VOTING ON THE QUESTION.

B. THE QUESTION OF ELECTING A CHARTER COMMISSION MAY BE PLACED ON THE BALLOT BY A MAJORITY VOTE OF THE MEMBERS ELECT OF THE BOARD OF SUPERVISORS AND SHALL BE PLACED THEREON ON RECEIPT OF A PETITION SIGNED BY 5 PER CENT OF THE REGISTERED VOTERS OF THE COUNTY. THE CHARTER COMMISSION SHALL BE ELECTED BY THE COUNTY ELECTORS IN ACCORDANCE WITH THE ELECTION LAWS.

Sec. b. UNDER GENERAL LAW EACH COUNTY CHARTER SHALL PROVIDE:

A. FOR THE SELECTION OF JUDICIAL OFFICERS OF THE COUNTY AS PROVIDED IN ARTICLE VII OF THIS CONSTITUTION.

B. FOR THE ELECTION OF A COUNTY CLERK, A COUNTY REGISTER OF DEEDS, A COUNTY TREASURER, A SHERIFF, AND A PROSECUTING ATTORNEY IN ACCORDANCE WITH THE PROVISIONS OF THIS CONSTITUTION.

C. FOR A BOARD OF SUPERVISORS TO BE CONSTITUTED AS PROVIDED BY LAW.

D. FOR THE EXERCISE OF ALL POWERS VESTED IN, AND THE PERFORMANCE OF ALL DUTIES IMPOSED UPON COUNTIES, COUNTY OFFICERS, AND CHARTER COUNTIES BY THIS CONSTITUTION OR BY GENERAL LAW.

Mr. Arthur Elliott, chairman of the committee on local government, submits the following reasons in support of Committee Proposal 89:

The majority of the committee on local government is mindful of the problems encountered at this time by the counties, and particularly, the larger counties of the state. It has been the intention of the majority of the committee to give to those counties full authority to so modify the governmental machinery as to meet those problems efficiently.

However, the committee is mindful also that to a large extent the county is an administrative arm of the state government.

The differences of opinion that have arisen in the committee are largely on 2 points:

(1) Whether there should be retained in a home rule county the requirement for the election of the sheriff, prosecuting attorney, county clerk, county treasurer and register of deeds; and

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Explanation—Matter within [ ] is stricken, matter in capitals is new.

(2) Whether the board of supervisors should be retained as the governing body of the county.

As to the so called constitutional officers, they do not in any important respect carry out policy developed within the county. Their duties are determined by the state legislature and their time is almost completely devoted to carrying out those statutory duties. Not only so, but they are supervised by the state in those activities. The sheriff and prosecuting attorney, as law enforcement officers, are under the direction and supervision of the attorney general and of the governor himself. The county clerk, as an election official, is under supervision of the secretary of state and as a keeper of vital statistics is under the supervision of the public health department, and the sheriff, prosecutor and clerk are all part of the court system, which everyone agrees should not be subject to change in a home rule county. Moreover, all of these officers are audited by the state and their accounts must be uniform. Under these circumstances, it is the belief of the majority of the committee that it is necessary to have uniformity of setup throughout the state, as to these offices.

In addition, the elected sheriff and prosecuting attorney are part of our system for the protection of our personal rights and liberties. It took centuries for our ancestors to win the right to elect these officials. There will never be a gestapo when the principal law enforcement officers are chosen by the people they serve. This is so important that we should never abandon the system of keeping these officers as elected officials. It is the feeling of the majority of the committee too that the county clerk and county treasurer and register of deeds should be directly responsible to the people of the county and not to some appointed official, and that the independence of the treasurer not only from appointing officials but from other officers of the county and being directly responsible to the people is a safeguard that the taxpayers do not wish to give up. He ought not to be appointed by the same person who appoints the auditing officials of a county, as that would be breaking down the proper check and balance system, which we now have.

Of extreme importance to the majority of the committee was the status of these elected officials in each county.

It is the belief of the committee that these officers can be left elected officials and in no way hamper the county in setting up the form of organization it wishes in order to meet its responsibilities under a county administrator or manager or in such other way as it chooses. Generally speaking, the counterparts of these officers in home rule cities are elected officials.

The problems of the big county are like the problems of a city — law enforcement personnel, central purchasing, management of buildings and grounds, public works in all forms, including recreational and other facilities, sanitation and health measures. As to all of these, the proposal recommended will permit a county to meet the problems as it chooses.

There remains a question of the board of supervisors. The proposal includes a named county governing body, providing for a board of supervisors by constitution as constituted by legislative act. This differs from our present constitution only in the fact that the present constitution specifies that each township shall be represented on the county board by a supervisor. Otherwise, the board is now constituted as specified by the legislature, and under this proposal it will be completely constituted as specified by the legislature.

The proposal specifically authorizes a home rule county in its charter to establish a maximum property tax limitation. Probably it would have this authority without this specific provision but including it makes that certain.

It is our opinion that this proposal gives those counties with specific problems the necessary machinery to deal with those problems but does so without disturbing unnecessarily the government of the other counties of the state.

The wording of the proposal follows substantially the home rule provision for cities in our present constitution, and those that will be included in the new constitution. They too have constitutional limitations more numerous than the limitations included in this proposal.

Following is the minority report to Committee Proposal 89 as offered and the reasons submitted in support thereof:

Messrs. Allen, Batchelor, Mrs. Cushman, Messrs. Farnsworth, Figy, Follo, Mrs. Judd, Messrs. McCauley, McLogan, Sleder and Tweedie, a minority of the committee on local government, submit the following minority report to committee proposal 89:

We propose the substitution of the following language for the language contained in subsections B and C of section b, (lines 5-10 on page 2) of Committee Proposal 89:

A minority of the committee recommends that the following be included in the constitution:

B. NOTWITHSTANDING ANY OTHER PROVISION IN THIS CONSTITUTION OR IN LAW, FOR THE DESIGNATION OF THE OFFICERS OF THE COUNTY AND THE MANNER OF THEIR SELECTION.

C. NOTWITHSTANDING ANY OTHER PROVISION IN THIS CONSTITUTION OR IN LAW, FOR THE FORM OF GOVERNMENT OF THE CHARTER COUNTY, INCLUDING THE MEMBERSHIP OF THE BOARD OF SUPERVISORS AND THE MANNER OF THEIR SELECTION WHICH SHALL NOT BE BY AN ELECTION AT LARGE.

Messrs. Allen, Batchelor, Mrs. Cushman, Messrs. Farnsworth, Figy, Follo, Mrs. Judd, Messrs. McCauley, McLogan, Sleder and Tweedie, a minority of the committee on local government, submit the following reasons in support of the foregoing minority report, which accompanied Committee Proposal 89:

Committee proposal not home rule:

The committee proposal does not provide true county home rule. "Home rule," by legal definition is "local self government;" that is, the right of the people to determine by charter the form of their own local government.

The committee proposal establishes the structure for "home rule" counties by mandate of the constitution and the general law. Thus, although it does provide acceptable charter making procedures, it removes from that process the very heart of home rule: namely, the right of the people of a county to change the structure of their county government to meet their own peculiar needs.

Without the right to make such determinations, one may venture to predict that the people of few, if any, counties would attempt the arduous task of writing a county charter.

The issue: mandatory uniformity versus home rule:

As indicated in the committee report, the issue between the committee report and the undersigned members on the proposed county home rule provision relates not to the charter making procedure nor to the substantive powers of the county, but only to the structure of the county government.

We would, however, restate the issue. The difference between us is not on what structure a home rule county should have, but on how it should be determined. The issue, in other words, is uniformity mandated by the constitution or general law as against home rule: the right of the people of a county to choose their form of county government for themselves.

Specific points of difference — what the amendments would do:

County officers: The committee proposal requires a home rule charter to retain the constitutional status and election

Explanation—Matter within [ ] is stricken, matter in capitals is new.

of the prosecuting attorney, sheriff, clerk, treasurer and register of deeds. The amendment permits the people of a county to decide for themselves whether they wish to make all or any of their county officers elective or appointive.

Board of supervisors: The committee proposal gives to the legislature the power to determine the form and manner of selection of the board of supervisors. The amendment permits the people of a county to decide for themselves whether they wish to keep their board of supervisors exactly as it is or to make it more fairly representative for their particular county and more directly accountable to the voters.

Specific points of agreement — what the amendments would not do:

These amendments would not require any county to attempt to draft a home rule charter if it did not desire to do so. For all 83 counties the committee on local government has proposed exactly the same structure as has been provided in the constitution since 1835. Counties which find this structure still satisfactory need not make use of the home rule provision.

These amendments in no way endanger the usefulness of the county as an administrative arm of the state. The last section of the committee proposal, section d, requires the continuance of all traditional county functions in relation to state administration.

These amendments would not lead to the abolition of cities, villages and townships. These units of government are assured in the general provisions on local government. Their effectiveness, however, within the wider urbanized area would be heightened by the opportunities for coordination and cooperation offered by a responsible and responsive form of county government.

County home rule urgently needed:

Urbanization is the reason for county home rule. Several counties in Michigan today are plagued with areawide problems unmatched by areawide government capable of meeting these problems. The county is big enough to cover most of these metropolitan areas, but the constitution blocks basic adjustment in the form of its government. Without an executive head and without a board of supervisors designed to serve as a representative, policy making body, one can predict that both the people and the legislature will be slow to grant the new powers to the county that would enable it to serve metropolitan needs.

Effective county government in metropolitan areas of concern to the entire state:

Effective county government in metropolitan areas can serve to check the drift of local government away from local and state control. It can encourage industrial growth in the metropolitan community and hence in the state. Effective county government in metropolitan areas offers a bulwark against the removal of government to agencies not responsible to the local voter. The bulging populations of our urban areas must have adequate governmental services. If they do not find the county usable for this purpose, they will be forced to find alternatives. Alternatives accepted with increasing frequency today are special districts and authorities and federal aid. All of these are removed from control by the local voter. Federal aid, in addition, tends to bypass and weaken the state.

Effective area wide government in urban counties is also essential to keep and attract industry and hence to undergird the economic growth of the state as a whole. Absence of such area wide governmental competence, however, will not check population growth. The burden of serving a growing metropolitan population without a corresponding growth in employment will fall on the taxpayers of the state as a whole.

Opportunity of the convention:

The Constitutional Convention of 1908 has come down in history as the initiator of one of the great political experiments of this century, municipal home rule. Under this provision the state of Michigan forged ahead with creative citizen efforts in the development of effective municipal government.

The Constitutional Convention of 1962 can make an equal contribution in the development of the county in the new urban complex. The 2 amendments, designed to provide genuine structural home rule, would make this contribution possible.

Responsibility of the convention:

We urge the acceptance by this convention of the cornerstone principle of our American democracy; namely, the right of local self government, this time applying it to counties. To achieve this, the people of a county through the drafting and adopting of a home rule charter must be given the right to choose election or appointment of their county officers and the right to determine the membership and manner of selection of their board of supervisors. These rights are provided in the 2 proposed amendments. We urge their adoption.

CHAIRMAN DeVRIES: The Chair recognizes the chairman of the committee, Delegate Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, members of the committee, this proposal will be handled section by section. And as all members of the committee are fully aware, this is the proposal on home rule. It has had a great deal of discussion over the past several weeks. The committee was somewhat divided in its approach to the problem, and the chairman was also in that unusual position.

I would at this time like to yield to Mrs. Judd.

MR. DOWNS: Point of order, Mr. Chairman.

CHAIRMAN DeVRIES: State your point of order, Vice President Downs.

MR. DOWNS: I believe that there has been a minority report filed. Delegate Hart and I have filed with the secretary and distributed to the delegates last Tuesday a substitute for the minority report specifically amending subsections B and C. I believe, therefore, that what is now in order is the substitute for the minority report and that this should be before the body at the present time.

CHAIRMAN DeVRIES: Vice President Downs, the committee has acted in the following way. We allow the committee to make the explanation of the section and then ask if there are any amendments to the section.

MR. DOWNS: May I just make a further parliamentary inquiry, Mr. Chairman? The amendments we have are to subsections B and C. I think it would be easier to take them up as a unit. Will that be in order after the committee has explained the majority report?

CHAIRMAN DeVRIES: Vice President Downs, the minority report is an amendment to section b. Can we dispense with section a before turning to the minority report?

MR. DOWNS: Yes. I was raising this in connection with section b.

CHAIRMAN DeVRIES: Delegate Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, I would like to withdraw the direction in which I yielded the floor, and for the moment yield the floor to Mr. Baginski, as this is the majority report.

CHAIRMAN DeVRIES: Delegate Elliott yields to Delegate Baginski.

MR. BAGINSKI: Mr. Chairman and delegates, for the sake of brevity — and I know we are going to spend a lot of time with this — I will call your attention to the comments in Journal 71, pages 462 and 463.

And now I will yield the floor to Mr. Elliott and we will see, as Mr. Powell says, what he has up his sleeve.

CHAIRMAN DeVRIES: Delegate Baginski yields to Delegate Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, I now yield to Mrs. Judd for the purpose of introducing an amendment.

CHAIRMAN DeVRIES: Mr. Elliott yields to the lady from East Grand Rapids, Mrs. Judd.

MRS. JUDD: I believe there is an amendment, Mr. Chase?

CHAIRMAN DeVRIES: The secretary will read the amendment.

SECRETARY CHASE: Mrs. Judd, Mr. Brake and Mr. Arthur Elliott offer the following amendment to Committee Proposal 89:

1. Amend page 1 by striking out all of lines 6 through 22 and inserting the following:

"Sec. a. Any county may frame, adopt, amend, or repeal a county charter in a manner and with powers and limitations to be provided by general law, which law may permit the organization of county government in forms different from the form set forth in this constitution. Subject to law, a county charter may authorize the county through its regularly constituted authority to pass all laws and ordinances relating to its municipal concerns.

No county charter shall be adopted, amended, repealed or revised until approved by a majority vote of county electors voting on the question.

The question of electing a charter commission may be placed on the ballot by a majority vote of the total membership of the board of supervisors and shall be placed thereon on receipt of a petition signed by 5 per cent of the registered voters of the county. The charter commission shall be elected by the county electors in accordance with the election laws.".

CHAIRMAN DeVRIES: The Chair recognizes Delegate Judd speaking on the amendment.

MRS. JUDD: Mr. Chairman and members of the committee of the whole, I rise to speak as an individual—

MR. McCAULEY: Point of information, Mr. Chairman.

CHAIRMAN DeVRIES: State your point, Delegate McCauley.

MR. McCAULEY: Mr. Chairman, members of the committee, there have been certain minority reports filed in this thing and they are tied in with the majority report. Now, all I want to know is: when we get back to these minority reports, are we going to have to write this thing out, or can we just move, in order that our minority report will make sense, that we refer back to the majority report before it was substituted by Mrs. Judd?

CHAIRMAN DeVRIES: It is the Chair's understanding that the amendment we are considering is to section a and that the minority reports are amendments to sections b and c.

MR. McCAULEY: But the only point I am making is that the minority report makes no sense if the substitute is adopted, and we don't have our day in court to talk about it. It will be all over.

CHAIRMAN DeVRIES: The Chair finds that regrettable for you, Delegate McCauley, but I don't know how else to rule.

Delegate Judd.

MR. FORD: Mr. Chairman.

CHAIRMAN DeVRIES: For what purpose does the gentleman arise?

MR. FORD: Another point of information. As I glance at this amendment, it is not an amendment to section a. It is a substitute for the entire committee proposal. And in discussing it, unless you are going to try and pick out that language which duplicates section a of the majority report, it is going to be impossible. This is not an amendment to section a. It is an amendment to the entire subject matter covered by the minority report as well.

CHAIRMAN DeVRIES: Delegate Ford, the amendment reads, "Amend page 1 by striking out all of lines 6 through 22," which is all of section a, "and inserting the following:". Therefore, the amendment does deal with section a.

The Chair recognizes Delegate Judd.

MRS. JUDD: Mr. Chairman, I rise as an individual to support the proposed substitute for 2 reasons: first, I believe it is extremely important that this convention include in this constitution a provision for county home rule; and secondly, I believe this proposal will have wider acceptance in the convention than any other proposal so far offered.

First, I would like to take a few minutes of the committee's time to discuss what county home rule is and the need for it, since this is the first time the subject has come before the committee. Home rule is the right of the people to determine for themselves that form of government best suited to their local needs. In Michigan history, since 1908, home rule has been in existence for cities, and it has been carried on according to the constitution subject to general law.

Now, county home rule is urgently needed in Michigan. Urbanization is the reason for this. Several counties in Michigan today are plagued with areawide problems unmatched by areawide government capable of meeting these problems. The county is geographically big enough to encompass most of these metropolitan areas, but its structure and its powers require adjustment if it is to meet these new responsibilities.

Effective county government in metropolitan areas is of concern to the entire state, first because it can serve to check the drift of local government away from local and state control, and second, because it can encourage industrial growth in the metropolitan community and hence in the state. Effective county government in metropolitan areas offers a bulwark against the removal of government to agencies not responsible to the local voter. The bulging populations of our urban areas must have governmental services. If they do not find the county usable for this purpose, they will be forced to find alternatives. Alternatives accepted with increasing frequency today in Michigan are special districts and authorities and federal aid. All of these are removed from control by the local voter. Federal aid, in addition, tends to bypass and weaken the state. Effective areawide government in urban counties is also essential to keep and attract industry and hence to undergird the economic growth of the state as a whole. Absence of such areawide governmental competence, however, will not check population growth. Let me repeat that point, please. I think it is something we forget. Absence of such areawide governmental competence will not check population growth. The burden of serving a growing metropolitan population without a corresponding growth in employment will fall on the taxpayers of the state as a whole.

Secondly, I believe that this amendment for county home rule that I am supporting will find wider acceptance in the convention. It is a non self executing provision; that is, statutory implementation is required to permit changes in the present form of county government. The minority proposal from the local government committee is self executing on this point. This is the essential difference between them. This amendment represents a common meeting ground in the legislature. Reliance on the legislature for the implementation of county home rule is consistent with the principle being slowly and painfully accepted by this convention with respect to many aspects of the constitution. It is also in line— though with a difference in degree— with the 1908 provision for municipal home rule.

Further, I find this principle in accordance with the spirit of thinking of various students of the home rule doctrine. For example, the pamphlet, Salient Issues of Constitutional Revision, recently published by the national municipal league— and I believe in our library here— states, "It must be recognized that ideally a constitutional home rule scheme could and should benefit from legislative implementation." Now, we all recognize that in the legislature we seldom have an "ideal" situation. Nevertheless, the transfer of power to execute fully the county home rule provision from the people of a county to their representatives in the legislature still preserves a fair arena in our democratic form of government in which to work for county home rule.

The amendment retains the procedures by which the board of supervisors or the people by petition may place the question of framing a charter on the ballot and may elect a charter commission, together with the requirement of a popular vote for adoption of the charter. This is the safeguard of the voice of the people of a county in the form of their government. In view of these provisions on charter procedure, I interpret the first sentence of the amendment to mean that the legislature may, as it did in the municipal home rule act of 1909, require, permit and prohibit various provisions of a county charter within which limitations a county may frame its own charter.

While genuinely regretting the dropping of the self executing feature of the minority proposal, I recognize the difficulty of writing a fully self executing provision satisfactory to everyone without cluttering it with rigid statutory detail. Under this non self executing provision the many factors that should

or should not be included in a charter can be worked out with greater flexibility in the legislature.

The adoption of this substitute calls for the long view on the part of its proponents for the achievement of a form of county government competent to serve metropolitan needs. It is my sincere conviction, however, that this goal can and will ultimately be realized under this amendment. So I support the amendment, Mr. Chairman.

CHAIRMAN DeVRIES: Will the lady from East Grand Rapids yield to Delegate Elliott?

MR. A. G. ELLIOTT: Mr. Chairman, I yield to Delegate Brake.

CHAIRMAN DeVRIES: Delegate Elliott yields to Delegate Brake.

MR. BRAKE: Mr. Chairman, Mrs. Judd and ladies and gentlemen of the committee, I think that practically every delegate came to this convention with a recognition that something would be done and should be done in the field of home rule for counties.

There were several proposals introduced, very divergent in their approach. Mr. Buback and Mr. Baginski introduced a proposal. I did. We found that we were very much alike and got together and made them completely alike, and as a net result, we got called some names that were not intended to be complimentary. I didn't lose any sleep over it and I take it Mr. Buback and Mr. Baginski didn't lose any sleep either.

In the committee we were sharply divided. The proposals were discussed. At times the argument got warm enough so that it was very interesting. And finally we 3, with other supporters of their proposal, were able to get the proposal out of committee by a very slender margin. I believe it was 14 to 11. That looked like quite a fight on the floor of the convention. Nobody had changed his mind. Some things changed in the convention that made the outcome very uncertain.

Under those circumstances a practical person compromises, if he can compromise without sacrificing his principles. I told Mr. Buback and Mr. Baginski that I was in a position where I would try for a compromise if others would. I asked nothing of them in the way of changing their position and they asked nothing of me in the way of changing my position. We still think alike. But finally a compromise, concurred in by many of those directly interested, was arrived at, and it is before you in the form of a substitute for the majority report.

It is a compromise. It is not a compromise that sacrifices anybody's principles at all. It does 2 things: it asks the legislature to pass a county home rule act. That is just what the 1908 constitutional convention asked the legislature to do with reference to city home rule, and asked it in almost the same terms. Everybody, I think, agrees to that. No controversy there at all. The other thing that it does is to transfer the forum for this battle from this convention to the legislative halls. If this is adopted, put in this constitution, Mrs. Judd, Mrs. Cushman, Mr. Allen and others who agree with them will meet Mr. Buback and Mr. Baginski and I, or others taking our place but still having our philosophy, before the committee of towns or counties in the house, and municipal corporations in the senate, and I think that will be an interesting meeting too.

You can put up a pretty strong argument that that is just the way it ought to be done. While there are counties with home rule around the country, the pattern is not too well established yet. It is rather new. And the first plan adopted in the legislature may not be the best plan. We may find that there are changes that ought to be made. And even if the plan as adopted is good and very workable, 10 years from now, 20 years from now there may be changed conditions that will warrant a change, and change can easily be made in the legislature as compared with the necessity of bringing about a constitutional amendment. So that may be the right answer.

Anyway, it is a compromise. We propose that the legislature shall lay down the rules under which counties may adopt a home rule charter. There is no controversy, so far as I know, with reference to the 2 second paragraphs which provide that the voters of the county must approve, of course, before a charter is adopted, and provide the method of getting the procedure started either by the board of supervisors or by initiatory petition.

A real compromise is never 100 per cent satisfactory to everybody. That is the nature of a compromise. But this is one where you sacrifice no principle. You simply change the forum. And let me assure you that it was reached not easily, but after a lot of negotiation, a tremendous amount of difficulty and some very, very urgent persuasion. I lost some sleep when a farmer ought to be sleeping, and others did more than I. It is a compromise.

I know that there are supporters on both sides that would like to change some of this, and there are those who have said that if amendments start to succeed, they too will have some. So let me urge all of you on both sides of the controversy, with all the sincerity that I can, if you can possibly do it, let's accept this as it is, recognizing it is a compromise, recognizing that you don't need to sacrifice what you believe, and let's get this over as quickly as we can. Thank you very much. (applause)

CHAIRMAN DeVRIES: The question is on the amendment to section a. Delegate Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, members of the committee, I think you have just seen demonstrated why Mr. Brake has the admiration and respect of all of Michigan.

I would like to suggest, not to belabor the point, that we are standing, in 1962, at the same threshold at which those delegates stood in 1907 and 1908, with a problem which is just as difficult as the one that they had, with the same divisions of thought as they had. And I think that we should all be grateful for the course which they charted for us back then, because with their wisdom and their imagination and willingness to look into the future, they gave to us an instrument within our constitution that made it possible for the legislature as the years have gone by to make changes in the statute which have provided for the needs of the times.

This language which Mrs. Judd and Mr. Brake and I are offering I am convinced does the same thing for the future of our state through the '70s, '80s, '90s and so forth in relation to counties, and I would like to add my voice to those of Mr. Brake and Mrs. Judd in urging the adoption of this in its entirety.

CHAIRMAN DeVRIES: The Chair might announce that there are 2 amendments to be offered to the amendment offered by Delegates Judd, Brake and Elliott. The first is offered by Mrs. Cushman; the second is offered by Mr. Pellow. Delegate Hodges.

MR. HODGES: My remarks are on the main amendment. If there is an amendment to the amendment, would it be more in order for my remarks to wait?

CHAIRMAN DeVRIES: Would it be agreeable with you, Delegate Hodges, if you waited until the amendments were disposed of to section a before making your remarks?

MR. HODGES: I will yield to Mrs. Cushman for her amendment. Will that be proper?

CHAIRMAN DeVRIES: If you so desire. The secretary will read the amendment of Mrs. Cushman to the amendment offered by Mrs. Judd and others.

SECRETARY CHASE: Mrs. Cushman, Mr. Follo and Mr. McCauley offer the following amendment to the amendment proposed by Mrs. Judd, Mr. Brake and Mr. Arthur Elliott:

1. Amend the amendment after "Sec. a.", by striking out the first paragraph and inserting "Any county may frame, adopt, amend or repeal a county charter to organize county government in form different from the form set forth in this constitution in a manner and with powers and limitations to be provided by general law. Subject to law, a county charter may authorize the county through its regularly constituted authority to pass all laws and ordinances relating to its municipal concerns.".

CHAIRMAN DeVRIES: The question is on the amendment to the amendment. Delegate Cushman.

MRS. CUSHMAN: As you can see, my amendment is along much the same lines as the Judd-Brake compromise amendment, and it is because I agree with the things that they have said and with the things that Mr. Elliott has said that I offer

it. I offer it because I really believe that it is important for us at this time to offer something that is a real home rule, and I think that this spells it out in a somewhat clearer form than their amendment.

It gives the people of the county, in my opinion, a more definite right to write a county charter that meets their specific needs. I do not feel that this right is adequately protected under the compromise amendment. I want to make it very plain that counties do have this right. I do, of course, keep the legislature in the role of arbitrator where necessary, but I think that there is a difference between my wording and that of the compromise.

I feel that we have to compare what we want to give counties with what we have given cities. Several people have said this. I think the cities are in a different position, constitutionally, from the counties. There is nothing in the Constitution of the State of Michigan that tells a city in any way what its basic form of government should be. In contrast, the counties do have a standard form that we adopted or readopted the other day, and its spells out in some detail the legislative body, the administrative officers and so forth of a county. Because of the fact that we have this in the constitution, I feel it is important to make it plain that a county with home rule should be able to change this form.

I would like to yield to Mr. Follo.

CHAIRMAN DeVRIES: Delegate Cushman yields to Delegate Follo.

MR. FOLLO: Mr. Chairman, members of the committee, this business of county home rule was something that was very close to my heart and has been for a long time. Much of what I am going to say here has been heard over and over again by the members of our committee, and they can plug their ears or go for a walk or something.

It is a long tradition in Delta county also. Years ago, in 1921 and '22, Escanaba and Gladstone adopted city home rule and under it adopted charters which afforded a great improvement over what we had had before. The editor and publisher of our paper at that time was John P. Norton, and many of you who are old in the Republican party will remember that he was a stalwart in that party. John P. Norton wrote editorial after editorial in the Escanaba Daily Press calling for county home rule because he could see how well it worked in the city, and he felt that there was a great need for thoroughgoing county reform as early as the 1920s and the 1930s.

Following that, there has been great interest in Delta county in this county reform, and I want to cite several things that will perhaps indicate that interest. In 1949 we formed a county committee in Delta county of which I was fortunate to be chairman and in which we made a thorough study of county home rule in the United States, and we came to the conclusion that a movement had to start somewhere and we spent for weeks many, many hours framing a proposed amendment to the Constitution of the State of Michigan. Our county board of supervisors was so impressed with this that they endorsed it twice on 2 different occasions and even appropriated $300 to have it printed and circulated throughout the state, hoping that other counties might support it.

This did not happen. It was perhaps too early for it, but at least it indicates that 1 county of moderate population — about 35,000 now, but back then less than 30,000 — was interested in county home rule, and I would venture to predict that it would have a very good chance of passing in Delta county today because of the ground work that has been laid over the years for this.

I feel that the proposal, if left to the legislature, is going to languish there. I feel that we are going to need to do more. We are going to have to allow the people to attempt to change their government. I think that we are not asking for a great deal. We are asking that maybe 1 county at least, maybe 2, would have the chance to try this to see how it would work.

Lord Bryce, the famous British political scientist, once said that there was virtue in the American democracy because states could experiment with various types of government. I would like to see the opportunity afforded to the people of Michigan to attempt an experiment in some of the new forms of county government.

Therefore, I would urge you to support the amendment which has been introduced by Mrs. Cushman, Mr. McCauley and myself.

CHAIRMAN DeVRIES: The question is on the amendment to the amendment. The Chair recognizes the gentleman from Taylor, Delegate Ford.

MR. FORD: A question to any of the proponents. Is it intended that this amendment will replace only section a, or is it intended that this will be the total of the county home rule provision?

CHAIRMAN DeVRIES: Delegate Ford yields to Delegate Cushman.

MRS. CUSHMAN: This would replace the first paragraph of the Judd-Brake amendment, and then it would be followed by 2 other paragraphs here. That would be all.

MR. FORD: Mrs. Cushman, with respect to this first paragraph, would it fit as well as the replacement to the first paragraph of the majority report? Could, for example, we adopt all of the majority report and adopt yours too if we replaced paragraph a with your paragraph a?

MRS. CUSHMAN: Well, I would have to look that over and make sure. I don't know. I don't have the majority report in front of me.

MR. FORD: What I guess I am really asking, Katherine, is in what way is your language now proposed here as an amendment different from the language proposed in the majority report for paragraph a?

MRS. CUSHMAN: I think it spells out a little bit more clearly that the county can do it in forms different from the forms set forth in this constitution in the other article.

MR. FORD: As I read the language, is it your intention that this would be what we have referred to in the committee as a self executing home rule, in that a county would have the inherent right to have home rule, subject to restrictions, as distinguished from the majority, which says that the legislature may delegate to the county the authority to have home rule?

MRS. CUSHMAN: My understanding of what self executing home rule is is possibly a little different from yours because my idea of self executing home rule is nothing that has yet been introduced in this convention at all. It would require a detailed spelling out. It would require the sort of language that we had in the Cushman-Donnelly delegate proposal, if you remember that. That is self executing. None of it that has been introduced as committee proposals or amendments or anything is self executing in my understanding.

MR. FORD: Well, so that we don't appear to disagree where we agree because we have a different definition for a term, maybe we can find a different term. As I understand your language, the legislature would not make a decision as to whether or not there should be home rule. The legislature is being told that a county has a right to home rule and it has been directed to provide the framework for it.

MRS. CUSHMAN: That is right.

MR. FORD: Whereas the majority reports says that the legislature shall provide by general law for home rule —

MRS. CUSHMAN: May provide, yes.

MR. FORD: May provide by general law, and in fact they would delegate to the county a home rule power, while your provision would delegate that power now, subject to the restrictions the legislature might put on it.

MRS. CUSHMAN: This is the implication that I get from it, I hope.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Bessemer, Delegate Pellow.

MR. PELLOW: I have a parliamentary inquiry at this time, Mr. Chairman. I would like to know whether or not if the Cushman amendment is adopted, that will preclude the amendment that I have offered.

CHAIRMAN DeVRIES: It is the Chair's understanding that your amendment, Mr. Pellow, is at the end, and Mrs. Cushman's is to the amendment offered by Delegates Judd, Brake and Elliott. It would not preclude yours.

MR. PELLOW: The only point that I raise is that in the event Mrs. Cushman's amendment is adopted or is not adopted, that I will still have a chance to speak upon my amendment, and make the amendment to either Mr. Brake's amendment or Mrs. Cushman's amendment.

CHAIRMAN DeVRIES: That is correct.

MR. PELLOW: Thank you, sir.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from St. Ignace, Delegate Dell.

MR. DELL: Mr. Chairman and delegates, I was a member of this local government committee and, as Mr. Brake advised you, there was considerable discussion on this particular angle of county home rule. We made a compromise. Now I find that members of our committee are offering amendments. I think we should stick with the compromise.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Wyandotte, Delegate McCauley.

MR. McCAULEY: Point of personal privilege.

CHAIRMAN DeVRIES: State your point.

MR. McCAULEY: In answer to Mr. Dell, I think this question should be answered. There was a compromise arrived at. The 3 members that were on this minority report of the Democratic party did not agree to the compromise, and I think everybody understood that. I perfectly well realize that you have to have the votes to win, and I am not going to be crushed if I lose, but I want to have my day to talk about it, that is all.

CHAIRMAN DeVRIES: The question before the committee of the whole is the amendment offered by Delegates Cushman, Follo and McCauley to the amendment offered by Delegates Brake, Judd and Elliott to section a. As many as are in favor of the amendment to the amendment will say aye. As many as are opposed will say no.

The amendment to the amendment is not adopted.

MRS. CUSHMAN: Division.

CHAIRMAN DeVRIES: Delegate Cushman requests a division. Is there support for a division vote? There is support for a division vote. The secretary will read the amendment to the amendment.

SECRETARY CHASE: The amendment by Mrs. Cushman, Mr. Follo and Mr. McCauley is:

[The amendment was again read by the secretary. For text, see above, page 1095.]

CHAIRMAN DeVRIES: The question is on the amendment to the amendment. All those in favor will vote aye. All those opposed vote no. The secretary will lock the machine and tally the vote. The secretary will announce the vote.

SECRETARY CHASE: On the adoption of the amendment offered by Mrs. Cushman, Mr. Follo and Mr. McCauley, the yeas are 27; the nays are 89.

CHAIRMAN DeVRIES: The amendment to the amendment is not adopted. Are there any further amendments to the amendment?

SECRETARY CHASE: Mr. Pellow offers the following ing amendment to the amendment:

1. Amend the amendment at the end thereof, by inserting the following paragraph:

"Each county charter shall provide for the election of a county clerk, a county register of deeds, a county treasurer, a sheriff, and a prosecuting attorney, in accordance with the provisions of this constitution.".

CHAIRMAN DeVRIES: The question is on the Pellow amendment to the amendment offered by Delegates Judd, et al. The Chair recognizes the gentleman from Bessemer, Delegate Pellow.

MR. PELLOW: Ladies and gentlemen of this committee of the whole, I think that we are now coming to the crucial point of this convention, and I bring this up at this time not only to speak for the county elected officials — and before someone rises to their feet and says that I have a vested interest in this because I am serving my third term as prosecuting attorney of Gogebic county — I did not come down to this convention to compromise my views. I did not come down to this convention to get into a private caucus and then, what I firmly believed in, to compromise with others and as a result give away my solemn pledge to my people of the upper peninsula.

Now, Delegate Follo has accurately and so eloquently spoken of the county of Delta. Believe me, ladies and gentlemen of this committee, I too have talked with people from the county, not only of Delta, but the counties of Gogebic, Iron, Dickinson and Marquette, the senatorial district that I represent, and these elected officials — and not only the elected officials but the people of the upper peninsula — believe in grass roots democracy. They believe in the right of the people to govern themselves. They do not believe that we should have a creeping intellectual communism. They do not believe that the legislature should have the power if they so desire to take away the grass roots democracy that our people have fought for on foreign shores.

Now, I say that this question is not only important to the county officials; this question is also important to the basic question that we are soon to approach as to whether or not the state officials shall be elected or appointed, as to whether or not the supreme court shall be elected or appointed, as to whether or not the governor, the state representatives shall be elected or appointed. Or shall we just by proxy give our votes to our legislature and allow them to run our state government? I say to this committee in all seriousness and in all fairness to the people that they should elect fundamental grass roots officials.

At this time I would like to call this committee's attention to the amendment proposed by Mr. Brake — and perhaps if it was passed, the upper peninsula would be beneficiaries thereof — this states:

> Subject to law, a county charter may authorize the county through its regularly constituted authority to pass all laws and ordinances relating to its municipal concerns.

Now, this convention has seen fit to impose a flat rate income tax upon the people of the upper peninsula — that no graduated income tax shall be levied.

Perhaps with this particular provision, in the event that the county may regulate its own affairs and since there isn't any prohibition against legalized gambling in the upper peninsula, the counties of the upper peninsula may be in the position, in order to concern themselves with recreation, to have legalized gambling, and salvage their own destiny. I just throw that out as one question that is posed by this particular amendment.

I would also state to this committee in all seriousness that these various individuals that come up at this time and that are talking so strongly for allowing the people of the counties to govern themselves; did you see which way they voted when they brought up bingo, bango, bongo; when they talked about liquor on Sundays; when they talked about letting the community decide whether or not they should have industrial development?

I say to you at this particular time that if this committee does away with elected officials of the state of Michigan, that in 20 to 30 years you are going to have a massive bureaucracy. Everyone is going to be appointed, feeding at the public trough. The people will have no voice in government, and we may as well give it up right now if that's what this convention wants. And I say to this committee in all seriousness that if this is passed as it is, that I, as one individual delegate representing the thirty-first senatorial district, will go to my people — and I am not bashful to talk to my people — and I am going to campaign against this constitution regardless of party, regardless of the rest, because the basic fundamental principle is the right of government of the people, by the people and for the people.

CHAIRMAN DeVRIES: Will the gentleman from Bessemer yield to the gentleman from Detroit, Delegate Binkowski?

MR. PELLOW: I yield to anyone.

CHAIRMAN DeVRIES: Delegate Binkowski.

MR. BINKOWSKI: To further immortalize our distinguished delegate from the upper peninsula, I would only like to say "banzai!" (laughter)

CHAIRMAN DeVRIES: The committee will come to order. The Chair recognizes the gentleman from St. Ignace, Delegate Dell.

MR. DELL: Mr. Chairman and delegates, I have every regard for my fellow delegate, Mr. Pellow, from the upper peninsula and I happen to be a county officeholder too from the upper peninsula and could be in the position of fighting for personal interest. In the committee, after many hours of debate on this subject, I am quite willing to accept the compromise. I don't like to use the word "compromise" but, nevertheless, we realize that there are many problems that come in and that is the way that we arrive at everything, through a compromise, and I am quite willing to go ahead and trust the legislature in handling this problem from now on. And I just want to stand here and say I hope you adopt the original amendment.

CHAIRMAN DeVRIES: The question before the committee is the Pellow amendment to the amendment offered by Delegate Judd et al to section a. As many as are in favor of the Pellow amendment to the amendment will say aye. As many as are opposed will say no.

The amendment is not adopted. Are there any further amendments to the amendment offered by Delegates Judd, Brake and Elliott to section a?

SECRETARY CHASE: Mr. McCauley offers the following amendment to the amendment:

1. Amend the amendment at the end thereof by inserting the following paragraphs:

"Notwithstanding any other provision in this constitution or in law, for the designation of the officers of the county and the manner of their selection.

Notwithstanding any other provision in this constitution or in law, for the form of government of the charter county, including the membership of the board of supervisors and the manner of their selection which shall not be by an election at large.".

CHAIRMAN DeVRIES: The question is on the adoption of the McCauley amendment to the amendment. The Chair recognizes the gentleman from Wyandotte, Delegate McCauley.

MR. McCAULEY: Mr. Chairman and members of the committee, once again now I think we are back to the original minority report, which can be found on page 528 of Journal 73. I would like to point out to the members of the committee that here we are dealing with the basic heart, the fundamentals of home rule. We are talking about the rights of people in certain counties if they so desire to elect their board of supervisors, to appoint them, take them by raffle, however they want to choose these officials. I think this is a point where we are getting down to the grass roots of government when we are talking about the original minority report. Another thing that we are so very concerned about as far as county home rule goes is the rights of people to determine what elected officers they want, if any.

I would like to repeat from the minority report that the definition of home rule is "local self government"; that is, the right of the people to determine by charter the form of their own local government.

The committee proposal that is before us now, without the amendments, establishes the structure for home rule counties by mandate of the constitution and general law. Thus, it does provide acceptable charter making procedure. It removes from that process, however, the very heart of home rule: namely, the right of the people of a county to change the structure of their county government to meet their own particular needs.

Without the right to make such determinations, one may venture to predict that the people of few, if any, counties would attempt the task of writing a county charter.

The issue presented before us here today is mandatory uniformity versus home rule. As indicated in this report, the issues between the committee report and the report that I am presenting now on proposed county home rule provisions, relates not to the charter making procedures nor to the susbtantive powers of the county, but only to the structure of county government.

We would, however, like to restate the issue. The difference between us is not on what structure a home rule county should have, but on how it should be determined. The issue, in other words, is uniformity mandated by the constitution or general law as against pure home rule: the right of the people of a county to choose their form of county government for themselves. That is the issue that is directly before you and that we should confine ourselves to today.

I certainly appreciated Mr. Brake's remarks and I know that they were made in all sincerity and maybe it would be better to discuss this in another forum. However, coming from Wayne county and the area that I represent, I know what my chances would be in the other forum.

I say to you, ladies and gentlemen, that we in counties that want home rule, pure home rule, want the right to determine whether or not our supervisors should be elected or appointed, the right to determine whether or not we should have a sheriff, we should have a prosecutor, we should have a register of deeds. These are the items that should be discussed and should be passed upon by the persons at the grass roots level.

Therefore, ladies and gentlemen, I would urge the adoption of the amendment. And if we are talking about strict home rule, I think that this is going to give the people of the counties the permissive right to determine exactly what they want and what they think is in the best interests of their people.

CHAIRMAN DeVRIES: The question is on the McCauley amendment to the amendment. The Chair recognizes the gentleman from Stanton, Delegate Brake.

MR. BRAKE: Mr. Chairman, ladies and gentlemen, I had intended to say nothing more during this debate, but I can't quite resist. I think there is no reason in the world to think that the legislature will be less sensitive to the rights of the people and to the protection of those rights than are we here. That is part of their business. And they go back to the people every 2 years in order to make sure that they are going to be sensitive to those people's rights. We have debated back and forth many times on how much you should trust the legislature. All this does is to transfer the question to the legislature. And I am sure they will be as sensitive as we are in the protection of those rights.

Now, one other thing, Mr. McCauley. I served 8 years in the legislature and have been around it a great deal since. I have never had any reason to think that somebody from Wayne county was prejudiced in that legislature, that he didn't have as good a chance as somebody from my county or Mr. Pellow's county or any other county.

CHAIRMAN DeVRIES: Delegate McCauley.

MR. McCAULEY: In reply to Mr. Brake, I would just like to say I agree with your statements, Mr. Brake, but the only difference is that you have the votes and we in Wayne county have not. That's it.

CHAIRMAN DeVRIES: The Chair recognizes Delegate Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, members of the committee, so that there will be no misunderstanding, I think it should be made perfectly clear that the approach to this problem is the identical approach that we took in the area of cities almost 60 years ago. There is not, by the purpose of this amendment, any desire on the part of myself as maker to prevent at any time in the future, once the legislature has adopted the enabling legislation, the counties from adopting the type of charter that they want.

I would bring to your attention that this does one thing that I think is extremely essential: it gives the flexibility for the future to the legislature so that if there are needs in the future for modifications in enabling legislation, it can be easily done. There was no thought here, Mr. McCauley, on my part but what the legislature will adopt the proper legislation which will allow the people of the county to have complete self determination in this field that you have just spoken of.

CHAIRMAN DeVRIES: Delegate McCauley.

MR. McCAULEY: My final comment is this: if we in Wayne county and in the urban counties want exactly the same type of government we have today — the sheriff, the prosecutor, the register of deeds and so on — if the people of Detroit want to continue with appointed members of the board

of supervisors, just defeat these amendments and we've got it made for the next 50 years.

CHAIRMAN DeVRIES: The question before the committee of the whole is the amendment by Mr. McCauley to the amendment offered by Delegate Judd, et al, to section a. The secretary will read the amendment.

SECRETARY CHASE: Mr. McCauley's amendment is:

[The amendment was again read by the secretary. For text, see above, page 1098.]

CHAIRMAN DeVRIES: The question before the committee is the McCauley amendment to the pending amendment. As many as are in favor will say aye. Opposed, no.

The amendment to the amendment is not adopted. Are there any further amendments to the Judd-Brake-Elliott amendment to section a?

SECRETARY CHASE: Miss Hart and Mr. Downs offer the following amendment —

CHAIRMAN DeVRIES: Vice President Downs.

MR. DOWNS: Mr. Chairman, this was distributed to the delegates Tuesday. It is 2½ pages. I would respectfully move that except for the introduction, the part on the yellow sheets be considered read and printed in the journal to save the time of the committee.

CHAIRMAN DeVRIES: Without objection, it will be so ordered.

SECRETARY CHASE: The amendment proposed by Miss Hart and Mr. Downs is:

1 Amend the amendment offered by Mrs. Judd and others, after the word "limitations" by striking the balance of the amendment and inserting "as follows:"; so that the language will read, "Sec. a. Any county may frame, adopt, amend, or repeal a county charter in a manner and with powers and limitations as follows:"; then the printed material that Mr. Downs is talking about.

Following is the balance of the amendment:

"1. The prosecuting attorney shall be nominated and elected as provided by law.

2. The county sheriff shall be nominated and elected as provided by law.

3. Other existing county officials may have their functions merged or altered or unchanged, including the establishment of an elected or appointed county executive head, as determined by the county charter.

4. Employees performing ministerial and executive functions shall be hired under a civil service system, provided the chief executive and deputy of a department may be exempt if so provided by the charter. The judicial system shall not be altered by the charter.

Notwithstanding any other provision in this constitution or in law, for the form of government of the charter county, including the membership of the legislative body (now called the board of supervisors) and the manner of their selection which shall be as follows:

1. Members of the county legislative body shall be nominated and elected by the people, provided that elected local officials may serve on the county legislative body by virtue of their office, as determined by the county charter, if each such local official represents approximately the same number of people.

2. Such nominations and elections shall include nominations by direct party primary and elections in a general election as provided by law.

3. Members of the county legislative body shall be elected from areas as nearly equal in population as practicable, or elected at large, as determined by the charter. More than 1 county legislator can be elected from the same area, providing each such legislator represents approximately the same number of people. The number of county legislators shall be determined by the charter.

4. The county legislative body shall keep a public journal of its activities, record by yeas and nays the final votes on all policy decisions, record all other votes by yeas and nays on the demand of 1/5 of the members elect, meet publicly unless public security demands otherwise, and establish rules for operation consistent with the public good.

5. The charter commission preparing for the change to this form of county government shall be nominated and elected on a bipartisan basis with proportional representation reflecting the votes of the respective candidates running from each political party. Nominations shall be in a direct primary. Members of the charter commission shall be elected from districts providing approximately equal representation of people, or at large. The number of members shall be determined by the charter petition.

6. The electors shall be able to initiate a charter commission under these standards by petitions signed by 5 per cent of the registered voters and approved by a majority voting thereon. The petitions for creation of a charter commission may be in any form consistent with this constitution and shall be self executing without the requirement of any additional state legislation. The people shall be able to rescind or amend their action by the same process.".

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Detroit, Vice President Downs.

MR. DOWNS: There is a simple explanation, and I shall try to be as brief as I can so as to not prolong the debate. I would like to say here, though, at the outset that what we are doing is something different from what we have done so far in our convention. We are establishing a new form of government on a permissive basis for the people of a county. And I think in our last few days' deliberations we have found it is extremely difficult to change, alter or patch what has grown up over a period of time. So I think that if there is anything that really challenges our imaginations, it is to start a new form on a permissive basis so it is done properly and so that the convention 10, 20, 30, 40 years from now does not have to try to patch up what we are doing. This is why I think there is particular urgency to use our fullest abilities to think ahead and do a constructive job.

What this amendment by Delegate Hart and myself does is establish several principles of home rule. You know, everybody is for home rule just like we are for the flag and for motherhood, but I think it comes down to how we define it. The amendment that we have, first of all means that the new form is permissive. It is permissive by the voters in the county. It does not take any legislative action whatsoever. And, as our attorney friends say, it is self executing. This point I want to make very clear. These amendments would provide that the people of any county could have home rule by starting their petitions, and they would not need any additional legislative action.

Now, what this also does — and this is common with most home rule provisions — is to a large extent combine the legislative and executive functions of government. This is somewhat similar to the parliamentary system of England and of the Ontario legislature. I think that when we give these broad powers, we need to be sure that due responsibility will be maintained, and therefore we have the freedom of the people to start their home rule system, but limitation to the framework in which that freedom can be exercised.

The first limitation is that the law enforcement officials of the county must be elected by and directly responsible to the people. This means the sheriff and the prosecuting attorney. I believe there is historical justification for this.

The next provision is that those employees who are of a ministerial and executive function must be hired under a civil service system with reasonable provisions for exemptions of heads of agencies. I think this is important, because if we are going to grant a county the home rule principle to merge what are now elected executive officials such as the treasurer, the clerk, the register of deeds and so on, if we are to allow the county to reorganize that, I believe that we should have the protection that the individuals employed under that setup will be under a civil service system.

Finally, and the important thing, is the kind of legislative body we have. And Miss Hart and I do not use the words "board of supervisors" here because we find then we think of the past board of supervisors instead of the future concept of a county legislative body with limited executive powers. We provide in this that the county legislative body must be elected by the people and no appointed members can serve. The size of the body would be left entirely to the determination by the people through their charter commission. The nominations and elections would be on the direct primary and 2 party system. We believe that this is important, because our tradition of American government shows that our government operates best where we have a combination of a party responsibility and the individual candidate's responsibility. Therefore, the concept of 2 party responsibility is established.

The third point we make on this legislative body, this new one to be organized, is that so far as practical, the members should come from districts equal in population. We are not rigid as to how this is done. If a small county wants to elect a county legislative body of 10 people at large, they could do that. If a larger county wants to say that the elected mayor of a city within that county would automatically serve on this county legislative body, that could be done, and it might mean there would be 2 or 3 from a city who would either be the existing council members or an election of the persons as determined by the charter itself.

And another point we make — I think this is important: that this county legislative body would keep a journal of its proceedings and recorded roll call votes. These standards of public record are similar and taken from the standards we now use in the state legislature. And I want to remind the delegates that we are not saying leave everything up to the legislature. The present constitution — and I assume our future one — will call for specific provisions whereby there are recorded roll call votes, journals of activities and so on. This also requires public meetings of the legislative body unless public security demands otherwise.

Then, finally, the matter of the charter commission itself. Because this is self executing, we provide not how many should be on the charter commission, but the members should be elected either at large or on a basis as near equal in population with proportional representation. This would mean that if a county, for example, had a charter commission of 15 people and 1/3 of the votes were Democrats, there would be 5 Democrats and 10 Republicans on that charter commission. Then the commission itself could draw up any form of government not inconsistent with these provisions and other provisions of the constitution.

The judiciary system would be preserved and the charter commission would not be allowed to involve itself in the judicial system.

Now, as far as how this would be initiated, it would mean that 5 per cent of the registered voters could initiate petitions for a charter commission. There is nothing magic about that figure and certainly we would not object to its being changed. And then a majority of the voters would need to vote on it.

So what this does, we believe, is follow sound principles of having people choose their own form of government within a framework of a responsible elected system of government. We think this is particularly true to have a framework for home rule, because it is intimated that there will be additional powers given over what our county legislative bodies now have.

I appreciate the chance of presenting this. I am sorry this was not done the first thing in the morning, and I do hope the delegates will give this their serious consideration and thought, and I hope that you will vote according to what you believe is best in this matter.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Garden City, Delegate Brown.

MR. T. S. BROWN: Mr. Chairman, I rise in support of the Hart-Downs amendment for an entirely different reason and one which will take a little while in exposition, and I hope you will bear with me since the hour is late. If you will recall, it was mentioned by Mr. Elliott, I believe on 2 occasions, and once by Mr. Brake, that what the principal compromise terminology would do in effect would be simply to transfer the problem to the legislature and also to put the legislature substantially in the same position it was in when we initiated the city home rule provisions back at the turn of the century and it apparently worked out well then and it should work out well now.

I suggest that this is really not true, because ½ century of lifemanship has transpired in our society and in the state of Michigan, and that ½ century has wrought tremendous changes and has given us some very serious matters to consider in the future. I will attempt to delineate, I think, what is the chief difference between the idea of granting complete power without restrictions to cities back at the turn of the century and the similar idea of granting similar power to the counties in this day and age.

Now, the essential difference is this. When cities in the state of Michigan in the historical process were granted home rule, government, even in the larger cities, was a matter over which people had some particular degree of self determination. We were not at that time in the era of the IBM. We were not at that time concerned with the statistical problems that result from large numbers of people. We were, rather, concerned with the fact that we had problems and they were represented through individual people. It was entirely possible in those days to say in an individual city: we will have a city manager — or we will have a council — or we will have a strong mayor or a weak mayor — or any of the other number of infinite varieties of city government. And you could make it an effective form of government because it would still be close to the people and would meet the needs of the people, and therefore you could give the cities carte blanche at the turn of the century and say: run your cities as you wish — because it was possible then to run your cities as you wish and it was possible for reasonable people, acting in concert, to actually do something worthwhile, because the problems were not that complicated.

Now we are living in the days of expertise, and in the future this particular phenomenon of our society will become more and more pronounced, more and more pronounced. It is obviously — and I think all of us realize it now — impossible for the average man, what I would call, say, an intelligent layman observer, to walk into the city-county building in Detroit or any other large city and know exactly how his government functions. And I think it is equally impossible for an individual who has been employed even, in a high capacity within such a large city for several months to actually gauge the tremendous problems that he has to face in order to make intelligent decisions, especially in regard to the future.

So instead of saying in 1962 we will give to the counties carte blanche for anything that they would like to do, and knowing, therefore, that if this occurs the tendency will be for the expert and for the managerial staff and for that particular strata of administrators within our local governments to rise to the top and to perpetuate their idea of how cities should run on a statistical basis — I think this would be an error. What we have to do, even though it is regrettable, even though it goes against the concept of the pure county home rule, in which you say "Here is your county; do what you want with it" — what we have to do at this juncture — and I hope that I am sounding like a conservative in these words — is return the mechanism of our large political entities within the state of Michigan to the more grass roots level so that the people will be able to protect themselves.

Now, I am not definitely in accord with the fact that the prosecutor and the sheriff shall be elected. I don't consider necessarily that their positions are any more sacrosanct than any other officials within the county. But the principal point is this. We must, however unwillingly, have the foresight to burden the pure home rule concept and temper it with a little idea of grass roots control by the people themselves. You can no longer give, say, the county of Wayne or the county of Kent or Genesee county or any of the other large counties

pure county home rule as you gave back to the cities at the turn of the century because the same problems do not exist. The scope of problems is completely beyond the ken of normal elected officials, and if the structures of local government fall increasingly, as they actually must, into the hands of the statistical administrators, then I think we are going to lose the real popular control over our local form of government.

And for that reason I support the Hart-Downs amendment.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Taylor, Delegate Ford.

MR. FORD: I want to rise to support the Hart-Downs amendment and my reasons, again, are a little bit different than Tom's as he explained them and I guess a little bit different than Ted's.

One thing I want to make clear. For some time in this convention on the local government committee we had a division that was so severe that people actually were on the verge of losing friendships of some importance to them over the emotion that was generated by this question. I felt that there was no issue that caused as much concern to me about the attitudes of my fellow delegates, people that I considered friends that I had to differ with. There was nothing that compared to this. And how we could solve this problem has been a dilemma to many of us because there are so many points of view, and I would wager that if we took all 144 delegates and had them write, in not more than 25 words, a definition of home rule, we would get 144 different concepts. So we have to start off on the assumption that not all of us are talking about the same thing when we are talking about it. It is not the kind of thing that you can define with sufficient clarity so that we always know that when I am arguing for home rule or against it, I am really disagreeing with one who seems to be on the other side.

Now, this compromise that is talked about, which takes that form in this amendment, is a compromise between some certain individuals on the committee. And I want to make it clear that I took no part in that compromise and I don't endorse it, nor do I criticize the attempts of the people who brought the compromise about, nor do I criticize their motives. But I want to suggest to you that maybe what looks like a compromise here isn't really a compromise at all.

Mr. Brake said a practical person will compromise when he can do so without sacrificing his principles, and I thought that Mr. Brake and I at one point agreed on a couple of rather basic principles that have now been compromised right out the window, and one of the very basic principles is that I have no particular affection for the concept that all county officials have a vested interest that has to be protected. I don't represent any county officials. I have no aspirations toward becoming one and I don't know that I could even say that the county officials in my county are even personal friends. But there are 2 county positions that have a tradition and a history behind them that make me, as a lawyer, very apprehensive about tinkering with them and tinkering with their manner of selection. That is the prosecutor and the sheriff.

Now, Ted said he didn't understand why they were different or he didn't see that they were different than the other county officials. Well, I submit that they are different and they are different in the same way that the judges of our courts are different from the other county officials.

One of the questions that you are going to have to face later in the convention is a question of whether you would allow your judiciary to be appointed or whether you want to retain the right to elect them, and the principal focal point of this question is that historically we have come to the position in this country where the people demand the right to select the person who is going to sit in judgment of their rights.

In the same manner, in the formation of our present government, a very significant step was taken in this direction in 1215 at Runnymede Meadow when they sat down and said to bad Prince John, "We're not going to stand for the way you've been running things in the past. We want the right to determine for ourselves a good many of the things that you have been determining." All of you have a copy of the magna carta, the blue volume that was given to us at the beginning of the convention. One of the things that you will find running throughout is that when they referred to the people who enforced the King's laws, they constantly took care to see that the persons enforcing those laws would be selected by the people against whom they were being enforced or for whose benefit they were being enforced. The second thing that they were very careful to preserve unto themselves was the right to choose some form of local judiciary, someone to administer the law. Now, at that point in history there was no prosecutor. He is a more modern part of our system. But the prosecutor is an important and integral part of the whole system of justice and people's rights. The sheriff occupies a position that is not identical with a chief of police or a municipal law officer comparable to a chief of police, and the judiciary is a part of this system. It has been suggested to me, for example, that one reason why you might not agree that people like myself who feel that they have a constitutional right to elect the people that deal with the enforcement of the law at this level should not insist on this for the sheriff because, after all, he is just a chief of police. I want to point out one distinct reason why he is not just a chief of police. You cannot under the laws of this state be sentenced to serve any time in a city or municipal jail, but many people every day in this state are sentenced to serve time in a correctional or detention facility — down in Wayne county we have the county jail and then we have the Detroit house of correction — which is basically throughout this state an institution, the county jail that is controlled by an elected official.

There are many functions that the sheriff performs in Wayne county that are identical to and identical with every other county in the state. The manner of serving process, the manner of performing his duties is no different within the city of Detroit than it is in Berrien county or in the upper peninsula. The books of this state are full of statutes that define, modify and handle the powers and duties of both the sheriff and the prosecutor, and they don't say that in all counties except counties of such and such population, the sheriff or the prosecutor shall do thus and so. They say the sheriff and the prosecutor shall do thus and so.

And when you read that statute, you know who they are talking about. You know what kind of an officer they are talking about. You don't have to take a quick check and find out whether it is a home rule county that they are talking about or a county with over half a million people. The functions that these 2 people perform cannot, and in my opinion never should, be any different in Wayne county than they are any place else in the state of Michigan.

And I urge upon you that you and I have a constitutional right to guarantee ourselves that however well meaning the people who would promote a change might be, they never are in a position to take these principal law enforcement officers away from an election by the people and a direct responsibility to the people. Imagine, if you will, any political party or group, whether they are nonpartisan citizens for Wayne county or whatever you want to call them, or whether they are Democrats or Republicans or whatever party label they might choose to adopt, getting control of county government under a circumstance where they could adopt a charter which would not only permit them to appoint all of the administrative officers but would allow them to have the appointment and removal power over a principal part of the whole system of justice in that county.

Now, would you for one minute suggest sacrificing on the altar of this sacred home rule principle the courts by saying that in the county of Wayne, for example, a charter commission ought to be able to devise a different judiciary system and a different method of picking judges than they have in the rest of the state? Would you be willing to take a chance on the fact that in your county, instead of having an elected circuit judge, a charter commission could, in a wave of good government feeling, decide that it would be better to appoint that judge, or to have him appointed by the board of supervisors? I don't think anybody here would

agree to that, but I submit that you are saying that you would be willing to permit a principal part of the justice system to be handled in just this manner.

Now, there isn't any reason for us to kid each other and beat around the bush about what the real issue is in this home rule, and has been, the real divisive issue. When we talk of home rule concepts, there are some differences of opinion. For example, no one has said anything about the taxing power of this home rule county. If the 15 mill limitation goes out the window, then I don't suppose we have any more to worry about with respect to this, but if the 15 mill limitation finds its way into this constitution or continues, then we have to face the question of whether these proponents of pure home rule really mean it, because when we asked them in the committee, "Would you allow a county to have taxing power, other than that which a normal county has, when it becomes a home rule county?", their answer was "No." One of the most influential or best publicized delegates in this convention had before us a proposal which specifically prohibits a home rule county from being exempted from the 15 mill limitation.

Now, doing this, and recognizing that you are going to create an animal without taxing power, what is it for? Is it to perform services? And if it is, how does it perform services in addition to what it performs presently if you give it no additional taxing power? Really, what some of these proponents of the pure home rule are talking about is what they call structural home rule, and by that they mean that they want the people of the county to have the right to change the governmental structure, the name of the officers, the powers of the officers, but not to change the governmental functions of a home rule county. And I submit that the only thing that you would have with this kind of pure home rule would be a county with officers with different names, picked in a different manner than they are now picked, but with no powers different than they presently hold.

A compromise was made and people signed their names to this compromise who were diametrically opposed on all of these issues that I have mentioned to you. And here is why I don't think it really is a compromise. As John McCauley has said, all that this intends to do is get rid of a hot potato in this convention by shifting it over to the legislature. In so doing, the members of both sides of this compromise are looking for 2 different results.

The people who support the Allen-Judd point of view — and I am not trying to single them out, because they have many people supporting them; I suggest this is a representative part of one group in the local government committee — apparently feel that if they trust the legislature to establish the structure of the county with respect to the question of whether the present constitutional county officials shall continue to be elected or not, that they can muster enough influence in the halls of the capitol building to cause the legislature to adopt a home rule provision that would permit the abolition of the constitutional officers.

On the other hand, Mr. Brake and his people very obviously went for this compromise because they think that they have enough influence in the halls of that capitol building over there to prevent the legislature from adopting a statute for county home rule that would permit the abolition of the present county officers.

Now, I am pointing fingers and I have a great deal of respect for the people whose names I have used, and I don't in any way intend to impugn their characters or to suggest anything but the highest motives. They are, in their way, attempting to get for the people of Michigan who seem most important in their considerations what they think is best for them. But I suggest to you that you are being fooled slightly if you think that this compromise is really a compromise, because all it is doing is getting us away from making the decision, and shifting it to the capitol building, and it is entered into by 2 groups of people who think that they have over there an opportunity to get what they want in county home rule and might not be able to get what they want here.

It apparently has been indicated to some people in this convention that there is a sufficient feeling in one direction or another on these issues so that the only hope they have of saving their position is really to save it over on capitol hill because they have lost hope here in this convention. I think that everybody in this room has some idea as to whether or not there have been discussions in groups other than on this convention floor that might lead people to believe that principal parts of this issue might have been resolved by political parties. I think it is a terribly unfortunate situation when we find ourselves in a position in this convention with anything as important and vital as this issue, with anything that has taken as much time and study as this issue has in the convention to come up with what is called a compromise, when we know really it isn't a compromise at all but it is a way to avoid some controversy that might to some people be embarrassing.

Some of the compromisers have still a third reason for entering into the compromise or for supporting the compromise, and that is that in the Tom Downs-Adelaide Hart formula of county home rule there isn't any question that every county in this state will have the right, from the day that this constitution is adopted, to start right out then with county home rule. But under the compromise proposal and under the amendment that Mrs. Cushman presented, which is almost identical, you find yourself in a position where if the legislature never agrees to a form of county home rule, there won't be any county home rule, because until such time as the legislature enacts a home rule statute, there isn't county home rule. There is nothing self executing about this provision.

So maybe this falls again into the hands of the people who say, "Really, what we are saying when we say we want to shift it to the legislature is that over in the legislature, if we don't get what we want, we can bottle it up in a committee for so long that in fact there will never be home rule, and we don't have to worry about whether the county officers are going to be eliminated or not." And I suspect that there is a possibility that the legislature will be in no better position to agree on what county home rule should be than we are right now, and that this issue could stay over there for years with good men tried and true, laying aside all politics and personal gain, still unable to make a decision because it is a knotty problem and it has a lot of prejudices built into it. The Downs-Hart amendment would say to the people of any county in this state, "Whether the legislature acts or doesn't act, you can go ahead and frame a charter, and at least as to the extent of the provisions in this amendment, you can have county home rule."

It is going to be urged here that you shouldn't adopt this Downs-Hart amendment because it is restrictive. Let's see which is really restrictive, the one that says that you have this as an absolute right, county home rule, or the one that says if and when the legislature ever gets around to adopting a home rule statute, you will then have it.

And then one final comment. John McCauley touched on it when he said there are some of us who are fearful that if we have to go into the arena of the legislative committee, that our views from Wayne county may not be heard. I don't think that John and I agree on this entirely, but I think that I could demonstrate to you very quickly that we have statutes galore on our books which have a population formula in them, and they might just as well say that in Wayne county, thus and so will happen. They don't say that. They say ". . . in counties of 1 million. . . ." They used to say ". . . in counties of 500,000. . . ." Then the 1960 census brought another couple of counties into the picture, so now they are revising all these figures up to 1 million, and I am fearful of a double standard that has pervaded much legislation coming into this county home rule picture, where that legislature might in its wisdom adopt a county home rule statute that said, "In counties where home rule is adopted, all county officials shall remain as presently provided for in the constitution, except in counties of over 1 million the county officials may be elected, selected, appointed or abolished in such manner as may be provided by the charter." And this

is one of the clear and present dangers I see to leaving it to the legislature. I don't want my county or your county or anyone's county treated differently than the others when we are talking about county citizenship, and I don't think that a big county or a little county has any different interests in this matter.

And I ask you to support the Downs-Hart amendment because it is the only way that we can make a clear cut exposition to the people that we really honestly believe in county home rule and that we also honestly believe in protecting certain basic rights in the administration of justice.

CHAIRMAN DeVRIES: The question is on the amendment offered by Delegate Hart and Vice President Downs to the amendment offered by Mrs. Judd, et al, to section a. The Chair recognizes the gentleman from Flint, Delegate McLogan.

MR. McLOGAN: Mr. Chairman, I did want my day in court on this important matter but I don't want my day to be in the middle of the night, and in view of the hour, I will pass.

CHAIRMAN DeVRIES: Delegate McLogan passes.

The question before the committee is the amendment offered by Delegate Hart and Vice President Downs to the amendment offered by Delegates Judd, Brake and Elliott to section a. The secretary will not read the amendment. The reading was dispensed with by unanimous consent. As many as are in favor of the amendment offered by Delegate Hart and Vice President Downs will say aye. As many as are opposed will say no.

A DELEGATE: Division.

CHAIRMAN DeVRIES: A division is requested. Is there support for a division vote? There is adequate support for a division vote. All those in favor of the amendment offered by Delegate Hart and Vice President Downs to the pending amendment will vote aye. All those opposed will vote no. The secretary will lock the machine and tally the vote. The secretary will announce the vote.

SECRETARY CHASE: On the adoption of the amendment offered by Miss Hart and Mr. Downs, the yeas are 33; the nays are 80.

CHAIRMAN DeVRIES: The amendment to the amendment is not adopted. Are there any further amendments to the amendment offered by Delegate Judd, et al?

SECRETARY CHASE: Mr. T. S. Brown offers the following amendment to the amendment:

1. Amend the amendment, first paragraph, after the first "county charter" by striking out "in a manner and with powers and limitations to be provided by general law, which law may" and inserting "to"; and after "constitution.", by striking out the words "subject to law,"; so the language will read:

> Sec. a. Any county may frame, adopt, amend, or repeal a county charter to permit the organization of county government in forms different from the forms set forth in this constitution. A county charter may authorize the county through its regularly constituted authority to pass all laws and ordinances relating to its municipal concerns.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Garden City, Delegate Brown.

MR. T. S. BROWN: Mr. Chairman, members of the committee, working with the terminology that I very frankly understood from several delegates was the terminology that the majority members wished to pass, and attempting to interpose my particular idea of county home rule and give it a more puristic approach, I simply deleted the words which would limit or otherwise delineate the type of county home rule that any particular county could have. And then in reference to the phrase "subject to law," of course I think it is well understood that any county home rule provision initiated by the people in charge of the county would have no effect if it were contrary to general state law or the constitution or to any other superior document. It is very simple. It provides for what might be called a puristic county home rule, and it is self executing.

I was much impressed by what Bill Ford said. I think that we here have put as much study into this matter of county home rule, whether or not we shall have it, what type we should have and so on, as our best members in our legislature could possibly put in, and I don't think it is advisable for us at this time simply to give the matter to the legislature, because vested interests on both sides of the political fence in the state of Michigan will then begin to act as they have always acted in the legislature, and I think we here very frankly are a more logical body to determine, with less vested interest represented, just exactly what type of county home rule we are going to have. We are actually the people assembled, and I don't think that the legislature in its finest hour can say that much.

CHAIRMAN DeVRIES: The question before the committee is the amendment offered by Delegate T. S. Brown. The secretary will read the amendment.

SECRETARY CHASE: Mr. Brown's amendment:

[The amendment was again read by the secretary. For text, see above.]

CHAIRMAN DeVRIES: The question is on the amendment offered by Delegate T. S. Brown to the amendment. As many as are in favor of the Brown amendment will say aye. Opposed, no.

The amendment is not adopted.

MR. T. S. BROWN: Division.

CHAIRMAN DeVRIES: A division vote is requested by Delegate Brown. Is there support? There is sufficient support. As many as are in favor of the Brown amendment to the pending amendment will vote aye. As many as are opposed will vote no. The secretary will lock the machine and tally the vote. The secretary will announce the vote.

SECRETARY CHASE: On the adoption of the amendment offered by Mr. T. S. Brown, the yeas are 26; the nays are 81.

CHAIRMAN DeVRIES: The amendment to the amendment is not adopted. Are there any further amendments to the amendment offered by Delegates Judd, Brake and Elliott?

SECRETARY CHASE: Mr. T. S. Brown offers the following amendment:

1. Amend the amendment, last paragraph, after "electors" by inserting "by partisan ballot"; so that the last sentence in the last paragraph will read, "The charter commission shall be elected by the county electors by partisan ballot in accordance with the election laws."

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Garden City, Delegate Brown.

MR. T. S. BROWN: Those of you who voted nay on the last amendment I proposed must recognize this as the last dying gasp of the point of view that we have been proposing here this afternoon. If this passes, I think it will be sufficient in the light of all the circumstances, because it will guarantee at least that the people by partisan ballot in any county will have a right to pass upon the actual workings out of their particular form of county home rule. In those counties that are conservatively oriented, I am sure the conservatives will win, and the reverse is also true, and then if we, in acquiescence to the best wishes of our particular political orientation, do ourselves a disservice in voting upon ourselves the wrong kind of charter, then, of course, we hold ourselves only to blame. But I do think that the matter should be decided on a partisan basis.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Detroit, Delegate Binkowski.

MR. BINKOWSKI: Mr. Chairman, ladies and gentlemen of the committee, I won't belabor this point because I think it is obvious, according to the record, that the majority here have made up their mind and therefore this is just a complete silence on their part and there will be no changes. I would just like to go on record, though, as favoring the Brown amendment.

CHAIRMAN DeVRIES: The question before the committee of the whole is the amendment offered by Delegate T. S. Brown

to the amendment offered by Delegates Judd, Brake and Elliott to section a. As many as are in favor of the Brown amendment will say aye. Opposed, no.

A DELEGATE: Division.

CHAIRMAN DeVRIES: A division vote is requested. Is there support? There is support. As many as are in favor of the Brown amendment to the pending amendment will vote aye. As many as are opposed will vote no. The secretary will lock the machine and tally the vote. The secretary will announce the vote.

SECRETARY CHASE: On the adoption of the Brown amendment, the yeas are 41; the nays 70.

CHAIRMAN DeVRIES: The amendment to the amendment is not adopted. Are there any further amendments to the amendment?

SECRETARY CHASE: Mr. Hodges offers the following amendment:

1. Amend the amendment, first paragraph, after "by general law,", by inserting "provided such law is uniform for all counties,"; so that the language will read:

> Any county may frame, adopt, amend, or repeal a county charter in a manner and with powers and limitations to be provided by general law, provided such law is uniform for all counties, which law may permit the organization of county government in forms different from the form set forth in this constitution.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Detroit, Delegate Hodges.

MR. HODGES: Mr. Chairman, many people from my area have been discussing what I would probably consider a parade of horribles of what might happen, they envision, based on their experience with the current legislature and the possible one that might come out of this convention.

All we ask here — and I don't think this is asking too much — is that if a law giving home rule is enacted by the legislature and to the degree it gives it, that it is uniform on all counties. This would answer and would make me feel much more at ease in voting for the amendment if I felt that there could not be an exception made of Wayne county on any type of issue, whether it is partisanship, nonpartisanship, elected officials or what, and that we would have our day in court.

It seems to me that this is a simple provision. It doesn't change the basic intent of the amendment. It just allows for fair play for all the counties alike, and with the legislature as it is presently constituted, I think that this is not a guarantee that is at all unreasonable.

CHAIRMAN DeVRIES: The question is on the Hodges amendment to the amendment.

MR. HODGES: I request a division vote.

CHAIRMAN DeVRIES: Delegate Hodges requests a division vote. Is there support? There is support. As many as are in favor of the Hodges amendment to the amendment will vote aye. As many as are opposed will vote no. The secretary will lock the machine and tally the vote. The secretary will announce the vote.

SECRETARY CHASE: On the adoption of the Hodges amendment, the yeas are 39; the nays are 68.

CHAIRMAN DeVRIES: The amendment to the amendment is not adopted. The question is on the amendment offered by Delegates Judd, Brake and Elliott to section a of Committee Proposal 89.

SECRETARY CHASE: Mr. Austin offers the following amendment to the amendment:

1. Amend the amendment, following the last paragraph, by inserting a new paragraph to read as follows:

"The legislature shall by general law, for counties adopting home rule powers, limit the rate of general property taxation for municipal purposes, and restrict their powers of borrowing money and contracting debts. Each such county is hereby granted power to levy other taxes for public purposes subject to limitations and prohibitions set forth in this constitution or law.".

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Detroit, Delegate Austin.

MR. AUSTIN: Mr. Chairman and members of the committee, the purpose of this amendment is simply to assure that home rule counties will have home rule taxing powers and to do just as we have done for home rule cities. The language is actually exactly the same. It is just to make sure that the legislature understands that once a county has adopted a home rule charter, it is also to have home rule taxing powers.

CHAIRMAN DeVRIES: The question is on the adoption of the Austin amendment to the amendment.

MR. HOXIE: May we have it read again, please?

CHAIRMAN DeVRIES: The secretary will read the Austin amendment.

SECRETARY CHASE: The amendment is:

[The amendment was again read by the secretary. For text, see above.]

CHAIRMAN DeVRIES: The question is on the Austin amendment to the amendment. As many as are in favor of the Austin amendment will say aye. As many as are opposed will say no.

MR. AUSTIN: Division, please.

CHAIRMAN DeVRIES: Delegate Austin requests a division vote. Is there support? There is support. All those in favor of the Austin amendment to the pending amendment will vote aye. All those opposed will vote no. The secretary will lock the machine and tally the vote. The secretary will announce the vote.

SECRETARY CHASE: On the adoption of the Austin amendment, the yeas are 42; the nays are 65.

CHAIRMAN DeVRIES: The amendment to the amendment is not adopted. Delegate Ford.

MR. FORD: I would like to direct a question. Are we back now on the principal amendment?

CHAIRMAN DeVRIES: The question before the committee is the adoption of the amendment offered by Delegate Judd, et al.

MR. FORD: I would like to direct a question to each of the 3 proponents of this amendment. In view of the fact that all 3 of you voted against Mr. Austin's amendment to give a county home rule taxing power, is it to be assumed that it is not your intention that a county should have, when it adopts home rule, any taxing power different than it has as a standard county?

CHAIRMAN DeVRIES: The Chair recognizes Delegate Brake.

MR. BRAKE: Mr. Ford, we are leaving that and all other questions to the legislature. And when I agree to a compromise, I mean that, nothing else.

CHAIRMAN DeVRIES: The question now is on the amendment offered by Delegate Judd, et al, to section a of Committee Proposal 89. The Chair recognizes the gentleman from Detroit, Delegate Madar.

MR. MADAR: Before we go to this vote, Mr. Chairman, I wanted to say that I am mighty proud of the fact that today I was able to be consistent all the way through. I don't like this idea of breaking completely with my principles. I never will. And I hope that never again in my life shall I ever see good men broken as some of them have been in this convention and today or last night.

CHAIRMAN DeVRIES: The question is on the adoption of the amendment.

DELEGATES: Division.

CHAIRMAN DeVRIES: A division vote is requested. Is there support? There is support. As many as are in favor of the amendment offered by Delegates Judd, Brake and Elliott to section a will vote aye.

MR. DOWNS: Parliamentary inquiry. May a person abstain from voting in the committee of the whole?

CHAIRMAN DeVRIES: Vice President Downs, it is the understanding of the Chair that the rules of the convention also apply to the committee of the whole as far as applicable.

MR. DOWNS: I wish to announce I may reserve my right to abstain.

CHAIRMAN DeVRIES: Vice President Downs wishes to abstain.

MR. FORD: A parliamentary inquiry, if I may.

CHAIRMAN DeVRIES: State your point.

MR. FORD: The text I have in front of me indicates that this is what we would be voting on as an amendment to Committee Proposal 89. It was my understanding that before we could vote on the committee proposal or amendments thereto, we first had to vote on the minority report if one was filed, and I believe the minority report does cover the same subject matter as this amendment. I think that we are entitled to have the minority report disposed of, which happens to have some of the same signers as this amendment, but isn't identical.

Unless all of the signers of the minority report are willing to withdraw it, I think we have the right to have it considered.

CHAIRMAN DeVRIES: Delegate Ford, we are considering an amendment to section a. The minority report concerns sections b and c.

MR. FORD: Well, I want to ask the Chair if he has a copy of this in front of him. This was distributed to us. It says, "Amend lines 6 through 22 by striking it out and inserting . . ." Then at the very bottom it says: "Amend page 2, lines 1 through 14, by striking all of section b." How much of this are we voting for?

CHAIRMAN DeVRIES: Mr. Ford, the Chair does have that, and the last sentence on the sheet is an amendment to section b. It will be considered as a separate amendment. All we are concerned with right now is the amendment to section a, the 3 paragraphs on the sheet.

MR. FORD: All right. Now, are we amending section a of the committee report or section a of the minority report?

CHAIRMAN DeVRIES: Section a of the committee report.

MR. FORD: Then why are we amending the committee report before we vote on the minority report?

CHAIRMAN DeVRIES: Because the minority report is concerned with sections b and c. Presently the committee is concerned with section a, the amendment to that section.

The question is on the adoption of the amendment. As many as are in favor will vote aye. As many as are opposed will vote no. The secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the adoption of the amendment to section a offered by Mrs. Judd, Mr. Brake and Mr. Arthur Elliott, the yeas are 79; the nays are 24.

CHAIRMAN DeVRIES: Delegate Madar.

MR. MADAR: I just wanted to explain my vote, because I believe that this will be known all over the state, and all I have heard is about true home rule. This amendment does not give true or strict home rule. I read editorials, newspaper accounts, and I only hope and pray that the Detroit News, the Detroit Free Press and the other newspapers print this like they did everything else, and lay the blame for not getting strict home rule where it belongs — on the Republican party.

CHAIRMAN DeVRIES: The amendment is adopted. Are there any further amendments to section a?

MR. MARSHALL: Mr. Chairman.

CHAIRMAN DeVRIES: Delegate Marshall.

MR. MARSHALL: Mr. Chairman, I just want to make a brief statement and then I will make a motion. I don't want to be put in the position of being the one to move that we rise or that we adjourn, but we have been here now for almost 4½ hours, and it is a little hard after you sit for 4½ hours to concentrate and to keep up with what is going on. I notice that, looking around the hall, people are getting drowsy. Many of them have left. A few of them have been asleep, and it just seems to me with the time we put in this morning and a 4½ hour stretch this afternoon that this is enough, and at this time I would like to move, Mr. Chairman, that the committee do now rise.

CHAIRMAN DeVRIES: Delegate Marshall moves that the committee of the whole do now rise. As many as are in favor of the motion will say aye. Opposed, no. The Chair is in doubt. As many as are in favor of the committee rising will vote aye. Those opposed will vote no. The secretary will lock the machine and tally the vote.

Delegate Brown, for what purpose does the delegate arise?

MR. T. S. BROWN: A matter of personal privilege, Mr. Chairman.

CHAIRMAN DeVRIES: Can you wait until the vote is tallied?

MR. T. S. BROWN: Yes.

CHAIRMAN DeVRIES: The secretary will announce the vote.

SECRETARY CHASE: On the motion that the committee rise, the yeas are 59; the nays are 54.

CHAIRMAN DeVRIES: The motion prevails. The committee will rise.

[Whereupon, the committee of the whole having risen, Vice President Romney assumed the Chair.]

MR. T. S. BROWN: Mr. President.

VICE PRESIDENT ROMNEY: Delegate Brown.

MR. T. S. BROWN: Thank you, Mr. President. I just wanted to make some remarks, which if the matters contained in the committee of the whole are not recorded in the journals and the remarks contained when we rise are, will not necessarily make any sense.

VICE PRESIDENT ROMNEY: Delegate Brown, the secretary informs me that remarks are not in order until we hear a report on the work conducted in the committee of the whole. I will recognize you as soon as we have done that.

Delegate DeVries.

MR. DeVRIES: Mr. President, the committee of the whole has had under consideration certain matters on which the secretary will give a detailed report.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 88,** A proposal pertaining to metropolitan areas; and reports this committee proposal back to the convention with an amendment, recommending that the amendment be agreed to and the proposal as thus amended do pass.

Following is the amendment:

1. Amend page 1, line 20, after "government" by striking out the period and "Under such general law such units of local government shall have power:" and inserting a semicolon and "which general law shall authorize such units of local government among other things:".

VICE PRESIDENT ROMNEY: Those in favor of the recommended amendment vote aye. Opposed?

The amendment is adopted.

SECRETARY CHASE: Mr. Boothby offers the following amendment to Committee Proposal 88:

1. Amend page 2, line 13, by striking out "consent of" and inserting "approval of a majority of the electors voting thereon in"; so that page 2, subdivision 3, beginning at line 11, will read:

> (3) To transfer to each local unit of government or combination thereof functions and responsibilities or both upon the approval of a majority of the electors voting thereon in each unit of government involved.

VICE PRESIDENT ROMNEY: Delegate Boothby.

MR. BOOTHBY: Mr. President, I would like to call for a record roll call vote.

VICE PRESIDENT ROMNEY: Is the demand seconded?

SECRETARY CHASE: Seventeen.

VICE PRESIDENT ROMNEY: Not a sufficient number. Delegate Ford.

MR. FORD: It is very apparent from what has already happened here today that we are going to have a whole series

of amendments. We saw what happened last night, and I think everybody is about as tired as they ought to be for one day, and I wouldn't want to face the challenge of getting up here again, the way I feel about the manner in which this decision was made.

I would like to have your cooperation when I move that we adjourn until tomorrow morning.

VICE PRESIDENT ROMNEY: The question is on the motion that we adjourn. Those in favor will say aye. Opposed?

The motion prevails. We are adjourned until 9:30 tomorrow morning.

[Whereupon, at 6:35 o'clock p.m., the convention adjourned until 9:30 o'clock a.m., Friday, February 16, 1962.]

EIGHTY-FIRST DAY

Friday, February 16, 1962, 9:30 o'clock a.m.

PROCEEDINGS

VICE PRESIDENT HUTCHINSON: The convention will come to order.

The invocation this morning will be delivered by the Reverend Forest Friese, Pastor of Bethlehem Lutheran Church in Roseville. Reverend Friese comes at the invitation of Delegate McCauley.

REVEREND FRIESE: Almighty God, heavenly Father, Thou hast commanded Thy people to pray and Thou hast promised to hear their prayers; therefore hear us, O Lord, as we come unto Thee with hearts that are filled with joy and thankfulness for the many temporal and spiritual blessings that Thou hast so generously bestowed upon us, our families, our churches and our nation. Hear our prayers of thanks, O God, and keep us thankful lest by word and by deed we become ungrateful and thankless and Thou in Thy justice withhold Thy gracious blessings and cause Thy consuming wrath to descend upon us. Humbly and repentantly our hearts and voices request that Thou wouldst not look upon our weaknesses, our frailties and our shortcomings and because of them deny our prayers. Instead, O God, cause Thy mercy to descend upon us, and Thy forgiving grace to embrace us.

Heavenly Father, without Thy blessings and benediction we can do nothing, therefore shed Thy strength and wisdom upon those who have met here in order that all may be mindful of the seriousness of the obligations they have assumed and inspire us to give of ourselves unselfishly so that our time and our gifts and abilities may be used in Thy service for the good of our fellowmen and in behalf of our beloved state.

O Thou Giver of all wisdom, guide and keep us so that Thy will may be done and protect us so that selfishness, greed and indifference may never control our actions or our deliberations. Give us the wisdom to see that which is right, the courage to speak that which is beneficial, and the conviction to hold fast to that which is honest, just and impartial.

O Lord God heavenly Father, we are as grass that is present today and withered and gone tomorrow, but since our work and deliberations may affect coming generations, shower us with Thine omniscient help, crown us with Thine unfathomable wisdom, and guide us with Thine almighty strength so that all may be done in harmony with Thy gracious will and for the benefit of mankind.

These and whatsoever other things Thou wouldst have us ask of Thee, O God, grant them unto us for the bitter sufferings and death of Christ, Thy beloved Son, our Lord and Savior, so that we may do Thy will and some day hear Thee say, "Come, Thou good and faithful servant, enter the kingdom that I have prepared for Thee." Hear our prayers and answer them, O God. Amen.

VICE PRESIDENT HUTCHINSON: The roll call will be taken by the secretary. All those present will vote aye. Have you all voted? If so, the secretary will lock the machine and record the roll.

SECRETARY CHASE: Mr. President, a quorum of the convention is present.

Prior to today's session, the secretary received the following requests for leave:

Messrs. Garvin and Mahinske, from today's session; and Mr. Nisbet, from the session of today and the sessions of next week, because of company business that was arranged 2 years ago.

VICE PRESIDENT HUTCHINSON: Without objection, the requests are granted. I hear none. It is so ordered.

SECRETARY CHASE: Absent with leave: Messrs. Garvin, Goebel, Gust, Mahinske, Nisbet and Nord.

Absent without leave: Messrs. Krolikowski and Norris.

VICE PRESIDENT HUTCHINSON: Without objection, the unexcused absentees will be excused from today's session. Is there objection? The Chair hears none, and they are granted excuses.

[During the proceedings, the following delegates entered the chamber and took their seats: Messrs. Krolikowski, Garvin, Gust and Norris.]

Reports of standing committees.

SECRETARY CHASE: No reports filed, Mr. President.

VICE PRESIDENT HUTCHINSON: Reports of select committees.

SECRETARY CHASE: None.

VICE PRESIDENT HUTCHINSON: Communications from state officers.

SECRETARY CHASE: None.

VICE PRESIDENT HUTCHINSON: Second reading of proposals.

SECRETARY CHASE: The items on the second reading have been postponed until Monday.

VICE PRESIDENT HUTCHINSON: Third reading of proposals.

SECRETARY CHASE: Nothing on that calendar.

VICE PRESIDENT HUTCHINSON: Motions and resolutions.

SECRETARY CHASE: There are no resolutions on file.

VICE PRESIDENT HUTCHINSON: **Unfinished business.**

SECRETARY CHASE: Under the order of unfinished business, the president lays before the convention the report of the committee of the whole. **Committee Proposal 88,** A proposal pertaining to metropolitan areas; was reported last evening with an amendment, which amendment has been agreed to. Pending the reference of the proposal to the committee on style and drafting, Mr. Boothby offered an amendment, which is now pending.

[The amendment was again read by the secretary. For text, see above, page 1105.]

The yeas and nays were demanded, but were not supported.

VICE PRESIDENT HUTCHINSON: The question is upon the amendment offered by the delegate from the seventh district,

Mr. Boothby. All those in favor will say aye. Those opposed will say no.

The amendment is not adopted.

SECRETARY CHASE: There are no other amendments pending to the proposal, Mr. President.

VICE PRESIDENT HUTCHINSON: **Committee Proposal 88,** as amended, is referred to the committee on style and drafting.

Following is Committee Proposal 88 as amended and referred to the committee on style and drafting:

The committee recommends that the following be included in the constitution:

Sec. a. The legislature shall have power to establish in metropolitan areas such additional forms of government or authorities with such powers, duties and jurisdictions as the legislature shall deem necessary.

Wherever possible, said additional forms of government or authorities shall be designed to perform multipurpose functions rather than a single function.

Sec. b. The legislature shall provide by general law for the exercise of local government by 2 or more counties, cities, villages, townships or districts, or any combination of 2 or more of such units of local government; which general law shall authorize such units of local government among other things:

(1) To enter into contractual undertakings or agreements with one another or with the state or with any combination thereof for the joint administration of any of the functions or powers which each local unit of government would have the power to perform separately;

(2) To share the costs and responsibilities of functions and services with one another or with the state or with any combination thereof which each local unit of government would have the power to perform separately;

(3) To transfer to each local unit of government or combination thereof functions and responsibilities or both upon the consent of each unit of government involved;

(4) Jointly to cooperate with one another and with state government and intergovernmental agencies;

(5) To lend their credit in a manner prescribed by law in connection with any publicly owned undertaking authorized herein.

Any other provision of this constitution notwithstanding, an officer or employee of any of said units of government or subdivision or agency thereof may serve on or with any governmental body established for the above purposes and shall not be required to relinquish his office or employment by reason of such service.

SECRETARY CHASE: Also, as part of the report of the committee of the whole, Mr. President, under unfinished business, the committee of the whole reports back to the convention **Committee Proposal 85,** A proposal to provide that public utilities may use public property with consent of local authorities and a limitation on the length of franchise. The committee of the whole reports the proposal with 2 amendments, recommending the amendments be agreed to and that the proposal, as thus amended, do pass.

Following are the amendments recommended by the committee of the whole:

1. Amend page 1, line 7, after "corporation" by inserting a comma and "public or private,".

2. Amend page 1, following line 20, by inserting a new section to read as follows:

"Sec. c. Any county, through its legislative body, shall have the authority to enter, or to intervene in any suit or certificate proceeding involving the service, charge or rate made by any privately owned public utility furnishing services or commodities to rate payers within the county.".

VICE PRESIDENT HUTCHINSON: The question is upon concurring in the amendments recommended by the committee of the whole. All those in favor will say aye. Those opposed will say no.

The amendments are adopted.

Committee Proposal 85, as amended, is referred to the committee on style and drafting.

Following is Committee Proposal 85 as amended and referred to the committee on style and drafting:

The committee recommends that the following be included in the constitution:

Sec. a. No person, partnership, association or corporation, public or private, operating a public utility shall have the right to the use of the highways, streets, alleys or other public places of any county, city, village or township for wires, poles, pipes, tracks or conduits, or other utility facilities, without the consent of the duly constituted authority of the county, city, village or township; or to transact a local business therein without first obtaining a franchise from the city, village or township. The right of all counties, cities, villages and townships to the reasonable control of their highways, streets, alleys and public places is hereby reserved to said local units of government.

Sec. b. No franchise or license shall be granted by any municipality of this state for a longer period than 30 years.

Sec. c. Any county, through its legislative body, shall have the authority to enter, or to intervene in any suit or certificate proceeding involving the service, charge or rate made by any privately owned public utility furnishing services or commodities to rate payers within the county.

SECRETARY CHASE: The committee of the whole, Mr. President, also had under consideration **Committee Proposal 89,** had considered several amendments thereto, and had come to no final resolution thereon. This completes the report of the committee of the whole, Mr. President.

VICE PRESIDENT HUTCHINSON: Special orders of the day.

SECRETARY CHASE: None.

VICE PRESIDENT HUTCHINSON: **General orders of the day.** The Chair recognizes the delegate from Kent, Mr. DeVries.

MR. DeVRIES: Mr. President, I move that the convention resolve itself into committee of the whole for consideration of several items upon the order of general orders.

VICE PRESIDENT HUTCHINSON: The question is upon the motion. All those in favor will say aye. Those opposed, no.

The ayes have it, and the motion prevails. Mr. DeVries will preside.

[Whereupon, Mr. DeVries assumed the Chair to preside as chairman of the **committee of the whole.**]

CHAIRMAN DeVRIES: The committee will come to order. When last the committee met, it was considering **Committee Proposal 89,** A proposal pertaining to county home rule; and had completed consideration of section a.

For last previous action by the committee of the whole on Committee Proposal 89, see above, page 1091.

The secretary will read section b.

SECRETARY CHASE: Section b.

[Section b was read by the secretary. For text, see above, page 1091.]

CHAIRMAN DeVRIES: The Chair recognizes the chairman of the committee, Delegate Elliott, for the committee explanation.

MR. A. G. ELLIOTT: Mr. Chairman, I think it is proper at this time to inform the Chair that there is a minority report that takes precedence over an amendment offered by Mrs. Judd, Mr. Brake and myself.

CHAIRMAN DeVRIES: The secretary will read the minority report amendment.

SECRETARY CHASE: Pursuant to the minority report of Messrs. Allen, Batchelor, Mrs. Cushman, Messrs. Farnsworth,

Figy, Follo, Mrs. Judd, Messrs. McCauley, McLogan, Sieder and Tweedie,

Mr. McCauley offers the following amendment:

1. Amend page 2 by striking out lines 5 through 10 and inserting:

"b. Notwithstanding any other provision in this constitution or in law, for the designation of the officers of the county and the manner of their selection.

c. Notwithstanding any other provision in this constitution or in law, for the form of government of the charter county, including the membership of the board of supervisors and the manner of their selection which shall not be by an election at large.".

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Wyandotte, Delegate McCauley.

MR. McCAULEY: Mr. Chairman and members of the committee, I think I spoke on this at sufficient length yesterday, and at this time, if there are no objections by the other proponents of the minority report, I would like to withdraw it, but will be back again when the committee rises.

CHAIRMAN DeVRIES: Without objection, the minority report amendment will be withdrawn. I hear none; it is withdrawn. Are there any further amendments to section b of Committee Proposal 89?

SECRETARY CHASE: Mrs. Judd, Mr. Brake and Mr. Elliott offer the following amendment:

1. Amend page 2, lines 1 through 14, by striking out all of Sec. b.

CHAIRMAN DeVRIES: The question is on the amendment. As many as are in favor of the amendment offered by Delegates Judd, Brake and Elliott will say aye. Opposed, no.

The amendment is adopted. Are there any further amendments to section b of Committee Proposal 89?

SECRETARY CHASE: None, Mr. Chairman.

CHAIRMAN DeVRIES: Are there any further amendments to the body of Committee Proposal 89? If not, it will pass.

Committee Proposal 89, as amended, is passed. The secretary will read.

SECRETARY CHASE: Item 8 on the calendar, from the committee on local government, by Mr. Arthur Elliott, chairman, **Exclusion Report 2035,** A report recommending the exclusion of article VIII, section 6, regarding jury commissioners.

Following is Exclusion Report 2035 as read by the secretary, and the reasons submitted in support thereof:

The committee on local government recommends that article VIII, section 6 of the present constitution be excluded from the new constitution.

Mr. Arthur Elliott, chairman of the committee on local government, submits the following reasons in support of Exclusion Report 2035:

The legislature has the power and has provided for jury commissioners. The constitutional right of a referendum is no longer an issue, and the section is not needed. The committee on judiciary concurs in this.

CHAIRMAN DeVRIES: The Chair recognizes the chairman of the committee, Delegate Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, members of the committee, we will now have a series of 6 exclusion reports. Different members of the committee on local government will make the explanation in this regard. In calling upon the first gentleman, who will handle Exclusion Report 2035, I would just like to make it perfectly clear how much admiration and respect I have gained in knowing this man through the last 4 months. He has been most helpful in making the work of the committee on local government function as smoothly as it has. I refer to one of our vice chairmen, Mr. Buback.

I yield to Mr. Buback at this time.

CHAIRMAN DeVRIES: Delegate Elliott yields to Delegate Buback.

MR. BUBACK: Mr. Chairman and members of the committee, thank you very much, Mr. Elliott, for those kind words. This is being deleted, because it is now provided by statute. It is in the statute, and we would ask the committee to delete this from the constitution. This gives more flexibility to the legislature, and it is now provided by the legislature. We recommend that this be deleted from the constitution.

CHAIRMAN DeVRIES: The question is on the adoption of the exclusion report. Are there any amendments to the exclusion report? If not, it will pass.

Exclusion Report 2035 is passed. The secretary will read.

SECRETARY CHASE: Item 9, from the committee on local government, by Mr. Arthur Elliott, chairman, **Exclusion Report 2036,** A report recommending the exclusion of article VIII, section 10.

Following is Exclusion Report 2036 as read by the secretary, and the reasons submitted in support thereof:

The committee on local government recommends that article VIII, section 10 of the present constitution be excluded from the new constitution.

Mr. Arthur Elliott, chairman of the committee on local government, submits the following reasons in support of Exclusion Report 2036:

The limitations on taxation in this section were established at a time when there was no general limit on the property tax. Delegates to the 1907-1908 constitutional convention believed that county boards of supervisors should not have complete discretion in deciding how much could be spent annually on public buildings or bridges. With the adoption of the 15 mill limitation, this section became, in practical terms, meaningless. Changes in article X, section 21, being recommended by the committee on finance and taxation and in which the committee on local government concurs, will continue to restrict county taxing powers, and if these or similar restrictions are included in the constitution, article VIII, section 10, is unneeded.

CHAIRMAN DeVRIES: The Chair recognizes the gentleman from Pleasant Ridge, Delegate Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, ladies and gentlemen of the committee, I would like to yield to Mr. Brake to give the explanation on this particular exclusion report.

CHAIRMAN DeVRIES: Delegate Elliott yields to Delegate Brake.

MR. BRAKE: Mr. Chairman, ladies and gentlemen of the committee, one disagreeing with the action of the convention the other day might have a little fun here if you are not too closely on your toes, but I guess it would be better not to do it.

This section reads like this:

The board of supervisors of any county may in any 1 year levy a tax of 1/10 of 1 mill on the assessed valuation of said county for the construction or repair of public buildings or bridges, or may borrow an equal sum for such purposes . . .

This exclusion was approved by both the committee on local government and the finance and taxation committee. But when it was approved, the 15 mill was assumed to be staying in the picture. Now it is out of the picture. And unless the legislature were to act, the county board of supervisors could levy enough tax in one year to build a new courthouse, or borrow a like amount without the vote of the people. Now, I'm not worried. I have worked with boards of supervisors enough so that I have confidence in them. If you are worried, the action is up to you. As far as I'm concerned, this can go on to the committee on style and drafting, as was originally planned. I have told you what the result is.

CHAIRMAN DeVRIES: Are there any amendments to the exclusion report? If not, it will pass.

Exclusion Report 2036 is passed. The secretary will read.

SECRETARY CHASE: Item 10, from the committee on local government, by Mr. Arthur Elliott, chairman, **Exclusion Report 2037,** A report recommending the exclusion of article VIII, section 11.

Following is Exclusion Report 2037 as read by the secretary, and the reasons submitted in support thereof:

The committee on local government recommends that article VIII, section 11 of the present constitution be excluded from the new constitution.

Mr. Arthur Elliott, chairman of the committee on local government submits the following reasons in support of Exclusion Report 2037:

The section is unneccessary since all powers authorized by it are also covered by section 8 and legislation passed thereunder which the committee recommends be retained without change, or by a new section on intergovernmental relations which will permit counties to act in conjunction with one another. The Michigan department of public welfare agrees with the viewpoint expressed here.

CHAIRMAN DeVRIES: Delegate Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, I would like to yield to Mr. Baginski.

CHAIRMAN DeVRIES: Delegate Elliott yields to Delegate Baginski.

MR. BAGINSKI: Mr. Chairman and delegates, section 11 deals with the right of the county to build hospitals and infirmaries for the support of the indigent and the unfortunate. It was the feeling of the subcommittee on counties that sufficient powers were granted under section 8 and that section 11 could be excluded.

CHAIRMAN DeVRIES: Are there any amendments to the exclusion report? If not, it will pass.

Exclusion Report 2037 is passed. The secretary will read.

SECRETARY CHASE: Item 11 on the calendar, from the committee on local government, by Mr. Arthur Elliott, chairman, **Exclusion Report 2038,** A report recommending the exclusion of article VIII, section 15a, regarding drainage district bonds.

Following is Exclusion Report 2038 as read by the secretary, and the reasons submitted in support thereof:

The committee on local government recommends that article VIII, section 15a of the present constitution be excluded from the new constitution.

Mr. Arthur Elliott, chairman of the committee on local government, submits the following reasons in support of Exclusion Report 2038:

The section will be unnecessary and should be excluded if the finance and taxation article includes a provision that public corporations and public bodies shall have power to borrow money and to issue their securities evidencing debt, subject to constitutional and statutory limitations. Drainage districts would be covered under such a general provision. The report to the convention of the committee on finance and taxation contains language which accommodates this problem. (See Committee Proposal 49.)

CHAIRMAN DeVRIES: Delegate Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, I yield to Mr. Batchelor.

CHAIRMAN DeVRIES: Delegate Elliott yields to Delegate Batchelor.

MR. BATCHELOR: Mr. Chairman, fellow delegates, first of all, I would like to give a couple of lifetime observations. I noticed when I was a young boy running off to go swimming that little boys threw the most sticks at the trees that had the most apples on them. And another one: that in the band you hear the loudest and the most noise, most of the time, from the bass drum. The reason for that is it's hollow. (laughter)

This is Exclusion Report 2038, to be found in Journal 71 on page 493. This concerns article VIII, section 15a, which reads as follows: "Any drainage district, established under provision of law, may issue bonds for drainage purposes within such district."

[The supporting reasons were read by Mr. Batchelor. For text, see above.]

CHAIRMAN DeVRIES: Are there any amendments to Exclusion Report 2038? The gentleman from St. Clair Shores, Delegate Snyder.

MR. SNYDER: Mr. Chairman, I would like to direct a question to the committee. I come from a county that has a very serious drainage problem. We are in the process now of trying to correct these things, and we do have many, many drainage districts currently created, and some contemplated. I feel that I must have some assurance for my county, so that we can resolve our problems, that this will not be predicated on an "if-come" basis. I feel that the action that I take now should not be dependent on a possible action of the committee on finance and taxation. I must have some assurance, before I vote affirmatively on this exclusion report, that we will have the means in our county to set up the districts in the event the committee on finance and taxation does not provide the relief as pointed out by the presenter of this report.

CHAIRMAN DeVRIES: Delegate Snyder yields to Delegate Batchelor.

MR. BATCHELOR: Well, I'm sure I will have to yield to the chairman of the finance and taxation committee.

CHAIRMAN DeVRIES: Delegate Batchelor, will you yield to Delegate Van Dusen?

MR. BATCHELOR: Yes.

CHAIRMAN DeVRIES: Delegate Van Dusen.

MR. VAN DUSEN: Mr. Chairman and Mr. Snyder, I can give you the precise assurance which you request. Bond counsel for the Macomb county drain commissioner has recommended this exclusion.

CHAIRMAN DeVRIES: Delegate Snyder.

MR. SNYDER: My question has been very well answered. I have no reason to doubt Mr. Van Dusen.

CHAIRMAN DeVRIES: Are there any amendments to the exclusion report? If not, it will pass.

Exclusion Report 2038 is passed. The secretary will read.

SECRETARY CHASE: Item 12 on the calendar, from the committee on local government, by Mr. Arthur Elliott, chairman, **Exclusion Report 2039,** A report recommending the exclusion of article VIII, section 24.

Following is Exclusion Report 2039 as read by the secretary, and the reasons submitted in support thereof:

The committee on local government recommends that article VIII, section 24 of the present constitution be excluded from the new constitution.

Mr. Arthur Elliott, chairman of the committee on local government, submits the following reasons in support of Exclusion Report 2039:

The committee proposes to add language to a revised version of section 20 which will authorize the legislature by general law to control the conditions under which a city or village may give security for loans made in connection with municipal utilities. With such a provision in section 20, cities and villages could use mortgage bonds as provided by law. No currently outstanding municipal bonds are dependent upon section 24 for their validity, and the section is unneeded. The committee on finance and taxation concurs in this recommendation.

CHAIRMAN DeVRIES: The chairman of the committee, Delegate Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, I yield to Mr. Tweedie.

CHAIRMAN DeVRIES: Delegate Elliott yields to the gentleman from Port Huron, Delegate Tweedie.

MR. TWEEDIE: Mr. Chairman and members of the committee, the present article VIII, section 24 of the constitution provides for the issuance of mortgage revenue bonds for public utilities. It was the unanimous decision of the committee on local government that this provision be excluded from the present constitution, due to the fact that in 1933 the revenue bond act, public act 94, as amended, provided a method of financing public utility revenue type financing, and all public utility revenue financing is now done under this provision. We rec-

ommend that the present article VIII, section 24, be eliminated from the constitution.

CHAIRMAN DeVRIES: Are there any amendments to the exclusion report? If not, it will pass.

Exclusion Report 2039 is passed. The secretary will read.

SECRETARY CHASE: Item 13 on the calendar, from the committee on local government, by Mr. Arthur Elliott, chairman, **Exclusion Report 2040,** A report recommending the exclusion of article VIII, section 31.

Following is Exclusion Report 2040 as read by the secretary, and the reasons submitted in support thereof:

The committee on local government recommends that article VIII, section 31 of the present constitution be excluded from the new constitution.

Mr. Arthur Elliott, chairman of the committee on local government, submits the following reasons in support of Exclusion Report 2040:

Section 31 has proved to be cumbersome and has rarely been used for that reason. The committee on local government has proposed a new section providing more flexibility in the establishing of metropolitan units of government. The few metropolitan districts now operating under section 31 will be protected by the general saving clause of the new constitution.

CHAIRMAN DeVRIES: The Chair recognizes the chairman of the committee, Delegate Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, I yield to Mr. Sharpe.

CHAIRMAN DeVRIES: Delegate Elliott yields to the gentleman from Howell, Delegate Sharpe.

MR. SHARPE: Mr. Chairman, the committee on local government recommends the deletion of this section for the reason that we have agreed to insert a more modern and liberal section on metropolitan government. Therefore, this section will no longer be needed.

CHAIRMAN DeVRIES: Are there any amendments to the exclusion report? If not, it will pass.

Exclusion Report 2040 is passed.

MR. A. G. ELLIOTT: Mr. Chairman.

CHAIRMAN DeVRIES: Mr. Elliott.

MR. A. G. ELLIOTT: Ladies and gentlemen, you have just completed in the committee of the whole the work on local government. As chairman of this committee, it has given me tremendous pleasure the last several weeks to work with these 26 other men and women, each of whom is very dedicated to his task.

As you well know, this committee met many evenings and on at least 2 weekends in order to complete its work. We feel that with the completion of this work in the committee of the whole, subject to what is done in the general session, that we have presented to the state of Michigan a local government article which will meet all of the requirements that the people laid down when they sent us here on October 3: first, that it strengthens the present units of local government; and secondly, that it takes a broad look into the future and lays down in this constitution provisions which will accommodate the needs of the next several decades. The last 2 proposals with which the committee of the whole has worked I'm sure will accomplish the latter purpose. Both Committee Proposal 88 and Committee Proposal 89 do look to the future. They are proposals which do not just accept the present as it is, but which are prepared to meet whatever the units of government may need in 1970, 1980, and so forth.

And so it is with the concurrence, I know, of each of the members of this committee on local government that we thank you for your careful attention to our problems and to the problems of all of us for the last 4½ days. We hope that we will resolve the balance of our problems, if we have any still to be resolved, rather quickly when I now ask the committee to rise.

CHAIRMAN DeVRIES: The question before the committee is a motion by Delegate Elliott that the committee of the whole do now rise. The Chair recognizes the gentleman from Taylor, Delegate Ford.

MR. FORD: Mr. Chairman, I would like to ask Mr. Elliott a question through the Chair.

CHAIRMAN DeVRIES: You may, if the gentleman cares to answer it.

MR. FORD: Mr. Elliott, we have had some discussion about the fact that in our committee we at one time unanimously adopted a provision to provide for consideration in the future of annexation and incorporation procedures, particularly with respect to boundaries being a judicial question in this state, so that the courts could in fact review these procedures. And although the committee was unanimous on this aspect of it, we did have considerable disagreement on an additional factor of requiring a referendum. The question now is by what manner can we bring this before the convention if we at this time rise and pass on from the local government section?

CHAIRMAN DeVRIES: Delegate Elliott, will you temporarily withdraw your motion to rise? Because this motion is not debatable.

MR. A. G. ELLIOTT: I will.

CHAIRMAN DeVRIES: Delegate Elliott.

MR. A. G. ELLIOTT: Mr. Chairman and Mr. Ford, as you know, I'm keenly aware of the problem, and as anxious as you and others to find a solution for it, if we can. I have talked independently with other members of the committee.

It was my feeling that there would be no reason at all, Delegate Ford, why we couldn't, as a committee, meet as often as possible in the next few days to see if we could find a point of agreement on this particular subject. If we could, then when the local government article comes back to the convention on second reading, under certain sections which I have checked out with research and drafting, it will be possible for an amendment to be offered which will accommodate the problems which you and I are both aware of.

CHAIRMAN DeVRIES: Delegate Ford.

MR. FORD: The only problem that we have is that at this point annexation as such is a new matter, and it could very readily be argued by anyone who wants to stop us that annexation procedures and this question in its entirety is not germane to any other section that up until now we have adopted. And my question is: by what procedure do we properly get this before the convention should we now pass on from local government?

CHAIRMAN DeVRIES: Delegate Elliott.

MR. A. G. ELLIOTT: Mr. Chairman and Mr. Ford, apparently there could probably be an argument, because I'm sure there's been an argument on every point; and I'm not a lawyer. However, in asking the counsel of lawyers on this question, they pointed out that we have a proposal which involves the consolidation of townships; and that there were some other proposals that involved various units of government; and that these would be germane, and it would be possible to offer an amendment if there was one offered.

Furthermore, let me say this. I feel completely confident, Mr. Ford, that if our committee can arrive at a decision which is harmonious and unified, that there will be no problem in asking the convention, if it were absolutely necessary, to make some provision for us to do this. The only problem that would be confronting us would be if we run into the same difficulty which we have had on the 3 occasions that we have tried to meet the problem within the committee itself.

MR. FORD: Thank you.

CHAIRMAN DeVRIES: The question is now upon the motion of Mr. Elliott that the committee of the whole do now rise. As many as are in favor of the motion will say aye. Opposed, no.

The motion prevails and the committee will rise.

[Whereupon, the committee of the whole having risen, Vice President Hutchinson resumed the Chair.]

VICE PRESIDENT HUTCHINSON: The convention will be in order.

The Chair recognizes the delegate from Kent, Mr. DeVries.

MR. DeVRIES: Mr. President, the committee of the whole

has had under consideration certain items on which the secretary will give a detailed report.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Exclusion Report 2035,** A report recommending the exclusion of article VIII, section 6, regarding jury commissioners; **Exclusion Report 2036,** A report recommending the exclusion of article VIII, section 10; **Exclusion Report 2037,** A report recommending the exclusion of article VIII, section 11; **Exclusion Report 2038,** A report recommending the exclusion of article VIII, section 15a, regarding drainage district bonds; **Exclusion Report 2039,** A report recommending the exclusion of article VIII, section 24; and **Exclusion Report 2040,** A report recommending the exclusion of article VIII, section 31. It reports these exclusion reports back to the convention without amendment, and with the recommendation that the reports be adopted.

VICE PRESIDENT HUTCHINSON: Without objection, the several exclusion reports will be adopted, and referred to the committee on style and drafting.

There is no objection. They are adopted, and **Exclusion Reports 2035, 2036, 2037, 2038, 2039 and 2040** are referred to the committee on style and drafting.

For Exclusion Report 2035 as referred to the committee on style and drafting, see above, page 1108.

For Exclusion Report 2036 as referred to the committee on style and drafting, see above, page 1108.

For Exclusion Report 2037 as referred to the committee on style and drafting, see above, page 1108.

For Exclusion Report 2038 as referred to the committee on style and drafting, see above, page 1109.

For Exclusion Report 2039 as referred to the committee on style and drafting, see above, page 1109.

For Exclusion Report 2040 as referred to the committee on style and drafting, see above, page 1110.

SECRETARY CHASE: Mr. President, the committee of the whole has also had under consideration **Committee Proposal 89,** A proposal pertaining to county home rule. The committee of the whole reports the proposal back to the convention with the following amendments, recommending the amendments be agreed to, and the committee proposal as thus amended do pass:

1. Amend page 1 by striking out all of lines 6 through 22 and inserting the following:

"Sec. a. Any county may frame, adopt, amend, or repeal a county charter in a manner and with powers and limitations to be provided by general law, which law may permit the organization of county government in forms different from the form set forth in this constitution. Subject to law, a county charter may authorize the county through its regularly constituted authority to pass all laws and ordinances relating to its municipal concerns.

No county charter shall be adopted, amended, repealed or revised until approved by a majority vote of county electors voting on the question.

The question of electing a charter commission may be placed on the ballot by a majority vote of the total membership of the board of supervisors and shall be placed thereon on receipt of a petition signed by 5 per cent of the registered voters of the county. The charter commission shall be elected by the county electors in accordance with the election laws.".

2. Amend page 2, lines 1 through 14, by striking out all of Sec. b.

VICE PRESIDENT HUTCHINSON: The question is upon agreeing to the amendments made by the committee of the whole. The Chair recognizes the delegate from Wayne, Mr. Downs.

MR. DOWNS: Mr. President, I move that action on this recommendation be postponed until after the committee on legislative organization has reported to the committee of the whole.

VICE PRESIDENT HUTCHINSON: The question is upon the motion made by the delegate from Wayne, Mr. Downs, to postpone.

MR. DOWNS: May I speak on the motion, Mr. President?

VICE PRESIDENT HUTCHINSON: You may speak on the motion.

MR. DOWNS: The reason for this motion is a very simple one: that under the proposal that is now before the committee, the entire action is left up to the legislature as to whether or not home rule is authorized.

Some delegates were afraid this offered too much on home rule. Personally, I am afraid it offers too little. And I would like to take this opportunity to compliment a very good friend and hard working delegate, Mr. Brake, because I believe that he very properly pointed out yesterday afternoon that what we were doing was shifting the battle arena from here to the legislature. Personally, I do not like to think of us acting in terms of an arena. But I do wish to point out that another term that might be used is you might say we were passing the buck.

But I am inclined to believe that if this matter can be acted upon only if the legislature authorizes something, that until we know we have a legislature that represents the people, the so called county courthouse gang will have no trouble at all in having their friends and cronies in the legislature see that nothing is done.

And I therefore plead with the people who have spoken for home rule: if you want home rule, postpone action until we know what kind of legislature there is that will act upon home rule. If you want nothing but a political document that will sound good but mean nothing, then vote for this as it stands.

VICE PRESIDENT HUTCHINSON: The Chair recognizes the delegate from Oakland, Mr. Elliott.

MR. A. G. ELLIOTT: Mr. President and Vice President Downs, I'm somewhat concerned and disturbed. After the local government committee has worked as hard as it has over the last several months, I think that to make these kind of charges is completely out of keeping with the temper and the desires of this convention.

Now, let me point out to you that what we have done here is not pass the buck — and I would say that Mr. Brake would be the first one that would defend the position that this was not a buck passing operation at all. But what we have done here is take exactly the same steps in the area of county home rule as our predecessors did in 1907 and 1908 in the area of city home rule. In addition to that, as Mr. Downs will remember, we have actually adopted the type of proposal that was recommended by these groups who have been interested in sound constitutional procedure for some time, one of them being the league of women voters, the other being the committee on a sound constitution.

This is not and was never intended to be passing of the buck. I have heard Mr. Downs say on other occasions on this floor that if we have confidence in the legislature, let's show confidence in the legislature. I think it just makes a great deal of difference upon which side of the issue he now wants to speak.

I personally feel that it would be injurious to the efforts of this convention, it would be injurious to the work that has been done over the last 4 months, and it would certainly be injurious to the work that has been done in the last 4½ days to try to relate what we have done here in the committee of the whole and in convention to subsequent action of this delegation.

I would again reiterate: this is home rule. This puts it in exactly the context that I sincerely believe should be the context in which we find it. This puts it in exactly the context which I, as an individual delegate, came to this convention prepared to see happen, for which I'm grateful. I would urge the defeat of this motion.

VICE PRESIDENT HUTCHINSON: The Chair recognizes the delegate from Wayne, Mr. Marshall.

MR. MARSHALL: Mr. Chairman and fellow delegates, I rise in support of the motion made by Vice President Downs. I have repeatedly said in committee hearings and throughout this convention that many of the questions and problems that we were being called upon to vote on were related not indirectly,

but directly to the question of legislative reorganization; as to what type of a legislature we were going to have, as to whether it was going to be a truly representative body.

I was interested in listening to Delegate Elliott's remarks about his concern. There are many of us that are concerned, too, about the fact that the local government committee labored many long hours in drafting a proposal on local government to submit to this convention. We are concerned, after laboring all these many hours, that nothing was done in the committee or accomplished. It is rather obvious at this point, I think, that a few people got together just in recent hours or days and decided what type of a proposal they were going to have, reached the so called compromise that Delegate Brake talked about yesterday, and then pressure was applied to the Republican caucus to adopt it.

Now, we talk about confidence in the legislature. I'm interested in Mr. Elliott's remarks in this area also. I believe I have heard Mr. Elliott and other members — and I have done so — talk about how certain things should be left up to the legislature. But this is one that I do not believe should be left to the legislature. I believe that we should set the framework and the guidelines for true home rule in the constitution.

I might suggest also, in closing, Mr. President and delegates of the convention, that we might put a sign upon the wall each morning: "Today we trust the legislature; tomorrow we don't trust them" — and then we will know what days we do and don't.

VICE PRESIDENT HUTCHINSON: The Chair recognizes the delegate from Wayne, Mrs. Cushman.

MRS. CUSHMAN: I just want to correct an impression which I don't believe Mr. Elliott really intended to make, which was that the league of women voters had approved the present provisions in here. This is a question on which the league has not approved any specific pieces of legislation or constitutional matter, and whether they would be for or against this particular provision, or for something perhaps of a different nature, is something that I don't believe any of us here could say at the present time.

VICE PRESIDENT HUTCHINSON: On the motion to postpone, the delegate from Delta, Mr. Follo.

MR. FOLLO: Mr. Elliott, if what you say is true, I would like to know why certain members who supported the original majority proposal have come to some of us who supported the minority proposal and said, "Well, we've got you licked now"?

VICE PRESIDENT HUTCHINSON: The question is upon the motion of Mr. Downs to postpone further consideration of the report of the committee of the whole until after the committee of the whole has reported on the matters pertaining to legislative organization. On the motion to postpone, all those in favor of the motion will say aye. For what purpose does the delegate arise, Mr. Kuhn?

MR. KUHN: Mr. President, I rise in opposition to Mr. Downs' statement that we should wait until after the legislative organization is through to see what type of legislature we might have. I'm convinced that we couldn't get a better type of legislature than we have here in constitution hall. And I must say that I have to agree with him that as far as I'm concerned we are buck passing, and home rule is dead, and I don't see any reason to prolong it.

VICE PRESIDENT HUTCHINSON: The question is upon the motion of Mr. Downs to postpone. All those in favor will say aye. Those opposed will say no.

The motion does not prevail.

The question is upon agreeing to the committee amendments. On that question, all those in favor will say aye. Those opposed will say no.

The committee amendments are adopted.

MR. MADAR: Mr. President —

VICE PRESIDENT HUTCHINSON: Mr. Madar.

MR. MADAR: I don't know whether I am in order or not, but this is on article VIII, and because this did come up in committee and I was promised that there would be some action taken on it, and I heard none here, I want to make sure before we dispense with article VIII that there is some record of it in the proceedings of the convention. I submitted a proposal which would, in essence, make the public utilities commission act in that they would not permit the use of expenditures on lobbying, on advertising, and on public — well, anyway, on trying to coerce and make the public feel good about public utilities —

MR. WANGER: Point of order.

MR. MADAR: — be not used —

VICE PRESIDENT HUTCHINSON: Mr. Madar, a point of order has been raised.

MR. MADAR: I know. But until you say something, I think I should just keep on going.

VICE PRESIDENT HUTCHINSON: I will recognize the gentleman for the purpose of raising his point of order.

MR. MADAR: When you say so, I stop.

VICE PRESIDENT HUTCHINSON: Mr. Wanger, what is your point?

MR. WANGER: Mr. President, my point of order is that Mr. Madar's remarks are not germane to the matter which is pending before the convention: namely, home rule.

VICE PRESIDENT HUTCHINSON: Well, at the moment the Chair would rule that there isn't anything before the convention. The convention has concurred in the committee reports, and the Chair has not yet referred the matter to the style and drafting committee, because the Chair is informed that there are further amendments on the desk. But no amendment has been presented.

MR. WANGER: Then, if there's nothing pending before the convention, then no remarks of any kind whatsoever are in order.

VICE PRESIDENT HUTCHINSON: Without objection, the gentleman from Wayne may proceed.

MR. STERRETT: Mr. President, I move that we recess for 10 minutes.

VICE PRESIDENT HUTCHINSON: The question is upon the motion to recess for 10 minutes. All those in favor will say aye. Those opposed will say no.

The motion does not prevail.

MR. MADAR: Mr. President.

VICE PRESIDENT HUTCHINSON: The gentleman from Wayne, Mr. Madar.

MR. WANGER: I register an objection, Mr. President.

VICE PRESIDENT HUTCHINSON: Mr. Wanger objects.

MR. MADAR: Mr. President, I would like to rise to a point of order. There is nothing on the floor at the present time, and I believe that I have a right to bring up something so that we can have something on the floor. This is a point of information, Mr. President.

VICE PRESIDENT HUTCHINSON: The Chair would like to make it clear that perhaps the Chair was in error in stating that there was nothing on the floor. (laughter) The question properly before the body now is the reference of the committee proposal having to do with county home rule to the committee on style and drafting. And I would ask the gentleman to at least so phrase his remarks that he will bring them within the reference of that question.

MR. MADAR: Mr. President, I think we'll do that. However, I would like to comment on nothing being on the floor.

MR. HIGGS: I object.

VICE PRESIDENT HUTCHINSON: Mr. Higgs objects.

MR. HIGGS: Mr. President, I object to continuing these remarks unless they are applying to that question. I'm sure Mr. Madar will find plenty of opportunity to make remarks.

VICE PRESIDENT HUTCHINSON: Mr. Higgs moves that we proceed in the regular order of business. All those in favor will say aye. Those opposed will say no.

The motion prevails. The secretary will read the next amendment.

MR. IVERSON: Mr. President.

VICE PRESIDENT HUTCHINSON: Mr. Iverson.

MR. IVERSON: Mr. President, it seems quite evident that the minority party would like a 10 minute recess for a caucus, and I would be glad to suggest that we grant it.

VICE PRESIDENT HUTCHINSON: Do you so move, Mr. Iverson?

MR. IVERSON: If they desire it.

MR. DOWNS: Mr. President.

VICE PRESIDENT HUTCHINSON: Mr. Downs.

MR. DOWNS: Mr. President, there is no intent for a recess for a caucus. We do not have a unit rule. If the chairman of the majority caucus would like to have a recess for 10 minutes, I have no objection.

MR. HODGES: Mr. President.

VICE PRESIDENT HUTCHINSON: Mr. Hodges.

MR. HODGES: Mr. President, I was just going to comment on Mr. Iverson's remark. The minority party will ask for caucuses itself when it so desires.

I have a point of personal privilege at this time.

VICE PRESIDENT HUTCHINSON: The gentleman will state the point.

MR. HODGES: Mr. President, since the beginning of this convention members of the minority party have been accused of bloc voting. In truth, this is not the case, and every Democrat here knows it. On very few occasions has the Democratic delegation voted as a bloc, and the record will so show. And practically every Democratic caucus has been open to the press, and the press can substantiate this. However, as of recent date, the opposite does not seem to be true. It has been rumored—and I think the facts on the floor yesterday substantiated the charge — that the majority party was acting under the unit rule, and had ordered its people not to make any remarks on the floor. The members of the Democratic delegation put out many worthwhile amendments, which were not even considered, and their ears were closed to them. If this is to continue, Mr. President, I see no need for the minority party participating. If the decisions in this convention are to be written in the Republican caucus rather than on the floor of this convention, then it would seem to me that there is no possible use for the members of the minority party to continue to participate in this convention. And if I'm wrong in these remarks, I would like the chairman of the Republican caucus to tell me so.

MR. STERRETT: Mr. President.

VICE PRESIDENT HUTCHINSON: Mr. Sterrett.

MR. STERRETT: A point of personal privilege.

VICE PRESIDENT HUTCHINSON: The gentleman will state it.

MR. STERRETT: I have attended the Republican caucuses. I have not been ordered to vote in any manner or way. I have voted as I saw fit, and I'm sure that every other Republican in this room will be able to say the exact same thing.

VICE PRESIDENT HUTCHINSON: The gentleman from Kalamazoo, Mr. Brown.

MR. G. E. BROWN: A point of information, Mr. President. Mr. Downs mentioned a unit rule. I'm a Republican, and I don't understand that rule. Will he explain it to me? (laughter)

VICE PRESIDENT HUTCHINSON: Mr. Downs.

MR. DOWNS: I can explain the unit rule in a negative way. A unit rule is not the way the Democrats vote here. We can't even get unanimity on motions to adjourn.

MR. FARNSWORTH: Mr. President.

VICE PRESIDENT HUTCHINSON: Mr. Farnsworth.

MR. FARNSWORTH: Mr. President, do I understand that the question before the house at the moment is whether or not to refer a certain proposal to style and drafting?

VICE PRESIDENT HUTCHINSON: That is the question. But there are amendments on the desk, which amendments must be disposed of ahead of such reference.

MR. FARNSWORTH: I move the previous question, with the full understanding that we will dispense with all the amendments that are on the desk; that the question go right on down to the amendments.

VICE PRESIDENT HUTCHINSON: Do I understand the delegate to move the previous question upon all amendments, so there could be no debate upon any of those amendments?

MR. FARNSWORTH: That is correct.

VICE PRESIDENT HUTCHINSON: Is the demand for the previous question supported?

The demand is not supported. The question is upon the reference of this proposal to the committee on style and drafting, pending which the Chair is advised there are amendments on the desk.

The Chair would like to have the next amendment presented.

SECRETARY CHASE: Mr. Austin offers the following amendment:

1. Amend page 1, following the last line, by inserting a new paragraph to read as follows:

"The legislature shall by general law, for counties adopting home rule powers, limit the rate of general property taxation for municipal purposes, and restrict their powers of borrowing money and contracting debts. Each such county is hereby granted power to levy other taxes for public purposes subject to limitations and prohibitions set forth in this constitution or law.".

VICE PRESIDENT HUTCHINSON: On the amendment offered by Mr. Austin, the Chair recognizes Mr. Austin.

MR. AUSTIN: Mr. President, in drafting our home rule provisions for cities we saw fit to include a specific section for general taxing powers, giving the legislature the right to limit these powers. If we are to provide home rule for counties, it would seem appropriate to recognize the need for such powers in our home rule provisions, and not leave it entirely up to the legislature to determine what home rule taxing powers counties are to have.

I would like to move that this amendment be added to the amendment that was already passed, and that we have a record roll call vote on it.

VICE PRESIDENT HUTCHINSON: Mr. Austin's amendment, of course, is without any motion to add it to another amendment. The amendment is adopted as part of the proposal, upon which amendment Mr. Austin demands the yeas and nays. Is the demand for the yeas and nays supported? The demand is supported. The question is upon the amendment offered by Mr. Austin, upon which a recorded roll call vote has been supported. The secretary will again read the amendment.

SECRETARY CHASE: The amendment is:

[The amendment was again read by the secretary. For text, see above.]

VICE PRESIDENT HUTCHINSON: The question is upon the amendment, upon which a record roll call has been supported. All those in favor —

Are you desiring recognition, Mrs. Cushman?

MRS. CUSHMAN: Yes.

VICE PRESIDENT HUTCHINSON: The lady from Wayne, Mrs. Cushman.

MRS. CUSHMAN: I have a question for Mr. Austin. What do you mean by "adopting home rule powers?" Do you mean adopting home rule or adopting home rule powers?

MR. AUSTIN: Are you referring to counties?

MRS. CUSHMAN: Yes, "for counties adopting home rule powers."

MR. AUSTIN: Well, actually, it should be "home rule." "Home rule" would be sufficient. We don't need the word "powers." That was rather hastily drawn, and I would assume that it would be straightened out in style and drafting if it were passed.

MRS. CUSHMAN: Well, that makes a difference.

MR. AUSTIN: As far as I'm concerned, the word "powers" could be deleted. It's the sense of it that I would like to get. I think the delegates understand what it is that we are trying to accomplish.

VICE PRESIDENT HUTCHINSON: Without objection, Mrs. Cushman's amendment to Mr. Austin's amendment will be treated as though Mr. Austin had offered his amendment originally in that form, by striking out the word "powers."

The secretary will now read the amendment as revised.

SECRETARY CHASE: The amendment now reads:

1. Amend page 1, following the last line, by inserting a new paragraph to read as follows:

"The legislature shall by general law, for counties adopting home rule, limit the rate of general property taxation for municipal purposes, and restrict their powers of borrowing money

and contracting debts. Each such county is hereby granted power to levy other taxes for public purposes subject to limitations and prohibitions set forth in this constitution or law.".

VICE PRESIDENT HUTCHINSON: On the amendment, all those in favor will vote aye. Those opposed will vote no. For what purpose does the gentleman rise, Mr. Hanna?

MR. W. F. HANNA: Personal privilege.

VICE PRESIDENT HUTCHINSON: Will you please wait until the vote is taken.

MR. W. F. HANNA: I will wait.

VICE PRESIDENT HUTCHINSON: Have you all voted? If so, the secretary will lock the machine and record the vote.

The roll was called and the delegates voted as follows:

Yeas — 69

Anspach	Greene	Perras
Austin	Habermehl	Pollock
Baginski	Hanna, W. F.	Powell
Balcer	Hannah, J. A.	Prettie
Barthwell	Hart, Miss	Radka
Binkowski	Hatcher, Mrs.	Rajkovich
Bledsoe	Higgs	Rush
Brown, G. E.	Hodges	Shackleton
Brown, T. S.	Hood	Shanahan
Buback	Judd, Mrs.	Sharpe
Butler, Mrs.	Kelsey	Snyder
Cushman, Mrs.	Lawrence	Staiger
Dade	Leibrand	Stamm
Davis	Leppien	Sterrett
Dehnke	Lesinski	Stopczynski
Donnelly, Miss	Liberato	Suzore
Douglas	Madar	Tubbs
Downs	Marshall	Turner
Durst	McCauley	Walker
Elliott, Mrs. Daisy	McGowan, Miss	Wilkowski
Faxon	McLogan	Wood
Follo	Murphy	Young
Ford	Ostrow	Youngblood

Nays — 61

Allen	Gadola	Plank
Batchelor	Gover	Pugsley
Beaman	Haskill	Richards, J. B.
Bentley	Hatch	Richards, L. W.
Blandford	Heideman	Romney
Bonisteel	Howes	Rood
Boothby	Hoxie	Seyferth
Brake	Hubbs	Shaffer
Conklin, Mrs.	Hutchinson	Sieder
Cudlip	Iverson	Spitler
Danhof	Karn	Stafseth
Dell	King	Stevens
DeVries	Kirk, S.	Thomson
Doty, Dean	Koeze, Mrs.	Tweedie
Doty, Donald	Kuhn	Upton
Elliott, A. G.	Lundgren	Van Dusen
Erickson	Martin	Wanger
Everett	McAllister	White
Farnsworth	Millard	Woolfenden
Figy	Mosier	Yeager
Finch		

SECRETARY CHASE: The yeas are 69; the nays are 61.

VICE PRESIDENT HUTCHINSON: The amendment is adopted.

The Chair recognizes the delegate from Muskegon, Mr. Hanna.

MR. W. F. HANNA: Mr. President, I wondered if Mr. Hodges wanted to borrow my glasses, so that he could see the board and note that at least I and a couple of other Republicans were not bound by any unit or party rule. He was busy reading the paper, and I don't know whether or not from his remarks today he is so nearsighted that he could not see the board, because this is the same way I voted yesterday, and I don't see any party line vote on the board.

VICE PRESIDENT HUTCHINSON: For what purpose does the gentleman from Macomb, Mr. Snyder, arise?

MR. SNYDER: Mr. President, I suggest that we get on with the business of the convention.

VICE PRESIDENT HUTCHINSON: The secretary will read the next amendment.

SECRETARY CHASE: Mr. Pellow offers the following amendment:

1. Amend page 1, following the last line, by inserting a new paragraph to read as follows:

"Each county charter shall provide for the election of a county clerk, a county register of deeds, a county treasurer, a sheriff, and a prosecuting attorney, in accordance with the provisions of this constitution.".

MR. VAN DUSEN: Mr. President, I ask for the yeas and nays.

VICE PRESIDENT HUTCHINSON: Mr. Van Dusen demands the yeas and nays on the amendment. Is the demand seconded? There is a sufficient number up. The demand is supported.

The Chair now recognizes Mr. Downs.

MR. DOWNS: I ask that the question be divided, so as to separate each county official. The reason is that some of us may wish to have an elected prosecutor, but not treasurer, and I think we should be able to record our vote.

MR. BINKOWSKI: Point of order, Mr. President.

VICE PRESIDENT HUTCHINSON: Mr. Binkowski.

MR. BINKOWSKI: Does the proponent of the motion have to be present?

VICE PRESIDENT HUTCHINSON: The proponent of the amendment should be present. Is the proponent present? If not, the amendment is not in order at this time. We will proceed then to the next amendment.

SECRETARY CHASE: Miss Hart and Mr. Downs offer the following amendment:

1. Amend page 1, first paragraph, after "constitution.", by inserting "The prosecuting attorney shall be nominated and elected as provided by law."; so that the language will then read:

Sec. a. Any county may frame, adopt, amend, or repeal a county charter in a manner and with powers and limitations to be provided by general law, which law may permit the organization of county government in forms different from the form set forth in this constitution. The prosecuting attorney shall be nominated and elected as provided by law.

VICE PRESIDENT HUTCHINSON: Mr. Van Dusen.

MR. VAN DUSEN: I demand the yeas and nays, Mr. President.

VICE PRESIDENT HUTCHINSON: Mr. Van Dusen demands the yeas and nays on the amendment. Is the demand supported? The demand is supported.

The Chair now recognizes Mr. Downs on the amendment.

MR. DOWNS: Mr. President, I shall speak very briefly on this. I might say, parenthetically, I sympathize with the President. I am glad the difficulties have passed around. (laughter)

I think that in the state of Michigan we have been unusually fortunate, as a people, in having dollar honesty in government, and I say this as applies to our law enforcement officials of both parties in all counties in state government. I believe that one reason for this is that we have had the historic principle that the prosecuting attorney is directly answerable to the people by an election.

I think that those who want more administrative county home rule are perfectly proper in their approach, but I feel we should have the prosecutor directly responsible to the people. I think this is particularly true because under the amendment we adopted this morning we could have a situation where a board of supervisors, with a majority of appointed members, could in turn secretly appoint a prosecutor — and I hope this would not happen. But I think that this amendment will preserve integrity of government, and I urge its support.

VICE PRESIDENT HUTCHINSON: The question is upon the amendment offered by Mr. Downs.

The secretary will read the amendment once more.

SECRETARY CHASE: The amendment is:

[The amendment was again read by the secretary. For text, see above.]

VICE PRESIDENT HUTCHINSON: The yeas and nays upon the amendment have been ordered. All those in favor of

the amendment will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and record the vote.

SECRETARY CHASE: May the secretary suggest that perhaps some of the difficulty in getting both lights on is caused by too quick a switch from one to the other. (laughter) If in using your voting station you will move to the neutral spot, and pause for just a second, and then move to the other, I think this will eliminate the difficulty we have been having.

The roll was called and the delegates voted as follows:

Yeas — 53

Austin	Gadola	Murphy
Baginski	Greene	Ostrow
Balcer	Hanna, W. F.	Perras
Barthwell	Hannah, J. A.	Prettie
Batchelor	Hart, Miss	Pugsley
Binkowski	Hatcher, Mrs.	Radka
Boothby	Hodges	Richards, L. W.
Brown, G. E.	Hood	Snyder
Buback	Hoxie	Stopczynski
Butler, Mrs.	Kelsey	Suzore
Dade	Krolikowski	Thomson
Donnelly, Miss	Lawrence	Walker
Douglas	Leibrand	Wilkowski
Downs	Leppien	Wood
Elliott, Mrs. Daisy	Lesinski	Yeager
Faxon	Liberato	Young
Follo	Lundgren	Youngblood
Ford	McGowan, Miss	

Nays — 74

Allen	Haskill	Richards, J. B.
Andrus, Miss	Hatch	Romney
Anspach	Heideman	Rood
Bentley	Higgs	Rush
Blandford	Howes	Seyferth
Bonisteel	Hubbs	Shackleton
Brake	Iverson	Shaffer
Conklin, Mrs.	Judd, Mrs.	Shanahan
Cudlip	Karn	Sharpe
Cushman, Mrs.	King	Sleder
Danhof	Kirk, S.	Spitler
Davis	Koeze, Mrs.	Stafseth
Dehnke	Kuhn	Staiger
Dell	Madar	Stamm
DeVries	Marshall	Sterrett
Doty, Dean	Martin	Stevens
Doty, Donald	McAllister	Tubbs
Durst	McCauley	Turner
Elliott, A. G.	McLogan	Tweedie
Erickson	Millard	Upton
Everett	Mosier	Van Dusen
Farnsworth	Plank	Wanger
Figy	Pollock	White
Gover	Powell	Woolfenden
Habermehl	Rajkovich	

VICE PRESIDENT HUTCHINSON: The secretary will announce the vote.

SECRETARY CHASE: On the adoption of the amendment proposed by Miss Hart and Mr. Downs, the yeas are 53, the nays are 74.

VICE PRESIDENT HUTCHINSON: The amendment is not adopted.

SECRETARY CHASE: Miss Hart and Mr. Downs offer the following amendment:

1. Amend page 1, first paragraph, after "constitution.", by inserting "The county sheriff shall be nominated and elected as provided by law.".

VICE PRESIDENT HUTCHINSON: The question is upon the amendment offered. Mr. Van Dusen.

MR. VAN DUSEN: I simply rise to demand the yeas and nays, Mr. President.

VICE PRESIDENT HUTCHINSON: Mr. Van Dusen demands the yeas and nays on the amendment. Is the demand supported? The demand is supported. The question is upon the amendment offered by Miss Hart and Mr. Downs.

MR. FORD: Mr. President.

VICE PRESIDENT HUTCHINSON: Mr. Ford.

MR. FORD: I rise to support this amendment. I talked at great length yesterday afternoon. I wished that someone had told me that the decision had already been made before I took the floor, and we all could have had our dinner at a more reasonable time last evening. I outlined yesterday the reasons that I very sincerely believe indicate the need for a constitutional guarantee of an election of the entire justice system in this state.

I submit to you that regardless of the quality of our judges and the quality of our bar and the quality of people in law enforcement at all levels, the one thing that stands like a wall or a foundation and protects us from the kind of graft and scandal that many other states in this country have experienced from time to time is the independent, elected, responsible system of justice from the one side to the other — the election of judges, the election of the chief law enforcement official of the county, the election of the chief law enforcement official of the state, and the election of the key person whom we have just passed over, the prosecutor. It's too late for him now. But I submit if there's one protection that we have against any group or political organization or any single person taking over the law enforcement agencies of this state to the extent that the kind of organized crime that existed in the '30s in other places got into our sister states, but did not get into this state, it is the election of these people.

I urge very strongly that we preserve in the hands of the people the election of those persons who are charged with the obligation of protecting their individual rights and, if you will, in arresting us when we violate someone else's rights.

VICE PRESIDENT HUTCHINSON: The Chair recognizes the gentleman from Wayne, Mr. Brown.

MR. T. S. BROWN: When the Reeve of the Shire of Nottingham was not elected by the people of Nottinghamshire, this led to the arrival on the scene of Robin Hood. And I think that this particular premise is still true today.

VICE PRESIDENT HUTCHINSON: The gentleman from the twenty-eighth district, Mr. Hubbs.

MR. HUBBS: Mr. President and members of the convention, I would like to briefly object to the remarks made here on the present voting, for this reason: I intend to vote no on each one of these propositions, and I'm going to tell you why — not that I'm against electing these people. If it gets right down to it, I'm in favor of electing every officer that it is possible to elect in my county who serves the people in any capacity whatsoever.

However, what I am voting no on here today is whether we should put this into the constitution or whether we should not. The provision that we have made for county home rule and local government leaves it to the legislature to decide whether these people shall be elected or whether they shall not be elected, and I am not voting on that proposition today. I am voting on whether we shall put it in the constitution or whether we shall not, and I intend to vote no on each one of these for that reason, although I'm in favor of electing local officials.

VICE PRESIDENT HUTCHINSON: The gentleman from Washtenaw, Mr. Lawrence.

MR. LAWRENCE: I find that things have a habit of bothering me lately. I am wondering if there is any parallel — and, if not, will somebody explain the difference. Would we be better off if the head of the state police and our municipal police chiefs were elected instead of appointed?

VICE PRESIDENT HUTCHINSON: The Chair recognizes the gentleman from Oakland, Mr. Walker.

MR. WALKER: I have a question of Mr. Hubbs, if I might, Mr. President.

VICE PRESIDENT HUTCHINSON: If the gentleman cares to answer.

MR. WALKER: Mr. Hubbs' remarks left me in doubt as to whether he is or is not going to vote his conscience, or if his cage has just been rattled a little. Which is the case, Mr. Hubbs?

MR. WANGER: Point of order, Mr. President.

VICE PRESIDENT HUTCHINSON: What is the point of order, Mr. Wanger?

MR. WANGER: That the remarks of the speaker are clearly relating to personalities, which is entirely out of order in this convention.

VICE PRESIDENT HUTCHINSON: Yes. The Chair will advise the convention that the delegates should refrain from indulging in personalities.

MR. WALKER: Mr. President, as long as there is this possibility present in the minds of any of the delegates present, I would withdraw my question.

VICE PRESIDENT HUTCHINSON: The delegate from Oakland, Mr. Elliott.

MR. A. G. ELLIOTT: Mr. President, I move the previous question.

VICE PRESIDENT HUTCHINSON: Mr. Elliott moves the previous question. Is the demand for the previous question supported?

MR. HODGES: Mr. President, I rise for a point of personal privilege.

VICE PRESIDENT HUTCHINSON: It is out of order now.

The demand for the previous question is seconded. Now, all those in favor of ordering the previous question will say aye. Those opposed will say no.

The previous question is ordered. The question is upon the amendment offered by Mr. Downs and Miss Hart, which the secretary will read.

SECRETARY CHASE: The amendment is:

[The amendment was again read by the secretary. For text, see above, page 1115.]

VICE PRESIDENT HUTCHINSON: The yeas and nays have been demanded.

For what purpose does the gentleman rise, Mr. Marshall?

MR. MARSHALL: I wish to announce my intention of abstaining, Mr. President, and state my reasons.

I am for electing these officials. I am opposed to leaving it up to the legislature or to freezing it into the constitution. I think the people with the pure home rule status should have the right to determine which officials, if any, they want to have remain elective. Therefore, I am abstaining from voting.

VICE PRESIDENT HUTCHINSON: All those in favor of the amendment will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and record the vote.

For what purpose does the delegate from the twenty-fourth district arise?

MR. LEIBRAND: To explain my vote, Mr. President.

VICE PRESIDENT HUTCHINSON: You may do that as soon as the vote is announced.

The roll was called and the delegates voted as follows:

Yeas—43

Austin	Elliott, Mrs. Daisy	Murphy
Baginski	Erickson	Ostrow
Balcer	Ford	Perras
Barthwell	Greene	Pugsley
Batchelor	Hart, Miss	Radka
Binkowski	Hatcher, Mrs.	Richards, L. W.
Bledsoe	Hodges	Snyder
Boothby	Hood	Stopczynski
Brown, T. S.	Hoxie	Suzore
Buback	Kelsey	Walker
Butler, Mrs.	Leibrand	Wilkowski
Dade	Liberato	Wood
Douglas	Lundgren	Young
Downs	McGowan, Miss	Youngblood
Durst		

Nays—81

Allen	Haskill	Rajkovich
Andrus, Miss	Hatch	Richards, J. B.
Anspach	Heideman	Romney
Beaman	Higgs	Rood
Bentley	Howes	Rush
Blandford	Hubbs	Seyferth
Bonisteel	Iverson	Shackleton
Brake	Judd, Mrs.	Shaffer
Brown, G. E.	Karn	Shanahan
Conklin, Mrs.	King	Sharpe
Cudlip	Kirk, S.	Sieder
Cushman, Mrs.	Knirk, B.	Spitler
Danhof	Koeze, Mrs.	Stafseth
Davis	Krolikowski	Staiger
Dehnke	Kuhn	Stamm
Dell	Lawrence	Sterrett
DeVries	Leppien	Stevens
Donnelly, Miss	Madar	Thomson
Doty, Dean	Martin	Tubbs
Doty, Donald	McCauley	Turner
Elliott, A. G.	McLogan	Tweedie
Everett	Millard	Upton
Farnsworth	Mosier	Van Dusen
Faxon	Plank	Wanger
Figy	Pollock	White
Gover	Powell	Woolfenden
Hannah, J. A.	Prettie	Yeager

SECRETARY CHASE: On the second amendment offered by Miss Hart and Mr. Downs, the yeas are 43, the nays 81.

VICE PRESIDENT HUTCHINSON: The amendment is not adopted.

The Chair recognizes the delegate from the twenty-fourth district, Mr. Leibrand.

MR. LEIBRAND: I wish to explain my vote. I am in favor of electing all presently elected county officials, and if we have them in there one at a time, that's the way we can do it.

VICE PRESIDENT HUTCHINSON: The Chair recognizes Mr. Madar.

MR. MADAR: I believe I might just as well be on record, too. I am in favor of electing these officers. I believe in giving the people the right to decide whether they should. And I will do my utmost to make sure that that does get into the charter on a partisan basis.

VICE PRESIDENT HUTCHINSON: The secretary will read the next amendment.

SECRETARY CHASE: Miss Hart and Mr. Downs offer the following amendment:

1. Amend page 1, first paragraph, after "constitution.", by inserting "County officials other than the prosecutor and sheriff may have their functions merged or altered or unchanged, including the establishment of an elected or appointed county executive head, as determined by the county charter.".

VICE PRESIDENT HUTCHINSON: The question is upon the amendment offered. The Chair recognizes the sponsor of the amendment, Mr. Downs.

MR. DOWNS: Mr. President and fellow delegates, I believe this is a very simple amendment that provides, with the exception of these 2 offices, that a county charter could make any administrative and legislative combination it wanted. The executive head of a county could be elected, as the mayor is, or could be appointed by the county legislative body. I believe it does set some standard.

VICE PRESIDENT HUTCHINSON: The question is upon the amendment offered. All those in favor will say aye.

MR. DOWNS: I demand the yeas and nays.

VICE PRESIDENT HUTCHINSON: Mr. Downs demands the yeas and nays on his amendment. Is the demand supported? The demand is supported. The amendment will again be read.

SECRETARY CHASE: The amendment is:

[The amendment was again read by the secretary. For text, see above.]

VICE PRESIDENT HUTCHINSON: The question is upon the amendment offered, and the yeas and nays have been demanded. All those in favor will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and record the vote.

The roll was called and the delegates voted as follows:

Yeas—27

Austin	Downs	Lesinski
Baginski	Elliott, Mrs. Daisy	Murphy
Barthwell	Faxon	Rush
Binkowski	Follo	Stopczynski
Bledsoe	Greene	Suzore
Brown, T. S.	Hart, Miss	Walker
Conklin, Mrs.	Hatcher, Mrs.	Yeager
Dade	Hood	Young
Douglas	Lawrence	Youngblood

Nays—96

Allen	Gover	Plank
Andrus, Miss	Hannah, J. A.	Pollock
Anspach	Haskill	Powell
Balcer	Hatch	Prettie
Batchelor	Heideman	Pugsley
Beaman	Higgs	Radka
Bentley	Hodges	Rajkovich
Blandford	Howes	Richards, J. B.
Bonisteel	Hoxie	Richards, L. W.
Boothby	Hubbs	Rood
Brake	Iverson	Seyferth
Brown, G. E.	Judd, Mrs.	Shackleton
Buback	Karn	Shaffer
Butler, Mrs.	Kelsey	Shanahan
Cudlip	King	Sharpe
Cushman, Mrs.	Kirk, S.	Sleder
Danhof	Koeze, Mrs.	Spitler
Davis	Krolikowski	Stafseth
Dehnke	Kuhn	Staiger
Dell	Leibrand	Stamm
DeVries	Leppien	Sterrett
Donnelly, Miss	Liberato	Stevens
Doty, Dean	Lundgren	Thomson
Doty, Donald	Madar	Tubbs
Durst	Marshall	Turner
Elliott, A. G.	Martin	Tweedie
Erickson	McCauley	Upton
Everett	McGowan, Miss	Van Dusen
Farnsworth	McLogan	Wanger
Figy	Millard	White
Finch	Mosier	Wood
Gadola	Perras	Woolfenden

SECRETARY CHASE: On the adoption of the amendment offered by Miss Hart and Mr. Downs, the yeas are 27, the nays are 96.

VICE PRESIDENT HUTCHINSON: The amendment is not adopted.

SECRETARY CHASE: Miss Hart and Mr. Downs offer the following amendment:

1. Amend page 1, first paragraph, after "constitution.", by inserting "Employees performing ministerial and executive functions shall be hired under a civil service system, provided the chief executive and deputy of a department may be exempt if so provided by the charter.".

VICE PRESIDENT HUTCHINSON: The question is upon the amendment offered. Mr. Downs.

MR. DOWNS: Mr. President, I believe that the amendment we adopted this morning gives the possibility of broad powers to a new form of government. I believe that the people and the employees should have the protection of civil service which this provides.

I demand the yeas and nays.

VICE PRESIDENT HUTCHINSON: Mr. Downs demands the yeas and nays on the current amendment. Is the demand supported? The demand is supported.

The Chair will request that the board be cleared. There has been some question. The amendment will again be read.

SECRETARY CHASE: The amendment is:

[The amendment was again read by the secretary. For text, see above.]

VICE PRESIDENT HUTCHINSON: On the amendment, those in favor will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and record the vote.

The roll was called and the delegates voted as follows:

Yeas—36

Austin	Follo	Madar
Baginski	Ford	Marshall
Balcer	Greene	McCauley
Barthwell	Hart, Miss	McGowan, Miss
Binkowski	Hatcher, Mrs.	Murphy
Bledsoe	Hodges	Snyder
Brown, T. S.	Hood	Stopczynski
Buback	Kelsey	Suzore
Dade	Krolikowski	Walker
Douglas	Lawrence	Wilkowski
Downs	Lesinski	Young
Elliott, Mrs. Daisy	Liberato	Youngblood

Nays—91

Allen	Gadola	Prettie
Andrus, Miss	Gover	Pugsley
Anspach	Hanna, W. F.	Radka
Batchelor	Hannah, J. A.	Rajkovich
Beaman	Haskill	Richards, J. B.
Bentley	Hatch	Richards, L. W.
Blandford	Heideman	Romney
Bonisteel	Higgs	Rood
Boothby	Howes	Rush
Brake	Hoxie	Seyferth
Brown, G. E.	Hubbs	Shackleton
Butler, Mrs.	Iverson	Shaffer
Conklin, Mrs.	Judd, Mrs.	Shanahan
Cudlip	Karn	Sharpe
Cushman, Mrs.	King	Sleder
Danhof	Kirk, S.	Spitler
Davis	Knirk, B.	Stafseth
Dehnke	Koeze, Mrs.	Staiger
Dell	Kuhn	Stamm
DeVries	Leibrand	Sterrett
Donnelly, Miss	Leppien	Stevens
Doty, Dean	Lundgren	Thomson
Doty, Donald	Martin	Tubbs
Durst	McLogan	Turner
Elliott, A. G.	Millard	Tweedie
Erickson	Mosier	Upton
Everett	Perras	Van Dusen
Farnsworth	Plank	Wanger
Faxon	Pollock	White
Figy	Powell	Yeager
Finch		

SECRETARY CHASE: On the adoption of the amendment offered by Miss Hart and Mr. Downs, the yeas are 36, the nays are 91.

VICE PRESIDENT HUTCHINSON: The amendment is not adopted.

SECRETARY CHASE: Miss Hart and Mr. Downs offer the following amendment:

1. Amend page 1, first paragraph, after "constitution.", by inserting "The judicial system shall not be altered by the charter.".

VICE PRESIDENT HUTCHINSON: On the amendment, the Chair recognizes Mr. Downs.

MR. DOWNS: Mr. President, some time yesterday there was discussion as to whether or not there was an intent to affect the judicial system. I believe I am correct in stating that the proponents of the amendment said there was not such an intent. However, I draw the attention of the delegates to the word "government" in the third line of the amendment we adopted this morning, which permits the organization of county government in forms different from the forms set forth in this constitution. I suggest that we adopt this amendment to be very sure that the so called home rule amendment will deal only with the legislative and executive and not with the judicial functions.

I demand the yeas and nays.

VICE PRESIDENT HUTCHINSON: On the amendment, Mr. Downs demands the yeas and the nays. Is the demand supported? The demand is supported.

The Chair recognizes Mr. Allen.

MR. ALLEN: Mr. Downs, under our municipal home rule the functions of the court are taken care of separately by the legislature, and I don't think that there is anything that would be granted in the amendment as it now stands which could affect the judiciary independently. In other words, I don't think that this is needed. It doesn't give any more protection than is already there.

VICE PRESIDENT HUTCHINSON: The Chair recognizes Mr. Danhof.

MR. DANHOF: Mr. President, I would be inclined to agree with Mr. Allen. The judicial article, if adopted, at least for the so called major courts, would provide constitutional status, and will undoubtedly set up the method by which the judiciary will be selected. If the amendment is concerned with the courts as we now know them as inferior courts, I suggest that the home rule provision as it has related to cities does not in any way hinder this particular development. The county courts, as you might know them, as being the circuit court and the probate court, will have constitutional status.

I see no way that the amendment we have adopted for county home rule could in any way affect what is constitutionally provided. As to the inferior courts, or the courts of limited jurisdiction, the committee has adopted a provision where this will be left to the legislature. This then would be consistent with the amendment that has been adopted by this convention. I would not support the amendment.

VICE PRESIDENT HUTCHINSON: The delegates will kindly clear the board. The yeas and nays have been demanded. The question is upon the amendment of Mr. Downs.

The secretary will again read the amendment.

SECRETARY CHASE: The amendment is:

[The amendment was again read by the secretary. For text, see above, page 1117.]

VICE PRESIDENT HUTCHINSON: All those in favor of the amendment will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and record the vote.

The roll was called and the delegates voted as follows:

Yeas—41

Anspach	Erickson	Liberato
Austin	Faxon	Madar
Baginski	Greene	Murphy
Balcer	Hanna, W. F.	Perras
Binkowski	Hart, Miss	Radka
Bledsoe	Hatcher, Mrs.	Shanahan
Bonisteel	Hood	Sharpe
Boothby	Hoxie	Snyder
Buback	Kelsey	Stopczynski
Dade	Kuhn	Wilkowski
Dehnke	Lawrence	Wood
Douglas	Leibrand	Young
Downs	Leppien	Youngblood
Elliott, Mrs. Daisy	Lesinski	

Nays—79

Allen	Hatch	Rajkovich
Andrus, Miss	Heideman	Richards, J. B.
Batchelor	Higgs	Richards, L. W.
Beaman	Howes	Romney
Bentley	Hubbs	Rood
Blandford	Iverson	Rush
Brake	Judd, Mrs.	Seyferth
Brown, G. E.	Karn	Shackleton
Butler, Mrs.	King	Sieder
Conklin, Mrs.	Kirk, S.	Spitler
Cudlip	Knirk, B.	Stafseth
Cushman, Mrs.	Koeze, Mrs.	Staiger
Danhof	Krolikowski	Stamm
Davis	Lundgren	Sterrett
Dell	Marshall	Stevens
DeVries	Martin	Suzore
Doty, Dean	McCauley	Thomson
Doty, Donald	McGowan, Miss	Tubbs
Durst	McLogan	Turner
Elliott, A. G.	Millard	Tweedie
Everett	Mosier	Upton
Farnsworth	Plank	Van Dusen
Figy	Pollock	Walker
Finch	Powell	Wanger
Gadola	Prettie	White
Hannah, J. A.	Pugsley	Yeager
Haskill		

SECRETARY CHASE: On the adoption of this amendment offered by Miss Hart and Mr. Downs, the yeas are 41, the nays 79.

VICE PRESIDENT HUTCHINSON: The amendment is not adopted.

SECRETARY CHASE: Miss Hart and Mr. Downs offer the following amendment:

1. Amend page 1, first paragraph, after "constitution.", by inserting "Members of the county legislative body shall be nominated and elected by the people, provided that elected local officials may serve on the county legislative body by virtue of their office, as determined by the county charter.".

VICE PRESIDENT HUTCHINSON: Mr. Downs.

MR. DOWNS: Mr. President and fellow delegates, this provides that the members of the newly formed legislative body need to be elected by the people. I believe this is very important, because we are giving additional powers to this new form of government, and at some place I hope we have direct responsibility to the people.

I urge its adoption, and I demand the yeas and nays.

VICE PRESIDENT HUTCHINSON: On the amendment, Mr. Downs demands the yeas and nays. Is the demand supported? The demand is supported. On the amendment, the Chair recognizes Mr. Elliott.

MR. A. G. ELLIOTT: Mr. President, just so that the position is perfectly clear, what Mr. Downs is doing is freezing into the constitution, step by step, various portions of what he calls home rule, but which I think would actually take away from the people their right of home rule. All I'm suggesting is that the provision that you have before you without the amendment does give to the legislature the right to establish any controls that they feel necessary at the time. It gives them the provision to make, by correcting legislation, changes as the future comes along. And in those areas where they do not restrict, the people have the complete right of selection, which is what I think we're really after.

I urge the defeat of the amendment, and I move the previous question.

VICE PRESIDENT HUTCHINSON: Mr. Elliott moves the previous question. Is the demand for the previous question supported? The demand is supported. The question now is: Shall the main question now be put?

MR. FORD: Mr. President.

VICE PRESIDENT HUTCHINSON: For what purpose does the gentleman arise?

MR. FORD: A parliamentary inquiry. I took the floor as Mr. Elliott was talking. He looked over at me, and he knew that I was on the floor when he moved the previous question. I want to know whether this is possible. Is it possible, if I'm the lucky fellow who gets recognition first, to look around and see who is likely to take me on, and then move the previous question and stop the debate?

VICE PRESIDENT HUTCHINSON: It is in order Mr. Ford.

MR. FORD: I just wanted it to be made eminently clear that I believe, Art, that this is what you did.

VICE PRESIDENT HUTCHINSON: The question is: Shall the main question be put? All those in favor will say aye. Those opposed will say no.

The motion prevails. The previous question is ordered. The yeas and nays on the amendment have been demanded.

The secretary will read the amendment.

SECRETARY CHASE: The amendment is:

[The amendment was again read by the secretary. For text, see above.]

VICE PRESIDENT HUTCHINSON: All those in favor will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and record the vote.

The roll was called and the delegates voted as follows:

Yeas—43

Austin	Faxon	McGowan, Miss
Baginski	Follo	Murphy
Balcer	Ford	Richards, L. W.
Barthwell	Greene	Shanahan
Binkowski	Hanna, W. F.	Sharpe
Bledsoe	Hart, Miss	Snyder
Boothby	Hodges	Stopczynski
Buback	Hood	Suzore
Cushman, Mrs.	Hoxie	Walker
Dade	Kelsey	Wilkowski
Donnelly, Miss	Leibrand	Wood
Doty, Donald	Leppien	Yeager
Downs	Lesinski	Young
Elliott, Mrs. Daisy	Liberato	Youngblood
Erickson		

Nays—80

Allen	Hatch	Prettie
Andrus, Miss	Hatcher, Mrs.	Pugsley
Anspach	Heideman	Radka
Batchelor	Higgs	Rajkovich
Beaman	Howes	Richards, J. B.
Bentley	Hubbs	Romney
Blandford	Iverson	Rood
Bonisteel	Judd, Mrs.	Rush
Brake	Karn	Seyferth
Brown, G. E.	King	Shackleton
Butler, Mrs.	Kirk, S.	Shaffer
Conklin, Mrs.	Knirk, B.	Sieder
Cudlip	Koeze, Mrs.	Spitler
Danhof	Krolikowski	Stafseth
Davis	Kuhn	Staiger
Dehnke	Lawrence	Stamm
Dell	Lundgren	Sterrett
Doty, Dean	Madar	Stevens
Durst	Martin	Thomson
Elliott, A. G.	McCauley	Tubbs
Everett	McLogan	Turner
Farnsworth	Millard	Tweedie
Figy	Mosier	Upton
Gadola	Perras	Van Dusen
Gover	Plank	Wanger
Hannah, J. A.	Pollock	White
Haskill	Powell	

SECRETARY CHASE: On the adoption of the amendment offered by Miss Hart and Mr. Downs, the yeas are 43, the nays are 80.

VICE PRESIDENT HUTCHINSON: The amendment is not adopted.

SECRETARY CHASE: Miss Hart and Mr. Downs offer the following amendment:

1. Amend page 1, first paragraph, after "constitution.", by inserting "Such nominations and elections shall include nominations by direct party primary and elections in a general election as provided by law.".

VICE PRESIDENT HUTCHINSON: On the amendment, the Chair recognizes the gentleman from Wayne, Mr. Downs.

MR. DOWNS: Mr. President, Miss Hart and I put this towards the end. We are past the halfway mark on the amendments. We had thought that the noncontroversial ones would be adopted, and this was thrown in here thinking there might be some controversy on this. This provides for the election of county legislative officials under our 2 party system. I know that some people argue that the people in a community should be allowed to have nonpartisan government. I think that there can be some theoretical merit to that argument. Our feeling is that party nomination and election with the direct primary gives the party responsibility, plus the right of the individual citizen to make the final decision.

I urge the adoption, and demand the yeas and nays.

VICE PRESIDENT HUTCHINSON: Mr. Downs demands the yeas and nays on the amendment. Is the demand supported? There is a sufficient number. The demand is supported, and it is so ordered.

The Chair now recognizes the delegate from the seventeenth district, Mr. Martin.

MR. MARTIN: Mr. President, I don't want to engage in debate at this point, but I do want to make this one point. We are voting on a number of amendments which, if any of us who are voting no on these this morning were in the legislature, we would be voting yes on. At least, this would be true in my case.

Specifically, if this were being voted on in the legislature and I were a member of that body, I would be voting to permit the county to establish a civil service system under its home rule activity, to elect its board of supervisors or legislative body by the people, to retain the sheriff and the prosecutor, and to elect its officials by a party system of election. These are all matters which I would favor in county government. I think it should be made crystal clear that as far as I, myself, am concerned, I am for these things, and I believe as far as many of the other delegates are concerned they are for these things, too; and that the negative votes this morning are simply and solely a vote in favor of sound home rule in the same form as it was provided for the cities in 1908 by giving the legislature the opportunity to pass upon these matters and to provide an adequate home rule act. I think it's important that the public understands that this is the significance of these votes this morning.

VICE PRESIDENT HUTCHINSON: The lady from Wayne, Miss Hart.

MISS HART: Mr. President, if Mr. Downs and I had the same voice in the legislature that Mr. Martin has, I'm sure we would agree with him.

VICE PRESIDENT HUTCHINSON: The gentleman from Mackinac, Mr. Dell.

MR. DELL: Mr. President, in regard to Mr. Martin's remarks, I just want to say "amen."

VICE PRESIDENT HUTCHINSON: The question is upon the amendment offered by Mr. Downs. The secretary will again read the amendment.

SECRETARY CHASE: The amendment is:

[The amendment was again read by the secretary. For text, see above.]

VICE PRESIDENT HUTCHINSON: All those in favor of the amendment will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and record the vote.

The roll was called and the delegates voted as follows:

Yeas—38

Austin	Gover	Madar
Baginski	Greene	Murphy
Balcer	Hanna, W. F.	Perras
Barthwell	Hart, Miss	Richards, L. W.
Binkowski	Hatcher, Mrs.	Sharpe
Boothby	Hodges	Snyder
Buback	Hood	Stopczynski
Dade	Hoxie	Suzore
Doty, Dean	Kelsey	Walker
Downs	Leibrand	Wilkowski
Elliott, Mrs. Daisy	Leppien	Young
Erickson	Lesinski	Youngblood
Ford	Liberato	

Nays—81

Andrus, Miss	Hannah, J. A.	Prettie
Batchelor	Haskill	Pugsley
Beaman	Hatch	Radka
Bentley	Heideman	Rajkovich
Blandford	Higgs	Richards, J. B.
Bonisteel	Howes	Romney
Brake	Hubbs	Rood
Brown, G. E.	Iverson	Rush
Butler, Mrs.	Judd, Mrs.	Seyferth
Conklin, Mrs.	Karn	Shackleton
Cudlip	King	Shaffer
Cushman, Mrs.	Kirk, S.	Shanahan

Danhof	Knirk, B.	Sieder
Davis	Koeze, Mrs.	Spitler
Dehnke	Krolikowski	Stafseth
Dell	Kuhn	Staiger
DeVries	Lawrence	Stamm
Donnelly, Miss	Lundgren	Sterrett
Doty, Donald	Martin	Stevens
Durst	McCauley	Tubbs
Elliott, A. G.	McGowan, Miss	Turner
Everett	McLogan	Tweedie
Farnsworth	Millard	Upton
Faxon	Mosier	Van Dusen
Figy	Plank	Wanger
Finch	Pollock	White
Gadola	Powell	Yeager

SECRETARY CHASE: On the adoption of the amendment offered by Miss Hart and Mr. Downs, the yeas are 38, the nays are 81.

VICE PRESIDENT HUTCHINSON: The amendment is not adopted.

SECRETARY CHASE: Miss Hart and Mr. Downs offer the following amendment:

1. Amend page 1, first paragraph, after "constitution.", by inserting "Members of the county legislative body shall be elected from areas as nearly equal in population as practicable, or elected at large, as determined by the charter. More than 1 county legislator can be elected from the same area, providing each such legislator represents approximately the same number of people. The number of county legislators shall be determined by the charter.".

VICE PRESIDENT HUTCHINSON: On the amendment, the Chair recognizes Mr. Downs.

MR. DOWNS: Mr. President, this is one of the longer ones — 3 sentences. I shall again try to be brief in explaining it. This would provide that the county charter could set the number of members of the county legislative body. It would provide that the people would come from districts as near equal in population as possible. The ones from a city could be elected at large or from separate districts, provided approximately the same number were represented. In a sense, perhaps this should belong in legislative organization. We are trying to get reapportionment at a small scale in the unicameral legislative body of counties.

I urge its support, and demand the yeas and nays.

VICE PRESIDENT HUTCHINSON: Mr. Downs demands the yeas and nays. Is the demand supported? The demand is supported. The question is upon the amendment offered by Miss Hart and Mr. Downs.

The secretary will again read the amendment.

SECRETARY CHASE: The amendment is:

[The amendment was again read by the secretary. For text, see above.]

VICE PRESIDENT HUTCHINSON: All those in favor of the amendment will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and record the vote.

The roll was called and the delegates voted as follows:

Yeas—34

Austin	Follo	McCauley
Baginski	Ford	McGowan, Miss
Balcer	Greene	Murphy
Barthwell	Hart, Miss	Snyder
Binkowski	Hatcher, Mrs.	Stopczynski
Bledsoe	Hodges	Suzore
Buback	Hood	Walker
Butler, Mrs.	Kelsey	Wilkowski
Dade	Krolikowski	Yeager
Downs	Lesinski	Young
Elliott, Mrs. Daisy	Liberato	Youngblood
Faxon		

Nays—82

Andrus, Miss	Hannah, J. A.	Powell
Batchelor	Haskill	Prettie
Beaman	Hatch	Pugsley
Bentley	Heideman	Radka
Blandford	Higgs	Rajkovich
Bonisteel	Howes	Richards, J. B.
Boothby	Hoxie	Richards, L. W.
Brake	Hubbs	Romney
Brown, G. E.	Iverson	Rood
Cudlip	Judd, Mrs.	Rush
Cushman, Mrs.	Karn	Seyferth
Danhof	King	Shackleton
Davis	Kirk, S.	Shaffer
Dehnke	Koeze, Mrs.	Shanahan
Dell	Kuhn	Sharpe
DeVries	Lawrence	Sieder
Donnelly, Miss	Leibrand	Spitler
Doty, Dean	Leppien	Stafseth
Doty, Donald	Lundgren	Stamm
Durst	Madar	Sterrett
Elliott, A. G.	Martin	Stevens
Erickson	McLogan	Tubbs
Everett	Millard	Turner
Farnsworth	Mosier	Upton
Figy	Perras	Van Dusen
Finch	Plank	Wanger
Gover	Pollock	Woolfenden
Hanna, W. F.		

SECRETARY CHASE: On the adoption of the amendment offered by Miss Hart and Mr. Downs, the yeas are 34, the nays are 82.

VICE PRESIDENT HUTCHINSON: The amendment is not adopted.

SECRETARY CHASE: Miss Hart and Mr. Downs offer the following amendment:

1. Amend page 1, first paragraph, after "constitution.", by inserting "The county legislative body shall keep a public journal of its activities, record by yeas and nays the final votes on all policy decisions, record all other votes by yeas and nays on the demand of 1/5 of the members elect, meet publicly unless public security demands otherwise, and establish rules for operation consistent with the public good.".

VICE PRESIDENT HUTCHINSON: On the amendment, the Chair recognizes Mr. Downs.

MR. DOWNS: Mr. President, fellow delegates, this language is taken largely from the present constitution, and what the committee of the whole has recommended for standards in the state legislature. I think that when we are going to have a newly formed county legislative body, we should see that it has at least the same standards of public meeting, recorded roll call votes, as we have set for the legislature. There has been much talk about confidence or lack of confidence in the legislature. We do seem unanimously agreed that there should be in our constitution standards of public activity and recorded roll call votes. I call upon the delegates to establish the same standards for the new form of county government that is being established.

I demand the yeas and nays, and urge the support.

VICE PRESIDENT HUTCHINSON: Mr. Downs demands the yeas and nays on the amendment. Is the demand supported? The demand is supported. The question is upon the amendment of Miss Hart and Mr. Downs, which the secretary will again read.

SECRETARY CHASE: The amendment is:

[The amendment was again read by the secretary. For text, see above.]

VICE PRESIDENT HUTCHINSON: On the amendment, all those in favor will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and record the votes.

The roll was called and the delegates voted as follows:

Yeas—39

Baginski	Faxon	Madar
Balcer	Ford	Murphy
Barthwell	Greene	Plank
Binkowski	Hart, Miss	Richards, L. W.
Bledsoe	Hatcher, Mrs.	Shackleton

Brown, T. S.	Hodges	Snyder
Buback	Hood	Stopczynski
Butler, Mrs.	Hoxie	Suzore
Dade	Kelsey	Walker
Douglas	Leibrand	Wilkowski
Downs	Leppien	Wood
Elliott, Mrs. Daisy	Lesinski	Young
Erickson	Liberato	Youngblood

Nays—76

Allen	Hanna, W. F.	Pugsley
Andrus, Miss	Haskill	Radka
Batchelor	Hatch	Rajkovich
Beaman	Heideman	Richards, J. B.
Bentley	Higgs	Romney
Blandford	Howes	Rood
Boothby	Hubbs	Shaffer
Brake	Iverson	Shanahan
Brown, G. E.	Judd, Mrs.	Sharpe
Cudlip	Karn	Sleder
Cushman, Mrs.	King	Spitler
Danhof	Kirk, S.	Stafseth
Davis	Krolikowski	Staiger
Dehnke	Kuhn	Stamm
Dell	Lundgren	Sterrett
DeVries	Martin	Stevens
Donnelly, Miss	McCauley	Thomson
Doty, Dean	McGowan, Miss	Tubbs
Doty, Donald	McLogan	Turner
Durst	Millard	Tweedie
Elliott, A. G.	Mosier	Upton
Everett	Perras	Van Dusen
Farnsworth	Pollock	Wanger
Figy	Powell	Woolfenden
Finch	Prettie	Yeager
Gover		

SECRETARY CHASE: On the adoption of the amendment offered by Miss Hart and Mr. Downs, the yeas are 39, the nays are 76.

VICE PRESIDENT HUTCHINSON: The amendment is not adopted.

SECRETARY CHASE: Miss Hart and Mr. Downs offer the following amendment:

1. Amend page 1, first paragraph, after "constitution.", by inserting "The charter commission preparing for the change to this form of county government shall be nominated and elected on a bipartisan basis with proportional representation reflecting the votes of the respective candidates running from each political party. Nominations shall be in a direct primary. Members of the charter commission shall be elected from districts providing approximately equal representation of people, or at large. The number of members shall be determined by the charter petition.".

VICE PRESIDENT HUTCHINSON: On the amendment, the Chair recognizes Mr. Downs.

MR. DOWNS: Mr. President, this provision spells out how a charter commission would be set up. It provides for bipartisan representation. It means, for example, if a county were to have a 9 member charter commission, and one party got 5/9 of the vote and the other 4/9, the one with 5/9 would have 5 members, and the other 4. I believe that this assures the 2 party participation and guarantees more broad citizen activity in developing a charter commission.

I urge its support, and demand the yeas and nays.

VICE PRESIDENT HUTCHINSON: On the amendment, Mr. Downs demands the yeas and nays. Is the demand for the yeas and nays supported? The demand is supported. On the amendment, the Chair recognizes the gentleman from Allegan, Mr. Farnsworth.

MR. FARNSWORTH: Mr. President and members of the convention, by this time it should be crystal clear that the proposal as adopted by the committee of the whole would, by any stretch of the imagination, give a much wider latitude of home rule than the amendments collectively that have been offered to us here by Mr. Downs and Miss Hart.

I would call your attention to the fact that they proposed that you must elect a prosecutor, that you must elect a sheriff, that you must have civil service, they told you how to choose your board of supervisors, they are attempting to tell you how to keep the records of your board, and now they are going to tell you exactly how to elect your charter commission. Now, I submit to this convention that what they have left, had these amendments been adopted, is that they would give the local people a choice as to exactly what they would do with 3 things: the clerk, the register of deeds, and the treasurer. Now, I would only say that the committee proposal gives a much wider latitude of home rule than these various amendments would have had they been adopted. I'm against the adoption of this amendment.

VICE PRESIDENT HUTCHINSON: On the amendment, all those in favor will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and record the vote.

The roll was called and the delegates voted as follows:

Yeas—25

Baginski	Downs	Krolikowski
Balcer	Elliott, Mrs. Daisy	Murphy
Barthwell	Greene	Snyder
Binkowski	Hart, Miss	Stopczynski
Bledsoe	Hatcher, Mrs.	Suzore
Brown, T. S.	Hodges	Wilkowski
Buback	Hood	Young
Dade	Kelsey	Youngblood
Douglas		

Nays—91

Allen	Gover	Pugsley
Andrus, Miss	Hanna, W. F.	Radka
Batchelor	Haskill	Rajkovich
Beaman	Hatch	Richards, J. B.
Bentley	Heideman	Richards, L. W.
Blandford	Higgs	Romney
Boothby	Howes	Rood
Brake	Hoxie	Seyferth
Brown, G. E.	Hubbs	Shackleton
Butler, Mrs.	Iverson	Shanahan
Conklin, Mrs.	Judd, Mrs.	Sharpe
Cudlip	Karn	Sleder
Cushman, Mrs.	King	Spitler
Danhof	Kirk, S.	Stafseth
Davis	Koeze, Mrs.	Staiger
Dehnke	Kuhn	Stamm
Dell	Leibrand	Sterrett
DeVries	Leppien	Stevens
Donnelly, Miss	Lundgren	Thomson
Doty, Dean	Martin	Tubbs
Doty, Donald	McCauley	Turner
Durst	McGowan, Miss	Tweedie
Elliott, A. G.	McLogan	Upton
Erickson	Millard	Van Dusen
Everett	Mosier	Walker
Farnsworth	Perras	Wanger
Faxon	Plank	White
Figy	Pollock	Wood
Finch	Powell	Woolfenden
Ford	Prettie	Yeager
Gadola		

SECRETARY CHASE: On the adoption of the amendment offered by Miss Hart and Mr. Downs, the yeas are 25, the nays are 91.

VICE PRESIDENT HUTCHINSON: The amendment is not adopted.

SECRETARY CHASE: Miss Hart and Mr. Downs offer the following amendment:

1. Amend page 1, first paragraph, after "constitution.", by inserting "The electors shall be able to initiate a charter commission under these standards by petitions signed by 5 per cent of the registered voters and approved by a majority voting thereon. The petitions for creation of a charter commission may be in any form consistent with this constitution and shall be self executing without the requirement of any additional state legislation. The people shall be able to rescind or amend their action by the same process.".

VICE PRESIDENT HUTCHINSON: The question is upon the amendment. The Chair recognizes Mr. Downs.

MR. DOWNS: Mr. President, I wish to advise the delegates that this is the last of the Hart-Downs amendments. (applause) Thank you. I wish also to say that this is really the heart of the whole question, and the difference between the majority report that was adopted this morning and the amendments of Delegate Hart and myself.

The previous speaker, Mr. Farnsworth, without going into the details, was absolutely correct in saying that our amendments would set certain standards for having home rule. We think those were good standards. But what this amendment does is say that the people can have home rule without any additional legislative action, or it would be what we call self executing. This amendment will provide that the electors themselves in a county can initiate home rule and can complete the elective process by having a charter commission, and the charter presented to the people, and so on. If we really want county home rule, the people of that county should make the decision without having the people in the entire state and the legislature, and how it will be composed we do not yet know, decide whether or not they can have home rule. The majority proposal provides for an unlimited form of home rule, but no assurance there ever will be any. This amendment provides that the people in a county, by themselves, if 5 per cent initiate the petitions, can start the ball rolling for home rule, and the people in the other 82 counties cannot prevent that from happening.

I therefore say that for the people who really want home rule, this is a self executing proposition. And where we now stand, with all the criticism we have of the present proposal, of being afraid it might go too far, we can avoid the situation of the legislature not moving at all by adopting this amendment, which will permit the individual voters to start the ball rolling for home rule. I say to the delegates here: if you really want the people to have home rule, then support this; because this is the only amendment before this body at present that will permit the individual voters in a county to have home rule without the necessity of legislative action. Thank you.

I demand the yeas and nays.

VICE PRESIDENT HUTCHINSON: Mr. Downs demands the yeas and nays. Is the demand supported? There is a sufficient number. The Chair recognizes the delegate from the seventeenth district, Mr. Martin.

MR. MARTIN: Mr. President, I simply want to expand on my earlier comments. As I have sat here and listened to these amendments offered — and this comment that I'm going to make I have not indulged in, and I hope I won't have to indulge in again in this convention — but I think the performance that has been going on here this morning is a completely phony political performance, and that these amendments are not offered in good faith; that the sole purpose of offering them is to enable the minority party at some point in the forthcoming political campaign to be able to issue a broadside or a sheet of paper on which they will say the majority party is against this, that and the other thing on which we have been voting this morning.

MR. WALKER: Point of order, Mr. President.

MR. MARTIN: It is a significant performance, and I want to put it on the record.

VICE PRESIDENT HUTCHINSON: For what purpose does the gentleman rise?

MR. WALKER: A point of order.

VICE PRESIDENT HUTCHINSON: What is the point?

MR. WALKER: It appears to me that if I were guilty of attacking a person individually, I would say that Mr. Martin were certainly guilty, and I would like to object to the remarks on the grounds that they are a direct attack on Mr. Downs and Miss Hart, and I personally take offense to them.

VICE PRESIDENT HUTCHINSON: Well, the Chair didn't hear any delegate's name mentioned in the remarks, so it is not well taken.

The Chair recognizes Mr. Downs.

MR. DOWNS: I rise to a point of personal privilege.

VICE PRESIDENT HUTCHINSON: Mr. Downs is recognized for the purpose.

MR. DOWNS: Was the previous speaker impugning the motives of either Miss Hart or myself?

VICE PRESIDENT HUTCHINSON: Mr. Martin.

MR. MARTIN: Mr. President, the remark was not directed to Mr. Downs or Miss Hart. The remark was directed to the general performance, which I assume comes from a Democratic caucus of some sort, as a matter of Democratic policy.

MR. DOWNS: Mr. President, on a matter of personal privilege, I wish to rise and say that Miss Hart and I developed these amendments. They were developed in all sincerity to assure that individuals would get the right of home rule, and not be limited within what we consider a reasonable governmental standard.

VICE PRESIDENT HUTCHINSON: The Chair recognizes the lady from Wayne, Miss Hart.

MISS HART: I'd like to add to what Mr. Downs has said that these are not caucus decisions. Mr. Downs and I take complete responsibility for the amendments that have been offered. We are happy to do so. And let Mr. Martin make any implication that he cares to. It's of complete indifference to us.

VICE PRESIDENT HUTCHINSON: The Chair recognizes the gentleman from Wayne, Mr. Madar.

MR. MADAR: Mr. President, back a few weeks ago I told Mr. Follo, I told Mrs. Cushman and I told several others that I was for a purely strict self executing home rule. I also told this — and went on record — to Mr. Popa of the Detroit News, telling him the same thing. This morning, if anyone noticed here, I have not voted each and every time with Mr. Downs and Miss Hart. I have on occasion voted with them; on other occasions I voted against their amendments. When it meant that we would not get self executing home rule, I would vote against it. When it meant we were getting it, or that it would assist, I voted for it.

I certainly don't like Mr. Martin's remarks any more than anybody might have liked any that I made, but I can take it as well as I can give it. I've seen in my 34 years with the Republican party Mr. Martin and others do the same thing. Let's not be so pure, Mr. Martin. You've done just as much, and worse.

MR. IVERSON: Mr. President.

VICE PRESIDENT HUTCHINSON: Mr. Iverson.

MR. IVERSON: I move the previous question.

VICE PRESIDENT HUTCHINSON: The previous question has been moved.

MR. MARSHALL: Mr. President, I was on my feet.

VICE PRESIDENT HUTCHINSON: I recognize that, but the Chair recognizes a preferential motion, and it is up to the body as to whether or not the previous question is ordered. Is the demand for the previous question supported? The demand is supported. Now, the question is: Shall the main question be put? All those in favor say aye. Those opposed will say no. The previous question is ordered. The yeas and nays have been demanded. The secretary will read the amendment.

SECRETARY CHASE: The amendment is:

[The amendment was again read by the secretary. For text, see above, page 1121.]

MR. KING: Mr. President.

VICE PRESIDENT HUTCHINSON: For what purpose does the gentleman rise, Mr. King?

MR. KING: A point of parliamentary inquiry. Did you recognize the person who sought to move the previous question when there were other people on their feet?

VICE PRESIDENT HUTCHINSON: I did because he made the motion, which was a motion of preference.

MR. KING: Did he make the motion with your recognition? Upon your recognition?

VICE PRESIDENT HUTCHINSON: I recognized the gentleman for that purpose. I heard the motion made.

MR. KING: Thank you.

VICE PRESIDENT HUTCHINSON: All those in favor of the amendment will vote aye. Those opposed will vote no. Have

you all voted? If so, the secretary will lock the machine and record the vote.

The roll was called and the delegates voted as follows:

Yeas — 37

Austin	Follo	Marshall
Baginski	Ford	McCauley
Balcer	Greene	McGowan, Miss
Binkowski	Hart, Miss	Murphy
Bledsoe	Hodges	Pollock
Brown, T. S.	Hood	Snyder
Buback	Kelsey	Stopczynski
Dade	Krollkowski	Suzore
Donnelly, Miss	Kuhn	Walker
Douglas	Lesinski	Wilkowski
Downs	Liberato	Young
Elliott, Mrs. Daisy	Madar	Youngblood
Faxon		

Nays — 82

Allen	Gadola	Pugsley
Andrus, Miss	Gover	Radka
Anspach	Haskill	Rajkovich
Batchelor	Hatch	Richards, J. B.
Beaman	Heideman	Richards, L. W.
Bentley	Higgs	Romney
Blandford	Howes	Rood
Bonisteel	Hoxie	Shackleton
Boothby	Hubbs	Shanahan
Brake	Iverson	Sharpe
Brown, G. E.	Judd, Mrs.	Sieder
Butler, Mrs.	Karn	Spitler
Conklin, Mrs.	King	Stafseth
Cudlip	Kirk, S.	Staiger
Danhof	Knirk, B.	Stamm
Davis	Koeze, Mrs.	Sterrett
Dehnke	Leibrand	Stevens
Dell	Leppien	Thomson
DeVries	Lundgren	Tubbs
Doty, Dean	Martin	Turner
Doty, Donald	McLogan	Tweedie
Durst	Millard	Upton
Elliott, A. G.	Mosier	Van Dusen
Erickson	Perras	Wanger
Everett	Plank	Wood
Farnsworth	Powell	Woolfenden
Figy	Prettie	Yeager
Finch		

SECRETARY CHASE: On the adoption of the amendment offred by Miss Hart and Mr. Downs, the yeas are 37, the nays are 82.

VICE PRESIDENT HUTCHINSON: The amendment is not adopted.

The Chair recognizes the gentleman from the twenty-first district, Mr. Marshall.

MR. MARSHALL: Mr. President and fellow delegates, I rise to a point of personal privilege.

VICE PRESIDENT HUTCHINSON: The gentleman will state it.

MR. MARSHALL: I wish to answer Delegate Martin. I am not going to get into any personalities whatsoever. On this particular question that he raised and said was purely a political maneuver on the part of Mr. Downs and Miss Hart, and even further, on the part of the Democrats, from the beginning of this convention — and I want to make this emphatically clear — I have been in favor of pure and sound home rule. I have worked hard within the Democratic group trying to get the differences within the minority party here resolved. I have talked to Delegate Allen on several occasions on what we could do to accomplish this and give the people the right of home rule, and at the same time not get involved in a long, drawn out debate. Delegate Allen can question me on this if he wants to, or deny it. I have talked to other people in this convention. At this very moment I am not too popular among the Democrats on this issue, because I happen to believe very strongly in home rule and the right of the people to determine. And I resent the remarks, in all due respect to Delegate Martin, which inject the political question into this discussion. I am going to continue to fight to try to obtain home rule — pure home rule — to the best of my ability, and I respect the rights of others who have a different viewpoint on this subject than I.

I think we should not have mentioned — if we are going to start mentioning who is playing politics and who is not in this convention, then I think we ought to have a debate on it and talk about it, and not have one individual delegate get up and accuse one group of this type of maneuver. And if there's any politics in this convention at this time, and if there has been any politics in this convention, and if there will be any partisan politics in the future, I think I will leave it to the good judgment of the people of the state of Michigan as to who is and who is not playing politics with this constitutional convention.

VICE PRESIDENT HUTCHINSON: The Chair recognizes the gentleman from Wayne, Mr. Barthwell.

MR. BARTHWELL: I rise to get a point of parliamentary information completely clear in my mind. Since I'm one of the nonlawyers and since I'm one of the delegates who have not used many of their words, I don't want to be shut out of the opportunity and privilege of using them when I get ready to use them.

It is my opinion that I heard the Chair state that in order for a delegate to get the floor, he had to be recognized, and wait until he is recognized through the Chair. If this is so, I think if the Chair displays any degree of fairness in recognizing delegates in some order as to how they applied for the floor, I think then that a delegate who is standing up at the proper time and is polite enough to wait for the Chair should get the privilege of saying what he has to say on the question. I would just like to know if I'm right in this opinion or not.

VICE PRESIDENT HUTCHINSON: The Chair would answer the gentleman in this way. I'm sure that every delegate in the Chair has always tried very hard to be fair in this matter and to recognize delegates in the order in which he saw them seeking recognition on the general question for debate.

However, it is always in order for a delegate to make a motion which has priority. Now, when a delegate makes a motion for the previous question, that doesn't automatically mean that the previous question will be ordered. It's the body itself that determines whether the previous question will be ordered. And that decision is made when the Chair asks, "Shall the main question now be put?" If the body should say no at that point, the previous question would not be ordered, the debate would continue, and the Chair would continue to recognize delegates on the general debate in the order in which he saw them seeking recognition.

This is rather a large hall, and the seats are arranged in a semicircle, so that unless the presiding officer keeps reminding himself that he has to look way over to the side, I know that once in a while it's a little bit more difficult for delegates on the far side of the room to get the same recognition as those in the middle. I, on my part, have always tried to remember that — to keep looking over to the sides as well.

There has never been any intent on my part to show any preference among delegates in general debate. However, the body has a right to proceed in the order of business; and the Chair feels that it has the right to recognize preferential motions. If that were not true, the body would not ever be able to proceed until all possible debate was exhausted. Sometimes it may be the will of the body to move at a faster rate than that. Therefore, the Chair does not believe he was in error in recognizing Mr. Iverson to make a motion for the previous question, even though there were other delegates on the floor seeking to debate.

The decision was not the Chair's; the decision was the convention's, as a body, as to whether or not debate should be cut off at that time, as I have explained before. I hope this will answer the gentleman.

MR. BARTHWELL: Mr. President, does each of the delegates have a right to make such a motion without being recognized by the Chair?

VICE PRESIDENT HUTCHINSON: The Chair must recognize every delegate. No delegate has the floor without recog-

nition from the Chair. The Chair, however, will recognize delegates who make preferential motions.

The Chair recognizes the Delegate from Oakland, Mr. Elliott.

MR. A. G. ELLIOTT: Mr. President, ladies and gentlemen of this convention, I would like to put us back in focus, if I may, for just a moment. We have spent now 5 days, starting with Friday of last week, on local government. We are nearing the completion. As I understand it, there are no other amendments on the desk.

SECRETARY CHASE: Yes, there are.

MR. A. G. ELLIOTT: Oh, are there? Well, I will make this comment, anyway. I in no way feel that the action today of the amendments as offered by Mr. Downs and Miss Hart was anything other than an attempt to present a point of view which they subscribe to. I recognize, and am thankful, that they made those points of view perfectly clear. I think the action of this convention in the defeat of those amendments to this date is an indication of the procedure which the convention wishes to follow in this very, very serious area. This action was not on partisan lines. As I watched the board on each record roll call vote, while the preponderance of votes might have been for one party or another, there were members of both parties voting on both sides of the issue.

I would like to bring to the convention's attention that we are about to reach a milestone of good activity — one which will help the state of Michigan for years to come. I thank you.

VICE PRESIDENT HUTCHINSON: The Chair recognizes the delegate from Saginaw, Mr. Turner.

MR. TURNER: I rise to a point of personal privilege. If the attitude continues as it is at this point, I will take some time and threaten with rhyme. (laughter)

VICE PRESIDENT HUTCHINSON: The Chair recognizes Mr. Brown of Wayne.

MR. T. S. BROWN: Mr. President, at the conclusion of yesterday's activities I was about to make a point of personal privilege, which I deferred until today. That point is simply this. In order to further clear the air, in light of the conversation that has just ensued, I should like to apologize if any members of my political party have acted in an untoward manner in regard to anyone else, or this body as a whole. But I should also like to say this: that what has personally disturbed me about yesterday afternoon's actions, not so much about this morning's, is this one particular observation. I think it would be fruitful if we would look into this particular matter.

Yesterday afternoon, when we — it happened to be that we were all Democrats — were proposing a series of amendments and alterations and such concerning county home rule, I got the very definite impression that we were faced with what I would call a conspiracy of silence. Now, whether or not this was a conspiracy, whether the motives were pure, or impure, or mixed, or whatever the situation was I think is immaterial to the cause.

If you take any body who happened to identify with a particular belief, whether they were talking about partisan matters or whether they were talking about nonpartisan matters, such as county home rule, and this body goes through on our floor some 2 or 3 hours of debate, and they present every possible facet, every possible reasonable compromise, and hold themselves open to anything that will put the stamp of approval of this body on their particular philosophy, and they are not graced with a response from the majority voters on that particular matter, then they begin to feel that something may have been decided in advance; that silence means that they are unwilling to listen.

Now, I would suggest this — and I hope that this is always true for all of us. If I say something that you don't agree with, I hope that everyone who disagrees will stand up and tell me why they disagree. But if I say something in 10 different forms over a period of 2 or 3 hours and it happens to be a matter of great import to certain groups in this convention, and we are not graced with the dignity of a response, then I cannot help but feel that something is wrong.

And I think for the benefit of the progress of this convention both sides should adhere to the philosophy that we will no longer be treated to any sort of obvious conspiracy of silence. Now, when I say "conspiracy of silence," I don't mean that it is necessarily conspiratorial. It just works out that way. And it looks bad, and does not engender good faith in bipartisan cooperation.

VICE PRESIDENT HUTCHINSON: The Chair recognizes the delegate from the fifteenth district, Mr. Bentley.

MR. BENTLEY: Mr. President, I rise to address a question to the chairman of the committee on local government. Is it the gentleman's intention to complete action on the pending amendments this morning, Mr. Elliott?

VICE PRESIDENT HUTCHINSON: Mr. Elliott.

MR. A. G. ELLIOTT: As I understand it, Mr. Bentley, we are nearing the completion. Would the secretary inform me how many amendments there are on the table?

SECRETARY CHASE: There are 6 presently, Mr. Elliott.

MR. A. G. ELLIOTT: The problem we have before us is that we are nearing the completion of this work, and there are reasons why we would like to finish this up before the afternoon session. I would urge the convention to bear with me for just a few moments and see whether or not these amendments can be accommodated. If they cannot, then I would urge that we recess.

MR. BENTLEY: Mr. President, since I am reserving the floor, would the gentleman answer another question? In the event that the gentleman is not able to complete action on the pending amendments this morning, is it the gentleman's intention to pass over those amendments, or request that they be passed over until later?

MR. A. G. ELLIOTT: It is my intention to request that these amendments be passed over until later, unless we complete them this morning. That's why I'm so anxious for this group to stay in session for a few more moments and see if we can dispose of the amendments that are before us.

MR. BENTLEY: I thank the gentleman.

SECRETARY CHASE: Mr. Ford has offered the following amendment —

MR. MADAR: Mr. President.

VICE PRESIDENT HUTCHINSON: Mr. Madar.

MR. MADAR: Point of information. Some time ago there was a motion passed here that the delegation or the convention would make recommendations to the legislature. I am wondering whether a recommendation that I made in the local government committee and which was approved for recommendation to the legislature would be acted upon; and I would certainly like to know that it would be included in the journal, so that action will be taken. Because unless I get some information on it now, I don't know just when I am going to bring this up. For instance, my proposal at the time was that the proposition go to the legislature that the public utilities not include the costs of public relations, lobbying and advertising to be used in basing rates.

Now, is that so? Would those recommendations be made to the legislature?

VICE PRESIDENT HUTCHINSON: To whom do you direct your question, Mr. Madar?

MR. MADAR: To the Chair, because the motion was made here and passed; and it was also approved in the local government committee that action would be taken on it.

VICE PRESIDENT HUTCHINSON: The Chair is entirely unable to answer. The Chair is not informed about the particular proposition, nor what the committee on local government has —

MR. MADAR: Then I would like to ask the chairman of the local government committee if action will be taken.

VICE PRESIDENT HUTCHINSON: The Chair recognizes the chairman of the committee, Mr. Elliott.

MR. A. G. ELLIOTT: Mr. President, it is our intention to bring to the convention at some later date a list of recommendations which we will urge be sent on to the legislature, and we will have sessions in committee to make final decisions on those items, just as we have made final decisions on others.

MR. MADAR: Then, Mr. President, it will be made a matter of record that this will be brought up in the future?

VICE PRESIDENT HUTCHINSON: It will show in the verbatim record of the convention.

MR. MADAR: Thank you, Mr. President.

SECRETARY CHASE: Mr. Ford offers the following amendment:

1. Amend page 1, last line, after "laws" by inserting a colon and "Provided however, No county charter or provision thereof shall be in derogation of or otherwise diminish the rights, powers or duties of any municipality within said county".

VICE PRESIDENT HUTCHINSON: The Chair recognizes Mr. Ford upon his amendment.

MR. FORD: Mr. President, this did have a very brief consideration as a part of one of the delegate proposals that appeared before the local government committee. I think that it becomes apparent, because we shouldn't lose sight of the fact in discussing home rule, that we are talking about home rule that is going to lap over another form of home rule that has been given recognition and has a long tradition in the state.

Although I have most frequently been talking in the area of townships, I also represent 3 cities as a delegate to this convention. They are downriver cities, and I'm sure that they would be very much concerned about the possibility of a charter being adopted which would include them in the territory of its operation and which would in any way be in derogation of the inherent powers of local self government that they have as chartered communities. I would anticipate by the growth of our community that the other communities that I now represent will have home rule charters in the foreseeable future. It is entirely possible and very likely that with the status of this as it is now we are talking about the possibility of home rule as something a long, long time in the future.

We, by the action of the convention, have adopted a form of non self executing home rule, and left the situation so that the legislature may take some time to decide this matter. When they do, I think that in adopting any legislation to implement home rule, they should have clearly before them the intention of this convention that when we are talking about county home rule we are talking about a way of facilitating countywide performance of services that can best be performed on a countywide basis, and that we are not talking about a form of government which is intended to replace local home rule, whether we are talking about cities, villages or townships; that we are talking about something similar to what one of the delegates attempted the other day when he put in an amendment suggesting that metropolitan government would be of a nature of a service government, rather than a functional government to replace the functions of local units within it. This is the purpose of the amendment.

It might be argued that it is a restriction on the legislature, but I think that it's more in the nature of a direction to the legislature to safeguard in the implementing legislation the rights of the communities that will be located within the chartered unit known as a charter or home rule county.

VICE PRESIDENT HUTCHINSON: On the amendment of Mr. Ford. Those in favor will say aye.

MR. ALLEN: Mr. President.

VICE PRESIDENT HUTCHINSON: The Chair recognizes the delegate from Kalamazoo, Mr. Allen.

MR. ALLEN: In reply to the point made by Mr. Ford, I come from a city, and we are not concerned about this. You will notice that in the first paragraph the powers given are not completely self executing, are not completely broad; and that the first 2 sentences say that a county may frame its charter, with powers and limitations to be provided by general law. And then, in the second sentence, it starts, "Subject to law, a county charter may authorize . . ." and so on. So we have restrictions which the legislature may impose. I would be afraid that if this were adopted it would be too restrictive.

VICE PRESIDENT HUTCHINSON: The Chair recognizes Mr. Brown, of Kalamazoo.

MR. G. E. BROWN: Mr. President, I move the previous and primary question.

VICE PRESIDENT HUTCHINSON: Mr. Brown moves the previous question upon the amendment. Is the demand supported? The demand is supported. The question is now: Shall the main question be put? All those in favor will say aye. Those opposed will say no.

The previous question is ordered. The question now is upon the amendment offered by Mr. Ford. The secretary will read the amendment.

MR. FORD: I would like to ask for the yeas and nays, Mr. President.

VICE PRESIDENT HUTCHINSON: And Mr. Ford demands the yeas and nays upon his amendment. Is the demand supported? The demand is supported. The secretary will read the amendment.

SECRETARY CHASE: Mr. Ford's amendment is:

[The amendment was again read by the secretary. For text, see above.]

VICE PRESIDENT HUTCHINSON: All those in favor of the amendment offered by Mr. Ford will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and record the vote.

The roll was called and the delegates voted as follows:

Yeas — 26

Baginski	Follo	McGowan, Miss
Binkowski	Ford	Murphy
Bledsoe	Hart, Miss	Snyder
Brown, T. S.	Hatcher, Mrs.	Stopczynski
Buback	Hood	Suzore
Dade	Hubbs	Walker
Douglas	Kelsey	Wilkowski
Downs	Marshall	Youngblood
Elliott, Mrs. Daisy	McCauley	

Nays — 85

Allen	Finch	Pugsley
Andrus, Miss	Gadola	Radka
Anspach	Gover	Rajkovich
Balcer	Haskill	Richards, J. B.
Barthwell	Hatch	Richards, L. W.
Batchelor	Heideman	Romney
Beaman	Higgs	Rood
Bentley	Howes	Rush
Blandford	Hoxie	Seyferth
Bonisteel	Iverson	Shackleton
Boothby	Judd, Mrs.	Shanahan
Brake	Karn	Sieder
Brown, G. E.	King	Spitler
Butler, Mrs.	Kirk, S.	Stafseth
Conklin, Mrs.	Knirk, B.	Staiger
Cushman, Mrs.	Koeze, Mrs.	Stevens
Danhof	Kuhn	Thomson
Davis	Lawrence	Tubbs
Dehnke	Leibrand	Turner
Dell	Leppien	Tweedie
DeVries	Lundgren	Upton
Donnelly, Miss	Martin	Van Dusen
Doty, Dean	McLogan	Wanger
Doty, Donald	Millard	White
Durst	Mosier	Wood
Elliott, A. G.	Perras	Woolfenden
Farnsworth	Powell	Yeager
Faxon	Prettie	Young
Figy		

SECRETARY CHASE: On the amendment offered by Mr. Ford, the yeas are 26, the nays are 85.

VICE PRESIDENT HUTCHINSON: The amendment is not adopted.

Mr. Brown of Kalamazoo.

MR. G. E. BROWN: Mr. President, it is my intent to move the previous question on all pending amendments. It has been interpreted that way, so I would so move at this time.

VICE PRESIDENT HUTCHINSON: Mr. Brown of Kalamazoo moves the previous question upon all pending amendments. Is the demand supported? It is supported, 10 or more delegates having indicated support. The question now is: Shall the main question be put? All those in favor will say aye.

MR. HOXIE: Mr. President.

VICE PRESIDENT HUTCHINSON: For what purpose does the gentleman rise, Mr. Hoxie?

MR. HOXIE: I would like a division on the question.

MR. KING: Mr. President.

VICE PRESIDENT HUTCHINSON: For what purpose does the gentleman rise, Mr. King?

MR. KING: I make a preferential motion to limit debate to 5 minutes on all these amendments.

VICE PRESIDENT HUTCHINSON: The motion is in order. Mr. King moves to limit debate to 5 minutes on each pending amendment.

MR. KING: No, on the total.

VICE PRESIDENT HUTCHINSON: On the total?

DELEGATES: No.

MR. KING: All right; on each. (laughter)

VICE PRESIDENT HUTCHINSON: Mr. King moves that debate upon each of the pending amendments be limited to 5 minutes. All those in favor of the motion to limit debate will say aye. Those opposed will say no.

The motion to limit debate is not adopted. The question now is upon the previous question. The previous question has been supported. The question now is — and Mr. Hoxie demands a division — is the demand for a division supported? The demand is supported. The question now is: Shall the main question be put? All those in favor will vote aye. All those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the motion for the previous question, the yeas are 58, the nays are 56.

VICE PRESIDENT HUTCHINSON: The motion prevails. The previous question is ordered.

MR. HOOD: Mr. President.

VICE PRESIDENT HUTCHINSON: For what purpose does the gentleman rise?

MR. HOOD: I would like to be recorded as voting no.

VICE PRESIDENT HUTCHINSON: The Chair regrets that the gentleman was too late. The vote has already been announced.

MR. HOOD: Mr. President, I was downstairs when the bell rang, and I came upstairs with posthaste dispatch, but I couldn't make it; and if it would be in order, I would like to cast a nay vote. I think we do have a provision that requires one minute, and certainly I don't believe that one minute elapsed between the time the bell rang and the time the machine was locked.

MR. HODGES: Mr. President.

VICE PRESIDENT HUTCHINSON: For what purpose does the gentleman rise, Mr. Hodges?

MR. HODGES: Mr. President, I move to reconsider the previous motion.

VICE PRESIDENT HUTCHINSON: Mr. Hodges moves to reconsider the vote by which the previous question was ordered. All those in favor of reconsideration will say —

MR. HODGES: I demand a division.

VICE PRESIDENT HUTCHINSON: — upon which motion Mr. Hodges demands a division. Is the demand for a division supported? The demand is supported. The machine will be cleared. All those in favor of reconsidering the motion for the previous question will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and tally the vote.

Mr. Downs, for what purpose does the gentleman rise?

MR. DOWNS: When the vote is recorded, I wish to rise for a parliamentary inquiry.

VICE PRESIDENT HUTCHINSON: All right.

SECRETARY CHASE: On the motion to reconsider, the yeas are 67 and the nays are 52.

VICE PRESIDENT HUTCHINSON: The motion to reconsider prevails. The question now is upon the motion to order the previous question on all pending amendments. The question now is: Shall the main question be put? Mr. Downs.

MR. DOWNS: Mr. President, I rise for my parliamentary inquiry. Is a request for a division the same as a recorded roll call vote?

VICE PRESIDENT HUTCHINSON: No, Mr. Downs.

MR. DOWNS: Would I be in order to demand the yeas and nays and a recorded roll call vote on this?

VICE PRESIDENT HUTCHINSON: You would be.

MR. DOWNS: I so do.

VICE PRESIDENT HUTCHINSON: Mr. Downs demands the yeas and nays on ordering the previous question on all pending amendments. Is the demand supported? It is supported. All those in favor of ordering the previous question upon all pending amendments will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and record the vote.

The roll was called and the delegates voted as follows:

Yeas — 58

Allen	Everett	Powell
Andrus, Miss	Farnsworth	Prettie
Batchelor	Figy	Richards, J. B.
Beaman	Finch	Rush
Blandford	Gover	Seyferth
Bonisteel	Hanna, W. F.	Spitler
Boothby	Haskill	Stafseth
Brake	Hatch	Stamm
Brown, G. E.	Higgs	Stevens
Butler, Mrs.	Hubbs	Stopczynski
Danhof	Iverson	Thomson
Davis	Karn	Tubbs
Dehnke	Kirk, S.	Turner
Dell	Knirk, B.	Tweedie
DeVries	Koeze, Mrs.	Upton
Doty, Dean	Lundgren	Van Dusen
Doty, Donald	Martin	Wanger
Douglas	Millard	White
Elliott, A. G.	Mosier	Yeager
Erickson		

Nays — 63

Austin	Hart, Miss	Perras
Baginski	Heideman	Pugsley
Balcer	Hodges	Radka
Barthwell	Hood	Rajkovich
Bentley	Howes	Richards, L. W.
Binkowski	Hoxie	Romney
Bledsoe	Judd, Mrs.	Rood
Brown, T. S.	Kelsey	Shackleton
Buback	King	Shanahan
Conklin, Mrs.	Kuhn	Sharpe
Cushman, Mrs.	Lawrence	Sieder
Dade	Leibrand	Snyder
Donnelly, Miss	Leppien	Staiger
Downs	Lesinski	Sterrett
Durst	Liberato	Suzore
Elliott, Mrs. Daisy	Madar	Walker
Faxon	Marshall	Wilkowski
Follo	McCauley	Wood
Ford	McGowan, Miss	Woolfenden
Gadola	McLogan	Young
Greene	Murphy	Youngblood

SECRETARY CHASE: On the matter of ordering the previous question, the yeas are 58 and the nays are 63.

VICE PRESIDENT HUTCHINSON: The previous question is not ordered.

The Chair recognizes the gentleman from Wayne, Mr. Madar.

MR. MADAR: Mr. President, at this time I would like to move that we recess until 2:00 o'clock this afternoon.

VICE PRESIDENT HUTCHINSON: Mr. Madar moves that the convention stand in recess until 2:00 p.m. Pending the putting of that motion, Mr. Madar, the secretary advises that he has requests for absences from the afternoon session. May we handle those first?

MR. MADAR: Oh, that's all right. Certainly I would be glad to have that done. I'll give them a chance to go home if they want to.

SECRETARY CHASE: Mr. McAllister requests leave from the afternoon session to take care of a legal matter that has been pending since May of last year; Messrs. Radka, Dell, Habermehl and Lundgren ask to be excused from the afternoon session to fulfill an evening television engagement at Charlevoix at 7:00 p.m.; Father Dade and Mr. Suzore request to be excused from Monday's session; and Mr. Baginski requests leave from the afternoon session.

VICE PRESIDENT HUTCHINSON: Is there objection to the granting of any of these excuses? The question is upon granting the several excuses requested. Is there objection?

If not, the several requests for absence will be granted, and it is so ordered.

The gentleman from Wayne, Mr. Madar, moves that the convention stand in recess until 2:00 o'clock p.m. this afternoon. All those in favor will say aye. Those opposed will say no. The Chair is in doubt. All those in favor will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and tally the vote. The secretary will announce the vote.

SECRETARY CHASE: On the question of taking a recess, the yeas are 59, the nays are 61.

VICE PRESIDENT HUTCHINSON: The motion does not prevail.

The Chair recognizes Dr. Anspach.

MR. ANSPACH: Mr. President, I rise to a point of personal privilege for the purpose of making a comment.

VICE PRESIDENT HUTCHINSON: You may proceed, with unanimous consent.

MR. ANSPACH: This person went into a western union office and said, "I want to send a telegram."

The clerk said, "To whom?"

He said, "To myself."

"What's your name?"

"John Brown."

"Where do you live?"

"452 Green Street, Cleveland, Ohio."

"What do you want to say?"

He said, "La-la-la-la-la-la-la-la-la."

He said, "You're entitled to 10 words."

"What else do you want me to say?'

"What about another la?"

"No," he said, "I think that would be ridiculous." (laughter)

VICE PRESIDENT HUTCHINSON: The secretary will read the next amendment.

SECRETARY CHASE: Mr. McCauley, Mrs. Cushman, Messrs. Marshall and Follo offer the following amendment:

1. Amend page 1, line 6, after "Sec. a.", by striking out the balance of the committee proposal and inserting:

"The legislature shall provide by general law that the electors of any county shall have power and authority to initiate, frame, adopt, amend or repeal a county charter and therein authorize the county through its regularly constituted authority, to pass all laws and ordinances relating to its municipal concerns, and shall limit their rate of taxation notwithstanding anything to the contrary in this constitution.

A. No county charter shall be adopted, amended, repealed or revised until approved by a majority vote of county electors voting on the question.

B. The question of electing a charter commission may be placed on the ballot by a majority vote of the members elect of the board of supervisors and shall be placed thereon on receipt of a petition signed by 5 per cent of the registered voters of the county. The charter commission shall be elected by the county electors in accordance with the election laws on a partisan basis.

Sec. b. Under general law each county charter shall provide:

A. For the selection of judicial officers of the county as provided in article VII of this constitution.

B. Notwithstanding any other provision in this constitution or in law, for the designation of the officers of the county and the manner of their selection.

C. Notwithstanding any other provision in this constitution or in law, for the form of government of the charter county, including the membership of the board of supervisors and the manner of their selection which shall not be by an election at large.".

VICE PRESIDENT HUTCHINSON: The question is upon the amendment so offered. The Chair recognizes Mr. McCauley.

MR. McCAULEY: Mr. President and members of the convention, I realize we have had a long and arduous day, and I'm certainly not going to take up much of your time. However, I would like to remind you that this gets to the basic issue of what we have been talking about here for 2 days. The 2 issues before us — the real issues before us — are the selection of the county board and the selection of the officials in the county.

If you will notice, the first paragraph, and I might say the first paragraph down to section b, is almost exactly what we have termed for many weeks in local government the "3 B" proposal. There has been one change where we are adding the partisan basis for the election of the charter commission. But let me say this. As far as the first paragraph is concerned, this is just about the same as what city home rule has, but you will notice that we have added — and this has been adopted by the convention — a provision to take care of any financial problems that a home rule county might get into.

If the 15 mills stays out, this language at the end possibly wouldn't be necessary. However, if it pops back in, we are going to have to divide certain moneys for home rule counties to operate on over and above the 15 mills. However, Mr. Austin's amendment did take care of that, and it is not too relevant at this time.

You will note that the second paragraph contains the language as to how the charter will be adopted, who will vote on it — and that's the majority of the county electors voting on the question. The next paragraph has to do with the election of the charter commission itself; how it might be initiated by the supervisors, and then a percentage of the electors in the county.

The very next section has to do with the amendments — the amendments that we feel are so necessary for true county home rule. They must be read under the language as stated there, "Under general law each county charter shall provide." Now, this is the important language. It shall provide "For the selection of the judicial officers, as provided in article VII of this constitution." The charter shall also provide, "Notwithstanding any other provision in this constitution or in law, for the designation of the officers of the county and the manner of their selection." The last paragraph, under general law each county charter shall provide:

> Notwithstanding any other provision in this constitution or in law, for the form of government of the charter county, including the membership of the board of supervisors and the manner of their selection which shall not be by an election at large.

The reason for the last 3 words is that a lot of smaller communities are concerned that the larger ones might attempt to gobble them up. This is providing for a districting, so that the smaller individual communities would have some protection along those lines.

It is the feeling of myself and the proponents of this amendment that this solves all of the problems. We are taking care of the elected officials by leaving it up to the county to decide what they want, and also the type of government and the selection of the board of supervisors.

I urge the adoption of the amendment.

VICE PRESIDENT HUTCHINSON: Mr. Elliott.

MR. A. G. ELLIOTT: Mr. President, I have the greatest admiration for Mr. McCauley and a great fondness, and I am sorry that I have to speak in opposition to his amendment. But I do, and I urge that you do not adopt it.

I would like to yield the floor to Mr. Follo.

VICE PRESIDENT HUTCHINSON: Mr. Follo.

MR. FOLLO: Much was said here this morning about a unit rule. And yet everything that happened yesterday seemed to point to the fact that there was an understanding in the Republican party. Here is your chance to show us that there is no unit rule, there is no understanding. This is true home rule. This is why we are putting it up here. I hope that a few of you, at least, will vote for it.

MR. A. G. ELLIOTT: Mr. President.

VICE PRESIDENT HUTCHINSON: Mr. Elliott, for what purpose does the gentleman rise?

MR. A. G. ELLIOTT: I had the floor. I yielded to Mr. Follo.

VICE PRESIDENT HUTCHINSON: I understood you yielded the floor.

MR. A. G. ELLIOTT: No, just to Mr. Follo.

VICE PRESIDENT HUTCHINSON: All right. The Chair will so recognize you then.

MR. A. G. ELLIOTT: Ladies and gentlemen, I would like to urge that this is not necessarily any truer home rule than what you now have adopted to this point. It's just a procedure that follows, and I would urge that this amendment be defeated, and move the previous question.

VICE PRESIDENT HUTCHINSON: Mr. Elliott moves the previous question.

MR. MARSHALL: Mr. President.

VICE PRESIDENT HUTCHINSON: Is the previous question supported?

MR. MARSHALL: Mr. President, I was waiting.

VICE PRESIDENT HUTCHINSON: The demand is supported. The question now is: Shall the main question be put?

For what purpose does the gentleman rise, Mr. Marshall?

MR. MARSHALL: I was waiting to be recognized, and Delegate Elliott knew that, and is attempting to apply the gag rule to me. As one of the supporters of the amendment, I wanted to make a brief statement on it. But I guess I'm out of order, since he has moved the previous question.

VICE PRESIDENT HUTCHINSON: The demand for the previous question has been supported.

For what purpose does the gentleman rise, Mr. Kuhn?

MR. KUHN: A preferential motion.

VICE PRESIDENT HUTCHINSON: What is your motion?

MR. KUHN: To limit debate to 10 minutes on this amendment.

VICE PRESIDENT HUTCHINSON: Mr. Kuhn moves to limit debate to 10 minutes upon this amendment. All those in favor of limiting debate will say aye. Those opposed will say no.

The motion does not prevail. The question now is: shall the main question be put? All those in favor of the previous question will say aye. Those opposed will say no. The Chair is in doubt. All those in favor will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the question of ordering the previous question, the yeas are 67, the nays are 51.

VICE PRESIDENT HUTCHINSON: The previous question is ordered. The question is now upon the amendment, which the secretary will now read.

SECRETARY CHASE: Mr. McCauley, Mrs. Cushman, Messrs. Marshall and Follo have offered the following substitute for the committee proposal:

[The amendment was again read by the secretary. For text, see above, page 1127.]

VICE PRESIDENT HUTCHINSON: For what purpose does the gentleman rise, Mr. Binkowski?

MR. BINKOWSKI: Mr. President, if a record roll call vote has not been so requested, I request it.

VICE PRESIDENT HUTCHINSON: Mr. Binkowski demands the yeas and nays upon the amendment. Is the demand supported? The demand is supported, and it is so ordered.

Mr. Leibrand.

MR. LEIBRAND: May I, under rule 67, I believe, abstain from voting? I do not understand what I'm voting on. That is the reason given under the rule.

VICE PRESIDENT HUTCHINSON: The question is upon the amendment offered and just read by the secretary. All those in favor will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and record the vote.

For what purpose does the gentleman rise, Mr. Marshall?

MR. MARSHALL: I rise to a point of personal privilege, to make a statement, Mr. President.

VICE PRESIDENT HUTCHINSON: As soon as the vote is announced.

The roll was called and the delegates voted as follows:

Yeas — 40

Allen	Faxon	Marshall
Austin	Follo	McCauley
Baginski	Ford	McGowan, Miss
Balcer	Greene	Murphy
Binkowski	Hart, Miss	Snyder
Bledsoe	Hatcher, Mrs.	Staiger
Brown, T. S.	Hodges	Stamm
Buback	Hood	Stopczynski
Cushman, Mrs.	Kelsey	Suzore
Dade	Krolikowski	Walker
Donnelly, Miss	Kuhn	Wilkowski
Downs	Liberato	Young
Durst	Madar	Youngblood
Elliott, Mrs. Daisy		

Nays — 74

Barthwell	Haskill	Richards, L. W.
Batchelor	Hatch	Romney
Beaman	Heideman	Rood
Bentley	Higgs	Rush
Blandford	Howes	Seyferth
Boothby	Hoxie	Shackleton
Brake	Hubbs	Shanahan
Brown, G. E.	Iverson	Sharpe
Conklin, Mrs.	Judd, Mrs.	Sleder
Cudlip	Karn	Spitler
Danhof	King	Stafseth
Davis	Kirk, S.	Sterrett
Dehnke	Knirk, B.	Stevens
Dell	Koeze, Mrs.	Thomson
DeVries	Leppien	Tubbs
Doty, Dean	Lundgren	Turner
Doty, Donald	Martin	Tweedie
Elliott, A. G.	Millard	Upton
Erickson	Mosier	Van Dusen
Everett	Perras	Wanger
Farnsworth	Powell	White
Figy	Prettie	Wood
Finch	Pugsley	Woolfenden
Gover	Radka	Yeager
Hanna, W. F.	Richards, J. B.	

SECRETARY CHASE: On the adoption of the amendment offered by Mr. McCauley and others, the yeas are 40 and the nays are 74.

VICE PRESIDENT HUTCHINSON: The amendment is not adopted.

The Chair recognizes the gentleman from the twenty-first district, Mr. Marshall.

MR. MARSHALL: Mr. President, I just want to go on record here and make a few remarks concerning the action just taken. I worked with Delegate McCauley on this last night and this morning. As I have said previously, I believe in home rule. I believe in the people having the right to determine. I was laboring on this under some extreme pressure from certain sources that I don't care to divulge. I resent the fact that the gag rule was applied. The delegate from Bay City announced that he did not want to vote because he did not clearly understand the amendment.

I do not believe that we are acting in a very intelligent way when here is a substitute proposal which in my considered and humble opinion offers to the people the right to determine for themselves. I don't believe a better or more encompassing home rule provision could have been written.

Then, I find myself unable, standing on the floor when Delegate Elliott moved the previous question, to have an opportunity to explain the amendment. I'm not going to bore you with explaining it now, because the decision was made.

I only want to remark in closing that the proposal that was adopted by the committee is not in any sense of the word a home rule provision. It is merely a provision designed and planned to pass the buck to the legislature, and to mislead the people into thinking that they had a home rule provision.

I would hope that we will not again get into a provision on something as important and as serious as this of applying a gag rule to the delegates, particularly when some delegates

are laboring under a terrific burden to start with, where in my case I felt that I should have had the opportunity to explain my reasons — all of them — for supporting this amendment, paragraph by paragraph.

I'm not concerned too much about the pressure and what the people think who are giving me the devil about supporting this thing, but I do resent, and I do not think it is in the best interests of the people of this state on something this serious, to have the chairman of the local government committee get up and apply the gag rule and cut off debate, and vote on an amendment without having the right to explain it.

VICE PRESIDENT HUTCHINSON: For what purpose does the gentleman rise, Mr. Faxon?

MR. FAXON: A point of personal privilege, Mr. President.

VICE PRESIDENT HUTCHINSON: The Chair recognizes you for that purpose.

MR. FAXON: Thank you. I have kept silent for the last few days, but I think this has been a very unfortunate day here, and I think it is the very low point of the convention, when we are going ahead and treating amendments, no matter what our dispositions toward these amendments are, in the summary fashion which we have just seen.

We have people who have worked for many months and who have worked hard on these things, and I sat in on the local government committee, and I'm aware of the time and effort that they've spent on it. We have been proposing these amendments on the floor, and then I've watched to see that there's no opportunity for the delegates to discuss these things. We never did discuss this business of county home rule on the floor.

We have spent hours discussing other proposals of a much less important nature than this — not just hours, I think days — and we came to county home rule yesterday, and I had read the reports in the journals, and this is what I was going on. It came to county home rule yesterday, and it was late in the afternoon, and all of a sudden there was no discussion.

We were coming up with no county home rule, or we were coming up with putting it in the hands of the legislature, and there was no discussion of this thing. There was no discussion of what Mr. McCauley had just put in. And I think it is most unfortunate for Mr. McCauley or for any person who has pending amendments to come now and to have people say: "We have already decided ahead of time. We are not even going to consider these amendments. We don't want to hear the discussion on them. Just read it and vote and get through with it."

This is a deliberative body. I'm just shocked to think that people who are elected as delegates to a convention, who come here to deliberate on questions, are willing to handle things in such summary fashion as to completely dismiss the will of any group of members or delegates who wish to propose something.

We have 5 more pending amendments, and I think that pushing it this way, with no time for a break — we didn't have a break at 10:30; it's over 3 hours of straight meeting — and 1, 2, 3, let's get it over with. This is not doing a service to the people of the state. It is not doing a service to yourself to sit here now and just want to get it over with because you don't want to hear any more about it.

I would like, therefore, to move at this time, considering the fact that it is over 3 hours and the people haven't eaten lunch that are being asked to handle this, to recess until 2:00 o'clock.

VICE PRESIDENT HUTCHINSON: Mr. Faxon moves that the convention stand in recess until 2:00 o'clock p.m.

MR. MADAR: Mr. President, a preferential motion.

VICE PRESIDENT HUTCHINSON: State the motion.

MR. MADAR: I believe it's a preferential motion. I want to move that we adjourn until Monday afternoon at 4:00 p.m.

VICE PRESIDENT HUTCHINSON: Yes, the motion to adjourn is in order. All those in favor of adjourning will say aye. Those opposed will say no.

The motion does not prevail.

MR. MADAR: Division, Mr. President.

VICE PRESIDENT HUTCHINSON: Is the demand for a division supported? There is a sufficient number up. All those in favor of the motion to adjourn will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the motion to adjourn, the yeas are 32, the nays are 84.

VICE PRESIDENT HUTCHINSON: The motion does not prevail. The question is upon the motion of Mr. Faxon that the convention stand in recess until 2:00 o'clock p.m. All those in favor will say aye. Those opposed will say no. The Chair is in doubt. All those in favor will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the motion to recess until 2:00 o'clock, the yeas are 61, the nays are 58.

VICE PRESIDENT HUTCHINSON: The motion prevails, and the convention stands in recess until 2:00 o'clock p.m.

[Whereupon, at 12:45 o'clock p.m., the convention recessed; and, at 2:00 o'clock p.m., reconvened.]

The convention will be in order.

SECRETARY CHASE: Mr. President, a quorum of the convention is present.

VICE PRESIDENT HUTCHINSON: The convention is still considering the report of the committee of the whole. We are considering amendments to Committee Proposal 89.

SECRETARY CHASE: Mr. Hodges offers the following amendment:

1. Amend the first paragraph after "by general law,", by inserting "provided such law is uniform for all counties,"; so that the first sentence of section a will read:

> Any county may frame, adopt, amend or repeal a county charter in a manner and with powers and limitations to be provided by general law, provided such law is uniform for all counties, which law may permit the organization of county government in forms different from the form set forth in this constitution.

VICE PRESIDENT HUTCHINSON: On the amendment, the Chair recognizes the gentleman from Wayne, Mr. Hodges.

MR. HODGES: Mr. President, I trust that after the break, probably with a little bit of food all of us are in a little better humor than we might have been a while ago, including myself.

I offer this amendment in all seriousness. It was offered on the floor last night, and was voted down. However, afterwards, after a discussion with some delegates who had voted against it, the considerations seemed to be that there was not too much opposition to it. I think all I might want to do now is explain the purpose and intent of it. I am truly hopeful that this would help remedy some of the fears that persons such as myself might have over what is going to be the provision in the new constitution. My purpose is not to say that every county must have the same type of government; merely that the enabling legislation for that shall be uniform, so that the legislature cannot pick and choose in terms of counties as to what types of enabling legislation it is going to allow.

Quite frankly, we have talked — and I don't want to engender this into a partisan aspect again — of the problem of the legislature. Many of us from Wayne county are fearful — at least some of us are — that the forces for total home rule, in their zeal for it, along with nonpartisanship, may clash in the legislature with the forces of the status quo, and that the compromise that would be effected would be one which would except a county such as Wayne from the provisions of counties other than the large metropolitan ones.

I offer this in the hope — I think it is a fair play type of thing — that if we are going to turn it over to the legislature, at least we will not let the legislature pick and choose as to what they are or are not going to allow as between counties. This is not to say in any way that the counties couldn't have different home rule if the legislature saw fit to

entitle counties to have total home rule; then it would be so for all counties. If they were to say there should be certain restrictions, such as election of certain officials, or any other restrictions, those restrictions would apply uniformly.

I ask for the support of the convention for this amendment.

VICE PRESIDENT HUTCHINSON: On the amendment, the Chair recognizes the gentleman from Oakland, Mr. Elliott.

MR. A. G. ELLIOTT: Mr. President, Mr. Hodges, I am sure that what Mr. Hodges says, he says with the greatest of sincerity. And it is with some reluctance, because I recognize this sincerity, that I rise in opposition to this amendment. I feel that this is something that may in the future be wise for us not to have in the constitution. We are trying to give the legislature here the flexibility of action to meet the demands of not just 1962, 1963, as we see it, but for at least the next several decades. As Mr. Hodges well knows, with the changing pattern of our state as we now find it, there can easily be reasons in the future where it might be wise for the legislature to make in their laws certain deviations from a standard in order to accommodate the needs of various sections of our state.

For that reason, and because I feel that we by no means defeat uniformity by the defeat of this amendment, I urge that it be rejected.

VICE PRESIDENT HUTCHINSON: The Chair recognizes the lady from Kent, Mrs. Judd.

MRS. JUDD: Mr. Elliott has already expressed most of what I intended to say. But I might remind the convention that there is a provision in the constitution, and probably will be again, against special acts. This makes it almost necessary for everything the legislature does to apply uniformly to every county, unless they classify counties by population, as they have done in the past, and in many ways this is desirable.

I recognize Wayne county's fear of being singled out as different, and I sympathize with it. I might suggest that the New York constitution, in their provision against special acts, says that in classifying cities or counties there shall be at least 3 units in each classification. If we had something like this it might give Wayne county a little company.

VICE PRESIDENT HUTCHINSON: Mr. Hodges.

MR. HODGES: On the amendment again, Mr. President, from Mr. Elliott's remarks I think there is some confusion as to what I really intend. It is not that Wayne county should not perhaps have a structure totally different from any other county in this state. It's merely to the degree that you are going to allow the people self determination. What I'm getting at is the self determination should be the same for the people of Wayne county as it should be for the people of Berrien county or any other county. Not that their government should be the same. But if the legislature is to put certain restrictions on them, that those restrictions be uniform; or free it up to allow the people to decide. It's only a question of uniformity of degree, not of the type of government.

I think that this would solve at least in my mind, and I think maybe other delegates' minds, the fear — and it's genuine — that we have for this provision that is going to be enacted.

VICE PRESIDENT HUTCHINSON: The question is upon the amendment offered by Mr. Hodges, which the secretary will again read.

SECRETARY CHASE: Mr. Hodges' amendment:

[The amendment was again read by the secretary. For text, see above, page 1129.]

VICE PRESIDENT HUTCHINSON: Those in favor of the amendment will say aye. Those opposed will say no.

MR. HODGES: Division.

VICE PRESIDENT HUTCHINSON: A division has been called for. Is the demand for a division supported? The demand is supported. Those in favor of Mr. Hodges' amendment will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the adoption of Mr. Hodges' amendment, the yeas are 42, the nays are 75.

VICE PRESIDENT HUTCHINSON: The amendment is not adopted.

The Chair recognizes the gentleman from the twenty-first district, Mr. Marshall.

MR. MARSHALL: Mr. President, I rise to a point of parliamentary inquiry.

VICE PRESIDENT HUTCHINSON: The gentleman will state it.

MR. MARSHALL: I noticed this morning and for several days now — and I think with an assist from Delegate Bentley — that we've gotten off into the congressional procedure of one speaker yielding the floor to another. I have been unable to find anything in the rules — in our own rules — on this, nor have I been able to find anything in Mason's Manual. Now, what this does — I can see yielding for the purpose of a delegate asking a question. We started out in our procedure with the presiding officer recognizing the people as they rose and asked for recognition. Then he would list the names, and would call on them in order. Now, we've gotten off into a practice — and I think with an assist from Mr. Bentley, from his having served in congress so long — and in my opinion I do not believe this is covered in our rules or in the manual.

What this does, so it will be clear for the record, is allow a committee chairman to have a great deal of control over the debate on the floor, and the trend that it will take, by yielding from time to time to various speakers that may rise, permitting certain speakers to speak, even though there are others who have asked to be heard. I merely ask the question now, to get to the point of parliamentary inquiry: is this permissible under the rules of the convention?

VICE PRESIDENT HUTCHINSON: In answer, the Chair will advise the delegate that according to Mason, and the Chair reads from section 95 of Mason's Manual, "A member having the floor in debate may, without objection, yield it for questions and explanations connected with the subject before the house." Now, that means that if there is objection to this process of yielding, it will be out of order.

MR. MARSHALL: Thank you, Mr. President.

SECRETARY CHASE: Mr. T. S. Brown offers the following amendment:

1. Amend the first paragraph, after the first "county charter" by striking out "in a manner and with powers and limitations to be provided by general law, which law may" and inserting "to"; and after "constitution.", by striking out the words "Subject to law,"; so the language will then read:

> Any county may frame, adopt, amend or repeal a county charter to permit the organization of county government in forms different from the form set forth in this constitution. A county charter may authorize the county through its regularly constituted authority to pass all laws and ordinances relating to its municipal concerns.

VICE PRESIDENT HUTCHINSON: On the amendment, the Chair recognizes the gentleman from Wayne, Mr. T. S. Brown.

MR. T. S. BROWN: Mr. President and fellow delegates, we have been through this particular proposition yesterday afternoon. I'm sure you are all aware of the extent of my remarks at that time. This is another version of pure county home rule, except that it is couched in the terminology of the compromise agreement that you apparently agreed to in advance. It simply deletes mention of provisions or limitations that the legislature may place upon a county desirous of home rule.

VICE PRESIDENT HUTCHINSON: The question is upon the amendment offered by Mr. Brown.

MISS DONNELLY: Will you read it again?

VICE PRESIDENT HUTCHINSON: All right. The secretary will read it again.

SECRETARY CHASE: Mr. Brown's amendment is:

[The amendment was again read by the secretary. For text, see above.]

VICE PRESIDENT HUTCHINSON: The question is upon the amendment so read. Those in favor will say aye. Those opposed will say no.

The amendment is not adopted.

MR. T. S. BROWN: Mr. President.

VICE PRESIDENT HUTCHINSON: Are you demanding a division?

MR. T. S. BROWN: May we have a recorded roll call vote, Mr. President?

VICE PRESIDENT HUTCHINSON: Mr. Brown demands a recorded roll call vote. Is the demand for a recorded roll call vote supported?

SECRETARY CHASE: There is a sufficient number up.

VICE PRESIDENT HUTCHINSON: The demand is supported. Those in favor of Mr. Brown's amendment will vote aye. Those opposed will vote no.

For what purpose does the gentleman from Ingham rise, Mr. Wanger?

MR. WANGER: An inquiry as to whether or not we can have a roll call vote after we have already taken the vote.

I would think a division might be in order, but I ask whether or not, after the vote has already been taken on a matter and when a roll call could have been required prior thereto, but was not, if afterwards we can go back and have a roll call.

VICE PRESIDENT HUTCHINSON: The demand is in order, Mr. Wanger. Have you all voted? If so, the secretary will lock the machine and record the vote.

The roll was called and the delegates voted as follows:

Yeas—28

Austin	Ford	McCauley
Barthwell	Garvin	Norris
Binkowski	Hart, Miss	Snyder
Bledsoe	Hodges	Staiger
Brown, T. S.	Kelsey	Suzore
Dade	Krolikowski	Walker
Douglas	Liberato	Wilkowski
Downs	Madar	Young
Elliott, Mrs. Daisy	Marshall	Youngblood
Follo		

Nays—90

Allen	Finch	Pollock
Andrus, Miss	Gadola	Powell
Anspach	Gover	Prettie
Balcer	Gust	Pugsley
Batchelor	Hanna, W. F.	Rajkovich
Beaman	Hannah, J. A.	Richards, J. B.
Bentley	Haskill	Richards, L. W.
Blandford	Hatch	Romney
Bonisteel	Heideman	Rood
Boothby	Higgs	Rush
Brake	Howes	Shackleton
Buback	Hoxie	Shaffer
Butler, Mrs.	Hubbs	Shanahan
Conklin, Mrs.	Iverson	Sharpe
Cudlip	Judd, Mrs.	Sleder
Cushman, Mrs.	Karn	Spitler
Danhof	King	Stafseth
Davis	Kirk, S.	Stamm
Dehnke	Knirk, B.	Sterrett
Dell	Kuhn	Stevens
DeVries	Lawrence	Tubbs
Donnelly, Miss	Leibrand	Turner
Doty, Dean	Leppien	Tweedie
Doty, Donald	Lundgren	Upton
Elliott, A. G.	Martin	Van Dusen
Erickson	McLogan	Wanger
Everett	Millard	White
Farnsworth	Mosier	Wood
Faxon	Perras	Woolfenden
Figy	Plank	Yeager

SECRETARY CHASE: On the amendment offered by Mr. Brown, the yeas are 28, the nays are 90.

VICE PRESIDENT HUTCHINSON: The amendment is not adopted. Mr. Allen.

MR. ALLEN: I rise to speak as a matter of personal privilege. In connection with the vote just taken, lest it be thought of as a vote against real home rule, I would like to comment that in an effort to accomplish this, the wording which Mr. Brown had, removed the legislature not only on the form part, or the structure, but completely removed it on the powers. So that had it passed, we would have had county home rule with powers of their own choosing, and not subject to any legislative restraint. Even municipal home rule doesn't do this. Even municipal home rule is subject to law.

VICE PRESIDENT HUTCHINSON: For what purpose does the gentleman rise, Mr. Brown?

MR. T. S. BROWN: Point of personal privilege, Mr. President. We covered that point, I believe, yesterday afternoon, Mr. Allen, in which I indicated that I felt that no county, just by its own volition, can pass any kind of a charter which is in derogation of the general state law anyhow. We are all subject to state law at all times.

VICE PRESIDENT HUTCHINSON: The Chair would like to state that in the opinion of the Chair a great deal of freedom is being taken with this phrase "personal privilege." The Chair will say that with only a few exceptions the remarks heard today under points of personal privilege have not been proper points at all. The Chair, however, will not raise the point of order, because unless somebody else objects, the Chair is willing to go along. But simply because all of these remarks will be printed in the verbatim journal, they will not be printed in the daily journal.

The secretary will read the next amendment.

SECRETARY CHASE: Mr. T. S. Brown offers the following amendment—

MR. YEAGER: Mr. President.

VICE PRESIDENT HUTCHINSON: Mr. Yeager.

MR. YEAGER: May I interrupt for just a moment? Would the Chair be kind enough to give us a good definition of what personal privilege is?

VICE PRESIDENT HUTCHINSON: I think that perhaps the secretary can do that very ably.

SECRETARY CHASE: "Questions of privilege" is found in Mason's Manual, sections 220 to 222. Section 220 deals with, What is a question of privilege

1. Questions which relate to the body or to its members in such a manner as to effect proper functioning of the body are questions of privilege. It is necessary that these questions be under the immediate control of the body. They relate to the rights and privileges of the body or to any of its members in their official capacity or to the comfort and convenience of the body or its members in the performance of their official duties. . . .

3. Questions of privilege are of 2 types: they may relate to the privilege of the entire body, which are known as questions of "privilege of the house," and questions of privilege which relate to a member, which are known as questions of "personal privilege". . . .

Then:

Section 222. Questions of personal privilege

1. Questions affecting the rights, reputation and conduct of members of the body in their representative capacity are questions of personal privilege.

2. Questions of privilege of a member must relate to a person as a member of the body or relate to charges against his character which would, if true, incapacitate him for membership, and he is not entitled to the floor on a question of personal privilege unless the subject which he proposes to present relates to him in his representative capacity. . . .

VICE PRESIDENT HUTCHINSON: It is the opinion of the Chair that a true personal privilege matter is a situation in which a member has been personally attacked, either on the floor or off of it, in his representative capacity.

MR. HODGES: Point of information, Mr. President.

VICE PRESIDENT HUTCHINSON: Mr. Hodges.

MR. HODGES: I just wanted some clarification on the remark you made about what goes in the journal and what does not. The other day there were some remarks made and they were included in the journal. I know in the one case they were requested to be included in the journal, but I don't

think they were in other cases. I wonder what the determination is as to which remarks will be and which remarks won't be.

VICE PRESIDENT HUTCHINSON: The Chair announced that in the opinion of the Chair these matters, since they would be printed in the verbatim journal, would not be printed in the daily journal. If the body desires to direct otherwise, a motion would be in order to so direct.

MR. HODGES: I don't want to belabor the point, Mr. President. My only point is that this is somewhat different than the action taken the other day, and I just thought that in terms of uniformity we should have a uniform action.

VICE PRESIDENT HUTCHINSON: Well, Mr. Hodges, the Chair will announce that I recall that I made such a statement the other day, which is admittedly a legislative practice, where we do not have a verbatim journal.

The secretary reminded me a few minutes ago that since we did have a verbatim journal, we could be saving some of the taxpayers' money if we didn't print these again in the daily journal. And, if that is agreeable with the body, we will follow the latter suggestion henceforth.

MR. L. W. RICHARDS: Mr. President, I would like to have a point of information, also, please.

VICE PRESIDENT HUTCHINSON: Mr. Richards, of Marquette.

MR. L. W. RICHARDS: I was wondering: we made a decision the other day. I realize how important it is for us to continue on with this discussion on local government, but the fact is that we went on record that at 2:00 o'clock Friday afternoon we would discuss this post budget. Is that discontinued now?

Maybe a change of diet would do us all some good. I don't know. I would like to get a ruling on that, please.

VICE PRESIDENT HUTCHINSON: The ruling is, Mr. Richards, that the matter was postponed to the 2:00 o'clock session, according to the records, and not to a particular time certain. The matter would be next in order after the present matter is disposed of. The Chair will recognize Dr. DeVries, if you desire to speak —

MR. L. W. RICHARDS: I would go along then with the diet we have.

VICE PRESIDENT HUTCHINSON: All right.

SECRETARY CHASE: Mr. T. S. Brown offers the following amendment:

1. Amend page 1, last paragraph, after "electors" by inserting "by partisan ballot"; so that the last sentence in section a will read, "The charter commission shall be elected by the county electors by partisan ballot in accordance with the election laws."

VICE PRESIDENT HUTCHINSON: On the amendment, the Chair recognizes the delegate from Wayne, Mr. T. S. Brown.

MR. T. S. BROWN: Mr. President and fellow delegates, again, as yesterday, I am concerned here with the apparent trend of events which would allow the legislature to set up different standards for home rule in different counties, and which would otherwise not necessarily limit the legislature to doing anything they wanted to in regard to the particular counties that wanted home rule. Now, since I know Wayne county better than the other counties in the state, I do fear that this possibly will happen. If the legislature is considering a county home rule conversion, they will most likely look to certain powers in Wayne county when they establish their law. Now, I am not at all certain — and this is true for both parties — that the people who will be attempting to influence the legislature in a particular home rule act for Wayne county will necessarily represent the best interests of all of the people in Wayne county. The legislature, as Bill Ford said yesterday, will eventually be plagued by the "in" group — whatever the "in" group has to represent — and the machine aspects of bossism, in Wayne county, as in every other county.

I suggest that the ultimate way to safeguard this is to provide the people on a partisan and on an ideological basis an opportunity to veto the whole process if anything should go wrong. Now, every county in the state of Michigan now elects its officials on a partisan basis, and I think ultimately that the vote of the people in any individual county ought to be a partisan vote, as reflected on the members of the charter commission.

And with this, I think, despite all that might possibly happen, if it happens, and if our fears are well grounded and various things do happen, the people in the individual counties would ultimately be able to say we are electing a charter commission based on party ideology, and we are therefore ready to accept the consequences.

VICE PRESIDENT HUTCHINSON: The question is upon the amendment offered by Mr. Brown of Wayne. All those in favor will say aye. Those opposed will say no. Mr. Brown, of Wayne.

MR. T. S. BROWN: I'm sorry, Mr. President. I request a recorded roll call vote, please.

VICE PRESIDENT HUTCHINSON: Mr. Brown of Wayne demands the yeas and nays upon his amendment. Is the demand supported?

SECRETARY CHASE: There's a sufficient number.

VICE PRESIDENT HUTCHINSON: The demand is supported. Judge Leibrand.

MR. LEIBRAND: Will the secretary read the amendment once more, please?

VICE PRESIDENT HUTCHINSON: The secretary will read again.

SECRETARY CHASE: Mr. Brown's amendment is:

[The amendment was again read by the secretary. For text, see above.]

VICE PRESIDENT HUTCHINSON: The question is upon the amendment. All those in favor will vote aye. Those opposed will vote no. Have you all voted?

MR. MADAR: Point of information, Mr. President. I do want to ask for the vote of those who have not been excused for this afternoon's session, and I just want to know what procedure I've got to go through to get this. It is my contention that if anybody wants to go away in the afternoon session, they should get permission.

VICE PRESIDENT HUTCHINSON: The rule of the convention upon this matter, Mr. Madar, is quite interesting. (laughter) It does not apparently permit anybody to demand anybody's vote. On the other hand, it carries the admonition and the requirement that: "No delegate shall be entitled to abstain from voting in any roll call unless he shall have stated his intention to abstain before the voting starts." But it doesn't say that anybody can demand his vote.

MR. MADAR: Okay.

VICE PRESIDENT HUTCHINSON: Have you all voted? If so, the secretary will lock the machine and record the vote.

The roll was called and the delegates voted as follows:

Yeas—41

Austin	Garvin	McCauley
Balcer	Greene	McGowan, Miss
Barthwell	Hanna, W. F.	Murphy
Binkowski	Hart, Miss	Norris
Bledsoe	Hatcher, Mrs.	Perras
Brown, T. S.	Hood	Shanahan
Buback	Hoxie	Sharpe
Butler, Mrs.	Kelsey	Snyder
Dade	Lawrence	Suzore
Douglas	Leibrand	Walker
Downs	Leppien	Wilkowski
Elliott, Mrs. Daisy	Liberato	Young
Erickson	Madar	Youngblood
Ford	Marshall	

Nays—80

Allen	Gover	Rajkovich
Andrus, Miss	Gust	Richards, J. B.
Batchelor	Hannah, J. A.	Richards, L. W.
Beaman	Haskill	Romney
Bentley	Hatch	Rood

Blandford	Heideman	Rush
Bonisteel	Higgs	Seyferth
Boothby	Howes	Shackleton
Brake	Hubbs	Shaffer
Brown, G. E.	Iverson	Sleder
Conklin, Mrs.	Judd, Mrs.	Spitler
Cushman, Mrs.	Karn	Stafseth
Danhof	King	Staiger
Dehnke	Kirk, S.	Stamm
DeVries	Knirk, B.	Sterrett
Donnelly, Miss	Koeze, Mrs.	Stevens
Doty, Dean	Krolikowski	Tubbs
Doty, Donald	Kuhn	Turner
Durst	Martin	Tweedie
Elliott, A. G.	McLogan	Upton
Everett	Millard	Van Dusen
Farnsworth	Mosier	Wanger
Faxon	Plank	White
Figy	Pollock	Wood
Finch	Powell	Woolfenden
Follo	Prettie	Yeager
Gadola	Pugsley	

SECRETARY CHASE: On the amendment offered by Mr. Brown, the yeas are 41, the nays are 80.

VICE PRESIDENT HUTCHINSON: The amendment is not adopted.

SECRETARY CHASE: Mr. Binkowski, on behalf of Mr. Pellow, offers the following amendment:

1. Amend page 1, after the last line, by inserting a new paragraph to read as follows:

"Each county charter shall provide for the election of a county clerk, a county register of deeds, a county treasurer, a sheriff, and a prosecuting attorney, in accordance with the provisions of this constitution.".

VICE PRESIDENT HUTCHINSON: On the amendment, the Chair recognizes the gentleman from Wayne, Mr. Binkowski.

MR. BINKOWSKI: Mr. President, ladies and gentlemen of the convention, earlier this morning I thought that our distinguished delegate from the upper peninsula should have the opportunity of having his day in court. However, considering the mood of the convention at this particular time, it seems that perhaps we should move on. As someone has already commented, we are probably in the process of writing a stop watch constitution, so I think that "banzai" will have to give way to "la-la-la," and I hereby withdraw the amendment.

VICE PRESIDENT HUTCHINSON: Mr. Binkowski withdraws the amendment.

SECRETARY CHASE: There are no other amendments on the desk, Mr. President.

VICE PRESIDENT HUTCHINSON: **Committee proposal 89,** as amended, is referred to the committee on style and drafting.

Following is Committee Proposal 89 as amended and referred to the committee on style and drafting:

The committee recommends that the following be included in the constitution:

Sec. a. Any county may frame, adopt, amend, or repeal a county charter in a manner and with powers and limitations to be provided by general law, which law may permit the organization of county government in forms different from the form set forth in this constitution. Subject to law, a county charter may authorize the county through its regularly constituted authority to pass all laws and ordinances relating to its municipal concerns.

No county charter shall be adopted, amended, repealed or revised until approved by a majority vote of county electors voting on the question.

The question of electing a charter commission may be placed on the ballot by a majority vote of the total membership of the board of supervisors and shall be placed thereon on receipt of a petition signed by 5 per cent of the registered voters of the county. The charter commission shall be elected by the county electors in accordance with the election laws.

The legislature shall by general law, for counties adopting home rule, limit the rate of general property taxation for municipal purposes, and restrict their powers of borrowing money and contracting debts. Each such county is hereby granted power to levy other taxes for public purposes subject to limitations and prohibitions set forth in this constitution or law.

SECRETARY CHASE: That completes the report of the committee of the whole, Mr. President.

VICE PRESIDENT HUTCHINSON: The gentleman from Oakland, Mr. Elliott.

MR. A. G. ELLIOTT: Mr. President, I request of the convention unanimous consent to make a brief statement.

VICE PRESIDENT HUTCHINSON: Is there objection? The Chair hears none, and you may proceed.

MR. A. G. ELLIOTT: Thank you very much.

MR. MADAR: I'm objecting.

MR. A. G. ELLIOTT: Mr. President and ladies and gentlemen of the convention, 31 delegate hours ago—

MR. MADAR: I objected.

VICE PRESIDENT HUTCHINSON: Objection is heard.

MR. WANGER: May we ask what the statement concerns, Mr. President?

MR. A. G. ELLIOTT: Yes. I intended to give a few kudos where they belong within my committee, including Mr. Madar. (laughter). I would like the privilege of doing this. I feel that it's in order, and I would like for Mr. Madar to withdraw his objection.

MR. MADAR: Point of personal privilege, Mr. President. I don't need any kudos for having done anything here. The people are paying me for doing my job here.

VICE PRESIDENT HUTCHINSON: Does the gentleman object, Mr. Madar?

MR. MADAR: I will let him speak, even though he wouldn't let the rest of us speak on other matters.

VICE PRESIDENT HUTCHINSON: Mr. Madar withdraws his objection.

MR. MADAR: I want that in the record, Mr. President.

VICE PRESIDENT HUTCHINSON: Oh, it will be there. (laughter).

MR. MADAR: I mean my comment, Mr. President, that I will let him speak, even though we couldn't speak on matters of importance.

VICE PRESIDENT HUTCHINSON: The house will be in order, please. The delegate from Oakland, Mr. Elliott, is recognized by unanimous consent.

MR. A. G. ELLIOTT: Mr. President, ladies and gentlemen of the convention, I hope we haven't taken any of the edge off the remarks which I now intend to make. Thirty-one delegate hours ago we began the discussion of local government. Since that time we have been primarily involved in discussion while in the committee of the whole, which has allowed for free and full discussion and debate on every issue of local government.

We have now, at least, completed one of the steps along the way to introducing into the constitution of 1962 the language which will be entitled "Local Government."

As chairman of this committee, I would like to again, for the record, thank each and every one of you for your considered and careful deliberation of the items which have been before you. I think when you realize that as chairman I had felt that the subjects that we had to discuss might involve discussion of 7 hours of debate, and I find today, on Friday, at 20 minutes of 3:00, that they have involved 31 hours and 40 minutes, that you will all be assured that you have had an opportunity to see and to hear all sides of the question.

I would like to tell you why you have had before you and have just passed on to the committee on style and drafting what I consider one of the milestones of this convention in an article of local government which will do for the state of Michigan in the next many decades the job that the people of Michigan sent us here to do. I think the reason for this

is because you have had a committee of 27 men and women dedicated to the proposition of resolving their differences. True, some of those committee members have felt compelled to make statements which were in opposition to the majority opinion here on the floor during the committee of the whole. This I'm proud that they did, because I feel that it is only proper that they should have the opportunity of expression here, and that each of you should know at least to some limited degree the problems as we met them within our own committee down in room A over the 4 months which have just previously passed.

I would like to also point out that with the exception of one or two areas which I shall not try to identify, almost every proposal that came to the floor was introduced to the floor by a unanimous vote — or if not a unanimous vote, at least it was substantially so. Therefore, it proves again that 27 men and women of various sections of this state and with varying political views, and with varying experiences in government, were in a position to listen carefully to the arguments on all sides of the question and arrive at conclusions that they felt were the best for all.

In these deliberations I have had the pleasure of working with 2 vice chairmen who have given me, as I have mentioned to you before, complete support and loyalty. No one could have had any 2 people who have supported the position of the chairman and have tried to move this committee in a deliberative and orderly manner than Mr. Buback and Mr. Figy. And to them we all owe a considered debt of gratitude.

Now, the remaining members of my committee each are entitled to a word of praise, because each of them in their own way made substantial contributions to the work that we did. And I have these here generally in alphabetical order, and not in order of their importance at all.

Mr. Allen served as a subcommittee chairman on metropolitan government and intergovernmental relations. He had on his committee men of rural background, as well as Mrs. Cushman, who had a metropolitan background. Together they forged language which I think will give to the metropolitan areas of our state and to all areas of our state an opportunity for future control of the problems as they arise within the framework of the local government as we now see it, and I am very grateful for the leadership which he gave us in that regard.

Mr. Baginski gave invaluable assistance in the area involving charitable institutions, and other areas that were so related, because his background was one that made it possible for him to bring to us information which otherwise we would have had difficulty in obtaining.

Mr. Batchelor, with his experience and his great familiarity with the problems of annexation, made us keenly aware of the problems that are presented to townships and to the cities in this particular area, and made other substantial contributions as he went along.

All of you know, of course, of Mr. Brake's history in government and the fact that he would be able to make a contribution to any one of the 9 or 10 substantive committees which we have in the convention — as I'm sure sure so would the other members of our committee. But to him I owe a particular debt of gratitude because he was able to take us out of the morass of indecision at times when the clarity of his point of view moved us in the direction of positive action.

Mrs. Cushman had a complete awareness of the problems of metropolitan areas. She served, as did Mr. Gover, on the subcommittee on eminent domain. She was untiring in her research, and the material which she furnished to us was certainly valuable in our work.

And along with her, of course, we had the able support of Mrs. Hatcher, who likewise recognized the problems of metropolitan government, and thus helped us meet those problems as we went through our activities.

Mr. Dell had a tremendous familiarity with the problems of rural communities, having served as a county official for many, many years. He, too, helped us in our deliberations.

Mr. Farnsworth was unique in that he had both a city view as well as a rural view, and he served as the coordinator on our committee of all delegate proposals, and eminently speeded the committee's actions.

Mr. Finch and Mr. Gover presented the township problem to us in a way that made it perfectly clear that there were needs there, as there were in every other form of local government. And their consistency in their approach to meeting those township problems — along with others; I'm not limiting it to these men alone — are certainly an indication of why our township sections came out as strongly as they did.

Mr. Follo, who happens to be of a different political faith than I, but whom I have found an eminently fine gentleman and one of strong character and standards, served as committee chairman on the miscellaneous items that were before our committee on annexation. He was consistently helpful in all fields of our deliberation, looking not to what was best for himself or his community, but to what was best for the state.

And I don't believe that we could have functioned nearly as well as we did if we hadn't had Mr. William Ford on the committee. He had a background of the highly urbanized township that was necessary to be expressed within our committee, and he expressed it most forcefully, and gave us an opportunity to become fully aware of those problems. His knowledge of the law as it applies to local government was helpful also.

Mrs. Judd served as chairman of the subcommittee on counties. This had the greatest number of sessions. She and her committee worked many long hours when all of us were home in our respective districts, completing their work so that we could have the proper deliberations.

Now, Mr. Madar also made a contribution, and I want you men and women of this convention to know that in my judgment there are things in this article on local government which would not have been there if it hadn't have been for Mr. Madar's assistance. (laughter) And that is not said in levity, but with great sincerity. I have never taken exception to a person who has a point of view and sticks with it until he finds that he is overwhelmed by the majority. Mr. Madar's position was made crystal clear in the committee, as he has made it crystal clear on the floor, and despite anything that anybody might think to the contrary, I am most grateful for what he has done in our committee, and the comments that he made during the 4 months he served with us.

Mr. John McCauley, who is a former mayor of Wyandotte, served as chairman of the committee on cities and villages, and his committee has made a significant breakthrough, I believe, in the area of city government, for which all of the people of our state who live in cities and villages should be most grateful.

Ed McLogan has a big job ahead of him. He is chairman of reports to the legislature. He has served most ably on the committee for counties, and I'm sure became Mrs. Judd's right arm in this particular area.

Mr. Radka served as committee chairman on townships, and he helped, along with the other men that I have mentioned, in formulating and strengthening the provisions of township government.

Now, I'm nearly through, but let me just take a moment and have your attention, please, because I think these people each need to be singled out.

J. Burton Richards and Les Richards were 2 of our more quiet members on the committee. They were content to listen and to meditate, but when they did speak, they made a positive contribution to the efforts within which we were engaged, and they contributed equally as well, although the committee records will not show that they may have spoken quite as often as some of the others.

Mr. Sharpe could have been identified as having supported many different positions with the committee. I only point out that the language that we now have in the constitution in regards to the problems of dams and streams and so forth are a direct responsibility of his concern for this particular matter and making the committee aware of the problems.

Mr. Sleder, of Traverse City, served as chairman of the public utilities committee, and I am sure that you all recognize that we have made substantial changes there, and that the people of our state will have an opportunity to speak in those areas where before it was not granted them, for sure.

Mr. Suzore is the clerk of Lincoln Park, and he brought to the committee much experience as a result of that service and other service within the communities in that particular section of our state.

Now, I would like to speak a moment about Jim Thomson, because, unfortunately, during the time that we were in our greatest deliberations Mr. Thomson was home ill. But, at the very beginning of the convention, when he was able to be with us, his background in county government was most helpful to each and every one of us. And I'm only sorry, Jim, if you're here in the room today, that you were not able to be present at all of our deliberations; because I'm sure that we would have come to a speedier conclusion on some of the points that we discussed if we had had you with us.

Finally, and last — and I'm grateful to each of you for your consideration in giving me this time — I would like to speak about another member of our committee who was one of our quiet members, Mr. Tweedie. I would just like to say that he, too, made his contributions quietly, but when he made them he made them with force.

Ladies and gentlemen of the convention, I want to tell you that it's been a real thrill and experience for me to have served you these 4 months in these particular deliberations. I could not have done it, and the actions that you have taken here could not have taken place, if it hadn't been for the help of the 26 members that served on this committee with me. I thank you.

VICE PRESIDENT HUTCHINSON: The gentleman from Oakland, Mr. Walker.

MR. WALKER: Mr. President, I rise to ask that the remarks not be printed in the daily journal. I say this with no malice or anything toward Mr. Elliott. But with the convention costs as they are of roughtly $2400 per session hour, 11 minutes would come to roughly $440, and I think it is unnecessary to expend any more of the taxpayers' money. And although I think this is very nice and very good, and I think Mr. Elliott deserves a lot of kudos for his fine performance, I don't think we ought to spend any more of the taxpayers' money.

VICE PRESIDENT HUTCHINSON: Mr. Walker, the Chair advises the gentleman that neither the remarks of Mr. Elliott nor the remarks of Mr. Walker will appear in the daily action journal. They will appear in the verbatim journal.

Pursuant to order previously made, the convention will now return to the order of reports from standing committees; and the Chair recognizes Mr. DeVries.

MR. DeVRIES: Mr. President, I move that Resolution 70 and the amendments thereto be passed over until Monday evening at 8:00 o'clock.

VICE PRESIDENT HUTCHINSON: On the motion, all those in favor will say aye. Those opposed will say no.

The motion prevails, and it is so ordered.

The gentleman from the twenty-first district, Mr. Marshall.

MR. MARSHALL: Mr. President, I just want to make a few brief remarks. I want to compliment the distinguished chairman of the local government committee for the wonderful remarks that he made. Knowing Art as I do, and having a lot of respect for him and his ability, both in business and politically, I realize that he was serious and earnest when he made these remarks.

I don't want this remark that I'm going to make now to be taken too seriously, however. Now that he has buried me under home rule, and the other Democrats on the committee, being the strong and stalwart gentleman that he is, and believing strongly in his political faith, I think he must believe in the old adage that the only good Democrat is a dead one, so now he eulogizes us. (laughter) With that, I will relinquish the floor. I will go home tonight, where there is true home rule. (laughter)

VICE PRESIDENT HUTCHINSON: The next order of business is **general orders of the day.** The Chair recognizes the delegate from Ionia, Mr. Powell.

MR. POWELL: Mr. President, I move the convention resolve itself into committee of the whole for consideration of the committee proposals on general orders.

VICE PRESIDENT HUTCHINSON: The question is upon the motion made by the delegate from Ionia, Mr. Powell. All those in favor will say aye. Those opposed will say no.

The motion prevails. The delegate from Ionia, Mr. Powell, will preside.

[Whereupon, Mr. Powell assumed the Chair to preside as chairman of the committee of the whole.]

CHAIRMAN POWELL: The committee will be in order for the consideration of committee proposals under the item of general orders. The secretary will read.

SECRETARY CHASE: Page 2 of the calendar, Item 1, from the committee on education, by Mr. Bentley, chairman, **Committee Proposal 98,** A proposal pertaining to the educational institutions of the state. Replaces sections 3, 4, 5, 7, 8, 10 and 16 of article XI.

Following is Committee Proposal 98 as read by the secretary, and the reasons submitted in support thereof:

The committee recommends that the following be included in the constitution:

Sec. a. THE LEGISLATURE SHALL APPROPRIATE FUNDS TO MAINTAIN THE UNIVERSITY OF MICHIGAN, MICHIGAN STATE UNIVERSITY, WAYNE STATE UNIVERSITY, EASTERN MICHIGAN UNIVERSITY, CENTRAL MICHIGAN UNIVERSITY, WESTERN MICHIGAN UNIVERSITY, NORTHERN MICHIGAN UNIVERSITY, MICHIGAN COLLEGE OF SCIENCE AND TECHNOLOGY, FERRIS INSTITUTE, GRAND VALLEY STATE COLLEGE, AND OTHER EDUCATIONAL INSTITUTIONS OF HIGHER EDUCATION ESTABLISHED BY LAW. THE LEGISLATURE SHALL BE GIVEN AN ANNUAL ACCOUNTING OF ALL INCOME AND ALL EXPENDITURES BY EACH OF THESE EDUCATIONAL INSTITUTIONS.

Sec. b. THE REGENTS OF THE UNIVERSITY OF MICHIGAN AND THEIR SUCCESSORS IN OFFICE SHALL CONSTITUTE A BODY CORPORATE KNOWN AS THE REGENTS OF THE UNIVERSITY OF MICHIGAN; THE TRUSTEES OF MICHIGAN STATE UNIVERSITY OF AGRICULTURE AND APPLIED SCIENCE AND THEIR SUCCESSORS IN OFFICE SHALL CONSTITUTE A BODY CORPORATE KNOWN AS THE BOARD OF TRUSTEES OF MICHIGAN STATE UNIVERSITY OF AGRICULTURE AND APPLIED SCIENCE; THE GOVERNORS OF WAYNE STATE UNIVERSITY AND THEIR SUCCESSORS IN OFFICE SHALL CONSTITUTE A BODY CORPORATE KNOWN AS THE BOARD OF GOVERNORS OF WAYNE STATE UNIVERSITY. THE RESPECTIVE BOARDS SHALL HAVE THE GENERAL SUPERVISION OF THEIR RESPECTIVE INSTITUTIONS AND THE CONTROL AND DIRECTION OF ALL EXPENDITURES FROM THE INSTITUTION'S FUNDS; THEY SHALL, AS OFTEN AS NECESSARY, ELECT A PRESIDENT OF THE INSTITUTION UNDER THEIR RESPECTIVE SUPERVISION WHO SHALL BE THE PRINCIPAL OFFICER OF THE INSTITUTION, BE AN EX OFFICIO MEMBER OF THE BOARD BUT WITHOUT THE RIGHT TO VOTE, AND PRESIDE AT MEETINGS OF THE BOARD. THE BOARDS OF EACH INSTITUTION SHALL CONSIST OF 8 MEMBERS WHO SHALL HOLD OFFICE FOR 8 YEARS AND WHO SHALL BE ELECTED ACCORDING TO LAW. VACANCIES SHALL BE FILLED ACCORDING TO LAW.

Sec. c. OTHER INSTITUTIONS OF HIGHER EDUCATION CREATED BY THE LEGISLATURE HAVING AUTHORITY TO GRANT BACCALAUREATE DEGREES SHALL EACH BE GOVERNED BY A BOARD OF CONTROL WHICH SHALL BE A BODY CORPORATE; SHALL HAVE GENERAL SUPERVISION OF THE INSTITUTION AND THE CONTROL AND DIRECTION OF

Explanation—Matter within [ ] is stricken, matter in capitals is new.

ALL EXPENDITURES FROM THE INSTITUTION'S FUNDS; SHALL, AS OFTEN AS NECESSARY, ELECT A PRESIDENT OF THE INSTITUTION UNDER ITS SUPERVISION WHO SHALL BE THE PRINCIPAL EXECUTIVE OFFICER OF THE INSTITUTION, BE AN EX OFFICIO MEMBER OF THE BOARD BUT WITHOUT THE RIGHT TO VOTE, AND PRESIDE AT MEETINGS OF THE BOARD. EACH BOARD OF CONTROL SHALL CONSIST OF 8 MEMBERS WHO SHALL HOLD OFFICE FOR 8 YEARS AND WHO SHALL BE APPOINTED BY THE GOVERNOR IN A MANNER SIMILAR TO OTHER EXECUTIVE APPOINTMENTS AS PROVIDED IN THIS CONSTITUTION. VACANCIES SHALL BE FILLED IN LIKE MANNER.

Sec. d. THE LEGISLATURE SHALL PROVIDE BY LAW FOR THE ESTABLISHMENT AND FINANCIAL SUPPORT OF PUBLIC COMMUNITY AND JUNIOR COLLEGES, WHICH SHALL BE OPERATED BY LOCALLY ELECTED BOARDS. THE LEGISLATURE SHALL PROVIDE BY LAW FOR A STATE BOARD FOR PUBLIC COMMUNITY AND JUNIOR COLLEGES, WHICH SHALL ADVISE THE STATE BOARD OF EDUCATION CONCERNING GENERAL SUPERVISION, PLANNING FOR SUCH COLLEGES AND REQUESTS FOR ANNUAL APPROPRIATIONS FOR THEIR SUPPORT. THE BOARD SHALL CONSIST OF 8 MEMBERS WHO SHALL HOLD OFFICE FOR 8 YEARS AND WHO SHALL BE APPOINTED BY THE STATE BOARD OF EDUCATION. VACANCIES SHALL BE FILLED IN LIKE MANNER. THE SUPERINTENDENT OF PUBLIC INSTRUCTION WILL BE AN EX OFFICIO MEMBER OF THIS BOARD WITHOUT THE RIGHT TO VOTE.

Mr. Bentley, chairman of the committee on education, submits the following reasons in support of Committee Proposal 98:

Sec. a. This section requires the legislature to appropriate funds to maintain all state supported institutions of higher education, including those presently having constitutional status. Other institutions are specifically mentioned by name in this constitution for the first time. Northern Michigan College becomes Northern Michigan University and Michigan College of Mining and Technology has its name changed to Michigan College of Science and Technology. There was some sentiment within this committee for omitting all specific reference to these institutions by name but the majority opinion was that to provide adequate constitutional and legal protection as well as for reasons of prestige, they should be referred to by specific title. All of the state supported institutions are required to give an annual accounting to the legislature of all income and all expenditures.

Sec. b. This section replaces sections 3, 4, 5, 7, 8, 10 and 16 of the present constitution and combines them into one section. The governing boards of the University of Michigan, Michigan State University and Wayne State University are placed on an equal basis so far as the supervision of their respective institutions and the control and direction of all expenditures from the institution's funds are concerned. There is a provision in each case for their choosing a president of the institution as is now the case with them. All 3 boards are to be equal in size, which enlarges those of Michigan State University and Wayne State University from 6 to 8 members. Such members are all to be elected for 8 year terms according to law and any vacancies in these boards are likewise to be filled by law. This section reaffirms the constitutional status of the 3 major state institutions and places them on an exactly equal footing with respect to their governing boards, presidents, etc. It was approved unanimously by the committee.

Sec. c. This section confers constitutional status on all other institutions of higher education which are now in existence or which may hereafter be established. The provisions relative to their boards of control, presidents, etc., are similar to the provisions for the 3 institutions named in Sec. b. Members of these boards of control, however, are to be appointed by the governor in a manner similar to other executive appointments as provided in this constitution.

Sec. d. This section requires the legislature to provide by law for the establishment and financial support of public community and junior colleges to be operated by locally elected boards of control. A majority of this committee wished to have included in the constitution reference to a separate state board for the purpose of providing special emphasis to this rapidly growing segment of our educational system. The recommendation is in line with the John Dale Russell report, Higher Education in Michigan. To quote Russell:

> It is coming to be recognized that the community or junior college is something different from the other units of the public school system. It is not just a glorified high school, neither is it just an inferior or downgraded college. It has a distinct and unique place of its own in the public school system. As such — it deserves the kind of supervision at the state level that can best be furnished by an agency which does not have its main focus of attention on the elementary and secondary schools.

It should be emphasized that the creation of this special board does not violate the concept of unity and coordination which we have attempted to establish through a new and enlarged state board of education. Rather, the board is essentially advisory to the state board of education, operating within the total framework of the board. It would not cause the creation of a different office of education. Placing the superintendent of public instruction as ex officio member on this board will further assure that all of the facilities and staff of the superintendent of public instruction will be available to the board to assist them administratively and clerically.

Of course, the committee realizes that the state board of education has power and authority to appoint advisory groups when needed. It is expected that the board will appoint committees of outstanding citizens from time to time which would advise it in planning and coordinating any of the areas of education.

Following is the minority report to Committee Proposal 98 as offered and the reasons submitted in support thereof:

Messrs. Faxon, T. S. Brown, Kuhn and Mrs. Conklin, a minority of the committee on education, submit the following minority report to Committee Proposal 98:

A minority of the committee recommends that the following be excluded from the constitution:

Committee Proposal 98, page 3, line 2, delete from "The legislature . . ." through rest of section.

Messrs. Faxon, T. S. Brown, Kuhn and Mrs. Conklin, a minority of the committee on education, submit the following reasons in support of the foregoing minority report, which accompanied Committee Proposal 98:

The minority members of this committee first wish to call the attention of the delegates to the first action which this committee took regarding junior colleges. On Friday, January 26, the majority of the members voted in favor of the language which is now being offered as the minority report. It is for this reason that we are using the supporting language which the chairman of our committee originally prepared to deal with this section under discussion.

We believe that the statement made by our chairman on this subject states adequately the feelings that were then expressed in the committee and we wish to support these statements at this time.

Delegate Bentley, chairman of the committee on education, prepared the following report in support of our substitute proposal:

This section requires the legislature to provide by law for the establishment and financial support of

Explanation—Matter within [ ] is stricken, matter in capitals is new.

public community or junior colleges to be operated by locally elected boards of control. A strong minority of this committee wished to have included in the constitution reference to a separate state board for the purpose of supervising these colleges to provide the legislature with annual reports on their operations, to request annual appropriations for their support and to allocate among them all funds appropriated. The majority of this committee, however, decided that it was unnecessary to create a separate board for such purposes, believing that an enlarged state board of education could and should adequately perform such functions. However, the committee realized the growing importance of these institutions in the field of higher education. There are now 17 community colleges in Michigan and it is anticipated that this number may expand to 30 or 40 within the next several years. At that time their enrollmment may well exceed that of the total number of all state educational institutions who have constitutional status. The committee, therefore, decided to recommend to the state board of education that it either include overall supervision of these colleges among its own functions or, preferably, request the legislature to create by statute a separate coordinating community college board for such purposes. The committee also decided to encourage coordination and cooperation among the community and junior colleges on a voluntary basis, perhaps by some organization such as now exists among the other state supported institutions of higher education (council of state college presidents).

In further consideration of reasons other than those already mentioned dealing with this problem, we have only to look at the language under consideration. The state board of education has within its powers the authority to create any such boards as it may deem necessary in order for it to carry out its functions adequately. This is implicit in the language dealing with the state board of education. The language establishing the state board of education is as follows:

> There shall be established a state board of education which shall provide leadership and supervision over public education including adult education and instructional programs in state institutions other than colleges and universities. In addition, it shall serve as the general planning and coordinating body for all public education in the state and shall provide advice to the legislature and to the people as to the amount of state support required.

It can be observed that in this language establishing the state board of education, that junior and community colleges are included. In order to maintain consistency here, it is our feeling that the total problems and the total view of education should rest with the state board of education and not constitutionally assigned to another board. This is not only in keeping with sound administrative policy, but is also in keeping with recommendations made by the present superintendent of public instruction.

It might further be observed that the entire section dealing with junior colleges might not be included in the constitution at all and that they would still come under the state board of education. It is our feeling that a recognition of the junior and community colleges is necessary since the committee has recognized so many other important areas of education.

The statement which we recommend satisfies 2 of the important requests made to our committee by the junior colleges themselves, the first of these being that "the legislature shall provide by law for the establishment and financial support for public and junior colleges" and the second being that these colleges be operated by locally elected boards. Certainly no member of the committee can be accused of not showing concern for junior colleges in proposing and adopting this language.

We furthermore feel that the creation of a constitutional board to advise another board is unprecedented in Michigan constitutional history and probably equally unprecedented in American constitutional history. It is our feeling that this is not a constitutional matter. It presently is found within the scope of the state board of education. It is implicit within the powers of the proposed state board of education so that the addition of any language establishing a board would only serve to create confusion and dissension within educational ranks.

The whole purpose to the establishment of a state board of education as has been unanimously proposed by this committee was to give to education a single board that could look at educations' entire needs. To constitutionally establish a board for junior colleges is, in our opinion, demonstrating lack of faith not only in the legislature, but also in the ability of the state board of education to administer this department adequately.

In summation, we may observe the following:

1. The establishment of a state board with specific functions to advise is not a constitutional subject of concern.

2. Recommendations for the establishment of such a board are to be found in Chairman Bentley's supporting statements for this proposal.

3. This proposal meets the need of recognition of the importance of junior and community colleges without setting up another faction of state educational administration.

4. The power to handle this subject has already been delegated to the state board of education. Therefore, it would seem best to leave it to their discretion as to how they might best perform their duties.

5. It is our feeling that the constitution should have within it flexibility and that locally elected boards controlling junior and community colleges should be free to enter into any type of association which might meet their needs. A proscription into the constitution of a specific board for this purpose is to deny to these people their free rights as American citizens.

[Section a was read by the secretary. For text, see above, page 1135.]

CHAIRMAN POWELL: The Chair recognizes the chairman of the committee, Mr. Bentley.

MR. BENTLEY: Mr. Chairman, we now begin our consideration of the final proposals from the committee on education. The first proposal, 98, which the committee of the whole has before it, is that one dealing with higher education. I would state frankly that it would be my hope that we can finish action on this proposal this afternoon. If the quantity as well as the quality of the debate does not so permit, we will of course move that the committee rise at a reasonable hour.

With respect to the first 3 of the 4 sections of the particular proposal, the first section being the one the secretary has already read, there were differences of opinion within the committee, and I understand there may be amendments offered; but the final action of the committee with respect to these first 3 sections was unanimous on the final vote. On section d, the fourth section, there is a pending minority report, signed by a bipartisan group of 4 members of the committee, which will be offered, of course, when that particular section is reached.

At this time, Mr. Chairman, before proceeding any further, I would like to make one brief statement to the distinguished gentleman from Taylor, Mr. Marshall, who referred to me earlier with regard to the idea of yielding.

I wish to assure the gentleman that although I am retaining the floor at the present time for the purpose of yielding briefly to other members of the committee, to make further explanations with regard to this first section, and then yielding for questions, it is not my intention — and I'm sure the intention of no other member of the committee on education — to retain the floor unduly, or to terminate debate, and I can assure the gentleman that if he has any remarks of his own on this part

or any other part of the education proposals, I would be happy to assure him that he will have ample time to do it.

I will yield to you for comments, if you desire.

CHAIRMAN POWELL: Mr. Marshall.

MR. MARSHALL: Mr. Chairman, I accept the explanation of my distinguished colleague from Owosso, with no comment whatsoever.

MR. BENTLEY: Mr. Chairman, the first paragraph which the secretary has read on the section of higher education deals with the constitutional status of the 10 state supported institutions of higher education which are specifically referred to herein. For a further explanation of this particular section, I yield to the gentleman from Ann Arbor, the chairman of the subcommittee on higher education, Mr. Bonisteel.

CHAIRMAN POWELL: The Chair recognizes Delegate Bonisteel.

MR. BONISTEEL: Mr. Chairman, Chairman Bentley and fellow delegates, I don't think there is too much to be said about section a, which has been read by the secretary. But in order that you might be fully informed, I am going to cite to you that page 475 of the journal contains the language which has just been read by the secretary, and also the other sections which have been described by Chairman Bentley.

The only comment that I care to make at this time on section a would be this: that under the provisions of section a, it requires of these educational institutions that the legislature shall be given an annual accounting of all income and all expenditures by each of these educational institutions. And, if my memory serves me correctly, this is the language which was used by the legislature when it created Wayne State University, and it is the legislative language pertaining to Wayne State University insofar as the accounting is concerned, and the committee unanimously adopted that language.

I think, Mr. Chairman, that that's all I care to say on this section. I would hope that it would be passed. Because I can't see anything in there which would indicate any reason why it should not be.

As to the specific naming of these educational institutions, by tradition they deserve perpetuation, I believe, in the constitution. In addition to that, I would say those people who have contributed so greatly to the establishment of Grand Valley State College, they too should be given a place in the sun, if that's the way we wish to look at it — and that's the way I do look at it.

I would suggest, Mr. Chairman, that this be adopted without further comment, if it's the desire of the delegates.

CHAIRMAN POWELL: Mr. Bentley.

MR. BENTLEY: Mr. Chairman, I think I should point out, in addition to the remarks of the gentleman from Ann Arbor, that at the request of 2 of the institutions named herein, we have changed their name. The institution at Marquette, Northern Michigan, has been named herein as Northern Michigan University; and the institution at Houghton, the Michigan College of Science and Technology, was designated by that name at the request of the president and the governing board of that particular institution.

Mr. Chairman, I am sure that Mr. Bonisteel and I would be happy to answer any questions with respect to this paragraph. I understand there is a pending amendment at the desk. After answering questions, we will be happy to yield the floor to the offerer of the amendment, for the purpose of offering it.

MR. MARTIN: Mr. Chairman.

CHAIRMAN POWELL: Does Mr. Bentley yield to the gentleman from Grand Rapids?

MR. BENTLEY: I will.

CHAIRMAN POWELL: Delegate Martin.

MR. MARTIN: Mr. Bentley, Mr. Chairman, section a provides in the last sentence, "The legislature shall be given an annual accounting of all income and all expenditures by each of these educational institutions." It provides further over in section b that the control and direction of all expenditures from the institutions' funds shall be in the respective boards.

I don't want to offer an amendment, but I did want to indicate that after some discussion with some members of the committee, I felt it would be desirable to offer to amend the proposal which we now have pending before the convention with respect to the legislative auditor, to provide that the legislative auditor, if he is approved, shall have the right and authority to make post audits — not pre audits in any sense of the word, or in any sense control of the actual process of expenditure, but post audits — of the financial and fiscal affairs of the institutions. I don't think there is any objection to this, and I only propose it because where the institutions have constitutional status of this sort, there can develop a question as to whether an official of another branch has the authority to make the sort of audits which the legislative auditor will be authorized to do.

I simply state this by way of explanation, hoping that there will be no objection from the committee to this procedure.

MR. BENTLEY: Well, Mr. Chairman, the procedure outlined by the chairman of the committee on executive branch is, so far as I know, satisfactory to the committee on education.

Mr. Chairman, I will be glad to yield to the delegate from Ludington, Mr. Plank.

CHAIRMAN POWELL: Delegate Plank.

MR. PLANK: Mr. Chairman, Mr. Bentley, I'm wondering about the advisibility of naming those universities in this section. It seems to me that you might cover not only the ones that exist today, but the ones that might be brought in in the future — the next 50 years or so — if you include them in a phrase but not necessarily list them by their names.

MR. BENTLEY: Mr. Chairman, I would suggest to the delegate from Ludington that he might wish to reserve his comment on this until the pending amendment at the desk is offered since it deals with this particular subject.

Mr. Chairman, before yielding the floor, if there are no further questions, I would like to make a unanimous consent request at this time. Mr. Chairman, I ask unanimous consent that when the distinguished member of our committee, the gentleman from East Lansing, Dr. Hannah, speaks on this proposal, that he be permitted, if he so desires, to speak out of order and speak on either Committee Proposal 98 or Committee Proposal 47, since he will not be able to be with us next week, when we will be considering Committee Proposal 47 on the floor. I ask unanimous consent that when he does address the committee of the whole, that he be able to speak out of order in this fashion.

CHAIRMAN POWELL: Is there objection to the request? If not, it is so ordered.

MR. BENTLEY: Mr. Chairman, I will be glad to yield the floor to the gentleman from Detroit, Mr. Faxon, for the purpose of offering an amendment.

SECRETARY CHASE: Mr. Faxon offers the following amendment:

1. Amend page 1, line 7, after "Sec. a.", by striking out the balance of the line and all of lines 8 through 13 and "by law" in line 14 and inserting "The legislature shall appropriate funds to maintain those institutions of higher education established by law or in this constitution.".

CHAIRMAN POWELL: Delegate Faxon.

MR. FAXON: Mr. Chairman, members of the committee, this is no great burning issue, but it is something which you ought to be able to realize is an alternative to the present committee report. I want it known I supported the present committee report, but this was brought up in the committee, and I was always very delighted when one of the other members of the committee here, Mr. Brake, would tell us about the alternatives that were available. And, in so doing, we at least know that there is an alternative here. Now, the alternative is, namely, whether we feel it is good constitutional practice to name the institutions.

In section b of this proposal we are naming the University of Michigan, Wayne State University and Michigan State University. The question here is, in writing a document that we hope will survive for many decades, and perhaps 50 to 100 years, whether the naming of institutions in some way may date the document, or whether we might better leave this to the matter of specification by the legislature in terms of the names, or not. I realize that in the committee when this came up it was a very close vote, 9 to 8, for leaving the present

sentence. So I want at least the members of the committee of the whole here to be aware of the alternative, and to call to their attention certain items that were brought out with regard to the naming. In the old constitution it says:

> The legislature shall maintain the University, the College of Mines, the State Agricultural College, the State Normal College and such state normal schools and other educational institutions as may be established by law.

That of course was back in 1907 and '08. Today we know that the state normal colleges are now universities, the College of Mines is now a college of science and technology, and the State Agricultural College is now a major state university. So in the naming of the schools in the old constitution, we tend to look back at this section as showing what the passage of years does to this particular section.

Now, I would suggest this, and I just toss this out to you for your consideration, it's possible within the next 50 years that new colleges and universities may be established. It's possible that present institutions which are named as colleges may become universities. Is it advisable, realizing the way technology and time changes, to name these institutions and thus, when later colleges or institutions are established, to have them feel that they, too, would want to get into the constitution and get their name in it? Or would we be better off leaving the 3 large institutions named as in section b, and leaving the rest to the establishment of the name by law, and leave it out of the constitution?

This is mainly the question. It just deals with the first sentence. It is no burning issue. They are still provided with their status. The universities themselves have said that they don't mind whether it is in or out; but they were concerned with having their status as constitutional universities. So I simply propose this to the members of the committee for their consideration.

CHAIRMAN POWELL: Chairman Bentley.

MR. BENTLEY: Mr. Chairman, in reply to the gentleman from Detroit, I would say that his remarks were substantially correct, with the exception of the last. That was when he said the universities did not mind whether they were specifically named or not. I think I can assure the members of the committee of the whole that the testimony we had from the representatives of the other 7 institutions of higher education indicated they were unanimous in that they wanted to be named in the constitution, for a variety of reasons.

The question of prestige, as the committee on education stated in its accompanying report, was of course present, but there were also important constitutional and legal arguments for specifically naming each of these institutions in the constitutions. And I would like either the gentleman from Ann Arbor, Mr. Bonisteel, or the gentleman from Mount Pleasant, Dr. Anspach, to comment on the constitutional and legal protection that specific reference to these institutions affords them.

CHAIRMAN POWELL: The Chair recognizes Delegate Anspach, of Mount Pleasant.

MR. ANSPACH: Mr. Chairman and members of the committee, I am willing to defer to Mr. Bonisteel, because he is an attorney. It has been said many times on this floor by various delegates that they were not attorneys. I am not an attorney either. But in discussing this matter with several legal authorities, including Mr. Bonisteel, he thinks there is merit in retaining the names in the constitution, from the standpoint of trusts and endowments and gifts which will come to an institution.

This has no bearing upon the constitution but is an illustration. Several years ago in our county a will was probated, leaving some thousands of dollars to the educational institution, but the institution was not named. After some legal procedure and some discussion with the heirs to the estate, it was finally determined by the court that the institution at Mt. Pleasant was the institution named. Now, I know, as I said when I started, this has nothing to do with the constitution particularly, except that it does bear on the point that when a definite name has been given, it does have some legal significance.

From the standpoint of prestige, I know that this perhaps is not a great argument. The one I just mentioned I think is valid, and legal authorities would have to determine whether it is or not. I can't. But I have been so advised. But, from the standpoint of prestige, I know we have an educational system in the state of Michigan which is the envy of many. I'm aware of the fact that many states do not name the institutions of higher education in the constitution. I remind you that Michigan goes back many years, and our educational system is significant.

The University of Michigan is one of the great universities of the world. It is named in the constitution, of course, because it is necessary in determining or specifying how the board of control shall be established. This is true in the cases of the University of Michigan, Michigan State University and Wayne State University, so they are mentioned. The others are not mentioned, as such.

Now, the fact that the University of Michigan has been named in the constitution, while this is not true in many other states, has created a point of envy on the part of those states which have educational institutions that are not so named. I was in another state a week ago and discovered that many of the people there looked with envy to the University of Michigan because of the prestige. There is something about this matter of constitutional mention that seems to give a bit of prestige. The University of Michigan, going way back to the very beginning, has it. I think we would like to be in the company of these individuals at the University of Michigan and others. This matter has been discussed by the various presidents of the colleges and the alumni, and they are very much interested in seeing, as a matter of pride, that their institution be mentioned.

However, all of this goes back to the point, number 1, of legal significance, which I think is a very important point. The other is a matter of feeling, and not a matter of law.

CHAIRMAN POWELL: The question before the committee is the Faxon amendment. Delegate Heideman.

MR. HEIDEMAN: Mr. Chairman, fellow delegates, if there is any one matter that has been brought up to me during the time that I have been a delegate in my return trips home, it has been this matter of constitutional status; this matter of having these colleges — and, of course, up there, Michigan Tech and also Northern Michigan — mentioned in the constitution. The people up there take this very seriously. They are very much in favor of having these colleges named in the constitution; of gaining for these colleges constitutional status.

I would like to urge you to give this support.

As a matter of fact, Michigan Tech was, in effect, named in the Constitution of 1908. In article XI, section 10, it is called the College of Mines. Now, there is only one college of mines, the one at Houghton.

I'm in favor of having them all mentioned; I think without question they all desire this. The testimony has been to this effect. As a matter of fact, at the first of the hearings which we had in the upper peninsula, being in December, it was very obvious that this was a very important matter. I have a desk full of material pertaining to this very thing.

Now, if we were to delete the reference, for example, to the College of Mines, to use a specific example, we would actually be going backwards. Because it is mentioned as that in article XI, section 10.

So again I urge you to support this first section, which includes these institutions in the constitution by name.

CHAIRMAN POWELL: May the Chair comment that it has listed 3 delegates now: Delegates Plank, Wanger and Miss Hart, and sees 2 others rising. The Chair will recognize Delegate Plank.

MR. PLANK: I think I would like to ask a question of Dr. Anspach. It just doesn't seem to me like the reasons he gave are important enough to keep these words in the constitution. There must be something else — and if there is something else, I would like to know what it is. Otherwise I'm going to have to vote against it. Because it just doesn't seem to me that we ought to add those words in there unless there is a good reason for it.

CHAIRMAN POWELL: Possibly these other speakers will bring out these points. If not, we will ask somebody for a definite answer. The Chair will recognize Delegate Wanger.

MR. WANGER: Mr. Chairman —

MR. BENTLEY: Does the gentleman desire to have his question replied to either by Dr. Anspach or myself?

CHAIRMAN POWELL: He did not so specify, and the next person to speak is a very able attorney, so I passed by. I will, however, yield the floor to anyone desiring to make a direct answer to Mr. Plank, if there is such.

MR. PLANK: On the contrary, Mr. Chairman, I did ask Dr. Anspach this question.

CHAIRMAN POWELL: The Chair is sorry; The Chair didn't so construe it. Dr. Anspach.

MR. ANSPACH: Mr. Chairman, Mr. Plank, as far as I'm concerned, I have given you the 2 reasons as I see them. The important one, as I stated when I closed my remarks, number 1, there may be some legal answers here. I can not answer from the standpoint of legal interpretations. From the standpoint of being mentioned, the second is merely a matter of feeling, that's all. So that's the only thing I had.

I'll say this, while I'm speaking. Sections b and c, as far as the constitution is concerned, are much more important than section a.

There is a feeling here, as has been pointed out by Mr. Heideman, and I think Mrs. Butler is asking for the floor, on the part of the institutions for being named in the constitution because there is a tradition for this, and as I said a while ago it may not be a valid reason, but it's a reason. There is a distinction which has grown up over the years since 1835, '36, that period, when the constitution provided for a university. The University of Michigan has been in over this period of years, and this tradition has grown, and there is a prestige that has gone with it. There is a sense of pride from the standpoint of institutions of higher education today. And there is a feeling on the part of the others that they would like to be in their company. That's the only answer I can give you. Plus the one from the standpoint of the legal aspects. Now, that may not be satisfactory to you, but it is satisfactory to me.

We feel the same way about this as you did, sir, about your television industry.

MR. PLANK: I'm glad you brought that up, because I'm going to offer an amendment on second reading to take out all reference to press, radio, and TV, because I don't think they have any place in the constitution. And that's why in this case I feel the same.

CHAIRMAN POWELL: The Chair will recognize Delegate Wanger.

MR. WANGER: Mr. Chairman, members of the committee, it is with the greatest of good will for these educational institutions that I speak in favor of the pending amendment. I have 5 comments to make in support of Mr. Faxon's amendment in this regard.

The first is that it is undoubtedly true that we're going to have many colleges in Michigan, in addition to those which we have at present, and if we list all of the present institutions in the constitution now, it is only right that as soon as those are created, that they be added; and that will in future years, with increasing enrollments, require many additional amendments to the constitution, and I think we ought to try to avoid that.

Secondly, I think by freezing these names into the constitution we are going to create another constitutional problem when those institutions and those who so rightly support them desire to change the name of the organization which they support. Ferris Institute, for example, may at some time desire, quite rightly, to change its name. Some of the other universities which are listed may find that in this very rapidly growing and changing world some other name will better express the meaning and purpose of the institution. And, therefore, additional amendments and the trouble which we know they entail will be required in order to accomplish what I think should rightly be left either to the institution itself or to the legislative enactment governing it.

The third comment which I would like to make is this: that I do not believe that specifically naming these institutions in this section gives them any substantial additional constitutional protection over what Mr. Faxon's amendment would give them. Because, obviously, they would clearly be institutions of higher education under his amendment. It has been suggested, however, that there is sometimes difficulty in the area of the law of trusts caused by the fact that the institution is not named accurately in the will which leaves a testamentary trust. This may at some times be a problem, but I suggest that merely by putting the name in the constitution of the state is not in most cases going to solve this particular problem. Because the name in any case should be widely known to the supporters of the institution, and should be available in the statutes.

My fourth comment is this: it has been stated that many people wish to have all of the institutions of higher education named in the constitution, and that they desire this. Well, I do not believe that the people who are connected with these organizations will base their judgment of the constitution on this issue — on whether or not their names are included in the document.

Finally, I would like to in part echo Mr. Plank's remarks with regard to the question of prestige. I think when we talked about this subject in connection with radio and television media, we used the word "recognition," and actually in a greater or lesser sense the 2 words mean the same thing. I don't think that these educational institutions need to be mentioned in the constitution to preserve or further the great prestige which they have already throughout this state. And I think that the technical difficulties and other difficulties which would be caused by including them would outweigh any imagined additional prestige throughout the citizenry which putting them into the constitution might create.

CHAIRMAN POWELL: The Chair recognizes the lady from Detroit, Delegate Hart.

MISS HART: Mr. Chairman, when I came to this convention I determined to try to distinguish between shooting at mice and shooting at elephants. It seems to me that at this particular moment we are shooting at mice. The history of education in the state of Michigan is a proud one. It seems to me that if these institutions that have lived so long in this state are eager to be named in the constitution, we really have no good reason for not sparing them a paragraph.

CHAIRMAN POWELL: The Chair now recognizes Mrs. Butler.

MRS. BUTLER: Mr. Chairman, members of the committee, I rise to support Mr. Heideman's remarks about Michigan College of Science and Technology. This school started out as a mining school, and for many years it had "mining" in its name. At this time it is a misnomer, and our people at the college feel that many students who would enroll in Michigan Tech are misled by the "mining" because it's a very small department now — the smallest.

Michigan Tech is today one of the largest technical schools in the state, and we see no reason why it cannot have constitutional status. It is a school of great dignity, and a school that has served the area and the state and the nation for a long time, and I hope that the delegates will see fit to name Michigan College of Science and Technology in the constitution.

CHAIRMAN POWELL: A few moments ago the committee, by unanimous consent, gave priority to Delegate John Hannah, and the Chair sees he now desires recognition. The Chair recognizes Delegate John Hannah.

MR. J. A. HANNAH: Mr. Chairman and members of the committee, I don't want to belabor this point, but I would like to speak briefly as chairman of the council of state college presidents, which is the organization that includes all of these institutions that you are talking about. I would be doing less than I should as their chairman if I didn't reiterate the points that have been made by Mr. Bonisteel, Mr. Bentley and Mr. Anspach; that this may seem trivial to some of you, but it's very important to them.

Reference has already been made to the distinguished record of the University of Michigan, one of the great universities of the world, and no small part in making it possible for the

University of Michigan to be what it is was the fact that it was given constitutional status in the first constitution, and that its board of control was a constitutional corporation, co-equal with the legislature. The founding fathers way back in the early days of this state determined that partisan politics and universities and colleges should be separated as widely as possible. And that isn't the issue in this section.

In 1850 it was the constitution that created the institution that I have the honor to preside over. It was the Constitution of 1850 that provided that at the earliest practical moment that institution should be created, and its definition was provided for.

Now, these other institutions have been named in various ways, as have been indicated: the College of Mines, the State Normal College, and other normal colleges. If Mr. Plank or Mr. Faxon or Mr. Wanger are concerned because we are taking too much space in the constitution, if they will compare the total number of words in the document that is before you with the total number of words in the present constitution, they will find that by combining the descriptive words for the University of Michigan, Michigan State and Wayne State dealing with all 3 of them in single paragraphs, the total will be shorter.

It means much to these institutions. And, gentlemen, I think there is no reasoning on the other side that is equal to the importance that this has in their eyes.

I can't believe that Mr. Faxon is very serious about his feeling. I can't believe Mr. Wanger is. I just think there are so many more important things for us to take our time with that I hope you will approve the committee report as it is before you.

CHAIRMAN POWELL: The Chair is going to grant another delegate recognition out of order. The Chair thinks he has a smile on his face. Delegate Leslie Richards.

MR. L. W. RICHARDS: I was going to ask, Mr. Chairman, for a point of personal privilege. The explanation was made as to how you classify under that, and I think today I have the right classification to make these comments. You may have noticed that a page walked in here just now and he was carrying a cake with 16 candles on that cake.

We do realize that as we sit here as a group, oftentimes our feelings do get a little disturbed and we have a little animosity toward each other. But also we recognize the fact that after we do leave this convention the friendships and fellowship we have for one another will be greatly appreciated, and there are occasions I think that in our lifetime we value very, very highly.

Today one of our very fine delegates whom I have become acquainted with and whom I respect very highly — and I think you will all agree with me — is celebrating her birthday, Miss Marjorie McGowan. (applause).

[Delegates joined in singing "Happy Birthday" to Miss McGowan.]

CHAIRMAN POWELL: Delegate McGowan.

MISS McGOWAN: Mr. Chairman and fellow delegates, I'm very grateful to you for your kindness, and thank you very much.

CHAIRMAN POWELL: Delegate Bentley, did you seek recognition?

MR. BENTLEY: Merely to reemphasize and reecho what has already been said by the committee of the whole on this subject by such distinquished speakers as Dr. Hannah, Dr. Anspach, Miss Hart, Mr. Heideman, Mrs. Butler, and the others who have been moved to speak in support of the committee proposal.

I ask for the defeat of the pending amendment.

CHAIRMAN POWELL: A while ago the Chair thought possibly Delegate Everett wished to speak. Do you now?

MR. EVERETT: Mr. Chairman, I want to rise to support Mr. Faxon's amendment. I'm not without pride for our colleges. I attended Michigan State. I have a son who is attending Michigan Tech.

I do think there might be some possible fault, however, if we name these, and I think Mr. Heideman has illustrated it. Back in the Constitution of 1908 this was the College of Mining. Now it is not. We propose to put another name on it, and possibly that name will change. I don't think this is a serious difficulty, but I think maybe in yielding to local pride we may have saddled some of these schools with names which will change when the constitution won't change, and I think Mr. Faxon's suggestion is a better one.

CHAIRMAN POWELL: The Chair recognizes Delegate Lawrence.

MR. LAWRENCE: I've been rushing around, and didn't hear all the debate, except on the loudspeaker. I would like to add this, however. Of course, I'm very interested in Eastern Michigan University. I recall that during the depression, when funds were scarce, when teachers were looking for work, and the enrollment was falling off, there was a lot of discussion about the possibility of closing then the Michigan State Normal College, now Eastern Michigan University.

And, if my memory serves me right, the discussion about closing it stopped when they found out that the constitution provided for that institution. Since that time, of course, the wisdom of keeping it open has been amply demonstrated.

But there was a real possibility at that time that Michigan State Normal would have been closed by the action of the legislature had it not been in the constitution. Coming from Ypsilanti and having attended the school, I urge you to keep its name in the constitution.

CHAIRMAN POWELL: The Chair recognizes the lady from Highland Park, Delegate Ann Donnelly.

MISS DONNELLY: I would simply like to state that in my opinion it is not the inclusion in this constitution that has made the universities which we have discussed great. They did this in spite of this. I believe they will continue to do so. I believe that the statement that the inclusion of these names will aid them legally is obviously incorrect. Michigan College of Mines would have inherited whatever it got under whichever name Mr. Heideman called it, or Mrs. Butler called it, for it was named years ago, and reached its greatness under that term.

This inclusion to me is unnecessary. Under the argument, these great colleges and universities exist, and we have also put in a brand new one. We don't know if it is going to be great or not. We certainly hope so, but these words will not do it. I support Mr. Faxon's amendment.

CHAIRMAN POWELL: The Chair recognizes the gentleman from Detroit, Delegate Iverson.

MR. IVERSON: Mr. Chairman, I wonder if I might ask the chairman of the committee a question. I wonder if the committee gave any thought to some language which might permit the change of the name of a university already mentioned in the constitution without the necessity of changing the constitution itself?

MR. BENTLEY: In reply to the gentleman from Detroit, Mr. Chairman, I might say that the committee did consider this possibility, but was unable to resolve satisfactorily any constitutional language which would so permit a change.

CHAIRMAN POWELL: Mr. Bonisteel, did you desire to answer that question?

MR. BONISTEEL: Yes. I started to answer it because, Mr. Chairman, Chairman Bentley probably will remember that I had discussed with him the question a day or two ago of a potential amendment which we might wish to introduce — we are not sure yet. It is not only in connection with this, but it is in connection with some other items which have been suggested to the committee.

CHAIRMAN POWELL: Delegate Wanger has been seeking recognition. Delegate Wanger.

MR. WANGER: I have just 2 brief points, Mr. Chairman. The first is this: the university in East Lansing, now Michigan State University, and the University of Michigan, as well, did not become great because their names were mentioned in the constitution, but rather because they were given powers and immunity in the constitution. That's a great difference. Under Mr. Faxon's amendment the powers and immunities given by this constitution to these educational institutions are preserved. It is only their names which are specifically left out.

Now, my second comment is more in the nature of a question, and it is this: do I understand correctly from the debate that the names of these universities or institutes as they are listed in section a are not in every case the same names which those institutions have at the present time? In other words, is there a change of a name of any institution which is incorporated into section a?

MR. BENTLEY: Mr. Chairman, if the gentleman will yield for a reply, that is correct. As I pointed out, we have made at the request of the 2 institutions concerned the changes in the names of the institutions at Marquette and Houghton.

CHAIRMAN POWELL: There are 2 or 3 things going through the Chair's mind right now. May the Chair say them casually, and then we will proceed. One is that Delegate Mrs. Butler is standing, desiring recognition, and I imagine she will not speak very long. Another thing that is going through my mind is that the hour has arrived when, normally, in an average day we would take a recess. But today we got started late, and it's Friday afternoon, so unless there's a request, I am not assuming that we'll have a recess.

The next thing on my mind is that, as we all know, Dr. Hannah will not be with us next week, and we gave him permission to speak not only on this proposal, but on a later proposal from the committee on education. And I think before too long we should hear him, because I see we are continually losing delegates here. They are picking up their dolls and departing, and so on.

May I call on Delegate Mrs. Butler.

MRS. BUTLER: It won't take me but a minute. I just wanted to say that not only the board of control and the faculty at Michigan Tech, but a large number of the alumni have requested this change in constitutional status. We in the upper peninsula are very anxious for it, and feel that our college deserves it.

CHAIRMAN POWELL: Delegate Theodore Brown, do you wish recognition?

MR. T. S. BROWN: Yes, sir. As a member of the education committee, I thought perhaps at this juncture we could synopsize what has gone on to date. Actually, in law, there is no reason for the maintenance of the names as the committee report would indicate, because, as has already been mentioned, those powers from whence the universities derive their protection are enumerated in the Faxon amendment. It's simply a question of nostaliga. Our committee is rather nostalgic, as opposed to some other committees, and perhaps this was their predisposition.

It reminds me of the comment that I made during the debate on this matter, in which I said: "if you had 2 statements: (1) President Nisbet, Ted Brown and other delegates will receive a paycheck on the thirtieth of this month; and (2) President Nisbet and other delegates will receive a paycheck on the thirtieth of this month; and you asked me which statement I preferred, I would naturally say I preferred the first one. I think the matter is just about that simple.

CHAIRMAN POWELL: The Chair is wondering if we have exhausted the argument. Are we ready to vote on this? The question is on the Faxon amendment. You are all clear on the content of it. As many as are in favor of it signify by saying aye. Opposed, say no.

The amendment is not adopted.

MR. HODGES: Division.

CHAIRMAN POWELL: There is a request for a division. Is the demand for a division supported? It is. Those in favor of the Faxon amendment vote aye. Those opposed, vote no. Has everyone now voted that desires to vote? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the adoption of the amendment offered by Mr. Faxon, the yeas are 24, and the nays are 68.

CHAIRMAN POWELL: The amendment is not adopted.

In harmony with our action taken earlier in the afternoon, the Chair is going to call on Delegate John Hannah for any remarks that he might have relative to this or other proposals.

The Chair will recognize Chairman Bentley.

MR. BENTLEY: Mr. Chairman, I was going to suggest — and this is entirely at the discretion of Dr. Hannah, of course — that I think it would be more appropriate if he should speak after we have read section b of the proposal, which specifically refers to the institution which he so ably heads.

CHAIRMAN POWELL: Is that agreeable, Dr. Hannah?

Then if there are no further amendments, this section will pass.

Section a is passed. The secretary will proceed with the reading of section b.

SECRETARY CHASE: Section b.

[Section b was read by the secretary. For text, see above, page 1135.]

CHAIRMAN POWELL: Chairman Bentley.

MR. BENTLEY: Mr. Chairman, in section b, in which we have combined the existing sections of the present constitution into one section relating specifically to those institutions sometimes known as the "big 3," the University of Michigan, Michigan State University and Wayne State University, we have only made 2 noteworthy changes from the present constitutional language. We have enlarged the governing boards of Michigan State University and Wayne State University from 6 to 8 members, and given them 8 year terms, to correspond with the number of the regents of the University of Michigan. We have secondly provided that any vacancies in those governing boards shall be filled by law, instead of, as now, by gubernatorial appointment.

At this time, Mr. Chairman, I would like to yield to the delegate from Ann Arbor, Mr. Bonisteel, who has 3 minor amendments to offer to this particular section. I would ask that they be read and considered en bloc, and then I think it would be appropriate at this time, as I said earlier, to hear from the delegate from East Lansing, Dr. Hannah.

CHAIRMAN POWELL: The Chair recognizes Delegate Bonisteel.

MR. BONISTEEL: Mr. Chairman, if you will note, on page 1, line 20, after the words "Michigan State University," striking out the words "of Agriculture and Applied Science." That's on page 1, line 20. On page 2, line 1, after the words "Michigan State University," by striking out the words "of Agriculture and Applied Science." Then, on page 2, line 9, through some mistake, after the word "principal," the word "executive" was left out, and the word "executive" should be in. In other words, the committee is suggesting that section b be amended as stated.

SECRETARY CHASE: Mr. Bonisteel offers the following amendment:

1. Amend page 1, line 20, after "University" by striking out "of Agriculture and Applied Science"; and page 2, line 1, by striking out "of Agriculture and Applied Science"; and in line 9, after "principal" by inserting "executive".

CHAIRMAN POWELL: The question is on the amendment. Dr. Hannah has been recognized.

MR. J. A. HANNAH: Mr. Chairman and gentlemen, I appreciate the great courtesy of the committee, and I'm afraid that you have been misled, because I have no speech to make at this time. I would like to speak in favor of this section, and then take the opportunity to speak very briefly on the state board of education that you are going to have before you on Monday when you consider Committee Proposal 47.

Now, the proposal that is now before you, this section b, with the exceptions that have already been noted, is essentially what you have in the present constitution. The board of trustees of Michigan State is increased from 6 to 8, and the board of governors of Wayne State University is increased from 6 to 8. There was no division in the committee. There isn't any question but there is gain if the boards in control of these institutions have considerable stability. And it was in an effort to bring together the 3 institutions so they could be treated equally that we moved in the direction of putting them all at 8. The board of regents of the University of Michigan now has 8 members for 8 year terms, and the other 2 have 6 members for 6 year terms.

Now, I know there have been some questions raised in the minds of some delegates with reference to this matter of elect-

ing these boards for the 3 big universities and the appointment of those for the other 7 institutions. The question has been raised as to whether or not it's desirable to have this difference. I should only like to comment, with all of the conviction possible, that I think it's of the greatest importance that you maintain the election of the boards of control of the 3 large universities. It gives the boards an independence that they would not have were they appointed by the governor, and this at times could be important.

Now, some questions were raised by Miss Donnelly, and the point was made that the institutions were poor or good not dependent upon their names, but because of deserved reputation. Well, I'm sure that that's true, but there is no gainsaying the fact that the University of Michigan and Michigan State — and now, only in recent years, Wayne — but the 2 institutions that have had this status for a long period have had a degree of independence unsurpassed anywhere and equaled in only a few states: the University of Minnesota, and in a very few other places. And certainly I hope that no delegate is giving serious consideration to changing this one.

Now, the point I would like to make is the one that has to do with coordination. When you come to study Committee Proposal 47, if you haven't already studied it, you will find that there is a recommendation before this group from the committee on education that there be an elected state board of education of 8 members and the governor: a total of 9 — 8 elected members, plus the governor — serving 8 year terms, nominated by the party conventions, and elected by the people. And this state board is given the responsibility for appointing the state superintendent; but this isn't the item I want to speak to. The item I want to speak to is the authority that that board is given to coordinate all of the publicly supported education from the preschool kindergarten clear through the high schools, the colleges and the universities.

There has been a good deal of discussion in the press to the effect that this state sorely needs some sort of enforced coordination of our institutions of higher education. We now have a council of state college presidents, and the boards in control of the 10 institutions have set up a new coordinating council, and it is hoped that it is going to succeed. But there is always the possibility that it may not. And if you approve the recommendation in Committee Proposal 47, the state board of education has the opportunity to coordinate, to give direction, to advise the legislature and the people of this state on the needs for education at all levels, including the most advanced levels, and — the key words — to advise with reference to the financial needs.

Which means, of course, that this state board of education, if it wants to, will be able to take over a very important role not only from the standpoint of coordinating programs and passing judgment on where new institutions should be created, whether 2 year junior colleges might appropriately become 4 year colleges, whether programs on existing institutions might be instigated that are not there now; but they can go beyond that, of course, and determine what the relative financial needs are of these various institutions.

Now, I take it, Mr. Chairman, you're getting ready to adjourn pretty soon. That was the point I would like to make, and I regret I'll not be here Monday, Tuesday and Wednesday; and I certainly hope that the committee will go along with the education committee's recommendations with reference to the state board of education. And of course I sincerely hope that you're going to go along with this section b.

CHAIRMAN POWELL: Delegate Bonisteel.

MR. BONISTEEL: May I ask just a question of Dr. Hannah? I think he has answered the question. But you personally have gone over the provisions that we have submitted here in this report, and you are in entire agreement with the program and plan as outlined? I'm sure you said that, but in order to make no mistake about it —

MR. J. A. HANNAH: I have no reservations at all. I signed the report for you, and I speak for the recommendations as they are, for the committee.

CHAIRMAN POWELL: Delegate Hoxie.

MR. HOXIE: Mr. Chairman, I would like to have one or two matters cleared up in my mind. I'd like to ask Dr. Hannah a couple of questions through the Chair, if I may.

CHAIRMAN POWELL: Yes.

MR. HOXIE: Dr. Hannah, one of the questions I would like to have you clear up, at least for me, remembering back, of course, that your very splendid institution was originally conceived as a land grant college — you can correct me if I'm in error — and there were certain federal funds made available at that time, and I believe through the years and even at the present time the university receives funds of that nature. I may be incorrect, but I think that is the case. The question in my mind is, if you do receive those funds as a land grant college, is there any danger that by adopting the amendment recommended by Mr. Bonisteel, striking the words "of Agriculture and Applied Science," that that would in any way jeopardize any funds that you may be receiving presently from the federal government?

MR. J. A. HANNAH: The answer is no, sir. The Michigan State University is the land grant college for Michigan, and it is too late on a Friday afternoon to go into any extended dissertation. When these land grant colleges were established by act of the congress and then acquiesced in, in the various states, by the legislature, the land grant colleges received first of all 30,000 acres of land for every member of the congress divided among the states on the basis of their representation. The understanding was that the lands were to be sold and the money invested and the interest used for the purpose, and so on.

Now, 24 of the states came up with a single university — an integrated university and land grant college. The University of Illinois, the University of Minnesota, the University of Wisconsin, the University of California, and so on.

Before Alaska and Hawaii became states, there were just exactly 24. The division was just half and half; there were 24 with a single integrated state university, and there were 24 that had separate state universities and land grant colleges. That was true in Michigan, in Indiana, in Iowa, Washington, Oregon, most of the states in the south, and so on.

There is nothing in the name — and of course there is no real change in the name. The point that Mr. Hoxie is referring to is that the institution is known now by statute as the Michigan State University of Agriculture and Applied Science. Of course, in fact, it is known by everyone excepting those that read legal documents as the Michigan State University. And that is the term which we prefer. It is more descriptive.

And I should make the point that there is nothing unusual about the development of the institution in East Lansing. These land grant colleges, which originally were agricultural and mechanical colleges in all of the states where they exist, have become rather complete universities, as you know, Pennsylvania State University, Purdue, Cornell, Iowa State, Washington State, Oregon State, Colorado State, and all of the rest of them.

MR. HOXIE: The other question, Dr. Hannah. I recall, as a member of the legislature — I can't remember how many years ago it was — that the name was changed, and at that particular time I recall that some of our agricultural groups felt very strongly about retaining the words "of Agriculture and Applied Science." I'm wondering, have the feelings of those folks, who at that time felt very strongly, been considered in deleting the words "of Agriculture and Applied Science"?

MR. J. A. HANNAH: Yes, it has been considered. But I don't think I would be honest if I said that 100 per cent of the farm people in the state are enthusiastic about the idea. They have no substantial objection. I think if they had their way, of course, they would probably have preferred the first name.

When the college was created originally in 1855, it was the Agricultural College of Michigan. Then it was the Michigan Agricultural College. Then it was the Michiagn State College of Agriculture and Applied Science. And then it was the Michigan State University of Agriculture and Applied Science. And from this time forward we hope it will be known as the Michigan State University.

It has been discussed with them. They have not raised substantial objection, but they are not enthusiastic about it.

MR. HOXIE: Thank you. I raised the question for the benefit of our chairman.

CHAIRMAN POWELL: The Chair has 3 delegates on the waiting list: our vice president, Tom Downs; Mrs. Cushman; and Miss Ann Donnelly. So unless any one of them expects to ask a question about the pending matter, the Chair will call on them in that sequence. The gentleman from Detroit, Delegate Downs.

MR. DOWNS: Mr. Chairman, I wish to express my wholehearted agreement with the concept of the constitutional status of our great universities, and particularly electing the boards of the 3 universities. I believe that Michigan's tradition in education is one that is a proud one, a history that is fine, and I hope that this will continue that independence and growth of our educational system.

There is one question I would like to ask perhaps the chairman of the committee, Mr. Bentley, if he is willing to go into it a little more in detail. Mr. Bentley, you did mention that one of the changes — and it's the last sentence of section b — was that in case of a vacancy, the appointment would be filled, I believe, as provided by law. The present constitution, as I understand, particularly on the University of Michigan and Wayne, provides that if there is a vacancy in the governing board, the governor shall make an appointment to fill that until the next election. I wondered, Mr. Bentley, if you would go into detail on the reasons for that change, and if you think it would be well to go back to the language in the present constitution.

MR. BENTLEY: Mr. Chairman, if the gentleman will yield for the reply — it is rather curious that the constitution makes no provision insofar as I can see for filling the vacancies on the board of trustees at Michigan State, but as the gentleman has stated, does provide for gubernatorial appointment to fill the vacancies on the board of regents at the University of Michigan and the board of governors at Wayne State.

In specific reply to your question, Mr. Downs, the committee felt that it would be better to leave up to the legislature the matter of filling these particular vacancies; whether by appointment, perhaps, by the other members of the boards, whether by continuing appointment by the governor, or whatever other manner the legislature in its wisdom and discretion would see fit to provide, rather than to tie down as the existing constitution does the question of appointment.

Therefore, we felt that since we desired to continue these boards on an elective basis — which you have so thoroughly supported, and rightfully so — I believe that we should allow the legislature the discretion to determine the manner in which any vacancies, if they should occur, be filled.

MR. DOWNS: Mr. Chairman, I didn't want to ask this afternoon, because it's too late, if this is the afternoon that we trust or don't trust the legislature, (laughter) but I did feel that there had been a historical certainty in the governor making the appointment. I wondered if the committee felt that there had been anything that hadn't worked out soundly in having the governor make the appointment?

MR. BENTLEY: Well, I certainly don't think that the committee ever intended to cast any reflection on the method presently in the constitution for filling vacancies, but did prefer the discretion of the legislature. In this particular case may I say that the committee did place confidence in the legislature to do the right thing.

MR. DOWNS: My conservatism suggests that we continue with the appointment by the governor, inasmuch as that has proved satisfactory. I have no specific amendment. I just wanted to hear from the chairman on this, and appreciate his answer.

CHAIRMAN POWELL: The Chair will recognize the lady from Dearborn, Delegate Cushman.

MRS. CUSHMAN: Thank you. I have a question of the chairman of the committee. I note that you have increased the size of 2 of the university boards from 6 to 8. Having in mind the fact that we already elect perhaps as many or more education officials than other states, I wonder whether this isn't going to pose an important burden on the voters of the state? I don't think there is any particular value in having uniformity for the sake of uniformity. Michigan State and Wayne have been getting along with 6 on their board. I just wondered why they wanted to increase it.

CHAIRMAN POWELL: Would some member of the education committee care to answer that? Mr. Bentley.

MR. BENTLEY: I take it, Mr. Chairman, that the lady is questioning the fact that we are increasing the present number of elected officials?

MRS. CUSHMAN: That's correct.

MR. BENTLEY: We are also, I might remind the lady, increasing their terms, so we still will provide for only 2 every 2 years, as is presently the case.

MRS. CUSHMAN: What is the purpose of the change?

MR. BENTLEY: The change in the number, or the change in the terms?

MRS. CUSHMAN: The change in the number.

MR. BENTLEY: To put the governing boards at Michigan State and Wayne State on an equal footing with the board of regents of the University of Michigan, as Dr. Hannah so eloquently explained earlier.

MRS. CUSHMAN: As I said, to me, uniformity for the sake of uniformity is of no particular value.

CHAIRMAN POWELL: Dr. Hannah.

MR. J. A. HANNAH: Mr. Chairman and members of the committee, the reason is a simple one. There is gain, first of all, in having the longer term. The average person coming to a board of trustees knows very little about it. It takes him at least 2 years to learn what it's all about. You understand, this is a nonpaid position; it takes a good deal of time. They meet at least once a month, and sometimes several times a month. They get 10 cents a mile to and from Lansing, and their dinner if it happens to take a dinner hour, and no compensation whatever. There is gain from the point of view of the longer term that gives more experienced service the latter years of the term.

A more important point, however, is that with winter vacations being what they are, it is often difficult on a 6 member board to find the time when there aren't at least 3 of them out of the state. It's easier to get 5 of 8 than it is to get 4 of 6.

CHAIRMAN POWELL: Mr. Bonisteel, do you wish to add anything?

MR. BONISTEEL: No, Mr. Chairman. I think that Dr. Hannah's remarks will suffice. There is another reason for the 8, but I don't think it is necesary to go into that at this time.

CHAIRMAN POWELL: The lady from Highland Park, Miss Ann Donnelly.

MISS DONNELLY: I just wish to correct an impression that I apparently gave to the president of one of the great universities and the former regent of another by speaking as I did on the first paragraph. My comment meant that I didn't think that listing them by name created their powers or helped them. I do think the rest of this is very vital for their continued strength and freedom, and I very thoroughly and wholeheartedly support it. I just wish to correct this erroneous impression which was apparently created in their minds.

CHAIRMAN POWELL: The delegate from Detroit, Mr. Barthwell.

MR. BARTHWELL: Dr. Hannah made my point.

CHAIRMAN POWELL: Delegate Knirk.

MR. KNIRK: Chairman Powell, I would just like to say a word to what Mr. Hoxie had to say. Being a graduate of Michigan State University, I would like to say, first of all, that I definitely recommend the change in the wording and the approval of the proposal as presented by the committee. I think that we in agriculture are very, very proud and justly so of our Michigan State University's position within this nation, and I think that definitely just the name of Michigan State University is becoming to our university, and therefore, as one person in agriculture and a graduate from there, I certainly hope that you folks will favor this proposal.

CHAIRMAN POWELL: The delegate from Detroit, Mr. Norris.

MR. NORRIS: Mr. Chairman, I rise to support the committee proposal. In so doing, I would like to make a few observations from experience. I concur in the idea that an enlarged board and an increased number of years would serve a very useful purpose. My experience with boards of education — and this is no reflection upon any of the extant boards — is that many of them become a rubber stamp for the presiding officer. And unless they have the kind of time necessary to fully familiarize themselves with the tasks — and many of them are complicated — you do have a situation where the staff begins to run the policy makers, and I think that does not serve the best interests of the state.

The big problem, it seems to me, is to get those who are constitutionally elected to actually perform their job of formulating policy. And if this kind of formulation is an assist to the attainment of that objective, I think it ought to be supported. I don't know whether there ought to be additional language to reinforce that objective, but I certainly would concur in the idea that you do need more time and you do need more people; and I'm sorry to note that there is the difficulty on the basis of pragmatic experience of getting the number of people necessary to formulate that policy.

But we ought to recognize that there has been some delinquency on the part of some of the boards in not being fully up to their job. By "up" to it, I mean that there is a kind of skill, experience and technique that is necessary that hasn't been true in many respects in the state.

I would like to concur in the majority report.

CHAIRMAN POWELL: The question is on the Bonisteel amendment. The secretary will read the amendment.

SECRETARY CHASE: Mr. Bonisteel has offered the following amendment:

[The amendment was again read by the secretary. For text, see above, page 1142.]

CHAIRMAN POWELL: The question is on the amendment as just read by the secretary. All in favor signify by saying aye. Opposed, no.

The amendment is adopted. Mr. Bentley.

MR. BENTLEY: I understand there is another amendment to this section at the desk, which may be a little more controversial. In view of the hour, the weather reports and other factors, I move the committee do now rise.

CHAIRMAN POWELL: The question is on the motion of Delegate Bentley that the committee do now rise. All in favor signify by saying aye. Opposed, no.

The motion prevails.

[Whereupon, the committee of the whole having risen, Vice President Hutchinson resumed the Chair.]

VICE PRESIDENT HUTCHINSON: The convention will be in order. The Chair recognizes the delegate from Ionia, Mr. Powell.

MR. POWELL: Mr. President, the committee of the whole has had under consideration a proposal, on which the secretary will make a detailed report.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 98,** A proposal pertaining to the educational institutions of the state; has adopted an amendment thereto, and has come to no final resolution thereon. This completes the report of the committee of the whole, Mr. President.

VICE PRESIDENT HUTCHINSON: Without objection, the convention will return to the order of **motions and resolutions** in order to introduce a resolution for reference to the committee.

SECRETARY CHASE: Messrs. Wanger, Baginski, Prettie, Mrs. Koeze and Mr. Powell offer

Resolution 74, A resolution to respectfully request the Michigan legislature to take such action as may be necessary to provide that the constitutional amendment proposed in enrolled house joint resolution "G" of 1961 will not be submitted to the people at the same time as the work of the constitutional convention.

Following is Resolution 74 as offered:

Whereas, It is probable that the work of the convention will be submitted to the people for adoption or rejection at the November, 1962, general election; and

Whereas, The legislature in 1961 adopted house joint resolution "G" proposing an amendment to section 40 of article V of the state constitution to authorize the legislature to provide for the general revision of the statutes; and

Whereas, Said house joint resolution "G" further provides that said amendment shall be submitted to the people at said election; and

Whereas, The submission of the work of the convention and said proposed amendment at the same election would create confusion and uncertainty which would result in a less effective expression of the will of the people upon the work of the convention; now therefore be it

Resolved, That the Michigan legislature is respectfully requested to take such action as may be necessary to provide that the constitutional amendment proposed in enrolled house joint resolution "G" of 1961 will not be submitted to the people at the same time as the work of the constitutional convention; and be it further

Resolved, That the secretary transmit a copy of this resolution to the president of the senate and the speaker of the house of representatives of the Michigan legislature.

VICE PRESIDENT HUTCHINSON: The resolution is referred to the committee on rules and resolutions.

Announcements.

SECRETARY CHASE: The following announcement, Mr. President: a meeting of the committee on style and drafting will be held Monday, at 2:00 o'clock p.m.

We have the following requests: Mr. Woolfenden asks to be excused from the sessions of Monday and Tuesday to attend a meeting of the house of delegates of the American bar association in Chicago; Mr. Stafseth requests excuse from Monday's session due to a commitment made previous to this convention; Dr. Hannah asks leave from the sessions of Monday, Tuesday and Wednesday of next week; and Mr. Suzore requests to be excused from Monday's session.

VICE PRESIDENT HUTCHINSON: Without objection, the several requests will be granted. The Chair hears no objection, and they are granted. The delegate from the eighteenth district, Mr. Yeager.

MR. YEAGER: Mr. President, for whatever it is worth, I understand from the latest weather report that the roads in southern Michigan are very hazardous. I thought perhaps some of the delegates might be interested in that.

VICE PRESIDENT HUTCHINSON: The delegate from the fifth district, Mr. Faxon.

MR. FAXON: Mr. President, I wonder if I could have something straightened out with regard to next week. Is it the intention of the convention that on Monday we will go to second reading, or will this be passed until we have completed the proceedings of the committee of the whole on first reading?

VICE PRESIDENT HUTCHINSON: That, of course, is up to the convention; and as of the present time the order of second reading has been passed only for this week. So that unless further decisions are made, the order of second reading would be in order on Monday.

MR. FAXON: Is Mr. Van Dusen here to comment? I would like to ask Mr. Van Dusen through the Chair what the plans are.

VICE PRESIDENT HUTCHINSON: The delegate requests of the chairman of the committee on rules to inform him as to the intention next week on the order of second reading. Do you intend to go on to the order of second reading next week?

MR. VAN DUSEN: Mr. President, I certainly think that

until the report of the committee on education has been completed, it would be in order to pass the order of second reading; and at this time I will move that the order of second reading be passed for Monday.

VICE PRESIDENT HUTCHINSON: The motion is to pass for Monday next the order of second reading. All those in favor will say aye. Those opposed?

The motion prevails.

Are there any further announcements? If not, the Chair recognizes the delegate from Genesee, Mr. Millard.

MR. MILLARD: Mr. President, after a hard day I think I have a very popular motion. I move we adjourn.

VICE PRESIDENT HUTCHINSON: The question is upon the motion to adjourn. All those in favor will say aye. Those opposed will say no.

The motion prevails. The convention stands adjourned until next Monday at 4:00 o'clock p.m.

[Whereupon, at 4:15 o'clock p.m., the convention adjourned until 4:00 o'clock p.m., Monday, February 19, 1962.]

EIGHTY-SECOND DAY

Monday, February 19, 1962, 4:00 o'clock p.m.

PROCEEDINGS

VICE PRESIDENT HUTCHINSON: The convention will come to order.

The invocation today will be delivered by Father Thomas McCarthy of St. Dominic's Church of Detroit.

FATHER McCARTHY: O ineffable Creator, who in the greatness of Thy wisdom hast perfectly fashioned and ordered all the parts of our universe, graciously assist these assembled delegates to fashion and order the laws of the state of Michigan.

Realizing our own inabilities, we have, nevertheless, set upon the task of revising the laws of our state. Enable us, we beseech Thee, to perform this task with patience and wisdom and courage. Let the light of Thy divine wisdom cast upon our minds a ray of Thy splendor, so that we may dispel the twofold darkness in which all men are born: that, namely, of sin and ignorance. Let us neither seek to please nor fear to displease but Thee alone.

May all the delegates discharge the duties of their respective stations with honesty and ability. Encourage them always to have due respect for virtue and religion; grant that they may form all laws in justice and mercy and, by so doing, will restrain vice and immorality.

Grant that these laws may preserve the peace, promote happiness, increase industry and useful knowledge, and perpetuate to all the blessings of equal liberty. We pray that the laws framed at this constitutional convention will lead all men to Thee, the true goal of our life here on earth. We earnestly seek these blessings in the name of the triune God: the Father, Son and Holy Ghost. Amen.

VICE PRESIDENT HUTCHINSON: The secretary will take the roll. All those present will vote aye. Have you all voted? If so, the secretary will lock the machine and take the roll call.

SECRETARY CHASE: Mr. President, a quorum of the convention is present.

Prior to today's session, the secretary received the following requests for leave:

Messrs. Baginski, Beaman, T. S. Brown, Dean Doty, Habermehl, Mrs. Koeze, Messrs. McAllister, J. B. Richards, Stopczynski and Wilkowski, from today's session; Mrs. Butler, Miss Donnelly and Messrs. Karn and Page, indefinitely, due to illness; Mr. Suzore, from tomorrow's session; and Mr. Pellow, from today's session and from the balance of this week.

VICE PRESIDENT HUTCHINSON: Without objection, the requests are granted.

SECRETARY CHASE: Absent with leave: Messrs. Baginski, Beaman, T. S. Brown, Mrs. Butler, Mr. Dade, Miss Donnelly, Messrs. Dean Doty, Habermehl, J. A. Hannah, Karn, Mrs. Koeze, Messrs. McAllister, Nisbet, Page, Pellow, J. B. Richards, Stopczynski, Suzore, Wilkowski and Woolfenden.

Absent without leave: Messrs. Batchelor, Bledsoe, Krolikowski, Leibrand and Youngblood.

VICE PRESIDENT HUTCHINSON: Without objection, those absent without leave will be excused from the session. The Chair hears no objection and they are so excused.

[During the proceedings, the following delegates entered the chamber and took their seats: Messrs. Batchelor, Bledsoe, Dade, Dean Doty, Habermehl, Krolikowski, Leibrand, Stopczynski, Youngblood and Mrs. Koeze.]

Reports of standing committees.

SECRETARY CHASE: None.

VICE PRESIDENT HUTCHINSON: Reports from select committees.

SECRETARY CHASE: None.

VICE PRESIDENT HUTCHINSON: Communications from state officers.

SECRETARY CHASE: None.

VICE PRESIDENT HUTCHINSON: Second reading of proposals.

SECRETARY CHASE: Nothing on that calendar for today.

VICE PRESIDENT HUTCHINSON: Third reading of proposals.

SECRETARY CHASE: Nothing on that calendar.

VICE PRESIDENT HUTCHINSON: Motions and resolutions.

SECRETARY CHASE: Mr. Van Dusen offers Resolution 75, A resolution to amend Resolution 45.

Following is Resolution 75 as offered:

Resolved, That Resolution 45 be amended as follows:

(1) Amend section 4 by striking out "February 21" and inserting "March 7".

(2) Amend section 6 by striking out "March 9" and inserting "March 16".

VICE PRESIDENT HUTCHINSON: The resolution is referred to the committee on rules and resolutions.

Unfinished business.

SECRETARY CHASE: Nothing on that calendar today.

VICE PRESIDENT HUTCHINSON: Special orders of the day.

SECRETARY CHASE: None.

VICE PRESIDENT HUTCHINSON: General orders of the day. The gentleman from Ionia, Mr. Powell.

MR. POWELL: Mr. President, I move the convention resolve itself into committee of the whole for consideration of the proposals on general orders.

VICE PRESIDENT HUTCHINSON: The question is upon the motion made by the gentleman from Ionia, Mr. Powell. All those in favor will say aye. Those opposed will say no.

The motion prevails and the gentleman from Ionia will preside.

[Whereupon, Mr. Powell assumed the Chair to preside as chairman of the committee of the whole.]

CHAIRMAN POWELL: The committee will be in order, and the secretary will refresh our memory as to just where we were at the time when we arose on Friday afternoon.

SECRETARY CHASE: Page 2 of your calendar, item 1, from the committee on education, by Mr. Bentley, chairman, **Committee Proposal 98,** A proposal pertaining to the educational institutions of the state. Section a had been considered and passed. Section b had been read and an amendment offered by Mr. Bonisteel had been adopted.

For last previous action by the committee of the whole on Committee Proposal 98, see above, page 1135.

Mr. Downs now offers the following amendment to section b:

1. Amend page 2, line 13, by striking out "Vacancies shall be filled according to law.", and inserting "The governor shall fill board vacancies by appointment. Any such appointee shall hold office until a successor has been nominated and elected as prescribed by law.".

CHAIRMAN POWELL: Mr. Downs.

MR. DOWNS: Mr. Chairman, after the session Friday, I had the opportunity to confer briefly with the chairman of the education committee. The intent of this is to provide that if there is a vacancy, the governor can fill it, but presumably the vacancy would run along until the next election. You get into a technical question how to best define that and the research department came up with this language.

I would be glad to yield to the chairman of the committee, who kindly laid this over until today by his agreement, and I believe this does carry out the intent that we discussed Friday afternoon prior to adjournment.

CHAIRMAN POWELL: Chairman Bentley.

MR. BENTLEY: Mr. Chairman, the gentleman from Detroit was kind enough to discuss briefly with me this amendment following the session of last Friday and, while obviously I have been unable to contact all members of the committee on education, those members whom I have contacted could see no objection in the gentleman's amendment and, speaking for myself and those members whom I was able to approach, we are willing to accept the amendment; although, as I say, I cannot speak for the entire membership of the committee, not having been able to contact them after it was drafted.

MR. DOWNS: Thank you, Mr. Bentley.

CHAIRMAN POWELL: The question is on the Downs amendment. Are you ready to vote? If so, all in favor signify by saying aye. Opposed, no.

The ayes have it and the amendment is adopted. Are there further amendments to section b?

MR. DOWNS: Thank you, Mr. Bentley.

CHAIRMAN POWELL: If there are no further amendments to the section, it will pass.

Section b, as amended, is passed. The secretary will read section c.

SECRETARY CHASE: Section c:

[Section c was read by the secretary. For text, see above, page 1135.]

CHAIRMAN POWELL: Chairman Bentley.

MR. BENTLEY: Mr. Chairman, the section the secretary has just read is that section which confers constitutional status upon the other 7 state supported institutions of higher education which have been named in section a.

I think it would be appropriate at this time, Mr. Chairman, for me to yield to the gentleman from Mt. Pleasant, a former president of one of these institutions, for whatever remarks he may care to make and for him to answer any questions thereupon; so I yield to Dr. Anspach.

CHAIRMAN POWELL: The Chair will recognize Delegate Anspach.

MR. ANSPACH: Mr. Chairman and members of the committee, as pointed out by Chairman Bentley, this section confers upon or grants the other 7 state institutions constitutional status. For a period of years these institutions have been operating with various types of boards — it, also, of course, creates boards for these various institutions — the 4 former state teacher colleges then became state colleges of education; now 3 of them universities, limited universities, and one a state college — and operated under the state board of education. They would now operate, if this is passed, under independent boards consisting of 8 members to be appointed by the governor. Staggered terms, of course, are set by whatever time that he sets, the reason for this being the fact that all of the colleges and universities have grown extensively to be rather large. There are now about 25,000 students in these 4 state universities and colleges involving many millions of dollars in annual appropriations and millions of dollars in capital outlay.

The state board of education, because of all its other duties and responsibilities, has not had the proper amount of time that should be given to this sort of management and control; so, therefore, the time is here when these 4 schools formerly under the state board of education should have their own boards and be governed and controlled by those boards so that proper planning and control might be given to each one of the institutions.

Now the other institutions, Ferris Institute, Michigan College of Mining and Technology and Grand Valley College, which has been created, all have independent boards now appointed by the governor. Therefore, they will all have uniformity in that all the boards for all the 7 institutions will be appointed by the governor and consist of 8 members to control the entire administration of each one of the schools.

Now, someone may ask why appointment by the governor here, and election in the case of the 3 other major institutions. In the first place, you already have established here the system of appointment in that, as I recall, as I mentioned, Ferris Institute has a board appointed by the governor, Michigan College of Mining and Technology is the same way, and Grand Valley State College has its board appointed by the governor. So, therefore, we join this group in having the boards appointed by the governor, which we think in Michigan is quite satisfactory.

I might also point out here, while I am on the whole matter, that the plan or the idea of granting these various colleges and universities the privilege of having independent boards has the approval of Dr. John Dale Russell; in his report he recommended it. Also, of course, it is cited in Mr. Dunbar's booklet put out by the citizens' advisory committee. It has the approval of the Michigan education association. It has been endorsed by the association of superintendents of the state. It has the endorsement of the council of college and university presidents. It has the endorsement of the private colleges of the state. It also has the approval of the American association of university women, the farm bureau, and others. Therefore, Committee Proposal 98, section c, merely follows the pattern which has been established in the way of rights and privileges and sets up independent boards for the control and direction of these institutions.

I hope that you will pass this section of Committee Proposal 98.

CHAIRMAN POWELL: Are there any amendments to section c? Delegate Norris.

MR. NORRIS: Mr. Chairman, I don't have any amendment but I do have a question, if I may pose it through the Chair, of Dr. Anspach. I note in Committee Proposal 98, on line 11 and again on line 24, that the principal executive officer is given the duty of presiding at meetings of the board, in both cases, and I think that constitutes an addition or a change from the 1908 constitution.

If, indeed, the boards are policymaking authorities and if, indeed, the constitutional power for the formulation of policy on the part of these respective boards is intended, why the power of the appointed officer to act as the presiding officer?

Doesn't that in some way deemphasize the policymaking function of the elected members of the policymaking board — the board of regents or board of governors or whatever they are called?

CHAIRMAN POWELL: Delegate Anspach, do you care to answer?

MR. ANSPACH: Mr. Chairman and Mr. Norris, I can partially answer it in this way: this section follows section b, which is the procedure in connection with the University of Michigan and the other 2 major universities. At the present time the president presides without vote. This was put in for purposes of uniformity.

The statement which you have just made was also made by Dr. Russell in the Russell report. I think he makes a statement similar to yours. As far as this section is concerned, it merely follows — and that is the only reason that I can see — it merely follows what has already been in practice at the University of Michigan and at the other 2 schools.

I would yield to Mr. Bonisteel, who has been a regent at the — a member of the board of regents at the University of Michigan for some 18 years. He has seen it in practice. He perhaps can answer your question better than I can, sir.

CHAIRMAN POWELL: Delegate Bonisteel.

MR. BONISTEEL: Mr. Chairman, Mr. Norris, I think probably the answer to your question is this: constitutionally, this has been the law from 1908. There is a good reason why the president of the University of Michigan or of Michigan State or of Wayne State University should be the presiding officer and ex officio a member of the board without vote. In the first place, he is the chief administrative officer. He is the one who has under his jurisdiction and control all matters which are brought before these boards for consideration.

Then I think there is another reason which experience will prove and dictate and that is that having it the chief executive officer of an educational institution such as we are discussing here is to the advantage of the institution itself; because, if a board elects its own member, then we would have a 7 man board presided over by the eighth man with the power to vote; and, this way, it seems to me that it keeps from the elected members of the board any feeling they might possibly have as to who of the 8 members should feel that he would be entitled to preside over the board; and I think in the executive sessions this is very desirable.

Now, they do have a system which I think is also very valuable and that is the system whereby the board itself elects one of its own members as chairman of the committee of the whole and when the board goes into session as a committee of the whole, it usually goes into session as committee of the whole solely with the members of the board who are elected; and the chairman elected to preside over the committee of the whole is from among their own members, who, at that time, may discuss matters of policy separate and distinct and apart from administration; and we have found that this dual system has worked very, very well indeed, and I would highly recommend that we continue to carry on in this manner because I believe that there are other ways that could be discussed, but I believe that what I have said to you here points out something which you wouldn't experience unless you had gone through it yourself.

CHAIRMAN POWELL: The gentleman from Taylor, Delegate Ford.

MR. FORD: I would like to ask a question. Beginning on line 24 is the sentence that reads, "Each board of control shall consist of 8 members who shall hold office for 8 years and who shall be appointed by the governor — " and this is the language which the question relates to, "—in a manner similar to other executive appointments as provided in this constitution." As a lawyer, I have real, serious doubts as to what this means; perhaps you could tell us.

CHAIRMAN POWELL: Chairman Bentley.

MR. BENTLEY: Mr. Chairman, in reply to the question of the gentleman from Taylor, if he will yield to me for that purpose, we did not feel that we were in a position, Mr. Ford, to specify exactly how these appointments should be made in view of the fact that in the executive article, and possibly in other articles of the proposed constitution, this question will be recurring. Therefore, we included this language merely to indicate our own conformity to whatever other methods of appointment and confirmation might be established by these other committees and approved by the convention in its wisdom.

I would assume that when the entire subject of executive appointments and approval — legislative, senatorial, what you will — has been decided upon by the convention that the committee on style and drafting will thereby act to make them uniform throughout the document, but we did not feel that we wanted to establish a precedent, since I believe we are the first section coming up dealing with this question of executive appointments, and, therefore, we tried — and I am making no justification for the language insofar as the lawyers are concerned — we tried to indicate that we were ready and satisfied to concur in whatever other form of appointment and confirmation might be decided upon by the convention with respect to related proposals.

MR. FORD: If I might continue with the question — the second question is: assuming for the moment the possibility of provisions similar to the 1908 constitution or the retention of the provisions where in some instances we have the executive appointments under circumstances where, by legislation, advice and consent has been imposed as a condition, as opposed to the governor's power to fill vacancies without advice and consent; assuming that we had 2 types emerge, which would you say would be similar to the manner otherwise provided in the constitution — with or without advice and consent?

MR. BENTLEY: Mr. Chairman, the gentleman is not going to get me to commit myself on that because, as I repeat again for the gentleman's information, as far as the committee on education is concerned, we felt that whatever other manner of appointment and confirmation might be decided upon by the convention, we were perfectly willing to have it apply with respect to the appointments to the governing boards of these 7 institutions. If the gentleman will excuse me, I do not think that the committee took a position in this matter and, therefore, I do not feel that I could speak for the committee. We are willing to have whatever other procedure is worked out, whether in the executive article or any other article; we are perfectly willing to have our section so redrafted as to conform to them.

MR. FORD: I don't want to seem too tenacious on this, but is it a fair assumption that your committee is willing to let some other committee recommend the manner of appointment as to these 4 boards?

MR. BENTLEY: There are 7 boards, Mr. Ford. In reply to your question, I would say that consistency, I believe, is the jewel — which I hope that we will practice in this convention — I hope that it will be the principal jewel in the crown of the committee on style and drafting — and we are willing, to answer you specifically, to let some other committee and, of course, in the final analysis, the convention itself determine what form for appointments and/or confirmations as the entire group may decide on. We are willing to concur in that.

MR. FORD: Well, one final question. Assuming that there are those of us who would like to have a definite decision as to how this appointment is to be made, how would we know whether we were flying in the face of the feeling of the committee, if you are unwilling — surely, there must have been some discussion. Now, isn't it a fair question to determine whether the sense of your committee feeling is that advice and consent should be present or should not be present? This is really what I am trying to find out; because I think, rather than leaving these things hanging in hope that style and drafting will write the constitution for us, we ought to make a decision now while we have the chance.

I have great faith in your committee, and I assume you must have had a discussion. I would like the benefit of their collective wisdom on just how this appointment should be made.

MR. BENTLEY: Well, Mr. Chairman, in reply to the gentleman's question again, if I may be permitted to make such a reply, we did discuss within the education committee, Mr.

Ford, the current proposal, for example, within the committee on executive branch to the effect that the appointment would require senatorial disapproval, I believe, within 60 days; otherwise it would stand. To the best of my recollection, the committee on education indicated that if the convention decided on that procedure for the appointments under the executive branch proposals, they were willing to accept them. If the convention, for example, should decide to remove all question of approval or disapproval by one or other of the legislative bodies, I think we would be willing to accept that; but we did not feel, very frankly, as I recall the discussion, that we wanted to be the ones to try to establish a precedent in this matter.

Again, respectfully, I would suggest that you accept our language which indicates a willingness to concur in whatever else the convention may do with respect to other proposals, and let us wait for further discussion on this subject until the proposals from the executive branch, at least, come up on this matter.

CHAIRMAN POWELL: Delegates, there are 3 delegates who have sought recognition and, unless their comments bear specifically on the questions raised by Delegate Ford, the Chair will call upon them in the order in which it recognized them, and would call upon the gentleman from Grand Rapids, Delegate Martin —

MR. FORD: Mr. Chairman, before I yield the floor finally, I wonder if I might have the indulgence of the Chair to permit us to write out an amendment here. I trust that if there is no further discussion, we might pass on over this section —

CHAIRMAN POWELL: The Chair assumes you will have time. All these 3 other delegates want to speak. Pardon the Chair for not recognizing you again, but a little while ago you said your final question was thus and so, and so the Chair assumed that that wound up your desire for the floor.

The Chair will recognize the delegate from Grand Rapids, Delegate Martin.

MR. MARTIN: Mr. Chairman, with respect to Mr. Ford's question, the committee on executive branch is recommending that appointments of this nature and others be with the advice and consent of the senate. By advice and consent of the senate, they so define it to mean that this will be that an appointment will be subject to rejection by the senate within 60 legislative days from the date the appointment is made.

This is the recommendation which the committee on executive branch will make. If it is necessary at this time, of course, we would have to propose an amendment along that line, if Mr. Ford is going to propose some amendments along some other line. It seems to me Mr. Bentley's suggestion is a good one: that we go ahead and pass this language which is general at the present time and decide this question when we come to it on the executive branch article.

MR. BENTLEY: Will the gentleman yield, Mr. Chairman?

MR. MARTIN: Certainly.

MR. BENTLEY: Mr. Chairman and fellow delegates, while I certainly am not going to say that Mr. Ford has no right to offer an amendment along the lines which he is discussing — because, obviously, he does — I do think, Mr. Chairman, that since this question will undoubtedly arise at the time the executive branch proposals are considered, whether there is a minority report of which I am one of the signers — there are other minority opinions, I am sure, within the committee and within the committee of the whole, as far as that is concerned, on this particular proposal, which Mr. Martin has outlined, and I wonder, since we do have in this proposal from the committee on education an agreement reflecting the understanding of the committee on education that whatever the final decision of the committee of the whole and the convention is on this particular subject, we are perfectly willing to abide by it, I wonder if Mr. Ford is anxious to participate in a discussion at this present time on a matter which is inevitably bound to arise again. That is my only question.

CHAIRMAN POWELL: Are you yielding the floor, Delegate Martin?

MR. MARTIN: Yes, I have said all I want to say, Mr. Chairman.

CHAIRMAN POWELL: Delegate Ford, do you have something to add?

MR. FORD: Does Mr. Bentley want an answer, or was that a statement rather than a question?

CHAIRMAN POWELL: I took it as a statement, but if you care to answer —

MR. BENTLEY: Mr. Chairman, it was merely an expression of hope, nothing more.

MR. FORD: Well, I will make the expression of hope that I trust Mr. Bentley is jesting when he suggests that it is not in order to precipitate discussion on an item that is going to be as important as this one.

I am somewhat alarmed to see a committee that has been dealing with education and that knows more about the immediate problems of the boards that we are here creating — understanding that we are creating a new constitutional animal — that is unwilling to put itself on the line with the recommendation for one kind of an appointment or another. It makes me just a little bit queasy, as a member of the minority group here, as to what kind of decision is going to be reached and in just what manner when a principal, primarily important committee in this convention is unwilling to take a position; and I say that I look with jaundiced eye upon this approach if this is going to be typical of how we are going to solve the important problems in this convention.

MR. BENTLEY: Mr. Chairman, will the gentleman yield to me?

MR. FORD: Gladly, Mr. Chairman.

MR. BENTLEY: Mr. Chairman, I made it very specific that I did not consider any amendment along Mr. Ford's thinking out of order at this time; I merely expressed the hope that it would not arise to prolong this particular discussion at this particular time.

I might further remind the gentleman that, as I recall, this particular section and the language therein was agreed upon unanimously by all the members of the committee on education, both the so called minority and the so called majority; although I might add that within our committee we have not used those expressions very often, I can assure the gentleman of that; and, although I have no wish to avoid the discussion of this matter, if Mr. Ford feels inclined to insist upon initiating it, I merely hope that we can reserve this particular discussion for a later time in the deliberations of the committee of the whole.

CHAIRMAN POWELL: The Chair recognizes the gentleman from Lansing, Delegate Wanger.

MR. WANGER: Mr. Chairman, I would like to address a question to Mr. Bonisteel.

MISS HART: Is this on the Ford amendment?

CHAIRMAN POWELL: There is no amendment on the floor, Miss Hart.

MISS HART: Is it on the Ford question?

MR. WANGER: If the lady desires to speak on that point, I would be happy to yield to her for that purpose.

CHAIRMAN POWELL: Miss Hart.

MISS HART: Thank you very much. I just wanted to make clear — I know that the chairman of the committee understood this. I think I for one on the committee — I am sure there are others — felt very strongly against the provision for advice and consent on the appointment of board members, so that while we agreed to the wording as it stands now, we did not agree to the principle; and I want to make this very clear: that if it comes out as advice and consent, I for one would object loudly.

MR. BENTLEY: But, Mr. Chairman, the lady will agree, I am sure, that we did indicate by this language that we felt that discussion of this particular issue should arise when our executive committee proposals start to come up rather than at the present time.

MISS HART: I do agree, Mr. Chairman. I just wanted to make myself very clear on this point, because I have made myself clear at every opportunity and I don't want to lose this opportunity to speak, also.

CHAIRMAN POWELL: The Chair recognizes again the delegate from Lansing, Mr. Wanger.

MR. WANGER: This question, Mr. Chairman and Mr. Bonisteel, is on a different subject, and this question applies to section c and I think also equally to section b. It is this: at present the constitutional sections relating to Wayne and Michigan State say that these boards of regents or trustees, in addition to having the supervisory control of their institutions, et cetera, shall also perform such other duties as may be prescribed by law. That is in the present constitution regarding Michigan State and Wayne.

Now, I notice here that nowhere in Committee Proposal 98 is that phrase used; so that while, as far as section c goes, all institutions of higher education created by the legislature and having authority to grant baccalaureate degrees will, of course, have the independence which they deserve, however, they will not be able to exercise any additional powers whatsoever, which the legislature might wish to confer upon them. I would like to ask why.

CHAIRMAN POWELL: Delegate Bonisteel.

MR. BONISTEEL: Mr. Chairman, well, I don't know that I get the import of the question, but if Mr. Wanger will look at the provisions relating to the University of Michigan as to the powers which it has, he will find that the same powers that the University of Michigan has are the same powers that have been given to Wayne State University and to Michigan State. That is why that language is as it is, because we have taken the language which has been proven over the years as being most helpful in the growth of the University of Michigan. It was the unanimous opinion of our committee and all the members of our committee that that language should be the language adopted for the use of those institutions.

MR. WANGER: I can appreciate that the language has probably worked very well for the University of Michigan and, therefore, that there should be probably no objection in applying the same language to the other great universities in our state. However, section c deals with institutions of higher education which are not yet created, the nature of which it might be presumptuous of us to predict at this time. I would wonder, therefore, if it might not be desirable to consider adding to section c the language that the "boards shall perform such other duties as may be prescribed by law" to give sufficient flexibility for educational institutions in the future to develop.

MR. BONISTEEL: Well, I can see no objection to that added section, proposal, or language to section c if Mr. Wanger would like to have it added. I think that they have all the authority and power by virtue of the type and kind of an institution they are at the present time to carry on, but, at the same time I would be willing, as far as I am concerned — I cannot speak for anybody else — but if they want to add "such other duties as shall be prescribed by law," it would be perfectly satisfactory to me.

CHAIRMAN POWELL: There are some other people wishing to speak but, possibly, if you care to speak directly to this question of Mr. Wanger's — Delegate Barthwell, is this the case?

MR. BARTHWELL: Yes.

CHAIRMAN POWELL: You may proceed.

MR. BARTHWELL: I am a member of the education committee, Mr. Chairman, and I am of the opinion that for all institutions of higher learning in this state that we should give them identical constitutional authority, and we think that this is in the best interests of the schools' development. Thank you.

CHAIRMAN POWELL: There are no amendments sent in as far as the Chair is aware. Maybe they are being prepared. The next delegate whom the Chair noticed was the gentleman from Detroit, Delegate Downs.

MR. DOWNS: Mr. Chairman and fellow delegates, I believe here that we are making or tending to make an error of equating a university with a regular branch of the executive arm of government; although I do not now intend to debate the advice and consent concept in the strictly executive branch of government. But I am concerned that, on the one hand, we give these institutions constitutional status — with which I am in wholehearted agreement — and then, on the other hand, we say that their policy making body shall be selected in the same manner as other executive departments.

Now, I am very much for seeing in the regular executive branch of government that the governor has the control and the responsibility; but I feel in the constitutional bodies we should see that they are, so far as feasible, separate from the other branches of government with reasonable controls and regulations such as accounting for financing and gifts, et cetera, which we have clearly added under section a. I just wish to draw the delegates' attention to the fact that I do not believe in either theory or practice we should consider a university or an institution of higher education in the same category as a regular administrative branch of government.

The other question I have — and perhaps the chairman of the committee or some other member could answer it — is whether or not there has, historically, been any problem on confirmation of appointees of existing educational institutions that require confirmation. Perhaps I could phrase the question by asking if the committee inquired into that and if they have received any information or statistics on that subject.

CHAIRMAN POWELL: Chairman Bentley.

MR. BENTLEY: Mr. Chairman, in reply to the gentleman, the committee, to the best of my knowledge, did not inquire into this subject. The committee, again to the best of my knowledge, was not aware of any particular difficulty in this field and I am unable to enlighten the gentleman further, although I would be happy to yield the floor or to allow the gentleman to yield to anyone who might have more detailed information on this subject; but I do not recall, at least in the full committee on education, that that particular subject was up for discussion.

MR. DOWNS: All right. Thank you.

CHAIRMAN POWELL: The Chair recognizes the gentleman from Ypsilanti, Delegate Lawrence.

MR. LAWRENCE: Mr. Chairman and fellow delegates, I have two matters, the first one more or less beside the point. I understood that this convention has more or less gone on record as being against discrimination, but when I arrived today I found certain standards in front of some of the mikes but this one in front of me doesn't have one. (laughter) I will be glad to accept the apologies of the administration committee, or whoever it is, and assume that the matter will be corrected.

Seriously, I would like to speak in support of the committee proposal here and point out a couple of matters that maybe have not been mentioned fully. I assume that every private college in the state: Alma, Albion, Hillsdale, Hope, and so forth, all have their separate administrative boards, boards that are concerned solely with the welfare and well being of those institutions; and of course this proposal of the committee, in giving such boards to the 7 universities and colleges that haven't had them, seems to be a step forward.

Now, as far as Eastern Michigan University is concerned, I discussed this matter of appointment, election of the board, with President Elliott. His attitude is simply this: he feels perfectly confident that the governor will appoint members of the board that would be qualified, who would be — maybe because of their proximity to the school, maybe because of their former relationship — people who would be dedicated to the interests of the institution. As far as election is concerned, that would be perfectly satisfactory, except that the chances are if it were a statewide election that the people would not be as well advised as to the qualifications of the members as the governor would be.

If you will just give us a board down at Eastern, we don't care too much how we get it; so we feel confident that by election, by the governor alone, by the governor with advice and consent, or any other way, it would inure to the benefit of the institution, and that if it is by appointment that the method that will be prescribed will get good, competent people as members of the board.

CHAIRMAN POWELL: The Chair recognizes the gentleman from Hancock, Delegate Heideman.

MR. HEIDEMAN: Just in answer to Delegate Downs' query, there has been question, there has been difficulty with respect to confirmation. I think there is some at the present time in connection with an institution which is in my bailiwick; so

that there is just an answer for the record, as a matter of accuracy: there has been question.

CHAIRMAN POWELL: The Chair recognizes the roving delegate, Delegate Binkowski, who will speak from there. (laughter)

MR. BINKOWSKI: Thank you, Mr. Chairman. I would like to address a question not only to the chairman of the committee but also to all the former state legislators who are present. It seems to me that I have read about this problem from time to time, and I think that this particular problem should be resolved here and now. Perhaps I am not bringing it under the right order, Mr. Bentley, so you will correct me; but in section 16 of our present constitution pertaining to Wayne State University, evidently the legislature thought that it was necessary to add this concluding sentence, "The legislature shall be given an annual detailed accounting of all income from whatever source derived and all expenditures by Wayne State University." So my question for you, Mr. Bentley, as well as those legislators, is: have we resolved this problem satisfactorily?

CHAIRMAN POWELL: Chairman Bentley.

MR. BENTLEY: Mr. Chairman, does the gentleman refer to the last sentence of section a that we have already passed over?

MR. BINKOWSKI: No, Mr. Bentley. I am referring to the last sentence contained in section 16 of article XI in the 1908 constitution, as amended in 1959, as the mandate contained in section 16 to Wayne State University that they shall give "an annual detailed accounting of all income from whatever source derived and all expenditures . . . ."

MR. BENTLEY: Mr. Chairman, in reply to the gentleman from Detroit, if he will yield to me for that purpose, the gentleman will recall that in the last sentence of section a, a sentence which applies to all 10 of these institutions, we stated, "The legislature shall be given an annual accounting of all income and all expenditures by each of these educational institutions."

I can answer the gentleman, Mr. Chairman, however, the fact is that the question of the words, which he may or may not be referring to, "from whatever source derived", was debated in the committee on education and it was felt that, as I recall, we should not try to impose upon these institutions an obligation to necessarily render a report of income derived from sources other than public. Now is that what the gentleman is referring to, specifically?

MR. BINKOWSKI: Yes, Mr. Bentley.

MR. BENTLEY: I think I would yield to the gentleman from Ann Arbor, Mr. Bonisteel, to comment on that question, because he has probably had more experience in the matter of accounting for income from so called private sources than anyone else here. I wonder if the gentleman from Detroit would yield to Mr. Bonisteel to comment on that particular matter?

MR. BINKOWSKI: Yes, by all means.

CHAIRMAN POWELL: Delegate Bonisteel.

MR. BONISTEEL: Mr. Chairman and fellow delegates, in answer to the delegate's inquiry, I might add that here is a typical illustration of the accounting and budgetary information which is furnished to the state legislature and to the committees of the state legislature, including some statistical measurements of instructional activity in the selected schools and colleges: the sizes of classes, the capital outlay budget, agency requests and needs for 5 year periods, University of Michigan financial report of 1961, year ended June 30 — these are all done voluntarily, you understand — this wasn't the provision as related to the University of Michigan — and, in addition to that, they have had all types of information — the budget office, and I have here a technical letter, which is too long to read but which is indicative of the type and kind of thing that you were talking about. Now, if this is a matter which relates to public funds and tax money, a detailed breakdown of that is desirable and I think the present language is sufficient to do it.

For your information, I might add that at all times, each one of the universities — and, I assume, those that are now being created — will submit to and give to the proper authorities of the state legislature and other officers of the state, complete breakdowns of all the income which they receive and all the expenditures of that income. So that I don't think there has been a withholding of any information of any kind whatsoever. On the other hand, to do what you would suggest should be done, namely, that a complete breakdown in certain areas be given, might be to our disadvantage. I think I can illustrate that. Just a minute. Right now these universities are doing a tremendous amount of work for the federal government. At the present time, some top secret work is going on and this money is being turned over to these institutions for research in these areas. As a matter of fact, some of this is so secret that I have been fingerprinted I can't tell you how many times to make sure that I would not divulge any of the things, any of the information which might come to me through my office as a regent at that time; and I might add for the benefit of the delegates here that, had I had all the access to the information which they were talking about, I would not have understood it anyway. (laughter)

But anyway, no matter how you look at it, these funds come into the University of Michigan, and I might say this: that we right now have a $30 million space research program in operation at the University of Michigan. Now, it certainly would not be within, I don't think, the authority of the state to require a detailed breakdown and detailed submission of the information relating to the expenditure of this fund or the areas in which the funds were expended. I would say to you that the income from the grants which might be received from the government — the $30 million — could be, surely; but the expenditures could be classified in certain areas but not detailed.

I think the present system has worked very satisfactorily, and I think that if we attempt to move from that by trying to place some restrictions on this — let me give you another illustration. We have received several million dollars for work in the field of philosophy. A man in Indiana has a foundation and he wants this work to be carried on. He does not necessarily want it to be carried on as a matter of public procedure, but he does want it carried on. He wants a report of the money which was given to the university, and which it does give to the people of the state of Michigan and which is made available to the members of the legislature and other public officials with which the governor is included, as to the way this money is invested. Sometimes these gifts are related to certain areas in which the giver wishes these moneys to be retained in a trust fund, and to go into all those details would seem to me to be a mistake.

There has been no attempt, so far as I know, at any time by any of the institutions to hide the egg, so to speak, but they have been forthright and very frank in their presentations. If you want to, you can look at these books which I held up here a moment ago which will show you all of the things I have been talking about, but not broken down to the nth degree for some of the reasons I have given.

CHAIRMAN POWELL: Are you still wishing to retain the floor, Delegate Binkowski?

MR. BINKOWSKI: Just for a few comments, Mr. Chairman. Mr. Bonisteel, I hope that my question will not be misconstrued; as I attempted to preface the question, these are things which I have just read about. I am not a former legislator and I never worked for these various state universities. I raised the question because it appeared to be a problem in the past. If the former legislators here present are satisfied with this language, if it will help or will once and for all settle the problems, then I certainly will be satisfied.

CHAIRMAN POWELL: Do you wish recognition, Delegate Barthwell?

MR. BARTHWELL: Mr. Chairman, I would just like to say to Delegate Binkowski, again, as a member of the committee, to me "all income" meant all income; we did not say public income or private, we said "all income"; so I think that means all income, Delegate Binkowski.

CHAIRMAN POWELL: The Chair wondered how long Regent Goebel would remain seated. Delegate Goebel.

MR. GOEBEL: Thank you very much, Mr. Chairman. I would like to speak to Mr. Binkowski's question. I have been a regent but a very short time at the University of Michigan, but I did have the pleasure of a week ago accompanying the senate appropriations committee to the university and spent a day with them, came back with them, and inquired of all of them whether or not they had all the information, financial and otherwise, that they wanted, and they all were very ready to say that they had received all of the information that they needed with regard to the university, not only on financial matters but on the other matters that were of concern to them. Thank you very much.

CHAIRMAN POWELL: May we now proceed to the consideration of the pending amendments that have been filed with the secretary?

SECRETARY CHASE: Mr. Wanger offers the following amendment:

1. Amend page 2, line 20, after "funds;", by inserting "shall perform such other duties as may be prescribed by law;".

CHAIRMAN POWELL: Delegate Wanger.

MR. WANGER: No.

CHAIRMAN POWELL: Any comment from a member of the committee or other delegate?

Delegate Heideman.

MR. HEIDEMAN: I would like to respectfully suggest that the language is not necessary in this particular case.

CHAIRMAN POWELL: Chairman Bentley.

MR. BENTLEY: Mr. Chairman, I completely concur in the remarks of the gentleman from Hancock. We felt that this language is completely unnecessary; that, obviously, if the legislature wanted to create by statute new duties for these institutions, they would be empowered to do so. We ask that the amendment be voted down.

CHAIRMAN POWELL: The Chair suggests the secretary read this particular clause, here, as it would be with the Wanger amendment.

SECRETARY CHASE: In section c, the language would then read, beginning on line 15:

> Other institutions of higher education created by the legislature having authority to grant baccalaureate degrees shall each be governed by a board of control which shall be a body corporate; shall have general supervision of the institution and the control and direction of all expenditures from the institution's funds; —

then the insertion of the Wanger amendment:

> — shall perform such other duties as may be prescribed by law; —

then:

> — shall, as often as necessary, elect a president of the institution under its supervision who shall be the principal executive officer of the institution, be an ex officio member —

and so forth.

CHAIRMAN POWELL: Delegate Wanger.

MR. WANGER: I must disagree, respectfully, with Chairman Bentley's interpretation of section c as it stands now, because I believe without the insertion of such a clause as I have proposed and which I understood was agreeable at the time I offered it, that the legislature would under no circumstances be able to prescribe any additional duties whatsoever. As I said previously, I thought it wise that they should have such powers, so that in the future the development of educational institutions would not be impeded.

This section c applies to any educational institution which includes those which might be created in the future. It seems to me it does not behoove us to just limit them completely to a set of powers in the constitution and forbid the legislature to ever increase those.

CHAIRMAN POWELL: Delegate Bentley has retained the floor.

MR. BENTLEY: Just to comment, Mr. Chairman. We have adopted insofar as possible the language of the existing constitution, and I might point out to Mr. Wanger that if his amendment would prevail — which I hope it does not —it would still specifically exempt the University of Michigan, Michigan State University and Wayne State University, because section c does not apply to those 3.

MR. WANGER: Mr. Chairman, it seems to me, to the contrary, that the present constitution with respect to Michigan State and Wayne State University does provide specifically what my amendment would create here. So it seems to me that this is in keeping with what the present constitution has provided for Wayne and for Michigan State. My amendment, of course, does not apply to Wayne and Michigan State, because of their unique circumstances as being our big 3 great universities, historically so; but it seems to me with respect to these others, and particularly those created in the future, that this flexibility is desirable.

CHAIRMAN POWELL: The Chair recognizes the delegate from Detroit, Delegate Ostrow.

MR. OSTROW: I want to take issue with Delegate Bentley as to the effect of this language. I am not taking any position on the language; I just want to straighten him out on the effect of it. Without this language, there is very, very little that the legislature could do about a constitutional body such as you are about to create. There are cases here relating to the University of Michigan, where there was no such language, in which the court said that the legislature — you will find it in the blue book here, on page 431:

> Whether the provision in Laws 1855, page 232, that there should always be at least one professor of homeopathy in the department of medicine of the university was repugnant to Constitution 1850, article XIII, which conferred upon the regents the power of general supervision of the university, query; the court being equally divided . . . under Constitution 1850, . . . the regents had direct and exclusive control of the university; and public acts 1895, 257, attempting to compel the discontinuance of the existing homeopathic medical college at Ann Arbor, and the reestablishment thereof at Detroit, was void.

So without this language the constitution gives each of these universities unlimited power without restriction or without change by the legislature.

As a matter of fact, if it wasn't for the addition of the last line in your section a, the universities would not even be required to account for their funds, because they have exclusive jurisdiction and control of the expenditure of their funds.

CHAIRMAN POWELL: The Chair recognizes the gentleman from Detroit, Delegate Downs.

MR. DOWNS: Mr. Chairman, I wish to rise in opposition to the amendment and support the position taken by Chairman Bentley. I believe that our historical language giving the governing body of the university general supervision has proven to be very well understood and giving them the responsibility. I think at times we forget that Michigan has a tremendous tradition of a great state with dedication to public education both in the high schools as well as in our universities. Part of this has been because people have supported the concept of education and part because our universities have, in the large, had their constitutional independence.

I strongly support section b, which expands that constitutional independence to other institutions of higher education. I believe this is a step forward. I think that these should be kept as a separate entity of government. I am afraid that if we start saying their duties can be added by legislative action, we may have a little act here and a little act there and the first thing we know the tail may be wagging the dog. This system has worked out historically, and I urge our retention of the original language that the chairman has supported.

CHAIRMAN POWELL: If the Chair might digress just for a moment, Delegate Lawrence called attention to certain examples of discrimination around here. Apparently, we have a very clear reflection of the pending amendment on the one wall, but it looks as though that one over there on the other wall is pretty vague. The Chair does not know whether that is true from where you sit or not. Delegate Wanger.

MR. WANGER: I think perhaps, Mr. Chairman, that Mr. Downs misconceives my amendment because, to the contrary of what he has said, my amendment puts back into the con-

stitution what has been there all the time with respect to Wayne and Michigan State. The committee deleted it and it came out of the committee with that deleted. I merely suggest that with respect to the institutions dealt with in section c that we should put back this traditional historical language which no one on this floor has complained has caused the educational institutions involved any difficulty whatsoever and which, again, I say would be wise to retain for flexibility, particularly for institutions which are not even created at this date and which would be involved.

The second point I would like to make, I think, is that if I understood Delegate Ostrow's comments correctly, I do not completely agree with his interpretation. It seems to me that adding this language would in no way allow the legislature to invade the boards' general supervisory authority of the institutions and the control and direction of all expenditures from the institutions' funds. This is the independence and the power which such educational institutions rightfully deserve with respect to their curricula and their other academic activities. My amendment would merely enable them to be endowed with additional duties.

CHAIRMAN POWELL: We have now had considerable discussion of the Wanger amendment. Can we bring ourselves to vote thereon? If there is no further discussion, those favoring the Wanger amendment signify by saying aye. Opposed, no.

Apparently, the noes have it.

DELEGATES: Division.

CHAIRMAN POWELL: Division is requested. Is the demand seconded?

SECRETARY CHASE: Not a sufficient number up.

CHAIRMAN POWELL: Not a sufficient number up. There are further amendments on the secretary's desk; getting deeper all the time. Proceed.

SECRETARY CHASE: Mr. Ford offers the following amendment:

1. Amend page 2, line 26, after "governor" by striking out "in a manner similar to other executive appointments as provided in this constitution"; so that the language will then read: "Each board of control shall consist of 8 members who shall hold office for 8 years and who shall be appointed by the governor. . . ."

CHAIRMAN POWELL: Delegate Ford, do you wish to say anything? This matter has been discussed in various ways earlier in the afternoon. Delegate Ford.

MR. FORD: The only thing I can say in support of the amendment is that this is one of the methods of selecting a board and I, as one delegate, before I vote to create 8 member constitutional bodies throughout the state, would like to know how those bodies are selected, and this is one way of arriving at a decision on just what we are creating here, who is going to pick these people, who is going to be responsible. Are we going to have the responsibility placed in the hands of someone who is elected by all of the people?

CHAIRMAN POWELL: Chairman Bentley.

MR. BENTLEY: Will the gentleman yield for a question as to the extent of his amendment? I would like to ask the gentleman to interpret his amendment for me, thus: if the Ford amendment should prevail, does the gentleman intend then that there will be no legislative action required insofar as the governor's appointment was concerned?

MR. FORD: With respect to these particular people, no.

MR. BENTLEY: Thank you. I oppose the amendment.

CHAIRMAN POWELL: Delegate Martin, did you wish to speak?

MR. MARTIN: Mr. Chairman, since Mr. Ford has offered his amendment, I would rise to oppose the amendment. I have an amendment on the secretary's desk which will provide that such appointments shall be subject to advice and consent of the senate, as is the case with other executive appointments, as proposed in our executive branch article. The amendment would leave the last sentence of the paragraph, which is "Vacancies shall be filled in like manner." I believe his amendment strikes that out, does it not, Mr. Ford?

MR. FORD: No. I think the secretary read it as though it did, but I only strike line 27.

MR. MARTIN: I see. Well, in any event, the simple question here is whether the governor is to make appointments without any legislative consent whatsoever or whether there should be this element of review attached to these appointments as well as to other executive appointments. I feel that no different policy should be followed here than is being proposed with respect to all other executive appointments.

CHAIRMAN POWELL: May we have the last part of section c read, so there is no question before we vote?

SECRETARY CHASE: Mr. Ford's amendment is as follows:

1. Amend page 2, line 26, after "governor" by striking out "in a manner similar to other executive appointments as provided in this constitution"; so the language would then read:

> Each board of control shall consist of 8 members who shall hold office for 8 years and who shall be appointed by the governor. Vacancies shall be filled in like manner.

CHAIRMAN POWELL: The question is on the Ford amendment. All in favor signify by saying aye. Those opposed, no. The Chair declares it lost.

DELEGATES: Division.

CHAIRMAN POWELL: There is request for division. Is the demand seconded?

SECRETARY CHASE: Sufficient number up.

CHAIRMAN POWELL: A sufficient number up. Those in favor of the Ford amendment, signify by voting aye. Opposed, no. Have you all voted? Hurry, hurry, hurry — coming on the run. The secretary will lock the machine and record the vote.

SECRETARY CHASE: On the adoption of the amendment offered by Mr. Ford, the yeas are 32, the nays are 80.

CHAIRMAN POWELL: The amendment is not adopted. The secretary will read the next amendment.

SECRETARY CHASE: Mr. Martin offers the following amendment:

1. Amend page 2, line 26, after "governor" by striking out the balance of line 26 and all of line 27 and inserting "subject to advice and consent of the senate."; so the language will read:

> Each board of control shall consist of 8 members who shall hold office for 8 years and who shall be appointed by the governor subject to advice and consent of the senate. Vacancies shall be filled in like manner.

CHAIRMAN POWELL: The Chair recognizes Delegate Martin.

MR. MARTIN: Mr. Chairman, I think the amendment is self explanatory. I do want to add this fact, however: that the committtee on executive branch in its Committee Proposal 71, has a paragraph which reads as follows:

> Appointment by and with the advice and consent of the senate when used in this constitution or in statutes in effect or hereafter enacted shall mean appointment subject to disapproval by a majority vote of the members elect of the senate if such action is taken within 60 legislative days after the date of such appointment.

It simply requires, in other words, that the senate act rather than simply let the matter lie there indefinitely. We believe that this is a fairer provision. This is not a part of the amendment, but I thought that the delegates should know that this is a part of the proposal of the committee on executive branch.

CHAIRMAN POWELL: Mr. Bentley.

MR. BENTLEY: Mr. Chairman, will the gentleman yield?

MR. MARTIN: Certainly. Yes.

CHAIRMAN POWELL: Mr. Bentley.

MR. BENTLEY: Mr. Chairman, it was my understanding that the gentleman was going to offer this as an amendment to the Ford amendment and not to be voted on separately. Now, since we are going to have to discuss this entire matter again when the executive branch proposal comes up, and since the defeat of the Ford amendment retains the present language which will allow all appointments to conform to whatever the committee or the convention decides to do when executive branch proposal arises, and, thirdly, because there are those of us on the executive branch committee who have a minority

position on this particular matter and there may be other minority positions, I wonder if the gentleman would consider withdrawing his amendment and deferring this matter until the time when the executive branch proposal comes before us, and we can properly deliberate and debate on this subject without having to repeat everything that may be said at this time.

MR. MARTIN: This is entirely satisfactory with me, Mr. Chairman, Mr. Bentley. That may expedite matters. For that reason, I will withdraw this amendment tonight, since you prepared the other one.

CHAIRMAN POWELL: Delegate Martin withdraws his amendment.

Do you seek the recognition of the Chair, Mr. Downs?

MR. DOWNS: Yes. I still wish to ask Mr. Martin — I think the question is still germane — does he believe that the constitutional educational body should be put in the same status as regular executive departments of government for the purpose of advice and consent?

CHAIRMAN POWELL: Delegate Martin.

MR. MARTIN: Mr. Chairman and Mr. Downs, I do not see any fundamental difference between this type of appointment and other types of appointments. It does seem to me, and I think to the other members of the committee I have been working on, that some legislative consideration should be given to these appointments and that this is a healthy check and that the governor should take this into account in making his appointments to the educational bodies just as well as to any other kind of body.

CHAIRMAN POWELL: Chairman Bentley, did you wish to comment further?

MR. BENTLEY: No.

CHAIRMAN POWELL: Delegate Hart.

MISS HART: Mr. Chairman, I am a little bit disturbed about the constant reference to committee. I think if we are going to talk about committee, we need to talk then about the majority opinion and the minority opinion, because the minority made itself quite evident as to how it felt; and so, I hope that we will talk now of majorities and minorities in these reports and not give the impression that it was a unanimous decision on the part of the committee. I am sure that Mr. Martin did not intend to do that.

CHAIRMAN POWELL: The Martin amendment has been withdrawn. The secretary will read the next amendment.

SECRETARY CHASE: Mr. Allen offers the following amendment:

1. Amend page 2, line 24, after "and" by inserting "may"; so that the language will read:

> . . . shall, as often as necessary, elect a president of the institution under its supervision who shall be the principal executive officer of the institution, be an ex officio member of the board but without the right to vote, and may preside at meetings of the board.

CHAIRMAN POWELL: The Chair will recognize the gentleman from Kalamazoo, Delegate Allen.

MR. ALLEN: Mr. Chairman, this matter pertains to the problem of whether or not the president of the university shall or must act as presiding officer at meetings of the board, or whether the board can use its discretion and have a presiding officer from among the members of the board.

Now, on the big 3 universities, the practice has grown up and the constitution has provided that the presidents actually preside, and I think this is very fine. It is the way tradition has developed, and they have developed their own system. Under paragraph b, I feel there is no need to make any change; but under paragraph c, we are dealing with the other 7 schools. Now, of these 7 schools — one of them is very new, Grand Valley is not finished yet — of these 7 schools all but 2 have been, of course, under the state board of education, but 2 of them, Michigan College of Mines and Ferris, have had a separate board; and I think it is interesting to note that on these 2 schools where there has been a separate board the president has not presided. The presiding officer has come from the appointed board members. So that if, in section c, we leave the language as it is, "shall", that he shall preside, what we are doing is that we are reversing the tradition that has grown up at Ferris and at Michigan College of Mines.

Now, secondly, I wonder about the policy of having the president be the presiding officer. I think it is all right on the large schools, but take your own boards of education at home: does the president of the board of education preside? Or does the superintendent of public education? Of course, the superintendent of public education does not. Or, if you take city government, does the presiding officer of the city elective body, the mayor, preside, or does the city manager? Of course, it is someone from the policymaking board, the mayor.

Now then, thirdly, I would point out that in the John Dale Russell report, Russell argued that it would be wiser for each governing board to choose its chairman or presiding officer from among its own members rather than to have the president of the college or university be the presiding officer.

Therefore, we can accomplish this same result by inserting the word "may" rather than having it in effect "shall"; so that the schools can develop their own practice. Some schools may want the president to preside; other schools, like Ferris and Michigan College of Mines, may wish to continue their tradition of having someone from the appointed board preside. The purpose of this amendment is to lay this policy decision squarely before you. Personally, I think it is better to leave some flexibility and leave a choice, so that the president does not have to preside in the case of these other institutions.

CHAIRMAN POWELL: Chairman Bentley, do you care to comment?

MR. BENTLEY: Mr. Chairman, I dislike to disagree with my good friend from Kalamazoo, but I must say that we deliberately adopted the language which is pertinent, as he has admitted, to Michigan, Michigan State, and Wayne State, with respect to the other 7 institutions. It was done, so far as I know, at their request. I believe they all preferred the language that we have in the present proposal. So far as I know, the problem was not discussed to any great extent, at least within the committee on education, and I would have to ask that the Allen amendment be voted down.

CHAIRMAN POWELL: The question is on the Allen amendment. Delegate Norris.

MR. NORRIS: Mr. Chairman, I just want to call the attention of the delegates to another amendment, which I have offered, which carries out in part the intent of Mr. Allen but goes one step further. I have suggested that the board "shall" elect one of their number as chairman — and not merely make it a question of "may", and that is an alternative before this committee with regard to a policy decision on this matter. I just wanted to call to the attention of the delegates that there will be an amendment along that line.

CHAIRMAN POWELL: The question is now on the Allen amendment. Delegate Stevens from Detroit.

MR. STEVENS: I may be wrong on this, but I always supposed that one important reason that the president presides in these 3 institutions is that he does not have a vote. He, therefore, is a nonvoting presiding officer or a mere moderator rather than having somebody who has a vote preside. It seemed to me that was important.

CHAIRMAN POWELL: The Chair recognizes the gentleman from Detroit, Delegate Yeager.

MR. YEAGER: Mr. Chairman, I would like to ask Mr. Bentley a question, if I may. If this person were absent for any reason, either illness or out of town or something, and it was required that he "shall" preside at meetings of the board, would it be possible for the board to meet, in effect; or would this interfere with the efficiency of the operation?

CHAIRMAN POWELL: Delegate Bentley.

MR. BENTLEY: I would have to ask someone who actually has headed one of these institutions, Mr. Yeager, to comment on this. I don't know whether Dr. Anspach could make a comment on that matter or not. I would assume that the language means just what it says and would require his presence there; but in the event, for example, you had a governing board desiring to meet and the president is ill, I don't know whether or not it could still go ahead and meet or not.

I will yield to Dr. Anspach, the gentleman from Mt. Pleasant.

CHAIRMAN POWELL: Delegate Anspach.

MR. ANSPACH: Mr. Chairman and Mr. Bentley, inasmuch as Mr. Bonisteel operated such a board for 18 years where this situation might have arisen, I think his answers would have more validity than mine. I will yield to him.

CHAIRMAN POWELL: Delegate Anspach yields to Delegate Bonisteel.

MR. BONISTEEL: Mr. Chairman and fellow delegates, in answer to the question, I would say that this does not prevent holding a meeting. It merely means, and it has been our experience over the years, that in the absence of the president either on account of illness or for some other reason, the vice president or whoever is the next executive officer presides, because, after all, his absence doesn't change the action of the board. The board members are the ones who vote. They cast the vote. This is merely a matter of presiding; so I think there is no question of legality, or no question of postponement by reason of the absence of the president.

CHAIRMAN POWELL: The question is now on the Allen amendment. All in favor signify by saying aye. Opposed, no.

It sounds as though the amendment is defeated.

A DELEGATE: Division.

CHAIRMAN POWELL: Division is requested. Is the demand supported?

SECRETARY CHASE: Sufficient number, 12.

CHAIRMAN POWELL: A sufficient number up. Those in favor of the Allen amendment will signify by voting aye. Opposed, no. One minute has now elapsed. The secretary will lock the machine and tally the vote. The secretary will announce the result of the voting.

SECRETARY CHASE: On the adoption of the amendment offered by Mr. Allen, the yeas are 51, the nays are 60.

CHAIRMAN POWELL: The amendment is not adopted. Mr. Bentley.

MR. BENTLEY: Mr. Chairman, I move the committee do now rise.

CHAIRMAN POWELL: The question is on the motion by Delegate Bentley that the committee do now rise. All in favor, signify by saying aye. Opposed, no.

The motion prevails.

[Whereupon, the committee of the whole having risen, Vice President Hutchinson resumed the Chair.]

VICE PRESIDENT HUTCHINSON: The convention will be in order. The Chair recognizes the delegate from Ionia, Mr. Powell.

MR. POWELL: Mr. President, ladies and gentlemen of the convention, the committee of the whole has had under consideration part of one committee proposal of which the secretary will make a detailed report.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 98,** has considered several amendments thereto, and has come to no final resolution thereon. This completes the report of the committee of the whole.

VICE PRESIDENT HUTCHINSON: Announcements.

SECRETARY CHASE: The committee on style and drafting will meet tomorrow, February 20, at 7:30 p.m. Mr. William B. Cudlip, chairman.

The committee on rules and resolutions will meet tomorrow, Tuesday, immediately after the afternoon session. Richard C. Van Dusen, chairman.

The following announcement: will all the delegates who can do so after the session this evening please remove their cars from the parking lot so that the parking lot can be cleared of snow during the night. (applause)

VICE PRESIDENT HUTCHINSON: What is the pleasure of the convention? The Chair recognizes the delegate from Oakland, Mr. King.

MR. KING: Mr. President, I move that this convention do now recess until 8:00 p.m.

VICE PRESIDENT HUTCHINSON: The question is upon recessing. All those in favor say aye. Those opposed say no.

The motion prevails, and the convention stands in recess until 8:00 p.m.

[Whereupon, at 5:35 o'clock p.m., the convention recessed; and, at 8:00 o'clock p.m., reconvened.]

The convention will be in order.

SECRETARY CHASE: Mr. President, a quorum of the convention is present.

VICE PRESIDENT HUTCHINSON: Pursuant to a previous order of the convention, the first item of business this evening will be the further consideration of Resolution 70, and the secretary will announce the item of business.

SECRETARY CHASE: Under the order of **unfinished business,** the president lays before the convention **Resolution 70,** A resolution of the constitutional convention establishing a budget for post constitutional convention expenses. This resolution was submitted by Mr. DeVries, on behalf of the committee on administration; has been reported out of committee with 2 recommended amendments and was postponed until today.

For Resolution 70 as offered, see above, page 986.

VICE PRESIDENT HUTCHINSON: The Chair recognizes the delegate from Kent, Mr. DeVries.

MR. DeVRIES: Mr. President, may I suggest the secretary read the 2 amendments offered by the committee and that we take action on those.

SECRETARY CHASE: The committee reported the resolution with 2 amendments:

[The amendments were read by the secretary. For text, see above, page 1024.]

VICE PRESIDENT HUTCHINSON: The question is on agreeing to the amendments recommended by the committee on administration to the resolution. On those amendments, the Chair recognizes Mr. DeVries.

MR. DeVRIES: Mr. President and fellow delegates, as we explained last week Tuesday, the first amendment strikes the words "80 page" because we don't know what the number of pages will be in the address to the people. The second merely inserts on page 599 the words "10 cents a mile." That should be self explanatory, at least on the second amendment.

VICE PRESIDENT HUTCHINSON: The question is upon the committee amendments. All those in favor will say aye. Those opposed will say no.

The amendments are adopted.

The question is upon the adoption of the resolution as amended. Upon the resolution the Chair again recognizes Mr. DeVries.

MR. DeVRIES: Mr. President and fellow delegates, this resolution supplements the one that was passed earlier by the convention, Resolution 65. That resolution set up the functions and duties of the post constitutional convention commission and also made it bipartisan. I believe it passed unanimously.

This budget that you have before you, on page 596 through the 4 or 5 succeeding pages, was adopted unanimously by the committee on administration, the committee on public information and the officers of this convention.

We need action on this budget at this time, because the legislature has requested it. We are not asking the legislature at this time for additional money; what we are asking in a proposed bill is that they give us the authority to transfer funds from one line item to another, from the delegates' salaries line item to the operations line item.

Again, if we can review this — if you will turn to your journal, page 588, and look at the 2 line items, items I and II, and look at the estimated balance in both line items for March 31 and total the 2, you will see that if we adjourn March 31 we shall have about $416,000 left. If we adjourn April 30, we shall have about $190,000 left; and May 15, about $75,000. Then if you will turn to the budget that we are presenting to you,

which is on page 596, the first page is a summary, a line item summary, of the detailed explanation which is on the following pages.

If you break down this budget into functions, you find that there are 3 major functions to be performed by the commission. The first function is that of a public information function, and here I will quote to you from the statute regarding our obligations and responsibilities when this convention adjourns. Act 8 of the public acts of 1961, provides that:

> The convention shall before its adjournment prepare and adopt an address to the people of the state explaining the proposed changes in the present constitution and the reasons for such changes and such other matters as the convention shall deem advisable. Not less than 25,000 copies of this address in pamphlet form containing the full text of the revised constitution shall be printed and distributed as the convention shall direct.

The point here is that before an address to the people can be printed and distributed, a majority of this convention must approve that which goes into the address to the people. That would be the basis of the activities of the public information department. Now, for that purpose, under the $333,000 budget being presented to you, $118,000 would be for the public information function. Out of the $118,000, $96,000 would go for the printing and distribution of the address to the people.

Now, the second function that the commission should perform is that of the administration and housekeeping chores, and this would amount to about $71,000. Of the $71,000, $30,000 would go for the restoration of the civic center and for the salaries of the staff in the period immediately following the sine die adjournment.

The third function of the commission is the publication and distribution of the convention record. That includes the action journal and the verbatim debates of this convention, and for that about $126,000 is allocated. Of this $126,000, about $103,000 goes for the convention record.

So there are fixed costs in this budget which we cannot escape, and we have certain obligations, both statutory and constitutional. The constitutional obligation I did not cite, I will read it to you now, comes from article XVII, section 4 of the present constitution, which provides, "The convention shall have power to appoint such officers" and so on, "and to provide for the printing and distribution of its documents, journals and proceedings." This is a constitutional obligation that this convention cannot escape.

Mr. President, I would move the adoption of the resolution, and I would be happy to answer any questions the delegates may have on its adoption.

VICE PRESIDENT HUTCHINSON: The Chair recognizes the delegate from the fifth district, Mr. Faxon.

MR. FAXON: Mr. President, I am a little bit concerned here about to what extent we read the so called constitutional charter as to what we must do when it comes to the matter of the dissemination of information. Now, I can follow along with the delegates the need for housecleaning and the need for a permanent historical record to be disseminated through the state, to libraries, et cetera. The part that I don't quite follow is the amount which is being expended with regard to the dissemination of information following the adjournment of the convention. Now, while we are still in convention, I would think that we would be able to act upon the question of the address to the people; that is, we ought to be able to know what it is we are saying with regard to the proposed changes that we are going to make in the constitution.

The additional functions beyond our adjournment are the things that concern me with regard to the listing of expenses for that period. Now, I will make a statement on that particular aspect, that is, on the question of the dissemination of information following the adjournment up until the time of the election and, essentially, the use of public money for this particular kind of purpose.

I would like just as a preliminary statement to state that I am fully aware of the fine work which Dr. DeVries has done in the preparation of this report. I was also unable, as a member of the public information committee, to participate at the time that this question was brought before the committee; and so, although I realize that this has the concurrence of that committee, I wish to state that I was not able to be there at that time, and at that time I was thus unable to express the views which I am going to share with you now.

Essentially, I view this in a very conservative way, and I view it conservatively because I see here an area where the state or the moneys of the state are going into a function which has been historically that of private industry or private enterprise: that is, the function of the dissemination of information.

Now, we have here in Michigan historically depended upon the people and organizations of the people to carry forth messages involving government, and what we are doing here is setting up a public information office which will have the responsibility which is similar in many ways to the kinds of responsibility we see such offices assume in other countries where socialism and communism are practiced: that is, the dissemination of information as to what has taken place according to that particular office or commission. I fear the invasion of government into this particular enterprise. I don't know if that sounds inconsistent coming from me, but I think that if Thomas Jefferson were alive today he would equally fear, have concern of this sort as to putting public money into the process of a public information office.

We here in the convention have already agreed to the deletion of a state paper, and we did so with the full idea that this was a practice which was no longer prevalent. Well, this is about as close as you can get to the idea of setting up a state paper, in setting up a state office of public information.

I think that we have had a good experience here in this state in letting people carry the ball and letting private groups, as they have been existing over the past years, carry forth the message of our work. Our responsibility — and I don't deny this — is to prepare an address to the people but as to the distribution of that address and as to the continued information aspects of our job, I think this is a function which has traditionally been in the hands of the people, and I think it should stay there.

I think it would be a mistake for us to endorse the expenditure of sums of money for something that the private groups in the state have fought for and would be willing, if we come forth with a document that meets with their approval, to continue to support. We have groups: the citizens for a sound constitution, the citizens for Michigan, we have different groups — they have not asked money from the state for their function. Why should we attempt to usurp this job now, and to take away from the good citizens of this state the responsibility of showing an interest and concern for the dissemination of information regarding our constitutional convention?

Specifically, then, Dr. DeVries, I would wonder whether those amounts of money which you are proposing that we authorize here regarding the aspects of the office of public information, its costs, the staff, the mileage allowances for people who are working on the staff, whether these expenditures might not be deleted and that we might show to the people of this state a sounder feeling for economy in our own operations here, as we are concerned with the total future of the state. I will yield the floor to Dr. DeVries for an answer.

VICE PRESIDENT HUTCHINSON: Do you desire to answer at this time, Doctor?

MR. DeVRIES: Yes, Mr. President. Delegate Faxon, let me say that my fear of creeping socialism is at least as great as yours. If we could make this kind of an arrangement, Mr. Faxon, that all the public relations work being done by the administrative agencies of the state, the thousands of dollars that are being spent by them, and their public information and public relations campaigns should be eliminated, then I will reconsider the committee's position on this matter. What you forget is this: that the convention must approve this address and must approve the constitutional draft and they must approve the accompanying explanation. It has to be done in convention. The way this resolution was worded, you cannot go beyond that which is in the address to the people and the accompanying explanation. Furthermore, a major part of the

cost for the office of public information, $97,000 out of $118,000, to be exact, is for the printing and distribution of the address to the people.

I don't think you want to take the position that after we have spent 7½ months on this constitution that we shouldn't let the people of this state know what we have done. I think they deserve a chance and the right to see an explanation of exactly what we have done, and we are required to do this under the statute. So I would be opposed to cutting out anything dealing with the public information budget on that ground. The vast majority of the cost here is for the address and its accompanying explanation and for nothing else.

MR. FAXON: I don't challenge the need for this particular item which you refer to now, nor do I feel that it is necessarily germane that we get involved ourselves in what functions other agencies of the state might perform; we are capable of making our own judgment aside from theirs.

My concern, Dr. DeVries, is with the question, for instance, of mileage to and from Lansing for the staff. Now, this may be a small item, but this is a total part of this office of public information. Now, if what you say is true that all we are going to do is to prepare a draft for the people and then distribute that draft, then I do not see where we need certain expenses which you have outlined here. I would like to yield for the answer to that.

VICE PRESIDENT HUTCHINSON: Do you desire to answer that question, Dr. DeVries?

MR. DeVRIES: Yes, Mr. President. Delegate Faxon, you are referring to the $1,000 item for staff mileage; is that correct?

MR. FAXON: Yes, that would be item E.

MR. DeVRIES: Well, that was put in here on the request of the secretary's office because the feeling was that perhaps this printing contract for the convention record might be let out of the city of Lansing. If that were the case, the secretary's staff would be required to travel to and from the printer; and if it turns out that the contract is let in Lansing we will not need the $1,000, but in this case we felt it best to put it in there, so that is why the $1,000 is in there for the staff.

MR. FAXON: I would then ask you this, sir. If we are to look at some of the items, for what reason do we need an executive director? Is his job, then, simply to distribute the proceedings of the convention following adjournment up until the time it is voted on? I see here an item for 7 months at $1,200 a month. Is his job simply one of distribution or does he actually perform any function as to policymaking or additional work? I would like to yield to Dr. DeVries with regard to the staff of this proposed distribution group.

VICE PRESIDENT HUTCHINSON: Do you desire to answer the question, sir?

MR. DeVRIES: Yes, Mr. President, I do. Mr. President and Delegate Faxon, on page 598 we list the salaries and wages of the staff at the estimated maximum amount of time they will be on after sine die adjournment, and, because it says the executive director will be on 7 months, it doesn't necessarily mean that he will be on 7 months; he will serve as long as the commission desires. His function is the overall supervision of the commission staff, which, for the first 4 weeks following the convention, will be considerable. It will consist of most of the former staff for periods ranging from 1 week to 4 weeks. He will also be responsible for compiling and transferring convention records, which I think is considerable responsibility, and we want a man here whom we can trust in this position. He will also be in charge of the disposition of convention properties, getting the necessary bids and so on, and he will have the commission correspondence. If it turns out the commission decides that they don't need him, then, after 2, 3, 4, 5 months, he can be discharged. This is not a guarantee of full employment; this is only a maximum estimated time for this particular person and, in every case, on the staff here, these are estimates concerning the amount of time that they will be on following the sine die adjournment. Does that answer your question?

MR. FAXON: That answers that, but I would like to ask this, Dr. DeVries: whether any thought was given in terms of this type of operation being turned back over to the state, just as they had done much of the work preceding it, in terms of the cleaning up; whether it is necessary for us to employ additional people to do what might be done just as well by present employees. We already have within our own convention people who are on leave from state employment. Why is it necessary to hire additional people or to pay these salaries for people who might be available, say through the secretary of state's office, to do the cleaning up? I would like to yield for an answer, and then I have another question.

MR. DeVRIES: Mr. President and Delegate Faxon, there is no intention of hiring new people. The people you see in this salary schedule are people who are now on the staff and will be retained anywhere from 1 week to 4 weeks and, in the case of the permanent commission staff, perhaps up to 7 months. There is no intention here of hiring any new people. Furthermore, the delegates of this convention have a responsibility as delegates to provide these services after we adjourn. That is part of their responsibility. We acquired this property; we have some responsibility in disposing of it. We also have a responsibility in the address to the people and the printing of our convention records, and a lot of policy decisions will have to be made when this convention adjourns.

It is our feeling — and I am sure it is yours — that the former delegates should have some control over the disposition of the property, the restoration of the civic center, the printing of the records and the address to the people. We feel our responsibilities extend beyond the sine die adjournment. That is the reason for the commission and that is why we will retain part of the present staff.

MR. FAXON: Mr. President and fellow delegates, I have no objection to anything with regard to the printing of the historical record, and I made that quite clear. My only concern is with the additional responsibilities which I am afraid that the public information office may assume after we are no longer here as delegates to act as any check upon that office, realizing full well that there will be a commission operating in our place.

MR. DeVRIES: Mr. President —

MR. FAXON: First, if I may just make one more note, Dr. DeVries. If the function of the post convention commission is strictly the dissemination of the address to the people, then I fail to see where TV public service slides, artwork and mats for releases, and materials of this sort are in line and keeping with that particular function which Dr. DeVries has stated as our responsibility, and which I have no feeling that we feel we are going to neglect here.

I just point this out and make my final observation which is, namely, that there is room for economizing and for showing a little more concern with the public moneys here in this whole commission and in this whole office, and I would invite the delegates to look scrutinizingly at this budget and to see whether in their own minds some of these expenses are in keeping with the strict responsibility of submitting and disseminating an address to the people dealing with the proposed changes in the constitution. That is all. Thank you.

MR. DeVRIES: Mr. President.

VICE PRESIDENT HUTCHINSON: Do you desire recognition a second time at this time, Delegate DeVries?

MR. DeVRIES: Yes, Mr. President, if I may.

VICE PRESIDENT HUTCHINSON: The Chair reminds you that you can speak only twice without unanimous consent, sir.

MR. DeVRIES: I will take the chance, Mr. President. (laughter)

VICE PRESIDENT HUTCHINSON: All right.

MR. DeVRIES: I am trying to get Mr. Faxon's position clear. It seems to be this: that he does not trust a bipartisan post constitutional convention commission consisting of former delegates, but he does trust the secretary of state to perform our responsibilities once this convention is over. Now, I think I have got that straight. It seems to me that our responsibilities extend beyond the sine die adjournment, and it should best be under the control of a bipartisan commission of former delegates than placed in the hands of a state agency.

VICE PRESIDENT HUTCHINSON: Were you seeking recognition, Mr. Barthwell?

MR. BARTHWELL: Mr. President, I just wanted to ask Dr. DeVries a couple of questions. You said that the cost of the printing and distribution of the address to the people would be $97,000?

MR. DeVRIES: Mr. President and Mr. Barthwell, the total cost for the printing and distribution of the convention record is $103,160.

MR. BARTHWELL: I am interested in knowing who you are going to mail a million copies of the address to the people to.

MR. DeVRIES: Oh, I am sorry. I thought you were talking about the convention record. You are talking now about the address to the people?

MR. BARTHWELL: Yes.

MR. DeVRIES: And your question is to whom are we going to mail them?

MR. BARTHWELL: Yes.

MR. DeVRIES: I will yield the floor to the chairman of the committee on public information, Mr. President, Mr. White.

VICE PRESIDENT HUTCHINSON: Mr. White is recognized to answer the question of the gentleman from Wayne, Mr. Barthwell.

MR. WHITE: Mr. President and Delegate Barthwell, these will not be necessarily mailed. It is very probable that a good many will be at requests from people who write for them. It is our assumption that a good many of them will be distributed through other agencies and that we will have the cost of the express and freight shipments to groups that want them: the colleges, schools, libraries and other places that would be able to distribute these addresses. We estimate that cost, roughly, at about 2 cents per copy of the million copies. Since there are, as you know, approximately 3½ million voters in the state, we feel that a million is not excessive as far as the number of pamphlets is concerned. Does that answer your question, sir?

MR. BARTHWELL: That answers my question. I am a little bit skeptical, though, about a million copies because, even if there are 3½ million voters, I am of the opinion that some of them belong to the same family; so I am wondering if we are not preparing more copies than is necessary for us to distribute this information to the people.

MR. WHITE: Mr. President, Delegate Barthwell, this is possible. On the other hand, I think you understand the range of costs in printing. It occurred to us that the cost of an extra hundred thousand, for example, of these was not much greater in the original run than the full million would be.

VICE PRESIDENT HUTCHINSON: Mr. Binkowski.

MR. BINKOWSKI: Dr. DeVries, a few more questions, sir, please. Dr. DeVries, your budget is predicated upon the supposition that this convention will adjourn March 31 of this year, is that correct?

MR. DeVRIES: Mr. President, Mr. Binkowski, it is based on 3 suppositions: March 31, April 30 and May 15.

MR. BINKOWSKI: In other words, regardless of the time which the convention adjourns, you think that the maximum period of time, that the executive director, the secretary, the finance clerk, et cetera, et cetera, will not be operating for any longer than the 7 month period?

MR. DeVRIES: That is my understanding, yes.

MR. BINKOWSKI: Dr. DeVries, I think earlier that you mentioned all these people are presently working on the staff, and I would like to find out who is the executive director presently.

MR. DeVRIES: You are asking me, Mr. Binkowski, who the president of the convention will appoint as the executive director?

MR. BINKOWSKI: No, Dr. DeVries. I think that you said that in answer to Mr. Faxon's question; you said most of these people were on the staff and that we would not have to go outside the convention to hire any additional staff.

MR. DeVRIES: Mr. President, Mr. Binkowski, it would be my guess that the executive director would come from the present staff. Who the commission will appoint, I don't know. I would assume that he would be one of the present staff members.

MR. BINKOWSKI: But presently we have no such individual as executive director?

MR. DeVRIES: No, sir.

MR. BINKOWSKI: Okay. I talked to you before, Dr. DeVries, in asking whether it would be possible to table this matter for a month, because it is my understanding that it is no longer possible to get a bill through the legislature. It seems to me the deadline for logging in any bills with the legislative research passed last week.

MR. DeVRIES: Mr. President, Mr. Binkowski, the deadline for the introduction of bills is February 21, which is Wednesday. The reason we need this budget passed now is that the legislature asked us 4 weeks ago for a detailed analysis of our budget report, and the basic thing we are asking the legislature now is not for an appropriation. What we are asking is the authority to transfer funds from the delegates' salaries line item to the other; we cannot use delegates' salaries for expenses for operations.

We still have a March 31 deadline; if we adjourn by then, and we did have the authority, we have plenty of money left in our $2 million appropriation to accomplish these tasks. If we adjourned on April 30, we might need an additional appropriation of around $125,000.

What we are asking the legislature now is not for an appropriation, but we are asking them for the authority to use the funds in the delegates' salaries line item — that is, assuming, now, that we adjourn March 31 — and I have no other evidence to the contrary, although you notice I did plan the budget up to May 15, but that is the cynical pessimist in me.

MR. BINKOWSKI: Dr. DeVries, if this convention does adjourn May 15, 1962 how much more money will the legislature then be asked to actually appropriate?

MR. DeVRIES: If we adjourn May 15, Mr. Binkowski?

MR. BINKOWSKI: Yes, that's correct.

MR. DeVRIES: Well, one thing I did not point out to the convention which I should say parenthetically, and that is that we expect to recapture about $60,000 which does not show on this budget. We expect to recapture about $30,000 from the sale of equipment and $30,000 from the sale of convention records. If we adjourned on May 15, it is my understanding that we would then need about $250,000.

MR. BINKOWSKI: Well, Dr. DeVries, on the basis of that statement, I would like to find out just very roughly how different an analogy would it be if the legislature went ahead and passed a law and then appropriated $¼ million to go and sell it to the people? How different are we than that position right now?

MR. DeVRIES: I am sorry, Mr. Binkowski, I didn't understand your question.

MR. BINKOWSKI: Well, here we are asking the legislature to spend $¼ million of the people's money in addition to the $2 million which we would have spent at that time to go ahead and "sell" a new document. My question is: would it be a valid public purpose for the legislature to go ahead and pass a law and then appropriate $¼ million to go in and sell that law?

MR. DeVRIES: Well, Mr. President and Mr. Binkowski, who is asking the legislature for $¼ million to sell anything? We are asking the legislature for 3 things: first of all, we are asking for authority to transfer funds. I don't think we are going to go to May 15 or maybe April 30; I don't know. The point is we are asking for authority to transfer funds. We are also asking for, or showing them in our budget, that we need $126,000 to publish the convention record and other records. We are saying to them that we need $70,000 for administrative and housekeeping duties to restore, put the civic center back in shape. Then we are asking $97,000 for an address to the people which the legislature required in public act 8 of 1961. So I do not understand your premise that we are asking the legislature for money to sell the constitution. We are asking for authority to do things that we are required to do constitutionally and on the basis of statute.

MR. BINKOWSKI: Well, I think that very few of us, Dr. DeVries, have any quarrel with the preparation of the address to the people and the document itself, and you say this will run approximately $97,000?

MR. DeVRIES: That's correct.

MR. BINKOWSKI: Then how much did you — was the budget anticipated to restore constitution hall and the equipment and so forth?

MR. DeVRIES: The best estimate we have on the restoration of the civic center is $30,000, which comes from the department of administration, but their item for administration and housekeeping is about $71,000. Half of that is for salaries and other services in the month following the sine die adjournment.

MR. BINKOWSKI: But, Dr. DeVries, again, I am sorry, I am at a loss to really find out why either the secretary of state or the department of administration is not quite capable of restoring the constitution hall to the condition that they had put it in originally. We had nothing to do with it in the first instance.

MR. DeVRIES: Mr. President and Mr. Binkowski, I am at a loss to understand the apparent change in attitude. Now, this convention adopted the resolution, Resolution 65, and all the budget does is implement the resolution — unanimously. The committees on administration and public information — those people present, at least — voted unanimously for this budget, the officers of the convention did; and something happened in the next 10 days that all of a sudden these purposes and these responsibilities are no longer ours. This piques my curiosity. It was a good decision a month ago. It was a good decision 10 days ago. Then it is a good decision today.

MR. BINKOWSKI: But we are not all infallible, and I think it is only proper that we reconsider our actions and we are, I think, at this point reconsidering them. (laughter) I am sorry, Doctor, but the fact that we had decided this previously in Resolution 65 is not sufficient logic to me today to say that we have to continue on with our previous action, if, again, we find out through reevaluation that this was not a necessary item for $30,000 or $40,000 or $70,000 to be spent.

MR. DeVRIES: Mr. President and Mr. Binkowski, you are entitled to your logic and I to mine. (laughter)

MR. BINKOWSKI: Dr. DeVries, you are not willing to have this matter tabled for 1 month; is that correct?

MR. DeVRIES: Mr. President and Mr. Binkowski, we promised this information 4 weeks ago. We laid it over for 1 week — first, we laid it over for 1 day on the request of Delegate Hoxie, and then we laid it over until Monday; and we can't put it off any longer. I don't think that I could accede to your request to table this for any additional period of time.

MR. BINKOWSKI: Well, then, if the secretary would read my motion to amend.

SECRETARY CHASE: Mr. Binkowski offers the following amendments to the post constitutional convention commission budget:

1. Amend item I-A., by striking out "Per diem and subsistence of commissioners (15 commissioners, 20 meetings at $30 per diem) .....$9,000.00".

2. Amend item I-B., sub-items 1, 2, 3, 23, 24 and 25, by striking out "7 mo.", and inserting "1 mo."; and sub-items 18, 19 and 21 by striking out "6 mo.", and inserting "1 mo.".

3. Amend item II, by striking out "E. Travel . . . 9,500.00
(Mileage to and from Lansing —
Commission (10 cents per mile) 8,500.00
Mileage — staff ..... 1,000.00)."

4. Amend item II-F., by striking out
"Weekly press mailings ..... 2,380.00".

VICE PRESIDENT HUTCHINSON: The question is upon the amendments offered by Mr. Binkowski. The Chair recognizes you upon your amendments.

MR. BINKOWSKI: Mr. President, ladies and gentlemen of the convention, I offer these amendments because, basically, I think that the work of the post convention staff should be able to be completed in 1 month; and, therefore, I think that in the interests of economy the state should not have to expend any more money than is necessary. Now, I am firmly convinced, as many are here, that if we have a sound document, if we have a progressive document, a document which is supported by both political parties, we will have no difficulty in selling it. We will not only have both political parties but we will probably have the farm bureau, the township associations, the chambers of commerce, the unions, the county officials, the newspapers, TV, radio, the league of women voters, et cetera. Therefore, I don't think that we have to expend taxes to go ahead and "sell" the document. I think a period of 6 or 7 months is much, much too long.

On the other hand, it seems to me that we in the minority, for us to approve this type of a budget, are really being asked to buy a "pig in a poke." At this point, I do not know if I, or my colleagues, or my party will be able to support this document. It is much too early. Therefore, I originally intended to have this consideration of the budget tabled; but, since Dr. DeVries did not want it tabled, it seems to me that this is the only compromise possible at this point.

VICE PRESIDENT HUTCHINSON: On the amendments offered by Mr. Binkowski, Delegate DeVries.

MR. DeVRIES: Mr. President and Mr. Binkowski, we are not asking for an appropriation to sell the document.

Furthermore, who are the Democrats who are buying the "pig in the poke"? Now, as I compute the number of Democrats on the committees as well as the officers, I come up with anywhere from 10 to 15 Democrats who approved this 10 days ago. Something happened around the tenth of February and then the opinion seemed to shift on the budget.

Now, speaking on the amendments, Mr. President, you intend to strike the secretary of the convention, the assistant secretary of the convention, and the journal clerk. Mr. Binkowski, no matter how you figure it, the minimum duration of activity for that part of the secretary's staff which is retained is 4 months. That is absolute minimum.

And if you want to break down the number of man hours it is going to take to proofread and edit the compiete convention record, I have it right here. I will give you part of it:

Verification and reconciliation of the verbatim typescript, 600 man hours or 15 weeks;

Integration of corrected journal and corrected verbatim journal, 300 man hours or 7.5 weeks;

Galley proofs, 600 man hours or 15 weeks;

First page proofs, 400 man hours or 10 weeks;

Final page proofs, 200 man hours or 5 weeks;

and so on, and so on. There is no way to compute the activity of the secretary's office and come up with anything less, to my mind, than 5 months.

Now if you do not want this convention to prepare its verbatim record, then I suppose, if you went along with the amendment you would strike that out and we would not have any verbatim record of the convention. That is one of our constitutional tasks. We have got to prepare it, we have got to see it published and we have got to see it supervised.

MR. WALKER: Mr. President.

VICE PRESIDENT HUTCHINSON: Mr. Walker, for what purpose do you rise?

MR. WALKER: A point of personal privilege, Mr. President.

VICE PRESIDENT HUTCHINSON: Well, the gentleman will state it.

MR. WALKER: I feel that as a Democrat delegate here that my honor and one thing and another has been impugned by Mr. DeVries. (laughter) After all, there was some insinuation that there was a change of opinion and the innuendo was it was not a correct change.

I wish to make the statement that I have been in favor of certain portions of this thing from the beginning, but seeing the exact figures, this probably would explain the change on possibly my part and possibly the part of others, but I do feel that we have been wronged through the insinuation that our motives were not lily white.

VICE PRESIDENT HUTCHINSON: In the Chair's opinion the matter is not properly a matter of personal privilege.

The Chair will now recognize Mr. Martin.

MR. MARTIN: Mr. President, it doesn't seem to me that Mr. DeVries ought to have to do all the defending of his budget, which is a very good budget and a very conservative one, and certainly absolutely necessary if the convention is to comply—and when I say the convention, I mean the Republicans and the Democrats in the convention—are going to comply with their constitutional responsibility to see that this document that is addressed to the people is printed and properly distributed.

We had a series of questions here and finally the cat jumped right out of the bag when Mr. Binkowski said, "We are not sure whether we are going to support this or not and we are not going to vote for any money until we are sure that this is exactly the way we want it." Then we really got down to the facts of the matter. So, the real question is just whether we are going to live up to our constitutional responsibilities and provide or try to provide through legislative assistance sufficient funds to do what we are already directed to do, and that is see that the record is preserved, that the address to the people is prepared and that it is properly distributed, and if the minority here are not willing to live up to that constitutional responsibility, then surely the convention is not doing very well. It seems to me we ought to vote on this and vote for it, and I hope the minority will vote for it just as well as the majority.

VICE PRESIDENT HUTCHINSON: The question is upon Mr. Binkowski's amendments. The Chair recognizes Mr. Sterrett on the amendments.

MR. STERRETT: Mr. President, I believe Mr. Faxon had some remarks earlier that would tend to weight the amendments, and I would like to ask Mr. Faxon if he has the journal mailing list.

MR. FAXON: Yes.

MR. STERRETT: Are the people receiving them?

MR. FAXON: Yes, to my knowledge.

MR. STERRETT: Are they reading them?

MR. FAXON: Yes, they are.

MR. STERRETT: And wouldn't public information, as you call a state newspaper, be similar to what you are sending to the people?

MR. FAXON: No, that's a record of the proceedings of the convention, and I think there is a difference to be made between proceedings, which have always been disseminated to the public and to people, even from the congress, rather than a state paper which is not a record but which is news or editorializing or any other number of things that could be done in a—

MR. STERRETT: I am not talking about a state paper. I am talking about the public information that would be given out by the commission at the end of the convention. It would be a consolidation and condensation of facts which would be similar to what you have been sending to the people already; although, however, the people probably have been having a hard time understanding these journals, as I have had comments given to me, and they keep asking me, "Will we get something that will consolidate this and condense it so that we will know exactly what is there?"

MR. FAXON: My objection is not to providing people with information, but the question of fact following the adjournment of the convention is the question that we as delegates will no longer be in a position to judge. I can answer questions that go on now during the proceedings of the convention when I see the people. My concern is afterwards. I don't know that I care to see an agency set up as a factual agency, because every agency clouds itself around this illusion that this is factual information here; and this is what I think everybody in the soviet union believes: that their newspapers are printing factual information. I have no dispute with this. My point is that this is not a function—after we are finished, we should not be in the position of having an agency disseminating information. I think we have normal media and normal means of communication without resorting back to an agency.

I, for instance, believe that there is no better group to disseminate information than we as delegates. I think we have been doing this throughout the whole progress of the convention. I think if we left here with the feeling that this is a good document, we can go back and sell it. I don't need any newspaper articles to comment; or, if it concerns certain areas of my district I can go back there and I can talk to the people. I know them better than the newspapers do. I think we are the best salesmen for the convention document.

I very seriously question the need for an appropriation for an office to go way over into November when we as delegates can do the job—and which is what I think we are expected to do when we are finished.

MR. STERRETT: Well, Mr. Faxon, I am very glad to see that you don't object to public information. I would like to point out that I believe you and the convention are talking about 2 different things, the same as Mr. Binkowski and the convention are talking about 2 different things. Both of you have made the remark, time after time, that there is a selling job. There is not to be a selling job by this commission. This is merely an establishing document of facts.

Mr. Binkowski, I would think that you have not done enough research on this before speaking on the matter, as judged from your amendments that you have given. Now, I thought it was only women's prerogative to change their minds—(laughter)

MR. CUDLIP: Mr. President.

VICE PRESIDENT HUTCHINSON: Mr. Cudlip.

MR. CUDLIP: Mr. President, I move the previous question.

VICE PRESIDENT HUTCHINSON: Mr. Cudlip moves the previous question on the amendment of Mr. Binkowski—

A DELEGATE: Division.

VICE PRESIDENT HUTCHINSON: There is demand for division. Is the demand supported? The demand is supported. The question is now: shall the main question be put? All those in—For what purpose does the gentleman rise?

MR. FORD: Mr. President, I would like to ask the Chair how many names do you have listed there who had already indicated, prior to Mr. Cudlip's motion, an intention to talk on this matter?

VICE PRESIDENT HUTCHINSON: On the amendment itself the Chair had only listed Mr. Farnsworth. The question is: shall the main question now be put? All those in favor will say aye. Those opposed will say no.

Then the previous question is ordered upon the amendments of Mr. Binkowski. The secretary will read the amendments.

MR. BINKOWSKI: Mr. President, may I ask a question?

VICE PRESIDENT HUTCHINSON: For what purpose?

MR. BINKOWSKI: May I amend my motion?

VICE PRESIDENT HUTCHINSON: Well, no; after the the previous question is ordered here, an amendment can only be—

MR. BINKOWSKI: I was standing, Mr. President; and in compliance with Dr. DeVries'—

VICE PRESIDENT HUTCHINSON: But the gentleman is out of order, Mr. Binkowski. The previous question has been ordered. The question is upon your amendments. All those in favor of the amendments offered by the gentleman from Wayne, Mr. Binkowski, will say aye. Those opposed will say no.

The amendments are not adopted.

A DELEGATE: Division.

VICE PRESIDENT HUTCHINSON: A division has been demanded. Is the demand supported?

SECRETARY CHASE: I count 10.

VICE PRESIDENT HUTCHNSON: There is a sufficient number. All those in favor of the amendments offered by Mr. Binkowski will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and record the totals.

SECRETARY CHASE: On the adoption of the amendments offered by Mr. Binkowski, the yeas are 31, the nays are 88.

VICE PRESIDENT HUTCHINSON: The amendments are not adopted. The question recurs upon the adoption of the resolution as amended. Several delegates sought recognition upon that question and the Chair will first recognize Mr. Walker.

MR. WALKER: To hark back to the exchange between Mr. Faxon and Mr. DeVries, may I point to the Michigan tourist council as an excellent example of a state agency cooperating with private business for the betterment of the whole group in handling the whole publicity picture through private enterprise, not through any state agency. The tourist council draws an appropriation of $120,000 per year, which is split between the 4 regional tourist associations: southeastern Michigan, northern Michigan, upper peninsula, I believe, and these organizations are supported primarily by private business.

I think that if we came up with a sound document that we would suffer no shortage, no lack whatsoever, of private enterprise, of civic enterprise, that would back this document and, as I have heard said here, sell the document. I think if we come up with a good document, there would be no problem with it. If I might hark back again to that same exchange, I don't recall any mention made of trust or mistrust of the secretary of state or anybody else.

I, therefore, would oppose the budget as it is written.

VICE PRESIDENT HUTCHINSON: The Chair next recognizes Mr. Madar.

MR. MADAR: Mr. President, fellow delegates, I hope you won't get tired listening to me read off the journal tonight. I can assure you it won't take me any longer than about 4:00 o'clock tomorrow morning. Actually, all I wanted to say is this: that the very first day that we discussed taking over constitution hall you will recall that I said then that it was a lousy spot to be; we should have something bigger. I said we had no responsibility in getting this place, and I didn't want anybody to say that it was my responsibility, any part of it. I voted against it. I am proud of that vote just as I am going to be proud of the vote when I vote against spending all this money.

For 34 years I have listened to the rantings and the ravings of economists economizing; I listened to the rantings and the ravings for several years now — most of it coming through the newspapers — about how there was too much money being spent. You know, it is getting to the point where I believe we are spending too much money. You have finally sold me. I think it was time, after 34 years, you were right. This is just in answer to a comment that was made by Delegate Hatch. I would not want him disappointed.

Now I say that we had no responsibility then and we have no responsibility now in getting rid of this place. There were others got this hall ready — oh, yes, you approved the expenditures of the funds — however, I voted against it. I am also going to vote against the expenditure of moneys to give this back to the city of Lansing—and I have nothing against the city of Lansing or their constitution or, rather, convention hall. I just didn't think it was big enough. I didn't think we could get enough people in here.

There were other things that were wrong. They are so numerous that it would take me too long — and I don't want to be accused of going beyond the March 31 deadline, because I am one delegate that sure wants to get out of here that night. (laughter) I want to be out of here the night of the thirty-first, and I don't want to be here April Fools' day. (laughter) Because I think that the citizens of this state may say after they read some of the things that have occurred here — I mean, if the responsibilities will be carried out by those who are supposed to carry out the responsibilities and tell everything that happened here, everything that has happened in this convention, as it should have been told, believe me, those citizens are going to think that there have been some fools here . . . and they will be right.

Now you are worrying about the dissemination of information. Well, I am too, just as much as you are. Now I think I have been doing as fair a share of my job on that, a fair — fair — share of the job. I haven't turned down a meeting. I have no intentions of doing so. I do believe that there is a certain amount of work that must be done by this group and that we have a certain amount of responsibility. Yes, the dissemination of information is our responsibility. But taking the public information post convention budget, I went along with it. In fact, I voted for it, and if all the committee was there I think it was unanimous. Am I right, Mr. White — Delegate White? Thank you. That night we approved a budget of $129,040. Now that is a far cry from $333,338.16.

You know we have an awful lot of mental people in this state that have to be taken care of, and you know that this difference would go a long ways in taking care of a good many of them. The difference would take care of a lot of other things that a lot of Republicans are saying shouldn't be done and they don't want to spend the money — just about 2 blocks from this place.

Yet over here, you are willing to throw it away. What gives? Is it right for you to throw it away here and not over there? Why don't you start searching your souls? I think you should. It is high time you did. I have watched you here on this floor when you refused to even change a slight word and yet you are willing to spend all kinds of money here. Well, I say bad cess to those of you who want to spend it.

VICE PRESIDENT HUTCHINSON: The Chair next recognizes the delegate from Wayne, Mr. Ford, on the resolution as amended.

MR. FORD: I might say that, with the luck of the draw, I find myself in position with a hard speaker to follow. I have some questions that I would like to ask Mr. DeVries. I think Charlie Follo was the one who said the other day here that he felt sorry for any committee chairman or subcommittee chairman who had to present something on the floor because he looked all the world to him like the fellow who stuck his head through the hole in the canvas at a carnival to let people throw baseballs at. With that much sympathy for your position, Walt, I would like to ask you some questions, if you would be kind enough to respond to them.

First of all, there is the question that Jack Faxon talked upon, which I think is one of the things that causes a great deal of concern for many of us who have tried to analyze just what this post convention commission means to us. Is it a fair assumption, Mr. DeVries, that what we are really talking about here is not an extension of the convention activities at all but a commission that would be created by the legislature and would, in fact, be a legislative commission and would only incidentally be made up of former delegates of the convention; they would not be acting in any way, officially or unofficially, as constitutional convention delegates; is that correct?

MR. DeVRIES: Mr. President and Mr. Ford, the commission will be set up, as it has been, by convention resolution. It will be appointed by the president. It will be bipartisan. And it will have the authority to do the things that the constitutional convention says it can do; nothing more and nothing less. It can only disseminate information about the address to the people, period, which is a statutory obligation of this convention, whether it is 144 delegates or an extension of it as 15. That is the only thing it can do under the statute and the only thing it can do under the resolution we have adopted.

MR. FORD: Mr. DeVries, do any of us have any authority to act in any capacity and vote on anything that is presented to us after this convention finally adjourns, whether it is March 31 or April 15, or whenever it does?

MR. DeVRIES: When this convention adjourns sine die, we are citizens.

MR. FORD: Then if any of us end up on the post convention commission, we will be citizens who were formerly con con delegates; is that correct?

MR. DeVRIES: That is correct.

MR. FORD: Now, another question that comes to mind — I made the amendment motion, I believe, that put the word "bipartisan" into the creation of this commission — and there seems to be a difference of opinion between you and me — I being the maker of the motion and you the person who graciously accepted it — as to what "bipartisan" means. What is your interpretation of the makeup of the 15 man commission on a bipartisan basis, Mr. DeVries?

MR. DeVRIES: Mr. President, Mr. Ford, right now I am tempted to say 14 to 1, but actually I mean 10 to 5. (laughter)

MR. FORD: I have been waiting to return your quip about the Freudian slip, but that's about as direct a kick in the breadbasket as you could give. (laughter) Well, I want to say, then, for the record, Mr. DeVries, that we still do not agree; because, when we leave this convention we have to remember that there are 2 major parties in the state and that, generally, "bipartisan" means something close to equal representation and this is what the maker of the motion had in mind. Should we get into a question of interpretation, I suppose maybe we could correct that by spelling it out in the resolution.

MR. DeVRIES: Well, Mr. President and Mr. Ford, in that the commission is an extension of the convention, 2 to 1 seems reasonable.

MR. FORD: That depends entirely upon your point of view.

Now, Mr. DeVries, as I look at your budget, which was apparently set up at a time when you and the other persons responsible for its preparation believed that we were going to adjourn on March 31, we would, if the March 31 deadline was met, find ourselves in what might at first appear to be an anomalous condition of deliberating and drafting for 6 months an instrument and then spending 7 months explaining it in one fashion or another to the people. Is that correct?

MR. DeVRIES: Mr. President and Mr. Ford, the 7 months is an estimate based from March 31 to the election day in November. This is estimated maximum time. I think that when the commission has performed its functions or feels it has, it goes out of existence. We had to make a budget estimate in some way. We had to set a time limit.

MR. FORD: Well, that brings us to the next question. You have made mention several times, Mr. DeVries, to the effect that we unanimously adopted the idea of, the concept of a post convention commission, but — so that I won't improperly suggest something that, because I may have missed it — did you at any time prior to the time that we voted on the concept of a commission indicate a cost any place approaching the amount of money you are now suggesting to us?

MR. DeVRIES: Mr. President and Mr. Ford, I think what I said was that, to the best of my knowledge, Resolution 65 would outline the functions of the post constitutional convention commission. It was approved unanimously. At that time I did not know what the estimate would be for the 3 functions that I have described here today.

MR. FORD: Then is it fair to say that when we voted on that resolution, we had no idea of what you conceived in the way of expense?

MR. DeVRIES: Would you repeat the question, Mr. Ford?

MR. FORD: Is it fair to say that the members of this convention at the time that they voted on Resolution 65 had no concept of the amount of expense involved?

MR. DeVRIES: I think it is fair to say that the members of the convention knew that it would cost them some money.

MR. FORD: But there was no suggestion of the amount of money. Now, you point out that the function of the post convention commission and the staff that is retained will be a public information function, and I believe you narrowed that somewhat by suggesting that the function of these people would be to disseminate such information as had been agreed upon in the form of an address to the people by the convention prior to adjournment. Is that correct?

MR. DeVRIES: That is correct.

MR. FORD: Now, if that is true, would it be fair to assume that the kind of people necessary to distribute this would be people who would not necessarily or, as a matter of fact, not be called upon to exercise any discretion in the manner of disseminating that information?

MR. DeVRIES: Mr. President and Mr. Ford, those are the decisions that will be made by the commission. That is why we feel a commission is necessary. That is why we do not want to place this in the hands of the secretary of state, and there are a lot of reasons for that: one, we think there are policy decisions that will have to be made; and two, I think we know now that to turn this over to the secretary of state would cost a lot more money than we have projected in this budget.

MR. FORD: I didn't suggest the secretary of state, Mr. DeVries.

MR. DeVRIES: Any other state administrative agency, Mr. Ford.

MR. FORD: I believe you further said that the function of the commission is not to be a selling job but merely to be an information relaying job. This brings the question: in the formation of this commission, what authority will the commission have to make decisions such as the framing of press releases, explanatory material to explain what the explanation in the message to the people really means?

MR. DeVRIES: Mr. President, Mr. Ford, the commission will act on the basis of 2 resolutions: one which has been adopted and one which I hope will be adopted. Again I would refer you to page 596. The data to be used by the public information office will be "prepared solely from the official convention record and the committee reports," — period.

MR. FORD: Well, looking at page 596, item 2 — item 1 is the preparation and distribution of the 1 million copies of the official address, there is no question that this convention acting as a convention will have to pass upon the content of that address.

When we get to item 2, this is where some of us pick up a little bit of concern — and I might say that what happened on or about February 10, as you mentioned, could conceivably have some influence on it, but I am not inclined to think that that is of major importance — "The preparation and distribution of informational bulletins to all press media, interested civic groups, educational institutions, etc.

Now, just who would determine the content of these so called informational bulletins that would be distributed under the apparently official cloak of this convention and its commission?

MR. DeVRIES: Mr. President and Mr. Ford, everything that is cited in that last whereas clause refers to the clause before: "This data will be prepared solely from the official convention record and the committee reports." That's all. It might be a press release or an informational bulletin, say, on finance and taxation, accompanying the committee report. There would be no editorializing; it would just be a matter of fact report of what the convention had done on that section and the reasons for its change from the 1908 constitution or the reasons for the addition of new material.

MR. FORD: All right. Now, would the manner of answering questions from an interested group on something such as county home rule, for example, be by extracting portions from the debates and motions in the verbatim journal or by simply citing the person making the inquiry to that section of the address to the people covering the subject matter involved?

MR. DeVRIES: That is correct; the complementing committee report that went along with the proposal as adopted by this convention, and the official address to the people.

MR. FORD: Then, based on what you have just said, is it fair to assume that in extracting the committee reports, the majority reports would be the rationale or explanation that would be disseminated to the people to supplement the address to the people explaining why we did what we did?

MR. DeVRIES: Well, there is no other basis for an accompanying explanation other than the majority reports. Most of them, as I understand, are bipartisan.

MR. FORD: Item 3: "The production of tape recorded informational bulletins to radio stations". Is it fair to assume that this would cover the same sort of subject matter?

MR. DeVRIES: That's correct.

MR. FORD: And this would be supplemental to and in addition to the subject matter contained in the address to the people?

MR. DeVRIES: Would you repeat that question?

MR. FORD: This could be matter that is supplemental to and in addition to the content of the address to the people?

MR. DeVRIES: No. As I said in the resolution, the public information department is limited to that which is approved in the address to the people and the accompanying committee report on the proposal as it passed; that is all.

MR. FORD: But would they tape the language of the address to the people or the language of the majority report that was read on the floor from the committee explaining the reasons why a certain clause should be inserted or taken out of the constitution?

MR. DeVRIES: I don't know how this would be done technically, Mr. Ford. Maybe Mr. White can explain it.

MR. FORD: Well, really, Mr. DeVries, my question is not as to how it would actually be done, but would it be possible, in your concept of this commission, for them to do this kind of information work — in other words, to give something more than is contained in the address to the people, in the form of a taped speech by one of the staff members, for example?

MR. DeVRIES: No. As I have said again and again, I think, the public information department is limited to the address to the people; that is the proposed constitutional draft, the accompanying explanation, and the committee reports.

MR. FORD: Jumping down to the "Distribution of the documentary film on the work of the constitutional convention;" is the dissemination of that documentary film, in your concept, a part of the address to the people?

MR. DeVRIES: The dissemination of the documentary film as prepared by the 3 universities is intended to explain the operations of the convention. It is something different. There is nothing substantive about this, as I understand it.

Mr. White, maybe you can talk on it better; but, as I understand the film as it is being prepared and edited deals only with the organization and operation of the convention. How we did things, not what we did.

MR. FORD: But this will be edited so as to show parts of the debates on various matters that took place here on the floor?

MR. DeVRIES: Mr. President and Mr. Ford, well, I do not know how else you would be able to explain the operations of the convention if you didn't have pieces of filmed matter dealing with debate on the floor. Are you concerned about who is going to be in the film? (laughter)

MR. FORD: That is part of my concern, yes. Someone suggested I would be. That is part of the problem. When you indicate that this executive director will handle commission correspondence — this, I think, has been touched upon in Mr. Binkowski's inquiries about his duties — do I take it that this commission which would meet twice a month would actually formulate policy and direct the method of answering the correspondence or would he, on the letterhead of this post convention commission, be able to indicate those parts of the address which are important and those parts which are not?

MR. DeVRIES: He would handle the correspondence and anything else that was determined by the commission.

MR. FORD: There is a newspaper article that was given to many of us today stating that you, Mr. Richard Van Dusen, Mr. Hutchinson and President Nisbet met — and I will quote, if I can find it here — privately with the senate finance chairman, Elmer Porter; the house appropriations chairman, Arnell Engstrom; and the GOP floor leader, to discuss the "problem", to wit: the problem we are discussing here. The newspaper article would indicate that the present plan — apparently the plan arrived at by this group of people — is to tack onto the legislative appropriation bill an amendment, ". . . giving con con power to convert salaries to post convention budget."

The article goes on to say that: "The convention could salvage $144,000 a month for every 30 days between adjournment and May 15. The hope now is to adjourn about April 15. . . ."

Could you indicate what effect this would have upon the proposed budget if this group of apparent leaders in the convention now feel that April 15 is the target date?

MR. DeVRIES: Mr. President and Mr. Ford, I do not think that the group of alleged leaders feels that April 15 is necessarily the adjournment date. I can quote you a lot of newspaper articles from a lot of different points of view, but I do not think that this group or any other knows when this convention is going to adjourn. I assume, as the eternal optimist, that we are going to adjourn March 31. In planning the budget, I assumed May 15.

MR. FORD: Since this was not a bipartisan discussion, could I ask you: is this an accurate appraisal of the intent of you people representing us in these discussions?

MR. DeVRIES: What accurate appraisal?

MR. FORD: That April 15 now seems to be the logical adjournment date?

MR. DeVRIES: I cannot speak for these other people, Mr. Ford. If you want my personal opinion again, I will tell you I think it is April 1, but I know no better than any of the other 143 people here when we are going to adjourn.

MR. TUBBS: Mr. President, may I ask if Mr. Ford would yield to a suggestion?

VICE PRESIDENT HUTCHINSON: Does the gentleman yield to the gentleman from Kent, Mr. Tubbs?

MR. FORD: Yes, I will yield to Mr. Tubbs.

MR. TUBBS: We are very much interested in your colloquy, Mr. Ford, but it seems to me it might better be carried on in a private conversation. I remind you that, according to the figures we have been furnished, it costs $2,600 an hour to keep this convention going.

MR. FORD: I might have been more moved by that $2,600 figure before I was faced with spending $2,600 an hour to talk about $333,338 of the taxpayers' money. If we can not argue about this — with all the mice we have been shooting around this convention in the last few weeks — when we get down to something that is costing $1/3 million, I submit that it is not a matter for levity, but it is a very serious matter and one that leaves some of us with very serious misgivings when we are going to be asked to vote on this. (applause)

VICE PRESIDENT HUTCHINSON: The Chair next recognizes the gentleman from the twenty-first district, Mr. Marshall.

MR. MARSHALL: I will be very brief, Mr. President. I do have one or two questions that I want to ask — I will not use up $2,600 worth though. The reason I won't have to is that the previous speakers have asked most of the questions that I would like to have asked. I would like to ask Dr. DeVries if he can tell us what was done in this respect in 1908.

MR. DeVRIES: Mr. President and Mr. Marshall, I will tell you what was done, but I don't think you can make any kind of appropriate analogy here. What was done was a contract was made with the secretary of the convention to provide 2 things: the Address to the People and the convention record.

Now in other states they have done similar things. In the state of New York, they had a committee on contingency expenses, I think they called it, which performed these functions after the convention, consisting of former delegates.

I don't think we can make any analogy, though, with the convention of 1908. We have different statutory and constitutional obligations.

MR. MARSHALL: Well, would you say that what we are doing here, then, is approximately the same thing that was done in New York? Did they have to have 7 months? Did they require almost $¼ million post convention expense? Just what was done in New York? You mentioned the state of New York.

MR. DeVRIES: They set up their committee on contingency expenses which made policy decisions about their address, and about their records, and so on, consisting of former delegates. How long it lasted, what it cost, I am sure I don't know, Mr. Marshall. I will check on it if you would like.

MR. MARSHALL: Well, could it not be possible, then, so far as disposing of the convention furniture, cleaning up the convention hall, and turning it back over to the city of Lansing or to the civic center, couldn't this just as well be handled by the state building superintendent, which is a department already created?

MR. DeVRIES: Mr. President and Mr. Marshall, we would be delighted to turn it over to them, if they volunteered, but it is still going to cost money. It is still going to cost $30,000, and whether we want to do it or the legislature wants some-

body else to do it, that is perfectly all right with me. I would just as soon have that off our backs.

MR. MARSHALL: Well, the other question — I will ask this question: why could not the commission, this 15 member commission and the staff be established and named before the budget is adopted?

MR. DeVRIES: Mr. President and Mr. Marshall, that is up to the president of this convention; whenever he wants to appoint the commission and its staff, he can do so.

MR. MARSHALL: You talk about a bipartisan commission —

MR. DeVRIES: Do you mean to tell me, Mr. Marshall, that it makes a difference who serves on the commission or the staff before we approve the budget? I wouldn't want to bring personalities into this —

MR. MARSHALL: I think if we are going to have a — look Dr. DeVries, I think, absolutely, if you are going to have a 15 member commission that is going to be operating from the end of this convention right up until November, I think it is absolutely important and essential. Now, you mentioned the fact about a 2 to 1 ration as being bipartisan, a bipartisan commission. I ask you to take a look at other state commissions that are established on a bipartisan basis and tell me if those bipartisan commissions are established on a 2 to 1 basis or a 5 to 1 or, I believe, a 14 to 1, as you said. As far as I am concerned, 14 to 1 would be just as well as 2 to 1, particularly as to what has happened up until now.

MR. DeVRIES: Mr. President and Mr. Marshall, I hope you knew that I was being facetious —

MR. MARSHALL: But not jocular.

MR. DeVRIES: — but not jocular on 14 to 1. This is not a typical state commission. By no definition is this a state agency. This is an extension of the constitutional convention for a limited amount of time and then the commission dies. There is no parallel between this and a state commission, none whatsoever.

MR. MARSHALL: One closing statement, Mr. President, and then I will relinquish the floor. I do not want to ask any more questions. I realize that we all — and I am speaking against the committee report, the resolution. I think it is premature. I think that some of the things that have occurred to date in this convention make it premature. I think we should have had a little better determination on when we are going to end our work, what kind of a document we are going to produce, whether we are going to continue to adopt a document that is only going to pass the buck over to the legislature, continue the more restrictive provisions as in the old constitution.

Now, Mr. Martin raised the point on the floor and I think it should be answered; he said this on Friday and he intimated the same thing here again tonight. I think that we all have a responsibility to the people of the state of Michigan as a whole. I think it is absolutely essential to prepare the message to the people. I think it is essential that it be prepared properly. I think even after the convention ends that it is incumbent upon all of us to go back into our districts and attend as many meetings as we can, and elsewhere in the state where we are invited, to explain to the people what transpired and why it was done and what it was all about.

I do resent the fact — and I question the motives; I will have to be frank — of a commission of 15 members that will be overwhelmingly Republican in nature, that will be operated from the time this convention ends up until election day in November. I think we have had entirely too much politics in this convention to date already, and I agree with the remarks made by Delegate Martin from Grand Rapids, which he made here on Friday and intimated again tonight. I question where the responsibility rests, though, in line with what Mr. Martin said.

I think it would be bad. I think it would not be good — and I don't say this is going to happen but if it should happen, and I can foresee it happening — that we have a 15 member commission, all of this staff, the public information group, at the tune of $1¼ million, running all over the state selling a document that might not be, might not be acceptable to the majority of the people. I hope that it is. I am not trying to prejudge the document here yet. We still have a lot of work to do even in committee of the whole and on second reading and third reading, and I am hopeful that some of the mistakes we have made already can be corrected before we complete our work here in this convention, and I hope that we will proceed with a little more caution on those yet remaining, so that we don't make some of the same mistakes that we have made heretofore.

But I question whether or not the taxpayers of the state of Michigan should expend somewhere close to $1¼ million for this purpose. I think that we should prepare our message to the people. I think we should make arrangements to submit that message to the people. I think we should retain a staff here if that is necessary to dispose of the equipment and to complete the final work. I don't think it is necessary to have one continue for 7 months, and I think I will make the same charge in reverse that Delegate Martin made on Friday. I am not so sure that this isn't politically motivated.

VICE PRESIDENT HUTCHINSON: The Chair recognizes the gentleman from Oakland, Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, as Mr. Marshall says, we still have a lot of work to do. I move the previous question.

VICE PRESIDENT HUTCHINSON: Mr. Van Dusen moves the previous question upon the resolution as amended.

A DELEGATE: Division.

VICE PRESIDENT HUTCHINSON: Division has been demanded. Is the demand supported?

SECRETARY CHASE: Forty-two, a sufficient number.

VICE PRESIDENT HUTCHINSON: The demand is supported. The question is now: shall the main question be put? All those in favor will say aye. Those opposed will say no. The previous question is ordered.

MR. HODGES: I demand the yeas and nays, Mr. President.

VICE PRESIDENT HUTCHINSON: Mr. Hodges demands the yeas and nays upon the adoption of the resolution as amended. Is the demand supported? The demand is supported. All those in favor of the resolution as amended will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and record the vote.

The roll was called and the delegates voted as follows:

Yeas—85

Allen	Habermehl	Radka
Andrus, Miss	Hanna, W. F.	Rajkovich
Anspach	Haskill	Richards, L. W.
Batchelor	Hatch	Romney
Bentley	Heideman	Rood
Blandford	Higgs	Rush
Bonisteel	Howes	Sablich
Boothby	Hubbs	Seyferth
Brake	Iverson	Shackleton
Brown, G. E.	King	Shanahan
Conklin, Mrs.	Kirk, S.	Sharpe
Cudlip	Knirk, B.	Sleder
Cushman, Mrs.	Koeze, Mrs.	Spitler
Dade	Lawrence	Stafseth
Danhof	Leppien	Staiger
Davis	Lundgren	Stamm
Dell	Martin	Sterrett
DeVries	McCauley	Stevens
Doty, Dean	McGowan, Miss	Thomson
Doty, Donald	McLogan	Tubbs
Durst	Millard	Turner
Elliott, A. G.	Mosier	Tweedie
Erickson	Perras	Upton
Everett	Plank	Van Dusen
Farnsworth	Pollock	Wanger
Figy	Powell	White
Follo	Prettie	Wood
Goebel	Pugsley	Yeager
Gover		

Nays—35

Austin	Garvin	Mahinske
Balcer	Hart, Miss	Marshall
Barthwell	Hatcher, Mrs.	Murphy
Binkowski	Hodges	Norris

Bledsoe	Hood	Ostrow
Buback	Hoxie	Perlich
Douglas	Krolikowski	Snyder
Downs	Kuhn	Stopczynski
Elliott, Mrs. Daisy	Leibrand	Walker
Faxon	Lesinski	Young
Finch	Liberato	Youngblood
Ford	Madar	

SECRETARY CHASE: On the adoption of Resolution 70 as amended, the yeas are 85, the nays are 35.

VICE PRESIDENT HUTCHINSON: Resolution 70, as amended, is adopted.

Following is explanation of nay vote submitted by Mr. Binkowski:

In compliance with my rights as delineated in rule 65, I, the undersigned, hereby submit for publication in the journal my reasons for voting "nay" on the question of post constitutional convention commission budget on the evening of February 19, 1962.

The people of the second senatorial district elected me as their delegate to this constitutional convention. I have continually returned to them to discuss the overall problems that the convention faces, to get their recommendations, and their approval of the positions I have taken in committee and on the floor.

In voting "no" I reflected not only my own concerns but the fears and doubts of the people I represent. It is for this reason that I have elected to go on record on this matter and to "wait and see" if the document completed by this convention is worthy of further effectuation.

As an example, the recommendations made by the committee on finance and taxation, of which I am a member, and as modified and adopted by this convention, more nearly represent the philosophy and scheming of the horse-and-buggy era, when a fair and forward looking governmental tax structure is needed in Michigan to thrust it ahead in the age of space exploration, electronics, and a secure life for all citizens.

Therefore, because of the backward look inherent in this committee's recommendation, I cannot in good conscience advocate the adoption of any proposed document which contains these unrealistic and unfair provisions.

Should it take more time to come to agreements which will bring about a fair and equitable constitution to meet the needs of all the people of Michigan, I see no reason why the arbitrarily designated deadline need be maintained. In fact, by removing both the pressures of an artificial completion date and the desire of some to mold the constitution into a campaign document, it might be better to delay the finalization of this basic law by a few additional weeks of hard work and sincere compromise.

We have already spent about a million and a half dollars for the one sided document we now have. I am voting against establishing a budget for a post convention commission because I do not believe in buying a "pig in a poke" for myself, my constituents, and the people of Michigan. There is no justification, at this time, to pour additional money into a machine which would "sell" the 1962 constitution to the people, if it will be a poorer document than our present constitution.

Following is Resolution 70 as amended and adopted:

A resolution of the constitutional convention establishing a budget for post constitutional convention expenses.

Whereas, It is necessary that the post convention commission meet on a regularly scheduled basis to formulate policy and make many decisions as to the disposition of the convention property and the printing and distribution of the official convention documents; and

Whereas, The commission will also be charged with informing Michigan's citizens of the work of the convention and a simplified explanation of the proposed document; and

Whereas, The commission will be assisted by an executive director who will supervise the administrative and housekeeping division, as well as coordinate all 3 divisions with the commission itself; and

Whereas, The executive director will supervise the renovation of the civic center in order that it may be returned in the same condition as leased and the disposition of convention property in a manner most beneficial to the state; and

Whereas, The other full time employees within the administrative and housekeeping division will be a secretary to both the executive director and the commission and a finance officer who will continue to handle the accounts of the convention and the commission; and

Whereas, The secretary's office will be in charge of preparing the official record and proceedings of the convention and the bound volumes of the daily action journal and the delegates' proposals, which record shall consist of a single convention record consisting of the verbatim proceedings, plus those portions of the daily action journal needed to make the record complete, will be prepared and 3,000 copies of this 3 volume work will be produced by letter press printing. After distribution to delegates, colleges, universities, libraries, research centers, certain state officers and legislators, the remainder will be offered for public sale by the secretary of state. The 100 bound copies of the daily action journal and the 100 bound copies of the delegates' proposals will be distributed to libraries and research centers to make their records complete. The secretary's office estimates that it will take 3,000 man hours to prepare the convention proceedings for the printer. Bids will be accepted on the printing of the proceedings and other volumes; and

Whereas, The purpose of all post convention public information activities will be to prepare and distribute, through all possible media of communications, objective, factual data, of a purely informational character, on all aspects of the constitutional convention. This data will be prepared solely from the official convention record and the committee reports; and

Whereas, It is anticipated that the public information division's activities will embrace the following:

1. The preparation and distribution of 1 million copies of the official address to the people on the work of the convention;

2. The preparation and distribution of informational bulletins to all press media, interested civic groups, educational institutions, etc.;

3. The production of tape recorded informational bulletins to radio stations;

4. The production of suitable artwork, graphs, charts and other visual aids, to illustrate topics dealt with in informational bulletins;

5. Distribution of the documentary film on the work of the constitutional convention;

6. Assistance to working press members in preparing material on the constitutional convention;

7. Assistance to television stations in producing educational programs on the constitutional convention;

8. Fulfilling all requests for informational data from groups and private citizens; and

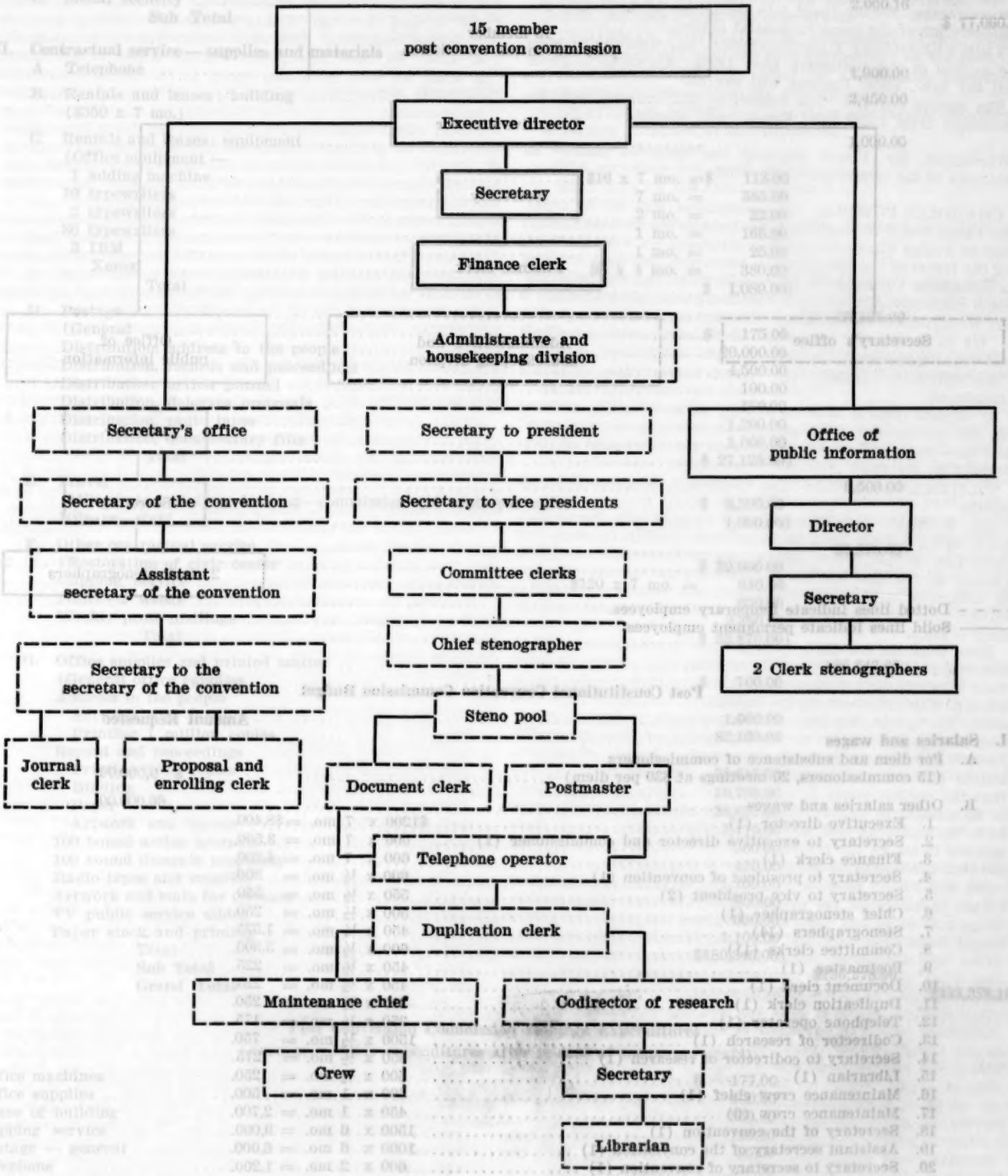
9. Providing all other necessary services of an informational character; now therefore be it

Resolved, That the convention adopt the following post constitutional convention commission budget:

Post Constitutional Convention Commission Budget

		Amount Requested
I.	**Salaries and wages**	
A.	**Per diem of commissioners (15 commissioners, 20 meetings at $30 per diem)**	$ 9,000.00
B.	**Other salaries and wages (See chart. In most cases the employee's present salary will be continued for the duration of his or her employment.)**	66,000.00
C.	**Social security**	2,060.16
	Sub Total	$ 77,060.16
II.	**Contractual service — supplies and materials**	
A.	**Telephone and telegraph**	1,900.00
B.	**Rentals and leases: building**	2,450.00
C.	**Rentals and leases: equipment**	1,090.00
D.	**Postage — (general and distribution of convention records)**	27,125.00
E.	**Travel**	9,500.00
F.	**Other contractual service**	33,870.00
G.	**Office supplies and printed matter**	180,343.00
	Sub Total	$256,278.00
	Grand Total	$333,338.16

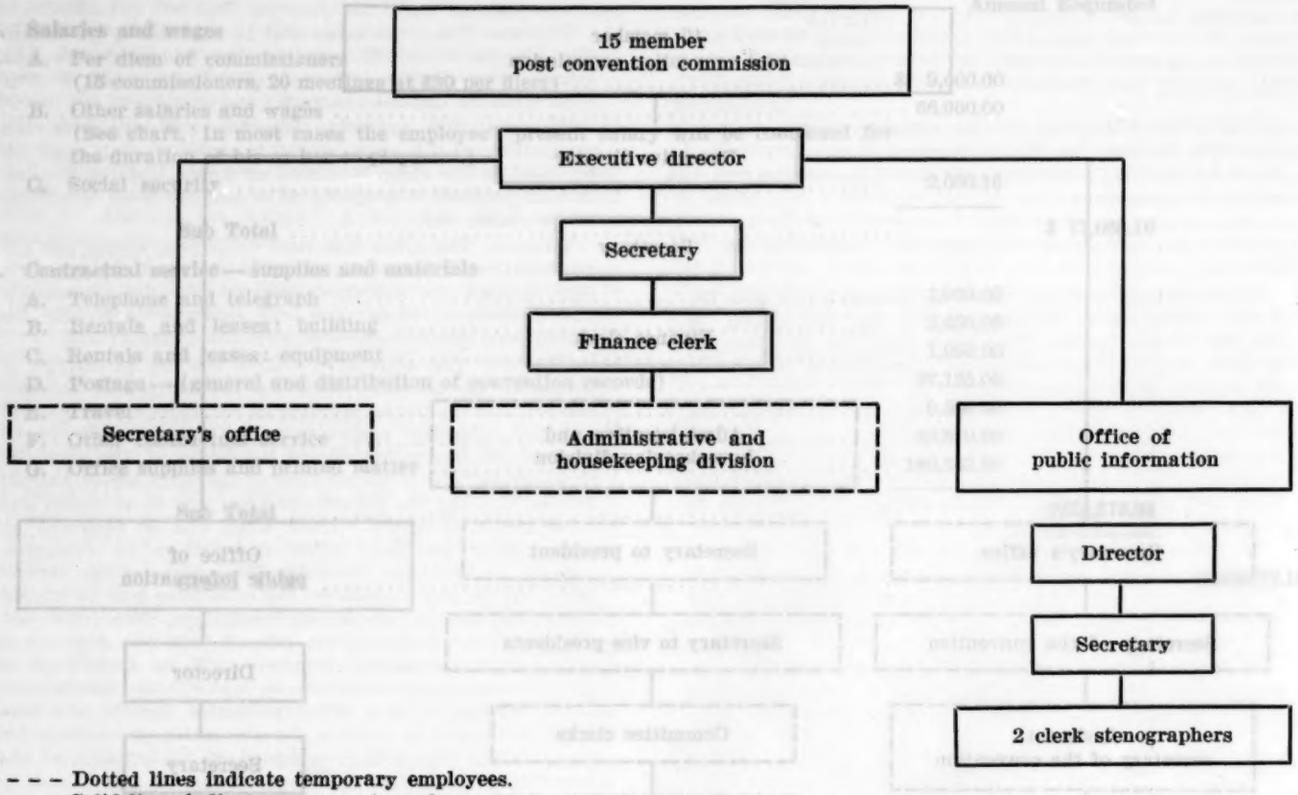
Post Convention Organization Chart



——— Solid lines indicate permanent employees.

- - - - Dotted lines indicate temporary employees.

Post Convention Organization Chart
Permanent Staff



- - - - Dotted lines indicate temporary employees.
——— Solid lines indicate permanent employees.

Post Constitutional Convention Commission Budget

		Amount Requested
I. Salaries and wages		
A. Per diem and subsistence of commissioners (15 commissioners, 20 meetings at $30 per diem)		$ 9,000.00
B. Other salaries and wages		66,000.00
1. Executive director (1)	$1200 x 7 mo. =	$8,400.
2. Secretary to executive director and commissioner (1)	500 x 7 mo. =	3,500.
3. Finance clerk (1)	600 x 7 mo. =	4,200.
4. Secretary to president of convention (1)	600 x ½ mo. =	300.
5. Secretary to vice president (2)	550 x ½ mo. =	550.
6. Chief stenographer (1)	500 x ½ mo. =	250.
7. Stenographers (14)	450 x ¼ mo. =	1,575.
8. Committee clerks (11)	600 x ½ mo. =	3,300.
9. Postmaster (1)	450 x ½ mo. =	225.
10. Document clerk (1)	450 x ½ mo. =	225.
11. Duplication clerk (1)	500 x ½ mo. =	250.
12. Telephone operator (1)	350 x ½ mo. =	175.
13. Codirector of research (1)	1500 x ½ mo. =	750.
14. Secretary to codirector of research (1)	550 x ½ mo. =	275.
15. Librarian (1)	500 x ½ mo. =	250.
16. Maintenance crew chief (1)	500 x 1 mo. =	500.
17. Maintenance crew (6)	450 x 1 mo. =	2,700.
18. Secretary of the convention (1)	1500 x 6 mo. =	9,000.
19. Assistant secretary of the convention (1)	1000 x 6 mo. =	6,000.
20. Secretary to secretary of convention (1)	600 x 2 mo. =	1,200.
21. Journal clerk (1)	600 x 6 mo. =	3,600.
22. Proposal and enrolling clerk (1)	600 x 2 mo. =	1,200.
23. Public information director (1)	1000 x 7 mo. =	7,000.
24. Secretary, to public information office (1)	600 x 7 mo. =	4,200.
25. Clerk stenographer, public information office (2)	450 x 7 mo. =	6,300.
Total		$ 65,925.

Post Constitutional Convention Commission Budget (Continued)

				Amount Requested
C.	Social security			2,060.16
	Sub Total			**$ 77,060.16**
II.	**Contractual service — supplies and materials**			
A.	Telephone			1,900.00
B.	Rentals and leases: building ($350 x 7 mo.)			2,450.00
C.	Rentals and leases: equipment			1,090.00
	(Office equipment —			
	1 adding machine	$16 x 7 mo. =	$ 112.00	
	10 typewriters	7 mo. =	385.00	
	2 typewriters	2 mo. =	22.00	
	30 typewriters	1 mo. =	165.00	
	3 IBM	1 mo. =	25.00	
	Xerox	95 x 4 mo. =	380.00	
	Total		$ 1,089.00)	
D.	Postage			27,125.00
	(General		$ 175.00	
	Distribution, address to the people		20,000.00	
	Distribution, records and proceedings		4,500.00	
	Distribution, action journal		100.00	
	Distribution, delegate proposals		150.00	
	Distribution, radio tapes		1,200.00	
	Distribution, documentary film		1,000.00	
	Total		$ 27,125.00)	
E.	Travel			9,500.00
	(Mileage to and from Lansing—commission (10 cents per mile)		$ 8,500.00	
	Mileage—staff		1,000.00)	
F.	Other contractual service			33,870.00
	(Restoration of civic center		$ 30,000.00	
	Clipping service	$120 x 7 mo. =	840.00	
	Police—2 weeks		650.00	
	Weekly press mailings		2,380.00	
	Total		$ 33,870.00)	
G.	Office supplies and printed matter			180,343.00
	(General office supplies		$ 700.00	
	Address to the people			
	Artwork and layout		1,000.00	
	Printing 1 million copies		82,160.00	
	Record and proceedings			
	Printing 3,000 copies		59,615.00	
	Binding		10,756.00	
	Paper		20,887.00	
	Artwork and layout		1,175.00	
	100 bound action journals		300.00	
	100 bound delegate proposals		450.00	
	Radio tapes and supplies		1,100.00	
	Artwork and mats for releases		800.00	
	TV public service slides		300.00	
	Paper stock and printing		1,100.00	
	Total		$180,343.00)	
	Sub Total			**$256,278.00**
	Grand Total			**$333,338.16**

Post Convention Commission Monthly Expenditures

(Average monthly expenditures after release of temporary staff)

Office machines	$ 177.00
Office supplies	100.00
Lease of building	350.00
Clipping service	120.00
Postage — general	25.00
Telephone	200.00
Travel	1,357.00
Social security	215.63
Commissioners' per diem	1,285.70
Other wages and salaries	6,900.00
Office of public information	1,126.00
Total	**$ 11,856.33**

VICE PRESIDENT HUTCHINSON (continuing): General orders of the day. The gentleman from Ionia, Mr. Powell.

MR. POWELL: Mr. President, fellow delegates, I move the convention resolve itself into committee of the whole for consideration of the items on general orders.

VICE PRESIDENT HUTCHINSON: The question is upon the motion of the gentleman from Ionia. All those in favor will say aye. Those opposed will say no.

The motion prevails. The committee will convene, and the gentleman from Ionia, Mr. Powell, will preside.

[Whereupon, Mr. Powell assumed the Chair to preside as chairman of the committee of the whole.]

CHAIRMAN POWELL: The committee will be in order. The Chair would remind the delegates and our visitors tonight that on Friday afternoon and this afternoon we were considering the report of the committee on education. We were working on Committee Proposal 98, A proposal pertaining to the educational institutions of the state. We had passed sections a and b and were considering proposed amendments relative to section c. We have disposed of certain amendments and the Chair will ask the secretary to read the next amendment in order.

SECRETARY CHASE: Mr. Norris offers the following amendment:

1. Amend page 2, lines 10 and 23, after "vote" by striking out the comma and "and preside at meetings of the board" and inserting a period and "The board shall elect one of their number as chairman".

CHAIRMAN POWELL: The Chair will recognize Delegate Norris.

MR. NORRIS: Mr. Chairman, I believe that the amendment which I offer here proceeds with fidelity to carry out the intent of the section which we now have before us. The general idea is that the board shall elect one of their number as chairman instead of saying that the principal executive officer, namely, the presidents of the instant universities, shall preside.

Now, what we are doing here in these provisions is to grant constitutional status to these universities and when we accord them constitutional status, we are saying they occupy status coequal with the governor, the legislature, the judiciary of this state. We are saying that these people are to have supreme authority with regard to the operation of the university. Now, if we the people are going to elect boards of regents, boards of trustees, governing boards, then we ought to say that the regents ought to express their regency; the trustees, in fact, ought to be trustees; and the governing boards ought to in fact govern; and that they ought to elect one of their number to act as the presiding officer in order that we might see that the constitutional mandate is carried out.

By this I don't mean to suggest any imputation with regard to the character of the presidents of their respective universities now or at any time in the future. They are very competent individuals now and I am certain that they are going to be very competent people in the future. But the fact is that when we give these institutions constitutional status, we, as the people, ought to recognize that they have a supreme responsibility, and they just can not sit there as boards of trustees or boards of governors or boards of regents and listen to an agenda which is shaped up by the presiding officer, where the main considerations which are introduced for discussion are introduced by the presiding officer, and, as a matter of fact, where pragmatism indicates that many of the results are preordained by the presiding officer.

Now, I suggest to you that the amendment which is contemplated here would say to these respective boards, "We the people of the state of Michigan have elevated you to a constitutional status and we expect you to exercise every ounce of energy, every ounce of discretion, every ounce of responsibility with regard to these key institutions."

Now, I do know that there has been some discussion in the committee with regard to these matters. I know that there has been considerable discussion, but I don't see any minority report on these matters. Also I note that, in the volume which was distributed to us in the early part of this convention on higher education in Michigan, there is a reference to a most extensive study of higher education in Michigan that was made in recent years by one John Dale Russell and a staff for the Michigan legislative study committee on higher education. This staff report was published in July of 1958. In that report Dr. Russell states ". . . that it is wiser for each governing board to choose its chairman or presiding officer from among its own number." This report recommends:

> . . . that when a convention is called for a general revision of the constitution, consideration should be given to the elimination of the provisions in the present constitution making presidents of 3 of the state universities the presiding officers of their governing boards.

And I submit, Mr. Chairman, that what we have here is simply an issue of whether or not the governing boards are in fact to govern, whether or not they are to set the tone and the responsibility and exercise the constitutional mandate, and do this without impugning any of the ability, character or aspirations or competency of any of the presidents involved.

I urge, respectfully, Mr. Chairman, support for this amendment.

CHAIRMAN POWELL: The Chair recognizes Chairman Bentley on behalf of the committee on education.

MR. BENTLEY: Mr. Chairman, the Norris amendment pretty much covers the same ground that we discussed this afternoon when the amendment offered by the gentleman from Kalamazoo, Mr. Allen, was before us; but it is even more restrictive than the Allen amendment, which, of course, was voted down in committee of the whole, in that the Allen amendment was permissive. The Norris amendment is mandatory. It would forbid the presidents of these institutions to preside in any and all cases.

I might also point out to the gentleman from Detroit that, although he was talking about regents, governors, and trustees, his amendment would only affect the other 7 institutions supported by the state. It would not affect the University of Michigan, Michigan State University and Wayne State University, since the section relating to those 3 institutions has already been passed.

The language of the committee proposal, Mr. Chairman, was approved unanimously by the committee on education, and we ask that the Norris amendment be voted down.

CHAIRMAN POWELL: The question is on the Norris amendment. Delegate Lawrence is recognized.

MR. LAWRENCE: I might say that I put in Delegate Proposal 1071, relating to Eastern Michigan University. At that time I had in the proposal these words, "The president shall preside at the meetings of the board and be the executive officer of the university."

Dr. Elliott got in touch with me regarding this and said that he did not care to be chairman of the board, that as far as he was concerned, his job was to administer the affairs of the university, make recommendations to the board of trustees or what you will, and answer inquiries, get information for them, and so forth; but that he did not think that he would care to be presiding officer.

Subsequently, on the copy I have here, the words "preside at the meetings of the board and" are crossed out, so that it read, "The president shall be the executive officer of the university"; and these words were inserted, "A chairman of the board of governors shall be elected annually from the board. He shall preside at meetings of the board."

Now, I am sorry I cannot tell you how that got in there, except that I understood that that was what the committee at that time at least was considering, but I am certain that any president of a university, if ordered by the constitution to act as presiding officer, would do it; but at least I can say that as far as Dr. Elliott is concerned at Eastern Michigan, the preference would be that the presiding officer would be elected from the board by the board.

CHAIRMAN POWELL: Mr. Bentley.

MR. BENTLEY: If the gentleman will yield for a comment, Mr. Lawrence, Dr. Elliott gave no such indication to the

committee on education of his feelings. It is our belief that the language which the committee has before it was approved by all the institutions affected.

CHAIRMAN POWELL: Mr. Lawrence.

MR. LAWRENCE: I understand that, Mr. Bentley; I am inclined to think that that was given to me at a luncheon in Ypsilanti as what he preferred, and if there has been any dereliction of duty it has been on my part in not transmitting it to the committee.

CHAIRMAN POWELL: The Chair recognizes the gentleman from Kalamazoo, Delegate Allen.

MR. ALLEN: Mr. Chairman, when the vote is taken, I request that it be divided; the reason for it is that the first amendment applies to section b, which is the big 3 — and on that I think we have a different situation, because the history of those institutions has been to have the presiding officer the president. The second part of it relates to the 7 other schools in section c. I think some of us may want to vote one way on the one part and different on the other.

MR. BENTLEY: Mr. Chairman, a parliamentary inquiry. Does the Norris amendment apply to section b as well as to section c?

CHAIRMAN POWELL: The Chair is so informed by the secretary, but it would be the Chair's understanding that at the present time we could consider only the portion dealing with section c.

MR. BENTLEY: Because I make a point of order against any amendment dealing with section b at this time.

CHAIRMAN POWELL: Before the committee rises, probably we could revert to that earlier section but not now. For the benefit of Delegate Norris, I will say that this amendment will be divided and we will vote now on the portion which pertains to section c, which is the only matter directly under discussion.

MR. BENTLEY: Well, Mr. Chairman, a parliamentary inquiry. Am I correct that when a point of order is sustained against a portion of the amendment, that portion at least does not come before the committee of the whole?

CHAIRMAN POWELL: Certainly not at this time. The Chair thinks it might be in order before the committee rises when we ultimately dispose of the entire committee proposal.

MR. BENTLEY: Well, I would suggest that if Mr. Norris has an amendment that deals with more than one section that he reserve that amendment until amendments are offered to the body of the proposal.

CHAIRMAN POWELL: Delegate Norris, is it your wish to divide this and take the part pertaining to section c now or hold the whole thing up until the body of the proposal is before us.

MR. NORRIS: Take it as to section c now, Mr. Chairman.

CHAIRMAN POWELL: So ordered. Will the secretary read the part that pertains to section c?

SECRETARY CHASE: The Norris amendment now reads:

1. Amend page 2, line 23, after "vote" by striking out the comma and "and preside at meetings of the board" and inserting a period and "The board shall elect one of their number as chairman"; so that going back to line 20, the middle of the line, the language will read:

> . . . shall, as often as necessary, elect a president of the institution under its supervision who shall be the principal executive officer of the institution, be an ex officio member of the board but without the right to vote. The board shall elect one of their number as chairman. Each board of control shall consist of 8 members. . . .

CHAIRMAN POWELL: The question before the committee is the Norris amendment as has just been read by the secretary. All in favor signify by saying aye. Opposed, no.

The amendment is not adopted.

A DELEGATE: Division.

CHAIRMAN POWELL: Division is requested. Is the demand seconded?

SECRETARY CHASE: A sufficient number.

CHAIRMAN POWELL: A sufficient number up. We will vote by the machine. All in favor of this amendment signify by voting aye. Opposed, no. Using the board. Sixty seconds have elapsed. The machine will be locked and the secretary will tally the vote. The secretary will announce the result of the ballot.

SECRETARY CHASE: On the amendment offered by Mr. Norris, the yeas are 46, the nays are 62.

CHAIRMAN POWELL: The amendment is not adopted. The secretary will read the next amendment on his desk.

SECRETARY CHASE: That is all of the amendments pertaining to this section, Mr. Chairman.

CHAIRMAN POWELL: Are there any further amendments to section c? If not, it will be passed.

Section c is passed.

The secretary will read section d.

SECRETARY CHASE: Section d:

[Section d was read by the secretary. For text, see above, page 1135.]

CHAIRMAN POWELL: The Chair notes that both the chairman of the committee and the chairman of the subcommittee are seeking recognition. The Chair will call first upon the chairman, Delegate Bentley.

MR. BENTLEY: Mr. Chairman, this particular section was the one controversial portion of this particular proposal insofar as the committee was concerned.

There is a minority report signed by a bipartisan group of 4 members of the committee, but I am wondering if we might adopt this particular procedure: so far as I recall, there was no controversy within the committee regarding the first sentence of section d. I am wondering if the signers of the minority opinion would be willing to divide the paragraph for purposes of voting, to vote first on the initial sentence, which I understand was noncontroversial, and then to deliberate and discuss the remaining portion of section d, which is the item under controversy. I wonder if the gentleman from Detroit, Mr. Faxon, who was one of the 4 signers, would indicate if there is any disposition on the part of the minority to change the first sentence; if not, if he would be willing to have the question divided.

CHAIRMAN POWELL: The Chair recognizes the gentleman from Detroit, Delegate Faxon, to answer the question.

MR. FAXON: I can only speak for myself on this, and I would like Mr. Kuhn and Mrs. Conklin also to comment. I would see no objection to our passing upon the first sentence, since this is not a subject of controversy among the committee, and then having the minority report deal with the deletion of the balance.

MR. BENTLEY: I wonder if either Mr. Kuhn or Mrs. Conklin — is that satisfactory? Mr. Brown — I do not see him here.

So, Mr. Chairman, I ask unanimous consent that section d be divided, that we proceed to vote first on the first sentence of section d and then we take up the remainder of section d, which is the part under controversy.

CHAIRMAN POWELL: Is there objection? The Chair hears none. It is so ordered. Without objection we will take up this first sentence and the —

Do you wish to speak further, Mr. Bentley? Delegate Andrus has been on her feet. Do you wish to speak on the point? Mr. Bentley.

MR. BENTLEY: Mr. Chairman, I have this wonderful advantage of not being able to see a goodly portion of my committee over there. I know that the lady from Port Huron wishes to speak on this particular section. I wonder if she desires to confine her remarks to the controversial question of the board and not to speak on the first sentence, to let it pass by, since it is noncontroversial, and confine her remarks to the question of the separate board. Would that be satisfactory?

CHAIRMAN POWELL: That is the question the Chair asked her, Delegate Andrus, if she had anything to comment with reference to this first sentence; The Chair would prefer she withhold her discussion until we get into the balance of the section.

MISS ANDRUS: Mr. Chairman, this is the first I had known of separating this, and I would like very much — there are many of our delegates who are unacquainted with our junior colleges — so I would like to speak to them about it. If Mr. Bentley does not feel that this will preclude it, I will be very glad to wait and speak after this first vote.

CHAIRMAN POWELL: Mr. Bentley.

MR. BENTLEY: Mr. Chairman, I would respectfully request the distinguished lady from Port Huron if she will let us vote on this first sentence, and I am sure she will have ample opportunity for her remarks on the balance of the section to enlighten all of the delegates on the subject of community and junior colleges.

CHAIRMAN POWELL: Are there any amendments to this first sentence? If not, it will be passed.

The first sentence of section d is passed. We will now take up the balance of the section. Mr. Bentley.

MR. BENTLEY: At this time, Mr. Chairman, I think that we will yield to the lady from Port Huron for her comments on the balance of section d.

CHAIRMAN POWELL: The Chair recognizes the lady from Port Huron, Delegate Andrus.

MISS ANDRUS: Thank you, Mr. Bentley.

I would like to say this about our committee. As I have heard some of the discussion the last week, I have felt how fortunate we were in our education committee. I did not know whether we were Democrats or Republicans. We were all thinking of the young people and their future in the next 50 years. It was a pleasure to work on that committee.

Now the other night or Friday afternoon, one of the delegates, in speaking of our discussion on education, —

CHAIRMAN POWELL: Let's have a little better order in honor of the lady who is speaking.

MISS ANDRUS: — said we were nostalgic, that we were looking backward in our consideration of education in this convention. I would like to say that I am glad we are nostalgic. We have a great history in education here in Michigan, and I think before we can vote intelligently tonight on this section d, we have to look back — I am sorry we could not have done this all at one sitting last Friday — look back at what the conventions did in this field of education before.

Now, in our first constitutional convention in 1835, we provided for a primary school system, which has already been spoken of in this convention. Lands were put aside for sale for schools. You know, Michigan was settled by people who came from Connecticut and Massachusetts and New York, and they came here to the wilderness. They brought with them their idea of local government, of people taking part in their government, and they felt, as they had back in New England, that the people should know how to read and write and be able to participate actively in government. So they provided for what we call our primary school system. They also provided for our state universities and they provided for libraries.

Now, in our Constitutional Convention of 1850, we had grown quite a little by that time, and they provided for a state agricultural college, the first state agricultural college in the United States. That is our present Michigan State University. They provided for a normal school to teach people who could go to teach children in the primary schools. They also provided for schools for the blind and the deaf.

In other words, each of our constitutions has been looking forward to the needs of the people.

Now, when we came to 1908, what were the problems then before the convention? We now had the demand for high schools and so this constitution looked forward to the development of secondary education. It also provided for the School of Mines at Houghton.

We are in each of our conventions looking to the needs of our young people of the future. Now that is nostalgic, I suppose; we look back at what our forefathers did. Now, it is 1962. What is the problem before the people here in Michigan in the field of education today? We have a fine primary school system. We have a fine secondary school system. We have some very fine universities and colleges, and Michigan can be proud. We have always been an outstanding state in education. But today we have a very serious problem. Young people today need more technical and more advanced training. Our colleges are crowded. They are bursting with the young people who want to get further training. We also have people who have been employed who now find that they need retraining or they need further training.

The universities will have to build many more buildings. The colleges will not only have to build the classrooms but the laboratories and the libraries; they will have to build dormitories to house these students. The estimate is today we have less young people between 18 and 22 or 23 than we had 10 years ago, but in about 3 years our war babies will be getting into college, and that is why the boards of education locally have had to spend so much in building elementary schools and high schools. The colleges are trying to prepare for the influx of these young people into college, and it is very difficult for them to take care of them.

Now in our hearings before our committee, everyone felt that we should have more and more junior or community colleges to help take care of these young people. It is very important for us to think of this. I was in Russia for a summer studying their educational system in the '30s. Most of the people in Russia at that time could not read and write. Look at them today. We need to have technically trained people to compete with those young people in the Soviet Union who are having all of the training that they can possibly use in their competition with the free world.

So, at the time of world war I, the first junior colleges were started. The first one was in Grand Rapids. Mr. William Hanna and Mr. Blandford are products of that junior college, and I think there perhaps are others here. They have both told me so. Then Detroit started a junior college. It is now Wayne University. Quite of number of others were started after the war. Then the depression came. The different school boards could not carry on. In fact, some of them had to drop out; but, after world war II, there has been a great increase in the demand for these schools.

So this is the problem today. I want to explain this to you, because I have found so many people have not understood just what a junior college, a community college is. It is a 2 year college operated by a local board of education.

In Port Huron — and we have had one since 1923 — the local board of education is asking next month for a 9 mill increase for the schools, 9 mills to build a high school and elementary school. They just don't have money to build junior colleges. It is all they can do to take care in most of these places of their elementary and secondary students.

Now, these young people are going to have to go somewhere. We, the people of Michigan, must train them. Will we do it in the universities where we have to build dormitories and so forth? Or will we take care of them in our local communities? If we do, in our local communities, the present arrangement is this — and I am making this very simple, because some don't understand community colleges. I know some of you know all about this. The legislature provides $205 for each student, just as they do a high school student. Then they have offered the last 4 or 5 years to match moneys for building, but they haven't had the money to match it. They have wanted to, but they just haven't been able to raise it. Now, these junior colleges will have to build laboratories, classrooms, libraries, if they are going to take care of these young people; or the 4 year schools will have to do so, building more study space and dormitories.

So in our hearings — and we had a great many people speak to us; it got to be a little joke in the committee — I asked each one: do you think we need a separate board for junior colleges? And every person who spoke to us said, yes, we do. I didn't think of it with our first witness, Mr. Bartlett, but the following day — this was our first witness in October — the following day an assistant superintendent spoke to us and I thought of asking him. He said, yes, we did. Then, as we had other presidents and other people speak to us, I asked them the same question.

Mr. Norris awhile ago quoted the John Dale Russell report. That was an investigation which was made by a special com-

mittee appointed by the legislature and they hired Dr. Russell, the outstanding authority on higher institutions, to make a study. He spent about 2 years here in Michigan. It came out in 1958. He felt that we should have many junior colleges, but they should not spring up here and there all over the state. There should be a separate board to notice the needs of where we should have these and to give advice on where they should be located.

I asked Mr. Elliott, a former superintendent of public instruction, who spoke to us. He said, yes, we needed a separate board. I asked most of the presidents of the different colleges and they, all of them, agreed: we needed more junior colleges but we need a board to decide, to help determine, where they should be, and how much money they should have.

Then our president of our junior college association — by the way, in the minority report this is rather misleading — we have had such an organization for over 30 years similar to the council of state presidents — and Mr. Wisser from Grand Rapids, the president, said we need it; all of the junior colleges agree. Right now we have 17. There are about 12 different places that want junior colleges. There are going to be 30 or 40 more, probably, in the next 10 years.

The state board of education is going to be an overall body for all of our educational institutions in the problems that will come up in the next year. We should have a special board to take care of this question of junior colleges.

It was practically unanimous — I don't believe there was anyone connected with higher education of whom I didn't ask the question. I remember one day I didn't ask, and Mr. Hanna, down at the other end of the table, leaned over and said, "If Miss Andrus doesn't ask this question, I will." Then I realized that they had come to think of me as Miss Junior College in that I had always asked that question; but I was trying to find out how these people felt about it.

In our subcommittee, of which Mr. Bonisteel is the chairman, Mr. Hanna, Mr. Anspach, Mr. Follo and myself were unanimous in making this recommendation to the committee. We were most surprised when we saw, later, in the journal this minority report. There was practically no discussion of this. We had recommended that the board be appointed, like the boards of the other institutions, by the governor. There was a motion to make the board appointed by the department of education. Now Mr. Bentley read this to you. It is to be a board of 8 members, elected for 8 years, just as all of the other boards are. It, however, is not a governing board.

We hope that it will be made up, not of members of junior colleges but of leading citizens who will have as their chief civic interest and responsibility the studying of this problem of deciding where junior colleges should be established and what their needs are, instead of having 35 or 40 of these colleges going to the legislature and trying to get funds or pestering the state board of education. This would be a body which could do that.

Now, in closing, I would like to say this. This is made up of 3 sentences. We tried very hard in our committee to shorten the constitution, and we have taken a great deal out and condensed it. These 3 sentences are very important for the future of the young people of this state to give them the opportunity for further education in preparation for the very uncertain times that are coming. I would like to call your attention to the fact that when we had the library report the attorneys insisted on putting in a sentence we thought was unnecessary on the city penal fines; the city ordinance people insisted. Now, those were 2 sentences. There will be 3 here.

Everyone connected with higher education is sure that we need this, and the majority of the committee hope that you will vote for this section.

CHAIRMAN POWELL: The Chair believes the time has now arrived to receive amendments to the balance of the proposal. The 4 signers of the minority report have filed their report as an amendment to the balance of this section.

Delegate Bentley.

MR. BENTLEY: In view of the fact that we are entering on a new area of higher education, Mr. Chairman, an area that is, while not controversial insofar as the junior colleges themselves are concerned, is controversial with respect to this new board, and, in view of the lateness of the hour and other factors, I move that the committee do now rise.

CHAIRMAN POWELL: The question is on the motion of Chairman Bentley that the committee of the whole do now rise. All in favor signify by saying aye. Opposed, no.

The ayes have it. The committee has risen.

[Whereupon, the committee of the whole having risen, Vice President Hutchinson resumed the Chair.]

VICE PRESIDENT HUTCHINSON: The convention will be in order. The Chair recognizes the delegate from Ionia, Mr. Powell.

MR. POWELL: Mr. President and ladies and gentlemen of the convention, the committee of the whole has, for the third time, made progress on a committee proposal dealing with education, and I will ask the secretary to make a detailed statement.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 98**, A proposal pertaining to the educational institutions of the state; has considered several amendments thereto; and has come to no final resolution thereon. This completes the report of the committee of the whole, Mr. President.

VICE PRESIDENT HUTCHINSON: Are there any announcements?

SECRETARY CHASE: We have the following announcements of committee meetings:

The committee on style and drafting will meet tomorrow evening at 7:30. William B. Cudlip, chairman.

The committee on rules and resolutions will meet tomorrow immediately following the afternoon session. Richard Van Dusen, chairman.

The committee on emerging problems will meet Wednesday, February 21, at 12:30 p.m., in committee room I on the third floor. Frank Millard, chairman.

All delegates who can are requested to please remove their cars from the parking lot tonight, so that the parking lot can be cleared of snow during the night.

The apples today are from Mr. Rush. (applause)

VICE PRESIDENT HUTCHINSON: Any further announcements?

SECRETARY CHASE: That is all the announcements, Mr. President.

VICE PRESIDENT HUTCHINSON: What is the pleasure of the convention? The Chair recognizes the gentleman from Macomb, Mr. Kelsey — Mr. Kelsey, will you yield? Mr. Richards of Marquette is recognized.

MR. L. W. RICHARDS: Mr. President, I realize every delegate here has a right to his own personal opinion, and one thing that has disturbed me a little is that during the action of the committee of the whole, a delegate referred to the "lousy" conditions of where we are meeting in our convention. I would like to take exception to that, as far as my own personal opinion, sir, due to the fact that I realize that the administrator of the city of Lansing has done a terrific job in giving us the facilities that we have; although I realize that sometimes the gallery is not quite adequate. Probably that is the biggest inconvenience, but, otherwise, I think they should be commended highly for the services and facilities they did provide for us. (applause)

VICE PRESIDENT HUTCHINSON: The Chair now recognizes the gentleman from Macomb, Mr. Kelsey.

MR. KELSEY: Mr. President, I move we now adjourn.

VICE PRESIDENT HUTCHINSON: The question is upon the motion to adjourn. All those in favor will say aye. Those opposed will say no.

The motion prevails and the convention stands adjourned until tomorrow at 9:30 a.m.

[Whereupon, at 10:00 o'clock p.m., the convention adjourned until 9:30 o'clock a.m. Tuesday, February 20, 1962.]

EIGHTY-THIRD DAY

Tuesday, February 20, 1962, 9:30 o'clock a.m.

PROCEEDINGS

VICE PRESIDENT HUTCHINSON: The convention will come to order.

The Chair will announce that arrangements are being made so that when the countdown is finished we are going to recess to watch it.

The invocation this morning will be delivered by the delegate from Wayne county, Mr. Sterrett.

MR. STERRETT: Let us pray. Father, we thank Thee for the many blessings that Thou hast bestowed upon us: our minds, our bodies, and, above all, our ability to have consideration for others. May we use these for our guidance.

Let us be reminded of the wonderful basic resources our forefathers discovered when settling our great state of Michigan and, also, be reminded of the fine, noble people who developed this land of ours. Give us strength, O Lord, to keep these thoughts in mind and to carry on in the upright manner as they have before us. Make alive within us the knowledge that is necessary for conscientious deliberation, so that we may do right for our brother and permit us to openly face our Keeper.

Above all, today, O Lord, let our prayers and thoughts be with an individual who is striving to make a greater land for all of us. Help us this day with Thy guidance. Amen.

VICE PRESIDENT HUTCHINSON: The roll call will be taken by the secretary. All those present will vote aye. Have you all voted? If so, the secretary will lock the machine and take the roll.

SECRETARY CHASE: Mr. President, a quorum of the convention is present.

Prior to today's session, the secretary received the following requests for leave:

Mr. J. B. Richards, indefinitely, due to illness and Mr. Cudlip's secretary phoned in this morning. He is ill with the flu and would like to be excused indefinitely.

VICE PRESIDENT HUTCHINSON: Without objection, they will be excused because of illness indefinitely. The Chair hears no objection.

SECRETARY CHASE: The following delegates are absent with leave: Mrs. Butler, Mr. Cudlip, Miss Donnelly, Mr. John Hannah, Mr. Karn, Mr. Nisbet, Mr. Page, Mr. Pellow, Mr. J. B. Richards and Mr. Woolfenden.

Absent without leave: Mr. T. S. Brown.

VICE PRESIDENT HUTCHINSON: Without objection, Mr. Brown will be excused from today's session. The Chair hears no objection and he is excused.

[During the proceedings, the following delegates entered the chamber and took their seats: Mr. T. S. Brown, Mrs. Butler and Miss Donnelly.]

The Chair recognizes the delegate from Oakland, Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, I am advised that the countdown currently is proceeding, that there are about 7 minutes remaining, and I move that we recess subject to the call of the Chair.

VICE PRESIDENT HUTCHINSON: Mr. Van Dusen moves that the convention recess subject to call of the Chair. All those in favor say aye. Opposed say no.

The motion prevails and the convention stands in recess subject to call of the Chair.

[Whereupon, at 9:40 o'clock a.m., the convention recessed; and, at 10:05 o'clock a.m., reconvened.]

The convention will come to order.

SECRETARY CHASE: Mr. President, a quorum of the convention is present.

VICE PRESIDENT HUTCHINSON: The Chair recognizes the delegate from Gratiot, Mr. Hoxie.

MR. HOXIE: Mr. President and fellow delegates, we have just witnessed an historical event in the annals of American history, and I would like at this time to move that we stand in silent prayer for the success of this flight and the safe return of Colonel John Glenn.

VICE PRESIDENT HUTCHINSON: The question is upon the motion of the delegate. All those in favor of the motion will stand.

[The motion prevailed, all persons in the convention hall standing in silent prayer.]

The Chair recognizes the delegate from Wayne, Mr. Madar.

MR. MADAR: I am rising to a point of personal privilege.

VICE PRESIDENT HUTCHINSON: Will the gentleman state the point?

MR. MADAR: There is an item in the newspaper this morning from the Detroit Free Press on page 20. It refers to one of the matters that came up yesterday, and it is in connection with the expenditure of $333,333. The item specifically says that: "A group of Democrats tried unsuccessfully to restrict the commission's operation to 1 month after the convention formally adjourns."

Now I was up at this mike yesterday. I believe that this information will get back to the people, as it should. I know it will get back down to my district, and I believe the people there know that just what I do—

MR. PLANK: Point of order, Mr. President.

VICE PRESIDENT HUTCHINSON: State the point, Mr. Plank.

MR. PLANK: I fail to see where this has any direct bearing on Delegate Madar. I am wondering whether or not this is actually a point of personal privilege.

MR. MADAR: Mr. President—

VICE PRESIDENT HUTCHINSON: Does the article refer to the gentleman by name?

MR. MADAR: It does not refer to me by name. It refers to a "group of Democrats". I was up here and I spoke, and I do want the privilege of having my vote explained. I believe I have that right, Mr. President.

VICE PRESIDENT HUTCHINSON: The Chair states that this is not a matter of personal privilege. You do have the right to explain your vote under the rules, but it is not a matter of personal privilege.

MR. MADAR: Therefore, Mr. President, I do wish to explain my vote.

VICE PRESIDENT HUTCHINSON: The gentleman will be recognized for that purpose.

MR. MADAR: I voted. I do realize that there will be a copy of the proceedings of this convention issued after the convention adjourns which will be the verbatim journal, and I am certain that there will be a lot of people in this state who will read it so that they can see exactly what my reason was for this. My reason for having gotten up here yesterday was just one reason and only one: it was to fight this idea of featherbedding. I did not want to see the state of Michigan paying for something that they should not pay for.

I certainly was in favor of the expenditure of $129,040 to tell the people of the state of Michigan everything there was to know about this convention. Our chairman, Mr. White,

explained to us at the time that there would be nothing in this printing of the book or pamphlet—whatever it was to be—that would be of a political nature, and I believe Mr. White was sincere when he made that statement, and I believe that this is exactly what it will be if Mr. White is the man who will oversee this job. I am sure we will get a good job done. I want that placed in the minutes. I hope that it might get into the journal now, so that the people would know—because I didn't want somebody impugning my character and the character of my friends, and I didn't want—as Jack Parr would say—some newspaper lying about what I am thinking about or what I am trying to do.

Frankly, I don't think that the heading of this item was done by James Robinson; it was done by someone else on the staff, because I don't think Jim would stoop so low. But I have watched the changing of stories or, that is, I have watched them say things that were absolutely wrong.

I can understand why people were making remarks several months ago and still continue to do so. As to how long it will last—I saw the ad on the back page of the newspaper when they said the newspaper was not for sale—

MR. HIGGS: Point of order, Mr. President!

VICE PRESIDENT HUTCHINSON: Mr. Higgs will state the point.

MR. HIGGS: I wonder what this has to do with the explanation of Delegate Madar's vote, and I wonder how much this is costing the people of Michigan.

MR. MADAR: Mr. President, because it hurts the ears—

VICE PRESIDENT HUTCHINSON: The Chair is being very lenient with the gentleman —

MR. MADAR: I will let the rest of it go.

VICE PRESIDENT HUTCHINSON: The Chair would like to invite the attention of the delegates to rule 65, the last 2 sentences of which read:

> Any delegate is privileged to explain in writing his vote on record roll call votes. The written explanation shall be included in the journal if presented to the secretary before the next session of the convention.

Henceforward, the Chair will attempt to enforce that rule in that way. The explanation of votes will be done in writing presented to the secretary. It will not be made orally on the floor.

Reports of standing committees.

SECRETARY CHASE: No committee reports, Mr. President.

VICE PRESIDENT HUTCHINSON: Communications from state officers.

SECRETARY CHASE: None.

VICE PRESIDENT HUTCHINSON: Second reading of proposals. The delegate from Oakland, Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, I move that the order of second reading be suspended for the balance of the week.

VICE PRESIDENT HUTCHINSON: Mr. Van Dusen moves that the order of second reading of proposals be suspended for the balance of this week. All those in favor will say aye. Those opposed?

The motion prevails and it is so ordered.

Motions and resolutions.

SECRETARY CHASE: Messrs. Leibrand and Perras offer **Resolution 76,** A resolution pertaining to the rules to be followed on the order of second reading of committee proposals, as amended.

Following is Resolution 76 as offered:

Whereas, The standing rules of this convention are silent as to the time and order in the course of this convention when the order of second reading of committee proposals, as amended, will take place; and

Whereas, Unlike the situation that prevails in ordinary legislative chambers where measures coming before the legislative body are largely unrelated, most of the articles and sections that will come before the convention on the order of second reading of proposals are in one way or another interrelated; and

Whereas, Many delegates believe that they cannot intelligently consider and vote upon isolated articles, sections and amendments thereto proposed without then having before them all of the substantive proposals as approved by the committee of the whole and passed; and

Whereas, There has been discussion in the convention regarding limitation of debate and possible limitation of amendment upon second and subsequent readings; now therefore be it

Resolved, That this body instruct its committee on rules and resolutions to consider and report back to the convention a set of rules to govern all procedures upon the order of second reading of proposals and that the committee give special consideration to a rule that will defer the order of second reading of proposals until such time as all substantive proposals have passed first reading and the proposed constitution has been printed as a whole.

VICE PRESIDENT HUTCHINSON: The resolution is referred to the committee on rules and resolutions.

SECRETARY CHASE: That is the only resolution on file.

VICE PRESIDENT HUTCHINSON: Unfinished business.

SECRETARY CHASE: None.

VICE PRESIDENT HUTCHINSON: Special orders of the day.

SECRETARY CHASE: No special orders.

VICE PRESIDENT HUTCHINSON: **General orders of the day.** The delegate from Ionia, Mr. Powell.

MR. POWELL: Mr. President, ladies and gentlemen of the convention, I move that we resolve ourselves into committee of the whole for consideration of proposals on the order of general orders.

VICE PRESIDENT HUTCHINSON: The question is upon the motion of Mr. Powell. Those in favor will say aye. Those opposed will say no.

The motion prevails and the committee will convene and Mr. Powell will preside.

[Whereupon, Mr. Powell assumed the Chair to preside as chairman of the committee of the whole.]

CHAIRMAN POWELL: The committee will be in order. Beginning last Friday and continuing through the 2 sessions yesterday, we have had under consideration **Committee Proposal 98,** A proposal pertaining to the educational institutions of the state. We have now passed sections a, b and c and the first sentence on section d, if the Chair recalls correctly. We have an amendment, the minority report.

For last previous action by the committee of the whole on Committee Proposal 98, see above, page 1170.

Delegate Faxon, do you wish recognition?

MR. FAXON: Mr. Chairman, fellow delegates, with your permission I would like to yield to the other members, those who signed the minority report, and then to comment afterward. This is with regard to junior colleges, in case some of you have forgotten yesterday's proceedings at the last.

MR. BENTLEY: Mr. Chairman, if the gentleman will yield—I do not believe that the amendment has been read yet.

CHAIRMAN POWELL: Will the secretary read the content of the minority report?

SECRETARY CHASE: Pursuant to the minority report of Messrs. Faxon, T. S. Brown, Kuhn and Mrs. Conklin,

Mr. Faxon offers the following amendment:

1. Amend page 3, line 2, after "boards.", by striking out the balance of the section.

CHAIRMAN POWELL: In other words, we have retained the first sentence which carries over onto page 3 a line and one word, and the balance of that printed material on page 3 is what the minority report amendment proposes to delete. Delegate Faxon.

MR. FAXON: The delegates will find the complete report in the journal on page 529, as to the detailed reasons regarding

our minority report here. At this time I would like to yield to Delegate Conklin for additional remarks.

CHAIRMAN POWELL: The Chair will recognize the lady from Wayne, Delegate Conklin.

MRS. CONKLIN: Mr. Chairman, fellow delegates, because, as Jack Faxon pointed out, our full statement is carried in the journal and because prior to this time I have spoken to many of you individually, I would like to be brief. In the first place, before I start, I would like to point out very emphatically that I am not opposed to community colleges and I don't want it construed in that manner. This past summer while I was campaigning for my own office, I carried literature door to door in my own community, which has just voted to have a community college.

I think one of the problems that we have here is that we are talking about this proposal before we are taking up our Committee Proposal 47, which covers the state board of education. If you would take a look at it, maybe, while I am talking, I will point out that it is our recommendation that the state board of education be increased from 4 members to 8 members, and we have taken away from them, from this board, the responsibility of supervising the other 7 state supported schools by the section which we have just passed. Prior to this time, they have had supervision of the central, eastern, western, and northern colleges. With the doubling of the size of the board and the reducing of their work load, I see no reason why we should allow the legislature to set up another board for the sole purpose of handling one phase of the educational picture.

It is my sincere belief that in the matter of education, as well as all other aspects of government, there should be one defined area of responsibility. In this instance it is going to be with the state board of education. The board itself can assign part of its own membership to study the area of community colleges if it so desires. We have provided in Committee Proposal 47, if it is passed, that the state board shall have overall supervision of all education in the state. So I believe that we should not start diluting that responsibility by taking away certain areas of this responsibility.

I might point out that in the journal on page 477, the majority report, I think, gives us one of the best arguments for the minority report. It says:

> Of course, the committee realizes that the state board of education has power and authority to appoint advisory groups when needed. It is expected that the board will appoint committees of outstanding citizens from time to time which would advise it in planning and coordinating any of the areas of education.

I think this is a substantial argument for the minority point of view. We have increased the board. We have taken away some of their responsibilities that they have had heretofore. Rather than see another board set up in the constitution, I urge the adoption of the minority report amendment.

CHAIRMAN POWELL: Delegate Faxon, to whom do you yield now?

MR. FAXON: I would like, at this time, to yield to Delegate Kuhn.

CHAIRMAN POWELL: Delegate Kuhn, the gentleman from Oakland.

MR. KUHN: Mr. Chairman and members of the committee, Delegate Conklin has given you our main reason as to why we are opposed to this board being established by constitution. We are sure that the legislature, if they feel that this board is needed, have the power to establish this board. We do not believe that it is necessary to put in the constitution a board whose only function, really, would be to advise another board.

In other words, we do have several boards that we are going to establish in our constitution, but they have supervision of those schools and universities. This board would have no supervision whatsoever. It says their powers would be: ". . . advise the state board of education concerning general supervision. . . ." So, to us, this is rather a silly thing to do to give constitutional status to a board which will merely advise another board. This is strictly a legislative matter.

Another point to be remembered is that I thought our committee on education took a long step forward by making the state board of education responsible for all the education in the state of Michigan from kindergarten all the way through our higher education. It is going to be their function to advise the legislature on the amount of money these different levels of education need. Therefore, we are opposed to creating a new board merely to advise this board, without giving this new state board of education which we are creating in this constitution a chance to operate.

As Delegate Conklin pointed out, this new state board of education, which we are increasing from 4 to 8 members, if they saw fit could appoint 3 or 4 of their members to look over the junior colleges' problems. It has also been pointed out earlier that the junior colleges have a voluntary group like our state council of college presidents. It is a voluntary group which could advise the state board of education. The main argument that we have against this board is that it is strictly a board to advise, and we don't think it should have constitutional status.

CHAIRMAN POWELL: Delegate Faxon, are you retaining the floor?

MR. FAXON: Yes. I would like to just briefly after these comments explain to the other delegates exactly what occurred in our committee with regard to this particular question. As stated in the minority report, the language which is now being submitted as the minority report was originally passed by the committee as the majority report. Then, on the following week, which was the last week for committee proposals, this language was then inserted with regard to this state board, again, by a very close vote of 11 votes, then, to reconsider it. So that what we are facing here, looking at, in part, in the minority report, is the language that our chairman, Mr. Bentley, had written at the time that this was considered the majority report, and this was included in our statement as to the function of the state board of education and as to the place the junior colleges would take within it.

I think all of us here are agreed as to the need for junior colleges and the need for their being supported throughout the state, and there isn't anyone here who would deny this. I am certain that we are all cognizant of our responsibilities with regard to education. The question that is before us is whether the language which we are asking you to delete accomplishes this purpose for junior colleges; and I would ask you to look closely at this language that we are asking you to delete, to see whether or not this does accomplish some of the things which they feel that it should.

I would first of all call to your attention that the establishment of an advisory board in the constitution, that is, a board to advise a board, is unprecedented in Michigan constitutional history and equally unprecedented in the constitutions of other states. Advisory boards have always been created, but they are not created by constitutional fiat.

Then I would like to call your attention to a statement that I have here with regard to the operations of the state board of education and ask whether or not this doesn't comply with what most of us consider its proper functions. This is a statement that was given to me following the action of the committee in approving the establishment of this separate state board for junior colleges. The statement was given to me by Dr. Ferris Crawford, who was an assistant superintendent with the department of public instruction in charge of junior colleges. I am going to read his exact words to you, so that you can judge for yourself as to his meaning here.

> The state board of education has by precedent established its authority and responsibility for appointing advisory committees and commissions. Examples of such appointments have been the teacher education advisory commission, an ongoing commission which has been in effect since 1948, an advisory commission constituting some 25 representatives of various institutions and organizations which was originated in 1948. Another example is the teachers' certification code revision committee, which has been in operation since 1951. Other examples include innumerable commissions and committees appointed to deal

with the responsibility of the state board of education to approve the incorporation of private colleges in the state.

There is considerable evidence to substantiate the fact that the department of public instruction over the years has provided more than adequate service to the entire field of community college establishment, operation and healthy development. The department, through the statutory provisions setting forth the responsibility of the superintendent of public instruction, is very adequately authorized by the legislature to provide all of the services that are needed for the future development of community colleges. There is not a thread of evidence to support the contention that a separate board could provide better or more efficient coordination and service than now being provided by the superintendent of public instruction and staff. Evidence in the files of the superintendent of public instruction indicates that a great proportion of the time of the staff members of the superintendent of public instruction was devoted to community college affairs.

Now, this is his concluding paragraph:

The new language of the proposal adopted by the education committee regarding the responsibility and role of the state board of education should provide substantial authorization as well as adequate financial support from the legislature to furnish all and more of the service as itemized for the state board for public community and junior colleges in section d.

This is the statement that Dr. Crawford gave to me following the action of our committee.

It is not a question that we are not interested in doing the best for junior colleges. The question is, is this a constitutional remedy? The need for money may be necessary, but it isn't something we can write into the constitution. Are we doing the best for junior colleges when we make them apart from the regular operations and functions of the total educational operation as envisioned in the proposed state board of education?

At this point, Mr. Chairman, I would be willing to yield for any questions that the delegates may have with regard to this or any other subject having to do with junior colleges.

CHAIRMAN POWELL: The lady from Grand Rapids, Delegate Judd, was seeking recognition. The Chair does not know whether it was for a question or a statement. Are there any questions while Delegate Faxon retains the floor?

MR. FAXON: Well, just in closing, then, I would call your attention to the statement that we have all adopted yesterday, which I think should be a good sign to us all, that the legislature shall provide by law for the establishment and financial support of public community and junior colleges which shall be operated by locally elected boards. This gives them constitutional recognition which is what many of them wanted, and it puts us in a very good state with regard to the other states in the union in recognizing junior colleges, and I would urge you all to support the sentence which we have just adopted yesterday and to go along with the deletion of the balance as being unnecessary to the main subject at hand.

CHAIRMAN POWELL: Delegate Judd.

MRS. JUDD: Mr. Chairman and members of the committee, I was a member of the very first class of the very first junior college in the state of Michigan in Grand Rapids, and so, of course, this makes me an authority on junior colleges. (laughter) I may not know as much about them as Delegate Faxon but at least I have a somewhat longer perspective on the situation—and this time may seem awfully long to Delegate Faxon but it doesn't seem very long to me.

I was unable to determine just why he feels so eager to get the junior college board out of the constitution, except to realize that this is probably part and parcel of his original proposal on an earlier section, which would eliminate all of the university boards from the constitution, and this particular junior college board is sort of the tail of his general proposal. Having lost the dog, he is now trying to save the tail. (laughter) It seems to me that the need for a board, a separate board, for the junior college rests not alone on the very great expansion both in number of colleges and number of students but, also, on the increasing amount of funds that the state is having to appropriate therefor, and that the taxpayers of the state do need this kind of protection as to the proper use of their money in relation to the junior colleges.

I think that it is important to refer back to Miss Andrus' talk of last evening to realize that although the junior college movement is now nearly 50 years old, it nevertheless is plainly an emerging function in our whole system of higher education. We need not belabor the point of the need for technological training after what we saw on the TV this morning; but the junior colleges are the one place, it seems to me, where the opportunity for technological training so needed in our present economy could grow and expand. There is, however, something that they have to overcome in achieving this. We go back to the old concept of the trade schools or vocational high schools where we used to send the youngsters who just could not make the high school training.

This is not the concept of the future use of the junior college. The junior college would be a place where a student who has graduated from high school and who has real aptitude in a technological direction could get the training that would fulfil our increasing needs in this field.

This, of course, does not eliminate its other purposes: enabling a student who is qualified for 4 year college training but cannot afford the full 4 years away from home to get his first 2 years at less expense; for the student who is not qualified for a 4 year liberal arts education but who can profit by 2 more years of extension of his secondary education; for the student of a relatively high IQ who just has not matured through the high school years and who can, through 2 more years of college, finally pull himself up by his bootstraps and get his ultimate 4 years of education.

Now these are problems that are a part and parcel of our whole picture of higher education. But with the possibility of 30 or 40 junior colleges coming along, this is too big a burden to put on this board of education which the coming proposal establishes. We have purposely—I presume the committee has—relieved the board of education of governing 4 state universities so that it could concentrate on the planning and coordination of the whole pattern of higher education.

Now if we burden it with this problem of a large number of junior colleges each of which has its own local problems, we are just simply wiping out the advantage gained by setting up separate university boards. I think that the planning and coordination of the junior colleges should originally be done by a separate state board whose work then can be forwarded in to the board of education. It would not be an isolated board, because the proposal is that it be appointed by the board of education so that its work would be coordinated with the planning and coordinating of the overall picture; but I think that we must preserve the time of the board of education for the whole picture without making it specialized in any particular field.

I, therefore, support the committee proposal.

CHAIRMAN POWELL: The Chair recognizes the gentleman from Escanaba, Delegate Follo.

MR. FOLLO: Mr. Chairman and members of the committee, I have a lot of respect for, and I even like the 4 members who have brought up this amendment. I think, however, they are mistaken.

It is nice to have a nice, neat constitution, one that conforms in all ways to the model, but sometimes we have to recognize realities. These realities are that we are going to have, as Mrs. Judd said, perhaps, as the experts tell us, as many as 30 or 40 junior colleges in the state of Michigan in the next 10 to 20 years. This is a tremendous burden, and even though we have enlarged the state board of education to 8 members this still would be too much for them to handle in addition to all of the other things that they are being called on to handle.

I would like to point out to you that the members of the subcommittee on higher education, which included Dr. Anspach, Mr. Bonisteel and Dr. Hannah, all endorsed the separate board

for junior colleges. I would like to point out that these men have dealt with the department of public instruction. They know how it works. They know the need for this board. Those of us who have worked with the state board of education realize that this thing should be done. It is a special case, and we certainly hope that this amendment will not prevail.

There is a need in certain areas of the state for the growth of junior colleges. I am thinking of my own part of the state, the northern part of this state, and I know there are many other communities where students who come from lower income families do not have the opportunity to attend college as well as those from upper income families. For this reason and because we are going to see a great growth in junior colleges in this state—and it is going to become a very important adjunct in education—I would urge you to vote against this amendment.

CHAIRMAN POWELL: Delegates, you might be interested to know that the Chair has 10, now 11 folks on the waiting list, I believe. The Chair will now recognize the gentleman from Petoskey, Delegate Spitler.

MR. SPITLER: Mr. Chairman and delegates, with that report you have just made, it behooves me to be very brief. I want to say that I would oppose the minority report amendment and ask you to vote in favor of the majority report. I feel that the majority report would be more economical. It would expedite things. It would save money for the state of Michigan. If there is to be a staff set up in the department of public instruction, with personnel to do all of this work, it is going to be costly. Here is your opportunity to set up a board, an impartial board, not made up of members from the boards of control of these various community colleges, not made up of administrators from these various community colleges, but an impartial board of 8 members who can weigh their needs, their problems and their requests, and recommend to the state board of education what they feel should be done for all of these community colleges.

Visualize, if you can, what has been stated already. There are 35,000 enrollments in our present community colleges, as many as there are in all of our colleges and universities with the exception of the big 3. We are told in the next few years that that may double, to 70,000. Here we have—with the present board of education having to take care of all the details that they have to take care of: teacher certification, reorganization, annexation and all of the other matters—and we have 30 or 40 community colleges each coming to them and bargaining with them and with the legislature as to what each one should receive. They are going to be bogged down in the work that they will try to do.

I think that the community colleges have been very fair in saying that there shall be an impartial board of 8 set up here, who shall consider their needs, the 17 present community colleges which, as we say, may grow to 30 or 40, and will view those impartially and make recommendations to the state board of education and to the legislature as to their needs.

The Russell report has been referred to here again and again, and the Russell report makes it very emphatic that, in the matter of the community colleges, it is not an enlargement of the elementary and secondary schools over which the state board of education has control. It is not a bringing down of the higher education. It is a separate institution and it needs separate consideration. I think that here is an opportunity to set up a board that could consider these things and channel the requests from these 30 or 40 different community colleges which we may have and save time and save money for the taxpayers of the state.

I would recommend the support of the majority report.

CHAIRMAN POWELL: The Chair recognizes the gentleman from Traverse City, Delegate Rajkovich.

MR. RAJKOVICH: Mr. Chairman and fellow delegates, a good share of my speech has already been given by the 2 or 3 previous speakers, but there are a few things that I would just like to call your attention to here that were brought up today.

I am very happy to hear that nobody is against community colleges. Even in the minority report, people think that the community colleges are excellent, they are fine, they ought to be continued, and I wholeheartedly agree with them that this must be done. However, if we are to provide for orderly growth among these community colleges, we have to have some responsible body to see to it that they grow according to a pattern. If we are going to allow these schools to grow helter skelter, grow up like Topsy, I am afraid we are going to have exactly that type of an organization.

Now, it was pointed out or brought out by the minority report that there are no states that have such a provision. I might add that there are 2 states to my knowledge at present that do have such provisions. I think Mississippi is one of them and Florida is the other. I also might add that in those 2 states, since 1928, that any community college that was established under this system, that all of those community colleges are still in existence and are prospering to this day. This is exactly what we would like to do in the state of Michigan. Furthermore, it has been pointed out that the state board of education will handle all of these things for us in excellent manner. I want to call to your attention another fact in this case. The state board of education we are setting up or we probably will set up—I hope we do—is not a full time body. This state board of education is going to meet maybe once or twice a month. This state board of education is going to oversee and supervise all elementary and secondary education, all higher education, examine the budgets of all the higher institutions. I am quite certain that this body is going to be very, very busy, so that it will be in no position to devote all this essential time that is necessary to all of these community colleges.

Furthermore, it was pointed out that Mr. Crawford was very much opposed to setting up this board. I hate to use names here, but I might point out that Mr. Crawford was responsible, with the state department of public instruction, for the community colleges. It has been his job. He was assigned as a part time duty to work with community colleges. I am not critical of Mr. Crawford, not at all, but this was his responsibility; so, of course, in making a statement, we can read some things into all of these things. I do not want to be critical. I think he has done a good job. The work that has been done so far with community colleges was done, by the way, a great deal on a voluntary basis. It was done with the help of the University of Michigan, Michigan State University and Wayne. So all of them did render assistance.

Now, the question is: what can this board do? I have jotted down a few things that we think this board will do. This board should assume general supervision of community colleges, and we felt that the constitution should not be too specific; because some of these things are going to change from time to time, and these 17 present community colleges are as different as they could be because they serve different areas and different types of people. This has already been explained to you by Miss Andrus and by previous speakers. We also suggest that this board should submit an annual report which would be a sort of a guide for financial assistance and help. Also, we have quoted Russell's study a number of times in this convention and, to quote him again in this case—because the state legislature spent a lot of money in 1958 to get this report done—and here is what he had to say in 1958:

> At present there is no central state agency to which responsibility is assigned for continuing supervision and control of community colleges in Michigan. General responsibility is lodged with the state superintendent of public instruction for the initial approval of the establishment of a community college, but he and his staff have not been assigned responsibility for continuing supervision of these institutions. As a matter of general principle, it would seem wise for the state to lodge the authority over the comunity college system in a board.

Furthermore, we believe and believe very strongly in the community colleges; that the constitutional authority for separate control of community colleges will give community colleges recognition and status which is not available at present.

Community colleges are not thirteenth and fourteenth grades. Many believe that they are, but they are not; although at times

we do render that service. If there are some youngsters who need help, we are very happy to give them that assistance, because we do render service—the first 2 years of a 4 year curriculum. We do render service in terminal programs. We do give adults training programs, and we do assist the community in general. Now, those are some of the things in general that we have in mind.

"What would the board do?" the question has been asked; the point has been raised that "they have nothing to do." Well, actually what we think the board could do, and one of the first things, is to develop a statewide plan for the centers where community colleges should be developed. Everybody would like to have one. Second, we would like to have them provide counsel on problems of establishing and operating new community colleges. Third, we would like to have them approve establishment of new community colleges.

On what basis? Actually, what we would like to have them consider—and this is what is always necessary to establish a successful community college—first, we need an honest state plan for further education of all of youth and adults in our communities. That is the first thing to be considered. Second, we have got to have districts that are large enough to support a community college as far as the students are concerned.

We have to have the will of the people in this particular area; that they want a community college. Now, if you ask the local people, I am sure that they all know what they want; but we want an impartial body to inspect this. Further, we would like to have inspection by this state board, so that it will give us an idea of whether or not we are maintaining an adequate program. Again, we would like to ask them to supply the legislature or this new board of education with our financial needs. We would like to have them do something else that was not mentioned, which I think is very important, and that is to help coordinate the community college activities with other state supported, degree granting institutions, so that each one of those 17—or maybe 40 in the next 15 years—does not have to go around to all these 4 year schools and get an idea of what this is all about or what the transfer provisions shall be.

With these things in mind, I urge all of you to vote down the minority report amendment and to support the committee report for a separate board. Thank you.

CHAIRMAN POWELL: The Chair recognizes the lady from Detroit, Delegate Hart.

MISS HART: Mr. Chairman and fellow delegates, I think almost everything has been said that can be of value except for one or two things. I am glad that we have been reminded that the state board of education is a voluntary board. These people are people who have given tremendous service. They have been so effective—our state board has been so effective in the state of Michigan, that the legislature has seen fit to add to their duties. If our president, Stephen Nisbet, were here, he would verify what I have had to say. This has probably been the most overworked board in the state of Michigan.

I think anyone who has ever watched a board or watched a school or college attempting to get the undivided attention of a board of education would realize the feeling of frustration that the junior colleges must have. They have divided boards for the most part at home. They have school boards that are concerned with elementary and secondary education as well, plus the problems of the junior colleges. I remember in the city of Detroit where the Detroit board of education used to have the responsibility not only for elementary and secondary education in Detroit, but they also had to worry about Wayne State University, and anyone who ever sat through those meetings week after week realizes the impossibility of adequate attention to higher education under those circumstances.

Now, it seems to me that these colleges feel very deeply the need for coordination. They have had a voluntary board and this has not been adequate for their purposes. They have asked the legislature, and the legislature has not seemed to understand the necessity. It seems to me that we are writing a constitution not as a model to edify the United States or Europe or the world. We are writing a working document to meet the needs of the people in Michigan today, tomorrow, and 25 years from now, and I sincerely hope that this committee will vote down the minority report amendment and vote for the report of the education committee.

CHAIRMAN POWELL: The Chair will recognize the gentleman from Detroit, Delegate Sterrett.

MR. STERRETT: Mr. Chairman and delegates, I, like Mrs. Judd, attended a junior college. I am somewhat familiar with their operations and problems. When I came to Lansing as a delegate, one of the prime interests I had in mind was to be sure that community junior college program would be written into the Constitution of the state of Michigan. I am very happy that we are doing this.

However, with due respect to all my friends who are educators here in this convention, I would like to support the minority report amendment. It has been pointed out that we have doubled the size of the state board of education. People have said that we will see 30 or 40 new junior colleges within the next 10 years, but nobody—not one person yet—has definitely stated that the increased state board of education can not handle this situation now.

I would also like to point out to you that in this section of the article on education the state board of education is given the opportunity to appoint a board for junior colleges if it is seen necessary. I personally do not want some deadwood in this until we absolutely need something—and then it would no longer be deadwood.

CHAIRMAN POWELL: The Chair is advised that our Astronaut Glenn has just had lunch.

The Chair will recognize the delegate from Detroit, Mr. Barthwell.

MR. BARTHWELL: Mr. Chairman, fellow delegates, my speech has really been made by many of the delegates; so I think it is now time for me to make one, after sitting here and observing and listening to the orations which I consider have been the most effective speeches I have heard made in this convention: that is that I am against the minority report amendment and favor and ask for the support of the committee.

I am not sure that I am one of those delegates that makes this kind of speech and makes it stick, but I would like to make that speech.

CHAIRMAN POWELL: The Chair will now recognize the gentleman from Bay City, Delegate Higgs.

MR. HIGGS: Mr. Chairman and fellow delegates, I don't think that each of us who speaks needs actually to apologize for his position or to say whether he is friendly or unfriendly to education, but perhaps I should since I have some searching questions here. I have served with a committee which successfully developed a junior college, and I am certainly not unfriendly to junior colleges, and I have gone out and helped to promote this college and to raise the necessary millage for its development.

In examining this committee proposal, the question occurs to me and was highlighted just a moment ago, the question of meeting the need. Now, I wonder whether this proposal will meet the need. The committee proposal sets up an advisory board. We are freezing into the constitution a particular method of advising the state board. How do we know now, how can we anticipate right today whether this particular method will meet the need?

I am impressed by the fact that this is merely an advisory board. It has no power beyond furnishing facts to the state board. We have heard about the need for a statewide plan for development of community colleges. This board cannot do that except through the state board. We have heard about the need for approving the establishment of new community colleges. This board cannot do that, because it doesn't have the power to do that. It merely can advise the state board. We hear about the need for inspection of these community colleges by some board. This board may be able to make the inspection, but it cannot do anything about it except advise the state board. We hear about the need for coordination of programs with other 4 year institutions. This board cannot do that either. This must be done by the state board. Now, I wonder just what the power of the state board will be with regard to the advice that it gets.

I am impressed and I do not take lightly the recommendations that we hear with regard to the need; I only want to ask you whether or not we are meeting the need by freezing into the constitution an advisory board to another board. I am impressed by that argument.

The real question that I would like to have answered is whether or not the power to establish this board is not now with the legislature or would not be with the legislature under the committee proposal. Isn't this particular problem a problem which should be left flexible enough for the legislature itself or the state board itself to determine the kind of advice that may be needed?

I don't think any of us here are opposed to the development of community colleges. I am impressed by the need—I am sure we all are—but are we making a wise step by attempting here to freeze into the constitution this particular method of meeting the need?

CHAIRMAN POWELL: The Chair recognizes the gentleman from Traverse City, Delegate Sleder.

MR. SLEDER: Mr. Chairman and fellow delegates, I should like to speak in opposition to the minority report amendment and in favor of the majority report. I feel, like some of the other speakers, somewhat qualified as an authority on community colleges. I served as vice president on the board of trustees of Northwestern Michigan College and served on the board since it originated 10 years ago. I have watched a community organize a college in an area that was in desperate need of some higher education.

When we first started talking about some type of education in northwestern Michigan, in Grand Traverse county alone 20 per cent of the high school graduates were going on to college. As of today, after this school has been in existence just 10 years, now we have 52 per cent of the high school graduates going on to higher education. And we can compare that as of 10 years ago when in Ingham county, here, close to 90 per cent of the high school graduates were going on to college.

There are certainly areas in this state that do need some form of higher education, and I think it has been found in the community and in the junior colleges, and I think it has been brought out here on the floor in testimony and by the minority report that states:

> However, the committee realized the growing importance of these institutions in the field of higher education. There are now 17 community colleges in Michigan and it is anticipated that this number will expand to 30 or 40 within the next several years. At that time their enrollment may well exceed that of the total number of all state educational institutions who have constitutional status.

I think right there, when we are going to have more students in community and junior colleges in the field of higher education than in any other school that has constitutional status, it is necessary that they be recognized in the constitution.

In my experience with the development of a community college, we found that it was difficult for us to get a connection with the state legislature and with the state government through the board of education, which is necessarily and principally interested in primary schools. A community or junior college is no longer a primary school but is a school of higher education and must be recognized as such. In this constitution we must recognize them as such, and they are in desperate need of a board to help supervise, help the growth—this tremendous growth—that has been pointed out. It is necessary that they have guidance and counsel and that it be orderly growth.

For these reasons, I definitely urge everyone to defeat the minority report amendment and support the report of the committee.

CHAIRMAN POWELL: The Chair will recognize the gentleman from Grand Rapids, Delegate DeVries.

MR. DeVRIES: Mr. Chairman, ladies and gentlemen of the committee, if this board might result in a better coordination of the junior community colleges, it also might result in saving some money. It might raise and coordinate teaching standards among these colleges. It might result in better planning for the J.C.'s and community colleges, and if it does these things it is good enough for me.

I urge you to vote no on the amendment and support the committee report.

CHAIRMAN POWELL: The Chair will recognize the gentleman from Detroit, Delegate Downs.

MR. DOWNS: Mr. Chairman and delegates, I wish to add my voice to those who have urged the support of the committee report and opposition to the minority report amendment. I believe that what the committee here has done is try to establish a realistic bridge between the junior colleges that have literally sprung up around the state, and the rest of our educational system. I think they have stood a very splendid middle ground between having the junior colleges completely separate or making them completely adjuncts to the other parts of the educational system. I think that this looks forward in a very realistic manner. And Delegate Follo, I believe, made a very good statement in saying that we need a constitutional status that gives dignity to these agencies and is not just a cold blooded document.

I urge support of the committee report. Thank you.

CHAIRMAN POWELL: The Chair will recognize the gentleman from Mt. Pleasant, Dr. Anspach.

MR. ANSPACH: Mr. Chairman and fellow delegates, you know if I could read my notes it would be all right. This youngster handed in a paper to the professor, and when he got it back there was a notation in the margin. He could not read it. So he said to the professor, "What does that say?" And the professor said, "That says that you should improve your penmanship." (laughter)

Well, now, we all agree that there is a need. We agree that from the standpoint of size, number of students and number of institutions we already have and that we are going to have in the future, we all agree that it is necessary to have some sort of planning. We all agree there needs to be some sort of control. Now, we do not agree as to how this is to be furnished, but we do agree that there needs to be some board or governmental agency that will be responsible for the supervision, the planning, the overseeing of these institutions.

It has been suggested that this planning and overall supervision might go to the state board of education. It has been said that we would enlarge the state board of education, if it passes, or that we have taken away from the state board the administration of 4 state supported institutions. I remind you that this is true.

On the other hand, we are now making this board responsible, if the next proposal passes dealing with the state board of education, to have complete supervision and control in an advisory capacity, which, of course, is very definite control of all the institutions of the state. You have taken away 4 and you have added 10, plus some 25—some 17 or some 25 or 30 or 40—junior colleges. The state board of education is very busy. It has the responsibility for the supervision of public education, primary and higher education. It is responsible for certification, responsible for planning, for elementary and secondary education. It is responsible for all of your problems of annexation. It is responsible for the hearings on the revoking of certificates. So it has a great deal of responsibility now in addition to this. We have given them the responsibility for advising, coordinating, supervising all levels of education in the state. It is going to be a very busy board.

The board that is being proposed is a permanent body; it is not just a temporary commission. It will gather together for the purpose of survey or study, be a responsible or continuing body with 8 year terms, 8 members, as proposed, if it passes. Therefore, it will be responsible for one segment of education. It is not taking away; this is adding to the state board of education. Just take the matter of budgets alone. If a state board of education must gather 27, 35 or 40 budgets and have hearings on all of those, this is a great responsibility. This board will assume that responsibility and, in turn, will advise the state board from the standpoint of the amount of money necessary for this particular activity in the field of education. So, therefore, it is permanent, made up of indi-

viduals who will give time and effort, and will exert interested effort.

The last is a matter of support. This matter of the board, the board for junior colleges, has the support of most all the authorities in the field. Reference has been made to the Russell report. Dr. Russell says it is required and advises this. Dr. Flood agrees, and Dr. Flood at Michigan State University perhaps is one of the outstanding authorities in the world in that particular area. He says that a board is necessary in this particular area. Then as far as professional educational organizations are concerned, the NEA, the school superintendents, council of presidents of colleges and universities, all endorse this type of proposal that there must be a separate board.

Now I have just been informed a moment ago that at least one committee, the committee on education or members of it—I want to modify it, because I cannot speak definitely; all I can say is I understand. Years ago a professor said to me, if you want to quote, don't quote a man; say "I understood him to say"; then you are one safe ground—so I am not saying this is definitely so, but I understand that the education committee of the house is in favor of a separate board. This is also true in the senate. Last year a bill was introduced to create such a board, but it did not get through the legislature. I, therefore, ask for the support of the majority report and for the defeat of the minority report amendment.

CHAIRMAN POWELL: The Chair recognizes the gentleman from Muskegon, Delegate Seyferth.

MR. SEYFERTH: Mr. Chairman and fellow delegates, it seems like this committee is loaded on the side of education. I have been in this spot once or twice before.

I wish to rise in support of the minority report amendment. It seems to me that, first of all, our community college projects as we know them today are locally oriented institutions. They are supported locally, the same as our primary and secondary school systems.

I don't think it is the intent of the education committee by the imposing of this section d in its full extent that they are intending to change the financial support arrangement of community colleges. However, I am a little suspicious when they talk so loudly in support of the separate board to control junior colleges. In effect, I am wondering if this is now to become a large complex at state level where junior colleges as such will be taken out of the community level and control and placed pretty much on the same level as higher education. If this is to be done and if this is the plan, then, of course, the board as proposed certainly fits into the picture.

However, we have been talking now for a day or two on organizing and reshuffling of the boards for the various schools on the higher education level. These are existing institutions, and these boards or reshuffling of boards and additional responsibilities seemingly are very necessary. But here, now, we are talking about establishing a board for something that is not literally in existence yet, only in a skeleton form. We have 17 to 19 junior colleges. We are talking about 30 to 40 colleges in a matter of 10, 20 or 30 years—junior colleges. If this happens, the school budget for the state of Michigan is going to be much more than 50 per cent of the total revenues. I cannot anticipate, at least I cannot visualize at this point, that that is going to happen as rapidly as we think it is.

Now if this does happen that junior colleges do come into existence on the basis of 30 to 40 in the next 30 years, additional 30 or 40, I am wondering if we do not have in section d, in the first sentence—

> The legislature shall provide by law for the establishment and financial support of public community and junior colleges, which shall be operated by locally elected boards

—do we not have in that sentence the authority for the legislature to then appoint by law or set up by law a board of control or a board of regents, as such, for the junior college operation?

I support the minority report amendment that we are not ready for the board for junior colleges yet. Later on we will be.

CHAIRMAN POWELL: The Chair recognizes the lady from Livonia, Delegate Conklin.

MRS. CONKLIN: Mr. Chairman, fellow delegates, I believe with the emptying of the room that I think most delegates have made up their minds.

I would like to read something which I wasn't going to go on into, but in the journal in talking about our new state board as we saw it in committee, I would like to quote from our report:

> The new state board is a symbol of partnership between the people and the state. As representative of the people, it embraces popular control, discourages use of education as a partisan tool, provides continuity of statewide policies and programs, is a barrier to special interest group influence on the schools, and helps unify educational forces throughout the state.
>
> It is considered the unifying and coordinating force for education within the state. The committee recommends that the board shall receive information from all of the various levels of public education—elementary, secondary, higher and other public institutions providing instructional programs.
>
> Such information shall be used in order that the state board of education may adequately consider and advise local school boards, governing boards of colleges and universities, the legislature and the people as to the total needs of education in this state and make recommendations concerning their solution.

Then the statement goes on.

I think, as I see it, we are faced with 2 decisions: whether you want to place—and I would say at this time that I would rather see, which sounds like a ridiculous statement, but I would rather see the state board of education increased to 16 or 20 members, if we feel that this isn't enough to adequately handle the problem before us, than I would to start splintering off the responsibility which we are trying to place in one area for the first time in the history of the state of Michigan, as far as education is concerned.

I think we are now faced, when it all boils down, between what the majority says and what the minority report says, with: do we want to put the responsibility on the state board of education or, before we even pass the proposal, do we want to start splintering it off with special interest groups?

I urge the adoption of the minority report amendment.

CHAIRMAN POWELL: The Chair recognizes the gentleman from Bloomfield Hills, Delegate Romney.

MR. ROMNEY: There have been several questions raised here that I think deserve comment. One, with respect to Mr. Seyferth's question. This certainly does not affect the local control of community colleges. It leaves the operational control and the financing of the community colleges exactly where it has been in the past. Certainly, it is true that the power exists in the new board of education to create a committee or an advisory board of this character, and I recognize that fact and certainly I am quite conscious of the new functions of the state board of education because I was chairman of the committee that had to deal with that problem.

When we come to the new functions of the board of education, you will find that they have been vastly enlarged and, consequently, this creates a situation that I think merits the type of attention we are giving to this particular problem. Now, this new state board is going to be the focal point of recommendations by the organized colleges and universities. After all, each university and each college has a board of regents or board of governors that will be able to speak with authority to this state board. On the other hand, these community colleges are controlled by local boards and they really have no effective organized means of presenting their views to the state board of education unless we create an instrument of this character, and this is one of the reasons why I favor the creation of this community college board even though it is merely an advisory board. I am confident that it is wise to make it a board appointed by the state board of education, because we would not want to divide the final responsibility.

I think one other reason that influenced my thinking in supporting this proposal is this: unquestionably, we face greatly enlarged needs in the field of higher education. As Dr. Hannah and others have pointed out, the youngsters who are going to be entering college in the '70s are already in grade school. We know the color of their eyes, their hair, their age, and they are there, and they are going to be seeking a higher education. It seems to me that it is quite obvious that the most economical way to provide for the higher education of many of these youngsters is to place important reliance on the expansion of our community college program. It is much more economical to provide the first 2 years of college in community colleges than it is in the 4 year colleges and universities. It seems to me that it would be short sighted to take the risk that the opportunity to make effective use of the community colleges would be overlooked in a board of education that has a very broad and comprehensive responsibility. I don't want to take that risk. I think that the community colleges should be organized in a way so that they can be equally effective on the presentation of their opportunity to meet our higher educational needs as the colleges and universities.

For that reason I favor the committee report and oppose the minority recommendation.

CHAIRMAN POWELL: The Chair recognizes the delegate from Hancock, Dr. Heideman.

MR. HEIDEMAN: I would like to say a word, Mr. Chairman and fellow delegates, a word in support of this board for junior colleges. If there is any area in the field of higher education which geographically is representative of our state, it is in the field of the junior colleges. I have here a brochure which indicates where they are located. There is one at Ironwood, one at Gogebic. There is another one that isn't indicated here, really, at Michigan Tech at the Soo. The first 2 years at Michigan Tech at the Soo really are a junior college. There is another one at Petoskey—North Central; at Alpena, Traverse City, Muskegon, Saginaw, Bay City, Grand Rapids, Port Huron, Flint, Lansing, Battle Creek, Benton Harbor, Jackson, Warren, Highland Park, Dearborn. Now the number of these is expected to be increased from 17 or—if we count Michigan Tech at the Soo—18, to about 40 in the not too distant future; and I have a statement here which, of course, has been said in different ways: that Michigan public community colleges are growing at a faster rate of growth than all other higher educational institutions.

One of our main purposes was to free the state board of education of its former function of supervising the 4 former teachers' colleges which are now full universities—or the last one will be, the University of Northern Michigan. Because of its great and growing future responsibilities, the creation of this board further implements this purpose. We wish to give constitutional recognition to this board in order to give direction and provide for orderly and systematic growth in this expanding sector of education. It would seem wise, as has been said, that these colleges have a constitutional board for their problems. Thank you.

CHAIRMAN POWELL: The Chair will recognize one of the sponsors of the pending amendment, Delegate Faxon.

MR. FAXON: I wish we could look at this without any great emotion in terms of what we are trying to cut out in these things. You would almost have us believe that the sponsors of this amendment are some great butchers who are attempting to slice away at the lifeblood of that institution which has so far furthered education in this state. Nothing could be further from the truth, and I want to point out that when a constitution—it can do 2 things here, and I want to tell this to those people who are such adherents to junior colleges; that, on the one hand, where they are so anxious to have this board, they may be hurting junior colleges more than they may be helping them. Now a constitution is a grant of power and it is also a restriction of power.

What the proponents of the majority are setting up in the constitution is indeed a very weak sister. All you have to do is read the language to make that determination. Many of those people who are talking about a junior college board which has responsibilities—and I quote from previous speakers—of general supervision, recommendations, et cetera, are not talking about the board that is in that document, section d of our proposal; they are talking about a board that has not been created, because this board that we are dealing with in terms of the deletion is not a board that is going to have powers of this sort. It is going to be a board that simply will advise on these various questions. I wish the delegates would remember, if they are really concerned with doing the best thing for junior colleges, that the best thing for junior colleges may be to give them and give the legislature flexibility to do what might be better.

It has been said, for instance, that in the states of Mississippi and Florida they have a board for junior colleges. I don't deny this, but neither of these states have them in the constitution and they are effective boards. Does this not indicate to you that it might be better for junior colleges to give them a stronger board through legislative action than to set up an advisory board through constitutional action?

Now I must comment on a statement such as why we want to get this out of the constitution. This was made by the first speaker. This is not a question of getting them out of the constitution; they have never been in the constitution. We have to approach this with the question: is putting them in the constitution going to make them better, stronger, is it perhaps going to lead to more effective overall control and planning?

The statement has been made that I at one time sponsored a proposal to eliminate all the university boards from the constitution. I don't know where the delegate received this misinformation, but at no time have I ever sponsored such a proposal to eliminate the university boards from the constitution and I would submit to the delegate who made this charge that a careful review of my proposal dealing with higher education will support my statement here.

The statement has been made time and time again with reference to the Russell report. Now I know those of you who are not members of the education committee have not heard about this Russell report as frequently as we have. The Russell report was based upon a given situation as of a few years ago. The situation given was that the state board of education was in charge of supervision of the 4 former teacher training institutions and that the state board of education had more than enough to do under those responsibilities; so, therefore, it was recommended by Dr. Russell that a board be set up for junior colleges in view of the present educational structure—at that time.

Now, we are writing a constitution that is going to set up a new educational structure in the state, and a new educational structure isn't what Dr. Russell was talking about. I think the delegates must remember that we are dealing with a new structure and, as such, old information and old advice is based upon a situation which will not be true if the proposal which follows this one is going to be adopted. So let us not fall into the mistake of quoting what previous reports have said about the old situation when we are trying to fabricate a new one.

It has been charged here, or, I should say, it has been stated, that a new board will provide for a more economical means of expediting the problems in junior colleges. The only one I could turn to on this would be Dr. Crawford, and there is no substantiation to the fact that this is going to be more economical. I really don't feel that this is a valid criticism to make.

Now, everyone admits and no one gets up here and says, "We don't want to see junior colleges grow." This isn't the question at all. I think when it comes right down to it, the question is whether you are going to provide for flexibility in terms of meeting the needs of junior colleges or whether you want to fix an advisory board from a board to a board as a means by which they can best achieve their goals and purposes.

I wish you would look at it from that standpoint. Is this board good enough to do what you think it can do, or do you think that we could better trust in the action which might develop later on that would better reflect the changing needs than to go ahead with a board which is appointed by the

board to advise a board? Again I want to repeat that at no time in the constitutional history of this state or the constitutional history of any state has any such board been put in. This is completely radical and new. It does not permit legislative action. It does not permit the state board to act. It is something totally new, and the delegates are treating this as if it were something that has already been in.

I wish you would look at this with a very sober and critical eye as to whether this really does what the proponents say it will do.

MR. BENTLEY: Mr. Chairman.

CHAIRMAN POWELL: Chairman Bentley.

MR. BENTLEY: Mr. Chairman, may I inquire how many more speakers are registered with the Chair?

CHAIRMAN POWELL: Apparently 3.

MR. BENTLEY: Well, Mr. Chairman, my personal opinion is that everything that is essential has been said in connection with this amendment and maybe some things that were not so essential, but in view of interesting developments in connection with Project Mercury and because of the time, I move that the committee do now rise.

CHAIRMAN POWELL: The question is on the motion of Delegate Bentley that the committee do now rise. All in favor signify by saying aye. Opposed, no.

The ayes have it. The committee has risen.

[Whereupon, the committee of the whole having risen, Vice President Hutchinson resumed the Chair.]

MR. TUBBS: Mr. President.

VICE PRESIDENT HUTCHINSON: Mr. Tubbs.

MR. TUBBS: Mr. President, just as a matter of information—

VICE PRESIDENT HUTCHINSON: The convention will please show a little better order.

MR. TUBBS: I arose not to speak on the amendment but to remind Mr. Faxon that he and the astronaut had their timing perfect. He made one circuit of the earth while Mr. Faxon was making one circuit of one section of this constitution. (laughter)

VICE PRESIDENT HUTCHINSON: The Chair recognizes the delegate from Ionia, Mr. Powell.

MR. POWELL: Mr. President, ladies and gentlemen of the convention, the committee of the whole has been in session for approximately 90 minutes and we have lost no ground. (laughter) We are considering exactly the same amendment as we were when we went into session.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 98,** has considered an amendment thereto and has come to no final resolution thereon.

VICE PRESIDENT HUTCHINSON: Announcements.

SECRETARY CHASE: The committee on style and drafting will meet in room K this evening at 7:30. Mr. Edward Hutchinson, vice chairman.

We have a request for leave of absence: Mr. Lundgren would like to be excused from the sessions of this afternoon and tomorrow morning.

VICE PRESIDENT HUTCHINSON: Without objection, the request will be granted. The Chair hears no objection and it is so ordered.

What is the pleasure of the convention? Mr. Kirk.

MR. KIRK: Mr. President, I move the convention recess until 2:00 p.m.

VICE PRESIDENT HUTCHINSON: Mr. Kirk moves that the convention stand in recess until 2:00 p.m. All those in favor will say aye. Those opposed, say no.

The motion prevails and the convention stands in recess until 2:00 p.m. today.

[Whereupon, at 11:35 o'clock a.m., the convention recessed; and, at 2:00 o'clock p.m., reconvened.]

The convention will come to order. For what purpose does the gentleman rise?

MR. KNIRK: I would like to ask for a roll call, because I do not believe that a quorum is present.

VICE PRESIDENT HUTCHINSON: Well, the secretary announces when a quorum is present and he has not announced yet. He is waiting.

MR. KUHN: Mr. President, I would like to know how long we have to wait.

VICE PRESIDENT HUTCHINSON: Well, we can wait until a quorum appears unless somebody moves to recess in the meantime.

MR. KUHN: Well, isn't a roll call in order at any time even though there is not a quorum present? I thought it was, under our rules.

MR. BENTLEY: Mr. President.

VICE PRESIDENT HUTCHINSON: Mr. Bentley.

MR. BENTLEY: I move that we recess subject to the call of the Chair.

VICE PRESIDENT HUTCHINSON: Mr. Bentley moves that the convention stand in recess subject to the call of the Chair. All those in favor will say aye. Those opposed say no.

The motion does not prevail. (laughter)

MR. DADE: Mr. President.

VICE PRESIDENT HUTCHINSON: Reverend Dade?

MR. DADE: Mr. President, a question of personal privilege having to do with the body. I believe that Delegate Douglas has a radio and it might increase the efficiency of the convention if the radio was put near the microphone at the time of the arrival of the astronaut, and if it was turned up, we could cont'nue with our business. (laughter)

VICE PRESIDENT HUTCHINSON: It would be the intention of the Chair that at the appropriate time the notification would be again received and we would probably stand again in recess.

SECRETARY CHASE: Mr. President, a quorum of the convention is present.

VICE PRESIDENT HUTCHINSON: **General orders of the day.** The Chair recognizes the gentleman from Ionia, Mr. Powell.

MR. POWELL: Mr. President, fellow delegates, I move we again resolve ourselves into committee of the whole for consideration of proposals under the general orders.

VICE PRESIDENT HUTCHINSON: All those in favor of the motion will say aye. Opposed will say no.

The motion prevails. The committee will convene and Mr. Powell will preside.

[Whereupon, Mr. Powell assumed the Chair to preside as chairman of the **committee of the whole.**]

CHAIRMAN POWELL: The committee will be in order. This will be about the fifth time that our committee of the whole has worked on this proposal, **Committee Proposal 98.**

MR. BENTLEY: Mr. Chairman.

CHAIRMAN POWELL: Delegate Bentley, chairman of the committee on education.

MR. BENTLEY: Mr. Chairman, would the Chair announce the names of those delegates who have indicated their desire to be recognized?

CHAIRMAN POWELL: Those who are now on our waiting list are Delegates Kuhn and Sterrett. The Chair believes Delegate Tubbs said what he desired to say. Delegate Habermehl has now requested; so we have the 3: Kuhn, Sterrett and Habermehl.

MR. BENTLEY: Well, I intend to yield the floor, Mr. Chairman, for purposes of whatever contributions these gentlemen may care to make to the discussion, but I do hope very much the delegates will recognize that most of what could be said on this particular amendment has, I think, already been said, if not everything, and I would hope that we could move as expeditiously as possible to a vote following the remarks of the gentlemen whose names you have just read.

CHAIRMAN POWELL: We are now working on the report of the minority of the committee that has been offered as

an amendment, and the Chair will recognize the gentleman from Pontiac, Delegate Kuhn.

MR. KUHN: Mr. Chairman, members of the committee, once again I would like to speak in support of the minority report amendment. In further support I would like to add this: we have heard that there are 17 junior colleges now and there are going to be more and that, therefore, there would be too many different schools reporting to our state board of education.

Well, I notice we have 10 colleges and universities and they are all going to have to individually report to our state board of education; so, to be consistent, I wonder, if we are to appoint this state board for junior colleges which we could call a super board over our junior colleges, whether or not we should not consider a super board over our regular 4 year colleges and universities. In that way we would only have 2 boards reporting to the state board of education: one representing all the boards for our colleges and universities, and one for our state board for junior colleges. This to me would be consistent. Now, I am sure that the backers of our University of Michigan, Michigan State University, and Wayne State University would not approve of this. I am absolutely certain they would not approve of this, and yet I think I am certain when I say that Dr. Russell supported in his report a super board for higher education.

Therefore, I would like to close by saying that this board is not necessary, especially to be in our constitution, because of the fact that it is a legislative matter and, too, that its only purpose would be one of advice. They would not have anything to do with supervision of our junior colleges. Therefore, I, as one delegate, want to be sure our junior colleges are operated and controlled by locally elected board members. Therefore, I am in support of the minority report amendment.

CHAIRMAN POWELL: The Chair will recognize the gentleman from Detroit, Delegate Sterrett.

MR. STERRETT: Mr. Chairman and delegates, I would like to have you recall a point that Mr. Higgs made that we would be freezing an 8 member board into this constitution. I don't believe that this would be exactly fair to the community and junior college program, nor would it be a type of thing that could be used as freely as it should be used in the future.

I have heard that the community junior college program is going to be expanding, that there are going to be more junior colleges. Who knows? Maybe there will be the day in the next 10 years or 15 or 20 years when we might need area boards. So I would like to see this language omitted from the committee proposal in order to have a freedom of action when it is needed.

There are a few more words to be said, and I would like to yield the floor to Mr. Hubbs.

CHAIRMAN POWELL: Delegate Hubbs.

MR. HUBBS: Mr. Sterrett caught me somewhat by surprise. I share his view with regard to this board being inserted into the constitution. I believe that on constitutional grounds, the idea of writing a constitution which is the fundamental law, that we are violating one of our fundamental doctrines by putting what might very well be called statutory material into this constitution, and I therefore support the minority amendment.

CHAIRMAN POWELL: The Chair recognizes the gentleman from Alpena, Delegate Habermehl.

MR. HABERMEHL: I believe, Mr. Chairman, that my remarks will be quite brief. Delegate Faxon spoke of the purpose of the constitution as being a grant of power or a limitation upon power. I would simply like to point out that in this particular field it has been decided many times that we cannot here grant more power than the legislature now possesses. Matters of education are strictly within the control and under the power of the legislature. Thus, any constitutional provision must be construed only as a limitation on the power of the legislature or of state government. Particularly is that true of section d, that we are involved with here. It would freeze for all time—or at least until such time as a very difficult method of constitutional amendment should be used—the makeup of this board, its tenure and its powers, its jurisdiction.

This, then, fellow delegates, limits the power of the state to make such changes as the future may show to be necessary in the makeup of this board. The legislature could not extend the powers of this board. It could not change their tenure. It could not change their manner of appointment or selection.

Now I would ask: does the power to appoint necessarily involve the power to remove? I believe there are supreme court decisions on that point, which means that the state board of education, however it might be composed, could decide the policy of this junior or community college board. Is there any doubt in any delegate's mind that this community college board subject to appointment and removal by the state board of education would decide or take any different policy stand than the state board of education would take?

The next problem that I address myself to: the state board of education is elected on a statewide basis. It is entirely possible, in fact quite likely, that a majority of that state board of education might well be elected from people sharing one particular educational viewpoint, or from people from one particular area of the state. Five members of that state board of education, then, could decide the makeup of the junior or community college board. I point out that the community colleges are of statewide interest. There is probably more need and more use for the community college set up in the sparsely populated areas of the state, in northern Michigan, where to attend college any student must travel a great distance to attend one of the regular state institutions. How well, then, would this community college board reflect the needs, the wishes, of the upstate and other Michigan areas?

For those reasons, I would strongly urge that you support the minority report amendment in this case. Leave the makeup of this board, its duties, its responsibilities, to the legislature. Certainly they can be just as well trusted as any board of education elected for an 8 year term with staggered terms. The legislators, after all, are the representatives of the people and, as the people's wishes in this field might change, the legislature would have an opportunity to change them, change these provisions, these provisions concerning this community college board. Certainly, I think, we can repose as much trust in the legislature as we can in any appointed board.

MR. MADAR: Point of information, Mr. Chairman.

CHAIRMAN POWELL: The Chair recognizes the gentleman from Birmingham, Mr. Van Dusen, for a preferential motion.

MR. VAN DUSEN: Mr. Chairman, I am advised by the sergeant at arms that our distinguished astronaut is about to make his descent and for that reason I move at this time that the committee rise.

CHAIRMAN POWELL: The question is on the motion of Delegate Van Dusen that the committee do now rise. All in favor signify by saying aye. Opposed, no.

The motion prevails and the committee has risen.

[Whereupon, the committee of the whole having risen, Vice President Hutchinson resumed the Chair.]

VICE PRESIDENT HUTCHINSON: The convention will be in order.

Without objection, the report of the committee of the whole will be temporarily suspended.

The Chair recognizes the gentleman from Birmingham, Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, I move that the convention stand in recess subject to the call of the Chair.

VICE PRESIDENT HUTCHINSON: All those in favor of the motion will say aye. Those opposed will say no.

The motion prevails and the convention stands in recess subject to the call of the Chair.

[Whereupon, at 2:15 o'clock p.m., the convention recessed; and, at 3:05 o'clock p.m., reconvened.]

The convention will come to order.

SECRETARY CHASE: Mr. President, a quorum of the convention is present.

VICE PRESIDENT HUTCHINSON: The Chair will recognize the gentleman from Ionia, Mr. Powell.

MR. POWELL: Mr. President, I move that the convention resolve itself into committee of the whole for the consideration of items under general orders.

VICE PRESIDENT HUTCHINSON: The gentleman from Ionia, Delegate Powell, moves that the convention resolve itself into committee of the whole for consideration of items under **general orders.** All those in favor will say aye. Those opposed will say no.

The motion prevails. The committee will convene and Mr. Powell will preside.

[Whereupon, Mr. Powell assumed the Chair to preside as chairman of the **committee of the whole.**]

CHAIRMAN POWELL: The committee of the whole will be in order. Let us proceed where we left off on **Committee Proposal 98** and the Faxon amendment thereto. The Chair believes the only person who had requested recognition was the gentleman from Detroit, Delegate Madar.

MR. MADAR: Mr. Chairman, all I wanted was to get some information through the Chair from Mr. Habermehl. He made a remark this morning that the legislature had power over these various colleges and universities, and I was just trying to find out whether this is absolutely so and whether or not the legislature could ask for an audit of the universities' and colleges' books.

CHAIRMAN POWELL: Delegate Habermehl, do you care to answer?

MR. HABERMEHL: As closely as I can, Mr. Chairman. Whether or not the legislature has power to audit them, I suppose, will depend upon action that the convention still has to take on this matter of the appointment of a legislative auditor. As I understand that proposal, they would have the right to, if this proposal is adopted.

I will agree that insofar as the 3 top universities of the state, the legislature's control over those 3 universities is limited by the constitutional provisions.

MR. MADAR: In other words, they do not really control the 3 top universities?

MR. HABERMEHL: Except in the fiscal or financial sense if a legislative auditor is appointed.

MR. MADAR: I think you will agree with me, Mr. Habermehl, that this is the place where your control is on the economic end of it. Otherwise, you don't do any controlling.

MR. HABERMEHL: Quite so. I would like to make a little further statement, too. I would state that this idea of the community college board to supervise all the community colleges has a good deal of merit. My objection is to freezing the members of that board, their tenure and their duties, into the constitution so that it cannot be adapted to changes as they may occur.

That is my objection and I want to make it clear that I do not oppose the idea of the formation of a board to supervise the community colleges.

CHAIRMAN POWELL: The Chair recognizes Delegate Bentley, the chairman of the committee on education.

MR. BENTLEY: Mr. Chairman, if there are no other delegates desiring recognition, I suggest we proceed to a vote. As the chairman of the committee on education, I request that the Faxon amendment be voted down and that the committee proposal be sustained.

CHAIRMAN POWELL: Since you have spoken, T. S. Brown, one of the sponsors of this minority report amendment, has sought recognition. He was not here when this matter was discussed earlier in the day. Delegate Brown, do you wish to make a statement?

MR. T. S. BROWN: Yes, I do, Mr. Chairman. I want to apologize for not being privileged to hear the debates on this issue this morning. I am sure they were many and varied and cogent on both sides, but, as I am one of the sponsors of the amendment, I cannot help but speak my mind in this case on the genesis of this particular amendment.

As I spoke last week on the matter concerning the naming of all of the various colleges in our constitution, I believe I mentioned that our committee was full of nostalgia, and I think that particular brand of nostalgia was the reason behind the inclusion of the junior colleges in our constitution, and I think Mr. Habermehl's argument from what I heard was the most cogent for its noninclusion. This nostalgia was accompanied in our committee in the case of the junior colleges by copious amounts of feminine tears, and I understand that we have had many, many exhortations on the part of the people who are very closely allied to junior colleges in the last few days asking our delegates to "Please help us out and stick us in there, you know, because this is what is good for the alma mater." I do object to these things because, although I get a tear in my eye every time the University of Michigan loses a football game, I do realize that there should be certain logical considerations for the inclusion or exclusion of certain schools or categories of schools in our constitution.

I think that actually, at bottom, at bottom, the decision of the majority members of our committee in this particular regard was an emotional decision rather than a logical one. I therefore support the Faxon amendment.

CHAIRMAN POWELL: The question is on the pending amendment which is the minority report, or most of the material on page 3 of Committee Proposal 98, beginning on line 2. All in favor of this pending amendment signify by saying aye. Opposed, no.

A DELEGATE: Division.

CHAIRMAN POWELL: Division is requested. Is the demand seconded? There is a sufficient number up. The secretary will take a roll call vote. Sixty seconds having elapsed, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the adoption of the amendment offered by Mr. Faxon and others, the yeas are 47, the nays are 69.

CHAIRMAN POWELL: The amendment is not adopted. Are there any further amendments on the secretary's desk?

SECRETARY CHASE: Not to this section, Mr. Chairman.

CHAIRMAN POWELL: If there are no more amendments to this section, it will pass.

Section d is passed.

Are there any amendments to the body of the committee proposal?

SECRETARY CHASE: Mr. Norris offers the following amendment:

1. Amend page 2, lines 10 and 23, after "vote" by striking out the comma and "and preside at meetings of the board.", and inserting a period and "The board may elect one of their number, or may designate the president, to preside at board meetings.".

CHAIRMAN POWELL: Delegate Norris.

MR. NORRIS: Mr. Chairman, I do not mean to elaborate upon the reasons which I have advanced on a prior occasion in support of the principle of this amendment. As we have indicated, we are creating constitutional status for these respective boards of trustees, boards of regents, boards of governors. By giving them constitutional status we are making them, according to them, the level accorded to the governor, the legislature, the judiciary. We want to lengthen their terms. We have expanded their number. The whole idea is to make them, in fact, the policymakers of these respective institutions and to continue the international reputation which has thus far been accorded to these institutions, without in any way, directly or indirectly, impugning the integrity or the competency of the presidents of the respective institutions.

The fact is we want to make out of these boards policymaking and functional people, and I think that what we ought to do here is give the right to the boards to select one of their number to preside or, should they decide, give the president that function; but the decision should rest with them, and the word "may" is dispositive of the intent in this particular amendment.

I urge, respectfully, support of this amendment. I think it is in keeping; it proceeds with faithfulness to implement the very function of the committee report. I trust that it will be adopted.

CHAIRMAN POWELL: Chairman Bentley.

MR. BENTLEY: Mr. Chairman, a parliamentary inquiry. I take it that the difference from the amendment offered by the gentleman yesterday is that this is permissive and not mandatory. Am I correct?

CHAIRMAN POWELL: That is correct.

MR. BENTLEY: And I think it also differs from the Allen amendment in that the Allen amendment offered yesterday said that the board "may" elect one of their number as chairman, or, rather, the president "may" preside over the board. Am I correct?

I wish the secretary would enlighten me to see if there is a distinction between this and the Allen amendment of yesterday.

SECRETARY CHASE: The Allen amendment was on page 2, line 24, by striking out the word "shall" or, rather, by inserting the word "may" after "and" in line 24: " . . . and may preside at meetings of the board."

MR. BENTLEY: Thank you, Mr. Secretary. Mr. Chairman, I agree with the gentleman from Detroit only to this extent: that I think everything that has been said on this amendment was said yesterday. I urge the defeat of the amendment and support of the committee proposal.

CHAIRMAN POWELL: The gentleman from Kalamazoo, Delegate Allen, has sought recognition.

MR. ALLEN: Mr. Chairman, we have been through this before. I agree with Delegate Norris in part and disagree with him in part. His amendment, you will note, refers to 2 sections: section b, which is concerned with the 3 large universities, and section c, which is concerned with the other 7 schools.

Now I would oppose the amendment, as I did yesterday, on section b, since the tradition of these schools has been to have the president preside. This is because this is the way the constitution has been worded. I think they have built up such a tradition that we shouldn't try and upset it. But when we get over to section c, I think we have a different situation.

Now the boards of these other schools — well, first of all — all of the other schools except Ferris and Michigan College of Mines have been under the state board of education, so there is no history. But on these 2 schools, Ferris and Mines, they have had a statutory appointed board, and on these boards a member of the board has presided rather than the president. Now, what we do if we go ahead and adopt the language in the majority proposal is that we change the system under which these schools have grown up, and I think if we don't want to change it for the big 3, we shouldn't change it for these other 2 schools.

I think while the Norris amendment to section c is not exactly the same as mine, it comes so close to it that for practical purposes I would be quite willing to accept it. I think we ought to give a little elasticity here. I think most of us are familiar with private colleges. Where in the private college does the president preside? I don't know of any; the board presides. I think that we ought to have the board have the right, if it wishes to do so, to select one of its own members to preside or, if the board wishes to do so, it may have the president preside. Some schools can do it one way; some schools can do it a different way. I personally prefer this system because I don't know how sound it is, where you have a group of men who hire an employee, the president of the university, and then have him preside. We don't do that in our private institutions, we don't do it on our school boards, we don't do it on the state board of education. I think this will give a little flexibility. I think it is a good thing to do.

Now, Mr. Chairman, I would request that because of the differences between section b and section c that when we vote the question be divided.

MR. BENTLEY: I object.

MR. ALLEN: I move that the question be divided.

CHAIRMAN POWELL: The Chair rules that you have the right to divide the amendment.

There are 3 speakers who have sought recognition now in the order that the Chair has noted them. The gentleman from Detroit, Delegate Iverson.

MR. IVERSON: Mr. Chairman, I recall that last evening we voted down this amendment on section c. Am I right? If we did, then we should only proceed on section b.

CHAIRMAN POWELL: The question will now be on the amendment to section b, which the secretary will read.

SECRETARY CHASE: The first amendment offered by Mr. Norris is:

1. Amend page 2, line 10, after "vote" by striking out the comma and "and preside at meetings of the board.", and inserting a period and the sentence "The board may elect one of their number, or may designate the president, to preside at board meetings."; so that the language will then read, going back to near the start of line 7:

> They shall, as often as necessary, elect a president of the institution under their respective supervision who shall be the principal executive officer of the institution, be an ex officio member of the board but without the right to vote. The board may elect one of their number, or may designate the president, to preside at board meetings.

CHAIRMAN POWELL: The Chair recognizes the gentleman from Detroit, Delegate Faxon.

MR. FAXON: Is this question, then, going to be divided, Mr. Chairman?

CHAIRMAN POWELL. It is divided.

MR. FAXON: That is all I wanted to ascertain.

CHAIRMAN POWELL: On the portion relating to section b, which the secretary has just read, Delegate Norris, did you wish to speak again?

MR. NORRIS: I just wanted to underscore one point, Mr. Chairman, and that is we have to remember that the principal executive officer, in this case the president, is a person who is selected by the board, whether it be the board of trustees, the board of governors or the board of regents here, and to accord to him the duty and constitutional right to preside deemphasizes the constitutional status and function and responsibility of the board. For that reason I wanted to underscore it and ask for an affirmative vote on the amendment.

CHAIRMAN POWELL: The question is on the Norris amendment to section b. Delegate Austin.

MR. AUSTIN: This is just for a point of information. I believe that the projection over here on the wall is misleading, because this seems to be the amendment proposed by Mr. Norris yesterday. It differs from the one over there and it may be confusing some of the delegates.

CHAIRMAN POWELL: Is there any desire to have the amendment reread or any confusion at all? Delegate Bonisteel.

MR. BONISTEEL: Mr. Chairman and fellow delegates, I rise to oppose this amendment, because I don't believe in the reasoning that has been presented here as to why a board should not have its president preside over it. I think I stated to you yesterday that the voting members of the board are the 8 members who constitute the board.

Secondly, I believe, is a matter of harmony, which has been demonstrated almost entirely during the history of these institutions, that the method that has been used by the 3 institutions has produced greater harmony by having the president preside over the board than if someone from among the members of the board should be selected to preside; because, if you had much experience in this area, you would find that there are those who would like to have the honor of presiding over the board, maybe more than 1 in a board of 8, and, consequently, you begin to have some division at the very beginning. This way you have at least a man who can preside over the board, over the 8 people who are sitting there, and sitting there in the same capacity to which they were elected, and, actually, the president of the institution is the moderator of the board.

Therefore, I believe that experience having produced the end result which we see here in higher education in Michigan, I can see no reason now to change it insofar as the institutions are concerned, and I would ask those who are here to give great consideration to voting against the proposed amendment.

CHAIRMAN POWELL: In order that there may be no confusion, the Chair is asking the secretary to reread the pending amendment, and then the Chair hopes we can vote thereon.

SECRETARY CHASE: The first amendment is:

[The amendment was again read by the secretary. For text, see above, page 1186.]

CHAIRMAN POWELL: Those in favor of this amendment signify by saying aye. Opposed, no.

The amendment is not adopted. The secretary will read the second amendment.

SECRETARY CHASE: The second amendment offered by Mr. Norris is:

1. Amend page 2, line 23, after "vote" by striking out the comma and "and preside at meetings of the board.", and inserting a period and the sentence "The board may elect one of their number, or may designate the president, to preside at board meetings.".

CHAIRMAN POWELL: The question is on this amendment. All in favor signify by saying aye. Opposed, no.

A DELEGATE: Division.

CHAIRMAN POWELL: Division is requested. Is the demand supported?

SECRETARY CHASE: A sufficient number.

CHAIRMAN POWELL: A sufficient number up. We will now vote by the electric voting machine. Those in favor will vote aye. Opposed, no. Sixty seconds having elapsed, the secretary will lock the machine and tally the vote. The secretary will announce the result of the voting.

SECRETARY CHASE: On amendment 2 offered by Mr. Norris, the yeas are 60, the nays are 57.

CHAIRMAN POWELL: Sixty to 57. The amendment is adopted. Are there any further amendments on the secretary's desk?

SECRETARY CHASE: Mr. White offers the following amendment:

1. Amend page 1, line 16, after "institutions.", by inserting "Formal sessions of governing boards of such institutions shall be open to the public.".

CHAIRMAN POWELL: The gentleman from St. Johns, Delegate White.

MR. BENTLEY: Mr. Chairman, a parliamentary inquiry. This amendment is confined to section a. Section a having been passed, is this amendment in order at this time?

CHAIRMAN POWELL: Yes, it was our understanding that after we had taken them up section by section, we would go back and have amendments to the body of the committee proposal.

MR. BENTLEY: That is just the point I am making; it is not to the body of the proposal. It is confined to section a.

CHAIRMAN POWELL: It is to one of the sections of the committee proposal, which the Chair understood was to be permitted after we had gone through the various individual sections. It is the Chair's understanding it is in order. Delegate White.

MR. WHITE: Actually, I think this amendment is self explanatory. Meetings of governing boards of the 3 major universities have been open to the public and news media only for the past ½ dozen years and that has been accomplished only after a long period of negotiations. As it stands, the public and news media are present only as a matter of sufferance. They are invited guests of the governing board, an invitation which could be, conceivably, withdrawn at any time. It seems to me that now that we are creating by constitutional enactment 7 more such governing boards, it would be appropriate that their formal meetings should be conducted in public sessions.

I would urge your support of this amendment.

CHAIRMAN POWELL: The Chair will recognize the gentleman from Detroit, Delegate Downs.

MR. DOWNS: I would like to speak very strongly in favor of Delegate Ink White's amendment. I believe that the boards should be open to the public as a matter of constitutional right. They are public business. The only possibility might be adding some clauses as we did in the legislative, unless public security demands otherwise, and I cannot see that contingency.

I hope my good friend, Delegate White, will cosponsor a proposition that we make the same principle applicable to boards of supervisors when that is in order. (laughter)

CHAIRMAN POWELL: The gentleman from Detroit, Delegate Madar.

MR. MADAR: I just wanted to say that I am positive now that my trust has not been misplaced. Thanks, Mr. White.

CHAIRMAN POWELL: The question is on the amendment by Delegate White. All in favor signify by saying aye. Opposed, no.

The ayes have it. The amendment is adopted. Are there any further amendments to the body of this committee proposal?

SECRETARY CHASE: Messrs. Pollock and DeVries offer the following amendment:

1. Amend page 3, line 1, after "which shall be" by striking out "operated" and inserting "supervised and controlled"; so that the first sentence will read, going back to page 2, line 29:

The legislature shall provide by law for the establishment and financial support of public community and junior colleges, which shall be supervised and controlled by locally elected boards.

CHAIRMAN POWELL: The Chair recognizes the gentleman from Grand Rapids, Delegate DeVries.

MR. DeVRIES: Mr. Chairman and ladies and gentlemen of the committee, Dr. Pollock and I discussed this amendment with Mr. Bentley and Mr. Sieder. They agreed to it. All it does is change the word "operate" to the words "supervise and control." We thought the word "operate" connotes daily administration and that the words "supervise and control" spell out that the boards' function is basically policymaking and not administration.

MR. BENTLEY: Mr. Chairman.

CHAIRMAN POWELL: Chairman Bentley.

MR. BENTLEY: In view of the great distinction enjoyed by the gentleman from Grand Rapids and the gentleman from Ann Arbor, and that I believe that this does contribute, my conviction is that this does contribute to a better understanding of the proposal, the committee on education has no objection.

CHAIRMAN POWELL: The question is on this pending amendment by Doctors Pollock and DeVries. All in favor signify by saying aye. Opposed, no.

The ayes have it and the amendment is adopted.

SECRETARY CHASE: Mr. Faxon offers the following amendment:

1. Amend page 2, line 26, after "governor" by striking out the remainder of the sentence and inserting "with the advice and consent of the state board of education."; so that the language will read, beginning on line 24:

Each board of control shall consist of 8 members who shall hold office for 8 years and who shall be appointed by the governor with the advice and consent of the state board of education.

CHAIRMAN POWELL: Delegate Faxon.

MR. FAXON: Mr. Chairman and fellow delegates, we have had considerable discussion over the question of appointments without any check upon the power of appointment. I offer this as one of the methods that have been considered and not acted upon favorably by the committee. But it was considered, and I feel that the members of this committee ought to at least be aware of this possible alternative to appointments.

It has been pointed out that educational boards are different from regular executive functions of the governor and, as such, it would be in keeping with their difference to indicate this by giving the power of the advice and consent over to a statewide

board elected by the people to confirm or deny the appointments made by the governor to the boards, over which the state board of education might exercise some degree of supervision; so I simply offer this to you as an indication of one way by which we might overcome an obstacle in terms of the composition and the methods of selection and appointment of the members of these boards. I urge your consideration of this as a compromise in this field.

CHAIRMAN POWELL: Chairman Bentley.

MR. BENTLEY: Mr. Chairman, the gentleman from Detroit, Mr. Faxon, has been at times a very useful member of the committee on education and has made great contributions to our work and deliberations thereto, but I must say, in all sincerity and kindliness to the gentleman, that he completely misunderstands the committee procedure if he thinks that every single amendment which was brought up in committee and disposed of in committee after thorough discussion and deliberation has got to be offered again in committee of the whole.

This amendment, as I say, his proposal, was thoroughly discussed and debated in the committee on education. It was voted down. I see no reason to bring it up at this time, and I hope that we can complete action on this proposal and move along. I therefore ask that the Faxon amendment be disposed of in the negative sense by being voted down.

CHAIRMAN POWELL: The question is on the Faxon amendment. All those in favor signify by saying aye. Opposed, no.

The amendment is not adopted.

SECRETARY CHASE: Mr. Habermehl offers the following amendment:

1. Amend page 3, line 8, after "appointed" by striking out "by the state board of education" and inserting "by the governor with the advice and consent of the senate"; so that the language will then read:

> The board shall consist of 8 members who shall hold office for 8 years and who shall be appointed by the governor with the advice and consent of the senate.

CHAIRMAN POWELL: The Chair recognizes the gentleman from Alpena, Delegate Habermehl.

MR. HABERMEHL: Mr. Chairman, I do not believe that I will need very much time on this. This would simply provide for the same method of appointment for this community college board as is provided in the preceding section, section c, for the boards of the various state institutions other than the 3 constitutional ones. I believe that this would eliminate the objection of the community college board being dominated in policy matters by the state board of education. If this community college board is to serve any useful purpose, certainly it ought to have some independence of action. This, I believe, would give it to them.

MR. BENTLEY: Mr. Chairman.

CHAIRMAN POWELL: Chairman Bentley.

MR. BENTLEY: I have great respect and admiration for my good friend from Alpena, but I would point out that his amendment seeks to destroy the committee's intent on this particular proposal, because we definitely voted to make this community college board advisory to and subservient to the state board of education and work through the state board of education. The gentleman's proposed amendment would remove this board entirely from any connection with the state board of education, making it in direct connection with the governor. We do not believe that is in the best interest of the community colleges. We ask for the defeat of this amendment.

CHAIRMAN POWELL: The question is on the Habermehl amendment. Delegate Hart.

MISS HART: Mr. Chairman, we have struggled to keep from fragmenting education, and I would certainly hope that the committee will support the education committee.

CHAIRMAN POWELL: All in favor of the Habermehl amendment signify by saying aye. Opposed, no.

The amendment is not adopted. Are there any further amendments to any section of this committee proposal?

SECRETARY CHASE: That is all of the amendments presently on the desk, Mr. Chairman.

CHAIRMAN POWELL: If not, it will be passed.

Committee Proposal 98, as amended, is passed. It has taken only 5½ days.

The secretary will read the next proposal. I believe it is 47.

SECRETARY CHASE: Item 2 on the calendar, from the committee on education, by Mr. Bentley, chairman, **Committee Proposal 47,** A proposal to replace sections 2 and 6 of article XI.

Following is Committee Proposal 47 as read by the secretary, and the reasons submitted in support thereof:

The committee recommends that the following be included in the constitution:

Sec. a. THERE SHALL BE ESTABLISHED A STATE BOARD OF EDUCATION WHICH SHALL PROVIDE LEADERSHIP AND SUPERVISION OVER PUBLIC EDUCATION INCLUDING ADULT EDUCATION AND INSTRUCTIONAL PROGRAMS IN STATE INSTITUTIONS OTHER THAN COLLEGES AND UNIVERSITIES. IN ADDITION, IT SHALL SERVE AS THE GENERAL PLANNING AND COORDINATING BODY FOR ALL PUBLIC EDUCATION IN THE STATE AND SHALL PROVIDE ADVICE TO THE LEGISLATURE AND TO THE PEOPLE AS TO THE AMOUNT OF STATE SUPPORT REQUIRED. THE POWER OF THE BOARDS OF INSTITUTIONS OF HIGHER EDUCATION OTHERWISE PROVIDED HEREIN TO SUPERVISE THEIR RESPECTIVE INSTITUTIONS AND CONTROL AND DIRECT THE EXPENDITURE OF THE INSTITUTIONS' FUNDS SHALL NOT BE LIMITED BY THIS SECTION.

THE STATE BOARD OF EDUCATION SHALL CONSIST OF 8 ELECTIVE MEMBERS WHO SHALL HOLD OFFICE FOR 8 YEARS. THEY SHALL BE NOMINATED BY PARTY CONVENTION AND ELECTED AT LARGE AS PRESCRIBED BY LAW. THE GOVERNOR SHALL ALSO BE A MEMBER OF THE STATE BOARD OF EDUCATION.

Sec. b. THE STATE BOARD SHALL APPOINT A SUPERINTENDENT OF PUBLIC INSTRUCTION WHOSE TERM OF OFFICE SHALL BE DETERMINED BY THE BOARD. HE SHALL BE THE CHAIRMAN OF THE STATE BOARD—WITHOUT THE RIGHT TO VOTE, AND SHALL BE RESPONSIBLE FOR THE EXECUTION OF ITS POLICIES.

THE SUPERINTENDENT OF PUBLIC INSTRUCTION SHALL BE CHIEF ADMINISTRATIVE OFFICER OF A STATE OFFICE OF EDUCATION WHICH SHALL BE GRANTED SUFFICIENT FUNDS AND STAFF TO CARRY ON STATE RESPONSIBILITIES FOR EDUCATION AS DETERMINED BY LAW.

Mr. Bentley, chairman of the committee on education, submits the following reasons in support of Committee Proposal 47:

A fundamental principle is that education is the concern of all people to safeguard democracy. Inherent in its objectives has been the development of good citizens for the preservation and growth of our country but also inherent has been the public participation in the nature of its teaching and operation. This section attempts to embody both of these principles and is in line with recommendations of major educator and parent groups concerned with education as well as many in school administration.

The enlarged state board finally gives Michigan a policy making body on a state level similar to the local boards of education. Michigan is 1 of 3 states that does not have such a board. For many years there have been grave doubts about the advisability of policies and procedures determined by a superintendent of public instruc-

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Explanation—Matter within [ ] is stricken, matter in capitals is new.

tion alone. Creation of a state board places the superintendent in the position of having constantly available a deliberative body of outstanding citizens who are representative of the citizens of Michigan.

Eight elected members have been selected as the number for the board because experience in other states has proved this to be a desirable size for a deliberative body of this nature.

It is recommended that the legislature provide for the election of board members on staggered terms to maintain continuity in education policies.

The governor shall be a member of the state board of education in order to provide a close relationship between the executive branch of state government and the field of public education. It is understood that such a membership would carry the right to speak and to vote at all board meetings. Such membership could be deputized but without the right to vote.

The new state board is a symbol of partnership between the people and the state. As representative of the people, it embraces popular control, discourages use of education as a partisan tool, provides continuity of statewide policies and programs, is a barrier to special interest group influence on the schools, and helps unify educational forces throughout the state.

It is considered the unifying and coordinating force for education within the state. The committee recommends that the board shall receive information from all of the various levels of public education—elementary, secondary, higher and other public institutions providing instructional programs.

Such information shall be used in order that the state board of education may adequately consider and advise local school boards, governing boards of colleges and universities, the legislature and the people as to the total needs of education in this state and make recommendations concerning their solution.

Having the superintendent of public instruction appointed by the state board follows present day trends as indicated by the following chart:

Methods of selecting chief state school officers by number of states

	1909	1930	1950	1960
Selection by state board	4	8	13	22
Selection by governor	9	7	6	5
Selection by election	33	33	29	23

Appointment by a state board assures that the superintendent of public instruction will be selected from among the most competent people available to serve in that capacity. His responsibilities would be that of directing the state educational system and acting as the executive officer of the state board of education in administering its various functions. It is interesting to note that the last 3 previous superintendents of public instruction of Michigan, all of whom left the office voluntarily, went on record repeatedly as favoring the appointment of a superintendent of public instruction by an enlarged board of education.

This section also recognizes the superintendent of public instruction as administrative head of the state department of education. It is the intent of this committee that the superintendent of public instruction be considered the chief educational officer of the state and as such staff officer to the governor and on his administrative board.

The committees on rights, suffrage and elections and executive branch, who have concurrent jurisdiction, have concurred with the committee on education on this proposal.

Following is the minority report to Committee Proposal 47 as offered and the reasons submitted in support thereof:

Miss Hart and Messrs. T. S. Brown and Douglas, a minority of the committee on education, submit the following minority report to Committee Proposal 47:

A minority of the committee disagree with paragraph one of section b. of Committee Proposal 47.

Miss Hart and Messrs. T. S. Brown and Douglas, a minority of the committee on education, submit the following reasons in support of the foregoing minority report, which accompanied Committee Proposal 47:

The heart of the question over whether or not the state superintendent of public instruction should be elected by the people or appointed by a state board of education is the question: is Michigan to have a strong superintendent of public instruction who is to be a policymaker by dint of his own strength as the choice of the people, or are we to have a superintendent who is granted his strength and guaranteed his weaknesses by virtue of the whim of a board of education which, even if elected, will by its very nature be more difficult to attune to the public will?

It is not enough to say that an appointed superintendent will be on the governor's administrative board. If he is there only as the liaison between the governor and the board of education, he is reduced to the position of messenger boy. If he is on the administrative board as an elected official, he is there as the representative of the people.

The board of education, even though elected, is more difficult to attune to the public will simply because it is more difficult to place blame for mistakes or tender praise for success.

An elected superintendent of public instruction is answerable directly to the people while, as a policymaker at the administrative board level and presiding officer of the board of education, his actions and policies are demonstrably his own.

Other arguments supporting the election of a superintendent of public instruction:

(1) Elected policymaking officials are historically more effective before the legislature and its committees;

(2) An elected superintendent makes it his business to meet the public in every part of the state and will be more inclined to bring the story of the needs and problems of education to all manner of groups; and

(3) There is no evidence to support any argument that an elected superintendent would not perform his professional duties as an educator. On the contrary, his accessibility to the will of the people tends to place the emphasis on more energetic performance of such duties.

Finally, may we add that it is only natural that professional educators should feel that they are best qualified to solve educational problems and handle educational matters. However, the facts are that this is a public responsibility and the only way the public has a direct voice at high, policymaking levels in education is through the election of the superintendent of public instruction.

[Section a was read by the secretary. For text, see above, page 1188.]

CHAIRMAN POWELL: Chairman Bentley.

MR. BENTLEY: Well, Mr. Chairman, Committee Proposal 47 from the committee on education is divided into 2 parts of which the secretary has just read the first part relating to the state board of education. As far as the committee on education is concerned, Mr. Chairman, section a was adopted unanimously, as I recall, by our committee on education, and I believe I am speaking the sentiments of all members of the committee on education when we regard this new state board of education as perhaps our most outstanding accomplishment of all our proposals for the new constitution in the field of education. Section b, which will be arrived at, of course, subsequently, is, on the other hand, quite controversial. There is a minority report pertaining to this section, which we are not discussing at the present time.

For a more adequate and thorough discussion and explanation of section a of Committee Proposal 47, relating to the

state board of education, I yield to the chairman of the subcommittee that handled this matter, the distinguished vice president of the convention, the gentleman from Bloomfield Hills, Mr. Romney.

CHAIRMAN POWELL: The Chair recognizes the gentleman from Bloomfield Hills, Mr. Romney.

MR. ROMNEY: I think for the information of the delegates that I should first outline the significant changes made by this new proposal, and then indicate the things that this proposal does not do, and then the reasons for these changes.

The first thing that the proposal does is to enlarge the board of education from a board of 3 to a board of 8, the 8 members to be elected. It also adds a ninth member in the governor and, through the addition of the governor, develops a tie in between the governor's administrative and executive responsibility and the functioning of the board of governors. I think it is clear that in an activity as important as education involving 50 per cent of the state's expenditures, that it is important that the governor have a direct contact with this activity, be familiar with it, and be in a position to make recommendations on the basis of firsthand knowledge. After all, his recommendations with respect to the budget will be very important in terms of what is finally done for education as a whole.

Now, the second thing that the proposal does is to relieve the board of education of the responsibility for providing the operating direction for the normal colleges.

The third thing it does is to enlarge the functions of the board. The new board of education is given leadership and supervision over education other than colleges and universities. This means the elementary and secondary schools as well as other institutions of an educational character. The third thing it does is to give this board overall planning and coordinating responsibility for all of education. This we have not had. As Miss Hart just indicated, we have had a fragmented situation where segments of education have been operating quite autonomously, and for the first time through this overall board we set up a body that has general planning and coordinating authority. This means that this board is in the position to determine where community colleges should be located, for instance, with the advice of the community college board, whether 4 year colleges should add additional departments, or whether universities should add additional post graduate work. It gives this board the key position in recommending to the governor and the legislature all the steps taken to meet our educational needs in the state.

On number 3, this board's functions are enlarged by making it a general review body of total fund requests for education. This board will have the responsibility of reviewing requests for funds from all segments of education and then submitting its recommendations on these requests to the governor and the legislature and the people of the state, generally. It is believed that this body will establish a stature, a prestige, that will enable it to be very influential in terms of its recommendations. It also means that it will give the board the opportunity to exercise the type of general planning and coordinating control that I have previously indicated in that its recommendations should have a very important bearing on appropriations. Now, this does not preclude separate universities from going directly to the legislature if they do not agree with the recommendations of the board. In connection with the enlargement of the board's activities, I think it is important to know that this enlargement of the board's activities does not increase the authority of the board beyond that now granted in the present constitution to the superintendent of public instruction. The present constitution gives the superintendent of public instruction very broad authority over education, but he is not properly equipped either from the standpoint of staff and department or from the standpoint of ability to cover the full field to discharge that function. This contemplates the establishment of this board with these broad functions and, certainly, this provides a more suitable means of discharging these important functions.

Now what are some of the things it does not do? It does not discourage the voluntary effort that is building up in many fields of education, particularly in the field of higher education. The council of university presidents has begun to do some coordinating work on their own that represents a potentially valuable contribution. This does not discourage the continuation of that voluntary planning and coordination on the part of the institutions of higher learning, nor does it discourage similar voluntary effort on the part of community colleges. It does not interfere with the operating autonomy of the colleges and universities. The boards of regents, the governing boards of the universities and colleges will retain their autonomy in the operating area. And this does not take control of education away from the control of the people; it leaves the control of education in the form that is so well known locally, namely, the election of educational officials. The state board corresponds very closely to the local boards of education. It does not remove completely from the governor the governor's administrative and executive responsibility, because the governor is made a part of this board.

Now we need this provision, as far as I am concerned, because education will play an ever increasing part in state government. It already represents 50 per cent of our state expenditures. We are faced with an increasing number of youngsters who are seeking a higher education in particular and, because of this larger need in the future, it seems particularly timely to make adequate provision for planning and coordination. We are certainly going to need the wisest possible expenditure of available funds in order to meet our educational requirements both in terms of quality and in terms of the number of young people and adults and others who need education in this period when knowledge is multiplying more rapidly than ever before and where the need for it is greater. We certainly need to develop a means of meeting these needs that will be free from local interests and group pressures, and it is believed that this enlargement of the functions of the board of education will contribute importantly to this end. If you have not read it, I would suggest that you read the majority report of the committee on page 402 of the journal.

In conclusion, I think this recommendation for the board of education, if approved by you—as I hope it will be—by itself is sufficient justification for this constitutional convention. I believe that it will function in a manner that will save more annually as we go down through the years than the total cost of this constitutional convention. It will do this by bringing together at a central point intelligent planning for our total educational requirements and free us from the type of fragmented pressures that have been exerting themselves in the past.

I think this is a very timely and necessary action, and I urge you to support the committee's recommendation.

CHAIRMAN POWELL: The Chair recognizes the gentleman from Lincoln Park, Delegate Suzore.

MR. SUZORE: Mr. Chairman, I would like to direct a question to the committee. On page 1, lines 15 and 16, the sentence that reads "They shall be nominated by party convention and elected at large as prescribed by law." It confuses me as to whether or not the intent of the committee was to have them elected on a partisan or a nonpartisan ballot and, if they did wish to do so, why is it not spelled out or something spelled out to indicate more clearly the intent of that sentence?

CHAIRMAN POWELL: Mr. Bentley.

MR. BENTLEY: Mr. Chairman, if the gentleman from Lincoln Park will yield to me for reply, I can assure Mr. Suzore that the intent of the committee on education was very definitely that they would be nominated and elected on partisan tickets, Mr. Suzore. We think that our language is adequate, because, by requiring their nomination by party convention, they would then be nominated on partisan tickets, and when we say "elected by law" we are referring more to the fact that we leave it to the legislature to determine the method of their election; such as, for example, we suggest that 2 be elected every 2 years on a staggered basis, but we think that is a detail the legislature could handle.

MR. SUZORE: I think that is sufficient. It is now on the record as to the intent of the committee.

CHAIRMAN POWELL: The Chair recognizes the gentleman from Sheridan, Delegate Gover.

MR. GOVER: Mr. Chairman, Delegate Romney, I have a question that I would like to have brought out at this time. It is a little unclear in my mind, since it seems that the governor, as busy as he is, shouldn't be bothered by being a member of the committee other than ex officio, and I would like the explanation from the committee on education as to why he was made a regular member of the committee and not just an ex officio member.

CHAIRMAN POWELL: Delegate Romney, do you care to reply?

MR. ROMNEY: Well, actually, there were many members on the committee who felt that the board of education might as well be appointed by the governor because of the fact that education represents such an important part of the state's total expenditures, and, after all, the governor has a considerable responsibility for the total operation of the administrative side of our state government. Now, it was felt that the governor should be tied in as closely as possible with this board, and he should have an effective voice on the board because of the important part he has in the educational program of the state. We considered the question of making him just an ex officio member but concluded that this represented a much more proper relationship between the governor and the board of education, and that there should be as close a relationship is indicated by his voting power on the board.

MR. GOVER: Well, thank you, Delegate Romney. I am not quite in sympathy with that thought, but still it is a good explanation of it.

CHAIRMAN POWELL: The Chair recognizes the gentleman from Gladwin, Delegate Hubbs.

MR. HUBBS: Mr. Chairman and fellow members of the committee, I would like to direct a question to the chairman of the education committee or one of the members who might like to answer it. I would like to refer him to this proposal which we are currently discussing, line 9, the words "and to the people." It says in the proposal that:

> In addition, it shall serve as the general planning and coordinating body for all public education in the state and shall provide advice to the legislature and to the people as to the amount of state support required.

My question is this, Mr. Chairman of the committee: just exactly what did you have in mind when you put these 4 words in "and to the people"?

CHAIRMAN POWELL: Chairman Bentley.

MR. BENTLEY: In reply to the gentleman from Gladwin, Mr. Chairman, I will say that it means just what it says. We feel that the state board of education is such an important institution, and has a peculiar knowledge of the needs of education at all levels in the state of Michigan, that they should make their recommendations not only to the legislature but, also, should give them the widest possible publicity throughout the state, so that the people of Michigan can see and decide for themselves as to whether or not the suggestions of the state board are being carried out and, perhaps more important, should have confidence in the group of—we hope—public spirited, dispassionate persons whose whole souled aim is only to see that the great needs of public education in the state are adequately provided for and financed.

MR. HUBBS: I would like to compliment the chairman on his regard for education, and the members of the committee on their noble objectives which I thoroughly agree with; however, I am just a little bit afraid that by putting these words in here we are evidencing a distrust of the legislature, who are supposed to be the representatives of the people, in suggesting that the board of education might find it necessary to circumvent the legislature to attain their ends. I feel myself that these 4 words could possibly be eliminated and that any selling job that had to be done to the public could be done by the public press and that when the board of education makes their request to the legislature they are talking to the people, to the people who are the legislature, and I frankly feel that this could result in the expenditure of the tax money to lobby the public from the board of education and bypass the legislature. I do not think that these 4 words should be retained in this article.

CHAIRMAN POWELL: Chairman Bentley, do you wish to comment? The Chair will recognize the gentleman from Detroit, Delegate Iverson.

MR. IVERSON: Mr. Chairman, I would like to direct a question to the chairman of the committee or to Mr. Romney. The state board of education is given supervisory control over all state institutions with the exception of colleges and universities. My question is this: does this conflict with Committee Proposal 98 which we just passed, on page 3, which provides:

> The legislature shall provide by law for a state board for public community and junior colleges, which shall advise the state board of education concerning general supervision, planning for such colleges and requests for annual appropriations. . . .

It seems to me there might be a conflict there.

CHAIRMAN POWELL: Mr. Bentley.

MR. BENTLEY: Mr. Chairman, I do not believe, Mr. Iverson, that there is a conflict, but if the matter of state institutions is what is bothering the gentleman, I would like to ask the lady from Detroit, Miss Hart, to comment, because I believe that she was very active in the drafting of this particular language. Am I not correct, Miss Hart?

CHAIRMAN POWELL: Miss Hart.

MISS HART: I have been concerned that the superintendent of public instruction and the state board be concerned with education within the vocational schools, that they have supervision in the institutions of mental health as far as education is concerned, and this is what we were talking about when we spoke of the institutions, specifically, education within state institutions.

CHAIRMAN POWELL: Mr. Iverson.

MR. IVERSON: Well, that does not quite answer my question. In section a you do not give them supervisory control over colleges and universities. Now, in Committee Proposal 98 you do, apparently, give them supervision over community colleges or junior colleges. Then my question was: is there a conflict?

CHAIRMAN POWELL: Mr. Romney.

MR. ROMNEY: Mr. Chairman, if I may comment, Mr. Iverson, on this point. Actually, the board of education does have general supervision over community colleges. It does not insofar as state matters are concerned except to the extent that the direct operating control is with the local board. Now, in the case of the universities, the state board of education does not have general supervision and there is no conflict here so far as I can see.

CHAIRMAN POWELL: Mr. Bentley.

MR. BENTLEY: Mr. Iverson, I think if you will read the sentence in its context ". . . including adult education and instructional programs in state institutions other than colleges and universities. . . ." In other words, it is referring to adult education and instructional programs. I do not believe that we contemplated within Committee Proposal 98, to which you refer, that we were going to get into the question of instructional programs in the community colleges and, therefore, I would see no conflict.

CHAIRMAN POWELL: The Chair will recognize Delegate Faxon somewhat out of order. There are 3 or 4 others, but apparently you want to answer this question?

MR. FAXON: Yes, I just want to respond to this, too. I think that Committee Proposal 98 says that the state board for junior colleges will advise the state board of education, so that it is implied within the state board of education, as Mr. Romney said, that they do make the overall policy and determinations, but that in Committee Proposal 98 the state board would simply have advice from this other board as to how they might proceed here. But I think the state board

does have the overall responsibility for the junior community colleges. I think that may be what his point was.

CHAIRMAN POWELL: The Chair recognizes the gentleman from Detroit, Delegate Downs, next.

MR. DOWNS: Mr. Chairman, I believe there is an amendment pending, and I would rather save my chance to speak in favor of that. May I do that?

CHAIRMAN POWELL: Certainly. The Chair recognizes the delegate from Taylor, Delegate Ford.

MR. FORD: I have a question for Mr. Romney with respect to the rationale of the committee recommendation that you cited to us, Mr. Romney, on page 403. It starts on page 402:

> The governor shall be a member of the state board of education in order to provide a close relationship between the executive branch of state government and the field of public education. It is understood that such a membership would carry the right to speak and to vote at all board meetings.

Now the next language is:

> Such membership could be deputized but without the right to vote.

My first question is what language in the proposed section of the constitution would authorize any member of the board of education to deputize his membership to someone else?

CHAIRMAN POWELL: Mr. Romney.

MR. ROMNEY: Mr. Chairman and Mr. Ford, there is no specific language in the committee proposal that does this, but the committee felt that it could be accomplished by making this clear in the committee report, and because there was a desire to make it possible for the governor to have a deputy attend the meeting if that became necessary, it was provided for in this way. Now, it was the judgment of those advising the committee, as well as the members of the committee, that by making this provision in the report it would be so understood and would be permitted.

MR. FORD: It being the feeling of the committee that the language of the explanation would delegate or permit the delegation of authority short of the authority to vote, what would you conceive the function of the deputy to be? Would he actually render opinions and make pronouncements as a member of the board, as if he were standing in the governor's shoes?

MR. ROMNEY: No, he could simply keep the governor informed on those occasions when the governor might not be able to be present. It was felt, however, that the primary consideration was to make it possible for the governor to have a direct tie in with an activity that represents 50 per cent of total state expenditures and that he should be able to have a direct knowledge of the basic facts and considerations entering into such an important segment of total state activity. Now, recognizing that there might be occasions when the governor could not attend meetings personally because of his other duties, it was felt that in his particular case it would be desirable to indicate intention that he be permitted to be represented by a deputy, not for the purpose of voting as is indicated here but, rather, for the purpose of being informed and helping to keep the governor informed.

MR. FORD: Would it be possible with this board as you have constituted it for the governor to be unofficially represented by a person who could report to him without making that person a member of the committee, or the board, rather?

MR. ROMNEY: Well, I assume that he could secure such a right from the board of education; however, the committee members felt that it was desirable to make this right to be represented by a deputy clear and to embody it in the committee report. It was felt that this was a better and more specific way in which to handle it.

MR. FORD: Then, I take it that this language in the committee recommendation, although it says "deputized but without the right to vote," merely means as an observer and not as a person who would speak for the governor as a member of the committee even though he didn't vote?

MR. ROMNEY: Well, that was my impression when the committee put this in. Other committee members may want to express themselves on this point. This was something that, as far as I know, the committee members generally felt was a desirable thing to provide for.

CHAIRMAN POWELL: The Chair recognizes the gentleman from Garden City, Delegate Ted Brown.

MR. T. S. BROWN: Mr. Chairman, perhaps just a word of explanation concerning section a, here, would be in order. Since there has been some questions about it, I would like to explain it from my point of view, which I think makes sense to me at least, and add my concurrence to what Delegate Romney has said.

If there is anything in this constitution to date which is demanding of superlatives, I think it is the terminology contained in the first paragraph of section a. Now, Dr. Hannah delivered the committee of a very fine address concerning the status of education in this country and especially in the state of Michigan, and the future of education and the gravity of the situations that we are now confronted with. He came up with some very interesting figures which stunned me and, I think, will stun you. One of these, I think, is that the total scope of man's knowledge doubles now every 6 years. It used to be that man's knowledge doubled every thousand years, every hundreds of years. Now we are doubling our total knowledge every 6 years.

It is insufficient in this day and age to have the fragmented type of planning or lack of planning that we have in the present constitution and this gave rise to the idea of the super board. This board, of course, was considered by the people representing the larger universities in this state and they were all in accordance with the fact that there should be some sort of preplanning without detracting from their individual autonomy or the destruction of their traditional way of operating their particular universities. It would also eliminate, I think, the cat and dog fight that occurs in the legislature between the various universities applying for "X" dollars and so on and the devil take the hindmost. This is a very noble and a very far reaching and a very progressive thing that we are doing here in the first paragraph of section a.

In reference to the second paragraph of section a, Delegate Ford had some questions regarding the governor, and I think that the fact that the governor is indicated as a member of the board represents a compromise on the committee between the position of having the governor appoint the board completely and not having the governor have any direct hand in the action of the board. Since the board is elected on a statewide basis and, we assume, on a partisan ballot, we have met the requirement of the people's interest, and therefore I certainly find no harm if the governor were a member of the board.

CHAIRMAN POWELL: The Chair recognizes the gentleman from Detroit, Delegate Faxon.

MR. FAXON: I just want to join in support of the committee report. I think that everything has really been said, that this is a tremendous forward look in the overall structure of education in Michigan. It is something that I go back and talk about with great pride as an indication of our willingness to establish a board that will have this overall look and one that will be able to plan adequately for our future needs. So I wanted the members of this committee to know that this was a result of unanimous action in our subcommittee and, I believe, in our full committee.

CHAIRMAN POWELL: The Chair recognizes the gentleman from Niles, Delegate Boothby.

MR. BOOTHBY: Mr. Chairman, I have an amendment on the secretary's desk which I would like to have read at this time.

SECRETARY CHASE: Messrs. Boothby, Brake, Dean Doty, Leibrand, Finch, Sharpe, Dehnke, Miss Donnelly and Mr. Downs offer the following amendment:

1. Amend page 1, line 16, after "law.", by striking out the balance of the line and all of line 17, which reads, "The governor shall also be a member of the state board of education."

CHAIRMAN POWELL: Delegate Boothby.

MR. BOOTHBY: Mr. Chairman, ladies and gentlemen of the committee, this amendment, as the secretary has indicated, would delete from the recommendation of the committee on education the provision which would place the governor on the board of education. This caused some concern in my mind because, traditionally in this state and in many other states we have tried to remove the education field as far as possible from politics and particularly from partisan politics. It seems to me that by placing the governor of the state, who is actually a political creature and must be so, on the board of education that you would be creating a situation where education might very well be placed in a political arena.

Another thought occurred to me, also, along this line: the fact that the board of education is to be composed of a group of citizens, as the committee has indicated, from all over the state, of outstanding ability in the education field. It seems to me that each one of these people should speak with some effective independent voice on the board. I have been to a certain degree worried that if you place the governor, the governor of the state, a person on whom the eyes of the state are fixed, on the board, that he would become the dominant force on that particular educational board, and the other 8 individuals, having possibly a greater amount of background in education, might not have their word given the full attention which it should.

I would also suggest that the governor would have 2 particularly important areas of concern if he were on the board. One would be in the area of policy, and I have grave questions in my mind whether the governor of the state of Michigan would have the proper time to give the consideration that he should to the policies of the board of education. It was pointed out by the committee on education that the function of this board is to be similar to the local boards of education. I have grave concern whether the governor of the state can give as much consideration as he should on the matters of policy. The second and probably the primary function which the governor would have on this board, and probably the reason why this is in the report, because it was indicated this was a compromise, was that he would have some say on the appointment of the superintendent of public instruction. So what you actually have, in effect, is indirectly the appointment of the superintendent of public instruction by the governor.

Another fact which I think should be pointed out is that the governor does have certain methods by which he can make his influence felt. I do recognize that education consumes 50 per cent of the taxpayers' funds. However, the governor has many means by which he can assert his influence in a very direct manner. One way is by the party convention and being the titular head of the party. We see by the report that the members of the board will receive nomination by their political party. So he has a great deal of influence on the creation of the board. Then he can submit, by various methods, bills to the legislature. He also has the method of a message to the legislature whereby he can incorporate his thoughts in a very direct manner to the legislative body by the message to the legislature. Another way in which the governor can assert his influence is by his very complete access to public communication. So I say that the governor of the states does have a very direct influence on any educational policy that might come out of the board of education.

Another further point is that the superintendent of public instruction, under the plan coming out of the committee, is a staff officer to the governor and serves on his administrative board. So you do have a liaison officer directly from the governor's office on the board of education who can speak for him. The reason for the governor being placed on the board of education was stated on the bottom of page 402 to be that:

> The governor shall be a member of the state board of education in order to provide a close relationship between the executive branch of state government and the field of public education.

Now I submit that any problem that might arise can be adequately taken care of—and the committee actually pointed out the way by which it could be taken care of—and that is in the statement made near the end of the first line on the last paragraph on the bottom of page 403, on the left hand side where it says:

> This section also recognizes the superintendent of public instruction as administrative head of the state department of education. It is the intent of this committee that the superintendent of public instruction be considered the chief educational officer of the state and as such a staff officer to the governor and on his administrative board.

I say the governor has many means by which he can assert his influence and particularly through the superintendent of public instruction, who is contemplated to be a staff officer of the governor and would serve on his administrative board.

I would suggest 3 things in your contemplation of this amendment. I would ask that you allow the superintendent of public instruction to be actually the chief educational officer of the state. I say if the governor is on this board, even though he is not designated as the chief spokesman on the board of education, he would become so, and he would certainly cause the superintendent of public instruction to be relegated to a weaker position. I would say that we must keep education to the greatest extent possible out of politics. I would say that we must remove from the board of education any one person having any particular dominance over that body.

I urge the support of this amendment which would strike from the body of the proposal the words which would allow the governor of the state to serve on the board of education.

At this time I would like to yield to one of my cosponsors of this amendment, Mr. Brake.

CHAIRMAN POWELL: The Chair recognizes Delegate Brake.

MR. BRAKE: Mr. Chairman and ladies and gentlemen of the committee, Mr. Boothby has covered much of what I had intended to say, but I would like to try to analyze this situation just a little bit further. In the ordinary course of events, the 8 members of this board are going to be professional educators. That has been the history of the board of education in the past, and I am sure it will be in the future and that it should be in the future. The governor will not be a professional educator. Professional educators don't know enough about politics to get elected governor. (laughter) I found out not too long ago that I didn't either. (laughter)

That being true, the governor being a politician, as a governor must be a politician, the other members of the board being professional educators, as they should be, my first premise is that the 8 members of the board should lay down the policy to be followed by this board. They should make the decisions. They know what the problems are. They should be the dominant force.

It seems to me that while Mr. Romney didn't say so that one of the principal objectives in the set up that has been suggested to us here is that of moving the department of education a little bit further away from the political arena. The board is elective. They pick the superintendent of public instruction instead of having him elected by the people as in the past. Then the committee turns right around and comes right straight back toward the political arena by putting the chief politician of the state on the board.

My first premise is that the board ought to run this show. Now I would like to inquire as to whether that will be true with the governor on the board. Mr. Boothby has said that the governor must be a dominant figure. That is the nature of governors. If he doesn't dominate every activity into which he goes, he will be branded as weak and ineffective. When the governor goes to a wedding, he gets more attention than the bride gets. (laughter) He will have more attention on this

board than any 4 or 5 members on it; and, since they are professionals or will be professionals and he not a professional, I think that is not good.

Just one other angle, and Mr. Boothby hinted at that, also: that is the matter of the communications from the board to the public. It is highly important that the public know what the problems are, what the board is doing about them, what their plans are for the future. The board will get more publicity with the governor on it than without his being on it; there is no question about that. But will it be the information that the public ought to be receiving in connection with the board? A governor's desire for publicity is irresistible and insatiable. That is all right; I am not complaining about it at all. He has to have it; it is a necessity; he has got to be in the papers every day. If he doesn't get the publicity, he doesn't come back the next term. So, if he is on that board, the information that the public gets is going to be the information that the governor gets out, the information of his viewpoint, his slant at everything that comes before the board. When the reporters want to know about the board, it will be the governor they contact. I think that is not good. I think this ought to come from the board itself, the people who are professionals and who understand the educational problems. It seems to me that the governor just does not belong on this board.

CHAIRMAN POWELL: The Chair recognizes the lady from Livonia, Delegate Conklin.

MRS. CONKLIN: Mr. Chairman, I would just like to say that I am not leaving my committee, because, although this came out in the committee report, I did vote against it in committee and I would like to support the amendment, being one of the few here who didn't have their names on the amendment when it was submitted, and I would like to support it.

CHAIRMAN POWELL: Delegate Downs.

MR. DOWNS: Mr. Chairman and fellow delegates, I rise in support of the amendment, and I would like, if it is in order, to ask the committee chairman a question. First of all, I would like to say that I believe the committee has done an excellent job in strengthening the whole concept of the board of education, and I want to say that I am in wholehearted agreement through line 16 and wish to make that very clear. What I am concerned with, Mr. Chairman, is with the governor being put on the board the same as the 8 other members; is there a danger that he would either be downgraded to be 1 of 9 members or else, as other speakers have said, would tend to dominate the other 8 and thereby weaken a good governmental structure? I wonder if the chairman has any comments to make?

CHAIRMAN POWELL: Mr. Bentley.

MR. BENTLEY: Well, Mr. Chairman, in reply to the gentleman from Detroit—I want to make some comments on the amendment myself a little bit later—but in specific reply to the gentleman from Detroit, I would say that it is certainly not the feeling or the belief of the committee on education that the governor would necessarily dominate this board. If we felt there was any possibility of dominance, we would never have included this particular sentence.

Now, as to the possibility of whether or not he might be "down graded," I do think the governor would be sitting on the board for many reasons, but I will say—and I would hope very much—that while he was on the board he would be just 1 of the 9 board members and would not be in a position superior or inferior, so far as that is concerned. Perhaps, Mr. Downs, rather than saying the governor would be down graded to the level of the other board members, maybe the better explanation would be that the other board members would be up graded in this particular instance to the status of the governor.

MR. DOWNS: Well, thank you. I appreciate the chairman's remarks. I do feel when he said it was the hope—and I am sure he expressed the hope of the committee—I am a little more inclined to be concerned that, people being what they are, this would not end up with the independence we now have in the educational system. I again speak in favor of the amendment to delete the last sentence. Thank you.

CHAIRMAN POWELL: The Chair recognizes the gentleman from Grand Rapids, Delegate Martin.

MR. MARTIN: Mr. Chairman, I looked on this addition of the governor to the state board of education with some doubt in my own mind, in the first instance.

I have given it considerable thought since then and tried to recall what effect the presence of the governor had, for example, on the state administrative board. At the time that I had anything to do with it, of course, there were a majority of one party on the board and the governor was of another party; but it didn't seem to me that, in general, insofar as discussion was concerned and consideration of the matters which came up, that the governor made any more news, so to speak, or dominated the public picture of what was going on on that board than any other member of the board. To the extent that he was vocal, of course, he perhaps got some additional press copy, but other members of the board were vocal too, as I am sure the members of this board would be, and they received as much attention from the press as the governor did. So that it doesn't seem to me that his presence on this board means that in any way he would dominate the board.

On the other hand, his presence on the board does give the board additional importance and prestige because he is the principal officer of the state, and his presence there and his knowledge of the problems that the board is taking up seems to me to be very important. He has to make recommendations to the legislature in regard to what is going on with regard to the educational system, and this seems to me the very best way for the governor to obtain his information, that is, by a membership on the board where these problems are being discussed and considered.

So that, on reflection, it seems to me that committee has made a wise choice and has made a sound proposal which will benefit the state board of education and give it increased prestige and standing.

CHAIRMAN POWELL: The Chair recognizes the gentleman from Garden City, Delegate T. S. Brown.

MR. T. S. BROWN: Mr. Chairman, I rise in support of the amendment. To delete the governor's position on the state board of education, I think is sound.

In our committee, originally, there were, I would say, 2 factions in regard to this particular problem. There were those of us who felt we had to save the right of partisan elections of the members of the state board rather than submit to the wishes of the other faction which wished to have the governor appoint everyone all the way down the line. At one stage in our deliberations and voting, we were having the governor appoint the members of the board of education and also the superintendent. The last sentence including the governor on the state board of education was accepted by us—I am speaking of a few of us; and Miss Conklin, I think, was in that group—as a compromise situation.

I am very gratified to see that there is genuine desire to eliminate this type of interference in the educational process and am very happy to desert what I think is now a sinking ship, because there simply wasn't any reason for it. It was one of these compromises arrived at in a very crucial moment and everyone felt that—let's say this: I personally felt that by accepting this particular thing at this time, I would assure that the members of the board of education, at least, were elected; and this was the primary thing I was concerned with.

I, therefore, support the amendment.

CHAIRMAN POWELL: The question is now on this pending amendment by the distinguished group of bipartisan sponsors here. Chairman Bentley.

MR. BENTLEY: Mr. Chairman, ladies and gentlemen, I think, first of all, Mr. Chairman,—and I am not trying to be facetious—but when my friend from Garden City talks about a sinking ship, he should reflect on the choice of his words because there is an old proverb about those who are first to leave a sinking ship. (laughter and applause) I'm sorry, but I couldn't resist that one.

Mr. Chairman, ladies and gentlemen, the committee, as has been indicated by those members who have spoken on this question, has given this matter a lot of serious consideration and thought during our deliberations. I appreciate the position and the remarks of the sponsors, the cosponsors of the amendment. I was interested in hearing the names read off, particularly the last one.

I said some time ago, if I recall, that some future historians were going to have a field day figuring out the interesting and fascinating coalitions that have arisen or will arise as the result of this convention but, seriously, Mr. Chairman and ladies and gentlemen of the committee of the whole, we did have, I think, at least the majority of us on the committee on education, good and sound reasons for making the governor a ninth member. As I indicated to the gentleman from Detroit, we were not trying to down grade the governor. We were not trying to, on the other hand, make of him a dominant person or individual. Rather, we were attempting as best we could to, in the first place, point out the tremendous importance with which we view the activities and the future competence and jurisdiction of the state board of education. We were trying by placing the governor on the state board of education to provide a direct tie in with the executive branch of the state government. By placing the governor on the board we felt very sincerely that the governor could make a very real contribution through his knowledge of the budget. through his influence on the board. On the other hand, we felt at the same time that by being on the board and by being, we hoped, privileged to attend many of its meetings, the governor in turn could perhaps become more aware of the great needs of public education at all levels in this state than he would normally have time for.

I say again I think that we had a very sound and a very constructive reason for making the governor a member of the board of education. We do not believe that it will inject partisan politics unnecessarily because, after all, he will only be 1 of 9 members, but by placing him on the board I believe we will highlight the importance with which we view the state board of education for which everybody seems to have praised us, as far as our new comprehension of the board is concerned. We do trust that before voting on the pending amendment, you will try to see the reasons of the committee on education, that is the majority of its membership, in making him a member of this board and will keep in mind particularly the words of Mr. Romney, who said—and I subscribe to them wholeheartedly—that the activities of this board as we have conceived them on the committee on education could very well save the state more money than this entire convention has cost us.

That is the way we have visualized the board. That is the way we have set it up. That is the way we have created it. I hope very much that you will not diminish or infringe upon the picture of the board as we have so fashioned it and formulated it in the committee and as we present it to you here. I hope that you will support the committee and will vote down this amendment.

CHAIRMAN POWELL: The Chair recognizes the gentleman from Ann Arbor, Delegate Pollock.

MR. POLLOCK: Mr. Chairman and members of the committee, I find myself in the position of supporting the committee and, particularly, of agreeing with the very cogent argument which Delegate Martin has just made. I see no reason why we should view this very original suggestion of the committee—I don't care whether it was a compromise or not. It seems to me to be an original contribution to the relationship between the regular political processes of the state and the educational system.

I think instead of thinking of it merely in political terms: what it will do to the governor and what it will do to the board of education in political terms—that we should think, rather, that today we are in an administrative era. Politics may be ¼ of it, but about 3/4 of it is administration. The problem of education being such a great one and being one of the major problems confronting the governor, it seems to me this is a very happy solution of relating the governor, with his overriding responsibility for the financial soundness of this state and for the administrative harmony of the whole state structure, to allow the governor, as much as he wishes, to be associated with the work of this board and, at any rate, to be exposed to the board and have some relationship to it.

I personally would have preferred it if the committee had had the superintendent of public instruction appointed by the governor. I found that lots of educational people don't agree with me on this, but viewing it again from the point of view of the sound administration of the state, I think this would be a much better way than to have him appointed by the board; but since the committee in its wisdom has seen fit to have him appointed by the board, I think it is a perfectly logical corollary, viewing the rest of the state structure separate from education, to make that link between the board and the governor.

I think, therefore, that the committee view should prevail and should prevail on the basis not merely that it is a new and original idea and a helpful one to bring together educational expenditures with other expenditures but, also, to give the governor in a sense a group of expert persons whose principal interest is education with whom to advise on matters involving educational policy.

CHAIRMAN POWELL: Delegate Faxon.

MR. FAXON: I rise to second Dr. Pollock's statement here. As a member of the subcommittee and the committee which this came from, I think we have had it mentioned several times now the question that this has been a compromise and, of course, as if the word "compromise" has some connotation that it is not good for either side. I think we ought to understand exactly what the difference was to see how this has sort of brought us together. I refer specifically now to the day that this took place in the committee, the subcommittee had come in with the report that the superintendent be selected by the governor with the advice and consent of the state board of education. We bandied this about in the subcommittee for, I don't know, a few hours, and during the discussion of why this ought to be involved, why the governor and the educational function of the state ought to be more closely allied, many arguments were advanced: what you have heard from Mr. Bentley and from Dr. Pollock that because education is such a major function in this state, the governor ought to in some way have some responsibility for its administration, at least insofar as his office is concerned. So, after all these arguments had been advanced and the vote was taken, that was defeated by one vote on the committee, Dr. Hannah, who was present at that time, made the suggestion that since we were so concerned and since many members of the committee had expressed the concern that the governor ought to participate in the educational administration of the state and ought to participate in the policymaking function of the board to some extent—because it would be his job to implement this—that he made the suggestion that we put the governor on the state board of education. At that time, many members of the committee felt that this was a wedding together of 2 divergent factors, that this made for a more solid and unified educational structure in putting the governor into this educational framework.

I think that the analogy that has been made by Delegate Martin is well taken that the governor, as a member of the state ad board, is able to participate fully in the decisions of that board, and I think that the presence of the governor on the state board of education will give status to that board. It will show to the people of the state the urgent need of education and the overall responsibility that education has. I think it is a step forward in bringing this together, and in so doing I think that the committee has acted wisely, and I support the committee report and speak against the amendment.

CHAIRMAN POWELL: The Chair recognizes the gentleman from Fennville, Vice President Hutchinson.

MR. HUTCHINSON: Mr. Chairman and members of this committee, I rise in support of the amendment now before you and speak to it because on some things, I suppose, we all feel strongly and this is a matter about which I have a strong feeling. I am concerned about the relationship of the governor

to his entire administration. Somehow or other I never have been able to see the logic or the wisdom in making the governor a member, if you please, of the several departments which are under him.

Now this state board of education and its superintendent of public instruction which will be its executive officer is a department in the state government. True it is that this matter of education is one which, according to Mr. Romney, will relate to the expenditure of at least ½ the budget in the state, but that is only ½ the budget. There is another ½ that relates to a lot of other things. The governor, if he can logically be made a member of the board of education, logically should be made a member of all the other departments under him, and I don't think that that is what we want. I understand that the idea was to build a strong governor in this state, and if we have a strong governor he has got to be above all these departments.

I daresay that I can imagine that some governors might very well be embarrassed by their membership on this board of education. They would much prefer, I am sure, not to be a member of it but to require it to answer to him in writing just as other departments must be required to answer to him in writing. His position as a voting member of this board and with not even the chairmanship thereof cannot in my mind but degrade him.

If the other course of action actually comes about as has been described here, he will so completely dominate the board that it will lose its proper function and become merely his adjunct. Now whether he dominates the board or whether he becomes embarrassed by it probably will depend upon the particular governor. Some men will approach the office differently than others. Some men will approach the office of governor in greater degrees of strength both political and popular than would others. Some governors will become governor with a greater sense of direction and a dominance that other governors will not have. Now it doesn't seem to me to be wise at all to make the governor a member of this board any more than it would be wise to make him a member of any of the other departments over whom he presides.

Mr. Martin made reference to the ad board, made mention of the fact that the governor was a member of the ad board and that there were other members of it. But it has always been my understanding that the governor was the chairman of the ad board, and that while in the early days under Governor Groesbeck the governor had an absolute veto over the ad board action, in later days that he doesn't have the veto, nevertheless he is the chairman. I am sure that in the opinion of most of the people of Michigan he is the dominant member of the ad board. I am sure that most of the people of Michigan have always thought of the state administrative board as kind of the governor's cabinet and that the governor presided and actually dominated that board. Now, it may have been, in a couple of terms back when Mr. Martin was a member of the ad board, that that was not true, but in the long run and in the ordinary course of things the governor as chairman of the administrative board will dominate it. I am sure that he will dominate this state board of education in the same way, and I do not think he should.

If this is a compromise coming out of the committee of education, it just goes to prove in my mind, at least, that not all compromises are good; they are unfortunate. I hope that even though the committee found it necessary to compromise in order to get something resolved and out on the floor that the floor will not feel obligated to accept this compromise, because the compromise of placing the governor on the state board of education as simply a common member thereof is very poor policy indeed. In fact, I cannot believe—every time that the governor of Michigan comes into this room or before any other department or any other group of citizens in this state, we all stand in honor of the office. We give him that recognition. He could not come into the state board of education without ipso facto by reason of his presence becoming the chairman, at least for the time while he was there. The position of his office would demand it. Whether or not he were legally the chairman, he would actually be the chairman.

As I say, I can imagine that a good many times the governors of Michigan would be embarrassed, perhaps, by their membership on that board because they would not, perhaps, feel quite as free to call the board to answer to them as they would to require other departments to answer. He should require that department of education to answer just as he requires the department of conservation or the department of state or the department of the treasury or anything else.

I rise in support of this amendment and I think it would be a poor decision indeed if this constitutional convention should go to the people with a provision in a constitution which would reduce the governor to a mere member of the board of education.

MR. ROMNEY: Mr. Chairman.

CHAIRMAN POWELL: The Chair recognizes Delegate Romney, for a reply.

MR. ROMNEY: I must admit that I am somewhat confused by some of the statements that are being made. Mr. Hutchinson just closed with the idea that the governor would be a mere member of the board of education and yet in the course of his discussion he talked about the governor dominating the board of education. Now I submit he cannot be both at the same time. He has either got to be just a member of the board of education or, as Mr. Hutchinson said, he is going to dominate it.

I don't think he is going to dominate it, and I want to tell you why. Number one, while this particular form is novel in that the governor is the only administrative officer on the board of education other than the members of the board of education, this is not completely new. The state of California has established new educational boards in the last 2 years after 2 years of study and they have made both the governor and the lieutenant governor members of these boards of education. Now this is not something completely new.

I think it is important to understand exactly what we are talking about here, and I don't think it has been completely stated yet. This elected board is an independent board. The men elected to that board are elected by the people of this state, and as such they are in a position to take an independent position as members of that board. This independent board of 8 has been given the authority and the responsibility of appointing the superintendent of public instruction.

I was one of those on the committee who shared the view expressed by Dr. Pollock that the sound approach would have been to permit the governor to appoint the superintendent of public instruction, so that the official member of his "family" responsible for education would be a man who had some responsibility to him. Now this did not happen. It was the decision of the committee to make the board of education completely independent of the governor by their separate election and, also, to make the superintendent of public instruction completely independent of the governor by permitting the board of education to appoint the superintendent of public instruction.

There were those on the committee who took the position that education is a fourth branch of government and that we should recognize that there are 4 branches of government and not 3, that education should be set up independently of the rest of the administrative and executive branch of the state government, and should be independent of the legislative and the judicial. I personally do not subscribe to this viewpoint. I do not believe there are 4 branches of state government. I believe that education insofar as it relates to the administrative and the executive part of the state government is an area for which the governor has some degree of important responsibility, and he is so held by the people of this state. Certainly, the governor is the primary person responsible for submitting the budget of this state, and 50 per cent of that budget is to cover educational expenditures.

If you approve the amendment that you are proposing, what you are proposing to do is to divorce the governor from any direct relationship or responsibility for the educational program of this state. Now this talk about his being able to require things in writing and to handle this matter in some other way is contradicted by the experience cited by Mr. Martin and

others where independently elected members of the administrative board have gone their own course; and this board has purposely been put in the position where they are independent and they have purposely been put in the position where they can appoint the superintendent of public instruction, so that the superintendent of public instruction can be taken out of politics to the maximum extent possible. This is the minimum relationship between the governor, and his total administrative and executive responsibility, and the educational program of this state.

If you support this amendment, in effect you are saying that the governor of this state should have no administrative or executive responsibility. You deprive him of even the expert advice of people responsible to him in any way for the educational program of this state, because the members of the board of education aren't responsible to him in any way, the superintendent of public instruction is not responsible to him in any way, and you would divest him of the help he needs in the discharge of his responsibility. All that this proposal makes possible is for the governor to be 1 of 9 in shaping these policies, being familiar with them, and 1 of 9 in the appointment of the superintendent of public instruction, who is to be a member of his own official family.

I think the key question here, the key question here is whether you want to divorce education completely from the governor's administrative and executive responsibility. I think this would be a mistake. I think it is important in terms of the proper conduct of state government; it is important in terms of the future of education in this state that there be a tie in here that avoids domination. I want to close by saying that Mr. Hutchinson cannot be right on both points and neither can Mr. Brake. In other words, the governor cannot both be just a humble member of this board and dominate this board at the same time, because that is a patent inconsistency.

MR. BRAKE: Mr. Chairman.

CHAIRMAN POWELL: Unless you have a very preferred position here to answer a propounded question, you would be about number 5 on the waiting list. Are you offering an amendment? You are one of the sponsors of the pending amendment. The next person to be recognized is the delegate from Garden City, T. S. Brown.

MR. T. S. BROWN: Mr. Chairman and members of the committee, we have come very close to home on this particular issue, very close to home. When I mentioned my last time here at this microphone that we—certain of us as members of the education committee—were subjected to pressure by those people who wanted the governor to appoint everyone all the way down the line, I was not apparently whistling "Dixie" because we have just heard an exponent of that particular point of view.

Now, speaking for us "rats", in answer to Chairman Bentley, and also in answer to Dr. Pollock, I think what has happened here in the objections to the present amendment is that we are confusing substance with form. The substance of the matter is that the governor is the governor is the governor is the governor, and the board of education is the board of education, et cetera. Whether or not the governor is a member of the board of education does not add or detract from his powers to influence or take responsibility for their actions. If we are going to use an artifact of placing the governor on a board to insure that he either dominates or becomes subservient to, we are doing an illogical thing.

CHAIRMAN POWELL: The Chair recognizes the gentleman from Pontiac, Delegate Kuhn.

MR. KUHN: Mr. Chairman and members of the committee, to be absolutely consistent, I must rise in support of the amendment. I am a member of this committee on education and I voted against the governor being a member of the board, and I also voted against him having the right to vote. And I agree with Dr. Pollock and I agree with Mr. Romney that there should be some connection between the governor's office and the education department. I have offered an amendment in the next section to accomplish what they had desired, and that is to allow the governor to appoint the superintendent of public instruction. I think that this is the fairest way to get this line between the governor's office and the education department. Dr. Pollock thought that was the best. Mr. Romney said that was his position, but this was the compromise. I still think it is the best. I am absolutely opposed to the governor being on the state board of education, and I would like to ask the chairman of the committee, Mr. Bentley, if he would be willing to pass over section a and go to section b to see if this committee agrees with us: that the governor should appoint the superintendent of public instruction with the consent of the state board of education, so the educational people will have the veto power, and then we can decide the other issue once and for all.

MR. BENTLEY: Mr. Chairman, if the gentleman is making a motion to pass section a at this time, I see no particular objection to it.

MR. KUHN: Then I so move, Mr. Chairman. I make the motion that we should pass over section a and go to b.

CHAIRMAN POWELL: The motion is in order.

The question is on the motion by Delegate Kuhn to pass section a temporarily and go on to section b. Are you ready to vote? All in favor of the Kuhn motion signify by saying aye. Opposed, no.

The motion does not prevail.

A DELEGATE: Division.

CHAIRMAN POWELL: There has been a demand for division. Is the demand seconded?

SECRETARY CHASE: A sufficient number.

CHAIRMAN POWELL: The question is now on the motion that we pass section a temporarily and proceed with consideration of section b. We will vote using the machine and those in favor will vote aye; those opposed will vote no. The question is on the motion by the delegate from Pontiac, Mr. Kuhn, that we pass section a temporarily and proceed to the consideration of section b. Of course, there is a pending amendment, as you are aware, to section a, which will be to that part of this section. Sixty seconds having elapsed, the secretary will lock the machine and tally the vote. The secretary will announce the ballot.

SECRETARY CHASE: On the motion of Mr. Kuhn to pass section a temporarily and proceed with consideration of section b, the yeas are 46, the nays are 62.

CHAIRMAN POWELL: The motion does not prevail. The question is now on the amendment by Delegate Boothby and 8 others. The next person on the list is the gentleman from Marshall, Delegate Hatch.

MR. HATCH: Mr. Chairman, I would like to direct a question to Chairman Bentley, who also was a member of the committee on executive branch. In Committee Proposal 71 by the executive branch, the committee has recommended that executive agencies, boards, commissions, et cetera, be reorganized into not more than 20 principal departments. Now, it would be my assumption that education would be one of those principal departments. I wonder if the chairman of the education committee would agree with that?

CHAIRMAN POWELL: Mr. Bentley.

MR. BENTLEY: Most completely.

MR. HATCH: Now, in section d of the same proposal, it is provided, "Each principal department shall be under the supervision of the governor." My question is, if a department of education is to be one of the principal departments and if the principal departments are to be under the supervision of the governor, how then, can he supervise himself?

MR. BENTLEY: I will be glad to reply to the gentleman from Marshall that we did not have reference, of course, specifically to the state board of education. I think insofar as we were seized of this matter, we were referring to the department of education, which is one of the 20 departments.

MR. HATCH: Would it not be true that the governor by virtue of his authority as governor and by virtue of the language in Committee Proposal 71, if adopted by the convention, would have general supervisory power over the department of education?

MR. BENTLEY: The department of education, yes.

CHAIRMAN POWELL: The Chair recognizes the lady from Highland Park, Delegate Donnelly.

MISS DONNELLY: I rise to support the amendment, naturally, since my name is on it. In an attempt to analyze this, to me it seems the big argument for having the governor on this committee is because of his knowledge of the budget and his knowledge of the amount of money that is going to be involved. Well, maybe it is not particularly pertinent or deep, but the youth of the state is going to be involved here and I think the parents are deeply concerned, and maybe they should be on it too. for the reason that they are that way.

I am sure, though, that basically we are more interested in the kind of education that is going to come out of this. Last week we voted to increase the board of education for other institutions, to allow more members on the theory that Dr. Hannah said it was more important that people understand the functions of the board, that they cannot get to know them quickly, that they must have a period of time to be on them to function most adequately. I am sure that both parties in selecting their nominees for the office will do their best to get the most qualified people to represent them on this board, but I am also sure that they are not going to select one of the most qualified educators to be governor of the state, because this isn't the function that he must have the greatest asset and the greatest ability in.

To me to put a governor on this board would be in the long run to weaken the board, because of the lack of experience that this individual would bring to that board. The fact that he would not be there frequently, he would send a deputy, would also indicate that it isn't considered to be very serious that the governor be there.

Now in answer to the question that Mr. Romney posed to Mr. Hutchinson as to how we could have him influence the board in some instances and yet not in the other, and to be an improper and incomplete and illogical argument, I would support Mr. Hutchinson's argument by saying I think he missed the point that he said it would depend upon the governor, and how he was elected, and the number of people elected from that party on the board, and the personality of that governor. In many instances we could have a very weak governor on the board or we could have a strong governor on the board, but in neither instance would we primarily have an educator on that board in the form of a governor.

I therefore recommend supporting the amendment to this proposal in hopes that this will also strengthen our educational system which is most vital.

CHAIRMAN POWELL: The Chair recognizes the gentleman from Stanton, Delegate Brake.

MR. BRAKE: Mr. Chairman, ladies and gentlemen of the committee, it seems to me that Mr. Romney's view of how this would work is a very long distance view. Some of us have been around close enough to know how these things actually work out, and certainly they are going to work out with the governor dominating this board. In the ordinary course of events, the board will in the majority be members of the governor's party. That will not always be true probably, but generally. If he is strong enough to win, he will carry most of the ticket with him, and certainly the members of his party on that board are going to watch him for their leadership. There isn't any question about that. That is just one of the facts of life. Now, should there be a majority on the other side, or just a minority on the other side, that minority and the governor are going to sit on opposite sides of the table watching each other for political moves.

Ordinarily, that is a good thing in the right place. I think it is a good thing if the legislators watch each other, the opposite party, kind of keep a check on what they are doing. I rather think it is all right on the administrative board. I kind of like that idea of watching each other, but I don't think it belongs in this department of education. If we want to get this out of politics, the very worst thing we can possibly do is to put the governor on that board.

CHAIRMAN POWELL: The Chair recognizes the gentleman from Muskegon, Delegate Danhof.

MR. DANHOF: Mr. Chairman, I find myself caught between 2 particular fires in this particular case; however, I am inclined to agree at this time with the committee proposal. I was impressed somewhat by the argument made by Dr. Pollock from Ann Arbor, and I think perhaps we are being worried too much by something that might be new, and, therefore, we have a natural tendency to fall back on what we know. As we all know, the educational requirements of this state are going to increase tremendously, and while it may be half of the budget now I can envision where it may go up to 60 or 65 or 70 per cent of this state's budget. If the population figures predicted for this state come true, then the education of our youth and our young people will be probably the most important policy decision that any governor may have to make when he campaigns for that particular office.

I hear the arguments of Mr. Hutchinson and Mr. Brake on how things have worked in the past on certain other boards, but this is something particularly new. Unless he is there or his deputy or someone to help formulate the policy or to, at a minimum, explain the position of the executive and how he feels on certain proposals, I think that we will be doing a disservice to the state.

I think if we propose an independent board, we will be getting to not only a fourth branch of government, maybe, but a fifth—it has been argued that the civil service is already the fourth—so now we will be constituting a fifth branch of government. I think the liaison of the knowledge will be something that we should bear in mind. I would therefore urge, and I myself will support the report of this committee.

MR. BLEDSOE: Mr. Chairman.

CHAIRMAN POWELL: The Chair recognizes the gentleman from Detroit, Delegate Bledsoe.

MR. BLEDSOE: Mr. Chairman, my fellow delegates, certainly we are confronted here with one of the most important problems of our state. It so happens that I am simply sharing my experience here with you in this same problem, because I had the good fortune and experience to serve as an attorney for a school board. I want to say to you that contrary to what Mr. Brake has said, most of your problems that come up from your school districts are not political problems. This is my experience over a period of 6 years. There are a great many other problems, and sometimes those problems find themselves leading you and your independent school districts right to the superintendent of public instruction, because the local boards, as you know, by law are independent. They are just as independent as they can be made by law. Now, I see in the proposal that you have taken away the right of the people to elect their superintendent. You have put it in your board. I think that was a mistake, but we may have to go along with that.

My experience with boards so far is that if you want to get somebody, a group of people on a school board who can sling the book and pass the buck, just try a school board. So when you have a situation like that, where does that leave the people? It leaves the people in one position and that position is to walk into your governor's office with a bridle in your hand, put the bit in his mouth, and make your demand there, because you can't do that with ½ dozen members more or less of a school board because you would have to have too many bridles. Do you get what I mean? Now that has been my experience. The people will be left out. I am only giving you this as a part of my experience. Take it for what you want, but somewhere in some of these problems that come up from the school districts the people will be left completely out if you don't have some strong central authority, to go somewhere to take your problems; and the majority of those problems, believe me, are not political.

I therefore—since the proposal has taken away the strength that ought to go with the election of your superintendent; you have made the superintendent amenable to the board; I am prepared to say to you since you have done that he is going to get together with the part of the people that he can get along with on the school board and the rest of them will

be silent. That's the way that works. There will be a little clique there. He will get along with them. He will get himself a majority on that school board you have put there, and as long as he can operate within the framework of the majority of the people on that school board, the rest of them can go to fire. Believe me, that's the way it works. That's the way it works on the local level and that's the way I believe it will work with the board.

And the people, then? What happens to them? I repeat: if they haven't got some place that they can go and say, "Here, this is your responsibility. You take this problem. You lead us out of it or we will meet you at the polls, at the voting booths." That is a great leveler.

CHAIRMAN POWELL: For some time the Chair has thought that each speaker was the last on the list, but there still is one more. Dr. Anspach.

MR. ANSPACH: Mr. Chairman and members of the committee, when this was first proposed—and I am a member of the committee on education—when it was first proposed I had my doubts, because it was new. I remember, however, that Mark Twain said many years ago, "I have suffered many hours of ill in anticipation of difficulties which have never occurred." So, therefore, when something new comes up, we do have our fears and we do anticipate difficulties and problems, and this is correct. I don't doubt that some of the things can happen that have been prophesied today.

I, too, am in favor of taking education as far away from politics as you can. Whether it is taken away or not depends upon not so much the form as the individuals who are active in connection with the activities of education. I think that education needs this tie in. I, too, have heard people say that we have a fourth branch of government. I think the tie in here with the governor is good for education. I think it is good for the governor. I don't believe that a governor can dominate—there is a possibility he can dominate a board; this is true—on the other hand, an elective board of outstanding individuals undoubtedly could resist the governor. I think it is a very good check, but I don't believe that he can dominate all boards; he might dominate some. So I support the committee report and am opposed to the amendment.

CHAIRMAN POWELL: Chairman Bentley.

MR. BENTLEY: Mr. Chairman, I understand that there was another committee that had scheduled a meeting as soon as we finish this afternoon, and hoping to complete that by supper and in view of the fact that the hour is getting late, I move the committee do now rise.

CHAIRMAN POWELL: The question is on the motion by Chairman Bentley that the committee do now rise. All in favor say aye. Opposed no.

The motion does not prevail.

A DELEGATE: Division.

CHAIRMAN POWELL: There is request for division. Is the demand supported?

SECRETARY CHASE: A sufficient number.

CHAIRMAN POWELL: A sufficient number up. The question is now on the motion of Chairman Bentley that the committee do now rise. Those who are in favor will vote aye; opposed, vote no. Sixty seconds having elapsed, the secretary will lock the machine and tally the vote. The secretary will announce the result of the ballot.

SECRETARY CHASE: On the motion that the committee rise, the yeas are 60, the nays are 49.

CHAIRMAN POWELL: The motion prevails and the committee rises.

[Whereupon, the committee of the whole having risen, Vice President Hutchinson resumed the Chair.]

VICE PRESIDENT HUTCHINSON: The convention will be in order. The Chair recognizes the delegate from Ionia, Mr. Powell.

MR. POWELL: Mr. President and fellow delegates, the committee of the whole has made definite progress of which the secretary will make a detailed report.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 98, A** proposal pertaining to the educational institutions of the state. It reports this proposal back to the convention with 6 amendments, recommending the amendments be agreed to and the proposal as thus amended do pass.

The following are the amendments to Committee Proposal 98, which have been recommended by the committee of the whole:

1. Amend page 1, line 16, after "institutions.", by inserting "Formal sessions of governing boards of such institutions shall be open to the public.".

2. Amend page 1, line 20, after "university" by striking out "of Agriculture and Applied Science"; and page 2, line 1, by striking out "of Agriculture and Applied Science"; and in line 9, after "principal" by inserting "executive".

3. Amend page 2, line 13, after "law.", by striking out "Vacancies shall be filled according to law.", and inserting "The governor shall fill board vacancies by appointment. Any such appointee shall hold office until a successor has been nominated and elected as prescribed by law.".

4. Amend page 2, line 23, after "vote" by striking out the comma and "and preside at meetings of the board.", and inserting a period and the sentence "The board may elect one of their number, or may designate the president, to preside at board meetings.".

5. Amend page 3, line 1, after "which shall be" by striking out "operated" and inserting "supervised and controlled".

VICE PRESIDENT HUTCHINSON: The question is upon concurring in the several amendments recommended by the committee of the whole. All those in favor of concurring will say aye. Those opposed will say no.

The ayes have it. The amendments are adopted.

SECRETARY CHASE: Mr. Downs and Miss Hart offer the following amendment to Committee Proposal 98:

1. Amend page 2,—

MR. DOWNS: Mr. President.

VICE PRESIDENT HUTCHINSON: Mr. Downs.

MR. DOWNS: I rise to ask a point of parliamentary inquiry. I know it is late in the day. If the convention would rather adjourn, we would be glad to carry these over until the morning. It is whatever the convention and the Chair recommend.

VICE PRESIDENT HUTCHINSON: It would be in order, Mr. Downs, if you wanted to, to move to postpone further consideration of Committee Proposal 98 until tomorrow.

MR. BENTLEY: Mr. President.

VICE PRESIDENT HUTCHINSON: Mr. Bentley.

MR. BENTLEY: Will the gentleman yield? May I suggest that his amendment be read before any further motion is in order?

VICE PRESIDENT HUTCHINSON: Yes.

MR. DOWNS: I will yield to the chairman of the committee.

VICE PRESIDENT HUTCHINSON: The secretary will read the amendment which is now being offered.

SECRETARY CHASE: Mr. Downs and Miss Hart have filed the following amendment and there are several others that are on file:

1. Amend page 2, line 26, after "governor" by striking out "in a manner similar to other executive appointments as provided in this constitution.", and inserting "with the advice and consent of the house of representatives.".

Do you want me to read the others, Mr. Downs?

MR. DOWNS: Yes, if the chairman of the committee so desires.

MR. BENTLEY: If you will, sir, Mr. Secretary.

SECRETARY CHASE: Mr. Downs and Miss Hart have also filed the following amendment:

1. Amend page 2, line 26, after "governor" by striking out "in a manner similar to other executive appointments as provided in this constitution.", and inserting "unless rejected by the majority of a select committee of 10 members of the senate, 5 selected by the majority party and 5 selected by the minority party.".

And a third amendment:

1. Amend page 2, line 26, after "governor" by striking out "in a manner similar to other executive appointments as provided in this constitution.", and inserting "with the advice and consent of a select committee of the senate composed of 10 members, 5 selected by the majority members and 5 selected by the minority members.".

I might add that Mr. Faxon has submitted an amendment, and the minority report is submitted as an amendment, and Mr. Ford has offered an amendment.

MR. BENTLEY: Mr. President, may I—I wonder if the gentleman would yield to me. I would like to ask him if he intends, if he and Miss Hart intend to offer their amendments in order and they intend to offer each one in order regardless of what may have happened to the others.

MR. DOWNS: These are so designed that if one of them should pass, the others will be withdrawn. It would save the time of the convention to pass any 1 of the 3. (laughter) If the chairman would indicate which 1 he is supporting, I would be glad to withdraw the other 2.

I would suggest, Mr. President, if it is in order, that I move consideration of these amendments be postponed until tomorrow.

VICE PRESIDENT HUTCHINSON: Mr. Downs moves that further consideration of Committee Proposal 98 be postponed until tomorrow. All those in favor will say aye. Those opposed say no.

The motion prevails and it is so ordered.

MR. HOXIE: Mr. President.

VICE PRESIDENT HUTCHINSON: Mr. Hoxie.

MR. HOXIE: Mr. President, I am wondering if it would be possible for the proposers of these amendments to have them reproduced and on our desks tomorrow morning at 9:30.

VICE PRESIDENT HUTCHINSON: The proposers of the amendments are requested so to do, to assist the work of the convention.

Without objection, we will return to the order of **motions and resolutions.** I hear none.

SECRETARY CHASE: Miss Hart and Mr. Downs offer **Resolution 77,** A resolution requesting information relative to division of the proposed constitution.

Following is Resolution 77 as offered:

Whereas, Indications are that many parts of the proposed constitution will be noncontroversial and supported by the overwhelming majority of the people of Michigan; and

Whereas, There are indications that other portions may be of a controversial nature; and

Whereas, New York state, in presenting its new constitution, satisfactorily did so in a noncontroversial package, with specific votes on separate controversial items; now therefore be it

Resolved, That this convention ask the committee on style and drafting to consider the advisability of making a similar division of the document coming from this convention, and the convention also requests the aid of the attorney general for an opinion as to how this can best be done, if the convention so desires; and be it further

Resolved, That this resolution shall not be construed to commit the convention as to the method of presentation, but is for information only.

VICE PRESIDENT HUTCHINSON: The resolution is referred to the committee on rules and resolutions.

Announcements.

SECRETARY CHASE: The committee on style and drafting will meet in room K this evening at 7:30. Edward Hutchinson, vice chairman.

We have 1 request for leave of absence: Mr. Norris requests to be excused from the morning session of Wednesday and the morning session of Friday.

VICE PRESIDENT HUTCHINSON: Without objection, the request of Mr. Norris will be granted. The Chair hears no objection and it is so granted.

Mr. Lawrence.

MR. LAWRENCE: Mr. President, I notice that in spite of the rather eloquent plea that I made yesterday, discrimination still exists in the convention; so at this time I am wondering if somebody would lend me a screwdriver and maybe I can just do a little self help. (laughter)

VICE PRESIDENT HUTCHINSON: The secretary will make 1 further announcement.

SECRETARY CHASE: The committee on administration will meet tomorrow, Wednesday, at 1:30. Walter DeVries, chairman.

VICE PRESIDENT HUTCHINSON: Mr. DeVries.

MR. DeVRIES: The committee on administration will consider Mr. Lawrence's request for a screwdriver tomorrow at 1:30. (laughter)

VICE PRESIDENT HUTCHINSON: What is the pleasure of the convention? The Chair recognizes the delegate from the ninth district, Mr. Knirk.

MR. KNIRK: Mr. President, I move we adjourn.

VICE PRESIDENT HUTCHINSON: The question is upon the motion of the gentleman from the ninth district that the convention shall now adjourn. All those in favor will say aye. Those opposed will say no.

The motion prevails and the convention stands adjourned until tomorrow morning at 9:30.

[Whereupon, at 5:35 o'clock p.m., the convention adjourned until 9:30 o'clock a.m. Wednesday, February 21, 1962.]

EIGHTY-FOURTH DAY

Wednesday, February 21, 1962, 9:30 o'clock a.m.

PROCEEDINGS

VICE PRESIDENT HUTCHINSON: The convention will come to order.

The invocation today, will be delivered by Reverend William Des Autels, minister of the Methodist Church of St. Louis, Michigan.

REVEREND DES AUTELS: Let us pray. Eternal God, our heavenly Father, touch us with a sense of the abiding significance of these days, days in which history is being written for those who are to follow. We praise and thank Thee for the accomplishments and safe return of our American astronaut and pray that as we look back upon these days, that we, with the experience and responsibilities which are ours, might be lifted above ourselves that we might see that we, too, are making history.

Remind us again of the historic background and rootage of our work, that we might see our nation under God, the same God that would make such accomplishments as the astronaut possible. So lift us, as Thou didst lift him, above ourselves, that we might see our accomplishments as pointing ourselves and others toward Thee.

In the pressure of these days of double schedule, our Father, we pray for Thy special blessing upon these, the convention delegates, that they might stand for something abiding, lest they fall for anything. Bless them and their families at home; touch them and guide them by Thy Holy Spirit, that their deliberations and decisions might be lifted above selfishness, to the good of mankind. For this we pray, in the name of Christ, our Lord. Amen.

VICE PRESIDENT HUTCHINSON: The secretary will take the roll. All those present will vote aye. Have you all voted? If so, the roll call will be taken by the secretary.

SECRETARY CHASE: Mr. President, a quorum of the convention is present.

Prior to the session today, the secretary received the following requests for leave: Mr. Gover requests leave of absence from today's session to attend a funeral; Mr. Bonisteel requests to be excused from the day's session to attend a meeting of the board of directors; and Delegate Donald Doty wishes to be temporarily excused because of road conditions. He will be a little late getting here. Delegate Stanley Powell requests to be excused from the session of the afternoon to fill a speaking engagement on the constitutional convention at the statewide freedom conference at Central Michigan University, in Mt. Pleasant.

VICE PRESIDENT HUTCHINSON: Without objection, the requests will be granted. The Chair hears none and it is so ordered.

SECRETARY CHASE: Absent with leave: Messrs. Bonisteel, Donald Doty, Gover, J. A. Hannah, Karn, Lundgren, Nisbet, Norris, Pellow and J. B. Richards.

Absent without leave: Messrs. G. E. Brown, Hodges and Marshall.

VICE PRESIDENT HUTCHINSON: Without objection, the several unexcused delegates are excused.

[During the proceedings the following delegates entered the chamber and took their seats: Messrs. G. E. Brown, Donald Doty, Hodges, Lundgren, Marshall and Norris.]

SECRETARY CHASE: The secretary has an announcement for the interest and the attention of all delegates. Proofs of your convention record photographs are now being distributed. Please read the notice which accompanies them before you examine your proofs. This notice is, "Examine your proofs only in subdued or indirect light. Exposure to direct artificial light or sunlight will cause your proofs to fade out in a few minutes. All proofs must be returned at the time of your appointment with the photographer's representatives. Please be prompt. The photographer's representatives will be located in the lobby near the secretary's office. Your appointment time is given on your proof envelope."

VICE PRESIDENT HUTCHINSON: Reports of standing committees.

SECRETARY CHASE: The committee on rules and resolutions, by Mr. Van Dusen, chairman, reports back to the convention **Resolution 71,** A resolution with respect to adjustment of the voting machine to eliminate visual registration of the vote until the machine has been locked; without amendment, and with the recommendation that the resolution be adopted.

R. C. Van Dusen, chairman.

[The resolution was read by the secretary. For text, see above, page 1029.]

VICE PRESIDENT HUTCHINSON: On the adoption of the resolution, the Chair recognizes the gentleman from Oakland, Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, I would yield to Mr. Kuhn, the author of the resolution, for an explanation and advocacy thereof.

VICE PRESIDENT HUTCHINSON: The Chair recognizes the gentleman from Oakland, Mr. Kuhn.

MR. KUHN: Mr. President, fellow delegates, I think it is quite obvious what the intent is. So many times, delegates seem to be sort of confused and they have to wonder how certain people are going to vote. I do not think anybody is taking singles in this convention. I honestly feel that each and every member can make up his own mind independently, and therefore I am not one that is worried about it, and I am sure most of us are not. Therefore, I moved to have this resolution drafted, and the committee adopted it yesterday, to help us out so we don't have to worry about how anybody is voting until the machine is locked, and then the lights will go on all at once. I think it is that simple.

VICE PRESIDENT HUTCHINSON: The question is on the adoption of the resolution. All those in favor will say aye. Opposed will say no.

The resolution is adopted.

For Resolution 71 as adopted, see above, page 1029.

SECRETARY CHASE: The committee on rules and resolutions, by Mr. Van Dusen, chairman, reports back to the convention **Resolution 75,** A resolution to amend Resolution 45; with an amendment, recommending the amendment be agreed to and the resolution as thus amended be adopted.

The committee recommends the following amendment to Resolution 75:

1. Amend the resolving clause by inserting a new subparagraph (2) as follows and making subparagraph (2), subparagraph (3):

" "(2) Amend section 5 by striking out "March 2" and inserting "March 9".".

R. C. Van Dusen, chairman.

The following is the resolution:

[The resolution was read by the secretary. For text, see above, page 1146.]

VICE PRESIDENT HUTCHINSON: The question is upon the amendment recommended by the committee. Mr. Leibrand.

MR. LEIBRAND: Mr. President, may we have the original resolution read? This is an amendment and I don't know what it is amending.

VICE PRESIDENT HUTCHINSON: The secretary will read the original resolution.

SECRETARY CHASE: The original resolution, Resolution 45, was amended on December 6. You will find it in the journal of December 6, and the resolution as adopted by the convention provided as follows:

Resolution 45, A resolution to provide a schedule for completing the work of the convention by March 31, 1962.

Resolved, That:

1. All public hearing by substantive committees shall be completed on or before December 21, 1961, unless otherwise authorized by the convention. This shall not preclude a committee from hearing witnesses invited by the committee.

2. All substantive committee hearings on delegate proposals shall be completed on or before January 5, 1962.

3. All substantive committee proposals and supporting reports shall be submitted to the convention and placed on general orders in accordance with rule 57, paragraph 2, on or before January 31, 1962.

4. The committee of the whole shall complete its consideration of all committee proposals and make its reports in accordance with rule 57, paragraph 4, on or before February 21, 1962.

5. The committee an style and drafting shall complete its consideration of all committee proposals and make its reports in accordance with rule 57, paragraph 5, on or before March 2, 1962.

6. Second reading of all committee proposals shall be completed on or before March 9, 1962.

7. The final report of the committee on style and drafting shall be made in accordance with rule 57, paragraph 8, on or before March 23, 1962.

8. The convention shall finally adjourn on or before March 31, 1962.

The amendments proposed by the committee on rules and resolutions to Resolution 75, would amend Resolution 45 as follows:

Amend paragraph 4 of Resolution 45 to read:

The committee of the whole shall complete its consideration of all committee proposals and make its reports in accordance with rule 57, paragraph 4, on or before March 7, 1962.

Paragraph 5:

The committee on style and drafting shall complete its consideration of all committee proposals and make its reports in accordance with rule 57, paragraph 5, on or before March 9, 1962.

Paragraph 6:

Second reading of all committee proposals shall be completed on or before March 16, 1962.

VICE PRESIDENT HUTCHINSON: The question being upon the amendment offered by the committee on rules and resolutions to Resolution 75, the Chair recognizes the chairman of that committee, Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, the amendment would simply correct an omission when the resolution was prepared and provide for orderly sequence. I would suggest that we adopt the amendment and then discuss the entire resolution.

VICE PRESIDENT HUTCHINSON: The question being upon the committee amendment, all those in favor will say aye. Opposed will say no.

The amendment is adopted. The question now being upon the adoption of the resolution as amended, the Chair recognizes the chairman of the committee, Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, Resolution 45, which this resolution would amend, provides that today is the last day for the completion of the work of the committee of the whole. Obviously the committee of the whole is not going to complete its work today, and frankly we can't tell when the committee of the whole is going to complete its work. The committee on rules and resolutions believes that the best means of dealing with the situation at the moment, on an interim basis, is simply to make those reasonable adjustments in the schedule which will give us 2 more weeks, at the moment, for the completion of the work of the committee of the whole. If the work of the committee of the whole is completed within that period — as I hope it may be — we probably then should take another look at the entire schedule to see how realistic it looks in the light of our work at that point.

This is purely an interim device for dealing with the problem with which we are now confronted. It is the only alternative, as I see it, to either throwing out the schedule completely or making a total readjustment of it. The committee on rules and resolutions didn't feel that we should throw out the schedule completely, and did not feel that we should, at this point, attempt a total readjustment of it. The resolution has the unanimous support of the committee on rules and resolutions.

VICE PRESIDENT HUTCHINSON: On the resolution, as amended, the Chair recognizes Judge Leibrand.

MR. LEIBRAND: Mr. President, may I make an inquiry of the chairman of the committee on rules and resolutions? I find on my desk this morning a convention calendar labeled, Order of Second Reading. Has there been any decision in the committee on rules and resolutions as to the date when second readings will begin?

MR. VAN DUSEN: Mr. President and Judge Leibrand, your resolution is pending before us and we will meet to consider it before making the decision which you suggest. At this moment, the order of second reading has been passed for this week. I think there is some general consensus that it may be desirable to complete the order of work in the committee of the whole before commencing on second reading. No final determination has been made, and none will be made until you are given an opportunity to be heard on your resolution by our committee.

MR. LEIBRAND: Thank you, sir. I believe my resolution is to that effect: that is, we complete the work of the committee of the whole before we start the second reading. Thank you.

VICE PRESIDENT HUTCHINSON: The question being upon the resolution as amended, all those in favor will say aye. Opposed will say no.

Resolution 75, as amended, is adopted.

Following is Resolution 75 as amended and adopted:

A resolution to amend Resolution 45.

Resolved, That Resolution 45 be amended as follows:

(1) Amend section 4 by striking out "February 21" and inserting "March 7".

(2) Amend section 5 by striking out "March 2" and inserting "March 9".

(3) Amend section 6 by striking out "March 9" and inserting "March 16".

Reports of select committees.

SECRETARY CHASE: None.

VICE PRESIDENT HUTCHINSON: Communications from state officers.

SECRETARY CHASE: None.

VICE PRESIDENT HUTCHINSON: Second reading of proposals.

SECRETARY CHASE: Nothing on that calendar for today.

VICE PRESIDENT HUTCHINSON: Third reading of proposals.

SECRETARY CHASE: Nothing on that calendar for today.

VICE PRESIDENT HUTCHINSON: Motions and resolutions.

SECRETARY CHASE: There are no resolutions on file.

VICE PRESIDENT HUTCHINSON: Unfinished business.

SECRETARY CHASE: Under the order of unfinished business, the president lays before the convention the report of the committee of the whole of yesterday, the balance of which was postponed until today. The item under consideration is **Committee Proposal 98**, A proposal pertaining to the educational institutions of the state. The amendments recommended

by the committee of the whole have been adopted. There are pending certain amendments, a copy of which the delegates have on their desks.

First, Mr. Downs and Miss Hart offer the following amendment:

1. Amend page 2, line 26, after "governor" by striking out "in a manner similar to other executive appointments as provided in this constitution.", and inserting "with the advice and consent of the house of representatives."; so that the language will read:

Each board of control shall consist of 8 members who shall hold office for 8 years and who shall be appointed by the governor with the advice and consent of the house of representatives. Vacancies shall be filled in like manner.

VICE PRESIDENT HUTCHINSON: The question is upon the amendment offered by Mr. Downs and Miss Hart. On that amendment, the Chair recognizes Mr. Downs.

MR. DOWNS: Mr. President and fellow delegates, I wish, in speaking on this amendment, to again restate that I think the education committee did an excellent job in resolving the question of the constitutional status of all our institutions of higher education and junior colleges. The thing that does bother me is that the language as it stands now says that the educational board shall have their appointments confirmed in the same manner as executive appointments. This, in the first place, equates our universities with other executive departments.

I think we have said, time and again on the floor, that one of the reasons Michigan's great educational institutions have developed is that the educational system, for practical reasons, has been kept, as far as practical, as a separate entity. I believe this has fostered education. The amendment of Miss Hart and myself simply carries out this principle. It also, the first one, makes a specific method of advice and consent by shifting advice and consent to the house. This is done on the theory, also, that the house will be more representative of the people, and perhaps we are anticipating the legislative organization committee, but that, at least, is the indication of the majority report.

I therefore urge support of this amendment and call for the yeas and nays.

VICE PRESIDENT HUTCHINSON: Mr. Downs demands the yeas and nays on the adoption of the amendment before the body. Is the demand supported? The demand is supported. The Chair now recognizes the chairman of the committee, Mr. Bentley.

MR. BENTLEY: Mr. President, actually the existing language of the committee proposal, as it was approved by the committee of the whole, does not refer to executive departments. It says, and I quote:

Each board of control shall consist of 8 members who shall hold office for 8 years and who shall be appointed by the governor in a manner similar to other executive appointments as provided in this constitution.

As was pointed out, I believe, the day before yesterday, at considerable length, the committee on education did not feel compelled or willing to make a definite statement as to how the governor's appointments to these governing boards should be handled. We preferred to leave that for a later time, a later period of discussion, probably when the proposals from the executive branch committee are before us. The convention will recall that it was on my request that the gentleman from Grand Rapids, the chairman of the executive branch committee, withdrew his amendment, which would have provided specifically for senate confirmation in this particular case. I repeat now what I said on that occasion, that I think that this question of the method of confirmation should be put over until we have the executive branch proposals and other proposals before us. The adoption of the present language would not commit the convention to any specific method of confirmation.

I appreciate, of course, the kind remarks from my friend from Detroit regarding the work of the committee on education, but I would ask that the convention defeat his amendment and all the other similar amendments in this connection.

VICE PRESIDENT HUTCHINSON: The question is upon the adoption of the amendment. All those in favor will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and record the vote.

The roll was called and the delegates voted as follows:

Yeas—40

Austin	Ford	Nord
Baginski	Garvin	Ostrow
Balcer	Greene	Perlich
Binkowski	Hart, Miss	Sablich
Bledsoe	Hatcher, Mrs.	Shanahan
Brown, T. S.	Hood	Snyder
Buback	Kelsey	Stamm
Cushman, Mrs.	Krolikowski	Stopczynski
Dade	Liberato	Suzore
Douglas	Madar	Walker
Downs	McCauley	Wilkowski
Elliott, Mrs. Daisy	McGowan, Miss	Young
Faxon	Murphy	Youngblood
Follo		

Nays—86

Allen	Gust	Pugsley
Andrus, Miss	Habermehl	Radka
Anspach	Hanna, W. F.	Rajkovich
Barthwell	Haskill	Richards, L. W.
Batchelor	Hatch	Romney
Beaman	Heideman	Rood
Bentley	Higgs	Rush
Blandford	Howes	Seyferth
Boothby	Hoxie	Shackleton
Brake	Hubbs	Shaffer
Butler, Mrs.	Iverson	Sharpe
Conklin, Mrs.	Judd, Mrs.	Sleder
Cudlip	King	Spitler
Danhof	Kirk, S.	Stafseth
Davis	Knirk, B.	Staiger
Dehnke	Koeze, Mrs.	Sterrett
Dell	Kuhn	Stevens
DeVries	Leppien	Thomson
Donnelly, Miss	Lesinski	Tubbs
Doty, Dean	Martin	Turner
Durst	McLogan	Tweedie
Elliott, A. G.	Millard	Upton
Erickson	Mosier	Van Dusen
Everett	Page	Wanger
Farnsworth	Perras	White
Figy	Plank	Wood
Finch	Pollock	Woolfenden
Gadola	Powell	Yeager
Goebel	Prettie	

SECRETARY CHASE: On the adoption of the amendment offered by Mr. Downs and Miss Hart, the yeas are 40, the nays are 86.

VICE PRESIDENT HUTCHINSON: The amendment is not adopted.

SECRETARY CHASE: Mr. Downs and Miss Hart offer the following amendment:

1. Amend page 2, line 26, after "governor" by striking out "in a manner similar to other executive appointments as provided in this constitution.", and inserting "with the advice and consent of a select committee of the senate composed of 10 members, 5 selected by the majority members and 5 selected by the minority members.".

VICE PRESIDENT HUTCHINSON: The Chair recognizes the gentleman from Wayne, Mr. Downs, on the amendment.

MR. DOWNS: Mr. President, I rise in support of this amendment. This is another method of providing for so called advice and consent. I believe some people have demonstrated a concern that they don't want the governor to have too much power in appointments. Personally, I am not particularly fearsome of that, but this does offer a reasonable alternative for a reasonable provision of advice and consent.

I urge a yes vote. I hope the Christmas tree will flash more optimistically this time, and I demand the yeas and nays.

VICE PRESIDENT HUTCHINSON: On the amendment Mr. Downs demands the yeas and nays. Is the demand supported? The demand is supported. Will you clear the board?

SECRETARY CHASE: The individual delegates will have to do that.

VICE PRESIDENT HUTCHINSON: All those in favor of the amendment will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and record the vote.

The roll was called and the delegates voted as follows:

Yeas—41

Austin	Ford	Nord
Baginski	Garvin	Ostrow
Balcer	Greene	Perlich
Binkowski	Hart, Miss	Sablich
Bledsoe	Hatcher, Mrs.	Snyder
Brown, T. S.	Hood	Stamm
Buback	Kelsey	Sterrett
Cushman, Mrs.	Krolikowski	Stopczynski
Dade	Lesinski	Suzore
Douglas	Liberato	Walker
Downs	Madar	Wilkowski
Elliott, Mrs. Daisy	McCauley	Young
Faxon	McGowan, Miss	Youngblood
Follo	Murphy	

Nays—86

Allen	Gust	Pugsley
Andrus, Miss	Habermehl	Radka
Anspach	Hanna, W. F.	Rajkovich
Barthwell	Haskill	Richards, L. W.
Batchelor	Hatch	Romney
Beaman	Heideman	Rood
Bentley	Higgs	Rush
Blandford	Howes	Seyferth
Boothby	Hoxie	Shackleton
Brake	Hubbs	Shaffer
Butler, Mrs.	Iverson	Shanahan
Conklin, Mrs.	Judd, Mrs.	Sharpe
Cudlip	King	Sleder
Danhof	Kirk, S.	Spitler
Davis	Knirk, B.	Stafseth
Dehnke	Koeze, Mrs.	Staiger
Dell	Kuhn	Stevens
DeVries	Leppien	Thomson
Donnelly, Miss	Martin	Tubbs
Doty, Dean	McAllister	Turner
Durst	McLogan	Tweedie
Elliott, A. G.	Millard	Upton
Erickson	Mosier	Van Dusen
Everett	Page	Wanger
Farnsworth	Perras	White
Figy	Plank	Wood
Finch	Pollock	Woolfenden
Gadola	Powell	Yeager
Goebel	Prettie	

SECRETARY CHASE: On the adoption of the amendment offered by Mr. Downs and Miss Hart, the yeas are 41; the nays are 86.

VICE PRESIDENT HUTCHINSON: The amendment is not adopted.

SECRETARY CHASE: Mr. Downs and Miss Hart offer the following amendment:

1. Amend page 2, line 26, after "governor" by striking out "in a manner similar to other executive appointments as provided in this constitution.", and inserting "unless rejected by the majority of a select committee of 10 members of the senate, 5 selected by the majority party and 5 selected by the minority party.".

VICE PRESIDENT HUTCHINSON: On the amendment, the Chair recognizes Mr. Downs.

MR. DOWNS: Mr. President, I rise, very briefly, in support of this amendment. I believe that it provides a reasonable protection for those who are concerned about the governor having too much power. It seems to be a very practical method and provides the power of advice and consent within a comparatively small number of people. I urge support of this, so that we will have definiteness as to how these people are to be confirmed, and to see that they are not necessarily tied to the method of executive appointments and other branches of government.

I demand the yeas and nays.

VICE PRESIDENT HUTCHINSON: On the amendment, Mr. Downs demands the yeas and nays. Is the demand supported? The demand is supported. On the question, all those in favor will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and record the vote.

The roll was called and the delegates voted as follows:

Yeas—40

Austin	Ford	Nord
Baginski	Garvin	Ostrow
Balcer	Greene	Perlich
Binkowski	Hart, Miss	Sablich
Bledsoe	Hatcher, Mrs.	Snyder
Brown, T. S.	Hood	Stamm
Buback	Kelsey	Sterrett
Cushman, Mrs.	Krolikowski	Stopczynski
Dade	Lesinski	Suzore
Douglas	Liberato	Walker
Downs	Madar	Wilkowski
Elliott, Mrs. Daisy	McCauley	Young
Faxon	Murphy	Youngblood
Follo		

Nays—87

Allen	Gust	Prettie
Andrus, Miss	Habermehl	Pugsley
Anspach	Hanna, W. F.	Radka
Barthwell	Haskill	Rajkovich
Batchelor	Hatch	Richards, L. W.
Beaman	Heideman	Romney
Bentley	Higgs	Rood
Blandford	Howes	Rush
Boothby	Hoxie	Seyferth
Brake	Hubbs	Shackleton
Butler, Mrs.	Iverson	Shaffer
Conklin, Mrs.	Judd, Mrs.	Shanahan
Cudlip	King	Sharpe
Danhof	Kirk, S.	Sleder
Davis	Knirk, B.	Spitler
Dehnke	Koeze, Mrs.	Stafseth
Dell	Kuhn	Staiger
DeVries	Leibrand	Stevens
Donnelly, Miss	Leppien	Thomson
Doty, Dean	Martin	Tubbs
Durst	McAllister	Turner
Elliott, A. G.	McLogan	Tweedie
Erickson	Millard	Upton
Everett	Mosier	Van Dusen
Farnsworth	Page	Wanger
Figy	Perras	White
Finch	Plank	Wood
Gadola	Pollock	Woolfenden
Goebel	Powell	Yeager

SECRETARY CHASE: On the adoption of the amendment offered by Mr. Downs and Miss Hart, the yeas are 40, the nays are 87.

VICE PRESIDENT HUTCHINSON: The amendment is not adopted.

SECRETARY CHASE: Mr. Faxon has filed the following amendment, listed as the fourth amendment on the sheet on your desk—

MR. FAXON: Mr. President.

VICE PRESIDENT HUTCHINSON: Mr. Faxon.

MR. FAXON: This amendment which I have with regard to the confirmation by the state board of education, I would like to withdraw at this time, because of the fact that we haven't yet determined the composition of that board.

VICE PRESIDENT HUTCHINSON: Mr. Faxon withdraws his amendment.

SECRETARY CHASE: Mr. Ford offers the following amendment:

1. Amend page 2, lines 26 and 27, after "by the governor" by striking out "in a manner similar to other executive appointments as provided in this constitution".

VICE PRESIDENT HUTCHINSON: On the amendment, the Chair recognizes the delegate from Wayne, Mr. Ford.

MR. FORD: This is the same amendment which was presented in the committee of the whole. I don't think it is

necessary to go into any explanation, except that it has been very apparent, if you will recall, this was the first attempt that I made to determine from the committee on education how they intended to have this board appointed, and just what was going to happen, whether the governor was going to make the appointment, whether he was going to make it subject to confirmation by the senate, or by the legislature, or the lieutenant governor, or his wife, or however he was going to consult with people before he made his decision.

We have been unable, after 2 days on this floor, to get any commitment whatsoever from the education committee on their preference in this matter. It would seem to me that in establishing a board as important as this board appears to be, from everything that was said by the proponents of the board on that committee, that they should certainly have been prepared, after 3½ months, to give us some guidance in the matter of the manner of its selection. It is apparent that, for whatever reason and whatever motive, the chairman and the members of that committee are unwilling to do this. With that in mind, I submit this as a possible way of laying squarely before the convention the choice of whether you want the governor to be able to make a selection, or whether you want the governor to suggest a name to the "fish bowl" over there and let those people go through the usual political shenanigans of advice and consent, horse trading and swapping and all the other things that are involved when you are talking about a board of education.

I resent very deeply the suggestion by the chairman of this committee that the members of an educational board — of the importance that this one seems to have, by the way it has been characterized in this convention — should wait upon the pleasure of the convention with respect to the method of appointment of other political officeholders in the state. I think it has been stated here, by very prominent members of this convention, that in every way possible the people dealing directly with the field of education should be kept, as nearly as possible, independent of the normal strains and tugs of war in the political arena, and I submit that any form, whether it takes the Downs' form or the amendment that was offered by Mr. Martin the other day and then withdrawn, for advice and consent of the senate, any one of these advice and consent forms with respect to this board of education is going to do nothing more than precipitate the board of education into the kind of political maneuvering that has to go on in order to obtain what they refer to, and I think euphemistically, as advice and consent. There is very little advice and rarely is there consent. It is generally a compromise, and the reasons for the compromise are, very frequently, as everyone in this room who wants to be candid about it will have to admit, not the reasons that are in the best interests of the board or commission that is being constituted.

Yesterday, I believe Mr. Romney indicated, in reporting on behalf of the committee, and then reiterated and stated as a personal conviction, and a strong personal conviction on his part, that the governor should have a very direct interest in the composition of this board and the action of the board. I submit that if you believe he was correct in this, that a more effective way than making the governor a member of the board, as suggested by him, would be to permit the governor to appoint qualified people, without the necessity of submitting these people, who, in the first instance and in most instances should be professional educators rather than politicans, to the usual strains of going through the advice and consent procedures.

VICE PRESIDENT HUTCHINSON: The Chair recognizes Mr. Bentley.

MR. BENTLEY: Mr. President, I just want to advise my good friend from Taylor that when he, quote, resents, end quote, my suggestions in this particular respect, I am sure he understands and is smart enough to understand that I am speaking for the committee on education in this matter, and I trust he will transfer his resentment to the entire membership of the committee on education, including 7 members of his own political party, since this was a unanimous decision on our part.

VICE PRESIDENT HUTCHINSON: Does the gentleman desire to be recognized a second time on his amendment?

MR. FORD: Just as a matter of explanation, Mr. Bentley, I don't intend to indicate any resentment, just disappointment, not only with you, Mr. Bentley, but with the others who were in a position and are still in a position to make a decision and give us guidance in this matter, and to this instance, nevertheless, refuse to assume that responsibility and do so.

VICE PRESIDENT HUTCHINSON: The question is on the amendment offered by Mr. Ford. All those in favor will say aye. Those opposed will say no.

The amendment is not adopted.

SECRETARY CHASE: Messrs. Faxon, T. S. Brown, Kuhn and Mrs. Conklin offer the following amendment:

1. Amend page 3, line 2, after "boards.", by striking out the balance of the section.

VICE PRESIDENT HUTCHINSON: The question is upon the amendment offered by Mr. Faxon and others. The Chair recognizes Mr. Faxon.

MR. FAXON: Mr. President and fellow delegates, I am not going to repeat the arguments that were already given yesterday, except to say, very briefly, that the portion which we are asking you to delete is a matter which is clearly not of constitutional substance; that we are here as delegates to a convention that is writing a constitution, not a legislature that is writing laws, and if you will carefully examine the language that we are asking you to delete, you will see that the asking of the creation of a board to advise a board is unprecedented in Michigan constitutional history and in federal constitutional history. I ask you to try to put aside the pressures which have been brought to bear by those interests which have sought this constitutional mention and to vote as you would vote on anything that you would feel is not clearly a constitutional matter, and in so doing, Mr. President, I ask for a roll call vote on this.

VICE PRESIDENT HUTCHINSON: On his amendment, Mr. Faxon demands the yeas and nays. Is the demand supported? There is a sufficient number up. All those in favor of the amendment offered by Mr. Faxon, T. S. Brown, Mr. Kuhn and Mrs. Conklin will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and record the vote.

The roll was called and the delegates voted as follows:

Yeas — 49

Allen	Higgs	Seyferth
Bledsoe	Hood	Shackleton
Brown, T. S.	Hoxie	Shaffer
Conklin, Mrs.	Hubbs	Shanahan
Cudlip	Krolikowski	Staiger
Cushman, Mrs.	Kuhn	Stamm
Dade	Madar	Sterrett
Dehnke	McCauley	Stopczynski
Dell	McGowan, Miss	Suzore
Elliott, Mrs. Daisy	Millard	Walker
Farnsworth	Nord	Wanger
Faxon	Ostrow	Wilkowski
Finch	Plank	Wood
Greene	Pollock	Woolfenden
Habermehl	Powell	Yeager
Hanna, W. F.	Prettie	Youngblood
Hatcher, Mrs.		

Nays — 75

Andrus, Miss	Figy	Murphy
Anspach	Follo	Page
Baginski	Ford	Perlich
Balcer	Gadola	Perras
Barthwell	Garvin	Pugsley
Batchelor	Goebel	Radka
Beaman	Gust	Rajkovich
Bentley	Hart, Miss	Richards, L. W.
Binkowski	Haskill	Romney
Blandford	Hatch	Rood
Boothby	Heideman	Rush

Brake	Howes	Sablich
Buback	Iverson	Sharpe
Butler, Mrs.	Kelsey	Sieder
Danhof	Kirk, S.	Snyder
Davis	Knirk, B.	Spitler
DeVries	Koeze, Mrs.	Stafseth
Donnelly, Miss	Leibrand	Stevens
Doty, Dean	Leppien	Thomson
Douglas	Lesinski	Tubbs
Downs	Liberato	Turner
Durst	Martin	Tweedie
Elliott, A. G.	McAllister	Upton
Erickson	McLogan	Van Dusen
Everett	Mosier	White

SECRETARY CHASE: On the amendment offered by Mr. Faxon and others, the yeas are 49; the nays are 75.

VICE PRESIDENT HUTCHINSON: The amendment is not adopted.

Committee Proposal 98, as amended, is referred to the committee on style and drafting.

Following is Committee Proposal 98 as amended and referred to the committee on style and drafting:

The committee recommends that the following be included in the constitution:

Sec. a. The legislature shall appropriate funds to maintain the University of Michigan, Michigan State University, Wayne State University, Eastern Michigan University, Central Michigan University, Western Michigan University, Northern Michigan University, Michigan College of Science and Technology, Ferris Institute, Grand Valley State College, and other educational institutions of higher education established by law. The legislature shall be given an annual accounting of all income and all expenditures by each of these educational institutions. Formal sessions of governing boards of such institutions shall be open to the public.

Sec. b. The regents of the University of Michigan and their successors in office shall constitute a body corporate known as the regents of the University of Michigan; the trustees of Michigan State University and their successors in office shall constitute a body corporate known as the board of trustees of Michigan State University; the governors of Wayne State University and their successors in office shall constitute a body corporate known as the board of governors of Wayne State University. The respective boards shall have the general supervision of their respective institutions and the control and direction of all expenditures from the institution's funds; they shall, as often as necessary, elect a president of the institution under their respective supervision who shall be the principal executive officer of the institution, be an ex officio member of the board but without the right to vote, and preside at meetings of the board. The boards of each institution shall consist of 8 members who shall hold office for 8 years and who shall be elected according to law. The governor shall fill board vacancies by appointment. Any such appointee shall hold office until a successor has been nominated and elected as prescribed by law.

Sec. c. Other institutions of higher education created by the legislature having authority to grant baccalaureate degrees shall each be governed by a board of control which shall be a body corporate; shall have general supervision of the institution and the control and direction of all expenditures from the institution's funds; shall, as often as necessary, elect a president of the institution under its supervision who shall be the principal executive officer of the institution, be an ex officio member of the board but without the right to vote. The board may elect one of their number, or may designate the president, to preside at board meetings. Each board of control shall consist of 8 members who shall hold office for 8 years and who shall be appointed by the governor in a manner similar to other executive appointments as provided in this constitution. Vacancies shall be filled in like manner.

Sec. d. The legislature shall provide by law for the establishment and financial support of public community and junior colleges, which shall be supervised and controlled by locally elected boards. The legislature shall provide by law for a state board for public community and junior colleges, which shall advise the state board of education concerning general supervision, planning for such colleges and requests for annual appropriations for their support. The board shall consist of 8 members who shall hold office for 8 years and who shall be appointed by the state board of education. Vacancies shall be filled in like manner. The superintendent of public instruction will be an ex officio member of this board without the right to vote.

SECRETARY CHASE: The committee of the whole, Mr. President, has also had under consideration **Committee Proposal 47;** has considered some amendments thereto; has come to no final resolution thereon. This completes the report of the committee of the whole.

VICE PRESIDENT HUTCHINSON: Special orders of the day.

SECRETARY CHASE: None.

VICE PRESIDENT HUTCHINSON: **General orders of the day.** The Chair recognizes the delegate from Ionia, Mr. Powell.

MR. POWELL: I move that the convention resolve itself into committee of the whole for consideration of general orders.

VICE PRESIDENT HUTCHINSON: All those in favor will say aye. Opposed will say no.

The motion prevails. The committee will convene and the gentleman from Ionia will preside.

[Whereupon, Mr. Powell assumed the Chair to preside as chairman of the **committee of the whole.**]

CHAIRMAN POWELL: The committee will be in order. When we rose yesterday afternoon, we were in the midst of consideration of **Committee Proposal 47,** A proposal to replace sections 2 and 6 of article XI.

For last previous action by the committee of the whole on Committee Proposal 47, see above, page 1188.

Messrs. Boothby, Brake, Dean Doty, Leibrand, Finch, Sharpe, Dehnke, Miss Donnelly and Mr. Downs had offered the following amendment:

1. Amend page 1, line 16, after "law.", by striking out "The governor shall also be a member of the state board of education.", and all of line 17.

There had been considerable debate of that, but it was not settled when the committee rose. The question is on the amendment. The Chair recognizes the gentleman from Bloomfield Hills, Delegate Romney.

MR. ROMNEY: Mr. Chairman, it seems to me there are certain additional facts that the delegates ought to be familiar with in dealing with this highly important matter. As a matter of fact, I consider this one of the most important matters that will come before the convention, not only because of the current importance of education in our state's total program, representing as it does, 50 per cent of our total state expenditures at the present time, but also because, as we look to the period ahead and the meeting of the educational requirements of the youth and adults of our state, it is readily obvious that this will be an increasingly great expenditure in our total state picture. Consequently, the plans we make to this matter at this time will importantly shape the ability of future state administrations to meet this need soundly, economically and efficiently.

I think, first, we should have a somewhat clearer understanding of this new board of education. This is not a board of education such as we have had in the past. This board of education is based on new concepts. This board of education has been upgraded a great deal. This board of education has been given overall responsibility for the state's part of our educational program, and this includes the supervision of the primary and secondary and other instructional institutions,

the community colleges, and the planning and coordinating responsibility for all of the institutions of higher education, as well as the responsibility of reviewing the total budget requirements of all education, insofar as the state is involved.

The statement was made yesterday that this board is going to be composed primarily of professional educators. This is not correct, and this is not the purpose. As a matter of fact, this is not correct on the basis of the present composition of a board with much lesser responsibility. Two of the present 3 members of the state board of education are not professional educators. I refer to Mr. Magnusson and I refer to Mrs. Robinson, a housewife. One is a former professional educator. I submit that the former chairman of that board who is president of this convention, while he had had educational experience in his background, was not identified as a professional educator when he became a member of this board and served as its chairman.

I believe I am expressing the viewpoint of those educators who were on the education committee, and we had a goodly number, in saying that it is their hope that the new board of education will be composed importantly of people of lay stature, who can combine their broad knowledge of our needs with that of the professional educators who will be making recommendations to them in determining the future educational program of this state. In fact, I think it would be accurate to say that the professional educators will be greatly disappointed if this new board is composed importantly of professional educators or ex professional educators.

Based on such knowledge as I have of the educational needs of this state — and I have devoted more than the usual amount of time to educational matters in recent years — I can say, without any qualifications, that one of the greatest deficiencies in meeting our educational needs in this state is the willingness of noneducators to participate in shaping the educational programs of this state and of the local communities in which people reside. Indeed, there can be no successful educational program that does not involve parents as well as children, and this is true all the way up the line.

Let's get down to the basic issues that are involved here. It seems to me there are 2 basic issues that are really basic issues. One is this issue of whether or not we believe we should set up the educational program on a completely independent basis, and I mean independent from the chief executive of this state; or whether there should be some reasonable tie in between the chief executive and the educational program of this state. I know there are those who indicate that this tie in might be indirect or surreptitious through the convention mechanism. As far as I am concerned, this is a hazardous approach, it has not proven dependable in the past because it would be unfortunate, in my judgment, if this new board of education should be approached on the premise that people are going to be nominated to run for this board of education that the governor can control when they get onto that board of education.

This is not the concept, and this hasn't even proven true in all instances where the governor has been able to influence, through the convention, the nomination of people to the ad board. As a matter of fact, this independent election of state officials has confronted us with a situation where it is really up to the individual involved to decide whether he wants to take a completely independent course, independent politically and administratively or whether he wants to be a part of the executive administrative team.

It is not intended that this board of education be composed of people who are prepared to sacrifice their independence. As a matter of fact, the very purpose here is to elevate this board of education to a stature where it will attract people who will devote themselves on the basis of personal integrity and conviction to the meeting of the educational requirements of this state, and anything less than this is not going to be satisfactory in meeting our needs.

As far as I am concerned, what the educational committee has proposed is acceptable. It is not what I prefer. Let me make that quite clear. What the educational committee has recommended unanimously — because this followed months of deliberations, it followed months where we were widely divided; when we first commenced this discussion of providing an overall board to supervise, in a planning way, the total educational program of this state, there were members of our committee who were violently opposed to it. And over a period of 4½ months, the education committee has worked hard to arrive at a recommendation that represents the best thinking of a wide diversity of representation on that committee. About half of that — perhaps not quite half, but a goodly portion of the members of that committee — are professional educators. Consequently, this committee recommendation reflects the combined judgment of the educators and the laymen on this educational committee, and was made on a bipartisan basis.

This committee proposal is acceptable because it does provide a minimum tie in, and I emphasize a minimum tie in — I think anything less than having the governor a member of this independently elected board would be to eliminate any effective tie in between the educational program of this state and the chief executive of this state. I submit that when you consider the importance of this educational program currently and in the future, it is unthinkable to expect the chief executive to discharge the responsibilities of his office effectively without at least having a ringside seat and a degree of participation in shaping the policies and the programs of an educational character. To completely eliminate him from this board, as would be done under this amendment, and to give him no direct tie in — because this would eliminate any direct relationship between the chief executive of this state and the board of education and the superintendent of public instruction, because under the committee's proposal, the superintendent of public instruction is appointed by the board of education; he is not responsible in any way to the governor. He is a creature of the board. We clearly discussed in our committee meetings the fact that by making him a creature of the board, it permits this board of education to defy the governor in terms of the replacement of a superintendent of public instruction that the board considers to be competent and that a governor might want to replace.

I think if you will take a look at the character of what is being proposed here, that this is a fact, that the board has control, the 8 members of the board have control, and if they select, as they should, the most competent educator that can be secured to head up this most important area, representing 50 per cent of state expenditures, and in their judgment he is discharging the responsibilities of his office competently, then they are in a position to defy any political influence in undertaking to replace that superintendent of public instruction. We have purposely given the board of education the right to determine the term of office of the superintendent of public instruction so that we can get a superintendent of public instruction that is removed, as nearly as you can remove and should remove, because you shouldn't remove completely from political considerations, because when you talk political considerations, you are talking basically giving the people an opportunity to voice themselves in these matters, in its ultimate form. But, removing the superintendent, as nearly as possible, from capricious or individual political considerations.

As far as I am concerned, the preferred setup would be the one that was discussed here yesterday, and this was a provision that received a great deal of debate in the committee. There was a very close division on this point in the committee. At one point, this provision prevailed and represented the majority viewpoint. Subsequently it did not. My preferred position, as an individual member of that committee — and I know this is the preferred position of some of the members of the committee — would be that the superintendent of public instruction be appointed by the governor, and that the governor not be a member of the board of education —

MISS HART: Point of order, Mr. Chairman. Are we debating section b? Are we debating section a? Just what are we talking about?

CHAIRMAN POWELL: We are debating the amendment offered by several delegates here.

MISS HART: And this is on section a, is it not?

CHAIRMAN POWELL: Section a.

MISS HART: Then I would suggest that the delegate is out of order.

MR. ROMNEY: I would like to suggest, Mr. Chairman, that I am discussing the board of education and its responsibilities, and its responsibilities include the appointment of the superintendent of public instruction. You cannot disassociate the 2. They are interwoven and intertwined. For the members of this committee to properly understand section a, it is impossible to discuss them intelligently on a completely separate basis.

CHAIRMAN POWELL: May the Chair suggest that as far as possible, the remarks be directed to the elimination of the sentence, "The governor shall also be a member of the state board of education".

MR. ROMNEY: I will be glad to do so. But again, this relates to this portion of the amendment, because if the amendment is adopted, then the governor would have no relationship, direct relationship with the board of education or the superintendent of public instruction. Neither would have any responsibility to him, and yet the superintendent of public instruction would probably be a member of his official family.

I prefer, as I have indicated, that the governor not be a member of the board of education, which is the immediate point under discussion, but rather that the governor have the right to appoint the superintendent of public instruction. The reason I prefer that is that there must be this tie in, and I submit to you that any governor that appointed an incompetent superintendent of public instruction would be subject to public disapproval in the same way that any president of the United States that appointed an incompetent secretary of defense would be subject to the disapproval of the people of this country. The first issue, therefore, involved in this amendment is whether there should be any direct tie in between the governor and the educational program of this state, and the committee proposal is a minimum tie in.

The second issue involved here is this: is the governor of this state to be the chief executive of this state in fact or only as an illusion? As far as I know, an elemental principle — and I emphasize, an elemental principle in any organization, I don't care whether it is political or economic or social or any other organization, an absolutely elemental principle, an indispensable principle — is that you establish responsibility and grant authority coequal with responsibility, and any other approach is subject to defects and confusion and difficulty, and is subject to the inability to keep, to hold the administrative officials responsible for their acts.

This involves this. One of the biggest issues that we are going to face in this convention is the very simple question of whether we are going to have a chief executive of this state or whether we are not going to have a chief executive of this state. We are either going to give the chief executive of this state authority equal with his responsibility or we are going to fragment his authority and leave him in the inconsistent position where the people hold him responsible but he does not have the authority to discharge that responsibility.

MR. DOWNS: Point of order.

CHAIRMAN POWELL: A point of order is being raised. Delegate Downs.

MR. DOWNS: On the point of order, is the delegate talking on this amendment —

MR. ROMNEY: I am talking on this amendment.

MR. DOWNS: — or on the amendment that Miss Hart and I just offered?

CHAIRMAN POWELL: It seems that he is talking on this sentence about the governor serving on the board of education.

MR. ROMNEY: This bears very directly on this point.

MISS HART: Point of order, Mr. Chairman. I cannot understand how the governor being on the education board has one thing to do with what the delegate is talking about. It would have something to do if we were talking about the appointment by the governor of the superintendent, but the membership of the governor on the state board is not related.

CHAIRMAN POWELL: It seems to the Chair that there were some remarks earlier that were over on to section b, but it seems as though the recent remarks of the delegate have had to do with this sentence.

MR. ROMNEY: Mr. Chairman, thank you, because what I am actually discussing is the question of whether the governor shall have any degree of authority in relationship to his administrative responsibility for education. The governor has a sizable administrative responsibility for education, and this amendment would leave him without any authority whatsoever to discharge that responsibility. That is what we are discussing, and what I am saying is that an elemental principle of organizational structure in any organization is to establish authority equal to the responsibility, and I submit that under the responsibility that the governor of this state has for the total educational program of this state, which represents 50 per cent of his annual budget, which represents 50 per cent of his responsibility for the economical and efficient use of the funds taken from the taxpayers of this state, that it is absolutely indispensable to give him some degree of authority in relationship to his educational responsibilities to the people of this state. Are we going to apply this principle to the administrative and executive authorization of this state, and particularly as it relates to education? That is the immediate question before us.

The present situation that exists in this state, and one that would be developed by this amendment, is unsound organizationally, it is unsound politically, and it is unsound economically. It is unsound in any aspect that you want to look at it because it will deprive this state of the executive and administrative tie in of the chief administrative officer of this state in the biggest single area of administrative and executive responsibility in this state. I am all for the independent board because I believe education should have a degree of independence in this.

In conclusion, this is not an unusual situation. There are 7 states that have the governor as a member of the state board of education at the present time. There are 7 states, and 3 of these states have established this practice as a result of a recent study of their total educational system. I will identify for you the 3 states which have done this as a result of recent studies of their educational programs. The 7 states are Alabama, Arizona, California, Florida, Montana, North Dakota and South Carolina and of these, the ones that have done this as a result of recent studies are California, Florida and North Dakota.

I think there is another pertinent aspect to this situation, and that is that there is a great deal of precedent for the governor being on educational boards. In 13 states, the governor is on one of the major boards of higher education. This appears to be the result of great concern for the proper educational growth in the state, and it is going to take the combination of the board of education, the superintendent of public instruction and the governor to meet the educational requirements intelligently. The 13 states are Arizona, California, Colorado, Connecticut, Delaware, Florida, Kentucky, Massachusetts, Montana, New Hampshire, Pennsylvania, South Carolina and Tennessee.

The history of Michigan is that only about 25 per cent of the members of the state board of education have been professional educators. I submit that this committee proposal represents a minimum tie in between the chief executive and the educational program of this state. It gives us an independent board of education. It gives us a superintendent of public instruction, if the other matter is approved, on a sound basis, and if we are not going to do this, then we ought to establish some more direct tie in between the governor and the state board of education. I accept this as an acceptable tie in. I would prefer the other.

I think that if we were going to take orderly procedure here we would meet the problem raised by Miss Hart. You really cannot consider sections a and b separately. They are linked. This question of how you secure the superintendent of public instruction is related to this section. In an orderly procedure, we really ought to deal with b first and a second. Then we would know whether or not we are going to establish a tie in through the superintendent of public instruction or whether

we would develop it through making the governor a member of the board of education. Thank you very much.

CHAIRMAN POWELL: The Chair recognizes the chairman of the committee, Delegate Bentley.

MR. BENTLEY: Mr. Chairman, the debates of the last few days, the last 2 days to be exact, as well as the point of order raised by the gentleman from Detroit and the lady from Detroit, have shown how difficult it is to separate the 2 sections of this proposal. Perhaps there is no other proposal now pending before the committee of the whole where the 2 sections are more closely interwoven and interlocked than sections a and b are of Committee Proposal 47.

The gentleman from Pontiac, yesterday, made a motion which I thought was a timely and good motion, which I supported, that further consideration of section a be postponed and that we move immediately to the consideration of section b. For that reason, Mr. Chairman, I renew the motion this morning that we postpone further consideration of section a and all amendments thereto and we proceed immediately to take up section b of Committee Proposal 47.

CHAIRMAN POWELL: The question is on the motion by Delegate Bentley that we pass temporarily further consideration of section a and go on to the consideration of section b. Miss Hart.

MISS HART: We went all through this yesterday. Is there any reason why we cannot finish section a? We have one sentence to finish. I do not see the point that the delegate from Bloomfield or that the chairman is making that these are completely related. We are going to be battling on an issue that is not a part of section a at all. This is a clear cut issue on whether the governor should be a member of the state board of education or whether he is not to be a member of the state board of education. It has nothing to do with the superintendent of public instruction.

CHAIRMAN POWELL: May the Chair say that this motion is definitely in order and the decision is up to the committee. The Chair recognizes the gentleman from Lansing, Delegate Wanger.

MR. WANGER: It seems to me the question is broader than the lady suggests. The question is the governor's responsibility in the field of public education, which does spend such a tremendous part of our budget, and for that reason the motion is clearly appropriate.

CHAIRMAN POWELL: The question is on the motion by Delegate Bentley. All in favor signify by saying aye, opposed, no.

The motion prevails.

A DELEGATE: Division.

CHAIRMAN POWELL: Division is requested. Is the demand supported? There is a sufficient number up. We will proceed to vote on the electric voting machine. All in favor signify by voting aye, opposed, no. Mr. Romney.

MR. ROMNEY: Mr. Chairman, would the Chair restate the motion for the late arrivals who can't look at the board? The last amendment rather than the motion is on the wall.

CHAIRMAN POWELL: Before the machine is locked, may we understand precisely what the issue is. Consideration of this amendment has been carried over from yesterday. A motion has been made by Chairman Bentley that further consideration of section a be passed temporarily and that we proceed now to the consideration of section b. Sixty seconds having elapsed, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the motion to pass temporarily section a and proceed to the consideration of section b, the yeas are 79, the nays are 41.

CHAIRMAN POWELL: The motion prevails. The secretary will read section b.

SECRETARY CHASE: Section b.

[Section b was read by the secretary. For text, see above, page 1188.]

MR. BENTLEY: Mr. Chairman.

CHAIRMAN POWELL: Mr. Bentley.

MR. BENTLEY: We now come to section b of Committee Proposal 47 which, in this case, the committee had clear warning of its controversial nature. This is the question of the selection of the superintendent of public instruction and, as the secretary has read, the committee on education is recommending that he be appointed by the state board and be its chairman without the right to vote. We are also, of course, making certain recommendations as to his function with regard to the state office of education.

Mr. Chairman, there is a minority report pending on this particular section, signed by the lady from Detroit, Miss Hart, and 2 other members of the committee on education. If it is satisfactory to her, I would like to yield at this time for a further explanation of this section to the gentleman from Petoskey, Mr. Spitler, and then unless there are questions I believe the appropriate procedure would be to yield the floor to the lady for the purpose of offering her amendment. I yield to the gentleman from Petoskey.

CHAIRMAN POWELL: Delegates, the Chair had certain folks recognized, but that was back when we were on section a, so it thinks that —

Delegate Hart, did you wish to hold your position?

MISS HART: No, Mr. Chairman. If I may, inasmuch as we have a, b, c all mixed up, may I respond to the delegate from Bloomfield on the question of the governor on the state board first, and then I will yield to the gentleman from Petoskey for the next part. May I do that?

CHAIRMAN POWELL: The Chair is not quite clear, but can't we have the attention focused now on section b?

MISS HART: I have asked for the floor, Mr. Chairman. I have asked to respond to the delegate from Bloomfield. I called him out of order. The Chair did not consider this, it said they were one and the same thing, so I can't —

CHAIRMAN POWELL: You are putting words in the Chair's mouth, Delegate Hart.

MISS HART: I am sorry I did not appeal the ruling of the Chair, but I might have and I probably should have because we were debating on section b while the delegate from Bloomfield was talking. We got into the question of the superintendent of public instruction, the election versus the appointment of the superintendent of public instruction in section a. I asked to respond. I have not been given the opportunity to respond to him on the question of the governor being a member of the board of education. When do I get that in? When do I get to respond?

CHAIRMAN POWELL: Without objection from the committee, you may continue your remarks at this time.

MRS. CONKLIN: Point of information, Mr. Chairman.

CHAIRMAN POWELL: Delegate Conklin.

MRS. CONKLIN: I would like to suggest that a couple of weeks ago I thought we had decided that we would recess at 10:40. Is it your intent to recess now or not?

CHAIRMAN POWELL: You are so right, and the Chair counseled around here about that. It just seemed as though we had been in the committee of the whole only a few moments when that time arrived; and as you can see, things were moving along and there wasn't any good stopping place. The Chair just recently sought the advice of our vice president and he thought if no one raised the point, let's keep working. If anybody desires that we do recess, a motion to that effect would be in order. Miss Hart.

MISS HART: Mr. Chairman, if I may have the microphone when we come back, I will be happy to move to recess. Personally, I think we might have interrupted the discussion on section b that was being talked about on section a and recessed at that time. But I shall be glad to yield at this point, if I may have the microphone at the conclusion of the recess.

CHAIRMAN POWELL: Mr. Madar.

MR. MADAR: Mr. Chairman, a point of order. I would like to also point out that during Mr. Romney's talk he stated that these 2 sections were intermingled and one meant quite a bit to the other. Frankly, that is all I wanted to get up and talk about, too, and I do want to be kept in place there.

CHAIRMAN POWELL: The Chair has your name here, delegate. In the confusion of things where there were 2 or 3 talking at once, the Chair wasn't sure what Delegate Conklin may have said. Did you make a motion?

MRS. CONKLIN: I so move.

CHAIRMAN POWELL: She moves the committee rise for the purpose of this recess. The Chair thinks that is in order.

MR. BENTLEY: Mr. Chairman, I move to lay that motion on the table.

CHAIRMAN POWELL: This motion that the committee rise is not subject to a motion to lay on the table so the Chair will put the question. Those in favor of the committee rising, signify by saying aye; opposed, no.

The motion prevails.

[Whereupon, the committee of the whole having risen, Vice President Hutchinson resumed the Chair.]

VICE PRESIDENT HUTCHINSON: The convention will be in order. Pursuant to orders previously adopted, the convention stands in recess until 11:00 a.m.

[Whereupon, at 10:50 o'clock a.m., the convention recessed; and, at 11:00 o'clock a.m., reconvened.]

The convention will be in order.

SECRETARY CHASE: Mr. President, a quorum of the convention is present.

VICE PRESIDENT HUTCHINSON: The delegate from Ionia, Mr. Powell.

MR. POWELL: I move that the convention resolve itself into committee of the whole for the further consideration of general orders.

VICE PRESIDENT HUTCHINSON: All those in favor will say aye. Opposed will say no.

The motion prevails. The committee will convene and the gentleman from Ionia will preside.

[Whereupon, Mr. Powell assumed the Chair to preside as chairman of the committee of the whole.]

CHAIRMAN POWELL: The committee will be in order. You will recall that when we recessed we had passed temporarily the consideration of section a and gone to section b of Committee Proposal 47. The delegate from Detroit, Miss Hart, had requested permission to make a statement and there was no objection, so the Chair recognizes Miss Hart to make her statement, which may pertain to both sections of this proposal.

MR. HIGGS: Point of order, Mr. Chairman.

CHAIRMAN POWELL: A point of order is being raised by Delegate Higgs.

MR. HIGGS: I did intend to make an objection to a statement by Delegate Hart at this time. She will have ample opportunity to answer. I have things to say that I would like to say on that subject. I think we could carry it on for quite a long while and I would object to that procedure.

CHAIRMAN POWELL: The Chair is afraid your objection now comes too late. Hers was with unanimous consent—

MR. HIGGS: I will appeal the ruling of the Chair because there was no opportunity to make an objection at that time.

CHAIRMAN POWELL: The Chair is sure that her remarks would be restrained and brief.

Is an appeal from the decision of the Chair in order in the committee of the whole?

SECRETARY CHASE: It is.

CHAIRMAN POWELL: It is. The question is: shall the judgment of the Chair stand as the judgment of the committee? Those in favor say aye; opposed, no.

The decision of the Chair is sustained, and Miss Hart will proceed.

MISS HART: Thank you very much, Mr. Chairman. I want to agree with the delegate from Bloomfield that the state board of education should be one of lay people. I thoroughly agree with that—elected, as we have provided, and on a partisan basis. I am, however, amazed at the lack of understanding of the burdens that a governor carries, which exhaust every moment of his time and will still exact every moment of his time, even though there are only 20 departments if the executive provision is passed. This will, in no sense, cut down on the governmental responsibilities. It may cut down on contacts but not on the responsibility of the governor.

The governor in the state of Michigan is an important person, regardless of what party may occupy the seats on any board or any commission. He is important simply because he is the head of the executive of this state, and his will must be reached, if people are to be, if these boards and commissions are to have a proper voice and to have effectiveness, as in legislative halls and with the public, because we have been reminded here that the governor, every day, must have publicity, and it would be unfortunate if he were to be ill disposed toward any one of these departments' acts or their recommendations. Actually, the governor is welcome to any commission meeting, any board meeting. I am sure the boards and commissions would vie to have him present.

To give him a position—and the word "authority" was used—disturbes me. I think the governor has all the authority that he needs in his messages to the legislature, his address to the people, and his effectiveness in appointing committees and commissions, and the rest of it, his effectiveness in elections. Therefore, I think his authority is where it belongs, not exercised among the lay people on a state board.

One other thing concerns me. It would seem to me that this constitution is a conflict of interest. What happens to the governor, for example, when appropriations are going to be recommended? The majority of the board votes one way, and he is a member of the minority? Then, what is his position in his message to the legislature? What is his position in his recommendations? It seems to me that he would be in a very embarrassing position. I can't imagine the governor spending his time sitting and listening to the various reorganization plans, listening to the problems of teachers, which the board must judge personally by authority of the attorney general because they may not be listened to through delegated representatives. I cannot understand what the governor would be doing at this kind of meeting, and I am sure he would have to sit through hours of this kind of thing.

If it is important for him to be on the state board—and I deny that it is—why isn't it equally important for him, then, to be on all of the university and college boards? The state superintendent has been a member ex officio of all of those boards, and it has been impossible for him to attend all of the board meetings. It just seems to me a little ridiculous to put the governor in this kind of position. It seems to me a frivolous position to take, a lack of understanding of how the governor of the state of Michigan works, and I sincerely hope we won't do anything this foolish.

CHAIRMAN POWELL: Prior to our recess we had voted to go ahead to section b. The Chair is not sure that some of these speakers wish to speak on section b. First, the chairman of the committee, Mr. Bentley.

MR. BENTLEY: The Chair will recall, I am sure, that when we moved to section b, the secretary had read section b. I said it was my intention that since we had a minority amendment pending on this section, I would yield to the gentleman from Petoskey for an explanation on behalf of the majority of the committee on this section, and then I suggested that we yield the floor to the lady from Detroit so that she could offer an amendment on behalf of the minority. Does the Chair find any objection to that procedure?

CHAIRMAN POWELL: You are correct on that, and the Chair will recognize the delegate from Petoskey, Mr. Spitler.

MR. SPITLER: Mr. Chairman and delegates to the convention, the issue, as we see it here, is the selection of the superintendent of public instruction. We have had a great deal of discussion yesterday and today, much of which involved this particular issue. There are 3 methods of selecting the superintendent of public instruction; he may be appointed by the governor, he may be elected or he may be appointed

by the state board of education and, as has been stated here, there was division on our committee as to how this should be done.

I respect the opinion of those who differ with me on this very thing, and I respect their rights to offer their opinion on it. I happen to be a member of the majority of the committee and I would like to say just a few words concerning the reason for taking the stand that I do. I think we have discussed this thing thoroughly yesterday and today. I think it had been discussed thoroughly before we ever came to convention. I think that your minds are pretty well made up on this, and what I say or what someone else says here is not going to change the vote of very many people in this committee. As a result, I am going to make my remarks very brief. In fact, I have cut out a great deal of what I intended to say. I just want to speak very briefly on why I feel the way I do, and I think those who feel differently should have an opportunity to express themselves, and then I hope that we may come to a decision on this matter and that we may move on. I hope that my statement — that I will be brief. I believe that you will find that to be true, and I hope that that can be followed by those who are presenting different sides on this particular issue.

I happen to feel that the superintendent of public instruction, as an administrative officer, as an executive officer for the school system of this state, should be put in that position where he has the least partisan political obligation that he possibly may have. I have been members of many organizations, and many organizations — not school organizations but other organizations — have committed themselves on this particular issue. They feel that the superintendent of public instruction, if he is to serve all the people of this state, the various members of the board of education, the various teaching personnel, the boys and girls of this state, if he is to do that and do it efficiently and effectively, he ought to be put in a position where he has as little party responsibility as he may have. Otherwise his decisions are bound to be slanted in the direction of that party which he represents, and I am speaking concerning both parties, not concerning any one particular party.

As I have said, many organizations have gone on record as favoring this plan for the selection of the superintendent of public instruction. The Michigan congress of parents and teachers, which represents thousands of people in this state, and I would say that 80 per cent or 90 per cent of them are lay people, not professional school people, not school personnel, but lay people in this state, and they have gone on record for years, of favoring this type of appointment of our superintendent of public instruction. The resolutions committee, for the past number of years, each year has come out with a resolution definitely asking that the superintendent of public instruction be appointed by the state board of education.

We have taken that practice when we select the presidents of our various universities and colleges. Those boards of control attempt to go out and select for themselves the best man available, whether he is in the state or whether he is in some other state, and give him the job of administering and administering to that institution for which he is employed. Just a few years ago, we made the same move in the manner of selecting a county superintendent of schools. Previous to that time, it had been his need to go out each year or each 2 years and run for office as a county superintendent of schools. We removed that. Now the county board of education selects him, and may select the most competent person available for that field. The only chief administrative executive officer of any kind of the state that is subject to election is now our state superintendent of public instruction.

What has been the direction nationally in this field? In 1909, when the present constitution was adopted, there were 4 superintendents of public instruction — and they were called by various names, but were the chief executive officers of the school — 4 were appointed by the board. In 1960, 22 of them were appointed by the board.

The last 3 superintendents of public instruction who left office — and each one of them left voluntarily — have taken the stand, definitely, for the appointment of the superintendent of public instruction by the state board of education, and they have said to me, personally, as I am sure they have said to many of you, that the reason for their not being a candidate for office was largely due to the fact that they had to campaign on a partisan ticket, they had to go through a partisan convention, they had to campaign on a partisan ticket. These were strong men, but they left the office largely for that reason.

This plan that we are submitting would permit the state board of education to select the most competent person available, whether he is in Michigan or whether he is anywhere in the nation. At the same time, it puts him in a position where he may work for the best interests of the schools of this state, without partisan obligation of any kind. I know it has been said, and I think it is true that members of the legislature, if they happen to be of one party and are asking for information from the department of public instruction and the superintendent of public instruction is of the opposite party, there is a feeling on their part — and I am not saying that this is necessarily true — but there is a feeling on their part, the information they get is slanted, and that holds true whether it is a Republican group in the legislature asking a Democratic superintendent of public instruction, or whether it is a Democratic group in the legislature asking a Republican superintendent of public instruction. The same thing holds true.

I think I have said all that I care to say. The issue is clear. If you believe that the superintendent of public instruction should be elected on a partisan basis, where he is responsible to a partisan governor, where he is responsible to a party that has nominated him through convention, if you believe that he should go out and campaign every 2 or 4 years on a partisan basis, and you believe that he can best serve the schools of this state that way, then you would vote for that type of selection. I believe that he cannot do it and do it efficiently. For that reason, I support the majority report and hope that you will vote in favor of it.

CHAIRMAN POWELL: The Chair notices there is a minority report filed here disagreeing with paragraph 1 of section b. The Chair is wondering if those minority report sponsors have filed an amendment to implement? Wouldn't that be in order next?

SECRETARY CHASE: Pursuant to their minority report, Miss Hart and Messrs. T. S. Brown and Douglas offer the following amendment:

1. Amend page 1, line 18, after "Sec. b.", by striking out the balance of the line and all of lines 19, 20 and 21.

CHAIRMAN POWELL: The question is on this minority report amendment. Miss Hart.

MISS HART: Mr. Chairman, fellow delegates, let me first pay tribute to the work of the education committee, under the patience and perseverance of the long suffering chairman. The work of the education committee through the long preparatory months has been so thorough, so thoughtful, and so dedicated that it is with very real regret that Ted Brown, Ed Douglas and I must part with our fellow committee members and move to amend the committee proposal.

It is our recommendation that the superintendent of public instruction remain an elective officer. The majority has made its recommendation with what seems to us the mistaken idea that an agency of government entirely dependent for financial support upon politicians — and I use the word "politician" respectfully — may be taken out of politics. They also are of the opinion that the "best" school men and women are afraid to engage in political contests. This opinion, as an educator, I refuse to admit.

Let me read to you the testimony of our present superintendent, who has consistently maintained throughout the years that the office should remain an elective one, and let me remind you that Lynn Bartlett was defeated at the polls the first time he ran for office. I quote Dr. Bartlett:

Boasting a public school system comparable to the

very best in the nation, the state of Michigan has long been acknowledged a leader in education.

Let me remind you that the educators who have talked to you on the floor have boasted of equality of education in this state. We are among the top states in the country.

We believe that a primary reason for Michigan's strong and vigorous leadership role in all areas and in all levels of education can be attributed to the fact that the state superintendent, elected by the people, has the opportunity and freedom of action that is a prerogative of an elected official.

As never before in the history of this state and nation has the importance of and the critical need for adequate educational opportunities been so apparent. It follows, therefore, that this is also a time when forthright, courageous and visionary leadership is absolutely indispensable to our future progress in education.

In light of this, the method by which a state superintendent of public instruction is selected is of critical importance. The method must, insofar as it is humanly possible, insure the selection of the most qualified individual, one who not only can demonstrate leadership, but also a person who is immediately responsive to the needs, wishes and demands of the citizens of Michigan.

It is our considered opinion that the office of the state superintendent of public instruction remain a partisan, elective post, but for a 4 year term of office rather than the present 2 years.

We cite the following reasons for the position we have taken in this matter. First, because he is directly responsible to the people rather than to any one individual or appointing authority, the state superintendent has much greater opportunity to exercise individual initiative and leadership. Secondly, education is a state function and therefore its chief executive must be in a position whereby he can work most effectively within the framework of state government. We believe that as an elected official, he has direct liaison with all other elected officials in state government, both in the executive and legislative branches, and it is most desirable that this be maintained. The chief state school officer should continue to serve as a member of the state administrative board so that the needs of education can be constantly and broadly interpreted to other state officials and branches of state government.

You will notice in the committee report it is pointed out that he will remain the chief school officer. But, let me say to you that a chief officer, acting with other officials — and he is going to have to check back with 8 widely separated board members before he can make a final decision, and if the state board is constituted as I hope it will be, we will have somebody from the upper peninsula, we will have somebody from southwest Michigan, from the northern part of the lower peninsula, we will have them from the west coast and from southeastern Michigan, and this is a pretty unwieldly kind of an operation.

Making this office appointive could have the effect of reducing the status of the chief state school officer, thereby minimizing both the stature of this position and the opportunity to exert the forceful leadership which is required. This post should be one of equal force and authority with the other administrative officers. Any provision which would, in any way, tend to regulate the role of education in state government to lesser importance would render a disservice to the children and the people of the state of Michigan.

The position of the chief state school officer is not truly analogous to that of a local superintendent of schools. A local superintendent works within the structure of the statutes, an organization of local government which is vastly different from the structure of state government. Let me say here that we have listened to people on the education committee who have been advocates of the little red schoolhouse, of the village schools, of consolidating areas out of the big city systems of Muskegon, Grand Rapids, Flint, Saginaw, Detroit — 2,144 school districts at the last count. All of these people are deserving of attention. This is not like a local area where board members can go into a school, examine it for themselves, listen to the people, talk with them, talk with the superintendent day in and day out, where the people can telephone the superintendent or any board member any day they want to, all it takes is the effort to take down the receiver and call a number. But, if you were a person in a little school district up in Keweenaw, say, and you were objecting to something that happened, an action on a state educational setup, and you called and you had to call somebody in South Haven to make your complaint, and he said, oh, he wasn't the person responsible at all, it was somebody in Detroit, and by the time you got through telephoning and registering your complaint, you would have a pretty heavy telephone bill. This way you call the superintendent. He is in a position to answer you because he has an independent voice.

It is, therefore, our reasoned opinion that an elected official in state government can work most effectively with other elected officials, and is in the strongest position to exercise the necessary leadership of his office.

The present system has worked well, as is evidenced by the fact that Michigan is considered to have one of the outstanding school systems in the nation. This is also evidenced by the caliber of the men who have sought and gained the office of state superintendent.

In summary, we iterate, then, that the present system of electing the state superintendent of public instruction should be continued, and that the length of his term of office should be for 4 years rather than 2 years.

This is the statement of Dr. Bartlett.

Now we are told that educators want no part of politics, are unwilling to participate in our American system of choice by the people of the officers who are to serve them. This I refuse to believe, but if it were true and I had to make a choice betwen a theorist who lives in an ivory tower withdrawn from the democratic processes that make our country great, and the man or woman who so believes in his educational program that he is willing to face the people, take them into his confidence and fight for what he believes, I will take the realist every time as best for education, best for the people and best for the entire state of Michigan. Thank you, Mr. Chairman.

MR. BENTLEY: Mr. Chairman.

CHAIRMAN POWELL: The Chair recognizes the chairman of the committee, Mr. Bentley.

MR. BENTLEY: Mr. Chairman, I would like to compliment the lady from Detroit upon her eloquent statement and the forceful manner in which she presented it. I would also like to pay tribute to her, as well as the other members of the minority who signed her report with her for the very fine contribution which they made to the committee on education, contributions without which the committee on education could not nearly have functioned as successfully as it did.

At this time, Mr. Chairman, I move the committee do now rise.

CHAIRMAN POWELL: The question is on the motion the committee do now rise. All in favor signify by saying aye. Opposed, no.

The motion prevails. May the Chair thank you all for your tolerance and cooperation and good will. I have been excused for the afternoon and someone else will preside. I wish you luck. (laughter)

[Whereupon, the committee of the whole having risen, Vice President Romney assumed the Chair.]

VICE PRESIDENT ROMNEY: I am sure we will miss Delegate Powell and his effective presiding ability. I recognize Delegate Powell.

MR. POWELL: Mr. President, the committee of the whole has had under consideration one proposal, has had some very eloquent remarks and the secretary will make a detailed report.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 47, A** proposal to replace sections 2 and 6 of article XI; has con-

sidered amendments thereto and has come to no final resolution thereon. That completes the present report of the committee of the whole, Mr. President.

We have 3 announcements.

The committee on style and drafting will meet in room K at 8:00 o'clock this evening. William B. Cudlip, chairman.

The committee on administration will meet at 1:30 this afternoon. Mr. DeVries, chairman.

The committee on emerging problems will meet at 12:30 today, committee room I, on the third floor. Mr. Gerald Eddy, director of the conservation department, will appear before the committee. Frank G. Millard, chairman.

VICE PRESIDENT ROMNEY: The Chair recognizes Mr. Madar.

MR. MADAR: Mr. President, I move we recess until 2:00 o'clock this afternoon.

VICE PRESIDENT ROMNEY: You have heard the motion. Those in favor say aye; opposed, no.

The motion prevails. We will recess until 2:00 o'clock this afternoon.

[Whereupon, at 11:30 o'clock a.m., the convention recessed; and, at 2:00 o'clock p.m. reconvened, with Vice President Hutchinson in the Chair.]

VICE PRESIDENT HUTCHINSON: The convention will be in order.

SECRETARY CHASE: Mr. President, a quorum of the convention is present.

VICE PRESIDENT HUTCHINSON: The Chair recognizes the delegate from Kent, Dr. DeVries.

MR. DeVRIES: Mr. President and fellow delegates, an oral report from the committee on administration: we have dealt with Mr. Lawrence's request, and within a few days we shall have stands on all the microphones for every delegate here. Therefore, there will be no more discrimination. This is entirely for your information.

VICE PRESIDENT HUTCHINSON: The gentleman from Washtenaw, Mr. Lawrence.

MR. LAWRENCE: I am disappointed, Mr. DeVries. I thought I was going to get a screwdriver. I mean, not the kind you are thinking of. (laughter)

VICE PRESIDENT HUTCHINSON: **General orders of the day.** The Chair recognizes the delegate from Genesee, Mr. Millard.

MR. MILLARD: Mr. President, I move that the convention resolve itself into committee of the whole for the consideration of matters on general orders.

VICE PRESIDENT HUTCHINSON: The question is upon the motion of the gentleman from Genesee. All those in favor say aye. Those opposed will say no.

The motion prevails, and the gentleman from Genesee, Mr. Millard, will preside.

[Whereupon, Mr. Millard assumed the Chair to preside as chairman of the **committee of the whole.**]

CHAIRMAN MILLARD: The committee will be in order and the secretary will read.

SECRETARY CHASE: Mr. Chairman, at the time the committee rose this morning, it had under consideration **Committee Proposal 47.** Under consideration was section b, to which the minority amendment had been offered, which amendment is as follows:

1. Amend page 1, line 18, after "Sec. b.", by striking out the balance of the line and all of lines 19, 20 and 21.

CHAIRMAN MILLARD: The question is on the amendment. The Chair does not have a list of those that were to be recognized and so the Chair will have to start fresh. Is there anybody that wishes to be recognized on the amendment? Mr. Downs.

MR. DOWNS: Mr. Chairman, I did not wish to speak in front of anybody who had asked to speak on it before the recess, and if there is anybody who had requested to speak beforehand, I shall be glad to be seated and wait my turn.

CHAIRMAN MILLARD: Delegate Downs, as the Chair has no one on the list, you may proceed.

MR. MADAR: Mr. Chairman, I just wanted to say that I was on that list, but I think that what I will do, instead, is wait until we are discussing the first portion of this section, because I did want to answer Mr. Romney.

CHAIRMAN MILLARD: Delegate Madar then yields to Mr. Downs.

MR. DOWNS: I believe, Mr. Chairman, that the question we are speaking upon is whether the superintendent should be an appointed or an elected official. This was covered quite well by Delegate Hart, but I would like to bring up one or two points that I think are pertinent to this. Some of the other speakers, and very properly, have raised a question about whether or not education is political. I would like to point out to the delegates that the history of free public education in America is the history of a political struggle of the people to get education, not so much for themselves but for their children. This was the big fight in the period of 1920 to '40, and we got public education largely as we increased the franchise so that the ballot was not limited to property owners alone. These two went hand in hand, and I believe we should remember that the history of public education is the history of a full political participation by an American people dedicated to the expansion of education.

I think, more immediately, in our history currently in Michigan and in the recent past, that I speak for an elected superintendent of public instruction for several reasons. I think one very telling reason is that if he is on the administrative board, as a constitutionally elected officer, he is going to be able to present the needs of education much more fully. I believe that the governor, as an elected constitutional officer, should weigh the various financial needs of the state, but if there is any one need that we have above any in this age where a man has orbited the world, where there are new problems, where all we are sure of is uncertainty and change, it is that need for further education.

I wish to make one other point on the value of an elected over an appointed official, and I yield to no man in the need for dedicated, career technicians. We need more of them. But at the heads of our agencies, and while this is called an administrative position because it is statewide, it is far more than a school superintendent administering problems in a local community with the citizen school board that meets monthly or more often on demand. We have a situation where the person who is elected to this position must have a statewide campaign for that position and a statewide campaign with other candidates running for office. I believe that the process of campaigning — and I think there are many of us here who are not unaware of the vigors of campaigning — that the process of campaigning is, in itself, educational.

The constituents of the candidates learn more of the problems of the state through the dynamics of our 2 party system, as well as other political meetings. I believe above all, that while the constituents may not all get to know the person who is elected personally, the very process of campaigning from the Keweenaw peninsula to the shores of Lake Michigan, to the shores of Lake Huron, to the central parts of our great state — the very process of campaigning possibly in 83 counties with different people and different problems — does give the elected candidate, and for that matter, the defeated candidate, a better concept of the vastness of our state, the educational problems of the citizens, and further qualifies him to meet the statewide problems we have. I feel, therefore, that the elected person who has a general concept can do a better job and he, in turn, through the educational system, should, of course, hire the best career technicians possible.

I do approve of the idea of increasing the term to at least 4 years because of the continuity. This is a real difference, perhaps, in political philosophy. I realize full well that there is this and many other questions on which there can be honest differences amongst honest people. But I, for one, as we are moving into a more technical society, want our people at the helm of these great organizations on an elected basis,

with technicians available to help them. I urge, therefore, support of the minority report amendment. Thank you.

CHAIRMAN MILLARD: Delegate Bentley.

MR. BENTLEY: Will the gentleman yield for a question at this point? Am I correct in asking the gentleman whether or not the pending amendment merely strikes out the first paragraph of section b and does not specifically provide for the method of choice of the superintendent?

MR. DOWNS: As I read this, Chairman Bentley, I understand that does that, and perhaps a method of choice would be in the part dealing with the election of other officials.

Again my own thinking, Mr. Chairman — and I am not sure if this is in the minority report — is that the election — and I hope that at a later time in the convention we will eliminate spring elections and have them in the fall so that this office is tied in with other 4 year terms. I realize, Mr. Bentley, that this is really looking 2 curves down the road, but I doubt, with all the other problems we have had on education, we should necessarily get into whether we should have 4 year terms for the governor and others.

MISS HART: Mr. Chairman, I am sorry. It was intended—

MR. DOWNS: I will yield to Delegate Hart.

MISS HART: Thank you.

CHAIRMAN MILLARD: Just a minute. So we can get it on the record, the Chair will recognize Delegate Hart.

MISS HART: Thank you. I wanted to answer the chairman of the committee. It was intended by the minority, and I read that this morning at the beginning of the statement, I think, that the superintendent of public instruction, this would be struck out, and insert, "The superintendent of public instruction shall be elected for a 4 year term."

MR. BENTLEY: But the pending amendment merely strikes out the first paragraph, does it not?

MISS HART: That was not the intention.

MR. BENTLEY: I wonder, Mr. Chairman, if the secretary would read the pending amendment so we could be certain what we are voting on.

CHAIRMAN MILLARD: The secretary will read.

SECRETARY CHASE: The pending amendment is, as the secretary has it, to strike out the first 4 lines of section b.

Miss Hart has also filed an amendment to accomplish the purpose that she has in mind.

MR. BENTLEY: I am wondering if Miss Hart wants to combine these 2 amendments?

MISS HART: Yes, that was the intention.

MR. BENTLEY: Mr. Chairman, I ask unanimous consent that the lady be permitted to combine these 2 amendments.

CHAIRMAN MILLARD: Is there any objection? If not, the amendments will be combined and the secretary will read.

SECRETARY CHASE: The amendment, then, as now revised is as follows:

1. Amend page 1, line 18, after "Sec. b.", by striking out "The state board shall appoint a superintendent of public instruction whose term of office shall be determined by the board.", and inserting "The superintendent of public instruction shall be elected for a 4 year term.".

The remainder of the first paragraph stands as it is in the section, "He shall be the chairman of the state board without the right to vote, and shall be responsible for the execution of its policies."

MR. BENTLEY: Mr. Chairman, the reason I raised that question is because I think that the initial amendment offered by the lady should be corrected, because, if my memory serves me correctly, the initial amendment strikes out the entire paragraph, and that should be changed if she wants to leave the second sentence of the first paragraph intact.

Does the gentleman want me to yield to him?

CHAIRMAN MILLARD: Delegate Downs, might the Chair ask of Delegate Hart if that is her understanding, if that is correct?

Delegate Bentley, as the Chair understands, this amendment was agreed to without objection.

Delegate Downs.

MR. DOWNS: Mr. Chairman, I believe Delegate Bentley raised a very pertinent point on the matter of how these elections fit into other elections. What I tried to say earlier is that I think when we get to the election proposal, there will be discussion of gearing our different offices into one statewide election, where we now have fall and spring elections. I think the intent here is clear as to whether or not the superintendent should be appointed or elected. The minority report makes it very clear, in speaking for an elected superintendent of public instruction, without going into the details as to whether that should be a spring or fall election.

MR. BENTLEY: Mr. Chairman, if I may speak briefly on the amendment now?

MR. DOWNS: I will yield the floor to Delegate Bentley, as I have finished the comments. If he has any questions, I shall be glad to try to answer them.

CHAIRMAN MILLARD: Delegate Bentley, you are recognized.

MR. BENTLEY: Mr. Chairman, I thought it might be helpful to the members of the committee of the whole to know the system prevailing in other states with respect to the method of selecting the chief state school officer. At the present time there are 5 states where the chief of state school officer, corresponding to the superintendent of public instruction, is appointed by the governor. Those 5 states are Alaska, New Jersey — both of which, of course, have recent constitutions — Pennsylvania, Tennessee and Virginia.

There are 23 states, Mr. Chairman, where the superintendent is elected by the people, and I would like the delegates to reflect on the school systems as they exist in those 23 states, as I read them. These 23 states are as follows: Alabama, Arizona, California, Florida, Georgia, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Montana, North Carolina, North Dakota, Oklahoma, Oregon, South Carolina, South Dakota, Washington, Wisconsin and Wyoming.

In the other 22 states, the chief state school officer is appointed by the board of education, including the states with recent constitutions, such as Hawaii, Missouri and the state of New York.

It is for these reasons, among many others that have been advanced, Mr. Chairman, that I urge the defeat of the pending amendment.

CHAIRMAN MILLARD: The Chair recognizes Delegate Judd.

MRS. JUDD: Mr. Chairman and members of the committee, I would like to first agree wholeheartedly with Delegate Downs that the agency which makes policy for education in the state should be directly elected by the people. We have provided this in the committee proposal in the board of education, which is to be nominated by the party conventions and elected by the people. This, as I understand it, is to be a much larger and stronger board so far as responsibilities go, than it has ever been before, and will be a major policy making board.

I think we have no reason to fear that educational policy will be made by a group responsible to the people. If we were to elect, also, directly, the superintendent of public instruction, we would be setting up a competitive policymaking officer, independent of the board of education, who, himself, would have policy making power simply by the fact that he is independent of everybody in the government and only responsible to the people. So we might have some dangerous conflict in the field of education between these 2 agencies.

I think, then, that before we decide how the superintendent should be selected, we must first decide what his function is to be. Is he to be another policymaking agent, or is he to be administrative, to carry out the policies of the board? I note that the proposers of this amendment have consented to leave in the text the words that the superintendent shall be responsible for the execution of its — that is, the board's — policies. We cannot expect the kind of cooperation, with this new and more powerful policymaking board, that we should have if the superintendent is, himself, independently elected.

I therefore very strongly urge that we keep him an appointive official and responsible to the board.

CHAIRMAN MILLARD: The Chair recognizes Delegate Downs.

MR. DOWNS: Mr. Chairman, I believe that the delegate who just spoke, Mrs. Judd, has made a contribution on this, as well as the chairman of the committee, on the differences between the elected and the appointed.

As I said earlier, if this were a city school board that met regularly, once a month or so, and were in constant contact with the superintendent, I think the arguments would have much more weight. I think the difference here is largely one of degree. While the proposal does not say how often the board would meet, there is no per diem spelled out, and many of these bodies that are policymaking, yet partially honorary in nature, I think, history shows, meet maybe once a month, and when the person has a statewide function, I believe the matter of degree is such to warrant the election.

I would like to point out that the matter where people are elected includes those states of Oregon, Washington, Wisconsin and California, and that one reason our sister state, Wisconsin, has been able, in my judgment, to keep the independence and integrity of their educational system, regardless of the changes of political winds, is its fortune has been that the University of Wisconsin has been on the elected basis for control and has proved to be very satisfactory.

I would just like to make one more point. We have talked a little on the history of education, and for just a moment, since the question of comparison with other states has come up, I wish to try to be very brief on what I think is an historical trend. Fifty years ago or more, there was in the books, the literature — The Shame of the Cities, by Lincoln Stephens; and others — the growing feeling that political parties ran their business in smoke filled rooms, or "smoke fulled rooms," perhaps, is the better term, and that therefore, to prevent that, we should eliminate the party primary and have the direct primary, the short ballot, and even — some of us may shudder at the concept — nonpartisan election of city managers. At that time, that was an improvement over the political machines of that day.

I think, in the last few years, we have within our political life developed more responsive politicial organizations in the United States, and particularly in states like Michigan. I might add that one reason I think the smoke filled rooms have decreased is that our friends, the women, got to vote, and when the women got to vote and became the majority of the voters, maybe that added to the moral influence within political parties. I leave that to other delegates. I think that now the trend is to have responsible, political participation. I feel that our political parties, with their vigorous campaigns and conventions and year round meetings have given people a chance to participate in political campaigns and bring forth the ideas of education and other state offices in a very positive and helpful way.

I therefore urge the support of the minority report amendment. Thank you.

CHAIRMAN MILLARD: The Chair recognizes the gentleman from Wayne, Delegate Douglas.

MR. DOUGLAS: Mr. Chairman, fellow delegates, it was my good fortune to be a member of the committee on education, and I relate to you at this time that never before have I served with such fine persons who were dedicated to a certain purpose, that is, to bring before this convention the best proposals pertaining to education. We did make some mistakes, and I think that this particular proposal is a mistake. I think that one thing that the members on this committee would perhaps be unanimous on, is our commendation of our chairman, who was very firm, but he was fair, always a gentleman, and very tactful.

It has been a rule of long standing that any time a proponent of a constitutional change comes forth with a proposal, he must bear the burden of proof. The committee should be able to come to this convention and show you that the proposal that they are presenting is necessary or that it would greatly improve the existing situation. They cannot claim this, because we have absolutely no evidence at all that the present office, superintendent of public instruction, as elected, is, in any way, detrimental to our educational system. On the contrary, you will hear on this floor — and we have heard consistently in committee — that we have a very fine superintendent and we are all proud of how he was elected.

Now the committee comes to you with a very substantial change, and I assert to you that they will present no evidence of fact. I am inviting your attention to page 403 of the journal. This is the committee report. I think that in order to justify this substantial change the committee should present you with some kind of fact. The chairman tried to point out a few statistics, and they have a little chart here. This chart should tell us something, and if it doesn't tell us something, it should imply something. In looking at this chart, I am not sure whether we are supposed to think that it presents a syllogistic situation or not. That is, does this chart tell us that because certain states have changed to appointment by the board of the superintendent, do those states have a better system of education? That fact is not given here. From what kind of situation did they change to an appointment?

You have just heard Mr. Downs tell you a little bit about history. Anyone here who knows anything about statistics or the making up of charts knows you can present any kind of chart, any kind of statistics you want to, to show any kind of situation you want to. There are 8 states that have exactly the same system that the committee is proposing, and nowhere in the report do they tell us that these states that have the same situation have a better educational system. Colorado, Iowa, Nebraska, Nevada, New Mexico, Ohio, Texas and Utah; those are the states that now have the situation that the committee wants you to adopt. If it is so good, let them come forth with some facts and tell this delegation that they have a better system in another state, so let's be copycats.

Twenty-two states now elect the superintendent of public instruction, and the twenty-third is New York, which elects it by the legislature.

Let's look again at the committee report and see if it says anything at all. I think that in the next paragraph it starts off with opinions, stated positively without justification. I think that it is very brave for the committee to come forth with a categorical statement, positively made, based on mere opinion. It says, "Appointment by a state board assures that the superintendent of public instruction will be selected from . . . the most competent people available to serve in that capacity." Would that not seem contrary to the exact situation we have now, and everybody in education is bragging about the fact that Michigan ranks in the upper 1/3 in the nation? It implies that only by appointment can the most competent person be made available, and to justify this, somewhat, the committee goes on to tell us about 3 previous superintendents who have gone on record refusing to submit themselves to a test of the people.

I personally take issue with this because I think that it is one way we can start to undermine the very democratic process by which we are the inheritors, that is the electoral franchise. I think that we should stop this trend towards taking away from the people that which is rightfully theirs, and that is to go to the polls and elect the administrators that they want to carry forth the program here in Michigan. It has been stated by one of your distinguished delegates here in talking to the press, saying to the press that at present the politicians and the public officials, their images are very low before the people. I think that we can bolster those images, I think that we can be proud of our politicians. I don't think that we should undermine our political system. To be a politician is not a bad thing, but to hear some educators talk, it is a bad thing unless you are running for president of the United States. This, I think, is contrary to the things that we are trying to teach to our youngsters.

I should like to present, in conclusion, 5 points, and I challenge the majority to come forth, refute these points and give to this delegation some facts that what they propose is better.

First, elected officials are made directly responsible to the citizens electing them. The only way educational programs and the issues involved can be carried throughout this state is for someone interested in education to carry those issues in a campaign. The state board of education, those persons seeking election, will not know all the educational issues.

Two, the system has worked well in the past. I don't think we are going to have anybody from the committee coming up and saying that the system has not worked well in the past. We have sought to weld together the fragmented system we have in education in the state, but I don't think that we will have anyone who will refute this point.

Point 3, the best politics of each political party is to screen carefully and select strong and capable candidates. You can hear a lot on this floor about taking politics out of education. I think that this is sort of foolish, unless you are talking in the extremes, like Mr. Downs told you about past situations. To argue this point is to assume that the 2 responsible political parties in this state do not come forth with a platform and a program in education that is sincere and constructive, and I don't think that we should start with this premise.

Point 4, an elected state superintendent has equal status and recognition with other elected state administrative officials. This is not true of the appointive officials. I heard this morning a delegate refer to this creature of the board, and that is exactly what we are relegating the superintendent to, a mere errand boy, an errand boy between the state board of education and the administrative board and the governor, and we would not have gotten into the dilemma of this morning had we not come up with this committee proposal.

I served on the subcommittee, which was chaired by Delegate Romney, and one a.m. everyone had a clear head, we had breakfast together and handled business, and I suggested that before we proceed any further we agree upon a basic organizational structure. Everybody said, "This is fine. This is what we shall do." So we started gathering our pieces of paper and drawing out diagrams in order to come up with a basic structure, and this is what we had: we had the governor at the top, and we had a direct line to the superintendent of public instruction. What does this mean? This means that he either had to be appointed directly by the governor or he had to be elected by the people. The next direct line was to the state board of education. I shall not go into the rest of it because it is not an issue here, but if you understand the basic organizational structure that we all agreed upon — and it was brought out that this is what they use in industry and I didn't deny this because I find that in most organizations this is the way it probably should be. So we proceeded, after that, to go into all of the aspects of the state board of education, and we agreed upon a certain wording.

But later, there was a subcommittee meeting which I could not attend, and I gave notice that I could not attend it, and the matter was debated and out came this monstrosity that is presented to you today. This was the compromise. Once the compromise was made, you see, the direct link between the governor and the superintendent of public instruction was destroyed. So we got in committee, the whole committee now, considering the wording of the state board of education, and we said, "Wait a minute here, we've got to back up. Something's wrong. We've got to reestablish this link. How shall we do it?" Well, they did it. They stuck on a sentence on the end and you see how confused it brought the situation to this morning. This is how we got into the dilemma this morning because we violated the fundamental organizational structure that we started off with.

My last and fifth point: it is difficult for an appointed official to exert state educational leadership when each major decision must be reviewed and approved by his board. I ask you, with the committee proposal to whom is he responsible? He is not responsible to the people. He is not responsible to the governor. He is a creature of the board, and he is responsible to the board. Every time a major decision has to be made on the administrative board, he has to go back to those people who hired him. You think that once we get a man in there appointed, that he can be removed immediately? This is not so. Let's look at the situation practically. You've got 8 members on the state board of education who would be elected every 2 years. You are going to replace 2. What does he have to do? He's got to play some politics and not too much politics, because once he gets in, all he has to do is to have 3 or 4 cronies, and he will stay in there forever. We, the people, can't get him out. The governor can't get him out. We provide that the governor shall change office, if he is elected, every 4 years, but not this creature of the board.

So I urge you, fellow delegates, in conclusion here, if the majority on the committee report, cannot come forth to this delegation and prove to you, definitely, or by some evidence, that what they propose is much better, then I think that you should stick with the same thing that we have now, which would retain in the people the electoral franchise. Thank you. (applause)

CHAIRMAN MILLARD: The Chair recognizes the gentleman from Bay, Delegate Higgs.

MR. HIGGS: Mr. Chairman, I would like to yield for 2 questions to Delegate Hart, if she would care to answer them.

CHAIRMAN MILLARD: If the lady wishes to answer.

MISS HART: It is all right.

MR. HIGGS: Is it the intention of this amendment that the nomination be made at party convention?

MISS HART: As it is now, Mr. Higgs.

MR. HIGGS: Is your answer yes?

MISS HART: Yes.

MR. HIGGS: And second, with regard to the comments of Delegate Judd, which I think really goes to the heart of the selective process of choosing a superintendent, what do you conceive to be the duties of this office? That is, do you conceive of these duties as principally an administrative official or do you conceive of it as a political, policy making function?

MISS HART: I think it has to be a policymaking function, in part. I don't see how it can help but be a policymaking position in part. The policy of education, which would be with the advice and consent of the state board of education.

MR. HIGGS: Would it be your thinking that it would be a shared responsibility or would it be centered in the superintendent or in the board or concurrent?

MISS HART: I would assume that, as it is now, the state superintendent of public instruction would consult his board, welcome their advice, but that he would be responsible. He would be a member of the top officialdom, whatever that might be when we get through with this constitution. As it is now, he is a member of the administrative board. He speaks for education. When he speaks for education, he is in a position to speak always for education, independently, for the best interests of education. I would hope that he could continue to speak that way.

MR. HIGGS: Thank you. Fellow delegates, I would like now to address myself to the question. It seems to me that with the answers to these questions and the remarks of Deleate Downs and Delegate Douglas, we have something to get our teeth into.

First of all, I feel compelled to support the committee in that I think that this particular amendment would result in a division of leadership. You would have, actually, 2 heads of the system. You would have the board and the superintendent, if I follow Miss Hart. There would be a great opportunity for one to say, "That is your responsibility"; and the other to say, "Well, you are elected, that is your responsibility." I kind of favor the direct responsibility in the board for that reason. Secondly, I think that with regard to Delegate Downs' indicating that the official in this office should be free of political caprice and whim — at some point I picked those words out — and it seems to me that the committee proposal would offer greater stability than the amendment would offer, in that I note that the state board would be elected for the term of 8 years. This, being a much longer term than the governor or than any other elective officials, I think would build in this greater degree of stability. I think that actually when you are comparing the elective process with the appointive in this context, that Delegate Downs' point would actually limit the selection of the people in that they would actually have only 2 choices when they went to the polls; one party or the other party. That would be the first limitation.

The second limitation would be that this man would have to be a resident of the state in order to run. I don't think we have taken anything away from the people that is rightfully theirs, as Delegate Douglas has suggested. By giving the peo-

ple, through their elected representatives, a broader base for selection, we would be electing the state board and they would have available to them candidates for this office from all over the United States, wherever they could find the finest administrators possible. They could search and seek, and in the calm, deliberative atmosphere of the meetings of the board, they would be able to screen these candidates in order to determine the best available. I am not sure just how your party conventions operate, but I am not exactly sure that a party convention would be in a position to go through this careful screening process, but certainly we have given the people a broader selection through their elected representatives than your amendment would provide.

I would like to answer only one of the points made by Delegate Douglas. He states that he challenges any member of the other party to answer any of these. I would just choose one, that elected officials are directly responsible to the people who elected them. In the committee proposal I think we have the finest kind of responsibility available. In the minority amendment the people would be limited to exert that direct responsibility only once in 4 years. If I understand the committee proposal, the board would have the power to determine the term of office. The board would have an opportunity, perhaps, to determine that the superintendent serve on a trial basis for a year, or something like that. I am not an expert in the education field, but it seems to me that the responsibility of the superintendent would be more direct and more immediate to the elected representatives of the people serving on the board than they would be under the minority amendment. So I would favor the committee proposal.

CHAIRMAN MILLARD: The Chair recognizes the gentleman from Wayne, Delegate Stevens.

MR. STEVENS: Mr. Chairman and members of the committee, as a political theorist who has so recently left his ivory tower by way of retirement to enter the rough field of practical politics very briefly, I hope, I would like to make a few simple statements of fact. In the 40 years in which I have been connected with education in this state, I think I have learned a few of the facts regarding the superintendent of public instruction, as well as some other things. He has probably less real authority in making policy and more prestige than any other elected state official. His duties are almost entirely ministerial, carrying out those duties which the legislature provides for him by law. As a consequence, it would be highly desirable that he be appointed by the board which, under the new constitution, will have broad duties.

In the 1908 constitution, the board's principal duty has been to administer the affairs of 4 institutions of higher learning, originally known as normal schools. These duties will be much increased, and the superintendent of public instruction, as visioned here, will be the administrative officer to carry out the policies.

For over 40 years — I don't know how much longer, but I know for over 40 years — most of the school people, including the organizations of teachers throughout the state, have urged that the superintendent of instruction be appointed by the board of education. I think it is high time that we give due consideration to that. It seems the logical, sensible and proper thing to do. Thank you.

CHAIRMAN MILLARD: The Chair recognizes the gentleman from Wayne, Delegate Brown.

MR. T. S. BROWN: Mr. Chairman, fellow delegates, I should like, at this juncture, to say my amen to the fine speech of Delegate Douglas, and approach this thing from perhaps a slightly different point of view. It would be appropriate, I think, at this time, to discuss the philosophy of the word "efficiency," because this matter has been broached in many different ways during the course of our deliberations to date, and will also be important in our deliberations in the future.

There is a point at which the liberal philosophy and the true, conservative philosophy merge, in regard to the word "efficiency." From the beginning of this convention we have been exposed, on many occasions, to the terminology of the marketplace. We are going to get down to the business of the convention, it was said. We are limited to 17,000 words, it was said. We must get on with what is urgent about the business of the convention, it was said. And we must have efficiency, and above all, according to this particular point of view, we must have effective government. This is a very key word, "effective" government.

I submit that what is wrong essentially and philosophically with our country today is that we are so busy doing what is urgent that we neglect to do what is important. There are those people within this convention who would say, "We are casting a pox upon both your houses, the liberal element and the extreme conservative and perhaps rural element, because both of you are for the status quo, because both of you would like to have all of the officials remain elected. We are casting a pox upon both your houses." And we are saying we are for efficient, modern, progressive, far reaching government. There is a latent fallacy, and I think it is a philosophical one because, fellow delegates, government was never meant to be efficient. It was never meant to be cold and hard and sterile and smoothly working. Government has built within it a gross inefficiency to safeguard the rights of the people. At some part in the political spectrum, the true liberal and the true conservative will say that the ultimate repository of all faith and confidence in the future of a government lies within the people when they cast their ballots. For that particular reason, among many others, I am certainly one of the proponents of the amendment to restore or, at least, maintain the school superintendent in an elective capacity.

There is one other minor point, and I hate to end on a Monday note, but as a practical matter, I think what will happen, if you make the superintendent the chosen minister of the elected board or, worse still — and this, of course, is not before us now — if he were the chosen minister of the governor, you would exchange the grossness and the blatant aspect of regular party politics for the hidden politics of school administration, and without getting on the school administrators, without getting into a subject that I know will cause them to rise to their own defense, I would suggest also that the hidden politics of school administration is more insidious and more unworkable than the open politics of regular party politics and machinery.

CHAIRMAN MILLARD: The Chair will recognize the gentleman from Oakland, Delegate King.

MR. KING: Mr. Chairman, ladies and gentlemen of the delegation, I was extremely pleased when I, as we progressed through this education article, found that we were going to strengthen the board of education. My opinion is, the present board of education is not constituted as a broad and powerful coordinating group over all state supported educational institutions. I am very pleased that Miss Hart and the other distinguished educators on this committee felt that this was a necessary constructive step. But at this point I am completely confused. We have strengthened this board of education, which is responsible to the people and which is elected by the people, and all the people, and not by districts or anything else, and all of a sudden now we want to also elect another policymaking official as superintendent of public instruction. My confusion arises at this point. Who is really responsible for the policy with regard to education in the state of Michigan?

It would be my understanding — and correct me if I am wrong — that although the superintendent of public instruction should be an administrative officer responsible to the board of education, it would be my understanding that the board of education could not replace or remove the superintendent of public instruction, under the pending amendment. With this in mind — and I don't want to draw diagrams in the air, but an analogy was drawn between business and government — at the top of any table of organization in business you find the stockholders, and I assume that at the top of any table of organization in government, you find the voters. I don't think that anyone would propose that the stockholders should elect the board of directors, and then also elect the president of the corporation. Why, this would be ridiculous. So let's bring this thing back into focus, what we are talking about here is a chief administrator.

I say the board of education ought to be elected by the people.

I say it ought to be a powerful coordinating group, which can bring all of the divergent factors of education in this state of Michigan together, working as a team. But I can't, for the life of me, in the name of good government, understand how we would want to dilute this constructive step forward that we have taken by supporting any such amendment as shown on the wall at this time.

CHAIRMAN MILLARD: The Chair recognizes the gentleman from Grand Rapids, Delegate DeVries.

MR. DeVRIES: Mr. Chairman, ladies and gentlemen of the committee, Mr. King has raised some of the points that I had in mind, but frankly, Miss Hart and Mr. Downs, Mr. Brown, I am having a hard time getting oriented here, or maybe it is reoriented. Is it true that I am hearing from these distinguished colleagues: one, "there is no need to change because the system we now have is good; therefore, we must retain it because if it wasn't any good we wouldn't have it?" Which is about the best argument I have ever heard for status quo. I've got nothing against status quo, but I do think when we do face the situation where we need social change, we ought to recognize it, so I am curious about that. Secondly, the argument that "we have to keep government close to the people." I think we all believe this, but you know as well as I, in any statewide poll, less than 5 per cent of the people of this state can tell you who is on the ad board, can name more than one member, and certainly not the superintendent of public instruction. The election, therefore, for the superintendent of public instruction is not a situation where the people of this state rationally choose between 2 potential administrators of our school system. I think it is merely a test of party strength at one point and time.

It is obvious that the superintendent of public instruction, from what I have heard today, is purely an administrative officer, and, as such, should be appointed and responsible to an elected board. This is what the committee proposes. So I would urge the defeat of the amendment and support of the committee proposal. I think it is a fine step forward and a much needed social change.

CHAIRMAN MILLARD: The Chair will recognize the storyteller from Isabella, Delegate Anspach.

MR. ANSPACH: Mr. Chairman and members of the committee, it has been my great fortune to be a member of the committee on education, and because of that association I have come to respect and admire all of the members of the committee, and I say that in all sincerity.

You heard a very, very fine presentation by Mr. Douglas. I am not differing from Mr. Douglas except I want to comment on some of the points that he made. His first point was elected officials are responsible to the people more so than a person who is appointed by the board. I go back to some comments that were made a moment ago: you will have 8 members of the board who will be elected by the people, who will be responsible for the appointment of the superintendent. Therefore, you have 8 people who will receive the screening, commendation and the condemnation of the people of the state. Therefore, he is responsible, through them, to the people. He is responsible to 8 people who are elected by the people on a party ticket.

The second point, it worked well in the past, therefore it should be retained, Dr. DeVries answered a part of the question there, the point made there. Whether it has worked well or not is a matter of opinion. On the other side, to support the opinion of those who think, perhaps, it hadn't worked well, you have the opinion, resolutions and so forth of the M.E.A., the superintendents of the state, various professional organizations, including university people, lay people, including various groups throughout the state, so if it comes down to a matter of opinion, you have the opinions of many people that have some question as to whether it has worked well in the past.

Second, you get good political screening. You certainly get good political screening on the selection of 8 people who will run on party ticket. In addition to that, those 8 will screen the candidates for appointment to the office of superintendent of public instruction, so you certainly will get screening, all the screening that I think is perhaps necessary. The next, an elected official will have greater status because he is elected. If you elect 8 members of the board, and the eyes of the state are on the 8 members, knowing it is their responsibility to appoint an individual who will direct, under their supervision, the affairs of education in the state, you certainly are going to give that person status especially. We lost one member out of the state board of education, as you know, who went to the state of Colorado, a very, very fine person, because the board in Colorado has the right to appoint. So they took our deputy of the state of Michigan about 2 years ago, to go to the state of Colorado. His going to the state of Colorado certainly was indicative of the prestige of this individual from the standpoint of educational circles in the United States because he was selected as one of the outstanding educators in the United States.

The third point: it is difficult to give decision to a board. I don't know whether it would be more difficult to give a decision if you are on a board than it is now, because the superintendent of public instruction must work with various commissions and committees that he appoints. Therefore, it is difficult for him to make a decision on the spur of the moment, too, until he goes back to some of these advisory groups that he has set up to advise him.

Therefore, I think that the committee proposal is right in its recommendation that the superintendent be appointed by this board. I therefore urge support of the committee proposal, and defeat of the amendment.

CHAIRMAN MILLARD: The Chair recognizes the gentleman from Wayne, Delegate Ford.

MR. FORD: I rise only to question those who would have you believe that this concept of an appointed superintendent of public instruction versus an elected superintendent of public instruction is something modern or something new. If you will take a look in the blue volume that all of you have, you will find that in 1835, the constitution provided that the superintendent of public instruction would, in fact, be appointed by the governor, subject to the advice and consent of the legislature. In 1850, for whatever their reason, they dropped that provision from the constitution when they revised it just 15 years later, so for 15 years in this state, we did have an appointed superintendent of public instruction. When Mr. Douglas asked if we had had any experiences as to whether or not this would be an improvement, I submit we have had experience as to the fact that it wasn't an improvement because after trying it for 15 years, the people in drafting a new constitution dropped it from the constitution.

In 1907, when the convention met, if you look at the little blue message to the people, you discover that they made another change with respect to this office, and I would like to read the explanation that they gave to the people in 1908 when they asked them to vote on the present constitution as to why they made the changes that they made, with respect to section 2 of article XI. I am reading from the section itself:

> A superintendent of public instruction shall be elected at the regular election to be held on the first Monday in April, 1909, and every second year thereafter. He shall hold office for a period of 2 years from the first day of July following his election and until his successor is elected and qualified.

At this point they began to spell out specifically some of the duties that he would have and some of the powers.

> He shall have general supervision of public instruction in the state. He shall be a member and secretary of the state board of education. He shall be ex officio a member of all other boards having control of public instruction in any state institution, with the right to speak but not to vote. His duties and compensation shall be prescribed by law.

The language very clearly indicates that they expected that the superintendent of public instruction would have certain constitutional powers, in answer to Mr. Higgs' question, and in addition thereto, it made it clear that they expected that the legislature might, from time to time, add to those powers. But I don't think there is any lawyer here who would suggest for one moment that the powers and prerogatives set forth

in this section of the constitution could, in any way, be diminished by the legislature.

In explaining why they changed the language from the preceding constitution, this is what they said:

> This section takes the place of section 1, article XIII of the present constitution, and includes certain provisions of section 1, article VIII, and section 1, article IX. The propositions to make the office of superintendent of public instruction elective at the April election, to make him a member of the state board of education and other educational boards are not found in the existing constitution.

They are referring to the Constitution of 1850.

> The first change is designed to place his selection on the same basis as the selection of regents and judges, and the second is a recognition of certain present statutory provisions.

It was made very clear that in 1907, in a constitutional convention that made, as we all agree, very few changes from the Constitution of 1850, that they went out of their way to do 2 things: to make it very clear that they had some basic constitutional powers, prerogatives and duties and, secondly, to provide that he should be selected in the same manner as the regents. I submit that their reasoning was that they felt that the universities of this state should be governed by people answerable directly to the people, and they had had the experience of leaving to the legislature, between 1850 and 1907, the method of selection, and decided they better make it constitutional again.

I hate to be repetitious, but just see what we did: for 15 years we appointed him. For 50 years we left it to the legislature, and at the end of that first 15 years, we got away from the appointment but went to the legislature. At the end of that period of time, we evolved to a situation where by constitution we guaranteed that he would be elected by the people. I submit that this shows a progression of the treatment of this office not from the elective process to the appointive process, but, quite the contrary, from a trial of the appointive process to a flexible Constitution of 1850, which didn't prescribe the method but left it to the legislature, to the 1907-1908 situation where they said, "We have to guarantee to the people this right by constitution."

So, if we are going to be modern and we are going to be forward, let's do it. Let's don't go back to 1835 and start off with a concept that was rejected after only 15 years of life in this state.

CHAIRMAN MILLARD: I recognize Delegate Sterrett.

MR. STERRETT: Mr. Chairman and delegates, we heard Mr. Down's statement about the benefit of the campaign of the superintendent of public instruction. I would like to point out to you that the author of this amendment was sitting at the committee table in the committee on executive branch when our present superintendent of public instruction appeared before us as a witness. My question to him was: in your last campaign, do you feel that you came in contact with at least 10 per cent of the voters of the state of Michigan? And he was unable to say that he had even come in contact with 10 per cent of the voters. How are the people getting to know a person if that person can only come in contact with this number of people?

CHAIRMAN MILLARD: The question is on the minority amendment. The secretary will read the amendment so we will know what it is all about.

SECRETARY CHASE: The amendment is:

[The amendment was again read by the secretary. For text, see above, page 1214.]

MR. DOUGLAS: I demand a division vote, Mr. Chairman.

CHAIRMAN MILLARD: A division has been demanded. Is the demand seconded? There is a sufficient number up. All those in favor of the minority amendment will vote aye. Those opposed will vote nay. The time has elapsed. The secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the adoption of the amendment offered by Miss Hart and others, the yeas are 45, the nays are 82.

CHAIRMAN MILLARD: The amendment is not adopted. Are there any further amendments to section b?

SECRETARY CHASE: Mr. Kuhn offers the following amendment:

1. Amend page 1, line 18, after "Sec. b.", by striking out "The state board shall appoint a superintendent of public instruction whose term of office shall be determined by the board.", and inserting "The governor shall appoint a superintendent of public instruction with the advice and consent of the state board of education and whose term of office shall be at the pleasure of the governor.".

CHAIRMAN MILLARD: The Chair recognizes Delegate Kuhn.

MR. KUHN: Mr. Chairman, members of the committee, as you know, it has been said, "In a chain of command the top administrative head should have the appointment of his department heads." Well, the superintendent of public instruction is the administrative head of the state department of education. He is the chief educational officer of the state.

You know under our federal system the president appoints his cabinet. I feel this should be the same in the state of Michigan. After all, it has been pointed out to us that 50 per cent of our appropriations go to education and, therefore, we should have responsibility as to how our money is spent and things of that nature. I think it is important that when we have someone who is superintendent of public instruction, that we have responsibility in the people to be able to remove him. If he is insulated by 8 members of the state board of education, then I think we are fooling ourselves. I think that is one of the reasons we called this constitutional convention: to do away with these so called 120 departments, to reduce the number so we could pinpoint responsibility. This way, we can pinpoint responsibility. The superintendent of public instruction would be appointed at the pleasure of the governor. If he weren't doing the job the governor thought he should do, he could be removed by the governor.

How are the people in education going to be protected? Well, the people do elect our state board of education and, therefore, they are supposed to be on the side of education. They have the right of veto if they feel that the governor did not make a wise selection, and that is why we use the words "advice and consent." We would hope that the governor would go to the state board of education and get their advice, and he would have to have their consent in order to make the appointment. We feel this would make our administrative chart correct, the chain of command would be correct, we would pinpoint responsibility. Therefore, if this plan would be adopted, we could take the governor, as the committee has recommended, off the state board of education and then we would still have a sound, administrative chart.

CHAIRMAN MILLARD: The Chair recognizes the chairman of the committee, Delegate Bentley.

MR. BENTLEY: Mr. Chairman, the gentleman from Pontiac, one of the hardest working, most valuable members of the committee, has been entirely consistent on his position. He voted for it in committee and he is entirely within his rights in offering the amendment on the floor.

Nevertheless, for reasons which I do not think need to be repeated, the committee did not see fit to agree with his position, and therefore, on behalf of the committee on education, I ask that the pending amendment be defeated.

CHAIRMAN MILLARD: The question is on the amendment by Delegate Kuhn. The secretary will read.

SECRETARY CHASE: Mr. Kuhn's amendment:

[The amendment was again read by the secretary. For text, see above.]

CHAIRMAN MILLARD: The Chair recognizes Delegate Faxon.

MR. FAXON: I just want to state that this resembles one which was in committee, but it is not the same. Mr. Kuhn added the language, "to serve at the pleasure of the governor," which was not in the proposal that I had favored in the committee, and I am opposed to that addition.

CHAIRMAN MILLARD: The Chair recognizes Delegate Downs.

MR. DOWNS: Mr. Chairman, I wish to rise, very briefly, in opposition to the amendment. I believe that this violates the separation of education from other parts of state government, and believe it would weaken our educational system and not strengthen it.

CHAIRMAN MILLARD: The Chair recognizes Delegate Dehnke.

MR. DEHNKE: Mr. Chairman and delegates, I want to direct attention particularly to the closing language of the proposed amendment, that "the term of office shall be at the pleasure of the governor." Here we have one of the members of the administrative board, and it is true, as has been suggested during some of our discussion, that the governor has the power to remove, and under the present constitution, that reads as follows:

> The governor shall have power and it shall be his duty, except at such time as the legislature may be in session, to examine into the condition and administration of any public office and the acts of any public officer, elective or appointive; to remove from office for gross neglect of duty or for corrupt conduct in office, or any other misfeasance or malfeasance therein, any elective or appointive state officer, except legislative or judicial, and report the causes of such removal to the legislature at its next session.

It seems to me this language goes far beyond that. Under the other constitutional provision, the governor will be under the necessity of demonstrating to the people of the state his own good faith and that there was some misfeasance or malfeasance in office as well. Under the language we have in this proposed amendment, all he needs to do is write them a letter, "It is no longer my pleasure to have you continue in the office."

I therefore move, if I may do it without presenting it in writing, that the language after the word "be" in the next to the last line to the end be stricken, and the language would then be, "whose term of office shall be fixed by law."

SECRETARY CHASE: Mr. Dehnke suggests the following revision to the amendment offered by Mr. Kuhn: after the words "shall be" strike out the language "at the pleasure of the governor" and insert "fixed by law"; so the language will then read, "whose term of office shall be fixed by law."

CHAIRMAN MILLARD: Mr. Kuhn.

MR. KUHN: Mr. Chairman, I would accept the revision.

CHAIRMAN MILLARD: Without objection, the revision of Delegate Dehnke is accepted. Are you ready for the question? Mr. Kuhn.

MR. KUHN: Mr. Chairman, I would like to answer a couple of points that were raised by Mr. Downs. He is worried about the separation of powers. It should be noted that New Jersey, which was the last state to revise its constitution, has put the power in the governor to appoint the superintendent of public instruction, and also one of our newest states, Alaska, has put the power in the governor to appoint the superintendent of public instruction.

CHAIRMAN MILLARD: Delegate Brown.

MR. T. S. BROWN: Mr. Chairman, I was going to let this matter pass because I had hoped, and I thought that the Kuhn amendment would fall of its own weight, but apparently it is not quite that heavy yet. This reminds me of a matter that was brought before our committee on education, and it was a matter on which we spent considerable time, and I think a matter which involved the greatest controversy on the committee.

I should like, at this time, to talk about the real problem that we face in this and related matters. This is nothing more than another aspect of the problem that we are facing now in the previous section in regard to whether or not the governor should sit on the board of education. Now, what I am talking about is the personification of forms of government. Now, it is not good form to personify anything in the way of principles of government. When an individual's personality, an individual's desires get in the way of the proper exercise of his office, then I think he is wrong.

Now, a couple of days ago, the chairman of our committee — I hope in a jocular vein — indicated that I was a "rat," and I did not rise to a point of personal privilege there, and I hope that in what I am about to say, that this will not necessitate anyone else rising to a point of personal privilege, but I am very seriously concerned about this matter.

There is a certain gentleman in this convention, 1/144 participant in this convention, who did state to the members of the committee on legislative organization — and of my own knowledge I know of this fact — that he made this convention possible. Of my own knowledge, on the education committee, this same particular gentleman wanted the governor to appoint the members of the board of education and he also wanted the governor to appoint the superintendent of public instruction. Now, I think at this juncture, we all pretty well realize what has happened, especially in regard to the matters of county home rule and the matter of the governor's position vis a vis the board of education that we have been discussing for the last 2 days, and I would suggest that at this juncture, this convention is about to plunge precipitously over an abyss from which there is no return, and I level this accusation at all of us, myself included, collectively, that we began, in our body, as the people assembled, and now we are in very grave danger of ending up as genuflectors to a supposedly charismatic personality. And I also say to that particular individual that when you become so engrossed with your own particular aspirations and motives that you cannot distinguish between them and the will of the people, then you are not fit to exercise more than the 1/144 influence upon this delegation.

CHAIRMAN MILLARD: The Chair recognizes Delegate Butler.

MRS. BUTLER: I don't understand, Mr. Chairman, what this genuflecting business is, and who it's to.

CHAIRMAN MILLARD: If the gentleman cares to answer. (laughter)

MRS. BUTLER: It is not genuflecting because we have been told to genuflect, as the gentleman seems to imply.

CHAIRMAN MILLARD: The Chair recognizes Delegate Sterrett.

MR. STERRETT: Mr. Chairman and fellow delegates, the last statement of passing beyond the point of no return would be perfectly all right with me if we should adopt this amendment, because we wouldn't have to return to do any better. Thank you.

CHAIRMAN MILLARD: The question is on the Kuhn amendment, as revised. The secretary advises me we have an amendment to the amendment. The secretary will read.

SECRETARY CHASE: Mr. Madar offers the following amendment to the amendment of Mr. Kuhn:

1. Amend the amendment after "instruction" by striking out "with the advice and consent of the state board of education and"; so that the inserted language would read, "The governor shall appoint a superintendent of public instruction whose term of office shall be fixed by law."

CHAIRMAN MILLARD: Delegate Madar.

MR. MADAR: Mr. Chairman, I wanted to slip this amendment in for a very good reason, which is this: that I have been, personally, for the appointment of certain men in government appointed by the governor without the advice and consent of the legislature. I was for this a good many years ago, and I still am today. I don't believe that any governor appoints any man when he has to do it with the advice and consent of the legislature, whether it be the house or the senate. When it is by this particular method, then it is not the governor who is appointing, it is the senate, as the case is today, over in the capitol, and it would be the same thing with the board of education advising and consenting here. It would be by the board of education, not the governor. Oh, I realize why a lot of people here, a lot of the delegates say "by the advice and consent". I expect to hear them say this on more than one occasion, "by the advice and consent".

The reason I say this is because I have heard, on many an occasion, that if you listen long enough to some people, especially in politics, they will contradict themselves on many an oc-

casion, and I have been listening here today and I have heard an awful lot of contradictions.

First, I heard contradictions as to the idea of changing our entire method of running our educational system, because we want to make it a good educational system. And yet, they say that we have an educational system second to none. For heavens' sake, I don't see how you can make it any better, if it is second to none, and it really is second to none.

I listened today, too, to several states being mentioned as putting the governor on the board of education. Heavens to Betsy, let's stop kidding ourselves, we are second to none in education and these other states that have been mentioned are not any higher on the list than twentieth and some fortieth.

I say right now that I want to keep those responsible for government who should be responsible. If the governor appoints a lousy superintendent of public instruction, then let him take the blame for it. If he appoints a good one, then let the people give him credit for having done a good job, but don't go putting it into the hands of the board of education. That is 8 other people that you are going to have to start laying the blame to, or giving the credit to. I don't think you can do either one with everybody being tied into it. For heavens' sake, let's be consistent if nothing else.

CHAIRMAN MILLARD: The Chair recognizes the gentleman from Wayne, Delegate Marshall.

MR. MARSHALL: Mr. Chairman and fellow delegates, I am not going to infringe upon your time and patience by making a speech. I haven't said anything in a couple of days, but I do rise on this one to urge you to stop debating and vote. I think all has been said that can be said on this question, and if we keep on you are going to get spenorious again.

CHAIRMAN MILLARD: The question is on the Madar amendment to the Kuhn amendment. All in favor will say aye. Opposed, no.

The amendment to the amendment is not adopted. Now we will vote on the Kuhn amendment, as revised. All in favor will say aye.

SECRETARY CHASE: A division has been asked for.

CHAIRMAN MILLARD: A division was asked for. Is it seconded? Sufficient number up. Those in favor of the Kuhn amendment, as revised, will vote aye, and those opposed will vote no.

MR. WOOLFENDEN: Point of information, Mr. Chairman.

CHAIRMAN MILLARD: State your point.

MR. WOOLFENDEN: There has been on the walls here an amendment which I haven't heard discussed. It was put up as the Madar amendment, but that was not the amendment as it was read by the secretary, and I think the delegates may be confused as to what is before us right now. On the wall over here is an amendment which I don't understand to be the Kuhn amendment.

CHAIRMAN MILLARD: The secretary will read the Kuhn amendment, as revised.

SECRETARY CHASE: The Kuhn amendment was revised by an amendment offered by Judge Dehnke so that the language to be inserted now reads, "The governor shall appoint a superintendent of public instruction with the advice and consent of the state board of education and whose term of office shall be fixed by law."

CHAIRMAN MILLARD: Have you all voted?

If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the adoption of the amendment offered by Mr. Kuhn, the yeas are 20. The nays are 100.

CHAIRMAN MILLARD: The amendment is not adopted.

Pursuant to an order of the convention, the committee of the whole will now rise so the convention may recess.

MR. BENTLEY: Mr. Chairman, I move that the committee do rise, if that is correct.

CHAIRMAN MILLARD: The secretary informed me that the Chair could make that statement, so the Chair did. (laughter)

[Whereupon, the committee of the whole having risen, Vice President Hutchinson resumed the Chair.]

VICE PRESIDENT HUTCHINSON: The convention will be in order. Pursuant to orders previously made, the convention stands in recess until 3:45.

[Whereupon, at 3:35 o'clock p.m., the convention recessed; and, at 3:45 o'clock p.m., reconvened.]

The convention will be in order.

SECRETARY CHASE: Mr. President, a quorum of the convention is present.

I have the following requests: Mr. Sterrett, Mr. Iverson, Mr. Yeager, Mr. Stevens and Mrs. Conklin will be leaving at 4:00 o'clock this afternoon in order to make speeches in Detroit this evening, and would like to be excused after 4:00 o'clock.

VICE PRESIDENT HUTCHINSON: Without objection, the several requests for excuse will be granted. The Chair hears no objection and it is so ordered.

General orders of the day. The gentleman from Genesee, Mr. Millard.

MR. MILLARD: Mr. President, I move that the convention resolve itself into committee of the whole to consider matters on general orders.

VICE PRESIDENT HUTCHINSON: The question being upon the motion of the gentleman from Genesee, all those in favor will say aye. Opposed will say no.

The motion prevails. The committee will convene and Mr. Millard will preside.

[Whereupon, Mr. Millard assumed the Chair to preside as chairman of the **committee of the whole.**]

CHAIRMAN MILLARD: The committee will be in order. The secretary will read.

SECRETARY CHASE: **Committee Proposal 47.** We are considering section b. Mr. Faxon offers the following amendment:

1. Amend page 1, line 23, after "education" by striking out "which shall be granted sufficient funds and staff to carry on state responsibilities for education as determined by law"; so that the sentence beginning on line 22 will read, "The superintendent of public instruction shall be chief administrative officer of a state office of education."

CHAIRMAN MILLARD: Delegate Faxon.

MR. FAXON: Mr. Chairman, this was just to clean up the language a little bit. I am sure the delegates are aware of the fact that the language recommended here is legislative, and for the further report on this I should yield to Mr. Bentley, the chairman of the committee.

CHAIRMAN MILLARD: Mr. Bentley.

MR. BENTLEY: I would prefer the gentleman not yield to me. I wish to speak on the amendment.

MR. FAXON: We had discussed this in committee, and somehow when the proposal finally came through, the deletion of those words didn't come through with it. I didn't find any strong feeling for its inclusion because there is nothing you could do. I mean, obviously, the legislature shall grant sufficient funds but you can't mandamus the legislature into determining what is a sufficient amount of money. So I proposed this simply to clear up the language and to keep in line with what is constitutional language and what is primarily legislative or statutory.

I think this is all that needs to be said, unless Mr. Bentley has any questions. I would like to yield to him for any statement he may — no? Well, I just want to say that if there is anybody on the committee that has any objection to this deletion, I haven't heard of them. I showed this to the chairman, and to the chairman of the subcommittee, and to several other people in the committee, and they felt there was no objection to the deletion of the language.

CHAIRMAN MILLARD: Is the delegate yielding the floor now?

MR. FAXON: Well, to Mr. Bentley. He stands by the microphone.

CHAIRMAN MILLARD: The Chair will recognize the chairman of the committee, Delegate Bentley.

MR. BENTLEY: Mr. Chairman, the gentleman, of course, did discuss this amendment with me beforehand, and the gentleman may be correct in that he claims that it is statutory and legislative in nature, with regard to the particular phrase he wishes to be stricken, and he may also be correct in saying that we cannot mandamus the legislature, and therefore the language is unnecessary.

But I believe, Mr. Chairman, that the reason that the committee desired to include this particular language was because of the statements that had been made to us at various times in presentations by the incumbent superintendent and by other gentlemen from the state department of education, in that they felt that in some cases their budgets had been inadequate to enable them to carry out the responsibilities and the duties with which they were charged by law.

It is my recollection that a number of members, if not a majority, of those on the committee on education, felt strongly that the question of adequate appropriations for the state department of education and its officials was so important that we wished to register our belief in this fashion, and therefore desired to include this language under discussion, even though it may be somewhat statutory in nature.

I might suggest to the gentleman from Detroit, Mr. Faxon, that while I do not believe the proposal would be greatly harmed if this particular phrase were deleted, that I would personally prefer to leave it up to the excellent committee on style and drafting to decide whether or not the language is specifically statutory or whether it properly belongs in the constitution.

CHAIRMAN MILLARD: Does the delegate from Detroit have anything further, Delegate Faxon?

MR. FAXON: I think that I would like to yield to Miss Hart and hear what objections she may have.

CHAIRMAN MILLARD: No, the Chair must now recognize the gentleman from Hancock, Delegate Heideman.

MR. HEIDEMAN: Mr. Chairman, fellow delegates, I would just like to say that regardless of this mandamus business, it is perfectly proper to write in a constitutional command to the legislature. That is done all the time in state constitutions and also in the federal constitution, so that a distinction can be drawn between where you can't mandamus the legislature in writing in a constitutional duty which the legislature is called upon to perform and which, if it doesn't do it, it is derelict in its constitutional duty, and then, of course, the recourse is through the polls, through election. But this can be done, and I think this language is perfectly proper and, of course, I think it should remain in the constitution.

CHAIRMAN MILLARD: The Chair recognizes the lady from Detroit, Delegate Hart.

MISS HART: Mr. Chairman, I rise to agree with Mr. Heideman. I oppose the deletion of this particular sentence.

CHAIRMAN MILLARD: Delegate Faxon.

MR. FAXON: Could I have the — I notice that they haven't projected this upon the walls here and I just want to be sure that the delegates know exactly what we are referring to.

The language which I put in for deletion is the end of page 1, the last line in the paragraph beginning,

> The superintendent of public instruction shall be chief administrative officer of a state office of education which shall be granted sufficient funds and staff to carry on state responsibilities for education as determined by law.

This additional language, "which shall be granted sufficient funds and staff", is, in my opinion — and I am not a lawyer here — it isn't constitutional language. Obviously, the legislature is going to grant funds. Now, whether the funds are going to be sufficient to the people who are in the office of education or the people who are in the legislature is another question. I don't think that the words "sufficient funds" are meaningful. I don't think the language is operational.

So, my only concern here is that we have something which is a clear cut statement and leave this determination to the legislature because it is going to be theirs anyhow. That is all.

I would urge the delegates to support the amendment for these reasons.

CHAIRMAN MILLARD: The question is on the amendment to section b offered by Delegate Faxon. The Chair recognizes Delegate Habermehl from Alpena.

MR. HABERMEHL: Mr. Chairman, I would like to direct a question to the chairman of the committee. Is there some danger that, where on page 2 on line 2 you state "carry on state responsibilities for education as determined by law", when previously in section b, on page 1, line 21, you state that the superintendent of public instruction shall be responsible for the execution of its — referring to the state board's — policies. Is there a possibility of conflict there?

CHAIRMAN MILLARD: Mr. Bentley.

MR. BENTLEY: Mr. Chairman, if the gentleman from Alpena will yield, the committee did not feel that there was a conflict. I may say something that I think is obvious, not only to the gentleman but to the committee of the whole at large. We have not been blessed, on the committee on education, with as many lawyers as there have been on some of the other committees. That may or may not have been an advantage from our standpoint in carrying on our deliberations, but I am perfectly willing to say that we did not foresee such a conflict, Mr. Habermehl, and, very frankly, I would hope that if a conflict of this nature should be felt, I would personally be willing to leave it to the committee on style and drafting to iron out any inconsistencies in this respect.

CHAIRMAN MILLARD: The question is on the Faxon amendment. All those in favor will say aye. Opposed, no.

The amendment is not adopted.

A DELEGATE: Division.

CHAIRMAN MILLARD: A division is called for. Is the demand seconded? A sufficient number is up. All those in favor will vote aye. Those opposed will vote nay. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the amendment offered by Mr. Faxon, the yeas are 23; the nays are 90.

CHAIRMAN MILLARD: The amendment is not adopted. The secretary will read.

SECRETARY CHASE: Mr. Hoxie offers the following amendment:

1. Amend page 1, line 19, after "shall be" by striking out "determined by" and inserting "at the pleasure of"; so the language will then read, "The state board shall appoint a superintendent of public instruction whose term of office shall be at the pleasure of the board."

CHAIRMAN MILLARD: The Chair recognizes Delegate Hoxie.

MR. HOXIE: Mr. Chairman, fellow delegates, I think it is self explanatory. It is not my desire to precipitate extensive discussion. As the proposal presently reads, I can see the possibility of some dangers in the term of office being granted to a superintendent with the possible change of the members of the board, whereby they might desire to have a different superintendent.

I think we have seen this repeatedly throughout the state, where superintendents have been hired for a certain term, and for some reason or other, the board desires to make a change. The end result is that the contract which has been entered into with the board is complied with, the superintendent is paid off and he goes his merry way. I don't think we want to get in a position where a state board of education couldn't resolve this matter without obligating the state.

So, I offer this amendment to clarify what I understand was the intent of the committee.

CHAIRMAN MILLARD: The Chair recognizes the chairman of the committee, Delegate Bentley.

MR. BENTLEY: Mr. Chairman, the gentleman did discuss this amendment with me previously. I, obviously, have not been able to poll the committee, and so therefore cannot speak for them. Speaking personally, I see no objection to the amendment, since, in my opinion, it does spell out more specifically the intent of the committee with respect to the length of service of the term of office of the superintendent.

CHAIRMAN MILLARD: The question is on the amendment offered by Delegate Hoxie. Delegate Brown, from Wayne.

MR. T. S. BROWN: Mr. Chairman, I am a little tenuous about this, but I think "determined by" would imply, in its terminology, that the board would set a specific time period in which the superintendent would serve, and "at the pleasure of" would not require the board to set any time period at all. If this board were to select a man of stature, and they were to say to this man of stature, "Please come and be our superintendent of public instruction, but you serve only at our pleasure," then, I think this would predispose against his accepting the job.

MR. BENTLEY: Mr. Chairman, will the gentleman yield?

CHAIRMAN MILLARD: Mr. Bentley.

MR. BENTLEY: It is just my opinion that the man of stature whom we hope will be selected to be the new superintendent of public instruction by the new board would be a man of such stature and such prestige that he would — his services could not be obtained without a reasonable degree of security, including, I would assume, some contract or written guarantee of a certain period of time. I think that Mr. Hoxie's fear was that the board might have the desire to terminate his services after the expiration of a given time period and be unable to do so for particular reasons.

Do you not feel that the intent of the committee was that the board should be able to change superintendents if they desired to do so, but that the question of security certainly should be included?

CHAIRMAN MILLARD: Delegate Brown.

MR. T. S. BROWN: Yes, Delegate Bentley. I am not objecting, really, except for the fact that if you take the total connotative effect of "at the pleasure of", then I think it is a little more deleterious and a little more insidious than the total connotative effect of "determined by." That is really what I am objecting to. Now, maybe that is a little far out, and if it is, I apologize.

CHAIRMAN MILLARD: The Chair recognizes the gentleman from Bay, Delegate Higgs.

MR. HIGGS: Mr. Chairman and Delegate Bentley, this amendment brings into focus a question that I had been saving, and concerned about and had hoped we might get some further light on before second reading or on the style and drafting committee, of which I am a member. I interpreted the words, "shall be determined by the board", to mean that the board could give a contract to a candidate for this office, and would probably no longer contract than the tenure of the board itself. That is, I don't think, as a matter of law, that the board could bind a succeeding board by its actions.

Is it your understanding, by accepting this amendment, that it would not be possible for a board to offer a contract to a candidate?

CHAIRMAN MILLARD: Mr. Bentley.

MR. BENTLEY: Mr. Chairman, I thought I made it quite plain just a moment ago that I thought the board could offer a contract. Furthermore, I don't quite know what the gentleman means by "a succeeding board," since it was our recommendation, I believe, from the committee report, that the board be elected for 8 year terms on a staggered basis, so there would always be a continuing board rather than a whole new board elected at one time. But I tried to make it quite clear that we did not feel, I do not feel that the acceptance of the amendment by the gentleman from St. Louis would preclude the offer of a contract to a superintendent, and I would certainly personally hope that such a contract would be offered.

MR. HIGGS: Perhaps I should direct the question to Mr. Hoxie, then, what his intention is.

CHAIRMAN MILLARD: Mr. Hoxie, do you care to answer? Mr. Higgs.

MR. HIGGS: Mr. Hoxie, is it your intention, by inserting the words "at the pleasure of", to preclude the board from offering a contract to a candidate for this office?

MR. HOXIE: It is not. My only fear is, Mr. Higgs, that in the course of election, in the course of, say, 2 succeeding elections, so there would be probably 4 new members of this board, and perhaps another 2 years — and I would like to clarify this, as far as you are concerned — that we have seen repeatedly, and the courts have substantiated and upheld contracts that have been entered into in the way of employment that extends beyond the time of office of those people, such as your state board would be. In other words, if the members entered into a contract with the superintendent and they were not reelected, that contract would be binding upon the board, regardless of whether or not they were reelected. So that my fear is that we might be tying the hands of the state board of education in the event that they desired to make a change.

I think that they are the ones that are responsible to the people. I think they should be given that authority. But, in answer to your question, it was not my intent with this amendment, nor do I think it precludes the board from entering into a contract for a term with the wording there. If you feel it does, then perhaps it should be corrected, but it was not my intent.

MR. HIGGS: I just want to get at the intent. I would like to ask one further question of Delegate Bentley, then. Did your committee consider the limiting of the term of a contract which might be granted?

CHAIRMAN MILLARD: Mr. Bentley.

MR. BENTLEY: Mr. Chairman, I will say to the gentleman from Bay City that I don't believe the committee took particular cognizance of this matter. We felt that it was a question that could be handled very appropriately by statute, if necessary. And I say, Mr. Chairman, that although I respect the interest of the gentleman from Bay City and his desire to plumb the meaning and the intent of the committee, I would hope that he is satisfied on this respect, and I would hope that we could move to a vote on this section.

CHAIRMAN MILLARD: The Chair recognizes Delegate McAllister.

MR. McALLISTER: Mr. Chairman and fellow delegates, it would appear to me that "at the pleasure of" means just what it says, and that if the board of education entered into a contract for a period of time, they would be acting in violation of the provisions of the constitution, and there might be personal liability but there would be no other liability. That is my thinking on the provision in the amendment.

CHAIRMAN MILLARD: The question is on the Hoxie amendment. The Chair recognizes Delegate Barthwell from Detroit.

MR. BARTHWELL: Mr. Chairman and delegates, since, to me, "at the pleasure of" creates some confusion in my mind, I want to suggest to the committee of the whole that we stick by the committee's original language.

CHAIRMAN MILLARD: The question is on the Hoxie amendment. Delegate Garvin.

MR. GARVIN: Mr. Chairman and delegates, I feel, very definitely, that the proposal should remain as it is for the reason that, as has been stated I believe by Ted Brown and others, that if anyone accepts this position, they have to accept it with some degree of assurance that they will be there for a certain period of time, and "at the pleasure" does not mean that, by any means. It means that he might be there tomorrow and he might not be there next week. So, I would suggest, and I will go along with the committee, that the offer is of a more definite nature as it is written in the proposal.

CHAIRMAN MILLARD: The question is on the Hoxie amendment. The secretary will read it.

SECRETARY CHASE: The amendment is:

[The amendment was again read by the secretary. For text, see above, page 1222.]

CHAIRMAN MILLARD: You have heard the amendment. All in favor will say aye. Opposed, no.

The amendment is not adopted. The secretary will read.

SECRETARY CHASE: Mr. Hoxie offers the following amendment:

1. Amend page 1, line 19, after "shall" by striking out "be"

and inserting "not exceed 4 years at any one time as"; so that the language will then read:

The state board shall appoint a superintendent of public instruction whose term of office shall not exceed 4 years at any one time as determined by the board.

CHAIRMAN MILLARD: The Chair recognizes Delegate Hoxie.

MR. HOXIE: Mr. Chairman and fellow members, this amendment is offered in all good faith with the idea of the possible dangers that we are getting ourselves into. All this says is that the board cannot appoint anyone as superintendent for a longer period than 4 years at any one time, so that if your board does change — which it is bound to change — it does give the new board an opportunity to make a determination to hire someone else, if they see fit.

I urge you to adopt this amendment and I ask for a division.

MR. BENTLEY: Mr. Chairman, will the gentleman yield for a question?

CHAIRMAN MILLARD: Delegate Bentley, chairman of the committee, is recognized.

MR. BENTLEY: Mr. Chairman, I would like to ask the gentleman from St. Louis why he feels it so necessary to bind the board in this particular respect. Within the 4 year period, if the committee proposal is part of the new constitution, the board will have changed by only 50 per cent; that is, only 4 of its 8 members will have gone through the elective process. There will still be 4 members of the board that originally hired the superintendent, and I wonder why he feels it so necessary to restrict the board to a 4 year term if, in the discretion of the board, they can find a good man and want to put him on a longer time basis.

MR. HOXIE: Mr. Bentley, apparently I don't make myself clear as to my thinking on this question. Certainly, we know the possibility of the board changing, the membership on the board changing from time to time. Perhaps at the end of 2 successive elections we will have 4 new members of the board. Perhaps 2 years later, there may be 6 new members of the board.

Let's assume, if we may, that the board would hire the superintendent for a 10 year period, and it was done legally. What happens then if the board changes and they wish and desire to hire a different superintendent? The end result will be the same as we have seen throughout the state, where boards of education have paid off teachers and superintendents because they were under contract, and I think this is a safeguard. I think by the wording "determination by the board", leaves the door wide open. I think this is a safety measure that we should adopt to the benefit of the people of the state. Let's say we have a good superintendent, certainly the board will continue his services. It seems to me that anyone that is interested in this position, with a guaranteed contract of 4 years to start with, is a long enough term for the board to determine whether or not they want to continue his services.

CHAIRMAN MILLARD: The question is on the Hoxie amendment. Division has been called for. Is there sufficient number up for a second? The Chair recognizes Delegate Barthwell.

MR. BARTHWELL: Mr. Chairman and delegates, one of the things that was very emphatically impressed on me in the committee meetings was that the advantage of this officer being appointed rests in the fact that he could have security and you could attract men of higher caliber, and it seems to me if we are going to write into this constitution a limitation to his security, then we are starting out now to defeat the very thing that I thought we were accomplishing.

I would urge the delegates to vote against the amendment.

CHAIRMAN MILLARD: The Chair recognizes Delegate Higgs.

MR. HIGGS: Mr. Chairman, I would like to plumb the education committee a little further, if I may, if Delegate Bentley will respond. Are you opposed to this amendment?

CHAIRMAN MILLARD: Mr. Bentley.

MR. BENTLEY: Mr. Chairman, in response to the gentleman from Bay City, I personally feel it would be helpful if the board would be left with the discretion of setting the time for mutual agreement between themselves and the superintendent.

MR. HIGGS: Would there be any limitation at all, then, in your judgment, on how long a term the board could grant? For instance, could it be 10 years?

MR. BENTLEY: I feel that that is a matter that can be handled by statute.

MR. HIGGS: Would you say that the legislature would have the power, by statute, to limit the constitutional power that we grant them?

MR. BENTLEY: Mr. Chairman, in reply to the gentleman from Bay City, I am not, as I said before many times, a member of the legal profession and I don't recall any protracted discussion within the committee on this point, except to reemphasize the point made by the gentleman from Detroit, Mr. Barthwell, that we did believe that the question of security was an important one and we felt that one of the advantages in having an appointive superintendent was that he would be secure in his job for as long a time as he and the board could come to terms.

MR. HIGGS: Thank you. Mr. Chairman, I would like to conclude in that I feel — and I would like to hear from other delegates if they disagree — but I feel that the Hoxie amendment has a great deal of merit, because I really don't think that the legislature would have any power to limit the constitutional grant that we have set forth in section b.

CHAIRMAN MILLARD: The question is on the Hoxie amendment. A division has been called for. Is there a sufficient number up for a second? A sufficient number is up. All those in favor of the Hoxie amendment will vote aye. Those opposed will vote no. Have you all voted? The machine will be locked and the secretary will tally the vote.

SECRETARY CHASE: On the adoption of the amendment offered by Mr. Hoxie, the yeas are 34. The nays are 77.

CHAIRMAN MILLARD: The amendment is not adopted. Are there any further amendments? If there are no further amendments to section b, it will be passed.

Section b is passed.

SECRETARY CHASE: Section a, an amendment is pending. The amendment is offered by Messrs. Boothby, Brake, Dean Doty, Leibrand, Finch, Sharpe, Dehnke, Miss Donnelly and Mr. Downs:

1. Amend page 1, line 16, after "law.", by striking out "The governor shall also be a member of the state board of education.".

CHAIRMAN MILLARD: The Chair recognizes Delegate Boothby.

MR. BOOTHBY: Mr. Chairman, ladies and gentlemen of the committee, I think this question has been exhausted, as far as debate is concerned, and I will not prolong the time of the delegates here on going over and reiterating the various points that have been made on both sides or on behalf of those who are asking for support of this amendment.

I do point out that it is a very vital matter that we are facing here, because, in my mind, the question of the governor being on the board of education or not being on the board of education is simply the question of whether you are going to allow the board of education to become a political arena or whether you are going to follow the traditional approach that the people of Michigan have followed, and that is to keep, as best they can, education out of the political arena. I have always worried about the placing of education in a situation where it would be used as a political football for the advantage of one particular party or one particular person in public office. I urge the support of this amendment, which we have submitted to you, which would delete from the committee proposal the provision which would allow the governor to not only sit on the board of education, but also to vote on the board of education.

I urge the adoption of this amendment.

CHAIRMAN MILLARD: The question is on the Boothby amendment. The Chair recognizes Delegate Downs.

MR. DOWNS: I would like, very briefly, to speak for this, since we did discuss it earlier. I would just point out that if

the governor is on this board, he would then participate in a vote and later on, as chief executive, be asked to review what was done. This might come up in budget or other policy matters. I believe it is unsound governmentally, and I urge the support of the amendment to delete this sentence.

CHAIRMAN MILLARD: The Chair recognizes Delegate Faxon.

MR. FAXON: Mr. Chairman, and members of the committee, yesterday I spoke on behalf of keeping the language, now I am reversing myself, but that is because additional information has been brought to my attention. Originally I felt that there ought to be a tie in, and I voted for the appointment of the superintendent by the governor, because I felt that would be a much more direct tie in. Now I understand that the inclusion of the governor on the state board — we went ahead and did this in committee, it was a compromise, it was done rather quickly, and I don't believe anybody in the committee bothered to find out what the wishes of the governor were on this matter.

I think the executive committee, at least, had the courtesy of asking the governor, the present governor of the state, or any previous governor, what his position was with regard to executive appointments. We went ahead and put the governor on the committee, and no one asked whether the governor felt he ought to be on the committee. It seems to me that the governor doesn't seem to be happy in his position on the committee, in having to serve on the board of education. I don't think we ought to force him to take this position.

I want to call to the attention of the delegates article VI, section 3, which states that:

> The governor shall take care that the laws be faithfully executed; shall transact all necessary business with the officers of government; and may require information in writing from all executive and administrative state officers, elective and appointive, upon any subject relating to the duties of their respective offices.

It seems to me that there is constitutional provision now for the governor to request the necessary information in order for him to carry out the mandate of his office. It seems to me that the governor can actively participate, if he so desires, and that the board of education will not deny him an opportunity to speak before it, if there is a matter of pressing urgency.

It seems to me that if the governor feels that his time is required of many agencies and officers, it would be best not to pinpoint a specific one, because I am certain that this may be a source of some embarrassment, participating in budget for this and not being able to participate in the budget making process, say, for mental health or other agencies of government which may feel equally touched by the need for the governor's action.

With these statements, Mr. Chairman, I support the amendment submitted by Boothby, et al.

CHAIRMAN MILLARD: The Chair recognizes the gentleman from Ann Arbor, Professor Pollock.

MR. POLLOCK: Mr. Chairman and fellow delegates, the members of the committee of the whole, a good many of them, have scratched all sorts of things on this committee proposal. They have moved this. They have moved that. Cut out a word here, put in a word there, scratched the whole sentence, and all of these have been turned down. I presume they were turned down in the committee in the first place.

Some of us felt that it would be better to have the governor appoint the superintendent of public instruction. I thought this. This has been defeated. Others thought he should be elected. This has been defeated. Every other possible combination has been defeated. I submit that we go back to the obvious compromise which the committee framed in the first place and let this be the judgment of the whole. I am, therefore, opposed to this amendment.

CHAIRMAN MILLARD: The question is on the Boothby, et al, amendment.

MR. BOOTHBY: Mr. Chairman, I would like to ask that we have a division on this question.

CHAIRMAN MILLARD: A division has been called for. Is there sufficient number up? There is a sufficient number. Delegate Norris.

MR. NORRIS: May we have the specific wording of the amendment read, sir?

CHAIRMAN MILLARD: The secretary will read.

SECRETARY CHASE: The amendment is:

[The amendment was again read by the secretary. For text, see above, page 1224.]

CHAIRMAN MILLARD: All those in favor will vote aye. Those opposed will vote no. Have you all voted? If so, the machine will be locked and the secretary will tally the vote.

SECRETARY CHASE: On the adoption of the amendment offered by Mr. Boothby and others, the yeas are 63, the nays are 57.

CHAIRMAN MILLARD: The amendment is adopted. The secretary will read.

SECRETARY CHASE: Mr. Hubbs offers the following amendment:

1. Amend page 1, line 9, after "legislature" by striking out "and to the people"; so that the sentence beginning in line 7 will read:

> In addition, it shall serve as the general planning and coordinating body for all public education in the state and shall provide advice to the legislature as to the amount of state support required.

CHAIRMAN MILLARD: The Chair will recognize Delegate Hubbs.

MR. HUBBS: Mr. Chairman, fellow delegates, I am tempted to spend about an hour and a half talking this afternoon. Every time I get up to make an amendment, somebody has just finished talking about scratching and off the cuff and off the top of your head. Well, I have been waiting for 2 days to get this one up here, and I have previously made some remarks in regard to it. But I also notice that the longer you talk, the more people start thinking about your project and before you are done, why, you get people talking on all sides, and I might even win if I talk long enough. So, settle down, and I am going to begin now and see if I can't win one, for a change, instead of coming up here and speaking my piece and sitting down in a hurry.

It has been said that educational expense is about 50 per cent of state expense. On this basis, it seems fair to assume that education will continue to be given adequate support in the legislature. These words presume the necessity of promoting educational programs to gain financial support. The words that I am referring to are "and to the people". It seems to me, as I said yesterday, that these words are constitutional authority to lobby the public with tax money without regard to economy. It looks to me like a large loophole for state tax moneys to pour out in support of projects dreamed up by people on the state board of education which, while worthwhile and noble, I don't think this is the way to go about getting support in the legislature, by putting the pressure on the people by the state board of education. The legislature is supposed to represent the people, and they should not be circumvented in this manner and thereby weakened. I thought that we came down here to strengthen the legislature, and I suggest that these 4 words should be deleted, and the sentence, then, would provide the kind of operation that we need at this level.

The state board of education would make its recommendations to the legislature. The legislature, representing the people, would judge the quality of these recommendations and then appropriate sufficient money. I do not believe that we should permit the state board of education to lobby the people for the projects that they want to put across. This is completely wrong. It is going to lead to a great expense to sell the people on projects when they should be talking to the legislature at close range.

I will slow down a little bit, and if anybody would like to get up and talk on this subject, why, maybe I will quit. Otherwise, I might keep on going for a while to see if I can't get a little support for this amendment which, to my point of view,

should produce economy in government. That is what we came down here for, and I am afraid that a lot of things that we have been doing so far are not going to produce any economy in government.

So, with that, I will yield the floor to anybody who might like to take up here. Thank you.

CHAIRMAN MILLARD: The Chair recognizes Delegate Anspach.

MR. ANSPACH: Mr. Chairman and members of the committee, if you wish to speak — if so, I yield to the chairman of the committee.

CHAIRMAN MILLARD: Mr Bentley.

MR. BENTLEY: I merely wish to say we are opposed to the amendment.

CHAIRMAN MILLARD: Mr. Anspach.

MR. ANSPACH: Mine is merely a comment. It is a matter of explaining my position to the standpoint of these words, Mr. Hubbs. For a period of years, since I have been in education, there has been a great deal of criticism of the fact that insufficient information has been going to the legislature and to the public, and my interpretation of this is quite different than yours. You are taking the position that this is for the purpose of lobbying the people of the state. My position is the opposite position. This is to give information to the citizens of the state so they can come to fair judgment as to whether there is too much going into education or whether there isn't enough going into education. So, it is my mistake here, I think.

The chairman said something about a story, here. You see, Mr. Hubbs interprets it this way, and he, according to his interpretation, is right, and I interpret it the other way, which is, of course, my right. It is like this man who came out of his house one morning and it was raining, and he said to his wife, "I need an umbrella." She said, "You have 6 umbrellas. You have broken all of them. You have taken them down to get them repaired. You were forgetful, you have forgotten to pick them up. So, through the rain for you this morning." So he went out and got on a bus, sat down alongside of a very nice looking lady. It came his time to get up and leave, he picked up her umbrella. She said, "That's my umbrella," and he apologized and said, "That's right," and gave it back. That night, when he came out of his office, it was still raining. He thought of these 6 umbrellas and went down and got them, all 6 of them, and he got out and got on the bus and sat down, and to his amazement, he was sitting aside the young lady who had occupied half the seat in the morning. She took one look at him and one look at the umbrellas and said, "Well, you've had a good day, haven't you?" (laughter)

CHAIRMAN MILLARD: Does Delegate Hubbs wish to answer?

MR. HUBBS: I don't have a funny story to tell right now. I'll have to think about it.

But the fact that Dr. Anspach and myself differ on the interpretation of this thing is all the more reason that we should spend some time on it, because I can see a great danger here, and apparently he can't. As far as I am concerned, I am not against education, and I am not against the legislature being informed and the people being informed, but I feel that the proper people to inform the people are the newspapers and the radio and TV, and they will inform the people when the state board of education talks to the legislature.

I feel that given a legislature who might tend, occasionally, to be somewhat economy minded, whereas the members of the state board of education might feel that they needed a whole lot more money, then they would look at the constitution and say, "Well, fellows, we haven't got any problem. We will just hire one of the 'narrow tie, blue shirt' boys to do a little press relating to the public, and we will take $50 million or something out of our fund, or maybe ½ million to start with, and we will sell this program to the people whether the legislature likes it or not."

So, the fact that you and I come to different conclusions as to these words, I wouldn't want to leave it to style and drafting because I assume that it is substantive; money being rather substantive, from my point of view, and that is what this involves — economy.

I hope that we will plug this little loophole to a potential expenditure, which I don't consider a legitimate one, and get about the business. I am going to try and win this one if I have to stay here for quite a while.

CHAIRMAN MILLARD: The Chair recognizes the gentleman from Lansing, Delegate Wanger.

MR. WANGER: Mr. Chairman, members of the committee, I think Mr. Hubbs has a very good point, but there is no other office or agency of state government which has express, and I believe self executing constitutional authority, to directly advise the people, which, of course, includes buying time on the radio, time on television, ads in newspapers, and other things of that nature to inform the people, with taxpayers' money, of their particular point of view.

While I am sure the committee on education, at least I hope, certainly did not intend that their proposal would authorize the board to do this, I think, looking at the language he wants to delete, there is a possibility that the language could legally be interpreted to authorize those things.

I think that every authority established in the constitution has power to inform the people in the form of the traditional means of informing them, such as we have now, and I am satisfied that those means are adequate and that we did not need to create a constitutional question by putting these words in the constitution, and, therefore, urge your support of his amendment.

CHAIRMAN MILLARD: Delegate Norris.

MR. NORRIS: Mr. Chairman, I did not serve on the education committee, and I don't know all of the reasons which motivated the language, but looking at section a, I understand that the board of education is to have a leadership function as well as a supervision function. It is to indicate to the people of the state, in the form of advice, the amount of state support required for the very fundamental object of education. I think there is a general strain of thinking in this report of the importance of education to the people of the state, and that while Michigan has made significant progress, significant progress can be made in the future and that it ought to be continued.

I think we ought to recognize that not only do we have a leadership function to be exercised on the part of the board of education, we have a leadership function to be exercised on the part of the people. There is a sincere question as to whether or not all of the people of the state of Michigan have that quality and quantity of comprehension as to the function of education in the kind of age in which we are entering. Yesterday Colonel Glenn distinguished himself and gave great pride to all Americans with his feat and the 25,000 technicians that went behind it; it seems to me that this constitution should express what he indicated to be the state of his own constitution, namely, as he stated, "excellent". If we are to project our country and, indeed, our survival and our growth into the twentieth century, we have to look upon education in just a little different way than we have in the past.

As I understand it, it is a basic proposition of this section to advance the concept of a board of education as one giving leadership as well as just providing administerial supervision, and in keeping with that, I think it ought to take such steps as, in its view, may seem appropriate to provide the kind of information that Dr. Anspach has indicated, statistical information, probative information and, given general currency in suitable form, it need not necessarily involve expenditures of money of the kind apprehended by the author of this amendment. I think if you give this constitution, as we look upon Colonel Glenn, in terms of saying that our motions and our projectory should give our constitution more orbit than obituary, we should give this kind of concept to this section.

I would concur heartily in the spirit and letter of the committee proposal, and would ask people to support it.

CHAIRMAN MILLARD: The Chair recognizes the gentleman from Bad Axe, Delegate McAllister.

MR. McALLISTER: I would like to support the Hubbs amendment. It appears to me that this gives unlimited

authority to spend the people's money to lobby for matters that should not be paid for in this respect.

CHAIRMAN MILLARD: The Chair recognizes the gentleman from Detroit, Delegate Faxon.

MR. FAXON: As a member of the committee, I think that some of the members of the committee of the whole have misinterpreted what we mean here. First of all, the only information which is being given is information as to the amount of state support required, and as I understand it, the place that the money is derived, where the money comes from is the legislature, and I don't believe the legislature is going to appropriate money to the state board of education for the dissemination of information of a propaganda nature. I think what we had in mind here was that the people ought to know what amounts may be expected or what the expenditures and costs of education are, and, in the way of being specific, I think the most that this would involve, in terms of the actual operation of this little word, is that a brochure or an information sheet would be given out which would be available to the people to see what education costs in Michigan. The total cost and the breakdown and what recommendations the state board may want to make to the legislature, the people ought to know, too. I think that we are over exaggerating what this might mean.

As long as the legislature maintains control over the amounts of money that the state board receives, and how that money is to be spent, I think that I will trust the legislature to see to it that this is not used as a means of going into the business of public information.

CHAIRMAN MILLARD: The Chair recognizes the gentleman from Fennville, Delegate Hutchinson.

MR. HUTCHINSON: Mr. Chairman, paying attention to this language, saying that the state board of education shall provide advice to the legislature and to the people as to the amount of state support required raises 2 questions in my mind. The first has to do with budget procedures, which, I suppose, will, in the future, as they are now, be an executive budget. It would seem to me as though the amount of state support required, desired, or available, for that matter, for the field of education would be a matter which would have to be submitted to the legislature through the executive budget.

I don't understand how this kind of advice, which, obviously, has to do with finances since it is advice of state support, if it is intended that this is to come directly to the legislature and bypass the governor, just how is that going to fit in with the budgetary provisions of the constitution? Haven't we got a conflict here? Is it your intent that this contact shall be directly to the legislature? Apparently it bypasses the budgetary procedure. That is the first question.

The other question has to do with the field of public relations. This problem of public relations in government is something which has definitely grown up in the past few years since world war II, very obviously. We used to think, or at least I did when I was in my early years in the legislature, that it was not the function or the proper responsibility of an agency in the government to go out and sell to the people or influence the people as to the work of its services or as to the work of its programs; but that information and influence should be placed upon the legislature, that is to say, directed toward the legislature.

I am willing to say that back a number of years ago, when the treasury department of the United States — I believe it was they — and the armed services used to start to finance programs on the radio. It was quite surprising to me. I didn't think it was proper. We have this problem of public relations. But, as I read this language here, which we are now considering, it seems to me as though we are building right into the constitution a public relations function, and I am reminded of what has happened in regard to several of the executive departments in recent years, where, by reason of their public relations' activities, they have literally produced reams of press releases and other stuff intended to attract the attention of the public sometimes in 4 or 5 colored printed brochures. One department of government or another department of government and so on, in order to attract public attention and support to a particular program.

We are all for education. We are all for education, and I don't deny, for a minute, the importance of education in the middle of this twentieth century. But, of course, we also have to keep in mind the fact that the course in which education is to take, the emphasis that is to be put upon certain education, certain methods of education, certain areas of education, and all that, leads that into the political arena, perhaps not in a partisan political sense, but they get into the political arena. I am greatly concerned about the language that is here, because I think that in its breadth we are writing into this constitution constitutional power for a board of education acting under its constitutional power to advise the legislature and the people as to the amount of state support required that will give them constitutional power to use any amount of money necessary in order to carry on that advice, to make that advice felt, to make it available, and if anybody is surprised that the legislature would be concerned at our idea that we needed a million copies of the address to the people, in connection with the end product of this convention, I think that we will, in the future, be surprised, perhaps, at the amount and the great volume of material that would be forthcoming under the guise of public relations under this constitutional grant of advice, out of the department of education or the state board of education.

Perhaps the situation might evolve into the situation where the education department will have this constitutional grant of authority to do all this, whereas all the rest of the departments in state government will have to go to the legislature in order to satisfy the legislature in its budgetary and appropriation processes that they need a certain amount of money to inform the people about the work of their programs.

So, I leave you with these 2 questions, and neither one of them, have I been able to resolve in my mind from reading this language. I understand the intent of the committee, and if, somehow or other, after further working on this section, before the final constitutional provision is finally adopted, we can refine it and do a better job, perhaps, of defining what the intent of the committee actually is, I think that will be our absolute duty, because as it now stands I see a great loophole here, and it will be in the constitution, too. It will be hard to change.

CHAIRMAN MILLARD: The Chair recognizes the gentleman from Alpena, Delegate Habermehl.

MR. HABERMEHL: Mr. Chairman, I think Mr. Hutchinson has expressed most of what I intended to say. I would like to draw this, though, in practical terms. The committee, I believe, anticipated the establishment of a state office of education. On line 23, page 1, they refer to a state office of education. Then, on these budgetary matters, apparently the state board of education would decide upon a certain figure. This would be transmitted to the governor for his approval. And he, of course, would have the right to make changes in it. The governor would then transmit it to the legislature. If, however, the legislature made any further changes in it, we would here grant a constitutional power to the state board of education to take their case, by any means whatsoever, in contradiction to the head of their own department, in contradiction to the governor's office, and in contradiction to the legislature, and plead their case before the people with the use of state funds. This is a monstrosity.

CHAIRMAN MILLARD: The Chair recognizes the delegate from Detroit, Delegate Binkowski.

MR. BINKOWSKI: Mr. Chairman, ladies and gentlemen, I can't pass up this opportunity to be a bit jocular, but after all the argument that we advanced Monday evening with respect to the post constitutional convention budget, it is rather gratifying to see that we have now won some converts for that line of thinking. Thank you.

CHAIRMAN MILLARD: Delegate Hodges from Detroit.

MR. HODGES: I think Mr. Binkowski expressed what I was going to say. I was just going to say that Mr. Hubbs, I think, could be justified in his conclusion that bodies are liable

to do this, because he was just a member of a body and also voted to propagandize that body to the tune of a $1/3 million.

CHAIRMAN MILLARD: The Chair recognizes Delegate Perras.

MR. PERRAS: Mr. Chairman and delegates, I just rise for a point of information. All the delegates have talked for removing this word "people" from this section, and it seems that nobody from the committee has stood up to kind of testify why they put that in. I would like to find out why they put that in and what the intent was before I vote intelligently on this thing.

CHAIRMAN MILLARD: Anybody care to answer the gentleman's question? If not, the Chair recognizes Delegate Norris.

MR. NORRIS: Mr. Chairman, following through Mr. Perras' question, I would like to direct a question to the chairman of the committee, if I may, and that is: is it not the contemplation of the language of the proposal that advice to the people with regard to the amount of support for education would be financed by budget that would be approved by the legislature, and that the nature by which this advice would be communicated would be a matter upon which the legislature would express a judgment? So that the question of lobbying for the people might be an irrelevant matter?

CHAIRMAN MILLARD: Mr. Bentley.

MR. BENTLEY: Mr. Chairman, I would concur in the interpretation placed on it by the gentleman from Detroit. The reason I did not respond to the question of the delegate from Nadeau, Mr. Perras, was because I was planning to speak on the amendment myself before discussion terminated, and endeavor to explain, and I hope to the gentleman's satisfaction the intent of the committee in inserting this language.

CHAIRMAN MILLARD: The Chair recognizes the gentleman from Muskegon, Delegate Hanna.

MR. W. F. HANNA: Mr. Chairman, now that we have taken the governor off the board of education, it seems to me there is further defect in this language, which was raised by Mr. Hutchinson. It seems to me that this advice by the state board of education should not be to the legislature but should be to the governor. The governor is the chief executive, responsible for the budget, trying to fit the expenditures for education into the rest of it. I wonder if we shouldn't, in addition to adopting the Hubbs amendment, provide that they will furnish advice to the governor, and to the legislature when requested, but it should be to the governor. This board should not bypass the chief executive. I realize that your language was drawn in contemplation of the governor being a member of the board, but I ask you whether or not, in view of the action of the committee of the whole and if sustained by the convention, if it should not be advice to the governor, and to the legislature when requested, and if this isn't sufficient, that with the newspapers the general public will be informed.

CHAIRMAN MILLARD: Is that directed to the chairman of the committee?

MR. W. F. HANNA: Yes.

CHAIRMAN MILLARD: Mr. Bentley.

MR. BENTLEY: Well, Mr. Chairman, if the action of the committee of the whole is, of course, sustained by the convention, I would be willing, of course, to admit that the gentleman from Muskegon has a valid point there. I would not be prepared to concur in the deletion of the words, "and to the people", but I would concur that the insertion of the words, "to the governor", if the governor is not to be a member of the state board, would have a certain amount of validity.

CHAIRMAN MILLARD: The Chair recognizes Delegate Hubbs.

MR. HUBBS: I would just like briefly to answer Mr. Norris. He used what I consider the "motherhood" approach to defeating this change. You know, you don't dare touch the sacred cow of education, or pull a feather — not a feather — from her tail, because cows don't have feathers in their tails. (laughter) You see, Dr. Anspach, I don't have to tell jokes to be funny.

What I would like to have is a division when we vote on this, and I would like to have you people who are seriously interested in economy in this state in the future to vote for this amendment.

CHAIRMAN MILLARD: The Chair recognizes Delegate Douglas.

MR. DOUGLAS: Mr. Chairman and fellow delegates, I am not going to try to answer the question specifically, but I think that we should try to separate, in section a, the first sentence from the second sentence. The first sentence here:

> There shall be established a state board of education which shall provide leadership and supervision over public education including adult education and instructional programs in state institutions other than colleges and universities.

Now, the function of the state board of education in the second sentence is different.

We had a very difficult time, and this was a little touchy subject here; we were trying to create within the state board of education a function of coordinating and planning, and the minute you start to talk about coordinating and planning in higher education, you are on a very touchy subject. There was some criticism brought to our attention that higher education had not been too responsive to the legislature as to the finances. I think that those in higher education responded quite well, and they showed the committee where they did submit to the legislature all the proper documents showing income. Somewhere else, in the latter part of the sentence, we have provided there that they will show this income. But still, the problem arose in the state of Michigan, we have nobody to say whether or not a certain institution shall expand to a point, no one knows where, and we, on the committee, felt that somewhere along the line in the entire educational program there should be some body, some central body that could at least say, well, schools A, B, C will not have a medical school or a dental school.

This is part of the entire program. How can this be done? One thing brought to our attention was that a state institution can't expand too much because the legislature holds the purse-strings, but we also had other evidence that different institutions do have somewhat of a lobby, or influence people who go throughout the legislature trying to get the things that they want. So, I think that the language here resulted from our many discussions on how shall this body influence the legislature, how shall the people know what kind of higher institutions we shall have. I want to repeat that the second sentence here has to do with the state board of education and their function and coordination with the higher institutions.

CHAIRMAN MILLARD: Delegate Wanger.

MR. WANGER: Mr. Chairman, members of the committee, Mr. Bentley, the chairman of the committee, stated some time ago that the committee did not have the opportunity to have perhaps as many lawyers within its membership as some other committees have. Perhaps, therefore, some language in the report was not, from a legal standpoint, quite expressive of the committee's intent. As one of the lawyers here, I do want to remind the delegates that while intent of the committee is important, what is even more important is what the words actually say, and I want to emphasize what the words say here, "advice to the people" on this subject could be interpreted as authorizing some of the evils which have been suggested on the floor.

I think, without unduly belaboring the point, it should be added that the board will be a partisan board. That is, it will be elected on a partisan basis, having been nominated at a party convention, and that there is certainly no other partisan elected or nominated office in the constitution which has words surrounding it which could be so construed. I therefore suggest that the committee's intent will best be shown by every member of the committee voting in favor of the Hubbs amendment.

CHAIRMAN MILLARD: The question is on the Hubbs amendment. Mr. Bentley.

MR. BENTLEY: Mr. Chairman and ladies and gentlemen of the committee, the committee on education was certainly not attempting to look under the bed to try to discover a propagandizing agency in the newly created state board of

education. I seem to recall within a fairly short period of time ago, I think it was only yesterday to be exact, that there were a great many statements made here on the floor of this convention by various delegates, not members of the committee on education, regarding the splendid work done by the committee on education with regard to the new concept of the enlarged state board of education. We felt, as I stated and as was stated by other delegates, that this represented one of the most constructive achievements which had come out of our entire committee during the work which we had done. We felt and I felt that that thought was shared by the majority of the delegates here, that the new state board of education would be one in which all the people, educational and noneducational alike, could have confidence. But now, the committee of the whole has acted to decrease the membership of the state board by one member, and now the committee of the whole, at least certain members of the committee of the whole, are voicing their mistrust of this agency to such an extent that they are afraid it will turn into a lobbying organization using public money to lobby the people of the state around and behind the backs of the legislature for new money.

I think, Mr. Chairman, it might be helpful to the delegates for them to turn back and just review very briefly those paragraphs of our supporting reasons in which we explained our concept of the function of the state board of education, and I am going to read those 3 short paragraphs at this time.

[Paragraphs 6, 7 and 8 of the supporting reasons were read by Mr. Bentley. For text, see above, page 1188.]

Mr. Chairman, I can assure the delegates here assembled that it was far from the thought of any member of the committee on education to set up a super propagandizing or super lobbying organization here in this respect.

If, in accordance with the suggestion of the delegate from Fenneville, Mr. Hutchinson, the distinguished vice president of the convention, we might on further examinaton, whether in the education committee or in the committee on style and drafting, adopt words which would more clearly specify and carry out the intent of the committee on education, I believe that our committee would have no objection. But merely to say that we are going to remove this part of the proposal with no substituted language suggested is, I think, showing a lack of trust and confidence in the proposed new state board of education regarding which delegates only yesterday were so laudatory, and also, I might suggest that it shows to some extent a lack of confidence in the committee on education, which I hope is not the intent of those delegates who address themselves to the support of the pending amendment.

The state board of education, Mr. Chairman, as the committee on education conceived of it, was a coordinating body between the people, the state government and educational circles throughout the state. To properly fulfill the concept that the committee had of the state board of education in this manner, we felt that it was important that the state board of education should advise the state government — whether through the person of one of its members or directly to the governor, if he is not to be a member — should directly advise the legislature and should advise the people regarding its overall recommendation as to the financial needs of this state in the field of public education at all levels for these many years to come.

I am sorry, beyond more words than I can say, that the distinguished member of our committee, the gentleman from East Lansing, Dr. Hannah, is not here today, because he spoke so eloquently in the committee, and I cannot and do not have the power to reecho his words and his explanation in this concept. But I feel sure that if he were here today, he would strongly urge the retention of the committee proposal and the defeat of the pending amendment because of our very real hope that this board of education, the real milestone, insofar as I, as chairman of the committee, am concerned, which the committee has performed in its deliberations, should act as this coordinating body between the state government and the legislature and the people, and, as such, have equal right of access to all 3, laying down its considered opinion as to what the needs of the state are. Certainly, with respect to those distinguished delegates who have voiced fears that the state board of education would be lobbying on public funds, I remind them that after all, the legislature, I would assume, would have some control over the amount of money to be granted to the state board for this or for any other purposes, and I doubt very much that the legislature would grant lobbying funds to the state board to permit such a board to lobby behind its back.

But sincerely and honestly, ladies and gentlemen and Mr. Chairman, the committee on education had no such intent when it conceived this language, and I beg you to believe of us that we would be the strongest supporters of the amendment if we felt there were any real danger of this terrible prospect arising.

CHAIRMAN MILLARD: Delegate Wanger.

MR. WANGER: Mr. Bentley is entirely mistaken if he thinks that my support, and I am sure the other people whose support for the Hubbs amendment, is evidence of any mistrust whatsoever with respect to the intentions of any member of the committee on education. But the point is simply this: that we want to write a constitution which will last long after we are gone and that in which case it will be interpreted long after we are gone.

The problems of interpretation in this language have been clearly pointed out, and I am sure that no person supporting this amendment, which we ask you to support and adopt, has any thought at all that it will weaken the power of the board of education to advise and offer information to the people, the same as any other office or unit of government could do. We merely wish to remove the language which could be interpreted in the future, perhaps by the people not yet even born, in such a way as to be to the detriment, rather than to the benefit, of the people of the state of Michigan and to our system of education.

CHAIRMAN MILLARD: Delegate Heideman.

MR. HEIDEMAN: Mr. Chairman and fellow delegates, I do not think the chairman of the education committee and distinguished delegate from Owosso has been lacking in eloquence. I think he has been most eloquent, indeed, in defining our position, and I wish to endorse him.

CHAIRMAN MILLARD: Delegate Downs.

MR. DOWNS: Mr. Chairman, I believe this is another one of those situations where we are all agreed upon the intent, and I would like to rise in agreement with the report of the chairman of the committee, and I believe certainly the intent here is to see there is more coordination, yet not put various agencies in a straitjacket.

I would suggest, if it is agreeable to the committee, that the problems that have been raised might be ironed out in style and drafting. I think this is a case where the convention delegates are agreed upon intent, and I would urge the adoption of the language as it is, with the understanding that style and drafting do some revision, if necessary, to make it more clearly consistent with the intent of the committee.

CHAIRMAN MILLARD: The question is on the Hubbs amendment. All in favor will say aye.

A DELEGATE: Division.

CHAIRMAN MILLARD: A division has been asked for. Is there a sufficient number up? Sufficient number up. The question is on the Hubbs amendment and the secretary will read it so everybody will know.

SECRETARY CHASE: The amendment is:

[The amendment was again read by the secretary. For text, see above, page 1225.]

CHAIRMAN MILLARD: If there are no further amendments, the section will pass.

Section a, as amended, is passed. The question is on the proposal, as amended. All in favor will vote aye, and opposed will vote nay. Have you all voted? The secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the adoption of the amendment offered by Mr. Hubbs, the yeas are 60, the nays are 51.

CHAIRMAN MILLARD: The amendment is adopted. The secretary will read.

SECRETARY CHASE: Mr. Chairman, there are no further amendments on the desk.

CHAIRMAN MILLARD: Mr. Durst.

MR. DURST: Mr. Chairman, I move that we reconsider the vote on the Boothby-Brake amendment to section a of Committee Proposal 47.

CHAIRMAN MILLARD: The question is on the motion to reconsider. All those in favor of reconsideration will say aye; opposed, no.

A DELEGATE: Division.

CHAIRMAN MILLARD: A division is called for. Is there sufficient number up? The demand for a division vote is supported. The question is on the reconsideration of the Boothby amendment which has been previously adopted. The secretary will read the amendment.

SECRETARY CHASE: The Boothby amendment, on which the motion is to reconsider—

MR. BENTLEY: The vote is not on the amendment; it is on the motion to reconsider.

SECRETARY CHASE: May the secretary clarify the situation? The question, as your secretary understands it, is on a motion to reconsider the vote by which the Boothby amendment was adopted, and the Boothby amendment was as follows:

1. Amend page 1, line 16, after "law.", by striking out "The governor shall also be a member of the state board of education.".

CHAIRMAN MILLARD: All those in favor of reconsideration will vote aye, and those opposed will vote nay. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the motion to reconsider, the yeas are 45, the nays are 74.

CHAIRMAN MILLARD: The motion to reconsider does not prevail. The Chair recognizes Delegate Brake.

MR. BRAKE: A question to Mr. Bentley: I notice you make no provision in this section for filling of vacancies on the board. Is that to be taken care of some other place in the constitution or are you just leaving it blank?

CHAIRMAN MILLARD: Mr. Bentley.

MR. BENTLEY: We did not take care of this contingency, I will say to the gentleman from Stanton, and if the gentleman wishes to offer an amendment to so provide, why, the committee would, of course, consider it.

SECRETARY CHASE: Mr. Lesinski and Miss Hart offer the following amendment:

1. Amend page 1, line 16, after "law.", by inserting "The governor shall fill board vacancies by appointment. Any such appointee shall hold office until a successor has been nominated and elected as prescribed by law.".

CHAIRMAN MILLARD: The Chair will recognize Mr. Bentley, the chairman of the committee.

MR. BENTLEY: No, no. The proponent of the amendment first, Mr. Chairman.

CHAIRMAN MILLARD: Delegate Lesinski.

MR. LESINSKI: Mr. Chairman, this amendment is proposed to provide for vacancies and to be consistent with what we adopted yesterday as pertaining to section b, Committee Proposal 98, which relates to the 3 universities.

CHAIRMAN MILLARD: Delegate Bentley.

MR. BENTLEY: Mr. Chairman, it is difficult to comment on an amendment having just immediately seen it. I will agree with the gentleman that it is consistent with the policy we adopted yesterday regarding filling vacancies on the governing boards of the higher institutions. I have no opinion. I just can't make a statement on behalf of the committee at this time.

CHAIRMAN MILLARD: The question is on the amendment. The Chair will have the secretary read it once more, so we will all know what we are voting on.

SECRETARY CHASE: The amendment is:

[The amendment was again read by the secretary. For text, see above.]

CHAIRMAN MILLARD: The question is on the amendment. All in favor will say aye; opposed, no.

The amendment is adopted. Are there any further amendments to the body of the proposal? If not, the proposal will pass.

Committee Proposal 47, as amended, is passed. Mr. Bentley.

MR. BENTLEY: Mr. Chairman, I move the committee do now rise.

CHAIRMAN MILLARD: The motion is that the committee now rise. All in favor will say aye. Opposed, no.

The motion prevails.

[Whereupon, the committee of the whole having risen, Vice President Hutchinson resumed the Chair.]

VICE PRESIDENT HUTCHINSON: The Chair recognizes the delegate from Genesee, Mr. Millard.

MR. MILLARD: Mr. President, the committee of the whole has had certain matters under consideration on which the secretary will make a complete report.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 47**, A proposal to replace sections 2 and 6 of article XI; reports the proposal back to the convention with 3 amendments, recommending the amendments be agreed to and the proposal, as thus amended, do pass.

Following are the amendments recommended by the committee of the whole:

1. Amend page 1, line 9, after "legislature" by striking out "and to the people".

2. Amend page 1, line 16, after "law.", by striking out "The governor shall also be a member of the state board of education.".

3. Amend page 1, line 16, after "law.", by inserting "The governor shall fill board vacancies by appointment. Any such appointee shall hold office until a successor has been nominated and elected as prescribed by law.".

VICE PRESIDENT HUTCHINSON: The question is upon concurring, and the Chair recognizes Mr. Bentley.

MR. BENTLEY: Mr. President, I would like to inquire how many amendments the secretary has pending at the desk.

SECRETARY CHASE: Those are the only ones, Mr. President.

MR. BENTEY: These are the only ones? Mr. President, I move that we adjourn.

VICE PRESIDENT HUTCHINSON: Mr. Bentley moves that the convention do now adjourn. The question is not debatable.

MR. DOWNS: Is a preferential motion in order?

VICE PRESIDENT HUTCHINSON: There is no preferential motion.

MR. DOWNS: If I get the floor, there will be.

VICE PRESIDENT HUTCHINSON: There could not be a preferential motion to a motion to adjourn.

MR. DOWNS: There cannot be a preferential motion to a motion to adjourn?

VICE PRESIDENT HUTCHINSON: There cannot be.

MR. DOWNS: Thank you. (laughter)

VICE PRESIDENT HUTCHINSON: The question is upon adjournment.

MR. HOXIE: Mr. President, I ask for a division.

VICE PRESIDENT HUTCHINSON: Upon which motion a division has been asked. Is the demand for a division supported? It is supported.

There is no preferential motion, Mr. Kuhn.

MR. KUHN: If you look on page 49 of our rules they have the order of what has preference, and there is one ahead of the motion to adjourn. I don't have this motion, but I just believe there is one, and I would like you to rule on it.

VICE PRESIDENT HUTCHINSON: All right. There is 1 motion that has preference. Do you want to fix the time to which to adjourn?

MR. KUHN: All right. I just wanted Mr. Downs to be aware of it.

VICE PRESIDENT HUTCHINSON: Does Mr. Downs wish to set the time to adjourn?

MR. DOWNS: May I thank Mr. Kuhn and thank the president. I move a preferential motion that we adjourn after we have disposed of these 3 amendments.

VICE PRESIDENT HUTCHINSON: That is not in order.

MR. DOWNS: All right. It must be a time certain? I move we adjourn at 6:00 o'clock, as the time certain.

VICE PRESIDENT HUTCHINSON: That is not in order. The only motion in order would be a motion to fix the time to which to adjourn, not at which to adjourn.

MR. DOWNS: Thank you. I move the time to which we adjourn (laughter) be fixed at 6:00 o'clock.

VICE PRESIDENT HUTCHINSON: Six o'clock when?

MR. DOWNS: Six o'clock tonight.

VICE PRESIDENT HUTCHINSON: Does the gentleman understand that he would then be starting another session day with a new journal?

MR. DOWNS: I'm not concerned. Thank you for the information though. I am sorry, Mr. President. I want to make a parliamentary inquiry. The intent of my motion was we would stay in session for another ½ hour. Am I out of order?

VICE PRESIDENT HUTCHINSON: You are out of order. That can be accomplished by voting down the motion to adjourn. The motion to adjourn is before us. The motion is not debatable.

MR. DOWNS: I have one preferential motion. I move we adjourn until 5:35.

VICE PRESIDENT HUTCHINSON: The motion is not in order.

MR. DOWNS: May I have one more try, Mr. President? (laughter) I move that we, when we adjourn, adjourn until the time certain of 5:35.

VICE PRESIDENT HUTCHINSON: The gentleman is intending thereby to start a new session day with a new journal?

MR. DOWNS: That is correct.

VICE PRESIDENT HUTCHINSON: All right, I will accept that motion.

MR. DOWNS: Thank you.

VICE PRESIDENT HUTCHINSON: All those in favor that when the convention adjourns today, we stand adjourned until today at 5:35 p.m. —

A DELEGATE: Division.

VICE PRESIDENT HUTCHINSON: A division is demanded on this motion. Is the demand supported? The demand is supported. All those in favor of fixing the time to which to adjourn will vote aye, those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the motion of Mr. Downs to fix the time to which adjourn, the yeas are 36, the nays are 88.

VICE PRESIDENT HUTCHINSON: The motion does not prevail. The question recurs upon the motion of Mr. Bentley that the convention do now adjourn, upon which a division has been demanded. All those in favor of adjourning will vote aye, and those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the motion to adjourn, the yeas are 58; the nays are 60.

VICE PRESIDENT HUTCHINSON: The motion does not prevail. The question is upon concurring in amendments made by the committee of the whole. Mr. Bentley.

MR. BENTLEY: Mr. President, on that I ask for a division and a separate roll call vote, with the yeas and nays on the Boothby amendment.

VICE PRESIDENT HUTCHINSON: Are you asking for a division on all of them?

MR. BENTLEY: I ask that the Boothby amendment be separated from the other amendments to be voted on en bloc, the Boothby amendment to be voted on separately with the yeas and nays demanded.

VICE PRESIDENT HUTCHINSON: All right. The secretary will first read the 2 amendments upon which no demand has been made.

SECRETARY CHASE: The first amendment is:

[Amendments 1 and 3 were again read by the secretary. For text, see above page 1230.]

VICE PRESIDENT HUTCHINSON: Mr. Norris.

MR. NORRIS: Mr. President, I would like to move to separate those 2 questions.

VICE PRESIDENT HUTCHINSON: Very well. Then the convention will proceed to vote upon these amendments separately. The secretary will read the first amendment.

SECRETARY CHASE: Mr. Hubbs' amendment:

[The amendment was again read by the secretary. For text, see above page 1230.]

VICE PRESIDENT HUTCHINSON: All those in favor of the amendment will say aye; opposed, no.

The amendment is adopted.

SECRETARY CHASE: Amendment 3:

[The amendment was again read by the secretary. For text, see above page 1230.]

VICE PRESIDENT HUTCHINSON: As many as are in favor of the amendment will say aye, opposed will say no.

The amendment is adopted.

SECRETARY CHASE: Amendment 2 on which Mr. Bentley has demanded the yeas and nays:

2. Amend page 1, line 16, after "law.", by striking out "The governor shall also be a member of the state board of education.".

VICE PRESIDENT HUTCHINSON: Is the demand for the yeas and nays supported? The demand is supported. The question is upon concurring in the amendment. As many as are in favor will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and record the vote.

The roll was called and the delegates voted as follows:

Yeas—69

Austin	Habermehl	McCauley
Baginski	Hanna, W. F.	McGowan, Miss
Balcer	Hart, Miss	Millard
Binkowski	Haskill	Mosier
Bledsoe	Hatcher, Mrs.	Murphy
Boothby	Hodges	Norris
Brake	Hood	Ostrow
Brown, T. S.	Hoxie	Perlich
Buback	Hubbs	Pugsley
Dehnke	Hutchinson	Radka
Dell	Iverson	Sablich
Donnelly, Miss	Kelsey	Shaffer
Doty, Donald	Kirk, S.	Shanahan
Douglas	Kuhn	Sharpe
Downs	Lawrence	Snyder
Elliott, Mrs. Daisy	Leibrand	Stafseth
Erickson	Leppien	Stopczynski
Faxon	Lesinski	Suzore
Finch	Liberato	Walker
Ford	Madar	Wilkowski
Gadola	Mahinske	Wood
Garvin	Marshall	Young
Greene	McAllister	Youngblood

Nays—50

Allen	Figy	Richards, L. W.
Andrus, Miss	Follo	Romney
Anspach	Goebel	Rood
Barthwell	Gust	Seyferth
Batchelor	Hatch	Shackleton
Beaman	Higgs	Sieder

Bentley	Howes	Spitler
Blandford	Judd, Mrs.	Staiger
Brown, G. E.	King	Stamm
Danhof	Koeze, Mrs.	Turner
Davis	Lundgren	Tweedie
DeVries	McLogan	Upton
Doty, Dean	Page	Van Dusen
Durst	Perras	Wanger
Elliott, A. G.	Plank	White
Everett	Prettie	Woolfenden
Farnsworth	Rajkovich	

SECRETARY CHASE: On the adoption of the amendment, the yeas are 69, the nays are 50.

VICE PRESIDENT HUTCHINSON: The amendment is adopted.

Committee Proposal 47, as amended, is referred to the committee on style and drafting.

Following is Committee Proposal 47 as amended and referred to the committee on style and drafting:

The committee recommends that the following be included in the constitution:

Sec. a. There shall be established a state board of education which shall provide leadership and supervision over public education including adult education and instructional programs in state institutions other than colleges and universities. In addition, it shall serve as the general planning and coordinating body for all public education in the state and shall provide advice to the legislature as to the amount of state support required. The power of the boards of institutions of higher education otherwise provided herein to supervise their respective institutions and control and direct the expenditure of the institution's funds shall not be limited by this section.

The state board of education shall consist of 8 elective members who shall hold office for 8 years. They shall be nominated by party convention and elected at large as prescribed by law. The governor shall fill board vacancies by appointment. Any such appointee shall hold office until a successor has been nominated and elected as prescribed by law.

Sec. b. The state board shall appoint a superintendent of public instruction whose term of office shall be determined by the board. He shall be the chairman of the state board without the right to vote, and shall be responsible for the execution of its policies.

The superintendent of public instruction shall be chief administrative officer of a state office of education which shall be granted sufficient funds and staff to carry on state responsibilities for education as determined by law.

SECRETARY CHASE: We have the following announcement, Mr. President: the committee on judicial branch will meet in room B tomorrow at 9:00 o'clock a.m.

We have 2 requests for leave of absence: Mrs. Butler would like to be excused from the sessions of Thursday and Friday and Mr. Hutchinson requests leave from the session of Thursday to fulfill a speaking engagement.

VICE PRESIDENT HUTCHINSON: Is there objection to the requests? If not, they will be granted and it is so ordered.

What is the pleasure of the convention? The Chair recognizes the lady from Kent, Mrs. Koeze.

MRS. KOEZE: It isn't very often I get a chance at this microphone, so I am going to keep you sitting here for about 20 minutes now. I have been pretty quiet, but let's adjourn.

VICE PRESIDENT HUTCHINSON: Mrs. Koeze moves that the convention do now adjourn. All those in favor will say aye. Those opposed will say no.

The motion prevails and the convention stands adjourned until tomorrow morning at 9:30 a.m.

[Whereupon, at 5:40 o'clock p.m., the convention adjourned until 9:30 o'clock a.m., Thursday, February 22, 1962.]

EIGHTY-FIFTH DAY

Thursday, February 22, 1962, 9:30 o'clock a.m.

PROCEEDINGS

VICE PRESIDENT ROMNEY: The convention will please come to order.

The invocation this morning will be offered by our fellow delegate, Joseph Snyder, from St. Clair Shores.

MR. SNYDER: O Lord, we implore Thee, let Thy inspiration precede our actions, and Thy help further them, so that all our prayers and deeds may ever take their beginning from Thee, and so begun—may through Thee, reach completion.

We are ever grateful for Thy divine guidance and the protection given by St. Christopher, Patron Saint of Travelers, in our journeys to and from these deliberations. Through Christ our Lord. Amen.

VICE PRESIDENT ROMNEY: The roll call will be taken by the secretary. Will those present please vote aye.

SECRETARY CHASE: Will everyone present please vote aye. Have you all voted? If so, the machine is now locked and the attendance will be recorded.

Mr. President, a quorum of the convention is present.

Prior to today's session, the secretary received the following requests for leave:

Mrs. Hatcher, Messrs. Gover and J. A. Hannah; from today's session.

VICE PRESIDENT ROMNEY: Without objection, the requests are granted.

SECRETARY CHASE: Absent with leave: Mrs. Butler, Messrs. Gover, J. A. Hannah, Mrs. Hatcher, Messrs. Hutchinson, Karn, Nisbet and Pellow.

Absent without leave: Messrs. Nord, Pollock, Shaffer and Sterrett.

VICE PRESIDENT ROMNEY: Without objection, the delegates are excused.

[During the proceedings the following delegates entered the chamber and took their seats: Messrs. J. A. Hannah, Nord, Pollock, Shaffer, Sterrett, Hutchinson and Mrs. Hatcher.]

Reports of standing committees.

SECRETARY CHASE: None.

VICE PRESIDENT ROMNEY: Reports of select committees.

SECRETARY CHASE: None.

VICE PRESIDENT ROMNEY: Mr. Madar.

MR. MADAR: Mr. President, I would like to rise to a point of personal privilege, and actually I believe I might be wrong there. But I did receive a communication this morning, and I understand that all of the delegates weren't thought of quite as well by the gentleman who sent it, or at least he thought I could use it a little better. But I would like to have the delegates know what this gentleman wants done, and it is very short:

Michigan Constitution of 1962—Short Short Form.

Article I. The state of Michigan relinquishes all rights in the county of Wayne and regretfully withdraws all objections to the establishment of the sovereign state of Wayne.

The state of Michigan shall give recognition to this new state with a period of silence of 1 hour.

Article II. Within 30 days the delegates from the other 82 counties shall reassemble to rewrite portions of the new constitution to conform with the action designated in article I. The delegates shall also write a message of congratulations to the new and fifty-first state on having the right to its own governor, legislature, supreme court, 2 United States senators on an area basis, and members of congress on a population basis, just as at present, except the legislature.

This is from Lloyd's, incorporated.

I would be very happy, gentlemen, any of you who happen to know him, if you will just vote for this. We will be happy too. (laughter)

VICE PRESIDENT ROMNEY: Mr. Farnsworth.

MR. FARNSWORTH: Mr. President, would Mr. Madar answer a question? Is there some reference in there, Mr. Madar, about 1 hour of silence? (laughter)

VICE PRESIDENT ROMNEY: Communications from state officers.

SECRETARY CHASE: No communications, Mr. President.

VICE PRESIDENT ROMNEY: Second reading of proposals.

SECRETARY CHASE: Nothing on that calendar for today.

VICE PRESIDENT ROMNEY: Third reading of proposals.

SECRETARY CHASE: Nothing on that calendar.

VICE PRESIDENT ROMNEY: Motions and resolutions.

SECRETARY CHASE: There are no resolutions on file.

VICE PRESIDENT ROMNEY: Unfinished business.

SECRETARY CHASE: None.

VICE PRESIDENT ROMNEY: Special orders of the day.

SECRETARY CHASE: There are no special orders for today.

VICE PRESIDENT ROMNEY: General orders of the day. The gentleman from Genesee, Delegate Millard.

MR. MILLARD: Mr. President, I move that the convention resolve itself into committee of the whole for the consideration of matters on the general orders calendar.

VICE PRESIDENT ROMNEY: Those in favor of the motion say aye. Opposed?

The motion prevails. Mr. Millard will preside.

[Whereupon Mr. Millard assumed the Chair to preside as chairman of the committee of the whole.]

CHAIRMAN MILLARD: The committee will be in order. The secretary will read.

SECRETARY CHASE: Item 3 on page 2 of the calendar, from the committee on education, by Mr. Bentley, chairman, Committee Proposal 97, A proposal to amend article XI by adding a new section pertaining to the arts and recreation.

Following is Committee Proposal 97 as read by the secretary, and the reasons submitted in support thereof:

The committee recommends that the following be included in the constitution:

Sec. a. THE PROMOTION AND DEVELOPMENT OF THE ARTS AND RECREATION SHALL ALWAYS BE ENCOURAGED.

Mr. Bentley, chairman of the committee on education, submits the following reasons in support of Committee Proposal 97:

The Michigan constitution has always had a forward look. One may document historically many incidences where constitutional encouragement has placed Michigan far ahead in social and cultural advancement. Two typical examples in this regard, on which this committee has already acted, are article XI, section 14 (libraries) and section 15 (charitable institutions).

Now we must look forward again to the next 50 or 100 years. Much of our consideration has been with the materialistic side of life. It would be tragic if we move so far towards the materialistic that we minimize the cul-

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Explanation—Matter within [ ] is stricken, matter in capitals is new.

tural and aesthetic. Thus to assure proper balance in our new constitution, it is being proposed that a section be designed to encourage the arts and recreation. With changes in present employment practices, shorter working hours, with the growth of automation in business and industry, now is the time to encourage creative, constructive, leisure time activities.

This recommendation also is made with the realization that in recent years there have been strong accusations that Americans are going "soft" physically. Studies which reveal deficiencies in the physical dexterity and strength of American youth have alarmed many of our thinking citizens, including former President Dwight D. Eisenhower and President Kennedy.

It is not the intent to set up a complicated organizational structure to implement this section but rather to present a simple statement of encouragement and intent which would add to the strength and esteem of this document. We leave the mechanics of implementation to the citizens of Michigan and the legislature.

CHAIRMAN MILLARD: The Chair will recognize the chairman of the committee, Delegate Bentley.

MR. BENTLEY: Mr. Chairman, Committee Proposal 97, which was unanimously supported by the committee on education, is now before you. Because of its extreme complex and difficult aspects (laughter) we have decided to divide the presentation into 3 parts, not necessarily equal. (laughter) I will first call upon the chairman of the subcommittee which handled this proposal, the lady from Port Huron, Miss Andrus, to make a brief comment with regard to the proposal. We will then divide the proposal into 2 parts for purposes of presentation. The entire field of the arts will be discussed by Mr. Faxon. And then the fascinating subject of recreation and all of its ramifications will be covered by the gentleman from Oakland, Mr. Kuhn. (laughter and applause)

CHAIRMAN MILLARD: The Chair will recognize Delegate Andrus.

MISS ANDRUS: Thank you, Mr. Chairman. I am sure you are all very glad to hear that this is our last proposal and you will be through with our education committee.

Tuesday we saw a great historical event out in our lobby, but also Tuesday and Wednesday, I think you saw something here in this hall which will be considered of great historical significance. We provided for an overall board of education and for a board for junior colleges. As the years go on, those will be considered of great historical importance to the young people of the state, to adults and, I think, to us taxpayers. We will be able to get much more for our tax dollar.

When we were first given this proposal, we didn't quite see its implications. I would like, however, to tell you something about the reaction as we studied the question. Our subcommittee was made up of Mr. Faxon, Mr. Heideman, Miss Hart, Mr. T. S. Brown and Mr. Kuhn. As we studied it and as we heard evidence, we came to feel that this is a very important question. It is not one to take lightly.

In our first constitutional convention, as I told you the other night, our forefathers looked forward to a time — and they were in a wilderness, you know, in 1835 — when everyone should have a chance at education, when there would be a library for everyone and there would be a state university. That was a dream. Our forefathers in the 1850 constitution again took the lead. They provided for the first state agricultural college in the whole United States, for the first state normal college west of the Appalachians. They provided for institutions for the insane, for the deaf and the dumb. We have a tradition, a background, here in Michigan of looking forward, of thinking of the needs of our people. In 1908, they did the same.

Now we are in 1962 and, as we looked at the future, we saw that there was, as we said the other day, a great need for training of people who are past high school, people who are working and who find that they need further training. But we also found another problem, and it goes right along with this new civilization of ours: that is the question of leisure time. We are going to have more and more people who have more and more time. What are we going to do with it? I am sure everyone here realizes that the most important resource that we have in this country is people. The people of this country are our most important resource. However, today, with our shortening of the working days in the week, there is an enormous amount of leisure. We are finding that people do not know how to use this leisure. They flounder around in spending it. And we have found juvenile delinquency increasing very rapidly. You know, we are living longer now and people retire early. They have so much time on their hands that this has become a serious problem in this country. We were shocked to hear that in institutions they talk of people as vegetables. Have you ever heard that? I never heard it before. These people have no interest in life. They just live. They have no idea of what to do with their time.

Now, this proposal as we studied it came to mean more and more to us and our subcommittee was unanimous in bringing this report out to the committee and they voted to submit it to you. I wish you would give it very, very serious consideration. This is something of the present, but it is going to be of even more significance in the future.

I told you the other night that I spent a summer in Russia studying their educational system, and it was most interesting to see at that time most Russians couldn't read and write. They didn't know anything about technology. Look at them today. We need to train people to be able to compete with them. Now all over Russia they have a physical training program. I think we have seen this very, very clearly in the Olympic games in recent years. The United States with its great size used to win those. We are not doing it any more. People in cities don't have the opportunities that we did in the earlier days living in the country and in smaller towns, so physical fitness has come to be one of the big problems in national defense. And then there is the other side to it, not only the physical side but the mental, emotional and the moral side of people who don't know what to do with their time.

The same summer I was in Russia, I came back through Italy and Germany. There all the youngsters were marching. They were taking part in physical exercises. And here is a point Mr. Eisenhower stressed to us the other day: if we don't meet problems locally in our states, they are going to be met by the national government. I am sure that most of the people in this convention don't want to go to Washington, but questions of leisure time, questions of physical fitness are so important that the national government will, as they have done in many other fields, feel that they have to take this over if we don't meet it ourselves.

Now, in our proposal we are not saying that any certain thing should be done. We are just saying to our state legislature in the future that we, the people of Michigan, who speak through the constitutional convention today, would like to have them know that we are interested in this problem and that we would like them to participate; to encourage, in any way that seems desirable, young people, retired people, people of all ages in the use of their leisure time. If someone has something constructive to do, they are interested.

I think there is one other point I would like to leave with you. I imagine most of you are like me. You have had very interesting work to do. You aren't just standing at a machine. You are not doing something routine and mechanical. I work 10 hours a day and enjoy every minute of it and take work home over the weekend. But most of our people today — and there are going to be many more in the future with automation — are not going to have anything very interesting. Have you noticed how many people have taken up painting? You hear every now and then about people who never painted before. In our town through our junior college we have a little theatre group. We have an orchestra. We have art classes. Those are our activities which will give people a sense of achievement, of creating, of doing something that is worth while. Mr. Faxon was the proposer of this.

I would like to say one other thing. It will take about 2 sentences in the constitution. And I would like to have you, when you vote on it, think about 40 years from now or 50 years

from now. How are people going to look back at this constitutional convention? Are they going to feel that we were looking forward and we saw a need, as they did in 1835 and 1850 and 1908? This is the way we could show that.

CHAIRMAN MILLARD: The Chair recognizes the gentleman from Detroit, Delegate Faxon.

MR. FAXON: Mr. Chairman, fellow delegates, a constitution, as some of you may know, is not just a document which concerns itself only with setting up the structure of government and the outlines of its functions. A constitution also contains within it statements of purpose and intent and it has this appearance and it has had for several hundreds of years.

Before I get into the specific wording, I just want to call to your attention that as early as 1682 in the frame of the government of the colony of Pennsylvania, a concern for the arts was expressed. And I might add that it was expressed on an equal basis with that of justice, because they were concerned then with a committee of justice and safety, and they were also concerned with a committee of manners, education and arts, and as it goes on into the frame of 1682, "That all wicked and scandalous living may be prevented and that youth may be successively trained up in virtue and useful knowledge and arts." And so the word that we are dealing with here is nothing new to our American heritage and in fact goes back before the very creation of our federal constitution.

Now, when we refer to the arts as we do in this particular section, it is understood that we are referring to the creative arts and the creative arts include those of music, painting, drama and expressions of artistic forms. You will note that in our bill of rights, we had added the words "to express" dealing with freedom, freedom to express, as another area where a free society functions, so we have in essence already acknowledged that this is something which we have concern with and this is only following it up with more concrete words.

Originally the proposals that have been put in, Delegate Proposals 1055 and 1056, dealt with the establishment of an art commission or commission of the arts and with the director of the arts. These aren't entirely new. You will note that a good deal of talk on the arts has been had on the federal level where there has been mentioned that there might be a federal department of the arts. Other states have already made efforts in the direction of encouraging this form within their respective states, so for Michigan to take a position in this area would not represent any departure from what other states are doing. It would simply represent, in my opinion, a forward look and a feeling on the part of the citizens of this state that the future welfare of our citizens depends in part upon the providing of facilities and opportunities for artistic expression.

In addition to other states having made efforts in setting up programs for artistic development, that the federal government is evincing an interest in this area, I should call to your attention that in other countries, especially those of Europe from which we derive most of our culture today, this area of the arts forms a very important part of their society. Just to illustrate with an area of equal population, take the country of Holland, whose population is not far from the state of Michigan. You would have at least 15 or 20 symphony orchestras. You would have art museums. You would have various institutions that promote the arts within the country throughout this small area of small population.

It is not the intent in this proposal to establish a state subsidy for arts. It is not the intent of this proposal to in any way depart from what the historical pattern of the arts has been in this state. It is simply to give expression to the concern of the citizens of this state for an area which is in need of future action and an area which most people will agree is necessary to a free functioning society.

I therefore would invite anyone, after I finish, if you have any questions on the arts, to ask them and I will be very happy to answer them, but I feel that I would like at this time to permit Mr. Kuhn to give you his explanation with regard to the word "recreation."

CHAIRMAN MILLARD: The Chair will recognize the delegate from Oakland, Delegate Kuhn.

MR. KUHN: Mr. Chairman and members of the committee, when this question came before our committee on education, I really had no idea that I would support anything like this. (laughter) In fact, I was inclined to be opposed to it. But after giving it serious consideration and thinking of it on the serious side and not on the humorous side, I saw where it did have real merit, a step forward, a progressive step.

As you know, former President Eisenhower, President Kennedy and J. Edgar Hoover all say that we must do something for our youth in order to have a good free society. Juvenile delinquency has been on the rise for many years.

I think it would be fitting to know at this time that in 1961, in October, the national recreation congress had their national convention in our Cobo hall in the city of Detroit and that they had 2,500 volunteer and professional workers in recreation on hand, and the speaker for the day was secretary of the interior, Stuart L. Udall. They also had Dr. Forbes, director of health, physical education and recreation. They had the president's chairman on youth fitness, Dr. Donald P. Kent. Martin S. Hayden, editor of the Detroit News, opened the congress Sunday night.

This is an important question. People say, "What do you mean by recreation?" I say it can mean anything your mind says it is. I like to think of it on a very high level. (laughter) One of the greatest experiences I have had since I have been out of school and have been working is to be able to have recreation. Personally, until this year, when I came down here in con con, I used to play basketball at least once a week. It was fitting that last night I had to return to my district to make a speech. The snow was heavy. And when I got home late last night, I decided I better look through my newspapers. It was very encouraging for me to see our circuit court judge of Oakland county, Frederick C. Ziem's picture with a bunch of kids; that he takes time every Saturday morning to go over to our local junior high school and coach one of the basketball teams. This is the kind of recreation that I have in mind.

Our township spends maybe $70,000. Where does this money come from for recreation? Half of it comes from the board of education. The other half comes from our township government. In cities, generally, the board of education participates half and the other half is paid for by the city government.

I was on this committee on legislative powers. We toured the state and we heard these older people say, "We need to play bingo. We don't have any recreation." Well, I was thinking then of what we had back in Waterford township and what most of our cities have and what they are pushing, and that is these golden age groups where these older people who are retired, 65 and older, can go and have recreation and fellowship. This is the thing we are talking about.

Another significant thing, I think, is that the state of Michigan's third largest industry is our tourist industry. We are known for our lakes, for our parks. We are now getting known for our skiing facilities, for our winter sports. I say it is all where you put your mind.

To me there is nothing better than clean, healthy recreation, and I would be one that would support this, along with our arts.

CHAIRMAN MILLARD: The Chair recognizes the gentleman from Detroit, Delegate Binkowski.

MR. BINKOWSKI: Mr. Chairman, ladies and gentlemen of the committee, I would like to direct a question to Mr. Kuhn because he struck a very tender chord in my heart when he mentioned bingo. (laughter) Under your interpretation, Mr. Kuhn, can we play bingo now, I mean under this section? We have "recreation" in there.

MR. KUHN: I would say you certainly can play bingo.

MR. BINKOWSKI: Legally?

MR. KUHN: There has never been anything wrong with playing bingo. The only thing you can't do is play for prizes or consideration.

MR. BINKOWSKI: Thank you, Mr. Kuhn.

CHAIRMAN MILLARD: Delegate Anspach.

MR. ANSPACH: Mr. Chairman and members of the committee, I rise in support of this proposal, and in doing so I

use the words of another in support. The first, a reference to the Master Himself:

> He grew in stature and wisdom and in favor with God and man.

Second, the proverb of the Arab:

> If I had 2 loaves of bread, I would sell one to buy a hyacinth that I might feed my soul.

And last, the words of the Master Himself:

> Man does not live by bread alone.

I support the proposal.

CHAIRMAN MILLARD: The Chair recognizes the gentleman from Detroit, Delegate Madar.

MR. MADAR: Mr. Chairman, I just wanted to get up to declare myself in favor of this proposal because I just heard Mr. Kuhn mention "our Cobo hall." (laughter) This is wonderful. Who knows, we may even open the subject of local home rule and taxation, and maybe Pontiac will be able to help us with our Cobo hall.

CHAIRMAN MILLARD: The secretary will read.

SECRETARY CHASE: The committee recommends:

[Committee Proposal 97 was read by the secretary. For text, see above, page 1233.]

Mr. Stevens has filed the following amendment, and Mr. Hubbs has filed the same amendment:

1. Amend page 1 by striking out all of lines 8 and 9. (laughter)

CHAIRMAN MILLARD: The Chair recognizes Delegate Stevens from Detroit.

MR. STEVENS: Mr. Chairman, members of the committee, it will not take me long to present the opposition to this. I am opposed to this for about 4 reasons. It is meaningless, useless, of no effect, and it serves no purpose.

I do not object to retaining a few of these things in the constitution because of their historical importance, but I see no reason for burdening the constitution by putting in new and ineffective statements of philosophy of this kind. It in no way increases or decreases the present power of the legislature or anyone else in the field of recreation or the fine arts. The long dissertations on fine arts and recreation are entirely irrelevant and immaterial. They have nothing to do with our consideration of a constitution. I am sure there are others who want to speak at greater length than I.

CHAIRMAN MILLARD: Delegate Hubbs is recognized.

MR. HUBBS: Mr. Chairman, members of the committee, I hope that I am the last to speak and I tell you that I am not going to speak at great length. I only would like to suggest that the material contained in the education preamble is sufficient to accomplish the noble objectives of the committee on education.

Committee Proposal 97 is a declaratory statement, and to a degree could cause a little difficulty in the future by being used as an excuse to spend money in areas of questionable value and I am concerned for economy as usual. Any unnecessary increase in the already large cost of education or any other section of government should be avoided if possible. I feel that this statement might lead to difficulty because it is both too specific and too general. Arts may be construed by some to mean only certain fine arts, painting, sculpture, things of that sort; recreation being so general as to encompass anything that any individual considered provided him with relaxing effects.

I therefore respectfully suggest that we vote to strike the entire Committee Proposal 97. I would say that yesterday we pulled a feather from the tail of the sacred cow. Today I think that maybe we should pull a horsefeather from the tail of the sacred cow. (laughter)

CHAIRMAN MILLARD: The Chair will recognize Delegate Howes.

MR. HOWES: Mr. Chairman, fellow delegates, I rise not only to speak in favor of this proposal, but to bring to your mind another gap or place where we are falling down in the job of education. The gap that I am referring to is in the training of our young people who do not have the ability to finish high school or who cannot, try as hard as they can, get through the first year of college. The real heartbreak of our society can be found by delving into the feelings of these young people who have tried and not made the grade.

Many of the boys in this category try to enlist in the armed forces, but the armed forces during the past few years have been turning to the men of higher ability and sending a large share of these boys back home. I had 2 of these boys working for me planting forest trees a year ago last spring. They were good workers on a job where they had supervision. When I was through with the tree planting, I did not have this type of job for them. They both enlisted in the army. In 4 weeks they were both back. Next week one of them comes up for sentence for breaking and entering and robbery of a gas station in the nighttime. I believe that instead of the feeling of resentment that naturally comes to us at such young men as this one, we should have feelings of remorse that we have not provided a job at some small pay, and along with it some training which would enable them to get a good job and become good citizens of our state.

I believe if we owe about $1,000 per student — which I believe is about the amount which is appropriated now by our state to the young people with ability — we do owe something to the young people with lesser ability, and I believe it is a part of the job of education. I support higher education and I will continue to support it with all my ability but I will not feel right to do this while my back is turned on this other more unfortunate segment of our society.

CHAIRMAN MILLARD: The Chair recognizes the gentleman from Lansing, Delegate Wanger.

MR. WANGER: Mr. Chairman, fellow alumni — (laughter) fellow delegates, I rise in support of the amendment to the proposal this morning in all seriousness because I believe that this proposal as it has been reported out from the committee is somewhat discriminatory. It picks out recreation and the arts and says that they shall be promoted and developed, whereas I think that there is a very honest division of feeling whether or not in addition or instead, science, wildlife, the humanities, philanthropy, honesty, patriotism, citizenship, or a host of other qualities might be just as much in need of promotion as the qualities which the committee's proposal is limited to.

I also speak in favor of the amendment because, frankly, the word "recreation" has a very definite connotation of frivolity. I know the educators will appreciate Roget's Thesaurus which defines recreation as "Refreshment, play, pastime, relaxation. See amusement." And Evans' Dictionary of Contemporary American Usage in defining recreation states, "A recreation is an agreeable pastime or diversion which affords relaxation and enjoyment."

So regardless of what arduous and high forms of recreation the committee and Delegate Kuhn certainly have in mind, the words of themselves connote something far more frivolous. In fact, indeed in the light of the presentation that has been made by members of the committee, I think it would be more appropriate to their intent to include the words "hard work, physical fitness and mental health" in this part of the constitution rather than the word "recreation" because, considering the real meaning of the word "recreation" in its broadest sense, in its real sense, I think we can all agree that while man does not live by bread alone, the proposal as it stands really just adds more bread. (laughter)

The next point which I would like to make with respect to this proposal is simply that in the state of Michigan and pretty much in this part of the United States, recreation and the arts do not need constitutional encouragement. You know, many years ago the writer, H. L. Mencken, spoke of one segment of our country which is far removed from this as being a sahara of the beaux arts. Yet today in Michigan we have many cultural advantages in the field of literature, athletics, amusements and art of every form. In fact, I believe Delegate Kuhn just pointed out that recreation now has a congress. Now, under this situation of development, I am sure that we are not in need of placing specific constitutional encouragement on

recreation or the arts so far as the need for adequate future development in the state is concerned.

Finally, I would like to add that, as has perhaps been implied by a couple of previous speakers, including recreation and the arts in the constitution might be interpreted as an endorsement of state owned, state subsidized or state controlled theater, opera, orchestra, perhaps an official poet laureate, or perhaps even a state football team.

We must remember that the document we are drafting has to do with government and certainly if there is anything in the constitution which the constitution provides should be promoted or developed, it is only natural to conclude that the drafters of that constitution meant that it should be promoted and developed directly by the state. I frankly don't believe that, as a constitutional convention, we should be concerned with settling this question one way or the other, but rather, leave the situation as it is, so that the legislature, if and when it is necessary in the future to do so, can take such steps as may be necessary in this field. But to include these words in the constitution would be adding something that might be interpreted unfavorably for the public good in the future and as something which is entirely legislative in character rather than constitutional.

CHAIRMAN MILLARD: The Chair recognizes the gentleman from Detroit, Delegate Norris.

MR. NORRIS: Mr. Chairman, I rise to oppose the amendment and to support the committee recommendation in this regard. I appreciate the crusty remarks of Delegate Wanger and I suggest to him that there has always been a difference of constitutional purpose as explained to us by Chief Justice Marshall and those who took a broad construction theory of the constitution and those who took a very narrow one and that constitutional struggle is being perpetrated in this arena today.

I think what is involved here is a broader recognition of the function of a constitution. It is not merely one to proclaim specific delegation of powers and to limit the powers and to provide a structure of government. It is also to proclaim constitutional policy. It is also to indicate principles not only for the present but for the future and what is intended here is indigenous and germane and related to all the other provisions of the education article.

I think it is a step in the right direction of indicating that we are placing high on the order of values in the democratic society the cultivation of the arts and perhaps of a different concept of recreation, a recreating, if you will, of the will of the people in their devotion and desire on behalf of a democratic society. I think that the committee is to be commended for implementing the kind of spirit that was proclaimed in the principle which we have accepted as the first section of the education article about the means of education shall forever be encouraged.

I think what we are saying here is the arts also and recreation in the highest sense ought to be encouraged as part of the values in a democratic society. To be sure, words that have some latitude may be misconstrued, but that is why we have the courts. It is also a fact that in constitutional language you try to implement a policy. I think the statements by Miss Andrus, Mr. Faxon and Mr. Kuhn, as part of the intent of this particular projected language, will serve a very useful purpose, and as time goes on it will afford a basis for those who wish to say that the legislature ought to implement it by appropriate legislation to take care of the problems that are related to these 2 fields.

I am sorry myself that there isn't appearing in the constitution other statements of broader constitutional policy so that there may be some guide lines to the future. So we are trying to develop a document here in a different age altogether from the age of 1908 and the years that preceded it. We are trying to lift our sights to a totally different world that the balance of this century will reflect, and we ought to proclaim in this constitution the kind of standards and judgments and values that we want our civilization to be judged by. We judge a person by what he honors. We judge a people by what they state in their constitution. And I think that by stating that here, we are indicating the kind of standards we wish our legislature and our people to promote in the time to come.

I support, Mr. Chairman, the committee proposal and I rise against the recommendation in the Stevens amendment.

CHAIRMAN MILLARD: Delegate Faxon.

MR. FAXON: Mr. Chairman, fellow delegates, the statement has been made here that this statement is new and an ineffective statement which doesn't increase the power of the legislature. I would like to call to your attention that we could go through any number of articles in the present constitution and in the proposed constitution and find equal statements which do not increase the power of the legislature because the legislature already has the power to move in these particular fields.

Just to bring to your attention 2 articles or proposals which you have already acted upon, we might look at libraries. The legislature has a responsibility for libraries. Putting it into the constitution doesn't make it any less responsible. We may look at the proposal dealing with institutions for the care and rehabilitation and treatment of those who are physically and mentally and otherwise seriously handicapped and indicate once again this doesn't have to be in the constitution because the legislature already has the power to act.

I might say that you could take a look at that tax article, with all due respect to its chairman — it is a good one; at least some of it — and you might also note that there are many parts there that the legislature could do without putting it into the constitution. So let us not try to diminish the importance of this statement by using the argument that this is completely of a legislative sort and doesn't belong there.

Statements have been made to misread what this language says so that it ends up that we are promoting and developing the arts and recreation. And, my friends, I ask you to look at this statement and see whether this is what it says at all. It says, "The promotion and development of the arts and recreation shall always be encouraged." Not that we are promoting and developing but that we are encouraging the promotion and development, and I think there is a significant difference in the interpretation between one and the other. And the language was deliberately worded in this way so as not to make any confusion as to what our role as a state is with regard to the arts and recreation.

A previous speaker referred to a number of other generalities of qualities that we might insert here, as if to indicate why be discriminatory to these areas when there are others that deserve our attention and he indicated in there such words as humanities and others. And I wish to call to your attention that the creative arts include the humanities and that some of those aspects or qualities which he referred to could be construed as being part of recreation and/or the arts.

The allegation has been made that recreation has a connotation of frivolity and this may be true to some, but I don't think we laugh when we refer to our state as a recreation area. I think we are proud of the fact that Michigan ranks third in the field of recreation and we are proud of the fact that people from all over the country come to the state for recreation. It is an important industry in this state. It is an important aspect to our whole culture in this state. It is not one which is simply one of frivolity.

The other charge has been made that this could lead to the state in the arts business. If the original statement is true that this doesn't increase the power of the legislature — and I support this as being true; it doesn't increase the power of the legislature — then for the proponents of the amendment to delete the lines to assert that it makes possible state owned arts is to deny their first premise upon which they say that it doesn't increase the power of the legislature. I could point out to you, therefore, that if the legislature saw fit to indulge in any field of artistic endeavor or in some support of recreation, they could do so without this language, and so to support the idea that the language will make possible the legislature moving into an area which it cannot move into, I suspect, is a false conclusion.

In concluding my rebuttal here, I simply wish to point out to the delegates that we are dealing with one sentence, a sen-

tence of few words and only 2 lines. We have acted quickly on pages of language dealing with bonding — and I don't say that this wasn't important, but pages, hundreds of words, and now all you are being asked to consider are about 10 or 12 words as a statement of purpose and intent. I think it ill behooves any delegate who has acted with such care and caution over such matters as finance and powers to suddenly look upon this in any great suspicion or feeling that this is opening up an area which cannot be opened otherwise.

CHAIRMAN MILLARD: The Chair recognizes the gentleman from Detroit, Delegate Downs.

MR. DOWNS: Mr. Chairman, fellow delegates, I rise in favor of the committee report and in opposition to the amendment. I can only say very briefly what Miss Andrus said so adequately, that when the people who founded Michigan came here as a territory, they, who were living in log cabins with no television, none of the conveniences we have, dedicated their government to the promotion of education and institutions for the well being of people. I think rather than being anything new, this continues by directive to lift our sights to do just a little bit better than has been done and follows the great historic tradition of our state of trying to reach out ahead.

I think the intent is fine, I agree completely with those who say that it is not spelled out in detail any more than some of the other provisions are. I think the intent is clear and urge the support of the committee report and opposition to the amendment.

CHAIRMAN MILLARD: The Chair will recognize the proposer of the amendment, Delegate Stevens.

MR. STEVENS: Mr. Chairman, members of the committee, I realize the importance of that axiom that the volume of the discussion is inversely in proportion to the importance of the subject matter under consideration. I will therefore, after one brief statement of appreciation of Professor Norris' paper on his philosophy about constitutions, a philosophy with which I disagree but, at least he did explain his idea and purpose in this, merely repeat my prepared address on this that I believe that this is meaningless, useless, of no effect and serves no purpose. Thank you.

CHAIRMAN MILLARD: Delegate Hubbs.

MR. HUBBS: Mr. Chairman, members of the committee, I think that we have spent entirely too much time on this subject for the moment. I would like to rebut in detail the good many arguments that have been made but I will say only this, the proponents of this language should fire their retrorockets and get back into orbit or get out of orbit and let's bring them down to earth with a division when we vote. Thank you.

CHAIRMAN MILLARD: The Chair recognizes the delegate from Pontiac, Delegate King.

MR. KING: Mr. Chairman, ladies and gentlemen of the committee, I am somewhat torn on this particular issue. One of my most influential constituents is an artist — and that's my wife (laughter). But I am concerned about this recreation. I think the term is rather broad. I never know what my good friend and colleague is up to. Last night he corrected our distinguished vice president and parliamentarian by finding a motion which would take precedence over a motion to adjourn, which reminded me of a story of a fellow who had some trouble with speech and he had gone away to a speech correction school. It seemed as though he stuttered. And when he returned, his friend came up to him and said, "Has this school helped your problem?" And he said, "Y-y-y-yes. I can n-n-now say Peter Piper picked a peck of pickled peppers, b-b-but it rarely comes up in c-c-c-conversation." (laughter)

Now, our president of this land of ours has said, "Ask not what your country can do for you but rather what you can do for your country." I think perhaps we are emphasizing the wrong thing. I admit when Mr. Kuhn thinks of recreation, he thinks of circuit judges teaching high school boys how to play basketball, and golden age groups playing payless bingo. (laughter) Others may think of horse racing and burlesque shows, (laughter) with "burlesk" being spelled phonetically for those whose backgrounds are heavy on recreation. (laughter)

Frankly, I hope we can attack the problem separately and consider the, what I think, very worthwhile proposal encouraging fine arts and, if that can be done, I would be happy to support that part of it.

CHAIRMAN MILLARD: The Chair will recognize the gentleman from Detroit, Delegate Dade.

MR. DADE: Mr. Chairman, I think there is a very basic problem here and I think this problem is the increasing dehumanization and mechanization of society; that man today is so engrossed in scientific things, scientific work methods, that he is losing his soul, and that social scientists are increasingly concerned about this problem, and that instead of looking at this in a frivolous manner, we should look at this in its high aspects.

And I am certain that we are aware when we speak of recreation, we are thinking of recreation in the idea of recreation, and we are perfectly aware we are not talking about burlesque. We are not talking about the lesser pursuits. We are talking about the higher definition of recreation.

And I notice as I read this it says nothing about "promote." It says "encourage." And I think as a matter of the general welfare of the people of this state and looking forward to some 25 years, it is good to encourage, and looking to the nature of society some 25 years from now, it will be a good thing to have in our constitution a general encouragement of the arts and recreation, and in doing this, we shall be doing something that we shall be proud of.

And I say again it is a good thing and I support the committee proposal.

CHAIRMAN MILLARD: The Chair recognizes Delegate Wanger.

MR. WANGER: I can't help but comment, Mr. Chairman, members of the committee, on the thoughts of our forefathers when they were building this country when we did not have the advantages which we have today. I would like to say that our forefathers had done their job very, very well. Perhaps some day historians might say too well. They have given us the highest standard of living in the world, more leisure time than any other population generally ever enjoyed before in the history of the world. And I think today when we are thinking of emphasizing something in the constitution as a choice, the emphasis should rather be on hard work rather than on recreation with its connotation of frivolity which so naturally attaches to it.

CHAIRMAN MILLARD: The Chair will recognize the gentleman from Grand Rapids, Delegate Blandford.

MR. BLANDFORD: Mr. Chairman, Delegate Wanger in his opposition to this proposal defined recreation as "an agreeable pastime." Instead of turning me against this proposal, I suddenly find myself in favor of it. (laughter)

CHAIRMAN MILLARD: The Chair recognizes the lady from Grand Rapids, Delegate Judd.

MRS. JUDD: Mr. Chairman, members of the committee, I was not going to speak on this subject originally but the levity with which it has been treated causes me to get to my feet. Personally, I do not think it is necessary to put it in the constitution, but I should hate to have the general public's impression of this convention be that we felt these were light matters.

I have worked closely with the national recreation association for about 30 years and I know that recreation is increasingly a need. And I agree with Father Dade that this is a lot more than just having fun; that it involves a whole problem of our society today with its increasing leisure and increasing crime that goes with that leisure. This is a positive way of trying to handle this problem.

I do not think that it is necessary in the constitution, however, because our legislature has ample power. The conservation department is busy with this problem all of the time. Our cities and our boards of education are involved in recreation. It does need more promotion, more funds, more encouragement, but this will only come as the citizens of the state want and demand it and they can get what they want if they go after it.

CHAIRMAN MILLARD: The Chair will recognize the gentleman from Taylor, Delegate Marshall.

MR. MARSHALL: Mr. Chairman, we spent slightly over an hour, approximately one hour, debating this one provision with 13 words in it, 13 words being an unlucky number. And I agree with Mrs. Judd in the statements that she made. I don't believe this should be written into the constitution. If it is to be, however, I have offered an amendment that is on the secretary's desk that I intend to speak on for about 20 minutes. However, if the delegates will agree that they have talked long enough on this one and vote, I will agree to withdraw my amendment. I would like to ask the secretary to read the amendment, though, to see if the delegates think it is necessary.

CHAIRMAN MILLARD: Delegate Marshall, you are the last one on the list. Maybe we are ready to vote.

MR. MARSHALL: I would still like to have my amendment read.

SECRETARY CHASE: Mr. Marshall's amendment is to insert after the word "recreation" the word "oratory". (laughter)

MR. MARSHALL: I will, however, if the committee is ready to vote, withdraw the amendment provided that we vote now on this question. I offer this because 13 being an unlucky number, we would have 14 words.

CHAIRMAN MILLARD: Delegate Kuhn.

MR. KUHN: I don't want anybody to do us any favors. If this is a serious question, which I think it is, I do not think we should take it lightly. I am very disappointed the way some people talk about recreation but maybe that is the only recreation they know. As I said, this is taken in the way we think of recreation.

CHAIRMAN MILLARD: Does the delegate from Taylor want to answer?

MR. MARSHALL: I want to advise Delegate Kuhn that I am not taking it lightly. I think, though, that when we spend over an hour and we know and realize we aren't going to change any minds, that minds are made up on this question, we begin to look a little silly. I will still withdraw my amendment providing we vote at this moment.

CHAIRMAN MILLARD: The question is on the Stevens-Hubbs amendment. Mr. Hubbs has demanded a division. Is it seconded? A sufficient number up. All those in favor of the — Mr. Leibrand.

MR. LEIBRAND: May we have the amendment read, please?

SECRETARY CHASE: The amendment is to strike out all of the proposal, all of lines 8 and 9.

CHAIRMAN MILLARD: The question now is upon the Stevens-Hubbs amendment which has just been read. All those in favor will vote aye; those opposed will vote nay. Have you all voted? The secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the amendment, the yeas are 64, the nays are 54.

CHAIRMAN MILLARD: The amendment is adopted.

Delegate Conklin.

MRS. CONKLIN: Mr. Chairman, in spite of putting the recreation out, I would like to remind them it is 10:40. Do you intend to recess? (laughter)

CHAIRMAN MILLARD: Is that a motion? Under the convention orders, the committee will rise.

[Whereupon, the committee of the whole having risen, Vice President Romney resumed the Chair.]

VICE PRESIDENT ROMNEY: The convention will stand in recess for 10 minutes.

[Whereupon, at 10:40 o'clock a.m., the convention recessed; and, at 10:50 o'clock a.m., reconvened.]

The convention will be in order.

SECRETARY CHASE: Mr. President, a quorum of the convention is present.

VICE PRESIDENT ROMNEY: Delegate Millard.

MR. MILLARD: Mr. President, I move that the convention now resolve itself into committee of the whole for the consideration of further matters on general orders.

VICE PRESIDENT ROMNEY: Those in favor say aye. Those opposed?

The motion prevails. Delegate Millard will preside.

[Whereupon, Mr. Millard assumed the Chair to preside as chairman of the committee of the whole.]

CHAIRMAN MILLARD: The committee will be in order. The secretary will read.

SECRETARY CHASE: Mr. Faxon has submitted the following amendment to Committee Proposal 97:

1. Amend page 1, following line 6, by inserting "Sec. a. The promotion and development of the arts shall always be encouraged.".

CHAIRMAN MILLARD: Delegate Faxon.

MR. FAXON: Mr. Chairman, members of the committee, during the past hour's discussion with regard to the original proposal, much time was spent with regard to the use of a particular word which seemed to some to indicate all sorts of dangers which I didn't agree with but which seemed to be the feeling of the committee. There was not such a feeling expressed with regard to the arts which, as I mentioned to you before, dealt with the creative arts, as they have been a part of our heritage for some several hundred years.

I don't intend to begin any prolonged debate on this, but I feel that we ought to carefully consider that this proposal was the unanimous recommendation of the committee on education, that there was considerable feeling for its inclusion, and that the arts play an ever increasing role in our society as the leisure time develops for the people of this state. I cannot over emphasize the need for the kind of breadth of scope that this would permit in our constitution, and I would urge all of you to consider and to vote in favor of this amendment.

CHAIRMAN MILLARD: Delegate Stevens.

MR. STEVENS: Mr. Chairman, members of the committee, I oppose the pending amendment for the same reasons, which I will repeat at some length. It is meaningless, useless, of no effect and serves no useful purpose. Thank you.

CHAIRMAN MILLARD: The Chair recognizes Delegate Hubbs.

MR. HUBBS: Mr. Chairman, members of the committee, I honestly think that we have spent a lot of time on this thing and I respectfully agree with Mrs. Judd that this is something that can be taken care of in another way and shouldn't be in the constitution. And I think that as we go along, our thinking has even become just a little bit cloudy, and I am quite disturbed with Mr. King's position when he said that he favored separating the question because he favored art — and he mentioned burlesque with reference to it as being a recreation, and actually we all know that burlesque is not recreation; it is art. (laughter) So I really think we shouldn't waste any more time. Let's vote on this. I hope we will vote this new amendment down, and let's get on to the judicial article where we who really like to tear into things can find a lot of meat to work on. Thank you.

CHAIRMAN MILLARD: The Chair recognizes the gentleman from Grand Rapids, Delegate Tubbs.

MR. TUBBS: Mr. Chairman, I am very happy at this time to agree with my compatriot, Mr. Hubbs. I second his motion.

CHAIRMAN MILLARD: The Chair recognizes Delegate Dade.

MR. DADE: Mr. Chairman, I would like to make the one observation that in our consideration of this matter, in our references, we be reminded that in the audience there are young people.

CHAIRMAN MILLARD: The secretary will read the amendment.

SECRETARY CHASE: Mr. Faxon's amendment is:

[The amendment was again read by the secretary. For text, see above, page 1239.]

CHAIRMAN MILLARD: The question is on the Faxon amendment.

MR. FAXON: Division.

CHAIRMAN MILLARD: Mr. Faxon has demanded a division. Is that seconded? A sufficient number up. All those in favor of the amendment will vote aye. Those opposed will vote nay. The secretary will restate the amendment.

SECRETARY CHASE: The delegates will be reminded that prior to the recess, lines 8 and 9 were stricken out of the proposal by amendment. Mr. Faxon now offers the amendment to insert in lines 8 and 9 the words, "The promotion and development of the arts shall always be encouraged.".

CHAIRMAN MILLARD: All in favor will vote aye, and those opposed will vote nay. Have you all voted? The secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the adoption of the amendment offered by Mr. Faxon, the yeas are 47; the nays are 71.

CHAIRMAN MILLARD: The amendment is not adopted.

SECRETARY CHASE: There are no further pending amendments, Mr. Chairman.

CHAIRMAN MILLARD: Committee Proposal 97, as amended, is passed.

I recognize the chairman of the committee, Delegate Bentley.

MR. BENTLEY: Mr. Chairman, this completes the proposals from the committee on education, which I might remind the committee has extended over a period which began last October 23 and continued on until today, almost exactly 4 months.

At this time I would just like to make a very brief statement regarding the committee on education. It is not my intention to name by name the dedicated members, men and women, of the committee that have worked so hard to bring these proposals to the floor, proposals which, with the exception of the last one, 97, have, I think in whole, met with the general approval of the committee of the whole on first reading. But I would like to give my own personal thanks and pay my own personal tribute to the 20 ladies and gentlemen that composed the committee on education for having cooperated and collaborated almost 100 per cent with no thought of any motive in mind but that of doing their very best in the field and for the cause of public education in our state; and, as I say, express to them my own very deep sense of personal gratitude for the cooperation and assistance which they gave me, as chairman, during this long period of deliberations and consideration.

At this time, again, I wish to remind the committee of the whole that we have completed our work as a committee on education and I wish to thank the members of my committee and I wish to thank the members of the committee of the whole for the consideration which they gave to our proposals during these past 4 months.

At this time, Mr. Chairman, I move the committee do now rise.

CHAIRMAN MILLARD: The chairman of the committee on education moves that the committee do now rise. All in favor say aye. Opposed, no.

The motion prevails.

[Whereupon, the committee of the whole having risen, Vice President Romney resumed the Chair.]

VICE PRESIDENT ROMNEY: Delegate Millard is recognized.

MR. MILLARD: Mr. President, the committee of the whole has risen and the secretary will make a detailed report of what occurred there.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 97**, A proposal to amend article XI by adding a new section pertaining to the arts and recreation. The committee of the whole reports the proposal back to the convention with the following amendment:

1. Amend page 1 by striking out all of lines 8 and 9.

VICE PRESIDENT ROMNEY: The question is on agreeing to the amendment. Those in favor say aye. Opposed?

The amendment is agreed to.

Delegate Kuhn.

MR. KUHN: Mr. President, we would like to demand the yeas and nays on this amendment.

VICE PRESIDENT ROMNEY: Those in favor of the yeas and nays, please indicate.

SECRETARY CHASE: Seventeen.

VICE PRESIDENT ROMNEY: Not a sufficient number.

Committee Proposal 97, as amended, is referred to the committee on style and drafting.

Following is Committee Proposal 97 as amended and referred to the committee on style and drafting:

The committee recommends that the following be included in the constitution:

(Note — The complete content of this committee proposal has been stricken.)

Mr. Gadola.

MR. GADOLA: Mr. President, I have a point of order here or information. What are you going to propose to style and drafting? There is no Committee Proposal 97.

VICE PRESIDENT ROMNEY: I think the delegate is right. There is nothing to refer. It was voted down.

The secretary advises me that it will be reported to the style and drafting committee as a negative report. It will be an indication to the style and drafting committee as to the sentiment of the convention and for their guidance in their work.

Delegate Kuhn.

MR. KUHN: Mr. President, parliamentary inquiry. I am wondering if a motion would be in order as an amendment, then, which would be what the committee report is, "The promotion and development of the arts and recreation shall always be encouraged." Could we put that in, say, as an amendment to that and then ask for a vote?

VICE PRESIDENT ROMNEY: Delegate Kuhn, this is not a proper amendment. The convention has just expressed itself on that matter.

Delegate Van Dusen.

MR. VAN DUSEN: Mr. President, I move the convention resolve itself into committee of the whole for further consideration of matters on the order of **general orders.**

VICE PRESIDENT ROMNEY: You have heard the motion. Those in favor say aye. Opposed?

The motion prevails. Delegate Van Dusen will preside.

[Whereupon, Mr. Van Dusen assumed the Chair to preside as chairman of the **committee of the whole.**]

CHAIRMAN VAN DUSEN: The committee will be in order and the secretary will read the first proposal.

SECRETARY CHASE: Item 1 on your calendar, from the committee on judicial branch, by Mr. Danhof, chairman, **Committee Proposal 90,** A proposal pertaining to the judicial branch. A substitute for section 1 of article VII.

Following is Committee Proposal 90 as read by the secretary, and the reasons submitted in support thereof:

The committee recommends that the following be included in the Constitution:

Sec. a. THE JUDICIAL POWER OF THE STATE IS VESTED EXCLUSIVELY IN ONE COURT OF JUSTICE, WHICH SHALL BE DIVIDED INTO ONE SUPREME COURT, ONE COURT OF APPEALS, ONE TRIAL COURT OF GENERAL JURISDICTION KNOWN AS THE CIRCUIT COURT, ONE PROBATE COURT AND OTHER COURTS OF LIMITED JURISDICTION THAT THE LEGISLATURE MAY ESTABLISH BY A 2/3 VOTE OF THE MEMBERS OF EACH HOUSE.

Explanation—Matter within [ ] is stricken, matter in capitals is new.

Mr. Danhof, chairman of the committee on judicial branch, submits the following reasons in support of Committee Proposal 90:

After 3 months of hearings and another of discussion, the committee members are in general agreement that Michigan's judicial system is basically sound. The committee, therefore, took the approach that the deficiencies of the system should be corrected, but the structure should be maintained. A study of systems available in other comparable states confirmed this opinion.

The proposed section makes 3 basic changes. It creates "a court of justice." This is primarily an administrative matter, but incorporates the concept that we have a single court, with several branches, each devoting its attention to a certain level of judicial administration. This is the modern concept originally propounded by Dean Roscoe Pound, and since adopted in most new state constitutions. The language comes from the model judicial article of the American bar association.

The second change is to create an intermediate court of appeals. The committee believed that the present degree of work of the supreme court might well justify this new court. Certainly the mandate of this convention, that an appeal of right in criminal cases be granted, makes the creation of an intermediate court of appeals, in the opinion of the committee, essential.

Finally, this section removes the constitutional status of the justice of the peace system. The purpose is to enable the legislature to create a modern court of limited jurisdiction. The committee gave serious consideration to several proposals for the creation of a county court system. While a number of the members felt in sympathy with these ideas, it was concluded by the committee that the legislature should be given the leeway and the obligation to create courts of limited jurisdiction. It was the thought of the committee that a flexible system could thus be designed to meet the differing needs of large and small counties.

Following is the minority report to Committee Proposal 90 as offered, (no reasons were submitted in support thereof):

Miss Donnelly, Messrs. Leibrand and McAllister, a minority of the committee on judicial branch, submit the following minority report to Committee Proposal 90:

A minority of the committee recommends that the following be included in the constitution:

Line 5, after "vested", strike "exclusively"; and line 6, strike "one court of justice, which shall be divided into"; so that the section will read as follows:

Sec. a. THE JUDICIAL POWER OF THE STATE IS VESTED IN ONE SUPREME COURT, ONE COURT OF APPEALS, ONE TRIAL COURT OF GENERAL JURISDICTION KNOWN AS THE CIRCUIT COURT, ONE PROBATE COURT AND OTHER COURTS OF LIMITED JURISDICTION THAT THE LEGISLATURE MAY ESTABLISH BY A 2/3 VOTE OF THE MEMBERS OF EACH HOUSE.

CHAIRMAN VAN DUSEN: The Chair will recognize Mr. Danhof, chairman of the committee.

MR. DANHOF: Mr. Chairman, members of the committee, after having discussed such high level topics as fine arts and recreation of various forms, we come down now to such mundane things as the supreme court, circuit courts and the justices of the peace. Looking back at Mr. Hubbs' statement of a few moments ago in which he said that he wanted to get into something he could sink his teeth into, I approach this with a little fear and trepidation and advise him that the chairman of the committee is not of sufficient size to satisfy everybody. (laughter)

In starting out, I should state that the committee was composed of 21 in number, of which 20 were licensed to practice law in the state of Michigan. I have no problem but what we can convince the lay members of this committee that our proposal is good. My only concern is with those other 37 members licensed to practice law who were not on the committee. Mr. Barthwell, who served as the only nonlawyer, has stated that he will readily take the blame for any mistakes that may have occurred, (laughter) since he knows that 19 lawyers could not possibly have made any mistakes in writing this article. (laughter)

Earlier today on the desk you received 2 pamphlets. The committee proposals are found in Committee Proposals 90 through 96, and the one that the secretary has just read is Committee Proposal 90. The committee on judicial branch decided very early in their deliberations that we would write a new article and, as such, everything you find in the committee proposals will be in caps. Exclusion reports have been filed for every section in the old article VII. However, for your information and for your guidance, there has been prepared, taken from the sections of the 1908 constitution and insofar as it could be arranged, the interlineations of the new language and the new sections. I also took it upon myself to prepare a very sketchy outline which will show to you Committee Proposal 90, for instance, section a, the corresponding section of the 1908 constitution, being article VII, section 1, and very briefly the changes that the committee has recommended. This will allow you to follow along and to be kept informed as to the change. We have added new sections, of course, which are not found, and we have recommended the exclusion of others. I hope that this ready reference, particularly for the nonlawyers, will be of benefit so we can readily see, as we start out, the changes from the 1908 constitution, section 1, and section a of Committee Proposal 90.

At this time for some explanatory remarks concerning section a, Mr. Chairman, I would like to yield first to Mr. Ostrow, the gentleman from Detroit, and then to Delegate Everett, the gentleman from Battle Creek, for some remarks. We will then be yielding for the answering of questions.

CHAIRMAN VAN DUSEN: Mr. Danhof yields to Mr. Ostrow.

MR. OSTROW: Mr. Chairman, ladies and gentlemen of the committee, Committee Proposal 90 and the committee report are found on page 464 of the journal.

Our committee held hearings for 3 months and discussions for another month, after which the committee members were in general agreement that Michigan's judicial system is basically sound. The committee, therefore, took the approach that the deficiencies of the system should be corrected but the structure should be maintained. A study of systems available in other comparable states confirmed this opinion.

I would like to interject here that we brought people from Minnesota, Wisconsin, Illinois and New York because we heard that they might be able to contribute something toward an improvement in our system. The more we looked at other systems, the better we liked our own. I think you would be interested in this. This that I hold in my hand, very small type, 5 columns on one side and 3 on the other, is the New York judicial article submitted last November. As closely as I can estimate, this contains from 9,000 to 12,000 words. You can readily understand, therefore, that after looking at systems like that and considering our simple and efficient system in Michigan, why we did what I am about to explain that we did do.

The proposed section makes 3 basic changes. It creates a court of justice. This is primarily an administrative matter but incorporates the concept that we have a single court, with several branches, each devoting its attention to a certain level of judicial administration. This is the modern concept originally propounded by Dean Roscoe Pound and since adopted in most new state constitutions. This language comes from the model judicial article of the American bar association.

The second change is to create an intermediate court of appeals. The committee believed that the present degree of work of the supreme court might well justify this new court. Certainly the mandate of this convention, that an appeal of right in criminal cases be granted, makes the creation of an intermediate court of appeals, in the opinion of the committee,

Explanation—Matter within [ ] is stricken, matter in capitals is new.

essential. Incidentally, in that connection, almost everybody that testified before our committee agreed to the need for an intermediate court of appeals.

Finally, this section removes the constitutional status of the justice of the peace system. Here I would like to say for those who are concerned about justices of the peace — and I know that there are many — this section merely removes them from the constitution. There is a section later on, Committee Proposal 96, section 1, which you might say is the death penalty for justices of the peace. So if you are only concerned in preserving justices of the peace but don't care particularly whether they are in the constitution, save your fire for 96 1, and not here.

The purpose is to enable the legislature to create a modern court of limited jurisdiction. The committee gave serious consideration to several proposals for the creation of a county court system. While a number of the members felt in sympathy with these ideas, it was concluded by the committee that the legislature should be given the leeway and the obligation to create courts of limited jurisdiction. It was the thought of the committee that a flexible system could thus be designed to meet the differing needs of large and small counties. I would like to add that this is merely the basic structure of the court system of Michigan. If you are concerned specifically with how supreme court justices are elected, then instead of concerning yourself with amendments to this section, because this has nothing to do with their election or appointment or choosing or their powers or duties, for the supreme court you will be interested in Committee Proposal 91.

If you are interested in the court of appeals, it is Committee Proposal 92; if you are interested in the circuit judges, it is Committee Proposal 93; the probate judges, Committee Proposal 94; a new section dealing with appeals from administrative agencies, Committee Proposal 95; and the catchall, the general provisions, Committee Proposal 96.

CHAIRMAN VAN DUSEN: Does the chairman of the committee now desire to yield to the gentleman from Calhoun, Mr. Everett?

MR. DANHOF: Yes.

CHAIRMAN VAN DUSEN: Mr. Everett is recognized.

MR. EVERETT: Mr. Chairman and fellow delegates, I think Mr. Ostrow has very ably covered what the thinking of the committee in submitted Committee Proposal 90 is. I would prefer rather than to add to his comments to simply assist him in the event there are questions which might develop in the minds of any of you.

CHAIRMAN VAN DUSEN: Mr. Powell, did you desire recognition for the purpose of asking a question?

MR. POWELL: Mr. Chairman, ladies and gentlemen of the committee, what I am about to say you might call a little bit of a privileged statement, possibly. I have great esteem for the members of this committee and the work they have done. I am just calling attention to the fact that they have set up their reports in a different form than the others and do not show the deleted material, but they have thoughtfully provided this compilation here which I think most of us that haven't been working on these will want to follow because it shows what the changes are; that is, what is being deleted, and I thought if you hadn't caught on to that, it might be well to mention that at this juncture so that we can follow along in this rather thick bunch of white pages here and see exactly what these proposals are in comparison with what the existing corresponding provisions of the constitution are. Thank you.

CHAIRMAN VAN DUSEN: Thank you, Mr. Powell. Judge Leibrand, did you seek recognition?

MR. LEIBRAND: Mr. Chairman, I believe the practice has been to consider minority reports and amendments prior to the main question.

CHAIRMAN VAN DUSEN: That is correct, Judge Leibrand. Mr. Danhof had made his explanation, and I thought that when the explanation was complete, we would then proceed immediately to the minority report.

MR. LEIBRAND: Thank you.

CHAIRMAN VAN DUSEN: And if there is no further question on the majority proposal, the secretary will read the minority report.

SECRETARY CHASE: Pursuant to their minority report, Miss Donnelly, Messrs. Leibrand and McAllister offer the following amendment to Committee Proposal 90:

1. Amend page 1, line 5, after "vested" by striking out "exclusively in one court of justice, which shall be divided into" and inserting "in"; so that the language will then read, "The judicial power of the state is vested in one supreme court, one court of appeals, one trial court of general jurisdiction known as the circuit court," et cetera.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Miss Donnelly, Mr. Leibrand and Mr. McAllister. Mr. Leibrand.

MR. LEIBRAND: Mr. Chairman and delegates, you have heard the reading of the majority report on this section and also the reading of the minority report. Now, with reference to the words contained in those reports, there may appear to you to be very little difference, just a change of 3 or 4 words, but in general philosophy there was a world of difference, and what this committee of the whole does with this first section may greatly influence what is done with the following sections.

Basically I will say that the majority report on the nature of the court system in Michigan had its birth with an eminent judicial and legal theorist by the name of Roscoe Pound, whom I believe was dean of the law school of Harvard University. The conception and introduction to our committee of his theories begins to be covered on page 9 of the pamphlet that all of you have somewhere in your piles of reading material entitled, The Michigan Constitution and the Judiciary. As with most of those types of theories, his theory was one that the only good court system was one where somebody at the top was cracking the whip and the courts down below were dancing.

The minority report has its genesis and conception in the Constitution of 1908. It has been in there for 54 years and, as Mr. Ostrow has told you, the general overall court system has been considered to be satisfactory in Michigan.

The theory of the judicial system in the constitutional system of 1908 was generally that there were a number of independent courts with a considerable degree of independence, the circuit courts primarily and the probate courts. Of course, the Constitution of 1908 also created a supreme court, but primarily that supreme court was for the purpose of hearing appeals from specific cases. In other words if a litigant was dissatisfied with the kind of treatment he got in a certain court, he could appeal that specific case to the supreme court.

Under the Constitution of 1908 the Michigan supreme court was given the power to make general court rules covering general operations of the courts so that an attorney from one county or from one area could go into a court in another county or area and find himself confronted with the same type of general rules of procedure that he had in his own county or his own district. For 54 years that quasi independence of the circuit courts has been found to be eminently satisfactory.

In our long months of committee hearings we considered 5 levels of courts, 3 old levels and 1 or 2 possible new levels, and as we take the principal 4 courts that have been in existence under the Constitution of 1908, we have at the top the Michigan supreme court; then the courts of circuit court status; then the probate court; and then the justice court. We have had a 4 level system.

I don't believe any member of that 21 man and woman committee will disagree with me when I say that the complaints that we had or the objections that we had or the suggestions that we had as to revision came primarily with respect first, to the system of justice courts, to justices of the peace. The complaints came, secondarily, about the supreme court, its method of selection and tenure and that sort of thing. I don't recall reading a single letter or receiving a single letter or hearing a single criticism of the Michigan circuit court system. People seemed to be satisfied with the

kind of justice and the operations of the circuit court and to my recollection the committee has recommended no changes whatever in the operation and method of selection and tenure of the circuit judges.

Now, the theory of those of us who are in the minority, who have joined in the minority report, is that where a system, a circuit court system, has proved so eminently satisfactory over a period of 54 years, this is no time to change by interjecting into the circuit court system a great degree of dictation, control and domination by the Supreme Court of the State of Michigan. What the minority report amendment would do, if adopted, would be to continue the circuit courts and their operation as they have been in the past.

What the majority report would do, if adopted, would be not only to permit but almost direct the supreme court outside of regular appeal cases to intervene in and direct and control the operation of each separate circuit court and circuit judge in the state of Michigan.

We of the minority don't think that this is a good change. I am not going to go on longer trying to persuade you. How you will vote on these respective reports I think will depend upon your individual philosophies which have been building up within you for from 30 to 75 years. If you are a delegate and a person who thinks that all good things come from the top with direction from the top, you will, I believe, vote for the majority report. If you are a true believer in the principle of home rule and independence of your local elected judiciary, you will, I believe, vote for the minority report.

Thank you very much. And I recommend the adoption of the minority report amendment.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Miss Donnelly, Judge Leibrand and Mr. McAllister. Mr. Danhof.

MR. DANHOF: Mr. Chairman, I should like to state, if I can, that we have gotten into the usual practice that approximately at this time the convention recesses for lunch. We have heard the majority report. We have heard the opening statements on the minority report.

I would move at this time, Mr. Chairman, the committee do rise.

CHAIRMAN VAN DUSEN: Mr. Danhof moves the committee do now rise. Those who favor will say aye. Opposed? The motion prevails.

[Whereupon, the committee of the whole having risen, Vice President Romney resumed the Chair.]

VICE PRESIDENT ROMNEY: Delegate Van Dusen.

MR. VAN DUSEN: Mr. President, the committee of the whole has had under consideration one proposal of which the secretary will give a detailed report.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 90,** A proposal pertaining to the judicial branch; has considered one amendment thereto and has come to no final resolution thereon. That completes the report of the committee of the whole.

Mr. President, we have 2 requests: Delegate Bentley requests to be excused from the early part of this afternoon's session; and Delegate Dell requests to be excused from the afternoon session and tomorrow's session.

VICE PRESIDENT ROMNEY: Without objection, it is so ordered.

Mr. McLogan.

MR. McLOGAN: Mr. President, point of personal privilege.

VICE PRESIDENT ROMNEY: The gentleman will state it.

MR. McLOGAN: Ladies and gentlemen of the convention, 75 years ago this date there was born in the village of Corunna, Michigan, one who was destined to become a force for good in his community of Flint, one who was to hold a position of public trust for many years. The delegate to whom I refer is held in esteem by his city, his state and the constitutional convention.

May I express the wish of a very happy birthday to Judge Paul Gadola on completing ¾ of a century of a fine and productive life.

[Mr. Gadola was given a standing ovation.]

VICE PRESIDENT ROMNEY: Judge Gadola.

MR. GADOLA: Mr. President, there is little I can say. I am overwhelmed by your kindness and I thank this northwest section over here for this beautiful tribute that they gave me. I have endeavored through my life to further the interests of humanity, and being elected to this convention was my greatest endeavor, and I will continue to do that so long as the Lord gives me power to speak. Thank you. (applause)

VICE PRESIDENT ROMNEY: Delegate Van Dusen.

MR. VAN DUSEN: Mr. President, I move the convention do now recess until 2:00 p.m.

VICE PRESIDENT ROMNEY: Those in favor say aye. Opposed, no.

The motion prevails and the convention is recessed until 2:00 o'clock this afternoon.

[Whereupon, at 11:35 o'clock a.m., the convention recessed; and, at 2:00 o'clock p.m., reconvened.]

The convention will come to order.

SECRETARY CHASE: Mr. President, a quorum of the convention is present.

VICE PRESIDENT ROMNEY: Delegate Tubbs.

MR. TUBBS: Mr. President and ladies and gentlemen, I rise to perhaps a personal privilege to remind all of us of a little history. Two hundred thirty years ago this year a man was born. He was born on February 10, 1732. Why February 10? Because the English speaking world hadn't gotten around to changing their calendars to conform to the Gregorian calendar, so he was born before the English people made the change of 12 days, so his birthdate had to be changed to February 22, new style calendar.

His name was George — and I hope I do not bring the wrath of the Democrats down on my head by mentioning that at this gathering (laughter) but since he had 3 syllables to his surname rather than 2, perhaps I will be forgiven. He is probably the greatest sire of all time. He is supposed to be and I think in fact was the father of his country.

I think, Mr. President, at this moment we ought to salute George Washington. (applause)

VICE PRESIDENT ROMNEY: Delegate Van Dusen.

MR. VAN DUSEN: Mr. President, I move the convention resolve itself into committee of the whole for the purpose of considering certain items on the calendar of **general orders.**

VICE PRESIDENT ROMNEY: Those in favor of the motion say aye. Opposed?

The motion prevails and Delegate Van Dusen will preside.

[Whereupon, Mr. Van Dusen assumed the Chair to preside as chairman of the **committee of the whole.**]

CHAIRMAN VAN DUSEN: The committee will be in order. When we last met, we had under consideration **Committee Proposal 90,** and the question is on an amendment thereto offered by Miss Donnelly, Judge Leibrand and Mr. McAllister. Judge Leibrand.

MR. LEIBRAND: Mr. Chairman, during the noon hour it has come to my attention that a number of delegates have not received the reasons for the minority report which supposedly was distributed. Most of them have but a number have not. It is short. I would like to read it for the benefit of those who do not have that sheet:

> The minority report would strike the word "exclusively" from line 5 and would strike the words "one court of justice which shall be divided into" from line 6 of Committee Proposal 90.

The underlying concept of the majority report is that the judicial system of Michigan should be a single unit, having a number of branches, with the supreme court to assume widening control over all lesser courts. This concept differs from that found in the Constitution of 1908, which regards the circuit and probate courts of Michigan as distinct and independent courts. A right of appeal lay from the circuit court to the supreme court, and the supreme court was empowered by the Constitution of 1908 to provide general rules of practice and procedure for all courts. The control of the lower courts by the supreme court ended at this point.

It is the opinion of the minority that the tenor of section a of Committee Proposal 90, as well as the tenor of subsequent sections of the majority proposal, is to increase supreme court dictation to courts at the circuit and probate court levels. We believe that undue interference with courts at the circuit and probate levels, even by the supreme court, will tend to destroy the independence which these lower courts must have if they are to dispense real justice.

CHAIRMAN VAN DUSEN: When last we met, the Chair had noted 3 delegates seeking recognition and will call on them in the order in which they are noted. The first is Delegate Lawrence.

MR. LAWRENCE: Mr. Chairman, members of the committee, I would like to speak in opposition to the minority report and at this time to support the majority report with the understanding, proviso and reserving the fact that I do have an amendment in as to the majority report which is not in order at this time, but which I will mention in only one respect, and that is that the latter part of the majority report which would also be in this report is the part that I have the amendment to; in other words to create a court of county wide jurisdiction inferior to the circuit court.

As many of you know, the matter of selection and tenure of judges has been the one field that I have been interested in for a number of years. I will just mention for those who I haven't told this before that 12 years ago I was placed on the state bar committee of judicial selection and tenure. Five years ago I was made chairman of that committee and have remained such to this time. A part of our duty has been to go into this matter of selection and tenure of judges and their activities on the bench. During the course of those years, I have come to the conclusion that in a state with as large a population, as dense a population as we have in the southeastern part of this state, if we are going to get the efficient and proper use of our judicial manpower, of our courts, there has to be some sort of order. You can't have a number of separate planets operating entirely by themselves, determining the amount of time that they will work, the hours that they will keep, the manner in which their courts will be conducted, and still get the best for the public. Delays are one of the things that the courts are criticized for, and when you have courts operating without any general plan by themselves, delay is fostered.

As to the supervision of the courts, the fear that apparently too much power will remain in the supreme court or be in the supreme court that will effectively hamper the functioning of the lower courts, I have only this observation to make: within the last 3 years it came to the attention of the bar committee that there were certain things going on in Wayne county at the justice court level and particularly in connection with one justice of the peace that were not proper. At the request and at the instance of that bar committee, an investigation was conducted. As a result of that, the justice of the peace resigned.

At that time it was the hope of the committee — and the committee did offer its services to the Wayne county circuit court which has supervisory power over the lower courts in the county — to have an investigation made of all the justice courts. We offered the manpower. There was, of course, no charge for that. We offered to turn the results over to the Wayne county circuit court. Rather than have that occur, a special committee of the Wayne county bar was formed to perform that function.

Now, the difficulty has been that there hasn't been enough supervision rather than too much supervision. There is a need to coordinate the activities of the courts throughout the state — not of telling them how to decide their cases. I don't mean that at all. Certain areas of the state have too few judges. Other areas in the state have a workload so that the judges or the judge in the circuit has some spare time. Also as a result of efforts of that bar committee, the court administrator bill finally was passed in the state and we now have a court administrator whose function it is to see that the workload of the courts is distributed in such a way that if one court is not busy and another court is busy, some assistance is given. So we do have in the state the situation where at certain times of the year at least there is an excess of manpower and at the same time in other areas there is an overloading, and it is in that area where the supreme court, of course, can exercise a very good and beneficial function for the people.

It is only if you do have an integrated court system, however, a court system that starts with a supreme court at the top of the pyramid, goes down through an intermediate appellate court, if one is had, to the circuit and probate courts and on down into the lower courts, that you can make full use of that manpower. And as our state grows — I notice that there are some 4 or 5 more judges now asked for Wayne county at the circuit court level — as more judgeships are created, the need for supervision and coordination of those courts throughout the state is going to be more and more apparent.

For that reason, instead of diluting the committee report, instead of taking away the teeth, in other words, so to speak, of the authority given them as suggested in the minority report, I feel that it should not be lessened, that the court should be given every authority in the constitution to set up a truly integrated and efficient court system in the state. For that reason, it seems to me that, contrary to the best interests of the state, the minority report would tend to weaken that system and would result in the type of thing that we have been faced with in the past of no coordination anywhere, no direction as to the operation of the courts.

CHAIRMAN VAN DUSEN: The delegate from Huron, Mr. McAllister, one of the movers of the amendment.

MR. McALLISTER: Mr. Chairman, fellow delegates, the supreme court has always been considered as an appellate court. The first time there was any superintending control or any indication that they would have some control over the lower courts appeared in the Constitution of 1908. From 1908 until approximately 1959 that superintending control on the part of the supreme court was merely in assigning judges and seeing that dockets were taken care of. During all this period, from 1835 on, the circuit court was an independent court. The probate court was an independent court. In fact, the province of the supreme court was to correct errors in these other courts, and if a judge failed to decide a case according to law, then the aggrieved party appealed to the supreme court and, if the supreme court determined that the judge had erred, they sent it back for a retrial or they made a decision in lieu of the one the judge made, or due to the failure of a judge to make an order that he was required to make, they ordered him to make the order as they decided, and in the event he did not follow their direction, he would be cited for contempt of court.

Now, up until 1958 or 1959, when the Huff case came along, the courts were really independent, and you who are not lawyers are probably interested in the Huff case. In the Constitution of 1908 they required a judge would sit in the circuit in which he was elected and such other circuits as he might be directed to go to. Judge Huff was assigned to Detroit, although he had plenty of work in Saginaw, and another judge was assigned to Saginaw to do his work. He protested and refused to comply, and under the legal authorities, both statutory and constitutional, the supreme court had the right to do what they did, and immediately after that, they formulated a set of rules, and one of the things that was set forth in those rules was that any act that was made by the legislature which was contrary to their rule was of no force or effect, so that today we in effect have in the supreme court by their own

decision and without any other authority except their own minds, a rule that says, even though the legislature passes a statute to govern the courts, if they don't like that rule, it is set aside automatically.

Now, our circuit courts in all the history of Michigan have done a commendable job, and during our hearing before the judiciary committee, we had no complaints that I recall of any circuit court. The complaints that we had were concerning the justices of the peace and the supreme court.

Now, the supreme court, if they become the supreme court in every respect, will be almost able to tell the circuit judge how to part his hair, and the circuit judges will be merely puppets under this legal system. There is no limit to what the supreme court can do to our lower courts.

The circuit judges are elected by the people, and the people know their circuit judges. In my county, my circuit, in the history of that whole area covering a period of about 160 years, we have had 4 judges. There has never been the slightest taint of scandal. They have been elected and reelected without opposition.

There is a trend by a group here in this convention — and maybe their thinking is right — to centralize everything more and more. In other words, they want a head here in Lansing that just will run the whole state, and that is the premise and the only premise on which this unified circuit court system can be sustained. It seems to me that all the way down the line in everything we do we want more people appointed. We want to take more things away from the people.

Now, as far as the circuit judge is concerned, if he does something wrong criminally, he can be arrested. Under the existing constitution and under the new constitution, if he does something corrupt or is guilty of malfeasance or misfeasance in office, he can be removed by impeachment proceedings.

We have a splendid court system, but if the circuit judges throughout this state are going to be continually under control of the supreme court from Ironwood to Monroe and from Benton Harbor to Sault Ste. Marie, and continually harassed, and rules are made for the whole state of Michigan, we are going to be not a better state but a poorer one. Our judiciary is going to be, if not destroyed on a lower level, considerably weakened because of the constant fear and the constant direction of people who are many miles away and in most instances don't know the problems as well as the circuit judge who is on the scene.

So I say that from every angle in this particular matter, we should retain our independent court system because it will give justice in a better form to all concerned. Thank you.

CHAIRMAN VAN DUSEN: The gentleman from Calhoun, Mr. Everett.

MR. EVERETT: Mr. Chairman and fellow delegates, I can say without any false modesty that Tom McAllister and Karl Leibrand are better lawyers than I am. I can also say without any false pride that they are poor historians. The matters about which they complain did not arise in the Constitution of 1908 but were written into the Constitution of 1850 and have been part of the judicial practices of this state for over 100 years. What they are talking about is not trying to stop us from moving forward. What they are suggesting in not only this amendment but other amendments which they plan to offer to later sections is that we move the clock back beyond 1850. The majority of us in the committee felt that we should move forward.

I don't quarrel with them when they say that we have a good circuit bench in this state. I don't think there are any people who could quarrel with them. No doubt the primary reason is because the people in the locality have selected good men. But certainly one of the contributing reasons is the very rulemaking power and superintending power about which they complain. This our supreme court has had for 100 years. It has exercised this sparingly but well and it has made a distinct contribution to the development of an excellent circuit bench. Without it we would certainly not have as good or as strong a bench.

Lawyers who came to us from outstate told us that they were now trying to get what we have had in the state for 100 years, superintending powers, powers of administration vested in the supreme court. Certainly it would be a tragedy to take it away and to do as Don Lawrence has suggested, make 60 or 80 separate courts wandering off in their own direction.

What we are suggesting is not that you go to the other extreme and vest all power in some top area, but that you permit the logical and natural development of a court administration as it is taking place in this state to extend where it belongs, particularly to the lowest level, the inferior court system. Now, the supreme court has had this power for over 100 years, but has never been able to exercise it for the very simple reason that it doesn't have the time or the manpower to the level where as a matter of fact its administration is probably the most necessary.

In the creation of a new intermediate court of appeals we are going to be offered a choice of a hodge podge of different rules in different parts of this state familiar only to those who happen to live and appear in those areas, or some degree of uniformity directed from a central administration. That is the choice we are being offered between the majority and the minority reports. To me there is no choice. There must be a degree of central administration from the top down. So far as I know, all administration flows that way. It would be almost impossible to administer from the bottom up.

I think it goes without saying that we don't share the fears of these gentlemen. The fact that it goes without saying won't keep me from saying it; it hasn't deterred anybody else from saying the unnecessarily unsaid things here before. (laughter) None of us want a system which would destroy a degree of independence, and there should be a degree of independence and there should be total independence within the proper judicial area — the making of decisions. No court above, except through the appellate process, should have a right to change a decision or influence a decision made below.

But in the administrative side of justice, there should be a continuity, a high degree of uniformity — not exact but a high degree — and this can only come about if you permit the direction of administration from some common seat. In our case, obviously, the only obvious one is the supreme court, unless you would create some super administrator. What we are doing here is not going to a totally unified court system. Some members of the committee would like to. Many of us felt otherwise. The majority of us felt otherwise.

We are not creating totally independent courts nor totally dependent courts, but we are trying to create a degree of interrelationship which should exist in a system which is common to the state, and we feel that not only in this particular section but in some of those which follow to which other minority reports will be offered that we have hit a middle ground which will permit development along the lines which our state has taken for 100 years; allow it to proceed in that direction without forcing it into some common mold which many of us feel would not be advisable.

I know that I am representing the opinion of the majority of the committee when I strongly urge you to defeat the amendment and to support the original proposal.

CHAIRMAN VAN DUSEN: Mr. Everett, do you yield to the gentleman from Bay, Judge Leibrand, for a response?

MR. EVERETT: I will be glad to.

MR. LEIBRAND: I will ask Mr. Everett just one question, if I may. Is Delegate Everett familiar with the rules as to the discipline of judges adopted on June 5, 1959, by a majority of the supreme court?

MR. EVERETT: I am not as familiar as you are, Judge.

MR. LEIBRAND: Are you familiar with the last paragraph of rule 1, which provides, "Any statutory provision that is inconsistent with any provision in these rules shall be considered as superseded by these rules"?

MR. EVERETT: That, I am sure, was the rule of our court and the rule of law in the state of Michigan long before the date which you have cited. Court rules within constitutional framework supersede statutes which might be derogatory of constitutional rights.

MR. LEIBRAND: Isn't it correct then to say that it would be a useless gesture for the legislature to provide any proceed-

ings for the discipline of judges, since the supreme court has preempted that field?

MR. EVERETT: I doubt it. You can correct me if I am wrong, but my understanding of the development of procedure within courts is simply this: the legislature has the authority and exercises the authority to enact practice statutes, but these can be modified by the rulemaking power of the supreme court. If the supreme court does not act to modify them, the legislative enactments stand. However, the final authority, because of the provisions of our constitution since 1850 which gave the rulemaking power to the supreme court, give the supreme court the final word in this area. They do not preempt the field in the sense that the legislature may not act, but the supreme court does have the final say.

MR. LEIBRAND: Other than what might be done in this constitutional convention?

MR. EVERETT: No. That power arises from the provision of the constitution which says that the supreme court shall have rulemaking power. That is where they get their authority.

MR. LEIBRAND: Yes, but then this convention is the only body in the state of Michigan that can control the discipline powers of the Michigan supreme court, this body right here.

MR. EVERETT: I would say that you are probably correct, yes.

MR. LEIBRAND: Thank you.

CHAIRMAN VAN DUSEN: The gentleman from Wayne, Mr. Garvin.

MR. GARVIN: Mr. Chairman, delegates, I rise to support the majority report for the following reasons. Reading section a very closely, we will run over it rather rapidly:

> The judicial power of the state is vested exclusively in one court of justice, which shall be divided into one supreme court,

that is important

> — divided into one supreme court, one court of appeals, one trial court of general jurisdiction known as the circuit court, one probate court and other courts of limited jurisdiction that the legislature may establish by a 2/3 vote of the members of each house.

I do not have the written reasons for the amendment. However, Judge Leibrand read them, and it seems that the big objection is to a unified court which would give the supreme court too much power over the circuit courts. I submit, as Mr. Everett did, that they have had power for these number of years, and perhaps sometimes it is needed from some superior body, and according to the rules of the court it would be the supreme court.

Now, for the layman, you can compare the proposed amendment, the minority report, with the majority report and you will find that "vested" is left and "exclusively" is stricken. I don't recall hearing much about the word "exclusively." The other line, line 6, "one court of justice, which shall be divided into" is stricken, which still leaves, "The judicial power of the state is vested in one supreme court, one court of appeals, one trial court of general jurisdiction. . . ." I submit that the majority report does not create such a unified court; that in that particular section it sets up the supreme court as a superior body.

We will get to Committee Proposal 91 which sets out the various authorities for the supreme court and also the justices of the supreme court, to which Delegates Leibrand, McAllister and Donnelly have filed amendments. I am just wondering in making these statements if we are not going ahead of ourselves in discussing the various powers of the supreme court, and I wonder whether this particular section would not be vitiated or controlled by Committee Proposal 91. Until I hear something better or some better reason for changing the present committee proposal, I shall vote for the same.

CHAIRMAN VAN DUSEN: The gentleman from St. Joseph, Judge Mosier. The Chair might suggest that Mr. Garvin may have been unduly optimistic in suggesting that we were going to get to Committee Proposal 91. We still have 9 speakers listed on the amendment.

Excuse me, Judge Mosier. You may proceed.

MR. MOSIER: Mr. Chairman and fellow delegates, for something over 52 years it has been my privilege to observe the courts of this state from the lowest to the highest. And as I look over the Constitution of 1908 dealing with the judicial section, I cannot help but be impressed how well that convention did working with the background of the Constitution of 1850 which carried many of the provisions that have been referred to here today. And as I have seen the Constitution of 1908, I am impressed with the few changes that have been made in that document dealing with the judiciary of Michigan.

It has been said here — and I think that I am only repeating a well known fact — that the judiciary of Michigan has served the people of Michigan well. Remember that when that constitution was written, the population of Michigan was something like 2 million, and today it is close to 8 million and yet that document has served us and served us well.

Now, let's just find out what the facts are. That is the first thing that a lawyer or a judge would be concerned with. The amendment that is proposed to the proposal by the minority strikes out the word "exclusively" in line 1 and strikes out the words "one court of justice" in line 2.

Let's take the first amendment. The proposal made by the committee says, "The judicial power of the state is vested exclusively in one court of justice. . . ." The word "exclusively" in my opinion doesn't add a great deal except as it is tied in to the term that is used in the second line which is new, and that term is "one court of justice."

You have heard other speakers here speak of the fact that throughout the length and breadth of this land, in many court structures they have what they call a unified court, and that was one of the thoughts that prompted this committee to see if it was possible to create our judicial system into a unified court. And the plans that have been produced by the committee which will be presented to this convention provide for 5 tiers. The first, of course, is the supreme court; the second is the court of appeals, which would be new to Michigan; the third is the circuit court; the fourth is the probate court; and the fifth are courts of limited jurisdiction. That is what this section seeks to establish. The phrase "one court of justice" is a phrase or term that is applied to courts that are unified, and it was the feeling of the committee, in making this proposal, that our system was already unified. We, as members of the bar of Michigan, were required to recognize the jurisdiction that the circuit courts had over the justice court, that the supreme court had over the circuit courts, and recently the authority that the supreme court has over the probate court in the matter of superintending power.

Now, the arguments made in favor of the amendment bring into focus things that I think are not to be seriously considered because this doesn't change materially the power of the court. Now, let's see what our court has at the present time. Under our present constitution — and this was written in 1908 — it says:

> The supreme court shall have a general superintending control of all inferior courts; and shall have power to issue writs of error, habeas corpus, mandamus, quo warranto, procedendo and other original and remedial writs, and to hear and determine the same. In all other cases it shall have appellate jurisdiction only.

Now, all of those powers we have had and they have been used. But the constitution goes further and says this, "The supreme court shall by general rules establish, modify and amend the practice in such court and in all other courts, and simplify the same."

Now, I can say as a practitioner before the courts of this state for upwards of 52 years that the practice in this state has been simplified. I remember very well — and some of the older members of this convention will remember — that in 1912, I believe, at the extra session of the legislature they passed the workmen's compensation act, and I know it was the howl of the lawyers at that time that the legislature had put the lawyers out of business because up to that time one of their principal jobs was the handling of labor claims where an employee was injured. The lawyers, of course, at that time weren't able to foresee that the remuneration from that type

of litigation would be replaced by the coming automobile. But there was a form of bringing our court system and means of jurisprudence into line with modern thought.

This proposal does nothing more than to bring all our courts into one system — and I think we have always had it, but it names it in terms and in fact:

> The judicial power of the state is vested exclusively in one court of justice, which shall be divided into one supreme court, one court of appeals, one trial court of general jurisdiction known as the circuit court, one probate court and —

mind you

> — other courts of limited jurisdiction that the legislature may establish by a 2/3 vote of the members of each house.

It will be seen from that that this does not provide for a group of so called splinter courts. These courts will be united in the same manner that they always have been but the proposal by the committee is going to restrain the legislature from creating courts that are somewhat of a hybrid court. We have the superior court of Grand Rapids. We have the court in Detroit that handles the criminal matters. But under this proposal the legislature is confined to courts of limited jurisdiction. In other words the legislature would have power to establish courts in a county, a combination of courts. It might well combine the probate court with a county court or a court having the jurisdiction of a justice of the peace. It might combine it with what we know as the office of circuit court commissioner.

There is nothing to fear by this proposal, and I rise to support the proposal and oppose the amendment.

CHAIRMAN VAN DUSEN: The gentleman from Wayne, Mr. Norris.

MR. NORRIS: Mr. Chairman, I just wanted to ask a few questions for the purpose of making up my mind regarding this amendment and I should like to direct my questions, if I may, to Judge Leibrand, with your permission.

CHAIRMAN VAN DUSEN: If the gentleman cares to answer.

MR. NORRIS: What we have before us is some projected language, and the question in my mind is what is the effect of this language on the rulemaking power, the superintending power and the power to assign judges where they may be needed in the state? Does the contemplated amendment comprehend any alteration or abridgment of these presently existing powers in the supreme court? I understand as far as the majority is concerned these powers would remain unaltered or unabridged. Is it the intention of your amendment, sir, to abridge them or change them in any respect at all?

MR. LEIBRAND: With respect to the power to assign judges from one circuit to another, there is no intent to create a change. With regard to the general rulemaking power, there is no intent to make a change. The amendment or minority report does have some connection, however, with Committee Proposal 91 which follows.

Regarding the power to discipline a judge for misconduct or make rules under which a judge may be disciplined for misconduct, when you speak of discipline, you are speaking of something. No rule is any good unless it is enforceable in some way. The present constitution, the Constitution of 1908, and the proposed judicial article of this constitution place no limit upon penalties. I believe in the Huff case, which arose in 1959, the supreme court, as I recall it, imposed a fine of $100. Since the constitution places no limit upon this rulemaking power so far as it goes to discipline matters and since the legislature cannot control it, since the supreme court rule preempts the legislative field, presumptively the supreme court under its rulemaking power as applied to disciplinary action could remove or suspend a judge of its own motion. And that, Delegate Norris, is what we are trying here to prevent.

What we are trying to do in the minority amendment to Committee Proposal 90 is just simply preliminary to what we are going to try to do in sections b and c, I believe, of Committee Proposal 91. Do you follow me? Does that answer your question?

CHAIRMAN VAN DUSEN: Mr. Norris, have you further questions or do you yield the floor?

MR. NORRIS: Thank you.

CHAIRMAN VAN DUSEN: The lady from Highland Park, one of the movers of the amendment, Miss Donnelly.

MISS DONNELLY: In getting in line waiting to be heard, I think part of my statements have just been answered by Judge Leibrand. I hope the group will forgive all the lawyers. We have been living together so long on this subject that we jump on it and I don't know if the rest can follow us.

To me, part of the argument directed against our amendment to 90 is controlled by our 91 c and d. It is very difficult to argue every proposal at once and I know we are digressing. Mr. Lawrence definitely went after, I believe, the dockets. I think if you will read our c, you will see that we want the dockets controlled. You will also read in our d that we agree the supreme court shall by general rules establish, modify, amend and simplify the practice and procedure. You will also, if you will read our section a realize that we are only striking out the one court and that we are generally retaining everything else.

We have made very subtle changes. Our basis of approach for the subtle changes, in our opinion, is to preserve the individual dignity of the members of the lower benches such as the circuit bench. As a Republican practicing in Wayne county, I am confronted with members of the opposite party on that bench, and I don't want anybody to think for one moment that this member of that bar does not believe that those circuit judges of the opposite party should not be protected. I have every respect for those people. This is the bench that I know the best. I believe that their dignity as well as the dignity outcounty must be preserved. Their individual judicial power should be retained.

As to the argument that things must be unified throughout the state, the state is not the same throughout. In Wayne county we have different problems. I will certainly stipulate that as to history, Mr. Everett was right but I think if Mr. Everett goes back into history, I think he will believe that the Wayne county bench started the pretrial. The Wayne county bench has done much on their local level to change the system throughout the state and to take their problems as they come and to help build forward. To say that each bench must practice in each individual court exactly the same to my mind ignores the difference in basic fact that our lives are somewhat different. Their dockets are different in the degree of busyness and the nature of the cases that come before them.

But I assure you that the minority does not wish to remove most of the supreme court power. If you will read everything together, you will see we are trying to keep the basic power that we believe should be in the supreme court in the supreme court but attempting to retain in the individual circuit judges their individual rights to conduct their courts.

When the dockets are overloaded, when they are not moving correctly, when they wish aid, Wayne bench has given aid, for instance. This is the busiest bench. This is where the worst trouble comes. This is what most people are trying to cure but there are ways of curing it and the minority does not wish to argue, basically, on most of the things the majority wishes; they just wish to retain individual dignity of each member of the lower courts and not to destroy the so called system that has been set up over the years. I think if you go through it, you will realize that our changes are very subtle. They are to the degree of individual power over the individual members of the bench, not over every part of it. We certainly have a 5 tier system, so, obviously, from our amendment we certainly are in accord with this. We are in accord with most of it. We are only dividing from them in the degree over the individual bench.

And the other issue is the conflict between the supreme court rule and the statutes; that the substantive law of the statute shall prevail. We are saying in effect that the rulemaking power should not become the lawmaking power of the state; that we are trying to preserve to the legislature a certain amount of responsibility and right in this field as well as to other people. We are not trying to break down this court

system, in my opinion, in any way. Our changes are minor. They are slight and they are just to the degree of independence of an individual judicial officer.

CHAIRMAN VAN DUSEN: The Chair recognizes that the amendment which is under discussion is one of some breadth and of some degree of interrelation with other proposals but will ask the speakers to try to confine themselves as closely as possible to the amendment currently under discussion. The Chair will recognize the delegate from Bay, Mr. Higgs.

MR. HIGGS: Mr. Chairman and members of the committee, I certainly don't feel that the committee proposal in any way impinges upon the individual dignity of the circuit bench or any other lower court. I would like to call your attention to the word "exclusively" which Judge Mosier has already drawn your attention to. Actually the amendment seeks to strike simply the words "exclusively" and "one court of justice."

You have heard that the theory of unification in the development of this principle was fathered by Dean Roscoe Pound of the Harvard law school. While all due credit should be given to him for having pioneered this principle, this is not a strange principle or really a wild idea. It has a great deal of support in the legal profession. I would like to call your attention to the comparative analysis by the citizens research council of Michigan, which you have received a copy of, and that part under the judicial article which was prepared by the University of Michigan law school under the supervision of Dean Allen F. Smith. I happen to have had the pleasure and what I consider to be an honor to have graduated from that school.

On the second page and returning to the words "exclusively" and "one court of justice", these words appear in the model state judiciary article of the section on judicial administration of the American bar association. Our proposed section a corresponds with the model state judiciary article, with the exception that we have included the probate court and we have not provided for one trial court of limited jurisdiction known as the magistrate court but I think what is particularly important about these particular words that are sought to be stricken may be involved in the statement which appears and that I read on page 2 in that section, "Such a provision would achieve full unification and avoid many questions concerning the technicalities of jurisdiction of various separate courts." And for the layman, whenever you can avoid questions concerning technicalities of jurisdiction, I want to tell you you are talking about saving some money.

I would also like to call your attention to the article appearing in that treatise by Professor Charles W. Joiner, whom we have the privilege of having on our staff, in an article appearing in the Detroit Law Journal, wherein he states:

> The need is for far reaching statutes and constitutional provisions creating an integrated court structure for the state embracing Pound's 4 general principles: (1) unification; (2) flexibility; (3) conservation of judicial manpower; and (4) responsibility.

Thank you.

CHAIRMAN VAN DUSEN: The gentleman from Wayne, Mr. Barthwell.

MR. BARTHWELL: Mr. Chairman, fellow delegates, I think that I am the person here that is in the most unique position on this committee. I think I am the only person on this committee who could have solved, learned and tried to distinguish between what he thinks he has heard and read on this committee because I had no past experiences to be prejudiced by.

One of the things that I think I learned from the testimony and what I read bears out what has been said here, that I found out that Michigan does have a fairly good court system. From some of the experts that testified before us, I heard them hoping that they could get some of what we had in our court system from an administrative point on a voluntary basis.

So for this reason I kind of wanted to fall back on my way of thinking that in this system, since I favor it, anything you can do on a voluntary basis, I seem to feel very much for it. But after sitting awhile with lawyers, they convinced me that not only did you go by what is written down but by what you have written what it means, so I became fairly well convinced that I believe thoroughly in a unified court system, a court system defined in our constitution that wouldn't be changed.

I listened to witnesses from New York, Illinois and maybe Wisconsin or Minnesota, I don't know which, talk about what a hodge podge of courts they have gotten into by having everybody all over the board create courts.

So I, for one, am very much in favor of this unified court system and I think that it has been very well planned in our constitution whereby it preserves what we have and gives us possibilities not to fall into ruts that some other courts have fallen into that were not controlled as definitely by statute and the constitution as we will be. So for this reason, I am very much in favor of the committee's report.

CHAIRMAN VAN DUSEN: The gentleman from Wayne, Mr. Ostrow.

MR. OSTROW: Mr. Chairman, ladies and gentlemen of the committee, I had hoped to avoid just exactly what is happening here now by the explanation I made in my opening remarks but apparently I didn't do a good job.

Regardless of the merits of the amendment of Miss Donnelly, Mr. McAllister and Judge Leibrand, this is not the time or place for that amendment. There isn't a word in Committee Proposal 90 about the jurisdiction of the supreme court or the powers and duties of the supreme court or the supervision and control by the supreme court.

If in the succeeding paragraphs we were to say the supreme court shall have jurisdiction of cases up to $500 and misdemeanors and appeals from the supreme court should go to the probate court, that would be the law. There isn't a word here that is pertinent to the arguments that have been made here. Those arguments belong on Committee Proposal 91 c, which provides the supreme court shall have general superintending control, so forth and so on.

All that this does is say we are going to have this 5 court structure and there isn't anything here that should give rise to the alarms that were expressed here. For that reason, because you are just going to be duplicating it again when you come to 91c, I am opposed to the amendment.

CHAIRMAN VAN DUSEN: Mr. Leibrand.

MR. LEIBRAND: Might I rise to move the previous question?

CHAIRMAN VAN DUSEN: Unfortunately, Judge Leibrand, the previous question is not in order in committee of the whole. The gentleman from Wayne, Mr. Krolikowski.

MR. KROLIKOWSKI: Thank you, Mr. Chairman. In view of the preceding comments, Mr. Chairman, I think it is somewhat difficult to sharply confine oneself to the amendment which is on the floor. So with your indulgence I should like to try to face up to some of the questions that were posed by the proponents of the majority report. As I understand the principal argument advanced by the proponents of this report, they feel that it will enhance the supervision of the courts. Of course, I think Miss Donnelly averred to Committee Proposal 91 c, which certainly would answer this need.

The second argument that they advance for their justification of this proposal is unification. Now certainly, the last clause of the present committee proposal will be unaffected by the minority amendment. Therefore, I don't see any merit to their objection on the grounds of unification.

I think that in weighing the comparative merits of the majority and minority reports, particular attention should be paid to the supporting reasons to the majority report. The majority report incorporates by reference the doctrine of unification enunciated by Roscoe Pound. This doctrine of unification, as I understand it, contemplates a vestiture of power at a base and a vertical flow to all the branches which comprise this system of justice. Now, since the power flows vertically, it follows, under Pound's theory, that the authority is contingent upon this flow of power. Cut the flow of power and you interfere with the authority.

In his own analysis of this system, Roscoe Pound proceeds to demonstrate some of its true merit. He points out that because of these principles, the vertical flow of power, judicial manpower can be utilized very effectively and he goes on to de-

tail how effectively it can be used. This would permit the assignment and reassignment of judges not only in the branches themselves but also between the branches; that is, not only intrabranch assignment but interbranch assignment. This means that its application upon the Michigan court system would be this: the apex of this power could take a circuit judge and reassign him to a lower rung. It could take a municipal judge and reassign him to a circuit basis.

Now, it is conceivable under this Roscoe Pound theory for the supreme court to take a group of circuit judges and actually demote them to a lower tier of activity. I think that this theory is very desirable in the context of an appointive system of justice and, if you note, it is taken from the American bar association plan which, of course, endorses a quasi appointive system.

I submit, however, that the Roscoe Pound theory can be very disruptive in an elective system of justice because a group of constituents electing a circuit judge can have that circuit court judge demoted under the full logical application of the Roscoe Pound theory. I think that since the majority report clearly adopts the theory enunciated by Roscoe Pound, it has the seeds of some serious disaster upon the elective system in the state of Michigan.

For that reason I would urge you to support the minority report amendment.

CHAIRMAN VAN DUSEN: The gentleman from Hillsdale, Mr. Prettie.

MR. PRETTIE: Thank you. Mr. Chairman and fellow delegates, you have been treated in the last 45 minutes to what we of the judicial committee have heard for the past 3½ months. I support in principle the majority report and I oppose, not in its entirety but in part, the minority report amendment for these reasons: if I may invite your attention to the majority report, it speaks first of the judicial power being vested and so forth. The power, as Mr. Krolikowski has just pointed out, is one thing. Our courts are something else. The flow of that power is important. Part of that power stems — I am speaking particularly of the probate courts — from our statutes. The power does not stem from the constitution itself.

As suggested in the minority report, we really have before us 2 questions: is the judicial power of the state vested exclusively in one court of justice and then flowing down or fragmented between our court system? And the second question, as suggested by the minority report, is that we have a court of justice divided into a supreme court and so forth.

Although the amendment as it appears on the wall appears to be an integral amendment, I think to vote intelligently on this, Mr. Chairman and fellow delegates, this question should be divided.

Although I did listen, I think, most attentively certainly in all meetings of our committee to the arguments, the subtleties that Miss Donnelly suggested of the amendment here had rather escaped me until I had an opportunity to hear the debate here this afternoon. I think it would be most unfortunate if we found a constitutional statement that the judicial power is vested exclusively in one court, because it is not.

I think it would be equally unfortunate if we found that our courts could not be divided as they are or if our proposals are adopted, will be divided into several courts and so I support the majority report in principle.

I support the minority report as it proposes the striking of the word "exclusively". I oppose the minority report as to the striking of the remainder of the language and I would ask that the questions be divided when we vote.

CHAIRMAN VAN DUSEN: Mr. Prettie requests that the question be divided when it is submitted for a vote and it will be so divided. The gentleman from Wayne, Mr. Cudlip.

MR. CUDLIP: Mr. Chairman and members, Delegate Cudlip passes and he passes with the hopeful prayer that the members of our profession will not unduly tax the patience of the rest of the committee.

CHAIRMAN VAN DUSEN: Thank you, Mr. Cudlip. The Chair will call to the attention of our visitors today the fact that 35 of our lawyer members have thus far exercised notable self restraint. (laughter) The gentleman from Huron, Mr. McAllister.

MR. McALLISTER: Mr. Chairman, fellow delegates, I will be very brief. It is my interpretation of this proposal in the form in which it is written that the complete power over all courts will be in the supreme court and that in effect any judge who doesn't conform to the rules which the supreme court makes can be removed, suspended or almost anything can be done to that individual. And the most vital part insofar as it affects a judge is that he will have no right to appeal. The supreme court will be judge, jury and prosecutor. And I don't think where we have adequate laws and adequate provisions in the constitution concerning judges that we should ever give exclusive power to the top bracket of the court with the right to do almost anything they desire to do without the individual involved having a remedy. The first principle of American justice is that a man shall have a right to have a fair trial and a right to an appeal.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Miss Donnelly, Judge Leibrand and Mr. McAllister. In accordance with the request of Mr. Prettie, the question will be divided. The secretary will read the first portion of the amendment.

SECRETARY CHASE: The amendment as divided:

1. Amend page 1, line 5, after "vested" by striking out "exclusively"; so the language will then read, "The judicial power of the state is vested in. . . ."

CHAIRMAN VAN DUSEN: The question is on the amendment as so read. Those in favor will say aye. Those opposed will say no.

The amendment is not adopted.

A DELEGATE: Division.

CHAIRMAN VAN DUSEN: Division is requested. Is the demand supported? The demand is supported. The secretary will ring the bell. The secretary will read again for the benefit of our latecomers, the portion of the amendment upon which the question will now be put.

SECRETARY CHASE: The first amendment offered by Miss Donnelly and Messrs. Leibrand and McAllister.

[The amendment was again read by the secretary. For text, see above.]

CHAIRMAN VAN DUSEN: The question is on the amendment. Those in favor will vote aye. Those opposed will vote nay.

MR. DANHOF: Mr. Chairman.

CHAIRMAN VAN DUSEN: Mr. Danhof, for what purpose do you rise?

MR. DANHOF: Mr. Chairman, may I urge the defeat of the amendment?

CHAIRMAN VAN DUSEN: You are not in order but I guess you may. (laughter) For what purpose does the gentleman rise, Mr. Ford?

MR. FORD: A question. Are we now voting on Mr. Prettie's amendment to strike the word "exclusively"?

CHAIRMAN VAN DUSEN: Only on the question of striking the word "exclusively."

MR. FORD: And those who wish to vote no on the amendment will vote by machine or how?

CHAIRMAN VAN DUSEN: We have voted by machine. Have you all voted? If so, the secretary will lock the machine.

Miss Donnelly inquires what the question is. The question is on the amendment offered by Miss Donnelly, Judge Leibrand and Mr. McAllister to strike the word "exclusively" from line 5. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the adoption of the amendment to strike out the word "exclusively" from line 5, the yeas are 47; the nays are 62.

CHAIRMAN VAN DUSEN: The amendment is not adopted. The question is now upon the second portion of the amendment offered by Miss Donnelly, Judge Leibrand and Mr. McAllister. The secretary will read that portion of the amendment. Will the delegates please clear the machine.

SECRETARY CHASE: The second part of the amendment:

1. Amend page 1, line 6, by striking out "one court of justice, which shall be divided into"; so that the language will then read, "The judicial power of the state is vested exclusively in one supreme court, one court of appeals, one trial court" and so forth.

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: On behalf of the committee and the majority, I would urge the defeat of the amendment.

CHAIRMAN VAN DUSEN: The question is on the amendment. Mr. Ford.

MR. FORD: I wish to oppose the amendment.

CHAIRMAN VAN DUSEN: The question is on the amendment. Those in favor will say aye. Those opposed will say no. The amendment is not adopted. The secretary will read.

SECRETARY CHASE: Mr. Lawrence offers the following amendment:

1. Amend page 1, line 8, after "probate court" by striking out the balance of the section and inserting "and a court of limited countywide jurisdiction."; so that the language will read:

> The judicial power of the state is vested exclusively in one court of justice, which shall be divided into one supreme court, one court of appeals, one trial court of general jurisdiction known as the circuit court, one probate court and a court of limited countywide jurisdiction.

[During the proceedings, Mr. Bentley reentered the chamber and took his seat.]

CHAIRMAN VAN DUSEN: On the amendment, the Chair recognizes Mr. Lawrence.

MR. LAWRENCE: Mr. Chairman, members of the committee, on your desk this morning someone, not I — put photostatic copies of the Michigan State Bar Journal. If the members can find it in the maze of papers and will turn to the next to the last page, which is 59, at the bottom of the page is the report of the judicial selection and tenure committee. It starts there. If you will turn then to the last page, you will find under item 1 the following statement; in other words, that our committee recommended in principle the following items that are shown, item 1 being:

> A new state constitution should provide for a court system consisting of a supreme court, an intermediate court of appeals, a trial court of general jurisdiction, a separate probate court and a court of limited county wide jurisdiction.

It is that last part, of course, that this amendment seeks to effect.

One of the difficulties encountered since the 1908 constitution was adopted has been the fact that it has been within the power of the legislature to create courts. As a result of that power the legislature created the superior court of Kent county, or in Grand Rapids anyway; the recorders court in Detroit; the common pleas court and then passed a municipal court act which has allowed municipal courts to spring up throughout the state.

It was the hope that in creating this unified court system, some order could be achieved and that it could be made impossible for these special courts to be created and for that reason the amendment has been made for the fifth tier, so to speak, of this pyramid, the lower tier to provide for a court of limited county wide jurisdiction. Now, I would like to explain that a little bit more. In a county like Wayne, instead of having one court in the city of Detroit, it would be possible to establish branches of that court throughout the county the same as now the justice courts, municipal courts are in the various areas, but that court would be one court. The details of that, of course, would be worked out by the legislature. That would be the same in each county as far as being one county court and it would then be impossible to create, as time went on, additional courts. I don't know whether you realize it or not but for instance in Wayne county a person who commits a crime in the city of Detroit finds that he is to be tried in recorders court. If the same crime is committed outside of the city limits of Detroit, he is tried in circuit court. The recorders court also has other jurisdiction.

There now is before the legislature a bill to create 4 new circuit judgeships in Wayne county. I haven't been able to follow that in the newspapers or obtain the information but there seems to be a slight disagreement between the sponsors of that bill, in any event, and the board of supervisors of Wayne county, because the board of supervisors are going to have to put up ½ plus $1 of those judges' salaries, so they have appointed a committee to investigate to find out if they do need more judges down there. And I believe the recorders court has got into the act by the suggestion having been made that maybe they might do a little more work and take over some of the duties and maybe those additional circuit judges wouldn't be needed. And the recorders court at the same time is saying they don't want to take over those additional duties and they are objecting very strenuously. At least that is what I gather from the paper.

That sort of thing, of course, is not conducive to a proper respect for the court system. It isn't conducive to good court management. I would like to see the court system simplified and the fifth tier of courts, a countywide court system, provided for. Let the legislature implement it by proper act and there would be uniformity throughout the state.

I will admit that there is going to be a great deal of objection in certain municipalities that are depending on the fines from traffic cases and so on for a portion of their income. Let me say that is a deplorable situation also. Our courts should not be money making devices either for the judges who operate them, as we find under the fee system, or for municipalities or other branches of government. I think the proper allowance, if that is a necessary function, for the proper flow back from the county to the municipalities of fines, money that comes in, could be provided for but that seems to me to be more or less beside the point.

Let's get a court system that is uniform so that if your case comes up in one county, you are not going to be before one kind of a court; in another county before another court. I think that the state of Michigan and the people of Michigan will be benefited by the adoption of the amendment.

CHAIRMAN VAN DUSEN: On the amendment, the Chair recognizes Mr. Danhof, the chairman of the committee.

MR. DANHOF: Mr. Chairman, ladies and gentlemen of the committee, a moment ago Mr. Lawrence rose to defend the position of the committee for which I was most grateful and now I find that I must rise to defend the position of the committee against his amendment. What he has stated and the objective which he has is one which perhaps a number of the members of the committee had originally.

Now, insofar as we have the recorders court and the superior court in the city of Grand Rapids, we have provided that in the future this type of court operation cannot arise. These courts — at least the superior court and also it is true of the recorders court — have a jurisdiction that is similar or equal to that of the circuit court and we found that in those states in which there has been a complex of courts of similar or equal jurisdiction, the problems have become tremendous.

Therefore, we have deviated from the 1908 constitution and we would provide that the court of general jurisdiction will be the circuit court and only the circuit court.

Now the recorders court and the superior court of the city of Grand Rapids are created by statute. They are statutory courts that are creatures of the legislature and can be abolished or amalgamated or consolidated by statute. We would hope that perhaps in the distant future this might be done.

The committee began to consider the court of limited jurisdiction. By this we simply mean that there is a constitutional grant of general jurisdiction to the circuit court and that deviation from that grant of power and grant of jurisdiction must be made by statute or otherwise constitutionally as it is later provided.

The circuit court takes cognizance of all matters — and this is true in the 1908 constitution — except that which was constitutionally granted to the justices of the peace and the probate court as it related to children.

But when the committee began to consider this type of lower or limited court structure and we got into the ramifications of establishing a single county court, you just can't find a picture or idea that will fit one mold. The municipal courts are created by the legislature. We studied this problem for something like 3½ months, not exclusively on this one idea as we had other problems to take care of, but the study which will have to be done is something which may take in the neighborhood of 2 or 3 years perhaps, to determine what type of court of limited jurisdiction might be adequate and suitable for the highly urban or the highly industrialized areas, and a totally different type of court of lower jurisdiction, structure, jurisdictional amount, perhaps even where it will be situated, is something in the rural areas which would have to be determined by the legislature. It may be that population classifications will have to be built in.

We found ourselves confronted with the fact that in Wayne county you have municipal courts in tremendous amounts of areas. It may be found by the legislature that the municipal court act should be extended to urban and highly populated townships on a very similar basis. Maybe this is the answer. But this is the court that will change. This is the court that most people will come in contact with over the years. This is the one that will have to vary from locality to locality, which will vary as the population rises in certain areas and falls in others. It can't find a mold in which to fit all counties of this state.

The objective that Mr. Lawrence has is laudable. I realize it was endorsed by the bar association of which I am a member but I can state that we studied the problem. We debated it. We had a subcommittee work on it and they ultimately came to the conclusion that the establishment of these courts of limited jurisdiction should and must be left to the discretion of the legislature and this is what we have adequately and ultimately provided for in this constitution.

I feel, therefore, that we should defeat the amendment. We should retain the wording here which allows the legislature to set up these courts by a 2/3 vote, not a majority. This was done for a reason. It was done for the reason that when the legislature acts, we want it to act more than on a strictly partisan basis. We want it to be the considered opinion of the legislature that this is the right thing for the state of Michigan. We don't think that the establishment of courts by one vote over half is in the best interests and, therefore, we have deliberately left the 2/3 vote, to force — if you wish to say that — the legislature to agree substantially on a court system in its courts of limited jurisdiction.

I therefore feel that to adopt the amendment would not be in the best interests and I therefore very respectfully oppose and urge the defeat of the amendment. Thank you.

CHAIRMAN VAN DUSEN: The gentleman from Wayne, Mr. Ostrow.

MR. OSTROW: Mr. Chairman, ladies and gentlemen of the committee, these judicial department stores or supermarkets sound awfully good on paper but when you have problems — I am thinking now in terms of the public, not of the lawyers or the judges or anybody else — you have a problem with a specific court. If you are charged with a crime, you go to that court, not voluntarily, and you don't want to be mixed up with any other court and while you are being tried for a crime have your estate probated and get a divorce or do 5 or 10 other things. Every large city has its own problems.

Now, the theorists will give you, with this county court, for a county of 2,400 or a county of 15,000 a circuit judge, a probate judge and an inferior court judge and yet they complain about having a municipal judge in a city or a village of 15,000, 25,000, 30,000.

We have a problem in Detroit. We have solved our problem. First I want to take care of this money matter. It was raised once before. It is true that our criminal court, our traffic court, takes in about $5 million. We spent $4,600,000 for libraries, the traffic court costs $2 million, the recorders court costs $5 million to operate.

Our recorders court is recognized as one of the finest courts of its kind in the country. It and its predecessors have been there and have done their jobs since 1824. I think it is the only court in the state of Michigan that works on a 6 day week 52 weeks a year. The reason they have refused to take any circuit court cases is that they don't have the facilities and they don't have the time.

Let me give you some statistics on our recorders court. In 1960 they disposed of 5,735 felony cases, 18,443 misdemeanor cases, 4,511 miscellaneous matters, 5,129 preliminary examinations held or waived. In addition to that, they disposed of 101 condemnation cases with awards totaling $25 million.

They were one of the first courts in the country to have a probation department, a psychiatric department. They have probably tried the highest average number of cases per judge and the time lag between the time a man is arrested and tried is probably shorter than any comparable court in the country, much shorter than circuit court. They are doing their job.

There is no sense in putting in one of these systems unless it is going to improve something. How will it improve anything? I am not familiar with the superior court in Grand Rapids. There must have been an equally good reason for creating that.

As our population grows, other cities will have their problems. I don't understand this dog-in-the-manger attitude. We are not bothering anybody. The legislature created us — I am speaking of the recorders court. They can put us out of business tomorrow. We are doing the job. We have enough problems in the constitution. Let the recorders court alone.

CHAIRMAN VAN DUSEN: The gentleman from Wayne, Mr. Faxon.

MR. FAXON: Mr. Chairman, I would just like to ask Mr. Lawrence a question.

CHAIRMAN VAN DUSEN: If the gentleman cares to answer.

MR. FAXON: Mr. Lawrence, I have not looked at this before. It says Michigan State Bar Journal. It says that the committee sometimes unanimously and sometimes by a majority has agreed in principle that — and then it gives these recommendations and then it has a distinguished group of names of people who are on the committee. Am I to assume that this recommendation has the endorsement of the members of the committee as named here or was this a matter of controversy or just how do I interpret this?

MR. LAWRENCE: Mr. Faxon, don't assume anything. I merely pointed out that item 1, the way it was worded, was the way that I was trying to get our provision, particularly the last phrase there beyond the comma. In other words, the amendment on the board does not show the plan in its entirety. Do you see what I mean? Oh, that wasn't unanimous. There isn't anything on there that was unanimous.

MR. FAXON: In this journal does the committee of which you were chairman report back to a larger group of lawyers or do they just report to the membership?

MR. LAWRENCE: I see what you mean. No. The annual report appears in the bar journal, the September issue of each year and then the bar association annual meeting is held the latter part of September so that when the bar association meets, the committee reports are all before it and at that time they are either adopted or rejected or amended or changed. In this case the report of this committee was accepted. It doesn't say anything.

MR. FAXON: Then as far as these names are concerned of the members of the committee, they may have been split on this question?

MR. LAWRENCE: Oh, yes. They admit that this was the majority rule. Their names appearing on this doesn't mean they all approved of it. No. But they do say it is a correct statement of what the committee adopted, a majority.

MR. FAXON: That is all. Thank you.

CHAIRMAN VAN DUSEN: The Chair recognizes the gentleman from Wayne, Mr. Ford.

MR. FORD: I want to say that I was responsible for placing the copies of the bar journal on the desks of all the delegates. I am sorry that Mr. Lawrence so qualified the recommendation of his committee that — you will notice that he is the chairman of the committee that made the recommendation

we are talking about — that it isn't going to be possible to hold him responsible for all of their recommendations when we get to another section of this judiciary article.

Let me say that the committee considered this particular problem perhaps as long as any other matter that came before us. Judge Pugsley had a subcommittee that did a very, very exhaustive job in examining all sorts of possible forms that such a countywide court might take and the committee was finally compelled to the conclusion that you couldn't devise a single system of countywide courts of limited jurisdiction that would work all over the state of Michigan and I think the committee finally came — and perhaps somewhat reluctantly — to the conclusion that once you pass the level of the probate court and get down to the small peoples' court, the court that handles the more or less minor matters but the one that handles the matters that most people in this state will become involved in, that there are differences that have to be handled on a local level.

There is no question that the law is the same in all counties of the state but the procedures and the type of machinery necessary to enforce the law at the local level are different.

I rise to support the majority report of the committee and oppose the amendment because I feel that our committee did as well as any committee could with this problem and came to the conclusion that when you put the rigidity in that the amendment would put in, you start to get into trouble.

Now let me point out where it happens. Mr. Lawrence says that really he is not saying too much when he says a court of limited countywide jurisdiction. The real difference between his amendment and what the committee says is the "countywide" phrase, because the minute that you freeze into the constitution countywide jurisdiction, that is where we start to have trouble.

There was a proposal for a county court system and there was such a tremendous howl out of the courts in Wayne county that the committee dropped back and took another look at this problem. The common pleas court, for example, which is now on a docket that is well over 3 million, said, "We don't want countywide jurisdiction. We have all the business we can handle within the city of Detroit." And the recorders court said the same thing when we talked to them down there.

Now, down in Wayne county, using it as an example of one of the places where a system that might work in a smaller county comes a cropper, we have 30 municipalities. We have a lot of home rule cities down there and there is included in the home rule concept the idea of local self government, as a principle, the treatment of a local court system and most of the cities in Wayne county and throughout the state have in their charter a municipal court. It is established by charter, subject to restrictions placed on it by the legislature, and the effect of this amendment would be to create a super court. Admittedly, you might have 50 judges in this court and have them spread all over the county, because there are over 50 judges in Wayne county in courts of limited jurisdiction outside of the city of Detroit now and admittedly we don't want to replace them in toto and say to the people, "You now have a court but we're going to put you out of business." Even if this were done, you still get into a situation where you are trying to handle Grosse Pointe in the same manner as Rockwood on the other end of the county and there is a distinct difference.

You can't even use a population factor to try to work this thing out because taking, for example, the Grosse Pointes and the communities out there, some of them have judges who I don't imagine try on the local level 200 cases a year in the whole bunch of them. But when you get into the downriver area where you have a lot of business and industry and communities that are growing and moving, you find that their courts are very busy.

In the last session of the legislature the legislature tinkered with this countywide jurisdiction and, when they did this, they sought to give to the common pleas court — let me back up and say this: the common pleas court and similiar courts now have countywide jurisdiction after you reach a certain amount of money involved in a civil suit, for example. They have countywide jurisdiction in criminal cases now. The justice courts have countywide jurisdiction and so do the municipal courts. But the real hue and cry comes from the people when you start to lump small civil cases — the 15 and 20 and 30 and 50 dollar items — into a super court some place in the city of Detroit where they have to have an attorney represent them on a very small matter because of the very complexity of having it handled in such a large system.

The legislature sought to give the common pleas court countywide jurisdiction and there was an immediate howl not only from all of the lawyers and various groups outside of the city of Detroit but from the common pleas bench itself.

And when our committee was down in Detroit and we asked them about this, they said that they didn't want this countywide jurisdiction; they hadn't supported it in the first instance and they wanted it removed and there is now pending over in the capitol house bill 81 which will revert back to the former jurisdiction because they know already by trying it for a year that it just doesn't work in Wayne county.

And I hate to keep isolating this to our own county because there are unquestionably places in this state where a county court would work advantageously and would be better than what they now have. But the committee recognizes this and recognizes it should be left to the legislature to provide for a method for those counties which want a county court to have one and for those counties where they feel that a county court will not work not to have one.

But Mr. Lawrence's amendment would by constitution require that any inferior court system that is established throughout the 83 counties would have to be a court of countywide jurisdiction. I recommend that you vote against the amendment and vote for the majority report of the committee.

CHAIRMAN VAN DUSEN: The Chair recognizes the lady from Wayne, Miss McGowan.

MISS McGOWAN: Mr. Chairman and members of the committee, I rise in support of the committee report and ask you to vote against the Lawrence amendment. And I think there are some excellent reasons on the committee report for it, and they set them out, and I would like to read a part of them to you:

> . . . it was concluded by the committee that the legislature should be given the leeway and the obligation to create courts of limited jurisdiction. It was the thought of the committee that a flexible system could thus be designed to meet the differing needs of large and small counties.

And for that reason I ask you to vote for the committee report and to vote against the Lawrence amendment. Thank you.

CHAIRMAN VAN DUSEN: The Chair recognizes the mover of the amendment, Mr. Lawrence.

MR. LAWRENCE: I merely would like to say that apparently everybody agrees with the theory in part but not in toto. I think that you should know — I think you are entitled to know — what happened. If you feel it is the proper thing, vote against the amendment. One of the benefits of at least not caring whether you ever appear in court again and having been in this so long that you just are thoroughly imbued with it, you don't care whether you make friends or not.

When I left here one Friday, it was my understanding that we were to have a court of limited countywide jurisdiction. Over the weekend the roof fell in. The first thing that happened was that I received a long telephone call from a judge of the recorders court protesting against this. I then was advised by the paper that they were sending a delegation up to protest against it. It so happened that I couldn't come the first day. I wasn't here. We have been receiving letters from justices of the peace, from the common pleas court. This has been what has been going on. And when I got back, I found that they had made the provision they had and had eliminated the countywide court.

Now, if you want to yield to pressure, if you want that sort of thing to happen, it is all right with me. If you want to establish a court system that will have meaning, that will be the same throughout the county, here is an opportunity.

CHAIRMAN VAN DUSEN: The gentleman from Bay, Mr. Higgs.

MR. HIGGS: Mr. Chairman and members of the committee, I feel constrained to speak on this because I am one that favors a countywide court although at this particular point I am supporting the committee proposal. But a great deal has been said with regard to what is involved. Now, in all due respect to Delegate Lawrence, there is a great deal of truth in what he said. His analysis of the situation fairly fitted the description.

And as a member of the committee, I decided, when we got this immediate howl, not from the people of Taylor township as you might expect, but from the judges, that I would sit back in committee and let the delegates from Wayne county decide this question. I thought, "Why should I tinker with their system if they are happy and satisfied with it?"

And we heard that the recorders court was the finest criminal court in the whole country and of all the citations and awards and that may very well be true because I don't practice in that court. I would like to see a unified court of limited jurisdiction. But it was not long after we had approved the present language of the committee proposal that we began to hear from Delegate Ford and some of the others on the committee of what they wanted us to do in the constitution to correct some of the problems with their recorders court.

For instance, you cannot appeal from a judgment in that court on a conviction for a misdemeanor to the circuit court. You have to go directly to the supreme court because it is a hybrid court. We had many ideas as to how we might solve this problem and work out a limited court of countywide jurisdiction. We never got as far as proposing that the recorders court judges be permitted to retain their incumbency designation and run as circuit judges.

I urge you at this particular juncture to support the committee proposal. I think that within the language of the committee proposal the legislature will have a sufficient degree of flexibility to create a countywide court of limited jurisdiction. I believe there is a lot of merit in it.

Apparently we can't sell this idea in Wayne county at the present time. I don't propose to do that. I will back away from that as far as I can. But when I vote in favor of the committee report and against the Lawrence amendment, I don't want you to feel that it is because I do not have confidence in the proposition that he sets forth. I think it is set forth with a great deal of sincerity and merit and I think we may have an opportunity at some later time in the convention to discuss a countywide court but at this time I urge your support of the committee.

CHAIRMAN VAN DUSEN: The Chair would call to the attention of his fellow attorneys the fact that a few moments ago he counted and we were largely talking to ourselves. Only 40 nonlawyer delegates remained on the floor. (laughter) The Chair will recognize Mr. Pollock.

MR. POLLOCK: Mr. Chairman, fellow delegates, I have no hesitation in talking with lawyers, or against lawyers as far as that goes. (laughter) This isn't a matter of law; this is a matter of organization, structure, and I see no reason why one has to be a lawyer to understand such matters. I have a very simple question. I am not making any speech. I merely wanted to have a point clarified if Mr. Lawrence will be good enough to answer this question. Am I correct in thinking that if your amendment is adopted, this would, among other things, eliminate the justice of the peace system?

MR. LAWRENCE: Delegate Pollock, you are 100 per cent correct.

MR. POLLOCK: Then I have another question. I can't find in any of the other judicial committee proposals that this question is squarely faced up to at any other point. Is that correct?

MR. LAWRENCE: I haven't found it. In other words, if this is put through, we still have the legislature with the legislative courts and the legislature enabled to create additional courts one on top of the other, yes. I would say it is not in there. I didn't get what Mr. Higgs was talking about. I found that he was of kindred mind but I didn't follow where it was coming up later.

MR. POLLOCK: Is this the only point in the report of the judicial committee where the question of the justices of the peace system can properly be discussed and acted upon?

MR. LAWRENCE: I am sorry, I cannot answer that. I don't know.

MR. POLLOCK: Can Mr. Danhof answer the question?

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: Mr. Chairman, Dr. Pollock, the answer to your question is no. Now, it is true that in this section the justices of the peace have been eliminated, if you want to contrast this section to section 1 of article VII of the Constitution of 1908.

It has further been provided that an exclusion report has been filed relative to sections 15 and 16 of article VII of the Constitution of 1908, which granted the constitutional jurisdiction to the justices of the peace.

In section 1, I think, of Committee Proposal 96, it provides that this is given a 5 year moratorium, if you wish to call it that, to the office of justice of the peace and circuit court commissioner. In other words, taking a combination of the 2, Dr. Pollock, as the committee report now stands, within 5 years it will be incumbent upon the legislature to develop, by a 2/3 vote of the members of each house, a system of courts of limited jurisdiction to serve the people of this state.

I agree with Mr. Lawrence that we got a lot of letters and we read things in the paper. I didn't get any phone calls. I think it would not be fair to say that the majority of the committee buckled under the pressure. But when you consider the problems that are involved in setting up a lower, if you want to call it, court structure for all of the counties and the cities and the townships of this state, it is going to necessarily, perhaps, involve different laws creating different types of courts.

The municipal court system of this state is a creature of the legislature. It has proved very beneficial. The American bar association and other organizations have looked to the municipal court system of this state as one of the finest in the nation and this is a creature of the legislature and this is a court of limited jurisdiction.

And it was the feeling of the majority of the committee that the legislature and the court administrator — and we provide for a court administrator and for a staff — during the time that is allotted in this constitution — because this is going to take a lot of study and a lot of detail and even more than we had time to lend to it — along with the deputy court administrator and the bar association, both state and local, to study this and develop what they feel will best serve the needs of the people in the rural areas, in those areas that are half rural and half urban and then in the so called truly metropolitan areas and that is why we left open and allowed the language "and other courts of limited jurisdiction that the legislature may establish."

We have recommended the deletion — and this, I can say, was concurred in by all members of the committee — in the constitution of references to making and creating a constitutional office of justice of the peace and this is the same reason that we did not feel that we should create a constitutional office of countywide court. It might not work. Therefore, we allowed the flexibility.

These other things we set out distinctly because we don't want any more trial courts — this we can have by circuits and by districts; we don't want any more probate courts. But in this field of limited jurisdiction, because of the myriad of problems that you run into due to the complexity of the society of the state, we best can leave it to the legislature.

It means that in 5 years or 10 years after they develop a system, it will have to be changed and it was for this reason that we did not want to hinder it because we have a good municipal court system.

We have provided that there will be no further recorders court or superior court of Grand Rapids. We hope that as time goes on, the legislature has the authority to make the necessary

court reform which it did not have. You find in those states which had real trouble where the court was affected, there was a rigidity in the system and we feel that we have here a good system which sets it up, which will eliminate the problems, which will allow growth for the future. That is why we wrote it as we did, Dr. Pollock.

MR. LAWRENCE: Does that answer the question, Dr. Pollock?

MR. POLLOCK: Yes, I think very adequately.

MR. LAWRENCE: Will you explain the answer to me maybe this evening? (laughter)

MR. POLLOCK: I wanted to bring out the effect of your amendment in the immediate — I assume it would not wait for 5 years — elimination of the justice of the peace system.

CHAIRMAN VAN DUSEN: The Chair recognizes the gentleman from Wayne, Mr. Mahinske.

MR. MAHINSKE: Many of my points have already been made by the prior speakers but I would just like to point out that I would be opposed to the amendment. The basic reason is that I think it goes even further than Mr. Lawrence would want it to go. We have all these special legislative courts here—the superior court of Grand Rapids, recorders court, the common pleas courts and all the municipal courts — that would be abolished overnight and I don't think that Mr. Lawrence would want to create this kind of a situation where overnight recorders court, as such, would be out of business; their total docket would flow over to the Wayne county circuit court, which would create more of a circus down there than we have now. (laughter)

Then at the same time Mr. Lawrence's amendment would strike out the language that gives the legislature the power to create, with the safeguard here by a 2/3 vote, additional courts of limited jurisdiction. I don't think that a countywide court or a court of countywide jurisdiction is the answer to all the problems of all the counties. I think that the amendment is just too rigid. It just won't work all over the state and for that reason I would be opposed to the amendment.

CHAIRMAN VAN DUSEN: Does Mr. Mahinske care to yield to Mr. Lawrence for a reply?

MR. MAHINSKE: Yes, I do.

MR. LAWRENCE: Mr. Mahinske, I don't believe the constitution is going to be adopted overnight. There is going to be plenty of time between the time that the constitution is finalized and the time it goes into effect for the system to be set up.

CHAIRMAN VAN DUSEN: To which, Mr. Lawrence, the Chair might say, "amen." (laughter)

MR. MAHINSKE: And which I might say at the most 60 days. This is practically overnight when you are talking about abolishing this total concept of municipal courts and so forth. Sixty days is not enough time to get yourself prepared for the crash here.

CHAIRMAN VAN DUSEN: The Chair recognizes the gentleman from Ingham, Mr. Wanger.

MR. WANGER: Mr. Chairman, I have a point to add to the discussion which I don't believe has been made before. I am not so much concerned by the fact that Mr. Lawrence's amendment would add a court of limited countywide jurisdiction to the constitution as I am by the fact that his amendment would also prohibit any other court.

Here, for example, in Lansing we are in what we call a tricounty area. While we have not yet annexed, I believe, into Clinton county or Eaton county, it is quite probable that in the not too distant future we will do so, so that our corporate limits will extend across county lines.

Under the Lawrence amendment I see that in order to try an ordinance violation in the city of Lansing, if it was committed in the annexed territory, we would have to go perhaps to St. Johns to get the seat of this court of limited countywide jurisdiction to have jurisdiction over the case because, after all, a city court and a county court or any other court is limited by the word "jurisdiction" not only over the amount of money involved but also over the territory within which violations and violators may be pursued.

So unless I am in error in my interpretation of the language, I think that this defect alone would very definitely be cause for voting against the amendment.

CHAIRMAN VAN DUSEN: The Chair recognizes Judge Pugsley.

MR. PUGSLEY: Mr. Chairman and delegates, I rise to support the committee report. In doing so I wish it to be strictly understood that this is a compromise. I was chairman of the subcommittee and we gave a great deal of study to the matter of the creation of some system of a county court to take over the function of justices of the peace and circuit court commissioners and we tried to work out a system that would be flexible enough to take care of a situation in the very small counties and which would not disturb or upset those efficient courts which are operating in Wayne county.

I don't care to take up more time. I am not happy with this situation and I may as well say so frankly. I think it would have been possible, had we given it a little more time and a little more thoughtful consideration, to have been able to come before this committee at this time with something to take the place of justices of the peace and circuit court commissioners in a form that could have been made workable throughout the entire state. That has not been done. We are leaving the matter entirely with the legislature. I understand that there is a proposal which may be submitted as a supplement later on at the end of this judicial article which may take care of the situation.

I might talk for some time about the facts that have been revealed to this committee which have not been covered by any of the remarks that have been previously made but I don't think it would add any contribution to helping us to reach a decision at this time.

So I am supporting this proposal which has been submitted to you as a compromise with the reservations which I have made. Thank you.

CHAIRMAN VAN DUSEN: The Chair recognizes the delegate from Oakland, Mr. King.

MR. KING: Mr. Chairman, ladies and gentlemen of the committee, I would like to address a couple of questions, if I could, to Mr. Lawrence.

CHAIRMAN VAN DUSEN: If the gentleman cares to answer.

MR. KING: Mr. Chairman, Mr. Lawrence, is it your understanding of this particular wording that the recorders court and the common pleas court in the county of Wayne would be eliminated?

MR. LAWRENCE: I wouldn't say eliminated, of course. I would say that they would cease to be recorders courts and common pleas courts, as such. Obviously they or their successors would become a part of the countywide system.

MR. KING: And, of course, the same would be true of the municipal courts in the various cities?

MR. LAWRENCE: Unless, as a part of the limited countywide courts, the municipal courts or some court of similar stature were created in the municipalities, yes.

MR. KING: With regard to Mr. Wanger's question, would it be possible for the jurisdiction to extend across county lines, say into adjoining counties, or does your language prohibit that, do you think?

MR. LAWRENCE: Well, I would think the words "countywide jurisdiction" would limit that. I don't see how the legislature could vary that. I am sorry, I didn't get Delegate Wanger's import but, if there is some municipal court or justice court that has jurisdiction in 2 or 3 different counties, I wasn't aware of it. I thought I understood what the constitution and the statute said about that.

MR. KING: Mr. Chairman, Mr. Lawrence, would you be willing to accept any amendments to this language which would provide for continuation of existing municipal courts and provide for the possibility as provided by law of jurisdiction crossing into adjoining counties?

MR. LAWRENCE: I would say this: you should vote against the amendment and have the original go through if you want that. That is the very thing it was hoped that we could do away with, to get rid of municipal, justice, recorders,

superior, common pleas and all these different courts. If it is that that you wish to retain, I would say vote against it. In fact, your circuit courts have only jurisdiction basically within the county except in chancery cases. A crime has to be committed in the county in order for the circuit court to have jurisdiction, except in Wayne county, and then if you want to commit a crime and want to get into circuit court, you have to do it outside of the city of Detroit. As I said, I know of no municipal court in the state that has a larger range of jurisdiction than the circuit court.

MR. KING: Thank you.

CHAIRMAN VAN DUSEN: The Chair recognizes the gentleman from Bay, Judge Leibrand.

MR. LEIBRAND: Mr. Chairman, I no longer seek the floor.

CHAIRMAN VAN DUSEN: Judge Leibrand passes. The Chair recognizes the gentleman from Wayne, Mr. Stevens.

MR. STEVENS: Mr. Chairman, members of the committee, I merely wish to compliment Delegate Ostrow on his fine exposition of Detroit's recorders court. As a delegate from Detroit, I must oppose this amendment.

CHAIRMAN VAN DUSEN: The question is upon the amendment offered by Mr. Lawrence which the secretary will read.

SECRETARY CHASE: The amendment offered by Mr. Lawrence:

[The amendment was again read by the secretary. For text, see above, page 1250.]

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Lawrence. Those in favor will say aye. Opposed?

The amendment is not adopted. Are there further amendments to the proposal?

SECRETARY CHASE: Mr. Habermehl offers the following amendment:

1. Amend page 1, line 9, after "establish by a" by striking out "2/3" and inserting "majority"; so the language will there read, ". . . that the legislature may establish by a majority vote of the members of each house."

CHAIRMAN VAN DUSEN: On the amendment the Chair recognizes Mr. Habermehl.

MR. HABERMEHL: I would simply like to call the delegates' attention to the fact that I think we are being more than a little wildly illogical here. We speak in one breath of leaving this matter to the legislature and down at the bottom of the proposed section require a 2/3 vote of the legislature in order to establish any such court of limited jurisdiction.

I find we are illogical largely on the grounds that here in the convention by a simple majority — and on a number of occasions a very slim one — we may put into the constitution for perhaps up to the next 50 years provisions relating to our courts, the changing or amending or revising of which would be extremely difficult. At the same time we would require the legislature to get 2/3 of the members elect, I presume, of each house to try any sort of court system which, if it did not work out, they could repeal at the next session.

I would say that while I am not particularly modest, I don't believe that our judgment, our competence, is that much greater than that of the legislature that what we can do by simple majority and freeze into the constitution, the legislature should not be able to do by the same simple majority, especially since they could repeal it very simply at the next session. I must call your attention to this: even if the need for some additional courts, and particularly these courts of limited jurisdiction, were well demonstrated, were needed by something over 7 million people in the state of Michigan, this 2/3 requirement would permit 12 people to prevent the establishment of any such court, 1/3 plus 1 of the senate. I question again if that is a very good constitutional provision.

We have an additional complication here which unfortunately involves another section but we do know that there will be some sort of moratorium on the present courts of limited jurisdiction. The figure of 5 years have been mentioned. I would ask after the 5 years has expired and in the event of the inability of the legislature to secure a 2/3 vote for the establishment of any courts, is then our circuit court in the counties the lowest or inferior court? There is well the possibility here of an inability on the part of the legislature to secure this sort of a 2/3 majority. If so, the inferior courts or courts of limited jurisdiction would be abolished by constitutional provision. There would be no method to provide any substitute.

Now, it may be said — and I know that this provision has been in the constitution for a long time — that it has worked well in the past. I would simply like to point out that in the last few years there has been a much closer division in the legislature; that what may have worked in the past quite possibly might not work now and if the question has any partisan political overtones — and I have found very few questions here at the convention at least that don't have some partisan political overtones — the possibility of getting a 2/3 majority may be a complete impossibility. I suggest, therefore, that if we are going to let the legislature act in this field in reference to this convention let's at least make it possible for the legislature to act.

CHAIRMAN VAN DUSEN: On the amendment the Chair recognizes the chairman of the committee, Mr. Danhof.

MR. DANHOF: Mr. Chairman, previously in answers to questions propounded by Dr. Pollock, I alluded to this particular provision. In the booklets by the citizens research council, this is commented upon as being a valid restrictive provision. The members of the committee considered this quite carefully and actually for some of the reasons that Mr. Habermehl has put forth, we felt a 2/3 vote was needed so that it would not be partisan. It is not partisan to administer justice properly. One may have a philosophical viewpoint but the administration or the court structure is not a partisan matter. Everybody is in favor of adequate, efficient justice.

And I might state as Judge Pugsley did — and he worked long and hard on this matter and put in many hours and made a very valuable contribution to the committee, especially in this particular field — that we tried and, as he pointed out, maybe we would have, if we could have gone on longer, found a better solution. And this is the very reason for the fact that we have allowed for the 5 year moratorium.

And I would assume — and I would point out to Mr. Habermehl that the 5 year moratorium applies only to the constitutionally recognized offices of justices of the peace and circuit court commissioners — that it would be possible that the circuit court, being the court granted general jurisdiction and there being no other available tribunal, that they would. And I submit that if that happened, we would probably get the fastest action in the legislature that you could imagine.

But the fact remains that if we are going to have a judicial system — and it is only in the requirement of the establishment of the court that you need the 2/3 vote, not in the jurisdiction, dollar amount or territorialwise in the court's function — the committee was of the opinion that, because the political nature of this state is such that it is in even balance, this is even more of a safeguard and a requirement which we should have.

I would therefore urge again, although, as Judge Pugsley said, it is a compromise, we believe it is a good one, because as you see here now, you cannot foresee the problems that you find when you endeavor to go into this particular aspect of a court structure.

I would urge the defeat of the amendment, the retention of the 2/3 vote as it has been in the constitution since 1908.

CHAIRMAN VAN DUSEN: On the amendment, the Chair recognizes the gentleman from Calhoun, Mr. Everett.

MR. EVERETT: If Mr. Ford wishes to speak, I would yield to him.

CHAIRMAN VAN DUSEN: The Chair recognizes the delegate from Wayne, Mr. Ford.

MR. FORD: I would like to support the explanation just given by the chairman of the committee, urge that you vote no on the amendment and reemphasize that it is the feeling of the committee that the legislature should move very slowly in the creation of new courts. As Bob has indicated, this in no

way limits the legislature in changing the jurisdiction of existing courts but it is our view that before they take the step of creating an entirely new court as a part of the system, they ought to be absolutely sure of what they are doing over there.

CHAIRMAN VAN DUSEN: Mr. Everett, do you still desire recognition?

MR. EVERETT: I pass.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Habermehl which the secretary will read.

SECRETARY CHASE: Mr. Habermehl's amendment:

[The amendment was again read by the secretary. For text, see above, page 1255.]

CHAIRMAN VAN DUSEN: Those in favor of the amendment will say aye. Opposed will say no.

The amendment does not prevail. Are there further amendments to the proposal?

SECRETARY CHASE: There are none on file, Mr. Chairman.

CHAIRMAN VAN DUSEN: If not, the proposal will pass. Committee Proposal 90 is passed and the secretary will read.

SECRETARY CHASE: Item 2 on the calendar, from the committee on judicial branch, by Mr. Danhof, chairman, **Committee Proposal 91,** A proposal pertaining to the supreme court. A substitute for sections 2, 4, 5, 6 and 7 of article VII.

Following is Committee Proposal 91 as read by the secretary, and the reasons submitted in support thereof:

The committee recommends that the following be included in the constitution:

Sec. a. THE SUPREME COURT SHALL CONSIST OF 9 JUSTICES, TO BE ELECTED BY THE ELECTORS OF THE STATE. THE TERM OF OFFICE SHALL BE 8 YEARS. NOT MORE THAN 3 TERMS OF OFFICE SHALL EXPIRE AT THE SAME TIME.

Sec. b. ONE JUSTICE OF THE SUPREME COURT SHALL BE SELECTED BY THE COURT AS ITS CHIEF JUSTICE IN THE MANNER AND FOR THE TERM PROVIDED BY THE RULES OF THE COURT. HE SHALL PERFORM SUCH OTHER DUTIES AS MAY BE REQUIRED BY THE COURT. THE SUPREME COURT SHALL APPOINT AN ADMINISTRATOR OF THE COURTS AND OTHER JUDICIAL ASSISTANTS AS SHALL BE DEEMED NECESSARY TO AID IN THE ADMINISTRATION OF THE COURTS IN THE STATE. THE ADMINISTRATOR SHALL, UNDER THE DIRECTION OF THE SUPREME COURT, PREPARE AND SUBMIT TO THE LEGISLATURE THE BUDGET FOR THE COURT AND PERFORM ALL OTHER NECESSARY FUNCTIONS RELATING TO THE REVENUES AND EXPENDITURES OF THE COURT. HE SHALL PERFORM THE OTHER DUTIES THAT MAY BE ASSIGNED BY THE COURT.

Sec. c. THE SUPREME COURT SHALL HAVE: A GENERAL SUPERINTENDING CONTROL OVER ALL COURTS; POWER TO ISSUE, HEAR, AND DETERMINE PREROGATIVE AND REMEDIAL WRITS; APPELLATE JURISDICTION AS PROVIDED BY SUPREME COURT RULE.

Sec. d. THE SUPREME COURT SHALL BY GENERAL RULES ESTABLISH, MODIFY, AMEND AND SIMPLIFY THE PRACTICE AND PROCEDURE IN ALL COURTS IN THE STATE. THE DISTINCTIONS BETWEEN LAW AND EQUITY PROCEEDING SHALL, AS FAR AS PRACTICABLE, BE ABOLISHED. THE OFFICE OF MASTER IN CHANCERY IS PROHIBITED.

Sec. e. DECISIONS OF THE SUPREME COURT, INCLUDING ALL DECISIONS ON PREROGATIVE WRITS, SHALL BE IN WRITING AND SHALL CONTAIN A CONCISE STATEMENT OF THE FACTS AND REASONS FOR EACH DECISION. WHEN A JUDGE DISSENTS IN WHOLE OR IN PART HE SHALL GIVE IN WRITING THE REASONS FOR HIS DISSENT.

Sec. f. THE SUPREME COURT MAY APPOINT AND REMOVE ITS STAFF AND SHALL HAVE GENERAL SUPERVISION OF THE STAFF OF THE COURT AND CONTROL OF THE EXPENDITURE OF THE FUNDS APPROPRIATED FOR ANY PURPOSE PERTAINING TO THE OPERATION OF THE COURT OR THE PERFORMANCE OF ACTIVITIES OF ITS STAFF, EXCEPT THAT THE SALARIES OF THE JUSTICES OF THE SUPREME COURT SHALL BE ESTABLISHED BY LAW. ALL FEES, PERQUISITES AND INCOME COLLECTED BY THE CLERK SHALL BE TURNED OVER BY HIM TO THE STATE TREASURY AND CREDITED TO THE GENERAL FUND. NO JUSTICE OF THE SUPREME COURT SHALL EXERCISE ANY OTHER POWER OF APPOINTMENT TO PUBLIC OFFICE, EXCEPT AS OTHERWISE PROVIDED HEREIN.

Sec. g. ALL PRIMARY ELECTIONS AND ELECTIONS OF JUSTICES OF THE SUPREME COURT SHALL BE NONPARTISAN. THERE ARE HEREBY ESTABLISHED 7 JUDICIAL DISTRICTS, INITIALLY CONSTITUTED AS FOLLOWS:

JUDICIAL DISTRICT 1, COMPRISING WAYNE COUNTY.

JUDICIAL DISTRICT 2, COMPRISING OAKLAND COUNTY.

JUDICIAL DISTRICT 3, COMPRISING THE COUNTIES OF MONROE, LENAWEE, WASHTENAW, LIVINGSTON, SHIAWASSEE AND GENESEE.

JUDICIAL DISTRICT 4, COMPRISING THE COUNTIES OF MACOMB, ST. CLAIR, SANILAC, HURON, LAPEER, TUSCOLA AND SAGINAW.

JUDICIAL DISTRICT 5, COMPRISING THE COUNTIES OF BERRIEN, CASS, VAN BUREN, KALAMAZOO, ST. JOSEPH, BRANCH, CALHOUN, HILLSDALE, JACKSON AND INGHAM.

JUDICIAL DISTRICT 6, COMPRISING THE COUNTIES OF MUSKEGON, KENT, OTTAWA, MONTCALM, IONIA, GRATIOT, CLINTON, ALLEGAN, BARRY AND EATON.

JUDICIAL DISTRICT 7, COMPRISING ALL OTHER COUNTIES OF THE STATE.

THERE SHALL BE NOMINATED AND ELECTED 3 JUDGES FROM JUDICIAL DISTRICT 1, AND 1 JUSTICE FROM EACH OF THE JUDICIAL DISTRICTS 2 TO 7, INCLUSIVE.

THE LEGISLATURE SHALL, IF NECESSARY, PROVIDE BY LAW FOR TRANSFER OF COUNTIES FROM ONE JUDICIAL DISTRICT TO ANOTHER ON JANUARY 1, 1973, AND EACH TENTH YEAR THEREAFTER, TO THE END THAT NO JUDICIAL DISTRICT SHALL HAVE A POPULATION BASED UPON THE LAST UNITED STATES DECENNIAL CENSUS OF LESS THAN ¼ NOR MORE THAN ½ OF THE POPULATION OF JUDICIAL DISTRICT 1: BUT NO SUCH CHANGE SHALL HAVE THE EFFECT OF REMOVING A JUSTICE FROM OFFICE, OR AFFECT HIS QUALIFICATIONS TO BECOME A CANDIDATE FOR REELECTION IN THE DISTRICT FROM WHICH ELECTED.

EXCEPT AS IN THIS CONSTITUTION OTHERWISE PROVIDED, ALL PRIMARY ELECTION AND ELECTION LAWS, INCLUDING LAWS PERTAINING TO PARTISAN PRIMARIES AND ELECTIONS, SHALL, SO FAR AS APPLICABLE, GOVERN NOMINATING PROCEDURES, PRIMARY ELECTIONS, AND ELECTIONS HEREUNDER.

ALL JUSTICES OF THE SUPREME COURT HOLDING OFFICE ON THE DATE THIS CONSTITUTION SHALL BECOME EFFECIVE, SHALL SERVE OUT

Explanation—Matter within [ ] is stricken, matter in capitals is new.

THE TERM FOR WHICH THEY SHALL HAVE HERETOFORE BEEN ELECTED OR APPOINTED.

ANY JUSTICE HOLDING OFFICE ON THE DATE THIS CONSTITUTION SHALL BECOME EFFECTIVE, WHO IS NOT OTHERWISE DISQUALIFIED FOR REELECTION, MAY BE A CANDIDATE FOR REELECTION IN ANY DISTRICT WITHOUT REGARD TO HIS PLACE OF RESIDENCE.

ALL CANDIDATES FOR ELECTION AS JUSTICE OF THE SUPREME COURT WHO ARE NOT HOLDING OFFICE ON THE DATE THIS CONSTITUTION SHALL BECOME EFFECTIVE, SHALL BE RESIDENTS OF THE JUDICIAL DISTRICT FROM WHICH THEY ARE CANDIDATES.

TRANSITION FROM THE PRESENT ESTABLISHED LAW FOR THE ELECTION OF JUSTICES OF THE SUPREME COURT TO THE METHOD HEREIN PROVIDED SHALL BE PROVIDED BY LAW, INCLUDING THE ORDER OF ROTATION IN WHICH ELECTIONS SHALL BE MADE FROM EACH OF THE FOREGOING JUDICIAL DISTRICTS.

Mr. Danhof, chairman of the committee on judicial branch, submits the following reasons in support of Committee Proposal 91:

Sec. a. This section supplants section a, article VII of the Constitution of 1908 increasing the total number of justices to 9. It eliminates a former provision concerning the chief justice, "to be chosen by the electors of the state" and, in the last section, provides for the election of the chief justice by the members of the court. This section continues the present statutory 8 year term of office. By reason of the increase in total membership of the court, the last sentence provides for not more than 3 terms of office to expire at the same time — thus replacing the present provision that "Not more than 2 justices shall go out of office at the same time."

Sec. b. This is a new section. The first sentence clearly provides for the selection of the chief justice by the members of the court. This has been the practice of the court for several decades, although section 2 of article VII of the Constitution of 1908 would appear to require that the chief justice "be chosen by the electors of the state."

The committee is of the opinion that the members of the court are better qualified than the electors to make the selection of their own chief justice. This provision will give constitutional sanction to the existing practice.

The second sentence clearly provides a method for establishing the duties of the chief justice.

The third and fourth sentences implement the language appearing in section 4 with reference to the power of "superintending control" over all courts of lesser jurisdiction. This language will give constitutional sanction to the existing office of the court administrator, and will clearly spell out the source of his authority.

Sec. c. This section is a revision of section 4 of article VII of the Constitution of 1908. It substitutes the general term, "prerogative and remedial writs" for the list of historic writs contained in the 1908 constitution. The change accomplished by the final language permits the court to control its appellate jurisdiction by rule. It is the opinion of the committee that the language proposed will shorten and clarify this section.

Sec. d. This section is a revision of section 5 of article VII of the Constitution of 1908. In addition to existing powers of the court, power is conferred to simplify both practice and procedure. The second sentence gives constitutional sanction to the judicature act of 1960, by which distinctions between law and equity have been abolished. The last sentence continues the language of the 1908 constitution without change so that the office of master in chancery is prohibited.

Sec. e. This section is a revision of section 7 of article VII of the Constitution of 1908. The reference to "prerogative writs" replaces the list of historic writs contained in the present constitution. The proposed section continues the requirement of written opinions with a statement of facts and reasons for each decision. The final sentence requires a statement of reasons for all dissents whether in whole or in part. The eliminated language of the 1908 constitution requiring signature of opinions and filing of the same is, in the opinion of the committee, unnecessary. This practice is well established and it appears unnecessary to encumber the constitution with this requirement.

Sec. f. This is a new section, replacing and simplifying section 6. It extends the appointive power of the supreme court and its supervising control to its entire staff, instead of limiting it to the officers named in section 6 of article VII of the Constitution of 1908.

It continues the existing requirement that all receipts of the court shall be credited to the general fund. It also continues the prohibition against appointments by the supreme court to public office, excepting for the appointment of the staff of that court and other appointments of retired members of the judiciary to fill vacancies in the courts of the state by appointment of retired members of the judiciary. The details of such appointment which will continue only until such vacancies are filled by election, are covered in other sections of this committee's proposals.

Other proposals of this committee, which will be separately dealt with, permit the supreme court to authorize persons who have served as judges and who have voluntarily retired, to perform judicial duties for a limited period of time until a vacancy in judicial office is filled by election. The final language of this proposal is for the purpose of permitting the supreme court to make such interim appointments, and in the opinion of the committee, is necessary to correlate these 2 sections.

Sec. g. The committee on judicial branch has had under consideration since November 7, 1961, Delegate Proposal 1218. This was revised and again submitted on December 1, 1961, as Delegate Proposal 1488. The committee has heard the testimony from scores of witnesses bearing upon the method to be used in nomination and election of the justices of the supreme court. It has been faced with a choice between:

1. Some appointive method providing either for appointment of justices of the supreme court by the governor:

(a) With the advice and consent of the senate; or

(b) From a list of qualified appointees submitted in accordance with the so called "Missouri plan", or "ABA plan".

2. The continuance of the present provisions of section 23, as implemented by statute, which results in partisan nomination of justices of the supreme court followed by "nonpartisan" statewide election.

3. A constitutional change or direction to the legislature to provide for a statewide nonpartisan primary followed by a statewide nonpartisan election or, in the alternative, a statewide partisan primary followed by a statewide partisan election.

4. A plan for election of justices of the supreme court from areas within the state so arranged as to be as nearly as possible equal in population and availability of qualified candidates.

On January 16, 1962, the committee first considered the general subject of appointment as a general principle, with a vote of 18 opposing, one in favor and 2 absent.

On the same date, the committee took a tentative vote on the Missouri and ABA plans with the result that 15 opposed this principle; 3 were in favor of it and 3 were absent.

This was followed by a tentative vote on the principle of continuing some elective system. This vote resulted in 10 in favor, 8 opposed and 3 absent.

Following these tentative votes, additional work continued by members of the committee toward further refinement and perfection of the plan for district nonpartisan nomination and election of justices of the supreme court.

Explanation—Matter within [ ] is stricken, matter in capitals is new.

This work was completed and a revised proposal was submitted on January 25, 1962.

This revised plan established 7 judicial districts and provided for the nonpartisan nomination and election of 3 members of a 9 man court from judicial district 1, comprising the county of Wayne and containing 1/3 of the state's population; one justice from Oakland county, containing slightly less than 1/9 of the state's population but having a growth potential; and one justice each from each district as follows:

JUDICIAL DISTRICT 3, COMPRISING THE COUNTIES OF MONROE, LENAWEE, WASHTENAW, LIVINGSTON, SHIAWASSEE AND GENESEE.

JUDICIAL DISTRICT 4, COMPRISING THE COUNTIES OF MACOMB, ST. CLAIR, SANILAC, HURON, LAPEER, TUSCOLA AND SAGINAW.

JUDICIAL DISTRICT 5, COMPRISING THE COUNTIES OF BERRIEN, CASS, VAN BUREN, KALAMAZOO, ST. JOSEPH, BRANCH, CALHOUN, HILLSDALE, JACKSON AND INGHAM.

JUDICIAL DISTRICT 6, COMPRISING THE COUNTIES OF MUSKEGON, KENT, OTTAWA, MONTCALM, IONIA, GRATIOT, CLINTON, ALLEGAN, BARRY AND EATON.

JUDICIAL DISTRICT 7, COMPRISING ALL OTHER COUNTIES OF THE STATE.

The relative population of the districts so established would then be as follows:

Judicial district number	Number of counties	Number of justices	Population per justice
1	1	3	888,766
2	1	1	690,259
3	6	1	817,341
4	7	1	855,308
5	10	1	999,019
6	10	1	904,908
7	48	1	890,062

A study was also made of the distribution of lawyers in the state within each judicial district. This indicated that aside from public officers, house counsel and law school professors, the lawyer population including judiciary and inactive members of the bar in the proposed districts would be approximately as follows:

Judicial districts	Lawyer population
1	4,215
2	566
3	545
4	520
5	767
6	581
7	516

This tabulation illustrates the fairly constant proportion of lawyers to population in each of the proposed judicial districts.

Arguments presented before the committee in support of the district election plan included the following:

1. Candidates would be better known to voters of districts in which they were candidates.

2. The compact and contiguous areas comprising the districts (except possibly district 7) would make it possible for candidates to meet and know the voters which they cannot do when elected on a statewide basis.

3. The division of the state is on a population basis as nearly as possible equal.

4. Balance would be maintained in the type of men sitting on the court between all parts of the state, thus assuring a statewide approach to cases before the court. While such balance is now maintained in part by the present nominating process in which recognition is given to residence of the candidate, among other factors, there is no assurance or legal requirement that this will always obtain.

5. It is consistent with the overwhelming sentiment for a nonpartisan judiciary.

6. It would eliminate the present inconsistency of partisan nomination followed by "nonpartisan" election.

7. It would remove the inordinate expense to be borne by each candidate of having to campaign statewide for nomination (absent nomination at party convention) followed by a second statewide campaign at the individual expense of the candidate presumably without any party backing.

8. Elimination of items mentioned in paragraphs 6 and 7 could be expected to attract as candidates men of the highest ability, regardless of party affiliation or financial status.

9. The assured geographic distribution of justices would make it possible for every lawyer in the state to strive for such excellence that his fellow lawyers and the public might think him worthy to serve on this high court even though he should not become famous as a great trial lawyer.

10. This plan could be equally applicable to the election of judges of the court of appeals and with the same advantages.

11. The districts could be integrated into a court of appeals structure, with

One court of appeals serving district 1;
One court of appeals serving districts 2, 3, 4;
One court of appeals serving districts 5, 6, 7;
and possibly sitting in divisions at:
(a) Grand Rapids;
(b) Some place in the northern portion of the lower peninsula;
(c) Some place in the upper peninsula.

12. The districts are drawn in correspondence to presently existing circuit court boundaries. Thus all cases from any given circuit would be appealed to the same court of appeals.

13. While this plan would be new in Michigan, it is not unique. Some states already have it, notably Illinois, and they thought so highly of it that they retained it in their very recent overhaul of their court system.

14. Such a structure would provide an appellate court located at no great distance from any place in the state and should result in a reduction in both time and expense for those using these courts. Thus the best interest of the public would be served.

The majority of the committee rejected the argument that the district plan would lead to "balkanization of the state and to parochialization of the state's judicial process". It was pointed out by members of the committee who had served as circuit judges in many parts of the state that justice was administered with an even hand regardless of where an individual judge might reside or the location of the court in which he might preside.

It was further pointed out that over the years the justices of the supreme court have been called to that bench from many parts of the state but that once elected they performed their duties with a view to the law in the state as a whole. There was no evidence that the district plan would in any wise change the statewide view of those elected to the supreme court.

Certain members of the committee continued to advocate some appointive system modeled on the Missouri or ABA plan. Others favored continuance of the present partisan nomination followed by nonpartisan election. Still others suggested a return to complete statewide partisan nomination and election. This division in the committee continued until January 31, 1962, at which time the committee voted in favor of the plan as submitted and revised, with 11 votes in favor, 5 opposed and 5 absent or abstaining.

The committee proposal, therefore, contemplates nonpartisan primary and election on a district basis as therein set forth.

Explanation—Matter within [ ] is stricken, matter in capitals is new.

It further provides flexibility in permitting transfer of counties from one judicial district to another following each decennial census, so that no single judicial district would have a population of less than ¼ or more than ½ of the population of judicial district 1, (Wayne county). Such transfer, however, shall not result in removal of a justice, nor shall it disqualify him for reelection.

The proposal makes existing election laws applicable to all primaries and elections for justices of the supreme court. It continues in office incumbent justices without regard to place of residence and permits their reelection. It empowers the legislature to provide for transition from present methods of election to the method provided in the proposal.

Following is minority report A to Committee Proposal 91 as offered (no reasons were submitted in support thereof):

Miss Donnelly, Messrs. Leibrand and McAllister, a minority of the committee on judicial branch, submit the following minority report to Committee Proposal 91:

A minority of the committee recommends that the following be included in the constitution:

Sec. b. ONE JUSTICE OF THE SUPREME COURT SHALL BE SELECTED BY THE COURT AS ITS CHIEF JUSTICE IN THE MANNER AND FOR THE TERM PROVIDED BY THE RULES OF THE COURT.

Sec. c. THE SUPREME COURT SHALL HAVE: A GENERAL SUPERINTENDING CONTROL OVER THE DOCKETS OF THE APPELLATE COURT AND CIRCUIT COURTS; POWER TO ISSUE, HEAR, AND DETERMINE PREROGATIVE AND REMEDIAL WRITS; APPELLATE JURISDICTION AS PROVIDED BY SUPREME COURT RULE, IT BEING PROVIDED THAT THE SUPREME COURT SHALL NOT HAVE THE POWER TO REMOVE OR SUSPEND A JUDGE.

Sec. d. THE SUPREME COURT SHALL BY GENERAL RULES ESTABLISH, MODIFY, AMEND AND SIMPLIFY THE PRACTICE AND PROCEDURE IN ALL COURTS IN THE STATE, IT BEING PROVIDED THAT WHERE THERE IS A CONFLICT BETWEEN SUPREME COURT RULE AND A STATUTE CONCERNING EVIDENCE OR SUBSTANTIVE LAW THE STATUTE SHALL PREVAIL. THE DISTINCTIONS BETWEEN LAW AND EQUITY PROCEEDING SHALL, AS FAR AS PRACTICABLE, BE ABOLISHED. THE OFFICE OF MASTER IN CHANCERY IS PROHIBITED.

Sec. e. DECISIONS OF THE SUPREME COURT, INCLUDING ALL DECISIONS ON PREROGATIVE WRITS, SHALL BE IN WRITING AND SHALL CONTAIN A CONCISE STATEMENT OF THE FACTS AND REASONS FOR EACH DECISION AND DENIAL OF LEAVE FOR APPEAL. WHEN A JUDGE DISSENTS IN WHOLE OR IN PART HE SHALL GIVE IN WRITING THE REASONS FOR HIS DISSENT.

Following is minority report B to Committee Proposal 91 as offered and the reasons submitted in support thereof:

Messrs. Ford, Garvin, Bledsoe, Miss McGowan, Messrs. Ostrow, Barthwell and Krolikowski, a minority of the Committee on judicial branch, submit the following minority report to Committee Proposal 91:

A minority of the committee recommends that the following be excluded from the constitution:

Section g, beginning on line 25, page 2.

Messrs. Ford, Garvin, Bledsoe, Miss McGowan, Messrs. Ostrow, Barthwell and Krolikowski, a minority of the committee on judicial branch, submit the following reasons in support of the foregoing minority report, which accompanied Committee Proposal 91:

The purpose of the minority report is to eliminate all of section g, which contains the plan for "balkanizing" the supreme court by establishing districts for the election of judges to replace the present system of election on an at large basis. It is the belief of the proponents of this minority report that the present system wherein the election of supreme court justices is on a statewide nonpartisan basis, has worked very well in our state.

The legislature has provided a system of nomination and election under the 1908 constitution which has worked very well in the state of Michigan. By removing the language contained in section g, the legislature would have the power to revise the present procedure to meet changing needs of the state and devise the best possible system: Provided however, That election of supreme court judges would be on a statewide, nonpartisan basis.

The state bar committee on court administration, consisting of 42 members headed by Judge Noel P. Fox, recommended in 1961 in its report to the state bar that "the present system of nominating and electing supreme court justices be retained, the same provisions to apply to judges of an intermediate court of appeals, if the latter court be established by the constitution".

The district plan for election of supreme court justices would result in disenfranchising a majority of the electors in the state from voting for all of the judges exercising statewide power and jurisdiction. It is difficult to conceive of any principle which would limit a supreme court justice's opinions and point of view to a particular district of the state rather than to the state as a whole. The district plan would strongly tend to inject sectionalism into the opinions and decisions of the court.

In conclusion, the proponents of this minority report believe, after listening to testimony by representatives of the bench and bar throughout the state and at all levels, as well as representatives from the bar associations of other states, that our present system for selection of supreme court justices is far superior to any alternative plan presented before our committee.

Explanation—Matter within [ ] is stricken, matter in capitals is new.

[Section a was read by the secretary. For text, see above, page 1256.]

CHAIRMAN VAN DUSEN: The Chair would inquire of the chairman of the committee: is it your desire that we take this proposal up section by section?

MR. DANHOF: It is, sir.

CHAIRMAN VAN DUSEN: The Chair recognizes the chairman of the committee, Mr. Danhof, with respect to section a of Committee Proposal 91.

MR. DANHOF: Mr. Chairman, members of the committee, section a sets up a supreme court of 9 justices, one more than we have now. It provides that they shall be elected by the electors of the state, the term to be 8 years and not more than 3 terms shall expire at the same time.

I should like to point out that section a is tied inexorably to section g of Committee Proposal 91, section g being the majority report of the committee concerning the selection of the supreme court.

The majority report is that the justices shall be elected from various districts as are set forth in section g. I would point out to the committee that it will be necessarily determined that if section g is adopted by the majority of this committee, then section a should go with it in order that there be a logical number to fit the various districts that have been proposed by the majority of the committee.

I would, therefore, recommend and move that at this time the provision and the matter relating to section a be passed until we get to section g and have determined the method and the selection and that we then return, after consideration of section g, to the provisions of section a and I so move.

CHAIRMAN VAN DUSEN: The question is on the motion of Mr. Danhof that further consideration of section a be postponed until following consideration of section g of the proposal. Mr. Ford.

MR. FORD: Mr. Chairman, I would like to support the chairman of the committee in this motion.

CHAIRMAN VAN DUSEN: The question is on the motion of Mr. Danhof. Those in favor will say aye. Opposed?

The motion prevails. The secretary will read section b.

SECRETARY CHASE: Section b:

[Section b was read by the secretary. For text, see above, page 1256.]

CHAIRMAN VAN DUSEN: The Chair will advise the proponents of the minority report that following the regular practice, we will hear first from the chairman of the committee with respect to the section, following which we will go to consideration of the minority report. The Chair recognizes Mr. Danhof, chairman of the committee.

MR. DANHOF: Mr. Chairman, members of the committee, you will note that in essence there are 2 matters that are put forth in this particular provision. The first 2 sentences relate to the selection of the supreme court of its chief justice and the second sentence states that the duties that he shall perform shall be as required by the court. The remaining portion of this section is that we will create a constitutionally known office of court administrator who shall be appointed by the supreme court and take care of the matters that have been set forth.

I think that it would be in order, Mr. Chairman, to consider the first 2 sentences first, inasmuch as they relate to the chief justice, his selection and his duties, and that the section be divided so that the remaining sentences beginning "The supreme court shall appoint an administrator . . ." be taken separately. Would this be agreeable?

CHAIRMAN VAN DUSEN: Mr. Danhof suggests that the first 2 sentences of section b be considered separately, and without objection, they will be so considered.

MISS DONNELLY: I object.

CHAIRMAN VAN DUSEN: There is objection. Mr. Danhof, unless you choose to make a motion, we will proceed to consider the entire section.

MR. DANHOF: I understand from Miss Donnelly the minority report starts on the second sentence. Would it be agreeable to take it sentence by sentence?

CHAIRMAN VAN DUSEN: The suggestion of Mr. Danhof is then that the first sentence be considered separately and without objection the first sentence will be so considered. Is there objection? The Chair hears none. Mr. Danhof.

MR. DANHOF: Thank you. Mr. Chairman, I would at this time call upon the delegate from Grand Rapids, Mr. Tubbs, to speak upon this provision.

CHAIRMAN VAN DUSEN: Mr. Danhof yields to the delegate from Grand Rapids, Mr. Tubbs.

MR. TUBBS: Mr. Chairman, the first part of this section, as Mr. Danhof has indicated, is new language but it makes only a slight change in the present constitution. Section 2 of the present article VII says "The supreme court shall consist of one chief justice and associate justices . . ." to be elected and so forth. This indicates that the chief justice of the supreme court is to be elected separately. That has not been done. The chief justice has by court rule been appointed by the other members of the supreme court and the new language which you find in the first part of this section b simply implements the practice that has been prevalent in the court for a long time.

Now, the second part and perhaps the remainder of this section b is new. The present constitution gives the supreme court general — and I will read it — "superintending control" — are we dealing just with the first sentence?

MR. DANHOF: Yes, Mr. Tubbs. I think at this time you just limit your remarks to the first sentence relative to the selection of the chief justice.

MR. TUBBS: All right. I think I have adequately explained it. That is all I have, Mr. Chairman.

CHAIRMAN VAN DUSEN: Is there any further discussion of the first sentence? If not, we will proceed to consideration of the remainder of the section. I will advise that because the minority report deals with the entire section, we will not pass the first sentence at this time but will simply proceed to consideration of the balance of the section. Mr. Danhof.

MR. DANHOF: Mr. Chairman, thank you. There being no amendments to the first sentence, I will yield then further to Mr. Tubbs for an explanation of the committee report relative to the remaining portion of the section b.

CHAIRMAN VAN DUSEN: The Chair will recognize Mr. Tubbs.

MR. TUBBS: I have difficulty determining where the period is in this sentence, Mr. Chairman, but I guess I can make it out. "He shall perform such other duties as may be required by the court." That is referring, of course, to the chief justice of the court. "The supreme court shall appoint an administrator. . . ." This is new language. The supreme court has had an administrator of circuit courts for several years. He is now performing functions which are assisting the supreme court in their general supervisory control of all the other courts of the state. He is limited, however, by the terms of his appointment, to supervision of circuit courts.

They also have an assistant to the administrator who is supposed to be supervising the probate courts of the state. However, they have had some difficulty in getting an appropriation for his salary. I understand that because part of the jurisdiction of probate court is in the juvenile division and that is part of the welfare department of the state, he is being paid by the welfare department rather than by direct appropriation.

The remainder of this section is to implement the power of the court to have general superintending control over the other courts of the state. It is new language. It is not intended to enlarge the powers of the court beyond those given in the 1908 constitution.

SECRETARY CHASE: Pursuant to their minority report, Miss Donnelly, Messrs. Leibrand and McAllister offer the following amendment:

1. Amend page 1, line 12, after "court.", by striking out the balance of the section.

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: Mr. Chairman, having gone into this new proposal knowing it will take quite some time, we have heard the majority report. We can commence tomorrow with the discussion of this and the minority report. I would at this time move that the committee do now rise.

CHAIRMAN VAN DUSEN: Mr. Danhof moves that the committee do now rise. Those in favor will say aye. Opposed?

The motion prevails.

[Whereupon, the committee of the whole having risen, Vice President Romney resumed the Chair.]

VICE PRESIDENT ROMNEY: Delegate Van Dusen.

MR. VAN DUSEN: Mr. President, the committee of the whole has had under consideration several matters of which the secretary will give a detailed report.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 90, A** proposal pertaining to the judicial branch; reports this proposal back to the convention without amendment and with the recommendation that it do pass. Mr. Prettie offers an amendment pending the reference of the proposal to the committee on style and drafting.

Mr. Prettie offers the following amendment:

1. Amend page 1, line 5, after "vested" by striking out "exclusively".

VICE PRESIDENT ROMNEY: Delegate Prettie.

MR. PRETTIE: I do not wish to labor the point. It is the same point to which I addressed myself in committee of the whole. The proposal that we have before us provides, as I pointed out earlier, that the judicial power is vested exclusively in one court of justice. I do not think this is a correct constitutional statement. Our other courts have power, some of them statutorily conferred. The subsequent language "which shall be divided" refers grammatically, I believe, to the court of justice being divided, not to the power being divided, and I seriously urge, for the reasons stated in the committee of

the whole, that the word "exclusively" be omitted from this committee proposal.

VICE PRESIDENT ROMNEY: The question is on the amendment. Delegate Danhof.

MR. DANHOF: Mr. President, members of the convention, for the reasons stated, I would urge the defeat of the amendment.

VICE PRESIDENT ROMNEY: Delegate Ford.

MR. FORD: Mr. President, I would like to urge the defeat of the amendment. I will say, however, if Mr. Prettie has a point — and it appears to me that there may be a grammatical question — Mr. Cudlip's committee might go into that and take care of it for us.

VICE PRESIDENT ROMNEY: Delegate Higgs.

MR. HIGGS: Mr. President, Mr. Ford has made the point I think I would like to have made and I want to remind the delegates, because there are some here now that weren't here before, that this is the language recommended by the American bar association and it is stated in the article written under the direction of the University of Michigan that this provision would avoid many questions concerning technicalities of jurisdiction of various separate courts.

VICE PRESIDENT ROMNEY: Delegate McAllister.

MR. McALLISTER: Mr. President, fellow delegates, I just want to say again that — and on the last vote we did not prevail — that this is a very, very dangerous word, and it gives absolute control over all other courts to the supreme court. I don't think the other courts should be treated in any different respect than the supreme court. And where they have absolute control and, you might say, there is no appeal from their decision, you have something here that we should think seriously about. It probably won't make any difference to me but the thing is it does make a great deal of difference to all the people of this state and particularly our judges, because the court rules formulated by the court are severe. They can remove a judge for almost anything, personal practices, anything that they feel like doing, violations of the canons of ethics, anything along that line, and it could be a very trivial matter that might cause a man to be eliminated as a judge. We have politics. We will always have politics. And there is nobody to review what they have done. So I recommend to you that you vote yes on this amendment to remove the word "exclusively." Then all doubt will be gone.

VICE PRESIDENT ROMNEY: The question is on the amendment. Those in favor say aye. Opposed, no. The Chair is in doubt and understands that it is then automatically submitted as a division. Those in favor will vote aye and those opposed, no.

Delegate Stevens.

MR. STEVENS: Is this a recorded roll call vote or not?

VICE PRESIDENT ROMNEY: It is not a recorded roll call vote. It is for the information of the Chair. Has everyone voted?

Delegate Boothby.

MR. BOOTHBY: Mr. President, I would like to ask that this be a record roll call vote.

VICE PRESIDENT ROMNEY: The request has been made that this be a record roll call vote. Those in favor will please indicate. A sufficient number. It will be a record roll call vote. The secretary will lock the machine and record the vote.

The roll was called and the delegates voted as follows:

Yeas — 46

Anspach	Knirk, B.	Rood
Bledsoe	Krolikowski	Rush
Bonisteel	Kuhn	Shackleton
Boothby	Leibrand	Shaffer
Brake	Leppien	Shanahan
Dehnke	Lesinski	Stafseth
Donnelly, Miss	Lundgren	Stamm
Doty, Dean	Mahinske	Sterrett
Doty, Donald	McAllister	Stevens
Faxon	McCauley	Suzore
Finch	Plank	Thomson
Heideman	Powell	Turner
Howes	Prettie	Tweedie
Hoxie	Pugsley	Wanger
Hubbs	Richards, L. W.	Wood
Kirk, S.		

Nays — 70

Andrus, Miss	Follo	Mosier
Austin	Ford	Murphy
Balcer	Gadola	Nord
Barthwell	Garvin	Ostrow
Beaman	Goebel	Page
Bentley	Greene	Perlich
Binkowski	Gust	Pollock
Brown, G. E.	Hanna, W. F.	Rajkovich
Brown, T. S.	Hannah, J. A.	Sablich
Buback	Hatch	Seyferth
Cudlip	Hatcher, Mrs.	Sharpe
Cushman, Mrs.	Higgs	Sleder
Dade	Hodges	Snyder
Danhof	Hood	Spitler
Davis	Iverson	Staiger
DeVries	Judd, Mrs.	Tubbs
Douglas	King	Upton
Durst	Koeze, Mrs.	Van Dusen
Elliott, A. G.	Lawrence	Walker
Elliott, Mrs. Daisy	Martin	White
Erickson	McGowan, Miss	Woolfenden
Everett	McLogan	Yeager
Farnsworth	Millard	Young
Figy		

SECRETARY CHASE: On the amendment offered by Mr. Prettie, the yeas are 46; the nays are 70.

VICE PRESIDENT ROMNEY: The amendment is defeated. **Committee Proposal 90** is referred to the committee on style and drafting.

For Committee Proposal 90 as referred to the committee on style and drafting, see above, page 1240.

SECRETARY CHASE: Mr. President, the committee of the whole has also had under consideration **Committee Proposal 91,** A proposal pertaining to the supreme court; has considered an amendment thereto, and has come to no final resolution thereon. That completes the report of the committee of the whole.

VICE PRESIDENT ROMNEY: Delegate Koeze.

MRS. KOEZE: Mr. President, I rise to a point of personal privilege. However, I am in doubt about my personal privilege, but I have a general idea that I think the convention would like. I propose that we lock up all the lawyers tonight in this convention hall until they can decide what they want here, (laughter) and if they cannot decide, I would like to see them locked out of this until the lay people can decide. (laughter and applause)

SECRETARY CHASE: The following notice of a committee meeting: the committee on style and drafting will meet in room K this evening at 8:00 o'clock. William B. Cudlip, chairman.

We have the following requests for leave of absence: Mr. Haskill requests leave from tomorrow's session to attend an important meeting in Detroit; Mr. T. S. Brown requests leave from tomorrow's session; Mr. Suzore, from the session of Monday; Delegate Dade, from the session of Monday; Mr. Marshall, from the session of tomorrow due to personal business and a speaking engagement of long standing; and Mr. Perras wishes to be excused from the sessions of Friday, Monday and Tuesday because of the death of his mother.

VICE PRESIDENT ROMNEY: Without objection, the requests will be honored.

Delegate Kuhn.

MR. KUHN: Mr. President, first I would like to yield to Delegate Binkowski.

VICE PRESIDENT ROMNEY: Delegate Binkowski.

MR. BINKOWSKI: Mr. President, ladies and gentlemen of the convention, I would like to have permission to have reprinted in the journal Mr. Bud Vestal's column entitled, Mr. Dooley Would Have Had a Grand Time Commenting on the Con Con. Mr. Dooley, of course, was a fictional character and

it is a satire. He was a satirist of the nineteenth century and I think they made a very definite contribution to the history of American politics. It is not very long. If you haven't read it already, I think that you would truly enjoy reading it.

VICE PRESIDENT ROMNEY: Without objection, it is so ordered.

MR. FAXON: I object.

VICE PRESIDENT ROMNEY: Objections are heard.

Delegate Kuhn.

MR. KUHN: Mr. President, I move the convention adjourn.

VICE PRESIDENT ROMNEY: Those in favor of the motion say aye. Opposed?

We are adjourned until tomorrow morning at 9:30.

[Whereupon, at 4:45 o'clock p.m., the convention adjourned until 9:30 o'clock a.m., Friday, February 23, 1962.]

EIGHTY-SIXTH DAY

Friday, February 23, 1962, 9:30 o'clock a.m.

PROCEEDINGS

VICE PRESIDENT HUTCHINSON: The convention will come to order.

The invocation today will be delivered by the delegate from Wayne county, Miss Hart.

MISS HART: Lord, teach us to be generous, to serve You as You deserve, to give and not to count the cost, to fight and not to heed the wounds, to toil and not to seek for rest, to labor and not to seek reward, save that of knowing that we do Your will. We ask Your blessing, O Lord, on our service to Your people. Amen.

VICE PRESIDENT HUTCHINSON: The roll call will be taken by the secretary. All those present will vote aye. Have you all voted? If so, the secretary will lock the machine and record the roll.

SECRETARY CHASE: Mr. President, a quorum of the convention is present.

Prior to today's session, the secretary received the following requests for leave:

Mr. Downs wishes to be excused from today's session and Mr. Madar called to say that Mr. Buback was taken suddenly ill at breakfast and wished to be excused from today's session.

VICE PRESIDENT HUTCHINSON: Without objection, the requests are granted.

SECRETARY CHASE: Absent with leave: Messrs. T. S. Brown, Buback, Mrs. Butler, Messrs. Dell, Downs, Haskill, Karn, Marshall, Nisbet, Norris, Pellow and Perras.

Absent without leave: Messrs. Allen, Douglas and Gover.

VICE PRESIDENT HUTCHINSON: Without objection, the delegates are excused.

[During the proceedings the following delegates entered the chamber and took their seats: Messrs. Allen and Norris.]

Reports of standing committees.

SECRETARY CHASE: None.

VICE PRESIDENT HUTCHINSON: Reports of select committees.

SECRETARY CHASE: There are none.

VICE PRESIDENT HUTCHINSON: Communications from state officers.

SECRETARY CHASE: No communications.

VICE PRESIDENT HUTCHINSON: Second reading of proposals.

SECRETARY CHASE: Nothing on that calendar for today.

VICE PRESIDENT HUTCHINSON: Motions and resolutions. The gentleman from Oakland, Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, I would like to move at this time that the order of second reading be passed for all of next week

VICE PRESIDENT HUTCHINSON: The question is upon the motion made by the gentleman from Oakland, Mr. Van Dusen, that the order of second reading be passed for all of next week. All those in favor will say aye; opposed, no.

The motion prevails and it is so ordered.

SECRETARY CHASE: There are no resolutions on file, Mr. President.

VICE PRESIDENT HUTCHINSON: Unfinished business.

SECRETARY CHASE: None.

VICE PRESIDENT HUTCHINSON: Special orders of the day.

SECRETARY CHASE: No special orders.

VICE PRESIDENT HUTCHINSON: General orders of the day. The gentleman from Oakland, Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, I move the convention resolve itself into committee of the whole for the purpose of considering matters on the calendar of general orders.

VICE PRESIDENT HUTCHINSON: The question is upon the motion of Mr. Van Dusen. All those in favor will say aye. Opposed will say no.

The motion prevails. The committee will convene and Mr. Van Dusen will preside.

[Whereupon, Mr. Van Dusen assumed the Chair to preside as chairman of the committee of the whole.]

CHAIRMAN VAN DUSEN: The Chair is tempted to suggest that the circuit court for the county of Ingham will be in session but instead will suggest that the committee will be in order and that the secretary will advise us of where we are on our calendar.

SECRETARY CHASE: Item 2 on the calendar, from the committee on judicial branch, by Mr. Danhof, chairman, Committee Proposal 91, A proposal pertaining to the supreme court.

For last previous action by the committee of the whole on Committee Proposal 91, see above, page 1256.

Section a has been postponed until we have completed consideration of section b. The first sentence of section b has been read and considered, the second sentence has been read and a minority report amendment has been offered.

Miss Donnelly and Messrs. Leibrand and McAllister have offered the following minority report amendment:

1. Amend page 1, line 12, after "court.", by striking out the balance of the section.

CHAIRMAN VAN DUSEN: The question is on the amendment proposed by Miss Donnelly, Judge Leibrand and Mr. McAllister. On the amendment, the Chair will recognize the delegate from Highland Park, Miss Donnelly.

MISS DONNELLY: Since most of you apparently do not have our reasons, if you will bear with me, I will read to you—though I personally hate to be read to myself.

The minority concur with the majority of the committee in the first sentence but recommend deletion of the balance thereof for the following reasons:

1. To set forth in the constitution that the chief justice shall perform such other duties as may be required by the court is unnecessary. These duties, if proper, would clearly lie within the power of that court in handling its internal affairs and does not require any constitutional authority. It hardly behooves this convention to imply that the supreme court in the conduct of its internal affairs would require the chief justice to perform improperly.

Therefore, we feel that this sentence is entirely unnecessary and should be deleted.

To go further, do you want to go sentence by sentence—on my next thoughts particularly or do you want to discuss this sentence?

CHAIRMAN VAN DUSEN: The Chair will advise Miss Donnelly that the question is on the entire amendment. You may proceed in that order.

MISS DONNELLY: The next sentence in there provides:

To provide in the constitution the requirement that the supreme court appoint an administrator and other assistants as shall be deemed necessary to aid in the administration of the courts of the state is believed improper and unwise. This sentence is clearly legislative in nature as was the creation of the court administrator in the first instance. The minority believe that the majority proposal under section f of Committee Proposal 91 has sufficiently delineated the internal function of this court and its supervisory powers within that court.

Therefore, to go further and spell in the constitution what is statutory is superfluous and certainly does nothing but make a longer document and adds nothing, in our opinion, to the administration of justice, although we approve of the court administrator's function and his existence. We just object to requiring it in the constitution.

The last sentence is the requirement that the administrator perform these duties; and offering the budget to the legislature we also feel is improper.

To freeze in the constitution the requirement that the administrator shall prepare and submit to the legislature the budget for the supreme court is believed to be an improper dictation to that court. The method of submission of the budget of that court should be left to the supreme court's own discretion. The minority believe that our highest court can best make its own decision in this area, as well as in all other itemized activities in section b.

To summarize our opinion, in this instance we are consistent in believing that the supreme court should handle its internal affairs and under section f we've given them enough protection which they've asked and require, in our opinion. To go further and tell this court to do what it should do in its internal affairs, we believe is improper as to require the supreme court to go further and tell the circuit courts what they should do in handling their internal affairs. Therefore, we believe that the first section is proper. Section f handles it sufficiently. The rest should be removed.

CHAIRMAN VAN DUSEN: On the amendment, the Chair will recognize the chairman of the committee, Mr. Danhof.

MR. DANHOF: Mr. Chairman, at this time I would like to yield to Delegate Garvin.

CHAIRMAN VAN DUSEN: Mr. Danhof yields to Mr. Garvin.

MR. GARVIN: Mr. Chairman and delegates, there might be some question about some of these, but I want to explain exactly what is meant as well as possible. Mr. Tubbs, if you recall, went over this yesterday to some extent about a court administrator. As I understand the amendment, in line 1 there is no objection to that. Line 2, as I understand the reading of the reasons, "He shall perform such other duties as may be required by the court." Speaking of "he", the chief justice of the supreme court, somebody must have some authority in performing duties that are required by the court and necessary for the court work to proceed. That is the reason for that sentence.

Beginning on line 13 seems to be the part where there is the most objection:

The supreme court shall appoint an administrator of the courts and other judicial assistants as shall be deemed necessary to aid in the administration of the courts in the state. The administrator shall, under the direction of the supreme court, prepare and submit to the legislature the budget for the court. . . .

and so forth.

I'd like to submit to you that the court itself—first, line 16—it seems that there has been an opinion on the minority report that the administrator is the one that does this work, that of preparing the budget. But if you will notice on line 16 it says "under the direction of the supreme court. . . ." It is not the administrator who decides exactly what is necessary, but he is the one that does the ministerial act of submitting the budget and presenting the budget for approval of the legislature. We can hardly expect the chief justice to go over to the legislature every time it's necessary to argue a budget or say whether there should be another clerk or not another clerk. It just isn't reasonable. You can't do that and decide supreme court cases also. That is the reason for the administrator.

Again, Delegate Tubbs explained to you yesterday—to keep from going over this matter too much—that an administrator of the court became necessary just to carry out the duties or similar thereto as presented to you in this proposed change in the constitution—this new section to the constitution. The reason it is believed that it is necessary in the constitution is that it is for the protection of the court to see that those duties are carried on and not taking away the time of the court. All through these sections it states that they are under the direction of the supreme court.

It might be interesting to know the contents of the new judicature act which has already been enacted by the legislature and which becomes effective on January 1, 1963. It is that this administrator will have superintending control over the other courts of the state of Michigan. The qualifications that it sets up are that he must be an attorney, take oath required by the constitution, perform as provided by law or as provided by the supreme court in carrying out his duties to execute the duties of the supreme court, the individuals themselves, or the chief justice; and he may, with the approval of the supreme court, appoint a deputy or clerical personnel as necessary. All of this is with the approval of the supreme court. It is not a matter of the administrator taking over any duties of the supreme court. There is not one sentence in this, as far as I can see at this time, in this Committee Proposal 91, section b, that would require the administrator or give him the leeway to take over anything unless it is under the direction of the supreme court and the supreme court is liable thereto.

Now, about the administrator's obligations. To whom is he obligated? For his position and for his job he is obligated to the supreme court itself. It is not a civil service job. He is supposed to carry out the orders of the supreme court and the directions of the supreme court. It is strictly a ministerial office, and they would have the right to remove him and therefore shoulder any responsibility that might be wrong.

I say I support the committee proposal with the further statement that it is a necessary adjunct to the duties of the supreme court in order to see that they carry it out, in order that this constitution may be properly executed as far as the judicial branch is concerned. I therefore support the committee proposal.

CHAIRMAN VAN DUSEN: The Chair will recognize the gentleman from Bay, one of the movers of the amendment, Judge Leibrand.

MR. LEIBRAND: Mr. Chairman and delegates, you know from our experience in this convention every public employee, from the top to the bottom, wants constitutional status right down to the drain commissioner. Now we have another instance of an officer, a state officer, state employee, who wants

constitutional status. The gentleman from Detroit, Mr. Garvin, states that the court administrator is simply a ministerial officer; that is, he's sort of, I assume, a glorifed office boy for the supreme court. Now, it is certain that if that is all he is, if that is as far as his powers go, he certainly doesn't need constitutional status. But we of the minority feel that perhaps, under this proposal and under the statute that Mr. Garvin mentioned, his powers are really designed to go further than that.

Yesterday we had an issue here about the advisability of giving the supreme court absolute supervisory power over the circuit courts. Now, we thought that tended to destroy the independence of the locally elected judiciary. Now it seems to me that this goes even farther. The other at least was a direct duty of the supreme court itself. This constitutional provision combined with the statutory provision now in effect seems to give an appointive officer of the supreme court the general superintending power over the lower courts. As I stated yesterday, when we were discussing Committee Proposal 90, Committee Proposal 90 and Committee Proposal 91 are tied in together, and the effect of the 2 of them, it seems, is to greatly, greatly increase the superintending power not only by the court itself, but by a hired officer, a hired employee.

There is another reason why we feel that these lines should be deleted, and that is as has been indicated, the legislature has taken care of the situation and taken care of the situation so far as I know to the satisfaction of the supreme court. The present statute is act 269 of 1952. I don't think this has been greatly changed by the judicial code if it has been changed at all. And that creates the office of court administrator, provides as to his salary, sets forth his duties, authorizes the judges of the supreme court to direct the judge of the court to serve in another and gives other detailed instruction as to the operation of the court administrator's office. Now, undoubtedly the court administrator's act was passed by the legislature after long conferences with the supreme court and insofar as I know, the supreme court is satisfied with it. If we put this thing into the constitution, it may be that a year from now or 5 years from now, the supreme court will want to in some way set up a different structure and alter the position of the court administrator, perhaps add additional duties or take some duties away. We don't think the supreme court should be put in a straitjacket; we don't think we should permit a constitutional possibility of it being the court administrator rather than the court itself that exercises the actual superintending power over the lower courts of the state of Michigan.

I don't think as presented here this is a world shaking issue. But we are drawing a constitution and I think we should be very careful what is put in it. Time after time we've been told about the difference between constitutional language and statutory language. If ever there was statutory language in a constitutional provision, I feel we find it here. Thank you.

CHAIRMAN VAN DUSEN: The Chair recognizes the gentleman from Huron, Mr. McAllister.

MR. McALLISTER: Mr. Chairman and fellow delegates, Mr. Leibrand has pretty well covered the subject. The only thing if there is to be any change, if this is made part of the constitution, it will have to be by constitutional amendment. Here is a ministerial officer, a man who can really do nothing except under the authority of the supreme court and under their direction. This is strictly statutory. It is already covered by statute. We spent hours in this convention explaining that we should not put statutory provisions in the constitution and this is entirely statutory. So if we're going to put a ministerial officer in here as a constitutional officer, in this constitution, if we follow this pattern, we'll have every clerk in the capitol and every clerk in the state in the constitution, and the supreme court itself will have no right insofar as this individual is concerned. To me it seems to be a rather ridiculous part of this article.

CHAIRMAN VAN DUSEN: Mr. Danhof, were you seeking recognition at this time?

MR. DANHOF: No.

CHAIRMAN VAN DUSEN: The gentleman from Bloomfield Hills, Mr. Woolfenden.

MR. WOOLFENDEN: I rise to support the committee proposal and to oppose the amendment. This matter including the arguments just submitted to the floor were fully explored by the judicial branch committee. It was the considered judgment of the committee that the language as submitted in the committee proposal was constructive in the best interests of the administration of justice in Michigan and in the best interests of the entire state. I think that the spelling out in the constitution of the administrative authority and responsibilities of the supreme court is eminently proper and I strongly support the committee proposal and oppose this amendment.

CHAIRMAN VAN DUSEN: The chairman of the committee, Mr. Danhof.

MR. DANHOF: Mr. Chairman and members of the committee, the idea of court administration, an efficient court administration, is something which in this country has moved at a rapid rate within the last few years. Now, it wasn't too long ago that we approved 3 branches of government and all of the most recent state constitutions which have been drafted or which have been amended or which have been recommended set forth the office of the court administrator. If we are to change and we expect an efficient system, right here and now we should not let our prejudice or what we think of the men who may occupy the office interfere with setting up a good system. There is a difference. We must set up a good system and then pick the best means of selecting the men to run the system.

The states of Hawaii and Alaska, New Jersey, New York and Maryland have given constitutional status to the court administrator. If the courts are to adequately perform their function and the supreme court of court administration, then we must give them the tools and these should not—in a document where we will recognize the separation of powers—he should not be subject to the will or the whim of any other branch of the government. We have proposed in a later section, which is unanimously agreed to by the committee— there are at least no minority reports—that the supreme court be given the right to have them set and run their own budget. This is but a necessary correlation of this entire process of efficient judicial administration. This state will grow in population; it will grow in lawsuits; it will grow in courts; it will grow in the number of judges. The court which we charge with the administration of justice must be given the tools with which to carry out its purposes. We must not—and I think we should not—allow one vote over half in the legislature to remove what would be an important adjunct of the supreme court, the same as we have provided that we hope that the court will be given the responsibility to run its own shop. The model state constitution, the American bar association, the model judicial articles have recommended the court administrator be made and included as a constitutional officer.

Therefore, I urge, and the majority of the committee is likewise of the opinion, that we must write a document which is forward looking as the people were in 1908 when they put in general superintending control and other matters which at that time were undoubtedly not needed or even thought of. If we are going to have the tools and make them available so we will not have justice delayed, being justice denied, I urge that the court administrator be put in here so that he is solely and completely responsible to those who are charged with the efficient administration of justice. This is the majority report of the committee and I urge the rejection of the amendment.

CHAIRMAN VAN DUSEN: The gentleman from Taylor, Mr. Ford.

MR. FORD: Mr. Chairman, I rise to support the committee report. However, I have a great deal of respect for the contribution that has been made by the 3 people and a lot of sympathy for the members of the present minority. I'd like to ask a question of Mr. McAllister through the Chair, if I might, to see if we couldn't arrive at part of what he is trying to do. Tom, as I understood what you said on the floor as

contrasted to the total effect of your proposed amendment, you are not nearly as much concerned about that fact that we constitutionally recognize the position of court administrator as you are about the fact that we seem to spell out some duties that could never be taken away from him. Isn't that correct?

MR. McALLISTER: No, I feel that the court administrator was created by a statute that the legislature found a need for and he is a ministerial officer. He can't do anything without direction from the supreme court. It is similar to me to putting all the clerks in the state capitol in the constitution. In other words, this man has no authority at all except what is given to him by the supreme court. We spoke hours and hours here about putting statutory language in this constitution. The other thing is when you have to have a constitutional amendment to change the situation, it seems to me as I said, ridiculous because here is a ministerial officer; in order to make any change in this setup, we have to have a constitutional amendment adopted by the people. That is the reason that I say it should not be a part of the constitution.

MR. FORD: Now that I understand his position, I do have to oppose the amendment. One of the things that you have to keep clearly in mind here is that the committee, in giving recognition to the position of court administrator, goes a step further and says to itself, and is now asking you this question, "Given the position of a court administrator, who is actually going to be the ministerial officer carrying out the will of the supreme court and the enforcement of the court rules, would you rather that the legislature prescribe his specific duties or the court through rules and by direction prescribe them?"

Now, this is a question that is being answered by the committee in this way. The committee says that since this person is a ministerial officer charged with carrying out the wishes of the court and since the court should be, insofar as possible independent of either the legislative or executive branches of the government, then the court should be the one to set and establish the duties for the administrator. The committee majority report would place the court administrator squarely under the control of the court, with one exception, and the one exception being that the constitutional provision here would direct that the court administrator would be the budgetary officer of the court. And as I read it, this could be an influential or an insignificant function, depending on how much authority the court wanted to grant, and really, we're not, as Tom might indicate—Delegate McAllister, rather—we're not freezing into the constitution a framework of duties or restrictions that would prevent the court from having a free hand in directing the activities of its administrator.

CHAIRMAN VAN DUSEN: Mr. McAllister—

MR. McALLISTER: Do you wish me to reply to that, Mr. Ford? I will anyhow. (laughter) I say that the supreme court under the existing statute, has full authority over the court administrator. In fact, if he makes an investigation at the present time, before he can even file a petition, he's got to confer with the court and when he prepares that petition, it must be authorized by the chief justice or it can't go out. Actually, he's just really a glorified office boy. And here we're putting him in the constitution and the supreme court, as I understand it, can require him to perform any duties and undoubtedly he prepared all statistics that have been furnished to us here, to our committee. He prepares the budget at the present time as far as I know and as far as I know, there is no demand on the part of the supreme court for this constitutional provision. If there is, I never heard any supreme court justice before our committee ever ask for it.

In other words, we're putting something in here that is strictly statutory, is already covered, and it is just adding to the constitution and making it necessary as I have said before to have a constitutional amendment to change it. They don't need any more authority. The supreme court has all the authority to make this man do whatever they want him to. And he is actually an employee under the sole direction and control of the supreme court at the present time.

CHAIRMAN VAN DUSEN: Miss Donnelly, did you desire recognition at this time?

MISS DONNELLY: No.

CHAIRMAN VAN DUSEN: Judge Leibrand.

MR. LEIBRAND: Following along with what Mr. McAllister has said, I refer again to act 269 of 1952, the statute which created the office of court administrator. The position of the minority here is not that we are against or that we are opposed to the continued existence of that statutory act. We are not against the court administrator. This act 269 has been in effect for 10 years. The court administrator has been operating for 10 years. We want him to continue to operate. But there has been no effort, so far as I know, to repeal that act and eliminate the court administrator. But under the statute itself, let me read you a few things, powers that are vested in the court administrator, and there are mighty few. As someone has said, everything must be done under the direction of the supreme court itself:

> 1. There is hereby created the office of court administrator, the functions and duties of which shall be performed by the clerk of the supreme court, whom the supreme court may appoint and remove, or if the supreme court shall so direct, by a deputy hereby authorized to be appointed for that purpose by said clerk, with the approval of the supreme court to serve at the pleasure of the supreme court.

Now, that certainly gives the supreme court and the court administrator—that sets their status; there is no control; there is no civil service; there is no nothing. The supreme court appoints; the supreme court removes; the supreme court directs. And then we come down here to the duties of the court administrator:

> a. He shall supervise and examine the administrative methods and systems employed in the office of the courts. He shall examine the state of the dockets of the courts and determine the need for assistance by any court and report the same to the supreme court.

Then we go on with the wide, wide, list of duties but everything under the direction and control of the supreme court.

As I say, so far as I know, there has been no action for the repeal of that statute. The legislature created the office of court administrator 10 years ago without any prodding from the constitutional convention. We recognize the conditions in the courts may change from time to time and additional powers may be desired from the legislature. We feel this is simply one ministerial office that does not need constitutional status. Thank you.

CHAIRMAN VAN DUSEN: Mr. Plank, were you seeking recognition or were you sending your cordial greetings to the Chair? (laughter) Mr. Leppien? The Chair would guess it has simply been favored with cheery waves. (laughter) Mr. Nord.

MR. NORD: Mr. Chairman, I believe the question has been raised here, while it is not of great substantive importance, is of very deep procedural importance to the convention and that is the reason that I undertake to speak to you on this subject even though I am not a member of this committee. The basic question that is raised is: what belongs in the constitution and what does not? And that is a very, very important question, regardless of the substantive merits of this particular issue. And actually nobody is really excited about whether this language really is in or out but they are concerned about the basic principle. And I think we ought to spend a few minutes on the principle to see how it applies in this case and maybe it will help us to find out how it applies in other cases.

It seems to be the impression of the minority members of this committee that anything that the legislature could do should be left to the legislature—anything they could do—in fact, anything that they have done in the past prima facie is a matter for the legislature. It seems to me that that is a fallacy.

The mere fact that if the constitution is silent, the legislature can handle the problem, does not necessarily mean that the constitution ought to be silent. Some matters inherently

ought to be left to the legislature. By far the great bulk of the matters that we have discussed in this convention should have been left to the legislature. I wouldn't be surprised if we could say at least 3/4 of the things that we've discussed or adopted so far never should have been adopted and should have been left to the legislature.

Very few people have been excited about that up to this point. I think we will be excited about it eventually. But the mere fact that many of the things that we have been putting into the constitution and many of the things that we will be attempting to put in should not be put in, should be legislative, does not necessarily mean that everything that the legislature could do should be left to the legislature.

For example, if its a matter of adopting a law which will govern the conduct of the people, that ought to be left to the legislature. That is making a law. That is what we expect of them. We shouldn't make that law here; and we will have that situation come up over and over again. When it comes to questions directly involving people and not just involving representatives of the government but ordinary people and how they shall behave and what shall be done to them, those are normally matters for the legislature. Those should be removed from the constitution.

But now let's take a look at the subject before us in this particular case. Is the matter we are concerned with something which affects directly what people should do or what should be done to people, or has it got something to do only with what shall be done by government personnel and what shall be done to them? It is clear that when we are talking about an officer of the court, we are not talking about making a law which will govern the conduct of the people; we are talking about the administration of government. And, when we are talking about the administration of government, normally that is the exact type of thing which we expect to find in the constitution. I realize that many aspects of governmental control are handled by legislation simply because they have not been put in the constitution and because the legislature has the power to do so.

But let's look at this particular situation in this case. Here we have to do with the administration of the court system, the administration of the supreme court, and through the supreme court, and through the administrator, the administration of the entire judiciary. The question in my mind—and I believe this is a question that should be in all of our minds—is this: do we want the administration of the entire judiciary to be a legislative matter? Is that in keeping with the theory that we should keep things out of the constitution because they are inherently legislative? It seems to me that Mr. Danhof has made the point, and I wish to emphasize as clearly as I can, that this is a matter relating to the judiciary; it has nothing to do with the legislature as such. It is better that the legislature have nothing to do with it. It relates solely to the judiciary and how the judiciary should be organized and controlled and supervised. This is the kind of thing that we should have in the constitution if it is to be anywhere. Let's not get mixed up on the theory that just because the legislature did it in the past that therefore that is the best way to do it. That is not the best way to do it. The best way to do it, because it relates to the judiciary, is to keep it away from the legislature.

I therefore assert—and I hope that we will keep this in mind in other instances too—that you cannot jump to the conclusion that just because something looks like statutory language or even because it is a statute at the present time, that that is the way to determine whether it should be in or out of the constitution. In this particular problem we have to look at the problem and we must see that what is at stake is the independence of one branch of the government from another. If we decide we want to have an administrator, as seems to be agreed by everyone, it ought to be in the constitution.

I therefore support the committee proposal and oppose the amendment.

CHAIRMAN VAN DUSEN: Miss Donnelly.

MISS DONNELLY: I'd like to suggest that somewhere along the line this argument has gotten off the issue. We are now talking about—

CHAIRMAN VAN DUSEN: Miss Donnelly, that had occurred to the Chair, but it has been lenient.

MISS DONNELLY: Well, I thought it was only good manners to wait and let him finish his sentence. But we are now talking about section b. Section b in the majority report, if people will pay attention to section b alone—and that's what we're talking about in this instance—spells out that the chief justice shall perform other duties as may be required by the court. Now, that sentence again doesn't do much. It's ridiculous in the minority's opinion. This is what it says:

> The supreme court shall appoint an administrator of the courts—

which we are not objecting to at all, except that it shouldn't be in the constitution

> —and other judicial assistants as shall be deemed necessary to aid in the administration of the courts in the state. The administrator shall, under the direction of the supreme court, prepare and submit to the legislature the budget for the court and perform all other necessary functions relating to the revenues and expenditures of the court. He shall perform the other duties that may be assigned by the court.

We've got 2 things here: one, I think, legislative detail, and 2, we're telling the supreme court how their budget is going to be submitted to the legislature and how it is going to be handled. This isn't just legislative detail, aspects of what we are going to do to the legislature; we're also telling the supreme court what to do. Now, if the highest court doesn't know how to handle this, then we've really got problems. And the issue isn't how we are going to have the growth of the people in this state or what should or shouldn't be in the constitution alone in legislative detail versus the other. We are also putting in here language that is binding the supreme court on how it is going to handle its internal affairs on its budget and what have you. Certainly, they should be allowed to do it but they shouldn't be told how it's going to be submitted to the legislature. This is not just one point. I mean there is more than one issue and I think we are way off of it.

CHAIRMAN VAN DUSEN: Mr. Hutchinson.

MR. HUTCHINSON: Mr. Chairman, I desire to attract some attention, if possible, to not the court administrator himself, but to this phrase about "other judicial assistants as shall be deemed necessary to aid in the administration of the courts in the state."

Now, I think that this reaches to the entire court system, not just to the supreme court. Now, we are talking about the power of the supreme court to appoint judicial assistants to aid in the administration of the courts. Does this mean that hereafter the supreme court will appoint court reporters? Does it mean that the supreme court will appoint friends of the court? Does it mean that the supreme court will appoint probate registers? These officers, I think, are judicial assistants aiding in the administration of the courts. Is that what the committee intended by this very broad grant of power?

At the present time, under the present constitution, the supreme court has very extremely limited appointing power. I think that the present constitution says that the supreme court may appoint a clerk and a crier and that's about all.

The way that the court administrator act was written in 1952 was very carefully worked out in order to accomplish the purpose without violating that very restrictive power of the constitution. You notice Judge Leibrand read the act in which it says clearly that the powers of the court administrator shall be performed by the clerk of the court but that the clerk of the court may appoint a deputy simply because the supreme court doesn't have any constitutional power to do that. So the way they accomplished this was that the clerk of the supreme court appointed this deputy, who is the court administrator.

Well, that was a very restrictive appointive power. I think it only reasonable that the supreme court should have a

broader appointing power than it presently has. But I am a little bit alarmed at the breadth of the language which I refer to; that the supreme court shall have power to appoint judicial assistants to aid in the administration of the court. Just how far does that go? Does it go so far as to vest in the supreme court; and of course, if it is constitutionally vested there, this power to appoint say a probate register, why, the legislature couldn't change it. If the power is constitutionally vested in the supreme court to appoint friends of the court, the legislature couldn't change it.

At the present time I think that the governor appoints court reporters upon the recommendation of the several judges. Does this mean that the supreme court hereafter will appoint court reporters? Does it go this far? I believe it does by a fair reading, a fair interpretation of the words that you've got in this proposal here.

CHAIRMAN VAN DUSEN: Mr. Hutchinson, is your question rhetorical or do you desire to yield to a member of the committee for a response?

MR. HUTCHINSON: I will yield to Mr. Danhof, if he cares to respond.

CHAIRMAN VAN DUSEN: Thank you, sir. Mr. Danhof.

MR. DANHOF: Mr. Chairman, Mr. Hutchinson, as Mr. Hutchinson is aware, there is at the present time a gentleman employed who is known as a deputy court administrator. Now, the method by which he was hired and the means from which he is paid, I don't know the details but I know it took federal funds and the fact that he was appointed by some agency and then assigned over.

Now, the deputy court administrator is charged and is working with the probate courts to this date in an effort to perhaps make rules which would be similar, standardize the practice between the various probate courts in this state, assist those members of the probate bench who at the present time are not members of the bar, in an effort to coordinate, in an effort to ascertain where areas of improvement could be used in the probate courts.

It is anticipated that we have created and we are recommending that the legislature create and they have created a system of municipal courts. We think that in the future there should be some administration of these particular courts—an effort to standardize the practice and procedure so that people—or attorneys—when they move from place to place in this state can be assured of finding standardized procedure within the courts of limited jurisdiction, or the inferior courts, as they are now known.

The problem as you have so adequately stated has been the very restrictive power in the supreme court to hire anyone outside of a clerk and a crier as far as I can figure out. The supreme court justices don't even have the authority to hire their own secretaries or to hire a law clerk to assist in research, such as is needed by justices of the supreme court.

It was the intent—and I think I speak for the committee—that the gentlemen and the officers of which you speak were not necessarily connected with the supreme court but that it was in the administration in the standardizing of procedure and not in the everyday operational aspects of the court or in the employees which are used in the circuit courts or the probate courts, or even the court of appeals or the municipal court, such as their clerk or their reporter.

This is a grant to the supreme court to hire and to obtain—and when we referred to judicial assistants, we meant like the court administrator and perhaps assistants, whatever name you want to call them. We did not intend—at least I personally did not, and I do not think the majority of the committee did—that it reached down to the fact where friends of the court were actually court officers or employees of the probate or the circuit court and would be directed by the supreme court. But that fact that is needed is a wider branch, a wider grant to the supreme court in an effort to garner together and to make more efficient court administration, court rules, court procedure, and these efforts are being done—it isn't done overnight—but already the deputy court administrator has made great strides in getting the probate courts in the various sections of this state to get together, even voluntarily, to standardize rules. And various counties have gotten together; I think in southwestern Michigan they have a union of the probate judges who have, under the direction of the deputy court administrator, prepared a standardized set of rules which they are urging be adopted by the probate courts as it relates to the practice. Those attorneys who have practiced in a number of counties will know that the practice in that particular court will vary tremendously. This was—at least as far as I am concerned personally—the intent of the committee.

CHAIRMAN VAN DUSEN: The gentleman from Bay City, Mr. Higgs.

MR. HIGGS: Mr. Chairman and members of the committee, I think Mr. Danhof has adequately covered the fact that the intent of the committee—and I might say that that is my understanding also—that the intent of the committee was not to include judicial assistants below the level of the supreme court but merely assistants to the supreme court or the court administrator. I think I appreciate the concern of Delegate Hutchinson since we are both serving together on the style and drafting committee and I am sure that we can take care of that problem, if it is a problem.

Now, with regard in particular to the comments of Delegate Donnelly in the first sentence, "He shall perform the other duties that may be required by the court." When she said that this seemed silly, that it really doesn't add much, I would merely like to point out that I think that's the heart of what is involved. This is the issue. Shall duties be assigned to the administrator by the court or by the legislature? Will the supreme court be independent of the legislative branch of government? Or will they be subject to administration, administrative duties assigned to this officer by the legislature? I think we have a separation of powers factor involved here.

Now, I don't know—in sitting on the committee and listening to the testimony of judges and other witnesses that appeared before us, or anybody else, or in consulting with my own circuit judges—that the power involved here has ever been abused. I just haven't heard anything along that line at all. But I suggest to you very strongly that we should not leave this to the legislature to determine its duties.

This provision does not, I believe, put the supreme court in a straitjacket of any kind. In fact, it gives them the freedom and the power to exercise the administration that they need.

CHAIRMAN VAN DUSEN: The Chair recognizes that our debate has gone on but is going to ask that the committee maintain a little better order. Judge Leibrand.

MR. LEIBRAND: At the risk of being repetitious, I am going to speak once more and then be quiet. The objection to this language pointed out by Delegate Hutchinson, I think, has a real foundation. Bearing in mind what we did yesterday with Committee Proposal 90, by Committee Proposal 90 we said "The judicial power of the state is vested exclusively in one court of justice which shall be divided into," and so forth.

Now, section b here says, "The supreme court shall appoint an administrator of the courts and other judicial assistants as shall be deemed necessary to aid in the administration of the courts in the state." I feel there is a real danger that that might be extended to granting to the supreme court the appointive power of court clerks, registers and so forth. I wish to support what Mr. Hutchinson has stated.

CHAIRMAN VAN DUSEN: Judge Dehnke.

MR. DEHNKE: Mr. Chairman and delegates, I hadn't intended to participate in this particular discussion until I was aroused from my reveries by a few words I thought I heard Mr. Danhof say to the effect that the supreme court had not been able to appoint a deputy court administrator except with the aid of federal funds. We have been complaining about centralization of power in parts of our state government and there have been complaints that our supreme court was getting into that stream. Supervision is one thing; straitjacketing of the lower courts is something else. And if it is true that our

supreme court has gotten to the point where federal funds are considered acceptable in controlling the courts of this state, then I think it is indeed time that we sat up and took notice.

CHAIRMAN VAN DUSEN: Mr. Gadola.

MR. GADOLA: Mr. Chairman and members of the committee, there is being overlooked to some degree another statute. They've been commenting so much upon the statute of 1952 that made the court administrator act. Remember this, yesterday something was said about it being new. It's not new. It is only carrying out a previous act where there was a state judge, presiding judge, who was appointed by statute years ago, and that state presiding judge had the work that was taken over by the court administrator. So you go a little further than 1952, if you please, and let's go to act 236 of 1961, which is not really effective as of yet, and that is the revised judicature act of Michigan. That act is only 273 pages long, so I don't intend to talk about the whole act, or expect you to. But I do want to call attention to some of the provisions in that act. That act specifies all about a court administrator and what he shall do and so forth, or his appointment. But that act says this: whenever the presiding circuit judge of the state of Michigan appears in any statute of this state, the same is deemed to mean and refer to supreme court administrator, who shall take only such action in each instance as the supreme court shall direct. So in each instance, he can't go ahead on any occasion but one at a time, and he's got to be directed by the supreme court in each instance. That's the act that's going into effect. So let's not go back on these acts of the past that are on the books. Let's take the ones that are going to be in effect in the future and see how this constitutional amendment affects that act of the future. That's the new judicature act that the courts are going to act under very speedily in a very short time, January first—that's right.

Of course, there are 5 of us members of this convention who have operated under the old act of the presiding circuit judge and we had no difficulty at all in that. Then we always acted under the administrator act and we had no difficulty under that.

I am not opposing the constitutional part here at all. I believe perhaps that it is legislative to some degree. If it was to be spelled out, it may be all right. There are some things that are very questionable in there. I would say that in my opinion. However, I do hope that you will look to the future, at the act that the courts are going to operate under in the future, and not dwell only in the past. Let's live in the present a little while and look to the future and let the dead past bury the past.

CHAIRMAN VAN DUSEN: Mr. Martin.

MR. MARTIN: Mr. Chairman, I only want to make one short comment and that is: the significant thing about the committee proposal is that it deals with an independent branch of government. Judge Leibrand relies upon the court administrator act. But the fact of the matter is that tomorrow the legislature can repeal the court administrator act and thereby prevent the operation of another independent branch of government from being conducted in the way that it properly ought to be conducted. This is simply a statute subject to repeal at any time and the efforts of the committee, I am sure—and I have not discussed this with them in detail—but I am sure that the proposal of the committee is simply and solely directed at giving the supreme court the minimum of authority necessary to conduct its affairs in an orderly and proper manner, not subject to complete disintegration upon the whim of the legislature. The legislature, of course, has general control over the situation because it has control over the budget or the appropriations for the court and it always had authority to limit those. Certainly, this is the minimum that ought to be provided to the court to enable it to carry out its affairs in an orderly and sensible manner.

CHAIRMAN VAN DUSEN: The question is on the amendment. Mr. McAllister.

MR. McALLISTER: Another thing, fellow delegates and—in reverse now—Mr. Chairman, I think that we should consider the fact that the supreme court has the right to interpret this constitution the way they see fit. Mr. Hutchinson really brought up a point. They can interpret it that they have the right to appoint circuit court reporters, friends of the court, registers of probate and almost any other court officer. In other words, their construction of this constitution is not subject to appeal and they can make any determination they want to and we have nothing to say about it. I think that Mr. Hutchinson raised a very, very important point in this matter. And I again urge the adoption of our amendment.

CHAIRMAN VAN DUSEN: The question is on the minority report amendment offered by Miss Donnelly, Judge Leibrand and Mr. McAllister, which the secretary will read.

SECRETARY CHASE: The amendment is as follows:

[The amendment was again read by the secretary. For text, see above, page 1262.]

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: Mr. Chairman, members of the committee, I would urge the defeat of the amendment as now pending. The committee has not met, but personally, a limitation or an amendment after the words "judicial assistants" to limit it to the supreme court, I would personally have no objection to, if such an amendment were offered. I do feel, however, that the importance of retaining the court administrator is something which we should not delete from the constitution.

CHAIRMAN VAN DUSEN: Mr. McAllister.

MR. McALLISTER: Mr. Chairman and fellow delegates, the court administrator will be retained with or without this language. I would like to ask for a division on this matter.

CHAIRMAN VAN DUSEN: Mr. McAllister asks for a division on this question. Is the demand supported? It is supported. The question is on the amendment offered by Miss Donnelly, Judge Leibrand and Mr. McAllister. Those in favor of the amendment will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and tally the vote. Mr. Gadola.

MR. GADOLA: Mr. Chairman, please, may I explain my vote? I am voting no only because there are other amendments coming up.

CHAIRMAN VAN DUSEN: Mr. Yeager.

MR. YEAGER: Mr. Chairman, how does the Chair vote?

CHAIRMAN VAN DUSEN: The Chair does not vote in the committee of the whole, Mr. Yeager.

SECRETARY CHASE: On the adoption of the minority report amendment, the yeas are 44; the nays are 62.

CHAIRMAN VAN DUSEN: The amendment is not adopted. Are there further amendments to the section?

SECRETARY CHASE: Mr. Hutchinson offers the following amendment:

1. Amend page 1, line 14, after "assistants" by inserting "of the supreme court"; so that the language will read:

> The supreme court shall appoint an administrator of the courts and other judicial assistants of the supreme court as shall be deemed necessary to aid in the administration of the courts in the state.

CHAIRMAN VAN DUSEN: On the amendment offered by Mr. Hutchinson, the Chair will recognize the vice president of the convention, Mr. Hutchinson.

MR. HUTCHINSON: Mr. Chairman, I am informed by the sense of the statement made by Mr. Danhof earlier that this amendment would be personally acceptable to him and in my opinion would solve the question that I raised relative to how deep down the powers of the supreme court would reach in the appointment of assistants. Now, if we limit this to their appointing judicial assistants of the supreme court, this will mean that of course in the exercise of its superintending control the supreme court might be able to establish whatever staff is necessary in order to exercise the superintending control but would not be susceptible of interpretation such as I suggested which would reach way down to the point of, for

instance, having the supreme court name the probate register in every county in the state.

CHAIRMAN VAN DUSEN: On the amendment, Mr. Danhof.

MR. DANHOF: Mr. Chairman, I will favor the amendment. I cannot speak officially for the committee, but I believe that the committee would be in favor thereof.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Hutchinson, which the secretary will read.

SECRETARY CHASE: Mr. Hutchinson's amendment:

[The amendment was again read by the secretary. For text, see above, page 1268.]

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Hutchinson. Those in favor will say aye. Opposed, no.

The amendment is adopted. Are there further amendments?

SECRETARY CHASE: Mr. Hutchinson offers the following amendment:

1. Amend page 1, line 16, after "shall" by striking out the balance of the section and inserting "perform such duties as may be assigned by the court."; so the language will then read, "The administrator shall perform such duties as may be assigned by the court."

CHAIRMAN VAN DUSEN: On the amendment, Mr. Hutchinson.

MR. HUTCHINSON: Mr. Chairman, I offer this amendment not at all with any attempt to hurt or hinder the effect of this provision but, in my opinion, to strengthen it. The point is that once you constitutionally vest a power in an officer like a court administrator, there it is. And there is the power that he has, if you please, independent of the will of the court. Now, it seems to me as though the powers of the court administrator, what he shall do, what his duties are, should be prescribed by the court and I don't think that the constitution should undertake to do it. So that this language that says that "The administrator shall, under the direction of the supreme court, prepare and submit to the legislature the budget for the court and perform all other necessary functions relating to the revenues and expenditures of the court." Well, probably in the ordinary course of events those duties would be assigned to the administrator, but we are writing something for a long time into the future. It might be that under certain circumstances the court would want to relieve the administrator of parts of those duties, at least for a particular year or something. They might feel that maybe he doesn't quite see eye to eye with them and at the same time they don't want to fire him and they'd rather do a little bit of budgetary work themselves.

I think it would be much better constitutional practice not to define in the constitution the duties of officers at this level. I think you will find it better constitutional practice and you will find it will be better in the long run if you let the supreme court—which is supposed to have the control here—have the whole control and let them delegate to the court administrator such functions as they see fit over their budgetary expenditures.

CHAIRMAN VAN DUSEN: On the amendment offered by Mr. Hutchinson, Mr. Hatch.

MR. HATCH: Mr. Chairman, I'd like to direct a question to Mr. Hutchinson. Would it be your intent under the amendment that the court administrator perform any function other than an administrative function?

MR. HUTCHINSON: In answer to Mr. Hatch, I would say no. I would say, though, that the point that you raise is susceptible to the language as the matter now stands. I would have no objection to your inserting the word "administrative" ahead of "duties" and will accept the amendment.

MR. HATCH: That was precisely the point I intended to raise.

SECRETARY CHASE: Mr. Hutchinson revises his amendment by adding the word "administrative" before the word "duties"; so the amendment would read as follows:

1. Amend page 1, line 16, after "shall" by striking out the balance of the section and inserting "perform such administrative duties as may be assigned by the court.".

MR. HUTCHINSON: Mr. Chairman, in further support of the amendment I now offer, I would remind the committee again that the revised judicature act says in so many words that the court administrator shall take only such action in each instance as the supreme court shall direct. There is grave doubt, if the present proposed language goes into the constitution, it would appear as though the supreme court administrator might have some power independent of the supreme court because we wrote it into the constitution.

CHAIRMAN VAN DUSEN: The Chair will recognize Mr. Cudlip.

MR. CUDLIP: Mr. Chairman and members, I am a member of the committee and that's the only reason I rise, because the previous speakers are not, but I agree emphatically with Delegate Hutchinson and I'm sure that this is a very satisfactory amendment and, moreover, we save 30 words. (laughter)

CHAIRMAN VAN DUSEN: Chairman of the committee, Mr. Danhof.

MR. DANHOF: Mr. Chairman, I have made a fast check with I think almost a majority of the committee and we would accept the amendment.

CHAIRMAN VAN DUSEN: On the revised amendment offered by Mr. Hutchinson, the question now occurs. Those in favor of the amendment will say aye. Opposed, no.

The amendment is adopted. Are there further amendments to section b?

SECRETARY CHASE: None on file, Mr. Chairman.

CHAIRMAN VAN DUSEN: Will the secretary please read the amendment.

SECRETARY CHASE: The amendment that has just been adopted is as follows:

1. Amend page 1, line 16, after "shall" by striking out the balance of the section and inserting "perform such administrative duties as may be assigned by the court."; so that the language will read, "The administrator shall perform such administrative duties as may be assigned by the court."

CHAIRMAN VAN DUSEN: There being no further amendments, it will pass.

Section b, as amended, is passed.

The secretary has had word about the condition of our fellow delegate, Mr. Buback. The Chair will ask him to make a brief announcement.

SECRETARY CHASE: Mr. Madar reports that the seizure that Mr. Buback had this morning at the breakfast table was apparently due to some medication. A physician was called. He has been taken to St. Lawrence hospital, where he is resting much more comfortably and it is hopefully expected that he will be back before we adjourn today.

CHAIRMAN VAN DUSEN: The Chair will add we are all pleased to have that word about Mr. Buback.

The matter now before the committee is section c, which the secretary will read.

SECRETARY CHASE: Section c:

[Section c was read by the secretary. For text, see above, page 1256.]

CHAIRMAN VAN DUSEN: With respect to this section, the Chair will recognize the chairman of the committee, Mr. Danhof.

MR. DANHOF: Mr. Chairman, on this section I would again yield to the delegate from Grand Rapids, Mr. Tubbs.

CHAIRMAN VAN DUSEN: Mr. Tubbs is recognized.

MR. TUBBS: Mr. Chairman and ladies and gentlemen, this proposed section is simply a restatement of the present section 4 of article VII. If you will turn to your constitution, you will find that everything in that section is in the new

one, except the names of the writs. Now, those who are not lawyers might wonder at the names of some of those writs. They're old Latin names. They are still in use in some areas and they are still in use in Michigan. But if we are going to modernize our practice, we feel that we ought to just call them general administrative or remedial writs and leave out the names. We may have some different names for them in the next 50 years. There ought not to be any controversy over this section if you agree that the 1908 provisions were satisfactory.

CHAIRMAN VAN DUSEN: Mr. Danhof, have you further explanation?

MR. DANHOF: About what?

CHAIRMAN VAN DUSEN: Are there questions with respect to this section?

MR. DANHOF: I would further yield at this time perhaps to the gentleman from Detroit, Mr. Cudlip, if he has some words on this particular section.

CHAIRMAN VAN DUSEN: The Chair will recognize Mr. Cudlip.

MR. CUDLIP: Mr. Chairman and members, just to supplement briefly what my committee member, Mr. Tubbs, has said, I am sure that we all want to understand what we are putting in this constitution. This is a very desirable addition and succinct and it saves words again.

But I went down to the library to see what some of these words meant. So with your indulgence for a few minutes, we are striking them and including the words "prerogative writs" as the tools of this court. The "writ of error" simply relates to a writ involving review; you've heard a lot about "habeas corpus", you may have the body; "mandamus", a writ when the court is asked to order somebody to perform a ministerial act; "quo warranto", a writ by what warrant. Some corporations, for example, exceed authority and the procedure would be, by what warrant do you do that? "Procedendo", that's the one that really called me to the library. That is a writ used by the court when a lower court sends something to it on appeal or gets to the supreme court from an inferior court on appeal, the high court thinks it shouldn't be there, wants to send it back, so it uses a writ of procedendo—proceed again, proceed anew. It's a good section; it's a good change.

CHAIRMAN VAN DUSEN: There is a minority report filed by Miss Donnelly, Messrs. Leibrand and McAllister, pursuant to which they have offered an amendment. Does one of the movers of the amendment wish to be recognized?

The Chair recognizes Judge Leibrand, one of the movers of the amendment. The Chair would suggest that we have the secretary read the amendment first and then you proceed.

SECRETARY CHASE: The minority amendment is as follows:

1. Amend page 2, line 3, at the end of section c by changing the period to a comma, and inserting "it being provided that the supreme court shall not have the power to remove or suspend a judge.".

CHAIRMAN VAN DUSEN: The question is on the minority report amendment offered by Miss Donnelly, Messrs. Leibrand and McAllister. The Chair will recognize Judge Leibrand.

MR. LEIBRAND: I will first, with the indulgence of the committee, Mr. Chairman, read the reasons for the minority report on section c, particularly so because the first paragraph of these reasons is in error.

> Section c. The only change made by the Donnelly-Leibrand-McAllister minority report on section c is the addition of the phrase, "it being provided that the supreme court shall not have the power to remove or suspend a judge."

That is not correct; there is another phrase inserted. Starting at the very first of the minority report and reading therefrom:

> "The supreme court shall have: a general superintending control over the dockets of the appellate court and circuit courts;" limiting to dockets. The majority report doesn't have the docket limitation but gives the superintending control over courts, rather than dockets. Now, with reference to this matter we desire to add a provision, "it being provided that the supreme court shall not have the power to remove or suspend a judge".
>
> In suggesting the addition of this, we do not feel that we are tilting at windmills. There is, we assure you, a definite movement in this convention to empower the supreme court to remove elected judges from office on its own motion. We believe this is an unnecessary delegation of power. We also believe it is dangerous delegation of power.
>
> The supreme court has ample power, under the framework of its own rules, to enforce its general superintending control over the lower courts. If a lower court refuses to abide by the lawful judgments, decrees and rules of the supreme court, the supreme court may use writs of mandamus and prohibition. To enforce these writs the supreme court may commit an offending judge to jail for contempt until the judge does comply.
>
> If the judge of the lower court grossly violates his oath of office, the supreme court may report the situation to the governor, who, with the concurrence of 2/3 of the legislature, may declare the judicial office vacant. In addition, impeachment lies under the provisions of article IX of the present constitution, the substance of which, we understand, will be carried over into the new constitution. That article amply protects the public, during the time impeachment is pending, by providing that no judicial officer shall exercise his office after an impeachment is directed until he is acquitted.
>
> Any other public official removed in Michigan for wrongdoing by the governor or the legislature—

and they are the sole bodies now permitted to impeach or remove officials

> —has an appeal to and the protection of the supreme court. Designating the supreme court as the removing body deprives judges of that protection. The supreme court becomes judge, jury and prosecutor. There appears to be no reason for this discriminatory action. The adoption of the minority report will assure that such discrimination against judges shall not occur.

Now, I have said that we do not feel that we are tilting at windmills. The majority of this convention is or are—whatever the case may be—not lawyers. We know, and you have heard here that the supreme court by the Constitution of 1908 was granted broad rulemaking and disciplinary powers. They have exercised these powers from time to time, and back on June 5, 1959 the Supreme Court of the state of Michigan adopted a set of rules concerning their procedures in the exercise of disciplinary powers against local judicial officials. I will read to you the following. The heading on this sheet I hold is, "On Friday, January 5, 1959, the attached rules 1, 2, 3, 4, 5, 6, 7, 8 and 9, concerning superintendence of the judiciary of Michigan, were adopted by the affirmative vote of a majority of the justices." This is the first time that we have had from the supreme court a set of codified rules on this subject.

Now right here I am reminded of a little story about a plaintiff and a defendant and their attorneys who were trying a case before a justice of the peace, and after the testimony was over, the justice asked for arguments or any applicable law. The attorney for the plaintiff got out, I think it was 33 Michigan, a volume published about 1850, and brought forth a case that seemed to be right on the point to sustain a verdict for the plaintiff. The attorney for the defendant brought out a Michigan advance sheet dated about 30 days earlier. For you who are not lawyers, advance sheets are bindings of supreme court opinions immediately after they are published and come in a magazine form with a paper cover, while the permanent volumes are regular bound books. And so the justice duly and gravely considered the law produced by the attorney for the plaintiff from the old bound volume and the law produced by the defendant's attorney in the new advance sheet, and promptly, as befits a proper justice of the peace, gave verdict for the plaintiff. Someone asked the justice afterwards how he happened to arrive at such a conclusion in the face of

the applicable law. And the judge said, "That's easy." He said, "The attorney for the plaintiff got his law from a book while the attorney for the defendant got his law from an almanac." (laughter)

Now, I might say that these rules that I am going to read to you in brief, in short part—not completely—are actually found in a book, if you want to consult it, volume 356, Michigan, right at the opening of the volume, the rules as promulgated by the supreme court as to the discipline of the judiciary. And as I say, I will not read them in full; I will read excerpts here and there. You can consult the bound book if you want to. Rule 1 opens by saying, "These rules"—and my purpose for this is to indicate to you how the supreme court itself interprets its disciplinary powers—

> These rules are adopted pursuant to powers of the supreme court over the judiciary of this state, and also to enable the circuit courts to exercise their powers of supervisory control of all inferior courts and tribunals, subject to superintendence and review by the supreme court.

The next section I have marked:

> No investigation or proceedings under these rules shall be held invalid by reason of any nonprejudicial irregularity, nor for any error not resulting in a substantial miscarriage of justice.

Three:

> The enumeration of or reference to particular powers in these rules shall not be construed to exclude or limit others possessed by the supreme court.

In other words, the supreme court obviously takes the position that it can even go further with its disciplinary proceedings than provided by this rule.

> The enumeration of or reference to particular duties or standards of conduct herein shall not be construed to exclude or limit any other duties or standards of conduct to which any judicial officer and any inferior court or tribunal is subject.

Five, and here comes the prosecuting attorney aspect of this thing:

> The chief justice of the supreme court may, with or without a request, cause an investigation to be made by the court administrator of the affairs of any court or tribunal in the judicial department of this state, or the personal practices of any judicial officer thereof.

". . . or the personal practices of any judicial officer thereof." That's an important phrase.

And then they go on to say that on the other hand, the court may request an investigation by the court administrator and the chief justice may authorize a petition in the matter of the accused judicial officer. Now here is a definition of misconduct:

> Misconduct to be dealt with under these rules includes misconduct in office, misfeasance, malfeasance, neglect of duty, personal practices contrary to any of the canons of judicial ethics that have been or may from time to time hereafter be adopted by the supreme court, and any other practices that are likely to expose any court or tribunal in this state, or any judicial officer thereof, to public censure or reproach, or that are in any manner prejudicial to the proper administration of justice.

I submit to you, fellow delegates, that that definition is wide enough to penalize a judge for telling an off color story at a meeting of the Elks.

Rule 4 provides for the transfer of jurisdiction for the actual trial of the judicial officer, or hearing, to the county where the officer of the court is located.

Here is rule 7—remember you are trying a judicial officer—

> All proceedings under these rules, including the trial of the issues of fact and law, shall be conducted in open court without a jury, and shall otherwise conform as nearly as may be to the established civil practice and procedure in the circuit courts, and the rules of evidence in civil causes shall apply.

Now, the rules of evidence in civil causes are much more liberal than the rules of evidence in criminal causes. And what we are doing here, in effect—it seems to me what these rules are doing—is in many cases trying subjects that are inherently criminal in nature. But nevertheless, the respondent and judge only get the benefit of civil rules.

Then we go to rule 9 and I'm almost done:

> If the court finds that the charges are meritorious, the court shall make its written findings of fact and law, and shall determine such corrective and disciplinary measures as in the judgment of the court are warranted by such findings, and may issue such orders, directives, mandates, writs or process as in the judgment of the court are necessary or expedient to carry the court's determination into effect.

In other words, there is absolutely unlimited right claimed by the supreme court to impose penalties in such a case.

Now I grant you that whenever a court or any other body is given an investigative power and a power to determine facts concerning wrongdoing, there has to be a penalty in order to make those orders or determinations enforceable, but here we have, neither in the statutes nor the constitution as it exists now nor in the rules themselves, no limit as to what the court may do.

Furthermore—and this is the final rule I am going to read to you—and it is short; only 2 lines. The supreme court says in so many words that the legislature of the state of Michigan is forbidden to interfere with these proceedings, and here are the words, "Any statutory provision that is inconsistent with any provision in these rules shall be considered as superseded by these rules." Now, there we have it. That's the interpretation of the supreme court of its own powers under the present constitution. Under this interpretation, I submit there is no limit on the penalty that the supreme court might impose.

There is no reason at all why the supreme court in one of these proceedings could not remove or suspend a judge. We feel that that is a dangerous power. It's a power that should be exercised—the removal or suspension of an elective officer should be exercised as are these powers with other public officials, by the governor, by the legislature or by impeachment.

We're not interfering with the rules by the minority amendment. We are permitting the supreme court to impose any penalty that it sees fit for a determination that some judicial officer has violated the rules except 2 things: the supreme court shall not suspend or remove a judge.

CHAIRMAN VAN DUSEN: Judge Leibrand, did the Chair understand that the secretary had not correctly read the amendment which you, Miss Donnelly and Mr. McAllister offered?

MR. LEIBRAND: No, Mr. Chairman. We had made a misstatement in our reasons which were distributed to the delegates. We said the only thing in our amendment was the matter of removal and suspension of judges when, as a matter of fact, there was another aspect there, another phrase upon which I will not dwell at this time.

CHAIRMAN VAN DUSEN: The Chair will ask the secretary to read the amendment as it has been offered.

SECRETARY CHASE: May the secretary ask the pardon of the minority in the preparation of this amendment in that we overlooked one part of the amendment.

The minority report amendment offered by Miss Donnelly, Mr. Leibrand and Mr. McAllister is as follows:

1. Amend page 2, line 1, after "over" by striking out "all" and inserting "the dockets of the appellate court and circuit"; and in line 3, after "rule" by changing the period to a comma and inserting "it being provided that the supreme court shall not have the power to remove or suspend a judge."; so that the language will then read:

> The supreme court shall have: a general superintending control over the dockets of the appellate court and circuit courts; power to issue, hear, and determine prerogative and remedial writs; appellate jurisdiction as provided by

supreme court rule, it being provided that the supreme court shall not have the power to remove or suspend a judge.

CHAIRMAN VAN DUSEN: Just to keep the committee advised, the Chair's most recent census of nonlawyer delegates in attendance was 28. Mr. McAllister.

MR. McALLISTER: Mr. Chairman and fellow delegates and also delegates who are nonlawyers, I only have this to offer: on February 7, 1961, an attorney for the court administrator interpreted the rule of superintending control. Until 1959 the court had followed the writs which have been referred to by both Mr. Leibrand and Mr. Cudlip and never attempted to exercise greater power until the Huff case came along. But the attorney for the court administrator cites on February 7, the following—and I want you to listen closely:

> If cause exists for exercise of general superintending control, the practical application is nearly without limit, reprimand, fine, suspension, recommendation to the legislature or imposition of new and additional means, writs and processes.

I assume that this statement was made with the approval of the supreme court so that if this statement is correct and it was made by the attorney for the court administrator, the supreme court has unlimited power to do anything they see fit when anyone is before them. In other words, if they have this power, they have the power of the ancient king. The man is brought before the tribunal, the sentence is made and he has no appeal; and conceivably the decision could be made on any type of facts, as Mr. Leibrand has indicated in reading the court rules to you here today.

CHAIRMAN VAN DUSEN: The Chair will recognize Mr. Everett.

MR. EVERETT: In accordance with the Chair's suggestion, I may only be talking to brother lawyers but I still think it needs to be said that what the minority is trying to do is to move the clock back beyond 1850. The language which they object to, "the general superintending control over the other courts" has been in our constitution since 1850. Now, they can cite one case in 112 years in which they say the court has made a mistake. I don't know if the court did make a mistake or not. But if they made one mistake in 112 years, I submit their record is better than most of ours.

I think that we have got to determine for ourselves whether we do want to permit a general control or whether we don't. Judge Leibrand and Mr. McAllister have suggested the terrible consequences of this. In the 112 years which they claim the court has had this power, no judge has ever been suspended or removed—to my knowledge, at least—by the court. One, I guess was impeached someplace back in history by the legislature and this, of course, doesn't affect the right of impeachment. The legislature still has the power of impeachment.

What they are suggesting to us is—and I frankly can't follow their logic—is that the supreme court should not have this power because in all other instances the supreme court has the final say. Now, if you are arguing that they should not have the final say here because they do have the final say elsewhere, I don't understand why you worry about them. It is not a power which should ever be likely exercised.

We have heard a great deal of comment in these halls about having trust or mistrust of the legislature and I guess this simply boils down to whether you trust or distrust the supreme court. This is not a matter of personalities, who happens to sit on the court at this moment or some other moment in history. It is a question of whether the court administration is going to be continued and maintained or whether it is going to be thrown out the window.

As many of us suggested yesterday—maybe too many—lawyers throughout this country look upon Michigan as having had a tremendous degree of good court administration for the simple reason that we have had controls which they wished to have and are now acquiring.

And I submit that we would be making a terrible mistake if we turn the clock back not even 100 years, but back past 1850.

CHAIRMAN VAN DUSEN: The Chair will recognize the chairman of the committee, Mr. Danhof.

MR. DANHOF: Mr. Chairman and members of the committee, I would merely like to emphasize what Mr. Everett has said. We have recommended the reenactment here of the present constitutional language of 1908. If there was one thing that was presented to our committee, it was this particular language.

The gentleman who came from the state of New York where they passed that long judicial article that Delegate Ostrow showed you the other day, stated that as he was flying over here to Michigan, he read our judicial article and he said, "What we achieved in 1960 you have had since 1908." Now, the state of New York is not necessarily known as a backward or a nonprogressive state. Many of our laws, a great deal of our legal history comes from the state of New York. And if there was one thing that was impressed upon us by other speakers, especially from New Jersey where they probably had before 1947 the worst possible court system, was that the language that we had in our 1908 constitution should be retained.

Since 1908 the state of Michigan has been pointed to as a leader in this field. Every single authorization in the field of sound judicial administration comes from this particular act. All of the new constitutions have copied almost verbatim the words that we have had in Michigan for 52 or 53 years. The limitation which the minority report would make on this constitution would place us, as Mr. Everett has said, not just 50, but 100 to 150 years back. If there is one matter or one idea which must be preserved, it is on this particular provision.

We realize that certain people have a fear—and maybe it is justified and maybe it is not; maybe it is because they're a little too close to the trees and can't see the forest—but if there is one thing that we need, it is a sound judicial integrated system and to place upon this the limitations that the minority would, would severely hamper everything that you have voted for heretofore.

This is the crux that they admitted they were leading up to and this is the one thing, this is the thing that will provide a sound judicial administration. No judge, if he adequately performs his judicial duties, regardless of the strata that he may be in, will find himself before the supreme court or cited for any violation or dereliction of duty.

The majority of the committee urges that this convention not take a step backward but that they at least remain where they are and keep Michigan in the leadership in this particular field.

I strongly urge that the amendment be defeated.

CHAIRMAN VAN DUSEN: The Chair doesn't know quite what it was that you did that affected the delegates, Mr. Danhof, but 5 of them sought recognition during your remarks. The Chair will recognize Mr. Mahinske.

MR. MAHINSKE: I rise to support the proposed amendment here. Among other reasons, I would like to call the committee's attention to Committee Proposal 42, where we have already passed authority or a proposed article in the new constitution regarding impeachments. Now, in section d of this proposed article, we make judicial officers subject to impeachment for cause; then in section e of the new proposed article, we have written or suggested the following language:

> Any officer elected by a county, city, village, township or school district may be removed from office in such manner and for such cause as shall be prescribed by law.

Now, what we are suggesting is that judicial officers may be impeached under the strict impeachment provisions, or they may be removed from office by a simple statute that the legislature puts through. Now we want to go a little further and say that the supreme court themselves may also remove these judges.

The main objection I have here is the same objection that I have to the administrative tribunals. We have a body that writes the rules, that enforces the rules, makes the hearings under their own rules that they have written and they penalize

under these rules. Now, I don't think that we are going to want to go this far with our judges.

So far we have not determined how we were going to select the supreme court. We may well wind up here with an appointed supreme court with the power to remove elected officers. This I would object to from the very inception of this. We also may wind up here by selecting our supreme court bench on a regional basis.

Now, any judge in any area of the state knows that there is no possibility that a majority of that bench would be people from his own geographical area. Now, this is 2 strikes against him before he even gets involved with them.

Frankly, I think that there are enough safeguards in the impeachment article and in general practice and under the rules written by the supreme court to take care of any judges that start to divert from their duties. I think that putting a strict prohibition on the supreme court from removing elected judges, or even appointed judges, is a good move in this direction. For that reason, I would support this.

CHAIRMAN VAN DUSEN: Mr. Lawrence. Excuse me, Mr. Mahinske, had you concluded?

MR. MAHINSKE: I was just asked to comment on the docket procedure here. I think that this is also desirable as far as I am concerned. I think that they should have control over the dockets.

CHAIRMAN VAN DUSEN: Mr. Lawrence.

MR. LAWRENCE: Mr. Chairman, members of the committee, there are 2 or 3 things that have occurred to me as being rather serious in the effort to limit the superintending control of the supreme court by the proposed amendment and why I feel that the provision in the majority report should be approved. In the first place, to put it simply, the majority report—which as I believe has been pointed out, is taken not only from the 1908 constitution, but the 1850 constitution and has been in force all that time—merely says that the supreme court shall have superintending control over the courts with the power to issue certain writs: remedial writs and prerogative writs.

Now, let's take a couple or 3 examples. One, you've heard the Huff case referred to. I would like to know if there is any proponent of the amendment or any delegate who is prepared to stand here and say that the supreme court exceeded any reasonable superintending power that it should have in that case. If anybody cares to say so, I would like to hear it. And I would have that person point out, by being familiar with the facts of that case, wherein the supreme court exceeded any reasonable, proper superintending control. And unless that is done, let's forget about the Huff case even being one case in 112 years in which the supreme court has improperly assumed control or authority over our court system. That's the first thing.

Now the second thing. I think that our purpose here is to try to improve our court system. If it is, let's see if it is improper to have the supreme court or to lodge in the supreme court the superintending control over all the courts. We have several hundred, I imagine, judges in this state. If each one is to be a little law unto himself and be able to determine how he shall conduct himself, do we have the efficient use of our court system? Shouldn't we have authority somewhere?

Now, the amendment says, "the supreme court shall not have the power to remove or suspend a judge." Let's think about that for a minute. Suppose some judge starts acting queerly. Suppose, to use an example, that he started issuing divorce decrees willy nilly, without proper proofs. Suppose that he stated he would not follow a certain rule of law and consistently refused to do so. In other words, that for reasons of nervousness or mentality or something, he was no longer fit to act as judge, whether temporarily or otherwise; is there anybody here who would say that the supreme court, protecting the people of this state, should not have authority to issue a writ restraining that judge from acting until such time as it could be determined what was wrong? It seems to me so plain that that would be to the interests of the people in the state, of all of us.

Also, I think this, I think that the holding of judicial office is a very high honor. It is one of the highest honors that we can give. The right to determine the rights—personal and property—that our people have—I think that such a man, when he takes that office, should be willing to say: I am to be judged on a higher standard than the average man in the street who has litigation in front of him. And if he conducts himself personally outside the court in such a way as to bring discredit on the judicial system, certainly there must be some means within the court structure of issuing some sort of writ to suspend or remove such a judge from acting until any other method they want to have, such as impeachment, can be invoked. Thank you.

CHAIRMAN VAN DUSEN: The Chair recognizes the delegate from Bay, Mr. Higgs.

MR. HIGGS: Mr. Chairman and members of the committee, with regard to the minority report, the aspect of this that should not be lost and should attract your attention is that the power of the court would be limited to superintending control over the dockets.

Now, I don't think it's true that prior to 1959 the circuit courts in this state were above reproach. Prior to that time I recall complaints, and it is my understanding that there were courts in this state that declined to render decisions for a matter of years.

Put yourself in the place of a plaintiff or a defendant in a court of law and unable to get a decision from the judge for a matter of years. Sure, you have one remedy. You can go to the supreme court and get a writ of mandamus to force him to make a decision, but how effective is that? What kind of a decision are you likely to get?

Now, the case in 1959 did not directly involve such a problem of a failure to make decisions. But since that time I have heard a lot fewer complaints. A particular problem involved removing a judge from that circuit. Sure, he had plenty of work to do there, and they brought in another judge to do it, to solve a problem in Detroit, according to the court. Now, I'd also like to say that this amendment, if it would succeed, would cut the heart right out of a pending case in the supreme court.

Now, if this were to go through and the power of the supreme court in disciplinary matters were simply over the dockets of the court, you would have no power of discipline over let's say a nonlawyer judge in a probate court with regard to any other matter except the docket. I would say that it is not so that there is no limit on the power of what the court may do. Certainly the court would have to follow some due process requirements of notice. This is all provided for and I don't think there is any question but what the federal court could step in if there was an arbitrary exercise of power by the Supreme Court of Michigan.

It was not very long ago that the district federal judge did overturn a judgment of the Supreme Court of Michigan. I think that, as Chairman Danhof has said, I voted against the provision in committee that the supreme court not have the power to remove the judge from office, but I think there are cases where they must have the power to suspend or they must have a power beyond the control over dockets.

A judge is not an ordinary citizen. He is a man in an extreme position of power over the people that appear in his court. It would merely transfer this power that the proponents of the minority report are talking about from the supreme court to every individual judge of a court of record in this state or courts not of record.

In the course of our committee hearings and in hearing the testimony of witnesses from other states, this is the one thing, the superintending and supervisory control, that they felt that Michigan had that they needed.

I urge you to support the committe proposal and to defeat the minority report amendment.

CHAIRMAN VAN DUSEN: The Chair recognizes Mr. Woolfenden.

MR. WOOLFENDEN: Mr. Chairman and delegates, I rise in opposition to this amendment. I think in fact the amend-

ment is in 2 parts and when we come to vote on it, I will ask that it be voted on separately. Addressing the first part of the amendment, inserting the words, "the dockets of the appellate court and circuit", I wish to submit that the existing language of the Michigan constitution, as has been stated, has been unchanged since the Constitution of 1850. It is generally recognized throughout the United States as being one of the most important and most constructive provisions in the Michigan constitution.

I would like to read to you a brief comment from the citizens research council analysis of this article, which I can state from my own experience and discussing this matter with attorneys from states throughout the United States is a valid and accurate commentary. The citizens research council states:

> The superintending control power over all inferior courts given the supreme court by this section is one of the most significant powers given to the court in the constitution. This same power exists in a number of other states and is the envy of other states not having it.

There is no question but what the good administration of justice in Michigan—and I am speaking of the administrative phase of the courts of justice—is, we are one of the leaders of the United States and it is because of this language which has been demonstrably effective and in the best interests of the state now for 112 years. I think to pull the teeth of this section of the constitution would be a tragic step backward from the position of leadership in the administration of justice that we have enjoyed in Michigan.

Now, as respects the second clause, it being provided that the supreme court shall not have the power to remove or to suspend a judge, I think that this amendment reads into the general superintending control language something that isn't there. In the same 112 years since 1850 the superme court has had this general superintending control and to the best of my knowledge it has never once undertaken to remove a judge.

The impeachment provision of the existing constitution—and I am sure the constitution we ultimately come up with will provide for impeachment—and I think that makes entirely unnecessary this clause which is strictly surplusage in my judgment and reads into the article as proposed by the committee, something that isn't there.

Therefore, I oppose both sections of this amendment, but I ask that it be submitted as 2 parts for vote when the time comes.

CHAIRMAN VAN DUSEN: In accordance with Mr. Woolfenden's request, the question will be divided when it is put. Mr. Danhof.

MR. DANHOF: Mr. Chairman, it is obvious that debate will go on for some time and I therefore do now move that the committee rise.

CHAIRMAN VAN DUSEN: Mr. Danhof moves the committee do now rise. The question is on the motion. Those in favor will say aye. Opposed?

Motion carries. The committee will rise.

[Whereupon, the committee of the whole having risen, Vice President Hutchinson resumed the Chair.]

VICE PRESIDENT HUTCHINSON: The delegate from Oakland, Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, the committee of the whole has had under consideration several matters and the secretary will give a detailed report.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 91,** A proposal pertaining to the supreme court; has adopted 2 amendments thereto, has considered several other amendments and has come to no final resolution thereon. This completes the report of the committee of the whole.

VICE PRESIDENT HUTCHINSON: Without objection, we will return to the order of **motions and resolutions.**

SECRETARY CHASE: Messrs. Binkowski, Ford and Marshall offer

Resolution 78, A resolution relative to post adjournment affairs of the convention.

Following is Resolution 78 at offered:

> Whereas, The Michigan constitution, in section 4 of article XVII, requires that the convention shall "provide for the printing and distribution of its documents, journals and proceedings"; and
>
> Whereas, The convention also has an obligation to arrange for the orderly return of convention hall to its regular uses; and
>
> Whereas, These steps should be taken in as efficient and economical a manner as possible consistent with the constitutional and moral obligation to apprise the people of the convention proceedings; now therefore be it
>
> Resolved, That:
>
> 1. The convention call upon the legislature to arrange for the restoration of convention hall.
> 2. The department of administration shall be asked, in conformity with an opinion of the attorney general, rendered November 20, 1960, to Representative Joseph Gillis, to make arrangements for the disposal of all other properties of the convention.
> 3. The convention shall contract with the secretary of the convention, as was done in 1908, for the services of preparing the index and supervising the printing, binding and mailing of documents, journals, verbatim proceedings and debates and the address to the people, including the proposed constitution.
> 4. The convention, so far as feasible, shall have the journals and the documents and proceedings of the convention transcribed and prepared prior to the adjournment.
> 5. All records shall be transferred either to the secretary of state or the state historical commission at adjournment.
> 6. All moneys not expended or obligated at the time of the adjournment of the constitutional convention shall revert to the general fund of the state.
> 7. Any resolutions or actions inconsistent with this resolution shall be rescinded.

VICE PRESIDENT HUTCHINSON: The resolution is referred to the committee on administration.

Announcements.

SECRETARY CHASE: I have the following requests for leave: Mr. Perras has already been excused from the sessions of Monday and Tuesday next. He has filed an additional request to be excused from next Wednesday's session; and Mr. Nisbet asks to be excused from the session of Monday. That's all I have at the present time, Mr. President.

VICE PRESIDENT HUTCHINSON: Without objection, the requests will be granted. The Chair hears no objection. It is so ordered.

The Chair now recognizes the delegate from Washtenaw, Mr. Lawrence.

MR. LAWRENCE: Mr. President, I move that we recess until 2:00 o'clock this afternoon.

VICE PRESIDENT HUTCHINSON: Mr. Lawrences moves that the convention stand recessed until 2:00 o'clock p.m. All those in favor will say aye. Opposed will say no.

The motion prevails and the convention stands recessed until 2:00 p.m. today.

[Whereupon, at 11:40 o'clock a.m., the convention recessed; and, at 2:00 o'clock p.m., reconvened.]

The convention will be in order.

SECRETARY CHASE: Mr. President, a quorum of the convention is present.

We have the following requests for leave of absence: Mr. Madar is absent from the afternoon session so that he may take Mr. Buback back to Detroit; Mrs. Cushman would like to be excused from the afternoon session due to a doctor's ap-

pointment; and Mr. Page would like to be excused from the afternoon session.

VICE PRESIDENT HUTCHINSON: Without objection, the requests will be granted. The Chair hears no objection. It is so ordered.

The delegate from Oakland, Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, I move the convention resolve itself into committee of the whole for the purpose of considering matters on the general orders calendar.

VICE PRESIDENT HUTCHINSON: The question is on the motion of the gentleman from Oakland. All those in favor will say aye. All those opposed will say no.

The motion prevails. The committee will convene and Mr. Van Dusen will preside.

[Whereupon, Mr. Van Dusen assumed the Chair to preside as chairman of the committee of the whole.]

CHAIRMAN VAN DUSEN: The committee will come to order. As we proceed further with the consideration of the rather technical matters in the judicial article of the constitution, the Chair would suggest to this attorney the fact that this morning we experienced a high degree of absenteeism and an equally high degree of private conversation on the floor during debate and that a counteractive measure designed to retain your audience might be to make your remarks as brief and as simple as possible. With that admonition, we will continue with the consideration of section c of Committee Proposal 91, and specifically, the first part of the minority report amendment offered by Delegates Donnelly, Leibrand and McAllister. The Chair has 5 speakers seeking recognition, the first of which is Mr. McAllister and the Chair recognizes Mr. McAllister at this time to speak on the amendment.

MR. McALLISTER: In view of the fact that it has already been quite amply discussed, I believe I'll waive my right to the floor at this time.

CHAIRMAN VAN DUSEN: Mr. McAllister passes. Judge Dehnke.

MR. DEHNKE: Mr. Chairman and delegates, I have understood that there are some negotiations in the wind which may make it unnecessary for me to make the remarks that I had in mind. But in the meantime, I thought some of the lawyer delegates as well as the laymen might be interested in hearing what one prominent writer had to say about judges and how easy their task and how light the yoke rests upon their shoulders. This was a writer by the name of Elbert Hubbard, commonly know as Fra Albertus, who had these observations to make on judges about 50 years ago. He said:

> A frivolous man has said that a judgeship is a booby prize given to a lawyer for mediocrity. This is an overstatement of the literal truth, which is that a commonplace man will often make a very good judge.

I pause to give you a chance to say to yourselves, "Thank heaven for that." The quotation continues:

> There is something about the position that lifts a man morally and mentally, and brings out the best there is in him.
>
> The first requisite in a judge is disinterestedness. It is moral qualities that make the good judge, rather than eminent mental attainments.
>
> Very, very seldom in practice is a judge required to make an epoch making decision. The routine of office is a track well trodden. All along, the road is blazed.
>
> A businessman can go wrong easily, because he is often sailing an unchartered sea. But with a judge, the foghorns are within hearing distance, and the bells of the lifebuoys sound their continual alarm.
>
> A judge is very fortunate in having counsel on both sides explain the case to him at great length. Considering the constant tutorship and the plenitude of advice that he enjoys, there is really no excuse for the ignorance or the mistakes of a judge.

CHAIRMAN VAN DUSEN: Thank you, Judge Dehnke. The Chair will recognize the vice chairman of the committee, Mr. Ford.

MR. FORD: Mr. Chairman, I rise to support the majority report in the committee proposal. I'd like to call the delegates' attention to the fact that it has been pointed out here, perhaps by accident, that by implication the committee intends to confer upon the supreme court a power to suspend or remove judges inferior to the supreme court that it does not now have.

It is not my understanding as a supporter of the committee's position, that the committee intends to enlarge at all upon the powers that the supreme court has had in this case for many years, and it should be stated clearly on the record, at least to satisfy me as a supporter of this position, that we do not intend to confer upon the supreme court the powers to remove judges from office.

We have provided in Committee Proposal 96, at page 3, section h, the manner in which a judge can be removed or suspended from his office. We already adopted in the committee of the whole, I believe, a general provision having to do with impeachment procedure that would provide for the impeachment of judges. It should be kept clearly in mind that there are 3 ways that a judge might be taken out of his office either temporarily or permanently.

The first, of course, and the most serious, would be by impeaching him from office, and he would be impeached in the same manner as any public official at least above the county level and we have already provided for this in a provision in the existing constitution and in the proposed constitution. Now, impeachment arises out of misconduct affecting the office of misfeasance, malfeasance and nonfeasance. However, there might be causes for removal of a judge or for the suspension of his powers that fall short of official misconduct on his part. And for that reason, the judiciary committee has provided in section h of Committee Proposal 96 that a judge may be removed or suspended by joint action of the governor and 2/3 of both houses of the legislature. In other words, to suspend the powers of a member of the judiciary, a clear and distinct part of the 3 major portions of our government, you have to have the joint action of both other parts of the government, the legislative and the executive.

Now, within the contemplation of that section are removals for such things as physical incapacity that the judge might not be in a position to appreciate himself. Certainly you wouldn't impeach a judge because he had a nervous breakdown or a mental breakdown that made him incapable of carrying on, but also made him incapable of making a decision to resign from his office, but you wouldn't want to be in a position where you would have to continue him in office to the detriment of the public. So the governor, with the joint action of 2/3 of both houses, can remove him from office without attaching to him the stigma of an impeachment proceeding. This removal could, on its face, say that there is nothing wrong in the sense that the judge has performed any dishonest act but that he is just no longer able to perform his functions. By the same token, there might be an occasion—and I can't think of an example offhand—where a judge might be suspended for a period of time, and again it would take this same sort of formal action. So it is the view of the committee in recognition of coverage in the constitution of the 3 types of removal or suspension, that it is not necessary to consider that as a part of this particular section.

What we have to realize here is that we are arguing the same principle that we argued with respect to section a and section b. We are arguing here really about what the power of the supreme court is going to be to superintend the activities of these courts inferior to the court.

I should hope that the proponents of this amendment did not intend by this language to say that the supreme court could not, when it was called to their attention that something was wrong in the judiciary system, institute an investigation and on the basis of that investigation recommend either the impeachment, removal or suspension of a judge. To make it very clear, I would like to ask a question, Mr. Chairman, and yield for an answer to Mr. McAllister in this regard and perhaps we might reach a meeting of the minds with respect to the language involved here.

CHAIRMAN VAN DUSEN: Mr. Ford yields to Mr. McAllister for a response to a question.

MR. McALLISTER: Mr. Ford, there is no intent on the part of the minority group to prevent the disciplining of judges. The only thing we feel that the supreme court should not have is the right to remove a judge. And from your reasoning and your conversation here in talking to the delegates, it would appear that you say that you don't object to a provision in the constitution against the removal or suspension of judges. And if that is what you have said, as I understood it—was that this section does not contemplate the removal or suspension of judges—and if it doesn't contemplate that, I can see no reason why the committee, the majority of the committee, or yourself, would object to these 2 items being in the section of the proposal before us. If my understanding is right and you are willing that it specifically set forth that the court will not have the right to remove or suspend a judge, we are willing to, with that exception, let the proposal as you have it, stand.

MR. FORD: Could I ask Delegate McAllister if he feels there is any danger that including the language, "it being provided that the supreme court shall not have the power to remove or to suspend a judge" might have read into it this kind of a connotation: that since we have taken it upon ourselves to specify that they do not have this power, that this might imply that they do not have the power to investigate, initiate or otherwise inquire into matters necessary for the removal or suspension of a judge?

MR. McALLISTER: No. I say they have that right. I have no objection to that and I don't think the other members of the minority do. In other words, what we object to is a man being accused, complained against and tried by the court without having any opportunity to appeal. In other words, that doesn't sound like America to me. If you are willing to have added to the body of this section that the court shall not remove or suspend a judge, or words to that effect, that's all we want. And we certainly say that they have a right to investigate, discipline and complain to the proper authorities, asking for the removal of the judge.

At the present time if a man is impeached, he has a right to appeal to the court. That's my understanding at least. In other words, he has a second chance. But under the setup, if the supreme court, as they have indicated through their attorney, has unlimited power, then a man is brought in and tells his story, and whatever they do is final. And I don't think that is an American right or an American way of life.

CHAIRMAN VAN DUSEN: Mr. Ford.

MR. FORD: Mr. McAllister, don't you believe that the fact that we have provided in 2 other places in the constitution for the method of removal or suspension of judges is sufficient to afford the kind of protection that you want?

MR. McALLISTER: No, I don't; because, on February 7, through their attorney they claim they have unlimited power. That's the attorney's statement, the attorney for the court administrator who is under the direction and control of the supreme court. And if you mean what you say, you should have no objection to providing in this article that the supreme court shall not have the right to suspend or remove a judge. And if you can tell me in what way that is inconsistent with any other provision in the constitution, then I will be willing to listen.

CHAIRMAN VAN DUSEN: Mr. Ford.

MR. FORD: I want to accede to the fact that I do think that Mr. McAllister and I are coming to a meeting of the minds on what we intend to accomplish. But to further question Mr. McAllister, would in your opinion the inclusion of the language at this particular place—and by that I mean in juxtaposition with the general grant of superintending power to the supreme court—would this language have any danger of being used to prevent the supreme court from instituting proceedings such as in the Huff case,—

MR. McALLISTER: No, because—

MR. FORD: Let me finish.

MR. McALLISTER: Pardon me.

MR. FORD: —which might have, if the circumstances were more severe, ultimately ended up with a recommendation from them to the governor and the legislature that the judge be removed from office?

MR. McALLISTER: No. I would say the supreme court has that right. I think anybody has the right to recommend and I certainly don't feel by adding these 2 words to the section in any way prevents the supreme court—and I make that as a positive statement. The only thing is we don't want hazy language here that doesn't define things because in view of the supreme court's own statement—or at least the attorney for them—that they have unlimited power, it should be restricted so they can't invade the impeachment proceedings area except by making a complaint to the governor or to the legislature. They certainly would have that right. We don't contend that they don't have that right.

CHAIRMAN VAN DUSEN: Mr. Ford.

MR. FORD: Would you have any objection to modifying this language to make it equally as clear that the supreme court would in no way be restricted from taking any proceeding short of the actual removal itself in furtherance of removal or suspension?

MR. McALLISTER: I would say this, that the supreme court would have the right to recommend to either the governor or the legislature that any judge should be removed from office.

MR. FORD: But could the supreme court hold a hearing and go into the facts?

MR. McALLISTER: I would say they should not go into the facts, in other words, have a hearing on it, because then they've made a determination.

MR. FORD: Now aren't we down to the nub of this? Isn't this really it, Mr. McAllister, that you believe that this language would prevent the supreme court from holding a hearing on the question of the fitness of a judge to continue in his office?

MR. McALLISTER: I would go this far, that if the legislature requested them to hold a hearing, then I'd say they have a right. In other words, the thing is here, if the supreme court prejudges a matter of this kind—they should certainly have the right to report the facts that come to them to the legislature and let the legislature or the governor act on those facts. But if they have a hearing and determine in advance that the man is guilty of the charges, then isn't the legislature mandated to impeach that individual? In other words, the man is entitled to a fair hearing and if guilt is predetermined by the supreme court, then of course he can't have a fair hearing. It's plastered all over the papers that the man is guilty and the supreme court has so determined. So I would say they would have the right to complain and present the facts that they find, with no recommendation.

CHAIRMAN VAN DUSEN: The Chair would advise the gentleman from Taylor and the gentleman from Bad Axe that their colloquy has apparently attracted amendments. We now have a proposed substitute for the second half of the Donnelly-Leibrand-McAllister amendment and we also have an amendment to it. Might the Chair suggest that the secretary read the amendments which have been filed in the hope that it might expedite proceedings.

SECRETARY CHASE: Mr. G. E. Brown has offered the following substitute amendment for the second part of the amendment:

1. Amend page 2, line 3, after "rule" by changing the period to a colon and inserting "Provided however, No judge shall be removed from office or suspended except as provided by this constitution.".

CHAIRMAN VAN DUSEN: Mr. Ford, I believe that you had the floor. Would you like to yield to Mr. Brown for a discussion of his amendment or do you prefer to retain it?

MR. FORD: I'd like to yield to Mr. Brown if I could then yield to the chairman of the committee.

CHAIRMAN VAN DUSEN: We will follow that order. Mr. Brown.

MR. G. E. BROWN: Mr. Chairman, members of the committee, I shall be very brief. It seems that the amendment that I have proposed places the removal and suspension provisions together where they belong, that is, as Mr. Ford has mentioned, in section h of Committee Proposal 96. The language, however, here would seem to modify the language of the committee proposal insofar as it relates to the superintending power of the supreme court. This should cast away the windmills and let the removal and suspension power be set forth in the constitution where it should, that is, in section h of Committee Proposal 96.

CHAIRMAN VAN DUSEN: Mr. Ford now yields to the chairman of the committee, Mr. Danhof.

MR. DANHOF: Mr. Chairman, might I inquire of the secretary whether or not the question has been divided?

CHAIRMAN VAN DUSEN: The question has been divided and will be presented separately when we get to it. At the moment the matter before the body is the Brown substitute for the second half of the Donnelly-Leibrand-McAllister amendment.

MR. G. E. BROWN: Mr. Chairman.

CHAIRMAN VAN DUSEN: Mr. Brown.

MR. G. E. BROWN: My amendment, of course, also struck the first language, the language in the first clause. But since it is going to be divided and voted upon separately, upon consultation with the secretary, that part of my amendment was not read. My amendment totally would do away with the first clause about the dockets, et cetera and then change the language in the last. So if it is going to be divided, we could just as well vote upon it. It isn't necessary to do it twice by considering that first part of my amendment.

MR. WOOLFENDEN: A parliamentary inquiry, Mr. Chairman.

CHAIRMAN VAN DUSEN: Mr. Woolfenden.

MR. WOOLFENDEN: If I understood Mr. McAllister correctly a few moments ago and if he were speaking for his associates with this amendment, he withdrew the first part. Did I understand you correctly, Mr. McAllister?

MR. McALLISTER: That was my intention. I want to speak to my associates.

MR. WOOLFENDEN: Can I get that cleared up, Mr. Chairman? Mr. McAllister says it was his intention to withdraw the first part of the proposed amendment.

CHAIRMAN VAN DUSEN: The Chair may have missed it in the course of the colloquy, Mr. Woolfenden. May the Chair ask Judge Leibrand to comment?

MR. LEIBRAND: I concede to concur in the withdrawal of the first part.

CHAIRMAN VAN DUSEN: Miss Donnelly, your cosponsors of the amendment have suggested the withdrawal of the first portion of the amendment. What is your pleasure?

MISS DONNELLY: I'm sorry. I was trying to get Mr. Brown's language. My pleasure as to the word "dockets", you mean, in the appellate court? I have no objection to that being removed.

CHAIRMAN VAN DUSEN: The sponsors of the amendment withdraw the first portion of their amendment and the secretary will read the balance of the minority report amendment proposed by Miss Donnelly, Messrs. Leibrand and McAllister.

SECRETARY CHASE: The second part of the amendment as proposed by Miss Donnelly and Messrs. Leibrand and McAllister is as follows:

1. Amend page 2, line 3, after "rule" by changing the period to a comma and inserting "it being provided that the supreme court shall not have the power to remove or suspend a judge.".

For this amendment Mr. Garry Brown offers the following substitute amendment:

1. Amend page 2, line 3, after "rule" by changing the period to a colon and inserting "Provided however, No judge shall be removed from office or suspended except as provided by this constitution.".

CHAIRMAN VAN DUSEN: The question is on the substitute amendment offered by Mr. Garry Brown.

MR. HUTCHINSON: Mr. Chairman.

CHAIRMAN VAN DUSEN: Excuse me just a moment, Mr. Hutchinson. The Chair would advise Mr. Mahinske who has also filed an amendment that Mr. Brown's substitute was on the desk first and that it is therefore the matter currently before the house.

Mr. Hutchinson.

MR. HUTCHINSON: Mr. Chairman, I'd like to ask Mr. Brown of Kalamazoo a question with regard to his amendment. Keeping in mind the saying, which I think is true, that the constitution is what the supreme court says it is, when you would say that they can't remove a judge except as provided in this constitution, this seems to get so we're going around in a circle here right back to the problem that we have immediately before us. They apparently think they've got constitutional power to do that now. They might think they had constitutional power in the future if your amendment were adopted. Is that not true?

CHAIRMAN VAN DUSEN: Mr. Brown.

MR. G. E. BROWN: Mr. Chairman, Mr. Hutchinson. I think not, Mr. Hutchinson. The purpose in putting the language in at this point is to in effect limit the general language of the superintendency of the court, or the superintending powers of the supreme court over the courts.

The rule of constitutional interpretation, as I recall it, is that where there is an express provision relative to such things as removal or suspension—these are the provisions relative to removal or suspension which will be spelled out in section h of Committee Proposal 96—there is no power to imply a greater power from the general wording of "superintendency of the courts." Does Mr. Hutchinson disagree with this constitutional interpretation?

CHAIRMAN VAN DUSEN: Mr. Brown yields to Senator Hutchinson.

MR. HUTCHINSON: Mr. Chairman, in response to the gentleman, I would say that I would recognize the merit of his argument, that when we spell something out in particular, that it would take precedence over the general. But I am not at all certain that the Supreme Court of Michigan would interpret it the way you and I do, Mr. Brown, and I'd rather be specific.

CHAIRMAN VAN DUSEN: The Chair will advise the several gentlemen who have sought recognition that while there were some 7 speakers waiting recognition on the main question, the Chair started a new list when Mr. Brown's substitute amendment was proposed and now 5 speakers are seeking recognition on the substitute, the first of whom is the gentleman from Bay City, Judge Leibrand.

MR. LEIBRAND: May I make an inquiry of Mr. Brown?

CHAIRMAN VAN DUSEN: If the gentleman cares to answer.

MR. G. E. BROWN: Yes, Judge Leibrand.

MR. LEIBRAND: Is it the intent of your amendment to prevent the Michigan supreme court under any circumstances from removing a judge or suspending a judge?

MR. G. E. BROWN: Mr. Chairman, Mr. Leibrand, the intent of my amendment is to put the removal and suspension provisions in the place where they belong, that is in section h of Committee Proposal 96, which will be the section of the constitution dealing with removal and suspension. The only reason the language is put in this section at this time is to clearly set forth that this language later on relative to removal and suspension is the language relative to removal and suspension; that the superintending power of the courts in the supreme court does not in any way limit, extend or affect the removal and suspension provisions of the constitution as they will appear in the constitution.

MR. LEIBRAND: Mr. Chairman, may I ask a yes or no answer to my question? Is it the intent of the gentleman's amendment to prevent or prohibit the supreme court from removing a judge or suspending him?

CHAIRMAN VAN DUSEN: If the gentleman cares to answer.

MR. LEIBRAND: Will you answer yes or no, please.

MR. G. E. BROWN: I don't think a responsive answer would be a yes or no answer, Judge Leibrand.

MR. LEIBRAND: In other words, you don't know whether that's your intent or not. Is that what the gentleman is telling us? (laughter)

MR. G. E. BROWN: I am well aware of what my intent is, Judge Leibrand, and I think when we get to section h, you'll find out.

CHAIRMAN VAN DUSEN: Might the Chair request, Your Honor, that you conduct your cross examination through the Chair? (laughter)

MR. LEIBRAND: I think I have sufficient answer. I don't think I know what the amendment means, and I really feel in my heart the sponsor doesn't, and I yield.

MR. G. E. BROWN: I would like to answer Judge Leibrand, however, Mr. Chairman, if I may. And that is that—

CHAIRMAN VAN DUSEN: If the gentleman will yield for that purpose. The floor was Judge Leibrand's. (laughter)

MR. LEIBRAND: I will yield.

MR. G. E. BROWN: If Judge Leibrand wishes to tie it down even further, there is a very simple way he can do so, by merely adding the word "express" or "expressly provided".

CHAIRMAN VAN DUSEN: Judge Leibrand.

MR. LEIBRAND: May I inquire, through the Chair, if Mr. Brown desires to prevent the supreme court from suspending or removing judges, what is the objection to saying so specifically?

CHAIRMAN VAN DUSEN: Does the gentleman care to answer, Mr. Brown? The gentleman does not care to answer. (laughter) The Chair will recognize the gentleman from Calhoun, Mr. Everett. Mr. Everett passes. Mr. Mahinske.

MR. MAHINSKE: I would be opposed to this amendment simply because by the language we are going beyond the constitution where we state "as provided by this constitution" because we provide in Committee Proposal 42, section e, that any officer may be removed as prescribed by law. This thing is still wide open. And actually what I am opposed to is the supreme court being in a position to remove a judge. This language does not cure my objection. I would be opposed to the amendment.

CHAIRMAN VAN DUSEN: The Chair will recognize the gentleman from Bad Axe, Mr. McAllister. The Chair in doing so will express his gratitude to Mr. McAllister for the gift of a splendid cigar which the Chair expects to enjoy hereafter. (laughter)

MR. McALLISTER: I hope you enjoy it while you're here, Mr. Chairman. (laughter)

CHAIRMAN VAN DUSEN: The Chair trusts that the sense of Mr. McAllister's remarks is that "I can't take it with me." (laughter)

MR. McALLISTER: Right. Mr. Brown, what is wrong with the language at the bottom of line 11 in regard to the removal or suspension of a judge?

CHAIRMAN VAN DUSEN: Does the gentleman care to answer?

MR. G. E. BROWN: I would be happy to answer, Mr. Chairman, if I knew of what he was speaking.

MR. McALLISTER: Doesn't that clearly express what is intended?

MR. G. E. BROWN: What language are you referring to, Mr. McAllister?

MR. McALLISTER: Starting on line 10, "The supreme court. . . ."

MR. G. E. BROWN: The minority report, the committee report, or what?

MR. McALLISTER: The minority report.

CHAIRMAN VAN DUSEN: The secretary will read the Donnelly-Leibrand-McAllister minority report amendment.

SECRETARY CHASE: The amendment offered by the minority is:

[The amendment was again read by the secretary. For text, see above, page 1277.]

CHAIRMAN VAN DUSEN: Mr. Brown.

MR. G. E. BROWN: Your question, again, Mr. McAllister?

MR. McALLISTER: Is there any misunderstanding as to what that means?

MR. G. E. BROWN: No. I think it's clear enough.

CHAIRMAN VAN DUSEN: The Chair will recognize the gentleman from Muskegon, Mr. Hanna.

MR. W. F. HANNA: Mr. Chairman, the only comment I had was that Mr. Brown referred to another proposal and that proposal deals with only removal. In the present language Mr. Brown does not refer to suspension. Therefore, I don't think we should rely on that section. If it develops that this section, whether amended or not, and the future proposal as we ultimately adopt it is in conflict, after this extended debate, I suspect that with Mr. Hutchinson and Mr. Higgs and a couple other lawyers, including Judge Dehnke, on style and drafting we will prevent the conflict. But I do think that the minority report amendment and the Brown amendment ought to be defeated. It seems to me that there is a different problem in the question of removal and the question of suspension.

If the supreme court finds that a man has for some reason not acted in accordance with good judicial practice, the supreme court, under investigation, decides he ought to be suspended, then he ought to be suspended pending impeachment. I can see the objection to a single body being prosecutor, investigator, juror and dispenser of the penalty. But certainly if they found a judge who was pocketing all the money turned in to him or doing something which was wrong, impeachment proceedings cannot take place—the trial on impeachment cannot take place—until after the legislature is out of session. Certainly there ought to be power in the supreme court to so supervise their courts as to suspend that judge and then refer it to the governor for removal or refer it to the legislature for impeachment under the other article dealing with removal from office. I think that the sponsors of this amendment ought to give due consideration to dividing this question because I certainly could vote that the supreme court could suspend and I could vote against giving the supreme court power to remove; but there are 2 different problems here.

CHAIRMAN VAN DUSEN: The Chair will recognize the gentleman from Detroit, Mr. Stevens.

MR. STEVENS: I have a question, Mr. Chairman. Mr. Brown, would you answer this question, please? Does not your statement which says "except as provided by law" clearly imply that under some circumstances the supreme court would have that power?

CHAIRMAN VAN DUSEN: Mr. Brown.

MR. G. E. BROWN: Mr. Chairman, Mr. Stevens, are you referring to removal or suspension?

MR. STEVENS: Both.

MR. G. E. BROWN: Well, I can't believe that any lawyer here feels that the supreme court shouldn't have the power of suspension under certain circumstances. The only point that I am making is that the removal and suspension powers should be combined together and that should be in the section dealing with that subject matter. The whole question that has arisen here today has been over the language which is as follows, "The supreme court shall have: a general superintending control over all courts. . . ." You are not worried, I am sure, about the "power to issue, hear, and determine prerogative and remedial writs; appellate jurisdiction as provided by supreme court rule."

The reason that the amendment has been filed is because of this first wording, the "general superintending control over all courts. . . ." The fear is that this will give it the removal and suspension powers. All my amendment would do is say that removal and suspension powers will be taken care of in another section of the constitution, which will be done; and that the general superintending power of the court—that language shall not be directory or give any greater authority to the court or do anything that is not otherwise permitted in the constitution as relates to the removal and suspension powers.

MR. STEVENS: Mr. Chairman, Mr. Brown, I heard your explanation before. Would you care to answer yes or no, that the provision "except as provided by law" clearly implies that under certain circumstances the court would have the power either to remove or to suspend a judge?

CHAIRMAN VAN DUSEN: Mr. Brown.

MR. G. E. BROWN: I am inclined in a bit of haste to say that in view of the conduct and the arguments that some of the lawyers have made that the supreme court should have the power to both remove and suspend.

MR. STEVENS: Thank you.

CHAIRMAN VAN DUSEN: The Chair will recognize Mr. Bonisteel at this time, Judge Leibrand. Mr. Bonisteel.

MR. BONISTEEL: Mr. Chairman and fellow delegates, this probably could be considered historically but since the language which is being discussed here relates to section 4 of article VII of the constitution, in using the language, "The supreme court shall have: a general superintending control over all inferior courts, . . ." and the rest of that paragraph, I might state to you that several years ago the supreme court of this state, because of what they believed was misconduct of certain judges here in Michigan, wanted to know whether they had the power to remove under this provision or whether they had the inherent powers to remove judges as a court, and a brief was requested upon the question of their right and inherent power to remove judges, and a long brief was filed and there was a meeting in chambers with the court at that time. And the court at that time agreed that it did not have inherent powers of removal and did not believe it had the powers of removal under this particular section of this constitution. This is historic, at least as far as upon the question before us, and this is from my own observation, Mr. Chairman.

CHAIRMAN VAN DUSEN: The Chair will recognize the gentleman from Bay, Mr. Higgs.

MR. HIGGS: Mr. Chairman and members of the committee, I'd like to concur with Delegate Hanna in that I think that this question should be divided, the question of removal or suspension, and I'm not sure it should be divided on this substitute amendment. I would recommend opposing this particular amendment and passing on to the original minority amendment and dividing that.

CHAIRMAN VAN DUSEN: The Chair recognizes the gentleman from Bay, Mr. Leibrand.

MR. LEIBRAND: Might I address a question to Delegate Bonisteel?

CHAIRMAN VAN DUSEN: You may, Judge Leibrand, if the gentleman cares to answer.

MR. LEIBRAND: How long ago, Mr. Bonisteel, did this historic conference as to the power of the supreme court occur?

MR. BONISTEEL: I think it was over 12 years ago.

MR. LEIBRAND: Thank you. And the composition of the court has changed considerably since then?

MR. BONISTEEL: Well, there are some new faces on the court now, that's correct.

MR. LEIBRAND: Thank you.

CHAIRMAN VAN DUSEN: The question is on the substitute amendment for the Donnelly-Leibrand-McAllister minority report amendment offered by Mr. G. E. Brown. The Chair recognizes Dr. Nord.

MR. NORD: Mr. Chairman, I would like to raise a question and hope that the committee chairman can answer it to my satisfaction. It has occurred to me after hearing the debate that any language that we insert at this point could do harm—I don't see that it could do any good—because there is language elsewhere stating what the general power of removal shall be; but it seems to me it could do harm and I ask this question: suppose the supreme court issues a prerogative writ. We know they have the power to do so. It says so elsewhere and everyone is willing to let them have that power. They issue a prerogative writ to a judge of a lower court, ordering him to do a certain thing or produce certain records and so on—a judicial act—and he absolutely refuses to do it. He just won't do it. He keeps the papers that he should forward to the supreme court or refuses to make a decision and he stands there as a stumbling block and nothing can be done. Now at that point it occurs to me there must be some power to punish any person, whether he is a judge or whatever, if he refuses to obey a supreme court order. I wonder if as a matter of straightforward common law, at that point, whether the supreme court wouldn't have the power and whether they don't need the power to take whatever remedial action shall be needed and if that should include suspension or even removal, if that should be the necessary remedy, shouldn't they have the power?

Therefore, the precise question I have in mind is this: aren't there some cases, some situations in connection with the prerogative writ wherein the supreme court should have a power to discipline, which might include suspension, or it might even include removal? Would the chairman care to answer?

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: I can state that insofar as the committee was concerned, we discussed all of this matter very fully. I suppose one thing that could happen, he would stand in contempt and they might be able to incarcerate him until he complied with the order of the court. He might stay there from a day to a year. I can't think of any case offhand where this has happened. The Huff case has been mentioned. This was a case testing the right of the court to assign a judge to another circuit and it involved a possibility of contempt. I would agree that a prerogative writ or a remedial writ—if a prerogative writ were issued to require this—that certainly, I personally would agree that the court should have this power.

MR. NORD: Mr. Chairman, may I then try to get the issue a little straighter? Suppose they should decide that the lower court judge is in contempt and they decide to incarcerate him, everything else having failed. Now the judge is no longer able to act as a judge. He certainly has been suspended in a practical sense. But unless another judge can be substituted for him, there can't be any way to conduct the court's business. Therefore, shouldn't they have the power to remove him at that point? In other words, isn't there some possibility that there would be a need to remove or suspend and that we should be very careful about putting language such as we see it there that the supreme court shall not have the power to do a certain thing when we can't be certain they might not need it at certain times?

MR. DANHOF: I will agree. I might state, Mr. Chairman, for the benefit of those members who are not lawyers, we on the committee have gone through this, and over and over—you see what happens when you try to add language or you try to accept what is provided in the constitution—and we finally came right back to the language which has stood since approximately 1850. We have said if it has lasted this long, it will certainly serve us in the future. I would recommend the defeat of both of the amendments and would hope we could vote with part of it having been removed.

CHAIRMAN VAN DUSEN: Judge Leibrand.

MR. LEIBRAND: May I address a question to Mr. Danhof?

CHAIRMAN VAN DUSEN: If the gentleman cares to answer.

MR. LEIBRAND: Did I understand the chairman to say that it was the opinion of the committee that under the language used in the committee report, the supreme court did have the power to remove or suspend a judge?

MR. DANHOF: I don't think the committee ever reached that particular decision, Judge.

MR. LEIBRAND: I thought I gathered that in your reply to Dr. Nord.

MR. DANHOF: Dr. Nord said he thought that they should have this. I merely gave my personal assent to what he thought.

CHAIRMAN VAN DUSEN: Judge Leibrand.

MR. LEIBRAND: Just a few words and I'm done for the day. There has been a great deal of discussion about the safety in which we have lived for the last 112 years, the fact

that the supreme court had not removed or suspended a judge under this provision in the constitution. Now, to begin with, that doesn't mean very much. The provision lay there unused, I think they said 112 years. The provision lay there unused for 102 years. Then suddenly out of the void came the Huff case, which I think was very properly brought and I think the supreme court had the absolute right to discipline as it did discipline. But that brought the question out into the open. Nobody had ever really thought about the possibility of the extent of the powers of the supreme court along this line until the Huff case arose. Then after the Huff case in 1952 we went along for another 7 years with our questions about the extent of the disciplinary power of the supreme court unanswered. Then along came these rules which I have read to you, in part, adopted on June 5, 1959, which deal, as I pointed out this morning, not only with the official conduct of a judge, but the right of the supreme court to discipline a judge because of his personal habits, his personal conduct, his violation of the canon of ethics of the American bar association, and that canon of ethics may not be in accord with the views of the state of Michigan at all. As a matter of fact, I know many of the canons of judicial and legal ethics with which the people do not agree even by a majority.

So now we are faced with the situation as it really exists. The first 102 years it wasn't called to their attention. The next 7 years we had no practical experience with it; but when these rules come out and say they can discipline an elected judge, and as has been expressed here by several of the speakers, they believe that under these disciplinary powers the supreme court now can remove or suspend an elected judge, it seems to me that it is time to give some attention to this matter.

This is one thing we can't leave to the legislature. We can't leave it to the legislature because as I read you this morning, the supreme court has announced that they don't have to recognize the legislature. They say any statutory provision that is inconsistent with any provision in these rules shall be considered as superseded by these rules. If the legislature should pass a statute governing the discipline of a judge, the supreme court under its declaration here, would have the right and undoubtedly would absolutely ignore that statute. And I say that we are confronted with a problem that is not only emerging; it has with the introduction of these rules actually emerged.

Since the legislature can't do anything with the problem, there is only one body in all the state of Michigan that can do something with it and that is this convention, and I believe this convention should do something about it. Thank you.

CHAIRMAN VAN DUSEN: The question is on the substitute amendment offered by Mr. Garry Brown for the minority report amendment offered by Miss Donnelly, Judge Leibrand and Mr. McAllister. The secretary will read the substitute amendment.

SECRETARY CHASE: Mr. Brown's substitute is:

[The substitute amendment was again read by the secretary. For text, see above, page 1276.]

CHAIRMAN VAN DUSEN: Those in favor of the substitute will say aye. Those opposed will say no.

The substitute amendment is not adopted. I believe, Mr. Secretary, there are further amendments to the minority report amendment offered by Miss Donnelly, Judge Leibrand and Mr. McAllister.

SECRETARY CHASE: Mr. Everett offers the following amendment to the amendment:

1. Amend the amendment, after the last word "judge" by inserting a comma and "except after appropriate notice and hearing"; so that the amendment proposed by the minority would be to insert a proviso, "it being provided that the supreme court shall not have the power to remove or suspend a judge, except after appropriate notice and hearing."

CHAIRMAN VAN DUSEN: On the amendment offered by Mr. Everett, the Chair will recognize the mover, Mr. Everett.

MR. EVERETT: Mr. Chairman, I don't doubt but what just about everything has been said on the subject and I shall certainly try to confine my remarks to the few words of this amendment. I think Mr. Nord has suggested that there probably should be the power within the supreme court in extreme cases to remove a judge. Mr. Hanna has pointed out that the other amendment does not permit suspension but only permits removal for cause.

Now, frankly, I don't think this amendment is needed because I can't conceive that the supreme court would fail to give a proper hearing to a man and I can't conceive that he would not have a proper review if they did fail to give it to him. But in support of their provision, Mr. McAllister and Judge Leibrand have suggested that the court might be arbitrary. So if there is any doubt about it, let's remove the doubt and say, "You may not be arbitrary. You must be fair. If you're not, the federal courts will protect the right of the individual."

Mr. McAllister, incidentally, has said that the real meaning of their amendment is to go much further than removal and to deny the court the right to even have a hearing and inquire into the facts. I, for one, cannot conceive that the supreme court should be so limited. I think if they sincerely believe that the man is entitled to a fair day in court and a fair review of that decision by other courts, this will give it to them and it should solve their problem.

CHAIRMAN VAN DUSEN: On the amendment offered by Mr. Everett, the Chair recognizes Judge Leibrand.

MR. LEIBRAND: The minority opposes the Everett amendment.

CHAIRMAN VAN DUSEN: Judge Dehnke.

MR. DEHNKE: Mr. Chairman and gentlemen, I am now compelled to say something which I had hoped I might avoid saying. Of course, nobody would expect that the supreme court would cite a judge without going through the formality of a notice and a trial. Let me come back to the Huff case—and it's true, as Judge Leibrand has pointed out—the necessity for this amendment has risen only in the last 2 or 3 years because of the increasing indications that the supreme court, with the support of a certain portion of the organized bar, was getting around to the point of believing that it had unlimited power.

It had been recognized for generations that every circuit judge, when he could spare the time from the work in his own circuit, was duty bound to accept assignments to other circuits where help was needed. But the Huff case did raise one brand new question. That was whether the supreme court had the authority to take a judge elected in a certain circuit primarily for the purpose of serving the people of that circuit and acting as a trial judge in cases in that circuit where there was plenty of work to keep him busy, had the authority to send him out to some other circuit and send other judges in to do the work in his own circuit. That was a new question.

I can't see for the life of me why anyone should have questioned Judge Huff's right to raise the issue. His position was in substance, "I decline to recognize this order until the supreme court has, in an orderly fashion, considered the question of its authority in that respect. If it decides that it has that authority, then I will obey the order." In spite of that attitude, he was painted as a recalcitrant and rebellious judge. He was hailed before the court and the whole proceeding indicated that the entire approach had been one of arbitrariness. Instead of recognizing that he had the right to raise that point and to have it passed on in an orderly fashion, he was found guilty of wilful disobedience, and he was talked to when the penalty was imposed in a manner that I think has seldom been equalled in what was said to a criminal of the worst kind when he stood before the court for sentence.

That, as I viewed it, demonstrated to me that the whole proceeding had been carried on in an arbitrary spirit. It was a hearing in form only and, I think, emphasizes the necessity of putting something of this kind in now that we are clearly put on notice that the court claims that power or is likely to claim it.

I'd like to add this admonition, fellow delegates, we cannot afford to have the word go out or the impression go out to the

people of the state of Michigan that this constitution which we are attempting to hammer out, especially this judicial article, is being written by and for lawyers and judges.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Everett to the Donnelly-Leibrand-McAllister amendment. On that amendment Mr. Martin seeks recognition.

MR. MARTIN: Mr. Chairman, I didn't expect to speak on this subject either but apparently the question is fairly squarely before us as to what the powers of the supreme court ought to be in matters of a kind where a judge does not or will not do what he is expected to do. I don't like to talk on the other side of the question from Judge Leibrand and Judge Dehnke but I think it is necessary and desirable that the delegates, particularly those who are not lawyers, understand what the real problem was, particularly in the Huff case. As I understand the facts, it was an aggravated case. Surely no court is going to act on matters of this kind unless the case is extremely aggravated. It is my understanding that the problem was that decisions were not being made in that court and that they hadn't been made in that court on certain questions for a number of years and the complaints were so numerous and so strenuous from the bar and others and litigants who were entitled to have decisions made, that finally the supreme court acted to exercise its disciplinary powers. The question then is, what disciplinary powers should the court have? It is my understanding of the amendment here proposed that in effect it would strike out from the powers of the court any real power to exercise discipline within the court system.

CHAIRMAN VAN DUSEN: Mr. Martin, the question is the Everett amendment to the Donnelly-Leibrand-McAllister amendment.

MR. MARTIN: I appreciate that. The Everett amendment is a clarifying amendment, I think, in that it makes it clear that the court would not exercise this power without proper due process, that is, without notice and hearing. I think it presents this problem clearly to the delegates. So the question then becomes this, can the court remove or suspend? And they are really 2 different questions. Perhaps the amendment should be divided and the delegates should vote on them separately. But the question is, should the court have the power to remove or suspend in a case where a judge simply will not do or is incapable of doing what he is supposed to do?

We had another case over in Mr. McAllister's district where, I understand, the judge was totally—and I mean totally—mentally incompetent for a period of 4 years and there was absolutely nothing apparently that could be done or that the court felt it wanted to exercise its authority to do to replace this judge. It was necessary to get other judges to come in and carry his load and nothing apparently was done or could be done.

This is the basic problem before the delegates and it is one on which there are clearly differing views and views of distinguished attorneys on both sides. But the amendment would strike out—Mr. Everett's amendment would clarify this question and the amendment if ultimately voted down would clearly say that the court had no ultimate authority to even investigate these matters and certainly not to either suspend or remove.

It seems to me that Mr. Everett's amendment should be approved and then that the question should be divided on the matter of suspension or removal.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Everett to the minority report amendment. The Chair recognizes that there are other speakers, but wants you all to understand what is before us. To add the words "except after appropriate notice and hearing" and on that amendment the Chair recognizes Judge Dehnke.

MR. DEHNKE: I wanted to merely emphasize what has been discussed by other speakers, the right of anyone against whom a judgment of any kind is entered to an appeal. If a circuit judge acts in an arbitrary manner, the person injured by it has an appeal to the supreme court but, in such case as Judge Huff's, there was no appeal, nothing he might say about the manner in which the investigation had been instituted and a hearing conducted that would give him any relief.

Throughout this discussion there have been indications and suggestions that the real reason for what happened in that case was something else, failure to make decisions. Oh, how much simpler it would have been for the court administrator to have filed a motion in the supreme court, reciting that there was neglect of duty in this respect and asking the court to make an appropriate order.

I think the basic question here is whether or not the court shall have that power under any circumstances or at all, power of removal, at least.

CHAIRMAN VAN DUSEN: The Chair will recognize Mr. Norris.

MR. NORRIS: Mr. Chairman, without getting into the question as to whether or not the superintending power includes the power of suspension or removal or ought to include the power of suspension or removal, it seems to me what we have here is a matter of whether or not civil rights are to be accorded to judges. And I would concur with the Everett amendment, that certainly before the supreme court proceeds with regard to a judge there ought to be fair notice and fair hearing, and that is what I understand to be the thrust of the amendment now before us, and I would concur in that. Certainly, the court ought to set an example for obedience to due process for following by all the rest of the citizens.

With regard to the main question as to whether or not the superintending power does include removal or suspension, that can then be decided when that comes. But I certainly would concur with the Everett amendment.

CHAIRMAN VAN DUSEN: On the Everett amendment, the Chair recognizes Mr. McAllister.

MR. McALLISTER: Mr. Everett, do I understand the meaning of your amendment to be that before removal or suspension, that the court should give the defendant a notice and an opportunity to be heard?

MR. EVERETT: Yes.

MR. McALLISTER: Isn't that inconsistent with your position this morning that the rule had no intention of removing or suspending a judge?

MR. EVERETT: I didn't take any such position this morning, Mr. McAllister. I'll tell you very frankly, I did not conceive that the language did what you said it should not do. When you brought it to our attention that it possibly had said that and you now wish to take the power away, I felt if the power was there it ought to remain there.

MR. McALLISTER: Your position is now then that the supreme court has the right to remove or suspend a judge? Is that right?

MR. EVERETT: I don't know whether they do or not, Mr. McAllister. But if they do — I don't honestly know whether they do or not.

MR. McALLISTER: Now, as a lawyer, do you feel that a man who is charged — let's say a judge is charged with some matter of personal practices or improper conduct of some kind, that the supreme court should have a right to remove or suspend that individual without a right to appeal from the supreme court's decision?

MR. EVERETT: As I said when I offered the amendment, I cannot conceive that the supreme court would deny him fair opportunity to be heard. If you think they might, this would prevent them from doing it. And I am certain, as an attorney, that they could not deny him a fair hearing and remove him from office and thus by-pass an appeal to the federal courts. If you think it takes this language to assure an appeal to the federal courts, then I say put it in, because he absolutely should have a right to know that his rights as an individual are fully protected. That's why I offered the amendment. I don't share your suspicions or fears, but let's remove them.

MR. McALLISTER: Let me ask this. Are you familiar with the fact that in the state of Michigan that a judicial office is not property and you cannot appeal, under the existing decisions, to a federal court?

MR. EVERETT: The provisions of due process which would be set forth here are provisions guaranteed to the citizens by the federal constitution. If they denied him those rights, if they didn't give him proper hearing, if they didn't give him proper notice, if they didn't conduct a fair hearing and properly so, he certainly would have a right of review in the federal courts.

MR. McALLISTER: What is your objection, Mr. Everett, to putting in these provisions so we will be sure that no man may be removed or suspended by the supreme court?

CHAIRMAN VAN DUSEN: Gentlemen, the Chair thinks the colloquy is wandering somewhat from the point and trusts you can bring yourselves back to it. On the Everett amendment the Chair recognizes Mr. Mahinske.

MR. MAHINSKE: Mr. Chairman, I oppose the amendment more strongly now since Mr. Everett just spoke, than I did 10 minutes ago, when I asked to be recognized. Mr. Everett says that under the present language, absent all the amendments proposed here, he does not know whether the supreme court has the power to remove a judge. Now, just by virtue of his amendment here, if it is adopted, we are clearly giving the supreme court the power to remove a judge. That is what I am definitely opposed to.

CHAIRMAN VAN DUSEN: The Chair finds we now have 2 laymen seeking the opportunity to clarify this matter, (laughter) the first of whom is Mr. Arthur Elliott, whom the Chair will now recognize.

MR. A. G. ELLIOTT: Ladies and gentlemen, lawyers, judges — help! (laughter)

CHAIRMAN VAN DUSEN: The Chair will recognize Mr. Garry Brown.

MR. G. E. BROWN: I am not sure, Mr. Chairman, when you said you saw there were 2 laymen waiting to be recognized if you were referring to me also, but I'd like to make it clear that the delegates will not be supporting a lay position; that I am also licensed to practice law in this state. I would like to only answer Mr. McAllister's remarks. First of all, I preface my remarks by saying, the very thing that my amendment was attempting to do is to not have this matter argued twice, which I am sure you can see is going to be done. We are now on the merits of whether or not the supreme court should have the right to remove, which I am sure will once again be raised in section h of Committee Proposal 96. But if we are going to argue anything twice, I guess we might as well argue this twice.

With respect to Mr. McAllister's remarks about the supreme court being prosecutor, judge, sentencing officer and everything else, I would like to point out to Mr. McAllister that the judges of the courts of record, of course, are the only elective officers in the state of Michigan that are not subject to recall. Now, whether or not this is a procedure which is more drastic than a recall action, which requires no misconduct whatsoever but can be merely done by the electorate, I can't believe that it is. If that is your argument — as I say, to get back to the basic question, however, I feel that we should be doing this in section h of Committee Proposal 96 rather than here in the first sentence of this section. I would suggest to the delegates that rather than debate it now and debate it again then, that we move on, that we vote on this amendment and vote on the minority amendment and move on with the work of the judicial article.

CHAIRMAN VAN DUSEN: Mr. Brown, the Chair did not doubt your professional status. The other layman appears farther down on the list. The Chair will next recognize Judge Mosier speaking on the Everett amendment.

MR. MOSIER: Mr. Chairman and fellow delegates, ordinarily in human life, when we make up our minds to go somewhere and do something for a purpose, we want to know what the purpose is and what we are going to accomplish by it. It therefore becomes necessary for us in the determination of this question to find out what we already have and whether what we already have is sufficient and if it is, let it alone. If it isn't sufficient, we can amend it.

There seems to be some doubt about the question of the authority of somebody to remove a judge. Now just look at what our constitution today says — and I am referring to article IX, sections 1, 2, 4, 5 and 6, which provide for impeachment:

> The house of representatives shall have the . . . power of impeaching civil officers for corrupt conduct in office, or for crimes or misdemeanors; but a majority of the members elected shall be necessary to direct an impeachment.

Then the next section says that

> When an impeachment is directed, the house of representatives shall elect from its own body 3 members, whose duty it shall be to prosecute such impeachment. No impeachment shall be tried until the final adjournment of the legislature, when the senate shall proceed to try the same.

Now, section 4 says:

> No judicial officer shall exercise his office after an impeachment is directed until he is acquitted.

Then the next section says that — and this is important:

> The governor may make a provisional appointment to fill a vacancy occasioned by the suspension of an officer, until he shall be acquitted or until after the election and qualification of a successor.

Then the next section:

> For reasonable cause, which shall not be sufficient grounds for impeachment, the governor shall remove any judge on a concurrent resolution of 2/3 of the members elected to each house . . . ; and the cause for which such removal is required shall be stated at length in such resolution.

Now, it is clear — it must be clear — that the legislature has the power to impeach a judge. The governor has the power to remove a judge for causes less than impeachment.

Now let's take the case of a judge, and we'll assume one who is real bad, who might be embezzling moneys while he is acting in a judicial way, and the supreme court, through its officer, the court administrator, should find out that he was doing these things, the court would refer that matter to either the legislature or to the governor. But it would seem to me that while these proceedings are going on, that certainly the supreme court should have the right to suspend that judge from operating as a judge and it seems to me that under all these amendments that we've got here, that that is the goal that this convention should arrive at.

It is my opinion that the supreme court should not have the ultimate power of removing a judge. I think that that removal should have the right of an appeal and that the court should be in a position to act as an appellate court and give that judge his right of appeal from the governor or from the legislature. But in the interim, during the time that the proceedings are going, it seems to me the supreme court should have the power to suspend. That means that he doesn't lose his office; he doesn't lose his status; only he is prevented from operating as a judge.

CHAIRMAN VAN DUSEN: The Chair will recognize the gentleman from Ludington, Mr. Plank.

MR. PLANK: I rise to a layman's privilege, I think. I feel that we laymen are being discriminated against. It seems like at least we should have a layman presiding over this session. (laughter)

CHAIRMAN VAN DUSEN: Mr. Plank, there are times when the Chair agrees with you; (laughter) but it would be cruel and unusual punishment. The Chair will recognize the gentleman from Pontiac, Mr. King for what is hoped might be the last word on this subject. (laughter)

MR. KING: I make no such guarantee, Mr. Chairman.

CHAIRMAN VAN DUSEN: You just happen to be the last one on the list at this point.

MR. KING: It seems to me, Mr. Chairman and fellow delegates, that the problem here is really whether or not we want an integrated court system. Yesterday it was decided by this body that the language, "The judicial power of the state is vested exclusively in one court of justice, . . . " was what we wanted to say. Now, this question of removal really should come up in Committee Proposal 96, but I guess there are

some of us who can't wait. This is a lawyer's device, I might point out to the laymen. There are many lawyer's devices being used here. On this amendment, first of all it was stated that there wasn't notice of hearing. Well, this was kind of an emotional argument but it opened the door to let someone come in and tack on an amendment which obviously vitiates what was already said. You have to get used to these devices. And I am not saying that in a derogatory manner. I know you've all heard the story about the fellow who went by the tombstone and it said, "Here lies a lawyer and an honest man." And the fellow commented, "How could they get 2 into such a small plot?" (laughter)

Obviously, these kind of remarks are to be expected. This is not an exact science. It never was meant to be, I am sure. The real problem in the world is whether we live by the force of law or by the law of force. It is my opinion that it is the legal profession that holds back that thin line which keeps civilization from being overrun by something far worse.

I would be hopeful that we could pass by this thing at the present time and discuss it where we ought to discuss it, in Committee Proposal 96. I personally think that that's the place where we really will have the argument and that's the place where we ought to have the argument. I urge that we let the committee language stand until we reach that point.

CHAIRMAN VAN DUSEN: The Chair begs the pardon of the lady from Highland Park for not having realized she was seeking recognition when he made the comment about Mr. King being the last speaker. The Chair will at this time recognize the lady from Highland Park, Miss Donnelly.

MISS DONNELLY: I requested it prior to that, Mr. Van Dusen, but I do forgive you. We lawyers are all naughty apparently here. I think, briefly, that some statements have been made which may confuse certain individuals. Mr. Martin said "clarify". If he meant by "clarify" not to improve what we mean here but to absolutely kill what we meant, that is true. As to vitiate, this is absolutely right, what Mr. King suggested, that it would kill it.

There is no question, in my opinion, but that Mr. Everett's amendment is to absolutely kill the meaning of the preceding section in our amendment. The meaning of the preceding section was very simple on its face. It means exactly what it says. This is the language that all, I think, can understand. And when we say we think the supreme court should not have the power to remove or suspend a judge, that is what it means. The supreme court is the highest court we have. This is the last spot than anybody can go to for relief. If you start at the supreme court, where do you go from there for relief?

I think an individual judge is entitled to be protected as he was originally in the 1908 constitution. Recent activities of the supreme court are beginning to chip away at what the 1908 constitution had. I think that we should preserve what protection the judges had under that constitution and not allow it to be removed and treated in the supreme court, and with less protection than the lowest criminal in this state has. We have provided an absolute right of appeal for a criminal, not leave or anything, to protect him. And now we are absolutely taking judges and giving them one hearing, and only one, if you would support Mr. Everett's amendment.

CHAIRMAN VAN DUSEN: Would Miss Donnelly yield to Mr. Mahinske?

MISS DONNELLY: Yes.

MR. MAHINSKE: I direct a parliamentary inquiry to the Chair here. I wonder if this is a proper amendment. It is completely in opposition to the intended thought of the amendment that it is amending.

CHAIRMAN VAN DUSEN: The Chair will rule that it is in order, Mr. Mahinske.

MR. MAHINSKE: Even though the adoption of this amendment would kill the amendment that it intends amending?

CHAIRMAN VAN DUSEN: The Chair will rule that the extinction of the amendment is performed so subtly that the amendment is in order. It isn't the precise reverse. And the Chair will recognize Mr. McAllister.

MR. McALLISTER: I certainly don't like to take this time but I deem it is absolutely necessary. The supreme court can only be removed by impeachment proceedings. I don't think the circuit court should be a second class citizen.

Mr. King talked here about that this wasn't the proper place for the amendment. We are talking about superintending control and 16 days ago the attorney for the court administrator said that the supreme court had unlimited control under that superintending control power. So this is definitely the proper place for this amendment.

Judge Mosier has raised a question as to how the court would be taken care of under circumstances that he presented. In the first place, if a man was guilty of embezzlement, he would be in jail. In the second place, under the powers the supreme court now has, they could assign another judge to his circuit and that judge would take care of the matter until the judge's problem was disposed of. So that the people are fully protected from any angle in event they cannot suspend the judge immediately.

CHAIRMAN VAN DUSEN: On the Everett amendment, the Chair will recognize Mr. Hubbs.

MR. HUBBS: Mr. Chairman and members of this delegation, I don't know what your count of laymen here is right now, but I hope there are a few left because I would like to talk to them briefly. Being one myself, I hesitated to come up at this moment to get into this discussion. I'd like to point out on Mr. Leibrand's yellow sheet here defending his position, the use of the phrase "tilting with windmills"; I may be in that position of tilting with windmills.

I would like to say, however, that the expression of a unified court system has led me to be concerned, particularly when it says in the opening section of the judiciary article that the judicial power is vested in the supreme court. It seems to me that now they would like to also have the police power and I don't think that the police power rightfully belongs to them. I might be slightly in error but I don't think that is correct.

Judge Mosier's remarks have particularly impressed me with a solution to this problem. I think that as a layman I will support the Leibrand-Donnelly amendment and that I will vote against Mr. Everett's amendment because as we all know, it completely eliminates the effectiveness of the Leibrand-Donnelly amendment. I would support the Leibrand-Donnelly amendment and suggest that all of the processes that Judge Mosier outlined in the constitution are sufficient to take care of the judges who do not do their duty in the way that they should do it, and that the supreme court should not have the authority to arbitrarily remove a judge. And I hope that there are enough lay people here that they will now look at it in this way and maybe we can get moving. Thank you.

CHAIRMAN VAN DUSEN: On the Everett amendment, the Chair will recognize Mr. Habermehl.

MR. HABERMEHL: Mr. Chairman, I've been waiting for some of the distinguished speakers to respond to Mr. Elliott's appeal for help. I think probably there are many laymen in that position. We lawyers unfortunately spend half of our time talking to each other. The question, it seems to me, is an extremely simple one. On line 22, page 1, the statement starts, "The supreme court shall have: a general superintending control over all courts. . . ." That's all that is involved. The problem, of course, is complicated by the fact that what the language means depends upon the supreme court, who finally determines what the constitutional language means. In other words, left as it is, it means whatever the supreme court says it means. And what has complicated this matter is that in recent years, the supreme court has interpreted that language to mean that they have complete control over the actions or failure to act of all judges, not only the Huff case, but recently a few probate judges. And of course, the Donnelly-Leibrand amendment would say that they have such superintending control except that they might not suspend or dismiss — in other words, get rid of — a circuit judge that was elected by the people of his circuit. That in essence, I believe, is the argument that we are faced with.

The pending matter is that the supreme court might suspend this judge only after a hearing. Of course, again, whether or not this was an adequate hearing would depend upon the supreme court itself and that we have at least one instance where I think most of us feel the hearing was far from adequate. I hope that tends to clarify the issue to some extent.

CHAIRMAN VAN DUSEN: On the Everett amendment the Chair will recognize Judge Gadola.

MR. GADOLA: Mr. Chairman, members of the committee, there, of course, has been too much said already. However, I believe that some of us should come to the defense of one man who has been maligned here continuously. No evidence here has been introduced as to any nefarious activities of that circuit judge that was before the supreme court. There are 6 judges sitting here that operated under the system that we had when we had a Michigan presiding circuit judge. We operated very, very well under that procedure. I have sat in court in pretty near every circuit in this state and so have the rest of these judges here. Month after month I've sat in court in Detroit, in traffic court, and in the circuit court there, and all the rest of these judges have. We never had any difficulty. If we didn't want to go when the presiding judge called us up and asked us if we could accept the job of going to some other circuit, we said no, we don't feel we want to go now. There wasn't any question about citing us anywhere. They merely called another judge and he came in, and then they got this administrator job here.

And the thing that I deplore today, the attack upon one circuit judge, an outstanding and a fine individual, that's been done here. And I hope that the people here are not really amenable to the law of slander. For the simple reason that if the supreme court believes in using a subterfuge to punish a man, then they are violating every right of every individual in this country.

When a man is charged with a crime, the law provides that he must be told minutely of what the charge is. When you go into civil court, you must file your pleadings to absolutely state your cause of action. This man here wasn't charged with the things that they are telling about him here. He was charged with refusing to obey the order of the supreme court to go to another circuit. That's all. And no one, in all the years that we have had this process of serving in the other circuits was anyone ever even reprimanded when he didn't accept the assignment that was given to him.

As I say, I served in Ontonagon; I served in Monroe; and that's just as far as I can go either north or south, I think, and I had no difficulty.

Something has been said about one judge that for 4 years was unable to sit. I sat in his court in Sandusky for months at a time to clear up the docket for him because of the fact that we knew that he needed the compensation that was paid to him and we substituted for him and took care of his court. Many judges refused to go there. When I went there, they asked me if I would only stay to clear up the entire docket, and I did for months, driving back and forth 100 miles a day from Flint, to take care of his court. So let's don't malign an individual. Let's not let the record show here that matter and don't let anyone say that the court hasn't changed because we operated under the old supreme court.

And you know, a peculiar thing occurred in a case of mine that went to the supreme court a short time ago and the opinion was written by one Justice Edwards, who has now left the court, and in reversing my decision — because I found the prior decision of the supreme court — he said the thinking of the court hasn't changed; it's the personnel. Remember that, all of you. (applause)

CHAIRMAN VAN DUSEN: We have one more speaker seeking recognition on the Everett amendment, Mrs. Conklin.

MRS. CONKLIN: I'm not going to speak. I want to ask a question. I'd like to ask a question of 2 people. I think Mr. Habermehl first touched on it lightly so I'd like to ask Mr. Habermehl if he'd answer me, who determines what is an appropriate notice and hearing?

CHAIRMAN VAN DUSEN: Mr. Habermehl, does the gentleman care to answer?

MR. HABERMEHL: Of course, Mr. Chairman. Mrs. Conklin, the supreme court is the final court of last resort in the state. They will make the determination of whether or not the hearing was adequate. But the fact that they conduct the hearing also may slightly prejudice their judgment.

CHAIRMAN VAN DUSEN: Mrs. Conklin, have you a further question?

MRS. CONKLIN: I got the answer I wanted.

CHAIRMAN VAN DUSEN: The question is on the Everett amendment to the minority report amendment offered by Miss Donnelly, Judge Leibrand and Mr. McAllister. The secretary will read the Everett amendment.

SECRETARY CHASE: The Everett amendment is:

[The amendment was again read by the secretary. For text, see above, page 1280].

CHAIRMAN VAN DUSEN: Judge Leibrand.

MR. LEIBRAND: Do you have a bell?

CHAIRMAN VAN DUSEN: The secretary will ring the bell. No division has been requested, Judge Leibrand. Did you request a division? There has been none requested so far.

MR. LEIBRAND: Yes.

CHAIRMAN VAN DUSEN: Judge Leibrand requests a division. Is the demand supported? It is supported. The secretary will ring the bell. Those in favor of the Everett amendment to the minority report amendment offered by Miss Donnelly, Messrs. Leibrand and McAllister will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the amendment offered by Mr. Everett, the yeas are 17; the nays are 79.

CHAIRMAN VAN DUSEN: The amendment to the amendment is not adopted. The secretary, I believe, has a further amendment to the amendment.

SECRETARY CHASE: Mr. Mahinske offers the following amendment to the amendment:

1. Amend the amendment by adding a new paragraph at the end thereof to read as follows:

"This section shall in no way be construed as to prohibit the said court from investigating complaints against judges and making recommendations thereon to the proper authorities.".

CHAIRMAN VAN DUSEN: On the amendment offered by Mr. Mahinske, the Chair will recognize Mr. Mahinske and the Chair will respectfully request all speakers to confine themselves very closely to the subject at hand. Mr. Mahinske.

MR. MAHINSKE: This amendment simply goes back an hour and a half and puts in writing what Judge Leibrand and Judge McAllister maintained that their thoughts were here, that they were not depriving the court of its power to investigate and make recommendations. So we are simply spelling out the fact that the court cannot remove or suspend judges but at the same time they do have the power to investigate complaints pertaining to judges.

CHAIRMAN VAN DUSEN: On the amendment, Judge Leibrand, do you seek recognition?

JUDGE LEIBRAND: Not at this time, Mr. Chairman.

CHAIRMAN VAN DUSEN: Mr. McAllister.

MR. McALLISTER: No.

CHAIRMAN VAN DUSEN: Mrs. Conklin.

MRS. CONKLIN: I'm sorry but I don't now understand who are the proper authorities, Mr. Mahinske.

CHAIRMAN VAN DUSEN: Does the gentleman care to answer, Mr. Mahinske?

MR. MAHINSKE: In the impeachment article we have set up various forms of impeachments and so forth, plus section e that says, "Any officer elected by a county, city, township or school district may be removed from office in such manner and for such cause as shall be prescribed by law, . . . " now, whichever authority as shall be prescribed by law or back to the house or senate or to the governor, as under Committee Proposal 96, section h.

CHAIRMAN VAN DUSEN: The Chair will recognize the chairman of the committee, Mr. Danhof.

MR. DANHOF: Mr. Chairman, I would respectfully oppose the amendment to the amendment, and the amendment. Again, we are trying to write the language. If we will go back — as the committee did, when it went over this and over this, we will leave it alone. If you want to take up the power of removal when we get to section h of Committee Proposal 96, that's the time to write it in. I respectfully urge that the amendment to the amendment be defeated and that we defeat the amendment so that we can pass this section. We've had all the debate and we can get the committee up to where we can get through this.

CHAIRMAN VAN DUSEN: Mr. Mahinske, do you desire recognition further on your amendment?

MR. MAHINSKE: No. I'll yield to any other —

CHAIRMAN VAN DUSEN: Mr. McAllister, do you desire to be recognized at this time?

MR. McALLISTER: No.

CHAIRMAN VAN DUSEN: The question is on the amendment to the amendment offered by Mr. Mahinske, which the secretary will read. Excuse me, Mr. Ford.

MR. FORD: I wish to support the amendment, but with the express understanding that I will then vote no against the amendment as amended. (laughter)

CHAIRMAN VAN DUSEN: Do you seek recognition at this time, Mr. Mahinske?

MR. MAHINSKE: No, sir.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Mahinske, which the secretary will read.

SECRETARY CHASE: Mr. Mahinske's amendment is:

[The amendment to the amendment was again read by the secretary. For text, see above, page 1284.]

CHAIRMAN VAN DUSEN: Those in favor of the Mahinske amendment will say aye. Those opposed will say no.

The amendment to the amendment is not adopted. Mr. Secretary, have you another amendment?

SECRETARY CHASE: Mr. Bonisteel offers the following amendment:

1. Amend the amendment after "to remove" by striking out "or suspend"; so that the proviso would read, "it being provided that the supreme court shall not have the power to remove a judge."

CHAIRMAN VAN DUSEN: On the amendment offered by Mr. Bonisteel to the Donnelly-Leibrand-McAllister amendment, the Chair will recognize Mr. Bonisteel if you seek recognition on the amendment. Mr. Bonisteel does not seek recognition. Judge Leibrand.

MR. LEIBRAND: I would suggest that in the present form the minority would oppose the amendment. The word "suspension" has no definite term. There is nothing there to prevent the supreme court, if it desires to suspend for a year, 2 years, or for the rest of the term of the judge involved, and I don't think we want to muddy the waters any more. So I would object to the amendment in the present form.

CHAIRMAN VAN DUSEN: On the amendment offered by Mr. Bonisteel, the Chair recognizes Mr. Higgs.

MR. HIGGS: Mr. Chairman and members of the committee, if we've got to have an amendment at all, I think we should support the amendment which strikes the words "or suspend".

I really support the committee proposal, but if you feel that you have got to support the amendment to delete the power to remove, then I urge that you support this amendment in the event the original amendment is carried because regardless of what all of the judges here have said, we have rights involved not only of judges sitting in court, but there are rights of people who come before those judges. And in the event that you have a situation develop where the supreme court does not have this power to suspend, there may be an interval or a period of time in which the rights of children coming before a probate court or the rights of people and property may come before a court, cases in which the fact that mental competency may not be so extreme that the man is flat on his back in bed. There are many other situations which may not involve impeachment — and by the way, I would like to state that the power of the governor to remove for cause for less than impeachment is subject to 2/3 resolution of the legislature; it is not a simple thing—while I basically support the committee, if we've got to have this amendment at all and raise this problem, then I urge that you strike the words "or suspend".

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Bonisteel to strike the words "or suspend" so that the language of the minority amendment proviso would then read, "provided the supreme court shall not have the power to remove a judge." On this question, Mr. Ford.

MR. FORD: I think we are back around to the explanation that Bill Hanna gave so well a little while ago. This would result in impeachment in one fashion, removal by concurrence of the governor and the legislature and possible suspension by the court.

There are circumstances, Mr. Higgs has indicated, where it might be in the best interests of the public to temporarily suspend the powers of the judge to continue acting on the bench. There is some fear that the amendment presented by the minority with the word "suspend" in it might prevent the court from even issuing an order, restraining the lower court from continuing to act in a manner that is inimical to the best interests of the public. This would leave in the protection which I think Mr. McAllister wanted. It makes it clear that the supreme court can't on its own remove a judge from office, but wouldn't impair the ability of the supreme court to temporarily suspend his powers.

I think Mr. Bonisteel has finally come up with an answer that should satisfy everybody in this matter.

CHAIRMAN VAN DUSEN: On the Bonisteel amendment, the Chair will recognize Mr. McAllister.

MR. McALLISTER: Mr. Chairman, Mr. Ford, I think what I said previously that if a judge is incompetent, another judge can be assigned to his circuit until the regular process of the law is followed. If he violates the supreme court's order he can be cited for contempt. So we have nothing to worry about insofar as the short delay between the time he becomes incompetent and impeachment proceedings or removal proceedings can be commenced. As soon as they are commenced he is automatically suspended and I think when you leave out the word "suspend" it is just almost as detrimental to the judge as to remove him.

I would also like a division on this matter.

CHAIRMAN VAN DUSEN: Mr. McAllister requests a division. Is the request for a division supported? It is supported. The Chair recognizes Mr. King.

MR. KING: Would Mr. McAllister yield to a question?

CHAIRMAN VAN DUSEN: The Chair thinks Mr. McAllister yielded the floor.

MR. KING: I would direct a question to him if he would care to answer it. I am a little bit confused about the statement that you just made. Are you indicating that if a judge is incompetent but physically capable of arriving at the courthouse at 9:00 in the morning, that someone else can be assigned to take his place?

MR. McALLISTER: Judge Huff, whom we were talking about, was capable, had business to do, was ordered assigned. There was nothing wrong with him either mentally or physically. He was ordered assigned to Detroit. He didn't go. He was fined for contempt of court. There would be no difficulty insofar as assigning a judge there to take the place of the judge who was in trouble until the matter was resolved.

MR. KING: Mr. Chairman, Mr. McAllister, I think you misunderstood my question or I misunderstood the answer as suggested by the distinguished Mr. Boothby. My question relates to the incapacity of the man whom the supreme court does not want to sit. Now, if he is able — although perhaps mentally incapacitated — if he is able to show up at the courthouse, how does the supreme court come by its authority to send somebody else in there and sit on his lap or sit beside him?

MR. McALLISTER: I say that Judge Huff was mentally and physically competent. He was ordered to Detroit. They sent another judge in to take his place and he wouldn't give up. So then the supreme court cited him for contempt and took care of him.

MR. KING: And this language would not in any way affect that procedure?

MR. McALLISTER: No. It doesn't affect that right in any particular.

MR. KING: I won't comment on the answer. I yield.

CHAIRMAN VAN DUSEN: The Chair recognizes the chairman of the committee, Mr. Danhof.

MR. DANHOF: Mr. Chairman, personally I find myself in the middle, as Mr. Higgs pointed out. If we have to have it, certainly I would support the amendment to strike the words, "or suspend." Therefore, I still am of the position that the amendment in toto should be defeated, but on this item, this language should certainly be deleted.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Bonisteel to strike the words "or suspend" from the minority amendment. Is there any request for further reading? If not, those in favor of the amendment to the amendment will say aye. Those opposed will say no. Excuse me, a division had been requested several speakers back. The Chair apologizes for forgetting. Those in favor of the amendment to the amendment will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the amendment offered by Mr. Bonisteel, the yeas are 56; the nays are 38.

CHAIRMAN VAN DUSEN: The amendment to the amendment is adopted and the question is now upon the minority report amendment, as amended, offered by Miss Donnelly, Judge Leibrand and Mr. McAllister. When last we were on the main question, the Chair had listed the following speakers seeking recognition: Mr. Bledsoe, Mr. Brake, Mr. McAllister, Mr. Rajkovich, Mr. Bonisteel, Mr. Tubbs and Mr. Mahinske. I will ask at this point if any of those gentlemen still desires recognition on the question. Mr. Mahinske.

MR. MAHINSKE: I would like to ask the proponents of this amendment, as amended, if it is still their intention that the supreme court have the power to investigate complaints in other areas of justice.

CHAIRMAN VAN DUSEN: Judge Leibrand.

MR. MAHINSKE: I am talking about your amendment as amended now, if this has changed your intent any.

MR. LEIBRAND: Mr. Chairman, in answer to Delegate Mahinske, it hasn't changed our intent in the slightest. We still believe that the supreme court has and should have the power to make investigations and recommendations.

MR. MAHINSKE: Thank you.

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: I would simply urge that again the committee went over this. I still believe the language as we had it in 1908 is correct. I would urge the defeat of the amendment.

CHAIRMAN VAN DUSEN: The Chair recognizes Mr. Higgs.

MR. HIGGS: Mr. Chairman, I'd like to direct a question to Delegate McAllister, if he cares to answer.

CHAIRMAN VAN DUSEN: If the gentleman cares to answer. You may proceed, Mr. Higgs.

MR. HIGGS: To follow the question put to Delegate Leibrand, I'd like to ask that assuming the supreme court made an investigation, held a hearing and made a recommendation to the legislature requesting an impeachment, is it your opinion that the supreme court would then be in a position to review an impeachment which was determined by the legislature?

MR. McALLISTER: No, it would not be my position that if they made a recommendation and had a hearing and made a determination, they are predetermining the man's guilt.

MR. HIGGS: In other words, if the supreme court in any way participated in bringing about the impeachment, it would be your opinion that they would not be impartial and that they could not properly review that determination; is that right?

MR. McALLISTER: No, that isn't my answer. My answer is that it would certainly be their duty to report anything that came to their attention to the proper authorities, the legislaure or the governor. No, I don't think that they should predetermine the man's guilt.

MR. HIGGS: Mr. Chairman and fellow delegates, I think this brings us back again to some of the problems that bothered the committee. Now I feel compelled to vote against the amendment, although if we have to have it, it is in better form than it was. In the committee many problems arose. I had really hoped that Mr. McAllister and Mr. Leibrand before second reading would have come up with a better solution to this problem than they have. It seems to me there may be a positive way to do this; but I don't think this is it. There are just too many questions that arise with regard to the rights of the court and the legislature in this particular situation.

CHAIRMAN VAN DUSEN: Mr. Boothby.

MR. BOOTHBY: Mr. Chairman, I urge a yes vote and request a division.

CHAIRMAN VAN DUSEN: Mr. Boothby requests a division. Is the demand supported? It is supported. The Chair recognizes Mr. Hodges.

MR. HODGES: I would like at this time to address a question to Mr. McAllister. I don't want to be redundant, but in the colloquy between Mr. Ford and Mr. McAllister it was pointed out that Mr. McAllister did not feel that if the court didn't have the power to investigate and have hearings, that they should not have the power to make recommendations. I think on this, this is the whole heart of the question and would determine in many of our minds how we would vote on this. Personally, I am in favor of the amendment if the court would have that power. I would just ask Mr. McAllister if his answer is the same, that the supreme court would not have the power to make recommendations.

CHAIRMAN VAN DUSEN: Mr. McAllister.

MR. McALLISTER: Mr. Hodges, I don't believe that I ever said at any time that I thought the supreme court had a right to have a hearing on the matter. My thought was, and I think any court — if something comes to their attention or anyone came to their attention and indicated some improper conduct on the part of the court — that it should be reported to the governor or legislature. But I don't think that the supreme court should have a right to have a hearing on it and make a recommendation because under the procedure, ordinarily the legislature handles this and the supreme court could determine whether the legislature had made an error.

CHAIRMAN VAN DUSEN: The Chair recognizes Mr. Krolikowski.

MR. KROLIKOWSKI: Mr. Chairman, I should like to direct a question to Delegate Donnelly.

CHAIRMAN VAN DUSEN: If the lady cares to answer.

MR. KROLIKOWSKI: Miss Donnelly, in order to understand the procedure at this junction, in view of the adoption of the Bonisteel amendment, is it correct that the supreme court could proceed to suspend a justice and that unless your amendment is adopted, the supreme court can proceed to suspend a justice?

MISS DONNELLY: In my opinion, the answer would be yes.

MR. KROLIKOWSKI: Now, is there any time limitation with respect to the suspension?

MISS DONNELLY: In my opinion, no.

MR. KROLIKOWSKI: In other words, the suspension could be tantamount to a removal?

MISS DONNELLY: In my opinion, yes.

MR. KROLIKOWSKI: In other words, it is necessary that your amendment be adopted?

MISS DONNELLY: Yes.

MR. KROLIKOWSKI: Thank you.

CHAIRMAN VAN DUSEN: Mr. Hodges, do you seek recognition at this time?

MR. HODGES: Mr. Chairman, I have an amendment to the amendment on the secretary's desk. I request it be read.

CHAIRMAN VAN DUSEN: The secretary will read the amendment.

SECRETARY CHASE: Messrs. Hodges and Mahinske offer the following amendment to the amendment:

1. Amend the amendment by adding a new paragraph at the end thereof to read as follows:

"This section shall in no way be construed as to prohibit the said court from investigating complaints against judges and making recommendations thereon to the proper authorities.".

CHAIRMAN VAN DUSEN: The Chair will rule that that is the identical amendment previously offered by Mr. Mahinske and is therefore out of order.

MR. HODGES: Mr. Chairman, point of information. This was the amendment offered to the amendment before it was amended. At this time I think it would change the minds of many of us on how we vote on this. I, for one, was against the Mahinske amendment before because I too thought that the court should have the power to suspend but not the power to remove. But I did feel that the court should have the power to investigate and make recommendations to the proper body. For that reason, I would believe the amendment would be in order at this time.

CHAIRMAN VAN DUSEN: Mr. Hodges, the Chair will still rule that the amendment is not in order at this time. Mr. Mahinske.

MR. MAHINSKE: But this is an amendment to a different proposition than it was submitted to previously.

CHAIRMAN VAN DUSEN: Mr. Mahinske, the Chair will rule that the amendment adopted by the committee of the whole, proposed by Mr. Bonisteel, does not sufficiently change the basic amendment to make your amendment any different than it was at the time it was previously offered. It was offered and defeated. The Chair will rule it is out of order.

MR. MAHINSKE: Is the Chair ruling then there is no difference between removal and suspension?

CHAIRMAN VAN DUSEN: The Chair is not so ruling.

MR. MAHINSKE: Mr. Chairman, I appeal the decision of the Chair.

CHAIRMAN VAN DUSEN: The question is on sustaining the ruling of the Chair. Those who wish to sustain the ruling of the Chair that the amendment is out of order will say aye. Those opposed will say no.

The ruling of the Chair is sustained. The question now is on the Donnelly-Leibrand-McAllister amendment, as amended. Mr. Barthwell.

MR. BARTHWELL: I just merely want to find out the difference between a hearing and an investigation because I'm a little bit confused now. I think Mr. McAllister said he would be willing for the court to investigate, but if they had a hearing and made recommendations, he couldn't agree that they would have this right. I think that's what he said.

CHAIRMAN VAN DUSEN: Mr. Barthwell directs a question to Mr. McAllister, if the gentleman cares to answer it.

MR. McALLISTER: My interpretation of that is to investigate the charges and report what they find to the proper authorities. A hearing would contemplate witnesses and cross examination of the witnesses and a determination of the man's innocence or guilt.

CHAIRMAN VAN DUSEN: The question is now upon the amendment offered by Miss Donnelly and others. Mr. Young.

MR. YOUNG: Mr. Chairman, I'd like to state that the Chair just made up my mind. By being the judge on his own decision he convinced me the supreme court should not have that right.

CHAIRMAN VAN DUSEN: The question is upon the amendment, as amended, offered by Miss Donnelly and Messrs. Leibrand and McAllister. A division has been requested and the demand was supported. Those in favor of the amendment, as amended, will vote aye. Those opposed will vote no.

In response to a question from Mr. Bonisteel, the question is on the main amendment, as amended. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the adoption of the amendment, as amended, the yeas are 54; the nays are 47.

CHAIRMAN VAN DUSEN: The amendment, as amended, is adopted. Are there any further amendments to section c, Mr. Secretary?

SECRETARY CHASE: There are no other amendments offered to this section.

CHAIRMAN VAN DUSEN: There being no further amendments, the section will pass.

Section c, as amended, is passed.

Mr. Danhof.

MR. DANHOF: Mr. Chairman, I move that the committee do now rise.

CHAIRMAN VAN DUSEN: Mr. Danhof moves the committee do now rise. Those in favor will say aye. Opposed, no.

The motion prevails and the committee will rise.

[Whereupon, the committee of the whole having risen, Vice President Hutchinson resumed the Chair.]

VICE PRESIDENT HUTCHINSON: The convention will be in order. The Chair recognizes the delegate from Oakland, Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, the committee of the whole has had under consideration one proposal on which the secretary will give a detailed report.

VICE PRESIDENT HUTCHINSON: Thank you.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 91,** A proposal pertaining to the supreme court; it has considered several amendments thereto; has come to no final resolution thereon.

VICE PRESIDENT HUTCHINSON: Announcements.

SECRETARY CHASE: None.

VICE PRESIDENT HUTCHINSON: Without objection, we will return to the order of **motions and resolutions.**

SECRETARY CHASE: Messrs. Tubbs and Romney offer **Resolution 79,** A resolution to provide for a recess during the week of April 16.

Following is Resolution 79 as offered:

Whereas, Members of this convention have for many weeks, planned activities outside the city of Lansing during the week of April 16, including trips abroad, honeymoons, etc.; now therefore be it

Resolved, That this convention take a recess from all activities from April 16 to 21, or, in the alternative, that the signers of this resolution be granted leaves of absence.

VICE PRESIDENT HUTCHINSON: Referred to the committee on rules and resolutions.

SECRETARY CHASE: I have the following requests for leave of absence: Mr. Seyferth requests permission to be absent from the afternoon session of next Monday. Mr. Hutchinson requests to be excused from the session of Monday. Mr. Lawrence requests leave from Monday's session; and Mr. Heideman and Mr. Spitler make like requests.

VICE PRESIDENT HUTCHINSON: Without objection, the several requests will be granted. The Chair hears no objection. It is so ordered.

SECRETARY CHASE: Those are all of the announcements, Mr. President.

VICE PRESIDENT HUTCHINSON: What is the pleasure of the convention? The Chair recognizes the gentleman from the twenty-fourth district, Judge Leibrand.

MR. LEIBRAND: I move, after a hard and strenuous day, we adjourn.

VICE PRESIDENT HUTCHINSON: The question is on the motion of Judge Leibrand to adjourn. All those in favor will say aye. Opposed, no.

The motion prevails. The convention is adjourned until 4:00 o'clock p.m. Monday.

[Whereupon, at 4:00 o'clock p.m., the convention adjourned until 4:00 o'clock p.m., Monday, February 26, 1962.]

EIGHTY-SEVENTH DAY

Monday, February 26, 1962, 4:00 o'clock p.m.

PROCEEDINGS

VICE PRESIDENT ROMNEY: The convention will please come to order.

Our invocation tonight will be offered by Delegate Van Dusen.

MR. VAN DUSEN: Let us pray. Our Father who art in heaven, help us, as delegates to this convention and as citizens of this state, to know and to do Thy will. Help us, in our relationships with one another, to remember Thy commandment that we love our neighbors as ourselves. This we ask in the name of Jesus Christ. Amen.

VICE PRESIDENT ROMNEY: The roll call will be taken by the secretary. Has everyone present registered on the board by voting aye?

SECRETARY CHASE: The machine is locked and the attendance will be recorded.

Mr. President, a quorum of the convention is present.

Prior to today's session, the secretary received the following requests for leave:

Messrs. Baginski, Stamm and Wilkowski, from today's session. Mr. Yeager, from today's session and tomorrow morning's session. Mr. Radka reports he will be late for this session and asks to be temporarily excused. Messrs. Boothby and Rood request indefinite leave due to illness.

VICE PRESIDENT ROMNEY: Without objection, the requests are granted.

SECRETARY CHASE: Absent with leave: Messrs. Baginski, Boothby, Dade, Heideman, Hutchinson, Karn, Lawrence, Nisbet, Perras, Radka, Rood, Seyferth, Spitler, Stamm, Suzore, Wilkowski and Yeager.

Absent without leave: Mr. Bledsoe, Mrs. Cushman, Messrs. Krolikowski, Leibrand and Mosier.

VICE PRESIDENT ROMNEY: Without objection, those not present will be excused.

[During the proceedings the following delegates entered the chamber and took their seats: Mrs. Cushman, Messrs. Bledsoe, Hutchinson, Krolikowski, Lawrence, Leibrand, Radka, Seyferth, Spitler and Stamm.]

Delegate Brake.

MR. BRAKE: Mr. President, a matter of personal privilege. Ladies and gentlemen of the convention, over the weekend there appeared on the editorial page of one of the Detroit papers a story in which the writer prophesied that the justices of the peace would outlive the onslaught of this convention. They used very dignified and artistic language. One of the most inspirational paragraphs reads this way:

> Had the convention had the moxie to tell the traffickers in petty politics, lumped under the unlovely name of courthouse gang, to go soak their selfish heads this one would have been all solved.

I do not rise to protest, Mr. President, but to compliment these writers. When they write pure fiction they do so much better than when they try to handle matters with which they are not familiar; such as facts and logic. (laughter)

On a previous occasion they did us the courtesy to mention 3 of us by name, and I am chagrined in not having that personal recognition this time, but I assume I didn't merit it because I haven't done one single thing about the justices of the peace in this whole session except, when Mr. Lawrence's sudden death amendment came up the other day, I voted against it knowing that the matter came up again in Committee Proposal 96 under the judicial article and I thought that if there was to be homicide we should have 2 or 3 days delay in which to prepare to spring the trap or throw the switch or turn on the gas or whatever has to be done.

I have no personal problem. I think that if this convention decides that the county court should displace the justices of the peace, that in each of my 4 counties a competent member of the bar can be found who would be willing to be judge of that court; and I think that each of my 4 counties can finance such a court. So I have no personal problem at all.

I haven't observed anybody doing anything about the justices of the peace in this convention except the 20 lawyers and one druggist who make up Mr. Danhof's committee on judicial branch and I don't know whether any of those people claim to be members of the courthouse gang or not.

We are a little bit exclusive, although strictly bipartisan. (laughter) Pete and Martin and myself have appointed ourselves — we are charter members — as the membership committee, and we won't admit anybody unless he has qualifications, and those qualifications are 3 in number. In the first place, the applicant must know a courthouse when he sees it, and secondly, he must know that the county seat is not an armchair. I would have said rocking chair, except that that has partisan connotation, (laughter) and, in the third place, he must know that a justice of the peace is not a county officer.

It is very apparent, Mr. President, that some of these editorial writers in Detroit would be unable to qualify as to any one of those qualifications. We think, however, that the reporters who cover this convention could qualify as to all 3, and we are very happy to welcome them to honorary membership in the courthouse gang of the 1962 constitutional convention. (laughter)

Mr. President, I am fully aware that what I have said could have been said in fewer words, and more expressive words, but I was not at liberty to use those words. Two words would have been enough but I couldn't use them because there are ladies present. (applause)

VICE PRESIDENT ROMNEY: Reports of standing committees.

SECRETARY CHASE: No committee reports, Mr. President.

VICE PRESIDENT ROMNEY: Reports of select committees.

SECRETARY CHASE: None.

VICE PRESIDENT ROMNEY: Communications from state officers.

SECRETARY CHASE: No communications.

VICE PRESIDENT ROMNEY: Second reading of proposals.

SECRETARY CHASE: Nothing on that calendar for this week.

VICE PRESIDENT ROMNEY: Third reading of proposals.

SECRETARY CHASE: Nothing on that calendar.

VICE PRESIDENT ROMNEY: Motions and resolutions.

SECRETARY CHASE: There are no resolutions on file.

VICE PRESIDENT ROMNEY: Unfinished business.

SECRETARY CHASE: None.

VICE PRESIDENT ROMNEY: Special orders of the day.

SECRETARY CHASE: None.

VICE PRESIDENT ROMNEY: General orders of the day. Delegate Van Dusen.

MR. VAN DUSEN: Mr. President, I move that the convention resolve itself into committee of the whole for the purpose of considering matters on the general orders calendar.

VICE PRESIDENT ROMNEY: Those in favor of the motion say aye. Opposed, no.

The motion prevails. Delegate Van Dusen will preside.

[Whereupon, Mr. Van Dusen assumed the Chair to preside as chairman of the committee of the whole.]

CHAIRMAN VAN DUSEN: The committee will come to order. The secretary will read.

I believe when last we met we had just completed our consideration of section c of Committee Proposal 91, and therefore the business before the committee is section d, which the secretary will read.

SECRETARY CHASE: From the committee on judicial branch, by Mr. Danhof, chairman, **Committee Proposal 91, A** proposal pertaining to the supreme court; section d.

For last previous action by the committee of the whole on Committee Proposal 91, see above, page 1275.

[Section d was read by the secretary. For text, see above, page 1256.]

CHAIRMAN VAN DUSEN: The Chair will recognize the chairman of the committee, Mr. Danhof.

MR. DANHOF: Mr. Chairman, members of the committee, we are again concerned with the provisions relating to the supreme court, the duties and the responsibilities thereof. As previously, I should like at this time, for an explanation of this section and of the majority report of the committee, to yield to the gentleman from Grand Rapids, Mr. Tubbs.

CHAIRMAN VAN DUSEN: Mr. Danhof yields to Mr. Tubbs.

MR. TUBBS: Mr. Chairman and delegates, I tremble a little bit when I bring up another noncontroversial section. This is a rewrite of section 5 of article VII of the present constitution. You will find the explanation on page 466 of the journal. Actually the language is not much changed except that we here are writing into the constitution the abolition of the distinction between law and equity that was done by the legislature in the recently enacted judicature act.

Some of you who have been in the practice of law for 35 or 40 years, as I have, may wonder why we are continuing to prohibit the office of master in chancery. I think it has not been a part of the court system of this state for many years. We did not want some sophist to claim that if we left that language out we were lefthandedly putting it back into circulation, because the language of the 1908 constitution is identical with the last sentence of this section d.

We hope, Mr. Chairman, that this will not merit too much adverse discussion and that perhaps we can get on with our business. I return the mike to you, Mr. Chairman.

CHAIRMAN VAN DUSEN: Mr. Danhof, have you further explanation on section d?

MR. DANHOF: Not at this time. Mr. Woolfenden is prepared but I think we can hold that.

CHAIRMAN VAN DUSEN: There is, I believe, an amendment to the section, which the secretary will read.

SECRETARY CHASE: Pursuant to their minority report, Miss Donnelly and Messrs. Leibrand and McAllister offer the following amendment:

1. Amend page 2, line 5, after "state" by changing the period to a comma and inserting "it being provided that where there is a conflict between supreme court rule and a statute concerning evidence or substantive law the statute shall prevail."; so that the first sentence in section d will read:

> The supreme court shall by general rules establish, modify, amend and simplify the practice and procedure in all courts in the state, it being provided that where there is a conflict between supreme court rule and a statute concerning evidence or substantive law the statute shall prevail.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Miss Donnelly, Messrs. Leibrand and McAllister. The Chair recognizes Mr. McAllister.

MR. McALLISTER: Mr. Chairman and fellow delegates, I don't see either one of the other 2 delegates who sponsored this amendment or this minority report, but under the present court rules, which we discussed here the other day, the supreme court has in the rules that where any statute conflicts with the rules, that it is of no force or effect.

We don't intend by this minority report amendment to prevent rulemaking power as far as procedure is concerned, but we do — where the legislature has passed a statute or does pass a statute, we feel that in that instance where it relates to evidence or substantive law, that the legislative act should prevail over the court rules of the supreme court. We feel this is only protection for the public, and that the legislative and legal and judicial departments are separate, so that where there is a conflict, that the legislative act should prevail.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Miss Donnelly, Judge Leibrand and Mr. McAllister. On the amendment, Mr. Danhof.

MR. DANHOF: Mr. Chairman, members of the committee, the paragraph that we have here is a grant of power to establish and modify and amend the practice and procedure in all courts of this state. Not only has it been in our constitution since 1908, but the most sincere form of flattery that can be offered is that it has been practically adopted verbatim by the last 3 states having the opportunity to write new constitutions. The provision limiting the power of the supreme court as it pertains to substantive law is, in fact, no limitation at all. The grant of the power deals with practice and procedure, and this is different than the substantive law.

This amendment goes further than this. Rules of evidence have historically been made by the courts over the years. They have developed through usage, through practice, through various cases, and with but very few exceptions, except as relates to presumptions and privileges, the rules of evidence as to what may be introduced are and should continue to be a court function. The legislature may write statutes as they relate to the substantive law, but the rulemaking power of the court as it relates to the admission of evidence should not be limited, as this would do.

Again we have here something which shows a consistent pattern to endeavor to restrict and tie in knots the administration of justice in the operation of our supreme court. I think too often we tend to let the personalities of the court personnel interfere with our consideration of the system. If there is one thing this committee should do, it is to try to set up a good system, and then find ways by which we can staff the system by the fairest means. Every single authority in the field of administration of court decisions has held that the power of rulemaking over evidence, and so on, and practice and procedure should not be tampered with.

At the present time the Supreme Court of the United States will soon prepare uniform rules of evidence. This particular section that we endeavor to solidify here, and actually cut down the wording, is one which has been in for a great number of years, and again I would urge you to defeat the amendment, to keep the section exactly as it is. We have not made too many changes. We have abolished the distinction between law and equity as they have been done by the judicature act, and we now make this a constitutional provision. This will be a tremendous advancement in the practice of law. It would eliminate many hardships which arose because of the failure to enter one side of the court or the other. We suggest that section d is a good section. Don't put a stranglehold upon it. I would therefore urge the defeat of the amendment.

CHAIRMAN VAN DUSEN: On the amendment, the Chair recognizes Mr. Woolfenden.

MR. WOOLFENDEN: I rise in opposition to the amendment. The amendment is based upon reading into the language of the committee proposal something that is not there. As the chairman has stated, and I will not reiterate his argument, this section has been, for all practical purposes — the language is changed slightly but only in the interest of clarity — in the constitution since 1908, and it has never been interpreted by the courts to include anything that would be the basis for the amendment proposed. I think this amendment, if adopted, would merely confuse the administration of the supreme court in the exercise of its proper rulemaking authority, and I urge a no vote on the amendment.

CHAIRMAN VAN DUSEN: Mr. Wanger.

MR. WANGER: Mr. Chairman, Mr. Danhof, I would like to ask a question. Mr. Danhof, did I understand you correctly

to say that under the present language of the committee proposal the supreme court, with respect to any rule of evidence whatsoever, could by rule override any statute? That is the way I understood you. I was quite surprised to hear that. Is that what you intend?

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: I said that basically the provisions relating to the introduction of evidence are things that have grown from judicial decisions. I think it was Mr. McAllister who made the reference to the particular rule as voiding the statute. My thought was that the rules, as they have been developed over the years, have been made by the courts in judicial decisions as to what would and what would not be admitted.

Now, it is true that when we adopt a provision like we did in the civil rights section it tells the court in effect what will and will not be admitted but that, by and large, this has become a court function. The substantive part, of course, is either developed by the common law or the statute.

MR. WANGER: That doesn't answer my question. My question is, do you want the supreme court of the state, by court rule, to be able to override any statute which sets up a rule of evidence? As you know, we have many statutes which clearly say what is admissible in evidence and what is not, and this determines the outcome of many, many cases. I just want to know, do you desire that the supreme court, under this section of the committee proposal, shall, by a court rule, be able to override any statute regarding a rule of evidence? I thought you said yes, but I was quite surprised, and I just wanted to have it be clear.

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: I will be quite frank with you, I don't quite follow your particular reasoning from the words that we have here. Actually, in 1908 we had identically the same words, except for "the legislature shall abolish." Now the practice within the court may involve some of the rules of evidence. There may be statutes that will intervene in there, but the question becomes one of the practices in the court, and the procedures within the court should and must continue to be the province of the court.

MR. WANGER: Well, that still doesn't answer the question. The question is very simple. We have many statutes in this state, as we have many statutes in other states and the federal system, which set forth the rule of evidence under certain subjects; saying this particular type of evidence will or will not be admissible in the court under certain circumstances. All I want to know is, if the legislature passes a statute setting up such a rule of evidence in the statute, can the supreme court, under the committee proposal, pass a court rule which supersedes that statute?

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: My only answer, Mr. Wanger, is that if it relates to substantive law, naturally the statute — and I am sure the court has in the past ruled — that would prevail. This in no way would change the present practice.

MR. WANGER: I am not talking about substantive law; just rules of evidence, sir.

MR. DANHOF: To my knowledge the present practice will not change. Now, I can't answer your question, I am sorry, any further than that.

MR. WANGER: Well, should the supreme court, then, be able to pass a rule of evidence which would supersede a rule of evidence set forth in the statute? I am not changing my question. My question first was what does this proposal do, and you said it does not change the present practice. I think the present practice sometimes has been subjected to a little controversy and I just want to ask you, which should it be?

MR. DANHOF: Well, if it relates to practice or procedure, then this in the court rule would override it.

MR. WANGER: Well, if it relates to evidence — certainly practice and procedure is a very broad term. We all agree that most aspects of that should be governed by rules, but when it comes down to evidence — what is admissible in evidence and what is not — my question is, should the supreme court be able to pass a court rule which would supersede a statute that the legislature would pass on the very same subject?

MR. DANHOF: If you ask me my personal opinion, I will grant you that. As to the opinion of the committee, this was not necessarily considered. I can't answer any further than that. Maybe some of the other members of the committee can, I don't know. Maybe Mr. Woolfenden or Mr. Ford can give you an answer. That is about the best I can tell you. The present practice would continue. The rules that have dealt with the presumptions, and the rule that deals with privilege, and not involving policies of judicial administration and procedure, those particular statutes are on the books and have been honored by the court, and as far as I can see this practice would continue. Now, if that is what you mean by rules of evidence, I think it would continue, yes.

CHAIRMAN VAN DUSEN: The gentleman from Taylor, Mr. Ford.

MR. FORD: Well, a quick comparison will show that the language has not changed since 1850. It was there in 1850; it was repeated in 1908, and we are repeating it again. There are a long line of cases that show what kind of powers — certainly there has been some conflict, but most generally the conflict has been where there is a local court rule or where the legislature starts to get involved in procedure, and the court makes a rule involving procedure.

Mr. Wanger, I think, is confusing us a little bit by talking about rules of evidence, because most generally when we are talking about rules of evidence we are talking about substantive matters in the trial of a lawsuit; and particularly where that would be determinative of the outcome of the lawsuit rather than the procedure involved in how you go forward with the evidence or at what point something happens in the actual procedure, particularly with respect to trials, but not necessarily limited to trials.

I note in the footnotes, for example, this says court rules cover such things as who shall be a surety on a bond, and things of this kind. Where the court makes a rule that is contrary to or in apparent conflict with the legislative act, in that case the court rule prevails. And this has been the law in Michigan since 1850.

CHAIRMAN VAN DUSEN: The lady from Highland Park, Miss Donnelly.

MISS DONNELLY: I must say that the longer I listen to Mr. Ford and Mr. Danhof, I think they have no objections to our minority report. I think if they mean what they say they should be supporting us instead of objecting to it. Our minority report very clearly says where there is a conflict between the supreme court rule and a statute concerning evidence of substantive law, the statute shall prevail. This is an addition. It is the only addition we have made here. We make this addition because we feel that, one, the legislature theoretically represents a cross section of the people on what should be in evidence, and a law representing admissibility of evidence.

To go into a long dissertation on the various statutes regarding evidence, the dead man's statute, for instance, one of the most complicated we have, is not, I don't think, too beneficial to most of the lay people here. However, I think it is very simple to decide this issue, whether the supreme court rule may, instead of striking down the statute and holding it unconstitutional — which we maintain they may still do — they can just override it by their court rule alone, without a case testing the statute, without determining it in any way; they can write the statute out and make it unconstitutional by their court rule.

We maintain this is improper. It should be tested in court, go through the regular procedure, and be determined unconstitutional; not merely in conflict with the rule. We are not talking about sureties on bonds. We are talking about a statute concerning, as it is said in our language, substantive law and evidence. The reason this is in is because of a new court rule which has been adopted, which says that this can be done. We maintain in the court rule this cannot be done.

What we are trying to do is make the court rule unconstitutional because it doesn't go with the present constitution in our opinion. We are trying to strike back down at their power; making it go back the other way. If they want a statute — if they don't approve a statute, they can find that

statute unconstitutional, if in fact it is. But not just write it out by a court rule — which very few people know what is happening until it is a little late. It doesn't have the aspect of publicity. It doesn't have a trial to go through. In many ways we feel that for the supreme court to automatically write off what the legislature has done in their own private rules is improper, and it should be tested like any other statutory enactment, as well as the law of evidence.

It is very simple, I think, on its face, what we mean. What I think the people arguing for the majority report say we mean is not quite true. If they mean what the say, they should be supporting us instead of opposing us.

CHAIRMAN VAN DUSEN: The gentleman from Bad Axe, Mr. McAllister. There are several seeking recognition ahead of you, Mr. Tubbs. The Chair will get to you in due course.

MR. McALLISTER: I have a little difficulty answering Mr. Wanger's statement. The supreme court rule was put into force June 5, 1959. It is true that the constitution hasn't been changed, but in the supreme court rule of June 5, 1959, there was nothing said about substantive law and nothing said about evidence. It just said that wherever a statute was in conflict with the rule of the supreme court it was gone; it had no force or effect.

So if this constitution doesn't protect the many pages of evidence that are set forth in the statutes, the supreme court, after this constitution is passed, in view of their present court rules, can make new rules of evidence for everything that is in the statutes, and there isn't a thing we can do about it.

I say to you folks, this is a very, very serious matter, and we have traveled along since 1850 on this constitution, and the supreme court has never attempted to exercise this power before, and now in June, 1959, they pass these rules and say where the statute conflicts with their rules, their rules shall prevail.

Again I say that, if Mr. Ford and Mr. Danhof mean what they say, they should be supporting this amendment, and also Mr. Woolfenden, instead of opposing it.

CHAIRMAN VAN DUSEN: Mr. Garry Brown.

MR. G. E. BROWN: I will pass.

CHAIRMAN VAN DUSEN: Mr. Brown passes. Mr. Martin.

MR. MARTIN: Mr. Chairman, the amendment that is proposed here raises some questions about which not even the lawyers, I am sure, are certain; that is, what the long range effect of this kind of a change may be.

We have operated under the present provisions of the constitution which the committee has proposed for over 100 years. The mere fact that the supreme court has promulgated a rule saying that if a rule conflicts with the statute the rule shall prevail means nothing more than if the statute is in violation of the powers of the judiciary, of the established powers of the judiciary, that it will prevail. It doesn't set forth anything new.

The question I would ask Miss Donnelly, or Mr. McAllister, or anyone else, is whether there has been any attempt at any time to assert the proposition that a rule of the supreme court on matters of this kind does contravene a law or statute which was passed by the legislature, and does destroy that statute? If there is any evidence of that kind, then we might have something to go on. But just to, out of the blue, include a provision of this sort may well alter the whole conduct of court trials and have a long range effect, deleterious or bad effect which none of us can foresee at the present time. It seems to me we are just shooting in the dark here.

CHAIRMAN VAN DUSEN: Mr. Martin, do you desire to yield to Mr. McAllister for reply?

MR. MARTIN: Yes.

CHAIRMAN VAN DUSEN: Mr. Martin yields to Mr. McAllister.

MR. McALLISTER: This will be very brief. Who determines what shall prevail? The supreme court. In other words, if they determine the statute conflicts with the rules, that is all there is to it. And, the thing is that these statutes, many, many statutes under which we have been guided for nearly a century, over a century, have established certain rules of evidence. They can change those tomorrow by making a rule.

CHAIRMAN VAN DUSEN: The Chair recognizes the vice chairman of the committee, Mr. Ford.

MR. FORD: I think Mr. Martin said what we had determined on back here with our little caucus. I think Tom is doing a pretty good job repeating what he did last Friday. He is putting something in here that isn't here. It is like a ghost on your television screen, and we shouldn't pay too much attention to the ghost and run the danger of losing sight of what we are actually doing.

When we are talking about the lines between substantive law and procedural law, not all of us are as positive as Miss Donnelly that we know when we cross over this line from one to the other. All of the lawyers in this room, I am sure, appreciate one experience or another where it is very difficult to tell at what point you cross the line.

For example, it wasn't too long ago — there are 2 places where I might give an example of very important rules of the court that aren't really substantive, but they have a tremendous effect. One, for example, is the manner in which you plead alibis in this state. The statute doesn't say that you plead alibis in a certain way, or that you have to follow a certain procedure if you intend to rely on it. The court rules do. Another one is in the manner of the admission of certain evidence, and in the matter of suppression of evidence, the motion to quash. You can't simply wait until the prosecutor presents the evidence and then start to scream about it. You've got to put him on notice in advance of your intentions to object. This is all done by court rules. This sets the stage. Now, it could, in effect, have the effect of keeping out or letting in evidence that might by statute be admissable or inadmissible; the effect of not following the rules, but these are intertwined in such a manner so as to make them almost impossible to separate.

And the danger we see in trying to create this distinction as if it were a clear cut line between the 2 is that we are opening the door for all sorts of litigation to start confusing the future rulemaking power of the court, where, over a long period of time, we have got a pretty well settled situation. I might say that our court rules in Michigan are looked at as something of a model by a great many states, and where the legislature was so very reluctant to finally do what they did last year with the judicature act in abolishing once and for all the distinction between law and equity or law and chancery, rather, our court rules have come up with a rather simple system, and it is a very direct system considering all of the difficulties that are built into it by statute.

I rise this last time to support the committee's majority report, and urge you to vote against the minority report amendment.

CHAIRMAN VAN DUSEN: The gentleman from Grand Rapids, Mr. Tubbs.

MR. TUBBS: I pass.

CHAIRMAN VAN DUSEN: Mr. Tubbs passes. Miss Donnelly.

MISS DONNELLY: Mr. Ford seems to feel that I feel that I am endowed with unusual ability to tell the difference between substantive and procedural law. But I will recall to him that if there is one place that it will be very obviously determined, that will be in the supreme court, and it will then say whether it crosses this imaginary line or not.

We have very simply stated, I believe, that the supreme court shall not strike down legislative enactment by court rule; that when they start to strike down the legislative acts they will do it the way they used to do it, by having them be appealed and determined either constitutional or unconstitutional. I think that if Mr. Martin or anybody else was sitting in the legislature that is how they would think it should be done; not by merely amending a court rule.

So again I say the determination of the effect of this language will be in the supreme court, and they will know, very nicely, for their own benefit, as well as for everybody else's in the state, whether it is a substantive statute regarding evidence of substantive law, or merely procedural.

CHAIRMAN VAN DUSEN: Dr. Nord.

MR. NORD: Mr. Chairman, I would like to speak in opposition to the amendment and in support of the committee proposal. The information that we have been given might lead one to think that we have here some sort of a tremendous innovation, that is, some sort of a radical change. It has been pointed out over and over again there is no change whatsoever in the constitution of any significance at this point. Further, the change that has been suggested is also extremely exaggerated.

It has been suggested that the supreme court has adopted rules which say that any statute which is inconsistent with their rules, the statute can go jump in the lake. That is a lot of boloney. It says no such thing. It merely says that if there is a conflict between the rules and a statute, the rule prevails, but the rules are limited to procedure. If the supreme court should adopt a rule that is a matter of substantive law, then we would have the problem that has been placed before us. But that is not the problem. Nobody has ever suggested, that I have ever heard of, that a court has the power to write off a substantive statute just because it feels like it.

The supreme court of this state has never said so. The rules do not say so. No other court has said so. But what the court has said in its rules is exactly the same as many other courts, most modern courts say now, including the United States supreme court, that when it comes to a conflict between how the procedure of the court shall be carried out, and there is a statute and there is a court rule, and one or the other must prevail, the court rule shall prevail. And the reason for that is very simple. The reason for that is that the judicial power is exclusively vested in the court and the legislative power is exclusively vested in the legislature. There is a separation of powers.

Now, what we have here is one attempt out of many — we have had a number of attempts in this particular proposal, one after the other, to do the same — and that is to put the court below the legislature. There is no reason to do that. The court must be able to control its own procedure.

Now, the question I was asked by Mr. Wanger is a very tough question, that is to say, should evidence be counted as procedure or not. Normally it is. Possibly there are some rules that should not be. We know that it is a difficult line between procedure and substantive in some cases. And, as a matter of fact, the same subject matter will sometimes be called substantive and sometimes procedural depending on the context. As far as I am concerned, if it is a rule of evidence of the ordinary type, let's say it is something about the hearsay rule, as to whether hearsay evidence should be admitted under some exceptions, there is no objection that I know of to the court determining whether it should be admitted or not, because that has to do with the way the case will be conducted in the court.

In other words, what I say is that the alarms that have been raised here are absolutely unwarranted. No change has been made either in the supreme court or in the constitution as now proposed. The practice that is suggested is in line with all modern thinking on the subject, and the real issue is, do you really mean it when you say that the judicial power is exclusively vested in the court? You said that a few days ago and if you mean it you should quit attacking the court. I suggest you vote down the amendment.

CHAIRMAN VAN DUSEN: Dr. Nord, Mr. Wanger requested you yield to him for the purpose of commentary. Will you so yield?

MR. NORD: Yes.

CHAIRMAN VAN DUSEN: Mr. Wanger.

MR. WANGER: I would like to ask a question. Do I understand, then, Dr. Nord, that you believe that — should, shall we say, the rule of the court establishing a provision regarding the admissibility of certain evidence as an exception to the hearsay rule under one of the traditional exceptions, do you believe, then, that if that should be put into the supreme court rule, mind you, that the legislature should not then be able to change it by statute?

CHAIRMAN VAN DUSEN: Dr. Nord.

MR. NORD: If you are asking my opinion, the answer is yes, the legislature should not be allowed to change it, for the reason that one or the other must control. And the question is who shall control if it is a matter of evidence; not a matter of who wins the case, but how the case is to be handled in the court. One or the other must control, and I say it must be the court. That is my opinion.

MR. WANGER: Well, it seems to me it should be clear to everybody and not just attorneys that you win or you lose your case on the basis of the evidence, and the rules of evidence determines whether or not you can get that particular point or material into court. And if the rules of evidence keeps it out of court, it may be procedural, it may be just a matter of form, but the direct and absolute result of it is that you lose your case. And that is the reason why it seems to me that if there is a conflict on the admissibility of a certain matter of evidence, then the legislature should have the power, by a statute, to determine the matter, any rule of the supreme court notwithstanding.

It had been my thought that that has been the law of this state, and that was the reason why I thought originally that the amendment offered was, perhaps, a little bit redundant. But in the light of what was said by the people here on the floor, I am very much concerned that that may not be the law of the state. And since matters regarding the admissibility of evidence are so important to all of the people here in Michigan, I think the legislature ought to have the controlling voice when it chooses to exercise that voice by statute.

CHAIRMAN VAN DUSEN: Dr. Nord.

MR. NORD: I would like to respond to Mr. Wanger, if I may, since he responded to me. As to what the law is in Michigan, Mr. Wanger asked Mr. Danhof, and he answered correctly that he did not know, because on that subject it is my opinion that the answer is "not know." It isn't clear in Michigan. It has been made clear in some states, but in Michigan the general understanding, as far as I am aware, is this: that the statute supersedes the court rule if it is later and the court rule supersedes the statute if it is later. That has not been an absolute determination — that has been the understanding, and that is the way it is stated in the books. It doesn't have to be that way, and it has never been really decided, but on the basis of that rule in the past, and it was certainly understood, that if it is a procedural matter the supreme court rule would override a statute.

The question that has never really been determined at all is how far this word "procedure" goes. There we are shooting out into the dark. Now, in my opinion, if we attempt to settle this question here, then we change our minds from where we were a few days ago. A few days ago we said the judicial power shall be exclusively in the court, and now we are saying, basically, it shall be exclusively in the constitutional convention, that we are going to determine in advance everything that is procedural and everything that isn't. We are going to make up our minds now that all evidence is not procedural.

CHAIRMAN VAN DUSEN: Judge Pugsley, Mr. McAllister has sought recognition, and then you will be recognized. Mr. McAllister.

MR. McALLISTER: I want to say that the innovation that proposed this minority report was the supreme court rule. Now, the supreme court rule doesn't say that their rules — that it only applies to rules of procedure. It is a blanket rule; that where any statute conflicts with a court rule it shall be of no force and effect, or words to that effect. So that is the reason that we felt that the minority amendment should be accepted.

It is true that for 150 years, or over 100 years, it has been the same in the constitution. The point that I make is that even these people who oppose the amendment say that it doesn't say in that section we are talking about that the court will have the right to do this, but the court has already done it. They did it on June 5, 1959, and the rule is not limited to rules of procedure; it is a flat statement and encompasses everything.

CHAIRMAN VAN DUSEN: Judge Pugsley.

MR. PUGSLEY: Mr. Chairman and fellow delegates, I

think there may be in the minds of the delegates, perhaps, who are not lawyers, some confusion when we talk about the matter of substantive law and the matter of procedure. I think it is the practice of the supreme court to exercise the right of telling the lawyers and those who seek to exercise procedure the method by which it shall be done. We must not confuse that with substantive law; it is given to the legislature to make the law.

Perhaps it will be interesting and enlightening to note the following decision by the supreme court in Jones vs. Eastern Michigan Motor Buses, 287 Michigan 619. I am reading from the footnotes of the volume which you all have. I quote:

> Since all judicial power is vested by constitution in supreme court and other inferior courts over which it has supervision and control, power to regulate procedure is inherently vested in supreme court, to be exercised under its rulemaking powers.

I think that is the problem. I think that is what is intended by this provision.

CHAIRMAN VAN DUSEN: The Chair will recognize the gentleman from Wayne, Mr. Garvin.

MR. GARVIN: Mr. Chairman and delegates, I believe Judge Pugsley just about covered it then. My question was going to be to one of the proposers or Mr. Wanger. In their opinion, where does the article IV of the constitution, where there is a division of the executive, judicial and legislative branches, where does it separate? The judicial branch must be at some point.

It is the contention of the committee that the supreme court has the right to make the rules under which the various courts proceed, and the lawyers practice, and that is part of the judicial branch. Now, if we take the position that every time something is to be changed by the judiciary, by the legislature, then there would be no point in having a judicial branch as has already been set up in the Constitution of the state of Michigan. I support the committee proposal.

CHAIRMAN VAN DUSEN: Dr. Nord, do you seek recognition at this time?

MR. NORD: Mr. Chairman, I have before me the text — well, I am informed it is the text — of the supreme court rule to which reference has been made many, many times in this debate, and I will read it, and then you can see for yourselves whether this has this evil effect as has been claimed. These are the words: "Any statutory provision that is inconsistent with any provision in these rules shall be considered as superseded by these rules."

Now, the question is, what is in these rules? If there is anything in these rules of a substantive nature, Mr. McAllister is right. If there isn't, he is wrong. We have them all before us. There is nothing of a substantive nature in them at all. They are entirely related to procedure. The title, for example, says Supreme Court Rules Concerning Superintendence of the Judiciary of Michigan. It goes on to explain how the administrator shall be doing this and that, with investigation by the court administrator, and whether they can transfer jurisdiction from one county to another, and so on. It is procedure. All the court has said is what everybody knows in the first place; that any statutory provision that is inconsistent with any provision in these rules, but not in some other rules, shall be considered as superseded by these rules. These are rules of procedure. Therefore there is no reason to be alarmed that the supreme court is taking off into orbit after Mr. Glenn.

I say we should vote down the amendment. I oppose the amendment.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Miss Donnelly, Messrs. Leibrand and McAllister, on which Miss Donnelly seeks recognition.

MISS DONNELLY: I would just like to reply to what Mr. Nord said made Mr. McAllister wrong. I think if he reads it, we are saying that substantive law of the statute shall prevail. This does not make Mr. McAllister wrong. It makes him thinking just the way you are thinking when you say that. If you will read what our amendment says, you will be forced to agree he isn't wrong; he is right. We are talking substantive law.

CHAIRMAN VAN DUSEN: Mr. McAllister.

MR. McALLISTER: The only provision that our amendment makes is as to evidence and substantive law. That provision in there, I don't agree with your interpretation of it, Mr. Nord, because that is all inclusive.

We don't know what those rules will contain tomorrow, and the thinking is that if it is in the constitution the way we propose it, then no harm will be done; and the time to prevent injury is before it occurs, so that rule is all encompassing. Our amendment, according to your own interpretation of those rules, will not do any damage to the supreme court or anyone else. This is strictly a protective measure so that the evidence that is contained in our statutes, and has been there for years, cannot be destroyed by a rule of the supreme court where it relates to evidence or a substantive law.

CHAIRMAN VAN DUSEN: Dr. Nord.

MR. NORD: Well, perhaps we can finalize the exact issue. Everyone knows, as I have said, and I believe everyone has said, that no one thinks the supreme court has the power to change a statute relating to substantive law just by its own fiat. They can't do it. The point I made was that you have given the impression the supreme court says it has that power. It certainly does not say so. Nobody thinks it has that power, and there has been no change in the situation from before to now. I admit that if you put those words in about substantive law it won't do any harm, but if you put the words about evidence in, I believe it will do harm. I do take issue with you on that.

In addition, if you want to be more than half safe, really be safe, you could start putting rules into the constitution about how the legislature shall run its business; that the supreme court shall not tell the legislature how to appoint its committees, and so on. Nobody has asked that that should be done. It isn't necessary. In this case, as to the substantive material, it isn't necessary; but as to the evidence, it is harmful.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Miss Donnelly, Mr. Leibrand and Mr. McAllister. Mr. Habermehl.

MR. HABERMEHL: Mr. Chairman, I would like to address a question to Dr. Nord.

CHAIRMAN VAN DUSEN: If the gentleman cares to answer.

MR. HABERMEHL: The supreme court rules are promulgated by the court itself, are they not?

CHAIRMAN VAN DUSEN: Dr. Nord.

MR. NORD: Mr. Habermehl, they were promulgated, as I see by the record, by 5 of the 8 supreme court justices.

MR. HABERMEHL: In the event they choose to put a rule in there that at least most of us would feel contravenes the statute on substantive law, who would make the decision as to whether or not those rules contravene the statute?

MR. NORD: The same court as would make the decision on any other thing which we disagreed with: the supreme court.

MR. HABERMEHL: This then, without the minority report, without the amendment proposed by the minority, of course, would give the supreme court the power to do exactly what you say no one believes that they have now.

MR. NORD: Mr. Habermehl, if you put words into the constitution saying the supreme court shall not have power to change the substantive statute, and if you distrust the court that much, you should predict this: the next thing they will do is to say there is no such thing as a substantive statute. Any statute you name they will say is procedural. If you are that worried about them, they have the final answer anyway. You can't stop them. The only way you could stop them is if they violate the United States supreme court constitution. I mean the United States constitution.

MR. HABERMEHL: Except that, of course, the Michigan constitution is a limitation upon the supreme court itself, is it not?

MR. NORD: Yes, but if you are going to put in words that are subject to interpretation, such as substantive, let us say, they can still interpret them. Let me put it like this: your real

problem is, if you are afraid of the supreme court and the people on it, you have one way you could solve that fear: make sure that you can kick them out when they behave in an abominable manner. Make sure they are elected, and the people can kick them out if they don't like them. Do it by voting.

CHAIRMAN VAN DUSEN: The Chair will ask the speakers to confine themselves to the amendment currently before us. The question is on the amendment offered by Miss Donnelly, Mr. Leibrand and Mr. McAllister. The secretary will read the amendment.

SECRETARY CHASE: The amendment is:

[The amendment was again read by the secretary. For text, see above, page 1289.]

CHAIRMAN VAN DUSEN: Mr. McAllister.

MR. McALLISTER: I would like a division on this question.

CHAIRMAN VAN DUSEN: Mr. McAllister requests a division. Is the request supported? It is supported. The question is on the amendment offered by Miss Donnelly and others. Those who favor it will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the amendment offered by Miss Donnelly, Messrs. Leibrand and McAllister, the yeas are 32, the nays are 75.

CHAIRMAN VAN DUSEN: The amendment is not adopted. Are there further amendments to section d?

SECRETARY CHASE: None on file, Mr. Chairman.

CHAIRMAN VAN DUSEN: There being no further amendments, it will pass.

Section d is passed. The secretary will read section e.

SECRETARY CHASE: Section e:

[Section e was read by the secretary. For text, see above, page 1256.]

CHAIRMAN VAN DUSEN: For an explanation of section e, the Chair recognizes the chairman of the committee, Mr. Danhof.

MR. DANHOF: Again I would like to yield to the gentleman from Grand Rapids, Mr. Tubbs, on section e.

CHAIRMAN VAN DUSEN: Mr. Tubbs.

MR. TUBBS: Mr. Chairman and fellow delegates, this is a rewrite of the present section 7 of article VII of the constitution. It changes the language a little bit to clarify it, and requires that reason shall be given, and that all decisions of the court shall be in writing. Even a dissenting judge must give the reasons for his dissent. This has been in the constitution for a long time, and I can see no reason why it should not be continued, and hope that you will pass this provision.

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: I should also like to call upon the delegate from Detroit, Mr. Cudlip.

CHAIRMAN VAN DUSEN: Mr. Cudlip is recognized.

MR. CUDLIP: Mr. Chairman, members of the committee, the change with respect to writing these dissenting opinions is, "When there is a dissent in whole or in part" is the proposed rule. Today the constitution simply provides for dissenting opinions.

One of the justices that appeared before us said this in his report, and we in the committee thought it had a great deal of meaning and merit:

> Some members of the court have in the past followed the practice of signing on the left side of the opinion when they agreed with the result but didn't agree with all the reasoning in the majority opinion. By this they mean they do not agree with the reasoning and statements in the opinion, but agreed only with the result obtained.
>
> Either the section should provide for writing opinions and giving reasons when they disagree in whole or in part, or the provision with respect to writing dissenting opinions serves no useful purpose.

The reason the committee felt that the words "in part" should be included in its proposal are these: lawyers in advising their clients pay great attention to these dissenting opinions, and we know that as life moves forward, that sometimes the dissenting opinion and the views expressed therein become the majority opinion, and it is very useful for a member of the bar to sense the trend of the court. And it is particularly true of a dissenting opinion that is joined by 2 or 3 or 4 — or 2 or 3 judges in the cases of our court.

The same reasoning applies in the case of a judge or 2 judges who agree in the result of a case, the majority opinion, but don't necessarily agree in the reasoning, and that is where they sign, we will say, sometimes on the left, to indicate that very result.

We members of the committee feel, and I think the bar of Michigan felt, that if they do not agree with the reasoning, even though they agree with the result, they should say so. They don't have to be verbose, but they should say so, so that we who have to advise clients can detect those trends and, as I say, sometimes those trends become the majority rule, and that is a very important thing for lawyers to know: what these attitudes are of the appellate courts.

For that reason I ask that the delegates support the committee proposal.

CHAIRMAN VAN DUSEN: Mr. Danhof, do you have anything further at this time? The secretary has an amendment on his desk. Mr. Norris.

MR. NORRIS: Mr. Chairman, I would like to ask a couple of questions, if I may, of the committee chairman.

CHAIRMAN VAN DUSEN: You may if the gentleman cares to answer.

MR. NORRIS: First, Mr. Danhof, is a writ of habeas corpus a prerogative writ?

MR. DANHOF: It would be our interpretation that decisions involving the writs of that type, yes.

MR. NORRIS: Would require an opinion?

MR. DANHOF: I would hope so, yes. I would imagine the court would have some reason that they might interpret it another way, but I would think that they would write an opinion on it. I would hope so, anyway.

CHAIRMAN VAN DUSEN: The secretary will read the amendment.

SECRETARY CHASE: Pursuant to their minority report, Miss Donnelly, Messrs. Leibrand and McAllister offer the following amendment:

1. Amend page 2, line 11, after "decision" by inserting "and denial of leave for appeal"; so the sentence will read:

> Decisions of the supreme court, including all decisions on prerogative writs, shall be in writing and shall contain a concise statement of the facts and reasons for each decision and denial of leave for appeal.

CHAIRMAN VAN DUSEN: Does one of the movers seek recognition? Mr. McAllister?

MR. McALLISTER: I yield to Miss Donnelly.

CHAIRMAN VAN DUSEN: The lady from Highland Park, Miss Donnelly.

MISS DONNELLY: I think, initially, "denial of leave to appeal" probably would be more usual language and perhaps a better use. Our main thought here is that today the supreme court does not ever give a reason for denial of leave to appeal. They merely say it is denied. This leaves the litigant and their attorney in the position of not knowing why. They maybe can guess, and when the client comes to the office and asks, the attorney can guess, the client can guess, and everybody can have a fine time, but they don't know.

It is our position at this time that having created an intermediate appellate court, instances when a person would go to the supreme court would probably be cut by a fantastic number. Therefore, when one does go to the supreme court — in all probability this is double guessing because we have not outlined here any reason why the supreme court must listen. Up until now the supreme court has given many instances and has heard many cases where there is any right to appeal. There are leaves to appeal in other instances.

With the creation of an intermediate appellate court there is great likelihood that the supreme court might find that one

should have leave to appeal in practically every instance, except for a very few that they can set out in their court rule.

However, the problem of why this case will not be heard in the supreme court would thus become even more important to a litigant who wishes to know. It would be very advisable for all litigants coming after them. Therefore, we move to amend to include a denial of leave for appeal — or to appeal would be added — so that the supreme court, when refusing to give the hearing, will give the reason why. The reason may merely be this is merely an issue of fact which has been adequately determined. They could give that reason very readily, very quickly. Then the individual litigant will know.

This is a way of allowing people to in the future gauge what they should try to take and spend their money for and time and energy in hoping to be heard in the supreme court, and will give guidance to them all, as well as the reason for dissenting opinion, to give guidance to the future, to others who will have a case somewhat analogous to this, and this is in furtherance of this basic theory that people have a right to know.

CHAIRMAN VAN DUSEN: On the amendment, the chairman of the committee, Mr. Danhof.

MR. DANHOF: Mr. Chairman, members of the committee, this particular amendment as put forth by the minority was discussed at length within the committee. Now, it was the thinking of the majority of the committe that the provision that we have adopted will allow the Supreme Court of the state of Michigan to function very closely to the Supreme Court of the United States. You will have a trial on a circuit court level. Undoubtedly there will then be appeal, if the case is appealed, to the court of appeals, where you will get a written decision. This is very similar to what happens in the federal court.

Now, if you desire to go further, and you have approved that appellate jurisdiction shall be divided by rule, we shall assume for the moment that the supreme court will set up rules regarding appeals as a matter of right perhaps in criminal cases involving life sentences. The rest they will probably say shall be by leave. Now, in the federal court, when you finish in the court of appeals, you file a writ of certiorari in the supreme court. You file a brief, and the court, if it grants the writ — you proceed to argue your case. If the writ is denied, normally that is what it says.

On occasions the court will say: the writ is denied; see such and such a case, or handled previously, no substantial question, very similar, or something to that effect.

But when you write in a provision that requires the court to give the reason for denial of leave to appeal, you are almost, in effect, asking the court to judge each particular case. Because if it is going to deny the leave, it says to set up the reason, and the reason will only be after it examines it, and so you might just as well grant an appeal as a matter of right.

Now, you may make them as long or as short as you desire, but it was the thinking of the majority of the committee that this could best be left to the discretion of the court. Now, if the court says your leave is denied, it very adequately means that the court of appeals becomes your court of last resort, and the decision therein written, as you know at the federal level, will passively become that in the law of the state of Michigan. That means that the supreme court of this state agrees with the court of appeals; agrees with the trial court. If it didn't, it probably would grant the leave to appeal.

Assuming that the court of appeals affirms the trial court, the supreme court agrees, it sees no particular reason to give its reason therefor, and consequently we felt that this would be putting an undue burden of detail within the constitution and upon the court. We have granted the appellate jurisdiction as provided by supreme court rule.

In the next section to be determined we state that the jurisdiction of the court of appeals shall be by law, and we think that perhaps the legislature should best pass the statute stating what cases would be appealed as a matter of right. If the supreme court picks up the case, of course it will, and of necessity, write an opinion, as we have required. But to tell them in each and every case they have to give the reasons as to why they have denied the appeal, we think, is undue detail and undue burden once you have established, as you have implied, that the appellate jurisdiction of what the supreme court shall do will be actually upon what the supreme court deems to be important.

As such, the majority of the committee — we discussed this quite in detail in the committee, and the majority felt that the section as we now have it would be complete, would make mandatory the writing of decisions which clearly set out what the court had to write, and we did take out where it should be filed. It says with the clerk. We think the supreme court will file them with the clerk, or with the recorder, or whoever they have.

Therefore I would oppose the amendment on the basis that it is details that we had best leave to the court, since we have allowed the appellate jurisdiction to be by supreme court rule.

CHAIRMAN VAN DUSEN: Mr. Danhof, Miss Donnelly requests you yield to her.

MR. DANHOF: Certainly.

CHAIRMAN VAN DUSEN: Miss Donnelly.

MISS DONNELLY: I would like to ask Mr. Danhof 2 questions. One — this may be my lack of knowledge; this may have happened in my absence, and, if it is, I do wish to know this. You say the majority believes. The last time this came up in committee, to my best knowledge, the vote was 9 to 9, and I lack the knowledge of when the majority made the decision that you say they made. Now, maybe they did. I don't want to impute that this isn't true, but to my best knowledge the vote was 9 to 9.

MR. DANHOF: I never argue with a lady. If that was the vote, I don't have the details. But let me put it this way: the majority would not concur in putting in what the minority wanted to. If that was the case, I will not argue with Miss Donnelly as to the vote.

MISS DONNELLY: May I ask you another question? You impute to me — and I am sure you don't wish to, and I think this is for the clarification of everybody — that when the supreme court does deny leave of appeal they do decide this, don't they, and therefore they do analyze the facts, and when you say this requires them practically to make the decision you do not wish to impute that they don't review everything first, do you?

MR. DANHOF: I am not present in the chambers. I would hope that they give due consideration to it. I don't know. But I would imagine they do, not wishing to impute the honesty and integrity of the court. I may have to practice there some day.

MISS DONNELLY: I just wanted to clarify that. I didn't think you meant to say that they didn't consider them. All we are saying is, give the reasons in writing. It is not that we think they didn't consider them; we hope they did consider them. We just want to know what they decided.

CHAIRMAN VAN DUSEN: The Chair will recognize Mr. Garry Brown.

MR. G. E. BROWN: Mr. Chairman, a couple of short questions, one to Mr. Danhof and one to Miss Donnelly. First of all, from your answer, Mr. Danhof, it appears that you do not interpret "decision" as meaning a decision on leave to appeal. Is that correct?

CHAIRMAN VAN DUSEN: Mr. Danhof, if the gentleman cares to answer, he can.

MR. DANHOF: Oh, you mean that when they deny a leave that that is not a decision? No. We interpret decision when they have taken the case and it has been argued and the briefs submitted and the record put before it. That would be the consideration of the committee, yes.

MR. G. E. BROWN: Now I am wondering what — it seems to me I have come across some cases where there has been a leave from an intermediate court of appeals, or an appeal from an intermediate court decision. Those are reported cases, on occasions, I believe, to some other jurisdiction. Is this the way other jurisdictions handle it? Do you know?

MR. DANHOF: You mean are the decisions of the court of appeals reported? My answer, I would imagine, is yes. As far as I know, they are, yes.

MR. G. E. BROWN: The decisions of those courts, yes, but I am asking you about the applications to the higher court, then.

MR. DANHOF: You mean when leave to appeal is filed and denied, is that reported?

MR. G. E. BROWN: Yes.

MR. DANHOF: To my knowledge, yes, but this would be a matter of practice and procedure, but I would assume the book publishing companies would pick that up in a hurry.

MR. G. E. BROWN: Okay. Now, leave to appeal in our supreme court, those matters are treated as window matters, so to speak, and it isn't a reported case as such on them. Now, then, I am wondering now, to direct a question to Miss Donnelly, and that is, did you contemplate that by adding this language, that you would make this a reported case, or merely that in the opinion rendered to the litigant that they would set forth their reasons? Now, where you have put this language, you have it after the preceding words that say "the facts and reasons shall be set forth," and do you contemplate then that the court would be required to set forth the facts as well as the reasons for denying the leave to appeal?

CHAIRMAN VAN DUSEN: The question is directed to Miss Donnelly. Miss Donnelly is recognized.

MISS DONNELLY: I would contemplate that — to go back momentarily, originally the issue on the writ, or the question on the habeas corpus writ, is now treated as a window matter. To follow this logically, then, Mr. Danhof would have to say that window matters will be decided. Now, I don't interpret that window matters necessarily, except where they refer to prerogative writs, would be, but I believe that an individual is entitled to know.

Now, whether they have to publish in the long form is not what I intend. I would say a very short and concise statement could be made interpreting what the — in effect, if they were to print the intermediate courts, then the need to print all the facts would not be. But I don't think we are anticipating intermediate court's opinions being printed.

I think particularly of value to all people would be why this leave is denied, as well as why one is granted. This, in effect, gives them another decision. Therefore it would seem to me that a very short, concise statement that leave to appeal in case so and so versus so and so is denied because it is merely a question of fact, wherein the inferior court has more than adequately explored the field. A very short, concise statement.

I will stipulate that the nature of this draft is a little loose there, and I can see the reason for your question. Perhaps we should have redrafted this better. I think there is reason to think that. I wouldn't anticipate that they would have to write the whole case history up, no.

CHAIRMAN VAN DUSEN: Mr. Brown.

MR. G. E. BROWN: I think there is some merit in your amendment. However, I think the place it is put in the language of the committee will require them to, in effect, recite the facts and recite the reasons much like they would in any other decision. That is why I wanted to clarify this point, because I would not be in favor of that. Conceivably this is a matter that style and drafting could take care of.

MR. DANHOF: If Mr. Brown will yield for just a moment.

CHAIRMAN VAN DUSEN: Mr. Brown, will you yield to Mr. Danhof?

MR. DANHOF: Now, you talk about the window matters, and of course they are not reported. However, it would be of very little import since the circuit court cases are not, as such, reported. I mean, there is no use reporting a denial for leave to appeal unless you are going to set up all the case history of it, when you don't have the circuit court case history in front of you. And when you get the federal type of reporting, where you have first a district court, if it is a case of fair import, and all of the court of appeals, then when the supreme court denies the writ or the leave to appeal it has real import.

Now, this is a matter that you can't spell out in the constitution, about whether they are going to publish the court of appeals, but I think that if you wanted a court rule or practice or procedure even by statute, that if the appeals and the decisions are fully reported from the court of appeals, that then the supreme court would begin to publish as they do in the back of the U. S. Reports, the case of so and so, writ denied. This would in turn mean something. But I don't think we should write that in and make it mandatory. Now, maybe that is what you have in mind, Mr. Brown. I don't know.

CHAIRMAN VAN DUSEN: Mr. Brown.

MR. G. E. BROWN: Mr. Danhof already has asserted the rules, but would you say this possibly could be done by the legislature in setting forth what matters shall be done in connection with the leave to appeal? I am wondering about what happens to section c where we have just said that the court shall have complete jurisdiction over the practice and procedure, and therefore very conceivably the court may say that we will not issue any reasons, we will not do anything in this regard, we will continue the practice of merely filing and sending back an order of the application for leave to appeal denied.

MR. DANHOF: I wasn't talking about who or what could be appealed. I was talking about the publication of court decisions, which I think might — our public records, in effect, could be moved that they all be — I suppose we could pass a law that all court decisions will be published. I don't know. This is what I was referring to, more than knowing who would appeal, and the manner and method is court rules of practice. This would be regulated by the court.

CHAIRMAN VAN DUSEN: The gentleman from Detroit, Mr. Norris.

MR. NORRIS: Mr. Chairman, first I would like to, with your permission, direct a question to Mr. Danhof.

CHAIRMAN VAN DUSEN: If the gentleman cares to answer.

MR. NORRIS: I wonder if he would pull the shade on window matters? Just what do we mean by window matters?

MR. DANHOF: As near as I can figure out, it is everything the supreme court handles that you do not read about in books, Dr. Norris. It is petitions for writs of habeas corpus, leaves to appeal, or various requests for writs that are forwarded to the court which are not, you might say, substantive cases wherein Jones, plaintiff, appeals a case against Smith, defendant, or vice versa. They are never quite clear just what they mean by window matters, but it involves not necessarily the appeal of the particular case, but rather, perhaps, after somebody has been convicted, he goes to jail, and then begins to file for writ of habeas corpus, or petition to remand, or something like that. We obtained this from the supreme court justices. Maybe some of the other members of my committee can enlighten you a little bit further. Maybe Mr. Cudlip, maybe even Dr. Nord can. This is where we obtained the language, but it is everything but the actual cases that are actually formally appealed. It is prerogative writ requests, and things along that manner.

CHAIRMAN VAN DUSEN: It is the recollection of the Chair, Mr. Norris, that the term derived from a habit of the justices of the supreme court in the early days of putting these requests up on the window sill until they were prepared to deal with them.

MR. NORRIS: Well, I had hoped the question would throw a little light on that subject. I am not so sure it has. I gather that what amounts to a window matter is that upon which the court has not exercised its judicial power to write a decision, and I am a little disturbed about it.

I am quite sympathetic to the amendment, Mr. Chairman. I think that a day in court includes an opinion at all levels, and as much as possible on all matters. I think that the litigant is, after all, a member of the public, and there is a little disposition on the part of the bench and bar sometimes not to remember that the bench and bar exist to serve the public, and the public doesn't exist to serve the bench and bar. And if we are going to take what I believe is the position that our service of the judicial power by way of the constitution is to fulfill the needs of the public, the public has a right to know the reasons that are assigned for denial on appeal.

I think this wording here, when it refers to prerogative writs, then I take it there would be a decision on all prerogative

writs, and I would assume that would include a writ of mandamus, quo warranto, writ of prohibition, and all the rest of them, including writ of habeas corpus.

I am a little disturbed by the attitude of some of the judiciary, and a little bit disturbed by what Mr. Danhof suggested, that the writ of habeas corpus by people who are in jail, that is, that people who don't have the means to hire counsel, have used a petition for writ of habeas corpus for the purpose of getting a review of facts and law regarding their incarceration, and I don't think the fact that they do not have the means to procure a counsel ought to be a reason for not having reasons assigned for the denial of the writ.

I support the amendment because I believe that there ought to be a statement of facts and the reasons therefor. If the supreme court considers it at all, it must have arrived at a rational basis for its decision to deny appeal, and if it has a rational basis there is no reason why it ought not to say so in writing to the parties who are appealing. I support the amendment.

CHAIRMAN VAN DUSEN: The Chair recognizes the gentleman from Taylor, Mr. Ford.

MR. FORD: This is where Mr. Danhof and I begin to part company. I am happy at last to have an opportunity to join with these 3 hard working members of the committee who have been up until now carrying the load all by themselves. This was a matter that the committee was somewhat evenly divided upon, and my recollection was that we really didn't spend a lot of time on it, because not all the lawyers on the committee had had the experience of the terrible disappointment of having these matters denied up there and then wondering forevermore why.

I don't think there is anything more difficult or frustrating to a lawyer, and particularly if you are representing a municipality — and these things, Mr. Norris, come up very, very frequently with respect to writs of mandamus and to injunctions whether they are granted or not granted — because you don't have a final order from which you have an appeal as a matter of right, and they frequently involve great sums of money and a great many personal and individual and community rights.

For example, this weekend I spent about a day and a half of my two days home working on a brief, answering a brief on an application for a leave to appeal. The person making the application against the municipality filed about an 18 or 20 page brief. Mine is much shorter. But after one of the judges reads this over there, I think that the very least he could do would be to write a single paragraph and say this is the reason why I am denying it. .

If the application for leave to appeal is granted, then you find out what happened because you then go on with the trial of the matter in the supreme court, the hearing. You perfect the record, and it goes into the books, and everybody knows why the court did what it did. But your rights are as fully and as completely terminated, if you happened to be the applicant, when that court says no, we won't listen to your appeal, as if you had the full hearing and then they said no.

If they grant you leave to appeal, and then you have the hearing, then you find out why they are not going to give you the relief that you think you are entitled to. But if you simply get a form — and this is the way it is done: you get a form back, and there is a place to fill in the word "not," and it says "The application for leave to appeal the above entitled case has — blank — been approved," and if they deny it they put the word "not" in there. Now, this is a rather summary way to dispose of it, and Bob indicates they occasionally go to the extent of saying "because we heard a case similar to this before," but I have seen several of these in the last 5 or 6 years, and I have never seen anything beyond 3 or 4 words, cursory words — a very cursory explanation, and nothing that you can take back, for example, to a municipal board or body or to the citizens of the community and explain why they are going to have a gasoline station right on the corner next door to a church, for example.

This is a very serious matter, and Garry Brown raises a very good question. I don't think that anybody, at the time that we discussed this in committee, anticipated that we were going to inject this point of procedure into the record books to the extent of requiring the printing of these as a permanent record.

The reasons for denial in these matters are only of interest primarily to the people involved. They are not binding on anybody else. They do provide direction for people so that — as a matter of fact, it has been suggested that the supreme court would have more work if this were done. I believe the converse is true. I believe that if, for example, all of the attorneys involved with a particular type of municipal problem were able to obtain a copy of a well reasoned reason, even a few paragraphs, as to why a particular action was taken, it would prevent other attorneys from going back and asking for the same thing knowing they weren't going to get it.

As Mr. Norris has said, all of us hate to believe that the supreme court or any member thereof — and you must remember that these matters are generally determined by a single judge, not the court sitting en banc — must have some reason for saying to a person: we are not going to hear you further. You are through. You have gone as far as you can go.

Now, having made up its mind that the court shouldn't entertain this matter any further, it is a rather simple matter, it seems to me, to dictate a couple of paragraphs to say why. This would produce the second result, and that is that we have no assurance and no way of knowing that there is any consistency in the way these are handled between different judges on the bench.

I had one granted about 3 or 4 years ago, and very competent counsel — I had a whole battery of them. I had even the proverbial big city lawyers from New York on the other side — who had a whole string of cases showing me that the court wouldn't entertain a petition in this type of matter, and they did. But if they had been able to show me why, they probably could have talked me out of it and saved everybody a lot of time and trouble. But nobody knows why they turned them down, so you have to just take your chances up there and see what happens.

Now, case A is turned down by Judge 1, and 2 months later the same set of circumstances come up, and Judge 2 happens to catch it on his window sill, and he says, "Okay, the court will hear this." Now, those 2 cases might be identical, but Judge 2 is so busy, they are both so busy, that they rarely know what's going on between them on miscellaneous or window sill matters, as they are called, and if there was a reason given and a record kept, I think it would tend to cause the reasons for them being allowed or disallowed to become more uniform, and instead of increasing the work over there, it would cut it down immeasurably.

It doesn't seem at all right that you should ever go into a court with a valuable right and have a decision made, so to speak, under a bushel basket and not really know why unless you happen to, by accident, bump into the supreme court justice who happens to catch that matter, and he happens to remember it from the many hundreds of others, and he says, "Oh, yes, I remember that one, and this is what I thought at the time." This is a very unsatisfactory way to find out what happened up there.

One correction could possibly be made — maybe Miss Donnelly might consent to changing it — to meet Garry Brown's question. Where you add the words "and denial of leave to appeal," maybe "and reasons for denial of leave to appeal" would make it clear that with respect to the denial of leave to appeal we don't want a reiteration of the facts, but just a statement of reasons.

CHAIRMAN VAN DUSEN: Miss Donnelly.

MISS DONNELLY: As a matter of fact, I think we had that in originally, and it sort of got lost. I definitely agree.

CHAIRMAN VAN DUSEN: Miss Donnelly, it would be appreciated, the Chair is sure, by the secretary, if you would prepare your amendment in the precise form in which you would like to have it approved, and present it to him while we are hearing from Mr. Ostrow and Mr. Garry Brown. The Chair recognizes the gentleman from Detroit, Mr. Ostrow.

MR. OSTROW: I support the Donnelly amendment. As a matter of fact, one of the reasons why I was in favor of an intermediate court of appeals was to give the supreme court the time to handle leaves to appeal properly. Now, for the benefit of the laymen, that is, the nonlawyers in this committee, there are very, very many cases in which the application for the the leave to appeal is the end of the litigation. It is not just in criminal cases or municipal cases.

I am not sure of the law at the present time, but at one time workmen's compensation cases could only get into the supreme court by applications for leave to appeal. In those days, if I remember correctly, they didn't even have this blank that they sent back to you. We had a clerk of the supreme court once who didn't want to clutter up the office with a lot of files and filing system, and so he just wrote on the back of your application "Application denied." There was always a suspicion, never confirmed, that he either denied them or a single judge denied them; nobody knew quite how or why they were denied.

These things are very important matters. Every supreme court case is an important matter not only to the litigant, but every day of your life you are affected by supreme court cases that you never heard of. I know it is a tendency on the part of some laymen to say, "I have never even been in the circuit court; what do I care about the supreme court? That is for the lawyers." Well, you should care about the supreme court; you should care about the circuit court; because whether you have ever had a lawsuit in your life, you are daily affected by cases you never heard of.

I want to give you one. We had a statute in the state of Michigan that required factories to pay women the same wages as men. But it was a penal statute. It provided — I forget — $100 fine, 30 days in jail, and nobody paid any attention to it because corporations don't go to jail, and if you got a hundred women working for you, and you are saving 20 cents an hour, you can afford to pay a $100 dollar fine. The case went to the Supreme Court of the state of Michigan, and the supreme court held that the women could sue and recover the difference in wages, and the women did sue and did recover the difference in wages, and since then, because every employer knows that if he doesn't pay women the same as men, that is, in factories, they can sue and recover. It is automatic. And very few people have ever heard of the case. It happened over 20 years ago.

While I am here I may as well take this opportunity to say this to the nonlawyers: here is your greatest chance to get free legal advice. You have got 56 lawyers here. If you don't understand what they are talking about, get up on your feet and make them explain it to you. Because if you don't understand, how are you going to go back home and explain why you voted for or against something? There is nothing so technical that it can't be explained to you, and anybody who knows what they are talking about can explain it so that you can understand it.

CHAIRMAN VAN DUSEN: The Chair recognizes Mr. Garry Brown.

MR. MADAR: Point of personal privilege.

CHAIRMAN VAN DUSEN: State your point, Mr. Madar.

MR. MADAR: Well, I just thought that I would like to find out now from Mr. Ostrow how we are going to get this good information. It seems to me there have been quite a few attorneys here who didn't know what the other attorneys were talking about. (laughter)

CHAIRMAN VAN DUSEN: As the Chair has pointed out also, from time to time they have talked largely to one another; but notes that our attendance this evening is much better. Mr. Ostrow.

MR. OSTROW: Let me say this in connection with that question: that is one thing that attorneys always get, that attorneys disagree. Certainly they disagree. Courts disagree. But at least you can get both sides of the question and then make up your own mind as to which you think is the better side. I don't claim that we can resolve all questions or agree, but at least get both sides of the question so you can talk intelligently on either side. Then your guess is as good as ours, but at least make it an educated guess and don't just toss a coin.

CHAIRMAN VAN DUSEN: Mr. Garry Brown.

MR. G. E. BROWN: Mr. Chairman, with respect to the question raised by Mr. Norris a few minutes ago, I thought it still might be worthy of an answer to that question. In addition to the matters he mentioned as far as the appeals in the matter, of course, all of your motions and so on, that are pending in the case before its final adjudication are treated as window matters; such as motions for emergency consideration of appeal, and things of this nature. I think in fairness we should say, too, that the court, at least my understanding has been that not only one judge decides this matter, but he tries by a telephone conference to confirm that which he has decided. Now, I trust that he does attempt to contact a majority of the court with respect to these matters, and I will share that doubt at least in preference of the court before I decide to go along with Bill Ford that one man decides all this.

I think that this also raises a further problem, though, with respect to this matter of giving reasons for denial of leave to appeal, and that is that if this is done on a telephone conference basis, very conceivably it would be impossible for each of the judges to set forth his dissent as to whether or not there is going to be granted a leave to appeal. Really, I think that this is a matter which you cannot dispose of by just inserting a word or two; but very probably should be the subject of an entirely new sentence dealing with matters involving leave to appeal.

CHAIRMAN VAN DUSEN: Mr. Brown, will you yield to Mr. Norris? Mr. Norris.

MR. NORRIS: Do I understand you, sir, to defend a practice of deciding leaves to appeal by one person confirming it by a phone call?

MR. G. E. BROWN: It isn't my privilege to say, really, Mr. Norris, as to how that should be decided. I think that should be decided by the court, of course, but I am saying that this is the practice, as I understand it. I am sure that if one of the justices were here, he would say that this is decided by the full court. "Of course, we don't meet together to decide these things, very possibly, but we all concur in the decision." Whether that is true or not, I don't know. I think, though, that with an appellate court you wouldn't have so much of this window matter, and that very possibly this will permit the supreme court, as such, to actually set forth their reasons, and to meet to determine these things such as on every Tuesday morning when they decide motions.

MR. NORRIS: I appreciate what you said, but I do think that what you have said, which may have some semblance to the actual practice, is added confirmation for the need to support the Donnelly amendment.

CHAIRMAN VAN DUSEN: The Chair would suggest that some of the recent argument has tended to wander slightly from the point, and would request the succeeding speakers to confine themselves to the Donnelly amendment, on which the Chair will recognize Mr. Brown.

MR. G. E. BROWN: I would like to point out, Mr. Norris, that I also favor the Donnelly amendment, with the objections I have raised in the wording of it.

CHAIRMAN VAN DUSEN: Mr. King.

MR. KING: Mr. Chairman, fellow delegates, I would like to address a question to the chairman of the committee, Mr. Danhof, if I may.

CHAIRMAN VAN DUSEN: If the gentleman cares to answer.

MR. KING: Mr. Danhof, do you know of any state where the court states its reason for denying appeal? In your study of this matter did you uncover any state?

MR. DANHOF: Offhand I can't recall any, no. You mean where they have a court of appeals, I assume?

MR. KING: Well, either where they have an intermediate court or where they don't.

MR. DANHOF: You see, if I may, that is where you have to read this particular idea into the context. You can't read

the present procedure into the court system that we have tentatively agreed to set up. That is the problem that I think is developing now. In those states where they have intermediate courts, New York, Illinois and New Jersey, I cannot recall any where they make it mandatory in the constitution. They might have it in the court rules, or someplace like that, but not that I can recall in the constitution.

MR. KING: I don't recall ever running into that kind of situation in my study of the law as a student, and I further think that there is great danger in asking a court for brief reasons for denying leave. I don't see how they can do it in one or two sentences. This is contrary to my understanding of the judicial system in this country.

I could cite many cases where the court has reversed itself over a number of years, and I am sure you can. Brown vs. School Board of Topeka, Kansas; Mapp vs. Ohio. But I don't want to say anything that is controversial here.

But it seems to me that this is something which is best left to the discretion of the court; that as time goes on, if and when the court feels constrained to reverse itself on an earlier decision, at that time it can, and it does, and it should have that right. I don't for a minute deny them that right.

I think perhaps that if you want to make sure that each judge has read the leave for appeal, then put in the constitution that each judge shall sign that he either concurs or does not concur in the denial. Perhaps at a later date he will be embarrassed if in fact he hasn't read the case. I think this is a dangerous step forward, and it is contrary to my understanding of the judicial practice in this country.

CHAIRMAN VAN DUSEN: The Chair will recognize the gentleman from Detroit, Mr. Iverson.

MR. IVERSON: Mr. Chairman, members of the committee, I am rather amazed, myself, at the action of many lawyers around here attempting to undo what this committee has already done. You will recall the other day that you agreed to what amounts to a 5 tier court system, and you have agreed to set up a court of appeals. One of the main reasons for that court of appeals is the fact that one of our other committees proposed that an appeal in all criminal cases as a matter of right shall be granted. That was one of the reasons. Another reason why this court of appeals was set up was for the purpose of relieving the supreme court of many so called minor matters, window sill matters, if you please, and I submit, and I am not inviting this, but I submit that if any language of this kind is necessary at all it belongs in Committee Proposal 92, where we set up and created actually the court of appeals.

I think you are completely undoing, if you adopt this amendment, everything that we are trying to do here. Has anyone any doubt in this room that on an appeal as a matter of right to the court of appeals, that there would not be a written opinion? Has anybody in this room got any idea that if someone asks for leave to appeal to the supreme court, that if that court denied the appeal without any comment, that there would be any question but what they agreed with the court of appeals?

So what you are doing by this amendment is absolutely nullifying what we are trying to do in this court system. I am not inviting it, but if you need it any place at all, and I don't say you need it, you need it in the other provision setting up the court of appeals. I hope you will not go along with this amendment. If you do, you are completely nullifying what we have already done here in the past few days.

CHAIRMAN VAN DUSEN: Mr. Mahinske.

MR. MAHINSKE: Well, I agree with Mr. Iverson, but probably a little more than he will agree with me. I think that he is right when he says that this belongs in Committee Proposal 92, but I think it belongs there, also. If you read over Committee Proposal 92, that mentions, in passing almost, an intermediate appellate court that will be set up along any rules that the supreme court may see fit to set this court up with. Now, there is no provision in Committee Proposal 92 for any type of decision in the appellate court. We may wind up with an appellate court here that has no written record. We have trial courts now that have no written record outside of the file, and we have all these items going to the supreme court where we have no written records right now.

This is what we are trying to undo. We want attorneys who come around a year from now with the same problems that an attorney has today to know whether or not it is going to serve his client any purpose, or whether or not he is going to save his client any money, or possibly get his client off with a bad decision, or a decision that he considers bad, from a lower court. Without these opinions, all attorneys are in the dark, and all clients are in the dark. You tell your client: possibly we can do something on appeal, we will apply for an appeal, and your client calls you up some time later and says: when are we going up? And all you can tell him is that the supreme court said no, and you can't say why or any other reason. All you can give your client is a no for the fee that he has paid you, if you are lucky enough to have gotten it already, because from there on in you can just whistle for it because you are not going to get it.

Now, because of the fact that I think 92 is just too wide open and just too vague as far as what this intermediate appellate court is going to provide for us, I feel that we should adopt the amendment to at least 91, and possibly 92, also, for the simple reason that we will want written records between the trial level and possibly the appellate level to stem off this future work.

Now, as far as taking a dangerous step forward, I think, frankly, this is a situation that a lot of attorneys have objected to for quite a while now, and as far as myself is concerned, and obviously the proponents here, this is not a dangerous step forward. As far as the other remarks tend to lead us to the belief that the appellate court will have nothing but an excess amount of work here: obviously they read these matters now, they make a decision and they write "not" on the little blank line in your request for an appeal.

It is not asking for too much to ask the court to just go a little further and write out 2 or 3 sentences giving you exactly, in as short a form as possible, their reasons for not entertaining your appeal. This is all that we are asking the court to do, is write down what they are deciding in their minds right now. For these reasons I would support the proposed amendment.

CHAIRMAN VAN DUSEN: The Chair will recognize one of the movers of the amendment, Mr. McAllister.

MR. McALLISTER: I examined one file of leave to appeal the other day over at the supreme court. I don't even remember the case. But I asked for a case where there had been leave to appeal filed, and I looked that file over very carefully, and that file only bore the signature of one judge, and that individual had practically no criminal experience; and this involved a criminal case, of course. If you have a case now which involves over $500, why, you can appeal to the supreme court as a matter of right, and then they have to give you a decision.

Another thing on leave to appeal, on this application for leave to appeal, a denial of it: a written decision would have to be signed by all 8 judges or 8 or 9 judges, whatever there is, and then you will know that each looked at it, because a judge is not going to sign that decision unless he is familiar with the case. So that if a man is charged with murder or manslaughter or embezzlement, or some serious crime, I think he is entitled to know why the supreme court has decided the case against him. I think that everybody — the lawyer is entitled to know. And, as was previously stated, then you will be guided in the future by their decision.

So I ask you to support this amendment. I think it is of great benefit and of no damage to anyone.

CHAIRMAN VAN DUSEN: Mr. Wanger.

MR. WANGER: Mr. Chairman, members of the committee, in speaking in opposition to this amendment, I do so, not because I am out of sympathy with some of the people who have urged it, but rather because I think that this amendment approaches the problem in absolutely the wrong way. It approaches it from the wrong direction. An application for leave for appeal is something which any one who is disgruntled with the decision that he received in the court below can send up to the supreme court. It is a request. It admits we don't have a right to appeal under the law, but it says "We would like to appeal anyway, and in the exercise of your discretion won't you let us appeal?"

It seems to me rather than force the court to write an opinion, even a short one, on each of these that come up, it would be much better to take these important matters which have been talked about, and which the lawyers are all concerned about, and make a provision in the law that there shall be a right to appeal, and to save the court from the burden of having to write an opinion discussing the reasons and the facts of these little minor matters which anybody can send up to them and try to get a decision on. And believe me, a lot of people will try to get such a decision, and it can prove to be embarrassing, and the reason that it can prove to be embarrassing is because of the fact that even a short opinion of the court, if it is printed up officially or unofficially and passed around, can become precedent for future action. We don't want those precedents to be based on snap judgments, whether by 1 judge or 2 judges or 3 or a dozen judges.

That is all they are going to be if you require one of these written opinions for every little matter that somebody wants to appeal on. They have to come down. This is going to be a snap judgment, and it is going to be, as Mr. Ford pointed out some minutes ago, it will be regarded as a precedent. We don't want that kind of precedent in Michigan, and it would be much better to approach this in the other direction by taking those important matters and giving them a right to appeal on those, rather than requiring an opinion on everything.

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: Mr. Chairman, I thought perhaps we might be able to get a vote, and I inquired, and there are some 3 or 4 speakers left, and in view of the hour I move that we do now rise.

CHAIRMAN VAN DUSEN: Mr. Danhof moves the committee do now rise. All in favor say aye. Opposed?

The motion prevails. The committee will rise.

[Whereupon, the committee of the whole having risen, Vice President Romney resumed the Chair.]

VICE PRESIDENT ROMNEY: Delegate Van Dusen.

MR. VAN DUSEN: Mr. President, the committee of the whole has had under consideration several matters of which the secretary will give a detailed report.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 91,** has considered amendments thereto, has come to no final resolution thereon. This completes the report of the committee of the whole.

VICE PRESIDENT ROMNEY: Delegate Anspach.

MR. ANSPACH: Mr. President and fellow delegates, I appreciate the comments of Mr. Ostrow, being a layman. For the encouragement of all of you the proposals come from the committee, the minority reports and the amendments.

I think I feel like this individual who was on the rubberneck wagon in the city of Detroit. They were going along in the rubberneck wagon, and the ballyhooer said, "On the right, ladies and gentlemen, we have the home of Mr. Ford," and an old lady leaned forward and said, "Henry Ford?" The ballyhooer said, "No, Edsel Ford."

After a while he said, "On the left we have the home of Mr. Dodge." The old lady leaned forward and said, "Horace Dodge?" The ballyhooer said, "No, John Dodge."

A little later on the ballyhooer said, "On the left we have Christ Church." The old lady didn't say a thing, and a man back of her tapped on her shoulder and said, "Go ahead, lady, you can't always be wrong." (laughter)

VICE PRESIDENT ROMNEY: Delegate Leppien.

MR. LEPPIEN: Mr. President, I move the convention recess until 8:00 p.m. this evening.

VICE PRESIDENT ROMNEY: You have heard the motion. Those in favor say aye. Opposed?

We stand in recess until 8:00 p.m. this evening.

[Whereupon, at 6:00 o'clock p.m., the convention recessed; and, at 8:00 o'clock p.m., reconvened.]

Will the convention come to order please.

SECRETARY CHASE: Mr. President, a quorum of the convention is present.

VICE PRESIDENT ROMNEY: Delegate Van Dusen.

MR. VAN DUSEN: Mr. President, I move that the convention resolve itself into committee of the whole for the purpose of considering items on the calendar of **general orders.**

VICE PRESIDENT ROMNEY: You have heard the motion. All those in favor say aye. Opposed?

The motion prevails. Delegate Van Dusen will preside.

[Whereupon, Mr. Van Dusen assumed the Chair to preside as chairman of the **committee of the whole.**]

CHAIRMAN VAN DUSEN: The committee will be in order. When last the committee sat, it was considering section e of **Committee Proposal 91.** The business before the committee is an amendment to section e offered by Miss Donnelly, Messrs. Leibrand and McAllister, which the secretary will read.

SECRETARY CHASE: The minority report amendment offered by Miss Donnelly and Messrs. Leibrand and McAllister has been revised so that it now reads:

1. Amend page 2, line 11, after "decision" by inserting "and reasons for each denial of leave to appeal"; so that the sentence will read:

> Decisions of the supreme court, including all decisions on prerogative writs, shall be in writing and shall contain a concise statement of the facts and reasons for each decision and reasons for each denial of leave to appeal.

CHAIRMAN VAN DUSEN: On the amendment, the Chair had when we last sat 3 delegates seeking recognition. The first of those was the delegate from Detroit, Dr. Nord. Do you see recognition at this time, Dr. Nord?

MR. NORD: Mr. Chairman, on this question of whether or not there should be a written decision on a denial of a leave to appeal, I have heard both sides of the argument during debate and also during dinner, and I believe there is a great deal to be said on both sides. But I would like to speak only on one side at a time. It is certainly true that this is by no means an open and shut case on either side, and that is evidenced to by the 9 to 9 vote in the committee.

I think the underlying problem is the thinking that causes the trouble, and we may not be able to cure that. The underlying trouble has to do, in my opinion, with the nature of the leave to appeal. Leave to appeal, in essence, means that the court says there is a review, but — that is, you have a right to file an application for review — they may decide to hear it and then again they may not entirely in their discretion, entirely as a matter of grace. Now, that is bound to cause trouble no matter what we do with it, because it is just antagonistic to our whole idea of justice that a court, if it feels like it, without any reason, can say, "Well, we will give you a hearing," and, if it feels like it, can say, "Well, we will not give you a hearing." So therefore we are probably not going to solve this whole problem as long as there is an appeal of that nature.

But assuming that the court rules will continue to permit leave to appeal in some cases, that is to say that they will provide by rule for a review of 2 kinds similar to what the United States supreme court does, namely, review by appeal where there is a right to review and review by certiorari where there is only leave to appeal or you request leave to appeal. Assuming that they will continue those both, and that we will have these cases where you have to request leave to appeal, then we get down to the meat of the question as proposed by Miss Donnelly, and that is this: if the court has said there can be review of that type, is it proper for the court then, absolutely at their own discretion, for no reason stated, to deny a hearing? Miss Donnelly has said the answer to that question is no; that if there is a review at all of that type, even if it is a matter of leave, that the least the court should do is state why they are not hearing.

It seems to me that the basic type of appeal here or review is not a very high class type of justice because of the fact that it's got this matter of grace or discretion in it. But, how-

ever, as long as that exists we ought to at least do something to make it reasonably fair. What we ought to do with it, if we retain it at all, or if the court retains it at all, is to make sure that every person who goes to the trouble of filing an application for leave to appeal, even if they are not given a hearing, at least they are not turned down just point blank, cold, in a rather cool and calculated manner, with no reason stated whatsoever.

I understand the point of view that has been raised by a number of delegates that this is a departure from established practice. This is by no means a settled or well settled approach. It is a new approach, in my opinion. I don't believe that makes it a bad approach. I believe we have to judge on the merits whether it is a good idea or bad idea. It seems to me that on the whole, if there is going to be such type of review, the least we can expect from the court is a decision, and we should not be deterred from requiring the court to make such a decision or such statement of reason, rather, merely on the grounds that this will be a nuisance to the court and it will be trouble, and they don't like it. My feelings about that is it is unfortunate if it is a nuisance, unfortunate they don't like it, but it is more important that the person who believes he has valuable rights, who by court rule is permitted to apply to the court for review, be given some answer more than just the word "no."

Therefore, on the whole, I believe the amendment is well founded and it ought to be supported, and I intend to support it.

CHAIRMAN VAN DUSEN: The secretary will reread the amendment.

SECRETARY CHASE: The amendment as revised is as follows:

1. Amend page 2, line 11, after "decision" by inserting "and reasons for each denial of leave to appeal".

CHAIRMAN VAN DUSEN: On the amendment the Chair will recognize the gentleman from Allegan, Mr. Farnsworth.

MR. FARNSWORTH: Mr. Chairman, members of the committee, I am going to speak in favor of the adoption of the amendment. I am particularly appreciative of Mr. Ostrow's remarks this afternoon when he asked us if we didn't understand what the lawyers were talking about, that we please get up and ask questions, and I don't know if you understand quite thoroughly, Mr. Ostrow, what you have laid yourself open to, because now the laymen are going to get into the act.

But it seems to me that here is something that we nonlawyers can understand. I don't believe there is any question about it. It simply says that if we are unfortunate enough to get into court, and we get all the way up to the supreme court and they say: no, we are sorry, we can't hear your case, that they simply must give us some reason in writing. Now it seems to me that that is a rather reasonable request. It seems to me there is something that the nonlawyers can understand. It seems to me that here is an opportunity for the nonlawyers in this committee to help the lawyers who are apparently unable to make up their minds which way this thing is going to go, and we should support their amendment and decide for them.

CHAIRMAN VAN DUSEN: The gentleman from Oakland, Mr. Kuhn.

MR. KUHN: Mr. Chairman, I would like to ask Miss Donnelly a question, if she would care to answer.

CHAIRMAN VAN DUSEN: If the lady cares to answer.

MR. KUHN: Miss Donnelly, under your amendment if I had a case which would have original jurisdiction in the Supreme Court of Michigan, and the supreme court would deny my motion, would they have to write a reason out under your amendment?

MISS DONNELLY: If I understood your question, if you have a case that has original jurisdiction in the supreme court?

MR. KUHN: Of the state of Michigan; a writ of mandamus against a state official, which would be — the original jurisdiction would be the only place I could go.

MISS DONNELLY: I would say yes. The only thing that bothers me is, I am not so sure we have got anything that's got original jurisdiction in the supreme court anymore, assuming the constitution is passed. This is what bothers me. Assuming that there is such a thing, the answer would be yes.

MR. KUHN: Mr. Chairman, I would like to ask one question of the chairman of the committee, Mr. Danhof.

CHAIRMAN VAN DUSEN: If Mr. Danhof cares to answer.

MR. KUHN: Mr. Danhof, are you aware that today, under our present setup, that we could have a case which the supreme court would have original jurisdiction on a writ of mandamus of a state official, and that the supreme court could deny it and give us no reason why they denied it?

MR. DANHOF: Yes.

MR. KUHN: Do you think this is a good practice to be following? In other words, it would be our first chance to have our day in court, and yet we wouldn't know what the reason was we were thrown out of court.

MR. DANHOF: I think if you are going to grant, as you are in this case, where you are going to have most of this by rule, I would imagine that these things will be — there may be a question of what the supreme court has. But I think part and parcel of it, if the case is of sufficient import, the court will, under the new system, begin to report this, too, in their cases. I think we have tried to judge the past too much by what we intend for the future. I think in the past they have found that because of the work load there, and the numerous motions, they have not tended to write long decisions or report them. But in the future we would hope that the decisions that they make will be of sufficient import that they will be reported.

I can think there may be cases where a particular case should not be reported regarding the facts or what is involved. There might be a time when the court will say it is better that this one not be reported, and maybe they should be allowed that leeway. If it involves, like you say, a state official, there may be some personal reasons or something in there that it is not as good that it be reported, but the fact is, the only thing you find on the record is the writ granted or not, and all of the reasons and the thinking behind it should well be left to the court.

You have rules now to suppress a lot of cases, at least on the trial level. I don't know. We aren't prohibiting the court from doing anything. If they want to write their reasons for denying an appeal, let them do it. But what we are setting up is a new practice, and I don't think we can look 20, 30 years in the future to find out. Let them work it out as their practice. I have never known a court that is so shrinking that it has not printed most of its decisions that it can possibly get into print. It has been my knowledge that the lawyers are getting more books, not less.

MR. KUHN: Mr. Chairman, I would like to say I support the Donnelly amendment for the reasons I was trying to state.

We had a case several years ago which did involve a state official. It was a very serious question on an election; whether or not an election law was constitutional. I thought I hired the best attorney in our city. He told me it was unconstitutional. All the circuit judges seemed to think it was unconstitutional, and that was the word we had by way of grapevine. We went to the supreme court, and the only thing we got there was the word "denied," and this was the court of original jurisdiction.

Now we do not know whether the statute is constitutional, whether it was a matter of timing, being too close to election, or what their problem was, and I think it is time that the supreme court put their decisions in writing on why they are denying these motions.

CHAIRMAN VAN DUSEN: The Chair will suggest that the question at the moment is on the Donnelly amendment, which deals with statement of reasons for denial of leave to appeal, and will request the delegates to confine themselves to that question. Mr. Prettie.

MR. PRETTIE: Thank you, Mr. Chairman. Fellow delegates, I think it may be interesting to all of us to give a thought to what by way of work volume this proposed amendment will mean to the supreme court of our state.

I have before me one document that was furnished to the members of our committee on judicial branch, A Review of Judicial Administration at the Appellate Level in the State of Michigan, prepared under the supervision of Dr. Joiner of the University of Michigan law school. Two short excerpts I think will give you some idea of the work volume with which we are dealing in this amendment. Reading from page 3 of the pamphlet, the statement is made that "In 1956," which, incidentally, was the last year for which such statistics were available, "there were 250 written opinions handed down by the supreme court of this state." This is in fully prepared and presented cases with printed record and printed briefs. The pamphlet continues:

> This is one of the heaviest loads carried by any court of a state of comparable size.

Skipping to the next following paragraph:

> This, however, is but a part of the total work of this court. (In addition to the 250 cases the court in 1956 was faced with the decision of 591 interlocutory motions or window matters.) Thus, each week 14 of these matters must be decided, many of which are inadequately briefed, the decision of which determines in many instances the merits of a lawsuit. In most of the 591 interlocutory motions an informal memorandum is prepared by a judge and circulated among the justices. Often the time taken in preparation of this memorandum involves extensive research and briefing. Thus weekly each judge must first study briefs and records, prepare and polish substantially one major written opinion for the court.
>
> Second, study briefs and records of opinions of 7 other cases and prepare and polish such dissenting and concurring opinions as may be necessary, and, third, be prepared to discuss and decide up to 14 interlocutory motions and prepare a memorandum in at least 2 of them.

The appendix supporting this study appearing on page 48 analyzes some 50 different types of interlocutory motions that came before the court in the year under study, the year 1956.

I won't deal with all of them, but the most significant categories are leave to appeal in civil cases, of which there were 186, of which 104 were denied and 62 granted; leave to appeal in criminal cases, a total of 95, 72 denied and 23 granted; original writs or application for writs of mandamus 29, all denied; 42 writs of habeas corpus, 5 granted and 37 denied. And so I might analyze the rest of these categories. In summation, of these 548 interlocutory matters in that year, 186 were granted, 349 were denied.

The amendment we have under consideration would require the preparation and filing in that year of 349 decisions of the court. Although brief, they would certainly require the research that was referred to here. They would require a reason, statement of reasons for denial. I simply want to present these facts before you so you may intelligently vote upon the additional volume of work — I would dare say at least an increase of 100 per cent of the work load of the supreme court if this amendment be adopted.

Now, it may be said that the intervention of an intermediate court of appeals would screen out many of these applications, and I think this may be true. I have seen during my years in the attorney general's office many of these matters that have been referred to as window matters. They come primarily from a single source. They are very inadequately prepared, they are very inadequately briefed, an intelligent decision of them requires no end of research on the part of the justice who is required to write upon them, and unless we were to substantially increase the manpower of our courts at the appellate level, the proposed amendment would simply make impossible the work load that would be imposed upon our highest tribunal.

And until we can make some decisions on this other matter of the size of our courts and the establishment of an intermediate court of appeals, I find myself compelled to vote against the amendment because of the insuperable work load that statistically would be imposed upon our courts.

CHAIRMAN VAN DUSEN: The gentleman from Ypsilanti, Mr. Lawrence.

MR. LAWRENCE: Mr. Chairman, members of the committee, I rise to speak in support of the Donnelly amendment. I think it is about time that we gave some consideration to the litigants in these cases, and I don't think that the denial of the right, the power exercised by the court in merely saying "denied," is a proper showing of consideration to the litigants.

I don't have the figures before me, but the Supreme Court of Michigan decided only about half the cases in the year cited by Mr. Prettie that it did back in the '20s. There were some years in which it decided in written opinions over 500 cases, and now it is below 300.

I think that the amendment is foresighted in that it takes into consideration 2 factors that we haven't had in the past. First, that the committee report at least proposes to increase the number on the supreme court from 8 to 9; thus giving one more justice. It also takes into consideration that we will have an intermediate appellate court to act as a buffer between the circuit court, so to speak, and the supreme court. Therefore it seems to me that if a party has gone from the circuit court to the intermediate appellate court and had his case tried there — whether it is for or against him makes no difference — and then takes an application to the supreme court for leave to appeal, which is a matter of grace, that the least the supreme court can do is give the reason for that decision.

I don't say that it contemplates the type of decision that we get in an appeal that is heard on the merits, the length of it, but they can at least say that under the facts it is denied, or by virtue of such and such a decision it is denied, and at least the litigant — and again I am not speaking of the lawyers, but I am speaking of the parties — the party who has taken the trouble and gone to the expense of asking the supreme court to determine what his rights are, his basic rights in any case, is at least entitled to know why those 9 men denied him the right to have his case heard in the supreme court.

For that reason it just seems to be a matter of basic rights, it seems to be a matter that would be for the benefit of the entire state, and that the party involved at least would know why the door has been closed to him. For that reason I urge you to vote in favor of the Donnelly amendment.

CHAIRMAN VAN DUSEN: The gentleman from Taylor, Mr. Ford.

MR. FORD: I looked for my copy of the document that Mr. Prettie was using, and he went through the figures rather rapidly. I wonder if I could ask, through the Chair, of Mr. Prettie if his statistics show what amount of the 349 not granted were criminal cases?

CHAIRMAN VAN DUSEN: Mr. Prettie.

MR. PRETTIE: Yes, they do, Mr. Ford. The number of leaves to appeal in criminal cases not granted was 72. I might add that many of these, in my experience, come up on a writ of habeas corpus, and of 42 such applications, 37 were denied.

CHAIRMAN VAN DUSEN: Mr. Ford.

MR. FORD: So that we would have 72 plus 37 denials in criminal matters, is that correct?

MR. PRETTIE: That would be what the appendix to this pamphlet indicates.

MR. FORD: So we would have 109 cases included in your statistics that, if we have an intermediate court of appeals, will probably not find their way to the supreme court as window matters, but will go directly to the appellate court as a matter of right, is that right?

MR. PRETTIE: Hopefully that is true, although if Mr. Garry Brown's statement that an appeal is an appeal contemplates that you get into the supreme court as a right, they may, many of them, find their way there, too.

MR. FORD: I am going on the presumption that we are talking here in terms of the intent of the committee up until this point. Wasn't this their intentions, Mr. Prettie, in discussing the court, that by granting an automatic right to appeal in criminal matters, that those matters would go, in the first instance, directly to the intermediate appellate court?

MR. PRETTIE: In the first instance, yes.

MR. FORD: Thank you. Now, we shouldn't be too alarmed with these figures, because as I indicated a little while ago I agree with Dr. Nord that there is never an excuse for the

courts to give less than full justice to the citizen because they are too busy. This would be an intolerable concept if we were to for one instant give in to it, and any argument that seeks to persuade you by saying that we should give people anything less than the full measure of their day in court because we might be burdening the court with a little more work than they would like to have seems to me to have no place in the consideration of the rights of people in a democracy.

Now, the intermediate court of appeals is going to be discussed later, but you must realize that when we are talking about this matter we are talking on the assumption that an intermediate court of appeals will be established, and on the assumption that it will follow pretty much the pattern of similar courts in other states, and somewhat the pattern of the federal system.

For example, our supreme court now has a great deal of its time taken up with appeals in negligence cases arising out of automobile accidents primarily. They are not cases of prime importance to anybody except the litigants involved. They are not making new law. They are up there on technical questions. They are up there on questions of the amount of damages, the measure of damages, the method used in measuring the damages, and as you review these advance sheets you read the same old stuff over and over and over again, because the supreme court is being asked to make the same decision, and the reason is that once you are involved in a civil case that involves more than $500, it doesn't matter how good your reason is for appealing, the supreme court has to listen to you, and when it denies your appeal it has to give you a reason, and it has to, in fact, print it in the books for all time to come.

Now, this kind of case very likely will not go to the supreme court in the first instance, and will meet its demise in the form of a formal decision at the appellate court level. So we are going to take this load off of the supreme court's shoulders.

Another series of cases that very recently have started to go up in larger numbers than they have been for some time are divorce cases, and again they are up there on questions of custody, questions of possible abuse of the judge's discretion — many things that are of importance and are not making rules that are to be followed by people throughout the state, but merely are important for that one case. And it would be our fond hope that cases that are not of general statewide concern, and cases that are not calculated to establish new principles of law or clarify otherwise hazy principles of law will not go beyond the appellate court level, and that in order to get beyond the appellate court level they would require something more than something in the nature of the application for leave, and that these would be very limited in their number.

I don't think if you consider from this point of view that the argument that we might be burdening the court over there by asking them to state the reasons why they do what they do has much merit.

I urge the support of the amendment proposed by Judge Leibrand, Mr. McAllister and Miss Donnelly.

CHAIRMAN VAN DUSEN: The gentleman from Wayne, Mr. Mahinske. The Chair will remind the delegates that the subject under discussion is the Donnelly amendment. The Chair recognizes that relevant to that amendment are many other concerns, but will, nevertheless, ask respectfully that the delegates confine themselves as closely as possible to the subject under discussion. Mr. Mahinske.

MR. MAHINSKE: I rise a second time on the proposed amendment here in view of the statistics that have been thrown out to us by Mr. Prettie. I am a little bit familiar with the report Mr. Prettie cites. There are 3 points that I would like to bring out that come to mind. One, the criminal matters that are so inadequately prepared, and so forth, that are denied, are, I would say, 98 per cent coming out of Cooper street down in Jackson and that is where the boys are all practicing law. This is why they are not too adequately prepared. Two, you notice that these are 1956 figures that Mr. Prettie has cited to us. There are 2 reasons for this, as far as I can see: the 1956 figures are the lowest work load figures that the supreme court has shown since 1929, and since they have reached that alltime low the supreme court has seen fit, for one reason or another, not to publish these figures anymore, and I would hesitate to think why, but I would assume that it is possibly because the figures are continually going down, and they would just rather not have these figures published. And this is something that is not mandatory on their part over there. And then, of course, we have all the arguments for the intermediate appellate court taking some of this proposed work load off of them. So, in view of these facts, I think that the statistics as presented should not — at least have not influenced my position in this matter and I still would rise in support of the amendment proposed.

CHAIRMAN VAN DUSEN: The gentleman from Detroit, Mr. Norris.

MR. NORRIS: Mr. Chairman, I do believe we ought to be somewhat cautious here and move our remarks to inculcate a spirit of respect, and place the supreme court where it should be, on the apex of our system of jurisprudence, and be cautious in indicating that there might be some reason that might not meet with public approval regarding the information on statistics.

I would be quite charitable with regard to the motivation as to why or why not certain data may be available. I do think, however, that we ought to weigh with due care and caution the data that was given to us by Delegate Prettie, and I am certain, too, that the data there was accurate, but he referred to the large number of interlocutory matters.

This motion, as I understand it, this amendment before us, deals with "and reasons for each denial of leave to appeal," and not with interlocutory matters. It deals exclusively with reasons assigned for the denial of leave to appeal.

Now, with regard to the data involved in that matter, I went over to Mr. Winters, the clerk of the Michigan supreme court, and he sent a letter to me on supreme court stationery dated November 27, 1961. This was with regard to the question of a right of appeal on a criminal case that I was preparing a memorandum on for our committee on declaration of rights, and this is what he indicated with regard to the data for the last year that data were available:

> In reply to your request of November 16, please be advised that during the period from November 1, 1960, to November 1, 1961, this court entered orders in 218 criminal cases. Of the 218 only 29 represented applications for leave to appeal granted. Of 39 petitions for writ of habeas corpus, 2 were granted. Of 30 petitions for writ of mandamus, none were granted.
>
> During the same period the court entered orders in 153 applications for leave to appeal in civil cases. Of the 153, 58 were granted and 95 were denied. In addition, 21 petitions for extraordinary writs were filed involving civil cases, of which 6 were granted and 15 denied.
>
> I hope this gives you the information you need in the form you can use.
>
> Mr. Donald Winters.

So that the volume that we are talking about, assuming that we have an intermediate appellate court to which there would be a right of appeal in a criminal case, and which would take care of that part of the problem, is some 95 cases out of 153 where leave was denied in a civil case, and I think that is the volume that we are talking about.

I think, further, that the question which was raised by Mr. Kuhn with respect to writ of mandamus was covered in the first sentence of the section proposed by the committee "decisions of the supreme court including all decisions of prerogative writ shall be in writing," and so forth. The writ of mandamus is a prerogative writ. And it does not envision that there would be a decision. It does mean in terms of the work load of 1960-61, where there were 30 petitions for writ of mandamus and none were granted, in those 30 cases there would be a decision to be expected from the Michigan supreme court in accordance with the committee's recommendation. And rightfully so, particularly in view of the fact that with reference to writ of mandamus the supreme court has original jurisdiction.

So, then, I think in terms of the volume of work involved, it

would not be so voluminous as to call into question the second reconsideration of this matter, and I think that the Donnelly amendment ought to be supported. But I would, before leaving, suggest this point, and that is that what is significant is not only that there would be reasons assigned for the denial of appeal — and this would help the litigant, and would be in the best interest of the public — but it would indicate again that there would be a full day in court in the sense that a full day in court includes the reasons for a denial of leave to appeal.

And basically we are all under the umbrella of the proposition that this is a government of laws and not of men. That means that decisions cannot be arbitrary; that they be based on some rational reasons, and that the reasons ought to be declared in writing. And under the concept, the high concept of the exercise of judicial power under a government of laws and not of men, we ought to ask the supreme court, with the respect to which we accord it, to assign to us a reason when the important right to appeal is denied; remembering, remembering that the right of appeal is not a part of due process. It is not a constitutional right. It is a matter of grace in some respects, except as the constitution herein provides. So I urge support for the Donnelly amendment.

CHAIRMAN VAN DUSEN: The gentleman from Allegan, Mr. Farnsworth.

MR. FARNSWORTH: Mr. Chairman, members of the committee, in rising again in support of the Donnelly amendment, I am compelled to do so by the reason that our good friend, Ken Prettie from Hillsdale, gave us — the reason why we shouldn't go for the amendment — and the reason he gave was that it involved additional work to quite considerable extent. Well, what is this thing, Mr. Prettie, that we call justice? Is it something that we dole out to people when we are not very busy, or is it something that we give to them whether we are busy or whether we are not? This matter of research that you referred to: am I to believe that possibly the supreme court would take my matter under consideration and make a decision to deny the right to a review prior to the time that they made the research? Would they make that decision without going into the facts, completely researching it before they made that decision?

Now, I don't think the supreme court would, and so if they did make the research, I can see that a little extra work is required in writing down their reasons, or the results, or whatever they found out.

Again I am rising, Mr. Chairman, to try to help the lawyers out, believe me. This is with the best of intentions. I think we should heartily support the Donnelly amendment.

CHAIRMAN VAN DUSEN: The gentleman from Grand Rapids, Mr. Tubbs.

MR. TUBBS: Mr. Chairman — thank you, Mr. Farnsworth, I am sure we need it — I am sure that all of the arguments pro and con on this thing far outstrip this necessity in this constitution.

But I am constrained to add just 1 or 2 things. I would like to ask one member of the sponsors of this amendment a question or two — perhaps Miss Donnelly — she seems to be one that is sponsoring it. I assume that this sentence applies only to application for leave to appeal; that the answer given by the court would be something like this, "Appeal denied. Reasons, none." Would that satisfy this amendment?

CHAIRMAN VAN DUSEN: Miss Donnelly, does the lady care to answer?

MISS DONNELLY: Mr. Tubbs, I suggest that you as a member of the bar are not serious in saying this.

MR. TUBBS: Let me ask you another question. I would like to ask a second question, Mr. Chairman, if Miss Donnelly would permit me. Now, this next opinion says "Appeal denied. Reasons, we do not like the brief filed for the appellant."

MISS DONNELLY: I like to use my first reasoning again. I don't believe they will do that, and I don't think you do, either.

MR. TUBBS: Third question: suppose the supreme court issues an opinion "Appeal denied. No reasons." Who and what will enforce the constitution?

CHAIRMAN VAN DUSEN: Does the lady care to answer, Miss Donnelly?

MISS DONNELLY: I think you know the answer, Mr. Tubbs. Nothing will. But if the supreme court will so violate that part of the constitution, then we have a very, very serious problem in this state.

CHAIRMAN VAN DUSEN: The gentleman from Detroit, Mr. Madar. The Chair is sure, Mr. Madar, that you are impelled by the same motivations which brought Mr. Farnsworth to his feet.

MR. MADAR: Well, I can assure you, Mr. Chairman, that I believe that the laymen should say something this evening about this particular portion of the judicial proposal, and I might say that this is following along the lines of what I said before, that somewhere we ought to be able to find an attorney who got himself a good enough education in our colleges, our law schools, so that he would be able to write into our constitution something that would absolutely give us force, enforcing the legislature and the judges to do something about our constitution, and obey it. Now, I didn't get up to say just that. In fact, I hadn't intended to say that at all, but when the Chair made the facetious remark that he did, I thought he should be answered with something like that; as I understand he is also an attorney.

Fellow delegates, I don't find myself agreeing with Jim Farnsworth too often. However, I do know that Jim Farnsworth is a successful businessman, and I have been associated with him in the local government committee, and he has been doing a fine job, and I feel that we ought to take into consideration something here besides law.

The first night that I spent in Lansing, we were told that we should write a constitution that would even be understood by the supreme court judges. You know, I sometimes think that when it costs a man $500 to $800 to try to get an appeal, this should be understood and understandable to any judge that that is quite expensive, and that the man who is asking the attorney to get him an appeal is spending an enormous amount of money that 10 chances to 1 he can't afford, and he ought to get something more than just a plain, "denied".

I sat here listening to Mr. Prettie talk about a work load. Work load. Well, I have watched judges work in circuit courts, recorder's court, common pleas court, and, if you please, I set on more than one occasion in Lansing, Michigan, listening to the supreme court justices, and if you call this work, and if you think that this is putting in a lot of time for the money that they get, I am going to tell you right now that we here should get 75,000 bucks a year.

CHAIRMAN VAN DUSEN: The Chair is sure that we all agree with you, Mr. Madar, but hopes you will confine yourself a little more closely to the point.

MR. MADAR: I am confining myself to the point, in that I am trying to stress the reasons why they ought to be able to give us more than just a "denied", and I certainly am going to vote for the amendment.

CHAIRMAN VAN DUSEN: Mr. Garry Brown.

MR. G. E. BROWN: Mr. Chairman, ladies and gentlemen of the committee, it seems to me that too often when we are reviewing a proposal such as this one, that we lose the forest for the trees. In this regard I think that much of the criticism to the Donnelly amendment — and I am speaking in behalf of it as I shall later explain — comes from the fact that this is writing into the constitution many of those things which can better be left to either court rule or legislative act.

We set forth in the section that the facts and reasons for each decision shall be given. When we say decisions of the supreme court, and use practically the same wording that has been used in the past, we are expecting and, in effect, concurring in a similar interpretation of what the supreme court should do with respect to this decision. This would, of course, leave out any decision or the giving of any reason on any decision involving leave to appeal.

In Committee Proposal 92, which the committee has reported out — and which deals with the appellate court — in the very last section we say the jurisdiction of the court of appeals shall be prescribed by law, and then, of course, the practice and procedure shall be provided by court rule. Inasmuch as we do not know at this point what the jurisdiction — in fact

we won't know in this convention if that proposal is passed — of the appellate court will be, how can we say with any degree of certainty what decisions should be reported, should be promulgated, and which one should bear facts and reasons in support thereof?

In answer to Mr. Prettie. I am not quite sure what he meant when he said that my statement indicated that an appeal is an appeal is an appeal. I know that I have been familiar with many briefs that have been filed in connection with leave to appeal which were 30 pages in length. I think this is adequate to prompt a decision from the court that would at least set forth in a paragraph or so its reasons. I think that it is justified, and it should be given.

I don't think that the Donnelly amendment, as such, is the answer to this problem. I certainly would support it, however, and do support it, if we are going to leave the committee proposal as it presently stands. But it occurs to me that it would be better to set forth in this section, rather than specifying that facts and reasons shall be stated, but rather some language to this effect should be stated: that all decisions of the supreme court shall be reported and promulgated as provided by law.

We are unable at this point to determine what the jurisdiction of the supreme court shall be, what matters will be subject to leave to appeal. All of Mr. Prettie's statistics have no bearing insofar as this section is concerned until we know what that jurisdiction shall be. We certainly thought it would be original jurisdiction in the supreme court, and that there would be matters that can only get to the supreme court by virtue of leave from the intermediate appellate court.

I want to say, if there is not to be any general language which will permit these things to be worked out by the legislature insofar as reporting and promulgating of decisions are concerned, we should support the Donnelly amendment.

As I say, I think that it would be better to use general language in this section. It is more constitutional in nature, and would be more fitting in view of the fact that we do not know what will be the jurisdiction and the ramifications of an appellate court in this field.

CHAIRMAN VAN DUSEN: In response to numerous requests, the Chair would advise that he has 2 speakers seeking recognition. The first is Mr. Gover.

MR. GOVER: Mr. Chairman, fellow delegates, as a layman like Mr. Farnsworth and Art Madar, it seems to us nonattorneys that we are like a jury hearing both the pros and cons of this case, of this amendment. I am inclined to believe that this is good for the small people of Michigan who should have a right to know the reasons for denial. I believe we should support this amendment.

CHAIRMAN VAN DUSEN: Mr. Higgs.

MR. HIGGS: Mr. Chairman and members of the committee, I think a word should be said in behalf of the judiciary committee. I think Dr. Nord put his finger on part of the problem that may be had in understanding what is involved when he said that the petition for leave to appeal is a peculiar thing. This is a request for the laymen. This is a request asking permission for a fullblown argument and submission of briefs. The judiciary committee, in considering this matter — and several hours ago I think our chairman of our committee touched upon it — consideration of this matter involved the fact that we will have an appellate court.

Delegate King asked a question that I don't believe was answered; as to what can be expected of the appellate court with respect to a decision, and he asked whether or not we had looked into other states. Now, the state of New York has such an appellate division that renders decisions in writing, and these are digested in a set of books called the New York Supplement. I have used, on occasion, opinions of that court in argument.

Now, our anticipation, the anticipation of the judiciary committee was, I think, that where a petition for leave to appeal was filed and denied, that the supreme court, in effect, would be affirming the decision of the appellate court. The consideration was that, in my mind as a member of the committee, you would have on file a written opinion of the appellate court for reference.

If the court, the supreme court, is required to write a fullblown opinion in response to a petition for leave to appeal, you have, in effect, destroyed the whole nature of a leave to appeal. This isn't a leave to appeal anymore. This is an appeal. I am not certain that that is what the amendment contemplates, and I have been quiet here, but I would like to ask a member of the committee, or a member of the minority offering this amendment — and, as I read it, they do not anticipate a fullblown opinion. Ann, would you care to answer? The way I read this, all you ask for is reason for denial; you do not require a concise statement of the facts, is that right?

CHAIRMAN VAN DUSEN: Mr. Higgs yields to Miss Donnelly.

MISS DONNELLY: I believe that is what the language says.

MR. HIGGS: I am asking what your intention is. I am also on style and drafting. We may have to face this. Do you anticipate a concise statement of facts?

MISS DONNELLY: On their reasons for denial of leave?

MR. HIGGS: Yes.

MISS DONNELLY: I would say that if the supreme court decided that it wished to give a concise statement of facts and say "This is ridiculous," they could, in effect, because of these facts it is obvious why we have done it.

I am not attempting to say that they must state everything and make as complete a decision as they would if they were granting the leave, although I think there is good argument why they should. At this moment I am not asking that much, although I think it is a worthwhile thought.

MR. HIGGS: You kind of left me. I would like to say this: if what is contemplated is simply a statement of a very concise reason without going into the facts, I think it is not such a bad idea. But if the supreme court must give a concise statement of facts as well as reasons, this they should not do on a matter of this kind without a fullblown hearing. Because if they do do it, then they are laying down precedent type of law that will be controlling throughout the state of Michigan, and this should not be done without a fullblown hearing, the arguments, the briefs, the whole matter. And if this is what you contemplate, then what you are doing is destroying this particular avenue of appeal, the leave to appeal.

MISS DONNELLY: I don't know if you are asking me a question or making a speech still.

CHAIRMAN VAN DUSEN: Mr. Higgs, were you asking a question or making a speech?

MR. HIGGS: I had asked the question, and I wasn't sure that the answer was clear, and if Delegate Donnelly would like to clarify that, then I would like to have it.

CHAIRMAN VAN DUSEN: Mr. Higgs yields to Miss Donnelly.

MISS DONNELLY: If I remember correctly, the amendment says "reasons for each denial of leave to appeal." Now, then, let's go a step further. I am not attempting, and I don't think anybody is attempting in this, to say that the supreme court may not make a comment on the facts. I think if the supreme court, in its discretion and in its decision and determination, feels that it is pertinent, it could certainly do so. To say that they can't is not what I am trying to do. I am just saying that they should give a reason for each denial of leave to appeal. Now, how they want to give their reasoning I would leave within their discretion.

CHAIRMAN VAN DUSEN: Mr. McAllister.

MR. McALLISTER: Mr. Chairman, fellow delegates, I want to assure you this is the last time I will appear before you on this matter. When you ask the supreme court for relief, you expect the utmost consideration and fairness. The justices of this court are the supreme justices of the state of Michigan. They are supposed to be the cream of the legal profession.

Work volume is not a factor. This is not a factor in justice. This is the poorest argument advanced so far for the defeat of our amendment. No expense is spared to convict an individual and give him a red carpet prosecution. Oftentimes this alleged violator is acquitted. The time spent in telling a man convicted of murder, bank robbery, embezzlement, or any other serious crime, the reasons why his appeal has been denied

takes only an hour or two, and is the least that any court can do for a man under those circumstances.

I yield to Leslie W. Richards.

CHAIRMAN VAN DUSEN: Mr. McAllister yields to Mr. Richards.

MR. L. W. RICHARDS: Mr. Chairman, fellow delegates, some 5 or 6 hours ago I was no authority at all on this particular subject. At the present time I feel quite an authority, and I might add at this time, as Art Madar referred to Jim Farnsworth, it isn't always he agrees with Jim; and Art, I am quite pleased to say I agree with you on the particular position you took and I rise to support the amendment and I realize, at least my interpretation of the tremendous cost that is involved for an individual to get his case as far as the supreme court, and with such cost certainly he should have a right of explanation why it was denied. And I believe all the lawyers here will agree with me that this is a tremendous cost, because, after all, I believe they would be a part of the cost rising to that height.

Up until now, folks, I had strenuously opposed the gag rule. It has been discussed a number of times, and I have really opposed it. But I have felt up to the present time if the lay people here in the group would go along with me probably this would be the right time to place the gag rule into effect, and while we are on the judicial committee I would be inclined to go along and vote with it.

I certainly support this for one other reason: I supported Tom McAllister on the last several amendments and lost my vote. I would like to again be on the winning side, and last but not least, Tom asked in his behalf if I would ask for a division vote when we are ready to vote.

CHAIRMAN VAN DUSEN: Mr. Richards requests a division. Is the demand for a division supported?

It is supported. The gentleman from Pontiac, Mr. King.

MR. KING: I take it when the division is requested that means I should be very brief. I am still very much concerned about what we are doing here, Mr. Chairman and ladies and gentlemen of the committee. The right to appeal is not a right at all. If you want to write in that in every case there shall be a right to appeal, then perhaps that is what we ought to do, if that is the sentiment of this committee. But, frankly, I am concerned about this short statement giving reasons why the right of appeal is denied or why the leave to appeal is denied. This is where the danger lies. This will become precedent making law.

I think some of us forget how the judicial system in this country operates. You can't have a brief, concise statement as to why the court decided not to hear your case. Either they don't hear it or they do hear it. If they hear it, they have got to hear it completely, and they have got to outline their reasons completely. If I personally were going up to the supreme court asking leave to appeal, if I were denied, naturally, I would want to know why, I would love to know why, and I would like to have them send me a dozen long stem roses when they sent the reason back, too. Dean Doty says that is a good point. (laughter)

I have a friend who is an author, and he wrote a story, and he sent it to a publisher, and all he got back was a rejection slip. Now, naturally he would like to have, I suppose, a book review instead of a rejection slip, and I don't blame him. But the supreme court is not a counselling service, nor is it a post-graduate school for attorneys.

We are missing the whole point here. The supreme court should not find itself in the position of writing a 3 line or 4 line reason why it has turned down the appeal. I am not really concerned about the work load. I am concerned about the American system of jurisprudence, and that is what we are tampering with at this point. And I don't think there is a jurisdiction in the United States of America which has any set rule in its constitution, and, frankly, I think that if this committee is prepared to adopt this amendment, as apparently they are, I think it may be well to move to give the committee on judicial branch an extra 24 hours to see if perhaps there are some other jurisdictions which have taken this rather drastic step.

This is not a light matter. I just want to impress that upon you, ladies and gentlemen. This is a very serious step that we are contemplating.

CHAIRMAN VAN DUSEN: The gentleman from Ypsilanti, Mr. Lawrence.

MR. LAWRENCE: I think Mr. King has given the answer that I was trying to get. If the supreme court should not be required to give only a 3 or 4 line opinion, if that is wrong, certainly it is much "wronger" to give one word "denied."

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Miss Donnelly, Messrs. Leibrand and McAllister. The Chair, unfortunately, has kept no record of those who have spoken for and those who have spoken against, and therefore it will be necessary to call for the vote, and the secretary will read the amendment. Mr. Wanger now desires recognition.

MR. WANGER: I want to make one comment. It seems to me that most of the people supporting this amendment all think that every case that is coming up will be a federal case; that the circuit court is not good enough, no, sir, and the court of appeals is not good enough, either. By golly, if I got a case going up, it's got to go to the supreme court. Whether I've a right to appeal or not, I've got a right to have the supreme court set out some reasons why my case, my client's case, my uncle or my brother's case shouldn't get up there and have a full hearing.

The only trouble with that is that if we go on that theory, why should we have any other court except the supreme court? If you want your reasons put out in writing, let's remember that your reasons are no good unless those reasons are based on a thorough understanding of the case, and if you want those kinds of reasons, then you are going to have to expect the supreme court to spend the time and research necessary to get those good reasons all in form.

And if you don't, why those reasons are not worth any more than any other thumbnail sketch or slipshod reason or excuse. No, the reason why our court system is divided is because we found out that the work load has to be adjusted, and that everybody's case isn't worth taking up to the supreme court.

CHAIRMAN VAN DUSEN: Mr. Danhof, do you desire recognition?

MR. DANHOF: Only, Mr. Chairman, to perhaps wind this up and try to get back and get a vote so we can go on to the next section, which would, I am sure, promote, being new, much more discussion than something which we have had since 1908.

If the provision as amended — if the amendment is adopted, then this committee should realize what they are indirectly doing, what they are doing in making an appeal as a matter of right in every single case. Mr. King is completely correct. This, then, in effect, would be undoing what we had tried to do by setting up a court of appeals.

Mr. Farnsworth talked about the expense, and 2 days ago last Thursday we voted to have a court of appeals. This is in Committee Proposal 90. If you add this amendment, all you are doing is adding on the expense of going through another layer of courts, and you might just as well take out the court of appeals. If you are going to require the supreme court to write a decision every time it denies a leave, you might as well go there in the first place, and you might as well save your client the cost of the court of appeals, and this is where the real savings will come, Mr. Farnsworth.

Maybe Mr. Wanger had a point too in doing away with the circuit court. But the idea that the committee had in making a court of appeals was to make the cost less and not greater, and by adopting the amendment, both you and Mr. Richards should realize that if you approve a court of appeals, as you did, you then will be adding to the cost, because the cost will come not in going to the supreme court but in going to the court of appeals where you will be forced to go in between. The idea that the committee had was that when you file your petition for leave to appeal, if you are going to force reasons, you are going to get these curbstone opinions, which is just about what they are going to be, because the court will not have considered the case fully, will not have had all of the

briefs, and when they look at a leave it is necessarily considerably less than a full hearing, a full brief and a full record, and they have to determine whether or not the case is of such merit or such magnitude or such importance that it should go up.

And what Mr. King is stating is absolutely correct. We are putting here a strangle hold upon the supreme court. The 1908 article was known as a very forward looking article because of the broad and very few restrictions placed upon the court. I am beginning to think that the article of 1962 will nowhere approach in relative importance what they did in 1908. Michigan has been copied by these other states very recently. What we do now will certainly put a strangle hold thereon.

I think we are letting the personal experiences of too many lawyers enter into the consideration of what is a good system. The fact that one of us might have had a case one time where we didn't like what the court said or how it was said to us should be thrown out. Those that try to try their personal matters have no place in this particular convention, and I submit that over the last 2 days this is what we have been doing.

CHAIRMAN VAN DUSEN: Dr. Nord.

MR. NORD: Mr. Chairman, I believe that we are again getting overconcerned about terrible things that are bound to happen if we do this. The supreme court is not nutty. They can handle this problem with no difficulty. Of course if they were nutty, they would have a problem. But the point is this, all they need to do is adopt some rule. They would have to adopt some rules. That's true. They can't let everyone appeal from the justice of the peace court and all the way up just automatically and say that he has an opportunity to file a leave to appeal.

No doubt — I don't have the slightest doubt in my mind that they will do something like the United States supreme court. They will adopt rules stating under what circumstances there can be any review whatever, any review whatever, from the appellate court. They will state what those circumstances are, and if you don't fit within those circumstances you can never even file the application, or, if you do, it will be destroyed. It won't be even returned to you. Or if it is returned, it will be returned with one word, "not within rule 57" or some such thing.

Now another misapprehension is that the supreme court is going to give a decision on the merits in one paragraph. They would have to be absolutely asinine to do that. They will not give a decision on the merits for the reason it hasn't got to the merits yet. All they will do is decide whether they are going to hear the case. That is the only decision they will make. For example, the reason they will give will not be that your case doesn't appear to us to be just or right, or something like that, but what they will say will be something, for example, like this: the legal point involved according to the briefs has already been settled in 2 or 3 or however many different divisions of our appellate court there are, and it's uniform, and since it is uniform there is no reason for us to reconsider it.

On the other hand, if it had been nonuniform they would have listened to it. They may give that as a reason, that the rule is uniform, or they may say there is no jurisdiction to hear this appeal, and that is why they are not hearing it. Or they may say there is no rule supporting a view of any type in such a case. Or they may say the only thing that has been raised is a question of fact, and they may say on that basis they don't intend to go into it because it has already been gone into twice. They will give some reason of that type, and then you will know what was their reason for not hearing the case. You will not know what they would have done if they had heard the case.

So let's not get nervous that everyone will be able to appeal to the supreme court. They will not. Or that every time a motion is filed for a leave to appeal there will be an absolute appeal as a right. There will not. Or let's not get nervous that we will be getting decisions which are thumbnail descriptions or off the cuff opinions. We will not. All we will be getting is possibly a sentence or 2 or 3 stating one of these grounds or some such grounds, and then you will know exactly what you did wrong, and you will know better next time.

CHAIRMAN VAN DUSEN: Mr. Garry Brown.

MR. G. E. BROWN: Mr. Chairman, members of the committee, I shall be very brief, and hope that the others will be likewise. I would only direct the committee's attention to section 4 of this white sheet which I think is section 3, which we dealt with on Thursday and Friday, and in that, of course, it says, "The supreme court shall have appellate jurisdiction as provided by supreme court rule." Now, this only tends to supplement what Dr. Nord has said; that in these cases in connection with appellate review, that the court can limit those cases that will be coming to it purely and absolutely, and that there will be no application for leave to appeal in many matters, and that those matters that do come under the gray area, so to speak, between those which are appeals as a matter of right and those which cannot be appealed, those which have to be subject to a leave to appeal, will certainly be limited so the court can handle the matter adequately and give the reasons for its decison.

CHAIRMAN VAN DUSEN: Mr. Hoxie.

MR. HOXIE: Mr. Chairman and fellow delegates, I feel impelled to rise to my feet to make a long discussion on this subject. I think we are getting very repetitious, and my recommendation from my legal training is 3 words: let us vote.

CHAIRMAN VAN DUSEN: The question is on the amendment to section e offered by Miss Donnelly, Messrs. Leibrand and McAllister, which the secretary will read.

SECRETARY CHASE: The amendment is as follows:

1. Amend page 2, line 11, after "decision" by inserting "and reasons for each denial of leave to appeal".

CHAIRMAN VAN DUSEN: Those in favor of the amendment will vote aye. Those opposed will vote no. For what purpose does the gentleman rise, Mr. Walker?

MR. WALKER: I believe a division was asked for and seconded.

CHAIRMAN VAN DUSEN: That is correct, and that is why the people are voting aye and voting no on the machine. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the amendment, the yeas are 78; the nays are 47.

CHAIRMAN VAN DUSEN: The amendment is adopted. Are there further amendments to section e?

SECRETARY CHASE: None on file.

CHAIRMAN VAN DUSEN: If not, it will pass.

Section e, as amended, is passed and the secretary will read section f.

SECRETARY CHASE: Section f:

[Section f was read by the secretary. For text, see above, page 1256.]

CHAIRMAN VAN DUSEN: For an explanation on section f the Chair recognizes the chairman of the committee, Mr. Danhof.

MR. DANHOF: Mr. Chairman, I should like at this time to yield to the vice chairman of the committee for the explanation of this section, Mr. Ford.

CHAIRMAN VAN DUSEN: Mr. Danhof yields to Mr. Ford.

MR. FORD: The chairman of the committee in his infinite wisdom relegated to me the truly noncontroversial section of the judiciary article.

This is somewhat new. The committee rationale is on page 466 of the journal. I might say that we were out of Journal 71 for some time, and there are copies available now. For some reason we had a run on them, but there are now copies available that might be handy to you for the balance of the discussion of the whole judiciary article. I will read first what the committee had to say:

> This is a new section, replacing and simplifying section 6, article VII of the Constitution of 1908. It extends the appointive power of the supreme court and its supervising control to its entire staff, instead of limiting it to

the officers named in section 6, article VII of the Constitution of 1908.

The language that does that, if we can go through this together, is the first sentence, of course, which has 2 subjects covered in it. One, the appointment of the staff, and the second is control of expenditure within the budget allocated to the court.

> It continues the existing requirement that all receipts of the court shall be credited to the general fund. It also continues the prohibition against appointments by the supreme court to public office, excepting for the appointment of the staff of that court and other appointments of retired members of the judiciary to fill vacancies in the courts of the state by appointment of retired members of the judiciary.

Now this is where we overlooked the controversy in this section, because this is undoubtedly going to be controversial at another point, and I want to be fair and say I have a minority report that might seek to take that back away from them, but it is to another section. So at this point I am supporting the committee.

> The details of such appointment which will continue only until such vacancies are filled by election, are covered in other sections of this committee's proposals.
>
> Other proposals of this committee, which will be separately dealt with, permit the supreme court to authorize persons who have served as judges and who have voluntarily retired, to perform judicial duties for a limited period of time until a vacancy in judicial office is filled by election. The final language of this proposal is for the purpose of permitting the supreme court to make such interim appointments, and in the opinion of the committee, is necessary to correlate these 2 sections.

Now I want to say that although I will have some objections as to the manner that the committee has established for the filling of the vacancies on the courts, this is not the place to make the fight, and I don't agree with the person who wrote the rationale of the committee that this language in this section is particularly controlling of that issue.

So I don't think that we should argue that point here. I think, really, all this section does that is at all startling or new is to adopt the concept that when the court has money appropriated to it for its operation by the legislature, once the money has been appropriated the court itself will have control over the amount of wages paid to its employes, and so on and so forth, within the limits of the budget.

This would in some ways make it, as we are informed by representatives of that court, more readily possible for the supreme court to govern its housekeeping affairs and to handle matters of personnel over there. They have rather strange methods of obtaining assistance, and this would make it possible, for example, for them to attract people who are actually people with rather special training, and, in some instances, professional people that are on their staff.

I would like to yield for questions in the hope that the chairman can answer them.

CHAIRMAN VAN DUSEN: Mr. Ford yields for questions. Are there questions with respect to section f of Committee Proposal 91? You seem to have passed nobly, Mr. Ford.

The secretary will read the first amendment proposed to section f.

SECRETARY CHASE: Mr. Austin offers the following amendment:

1. Amend page 2, line 15, after "control of" by inserting "the preparation of its budget recommendations and"; so that the sentence will read:

> The supreme court may appoint and remove its staff and shall have general supervision of the staff of the court and control of the preparation of its budget recommendations and the expenditure of the funds appropriated for any purpose pertaining to the operation of the court. . . .

CHAIRMAN VAN DUSEN: On the amendment the Chair recognizes Mr. Austin.

MR. AUSTIN: Mr. Chairman and members of the committee, I think we will have a little change of pace now. We nonlawyers have a subject that we can discuss. I have suggested this amendment because there is a question that needs to be answered, and I felt that the best way to get an answer was to propose this amendment.

In our debate the other day we deleted from page 1, line 16 of this proposal, Committee Proposal 91, the following words "prepare and submit to the legislature the budget for the court." You will recall we were talking about the administrative assistant of the court, and we deleted all of the language which would spell out the duties of that administrative assistant. Just to be a little more specific, the language that we deleted was

> The administrator shall, under the direction of the supreme court, prepare and submit to the legislature the budget for the court and perform all other necessary functions relating to the revenues and expenditures of the court.

It is not my intention to suggest that we reinstate this language. I am merely calling attention to the fact that we have deleted reference in this proposal to the preparation of budget.

The question, of course, is whether the preparation of budget for the supreme court shall be left to the executive department or shall it be left to the legislature. It seems to me that we must in this article include something that will indicate that the budget for the judiciary is under the control of the judiciary. It is quite possible that if we do not provide for budget control in the judiciary, it is possible that either of the other 2 branches may be able to exercise some indirect control over the judiciary through budget manipulation.

Now in deleting the language that was deleted the other day, the objections raised were that we objected to the assignment of functions to the administrator in the constitution, and that the language we had was rather rigid for the constitution. No reference was made at the time to the need to include any authority for budget preparation for the judiciary. The committee on judicial branch apparently saw the need for including some language of this sort, and now that it has been deleted from the paragraph from which it was deleted, it is my feeling that we can insert it at this point.

Now I would like to go one step further. I would like to refer you to Committee Proposal 46. I am wondering if you would take a look at Committee Proposal 46, which we have not yet considered, but which relates to the proposed executive budget. Committee Proposal 46, under section a — I am sorry — requires that the full budget for all expenditures are to be included in the executive budget. This budget, of course, will be prepared from recommendations from the various departments. On page 2, line 17 of Committee Proposal 46 you will find this language:

> The governor's power to reduce expenditures shall not apply to the legislative and judicial branches or to those services for which funds are mandated by this constitution.

I am particularly concerned about the exclusion here of the power of the governor to reduce expenditures for the judicial branch. If the governor is not to have this power, then who is to have the power? Is it to be left to the legislature?

This is another reason why I feel that we must include in this paragraph of section f of Committee Proposal 91 some reference to the preparation of budget, and instead of suggesting that the budget be prepared by the department, that is, by the judiciary, I am suggesting that budget recommendations be prepared by this department, and, of course, they would be forwarded to the governor for inclusion in his executive budget.

I hope that I have made clear what my intention for including this amendment is, and I will yield now for any questions.

CHAIRMAN VAN DUSEN: Do you desire to yield to the chairman of the committee, Mr. Danhof, Mr. Austin?

MR. DANHOF: Mr. Chairman, members of the committee, Mr. Austin brought this to my attention last Friday. I told him at that time I personally could not see any particular objection. He did not have the exact words worked out, and now that he has, and has given an explanation, I certainly do not find it objectionable. I have not talked to the full

membership of my committee, except a few who are in my immediate area. They agree to assent.

This endeavors to do what we are trying to accomplish for the supreme court, and what small amounts of money it gets in proportion out of the general budget; that is, that the court will submit a budget, it will be scrutinized by the legislature, and when the appropriation is made they can at least transfer within the amount of the appropriation. It also gives them the supervision over its staff.

I personally can see no objection to the amendment, especially in light of the action taken the other day wherein the other budget suggestion was taken out of an earlier part of this particular committee proposal. I would urge the adoption of the amendment.

CHAIRMAN VAN DUSEN: Mr. Ford.

MR. FORD: I think what Mr. Austin has done has amplified the real intention of the committee, and I would support the amendment to the committee proposal.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Austin, which the secretary will read.

SECRETARY CHASE: Mr. Austin's amendment:

[The amendment was again read by the secretary. For text, see above, page 1308.]

CHAIRMAN VAN DUSEN: Those in favor of the amendment will say aye. Those opposed will say no.

The amendment is adopted. The secretary will read the next amendment.

SECRETARY CHASE: Messrs. Brake and Hutchinson offer the following amendment:

1. Amend page 2, line 17, after "court" by inserting "subject to the general accounting laws of the state"; and after "staff" by changing the comma to a period and striking out "except that" in line 18; so that the language will then read:

> expenditure of the funds appropriated for any purpose pertaining to the operation of the court subject to the general accounting laws of the state or the performance of activities of its staff. The salaries of the justices of the supreme court shall be established by law.

CHAIRMAN VAN DUSEN: On the amendment, Mr. Brake. Mr. Brake yields to Mr. Hutchinson.

MR. HUTCHINSON: Mr. Chairman, I originated this amendment, and when we adjourned on Friday, and when we hadn't gotten down here, and I knew I couldn't be here this afternoon, I asked Mr. Brake if he would offer it because I couldn't conceive that we would not have gotten this far by the afternoon session. But we didn't, and so I am back, and I can explain it myself.

I offer it, even now since Mr. Austin's amendment has been adopted, for the reason that I feel it is now necessary to make clear that the control of the expenditure of appropriated funds to the court will be subject to the accounting laws of the state. You see, the supreme court is the final arbiter as to what the constitution says, and even when it is a party to the controversy, in a sense, because it has to interpret what its own powers are, from which decision there apparently is no appeal, in this area particularly the constitution is what the supreme court says it is.

Now, if we have seen fit to spell out the fact that the control of the budget preparation shall be in the hands of the court itself, then if we don't follow along and say that the control of the expenditures shall be subject to the accounting laws, perhaps the court will conclude that they are not. The expenditure should be subject to the accounting laws because they should be subject to the allotment procedure which is within those laws.

What I mean is this, ladies and gentlemen of the committee, when the legislature appropriates money, this simply amounts to an authorization to expend money out of the treasury. Now, the actual expenditure of the money is something that is within the executive branch operations. The several departments of the government have to go, under present law, to the state administrative board seeking an authority to withdraw from the treasury in accordance with the appropriation.

The procedure is, ordinarily, that the appropriation is allotted quarterly, so that the administrative board each quarter allots, presumably, 25 per cent of the total appropriation, and during that 3 month period the department involved may withdraw up to that amount of its total appropriation.

In cases where there is a justification for a departure from an even division into even quarters, why, the ad board may permit, for instance, the expenditure of 1/3 of the whole appropriation in a 3 month period instead of 1/4 of it if in another quarter the matter can be adjusted.

It does seem as though this court should be subject to the allotment procedures, should be subject to the other accounting procedures of the state, and particularly do I feel that it is important to spell it out here now since the budgetary matter has been spelled out. The budgetary part of it is the formulation of what we want to expend in the future. Having spelled that part of it out, that part of it which precedes the actual appropriation, then I think we should also spell out that part of the operation which follows the actual appropriation so that there will be control as there is in other departments.

Now I don't mean to dispute for a moment the idea of a lump sum appropriation to the court. I can see wisdom in a lump sum appropriation. But I think we should be concerned lest in times of restricted cash flow through the treasury the court might embarrass the treasury by demanding to take all of its whole appropriation out at one time, when there might not be sufficient cash there to accommodate them. I don't mean to say that they are not reasonable men. I think that they are. I think that by and large the court will be as cooperative as though they were actually subject to the executive branch.

On the other hand, we don't know what the situation will be in the future, and I sincerely hope that the committee will see fit to make this matter subject to the accounting procedures of the state, just as it has seen fit to provide that it shall be subject to the budgetary procedures of the state.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Hutchinson, on which the Chair will recognize the chairman of the committee, Mr. Danhof.

MR. DANHOF: Mr. Chairman, Mr. Hutchinson, let me first state that it was not the intent of the committee that there should be no post audit of any of the appropriations that might be given to the court. I don't have before me the exact wording regarding the proposal of the legislative audit. However, I can state, and I think without qualification, that the committee was firmly of the opinion that the legislature or the auditor or the auditor general, whatever we have, would have the right at the end of the fiscal year to come in and audit the account and the books and the records of the supreme court.

The only thing that appears to me is this: Mr. Hutchinson refers to the fact that the court should be subject to the allotment proceedings of the accounting laws of this state lest the court, by reason of its appropriation, raids the treasury. I think, in the first place, we are talking about an appropriation which, in the light of the general appropriation and expenditure of this state, is a very, very small percentage. The court operates with 8 men.

A DELEGATE: We will have 9.

MR. DANHOF: Well, we haven't gotten that far yet. We might only have 7. Now, last week this committee passed without worrying about a lump sum or allocation, the power to the regents of the University of Michigan to draw anywhere from $35 to $40 million out once the appropriation is made. Now, however, the supreme court must go hat in hand to the ad board and say, "Please give us our 90 day allotment."

Now, I don't envision that the supreme court, or the administrator who is going to run this, is such a poor politician that he does not want to get along with either the members of the legislature or the administrative board, and I am sure that he will do everything possible to keep a smooth operation going under the golden dome across the street; because each and every year he is going to have to go back to the same legislature to get his appropriation.

But to make it subject to the general accounting laws of the state, therein lies what I think is the great danger; because if we do that the general accounting laws may change to demand

a line by line budget and again a line by line expenditure, and this can very definitely fall under the accounting laws of this state.

Now, if the committee wishes to put in there what it did for the universities, who are going to spend some $40 to $50 million, for this massive appropriation of the court, which will probably never exceed a couple of hundred or three hundred thousand, we will have no objection. We do think that the court is an independent branch of the government; that it should be given its appropriation; that the 8 justices of this court should be at least trusted to expend it with reasonable diligence and following what their budget is, and we do feel that they should have more authority than they have now so that if they do not find what they need for salaries, but they need additional equipment, they can at least move it around within the appropriation.

I am sure that the chairmen of the appropriation committees of the 2 houses, if they go too far astray on any particular item, that is, if they overestimate salaries and underestimate books, will cut them back the following year.

I would urge the defeat of this amendment, but would be willing to state that if we could draft language relative to a post accounting audit, perhaps this would be agreeable, in line with what we have done with the universities that we adopted last week. Thank you.

CHAIRMAN VAN DUSEN: The gentleman from Pontiac, Mr. King.

MR. KING: Mr. Chairman, ladies and gentlemen of the committee, I would like to ask a question of Mr. Hutchinson. My question is, what constitutes the general accounting laws of the state?

CHAIRMAN VAN DUSEN: Mr. Hutchinson.

MR. HUTCHINSON: Mr. Chairman, on that I would like to yield to Mr. Brake. I don't think there is a man in the room that is better qualified to answer than he.

CHAIRMAN VAN DUSEN: Mr. Hutchinson yields to Mr. Brake.

MR. BRAKE: Mr. King, ladies and gentlemen, principally just this: the vouchers of the supreme court would go through the regular channels, the same as any other department of state government. When it comes to allotment, they would not need to go to the administrative board hat in hand at all.

The even quarterly allotment would be made as a matter of course. If the supreme court wanted to spend ½ of its appropriation in 3 months, then it would have to ask permission, the same as any other department of state government. This is simply a matter of keeping the procedure uniform and orderly. It doesn't mean commingling of funds, it doesn't mean taking any money away from the supreme court, or anything of the kind.

MR. KING: Is it my understanding then that — well, let me put it this way, the general accounting laws of the state, of course, consist of a great many laws which are subject to amendment each and every session of the legislature, isn't that so?

MR. BRAKE: This wording occurs over and over and over again. It simply means you follow the regular procedures.

MR. KING: Would you object if we change your amendment to read subject to the allotment laws of the state, or laws regarding allotment?

MR. BRAKE: Well, that isn't all there is to it. It is a matter of presenting their vouchers to the department of administration which orders the issuance of the checks. That is included as well as the allotment.

MR. KING: Do you conceive of any possibility that the legislature could infringe upon the separation of powers?

MR. BRAKE: When the legislature has made the appropriation, that is the appropriation. They can't do anything about that. That is covered by the accounting procedures.

MR. KING: Don't you think a post audit would satisfy the requirement that you feel is necessary?

MR. BRAKE: That is something entirely different. There should be a post audit of everything. That isn't what this covers at all.

MR. KING: One more question, Mr. Chairman. What percentage of the state budget do you think is consumed by the supreme court?

MR. BRAKE: A very, very small part. It is a matter of having the same orderly procedure everywhere. It isn't a matter of saving any money.

MR. KING: Thank you.

CHAIRMAN VAN DUSEN: The vice chairman of the committee, Mr. Ford.

MR. FORD: I want to support the statement made by Mr. Danhof. It is our view that what Mr. Hutchinson and Mr. Brake would do now would be to provide a means whereby the legislature could take away, intentionally or unintentionally, the kind of fiscal independence, even though we are talking about a very small part of the state budget, that we are trying to give to the supreme court.

They have an awful lot of trouble over there where they hire a person for one job and they have to hire them with a classification of some other kind. They are dealing with professional people that they bring into the court from time to time, and it was the view of the committee that once they have established the need for funds, and the legislature has appropriated it, we could trust the supreme court to spend the money during the year understanding that when they account — at the end of the year when they come back asking for their new appropriation, if they abuse it in any way the legislature can take care of it.

It would seem to destroy everything we have tried to do if we place back into the hands of the legislature the possibility of adopting any kind of accounting procedure during the actual using of the funds that would take this independence away from the court, and I would oppose the amendment.

CHAIRMAN VAN DUSEN: The gentleman from Detroit, Mr. Austin.

MR. AUSTIN: Mr. Chairman, I just asked Mr. Brake a question privately, and I think I will ask it here on the floor, because I think maybe this answer ought to be in the record, because I am not clear on it. When the committee passed Committee Proposal 37 from the finance and taxation committee this language was included, "No money shall be paid out of the state treasury except in pursuance of appropriations made by law."

Of course, my question is — before I ask my quesion I would like to comment on something else that was said a little earlier about audits, because when I sit down I know that I will yield the floor. In regard to audits, I would like to call to Mr. Danhof's attention that we do now provide in the constitution that all accountings — that the legislature shall provide by law for the annual accounting of all public moneys; the legislature shall provide by law for the audit of state and county accounts by competent state authorities. I merely wanted to point out that we have already provided for the audit of any state accounts, and this would include the supreme court as well as any others.

Now, to get back to my question: I would like to know why this language "no money shall be paid out of the state treasury except in pursuance of appropriations made by law" would not cover what we are interested in in this proposal. We are saying here that we would like the — I can't read this — subject to the general accounting laws of the state.

It would appear to me that if the appropriation for the supreme court is made in accordance with the section that we have already agreed upon, that at the time the appropriation is made the law which makes the appropriation would in some way indicate how the money is to flow to the judiciary which is to receive the money. If that isn't the case, I would like to have it explained.

CHAIRMAN VAN DUSEN: Mr. Brake.

MR. BRAKE: The provision that we have approved in the committee here, Mr. Austin, simply provides that the money appropriated to the supreme court will be available for the supreme court to spend. It doesn't say how.

Mr. Ford talks as if the legislature would have to pass some special accounting laws so that the supreme court could spend

its money. That isn't the case at all. Those laws are already there. They need not be changed. It is just a matter of having the supreme court put its vouchers through the regular channels; making any change in allotment they need from one quarter to the other, the same as everybody else does. It doesn't take any money away from them; it doesn't keep them from spending it; it doesn't take the control away from them.

CHAIRMAN VAN DUSEN: Mr. Austin, do you wish to pursue your point further?

MR. AUSTIN: I yield the floor.

MR. HUTCHINSON: Mr. Chairman, might I respond further?

CHAIRMAN VAN DUSEN: Mr. Hutchinson.

MR. HUTCHINSON: I would like to respond this way to Mr. Austin's question: Mr. Austin says, well, the appropriation act of the legislature will probably say in so many words that this appropriation shall be expended in accordance with the general accounting laws of the state. He thinks it will be taken care of at the legislative level, and I would agree with him but for the fact that here we are writing something into the constitution, and the constitution would supersede anything that the legislature might say in its appropriation act, and even though the legislature might say in its appropriation act — and this would be the general government appropriation act, which would include something for the supreme court as well as something for the other agencies of the government — even though that act might say that these moneys shall be subject to the general accounting laws — these appropriations shall be expended only in accordance with the general accounting laws of the state, the point is that here we have it in the constitution that the supreme court shall have control of the expenditure of the funds appropriated, and there aren't any constitutional strings applied, and if the issue arose before the supreme court, and the supreme court was called upon to interpret what its constitutional power was, as opposed, if you please, to the statutory directions of the legislature and the general accounting laws of the state, who is to say that the supreme court might not say: well, the constitution is silent on the matter, and doesn't put any conditions on that, and it has given us the absolute control of expenditure. So we will control it, and we won't go to the state administrative board seeking allotments, and we won't comply with the general accounting laws of the state because the constitutional writers said that in this particular field we weren't forced to comply with it.

Now, that, I think, is the answer to your question, sir. It is simply that here we are writing a constitutional provision which would, by interpretation, supersede anything that the ordinary processes might require, and you felt it necessary to write into the constitution assurance that their budgetary procedures would be taken care of by them, and I think that it is equally important that we make sure that the other end of the procedure likewise is constitutionally provided for under these circumstances.

CHAIRMAN VAN DUSEN: The gentleman from Muskegon, Mr. William Hanna.

MR. W. F. HANNA: Mr. Chairman, a question to Mr. Danhof. Mr. Danhof, in this matter you have "control the expenditure of funds appropriated." Is it your understanding that the supreme court would run a checking account independently of the general warrant system?

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: Do I think that they would? No, I don't think they would. As I said, I think they are intelligent people who want to comply with this system, and would go along with it. I can't conceive, assuming that this is going to be one of the duties given to the administrator, that he would do anything other than go with the particular usual state procedure.

MR. W. F. HANNA: Would you say that the supreme court could ignore central purchasing?

MR. DANHOF: It might.

MR. W. F. HANNA: Do you think they should?

MR. DANHOF: I don't know, but they might. It is possible that there are things that they may wish to expend on their own. Again, maybe they have to go out and purchase their own books. I don't know.

MR. W. F. HANNA: Is there any reason why they shouldn't be required to write a purchase order and go through ordinary purchase procedure?

MR. DANHOF: They are not a branch of the executive, Mr. Hanna. They are an independent branch, and again this seems to be a discriminatory tactic against the court.

MR. W. F. HANNA: Doesn't the legislature, when it buys its supplies, have to go through central purchasing?

MR. DANHOF: Only if they desire, I presume. They probably could say they didn't have to.

MR. W. F. HANNA: Do you interpret this language to mean they could issue their own warrants on the state treasury without any going through of the usual administrative procedure and having the warrant signed by the appropriate member of the budgetary control department?

MR. DANHOF: Could or would?

MR. W. F. HANNA: Could they?

MR. DANHOF: Yes, the same as the University of Michigan or Michigan State University can for $40 million or more.

MR. W. F. HANNA: Do you conceive of the supreme court as an independent body corporate that could be sued in its own name?

MR. DANHOF: I envision it as a separate branch of government that eventually should be given the right to run its own house.

MR. W. F. HANNA: Could it charge sufficient fees at the local court level with which to run its own operations, and thus not go to the treasury for appropriation?

MR. DANHOF: If you would read the second to the last sentence you will find that all fees and income must be turned over and credited to the general fund. They can't keep any money.

MR. W. F. HANNA: Well, this is inconsistent with your first position.

MR. DANHOF: No, because we do want control by the legislature which has to appropriate the money. Therein lies the control. The legislature, if it goes too far, would undoubtedly take steps to cut their budget, the same as it can do — it has the final say as to what is going to be appropriated. The court can't make its own appropriation. All we ask is that once it is justified in appropriations, it be given the right to spend the money within its own particular branch.

CHAIRMAN VAN DUSEN: The gentleman from Grand Rapids, Mr. Martin.

MR. MARTIN: Mr. Chairman, I have been voting consistently with the committee to support what I thought were full and adequate powers for the court to manage its own affairs, but I do want to indicate my agreement with Mr. Brake and Mr. Hutchinson with respect to this particular amendment. I think it simply says, in effect, that the court shall follow the same orderly procedures in obtaining its funds and making expenditure that other portions of the state government should follow. I don't think it will hinder the court in any way from using the money or spending the money in the way it sees fit. So I think the amendment is a proper one, and can do no harm, and perhaps can do some good in keeping the general procedures of handling the funds aligned with the procedures for the rest of state government. I would support the amendment.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Delegates Brake and Hutchinson, which the secretary will read.

SECRETARY CHASE: Messrs. Brake and Hutchinson have offered the following amendment:

[The amendment was again read by the secretary. For text, see above, page 1309.]

CHAIRMAN VAN DUSEN: Mr. Downs.

MR. DOWNS: Mr. Chairman, I rise in support of the committee report, and wish to express my agreement with Chair-

man Danhof. I think in all our discussion about the various branches of government it is time to remind ourselves again that we are talking about the supreme judicial power of the state of Michigan. We are not talking about an administrative branch or an administrative branch of an executive branch handling millions of dollars that we want to watch very carefully. Rather we are talking about the body that we look to as the deliberative thought provoking body that should not necessarily be tied down by routine and administrative channels, though certainly if they want to they can.

I would imagine from a legal viewpoint that if, for some reason, the legislature did not appropriate money for the pay of constitutional officers they could mandamus the state treasury to get it. I think that is as unlikely to happen as it is that members of the supreme court would capriciously or on whim spend the money. I think at some point, although building in safeguards is very proper, we should certainly respect a certain dignity of the office of both the legislature and the court, and I for one am satisfied that the legislature would not attempt to deny the pay of judicial officers, just as I am equally convinced that the judicial officers of the state would not spend the money capriciously.

I think the stand which is already explained by Delegate Austin is more than adequate, and I therefore urge opposition of the amendment and support of the committee report.

CHAIRMAN VAN DUSEN: The gentleman from Detroit, Mr. Madar.

MR. MADAR: Mr. Chairman, after listening to the interchange between Mr. Austin and Mr. Brake — rather Mr. Hutchinson — I thought that we ought to vote against the amendment, and then I listened to Mr. Danhof, and I listened to Delegate Downs, a couple of attorneys discussing it, and it sounds to me as if possibly the judiciary ought to have rights to do something on an administrative matter that no one else has a right to do; that they ought to be solely in charge of their own funds and do just as they wish and please. But so far as I am concerned, I don't think that the judiciary and the educational departments, or any other group, has any right to do these things, and they should submit vouchers the same as I or anybody else must do in spending public funds. I am in favor of the amendment.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Delegates Brake and Hutchinson. Does anyone desire to have it read further? Those in favor of the amendment will say aye. Those opposed will say no. The Chair is in doubt. Those in favor of the amendment will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the adoption of the amendment, the yeas are 53; the nays are 60.

CHAIRMAN VAN DUSEN: The amendment is not adopted. Are there further amendments to section f? If not it will pass.

Section f, as amended, is passed.

Mr. Bonisteel.

MR. BONISTEEL: Mr. Chairman and members of the committee, I know it is getting late, but I would like to ask Mr. Danhof a question, if he will be so kind.

CHAIRMAN VAN DUSEN: If the gentleman cares to answer.

MR. BONISTEEL: The last line in this section, "No justice of the supreme court shall exercise any other power of appointment to public office, except as otherwise provided herein." Precisely what does that mean?

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: Merely this, Mr. Bonisteel. As I understand it, that except for the appointments put in the constitution, there cannot be delegated to any justice of the supreme court by legislative act the right to make any other particular appointment in a public office either originally or in the case of a vacancy. Now, when they fill their staff, that is provided herein, that is, the staff of the supreme court. Also, as Mr. Ford read later on, we have a provision wherein the supreme court or the justices may designate a judge who has been retired to temporarily serve. Apart from that — and this is likewise true with circuit judges who in the Constitution of 1908 had only the right to appoint the clerk in case of a vacancy, and a prosecutor — in the Constitution of 1908 the court could appoint only a bailiff, a crier, and I think a reporter, Mr. Bonisteel.

MR. BONISTEEL: I am curious about the language here "No justice of the supreme court. . . ." Why should it be "No justice of the supreme court . . ."? Why shouldn't it be "The supreme court shall not exercise any other power of appointment to public office except as otherwise provided herein"? And then in furtherance of that same suggestion, suppose that the legislature directly authorizes the supreme court at some time in the future to make certain appointments which the legislature might feel the supreme court had better ability to do than perhaps somebody else; under the language you have here that would be prohibited, if I interpret it correctly.

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: That would be my interpretation, Mr. Bonisteel. It was the feeling of the committee that a prohibition of this type would be ample warning to the legislature that it cannot do just what you say you feel it might do, because we feel the court should not get involved, except in its own operations, with the appointment of anybody to a particular office or filling appointment to any board, and such things like that. Now that is basically the reason we extracted it exactly from the old constitution. We could change it around if you want to say "The supreme court or any justice thereof shall not exercise. . . ." The thought is except as the constitution provides the justices, and, as we go on, the circuit court also shall not exercise any type of a particular appointment of any other public office other than as prescribed in the constitution.

MR. BONISTEEL: I am not sure, Mr. Chairman, after listening to the explanation, but what there should be some amendment to this sentence that I have just talked about here. I am not convinced yet in my own mind that the supreme court should not have the right, if the legislature so desires to give it the right, to make some certain types of appointments. And since the hour is getting late, I think it may be a good place to stop now and get an opportunity to check this. At least I would like to check it.

CHAIRMAN VAN DUSEN: Mr. Bonisteel, the Chair had, prior to recognizing you, announed that the section had passed, and I would suggest that your amendment would be in order after completion of our consideration of Committee Proposal 91, when amendments to the body of the proposal are in order.

Mr. Danhof.

MR. DANHOF: Mr. Chairman, I move the committee do now rise.

CHAIRMAN VAN DUSEN: Mr. Danhof moves that the committee do now rise. All in favor say aye. Opposed no.

The motion prevails. The committee will rise.

[Whereupon, the committee of the whole having risen, Vice President Romney resumed the Chair.]

VICE PRESIDENT ROMNEY: Delegate Van Dusen.

MR. VAN DUSEN: Mr. President, the committee of the whole has had under consideration the same proposal of which the secretary will give a further report.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 91,** A proposal pertaining to the supreme court; has considered several amendments thereto, and has come to no final resolution thereon. This completes the report of the committee of the whole.

VICE PRESIDENT ROMNEY: Announcements.

SECRETARY CHASE: The committee on emerging problems will meet Tuesday, tomorrow, in committee room I on the third floor at 7:30 p.m. Frank Millard, chairman.

The apples today are from Mr. Turner. (applause)

Mr. Heideman called in and wishes to be excused from tomorrow's session.

VICE PRESIDENT ROMNEY: Without objection, it is so ordered.

SECRETARY CHASE: That is all of the items on the desk at this time, Mr. President.

VICE PRESIDENT ROMNEY: Delegate Lesinski.

MR. LESINSKI: Mr. President, I move that the convention now adjourn.

VICE PRESIDENT ROMNEY: You have heard the motion. Those in favor say aye. Opposed?

The motion prevails. We are adjourned until tomorrow morning at 9:30.

[Whereupon, at 10:10 o'clock p.m., the convention adjourned until 9:30 o'clock a.m., Tuesday, February 27, 1962.]

EIGHTY-EIGHTH DAY

Tuesday, February 27, 1962, 9:30 a.m.

PROCEEDINGS

PRESIDENT NISBET: The convention will please come to order.

Our **invocation** this morning will be given by one of our own delegates, Leslie Richards, from Marquette county.

MR. RICHARDS: Let us pray. Almighty God, Thou hast taught us that in quietness of prayer, Thou shalt be our guide. Help us to know that Thou art always with us. As our purpose is to help our fellowmen and to promote all that is good in the life of our state, so we pray that Thou wilt strengthen our hands in all our undertakings. O God, who dost hold us to account for the use of our powers and privileges, guide, we pray Thee, the delegates of this convention, that by wise legislation and administration the rights of all the people will be protected and our state enabled to fulfill its purposes. Grant to us the spiritual gifts of understanding and wisdom, of strength and counsel, that we might uphold what is right and follow what is true. Save us from discord and confusion, from pride and arrogancy, and fashion us into one united group. Exercise our minds to meet our responsibilities and endue us with Thy wisdom. Deliver us from putting selfish, private interests or concerns above public welfare. We know, our Father, that at this important hour we need Thee. We need Thy strength, Thy guidance, Thy wisdom. There are always problems far greater than the wisdom of man can ever solve. May these responsibilities lie heavily upon our hearts. Give to us honesty, courage, and the moral integrity of doing that which is best and right. Bless this state we love so much, and may the work of our hands and minds the past few months brings to our state a constitution that will bring to the people a real sense of well being, fairness, sound security and peace of mind. Purify our intentions, strengthen our purposes and grant that in serving our fellowmen we may serve Thee. Through the name of Jesus Christ our Lord we pray. Amen.

PRESIDENT NISBET: The **roll call** will be taken by the secretary. Those present please vote aye. Have you all recorded your presence? If so, the secretary will record the roll.

SECRETARY CHASE: Mr. President, a quorum of the convention is present.

Prior to today's session, the secretary received the following requests for leave: Mr. Baginski, from today's session; and Miss Hart, indefinitely, due to illness.

PRESIDENT NISBET: Mr. Danhof.

MR. DANHOF: Mr. President, in regard to Judge Mosier, I would like to state that yesterday I received a telegram to the effect that he was ill, and I assume this is the case today. I would request that he be placed on indefinite leave.

PRESIDENT NISBET: Thank you, Mr. Danhof. Without objection, the requests for leave are granted.

SECRETARY CHASE: Absent with leave: Mr. Baginski, Miss Hart, Messrs. Heideman, Karn, Mosier, Perras, Rood and Yeager.

Absent without leave: Mr. Habermehl.

PRESIDENT NISBET: Without objection, Mr. Habermehl is excused.

[During the proceedings the following delegates entered the chamber and took their seats: Messrs. Habermehl, Karn, Rood and Yeager.]

Reports of standing committees.

SECRETARY CHASE: None.

PRESIDENT NISBET: Select committees.

SECRETARY CHASE: No select committee reports.

PRESIDENT NISBET: Communications.

SECRETARY CHASE: None.

PRESIDENT NISBET: Second reading.

SECRETARY CHASE: Nothing on that calendar today.

PRESIDENT NISBET: Motions and resolutions.

SECRETARY CHASE: No resolutions on file.

PRESIDENT NISBET: Unfinished business.

SECRETARY CHASE: None.

PRESIDENT NISBET: Special orders.

SECRETARY CHASE: No special orders.

PRESIDENT NISBET: **General orders.** The Chair recognizes Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, I move that the convention resolve itself into committee of the whole for the purpose of consideration of matters on the general orders calendar.

PRESIDENT NISBET: The question is on the motion of Mr. Van Dusen. Those in favor say aye. Opposed, no.

The motion prevails. Mr. Van Dusen.

[Whereupon Mr. Van Dusen assumed the Chair to preside as chairman of the **committee of the whole.**]

CHAIRMAN VAN DUSEN: The committee will be in order and the secretary will read.

SECRETARY CHASE: From the committee on judicial branch, by Mr. Danhof, chairman, **Committee Proposal 91,** A proposal pertaining to the supreme court.

For last previous action by the committee of the whole on Committee Proposal 91, see above, page 1300.

[Section g was read by the secretary. For text, see above, page 1256.]

CHAIRMAN VAN DUSEN: For an explanation of the section, the Chair recognizes the chairman of the committee, Mr. Danhof.

MR. DANHOF: Mr. Chairman, members of the committee, to explain the majority position of the committee and the report of the committee on this particular section, I should like to yield at this time to the delegate from Hillsdale, Mr. Prettie.

CHAIRMAN VAN DUSEN: The Chair recognizes the delegate from Hillsdale, Mr. Prettie.

MR. PRETTIE: Mr. Chairman and fellow delegates, in this presentation I do not propose to read either section g of Committee Proposal 91, which the secretary has just read to you, nor the report of the committee in support of it. I shall assume that you have all read these. If you have not, the proposal is before you, and is published in the journal at page 465, and the report begins at page 467.

I do want to highlight some of the developments of the past 6 months that have resulted in the presentation of this proposal for your consideration, and may I say it is submitted in all sincerity. Several members of our committee, as well as lawyers statewide have long been concerned with the flagrant inconsistency of our supreme court justices being nominated at party conventions and then, so to speak, taking a bath and running as nonpartisan candidates for this high office. It was obvious that some correction of this anomaly was necessary if the integrity of this court was to be preserved and public respect for it maintained. Such an inconsistency, I believe—and I think many join me in this—reflects at the very outset upon the integrity and the honesty and the political acumen of every candidate for this high office.

Before this convention met, several delegates, who later became members of our committee on the judicial branch, corresponded between themselves on this subject, and they had the benefit of the advice and counsel of then and now members of the supreme court. Later, when these delegates to whom I have referred were appointed as members of the committee on judicial branch, we found ourselves and the entire committee faced with several possible solutions to this dilemma. Some of them were Hobson's choice.

If you refer to the material projected on the wall that will be before you as I discuss this matter, our choices were between some appointive method, providing either for the appointment of justices of the supreme court by the governor, with the advice and consent of the senate, or from a list of qualified appointees submitted in accordance with the so called Missouri plan. A second choice was a continuance of the present provisions of section 23 of article VII, as implemented by statute, which results, as I mentioned, in partisan nomination of justices followed by "nonpartisan" statewide election. A third choice is a constitutional change or a direction to the legislature to provide for statewide nonpartisan primary, followed by statewide nonpartisan election; or, in the alternative, a statewide partisan primary followed by a statewide partisan election. A fourth possible choice, and the one that we have before you, a plan for election of justices of the supreme court from areas within the state so arranged as to be as nearly equal as possible in population and availability of qualified candidates. Now I wish you would keep these choices before you as we consider some further matters.

As early as October 24, 1961, the general subject of the Missouri or ABA plan was vigorously advocated before our committee. John Manning, writing on the editorial page of The Detroit Free Press on November 1, 1961, said:

> Last week at the constitutional convention, certain representatives of the state bar association resumed their argument in favor of the Missouri plan for making judges. Under it the public has virtually no say. A tight little committee of attorneys and laymen would tag a list of judicial nominees and the governor would pick appointees from this sacred list.
>
> Delegate K. G. Prettie of Hillsdale demanded of Professor Charles W. Joiner, a convention codirector of research, "Do you feel there is something so sacrosanct about the courts that we should treat them differently from other public offices?"

Then the article went on to comment favorably upon the general principle of election as opposed to appointment on any basis of members of this high court.

This favorable press reaction to election as distinguished from appointment of our judiciary encouraged certain members of our committee to discard the Missouri plan, and on November 7, 1961, Delegate Proposal 1218 was introduced, joined in by 6 members of our committee, including 3 former circuit judges of this state, and proposed a district plan for nonpartisan election of members of the supreme court. On December 1, 1961, this plan was further refined and included as a part of a complete judicial article as Delegate Proposal 1488, which you have all had on your desks for months. In the meantime our committee was hearing testimony from scores of witnesses on every phase of the judicial article, including the subject of judicial selection and tenure as bearing upon the 4 choices, the subdivisions that you have before you.

May I share with you some of this testimony? And I have to apologize for reading it because I wish to quote it with ultimate accuracy. On November 8, 1961, Justice Eugene Black appeared as a witness before our committee, made a rather lengthy statement and then answered questions for some considerable period of time. One of these questions was:

> Wouldn't the election of supreme court justices on a district basis be advisable for these reasons? Areas wouldn't be so large that the people would not be acquainted with candidates, and it would also eliminate the strenuous campaign ordinarily being statewide. What is your thinking?

End of the question. Then the answer:

> The plan that you are talking about is one that Judge Pugsley has labored with me on for months and months back. I think it is wonderful. I think it would be a step forward as the nominating system and elective system would normally be separated from party politics, and it has this advantage: it takes less time to campaign in a limited district and, if you are a money spender, it would take a lot less money to campaign in a limited district. I do not believe in the appointment of a judge to a judicial position for any length of time.

Then the question:

> If we adopt the district system, would the district represent a like number of voters or like area?

And the answer was:

> I would like to see them represent a series of districts composed in such a way that every man's vote has equal value.

End of quote, and end of that portion of Justice Black's testimony.

On November 9, 1962, Justice Theodore Souris made a very helpful presentation to our committee in connection with the establishment of appellate courts, and those appellate courts he suggested be established by districts, and submitted maps, in which regard he testified. His testimony is rather lengthy, but I submit to you that it is so important on this matter of these choices before you that I ask you to bear with me in reading it. He testified, "I suggest that it might be desirable to have intermediate appellate judges elected from the districts within which they would be working." In answer to questions he testified:

> I say to you that where you have a whole state from which to select your nominees at a particular moment it may be necessary to make a selection, it may be desirable to make a selection from a particular area.

He was asked the question:

> What is your view of the federal appointive system? Do you think that this has resulted in less than adequate judges on the federal bench?

And he answered:

> I prefer the caliber of judges we obtain in Michigan at our circuit court level and at our supreme court level over the caliber of judges we obtain in our federal district court and circuit court of appeals level all over the country.

In his formal statement to the committee Justice Souris spoke strongly against any appointive system, saying:

> The people's right to vote for their judiciary should not be taken away from them any more than there should be taken away from the people their right to vote for those who enact the laws or those who enforce them. Once anyone assumes a special capacity for selection of superior judges, it must necessarily follow that they or others like

them possess a special capacity for selecting, in place of public election, the governor and our legislators. No thoughtful student of American government would go so far. It's bewildering to me to discover that some thoughtful citizens apparently are seriously considering the unconditional surrender of the elective franchise as it relates to the judiciary.

End of Justice Souris' testimony.

Justice George Edwards, in a prepared statement on November 1, 1961, advocating a statewide elective system, testified at some length. In his prepared statement he said:

Election of judges has been a basic part of the American tradition since the revolution. Most state judicial systems provide for an elected judiciary. In Michigan our state judicial system has been elective since 1837, when Michigan became a state.

During all of its history, the Michigan judiciary has been of high repute in the state and the nation. No major scandal has besmirched its record. Its record for disposition of litigation compares very favorably with the records of sister states.

Michigan's present electoral provisions relating to the judiciary provide for independence of the judiciary. At the same time, this constitutional article would preserve to the people the right of election of their judges. By requiring judges periodically to report to the people who are the source of their power which they wield on the bench, some tendency is created toward restraint of possible judicial arrogance.

And I think in the past few days, parenthetically, we have had some indication here of what has been termed judicial arrogance. To return to Justice Edwards' testimony:

While relatively few incumbent judges have been defeated for reelection, the people have had a remedy when a clearcut need was presented.

The suggestion that election of judges should be removed from the hands of the people and placed in the hands of a select committee I regard as having little merit. The argument of the advocates of this plan is that it will serve to remove the judiciary from politics. In reality, the plan means that open political consideration of the judicial nominations is replaced by a few men in wholly private meetings.

The people of this state have never exhibited any desire at all to abandon their right to elect their judges. I would think it most unwise to draft a constitution for presentation to the people which did not retain an elective judiciary for the state of Michigan.

Justice Dethmers, who was one of the few witnesses appearing before our committee testifying in favor of the Missouri plan, of group selection or nomination, rather, and then appointment, broadcast over channel 10 TV on November 20, 1961, and among other things Justice Dethmers said:

It has been demonstrated that people don't know much about who the candidates are for the supreme court, and so they cast their votes, a majority of them, for a name candidate, who perhaps may have been governor or secretary of state, or something like that.

He went on to say:

Now, what is it that the people are entitled to in a judge or in a supreme court justice? Well, I submit that they are entitled to—what they are entitled to is independence, impartial judges who are not influenced in any way by party obligations or influence of pressure groups. Now, I am submitting that when you have to be nominated by a party, and then have to have party support to be reelected, it takes good, strong character to resist the memory or the realization of that fact.

Justice Paul Adams also appeared before us and favored the present status quo with its inconsistency, and opposed the Missouri plan. I am only going to give a very brief excerpt of very fine and extensive and helpful testimony that Justice Adams gave us. He said:

I strongly advocate the election of judges and justices. There are two important aspects of this process. First is the participation by the people in their government. Second, and equally important, is the effect running for election has on the candidate himself. There is no other way for our officials, the representatives of the people, in whatever branch of government, to get close to the people and to understand their needs except by submitting themselves to the people and seeking their support.

Judge Michael Carland, president of the Michigan judges association currently, on November 16, 1961, testified in part:

We are opposed to any plan which takes from the people the right to elect their own judges. The suggested election of supreme court justices by districts may be the answer, and seems to have merit, but only if elected upon a nonpartisan basis.

Judge Noel Fox appeared as a witness on November 14, 1961, and submitted the report of the citizens advisory committee of which he was chairman. This committee recommended that the present inconsistent method of nomination and election be retained, but this report rejects any appointive plan and states at page 29 of the little booklet you all have:

This constitutional article should preserve to the people the right of election of their judges. The suggestion that election of judges should be removed from the hands of the people and placed in the hands of a select committee is regarded as having little merit.

Now our committee felt that this district plan was perhaps somewhat novel; certainly new to Michigan, but we learned that it was not unique, that it exists in other states, and it exists in our neighboring state of Illinois. Recently that state revised its constitution, and in that revision it retained the district election of its supreme court judges. We therefore invited, as a witness before our committee, Mr. Albert Jenner of Chicago, a past president of the Illinois bar association. He testified on December 7, 1961, to the following question:

Do you find that the election of the supreme court justices on the district basis has any tendency to polarize or balkanize those judges in their thoughts on the supreme court?

This answer:

No. I can say this after 31 years of practicing law, and I am a litigation lawyer, and have been in that court a 150 times. It has not balkanized those judges at all.

Then the question:

Do you find that the election of these justices of the supreme court on a district basis has a tendency to encourage better lawyers to run for office?

And his answer was:

Very much so. First, let us take campaign expenses. For a judge to really campaign throughout the state of Illinois is a tough job. It costs a minimum of $45,000 to $50,000; an absolute minimum.

Now I could share with you, fellow delegates, a great deal of additional testimony before our committee taken over the 3 months we deliberated this matter, but this should suffice to give you the general purport of what we heard.

Following this extensive testimony we took a first vote on substantive matters in our committee on January 16, 1962, and that vote was on the proposition as to how many of our 21 members favored an appointive as against an elective system. The vote resulted in that 18 opposed appointment, 1 favored it and 2 were absent. On the same date we voted specifically on the Missouri plan. Fifteen opposed it, 3 were in favor of it, and 3 were absent or abstained. This vote eliminated from our consideration any appointive method, and left us faced with the second, third and fourth choices and their subdivisions appearing on the wall before you.

A continuance of the existing inconsistency was unthinkable in view of the testimony of which I have given you excerpts, and that eliminated choice 2. Much testimony had convinced us that the difficulty and expense of statewide partisan or nonpartisan elections was an insupportable burden beyond anything that would attract competent members of the judiciary. This ruled out choice 3. The group within our committee, therefore, continued to work toward further perfection of the

district plan, which was finally revised on January 25, 1962, so that it looked like this — if I may have the next projection. There. This map is very similar to the one that has been distributed to you and outlines the areas and the boundaries of these districts, which are in correspondence with the boundaries of existing circuits so that they correspond with the general judicial structure. I think it is quite impossible for you to see the figures in the upper right hand corner of the board. It's possible it could be moved down just a little bit lower.

In carrying out the desire of those who sponsor this proposal for as nearly as possible equal distribution of population throughout the state, a division was made which establishes Wayne county as one judicial district, entitled to elect 3 justices, and with a population of some 888,000 persons per justice. Oakland county is somewhat smaller than 1/9 of the state, but this was purposely so because of the projection figures for 1970 population that would indicate substantial growth. The other areas of the state range, as you can see from the chart — and you have had these in your hands for over a month — from a low of some 815,000 to a high of some 990,000.

Now another problem that concerned us was the legal population of the state and the availability of competent legal talent on a statewide basis and on a district basis, and if we may now have the next projection, which is a projection of figures also appearing in your journal, this tabulation will illustrate the thoroughly constant proportion of lawyers to population in each of the proposed judicial districts. I think the low is 520 lawyers in the judicial district 4, ranging up to 767 in judicial district 5, and with 4200 in Wayne county. But from that there would be selected, as the years go on, 3 members of this high court. In making this tabulation, the source of which was figures from the state bar of Michigan, I endeavored in Wayne county, at least, and also in Ingham county, to eliminate those who could be clearly identified from legal rosters as public officials, house members and law professors, but these tabulations in all instances must necessarily include some retired, inactive practitioners and members of the judiciary.

On January 25 there was submitted to every member of this convention a draft of this plan with reasons in support of it much the same as those appearing in your journal. A request was made for any objections or criticisms or suggestions for improving it, and with a request that each delegate return an indication of his thinking on this plan. As a result of this, one letter was received urging a completely appointive plan; one letter vigorously opposed the plan, and I will discuss this later in greater detail. Twenty marked ballots were received, of which 14 favored the district plan. While the return of the questionnaires was disappointingly small, it was no smaller than the percentage of votes by which most of us hold our seats in this convention. In any event, it indicated some substantial majority in favor of the plan, and encouraged those who had been working upon it for months to go ahead further with its perfection and presentation.

I should point out further that while this plan was under consideration, the state bar of Michigan conducted a poll of its membership. The results of this were received on January 10, and have been duplicated and distributed to you. Even without the details of the district plan before them, because it had not been finalized when this questionnaire was prepared on December 20, if you will refer to page 2 of these questionnaires, you will see under question 3c that if the court be elected, 1442, or 36 per cent of the lawyers expressing a view felt that a regional basis should be advisable, and this was somewhat a matter of buying a pig in a poke, because the details were not before them. Although the point will be made that on page 1 of this questionnaire there is an indication that out of 4903 lawyers some 2500 favored the Missouri plan, in evaluating this questionnaire — and this fact was very vigorously brought out by Mr. Ford in our committee — the circumstances under which that poll was taken must be given consideration. To every lawyer in the state, and concurrently with the distribution of that questionnaire, were delivered 2 separate pieces of literature favoring the Missouri plan. One of them starts out with the catch line "A once in a lifetime opportunity," and the other one starts out "Arise and be heard." These questionnaires were returned with that kind of solicitation at the ballot box, if you please, before the lawyers of the state, and I think the result of it must be evaluated with that in mind.

I do not wish to repeat the argument submitted in the report in support of this plan. These were furnished to each delegate on January 25, and are spelled out in detail on page 468 of the journal. I might say that one feature which wasn't mentioned in those arguments, and which I think is a very important one, is that such a plan as this would provide for an orderly progression through competent lawyers to positions on our circuit bench, through that, hopefully, to positions on the bench of our intermediate court of appeals, if and when established, and, hopefully, from that on to the high bench.

Now, I said I wanted to deal briefly—and I will try to be brief in the presentation of it—with some of the criticisms that have been leveled against this plan. First, the catch phrase or the cliche that this is a balkanizing of the court. I submit this has no real validity. The argument entirely overlooks the fact that our circuit judges now preside in courts throughout the state. They are, of course, elected in their own individual circuits. No one has ever claimed—certainly they haven't claimed with any justification—that this resulted in any parochialization of the thinking of our circuit judges. They have administered justice with an even hand regardless of where they reside or the location of the court in which they preside. Many of those judges who are delegates here presided in many of the courts of this state, and the fact that they came from Harrisville or Oceana county, or some other county, Bay county, didn't influence their decision when they were sitting in Wayne or elsewhere in the state.

Furthermore, Justice Souris himself suggested that the proposed court of appeals be established on a district basis and that the judges thereof be elected from the districts so established, although they would be empowered to sit and hear cases in any district in the state. If this does not balkanize the appellate court why should it be claimed that district selectives of the supreme court justices would balkanize that court? I mentioned earlier there had been distributed to you within the past 2 or 3 days a map much the same as the one on the wall, but containing the names and terms of service of 29 justices of the supreme court who have served this court within the past 30 years. I made a little analysis of that, and 7 of these judges came from district 1. Seven of them also came from district 6, and the Grand Rapids area. Three each came from districts 3, 4 and 5, only 1 came from Oakland county in that entire 30 years, and 5 came from the upper part of the lower peninsula and the upper peninsula, what would be district 7 under the plan as suggested.

So, if the court has not been balkanized by the distribution, perhaps by accident, resulting from partisan nominations over the past years, I don't think a planned method of distribution of the selection of our talent would be in any wise more of a balkanizing effect. Now, I prepared a chart, which is on the screen, of the present membership of our supreme court, and you will note that it comes from 5 of the districts now proposed. It cannot be contended with any validity that the distribution of our present justices from various parts of the state results in a parochial attitude on the part of the membership of that high court. Justice is, and I submit has always been, administered with a view to the law in the state as a whole. There was no evidence before our committee that election on a district basis in Illinois resulted in a balkanization of that state. In fact, the testimony of Mr. Jenner was exactly to the contrary.

Now, by reason of the imminent retirement of Justice Carr at the end of his present term beginning January, 1964, there will be a change in the court. Taking this into account, and if the district plan be adopted, then the personnel of the court, subject to reelection, would be as shown on this projection. This assumes the creation of the 9 judicial districts proposed

in the plan. It will be noted that there would be one vacancy from district 1, and there may be some question concerning Justice Kelly, who I think now is a resident of Otsego, but under the plan he could run from the Detroit area where he has historically lived, or choose district 7, if he so desires. There would certainly be one vacancy from judicial district 1. There would be a vacancy from judicial district 2. Justice Smith would represent his home district, district 3; Justice Black is district—Port Huron and the area—4; Justice Kavanagh, now a resident of Lansing; Justice Dethmers is presently a resident of Lansing, but his origins were in Holland, and he, under the plan, would have the choice of running there; and Justice Adams representing district 7.

On February 14 there was distributed to every delegate here a letter from the league of women voters stating their views as to what we should do here. This well meaning group of some 3700 interested citizens stated that this plan "opens the highest court in the state to unwholesome partisan and sectional pressures." Partisan pressure is exactly what they are trying to avoid. Sectional pressures, I submit, do not exist. We have had no evidence of it in the years that sections have been represented on our high court. It is further stated in this letter that the supreme court must serve all Michigan people equally and impartially. Whoever said that it does not? As I pointed out, although the justices now and always have come from various parts of the state, as shown by the map I referred to a moment ago, they have administered even handed justice on a statewide basis. And, finally, the league of women voters urges us to ease the voters' job by providing for original appointment. My answer is: this doesn't ease the voters' job, it destroys it.

The argument is made that the state's keenest legal minds are to be found among Wayne county lawyers. There are among this delegation 6 retired circuit judges who have presided in Wayne county and elsewhere throughout the state. I hope they will take this floor and tell you, as they have told me, that there is no monopoly of legal knowledge in this state nor in any county of this state. The map that you have negatives this fact. There has been a fair distribution of membership on our high court throughout the state over at least the past 30 years, and I think the analysis might be extended for many years back of that.

Now just a word about the minority report appearing on pages 579 and 580 of the journal. To me it does not seem to be constructive; it merely proposes the elimination from the constitution of section g of this committee proposal. I am not certain where this would leave us, for the committee has filed Exclusion Report 2043, recommending exclusion of the entire judicial article, now section 23 of article VII. I believe that it is the intent of the minority report to include in Committee Proposal 96 a continuance of the status quo. But I think we have already discussed that sufficiently.

The most recent criticism that has come to my attention is an editorial in one of our state's metropolitan dailies. It is a constant source of wonder to me that the writers of these editorials, without hearing any witnesses, and without considering all sides to any question, suddenly become experts. Let us look at this editorial. The editor states, "We have no great love for the present system, especially its nomination to a nonpartisan court by party conventions." Later they state, "There is no point in plugging for a modified Missouri plan. It's politically dead." By these statements 2 of our possible alternatives have been eliminated. The editorial then criticizes the district plan because, they say, it is a situation tailor made for name candidates or pressure group favorites. This certainly is not true in the major part of the state where circuit judges and competent lawyers are known to their constituents for their character alone. Another criticism, "Highly qualified men may be shut out in his own district while mediocrity turns out to be the best to be found in the next district." History has shown that competent jurists can and have been found and have served with credit on this court from every area of the state. And, finally, in this editorial the point is made, "Sectionalism should have no place in deciding statewide questions of law." I think I have already dealt with that sufficiently. The historic geographical distribution of members of our court has never resulted in sectionalism, and the continuance of statewide distribution of personnel will not, I submit, result in any sectionalism in the future. After reading this editorial yesterday, it seems to me clear that the writer is against practically every plan that has been proposed, but it certainly is not clear to my mind what he favors, and that is the problem we have here to decide.

Two or 3 final details should be outlined. These are found toward the end of Committee Proposal 91g, lines 14 to 21. It provides for readjustment of these districts by the legislature as population changes may require, but such readjustment should not result in the removal or disqualification of an incumbent judge for election or reelection. The proposal makes existing election laws applicable to all primaries and elections for justices of the supreme court. It continues in office incumbent justices without regard to place of residence, and permits their reelection similarly without regard to place of residence. It empowers the legislature to provide for transition from present methods of election to the method provided in the proposal.

Now, before someone else mentions it, I should state to you, in all frankness, that this proposal was reported out of the committee on judicial branch by only 11 votes, with 5 opposed and 5 absent or abstaining. I would further point out, however, that it was the only proposal that obtained a majority vote in the committee, and that the plans for appointment, as I discussed very early in this presentation, were opposed by an overwhelming majority. I submit that this district plan, coupled with our established precedent of nonpartisan election, will secure for this state a supreme court of the highest caliber; will attract as candidates the most competent lawyers from all over the state; will make members of the judiciary known to the voters who elect them, and will result in a truly nonpartisan court without the inconsistency of party nomination followed by so called nonpartisan election.

CHAIRMAN VAN DUSEN: Mr. Danhof, do you have—Mr. Danhof is not present. Mr. Ford, does the committee have further presentation with respect to section g?

MR. FORD: In the absence of Mr. Danhof, I would like to yield the floor, if I may, Mr. Chairman, to Judge Leibrand.

CHAIRMAN VAN DUSEN: Judge Leibrand.

MR. LEIBRAND: Mr. Chairman and fellow delegates, after listening to the able presentation of the position of the committee on district election of judges, most anything that I might say would fall very flat, indeed. I do think, however, that perhaps it would be helpful to the delegates if I gave a brief review of the history of Michigan's judicial system.

Michigan's first constitution was drafted in 1835, prior to the admission of Michigan as a state of the union. Following the plan that had been in effect during the territorial days, judges were appointed by the governor with the advice and consent of the new state senate. It took only 15 years for the people of the state of Michigan to have a belly full of that system. In 1850, when they drafted their new constitution, they provided for the election of judges. Now, that election under the 1850 constitution was by a partisan system, by conventions, state conventions and county conventions, but it was, fellow delegates, election. That election continued from 1850 until the Constitution of 1908, with 58 years experience. And again the drafters of the Constitution of 1908 provided for an elective system, for the election of supreme court, circuit court and probate court judges. They continued on this party system, which was the only real system which was known then not only in Michigan but in other states. By the year 1939 the people of the state of Michigan had had their fill of partisan elections. For 89 years they had experience with them, and they decided that they could improve the judicial system by placing the election of judges on a nonpartisan basis.

By initiative petition, not through the political parties, not through the legislature, but their own initiative petitions, there was placed on the ballot in 1939 a measure which was designed to make the election of judges truly nonpartisan. I don't have the figures before me, but my memory is that that initiative proposition carried by a vote of something like 375,000 to

240,000. And I say to you members of the convention, and I have mentioned this before, it isn't so bad to try to tinker with provisions that were put into this constitution by the Convention of 1908, but when you start to tinker with any proposition which has been put into the constitution by the people, particularly by a large vote, we are treading on awful thin ice.

Going back to this 1939 nonpartisan amendment, initiative amendment, that provided for the complete 100 per cent nonpartisan nomination and election of probate judges and circuit judges in their counties and districts, nomination by nonpartisan petition, election on nonpartisan ballots, when the favorers of the initiative amendment got to the supreme court, and how to handle that, they ran into trouble. They knew, as well as we know today, that it was a very, very difficult proposition for a lone nonpartisan candidate to campaign the entire state of Michigan, and to carry the campaign costs, the expenses that were incident to that. So the framers of that initiative amendment did what we are doing here in this convention with many matters for which they could find no solution. They passed the buck to the legislature, and they said the nonpartisan nomination — the nomination, not nonpartisan, but the nomination for justices of the supreme court shall be made in such manner as is provided by the legislature. And the legislature had as much trouble with that proposition as had the framers of the initiative amendment. And so the legislature came up with this proposition of nomination at party conventions and election statewide on nonpartisan ballots; the proposition, as Delegate Prettie says, of going into a convention with your hat in hand to get a nomination and then taking a bath and starting out around the state claiming you are pure, white and free from any political taint.

Now, I've campaigned. I say to you that this provision, this system we have for nominating justices of the supreme court, and which will be in effect for the nomination of justices of the appellate court, is decidedly unpopular with the people. My district is about 100 miles wide — 100 miles long and about 30 or 40 miles wide, and I campaigned that district intensively for about 3 months, and I appeared at dozens and dozens of meetings and dozens and dozens of debates, and as I did so I found considerable concern about the Michigan supreme court and the method of nomination of its members, and what the folks in my audiences and the folks who asked me questions were concerned with was not how to transform this into an appointive system — not once out of these dozens of meetings, out of these hundreds or thousands of questions, did I hear one single suggestion that the nomination and the election of the Michigan supreme court should be done by appointment. The questions I did hear and the suggestions I did get were that this convention should settle down to do something that made the judiciary of Michigan truly nonpartisan. I believe, members of the committee, that that is what the people want. I don't believe they want an appointive system. I don't believe they want the hybrid system that they have now.

Thirty-seven out of our 50 states have an elective system. Thirteen out of the 50 have an appointive system. But no one has the kind of a monstrosity that we have been trying to get along with here since the year 1939.

Mention has been made of an editorial appearing in the Detroit — my fellow delegates said a metropolitan paper. I'll call the names — The Detroit News, dated February 26. I hope you all read that. And then after you have read it, I hope you compare it with an editorial in the State Journal of November 19, 1961. Now, I submit to you that since we have been assembled in the convention here there have been numerous criticisms about the accuracy and the positions taken by the metropolitan papers. I submit to you that since we have been in convention most of us have been reading for the first time regularly the State Journal published here in Lansing. I am not a stockholder in the State Journal, but I say to you that I feel that the reporting in the State Journal and in the Booth newspapers is so far superior to the reporting in the metropolitan dailies, there is no comparison. I want to read you this editorial from the State Journal, which gives you the other side of the question, and then I will be done. The title of this editorial is, "Sham Should Be Eliminated."

> Some changes in the Michigan supreme court system are almost certain to be written into the new constitution proposal being drafted by the constitutional convention. A parade of witnesses already have been heard on the supreme court issue, and although there has been no unanimity on what should be done, most of the witnesses, including a number of supreme court justices, have expressed themselves as to the need for revision.
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> Under present law Michigan's 8 man court is selected in staggered terms of 8 years; 2 justices elected every other year. Theoretically the justices are elected on a nonpartisan basis, but the only thing nonpartisan about it is the official designation. The justices not only are nominated by party conventions, but they tour the campaign circuit with party nominees for other elective offices, and their campaign expenses are at least partly paid by party campaign funds.
>
> This sham should be eliminated. The justices should either be elected on a truly nonpartisan basis, without political party strings, or they should be elected on a partisan basis, and their political party made responsible for their action. The ideal arrangement would be to elect supreme court justices on a nonpartisan basis with neither the political parties nor the governor nor the legal profession —

and I emphasize this with special reference to the American bar association or the Missouri plan —

> nor the legal profession determining who shall be nominated or who shall be barred from nomination.
>
> The difficulty of this procedure is the element of cost, since supreme court justices hold state offices, the cost involved in conducting statewide campaigns in both primary and general elections can be considerable; so great, in fact, that many capable jurists would be precluded from office because they could not afford the expense of the election campaign. Obviously no one wants a supreme court packed with millionaires.
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> One proposal that had been suggested to meet this problem is the election of supreme court justices by districts. Thus a candidate for the high court would not have to campaign throughout the state, but only in his particular district.
>
> This solution to the cost problem also would remove another thorn that bothers a lot of people in the state of Michigan; that is the problem of preventing 1 political party or 1 pressure group with a potent political machine from grabbing control of the supreme court. If this should happen, and it could, the judicial system of Michigan would lose its integrity. A truly nonpartisan supreme court with justices elected from separate districts would reduce political pressures on the state's highest court, and would guarantee equitable representation for all citizens of Michigan.
>
> The supreme court should have an uneven number of justices; not 8 as now, but either 7 or 9, so there would be no votes on split decisions.

Mr. Chairman and delegates, I support the remarks of delegate Prettie, and support the adoption of the majority report on the district system. Thank you.

CHAIRMAN VAN DUSEN: Mr. Prettie, the Chair believes you had retained the floor. Do you have further presentation?

MR. PRETTIE: Mr. Danhof has now returned to the floor. I yield the floor to him.

CHAIRMAN VAN DUSEN: The Chair recognizes the chairman of the committee, Mr. Danhof.

MR. DANHOF: At this time I would like to yield to a member of the committee, Mr. Iverson.

CHAIRMAN VAN DUSEN: Mr. Iverson.

MR. IVERSON: Mr. Chairman, members of the committee, my remarks are going to be really brief, because I think this matter has been so ably presented by 2 previous speakers that it is unnecessary for me to enlarge upon it, except that I want to make a few remarks.

I go back perhaps 8 or 10 years when the bar association, the American bar association, I believe, first started action upon the so called appointive system of judges, and I must confess that for a short period of time at least, I was rather impressed with this system because I think as lawyers we are primarily interested in seeing that our courts are free from political pressures or other pressures, if you please, and I believe I was almost sold on the so called ABA plan. And I must make another confession; that about the same time I was a little discouraged about the jury system, and I had some ideas in my mind that perhaps that could be improved by some professionals, perhaps, sitting as jurors, or perhaps a bank of judges. I think all lawyers go through those situations, and I presume this situation was brought about by some immediate case where I felt there was a miscarriage of justice as far as juries were concerned.

Let me say to you now, I have completely changed my mind. Regardless of the fact that sometimes juries, to my way of thinking, do not try a case properly or come up with the right decision, I am still inclined to believe that it is the best system in the world today. I am ready to admit that juries can make errors, just as lawyers or judges can. I am ready to admit that in our system of government there are mistakes made. It is a slow process, and many things could be done for less money and in a quicker way. But I still think that we better retain our present system, regardless of those delays or regardless of the cost, and I think it goes without saying that most of you in this room agree.

As I say, I did feel at one time that perhaps this judicial system could be corrected by appointment of judges, and I presume a few situations occurred in between times where certain judges who were appointed for life became what I considered practically tyrants, and I am not ready to further a system of that kind in this state. Since that time, as I say, I am very much for trusting the people, if you please, to elect our judiciary just as they elect the other 2 branches of the government. Even though in some respects they may not know all the candidates, at least there is a chance that they can be informed, and, generally speaking, over the years they haven't made too many mistakes. I might have disagreed with them politically, perhaps, but that is neither here nor there.

Getting down to this present system, I don't think there is anyone in this room, deep down in their hearts — including the sponsors of the minority report which proposes to maintain the present hybrid system and, I believe, the minority party in this group — but who will agree with me that it is a crime and a sin, and I don't care which party you are in, to place a man in nomination, a lawyer, a reputable lawyer, in a party convention and then throw him to the wolves in a general election. I know whereof I am talking, because of one of the so called nonpartisan campaigns I handled for 2 of the gentlemen who were running for that office — and very capable men, too. Now, I will tell you, it just makes me sick. I don't think that anyone in this room — I don't care what party he belongs to, if he will be true to himself — will agree that the present system is conducive to good justice in this state. I think further than that, that unless we correct this situation we will have the wrath of God brought down on our heads as far as the press is concerned and the people of this state, because I don't think they're going to stand for the maintenance of this present system, and I, for one, am not yet ready to let the legislature make the correction. They have had since 1939, which I believe is about 23 years, and there has been no apparent attempt to do what is necessary to be done to correct the evils in the election of supreme court justices.

I hope you support the committee proposal in this matter, and I believe we will end up with a system of election of justices of the supreme court in the years to come which every one of you will be proud to have participated in.

CHAIRMAN VAN DUSEN: Mr. Danhof, has the committee further presentation with respect to the majority proposal?

MR. DANHOF: No, Mr. Chairman.

CHAIRMAN VAN DUSEN: If not, the committee will proceed with the consideration of the amendments on the secretary's desk, and the secretary will read the first amendment.

SECRETARY CHASE: Pursuant to the minority report of Messrs. Ford, Garvin, Bledsoe, Miss McGowan, Messrs. Ostrow, Barthwell and Krolikowski,

Mr. Ford offers the following amendment:

1. Amend page 2, line 25, by striking out all of section g.

CHAIRMAN VAN DUSEN: On the amendment the Chair recognizes Mr. Ford.

MR. FORD: Mr. Chairman, although I find much to disagree with in what has been said by the previous speakers, I find even more disagreeable the reaction that I have when I stand here and see that we are, in my opinion, debating one of the most important issues to come before this convention, and one that affects everybody in this state intimately and throughout everything they do, and see that we don't have a quorum on the floor. I know it is not a popular thing to start advocating a cause by antagonizing your jury, but it would seem to me that there ought to be a device whereby we can take a recess and then get back here and consider this, and if it would be in order I would like to move that the Chair follow the rule on the 10:30 recess, and we come back to this when we have a better audience.

CHAIRMAN VAN DUSEN: Mr. Ford, a quorum is present. The Chair has just satisfied himself of that fact. The Chair is advised it is the intention of the chairman of the committee to move that the committee rise at approximately 11:30, or shortly thereafter and, therefore, in the discretion of the Chair, he had determined there would be no recess and suggests that the retention of the audience is a matter that is within the province of the speaker. However, in fairness to you, Mr. Ford, the Chair would suggest that the secretary ring the bell. The committtee will be at ease briefly while the bell does its work.

The committee will be in order. For the benefit of those who have just arrived, the secretary was instructed by the Chair to ring the bell because of the apparent absence of full attendance on the floor. The proceedings have reached the point where the minority report is being presented. The secretary will read the amendment offered by the minority, following which we will proceed to its consideration.

SECRETARY CHASE: Mr. Ford, on behalf of the minority, has offered the following amendment:

[The amendment was again read by the secretary. For text, see above.]

CHAIRMAN VAN DUSEN: Mr. Ford.

MR. FORD: The minority, in this case consisting of 7 signers, I believe, proposes the elimination of the committee proposal with respect to section g, and I think it should be said at the outset that everything that might be said about the minority attempting in this instance to maintain the status quo should be looked at with some close attention to what is actually happening here. Now, regardless of what your feelings may be about the present system, let's get clear at the outset that this is not a constitutional system we're talking about, basically. We are talking about a statutory system, and all of the things that I have heard criticized about the present system can be changed and could have been changed at any time that our bar association, which is one of the loudest critics, would have had the ambition to go over on capitol hill and talk to the people in the legislature; because all the present constitution requires with respect to the supreme court is simply that the justices be elected on a nonpartisan basis, and that they be nominated in a manner provided by law. The constitution doesn't say that the parties will nominate them at their party conventions. It doesn't say they can't be nominated on a partisan basis, that they can't be nominated by a primary, and, as a matter of fact, Mr. Prettie's entire plan could be implemented by statute without changing the 1908 constitution. There is nothing in Mr. Prettie's plan, as we look at it, that would be inconsistent under the present provisions of the constitution. So what the proposal of the majority is asking you to do is by constitution freeze in for all time a plan that may or may not be better than what we have.

Assuming for the moment the possibility that we ought to try something like this, it would seem that the wisest way to try it would be to try it by statutory change, and if it doesn't work, and if this produces some of the evils that many of us are prone to suspect it of, then the transition back to a system that has been in existence for many years would be rather a quick transition, and could be accomplished before great mischief was done. It is not the request of the minority in asking you to vote against what I refer to as the "balkan plan," to reject it entirely, but merely to reject the idea of building it into the constitution. I submit that even the people who support Mr. Prettie's plan for districting of the supreme court can, in all comfort, support our proposal to remove it from the constitution, and then convince the legislature that this is a good thing on the assumption that if it is tried and it doesn't work, the legislature can correct its error much more readily than we might should we build this into the constitution.

The minority has set out some specific reasons in Journal 76 which you will find for our seeking to strike section g. Primarily it revolves around the fact that everybody on our committee will have to agree that after examining the judicial systems of other states, and listening to the many people who came before our committee, however reluctantly, you ultimately come to the conclusion that although there are improvements that each one of us individually as lawyers might like to suggest, based on a personal experience — for example, Art has had the unhappy experience of campaigning all over the state for 2 very well qualified men who didn't get elected, and this always leaves us unhappy when we have had this kind of experience. And so he would correct this in the manner that appeals to him. I came to the convention, as many other lawyers did, convinced that we had an anomalous situation with the partisan nomination and nonpartisan election that cried out for some sort of a change, but one by one as you examine the alternatives you began to realize that although it took them a long time to evolve the system to the point that it has reached, it is not a bad system.

In supporting the district plan, Mr. Prettie pointed out that we heard from the president of the bar over in Illinois. They have a district plan over there. They have, I believe, 7 judges in their court, and Cook county, which has 60 per cent of the population of the state and 90 per cent of the lawyers, has 1 representative on that court. Now, when we asked the president of the Illinois bar why he thought they should retain a district system — as Ken has indicated to you in their judicial revision they are retaining it — he stated 1 reason directly and he stated another reason indirectly. The reason that he stated directly was that he felt that this protected the state against having its supreme court dominated by the residents of the city of Chicago. Now I submit that this reason is not a valid reason in Michigan. We distributed to all of you the other day a map which shows by indication on the map where the judges of our court have come from in the last 30 years. One of the copies — we gave you 2 maps, and 1 of them has some darker lines on it, and the darker lines show what happens when you superimpose the committee's district plan on top of this, and it will show, as a matter of fact, that the present system has done a little bit better job of distributing judicial talent geographically than Mr. Prettie's plan would do.

Now immediately it is going to be said, because it has been said several times here, that being from Wayne county I should welcome Ken's plan, because only on rare occasion during the past 30 years, or in the history of the court, has Wayne county had the number of judges that he would give us under his plan. I suppose the people who say this to me are proceeding on the assumption that all of us came here to represent the people in our own little provincial area first and the people of the state of Michigan second, and I am not so sure that we haven't demonstrated over and over again here, all of us — and I am as guilty of this as anyone — that this becomes true; that no matter how hard you try to examine these issues objectively you must always come to a conclusion which is based largely on your subjective observations, based on the fact that you come from a part of a state where a particular problem is of more importance than it may be in the other part of the state, and the people in the rural parts of the state cannot be expected to get as exercised about the question of a city income tax down in Wayne county as some of us might. By the same token, there are problems involving the townships, maybe the 15 mill and some other things, that don't excite the people in Wayne county in the same manner that they do the others. This is as it should be in a body such as this, because we are elected on a representative basis, and we are here to put our best foot forward for the people who sent us here. I don't think we should be nearly as sectional in our point of view as the legislature is, because there clearly those people are sent to represent a small group of people, but I submit that our own experience here at the convention should show you how dangerous it is to send people to a court or to a convention to draw an instrument that is supposed to objectively serve the needs of all of the people of the state, but elect them on the basis of representing just a few people in the state.

Mr. Prettie, himself, said the present system distributes judges throughout the state, but sectional pressures haven't resulted from this. Of course it hasn't, because regardless of where a judge comes from in this state, when he writes an opinion or makes a public pronouncement — and of recent years some of the things that have disturbed some of us most are not the decisions coming out of the court, but the public pronouncements that are being made from time to time by members of the court which carry a lot more dignity in the press than they should have in the minds of a lot of attorneys, because it is a member of the court talking. They feel free to criticize almost all facets of government, speaking with the authority that members of the bench have whether they are sitting on the bench or off of it. I am now proceeding with some temerity, because I expect to be back over there shortly, and I trust that the judge or judges we are referring to won't remember this speech.

Mr. Prettie said since we have had the experience of judges being elected from throughout the state, and we have discovered that it hasn't produced sectionalism, we shouldn't fear sectionalism in a district plan. He says sectionalism doesn't really exist; it is something that everybody fears and nobody really believes. But then in his very next comment he said many contend that all of the talented lawyers are down in Wayne county. Now, in all due respect to Mr. Prettie, I don't think for 1 minute that Mr. Prettie doubted that he was touching on a raw nerve with some people, and particularly some of the members of the judiciary here, when he suggested, with tongue in cheek, what some people, unenlightened people for sure, have suggested in the past, that big city lawyers are the ones best qualified to be on that bench. And I am sure that when he suggested it — it may have been automatic — I am sure Ken was acting in good faith. He realized that he was appealing to a certain prejudice that lies in the back of some of our minds here, and, as I said before, I hold no grudge or do not deny the right to have this kind of prejudice in our minds. This is part of what makes a representative body.

He went on to solicit even further this sort of thinking in the convention by suggesting that you could look around the room and see very many eminent gentlemen who, because of the weakness of the present system, had been passed over as potential judicial talent for the supreme court. I happen to agree with him on this, too, but I submit in trying to justify his position he has demonstrated just the kind of subtle sort of pressure that exists when you start talking about sectionalizing anything, and I don't think we have any place for it on a court that writes opinions which are the law for all of the state.

The contrast with the circuit court is a rather absurd contrast, because at the circuit court level, that circuit court is not making decisions that are very often of statewide concern, but the supreme court is almost invariably making decisions that are of statewide concern, and I would hate to suggest the possibility that we might place our court in the position where 3 of them, for example, would only have to be concerned about the popularity of their decisions in a single county, Wayne county, and a fourth one would only have to be concerned about the popularity or public acceptance of his decisions in

Oakland county. And I feel real sorry for the fellow who gets in under district 7 under their plan, because he has to satisfy the people in 48 counties, starting at Bay City and going all the way to the Keweenaw peninsula.

Now you might notice from this map, for example, we have had in the last 30 years 3 judges from the upper peninsula. We have had 7 from Wayne county. As had been stated, only 1 from Oakland county, and we have had 6 from district 6. This brings us around to the second reason that the president of the Illinois bar association had for retaining the district plan in the judicial revision; the one that he didn't like to come right out and say, but the one that was very easily read into his comments, and that was that as a realist who had been fighting as an idealist for many years for judicial revision in Illinois — and anybody who examines their system knows that they need it if anybody needs it — there is nothing in that system that commends it be copied by the state of Michigan, because in every way that you might compare it with our system it is inferior. They fought for many years as a bar association over there for revision, and they finally came to the conclusion that if they were to get any revision at all they had to get something less than a perfect system and something less than a perfect system meant that they were going to have to satisfy the state legislature and the politicians in Illinois that they were not taking away from them the judicial system.

So, admittedly, there are things in the judicial revision proposed for the state of Illinois that the theorists do not believe in entirely, but they feel they have to take it in order to get the other good things, the other gains that are made, and one of the things that the politicians in Illinois absolutely insist on is the retention of the district plan, even though they're going to give Cook county more representation than it now has, because the district plan in Illinois absolutely guarantees for all time, as it would here, a substantial majority of the court coming from the state outside of the heavily populated area. Now, all of us have this in our minds. There is not too much sense in us kidding each other about this being a factor, and there is a political overtone in this plan that is inescapable, and the political overtone is the immediate effect of this on the very next election that occurs. And as one observer, not speaking for my party, not speaking for anyone else but myself, it is my humble opinion that there are at least 3 other judges next coming for election that don't have the chance of the proverbial snowball down below of surviving the election if we go to the district plan, and the sponsors of the district plan well know this.

Mr. Prettie cited the difficulty of statewide elections, cited the comments of bar presidents from other states. He didn't mention, however, the comments of the president of the Minnesota bar, who appeared before us, when he was asked somewhat eagerly, "Don't you agree that it's a terrible burden on a supreme court judge to make him go all over the state campaigning for office?" And without batting an eyelash he looked right back at the questioner and said, "Why no, I don't think it is a burden at all." He said, "I think it's a darn good thing for him to get out and find out what's going on in the state. It makes him a better judge." It has been suggested here a judge might be a better judge if he only had to campaign in Wayne county and never had to go out of that county in order to get on the bench until he drove to Lansing to assume the position than if he had to campaign from Wayne county to the Keweenaw peninsula, and talk to the people, meet their questions and be subjected to their scrutiny. This, it seems to me, is contrary to the popular conception of democracy, that the best way for people to make a decision about a candidate, and the best way for the candidate to serve the people that he is elected to serve, is to be exposed to them and be selected by them. And a judge elected out of Wayne county to the supreme court does not represent the people of Wayne county; he represents the people of the state of Michigan, and he should not, under any circumstances, make his decision based upon the fact that he represents a certain section of the state.

As I said before, if you would like to experiment with this system, I submit you should vote for the minority report amendment and leave the system as it is now with the legislature having the power to institute this system if they want to try it out; but let's don't freeze a system like this, or anything similar to it, into the constitution. We are not asking to freeze the present system into the constitution, to wit, the partisan nomination or the nomination by the party convention. This can be changed at any time. We don't advocate that this should be kept for all time. If somebody has a better system, let's try it, but let's don't try it by taking the flexibility now available to the legislature away from them and freezing a system into the constitution.

We are back around again to this magic word of flexibility. In this particular instance I think the minority finds itself on the side of the angels, because we are not advocating status quo in the sense of saying we have got a system that works, nobody can demonstrate by any example that another system is better, they can suggest by theory that it might be better, and therefore we are holding out against progress. This is not the situation at all. We are holding out for a provision, a constitutional provision, which permits any kind of a change within its framework that the legislature might see fit to institute, and this could be any form of progress in a change. The only condition that is involved here in the present language of the constitution is election, not even statewide election, but just election by the people, and nonpartisan election by the people, and I don't think there is anybody here who is seriously going to urge that the people of Michigan are ready to go to a partisan system of electing judges. I will have to confess and admit that I would have, with greater alacrity, supported a plan for the nomination, the partisan nomination and election that existed prior to 1939, but there just doesn't seem to be very much sympathy for it either here at the convention or amongst the people. The people themselves put this in in 1939, and there are a number of political reasons that have been explained historically for this happening, but it has worked rather well.

There is this, also, to be considered. We gave out the other day photocopies of 2 sections of the recommendations of the state bar that were made before the convention convened. They were made by committees made up of many prominent men. Some of them are here in this convention. Looking at page 47, you have the beginning of the report of the committee on court administration. If you will turn over to page 48, you will see a rather impressive list of prominent members of the bar, I am sure, showing a good cross section of the state by sectional basis, by the judiciary versus the working bar, and by partisan affiliation, if any. The recommendations made, as I stated before, before this convention started, on the basis of a year's work or in some cases on the basis of many years of work, by this committee of the bar were 1, that the present provisions of the state constitution pertaining to the election of judges be retained. Now, did this mean that the members of this committee subscribed wholeheartedly to the exact method that is now used? Not at all. Merely that from the viewpoint of constitutional change, they felt that no change was necessary.

At this juncture it might be well to observe also that although there was a lot of discussion during the campaign for con con about the court system, in watching a lot of candidates in our area it seems to me that the lawyers are the ones who are responsible for talking about it, because this was the safest area for us to talk in with lay candidates against us on the other side, because regardless of our backgrounds, we had a little bit of an edge in that kind of debate. But really, in my section of the state which did vote to call a convention, a crying need for judicial reform was not the compelling motive for voting to call a convention, and I haven't experienced any great ground swell of dissatisfaction amongst the people with the present system, and I don't think anybody else here can honestly say they have, either.

There is always agitation amongst the lawyers, as there should be, for changes in the court system. The lawyers are somewhat similar to the military and anybody else, and I think it might be safe to say when the lawyers quit griping, that is the time to start worrying, and if they ever agree on anything,

then I would certainly be worried, because it is very difficult to get a majority, and certainly never unanimous view, from any group of lawyers as soon as you put 2 or more of them together. Nonpartisan nomination and elections should be retained as to judges who have terms of 6 or more years, except those elected on a statewide basis. The same should apply to the justices of the peace if revision for justice courts were retained in the constitution; the present system of nominating and electing supreme court justices should be retained with the same provisions to apply to judges of the intermediate courts of appeals.

You will notice that they made a distinction on this nonpartisan primary when they got to the justices of the supreme court because, for many of the reasons that Mr. Prettie has indicated, you get into a great deal of difficulty if you try to saddle the system with a nonpartisan statewide primary; that, apparently, in their wisdom, the people who have gone on before us want to avoid. Mr. Prettie has quoted at some length from Mr. Justice Edwards' testimony before the committee, and in conclusion I would like to read a letter that he wrote quite recently to the president of this convention. It is addressed to Mr. Stephen Nisbet, president, constitutional convention, Lansing, Michigan:

Dear Steve,

As one whose testimony pertaining to the judicial article of the forthcoming constitution was sought by the committee on judicial branch, and as a former justice of the Michigan supreme court, and one with continuing interest in the administration of law in this state, I would like respectfully to record my view concerning Committee Proposal 91, submitted by the committee on judicial branch and recorded in Journal 71 of the constitutional convention, dated February 2, 1962.

This proposal contemplates the election of justices of the supreme court by district rather than on a statewide basis. Such sectionalization of the highest court of the state seems to me to be most undesirable. The supreme court of the state should command the talent of the best which is available on the bench and the bar of the state, regardless of where the individual justice resides. Above all, each justice should be dedicated to consideration of problems of law as they affect the whole state of Michigan rather than any geographical or political district thereof.

While I do not, of course, deny that there are many public officials elected by districts who rise above sectional interest in the discharge of their duties to the state or to the country, I see little merit in imposing upon each justice sectional considerations of this nature which would represent a burden to all and a real impediment to some.

I do not comment upon whether or not this plan, by its nature, indicates partisan origin. I have made no detailed analysis of the districts or the electoral picture that might result, and for the moment I assume that it is submitted in utter good faith. There has been, however, much high hope engendered that the constitutional convention might move this state toward modern government and toward good government by the adoption of a modern and sound constitution. In my opinion, sectionalizing or districting the Supreme Court of Michigan is a step in the opposite direction from good government.

I trust the convention will reject this portion of the committee report.

Sincerely yours, George Edwards.

I think that this very clearly and succinctly sums up the position of the minority, and I would like to yield at this time to Mr. Garvin or Mr. Barthwell.

CHAIRMAN VAN DUSEN: To which gentleman do you prefer to yield, Mr. Ford?

MR. FORD: To whichever is ready.

CHAIRMAN VAN DUSEN: Mr. Ford yields to Mr. Barthwell.

MR. BARTHWELL: Mr. Chairman, members of the committee, I walked into this judicial committee, and was really disturbed when I found that I was the only lay member on this 21 man committee. I thought a while, and as I listened to the committee lay their plans out, just how we would proceed to study the article, and listened to them say that we would call the bar association for polls, and the eminent judges to talk to us about this article, I began to feel that I was real happy that I was on this committee, and sorry that some more lay persons were not on the committee, because it immediately appeared to me that this committee considered that the judicial article was made for the service of the lawyers, and they had forgotten the people completely. I want to say, after listening to the very many eminent judges, lawyers and secretaries of bar associations from various states, about the only question that they seemed to have agreed upon was the fact that the court system of Michigan was not bad as compared to court systems of the nation. They all said that we had many things that they would like to have. So, this is about the only point that they agreed upon.

Mr. Prettie mentioned the committee's report. Well, as I live, I learn many things. I even found out how lawyers agree to get a majority report out of a committee. We had a very fine chairman; a very fine committee. We divided very sharply over the different methods of selecting the supreme court justices, so the day before the last day we had our committee chairman say to us, "I have got to report out by the deadline, so I want to get at least 11 votes for some plan. You can sign a minority report or you can get on the floor and oppose it; but just let me bring this plan out." So it was under these conditions that we finally brought out the majority plan.

I figure the division of our deliberations has been over trying to improve the method of selecting judicial officers. It is contended by those who propose the district system that by districting the state this would enable us to encourage a high type of lawyer to present himself for the office of supreme court justice. May I call your attention to the states where this plan has been adopted? They are Oklahoma, Kentucky, Illinois, Louisiana, Maryland and Nebraska. I would like also to call your attention to the fact that of the eminent people we have had to testify before our committee, none of them have pointed out a single one of these states as having a judicial system superior to ours.

Let's look at the committees' supporting reasons which are found in the journal, page 461, and I just want to read the statistics of their reasons to you. The first table is the districts and the population in each district. In district 1: 888,766 people there; in district 2: 690,259; district 3: 817,341; in district 4: 855,308; in district 5: 999,019; in district 6: 904,908; in district 7: 890,062.

This does represent a fairly even division of the people living in the district, but when we get down to the next table, which I really consider the meat of the plan, we find the number of lawyers living in these districts. In district 1 there are 4,215 lawyers; district 2, 566 lawyers; district 3, 544 lawyers; district 4, 520 lawyers; district 5, 767 lawyers; in 6 there are 581; and in 7, 516 lawyers.

Based on the figures contained therein, it shows that where the districts are divided fairly evenly upon a population basis, this does not hold true with reference to the lawyers living in these districts; hence their lack of availability. One third of the justices will always come from over 50 per cent of the lawyers of the state, while 2/3 of the justices must always come from less than ½ of the lawyers of the state. This clearly reveals the mathematical weakness of this contention, because you are going to always have to find the most able people from less than ½ of the lawyers for 2/3 of the justices.

We are not here for the purpose of changing for the sake of change. We want to improve the judicial article. The districting plan does not improve our present system, and I think that the minorities plan to leave it with the legislature is at least giving the lawyers in their political setup as fair a choice as you are giving the people of the state as to home rule. We left it to the legislature for them to decide what home rule would be, and I think we could make a similar compromise,

since this seems to be a compromising deal from start to finish.

Therefore I urge you to please support the minority amendment.

CHAIRMAN VAN DUSEN: Mr. Ford, do you desire now to yield to Mr. Garvin?

MR. FORD: I would like to yield to Mr. Everett first.

CHAIRMAN VAN DUSEN: Mr. Ford yields to Mr. Everett.

MR. EVERETT: Mr. Chairman, fellow delegates, I am here to support the minority report amendment, not, I feel, for the reasons for which it was offered, but for the principal reason that to me, this is the only method by which we can have a direct vote in this convention, at least in this committee, on the district plan. As Mr. Prettie has very fairly stated, there are a number of alternatives which have been offered. These alternatives will be debated and voted upon in turn, but no other method is given us to express ourselves whether we are for or against the district plan.

If a majority of this committee favors the district plan, we should know this now at the outset. If, on the other hand, a majority oppose it, for whatever reason and with whatever alternative in mind, we ought also to know this so we can then turn to the alternative plan and determine which is best. I think without question, all of us, whatever method we may support, have one common motive. We are seeking the best system of getting the best personnel on the Supreme Court of the state of Michigan. In this case, if, as I say, you are opposed to districting, as I personally am, you will support the minority report amendment so that we can clear the decks and start finding that best method. If, on the other hand, you agree with Mr. Prettie and favor the district plan, you have an opportunity to express yourself by simply voting against the minority proposition.

I would like to second what Mr. Barthwell said. The district plan is only technically a majority plan of the committee. Four of us, myself included, voted to bring it out solely so we could have a matter here to be discussed and to be determined by the committee of the whole, and ultimately by the convention itself. It is for these reasons that I rise to support the minority plan and urge votes for it on behalf of all of those who may object to the districting plan offered.

CHAIRMAN VAN DUSEN: Mr. Ford.

MR. FORD: I would like to yield to Mr. Garvin, cosponsor of the minority report.

CHAIRMAN VAN DUSEN: Mr. Ford yields to Mr. Garvin.

MR. GARVIN: Mr. Chairman and delegates, I want to emphasize what Mr. Ford said in one respect, just in the event that some of the delegates still believe that the method of the election of the supreme court and the nomination thereof is in the constitution. It is not in the constitution now, and we hope that it will not be, because the legislature is there to rearrange any court structure whenever it is deemed necessary to rearrange it.

You received on your desks the photostat of the Michigan State Bar Journal, page 59, Judicial Selection and Tenure. I am particularly interested in that committee, because I see by the names of that committee about 30 members, people that you know. I want to give you their recommendations to the state bar of Michigan in September, 1961, which is as follows:

> A new state constitution should provide for a court system consisting of a supreme court and intermediate court of appeals, a trial court of general jurisdiction, a separate probate court and a court of limited countywide jurisdiction.

The committee has done that. There are other recommendations:

> No one should be allowed to exercise judicial power unless he is a member of the state bar, with an appropriate exception for present incumbents who are not lawyers.

Your committee has done that. Number 3, "Incumbent judges should carry a designation of office when running for reelection." We have not covered that point. Four, "In elections other persons should be allowed to run against the incumbent." We, I believe the majority of the committee, believe in that. Five,

> In the multiple court, judges' court, staggered terms should be provided. Precise definition of multiple courts has not yet been determined. Tentatively, however, if a court has fewer than 4 judges staggered terms probably would not be required.

I believe your committee has covered that.

Now, since this recommendation by this august committee of the state bar, which in September of 1961 had such prominent members, I wanted to, if you are not looking at your copies now, give you some of the members. The chairman was one J. Don Lawrence, a very eminent lawyer. One of the members was a person who has been mentioned here, who I believe is justice of the supreme court, Eugene S. Black. Another member whom I believe some of you know, and has made this recommendation, is one Richard C. Van Dusen. Of course we have also Theodore Souris, another august member of the bar of the state of Michigan. I just wanted to bring to your attention that this was in September of 1961, after we knew that there would be a convention to rewrite the Constitution of the state of Michigan.

Now, of these august members of the state bar there is no minority report, but if you look at the names there, you will see people in your own district who supported this—all except the provisions of section g that we are discussing at this time.

So I therefore, through the help and assistance of this august committee, recommend the minority report amendment that section g be deleted.

CHAIRMAN VAN DUSEN: Mr. Ford, the Chair believes you retain the floor. Do you desire to yield further at this time?

MR. FORD: I would like to yield to Mr. Ostrow, who is also a sponsor of this minority report.

CHAIRMAN VAN DUSEN: Mr. Ford yields to Mr. Ostrow.

MR. OSTROW: I support the minority report and oppose the committee report. I want to talk to the nonlawyers. I think I can do some good there. I can't with the others.

Now, we have heard a lot about political influence on the courts and pressures on the courts, all in generalities. At recess time go to the library downstairs and pick up one of these books. Pick up the latest ones. These are the Michigan Reports, and contain all of the opinions of the supreme court on every case they decide. You run through these volumes and see what you can see of a political nature in any of these cases that are reported there. Take a look at the lawyers, take a look at the litigants, take a look at the subject matter. You won't find one in 10 volumes.

Now, the kind of judge who would be influenced by political pressure if he is elected in a convention is the same kind of a judge who would be influenced by political pressure if he was elected from a district, or if there is no district he would be influenced by business pressures or social pressures. Nobody has ever been able to figure out who will become a good judge. You can't tell by what kind of a lawyer he was. Nor can you tell by his clientele before he became a judge what his thinking will be after he becomes a judge.

Your best example is Chief Justice Earl Warren, and I say this not disparagingly. Chief Justice Warren leads the liberal element—to some people the radical element—of the United States supreme court. He was appointed by a president. Nobody could have predicted what his thinking would be when he became a judge. There was nothing in his background as governor to indicate what his thinking was. This thing called judicial temperament, which makes the ideal judge, nobody has been able to figure out how to measure it before the man becomes a judge, whether he is elected or appointed. It is like going around with a girl. You can go with her for 10 years, but you cannot tell what kind of wife she will make until after you marry her. That is the same thing with judges.

So it gets down to the point that it is not a question of influence on judges. There are a lot of people who don't

like the thinking of particular judges. There is no way you can get insurance against that. If you are in the insurance business, you don't like the judgments that have been handed down in automobile accident cases. I submit to you that it is not only Democrats who are run over by automobiles. And I submit further to you that every lawyer who can get into federal court goes into federal court because they get bigger judgments there, and I further submit that it's the jury that determines the amount of the verdict and not the court. In California, where they have a modified form of the Missouri plan, the judgments there are 2 and 3 times as much as they are here.

You look at these books. It won't take you long. Just run through the cases. See the subject matter—automobile accident cases, divorce cases, zoning cases, contract cases—and you see how many of these books you have to go through and how many cases before you run into a single thing that even remotely resembles political consideration. I don't like everything our court has done. Nobody ever likes everything that a court has done. In every lawsuit somebody wins, somebody loses. The losers don't like it. At least I don't. And if you get to losing cases, it gets to be a habit and you can't win. The fault, if we have any fault, is not with the way we pick our judges. Men rise to the occasion. If they don't, it doesn't make any difference how you pick them.

CHAIRMAN VAN DUSEN: Mr. Ford, the Chair believes you still retain the floor. Do you desire to yield further?

MR. FORD: I believe that this takes care of all of the sponsors except Mr. Bledsoe, who wishes to speak.

CHAIRMAN VAN DUSEN: The Chair will recognize Mr. Bledsoe.

MR. BLEDSOE: Mr. Chairman, fellow delegates, if Mr. Ostrow will permit me, I think I shall address myself to the nonlawyers in this convention.

I want to say to you that, just as Mr. Barthwell said, this was not a majority opinion, in fact, it was not a majority report that came out, because it was tied, and I said to the chairman, "Lock the door." I am sure this will meet with a certain expression that was given here the other day about locking the lawyers in, because I wasn't prepared to come out of there. And it was after I said lock the door, I think it was one of our gentler sex, or the only gentle sex of our committee, who said, "Well, I'll put my 1 vote in just for the purpose of getting out of here." That is how you got this. Now don't feel that this is a sacred cow. This is your supreme court, and it belongs to everybody, and we thought it was so important we had better bring it out to you and let you help us thrash it out.

The only thing that disturbs me, and it has disturbed me all along about the possible changes that may take place with reference to our supreme court: I came, and I am certain most of us did, with the idea that we would try to make things, where we could, make a better article or make a better constitution, and I listened with great interest to find out just where these improvements could be made, and we don't have any. The only criticism that we have heard, and it came both from very eminent men, the judge, and my good friend, brother Prettie, over there, but it seems to me, after listening to them, the only thing that disturbs them is the fact that after the candidates are nominated by the respective parties, they have to take a bath before they can run on a nonpartisan ticket. That is what they said, both of them. Not a single word, just as Sam has said—and you read those opinions of those judges, I am certain you won't get any idea that they hadn't taken a bath when they wrote those opinions.

Now, that's procedure. That's procedure. If we don't like the way that our conventions are subject to vote, they are partisan, and if we don't like the way that they nominate our judges and get them on the ticket to run, that is a change that can be done by the legislature, and if we haven't arrived at the place in our social thinking that we can achieve that, let's not bind the infirmity of our inability to accomplish this on the next generation for 50 years. Maybe 10 or 15 years later there will be a smarter generation that can come through with this. It has given us a lot of trouble, and that is why this article is here. That is exactly why it is here. We believe in nonpartisan election of judges. We believe that it should be done by the great political parties. Maybe we don't like the party system, but what can we do better? Just like the jury system, let's change it. I don't know anything that is better than having the selection of our judges by our political parties. They come from the people. The delegates who come to those conventions nominate the candidates for the rest of the members of our governmental structures without them having to take a bath to run. We nominate the attorney general, and we nominate, up to now, unless there have been some changes hereabout—proposed changes, I think, in the department of education, but the same conventions that nominate the other members of your parties are nominating these.

Now, if we're going to start changing, you are going to have to make basic changes, and until we do that, until we can come up with that, I see no reason to change just for the sake of change. I asked Justice Black, when he came before our committee, I said, "Well, Judge, do you think that —" and it is in the record—"any of the men who are presently sitting on our supreme court are men of ill repute?" or that "anything that has happened to them in the process by which they got the office that has made them unfit to sit there?" I challenge the record, brother Prettie. You were sitting there. And his answer was no. That was the answer. I asked that question more than once. There isn't a single person who came before that committee who was able to pinpoint any scandal or anything that would tend to degrade our court by virtue of the process by which they are presently elected, and the record is entirely barren of that. So here this morning for the first time I hear they need to take a bath after they got nominated by the party. That is the only thing. The presumption is when a person needs a bath, he needs one. But that wasn't even mentioned before the committee. It might have had some influence if it had. It was mentioned here on the floor for the first time.

Now, if either of these gentlemen can get up here now and break this bath situation down where we can get hold of it, and tell us just what it is that happens to a man who is nominated by his party, selected by honorable people from the community as an able, honest, fearless, upright man to sit on that court, and then he is nominated by the party, the same party that nominates the rest of the ticket—and that's done by both parties—and after we carry him through there, and he is elected by the people on a nonpartisan ticket, I want to know where this metamorphosis takes place that degrades this man after going through this process. Just pinpoint the apex of this change where he—between cleanliness and uncleanliness, after all this has happened to him, so we can take that out right here on the floor. And until that is done, I see no reason at all for disturbing this, and certainly fastening this procedure on our generation for another 50 years—because I do hope they will be a little smarter than we are. For that reason, I think we ought to ponder this a great deal. It is your ox and it is my ox. Let's tie it up in this matter, and forget the fact that this was a majority consensus that came out of that committee, because it wasn't. We are going to have to depend upon you, my good laymen, to help us get out of this. The lawyers are stuck.

CHAIRMAN VAN DUSEN: Mr. Danhof—excuse me, Mr. Ford, the Chair believes you still retained the floor.

MR. FORD: Mr. Chairman, I believe this concludes the presentation of the minority, and at this time I would like to yield to the chairman of the committee, Mr. Danhof.

CHAIRMAN VAN DUSEN: Mr. Ford yields the floor, the Chair takes it, and yields to Mr. Danhof.

MR. DANHOF: Mr. Chairman, as we anticipated this has engendered much debate, and will undoubtedly do so later. Looking at the hour, I move that the committee do now rise.

CHAIRMAN VAN DUSEN: Mr. Danhof moves that the

committee do now rise. Those in favor of the motion will say aye. Opposed, no.

The motion prevails.

[Whereupon, the committee of the whole having risen, President Nisbet resumed the Chair.]

PRESIDENT NISBET: The Chair recognizes Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, the committee of the whole has had under consideration one section of one proposal on which the secretary will give a detailed report.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 91** and has come to no final resolution thereon.

PRESIDENT NISBET: Announcements.

SECRETARY CHASE: Will the delegates please note that the picture proof interviews will be in committee room G for the remainder of the appointments beginning at 1:00 o'clock this afternoon.

Mr. Kelsey asks leave to be excused from the afternoon session.

PRESIDENT NISBET: Without objection, he will be excused.

Without objection, we will return to the order of **motions and resolutions.**

SECRETARY CHASE: Messrs. Bentley, Hutchinson, Downs and Romney offer

Resolution 80, A resolution requesting that religious bodies of this state offer prayers for the success of the convention.

Following is Resolution 80 as offered:

Whereas, The people of the state of Michigan are greatly desirous of the success of this constitutional convention; and

Whereas, The people of our state and our nation are a deeply religiously people, being accustomed to seeking divine assistance in times of trial and trouble; and

Whereas, It seems appropriate to seek such assistance and intercession from Almighty God through the medium of prayer on behalf of the work of the constitutional convention; now therefore be it

Resolved, That the delegates of the constitutional convention respectfully request and urge all members of organized religious bodies within the state of Michigan to offer prayers for divine help and guidance in their work and looking toward the ultimate success of the convention; and be it further

Resolved, That the delegates of the constitutional convention further respectfully suggest that a day or days be set aside by such religious bodies for the purpose of offering prayer with the aforesaid motives thereto.

PRESIDENT NISBET: Referred to the committee on rules and resolutions.

The Chair recognizes Mr. Liberato.

MR. LIBERATO: Mr. President, I move the convention recess until 2:00 o'clock.

PRESIDENT NISBET: The question is on the motion to recess. Those in favor will say aye; opposed, no.

The motion prevails. We are recessed until 2:00 o'clock.

[Whereupon, at 11:40 o'clock a.m., the convention recessed; and, at 2:00 o'clock p.m., reconvened.]

The convention will please come to order.

SECRETARY CHASE: Mr. President, a quorum of the convention is present. Prior to the lunch hour, Messrs. Liberato and Youngblood filed with the secretary a request to be excused from the session of this afternoon.

PRESIDENT NISBET: Without objection, they will be excused.

The Chair recognizes Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, I move that the convention resolve itself into committee of the whole for the purpose of considering matters on the **general orders** calendar.

PRESIDENT NISBET: The question is on the motion of Mr. Van Dusen. All those in favor will say aye; opposed, no.

The motion prevails. Mr. Van Dusen.

[Whereupon, Mr. Van Dusen assumed the Chair to preside as chairman of the **committee of the whole.**]

CHAIRMAN VAN DUSEN: The committee will be in order. When last the committee sat we were considering an amendment to section g of **Committee Proposal 91,** offered by Delegate Ford. The Chair had 3 delegates seeking recognition on the amendment. The first of those was Delegate Lawrence, the gentleman from Ypsilanti. Mr. Lawrence.

MR. LAWRENCE: Mr. Chairman, members of the committee, I rise to speak in favor of the amendment and against the committee proposal, the so called majority proposal, which really isn't a majority at all, and wasn't a majority except for the purpose of getting the proposal out of the committee.

I concur in what Mr. Everett stated this morning, and I feel that this convention and the people of the state will be much better served if the minority proposal is adopted. After all, our purpose should be to get the best candidates possible, and, as I see it, it will least be served by the elective position taken by the so called majority report.

I would like to ask a question—I would like to have somebody at some time explain it—and that is, if the elective system is best, if this elective system as that part of the proposal contemplates is the best method of getting the best judicial candidates possible, why is it necessary to break it down into districts? What is there that this perfect system, so called, has that it cannot be conducted on a statewide basis for a state office? Why is it necessary, if the system is so good, to gerrymander the state, allocate to Wayne county a total of 3 seats and leave outstate either 4 or 5 or 6 seats, depending on the number of judges we end up with in the supreme court? I would like to have someone tell me what makes this system, this elective system, better if it is on a district basis than if it is on a statewide basis.

Surely there is nobody here who would claim that a voter in Wayne county, of that large population, would know the qualifications of the 3 candidates in Wayne county unless he happened to be an attorney who knew them or made some special study. He could just as well find out about a candidate from Grand Rapids or Flint or Saginaw, or any other place in the state, because he is going to have to make an investigation, and an investigation probably is not necessary as much outstate, whether it is a statewide candidacy or not.

Certainly if the system, which is the system we have used in the past for all these years on a statewide basis, of electing our judges, if that is what is claimed we have been doing—at least we have been going through competitive elections eventually—if that has been good all these years, why has it suddenly become necessary to divide the state up?

Of course, it is my contention that the elective system as proposed in the majority report does not weed out and make available the best talent obtainable, and, of course, that is the real difficulty with this elective system where anybody who can get the necessary petitions, or can get nominated at a party convention, immediately injecting politics into the judiciary, or whatever other method is used which is eventually decided on by the legislature, can become a candidate. It doesn't make any difference whether it is in the supreme court or in the circuit court, when it comes right down to it there must be some means of selecting the candidates in the first instance; some competent way of doing it, and not by political parties, if we are to have a truly independent judiciary.

So, for those reasons, that there must be a fatal defect in the system or it would not be necessary to break it down as they are trying to do, I urge you to support the minority report amendment and vote against the committee proposal.

CHAIRMAN VAN DUSEN: The lady from Grand Rapids, Delegate Judd.

MRS. JUDD: Mr. Chairman and members of the committee, I should like to make a few comments on the arguments that have been presented to us this morning, the argument being in favor of the district plan.

I couldn't tell for sure this morning which side Delegate Prettie was arguing on because he called to witness 4 Democratic justices, and we know that the Democrats are opposed to a district plan, and then he called to witness 1 Republican justice, whom we know is in favor of an appointive plan. However, we can find out a little more clearly the reasons why the majority or so called majority of the committee want the district plan, and I would like to take up point by point the rationale given in the journal.

MR. LEIBRAND: Point of order, Mr. Chairman.

CHAIRMAN VAN DUSEN: State your point, Mr. Leibrand.

MR. LEIBRAND: It is my understanding we are discussing the minority report, and Delegate Judd is discussing the majority report.

MRS. JUDD: I am discussing, Mr. Chairman, the reasons why we should delete the majority report. Is that in order?

CHAIRMAN VAN DUSEN: The Chair thinks the lady was proceeding in order, Judge Leibrand.

MRS. JUDD: The general reason is that the reasons given in support of the majority report are not, in my opinion, valid reasons. We have not been given a good reason for voting for the district plan, and therefore we should vote against it.

If you would turn in your journal to page 468, let's discuss some of these reasons. Reasons 1 and 2 say that the candidates and the voters may meet and know each other. In the twentieth century this is a nostalgic viewpoint. Obviously the writer does not live in a metropolitan area where people don't know their neighbors and seldom even see the family that lives across the hall. If, indeed, the need to be personally acquainted with a candidate for statewide office were possible and valid in our day, wouldn't it be equally reasonable to divide up the office of the chief executive into 7 parts and elect 1 member of it in each of 7 districts, and then some of us would know 1/7 of the executives.

Drop down to reason number 4. A "balance", it says, "will be maintained in the type of men sitting on the court . . . thus assuring a statewide approach to cases. . . ." Balance in the type of men. I think this is a valid term. What type of men do we want on the court? I would presume we want men of integrity, knowledge of the law, objectivity. Do these qualifications relate to area? Do we want merely a balance in these justices of integrity and objectivity? How does dividing the court in areas assure statewide approach? Doesn't it rather tend to show a provincial point of view?

Reasons 5 and 6. It is consistent with a nonpartisan judiciary, the journal says. Let's skip this one for the moment. It strikes at the heart of the issue and should be our final consideration.

Reason 7. It would remove the inordinate expense of a statewide campaign to the candidate. Any election which is nonpartisan, and hence without party backing, is an inordinate expense even in a district, as all of us know who survived the primary for election to this convention, and to just that degree it limits the independence of the judge unless he is wealthy in his own right.

Reason 8. It would attract the candidates of the highest quality. This presents a puzzling contradiction. No doubt it will attract some able men. Any system of the selection of judges will secure some men of high quality. But, on the other hand, I hear the argument that you can't require probate judges to be lawyers, because in some areas there are too few lawyers. Yet from the same area we are asked to elect justices of the supreme court who, we are told, will assuredly be candidates of the highest quality.

Point 9. Would inspire every lawyer to strive for excellence so that his fellow lawyers might think him worthy to serve on the court. Here I believe the rationale falls to a lower and lower level. The system will inspire lawyers to be on their good behavior. Is this why we have courts? The argument, in my opinion, is a brazen appeal for lawyers' support of the district plan. No wonder so many lawyers like the plan, and, parenthetically, I don't dislike lawyers. I love one very much. The writer has evidently at this point forgotten that there are laymen in the convention.

Point 14, the third paragraph down. Justices in the past coming from many different parts of the state, once elected, take a statewide view. The implication is that under the district plan they will also, once elected, take a statewide view. This is a logic hardly worthy of the legal profession, for the key to the viewpoint of a justice is not where he came from but to whom he owes his election.

Another view of the rationale brings its Achilles' heel to light. The whole argument falls when we look at district 7 on the map. Forty-eight counties stretching from the Bay City line to the tip of the Keweenaw peninsula. Will the voters of this vast area be acquainted with the candidates? Can a candidate make the rounds of every city and village? Is the area so uniform in its characteristics that its judge can add to the "balance of the court?" Will a campaign in the area be inexpensive? And why is it so big? The answer is the lack of lawyers in the area. If all the advantages of the system claimed in the rationale failed to hold in this district, what value the system?

Let's go back to points 5 and 6. It would eliminate partisanship. Yes, it would, perhaps, within the district, but as to the court as a whole it would assure partisanship. Indeed, at this point, we must face the reality of the plan. It is designed to assure partisanship.

In this convention the delegates are faced with 2 alternatives coming out of the judiciary committee, the majority report for election by district, designed to assure Republican dominance of the court, and the minority report for statewide election, designed to assure Democratic dominance of the court. Is this the way to secure objectivity in our judges?

I say a plague on both your houses. Let us defeat both these plans and search for one more likely to assure political independence and objectivity, and fair to both parties.

CHAIRMAN VAN DUSEN: The gentleman from Detroit, Mr. Norris. Mr. Norris passes. The gentleman from Detroit, Mr. Iverson.

MR. IVERSON: Mr. Chairman, I would like to ask Mr. Ford a question.

CHAIRMAN VAN DUSEN: If the gentleman cares to answer.

MR. IVERSON: I believe Mr. Ford, in his presentation of the minority report, made the statement that we do not advocate that the present system be kept. As I read the rationale of the minority report on page 580, "The legislature has provided a system of nomination and election under the 1908 constitution which has worked very well in the state of Michigan," and then, in the closing paragraph,

> In conclusion, the proponents of this minority report believe, after listening to testimony by representatives of the bench and bar throughout the state and at all levels, as well as representatives from the bar associations of other states, that our present system for selection of supreme court jutices is far superior to any alternative plan presented before our committee.

I would like to ask Mr. Ford if his statement in presenting the minority report is the correct one or is the rationale included at page 580 the correct interpretation?

CHAIRMAN VAN DUSEN: Does the gentleman care to answer? Mr. Ford.

MR. FORD: They are both correct. They don't differ. Art is using one of these things that Mr. King characterized as a lawyer's device on this floor yesterday, or the day before, trying to create the impression we are being inconsistent. I think I said earlier today that we are on the side of the angels on this one because we are not holding out for status quo in a rigid fashion. In this case status quo is flexibility and not rigidity. What I said was that in the opinion of the people supporting the minority report the present system was superior to anything that had been offered as an alternative, and this I will stand by. What I said this morning was that in addition to this, even if you believe that the district plan is a good plan

you should still support our position because our position is that no matter what plan you select at this point, unless you are convinced that it will work for all time in the future you shouldn't freeze it into the constitution. And all we are asking to do is leave the flexibility that now exists in the language that is now in the constitution so that if you want to try a district plan and it doesn't work, you can take it back out.

So I will stand by the statement I made this morning, and also the statement made by the minority. As far as we are concerned with what we have before us now, we urge that you vote for the minority amendment even if you believe in the district plan, because the right way to do it, if you want to do it, is not by freezing it in the constitution, and if you believe in the Missouri plan or the modified federal plan, or whatever plan you have in mind, you should still vote for the minority amendment to strike section g from the so called majority committee proposal.

Now, when we speak in the minority report, in the written report here at 580, we are simply saying that 7 members of the committee not only prefer that you don't put the district plan in, but prefer that we retain the present system.

CHAIRMAN VAN DUSEN: Mr. Iverson.

MR. IVERSON: Mr. Chairman, I would like to make one further comment, and I dislike to suggest that Delegate Judd did this intentionally, but apparently she is so wrapped up in her opposition to the district plan, and so wrapped up in a plan which is not the present plan of the supreme court, that she decided that under section 9 of the rationale this was for every lawyer in the state to strive for such excellence that his fellow lawyers might think him worthy to serve on this high court.

I am sorry to say that Mrs. Judd failed to quote all of the language, because the language reads, ". . . every lawyer in the state to strive for such excellence that his fellow lawyers and the public might think him worthy to serve on this high court."

CHAIRMAN VAN DUSEN: The Chair recognizes the gentleman from Detroit, Dr. Nord.

MR. NORD: Mr. Chairman, I come before you not to praise the district plan but to bury it. I don't know that I have the power to bury it, but if it is possible I will add my little bit to it.

It is very, very difficult to speak calmly about this plan. I have been advised to speak calmly about it, and I doubt whether I can do it. It is not a calm type plan. I have been reported in the newspapers as saying I believe that it's something like a disgraceful plan. I believe that it is. In fact, I reported that this is one of the most disgraceful plans that I have ever seen before me at this convention.

The fact that The Detroit News' editorial supports my position does not make me think I am wrong. They are usually on the opposite side, but it happens this time they are on the same side. I did not distribute this thing, and I don't believe in publicizing it in the newspaper. But I notice from the remarks of Mrs. Judd, and from the editorial of The Detroit News, and some other sources of information, that this issue is a very, very tricky proposition, and partisanship or nonpartisanship is at the root of it. It is not sufficient to say that nonpartisanship is at the root of it. Both nonpartisanship and partisanship are involved.

Before we decide this issue it seems to me it is very important to understand how basic the whole problem is. This is the most basic problem we can ever face in the constitution. I will explain why I take that view. We write in a constitution protection for people from the majority, and we put that in the constitution in the form of the declaration of rights. It prevents the majority from doing wrong in certain cases to the minority or to an individual. Then we select supreme court judges to make sure that that constitution remains in effect. If we ever have judges who do not obey the constitution, particularly with respect to those basic rights, civil rights, civil liberties, then we have no constitution, and that means we have no protection for minorities, and that means we don't have the rule of law.

As I say, there is no such thing as a legal system or constitutional system unless the judges are selected according to some system which will guarantee that they do live up to the constitution and the laws. Nobody has ever figured out a system that will guarantee positively they will do that, but there have been other systems which certainly don't do that.

And I will call to your attention — maybe some of you have seen that new movie, Judgment at Nuremberg, and if not, you are aware of the fact that there were judges, supreme court judges, in Germany, and they did not uphold the constitution nor the laws, and a horrible result eventuated.

It is crucial that judges obey the constitution, and that they obey the laws, and that they be independent of day to day pressure. I have no doubt about that. At the same time there is also the problem of what do you do with judges who go wild; how do you get rid of them? You really have 2 inconsistent problems, and that is why nobody has a neat solution. One of them, how could they be independent of the public, because if they are not independent of the public that means they follow the majority rule, and if they follow the majority rule, what happens to the rights of the minority under the constitution. Therefore they cannot always follow the majority rule. On the other hand, suppose they never follow the majority rule; suppose they abuse their power. You must be able to get rid of them. And because of these 2 things, that they must be independent, and, at the same time, be in contact with the public somehow or other, no one has ever figured out a really good system, to say nothing of a perfect system. It is a difficult problem and it's a crucial problem.

There are 2 halves of this problem about how you select a judge. One is how you select him in the first place, and the second one, what you do with him after he is a judge. How does he stay in or how does he repeat his term of office? The way he is selected the first time is not particularly important. For example, we have an election system now, and yet, in effect, it is an appointive system. I believe that it's perfectly all right. I don't really worry too much of how we appoint them. But what does bother me is how we get rid of them. If we can't get rid of them we can be in for a lot of trouble.

In this connection I would like to say that the plan that is proposed now is the one plan that makes it certain that you can't get rid of them. Just think about what this plan does. Suppose there is a judge who is abusing his prerogative, he is behaving in a monstrous manner, he cares nothing for the constitution. Nowadays he has to return to the people and if the people of the state judge him he goes, he is booted out. But under the plan that is proposed he will not by judged by the people of the state. Eight-ninths of the people of the state will be disenfranchised from rendering an opinion on that judge. Eight-ninths of the people are excluded from making such a determination. All that is left is 1/9 of the people. He cannot be booted out anymore by the people. He can only be booted out if it so happens that that 1/9 of the people wish to do so. All he needs to stay in power, no matter how he abuses his office, is a majority of that 1/9 or 1/18 — in other words, a little over 5 per cent of the people. If he has them behind him he can do anything he pleases, and he can never be removed from the office unless he behaved in a crooked manner. He might be impeached.

The point is, the people cannot boot him out. This is one of the most pernicious features of this plan. Let's not get mixed up about the details, that this is just a technical difference. It is not. It is the heart of the matter. Either the people can kick him out of the court or they cannot. Under the present plan, and, in fact, under every other plan I have ever heard of, the people can kick out a judge. Under the plan proposed here they absolutely cannot.

Now, what is the reason that some effort is being made to change the system? I think there will always be some effort made at all times to change the judicial system, because there is an absolute conflict among 2 ideas: to make the judge independent, at the same time to be able to kick him out. So it is in this case, and no doubt in every convention there is a desire to improve the system. In this particular case the problem has to do with nonpartisanship. I have been hearing here that the argument is that the judge is now selected by a

partisan convention and then he takes a bath and runs on a nonpartisan ticket. There is no doubt that that seems very odd. Whether you say take a bath or not, it doesn't seem very sensible. In fact, it seems hypocritical, and many people have objected to it because it is hypocritical. So let's examine that situation and see whether it is hypocritical or whether it is something else.

What is a nonpartisan election? That is the root of the problem at this stage of the problem. What is a nonpartisan election? A nonpartisan election is an election in which somebody runs for office and nobody supports them except when they go to vote. Nobody comes around and says, "Here is some money for your campaign." Nobody says, "We will help you in your campaign." They just leave him alone. No 2 people get together to support that candidate during the campaign. I ask you whether anybody has ever run for office under those conditions? The answer to that, as far as I know, is no. There is no such thing as a campaign which is nonpartisan in the sense that the man runs entirely by himself; that nobody assists him, and if you adopted a law that says that the campaign shall be nonpartisan, what is it that you say? You say that nobody shall assist him. You say that nobody shall help him financially, nobody can help him in any other way.

In my opinion, first of all, that is impossible to accomplish. In the second place, it would be extremely unwise to do it if you could accomplish it. We do want people to be able to get assistance from others in order to be able to run, otherwise nobody could ever run except the most wealthy man.

In addition, it seems to me that there is a basic civil right involved, and that right is the right to assist in a campaign and not just the right to vote. I therefore conclude on the point that the idea of a nonpartisan campaign is a fiction. In addition, it would be an unwise thing even if it could be done.

A nonpartisan ballot is an entirely different story. A nonpartisan ballot is the easiest thing in the world to do. You simply do not allow anybody to state who it is that supports him on the ballot. Now, there is certainly some merit to that in some cases. I have no objection to that system. In fact, I believe it is the best system for judges. I also believe it is perfectly all right to put the word "incumbent" underneath the name of a judge. There isn't anything wrong or difficult or complicated about having a nonpartisan ballot. But when it comes to having a nonpartisan campaign, as I say, it seems to me that is impossible and also undesirable. Now, if you face up to that, what do you conclude? You conclude that it seems to be desirable to have a nonpartisan ballot, and it seems to me desirable to have a partisan campaign.

That is the actual situation in Michigan at the present time, and I say that didn't happen by accident. It happened by trial and error. We have not been able to come up with a better solution. Here is not a great solution, but there doesn't seem to be a greater one in the offing.

Turning to the merits of the specific plan that we have before us, which has to do with population districts, I would like to say a number of things about population districts in view of the fact that we have been studying them at this convention for 5 months with great detail.

First of all, I would like to put this out: a number of Republicans, and, as a matter of fact, people not at the convention have a mistaken notion about the nature of population districts; districts which are equal in population. They have a notion that such population districts in this state under the present voting system would tend to be Democratic on the overall results. That is not so. The actual statistics based on past voting records show a different thing entirely. They show, as a matter of fact, for example in the legislature, where you have districts, that on a population basis the Democrats normally lose—in fact, they always have lost in the recent past—by a small margin, and the reason is that even though they may get 52 per cent of the vote ½ of the time, a big part of that vote is, so to speak, wasted votes. It is in Detroit where we have excess votes for Democrats, and they don't make any difference. And, as a result—and there is more of that in the Detroit and Wayne county area than there is outstate to counterbalance it—as a natural result of that, the actual facts show the population districts slightly favor Republicans. I am not against population districts because they favor Republicans. I am in favor of population districts in the legislature, or wherever we need to have districts. But I wouldn't want anyone to make a mistake and think that when you support population districts, that you are bending over backward to be nonpartisan or to be in favor of the Democrats. It is not so. To the contrary, it favors Republicans.

In this particular case, for example, where you have 6 districts, the various different estimates I have seen based on present voting strength would indicate you could expect to have 3 Democrats and 6 Republicans, or some people say 4 Democrats and 5 Republicans. I know that The Detroit News agrees with me on that point, that they feel that the result of this plan would be a majority of Republicans. I really doubt if anyone thinks the reverse. It is a Republican plan to that extent and the reason I mention that is because this plan has been put forward as a nonpartisan plan. A nonpartisan plan which switches the court from a majority of Democrats to a majority of Republicans is really not a nonpartisan plan.

But again considering it on the merits of a population district, we have had a lot of experience with population districts in the legislative organization committee. We know it isn't as simple as you may think. The first thing we learned is that in any kind of district, whether on population or something else, we run into the problem of gerrymandering; that is, where do you draw the line? No matter where you draw the line it has some political consequences, and if you draw lines for supreme court judges it will have political consequences, and if it has political consequences it will not be nonpartisan, it will be political. I don't see why we should wish to introduce the problem of gerrymandering in another part of the constitution. It is bad enough when we are forced to have it in one place, but we certainly shouldn't welcome it and bring it in in another place.

Similarly, the problems that we have had with apportioning of the legislature would be introduced in the judiciary. You know that in this plan as it is proposed, at the end of a certain period of time, January 4, 1973, and 10 years thereafter, every 10 years thereafter, the legislature would be expected to draw new lines, new districts, roughly based on population or as one of the proponents said, on population as nearly equal as may be. That is not the exact language of the proposal, but that is the language mentioned by the proponent. The legislature has not had a good record in drawing such lines in the past; not just in Michigan, but in all states they have had the most complicated trouble there can be. In the legislative apportionment committee we decided to give up on the legislature and turn it over to somebody else. It was just not possible to do it. I recognize the problem here is not identical with the one there, but the point still is that there are political consequences to those lines, and if there are, the legislature is going to have trouble drawing them.

What happens if the legislature does not draw them, as they were not able to do before? Suppose they fail to follow the language you have here? Suppose they never reapportion? You will have the same problem as you have with the legislative apportioning. You are just asking for new problems which never existed before. Suppose the legislature should adopt a plan, a reapportioning plan, but it isn't within the terms of the constitution. Who will adjudge that? The Supreme Court of Michigan will adjudge it. Now you will be asking the supreme court to determine whether the district plan for it is constitutional or not. It seems to me that you are simply inviting trouble there, too. You are injecting political boundary lines into the court.

I might say as well, possibly, that the legislature, having this power, has very considerable power over the supreme court. I recognize they can't actually get rid of a specific judge, but still they could affect the courts of judicial opinion by the power to redistrict, and they might use it as a club on the supreme court. This problem about population as nearly equal as may be also has caused trouble in the legislative or-

ganization committee. When some of us introduced a proposal just like that for the house of representatives, it was argued by others that it was impossible to do; that there was no way to make certain that something really is as nearly equal as may be because it is too vague. The language we have before us, of course, is more specific than as nearly equal as may be—it says within ¼ and ½, but anyway, if they attempt to come as nearly equal as may be, as is the objective stated by the proponents, we have that problem that we don't know exactly what that means. In the house proposal that the minority put out for the legislative organization we did attempt to grapple with that. We set up a statistical test so you could tell whether one proposal was closest to the norm or another was closest. We don't have anything like that in the present proposal for the judiciary. Again we will be running into problems about which plan is more constitutional than the other.

The main thing that you are doing by drawing these districts, I think we should recognize is that you are not just drawing lines on a map. What you are doing is drawing lines around people, people who live in various places of the state. And it seems to me there is never any reason to draw a line around a group of people and say from now on you will be treated differently from another group of people in the state, unless you have no other choice. In the legislature we have no choice. We elect them by dictation from those districts. In the supreme court that is not the situation. There is no need to draw lines around people.

Now, when we elect officials, supreme court judges, from these districts, what is supposed to be the objective of these districts? If it is anything like a legislative district, it means that the official is responsible to and therefore is responsive to the people of that district. If that is what we mean in this case, we are certainly making a terrible error. We don't want supreme court judges to be responsive only to 1/9 of the people of the state. We want them to be responsive to all of the people within a limited extent.

Also what you do when you draw lines about people is, you set up a quota system. I might say that the quota system is one of the things that causes me most to shudder. The quota system is something we must always try to avoid. Why must we have a quota system that says that we must have 3 judges, not less and not more, from Wayne county, and 1 judge from the upper part of the state, not more, not less? A quota system is a system that I have been familiar with in a very unhappy way. Quota systems are always used to discriminate against one group of people or another. In this case, when you enter into a quota system, you are letting loose that kind of objective. It seems to me that that might be the real objective behind this, to say that under no circumstances—and that has been mentioned here by someone that that is part of the desire—shall there ever be more than a certain number from one part of the state. That quota system I object to very strongly, and I might say, too, it doesn't make me feel better that under this proposed quota system you would increase the number of judges from Wayne county. I haven't got the slightest reason to believe at the present time we ought to have 3 judges from Wayne county. I don't know who the third one would be. We are better off not to have one from Wayne county unless we know who he is. Nobody should think that just because a number of us Democrats are from Wayne county, therefore we would enthusiastically endorse another judge from Wayne county. As far as I am concerned, nothing could be further from the truth. We don't want something for ourselves, for the district that we come from. This is not a district or local problem.

Now, what have we actually done when we adopt or attempt to adopt this particular plan? It seems to me that we take a very peculiar view of a constitution when we do this. First of all, I think we have to recognize that this is a radical change from the past in Michigan. It is a radical change. It is true that some states have taken this radical step. It nevertheless is a radical change. We can't predict exactly what will come out of it. I am not against every radical change. I believe every time there is a need for a radical change, then it should be taken. But for any change, whether it is a slight one or a big one, in a constitution, I am always cautious about making that change, including a legislature apportionment. My position has always been the same. In a constitution you must be conservative. You must not make changes, because what you have is a document that protects the rights of minorities against the majority and you mustn't tinker with it. You must leave it alone as much as possible. You only make a change when you feel there is a necessity, when you feel you have an answer to that need. In other words, there is a big burden of proof in making any change in the constitution.

In this case, with respect to the judiciary, I don't see that the committee has carried the burden of proof. They have failed to show, first, that there is a need for change, and second, if there is a need for change this is the solution to the problem. A conservative view of this problem would say that it looks like there is a need for change, and when we can find one that we know is good we will make it, and before we know that it is good we will leave it alone.

Mr. Prettie has inferred that he reached this particular proposal on the basis of the process of elimination. He eliminated all the other proposals, and there was nothing left over except this one. It seems to me that that is a rather backwards way to come up with a new constitution. When you do it that way, you are not sure you really have eliminated everything there is, and you are not sure, even, you shouldn't eliminate this one. You have a sort of elimination type plan. I suggest that if we continue to examine this proposal we will eliminate it, too, and when we do we will be in a position of going through all the other plans that have been thought about, considering every one of them separately, and then if we find one of them is good we will adopt it, and if we find another one that is good, it seems to me the logical thing is to leave it alone.

Mr. Chairman, that is my basic position. We have not seen anyone carry the burden of proof on this plan, and if there is a need for a plan we haven't seen that this is the right one and, that being the case, it should be rejected.

CHAIRMAN VAN DUSEN: Judge Leibrand, some time ago you rose. Did you seek recognition independently of your point of order?

MR. LEIBRAND: Yes, I did, Mr. Chairman.

CHAIRMAN VAN DUSEN: The Chair will recognize you.

MR. LEIBRAND: Might I inquire before I start, of the Chair, what we are discussing?

CHAIRMAN VAN DUSEN: The question before the committee is the minority report amendment offered by Mr. Ford and others to strike out section g of Committee Proposal 91. Section g is the section of the proposal which provides for the method of election of justices for the supreme court.

MR. LEIBRAND: That is what I thought, but I was somewhat misled by the other speakers.

CHAIRMAN VAN DUSEN: The Chair would state, Judge Leibrand, that he was reluctant to interrupt any of the speakers in midstream. The Chair would certainly agree with your point that it would be wise for all the speakers to attempt to confine themselves, as near as possible, to the question before the committee.

MR. LEIBRAND: May I recall to the Chair that I tried it once and it didn't work?

CHAIRMAN VAN DUSEN: The Chair ruled at that time, and he thinks properly, Judge Leibrand, that Mrs. Judd was addressing herself to the point. The Chair will try to keep everybody on it as much as possible.

MR. LEIBRAND: Well, I will keep on it, and I will start, that is, on the minority report amendment, and I will start by pointing out to the delegates that what we are considering here is an amendment that would, in effect, keep the present system of partisan nomination of supreme court judges and appellate court judges, if we have them; nomination in party conventions and elections as nonpartisan at large. I am opposed to the minority report, or amendment, whatever it is called.

Now a number of lawyers and some laymen have taken the floor and theorized and speculated on what effect this

party nomination and nonpartisan election has upon a judge. I don't know, and I don't think they know, but I am going to call a witness who does know, the Honorable Eugene Black, who in 1955 or '56 received a nomination for the supreme court from the Democratic convention, and who 8 years from then, 1963 or '64, is going to have to be going back to that convention, hat in hand, for a second nomination. My good friend, Harold Bledsoe, recalls that when Judge Black was before the committee he, Delegate Bledsoe, asked Justice Black, in effect, whether or not Justice Black felt that the system corrupted or made corrupt the justices of the supreme court, and Justice Black, naturally enough, answered no, that he din't think that, and neither does Delegate Bledsoe, and neither do I. But I have in my hand a transcript of a statement that Justice Black gave before the committee on judicial branch, which tells in plain, unvarnished terms what he does think of this monstrosity of a system that would be reinstated by the adoption of the minority report amendment. Mr. Justice Black said — I don't have the date, but the committee records will have that—

> No one believes under this impossible system of open partisan nomination followed by the pretentious fakery of a nonpartisan election that the pressure of party politics has ever or could be fully eliminated from our minds and consciences. When men look forward to continued nomination and election, and actually owe the very perpetuation of their tenure to the pleasure of a partisan group, we ask too much of them to expect total judicial independence.

And get this. Says Mr. Justice Black,

> The people have a right to expect of a supreme court justice no less than that kind of independence Marshall called for 130 years ago, limited solely by God and his conscience.
>
> I know that 1 or 2 members of our court protest vehemently that party politics are eliminated from supreme court souls and deliberations, as thoroughly as if each of us had been cleansed in the Jordan 2,000 years ago. You may take your pick of these conflicting viewpoints, but you will have no doubt about this: whoever is right, the political appearance or partisan posture of the court before the public is as damaging as the fact thereof. There is no use trying to deodorize by talk or double talk the impression the public is beginning to inexorably have of our partisan nominated courts. That can only be done by constitutional action, because, as we know from 20 years of experience, the legislature will not act.
>
> You may gather from all this that I don't want supreme court justices picked either in the Detroit athletic club or solidarity house. I suggest that they should be picked in the open, by open personal primaries and open personal elections, just as it worked so well for 2 decades with the circuit and probate benches in all outstate Michigan.

Now, I have a thesis, Mr. Chairman and delegates, that I intend to carry all through this convention, and that is: the best government is the government that is closest to the people. The district system will produce that. The minority report amendment will bring us back to the hodgepodge of political confusion so aptly and well described by Mr. Justice Black. Thank you.

CHAIRMAN VAN DUSEN: The Chair recognizes the gentleman from Ann Arbor, Dr. Pollock.

MR. POLLOCK: Mr. Chairman, fellow delegates, I presume it is still in order for a nonlawyer to make a few observations.

CHAIRMAN VAN DUSEN: You are quite in order, Dr. Pollock.

MR. POLLOCK: And also that the purpose of the committee of the whole is to promote brief and informal discussion.

CHAIRMAN VAN DUSEN: That had been the Chair's thought.

MR. POLLOCK: Thank you. I merely want to discuss the present parliamentary situation, in the course of which I will very briefly state my own opinion. I favor the adoption, for the moment, of the minority report amendment, because I think that the arguments—and I wish to associate myself with the able arguments made, among others, by Delegate Everett, Delegate Ostrow, Delegate Judd, Delegate Nord. Those arguments, it seems to me, have demolished the proposal of the so called majority of the committee. I think the proposal, the majority proposal of the committee, is an utterly defective plan for the reasons which have been so adequately presented to this committee. I also, however, wish to say that I am not at all satisfied with the present plan provided in the present constitution. But since this committee of all lawyers, with one very long suffering pharmacist, was unable to come up with an agreed plan, I see nothing else for the convention to do but to defeat the proposal of the so called majority, leaving for the time being the situation the committee was originally faced with, namely, our present plan, and then the convention will have to do the job which the committee was unable to do, which we can then do by adopting one of the remaining plans which I believe are provided for in amendments.

Therefore, the parliamentary situation putting me in this position, I shall certainly now support the minority amendment.

CHAIRMAN VAN DUSEN: The Chair recognizes the gentleman from Hart, Judge Pugsley.

MR. PUGSLEY: Mr. Chairman, fellow delegates, I think it is well known to the delegates here that I have had something to do with the introduction of this plan which has been so much discussed. We have been asked why we favor this plan. What are its merits? I think we start out with the premise that the great rank and file of the voters throughout the state of Michigan are not satisfied with the present plan. I think we also recognize the fact that the people of the state of Michigan wish to continue not only in the executive and in the administrative, but also in the judicial branch of our government, the privilege of selecting those who are to occupy positions of great responsibility and authority.

I think I can agree with most of the speakers who have spoken here today upon the theme that what we are most interested in, regardless of where we live and regardless of our politics, is by what method can we select the most competent, the most efficient, the most honest individuals to represent us in every spot and place in our government, the judiciary included.

As all of you know, I come here from one of the rural areas, from the sticks, so to speak. It has been my pleasure and my privilege to be a member of the judiciary on the lower level, in the circuit court, for 30 years. My circuit has not been one of the smallest, neither has it been one of the largest circuits of the state. There has been some time during my incumbency which I have had to spend in other districts, in other circuits throughout the state, both in the lower and the upper peninsulas; in the city of Detroit, if you please, for many, many days. I have enjoyed this work. I have enjoyed this experience. It has also been my privilege and my opportunity to serve on the bench in every one of these districts that are mentioned in the plan which has been submitted here, and I am here to say to you, fellow delegates, that without exception there is in every one of those districts today men in the legal profession eminently qualified to fill the position of a justice of the supreme court. Several of them have done so in many of these districts in the past. Some of them, unfortunately, have gone down to defeat when the time came for them to be renominated and elected; a loss which was suffered to the state of Michigan, I think, through their defeat. I do not wish to indulge in personalities, but I do wish to emphasize that I believe that the state of Michigan has a wealth of material in the lawyers in the state of Michigan in all parts of the state who would grace with dignity and efficiency the position of justice of the supreme court.

Now, one of the reasons why I have advocated this plan is because I have seen many elections of justices of the supreme court, and I know that the voters who have gone to the polls have, in many instances, if not most of the time, voted with ignorance as to the qualifications of the justices for whom

their votes were rendered. And it has been the thinking of those of us who propose this plan that if the justices who were proposed to be elected came from an area nearer to the residence of these particular individuals, they would be much better acquainted with the public and, as a result of that, we prophesy that a much greater interest will be taken in the selection of the representatives of the people from those particular areas.

I mention these things. I have been slow to rise and have anything to say in this argument, and I do so at this time because I know there are among my friends in the delegates at this convention those who are wondering, perhaps, whether I had changed my mind. Emphatically I have not. To me this offers an opportunity for the people of the state of Michigan to express themselves more intelligently at the polls than they had heretofore been able to. It is with that thought in mind that the judiciary will be kept nearer to the people whom it seeks to serve through this plan than any other that has been suggested.

It has been a pleasure, my friends, during my incumbency as a member of the bench to serve in various parts of the state, and it has also been my pleasure to note the interest that is taken by these judges, by the public, in the courts throughout the state.

Now, to come to the point, the question before us is this: shall we support this amendment or shall we turn it down? I believe, my friends, that we should turn down this amendment, and if it later appears that there is presented to this convention a better plan than this district plan, let us consider it then, but until we do have something better before us, let's turn down this amendment. I hope you will agree with me in voting against it.

CHAIRMAN VAN DUSEN: The Chair recognizes the gentleman from Bad Axe, Mr. McAllister.

MR. McALLISTER: Mr. Chairman, fellow delegates, I think the question that we have before us here today is do we want the people to know who they are voting for and their background, and the right to elect their choice.

We have had some conversation here about this being a lawyers' matter. There are 7,710 lawyers in Michigan, according to the journal, and approximately 8,000,000 people. As I have told you before, I am not here as a lawyer; I am here representing my people back home, and I think what we are concerned with is the people, not the lawyers. The lawyers can take care of themselves. But the people of Michigan can not intelligently vote today on the candidates for the supreme court because they come from widely scattered areas. In fact, the last 2 who were elected or appointed were 1 from Flint and 1 from Sault Ste. Marie. How many people throughout the state know anything about the background or experience of these men?

We have talked here about political pressure. Political pressure does not appear in court decisions, but to those of the lawyers here, we have had many decisions 5 to 3; 3 of one political faith on the one side and 5 of another political faith on the other side.

Mr. Lawrence has asked, is the elective system the best method of selecting judges on a district basis? Any time the people in these districts throughout Michigan select a man, he will undoubtedly be the best qualified in that area. The people in these areas know these individuals intimately, they know their background, except possibly in the city of Detroit. And I want to say that I don't believe that the people in the Wayne county area will have any difficulty in becoming acquainted with their candidates if they are men like Norris, Nord, Ford and Ostrow. I am sure that they will see that the people are well acquainted with them and have an opportunity to determine whether they should be the candidate for the supreme court. I think even Mrs. Judd, who doesn't know her neighbor next door, will be sure to get around the area, if she can be a candidate for the supreme court, and that they will know her and all about her before the campaign is over. So I don't think we have too much to fear if we elect these people by districts, because the people will have an opportunity to become acquainted with those folks who are candidates for public office.

I believe the subject has been pretty well covered here, but I do believe that we are interested in the people of Michigan, as individuals, and if we believe that they have the intelligence to now what is best for them, that we should defeat the minority amendment and get the courts closer to those who the courts serve.

CHAIRMAN VAN DUSEN: The Chair will recognize the gentleman from Ann Arbor, Mr. Bonisteel.

MR. BONISTEEL: Mr. Chairman and fellow members of the committee, for many of the reasons given by Delegates Everett, Lawrence and Judd, and others who have followed, I am voting for the minority report amendment. Because I believe that there are better plans for the selection of judges that will be presented to this committee, and at that time I may desire to speak at greater length on one or more of those plans. But I am voting for the minority report amendment.

CHAIRMAN VAN DUSEN: The Chair recognizes the gentleman from Lansing, Mr. Wanger.

MR. WANGER: Mr. Chairman, members of the committee, before lunch Delegate Ostrow — I see he is not here now, I am sorry to say — said something which disturbs me very much. As you know, I am a bachelor, and he said that you could be going around with a girl for years, but you couldn't tell what kind of a wife she would make until you married her. Well, I would like to say to Delegate Ostrow that that is no excuse for not trying; for not trying to get a plan which has the best chance of getting judges for Michigan, the kind of judges to which the people are entitled.

Now, Professor Joiner, in the con con research study 9, with which we are all familiar, stated,

> Two special qualifications distinguish competent judges from other state officials. One, reasonable legal ability, and, two, independence of thought and action.

Now I know we all agree with the problem of having a judge with reasonable legal ability, but I would like to dwell just briefly on the subject of what we mean by "independence of thought and action," and not in my words but in the words of our chief justice, John Dethmers, when last November he stated publicly as follows:

> Now, one judge appearing recently before the judicial committee of the constitutional convention said we should keep our present system because then it is possible for the people to change the membership on a court and change its philosophy, so that they can get the philosophy that the majority wants at the moment.
>
> To that I would like to respond that justices of the supreme court would do well to put most of the philosophy books back on the shelves and take down a few more of the law books and decide cases according to the law rather than philosophy.
>
> In the other 2 branches of the government, the executive and the legislative, officials should be representing the views and wishes of the majority of the people at the moment, but the judicial office is entirely different. We have constitutional guarantee, a bill of rights to protect the rights of individuals and of minorities, against the power and will of the majority.
>
> Now, how do these constitutional guarantees become effective? Just one way — through the decisions of supreme courts.
>
> And so time and again, when a constitutional right of an individual or a small minority, or any minority, comes up before the court, the court in upholding such a right has to defy or go against the will of the majority. That is their constitutional duty. So the partisan or political views of a judge are not those that are calculated to qualify him for performing that important function, but rather his legal skill, his devotion to the constitution and his understanding of law and its application.

Now, I do not come here to speak in favor of the pure appointment system for supreme court judges, and I realize, as did John Dethmers and the rest of us, that any human

system is going to have some defects, and the elective system of choosing judges has some defects in it because you can't have your cake and eat it, too. Two important defects in the elective process are, first, that it forces an incumbent judge to run against political opportunists, and frankly we know that that makes the incumbent judge subject to the political pressure of the hustings of the stump and of political pressure groups who will seek to support or defeat him in the elective process, and, secondly, we also know that another defect of the elective system in choosing or retaining judges is that the people, unfortunately, do not know the legal qualifications of a candidate, especially before he has served a term upon the bench.

Appearing before the constitutional convention judiciary committee was the director of the American judicature society, who stated as follows: "There have been elections when the voters of Wayne county had the job of choosing among literally hundreds of candidates for the 18 circuit judgeships. Even if—"

CHAIRMAN VAN DUSEN: Mr. Wanger, the Chair is very reluctant to interrupt, but will ask you please to confine yourself more closely to the amendment currently before the house.

MR. WANGER: The amendment currently before the house is whether or not we should scrap the elective process proposed in the district plan and go along with the amendment which is to make no reference, whatsoever, to the specific type of plan for electing judges. Presumably some other plan than we have now or the status quo. My point is, quite simply and directly, that there are defects in the elective system, and, secondly, that under the district plan those evils are intensified rather than alleviated. It seems to me I am expressly on the point.

Now the basic question here which Mr. Winters presented was that even if the number of candidates were within reason, a fair choice among them involves knowledge of their acquaintance with the law and how they handle themselves in court matters that only another lawyer or judge can evaluate, and other things that can be found out only by an investigation that no voter is going to make.

How does the district plan help the situation? Well, it gives us one advantage. The one advantage that the district plan gives us is that it makes it easier for more lawyers to run to be a judge on the supreme court. However, it seems to me that its disadvantages are, first of all, that it intensifies the evil of having an incumbent judge having to run against a political opportunist. We talk about the danger of having a candidate today with money run on a statewide basis. That same candidate with the same amount of money would be twice as powerful financially, or, rather, 7 times as powerful financially under the district plan. Secondly, on a district basis, where the average population is just under 900,000 people for all of the districts except, of course, the one of Wayne, it would make it very difficult, indeed, for the people to go out and find out the qualifications of any of the judges or the candidates even in the district. Third, the district plan would deny to Michigan men of the highest caliber for the bench for the very simple reason that the best candidate available from one district may often be less well qualified than the second best available in any or every other district. Fourth, as has been pointed out, this district plan provides an opportunity for sectional pressures upon the supreme court bench, although the word "balkanization" perhaps over emphasizes this point. Fifth, because of the district, and the way the plan is set up, it presents the legislature with the problem of reapportioning and gerrymandering in the future, which they have a difficult time enough with at the present. And, sixth, it assumes that the lawyer population of the state will remain constant with the rest of the population, something which we have absolutely no guarantee of at all.

Therefore, it seems to me that the district system gives very little in return for the evils which it presents and that we should vote in favor of the minority report amendment, hoping to find a better plan in the future, but realizing that even the minority report amendment would place the state in a better position than does the district plan of the committee.

CHAIRMAN VAN DUSEN: The Chair will recognize the honorary barrister from Allegan, Mr. Farnsworth.

MR. FARNSWORTH: Thank you very much, Mr. Chairman, members of the committee. So that I will not be called out of order, Mr. Chairman, I am going to address my remarks to this one problem of a single "g", because that is what we are discussing at the moment. I am going to speak in favor of the committee report and against the adoption of the minority report amendment.

Now, this matter of g's: the latest national hero last week, I believe, was blasted off from Florida. Newspaper reports indicated that he absorbed 8 g's. Out of that he got 81,000 miles, went into orbit and 3 times around the earth. I submit that this constitutional convention today is getting more mileage per g than did Colonel Glenn.

Everything has been said, possibly, that could be said about the proposal. We have heard about districts and lines and people and Democrats and Republicans and split decisions, but it seems that everyone has overlooked the important fact, the very important fact to me—and this speech is going to be short—that 7 lawyers on a committee got together on a single proposition, and all agreed that it was good. I submit to you that that is the first time in the history of this convention that 7 lawyers have agreed on any 1 point. I further submit to you that that was 35 per cent of the lawyers on that particular committee. At any time, ladies and gentlemen, we can get 7 of these people together, or 35 per cent of them, that is good enough for me. Let's turn down the minority report amendment.

CHAIRMAN VAN DUSEN: For the benefit of our visitors, the question before the committee of the whole is section g of Committee Proposal 91. The Chair will read to the committee a communication which has been received from an anonymous author, "I wish to move that we cause the bell to ring every 5 minutes, so that anyone speaking will know how he monopolizes the time and will wake us all up."

At this point the Chair will recognize the delegate from Detroit, Mr. T. S. Brown. Mr. Brown passes. Mr. Habermehl.

MR. HABERMEHL: Mr. Chairman, I would like to speak briefly in support of the committee report and against the amendment offered by the minority.

It would seem to me here we may be a little misled by the worry about politics in a particular judge. I am afraid if we seek the judicial candidate that has no politics, no political views, we wouldn't have a very good candidate for anything. It is not a judge who has no political views or politics that we seek here. It is a judge who will judge cases on the basis of law, without worry or without pressure as to the political effect of his decisions.

The recent examples before us indicate, I think, that political consideration may cause a judge to adopt certain views. I think what causes a great deal of difficulty among lawyers and among laymen, is how we go about judging the qualifications of a candidate for judicial office. I don't believe that he need be the outstanding legal light of the state or of the nation, but I believe that a couple of requirements, a couple of qualifications are essential. I think, first of all, he must consider any litigant or any person that comes before him primarily as a citizen and as an individual, without any concern whatsoever, for that person's politics, that person's race, color, creed, or any other qualification or characteristic that that person might have. I think he must accept, too, a fundamental of our political system; that we are a government of laws and not of men. I don't believe that any judge can do what some judges have been accused of doing; of following the election returns, of trying to cater to the wishes of the majority at a particular time. I think that idea has been carried, as we have seen in our time in parts of the world, to the extreme that we have people's courts in China, we have people's courts in Cuba, where the only consideration the judge has is pleasing the majority of the people.

We are a government of laws. All cases must be judged in that manner. If a judge has those characteristics, I believe he will be a good judge. How can we best get such judges?

Certainly not under the present plan, which would appear to be what the minority seeks to achieve here. The present plan, as has been pointed out, is largely an appointive system and not an elective system at all. The appointment, whether in the state or on the federal level, is made by the chief executive officer of the state. I think it has been pointed out to us here that the executive officer of the state is a politican. He not only holds the office of chief executive, he holds the position as head of his party, and I think it is a complete and human impossibility to expect any such person to consider or to fail to consider the political effect that any appointment that he might make would have on his own individual affairs, his own individual chances of being elected, or upon his party's chances of retaining power. I think that is inherent in the makeup of any chief executive.

If we consider the elective aspect of the present plan, we have these candidates running on a statewide basis, nominated by political parties and running on a nonpartisan ballot. I submit to you here that such a candidate cannot possibly avoid the matter of politics. In order to be elected in a state of approximately 8 million people, he must be a political figure. He must have had some publicity of a political nature or he must have attracted the support of political organizations. In doing so he incurs some obligations of a political nature.

I think in our own delegation here we have the best possible example of that. This may be embarrassing to some of the people that form a part of our delegation, but we have among us retired circuit judges who have a statewide reputation for competence and ability as judges. I point out to you that at least several of these people have had ambitions of becoming candidates of the supreme court, and in several instances were, in fact, candidates. I would point out to you, too, that despite the recognized capability and competence, they never had a prayer of a chance of being elected to the supreme bench.

If, then, we have found candidates of proven judicial ability, somewhere in this system that we devise there ought to be opportunity to promote these individuals. Our present system simply does not do that. A competent and adequate judge is not a politician. He takes no particular interest or part in politics because, of course, of the canons of judicial ethics. He makes no political name for himself. If he were to try to run on a statewide basis he would find it impossible to attract the number of votes that would assure an election. Any system we provide here ought to provide a way of recognition of these judicial capabilities, and an opportunity to promote such an individual to a high judicial post.

Six former circuit judges serve with our delegation; 6 men of proven judicial capabilities, and I very much doubt that a single 1 of the 6, barring some political accident, would have had much opportunity for the promotion to the supreme court.

Obviously, then, we have a job of adopting a system, a plan, that would insure the promotion of such individuals. Certainly the minority plan could not do this. I believe the majority plan could, because each of these 6 men we have with us would have been the logical candidate for election from his district, and most likely could have succeeded in being promoted from his district to the highest court; something that at least several of them found impossible on a statewide basis.

CHAIRMAN VAN DUSEN: The Chair recognizes the gentleman from Detroit, Mr. Hodges.

MR. HODGES: Mr. Chairman, to the delight of the members of the majority party and to the relief of some of the members of the minority party, I haven't taken the floor in about 3 weeks. At this time I would just like to ask for a division.

CHAIRMAN VAN DUSEN: Mr. Hodges requests a division on the Ford minority amendment. Is the demand supported? It is supported.

The Chair recognizes the gentleman from Detroit, Mr. Stevens.

MR. STEVENS: Mr. Chairman, members of the committee, all I want to do is call to your attention, if there is any question about it, that this system is not an innovation. Back as far as I can remember it has been the practice and custom and tradition of the nominating conventions of the 2 parties to pay a great deal of attention to the place of residence of candidates whom they nominated. So we would be merely continuing a practice which the conventions have followed whether the election was to be partisan or nonpartisan. Thank you.

CHAIRMAN VAN DUSEN: Mr. Yeager.

MR. YEAGER: Mr. Chairman, ladies and gentlemen of the committee, I want to bring up just 2 points. One, questions coming before the supreme court are not district questions but statewide questions for decision; and 2, we are providing for a court of appeals later on in the judicial section on a district basis, and this should answer the need for district representation at the higher court level. I therefore urge the adoption of the minority report amendment.

CHAIRMAN VAN DUSEN: Mr. Hatch.

MR. HATCH: Mr. Chairman, I would like to direct a question to Mr. Prettie, if I may.

CHAIRMAN VAN DUSEN: If the gentleman cares to answer.

MR. HATCH: Concerning page 3 of the district proposal, starting on line 14, which has to do with the reapportionment every 10 years, Mr. Prettie, is my assumption correct that under the district plan Wayne county would at all times be entitled to 3 justices?

MR. PRETTIE: That is the basis of the plan, Mr. Hatch. It seems to be the key county upon which the apportioning of population for the other areas must necessarily depend.

MR. HATCH: I notice, also, that the other districts may not have more than ½ of the population of Wayne county.

MR. PRETTIE: The plan so provides.

MR. HATCH: Does this mean that if a given county has more than ½ of the population of Wayne county, then it would be entitled to 2 justices?

MR. PRETTIE: That, I think, would be within the discretion of the legislature in making the reapportionment should such situation ever arise, and I think if they had more than ½ of the population of Wayne county they should equitably, but in the judgment of the legislature, be entitled to additional membership on the court with a proportionment readjustment elsewhere. Which, perhaps, raises a further question that you have: what happens to the rest of the districts? Frankly, I hadn't thought that far.

MR. HATCH: I would merely like to comment on this aspect of it. It seems to me that the system provided here for reapportionment and freezing in 3 justices in Wayne county may have a short term advantage for the outstate area, but could conceivably, in the next 30 years, have an adverse effect for the outstate area. In other words, I think we all know that in Wayne county, in proportion to the rest of the state, the tendency is that its population, as compared to the rest of the state, is going down, and that conceivably in the next 30 years we might have 1 or 2 other counties which do have more than ½ the population of Wayne county. If this means that these counties must then have 2 justices, this would be 3 in Wayne, 2 in another county, 2 in another county — there are 7 justices. Does that mean, then, that the other 2 justices would be divided between the remainder of the state?

CHAIRMAN VAN DUSEN: Do you direct your question to Mr. Prettie, or is your question rhetorical?

MR. HATCH: Rhetorical.

CHAIRMAN VAN DUSEN: The question is rhetorical. Mr. Gust.

MR. GUST: I come here to praise nothing that is now before us, and I'm going to be brief. I reached this conclusion by way of logistic syllogism: 1, I will have to vote with Delegates Ford and Nord; 2, this makes me feel very uncomfortable; 3, a fortiori, something must be amiss. There is no good place to go at present. I agree with Dr. Nord that the present system is not a great solution. I disagree with him that there is no good solution, and I am forced to do so until and unless I can see the remainder of these plans that I know

will be ultimately presented before the convention. And so, ladies and gentlemen, let's get on with the business at hand and vote with brothers Ford and Nord; get rid of both of these plans and get on to a plan we can accept. Mr. Chairman, I would like to move the previous question.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Ford and others to strike section g of Committee Proposal 91. Those in favor of the amendment will vote aye, those opposed to the amendment will vote no. The question, for any late arrivals, is on the Ford amendment to strike section g, on which those who are in favor will vote aye, and those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and total the vote.

SECRETARY CHASE: On the adoption of the amendment offered by Mr. Ford and others, the yeas are 69 and the nays are 58.

CHAIRMAN VAN DUSEN: The minority report amendment is adopted. The secretary will read the next amendment.

SECRETARY CHASE: Mr. Kuhn offers the following amendment:

1. Amend page 2, following line 24, by inserting section g, to read as follows:

"Sec. g. The supreme court shall consist of 9 justices. They shall be elected for 8 year terms, and not more than 3 justices shall go out of office at the same time.

Justices shall be nominated and elected at nonpartisan elections, conducted as provided by law. The legislature may provide for nomination and election by districts. Incumbent justices may secure their nomination by filing an affidavit of intention to run as shall be provided by law.".

CHAIRMAN VAN DUSEN: On the amendment the Chair recognizes its mover, Mr. Kuhn.

MR. KUHN: Mr. Chairman, I wish to withdraw that amendment at this time, and yield to Mr. Lawrence.

CHAIRMAN VAN DUSEN: Mr. Kuhn withdraws his amendment, and without objection it will be withdrawn. The secretary advises that Mr. Kuhn has the absolute right to withdraw his amendment. It is withdrawn. The secretary will read the next amendment.

SECRETARY CHASE: The next amendment on file is by Messrs. Lawrence, Tubbs and Mrs. Judd:

1. Amend page 2, following line 24, by inserting section g, to read as follows:

"Sec. g. For all courts of record for which a judicial nominating commission is provided, a vacancy in the office of justice or judge shall be filled by the governor from a list of 3 nominees presented to him by a judicial nominating commission. If the governor should fail to make an appointment from the list within 60 days from the day it is presented to him, the appointment shall be made by the chief justice or the acting chief justice from the same list.

At the next general election following the expiration of 3 years from the date of appointment, and every 10 years thereafter so long as he retains his office, every justice and judge so appointed shall be subject to approval or rejection by the electorate. In the case of a justice of the supreme court and of a judge of the court of appeals the electorate of the entire state shall vote on the question of approval or rejection. In the case of a judge of the circuit court or of the probate court the electorate of the county or circuit in which the court to which he was appointed is located shall vote on the question of approval or rejection.

There shall be a judicial nominating commission for the supreme court and the court of appeals. There shall be a judicial nominating commission for each circuit court and each probate court, in each county or circuit which has by a referendum vote of the electors therein authorized the creation of such a judicial nominating commission. Each judicial nominating commission shall consist of 7 members, one of whom shall be the chief justice of the state, who shall act as chairman. The members of the bar of the state residing in the geographical area for which the court sits shall elect 3 of their number to serve as members of said commission, and the governor shall appoint 3 citizens, not admitted to practice law before the courts of the state, from among the residents of the geographical area for which the court sits. The terms of office and compensation for members of a judicial nominating commission shall be fixed by the legislature, provided that not more than 1/3 of a commission shall be elected in any 3 year period. No member of a judicial nominating commission shall hold any other public office or office in a political party or organization and he shall not be eligible for appointment to a state judicial office so long as he is a member of a judicial nominating commission and for a period of 5 years thereafter.".

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Messrs. Lawrence, Tubbs and Mrs. Judd, on which the Chair will recognize Mr. Lawrence.

MR. LAWRENCE: Mr. Chairman, members of the committee, due to a gross failure in communications, I believe, I still do not have a stand in front of my microphone.

CHAIRMAN VAN DUSEN: The Chair would suggest, Mr. Lawrence—

MR. LAWRENCE: I just wanted to say I will appreciate it if you will be kind enough, if I go back and forth.

CHAIRMAN VAN DUSEN: The Chair will point out to you, Mr. Lawrence, that Mr. Spitler has offered you the use of his microphone which does have the equipment which you desire.

MR. LAWRENCE: I appreciate that. I just feel at home here by my friend, Judge Leibrand.

CHAIRMAN VAN DUSEN: The gentleman will proceed.

MR. LAWRENCE: This is the American bar association plan for selection of the judiciary. It is also known as the Missouri plan. I would like to go into it in some detail with you, assuming that everybody by this time is not a fully qualified attorney. The plan, although it is called the Missouri plan, actually was first used in California, and is now used for the selection of the judges of the supreme court and the appellate courts in that state. Because of a situation that existed in Missouri due to the Prendergast machine, it received additional adoption there because not only was it put into effect in the supreme court of Missouri, but also in the trial courts or the equivalent of the circuit courts in St. Louis and Kansas City. And I might add at this time that, in spite of 2 attempts to have a change of that in the Missouri constitution, both times those attempts were defeated, and the plan is in operation in those states.

The other day we caused to be placed on your desks the proposed amendment attached to which are the reasons. I would first like to go into the situation regarding the election system. As I assume you all know by now, we have only had the elective system in the United States for a little over 100 years. It was not until Patrick Henry came forth with the idea that everybody should be elected to everything that the elective system went into effect. Originally, in the 13 colonies, although they fought the revolution, although they were for a system such as we have in our country at large, judges initially were appointed, and in some of those original 13 states the appointive system is in effect. In other words, just because we elect throughout the country our executive and legislative officers, do not make the mistake in thinking that throughout the country, throughout the United States, the elective system in the judicial system is universal.

As a matter of fact, and I think this is of some importance, the last 3 constitutions adopted do not provide for an elective system, and I refer to Alaska, Hawaii and the one recently adopted by Puerto Rico. Not all of them have adopted the ABA plan. Many of the states still appoint through the system of appointment with advice and consent. The other day, however, Mr. Ostrow showed you a slip of paper on which the New York system was written out, and which, as he pointed out, I think contained more than we hope our entire constitution will contain. I do have in my hand, however, so that you can see the size of it, the provision as to the judicial system in Alaska, which adopted the American bar association plan. It is very brief, it is very concise and very clear, and if any of you would be interested in reading it, while I don't have any extra copies, you would be welcome to this one.

As was pointed out in the reasons, on the first page, there are a number of states using the appointive system in one form or another. Alabama at the present time has put this plan in effect in Birmingham, its largest city, or the largest metropolitan court area. At the present time Iowa, Nebraska and Illinois are submitting certain aspects of this plan. Arizona, Colorado, Montana, Nevada, Minnesota, New Mexico, Oklahoma, Pennsylvania and Wisconsin have drafted the plan for consideration and study. I believe I am entirely correct on this, that no state having an appointive plan for the judiciary is contemplating going to an elective system, and the reasons for this are simple. Only in the United States and in Russia, among the big governments of the civilized world, is there election of judges. The system of appointment has been found to be the proper system for the nature of the judicial office, because one of the things that we strive for in getting judges is to have them free from political influence and pressures. The objective we should strive for, of course, contrary to one of the statements that was made, is to have the initial selection a proper, good selection, and the best that can be obtained. If that is done, the emphasis on removal becomes less important, and I certainly do not agree it is necessary and it is the purpose of this plan, this ABA plan, that the initial selection will be the best to me.

This plan contemplates a judicial commission composed of 3 attorneys elected by the bar. If it is statewide, by the state bar, if it is in a circuit or a county, by the bar in that county. It contemplates the appointment of 3 laymen in the same area, the appointment to be made by the governor; and the seventh man being the chief justice of the supreme court of the state. This judicial commission serves without pay, and in the event of a vacancy it submits to the governor 3 — the names of 3 candidates. Within 60 days after the submission of those names the governor selects 1 from the 3. In the event he does not exercise that power, it then becomes the duty of the chief justice of the supreme court to make the appointment.

You will find, on the second page of the plan, that it is designed primarily for the supreme court, but it is made optional in the lower courts, that is, the circuit court, the probate court, for instance, if adopted by the county or by the circuit to be affected; and since one of our major problems is the situation in Wayne county, it is entirely conceivable that — the same as in Missouri, where only St. Louis and Kansas City have found it advisable or necessary to adopt the plan — it could be adopted in Wayne county, and in Wayne county alone, until the need for the plan arises in other counties.

In the July or in the January, 1962, issue of the Journal of the American Judicature Society it refers to an international conference — it actually was — that was held in Chicago, at which the matter of selection of judges was gone into in some detail. I would like to read to you the statement from page 9 of the consensus of the opinion. Now you understand there were people from all of the 50 states, from Canada, from Mexico and from England present.

> The objective of any method of selection should be to obtain judges free of political bias and possessed of qualities that would lead to the highest performance of their judicial duties. It is indispensable to the proper functioning of the judicial system that men who are to be elevated to the bench be selected solely on merit, on the basis of their qualifications for judicial office.
>
> In the process of their selection, as well as in their work and tenure, they must be free of all collateral influence and partisan political pressures.

Each of the panelists examined the method of selection in use in the various states. Some conferees from states having an appointive system reported that with an enlightened and cooperative governor the appointment of judges of consistently high quality has resulted. This method has the merit of focusing direct responsibility upon the appointing authorities. Even under elective systems most judges have been appointed initially, because in those states the governor has the power to fill the vacancies by appointment.

Criticism was directed mainly at the partisan elective system, and particularly with reference to the metropolitan centers where its defects appear in their most aggravated form. Although the nonpartisan elective system lessens party dominance in the selection of judges, it is not a method to be recommended for securing the best qualified men. The nonpartisan system dissipates the responsibility. Furthermore, it does not prevent interim appointments on a partisan basis. A judge so appointed may be difficult to remove even though unqualified.

The American bar association's plan affords the means of avoiding the weaknesses in other existing methods, while retaining their desirable features. It provides for the filling of judicial vacancies by appointment by the governor from nominations submitted by a nonpartisan commission composed of lawyers, judges and laymen. Tenure of judges so appointed is subject only to vote of the people at a noncompetitive election. This relieves the judge from the necessity of campaigning for office against opposing candidates, but still requires him to answer to the electorate. These 2 distinctive features tend to assure selection and retention of the best qualified judges. In the plan that is submitted here, at the end of the term of the judge, the judge would run at a nonpartisan election solely on this question, which would be very simple for the people to answer, "Shall Judge Blank be retained or shall he not be retained?"

I think the results that we have had in Michigan regarding the ABA plan are particularly significant. I have been unable to lay my hand on the one paper I wished, but at the annual bar association meetings, whenever the ABA plan has been brought for vote to the membership it has been defeated. At our annual conference there are at the most about 500 attorneys present, and it is very easy for organized groups to control the action at the annual conventions. But on 2 occasions the state bar has been polled at secret elections, their ballots are secret. The first of these was in 1953, and somewhere in that pile of papers on my desk is the results of that poll. My recollection is that it was 2407 in favor of the ABA plan and 2057 in favor of the present system.

On December 20, 1961, in an effort to cooperate with the constitutional convention, another poll was taken of the members of the bar in Michigan. In this poll the Missouri plan, the ABA plan, was preferred by 2,577 attorneys, as against 1,795 in favor of the present plan, and 531 for lifetime appointment by the governor with advice and consent of the senate. In other words, the ABA plan was preferred by more of the attorneys than the other 2 plans together.

In spite of the fact that the results of that poll were made known to the committee in this case, it gave no consideration to this plan. Quite recently a letter was received from the president of the Detroit bar association, was sent to Delegate Prettie. The letter was dated February 15, 1962. In this vote that was taken by the state bar, the ballots that were sent to Wayne, Oakland and Macomb counties were of a different color than those throughout the state. So it was possible to determine what the vote in the metropolitan area was. It is interesting to note — and, incidentally, the Detroit bar is the largest bar by far in the state — I noticed that, for instance, it must compose at least ½ of the bar, and perhaps more. The metropolitan area vote was as follows: appointment by the governor under ABA or Missouri plan, 1,731 against 1,056 to retain the present system and 354 for lifetime appointment by the governor with advice and consent of the senate.

Again among the attorneys who should know the situation as it exists in the courts, the majority were for the American bar association plan over the 2 others combined, and in the — as it applied to the circuit court, the vote in the metropolitan area was 1,592 over 1,397 and 110 for those 3 plans. Now, it shows that the attorneys, when they are called upon to vote in a manner that is consistent with our American experience, in other words, in a secret ballot, and in the area that is most vitally concerned, namely, in the southeastern portion of the state and the metropolitan area, not only did they favor this plan for the supreme court, but also for their lower courts.

Now, I believe that that concludes the presentation I wish to make. You have the material that was distributed. You have not only that for but against, and if we are to take in

this convention a forward step to correct not only the present system with its defects — which, after all, you know has the worse features of both the appointive and elective systems — you have heard expressions that our system is the best, but, after all, we have under the present system an appointment made by the governor without any responsibility to anybody; no advice and consent. He doesn't have to explain the appointment; he can use it for any purposes he pleases. That is why in the appointment system it is one of the bad features, and in the elective system we now have that where the candidates go to the polls, and one of them, even though he may only have recently been appointed by the governor, is entitled to the incumbency label, which, as one of the witnesses before the committee stated, in his opinion, one of the judges, it was worth 25 per cent of the votes.

We ask that this committee seriously study, consider and discuss the merits of this plan.

CHAIRMAN VAN DUSEN: On the amendment offered by Messrs. Lawrence, Tubbs and Mrs. Judd, do the other cosponsors of the amendment seek recognition? Mr. Tubbs.

MR. TUBBS: Mr. Chairman, I just want to second everything that Mr. Lawrence has said, and add that if you are looking for an ideal plan for a constitution for the selection of judges, this is it. Nobody in the country has ever adopted or come up with any plan that approaches it so far as assuring the independence of the judiciary is concerned, and it seems to me that should be our principal concern. Thank you.

CHAIRMAN VAN DUSEN: Mrs. Judd, do you seek recognition on your amendment?

MRS. JUDD: Only to say, Mr. Chairman and members of the committee, that in backing this proposition I feel that I am representing my fellow laymen throughout the state. There are others besides lawyers who are concerned with this matter. As you know, the Michigan league of women voters appeared before the judiciary committee and made a strong appeal for this type of system. The committee for a sound constitution has also come out for a similar plan, and my own Republican party in the county of Kent, in its discussions and in the polls that it took last summer, also favored an appointive plan.

CHAIRMAN VAN DUSEN: On the amendment offered by Mr. Lawrence and others, the Chair will recognize Mr. Everett.

MR. EVERETT: Mr. Chairman, I would request that the matter in front of us be divided, as it presents a manner of selecting both supreme court justices and a permissive manner of selecting circuit and probate judges. Really it can be divided, and seems to me should be.

MR. LAWRENCE: Mr. Chairman, I wonder if this might make any difference? Mr. Everett, there are 3 amendments in together. The first one is the one you refer to. The second one limits the plan to the supreme court and the appellate court, and the third to the supreme court alone.

MR. EVERETT: Well, it appears to me, Mr. Chairman, that it should be divided for this reason: the first plan simply allows a county or circuit by referendum of the people to select this plan. Now, the county from which I come, I don't think they would select it, but I see no harm in the constitution giving the people that right, and I wouldn't bother that right. In fact, I would be willing to vote that it be in the constitution so that if some day the people want that system they can have it. But this is an entirely separate question from the mandatory provisions that the supreme court and the court of appeals must be selected this way.

CHAIRMAN VAN DUSEN: Mr. Everett, if you persist in your request the question will be divided. The secretary advises the Chair it would be somewhat easier to proceed in the order suggested by Mr. Lawrence, but the decision is in your hands.

MR. EVERETT: If we are going to go from the third proposition forward I can see doing it that way, but if we are going to have to vote on the first, I don't see how I can vote upon it.

CHAIRMAN VAN DUSEN: Mr. Everett requests a division of the question, and when it is presented it will be divided. As the Chair understands it, Mr. Everett, you request it to be divided as to the supreme court, the intermediate appellate court and the inferior courts?

MR. EVERETT: I was only thinking in terms of dividing it beginning with the second sentence of the third paragraph on page 4. If it requires further division, somebody else would have to suggest that.

CHAIRMAN VAN DUSEN: The Chair's pagination is not identical to yours, Mr. Everett. Would you state the substance of what you seek to have divided?

MR. EVERETT: Yes. We were given a collection of the pending amendments to Committee Proposal 91. Page 4 of this collection is the amendment proposed by Messrs. Lawrence, Tubbs and Mrs. Judd, which includes reference to the circuit court, probate court, and while there is some reference to them in the earlier paragraph, this could be reinstated very easily, and it seems to me the division which I would like to see, at least, begins with the second sentence of the last paragraph of that page, starting "There shall be a judicial nominating commission for each circuit court", and so forth.

CHAIRMAN VAN DUSEN: The question will be so divided when it is presented, Mr. Everett. For what purpose does the gentleman rise, Mr. Yeager?

MR. YEAGER: Mr. Chairman, I request a division vote.

CHAIRMAN VAN DUSEN: Mr. Yeager requests a division. Is the request supported? It is supported.

On the amendment offered by Messrs. Lawrence and Tubbs and Mrs. Judd, the Chair will recognize Mr. Norris. Mr. Norris not being present, the Chair will recognize Mr. Iverson.

MR. IVERSON: Mr. Chairman and fellow delegates, I rise to oppose this proposed amendment, which proposes that Michigan adopt the form of the Missouri plan or the ABA plan for selection of justices of the Supreme Court of the state of Michigan. In the first place, the testimony of Mr. Glen Winters, executive secretary of the American judicature society, was presented before the committee on judicial branch of this convention, and he urged the adoption of some such plan most strongly. He pointed out that the American judicature society, for which he speaks, had been urging the adoption of this plan for almost 50 years. While it has received the appellation of the Missouri plan, it has actually been adopted for the trial courts in only 2 counties of that state. It was adopted there because of the corruption of the courts and their control by lawless elements in Missouri's largest cities.

No such situation has existed in Michigan. We hope it never will. Our nonpartisan method of selection of our judiciary has been firmly established as a part of our court structure ever since 1939. The principle of nonpartisan election has overwhelming support among the voters of this state. It negatives the need for the ABA or Missouri plan.

The cynicism of the proponents of the ABA plan is demonstrated in an article appearing in the December, 1944, Journal of the American Judicature Society, volume 28, page 108, wherein an article offered by Glen Winters states:

> Once a good judge has been put on the bench he ought to be able to keep his seat indefinitely, until death, retirement or resignation. The vote on retention in office is intended and expected hardly ever to interfere with the operation of that rule. It remains to be proven whether the voters can exercise any better judgment on the issue of reelection than on the original election. There surely are few people who believe that very many voters will go to the polls with more information about the average judge than as if they had the job of selecting him in the first place.

Mr. Winters pointed out in his address before the Genesee county bar association, November 6, 1961, and in his testimony before the committee on judicial branch of this convention, that despite the efforts of his society to promote this plan, it has been accepted in full or in part in only 5 of the 50 states. In 1934, it was adopted as to appellate courts, and only as to certain features, in California. In 1940 it was adopted in Missouri as to appellate courts and as to trial courts only in 2 counties of the state where the corruption of the judiciary shocked the conscience of the public.

Mr. Chairman, it seems to me there is a lot of talking. I don't know whether they want to hear me. If they don't, I would like to have them step out in the hall.

CHAIRMAN VAN DUSEN: The committee will be in order.

MR. IVERSON: In 1950 it was adopted only in part in Alabama. In 1958 it was adopted in Kansas as to the supreme court only. In 1958, in the new constitution of Alaska, it was adopted in the absence of any precedent such as we have in Michigan for nonpartisan election of the judiciary.

Mr. Winters asked and answered a question in the minds of most delegates in the following language:

> Some people have asked why, if the combination plan is so meritorious, it has not won wider acceptance during the half century the American judicature society and others have been promoting it. The answer is, in part, that it strikes at the heart of our system where changes will never come easily, and, in part, it takes an important segment of political patronage out of the hands of political organizations.

Very early in the deliberations of the committee on judicial branch the question was raised as to whether there was anything so sacrosanct about our courts that the voters of this state should be deprived of their franchise in selecting the judiciary. The same question was posed to Mr. Winters before our committee, and in his presentation on December 14, 1961, Mr. Winters had this to say:

> I suppose it is a natural inquiry to ask if there is safety in numbers, is there not the greatest safety in the greatest number, namely, the entire electorate of the state? Well, that does not follow at all, and it runs into conflict with the third principle which I offer for your consideration; that it is undemocratic to impose upon the democratic processes burdens it is not equipped to bear. There are things the voters have a fair chance of passing judgment on, and these should be left to them. There are many more as to which they do not have adequate opportunity to form an intelligent judgment, and these a well planned governmental system puts in the hands of smaller groups or individuals who, in turn, are responsible to the people for the way they exercise that delegated power.
>
> Although others of the witnesses you have heard would disagree, I suggest to you that the determination of the qualifications of a candidate for judicial office is in the latter group.

These statements indicate the continued attitude of the American judicature society toward the intelligence of the voters. But despite this fact, we must keep in mind the very heart of the ABA plan is that after nomination by a blue ribbon commission, and appointment by the governor, the voters are then called upon to determine whether a judge shall be continued in office on the basis of his record.

I agree with Mr. Winters that if the voters cannot intelligently choose the man who shall judge them in the first place, they are certainly not better equipped to pass upon their records after they have been upon the bench. But I submit that under a nonpartisan system the voters can and do act intelligently. I submit, further, that the whole argument for this plan falls when one considers that the state is fortunately possessed of a huge reservoir of retired judicial manpower available to fill vacancies on our courts as they occur until the next general and nonpartisan election. Such persons under the plan submitted in the majority report would be ineligible to run for election for the unexpired term, and thus the people are left free to select competent judges to fill vacancies, and must retain this basic right of free citizens, in a free society, to a freely elected judiciary.

The committee on judicial branch was privileged to have before it the testimony of several members of the supreme court of this state. Of those who so appeared, only Justice Dethmers favored the adoption of the ABA or Missouri plan. Justice Edwards, then on the bench of our supreme court, in his prepared statement to the committee on November 1, 1961, made statements which I will not repeat, but which were stated to you this morning, and Justice Black, as early as May 24, 1961, presented to the members of the judicial selection and tenure committee his draft of a new judicial article. He made no provision for adoption of the ABA plan, but continued the principle of nonpartisan election. Later in July, 1961, he subscribed to the principle of a nonpartisan election on the district basis, and he has continued his support of this plan. Again earlier this morning his questions and answers were given to you by Mr. Prettie, and I will not repeat them. Justice Adams stated before our committee on January 17, and I don't recall that this was brought to your attention:

> With reference to the present system of nomination and election of judges, and particularly supreme court justices, I believe that the present system is the best of any now advocated. If the statewide primaries and their attendant expenses are to be avoided, some responsible group must carry out the nomination of the justices of the supreme court, and under the Missouri plan, or any possible modification thereof the group proposed, in my opinion, is far too restricted. On the other hand, the delegates of our 2 major political parties constitute a sufficient wide cross section of the electorate to assure the selection of reasonably good candidates, who then must submit themselves to the people for the final test.

He strongly advocated the election of judges and justices.

Justice Souris appeared also, and that testimony was repeated this morning, and I will not again repeat it.

Justice Kavanagh appeared before our committee on judicial branch November 2, 1961, and expressed his total lack of agreement with the Missouri ABA plan. He said:

> Advocates of the so called Missouri plan and other similar plans forget that this was the method of selecting judges both in England and on the continent of Europe for centuries. They have a system in Russia and Cuba today where a small clique selects the judges and influences their decisions. Russia provides in its constitution for the same freedoms and liberties we have here in the United States of America. The reason we enjoy those liberties and they do not is that we have a free judiciary, elected by the people and subject only to the people to preserve them and protect those rights and liberties.

He further said:

> How many know that Michigan, in establishing its judiciary, was one of the pioneers in leading the way that was eventually followed by all states of our nation in electing on party tickets the members of the judiciary. Most states followed shortly thereafter.

He also said:

> The Missouri plan includes only supreme court justices, 3 appellate courts, 2 circuits in the cities of Kansas City and St. Louis. Others, although having the option, have not seen fit to adopt it. Independence of the judiciary is not obtained under the Missouri plan. The select committee, being few in number, is easily subject to pressures from all sources, political and otherwise. Under it the commission of attorneys and laymen would name a list of judicial nominees, and the governor would pick from this sacred list. If the committee was composed of friends of the governor and knew whom the governor desired to appoint, quite naturally they would put that individual on the list. What happens if the governor refuses to appoint a man to the vacancy until such time as the list is changed to include someone he could in good conscience appoint to such a sacred trust? After the appointment, in place of being independent, the judge chosen would naturally be beholden to the members of the committee.
>
> In my opinion a good judge, a competent judge, a judge who is conscientious in carrying out the responsibilities of his office need not fear election by the people.

The state of Illinois has for many years elected justices of its supreme court by districts, and I will not again burden you with that because it was given to you this morning; the testimony given before our committee. It is further significant that the committee on court administration of the state bar of Michigan, in its 1961 report published in the Michigan State Bar Journal for September, 1961, at page 48, recommended:

> . . . that the present system of nominating and electing

supreme court justices be retained; the same provisions to apply to judges of the intermediate court of appeals, if the latter court be established by a new constitution.

This committee was chaired by Circuit Judge Noel Fox, and included among its membership, Court Administrator Doyle, Justices Edwards, Kavanagh, Souris, along with many other circuit judges and eminent attorneys. No place in the report did they favor an adoption of the ABA plan. Our committee also had the benefit of the testimony of Judge Michael Carland, and I believe that was referred to this morning.

Other witnesses before the committee on judicial branch echoed the sentiments of the eminent witnesses I have quoted. But let us look to another source, the testimony of those who use our courts. As you all know, the state bar of Michigan, in its efforts to be of service to this committee on judicial branch of this convention, presented a questionnaire to its membership. With reference to circuit judges, the bar voted to retain the present Michigan system by a vote of 2461, and for the ABA plan, 2237. With reference to the supreme court justices, 1,795 favored the present Michigan method, 531 favored lifetime appointment by the governor, and 2,577 favored the ABA plan. In evaluating these results, however, it must be kept in mind that simultaneously, as was pointed out this morning, strong argument was independently sent to the members of the bar urging adoption or approval of the ABA plan.

With these facts before you, fellow delegates, I submit, 1, that the nonpartisan principle of election is well established and strongly favored by the voters of this state; 2, that there is no such judicial corruption as would require the discarding of this established system, and the institution of a blue ribbon committee with subsequent appointment; 3, that the justices of our supreme court, representatives of the association of judges, and committees of the state bar of Michigan which have had this subject under study, do not favor the adoption of the ABA or any other appointive plan; 4, that the committee on judicial branch of this convention early in its deliberations voted 18 to 3 against any plan for appointment of the judges of our courts; and 5, that this convention should confirm the decision of this committee.

CHAIRMAN VAN DUSEN: On the amendment offered by Messrs. Lawrence, Tubbs and Mrs. Judd, the Chair will recognize the gentleman from Saginaw, Mr. Shackleton. Before Mr. Shackleton begins, the Chair will advise that pursuant to the request of Mr. Everett the question has been divided in the following fashion: the first question which will be presented is the question of the use of the ABA plan for the supreme court and intermediate appellate courts, which is the language found on page 5 of your sheets. The second question presented will be the use of this plan on a referendum in counties, where it is used on a referendum basis for circuit and probate courts only, which will be the amendment proposed on page 4, from which certain words will be stricken; those words being "any reference to justices of the supreme court or judges of the court of appeals." When we get to that point, the secretary will read the amendment, but the Chair thought it may be helpful to you to know in advance in what fashion the question will be presented.

Mr. Shackleton.

MR. SHACKLETON: Mr. Chairman, a short statement, if I may, and a question through the Chair to Mr. Lawrence. We have been told there are less than 8,000 lawyers in the state. That is less than 1/1000 per cent of the state population. Mrs. Judd has told us that there are 2 organizations which support the proposed amendment now, each of which combined, or the 2 combined, do not have as many members in their membership as the bar association. My question to Mr. Lawrence, please: what evidence do you have from within Michigan that the average citizen, or particularly the average voter, has in the least, an interest in what the bar association thinks or what their polls indicate?

CHAIRMAN VAN DUSEN: Mr. Lawrence.

MR. LAWRENCE: Mr. Shackleton, either I misunderstood you or you misunderstood some figures. It is my understanding there are in the neighborhood of 9200 attorneys in the state. I don't know whether it makes too much difference in your percentages, but I will say that there are considerably more than 1,000 attorneys.

MR. SHACKLETON: No. I think I said 8,000.

MR. LAWRENCE: It sounded like a thousand here.

MR. SHACKLETON: One-thousandth of one per cent of the population.

MR. LAWRENCE: Mr. Shackleton, you have asked a difficult question to answer. I will try to answer it. It is difficult to answer because some of this is not documented. Over a period of about 12 years I have received a number of letters. My file contains numerous editorials, particularly shortly after judicial elections, not confined entirely to Wayne county, but primarily from Wayne county. Those letters, received by the state bar in many cases and forwarded to me, indicate an interest on the most part of the people who do not come into court all the time or frequently, the way attorneys do, and who aren't familiar with the court, but have been perturbed at the fact that they have been asked to vote for candidates of whom they have no knowledge.

The situation could be compared to that which we faced when we ran for office where, in spite of the efforts of our 2 major political parties, it seemed impossible to get a large segment of the voters out to vote, and yet I have felt, really have felt — and I think others agree with me — that the people were interested in this constitutional convention. I think that they felt one way or the other about it. But they were asked to vote on something that they didn't understand and, as a result, they felt that way about the candidates.

I have 2 ballots here, 2 sample ballots. One is this ballot in Wayne county, the Democratic primary in 1935, that brought about much of the change. I don't know that it is possible to see it around this room, but there were 18 candidates to be selected, and on that list — that is, they were to run in the finals. This was just the preliminary heat, so to speak. On that page there are 181 candidates. You can go down through the list of those candidates, you see similar names. If anybody presented a thing like that to me in the ballot box when I went to vote, I think I would walk out. After that ballot there were numerous letters received. There were numerous editorials and articles in the papers. As a result of that an effort was made to correct it by making the election nonpartisan, and by putting in the incumbency designation. However, in the biennial spring election of April 6, 1959, the last general judicial election in Wayne county at which there were candidates for the supreme court, circuit court, recorders and common pleas, the voters who went into the voting booth — and I believe in Detroit now it is all by machine — were faced with a ballot that had 63 candidates on it for the positions. Now, it is when the voters have received these that — when these situations have arisen — the letters have come into the bar and the editorials have appeared in the papers.

That is all I can tell you about it.

MR. SHACKLETON: One further question, Mr. Chairman, please. You have indicated you have had letters or editorials indicating dissatisfaction. Did any of them indicate a preference for appointments?

MR. LAWRENCE: I would say not. That is, that wasn't the objection.

CHAIRMAN VAN DUSEN: The Chair will recognize the chairman of the committee, Mr. Danhof.

MR. DANHOF: Mr. Chairman, in response to some statements made by Mr. Lawrence, I think Mr. Iverson covered some of them, but I should say for the members of this committee that this plan was seriously considered. It was not only expounded by the several justices of this state, but by the national spokesman for the plan, Mr. Glen Winters. I do not know how they could have had further or more detailed or forceful spokesmen than those 2.

As Mr. Iverson stated, the committee not only rejected an appointment system, but took a particular ballot on the ABA plan, and it was the overwhelming vote of the majority of the committee that there was no real need for a change, and that the people should have the voice in selecting the justices of the supreme court. It was pointed out, and rightly so, that the

courts are not necessarily just for the attorneys, but that they are for the people, and that Michigan historically has taken a lead in the nonpartisan election of judges, be it on a local trial level or the justices of the supreme court. We considered the plan, and we had numerous spokesmen for it, and I say Mr. Lawrence is being completely consistent, and he advised me very early that this was the only plan he would vote for, and regardless of what the committee came out with he would not approve it, and if we did not come out with the ABA plan he would present this as either an amendment, as a minority or, as he has, an amendment by getting 2 cosponsors. The same is true of Mr. Tubbs.

I can only state that the committee considered it. We believe the people should have the right to vote upon the election of supreme court justices. Therefore, I would urge the rejection of the amendment.

CHAIRMAN VAN DUSEN: On the amendment, the Chair will recognize Judge Dehnke.

MR. DEHNKE: Mr. Chairman and delegates, every day we are reminded that a lot depends upon the point of view, and that reminded me of a story a friend of mine recently told me. He said last summer he overheard a conversation between 2 house flies. They were discussing the idiosyncrasies of these creatures that call themselves people. Said one fly to the other, "Look at those crazy people. Here they spend all that money building ceilings and then they walk on the floor." (laughter)

I would like to emphasize just one point that I think is important in connection with the proposal. The clinching argument in favor of this plan is supposed to be that it will take the selection of judges out of politics. I think on analysis this is the very thing it does not do, because it leaves the appointment eventually and ultimately to the governor, where under the current practice politics becomes the controlling consideration. It starts with a nominating committee. Here we have a nominating committee called upon to select 3 nominees, and the first thing they say to each other is, "We have got to take at least one from the governor's party or else we will be accused of playing politics." And, of course, that particular nominee automatically becomes assured of the appointment. The choice is limited? Is it in fact? The governor cannot be compelled to name any of the nominees. He can hold it up and refuse to act until a new list is submitted which eventually contains the name of the person he wanted in the first place. That is exactly what happened at least once in the state of Missouri.

I wonder, as I have said to you privately before, whether we're not making a mistake in concentrating all of our thinking on lawyers and judges, and forgetting about the jury. To me this is the least acceptable of the so called appointive plans. Thank you.

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: Mr. Chairman, I made inquiry regarding the number of people asking to speak. I had hoped that we might get a vote on this particular amendment before I requested the committee to rise. I understand there are 3 on the list.

CHAIRMAN VAN DUSEN: The Chair would advise that he has at the moment Messrs. Hodges, Ford, Leibrand and Lawrence seeking recognition.

MR. DANHOF: If these people could make it short and if we could get on, I would like, if possible, to take a vote, but if we will be here too long, why, we would have the committee rise. Shall we try for another 2 minutes?

CHAIRMAN VAN DUSEN: The Chair recognizes Mr. Hodges.

MR. HODGES: Mr. Chairman, I am going to address my remarks to the laymen in the audience, since it seems to be the popular thing for attorneys to do. As an attorney I vote in the bar polls along with the rest of the attorneys, and seldom do I seem to win. Yet when I go to the polls and vote with the rest of the people, I seem to do pretty well. So for that reason I would be, out of hand, opposed to the present plan that is being proposed.

I think what we have got to realize here is that attorneys, besides being experts in the legal field, are also individuals with biases and prejudices the same as anyone else, and that a majority of attorneys, by the very reason they are professional men, are of a certain economic status, and even, to a certain degree, a majority with the same philosophical sense, and it seems to me you can never divorce your philosophy and your economics from your expertise, and for this very reason I think that all the people, since it is all the people who are being judged in the last analysis by our judiciary, should have a voice in selecting their judiciary. For that reason I stand opposed to this amendment.

CHAIRMAN VAN DUSEN: The Chair recognizes the gentleman from Taylor, Mr. Ford.

MR. FORD: I rise to oppose the amendment. I want to say that Don Lawrence has been honest and straight forward in his preparation. He makes no bones about the fact that this is the culmination of 12 years of work on his part, as a member of the very influential committee of the state bar to bring the Missouri plan to Michigan. He has consistently maintained his position from the beginning, and although we disagree with him, we know him, respect him for his integrity and for the sincerity with which he presents his plan to us.

However, I think it is a misnomer to call it the Missouri plan, because it really isn't. In Missouri, when they adopted this, they discovered that they had so worded it — and Mr. Winters indicated to us that this was done by mistake — that it was found to be a local option provision. In other words, each county has the option of continuing to elect its judges or accepting the so called Missouri plan for selection. In those 2 counties where they had very vicious situations arising out of machine politics and a lot of scandal the people were ready for almost anything that offered relief from it, and they accepted it. As a matter of fact, I don't think it is quite correct to say it is in 2 counties, because I understand in St. Louis county it applies within the city of St. Louis but not with respect to the county at large. I am not positive of that, but this is my understanding. It has been in effect in those 2 places in Missouri for 20 years, and no other part of the state has seen fit to adopt it.

Mr. Winters, the foremost exponent of this plan, admits that they have tried consistently and they have never ceased to urge upon the people of Missouri that this is working so wonderfully in Kansas City and St. Louis that everybody ought to have it, but the people of that state have not seen it as any great improvement; at least they haven't seen it as a great improvement to the extent where they have been willing to vote to give up their right to select the judges at the ballot box.

This matter has been debated by lawyers and nonlawyers for many years, and I think every lawyer goes through a metamorphosis on this question, at least the younger ones of us here. We get brainwashed about this in law school, and you don't realize to what extent until you get out and get involved ever so slightly in politics by becoming a con con delegate. I think that if you take a poll of college professors, law school professors, that you would come up with almost a 99 per cent yes vote for the Missouri plan. I am getting chuckles from one back here now.

College professors have a strange and almost morbid fascination for the appointment of judges, because very frankly they just don't have very much confidence in the average voter. Now, for many reasons they don't go out and openly say it, but what they really are motivated by is the strong opinion that the citizens are not smart enough to determine their own affairs. In other words, strange as it may seem, the professors charged with the duty of teaching the young people of this country to support the constitution do not really believe in democracy in its pure sense because they feel there are some things you ought to take away from the people because they are not smart enough to handle them. One of them is the selection of judges. By the same token, college professors and law students, not having been continually exposed to the courts as litigants and practicing attorneys interested in the outcome of a case, have a tendency to pick at the courts, perhaps a little

bit more than the rest of us, and they become dissatisfied with what they consider to be less than 100 per cent efficiency, and they point with terrible disdain at the occasional judge who doesn't measure up to their standards. But when you talk to the attorneys who are actually fighting it out from day to day in the practice of their profession, I don't think you will find a lot of attorneys criticizing the quality of our bench. Quite the contrary. I find that in my area, at least, in talking with my contemporaries, they are pretty generally satisfied across the board. There are exceptions, of course.

To finish this up, I would like to read from the Rotarian magazine for June of 1961, where this matter was debated by 2 prominent attorneys, this very brief paragraph:

> Recent authoritative views on this question voiced by some members of the bar may be reduced to 3 basic goals which they allege are wanting in the elective system — namely, how to select the best qualified men for the position of judge, how to get them on the bench, and how to keep them there. These authorities simply beg the question when they gratuitously conclude and assume that the first goal — the selection of qualified men — cannot possibly be attained through the elective method, and thus, inferentially and without proof, sanctimoniously attack the integrity and fidelity to their trust of the leaders of both political parties who nominate judicial candidates.

There is one other observation which should cheer the nonlawyers up just a little bit, because this fellow writing the article is a prominent attorney with more than 20 years practice before the appellate courts in Illinois, and since he is taking a little jibe at the lawyers I thought it was too good to pass up for the benefit of my nonlawyer friends. He is discussing the Missouri plan and the selection commission which consists of eminent members of the bar, who, perish the thought, have no prejudices and I assume no emotions, and are perhaps even neutral about the taste of food and sex, I suppose.

> The contingent from the bar association does not reflect the sentiment of the lawyers in the state, let alone the people . . . .

And this is important, and this is something that you have to realize as nonlawyers, because occasionally I have nonlawyer friends who assume that because I am a member of the bar I subscribe to the philosophy enunciated by the very small minority that Mr. Lawrence, himself, alluded to.

> Most bar associations are controlled by powerful minorities, usually aligned with large firms and vested interests . . . .

Excuse me, Mr. Chairman.

CHAIRMAN VAN DUSEN: Guilty on both counts, Mr. Ford.

MR. FORD: I will try to be more careful and edit this a little.

> . . . who guide the policy of the association in conformity with their respective philosophies. Secondly, the vast majority of lawyers are informed of the qualifications of judges purely through heresay, similar to the laymen, for the reason that comparatively very few members of the bar are ever involved in courtroom litigation.

You might get an interesting reaction if you took a poll of the first 200 lawyers that you find in the phonebook to find out when was the last time they appeared in front of a jury or in an actual trial before a judge in a court. It might be quite surprising to the laymen just what statistics you will discover. This is particularly true in the big cities.

> Also, the values of the bar are not necessarily identical with the values of the people whom courts must serve. This is only to suggest that what lawyers value in each other and in judges may not be the same as what a layman values in his judge.

And he finally concludes this by saying:

> This is not to say that bar associations do not serve the legal profession, the courts, and the communities in many other areas; but just as students should not have the right to vote concerning the selection or retention of their teachers, so also the lawyers should not have the right to turn the selection or retention of judges into a popularity contest.

CHAIRMAN VAN DUSEN: The gentleman from Bay City, Mr. Leibrand.

MR. LEIBRAND: Mr. Chairman, the debate is going to my satisfaction, so I will yield to the next speaker.

CHAIRMAN VAN DUSEN: The gentleman from Ypsilanti, Mr. Lawrence.

MR. LAWRENCE: I will make this as brief as possible. Let me tell you, there is an axiom that if you advocate judicial reform you must not be shortwinded. It takes a long time. Judicial reforms have been and should be done deliberately, and changes should not be made without full discussion and consideration. I do, however, want to speak to the laymen. I want you to know that I say this sincerely, in view of some remarks that were made by Judge Dehnke, that the courts were not solely for the lawyers, and we have forgotten the jury. Please believe me when I say this to you, that it is in an effort to see that our clients get justice that the bar as a whole is interested in seeing the best possible courts. The bar is not interested in running the courts. At least I have not found that to be the case. But the members of the bar are concerned when they feel that their clients do not receive the best treatment, the best considered opinions; and I think that the bar of Michigan would have been remiss in its duty to the people of this state and to this convention, if it were not interested in doing what it can to improve the system, and I think you people, as laymen, have a right to look to the members of the bar, because of their familiarity with the courts, to advise and recommend to you. I don't think it is presumptuous on the part of the bar. I think you have a right to expect the bar to do it.

But don't be fooled into thinking that you have an elected bench in Michigan. As you people who come from throughout the state think of your judges, both probate and circuit, and how many of them in your counties originally got on the bench by election, I'll venture that there are very few of you who know of judges in your circuits who, in your own counties, came on the bench originally by election. We have an appointment system without any responsibility whatsoever, followed by an election, which is, of course, the situation with the ABA plan. And let me call to your attention again that 5 out of 8 members of our present supreme court originally came on the bench by appointment. Thirteen out of 18 of the Wayne county circuit judges originally came on the bench by appointment; 8 out of 10 of the recorders judges, the same way, and 7 out of 9 of the common pleas judges. So don't believe it when you are told you have an elective system.

CHAIRMAN VAN DUSEN: The gentleman from Bad Axe, Mr. McAllister. The Chair would advise there are just 2 speakers seeking recognition, of whom Mr. McAllister is the first.

MR. McALLISTER: I oppose this amendment first, because the people of my area are opposed to it 5 to 1. Second, I am opposed to this amendment because it is based on the fact that the people are too ignorant to make a determination themselves. I am also against it because it is an appointive trend. It seems that a considerable number of people seem to think that everybody should be appointed. We won't have any political system if this continues. In fact, everybody will be appointed, and we will have no political party at all. I recommend that the amendment be defeated.

CHAIRMAN VAN DUSEN: The gentleman from Detroit, Mr. Faxon.

MR. FAXON: Following the path of solicitor Farnsworth here, I have heard so many fine appeals from the lawyers to the nonlawyers in the convention that I am much moved by all this talk to at least make one comment. I am sorry that we already concluded the educational article, because I think that if we could have generated such a strong feeling among the members of the teaching profession here for the selection of teaching officers in the state we might get something different in that line. I should think that the teachers might like to select their superintendent.

A DELEGATE: Point of order.

CHAIRMAN VAN DUSEN: Mr. Faxon, a point of order has been raised —

MR. FAXON: Yes, I just want to comment on one thing, if you will forgive me. I have kept quiet on this judicial article for several days, and Mr. Hoxie has been needling me all the time on this, but the argument has been advanced on this argument that we have had judges appointed, and what we have now is political consideration in the selection of the judges. I was sitting here thinking that it is unfortunate that this has to occur; that perhaps it might be in line for judges when they take office to sign an oath that during the next 8 years they will not get sick, they will not die, they will not leave office for any reason. I can't understand why the objection to appointment of a judge if he can't finish out his term of office. I fail to see that this represents any valid argument for changing the system insofar as this method of selection is concerned.

And I wish to make one final comment, and I think this is the impression that has been given me here. Under this plan a blue ribbon committee consisting of members of the professions are going to make the selection. I think our experience in this country has been largely that of respect for the people to make these decisions and not turning it over to any private group. I, for one, wouldn't want to see the educational function turned over to teachers, even though I am a teacher, and I wouldn't want to see the judicial function turned over to lawyers. I feel that the ultimate judgment and the wisdom of the people has in our past proved the best.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Messrs. Lawrence, Tubbs and Mrs. Judd. Pursuant to the request of Mr. Everett the amendment has been divided. We will put first the portion of the amendment, which is most easily found by turning to page 5 of your list of amendments under item 2 dealing with the use of a method of selection for justices of the supreme court and judges of the court of appeals. The secretary will read the portion of the question on which the vote is now to be taken.

SECRETARY CHASE: This is on page 5 of the pending amendments to Committee Proposal 91, item 2 on the page. This portion of the amendment reads as follows:

1. Amend page 2, following line 24, by inserting section g, to read as follows:

"Sec. g. A vacancy in the office of justice of the supreme court or judge of the court of appeals shall be filled by the governor from a list of 3 nominees presented to him by a judicial nominating commission. If the governor should fail to make an appointment from the list within 60 days from the day it is presented to him, the appointment shall be made by the chief justice or the acting chief justice from the same list.

At the next general election following the expiration of 3 years from the date of appointment, and every 10 years thereafter so long as he retains his office, every justice and judge so appointed shall be subject to approval or rejection by the electorate. The electorate of the entire state shall vote on the question of approval or rejection.

There shall be a judicial nominating commission for the supreme court and the court of appeals. Each judicial nominating commission shall consist of 7 members, one of whom shall be the chief justice of the state, who shall act as chairman. The members of the bar of the state shall elect 3 of their number to serve as members of said commission, and the governor shall appoint 3 citizens, not admitted to practice law before the courts of the state. The terms of office and compensation for members of a judicial nominating commission shall be fixed by the legislature, provided that not more than 1/3 of a commission shall be elected in any 3 year period. No member of a judicial nominating commission shall hold any other public office or office in a political party or organization and he shall not be eligible for appointment to a state judicial office so long as he is a member of a judicial nominating commission and for a period of 5 years thereafter.".

CHAIRMAN VAN DUSEN: The question is on the amendment as read. Division has been requested and the demand supported. Those in favor of the amendment will vote aye. Those opposed will vote no. The question, for the benefit of the late comers, is that portion of the amendment offered by Mr. Lawrence dealing with the appointment of justices of the supreme court and judges of the court of appeals. All those in favor of the amendment will vote aye; those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the adoption of the amendment, the yeas are 25, the nays are 91.

CHAIRMAN VAN DUSEN: That portion of the amendment is not adopted. The question now is upon the second portion of the amendment offered by Messrs. Lawrence, Tubbs and Mrs. Judd, which you will find on page 4 of your pending amendments. The portion of the question is that dealing with the method of selection of judges of the circuit court and of the probate court in counties voting to adopt the system. On that question, do you seek recognition, Mr. Everett?

MR. DANHOF: Point of order, Mr. Chairman.

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: Is there anything before this committee which yields itself to the consideration of selection of circuit court judges? To my knowledge the only matter before us is the selection of supreme court judges. We have not yet reached that point.

CHAIRMAN VAN DUSEN: The amendment which was offered by Messrs. Lawrence, Tubbs and Mrs. Judd dealt with both the selection of justices of the supreme court and judges of the court of appeals, and with the permissive use of the same system for the selection of judges of the circuit court and the probate court. The question was, pursuant to the request of Mr. Everett, divided, and we therefore have before us at this time the second portion of the amendment offered by Mr. Lawrence and his associates.

MR. DANHOF: You would rule that it is germane, then, Mr. Chairman?

CHAIRMAN VAN DUSEN: In its original form it was clearly germane, and the Chair doesn't think the division of the question would suffice to rule the remaining portion out of order at this time, Mr. Danhof. Mr. Everett.

MR. EVERETT: Mr. Chairman, I asked to have this divided because it seems to me 2 separate, distinct questions were presented. On page 4, the last paragraph on that page, the second line of the paragraph reads thus:

> There shall be a judicial nominating commission for each circuit court and each probate court, in each county or circuit which has by a referendum vote of the electors therein authorized the creation of such a judicial nominating commission.

The other section, of course, relates to the supreme court and the intermediate court of appeals. To my mind, if such a referendum were held in my county I would vote against it and oppose it, but I still think it ought to be in the constitution.

We have had a great deal of talk here about the people want this and the people don't want that, and all this says is that the people can get exactly what they do want by voting for it. I think it gives a degree of flexibility to the constitution which it should have. I think it gives to local governmental units the right to select for themselves how they will select their judges. I would hope that they wouldn't use it, but I don't think this convention should deprive them of the right to have it if they want to use it.

CHAIRMAN VAN DUSEN: The question is on this portion of the Lawrence amendment, which the secretary will read.

SECRETARY CHASE: The amendment has now been, by the division, revised so that it reads as follows:

1. Amend page 2, following line 24, by inserting section g, to read as follows:

"Sec. g. For all courts of record for which a judicial nominating commission is provided, a vacancy in the office of judge shall be filled by the governor from a list of 3 nominees presented to him by a judicial nominating commission. If the governor should fail to make an appointment from the list within 60 days from the day it is presented to him, the appoint-

ment shall be made by the chief justice or the acting chief justice from the same list.

At the next general election following the expiration of 3 years from the date of appointment, and every 10 years thereafter so long as he retains his office, every judge so appointed shall be subject to approval or rejection by the electorate. In the case of a judge of the circuit court or of the probate court the electorate of the county or circuit in which the court to which he was appointed is located shall vote on the question of approval or rejection.

There shall be a judicial nominating commission for each circuit court and each probate court, in each county or circuit which has by a referendum vote of the electors therein authorized the creation of such a judicial nominating commission. Each judicial nominating commission shall consist of 7 members, one of whom shall be the chief justice of the state, who shall act as chairman. The members of the bar of the state residing in the geographical area for which the court sits shall elect 3 of their number to serve as members of said commission, and the governor shall appoint 3 citizens, not admitted to practice law before the courts of the state, from among the residents of the geographical area for which the court sits. The terms of office and compensation for members of a judicial nominating commission shall be fixed by the legislature, provided that not more than 1/3 of a commission shall be elected in any 3 year period. No member of a judicial nominating commission shall hold any other public office or office in a political party or organization and he shall not be eligible for appointment to a state judicial office so long as he is a member of a judicial nominating commission and for a period of 5 years thereafter.".

CHAIRMAN VAN DUSEN: The question is on the amendment as read. Mr. Danhof.

MR. DANHOF: Point of order, Mr. Chairman. Before this committee at this time is a proposal pertaining to the supreme court, Committee Proposal 91. That is all that is before this committee at this time. That is all that we have been discussing. The circuit court is dealt with in Committee Proposal 93, A proposal pertaining to the circuit court. I therefore state that the matter for consideration at this time, Mr. Chairman, is out of order.

CHAIRMAN VAN DUSEN: Mr. Danhof, your point of order would be very well taken if the amendment had been offered separately. Because it was offered as a part of an amendment dealing with the supreme court and the court of appeals, the Chair will rule it is germane. However, the Chair might suggest that since its consideration might more appropriately be deferred until we are dealing with the circuit court and probate court, Mr. Lawrence might be willing to withdraw it. If Mr. Lawrence does not choose to withdraw it, however, the Chair will rule it is in order.

MR. DOWNS: Mr. Chairman, I have a motion to make if it is in order.

CHAIRMAN VAN DUSEN: State your motion, Mr. Downs.

MR. DOWNS: I move that consideration of this matter be postponed until Committee Proposal 93 is before the committee of the whole.

CHAIRMAN VAN DUSEN: Mr. Secretary, is the motion in order? The motion is in order. The question is on the motion of Mr. Downs that further consideration of the second half of the Lawrence amendment, the portion which was just read, be deferred until Committee Proposal 93 is before the committee of the whole.

MR. DOWNS: Mr. Chairman, the purpose for this, I think, is rather obvious. I think in discussing the circuit court and the probate court we should have the advantage of hearing the report of the committee and then discuss this at the more appropriate juncture.

CHAIRMAN VAN DUSEN: Any further discussion on the motion? Mr. Danhof?

MR. DANHOF: I think that is entirely proper.

CHAIRMAN VAN DUSEN: All in favor of the motion will say aye. Opposed, no.

The motion prevails. Mr. Danhof.

MR. DANHOF: Mr. Chairman, I move the committee do now rise.

CHAIRMAN VAN DUSEN: Mr. Danhof moves that the committee do now rise. Those in favor say aye. Those opposed, no.

The motion prevails, and the committee will now rise.

[Whereupon, the committee of the whole having risen, President Nisbet resumed the Chair.]

PRESIDENT NISBET: Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, the committee of the whole has had under consideration one section of one proposal, of which the secretary will give a more detailed report.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 91,** has considered certain amendments thereto, and has come to no final resolution thereon. This completes the report of the committee of the whole.

PRESIDENT NISBET: Announcements.

SECRETARY CHASE: The committee on style and drafting will meet in room K this evening at 8:00 o'clock. William B. Cudlip, chairman.

We have the following requests for leave: Mr. Norris wishes to be excused from tomorrow morning's session and Mr. Marshall wishes to be excused from the sessions of Thursday and Friday of this week as his wife is going into the hospital for surgery.

PRESIDENT NISBET: Without objection, the leaves are granted.

The Chair recognizes Mr. Hoxie.

MR. HOXIE: Mr. President, point of information. Relative to the time for reconsideration of a provision defeated in the committee of the whole, my question is, does the time start to run presently — and I am referring to the Prettie provision — or does the time start to run following the completion of the consideration of the entire proposal?

PRESIDENT NISBET: Mr. Chase, do you want to answer that question?

Mr. Hoxie, the opinion is that the motion for reconsideration must be made today or tomorrow. Mr. Leibrand.

MR. LEIBRAND: Mr. President, under what rule is that ruling you made?

PRESIDENT NISBET: Rule 53, Mr. Leibrand. The Chair recognizes Mr. Lundgren.

MR. LUNDGREN: Mr. President, I move that the Webster debating society adjourn.

PRESIDENT NISBET: The question is on adjournment. Those in favor say aye, opposed, no.

We are adjourned until tomorrow morning at 9:30.

[Whereupon, at 5:15 o'clock p.m., the convention adjourned until 9:30 o'clock a.m., Wednesday, February 28, 1962.]

EIGHTY-NINTH DAY

Wednesday, February 28, 1962, 9:30 o'clock a.m.

PROCEEDINGS

PRESIDENT NISBET: The convention will please come to order.

Our invocation this morning will be given by the Reverend Fredrick Brownell of St. Paul's Episcopal Church, Jackson. Reverend Brownell happens to be the pastor of Berry Beaman's church. We are glad to have him here this morning.

REVEREND BROWNELL: Let us pray. Most gracious God, we humbly beseech Thee, as for the people of the state of Michigan in general, so especially for this constitutional convention in meeting assembled; that Thou wouldst be pleased to direct and prosper all their consultations, to the advancement of Thy glory, the good of Thy church, the safety, honor and welfare of all Thy people in the state of Michigan; that all things may be so ordered and settled by their endeavors, upon the best and surest foundations; that peace and happiness, truth and justice, religion and piety may be established among us for all generations. These and all other necessaries, for them, for us, and Thy whole church, we humbly beg in the name and mediation of Jesus Christ, our most blessed Lord and Savior. Amen.

PRESIDENT NISBET: The roll call will be taken by the secretary. All present please vote aye. Have you all recorded your presence? If so, the secretary will take the roll.

SECRETARY CHASE: Mr. President, a quorum of the convention is present.

Prior to today's session, the secretary received the following requests for leave: Messrs. Heideman and Marshall; from today's session. Mrs. Davis called in; Mr. Davis has the flu and wishes to be excused indefinitely.

PRESIDENT NISBET: Without objection, the requests are granted.

SECRETARY CHASE: Absent with leave: Mr. Davis, Miss Hart, Messrs. Heideman, Marshall, Mosier, Norris and Perras.

Absent without leave: None.

[During the proceedings the following delegates entered the chamber and took their seats: Messrs. Norris and Perras. Mr. Balcer, having been excused for a portion of the day's session, reentered the chamber and took his seat.]

PRESIDENT NISBET: Report of standing committees.
SECRETARY CHASE: None.
PRESIDENT NISBET: Select committees.
SECRETARY CHASE: None.
PRESIDENT NISBET: Communications.
SECRETARY CHASE: No communications.
PRESIDENT NISBET: Second reading.
SECRETARY CHASE: Nothing on that calendar for today.
PRESIDENT NISBET: Motions and resolutions.
SECRETARY CHASE: No resolutions on file.
PRESIDENT NISBET: Unfinished business.
SECRETARY CHASE: None.
PRESIDENT NISBET: Special orders.
SECRETARY CHASE: None.
PRESIDENT NISBET: The Chair recognizes Mr. Leibrand.

MR. LEIBRAND: Mr. President, may I make a parliamentary inquiry?

PRESIDENT NISBET: You may.

MR. LEIBRAND: Yesterday afternoon in the committee of the whole there was under consideration section g of Committee Proposal 91 relating to the district plan for the selection of supreme court and appellate judges. The committee of the whole passed the Ford amendment which deleted section g. As I understood the ruling of the chairman of the committee of the whole, the action in passing the Ford amendment would preclude direct consideration in the committee of the whole of the district plan as contained in section g. What I inquire about at this time, Mr. President, is what effect that action of the committee of the whole will have on section g when Committee Proposal 91 reaches the whole convention. Will we still, then, be precluded from considering the merits of section g, the district plan?

PRESIDENT NISBET: Mr. Leibrand, when the committee of the whole rises, the question will be then on agreeing to the amendment as adopted by the committee of the whole yesterday.

MR. LEIBRAND: And if the convention agrees upon the Ford amendment, then the convention will be precluded from considering the merits of section g of the majority report; is that the ruling?

PRESIDENT NISBET: If the Ford amendment is voted down, then the judicial branch committee's report is the report of the committee of the whole.

Also, in addition to that, Mr. Hoxie asked for an interpretation yesterday on reconsidering. That is given further explanation on page 683 of today's journal.

MR. LEIBRAND: I saw that, Mr. President. But let's take the converse of that. Let us assume that the Ford amendment is approved by the convention. Then do I understand the ruling will be that this convention cannot consider section g of the majority report?

PRESIDENT NISBET: If the Ford amendment is approved by the convention as reported from the committee of the whole, then the only way the district plan could be presented again would be to have some revision of that plan offered as an amendment.

MR. LEIBRAND: It could not, then, be considered in its present form by the convention as a whole?

PRESIDENT NISBET: No, it could not, because it has already been defeated by the Ford amendment.

MR. LEIBRAND: Thank you, Mr. President.

PRESIDENT NISBET: General orders. The Chair recognizes Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, I move that the convention resolve itself into committee of the whole for the purpose of consideration of matters on the general orders calendar.

PRESIDENT NISBET: The question is on the motion of Mr. Van Dusen. Those in favor say aye, opposed, no.

The motion prevails.

[Whereupon, Mr. Van Dusen assumed the Chair to preside as chairman of the committee of the whole.]

CHAIRMAN VAN DUSEN: The committee will be in order. When the committee last sat, we were considering section g of Committee Proposal 91. The section as originally presented had been stricken, but there are amendments as substitutes for that section on the secretary's desk.

For last previous action by the committee of the whole on Committee Proposal 91, see above, page 1325.

The next amendment in order of consideration would be the amendment found on page 6 of your list of pending amendments, offered by Mr. Lawrence. The Chair would ask Mr. Lawrence at this time, in view of the fact that most of the substance of the amendment found on page 6 was presented and rejected by the convention yesterday, does Mr. Lawrence desire at this time to insist upon offering his amendment?

MR. LAWRENCE: Mr. Chairman, I have consulted with

the 2 other sponsors, and it is agreeable to withdraw the 2 amendments, if there are 2 left.

CHAIRMAN VAN DUSEN: The Chair believes, Mr. Lawrence, there is only 1 left, and it will be withdrawn?

MR. LAWRENCE: Yes.

CHAIRMAN VAN DUSEN: Therefore, the secretary will read the next pending amendment to section g of Committee Proposal 91 if any there be.

SECRETARY CHASE: Mr. King offers the following amendment:

1. Amend page 2, following line 24, by inserting a new section g to read:

"Sec. g. There is hereby created a committee on judicial selection consisting of 6 members, 1 attorney and 1 layman appointed by the governor, 1 attorney and 1 layman appointed by the senate, and 1 attorney and 1 layman appointed by the house. The committee on judicial selection shall fill all vacancies on the supreme court which shall result in unexpired terms. At the expiration of such term, the appointee shall stand for reelection and shall be entitled to ballot designation as an incumbent. The secretary of state shall provide for a nonpartisan statewide primary election to determine 1 other candidate to run against the incumbent. When a full term vacancy occurs, the nominee of the committee on judicial selection may be opposed by the winner of a nonpartisan statewide primary. Any supreme court justice may nominate himself for reelection at the end of his term.".

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. King, on which the Chair will recognize Mr. King.

MR. KING: Mr. Chairman, at this time I would like to withdraw this amendment with the proviso that I can resubmit it at a later time.

CHAIRMAN VAN DUSEN: Mr. King's amendment is withdrawn. Are there further amendments to section g? Mr. Danhof, do you desire to be recognized on section g? Mr. Secretary, are there further amendments to section g?

SECRETARY CHASE: Mr. Kuhn has an amendment—

MR. KUHN: I am going to let that go to the body of the proposal. I am waiting for the other appointive measures to take their course, and then I will come in with this one.

CHAIRMAN VAN DUSEN: Mr. Kuhn's amendment is temporarily withdrawn. Is there anything further pertaining to section g? Mr. Danhof.

MR. DANHOF: Mr. Chairman, according to the list previously furnished, there was an amendment offered by Messrs. Yeager, Stamm and Everett. What has happened to that particular one which is on the list that I have?

CHAIRMAN VAN DUSEN: According to the list in the hands of the Chair, that is an amendment to section a, Mr. Danhof.

MR. DANHOF: Was that to section a? Is that correct?

CHAIRMAN VAN DUSEN: The amendment offered by Messrs. Yeager, Stamm and Everett amends section a, page 1, line 6, and so forth.

MR. DANHOF: In that case, Mr. Chairman, there being no further amendment, I would move that further consideration of Committee Proposal 91 be deferred, that it be passed subject to recall at the pleasure of the chairman, and further, that we delay consideration of Committee Proposal 92 and at this time pass to consideration of Committee Proposal 93.

CHAIRMAN VAN DUSEN: Mr. Danhof moves that the committee proceed to consideration of Committee Proposal 93. Mr. Brown, on that motion.

MR. G. E. BROWN: Mr. Chairman, I would not like to speak on this motion. If it is going to be passed without objection, I do not wish to speak.

CHAIRMAN VAN DUSEN: Mr. Ford, do you desire to speak on the motion?

MR. FORD: No, parliamentary inquiry. Is it my understanding that what we are doing is passing on from section g and we are not passing section g by?

CHAIRMAN VAN DUSEN: That is the purport of Mr. Danhof's motion as the Chair understands it, Mr. Ford.

MR. FORD: We will return to this at the status when the floor is open for amendments to section g?

CHAIRMAN VAN DUSEN: That is correct, Mr. Ford. Mr. Yeager, do you desire to be recognized on the motion of Mr. Danhof?

MR. YEAGER: Mr. Chairman, I would like to ask Mr. Danhof if he would have any serious objection if we considered the federal plan amendment under section a at this time.

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: No, Mr. Chairman, I would be perfectly willing. If the sponsors of that wish to consider it at this time, I have no particular objection.

CHAIRMAN VAN DUSEN: Do you withdraw your motion, Mr. Danhof?

MR. DANHOF: In favor of Mr. Yeager's request, I do.

CHAIRMAN VAN DUSEN: Mr. Danhof's motion is withdrawn. Mr. Brown, for what purpose do you rise?

MR. G. E. BROWN: Parliamentary inquiry, Mr. Chairman. In the event there is an amendment which relates to both sections a and g as they appear in the committee proposal, but which may in prior constitutions relate only to one section, is it to be the ruling of the Chair that any portion that would have been covered by the subject matter of Committee Proposal 91, section g, would be out of order in consideration of Committee Proposal 91, section a?

CHAIRMAN VAN DUSEN: The Chair will not rule in advance on amendments which may be offered, Mr. Brown. The Chair would advise that if you have an amendment to section a which you would like to offer, the Chair would be glad to rule at that time, and that amendments, of course, will always be in order to the body of the proposal when consideration of the several sections have been completed.

MR. G. E. BROWN: Thank you, sir.

CHAIRMAN VAN DUSEN: The Chair will advise that, pursuant to the action previously taken in committee of the whole, consideration of section a had been postponed until completion of consideration of section g. Section g being temporarily passed, without objection, we will now proceed to section a.

SECRETARY CHASE: Messrs. Yeager, Stamm and Everett have offered the following amendment:

1. Amend page 1, line 6, after "justices" by striking out the comma and "to be elected by the electors of the state. The term of office shall be 8 years. Not more than 3 terms of office shall expire at the same time.", and inserting a period and, "The governor shall, with the advice and consent of the senate, appoint the justices of the supreme court who shall hold office during their good behavior. Justices in office on the effective date of this constitution shall hold office for good behavior.".

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Messrs. Yeager, Stamm and Everett, on which the Chair will recognize Mr. Yeager.

MR. YEAGER: Mr. Chairman and ladies and gentlemen of the committee, I would like to make a short statement on this amendment and then yield the floor to Mr. Stamm for some further remarks. It seems to me that in writing this section we have 2 desirable goals. They are 1, that we provide a system which will provide the most capable individuals to serve in the highest court of the state; and 2, that we provide a system which will permit the decisions of this court to be influenced as little as possible by political considerations. Please note that I said, as little as possible.

This amendment which is before us now provides that when a vacancy occurs on the bench of the supreme court, that vacancy will be filled by appointment of the governor, subject to advice and consent of the senate, and such appointee shall hold office during his good behavior. "Good behavior" is the term used in the federal constitution and means, in effect, until impeachment. This section applies, incidentally, only to the selection of supreme court justices and not of any of the lesser court judges. As a layman, my concept of what a supreme court of the state—or of our nation, for that matter—should do is that it should make final statements on the interpreta-

tions on questions of law; to make such statements based on law, not other considerations. I believe this court should be as far removed as possible from political influence. I don't believe this can be done by using the elective process.

When a judge runs for office, on what platform should he run? I am going to make a fairer judgment than my opponent? Or I am going to act in a way to please my political supporters? Or, in essence, why should I be supported politically for this office?

Now the question comes up, if a judge is appointed for life does this take political considerations out of his decisions? I think much more so than any system which requires him to come up for election. If he is to come up and answer the question, how did I support my political position?, isn't it logical that the answer to that question may reflect itself in his work on the bench? I think this is a possibility. Even if it were not so, there might be some feeling among people that it might be so, and the confidence that people need to have in the highest court of this state is a strong consideration.

We talk about election of judges but we really don't mean election because we stick on the proposition of the ballot designation. What we are saying in effect is that we are to have elections, but we provide guidance in the form of the designation so that the voter will cast an enlightened vote and so he will know who the incumbent is and so, in effect, will trust the position of incumbency. To me this designation is a poor form of reappointment in the form of a gimmick.

One of the common statements I find in the mail coming to me here in the constitutional convention relating to the judiciary is that most voters feel that they have no way of knowing the qualifications of men running for judicial office to be able to make a good sound judgment. They have to rely on name identification and other things — and ballot designations.

We have had much discussion in the convention on the question of trusting the legislature. I think at this point we not only need to trust the legislature, but I think we should think in terms of trusting a governor. I honestly believe that any governor with this responsibility will choose highly competent people for this highest judicial post. You now have the appointive system without any advice or consent of anyone. Most judges are appointed by one man only, the governor, to fill vacancies. The appointive confirmation procedure has worked very well at the federal level. At the federal level we have had a vacancy occur on the average of every 8 or 9 years. This procedure also provides continuity and stability at this court level. Now, some have said these appointees, because they have no election, are not answerable to the people and therefore become unresponsive. I for one am not interested in having the members of this court politically responsive. I only want them to make judicial decisions on the basis of law and not political considerations.

In the interest of supreme court decisions as far removed as possible from politics, I urge that you vote yes on this amendment for the federal system for the selection of state supreme court justices in the state of Michigan.

I would like, Mr. Chairman, at this time to yield to Mr. Stamm.

CHAIRMAN VAN DUSEN: Mr. Yeager, would you yield first to Mr. Lawrence for a question?

MR. YEAGER: Yes.

CHAIRMAN VAN DUSEN: Mr. Lawrence.

MR. LAWRENCE: Mr. Yeager, I wonder if any consideration was given to reducing the number of justices to 7 in view of the fact that it appears at this time that there will be an intermediate appellate court. Rather than increasing, I wonder if any consideration was given to decreasing the court by one?

MR. YEAGER: Well, speaking personally — I haven't talked to the other sponsors of the amendment — we, I am sure, would have no objections to decreasing the number. We accepted the number 9 because that was in the committee report as it came out, and for no other reason. Our amendment started after that figure was given in the report.

CHAIRMAN VAN DUSEN: Mr. Yeager now yields to Mr. Stamm.

MR. STAMM: It is with a certain amount of hesitancy that I want to talk on a thing that is as important as the supreme court. I, too, am a layman in this convention, but I think I have had the happy experience of having been associated with a section of our judicial system where I may sit as an observer and watch the barristers and the jurists as they tangle with the problems of law. I feel, too, that possibly our judicial committee was weighted too much in favor of the barristers and the jurists. I feel, too, that the people should have been entitled to some representation as the courts were being retooled and redesigned for all of Michigan, and I think it is unfortunate sometimes that we in our profession or in our business definitely have to represent that point of view because that is a thing that we know the most about. That is the thing that we work with.

Now, I feel that here in this particular system we have a system that has been tried and has been found to be a good operation. We find generally very little criticism with the operation of the federal system. In the federal system we do take attorneys usually from general law practice and assign them to our federal courts, and they know that once they have received the appointment to the court, they are free from outside political interference or influence. They are men who have been tried, and we have found very few situations where they have had to be removed from the bench. I think possibly our judicial committee in their study of this particular problem have been too much influenced by a contemporary situation which may not become a problem for the future. It seems to me that through this system we are providing a system that has been proven and should work within the state of Michigan.

In this convention we hear the old cliche of the people's choice. You and I who have been active in a political party know that when it comes to selection of candidates for the judicial system in our state, the people's choice is not considered as much as it is a matter of finding a candidate that is expedient and that possibly can win an election rather than someone who has the legal training and the legal mind that can fit into the position of a justice of our supreme court. I would like to feel that here we are going to represent the people who have entrusted us to work out a document in this convention that will provide a court in this state that will truly be a supreme court.

I did not come here with a prepared speech. I hastily scribbled some notes this morning because I didn't realize that we were going back to section a as soon as we were. But I do feel that our fear of political interference would be lessened if we realized that this court was going to be established through appointment by the governor with the approval of the legislature. I feel then that we would have a bench which would be made up of men who knew that they would have to have no fear of personal prejudices or influences in their decision. And there is one other thing I would like to leave with the committee: this fear of ours of party politics is no greater or no worse than the fear of bar politics.

I want to urge you to at least give some consideration to this proposition. It has worked for the United States of America, and I feel that there is no reason why it should not work for the great state of Michigan.

CHAIRMAN VAN DUSEN: Mr. Yeager, do you desire at this time to yield to Mr. Everett?

MR. YEAGER: Mr. Everett may want to make some remarks later, but we yield the floor at this time.

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: Mr. Chairman, members of the committee, as I stated to you yesterday, the committee considered a plan of appointment such as this. Mr. Yeager appeared before our committee, having introduced a delegate proposal, and very eloquently and forcefully argued his point of view as he has today. The committee, after due consideration, as I advised you, overwhelmingly defeated any type of appointive plan, not only the ABA plan, but a plan such as is put forth at this time.

It was the considered opinion of the majority of the committee that the voters of this state are not willing at this time to give away their right to choose the justices of the supreme court, or at least to have a say in their selection or retention, and as a consequence this type of plan wherein they are appointed for a lifetime appointment was rejected by an overwhelming vote. I will not necessarily get into the numbers. There seems to be some conflict.

It is the opinion of the committee that the elective system and retention has served well the people of this state and that there is not the requirement nor the need that we switch to this type of system. I will agree with Mr. Yeager that this has worked in the federal system, but again the size of the country and the very operation of the system requires the appointment. Therefore, I will have to at this time respectfully oppose the amendment and would urge that it be defeated.

At this time, Mr. Chairman, Mr. Ford wishes to take the floor, and I will so yield.

CHAIRMAN VAN DUSEN: Mr. Ford.

MR. FORD: Mr. Chairman and members of the committee, I rise to oppose the proposed amendment. I assume that this wouldn't be the end of it. I am waiting for somebody to take the floor and put the real clincher into this one, and that would be to add advice and consent, and then we will get right around to the position where we have both of the other departments of government deciding who is going to be on the supreme court instead of the people.

One thing that we seem to lose sight of when we get bogged down in the detail of devising a foolproof system of picking insulated judges that are free from all sorts of pressure and responsibility is the fact that we have 3 independent branches of government, and no place is this more important than at the very top, at the supreme court level. It would be unfortunate if the governor, and conceivably the legislature — because I can't see this delegation sitting still for this one without throwing advice and consent into it before we get through — sitting still for any governor to put people on our bench for life, and that is what this is. Nobody has used it yet but this is a lifetime appointment.

Tony Stamm says that he hadn't heard of very many cases of federal judges being removed. Well, Tony, there is a great deal said about the number of cases where federal judges should be removed and aren't removed because to impeach a man is a pretty serious matter and a very difficult thing. What sometimes has happened in our federal system is that they just keep him out of the way, keep him where he can do the least amount of damage until he finally expires or retires. This is a system that has worked rather well in the federal system, but there are a lot of distinctions between their system and ours, and I don't think that the majority of lawyers who practice in both courts are going to agree with you that the judges, at the trial level, at least, in the federal system are superior to the trial judges that we get in Michigan by the elective process. As a matter of fact, there is some evidence to the contrary. I am not talking about individuals, but I am talking about straight across the board.

The real bad part about this from our point of view is that, as Sam Ostrow said yesterday, no one has devised a yardstick by which you can measure a person before he goes on the bench and tell what kind of a judge he is going to be. You can take a man who has had an otherwise perfect record. He may be an excellent trial lawyer. He may be a lousy judge at the same time. He may have been a very mediocre trial lawyer or no trial lawyer at all and turn out to be one of the best judges that went on the bench. So this doesn't work. He may be a very personable fellow, well thought of and a member of all the proper clubs and organizations and not be a good judge; and he may be a fellow that just doesn't seem to get along with anybody and he becomes a superior judge. The way you find out is to put him on the bench and then see what he does.

Now, unfortunately you can't impeach a man because he is a bad judge. You can only impeach him if he does something dishonest. However, you can at the ballot box remove a man from office without the indignity of impeachment, reject him by simply saying, "You are not the best. You are not the quality that we want. We want Joe Doaks because he seems to have what we want."

This system goes further away from the elective system than anything that has been proposed, and I think that it would strike at the very heart of an independent judiciary and remove from the Michigan court system one of the essentials that makes it a superior system in the United States.

CHAIRMAN VAN DUSEN: On the amendment offered by Messrs. Yeager, Stamm and Everett, the Chair will recognize Dr. Nord.

MR. NORD: Mr. Chairman, I would, first of all like to state that this plan offered by Mr. Yeager and others is by no means a terrible plan. It certainly has a great deal to be said in favor of it. And I might say further that when I came to the convention, this is the plan I favored. I am still not convinced that it is wrong in every respect, but I would like to analyze it into parts to see to what extent it does have some defects. Of course, as far as I know, it has worked very well in the federal system, but I speak only as a professor rather than as a man with a great deal of practical experience. I have been advised by attorneys that they think otherwise as to the inability to remove a judge.

In any event, there are 3 different parts, as I see it, to this proposition, and it seems to me that some of them are good and others are not as good and maybe others are bad, and it might be that these could be considered separately. For example, the governor shall appoint. In my opinion that is the least objectionable and the most advantageous part of this system. The governor, in fact, has been appointing judges in this state for quite a long time. I have no objection to the people who have been appointed. I think they have been good judges. As far as I know, most people feel the same. And one of the advantages of that system of the governor appointing is that the governor is elected by all the people, so the people indirectly have selected the judges, and these judges have been selected in a manner that is responsive to the will of the people at large, so that particular part of it doesn't disturb me, that the governor shall appoint. I think that whether the governor appoints or whether the judges are elected in the first place is not particularly crucial, and as a matter of fact, this might be the best way to get a judge on the bench.

The next part of it, however, is with the advice and consent of the senate, and to that I would say there is a very serious objection, extremely serious. It has worked well in the United States. There is no question about it. But we have a different experience in Michigan with advice and consent of the senate. It has worked very poorly in Michigan. It has been highly political, and we would have to expect the same thing here. We also have to consider the fact that the senate in this state has been malapportioned for quite a long time, and we have no assurance, at this time at least, that it will not be malapportioned in the future. On that basis there will be a veto by the senate, and if the senate does not represent the majority of the people, then we can see that the people who will be selected, because of the advice and consent, will be screened by a minority, and the people who will become judges will really not be responsive to the majority of the people as such. I therefore feel that, considering the nature of the senate and the experience with the senate, that feature is very inadvisable in Michigan.

As to the third feature, the retention of judges or the tenure of judges, that they shall remain in office forever, there is certainly no question in my mind that that makes them as independent as possible and, as I said yesterday, independence is a very important part of being a judge, in my opinion. But, as I also stated, that is not the only thing. There must be some way to get rid of a judge who, let's say, stops being human. He must be independent, but at the same time there must be some humility left in him. He must not get the feeling that he is in a postion of a monarch of some sort, and it seems to me all of the other plans are superior to this one on this point. In every other plan there is some way to get rid of a judge. I don't think it should be very easy to get rid of a judge,

and actually none of the other ways are very easy to get rid of a judge. They are all very hard in this respect, but you can do it, whereas with the present amendment there is no way, basically, except by impeachment, and it seems to me that does go too far.

Therefore, although I feel that the first part, the appointment by the governor, is not bad, in fact is good, I believe the other 2 parts are bad and, on balance, I think we should oppose the amendment.

CHAIRMAN VAN DUSEN: On the amendment offered by Mr. Yeager and others, the Chair will recognize Mr. Woolfenden.

MR. WOOLFENDEN: Mr. Chairman and members of the committee, I welcome an opportunity to speak on this amendment and to vote on it. It is my first choice of a method of removing a judge from political considerations. I think it has worked very effectively in the federal system, and I believe that we have ample evidence as to the distinction between the federal system and any form of elective system which is available. That evidence is available to every delegate here and to every citizen of Michigan irrespective of whether he is a member of the bar or whether he is not.

As a lawyer of 31 years, active practice in Michigan in both the federal and the state courts, I will admit that it is not, at least in my experience and view, clearly demonstrable from the evidence available to us that you get a better man on the bench initially. I know outstanding jurists that have gone on the bench by unqualified gubernatorial appointment to fill a vacancy originally, who have gone on the bench in a nonpartisan primary and then a general nonpartisan election, and who had gone on the bench by the federal system. And I will readily admit that it is not provable that you can get a demonstrably superior judge through the federal system, but I think it is clearly demonstrable from the evidence available to every citizen in Michigan that once on the bench, the federal judge is completely divorced from all other considerations, political, social or other considerations which may tend to affect his ability to give his complete and undivided attention and abilities to the work of judging the causes that come before him.

That evidence to me is in part drawn from the fact that we have all observed within the last 6 months or year that 2 outstanding judges of our state courts — and I refer specifically to Wade McCree of the Wayne county circuit court and Talbot Smith of the Michigan supreme court — have accepted appointment to the federal bench. Certainly their actions speak much louder than any words of mine as to the distinction between the 2 systems, because those men having accepted federal appointment are now free to devote themselves unqualifiedly and in the dedicated way that they both work solely at the job of being judge. I think it is vitally important to the preservation of our American institutions that we have judges who are judges and who are only expected to be judges and not men who are attractive political personalities as well as judges. The 2 do not go hand in hand necessarily.

I specifically invite the attention of the outstanding advocates of civil rights to what I am going to say now. We have finished in this convention the adoption of a bill of civil rights which I think is monumental in the history of civil rights in the United States. It is one of the things, when we are finished, that I am going to be proudest of as having been a delegate to this convention and having written the civil rights provisions that we have written into this constitution. It is clearly evident to the delegates who sincerely believe in the preservation of our civil rights that south of the Mason Dixon line there is not a single judge who took office by election who has carried out the crystal clear mandate of the United States supreme court in the field of civil rights. It is not a matter of personal courage. If he did render a decision, as he is constitutionally obliged to do, carrying out the United States supreme court mandate in the civil rights field, he would not be a judge beyond the next election — if in fact he were not ridden out of town on a rail before the election. The only judges who have measured up to their oath to support the United States constitution — and I submit the only judges who could measure up to that oath — are appointed federal judges. And I invite every delegate here to read a recent book published in November under the title of Fifty-Eight Lonely Men. It is the story in detail, case by case, instance by instance, of the progress of the cause of civil rights in the south. And the 58 lonely men who furnish the title to the book are the 58 federal judges at the district court level and the circuit court of appeals level who, thank God, have had the judicial independence and the courage to carry forward the civil rights cause for the benefit of all Americans. I think that evidence clearly distinguishes the ability of a man once on the bench to be absolutely free to devote himself to carrying out the law of the land, and I earnestly invite your consideration of this fact in your vote upon this amendment.

CHAIRMAN VAN DUSEN: Mr. Martin has offered an amendment to the amendment, which the secretary will read.

SECRETARY CHASE: Mr. Martin offers the following amendment to the amendment:

1. Amend the amendment, first sentence, after "office" by striking out the balance of the first sentence and inserting "for a period of 5 years and then and each 10 years thereafter shall run on their record and with an incumbency designation."; and in the second sentence, after "office" by striking out the balance of the second sentence and inserting "for the balance of their term and then and each 10 years thereafter shall run on their record and with an incumbency designation.".

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Martin to the amendment offered by Messrs. Yeager, Stamm and Everett. On the Martin amendment the Chair will recognize Mr. Martin.

MR. MARTIN: Mr. Chairman, I offer these amendments because I think the principal objection in many people's minds to the federal system is the lifetime appointment. This is a recommendation to some people, but I think many people feel that, as far as the state courts are concerned, there should be an opportunity for the people to pass upon a judge's record at periodic intervals and for that reason the amendment strikes out the words "during good behavior" and provides that after a period of years from the date of appointment, the incumbent shall then run on his record, the question being shall he be approved or not, and he would carry an incumbency designation on the ballot. Now, the purpose of this is to give the people a look at the record. If it has been particularly bad, if the judge has done something which has been brought to the attention of the people and they really want to get rid of him, they can do it. Otherwise, with the incumbency designation, he would have a reasonable chance, perhaps a more than reasonable chance of being continued in office.

It seems to me that this method of appointment, subject to advice and consent of the senate, gives the people an opportunity to have the appointment procedure used, gives the people an opportunity also to look at the appointment through the eyes of part of the legislative body, which is a salutary check, and then gives the people a chance at a later date to pass upon the question of whether the judge has conducted himself in a proper judicial manner. I think the wording of both the Yeager amendment and of the amendment to the amendment are self explanatory and I have no further comment to make on it. But this is the federal system with a modification which would give the people an opportunity to look at the matter from time to time thereafter.

CHAIRMAN VAN DUSEN: On the Martin amendment, the Chair recognizes Mr. Faxon.

MR. FAXON: Mr. Chairman, I would like to ask Mr. Martin a question through the Chair.

CHAIRMAN VAN DUSEN: If the gentleman cares to answer.

MR. FAXON: Mr. Martin, on this question of after 10 years when the person comes up for rejection or approval, does this remove from consideration the placement of other names with regard to the office, or is this simply a rejection or approval, or is there still some opening for people to be nominated and still run?

CHAIRMAN VAN DUSEN: Mr. Martin.

MR. MARTIN: If I understand the question, this would

not give an opportunity for additional nominations, no. This would be the judge running on his record. He would not be running against opponents. Now, I personally think that is the best way to do it, but I would certainly be agreeable, if the committee so felt, to see the possibility of his running against opponents. But in that case, of course, I would want to see him run with an incumbency designation.

MR. FAXON: You said both having an incumbency designation and then running on his record, and when you said "incumbency designation" I thought you meant that there might be another person running but I see not.

MR. MARTIN: Not as it is now drafted, no.

MR. FAXON: I just want to state for my own record that I oppose a person running simply against his name. I think that our tradition has been one where there has been some degree of competition in office, and the only place where I know that this is done in any widespread area is in elections conducted in the soviet union where a person runs and there is either a rejection or approval and you can't lose because there always seems to be more approvals. I would very much like to see our consideration of having people running against other people and not simply a rejection or approval.

CHAIRMAN VAN DUSEN: On the amendment offered by Mr. Martin, the Chair will recognize Mr. Farnsworth.

MR. FARNSWORTH: Mr. Chairman, members of the committee, I would speak in favor of the Martin amendment. I believe this will get the amendment before us in the form that many of us can vote for. It seems to me that now we are throwing some safeguards around the selection of justices of the supreme court that are desirable, the first one being that it will be reviewed by the senate because it is with the consent of that body. Secondly, you get a crack at them at the end of 5 years. If they haven't proven out, certainly there is an opportunity for the people to turn down that man, which I assume would make a vacancy and you could go through the same process again. If it develops at the end of 10 years that you want to turn this man down, the voters are at liberty to do so. I am very much in favor of adopting the Martin amendment to this amendment.

CHAIRMAN VAN DUSEN: On the Martin amendment, the Chair will recognize the gentleman from Bay City, Judge Leibrand.

MR. LEIBRAND: Mr. Chairman and members of the committee, there is no doubt in my mind but that the motives and aims of Delegate Martin in offering this amendment are most lofty. However, in my considered opinion, the people of the state of Michigan are opposed, and violently opposed, to any system providing for the appointment of their judges. They want to vote for them. For that reason I would vote against the Martin amendment and any appointive plan, and I urge my fellow delegates to do likewise.

CHAIRMAN VAN DUSEN: Speaking on the Martin amendment, the Chair will recognize Mr. McAllister.

MR. McALLISTER: Mr. Chairman, fellow delegates, I have been practicing law for 33 years and have been in most of the counties of this state and many other states. I am not for any soviet plan of electing judges. That is what we have here. I am surprised that such an amendment has been offered. I concur with the views of Delegate Ford on this and the other amendment which is before this committee. A judge has to have much more than legal ability; he has to be a human being. He has to be able to get along with people. He has to love people. He has to have a very humane attitude at all times.

I have observed the appointive system in many countries of Spanish speaking origin, and the arrogance that is evident in those courts and the consideration that I have seen given people has been so repugnant to me that I never could vote for an appointive system. We are in a country where the government is supposed to be by and for the people and we should go forward by giving the people greater power in electing those that judge them rather than to go backward by using the appointment system. I am against both amendments and ask that they be defeated.

CHAIRMAN VAN DUSEN: On the Martin amendment, Mr. Madar.

MR. MADAR: Mr. Chairman, fellow delegates, as I said the day before yesterday, I occasionally agree with Mr. Farnsworth. I noted that yesterday he got up and talked about the g's. I hope that, as I told him yesterday, he wouldn't go off into orbit again, and I noted that he did again today.

I certainly am opposed — though my voice may not show it, I am vehemently opposed — to such a thing as appointments of judges except in cases of vacancies or emergencies, if you so wish. I believe the people ought to elect their own judges. I don't want the same thing to happen here that happens in Europe, not just in communism, as Mr. McAllister states it, but in conservative England where they create classes in society. That is the one thing we certainly don't want. We are a democracy here. I hope we keep it that way. And I hope that the delegates here before we leave, whether it be March 31 or July 31, will take the incumbent designation away from any office unless we have a similarity of names. Outside of that, incumbency designations don't belong. The system smells.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Martin to the amendment offered by Messrs. Yeager, Stamm and Everett. Mr. Danhof.

MR. DANHOF: Mr. Chairman, on behalf of the committee, I would again state that we considered this variation of the plan, many variations. It was the considered opinion of the majority of the committee that, at least as the plan stands now, the idea of running against a nonexistant opponent was not desirable. Consequently the majority of the committee rejected both the original amendment and the amendment thereto. I would urge the defeat thereof.

CHAIRMAN VAN DUSEN: Mr. Ford, do you desire recognition on the Martin amendment?

MR. FORD: Yes. I wish to oppose the Martin amendment. It doesn't do anything to cure the problems that we have talked about for 2 days here. It merely attempts to put a very thin gloss of varnish over something that is a rose by any other name. I also oppose the principal amendment itself.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Martin to the amendment offered by Messrs. Yeager, Stamm and Everett. The secretary will read the amendment.

SECRETARY CHASE: Mr. Martin's amendment is:

[The amendment to the amendment was again read by the secretary. For text, see above, page 1347.]

CHAIRMAN VAN DUSEN: Mr. McAllister.

MR. McALLISTER: I would ask for a division, Mr. Chairman.

CHAIRMAN VAN DUSEN: Mr. McAllister requests a division on the Martin amendment. Is the request supported? It is supported.

Mrs. Judd.

MRS. JUDD: Just speaking on the Martin amendment, 2 points: I think we are talking as though we were trying to institute a new kind of plan when talking about appointment by the governor. I think we forget that we already have actually an appointive plan, as was indicated yesterday; that probably a majority of our judges are appointed by the governor, but without any restriction, and this is simply an effort to face up realistically to this fact and to improve the method of appointment.

Secondly, I would like to ask Delegate McAllister if he would be willing in his previous speech to substitute for his words Spain and soviet the words federal government, because this is not a Spanish or a soviet plan. This was the plan instituted in 1787 in America, and I think we can hardly think of George Washington as being a communist.

CHAIRMAN VAN DUSEN: Mr. McAllister

MR. McALLISTER: This plan is a little different, I think, than your federal plan. I don't think the people of Michigan want it. I do say that we do have a federal court appointment

plan. It has been in effect, and very definitely the reason for that is that it would be impossible or almost prohibitive for any individual to run for a federal job in a state the size of Michigan. The cost would be too great. And I think that is the reason that it is based on. But as for this plan in the state of Michigan, I don't change my mind a great deal.

CHAIRMAN VAN DUSEN: Mr. Faxon, do you desire further recognition on the Martin amendment?

MR. FAXON: Just a comment to the previous speaker — not Mr. McAllister, but the lady from Grand Rapids. I believe you will notice that in the 1787 constitution the people who wrote that document had not at all envisioned the kind of courts and federal court system that later developed, and as a matter of fact the language in the 1787 document is quite clear as not having any such powers as the courts later claimed they did have.

I think that the record of constitutional history in our country reveals that there was no such intent on the part of the framers to give to the courts the power of judicial review or reviewing the actions of the legislatures in the respective states, and that the question didn't really come around to the point where we think of the courts today until after the civil war period.

I would, furthermore, like to point out that much analogy is made here. Reference has been made to appointment and to the English system. I think in this regard we have a system of checks and balances of supposedly separate branches. In the English system it is all supposedly in one area. The ultimate court of high appeal in England, of course, is the house of lords which is supposed to be representative of the nation. We don't have an appeal from our supreme court to the legislature as you might find in the English system. I think that our safeguard in this country, at least in our state, has been through some form of election by the people, and this has proved fairly effective in the states. I think that one could justifiably argue that at times the federal bench has not been responsive because of its appointive features and good behavior, and that in many periods of history following the civil war, the federal courts acted in a way to deter or prevent states from effectuating their functions and carrying out their responsibilities through their declaring of state acts unconstitutional.

CHAIRMAN VAN DUSEN: The question is on the Martin amendment to the amendment offered by Messrs. Yeager, Stamm and Everett. Is there any delegate who would desire to have the amendment read again?

DELEGATES: Division.

CHAIRMAN VAN DUSEN: A division has been called for. Is there support? Sufficient number up. Those in favor of the amendment — Mr. Ostrow, the Chair had understood that you desired recognition on the main question. Mr. Ostrow seeks recognition on the Martin amendment.

MR. OSTROW: I oppose the amendment and the amendment which it amends. Everyone is speaking about removing judges from political pressures. I asked you yesterday to look at the Michigan Supreme Court Reports and try to see how many cases you could possibly find that had any political implications or where there could possibly be any political pressures.

Now, how either this or the federal system divorces a man from political pressures I don't know. I want to remind you of a judge who was in the papers for quite some time. His name is Feikens. Two attorneys general, 2 presidents of the United States wanted him to continue to be a judge; 1 senator said no. Now, in spite of anything you say, a federal judge is appointed for political reasons. It is a matter of senatorial patronage. They call it senatorial privilege or courtesy. You cannot be appointed to a federal district court without the blessing of your senator. Now you are going to remove a judge from politics by having him appointed by the governor. How do you get an appointment from the governor?

CHAIRMAN VAN DUSEN: Mr. Ostrow, the Chair will request that you confine your remarks, if you would, at this time to the Martin amendment.

MR. OSTROW: The Martin amendment is part of that, because first he is appointed and second he runs.

CHAIRMAN VAN DUSEN: The only question currently before the committee is the Martin amendment dealing with the election subsequent to appointment.

MR. OSTROW: All right. Here is this man whom you have divorced from politics. He has to run. He has to be elected. Now, how does he get elected? He has to go to the voters just the way the judges do now. He has to campaign. He has to have campaign funds. He has to have campaign workers. I submit that a judge will be a good judge whether he is elected under the present system or has to run under Mr. Martin's system. Take a look at the judges that we have had in Michigan. I practiced law for 37 years legally. For 3 years before that it was our practice while going to law school to try justice court cases. I wouldn't admit it until I was admitted. (laughter) Take our Michigan judges and take our Michigan federal judges; our state judges compare favorably with any federal judge we ever had, with one exception, my favorite, my former boss, Raymond Starr. Of course, to my mind, nobody was as great as he was or is. But this system will no more remove a judge from politics than the present system will, and if a judge is going to be influenced, he will be influenced under either system.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Martin. A division has been ordered. Those in favor will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the Martin amendment, the yeas are 35; the nays are 90.

CHAIRMAN VAN DUSEN: The amendment is not adopted.

SECRETARY CHASE: Mrs. Judd offers the following amendment to the pending amendment:

1. Amend the amendment, first sentence, after "consent of the" by striking out "senate" and inserting "legislature in joint session"; so that the language will then read, "The governor shall, with the advice and consent of the legislature in joint session, appoint the justices of the supreme court . . . ."

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mrs. Judd to the amendment offered by Messrs. Yeager, Stamm and Everett. On her amendment the Chair will recognize the lady from Grand Rapids, Mrs. Judd.

MRS. JUDD: Mr. Chairman, members of the committee, this is an effort at trying to find a consensus of the committee as a whole on the problem of selecting judges, and possibly this is somewhat more palatable to a good many members of this committee than simply advice and consent of the senate. Incidentally, it happens to be the proposal in the model state constitution in its present form. Therefore, it seemed to me worth a try.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mrs. Judd. Mr. Downs.

MR. DOWNS: Mr. Chairman, I am not yielding my opportunity to speak on the original amendment. I would just like to compliment Mrs. Judd. She is getting closer (laughter) but not quite close enough. I think if you read the model constitution —and I yield to her; I am sure she has read it more recently— when they talk about advice and consent of the legislature, it is a legislature based on the one man, one vote concept. I assume this is a preface to our discussion on the executive branch, so I will not belabor the point or be out of order, but say that I compliment the delegate from Grand Rapids on her progress, and I hope it continues so we can see eye to eye when we get to the heart of advice and consent. Thank you.

CHAIRMAN VAN DUSEN: On the amendment offered by Mrs. Judd, the Chair will recognize the gentleman from Bay City, Judge Leibrand.

MR. LEIBRAND: Well, Mr. Chairman and delegates, if the lady from Grand Rapids would amend her amendment to provide for the appointment of judges on the advice and consent of the people, I would support it. (laughter)

CHAIRMAN VAN DUSEN: On the Judd amendment, the Chair recognizes Mr. Everett.

MR. EVERETT: Mr. Chairman, I cannot speak for the other 2 gentlemen who joined with me in offering the original amendment, but for myself I certainly have no objection to this being a matter for the legislature to pass upon. What they are interested in is a review of the governor's appointment which does not exist under the present system, and this certainly would be, in my own mind at least, a very acceptable review. We have contemplated the fact that even if the governor and the senate, or in this case the legislature, were of the same party—and there are quite a few of us in this room who assume that this situation will come into existence—there still would be a minority group which would look very carefully at this man, and in the spotlight of public opinion would determine whether or not he had qualifications to sit upon the bench. As I say, individually I would accept this as an appropriate amendment.

CHAIRMAN VAN DUSEN: Mr. Lawrence.

MR. LAWRENCE: It seems to me that this amendment does leave the advice and consent to the duly elected representatives of the people who should be informed and able to determine whether or not the appointment is proper and if the nominee has the proper qualifications, and for that reason I would support this amendment wholeheartedly.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mrs. Judd to strike out of the Yeager-Stamm-Everett amendment "senate" and insert "legislature in joint session." Those in favor of the amendment will say aye. Those opposed will say no.

The amendment is not adopted. The question is now on the amendment offered by Messrs. Yeager, Stamm and Everett, on which the Chair will recognize the gentleman from Detroit, Mr. Sterrett.

MR. STERRETT: Mr. Chairman and delegates, I have heard various arguments here today for and against the appointive system of supreme court justices and, unlike Dr. Nord, when I came up here I didn't have any particular plan in mind. I had an open mind. However, I feel that in inserting all of these various amendments to this amendment, we are doing nothing but trying to set up something that is in between, and in this situation I don't think we can be in between. I feel that we either have to go along with an appointive system the same as we have in our federal courts or definitely go the other way. The appointive system we have in our federal courts has been tried for years. It has been good for the United States, as has already been pointed out. I see no reason why this couldn't be good for the state of Michigan. I would like to point out to you that all but Justices Black and Kelly have been appointed by the governor of the state of Michigan at one time or another, all of our present justices.

Now, if we are not going to accept this plan — this plan is an attempt to make this a nonpartisan situation — then I think we should definitely go the other way and have a nomination by the party, a partisan election of the justices, and permit them to be elected through the party. But I would prefer to see this plan in force because I would like to keep it as much as possible on a nonpartisan basis. In this plan there is no reference to partisan or nonpartisan. We will never know in the future whether it will be a governor of one party or the other.

If we have reapportionment, the complexion of our senate and our legislature in general could change and we will definitely not have any idea in the future which party would be ruling this situation. Therefore, I feel that this would be the best for the people of the state of Michigan.

CHAIRMAN VAN DUSEN: Mr. Ostrow, do you now seek recognition on the main question? Mr. Ostrow passes. Judge Leibrand. Judge Leibrand passes. Mr. Martin, do you seek recognition on the main question? Mr. Martin passes. Mr. Downs, do you seek recognition on the main question?

MR. DOWNS: Yes. Mr. Chairman, fellow delegates, I hope that the oncoming cold will keep me shorter than usual. I would like to speak to one point that was raised by Delegate Woolfenden this morning, and I believe Delegate Farnsworth raised it yesterday in the memorandum attached to his recommendation for the so called Missouri plan. This was the point on the matter of civil rights — and I think I summarize them correctly — where they both pointed out that the 58 lonely federal judges in the deep south carried out the decisions of the United States supreme court where the elected state judges there did not necessarily do so. That statement on the surface is perfectly accurate. I only wish to point out that when those of us speak of elected judges, we mean elections in which all the citizens have a right to vote. My own feeling is that if there were elections in the deep south where every citizen had the right to vote, we would find that the state justices of those state courts would be just as vigilant if not more so in supporting the principles of the United States constitution. I did not bring that up, but since that question had been raised, I thought the answer should be made.

I do think that the question here is probably one of the most basic ones in our whole judicial system; that is, whether judges should be elected by the people or whether they should be appointed some way, whether it is the Missouri plan or some other form, for an indefinite period. And this one is one where it has been pointed out there can be and have been arguments on both sides of the question. My own feeling is that as far as state courts go, we do have judges with more compassion and more understanding when periodically they must go back to the people as the final judge. Now, this is often called politics. I assume the definition of "politics" is what the other fellow does. What we do is "statesmanship."

But judges aren't like other people. They are not IBM machines that have powers put around them. We talk about the federal system, and I think largely it has been pointed out it depends on which person was making the evaluation and which time in American history. We can go back to Thomas Jefferson's vigorous support of an elective system and opposition to an appointive system. I feel that history shows certainly in Michigan our elective system has worked. I am the first to concede that it is a combination with the appointive, with the governor having the appointive power, but the very fact that there is to be an election would, it seems to me, require either the party conventions currently making nominations or the governor making an appointment to keep in mind the ultimate wishes of the people. I therefore oppose the amendment that has been introduced. Thank you very much.

CHAIRMAN VAN DUSEN: The lady from Livonia, Mrs. Conklin.

MRS. CONKLIN: Not being an attorney, I hesitated to even get into the discussion of the supreme court or any other facet of our judicial system. I am even at the point where I have to write down my thoughts so I don't get up here and forget them. I am frank to admit that I have been torn one way and then another by all the discussions that we have had here the last 2 days. My only hope was that we could present to the people of this state a better plan than that which is now in effect. The real problem before us, if we are honest with ourselves, is how to free our supreme court justices from political pressures. You know and I know only too well that if a man is supported by a particular element of our society, he needs those votes if he is going to run for office again next time, and some of his decisions are going to be made with that thought in mind.

Judge Leibrand has said the people in the state are violently opposed to appointment of their judges. I would say that I have no indication of this from the people in my district. I honestly believe all that the people want on their bench is an uncontrolled, unbiased judge, not a politician with a vote-getting personality.

I would like to point out to the laymen, if there are any left in the room, that this amendment is offered by 2 laymen and one attorney, which fact alone, I think, warrants our consideration. I urge the support of the Stamm-Yeager-Everett amendment.

CHAIRMAN VAN DUSEN: Mr. Sterrett.

MR. STERRETT: Mr. Chairman, delegates, this is the last time I will speak on this; it's a promise. (laughter) We just heard Delegate Downs say that the election of the judges should be the right of the people. I just wonder if it is left to the people or to the party which can persuade them the most. I remember in the 1960 election these 2 supreme court

justices were supposed to be nonpartisan, but Souris' name was on the Democratic ticket at the polls and Breakey's name was on the Republican ticket at the polls.

There is a lot of pressure put on the voter. And I am sorry that Delegate Hart is not here today, because I recall that when we gave a talk in a group prior to the election to con con, I raised the question to this group, "How many can name just by last name your present supreme court judges?" Not one could. I asked another question, "How many can name one and give me his legal background and qualifications as a supreme court judge?" Not one could. Now, what I would like to ask you is, in the election of supreme court justices, are we really doing the people a favor? Are we giving them a right? I don't feel we are. I feel we would be doing them more justice by appointing the supreme court judges, as this amendment to the committee proposal provides. Therefore, I would like to support this and I hope that I will have all of your support.

CHAIRMAN VAN DUSEN: Mr. Ford.

MR. FORD: I think everything has been said that could be said about the contrast between election and appointment, but Mrs. Conklin strikes a note of concern in me when she suggests that what the people really want from this constitutional convention is a better system than we have and then she goes on to add, a system with unbossed and uncontrolled judges. I think that is substantially her language. I hope that she doesn't really seriously mean for one moment that the people of this state are dissatisfied with their present judicial system or with the quality of our judiciary. This discussion about unbossed judges and politics with respect to judges would be proper, in my mind, in the convention in Alaska where they had no precedent to go by, or it would have been proper in a state like New Jersey where they had a terrible scandal in their courts and were primarily concerned during their constitutional convention with the reform of a bad system because of bad people in the system as well, but it certainly has no place in Michigan where we have a long history of a clean, unbossed, independent judiciary.

I want to say once more that throughout the United States they hold our system up as an example of a good system. This is one of the places where we can be proud and hold our head up above all of the other states. As recently as December of this last year, Fortune magazine, in an article which is a scathing criticism of the judiciary throughout the United States, held up Michigan as one of the 3 best states in the union as far as its judicial system is concerned; and this is not based on a guess, this is based on a long period of study of the actual history of the court and our court's freedom, all the way from the bottom of the system up through the supreme court, from anything remotely resembling a controlled or machine politics type judiciary. And this goes back, if you will, long before we were electing judges nonpartisan, because we have only been electing judges on a nonpartisan basis since 1939, some of them since 1937. And even when we had the judges directly in politics with direct partisan nomination and partisan election, we have no history that would substantiate any accusation that the system has produced a bossed judiciary. This has never happened in Michigan. We had absolutely no evidence upon which to predicate the assumption that it could happen in the future.

CHAIRMAN VAN DUSEN: Judge Dehnke.

MR. DEHNKE: Mr. Chairman and fellow delegates, I am prompted to make a few remarks at this point because of what was said by Mr. Downs and by Mr. Ostrow. We have heard it said here rather often this morning that the federal system of appointments has turned out to be in every respect satisfactory. I don't want my silence to be construed as an agreement with that statement. Do we have to be blind to the extent to which judicial appointments have become political wares the same as any other kind of appointment?

In conclusion I want to read you something, and I feel it necessary in self defense to ask that you do not rise to express resentment over this sentiment until I have told you who said it:

> To consider the judges as the ultimate arbiters of all constitutional questions is a very dangerous doctrine indeed and one which would place us under the despotism of an oligarchy.
>
> Our judges are as honest as other men and no more so. They have with others the same passions for party, for power and the privileges of their courts. The judiciary is the subtle core of sappers and miners constantly working underground to undermine the foundations of our confederated fabric.

He is talking about the federal judiciary.

> They are construing our constitution from a coordination of a general and special government to a general and supreme one alone. This will lay all things at their feet. We shall see if they are bold enough to take the daring strides that 5 lawyers have lately taken. If they do, then I will say that against this every man should raise his voice and more, should uplift his arm. Having found from experience that impeachment is an impracticable thing, a mere scarecrow, they consider themselves secure for life.

That was written in 1820 by Thomas Jefferson.

CHAIRMAN VAN DUSEN: The gentleman from Detroit, Mr. Binkowski.

MR. BINKOWSKI: Mr. Chairman, ladies and gentlemen of the committee, I think Judge Dehnke has expressed some of my thoughts certainly better than I could. However, I would like to go on record for the election of judges.

Basically, I feel that judges are a bit more human if they have to come back to the people every 6 or 8 years, and I think that perhaps some of the dreamers in this convention are out of step in thinking that either judges live in a vacuum or that their decisions are made in a vacuum. Judges are human; they have prejudices; they have likes; they have dislikes.

These people who are hollering about nonpartisanship — I really don't understand nonpartisanship and perhaps somebody can explain it to me off the floor of this convention. Every one of us to the convention was elected on a partisan ticket. I think if you go through the biographies of most of us, you will find that in most cases we have a rich history of political activity, and I think this is very good and this is very sound. I for one believe in a vigorous 2 party system and will speak more upon that at a different time.

If it is necessary, I would be very happy to have partisan election of judges. However, I wonder if, according to Mr. Sterrett's comment, he is kind of fearful of this and whether some of the people here fear that perhaps they don't have a chance. I don't know. But I certainly am against this amendment and for the election of our judges.

Also I would like to raise another point that perhaps has been lost in all of our discussions, and that is this old item of flexibility. I submit that under the present language we have the greatest amount of flexibility. I think this is one of the standards that any of the proponents of a new plan have to bear the burden of proof in showing to this convention where their plan has more flexibility in the language for the future.

I think that Mr. Barthwell and Mr. Garvin have brought out the fact that our present method of electing judges is all spelled out by legislation. It is not in the constitution. I raise the question, "Why do you have to have it in the constitution?"

CHAIRMAN VAN DUSEN: Dr. DeVries.

MR. DeVRIES: Mr. Chairman, members of the committee, I really don't know what the people want. I can't intuit these things. Basically, I guess I am a social scientist, so I like to measure what people's attitudes are. We did this in Kent county last year, and I can only generalize about Kent county and how some of the people there who were polled felt about the supreme court. When you ask them about the present system, 7 per cent of them tell you that they want to keep it, which indicates to me some apparent satisfaction. You ask them about a partisan-nonpartisan arrangement like we have now and you get a 7 per cent return. You ask them if they want an all partisan primary and general election; 20 per cent of the people favor this kind of system. You ask them

about an all nonpartisan arrangement; about 20 per cent. You ask them if they want the supreme court appointed; 54 per cent of the people in my county polled want an appointed supreme court. Now, for this and many other good reasons already cited, I support the amendment.

CHAIRMAN VAN DUSEN: Mr. Hoxie.

MR. HOXIE: Mr. Chairman, fellow delegates, I rise to oppose the amendment that is before us for consideration. We have heard considerable discussion this morning about the federal plan. You have heard statements from various delegates why they do not believe it is practical for a state to adopt such a system, with which I wholeheartedly agree. I have in my hand a list of the methods of selection of justices throughout this country. Under the plan as proposed, we find 4 states: Delaware, New Jersey, Puerto Rico and Hawaii. I ask you, is this an experiment that we are going to enter into? Why, through the 175 years that we have had our federal system, if it is good for states, haven't more states adopted this type of selection of our supreme court justices?

I think when you consider that, you must realize that this system has not been adopted by the states because they felt it was not good. And in looking at the 4 states that have adopted it — and I guess Alaska can be included because this is a report from the Book of the States for 1960-61 — I think you cannot help but realize that it has its fallacies and that it should not be adopted in Michigan as a basis of selection of our justices of the supreme court.

CHAIRMAN VAN DUSEN: The Chair will recognize the mover of the amendment, Mr. Yeager.

MR. YEAGER: Mr. Chairman, ladies and gentlemen of the committee, we have had considerable discussion now at this point on this question of the federal system. I understand there are some other amendments up there a little different in character, and if possible I would like to see us take a vote at this time, and I request a division, Mr. Chairman.

CHAIRMAN VAN DUSEN: Mr. Yeager requests a division on the amendment. Those in favor of a division will rise. The demand is supported. The question is on the amendment offered by Messrs. Yeager, Stamm and Everett. Does any delegate desire to have it read? A division has been ordered. Those who favor the Yeager-Stamm-Everett amendment will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the adoption of the amendment offered by Messrs. Yeager, Stamm and Everett, the yeas are 30; the nays are 95.

CHAIRMAN VAN DUSEN: The amendment is not adopted. Are there further amendments to section a?

SECRETARY CHASE: Messrs. Yeager, Stamm and Everett now offer the following amendment:

1. Amend page 1, line 6, after "justices" by changing the comma to a period and striking out the balance of the section and inserting "The governor shall, with the advice and consent of the legislature, appoint the justices of the supreme court who shall hold office for a term of 8 years. At the end of such 8 year term, such justices desiring to succeed themselves may nominate themselves for reelection. Other candidates may be nominated on a nonpartisan basis as provided by law. Justices in office on the effective date of this constitution shall hold office as if appointed on the date of their last election.".

CHAIRMAN VAN DUSEN: The question is on the amendment now offered by Messrs. Yeager, Stamm and Everett, on which the Chair will recognize Mr. Yeager.

MR. YEAGER: Mr. Chairman, ladies and gentlemen of the committee, this amendment is an attempt to answer the objections of those who favor election of judges and those who think appointment is the best initial means of selection in a combination plan. The plan allows the governor to make appointment subject to advice and consent of the total legislature for the initial 8 year term. This means in effect that we will not have an appointment by just one man as we now have, but that in effect, if it were the present lgeislature constituted, it would be 145 people — that is 144 legislators and 1 governor. After the initial 8 year period, each justice can run for reelection upon his own nomination, and there is a provision for having other people in the race. It provides for staggering of terms by confirming the balance of the elective term of the incumbents.

To those who are interested in a plan for election by zones, I would simply point out that we are making provision for an appellate court to be elected on the zone basis which is going to take a considerable amount of work off the present supreme court. I therefore urge the adoption of this amendment.

CHAIRMAN VAN DUSEN: Mr. Everett.

MR. EVERETT: Mr. Chairman, I would like to second the remarks of Mr. Yeager and recall to your attention some of the material we covered yesterday, not all of it by any means, but some of it. Yesterday we tried to determine for ourselves whether there was a satisfactory elective system available for this constitution, and the majority of the members of this convention have indicated quite clearly that they cannot find an acceptable elective system. I am not going to rehash all of the pros or cons for those which have been offered, but a majority of this convention will not accept them. So we have to look elsewhere.

Mr. Yeager, Mr. Stamm and some 27 other people in this convention agreed that the federal system was the best. But 30 is not enough. We have to find a system which will do what all of us want to do, 2 things: first, provide a means of getting to the bench the best possible men; and second, providing a means which is going to command a majority support in this convention. It must accomplish both purposes, and nobody has yet suggested any elective plan which can do either.

Now, this system will certainly have a strong tendency to get to the bench the type of man who is not now reached. At the very outset of this debate today Mr. Yeager pointed out that we don't suggest that all politics will be eliminated by an appointive system. As a matter of fact, for myself, I am not so sure I would want to eliminate all politics if it were possible, and concededly it is not possible. But what we can do is attract to the bench by gubernatorial appointment men who are not now considered either because they are not now going to go to a partisan convention and seek support of that partisan convention, whatever their politics may be, or are overlooked simply because they don't have enough adherents within a patronage committee to suggest their names to the governor. And remember again that if the legislature must review these appointments, the governor is on notice that whoever he appoints is going to have to bear scrutiny. His appointment is going to be reviewed in public by legislators, yes, but also by the press and by the people, and he has to be able to defend that choice. The man is going to have to have stature. He is going to have to have experience and ability.

I am not suggesting that all of the men being appointed today don't qualify under these terms. Many of them, I am sure, would. But what we are getting away from is the uncontrolled appointment by a governor of anybody who suits the patronage committee of his party — and I am not particularly concerned which party, because to me the Supreme Court of the state of Michigan has to rise above patronage committees, and if it doesn't we as a group have failed in our task. I submit to you also, suggestions have been made here that the people want this kind of a system or they want some other kind of a system. I think we should keep it in mind that the people want leadership from this convention. They are not simply suggesting that we write in their prejudices or their beliefs; they are demanding of us that we as a group determine for ourselves what in our best judgment would provide the best framework for government that this state can have, and if we constantly are fearful that we will offend somebody, we might as well close up shop and go home because we cannot make improvement unless we do offend some people.

In the final analysis, though, the vast bulk of people are represented here by 144 of us, not by lobbyists, not by paid letters or telegrams, but by us, and, unless we assume our responsibilities right here and now, we will have failed them. I don't think there is any member of this committee who is ready now to admit failure.

This is a method which is a distinct improvement over the present system, which is an improvement over any elective system which has been suggested, and if it is acceptable to a majority of us, we can turn to it with pride and say we have done for the state of Michigan what we were sent here to do.

CHAIRMAN VAN DUSEN: On the amendment offered by Messrs. Yeager, Stamm and Everett, Mr. Young.

MR. YOUNG: Mr. Chairman, this committee has decisively rejected first the district plan, then the Missouri plan and more recently the federal plan. This plan which is now presented to us is an amalgamation of all 3 plans. And for all the very good reasons that have been presented here in opposition first to the district plan, then to the Missouri plan and finally to the federal plan, I oppose this amendment.

CHAIRMAN VAN DUSEN: Dr. Nord.

MR. NORD: Mr. Chairman, speaking on any proposal on the judiciary apparently is a very difficult problem because you can hardly ever find 2 or 3 people who do agree with you and you are bound to make enemies of your friends. But in any event, I would like to commend the sponsors of this amendment for continuing to work toward a suitable solution to the problem. I don't believe that they have quite made it, and I would like to suggest what I think is wrong with it and what I think is right with it and ask them whether they would consider making certain changes in it.

As to the appointment by the governor, as I said before, I have no objection to it. That is basically what happens now. I am in favor of that. As to the reelection system which they have provided now in which the candidate or the incumbent judge can nominate himself and run against other candidates, I believe that is a step in the right direction too. As a matter of compromise I think that combines the best features of both plans that we have had before us.

The objection I have to the plan as it now is submitted is that there is to be advise and consent of the legislature, and the objection is based on 2 things: one, that the legislature will not be properly apportioned. It will not be the will of the people. The governor will be the will of the people. The legislature will not. That being the case, I don't want the will of the people to be affected or diluted in any way. Further, I see no reason why the legislature should have anything to do with the selection of judges if we can avoid it. I believe Judge Leibrand was absolutely correct when he stated that the only people who should give advice and consent are the people themselves, the people at large, the people of the entire state. They should give advice and consent.

Now, the question is how can they do it? They can't do it 8 years later as is suggested here. I believe they could do it if it was a very short time afterwards. In other words, what I am suggesting to the sponsors of this amendment is that they strike the advice and consent of the legislature entirely and shorten the first term to, say 2 years so that the people could give their advice and consent after a brief period, but a period long enough so that they can have a basis for their judgment. Let them have a short term, say 2 years. Then let the people vote in exactly the way that was suggested by the sponsors of the amendment. If the judge is elected, then the next term would not be for 2 years but it would be possibly for 8 years or maybe 6 years. That could be worked out. But the point is I think that, as Judge Leibrand has indicated, if there is to be advice and consent at all on an appointive system, I believe most of us feel that the advice and consent must be by the people and only by the people, not by some other body such as the legislature. That could be done — at least I think it could — with a short first term.

As the amendment now stands, I am opposed to it. If the sponsors wish to make changes in the direction I have mentioned, possibly they could work out something I could favor.

CHAIRMAN VAN DUSEN: Miss Donnelly has offered an amendment to the amendment, which the secretary will read.

SECRETARY CHASE: Miss Donnelly's amendment to the amendment is as follows:

1. Amend the amendment after "a term of" by striking out "8" and inserting "2"; and after "end of such" by striking out "8" and inserting "2"; and after "law.", by inserting "The elected justice shall hold office for a term of 8 years."; so the language will then read:

> The governor shall, with the advice and consent of the legislature, appoint the justices of the supreme court who shall hold office for a term of 2 years. At the end of such 2 year term, such justices desiring to succeed themselves may nominate themselves for reelection. Other candidates may be nominated on a nonpartisan basis as provided by law. The elected justice shall hold office for a term of 8 years. Justices in office on the effective date of this constitution shall hold office as if appointed on the date of their last election.

CHAIRMAN VAN DUSEN: The Chair recognizes the lady from Highland Park, Miss Donnelly.

MISS DONNELLY: I think the purpose of this amendment is fairly clear. We are besieged with difficulties, as everybody knows, on how best to select our supreme court justices. I basically prefer nonpartisan statewide elections throughout, but I know that it is apparently financially an idealistic situation and would allow only the most wealthy to seek this because otherwise people must have financial support. This selection by the governor is not unknown. That is what we basically have now. They basically hold office until the next time for election. All this provision does, in my opinion, is limit the time they shall be there by taking it from an 8 year and putting it back to a 2 year term. Thus the governor has the check publicly on his appointment and would have to, as the other movers on this believe, go through a certain spotlight.

At the moment the governor appoints under the advice of those who are very, very close to this governor. The people of the state, I believe, have a right to act. At this moment they only act against an incumbent who the governor has appointed without much aid from the people. This provision would allow the legislature in joint session to act, but their provision would be for a 2 year term. The individual then would run. Then the people, after the 2 year term, would have had an opportunity to judge their performance in office. Instead of sealing them in for 8 years, which the main amendment does, this seals them in for only 2 years. Then they must run for election. They do run against someone, as the other amendment has. The only thing this amendment does is cut down the amount of time. These judges appointed by the governor and cleared by both houses hold this office for a 2 year term, and from then on they are out against the public like anybody else. They have the incumbency designation. They have had the 2 years. They have had the appointment screening process. They probably would never be defeated. But the people have a chance to move within this 2 year period, and the original appointment has been thoroughly screened. I therefore move the support of this amendment to the amendment and move the main amendment.

CHAIRMAN VAN DUSEN: Miss Donnelly, would you yield to Mrs. Conklin for a question?

MISS DONNELLY: Yes.

CHAIRMAN VAN DUSEN: Mrs. Conklin.

MRS. CONKLIN: Miss Donnelly — Ann — I just want to ask a question. I know we haven't debated the executive article yet but it seems the general intent around here is that the governor should serve a 4 year term so that he has a better chance to present his plans and become better known, perhaps, to the public, and I just wondered in a 2 year period how many of the average citizens of the state are going to know anything more about their judge than they do at the beginning of the 2 year term, and why not make it 4 years? Is there any particular reason for picking 2 years?

MISS DONNELLY: The reason I picked 2 years is because I believe the term of office of 8 years for the supreme court justice is proper. Taking a 4 year, it is 50 per cent. This advice and consent and nomination by the governor then would run for the length of the term of the governor, but they are sealed in for a 4 year term. The people cannot act.

I put it on the basis of a 2 year term on the theory that you shouldn't hold them in for 50 per cent of the time. On this amendment they will have 25 per cent of their time there. The people, in my opinion, will have an opportunity to observe

how these individuals have conducted themselves. The fact that the governor is in for a 4 year term — let's assume he is and that provision passes — I do not believe there is necessarily any reason to make the supreme court go on a corollary. In other words, I go back to my first thought: this is 25 per cent of the time. I think 50 per cent of the time is too long for the people not to have a chance to act.

MRS. CONKLIN: I just feel they aren't related with the term of the governor. If you understand my question, I don't think they are related, except that you have felt that a 4 year term would allow the people to begin to know something about the person involved, and I just wonder what could a supreme court justice do that maybe wouldn't be something pretty terrible where he would hit the front page of the paper that the average citizen in a 2 year period would ever know anything about him, and it seems to me they ought to serve a little bit longer where something at least might come up before the public's attention.

MISS DONNELLY: Well, I see your point. I don't think it takes a 2 year term for the people to know what the governor is doing. I don't agree with your premise in the first instance. I think there are other good reasons for the governor to act for 4 years. Your basic premise, I think, is false to me as to why the governor should have a 4 year term. The people can know before that, in my opinion. I think he should have more time to get a job done, perhaps. But it still goes back to how long should these appointees be sealed in. They would be sealed in, under my amendment, for 2 years. This is ¼ of their term.

I could see the 4 year argument. I just believe that 50 per cent is maybe too long to seal them in. The people should have a right to act before that time if they wish to act. I would say that 99 per cent of the time the people will not act. The incumbent will not be defeated. But the incumbent has originally been thoroughly screened, we like to think, in a public spot. They have had the 2 years. They would run with the incumbency designation. They thus have a great deal of protection, but they are not sealed in. The people may do something else. Someone may oppose them. And this is just an attempt to give more control to the people over the present system than we basically have now. They don't have it now. There is no airing of the appointment now.

CHAIRMAN VAN DUSEN: The Chair will advise that he has 5 speakers seeking recognition on the Donnelly amendment, one speaker seeking recognition on the main question. Mr. Danhof.

MR. DANHOF: Mr. Chairman, in view of the hour and the number of speakers just stated, I move the committee do now rise.

CHAIRMAN VAN DUSEN: Mr. Danhof moves the committee do now rise. Those in favor will say aye; opposed, contrary.

The motion prevails and the committee will rise.

[Whereupon, the committee of the whole having risen, President Nisbet resumed the Chair.]

PRESIDENT NISBET: The Chair recognizes Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, the committee of the whole has had under consideration several matters of which the secretary will give a detailed report.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 91,** A proposal pertaining to the supreme court; has considered several amendments thereto; has come to no final resolution thereon. This completes the report of the committee of the whole.

PRESIDENT NISBET: Are there any announcements?

SECRETARY CHASE: I have the following announcements:

The committee on style and drafting will be meeting this evening at 8:00 o'clock in room K. William B. Cudlip, chairman.

The committee on judicial branch will meet in room B tomorrow, March 1, at 8:30 a.m. Robert J. Danhof, chairman.

Mr. Balcer has been ordered to report to the veterans hospital for a physical examination and wishes to be excused from the afternoon session.

PRESIDENT NISBET: Without objection he will be excused.

SECRETARY CHASE: Mr. DeVries says the committee on administration will not be meeting this noon.

PRESIDENT NISBET: The Chair recognizes Mr. Mahinske.

MR. MAHINSKE: Mr. President, I move that the convention stand in recess until 2:00 p.m. this afternoon.

PRESIDENT NISBET: The question is on the motion of Mr. Mahinske. All in favor say aye; opposed, no.

The motion prevails. We are recessed until 2:00 o'clock.

[Whereupon, at 11:35 o'clock a.m., the convention recessed; and, at 2:00 o'clock p.m., reconvened.]

The convention will please come to order.

SECRETARY CHASE: Mr. President, a quorum of the convention is present.

PRESIDENT NISBET: The Chair recognizes Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, I move the convention resolve itself into committee of the whole for the purpose of considering matters on the general orders calendar.

PRESIDENT NISBET: The question is on the motion of Mr. Van Dusen. Those in favor will please say aye; opposed, no.

The motion prevails. Mr. Van Dusen.

[Whereupon, Mr. Van Dusen assumed the Chair to preside as chairman of the **committee of the whole.**]

CHAIRMAN VAN DUSEN: The committee will be in order.

The question before the committee is the Donnelly amendment to the amendment offered by Messrs. Yeager, Stamm and Everett to **Committee Proposal 91.** For the benefit of our visitors, the committee of the whole is considering the matter of selecting justices of the supreme court of this state. On the Donnelly amendment, the Chair will recognize Miss Donnelly.

MISS DONNELLY: At this time I wish to withdraw that amendment.

CHAIRMAN VAN DUSEN: Miss Donnelly withdraws her amendment.

The question is on the amendment offered by Messrs. Yeager, Stamm and Everett. On that amendment the Chair will recognize the gentleman from Saginaw, Mr. Shackleton. Excuse me. Mr. Yeager, did you seek recognition?

MR. YEAGER: I didn't know that you were going to call on another speaker, Mr. Chairman. I simply wanted to request a division if the vote was to be taken.

CHAIRMAN VAN DUSEN: Mr. Shackleton, if you could defer your point for just a moment, Mr. Yeager requests a division. Is the demand supported? It is supported. Mr. Shackleton, you may proceed.

MR. SHACKLETON: Mr. Chairman, members of the committee, we have heard a lot on this floor about discrimination. I have heard no good, sane, sound reason against discrimination. But that works 2 ways. One of the biggest minorities in the state is lawyers, and so long as there is a provision for incumbent after the name of a supreme court justice or a justice of the peace running, or any other officer, or the provision for self nomination, unless I can find someone that can give me a good, sane reason, I would be highly opposed to it. I don't see why they should have that advantage over a sheriff, a county clerk or a dog catcher if he is running for office. It certainly would be a distinct advantage.

Dr. DeVries pointed out this morning in his area no one knew who the justices were anyway. So they should not have that particular advantage, and I would be opposed to either one of those designations in any provision in the constitution until we can get a sane reason for it.

The reason they are on a pedestal, apparently, is because they themselves and the attorneys have placed them there, not the general public or the voting public.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Messrs. Yeager, Stamm and Everett. Mr. Danhof, do you seek recognition?

MR. DANHOF: We would like to have it read before we vote on it.

CHAIRMAN VAN DUSEN: The secretary will read the amendment.

SECRETARY CHASE: The amendment offered is as follows:

[The amendment was again read by the secretary. For text, see above, page 1352.]

CHAIRMAN VAN DUSEN: The question is on the amendment as so read. A division has been ordered. Those in favor of the amendment will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the adoption of the amendment, the yeas are 32; the nays are 89.

CHAIRMAN VAN DUSEN: The amendment is not adopted. Are there further amendments to section a of Committee Proposal 91?

SECRETARY CHASE: Mr. Kuhn offers the following amendment:

1. Amend page 1, line 6, after "Sec. a.", by striking out the balance of the section and inserting "The supreme court shall consist of 9 justices. They shall be elected for 8 year terms, and not more than 3 justices shall go out of office at the same time.

Justices shall be nominated and elected at nonpartisan elections, conducted as provided by law. The legislature may provide for nomination and election by districts. Incumbent justices may secure their nomination by filing an affidavit of intention to run as shall be provided by law.".

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Kuhn, on which the Chair will recognize Mr. Kuhn.

MR. IVERSON: Mr. Chairman.

CHAIRMAN VAN DUSEN: For what purpose does the gentleman rise?

MR. IVERSON: I move at this time to pass further consideration of Committee Proposal 91 at least temporarily if not beyond the consideration of the balance of the judicial article.

CHAIRMAN VAN DUSEN: Mr. Iverson moves to pass further consideration of Committee Proposal 91 until the remaining proposals of the judicial article have been considered by the committee of the whole. Mr. Ford.

MR. FORD: Mr. Chairman, I can't say that it is easy to form an opinion as to just what this will accomplish. I understand that there is considerable confusion among the delegates about just why this would be put over. There certainly is in this corner. However, if we are going to pass this, then we will have to pass the next proposal too, and if he wants to pass the proposals on both the supreme court and the intermediate court of appeals, we would have no objection.

CHAIRMAN VAN DUSEN: Mr. Iverson?

MR. IVERSON: Yes, I will agree to that.

CHAIRMAN VAN DUSEN: Mr. Iverson's motion is amended so that he now moves the further consideration of Committee Proposals 91 and 92 be deferred until following consideration of the remaining proposals relating to the judicial article. Those in favor of Mr. Iverson's motion will say aye; opposed, no.

The motion prevails. The secretary will read Committee Proposal 93.

SECRETARY CHASE: Item 4 on the calendar, from the committee on judicial branch, by Mr. Danhof, chairman, **Committee Proposal 93,** A proposal pertaining to the circuit court. A substitute for sections 8, 9, 10 and 11 of article VII.

Following is Committee Proposal 93 as read by the secretary, and the reasons submitted in support thereof:

The committee recommends that the following be included in the constitution:

Sec. a. THE STATE SHALL BE DIVIDED INTO JUDICIAL CIRCUITS ALONG COUNTY LINES IN EACH OF WHICH THERE SHALL BE ELECTED ONE, OR WHEN PROVIDED BY LAW, MORE THAN ONE CIRCUIT JUDGE. A CIRCUIT COURT SHALL BE HELD AT LEAST 4 TIMES IN EACH YEAR IN EVERY COUNTY ORGANIZED FOR JUDICIAL PURPOSES. EACH CIRCUIT JUDGE SHALL HOLD COURT IN THE COUNTY OR COUNTIES WITHIN THE CIRCUIT IN WHICH HE IS ELECTED, AND IN OTHER CIRCUITS AS MAY BE PROVIDED BY SUPREME COURT RULE OR BY LAW. THE NUMBER OF JUDGES MAY BE CHANGED AND CIRCUITS MAY BE CREATED, ALTERED AND DISCONTINUED BY LAW AND THE NUMBER OF JUDGES SHALL BE CHANGED AND CIRCUITS SHALL BE CREATED, ALTERED AND DISCONTINUED ON RECOMMENDATION OF THE SUPREME COURT TO REFLECT CHANGES IN THE JUDICIAL BUSINESS. NO CHANGE IN THE NUMBER OF JUDGES NOR ALTERATION OR DISCONTINUANCE OF A CIRCUIT SHALL HAVE THE EFFECT OF REMOVING A JUDGE FROM OFFICE DURING HIS TERM.

Sec. b. CIRCUIT JUDGES SHALL BE NOMINATED AND ELECTED AT NONPARTISAN ELECTIONS AS PROVIDED BY LAW. THE TERM OF CIRCUIT JUDGES SHALL BE 6 YEARS. IN CIRCUITS HAVING MORE THAN ONE JUDGE THE TERMS OF OFFICE SHALL BE ARRANGED TO PROVIDE THAT THEY WILL EXPIRE ON A STAGGERED BASIS.

Sec. c. CIRCUIT COURTS SHALL HAVE: ORIGINAL JURISDICTION IN ALL MATTERS NOT PROHIBITED BY LAW; APPELLATE JURISDICTION FROM ALL INFERIOR COURTS AND TRIBUNALS AS PRESCRIBED BY SUPREME COURT RULE: TO ISSUE, HEAR, AND DETERMINE PREROGATIVE AND REMEDIAL WRITS; SUPERVISORY AND GENERAL CONTROL OVER INFERIOR COURTS AND TRIBUNALS WITHIN THEIR RESPECTIVE JURISDICTIONS, IN ACCORDANCE WITH SUPREME COURT RULES; AND JURISDICTION OF OTHER CASES AND MATTERS AS THE SUPREME COURT SHALL BY RULE PRESCRIBE.

Sec. d. THE CLERK OF EACH COUNTY ORGANIZED FOR JUDICIAL PURPOSES SHALL BE CLERK OF THE CIRCUIT COURT FOR SUCH COUNTY. THE JUDGES OF THE CIRCUIT COURTS MAY FILL ANY VACANCY IN THE OFFICE OF COUNTY CLERK OR PROSECUTING ATTORNEY WITHIN THEIR RESPECTIVE JURISDICTIONS, BUT SHALL NOT EXERCISE ANY OTHER POWER OF APPOINTMENT TO PUBLIC OFFICE.

Mr. Danhof, chairman of the committee on judicial branch, submits the following reasons in support of Committee Proposal 93:

During the first 3 months of our committee work we had the testimony and advice of all the members of the supreme court, of circuit and probate judges, state bar officers and lawyers and officers of local bar associations and members of the general public. The plan of operation of our circuit and probate courts, we found, met the approval generally of all persons and groups who appeared before us.

Sec. a. In order to keep the manpower in the circuit court system operating as efficiently as possible, the legislature may on recommendation of the supreme court increase or decrease the number of judges, create new circuits and alter or discontinue existing circuits. By this means the courts can better keep abreast of changing population and economic conditions and thus serve all sections of the state more efficiently.

Sec. b. Circuit judges are to be nominated and elected as at the present time at nonpartisan elections and for the same term as now, for 6 years. Where a circuit has more than one judge the legislature shall arrange a plan whereby the offices will expire on a staggered basis. In some circuits at this time, and others that may increase in size, it was thought that it would be better for the

judiciary and much less confusing to the voters to have fewer judges on the ballot, rather than present a long list of candidates at one time, and staggered terms will accomplish this result.

Sec. c. The power of the circuit court to hear cases from courts of limited jurisdiction shall be as authorized by rule of the supreme court. As now provided in our present constitution, the circuit court will have a general control over courts and tribunals of limited jurisdiction in accordance with supreme court rules.

Sec. d. It will be seen that we have retained the section that states the county clerk shall be clerk of the circuit court and for the filling of a vacancy in that office. No change is made in this section and the committee on local government approves this action.

Following is minority report A to Committee Proposal 93 as offered (No reasons were submitted in support thereof):

Miss Donnelly, Messrs. Leibrand and McAllister, a minority of the committee on judicial branch, submit the following minority report to Committee Proposal 93:

A minority of the committee recommends that the following be included in the constitution:

Sec. c. CIRCUIT COURTS SHALL HAVE: ORIGINAL JURISDICTION IN ALL MATTERS NOT PROHIBITED BY LAW; APPELLATE JURISDICTION FROM ALL INFERIOR COURTS AND TRIBUNALS AS PRESCRIBED BY SUPREME COURT RULE; TO ISSUE, HEAR, AND DETERMINE PREROGATIVE AND REMEDIAL WRITS; SUPERVISORY AND GENERAL SUPERINTENDING CONTROL OVER INFERIOR COURTS AND TRIBUNALS WITHIN THEIR RESPECTIVE JURISDICTIONS, IN ACCORDANCE WITH SUPREME COURT RULES; AND JURISDICTION OF OTHER CASES AND MATTERS AS THE SUPREME COURT SHALL BY RULE PRESCRIBE.

Following is minority report B to Committee Proposal 93 as offered and the reasons submitted in support thereof:

Messrs. Ford, Garvin, Bledsoe, Miss McGowan, Messrs. Ostrow and Barthwell, a minority of the committee on judicial branch, submit the following minority report to Committee Proposal 93:

A minority of the committee recommends that the following be included in the constitution:

Amend Committee Proposal 93, page 2, line 1, by striking out "SHALL" and inserting "MAY".

Messrs. Ford, Garvin, Bledsoe, Miss McGowan, Messrs. Ostrow and Barthwell, a minority of the committee on judicial branch, submit the following reasons in support of the foregoing minority report which accompanied Committee Proposal 93:

The proponents of this minority report believe that the possibility of staggered terms in multiple judge circuits has merit. However, it is our feeling that this is a question better left to the legislature, to be resolved by it in a manner that does not disrupt the terms of office of the judges presently in office.

CHAIRMAN VAN DUSEN: For an explanation of section a of Committee Proposal 93, the Chair will recognize the chairman of the committee, Mr. Danhof.

MR. DANHOF: Mr. Chairman, members of the committee, I assume it was the thinking of the majority when they passed over that we can return to something with which we are a little more familiar and perhaps we can come to some agreement thereon.

The proposal relating to the circuit courts is one composed of 4 sections. There has been no great change from the original section. If you will look at the resume which was furnished to you at the beginning of our considerations, this is basically section 8 of article VII of the Constitution of 1908 with some additions thereto.

I should like to state that originally Judge Mosier was to have made the explanation of the committee in this regard. As you know, he is ill. And I have also asked Judge Pugsley to make some remarks regarding that section. Accordingly, at this time, I should like to yield the floor to a man who has spent a great many years as a circuit judge and has had a great deal of experience thereon, the delegate from Hart, Judge Pugsley.

CHAIRMAN VAN DUSEN: The Chair recognizes the delegate from Hart, Judge Pugsley.

MR. PUGSLEY: Mr. Chairman, delegates of the convention, last week our deliberations were interrupted because of our interest in a great event. Astronaut Glenn absorbed our attention and we were very much interested in the outcome of that flight. It has occurred to me that he was not the only one who has been up in the air. (laughter) That seems to have been somewhat contagious in this convention. I am glad at this time that we are about to work on a lower level. As has been stated by the chairman of our committee, it has been my pleasure to operate for some time on this lower level.

In the Constitution of 1908 there was a provision which divided the state of Michigan into judicial circuits. I think that perhaps we will have a better understanding of the proposal which has just been read to you by the secretary if I preface the few remarks which I am about to make by reading the Constitution of 1908 and then you will better appreciate, I think, the changes that have been proposed, which are not many so far as the spirit and substance of the provision is contained. I read from the Constitution of 1908:

> The state shall be divided into judicial circuits in each of which there shall be elected 1 circuit judge. The legislature may provide by law for the election of more than 1 circuit judge in any judicial circuit. A circuit court shall be held at least 4 times in each year in every county organized for judicial purposes. Each circuit judge shall hold court in the county or counties within the circuit in which he is elected, and in other circuits as may be provided by law. The legislature may by law arrange the various circuits into judicial districts, and provide for the manner of holding courts therein. Circuits and districts may be created, altered or discontinued by law, but no such alteration or discontinuance shall have the effect to remove a judge from office.

At present there are 41 circuits in the state presided over by 81 circuit judges. The largest circuit is in Wayne with 18 judges. The next largest are Oakland, with 5; Genesee, with 4; Saginaw, Macomb, Kent and Ingham, with 3; Berrien, Jackson, Kalamazoo, Muskegon, Bay, St. Clair and Calhoun, with 2 each. In other words, 19 of the larger counties which I have mentioned are being served today by 53 judges of a total of 81. The balance of the state, with a total of 62 counties, is being served by a total of 28 judges, each with multiple circuits of from 2 to 5 counties each.

Without going too much into detail, it may be fairly stated that the average case load per judge is much heavier in the larger circuits. Especially is this true in the counties of Wayne, Washtenaw and a few of the others with the largest population. It has been emphatically brought to our attention that there is a present need for a more even distribution of the case load in the outstate counties.

Under the provisions of the foregoing section 8 which I read to you, the division of the state into judicial circuits, the number of judges to be elected therein and the manner of holding courts has been left to the legislature.

I became a circuit judge of the twenty-seventh judicial circuit on January 1, 1930, in which circuit I was pleased to serve continuously until January 1, 1960. Two other retired judges at the convention, Judges Dehnke and Gadola, also served during the same years, each with credit to himself and with distinction to the judiciary of the state of Michigan. I am sure they will concur with me in an observation that during all of these years there has been, I believe, only one change made in the boundaries of the circuits in the state. For many years there were only 40. A few years ago one of the circuits in the upper peninsula was divided, and the number now, as stated before, is 41 circuits in the state.

Explanation—Matter within [ ] is stricken, matter in capitals is new.

Notwithstanding, there has been, as we all know, a very great increase in the population and in the case load in the several districts throughout the state. During recent years the supreme court has been taking a more active and a commendable interest in the supervision of the work of the circuit courts. Through its influence and also its recommendations the office of court administrator has been established, who has given a very valuable contribution to the administration of justice throughout the state. It is through assignments from this office that many of we judges from smaller circuits have been called upon from time to time to preside in numerous other circuits throughout the state in an effort to relieve a heavy case load in many of the larger circuits and to fill in in many cases where local judges were either disqualified or for some other reason could not preside.

From time to time each of we judges among those who are delegates to this convention have been called upon to leave our own circuits and to give service in other places throughout the state. In the earlier days these assignments were made through the office of the state presiding circuit judge who is elected annually at a meeting of the circuit judges of the state. This practice continued, and during my early days I was assigned first by Judge Dingeman to a number of circuits in the state, spending much time in the city of Detroit, and also to other places. We were called upon occasionally to preside in circuits where for one reason or another the judge was incapable or disqualified from handling matters that were to be handled in his respective circuit. In other cases we were called upon to go into other circuits to preside during the illness of a judge. One of my first assignments was a very pleasant one in the circuit of my neighbor on the left, Delegate Prettie, and I presided down there and have had a very pleasant time working with the attorneys in that particular circuit during the latter days and illness of the esteemed Judge Chester. Later I was called upon to go into the circuit which had been presided over for many years by Judge Gilbert, who had rendered a very valuable service to the state of Michigan, but who became ill, so I was called upon to give a part of my time to that circuit and served in the counties of Leelanau, Grand Traverse and Antrim, which was another very pleasant experience.

The court administrator in recent years, since the creation of that office, has made the assignments which were previously made through the office of the state presiding circuit judge. It is my belief that the system that we have at the present time from the standpoint of making assignments of judges from one circuit to another has worked out quite satisfactorily. It has been very pleasant for us to have the experience of going from one circuit into another, to meet the attorneys in the various circuits and to preside and hear cases which were presented to us from various parts of the state. It has also given a service to the people of the state of Michigan which has been intended to and I think for a great part has overcome the inequality of the amount of work in the various circuits, and I believe has leveled off to a great extent a criticism that might prevail against the great unevenness in the distribution of the work.

It is the unanimous opinion of the judicial committee that the supervision of the circuit court should continue to be done by the supreme court, and that if and when changes are to be made in the circuits of the state, that this task can be most intelligently and effectively done by the supreme court with the aid of the court administrator. It is with this thought in mind and to this end that this committee recommends the adoption of section a of Committee Proposal 93 which was read to you by the secretary and, Mr. Chairman, fellow delegates, I move the adoption of this section.

CHAIRMAN VAN DUSEN: Mr. Danhof, has the committee further presentation with respect to section a?

MR. DANHOF: If I could, I would like to have the delegate from Detroit, Mr. Iverson, add just a few words.

CHAIRMAN VAN DUSEN: Mr. Iverson.

MR. IVERSON: Mr. Chairman, members of the committee, I hesitate to say that this is a noncontroversial section, but I still think it is. I would like to point out that our committee spent considerable time in what we thought was an attempt to improve the court system and particularly with reference to the circuit courts. You have on your desk the old section which clearly brings to you the changes that were made. I think perhaps the most significant change at least that I would like to point out to you is the fact that we have provided that the legislature shall make such changes in the circuits as may become necessary based upon judicial business rather than attempting to tie it to a population or any other method. I think this is very definitely an improvement. And since we now have a very efficient court administrator who follows very closely the case load of the various circuits throughout the state, I think he is in a very good position to make his recommendations to the supreme court, if any necessity arises, that judicial circuits need to be changed in any manner or additional judges need to be named.

Needless to say, I think it has been a long time since any of the circuits in the state have actually needed to be changed in their boundaries, but it was deemed advisable to set this out in the constitution or in this section on the circuit courts so that in case adjustments needed to be made in the circuits themselves, it could very well be done by the legislature.

CHAIRMAN VAN DUSEN: Mr. Faxon, do you seek recognition at this time?

MR. FAXON: Just to ask a question of the chairman of the committee. I think Mr. Iverson has answered it partly, but I just wondered why the language wouldn't have been more clear in section a where it says "The state shall be divided into judicial circuits . . . ." I take it that this is to be done by the legislature; is that correct, Mr. Danhof?

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: Yes, it is. This has been the policy in the past and it will continue. We provide that the state shall be divided into judicial circuits along county lines and have one judge or more, and this has been done by law. It was the considered opinion of the committee, after discussing this and figuring whether it should be left to the supreme court or the court administrator, that on this particular basis we would go with history. Inasmuch as there was probably appropriation involved and additional expense when circuits are created or additional judges added, we meant and we intended to continue the present practice where they would be set by the legislature.

MR. FAXON: My only comment there was that I thought the language was a little ambiguous. If it was meant to be the legislature, it might have stated such as "the legislature may by law divide the state." In that way there would be no question as to whether this is to be lodged with the legislature or with the supreme court. That was just my comment on reading the first sentence.

The second question I have, if I may direct this to you, too, Mr. Danhof, is with regard to the insertion on line 12 of this "by supreme court rule" with regard to the circuit court judges. It says here "be provided by supreme court rule or by law." And my question is: if the 2 conflict on the question of where the judges shall hold their court, what happens? I mean, could you see a situation develop where a supreme court rule might be different from that set by law, and if such an eventuality were to come about, what would resolve the problem?

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: Basically, I couldn't quite anticipate the problem that you raise. However, you have it in the constitution now as by law. It has been firmly established that the circuit judges are state officials; they are not local or county officials. They have had the practice of sitting in other circuits and the assignment of a particular judge has been made, as Judge Pugsley pointed out, previously by the presiding circuit judge and now by the court administrator acting pursuant to authority granted to him by the supreme court which is given the general superintending control over all of the courts, and the practice has been that there is a law and it has been implemented by the particular supreme court rule.

In this regard you would only have my own personal opinion and I doubt, there being 56 other lawyers, if that is worth too much since I am sure they would all dissent, but I would

imagine that if there ever would be a conflict, the supreme court is going to have to decide it, and the supreme court might well say, if they have the superintending control, that the rule, this matter being a matter of practice and procedure, might possibly control. I have no way to predict what would happen, but this would be one lawyer's opinion, Mr. Faxon.

MR. FAXON: Well, would there be any need to, say, keep the language "or by law" there in light of the practice that has been followed? Does this serve any purpose?

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: Except that the legislature is the one which creates the circuits, which changes the circuits, which alters them or discontinues them. I think in that regard they should particularly have this. I have my own personal opinion on it. The committee was of the opinion that we should keep the present language but add "by supreme court rule." I have no personal thoughts on the matter. If you wanted to strike "or by law" then my own personal opinion would be by court rule. But in light of the fact that the legislature does have control over the circuits, their creation, their discontinuance and their altering, it was the opinion that this perhaps should be kept and retained in the constitution as it now is.

MR. FAXON: Well, my only comment there was that in the following sentence you do provide for the creation and alteration and discontinuance by law, so that I thought that this seemed to be specifically a matter which was dealt with by supreme court rule and that the additional words "or by law" just sort of made a little confusion there. But if you feel that it is clear, I don't intend to propose anything unless you felt there was some need to clear it up.

CHAIRMAN VAN DUSEN: Mr. Lundgren.

MR. LUNDGREN: Mr. Chairman, and probably to Judge Pugsley, who I think was just getting up to answer, my question was the same thing that Mr. Faxon just brought out. I was just wondering what supersedes the other, court rule or by law. I think you are getting yourself into sort of a bind here again. What is going to be the supervisory authority here, the circuit court or the judge's rule or the law of the legislature? Maybe it might be clearer to drop one. Maybe the judge has an answer to it.

CHAIRMAN VAN DUSEN: Do you desire to yield to Judge Pugsley, Mr. Lundgren?

MR. LUNDGREN: I do.

CHAIRMAN VAN DUSEN: Judge Pugsley.

MR. PUGSLEY: Delegate Lundgren, I don't think that there is any practical danger of any conflict between the law and the rule that may be made by the supreme court. Under the present practice a court administrator has been provided by an act of the legislature, and the court administrator acts under the authority and the instruction of the supreme court. The bulk of his work is in keeping an account of the case load and the progress that is being made in the various circuits throughout the state. He keeps a tabulated record of the number of those cases, the numbers that are tried, the number that remain without trial, and also in case there are more cases to be heard than there is available a judge to take care of that work, then he has the authority to assign a judge from another circuit to help out in that particular district. The law comes in there in that if it is necessary, for instance, to supplement or to amend the power and authority of the court administrator, it would then be in order to ask to have such a law enacted. Have I answered your question?

MR. LUNDGREN: I believe you might say one just complements the other.

MR. PUGSLEY: That is right.

MR. LUNDGREN: Thank you. That answers it.

MR. PUGSLEY: There was one thing I omitted, and that was that in the old law of 1908, in addition to dividing the state, as has been done, into judicial circuits, there is also included in the old language a provision by which the circuits might have been grouped into districts. But throughout the over 50 years that the Constitution of 1908 has been in existence, there has never been any attempt to do that, and so far as I know and so far as it has been called to our attention, there seems to be no need for leaving that in the constitution, and so that has been deleted.

CHAIRMAN VAN DUSEN: Are there any amendments to section a? Mr. Pellow.

MR. PELLOW: I was just going to ask Mr. Danhof a question. In line 14, is "shall" being used in the sense of discretionary or mandatory in the event that the supreme court recommends a change in the reorganization of the circuits? I assume that it is used in the discretionary sense.

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: Mr. Pellow, in this regard we leave to the legislature the drawing of the circuits. And, as we say, the number of judges may be changed and the circuits may be created, altered and discontinued by law, and we go on in the same sentence. This is all by law. Now, we started out months ago realizing that nobody can mandamus the legislature. This we all agree to. But the committee debated quite seriously whether or not a provision should be inserted in this constitution making it mandatory for the legislature to add additional judges or create new circuits upon a shift in population.

Now, as you know, there are states in which, when particularly a circuit comprising but one county has a population increase of some arbitrary number, being 50,000, 75,000, there is automatically added to that circuit a new judge. This is in essence the Florida system. The question came before the committee as to whether or not we should write this type of a provision into this constitution. The committee decided we should not, for the reason that population alone does not necessarily raise or lower law business. It depends on the type of community that you have, whether it has a great deal of industry in it or whether it is more or less a residential county, and there are numerous factors which go to make additional legal business for the courts.

The office of the court administrator, as Judge Pugsley has pointed out, is charged and we hope will be charged with the responsibility of keeping track of the case load, the days spent in court, the days spent at the jury trial and these types of things. All circuits are not alike. A lot of them may have a lot of criminal trials and some may have a lot of civil trials, some may have all their civil trials before a jury, others may try them all before the judge. There are a great number of them. It varies.

But as these statistics become available, if it becomes apparent to the supreme court and, in effect, the court administrator that needs are rising, that a circuit now comprising 2 counties should be split and they should each become a separate circuit, or that a county now having 3 judges or 2 judges should have additional manpower, it would be recommended to the legislature that these changes be made. If the legislature doesn't take the recommendation, nobody can force it to act, Mr. Pellow. We realize that. The supreme court can't mandamus the legislature to do it. But it was solely our intention to endeavor to put as much responsibility and as much authority as we could in the legislature and give it the greatest direction possible that it should respond to the recommendations of, in essence, the court administrator and his staff.

Now, later on you will find in the probate article that we have done the same thing, and there is now presently employed a deputy court administrator, and you will see that we provide for the grouping of counties into probate districts. This is the same idea. We would hope that in the future there could develop a liaison between the legislature and the court administrator, and that the court administrator would be reasonable in his demands so that a mutual respect could develop so that when these recommendations are made, the legislature shall do in essence as requested by the recommendation. We fully understand the authority lies in the legislature. I think the wording leaves it there. There is no authority here that is granted to the supreme court, because it is only on a recommendation of the supreme court that this be done, a recommendation to the legislature. This is what we did. We did this in lieu of inserting perhaps a mandatory requirement for increasing judicial manpower or the splitting of districts when

population would reach a certain size. I hope that answers your question.

CHAIRMAN VAN DUSEN: Are there any amendments to section a?

SECRETARY CHASE: Mr. Brake and Mr. Boothby offer the following amendment:

1. Amend page 1, line 14, after "judges" and after "circuits" by striking out "shall" and inserting "may"; so the language will read, beginning in the sentence in line 12:

> The number of judges may be changed and circuits may be created, altered and discontinued by law and the number of judges may be changed and circuits may be created, altered and discontinued on recommendation of the supreme court to reflect changes in the judicial business.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Messrs. Brake and Boothby, on which the Chair will recognize the gentleman from Stanton, Mr. Brake.

MR. BRAKE: Mr. Chairman, ladies and gentlemen of the committee, this is, of course, following up the question that Mr. Pellow just asked, and personally I am not at all satisfied with Mr. Danhof's answer. He is saying we are saying to the legislature "you shall" but we are saying it knowing that the legislature may not choose to do so. I think that is bad drafting of a constitution.

If you mean "may", if you mean to leave the discretion with the legislature, you should make your language discretionary so that you are not forcing the legislature to disobey the constitution in exercising its judgment. If you take it to mean "shall" this is projecting the supreme court a long way into the legislative field. The dividing up of the state into circuits is certainly a legislative function. Not only that, but you are appropriating money by the supreme court. If the supreme court should say, for instance, Wayne county needs 30 judges instead of 18, you are appropriating $15,000 or $20,000 of state money for every one of those judges added, because their salaries and their expenses have got to be paid.

Certainly it is desirable that the supreme court should make the recommendation. Through the administrator they know more about the business than the circuit. He should certainly make the recommendation as to what ought to be done. But I think it is poor draftsmanship in a constitution to say "shall" when you don't really mean "shall." We therefore propose that we use the word "may" and have the constitution read just as Mr. Danhof says he thinks it will read.

CHAIRMAN VAN DUSEN: On the Brake amendment, do you desire recognition, Mr. Danhof? The Chair will recognize Mr. Ford.

MR. FORD: Mr. Brake, I don't think that it is quite correct that the committee intended that the word "shall" should mean "may" nor is it at all intended that we think that the supreme court would have any power to order the legislature to change the number of judges in a circuit. We do think that we are saying to the legislature that it should give great credence to a recommendation from the supreme court that the number of judges in a circuit or that the boundaries of a circuit should be changed.

I would like to point out for the members of the committee that in Wayne county we have the same number of circuit judges that we had in 1929. In 33 years — I don't have the figures at my fingertips — we have pretty close to doubled the population being served, and the case load has gone up in greater proportion than the population. Now every year it is a wrangle in front of the legislature about where new judges are going to be added to circuits. This was the thought of some members on the committee: at first, for example, some of us started out thinking that we would like to have a constitutional mandate that there should be a circuit judge for every 75,000 people in a circuit. Several states have provisions similar to this in their constitution. We were dissuaded from this position by reason of the fact that, as Mr. Danhof has indicated, there are factors other than population to consider in determining the amount of work and the volume of work within a judicial circuit.

A second method that can be used and is sometimes used to determine the number of judges is the case load method, and there you go on the basis of recommendations by the bar association and people studying judicial administration as to what the efficient case load maximum for a judge might be. It happens that at this particular time there is a considerable amount of material available on this subject because the legislature is right at this moment considering several new circuit judgeships.

In Wayne county the recorder's court has more or less concurrent jurisdiction with the circuit court. If we use the recorder's court judges in the computation we find that, using either the accepted case load method or the population factor of 75,000, you come out with just about the same demand for additional judges.

Now, it is true that when you talk about adding judges, you are talking about appropriating money. But it has been said on this floor by many, many people that the people best able to promulgate changes within the judicial systems are the people sitting on the court, people who work with it every day. Unfortunately, the decision to add or not to add judges is most frequently made on political considerations and not on the basis of a real study of the need and a determination based upon anything remotely approaching an objective examination of the problem.

And what this proposal would do would be to make it possible for those persons living in a circuit where they felt that the people of that circuit were not being properly afforded justice, because of an overloading of the court, to present this problem to the supreme court for examination. The supreme court would make recommendations. The legislature might never act on the recommendation, but the legislature in failing to act on the recommendation would do so with public knowledge, knowing that the public was well aware of the fact that the supreme court had studied the matter and made this recommendation. It is our feeling that this would lend some impetus to a more serious consideration of the needs of the circuits throughout the state by the legislature when the problem comes up, and that instead of sending the circuit judges up to lobby the legislators, they would present in the first instance their facts and figures to the supreme court and have something close to an objective decision made upon which the recommendation would be based, rather than a horsetrading proposition of, well, we'll give this circuit 2 if you will vote to give this circuit 1. And everybody in here who has had any experience of trying to get judges out of the legislature knows that that is what happens.

As a supporter of the majority report, it was my opinion that this was a strong suggestion to the legislature that they should follow the lead of the supreme court, and the word "shall" means "shall" and doesn't mean that they have to, but it is used, Mr. Pellow, in its mandatory sense and not in its permissive sense.

CHAIRMAN VAN DUSEN: Mr. Brake.

MR. BRAKE: Mr. Ford, the beginning of your speech is inconsistent with the end of your speech. You start out by saying you didn't mean the legislature would have to do it, and you finish up with an argument why the legislature should be compelled to do it because they don't give the judges the proper recognition and so forth. If you meant what you said at the beginning of your speech, all I can say to you is that that is what you ought to have said. You have said "you shall," and you rely upon that not meaning "you shall" because the legislature cannot be mandamused. I think that is bad draftsmanship in a constitution.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Brake and Mr. Boothby. Mr. Ford.

MR. FORD: Lest anybody be led astray as to what the word "shall" means when you tell the legislature it shall do something, if you look at section 5 of article VII, you will see language that says:

> The supreme court shall by general rules establish, modify and amend the practice in such court and in all other courts of record, and simplify the same. The legislature shall, as far as practicable, abolish distinctions between law and equity proceedings. . . .

I have said this before on the floor, but the legislature

took that "shall" to mean, when it was adopted by the people in 1908, that it would be done when they got around to it, and they did get around to it in the 1961 session of the legislature. So it sometimes takes them a little while to follow the mandate of a word like "shall." "Shall" is a stronger direction to them than "may." It doesn't have a great deal different connotation in the law. It doesn't give any right to the court that it didn't have to make recommendations. But it does indicate our intention that the legislature ought to at least sit down with these fellows and talk it over.

CHAIRMAN VAN DUSEN: Mr. Yeager.

MR. YEAGER: Mr. Chairman, would you ask the secretary to restate the amendment before we vote, please?

CHAIRMAN VAN DUSEN: The secretary will read the amendment offered by Messrs. Brake and Boothby.

SECRETARY CHASE: The amendment is:

[The amendment was again read by the secretary. For text, see above, page 1359.]

CHAIRMAN VAN DUSEN: Mr. Danhof, do you seek recognition?

MR. DANHOF: Only to emphasize what Mr. Ford said. And when I was referring back to Mr. Pellow, I had only been referring to what has been stated as a matter of practicality. We meant "shall". We meant it in the sense that the legislature should — would — follow the recommendations of the court because they, as Mr. Brake has said, are best known.

We also provided the legislature could act on its own. It must be done by law; it cannot be done by court rule or by any other type of enactment. And we meant "shall," but when I was referring to it, as Mr. Ford pointed out, it is a very practical matter, and we meant that if the legislature didn't do it, it could be pointed to this, if you want to call it, the mandatory requirement that they do it and perhaps we could get action faster than has been obtainable in the past. This is why we did it, in order to make it as strong as we possibly could without writing a mandatory requirement based on case load or population, which we did not want to do.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Messrs. Brake anod Boothby. Mr. Hoxie.

MR. HOXIE: Mr. Chairman, I would like to ask Mr. Danhof a question.

CHAIRMAN VAN DUSEN: If the gentleman cares to answer.

MR. HOXIE: Under the provision that you presently have, would the supreme court be able to appropriate the money necessary for the creation of these new districts or new judges and so forth?

MR. DANHOF: Of course not, Mr. Hoxie. You read right in there this has to be done by law.

MR. HOXIE: Yes, but they shall do it, and in case they fail to do it, it is a mandatory provision within the constitution, and the question in my mind is, if the supreme court under such a situation wouldn't have the right to write drafts on the state treasurer because it is their mandatory right to pay for any of these circuits that they might create, new circuits and new judges. I think you ought to think of that a minute.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Messrs. Brake and Boothby. Those in favor of the amendment will say aye. Those opposed will say no. The Chair is in doubt. Those in favor will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the adoption of the amendment offered by Messrs. Brake and Boothby, the yeas are 57; the nays are 51.

CHAIRMAN VAN DUSEN: The amendment is adopted. Are there further amendments to section a of Committee Proposal 93?

SECRETARY CHASE: Mr. Faxon offers the following amendment:

1. Amend page 1, line 12, after "rule" by striking out "or by law".

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Faxon. Mr. Faxon.

MR. FAXON: Mr. Chairman, this has already been discussed. I have spoken to Mr. Danhof about it. His answer seemed to indicate that his "or by law" really wasn't necessary, and so I would yield to him at this time.

CHAIRMAN VAN DUSEN: Mr. Faxon yields to Mr. Danhof.

MR. DANHOF: I would have no objection to the amendment myself, Mr. Chairman.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Faxon. Does any delegate desire to have it reread? The secretary will reread the amendment.

SECRETARY CHASE: Mr. Faxon's amendment:

1. Amend page 1, line 12, after "rule" by striking out "or by law"; so that the sentence beginning in line 10 will read, "Each circuit judge shall hold court in the county or counties within the circuit in which he is elected, and in other circuits as may be provided by supreme court rule."

CHAIRMAN VAN DUSEN: Those in favor of the amendment will say aye; those opposed will say no. The Chair is in doubt. Those in favor of the amendment offered by Mr. Faxon will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the amendment offered by Mr. Faxon, the yeas are 56; the nays are 51.

CHAIRMAN VAN DUSEN: The amendment is adopted. Are there further amendments to section a?

SECRETARY CHASE: Mr. Lesinski offers the following amendment:

1. Amend page 1, by striking out all of line 14 and the words "altered and discontinued" in line 15; so that the language will then read, "The number of judges may be changed and circuits may be created, altered and discontinued by law on recommendation of the supreme court to reflect changes in the judicial business."

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Lesinski, on which the Chair will recognize Mr. Lesinski.

MR. LESINSKI: Mr. Chairman, this amendment has been submitted to delete repetitious verbiage.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Lesinski. Mr. Hutchinson.

MR. HUTCHINSON: Mr. Chairman, I would observe if that was the reason that the gentleman offered the amendment, simply to strike out excess verbiage, he has certainly done more than that (laughter) because his amendment as submitted would leave the situation that the legislature could not on its own motion make any new circuits, increase the number of judges or change the boundaries of circuits. They could only act upon the recommendation of the supreme court. I wonder if the gentleman really intends it to have that effect. His amendment goes much further than to strike out excess verbiage. I oppose his amendment.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Lesinski. Those in favor will say aye. Those opposed will say no.

The amendment is not adopted. Mr. Hutchinson, your argument was ultimately persuasive. (laughter) Are there further amendments to section a?

SECRETARY CHASE: None on file, Mr. Chairman.

CHAIRMAN VAN DUSEN: If not, it will pass.

Section a, as amended, is passed. The secretary will read section b.

SECRETARY CHASE: Section b:

[Section b was read by the secretary. For text, see above, page 1355.]

CHAIRMAN VAN DUSEN: The chairman of the committee, Mr. Danhof.

MR. DANHOF: Mr. Chairman, there is on the secretary's desk an amendment on behalf of the committee.

CHAIRMAN VAN DUSEN: The secretary will read the committee amendment.

SECRETARY CHASE: The committee amendment offered by Mr. Danhof:

1. Amend page 1, line 20, after "Sec. b.", by striking out the remainder of the section and inserting "Circuit judges shall be nominated and elected at nonpartisan elections in the county or the circuit in which they reside, and shall hold office for a period of 6 years and until their successors are elected and qualified.".

MR. DANHOF: Mr. Chairman, I think the amendment is not as the secretary read it. It strikes out the section through the word "years". It leaves the last sentence in, Mr. Chase.

SECRETARY CHASE: I beg your pardon. Thank you, Mr. Danhof.

CHAIRMAN VAN DUSEN: The secretary will reread the amendment.

SECRETARY CHASE: Mr. Danhof, on behalf of the committee on judicial branch, offers the following amendment:

1. Amend page 1, line 20, after "Sec. b.", by striking out the balance of the line, all of line 21, and line 22 through "years.", and inserting "Circuit judges shall be nominated and elected at nonpartisan elections in the county or the circuit in which they reside, and shall hold office for a period of 6 years and until their successors are elected and qualified.". Then resuming the reading in line 22, "In circuits having more than one judge the terms of office shall be arranged to provide that they will expire on a staggered basis."

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Danhof on behalf of the committee on judicial branch, on which the Chair will recognize Mr. Danhof.

MR. DANHOF: Mr. Chairman, members of the committee, there is no great change in the amendment as offered by the committee. It provides for nomination and election on a nonpartisan basis, for a period of 6 years. The original sentences had left out the words "and until their successors are elected and qualified" which we inserted. We also made it consistent with what we had done in the probate article. The committee met and approved this particular language.

It provides, again, for the 6 year term. It has been brought to my attention and perhaps it is correct — and I will leave it to Mr. Cudlip's able committee if there is a conflict; I don't think so, but it is possible — it provides that "Circuit judges shall be nominated and elected at nonpartisan elections in the county or the circuit . . . ." It is possible that the words "the county or" might be stricken.

We intend it to cover the situation where the circuit comprised 1 county, or if it comprises more than 1 county, I would imagine we could have said "elections in the circuit . . . ." We certainly mean that he shall reside within the circuit, be it a 1 county or a multiple county circuit, and hold office for a 6 year term until a successor is elected and qualified.

I would ask for a favorable vote on the committee amendment, and then we can go into the body of the proposal.

CHAIRMAN VAN DUSEN: Do you desire recognition on the committee amendment, Mr. Yeager?

MR. YEAGER: Mr. Chairman, I had a question on the last sentence of the proposal, so if you want to vote on the committee amendment first, fine.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by the committee. Mr. Ford.

MR. FORD: I would like to support the amendment of the committee and mention that I think that it was an oversight on our part that it was left out in the first place. What it substantially does is bring in the language that presently is in the constitution in 2 different sections.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by the committee. Does any delegate desire to have it read further? If not, those in favor will say aye. Those opposed will say no.

The amendment is adopted. Mr. Danhof.

MR. DANHOF: Mr. Chairman, at this time I would like to yield to the delegate from Detroit, Mr. Iverson, for an explanation of the entire section.

CHAIRMAN VAN DUSEN: The Chair recognizes Mr. Iverson.

MR. IVERSON: Mr. Chairman and members of the committee, in case you have not read the rationale on this, it is in the journal. Circuit judges are to be nominated and elected as at the present time by nonpartisan elections and for the same term as now, for 6 years. Where a circuit has more than 1 judge the legislature shall arrange a plan whereby the offices will expire on a staggered basis. In some circuits at this time and others that may increase in size, it was thought that it would be better for the judiciary and much less confusing to the voters to have fewer judges on the ballot, rather than present a long list of candidates at one time, and staggered terms will accomplish this result. I think that you will find that this is perhaps the main change in the section. Needless to say, the nomination and election of circuit judges is now provided on a nonpartisan basis by law, but it was the feeling of the committee that this should be provided in the constitution. It has been very successful so far as the election of circuit judges is concerned, and we feel that it has justified its existence under law and it has a place in the constitution.

The other significant change, as I indicated, is the staggering of the terms, and I think there should be no objection to this because we have heard considerable from the delegates on the committee as well as other delegates that so called bedsheet ballots should be avoided as much as possible. I think staggered terms give the voters a much better opportunity to know whom they are voting for, and I recommend the passage of the committee report.

CHAIRMAN VAN DUSEN: Mr. Yeager.

MR. YEAGER: Mr. Chairman, I should like to ask a question of either Mr. Danhof or Mr. Iverson on this proposition here of the staggered basis. In Wayne county we have 18 circuit judges, I believe, and is the term "staggered basis" explicit enough? In other words, if you elect 1 at one election, 1 at the next and 16 at the next, is this considered staggered? And 2, if we have an odd number, how does this term fit in? Should this term "staggered basis" be more explicit or is it explicit enough as it reads?

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: Mr. Yeager, you get down to the question again of whether you want to spell out all of the details or leave some to the legislature. Now, I should point out that in Committee Proposal 96, section j, there is a requirement that the legislature shall implement this particular section by the passage of legislation which would provide that when the judges are next elected, they would have a varying length of term, no term of which could be shorter than 6 years. This is explicitly put in so you aren't going to have some circuit judge who normally has been thinking of a 6 year term suddenly winding up with a 2 year or a 4 year term. We will admit that this may mean in some instances an 8 year term or perhaps even a 10 year term. We do not spell out all of the details, but we think that the legislature in its wisdom would provide that if they had a 6 year term, as is a normal term, that you would eventually get on the basis where you would have 1/3 or as close to a 1/3 as possible elected every 2 years.

Now, the committee on elections has recommended that there be no spring elections and there be basically an election every 2 years, as I recall their recommendation. This would mean you would have a nonpartisan ballot every 2 years. Now, if there is action of this particular convention to change that or that we have more elections or we have an odd year election, we could perhaps fit this in there. But based upon those recommendations and the provisions that the legislature shall so provide, I would think and I would assume that they would provide that they would have 1/3 elected every 2 years or as close as you can come.

Now you say, "Well, what do you do where you don't have a nice number divisible by 3? Well, again I can only say you do it as closely as you can. We can't make it perfect. But the recommendations of the state bar that Mr. Lawrence has given to you, the testimony that we had was to the effect that if we are going to do something to bring the judges closer to the people, this was one particular thing that could be done.

I point out that this is in the present constitution as it relates to probate judges in those counties over 100,000 where they have more than 1 probate judge. They have been elected every 2 years. They serve a 4 year term, and if there are 2

of them, 1 comes up every 2 years. So this isn't anything radically new that we are proposing for the circuit judges. It is something that the probate judges have lived with on a 4 year term. We think it will cut down the number of judges on the ballot. If there is only 1 judge running out of 3, the people will at least know this judge and be familiar with his record.

Now, could we have made it more detailed? Yes, we could. But we felt that the legislature should have some discretion in this particular matter, Mr. Yeager.

MR. YEAGER: I simply raised the question, Mr. Danhof, to get your explanation in the record. Thank you.

CHAIRMAN VAN DUSEN: Mr. Higgs.

MR. HIGGS: Mr. Chairman, a question to Mr. Danhof. Was there any discussion with regard to the elections committee or the committee which is working on scheduling to make a proposal with regard to this matter? I had some recollection that there was a committee which would be implementing this provision. I think it was the elections committee.

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: It was my understanding, Mr. Higgs, that the committee on miscellaneous provisions and schedule might have to meet after we have finally passed all of our articles at least to second reading and then begin to set up a scheduling process, but we provided in Committee Proposal 96 that there shall be implementing legislation to provide for this.

Now, it may be that provision we have is a little broad and it would have to work in with what miscellaneous provisions has provided. We didn't know what they had, but we provided for it in our own particular article. If there is a duplication, it is part of the job, again, of Mr. Cudlip's committee if it has to come out of 96 because it is provided elsewhere. I think that is what we discussed. But we did pass a provision that the legislature shall by legislation take care of the staggered term basis.

MR. HIGGS: I just raised this at this time because this has been in my mind as well as Delegate Yeager's.

CHAIRMAN VAN DUSEN: Are there any further amendments to section b?

SECRETARY CHASE: Pursuant to minority report B of Messrs. Ford, Garvin, Bledsoe, Miss McGowan, Messrs. Ostrow and Barthwell,

Mr. Ford offers the following amendment:

1. Amend page 2, line 1, after "office" by striking out "shall" and inserting "may"; so the language will then read, "In circuits having more than one judge the terms of office may be arranged to provide that they will expire on a staggered basis."

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Messrs. Ford and others, on which the Chair will recognize Mr. Ford.

MR. FORD: You see, your sins have a tendency to come home to roost. Mr. Brake is sitting here doing the best he can to control his laughter at the position I find myself in. (laughter) This is not one of the burning problems of the judiciary. (laughter) Actually, in order to consider the import of the difference between the word "shall" and "may" you have to look at Committee Proposal 96j as proposed by the committee, which reads as follows:

> The provisions of this constitution requiring the establishment of staggered terms of office in existence, shall be implemented at the next election for such offices by legislation providing for elections for terms of varying length, none of which shall be shorter than the basic term provided herein for the office.

Now what this does in effect is give a self executing situation where it says that the legislature has got to come up with the way to stagger the terms at the very next judicial election after this constitution is adopted, and it appeals to some of us that a more orderly transition might be made if the legislature were permitted to do this over a series of elections, maybe 2 or 3, rather than trying to do it all at once. And again we have to relate it to Wayne county which has the largest number of judges, 18 presently. But assuming for the moment that additional judges are added, it would be our thought that the legislature at the time that the judicial vacancies are created could start to implement the staggering in a manner that would not disturb the situation you have now with 18 judges whose terms of office are expiring simultaneously.

If the committee recommendation in 96j is adopted without taking out the words "at the next election" the legislature would have to provide for staggering of the 18 vacancies down there automatically — and I think there are 5 or 6 now in Oakland county — and it creates somewhat of a problem, because the only conceivable way that they could do it all in one election would be to decide that 1/3 of the judges would have a 6 year term, 1/3 would have an 8 year term, and 1/3 would have a 10 year term, because the language of the committee proposal would say that in staggering the terms, you cannot drop below 6 years with respect to circuit courts. In talking with members of our bench down there, I could see that this might precipitate a great deal of difficulty while, however, if it were possible to institute the staggering in the first instance with respect to vacancies and do it over a period of time, it might be possible for the legislature to implement this with a minimum amount of confusion.

We find ourselves in a position here of saying that we want to leave it to the legislature, but with respect to the word "may" or "shall" I am satisfied to leave it to Mr. Cudlip's committee to use the appropriate word depending upon what we do when we get to 96j. So really at this point we take the very generous attitude that you may vote for or against our amendment, recognizing that we will be back again if Mr. Cudlip doesn't solve our problem for us.

CHAIRMAN VAN DUSEN: Those who are in favor of the minority report amendment offered by Mr. Ford and others will say aye. Those opposed will say no.

The amendment does not prevail. Are there further amendments to section b, Committee Proposal 93?

SECRETARY CHASE: Messrs. Kuhn and Krolikowski offer the following amendment:

1. Amend page 1, line 22, after "than" by striking out "one judge and inserting "6 judges"; so the language will read, "In circuits having more than 6 judges the terms of office shall be arranged to provide that they will expire on a staggered basis."

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Messrs. Kuhn and Krolikowski, on which the Chair will recognize Mr. Kuhn.

MR. KUHN: Mr. Chairman and members of the committee, as you all know, today the circuit court is a nonpartisan court. We feel that if you use the number one, you might tend to do away with our real nonpartisan circuit court. We feel one is not a realistic number; that 6 would be a much more realistic number to have staggered terms. We also feel that it is very possible where we have a few judges and you have staggered terms that there are so many up for election all the time, and not being 1 or 2 possibly, that it tends to keep the court in a political campaign every 2 years, which might not be a good thing, especially where there are so few judges in the first place.

Our county, which is a strong Republican county, has a nonpartisan bench. We have 3 Republicans and 2 Democrats. And I would like to say at this time that our bench is 100 per cent in favor of not having to put 2 people out campaigning or 3 people every 2 years and let the others do the work. Our county has one of the highest case loads in the state of Michigan. I think one is not a realistic number, and I therefore move at this time that we support 6.

CHAIRMAN VAN DUSEN: On the amendment offered by Mr. Kuhn, the Chair will recognize Mr. Higgs.

MR. HIGGS: Mr. Chairman, I will yield to the chairman of the committee, if I may, and then have the floor.

CHAIRMAN VAN DUSEN: Mr. Higgs yields to Mr. Danhof.

MR. DANHOF: Well, Mr. Chairman, members of the committee, I don't mind Mr. Kuhn trying to protect the interest of his particular county. I think this is particularly laudable. I understand they have 5 judges. My only thought is that if we are going to do it, let's be consistent. We can write 4. Or

my county has 2 judges and so does Kalamazoo, so I suppose we could start at 3. We could skip up and start at 8 and then all we would hit is Wayne county. I see no great harm. If there are 6 judges, I am sure the legislature would have 2 run every 2 years. I think perhaps they may feel there is a little more safety in numbers and this may be the objection that they have to it.

I think in this case if we do it, we should do it the way the committee recommended and not discriminate against some in favor of others. This convention has gone on record as opposing matters of discrimination. Maybe we should continue that practice. Thank you. I yield to Mr. Higgs, Mr. Chairman.

CHAIRMAN VAN DUSEN: Mr. Higgs.

MR. HIGGS: Well, Mr. Chairman and members of the committee, I feel we definitely should support the majority report and oppose the amendment, and in particular there are several reasons why. I think the chairman of the committee has indicated that certainly if this is advisable for larger counties, it is advisable for all counties. But I particularly come from a 2 judge circuit. I think I can speak in this matter and demonstrate one of the problems in a 2 judge circuit where the terms are not staggered. Some years ago we had a vacancy and an appointment to serve until the next election at which time the incumbent ran with opposition for an unexpired term. Now, as a result of this contest in one office, a great deal of publicity and campaigning involved one incumbent and an opponent. It was only a very few months after this election and the 2 incumbents had to seek election for the full term. You can envisage the disadvantage of the incumbent who did not participate in any of the prior campaigns. He was sort of a lost man working quietly in the vineyards to do his work and he was beaten. Now, I don't know, and I don't know anyone who could say definitely that that was the reason why he was beaten. He is now deceased. But I always felt that he was at a disadvantage in that regular election running against 2 men, in effect, both of whom had participated in a very active, vigorous campaign just a few short months previously. I can envisage the same thing happening again, and I think it is quite disadvantageous. It also leads to the possibility of plunker votes, you see, just voting for one candidate and getting a double advantage. I think if this is good in any circuit, it is good in all circuits, and I would urge you to support the committee proposal.

CHAIRMAN VAN DUSEN: Mr. Krolikowski.

MR. KROLIKOWSKI: Mr. Chairman, members of the committee, I believe that committee action in this regard was inspired in the main by the bedsheet ballot that exists in the county of Wayne. Now, the bedsheet ballot in Wayne precludes an intelligent evaluation of judicial timber. This, however, is certainly not applicable in a district which contains 6 judges or less. I believe that the purpose for the committee proposal is devoid of merit where it is made applicable in a circuit wherein the electorate can intelligently evaluate the judicial manpower. For that reason I believe that although the committee proposal is designed to alleviate the situation in Wayne county, it exposes judges in the smaller districts to the thrust of party machinery, so for that reason I would urge you to adopt the amendment.

CHAIRMAN VAN DUSEN: Mr. King.

MR. KING: Mr. Chairman, ladies and gentlemen of the committee, I am in agreement with Mr. Kuhn and Mr. Krolikowski. I appreciate the problem that exists in Wayne county and I think that this is a satisfactory compromise solution to that kind of a problem. Now, our bench in Oakland county would be involved continuously in politics. In the summer before the elections, when I suppose judges like other people have to take vacations, we would probably have 2 on vacation and 2 out campaigning and 1 left to carry the load.

The problem as I see it here is to come up with some solution which will take care of these long ballots, which does not present a problem in Oakland county or any of the other multidistrict counties. I sat down with all of the circuit judges in Oakland county as I thought it my responsibility to do and discussed the article in general, and in general they were satisfied. They mentioned this problem which the committee has taken care of by amendment regarding this being duly elected and qualified, and other than that they thought it was an excellent article except for this one provision. This creates a very, very serious problem in the multidistrict counties, and I hope that somehow we can maintain the freedom from continuous politics in these counties. It is extremely important to me.

We have an excellent bench, as Dick pointed out, and all 5 of them are excellent judges, and 2 of them are Democrats and 3 of them Republicans. If that gets my name on the bulletin board again, so be it. (laughter) But it is a fact. They are all excellent judges.

I would be very hopeful that we can work out something here which will not penalize the multijudge county circuits and still will solve a problem which truly does exist in the county of Wayne.

CHAIRMAN VAN DUSEN: Mr. King, the Chair might suggest that if the experience of Messrs. Brake, Buback and Baginski is any indication, Messrs. Kuhn, Krolikowski and King may wind up, not on the bulletin board but on the editorial page. (laughter) The Chair will recognize Mr. Ford.

MR. FORD: Mr. Chairman, members of the committee, the delegates from Wayne county were not the advocates of this plan. The delegates from Wayne county, at least the majority of the Democratic delegates, accepted it somewhat reluctantly. When we accepted it, we accepted it with the understanding that we were voting for a principle that was a principle that was good for state officials throughout the state of Michigan and not because we were convinced that the people of Wayne county were less able to pick 18 names than the people of Oakland county to pick 6 names.

I don't know how Mr. Kuhn, King and Krolikowski are going to guarantee that you won't have 150 people file for circuit court out there, and if you have 150 people, I suppose it is more difficult to pick out 18 than it is to pick out 6. But the bedsheet ballot, as it is referred to, doesn't come entirely from the number of offices to be filled. Yesterday Mr. Lawrence showed you a ballot that should be getting dog eared now because we have seen it so many times, with several hundred people running in 1935 in Wayne county, but something happened just before that election in Wayne county that explains it. It had nothing to do with the new vacancies because there weren't any new vacancies. What happened was a fellow named Roosevelt got elected in 1932, and all of a sudden Democrats started winning in Wayne county and all of the Democratic lawyers came out of the bushes and ran for circuit court. (laughter) Now, if Oakland county went through a similar metamorphosis, I suspect it did come up with a pretty good sized ballot out there.

The reasoning behind this thing involves more than political advantage to one party or another, and it is this. Mr. Iverson has touched on it. One of the advantages you get from the staggering judges — (laughter) staggering terms of judges —

CHAIRMAN VAN DUSEN: A Freudian slip, Mr. Ford? (laughter)

MR. FORD: — one of the advantages that has nothing whatever to do with politics in the direct sense is the fact that the staggering of terms accomplishes this sort of an advantage: whether you have a circuit with 2, 10 or 20 judges, if you don't run them all for election at the same time, you have some continuity of court business. You don't have all of the occupants of the bench campaigning simultaneously and the ensuing confusion that results. And this is one of the principal benefits. Really some of us would have liked, if we thought we could have done it, to go to this much of the Illinois plan. Over in Illinois they have no circuit with less than 3 judges in it, and some of the experiences that have been related to me by lawyers from out of the state indicate that maybe this isn't a bad system.

But Mr. Kuhn thinks that he is protecting his county by saying 6, and I submit that at the rate that his county is growing, he is going to have to get a constitutional amendment before very long, because they might have 6 judges out there before very long and then the whole purpose that his amend-

ment would serve is defeated. It is very obvious on its face that what he is attempting to do is say, "You people in Wayne county don't know what you are doing, so we are going to protect you from yourselves by not allowing you to elect 18 judges, but we feel that we can elect 6 out here and do it."

If it is the view of the committee that staggering of terms is justified solely because of election procedures and solely because Wayne county is large, then I would have to oppose the entire principle, because the principle is the same, as Mr. Higgs has indicated, whether we are talking about 2 judges or 10 judges. What the committee is asking you here to do is to subscribe to the principle of not having all of the members of the bench run at the same time. Now, this shouldn't be a very difficult thing for us to grasp, because it is already in the law with respect to probate judges, and I don't believe that both of Mr. King's probate judges in his county run at the same time for office and this doesn't cause the courthouse to fall in. They have had this for several years out there, I believe. Ever since they have had 2 probate judges they have staggered terms for them, and all we are trying to do is treat the circuit judges in his county the same way as they are now treating the probate judges, and he certainly wouldn't urge that we start electing them together until he gets 6 probate judges out there. The principle stays the same regardless of the number.

The committee proposal does not dally with a recommendation of 3, 4, 5 or 6 because we found we could have argued forever about where the magic number is. There isn't a magic number, and if there is a magic number, the legislature should set the magic number and then change it from time to time. We shouldn't do it in the constitution. And this ties itself in with the minority report that we just passed over a few minutes ago. We will bring it up again when we talk about allowing the legislature flexibility in this whole matter of providing for staggered terms. This demonstrates very quickly the kind of problems you get into when you try to write the details of staggered terms into the constitution. It shouldn't be done and the committee didn't attempt to do so and I recommend that you vote against the KKK amendment. (laughter)

CHAIRMAN VAN DUSEN: Mr. Kuhn.

MR. KUHN: Mr. Chairman and members of the committee, I think Mr. Ford's logic is still way off. He talks about a bedsheet ballot of 150 candidates, and I submit to you that if they are having an election of only 2 judges, there can still be a bedsheet ballot of 150 candidates. This does not stop bedsheet ballots. You cannot put a limitation on the number of people that can run for any particular office. And I understand Oakland county might have about 700 judges so we possibly could have 700 candidates.

But let's look at the fallacy of his argument. There is a runoff, a primary. Then we end up with only 6 candidates at the most to be elected. You have to make a choice at the very most, under our plan, of 12 people who are running for the office of circuit judge, where in Wayne county they have to decide between 36 people, and I submit that that is asking of the people too much. I will agree maybe 6 isn't the right number. And I'm not trying to protect only Oakland county. There are 83 counties in the state of Michigan, as I understand it. And as I understand it, this amendment would affect at least 81 counties, and therefore I am looking out for the total of the people of the state of Michigan in the great majority of our counties when I am looking out for the interest of 81 counties and not 1 county.

CHAIRMAN VAN DUSEN: Mr. Barthwell.

MR. BARTHWELL: Mr. Chairman, delegates, I just want to say to Delegate Kuhn and the rest of them that are worried about us in Wayne county that we still don't want to become a state, as one of the agitators put in our mailbox, that maybe they should make us a state down there in Wayne county. We are kind of used to doing things in a big way. So don't worry about us. Treat us like you are going to treat the rest of the state.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Messrs. Kuhn and Krolikowski, which the secretary will read.

SECRETARY CHASE: The amendment is as follows:

[The amendment was again read by the secretary. For text, see above, page 1362.]

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: Just to emphasize what Mr. Ford said, the bar association recommended 4. We have an amendment here for 6. What is the magic number we felt could be a general proposition. There was no reason that we should discriminate in this way. I would urge the defeat of the amendment.

CHAIRMAN VAN DUSEN: Those in favor of the amendment offered by Messrs. Kuhn and Krolikowski will say aye. Those opposed will say no.

The amendment is not adopted. Are there further amendments? Mr. Shanahan.

MR. SHANAHAN: Mr. Chairman, fellow delegates, in reading this last sentence, I am going to read it carefully as I see it anyway. It says "In circuits having more than one judge the terms of office shall be arranged to provide that they will expire on a staggered basis." We have 2 horrible examples, of course, Keweenaw and Wayne. Take Wayne county with 18 judges; my reading of that indicates that no 2 of the terms shall expire at the same time, which means 1 every 4 months. I have been advised that section j of 96 covers that. I can't see how it does. It would seem to me that a simple amendment would resolve all the confusion, if there is confusion in regard to this, by adding the words "as provided by law" after "basis". That will leave it up to the legislature to spell it out. I would like to be advised if I am wrong in regard to this.

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: Well, in essence that is what we have done when we tell the legislature in section j of Committee Proposal 96 that they shall provide the statutes for implementing this particular section, and wherever this is found in the judicial article, they shall be implemented by the legislature. I am sure the committee never intended they were going to have a judge's term expiring every 4 months because this has to be read in with the election laws, and this was not and will not and is not to be the intent.

I might state, somewhat humorously, that when Mr. Ford hit on this staggered judges, this occurred to the committee. I had privately been talking to Mr. Hutchinson who serves on the style and drafting committee, and advised him that if he could find words to express this by eliminating the word "staggered" which might have some social connotations which are not favorable, we would not object.

I might state that I personally endeavored to work this out and by the time you try to say that the legislature shall do it so that they shall alternately come due in the even numbered years on a 1/3 basis, you come out with a great number of words. And the committee worked on it too, quite seriously. We didn't particularly like the social connotation of the word but we finally felt that it represented our particular intent, what we meant to do, and if the eminent men on style and drafting can find a synonym that will express the intent, I am sure on second reading we will very willingly accept it.

The intent, Mr. Shanahan, is not to have them on an every 4 months basis. We do provide that the legislature shall have to implement this and it does not mean that they have to be on a 4 month basis. We think that the intent is there that if they provide for a reasonable breakup of the number of courts, they will have complied with the constitutional mandate. This does not say they have to be on an every 4 months. It does not say that they all have to be separate. It merely says that the terms, when there is more than one, shall be on a particular staggered basis.

I would think if they would provide for 1/3 every 2 years — maybe this is the way we should say it — that they will have complied with the mandate of the constitution. I am sure there is nobody who would say that they have not.

CHAIRMAN VAN DUSEN: Are there further amendments

to section b? Mr. Shanahan, did you wish to pursue the point further?

MR. SHANAHAN: Mr. Chairman and Mr. Danhof, if that term could be worked in there, it would entirely satisfy me. It is entirely academic in my area. I am sure that in the next few years we will not have more than 1 judge in our area. However, if there is any possibility of doubt and confusion, and if something could be put in along that line, I think it would be an improvement in the language of the constitution. Thank you.

CHAIRMAN VAN DUSEN: Are there further amendments to section b of Committee Proposal 93?

SECRETARY CHASE: Mr. King offers the following amendment:

1. Amend page 1, line 22, after "in" by inserting "single county"; and after "than one" by striking out "judge" and inserting "but less than 10 judges, the board of supervisors may provide that"; so that the sentence will read:

> In single county circuits having more than one but less than 10 judges, the board of supervisors may provide that the term of office shall be arranged to provide that they will expire on a staggered basis.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. King, on which the Chair will recognize Mr. King.

MR. KING: Mr. Chairman, ladies and gentlemen of the committee, it looks like the KKK is dead, but before we turn in our bedsheets (laughter) I would like to have you consider one more short amendment here. Obviously Mr. Danhof is right. There is no magic number, and that includes the number 1. I think this is a local problem. And inasmuch as we have seen fit to let the board of supervisors supplement the pay of these men, I see no reason why we shouldn't let them decide this problem. I think that, without question, it is a serious problem in various parts of the state.

Miss Donnelly raises a point about knocking the whole thing out. I am sure that these distinguished 20 lawyers, along with the pharmacist to supply the aspirin (laughter) have thought very carefully about the problem of increasing the elected term of officials from 6 to 8 and from 6 to 10 years by way of constitutional mandate. I wouldn't conceive that they hadn't thought of that problem and I am sure that they decided this is proper so I won't get into that problem. I will just throw this amendment out and hope for somewhat more consideration than we got the last time around. Thank you.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. King. Does any delegate desire to have it reread? If not, those in favor of the amendment will say aye; those opposed will say no.

The amendment is not adopted. Are there further amendments to section b of Committee Proposal 93?

SECRETARY CHASE: Mr. Tubbs offers the following amendment:

1. Amend page 1, line 22, after "than" by striking out "one judge" and inserting "3 judges"; so the language will then read, "In circuits having more than 3 judges the terms of office shall be arranged . . . ."

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Tubbs. The Chair will recognize Mr. Tubbs.

MR. TUBBS: Mr. Chairman, this is not an attempt to find the magic number. It happens that about 2 hours ago I was talking with one of the local circuit judges, and he said that Judge Carland, who had appeared before our committee on behalf of all the circuit judges, called him this morning and was quite concerned and felt that 3 would be a good number and that we ought to submit it. Thank you.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Tubbs. Mr. Danhof.

MR. DANHOF: I can only say, Mr. Chairman, we have now switched from Oakland to Kent. We have gone from where there are 5 judges to 3. And I don't doubt what Judge Carland said, but again I think if it is good for one it is good for all. I think they are a little worried. They like safety in numbers. I don't think there is too much to worry about. I would urge the defeat of the amendment.

CHAIRMAN VAN DUSEN: Mr. Ford.

MR. FORD: I think if we took a private poll of all the incumbent judges in multiple judge circuits, without exception they would say that as incumbents they would rather run in a pack than run separated, and I think now the committee of the whole gets some idea of what happens with this multiple judge proposition. Mr. Tubbs wants to take care of his county. Mr. Kuhn is worried about his county. And everybody in a multiple judge county says, "This is a good thing but don't put it in my county."

Now, what we have here is a choice of supporting the committee and making it uniform throughout the state, or supporting the amendments which are obviously intended to give it to everybody else but us, meaning the people who propose the amendments. I urge that you vote no on the amendment.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Tubbs. Does anybody desire to have the amendment reread? The amendment is to strike the word "one" and insert the figure "3". Those in favor of the amendment will say aye; those opposed will say no.

The amendment is not adopted. Are there further amendments to section b?

SECRETARY CHASE: Yesterday, on motion of Mr. Downs, an amendment to Committee Proposal 91 was postponed to this particular proposal, Committee Proposal 93. The amendment is to add at the end of section b, page 2, following line 2, the following paragraph:

> For all courts of record for which a judicial nominating commission is provided, a vacancy in the office of judge shall be filled by the governor from a list of 3 nominees presented to him by a judicial nominating commission.

MR. FORD: Point of order, Mr. Chairman.

CHAIRMAN VAN DUSEN: Mr. Ford.

MR. FORD: I notice Mr. Downs isn't on the floor and I object to this being presented as an amendment unless he is here.

CHAIRMAN VAN DUSEN: The amendment is the second half of the amendment offered yesterday by Mr. Lawrence, Mr. Ford, and the committee yesterday adopted a motion by Mr. Downs to postpone consideration of Mr. Lawrence's amendment until this time.

MR. FORD: Excuse me. I understood it was Mr. Downs' amendment, not Mr. Lawrence's.

CHAIRMAN VAN DUSEN: No. We consider it at this time pursuant to Mr. Downs' motion. Unless Mr. Lawrence wishes to withdraw the amendment at this time, it is now in order.

MR. LAWRENCE: Two things: Since this is the first time I have been here since this has been acquired, I want to give due credit to the administration committee. [In his absence, a note-stand had been affixed to the microphone used by Mr. Lawrence.] Secondly, it is my understanding that this morning it was agreed with my 2 colleagues that this would not be brought up. Is that correct?

CHAIRMAN VAN DUSEN: Mrs. Judd?

MR. LAWRENCE: Is that correct? Yes. It will not be brought up.

CHAIRMAN VAN DUSEN: The amendment is withdrawn. Are there further amendments to section b? The Chair supposes the question should be, are there any more circuits to be heard from? (laughter) If not, it will pass.

Section b, as amended, is passed and the secretary will read section c.

SECRETARY CHASE: Section c.

[Section c was read by the secretary. For text, see above, page 1355.]

CHAIRMAN VAN DUSEN: The Chair would in the ordinary course recognize Mr. Danhof. For what purpose does the gentleman rise, Mr. Leibrand?

MR. LIEBRAND: I rise to withdraw a minority report

amendment with the consent of my cosponsors, Mr. McAllister and Miss Donnelly.

Following is the amendment pursuant to minority report A:

1. Amend page 2, line 8, after "general" by inserting "superintending".

CHAIRMAN VAN DUSEN: With the consent of Miss Donnelly and Mr. McAllister, the minority report amendment is withdrawn. Thank you, Judge Leibrand.

Mr. Danhof, you may proceed.

MR. DANHOF: I am somewhat overwhelmed. (laughter) First of all, Mr. Chairman, I think I should point out on the green sheet on Committee Proposal 93 — it is correct in the journal — on line 7 of page 2, after the word "writs" insert a semicolon. It was correctly printed in the journal. I don't know what happened in the green sheet. But insert a semicolon after the word "writs". In addition, I have filed with the secretary an amendment: on line 6, after "rule", insert the word "power". This was in the original draft of the committee. It is "power to issue, hear, and determine prerogative and remedial writs. . . ." I don't know if the first one is an amendment. I think it is just a typographical error on the green sheet. But if they are amendments, I would offer them as such.

CHAIRMAN VAN DUSEN: Mr. Danhof moves to amend the proposal to conform to the committee report.

SECRETARY CHASE: Mr. Danhof, on behalf of the committee on judicial branch, offers the following amendment:

1. Amend page 2, line 6, after "rule;", by inserting "power"; so the language in that clause will read, "power to issue, hear, and determine prerogative and remedial writs. . . ."

CHAIRMAN VAN DUSEN: The question is on the committee amendment. Those in favor will say aye. Those opposed will say no.

The amendment is adopted. You may proceed, Mr. Danhof.

MR. DANHOF: Thank you, Mr. Chairman. For an explanation of this particular section, I would again like to call upon the delegate from Oceana, Judge Pugsley.

CHAIRMAN VAN DUSEN: Judge Pugsley.

MR. PUGSLEY: Mr. Chairman and fellow delegates, section c is a revision of section 10 of article VII of the Constitution of 1908, the first sentence of which pertains to the jurisdiction of the circuit court in the following language:

> Circuit courts shall have original jurisdiction in all matters civil and criminal not excepted in this constitution and not prohibited by law, and appellate jurisdiction from all inferior courts . . . and a supervisory control of the same.

The proposed section deletes the words "civil and criminal not excepted in this constitution". This is deleted obviously in the belief that the broad language "in all matters not prohibited by law" is self sufficient and makes unnecessary any special reference to any matters "civil or criminal."

The second clause of the first sentence of the Constitution of 1908 gives "appellate jurisdiction from all inferior courts and tribunals and a supervisory control of the same." The proposed section retains the appellate jurisdiction from inferior courts and tribunals, and adds thereto the words "as prescribed by supreme court rule."

The old constitution lists the names of several writs which the circuit court may issue and determine. The proposed provision substitutes instead of the names of the several writs, such other writs as may be necessary to carry into effect their orders, judgments and decrees, and gives the circuit court general control over inferior courts and tribunals within their respective jurisdictions and in all such other cases and matters as the supreme court shall by rule prescribe.

CHAIRMAN VAN DUSEN: Are there any amendments to section c?

MR. PUGSLEY: I move the adoption of this section.

CHAIRMAN VAN DUSEN: Mr. Sterrett.

MR. STERRETT: Mr. Chairman, I believe out of courtesy to the committee the secretary should ring the bell to get the delegates back in here.

CHAIRMAN VAN DUSEN: The Chair thinks it may be a greater courtesy to the committee just to proceed at this point, Mr. Sterrett. There are no amendments. (laughter) If there is nothing further with respect to section c — Mr. Hutchinson.

MR. HUTCHINSON: Mr. Chairman, I just couldn't let it go by. (laughter) I wanted to raise this problem which I see here. Apparently the appellate jurisdiction of a circuit court is going to be prescribed by supreme court rule so that a circuit court will have no appellate jurisdiction whatever unless it is prescribed by supreme court rule.

Now, here is my problem. It seems to me as though somewhere else in this list of judicial proposals we intend to permit the legislature to create courts of limited jurisdiction. I suppose that if they can by law create the courts, they define the limits of the jurisdiction. But I also would take from this language here that the legislature will be completely without any power to provide for any appeal from those courts of limited jurisdiction because the appellate power of the circuit court, which is the natural court to which that appeal should be made, is completely within the control of the supreme court by supreme court rule.

I might state that I am becoming quite disturbed in looking over these proposals to note the length to which the committee is apparently going to, shall we say, to completely assure the independence of the judiciary and so centralize it from the top down that the supreme court is going to have control almost completely outside the ken of the legislature whatsoever in the judicial branch, and here we have it to the point where in fact the legislature is apparently going to be able to create inferior courts but will not be able to provide any method of appeal from those limited court jurisdictions. Am I right? I think I am.

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: Let me answer Mr. Hutchinson. The language as stated is for the reason that in the original Constitution of 1908 you had constitutionally created inferior courts, namely the justices of the peace. These were not courts of record. It is anticipated that it is quite possible that courts of limited jurisdiction will be created and they will be courts of record. Now, that means that if they are, and they are manned by a lawyer as a judge and you have a trial, and you have a complete adversary proceeding — and they will be courts of record — it could well be that the appeal from these particular courts — even though they be courts of limited jurisdiction as such; you have a jury trial and you have a complete trial — would be directly to the intermediate court of appeals instead of going to the circuit courts.

Now, we cannot envision — nor can we lay down here a hard and fast rule in this regard. There has been considerable agitation and I have received considerable mail for the establishment of a family court, so called, whatever that may be. But assuming for a minute that this is created and there is transferred perhaps to that particular court divorce court jurisdiction. Now, this will be a court of record. It will be a court without a jury, because you don't try divorce cases before a jury. But certainly there could be prescribed appeal to the court of appeals. There would be no need to burden the circuit court with a particular appeal. We have approved a matter of appeal as a matter of right in criminal cases, and I submit that if you put it in there any other way, you would in effect be straitjacketing what we can determine in the light of experience as we progress under this particular judicial article.

I don't feel that there is going to be any tremendous change. Undoubtedly, if we continue a period of justice of the peace courts or municipal courts, there will be prescribed an appeal to the circuit court and probably to the court of appeals, but as time goes on there may be enacted a single county court, even though we don't write it into the constitution, and this can be a court of record and a trial court and there would be no particular need, if you have a record and if you have a complete hearing, to burden the circuit court with this type of appeal.

This is particularly what the committee had in mind. We quite agree that this is a matter of rule. The supreme court

jurisdiction is going to be a matter of rule, and this, I submit, is the basic reasoning behind the committee. If the matter needs to change as new courts are brought into being, it will be easier to obtain a matter of appeal to whatever court is deemed proper under the particular circumstances, whether the court of limited jurisdiction is or is not a court of record, whether it is or is not staffed by an attorney. Now, as we have it, it will be. And it is for this reason that we wrote the article as we did and we granted original jurisdiction. The circuit court is our trial court and it is granted all original jurisdiction not prohibited by law, which is what it had before. It is granted constitutionally. I suppose by statute it could be taken away but I don't know where they would go with it, and they haven't. But this is the reason for it. We think it allows experience to govern as we go into our court of appeals, as we see what work load they have, whether or not there should be changes made. It was for this reason that we granted the appeal as we have granted appeal to the supreme court as a matter of rule.

CHAIRMAN VAN DUSEN: At the time Mr. Sterrett's request was made, the Chair did not anticipate the discussion which has developed. Since then the Chair has had further requests that the bell be rung, and the secretary will ring the bell. You may proceed, Senator Hutchinson.

MR. HUTCHINSON: Mr. Chairman, continuing this matter, I had always supposed that the matter of what jurisdiction a court would have, whether it be original or appellate, was properly a matter of law; that is, the legislature should define matters like jurisdiction and venue.

Then with regard to procedure, I am willing to agree that that is something within the purview of the court rule, but certainly jurisdiction and venue, I had been led to believe, were matters properly within the consideration of the legislature, and here we go saying that the appellate jurisdiction of a circuit court will be defined by the supreme court, not by the legislature at all. And Mr. Danhof proceeds to say that the committee envisions that the appeal from these courts of limited jurisdiction perhaps might not be made to the circuit court at all; it would be made to the intermediate appellate court which we will see above the circuit.

Well, if that is going to be the situation, then I wonder how that fits in with this idea that the circuit court shall have supervisory and general control over inferior courts and tribunals within their respective jurisdictions. I ask you to consider the logic of expecting a circuit court which would have no appellate jurisdiction from these inferior tribunals whatever to be at all concerned or how they could be properly concerned with a court or a tribunal from which they never receive any business. They have no concern because the appeal never comes to them.

If the purpose of supervisory and general control over inferior tribunals is desirable in order to provide for uniformity of procedure in those lower tribunals so that the records will come up to the appellate court in proper shape and so on and the practice in those lower tribunals will be uniform to accomplish and to accommodate the appellate tribunal — and that is the purpose of supervisory control — then if you are going to have a situation where the circuit court is not going to be the appellate tribunal, following Mr. Danhof's suggestion, there is no reason to have supervisory control in the circuit court.

I don't believe that I can follow the wisdom of this proposal as it stands. I think the committee ought to agree that if it wants to have this appellate jurisdiction set in part by supreme court rule, it ought to also provide that it could be set by law so that the legislature in creating a court of limited jurisdiction could at least say where the appeal is going to go from such a court.

CHAIRMAN VAN DUSEN: The gentleman from Hart, Judge Pugsley.

MR. PUGSLEY: I think Senator Hutchinson's point is well raised if we accept his interpretation of this language. I think that what was intended by this provision — at least it was my understanding of it — is that the point of supervision is a procedural question. The language does seem to be quite clear that circuit courts shall have appellate jurisdiction from all inferior courts and tribunals. Then follows the language which prompts his question, "as prescribed by supreme court rule." At first blush, my interpretation of that was that it was explanatory of the procedure which should be decided by the supreme court. If his interpretation is a correct one, then I think that it should so state. My first impression was that there was no question about the circuit court having the jurisdiction from the inferior court but that the supreme court would define the method of procedure.

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: I don't know, Mr. Chairman, if Mr. Hutchinson has raised a question. I don't know whether he has introduced an amendment or whether he hasn't.

CHAIRMAN VAN DUSEN: There is no amendment on the secretary's desk.

MR. DANHOF: I can state that as we proceed by the rule, the supervisory and general control is again as prescribed, as it must be, as it was under the 1908 constitution, because the supreme court had general jurisdiction over all inferior courts, and so it would delegate down and would probably give to the supreme court such supervisory control over the inferior courts within the circuit as it is so stated, even though in the particular language the circuit courts have the supervisory and general control. Now, we agree, and we iron it out in accordance with rules in, of course, the last sentence therein.

I can only state that if there is no amendment, I would ask that it would pass. However, the committee is going to meet tomorrow morning. I have called a meeting for other matters, and we might add this to it. If there is an amendment, why, we should take it up.

CHAIRMAN VAN DUSEN: Has the secretary an amendment?

SECRETARY CHASE: Mr. Hutchinson offers the following amendment —

MR. BLEDSOE: Mr. Chairman.

CHAIRMAN VAN DUSEN: Mr. Bledsoe.

MR. BLEDSOE: In conformity with Mr. Danhof's suggestion, may this pass over until the committee meeting tomorrow morning by the judicial committee?

CHAIRMAN VAN DUSEN: Mr. Danhof, did you make your suggestion in the form of a motion or not?

MR. BLEDSOE: I so move.

CHAIRMAN VAN DUSEN: Mr. Bledsoe moves that further consideration of Committee Proposal 93 be postponed until tomorrow morning.

MR. DANHOF: This is section c only, I assume?

CHAIRMAN VAN DUSEN: Did you limit your motion to section c, Mr. Bledsoe? Mr. Bledsoe moves that further consideration of section c of Committee Proposal 93 be deferred until tomorrow morning. Mr. Lundgren, do you desire recognition on the motion?

MR. LUNDGREN: Yes, Mr. Chairman. If we keep on postponing all these things, I don't know if you are going to have a quorum in this room to listen to anything.

CHAIRMAN VAN DUSEN: The question is on the motion of Mr. Bledsoe. Those in favor will say aye. Those opposed will say no.

The motion does not prevail.

SECRETARY CHASE: Mr. Hutchinson offers the following amendment:

1. Amend page 2, line 6, after "tribunals" by striking out "as prescribed by supreme court rule"; so that the phrase will read, "appellate jurisdiction from all inferior courts and tribunals. . . ."

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Hutchinson. Those in favor of the amendment — Mr. Danhof.

MR. DANHOF: I thought you were going to recognize the sponsor.

CHAIRMAN VAN DUSEN: The sponsor did not appear to seek recognition.

MR. HUTCHINSON: Well, Mr. Chairman, I didn't seek recognition because I think that my case for the amendment has already been presented and I don't want to have to do it again.

MR. DANHOF: Well, again, if you strike this language, you are freezing it in absolutely that every court would have an automatic right of appeal to the circuit courts. I don't think that is necessarily desirable. I don't think it is needed. I think if they have a trial in a lower court as it is prescribed by the statute to be a court of record, why should there be appeal to the circuit court and burden the circuit court with this appellate matter? Why can't it be heard directly? There is no particular reason. Referring to the probate court, we are going to have attorneys running the probate courts. From there it could go directly to the court of appeals if there is a valid trial.

Now, if somebody wanted to add "or by law" in here so that there would be some discretion, that would be all right. But to freeze it into the constitution that there must be direct appeal from the inferior courts and tribunals to the circuit court I think is just hamstringing the operation of the circuit court and making it costly to the litigants if they have to go to a second step, and just prescribing additional steps which you might reach directly by going to a court of appeals. I think that for this, the present amendment by all means should be defeated, because now you are freezing in here from all inferior courts and tribunals, whatever that may be determined to be, for all time they have to be appealed to the circuit courts, and I just think that we should not make this as inflexible as this particular thing, and I would urge the defeat of the amendment.

MR. NORRIS: Point of information.

MR. BLEDSOE: Mr. Chairman, I would request that—

CHAIRMAN VAN DUSEN: Mr. Bledsoe, would you yield momentarily so Mr. Norris may make his point of information?

MR. BLEDSOE: Yes.

MR. NORRIS: I just wanted to inquire, Mr. Chairman, as to the precise language of the amendment and where it is to be inserted so we can follow this discussion a little better.

CHAIRMAN VAN DUSEN: The secretary will reread the amendment.

SECRETARY CHASE: Mr. Hutchinson's amendment:

[The amendment was again read by the secretary. For text, see above, page 1367.]

CHAIRMAN VAN DUSEN: On the amendment offered by Mr. Hutchinson, the Chair will recognize Mr. Everett.

MR. EVERETT: Mr. Chairman, I wish to support Mr. Danhof and the committee and oppose this amendment. We are not here talking necessarily about the present situation as it exists. If it continues to exist the way it does now, the supreme court by rule will probably keep about the same appellate practice. We don't know exactly what the future will bring. We would certainly be making a serious error to freeze in a situation because we think we know what it is when as a matter of fact we don't know. This permits the development of a series, perhaps, of different types of appellate practice depending upon what courts exist. I think the committee proposal is proper and the amendment should be defeated.

CHAIRMAN VAN DUSEN: Mr. Bledsoe, do you desire recognition on the amendment?

MR. BLEDSOE: I simply wanted to ask Mr. Danhof a question, whether or not this had reference to or included appeals from the traffic court and recorder's court for the city of Detroit.

CHAIRMAN VAN DUSEN: Does the gentleman care to answer? Mr. Danhof, did you hear the question?

MR. DANHOF: Personally, Mr. Bledsoe, you have practiced there in Detroit a lot longer than I have as to where you appeal from traffic court and recorder's court. I have never had the opportunity to be in there. But I would imagine at least that it might not have any effect thereon at all. Perhaps if you leave the committee report as it is, you might get a court rule which would correct it.

CHAIRMAN VAN DUSEN: Mr. Bledsoe.

MR. BLEDSOE: Is it just that indefinite? I think that Mr. Hutchinson's amendment is well founded, because it does not include that presently under the language that it is set up in.

CHAIRMAN VAN DUSEN: Mr. Hutchinson, do you desire recognition at this time?

MR. HUTCHINSON: No.

CHAIRMAN VAN DUSEN: Miss Donnelly.

MISS DONNELLY: I rise to support Senator Hutchinson's amendment because I do not believe that freezing this in will do what Mr. Everett thinks it will do. The last line "and jurisdiction of other cases and matters as the supreme court shall by rule prescribe" handles the issue that I believe he wishes handled. In this instance, Mr. Hutchinson's amendment in effect puts it back to the original jurisdiction the circuit courts have. To leave the committee proposal as it is, the jurisdiction in the circuit courts is only that which is going to be determined generally by supreme court rule.

In this instance they thought the creation of an intermediate appellate court would take care of any problems. In my mind it doesn't. To my best knowledge, as I listened to the various justices from the supreme court who urged us to create an intermediate appellate court, they wanted this court created to relieve them. They did not wish this court created to relieve the circuit court. I do not know that the circuit court needs this relief. By allowing the jurisdiction to the circuit courts in the first instance from the inferior tribunals, we mean from the various justice courts as they were or will be when changed by the legislature, the municipal courts and these courts of inferior jurisdiction in this area.

Now, to allow an appeal constitutionally or to prescribe and require appeal constitutionally to the circuit courts in the first instance in my mind would do a few things, which primarily means that the individual litigants living in an area will go to their circuit courts first. They will not go miles to an intermediate appellate court which can be wherever it is deemed to be in these various districts as we have set up.

The circuit courts had this jurisdiction originally. It will not do anything but return to them what jurisdiction they presently have and allow a quicker, in my opinion, cheaper immediate appeal. The court rule under line 10 can apply other aspects by their rule, but at this stage of the game the circuit courts are losing jurisdiction, getting less work proportionately. By allowing the supreme court by rule to do anything they want, they are taking away power that is presently in the circuit courts, presently set there, and not allowing the legislature to act in any way.

Now, I think we have to make up our mind somewhere along the line how much power this supreme court is to have, how much power the legislature is supposed to have. We have uniformly throughout this article put all power in the supreme court. We don't know how we are going to get anybody on the supreme court. This is our big problem right now. But all the power is going to be there. We do know how we are going to get the power of the circuit up until this point. And I therefore support Mr. Hutchinson's amendment on the theory that we are merely returning the power to the circuit courts they originally had, allowing the supreme court by court rule to amend the jurisdiction of other cases and matters as the supreme court shall by rule prescribe, but giving back their power and allowing the intermediate appellate court to take the job away from the supreme court, which is what I understood the justices of the supreme court wanted, not this part.

CHAIRMAN VAN DUSEN: On the amendment offered by Senator Hutchinson, the Chair recognizes Mr. Ford.

MR. FORD: Mr. Chairman, we voted down a few minutes ago an attempt to pass over this, and I think that we ought to recognize just what a complex problem comes up, and it comes up not because the committee didn't work on this for a long time, because, like all committees, we stay so close to the individual problem that we begin to think sometimes from the same point of view.

Mr. Hutchinson has now approached this with a fresh point of view. If Mr. Hutchinson's construction of the language could properly be followed by the court, I don't think that it would carry out the intent of the committee. However, if we adopt Mr. Hutchinson's amendment for the reasons that he has stated, this isn't going to carry out the intent of the committee either.

The existing language of the constitution is not qualified. It simply says that there will be appellate jurisdiction, and it doesn't qualify it by saying as provided by law or as provided by court rule, and what has actually happened is that it has been provided in both ways. There are numerous statutes such as the civil service act, the FEPC act, workmen's compensation act that specify where you appeal, how you appeal and what the court can do when it gets the appeal. By the same token you have very detailed court rules on how you appeal from the common pleas court, for example, to the circuit courts in Wayne county, and I assume they have similar rules covering the other appellate courts. When you get to municipal courts, there are court rules that cover the appeal and there are also statutes that cover the appeal. They are not in conflict one with another. One takes over where the other one leaves off.

I don't think we would want to preclude the legislature from, by statute, prescribing a method of appeal, nor would we want to take the supreme court out of the business of making rules, and it appears to me now that it is going to be impossible through this method to get language that is not likely to cause trouble. I think that we would better serve the interests of this section if we passed over and gave Mr. Hutchinson, who is a member of style and drafting, and Mr. Danhof and other members of the committee an opportunity to work with this language a little bit and see if we can't say what we really meant to say, because I don't think that Mr. Hutchinson and Judge Pugsley in their explanation really disagree with one another, but Mr. Hutchinson does raise a valid fear here not because by adopting this we are getting anything really strange, but by adopting it in this manner we might be creating a false impression when the court interprets this section. I would like to move that we pass over consideration of this at least until tomorrow's session. Mr. Faxon has an amendment that would help also. Maybe we can put these things together and clear this language up, having the benefit of the fresh point of view expressed by Mr. Hutchinson.

CHAIRMAN VAN DUSEN: Mr. Ford moves that further consideration of section c of Committee Proposal 93 be deferred until tomorrow morning.

MR. FAXON: Mr. Chairman, haven't we already acted on this?

CHAIRMAN VAN DUSEN: Mr. Faxon raises the point of order that we have already acted on a similar motion. However, there has been intervening business. Therefore, the motion is now in order. Those in favor will say aye; those opposed will say no.

The motion prevails. The secretary will read section d of Committee Proposal 93.

SECRETARY CHASE: Section d:

[Section d was read by the secretary. For text, see above, page 1355.]

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: Mr. Chairman, members of the committee, in the absence of Judge Mosier, I can state that this is a reenactment of section 11 of article VII of the Constitution of 1908. I should further point out that at the time that this matter was adopted, the majority report of the committee on local government provided for these particular offices to be found in every county.

Now, in light of the adoption at this convention of the home rule provisions for counties, it might be that some revision of this particular section would be in order. At the time it was adopted the committee on local government had written in there that there would be constitutional offices, at least the 2 that are here mentioned. We now have left to the legislature the home rule provision, but we don't know exactly what they will do and it is possible that the offices as named might be consolidated or their names changed. This is a problem on which the judiciary committee could not, of course, proceed.

When we reached this section in our deliberation, the question arose within the committee as to whether or not this was a proper matter for the judiciary committee to handle. I think the first sentence, "The clerk of each county organized for judicial purposes shall be clerk of the circuit court for such county" is properly within the judicial article and within the jurisdiction of our committee. Our committee heard from various people, and we reached a unanimous recommendation that this should continue. There was talk that perhaps the circuits should be allowed to pick their own clerk, but this was discarded.

Now, the remaining sentence, "The judges of the circuit courts may fill any vacancy in the office of county clerk or prosecuting attorney within their respective jurisdictions, but shall not exercise any other power. . . ." At the outset, it would appear that in 1908, because the clerk of the county was the clerk of the court — and at that time being clerk of the court may have been the main job — and because the prosecuting attorney was so closely aligned with the court and with the enforcement of justice, they rendered to the circuit judges these 2 powers of appointment in case of vacancy. The committee debated whether or not this was a proper matter for the judiciary committee to determine, concluded that it was and that, because of the fact that it was in the judicial article, it had been primarily assigned to it, we proceeded to reenact the section. I made contact with the chairman of the local government committee, and he advised that they approved our particular action.

Now, I realize that questions are going to arise. I am not sure whether they are judicial in nature or whether they are local government in nature. But we did reenact the section, the theory being that the prosecuting attorney is so closely aligned with the court, and in the event of a vacancy, the judge might be the best qualified to pick the attorney to carry on and make sure law enforcement is continued. And also because the clerk of the county was the clerk of the court, in lieu of this, why, we likewise recommend the continuance of this particular provision.

Now somebody might say, "Well, why not the register of deeds and the treasurer?" And my only answer is I don't imagine they have anything at all to do with the court. There is at least some indirect connection between the county clerk and the circuit judge in the court in that he is the clerk of the court, and for the prosecuting attorney. Therefore, the committee recommended the continuance of this particular section. And, as we stated, the committee on local government concurred in the reenactment of this particular provision.

CHAIRMAN VAN DUSEN: Mr. William Hanna.

MR. W. F. HANNA: Mr. Chairman, I would like to address a couple of questions to the chairman of the local government committee because I believe this cuts over there. As I examine Committee Proposal 81 which was passed, there is no provision for the filling of vacancies in other county officers. It does not say who will fill, nor does it say that vacancies will be filled as provided by law.

Now, the first question is: how are other county officers to be filled? The second question is: is there any conflict with possible home rule provisions in which a home rule law was enacted by the legislature similar to the home rule act of cities, and pursuant to that home rule act the legislative body of the county proceeded to say that a clerk shall be appointed by the legislative body to serve at its pleasure. You would have a direct conflict with this provision as to who appointed upon the resignation or termination of the person who was holding the then clerk's office. And it seems to me that there is this conflict. The third conflict that I see is one that perturbs me from a philosophical basis. We provide here for an individual or a group of individuals to make an appointment without any confirmation by any other body. In a single judge circuit

— or in our county, which would be only 2 judges in which it would boil down to 1 judge making the appointment — this appointment will be made without any consultation with the board of supervisors or otherwise.

Those are the 3 questions. First, how do you fill vacancies for other officers according to this constitution? Secondly, will this interfere with legitimate home rule if we conceive of the enabling act for counties to be comparable to cities? And, third, whether or not from a philosophical basis the local government committee should allow 1 man to make an appointment without any advice and consent or approval of the legislative body of a county who presumably represents the people?

CHAIRMAN VAN DUSEN: Mr. Hanna, the Chair understands you desire to yield to Mr. Arthur Elliott for answers to your questions?

MR. W. F. HANNA: Yes.

CHAIRMAN VAN DUSEN: The Chair recognizes Mr. Arthur Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, Mr. Hanna, I truthfully can't tell you whether it is constitutional or statutory, and I feel that you probably could. The other officers of the county are appointed by the prosecutor, the clerk and the probate judges, so that would be the reason, of course, why the prosecutor and the clerk should not be a part of this particular article. I think the point you raise about the provisions that might be made in a home rule county is valid. They were not considered by us, and in the article which we have under consideration at no point did any of the appointments to vacancies come up. It wasn't in the article as in the 1908 constitution, and we frankly did not discuss it in committee except to concur with the judiciary on this approach to the clerk, which we did do.

CHAIRMAN VAN DUSEN: Mr. Brake, did you desire recognition on this point?

MR. BRAKE: No, Mr. Chairman. It was another point.

CHAIRMAN VAN DUSEN: Mr. Ford.

MR. FORD: Mr. Chairman, members of the committee, I wish to support the committee proposal with respect to this section. There are numerous articles similar to Mr. Hanna's. These were discussed in some detail by the committee. There are clear and cogent reasons why both sections of this particular paragraph deserve a place in the constitution. I urge that you support the committee.

CHAIRMAN VAN DUSEN: Are there any amendments to section d?

SECRETARY CHASE: Mr. Faxon offers the following amendment:

1. Amend page 2, line 16, after "jurisdictions,", by inserting "unless otherwise provided by law,"; so that the sentence will read:

> The judges of the circuit courts may fill any vacancy in the office of county clerk or prosecuting attorney within their respective jurisdictions, unless otherwise provided by law, but shall not exercise any other power of appointment to public office.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Faxon and on which the Chair will recognize Mr. Faxon.

MR. FAXON: Mr. Chairman, is it the desire of the chairman of the committee to speak? I just simply state the purpose of the amendment is to provide in the event that some home rule charters are developed for counties where they do provide for the filling of vacancies, that this would give the opportunity to the legislature to work out a method that would be in line with the wishes of the county or what the law would like to provide in that case. I yield to Mr. Danhof if he cares to comment.

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: The only thing that comes to mind when I hear this is that if we don't put anything in, it has to be provided by law then, and maybe if you want to do that, you would strike the whole last sentence rather than to say "as provided by law," because if you say nothing, somebody has to provide for the filling of vacancies and they will provide for it the same as they have for the filling of vacancies in other county offices, which has been by law. Therefore, on the particular amendment, I am not sure that it offers any particular advancement over the committee proposal. I would feel it should be opposed.

CHAIRMAN VAN DUSEN: Mr. Faxon.

MR. FAXON: The language is "unless otherwise provided by law," so that it would still keep it within the present method of filling the appointment unless otherwise provided in case the legislature saw fit to develop some method by which county charters would provide for the filling of vacancies. It is otherwise provided. I don't see that the language does give any flexibility to it unless I don't know how to read it right. It just says that the judges of the circuit court may fill any vacancy. Is that word "may" the one that gives them flexibility in terms of letting the legislature do it otherwise? Perhaps I am just not reading that word right. The word "may" on line 15; is that what gives it flexibility?

CHAIRMAN VAN DUSEN: Which of you gentlemen and ladies would like recognition? (laughter) Mr. Ford.

MR. FORD: Mr. Faxon, at first your amendment would seem not to make too much difference, but actually it might have the effect of taking away the constitutional aspects of these 2 particular appointments, and there is a rationale as to why these particular 2 county officials should be appointed, if a vacancy occurs, by the manner prescribed here. As Mr. Danhof has already indicated, it comes from a long tradition of recognizing that the judges are most likely to know the qualifications and needs for these 2 offices because they traditionally have been close to the court.

We have had an experience in Wayne county, and not so long ago, where such an appointment was made. Whether you agree or disagree with the wisdom of the appointment, it became apparent at that time that you really have a question on your hands when an important officer like the prosecutor, who is charged with law enforcement, leaves office and you face the question of whether you want to throw this into the political arena at large or whether you should ask the people who really know or should know what is going on in that county with respect to law enforcement, and that is the judges. Then after they have been appointed in this way, as Mr. Elliott has indicated, they have some importance because the county clerk takes on appointive powers for filling vacancies.

Your problem about county home rule I don't believe is a very serious one at this point because it is my understanding that the legislature would have the authority under the home rule provision that was passed by the constitutional convention thus far to eliminate any or all of the county officials and to provide for the manner of electing, selecting or replacing them in any way they saw fit, either by statute or by a provision permitting a charter to do this, so I don't think this would have any effect on or be in any way in conflict with the home rule provision.

CHAIRMAN VAN DUSEN: Mr. Faxon.

MR. FAXON: Well, my only comment is that I am not suggesting any other methods of selection or of filling of the vacancies. I am simply trying to make the language consistent so that if time develops where there are alternative solutions necessary, the legislature could provide for it. And I understand that under the county home rule charter that we have provided, the legislature has this flexibility, but it would seem here that there is a certain degree of mandatory language. I may be wrong in my interpretation, but this is the way it struck me. That is all.

CHAIRMAN VAN DUSEN: The gentleman from Bay City, Judge Leibrand.

MR. LEIBRAND: I rise to support the committee proposal. That exact language has been in the constitution for 54 years, and it has the great advantage that the people back in 1908 voted on it, liked it and carried it. I think we should leave it there.

CHAIRMAN VAN DUSEN: Mr. Everett, do you desire recognition at this time?

MR. EVERETT: I simply want to echo Judge Leibrand's comments that this is the present language and it has worked. I particularly rose because I know if Judge Mosier were here, he would want to be heard on this. He was very vigorous within the committee in recommending that this power be left where it is and where it has been for all these years. In 4 months of committee sessions not one person from the clerks association — and they appeared before us — from the prosecutors association, from the general public, even from the league of women voters appeared before us and suggested that we make any change. I submit this is one time when we ought to stick with the committee and vote down this proposed change or any other change.

CHAIRMAN VAN DUSEN: The lady from Grand Rapids, Mrs. Judd.

MRS. JUDD: I never heard the league of women voters mention it either. I think we are getting overly concerned about a problem which certainly won't arise for a good many years, and if it does arise it will be only with respect to a very few counties, and we do have the rest of the 83 counties to think of.

I would, however, like to ask a question of Mr. Danhof, and that is I would like to know if there was any other reason for using the county clerk as the clerk of the circuit court than the one that "we always have done so." I would think with the increasing populations and business of the county, that it might be necessary to consider whether the county clerk can carry all of these jobs.

CHAIRMAN VAN DUSEN: Mrs. Judd yields to Mr. Danhof.

MR. DANHOF: Yes, Mrs. Judd, there was another reason. It was proposed that perhaps each circuit judge should appoint his own clerk. And we took some testimony in this particular regard. First of all, we felt that at least 1 county, being Wayne, had a civil service system and this, we felt, might be moving to other large counties and that it would eliminate political log rolling, so to speak — the appointment of relatives to become clerk of the court or assistant clerk of the court — and as a consequence would make for a better administration of justice.

Now, as a practical matter, what happens in larger counties is that the county clerk himself does not do it, but he has a deputy who is assigned to the court, and it is my understanding that in those areas where you have more than one judge, they each have one assigned. These men are normally screened and have some qualifications for handling records and meeting with the public and keeping lawyers happy and so forth, and the judge may have some discretion in his particular clerk but it is not a political appointment.

We felt that we get better service. We further feel that there is an integration of the records with all of the other records within the county, and consequently, all in all, it was best that the clerk be given the overall control of the courts along with all of the other myriad duties that he performs.

CHAIRMAN VAN DUSEN: Mr. William Hanna.

MR. W. F. HANNA: I will pass.

CHAIRMAN VAN DUSEN: Mr. William Hanna passes. Mr. Elliott.

MR. GADOLA: Mr. Chairman.

CHAIRMAN VAN DUSEN: Judge Gadola.

MR. GADOLA: In 30 years on the bench I have only had the opportunity of appointing one clerk, and that was, I appointed the man's wife. He left to go into service in '42. And I was very pleased to make that appointment.

Remember that the clerk is the one that has charge of all the records of the circuit court. The clerk writes the journal. And, you know, the circuit judges can't conceal too much, because every day there is a diary written of their doings and they sign it every day, and you can find it 1,000 years from now if the records are kept. So I say that the clerk is the official of the judge and under the supervision of the judge. The legislature has seen fit to pile obligations and duties upon duties on the clerk, but nevertheless primarily he is under the supervision and jurisdiction of the judge, as is the prosecuting attorney. Even our court stenographer that we now call reporter is not appointed by the circuit judge. He is appointed by the governor. So I say that the proposition is proper to leave the appointment of those 2 officials with the judges.

CHAIRMAN VAN DUSEN: Mr. Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, I just don't know that we should try to clarify this right now except that from what has been said and if I understand it correctly, from what was said by Mr. Ford and by other members of this committee, their feeling is that from line 14 through 17 would not in any way affect the provisions of Committee Proposal 89 as adopted under county home rule, and I assume that the reason why they say that is because of the permissive word "may" in line 15. I too feel that the clerk should be the clerk of the circuit court. I have no quarrel with this. I just wanted to make sure that we weren't in conflict here with 2 of our proposals.

CHAIRMAN VAN DUSEN: Mr. Elliott yields to Mr. Ford.

MR. FORD: The reason for the word "may" is a little different than might at first glance suggest itself, and that is that traditionally judges have been restricted from exercising any power of appointment to public office, and we have had such a restriction in our constitution at least since 1835. Now, when this language was put in, the word "may" probably appealed to them and was very clear because up until that time no judge could appoint anyone to any public office. And then they said, because of the nature of these offices, we are going to make an exception and say that the court may appoint these 2 particular officers.

Now, I don't know as a legal proposition whether the legislature could take that power away from them. I don't know that this constitution guarantees that power. But I do know that this language in the constitution clearly, when read in context with other prohibitions that we have in the judiciary article, makes it possible for them to make the appointment, and without it the rest of the constitution standing alone would prohibit such an appointment.

MR. A. G. ELLIOTT: I just want to make the point perfectly clear that under the provisions of Committee Proposal 89 as adopted, we had left to the counties the right to frame, adopt, amend and repeal their charter in a manner and with powers as provided by general law and permit the organization of county government in forms different from the form set forth in this constitution. So if we have a conflict here and if there is a possibility for this conflict to be plaguing us in the future years, I think in good conscience the attorneys who would be able better to enunciate that conflict should do so, so that we can at least resolve it and make it easier by our debate or discussion for the legislature and for the courts to know what we intended. I am assuming that there is no conflict and that the county home rule does give to the counties these rights that I have just described.

CHAIRMAN VAN DUSEN: The Chair will recognize the gentleman from Hart, Judge Pugsley, speaking on the Faxon amendment.

MR. PUGSLEY: I think everything that I have had to say has already been covered. As Judge Gadola has said, the clerk of the county is the clerk of the court. I have had occasion in all 3 of the counties in my circuit to appoint a clerk; in one of the counties I appointed 3. And the language which we have before us is the same language, as Judge Leibrand has pointed out, which has been in the constitution since 1908. It is identically the same.

CHAIRMAN VAN DUSEN: Mr. Brake.

MR. BRAKE: The question I had, Mr. Chairman, has been led into by Judge Gadola. Judge, you said the appointment of your court reporter is made by the governor, but it is made on the recommendation of the circuit judge, isn't it?

MR. GADOLA: Yes, through the governor.

MR. BRAKE: Yes, upon the judge's recommendation. And as I remember it, the friend of the court situation is the same. The judge recommends him and the governor appoints him, and he is not at liberty to appoint anybody who has not been recommended by the judge. I assume that this circuitous method of making the appointment is due to that remaining

language there which says that the judge may not make any other appointment. I would like to ask Mr. Danhof if his committee thinks that it is advisable that we go on through the years with that circuitous method when obviously it is the judge who ought to make the appointment of both the reporter and the friend of the court.

CHAIRMAN VAN DUSEN: Mr. Brake, would you be kind enough to defer that question until we have disposed of the Faxon amendment?

MR. BRAKE: I raised it, Mr. Chairman, because Mr. Danhof suggested that we strike out the whole sentence rather than Mr. Faxon's amendment.

CHAIRMAN VAN DUSEN: The Chair thinks that currently before the committee is the amendment offered by Mr. Faxon which the secretary will read.

MR. FAXON: Mr. Chairman, in view of the fact that all of these prominent lawyers and judges have all seen fit to oppose the amendment and that no one has seen fit to support it, I will withdraw it at this time. (laughter)

CHAIRMAN VAN DUSEN: Mr. Faxon withdraws his amendment.

Mr. Brake's inquiry to the chairman of the committee, Mr. Danhof, is therefore in order, and the Chair will recognize Mr. Danhof.

MR. DANHOF: The basis, Mr. Brake, was that we felt — and perhaps this was not valid — that a judge should refrain from making other appointments to public office. I can understand your concern for these particular ideas. In the supreme court we got around it by giving them their staff and that was it.

Now, Mr. Bonisteel raised the same question there. But, you see, if you take it out, I suppose they can grant to the courts the power of appointment for all kinds of different offices.

The legislature might — and it is the theory that perhaps in the line, except for these 2 — the theory was that this should not be granted to a circuit judge and that the legislature should not be given the opportunity to even grant it. Some offices might be political in nature, and they felt that the judge should not exercise the power of appointment. Consequently, we continued this philosophy through not only for the supreme court but also for the circuit courts except for this particular idea. To my knowledge this was the only thinking that we did on it.

As I explained to you in the beginning, very frankly, this last sentence was a matter that we weren't sure was judicial or belonged to local government and we did feel very strongly on the first sentence, and I emphasize that. The clerk of the county will be the clerk of the court. This we do insist on. And the remaining part we passed and felt that the reasons for filling these 2 vacancies should occur, but there should be no other particular appointment. That, in essence, is about all the light I can shed on the reasoning of the committee.

CHAIRMAN VAN DUSEN: Judge Dehnke.

MR. DEHNKE: While we are recording unusual incidents in the history of Michigan, it might not be inappropriate for me to make reference to something that will emphasize the importance of these things. The fact that the judge can make the recommendation to the governor and the governor has the power to make the appointment doesn't always insure that the appointment is made.

Many years ago in the twenty-third judicial circuit, we had a stenographer who was also a lawyer. The time came when the judge told him that he should either stop practicing law or stop being circuit court stenographer. He refused to give up either. So the judge made an order suspending him from office which, because it wasn't lifted for 30 or 60 days, under the statute became a removal. The judge didn't like the stenographer. The attorney general didn't like the judge. The governor depended upon the attorney general's advice, and for 2 years the governor decided he wouldn't make an appointment. Then the attorney general became governor and stayed governor for 6 years and refused to make an appointment of anybody recommended by the judge, so for a period of about 8 years, every time he wanted to hold court in the twenty-third judicial circuit, an arrangement had to be made with some stenographer to come in from outside to be paid on a per diem basis.

So there are occasions when these things that look so simple on their surface may become quite serious.

CHAIRMAN VAN DUSEN: Is there any further amendment to section d?

SECRETARY CHASE: Mr. Prettie offers the following amendment:

1. Amend page 2, line 13, after "purposes" by inserting a comma and "or other officer performing the duties of such office,"; so that the language will then read, "The clerk of each county organized for judicial purposes, or other officer performing the duties of such office, shall be clerk of the circuit court for such county."

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Prettie, on which the Chair will recognize Mr. Prettie.

MR. PRETTIE: Referring to the citizens research manual dealing with this section, which has been copied identically from the 1908 constitution, the comment says, "This provision has given rise to no difficulty." We have been on it now for about 25 minutes, but I do think Committee Proposal 89 poses a problem where we may have in a home rule county a combination of officers or an elimination of the particular elective office of the county clerk. I think now is the time to face it and solve it and not have a possible conflict in the document we write. I think if we add the language of the amendment proposed, the county clerk in those counties having historic structure and officers will be the clerk of the court, and in those counties which in the future may adopt home rule, the officer performing that duty will perform the duty of the clerk of the court too.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Prettie. Mr. Danhof.

MR. DANHOF: Mr. Chairman, I would like to ask Mr. Elliott's opinion on this. My own thinking is that it offers no particular objection, but it does affect his particular committee also, and maybe we should get an expression there.

CHAIRMAN VAN DUSEN: Mr. Elliott.

MR. A. G. ELLIOTT: I think it clarifies the point quite well and I would have no objection.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Prettie. Those in favor will say aye. Those opposed will say no.

The amendment is adopted. Are there further amendments to section d?

SECRETARY CHASE: None on file, Mr. Chairman.

CHAIRMAN VAN DUSEN: There being no further amendments, it will pass.

Section d, as amended, is passed. Mr. Danhof.

MR. DANHOF: I move the committee do now rise, Mr. Chairman.

CHAIRMAN VAN DUSEN: Mr. Danhof moves that the committee do now rise. Those in favor of the motion will say aye. Those opposed will say no.

The motion prevails and the committee will rise.

[Whereupon, the committee of the whole having risen, Vice President Hutchinson assumed the Chair.]

VICE PRESIDENT HUTCHINSON: The convention will be in order, and the Chair recognizes the delegate from Oakland, Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, the committee of the whole has had under consideration several matters of which the secretary will give a detailed report.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 93**, has adopted several amendments thereto, has postponed consideration of section c until tomorrow; has come to no final resolution thereon. Also the committee of the whole has in committee postponed consideration of **Committee Proposal 91**

and **Committee Proposal 92** by placing them at the foot of the general orders calendar for the committee on the judicial branch. This completes the report of the committee of the whole.

[President Nisbet resumed the Chair.]

PRESIDENT NISBET: Are there any announcements?

SECRETARY CHASE: Mrs. Butler has the following request. She has sent her new Michigan manual around to get the signatures of all the delegates so that she might present it to the Houghton county historical museum. She has lost track of it and would appreciate having it returned to her desk.

Another announcement, a request that all delegates please check their mailboxes immediately following the session today.

The committee on judicial branch will meet in room B tomorrow morning at 8:30 a.m. Robert J. Danhof, chairman.

The committee on style and drafting will meet at 8:00 o'clock this evening in room K. Mr. William B. Cudlip, chairman.

We have the following requests for leave of absence: Mr. Downs asks an indefinite leave due to coming down with influenza; Mrs. Koeze wishes to be excused from Friday's session; and Mr. Stamm requests leave to be absent from tomorrow morning's session.

PRESIDENT NISBET: Without objection, the requests are granted.

Lots of times I think we do not recognize the very capable help of our young ladies up here at the rostrum. This happens to be the birthday of our very capable Lynn Nethaway here who has the flowers in front of her. (applause)

The Chair recognizes Mr. Martin.

MR. MARTIN: Mr. President, I move we adjourn.

PRESIDENT NISBET: The question is on adjournment. Those in favor say aye. Opposed, no.

We are adjourned until tomorrow morning at 9:30.

[Whereupon, at 5:00 o'clock p.m., the convention adjourned until 9:30 o'clock a.m. Thursday, March 1, 1962.]

NINETIETH DAY

Thursday, March 1, 1962, 9:30 o'clock a.m.

PROCEEDINGS

PRESIDENT NISBET: The convention will please **come to order.**

Our **invocation** this morning will be given by one of our own delegates, Roy Howes, of Manistee county.

MR. HOWES: Let us pray. Our heavenly Father, Thou knowest that we delegates at times become discouraged here as we are apt to do in our everyday lives in this time of threat of nuclear war. Help us to realize in this convention that our capitol at Washington and all our state capitols are the symbols of freedom and justice that have grown from something which was kept alive when men had more reason to be discouraged than we have here now. Help us to see what we might have in place of these symbols of freedom if our forefathers had given up during their darkest hours.

O Lord, help us to remember that it was during the darkest hours of history that many of the seeds were planted which grew into the greatest glories of mankind in its incessant fight against man's inhumanity to man. Help us to keep these thoughts before us as we endeavor to create a new constitution under which freedom and courage will continue to grow and under which other laws can be made which will apply equality and justice to all our people. These things we ask in Thy name. Amen.

PRESIDENT NISBET: The **roll call** will be taken by the secretary. Those present please vote aye. Have you all recorded your presence? If so, the secretary will take the roll.

SECRETARY CHASE: Mr. President, a quorum of the convention is present.

Prior to today's session, the secretary received the following requests for leave:

Dr. Anspach wishes to be excused from today's session for attendance at a funeral and Mr. Hatch, indefinitely, due to illness.

PRESIDENT NISBET: Without objection, the requests are granted.

SECRETARY CHASE: Absent with leave: Mr. Anspach, Miss Hart, Messrs. Hatch, Marshall, Mosier and Stamm.

Absent without leave: Messrs. Lesinski and Nord.

PRESIDENT NISBET: Without objection, the delegates are excused.

[During the proceedings, the following delegates entered the chamber and took their seats: Messrs. Nord and Stamm.]

Reports of standing committees.

SECRETARY CHASE: The committee on style and drafting, by Mr. Cudlip, chairman, submits Report 7 of that committee, reporting back to the convention **Committee Proposal 10,** A proposal to amend article I, section 2, of the present constitution pertaining to the seat of government at Lansing; with the recommendation that the style and form be approved.

William B. Cudlip, chairman.

For Committee Proposal 10 as reported by the committee on style and drafting, see under date of April 30.

PRESIDENT NISBET: Referred to the order of second reading.

SECRETARY CHASE: The committee on style and drafting, by Mr. Cudlip, chairman, submits Report 8 of that committee, reporting back to the convention **Committee Proposal 14,** A proposal pertaining to the preamble to the constitution; with the recommendation that the style and form be approved.

William B. Cudlip, chairman.

For Committee Proposal 14 as reported by the committee style and drafting, see under date of April 30.

PRESIDENT NISBET: Referred to the order of second reading.

SECRETARY CHASE: The committee on style and drafting, by Mr. Cudlip, chairman, submits Report 9 of that committee, reporting back to the convention **Committee Proposal 18,** A proposal to provide for a great seal of the state and to authorize its use; with the recommendation that the style and form be approved.

William B. Cudlip, chairman.

For Committee Proposal 18 as reported by the committee on style and drafting, see under date of April 24.

PRESIDENT NISBET: Referred to the order of second reading.

SECRETARY CHASE: The committee on style and drafting, by Mr. Cudlip, chairman, submits Report 10 of that committee, reporting back to the convention **Committee Proposal 20,**

A proposal to provide that no law shall be enacted providing for the penalty of death;
with the recommendation that the style and form be approved.
William B. Cudlip, chairman.

For Committee Proposal 20 as reported by the committee on style and drafting, see under date of April 30.

PRESIDENT NISBET: Referred to the order of second reading.

SECRETARY CHASE: That is all of the standing committee reports.

PRESIDENT NISBET: Select committees?

SECRETARY CHASE: None.

PRESIDENT NISBET: Communications?

SECRETARY CHASE: None.

PRESIDENT NISBET: Second reading.

SECRETARY CHASE: Nothing on that calendar for today.

PRESIDENT NISBET: Motions and resolutions.

SECRETARY CHASE: No resolutions on file.

PRESIDENT NISBET: Unfinished business.

SECRETARY CHASE: None.

PRESIDENT NISBET: Special orders.

SECRETARY CHASE: None.

PRESIDENT NISBET: General orders. Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, I move that the convention resolve itself into committee of the whole for the purpose of consideration of matters on the calendar of general orders.

PRESIDENT NISBET: The question is on the motion of Mr. Van Dusen. Those in favor will say aye; opposed, no. The motion prevails. Mr. Van Dusen.

[Whereupon, Mr. Van Dusen assumed the Chair to preside as chairman of the committee of the whole.]

CHAIRMAN VAN DUSEN: The committee will be in order. When the committee last sat, we were considering Committee Proposal 93, A proposal pertaining to the circuit court; and had deferred until this morning's session consideration of section c dealing with certain jurisdiction of the circuit courts.

For last previous action by the committee of the whole on Committee Proposal 93, see above, page 1355.

Mr. Danhof.

MR. DANHOF: Mr. Chairman, members of the committee, the committee on judicial branch met this morning. There is on the secretary's desk an amendment which I will ask the secretary to read.

CHAIRMAN VAN DUSEN: Mr. Danhof, the secretary still has pending an amendment offered yesterday by Senator Hutchinson. Does Mr. Hutchinson desire to withdraw that amendment at this time?

MR. HUTCHINSON: Mr. Chairman, I withdraw that amendment, understanding that the committee amendment to be offered takes care of the problem.

CHAIRMAN VAN DUSEN: Mr. Hutchinson withdraws his amendment. The secretary will read the committee amendment.

SECRETARY CHASE: Mr. Danhof, on behalf of the committee on judicial branch, offers the following amendment to Committee Proposal 93, section c:

1. Amend page 2, line 6, after "tribunals" by striking out "as prescribed by supreme court rule" and inserting "except as otherwise provided by law"; so that the language will then read, "Circuit courts shall have original jurisdiction in all matters not prohibited by law; appellate jurisdiction from all inferior courts and tribunals except as otherwise provided by law."

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Danhof, on behalf of the committee on judicial branch, on which the Chair will recognize Mr. Danhof.

MR. DANHOF: Mr. Chairman, members of the committee, it was the opinion of the committee on judicial branch that the words which you have heard read by the secretary will be adequate in this particular regard and would remedy some of the objections that have been raised before.

The question of whether or not there should be anything inserted therein; that is, whether the words "except as otherwise provided by law" should be inserted or whether it should merely be left "appellate jurisdiction from all inferior courts and tribunals." It was the considered opinion of all those present at the committee that a certain degree of flexibility was desirable in this particular case; that if the appellate jurisdiction were frozen completely in the constitution, there would be no chance at any time to make any needed reform. As a consequence, in view of the language which we had adopted relative to the court of appeals which allows that jurisdiction to be set by law, upon a vote, the majority of the total committee adopted the language "except as otherwise provided by law." We urge the adoption of the amendment.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Danhof, on behalf of the committee on judicial branch. Those in favor of the amendment will say aye. Those opposed will say no.

The amendment is adopted. Are there further amendments to section c of Committee Proposal 93?

SECRETARY CHASE: Mr. McAllister offers the following amendment:

1. Amend page 2, line 9, after "with" by striking out "supreme" and inserting "circuit"; so the language will then read, "supervisory and general control over inferior courts and tribunals within their respective jurisdictions, in accordance with circuit court rules. . . ."

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. McAllister. Mr. McAllister, do you seek recognition on your amendment?

MR. McALLISTER: Mr. Chairman and fellow delegates, I have offered this amendment, because without this amendment it is my contention that this particular sentence, the last sentence in this section c, will have no meaning at all, because if the circuit court doesn't have control over the inferior courts with circuit court rules, they will be merely acting as an administrative agency for the supreme court and this particular sentence would be unnecessary.

The other provisions set forth that the supreme court has control over practically everything as far as the courts are concerned. One amendment to this section has corrected that phase as far as that part of section c is concerned. But I am concerned about the fact that if the circuit courts are to have superintending control over the inferior courts, the courts below them, that then they should be able to make the rules concerning those courts and not be just an administrative agency for the supreme court, and I move the adoption of this amendment.

CHAIRMAN VAN DUSEN: On the amendment offered by Mr. McAllister, the Chair recognizes Mr. Danhof.

MR. DANHOF: Members of the committee, you have passed and have granted, in effect, the supreme court, as it now has under the Constitution of 1908, the general superintending control of all courts, and it is only logical that if there is to be a well administered setup, that anything that the circuit court will do in regard to control of the inferior courts must of necessity be and will be and is now regulated by what the supreme court will do and will grant.

Now, if the supreme court, as in the Constitution of 1908, has the general superintending control over all inferior courts — that includes the circuit court and the court of appeals and the probate court and any other court whether constitutional or statutory — and the superintending control is just a step by step matter, there will undoubtedly be delegations within the constitution to delegate to the circuit courts the authority to have general control over inferior courts and tribunals. Now, if there is to be any type of chain of command, then the language as the committee has written it should stand. We here see again a dedicated effort by a few to not keep a reasonably integrated court system but to scatter to the winds, and unless

we can maintain some semblance of administration and order, there will be a complete breakdown in the administration. It has to be within the supreme court rules as a practical matter. That is the way it stands today. That is the way it has to stand because it is a step by step administration.

If the circuit court can issue the rules for the courts lower or inferior to the circuit court, then you are indirectly taking away from the supreme court any right to write rules concerning tribunals or courts lower than the circuit court. So again this is simply an effort to break it down instead of integrating it as we have and as we have endeavored to do for administration purposes, not for the right of the decision of the cases.

I would urge the defeat of the amendment.

CHAIRMAN VAN DUSEN: The gentleman from Battle Creek, Mr. Everett.

MR. EVERETT: I wish to join our committee chairman in opposing the amendment. One of the criticisms which the circuit judges have directed toward themselves is the fact that they have not directly taken enough interest in and have not regulated sufficiently the practices in what is now the justice of the peace system. Frankly, I think they over criticize themselves, because they are busy men and this is something which they rarely have time to do. The point is, as our chairman has suggested, that this matter should be under the control of the supreme court and no doubt would be delegated by them through circuit courts.

There is another advantage to centralizing the authority in the supreme court in that while certainly there would be variations of court rules carrying out this control in various areas, there shouldn't be 60 or 70 different types of rules governing the inferior courts in each circuit. They ought to be fairly common and fairly uniform. And by centralizing the system within the supreme court, even though the direct administration would no doubt lie within the circuit courts, we are able to do this.

I support the committee's position.

CHAIRMAN VAN DUSEN: Mr. McAllister.

MR. McALLISTER: I believe Mr. Everett's position and Mr. Danhof's are a little inconsistent from what they have been. The other day here we were talking about the word "exclusive". At that time it was my understanding of their thinking that it didn't mean that any of the courts would lose their independence; that the supreme court would not have complete dominance over all courts. Apparently their thinking this morning is entirely to the contrary.

Now, I have heard nothing about the circuit courts not performing their duties. Apparently, again, we want to further curb the circuit courts and relieve them of the independence that they have exercised for many years. The provision giving the circuit courts general control over inferior courts was in the Constitution of 1850, the Constitution of 1908, and I believe it means just what it says. In other words, why was this provision put in this constitution that they were not to have control of the courts under them? And why was it put in the constitution that the supreme court was to have supreme control of all courts? Now, these are inconsistent. And incidentally, in the Constitution of 1850, the one in regard to circuit courts is a later provision.

The circuit courts are closest to the inferior courts in their area. They know the problems much better, and it seems to me that the supreme court would be happy to be relieved of the duties of supervising the courts within a county or within a small area, so the circuit court is in a much better position to do so and has a much better knowledge of the situation existing than the supreme court.

I urge you to adopt this amendment.

CHAIRMAN VAN DUSEN: Mr. Ford.

MR. FORD: Mr. Chairman, I rise to oppose the amendment and support the committee. Mr. McAllister is again treading very close to the line of confusing the lawyers. I am sure that the laymen will excuse us if we are confused when a fellow lawyer with Tom's many years of trial experience gets on the floor and creates the impression that there is something new about having the supreme court make rules that apply to all circuit courts and the inferior courts.

We have lived with this for a long time. We all know where to go and find the rule. Tom is now apparently subscribing to the total autonomy of each individual circuit court so that you would have to have a set of 20 volumes to find out what the local rules are in the various circuit courts throughout the state and then each municipal court and justice court and what else you have under the circuit courts. The kind of chaos that could come from the failure to have a statewide or reasonably uniform set of rules for this kind of practice is something that would cause even the bravest here to shudder over when they contemplate it.

I urge that you vote against the amendment.

CHAIRMAN VAN DUSEN: Mr. King.

MR. KING: Mr. Chairman, fellow members of the committee, I should like also to speak in favor of the committee report and ask that all of us read the language here that we are considering, because this is not such a difficult problem, I am sure, that laymen and lawyers alike can't understand it. And I might point out that we ought to start right after the word "writs". I think perhaps there ought to be a semicolon in there, Mr. Danhof, after the word "writs" on line 7.

CHAIRMAN VAN DUSEN: Mr. Danhof made that correction yesterday, Mr. King.

MR. KING: That correction has been made? Fine. I am sorry, my records didn't reflect that correction. I apologize.

Starting with the semicolon which has been inserted, we are saying "supervisory and general control over inferior courts and tribunals within their respective jurisdictions, in accordance with supreme court rules. . . ." In other words, the circuit courts will have supervisory and general control over these inferior courts, which is what we want. Now, the real question is: shall they have this control in accordance with their own rules or in accordance with a uniform set of rules promulgated by the highest court of this state? I think clearly that what we want is uniformity here. We want these rules enforced at the circuit court level, but we want the rules promulgated by the state supreme court. So I heartily support and endorse the committee recommendation in this area.

As I pointed out once before, section by section, proposal by proposal and paragraph by paragraph we are going to fight this battle right down to the very end to find out whether we are going to have an integrated court system in Michigan, and I certainly don't object to anyone waging this campaign at every step of the way, but I think we ought to all realize just what we are faced with and be on guard against it.

CHAIRMAN VAN DUSEN: Judge Gadola.

MR. GADOLA: Mr. Chairman, members of the committee, I have had some experience along this line. Several years ago, because of abuses that arose in the justice courts of Genesee county, Judge Bishop and myself went into conference with the supreme court relative to adopting some rule so we could correct those abuses. In our conference with them we asked if they would promulgate a rule to direct the circuit courts how to proceed in handling the injustices or improprieties of the justice courts because there was no procedure established at all to correct the abuses.

Justice Edwards was very insistent that it was unnecessary for the supreme court to promulgate any rule whatsoever; that the circuit courts had jurisdiction over all inferior courts and we could proceed. I said to him and to the court, "We desire, however, something to go by so that we will understand what the procedure is to be; some rules laid out as we have in all of our procedures in court, something to follow." And so we asked the supreme court to promulgate a rule for us to follow, remembering that the supreme court rules are supreme, and any circuit rules adopted are inferior to the supreme court rules and the supreme court rules can set them aside. You cannot make a circuit court rule inconsistent with the supreme court rule on the local level. But he insisted that we had the right to proceed. There was nothing established as to how to proceed — perhaps we should have proceeded, as have been the proceedings recently in the supreme court relative to some probate judges, with nothing established as to how the procedure should be followed, and a new line of procedure is being fol-

lowed completely that no one ever heard of before — so in that belief we just dropped the question. Perhaps we shouldn't have. Perhaps we should have done something to correct those errors that were there. They were there, but we believed until the supreme court gave us some authority, something that could be read, something that could be followed, that it wasn't up to us to merely go into unplowed territory and attempt to correct the errors.

Therefore, I say that the supreme court should make the rules. Of course, there is some change being made at the present time because under the court administrator they are now establishing another branch to deal with the inferior courts under the circuit courts and perhaps they will have the assistance of the administrator in that line. But I do believe that the supreme court should adopt the rules, and I therefore urge you to adopt the committee report.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. McAllister, which the secretary will read.

SECRETARY CHASE: Mr. McAllister's amendment:

[The amendment was again read by the secretary. For text, see above, page 1374.]

CHAIRMAN VAN DUSEN: Those in favor of the amendment offered by Mr. McAllister will say aye. Those opposed will say no.

The amendment is not adopted. Are there further amendments to section c?

SECRETARY CHASE: That is all we have on the desk, Mr. Chairman.

CHAIRMAN VAN DUSEN: Section c, as amended, is passed. Are there any amendments to the body of Committee Proposal 93? Mr. Hutchinson.

MR. HUTCHINSON: Mr. Chairman, I would like to ask the chairman of the committee, Mr. Danhof, one question in order that at least I might understand what is intended by this last grant of power. I refer to lines 10 and 11, which read, "and the jurisdiction of other cases and matters as the supreme court shall by rule prescribe." Now, we have above here given circuit courts original jurisdiction. We have given them appellate jurisdiction. We have given them power to issue and determine prerogative and remedial writs. We have given them supervisory and general control over inferior courts. Can the chairman give me at least an illustration of a case of jurisdiction of some other kind of a case which is contemplated in lines 10 and 11?

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: Mr. Hutchinson, to start out, it was the opinion of the committee that perhaps this was a safeguard or a catchall in trying to be safe, as attorneys like to be. In addition, as we had in section 10 of the 1908 constitution where you had the grants of practically all the delegations that you have mentioned, the identical thing, we concluded with the practically identical language wherein it states "and in all such other cases and matters as the supreme court shall by rule prescribe."

To offhand fish out an illustration might be a little difficult, but it is possible that perhaps the admission of new attorneys to the bar, as has been suggested, might be a matter that has been delegated to the circuit court by supreme court rule. Basically it was just a safeguard and something that we took from section 10 in order to just make safeguards. Should the legislature fail to act in any particular matter, the supreme court could refer the particular matter to the circuit court. It was basically a catchall and a safeguard rather than any particular idea that we had in mind.

CHAIRMAN VAN DUSEN: If there are no further amendments to section c, it will pass.

Section c, as amended, is passed. Are there amendments to the body of Committee Proposal 93?

SECRETARY CHASE: Mr. Brake offers the following amendment to section d:

1. Amend page 2, line 15, after "county clerk" by striking out "or" and inserting a comma; and in line 16, after "prosecuting attorney" by inserting a comma and "court reporter or friend of the court"; so the language will then read:

> The judges of the circuit courts may fill any vacancy in the office of county clerk, prosecuting attorney, court reporter or friend of the court within their respective jurisdictions, but shall not exercise any other power of appointment to public office.

CHAIRMAN VAN DUSEN: The question is on the amendment to section d offered by Mr. Brake, on which the Chair will recognize the gentleman from Stanton, Mr. Brake.

MR. BRAKE: Mr. Chairman, ladies and gentlemen of the committee, as was pointed out yesterday, because of the provision in our present constitution which says that the circuit judge may appoint nobody except the clerk and the prosecuting attorney, we have had the circuitous method of getting a court reporter and a friend of the court by providing in the statute that the governor shall appoint the court reporter upon nomination of the circuit judge and the same thing with the friend of the court. Now, the governor is not at liberty to make an appointment except as the circuit judge has made the nomination so that in effect if everybody does what he is supposed to do, the circuit judge is actually making the appointment of the reporter and the friend of the court, but he has to go through the governor's office to do it. And, as Judge Dehnke pointed out, when somebody gets off the beam a little bit, you may have trouble.

We think that this simplifies the procedure and takes the circuitous method out, lets the judge directly appoint his court reporter and his friend of the court. The relationship between the judge and both of those officials is such that he ought to make the appointment.

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: Mr. Chairman, members of the committee, Mr. Brake approached me with this particular matter last night and asked if we would discuss it in the committee. I can state that we did discuss it before the committee this morning to the limited extent of the time we had, but there was not support for this particular amendment for various reasons. We have on our committee 3 ex circuit judges, 2 of whom are present, Judge Mosier being ill. And it was likewise the view in regard to a court reporter that perhaps the independence of the court reporter to some extent is desirable. I think this particular point of view was expressed by Judge Leibrand, and I would hope that he might enlarge on it a little further. A view was further expressed in regard to the friend of the court that in some circuits, of course, this amounts to 1 or maybe 2 individuals at the most. However, in the more metropolitan areas — I have been advised that the friend of the court's office in Wayne county exceeds some 150 employees at the present time — that it is possible that this could become a political patronage operation of the courts, and that consequently it would best be left to other means of control.

I agree with Mr. Brake that these people do have an intimate working relationship with the judge, and perhaps there is some basis for it. I would not particularly care for freezing in the language "friend of the court." As time goes on, they may have name changes, and they are frozen in. But to put this burden on the circuit judge, at least there it was the opinion of the committee that this should not be done at this time in a constitutional provision, and consequently the matter was discussed before the committee but there were insufficient votes to bring the matter to the floor as a committee amendment. Consequently, because of the view of the committee, I would urge the rejection of the amendment.

CHAIRMAN VAN DUSEN: On the amendment offered by Mr. Brake, the Chair recognizes Judge Pugsley.

MR. PUGSLEY: I would like to ask Senator Brake whether he would insist upon the friend of the court being included, or whether he would be satisfied to delete the friend of the court and confine his amendment to the court reporter. It would make some difference in the position that I take myself in this matter.

CHAIRMAN VAN DUSEN: Mr. Brake.

MR. BRAKE: Let's compromise this way, Judge, and vote on the 2 separately.

MR. PUGSLEY: Very well, I will go along with you on that. I am in sympathy with your position so far as the court reporter is concerned. It has been my experience to have to select and employ court reporters from time to time, and their relationship is so intimate and so closely associated with the circuit court that I don't believe the governor is jealous of the opportunity of making that appointment, and it usually is a matter that is left with the court and I think we might as well recognize that. The court, I think, should have the right to select its own reporter.

CHAIRMAN VAN DUSEN: Mr. Brake requests a division of the question into the several matters of court reporter and friend of the court. It will be so presented. Mr. Norris.

MR. NORRIS: Mr. Chairman, I wonder if I might, through the Chair, direct a question to Mr. Brake.

CHAIRMAN VAN DUSEN: If the gentleman cares to answer.

MR. NORRIS: I wonder if there is any relationship, sir, between the filling of a vacancy in the office that you describe and those counties that have civil service. Is this matter of assignment or filling of vacancies provided for in these counties that have the civil service, and would this in any way impede, alter or change that?

CHAIRMAN VAN DUSEN: Mr. Brake.

MR. BRAKE: I think you will have to tell me, Mr. Norris. Wayne county, as far as I know, is the only county that has civil service. How do you handle that down there? I would assume that your head man, your friend of the court who is actually the head of the department, is appointed in the same way as he is everywhere else.

CHAIRMAN VAN DUSEN: Mr. Norris, do you desire to yield to Mr. Buback for a response?

MR. NORRIS: Yes, sir.

CHAIRMAN VAN DUSEN: Mr. Buback.

MR. BUBACK: Mr. Chairman and fellow delegates, in Wayne county the circuit judges do appoint their own stenographers and they are not under civil service. I mean they appoint them through the governor. They make the recommendation to the governor.

I think that Senator Brake is right. I think that the judges should also have the right to appoint the friend of the court, because actually they make their recommendation to the govenor and the governor acquiesces to the judge's request on the friend of the court and the stenographer. They are not under civil service. They are considered state employees.

CHAIRMAN VAN DUSEN: Mr. Higgs.

MR. HIGGS: Mr. Chairman, members of the committee, we discussed the matter of the appointment of the court reporter in the committee and came to the conclusion that this should be left unchanged. Now, the court reporter is not strictly an employee of the circuit judge. This gentleman in the performance of his duty should have, I think, a degree of independence from the circuit judge. This is the person to whom the attorneys and the litigants look and he actually should be a representative of the state and free and independent of any control. I would like to ask Delegate Brake if he has considered that aspect of it, and in particular, if the judge has the power to fill the vacancy, could he fire the court reporter?

CHAIRMAN VAN DUSEN: Mr. Brake.

MR. BRAKE: I am not talking about any specific instance that I know about, Mr. Higgs, but I would think that you would have a very serious situation in your court if sometime you were to have a judge and a court reporter who do not get along together. I think the judge's control of that should be sufficient so that that situation should never arise.

MR. HIGGS: Well, Mr. Chairman and members of the committee, I must disagree with Delegate Brake. I can certainly appreciate that there are reasons why they should get along, but there may be reasons why they don't get along. In any event, what we are extremely interested in as attorneys practicing in any court is the independence of the court reporter, and we discussed this in committee at length — well, I wouldn't say at length, but we discussed it for some period of time, and I would urge that you defeat this amendment.

CHAIRMAN VAN DUSEN: Judge Dehnke.

MR. DEHNKE: Mr. Chairman and members of the committee, I failed to mention yesterday the kind of a situation that can arise. Under the statutes that we now have, the circuit judge has the power to suspend the reporter, and if that suspension is not lifted within either 30 or 60 days — I have forgotten the exact period — it automatically becomes a vacancy.

Now, there may be situations when a question could arise as to the accuracy of the transcript, but those can be disposed of in hearings before the judge or the supreme court. But in this particular case of which I spoke, the reporter, as I indicated, was an attorney. He made a practice of advising people who had legal questions. Sometimes those cases got into the courts in the form of lawsuits. Then there was a question as to whether the reporter, having acted as adviser to the litigants, although he was not appearing for them as attorney in court, was in a defensible position in acting as a reporter and writing up the transcript. For that reason the court suspended him from office and there was some litigation conducted and some litigation threatened and that was used as the excuse for the attorney general's advice to the governor and the later action of the same individual, as governor, in refusing to appoint a successor. Here was a situation where the statute specifically said that the governor shall appoint the reporter recommended by the circuit judge. When the question arose as to what might be done about it, it was discovered that, under Michigan rules at least, the supreme court could not mandamus the governor, so we had that situation for approximately 8 years. Every time the judge wanted to hold court, he had to get on the telephone, call Alpena or Bay City or Saginaw or Detroit and import somebody for whatever work was at hand at per diem and expenses.

I don't feel so strongly about the friend of the court, but I do think that the door ought not to be left open to anything in the field of the court reporter of the kind I have related.

CHAIRMAN VAN DUSEN: The Chair will advise the committee that there are 9 speakers seeking recognition on the Brake amendment. Mr. Mahinske.

MR. MAHINSKE: I will pass.

CHAIRMAN VAN DUSEN: Mr. Mahinske passes. Judge Leibrand.

MR. LEIBRAND: Mr. Chairman and delegates, it might be of interest to nonlawyers to see how this situation we are in arose. The present law, I believe, provides for the appointment of court reporters by the governor on the recommendation of the circuit judge or judges involved. The background of that was an attempt to make the reporter as completely independent as possible from the judge, and the background of that is that many times even the best of judges in the heat of trial say things that in the calm of the next day they regret, and the thought was that the judge might be tempted to try to convince the reporter that the reporter's transcript was wrong while the judge's notes were right. Now, in a general way, I feel that it is rather important to keep the reporter independent of the judge for this very purpose.

On the other hand, my neighboring delegate here to the right who has also had considerable court experience suggests to me that if a gubernatorial appointment is required in each case, it would be difficult or impossible for a court to hire a reporting firm where, as happens in the convention, different reporters might be sent or used every day. Generally speaking, I would be opposed to the Brake amendment so far as the court reporter is concerned. I feel that he should be kept as independent as possible. But I would be highly in favor of the amendment so far as it relates to the appointment of the friend of the court who really, in these days of many, many divorces, is the right arm of the judge.

CHAIRMAN VAN DUSEN: Mr. Hoxie.

MR. HOXIE: I will pass.

CHAIRMAN VAN DUSEN: Mr. Hoxie passes. Miss Donnelly.

MISS DONNELLY: I would just like to say that, as a member of the committee, I felt very strongly that the judge should not be able to control the reporter, and he should be kept independent. However, I have checked around with various people, and I gather that in truth they aren't and this is sort of a game we are playing. Therefore, I now support Mr. Brake's amendment because, frankly, I conferred with someone from Wayne county who I thought knew most about it, and they said they do what the judges say anyway, so why are we doing this? I am now against the committee report, because the reasons I believed were true I found were not true. Therefore, I no longer support it.

CHAIRMAN VAN DUSEN: Mr. Ford.

MR. FORD: I am surprised that a great fighter for the right like Annie gives up now because the situation seems so hopelessly messed up.

I would like to agree with everything that Judge Leibrand has said, and I think he is very courageous as an ex circuit judge and a member of a very exclusive club to suggest — although he did it much more kindly than some of us might have — that everything that the judge says on the bench doesn't get into the record. Everybody knows that over a period of time court reporters who stay with a particular judge for a long time learn almost instinctively what the judge means to have in the record for everybody to see and what he means not to be in the record for everybody to see. The advantage he has is that the court reporter can't similarly read the minds of the witnesses and the lawyers, so if we make a mistake, it gets into the record and stays there to plague us.

I have had the experience of seeing a circuit judge berating the supreme court throughout a trial which ultimately ended up in front of the supreme court without a single word in the transcript about why he was making rulings as he was making them, and he said all the way through that he was making them just to see what those damn fools in Lansing would do about it. (laughter) Now, this gets to be rather serious, and if what we would be doing by adopting Mr. Brake's amendment would be by constitution acknowledging the fact that we could never come up with a system that would in fact make court reporters independent of the dominance of the judges whom they are serving, then I would be opposed to it.

I think Judge Leibrand is correct, however, with respect to the friend of the court. I can find no reason to oppose the idea of the circuit judge being the proper person to make that appointment. I would support Mr. Brake's amendment with respect to the friend of the court and urge that you defeat the other amendment. If the legislature wants to come up with a system different than we have now, fine, let them do it. But let's don't do it in the constitution.

CHAIRMAN VAN DUSEN: Mr. Bledsoe.

MR. BLEDSOE: Mr. Chairman and members of the committee, I feel like saying this morning, "Thank God for Judge Leibrand's statement." Let us not forget that in all of these matters the litigants are involved. The people whose interests are being involved are to be protected by this record, and sometimes a judge gets hot and gets angry with the lawyers and things get pretty warm and courts get pretty tense, but it is not going to be the lawyer who suffers if, when that record goes to the supreme court, everything is not in there that was said by everybody; it is the litigant. It is the little people who appear there with their causes who suffer when those records are not properly before the court with everything that has transpired.

I therefore urgently request: let's maintain this independence of the court reporter as much as possible. Those of us who have had a lot of trial experience know how important that is.

CHAIRMAN VAN DUSEN: Mr. McAllister.

MR. McALLISTER: Mr. Chairman, fellow delegates, I have a high regard for circuit judges and I think they are a very splendid group. However, I have had experiences similar to those of Mr. Ford, and 2 circuit judges that I was acquainted with, who have now departed this world, in my opinion and from pretty good knowledge, sometimes did edit the notes. I had one experience too not too long ago in a matter which was on its way to the supreme court, and in this instance the circuit judge really blasted the supreme court for quite a lengthy period. So after the matter had been concluded in the circuit court, I talked to the court officer. I said, "Do you suppose that will all be in the record?" He said, "Yes, sir. That court reporter will put everything in the record and every period regardless of what any judge said."

Now, there is an intimacy between a court reporter and a judge, and I don't think that in many instances there would be any editing or anything deleted from the record, but there is always the possibility where some careless or nasty remark is in the record, and I think for the protection of the public that a court reporter should be appointed and be an independent individual. It really is a pleasure for once to agree with the learned counselor from Taylor township, Mr. Ford. (laughter)

I might say that insofar as the friend of the court is concerned. I agree with Mr. Ford again, because the friend of the court is actually an adviser to the judge and more or less an agent of his to furnish him information that would require a great length of time if the court had to do it himself, so I am in favor of the friend of the court being appointed by the circuit judge.

CHAIRMAN VAN DUSEN: Mr. Hodges.

MR. HODGES: I pass.

CHAIRMAN VAN DUSEN: Mr. Hodges passes. Judge Dehnke.

MR. DEHNKE: Mr. Chairman and fellow delegates, when I asked for recognition this last time, it was merely a desire to clarify the record that the case to which I had referred arose under a predecessor of mine and not during my occupancy of the office for 32 years. During those 32 years I had no difficulties with any of the court reporters who served under me, not only those in my own circuit but in more than half of the counties of the state where I was called to try cases on assignment. But now the discussion has taken a turn that makes it necessary to say something more. I don't know of a single case that I ever tried which went to the supreme court where the record did not contain every word that was spoken during the trial which the attorneys on either side wanted in it. Again we have to take a little pains to explain to the laymen that when a case goes to the supreme court, it doesn't always mean, in fact it means in very few cases, that every word that was said during the proceedings in circuit court is in the record. The record is settled and contains those things and those things only which the lawyers on one side or the other think are important to the point on appeal.

Now, what has been said here suggests 2 things that are discreditable both to the profession of circuit judges and of court reporters. I won't have any difficulty in agreeing that any judge who is able to insist on a court reporter changing the record or leaving something out is not fit for the responsibilities of his office, and by the same token any court reporter who is willing to yield to that kind of pressure who wouldn't prefer to resign rather than to yield to it is unfit for his responsibilities.

I don't want the impression to go out, as might be gained from some of the things that have been said, that those are things that commonly occur or even rarely occur. Court reporters are responsible individuals. They have their code of ethics as lawyers have. And I think it is necessary for those of us who know the facts to guard, as far as we can, against any mistaken impression of that kind going out.

CHAIRMAN VAN DUSEN: Mr. Faxon.

MR. FAXON: I would just like to ask Delegate Brake if he doesn't believe that the addition of these 2 positions into the constitution would be giving constitutional status to 2 officials who presently don't enjoy any constitutional status or protection. What would the effect be in your opinion?

CHAIRMAN VAN DUSEN: Mr. Brake.

MR. BRAKE: Of course they would be mentioned in the constitution and they are not mentioned now. But we will always have a court reporter as long as we have a court. It is absolutely necessary. And I can't see, with the divorce rate as it is and other investigations as they are, how we are ever going to get along without a friend of the court.

MR. FAXON: Is it your feeling that this could not be dealt with by legislative action?

MR. BRAKE: That is the way it has been done and that is the reason you have to go clear around and get the governor to make the appointment that the circuit judge is actually making.

MR. FAXON: But if the legislature were to change the act and provide for more direct relationship —

MR. BRAKE: The legislature can't change the act. When you say in the constitution that the circuit judge can appoint the clerk and the prosecuting attorney and can't make any other appointment, the legislature can't undo that.

MR. FAXON: Do you think it might be better in order to give it flexibility to provide by law for any additional —

MR. BRAKE: No, because I don't think it ought to be opened up too wide. The legislature might give the circuit judge the power to appoint officers that he ought not to be appointing. I think it should be kept limited, but not so limited as to require the governor to appoint these 2 people who work so closely with the judge.

MR. FAXON: Thank you.

CHAIRMAN VAN DUSEN: Mr. Higgs.

MR. HIGGS: Mr. Chairman and members of the committee, I am sure the delegates will agree, the circuit judges — in particular I am speaking of Delegate Dehnke's remarks with regard to the record; I'm sure that he will agree — that before you can settle upon a record, you have to have the whole and complete record before the attorneys can settle the record, and if part of the proceedings, remarks or statements made in court which may have been made in front of a jury are not in the record, you can't settle upon it. I will move that we divide this question.

CHAIRMAN VAN DUSEN: It has already been divided, Mr. Higgs.

MR. HIGGS: All right, thank you. And I would urge that you support the friend of the court being included and striking the court reporter.

CHAIRMAN VAN DUSEN: Mr. Brake.

MR. BRAKE: Have you any other names on this?

CHAIRMAN VAN DUSEN: The Chair has 2 more speakers seeking recognition, Mr. Brake — now has 4 more speakers seeking recognition. They multiply like amoebae. (laughter) Mr. Everett.

MR. EVERETT: Mr. Chairman, I am certain enough has been said about the court reporter. You either believe he ought to be given a degree of independence or not and you can make up your mind on that issue.

I am a little disturbed, however, by the feeling that the friend of the court should be written in. I agree with Mr. Brake that somebody performing these duties will certainly be necessary, but we don't even know in the future whether divorce cases will always be heard in the circuit court. They may very well be transferred at some date to some other tribunal. There has been a great deal of suggestion, for example, that at some time in the future some sort of a family court be established. We have provided this kind of flexibility in other parts of this constitution. Now, if that were to occur — and I don't know whether it ever will or not — we would have the unusual situation of then having a man who worked very closely with another court being appointed by the circuit judge. To me, it is true, the route is circuitous, but we have been given one example in 50 some years where it didn't work, and I think that is very slim evidence upon which to base a judgment that we write in an officer in the constitution and freeze the situation for a period of time which none of us can fully foresee.

CHAIRMAN VAN DUSEN: Mr. Lawrence.

MR. LAWRENCE: Mr. Chairman, may I ask how the question has been divided? Has it been divided so that it is between prosecuting attorney, and between friend of the court and between —

CHAIRMAN VAN DUSEN: The amendment, Mr. Lawrence, offered by Mr. Brake would give the circuit judge the power of appointment over the court reporter and the friend of the court. The question has been divided so that you will vote separately on the power of appointment of the court reporter and separately on the power of appointment of the friend of the court.

MR. LAWRENCE: Thank you. I would like to speak for a moment in opposition to the amendment, to both parts of the amendment. Taking first the court reporter, not only should the court reporter be independent and able to not be dictated to by the judge, but he should be in a position where his retention is not in any way affected by the judge. I can only tell you this: it is my understanding that one of the courts in our state insists that in any transcript being prepared by the court reporter, any rulings, any opinions, any orders or directions made by the court have to be submitted to it before they are submitted to the counsel who order transcript. Now, that isn't right. There should be no ability on the part of the court to in any way change any portion of that transcript, and the court reporter should be absolutely independent of the judge in every way so that the transcript that is rendered cannot in any way be influenced by the court.

I agree with Mr. Everett on the friend of the court. Certainly the friend of the court is an arm of the court and should be treated as such. But in view of the fact that there may be a change in the court's jurisdiction in, say, divorce matters or matters involving children that are handled by the friend of the court as an aide to the court, certainly that can be taken care of in the legislature and the friend of the court can be under the direction of the circuit court. Then if there is a change into a family court or something else of that nature, the friend of the court will not be frozen in the constitution.

I don't think that either of these matters are constitutional matters, and I urge you to vote against the amendment.

CHAIRMAN VAN DUSEN: Judge Pugsley.

MR. PUGSLEY: When I made the inquiry of Senator Brake which I did, I did it with the idea of raising the question of whether or not the office of circuit court commissioner should be frozen into the constitution. Fortunately I have not had the unfortunate experience that some of the other judges have had with court reporters. I have had no complaints from the attorneys and I have had no complaints myself. I have been very fortunate in that respect.

I have no strenuous opposition to the committee report, although it did seem to me to be rather a useless fiction to require that a recommendation be made by the court and then the governor make the appointment. I don't think it is going to change the relationship one way or the other. I think we are putting more stress on the importance of this than it really deserves.

CHAIRMAN VAN DUSEN: Mr. Madar.

MR. MADAR: Mr. Chairman, speaking as a layman, I would certainly oppose the amendment. I could see where, when the court reporter is not independent of the judge who had appointed him, he might be doing some editing which might have quite a lot of bearing on whether or not appeals would be given by the supreme court. I certainly wouldn't even go along with the idea that was suggested a short while ago by one of the delegates that the governor listen to the judges. In fact, I think that a governor who appointed a court reporter on the advice of the judge should be very severely criticized because, after all, isn't this man supposed to be independent of the judge? Isn't he supposed to do independent court reporting? I think we should know everything that goes on there just as we do right here. There is going to be no editing of what I say. They are going to put it all in there, or they should. And certainly the people in my area are going to know what I say. And I certainly want to know what the judges have to say, or the witnesses or anyone else.

Now, so far as the friend of the court is concerned, I think that Delegate Everett and Delegate Lawrence are right. You can't tell when we may shift the hearing of these divorce cases to another court, so why not continue it the way we have had it?

CHAIRMAN VAN DUSEN: Mr. Norris.

MR. NORRIS: Mr. Chairman, I don't wish to address my-

self to the merits of the various contentions, but I would like to introduce a note of caution among the delegates, both lawyers and nonlawyers. We are dealing with the courts, and we are dealing with the courts in the public eye, and it seems to me that we ought to approach this question with due care and caution. We call a judge "His Honor" to remind us of our own honor, and I don't think we ought to introduce in an inartful formulation some of the points that have been made in the discussion both with regard to the circuit judges and the supreme court judges.

The rights of the people are directly related here to the integrity of the bench, and I think that when we discuss this, while the courts are not immune to first amendment criticism — speech and press — certainly in a sovereign body as this we have to make a searching inquiry with regard to the function of the courts and all the accoutrements of the courts. I seem to detect in the trend of the discussion on this judicial article a certain amount of disrespect which I think is unwarranted. I think it is possible to criticize in such a way that we elevate the thing we criticize and not deprecate it, and I think that ought to be borne in mind by all the delegates.

CHAIRMAN VAN DUSEN: Mr. Brake.

MR. BRAKE: Mr. Chairman, ladies and gentlemen, had I known in advance what some of these statements would have been, I certainly would not have offered this amendment, because the statements that have been made have done more damage than the amendment can do good if it carries. The only argument that has been urged against the appointment by the judge of the circuit court reporter is that through the influence of the judge the reporter will not correctly report the case. I can't dispute the experience that other attorneys say they have had in this field. I am shocked by what they say. When one gets to where he can't argue about a thing, a Methodist trained person simply testifies, and I testify. This means that the judge and the reporter are intellectually dishonest. I have never known such a judge and I have never known such a reporter. I think the amendment should be adopted.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Brake. The question has been divided. The first portion of the question is that dealing with the court reporter. The secretary will read that portion of the amendment.

SECRETARY CHASE: Mr. Brake's amendment as divided would provide for the appointment by the judge of the court reporter, so the amendment would be as follows:

1. Amend page 2, line 15, after "county clerk" by striking out "or" and inserting a comma; and in line 16, after "prosecuting attorney" by inserting "or court reporter"; so the language would read, "The judges of the circuit courts may fill any vacancy in the office of county clerk, prosecuting attorney or court reporter. . . ."

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: I can only state, Mr. Chairman, that I would echo the remarks made by Delegate Norris. I think they are most apropos. And also those of Mr. Brake. I think the discussion has developed that it best be left the way it is, that while the system may have certain disadvantages, it is better than to write them into the constitution. I would urge the defeat of the amendment.

CHAIRMAN VAN DUSEN: The question is on the portion of the amendment offered by Mr. Brake which the secretary has just read. Those in favor of the amendment will say aye. Those opposed will say no.

The Chair would rule that the amendment does not prevail.

MR. BRAKE: Division.

CHAIRMAN VAN DUSEN: A division has been called for. Is the request supported? It is supported. Those in favor of the amendment will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the adoption of the amendment relative to the appointment of a court reporter by the circuit judge, the yeas are 55; the nays are 60.

CHAIRMAN VAN DUSEN: The amendment is not adopted.

The second portion of the amendment offered by Mr. Brake deals with the appointment of the friend of the court by the circuit judge, and the secretary will read that portion of the amendment.

SECRETARY CHASE: Mr. Brake's amendment now is:

1. Amend page 2, line 15, after "county clerk" by striking out "or" and inserting a comma; and in line 16, after "prosecuting attorney" by inserting "or friend of the court"; so that the language will then read:

> The judges of the circuit courts may fill any vacancy in the office of county clerk, prosecuting attorney or friend of the court within their respective jurisdictions, but shall not exercise any other power of appointment to public office.

CHAIRMAN VAN DUSEN: On the amendment offered by Mr. Brake, Mr. Brake requests a division. Is the demand supported? It is supported. Those in favor of the amendment as so read by the secretary will vote aye; those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the adoption of the amendment relative to the appointment of the friend of the court, the yeas are 64; the nays are 52.

CHAIRMAN VAN DUSEN: The amendment is adopted. Are there any further amendments to the body of Committee Proposal 93? If not, it will pass.

Committee Proposal 93, as amended, is passed, and the secretary will read Committee Proposal 94.

SECRETARY CHASE: From the committee on judicial branch, by Mr. Danhof, chairman, **Committee Proposal 94**, A proposal pertaining to the probate court. A substitute for sections 13 and 14 of article VII.

Following is Committee Proposal 94 as read by the secretary, and the reasons submitted in support thereof:

The committee recommends that the following be included in the constitution:

Sec. a. IN EACH COUNTY ORGANIZED FOR JUDICIAL PURPOSES, THERE SHALL BE A PROBATE COURT. THE LEGISLATURE MAY COMBINE 1 OR MORE COUNTIES INTO PROBATE DISTRICTS, OR COMBINE THE OFFICE OF PROBATE JUDGE WITH ANY JUDICIAL OFFICE INFERIOR THERETO IN ANY COUNTY WITH LESS THAN 25,000 POPULATION WITH SUPPLEMENTAL SALARY AS PROVIDED BY LAW, AND SHALL DO SO ON RECOMMENDATION AND REPORT OF THE SUPREME COURT. THE JURISDICTION, POWERS AND DUTIES OF SUCH COURTS AND OF THE JUDGES THEREOF SHALL BE PRESCRIBED BY LAW. THEY SHALL ALSO HAVE ORIGINAL JURISDICTION IN ALL CASES OF JUVENILE DELINQUENTS AND DEPENDENTS, EXCEPT AS OTHERWISE PROVIDED BY LAW.

Sec. b. JUDGES OF PROBATE SHALL BE NOMINATED AND ELECTED AT NONPARTISAN ELECTIONS IN THE COUNTIES OR THE PROBATE DISTRICT IN WHICH THEY RESIDE AND SHALL HOLD OFFICE FOR A PERIOD OF 6 YEARS AND UNTIL THEIR SUCCESSORS ARE ELECTED AND QUALIFIED. IN MULTIJUDGE COUNTIES OR DISTRICTS THE LEGISLATURE SHALL PROVIDE BY LAW FOR STAGGERED TERMS.

Mr. Danhof, chairman of the committee on judicial branch, submits the following reasons in support of Committee Proposal 94:

During the first 3 months of our committee work we had the testimony and advice of all the members of the supreme court, of circuit and probate judges, state bar officers and lawyers and officers of local bar associations and members of the general public. The plan of operation of our circuit and probate courts we found met the approval generally of all persons and groups who appeared before us.

Explanation—Matter within [ ] is stricken, matter in capitals is new.

Sec. a. We found in many counties of the state that the work load of a probate judge was small and required but a portion of his time. We also learned that the cost to the taxpayer in those counties was by reason of small taxing areas much larger in proportion than in the counties of larger population and taxing power. We have therefore authorized the legislature, and required the legislature on recommendation of the supreme court, either to unite counties into probate districts, somewhat comparable to our circuit courts, or combine the office of probate judge with any judicial office inferior thereto in any county with less than 25,000 population. We believe either alternative will tend toward a better administration of the work of such courts and at the same time reduce the expense of operation.

Sec. b. It will be observed that the committee left with the probate courts, original jurisdiction in all cases of delinquent and dependent juveniles. But the committee felt that the legislature should have power to change this jurisdiction, should it sometime in the future create some division of a county court that might take over all juvenile work, such as a family or domestic relations court.

Following is the minority report to Committee Proposal 94 as offered and the reasons submitted in support thereof:

Messrs. Ford, Garvin, Bledsoe, Ostrow, Krolikowski and Barthwell, a minority of the committee on judicial branch, submit the following minority report to Committee Proposal 94:

A minority of the committee recommends that the following be included in the constitution:

Amend page 1, line 14, by striking "EXCEPT AS OTHERWISE PROVIDED BY LAW".

Messrs. Ford, Garvin, Bledsoe, Ostrow, Krolikowski and Barthwell, a minority of the committee on judicial branch, submit the following reasons in support of the foregoing minority report, which accompanied Committee Proposal 94:

The proponents of this minority report believe that the phrase recommended to be deleted from this section threatens the present constitutional status of the probate court's jurisdiction over juvenile delinquents and dependent persons.

We believe that the juvenile function should be retained in a court separate and apart from a general trial court, such as the circuit court as well as other courts exercising criminal jurisdiction.

In its report to the people of the 1907 convention the committee on submission and address to the people indicated that the phrase "and they shall also have original jurisdiction in all cases of juvenile delinquents and dependents" was added to the 1908 constitution to make the powers conferred by law on probate courts in juvenile cases constitutional powers.

The proponents of this minority report have been impressed by juvenile and probate judges who have appeared before the committee on judicial branch and recommended retention of this constitutional power in the probate courts.

CHAIRMAN VAN DUSEN: On section a of Committee Proposal 94, the Chair recognizes the chairman of the committee on judicial branch, Mr. Danhof.

MR. DANHOF: Mr. Chairman, members of the committee, we now move to the probate courts, having finished with the circuit court. And for an explanation of the committee report in regard to section a, I should like to call on the delegate from Bay City, Mr. Higgs.

CHAIRMAN VAN DUSEN: Mr. Higgs.

MR. HIGGS: Mr. Chairman and members of the committee, in dealing with the probate courts, I would like to call your attention to the fact that in Michigan we have provided in our constitutions of 1835 and 1850 and 1908 for a probate court. However, this is not necessary and not the practice in most of the states of the United States. Actually, only Alabama, Arkansas, Delaware, Georgia, Idaho, Kansas, Maryland, Minnesota, New Mexico, Ohio, Pennsylvania and Wisconsin also contain a general provision providing for a probate court in their constitution. That is 13 other states. There are 6 other states which vest the power of the probate court as we know it in Michigan in their general trial court similar to the circuit court as we have in Michigan.

With that general background, as far as providing for the probate court is concerned, the committee after deliberation and discussion as to the advisability of retaining this court decided upon keeping the same provision with the changes that we have recommended. Now, these changes include a provision making it possible for the combination of one or more counties into probate districts as one alternative; and as a second alternative, the possibility of combining the office of probate judge with any judicial office inferior thereto in any county with less than 25,000 population, with supplemental salary as provided by law, and this shall be done upon recommendation and support of the supreme court.

With regard to the possibility of combining probate courts of the counties into probate districts, I would like to call attention to the fact that in the recent poll of the lawyers of the bar, this question of the advisability of doing this was submitted, and the questionnaires returned indicated the following vote: 2,986 yes and 615 no. Now, the reason for combining the probate courts into districts is simply a matter of economics, a matter that in the very small counties there appears to be not sufficient business in the probate area to occupy the services of a judge full time. We have in Michigan 5 counties that are under the population of 5,000. We have 13 counties that are between 5,000 and 10,000 in population. All in all we have in Michigan 39 counties that have less than 25,000 population. One of the most important aspects of the business of the probate court is the handling of juveniles, both dependent and neglected juveniles and also juvenile delinquents. In both of these areas the services of trained social workers are highly desirable. In order to efficiently and economically administer this function of the probate court, it is considered that it might be desirable in counties of a small population to combine counties into probate districts.

As an alternative, and on the suggestion of a probate judge from Gaylord, one Boyd Baird, who last year was president of the top of Michigan probate judges association, we also included a provision that the probate court in small counties as a optional matter might be combined with inferior courts; that is, possibly with the circuit court commissioner's court and the justice court. In appearing before our subcommittee, he indicated that it was his opinion that it would be better to have a probate judge in each county with sufficient business to occupy him full time than to have a part time judge doing this work or a judge traveling a circuit. He felt that at least as an optional basis this should be provided. Actually, with regard to this matter there are no counties, none at all, with less than 25,000 population south of the north boundary line of Muskegon county, Kent county, Montcalm, Isabella and Bay. No county south of the north line of those counties would be involved in this provision whatsoever with regard to the combining of the probate court with judicial offices inferior thereto, and actually north of that line there are 6 counties out of the 45 that would exceed that population limitation.

Now, we have made one other change which is significant. In the last sentence of the proposal we have provided that the probate courts have original jurisdiction in all cases of juvenile delinquents and dependents except as otherwise provided by law. The proviso in this particular instance is there to grant flexibility to the legislature in the future development of our court system and in particular with regard to the possibility of the development of either a children's court, a domestic relations court or what is more modernly called the family court. It is entirely possible that this function, in the discretion of the legislature, might properly be placed in another court. I would like to say that in New York, for instance, this has been done. Last November in New York a

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Explanation—Matter within [ ] is stricken, matter in capitals is new.

complete new judicial article was adopted by a vote of 5 to 1 throughout the state, which I thought was quite tremendous. In the state of New York they have abolished a number of courts and transferred their jurisdiction to the family court. In particular, they had previous thereto a children's court, a domestic relations court, a surrogate court. They still retain the surrogate court but part of the jurisdiction of the surrogate court, all of the jurisdiction of the children's court, all of the jurisdiction of the domestic relations court and part of the jurisdiction of a number of other courts has been transferred to a new court which is called a family court.

The concept of the family court, we felt, was best developed by the legislature rather than by our committee, and accordingly it is only our purpose in making this provision to provide that flexibility. We have placed the original jurisdiction of juvenile delinquents and dependents in the probate court and it remains there until and unless and except as may be otherwise provided by the legislature.

I would like to yield the floor to questions at this time.

CHAIRMAN VAN DUSEN: Are there any questions for Mr. Higgs? Mr. Pellow.

MR. PELLOW: What do you mean, Mr. Higgs, by courts inferior thereto? In the event that this passes, are you going to combine the duties of the probate court with justice courts and so forth?

MR. HIGGS: It was not our purpose to make any combination, but merely to grant the flexibility to the legislature to make such a combination if it seemed wise in the future.

MR. PELLOW: What I mean is, by the language "inferior thereto," which courts are inferior to the probate court?

MR. HIGGS: We were thinking of the circuit court commissioner's court and courts of limited jurisdiction such as municipal courts and justice courts.

CHAIRMAN VAN DUSEN: Mr. Mahinske.

MR. MAHINSKE: Mr. Higgs, along the same lines that Mr. Pellow started to pursue here, under the prior judicial proposals we have no courts that are going to remain in existence inferior to the probate court on a county level. Now, it seems to me that it is a poor choice of wording here. If the legislature acts and it is going to create a court that will take over the functions of the probate court, it is at least creating a new court that is equal to the probate court in status or it couldn't give them more power than they are legislatively able to exert.

MR. HIGGS: Well, now you have made an assumption that we will have no courts inferior thereto, which I don't think is a valid assumption.

MR. MAHINSKE: I assume that the circuit court commissioners along with the justice courts are going to be out of existence after the 5 year period. Is this correct or not correct?

MR. HIGGS: The provision is that the powers and jurisdiction of these courts shall remain within the circuit court commissioner's court and in the justice of the peace court for a period not to exceed 5 years and shall be transferred to other courts to be established by the legislature.

MR. MAHINSKE: Yes, but which may not necessarily be inferior to the probate court. This is the point.

MR. HIGGS: I don't think we have any great pride of authorship. We have used in another section the words "courts of limited jurisdiction." Would you like that better?

MR. MAHINSKE: Well, I think this is a matter that style and drafting could polish up here. Now, down in line 14, are you prepared to discuss this "except as otherwise provided by law" or are we going to leave that to the minority report?

MR. HIGGS: We are prepared to discuss it.

MR. MAHINSKE: At this point? Would this be proper, Mr. Chairman?

CHAIRMAN VAN DUSEN: I think, Mr. Mahinske, if you could confine yourself at this point to questions relating to the committee proposal, we will deal with matters relating to the minority report as the amendments are presented.

MR. MAHINSKE: Then I have completed my remarks. Thank you.

MR. HIGGS: Thank you.

CHAIRMAN VAN DUSEN: Mr. Farnsworth.

MR. FARNSWORTH: Mr. Chairman, Mr. Higgs, I do have a question on lines 13 and 14. "They shall also have original jurisdiction in all cases of juvenile delinquents and dependents. . . ." Dependents of whom? Dependents of juvenile delinquents or do you mean neglected children?

MR. HIGGS: In the juvenile area the probate court not only has jurisdiction over juvenile delinquents but juveniles who are dependent and neglected. And that, I think, is the distinction.

MR. FARNSWORTH: That is, what you mean to say really, is neglected children rather than a dependent of a juvenile.

MR. HIGGS: Again, I don't think we have any pride in draftsmanship here. We have carried over the provision of the 1908 constitution with the proviso.

MR. FARNSWORTH: You wouldn't mean a dependent, for instance—

MR. HIGGS: I would like to yield to the committee chairman. I think he has a comment on this.

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: Mr. Farnsworth, that has been interpreted to mean juvenile delinquents and juvenile dependents. This is out of the 1908 constitution. It means actually just that. It is not dependents of juveniles but the fact that, as it was worded there, jurisdiction in all cases of juvenile delinquents and juvenile dependents. That means orphans and neglected children and things along that particular line, not necessarily in the delinquency statute but by reasons of death in the family or abandonment they become in effect dependent upon the state and, therefore, the jurisdiction falls to the probate courts. This is what has been done, and this is what we carried over right from the 1908 language.

CHAIRMAN VAN DUSEN: Mr. Higgs.

MR. HIGGS: Mr. Chairman, I think I have a minute to discuss one aspect of this that should be brought to your attention. One of the considerations with regard to the Judge Baird concept of the combination of the probate court with judicial offices inferior thereto — or courts of limited jurisdiction, whichever you prefer — one of the significant aspects of this is the possibility, and again we are not making the provision, but we are granting the flexibility to the legislature that, if in their discretion they would consider using this as one step in the development of a county court, this could be done most economically.

For instance, every probate judge in the state of Michigan has at the very least a statutory salary of $5,000. This is supplemented in some counties, and for each 10,000 of population, there is a statutory increase of an additional $500. We have probate judges in Wayne county receiving up to $22,500, but in the smallest of counties, in those counties less than 25,000, their pay is anywhere from $5,000 to $6,500. Now, in a county with less than 10,000 population, there just isn't very much probate work to be done. And Judge Baird advised us that when he ran for office, he advised the people in his district that he only intended to work 2 days, and the 2 days was entirely adequate to do the business of that court. So if you were going to use a base for the development of a county court in the small areas or in the sparsely populated areas, you would have available a court the judge of which already recieves a base pay of anywhere from $5,000 to $6,500 upon which to build, and in the development of that court it was our feeling that with this base and such supplement as might be provided by law, a county court could be developed most economically and with sufficient pay so that the office would attract qualified lawyers to act.

CHAIRMAN VAN DUSEN: Mr. Plank.

MR. PLANK: Mr. Higgs, I am interested in knowing a little more about these family courts you suggested be created by the legislature. Was it your suggestion they be created in counties of less than 25,000, or above?

CHAIRMAN VAN DUSEN: Mr. Higgs.

MR. HIGGS: Well, this matter of the family courts is only involved in the last sentence and without regard to limitation of population. It is stated that they — meaning probate courts

— shall also have original jurisdiction in all cases of juvenile delinquents and dependents, except as otherwise provided by law. This particular provision would, in our opinion and judgment, prohibit the establishment of a family court separate from the probate court without the proviso, and merely by adding the proviso we give the legislature the necessary flexibility in order to create a family court, which would be possibly but not necessarily entirely independent of the probate court. As the family court is constituted in other states, it would likely have a very broad jurisdiction which would include part of the powers of the circuit court.

MR. PLANK: In other words, you are saying it does not replace the probate court?

MR. HIGGS: No.

MR. PLANK: Then it would be in counties above 25,000, probably?

MR. HIGGS: The likelihood is that it would not be developed in counties anywhere near 25,000. The likelihood, in my judgment, is that it would be a court in the most highly populated areas rather than the lower.

MR. PLANK: I am a little bit concerned about your districting probate courts. I think their function is today quite successful due to the fact that they are close to the families which they have to serve, and I am wondering if you had difficulty in a given area and you had to go 2 counties away to find a probate judge, whether or not you would be serving them adequately. You may be paying the judge enough money but you may not be serving the people.

MR. HIGGS: I think many of us share your concern and this is why we left it as an entirely flexible and optional matter and why we made the other alternative, the other option. Judge Baird, for instance, reflected your concern in that same regard.

CHAIRMAN VAN DUSEN: The gentleman from Quincy, Mr. Knirk.

MR. KNIRK: Mr. Chairman, Mr. Higgs, Ray Plank was asking some of the same questions I had that I would like to ask you, and that is in regard to the probate court. Now, if you had a family court developed, would that do away with your probate court within counties of under 25,000 population?

MR. HIGGS: No, it would not. We have included the probate court as a constitutional court and it cannot be abolished.

MR. KNIRK: It cannot be abolished?

MR. HIGGS: No.

MR. KNIRK: Then will you explain to me in a little further detail "except as otherwise provided by law" in line 14. Just what is the intent there of that particular phrase?

MR. HIGGS: The intent in that particular phrase is to permit the legislature, in the development of a court system, to transfer a part of the jurisdiction of the probate court to another court. They would also be transferring to the family court part of the jurisdiction of the circuit court or it might be a division of the probate court or it might be a division of the circuit court. But we didn't feel as a committee that we should freeze into the constitution a family court. It might be desirable simply in 1, 2 or 3 or 4 counties of Michigan.

MR. KNIRK: I still don't quite understand your position there. You say that the probate court would become part of the family court? Is that what you said now?

MR. HIGGS: No. I said that the legislature in the development of a family court might conceivably make a division of the probate court to serve that function, but the probability is, if the experience in other states were to be followed, that it would be a separate and independent court; in other words, a new court, a family court separate from the probate court but would not abolish the probate court because there are many other functions that the probate court serves, many other powers and duties and jurisdiction that it has.

MR. KNIRK: I wonder, Mr. Chairman, if I might ask Stan Everett to elaborate. I see he was up on this.

CHAIRMAN VAN DUSEN: Mr. Higgs, would you like to yield to Mr. Everett for a further response?

MR. HIGGS: Yes.

CHAIRMAN VAN DUSEN: Mr. Everett.

MR. EVERETT: I think what Mr. Higgs just said, Blaque, might clear up some confusion in the laymen's minds. Historically the probate court in this and other states was set up primarily to administer the estates of those who died. In the Constitution of 1908 we simply tagged on the juvenile aspects to a court which was already concerned with things which had nothing to do with juveniles, like administration of estates, the commitment of mentally ill people, the appointment of guardians of mentally incompetent people and so on. Now, the development of the juvenile court within the framework of probate court has been very successful in most places so that this has worked quite well, although it is a rather strange combination that you have on one hand a court dealing with decedent estates and on the other hand they are dealing with juveniles. Still it has developed rather well, and we are not suggesting that this be changed.

What we are suggesting is that there be a degree of flexibility so that as experience in other areas may dictate, if it seems more logical to either transfer the juvenile powers of that court to another court or transfer other powers to that juvenile court or create a separate juvenile court in large counties, that this can be done. Under the present constitution it cannot be done. In 1908 it was not very practical to set up a separate juvenile system and so, as I say, they just tagged it on here.

Now, in many counties there is considerable thinking, at least in very large counties, that maybe that power ought to be taken away and put someplace separate. This is a matter which is being experimented with in other states, and I don't think many of us on the committee felt today was the day to make any change in Michigan. Maybe the day will never come to make a change in Michigan, but at least the power ought to be with the legislature to make that determination at some future time. That is why, when Mr. Higgs says the probate court will go on, there will have to be a court to handle all of these other duties of the probate court whether the juvenile powers remain there or whether they don't remain there.

CHAIRMAN VAN DUSEN: Mr. Mahinske.

MR. MAHINSKE: I would like to direct this question to either Mr. Higgs or Mr. Danhof. The language on line 14 where you say "juvenile delinquents and dependents" is the existing language in the 1908 constitution, but in response to Mr. Farnsworth I think both of you made the statement that is reflected on page 2 of the reasons for Committee Proposal 94, where you say "in cases of delinquent and dependent juveniles." Now, today in the probate courts their jurisdiction as far as dependents are concerned is not restricted to juveniles. The probate court is the court that enforces the petitions on responsible relatives, petitions from, say, the welfare department where the welfare department brings the responsible relatives into court to get them to contribute to the support of the person who is on relief. Now, is this your intent, that the probate court shall have no jurisdiction over other than juvenile dependents?

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: I think what you refer to, Mr. Mahinske, is granted to the probate court by statute.

MR. MAHINSKE: But if you say in your reasons here that you are talking about juvenile dependents only now, what are you doing with the statute?

MR. DANHOF: Nothing. Because I don't think the Constitution of 1908 — I think they gave them the original jurisdiction of juvenile delinquents and juvenile dependents. Mr. Higgs might have an answer there too.

MR. MAHINSKE: I will yield to Mr. Higgs.

CHAIRMAN VAN DUSEN: Mr. Higgs.

MR. HIGGS: Mr. Mahinske, if you look at lines 11, 12 and 13, you will note that the jurisdiction, powers and duties of such courts shall be prescribed by law. Generally speaking — and I think you probably know this — the power and jurisdiction of a probate court is entirely statutory except for this one provision with regard to juvenile delinquents and dependent children.

MR. MAHINSKE: Well then, in the case of original jurisdiction, are you saying that you only want the probate courts to have original jurisdiction as to juvenile dependents?

MR. HIGGS: No. We use the words "they shall also have" in addition to the powers, duties and jurisdictions prescribed by law in lines 11, 12 and 13.

MR. MAHINSKE: But still I ask again, are you maintaining that you want the probate courts only to have original jurisdiction; in other words, constitutional jurisdiction as far as juvenile delinquents and juvenile dependents are concerned, or are you talking about all dependents?

CHAIRMAN VAN DUSEN: Mr. Higgs.

MR. HIGGS: My answer is no, it would not change the existing language one bit. This is—

MR. MAHINSKE: But Mr. Danhof just informed us that the existing situation is statutory.

MR. HIGGS: And the statute was adopted under the 1908 constitutional provision which we have not changed in any respect except where we say "except as otherwise provided by law."

MR. MAHINSKE: Then your intent here would be to give the probate court original jurisdiction only with reference to juvenile dependents.

MR. HIGGS: No. Our intent is to provide constitutionally for original jurisdiction in these cases, and in all other cases by statute.

MR. MAHINSKE: Well then, why do you even refer to original jurisdiction here if it is going to be by statute? I don't think that is what you mean.

MR. HIGGS: Maybe we are not on the same wave length here, the same frequency. I will yield to Chairman Danhof.

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: Mr. Mahinske, what do you think the 1908 constitution provided?

MR. MAHINSKE: I think it provides for original jurisdiction in all cases of juveniles and dependents, but not restricting the word "dependents" to juvenile dependents.

MR. DANHOF: Let me state this—if that is your understanding, that is fine—it was our understanding that the 1908 constitution restricted it to juvenile dependents. Now, if the court wants to read "dependents" as meaning more than juvenile dependents, fine. We granted nothing more or nothing less than the 1908 constitution, and this was our sole intent. In the exclusive constitutional jurisdiction granted to the probate court there is no difference here than in 1908, and if that included adult dependents as distinguished from juvenile dependents, then it was the committee's intent that it be exactly as it was in 1908 wherein the only exclusive constitutional jurisdiction was in those words "original jurisdiction in all cases of juvenile delinquents and dependents," and that is what the committee intended and that is what we meant by the language.

MR. MAHINSKE: Well, we are in complete agreement here so there is no point in going any further, except would you be reluctant to strike the word "juveniles" from your committee report, not the proposal but the reasons, because I think this could be considered part of the record here and restrictive. On page 2 of your reasons you talk about "in all cases of delinquent and dependent juveniles."

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: Well, I would consider the request, Mr. Mahinske, and if the committee will meet, we can take care of this. But, as I said, the intent of the committee was to leave it exactly as 1908, with the same language, except we did put the proviso in that it can be changed by statute. But the constitutional grant of jurisdiction in this draft is identical with that of 1908.

MR. MAHINSKE: Then your intent would be identical.

MR. DANHOF: Yes.

MR. MAHINSKE: Thank you.

CHAIRMAN VAN DUSEN: Mr. Radka.

MR. RADKA: Mr. Higgs, I have a question. The first question I have is the 25,000 figure. What was the rationale behind the committee's using the 25,000 population figure?

CHAIRMAN VAN DUSEN: Mr. Higgs.

MR. HIGGS: The rationale was simply that there were a number of delegates on the committee that did not feel that they wanted to make any such combination or they did not want to permit the legislature to make this combination in larger counties because they felt that in larger counties the business of the probate court itself was sufficient unto itself without making any combination with any other courts. Now, I am probably responsible for the 25,000 figure. I made a compilation of the distribution of low population counties and there were 5 under 5,000; 13 from 5,000 to 10,000; 9 between 10,000 and 15,000; 6 between 15,000 and 20,000; and 6 between 20,000 and 25,000; and there was just 1 in the division between 25,000 and 30,000, and we drew the line there because it seemed the likely spot, in that no county south of Bay, Midland, Isabella, Montcalm, Kent or Muskegon would be involved and that the only counties involved would be the low population counties north of that line, with the exception of 6 counties which we couldn't entirely fit in because 1 of those counties, Marquette, is 56,000.

MR. RADKA: Then my next question, Mr. Higgs, would be since you are dealing primarily with counties north of town line 16 and in the upper peninsula, and since you have quoted Judge Baird from Otsego county at great length, how many other probate judges in these some 38 counties did you take testimony from in your committee?

MR. HIGGS: We took testimony from other probate judges, in particular with regard to the district idea. I have consulted with other delegates from this territory. I don't know just what your point is.

MR. RADKA: My specific question was how many judges from the counties north of town line 16 and the upper peninsula did you take testimony from on this so called consolidation or circuit-probate court plan? You referred many times to Judge Baird from Otsego county as the authority or the voice of the so called rural probate courts and I wondered how many judges your committee—not you personally—received testimony from that was considered in the deliberations that brought this plan to us on the floor.

MR. HIGGS: I don't know how many others. We did take testimony from other judges, but how many I don't know. We had the president of the probate judges association. We had Judge Meehan. Judge Meehan specifically preferred the district idea, if I am correct. Maybe Judge Pugsley would like to speak on that.

MR. RADKA: I will yield to Judge Pugsley.

CHAIRMAN VAN DUSEN: Would you prefer, Mr. Higgs, to yield to Mr. Everett?

MR. HIGGS: Yes.

CHAIRMAN VAN DUSEN: Mr. Everett.

MR. EVERETT: Thank you, sir. If I might help to answer the question, one reason we placed a good deal of emphasis on what Judge Baird said was that he was the head of what is known as the top of Michigan probate judges association, so we looked upon him as not simply a judge from 1 county. He was at that time down here for their convention, was going out of office, but he was the head of the association of all the judges of that area. He didn't suggest that he spoke the unanimous voice of all the judges of that area, but he was their official representative and we looked upon him as carrying more weight than just a single probate judge.

CHAIRMAN VAN DUSEN: Mr. Radka.

MR. RADKA: I am acquainted with Judge Baird and I am acquainted with the probate court system in rural northern Michigan north of town line 16 and the upper peninsula and I would just like to offer here that the opinions of Judge Baird were probably the opinions of Judge Baird, and further on as we discuss this and amendments that we have before us, I think that another viewpoint might be present.

MR. HIGGS: Well, I would like to concur, Mr. Chairman, with the fact that Judge Baird was careful to state that they were his opinions and he was not speaking for the association.

CHAIRMAN VAN DUSEN: Mr. Lundgren.

MR. LUNDGREN: To whichever member of the committee would like to answer these few questions—like Daniel, I

am wondering if I am getting into the den here with all these lawyers. If I might go back to between lines 7 and 11 where you say the supreme court may decide to order the combining of these courts into 1 court, I would like a further explanation of just when and how and where the supreme court will decide it should step in and combine these and whether the people will have anything to say about it or will it be an automatic decision or just what will it be? How will they go back to the legislature and say "We want to combine these counties into 1 court"?

MR. HIGGS: Mr. Lundgren, the supreme court now has a court administrator working with the circuit courts and a deputy working with probate courts, and it was our feeling that the deputy court administrator, in keeping the records with regard to the business of these courts and the problems of these courts, probably would be in a good position to make a recommendation to the supreme court, and that this being an administration type of matter — I shouldn't say simply an administration matter, but at least the administration of the court work in these courts being under the supervision of this deputy administrator, that his knowledge would be most beneficial and he would probably be the best able to compile the necessary statistics to make such a recommendation, if that is any answer.

CHAIRMAN VAN DUSEN: Mr. Lundgren, would you like to yield to Mr. Danhof for further response if he has any?

MR. LUNDGREN: Surely.

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: Let me say this, Mr. Lundgren: in regard first to the 25,000 population, this may look like it was picked out of the air. I assure you it was not. The considered opinion of the deputy court administrator charged with the function of administering and looking over the probate courts was that in a county of approximately 25,000 population, the probate court job pretty nearly reaches a full time position.

Now, insofar as the districts were concerned, there was not a single judge, probate or otherwise — and we had the president of the probate judges association; we had Judge McAvinchey from Flint for the large counties; we heard from the judges of Wayne county; we heard Judge Meehan from Oceana; from Judge Baird; we heard Judge Mary Coleman from Calhoun — not one objected. In fact all, including the bar association, recommended that probate courts be grouped into districts. In particular we inquired specifically of Judge Meehan, who comes from a relatively small county, whether or not there were those cases where it would be extremely difficult or would be needed to have a probate judge in every county. By that I mean the signing of orders of commitment of the mentally ill. And he said definitely not. He did not feel that 2 or 3 counties would be any great burden. Judge Mary Coleman, who comes from Calhoun, mentioned that she sat considerably in the adjoining counties; that, in her opinion, there is no difficulty, in this modern age of transportation and otherwise, of going. If you even have to go 35 or 40 miles to get a judge to sign the order, compare that with 1908 when if you were 15 or 20 miles from the county seat you were a full day's journey.

So that insofar as the districting is concerned, again here, we felt that as time progresses — and we realize this is not going to be done overnight — there can be a recommendation from the court administrator regarding those counties. And remember that, in particular in those areas where you have a nonlawyer judge — and we have a grandfather clause for the nonlawyer judges — as they may retire, resign, be defeated, gradually there would become a district basis the same as we have for circuit courts. And this had to be left to and should be done by the legislature.

Again, here we made it as strong as we could without making it mandatory that if the recommendations came based upon all of the research and the reports by the deputy court administrator — and hence the supreme court, Mr. Downs — that this then should and shall be done. Now we get down to the "shall" and "may" again and Mr. Brake smiles there a little bit. We meant "shall." We wanted to make it as strong as we could. But as Mr. Ford pointed out, when we say "shall," sometimes it takes 52 years. No, the supreme court cannot draw warrants or pay or anything else.

But remember this: there is no jurisdiction — there wasn't in the 1908 constitution — that was given to the probate courts other than for juvenile delinquents and dependents. Every other bit of work the probate court does comes by statute and is in effect taken away from the circuit courts. This is what we had in mind when it comes to the districting. We also thought in these small counties we would be able to assign to the probate judge, who gets all his jurisdiction by statute, other duties so that it might be best that he perform duties which had been handled probably by the justice of the peace or the circuit court commissioner, if you want that, in these small counties, and that is the object of the 25,000.

I realize that the gentlemen from Alpena, my friends Mr. Radka and Mr. Habermehl, say, "Well, let's go to 50,000," because in effect Mr. Habermehl came in with this identical idea and now we keep his county out because he has 28,000 and so he would like to go to 30,000. Well, the magic figure is at no place, but we didn't pick it out of the air; we did it upon the recommendation that when a county gets around this size, the probate judge job may get full time.

CHAIRMAN VAN DUSEN: Mr. Lundgren, do you desire to yield to Mr. Everett for further response?

MR. LUNDGREN: In about one minute. You have taken quite a few words to get around quite a few points, but you have also opened up something else here that I was going to ask about. It seems there is an opinion here to make the probate judge more than what we think of him now, and some of us are quite concerned about that. When you talk about arraignment of people in the middle of the night or cases — I know of the way the probate court works; sometimes they can spend a whole day on one family — he isn't going to have time to do these other legal things that you are talking about, and I question very seriously in counties my size or bigger whether you aren't getting too far afield, and that is what worries me, that somebody from Lansing can very capriciously say: this court area is too small and we are going to combine them — and the people up there will object to it, but they will have no voice in it. Will they have a chance to express themselves when somebody from Lansing or wherever it may be comes in and says, "We are going to combine your courts"? And we have court areas there that are over 100 miles apart. In modern day travel we just can't get there that quick. We can't, as somebody in Detroit said at our committee meeting, "take a jet." That is about as foolish as we can get on that sort of subject. The roads are better, but the time is still there. And these courts can't be combined in some of those areas as willingly as you seem to think. Now I will yield to Mr. Everett.

CHAIRMAN VAN DUSEN: Mr. Lundgren yields to Mr. Everett.

MR. EVERETT: Mr. Lundgren, I think one of the things which may be disturbing some of you from the smaller counties is that you are overlooking what those of us who are lawyers recognize. In the probate court, not in the juvenile aspects particularly but in the truly probate part of it, a great deal of the preliminary work is of a very routine and administrative nature, and the law now permits, for example, the oath of appraisers and the preliminary review of accounts to be made by the probate register. Now, we assume each county would retain a probate register so if the judge happened to be someplace else, most of these routine matters would be performed just as readily as they are today. The final order, in any case, must be signed by the judge. Usually these things can be scheduled on a daily basis, particularly in the juvenile area or in the mental area where there is a necessity for urgent action. Then if the districts were too big, this might play some hardship, but we don't think anybody is going to overlook that fact.

What I am trying to say is that the average routine preliminary matters can be handled whether the judge is there or not. The extreme case or the final determination would either have to be scheduled as it now normally is in fully 80 or 90 per cent of the cases in the smaller counties, and in

these other 10 or 15 per cent of the cases they are going to have to think of that before they combine, and recognize that there may be some very occasional inconveniences. It is just a question of whether possibly in an extreme case there is going to be some inconvenience or whether every county is going to be saddled with the expense of a probate judge who is not busy most of the time, and in these small counties they are not.

MR. LUNDGREN: Well, of course, in some of these small counties where they are lawyers, they are also doing their law work right within the courthouse, some of them.

MR. EVERETT: That is what we object to.

MR. LUNDGREN: You have nothing written in here on that.

MR. EVERETT: There is going to be an amendment offered by some of us from the committee to do just that, say that a judge may not practice law. Many of us on the committee feel this goes 2 ways. It should be a full time job.

MR. LUNDGREN: Then for the benefit of the record, I would also like this explained: when you get down further and combine these offices with any judicial office inferior thereto, could you clearly state what you feel might be inferior thereto that they could be combined with?

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: Well, certainly we are not referring to personalities.

MR. LUNDGREN: No, no.

MR. DANHOF: Mr. Lundgren, as Mr. Higgs says, if you want courts of limited jurisdiction, our idea was simply that it is possible that the legislature will set up various classifications for courts of limited jurisdiction or, as we know them, as inferior courts. They will classify by size of the counties. We felt that we should point out here to the legislature that if they desired to utilize the office of the probate judge with those functions that they might assign in other counties of larger size to a court of limited jurisdiction such as the circuit court commissioner now does, we did not want to have a constitutional prohibition against that particularly for the small counties.

The circuit court commissioner is a constitutional office presently which is vested with the powers of a circuit judge in chambers but also does a lot of other things, basically evictions. In a very small county they sometimes don't even have a circuit court commissioner. And if necessary, we felt that if evictions were assigned perhaps to a court of limited jurisdiction in a county of 100,000, they could be assigned over to the probate judge.

We aren't making any of this mandatory. We are merely making it permissive and as flexible as we can. And I don't think what you envision is going to happen with the legislature, as you well know, without thorough investigation by all parties.

MR. LUNDGREN: Let me ask just this one closing question: would a county court, if set up, be inferior or superior to a probate judge?

MR. DANHOF: Definitely it would be a court of limited jurisdiction and is stated as being less than a probate court.

MR. LUNDGREN: It would be less than probate, a county court?

MR. DANHOF: It would be a court of limited jurisdiction and this would be less than, and not being constitutionally recognized, would be a statutory court which, in the steps that we have set up, would, in our interpretation, be inferior, or of less power or whatever you want to say, yes.

MR. LUNDGREN: Thank you.

CHAIRMAN VAN DUSEN: The Chair would like to advise the committee that there are currently 6 pending amendments which cover each of the subjects which have been discussed generally, and that it may be helpful to channel the discussion and consideration of this proposal by the committee if we proceed to the amendments.

The Chair has pending requests for recognition from Messrs. Krolikowski, Everett, Ford, Leppien and Kuhn, and would like to suggest that if any of these gentlemen have questions of a completely general nature not related to pending amendments, those questions would be in order at this time. Would any of those gentlemen like to be recognized at this point? Mr. Leppien.

MR. LEPPIEN: Mr. Chairman, fellow delegates, I would like to direct a question to Delegate Everett because he touched on it, and I first want to preface my remarks with this: for the past 15 years I have long since learned that we ought not, as lay people, question lawyers. However, being a delegate to this convention, I suppose that is part of the job, so I apologize for that. But in your remarks a few minutes ago, you said that the legislature shall by law provide certain things. My question is, sir, when we start up here:

> The legislature may combine 1 or more counties into probate districts, or combine the office of probate judge with any judicial office inferior thereto in any county with less than 25,000 population with supplemental salary as provided by law. . . .

then we say this: ". . . and shall do so on recommendation and report of the supreme court."

Now, I assume, sir — and if I am correct, that is all I want to have answered — that goes right to the very words I started with. The legislature in one case may do something. In the other case you say it shall do this on recommendation of the supreme court. Do I understand it correctly when I say that when the supreme court makes the recommendation to the legislature, the legislature has no power whatsoever except to do it? Is that correct?

MR. EVERETT: It could come either way. If it came in the form of a report and recommendation from the supreme court, then we use the word "shall" because we meant then the legislature would have to act. If, on the other hand, the thing started with the legislature, it is up to the legislature. They could, for example, provide for local option to decide this thing. But if it comes from the supreme court, then they shall do it and there would be no alternative.

MR. LEPPIEN: Mr. Chairman, through the Chair I would like to request one more question.

CHAIRMAN VAN DUSEN: Proceed, Mr. Leppien.

MR. LEPPIEN: In your remarks you refer to ordinary duties, every day duties, taking oaths and so forth and so on. What about the case of emergency for juveniles who need to be married for obvious reasons? What about the mentally ill who become so disturbed that they are unable to be moved from county A to county B by the sheriff except by straitjacket and so forth and so on, taken into the courthouse or the jail of county B if that is where the probate judge is? How do you envision that to be handled?

CHAIRMAN VAN DUSEN: Mr. Everett.

MR. EVERETT: Well, Mr. Leppien, I did not wish to suggest that there were no emergencies which would not require the judge. Now, as to the first situation, unless the condition were very obvious, I would imagine that it ought to be able to wait a couple of days at least until the judge got back. And as to the latter, today it isn't necessary to move the mentally ill to the judge. He may and does frequently have to conduct hearings when the mentally ill person is not there simply because he cannot understand the nature of it. I would say the judge would come to the mentally ill person or at least to that county. If the mentally ill person were in such condition that he could not even go to the courthouse of that county, the hearing would have to go on. In addition, the law now does provide, Mr. Leppien, for temporarily restraining mentally ill people on the order of the prosecuting attorney until such time as you may file a petition and call this to the attention of the probate court. We don't visualize that this will change.

There are many emergency situations which the probate judge does have to handle. Percentagewise in his business it is not great. And we feel that with some understanding and some work in this area, almost all of these can be handled in a district plan. And as Chairman Danhof suggested, virtually every probate judge who talked to us about this, including their association, has recommended this. They recognize that a probate judge per county is just not a practical situation.

MR. LEPPIEN: One other question then, sir, if I may, through the Chair. How do you envision to settle the question

then if the district is composed of, let's say, 3 counties, as an example, that the probate judge shall, because his is the only nonpartisan judicial office available to do this, be the chairman of the elections commission of a county?

MR. EVERETT: Well, to begin with, Mr. Leppien, his duties as election commissioner, of course, come from the statute. I don't know whether the legislature would want to have a nonresident serving on that election commission. If I were in the legislature, I wouldn't want to have it. I would have somebody else serve on the election commission. But this is a matter which the legislature would have to decide. We don't look upon this as being a constitutional question.

MR. LEPPIEN: Thank you.

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: Mr. Chairman, in view of the hour and the amendments here, I move the committee do now rise.

CHAIRMAN VAN DUSEN: Mr. Danhof moves the committee do now rise. Those in favor will say aye. Those opposed will say no.

The motion prevails. The committee will rise.

[Whereupon, the committee of the whole having risen, President Nisbet resumed the Chair.]

PRESIDENT NISBET: The Chair recognizes Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, the committee of the whole has had under consideration several matters of which the secretary will give a detailed report.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 93**, A proposal pertaining to the circuit court; reports this proposal back to the convention with several amendments, recommending the amendments be agreed to and that the proposal as thus amended do pass.

[The following are the amendments recommended by the committee of the whole:

1. Amend page 1, line 12, after "rule" by striking out "or by law".

2. Amend page 1, line 14, after "judges" and after "circuits" by striking out "shall" and inserting "may".

3. Amend page 1, line 20, after "Sec. b.", by striking out the balance of the line, all of line 21, and line 22 through "years.", and inserting "Circuit judges shall be nominated and elected at nonpartisan elections in the county or the circuit in which they reside, and shall hold office for a period of 6 years and until their successors are elected and qualified.".

4. Amend page 2, line 6, after "tribunals" by striking out "as prescribed by supreme court rule;", and inserting "except as otherwise provided by law; power".

5. Amend page 2, line 13, after "purposes" by inserting a comma and "or other officer performing the duties of such office,".

6. Amend page 2, line 15, after "county clerk" by striking out "or" and inserting a comma; and in line 16, after "prosecuting attorney" by inserting "or friend of the court".]

PRESIDENT NISBET: The question is on agreeing to the amendments. Mr. Danhof.

MR. DANHOF: Mr. President, I would ask that the amendments to section a and to section b be divided and considered separately from the amendments to sections c and d at this particular time.

SECRETARY CHASE: The amendments offered to section a of Committee Proposal 93 are as follows:

1. Amend page 1, line 12, after "rule" by striking out "or by law".

2. Amend page 1, line 14, after "judges" and after "circuits" by striking out "shall" and inserting "may".

MR. DANHOF: Mr. President, I would ask again that on the 2 amendments there be a division, that we consider the amendment first as to line 12.

SECRETARY CHASE: First amendment:

1. Amend page 1, line 12, after "rule" by striking out "or by law"; so that the language then beginning in line 10 will read, "Each circuit judge shall hold court in the county or counties within the circuit in which he is elected, and in other circuits as may be provided by supreme court rule."

PRESIDENT NISBET: The question is on the amendment. Those in favor will say aye; those opposed, no.

The amendment is adopted.

SECRETARY CHASE: The second amendment:

2. Amend page 1, line 14, after "judges" and after "circuits" by striking out "shall" and inserting "may"; so the language then will read:

> The number of judges may be changed and circuits may be created, altered and discontinued by law and the number of judges may be changed and circuits may be created, altered and discontinued on recommendation of the supreme court to reflect changes in the judicial business.

PRESIDENT NISBET: The question is on agreeing to the amendment. Mr. Danhof.

MR. DANHOF: Mr. President and members of the convention, we again return to this particular problem and, on behalf of the committee, I would urge that the convention not concur in the recommendation of the committee of the whole. The committee felt as strongly as we could that in the past there had not been a response to the judicial needs particularly of this state. As pointed out by the members of the Wayne county delegation, there has been no increase in the judiciary of this particular county for almost 30 years. We seriously considered the possibility of writing in a mandatory requirement concerning population; this we did not do because we did not like particularly to write in numbers or numerical provisions. We wanted to emphasize, as strongly as we could, that the question of the adequate protection of the laws by the people is not something that should be played with in politics, nor should it even be decided upon financial or monetary considerations. Whether or not additional judges are needed to handle a case load should not be determinative upon the fact whether the state has to add an additional $50,000 or $60,000 and the county likewise to pay them. With the emergence throughout all of the country of the idea that the administration of justice should be — I don't use the word — if not nonpartisan, should certainly be a bipartisan consideration and not something which should be kicked around or buried.

We wanted to emphasize as strongly as we could without having an automatic provision that when in the eyes of those who have the facilities, who have the figures, who have the available material at hand, there develops a definite need for additional manpower or for the change of circuits in order to give adequate protection to the public for the efficient administration of justice, that this should be done.

We realize that the supreme court cannot draw warrants, nor can it create the circuits, but I would urge that the convention not concur in the recommendation of the committee of the whole.

I would request, Mr. President, that there be a roll of the ayes and the nays in this particular regard.

PRESIDENT NISBET: There has been a request for the ayes and nays. Is that demand supported? Those in favor will rise. A sufficient number up. Mr. Hutchinson.

MR. HUTCHINSON: Mr. President, I will yield to Mr. Ford.

PRESIDENT NISBET: For what purpose? Do you want to make a speech or do you want to make a motion?

MR. FORD: I want to make a motion.

MR. HUTCHINSON: Well, I want to make a speech.

PRESIDENT NISBET: Mr. Hutchinson has been recognized.

MR. HUTCHINSON: Mr. President, I ask the convention to look at the other side of this coin for a minute or so, maybe a few minutes. You have heard one side of it from Mr. Danhof. Now let's look at the other side. What the language of the committee does here is to vest in the supreme court

the power to determine, let us say it bluntly, how hard the judges of this state must work.

If in the opinion of the judges themselves they are overworked, why, it is just a judicial decision in their view. And if in the language of this section, the word is "shall," — the legislature shall create additional judges upon order of the supreme court — then the supreme court will have it in its power to determine how many judges there are. Now, Mr. Danhof says that this is more important than the matter of the $50,000 or $60,000 there might be of additional pay, but also I think that there is a general public concern about how hard the judges work, and I think that enters into the picture too. I am sure that at least the general feeling around the state — I am referring to a number of years ago now — was that when courts were in session apparently in Wayne county only from 10 until 12 and from 2 until 4 and not in session at all in the summertime, and some judges were spending the winter in Florida and so on, that the present circuit bench in Wayne county was not in fact being overworked, that probably the lawyers were to blame in lots of cases for the fact that the cases weren't brought to trial.

What the committee here is doing is writing into the constitution that you leave it up to the supreme court to determine how many circuit judges there are going to be in the state and that is going to be a judicial question. I don't know whether any of the committee has asked any of the members of the supreme court, either past or present, about their reaction to such a responsibility. It occurs to me that primarily the justice of the supreme court is interested in deciding cases, and except in the most extreme cases of misfeasance, I wouldn't suppose that the justices of the supreme court would want to be embroiled in the matter of administration and argue about whether they are going to have more judges created and how many more and all this sort of stuff, and I don't believe that very many people on the floor believe they would be either. I think that we recognize that as a matter of fact this thing would devolve upon the court administrator or a deputy or somebody and that there the power would actually lie, and how far down the scale do we want to actually vest the power to say what the legislature shall do? There are many considerations here, some of them political, some of them otherwise. As I say, the supreme court itself is going to be, I hope, too wrapped up in deciding cases to want to be bothered with this administrative detail. It is a matter which might better be left to the legislature.

Then I want to raise a matter which isn't out of the realm of possibility. Do we want to, in effect, permit the supreme court, perhaps for the time being under a particular philosophy, to pack the circuits? Because if this power is "shall," it is intended to be mandatory. It is expected that the legislature will simply bow and do what is required by this. When you say "shall" it means "shall". It is expected that the legislature shall create these judges and alter these districts. I hesitate to throw the word out, but I want to have it not overlooked. There is a possibility of packing here. Do we want to permit the circuit courts of this state to be packed?

I hope that you will concur in the amendment recommended by the committee of the whole.

PRESIDENT NISBET: The question is on agreeing to the amendment recommended by the committee of the whole. Mr. Ford, did you desire recognition?

MR. FORD: Mr. President, the motion that I had intended was the call of the convention, because yesterday when we voted on this, the vote was 57 to 51; 108 delegates participated in making the decision in the committee of the whole, and this is of vital importance. The committee spent a lot of time on it and we still feel as strongly as we did when we came on the floor with this that the committee is making a real step forward in court administration in putting the supreme court in a stronger position to make recommendations with respect to the needs of our judicial system.

Mr. Hutchinson is apparently talking about a period of time in Wayne county that precedes my 10 years of practice there, because I can assure him that our judges are there 5 days a week and as a matter of fact 6 days a week. Our courts are available to the people through noon on Saturday. This has been the practice for at least 10 years that I know of. There are statistics available to offset the guesses that he makes about how many days a judge works. We have the actual figures from the 1960 report made by Meredith Doyle, the court administrator for the state, and it shows that statewide in the 41 circuits the average number of working days per judge is 195, but there are some circuits, circuit 22 for example, where the average number of working days per judge — there is only 1 judge — is 278 days. But in the third judicial circuit, which is Wayne county that Mr. Hutchinson described for us, they are way above average. It is 237 working days per judge. This takes into account the fellow who may have gone to Florida or to Europe last year. He is charged against the others. And with a bench of 18 men, they still come up with an average that is far above the average statewide. You can take the statistics and use them in many ways.

The committee attempted, with the help of such aids as statistics, to come up with a magic number; that is, when you had 75,000 people, you ought to have a judge for them, or when you had a certain number of cases. The statistics will also bear out the fact that in some counties — and Wayne county is not alone in this, nor is it the one most in need of additional judicial manpower — the number of cases to be disposed of per judge is almost double what all of the people who have studied the problem feel is a sensible workload for judges if they are going to do a good job and give everybody their day in court.

I think we should think very seriously before we override the intention of the judicial committee in this language. And this is a case where the "shall" is very important. It doesn't tie the hands of the legislature, but it is going to hold up for public inspection the question of how many judges we actually need, and this decision will be reached on the basis of a recommendation that is made in an open courtroom, not in a closed committee session of the legislature.

I urge you to support the committee's position on this and vote against the amendment recommended by the committee of the whole.

PRESIDENT NISBET: The Chair recognizes Mr. Higgs.

MR. HIGGS: Mr. President and delegates, I also arise to —

MR. BOOTHBY: Mr. President, I have a preferential motion.

PRESIDENT NISBET: Mr. Boothby.

MR. BOOTHBY: I move that we recess now until 2:00 o'clock.

PRESIDENT NISBET: The question is on the motion to recess until 2:00 o'clock. Those in favor say aye; opposed, no.

We are recessed until 2:00 o'clock.

[Whereupon, at 12:05 o'clock p.m., the convention recessed; and, at 2:00 o'clock p.m., reconvened.]

The convention will please come to order.

SECRETARY CHASE: Mr. President, a quorum of the convention is present.

PRESIDENT NISBET: Announcements.

SECRETARY CHASE: We have 2 requests for leave of absence from the afternoon session: Mr. Tubbs has a pretrial hearing at 3:00 o'clock which has been set for many weeks. He asks to be excused; and Mr. Romney would appreciate being excused from the afternoon and tomorrow's session because of a long time speaking commitment in Washington, D.C. at the international christian leadership annual meeting.

PRESIDENT NISBET: Without objection, they will be excused.

When we took our recess this morning, we were discussing an amendment by the committee of the whole. Mr. Chase will read the amendment.

SECRETARY CHASE: The immediately pending amendment is to **Committee Proposal 93**, A proposal pertaining to the circuit court; and the amendment pending was:

[The amendment was again read by the secretary. For text, see above, page 1387.]

The yeas and nays have been ordered on the amendment.

PRESIDENT NISBET: At the time of recess Mr. Higgs had the floor. He is now recognized.

MR. HIGGS: Mr. President and delegates, the arguments of Delegate Hutchinson have caused me to question just exactly what he means. I really don't understand what Mr. Hutchinson is talking about when he talks about court packing in this particular situation and the introduction of the partisan argument.

It was the thinking of the committee that we have 2 situations here. We have a situation where the legislature may create judgeships and circuits in situations where they shall on recommendation of the supreme court. Of course, there is no way in the world that the supreme court can force the legislature to act when it does make such a recommendation. However, it raises a certain presumption, I think, and makes it more forceful, and in any event in a much less partisan atmosphere than the legislature. Certainly the supreme court cannot fill any vacancies. There is nothing to be gained or lost as far as the supreme court is concerned in making any such recommendations and I just don't see where court packing comes into the picture.

Now, as far as the legislature is concerned, we have had a background of experience with legislatures both at the federal level and at the state level, and we do know that partisan politics play a very active part in the creation of judgeships and in filling of judgeships. We have seen legislatures fail to act for periods of time in the face of need awaiting elections, awaiting opportunities to make appointments in a partisan way. We see great numbers of judgeships filled all of a sudden after an expiration of a long period of time.

In the creation of a judgeship in my own circuit a bill failed to pass because it made provision for the filling of the vacancy, according to my understanding, by election. This bill was vetoed. When the bill was revised as to create the opportunity for an appointment, it passed. Now, it seems to me that if there is any argument with regard to court packing, it certainly would not be with this particular recommendation of the committee, and I would urge that the amendment be defeated.

PRESIDENT NISBET: The Chair recognizes Mr. Boothby.

MR. BOOTHBY: Mr. President, ladies and gentlemen of the convention, I have listened to the arguments of the committee and the members of the committee who are urging nonconcurrence in this report that has come out of the committee of the whole. I am a bit concerned as I listened to the statements because I believe they are injecting a whole new concept into the constitution at this time. The judicial committee originally indicated that they wanted the mandatory word "shall" inserted in this article. They said that the legislature must, after the supreme court made its recommendation, adopt the recommendation of the supreme court, or better yet, as was pointed out by Mr. Higgs, I think yesterday, upon the recommendation of the court administrator, the legislature must make a certain decision. It has always been that the legislature had certain powers granted to it, and those powers were to decide what the law should be and what the policies of the state should be and what the machinery of government within the constitution should be. The executive department carried out those mandates which the legislature provided and the judicial only decided cases.

Now we have a situation where by the word "shall" we are having one branch of government, the supreme court, and particularly one man in that branch of government, the court administrator, telling the legislature what it should do, and what they are telling it to do is to substitute for its own judgment the judgment of the supreme court. The supreme court is telling the legislature, "Do not deliberate on this matter. Do not make an independent decision. Do what we tell you to do." They are saying "You shall do this." And I think this is a violation of the separation of powers concept.

I think that when the committee of the whole made the recommendation that the word "may" should be inserted for "shall" that they did then restore the basic concept of government as we know it: that the supreme court should have the right to make recommendations, the court administrator should have the right to make a recommendation to the legislature, but the legislators independently, after consideration of all the facts, not just the facts brought to the attention by the supreme court but after consideration of all the facts, should then decide whether they are going to create other districts, whether they are going to make certain changes, whether they are going to spend the taxpayers' money on the creation of new judicial circuits.

I think by this method, by the insertion of "may" the committee has given recognition to the separation of powers. But I feel if you accept the recommendation of nonconcurrence which has been presented here, that you will be violating that traditional concept. I know it has been pointed out that the word "shall" has been used in the constitution. In other words, the legislature has been told what to do in certain areas. But when you examine whenever the word "shall" has been used, the legislature shall, it is the command of the people. The people are saying in the constitution, "You shall do such and such and so and so." In this provision in which nonconcurrence is being recommended, it says that the supreme court shall order the legislature to do such and such. I believe that there is a great distinction.

I urge the concurrence in the recommendation of the committee of the whole.

PRESIDENT NISBET: The Chair recognizes Mr. Everett.

MR. EVERETT: Mr. President, fellow delegates, I think we have to look pretty clearly here at what it is we are talking about. We are not simply talking about whether there ought to be more judges, whether there ought to be larger or smaller circuits. One of the speakers has referred to this as an administrative detail which probably would be dumped in somebody's lap. We are talking about justice for people. One of the biggest difficulties of getting justice for individuals in this country of ours is the delay which results from lack of sufficient manpower on the bench. On this score Michigan is not the worst by any means. In fact, the legislature of Michigan happens to be one of the better state legislatures in providing this. But, nevertheless, there have been lags here and there have been lags elsewhere. We have seen the Congress of the United States refuse to create some 70 or 80 judgeships which were recommended simply for political reasons, to await the outcome of an election, and when the election was over, they created more judgeships than had been recommended to them, and the only reason they waited was for political considerations. This is a matter which we find throughout the country.

Now, it has been suggested that we are violating the separation of powers. I submit to you we are not. The best place to determine what is the situation is within the court itself through its administrative procedures. The separation of powers doctrine does say that having told the legislature you must act, the court cannot then force them to act, and that is the meaning of separation of powers and nobody is arguing that they should have the right to force them. Some of us here happen to believe that they will do what the constitution says they shall do and that there will not be difficulty about it.

It has been suggested that the supreme court can pack the courts, and how this has come about and been brought into this, none of us on the committee can understand, because the supreme court will not name any of these judges. If new judgeships are created, they will be filled in one of 2 ways. If the committee proposal which comes up later comes into effect, they will be filled by election of the people. The majority of us on the committee feel that is the only way to fill the vacancies in the circuit and on the probate bench — the circuit bench, of course, we are talking about here. If the present system is left in vogue, then they will come through

gubernatorial appointment, so that is a decision which this convention can make for itself when we come to it as to how to fill those vacancies.

There is today in the legislature a bill to create 5 new judgeships in Wayne county, a bill which, according to the newspapers at least, is quite likely to pass. But why wait until you need 5? If you need 5 today you must have needed 4 someplace in the past and 3 someplace back of that and 2 and 1. Why wait? We submit this is a matter of vital interest to the people of this state, that they are going to be entitled to a day in court now — not years from now, but now — and the only way they can get it is if there is sufficient manpower on the bench.

PRESIDENT NISBET: The Chair recognizes Mr. Faxon.

MR. FAXON: Mr. President, I would like to ask the chairman of the judicial committee, Mr. Danhof, a question on this. It might clear up my thinking on it. Mr. Danhof, in the committee report it says "altered and discontinued on recommendation of the supreme court." Now I assume that this means the recommendation made by the supreme court to the legislature. Is this correct?

PRESIDENT NISBET: Mr. Danhof.

MR. DANHOF: Yes.

MR. FAXON: The second part then. Is the legislature free to change or act upon the recommendations in whatever manner it sees fit? In other words, I received the impression in some of the arguments that have been going on that the supreme court is going to come in and is going to tell the legislature what to do. Now, can the legislature change these recommendations, alter them, do whatever it feels it should do as it sees fit?

MR. DANHOF: Yes.

MR. FAXON: Then isn't that the same thing that you are saying in the first line, which says "The number of judges may be changed and circuits may be created, altered and discontinued by law"?

MR. DANHOF: I think Mr. Everett has stated it before. The committee wanted to make it absolutely as strong as we could without making it constitutionally mandatory. The legislature, as we have said, can create the circuits, can create judges any time they want to on their own. If, for political purposes, it wants to add judges in a circuit or for anything it may want to do, it can. But when it became evident to that court and to that office and indirectly through the court that certain changes were really needed and when it came down as a recommendation, we wanted it as strongly as we could have it that the legislature shall act upon those recommendations.

Now, you are going to have differences of opinion. But we wanted action. If they recommend judges, that it wouldn't just lay there, that there would be action, that the legislature would follow it. And based upon what we hope would be a reasonable educational and objective study with facts to back up the requests and the recommendations, that the supreme court recommendations would be carried out. They, and perhaps they alone, have the knowledge as to where the business is being conducted, what the case load is per judge, what the trial days are in court. This is not always available, but this is a continuous study on the part of the supreme court through the court administrator. It has been up to now. We had charts and graphs from the smallest circuit to the largest, from the one carrying the most cases per judge, which is Washtenaw, to that carrying the smallest, which I can't tell you right now.

But here is the real nerve center, if you want to call it that, of what is really going on in the judicial system, and we wanted to provide that if the supreme court made these recommendations, as we said, that this shall then be done and they shall be created on the recommendation.

Now, you ask me, "Can they?" When we get back to it the answer is, "Sure they can." We would hope there could develop a good relationship, the same as you wanted in education, with the board of education to review the appropriations. So here we want to begin to work, and this is the strongest way we could word it.

MR. FAXON: So then the real effect here would be simply that where the supreme court makes the recommendations, that the legislature shall take some action, and as to what action, it doesn't necessarily mean it is the action that is recommended, but they shall take some action.

MR. DANHOF: Well, we would hope they would first take action, and, secondly, they would follow the recommendation because we think that would be sound.

MR. FAXON: Thank you.

PRESIDENT NISBET: The Chair recognizes Mr. Krolikowski.

MR. KROLIKOWSKI: Mr. President, it strikes me that to adopt the Brake amendment and insert "may" in place of "shall" will simply nullify all the work of the judicial committee up to this point. I don't see the purpose of a unified court system of justice and I don't see the purpose of the constitutional court administrator if this court administrator is merely to blandly collect records and these records are to be totally without benefit in determining how judicial manpower shall be utilized.

I think that some of the arguments that have been advanced clearly indicate from these arguments as to where the basis of determination should lie. Should we follow the statistical approach which was announced by the chairman and the vice-chairman of the committee in placing a reliance upon the statistics that are going to be compiled by the court administrator? Or should we rely upon the rank hearsay that some of the proponents of the "may" article have brought forward?

And I submit that anyone who makes statements with respect to the situation in Wayne county as being a situation that doesn't fully utilize its present judicial manpower is obviously out of touch with the situation in Wayne county.

PRESIDENT NISBET: The question is on agreeing to the amendment. Mr. Brake.

MR. BRAKE: Mr. President, ladies and gentlemen of the convention, Mr. Danhof has said over and over in the course of this argument that they went as far as they could without making it mandatory. I would like to know how you would make it mandatory. When you say to the legislature "you shall," what else can you say to make it mandatory? That is the strongest word I know, you shall do so and so.

And the answer to your question, Mr. Faxon. You asked whether or not the legislature would have to do what the supreme court told it, and you were correctly told no. But why? How? By violating the constitution. When the legislature doesn't do what this supreme court, through its administrator, says it shall do, it is violating the constitution. Now, do we want to write into the constitution a provision and rely upon the legislature violating it? That is a question we have to decide right here.

PRESIDENT NISBET: The Chair recognizes Judge Dehnke.

MR. DEHNKE: Mr. President and delegates, I just want to suggest that if we really want to accomplish what the word "shall" suggests, we should do one of two things: either cut out the circuit and give the supreme court the power directly to make that order, or add a provision which would authorize the supreme court to issue a mandamus compelling the legislature to comply with that directive under pain of being in contempt of court.

PRESIDENT NISBET: The Chair recognizes Judge Leibrand.

MR. LEIBRAND: Mr. President and delegates, I was a member of the committee on judicial branch. I voted, I believe, for the entire Committee Proposal 93, including the present language therein. When I did so, I was under the impression from the sentiment on the committee that we would probably end up in this convention by recommending a supreme court elected by districts, and I didn't feel that there would be too much difference between giving the power to create judicial districts and so forth to an elected supreme court and giving that power to the legislature.

Now it appears from the events of the last few days that we may well be heading in this convention toward an appointed supreme court. I am not willing to vest this broad power of

creating judicial circuits and combining them and that sort of thing in an appointive body. Consequently, I feel constrained to change my position as taken in the committee and support the Hutchinson amendment.

PRESIDENT NISBET: The question is on the amendment. The yeas and nays have been ordered. The secretary will read.

SECRETARY CHASE: The amendment is to page 1, line 14, after "judges" and after "circuits" by changing the word "shall" to "may" in each instance.

PRESIDENT NISBET: The Chair recognizes Mr. Heideman.

MR. HEIDEMAN: Mr. President, fellow delegates, it seems as if we are not only trying to erect a supreme supreme court but a supreme legislature as well. The words "may" and "shall" have for a long time had a distinctive meaning in constitutionalism. In article III of the federal constitution:

> The judicial power of the United States, shall be vested in one supreme court, and in such inferior courts as the congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

Now, the "may", of course, is purely permissive and the "shall" is mandatory.

I said the other day in connection with another matter that regardless of the mandamus proceeding, regardless of whether the legislature can be mandamused or not, the point is that there is no point in having a constitution unless you can express commands of the sovereign as well as restraints, and here this is clearly, I think, a command of the sovereign that this shall be done.

And as Delegate Boothby pointed out, I think very ably and effectively, this is a crossing up of our separation of powers theory. We are attempting to give the supreme court the power to make law as well as to interpret the law. And if that is what we want to do, that is one thing. But let's have it clear that that is what we are doing. There is no point otherwise in distinguishing between "may" and "shall". This "shall" here:

> The number of judges may be changed and circuits may be created, altered and discontinued by law and the number of judges shall be changed and circuits shall be created, altered and discontinued on recommendation of the supreme court to reflect changes in the judicial business.

Now that, I think, is clearly a command to the legislature, which would mean that if the legislature did not do it, it would be derelict in its constitutional duty.

Of course the recourse is at the polls to defeat these people who do not uphold the oath of office to uphold the constitution, but it still is clearly a constitutional command or mandate. And of course, I oppose the "shall" and favor the "may" because I believe in our separation of powers system.

PRESIDENT NISBET: The Chair recognizes Mr. Boothby.

MR. BOOTHBY: Point of information. I would like to direct a question through the Chair to the secretary. Is it correct that if the convention wishes to retain the wording of "may" which was inserted by the committee of the whole, that the delegates should vote no? And if they wish to change it to "shall" that they should vote yes on this amendment?

PRESIDENT NISBET: The secretary will read the amendment.

SECRETARY CHASE: The amendment is:

[The amendment was again read by the secretary. For text, see above, page 1387.]

PRESIDENT NISBET: The question is on the agreeing to the amendment. Mr. Higgs.

MR. HIGGS: Mr. President, I would just like to answer the question posed by Delegate Brake of the committee that if you want to make it more forceful, there is one way to do it. You make it self executing.

PRESIDENT NISBET: The Chair recognizes Mr. Shackleton.

MR. SHACKLETON: I wonder if we can have an interpretation of rule 24, please.

PRESIDENT NISBET: Mr. Shackleton's point is well taken. Rule 24 says a delegate may speak once, except a mover of a motion who may speak twice.

Mr. Mahinske.

MR. MAHINSKE: Can we have an explanation of the vote again? As I understand it, if we vote yes, we are changing 'shall" to "may". If we vote no, we are not changing anything.

PRESIDENT NISBET: That is correct. The question now is on agreeing to the amendment. Mr. Ford.

MR. FORD: I have already used my time on this one, but I would like to ask a question. I think Mr. Boothby may have injected some confusion, so I would like to know if those of us who want to support the committee now would vote no on the proposition before us. If we don't want to support the committee, we would vote yes?

PRESIDENT NISBET: That is correct. The question is now on agreeing to the amendment. Those in favor will vote aye. Those opposed will vote nay. Have you all voted? If so, the secretary will lock the machine and record the vote.

The roll was called and the delegates voted as follows:

Yeas—57

Baginski	Heideman	Radka
Batchelor	Howes	Richards, J. B.
Blandford	Hoxie	Richards, L. W.
Bonisteel	Hubbs	Rood
Boothby	Hutchinson	Rush
Brake	Kirk, S.	Seyferth
Davis	Knirk, B.	Shackleton
Dehnke	Koeze, Mrs.	Shaffer
Dell	Kuhn	Shanahan
Donnelly, Miss	Leibrand	Sharpe
Doty, Dean	Leppien	Sieder
Doty, Donald	Lundgren	Spitler
Figy	McAllister	Stafseth
Finch	McCauley	Stevens
Goebel	Pellow	Thomson
Gover	Perlich	Van Dusen
Habermehl	Perras	Wanger
Hanna, W. F.	Plank	White
Haskill	Powell	Wood

Nays—72

Allen	Farnsworth	McLogan
Andrus, Miss	Faxon	Millard
Austin	Follo	Nord
Balcer	Ford	Norris
Barthwell	Gadola	Ostrow
Beaman	Garvin	Page
Bentley	Greene	Pollock
Binkowski	Gust	Prettie
Bledsoe	Hannah, J. A.	Pugsley
Brown,T. S.	Hatcher, Mrs.	Rajkovich
Buback	Higgs	Sablich
Butler, Mrs.	Hodges	Snyder
Conklin, Mrs.	Hood	Staiger
Cudlip	Iverson	Stamm
Cushman, Mrs.	Judd. Mrs.	Sterrett
Dade	Karn	Stopczynski
Danhof	Kelsey	Suzore
DeVries	King	Turner
Douglas	Krolikowski	Walker
Downs	Lawrence	Wilkowski
Durst	Madar	Woolfenden
Elliott, A. G.	Mahinske	Yeager
Elliott, Mrs. Daisy	Martin	Young
Everett	McGowan, Miss	Youngblood

SECRETARY CHASE: On agreeing to the amendment recommended by the committee of the whole, the yeas are 57; the nays are 72.

PRESIDENT NISBET: The amendment is not agreed to. The secretary will read the next amendment.

SECRETARY CHASE: The next amendment recommended by the committee of the whole:

3. Amend page 1, line 20, after "Sec. b.", by striking out the balance of the line, all of line 21, and line 22 through "years.", and inserting "Circuit judges shall be nominated and elected at nonpartisan elections in the county or the circuit in which they reside, and shall hold office for a period of 6 years and until their successors are elected and qualified.".

PRESIDENT NISBET: The question is on agreeing to the amendment. Mr. Ford.

MR. FORD: This amendment placed here by Mr. Danhof is actually pursuant to the wishes of most of the members of the committee. We urge you to support the amendment.

PRESIDENT NISBET: Those in favor of the amendment will say aye; opposed, no.

The amendment is agreed to. The next amendment, Mr. Chase.

SECRETARY CHASE: This next amendment:

4. Amend page 2, line 6, after "tribunals" by striking out "as prescribed by supreme court rule;", and inserting "except as otherwise provided by law; power"; so that the language then reads:

> Circuit courts shall have: original jurisdiction in all matters not prohibited by law; appellate jurisdiction from all inferior courts and tribunals except as otherwise provided by law; power to issue, hear, and determine prerogative and remedial writs . . . .

PRESIDENT NISBET: The question is on agreeing to the amendment. Mr. Ford.

MR. FORD: Mr. President, the committee considered this and concurred in the change. When we left here yesterday, we passed over this matter in the committee of the whole for an attempt to get this language. I urge the support of the amendment.

PRESIDENT NISBET: The question is on agreeing to the amendment. Those in favor will say aye; opposed no.

The amendment is adopted. The next amendment, Mr. Chase.

SECRETARY CHASE: The next amendment:

5. Amend page 2, line 13, after "purposes" by inserting a comma and "or other officer performing the duties of such office,"; so the language would then read:

> The clerk of each county organized for judicial purposes, or other officer performing the duties of such office, shall be clerk of the circuit court for such county.

PRESIDENT NISBET: The question is on agreeing to the amendment. Those in favor will say aye; opposed, no.

The amendment is adopted.

SECRETARY CHASE: The next amendment:

6. Amend page 2, line 15, after "county clerk" by striking out "or" and inserting a comma; and in line 16, after "prosecuting attorney" by inserting "or friend of the court"; so the language will read:

> The judges of the circuit courts may fill any vacancy in the office of county clerk, prosecuting attorney or friend of the court within their respective jurisdictions, but shall not exercise any other power of appointment to public office.

PRESIDENT NISBET: The question is on agreeing to the amendment. Mr. Danhof.

MR. DANHOF: Mr. President, members of the convention, I only ask that this one be seriously considered, for this particular reason: the 2 offices mentioned in section d are, in essence, constitutional offices which have been previously provided for in the local government section. In the Constitution of 1908 they were constitutionally recognized offices. Now, what has been accomplished by inserting "friend of the court" is that you have indirectly frozen into this constitution an office which now exists only under the statute, and that by so doing, you have this particular situation: you may have an appointment to make to an office that might not be in existence, because the friend of the court can be abolished by the legislature unless you are going to provide for it some other place to make it a constitutional office, so if the legislature changes the name from friend of the court to family service officer, then the legislature is going to provide the appointment and not the judge, and the only way that they have to get around this is to change the name, because you have frozen in a name which in essence outside of this particular section means absolutely nothing.

Now, we do have county clerks provided for in the local government section. We have prosecuting attorneys provided for and there is a logical carry through from that to this. But when you go into the statutory offices and you now have indirectly frozen them in, I think you have caused nothing but trouble for the future and you are inviting circumvention by the fact that the legislature can abolish friend of the court, recreate it under another name and what have you got? I think it is just a poor concept of constitutional philosophy.

Now, if you wish to put in the local government section or some other place a provision that there will always be a friend of the court or something similar, I can see the particular reason.

For that reason, and not because I oppose friends of the courts —because I think they are a necessary adjunct to the court, but because of the fact that this is a statutory office, is not constitutional — I would urge that you seriously reconsider and that the amendment of the committee of the whole be not concurred in, and vote no.

PRESIDENT NISBET: Mr. Higgs.

MR. HIGGS: Mr. President and delegates, when I spoke in the committee of the whole, I indicated that I did not oppose this amendment. I have reconsidered, and I urge that you support the committee for the reasons given by Mr. Danhof, and vote no.

PRESIDENT NISBET: The question is on agreeing to the amendment. Judge Gadola.

MR. GADOLA: Mr. President and members of the delegation, again I am sorry but this judicial matter is something that has been with me for 50 years, and I operated for 30 under it. I won't go into the reasons why, but please vote no on this amendment. You put it upside down. If you wanted to give the court any authority over any other office, it should have been the court reporter or stenographer, but not the friend of the court. Thanks.

PRESIDENT NISBET: The question is agreeing to the amendment. Those in favor will vote aye. Those opposed will vote no.

The amendment is not agreed to. Are there any other amendments?

SECRETARY CHASE: Mr. Kuhn offers the following amendment:

1. Amend page 2, line 1, after "office" by striking out "shall" and inserting "may"; so that the sentence beginning in line 22 of page 1 would read, "In circuits having more than 1 judge the terms of office may be arranged to provide that they will expire on a staggered basis."

PRESIDENT NISBET: The Chair recognizes Mr. Kuhn.

MR. KUHN: Mr. President and members of the convention, as you know, yesterday we thought that 1 was rather a foolish number and we could not see how it was justified and we attempted to use the number 6. We are still of the opinion that 1 is not a satisfactory number, and to keep this document flexible, we are now recommending that we leave it up to the legislature in its discretion to determine what the number shall be and whether or not it wants to do what the committee is recommending.

I think this was clearly pointed out to us under the proposition now under consideration in the committee of the whole. The committee came up with a figure 25,000 population they should consolidate our probate courts. I for one think 25,000 is wrong. Someone suggested to me — and I don't know if it was in jest — that there are no members of the committee that represent a county of less than 25,000. I don't know if that is true or not. Maybe 200,000 or 400,000 would be a better number. To me, numbers should not be in the constitution, and therefore I would urge that we leave this up to the legislature.

PRESIDENT NISBET: The question is on the amendment by Mr. Kuhn. Mr. Danhof.

MR. DANHOF: Mr. President, members of the convention, we went through this. This was the minority report to section b. We went through all of the arguments. If style and drafting

would like to eliminate the "1" and say "having more than a judge" we will go along. We took all of the arguments as to why we felt it was good. If we are going to do it, it should be done. The bar association recommended it. Witnesses before our committee recommended it. If you are going to elect the judges, the least we could try to do is to shorten the ballot. We have provisions for the legislature to implement them. Without going back into all the arguments, I would urge the defeat of the amendment.

PRESIDENT NISBET: The question is on the amendment. Mr. Ford.

MR. FORD: Mr. President, I expressed yesterday that although we had a minority report that sought to do exactly what Mr. Kuhn is doing here, we did not wish to make a fight of it at this point because this issue comes up again in Committee Proposal 96 in a form where I think we can more readily resolve the issues. So I don't feel that the change of this word is essential at this time because I think it is something that can be done in Mr. Cudlip's committee to conform with whatever we do when we handle the matter in full in Committee Proposal 96.

PRESIDENT NISBET: The question is on the amendment. Those in favor will say aye. Opposed, no.

The amendment is not adopted. Are there further amendments?

SECRETARY CHASE: That was the last amendment, Mr. President.

PRESIDENT NISBET: If not, **Committee Proposal 93** as amended is referred to the committee on style and drafting.

Following is Committee Proposal 93 as amended and referred to the committee on style and drafting:

The committee recommends that the following be included in the constitution:

Sec. a. The state shall be divided into judicial circuits along county lines in each of which there shall be elected 1, or when provided by law, more than 1 circuit judge. A circuit court shall be held at least 4 times in each year in every county organized for judicial purposes. Each circuit judge shall hold court in the county or counties within the circuit in which he is elected, and in other circuits as may be provided by supreme court rule. The number of judges may be changed and circuits may be created, altered and discontinued by law and the number of judges shall be changed and circuits shall be created, altered and discontinued on recommendation of the supreme court to reflect changes in the judicial business. No change in the number of judges nor alteration or discontinuance of a circuit shall have the effect of removing a judge from office during his term.

Sec. b. Circuit judges shall be nominated and elected at nonpartisan elections in the county or the circuit in which they reside, and shall hold office for a period of 6 years and until their successors are elected and qualified. In circuits having more than one judge the terms of office shall be arranged to provide that they will expire on a staggered basis.

Sec. c. Circuit courts shall have: original jurisdiction in all matters not prohibited by law; appellate jurisdiction from all inferior courts and tribunals except as otherwise provided by law; power to issue, hear, and determine prerogative and remedial writs; supervisory and general control over inferior courts and tribunals within their respective jurisdictions, in accordance with supreme court rules; and jurisdiction of other cases and matters as the supreme court shall by rule prescribe.

Sec. d. The clerk of each county organized for judicial purposes, or other officer performing the duties of such office, shall be clerk of the circuit court for such county. The judges of the circuit courts may fill any vacancy in the office of county clerk or prosecuting attorney within their respective jurisdictions, but shall not exercise any other power of appointment to public office.

SECRETARY CHASE: The committee of the whole, Mr. President, has also had under consideration **Committee Proposal 94**, A proposal pertaining to the probate court; has come to no final resolution thereon. This completes the report of the committee of the whole.

PRESIDENT NISBET: The Chair recognizes Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, I move that the convention resolve itself into committee of the whole for the purpose of considering matters on the **general orders** calendar.

PRESIDENT NISBET: The question is on the motion of Mr. Van Dusen. Those in favor will say aye; those opposed, no.

The motion prevails. Mr. Van Dusen.

[Whereupon, Mr. Van Dusen assumed the Chair to preside as chairman of the committee of the whole.]

CHAIRMAN VAN DUSEN: The committee will be in order. When the committee last sat, it had under consideration **Committee Proposal 94**, a proposal dealing with organization and jurisdiction of the probate courts of the state.

For last previous action by the committee of the whole on Committee Proposal 94, see above, page 1380.

The general discussion of the proposal had been completed. Mr. Danhof.

MR. DANHOF: Mr. Chairman, Mr. Mahinske raised a particular question regarding the interpretation of the word "dependents". At that time I indicated that it was my opinion that the committee proposal was correct. I should like at this time to make additional reference thereto to solidify the interpretation given to it by the judicial committee.

First I should like to refer to the report of the submission and the address to the people of the Constitution of 1908 where they added this language, ". . . and they shall also have original jurisdiction in all cases of juvenile delinquents and dependents." Under the explanation it says:

> No change is made from section 13 of article VI of the existing constitution except for the purpose of improving the phraseology and the addition of the boldface words — which were the ones that I read
>
> — these being added to make the powers conferred by law on probate courts in juvenile cases constitutional powers.

Now, this meant that there had been, prior to 1908, a statute in this regard. I read further:

> . . . that from the debates of the Constitutional Convention of 1907-08, volume 2, page 970, it shows that the word "dependents" refers to juvenile dependents with this explanation. After the proposal was placed on second reading, the following amendment was offered:
>
> After the word "delinquents" insert "and dependents."
>
> The argument by Delegate Simons on his amendment was as follows:
>
> That this proposal aims to make the probate court a juvenile court; that is, giving it jurisdiction over juvenile cases. Now, those who have had to do with juvenile offenders recognize 2 distinct classes. One of them is delinquents and the other is dependents. And that classification is made in all of the statutes which have been passed in various states dealing with juvenile offenders.

Therefore, it is the position of the committee that the committee report is correct and that juvenile delinquents and dependents has the exact interpretation it had in 1907-08, refers to juvenile delinquents and juvenile dependents. And with that in mind I would like to proceed, Mr. Chairman.

CHAIRMAN VAN DUSEN: Mr. Mahinske, do you desire recognition?

MR. MAHINSKE: Yes. But then I would like to ask further that by repeating this language, it is not your intent to take any adult dependent jurisdiction away from the probate courts that had been conferred on the probate courts since 1908?

MR. DANHOF: By statute?

MR. MAHINSKE: By statute.

MR. DANHOF: No. Absolutely correct. We are not conferring upon them constitutional jurisdiction of adult dependents, Mr. Mahinske, only what they had before as it relates to juveniles.

MR. MAHINSKE: And you are not withdrawing from them the statutory adult dependent jurisdiction that they have?

MR. DANHOF: Of course not, because whatever is granted to them by statute they keep. We provide that they shall have such jurisdiction and powers and duties as shall be prescribed by law, and whatever is given to the probate court by law is what they have in addition to this juvenile jurisdiction.

MR. MAHINSKE: Fine. Thank you.

CHAIRMAN VAN DUSEN: Mr. Boothby.

MR. BOOTHBY: Mr. Chairman, I would like to direct a question to Mr. Danhof.

CHAIRMAN VAN DUSEN: If the gentleman cares to answer.

MR. BOOTHBY: Mr. Danhof, just so the record is straight and that my mind is clear on this matter, does the committee contemplate that in those counties with a population of less than 25,000, the court administrator can command and direct the legislature to provide a supplemental salary for probate judges in those counties?

MR. DANHOF: Well, as Mr. Higgs pointed out, the intention was that every county that has a probate judge pays him $5,000 now by statute, and we only would provide, we hope, that if they add to the duties of the probate judge, that they would add a supplemental salary as shall be provided by law.

Now, we have just gone through this whole deal again. Again we get down to: if there are additional duties that seem to be placed upon the judge because they transfer to him, we will say, the jurisdiction of the circuit court commissioner — which they could do, which they might do — that you have a salary scale generally for probate judges. Perhaps their whole salary scale would be revised. Again we would hope that if this procedure is adopted, that the recommendation of the court would be accepted, the theory being that if you want to have an attorney, you are trying to get a salary which would attract an attorney full time and give him a living wage in these counties.

MR. BOOTHBY: Then I think you have answered my question. What you are saying then is that the court administrator can dictate his will as to the salary of a probate judge in a particular county, and that if the legislature carries out the constitutional mandate, they must carry through with this particular directive of the court administrator. Am I correct?

MR. DANHOF: Of the supreme court, Mr. Boothby, not the administrator.

MR. BOOTHBY: Another question, Mr. Danhof, if Mr. Danhof would care to answer. Is it also in the contemplation of the committee that the court administrator, acting for the supreme court, could actually direct and command the legislature to set up a wholly new inferior court system in certain counties of the state?

MR. DANHOF: Wholly new?

MR. BOOTHBY: That is correct.

MR. DANHOF: No, because there you have to have a 2/3 vote. And the legislature, by section a, which you have already passed, is given the sole authority to set up any new court, Mr. Boothby.

MR. BOOTHBY: Let me ask this further question, if you would care to answer. Is it possible that by this command of the supreme court, they could command the legislature to set up a county court system but just naming it a probate court system, taking away the powers of the justice of the peace and yielding them to the probate court and in effect setting up a new judicial system?

MR. DANHOF: Well, this is the whole import of the amendment. You group this together with the idea that we have recommended that the justice of the peace and the circuit court commissioners be deleted from the constitution, and that within 5 years their powers, duties, et cetera, be transferred to some statutory court. And if this would turn out to be the best procedure, we would certainly hope that it would be utilized. This is the entire reason for recommending this particular type of proposal in these types of counties.

MR. BOOTHBY: If these courts were combined so that the probate court actually acted as the court over all of the inferior court matters, would this require a 2/3 vote of the legislature?

MR. DANHOF: I don't necessarily think so. This is my own personal opinion. It would not be setting up a new particular type of court because you see, Mr. Boothby, everything that the probate judge has now except juvenile authority comes by statute anyway, so they could assign him many duties right today that the circuit judge is performing or anything that even the justices of the peace are performing over and above what is constitutionally granted to them.

The probate court has no original jurisdiction except juvenile. Everything else comes from the statute and it, in effect, is a derogation of the jurisdiction of the circuit court, and I would imagine that if the legislature had seen fit over the past years, it could have, in effect, if it desired, reduced the probate court to nothing more than a juvenile court under the 1908 constitution and transferred everything that is in the probate court back to the circuit court. Now, we don't think that would happen. It hasn't happened. There is no reason to think particularly that it would. But I think that sometimes we get confused. There is no constitutional jurisdiction to the probate court except in just 2 cases: juvenile delinquents and juvenile dependents. The rest is all statutory and always has been and will continue to be.

MR. BOOTHBY: As I listen to your explanation of this section, I can only conclude that the court administrator, acting on behalf of the supreme court, can command the legislature to do 2 things: spend the taxpayers' money on supplemental salaries, and set up a completely new court system on the inferior court level by indirection. I understand they cannot do it directly, but they can do it indirectly by taking away the justice court functions and placing them in the hands of the probate court and giving them all the power which the inferior courts have.

CHAIRMAN VAN DUSEN: Mr. Higgs.

MR. HIGGS: Mr. Chairman, I would like to take up Delegate Boothby's question here. His understanding is certainly not mine, completely. Following on line 8, if you follow the comma after "districts" you read that entire clause:

> . . . or combine the office of probate judge with any judicial office inferior thereto in any county with less than 25,000 population with supplemental salary as provided by law. . . .

I think I can speak for the committee in this matter, and if I don't, I hope that they will correct me. It was my understanding in the construction of that sentence that "with supplemental salary as provided by law" applies only where the office of probate judge is combined with another judicial office. It does not apply to the combining of probate courts into districts.

Now, inasmuch as the probate salary is set by the legislature now, and inasmuch as it is merely provided that if additional judicial duties are added to the office, there be a supplemental salary, there is no power whatsoever in the court administrator — or it would be better and more correct to say that the supreme court, upon recommendation of the court administrator, has no power to determine what the supplemental salary is. This was designed, really, to provide a method that the legislature could use to create a court system at less money, because in counties with less than 10,000 population, they just don't have very much probate business, and they have, at the very minimum, $5,000 base salary by statute, and with a reasonable supplement, you have the base upon which to build. Our whole problem arises because we are incorporating into the constitution this tier of courts, the probate court. As I told you before, only 13 other states provide in their constitution for a probate court. What we have done is, we have provided for a probate court and we are trying, in including

it in the constitution, to also include a degree of flexibility for the handling of these problems in counties regardless of their size.

CHAIRMAN VAN DUSEN: The Chair will once again advise the committee that there are pending, in addition to the amendment pursuant to the minority report, some 7 additional amendments which cover, in the Chair's opinion, everything which has been discussed to this point, and it might be helpful in channeling the course of our activity to consider these subjects as the amendments arise. The secretary will read the amendment offered pursuant to the minority report of Messrs. Ford, Garvin, Bledsoe, Ostrow, Krolikowski and Barthwell.

SECRETARY CHASE: Mr. Ford, on behalf of the minority, offers the following amendment:

1. Amend page 1, line 14, after "dependents" by striking out the comma and "except as otherwise provided by law".

CHAIRMAN VAN DUSEN: On the amendment offered by Mr. Ford and others, the Chair will recognize Mr. Ford.

MR. FORD: Mr. Chairman, members of the committee, the rationale for the minority report is on page 581 of the journal. I will read in part from it.

[Paragraphs 1 and 2 of the minority report supporting reasons were read by Mr. Ford. For text, see above, page 1381.]

That is to say, we don't feel that the same judge who tries adult offenders and who hears other forms of cases that are always an antagonistic proceeding should be dealing with juvenile matters and particularly with juvenile offenders characterized as juvenile delinquents.

[The remaining 2 paragraphs of the minority report supporting reasons were read by Mr. Ford. For text, see above, page 1381.]

As has already been stated here today, the only constitutional power that the probate court has is this phrase. The effect of the committee's language at the end would be to nullify a constitutional guarantee that you can never merge the juvenile function with general trial function. A number of people who have been very active and very prominent in the juvenile field from the standpoint of juvenile court administration have recommended very strongly that we retain the language of the 1908 constitution, and there are a number of reasons that they advance in support of this position.

The question is going to be raised and the assertion is going to be made — so I might as well get it out on the floor now — that the reason for the addition of the qualifying language by the committee "unless otherwise provided by law" is to permit the creation of a family court. Well, I want to say that people who have been advocating the wisdom of a family court in Michigan — and I am one who subscribes to the idea, but again this is something like home rule. I guess we are not all talking about the same thing when we are talking about a family court — have come to the conclusion that the present constitution does not prohibit the creation of the kind of family court that they think Michigan needs.

We do not now, for example, have a juvenile court set up in the state as a separate court. We do have the juvenile function in the probate court, and the probate judges throughout the state are in effect juvenile judges. But probate judges do not try other criminals. They don't try adult criminals. And when we are talking about juveniles here, it should be made very clear that we are talking about people under the age of 17. When they reach 17 they become adults in the eyes of the law for the purpose of criminal prosecution. So we are talking of children of tender age.

Historically our system of justice fought with this problem for many, many years, and at the time of the 1908 constitution throughout this country there was a wave of revulsion over cases reported of children of very tender years. At just about the time of the last convention there was a rather famous case involving a 10 year old child being tried in a criminal adversary proceeding. The feeling of people for many years has tended toward the idea that children had to be treated differently when they committed a wrong against society than adults and that a different standard not only had to be applied to their conduct but a different manner of handling them as offenders had to be effected.

I think that the evolution of this concept is summed up quite well in the testimony given before our committee by Judge Mary Coleman, of Calhoun county, who spoke for the probate judges in front of our committee, and particularly on the juvenile aspects. She says on page 3 of her prepared statement:

> The juvenile court should be placed in that court the nature and philosophy of which is most closely allied. The matters coming before the probate court: probate of estates, commitments of the mentally ill and handicapped, guardianships, adoptions, juvenile court proceedings, etc. are well suited to be grouped in one court, a court of neither criminal jurisdiction nor one basically adversary.
>
> Less than half a century ago, in some states (not Michigan) of this country, a 10 year old boy who broke a street lamp could be brought into an adult criminal court. The importance and urgency of this issue was certainly very much in the minds of the drafters of the 1908 constitution, for they lived at a time when this was a burning cause. They recognized the issue as fundamental and a far sighted convention placed juvenile matters in the only noncriminal, nonadversary court in our state system.

It should be stated as it stands now, with the new 5 tier system that this convention has thus far agreed to, the only noncriminal nonadversary court available for the handling of these affairs is the probate court. If Mr. Higgs' amendment, which is part of the committee report, is adopted, this might be modified in some part, thus making an important step forward. This was a victory in a battle which had been waged for hundreds of years. It took longer for children to be treated as children than it did for all of us to obtain the constitutional right of free speech. I would like to repeat that: it took longer for children to be treated as children than it did for all of us to obtain the constitutional right of free speech.

Long after we had recognized all of the other basic rights that we now subscribe to and recognized them in the form of our bill of rights or declaration of independence in the constitution itself, we were still trying to convince people in this country that children had to be treated differently than adults when they got into trouble. As a matter of fact, there are states in this country today that still do not embrace this concept, and it has been suggested to me very recently, during the noon recess, that maybe we don't need this any longer because certainly we are all enlightened enough now so that no one would ever attempt again to put the children back into the criminal courts of the adults.

Well, it has been done right here on this floor, because this 25,000 population merger proposal will say that in counties of 25,000 or less the same person who holds examinations in all of the criminal matters, ranging all the way to and including murder, could conceivably be the probate judge, and the probate judge would be the juvenile judge, and you will be putting them back where they were a couple of hundred years ago.

Also we have had people before the committee and we have had professional recommendations that the whole system, as Mr. Higgs urged on you just a few moments ago, should be merged and there shouldn't be a separate probate court, and one of the strongest reasons for having a separate probate court is for having a separate court, a place in which you could repose the juvenile function and not have the danger of adding to that court's duties criminal or adversary proceedings.

Going on with Mrs. Coleman's statement:

> Let us not regress or place in hazard these important gains. To assure the place of children in our court system, such should be specified in the new constitution. The new constitution should retain that which is good in the 1908 constitution and remove or change that which should be removed or changed.

Now, in addition to Mrs. Coleman, we had testimony on behalf

of the probate judges association, and the Honorable Phillip Mitchell of Hastings made a presentation to us. I would like to read briefly from that:

> My own views are that exclusive original jurisdiction over juvenile delinquents and neglected children under the age of 17 years should be given to the probate courts, and that in addition the legislature should be authorized to establish family courts in such areas of the state as they deem it advisable by adding this jurisdiction to that of the probate court in the area affected.

In other words, the probate judges association is saying, "We agree that a family court would be a good thing, but we don't feel that you have to tamper with the constitutional guarantee of juvenile function being separated from other courts in order to accomplish your purpose."

I might say that although the family law committee of the state bar association has not had an opportunity to take a final position on this matter, I am a member of that committee and have participated in a number of discussions concerning the family court. There is a considerable amount of sentiment on this committee for some form of family court, but I think that it is fair to say that a majority of the members of the committee think that as a legal proposition a constitutional change is not necessary to make it possible to provide the kind of family court that people who are working in this field directly feel the state of Michigan might need now or on into the future.

Very recently you received, all of you, a letter from the juvenile judge down in Wayne county, and Mr. Garvin is going to discuss that, but just the other day we received from Mrs. Coleman a letter supplementing her testimony. It is dated February 20, 1962, addressed to the chairman of our committee:

> The juvenile affairs committee of the Michigan probate judges association strongly recommends striking from judicial Committee Proposal 94 relating to probate courts the words "except as otherwise provided by law" on line 14.
>
> The present form of the proposal provides no constitutional guarantee that children will not again be tried in adult, criminal, adversary courts — on the contrary, it leaves the door wide open.

I would like to supplement that by saying it not only leaves the door wide open, but there are people who already have their foot in the door, and it is the first step toward the amalgamation, once again, of these functions with a court where they don't belong. She goes on to say:

> We reiterate the position of probate judges that gains made over the last century be protected in the new constitution and children continue to be guaranteed hearing in noncriminal, nonadversary courts.
>
> It is respectfully suggested that an amendment be supported eliminating the endangering words "except as otherwise provided by law."

I am very pleased that the minority put its minority report in quite some time before these communications were received and, without any contact with us, spontaneously suggested the very change that we are here suggesting in the minority report.

I do hope that the ensuing discussion of family courts and other considerations doesn't serve to becloud the issue because it is a very simple, clear and concise one, the question whether we feel it is necessary to have such a constitutional guarantee or not, because when we put the qualifying words in that the committee puts in, the legislature could at any time intentionally or, what is worse, inadvertently in the creation of inferior courts or in the enactment of statutes not primarily for this purpose once again put the children back in the adult courts.

With that I would like to yield to Mr. Garvin, a member of the minority that signed the minority report that supports the amendment proposed.

CHAIRMAN VAN DUSEN: Mr. Ford yields to Mr. Garvin.

MR. GARVIN: Mr. Chairman and delegates, you know, I hope we face this issue squarely and not get off too much on side issues because it deals with juveniles, someone who cannot be here with us and someone whom we must continue to do the best possible to protect and bring up as proper citizens. There have been questions and statements about juvenile delinquency becoming worse or in greater percentage. Whether it is or not I am not here to discuss, or whether it is because of greater population. But I do know that it goes on throughout the state of Michigan without regard to the size of your county or the size of your district or the section of Michigan in which you live. Now, this in 1908 was added; that is, placing a period after giving the probate court original jurisdiction over juveniles and dependents for the very reason, as stated by Mr. Ford, that they shouldn't under the age of 17 be in adult criminal courts particularly.

There has been some discussion about a family court, but this would not be where a family court should be. In our Committee Proposal 90, our fifth tier of courts includes establishment of other courts of inferior jurisdiction. That is where it would be. To further explain this, I want to read part of a letter from the vice chairman of the juvenile affairs committee from the Michigan probate and juvenile judges association, Judge James H. Lincoln. By the way, this letter was just dated last week, long after the minority report was put in.

> The adding of the words "except as otherwise provided by law" has in effect removed all constitutional guarantees concerning juveniles that are contained in the Constitution of 1908. The practical and actual result of including the words "except as otherwise provided by law" goes far beyond the stated or intended reason for including these words. The actual result is to remove the bill of rights for juveniles from the constitution. There will be no constitutional guarantee. Juveniles may once again be tried in adversary and adult criminal courts. It took centuries to get children out of adversary and adult criminal courts. The constitution of 1962 should not remove the time tested guarantee given to juveniles in the 1908 constitution.
>
> If the words "except as otherwise provided by law" are stricken by amendment, there will then be a constitutional guarantee that juveniles will be tried in a nonadversary court and noncriminal court.

The letter proceeds on that general basis, that we are going centuries back if we allow this amendment there so the legislature can add any type of court they want. I was also going to mention — Mr. Ford has already mentioned it — about the fact that the legislature won't do that, when we are trying to do it ourselves here.

I have no objection to perhaps circuits being combined at 25,000 or more, but I don't see how it can be done and still retain the juveniles in a court of their own because of the adult matters that are happening in the justice courts for example.

Now, in reference to a family court, I will repeat again there is room for that. There is provision made so the legislature could establish family courts, and this section in this constitution is no place to take away our juvenile courts for the juveniles because that is where it should be, and I hope that you vote for this minority report amendment.

CHAIRMAN VAN DUSEN: Mr. Ford, you retain the floor.

MR. FORD: Mr. Chairman, I would like to ask if there are any other sponsors of the minority report who would like to speak on this. I don't think there are. And with that, we will rest our case.

CHAIRMAN VAN DUSEN: Mr. Baginski. Mr. Baginski, excuse me. Mr. Krolikowski, do you yield?

MR. KROLIKOWSKI: Yes.

CHAIRMAN VAN DUSEN: Mr. Baginski.

MR. BAGINSKI: Mr. Chairman, members of the committee, I rise in support of the minority report amendment. I stand here as an employee of the probate court for 22 years. I can say this this afternoon: the bench in Wayne county has asked me to rise to the floor to support this minority report amendment and to see if we can strike out these 5 words.

We have heard a lot about criminals in juvenile court and so forth.

Let me say this to you and cite another facet of the juvenile court. When I first came to the probate court, we had 6, maybe 10 mentally ill children that we found had to be committed per year. In the ensuing years we found that had we had proper psychological clinics, psychiatrists to examine these children who were committed to boys' vocational or the Adrian school for girls, they would not have had to go to Adrian or to boys' vocational. These children were mentally disturbed and mentally handicapped and should have gone to mental institutions. In these years we have a psychiatric staff; we have a child guidance clinic; we have a psychological clinic, and today, rather than force these children to go to boys' vocational where they become lost with some children who are of a criminal tendency, where they learn a lot of new ideas and later end up in Jackson prison, these children are sent to Northville or Ypsilanti and are treated as emotionally disturbed children, or they are sent to Lapeer or to Coldwater or to Newberry, whatever the case may be, and they are treated as mentally ill children and eventually get home. This is one facet of this work.

Now, the type of people who are employed in the juvenile court are specialists trained to do this particular work. We have some children who are placed on probation. They are handled by probation officers who know this particular kind of work, and they are career people and are trained to do this. Now, we are interested that the work that we have, the plant, the building, the Wayne county youth home that has been established at a cost of many millions of dollars remain with the court, that the special type of work remain with the juvenile division of the probate court, and if at some time in the future it is felt that they would like to create a family court, they can do it by the legislature and go on about their own composition.

We earnestly urge you to support the minority report amendment.

CHAIRMAN VAN DUSEN: The gentleman from Bay City, Mr. Higgs.

MR. HIGGS: Mr. Chairman and members of the committee, this is indeed a very serious matter. There is nothing about it that should be taken lightly. The committee has considered, I think, every aspect of this problem that has been raised here so far today. I do indeed wish you to face the issue squarely, not on the basis of any pressures that may be involved.

I too have letters from probate judges including the dire implications of what we might do, and I don't take them lightly, and I certainly do believe that we must here today consider all of the rights of children, who cannot speak for themselves, and I agree that children should not be tried in adult criminal courts particularly, as has been stated here.

I don't think that there is any possibility — and none of the judges that appeared that were asked the question felt that there was such a possibility — that we are going to try 10 year olds in adult criminal proceedings any more at any time in the future. This is really looking back many, many years. I haven't heard anyone anywhere advocate such a thing. And I heard Delegate Ford speak the other day about seeing ghosts, and I think certainly that is a ghost that he is seeing here today. Now, let us face the issue squarely. Delegate Ford says there is room in Michigan for the kind of family court Michigan needs. And believe me, I don't in any way mean to take anything away from the sincerity of the argument. This is exactly why we have attempted to write into this provision the degree of flexibility that we did, because we did not believe that we were able to know exactly what kind of family court Michigan does need. If we did know, we would have written it in.

We had in New York state last year a new judicial article, and it does include a family court. And that family court includes the jurisdiction of a children's court, a domestic relations court, aspects of the surrogate court and the circuit court, and it is a separate and independent court. It is a noncriminal court, especially set up for certain purposes.

I think we need to include in our constitution a provision which is broad and flexible enough so that we can take advantage of the experience of other states in the development of their courts along this line. We have the opportunity to watch the development before we go into it, see how it works. I think that is the most enlightened approach that we can possibly take. I note here in the letter from Judge Lincoln that if these words are stricken, there is no guarantee that the juveniles will be tried in a nonadversary and noncriminal court. Well, of course, the probate court is not a nonadversary court. There are a number of proceedings in probate court that are adversary. The jurisdiction of the probate court includes all kinds of things you probably never heard of, including appointments to the board of auditors, appointments to the county allocation board, appointments of members on the soldiers relief commission. It includes condemnation proceedings of 3 different types. I have a page and a half listed of duties of the probate court.

I would like to say that when Delegate Baginski tells us about the fine facilities in Wayne county for handling emotionally disturbed children and the employment of specialized juvenile court workers, this is exactly one of the reasons why we would like to make it possible for the legislature to develop possibly district probate courts or district juvenile divisions of the probate court so that they can employ the facilities and the people trained to do this kind of work. The door is open not to going backwards but to going forward. We can't look in a crystal ball and know exactly how this should be done. But I do believe that since we have gone this far — and we are going much farther than a majority of the states of the United States; there are only 13 other states that include the probate court in their constitution — then I think it is very important that we do include the flexibility necessary to develop better ways of handling juveniles.

I don't think it is necessarily true that the juveniles are best handled in all probate courts in the state of Michigan. It may be that the juvenile aspects should be entirely out of the probate courts in some parts of the state. Now, I don't know and I am not trying to tell you what this plan should be. I am only urging that inasmuch as we have continued the placement of the jurisdiction in the court, that you do not take away or strike out this provision, which would make the probate court inflexibly the source of original jurisdiction.

Let me give you a thought going back to this issue that Delegate Ford raised. What kind of a family court do we need or want? My understanding of what I have read in this direction is that if a judge can have before him perhaps in a domestic relations matter the entire aspect of the family relationship — maybe this is the kind of problem that generates juvenile deliquency and includes also adult delinquency, and as a way in which he can have the total picture before him, and not only the total picture but the power to act not only on the juvenile but on the adult, and with the assistance of experienced and trained people — if the judge can have that picture before him and the power to act, this is what the family court is striving for in other states, and I don't want to close the door in such a way, if the family court is developed as the kind of family court that Delegate Ford suggests, that it will exclude the jurisdiction over the juvenile dependent and neglected or the juvenile delinquent, but should include this unfortunate child within the fold of that court and within the framework of the social work that may be done to either bring that family together or look after the best interests of that child. I don't think we are prepared to say what kind of a family court we want to either prevent or provide for today.

And I urge, and respectfully, that you defeat this amendment.

CHAIRMAN VAN DUSEN: Mr. Staiger.

MR. STAIGER: I wonder if I could ask a question of Mr. Ford.

CHAIRMAN VAN DUSEN: If the gentleman cares to answer.

MR. STAIGER: Mr. Ford, as I understand it, your objection to including this wording "except as otherwise provided

by law" is that it leaves the door open for the legislature to combine juvenile jurisdiction into a court having general adult criminal jurisdiction? Is that correct?

CHAIRMAN VAN DUSEN: Mr. Ford.

MR. FORD: Yes. General adult criminal jurisdiction is the one we are most afraid of, but we also don't want it in the circuit court where adversary proceedings obtain, because the procedure in the juvenile court is informal and is not related to the procedure that is carried on in the adversary courts.

MR. STAIGER: So if these things were specifically prohibited, you would have no objection to leaving the flexibility so that it is clearly understood that a family court could be established. As I understand it, the majority report makes it clear they do not want what you are seeking to prohibit either, so if we clearly prohibited that by amendment, then there would be no objection to leaving it flexible for the establishment of some other court of a family jurisdiction?

MR. FORD: If we could use other language to do what I am trying to do, I would have no objection to it at all. The only thing is we have been doing it this way for 52 years and people who have actually — not people who have guessed about it, but the family law committee of the state bar which has been working hard on it does not think that the present constitution prevents the creation of an adequate family court.

MR. STAIGER: I would say that it certainly does create some doubt in my mind that you would still be able to establish a family court, and I think that by simply adding a few words to the language rather than striking it all, we could prohibit the thing that the minority is fearful of and the majority clearly states that they do not intend. And I think if this amendment is defeated, we can get some language up there fairly quickly that will prohibit what Mr. Ford seeks to prohibit actually by his amendment.

CHAIRMAN VAN DUSEN: Mr. Knirk.

MR. KNIRK: Mr. Chairman and delegates, I would like very definitely to say that I would like to support the minority report amendment, primarily because of the fact that I, too, am afraid that we will find ourselves opening the situation up to trying the juveniles in the criminal court. I have here before me a letter from former Senator Coleman which I would like to read just a single paragraph from. He says, in his opinion:

> Committee Proposal 94 gives the probate courts "original jurisdiction in all cases of juvenile delinquents and dependents, except as otherwise provided by law." I believe that this quoted provision is dangerous and that juveniles should be processed in nonadversary courts and should not be brought into adult criminal courts or any section thereof.

I think this is the opinion of the sponsors of this minority report amendment, and I feel that there is a danger that juvenile delinquents very definitely might find themselves tried in criminal court, and I think that inasmuch as it has been proper in the last 50 odd years, that we should retain the present language and delete as suggested here by the minority report. Thank you.

CHAIRMAN VAN DUSEN: Mr. Krolikowski.

MR. KROLIKOWSKI: Mr. Chairman, I should like to direct a question to Delegate Higgs.

CHAIRMAN VAN DUSEN: If the gentleman cares to answer.

MR. KROLIKOWSKI: As I understand the committee position, the purpose for the insertion of the language that the minority report finds offensive was to allow for the creation of a family court; is that correct?

CHAIRMAN VAN DUSEN: Mr. Higgs.

MR. HIGGS: I would like to say that that is the principal purpose.

MR. KROLIKOWSKI: But now actually if that language were stricken, a family court could still be created. The only difference would be that the family court would have its base in the probate court; is that correct?

MR. HIGGS: I think that that is possible. I think that it would be possible for the probate court to have a family court division. I think it would be limited to less than the circuit court jurisdiction. My point was that I think, if the experience with a family court such as New York has proves successful, that this should be a totally separate and independent court, and that it would include some of the jurisdiction of the circuit court and some of the jurisdiction of the probate court so that you would have the total family problem before you. If you had a domestic relations case, you might have a father who is either delinquent in his alimony or he might even be guilty of the crime of nonsupport, all of which should be before the court when he may be considering the problem of a dependent, neglected child. Both the judge and the social worker should have the whole picture before them.

MR. KROLIKOWSKI: All those facets of domestic life could be covered within the concept of a domestic relations court which was based in the probate court.

MR. HIGGS: Well, I think that is true. But then that defeats your argument that you want to have it in nonadversary court, because the probate court is an adversary court with many other functions, like condemnation proceedings, mental cases and estates and all of these other duties.

MR. KROLIKOWSKI: Well now, if we don't have the family relations based in the probate court, then you move in either of 2 directions. You move up to the circuit court where there is no question that there are adversary proceedings, or you move down to this fifth tier. Now, the complexity of that fifth tier has still been undetermined. Only the legislature will finally determine the complexion of the fifth tier.

So you have 3 possible solutions: you either move up to the circuit, which is concededly adversary; you base it at the probate level, which has a very minimal amount of adversary proceedings; or you allow it to go down to the fifth tier, where you are totally uncertain as to the nature of the proceedings. The nature of the proceedings in essence will be determined by the legislature at that fifth tier; is that correct?

MR. HIGGS: Regardless of the tier that you are at — and I don't think you could go down if you wanted to have the complete jurisdiction, but regardless of whether you were at the probate tier or the circuit court tier, I would conceive that this would be a separate division. In other words, you are thinking in terms of a judge whose sole function is to handle this aspect of the court's business. There is no reason why you cannot set up a separate division.

MR. KROLIKOWSKI: Right. But this division could equally exist at the probate court level, could it not?

MR. HIGGS: I am not satisfied that it could exist equally at the probate court division. I am not arguing that it be at either division. I am just arguing for flexibility so that Michigan can take advantage of the experience of other states in the development of this kind of a court, and I wouldn't want to tie the hands of the legislature so they could not take advantage of the experience as it develops.

MR. KROLIKOWSKI: But I don't understand where the flexibility cannot be achieved if it is based at the probate court level.

MR. HIGGS: Well, certainly probate judges apparently want it there very strongly. I can't really qualify my remarks more than to say that I think it should be a matter of flexibility so that we can take advantage of the experience of other states in the development of these courts.

CHAIRMAN VAN DUSEN: Mr. Higgs, are you willing to yield to Mr. Everett to supplement your response?

MR. HIGGS: Yes.

CHAIRMAN VAN DUSEN: Mr. Everett.

MR. EVERETT: Mr. Krolikowski, one reason presently existing why a family court cannot be created within the probate structure is that in the state of Michigan there are 33 nonlawyer probate judges. Now, we have in this judicial article, as you well know, provided that those men may remain in office until they reach 70, providing they can keep getting elected. No legislature is going to grant divorce powers to these men. This may be a generation from now. We don't know when they will become 70. We don't know what their ages are today. But it could very easily be a generation or a minimum of 10 to 15 years. This is one very sound reason why today at

least you cannot create a family court within the structure of the probate court.

MR. KROLIKOWSKI: All right. If that is your only objection, the nonattorney qualifications or the nonattorney rank of certain probate judges, you must restrict that reasoning to certain counties, because certainly all counties are not victimized or don't enjoy that type of justice at the probate court level. There are counties certainly in the state wherein all the judges are licensed attorneys. Now, the problem that you raise is a situation that exists in only a very limited number of counties. Furthermore, it is a situation which will be cured within the article proposed by the judicial committee. These probate judges will only be allowed to stand reelection. After they have had the benefits of reelection, all judges must be licensed attorneys, so time will obviate your objection, and your objection has no applicability in certain counties where all the probate judges are licensed attorneys.

MR. EVERETT: I agree with you that this is only a partial objection. I said at the outset this is only one of the reasons. It exists, however, in 33 counties, which is a very substantial number of counties, and those counties for some period of time prohibit what you are talking about. Mr. Higgs has pointed out other reasons.

Maybe I ought to talk like Dr. Nord and tell you what we are not doing here. We are not creating a family court. We are not saying to the legislature that you ever must have one. We are not saying that it should be in the probate court or someplace else, or whether it should come into existence. We are simply saying that if the day comes when the legislature, on the experience of other states, wants to try it they ought to have the right to do it, and I think Delegate Staiger has clearly given you an opportunity to solve this dilemma. You don't want them in the criminal court. We don't want them in the criminal court. Let's just say so in the constitution. That is all it takes.

MR. KROLIKOWSKI: Good.

CHAIRMAN VAN DUSEN: Gentlemen, the Chair is reluctant to interrupt your colloquy but would appreciate your occasionally acknowledging his presence in the course thereof. (laughter)

MR. KROLIKOWSKI: I'm sorry, Mr. Chairman.

CHAIRMAN VAN DUSEN: You may proceed, Mr. Krolikowski.

MR. KROLIKOWSKI: Let me just raise this question, Mr. Everett — if I may, Mr. Chairman. (laughter) If I may direct a question to Mr. Everett.

CHAIRMAN VAN DUSEN: If the gentleman cares to answer.

MR. KROLIKOWSKI: Well, now, in order to achieve this end, you have in effect stripped the probate court of the sole facet of original jurisdiction which was lodged in the probate court. With your language as it is, the one aspect of original jurisdiction enjoyed by the probate court can be stricken by the legislature. That is in effect what you do. Is that not correct?

CHAIRMAN VAN DUSEN: Mr. Everett.

MR. EVERETT: Mr. Chairman, Mr. Krolikowski, we permit the legislature to do this, absolutely. We do not strip the court of any power. We do permit the legislature to make this change if and when it wants to do it.

MR. KROLIKOWSKI: Mr. Chairman, in other words, the legislature could remove all jurisdiction from the probate court?

CHAIRMAN VAN DUSEN: Mr. Everett.

MR. EVERETT: Mr. Chairman, Mr. Krolikowski, yes. There is no question but what it could do that. It has to put those powers someplace. However, it is a little illogical to think that the legislature for some reason would transfer them elsewhere. However, they would have the power to do it. There is no question about it.

MR. KROLIKOWSKI: Mr. Chairman, then the probate court does not have constitutional status?

MR. EVERETT: Mr. Chairman, Mr. Krolikowski, of course it has constitutional status, and so does the circuit court. And if you will read the provisions which we have adopted for the circuit court, the legislature, in theory at least, can take these powers from the general trial powers in the circuit court, because we adopted the language that it shall have original jurisdiction except as otherwise provided by law. I don't remember the exact language, but the legislature can control this factor. Now, the legislature could, therefore, abolish both courts, but this is so ridiculous — that we would go along without any trial court in the state of Michigan — that I don't think this is a strong argument against permitting the creation some day or another of a family court if one seems advisable.

CHAIRMAN VAN DUSEN: Mr. Krolikowski.

MR. KROLIKOWSKI: I don't think I follow your analogy. Are you telling me that all the jurisdiction that is presently lodged in the circuit court could be removed by the legislature as is true in the probate court article? I don't think this applies to its appellate jurisdiction. You are right when you say that it applies to its original jurisdiction.

CHAIRMAN VAN DUSEN: Mr. Everett.

MR. EVERETT: Mr. Chairman, Mr. Krolikowski, section c of Committee Proposal 93 which we adopted says this, "Circuit courts shall have original jurisdiction in all matters not prohibited by law." The legislature could prohibit it from having any single bit of original jurisdiction. Then we go on to say it shall have "appellate jurisdiction from all inferior courts and tribunals except as otherwise provided by law." The legislature could provide another method. So it could, in theory, do away with the circuit courts. Now, we recognize this, but we also recognize they aren't going to do it. They could leave us without any trial court if they wanted to, but that still is no reason for us not to consider whether at some time in the future this constitution should not be flexible enough to permit a different method of handling juveniles.

CHAIRMAN VAN DUSEN: Mr. Krolikowski, do you desire to proceed further?

MR. KROLIKOWSKI: I would just like to state, Mr. Everett, that you didn't continue reading that article, because if you read further, there are clauses which allow the circuit court to issue prerogative and remedial writs, and this would not be within the purview of the legislature for abolition, so therefore the circuit court will retain its constitutional status notwithstanding the action of the legislature, but the probate court can be victim of the legislature.

MR. EVERETT: I stand corrected. The circuit court could issue writs and do nothing else if the legislature wanted it to do that.

CHAIRMAN VAN DUSEN: Mr. Faxon.

MR. FAXON: Mr. Chairman, I have a parliamentary inquiry. On February 15 the convention passed a motion with regard to a recess at approximately 3:40. I should like to ask the intention of the Chair with regard to this procedure.

CHAIRMAN VAN DUSEN: Mr. Faxon, the Chair understands the resolution to provide that the recess is in the discretion of the Chair. The Chair is advised by the chairman and vice chairman of the committee on judicial branch that it is their intention to move that the committee rise this afternoon shortly after 4:30. The Chair has therefore exercised its discretion against interrupting the proceedings of the committee of the whole for a recess. The Chair simply calls to the attention of the committee that it has noted that a number of delegates have availed themselves of the opportunity to enjoy private recess. (laughter)

Mr. Habermehl.

MR. HABERMEHL: Mr. Chairman, I would just like to suggest to the delegates from Wayne and the more populous counties that the arguments you so ably make concerning juvenile jurisdiction perhaps ought to be extended, too, to the rest of the counties of the state. It seems to me your eyes are particularly upon the situation in your own counties where you have most adequate facilities for the handling of juveniles. I wish some of you could visit some of our probate courts outstate where the probate judge is the only officer of the court and where the probate judge is so inept, so unqualified that that is the last place that I would want my child to appear.

There is a possibility of setting up some sort of district, some sort of court where we could assure the children of those areas of the sort of benefit that the children of your area

now receive. I could show you counties in the northern part of the state where the only hope the child has of receiving proper clinical services, psychiatric services, is to get before the circuit judge of that circuit. Our child guidance clinics, if we have any at all, are organized on a multicounty basis. I know probate judges who would refuse to refer any child to such a clinic.

This is a statewide constitution that we are attempting to adopt. To suggest that there is going to be any change in the excellent facilities that the big counties now provide is purely ridiculous. No legislature would ever tamper with the facilities that you have set up. But the opportunity to extend that kind of service to the rest of the state would require some such statement as the committee proposes. The probate courts in some of the outstate areas simply couldn't provide that kind of service on its own. It would have to be done by a combination, a combining of probate courts or some different type of court.

Now, would you bar the rest of the state from enjoying the kind of facilities for the care of juveniles that you presently enjoy?

CHAIRMAN VAN DUSEN: Judge Dehnke.

MR. DEHNKE: Mr. Chairman and delegates, it seems to me this discussion can possibly be simplified. Everybody seems to be agreed that juvenile delinquents and dependents ought not to be tried in an adversary court or in a court of general criminal jurisdiction. The difficulty seems to be that if you do take this language out "except as otherwise provided by law" you make it possible for the legislature to confer jurisdiction over this type of case on some other court of the type that I have mentioned. If you don't take it out, then you stand in the way of permitting the legislature to pass such an act as a family court would involve, because then it could be said that the constitution confers jurisdiction over juvenile delinquents and dependents upon the probate court, which the legislature could not change.

I have thought about a substitute which I think would take care of that, drawn up on short consideration. It no doubt has some defects, but the substance of the substitute would be to strike out this language "except as otherwise provided by law" and substitute for it the following: "provided that such last mentioned jurisdiction may be vested in any special court created by the legislature with jurisdiction confined to family or domestic affairs or problems."

I merely throw that in at the present time. I haven't sent the amendment to the desk as yet because I would like to have the delegates on one side and the other of this discussion give it some consideration with the possibility in mind that that may solve the problem.

CHAIRMAN VAN DUSEN: Mrs. Judd.

MRS. JUDD: Mr. Chairman, members of the committee, we have — most of us, I think — learned from social workers and court workers and from citizens who have worked very hard to improve juvenile court situations that a family may have 6 different judicial agencies treating its problems at the same time. I think this fact accounts for the flood of letters that perhaps many of us have had from just ordinary folks back home who have learned either through personal experience or experience of their friends how dreadful it is to have these problems fragmented among so many different agencies. On the other hand, we also have been receiving letters from probate judges on the other side of the problem. This raises some questions. What has become of Mr. Ford? I would like to ask him some questions, Mr. Chairman.

CHAIRMAN VAN DUSEN: Mr. Ford.

MRS. JUDD: Are you there? I took this microphone so as to leave that one for you. Mr. Chairman, Mr. Ford stated in his first presentation that some people have come to the conclusion that a family court can be established without a constitutional change. I wonder if you could identify the people or the group that you were referring to.

CHAIRMAN VAN DUSEN: Mr. Ford.

MR. FORD: Well, I am one of them. I would say that the other 2 are members of the subcommittee on family courts of the family law committee of the state bar. I am one of the 3 members. Judge Conlin from Ann Arbor is the second, and Mr. Morton Pierson, who is the number 2 man in the friend of the court's office in the county of Wayne is the third. On the basis of all the suggestions, we have tried to come up with some new kind of court, and I can't say that we have come to this as an official conclusion, but we seem constrained toward the conclusion that using the present court structure would be the more adequate remedy.

MRS. JUDD: Could you tell me how long ago this was?

MR. FORD: This is still going on, as a matter of fact.

MRS. JUDD: Still going on. Secondly, you quoted a good deal of testimony. I wonder if you had any testimony from people other than probate judges who wanted to keep the juvenile jurisdiction in the probate courts.

CHAIRMAN VAN DUSEN: Mr. Ford.

MR. FORD: You are talking about before the judicial committee?

MRS. JUDD: I think that is what you were talking about.

MR. FORD: I don't know of anyone other than judges or people connected with the courts who appeared on any aspect of this before the committee either for or against a family court. Although there was correspondence, as I said, the correspondence does not indicate a preference for this being a new court.

There was one thing perhaps, Mrs. Judd, that is confusing about this, and that is that the committee has already decided it wants a 5 tier system. Now, if we want to go to a 6 tier system I would have absolutely no objection to creating a sixth court and calling it a family court or a juvenile court or, as in New York, a children's court, but immediately you can see that if you look at the state now, there is only one full time juvenile judge in the whole state of Michigan. Now, what hope is there going to be that the counties who can't even get lawyers for probate judges are going to be able to get not only a lawyer for a probate judge but in addition a lawyer or social worker for the family court?

MRS. JUDD: Mr. Chairman, Mr. Ford is getting off my question.

MR. FORD: Well, that is the risk you take when you ask a rhetorical question.

MRS. JUDD: I know it. (laughter)

CHAIRMAN VAN DUSEN: Mr. Ford, see if you can return to the question, if possible.

MRS. JUDD: Well, I think he has answered my question that the testimony in favor of keeping the juvenile jurisdiction in the probate court comes entirely from probate judges.

Third, you indicated that it might be possible to set up a family court without constitutional change. I would like to ask, Mr. Chairman, of Mr. Ford if you wouldn't have to reexamine the jurisdictional provisions with respect to the circuit court?

MR. FORD: No, not at all. I assume when we are talking about a family court, when you said that there are some families that have several agencies concerned with them, we would not be amalgamating any of the agencies into the family court. We would be only amalgamating the court functions. Now, there are 3 courts that deal with family problems presently. First, you have the municipal, justice, or in Detroit, the recorder's court which deals with the situation where the father, for example, is not supporting his family and he is charged with being a disorderly person. This is a criminal proceeding. Then you have the problem with the unwed mother which is part of the function, we think, because it is part of the family problem. You have the divorce problem and all of the problems that go with it, problems of reconciliation, child care, custody and so on, which is in the circuit court. And then in the probate court you have the question of parental rights. The court has, as a matter of fact, the power to sever the rights, and it handles things like adoptions, guardianships, commitment of the kind of children that Martin was talking about, as well as the so called juvenile offender, and then there are just the plain neglected children. There had to be a place to find an order to determine their future, so that is done in the probate court. But all of these functions in the 3 courts reside there because of a statute that puts them there. Now, a divorce

is not a common law remedy. It wouldn't exist in common law, and contrary to what has been indicated here, what the constitution actually does is say that the circuit court has all common law general trial jurisdiction unless modified by the legislature. So the legislature could provide, if it felt, for example, that a family court should try juveniles in the same court that hears divorce cases.

MRS. JUDD: In other words, you think that the only way that you could set up a family court without changing the constitution would be to make the probate court the family court?

MR. FORD: Yes. In Wayne county, for example, we have 1 judge who doesn't sit in the same building as the rest of the probate judges. He sits in the juvenile court full time. All of the procedures and everything that goes on in that court is entirely different than what happens in the other courthouse. Now, conceivably we could add another judge and put him out there in the juvenile court and then add to his duties item by item until you had what would be called a family court. This is probably the easiest way to do it here, and I don't know whether other counties might prefer taking the juvenile jurisdiction away from the probate court because they are too busy, but we had no such testimony.

MRS. JUDD: Thank you very much, Mr. Ford. Mr. Chairman, it seems to me that one of the main problems here that hasn't been talked about very much, that I understand the tenor of this whole judicial article is, is in the direction of establishing a unified court system, and it seems to me we would have to be very careful that any arrangements we make for a family court would not become a splinter court but could be integrated with the entire system. This is one of the reasons it seems to me important that we don't attempt to set up any specific provisions in the constitution, but that we do leave a flexible framework, simply removing the obstruction, which is the constitutional provision putting it in the probate court and therefore leave it to the legislature. Mr. Ford spoke of the bar association committee on family law. I find in their 1959 report that they say:

> Family court. Our subcommittee on the family court spent practically all of the year developing a method which would provide a single integrated tribunal with jurisdiction over all major types of litigation involving the family. They have consulted with various experts in the field and have concluded that the establishment of a family court must be done by constitutional amendment.

Now, perhaps some of the lawyers have been changing their minds since that time, but that was the opinion of the committee in '59.

I would like to indicate that we are today trying to face up to problems that are different from those in 1908 when this was first established. Since that time we have seen a tremendous population explosion, a terrific increase in the problems of family life in our urban areas, and also a great development of sociology and psychiatry and the techniques of handling these problems so that we need much more technical help in handling much more serious problems. Now, we can't foresee changes in the next 50 years. All we can be sure of is that these changes are going to continue and that probably family life in our urban areas is going to become more and more serious, and this is why I agree with Mr. Everett and Mr. Higgs that it would be absolutely tragic for us to try to set up anything frozen in the constitution today. I think that the committee proposal is an excellent one for the purposes of the next 50 years.

CHAIRMAN VAN DUSEN: Mr. Everett.

MR. EVERETT: Mr. Chairman, I appreciate Mrs. Judd's agreeing with me, but I guess maybe now she will disagree with me because I am inclined to think Judge Dehnke has given us a pretty good solution. All of us want to avoid this problem of letting the children's cases be tried in criminal courts. I don't think the problem is there. I can't conceive of the legislature doing it. But if there is any question, I think we ought to say so. And incidentally, as to the power of the legislature now to create family courts or domestic relations courts, the blue book which we all have under article VII, section 13 of the present constitution, one of the footnotes or annotations says:

> Public Acts of 1913, 186, creating a court of domestic relations in counties of 250,000 or over was unconstitutional in depriving probate courts of their constitutional jurisdiction over juvenile delinquents and dependents in certain cases. Attorney General versus Lacey, 180 Michigan 329.

I don't think there is any question but what the present constitutional provisions, if we retain them, will prevent the creation of this court. As many of us have indicated, we have some hesitancy as to whether it ought to be created but we don't want to close the door to it, and if Judge Dehnke's suggestion will end the discussion — and to me it would certainly be acceptable although I can only speak as an individual, not for the committee — then perhaps we can move on. But if it is not acceptable to others, of course maybe we can't too.

CHAIRMAN VAN DUSEN: Dr. Nord.

MR. NORD: Mr. Chairman, I support the minority report amendment, although I do agree with Mr. Everett and Judge Dehnke that perhaps something can be done to improve that. But anyway, what we have before us at the moment is the minority report which suggests that we strike the words "except as otherwise provided by law." I think we should strike those words and then if we want to put something else in the constitution, we should do that in addition. But we can strike these words now anyway if we agree that they should be stricken.

Now, it is probably unfortunate that the issue has arisen in this roundabout way, but there is a very significant and basic issue in here which we should face. That is the question, as has been mentioned by a number of people, of whether we should have a constitutional guarantee of some sort that a child cannot be tried and punished as a criminal. I recognize that we don't have it in the constitution in very vigorous form even with the striking of these words, but it is in there anyway because the probate court is not conceived of as having criminal jurisdiction.

I think it would be better if we would settle this problem in much more detail somewhere else. Perhaps Judge Dehnke's suggestion isn't even good enough. But in any event, we should at least strike these words to make sure that a child can never be tried as a criminal. Now, I say that this is a constitutional matter and not something that should be left to law, and that is why I say we should strike the words "except as otherwise provided by law". This is a very basic right. I believe it is more basic than we have ever really conceived of, and the reason I say that is that in our system of law a child does not have the right to participate in the making of the law. He doesn't vote until he is 21 years old, and I understand there is a proposal from the declaration of rights committee to continue that. Now, assuming that that will be continued, there you have a situation in which persons who happen to be young persons below the age of 21 have no right to participate in the making of the laws and yet they can be punished as criminals. They could even, according to that, be sentenced to life imprisonment.

I recognize that, as I said before, the words before us don't completely solve that problem. They miss it by at least 50 per cent. At the present time the juvenile jurisdiction extends only up to the age of 17, and the proposal to reduce the voting age was only down to 19, and between 17 and 19 there is a gray area in which the juvenile court can take jurisdiction under present statutes. There is no question we haven't completely matched these 2 principles. There is a gap no matter how we do it under all the present proposals.

It would seem to me, although you can't fully discuss it at this point, that we ought to tackle the problem head on and solve it and reduce the voting age down to 19 and change the age to full adult powers to 19. They ought to be the same. But since that isn't before us at the present time and all that is before us is this, not to make this gap any bigger, then it seems to me we ought to adhere to the present system until we are ready to make the solution better. There is a defect, as I say, in all of the proposals we have before us or are

expected to have before us. There is some defect between principle and practice as to the right of a person who is judged to be a criminal to make the law. There is a defect. All I am saying is, let's not make the defect any bigger. If we can make it smaller or eliminate it, we should, and if we cannot, we should not make it any worse.

The argument has been made that we should have flexibility. "Flexibility" is my favorite word, though we have to recognize there is a limit to that, and the limit is when we come to a constitutional or a basic right. We don't want basic rights to be left in a flexible condition. They should be left in an inflexible condition. That is the only reason we have a constitution in the first place. And if I am correct — and I believe many agree — that this is a basic right of a person, it should not be left in a flexible condition.

For these reasons I am in support of the minority report amendment, and until we get a better version, I would say let's strike those words.

CHAIRMAN VAN DUSEN: Father Dade.

MR. DADE: Mr. Chairman, I would like to ask Mr. Ford a question.

CHAIRMAN VAN DUSEN: If the gentleman cares to answer.

MR. DADE: And before I ask Mr. Ford the question, I would like to make a statement. The statement first is, Mr. Ford, as a minister, I certainly couldn't sit here, with experience in the juvenile court and knowing of youngsters who have been treated not as criminals but as youngsters who had made mistakes, and seeing in my memory these same youngsters now responsible citizens in the community, and not support the continuation of juvenile courts because of the sympathetic understanding, the skill therein, and I could not, being the president of the Wayne county training school board, go without supporting it because of the sympathetic consideration of those who are mentally disturbed and mentally handicapped.

Now, Mr. Ford, my dilemma is this: I would like to support the minority, but I want to support it to the end, sir, that there be a provision that youngsters shall never be treated in adversary courts. At the same time, out of a wide experience, I have to stand and support the hope of a family court. Now, how do I resolve this dilemma?

CHAIRMAN VAN DUSEN: Mr. Ford.

MR. FORD: Reverend Dade, this is the dilemma that has faced the bar committee for a long time.

MR. DADE: May I interrupt with this one question. Would this dilemma be taken away if this provision were inserted that nonadults should be tried in nonadult courts?

CHAIRMAN VAN DUSEN: Mr. Ford.

MR. FORD: Reverend, it isn't just the problem of adult courts; it is the problem of the kind of procedure which obtains in a court which customarily handles adversary proceedings and criminal proceedings as contrasted with the type of procedure, very informal and more human, that pertains to the entire function of the probate court. Very few of the probate court's activities are truly adversary in nature.

CHAIRMAN VAN DUSEN: Father Dade.

MR. DADE: But isn't it true that the one advantage of the juvenile court is that there are no lawyers? (laughter)

CHAIRMAN VAN DUSEN: You may be referring to heaven, Father Dade. (laughter) Mr. Ford.

MR. FORD: Reverend, you may be inadvertently referring to the thing that bothers the committee that is made up all of lawyers, and that is that as long as we keep the divorce practice separated from the rest of the juvenile practice, we keep the lawyers from meddling with this system. But a very, very small percentage of the cases that are handled in the juvenile court have lawyers involved in them and they are not needed over there — and I hope I am not treading on the toes of somebody who considers himself a juvenile specialist — because of the way the cases are handled, and this is very fortunate.

What we are afraid of is, for example, if we set up a family court and say that the same court that handles juvenile matters ought to handle divorce cases, then we get right back into the same sort of a procedure where we have lawyers over there arguing over property rights and which of the parents was the first to commit the sin and so on, and this is not the kind of an atmosphere that we want juvenile matters handled in.

MR. DADE: Thank you.

CHAIRMAN VAN DUSEN: Mrs. Elliott.

MRS. DAISY ELLIOTT: Mr. Chairman and members of this committee, as a nonlawyer and a layman of this convention, I cannot believe that the intention of the judicial committee is to take away the bill of rights from the juveniles. At this point the lawyers here have thoroughly convinced me that words "except as otherwise provided by law" will do just that. We should keep the constitutional guarantee that juveniles will not be tried in adversary and adult criminal courts. If the legislature in its wisdom wants to enlarge the scope of jurisdiction of the probate court, it can do so without the words "except as otherwise provided by law."

I would urge you to support the minority report amendment.

CHAIRMAN VAN DUSEN: Mrs. Koeze.

MRS. KOEZE: Mr. Chairman, I am trembling, as you know, before this microphone. Most of you know that I am the mother of 5 children and deeply concerned, and only by the grace of God did my kids never land in a court. But I am worried about the grandkids that are coming up. I am not so sure about them. However, I want you to know that I am in favor of a family court. But after listening to the testimony this afternoon, I am sure I can't solve it and I am a little bit concerned that lawyers couldn't solve this problem. I wish somebody would help me with my decision.

CHAIRMAN VAN DUSEN: Mr. Higgs.

MR. HIGGS: Mr. Chairman and Delegate Koeze, with a little fear and trembling, I will try again. I think this is the direction that we really mean to go. There has been one thought suggested that we did not consider — I think we considered in the committee every other argument that has been raised here today — and Delegate Nord raised that question, and as far as I am concerned, I think the only amendment, and I don't know that it should be here, but the only provision that I think we should consider at this time — and if Delegate Nord wants to propose it, why, I would certainly concur — is that children not be tried as adults. Now, that much I think, if he would like to incorporate that in the bill of rights, I have no quarrel with.

However, as to any other provision, I think I have examined every proposed amendment that is circulating on the floor and I feel that Delegate Judd touched upon the point involved there, that we are trying to develop a unified court structure. I think certainly the probate judges are most concerned in this matter, and I am a little disturbed because of the fact that this might be created as a division of the circuit court. If that is the wise and right thing to do, it should be done. I would like to leave it to the discretion of the legislature to do it. Now, the circuit court is an adversary court and it is also a criminal court, and I don't see any reason why a family court could not be established as a division of that court with a judge who is solely designated to preside in that division. It is a special court but it would be a division of the circuit court. He would not be a judge that would be hearing other cases.

But the minute you start talking about setting this up in a nonadversary court, that would preclude the probate court itself from handling these matters, and if you speak about handling these matters in a noncriminal court, that would preclude the possibility of bringing in the parent who may be an adult delinquent in matters of support of his family whose delinquency in that regard, being criminal, should be brought to the attention of the judge who has before him also the matter of the dependent and neglected child. In other words, I would like that judge to have the full power and authority in those areas to handle the whole aspect of the problem.

Now, this is fine in the largest cities but not necessarily fine in the smallest areas. And I think Delegate Habermehl touched upon the problem in the real small counties. Do you realize

how small some of our counties are? We have 5 counties that are under 5,000. We have 13 that are between 5,000 and 10,000. That is 18 that are under 10,000 in population. We have one county in Michigan that has 2,400 people, and that county has a probate judge. The amount of juvenile work that he would handle, the amount of juveniles that are in the whole county would be very few indeed. And as Delegate Habermehl has pointed out, you don't get highly qualified people sitting as probate judges in those areas, and they are working all alone, without any assistance, without any requirement that they themselves be qualified, that they be trained or anything else. And they have to work with all of these problems all alone.

How much better it would be if we could give the legislature the flexibility necessary to accommodate the problems in those very small counties. In a community of 2,400 people I can conceive that you might have a county court or a probate court combining the jurisdiction of the circuit court commissioner and possibly the JP in such a small county.

Judge Baird said that in his court when he has a juvenile matter, he can schedule a hearing on that at a time when there is no other business coming into the court, an entirely separate proceeding without anybody else being around. It is not a problem, he says, to physically separate the hearing in that kind of a matter.

I would have no quarrel whatsoever in a right being established in the constitution that children 17 years of age and under not be tried as adults, and I don't think the legislature today or any time in the future is ever going to regress to the point where they are going to treat our children in any way except possibly in a more enlightened and advanced way than we ever have in the past.

CHAIRMAN VAN DUSEN: Mr. Ford. Mr. Ford passes. Mr. Martin.

MR. MARTIN: Mr. Chairman, this is, as is obvious from the discussion, a very important matter to a great many people all over the state of Michigan. We made a tremendous step forward back in 1908 when we created a court which had exclusive jurisdiction over children, and it is one of the reasons why we have moved forward at least in certain parts of Michigan in the development of a highly competent and well staffed court for the handling of juvenile problems.

I have been working on some of these problems for a number of years as chairman of the Michigan crime and delinquency council, and we have this primary concern with the problems of children and how they shall be handled, and we don't want to see something done here that we are going to be sorry for. We don't want to see us regress from the enormously important step that we took in 1908 which has been responsible for what we have now.

Now, one of the problems is that many of these courts are not staffed either with judges that are able to handle the work or with staff which is able to handle the work and a great deal has to be done in that regard, and the proposal of the committee to make the creation of districts possible which can be properly staffed with properly paid judges is very important. But what we are doing with this particular phrase here is to cause concern in everybody's mind all over the state of Michigan who has anything to do with the problems of child welfare, and for that reason it seems to me we have just got to move cautiously.

Mr. Staiger has mentioned the possibility of some wording that might calm some of these fears and Judge Dehnke has made some suggestions. I have thought of some wording that might serve that purpose. But it is pretty nearly impossible to work this out in the manner we are trying to work it out, and for that reason, if the committee were willing, Mr. Chairman, I would like to move that this particular section or this amendment be passed for the time being to give us an opportunity to see if we can work out some language which will not leave everybody in doubt and concerned about what we are doing on this particular point.

CHAIRMAN VAN DUSEN: Do you so move, Mr. Martin, or do you desire the position of the committee?

MR. MARTIN: I didn't understand.

CHAIRMAN VAN DUSEN: From your statement, Mr. Martin, the Chair was in doubt as to whether you so moved or whether you inquired of the committee.

MR. MARTIN: I inquired of the committee. I would like to be cooperating with them instead of making it difficult. Mr. Everett nods his head. I take it perhaps that means assent. Mr. Danhof?

MR. DANHOF: Well, Mr. Martin, I can only tell you that the committee worked long and hard with it. I think it simply develops down — I suppose the question is on the motion of Mr. Martin. I suppose I should confine my remarks to that.

CHAIRMAN VAN DUSEN: The Chair is not sure, Mr. Danhof, that Mr. Martin has made a motion yet.

MR. MARTIN: In order to make it clear, I will make it a motion, Mr. Chairman.

CHAIRMAN VAN DUSEN: Mr. Martin moves that further consideration of the pending amendment be passed temporarily.

MR. DANHOF: Mr. Chairman, may I inquire as to how many speakers the Chair has listed?

CHAIRMAN VAN DUSEN: The Chair has listed 6 speakers, Mr. Danhof, including yourself.

MR. LAWRENCE: Mr. Chairman. Mr. Chairman. Mr. Chairman.

CHAIRMAN VAN DUSEN: Mr. Lawrence, for what purpose does the gentleman rise?

MR. LAWRENCE: Is it in order to speak on Mr. Martin's motion?

CHAIRMAN VAN DUSEN: It is. Mr. Danhof currently has the floor.

MR. DANHOF: I will yield to Mr. Lawrence.

CHAIRMAN VAN DUSEN: Mr. Danhof yields to Mr. Lawrence on the Martin motion.

MR. LAWRENCE: I would oppose the motion for this reason: there will be an opportunity to have further consideration. We have spent considerable time on this. Let me speak to the nonlawyers in the committee. I come from a county of 172,000 which I think is a medium sized county. On its east is Wayne county.

CHAIRMAN VAN DUSEN: Mr. Lawrence, would you please confine your remarks to the pending motion, which is that the amendment be passed temporarily.

MR. LAWRENCE: I was about to do it.

CHAIRMAN VAN DUSEN: Your preface left the Chair in doubt. (laughter)

MR. LAWRENCE: And on the north is a smaller county, Livingston county. The situation in those 3 counties is entirely different, and it seems to me that the committee report as it has come out giving the legislature the right to enact statutes that will give credence to those different situations is the proper way to handle it, and therefore there is nothing to be gained by passing the matter at this time.

Truly the situation in Wayne is different than in Washtenaw and in Washtenaw it is different than in Livingston, and the thing to do, as I see it, would be to pass the committee report — that is, to vote on it, and if anything better can be found later, then we will have ample opportunity to consider it.

CHAIRMAN VAN DUSEN: Mr. Barthwell, do you desire to be recognized on the Martin motion?

MR. BARTHWELL: Yes, sir, Mr. Chairman. Mr. Chairman and fellow delegates, I would like to ask the maker of the motion a question through the Chair, if I may. When he says "so that we can have opportunity to work it out," I want to know who the "we" are, because I read in the paper last night on the other article that we passed so it could be worked out that the caucus appointed a committee to work it out. Now, I would just like to know if I am a delegate to this convention or if I am just sitting here to wait until the caucus decides what is to be done in the convention. (laughter)

CHAIRMAN VAN DUSEN: If the gentleman cares to answer. Mr. Martin.

MR. MARTIN: Mr. Chairman, I wasn't thinking of this as a political matter. I was thinking of it only as a matter for those of us who were interested in child welfare, and I would be happy to work on it with any of the people who have indicated their interest here today in this discussion.

MR. DANHOF: Mr. Chairman.

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: Mr. Chairman, if I might, maybe Mr. Martin would do this — in view of the hour; in view of the fact that you have 6 speakers on the list; it is obvious we would not get to a vote for some time — if Mr. Martin would withdraw the motion, I would move that the committee arise. Perhaps with Mr. Martin, Mr. Everett, Mr. Higgs and Judge Dehnke, somebody might arrive at some language. If we could, we can have an amendment tomorrow. If not, we will go on.

MR. MARTIN: I will be happy to withdraw the motion, Mr. Chairman.

CHAIRMAN VAN DUSEN: Mr. Martin's motion is withdrawn. Mr. Danhof.

MR. DANHOF: In that case, Mr. Chairman, I move that the committee do now rise.

CHAIRMAN VAN DUSEN: Mr. Danhof moves that the committee do now rise. Those in favor of the motion will say aye. Those opposed will say no.

The motion prevails. The committee will now rise.

[Whereupon, the committee of the whole having risen, President Nisbet resumed the Chair.]

PRESIDENT NISBET: The convention will please be in order. The Chair recognizes Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, the committee of the whole has had under consideration an amendment to a proposal of which the secretary will give a detailed report.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 94**, A proposal pertaining to the probate court; has considered one amendment thereto; has come to no final resolution thereon. This completes the report of the committee of the whole.

PRESIDENT NISBET: Are there any announcements?

SECRETARY CHASE: This announcement of interest to all of the delegates: please be sure to return your photographic proofs to the studio representatives in room G before 5:00 p.m. today. If you were unable to keep your original appointment, please go in at your convenience before 5:00 today.

This announcement also of interest to all of the delegates. As most of you know, the wives of the delegates have been presented with an opportunity to become acquainted with each other and a luncheon has been arranged for Tuesday, March 13, at the Jack Tar Hotel. Would you please remind your respective spouses of this and that their reservations should be turned in rather soon. Turn them in either to Mrs. Tucker in the president's office or to Mrs. Tubbs.

There will be a meeting of the committee on style and drafting in room K at 8:00 o'clock this evening.

The committee on rules and resolutions has been scheduled to meet Friday during the noon recess.

Mr. Nord has filed a resolution for introduction.

PRESIDENT NISBET: Without objection, we will return to the order of **motions and resolutions.**

SECRETARY CHASE: Mr. Nord offers **Resolution 81**, A resolution relative to the absence of delegates during committee of the whole.

Following is Resolution 81 as offered:

Whereas, It sometimes happens that during the course of debate in committee of the whole, a substantial number of delegates are absent from the floor and do not attend the debate, but nevertheless are later summoned to the floor to vote without having heard the reasons offered on each side in the debate; and

Whereas, Such votes are not based on the reasons set forth in the debate, and may in fact not be based on any reasons whatever; now therefore be it

Resolved, That if any delegate shall leave the floor of the convention during sitting of the committee of the whole, he shall thereafter be excluded from the floor until such time as a vote is taken on the issue then pending, except if he shall have been excused by the chairman before having left the floor.

PRESIDENT NISBET: Referred to the committee on rules and resolutions.

SECRETARY CHASE: We have the following requests for leave of absence: Mr. Nisbet asks to be excused from the session of Friday for the purpose of speaking in Grand Rapids and Muskegon on matters relative to the convention; Father Dade requests to be excused from the session of next Monday, March 4; Mr. Norris wishes to be excused from the morning session of Friday.

PRESIDENT NISBET: Without objection, the excuses are granted. Mrs. Hatcher.

MRS. HATCHER: Mr. President, I would just like to rise on a personal interest note to say that I certainly appreciate the invitation from the wives of the delegates to con con, and I wonder if the husbands are also invited to this luncheon. (laughter)

PRESIDENT NISBET: I understand this is a ladies' meeting. Judge Gadola.

MR. GADOLA: March came in like a lion. In this convention we acted accordingly. I hope that when it goes out as a lamb, that the lion and the lamb will lie down together in harmony for the good of the people of the state of Michigan. (laughter and applause)

PRESIDENT NISBET: Father Dade is recognized.

MR. DADE: I believe this is Mr. Chase's forty-third wedding anniversary. On behalf of all the men, I want to salute a good man and congratulate him and felicitate a wonderful lady. (applause)

SECRETARY CHASE: Thank you, Father Dade. It's a puzzle to me how she has put up with my idiosyncrasies for all of 43 years.

PRESIDENT NISBET: I was going to say Mr. Chase must be a good man — for 43 years. (laughter) Mr. Cudlip.

MR. CUDLIP: Mr. President, may these remarks be recorded in the journal? (laughter)

PRESIDENT NISBET: Without objection, they will be so recorded. (laughter)

The Chair recognizes Mr. McCauley.

MR. McCAULEY: Mr. President and delegates, as the famous English author, Thomas Babbington McCauley, once said, if you can keep your head amongst this confusion while others are losing theirs, you do not understand the problem. (laughter)

I move we adjourn.

PRESIDENT NISBET: The question is on adjournment. Those in favor say aye; those opposed, no.

We are adjourned until 9:30 tomorrow morning.

[Whereupon, at 4:35 o'clock p.m., the convention adjourned until 9:30 o'clock a.m. Friday, March 2, 1962.]

NINETY-FIRST DAY

Friday, March 2, 1962, 9:30 o'clock a.m.

PROCEEDINGS

VICE PRESIDENT HUTCHINSON: The convention will come to order.

The invocation today will be delivered by the son of one of our delegates, the son of Mr. Haskill, Mr. William E. Haskill, minister and a graduate of Bob Jones University.

MR. HASKILL: Our gracious heavenly Father, we thank Thee again today for the Lord Jesus Christ. We thank Thee for the great many blessings Thou has bestowed upon us thus far. We pray now for this convention as it comes to order and seeks to work out the problems and bring to the state a new constitution. We pray that Thou will grant to each one the wisdom and the understanding that he needs to do his part and we ask that personal interests will be laid aside as the constitution is drawn up for the benefit and welfare of all in this state. For we ask it in Jesus' name. Amen.

VICE PRESIDENT HUTCHINSON: The roll call will be taken by the secretary. All those present will vote aye. Have you all voted? If so, the secretary will lock the machine and take the roll.

SECRETARY CHASE: Mr. President, a quorum of the convention is present.

Absent with leave: Miss Hart, Mrs. Koeze, Messrs. Marshall, Mosier, Nisbet, Norris and Romney.

Absent without leave: None.

[During the proceedings the following delegates entered the chamber and took their seats: Messrs. Norris and Romney.]

VICE PRESIDENT HUTCHINSON: Reports of standing committees.

SECRETARY CHASE: No committee reports, Mr. President.

VICE PRESIDENT HUTCHINSON: Communications from state officers.

SECRETARY CHASE: None.

VICE PRESIDENT HUTCHINSON: Second reading of proposals.

SECRETARY CHASE: Nothing on that calendar for today.

VICE PRESIDENT HUTCHINSON: Motions and resolutions.

SECRETARY CHASE: No resolutions on file.

VICE PRESIDENT HUTCHINSON: Unfinished business.

SECRETARY CHASE: None.

VICE PRESIDENT HUTCHINSON: Special orders of the day.

SECRETARY CHASE: No special orders.

VICE PRESIDENT HUTCHINSON: General orders of the day. The delegate from Oakland, Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, I move the convention resolve itself into committee of the whole for the purpose of considering matters on the general orders calendar.

VICE PRESIDENT HUTCHINSON: The question is on the motion. All those in favor say aye; opposed will say no.

The motion prevails. The committee will convene and the delegate from Oakland, Mr. Van Dusen, will preside.

[Whereupon, Mr. Van Dusen assumed the Chair to preside as chairman of the committee of the whole.]

CHAIRMAN VAN DUSEN: The committee will be in order. When the committee of the whole last sat, it had under consideration Committee Proposal 94, reported by the committee on judicial branch, dealing with the organization and powers of the probate courts of the state of Michigan.

For last previous action by the committee of the whole on Committee Proposal 94, see above, page 1393.

The question is on a minority report amendment thereto, offered by Messrs. Ford, Garvin, Bledsoe, Ostrow, Krolikowski and Barthwell, on which the Chair had several delegates seeking recognition.

[The amendment was again read by the secretary. For text, see above, page 1395.]

Mr. Danhof, do you now seek recognition on the amendment?

MR. DANHOF: Not at this time.

CHAIRMAN VAN DUSEN: Does Mr. Lawrence seek recognition at this time? Does Mr. McAllister seek recognition at this time? The gentleman from Bad Axe, Mr. McAllister, speaking on the Ford amendment to section a of Committee Proposal 94.

MR. McALLISTER: Mr. Chairman and fellow delegates, I just want to explain my position in this matter. The probate judges in my area are for the minority report amendment, and Judge James Lincoln of the probate court in Wayne county is for the minority report amendment. He is a long time friend of mine, and a man who has, in my opinion, extremely good judgment. I promised him I would support this minority report amendment, and that is the reason that I am voting in the manner that I am.

CHAIRMAN VAN DUSEN: Mr. Martin, do you seek recognition on the amendment?

MR. MARTIN: Mr. Chairman, I had an opportunity to confer with various people who were discussing this on the floor yesterday, and also to check it with some of the people who are working on these things as citizens, and after talking also with Mr. Everett and reviewing the case which he mentioned, I am satisfied that under the language of the present constitution, but without this proviso, "except as otherwise provided by law", the legislature would have authority to establish a family court in the probate court if it so desired.

I am not sold on the idea of a family court, and I am not recommending that that be done, but they would have the authority to do that if they wished. For that reason — the one thing that we don't want to see done is to have the juvenile jurisdiction transferred out of the probate court and into the circuit court or into some other court — the language of the minority amendment seems, to me, to do what is necessary and, therefore, I want to support the minority amendment and do not want, at this time, to offer any further amendment to that amendment or otherwise.

I hope that the committee will support the minority report amendment, and I am sure that it represents the feeling of all those around the state of Michigan who have been working for many years on these child welfare problems, including the views of all the probate judges.

CHAIRMAN VAN DUSEN: Does the lady from Detroit, Miss McGowan, seek recognition?

MISS McGOWAN: Mr. Chairman and members of the committee, I rise to support the committee report and to ask you to support the committee report, and to vote against the minority report amendment.

The committee, in recommending this provision, did so because it recognized the need of our children with problems and desired to have those problems handled in a separate court in a nonadversary area. The committee left with the legislature the power to change the jurisdiction in the case of delinquent and dependent juveniles. In our committee deliberations we

most assuredly gave much thought to our children and grandchildren who may become delinquent and/or dependent juveniles. Should the legislature decide to create a domestic relations or a family court, this in no way changes our belief that the problems of our delinquent and dependent juveniles should be taken care of in a court of a nonadversary type.

We are all well aware of the fact that delinquent childen need special attention in a court of a nonadversary area. The committee report does not change this thought in any manner. In Detroit, presently, we have many courts and agencies handling the problems pertaining to children. We have the recorder's court, the circuit court, the friend of the court, juvenile court, and a division in the prosecutor's office. The committee proposal simply gives the legislature the power to determine what court will handle family problems, including the problems of delinquent or dependent children.

We would appreciate your support of the committee report. We ask you to be courageous and forward looking and vote yes on the acceptance of the committee report.

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: Mr. Chairman and members of the committee, in discussing this particular matter, the committee was well aware of the deep feelings of many people, also the emotional aspects that would arise. But, let me state that the majority deliberated at great length, and reached the conclusion that the legislature would not capriciously or arbitrarily abuse this particular section.

Yesterday, Dr. Nord mentioned that there is a question as to what constitutes a juvenile and, as he well knows, basically this is a person under 21 years of age. Yet, in a case that has been most described here — and that is the juvenile delinquent or the youthful offender of the criminal laws — they are tried as adults in this state at the age of 17. There has never been any doubt but what the legislature has had the authority to define and to set the limits as to what constitutes a juvenile. If it could be 17, it could be 16, and if it could be 16, it could be 15, and if it could be 15, it could be 14.

I submit that if you wish to provide for an adequate program of juvenile rehabilitation, that you pay serious attention to the words of the delegate from Alpena, Mr. Habermehl, for this provision is not aimed solely at the large counties which want to create either a domestic relations court or even a separate family court, but it was our considered opinion that in the sparsely populated areas this would allow for a separate juvenile court, if you want to call it that, and allow the combination of counties to provide for this type of a program. As it now stands, in many of our counties it is impossible to raise the money to provide an adequate staff of facilities.

Lest everybody get the impression that all of the probate judges favor this, the Honorable Gerald Meehan, the probate judge of Oceana county, appeared before our committee, and his exact words were, "The Constitutional Convention of 1908 made a mistake when they froze in this particular provision." This, my friends, is a judge from a county of only about 16,000 or 18,000 people, and he advised and recommended, as strongly as he could, that this particular section be made more flexible and that it be loosened up, so to speak.

Judge Mitchell, appearing before the committee and speaking on behalf of the probate judges association, made this statement:

> Section 13 also provides that the probate court shall have original jurisdiction in all cases of juvenile delinquents and dependents. This provision should be contained in any new constitution. Possibly it should be expanded to provide for a court having jurisdiction over various personal family problems, such as divorce, commitment of the mentally ill and other similar problems.

All of you may have received information, or at least I did — and this is from another group, the national association of social workers — that they entertained and passed, in the meeting of the southwestern chapter of that organization, a recommendation that we remove the present constitutional barriers and leave the way open for establishing courts having original jurisdiction over all matters pertaining to children and families.

Let's look at exactly what the committee did. It did not strip the probate court; it did not emasculate the provision. It granted the constitutional jurisdiction to the probate court. It isn't anything that the legislature has to give. It is something that the probate court has. If you are willing to say that you believe that the legislature will capriciously and without reason and without deliberate judgment just tear this away, then I don't think that you are facing your responsibility. In the first place, the legislature probably will not move on the matter unless there develops particular agitation for a different type of court in some area. They usually have enough to do over there without going around and tearing away the jurisdiction from the probate courts. But visualize, if you will, the hue and cry that would be raised if they did try to remove this capriciously or without reason or without providing a reasonable and adequate substitute.

I feel that there has been a considerable amount of emotion going into this particular article. The question is solely this: are you going to freeze it in so that from now on, for all time this constitution is in, there it is, inflexible and immobile, or do you believe that it should be granted, like we grant the general jursdiction to the circuit court? If you do, then support the particular committee proposal. We felt that this would leave the way open to leave it in the probate court, if that proves the wisest choice, but if there is some other means which is better — and I have had considerable mail, as Mrs. Judd has had, and this comes not from groups but from individuals, most of it. I am not sure that they have the vaguest concept of what a family court might or might not be. Our committee put in 3, 4 months of study, and this is something that is going to take more study, study by the legislature, study by the bar association, study by the social workers in the family service bureaus, and so on, to ascertain if a court is desirable. Then if it is, what type of court to have. I submit, if you freeze it in, you are making it inflexible.

To a statement that I made last night, that we would try to work up some other language, I endeavored, other members of the committee tried, members of the convention gave us suggestions, and by the time you try to work it all around, you come up with such a "provided however" section, that you just can't do it. The committee report is clear.

I have no fear, after all these years that the legislature knows what has happened in the probate court, that there will be any danger derived therefrom. I would strongly urge that you support the committee, and that, above all, we get on and take a vote on this particular matter. I understand there are another 4 or 5 amendments pending on the secretary's desk. Thank you.

CHAIRMAN VAN DUSEN: The lady from Highland Park, Miss Donnelly.

MISS DONNELLY: I rise to support the minority report amendment for various reasons. The one that has impressed me the most is the fact that the individuals who testified or contacted us, who were most concerned with the actual treatment, care and consideration of the delinquents were Judges James Lincoln and Mary Coleman. I think nobody can argue the fact that James Lincoln handles more than any other judge in the state. I would say the most experienced judge in this field feels that this is very vital. If there is an expert that says it is important to keep it in the probate court, I would say that there is probably the most experienced expert we have had. I think his predecessors and those that I have talked to are in accord.

We are, I think, putting a lot of emphasis on the delinquent minors and ignoring the fact that there are other minors too that must be taken care of. Those are the neglected, the abandoned, the abused children. They, themselves, are not criminals or have not gone against the law in any way, but they have just been misled, mistreated. Someone must take care of them, too. I submit that there is one court that has been doing the job, and it is the probate court. It is not an adversary situation.

As an "old maid", with no children and no hopes for grandchildren, I am still not disinterested in child welfare. As a psyche major who, theoretically, should have been most con-

cerned with this in my undergraduate days, I must agree that they have reached, in my opinion, the most intelligent analysis of the proper way to treat children whom we are trying to help for the future, where our strength will lie.

The advocates of a family court seem to be enthralled with the idea of taking the whole family and whatever kind of a mess it has and putting it together. The fact that the husband beats the wife or the wife beats the husband is not the issue, in a sense, of how are you going to take care of the children, primarily. This is a criminal action, and their conduct in that area should not be brought into what we are going to do with the children who are involved. The fact that the circuit court, through the friend of the court, is also involved in this in divorce proceedings, is not primarily the purpose. Certainly, in Wayne county, from the experiences I have had on these instances where we have had trouble with the children, we very readily had Judge Lincoln handle it completely and most effectively.

The argument that the large counties want this, that I heard yesterday, hours ago, is not true, obviously. The counties that have the problem of delinquency, the really serious problem of delinquency, want the probate court to handle it.

The issue about the fact that outstate, in small areas, there isn't time, does not seem to be adequate to my mind, because if we do combine these judges to handle the outstate probate problem, there will be more time for the state employed social worker, or whatever name they give them, to handle it.

The issue is, primarily, do we wish children to be in an adversary position or don't we. What direction do we want to go? In 1908, they went one way. I believe this is the proper way, and I think the only way to keep it proper is to accept this "as otherwise provided by law".

Mr. Danhof's issue about trust the legislature amuses me somewhat, because we couldn't trust the legislature on the court administrator. They created the court administrator, but we couldn't trust them not to take it away. In this instance, the constitution created the juvenile independence in the probate, and now we are going to say we can trust the legislature to not take it away. I think, somewhere along the line, we are going to have to think consistently and make up our minds in which direction we are going. I submit, this is not the time to trust the legislature. If we couldn't trust it on the court administrator which it created, then we surely cannot trust it in this area which was created by the constitution. I urge your support for the minority report amendment.

CHAIRMAN VAN DUSEN: Mr. Baginski.

MR. BAGINSKI: Mr. Chairman, members of the committee, yesterday when I rose to talk to you, I mentioned the fact that juveniles need people who are trained, who are career people, who know their responsibilities in the handling of juveniles. This morning's Free Press, on the second page, tells us about a juvenile who was lost in jail for 11 months. The story here is, this boy, 15, was picked up by the juvenile authorities and placed in the Wayne county youth home, where he was to be examined for possible commitment to an institution. The prosecutor's office came in and, because of the crime that he was accused of, insisted that a waiver be granted, and the boy was turned over to the recorder's court. At recorder's court, they decided that he was well enough mentally to aid counsel in defense, and they proceeded to try him with a sanity commission and, possibly, send him to the Ionia state hospital. In the meantime, his parents came to our court, to the civil part of probate court, filed a petition to have him committed, and our judge committed him to the Ypsilanti state hospital or the Northville state hospital. But, when we mean commitment, we don't mean admission. He was placed on the waiting list. In the meantime, though, he was in jail under the jurisdiction of recorder's court. When the judge and the prosecutor heard that he was committed to an institution for the mentally ill by probate, they immediately dropped their proceedings, but they failed to return Johnny Smith back to the Wayne county youth home, and he is in jail and he has been there for 11 months.

You see what happens when people who are inexperienced in this sort of work, in an adversary court like the criminal court, recorder's court. They are used to handling criminals and things of that sort, and they just let Johnny lay right there in the jail, promptly forgot about him instead of sending him back to the jurisdiction of Judge Lincoln.

These are the things that we are fighting for. Leave this matter in probate, in the juvenile court, under the jurisdiction of people who are trained to handle this sort of a case.

CHAIRMAN VAN DUSEN: Mr. Ford.

MR. FORD: I wasn't going to say any more on this until Bob brought in this recommendation from the southwestern Michigan chapter of the national association of social workers. I think that this is a quick way to demonstrate how much confusion is injected by people who are talking about a family court. In the first place, Mr. Higgs is talking about a family court, and he is talking about something entirely different than Miss McGowan is talking about, because he referred to New York, and in New York they call it a children's court, and in New York, recognizing that you have almost 8 million people in one city, they have a situation whereby they have the manpower and the need and everything else that goes with it, to have a special juvenile court. We call it a juvenile court, they are now going to call it a children's court. They are not going to handle divorce proceedings or criminal proceedings in that children's court. There is talk here about the family court in the nature of a domestic relations court, and that seems to be the concept that this social workers group has. Reading from the letter that Bob alluded to:

> In our work, we become acutely aware of the needs for more adequate judicial service for children of the families in Michigan. We believe that services similar to those now provided in juvenile court in a few counties should be made available throughout the state.

Why is it only provided in a few counties? Is it there because the people in the rest of the counties are insensitive to the needs of children? Not at all.

The inconsistency of this section recommended by the committee is almost inconceivable. If you will look at the majority recommendation for the reason for adopting the first part of section a, you will find that it says:

> We found in many counties of the state that the work load of a probate judge was small and required but a portion of his time.

Further on, it says:

> We have therefore authorized the legislature, and required the legislature on recommendation of the supreme court, either to unite counties into probate districts, somewhat comparable to our circuit courts, or combine the office of probate judge with any judicial office inferior thereto in any county with less than 25,000 population. We believe either alternative will tend toward a better administration of the work of such courts and at the same time reduce the expense of operation.

What they are saying is that the court wherein this function now resides is not busy enough so we are going to start combining them or we are going to give them more duties to perform. They are going to take from the court that is already not busy enough to sustain itself under its present form, a principal, basic, fundamental function of that court, the juvenile function, and create still another court to handle it.

If we start out and look at this from a practical point of view, there is one full time juvenile judge in the state today. The probate court judges are part time juvenile judges. In Wayne county, we have the only judge that devotes his time exclusively to juvenile affairs. Why? Because it is the only county that has the volume and also the facilities to handle this on a full time basis. Surely there are other counties that need it fully as well as Wayne county, but they haven't found it possible to add the extra judge, even though, in adding him, they wouldn't have to justify his existence solely on the basis of this single function. They go on to say in their letter, "Courts in a few counties should be made available throughout

the state," and that "they should not be limited to juvenile delinquents and dependents."

This is the key to where we lawyers, some of us, fall away from these people. "Children and families involved in divorce proceedings are surely entitled to as much consideration." Now, you get to the crux of it. Some of these people who are talking about a family court or a domestic relations court are not talking about a juvenile court that will specialize in the problems of children or dependent children, they are talking about lumping all of the human problems together on the theory that if mother and dad are fighting in a broken home, maybe they ought to lump the children into the whole proceeding. All of you lawyers know that to the extent that it is possible to do so, circuit court keeps the children out of the courtrooms, and keeps them away from the divorce proceedings. All of you know that divorce proceedings become vicious and antagonistic over affairs that are very difficult, if not impossible, for the children, who are the real victims of divorce in this state, to understand.

Let's take a look at Wayne county, for example, if we try to lump the divorce proceedings together with the juvenile proceedings. We now handle our juvenile problem with 1 full time judge. We have 18 circuit judges, and, conservatively, ¼ of their time on the bench is occupied in the hearings of motions and in the hearing of divorce matters. One out of every 3 cases started last year down there that went finally through to conclusion was a divorce case. If you are talking about combining these functions, do you realize what you are doing in Wayne county? You are going to have to take 6 of the 18 judges off of the bench and put them over here in this family court and have them trying divorce cases. Where do we gain anything? All that we gain is that we bring the children into the proceedings that thus far we have tried our very best to keep them out of.

The problems involved in trying to straighten out a child at the one level, on an informal basis, are entirely different than trying to settle the fight between the 2 parents of the child at another level. It is just as bad, in the opinion of some of us, to lump the children's affairs together with this antagonistic proceeding, as it is to try them in the criminal court and have the kind of things happen that Marty talked about.

When you talk about a domestic relations court, a childrens' court, a juvenile court, or a family court, you are talking about 4 different definable things. They are not all the same. They are not interchangeable. They are specialized functions and, in some states, they have specialized meanings because of the experience and the pattern of those states. Remember that Michigan is one of the forerunners and front runners in the concept of, by constitution, guaranteeing that children would not be lumped together in the adversary or trial court. This is why the other states have gone to these specialized courts and these specialized names, and this is why it hasn't been necessary in Michigan to seek this method in the past, even though we are out in front of the rest of them, even though other states look to us. Because 52 years ago our constitution guaranteed that you wouldn't have to get yourselves into the position that New York is in, that California was in before it went to its domestic relations court.

Just one final word. To paraphrase, with no disrespect, a very fine little saying, I submit that a family that litigates together, hates together.

CHAIRMAN VAN DUSEN: The Chair will advise that there are currently 5 delegates seeking recognition. The Chair has been extremely liberal in construing the subject under debate. There are 7 pending amendments to section a, in addition to the one currently under discussion. The committee has currently devoted over 2½ hours to the subject of the present amendment. The secretary will read the pending amendment.

SECRETARY CHASE: The pending amendment:

[The amendment was again read by the secretary. For text, see above, page 1395.]

CHAIRMAN VAN DUSEN: I will ask the remaining speakers to confine themselves, as closely as possible, to that subject. The Chair will recognize Mr. Plank.

MR. PLANK: Mr. Chairman, I thought I was out of order because it didn't seem like the previous speakers were on this amendment at all.

CHAIRMAN VAN DUSEN: The Chair concurs with Mr. Plank.

MR. PLANK: I am very happy to find out I am with the group, or at least some of them. I would like to ask the chairman of the committee a question, if I may.

CHAIRMAN VAN DUSEN: If Mr. Danhof cares to answer it.

MR. PLANK: I am wondering, if this language we are discussing is left in, why we have the rest of the verbiage there, Mr. Chairman. If you are going to leave it up to the legislature in the future, why don't you leave it up to them now?

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: What are you talking about, Mr. Plank? I can't quite follow your thought.

MR. PLANK: Well, you say, as "prescribed by law", and my interpretation of that is anything the legislature would like to change, they can. Why don't you leave it up to them in the beginning, then?

MR. DANHOF: Because, Mr. Plank, the committee wanted to emphasize that we were granting to the probate court, where this jurisdiction now resides and where, I will agree, there has been a development along the lines of picking out and having juvenile counseling — and so, we granted it to them initially. There it will repose and there it will stay until and unless the legislature takes it away. There is quite a bit of difference between the legislature having to give it to them and granting it to them, and making them take it away. We think it not only serves to emphasize that, as we have pointed out in our report; it should not be taken away from the probate court unless there is some adequate remedy and adequate facility provided which will be substituted in the place of the probate court. Therefore, we granted it to them in the constitution, so there is nothing the legislature has to do. It is with the probate court and it will stay there.

This is quite something else than anything other that the probate court has. All of the other jurisdiction of the probate court is what the legislature has given, not what has been granted by the constitution. This is a constitutional grant and I think you will agree that if you are somewhat prone to remove things, the spotlight is on you if you are going to take something away, unless you have provided a good, adequate remedy to take its place.

MR. PLANK: Mr. Chairman and Mr. Danhof, you give them the power to take it away. You are saying that the spotlight will not be on them now if they took it away as it presently stands in the constitution, in the 1908 constitution?

MR. DANHOF: Well, in the 1908 constitution, there was this, and they have defined it, and there is where they have left it.

MR. PLANK: That is right, except they don't have the power to take it away and here you are giving them the power.

MR. DANHOF: We agree, but we have granted it to them and they have got to take the thing away, Mr. Plank. It is not a question that they have to do anything further to give it to probate court. I submit that it will not be removed; they are not going to take it away from the probate court of Wayne county. But if the legislature in the future is going to have to deal with these problems, or somebody is, if there is to be any other type of a facility made available — I don't particularly care what it is called but if there is going to be allowance for any type of study or any type of research or any other type of a facility — we have come a long way since 1908, and we should make provision that as we go forward in the years to come, there can be arrangements for the study and perhaps for the investigation of other types of facilities, maybe not domestic relations, maybe purely juvenile. Maybe

they should be separated from the probate court, from the other proceedings in the probate court, from the mentally ill, from the commitments, from the processing of estates. This state is going to grow. We are going to get more counties that are going to have large centers of population, not less, and this is why we decided on this particular wording.

CHAIRMAN VAN DUSEN: Mr. Plank.

MR. PLANK: I still don't see why, if you are going to leave it up to the legislature, why don't you just leave it entirely up to them and don't put the other verbiage in there. I think you are not being consistent, and I certainly would urge the delegates here to make the constitution consistent with their language in trying to straighten this out. I am going to say that I support the minority report amendment here.

CHAIRMAN VAN DUSEN: Mr. Higgs.

MR. HIGGS: Mr. Chairman and fellow delegates, when Delegate Ford was speaking with regard to this language, he stated that Michigan is a front runner in having this particular provision that his amendment seeks to strike, and that other states look to us. And he said, "Look at the position New York is in because they don't have it. They have all these special courts." I would like to say that this is not true. Delegate Ford, apparently, doesn't know what position New York is in or he would not have spoken thus. He stated that what I was speaking about — and he said that Mr. Higgs, in speaking of a family court in New York, is talking about a children's court. If Delegate Ford was listening closely yesterday or listening closely in the committee hearing, he would have heard that in New York last November, they adopted a new judicial article. The children's court jurisdiction, together with their domestic relations court, which they also had, and parts of the jurisdiction of the surrogate court and other courts were transferred to a family court. That is the situation that New York is in.

When Delegate Baginski spoke about the 15 year old in this regard, I just don't see what this language has to do with that. Delegate Baginski skipped over it real fast, but if you were listening closely, you would have noticed that the 15 year old was waived over to the circuit court. There is only 1 court that has the power to do that, and that is the probate court, and the very same experts in that particular case apparently goofed, because what they did is, they waived him over to circuit court and then they tried to get him back. That was where the problem lay there.

When Ray Plank spoke on this and urged the support of striking this because he wants to be consistent, that won't do it. We are, I think, very frank to say that we did consider doing what Delegate Plank proposed, that is, taking out the section altogether, and I think Chairman Danhof has partially answered that. At least, we considered that, but we decided that it would be better to make the positive statement for emphasis as to where it lay, so that no one would be confused as to what we were doing, by adding the language "except as otherwise provided by law". But we were also giving recognition to the probate court. Some of the delegates here, I think, feel that there may be some danger in abolishing the probate court; that by including this language, it might somehow be possible to abolish the probate court. I want to sincerely urge to you that we have no such intention. When we write the probate court into the constitution, it is there. It won't be abolished. It can't be abolished any more than the circuit court. If you strike that phrase, you will place the probate court in a higher position, actually, than the circuit court.

I would like to conclude — and maybe this is a good point for it — I don't take the credit for writing this, but Delegate King wrote this yesterday afternoon, and I think it is a very fine piece of verse. He entitles it, Ode to Probate:

Blessed be the house of our con con.
We are the friend of the recent born
But across the road in that hall of sin
Are seated men of caprice and whim,
Not to be trusted, those mean lawmakers.
Who would incarcerate juvenile lawbreakers.
Under the banner of probate, so pure,
We shall go forward, their jurisdiction to secure.
Lobbied by emotion for our children, they endeavor,
Probate judges are constitutionalized forever.

CHAIRMAN VAN DUSEN: Mrs. Cushman.

MRS. CUSHMAN: I rise to support the majority report. Once again, I think, we have got to realize that we are writing a constitution, not for today or next year, but a constitution for 50 or 100 years. No one can deny that we have changed tremendously in the last 50 years. We must realize that conditions may equally change in the future. We have got to keep our constitution flexible to meet possible changes.

We are not now advocating putting children in an adversary situation, nor do we ever advocate such a thing. We are not making any real change in the jurisdiction of the probate court. All we are doing here is making it possible, if at some time in the future we develop a new concept of court arrangement — and we have done this in the past many times — if we develop such a concept, it would be possible to implement it. Therefore, I urge you to keep the constitution flexible. Support the majority report. Thank you.

CHAIRMAN VAN DUSEN: Mrs. Judd.

MRS. JUDD: Mrs. Cushman has made the point I wanted to make. It seems to me Delegate Ford has been raising up a ghost here that I think we should lay. He has been trying to pin upon the proponents of the majority report the intention of setting up a specific type of new court to handle family affairs. This is definitely not the case. It is just exactly because we do not yet know what kind of court or kind of method of handling these affairs should be set up, and it is just exactly because counties differ so in their needs for handling these matters that all the committee proposes is to remove the obstructions to this kind of future reform. Thank you.

CHAIRMAN VAN DUSEN: Mr. Stevens.

MR. STEVENS: Mr. Chairman, members of the committee, I rise to support the committee proposal and oppose the amendment for the following reasons: 1, I believe the discussion here has been, for the most part, purely academic; 2, the principal purpose seems to be to protect the self interest of certain probate courts in counties of larger population; and 3, it seems to me that the proponents of the amendment have no sympathy and no familiarity with the counties of low population. It seems, as pointed out by Delegate Habermehl, that we do have a need for some kind of a combination of courts which will provide, among other things, a satisfactory place for the care of juveniles in these sparsely settled counties. Thank you.

CHAIRMAN VAN DUSEN: The question is on the minority amendment offered by Mr. Ford on which the Chair will recognize Mr. Habermehl.

MR. HABERMEHL: Mr. Chairman, I will be very brief. Quoting from the same news story:

> Johnny Smith is 15 years old. For the last 11 months he has been in the Wayne county jail a lost boy. His incredible story came to light Thursday, to the shock, among others, of juvenile court authorities.
>
> Johnny was taken before Juvenile Court Judge James A. Lincoln, who waived jurisdiction over the then 14 year old boy. The state supreme court —

this horrible adversary court —

> ruled, 2 months after Johnny Smith's arrest, the juvenile authorities could not waive jurisdiction on 14 year old offenders. It was too late for Johnny.

Further, this horrible adversary court, the recorders court, dismissed charges against Johnny in June of 1961. Since that time he has been under the jurisdiction of this same expert, Judge James Lincoln. Unfortunately, under Judge Lincoln's jurisdiction, he somehow or other became lost and, since June, since the recorder's court waived the jurisdiction, he has remained lost. It seems to me that isn't too good a recommendation for the expert that circularized all the members of this delegation.

CHAIRMAN VAN DUSEN: Mr. Martin.

MR. MARTIN: Mr. Chairman, I think almost everything has been said on the subject that can be said, and I just want to wind it up, if I can, by saying that what we want here — and not talking about people in Wayne county, but people over the state who are interested in these problems — is to have the probate court strengthened throughout the state to do the job of juvenile supervision and handling which it is supposed to do in these serious problem cases. We want that court properly staffed. We want it set up by districts, wherever that is necessary. We want the judges properly paid, and we don't want to have the legislature tempted to do something with this juvenile jurisdiction which it can't do now. If that happens and we get back into these adversary proceedings, we will have committed a serious mistake. I hope that the minority report amendment will be supported.

CHAIRMAN VAN DUSEN: The question is on the minority amendment offered by Messrs. Ford, Garvin, Bledsoe, Ostrow, Krolikowski and Barthwell:

[The amendment was read by Chairman Van Dusen. For text, see above, page 1395.]

Division is requested. Is the demand supported? It is supported. Those in favor of the amendment will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the adoption of the amendment, the yeas are 62, the nays are 57.

CHAIRMAN VAN DUSEN: The amendment is adopted. The secretary will read the next amendment.

SECRETARY CHASE: Mr. Leppien offers the following amendment:

1. Amend page 1, line 7, after "may" by striking out "combine 1 or more counties into probate districts, or"; so the language will then read, "The legislature may combine the office of probate judge with any judicial office inferior thereto in any county with less than 25,000 population with supplemental. . . ."

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Leppien. Mr. Leppien, do you desire recognition?

MR. LEPPIEN: Mr. Chairman and members of the committee, very humbly, I want to point out first that the county from whence I am a representative of the senatorial district to this convention was the first county in the state of Michigan to have a probation officer. As a result of that, due to the work of Delegate Martin and the association that he heads in this state, we had a 3 year program of probation.

We have heard a great deal about combining courts for the purpose of giving better service to children. I wish to respectfully point out to the delegates present that the combining of the probate courts in counties will do just the reverse. If we will stop to think, first, that in order to strengthen the work for our juveniles on any level, it is necessary to pinpoint the program so that public officials and others involved will make it their business to see that we come up with a program that does actually strengthen the program, rather than reduce it or diffuse it. I think that is exactly what the combining of counties for the districting of probate judges' jurisdiction accomplishes.

There are 3 phases that are very vital, in my book, why this should be eliminated. The first of these is that the person who finds himself in the north country on vacation — and it has been well pointed out in this convention many times in other discussions — that were we to take the population of the state of Michigan for census purposes in a given summer month, instead of when it is taken, the results, of course, would be far different. Thus we find in the north country many people who, because of reasons unknown to us, could become mentally deranged and find themselves in an area where we have a districting — if this proposal is adopted by this convention and then put into the constitution — and the mentally deranged person would have a real, real rough time attempting to get and secure for himself, if he were able, somebody to file the necessary petition for the determination of the alleged mental derangement, and as a result of that it seems to me that we in no way can afford to do that. The necessity of keeping a probate judge on call at all times is a very, very important part of our entire governmental structure, both for the adult and for the child.

The second thing that I want to bring to your attention is the fact that if we proceed to adopt the committee proposal, we would then have the question of the young minor coming home from service, wanting to be married for obvious reasons, or even just reasons and, necessarily, they need to have a waiver of the waiting period, or the determination of whether this male or female child should be granted the right to be married.

I will grant you that all attorneys do have, and will continue to have, when they are working in circuit court, some relief signed today, and they find the circuit judge over in county C instead of county A, where this is taking place, that they can secure some man — constable, process server, deputy sheriff or what have you — to take that paper over and secure the signature of the judge, wherever he may be in his district on the circuit level. But, I respectfully submit to you that this cannot be done in the case of the minor who wishes to be married. They have got to find a way. The unfortunate young man and young woman in this condition or position find themselves confronted with the fact that there is no one available on the county level, where they reside, and that is the only place of jurisdiction for them to go to obtain relief from their problem.

The third thing that I want to point out is — and I think this is very, very important to our election processes — other clerks of counties in this convention can testify as to the importance of the county election commission, whose duty has to do with the problem of determining the number of ballots, and all of the other things in the makeup and the process of an election, in the conducting of it, and the probate judge, by statute, has been made a member and chairman of that commission, a nonpartisan member, if you please, in order to lend assurance that the purity of the election will be guarded at all times. I am sure that we all agree that this should continue with at least one member of this commission being nonpartisan. I submit that this is the only person under our judicial system that can do just that job.

In closing, let me say I appreciate that the attorneys are attempting, through this suggested proposal of districting probate judges, and wish to accomplish the fact that we have better justice by having attorneys preside at all probate courts. But, I submit, too, that in the absence of qualified attorneys in all of the counties, we do have very good lay probate judges.

I respectfully solicit and seek the support of the delegation in striking from Committee Proposal 94 the suggested words "combine 1 or more counties into probate districts". Thank you.

CHAIRMAN VAN DUSEN: Mr. Lundgren.

MR. LUNDGREN: Mr. Chairman, I don't know whether this question goes to Bill. I would support your amendment if you had gone a little further. I think we are going to have an amendment on the floor in a few minutes that does.

One question that still bothers me, as a lay person here, is the question which I raised yesterday morning on the floor, and I wish the judicial committee could give us an answer because I think this is where it belongs, rather than over in the legislature. I would like them to spell out just where and what type of court they mean they will join the probate court with. That, I think, we should have on the record here, and I would like to have it answered by the judicial committee.

CHAIRMAN VAN DUSEN: Mr. Lundgren, might the Chair ask that you defer that question until we get an amendment which deals precisely with that point?

MR. LUNDGREN: All right, I shall defer.

CHAIRMAN VAN DUSEN: Mr. Radka.

MR. RADKA: I appreciate Delegate Leppien's amendment, and I reluctantly support it. I support it only with reluctance

because I, too, feel it doesn't go far enough. The reason I feel this way, if you will look on your amendment sheet, I think that the entire section that has been added should be stricken. I speak to the amendment alone, as offered by Mr. Leppien.

I come from an area that we are aiming at with this combination probate court or district probate court plan. I come from an area where the heaviest county population is somewhat over 14,000, and we get down to counties that have populations of around 4,000. So this particular provision that you are asking be placed in this constitution is actually aimed at the area that I represent. Our probate courts, and our particular counties, are looked at as local institutions. I don't know where the proponents of this particular article have received the urge or the impetus to want to combine probate courts. They certainly have not received it from the people of the low population counties in northern Michigan and the upper peninsula.

I now practice law in a circuit. There are 3 counties in our circuit, Alpena, Montmorency and Presque Isle. Our county is not the lowest population county. The heaviest population county is Alpena. The circuit judge, generally, is elected from the heavy population county. The judge rides the circuit. We have 4 terms a year, but we often feel that the judge, living in Alpena, spending most of his time there, gives a distinct advantage to the attorneys and the people in Alpena county. I am a little bit concerned about what will happen when we create district probate courts. I would say that the probate judge will undoubtedly be elected in the county that has the greatest population, and I am a little bit concerned that the people in the low population counties are not going to really have their own local probate judge.

There is a difference between a probate court and a circuit court. Up in our area, this probate judge is not a jurist who sits behind locked doors so many hours a day, that you have to contact by appointment 3 or 4 days or weeks ahead of time. He is a servant of the people and the people in our area regard him this way and they use him or her, as the situation may be. I would venture to say that if any of you people would come up into our area and go into a probate judge's office and sit there for one day, you would never again ever consider the thought of abolishing a county probate judge in any county in this state. When you are talking combination of courts under this provision, if it were put into a constitution, the people in my area are not going to see "combining probate courts", they are going to read this thing as a provision that will allow the abolishment of somebody's probate court. And I submit to you that the people in these low population counties don't want this.

And another thing, I don't particularly know where the proponents of this particular idea ever got the idea, other than from people who are not aware of our situation up there. You will recall I asked 2 questions of Mr. Higgs. Judge Baird, from Otsego county, expressed his opinion but it was only his personal opinion. The committee received no testimony from individuals in the northern Michigan area. All they received was testimony from the president of the association, and Mr. Everett advised me that his county has a population, the president of the association's county, of some 38,000, so it didn't affect him.

I would say to you that we people in northern Michigan, in the low population counties, want our own local county probate court. We have no complaints. The people want the courts. They are willing to pay the little it may cost, and we don't feel that you should give the power — if you go all along with this particular provision — to the Supreme Court of Michigan to abolish some of our local institutions that mean so much to us, such as our probate courts.

CHAIRMAN VAN DUSEN: Judge Leibrand.

MR. LEIBRAND: Mr. Chairman and delegates, I was a member of the judicial committee, and I voted for this particular phrase that Delegate Leppien's amendment seeks to strike out. I voted for it because I was under the impression that the smaller counties would want it. We heard some complaint there that the burden of maintaining a full time judge, the cost of maintaining a full time judge in the smaller counties, bore pretty heavily upon them and that, as a result, some of these counties or most of these smaller counties had probate judges that were not full time judges. They were, perhaps, farmers, real estate men, school teachers and that sort of thing, and my vote was impelled by the fact that it would enable a district to have a full time judge and probably a judge with a legal background. But that vote came, as I say, because I thought I was doing a favor for the smaller counties. I would like to hear on this floor from delegates representing smaller counties — we have already heard from Mr. Radka — if they want their own probate judges, I am all in favor of them having them. I would like to hear from the delegates from the smaller counties.

CHAIRMAN VAN DUSEN: Mr. Tubbs.

MR. TUBBS: Mr. Chairman, I hope I can be heard. My voice is not in good trim, as you see and hear. The suggestion for districting of probate courts, which is sought to be stricken out by this Leppien amendment, came from many sources. For about 10 years, I have been a member of the probate and trust law section of the state bar, a section composed of 1,000 lawyers and probate judges from every corner of the state. A couple of years ago, I was chairman of that section, and I was asked to appoint a committee to study this subject and make recommendations for possible changes. At that time, the constitutional convention had not been determined upon, but while the committee was in the midst of this deliberation, we became a constitutional convention committee, rather than a legislative committee.

I am a little familiar with some of the smaller counties, though not all of them. I have talked to probate judges from many of the smaller counties. I have talked to lawyers from many of the smaller counties, and I don't believe I can get emotional on this subject.

We are trying to make the best use of judicial manpower and set up courts that will be of service to the people. I have one particular county in mind, at this moment, where the probate judge occupies an office in the courthouse. The office says "so and so, attorney at law". Down in the left corner it says "probate judge". The county is paying the overhead for that man to practice law, and he told me that the probate court work some weeks took more time, but usually didn't occupy more than an hour or 2 a week. Then there is that famous county up in the far end where there are 2,300 people, and under the present statute they have to pay $5,000 to a probate judge, so that is about $2 per capita, and if he works an hour a week, I would be very much surprised; that is, if he works more than that.

We are simply attempting to use manpower in the best way possible. Ever since the founding of this state, we have had a circuit court in every county, but we have not had a circuit judge in every county. Much of the work of probate is administrative in nature. It can be handled by the registrar of probate, and is, in most counties, at the present time. The judge has to be there about 1 day a week to sign orders and things and conduct any hearings that are necessary.

I do not believe we are going to destroy any offices in this state that are essential to the conduct of court business in this state. I urge the rejection of the amendment.

CHAIRMAN VAN DUSEN: Mr. Stamm.

MR. STAMM: Mr. Chairman and members of the committee, I am rather reluctant to stand here and argue with the lawyers, but, again, I do think that I am as well qualified to be a judge of the operation of the probate court as 90 per cent of the attorneys in this convention, because I neighbor to the probate court in my everyday occupation, and I see the many, many things that go through the probate court.

I think, sometimes, the name court is a misnomer and we put too much emphasis on the fact that the person who is in charge of that court must be a professionally trained attorney, because so many things that go through that court require more someone with understanding and compassion and the ability to counsel in the matter of human relationships than to interpret the technicalities of the statutes.

As Mr. Leppien has indicated, many of us depend on the probate court in the matter of committees that are in operation; in emergency situations within the county. I was surprised to hear counsellor from Grand Rapids indicate that most of the work was done by the registrar in the probate court. It seems to me that it backs up my argument that we should consider this whole matter of the probate court and possibly give it another name, take the word "court" out of it, so it would be a little bit closer to the people. I was raised on the idea that the probate court was actually the peoples court. It was a place where families could go with problems in relation to a juvenile who was running into difficulty either with the law or with school administration. Many of these things are emergency problems. You can't go in and expect a clerk typist sitting in the court to make the final determination as to what should happen to the child, whether the child should be taken into the custody of a juvenile officer or possibly placed in a juvenile home.

As Mr. Leppien indicated to you, there are emergency situations that arise every day in many of these areas that require the counsel and the wise guidance of the gentleman who occupies the office of the probate court, and these emergencies cannot wait until some circuit riding attorney manages to hit the county seat and take the matter under advisement. Many of these things have to be decided now and immediately, and I do think that there definitely is a need to continue this type of service within the county.

Possibly, there is a matter of expense, but I have known of cases where the state subsidizes circuit courts in these areas, because of the matter that there is a need for the court, and it is part of the state branch of the judiciary so the state provides the funds to subsidize these matters.

I have seen cases where the children have been neglected, and I don't know what would happen to these youngsters if it wasn't for the matter that the court could issue an order that the children be taken and a special guardian be appointed immediately or the children placed in some home until such time as the court may be able to conduct a hearing.

I would like to encourage you, if you do feel that the people in these areas of our state that you are considering lumping all together because of the fact that they are not harboring as many residents as some of our other counties in the southern section of the state, should be entitled to this court, I think you should support Mr. Leppien's amendment. It seems to me it has merit. Of course, I sympathize with the attorneys too; I realize that you have had a real rough job. I can't see how the 20 of you could even get together long enough to get out a report, because I work with you attorneys, and I know that all you have to do is say "good morning", and if you are saying "good morning" to 2 attorneys, you will have 2 answers from the 2. I don't say it facetiously. Go into the corridor, pretty soon, and try it out yourself and see what happens. The both of them will not agree on the fact that it is a good morning. One will say, "It's a little cold"; and the other will say, "The sun is a little bright."

But, I do encourage your support of this amendment. I do think that we should emphasize the fact that the people of the state still have a place in this judicial article. I think that is important.

CHAIRMAN VAN DUSEN: The gentleman from Escanaba, Mr. Follo.

MR. FOLLO: Mr. Chairman, I too come from an area of the state which is sparsely settled and which has counties of very low population. It seems to me that much of the discussion here is somewhat irrelevant, because I don't think that the probate judges are threatened as much as seems to be indicated by the debate. As I read the proposal, it seems to me that it says the legislature may do this. The legislature is not likely to act hastily. It will only be upon petition of people in the area, and if there is strong opposition to it, they will not act; they will not combine counties.

It always impresses me that people who oppose changes of this kind are the very people who advocate strict economy. Here is a chance, if the people of a county want to economize and feel that 2 counties or 3 counties could be combined with a probate court, it could be done.

I believe that we have been putting too much back in the constitution, restricting our legislature more and more, or at least as much as our old constitution. It seems to me we ought to look ahead and allow our legislature to act, allow the people to do the things for themselves, if they wish. Thank you.

CHAIRMAN VAN DUSEN: Mr. Brake.

MR. BRAKE: Mr. Chairman, ladies and gentlemen of the committee, I admit some uncertainty in this problem and I would like some further thinking from the committee and, in order to lay a background, there are some things I would like to go over. I recognize that there are some things that take place in the probate court where the answer ought to be given by a competent attorney acting as judge. And I recognize that if that is to be done it must be on a circuit basis for these small counties or they will have to have state subsidy in the payment of the salaries because the little counties can't pay that kind of a salary. On the other hand, it seems to me that the circuit idea raises some serious problems, and I would like to know what the committee proposes, what they are thinking about as an answer.

We get along very nicely with judicial circuits for circuit judges. If the judge comes in once a week or every 2 weeks, in some places once a month, we have lived with that. We get along quite nicely with it. But there is a difference in the courts. When the circuit judge comes to town, it is the lawyers who come to see him. Maybe they have their clients and their witnesses with them. But the circuit judge is not very accessible to the general public and need not be very accessible to the general public.

On the other hand, the probate judge is visited by the people — not by the lawyers, particularly, but by the people — day after day. It is a strange thing that we have such different experiences, a probate judge talking about taking care of the probate work in an hour a week. Of course, the counties with which I am immediately familiar are a little larger than these 25,000, but not too much larger, and there is always a crowd in the waiting room of the judge's office wanting to see the probate judge — not lawyers, but the people themselves. And, as I visit these smaller counties, stop in to say hello to the probate judge, it seems to me there is always somebody waiting. Their problems may not be very important to us, but there is something that they want to see the probate judge about, and I don't believe they are ever going to be happy if they have a probate judge 1 day a week or something of that kind. They want to see him when they go to the courthouse. They want him to be there, and my experience is that he generally is there.

I would like to know from the committee: is it your thinking that there will be maintained an open office in each of these counties in the circuit, with a registrar there and a staff? Is it your thinking that the registrar's powers should be increased so that they can take care of some of the problems that the judge is supposed to take care of? How do you propose that the demand of the public for constant access to the probate judge is going to be satisfied?

CHAIRMAN VAN DUSEN: Mr. Brake yields to Mr. Danhof.

MR. DANHOF: Mr. Brake, members of the committee, to answer Mr. Brake's question, perhaps, will take a little more time than just yes or no, so let me start with this: not a single probate judge that came before us — and in answer to Mr. Radka's problem, we had them from all sized counties, and we requested and we heard from more probate judges than we heard from any other branch of our judicial system, and every one of them, from Judge Lincoln, who comes from the largest county in this state, down to Mr. Baird, who represented, we thought and we hoped, the top of Michigan, to Judge Meehan, who came from a county of 16,000, to Judge Mitchell, who came from a county of 38,000, to Judge Coleman, who comes from Calhoun, which is not a big metropolitan but a larger county — agree, in essence, with this particular idea.

Basically, we envisioned this, Mr. Brake, that there is probably more money passing through the hands of the probate judge than there is through the hands of the circuit judge; that estates are growing larger, not smaller, and that a trained, competent individual was needed.

You are quite right that we felt that for judicial purposes — it is the thinking of the committee, and has been, that the office of the probate judge is going to grow and become a judicial office and not a county office, and these myriad of things that the legislature, because it has had no other official around, has dumped into the lap of the probate judge will have to be and, we admit, may be transferred to other officials. It was the thinking, basically, of the committee that the probate judge and the probate court was a probate and a juvenile judge in a court and not a dumping ground for everything that the legislature couldn't find anybody else to handle.

We envisioned, as you say, that through statutory enactment, when a district was set up, there would be in every county a probate office, a probate registrar or clerk, whatever the name may be, and that they may be accessible to handle the probation of estates. We inquired very diligently, and in particularly of Judge Meehan, and of the other judges, whether they could handle additional counts, and the answer was very emphatically yes.

Naturally, the county of Kalamazoo or Saginaw is not going to be grouped together in a probate district. They are single circuits. They certainly aren't going to be grouped together in a district. We envisioned that the probate registrar would be, if necessary, given additional powers over and above what they have now for the normal, everyday administration of estates.

Judge Coleman has been quoted on this floor quite considerably, and for good reason. Probably she is the best looking of all of the probate judges in the state of Michigan. Her statement, given to us on December 19 was that, first, probate judges should be elected by districts. The exact size of these districts is a matter better left to the determination of this committee or to the legislature. This was her particular statement. She also stated they should be attorneys, and she is head of the juvenile division.

We further felt that by grouping these together we could give a more efficient juvenile program to these particular counties. We made inquiry of Mr. Downs, who is a probate judge in a very small county, Charlevoix county, about the juvenile programs; and Judge Meehan, who appeared before us, gave emphasis to the fact, as you did, that by grouping the counties we could have a greater population to have additional money, additional manpower, so that we could provide for adequate probate facilities.

Now, if the action of this committee indicates the action of the convention, the probate court is going to be the juvenile court, and if there is one place where there needs to be additional juvenile work, where the only person sometimes in the office, I will admit, is the judge, and if he happens to be an attorney or happens to have other business, he isn't too much concerned with the juveniles that come before him.

This was the basic thinking of the committee. I will be perfectly frank with Mr. Brake, we didn't write in all these details. The problem that Mr. Leppien is getting at is really something that Judge Mitchell put out to us, and basically, it is this: "Our association recommends that your committee examine the counties of the state to determine whether some should be joined together to effect a more economical operation in all areas of government." This lies at the heart of the problem. We have passed the local government article, and there isn't anything in there. As he points out, if this is not done, then some other method should be found for making possible the grouping. We aren't grouping anything. We are making it possible. We think that every judge — and we had them from all sizes, and we had the list and their testimony is on the tape, and I had Judge Meehan's testimony transcribed, and I mislaid it through a myriad of papers, but he emphasizes very strongly that for many months he handled Manistee county, which is north of Oceana, and he said there was no problem at all.

The case that Mr. Leppien puts out is going to be the exception, it is going to be the rare exception. I submit that there isn't anything in this day of automobile traffic or anything else, we have cars and all of these highways that we are building with our earmarked money — certainly makes it possible for a probate court that does not have to be grouped in any county.

I will agree with you that many detailed, nonjudicial duties have been delegated to the probate court. We submit that as this state grows, this will have to change. Your probate judge is going to have to become a probate court. Estates are getting of greater size. More and more counties are taking the idea that you don't probate an estate on your own; you have an attorney, and unless some type of flexibility is left in this, I think you are freezing in, for all time to come, in those areas which are going to decline for some time in population before they grow, an inadequate system of justice for parts of this state.

It isn't going to affect my county. If you really believe that the people and the juvenile program should have some idea of success, in having stricken the proviso that we have on the bottom so that it now is in the probate court and in no other, and if you want and if you support an adequate juvenile program, and if it is going to be in the probate court, then, I say, by all means, you should allow this type of provision to be written in. I don't think it will be abused. I think if they are grouped together — and it does not work — there is nothing to prohibit them from going back or reducing the size of the circuits. That was the thinking of the committee, insofar as those particular questions.

Having struck out the language "except as otherwise provided by law," to allow any type of operation efficiently of the court, both the probate part and the juvenile part, we urge that you defeat the amendment and allow this to stand in this particular section.

CHAIRMAN VAN DUSEN: Mr. Brake, the Chair believes you retained the floor, do you seek further recognition? Mr. Leppien.

MR. LEPPIEN: Mr. Chairman, through the Chair I would like to ask Delegate Danhof 2 questions. One question is, do you envision in your thinking on the additional duties of the registrar of probate, such things as the creation of a delayed birth record, the waiving of the waiting period for marriage licenses, items of that kind which all of our legislators in times past, when county clerks have appeared before various committees of the legislature, have indicated very strongly are judicial determinations and not for laymen?

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: Not those items that relate to a judicial determination. You talk about a waiver of marriage. We will assume for a moment, if you will, Mr. Leppien, that you have a judge that has maybe 2 or 3 counties. I am not convinced that in those areas where there will be or there has taken place, that the judge will be so inaccessible that he cannot be reached for this particular purpose. I know that you can make the case and say, "Well, he is going to be 35, 40, 50 miles away," and I will agree. All I can tell you is that we inquired of the judges in those areas where, perhaps, this would take place. The only reply that we received was that the occurence of what you are mentioning is of a rarity which would not justify the nonincorporation of a particular item like this.

I would envision that the registrar would be given more power in the everyday operation and the probating of estates, not, of course, to determine final accounts, but in those matters which are the matters of filing and accountability, until such time as the judge would come and examine them and sign the final orders, perhaps along that particular line. You say filing a delayed birth registration. Most of these are not a matter that has to be done as of this date. I have filed many of them. You will file them and they will go to the court and eventually you will get a call that the judge has signed them. This is not a tremendous area of conflict and, as I said, we inquired particularly of Judge Meehan — he doesn't come

from a real small one but it is smaller than Mr. Brake was talking about — and also Mr. Baird, as to whether or not this would really be a handicap, because we were concerned with it. The answer that we received from every one of them was no.

MR. LEPPIEN: Delegate Danhof, I gather from the remarks just made, that you are interested in strengthening probate courts. That is correct, is it not?

MR. DANHOF: That was our intention. It is mine. It is the committee's intention.

MR. LEPPIEN: That is your intention, is it not?

MR. DANHOF: Yes.

MR. LEPPIEN: Then I submit, very respectfully, to this committee, that we are dealing with the rights of human, everyday people, and if it is necessary that this convention adopt some form of tax program that will provide for the subsidizing of probate judges in counties too small to support an adequate legally trained person, if that is necessary — and I am not saying it is, but if that is necessary — then, I submit, very respectfully, that we ought to face that in this convention and provide for it and keep the probate judge home in the county, in order to make him available at all times for many miscellaneous things. I have only mentioned 2 or 3. Every county clerk, I believe, every court official below the circuit court would well testify, and proof of what I am saying is that in our county — and I am sure it is true in other counties — the judge of probate never leaves, vacation, conference, or anything, without arranging with one of the circuit judges, who are always on duty, to be there to take his place when needed on a day to day basis.

CHAIRMAN VAN DUSEN: Mr. Shackleton.

MR. SHACKLETON: Mr. Chairman and delegates, a brief statement and a question to Delegate Danhof, please. In some of these more sparsely populated communities, there are businesses of various sizes, many of them solely owned, individually owned. An owner of the business may have employees ranging from 8 or 10 up to, maybe, 50. Assume, on a Thursday night or a Friday morning, he prepares the payroll checks for these people, payday being Friday, and then is inconsiderate enough to die that night or on Friday morning. How are those people going to be paid Saturday or Sunday until a special administrator has been appointed? If the judge is 2 or 3 counties away, how can this be accomplished?

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: Mr. Shackleton, I would submit it probably would be signed faster than in the county that you come from. I think a lawyer would take the estate of this businessman — if he has 40 or 50 employees, it would probably be of sufficient size — and, probably, a special administrator would be appointed within about 72 hours, I am sure. If he did nothing else but file a petition and mail it to the judge, he would get it back by Monday morning. I submit, it would be just as fast or faster than in a county where you have 1 or 2 probate judges, where probably you would file it and they would put it on the routine and it would be filed. You say, "Well, the people have to be paid." I agree that they have to be paid, and you get them paid out as fast as you can. I am not even sure that they could be paid by the special administrator until you got everything all squared away.

That particular type of an emergency is not one which, I think, Mr. Leppien was referring to. He is referring more to the commitment of the mentally ill, which is of far greater importance, and even there you have a 3 day waiting period which the prosecuting attorney can handle in the county. I don't think that that would be a particular problem. You file the petition; you file the order, and you prepare and file your bond, and if it is in good form, you have a registrar, and I would imagine in about 48 hours you would have it over and back, which is probably as fast as you could do it in the county of Saginaw right now.

CHAIRMAN VAN DUSEN: Mr. Sleder.

MR. SLEDER: Mr. Chairman, fellow delegates, the area I represent, the twenty-seventh senatorial district, there are 7 counties, and of these 7 counties, 5 of them have a population of less then 10,000; 2 of them have a population of over 30,000. The 2 counties, Grand Traverse and Wexford, are not particularly interested in this provision because they have their own probate court and, under the provision, would continue it. However, the other 5 counties are deeply interested in this provision and each 1 of them, of course, is opposed to it. They feel by the fact that if we take and combine any 1 of these 3 or 5 counties, or in any way it might be brought about by the legislature, it will take away 1 of the areas of local government, keeping government local and keeping it down with the people. We will build the probate courts in the same manner that we have the circuit courts.

The workload of the probate courts will pile up like they have in the circuit courts, and therefore the people will not have the service nor will they have the closeness to the court system. In our area, of course, a great deal of it deals with the children, and this is important in the fact that the local probate judge has a firm acquaintence with the people of his county. And, beyond this, there is one thing more that really does concern me, and that is when we look ahead of what the committee has planned and has put a provision in that the probate judges must be attorneys. This fact, I am sure, that the only way it would be possible for any of the smaller counties to afford an attorney would be by a combination of 3 or 4 different counties, and then when we put in the provision that they must be attorneys, this is where I really become concerned.

With all due respect to the organization, the bar association — we sometimes think that Delegate Marshall has a strong representative area, that he has a bargaining position, but let me tell you, the bar association certainly can out do him at any time. My experience, as mayor of Traverse City, where our city charter required an attorney to be the municipal judge, was that we had set, as a council, the salary that the municipal judge should have, and the local bar association, after we had to ask our present municipal judge not to run again, because of his conduct in office — he was a lawyer — we asked them to submit another name on the ballot. The trouble we had, they would not propose any one of their members until the salary was set by the city commission as to the terms that they wanted. Therefore, we went in on the election without any candidate for municipal judge.

This same thing can happen when we come to the probate judges. If this provision is in and we must combine our counties and where we have — and I realize in the big counties where the bar association consists, in a county, of probably 40 or 50 attorneys — but in these small counties, we combine 3 or 4 counties, and how many attorneys do we have? We have 6 or 7 attorneys, or maybe 5, and these 5 or 6 attorneys set around the "tea table" and they say, "none of us will submit our name as probate judge until the board of supervisors sets the salary where we want it," and, gentlemen, you are in a bind then. Because you have to meet their demands if you are going to fill the office.

Therefore, I feel that we have 2 things here correlated, and that is increa .g the size of the probate court and then, secondly, after we increase the size, we are then going to ask that they be attorneys, and then, we, when we do this, are in serious trouble, because the area, in the smaller communities where this applies, is definitely too small to contain many lawyers. As I say, with a small number in their association, they do control and they will control the probate courts and the salaries that will have to be set by the boards of supervisors.

I therefore, because of these reasons, highly suggest and recommend that if we are to better serve the areas of northern Michigan, the upper peninsula, where we do have sparsely populated counties, we must continue with the same or similar form of probate courts that we have operated with over the past 50, 60 years.

CHAIRMAN VAN DUSEN: Mr. Sharpe.

MR. SHARPE: Mr. Chairman, fellow delegates, I rise with a great hesitancy this morning. I have listened for hours and hours to conversation from attorneys. I would like to ask Mr. Danhof a question or two if he would care to answer

through the Chair, Mr. Chairman. You stated a few moments ago that we had passed the local government committee report and we did not mention the probate judge within our committee. I would like to ask you, Mr. Danhof, what did you expect the local government committee to do in this respect, when your committee had jurisdiction over the matter?

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: Mr. Chairman, Mr. Sharpe, I did not refer to the probate judge. I was talking to the question that was raised, in essence, by Mr. Leppien in combining counties. That was what I was referring to when I said that we had passed the local government committee and there was nothing contained therein in this particular regard; that if there had been a provision, or if we had taken some action to combine counties, to make counties of sufficient size, then, with the "every county" idea, I would go along. This is what Judge Mitchell was referring to and what I was quoting. I was not referring to the mentioning of the probate judge, Mr. Sharpe.

CHAIRMAN VAN DUSEN: Mr. Sharpe.

MR. SHARPE: All right. Thank you.

Mr. Danhof, you disturbed me with another remark you made when you stated that in many cases, the judge of probate is not concerned with the juvenile problem. I don't know whether this is true or not, not being familiar with all of the probate judges in Michigan, but I will guarantee you that in my county and in the county I represent, of Shiawassee, this is not true. I want to submit this to you also, that the probate court is a court with personality. Like Mr. Sleder so ably said, the judge of the probate court knows the people with whom he is dealing, and the impression that the judge makes on the juvenile that comes before him could, very likely, leave an indelible impression upon his imagination and his life that would carry down through his entire life.

As you know, as most of us know — and I would like to remind the nonlawyer delegates once again that this was drafted by a 21 member committee of 20 lawyers and 1 lonely druggist, and he had a tremendous job on his hands, I imagine, setting here for a few days listening to these arguments, but it looks to me like there could possibly be some personal prejudice coming out of this report, when you have stated that all these individuals must be lawyers, and Judge Coleman also, you emphasize, stated this, and I do admit that there was a very attractive judge, but she is also an attorney, and I don't blame her for wanting to perpetuate the attorneys in all the courts in Michigan. This, I do not believe, is what the people in Michigan necessarily want. If the bar association wants that, that represents a small segment of our population. I go along with Mrs. Koeze, when she said that maybe we should lock the lawyers out and draft this judicial article. I don't think she is so far wrong. I think I have said altogether too much right now. (laughter)

CHAIRMAN VAN DUSEN: The Chair will advise the committee that on the current amendment, 7 out of the 11 speakers have been nonlawyers, and the Chair will bring the matter back into balance by recognizing Mr. Martin, an attorney from East Grand Rapids.

MR. MARTIN: Mr. Chairman, I don't want to speak as an attorney in this matter. I do want to talk about the problem of the children, though, because that is at the heart of this committee proposal. Some 2 years ago, at the request of the legislature, the Michigan crime and delinquency council made a study of the handling of children, the problems of handling children in the juvenile courts, probate courts, throughout the state, and this was a statewide study and as comprehensive as we could make it and it was made with the cooperation of the probate judges association. What we found was that there are many counties in the state, and among the larger counties which have full time, well paid probate judges, who have adequate staff to do the prehearing investigations that have to be done with respect to these children, and to carry out the probation responsibilities, where they are placed on probation. But, we also found that there are many counties in the state where the judge is on a part time basis, there is no staff whatsoever to carry out these responsibilities, the judge doesn't even have decent quarters in which he can interview these youngsters when they do get into trouble, and these are the problems that do come to the probate judges. And so, the bearing of this proposal is to try to see if we can't get full time probate judges who have experience in this field and who can devote enough time to it to gain more experience, who would have adequate quarters and adequate staff to work with, trained staff — because it takes trained people to work with these children who get into trouble — and it appears to be absolutely impossible to obtain this in the very small counties which can't provide that kind of pay for their judge or personnel for staff purposes.

In addition, of course, in many of the counties, you couldn't justify full time staffs for this kind of work, if you just take 1 county at a time, because there aren't sufficient problems to be dealt with. So, the committee's thought with respect to district probate courts, where they can be justified and where they would justify adequate staff and adequate pay, is the right answer to this.

The legislature, obviously, isn't going to do something like this unless it is going to benefit the people of the area and the children of the area, particularly. So that the recommendation, I am sure, comes from the probate judges because they, more than anybody else in the state of Michigan, are acutely aware of the problem of trying to deal with children who are in trouble without having any staff to give them the background to deal with the problems that these children have. It isn't just a matter of having a child come in and say, "You are it", or "You go to boys' vocational school", or something like that. These are difficult cases and they have to be worked with by trained people. This, as far as we can see, is the only way to get that kind of treatment for these children throughout the state. The big counties that have full scale staffs meet the problem all right, but the smaller counties simply are unable to do it, and I am sure that is the reason that a recommendation of this kind comes from these probate judges who are trying to solve this problem.

CHAIRMAN VAN DUSEN: Mr. William Hanna.

MR. W. F. HANNA: Mr. Chairman, I think we ought to realize that we have a greater problem than merely combining counties into probate court. I personally believe that there should be some form of county court where some of these semi administrative and judicial functions can be rested in a judge.

But, I think we confuse ourselves when we talk about distances or size. If we are perturbed, as Mr. Sleder mentioned, that in his district the counties were of such size that such a combination would result in long distances, then, on the basis of size, if you compare Kalkaska, Antrim, Charlevoix and Emmet counties, if each of those counties, 4 in number, should have a probate judge because of distance, then Marquette county should have 4 probate judges. In fact, if you look at the population of those 4 counties, if they are entitled to 4, Marquette should then be entitled to 6. Our problem is that Marquette county now is almost 5 times the size of Charlevoix county. What we are doing at this convention is trying to solve an inefficient county court system known as the probate court, because of the lack of population, or, for that matter, size, in certain areas of the state.

This same problem of having an inefficient court system exists when you are talking about the sheriff system. If local government will look at the sheriff's department, you will see that if it were not for the state police, you have little except a jail keeper in the north. Facilities of the probate court are only a part of the problem and I would like to submit that if we do not combine probate courts, then we should allow the combination of counties so that you have a sufficient tax base, a sufficient population and, with due regard to distances, an area that can be served by 1 court, and we are facing up to 1/10 of the problem.

Mr. Sleder raised the problem of securing a judge in Traverse City, but I submit to you that there is more to that story, because Traverse City's charter is one of the few small city charters, and the only 1 in the north country that I know of,

which contains a very unusual charter provision. His charter provides that the municipal judge of the city of Traverse City can not practice in any court, the circuit court of that county. Now, even in Muskegon county, our charters do not restrict our municipal judges from engaging in private practice in the circuit court, undesirable as that practice may be. But when you put that charter into a county the size of Grand Traverse, you are seriously restricted, and the question before that council was 2 fold, one, if you are going to deprive an attorney of the right to earn an adequate living, you have to pay him an adequate salary. They could have very easily left the salary alone and have allowed him private practice before the circuit court. If he will examine his charter, he had 2 alternatives.

CHAIRMAN VAN DUSEN: The gentleman from Charlevoix, Mr. Shanahan.

MR. SHANAHAN: Mr. Chairman, fellow delegates, the comments of Julius Sieder apply very much to me and the area that I represent, partly because we overlap, somewhat, 3 of the counties that he mentioned as being small, 2 of them less than 10,000, and 1 just over 10,000, also in the Charlevoix district; Charlevoix is a little bit larger, not much. The problem, as he outlined it, is very real, but there is something else that has not been mentioned, and I think it should, and that is a matter of distance. When you talk about size, there are 2 considerations, one is the population; the other one is the area.

If anybody will take a few minutes to look at the upper peninsula, a map of it, and see the distances that are involved — considering the hazards of winters far more rugged there than it is in Lansing, or even in Charlevoix — you can see the problems that can develop. Very briefly, the upper peninsula has about 1/3 of the area of the state and has about 1/5 of the counties, between 1/5 and 1/6 of the counties, so they are large; and not only that, contrary to the way it is in the lower peninsula, where the county seats ordinarily — not always, but ordinarily — are fairly near the center of the county; in the upper peninsula you find them generally at the edge of the county and on the far edge from a neighboring county. So, there again, consider distances to be traveled under adverse conditions at a time when you must get to your probate judge, in this case.

Much of the economy that is proposed by eliminating probate judges through consolidation or a circuit is lost when it is realized that in each of the counties involved it is necessary to maintain an office, somebody is there to look after things, and then there have been some proposals in regard to the delegation of powers, so that much of the so called economy goes away in added administrative costs. It goes without saying that as the need for assistance to the probate judge increases, added clerical help, if that is what it is, is provided. I have before me a list of the probate courts and judges in the state of Michigan and I note, in passing, that some of the counties have 2 probate judges and, of course, Wayne has 6. That simply means that as you get more than one can take care of, even with added help, it is necessary to have additional probate judges.

The thing that we still are talking about — I hope I am still talking about it — is the fact that there is a need, a real need for a probate judge in each county who is available, who is known locally, which has on the other side of the coin the fact that he knows people locally, in order to provide the services that are necessary in a particular county, and by keeping each county with its individual probate judge, we are going far in maintaining local self government.

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: May I make an inquiry as to how many speakers the chairman has on the list?

CHAIRMAN VAN DUSEN: The Chair has Mr. Dell, Mr. Habermehl, Miss Donnelly and yourself.

MR. DANHOF: In view of the hour, Mr. Chairman, I would move the committee do now rise.

CHAIRMAN VAN DUSEN: Mr. Danhof moves the committee do now rise. Those in favor will say aye; those opposed, no.

The motion prevails.

[Whereupon, the committee of the whole having risen, Vice President Hutchinson resumed the Chair.]

VICE PRESIDENT HUTCHINSON: The Chair recognizes the delegate from Oakland, Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, the committee of the whole has had under consideration one proposal on which the secretary will give a detailed report.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 94,** A proposal pertaining to the probate court; has adopted 1 amendment thereto, has under consideration another amendment; and has come to no final resolution thereon. This completes the report of the committee of the whole.

Mr. Van Dusen has called a meeting of the committee on rules and resolutions this noon immediately upon adjournment.

I have the following requests for leave of absence: Mr. Lawrence wishes to be excused from the afternoon session of Monday. Mr. Hoxie wishes to be excused from Monday's session to attend a meeting of the board of review; Mr. Snyder and Mr. Suzore wish to be excused from Monday's session; and Mr. Tweedie wishes to be excused from the sessions of March 5 through March 9.

VICE PRESIDENT HUTCHINSON: Without objection, the requests will be granted. The Chair hears no objection.

The Chair recognizes the delegate from Genesee, Mr. McLogan.

MR. McLOGAN: Mr. President, I rise to a point of personal privilege.

VICE PRESIDENT HUTCHINSON: The gentleman will state the point.

MR. McLOGAN: Ladies and gentlemen of the convention, my respect for lawyers and for farmers has been fortified by this convention. I sometimes feel that both groups represent the last vestiges of rugged individualism, people who will speak out for what they think. I am not an attorney, but I would suggest that we cease and desist from a practice we seem to be falling into of castigating the bar association and the legal profession in general. Lawyers can fend for themselves. They would not stoop to any alteration of or protection from the constitution purely for self gain. Thank you. (applause)

VICE PRESIDENT HUTCHINSON: The Chair recognizes Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, I would simply like to remind the members of the committee on rules and resolutions that it will be entirely in order to bring their lunches to the meeting that has been called immediately following the noon recess.

SECRETARY CHASE: Mr. Habermehl requests leave of absence from the session of this afternoon.

VICE PRESIDENT HUTCHINSON: Without objection, the request will be granted. The Chair hears no objection.

The Chair recognizes the gentleman from Huron, Mr. McAllister.

MR. McALLISTER: At this time, I move the convention recess until 2:00 o'clock.

VICE PRESIDENT HUTCHINSON: Mr. McAllister moves that the convention stand in recess until 2:00 p.m. All those in favor will say aye. Opposed will say no.

The motion prevails and the convention stands in recess until 2:00 o'clock p.m.

[Whereupon, at 11:40 o'clock a.m., the convention recessed; and, at 2:00 o'clock p.m., reconvened.]

The convention will be in order.

SECRETARY CHASE: Mr. President, a quorum of the convention is present.

VICE PRESIDENT HUTCHINSON: **General orders of the day.** The Chair recognizes the gentleman from Oakland, Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, I move the convention resolve itself into committee of the whole for the purpose of considering matters on the calendar of general orders.

VICE PRESIDENT HUTCHINSON: On the motion of Mr. Van Dusen, all those in favor will say aye. Opposed will say no.

The motion prevails. The committee will convene and the gentleman from Oakland, Mr. Van Dusen, will preside.

[Whereupon, Mr. Van Dusen assumed the Chair to preside as chairman of the **committee of the whole.**]

CHAIRMAN VAN DUSEN: The Chair noted a certain lack of enthusiasm when we moved to resolve into committee of the whole, which is, perhaps, understandable. It was mentioned when the committee was sitting a day or so ago that one of the delegates had suggested that the bell be rung every 5 minutes just to keep people alert. This noon, in the rules committee, it was suggested that perhaps a clock might be placed back here so that all of the delegates could observe it, but Mr. Gover suggested that perhaps a calendar would be more appropriate. (laughter)

The committee of the whole is currently considering section a of **Committee Proposal 94,** which deals with the organization and jurisdiction of the probate courts of the state. The question is currently on an amendment to that section offered by Mr. Leppien, which the secretary will read.

SECRETARY CHASE: Mr. Leppien's amendment is:

[The amendment was again read by the secretary. For text, see above, page 1410.]

CHAIRMAN VAN DUSEN: On the amendment offered by Mr. Leppien, the Chair will recognize Mr. Dell.

MR. DELL: Mr. Chairman, there is a possibility that my statements are not pertaining to the amendment before us here. It is in the body of section a, and it is brought about by a statement by Mr. Sieder this morning.

CHAIRMAN VAN DUSEN: There are a number of pending amendments, Mr. Dell, if you would prefer to defer your remarks until we have one that is more appropriate.

MR. DELL: If it is permissible, I could speak on it at this time.

CHAIRMAN VAN DUSEN: If your remarks are confined to the Leppien amendment, you may proceed, Mr. Dell.

MR. DELL: They are not.

CHAIRMAN VAN DUSEN: Mr. Habermehl had sought recognition this morning, but has been excused. Miss Donnelly had sought recognition this morning. Miss Donnelly, do you desire to be recognized on the Leppien amendment?

MISS DONNELLY: Yes. Believe it or not, I rise to support the committee. I believe this is very vital for the future of good administration of justice throughout the state.

Originally, people have said they don't like it because they want nonlawyers, or we are throwing them off and we are being obnoxious about that. If you will read 96f, we keep those who are once elected on until they are defeated, so you don't need to panic about your individual nonlawyer judges. There are only 33 of them in the state that are involved in this.

As to availability, we had testimony from 1 of these esteemed judges who was a lawyer. He campaigned and was elected on the theory that he would be available 1 day a week and he isn't even available that often — and that was a Monday — because many is the time I saw him down here on a Monday, so obviously he wasn't even available to these people that 1 day a week. His basic theory was, if you efficiently handle your office, you do not need that amount of time for the small areas.

We want to basically remember that the people outstate in the small areas often have rather large estates where they have serious problems and they should be handled by someone who is very competent to handle them in the area of training and knowledge of the broad law and the effect of what their orders will mean. Mr. Leppien's county, with 190,000, I don't think will ever be touched under this. I don't think anybody would anticipate it. We have 17 counties, if the math is correct, under 10,000. These counties would probably be affected, but I think they would be benefited.

I submit that with Alexander Graham Bell and his aid, plus Henry Ford, or whoever else you would like to think of, these judges will be available whenever they are absolutely needed.

As to the unwed mothers, I don't think it is so immediate that 2 days or 1 day's phone call or 3 days is going to change the facts. We all know this condition doesn't arise immediately. It isn't that kind of an emergency. So, I submit it is not a good argument. (laughter)

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Leppien to section a of Committee Proposal 94. Does any delegate desire to have the amendment read again? If not, those in favor of the amendment will say aye. Those opposed will say no.

The amendment is not adopted. The secretary will read the next amendment.

A DELEGATE: Division.

CHAIRMAN VAN DUSEN: A division is requested, is the demand supported? It is supported. Those in favor of the Leppien amendment will vote aye, those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the adoption of the amendment offered by Mr. Leppien, the yeas are 45, the nays are 65.

CHAIRMAN VAN DUSEN: The amendment is not adopted. The secretary will read the next amendment.

SECRETARY CHASE: Mr. Hubbs offers the following amendment:

1. Amend page 1, line 10, after "law,", by inserting "however in all counties under 25,000 population the entire salary expense of any court established under this provision shall be borne by the state,".

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Hubbs, on which the Chair will recognize Mr. Hubbs.

MR. HUBBS: Mr. Chairman, interminable interlocution with interlocutory results prompts me to indulge in some hortatory oratory.

CHAIRMAN VAN DUSEN: On the amendment, the Chair presumes, Mr. Hubbs? (laughter)

MR. HUBBS: Yes, Mr. Chairman, and along that line I am also indulging in this hortatory oratory for a reason. Not being an attorney but a salesman, I believe in conditioning my audience to the material to follow, and I have therefore submitted this amendment. Before I get into the details of the amendment, however, I would like to mention to some of the attorneys present, or all of the attorneys present, that we laymen don't dislike them. In fact, I rather like attorneys myself, and someone this morning said, over in this corner, that some of us who were not attorneys were rather envious, and I am particularly envious. I would like to have been an attorney, and 2 reasons I can think of right now make me envious of attorneys. One of them, Mr. Chairman, is the fact that you have not seen fit to confer upon me the degree that you conferred on Mr. Farnsworth, that of honorary barrister. The other reason I am somewhat envious of attorneys, I understand that most of them had an opportunity to take a course in college called, how to be on either side of a question. Incidentally, the textbook of this course is entitled, Developing The Opposite Point of View, and was written by a man known as I. M. Divided. The initials stand for "impounded mandamus".

The reason that I offer my amendment, as you will all know, is that if the people who have written the judicial article have their way, it is likely that in the near future when we proceed into another section of the judicial article,

that our justices of the peace may be done away with and a county court provided for or will be provided for by action of the legislature. Now, I know that if I start talking about justices of the peace, all kinds of people will rise up to tell me what horrible people they are and that some of them are inclined to inebriation and things of that sort. I think there are a lot of good ones, and I think we outstate in counties of small population have a problem. My main problem, being in that type of situation, is economics, and I am unwilling to support, through tax money levied on personal property and real estate, any more government than I have to. I have too much government now and if the judicial article writers have their way, I understand they are going to have attorneys for judges, and county courts. This, in my opinion, will inevitably be more expensive than the present system in my area.

Therefore, my amendment is designed to provide for payment of salary to any court so established under this article by the state rather than the local government. I can come up with a lot of good reasons for this. I haven't provided that the state shall pay the expense of operating the new offices and judicial chambers required. I think local government may begin to carry that burden, but if they want us to have quality justice outstate, let them provide payment for quality justice by sending the tax money up from Lansing to pay the judicial salaries that will be involved, and that is why I have offered this amendment at this time. It comes in a little bit early as regards justices of the peace, but these fellows are tricky, you know. They don't wait until you get to justices of the peace to make some provision for them.

Line 7 says, "The legislature may combine 1 or more counties into probate districts," and that is all right, in a way, "or combine the office of probate judge with any judicial office inferior thereto in any county with less than 25,000 population, with supplemental salary as provided by law, and shall do so on recommendation and report of the supreme court."

This doesn't leave it up to local option; it doesn't leave it up to the legislature. It says the legislature may, but shall do so on recommendation and report of the supreme court and therefore I say that if you are going to tell us by action of the legislature and the supreme court exactly how expensive our court system in our areas is going to be, then I suggest that you pay for it. Thank you very much.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Hubbs. Mr. Stafseth, do you seek recognition on the amendment?

MR. STAFSETH: Mr. Chairman and fellow delegates, I think the situation that is before us is something similar to that which came before us when we were trying to encourage engineers into the county road engineering field, and I think that the solution that we effected might be a very good solution for this particular problem dealing with the probate court. That is, if you have a probate judge who is a licensed attorney, that the state supplement his salary; I am not saying pay all of his salary, but suplement it. The reason I say this is that the county, then, could have a choice. If they are up in the sparsely populated areas of the upper peninsula, or in the upper part of the lower peninsula and they feel that they want to have a layman that is conducting himself very well, they have this choice.

However, with the supplementing the salary of a licensed attorney, they would have a choice of saying, "Well, maybe we should have this licensed attorney," and I am sure that under those conditions you would have far better attorneys coming out and doing a job more conscientiously to sell their program.

CHAIRMAN VAN DUSEN: Mr. Barthwell.

MR. BARTHWELL: Mr. Chairman and fellow delegates, I probably will not say, as eloquently as Mr. Hubbs did, that I, too, favor the state assuming the responsibility for the salaries of judges. To me, this is very basic because I have listened in the committee for long hours to schemes as to how you are going to get the best people to submit themselves for the judges of the state.

I contend that in a capitalistic system there is only one thing that attracts the best people and that is money. So, as long as we are not going to pay these people adequately, and it has been stated that they are not adequately paid, I very definitely favor the state assuming the responsibility for the salaries of the judges. This has been done in many of the new judicial articles. In New York state and in Wisconsin, Illinois — a lot of the states — the state has assumed the responsibility of paying the salary of these officers. So, I am in favor of the amendment.

CHAIRMAN VAN DUSEN: On the amendment offered by Mr. Hubbs, the Chair will recognize Mr. Lundgren.

MR. LUNDGREN: This is just a brief statement. I think we have hit upon something here. Mr. Hubbs, I don't think your amendment is going to pass. I hate to foredoom you ahead of time, but we have hit on something here that state government has got to look to.

When we provide, within the constitution here, all these new courts and other things that we are going to provide, one of these days — as has been expressed to me several times by people over in the "big house", the legislature — when we continue to provide new commissions and new this and new that, one of these days we are going to have to start providing the money that the state says we shall do. I think we have gone through that with the erection of new jails throughout the state where the state has come in and condemned the jail, and the counties have had a dickens of a time raising the money to build a new jail.

I only talk to this point because I think we are on something that we have to give consideration to. When we decide that we are going to create new courts and new this and new that in communities that have a hard time now providing the proper place for their laws and everything to be taken up and discussed and acted upon, we have to recognize if we bring into these communities new ideas, that we should also provide some way, in some manner, some means of providing the moneys to operate such.

Mr. Hubbs, I think I would support your amendment here. I don't know how far we are going to go with it, but it is something we should consider.

CHAIRMAN VAN DUSEN: Mr. Madar.

MR. MADAR: Mr. Chairman, I have an amendment there to the amendment that I would like to have read.

CHAIRMAN VAN DUSEN: The secretary will read the amendment to the amendment.

SECRETARY CHASE: Mr. Madar's amendment to the amendment of Mr. Hubbs is as follows:

1. Amend the amendment, by striking out "however"; and after "counties" by striking out "under 25,000 population"; so the language of the amendment will then read, "in all counties the entire salary expense of any court established under this provision shall be borne by the state."

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Madar to the amendment offered by Mr. Hubbs on which the Chair will recognize Mr. Madar.

MR. MADAR: Mr. Chairman, I just want to say that I just want to be fair to everybody, and I think that we, in Detroit and Wayne county, should get a few dollars out of the state, too, besides what we are getting now. Of course, none of us are getting enough.

CHAIRMAN VAN DUSEN: The question is on the Madar amendment. Mr. Hubbs.

MR. HUBBS: Mr. Chairman, I would like to suggest to Mr. Madar that he check into something that prompted me to put my amendment up in the way that I did. I have been told that the members of the judiciary in Wayne county are partially paid by the state and partially paid by the county, and that their eligibility to the retirement system of Wayne county depends on their receiving at least half of their pay from the county of Wayne. Now, if the state pays all of their salary, will they still be eligible to obtain their retirement from the county of Wayne or will they not?

CHAIRMAN VAN DUSEN: Would the gentleman care to answer, Mr. Madar?

MR. MADAR: Mr. Chairman, I don't believe that this applies to the probate judges, as their salaries are paid for right now by the county. However, I might say that we are willing to go ahead and accept the money from the state. I don't suppose the judges are going to like it, but you can bet your bottom dollar that the taxpayers are going to appreciate it very much.

CHAIRMAN VAN DUSEN: Mr. Hubbs.

MR. HUBBS: Mr. Chairman, I am reliably informed by counsel that in the county of Wayne, the probate judges are paid by the county, just as they are in my county. But, by the way, I should like to point out to you, as far as my amendment is concerned, it does not say that the judges, in particular the probate judges, should be paid by the state. It says, "however in all counties under 25,000 population the entire salary expense of any court established under this provision . . . ." In other words, the county will continue to pay the salary it does now, unless the combinations are made and the justice courts are taken into the probate court or something of that sort. That is all my provision does. It says that if they change and give us quality justice, they are going to have to pay the quality salary required.

CHAIRMAN VAN DUSEN: Mr. Madar.

MR. MADAR: Mr. Chairman, in answer to Mr. Hubbs, I didn't have to go to my counsel, though I will admit that Mr. Hubbs has excellent counsel — I am sure Mr. Hutchinson is an exceptionally good attorney.

A DELEGATE: Iverson.

MR. MADAR: Oh, was that Mr. Iverson? Hubbs, will you stop getting — (laughter) Mr. Hubbs, I wish you wouldn't keep getting advice from our Wayne county attorneys. Go ahead and use Mr. Hutchinson, you've got him available there.

Frankly, I realize that this is also pertaining to other courts which might be established. That is the reason why I left that portion in there of "any other court established under this provision shall be borne by the state."

Now, so far as I am concerned, I will admit that I don't have any hopes of seeing this pass. In fact, I think we would be rather foolish to pass this as we would be if we passed the other amendment.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Madar to the amendment offered by Mr. Hubbs. Mr. Hubbs.

MR. HUBBS: Mr. Chairman, I have received some further counsel and I have no objection to the amendment.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Madar. Mr. Danhof.

MR. DANHOF: Mr. Chairman and members of the committee, in this regard, the salary of probate judges, I think that this is something that should be considered very seriously, and I think Mr. Hubbs has a point. I am not sure that it is involved in this particular article. We have a section coming up that deals with salaries. But, let's review, for a minute, how probate judges are paid. They used to be paid on a fee basis. That meant — and I can recall, it hasn't been that long since I have been practicing law — that they were on a fee basis, and that meant this, in some courts, and I won't name where, when you wanted an order confirming sale and you said, "Send me 2", you got 6; you didn't send 4 back, you paid for 6, because if you didn't, then the next time service was a little slow. At $1.50 an order, you see, this was an extra $6. It was determined that this was not a particularly good feature, and we have recommended that in all courts we not work upon a fee basis, and so, they went on salary.

The legislature has provided for a scale based on population, and this has been amended from time to time, and it sets up that the legislature provides that in counties of such and such a size up to such a size, the probate judge shall be paid so many dollars, and the minimum is $5,000. I don't know, off hand, exactly what the maximum is, but those from Wayne county can probably tell me in a hurry. In addition to that, some counties will pay more. The salary of the circuit judges, if we are talking salaries, and with the Chair's indulgence, maybe we can do that — and I am not sure, and I am willing to state here that if the legislature provides that there shall be districts, that at the time they do that, they should provide for a state salary, but I say that it is not the time here and now to write it in.

We aren't making mandatory that there be districts. I think that when and if there are, this is all part and parcel of the question of how they will be accomplished and how they will be paid, and I think that there would be a very proper time and a very proper place to raise this before the appropriate legislative committee. Because we agree, as Mr. Barthwell said, that perhaps justice is something that should be dispensed equally, and if probate judges are to develop into a district where there is a full time operation, so it will be as you have with circuit judges where you have a base pay by the state and supplementation by the counties within the circuit that desires to do so. There is nothing in here that prohibits that type of arrangement to be made, but I submit that it is not here, nor is it the place where we should work on the salary idea. The salaries of probate judges have gone through an evolution from where they were really low to where they got into a fee basis, whereby those probate judges in the heavily populated areas made a very sizeable salary or compensation. Consequently, the legislature determined that it should be on a salary, and this, I think, is valid.

I think, as time progresses, if, as Mr. Hubbs concludes, that some of these consolidations will take place, they will take into account the salary provision. They have done it in the past. I submit, they will do it in the future if they combine counties. And I think they should be made aware of the fact that if the salary is too high and the counties cannot bear the load, then it will be as we have with our circuit judges, where the bulk of it is paid direct from the state funds. The question of whether all salaries of all judges should be the same is something we will debate for a longer time for another day, but I submit that it is not here and now to write this particular provision in.

I can agree with the philosophy, perhaps, behind it, and with the concern that Mr. Hubbs has for his particular area, but I submit that there is nothing mandatory about these provisions, and I am sure that the men, as Mr. Lundgren wants to refer to them, at the big house" — and I think it is a little better than that — will give due consideration to all of these aspects before they make any type of recommendation or pass any type of legislation. I would urge the defeat of the amendment.

CHAIRMAN VAN DUSEN: The Chair would state that he has been somewhat indulgent with the chairman of the committee on judicial branch so that the subject might be somewhat more explored, but will request the succeeding speakers to confine themselves exclusively to the Madar amendment until that has been acted on. Mr. Mahinske, do you seek recognition on the Madar amendment?

MR. MAHINSKE: My question goes to both the Madar amendment and the Hubbs amendment. I think I know what your intent is here, but you don't say this, either one of you. You are talking about the entire salary expense of any court. When I interpret "entire", I am not restricting this to judges. Is it your intent to restrict this salary expense to the judge's salary expense?

CHAIRMAN VAN DUSEN: Mr. Hubbs.

MR. HUBBS: Mr. Chairman, fellow delegates, when I drafted this amendment, this question that Mr. Mahinske brings up was considered by myself, and I started thinking about it a little bit and it was suggested to me that I should put in here the entire judicial salary, and in my notes, I made a note to that effect. But then I started thinking about all of the services that the justices who hold court in their own buildings provide, that is heat, light, space, and so on, and I realized that salary expense, as I had put it, might not be a bad thing. In other words, I am willing to bargain a little bit with you. If you want to pay for some clerks and things like that, why, we will pay the heat and light bill and provide a place for them to do their work. So I left my amend-

ment deliberately the way it was, assuming that the increased expense of the courts, that I assume, are going to arise out of this provision, are going to include other things besides just the judicial salaries that you are thinking of.

MR. MAHINSKE: Then I would like to direct another question through the Chair. Did you also take into consideration that before this provision would be executed, we would be combining the probate court with an inferior court or a court of inferior jurisdiction? What you are asking here is the state to pay the entire expenses of any court established under this and part of the function and probably the greater function of this court would be strictly local matters and not probate matters at all. Did you take this into consideration?

MR. HUBBS: Mr. Chairman, Mr. Mahinske, yes, I did take that into consideration. But the whole tone of the judicial article suggests to me integration and direction from above, and therefore I assumed that if the judicial people desired to control the court from top to bottom, from the top, that they provide the salary from the top even though the matters that they are concerned with are local. I do not think that since the judges are likely to be elected locally, that this is going to result in lack of control over the judge, as someone might suggest. I think if he isn't any good and we are still electing people, why, then, we can get rid of him. But, with strict reference to Mr. Madar's amendment, I don't see anything wrong with it.

I think that Mr. Danhof, as the Chair has suggested, was given a great deal of latitude when he talked almost exclusively about the salaries of probate judges. My amendment had nothing whatever to do with the salaries of probate judges, as the system now exists. It only says that for courts established under this provision, the state shall bear the entire salary, and it doesn't have a direct reference to the present salaries of probate judges whatever.

I think that all of the persons who are concerned with economy in government at the local level and high cost of government bearing on property holders will vote for this amendment.

CHAIRMAN VAN DUSEN: Mr. Mahinske.

MR. MAHINSKE: In response I would like to state, in view of the remarks made, that I would be opposed to this amendment to the amendment, and to the amendment, because I think that it would encourage the application of this provision for economic reasons, primarily, and judicial reasons secondarily. For these reasons, I would be opposed to the amendment.

CHAIRMAN VAN DUSEN: Mr. Barthwell, do you seek recognition on the Madar amendment? The question is on the amendment offered by Mr. Madar to the amendment offered by Mr. Hubbs. Mr. Ford, do you seek recognition on the Madar amendment?

MR. FORD: Yes, Mr. Chairman, because the Madar amendment is a laudable amendment only because it strikes at one of the bad features here of the whole thing, in that it would take out some of the discrimination that is built into this thing. But we are kidding ourselves if we adopt this and think that we are correcting anything. All we are doing is putting a patch on a worn out tire.

Really, what Mr. Hubbs is doing here is destroying the possibility of ever having a local court system in a county under 25,000, because what you are asking the legislature to do is vote, not on the need of the local communities for a court system but on the question of how much money they can afford to pay for a court system for local communities. If the Madar amendment is adopted and then the Hubbs amendment is adopted, this would then have statewide effect. It is bad, in its entire effect, but if it is going to be bad for one part of the state, it should be bad for all of the state, and I don't think that the discrimination should be either in favor of or against counties above or below a certain number; 25,000 happens to be the one we are talking about here. I would urge the adoption of the Madar amendment only as a method of defeating the Hubbs amendment ultimately.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Madar to the amendment offered by Mr. Hubbs. The secretary will read the Madar amendment.

SECRETARY CHASE: The amendment offered by Mr. Madar is:

[The amendment was again read by the secretary. For text, see above, page 1418.]

CHAIRMAN VAN DUSEN: Those in favor of the Madar amendment will say aye; those opposed will say no.

The amendment is not adopted. The question is now upon the amendment of Mr. Hubbs. Mr. Hubbs.

MR. HUBBS: Mr. Chairman, Mr. Ford, in recommending the Madar amendment, was attempting to defeat my amendment, and in his remarks, he said that the criteria that the legislature would use in judging whether these local courts should be created or not would be whether they could afford them or not. I suggest to the economy minded people here that the criteria that the legislature should use is not whether they could afford it or not, but whether the people in the local area could afford it or not, and what I am saying is that we can't afford this expensive kind of justice at the local level, and would prefer to creep along with our own type, and if necessary, do what we can to make it better. I therefore suggest that if we are going to have quality justice, let the legislature provide the money to pay for it. I urge that you adopt my amendment at this time, to take into account something that I see coming up in later proposals. Thank you.

CHAIRMAN VAN DUSEN: Mr. Dell, do you desire to be recognized on the Hubbs amendment?

MR. DELL: Mr. Chairman, I guess this is as good a place as any if I am going to have my day in court.

CHAIRMAN VAN DUSEN: You may proceed, Mr. Dell.

MR. DELL: My problem was: being connected with the county since 1931 on the financial end of it, and trying to meet some of these salaries, and this morning when Mr. Sleder brought up the question of the county board of supervisors setting the salary, as I read this amendment here, or, rather, this section, and it is the section which Mr. Hubbs has mentioned, too, in that the salary would be supplemental, provided by law, and shall do so on recommendation and report to the supreme court, I just wonder, does that mean that the supreme court would control the salary and would tell us what salary we would pay to our probates?

CHAIRMAN VAN DUSEN: To whom do you direct your question?

MR. DELL: I guess Mr. Danhof.

CHAIRMAN VAN DUSEN: Mr. Danhof, would the gentleman care to answer?

MR. DANHOF: Mr. Dell, I had assumed that yesterday after a great deal of debate, we had taken care of this "shall" or "may". Again, it gets strictly down to that question. The salary will be as provided by law. If the law says the state will pay it, the state will pay it. If the law says the county will pay it, then I guess the county or counties, as the case may be, if there are more than one involved, will pay it.

Again, we get down to the use of these words that Mr. Brake and myself and numerous other people have gone round and round on. You get down to the question that, no, of course not, the legislature will set the districts and will set the salary. We would again get down into this for the recommendations — in order, when it can be placed before them — the recommendations will come regarding the size of the counties, the size of the caseload, what the past history has proven, what amount of time, perhaps, will be spent on it — we hope it will be full time — and what, in light of this, based maybe upon the present schedule, if you have the present schedule, what additional implementation or what additional amount should be put there, too, for the additional duties that may be involved.

That is just exactly what is involved insofar as the salary provisions are concerned. Anything beyond that, I can't tell

you exactly all of the details, but that is what we had in mind. But, as I said, this is the same thing we went through yesterday on these words. We had put this as strongly as we could so that the legislature would follow the recommendations, both upon the size of the district — in other words, in the size of it, if it is 2 counties or if it is 3 counties — and what the salary should be for that particular type and size of district. That is the idea.

CHAIRMAN VANDUSEN: Mr. Dell.

MR. DELL: It was just a question of whether or not it would go back to the supreme court in setting the salary. Now I am rather confused, and I think I understand now why there was 1 druggist on this committee with 20 attorneys. It was his position to provide the aspirin. (laughter)

CHAIRMAN VAN DUSEN: Mr. Higgs.

MR. HIGGS: Mr. Chairman, I can appreciate Mr. Dell's concern in reading this sentence, and we did go through it yesterday. The specific answer to the question, I think, as I understand it — and I am not sure I understood the chairman — but the answer to the question that Mr. Dell raised, in my mind, would be no, the supreme court would have nothing to do about setting the salary.

CHAIRMAN VAN DUSEN: Mr. Barthwell. Mr. Barthwell passes. Mr. William Hanna.

MR. W. F. HANNA: Mr. Chairman, Mr. Hubbs, if, next week, I could show you that having a probate court in every county costs your inventory of personal property more money than if your county was combined with the county next to it, would you change your position?

CHAIRMAN VAN DUSEN: Mr. Hubbs? The Chair will state that he is not sure the question is germane to the Hubbs amendment, but will, nevertheless, accept Mr. Hubbs' answer.

MR. W. F. HANNA: Mr. Chairman, it goes to the reasons that he raised for wanting his amendment.

MR. HUBBS: The reason I raised for wanting my amendment, Mr. Hanna, is that I am afraid that in the combination of courts that might result from this, the cost would be increased. I have not said that I was against the combination of probate judges. However, you will notice I was not in that argument this morning. But I will say that I would be against the combination of probate judges for a good many reasons other than cost alone.

MR. W. F. HANNA: Your argument, so far on the floor, was to the cost question.

MR. HUBBS: Generally speaking, the cost of soaking into the probate court, or some other court, the justice system, which is going to be the inevitable result of this article.

CHAIRMAN VAN DUSEN: Mr. Hanna.

MR. W. F. HANNA: Mr. Chairman, Mr. Hubbs, is it your understanding that your amendment goes both to the giving of the probate court additional jurisdiction, and to the question of the probate court being placed on a multiple county basis?

MR. HUBBS: My amendment has nothing to do with whether it is placed on a multiple county basis or not, and it has nothing to do with whether the probate court has any more jurisdiction than it has now or not, as far as I know. All it says is that if courts are combined under this provision, the salary expense shall be paid by the state.

In other words, I am anticipating that the county courts, which may be set up under the terms of the judicial article, will be a more expensive operation than we presently have outstate, and as I have said earlier, if they are going to increase the cost of justice at the local level, I want the people who want it to be increased to be willing to pay for it.

MR. W. F. HANNA: Mr. Chairman, if I may question Mr. Hubbs further. Mr. Hubbs, the probate court's jurisdiction and duties are prescribed by law. Are you saying that each time the legislature gives the probate court an additional function, that it should increase its salary, and each time it decreases or takes away from the probate court a function, it should decrease its salary?

MR. HUBBS: Have you read my amendment, Mr. Hanna?

MR. W. F. HANNA: Yes, sir.

MR. HUBBS: I have not said any of those things. I would think I can get expert testimony here to state as to what I have said, I didn't say anything of that kind.

MR. W. F. HANNA: Excuse me. Mr. Chairman, Mr. Hubbs, you are saying that if they give to the probate court the jurisdiction now held by justices of the peace, that you want the state to bear the entire salary.

CHAIRMAN VAN DUSEN: Mr. Hubbs.

MR. HUBBS: I am saying that if the jurisdiction of the justice courts, or any lower court in the county, is given to the probate court, that the increase that I expect will be present will be borne by the state. The entire cost, it says in my amendment, the entire salary expense.

CHAIRMAN VAN DUSEN: Mr. Hanna.

MR. W. F. HANNA: Mr. Chairman, Mr. Hubbs, what if they give them half the justice court jurisdiction?

MR. HUBBS: Mr. Chairman, I do not wish to indulge in a colloquy with Mr. Hanna, without going through you, and therefore I suggest that he is asking the questions in an attempt to put words in my mouth about what I want to do that I don't want to do. All I want to do is make sure that we have quality justice at the lower level with quality expense attached, and that the state pays for the increased costs which are sure to result. That is the objective of my amendment. That is — I am sorry that we had the little digression here with Mr. Dell's question — I would like to have you get back to it. Now that the Madar amendment is lost, I would like those of you who are seriously interested in the economy of government at the local level to support my amendment and vote for it, and I will then sit down.

CHAIRMAN VAN DUSEN: Mr. Higgs, do you desire recognition at this time on the Hubbs amendment?

The question is on the amendment offered by Mr. Hubbs, which the secretary will read.

SECRETARY CHASE: Mr. Hubbs' amendment:

[The amendment was again read by the secretary. For text, see above, page 1417.]

CHAIRMAN VAN DUSEN: Those in favor of the amendment offered by Mr. Hubbs will say aye.

MR. HUBBS: May we have a division?

CHAIRMAN VAN DUSEN: A division has been requested by Mr. Hubbs. Is the demand supported? It is supported. Those in favor of the amendment offered by Mr. Hubbs will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the amendment offered by Mr. Hubbs, the yeas are 23, the nays are 79.

CHAIRMAN VAN DUSEN: The amendment is not adopted. The secretary will read the next amendment.

SECRETARY CHASE: Mr. Radka offers the following amendment:

1. Amend page 1, line 7, after "court.", by striking out "The legislature may combine 1 or more counties into probate districts, or combine the office of probate judge with any judicial office inferior thereto in any county with less than 25,000 population with supplemental salary as provided by law, and shall do so on recommendation and report of the supreme court.".

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Radka, on which the Chair will recognize Mr. Radka.

MR. RADKA: I have learned that you don't have to say much to offer an amendment. All you have to do is throw the delegates the ball and they will run with it. Mr. Leppien threw them the first phrase of the text of this amendment this morning, and you ran around with it all morning, and now we have 4 separate phrases which we can consider all together. I would say that there is no need for us to express ourselves any further on the proposition of whether or not we should give anyone the power to combine probate courts

in particular counties. We had all the testimony on that this morning and we have had a vote on it. I would say that since the delegates here feel that our justices in the rural, lower populated counties might be in jeopardy, that rather than writing it in the constitution and impressing it upon us by saying that the supreme court will have the power to consolidate probate courts in these rural areas, you ought to at least give our people the right to approve it. I would say that it is all right to combine our probate courts, but let us also, by referendum, say that we approve the combination. Let us be the judge of our own justice and our own courts.

CHAIRMAN VAN DUSEN: Mr. Radka, the Chair believes you are speaking on the second of your 2 amendments.

MR. RADKA: No, I am not because the second of the 2 amendments I am just offering as a possible solution. I don't want to belabor—

CHAIRMAN VAN DUSEN: The matter currently before the committee, Mr. Radka, is your amendment to strike out the words "The legislature may combine 1 or more counties into probate districts, or combine the office of probate judge with any judicial office," and so on and so forth. It says nothing about a referendum.

MR. RADKA: Well, including these words that we have "combine 1 or more counties into probate districts," and the question of the referendum I am just offering as a possibility, rather than subscribing to this amendment in its entirety. I will take the phrases in reverse order. The second problem that we have—and I think that this is the most serious problem, as far as this sentence is concerned—"and shall do so". Now, this means that they will have the right to combine probate districts and will also have the right to combine the office of probate judge with any judicial office inferior thereto. This power, by this constitutional provision is placed in the hands of the supreme court, "and shall do so on recommendation and report of the supreme court." I call your attention to the word "shall", and I will just briefly say, we have had a whole lot of comment on this particular problem, and rather than belabor the point, I feel, once again, we are giving too much power to the supreme court which is legislative power and not within the judicial sphere.

I will merely mention the other phrase which I object to, and that is "in any county with less than 25,000 population with supplemental salary as provided by law." I point here specifically to the 25,000 figure. I heard Mr. Kuhn ask a question the other day, or raise a point, he thought that the 25,000 figure might be arbitrary and was unrealistic, therefore there will be many of you who will want to probably decrease this figure. I suggest we might decrease it to the figure of 2,716, because the population of Keweenaw county is 2,717, I believe.

The other facet of this particular amendment—and I will just point it up and you can run with it—"combine the office of probate judge with any judicial office inferior thereto," now, the problems that are found in this particular phrase we have discussed at great length when we were talking about the last sentence of section a, so I won't belabor you with this. In talking to many delegates, just this afternoon, some people have said they would agree to the combination of the probate court with the circuit court commissioner, but they wouldn't believe they could combine the probate court with the justice of the peace, so you have a whole lot of problems present here.

I, therefore, offer this amendment, and say that it should be passed on the basis of each of any 1 of the 4 phrases, but when you get all 4 of them together, it certainly should receive considerable consideration, and perhaps your support. I move the adoption of the amendment.

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: Mr. Chairman, I would ask that the amendment be divided into 3 parts: that is, "The legislature may combine 1 or more counties into probate districts," being the first part; "or combine the office of probate judge with any judicial office inferior thereto in any county with less than 25,000 population with supplemental salary as provided by law," as the second part; and the third, "and shall do so on recommendation and report of the supreme court." I think that we are dealing with 3 particular ideas.

In addition, the amendment offered by Mr. Leppien referred to the first clause that I have read, and I would ask that the Chair might rule that that particular portion will not be in order, having been considered already.

CHAIRMAN VAN DUSEN: Mr. Danhof first requests the division of the question, and the question will be divided in accordance with his request.

Mr. Danhof, second, makes the point of order that the words "The legislature may combine 1 or more counties into probate districts or", as incorporated in Mr. Radka's amendments are the same words sought to be stricken by Mr. Leppien's earlier amendment which was rejected by the committee of the whole. The Chair will sustain that point of order and rule that that portion of the question is not in order and is not before the committee at this time. Therefore, the remaining portions of the question, the right of the legislature to combine the office of probate judge with any judicial office inferior thereto in any county with less than 25,000 population with supplemental salary as provided by law, and the final phrase, "and shall do so on recommendation and report of the supreme court" will be considered separately.

Mr. Radka.

MR. RADKA: I merely wanted to state, Mr. Chairman, I make no strong objection to this, but I think that our discussion on the floor this morning clearly indicated how closely interrelated all of these phrases which are contained between the 2 periods really are, and I am a little bit concerned. You raised the point of order when I was discussing a particular facet of this matter—I don't see how we can intelligently discuss this amendment without discussing all parts of just 1 simple sentence that has an awful lot of dynamite hidden in it.

CHAIRMAN VAN DUSEN: The Chair has ruled, Mr. Radka, that the words of your amendment, "combine 1 or more counties into probate districts or", have already been disposed of by the committee. The remainder of your amendment is in order and will be considered in 2 separate parts.

Mr. Higgs.

MR. HIGGS: Mr. Chairman and members of the committee, in part I am speaking for myself and not for the committee, and that would be with regard to the last clause, "and shall do so on recommendation and report of the supreme court". Speaking for myself, I feel that there is merit in what Delegate Radka says. I don't think it is necessary to the intent of implementing this section. With regard to—and I will vote that way, Mr. Radka—the combining of the probate judge "with any judicial office inferior thereto in any county with less than 25,000 population with supplemental salary as provided by law," I think that is the particular part of the question that is before us now, is that right?

CHAIRMAN VAN DUSEN: That is correct, Mr. Higgs.

MR. HIGGS: For the information of the delegates and Delegate Hubbs, the matter of the salaries of probate judges is like this: the smallest salary in the state of Michigan is $5,000; the legislature has provided by statute that the pay shall be at least $5,000 in every county. Counties are permitted, however, to supplement that salary. You start at $5,000 in counties under 5,000 population. It is increased $500 in counties from 5,000 to 10,000 population, and thereafter for each 10,000 it is an additional $500. The highest paid probate judges in Michigan are in Oakland county. The statutory salary is $18,500, and the county supplements that salary by paying an additional $5,000, and they have $23,500. In Wayne, the statutory salary is $18,500; their supplement is $4,000, and it is $22,500.

The concept of this particular section that is sought to be stricken is this: as a matter of economy and a matter of sound administration of the lower court system in the small counties—and you can decide what you want to do with

this. This is offered by the committee, I think, in good faith, not for the benefit of lawyers, but for the benefit of the people in that area — that in these very small counties, a county like Keweenaw, with 2400 people, the probate judge just doesn't have much to do with 2400 people in the county, but there is a base salary of $5,000. It is a place to build a court of limited jurisdiction. This was the idea, that in the very small counties, it would require a very small supplement. The legislature has taken care of this matter with regard to probate courts in general. As far as the committee is concerned, I do not recall any particular dissatisfaction with what the legislature had done with regard to salaries of probate judges, and we just left it alone. But we are giving an opportunity to the very small counties to build a court system, and we have given the flexibility to the legislature to provide for it.

CHAIRMAN VAN DUSEN: Mr. Leibrand.

MR. LUNDGREN: Mr. Chairman, I would have a point of order, first.

CHAIRMAN VAN DUSEN: Mr. Lundgren, state your point.

MR. LUNDGREN: That interesting ruling that the Chair just gave out would make me wonder whether the people on the next amendment should talk now or later, because upon the passage of this amendment depends whether we are going to have our amendment acted upon. Would you please rule on that?

CHAIRMAN VAN DUSEN: The Chair was just examining the amendment offered by Messrs. Lundgren, Perras and Plank with that in mind, Mr. Lundgren, and would recommend that Messrs. Perras, Lundgren and Plank participate in the debate on the questions currently before the committee. They do appear to be almost identical.

MR. RADKA: I raise another point of order, Mr. Chairman.

CHAIRMAN VAN DUSEN: Mr. Radka.

MR. RADKA: If you would examine the amendment that was offered this morning by Mr. Leppien, he moved to amend after "may" by striking out "combine 1 or more counties into probate districts or".

CHAIRMAN VAN DUSEN: That is correct.

MR. RADKA: And I question whether my amendment, where I struck out "The legislature", might change the entire meaning. The intent and purpose of my amendment was completely different from what Mr. Leppien had offered.

CHAIRMAN VAN DUSEN: The Chair thinks, Mr. Radka, as was earlier ruled, the proposal by the committee contemplates that the legislature may do 2 things and shall do 1 thing upon recommendation of the supreme court. One of the things which the committee proposes that the legislature may do was the subject of the Leppien amendment this morning which the committee has acted upon. The other thing which the legislature may do is to "combine the office of probate judge with any judicial office inferior thereto," and so forth, contemplated by your amendment. That portion of your amendment remains in order, as does the final portion dealing with what the legislature shall do upon recommendation and report of the supreme court.

The question, in the judgment of the Chair, is clearly severable. The Leppien amendment took care of the first portion of it, and the Chair's ruling is as stated earlier.

MR. RADKA: Might I call the Chair's attention to section 316 of Mason's, paragraph 6:

> The formality of a vote on dividing the question is generally dispensed with, as it is usually arranged by general consent. But if this cannot be done, then a formal motion to divide is necessary, specifying the exact method of division.

CHAIRMAN VAN DUSEN: The Chair will call Mr. Radka's attention to rule 51 of the rules of the convention:

> Any delegate may call for a division of the question, which shall be divided if it comprehends propositions in substance so distinct that one being taken away a substantive proposition shall remain for the decision of the convention. . . .

It does not require a vote of the committee.

MR. RADKA: Mr. Radka accepts the ruling of the Chair.

CHAIRMAN VAN DUSEN: The Chair is grateful.

Mr. Lundgren, have you a further point?

MR. LUNDGREN: I was just going to ask if he is accepting that for all of us. You are destroying the whole intent of the amendment here. I feel, if you take out one part of it, then you have nullified the whole thing, and I think the sponsors of an amendment have the proper authority to talk about their whole amendment.

CHAIRMAN VAN DUSEN: The Chair will call to the attention of Mr. Lundgren and the other sponsors of amendments pending that we have had a great many amendments, some of which attack one portion of the committee proposal, others of which attack other portions. To the extent that the questions are divisible, the delegates are entitled to have them divided, as they have been in accordance with the request of the chairman of the committee, Mr. Danhof.

Judge Leibrand.

MR. LEIBRAND: Mr. Chairman and delegates, I rise to speak with reference to the third division of Mr. Radka's amendment, which moves to strike the phrase or the clause, "and shall do so on recommendation and report of the supreme court." Traditionally, courts in this country have been created in about 3 ways. All of them are, more or less, legislative in character. First, through the medium of constitutions; second through legislatures; and third is the local courts, through home rule charters which are voted upon by the people.

In lines 10 and 11 of Committee Proposal 94, we embark upon a totally new concept, that of empowering the supreme court to direct the creation of courts and the alteration of court boundaries. All of the traditional processes — such as the constitutional convention, the legislative process, or the local charter process — involve long debate, public hearings, and an opportunity of the public to express their opinions. Here we embark upon a process where the Supreme Court of the state of Michigan, which, as I have observed before, may turn out to be an appointive body, can, by one stroke of the pen, alter districts and create courts.

This proposition has come up before this convention before, and I say, Mr. Chairman and delegates, we are embarking upon a dangerous voyage. I support division 3 of Mr. Radka's amendment.

CHAIRMAN VAN DUSEN: Mr. Norris.

MR. NORRIS: Mr. Chairman, fellow delegates, I rise to oppose the amendment and support the committee recommendation. There are some reservations that I have about it, but not the ones that are posed here. First of all, I think we have to recognize that the people of this state have grown, more and more, to look to the supreme court for advice and counsel with regard to the administration of justice in this state, and what I think the committee is doing in this recommendation is to take that into account and to give the supreme court certain means by which this might be accomplished, which are not any more than making strong recommendations on the basis of considered appraisal of the facts and appraisal of the way in which justice is administered. I think that the judicial power, as such, includes the power, on the part of the supreme court, to make recommendations and to make reports to those who have the power to implement recommendations and reports.

I do think that there has been a very difficult problem in this state with regard to the conducting of justice at the lower level. In the public interest — not in terms of the interest of the lawyers, but in terms of the public interest — and particularly the little people in this state, it is absolutely imperative that we begin to think in terms of the appropriate ways by which the administration of justice might be executed. I think the committee has done some original thinking in this area and ought to be complimented by both the lawyers and nonlawyers, and the public interest, for giving us the kind of formulation

that helps in a flexible way to deal with this problem. It promotes the opportunity of thinking in terms of family courts. It promotes the opportunity of thinking in terms of the function, if any, of the J.P.s in relation to the administration of justice on the local level, and I think the kind of formula that has been developed here is one that has within it the potential of intimate adaptation to the needs of communities, and leaves it up to the people who have the power to implement it in such a way that it will take into account some of the points raised by Mr. Hubbs, people who raise questions of economy, people who raise questions of the local concerns and the particular characteristics of the area.

I think that there has been some good thinking here, and I think it ought to be supported. And I think the amendment ought not to be supported.

CHAIRMAN VAN DUSEN: Mr. Lundgren.

MR. LUNDGREN: It appears that I am going to have to talk about our up coming amendment because all the other sponsors have left the floor, amongst quite a few others.

I again address a question, which I think I have talked 2 or 3 times about, and I will direct it to Mr. Danhof or anybody on the committee, the judicial committee. I would like to have you clearly state for the record what particular courts are going to be inferior, that the probate court might be joined with. Now, do you consider that we are going to continue to have justice of the peace courts after the legislature gets through with this, or not?

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: Mr. Lundgren, you have answered your own question, after the legislature gets through with it. I will be very frank to tell — is Mr. Higgs here or has he left the hall? Mr. Higgs, Mr. Lundgren has made a particular point, this particular provision regarding these counties under 25,000, I will state to the committee, we discussed it very thoroughly, but Mr. Higgs, in particular, did a tremendous amount of research on this particular item, and the numerical designation was one, which, upon his research, he recommended to the committee and gave cogent reasons therefor.

I would respectfully suggest, Mr. Lundgren, that perhaps Mr. Higgs can give you a better idea as to what courts you will or will not have, or what he envisions this might or might not do. I am sorry that Mr. Habermehl had to leave for the afternoon. Mr. Habermehl put this in in the form of a delegate proposal and urged it, very strongly, upon the committee. He appeared and his testimony, as I say, is upon the record and the tapes. Naturally, he wanted Alpena county to be included and where we set the figure doesn't include Alpena county. He had an amendment in, but I think he withdrew it during his absence.

I know Mr. Higgs was present, and from that and from Mr. Habermehl's original discussion, this particular concept developed. If Mr. Higgs will take over, perhaps he can give you more explanation. If there is anything further, I will try to add to it. I would yield to the delegate from Bay City.

MR. LUNDGREN: That is perfectly all right, but you don't have to talk too long about it; just tell me what courts you have in mind. I have been trying to draw that out for a long time and it hasn't come out.

CHAIRMAN VAN DUSEN: Mr. Higgs.

MR. HIGGS: Courts inferior thereto would be courts of limited jurisdiction. Those would include —

MR. LUNDGREN: Yes, but what are they?

MR. HIGGS: I am coming to it.

MR. LUNDGREN: Okay.

MR. HIGGS: Those would include the circuit court commissioner's court, which a later proposal contemplates eliminating, and it would include justice courts, and it would include municipal courts.

MR. LUNDGREN: Let me ask you this: you are more aware of it than I am — except in counties that I have covered in one way or the other in different things — circuit court commissioner is not truly a court, it is one lawyer that accepts the job because nobody else wants it. So let's not delude ourselves that it is properly a court like we are talking about or you are trying to eliminate here. This is the thing that bothers me.

MR. HIGGS: Mr. Lundgren, I don't quite follow your point. Let me try. The circuit court commissioner's court, probably the most significant function that this court exercises in the counties of small population are cases involving the possession of real estate, that would involve the foreclosure of land contracts and the summary possession of real estate. At least now, that is my understanding. It is a fee court. They are paid on the basis of fees. They do have very little business. They are required to be lawyers. It is hard to get anyone to even take the job. There have been times in our county when we have had to go round looking for somebody to fill this function. Nobody really wanted to. In larger areas, and in Wayne in particular, it is a court. They have a number of judges and they have office space, and it is a different situation.

It was our thinking that because of the limited function and use of this court — but nevertheless, a very necessary function — that very conceivably this particular judicial function, with the exception of that part of the power of the circuit court commissioner to issue injunctions — we don't think that should be transferred to a court unless it is a court of record with a lawyer, if I may be so bold before this committee as to mention that awful word — we don't think probably that a municipal judge should have the power to issue an injunction that would restrain someone from doing something that may involve a very serious aspect of their business.

MR. LUNDGREN: Do you envision that the probate court should eventually take these kind of duties over? What I am trying to draw out is just what courts does the judiciary have in mind or don't they have in mind any courts? What if the legislature decides not to act, what are we going to have?

MR. HIGGS: Exactly what you have now.

MR. LUNDGREN: For 5 years.

MR. HIGGS: Well, in a period of 5 years —

MR. LUNDGREN: That is what is bothering me. There's no ifs, ands, or buts about it. It is in the constitution, and that is what is bothering me.

MR. HIGGS: In a period of 5 years, of course, it is conceived — I wonder whether we are in the right section, whether this is germane?

MR. LUNDGREN: Well, I think it is germane because all through this you are eliminating this and that. You have made a very strong supreme court, and it seems to me, as a layman, that you are creating a very strong probate court, and to a layman, I don't think that is what we want, in our smaller areas, let's say.

MR. HIGGS: Well, have I answered your question as to what courts were to be included?

MR. LUNDGREN: No, you haven't, because apparently your committee doesn't feel free to elaborate on it very much because you have chosen the path of elimination rather than the path of creation, and that is what is bothering me, and I think you have made your point and I think I have made my point, that you haven't created something for the future, except —

MR. HIGGS: Well, Mr. Lundgren, in a few words, the courts of limited jurisdiction below the circuit court include the probate court, the circuit court commissioners, justices of the peace, and municipal courts.

MR. LUNDGREN: And the other day, the chairman said that the county courts, if created — he felt that they would be inferior to a probate court. Now, you can correct me if I am wrong, but that is what, I believe, was said the other day here on the floor.

MR. HIGGS: Dr. Joiner advised our committee that when we used the words "courts of limited jurisdiction", we are referring to courts below the level of the circuit court. We used the word "inferior;" this may be something that we should clarify in style and drafting.

But those are the courts that we were thinking about.

MR. LUNDGREN: Thank you. I am stepping on eggshells here because I am not a lawyer.

MR. HIGGS: That is all right.

MR. LUNDGREN: But, I think the point is pretty well made that we haven't created something that the state is going to need, and it might come back to haunt us.

MR. HIGGS: Well, the concept — if I may, Mr. Chairman — is that we are trying to provide the necessary flexibility in the legislature so that it can create courts to take over these functions that will be adaptable to the varying needs of the different parts of the state. It is not conceived by the committee that we should lay that out, because of the differing needs that were presented to the committee.

MR. LUNDGREN: Well, I shall not talk any further to the point, thank you.

CHAIRMAN VAN DUSEN: For what purpose does the gentleman rise, Mr. Leibrand?

MR. LEIBRAND: A question to Delegate Higgs, if I might. Am I out of order?

CHAIRMAN VAN DUSEN: If it relates to the subject which has just been discussed, the Chair thinks it would be easier if you proceeded at this point so we might have some continuity.

MR. LEIBRAND: May I then direct a question to Delegate Higgs?

CHAIRMAN VAN DUSEN: You may proceed, Judge Leibrand.

MR. LEIBRAND: Delegate Higgs, you have just spoken about other provisions here enabling the legislature to create other inferior courts, is that correct?

MR. HIGGS: Inferior courts, which I would conceive —

MR. LEIBRAND: Of limited jurisdiction.

MR. HIGGS: That is what I understood.

MR. LEIBRAND: Then, by Committee Proposal 94, aren't we authorizing the Michigan supreme court to wipe out these other inferior courts or combine them with others?

MR. HIGGS: Delegate Leibrand, I have already stated, as far as I am personally concerned, I intended to vote against that part of the question. Speaking for myself, this is not the recommendation of the committee, but I, myself, would leave it to the legislature entirely. I don't think the committee feels strong about it.

CHAIRMAN VAN DUSEN: Mr. Hubbs.

MR. HUBBS: Mr. Chairman, have you taken a census lately?

CHAIRMAN VAN DUSEN: The secretary advises that he has just taken a census and that there is a quorum present.

MR. HUBBS: Did he divide it into laymen versus barristers, might I ask? I want to know whether the audience is sympathetic or not.

CHAIRMAN VAN DUSEN: The secretary advises that he made no separation. If he does, which side would you like to be counted with? (laughter)

MR. HUBBS: I was trying earlier to get to be an honorary barrister. I was hoping that someday that would be forthcoming, but in the meantime —

CHAIRMAN VAN DUSEN: You are in your sophomore year, Mr. Hubbs. (laughter)

MR. HUBBS: Thank you, sir. In the meantime — getting back to business — I can well understand now why my earlier amendment was defeated. I didn't get it up to the desk in the right order, or at least I hope I didn't get it up in the right order.

Here is the situation as it now exists. The reason I put my amendment in was to guard against a contingency that I know is forthcoming, provided this section carries as it is. And I would heartily agree with Delegates Lundgren, Perras, Radka, Leibrand and others who have suggested that we delete the lines starting with 8, "combine courts of probate judge with any judicial office inferior thereto in any county with less than 25,000 population with supplemental salary as provided by law, and shall do so on recommendation and report of the supreme court." This is what I arose to agree with. I know why my amendment was defeated. I support this amendment, and I hope that we can strike this language out of here. Thank you.

CHAIRMAN VAN DUSEN: Mr. King.

MR. KING: Mr. Chairman, fellow delegates, as you may have noticed, I have, right along, supported a strong supreme court. I think it is extremely important that this supreme court have power to make rules, power to enforce procedure, general supervisory power over the inferior courts, and for that reason, I would like to — not for that reason necessarily — but I would like to support the second divided part of the pending amendment, not support the amendment, but support the original committee language.

Now, when we get down into this third part, we are talking about something else. We are talking about something that I haven't supported, and I think it is extremely important that we all stop and take a look at this proposition. Now we are saying that the supreme court is going to have the power to create inferior courts, if that word "shall" means anything, and I guess maybe some think it doesn't, but I think it does. I think the legislature is obliged to respect that kind of language, and I took a look at the federal constitution to see what that said on the subject, and it said that the judicial power of the United States shall be vested in one supreme court, and such inferior courts as congress may, from time to time, ordain and establish.

We don't have a congress in Michigan, but we have a legislature in Michigan, which is somewhat analogous to a congress, and that is where courts should be created, not in the supreme court. So, with regard to that last part, I am opposed to it, and with regard to that, I do not think the committee position ought to be sustained.

Certainly the legislature should have the right and the authority as the years go by — and we are not writing this constitution for 1962, contrary to what may appear to be the case, we are writing it, perhaps, for another 50 years. I am sure that in 1907 they couldn't envision the problems that we have today, and I am just as sure that we can't envision the problem that the succeeding generations will have a half a century from now. But, at no time do I want it to be thought that I support the proposition that the Supreme Court of the state of Michigan can create inferior courts. That is purely a legislative function and ought to remain so.

CHAIRMAN VAN DUSEN: Mr. Ostrow.

MR. OSTROW: Mr. Chairman and delegates, I want to oppose the amendment, and in the process of doing that, I would like to straighten out what I consider a few misinterpretations here. When Mr. Higgs quoted Dr. Joiner in speaking of courts of limited jurisdiction and saying that they were inferior to the circuit court, he was talking about Committee Proposal 90. To get all this into perspective, in Committee Proposal 90, we established the 5 tier court system. There, when we were speaking of courts, we spoke of the supreme court, the appellate court, the trial court of general jurisdiction, a probate court, and other courts of limited jurisdiction, whatever they may be.

Now we come to this proposal, and in this one — well, first we ought to have the history of this particular part of this proposal. We had voted down the general county court. We had disposed of the supreme court — well, we hadn't disposed of the supreme court, we never did do that adequately. We disposed of the other courts and we came to the probate court. We agreed on keeping a probate court. We did not want to do anything to the small counties, we wanted to do something for the small counties.

It was represented to us that the small counties needed this, so we provided that in these small counties under 25,000, the probate court could be merged, not horizontally with courts of equal jurisdiction, or not taking in jurisdictions greater than theirs, but with courts "inferior thereto", referring to inferior to the probate court, and not inferior to the circuit court.

Now, when you go to 96, in 96 we abolish, within 5 years, the circuit court commissioner and the justice of the peace.

We do not abolish, in 96, the municipal courts. They were created by a statute, and we say in 96 they may retain their jurisdiction and their powers unless and until the legislature abolishes them or changes them. So, the only thing that this can mean is that the probate court will or can, if the legislature so sees fit, be merged downward with the circuit court commissioner and the probate court. As for municipal courts, the legislature always could do what they wanted to with them.

CHAIRMAN VAN DUSEN: Mr. Perras.

MR. PERRAS: Point of information, Mr. Chairman. I would like to ask the chairman of the committee or Mr. Higgs, if they in their committee gave any thought to letting the counties that might be involved in this merger of probate courts — if they gave any thought to these counties, probably, letting these people vote thereon. Was that brought up in your committee at all, Bob?

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: Is a discussion of this type pertinent to the present amendment, Mr. Chairman? I don't want to get started if it is not. We are not talking now about the combining of various counties into districts. The Chair has ruled that is not under discussion.

MR. PERRAS: My question, Mr. Danhof, was the combining of 1 or more counties into probate districts, that is what my question was about, and to the point that it was considered that the people of these various counties might bring this up together and vote on doing this without giving that power to the legislature.

CHAIRMAN VAN DUSEN: Mr. Perras, if your question does relate, as the Chair believes you just said it did, to combining 1 or more counties, the Chair would rule that you were not proceeding in order. If your question relates to the combining of the probate courts with judicial offices inferior thereto, your question would be in order.

MR. PERRAS: Well, that was what my question was. I asked if it was thought of in the committee that the people of those counties could have had the chance to vote on it themselves, without giving that power to the legislature. That was my question, Mr. Chairman.

CHAIRMAN VAN DUSEN: Mr. Danhof, does the gentleman care to answer?

MR. DANHOF: Mr. Perras, the answer is, yes. However, we are not writing in any of these provisions any self executing document of any kind. We are not making anything that is accomplished upon the passage of this constitution. We felt, to specifically answer your question, it would best be left to the legislature to determine the method; whether they wanted the people to vote, whether they wanted the board of supervisors to consider it, whether they wanted to shoot dice for it or draw straws; this could best be left to the legislature. On that basis, we felt that this was a matter that could be handled in that particular regard. The answer to the question is, yes, we did discuss it. We did not feel we had the foresight to write in what might be the proper means, and I still think the question is directed basically to the first clause of this particular sentence more than the second, Mr. Perras.

MR. PERRAS: Thank you, Mr. Chairman.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Radka. Before stating the question the secretary will ring the bell.

A division has not yet been requested. Mr. Everett? Mr. Everett requests a division on the Radka amendment. Is the demand supported? It is supported.

MR. DANHOF: Mr. Chairman.

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: Parliamentary inquiry. Will we vote on the first clause under consideration?

CHAIRMAN VAN DUSEN: The question will be put separately, Mr. Danhof. In order to avoid repetition, the Chair thought we might get a little more of the committee present. The question is upon the amendment offered by Mr. Radka, which has been divided. The secretary will read the portion of the Radka amendment first to be voted upon.

SECRETARY CHASE: The amendment, as now divided, will be as follows:

1. Amend page 1, line 8, after "districts" by striking out the comma and "or combine the office of probate judge with any judicial office inferior thereto in any county with less than 25,000 population with supplemental salary as provided by law,".

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: Mr. Chairman, on this part, the committee feels that this would be a step forward. It would again give the legislature a great deal more leeway in this particular field. We would urge, very strongly, that this part of the amendment be defeated.

CHAIRMAN VAN DUSEN: Those who are in favor of the — Mr. Ford.

MR. FORD: With respect to this portion of the amendment, since I didn't vote with the committee on this, it might appear that we are going against them, but with respect to this particular portion of it, I wish to support the amendment. I think that we have been persuaded, some of us, by the arguments made by people like Mr. Radka. There is one other, and that is that it occurred to some of us in looking at this that we are vitiating, in part, a concept that we adopted this morning, that juveniles should not be lumped together with adult criminals, and it now appears that in one part of the section we are saying they shouldn't and then in another part we are saying in counties of under 25,000, you can lump them together if you want to. It doesn't seem to be consistent, and for this reason I support the present part of the Radka amendment.

CHAIRMAN VAN DUSEN: The question is on the portion of the Radka amendment which has been read by the secretary dealing with combining the office of probate judge with judicial offices inferior thereto in counties with less than 25,000 population. Those in favor of the amendment will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the adoption of this portion of the amendment, the yeas are 51; the nays are 47.

CHAIRMAN VAN DUSEN: The amendment is adopted. The question is now upon the second portion of the Radka amendment, which the secretary will read.

SECRETARY CHASE: The last part of the Radka amendment is:

1. Amend page 1, line 10, by striking out "and shall do so on recommendation and report of the supreme court".

CHAIRMAN VAN DUSEN: On this portion of the Radka amendment, the Chair will recognize Mr. Boothby.

MR. BOOTHBY: Mr. Chairman and members of the committee, I am not going to spend a long time on this particular area. As you well know, I had some comments on this whole question yesterday regarding whether the supreme court should be able to force the legislature to make decisions regarding the court system and the court setup. I understand, of course, that the committee of the whole has now struck out much of this section and, of course, to be totally consistent, probably should strike out the second section just to be consistent. However, I do know something about striking out a section in the committee of the whole and having it not sustained when it reaches the floor of the convention, so I am going to make a few comments which otherwise would not be necessary.

The particular section which includes the provision that the supreme court may make recommendations, and that upon their recommendation, the legislature shall carry out their mandate, in this particular section, this particular proposal is a little different than the prior proposal, Committee Proposal 93. Committee Proposal 93, when the supreme court was given power to tell the legislature what to do, they were telling the legislature what to do in regard to the setting up of their judicial circuits. This might be construed to be a function of the administrator of the supreme court. I did not agree with this, but I can understand how this might be construed. However, this particular proposal goes much further than Committee Proposal 93, because this proposal

gives the power to the supreme court to tell the legislature how much money it is to spend. It says that they may provide for supplemental salary as provided by law. In other words, it is giving the supreme court the power to tell the legislature what to do in the setting of certain salaries, additional supplemental salaries. In addition, as has been pointed out by Mr. Radka, this committee proposal—

MR. HIGGS: Point of order, Mr. Chairman.

CHAIRMAN VAN DUSEN: Excuse me, Mr. Boothby, Mr. Higgs makes a point of order. Would you state your point, Mr. Higgs?

MR. HIGGS: It is my understanding this portion was stricken that Mr. Boothby is talking about. It never did provide for the supreme court setting salaries, but I believe it has been stricken.

CHAIRMAN VAN DUSEN: The Chair believes your point is well made, Mr. Higgs. Would you confine yourself to the remaining portion of the amendment, Mr. Boothby?

MR. BOOTHBY: Very well. The reason for my comment was because I had an experience yesterday. I would like to direct a couple of questions, at this time, just to clarify my own particular thinking. Mr. Higgs, I believe, a few minutes ago made some comment in reference to this particular provision of the amendment, to the latter portion which provides that "and shall do so on recommendation and report of the supreme court." As I understood Mr. Higgs, he said that he had no real objection to having this part of the section removed. I am wondering if he would clarify his position on that?

CHAIRMAN VAN DUSEN: Mr. Higgs.

MR. HIGGS: Yes. I am speaking personally and, of course, I cannot speak in behalf of the committee, but I did say that. That is a personal thing. I don't feel that is necessary.

MR. BOOTHBY: I would also like to direct a question to Mr. Everett, because he has spoken on this judicial section a great deal, and I respect his thinking. I am wondering whether he has any real objection to having this latter provision stricken from the committee proposal?

CHAIRMAN VAN DUSEN: Mr. Everett.

MR. EVERETT: Mr. Chairman, Mr. Boothby, I felt when the part which has just been taken out was still in, that probably we would be wrong in leaving this to the supreme court. I would say, now it is somewhat academic. I would certainly not object if it were taken out. Again, I am expressing a personal opinion. I am not speaking for the committee. I certainly wouldn't object to its being taken out. I would say that if we had left the other part in, it might be preferable to take it out.

MR. BOOTHBY: Thank you very much. I am moved by the comments of these members of the judicial committee. I, personally, have felt that the supreme court should not be empowered to tell the legislature what to do. I am now particularly impressed that this provision should not be left in the constitution because these very highly regarded members of the judicial committee also have indicated that they have no particular objection to having it removed, and I would then ask that the committee of the whole concur and vote to remove this provision from the committee proposal, and vote yes on the latter portion of the Radka amendment.

CHAIRMAN VAN DUSEN: The question is on the remaining portion of the Radka amendment, to strike the words, "and shall do so on recommendation and report of the supreme court". Mr. Danhof.

MR. DANHOF: Mr. Chairman and members of the committee, by reason of the action of the committee of the whole, the matter now reads, "The legislature may combine 1 or more counties into probate districts and shall do so on recommendation and report of the supreme court".

Now, we went all through this yesterday, and I agree with Mr. Boothby, there is no use taking a great deal of time. When I looked at the last vote which we took, between the reds and the greens and the blacks, why, it looked to me like the blacks were ahead. Again, we have gone through this. It is as Dr. Norris has pointed out, the reason why we did it. The middle section has been removed. I think now it is exactly as we have it with the circuits, when we talked about altering or creating or increasing the number of districts, there is no particular difference. I would urge the defeat of the amendment.

CHAIRMAN VAN DUSEN: The question is on the final portion of the Radka amendment. Mr. King.

MR. KING: Mr. Chairman and delegates, I don't want to belabor this point. I am somewhat embarrassed, because I didn't think that the middle part was going to disappear, and now that the middle part has disappeared, my remarks concerning the latter part don't seem nearly so important. So, I am not going to take a position one way or another. I merely want to explain how I got in this awkward situation and I trust that if and when the committee rises, with regard to this section, and if and when there is a full committee here, that probably the second part will be back in, at which time I can oppose the third part.

CHAIRMAN VAN DUSEN: The question is on the final portion of the Radka amendment. Mr. Heideman.

MR. HEIDEMAN: Mr. Chairman and fellow delegates, yesterday I spoke on this question of "shall" and "may", and several days before on the same subject. I think that the "shall" here was as pertinent yesterday with respect to giving the supreme court this power, in that the interpreting of the law is a judicial function and the creation of courts is a legislative function, and we were creating, hereby, a supreme legislative body out of the supreme court.

The federal constitution clearly says the legislative power shall, and the executive power shall, and the judicial power shall be vested in, and then goes off to "may", on the permissive; from the mandatory "shall" to the permissive "may". In addition to that language, a very careful distinction also is made between shall and may in the federal constitution. I went through the judicial article, article V of the model state constitution of the national municipal league. In the judiciary article, I counted 26 shalls and 15 mays, used very carefully and very advisedly.

Delegate Boothby and I both had submitted an amendment to the same effect, to strike this last part of the language, which reads "and shall do so on recommendation and report of the supreme court". So, I support the amendment in this regard.

CHAIRMAN VAN DUSEN: Mr. King.

MR. KING: Mr. Chairman, just a brief question. I would like to ask the chairman of the committee if it was the intent of the committee that this last phrase, "and shall do so on recommendation and report of the supreme court", was meant to apply to the first phrase, "The legislature may combine 1 or more counties into probate districts", or just specifically what was it meant to refer to?

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: Mr. King, after 5 days, I am not sure what we all referred to, and I will state that it was my intention that it referred to this as it now applies, yes, the same as to creating, altering or changing circuits, that there would be a possible study and that we meant it in the same direction as we would for creating new circuits out of old circuits, by splitting them; the same deal would prevail, the same thinking. We were consistent, at least we tried to be, from the circuit court down to probate court.

CHAIRMAN VAN DUSEN: The question is on the final portion of the Radka amendment. Is there any delegate who desires to have it read further? Those in favor of the Radka amendment will vote aye, and those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the adoption of this part of the amendment, the yeas are 61, the nays are 35.

CHAIRMAN VAN DUSEN: The amendment is adopted. Mr. Danhof.

MR. DANHOF: Mr. Chairman, we have completed this

section. There are more amendments. I looked at the last vote and it got down to 90 something, I think it totaled.

I move the committee do now rise.

CHAIRMAN VAN DUSEN: Mr. Danhof moves that the committee do now rise. The question is on the motion of Mr. Danhof that the committee now rise. Those in favor will say aye. Those opposed will say no.

The motion prevails. The committee will rise.

[Whereupon, the committee of the whole having risen, Vice President Hutchinson resumed the Chair.]

VICE PRESIDENT HUTCHINSON: The Chair recognizes the delegate from Oakland, Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, the committee of the whole has had under consideration one proposal of which the secretary will give a detailed report.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 94,** A proposal pertaining to the probate court; has adopted an amendment thereto; and has come to no final resolution thereon. This completes the report of the committee of the whole.

VICE PRESIDENT HUTCHINSON: Any further announcements?

SECRETARY CHASE: Yes, Mr. President. Will the delegates please leave your bound volume of journals here over the weekend if at all possible, so that the staff may divide them and put the larger portion of them in some permanent binders and leave your ringbook binders to be added to from day to day.

We have the following requests for leave of absence: Mr. Farnsworth wishes to be excused from the session of Monday; Mr. Tubbs, from the afternoon session of Monday; Mr. Spitler, from Monday's session; and Mr. Donald Doty wishes to be excused from the sessions of March 6 and 7.

VICE PRESIDENT HUTCHINSON: Without objection, the several requests will be granted. The Chair hears no objection and it is so ordered.

MR. SNYDER: Mr. President.

VICE PRESIDENT HUTCHINSON: Delegate Snyder.

MR. SNYDER: I believe I filed a request with Mr. Chase for an excuse for Monday also.

VICE PRESIDENT HUTCHINSON: Mr. Snyder requests excuse from Monday's session.

SECRETARY CHASE: I think we took care of that this morning, Mr. Snyder. I am not sure, but we will make sure.

VICE PRESIDENT HUTCHINSON: Without objection, it will be so ordered. It is granted.

What is the pleasure of the convention? The Chair recognizes the lady from Wayne, Miss McGowan.

MISS McGOWAN: Mr. President, I move that the convention now stand adjourned.

VICE PRESIDENT HUTCHINSON: The question is upon the motion to adjourn. All those in favor will say aye; opposed will say no.

The motion prevails and the convention stands adjourned until Monday next at 4:00 o'clock in the afternoon.

[Whereupon, at 3:50 o'clock p.m., the convention adjourned until 4:00 o'clock p.m., Monday, March 5, 1962.]

NINETY-SECOND DAY

Monday, March 5, 1962, 4:00 o'clock p.m.

PROCEEDINGS

PRESIDENT NISBET: The convention will please **come to order.**

Our **invocation** today will be given by one of our own delegates, Allen Rush of Macomb county. Will you please rise.

MR. RUSH: Let us pray. Our heavenly Father, we recognize Thee as the giver of all good and worthwhile gifts, the Father of all mankind, and the Author of life, liberty and justice.

As we reconvene this afternoon to try to solve the many problems that confront us, may we put aside our selfish desires and realize the need for Thy divine guidance. Help us to discern the truth, to refrain from being misled by popular slogans, to be able to judge the facts and above all, to seek Thy help.

We thank Thee for the heritage that is ours, for the sacrifices and vision of our forefathers. May we be equal to the task that has fallen to us—to preserve and pass on to posterity the many blessings that we have enjoyed. Give us strength, courage and wisdom to meet this challenge. These things we ask, our Father, in the name of our Savior and Redeemer, Jesus Christ. Amen.

PRESIDENT NISBET: The **roll call** will be taken by the secretary.

May I call your attention to the fact that last Friday when the roll call was taken there were 15 delegates present who did not indicate they were present. This is rather difficult for the secretary and his staff. So if you are in your seats, or when you come in, will you please register yourself present. Thank you.

SECRETARY CHASE: Has everyone who is here voted? The machine is locked. The attendance will be recorded.

Mr. President, a quorum of the convention is present.

Prior to today's session, the secretary received the following requests for leave:

Messrs. Kuhn and Stamm, from this afternoon's session; and Messrs. W. F. Hanna and Page, from today's session; and Messrs. Downs, Murphy, Nord and Wilkowski are all ill with this virus that is going around and wish to be excused indefinitely.

Mr. Pellow; from today's session and the sessions of the week.

PRESIDENT NISBET: Without objection, the requests are granted.

SECRETARY CHASE: Absent with leave: Messrs. Dade, Downs, Farnsworth, W. F. Hanna, Miss Hart, Messrs. Hoxie, Kuhn, Lawrence, Murphy, Nord, Page, Pellow, Snyder, Spitler, Stamm, Suzore, Tubbs, Tweedie and Wilkowski.

Absent without leave: Messrs. Allen, Bledsoe and Wood.

PRESIDENT NISBET: Without objection, the delegates are excused.

[During the proceedings, the following delegates entered the chamber and took their seats: Messrs. Allen, Bledsoe, Kuhn, Lawrence, Spitler, Stamm, Tubbs and Wood.]

Reports of standing committees.

SECRETARY CHASE: The committee on style and drafting, by Mr. Cudlip, chairman, submits Report 11 of that committee, reporting back to the convention **Committee Proposal 13,** A proposal respecting the physically, mentally or otherwise seriously handicapped;
with the recommendation that the style and form be approved.

William B. Cudlip, chairman.

For Committee Proposal 13 as reported by the committee on style and drafting, see under date of April 18.

PRESIDENT NISBET: Referred to the order of second reading of proposals.

SECRETARY CHASE: The committee on style and drafting, by Mr. Cudlip, chairman, submits Report 12 of that committee, reporting back to the convention **Committee Proposal 21,** A proposal pertaining to the division of the powers of government;
with the recommendation that the style and form be approved.
William B. Cudlip, chairman.

For Committee Proposal 21 as reported by the committee on style and drafting, see under date of April 30.

PRESIDENT NISBET: Referred to the order of second reading of proposals.

SECRETARY CHASE: The committee on style and drafting, by Mr. Cudlip, chairman, submits Report 13 of that committee, reporting back to the convention **Committee Proposal 29,** A proposal to provide for the form of laws;
with the recommendation that the style and form be approved.
William B. Cudlip, chairman.

For Committee Proposal 29 as reported by the committee on style and drafting, see under date of April 30.

PRESIDENT NISBET: Referred to the order of second reading of proposals.

SECRETARY CHASE: The committee on style and drafting, by Mr. Cudlip, chairman, submits Report 14 of that committee, reporting back to the convention **Committee Proposal 32,** A proposal to provide for eligibility to serve in the legislature;
with the recommendation that the style and form be approved.
William B. Cudlip, chairman.

For Committee Proposal 32 as reported by the committee on style and drafting, see under date of April 27.

PRESIDENT NISBET: Referred to the order of second reading of proposals.

SECRETARY CHASE: The committee on style and drafting, by Mr. Cudlip, chairman, submits Report 15 of that committee, reporting back to the convention **Committee Proposal 33,** A proposal to provide for immunity of legislators from arrest during sessions except for certain crimes;
with the recommendation that the style and form be approved.
William B. Cudlip, chairman.

For Committee Proposal 33 as reported by the committee on style and drafting, see under date of April 27.

PRESIDENT NISBET: Referred to the order of second reading of proposals.

SECRETARY CHASE: The committee on style and drafting, by Mr. Cudlip, chairman, submits Report 16 of that committee, reporting back to the convention **Committee Proposal 34,** A proposal to provide for quorums of the house and senate and the right of these bodies to compel attendance;
with the recommendation that the style and form be approved.
William B. Cudlip, chairman.

For Committee Proposal 34 as reported by the committee on style and drafting, see under date of April 30.

PRESIDENT NISBET: Referred to the order of second reading of proposals.

SECRETARY CHASE: The committee on style and drafting, by Mr. Cudlip, chairman, submits Report 17 of that committee, reporting back to the convention **Committee Proposal 35,** A proposal to provide that the form of legislation shall be by bill;
with the recommendation that the style and form be approved.
William B. Cudlip, chairman.

For Committee Proposal 35 as reported by the committee on style and drafting, see under date of April 30.

PRESIDENT NISBET: Referred to the order of second reading of proposals.

SECRETARY CHASE: The committee on style and drafting, by Mr. Cudlip, chairman, submits Report 18 of that committee, reporting back to the convention **Committee Proposal 5,** A proposal pertaining to the inclusion in the constitution of all of section 9 of article XII except the portion relating to bank notes or paper credit;
with the recommendation that the style and form be approved.
William B. Cudlip, chairman.

For Committee Proposal 5 as reported by the committee on style and drafting, see under date of April 30.

PRESIDENT NISBET: Referred to the order of second reading of proposals.

SECRETARY CHASE: The committee on style and drafting, by Mr. Cudlip, chairman, submits Report 19 of that committee, reporting back to the convention **Committee Proposal 16,** A proposal to permit the governor to grant reprieves, commutations and pardons and to delegate this power according to law;
with the recommendation that the style and form be approved.
William B. Cudlip, chairman.

For Committee Proposal 16 as reported by the committee on style and drafting, see under date of April 24.

PRESIDENT NISBET: Referred to the order of second reading of proposals.

SECRETARY CHASE: The committee on style and drafting, by Mr. Cudlip, chairman, submits Report 20 of that committee, reporting back to the convention **Committee Proposal 17,** A proposal respecting eligibility for the offices of governor and lieutenant governor;
with the recommendation that the style and form be approved.
William B. Cudlip, chairman.

For Committee Proposal 17 as reported by the committee on style and drafting, see under date of April 24.

PRESIDENT NISBET: Referred to the order of second reading of proposals.

SECRETARY CHASE: The committee on style and drafting, by Mr. Cudlip, chairman, submits Report 21 of that committee, reporting back to the convention **Committee Proposal 24,** A proposal pertaining to inclusion of section 39 of article V in the constitution;
with the recommendation that the style and form be approved.
William B. Cudlip, chairman.

For Committee Proposal 24 as reported by the committee on style and drafting, see under date of April 30.

PRESIDENT NISBET: Referred to the order of second reading of proposals.

SECRETARY CHASE: The committee on style and drafting, by Mr. Cudlip, chairman, submits Report 22 of that committee, reporting back to the convention **Committee Proposal 25,** A proposal to amend article XVI, section 2 of the present constitution pertaining to oath of office;
with the recommendation that the style and form be approved.
William B. Cudlip, chairman.

For Committee Proposal 25 as reported by the committee on style and drafting, see under date of April 30.

PRESIDENT NISBET: Referred to the order of second reading of proposals.

SECRETARY CHASE: The committee on style and drafting, by Mr. Cudlip, chairman, submits Report 23 of that committee, reporting back to the convention **Committee Proposal 27,**

A proposal to provide for liquor control, excise taxes and local option by counties;
with the recommendation that the style and form be approved.
William B. Cudlip, chairman.

For Committee Proposal 27 as reported by the committee on style and drafting, see under date of April 30.

PRESIDENT NISBET: Referred to the order of second reading of proposals.

SECRETARY CHASE: The committee on style and drafting, by Mr. Cudlip, chairman, submits Report 24 of that committee, reporting back to the convention **Committee Proposal 28,** A proposal to provide for compensation of the legislature;
with the recommendation that the style and form be approved.
William B. Cudlip, chairman.

For Committee Proposal 28 as reported by the committee on style and drafting, see under date of April 27.

PRESIDENT NISBET: Referred to the order of second reading of proposals.

SECRETARY CHASE: The committee on style and drafting, by Mr. Cudlip, chairman, submits Report 25 of that committee, reporting back to the convention **Committee Proposal 40,** A proposal with reference to public retirement systems;
with the recommendation that the style and form be approved.
William B. Cudlip, chairman.

For Committee Proposal 40 as reported by the committee on style and drafting, see under date of April 19.

PRESIDENT NISBET: Referred to the order of second reading of proposals.

SECRETARY CHASE: The committee on style and drafting, by Mr. Cudlip, chairman, submits Report 26 of that committee, reporting back to the convention **Committee Proposal 41,** A proposal to provide for a 2/3 vote of the legislature for non-governmental appropriations;
with the recommendation that the style and form be approved.
William B. Cudlip, chairman.

For Committee Proposal 41 as reported by the committee on style and drafting, see under date of April 30.

PRESIDENT NISBET: Referred to the order of second reading of proposals.

SECRETARY CHASE: The committee on style and drafting, by Mr. Cudlip, chairman, submits Report 27 of that committee, reporting back to the convention **Committee Proposal 42,** A proposal to include in the constitution all of sections 1, 2, 3, 4 and 8 of article IX entitled "impeachments and removals from office;"
with the recommendation that the style and form be approved.
William B. Cudlip, chairman.

For Committee Proposal 42 as reported by the committee on style and drafting, see under date of April 30.

PRESIDENT NISBET: Referred to the order of second reading of proposals.

SECRETARY CHASE: The committee on style and drafting, by Mr. Cudlip, chairman, submits Report 28 of that committee, reporting back to the convention **Committee Proposal 43,** A proposal pertaining to aliens and property rights;
with the recommendation that the style and form be approved.
William B. Cudlip, chairman.

For Committee Proposal 43 as reported by the committee on style and drafting, see under date of April 30.

PRESIDENT NISBET: Referred to the order of second reading of proposals.

SECRETARY CHASE: The committee on style and drafting, by Mr. Cudlip, chairman, submits Report 29 of that committee, reporting back to the convention **Committee Proposal 50,** A proposal to require the legislature to provide sufficient taxes to meet the state's expenses covering the substance of section 2, article X of the 1908 constitution;
with the recommendation that the style and form be approved.
William B. Cudlip, chairman.

For Committee Proposal 50 as reported by the committee on style and drafting, see under date of April 19.

PRESIDENT NISBET: Referred to the order of second reading of proposals.

SECRETARY CHASE: The committee on style and drafting, by Mr. Cudlip, chairman, submits Report 30 of that committee, reporting back to the convention **Committee Proposal 57,** A proposal to require a public hearing on all budgets of local units of government before the budgets are approved;
with the recommendation that the style and form be approved.
William B. Cudlip, chairman.

For Committee Proposal 57 as reported by the committee on style and drafting, see under date of April 19.

PRESIDENT NISBET: Referred to the order of second reading of proposals.

SECRETARY CHASE: The committee on rules and resolutions, by Mr. Van Dusen, chairman, reports back to the convention **Resolution 57,** A resolution promoting fellowship and understanding among the constitutional convention delegates; with a substitute therefor, recommending that the substitute be agreed to and that the resolution, as thus substituted, be adopted.

[Following is the substitute for Resolution 57:

A resolution for continuing and increasing fellowship and understanding among the constitutional convention delegates.

Whereas, The constitutional convention has been immeasurably enriched in its morale and effectiveness by the close association and fellowship of the delegates throughout the work of the substantive committees of the convention; and

Whereas, Said committees, with one exception, have now substantially completed their work; and

Whereas, In the unanimous opinion of the delegates it is good that such association and fellowship be continued; now therefore be it

Resolved, That the president of the convention create or direct an appropriate committee to devise ways and means by which the convention delegates may, from time to time and without public expense, be drawn together in congeniality and friendship; and be it further

Resolved, That the purpose of such get togethers be for the sole purpose of enriching and deepening common understanding, mutual respect and fellowship, toward the creation of a noteworthy document.]

R. C. Van Dusen, chairman.

For Resolution 57 as offered, see above, page 365.

PRESIDENT NISBET: The question is on the adoption of the substitute. Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, this resolution was introduced some time ago by Father Dade. The committee on rules and resolutions appointed a subcommittee to consider it and redraft it. We felt that through implementing it by some appropriate committee, to be either appointed by the president or to be referred to by the president, the resolution had merit and we urge the adoption of the substitute and the adoption of the resolution as so substituted.

PRESIDENT NISBET: The question is on the adoption of the substitute resolution as submitted. Those in favor will say aye. Opposed, no.

The substitute is adopted.

The question is now on the adoption of the resolution, as substituted. Those in favor will say aye; opposed, no.

Resolution 57, as substituted, is adopted.

SECRETARY CHASE: The committee on rules and resolutions, by Mr. Van Dusen, chairman, reports back to the convention **Resolution 72,** A resolution amending rule 57 of the rules of the convention; without amendment, and with the recommendation that the resolution be adopted.

R. C. Van Dusen, chairman.

For Resolution 72 as offered, see above, page 1067.

PRESIDENT NISBET: According to the rules, this will lie over for 2 days.

SECRETARY CHASE: That is all of the standing committee reports at this time, Mr. President.

PRESIDENT NISBET: Communications.

SECRETARY CHASE: None.

PRESIDENT NISBET: Motions and resolutions.

SECRETARY CHASE: No resolutions on file.

PRESIDENT NISBET: Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, while there are no resolutions on file, the rules committee authorized me, as its chairman, at its meeting last Friday to move, and I move at this time, that **Resolution 45,** A resolution to provide a schedule for completing the work of the convention by March 31, 1962; as amended by Resolution 75, be amended by deferring each of the remaining dates for 2 weeks. This would simply put over the deadline for the completion of the work of the committee of the whole until March 21 and each of the succeeding dates would similarly be postponed for a period of 2 weeks. The action of the committee was substantially unanimous — I believe there was one dissenting vote — and I urge the adoption of the motion at this time.

PRESIDENT NISBET: The question is on the motion of Mr. Van Dusen. Those in favor will say aye. Opposed, no.

The motion prevails.

Following is Resolution 45 as amended:

A resolution to provide a schedule for completing the work of the convention by April 14, 1962.

Resolved, That:

1. All public hearings by substantive committees shall be completed on or before December 21, 1961, unless otherwise authorized by the convention. This shall not preclude a committee from hearing witnesses invited by the committee.

2. All substantive committee hearings on delegate proposals shall be completed on or before January 5, 1962.

3. All substantive committee proposals and supporting reports shall be submitted to the convention and placed on general orders in accordance with rule 57, paragraph 2, on or before January 31, 1962.

4. The committee of the whole shall complete its consideration of all committee proposals and make its reports in accordance with rule 57, paragraph 4, on or before March 21, 1962.

5. The committee on style and drafting shall complete its consideration of all committee proposals and make its reports in accordance with rule 57, paragraph 5, on or before March 23, 1962.

6. Second reading of all committee proposals shall be completed on or before March 30, 1962.

7. The final report of the committee on style and drafting shall be made in accordance with rule 57, paragraph 8, on or before April 6, 1962.

8. The convention shall finally adjourn on or before April 14, 1962.

MRS. HATCHER: Mr. President.

PRESIDENT NISBET: Mrs. Hatcher.

MRS. HATCHER: I suppose it's too late to ask a question as to the purpose and perhaps the finality of extending the convention date from 2 weeks to 2 weeks. I would like to, if possible, ask for a point of special privilege at this time.

PRESIDENT NISBET: You may ask the question.

MRS. HATCHER: I'd like to ask Mr. Van Dusen if this means that the 2 weeks that the committee has extended, does that mean that this is a deadline? My purpose for asking this is that I am sure that I, as many other delegates, would like to plan future schedules, and I would like to have some idea whether or not we can assume that this will be the final date or will we be continuing to extend the convention 2 weeks at a time.

PRESIDENT NISBET: Mr. Van Dusen, do you care to answer or can you answer? (laughter)

MR. VAN DUSEN: The gentleman wishes he knew the answer. Mr. President, obviously, the rules committee hopes that these dates may be met by the convention. We don't regard them as hard and fast. We feel that the experience of the convention thus far is such that any dates established are somewhat unpredictable. I think, however, that if the work of the committee of the whole can be completed within a period between now and March 21, there is reasonable likelihood that the remainder of the dates can be met. We are hopeful, but we can't promise, Mrs. Hatcher.

PRESIDENT NISBET: Dr. Pollock.

MR. POLLOCK: Mr. President, could I ask Mr. Van Dusen whether he is adjusting the ruling of the attorney general so that the convention can take some appropriate action on a different date?

MR. VAN DUSEN: Unfortunately, Mr. President, Dr. Pollock, that is not within the province of the rules committee.

MR. POLLOCK: I understood that the president had asked the chairman of the rules committee to consider ways and means if we did not meet the original deadline. Am I not correct about that?

MR. VAN DUSEN: Mr. President and Dr. Pollock, the rules committee has that matter under consideration. At our last meeting we agreed to devote a substantial portion of a succeeding meeting to the study of that particular point.

MR. POLLOCK: There is no reason to think that it is a hopeless task, is there? (laughter)

MR. VAN DUSEN: I do not know the answer to that, Dr. Pollock. (laughter)

PRESIDENT NISBET: In the light of that comment and before we go into general orders, I happened to read something this week. I don't think it applies — I'm sure it doesn't apply to anybody here — but it might have application. This is what I happened to read, "It is my understanding that for those who speak by the yard and think by the inch there is a ceremonious treatment by the foot." (laughter) With that start for the week, the Chair recognizes Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, before we get to general orders of the day, may I move that the order of second reading be passed for the week.

PRESIDENT NISBET: The question is on the motion of Mr. Van Dusen that the order of second reading be passed for the week. Those in favor say aye. Opposed, no.

The motion prevails. Mr. Van Dusen.

MR. VAN DUSEN: Now, Mr. President, I move that the convention resolve itself into committee of the whole for the purpose of considering matters on the **general orders** calendar.

PRESIDENT NISBET: The question is on the motion of Mr. Van Dusen. Those in favor will say aye. Opposed, no.

The motion prevails.

[Whereupon, Mr. Van Dusen assumed the Chair to preside as chairman of the **committee of the whole.**]

CHAIRMAN VAN DUSEN: The committee will be in order.

When the committee last met we had under consideration **Committee Proposal 94,** A proposal pertaining to the probate court. Certain amendments have been adopted to section a of Committee Proposal 94 and the secretary will read at this point section a as it currently stands after the amendments which have thus far been adopted by the committee of the whole.

For last previous action by the committee of the whole on Committee Proposal 94, see above, page 1417.

SECRETARY CHASE: Section a, as amended, now reads as follows:

In each county organized for judicial purposes, there shall be a probate court. The legislature may combine 1 or more counties into probate districts, ...

Then going down to line 11:

The jurisdiction, powers and duties of such courts and of the judges thereof shall be prescribed by law. They shall also have original jurisdiction in all cases of juvenile delinquents and dependents.

CHAIRMAN VAN DUSEN: Are there further amendments to section a of Committee Proposal 94?

SECRETARY CHASE: Mr. Faxon offers the following amendment—

MR. MAHINSKE: Point of information, Mr. Chairman.

CHAIRMAN VAN DUSEN: Mr. Mahinske, state your point.

MR. MAHINSKE: I notice in the journal which we just received, on page 697 we had the Leppien amendment, which was adopted, as I understand it—

CHAIRMAN VAN DUSEN: The Leppien amendment was not adopted, Mr. Mahinske.

MR. MAHINSKE: I thought the motion prevailed here. Oh, I see here. So the Leppien amendment was not adopted?

CHAIRMAN VAN DUSEN: The Leppien amendment was not adopted.

MR. MAHINSKE: So we still have in the article here that there can be combining of counties and probate districts?

CHAIRMAN VAN DUSEN: That is correct. Mr. Secretary, will you proceed to read the next amendment.

SECRETARY CHASE: Mr. Faxon has offered the following amendment:

1. Amend page 1, line 14, after "dependents" by inserting "except that juveniles shall not be tried in court as adults".

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Faxon. Mr. Faxon.

MR. FAXON: Mr. Chairman, members of the committee, this was Father Dade's amendment. He was unable to be here today and he asked that I offer it for him. I will read the remarks which he prepared toward this effect.

On Thursday when this matter was under thorough discussion, we asked a question of Delegate Ford. We hoped, in the interest of working out a knotty problem, he would be most helpful. His answer was neither informing, nor illuminating, but full of confutation.

This amendment seeks to put in the constitution in simple language the safeguarding of a basic right for the youthful offender. The complexion of our courts may change. However, human weakness and frailty of human nature will ever be realities of human existence.

In our accelerated society of today we may come to a time when the sympathetic and skillful understanding of the juvenile may be dulled. I feel it is fundamental for the growth of the kind of world we want to live in, that our provision should be absolute in the law of our state.

I urge support of this amendment. It is my opinion that these amended words express the consensus of feeling in the hearts and minds of so many delegates on last Thursday. Sincerely, Malcolm G. Dade.

That will be all the comments that I have to make. Thank you.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Faxon. Mr. Danhof.

MR. DANHOF: Mr. Chairman, members of the committee, I think this amendment was more apropos at the time that we had the original committee proposal before us. I am not sure at this time particularly what it adds, if anything. I think that we have a matter here which does not define any particular restriction. The legislature has provided for the method by which juveniles shall be handled within the probate court. It sets up the procedure and method. I think that this particular matter is a legislative matter and is something that we should not write into the constitution tied in particular to the probate court section. Perhaps if there is to be such a section it should be handled within the civil rights section, as Dr. Nord pointed out when we discussed this particular matter on either Thursday or Friday. Accordingly, for that reason and for the reason that it is a legislative matter, I would urge the defeat of the amendment.

CHAIRMAN VAN DUSEN: Mr. Hodges.

MR. HODGES: Mr. Chairman, I have an amendment quite similar to this on the secretary's desk but I will speak on this amendment and I will speak in favor of it because it is similar.

Now, the argument that this is statutory perhaps has some weight except that all of the discussion on the previous battle of leaving jurisdiction within the probate court seemed to hinge on the fact that most of the delegates felt we should not allow children while they are juveniles to be taken into criminal adversary proceedings to be tried. Now, if this is a prevailing thought, some language similar to this is necessary to plug the gap or the hole in this thinking. At the present time, children between the ages of 15 and 17 may be waived. While the probate court has original jurisdiction, they may be waived on motion of the prosecutor, and if accepted by the probate court, waived to a court of criminal jurisdiction, namely, the circuit court or in Detroit, the recorder's court, and tried as adults. If you want to prevent this, it would seem from the discussion that was had the other day that this would be the way to do it. It is no more statutory in nature, I submit, than the whole article placing the jurisdiction of juveniles in the probate court. And it seems to me that the great sentiment on the floor was to keep this because I think everyone feels that this is the type of court, the non-adversary proceedings, where juveniles should be tried. And until or unless we have language to this effect, I believe that we will run the risk of trying children as they are presently being tried in courts of criminal jurisdiction.

This amendment, I think, has one fault in it, and that is that it sets no age limit, so it would be easy for the legislature if it was of a mind, to lower the age of what is considered a juvenile to a point that will still allow juveniles to be taken into courts of criminal jurisdiction. Both Judge Gadola and I are cosponsoring an amendment to take care of this. But I will have to stand and rise in support of this amendment at the present time.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Faxon. Mr. Stevens.

MR. STEVENS: Mr. Chairman, members of the committee, if it is the intention of this amendment to prevent the present rule of law which prevails in permitting the probate court to waive jurisdiction when it sees fit, I certainly would oppose it. I see no reason why under the present circumstances, with severe crimes being committed in this state by juveniles, it should not be possible if in the opinion of the probate judge he thinks it desirable to waive them to the court of criminal jurisdiction. This applies, of course, only as provided by law by the legislature to juveniles of certain ages. Thank you.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Faxon. Mr. Hodges.

MR. HODGES: I think the problem Mr. Stevens is speaking to, Mr. Chairman, is one that we are trying to prevent. It seems that when you have a particular heinous crime, or one that arouses public emotion, it is plain this is when you get the waiver of the juvenile and the pressure upon the probate court. And I would feel probably that the pressure would probably be stronger outstate than our own juvenile setup, where we've got a special court for it. But this is the very reason that many of us feel something of this nature is needed. Otherwise, when the public pressure builds up, they are waived, and it isn't the particular crime that makes the difference. If a person is a juvenile, I think we have come to the point of history and time where we feel that he should be treated in a different manner. And I submit that one problem you run into if you don't treat him in a different manner, if you get him in a jury trial in a court of criminal jurisdiction and you have a 15 or 16 year old on the stand—I think many attorneys have had the experience that a jury is very reluctant to do anything to convict a child of that

age in a criminal court — and as a result, chances are many times the child will be acquitted, will have no type of training or any type of custody over him when very well he might need some real help and that type of help that he might get through the probate court and through a juvenile court.

CHAIRMAN VAN DUSEN: Mr. Mahinske.

MR. MAHINSKE: I'd like to ask for a reading of this.

CHAIRMAN VAN DUSEN: Will the secretary please read the amendment.

SECRETARY CHASE: The amendment is:

[The amendment was again read by the secretary. For text, see above, page 1432.]

MR. MAHINSKE: I'd like to ask the proponents of this amendment a question through the Chair, if they care to answer it.

CHAIRMAN VAN DUSEN: If Mr. Faxon cares to answer it. Mr. Faxon is not here to answer.

MR. MAHINSKE: Well, without giving him his day in court under his own amendment here, I'll have to state that I would be opposed to this because this is a flat mandatory prohibition against waivers of any type. Frankly, I don't believe that is what —

CHAIRMAN VAN DUSEN: Mr. Faxon has rejoined us, Mr. Mahinske, if you now wish to —

MR. MAHINSKE: I see that Mr. Faxon is back here. I would like to ask if it is your intent to constitutionally prohibit waivers?

CHAIRMAN VAN DUSEN: Mr. Faxon.

MR. FAXON: I am not an expert in this. I don't believe this would do so. I think it leaves to the legislature some degree of latitude with regard to the interpretation of the word "juvenile". I don't think it would prevent waivers as such. Now, I am not an expert on it and I would invite those who are more familiar with this, to comment.

CHAIRMAN VAN DUSEN: It may be helpful, Mr. Mahinske, if you will pardon the Chair; there are 3 amendments pending dealing with this subject, of which the Chair believes you have notice of only 1, or perhaps 2, and will ask the secretary at this point to read, in addition to the Faxon amendment, the amendment offered by Judge Gadola, Mrs. Cushman and Mr. Hodges, and the amendment offered by Mr. Staiger, simply for the information of the delegates. Mr. Staiger has withheld his amendment.

SECRETARY CHASE: Mr. Gadola, Mrs. Cushman and Mr. Hodges have filed this amendment:

1. Amend page 1, line 14, after "dependents.", by inserting "Jurisdiction shall be original and shall not be waived for juveniles 17 and under, and such age may be increased as provided by law.".

CHAIRMAN VAN DUSEN: Now, Mr. Mahinske.

MR. MAHINSKE: Well, I would say that that amendment does exactly what this amendment does. We have our juveniles defined under the statute today as 17. There are areas where I feel that waivers have been justifiably made and should have been made and that there will probably be in the future other waivers made. For these reasons I would oppose this amendment and any proposed amendment that would exclude, constitutionally at least, waivers of, if you want to call them children, or juveniles between 15 and 17 because basically on the fact situations, these people are not juveniles. Primarily they are juveniles chronologically, not otherwise. Socially these are not juveniles that are being waived.

CHAIRMAN VAN DUSEN: Mr. Yeager.

MR. YEAGER: Mr. Chairman, I should like to direct a question to Mr. Danhof, if he would answer it.

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. YEAGER: We refer in the constitution in this particular article a number of times to the term "juvenile". Is the term "juvenile" defined any place in the constitution and should it be? I understand that the word "juvenile" is defined by statute. Does this place the legislature in the position of giving definition to the constitution?

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: It has not been defined in the 1908 constitution and I know of no definition within this constitution except perhaps what might come out of the declaration of rights, suffrage and elections as it relates to qualifications of voting. By statute, you are correct. Basically what constitutes a juvenile or what constitutes a delinquent and what constitutes a dependent has been left to the legislature within bounds, I would imagine. Now, they have determined that at age 17 a person charged with a crime will be tried the same as one 25. Below 17, they have set the fact that he will be tried in the probate court, except as has been pointed out, there may be waiver, which there has been to the age of 15. There is no definition of a juvenile nor is there a definition of a delinquent, for that matter, or the definition of a dependent, Mr. Yeager, to my knowledge.

MR. YEAGER: Isn't it true, though, that in the amendment on Friday, I believe, we struck the words "as provided by law?" Therefore, I raise the point that perhaps, technically speaking, we have no way really of defining what a juvenile is, since you have taken away the right of such definition by the legislature. Is this —

MR. DANHOF: No, because now it is exactly as it was in 1908, and they have passed a statute under the 1908 constitution making these classifications, Mr. Yeager. The exception, as otherwise provided by law, related to the jurisdictional aspect also, but if you are quiet in the constitution and if words need to be defined, they only get defined in 2 ways: either by the court when they come up for a case or by statute passed pursuant hereunder. In this particular case there have been statutes passed pursuant to this particular section.

CHAIRMAN VAN DUSEN: Mr. Higgs.

MR. HIGGS: Mr. Chairman and members of the committee, this amendment is an example of the problem you run into when you think in good conscience you are trying to solve a problem which is fairly technical. I would oppose this amendment.

First of all, you heard a discussion with regard to juveniles and as to what is intended by that, but most important of which is the waiver from juvenile court to circuit court. This is not done in all cases because of the fact that you want to treat the juvenile more harshly. It may be, as a matter of fact, that a juvenile is better tried in the circuit court than in the probate court. It may be, for instance, that there are psychiatric services and treatment available in circuit court that are not available in the probate court. You must recognize that in many parts of the state we have courts that have no services immediately available to them. Also, the juvenile does not have in a probate court trial the same constitutional rights that he has in the circuit court, and in matters of a very serious crime it may be to the best interests of the juvenile that he be tried in the adult criminal court.

I think this should best be left to the legislature. It has been handling this problem very nicely. There have been cases where there have been extensions of what is meant by juveniles from 17 to 18 in recent years.

CHAIRMAN VAN DUSEN: Mr. Garvin.

MR. GARVIN: Part of my question has been answered since the amendment was placed on the wall here. However, I wanted to state that since that other has been deleted, it seems to me that the statute is in a condition that it would work admirably under the present circumstances.

I might state here since there has been question of what the age of a juvenile is, that it is statutory for a juvenile. The juvenile doesn't necessarily mean a minor. A minor is one thing, under 21 years, and a juvenile is defined by the statute. Now, if we leave it as it is, since "except as otherwise provided by law" has been eliminated, I believe the courts can proceed to try juveniles as they have been tried. I was interested in Mr. Higgs' comment. I heard him mention Judge Baird quite a bit over the past few months, a probate judge, and it was interesting that Judge Baird tries his cases separately, as Mr. Higgs says, involving juveniles. I checked on attorneys that live in other jurisdictions, and find

out that is true too. I find out that Judge Conlin in Washtenaw county tries his separately, in a different room entirely. I submit that that is because the statute reads as it did in 1908 without the exception, "except as provided by law".

I am submitting these additional matters, although we have been over them, to reemphasize the importance of leaving the last sentence as it is, "They shall also have original jurisdiction in all cases of juvenile delinquents and dependents." Period. And I submit to you that after some experience with dependents and juveniles, that that would be the best thing for the child and the parents and for the state of Michigan. Thank you.

CHAIRMAN VAN DUSEN: Mr. Ford, do you still seek recognition?

MR. FORD: No.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Faxon, which the secretary will read.

SECRETARY CHASE: Mr. Faxon's amendment:

[The amendment was again read by the secretary. For text, see above, page 1432.]

CHAIRMAN VAN DUSEN: Those in favor of the amendment offered by Mr. Faxon will say aye. Those opposed will say no.

The amendment is not adopted. Are there further amendments to section a?

SECRETARY CHASE: Mr. Gadola, Mrs. Cushman and Mr. Hodges offer the following amendment:

1. Amend page 1, line 14, after "dependents.". by inserting "Jurisdiction shall be original and shall not be waived for juveniles 17 and under, and such age may be increased as provided by law.".

CHAIRMAN VAN DUSEN: Mr. Hodges.

MR. HODGES: Mr. Chairman, I made my initial remarks on the other amendment which would be the same as on this one. At this time I would yield to Judge Gadola for additional remarks.

CHAIRMAN VAN DUSEN: Judge Gadola.

MR. GADOLA: Mr. Chairman and members of the committee, I will try to be as brief as possible because after the explanation of the lineal rules this morning, I don't want to solicit the footwork that was described.

This amendment in no way is intended to reflect upon probate courts or probate procedure. We all recognize that there is a great difference in our courts because of population area and the setup of the courts. In our metropolitan areas we have extremely fine probate procedures with adult groups of probation officers, which they do not have in the sparsely settled communities. Something has been said here relative to the mental equation that the sparsely settled communities do not have. But they do have it. Any time that a prosecutor believes that any boy or anyone else is a mental case, he may file in the probate court to test that mental capacity, and that would be the fine thing to do.

The reason for advocating this amendment that I have had is this: after years and years of experience with waivers from probate court, I have always thought that there were too many waivers of these boys at 16. I say boys because in all of my experience I have had but 2 girls, and so it's all boys under this waiver provision. Now, the reason for this is this — you know, we'll first look into the reasons why the amendment shouldn't be given — they say, "Well, if some juvenile commits some extremely atrocious crime, he should be waived to circuit court." Well, perhaps that's true; but remember, that atrocious crime is the exception, oh, grossly the exception. And what happens to all the rest of these juveniles that have not committed atrocious crimes, such as stealing automobiles and other things? In a great many jurisdictions the prosecutor loves a conviction; and I am not criticizing the prosecutor for that. And the police officer loves a conviction; and I am not criticizing him for that.

But I do say this: we are attempting to protect not only youths, but the adult. That youth is going to become an adult sometime. One of the greatest examples that I ever had of that was when a man was summoned for jury duty and on the examination, as we always do, we ask the jurors if any of them have ever been arrested or convicted of a crime. They all said no. After the examination was over, this man came into my office and he said, "Judge, I want to be excused from jury service." And he said, "I'll tell you why. I'll honestly tell you why. I lied in there in the courtroom," he said, "for this reason. As a boy, I stole an automobile. I was convicted. I was punished." He said, "For years I've lived here in the city of Flint." He was a southerner — it was in the south. He said, "I've lived here in the city of Flint. I've raised my family. My children are going to school here. I am a business man here. I am a member of the church, carrying out the work," he said, "and am I going to be damned now after all these years? Because I know the question will be asked over and over again if I'm selected for jury service in any case." I said, "No." I said, "As a juvenile you should have been protected more than you were. Instead of being branded as a felon, something else should have been done with you. You are excused from jury service." That was one opportunity I had to correct something that shouldn't have needed correction.

I've had any number of these boys 16 brought before me that I didn't want before me at all, but I had nothing to do about it. They were waived from probate court. What could I do? I put them on probation. That didn't mean anything. Very few of them violated their probation but that stamp of a felon was upon them. And later on if they sought a position, they required a bond. What happened? Every bonding company and every man here that has ever had anything to do with bonding companies knows that the first question that is asked is, "Have you ever been convicted of a crime?" And they don't ask what the crime is or how old you were or anything about it. If you've been convicted of a crime, you're a poor risk and out you go.

That's why I want you to increase this age just 1 year, just 1 year. That's all that I ask by this amendment, that you increase it 1 year. They can waive now for that 1 year but at the end of that year they can be charged as an adult anyway. And what are we doing here? Are we paying any attention to what a juvenile is? We are making a juvenile an adult in criminal matters when he is 16. You can make him an adult in criminal matters at 16. But in every other activity of life he can't be an adult until he is 21 — with certain exceptions, of course. Nevertheless, we don't allow him to vote. We don't allow him to enter into contracts. We consider him as a child up until he is 21 really, but in criminal matters he is an adult at 16. And I say let's keep him in juvenile court. It can be handled. Later on, no matter what they say, all these atrocious crimes, he may be a repeater and all these things. If he is, he'll be back, and after 16 he'll be handled. If we had any place to keep him, if we had any place to help him as a juvenile, after we have had him in circuit court, it would be fine. But we have no place.

There was established a few years ago under the name of one of the delegates here, the Pugsley camp, where we sent some of the juveniles — they were not juveniles; they were youngsters — and they were sent to that camp for correction. But they were convicted of a felony. They are felons. Remember that. So let's think that over. Protect them.

I'm sorry I took as much time as I did. But let me appeal to you — everybody but Ann here because she says she's not going to have any grandchildren (laughter) — let's appeal to you as fathers, mothers, grandmothers and grandfathers — let's at least protect them for 1 more year.

CHAIRMAN VAN DUSEN: Mr. Hodges, the Chair believes you retained the floor. Do you wish to yield at this time?

MR. HODGES: No.

MR. KING: Mr. Chairman.

CHAIRMAN VAN DUSEN: Mr. King.

MR. KING: Mr. Chairman and fellow delegates, could I have that amendment read again? I am not sure I understood it.

CHAIRMAN VAN DUSEN: The secretary will read the amendment.

SECRETARY CHASE: The amendment is:

[The amendment was again read by the secretary. For text, see above, page 1434.]

MR. KING: Thank you. Despite what was said by the learned Judge Gadola, I am afraid that I would have to be opposed to this sort of an amendment. The idea of extending the age 1 year, which is what Judge Gadola mentioned, I think is very commendable. But we are also taking away the right to waive jurisdiction. I think this is a problem we are bound to get into when we try to draft details into this section. I frankly favor it the way it came out of committee.

Those of you who are lawyers, I commend to you for your reading in the February issue of the Michigan State Bar Journal, an article entitled, The Juvenile Court, Salvation or Damnation For Youthful Offenders. This is an excellent article. It points out that by and large we do have a good system. It's a young system but it's a good system, our juvenile system, but that there are many areas where it could be substantially improved. There has been criticism — very serious criticism. I could read you some. Speaking of the juvenile court, a fellow by the name of Olney said:

> It is fast developing into a complete system of fascism, as dangerous to our institutions as communism. Our youth are jailed, bailed, granted or denied rights on the mere order of probation officers, sheriffs and other executive officers. Laws and regulations are not made by legislation or settled law but by those in control . . . This theory of divorcing the home from the direct control of the parents as to discipline sets a dangerous precedent. It centers the function of fatherhood and motherhood in the state and in principle is socialistic . . . .

Now obviously, this is a very severe criticism of the juvenile system in this country and I don't think it's wise. I do think that there are cases, many cases, where 15, 16 and 17 year olders ought to be tried in a circuit court, and I view some of the remarks as being criticisms of the circuit court. These men have hearts too, the circuit judges, and they can be trusted. There may be zealous prosecutors and zealous police officers, but there are also zealous men on the circuit bench of the state of Michigan. And sometimes this works to the disadvantage of the youthful offenders. Let me quote again from this article:

> Many critics fear that the juvenile court will become a form of star chamber with little to restrain the judge but his own common sense. The Michigan code has been designed to meet this objection. However, there is no public trial, rules of evidence are not required to be rigidly followed, an oath may be given but is not required, and self incrimination and confrontation [of witnesses] are matters not specifically covered.
>
> There are certain procedural safeguards that could surely be practiced without presenting any conflict between the dual goals of rehabilitation and protection of the individual against arbitrary state action. The juvenile court would not suffer if better stenographic records were kept, the statutes were more precise in establishing jurisdictional standards, the referees were trained in the law, and more protection were given in the matter of detention before trial without an arrest warrant or hearing. Indeed, correction of these faults would do much to assuage the critic's attack upon those lax procedures which court officials deem essential to the system.

And I think we've seen in the last few days on the front pages of the newspapers just how this can happen, how a youngster can be kept and confined, as far as I can see, completely unlawfully.

So I say to you that this is not the sort of thing that we ought to be writing into the constitution. Now, if this matter came up across the street in the legislature and they wanted to give this a trial run, treat everyone 17 years and younger as a juvenile, with no waiver possible, then perhaps I'd be inclined to vote for it over there. But I think we are tying our hands far too much. There are better systems. Quite frankly, I think a family court is one of those better systems. We have already decided never to let that happen in Michigan without constitutional reform, assuming this constitution passes. This, I think, is unfortunate. But we are going one step further and I think we ought to think very carefully before we take this kind of a step.

CHAIRMAN VAN DUSEN: Mr. Ford, do you seek recognition at this time?

MR. FORD: A question to the proponents of the amendment. Do you mean by this that a person who has not yet reached his eighteenth birthday cannot be tried as an adult?

CHAIRMAN VAN DUSEN: Mr. Hodges? Mrs. Cushman? Judge Gadola?

MR. GADOLA: I will answer that. It's 17. This just moves it up from the present 16 to 17 and it doesn't go to 18. That is our intention, at least.

CHAIRMAN VAN DUSEN: Mr. Ford.

MR. FORD: Well, of course, no waiver is necessary over 17 because one moment after the child becomes 17 he is treated as an adult and the waiver is not in consideration. But the way I read this language, it says juveniles 17 and under, which means to me that a person who is past his seventeenth birthday is 17, or it may be under his seventeenth birthday, and I would assume that the cumulative effect of this language is that we are talking about children under 18. I think the present statutory breaking point is the seventeenth birthday. What I am asking is whether this is just 2 ways of construing the language or whether they meant the eighteenth birthday.

MR. VAN DUSEN: Judge Gadola.

MR. GADOLA: I believe it was intended for the seventeenth birthday.

If I may, while I'm on the floor, make one more little remark. Remember that everything relative to this at the present time is by statute and peculiarly — and I've questioned this all the way through this provision here — nowhere in the constitution are they trying to state what a juvenile is. They're leaving it to the statute, and unless something is done, the legislature can make it any age it wants to. And in addition to that, remember that the handling of a juvenile is all statutory. It's pretty near a whole little book by itself as to what's got to be done with him as soon as he is arrested, and you know, it's really more marked by its disregard than by its regard. In other words, any police officer arrests a juvenile, he is supposed to immediately go and find his guardian or parents; he isn't even supposed to take him to question at all. They don't do that. They don't do that. He is taken in, questioned, confesses, and everything else before he has a chance to talk to his parents or guardian. The statute doesn't say that. In addition to that, he's not supposed to be incarcerated at all with adults. They throw him in the county jail or at police headquarters just the same. There's the question. Are we protecting the juvenile? That's all I'm looking for is protection of that juvenile.

CHAIRMAN VAN DUSEN: Mr. Ford.

MR. FORD: I just sent to the library for the probate code. Apparently someone else has it out. I don't know if it's here on the floor or not. But it is my understanding of the probate code that the waivers of procedure were involving the ability of the child to defend himself, actually, and it doesn't relate to the time of the commission of the offense entirely but permits waiver after the child has reached 15 before he is 17, and this 15 is merely an age when they decide that before he is 15 he can't defend himself and after he is 15 he can, so they take a 14 year old and hold him until he is 15 and then file a petition. Is that right, Judge?

MR. GADOLA: No. The supreme court says you can't do that. They did do that, yes.

MR. FORD: It is my understanding this has been abused in some ways. The theory of this is very good. But I think Mr. King has raised a good point, and that is that some of us are a little bit leery about putting it at 17 because what our standard might be today might be different in the future. I don't know how long ago it was, but I know that Michigan has had at least 2 adjustments in the statutory rape age and

perhaps this is an age that may be adjusted either up or down in the future, depending on our experience. It seems to me that it would be a matter better left to the legislature if we make it clear that we are not going to commingle the juveniles, however they are defined, with the adults.

CHAIRMAN VAN DUSEN: Mr. Higgs.

MR. HIGGS: Mr. Chairman and members of the committee, this particular idea, as far as I know, was never brought to our committee by anyone. I didn't hear anyone argue or contend for such a provision as this. Consequently, it is a little difficult to have to sit and do some thinking right here on the floor as to what the hazards involved are. I think Delegate King has brought out a few, in particular, and there are others.

I'd like to call your attention first to the fact that the legislature has actually extended the age in certain cases from 17 to 18 so that the probate court and the circuit court have concurrent jurisdiction over certain classifications of juveniles in that age bracket. There is no reason to believe that the legislature is going to go backward. Second, I think we've got to bear in mind, as Delegate King has brought out, the ideas in the current state bar journal. A juvenile may be better off in the circuit court than he is in probate. He has certain constitutional rights guaranteed to him in the circuit court that he does not have in the probate court. As a parent, I may prefer my child, if he were 16, to be tried in the circuit court because of that fact. There are other children who may at that age be better off tried in the circuit court. And you must bear in mind the proceedings in a probate court are summary in many situations and that once the jurisdiction has attached, the court actually becomes a part of your family. Now, in the circuit court you have a right to a public trial. You have the right to be confronted by the witnesses. The child has the right to an attorney to help him, which he does not have in the probate court. He has the right to bail. Delegate King has already pointed out some of the deficiencies — problems, I should say — with regard to the stenographic records, and other proceedings. Now, I don't mean to be critical of the probate court. We heard Delegate Habermehl point out the lack of facilities the probate courts have in some parts of our state, where they are working all alone, a 1 man court. Thirty-three of our probate judges are nonlawyers.

Like I say, it was not brought to the attention of the committee. No one came before our committee and proposed anything like this, and I think it is hazardous if we attempt to rigidly incorporate into our constitution a provision which would actually invalidate a whole body of statute law that I presume there is some basis and foundation for in experience.

CHAIRMAN VAN DUSEN: Mr. Baginski.

MR. BAGINSKI: Mr. Chairman, delegates, let's break this down and let's see the picture clearly. If you take away from the probate court the waiver right, anyone picked up by the probate court charged with an atrocious crime, will have to be tried by the probate court or the juvenile section, and the probate judge there, if he finds the juvenile guilty, his choice then is to send the child to the boys vocational school or, if he finds that he is mentally ill, he has to send him to a mental hospital. In most of these cases, the children are mentally ill, mentally disturbed. Now what happens if a probate judge is forced to send this boy or girl who committed this atrocious crime to a mental hospital? That hospital in our area would be Northville. The child has to be placed in a dormitory with maybe 10 other boys and the 10 boys who are there are mentally ill and the reason they are mentally ill is they may be introverted, nonagressive — maybe just like vegetables — and you take this aggressive type of boy who is charged with murder or rape and you let him loose with these 10 other children who are mentally ill, and you are setting back the care, treatment and cure of these 10 mentally ill children a year or 2 because you permit this aggressive person to go into this dormitory.

Now, on Friday we mentioned the case of Johnny Smith. This morning I called Dr. Brown at Northville and he said he'd take Johnny Smith; but he said, "Baginski, we shouldn't take him in this hospital. He is going to do a terrific amount of damage. That boy should have been sent to the hospital for the criminal insane at Ionia." A probate judge is not permitted to commit to the hospital for the criminal insane at Ionia. That only can be done by the recorder's court or circuit court. Now, if you tie the hands of the courts by this amendment, remember the damage that you may be doing to the other children who are in mental hospitals and who can be cured but whose cure may be retarded because you put in one of these wild, aggressive type patients. I think this amendment should be defeated.

CHAIRMAN VAN DUSEN: Mr. Martin.

MR. MARTIN: Mr. Chairman, the purpose of those who offer this amendment is certainly for the best, but the fact of the matter is that this is a field where we are still feeling our way along; where we don't know whether 15 or 16 or 17 is the proper age to turn a boy over to the circuit court or not. We are still finding that out. It seems to me where you have a situation of this kind it is peculiarly a matter where you want flexibility and legislative discretion to act and adjust the situation according to what the best in psychiatry, the best in medicine, the best in criminal procedure shows ought to be done. For that reason, though it seems to me the purpose of the amendment is good, that it should be left to the discretion of the legislature and the amendment should not be adopted.

CHAIRMAN VAN DUSEN: Mr. Stevens.

MR. STEVENS: Mr. Chairman, members of the committee, Mr. Baginski has made a point on most of the things I wanted to talk about. Incarcerating these children, who are often hopeless, developed criminals, with other children, whether they are delinquents or of unsound mind is certainly an undesirable thing.

In addition, I would like to state that within my observation this happens only where it is an almost hopeless case where the juvenile has become a hardened criminal with many cases; he has been brought into the juvenile court to the youth bureau and other places many times before they go to this extent. Remember, he cannot be waived except by the juvenile judge or the probate judge acting in that capacity. Thank you.

CHAIRMAN VAN DUSEN: Mr. Hodges.

MR. HODGES: This will be the last time I rise on this, Mr. Chairman. I just point out 2 things: one, to Mr. Higgs' comment about the type of proceedings that are conducted and about his children, I would submit — I am sure the records would show — that there are very few instances, indeed, where parents or counsel for the boy have waived or requested a boy to be waived into a criminal case. It is on the motion of the prosecutor that this is done. The other thing is, I had a talk with my own probate judge, who was of different mind than I was on this proposition, and he pointed out the problem they have outstate and that they have waivers outstate because they do not have the facilities to keep these boys or detain them anywhere. There is no regional detention, most of these small counties don't have facilities and they can't keep them in the county jail. I would submit that this would be more reason to adopt this type of thing. It seems to me that if this was adopted, then the legislature would have to clearly see its duty and things like Marty Baginski just pointed out couldn't happen; that there are needs. We do need additional facilities which we don't have at the present time. There is no answer. There should be maximum detention or places for these children that have committed serious crimes and are maybe mentally incompetent or insane. I think this might help rather than hinder getting these regional detention homes and maximum security places where juveniles of this age can get help rather than waive them out because you don't have the facilities, and waive them out to be sent to Jackson or to Ionia.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Gadola, Mrs. Cushman and Mr. Hodges. Does anybody desire to have the amendment read again? If not, those in favor will say aye; those opposed will say no.

The amendment is not adopted. Are there further amendments to section a of Committee Proposal 94?

SECRETARY CHASE: Mr. Radka has offered the following amendment:

1. Amend page 1, line 8, after "districts,", by inserting "upon approval of the electors of the counties being combined,"; so that the language in the second sentence will read, "The legislature may combine 1 or more counties into probate districts upon approval of the electors of the counties being combined."

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Radka. Mr. Radka.

MR. RADKA: I see no reason to belabor the argument on this proposed amendment. We have heard the chairman of the committee, Mr. Danhof, explain the reason that they didn't allow the referendum provision. It was discussed in committee and rather than set forth that the districting must be approved by the voters or the electors of the counties or by another method such as a 2/3 vote of the board of supervisors for the purposes of flexibility, they left it up to the legislature. I offer this amendment, saying that I feel that if we are going to consolidate probate courts between counties, the people of the counties concerned should have the opportunity to determine the destiny of their own probate courts.

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: Mr. Chairman, members of the committee, if we were in the deliberative body that reposes across the street, I would think that Mr. Radka's remarks would be well taken and I might concur therein. And if we were setting up a mandatory or a self executing provision within this article and within this section, again, this might be the appropriate way to have a check thereon. However, as the matter now stands it is left solely to the legislature. The legislature may combine 1 or more counties into probate districts. This is left solely to its discretion. We are not even sure that it will be done, or as he himself states, he is not sure that it should be by election, by a referendum, by some vote of the governing board of the county, if it be the board of supervisors, or some other means or tribunal which is the governing body of a particular county. We are here leaving solely to the legislature when this will take place, under what circumstances it will take place, and the method by which it is to be accomplished.

The legislature has the power to create or alter circuit lines and it does it solely by law. I don't know whether the legislature would invoke that particular manner in regard to probate districts or not. But I do think that what we have here, again, is what we have had in the past 2 amendments, and is something which is better left to those who have more time to tend to the particular problem of the particular county than we had. We spent 4½ months on the entire court system. I think perhaps that a legislative committee may spend as much as 2 or 3 years studying this one particular aspect thereof.

I think that this is an unnecessary detail, something which will tie the hands of the legislature if it wants to set up a method of combining the particular counties, if it even agrees that in certain areas this is or is not feasible. Certainly, I think that it can best be the judge. I am sure that it is probably amenable to the wishes of the people and will be to the areas involved, being elected to that body every 2 years. I therefore feel that to put this restriction in would be unnecessary and would tie the hands of the legislature on something that is merely permissive and upon which it should have probably the greatest freedom that it can have to study the matter and then if it decides it should do it, to set up the method. The committee of the whole has removed the remainder of that particular sentence and I would therefore urge that the amendment be defeated in regard to the writing in of a mandatory referendum provision.

CHAIRMAN VAN DUSEN: Mr. Radka.

MR. RADKA: I have nothing further to offer other than state there is a principle involved here and I ask for a division.

CHAIRMAN VAN DUSEN: Mr. Radka requests a division on the amendment. Is the demand supported? It is supported.

MR. DEHNKE: Mr. Chairman.

CHAIRMAN VAN DUSEN: Mr. Dehnke.

MR. DEHNKE: Mr. Chairman and delegates, I would be inclined to agree with the chairman of the committee if he had any way of guaranteeing that the legislature would recognize this principle. As has been suggested here previously, at this time we do not know how the legislatures are going to be set up in the future. This would apply in most counties that even now have a very minimal representation in the legislature and there is no guarantee under those circumstances that the legislature will be willing to recognize that the people of the counties involved have a sufficient interest to entitle them to be consulted on it. I think the only safe way to handle this matter is to put the restriction in the constitution.

CHAIRMAN VAN DUSEN: Mr. Sharpe.

MR. SHARPE: Mr. Chairman, I'd like to ask the chairman of the committee, Mr. Danhof, a question if he would care to answer it.

CHAIRMAN VAN DUSEN: You may proceed, Mr. Sharpe.

MR. SHARPE: Mr. Danhof, do you say that you would object to the people having the privilege of recommending this merger of courts if they so desired?

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: I don't know the desires of the people but offhand, if that is the way that it would be set up, I would have no objection, Mr. Sharpe.

MR. SHARPE: In this event, why would you object to this amendment?

MR. DANHOF: I wouldn't object if you set it up for a vote of the board of supervisors either. I think that they would be amenable to the people and I think that perhaps there is a matter of cost and there is a matter of setting up the particular procedure. If the legislature would decide that it would be as well accomplished upon a majority or upon a 2/3 vote of the board of supervisors of the county involved, I would say that that would be a reasonable process. I just think that once you put this in, you are freezing in something which is not in here except if we were making this mandatory that all counties with less than 25,000 would be combined, or combinations thereof until you got to 25,000 or 20,000 shall be combined in the probate districts, then I would say that we should spell out the means by which there should be a check on this by the board of supervisors or by an election.

This is strictly a permissive matter and I think we are writing in unnecessary detail, the same as we would have written it into the home rule provision or anything else. We left that entirely and basically to the legislature. I think this is something we can just as well leave with and allow to its particular discretion what it may feel that is necessary. In counties of a certain size there should be a referendum and in counties of another size it should be handled by the boards of supervisors. I don't know. I don't have all of the details. I wouldn't have any objection to either one.

MR. SHARPE: You would have no objection to either one?

MR. DANHOF: Across the street, but not here.

MR. SHARPE: I see. Who do you think would be more capable of deciding whether or not their county should merge with another county than the people themselves?

MR. DANHOF: Again, now you are getting into a whole question of merger and annexation.

MR. SHARPE: Let's take the word "merge" out and put the word "combined" in then.

MR. DANHOF: Are you speaking of the people? If you have a special election, I would rather leave it to the boards of supervisors, Mr. Sharpe. With the return that you usually get in a special election, where you get 12, 14, 15, 20 per cent of the electorate, I would rather trust the governing body.

MR. SHARPE: Would you support an amendment, then, stating so?

MR. DANHOF: No, I will not because I think it is legislative detail.

CHAIRMAN VAN DUSEN: Mr. Garry Brown.

MR. G. E. BROWN: Mr. Chairman, members of the committee, I'd like to address a question to Mr. Radka, if I may. In your language, Mr. Radka, you say "upon approval of the electors of the counties being combined." In this instance do you mean upon approval of the electors of each of the counties being combined?

CHAIRMAN VAN DUSEN: Mr. Radka.

MR. RADKA: This is correct.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Radka. Mr. Ford.

MR. FORD: Mr. Chairman, I think that one of the problems raised is the way the sentence in the committee proposal reads. It has been read, as I understand by conversation off the floor with some of the members, that the legislature itself would by statute say that county A and county B shall thereafter be combined, while I think most of us thought that what we were doing was saying that the legislature might do this but that probably it would provide a method whereby if 2 counties or 3 desire to do it, could do it. Whether it was by the electors or by the board of supervisors I don't think we got into. But perhaps without tying the legislature, we could do it by making it clear at the style and drafting level that what we intend is that the legislature will provide a procedure for this but not necessarily provide a self executing statute that says hereafter county A and county B are combined.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Radka. Does any delegate desire to have it read further? If not, a division having been ordered, those who are in favor of the amendment offered by Mr. Radka will vote aye. Those who are opposed will vote no. The question, Mr. Walker, is on the amendment offered by Mr. Radka. Has everyone voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the adoption of the amendment offered by Mr. Radka, the yeas are 50; the nays are 65.

CHAIRMAN VAN DUSEN: The amendment is not adopted. Are there further amendments to section a of Committee Proposal 94?

SECRETARY CHASE: Mr. Higgs offers the following amendment:

1. Amend page 1, by striking out all of lines 6 through 14. (laughter)

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Higgs, which would strike what remains in section a. Mr. Higgs.

MR. HIGGS: Mr. Chairman, of course, I am not speaking for the committee. This particular amendment is to point out again the problems of legislative detail that we are writing into the constitution, since we are 1 of only 14 states that makes any provision whatsoever for the probate court. And this is where we get into trouble with all this legislative detail. Inasmuch as this particular section was designed to grant the maximum degree of flexibility possible to the legislature to handle the problem, and inasmuch as it is not yet in final form, I will withdraw the amendment at this time and see what it looks like when we get done with it.

CHAIRMAN VAN DUSEN: Mr. Higgs withdraws his amendment. Are there further amendments to section a of Committee Proposal 94?

SECRETARY CHASE: That's all the amendments presently on file on the desk, Mr. Chairman.

CHAIRMAN VAN DUSEN: Mr. Norris.

MR. NORRIS: Mr. Chairman, I just wanted to ask the committee chairman a question. I had contemplated submitting an amendment which would have created a right to counsel on behalf of a juvenile or his parents. I have not submitted that. I just wondered what the thinking of the committee was with regard to that proposition and whether or not the proposition was at all discussed. I understand that most of the witnesses that have appeared before the committee were judges and I don't know whether or not this particular matter was given the kind of thought that I might have given it had I been on that committee.

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: If I understand your question, it was whether we had discussed the idea of guaranteeing to juveniles the right to have counsel. Is that right? What do you mean, for the parents to have counsel or the right to have the parents there?

CHAIRMAN VAN DUSEN: Mr. Norris.

MR. NORRIS: Mr. Chairman, the present statute reads, ". . . and in the event such child or his or her parents desire counsel and are unable to procure same, the court in its discretion may appoint counsel to represent the child." Now, first of all, there is the question of the desire being manifested by the juvenile or his parents that has to take place; and second, "the court in its discretion may." Now, that may suit most circumstances, but there is a serious question because, after all, if you are creating — as we do in this section — a constitutional right on the part of the juvenile to be tried in a juvenile court, you are also saying he has a constitutional right not to have constitutional rights because that's the way the courts have construed it. Now, should he have at least the right to counsel?

MR. DANHOF: The answer to the first part of your question — I'm not sure this was before my committee. Rather, it was before the committee on which you served as the second vice chairman, where you provided for the defendant in all criminal cases to have the right to have counsel. Perhaps the primary jurisdiction would lie there insofar as the committee assignments were concerned because it is a civil right, I would think, rather than a judicial right. Now, the matter had some discussion at the time that Judge Coleman came before our committee, wherein she pointed out — not in as much detail, but alluded to and touched on — the matters that Mr. King referred to regarding the proceedings in the probate court. And in response to some questions, it happened to be her personal procedure that in numerous juvenile proceedings, and more as time went on, she was appointing counsel since she felt that it was needed in a number of cases. She went on to state that this was one of the reasons why, in her opinion, it was necessary that the judge be a lawyer. She tied it more in with that line to make sure that the juvenile's constitutional rights and those civil rights that are perhaps guaranteed to all of us by the federal constitution were protected because even a juvenile would have some rights thereunder and it was tied more to that.

Now, the specific question — we did not write it in here because, to be very frank with you Mr. Norris, I don't think it has to do with a judicial selection or a court administrative problem, which was our basic problem. Now personally, I might agree with you that if we get back to the civil rights section on second reading or something, that this would be an appropriate thing to insert in that section relating to the right of the defendant to have counsel, to likewise include juveniles and their parents, or some appropriate language. But we did have some discussion — not detailed or a great deal of discussion, since we were more concerned with the type of court except for this one general jurisdictional grant to the circuit court — but we had some discussion on it along that line. From her comments and the comments of the committee, it was our opinion that in more juvenile cases there should probably be attorneys to protect the civil rights of the juveniles and of their parents before these particular proceedings. We did not discuss the possibility in great detail of writing it into this particular article.

CHAIRMAN VAN DUSEN: Are there further amendments to section a of Committee Proposal 94?

SECRETARY CHASE: Mrs. Cushman, Miss McGowan, Messrs. Follo and Faxon offer the following amendment:

1. Amend page 1, line 8, after "districts" by changing the period to a comma and reinserting "or combine the office of probate judge with any judicial office inferior thereto.".

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mrs. Cushman, Miss McGowan, Messrs. Follo and Faxon. Mrs. Cushman.

MRS. CUSHMAN: Our purpose in offering this amendment was simply to have the convention rule on this very definite idea of allowing the legislature, under whatever rule it would like to set up, and without the restrictions previously in this, to combine the office of probate judge with a judicial office inferior thereto. That is the purpose that we have. As you can see, it is a reinstatement of certain of the language, but without certain restrictions, allowing the utmost flexibility.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mrs. Cushman and others. Mr. Ford.

MR. FORD: Mr. Chairman and members of the committee, I don't believe that this amendment would change much of

anything except to make it possible to change the name of the probate court because presently the legislature has no restriction on it against adding any powers it wants to the probate court. It can give it criminal jurisdiction; it can give it civil jurisdiction that it doesn't now have; it can give it almost any jurisdiction that it might choose. I know of no constitutional restrictions except that the circuit court has the original jurisdiction in common law matters not otherwise covered and so long as it wasn't in contravention of that, it could do this now. And all this section would do would be perhaps to make it possible to combine the probate court and thereby abolish it by creating a county court. If Mr. Higgs had put this in, I'd know that was what he was after. But I am surprised when I see Mrs. Cushman, because I don't think she is an advocate of the county court. That is exactly what this is leading up to and that is what this language would have been for when it was presented to our committee and rejected.

For that reason, I don't disagree with the principle of flexibility, but I think it is already there and I disagree with the amendment because it would permit something that I should hope they don't want to have happen.

CHAIRMAN VAN DUSEN: Mr. Radka.

MR. RADKA: Mr. Chairman, I rise to a point of order. I question whether this proposed amendment is much different than the language that previously was included in section a and has been deleted by amendment.

CHAIRMAN VAN DUSEN: Mr. Radka, the Chair will rule that the language previously stricken was, "or combine the office of probate judge with any judicial office inferior thereto in any county with less than 25,000 population with supplemental salary as provided by law." The language inserted by this amendment has a somewhat different purpose, as its proponent pointed out, and the Chair will rule that it is in order.

The question is on the amendment offered by Mrs. Cushman and others. Does any delegate desire to have the amendment read again? If not, those in favor will say aye; those opposed will say no.

The amendment is not adopted. Are there further amendments to section a of Committee Proposal 94? If not, the section will pass.

Section a, as amended, is passed. Mr. Sharpe.

MR. SHARPE: Mr. Chairman, this is a last minute thought, you see, but I thought that possibly on line 7, after the word "combine" we should strike the figure "1" and insert the figure "2". I believe that the legislature might find it difficult to combine 1 county. (laughter)

CHAIRMAN VAN DUSEN: Mr. Danhof, do you have any comment?

MR. DANHOF: Mr. Sharpe, Mr. Hutchinson made the remark, "Good point." He has made a note. He will take care of it when they next meet with Mr. Cudlip.

CHAIRMAN VAN DUSEN: The secretary will read section b. Mr. Danhof.

MR. DANHOF: Mr. Chairman, I would move at this time the committee do now rise.

CHAIRMAN VAN DUSEN: Mr. Danhof moves the committee rise. Those in favor will say aye; those opposed will say no.

The motion prevails. The committee will arise.

[Whereupon, the committee of the whole having risen, President Nisbet resumed the Chair.]

PRESIDENT NISBET: The Chair recognizes Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, the committee of the whole has had under consideration one proposal, of which the secretary will give a detailed report.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 94,** A proposal pertaining to the probate court; has considered several amendments thereto and has come to no final resolution thereon. That completes the report of the committee of the whole.

PRESIDENT NISBET: Any announcements?

SECRETARY CHASE: The committee on emerging problems will meet Tuesday, tomorrow, in committee room I on the third floor at 7:30 p.m. Frank G. Millard, chairman.

PRESIDENT NISBET: The Chair recognizes Mr. McLogan.

MR. McLOGAN: Mr. President, I move the convention take a recess until 8:00 o'clock p.m.

PRESIDENT NISBET: The question is on the motion of Mr. McLogan. Those in favor will say aye; opposed, no.

The motion prevails. We are recessed until 8:00 o'clock.

[Whereupon, at 5:30 o'clock p.m., the convention recessed; and, at 8:00 o'clock p.m., reconvened.]

The convention will please come to order.

SECRETARY CHASE: Mr. President, a quorum of the convention is present.

PRESIDENT NISBET: Are there any announcements?

SECRETARY CHASE: None at this time.

PRESIDENT NISBET: Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, I move the convention resolve itself into committee of the whole for the purpose of considering matters on the **general orders** calendar.

PRESIDENT NISBET: The question is on the motion of Mr. Van Dusen. All those in favor will say aye; opposed, no.

The motion prevails. Mr. Van Dusen.

[Whereupon, Mr. Van Dusen assumed the Chair to preside as chairman of the **committee of the whole.**]

CHAIRMAN VAN DUSEN: The committee will be in order and the secretary will read section b of **Committee Proposal 94** dealing with the organization and jurisdiction of the probate court.

SECRETARY CHASE: Section b.

[Section b was read by the secretary. For text, see above, page 1380.]

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: Mr. Chairman, members of the committee, having finally gotten through section a, we turn to section b which has to do with the judiciary of the probate court. For an explanation of the committee report, I should like to call on the delegate from Highland Park, Miss Donnelly.

CHAIRMAN VAN DUSEN: Miss Donnelly.

MISS DONNELLY: Pursuant to our president's words and to our chairman's words and to Mr. Van Dusen's words, this is short. We have made 1 change. We have increased the probate judge's term 2 years. Otherwise it is about what we have in the constitution, only reworded; otherwise, it is consistent with the first paragraph and the 1 change is from 4 to 6 years.

CHAIRMAN VAN DUSEN: Are there any amendments to section b?

SECRETARY CHASE: Mr. Higgs offers the following amendment:

1. Amend page 1 by striking out all of lines 16 through 20, being all of section b.

CHAIRMAN VAN DUSEN: Mr. Higgs.

MR. HIGGS: Mr. Chairman and members of the committee, the purpose of this amendment is the same as the amendment which I am reserving with regard to section a. I will withdraw it at this time and possibly introduce it at a later time.

CHAIRMAN VAN DUSEN: Mr. Higgs' amendment is withdrawn. Are there any further amendments to section b?

SECRETARY CHASE: None on file, Mr. Chairman.

CHAIRMAN VAN DUSEN: If not, it will pass.

Section b is passed. Are there any amendments to the body of the proposal? Mr. Radka.

MR. RADKA: Mr. Chairman, may I direct a question to Miss Donnelly through the Chair, please?

CHAIRMAN VAN DUSEN: Proceed, Mr. Radka.

MR. RADKA: Miss Donnelly, you stated that section b is consistent with section a. I would ask, is section b consistent with section a as amended?

MISS DONNELLY: In my opinion, yes.

CHAIRMAN VAN DUSEN: Are there any amendments to the body of the proposal? If not, it will pass.

Committee Proposal 94, as amended, is passed. The secretary will read Committee Proposal 95.

SECRETARY CHASE: Item 6 on the calendar, from the committee on judicial branch, by Mr. Danhof, chairman, **Committee Proposal 95,** A proposal pertaining to appeals from administrative tribunals. Amends article VII by adding a section.

Following is Committee Proposal 95 as read by the secretary, and the reasons submitted in support thereof:

The committee recommends that the following be included in the constitution:

Sec. a. ALL FINAL DECISIONS, FINDINGS, RULINGS AND ORDERS OF ANY ADMINISTRATIVE OFFICER OR BODY EXISTING UNDER THE CONSTITUTION OR BY LAW, WHICH ARE JUDICIAL OR QUASI JUDICIAL AND AFFECT PRIVATE RIGHTS, SHALL BE SUBJECT TO DIRECT REVIEW BY THE COURTS AS SHALL BE PROVIDED BY LAW. THIS REVIEW SHALL INCLUDE, AS A MINIMUM, THE DETERMINATION WHETHER SUCH FINAL DECISIONS, FINDINGS, RULINGS AND ORDERS ARE AUTHORIZED BY LAW, AND, IN CASES IN WHICH A HEARING IS REQUIRED, WHETHER THE SAME ARE CLEARLY SUPPORTED BY RELIABLE, PROBATIVE, AND SUBSTANTIAL EVIDENCE ON THE WHOLE RECORD.

Mr. Danhof, chairman of the committee on judicial branch, submits the following reasons in support of Committee Proposal 95:

Sec. a. The committee recommendation will create a new constitutional provision. Since the adoption of the 1908 constitution, the field of administrative law has assumed a more significant position in the jurisprudence of our state. This explains the absence of a similar provision in the present constitution and justifies the present consideration of problems that arose in the developmental stages of this distinct field of law in our state.

The committee recognized that this area poses several distinct problems. The committee, however, addressed its attention exclusively to the specific problem that falls within the purview of its primary jurisdiction, namely, the scope and method of judicial review of administrative decisions.

The proposed language is designed, in the main, to afford a full and adequate method of review of administrative agency decisions consistent with established principles of sound administrative practice.

CHAIRMAN VAN DUSEN: For an explanation of Committee Proposal 95, the Chair will recognize Mr. Danhof.

MR. DANHOF: Mr. Chairman, before proceeding with an explanation of this particular section, there is on the secretary's desk an amendment which I have filed on behalf of the committee which I would like to take up at this time.

CHAIRMAN VAN DUSEN: The secretary will read the committee amendment.

SECRETARY CHASE: Mr. Danhof, on behalf of the committee on judicial branch, offers the following amendment:

1. Amend page 1, line 12, after "clearly" by striking out "supported by" and inserting "erroneous in view of the"; so that the language will read; "in cases in which a hearing is required, whether the same are clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record."

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Danhof on behalf of the committee on judicial branch, on which the Chair will recognize Mr. Danhof.

Explanation—Matter within [ ] is stricken, matter in capitals is new.

MR. DANHOF: Mr. Chairman and members of the committee, at the time that we originally considered this, we wrote the language "clearly supported by reliable, probative, and substantial evidence on the whole record." Subsequently, upon the request of the subcommittee which worked this particular section, we met and struck out the words "supported by" and put in "clearly erroneous in view of the." Now, perhaps to the nonlawyers this may not seem to be tremendously important. But it was found after we had studied this for some time that the way that we had originally written the section put the burden of proof upon the administrative agency, and this we did not intend nor did we want to do. So by the insertion of the amendment, the burden is now upon the person appealing and it is upon him to show that the decision is clearly erroneous in view of the reliable, probative, and substantial evidence. That is, he must show that the administrative agency erred and the administrative agency is not required to show that their decision is supported by the evidence. Consequently, we request and urge the adoption of this particular amendment.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Danhof on behalf of the committee on judicial branch. Mr. Mahinske.

MR. MAHINSKE: I would like to direct a question to Mr. Danhof through the Chair.

CHAIRMAN VAN DUSEN: If the gentleman cares to answer.

MR. MAHINSKE: Is the amendment offered with the thought that the burden going forward with the evidence would shift on appeal rather than remain with the administrative agency?

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: No, not with the burden. But you see, the way it had originally been written — and perhaps Mr. Krolikowski, who will give the report of this will shed some additional light — if an appeal were taken it would be upon the administrative agency to show that their decision was actually supported by the record. As it is now, if we move to amend it, it will show that it is upon the appellant, the one is taking the appeal, to show that the administrative agency erred, which we believe should be the correct view, and that the decision is clearly erroneous by looking at the particular record. Now initially, of course, the burden is on the agency or the burden is upon whomever the legislature places it, in effect, Mr. Mahinske, in the original hearing. Sometimes it is on the agency; sometimes it is on the person who is being brought before the agency, as you well know, to show that he is not in violation of what they claim he is.

MR. MAHINSKE: Administrative agencies being what they are, the majority of them have extremely hearsay evidence rules. Now, your amendment says that they should show that the same are "clearly erroneous in view of the reliable, probative, and substantial evidence. . . ." Now, they may be erroneous with reference to this type of evidence but not erroneous with reference to the allowable or permissible hearsay evidence within the administrative tribunal. Now, do you feel that this would override any finding based on the hearsay?

MR. DANHOF: We would view this as setting a particular standard that there would have to be some reliable, probative, and substantial evidence on the record to support the decision. It was the intent of the committee that this particular thing be done. If I might, perhaps I might yield to Mr. Krolikowski, who might shed a little further light on this particular matter.

CHAIRMAN VAN DUSEN: Mr. Danhof yields to Mr. Krolikowski.

MR. KROLIKOWSKI: Would you pose that question again, Mr. Mahinske?

MR. MAHINSKE: Generally speaking, the rules against hearsay evidence are quite lax in the administrative tribunal. The rule today, as I understand it, is the scintilla rule. In other words, if you have just a little bit of fact and a hell of a lot of hearsay, then you've got a case on your side or against you. (laughter) Now, this wording here, as I see it, doesn't change the rules of evidence at all because on appeal,

the appellant will have to come in — in fact, the burden shifts here to the appellant — the appellant is going to have to show that the finding is clearly erroneous, based on reliable, probative, and substantial evidence. Now, does this change the existing rule any or is it intended to change the existing rule any? This is all I want to know, if you intend to change the existing rule or not.

CHAIRMAN VAN DUSEN: Mr. Krolikowski.

MR. KROLIKOWSKI: When you say "existing rule", Mr. Mahinske, you should be apprised of the fact that there are many existing rules with respect to the scope of review of administrative agencies. Now if, by "existing rule," you refer to the rule under the administrative procedures act, I should say that it broadens the scope of review. We have a number of methods of review that are current in our administrative procedure in Michigan today. Basically, I should think that this would be a reaffirmation of the substantial evidence rule. That is what it is designed to do. And of course, as you will note, it is couched in minimal language. Now, this is the minimum that an administrative agency must adhere to.

MR. MAHINSKE: Except that you have the word "clearly" in here. Then you mention —

MR. KROLIKOWSKI: Perhaps if I define "clearly erroneous" you may get a better insight into what we are seeking to achieve.

MR. MAHINSKE: But the answer I was looking for is, is it not your intent to leave the existing scintilla rule in force; that you feel that there should be some change?

MR. KROLIKOWSKI: Emphatically, no.

MR. MAHINSKE: Fine. That answers my question.

CHAIRMAN VAN DUSEN: Mr. Yeager.

MR. YEAGER: Mr. Chairman, in view of the fact that I apparently need glasses and we can't read what is on the wall on this side, would the secretary be kind enough to reread the amendment, please.

CHAIRMAN VAN DUSEN: The secretary will read the amendment.

SECRETARY CHASE: The amendment is:

[The amendment was again read by the secretary. For text, see above, page 1440.]

CHAIRMAN VAN DUSEN: Mr. Finch.

MR. FINCH: Mr. Chairman and members of the committee, I would like to ask a question of the judicial committee. Putting it in words that I can understand, does this reverse the old rule that the individual is innocent until proven guilty?

CHAIRMAN VAN DUSEN: Mr. Krolikowski.

MR. KROLIKOWSKI: No. This presumption of innocence to which we are presently referring is an entirely different concept and it is a concept that is applicable in the criminal code. It is not intended in any wise to be foisted into this committee proposal. The answer to your question is, no.

MR. FINCH: All right.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Danhof on behalf of the committee on judicial branch. Mr. King.

MR. KING: Mr. Chairman and fellow delegates, I have an amendment which I would like to have considered prior to the committee amendment, if that's possible, because the committee amendment strikes out language which I would want to insert and I would therefore have to change my amendment to put this language back in.

CHAIRMAN VAN DUSEN: It may be done by unanimous consent, Mr. King. Is there objection to considering Mr. King's amendment in advance of the committee amendment?

MR. KROLIKOWSKI: Objection, Mr. Chairman.

CHAIRMAN VAN DUSEN: An objection is heard, Mr. King.

MR. KROLIKOWSKI: In behalf of the committee, I think I should say that we would prefer to have the committee amendments adopted first and then reserve to Mr. King the right that he of course has to modify the committee proposal after we once present it.

CHAIRMAN VAN DUSEN: Your objection was heard, Mr. Krolikowski.

MR. KROLIKOWSKI: Thank you.

MR. KING: In view of his explanation, I would just like to say that the committee almost did something significant here and it's just a shame that they had to go back and retract it. (laughter)

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Danhof on behalf of the committee on judicial branch. Mr. Norris.

MR. NORRIS: Mr. Chairman, I would like to direct a few questions with regard to this matter to Mr. Krolikowski and Mr. Danhof. Do I understand that this particular proposal establishes a standard or test for judicial review for administrative tribunals which now reads that the findings will have to be supported by "reliable, probative, and substantial evidence. . . ." and be clearly erroneous in view of that?

CHAIRMAN VAN DUSEN: Mr. Krolikowski.

MR. KROLIKOWSKI: Yes, that is correct.

MR. NORRIS: Under recent decisions of the court, I understand that it is established, particularly in workman's compensation fields, the standards being supported by competent evidence. Do you feel that the rule established by the court pursuant to the statute, say in workman's compensation law, is inadequate in such a degree that it would create the necessity for a constitutional test that you now propose?

MR. KROLIKOWSKI: In behalf of the committee, the answer is yes.

MR. NORRIS: What particular problems have arisen which in your view would support a need for this revised standard?

CHAIRMAN VAN DUSEN: Mr. Norris, the Chair would inquire whether your question is directed to the committee amendment or whether it is directed to the proposal itself?

MR. NORRIS: Well, as I understand it, the odd language of the amendment does seem to establish a test for a review of findings and rulings of administrative tribunals. What I would like to think here is that we should have before us some, if you will, clear, reliable, probative, and substantial evidence for this proposal.

CHAIRMAN VAN DUSEN: The Chair is still in doubt as to whether your inquiry is directed to the amendment offered by the committee and would urge you to so confine it if you are able to do so.

MR. NORRIS: Well, what I am seeking, Mr. Chairman, and I think it is a legitimate inquiry, is that we have a body of statutory law now in an adminstrative procedures act, and in each act it sets up a taxing authority, workmen's compensation commission, the ratemaking authorities of this state, and what I am trying to find out is what is wrong with the present statutory tests that would create the necessity for our inserting in the constitution a new and broader test.

CHAIRMAN VAN DUSEN: Mr. Krolikowski.

MR. KROLIKOWSKI: Now, with respect to the scope of review that is prescribed to a particular agency, of course, that is a policy question in the first consideration. What the committee is aiming at here with this language is to impose upon all administrative agencies a uniform scope of review, and that uniform scope of review would blanket in, of course, the workmen's compensation, to which you have adverted.

Now, with reference to your specific question as to the justification for this particular rule of evidence to be imposed upon the workmen's compensation, that is a policy question which we are not considering at this time.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Danhof. Mr. Danhof, do you seek recognition? Mr. Ford.

MR. FORD: Perhaps it may seem out of place for me to be asking this question now, since I didn't attend the meeting at which the committee reviewed this language, but Mr. Krolikowski, the present rule of law with respect, for example, to an appeal which is a one way appeal from the suspension of a policeman under civil service statute or charter provision, is that he has a right to appeal from the determination by the civil service commission which in the first instance is an appeal from the person who removed him or the board

that removed him to the circuit court and the circuit court is bound by the findings of fact, and the examination of the findings of fact has in the past been limited to a finding that the facts in the record clearly tend by competent evidence to support the finding made by the civil service commission. Is it your thought that now we would be proceeding in a manner where in addition to showing that there was a fair probative value that there would have to be some greater test met by the civil service commission in sustaining its action, or sustaining the action of the removing authority who fired a policeman, for example, for drunkenness?

CHAIRMAN VAN DUSEN: Mr. Krolikowski.

MR. KROLIKOWSKI: Yes, I think they would. First of all, this language will negate the possibility of conclusive findings of fact on the part of an administrative agency.

MR. FORD: I just sent for a volume of the reports, but I find a headnote here indicating that our court has in the past held that a legislative attempt to create such a rule was violative of the constitution and it seems to indicate that it is a violation of the separation of powers because of the fact that the court is substituting its discretion for that of an administrative body. Was this question gone into at all when your subcommittee was working on this?

MR. KROLIKOWSKI: I think that there is a line of judicial thinking that would sustain that theory. However, I think that you must recognize that the concept of separation of powers is defined in the organic law of the state. Now, if this proposal is adopted, I submit that it would be conclusive on the question of separation of powers so that any cases to which you advert would be obviated by a constitutional provision which defined the separation of powers. This committee proposal would accomplish that fact.

CHAIRMAN VAN DUSEN: Mr. Woolfenden.

MR. WOOLFENDEN: I'd like to address a question through the Chair to Mr. Krolikowski.

CHAIRMAN VAN DUSEN: You may proceed, Mr. Woolfenden.

MR. WOOLFENDEN: Mr. Krolikowski, was this language dreamed up by the subcommittee or is this language the result of a recommendation of our research department or American bar association, or is it in any other constitution? I was just wondering about the background of this specific language.

CHAIRMAN VAN DUSEN: Mr. Krolikowski.

MR. KROLIKOWSKI: This language is in part adopted from the Missouri constitution. The part dealing specifically with the scope of review which embraces the "erroneous in view of" rule of law springs from the uniform code that has been proposed by the American bar association.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Danhof on behalf of the committee on judicial branch to section a of Committee Proposal 95. Mr. Garvin.

MR. GARVIN: I guess you covered it, Mr. Chairman, because it seems that the body of section a is being discussed rather than the amendment. It seems to me that perhaps the delegates would allow the committee to correct or adopt the amendment and then everyone would have the right to talk on the section as a whole, because we've lost considerable time not talking about the amendment so far.

CHAIRMAN VAN DUSEN: The Chair is glad to have his impression confirmed, Mr. Garvin. Mr. Brown, do you wish to speak on the Danhof amendment?

MR. G. E. BROWN: I wish to inquire on the Danhof amendment.

CHAIRMAN VAN DUSEN: You may proceed.

MR. G. E. BROWN: Mr. Chairman, I would like to address a question to Mr. Krolikowski, and that question is this, if the word "clearly" was removed from the original committee language instead of adding the language that you have suggested, would the result be different? Otherwise the language would then read, "whether the same are supported by reliable, probative, and substantial evidence on the whole record" whereas you suggest we insert "clearly erroneous in view of. . . ."

MR. KROLIKOWSKI: Of course, the intensity of judicial review cannot be measured mathematically or in any tangible form, but I should think that it would be the opinion of the committee that there would be a difference, that the "erroneous in view of" affords a broader base for review than the "clearly supported by." I think that is the considered position of the committee.

CHAIRMAN VAN DUSEN: Mr. Brown.

MR. G. E. BROWN: Mr. Chairman, Mr. Krolikowski, when you say "clearly erroneous in view of the reliable" and so forth, aren't you in effect reinserting the rule that has applied to administrative hearings in the past, and that is, if you can find any reliable, probative, and you say "substantial" — but what is substantial? Aren't you in effect establishing the old rule?

MR. KROLIKOWSKI: No, I don't think so. When we say "clearly erroneous" — well, let me say that you can have something clearly erroneous notwithstanding that it has a reasonable basis.

MR. G. E. BROWN: Mr. Chairman, Mr. Krolikowski, my question would then be, wouldn't it still require then that it be supported by reliable, probative, and substantial evidence on the whole record?

MR. KROLIKOWSKI: When the reviewing court is allowed to adopt this "erroneous in view of" position, the court can recognize the fact that there is a reasonable basis, or that the substantial evidence rule has been adopted, but that in spite of the fact that there is a reasonable foundation for the finding of fact, that there still can be an error in judgment. Let me say that it is the recognized authoritative view that the "clearly erroneous in evidence" view is closer to a substitution in judgment than the "substantial evidence" rule as is presently adopted by the courts, and as the proposal would stand, if it were not amended by the committee amendment at this time.

MR. G. E. BROWN: Mr. Chairman, Mr. Krolikowski, in view of the justification for the amendment, the amendment appears clearly erroneous in view of the justification, and therefore, I would not support the amendment and I would suggest that others not support it, and that rather, the word "clearly" be stricken, that "supported by" be reinserted as being the end that many of us who are interested in a paragraph of this nature, supported from the start. I would also like to comment on what Dr. Norris had to say. I am a little bit surprised that he is for limiting the rights of an individual with respect to administrative review, when this is, in effect a civil right.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Danhof. Does any delegate desire to have it read? Mr. Bledsoe.

MR. BLEDSOE: Mr. Chairman, with your consent and the consent of the committee, I would like to ask Mr. Krolikowski a question.

CHAIRMAN VAN DUSEN: On the amendment, you may proceed.

MR. BLEDSOE: Mr. Krolikowski, can you and will you explain in simple language the meaning of this amendment so that those present who probably are not familiar with the legal efficacy of this will understand it?

MR. KROLIKOWSKI: Do you want a definition of terms, Mr. Bledsoe?

MR. BLEDSOE: Just a simple statement so it can be understood.

MR. KROLIKOWSKI: "Clearly erroneous" means that there is a firm and definite conviction of mistake.

MR. BLEDSOE: What does this have to do with? What does this amendment have to do with?

MR. KROLIKOWSKI: Scope of review of an administrative decision or finding.

MR. BLEDSOE: Go ahead.

MR. KROLIKOWSKI: Do you want me to continue defining the terms in the proposed amendment?

MR. BLEDSOE: Yes, please.

MR. KROLIKOWSKI: Of course, the balance of the terms are identical to the terms we had in the original committee proposal. Do you still want those terms defined? We would turn

to that definition in the course of the full presentation of the committee's position unless you feel that you want the balance of the terms defined now.

MR. BLEDSOE: Mr. Krolikowski, I don't want it particularly for myself. I'd like to have it so the nonlawyers can understand it. That is what I am asking for.

MR. KROLIKOWSKI: Well, let me try to fashion it in this manner. If the reviewing magistrate decides that there is something definitely wrong on the record in the decision of the administrative agency, the reviewing magistrate would be authorized to reverse, modify or take any other remedial action which was in the purview of his authority.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Danhof. Mr. Yeager.

MR. YEAGER: Mr. Chairman, ladies and gentlemen of the committee, before we vote, I simply want to urge you to defeat this amendment and adopt the original proposal as it was put out by the committee. Thank you.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Danhof. Mr. Krolikowski, do you seek recognition?

MR. KROLIKOWSKI: Mr. Chairman, on behalf of the committee, I should say that the language that has been recommended by the committee comports with the rules of the most modern concept in administrative law. The committee is of the opinion that it provides a full and adequate scope of review and the committee would urge you to adopt the committee amendment because it is designed to more fully implement the overall concept that the committee intends to advance with this proposal.

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: Mr. Chairman, in addition to what Mr. Krolikowski has stated, let me give you some of the background. At the time that we originally conceived this type of a provision, we had the language as we hoped it will be after it is amended. However, after consultation between Mr. Krolikowski, Mr. Iverson and Judge Leibrand, who comprised the subcommittee, together with the subcommittee of the legislative powers committee, and in going over this with the research department, they came up with "clearly supported by" because this happened to be a more well known rule of law within the state of Michigan. Thereafter we found that the language "supported by" went farther than the committee had definitely intended — because we intend here a bare minimum; if the legislature wishes to go farther, it can. And when you say "supported by" you put a burden upon the administrative agency and what you are in effect doing is, for all practical purposes, removing the value of administrative agencies. Now, whether or not that is a matter which we should or should not have, we can take up after the amendment. But the committee intended originally to set up the minimum. We then went to this language upon advice, thinking that we were doing the same thing. We reflected upon it further and we went back to our original language, which is recommended by Professor Cooper of the University of Michigan, an administrative agency expert, and not only the best in the state, but one of the best in the country. This is the Missouri constitution in essence and what is recommended by the American bar association as a minimum. Now, this is the judicial committee recommendation. If this committee wants to go farther, we can take that up when we get to the policy. But I would urge that you support the amendment. Then if you want to go farther, that will be up to this committee. But our intention was this.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Danhof. Mr. Ford.

MR. FORD: Mr. Chairman, I wish to support the committee's recommended amendment and I hope that we will take a real long look before we adopt the entire section. I feel that the whole thing goes much further than was anticipated but at least the amendment by the committee is a step in the right direction back toward the present rule of law and a more conservative approach, I'm sure, but one that might not do as much violence to our present system.

CHAIRMAN VAN DUSEN: Mr. Mahinske.

MR. MAHINSKE: I'd like to direct this question to whoever should care to answer from either the judicial committee or the rights committee. In section 16 of Committee Proposal 15, we adopted this language, which I don't feel was affected by the original language of the judicial committee, but I think is going to be affected by the proposed amendment. This is the language that we have adopted:

> The right of all persons to fair and just treatment in the course of legislative and executive proceedings, investigations and hearings shall not be infringed.

I just wonder if this sort of cuts away some of the ground under this other provision that the rights committee has adopted.

CHAIRMAN VAN DUSEN: The Chair will recognize Mr. Krolikowski for an answer to the question and will ask that the committee be in order.

MR. KROLIKOWSKI: Mr. Chairman, I certainly don't intend to beg Mr. Mahinske's question at this juncture. However, I do think that it might be more properly directed to the committee after this particular amendment is adopted. I think it goes to the heart of the committee proposal and we should be happy to embark on an answer to Mr. Mahinske's question at that time.

MR. MAHINSKE: Well, then, perhaps the answer to this question directed through the Chair may shed some light on it. Is it the intent of the proponents of this amendment that this restriction should only go to evidentiary grounds for appeal?

CHAIRMAN VAN DUSEN: Mr. Krolikowski.

MR. KROLIKOWSKI: This is intended to serve as a rule of evidence, yes. The answer would be yes.

MR. MAHINSKE: Thank you.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Danhof on behalf of the committee on judicial branch. Does any delegate desire to have the amendment read? The secretary will read the amendment.

SECRETARY CHASE: The amendment as offered by the committee:

[The amendment was again read by the secretary. For text, see above, page 1440.]

CHAIRMAN VAN DUSEN: Mr. Yeager.

MR. YEAGER: I request a division, Mr. Chairman.

CHAIRMAN VAN DUSEN: Mr. Yeager requests a division. Is the demand supported? It is supported. Those in favor of the amendment will vote aye; those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the adoption of the amendment offered by the committee, the yeas are 77; the nays 41.

CHAIRMAN VAN DUSEN: The amendment is adopted. Are there further amendments to section a?

SECRETARY CHASE: Mr. King offers —

MR. DANHOF: Mr. Chairman, if I might —

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: I would like before we get into the amendment, if I may, to yield to Mr. Krolikowski, then to Mr. Iverson for an explanation of this particular section.

CHAIRMAN VAN DUSEN: The Chair will recognize Mr. Krolikowski.

MR. KROLIKOWSKI: Mr. Chairman, members of the committee, Committee Proposal 95 contemplates a new constitutional provision. Since the adoption of our present constitution in 1908, the field of administrative law has been expanded to a point where today it occupies a position of prominent importance in the jurisprudence of our state. The committee proposal strikes at an area that is presently covered in the main by statutory law and case law. In the opinion of the committee a constitutional provision is necessary in order to assure a judicial review of administrative agencies and appended thereto a minimal scope of review. Now, the first sentence of Committee Proposal 95 sets out the requirement that the findings, decisions, rulings and orders of all administrative agencies shall be subject to direct review by the courts. The second sentence sets out the minimum standards of review

that shall be imposed uniformly upon all administrative agencies in the state. Now, the scope of review is couched in the "erroneous in view of" language. By "erroneous in view of the reliable, probative, and substantial evidence on the whole record" it is meant that there must be a firm conviction of the state on the part of the reviewing magistrate after an examination of the full record emanating from the administrative agency.

Now, "reliable" is intended to mean trustworthy. This can go into questions of credibility of witnesses. "Probative" means such evidence as tends to prove a fact or an ultimate fact in issue. "Substantial evidence" means such evidence as a reasonable mind will accept as adquate to justify conclusion. "On the whole record" means that the reviewing magistrate can consider all the evidence in favor and all the evidence against a certain determination.

It was the opinion of the committee that this proposal is necessary to assure full and adequate protection from administrative decisions and findings. In behalf of the committee, I should urge you to adopt the committee proposal. I yield to Mr. Danhof.

MR. DANHOF: I would at this time call upon the delegate from Wayne, Mr. Iverson.

CHAIRMAN VAN DUSEN: Mr. Iverson.

MR. IVERSON: Mr. Chairman and members of the committee, after what Mr. Krolikowski has said, I believe it goes without saying that the members of this committee are entirely familiar with the growth of administrative law over the years and perhaps more familiar with its abuse in some instances. The committee, I believe, had in mind the protection of the public, the individuals, business and otherwise, in the adoption of these recommendations and I might say that in Committee Proposal 123, which we have not yet acted upon, coming from the legislative powers committee, is a measure which I wouldn't say is similar, but has some bearing upon this matter. In other words, 123 has to do with the legislature having some control over the issuance of rules and regulations by an administrative body created by the legislature, and Committee Proposal 95, which we are now discussing, is the protection granted to the individuals by the issuance of a regulation authorized by a legislative act. So it was felt necessary that each have the protection. In other words, it is our opinion — and I think there is little doubt about this — that this is a protection so far as the public is concerned. After all, we have seen the situation where it is possible for the legislature to pass a law with respect to every item necessary and therefore they ended up granting authority to administrative agencies the right of rule making powers. And it has thereby become necessary to protect the people in their right of appeal and their right to be heard in another branch of the government, namely, the judicial branch, on matters affecting their person, their property or their business.

I might say further that we must recognize the fact that perhaps administrative rules and regulations are necessary — the complexity of government these days perhaps makes it necessary — that we be governed to a degree by rules and regulations. However this proposal, in the judgment of the committee, is a safeguard, if you please, against bureaucratic action by an administrative agency which might, so to speak, get the bit in its teeth and run away with it. And I, for one, fail to see why anyone in this room would be unable to support the right of an appeal, a reasonable appeal from an action by an administrative body which is judicial or quasi judicial. We all recognize the fact that they have become such in recent years and certainly the public and business needs that protection.

Now, it seems that from some of the questions asked here and some perhaps eager individuals who desire to make this even stronger than it is, let me caution you slightly. I happen to have had considerable experience in practicing before commissions of the state and I have had my problems with respect to what I considered perhaps power which they asserted which I didn't agree with. But let's bear this in mind, and the committee had this in mind when we requested that this committee of the whole adopt this amendment. As it was originally written, the language said "clearly supported by". This, in effect, the committee felt required practically every act of the administrative body to be tried anew in a court of law; in other words, a trial de novo, if you please; to try all the facts and all the law. And I think that it goes without saying that that would create a hardship which would practically destroy what the legislature intended in the first place, to simplify the administration of the act which it passed. I don't think it was the intention of our committee that any such noose around the neck, so to speak, should be placed upon any administrative body, and for that reason the language was changed. But we felt it still gave proper protection to the people of the state of Michigan or business or individuals in their relationship to administrative bodies and who might someplace along the line be affected by some administrative rule, regulation or decision.

I sincerely believe that with the amendment which we have placed in here we have completely protected the rights of the citizens of this state against a bureaucratic act by an administrative body which is created by the legislature, if you please, and I believe this right, in conjunction with Committee Proposal 123, which of course we have not acted upon, is a complete protection to the people of the state of Michigan and still maintains the division of the 3 branches of government. I certainly urge the support of this proposal.

CHAIRMAN VAN DUSEN: Judge Leibrand.

MR. LEIBRAND: Mr. Chairman and delegates, Committee Proposal 95 which we are now considering does establish a basic constitutional right to appeal to a court from boards, bureaus and commissions; that is, from their decisions. Now, I feel that administrative law as I learned it as a member of the subcommittee, is highly technical. I myself have had but little experience with it. I recall only one instance in the last 8 years where I was required to appear before a state administrative board. I do not normally represent clients with causes before these boards; neither do I represent clients or insurance companies as defendants before these boards. But I do think that the issues that are before us here should be presented a little more clearly and I will try to present them in just as nontechnical language as I can use. I might say that I joined in the committee report both on the majority report and on the amendment, although in both instances I felt that the right of appeal granted to a judicial body was probably not wide enough or strong enough, however you want to say it.

Whatever we put in here with reference to appeals from administrative agencies will be new. The Constitution of 1908 had no such provision probably because there were few or no administrative boards, bureaus and commissions, but since 1908 this administrative government has grown by leaps and bounds. The estimates vary now, but we have heard estimates of from 125 to 150 boards, bureaus and commissions, with great, great powers over private rights and private property.

Now, we are not dealing here, fellow delegates, with peanuts. Let us take a situation before the public service commission. When someone applies for a license to establish a trucking line, perhaps in competition with another line, or when the commission finds that some existing trucking line has violated the rules of the public service commission and the commission seeks to penalize that line or perhaps revoke its charter entirely, we may very well be dealing with something that is valued at millions of dollars, and that is a property right.

Let's take the matter of the granting or the transferring or the revocation of a liquor license. Now, the theory of the law is that a liquor license is only a permit, a temporary grant by the state to the holder, which the state can revoke at any time and do about anything it wishes with. But we who are in the law business and you who have had contacts with hotels and taverns and that sort of thing know that that isn't true. We know that that license, despite the legal theory of it, has a value perhaps of $10,000, $20,000, maybe $100,000.

Let me move on a minute to something which is often in the realm of a sacred cow — workmen's compensation. Now, I don't question the fact at all that the workmen's compensation law as established in Michigan some 40 years ago, or

perhaps more, represented great social progress and social advance but it also represented something else. It represented the power to take money away from one person and give it to another, a power which had hitherto before that only been exercised by the courts. And this isn't peanuts either. I am informed by Delegate Sablich who, I am told, is well versed in workmen's compensation matters, that the maximum compensation award may be $56 a week for a maximum of 800 weeks, which is something like $45,000 of somebody's hard earned cash that is passing by virtue of a nonelected agent, employee, board or bureau of the state of Michigan.

Now, we go to great lengths to assure that a fellow that has been sued for a grocery bill of $501 will have the judicial right of appeal all the way through the gamut of courts through a scale of perhaps 1, 2, 3, 4 or 5 courts. But nevertheless, with these administrative agencies who are transferring thousands and millions of dollars worth of money and property every year — probably more in the aggregate, than do the courts — many of them are almost totally removed from judicial review.

We had the benefit in the committee — as someone has stated — of the research of Professor Joiner and Frank Cooper, one of the greatest administrative authorities, so we are told, in the state of Michigan. And I might say here and now that back in 1952 the legislature attempted to do something about these administrative agencies by providing a uniform administrative procedures act which would give some form of judicial review to people, whether they might be claimants or whether they might be defendants who felt they had been wronged before the state agency. But here is what Professor Joiner tells us about that act:

> The administrative procedures act passed in 1952 prescribes administrative procedure for all state boards, commissions or bureaus authorized to adjudicate contested cases except the workmen's compensation commission, the employment security commission, the department of revenue and the public service commission. Separate legislation exists for the scope of judicial review for these agencies.

Now, the first thing that I feel that this administrative article should do in the constitution is to assure that neither the rights and privileges of judicial appeal now granted by the 1952 act or as construed by the supreme court shall be diminished. In other words, these rights of appeal shall not be diminished. The legislature may enlarge those rights of appeal, but shall not diminish them. And the only way to assure that is to put some provision here in the constitution. Now, Professor Joiner goes on:

> Michigan statutes 17.186 provides for review of the workmen's compensation commission by the supreme court. Findings of fact made by the commission in the absence of fraud are conclusive. The supreme court will not weigh the evidence if there is some competent evidence to support the finding of the commission.

Now let me tell you in layman's language what this means to me. A fellow by the name of Charlie who works in a shop goes out with his bowling league to a bowling alley and he slips and he twists his back and he lies on the floor there in agony and finally a group of his friends pick him up and they get him in a taxicab and they take him to a doctor and the doctor massages him and puts some sort of a sacroiliac belt around him and they take him home and put him to bed. The next day our man goes to work and within the first 5 minutes after he arrives there, he slips on a little greasy spot on the floor, and a short time afterwards he is before the workmen's compensation commission for compensation arising out of and in the course of his injury. Now, 10 or 15 people at the bowling alley may tell how Charlie got hurt; they swear how Charlie got hurt, and when he got hurt, and where he got hurt. The doctor who gave him first aid may testify as to when and how he got hurt. But if Charlie goes in before the commission and says overnight his back recovered completely by morning, he felt no sign of pain when he went to work, but within 5 minutes after arriving at work he slipped on this grease spot, and if the commission awards him compensation, there is nothing in the absence of fraud. The supreme court and the courts cannot weigh the evidence. Unless it could be proven that this was fraudulent, that the deputy commissioner or the commissioner was bribed and there was some actual fraud, that compensation award stands. Now, nobody is more in sympathy with a man that's legitimately injured in a manner arising out of or in the course of his employment than I am. But when you have an administrative system that leaves the agency as the final arbiter — the final arbitrator — of these things, irrespective of the weight of the evidence, then I say it's time that some relief should be given, some control of these agencies should be taken over by this constitutional convention.

We have the same situation arising with the employment security commission. You will notice that Dr. Joiner says appeals from the employment security commission to the circuit court are covered by such and such a law. The circuit court may reverse the decision on questions of fact only if it is contrary to the great weight of the evidence. Review in the supreme court is a drastically limited one of review in the judgment of the circuit court on a writ of certiorari. And certiorari is a decision on the law, not on the facts. Probably 99 out of 100 of these cases that get before boards, bureaus and commissions are based upon decisions of fact. What is the fact? What happened? What was done? What was said? That is beyond the purview of the supreme court to review at all in Michigan employment security cases.

Now, there are other agencies where this right of review is limited. I have already said the effect of the general proposal as originally proposed by the committee was to assure that the legislature did not repeal those protective rights which it was granted by the 1952 act. A further administrative provision in this constitution will, in my opinion, assure that the Michigan supreme court does not in the future stretch the limits of perpetuity in some of these cases and will be given at least some opportunity to review the facts as well as the law on an appeal. What I say applies to both the defendant and the claimant. Currently today the claimant has no more right of appeal than the defendant does, and I feel this right of appeal should be extended to both of them, should be a constitutional right.

Now, the right of appeal that we propose to give by Committee Proposal 95, fellow delegates, is not a lawyer's bill. We don't provide for a new trial where you have to hire a lot of lawyers. As Committee Proposal 95 stands now, it provides for review, both as to the facts and the law on the transcript or on the record made before the administrative agency below. So while we lawyers may have been accused at times in this convention of trying to make business for ourselves, I don't think that we can be so accused in this case. I am in favor of the broad principles intended to be reached by Committee Proposal 95. I think the right of appeal could even be more greatly enhanced, not for the benefit of one party or the other, but for the benefit of both parties who find themselves in a situation involving thousands and perhaps hundreds of thousands of dollars without the right to have their day in court.

I understand there are going to be several amendments to Committee Proposal 95. As to some of them, I shall probably vote for them. As to some, I shall vote against them. But whatever we do, let's not finish this convention without doing something to control this completely arbitrary system of administrative agencies. Thank you.

CHAIRMAN VAN DUSEN: Mr. Gover.

MR. GOVER: Mr. Chairman and fellow delegates, it is my opinion that no person should be prosecuted and judged by the same official. I am not much on the law but it seems that it just isn't right for the same person to both judge and prosecute when it comes to these administrative decisions, which is done in many of these hearings. To be deprived of liberty or property by such an official should have some sort of definite review and that is what this Committee Proposal 95 does for the people. In fact, I think that the hearing should start all over again with a new trial for fairness to all instead of taking on the evidence if it is found to be faulty at all. Thank you.

CHAIRMAN VAN DUSEN: The Chair will advise that while there are a few speakers seeking recognition, it might be helpful at this point to channel the work of the committee to proceed to the consideration of the amendments. The Chair would request that the speakers, unless their remarks are completely general, defer their comments. Mr. Hodges, you may proceed.

MR. HODGES: Mr. Chairman, I would just like to address my remarks to certain remarks made by Judge Leibrand regarding workmen's compensation. I don't know how many other people here are familiar with the field. I worked as a defense attorney in workmen's compensation for some time for a large corporation and one of the grave reasons that we cannot have these tremendous delays in terms of appeal and so on is the terrific burden that is placed upon the person who is injured. Now, it is a well known fact and practical knowledge that you can sweat out an injured worker because he is without any kind of income. He is injured; he has no source of revenue; and if you can wait him out long enough, you can get the right kind of settlement out of him because he needs the money at the present time. Right now, as I read in the papers, it takes up to 13 months for a case to come up in the commission itself. If we are to tack upon this, appeals for any purpose whatsoever, or retrials for all practical purposes, the whole impact of workmen's compensation, as we know it now, on the employee would be lost, and much of the meaningful need he has for this compensation. He would have to surrender his rights for possibly a reduced sum or redemption. Therefore, in these fields of compensation it is difficult to talk in terms of long extended appeal procedures where the weight is so terrifically against one's party.

CHAIRMAN VAN DUSEN: Mr. Norris.

MR. NORRIS: Mr. Chairman, I just have a couple of questions, if I may, of Judge Leibrand. I am a little concerned because on the one hand, I see a larger standard than is now the case when it is required that there be reliable, probative, and substantial evidence produced by the administrative tribunal. As I understand it, Judge Leibrand, that is a greater quantum of evidence in support of the decision or ruling of the administrative tribunal than is now the case. As you cited, there is a question of the great weight of the evidence and some competent evidence. You are attempting to establish a greater standard by asking for the insertion of reliable, probative, and substantial evidence in the constitution. Is that right, sir?

MR. LEIBRAND: You bet your life.

MR. NORRIS: All right. Now, the appellant, whoever he may be, the aggrieved party — whether he be the insurance company or whether he be the claimant or the licensee — in addition, has to establish that this greater quantity of evidence, this greater quantity of reliable, probative, and substantial evidence has to be clearly erroneous. Is there not now a greater burden on the party who is the appellant to upset the ruling of the administrative tribunal? In other words, don't you have a situation here where the noun gives and the adjective takes away?

CHAIRMAN VAN DUSEN: Judge Leibrand.

MR. LEIBRAND: Mr. Chairman, answering Mr. Norris' question, are you referring now to the original committee proposal or to the committee proposal as amended?

MR. NORRIS: As amended, sir.

MR. LEIBRAND: I believe you are correct. That's why I'd like to go back to the original proposal.

MR. NORRIS: Well, does not the administrative procedures act, which you cited, sir, take care of the problem in those areas where the legislature has not seen fit to set forth an appropriate standard of proof?

MR. LEIBRAND: Mr. Chairman.

CHAIRMAN VAN DUSEN: You may proceed, Judge Leibrand.

MR. LEIBRAND: Mr. Norris, it certainly doesn't take care of the problem under the workmen's compensation act, under the employment security commission, under the department of revenue or under the public service commission, which are not included in the uniform procedures act. Does that answer your question?

MR. NORRIS: I appreciate the fact that there were certain exceptions. However, I note with great interest that Committee Proposal 95 has not only the question of commissions, agencies or bureaus — which I understand you cited the administrative procedures act contained — but also administrative officers. What units of government are you seeking to reach by the term "administrative officers" which are not now reached, sir?

MR. LEIBRAND: I understand that among the some 146 administrative agencies there are many who are governed by a number of men — boards, bureaus and commissions. I understand that some of the others — at least a minority of them — simply have 1 head, 1 officer at its head, and we certainly don't want to exempt these 1 officer agencies any more than we do the 5 officer agencies — not as much. I think it is more important that you have the 1 officer agencies reviewed.

MR. NORRIS: Mr. Chairman, if I may address a few more questions. Did I understand you to say that unless there is a provision in the constitution which creates a right of review or appeal, there is not now an appeal? In other words isn't —

MR. LEIBRAND: Well — Mr. Chairman, I have to remember my etiquette here.

CHAIRMAN VAN DUSEN: The Chair is very grateful, Judge Leibrand. (laughter)

MR. NORRIS: I am merely counsel. This is a judge here.

MR. LEIBRAND: There is a right of appeal, sir, under act 197 of the public acts of 1952. I don't think that that even goes far enough but even though it does, what the legislature has put in this year it can take out next year and it can eliminate the entire review procedure contained in that act by a majority vote of both houses, any time. That is something I think the constitution should protect against.

MR. NORRIS: Mr. Chairman, I would like to make a comment on this, if I may. As I understand it, we have a whole series of administrative tribunals, which have grown up for the purpose of dealing with specific problems requiring expertise in these areas — particularly in the rate making field and workmen's compensation and taxes — and in each one of these areas the legislature has made certain provisions with regard to the quantity of proof required to sustain a ruling or an order of an administrative tribunal. And I appreciate the fact that there have been a considerable number of abuses in this area. And I think there is a problem which has to be met. I raise the question, however, of whether or not it is possible that in view of the kinds of problems that have arisen in industrial states calling for multi faceted administrative tribunals, that we don't create more problems than we seek to ameliorate by this kind of provision. I think on the one hand we want to protect adequately and intimately the rights of individuals, associations, firms and corporations that do business or have relationships with other people than with the state. But if you are going to have complicated regulatory agencies, you also have to give them the kind of power to deal with these matters so that you don't put all of their functions back into the courts, which courts cannot deal with these problems.

It was the very function of quasi judicial or administrative agencies to deal with certain technical problems that this whole set of agencies grew up on a national scale, with the interstate commerce commission and the federal trade commission and the whole host of regulatory agencies. And we do have a national administrative procedures act which deals with these matters. And the legislature sought to deal with some of these matters in the administrative procedures act which Judge Leibrand has adverted to. But I think we ought to be quite wary of setting up the kind of test that is established in this provision and then also placing a disproportionate burden upon the appellant, whoever he may be, to establish that that burden, that test, is clearly erroneous.

It seems to me that the provisions here are ambivalent; they move in opposite directions and create problems for everyone. I am not so sure that the provision as a whole does

not create more problems than it solves, especially when, as Mr. Iverson indicated, we ought to look at 95 in conjunction with 123. Committee Proposal 123, as I understand it, states that before there can be the promulgation of any rule or regulation, this rule or regulation has to be filed with the legislature and the legislature may reserve the power to suspend or annul, some kind of a restraint upon administrative tribunals.

The combined impact of 95 and 123, it seems to me, is to unduly restrict an effort on the part of all of us to deal with complicated facts, complicated industrial situations, complicated tax and rate making problems, and may very well hamstring the power of the people to regulate in the public interest. I don't mean by this to suggest any abatement of enthusiasm or desire or interest in the protection of the right of individuals against administrative tribunals and that they might be deprived of rights without due process. But I suggest that these 2 efforts, 123 and 95, do create more problems than they solve. And I personally, unless I am persuaded otherwise, and unless the amendment seeks to clarify the situation, would be moved to vote against both 95 and 123.

CHAIRMAN VAN DUSEN: Judge Leibrand, do you have —

MR. LEIBRAND: I have just one short comment. Committee Proposal 95 does not seek in any way to control the entire judicial review or appellate procedure of these 146 agencies. If you will look at line 9, it simply sets a minimum standard, a minimum below which the legislature may not go in providing for review. The maximum, the method, the details are entirely left to the legislative body. Thank you. Mr. Chairman.

CHAIRMAN VAN DUSEN: The secretary will read the first amendment.

SECRETARY CHASE: Mr. King offers the following amendment:

1. Amend page 1, line 12, by striking out "clearly erroneous in view of the" and reinserting "supported by"; so that the language will then read; "in cases in which a hearing is required, whether the same are supported by reliable, probative, and substantial evidence on the whole record."

CHAIRMAN VAN DUSEN: On the amendment, the Chair will recognize Mr. King.

MR. KING: Mr. Chairman and fellow delegates, as I stated when my amendment was first objected to, this requires putting back some words which the committee of the whole has taken out and I know that this is a difficult thing to ask any group to do. But I am taking out 1 word. Let me explain it this way — the committee did a very substantial job of revision in this particular area and then — I mean this as a figure of speech only; I hope no one will be offended — someone got to the committee. Now that someone, it appears, is a very learned man by the name of Cooper. He inserted the proviso which is presently in the Missouri constitution. Now, it may be that the committee went too far initially, and I would not object to their backing up a few feet. However, what they have done is backed up to the starting point. They have actually, in my opinion, gone back, if not all the way, at least very close to the scintilla rule. To those of you who are not familiar with that term, the scintilla rule means that if there is a scintilla, a tiny bit, of evidence which the reviewing court can hang its hat on and find is in fact there, then it does not affect the decision of the administration, board, tribunal or commission. Now, I am willing to take out the word "clearly" so that what we are saying is that the hearing of a decision must be supported — not clearly supported, but just supported — by reliable, probative, and substantial evidence on the whole record. I can't believe that there is anyone here who would feel that if an administrative decision was not supported by reliable, probative, and substantial evidence on the whole record, that those delegates would want the decision to stand.

Of course, Delegate Norris is completely right when he says that the adjective takes away and the noun gives here. I think perhaps we should say that the adjectives give and the adverbs take away. But there is a conflict there and I am not a student of English, so I won't get into it any more than that. This is a major change. In fact, I'm not sure that it doesn't violate the 3 day rule which states that committee proposals shall lay over 3 days. I don't mind minor changes but this is a major change — 180 degrees. We are not asking for a trial de novo. All we are asking is that we get away from the scintilla rule.

I'd like to just read a quote from the Niles, Michigan Daily Star of December 12, 1961, where the editor states:

> Contrary to the concept of the United States constitution and bill of rights we have today at both state and federal government levels administrative bodies whose officials sit in a 3 way capacity of prosecutor, jury and judge.

Believe me, that is true. As a practicing attorney, I've seen it. And I think that the committee perhaps did go a little too far, but I think that right now we can correct that slight error by removing the word "clearly" and going back to the original committee language. And so I would ask that the committee of the whole do that at this point and time.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. King. Mr. Brown.

MR. G. E. BROWN: Mr Chairman, members of the committee, I rise to support the King amendment. He has done in his amendment the point to which I was speaking before, that is, that I believe by the committee's amendment in saying "clearly erroneous in view of the reliable, probative, and substantial evidence" we are back where we started from, back to the idea that any evidence, regardless of how insignificant, if it is evidence that is reliable and probative, is enough to support the findings. Now, this would say that this must be supported by reliable, probative, and substantial evidence on the whole record. I support wholeheartedly the King amendment. I think this is where we should be. I don't believe we should have stayed with the original committee language with the word "clearly" in there because that puts too great a burden, but with the language as it will be after the King amendment, that is, so that it says what I think the committee intended in the first place, that being whether the same "are supported by reliable, probative, and substantial evidence on the whole record" is where we should be and I would urge every delegate here to support it, it being the proper place to be with respect to this proposal.

CHAIRMAN VAN DUSEN: Mr. Everett.

Mr. Faxon, have you a point of information?

MR. FAXON: Just a point of order. Haven't we already acted upon this by adopting the amendment of the committee and inserting the language that this hopes to delete?

CHAIRMAN VAN DUSEN: Mr. Faxon, the word "clearly" is sought to be stricken by the King amendment. It was not touched by the committee amendment and therefore, in the opinion of the Chair — and the Chair will so rule — the amendment is in order.

Mr. Everett.

MR. EVERETT: Mr. Chairman and fellow delegates, I would oppose the amendment — not because I am out of sympathy with what Mr. King and Mr. Brown have said, but because I think that they may be the ones who are defeating our purpose. As Mr. Krolikowski said earlier, the words "clearly erroneous" have been determined by the courts — I don't believe by our own, because we have never used that language, but by courts in general who have given a distinct meaning which permits the court, if it determines a mistake has been made on the whole record, to correct that mistake. Now, they would have us take out this language which has definite meaning and put in the words "supported by". Well, what does "supported" mean? Does it mean a very small amount of support? Any support at all? Or total support? Well, they don't tell us. And the courts are going to have to decide that for themselves. And they could very easily decide that any competent evidence which supported a finding, no matter how small it was, no matter how much it might be outweighed by other evidence, was support, and therefore, the court would not have a right to overturn the decision. Now, that's right where we are today. I appreciate that's not where they want to end up but I suspect that that's where they're going to end up. I would think that we might better take the

language as to which we have a distinct attached meaning, a recognized meaning, and stand by it and not gamble on something which they think means more, but which may in fact mean much less.

CHAIRMAN VAN DUSEN: Mr. Everett, do you desire to yield to Mr. King for a question?

MR. EVERETT: I do.

CHAIRMAN VAN DUSEN: Mr. King.

MR. KING: Thank you, Mr. Chairman. What court which has any binding authority on the Supreme Court of Michigan has made this determination as to the meaning of the words "clearly erroneous"? Are you talking about the Missouri supreme court?

CHAIRMAN VAN DUSEN: Mr. Everett.

MR. EVERETT: Mr. Chairman, Mr. King, it wouldn't have binding effect on it, but it is judicially interpreted; and granted, our court can throw it aside, and it has been known to do such things, but at least there is less reason to think they would throw this aside than if they would not find that any support was sufficient support.

CHAIRMAN VAN DUSEN: Mr. Martin.

MR. MARTIN: Mr. Chairman, I think the committee started out to negate what we call the scintilla rule and to require that the decision of an administrative tribunal be supported by reliable, probative, and substantial evidence. It appears to me that Mr. King is right, and when we made the committee change, we in effect went back to a rule which was little short of or actually is the scintilla rule. I think his amendment is correct in that it does clearly establish the fact that we want to get away from this rule that the slightest fragment of evidence will support the ruling of an administrative tribunal. I believe his amendment should be supported.

CHAIRMAN VAN DUSEN: Mr. Ford.

MR. FORD: Mr. Chairman, again I want to speak against the amendment and I don't want by doing that to indicate approval of the language without the amendment, but the amendment clearly puts this back in the condition it was in before the committee reconsidered its previous action and corrected the situation that they were creating. And although the Chair has ruled that because the word "clearly" is left out, it is my feeling that the legal import of what we have now is exactly the same as the legal import of what we had in the original committee recommendation.

Mr. King, I think, has misled the laymen certainly, and perhaps some of the lawyers with his definition of the scintilla rule. Our supreme court has defined this frequently and it doesn't say that you have a pinch of evidence and this is good enough. It says that the evidence has to fairly support the finding of fact made by the administrative body or agency — for example, a civil service commission. The civil service commission has to have some facts to act on and those facts have to, when examined on their face, fairly support the findings. Now, this doesn't mean that they could support it entirely on a presumption on a presumption or on presumptions without any direct evidence. It is subjected at the present time to review because it is in the nature of certiorari. I don't think that we should be misled by this over exaggeration of the scintilla rule into believing that Mr. King's amendment will do anything except what Mr. Cooper wanted to do in the first place. Mr. King suggested — and I hope not unkindly — that Mr. Cooper got to the committee and that, as a result of that, they made their change. As a matter of fact, Mr. King, what happened was that Mr. Cooper wrote the original language, which is now your language, and the committee woke up and found out that Mr. Cooper had gotten to it and they made the change. I don't think it is any secret what Mr. Cooper's position is. He is the general counsel for the Michigan manufacturers association, I am informed, and this may have something to do with his point of view on this matter.

But certainly, to support the King amendment is to put back in the pernicious language that was in the original committee report and the committee justifiably decided that that was going too far.

CHAIRMAN VAN DUSEN: The Chair will remind the delegates to keep rule 22 in mind. Mr. Brown.

MR. G. E. BROWN: I should raise a point of information first, Mr. Chairman. What is rule 22? (laughter)

CHAIRMAN VAN DUSEN: You may proceed, Mr. Brown.

MR. G. E. BROWN: Mr. Chairman, members of the committee, first of all in answer to Mr. Everett, when he says that this will permit any evidence, I think that we must read the next to the last line in the committee proposal as it would be with the King amendment, which says, "reliable, probative, and substantial evidence on the whole record." This means that there must be substantial evidence. It doesn't mean that any evidence will be sufficient. Then in answer to Mr. Ford, I think with respect to the King amendment, the original committee proposal in using the words "clearly supported by," I think, went a little too far. I think this is the way Mr. King feels from the way that his amendment has been worded. In a sense it seems to say that there must be a predominance of evidence on this particular point that you look at, and you weigh the evidence. Now, that isn't the question in an administrative hearing. The question is, is it supported not by a proponderance of the evidence, necessarily, but by reliable, probative, and substantial evidence on the whole record? I think it is the place it should be. Once again, I would urge the support of the King amendment.

CHAIRMAN VAN DUSEN: Mr. Krolikowski.

MR. KROLIKOWSKI: Mr. Chairman and members of the committee, in behalf of the committee, I should urge you to defeat the King amendment. I think that the King amendment is ill advised. It apparently contemplates that the language adopted by the committee is some kind of a modified scintilla rule. Nothing could be further removed from the truth. Nothing could be further removed from judicial construction of the language adopted by the committee in terms of "erroneous in view of". We should recognize that the words "reliable, probative, and substantial evidence on the whole record" set out the scope which the reviewing magistrate can review in reaching his decision. He can go into the reliability, into the probativeness and into the substantial evidence on the whole record. The "erroneous in view of" is the conclusion that he finally reaches after screening the entire record. So the King amendment will not cure anything. It will simply reduce the broad concept of review that is contemplated in the committee proposal. I urge you to defeat the King amendment.

CHAIRMAN VAN DUSEN: Miss Donnelly.

MISS DONNELLY: I have a question through the Chair to Mr. King regarding some of the argument that has come on the floor and I believe what his intent was — and my suggestion being that he accept the amendment — after evidence, insert "in view of the whole record". Would that clarify the point he is trying to reach?

CHAIRMAN VAN DUSEN: Mr. King, does the gentleman care to answer?

MR. KING: Mr. Chairman, I would have no objection to that amendment. While I'm here, will Miss Donnelly yield to me for a second?

CHAIRMAN VAN DUSEN: Miss Donnelly yields to Mr. King.

MR. KING: I have a note here, "Mr. King, did Michigan manufacturers get to you?" It is not signed. At this time I would like to yield to Mr. Ford to correct a misstatement that he made.

CHAIRMAN VAN DUSEN: Mr. Ford.

MR. FORD: I want to make it clear that the committee wrote the proposal and the amendment. The language which the committee has now adopted was approved by Mr. Cooper in his recommendations. The language which we struck, I understand from talking to my associates here, was authored by Mr. Joiner of our staff, so that as we now have it, apparently Mr. King was right in his first assertion to some extent and we now agree with Mr. Cooper on the committee level. (laughter)

CHAIRMAN VAN DUSEN: Strict adherence to rule 22

would have avoided all these problems in the first place, gentlemen. Mr. Habermehl. Mr. Habermehl passes. Judge Leibrand.

MR. LIEBRAND: Mr. Chairman and delegates, for reasons given by Delegate Martin, I support the King amendment.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. King. Mr. Bledsoe.

MR. BLEDSOE: Mr. Chairman, does Leibrand yield to a question?

CHAIRMAN VAN DUSEN: Judge Leibrand has yielded the floor, as the Chair understands. You may proceed.

MR. BLEDSOE: May I ask him a question?

CHAIRMAN VAN DUSEN: If the gentleman cares to answer.

MR. BLEDSOE: Judge Leibrand, are you familiar with the methods of the appeal and hearings before the present compensation commission?

CHAIRMAN VAN DUSEN: Judge Leibrand.

MR. LEIBRAND: Mr. Chairman, Delegate Bledsoe, I haven't had a workmen's compensation case either on one side or the other for over 20 years. For some mysterious reason, all the claimants go elsewhere. (laughter)

MR. BLEDSOE: Do you understand that presently there is a method of appeal from the hearing referee to the full board? The de novo hearing presently in the commission?

MR. LEIBRAND: I believe that is the full practice: an appeal from the deputy commissioner lies to the full board, which is within the same department or agency.

CHAIRMAN VAN DUSEN: Mr. Bledsoe, the Chair will ask you to confine your inquiries to the King amendment.

MR. BLEDSOE: I got permission to ask this question and you told me if he would answer it. The King amendment wasn't mentioned. (laughter)

MR. LEIBRAND: Mr. Chairman, I'll be happy to try to answer any question that the gentleman poses.

CHAIRMAN VAN DUSEN: Mr. Bledsoe, will you proceed in order? You will be in order asking questions relating to the King amendment.

The question is on the amendment offered by Mr. King, which the secretary will read.

SECRETARY CHASE: Mr. King's amendment:

[The amendment was again read by the secretary. For text, see above, page 1447.]

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: Mr. Chairman, members of the committee, the only danger that I see in Mr. King's amendment is that the cases could go on and state that this would require not only "supported by" but "a preponderance of". I don't think that anybody would recommend this particular type of rule, because if you do, you are completely emasculating all of the advantages of administrative tribunals.

I don't say that the court has to rule this way under the "clearly supported" and perhaps that's why we did it, because that almost forces them to rule that way. But I think that there is a chance that they could rule on this basis. Now, the language which we adopted, the "clearly erroneous in view of the" is the language in the recent revised model state administrative procedures act, and this is taken as a minimum. There is nothing — I repeat, there is nothing — that would prohibit the legislature from expanding this if it so believed it to be in the best interests of the majority of the people. Now, we submit that in the past it probably hasn't. We do submit that there is language here which will allow the courts to get away from the scintilla rule. I suppose we could be here all night and say under "supported by" or under the language we have they could in effect still have the scintilla rule if the courts want to do it. But there is an opportunity for a court review and for the pointing out on the part of the aggrieved party that the decision of tribunal is erroneous in view of the evidence, as the reliable, probative, and substantial evidence.

I am afraid that if we adopt the amendment we may be going farther than some of us believe is advantageous at this particular time. There is a question here of separation of powers. There is a question as to why the legislature set up an administrative tribunal. There is still the question that it can dissolve it if it so desires. It can pass laws regulating and relative to its use. It has passed some. The committee felt that it had not gone far enough and that we should set out a minimum — I repeat, a minimum — requirement. The legislature can go farther; it could have gone farther, and some feel it has not. For the reason that I fear that we may be going too far and that the "supported by" would give an interpretation that we are getting up to where it has to be a preponderance or by the greater weight of, and in effect giving an appeal de novo and letting the circuit court or court of appeals — wherever the legislature decides it should be sent — get into this particular field, I would at this time feel constrained to oppose the amendment.

CHAIRMAN VAN DUSEN: Mr. Upton.

MR. UPTON: Keeping in mind the word that Judge Dethmers gave us the first evening we were together, it appears to me that the committee has tried to put in some words that are going to be very difficult to interpret. To me as a layman, "evidence supported" is much easier to determine than "erroneous". Therefore, I would support the King amendment.

CHAIRMAN VAN DUSEN: Mr. Yeager.

MR. YEAGER: Mr. Chairman, ladies and gentlemen of the committee, I think this is one of the really very important parts of this constitution that we are writing here. I would like to urge again the support of the King amendment and ask for a division vote.

CHAIRMAN VAN DUSEN: Mr. Yeager requests a division vote on the King amendment. Is the demand supported? It is supported. The question is on the amendment offered by Mr. King. Does any delegate desire to have it read again? The secretary will read the amendment.

SECRETARY CHASE: Mr. King's amendment is:

[The amendment was again read by the secretary. For text, see above, page 1447.]

CHAIRMAN VAN DUSEN: Those in favor of the King amendment will vote aye; those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the amendment offered by Mr. King, the yeas are 67; the nays are 55.

CHAIRMAN VAN DUSEN: The amendment is adopted. The secretary will read the next amendment.

SECRETARY CHASE: Mr. Bledsoe offers the following amendment:

1. Amend page 1, line 6, after "officer or body" by inserting a comma and "except the workmen's compensation commission,"; so the language of the sentence will then read:

> All final decisions, findings, rulings and orders of any administrative officer or body, except the workmen's compensation commission, existing under the constitution or by law, which are judicial or quasi judicial and affect private rights, shall be subject to direct review by the courts as shall be provided by law.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Bledsoe. Mr. Bledsoe.

MR. BLEDSOE: Mr. Chairman, in view of the vote just passed, I would like for the chairman to strike that amendment.

CHAIRMAN VAN DUSEN: Mr. Bledsoe withdraws his amendment. The secretary will read the next amendment.

SECRETARY CHASE: Messrs. G. E. Brown, King and Brake offer the following amendment:

1. Amend page 1, line 7, after "rights,", by inserting "privileges or licenses," ; so the language will then read, ". . . which are judicial or quasi judicial and affect private rights, privileges or licenses, shall be subject to direct review by the courts as shall be provided by law."

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Brown, on which the Chair will recognize Mr. Brown.

MR. G. E. BROWN: Mr. Chairman, members of the committee, I think that the amendment is self explanatory in that

it adds the words "privileges or licenses." We have been speaking to that end in the course of the discussion of the previous amendment in connection with the committee proposal. I have discussed this with some of the members of the committee and they feel that judicial interpretation of the words "affect private rights" contemplates rights that are in the nature of privileges or licenses. Certainly it is in the field of privileges and licenses that the right to judicial review from a determination by an administrative body is most essential. I should like to add that it is with respect to this amendment that Mr. King and Mr. Brake were also cosigners. Apparently their names were lost in the shuffle in putting the amendment up on the wall. I would urge support of this amendment.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Brown. Mr. Ford.

MR. FORD: I wish to oppose Mr. Brown's amendment. I think that he and I can probably agree on some kinds of licenses and privileges, but as I read this, I would take from it the fact that if the state plumbing board, for example, were to revoke a master plumber's license, that he could go to court and have the judge decide whether he was a fit man to have a plumber's license or not. Presently he can go to court and review whether or not the plumbing board had followed the law in revoking his license, but it is the plumbing board that makes the determination as to whether or not he is fit. And this applies to all forms of licenses. I think that Mr. Brown might be shooting at the liquor license proposition, which really isn't a license at all, but a contract between a distributor and the state of Michigan. I don't know whether this would accomplish that end or not. If a real estate or an insurance license was up for a question of dishonest conduct, or a question of conduct on the part of an insurance man that was inimical to what the department of insurance considered was proper conduct for a person so licensed, he could go to a circuit judge, have the circuit judge decide that the insurance commission didn't know what it was talking about, that they don't really understand what a good insurance man is, and he does. The effect of this would be to destroy the actual licensing control of all of the licensing boards in the state.

I respectfully ask that you defeat the amendment.

CHAIRMAN VAN DUSEN: Mr. Krolikowski.

MR. KROLIKOWSKI: Mr. Chairman, in behalf of the committee, I should urge you to defeat the Brown amendment. The Brown amendment is a direct assault on the privilege doctrine as enunciated by the Michigan supreme court. It was not the intention of the committee to overturn that doctrine. If anyone should overrule the privilege doctrine, the supreme court should do it. We were reluctant to insert the word "privileges" because the impact of that word would undermine the entire regulatory process in the state. As Mr. Ford pointed out, presently there is a procedural due process that is attached to all adjudicative facts that come before an administrative tribunal.

What Mr. Brown's amendment will do is allow for a challenge on all legislative facts being implemented by the administrative tribunal. It is the opinion of the committee that this will literally open Pandora's box with respect to regulation of the entire administrative process in the state of Michigan and we urge you to defeat the Brown amendment.

CHAIRMAN VAN DUSEN: Mr. Brown.

MR. G. E. BROWN: Mr. Chairman, members of the committee, I think that the gentlemen that have spoken previously have nothing to fear but fear itself. In the first place, I would direct your attention to the opening paragraph which relates to those hearings which are judicial or quasi judicial in nature. Now, this will eliminate much of the Ford argument, although I think what he had to say was in support of the amendment rather than in opposition to it. He indicated the need for such an amendment to include these words.

I am not concerned about what Mr. Krolikowski has said. I think that the legislature, in providing for the review of what the record shall contain, would not open Pandora's box, so to speak, but rather would provide for a judicial review of an administrative determination which is judicial or quasi judicial in nature. When we say "affect private rights" it seems to me that we are limiting the language from what is contemplated by the very idea of having such a provision in the constitution. When we talk about "affect private rights" we are talking about those rights which are in the nature of a license or a privilege, since a driver's license and all of these things are not rights, but are privileges, and therefore in order to eliminate any possibility of the court misconstruing this language, we should put in the words "privileges or licenses". Now, if the committee on style and drafting thinks that the words "privileges or licenses" are not the proper words, I'd be happy to have them change the words to retain the substance of such words.

CHAIRMAN VAN DUSEN: Mr. Krolikowski.

MR. KROLIKOWSKI: Mr. Chairman, there is no need for the Brown amendment. The objective of the Brown amendment can be achieved under the present laws of the state of Michigan. The Supreme Court of the state of Michigan has ruled repeatedly that procedural due process attaches to license revocation. This is an adjudicative matter and we are protected under the purview of the due process clause. The only area that it will open is the area dealing with legislative fact; the question as to the granting of the license. Now, this is an area that we do not want to invade by this constitutional amendment because the committee has not weighed the impact that this would have upon the regulatory process in the state of Michigan. It is further the opinion of the committee that the supreme court can bring in the adjudicative sources that are required in the revocation of licenses within the contours of the phraseology in the proposal mainly affected by private rights. There are numerous other courts, the courts of California, the courts of Massachusetts that have already brought licensing revocation within the language that appears in the committee proposal. It is the considered opinion of the committee that the Brown amendment is unnecessary and that it will merely cause uncertainty and possibly great harm in the regulation of state agencies.

CHAIRMAN VAN DUSEN: Judge Leibrand.

MR. LEIBRAND: Mr. Chairman, delegates, speaking solely in my personal capacity, I would endorse the Brown amendment. Delegate Ford speaks of the revocation of licenses and privileges and how we shouldn't interfere with them, how it is not necessary for court protection. Let's put that on a more personal basis. That plumber's license is his livelihood, the way he feeds himself and his family. That insurance man's license is his livelihood. And I feel that no man should be deprived of his livelihood without the opportunity for judicial review. I support the amendment.

CHAIRMAN VAN DUSEN: Mr. Danhof, did you seek recognition on the amendment offered by Mr. Brown?

MR. DANHOF: Yes, Mr. Chairman, I wanted to approve what Mr. Krolikowski stated, the reasons why we left these out. If you include the word "privilege" you might be indirectly stating that perhaps on advising the court that now a driver's license is no longer a privilege but it is really getting down to where it is a matter of right. Now, without debating the philosophical aspect of whether that is correct or not or whether that is the tack that we should take, we did not feel that this was the particular section in which to get involved. We have historically ruled in this state that in essence the right to drive a car is a privilege. Now, by inserting this language in here, I think that as Mr. Krolikowski stated, we are going to begin to indirectly state — and maybe adopt what California has — that it is not a privilege to drive a car; it's a right. Maybe this is all right. It's a matter of philosophy. If it is, I think we should put it in a separate section; perhaps state what are rights. But if you think this should perhaps be a matter of consideration by a more deliberative body — perhaps the legislature — if it wants to state that it is a right for everybody to drive a car, this is all right so far as I am personally concerned. But here I think we would just be creating what would lead to confusion. And I would recommend that the amendment be defeated and leave the language as it now stands as amended.

CHAIRMAN VAN DUSEN: Mr. Martin.

MR. MARTIN: Mr. Chairman, it appears to me that we

are taking a long, long jump forward on this last amendment in that we are going into a field where we don't quite see what the full significance of it is. It has long been the law of Michigan that a privilege or a license does not create a property right and if we are now suddenly going to declare that every privilege that we may have in the state of Michigan has become a right on which any interference by an administrative tribunal creates the right of court review, we are going to have more business in the courts than anybody ever dreamed of. It seems to me that the committee proposal is in proper shape at the present time but that if we add this we are going into a completely uncharted field. I think the committee should be supported on this and that the amendment should not be supported.

CHAIRMAN VAN DUSEN: Mr. Everett.

MR. EVERETT: Mr. Chairman, until Mr. Ford's remarks I was inclined to think this language was unnecessary. But I now want to support Mr. Brown's amendment. Certainly, as a member of the committee, when we were talking about rights, I thought one of the most fundamental rights was, as Judge Leibrand suggested, the right to make a living at your trade. Now we are being told that this right is to be taken away from a man without any judicial review. I would remind you again that the whole scope of the proposal is not to substitute the court's action for the administrative body's action, but simply to review the administrative body's action and if it is clearly erroneous and if it is not supported by reliable, probative, and substantial evidence, then to correct it. So that if the administrative agency's act in taking away this license is so supported, the court has no right to substitute its judgment. Certainly, it seems to me it would be shocking indeed to tell a man that his neighbor, who can appeal to a court if he is fined $10 in a traffic matter, may not appeal to the court if his very job is taken away from him by some administrative agency. This would be a fundamental error in not protecting one of the most important rights that all of us have. I think that we should adopt Mr. Brown's amendment.

CHAIRMAN VAN DUSEN: Mr. Habermehl.

MR. HABERMEHL: Mr. Chairman, I'd like to support the Brown amendment and I don't think it will have the earth-shaking effect that the committee seems to think. All it really would say is that when these privileges are affected by some administrative agency, that the person affected would have the right to appear in court; that a court hearing, of course, would be confined strictly to whether or not the facts support the suspension.

In regard to the matter of automobile licenses, I think everyone here is quite aware that we do exactly that sort of thing now, only we have to come in the back door of the court instead of the front door. We petition the circuit court for restoration of driver's privileges and the matter is reviewed there. This would simply permit us to do directly what we now do indirectly. It couldn't possibly create any constitutional rights that are described in here as privileges or licenses. For those reasons, I would support the Brown amendment.

CHAIRMAN VAN DUSEN: Mr. Brown.

MR. G. E. BROWN: Mr. Chairman, members of the committee, I shall be very brief, but I think that Mr. Martin hit upon something that should be answered and that is that in putting "privileges or licenses" into the language of this committee proposal, we are not establishing property rights that are protected as a matter of due process; rather, we are saying that they shall be subject to judicial review. This is not a test of whether or not there is reasonable doubt or whether there is a preponderance of the evidence but rather, is there evidence — reliable, probative, and substantial evidence — that will support the finding of an administrative body? Mr. Everett said this also, but I would like to point out that this is what the provision does. It doesn't provide that this is a property right that is to be protected by due process, but merely that this is a right in the nature of a private right, a privilege or a license that shall be subject to judicial review and subject to the test that has already been adopted.

CHAIRMAN VAN DUSEN: Mr. Boothby.

MR. BOOTHBY: Mr. Chairman and ladies and gentlemen of the committee, there possibly was some note of confusion generated a few minutes ago when Mr. Krolikowski indicated that in the state of California, the driver's license privilege had been construed to be a right, so we shouldn't be too concerned about this since it might be construed to be a right. Mr. Danhof said he agreed with Mr. Krolikowski but came up with a different conclusion, that drivers' licenses should not be construed to be a right. Now I am concerned that the people of the state are not faced with the situation after the constitution is adopted that the courts will draw nice distinctions between what a privilege, what a license and what a right is. I am certain that a person who has a driver's license and might happen to have it taken away, doesn't understand the distinction between privileges and rights. He wants to get into court and have decided the question of whether a certain individual acted arbitrarily and without sufficient reasons.

All we are saying here is that when an individual acts in the capacity of a prosecutor, a jury and a judge — and it doesn't matter whether he is affecting a privilege, a right or a license — we are going to give that person his day in court. And for my own money, I'd rather have my day in court than to leave the possibilities of a result with one single individual with those capacities of a judge, a jury and a prosecutor. I ask the adoption of this amendment and ask for a division.

CHAIRMAN VAN DUSEN: Mr. Boothby requests a division on the Brown amendment. Is the demand supported? It is supported. Miss Donnelly.

MISS DONNELLY: I just want to say, as a member of the judicial committee, I support this amendment. I had more liberally construed it apparently in committee than it is being construed on the floor. Therefore, this more clearly meets my opinion than when I voted for it in the first place.

CHAIRMAN VAN DUSEN: Mr. Ostrow, did you seek recognition earlier or were you just stretching back there? (laughter) Mr. Lawrence.

MR. LAWRENCE: Mr. Chairman, members of the committee, as a member of the judicial committee, I am afraid that I will have to take the position that I had to take as to most of the recommendations of the committee and say that I support the amendment. I recall having heard over the last several years a great number of complaints from people as to the autocratic, arbitrary attitude and decisions and treatment of the public by these administrative agencies and as time has gone on, those complaints, instead of decreasing, have increased. I don't recall having heard 1 single constituent, 1 single private citizen say that he thought that the actions of these administrative tribunals, when they have been arbitrary and have just disregarded the evidence and have sought to enforce — and this is actually what has happened — their social theories of what should be the situation on the people by this device, I haven't heard 1 say that he has thought that that was correct. I'm for the little people. I'm for the poor citizen who is trying to make a living, trying to abide by the law. And this applies to any future amendments to this one that would clip the wings of these administrative agencies and give some rights to the individual citizens at least to have a judicial review, a review to be sure that their rights have been protected and that these administrative agencies have at least had some grounds on which to act. I would be for, and I urge you to support this amendment.

CHAIRMAN VAN DUSEN: The Chair is advised that the secretary has an amendment to the amendment.

SECRETARY CHASE: Mr. Martin offers the following amendment to the amendment offered by Messrs. Brown, King and Brake:

1. Amend the amendment by striking out "privileges"; so that the language will then read, "and affect private rights or licenses."

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Martin to the amendment offered by Mr. Brown. Mr. Martin, do you desire recognition?

MR. MARTIN: Simply bearing on my earlier comments, Mr. Chairman, I think clearly the word "privileges" ought not to be in here because it totally confuses the fundamental dis-

tinction between a privilege and a right. Therefore, I offer the amendment.

CHAIRMAN VAN DUSEN: Mr. Ostrow, do you desire recognition on the Martin amendment?

MR. OSTROW: Yes, I would like to ask Mr. Martin a question.

CHAIRMAN VAN DUSEN: You may proceed, Mr. Ostrow.

MR. OSTROW: Mr. Chairman and Mr. Martin, would this amendment mean that if a student were turned down on his application for admission to one of the colleges, that he could apply to the courts for redress?

MR. MARTIN: Well, I think if the word "privileges" is in there, he could, because it is certainly a privilege to submit an application, it is a privilege to walk down the street, it is a privilege to do almost anything you can think of that we do without asking somebody's permission.

MR. OSTROW: I just wanted that clarified.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Martin to the amendment offered by Mr. Brown. Mr. Brown.

MR. G. E. BROWN: Mr. Chairman, members of the committee, to this colloquy that has gone on, I merely say that I think that the question raised by Mr. Ostrow does not constitute a judicial or quasi judicial function.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Martin to the amendment offered by Mr. Brown. Those in favor will say aye; those opposed will say no.

The amendment is not adopted. The question now is on the amendment offered by Mr. Brown, on which a division has been ordered. Those in favor of the amendment will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the adoption of the amendment offered by Messrs. G. E. Brown, King and Brake, the yeas are 82; the nays are 37.

CHAIRMAN VAN DUSEN: The amendment is adopted. Are there further amendments to section a of Committee Proposal 95?

MR. DANHOF: Mr. Chairman.

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: In view of the hour, I move the committee do now rise.

CHAIRMAN VAN DUSEN: Mr. Danhof moves that the committee do now rise. Those in favor of the motion will say aye; those opposed will say no.

The motion prevails. The committee will rise.

[Whereupon, the committee of the whole having risen, President Nisbet resumed the Chair.]

PRESIDENT NISBET: The Chair will recognize Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, the committee of the whole has had under consideration several matters, of which the secretary will give a detailed report.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 94,** A proposal pertaining to the probate court; and reports this proposal back to the convention with 3 amendments, recommending the amendments be agreed to and the committee proposal as thus amended do pass.

Following are the amendments recommended by the committee of the whole to Committee Proposal 94:

1. Amend page 1, line 8, after "districts" by striking out the comma and "or combine the office of probate judge with any judicial office inferior thereto in any county with less than 25,000 population with supplemental salary as provided by law,".

2. Amend page 1, line 10, by striking out "and shall do so on recommendation and report of the supreme court".

3. Amend page 1, line 14, after "dependents" by striking out the comma and "except as otherwise provided by law".

PRESIDENT NISBET: The question is on agreeing to the amendments recommended by the committee of the whole.

MR. DANHOF: Mr. President.

PRESIDENT NISBET: Mr. Danhof.

MR. DANHOF: Mr. President, in view of the complexity of these 3 amendments, I would ask particularly that they be divided; that they be considered separately. And further, I will ask for a roll call on amendment 1 as read by the secretary and amendment 3 as read by the secretary. I anticipate that perhaps there will be additional amendments offered and I would prefer and recommend that the convention not concur in amendment 1 and amendment 3. Perhaps this will provoke considerable discussion; I am sure it will and, therefore, if it be the pleasure of the convention, I will move at this time that the decision on concurring in the recommendation of the committee of the whole be held over until the session of tomorrow.

PRESIDENT NISBET: Is the demand for a roll call vote on amendments 1 and 3 supported? It is supported. Now the question is on the motion of Mr. Danhof to postpone until tomorrow action on the report of the committee of the whole on Committee Proposal 94. Those in favor will say aye; opposed, no.

The motion prevails.

SECRETARY CHASE: Mr. President, the committee of the whole has also had under consideration **Committee Proposal 95,** A proposal pertaining to appeals from administrative tribunals; has adopted several amendments thereto, and has come to no final resolution thereon. This completes the report of the committee of the whole.

PRESIDENT NISBET: Announcements.

SECRETARY CHASE: I have the following announcements: the committee on rules and resolutions will meet tomorrow, March 6, during the noon recess in room I; and the committee on emerging problems will meet Tuesday, tomorrow, in committee room I on the third floor at 7:30 p.m. Frank G. Millard, chairman.

The apples this evening were grown in the Turner orchards of Saginaw but are furnished by Mr. Burton Richards of Berrien county, who is fresh out of apples. (laughter and applause)

PRESIDENT NISBET: The Chair recognizes Dr. Anspach.

MR. ANSPACH: Mr. President and fellow delegates, the committee on the judiciary has been under fire for a day or so and I think that they can take care of themselves — or at least I hope they will get a bit of inspiration and courage from this story. This man received a letter from the collector of internal revenue. The letter said, "If you don't pay the back installments of your income tax, we are going to cause you a lot of trouble." He wrote back and said, "I'm not going to pay the back installments of the income tax because in the spring we had a flood and it washed out half of my crops. Then we had a dry spell and I lost the rest of my crops. I was forced to sell my cattle at a loss. The termites moved into my house and it's about to fall down. Lightning struck the barn and it burned down. My son was convicted of stealing and sent to the penitentiary. My wife got discouraged and ran away with the milkman. I'm not going to pay the back installments of the income tax because I'm just interested to see what kind of trouble you can cause me." (laughter)

PRESIDENT NISBET: Incidentally I think the convention will be glad to know that today happens to be the birthday of 2 of our delegates, D. Hale Brake and Dr. Anspach. (applause)

MR. ANSPACH: May I acknowledge for Mr. Brake and myself your very nice tribute? And yet I want to say this: a man went home one time after receiving such an accolade and he said to his wife, "Do you know how many important men there are in the world?" and she said, "There's one less than you think." (laughter)

PRESIDENT NISBET: Dr. DeVries.

MR. DeVIES: Mr. President, the committee on administration will meet Wednesday at 1:00 p.m. to consider Resolution 78 introduced by Messrs. Binkowski, et al, on the post adjournment affairs; Wednesday at 1:00 p.m.

PRESIDENT NISBET: Mr. Chase.

SECRETARY CHASE: I have the following requests for leave from the convention: Mr. McAllister requests leave from tomorrow's session; Mr. Davis wishes to be excused from tomorrow morning's session; Mr. Anspach requests to be excused from the session of Wednesday, March 7, to speak to a community luncheon on the work of the convention; Mr. Follo requests leave to be absent from the session of Friday, March 9; and Mr. Perras requests leave for the sessions of Thursday and Friday, March 8 and 9 to attend the funeral of a very close friend and business associate.

PRESIDENT NISBET: Without objection, the leaves are granted.

The Chair recognizes Mr. Norris.

MR. NORRIS: Mr. President, I move that the convention do now adjourn.

PRESIDENT NISBET: The question is on adjournment. Those in favor will say aye; opposed, no.

The motion prevails. We are adjourned until 9:30 tomorrow morning.

[Whereupon, at 10:20 o'clock p.m., the convention adjourned until 9:30 o'clock a.m., Tuesday, March 6, 1962.]

NINETY-THIRD DAY

Tuesday, March 6, 1962, 9:30 o'clock a.m.

PROCEEDINGS

PRESIDENT NISBET: The convention will please come to order.

We are very happy to have with us this morning Mr. Gust's pastor, the Reverend Bertram Atwood of the Grosse Pointe Memorial Church, who will give our **invocation.**

REVEREND ATWOOD: Our Father, as we begin this day of deliberation, we would remember that this is a new day, fresh from Thy hands; that it is unlike any other day Thou has ever made; that it has cost Thee long ages to bring it forth. Teach us now that we cannot use this day well without Thy guidance and direction. Help us to put the welfare of our state and her people above party and selfish consideration. Thou knowest our motives, our hopes, our fears. Thou art concerned about what is said and done here. Grant us when night falls to have a clear conscience before Thee, and be able to look every man in the eye without wavering. Bless us according to our deepest needs, and use us for Thy glory. Through Jesus Christ, our Lord. Amen.

PRESIDENT NISBET: The **roll call** will be taken by the secretary. Those present please vote aye.

SECRETARY CHASE: Have you all voted? The machine is now locked, and the attendance will be recorded.

Mr. President, a quorum of the convention is present.

Absent with leave: Messrs. Davis, Donald Doty, Downs, Miss Hart, Messrs. McAllister, Murphy, Pellow and Tweedie.

Absent without leave: None.

[During the proceedings, Mr. Davis entered the chamber and took his seat.]

PRESIDENT NISBET: Reports of standing committees.

SECRETARY CHASE: None.

PRESIDENT NISBET: Reports of select committees.

SECRETARY CHASE: None.

PRESIDENT NISBET: Communications from state officers.

SECRETARY CHASE: None.

PRESIDENT NISBET: Motions and resolutions.

SECRETARY CHASE: There are no resolutions on file.

PRESIDENT NISBET: **Unfinished business.**

SECRETARY CHASE: Under the item of unfinished business the president lays before the convention the report of the committee of the whole on **Committee Proposal 94,** A proposal pertaining to the probate court; which was reported on yesterday with 3 amendments, which amendments by request of Mr. Danhof are to be considered separately; and on amendments 1 and 3 the yeas and nays have been ordered. The first amendment is as follows:

1. Amend page 1, line 8, after "districts" by striking out the comma and "or combine the office of probate judge with any judicial office inferior thereto in any county with less than 25,000 population with supplemental salary as provided by law,".

PRESIDENT NISBET: The Chair recognizes Mr. Danhof.

MR. DANHOF: Mr. President and members of the convention, I think if you will check your journal at the time that this particular amendment was considered and voted upon you will find that the vote thereon was carried by approximately 4 votes, with less than 100 delegates voting. As a consequence, I feel that this particular matter should be given as serious consideration as it had in the committee.

The committee is of the opinion that this is a valid provision, and that it will allow the legislature — and it will be just the legislature — to give flexibility, if it so desires. There is nothing self executing about this particular provision. There is nothing mandatory about it. And it will be solely within the province of the legislature to do what it deems and feels should be done under the particular circumstances. The committee was of the opinion that such a provision should be included, and I think now that if we leave it solely to the legislature it would be advantageous, and it would be a step forward which would not endanger or make this particular matter self executing, but would leave it with the legislature in their discretion and after their study. Consequently, in view of the other amendment, I would seriously urge and recommend that the amendment be not concurred in; that a no vote be cast with regard to this particular provision and amendment; and that it be adopted as written by the committee, taking into consideration the further amendment of the sentence.

PRESIDENT NISBET: The question is on the adoption of the amendment. The yeas and nays have been ordered. Mr. Madar.

MR. MADAR: Mr. President, would you have that particular amendment read over again?

PRESIDENT NISBET: Mr. Chase, would you read the amendment.

SECRETARY CHASE: This is amendment 1:

[The amendment was again read by the secretary. For text, see above.]

PRESIDENT NISBET: Mr. Habermehl.

MR. HABERMEHL: Mr. President, I would like to rise to support the committee on this particular amendment. I in-

tended to speak last Friday but my absence made that impossible, so I would like to make just a few remarks in support of the committee this morning. I'm afraid that I have to disagree completely with my friend and neighbor, Delegate Radka. Our districts overlap. His county is also in my district that I represent here.

Even before the convention this was a subject that I was particularly interested in, and I think the delegates to this convention should be. We spend a great deal of time worrying about a method of selection of supreme court justices without stopping to think that for every individual that appears before the supreme court probably a thousand people are concerned and interested in the matters before these smaller courts. This subject, then, to the people of the state, is probably considerably more important than the matter of the selection of supreme court judges. It seems to me here that the committee has attempted to do a most commendable thing. The counties of Michigan, of course, are vastly different, both in their needs and in their means of financing what is important to the people of each county. And when we go from a population of about 2,600,000 in Wayne down to a population of 2400 in the smallest county, we must recognize that the legislature must have some flexibility if it's going to provide a system that will benefit all of the counties in Michigan.

I'm particularly concerned in this matter of children and the treatment that children will get statewide. I don't believe that children and their needs should differ from county to county. I don't believe that the place of residence of a child should determine the kind of care that that child can get. In the outcounty area the big problem is trying to finance methods of taking care of our juveniles when they are in trouble, when they are emotionally disturbed, or when they do get into conflicts with the law. In the big counties the problem does not exist, actually. There is plenty of financing — plenty of money to set up a very fine system, as Wayne county now has.

In the small counties we simply don't have the kind of financing that will enable us to provide any sort of counseling service for these juveniles. Now, nothing could be more important. Mishandling of a juvenile by our courts can result in a ruined life. If the child is not treated properly at 15 or 16, or even at ages below that, it affects the child for the remainder of his life.

We have to have some sort of flexibility in this provision. We cannot now lock out the possibility of doing something in the way of furnishing these services to the children of the state. And the big problem is not the name of the court, not the particular setup or the preservation of a status quo; the problem is the financing of such services. Very obviously a county of 2400 people is simply not going to be able to afford a child guidance clinic or psychiatric counseling for the children when they get into trouble. We must, then, have some flexibility. The committee of the whole has provided one means, the combining of these small counties into a probate district. This I think is fine for some parts of the state. In some parts of the state it will fit very well. We can then set up our child guidance clinics on a multicounty basis, probably even set up our handling of juveniles on a multicounty basis, and provide this kind of counseling to the children of that area. It isn't the whole answer, however. There are a number of Michigan counties that will not fit readily into a combination with their neighboring counties.

In those areas I submit that there is a better way, a way of integrating our courts horizontally; that is, combine a number of these courts that we might have in these small counties into 1 court of general jurisdiction. That's what the committee provision tried to do. I submit there is nothing wrong with that. I think that probably for a long time we have gotten used to the idea of designating a court for a specific or particular purpose. We are trying then to extend this idea of specialization into our inferior courts.

On the circuit court level we are doing exactly the opposite. The circuit courts now, under the new judicature act, will not even have a chancery and law division. We are assuming that a circuit court has general jurisdiction, and I submit that there's a reason why these inferior courts can't have a similar type of setup, with an advantage to everyone. This would, then, in almost every county in Michigan, provide a means of financing an adequate budget that would permit the county to furnish at least a minimum of counseling service, of psychiatric care, to the children that might become involved in troubles in that county.

The one way in which it will be done will be by the combining of offices and combining of budgets of existing courts. Every county has a budget, and actually a pretty adequate one, for the probate court. Many counties have budgets for other inferior courts, municipal courts, J.P. courts — and of course on the matters where J.P.s now collect fees, we are proposing later on to set up that court on a budget and provide a salary for the judge. If we can, then, combine these budgets we can furnish an adequate budget for one court.

This would do another thing. We've been talking about magic numbers. There's one magic number in the law now, the age of 17. In most of the counties in Michigan the youngster under 16 of course will appear in the probate court. Most counties have a county juvenile agent, a man whose job it will be to oversee these youngsters when they do get into trouble and keep them out of probationary status, and to regulate their conduct. The moment, however, a child passes the age of 17, such a service is no longer available to that child. In most counties in Michigan, in the municipal and justice courts there are only 2 alternatives when a youngster gets into trouble; either he goes to jail, or a fine is assessed against him. There are no probation officers for the youngsters of that age. If now we can again set up a system whereby this same county juvenile agent can oversee the activities and can provide for probationary service over these youngsters, we may keep them out of the circuit courts and keep them away from this handicap of having a felony on their record for the rest of their lives.

Many, many times people who have been in my position or are in my position now, as a former prosecutor, have found cases where there was nothing else we could do with the youngsters but to take them up to circuit court, and finally wound up sending them to Jackson prison for offenses which, had they been a few months younger, could have been handled on the probate court level. And it's no fun sending a 17 year old to Jackson prison; I can testify to that. In other words, the combining of these courts would make available all of the services we have now in the county to youngsters of all ages, right up to the age of 21.

We have another problem up there. If we can get a competent person to man these probate courts, generally it is on a part time basis. A lawyer will take the job if he can spend 2 days or 3 days a week at it and continue his practice in addition. It has to be done that way, because most of these counties dealing with the probate court alone cannot provide an adequate salary for that judge. This of course has many evils. The bar association is most unhappy about a judge competing with them, we'll say, in the other courts. And we have a situation where the probate judge one day might be defending a criminal case in circuit court, and might the next day be handling a matter on the juvenile level.

There is no conflict between the probate court and these other inferior courts, and no reason why they cannot be combined. I do not propose that this be a mandatory provision in any sense. I simply say that the legislature should be empowered, where that solution might be the best solution, to permit these counties to integrate these courts, to set them up on a single court basis. And I think it would be presumptuous of us here to say that the legislature shouldn't have such power.

Now, the only opponents to this provision are those delegates interested only in maintaining the status quo; interested only in protecting the incumbents in office. It seems to me that is hardly reason enough to oppose a provision that could be of great benefit to these smaller counties.

In every other aspect of government, in the home rule provision and in the metropolitan district provision, we recognize the fact that counties differ; that counties should then have an

opportunity to work out their own problems. Here, for some reason or another, 51 delegates last Friday decided that the counties in this field should have no opportunity to do that at all; that we should freeze into the constitution a provision that would prevent them from working out their own problems. Certainly here is an opportunity for those that are interested in what happens to our juveniles to permit these counties to make some adequate provision to take care of these emotionally disturbed kids that we have all through the state. And here is an opportunity to make sure that the geographical distribution of those children shouldn't affect their rights to justice and to proper care.

[Vice President Hutchinson assumed the Chair.]

VICE PRESIDENT HUTCHINSON: The question is upon concurring in the amendment. The Chair next recognizes Mr. Perras.

MR. PERRAS: A point of information I would like to direct to the secretary. There seems to be some confusion this morning, Mr. Secretary, as to what a yes and no vote would do in this case. Would you please clarify that?

VICE PRESIDENT HUTCHINSON: The secretary will clarify the situation.

SECRETARY CHASE: Amendment 1 was adopted by and therefore recommended by the committee of the whole, and the question will be on concurring in the amendment, which will strike from section a the language indicated. If you do not wish to concur in the recommendation of the committee of the whole, you should vote no.

MR. DEHNKE: Mr. President.

VICE PRESIDENT HUTCHINSON: Judge Dehnke.

MR. DEHNKE: I think a part of Mr. Habermehl's remarks were addressed to the first portion of this section, which was not stricken out on our previous consideration of the matter. There was also taken out of the committee proposal the language which immediately follows the second section, "and shall do so on recommendation and report of the supreme court," and in my voting on this present amendment I shall assume that that language will remain out.

I'd like to ask the chairman of the committee, however, this question. Is there any doubt in your mind, Mr. Danhof, that if the legislature chooses to exercise the power conveyed by this section, it would have the right to attach a referendum clause to the statute?

VICE PRESIDENT HUTCHINSON: The gentleman yields to Mr. Danhof for a question.

MR. DANHOF: They would have that absolute power, in my mind, if they should so desire, Judge.

MR. DEHNKE: Thank you.

VICE PRESIDENT HUTCHINSON: Mr. Madar.

MR. MADAR: Mr. President, I've been listening to a good bit of this discussion on the probate courts and the taking care of our juveniles in the state, and it would seem that those speakers who are asking you to put through this proposal which would supplement the salaries of the judges of the smaller counties are suggesting that the rest of us here are opposed to helping any child that gets into trouble; that we are heartless; that we just have no souls. Actually, I think that we want to help them just as much as we possibly can. We go out of our way to do this. We would be willing to spend money to do this.

However, this particular proposal takes care of the situation by giving these smaller counties an opportunity to combine, to get together to work out their problems. There's no reason on earth why they can't do it.

Oh, I could understand it back in the days when even I, myself, used to say, "Giddup, Maude;" when I couldn't get across the county. However, today I get into my Comet and I can drive across quite a few counties and be there, if I left at 7 o'clock in the morning, at the county seat, going across a good many counties to get to that county seat so that I could take care of those cases were I a probate judge.

Actually, what are we doing here if we do as Mr. Habermehl wishes us to do? In giving these additional funds we are letting Oakland county, Genesee, Kent, Wayne and a couple more supplement those salaries. I think we had better start getting back to fundamentals and start worrying about what we are going to do in this state when these manufacturers and these businessmen who furnish these tax moneys get angry at us and leave the state.

I'm not alone in being worried about these taxes. There were men worried about this a good many years ago. I happen to have a clipping here from the Detroit Free Press in which a very conservative writer talks about who is doing the squeezing. And just to quote from Judd Arnett's article in the Free Press:

> For a long time the taxpayers of Detroit have been supporting the development of outstate Michigan. In the early 1920s the late Alex Groesbeck, then governor, spotted the drift of things to come.

Now, as I said, the committee provided for the situation in the smaller counties. They can combine and get themselves a probate judge. And there's no reason why we can't do that. And, frankly, I'm for deleting that section which supplements the salary of a judge at the expense of someone else.

VICE PRESIDENT HUTCHINSON: The Chair recognizes Mr. Martin, the delegate from the seventeenth district.

MR. MARTIN: Mr. President, I just want to comment on Mr. Habermehl's statement, because I think it is the most enlightened statement that we have had on this general subject so far this session. Every study that we have made shows that he is absolutely correct; that we can't have adequate probate courts in these counties unless we have enough base, enough cause for full time operation, so that we can pay these judges adequately for full time work, and staff those courts properly. So I want to second what he said. I think it is very important that we have this provision in here to give the legislature some flexibility.

Just one fact which I think is important to you — it was called to my attention last night that 40 per cent of all the arrests made in Michigan are of children under 17 years of age. This is a big problem — and it's a big problem for the smaller counties just as well as for the larger ones. It needs this kind of provision to make it possible to get those courts beefed up to the point where they can do the job that they are supposed to do.

VICE PRESIDENT HUTCHINSON: The Chair recognizes the gentleman from Bay City, Mr. Higgs.

MR. HIGGS: Mr. President and fellow delegates, I would like to support the committee in this proposition and what the chairman, Mr. Danhof, said; and in particular recall your attention to the fact that when we voted on this last Friday we had less than 100 delegates on the floor, and it lost by 4 votes. So it may be important to review several of the most significant aspects of this.

While it is fresh in our minds, I would like to comment upon Delegate Madar's concern about Wayne county supporting outstate Michigan with this supplemental salary business. Now, this is really not the intention of the committee. All probate judges are now paid as provided by law, and all we are actually providing for is that their salary — if there is a judicial office combined with the probate judge — be augmented by some supplemental salary provided for by law to compensate for the additional duties, as provided by law, as the legislature may determine. This salary of probate judges now provided by law is not paid for by Wayne county. It is paid by the county in which the probate judge is working. So I hope this will put Mr. Madar's mind at rest.

Now, in speaking with other delegates since last Friday, I found that they had 2 concerns about this particular proposal. In particular, the first concern was with the clause which followed it and which was deleted in the committee of the whole, "and shall do so on recommendation and report of the supreme court." Last Friday I spoke and voted in favor of deleting that clause, and I do so again today. And I note that our committee chairman has not asked for the yeas and nays on that particular amendment. In speaking with other delegates, I feel certain that that should no longer be of concern to us.

Also, I would like to call to the attention of the delegates who may not have been here last Friday that this proposal will not affect Muskegon, Kent, Montcalm, Isabella, Midland or Bay counties, or any county south of these counties. It will, in the discretion of the legislature, only affect counties north of that line, of which there are 39 that fall into that general classification.

Another concern about giving this discretion and flexibility to the legislature was the fear that the legislature would just arbitrarily do this. I don't know whether you have had any experience in getting the legislature to act. Our county has, with regard to a judicial matter in setting up a second judgeship. But getting the legislature to act requires a concerted effort, for the most part, on the part of the district which is involved. And I would expect that before the legislature would act in either this alternative or in the first alternative, you would find that it would be the people in that area requesting the legislature to solve the problem in their area. And all that the committee has done, actually, is provide alternatives so that should the people go to the legislature, the legislature will be free and have sufficient flexibility in order to adapt a solution to the needs of that community. This is a flexibility feature. It is not self executing; it is not mandatory. It merely supplements the first alternative that we have provided.

I urge that you vote no, so that you will vote down the deletion, and will thereby be affirming the committee in its original proposal.

VICE PRESIDENT HUTCHINSON: The Chair recognizes the delegate from Wayne, Mr. Ford.

MR. FORD: Mr. President, I would like to take issue at the outset with Mr. Habermehl's statement that those of us who spoke the other day in favor of the amendment are worried about the tenure of the probate judges. I don't believe, Mr. Habermehl, that this in its wildest application could have any effect at all on the county that I come from. However, as I indicated the other day, if we are going to remain true to the principle that we want to separate a juvenile function and we have arrived at the idea that we have 1 court that up until now we have managed to keep adversary type proceedings out of, it seems that we are moving backwards when by constitution we indicate an intention to combine adversary and criminal proceedings with the present probate court.

Now, the probate court isn't a new concept in Michigan. Mr. Higgs said yesterday that many states don't provide for a probate court. Well, every state provides for a probate court, but not every state calls it a probate court. In some states they are called county courts, and in other states they have different names, but the probate function is performed, and I'm sure all the lawyers will agree, in the same manner as it is in Michigan by some court in every state in the union. And it is most generally true that what we consider to be probate functions, above and beyond the juvenile function, are handled by a court and in a manner and under procedures that are entirely different than the procedures that obtain in our courts of general trial jurisdiction.

The only thing that strikes me as a member of the judiciary committee, about this part of the proposal, is this: we have already provided that in the small counties, in order to be able to pay more money and in order to be able to serve more people with fewer judges, that they can combine the counties into districts. We have provided that this could be done for 2 purposes that were urged upon us. One was, as I have stated, that the cost of maintaining the court would be spread around a little thinner. Two, that probably by doing this they could obtain better juvenile facilities by having 1 juvenile judge for 3 or 4 counties instead of 1 serving a single county. And he of course could have referees, much as the system we have in Wayne county, and you would have a pretty nice system.

Then we come down to the situation where we are talking contrary to what we established with the very first article that we adopted on the judiciary, and that is that we wanted a 5 tier court system; and now we are talking about what the judicial committee came to know as vertical integration. We are not going to have a 5 tier system throughout the state of Michigan.

Mr. Habermehl said that he felt that people in one part of the state should be treated the same as people in another part of the state. I cannot under any circumstances be blamed for not having a personal interest in what happens to anybody in a county under 25,000, because I'm not sure, except for delegates to this convention, that I even know of anyone who lives in such a county. But if we are going to be consistent about establishing a uniform court system, and if we believe what we said at the beginning, on the first day, that we should have a 5 tier court system, with a clear 5 tiers, and that we should evolve the future of the court system within the framework of this so that we don't have splinter courts like the recorders court and common pleas and all the rest of them going up in the future, then let's do that. Now in the 5 tiers we have provided a very distinct line between the probate court and the fifth tier, the probate court being the fourth tier from the top, and the fifth tier from the top being some form of local court or countywide court, whatever the legislature might wish to provide.

Now we are being asked again to sacrifice at the altar of flexibility. I guess that everybody likes to use this phrase because it seems to pick up about 10 votes from someplace. There are 10 people that come to attention and vote whenever you say something is flexible. And I guess I've been guilty of this, too. But the flexibility is already here. There is nothing in this constitution, as I have indicated before, that prevents the legislature from adding to the duties of the probate court in these counties any duties that they wish to keep that judge busy. And, as has already been indicated, the only constitutional authority that court has comes from its juvenile function; all the rest of its functions are by statute. What we are getting involved in here is a situation where you can amalgamate the fourth tier and the fifth tier of the court system, and actually we will not have a 5 tier system; we will have a 5 tier system in counties over 25,000 and a 4 tier system in counties under 25,000.

For these reasons, and not because of the reasons that Mr. Habermehl has indicated, I would urge you to vote in favor of the committee of the whole's recommendation, and against the judicial committee's recommendation with respect to this particular phrase.

[President Nisbet resumed the Chair.]

PRESIDENT NISBET: The Chair recognizes Mr. Sleder.

MR. SLEDER: Mr. President and fellow delegates, the amendment that I think the delegates should be talking to is not the amendment on whether to combine counties for probate courts, "The legislature may combine 1 or more counties into probate districts." This is not the problem, and it seems that many of the lawyers are trying to confuse us in an attempt to say that this is what we are discussing. It is not this. It is the next part of the sentence, which says that the legislature or the supreme court may combine the work of the probate court and inferior courts. They likewise state the fact of the juvenile problem. It seems to me in their argument they are adding to the problem of the juveniles when they are adding work by combining the probate court and the inferior courts. They are complicating the problems in the juvenile section of the probate court rather than aiding it. I therefore feel that we should be speaking only on the part that is under discussion, the fact of combining the probate court with inferior courts in counties of under 25,000 population.

Likewise, Mr. Higgs states that this affects only counties north of the Bay City line. I'm sure on a poll you will find that a majority — and a large majority — of the delegates representing this area are in favor of striking this part of this sentence from the committee report.

I therefore urge you to vote yes on the present amendment before the convention.

PRESIDENT NISBET: The Chair recognizes Mr. Lawrence.

MR. HABERMEHL: Point of information, Mr. President. I believe that the present amendment makes no reference whatsoever to the supreme court. Is that correct?

PRESIDENT NISBET: Mr. Chase will read the amendment.

SECRETARY CHASE: Amendment 1:

[The amendment was again read by the secretary. For text, see above, page 1453.]

PRESIDENT NISBET: Mr. Lawrence.

MR. LAWRENCE: Mr. President, members of the convention, I feel that this particular section that we are dealing with now is one of the most important in the judicial section. I hope that we will obtain as large a vote as possible on it from the members of the convention.

If I understand this proposition right — and from things that have been said here this morning I am wondering if we do understand it — if you vote no at this time you in effect vote to restore the original language, which would allow the legislature to provide for the combination of the probate court with other courts inferior thereto in counties of 25,000 or less, in the hope and in the belief that by so doing we will create a better court system in those counties, and particularly, in this instance, with regard to the treatment and care of juveniles. Now, if that is right and if a majority vote of the convention against this amendment will restore that provision in the constitution, then by all means, if we have meant what we have said and we are trying to provide a constitution that is flexible — and I make no apologies for that word "flexible" — we should vote no. My only regret is that the committee saw fit to put 25,000 as the maximum, rather than some higher number.

We are trying to frame a constitution that will meet the needs of the people of this state for years to come. This isn't just a matter of legislation that can be amended or changed next year, or should be changed next year. This is a permanent provision, we hope. Our efforts should be to try to create a better system for the people of the state of a lasting nature. And by all means there is no indication whatever that this provision will inure to the detriment of the people of the state, particularly in the smaller counties.

I urge you to vote no on the present amendment, and in that way support the recommendation of the committee.

PRESIDENT NISBET: The Chair recognizes Mr. Norris.

MR. NORRIS: Mr. President, I feel that what we have before us is not only a significant portion of the judiciary article, but of the entire constitution, because I believe that the whole question, for example, of the bill of rights is one that infuses every section and every clause of the constitution; and we are dealing with an area which has a direct relationship upon the existence, perpetuation and vitality of constitutional rights. I say that because, first of all, this judicial committee proposal is to take the probate court and use it as a basis for constructing a kind of court in which we could get the highest standard and quality of justice. I think what we have to realize is that, after all, the purpose of the exercise of the judicial power is justice, and we are seeking to do that in this proposal.

I do think that a no vote, as explained by Mr. Lawrence, is in order here, for this reason: if you can take the probate court, which has a preserved, defined jurisdiction here with regard to juveniles, as stated in the last sentence of this section, and at the same time preserve that confined jurisdiction and add to it such functions as may from time to time be added which are now the province of the justice of the peace or circuit court commissioners, you are then able to secure an attorney — a person who is qualified to administer the kind of justice that would meet the local needs and state needs.

Now, why is that so important, particularly with regard to the exercise of the probate function? Today a juvenile does not have the protections of the Constitution of the state of Michigan or the United States. We have stated in our constitutional decisions that a juvenile may be deprived of constitutional rights, because we want to create a court that stands in loco parentis to a juvenile — that is, in place of the parents — so that we don't treat him as a criminal. We treat him differently, so that there can be a more sympathetic and compassionate approach, in order that we might get the salvageability of the youngster before us. That's the key thing — the salvageability of the youngster.

Now, if you have a person who is not a lawyer and who may not have all the qualifications which we would like to see here, you have a situation in which a youngster doesn't have constitutional rights, and you have sitting as a magistrate a person who may not even recognize that there is a deprivation of constitutional rights. He doesn't even have to give the person constitutional rights which he may not even recognize in the first instance. A juvenile doesn't have the kind of constitutional rights which even the most hardened criminal has; namely, the right to be informed of the charges against him, the right to counsel, the right to cross examination, jury trial — all the protections. And here you are going to place him before a person who doesn't even know that these rights are being denied in the first instance. So that it becomes more necessary than ever before to have a skillful person to extract the truth from a confused sea of hearsay, speculation, rumor and suspicion which constitute the basis for many of the pronouncements in juvenile court today. Most of the statements made in juvenile court are the product of secret investigations — of ex parte investigations, where the person who makes the investigation is not subject to cross examination. What is the purpose of cross examination? The purpose of cross examination is to get at truth. Truth is the basis for a judgment of the court. And you do not have these fundamental rights in a probate court which administers the juvenile matters. So it makes it even more important, in order to get a proper standard of justice, to create the opportunity for the legislature to take the probate court and add to it functions which are now the functions of other courts of inferior jurisdiction, particularly J.P.s and circuit court commissioners, so that you can make a court which meets the needs of the kind of justice standards we want today.

Now, I was very much disturbed by some amendments proposed at the time, that wanted to say, "Well, if the state wants to set these kinds of standards for local areas, then the state ought to pay for it;" as if the local people are not interested in a higher standard of justice. This I refuse to believe. I believe that if the facts are brought to the attention of all of the people, and if, as Judge Dehnke introduced before us, there is a distinct possibility, with the power of the legislature to create a referendum provision attached to the idea of synchronizing or amalgamating these judicial functions, it would be supported by the local people who indeed want a high standard of justice.

I am moved by the data called to our attention that 40 per cent of all the arrests in the state are of juveniles. This means that there must be seasoned, mature judgment to protect the rights of young people. After all, if these people do not see how constitutional rights are protected, how then do we have a model for them to emulate as adults?

It seems to me that the proposal which is before us — namely, the judicial committee proposal — permitting the opportunity of the court to be enlarged is a very fine proposal, constructive thinking, original thinking; and I think that it ought to be supported, and a vote no on the matter before us is in order.

PRESIDENT NISBET: The Chair recognizes Mr. Allen.

MR. ALLEN: Mr. President, I, too, favor a no vote. But I would like to make this point. I feel that all of the arguments which we are hearing today we heard at considerable length last week. I sometimes wonder, having gone through all of the arguments in the committee of the whole and then coming back into the plenary session and going through them all again, if we aren't going to be here possibly on June 15, rather than ending on May 15. Therefore, since all of these arguments have been heard, I should like to move the previous question.

PRESIDENT NISBET: The previous question has been demanded. Is that demand seconded? Those in favor will rise. There is a sufficient number up.

The question now is, shall the previous question be put? Those in favor say aye. Opposed, no.

The motion prevails. The question is now on the amendment. Mr. Chase will read the amendment.

SECRETARY CHASE: Amendment 1:

[The amendment was again read by the secretary. For text, see above, page 1453.]

PRESIDENT NISBET: The yeas and nays have been demanded. Those in favor of the amendment will vote aye. Those opposed will vote nay. Mr. Heideman.

MR. HEIDEMAN: Will you explain that vote again?

PRESIDENT NISBET: Those in favor of the amendment adopted by the committee of the whole will vote aye. Those opposed to the amendment adopted by the committee of the whole will vote nay. Have you all voted? If so, the secretary will lock the machine and record the vote.

The roll was called and the delegates voted as follows:

Yeas—56

Anspach	Hatcher, Mrs.	Pugsley
Baginski	Howes	Radka
Balcer	Hoxie	Richards, J. B.
Barthwell	Hutchinson	Richards, L. W.
Bledsoe	Kelsey	Rush
Bonisteel	Kirk, S.	Sablich
Boothby	Knirk, B.	Shackleton
Brake	Kuhn	Shaffer
Buback	Leibrand	Shanahan
Dell	Leppien	Sharpe
Donnelly, Miss	Lesinski	Sieder
Doty, Dean	Liberato	Stafseth
Finch	Lundgren	Stopczynski
Ford	Madar	Suzore
Gadola	Nord	Thomson
Garvin	Ostrow	Turner
Gover	Perlich	White
Greene	Perras	Wilkowski
Haskill	Plank	

Nays—80

Allen	Follo	Nisbet
Andrus, Miss	Goebel	Norris
Austin	Gust	Page
Batchelor	Habermehl	Pollock
Beaman	Hanna, W. F.	Powell
Bentley	Hannah, J. A.	Prettie
Binkowski	Hatch	Rajkovich
Blandford	Heideman	Romney
Brown, G. E.	Higgs	Rood
Brown, T. S.	Hodges	Seyferth
Butler, Mrs.	Hood	Snyder
Conklin, Mrs.	Hubbs	Spitler
Cudlip	Iverson	Staiger
Cushman, Mrs.	Judd, Mrs.	Stamm
Dade	Karn	Sterrett
Danhof	King	Stevens
Dehnke	Koeze, Mrs.	Tubbs
DeVries	Krolikowski	Upton
Douglas	Lawrence	Van Dusen
Durst	Mahinske	Walker
Elliott, A. G.	Marshall	Wanger
Elliott, Mrs. Daisy	Martin	Wood
Erickson	McCauley	Woolfenden
Everett	McGowan, Miss	Yeager
Farnsworth	McLogan	Young
Faxon	Millard	Youngblood
Figy	Mosier	

SECRETARY CHASE: On agreeing to the recommended amendment, the yeas are 56, the nays are 80.

PRESIDENT NISBET: The amendment is not adopted. The secretary will read the second amendment.

SECRETARY CHASE: Amendment 2:

2. Amend page 1, line 10, by changing the comma to a period and striking out "and shall do so on recommendation and report of the supreme court.".

PRESIDENT NISBET: The question is on the amendment. Those in favor—

MR. RADKA: Mr. President, I ask for the yeas and nays.

PRESIDENT NISBET: The yeas and nays have been demanded. Those in favor will rise. There is a sufficient number up. Those in favor of the amendment will vote aye. Those opposed will vote nay. Have you all voted? If so, the secretary will lock the machine and record the vote.

The roll was called and the delegates voted as follows:

Yeas—104

Allen	Gust	Plank
Anspach	Habermehl	Pollock
Baginski	Hanna, W. F.	Powell
Balcer	Hannah, J. A.	Prettie
Barthwell	Haskill	Pugsley
Batchelor	Hatch	Radka
Binkowski	Hatcher, Mrs.	Richards, J. B.
Blandford	Heideman	Richards, L. W.
Bonisteel	Higgs	Romney
Boothby	Howes	Rood
Brake	Hoxie	Rush
Brown, G. E.	Hubbs	Sablich
Brown, T. S.	Hutchinson	Seyferth
Buback	Iverson	Shackleton
Butler, Mrs.	Judd, Mrs.	Shaffer
Conklin, Mrs.	Karn	Shanahan
Cudlip	King	Sharpe
Danhof	Kirk, S.	Sieder
Dehnke	Knirk, B.	Spitler
Dell	Koeze, Mrs.	Stafseth
DeVries	Kuhn	Staiger
Donnelly, Miss	Leibrand	Stamm
Doty, Dean	Leppien	Sterrett
Douglas	Lesinski	Stevens
Durst	Liberato	Stopczynski
Elliott, A. G.	Lundgren	Suzore
Elliott, Mrs. Daisy	Martin	Turner
Erickson	McCauley	Upton
Everett	McLogan	Van Dusen
Figy	Millard	Wanger
Finch	Mosier	White
Follo	Ostrow	Wilkowski
Goebel	Page	Wood
Gover	Perlich	Youngblood
Greene	Perras	

Nays—29

Andrus, Miss	Gadola	Nord
Austin	Hodges	Norris
Beaman	Hood	Rajkovich
Bentley	Kelsey	Snyder
Bledsoe	Krolikowski	Thomson
Cushman, Mrs.	Lawrence	Tubbs
Dade	Madar	Walker
Farnsworth	Mahinske	Woolfenden
Faxon	Marshall	Yeager
Ford	McGowan, Miss	

SECRETARY CHASE: On agreeing to amendment 2, the yeas are 104, the nays are 29.

PRESIDENT NISBET: The amendment is adopted. The secretary will read the third amendment.

SECRETARY CHASE: Amendment 3:

3. Amend page 1, line 14, after "dependents" by striking out the comma and "except as otherwise provided by law".

PRESIDENT NISBET: Mr. Danhof.

MR. DANHOF: Mr. President and members of the convention, on this amendment the vote again was within 4 votes. I think it was 61 to 57 or 58. A number of the delegates were absent. We have had a great deal of discussion on this particular section. We spent a day on it. The committee's idea, as put forth in the report, was to grant to the probate court constitutional jurisdiction. That, if in the opinion of the legislature, it would become wise to be able to move this by providing a substitute, the flexibility—and I use the word almost with fear and trepidation—would be there.

I want to point out something. The jurisdiction has been granted. There is nothing the legislature has to do to give the jurisdiction to the probate court. That is there. And I think Mr. Higgs made quite a point here when he said that we know that unless there is a real concerted push, the

legislature very seldom makes any particular change. This would require the taking away — not the granting, but the taking away — and I submit that unless there is an adequate remedy or substitute provided, it would not be taken away.

Now, we have had all of the arguments about the family court and the juvenile court, and many others, and someone will speak on that, and I believe if you have any such provision or any such thoughts, by accepting and returning to the original wording of the committee you will allow this to be done.

I know this provoked a great deal of discussion. I would hope that today we might keep our remarks to a minimum and get on and vote, and try to finish other parts of the judicial article. I would urge that the convention not concur in the recommendation of the committee of the whole, and that you vote no.

PRESIDENT NISBET: The Chair recognizes Mrs. Judd.

MRS. JUDD: Mr. President and members of the convention, I agree with Mr. Allen, and also with the chairman of the committee, that this was thoroughly discussed in the committee of the whole, but the fact that there were such a large number absent and the fact that the vote was very close makes it, I think, somewhat dangerous to vote without reiterating some of the points that were made.

I hope this is the day that we are going to trust the legislature and leave this matter to it. I am in support of the committee's proposal to include the phrase "except as otherwise provided by law," for the following reasons. First of all, to delete it would be to violate the constitutional principle of flexibility. Except as to the justices of the peace in the old constitution, neither in the 1908 constitution nor in the committee proposal for a new constitution do we find any other specific assignment of jurisdiction to any court. The assignment of the juvenile jurisdiction to the probate court in the 1908 constitution might have been justifiable in 1908 on the grounds that it was a pioneering venture. Today, however, the concept of a nonadversary handling of juvenile matters is well established, and it is time for us in the 1962 convention to carry this pioneering venture into our own age of complex urban life. To do this we must open the way, constitutionally, to judicial recognition of the family as a whole as the setting within which juvenile problems must be handled.

The question before the convention, then, is whether we wish to provide the legislature with greater flexibility in determining the most suitable handling of the judicial aspects of these problems, particularly whether we should make it possible for it to allocate such jurisdiction to a higher level court. The unification and coordination of the judicial facets of family problems can only be fulfilled or can best be fulfilled by making a constitutional change.

Last week there was quoted on the floor here the case with respect to public act 186, 1913, which created, or attempted to create, a court of domestic relations in counties of 250,000 or over, and was declared unconstitutional, in that it deprived the probate courts of their constitutional jurisdiction over juvenile delinquents and dependents. We have further the word of such authorities, as to the need of constitutional change to achieve this, as Maxine Virtue. Those of you who have read her pamphlet, published by the University of Michigan, entitled, Public Services to Children in Michigan: A Study of Basic Structure, have read her conclusion, in which she recommends a study of changes needed in the legal machinery, and lists the following areas that might be considered, and I quote:

> Amend the constitution to provide for a more efficient judicial system by 1 of these methods:
>
> 1. Establishing a juvenile court on an area or circuit basis with especially qualified judges;
> 2. Providing a family court in the nature of a special tribunal with a specialized judge;
> 3. Transferring the present juvenile jurisdiction to the circuit court.

Now, what is this committee proposal, with this phrase included, designed to do? This is not the time or the place to discuss the details of the family court concept; but I wish to quote a few sentences from a 1959 publication of the national probation and parole association, now I believe called the national council on crime and delinquency, as a means of establishing their authority behind the concept. For instance, they state:

> The purpose of a family court act is to protect and safeguard family life in general, and family units in particular, by affording to family members all possible help in resolving their justiciable problems and conflicts arising from their interpersonal relationships —

and please note

> — in a single court, with one specially qualified staff, under one leadership, with a common philosophy and purpose, working as a unit, with one set of family records, all in one place, under the direction of one or more specially qualified judges.

If we were to read further in this report, we would see that they particularly recommend that such a court be placed on the level of the highest trial court. They recommend that it be established by the legislature. And if you were to read the suggested list of subjects that would come under their jurisdiction, you would see that it is still child centered; that it includes those aspects of family life as they affect the child that would come into a juvenile court.

Now I think we should again recall the attitude of the Michigan bar on the question of the constitution and the family court. The other day I read to you a portion of the report of the bar committee on domestic relations law, quoted in the Bar Journal of September 1959. I will not reread it now, but will remind you that, first, it indicated the desirability of a family court; second, that the family court would be possible only by constitutional amendment; and, third, that the proposed constitutional amendment should simply permit the legislature to establish such a court, and to confer its jurisdiction. It is interesting to note that on this committee were Maxine Virtue and Judge John Conlin.

I would remind you also of the recent poll of the Michigan bar taken on request of the convention's committee on judicial branch, in which question 22 was, "Should a family court be established?" And the answer was: yes, 2,952; no, 1,995. This was followed by the question, "If your answer is yes, should it be established by (1) the constitution?" — this got 979 votes — or (2) by the legislature?" — and this got 2,067 votes. In conclusion, then, I think that we must do some real soul searching as delegates in the way in which we make up our minds on this question.

Those of you who were here last week will recall that the only testimony brought to witness in behalf of deleting this phrase and freezing in the jurisdiction of the probate court over juvenile matters came from the probate judges.

We have heard many times through the months of this convention the need to elect our government officials so that they might be responsive to and close to the people. We delegates were elected by the people. I believe that this is our chance to demonstrate the sincerity and validity of this claim. We must ask ourselves as individuals, when we vote, "To whom are we closest, the probate judges or the people? Shall we, as representatives of the people, examine this question and determine it from the point of view of the welfare of the families in our increasingly complex urban life?"

PRESIDENT NISBET: The Chair recognizes Mr. Habermehl.

MR. HABERMEHL: Mr. President, fellow delegates, last week for about 2 days we were treated to a very lengthy discourse on this particular issue. The whole gist of the discourse was we must not mix up these adversary courts with these nonadversary courts.

I suggest to you that that completely missed the point of what the committee was trying to do here. As one who practices in the probate court, and as one with 5 children under the age of 17 and having a personal interest in this, I suggest to you that the name of the court has absolutely nothing to do with the issue. The issue is, simply: shall juveniles be treated as juveniles by our courts?

I think that Delegate Nord mentioned that the age of 17 is a rather ridiculous thing, and if it were at all possible to

insure that all juveniles would be treated in a manner that would attempt to effect their rehabilitation, in a manner that would attempt to make honest, decent citizens out of them, rather than to punish them, I would be in favor of any such approach. The real question, then, is the nature not of the court, or the name of the court, but the nature of the proceeding. If we assume that the probate court alone must have this, a particular court by the name of the probate court, we are assuming that only the judge of that court can look down off the bench and see that the person appearing before him is a juvenile. While I have had many arguments with judges, I have never found one that couldn't determine that the person in front of him was a juvenile. The nature of the proceeding then is the important thing, not the name of the court.

I believe that there must be something done here, as Mrs. Judd has mentioned, to unify, to bring together in 1 court all matters dealing with the family. Certainly no divorce can be granted without that court concerning itself with what is going to happen to the children of this marriage. Certainly no juvenile may be treated in any court with the idea of rehabilitating him or her without looking into that child's background and finding out what happened here in the marriage, in the family, that caused this child to become delinquent. If, then, all these matters can be considered in a proceeding, in any one proceeding, the entire picture will be before the judge of that court. Now, to say that only the probate court may do this simply doesn't conform to the facts. The circuit judges in our circuits throughout the state do it every day in a divorce matter.

Whether or not this jurisdiction should be in the circuit judges, whether it should be in the probate judges, or whether it should be in an entirely different sort of court setup, is a matter still to be determined in the future. Yet the amendment that was adopted here by the committee of the whole would freeze it into one place for as long as this constitutional provision endured. It would prevent the legislature from trying to effect this sort of unification of family matters.

I think the real issue, ladies and gentlemen, was put by Delegate McAllister when he said, "Judge Jim Lincoln is a friend of mine, and I promised him I would vote to delete this particular provision." The real issue here then is the concern on the part of some probate judges with any efforts or any attempts to tamper with their existing jurisdiction. I think we had all better recognize that any incumbent officeholder does not particularly desire any change in his power or jurisdiction. Yet for these officeholders, these particular probate judges, to say to this convention, "Don't you tamper with my jurisdiction; and what's more, make sure that the legislature will never do so," certainly is asking a great deal of this convention.

We are supposed to be proposing a constitution that will endure for a long period of time. To freeze juvenile jurisdiction into 1 court is simply not wise or good constitutional practice. I would urge a no vote on the matter of concurrence with the amendment of the committee of the whole.

PRESIDENT NISBET: The Chair recognizes Mr. Kuhn.

MR. KUHN: Mr. President, last week I heard so much from our delegates on how their probate judges thought on this matter that I went home and called my probate judge. To reply to Don Habermehl, I want him to know that my probate judge never called me or contacted me and told me how he stood on this issue. I consider my probate judge as probably one of the greatest authorities in this field. Certainly he is the bible in Michigan. Judge Arthur E. Moore is one of the most renowned probate judges in the United States. I called him yesterday, and he returned my call, and I said, "Judge, Committee Proposal 94 is on the floor, and I have heard so much talk about the last few words, 'except as otherwise provided by law,' I would like your thoughts on it." He said, "It should not be in there." I said, "Well, there's a great argument going on about family courts. The people are worried about them." He said, "That has nothing to do with it. They can still have their family courts." Therefore, I am prepared today to strike this language.

PRESIDENT NISBET: The Chair recognizes Mr. Yeager.

MR. YEAGER: Mr. President, we heard a great many arguments on this the other day. I move the previous question.

PRESIDENT NISBET: The previous question has been demanded. Is the demand seconded? Those in favor will rise. There is a sufficient number up. The question now is, shall the previous question be put? Those in favor will say aye. Those opposed, no.

The motion prevails. The question is now —

MR. FORD: Mr. President.

PRESIDENT NISBET: Mr. Ford.

MR. FORD: This is a matter of perhaps personal privilege, or maybe of parliamentary inquiry, I leave it to the Chair. But I think you may have noticed that none of the proponents of the amendment that is before the body now have yet taken the floor, although I guess one or more of us are on the list; and what is happening now is that all of those people opposing the minority report amendment which was adopted by the committee have had their say, and we are going to proceed to vote without hearing the other side. This is all right, I suppose, with respect to those who were here, but it has already been stated that there were 25 people absent the other day when we had the discussion.

I just call this to the convention's attention when you vote on moving the previous question.

PRESIDENT NISBET: The previous question has been ordered, Mr. Ford. The question is now on the amendment as adopted by the committee of the whole. Mr. Chase will read the amendment.

SECRETARY CHASE: The amendment is:

3. Amend page 1, line 14, after "dependents" by striking out the comma and "except as otherwise provided by law".

PRESIDENT NISBET: Those in favor of the amendment will vote aye. Those opposed to the amendment will vote nay. Have you all voted? If so, the secretary will lock the machine and record the vote.

The roll was called and the delegates voted as follows:

Yeas—63

Austin	Hood	Powell
Baginski	Howes	Pugsley
Balcer	Hoxie	Radka
Binkowski	Kelsey	Rajkovich
Bledsoe	Kirk, S.	Richards, J. B.
Brake	Knirk, B.	Rush
Brown, T. S.	Krolikowski	Sablich
Buback	Kuhn	Shackleton
Butler, Mrs.	Leppien	Shaffer
Dell	Lesinski	Shanahan
Donnelly, Miss	Liberato	Sharpe
Doty, Dean	Lundgren	Sleder
Douglas	Madar	Snyder
Elliott, Mrs. Daisy	Mahinske	Stafseth
Ford	Marshall	Stopczynski
Garvin	Martin	Suzore
Gover	Nord	Walker
Greene	Ostrow	Wilkowski
Haskill	Perlich	Wood
Hatcher, Mrs.	Perras	Young
Hodges	Plank	Youngblood

Nays—72

Allen	Figy	Millard
Andrus, Miss	Finch	Mosier
Anspach	Follo	Norris
Barthwell	Gadola	Page
Batchelor	Goebel	Pollock
Beaman	Gust	Prettie
Bentley	Habermehl	Richards, L. W.
Blandford	Hanna, W. F.	Romney
Bonisteel	Hannah, J. A.	Rood
Boothby	Hatch	Seyferth
Brown, G. E.	Heideman	Spitler
Conklin, Mrs.	Higgs	Staiger
Cudlip	Hubbs	Stamm
Cushman, Mrs.	Hutchinson	Sterrett
Dade	Iverson	Stevens
Danhof	Judd, Mrs.	Thomson
Dehnke	Karn	Tubbs

DeVries	King	Turner
Durst	Koeze, Mrs.	Upton
Elliott, A. G.	Lawrence	Van Dusen
Erickson	Leibrand	Wanger
Everett	McCauley	White
Farnsworth	McGowan, Miss	Woolfenden
Faxon	McLogan	Yeager

SECRETARY CHASE: On agreeing to the amendment recommended by the committee of the whole, the yeas are 63, the nays are 72.

PRESIDENT NISBET: The amendment is not adopted. This completes the amendments recommended by the committee of the whole. Are there other amendments?

SECRETARY CHASE: Mr. Sleder and Mr. Plank offer the following amendment:

1. Amend page 1, line 9, after "county" by striking out "with less than 25,000 population"; so that the language will then read:

> The legislature may combine 1 or more counties into probate districts, or combine the office of probate judge with any judicial office inferior thereto in any county with supplemental salary as provided by law.

PRESIDENT NISBET: The question is on the amendment. Mr. Sleder.

MR. SLEDER: Mr. President and fellow delegates, the discussion relative to the amendment to eliminate the combining of the probate court with other inferior courts, which was not adopted, was applicable only to those counties under 25,000 population.

With the points that were made here before the convention relative to the advantages of combining these 2 courts, the inferior courts and the probate courts, the combining of these 2 courts certainly shouldn't be limited to counties of under 25,000. It should be likewise as good for counties of 28,000 or 30,000 or 33,000, and we can go on continually. If the advantages are there for the counties under 25,000, it is very, very evident that they are there for the counties of over 25,000. Likewise, it has been brought out that this power should rest with the legislature. And if we are going to give the power to the legislature to determine what courts should be combined, the probate courts and the inferior courts, we should likewise give the power to the legislature to determine the population of the counties that this should apply to.

We here in Lansing should not sit and determine that the figure of 25,000 is a sacred, mystic figure that should determine if a probate court and an inferior court should be combined. I therefore urge you to vote in favor of this amendment, and strike the figure of 25,000 from the constitution.

PRESIDENT NISBET: The Chair recognizes Mr. Everett.

MR. EVERETT: Mr. President and fellow delegates, I find myself in agreement with Mr. Sleder and Mr. Plank, and I would support their amendment. I think that someplace there is a breaking point where the combination of these powers would simply overwork an already full court, but I'm not satisfied that the figure of 25,000 or 35,000 or any fixed figure is exactly that breaking point.

The principle which we fought for before, which the convention has now upheld, I think is applicable in a wider area than a range of 25,000. I recognize, as I say, that someplace along the way the legislature no doubt would draw its own line. But I think the amendment is valid, and I think that we should support it.

PRESIDENT NISBET: The Chair recognizes Mr. Radka.

MR. RADKA: Having hastily discussed the substance of this amendment with Mr. Plank and Mr. Sleder, and after hearing the remarks of Delegate Habermehl this morning and being foreclosed to add anything from the other side of the question because the previous question was moved, I felt that we should keep within the spirit as it was set forth by Mr. Habermehl that we should have a uniform court system throughout the state. I feel that if we remove this population figure we will help to keep ourselves honest. I urge you to support the amendment.

PRESIDENT NISBET: The Chair recognizes Mr. Danhof.

MR. DANHOF: Mr. President and members of the convention, I am not going to voice any personal convictions, but I want to say this: the figure was not just pulled out of the air.

I agree that perhaps there is nothing magic about 28,000, so Alpena county might get in, or 30,000 would be as good. But information was furnished to the committee that at a figure around this 25,000 mark it would not become economically or judicially feasible to do what we allow the legislature to do; that is, about 25,000, maybe 30,000, maybe 35,000, if you have a probate court that has any activity in it in the probating of estates or the handling of minors, and any juvenile activity, depending of course on the staff and the competency thereof, you reach a point where any additional duties would not be feasible. Now, I, personally — and I speak only personally — think that the legislature would probably recognize this particular feature.

I only want to state that the 25,000 was not just pulled out of a hat as something which we thought sounded like a good number, and maybe we wrote it in there. There was some justification for it. That is why the committee voted the 25,000, and that is why the vote came out of the committee.

We did consider this amendment. This did not prevail for the reason that there were a number of delegates on the committee from the metropolitan areas who did not feel that this should be in because it was not feasible and probably would not be carried out. That's why the population limitation was written in there. I only give you the explanation of the committee.

PRESIDENT NISBET: The Chair recognizes Mr. Habermehl.

MR. HABERMEHL: Mr. President, fellow delegates, you heard from Mr. Sleder. Mr. Sleder's county of course is Grand Traverse, with 33,000 population. I'll give you the views of the other county in the northern lower peninsula that would not be included in this 25,000 figure. Alpena county has 28,556, and in my county there is a great deal of interest in being able to combine these courts.

I think, too, that trying to put a population figure in the constitution is a very difficult and unwise thing to do. If, for example, the county were to exceed that figure on the next census, does that mean that they would have to break up any court system that they might have established, and go back to separate courts?

Leaving it, as it is, to the discretion of the legislature and with the assumption that these counties would request the legislature to act, seems to me to be the most advisable thing that we could do. For that reason I would heartily support the amendment offered.

PRESIDENT NISBET: The Chair recognizes Mr. Heideman.

MR. HEIDEMAN: Mr. President, fellow delegates, I would simply like to concur with the amendment to strike out the 25,000 figure. I think it would be wise to leave this to the wisdom and the judgment of the legislature.

PRESIDENT NISBET: The Chair recognizes Mr. Young.

MR. YOUNG: Mr. President, I support Mr. Sleder's amendment. In my opinion the figure 25,000 is purely arbitrary, and it is dangerous to fix inflexible figures in the constitution. It is calculated to last for a number of years. This is especially true in the face of the rapidly changing population pattern within our state, as well as the great advances that are being made in transportation.

Now, I don't know what type of scientific examination the judicial committee made in order to arrive at the magic figure of 25,000, but I am told — and perhaps Mr. Danhof can correct me — that the figure started off somewhat higher, and was amended lower and lower, until finally it got to a figure that was lower than the population of any county of any member of the judicial committee. (laughter)

PRESIDENT NISBET: The Chair recognizes Mr. Higgs.

MR. HIGGS: Mr. President, I was just asked if I was going to defend myself, and I guess I wasn't paying attention, so I can't. I would like to echo what Chairman Danhof said. This figure was not picked out of the air. It was our thinking

that there is a valid line to be drawn. Larger counties are not in the same position as the smaller counties with regard to the applicability of this provision. I think there is some merit in the argument, certainly, that the drawing of this line properly is a legislative matter. I think there is, therefore, merit in the particular amendment, except that I have a strong feeling that the amendment is advanced — and I would say this not without foundation — in an effort to strike the whole proposal in that connection. If this amendment were offered in good faith and with a sincere desire to make it workable and flexible, I could support it. I would certainly like to have reassurance from the sponsors of the amendment that that is not their purpose.

PRESIDENT NISBET: The Chair recognizes Mr. Plank.

MR. PLANK: I'd like to ask Mr. Danhof a question, if I may.

PRESIDENT NISBET: Would you care to answer, Mr. Danhof?

MR. PLANK: Mr. President, Mr. Danhof, if you had so much reason for picking the figure of 25,000 and it was not just picked out of the air, why don't you share it with us?

MR. DANHOF: Mr. Plank, I thought I had. The information was given to us that at approximately this particular figure, assuming a reasonably active county from the standpoint of probation of estates and juvenile activity, if additional duties were added this would make a full time court in counties of up to about 25,000 or that particular number. Now, I can't give you the particular breakoff, but as the population increases and you get up to maybe 35,000, 40,000, 45,000 or 50,000 the duties assigned to the probate court become almost a full time job in and of themselves. It was for this reason that we came to the figure of approximately 25,000. As I say, I'm not sure of the magic number, and I think by study the legislature may arrive at this figure by its independent judgment.

Basically, the figures around this area came to me from information provided by the deputy court administrator, who is the one charged with studying the activities of the particular probate courts. It was for that reason that the majority of the committee voted to put in the 25,000 figure. And it was for that reason that it went through. Now, whether you strike it or not, perhaps the legislature will arrive at it.

That, Mr. Plank, was the reasoning for the 25,000 figure. At least in my opinion I think this is borne out by the committee records.

PRESIDENT NISBET: Mr. Plank.

MR. PLANK: I would say that Delegate Danhof has given us the argument we need to strike this 25,000 from the proposal, by saying that he feels the legislature might arrive at that figure, too. So let's let it.

PRESIDENT NISBET: The Chair recognizes Mr. Ford.

MR. FORD: I wish to support Mr. Sleder's amendment because I think that we have to be consistent. It seems that the convention has now determined by its last 2 votes, notwithstanding what we did last week, that there isn't any real need for a distinction between the circuit court and the probate court, or between the probate court and municipal courts or justice courts, or whatever might come below them. It seems that step by step the convention is going toward the idea that was advanced by some people very early in the convention that really what we should have is a single court on a supermarket basis, with divisions. Mr. Higgs prefers the example of New York. Some others prefer the example of California. But a long time ago the committee on judicial branch decided that we did need a 5 tier court system with 5 distinct tiers, and I thought this convention voted that way a few days ago.

Now, you may notice, for example, that none of the proponents of the 25,000 figure came from counties that are going to be affected as long as you leave the magic 25,000 in there. In other words, this is something that they think is so good that it's good for everybody else, but don't touch us, because we live in a county that has more than 25,000. And they now seek the protection of a constitutional guarantee that although you have flexibility, you aren't going to have it in their county; you have it for somebody else. I think it is also apparent that the delegates here who are representing the areas that will be directly affected by this figure of 25,000 were in opposition to the total concept.

Now, if we are going to remain consistent and say that we want flexibility, and we want the legislature to make this decision, then let's take the 25,000 out and let the legislature decide which counties are going to have a separate 5 tier system and which counties are going to have a supermarket court by some other name. If you really want to get flexible, let's go back and reconsider Committee Proposal 90, and say that there shall be a supreme court and such other courts as the legislature may provide, and let it do what it will with it. Now the question is, at what point do you stop being flexible? Is it at 25,000, or 26,000, or 17,000? Where do you want to be flexible, and where do you stop?

I want to take issue with the members of this committee who indicate that this figure was arrived at by some sort of consideration of facts and matters urged upon us by experts or people interested in the matter. We arrived at the figure of 25,000 by a process of elimination; by a series of amendments that started up here and kept coming down, down, down until 20 of the 21 members on that committee were no longer affected by it.

I want to be honest with the convention and say that the only reason I voted for it was because it wasn't going to touch a county that's anyplace close to me, and I felt that if somebody outstate felt that strongly about it, they ought to be entitled to have it. But I was surprised to find, after the committee took this action, that I haven't run into a single delegate to this convention who comes from a county of under 25,000 who wants this provision in there. Now, why is it that those of us from the large counties are so anxious to give our cousins from the smaller counties this wonderful flexibility that we are afraid to have for ourselves?

Now, if you're going to be consistent and are going to go all the way and amalgamate the court system into a supermarket court, let's do it for everybody right up and down the line as far as the legislature wants to go. Give it all the flexibility in the world.

PRESIDENT NISBET: The Chair recognizes Mr. Lawrence.

MR. LAWRENCE: Mr. President, members of the convention, for the reasons that I stated earlier, I would like to support this amendment as a real step forward. I believe I stated that I regretted that that limit had not been raised. Now, if someone will be good enough to put in an additional amendment to line 9 and take out the words "inferior thereto," and we pass both of these, I think we will have a provision we can all be proud of and that will be flexible, and that the people of the state of Michigan will benefit by.

PRESIDENT NISBET: The Chair recognizes Mr. Bonisteel.

MR. BONISTEEL: Mr. President, fellow delegates, I think that we have heard all the arguments that can possibly be made, and there are a number of arguments which I think are pertinent to this about flexibility and inflexibility, and all that sort of thing. I move the previous question.

PRESIDENT NISBET: The previous question has been demanded. Is that demand seconded? Those in favor will rise. There's a sufficient number up. The question now is, shall the previous question be put? Those in favor say aye. Those opposed, no.

The motion prevails. The question now is on the amendment of Mr. Sleder.

MR. BARTHWELL: Mr. President, I demand the yeas and nays.

PRESIDENT NISBET: The yeas and the nays have been demanded. Is that demand seconded? There is a sufficient number up. Mr. Chase, will you read the amendment?

SECRETARY CHASE: The amendment by Mr. Sleder and Mr. Plank:

[The amendment was again read by the secretary. For text, see above, page 1461.]

PRESIDENT NISBET: The question is on the amendment. Those in favor will vote aye. Those opposed will vote nay. Have you all voted? If so, the secretary will lock the machine and record the vote.

The roll was called and the delegates voted as follows:

Yeas — 121

Allen	Gover	Page
Andrus, Miss	Greene	Perlich
Anspach	Gust	Perras
Austin	Habermehl	Plank
Baginski	Hanna, W. F.	Pugsley
Balcer	Hannah, J. A.	Radka
Barthwell	Haskill	Rajkovich
Batchelor	Hatch	Richards, J. B.
Beaman	Hatcher, Mrs.	Richards, L. W.
Bentley	Heideman	Romney
Binkowski	Higgs	Rood
Blandford	Hodges	Rush
Bledsoe	Hood	Sablich
Bonisteel	Howes	Seyferth
Boothby	Hubbs	Shackleton
Brake	Hutchinson	Shaffer
Brown, G. E.	Kelsey	Shanahan
Brown, T. S.	King	Sharpe
Buback	Kirk, S.	Sleder
Butler, Mrs.	Knirk, B.	Snyder
Conklin, Mrs.	Koeze, Mrs.	Spitler
Cudlip	Krolikowski	Stafseth
Cushman, Mrs.	Kuhn	Staiger
Dade	Lawrence	Stamm
Dehnke	Leibrand	Sterrett
Dell	Leppien	Stevens
DeVries	Lesinski	Stopczynski
Donnelly, Miss	Liberato	Suzore
Doty, Dean	Lundgren	Thomson
Douglas	Madar	Tubbs
Durst	Mahinske	Turner
Elliott, Mrs. Daisy	Marshall	Upton
Erickson	Martin	Van Dusen
Everett	McCauley	Walker
Farnsworth	McLogan	Wanger
Faxon	Millard	White
Finch	Mosier	Wilkowski
Follo	Nisbet	Wood
Ford	Nord	Yeager
Gadola	Norris	Young
Goebel		

Nays — 8

Danhof	Karn	Powell
Hoxie	McGowan, Miss	Prettie
Judd, Mrs.	Ostrow	

SECRETARY CHASE: On the adoption of the amendment offered by Mr. Sleder and Mr. Plank, the yeas are 121, the nays are 8.

PRESIDENT NISBET: The amendment is adopted. Are there any other amendments to Committee Proposal 94?

SECRETARY CHASE: There are none on file, Mr. President.

PRESIDENT NISBET: Mr. Radka.

MR. RADKA: Mr. President, I rise to a point of parliamentary inquiry. I offered an amendment, while we were sitting as the committee of the whole, which in effect provided for a referendum of the people in the event any combination or districting of probate courts was encouraged between counties. The amendment was after "districts" by inserting "upon approval of the electors of the counties being combined". My question is this: if I offered this amendment at this time and it were defeated, could it be offered again at the second reading of this particular proposal?

PRESIDENT NISBET: The answer is no, Mr. Radka.

MR. RADKA: That is the question I wanted to ask.

PRESIDENT NISBET: If there are no other amendments, then **Committee Proposal 94**, as amended, is referred to the committee on style and drafting.

Following is Committee Proposal 94 as amended and referred to the committee on style and drafting:

The committee recommends that the following be included in the constitution:

Sec. a. In each county organized for judicial purposes, there shall be a probate court. The legislature may combine 1 or more counties into probate districts, or combine the office of probate judge with any judicial office inferior thereto in any county with supplemental salary as provided by law. The jurisdiction, powers and duties of such courts and of the judges thereof shall be prescribed by law. They shall also have original jurisdiction in all cases of juvenile delinquents and dependents, except as otherwise provided by law.

Sec. b. Judges of probate shall be nominated and elected at nonpartisan elections in the counties or the probate district in which they reside and shall hold office for a period of 6 years and until their successors are elected and qualified. In multijudge counties or districts the legislature shall provide by law for staggered terms.

General orders. Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, I move that the convention resolve itself into committee of the whole for the purpose of considering matters on the general orders calendar.

PRESIDENT NISBET: The question is on the motion of Mr. Van Dusen. Those in favor will say aye. Opposed, no.

The motion prevails. Mr. Van Dusen.

[Whereupon, Mr. Van Dusen assumed the Chair to preside as chairman of the **committee of the whole.**]

CHAIRMAN VAN DUSEN: The committee will be in order. When the committee last sat it was considering **Committee Proposal 95**, dealing with appeals from decisions of administrative tribunals. The committee had made certain amendments to Committee Proposal 95. There are further amendments to be considered. Before proceeding with their consideration, the Chair will ask the secretary to read Committee Proposal 95 as it has been amended to this point.

SECRETARY CHASE: Committee Proposal 95 has been amended in the following particulars, in line 12, strike out the word "clearly" — this is the net effect of that amendment — so the language then reads, ". . . in cases in which a hearing is required, whether the same are supported by reliable, probative, and substantial evidence on the whole record."; and in line 7, after "rights,", by inserting "privileges or licenses,".

For last previous action by the committee of the whole on Committee Proposal 95, see above, page 1440.

CHAIRMAN VAN DUSEN: The secretary will read the next amendment.

SECRETARY CHASE: Mr. Faxon has offered the following amendment:

1. Amend page 1, line 9, after "law.", by striking out the balance of the section.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Faxon, on which the Chair will recognize Mr. Faxon.

MR. FAXON: Mr. Chairman and members of the committee, I didn't expect we would get to this so soon. I am just going to make reference to some of the arguments that were used yesterday in asking for the inclusion of this particular section in the constitution, and ask that you consider whether the matter that I am asking you to delete could not be better handled through statutory legislation rather than through a constitutional provision.

It was indicated that this whole section was new, and that much of the material contained therein is already to be found in statutory matters in a majority of other states. Now, I make reference here to the fact that the first sentence gives to the legislature a sufficient grant of power to take care of the

second sentence. The second sentence starts out by saying, "this review shall include, as a minimum," and in essence then it is prescribing to the legislature a minimum which obviously isn't necessary for the legislature in order for it to take sufficient action upon the matter.

Now, I was little bit confused yesterday at the manner in which the second sentence was looked upon by members of the committee. First, we went ahead and supported the recommendations made by the committee to insert the language "erroneous in view of the," and then we followed this up by going back and taking out that language and putting back "supported by." Rather than get into a hassle as to whether it should be "erroneous in view of the" or "supported by," it would be better to delete the sentence and leave the questions that are to be determined here to future legislative action.

I ask you, how many times in the constitution do we have need for setting a minimum prescription for legislative action? And this is really what this is doing. "This review shall include, as a minimum . . ." I maintain that in the first sentence, where we have already inserted "privileges and licenses," and we have a question of judicial, quasi judicial and private, you have a sufficient and broad enough grant of power with the additional words "as shall be provided by law" to give sufficient scope to this kind of provision without getting into legislative detail.

For the sake of brevity, to eliminate the confusion that has ensued over the second sentence, and to keep more strictly in line with what is good constitutional language, I would ask your support for this amendment.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Faxon. Mr. Mahinske.

MR. MAHINSKE: I would be opposed to the amendment, for the simple reason that this would leave us exactly in the situation that we find ourselves in today.

From line 9 down we have provided for a minimum; that whether or not the legislature provides for this in the establishment of one of these bodies, we have this. As it is today or under the amendment, the legislature would simply create, as it does today, one of these bodies, and in the enabling statutes it provides for the scope of review to be determined by the body itself, by its own rule. Now, if the body does not provide for a scope of review, there is absolutely no recourse. Under the committee proposal, as proposed, there would be at least the saving recourse that we have from line 9 down. By striking this, and by having the newly created body not providing for a scope of review, then we find ourselves exactly in the situation that we are in now. Some of these bodies have not provided for any scope of review, or review at all, and we have to rely on what we can find in the constitution itself. For these reasons I would be opposed to the amendment.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Faxon to strike the second sentence of section a. Dr. Nord.

MR. NORD: Mr. Chairman, I support the amendment offered by Mr. Faxon. I believe the last sentence is just chock full of legislative material, none of which in my opinion is worth a nickel. Every bit of it will cause trouble. There are many words in there which are certainly of no value, such as "reliable, probative, and substantial." All of those words will cause trouble in the courts. Further, all of these words — and keep in mind that the object of these words is to prevent the legislature from requiring less review than this — all of these words will simply require the court to go into the same business as every administrative officer and board. They will have to ignore practically all of the work of the administrative officers and board, and do it all over again, because they will have to determine whether the evidence is reliable, for example. How are they going to find out whether the evidence is reliable without a complete and thorough review of the evidence? Of course, as to whether it is probative, it raises nothing but legal problems, because if it isn't probative it could not possibly be evidence. As to whether or not it is substantial evidence, that is now basically the rule in any event. But putting the 3 words one right after the other can certainly do nothing but cause harm.

My feeling is that Mr. Faxon is correct. This last sentence does no good. It introduces legislative matters. It is chock full of troublesome legal words. In addition, as a substantive matter, it would practically wreck administrative boards and officers. It would certainly change the entire course of administrative law, and it would mean that wherever there is a hearing by an administrative officer or board, that is basically nothing but a matter of form. It will have to be done all over again by a court. It seems to me that the least we can do with this section is as Mr. Faxon suggests, and that is to strike out the last sentence.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Faxon. Mr. Ford, do you seek recognition?

MR. FORD: I rise to support Mr. Faxon's amendment. I think at this time I would like to point out the weakness of this whole new section and what we are actually doing. There were crocodile tears cried here last evening for the poor plumber who has his license taken away and hasn't got a chance to go to the court. This isn't quite true, and I think the people who said it knew that it wasn't true. The present law provides adequately for an appeal in this kind of a matter.

If we leave the section the way it has been amended now, with this last section intact, no one can guess what happens with the number of people who apply for licenses of one kind or another not just from the state of Michigan but from every municipality in this state and every county in the state. What happens in a city the size of Detroit with just the applications for an electrician's license, a plumber's license, or any one of the hundreds of licenses that are required? Is it the board of experts in the field of electricity who determine, on the facts, whether the man is competent, or is it a circuit court that determines that the man is competent? I think that, as Mr. Krolikowski so aptly put it, we have opened the door for all sorts of mischief. Now, really, from the legal point of view, I think we are missing the real question of what kind of a change is attempted by Committee Proposal 95.

I took a look at some cases with which some of us are familiar who have been involved in these civil service matters, from the municipal point of view, and the nature of the appeal. And in deciding these cases in the past I think the supreme court has laid down very clearly the concept of what we are talking about here. And the section of the constitution that causes the appellant to come a cropper in these appeals from administrative sections is not in the judicial article at all. The section that has been relied upon by the supreme court in the past for setting down the rules that it has set down on the scope of the appellate jurisdiction of the courts is in article IV, section 2 of the present Constitution of 1908, which has been passed by us, and will be in the new constitution. This is what we call separation of powers.

In the case of in re Fredericks — which was an appeal from a decision by a rather famous judge, Homer Ferguson, in which he was sustained, incidentally — the supreme court said with respect to the action of a civil service commission at the local level — in this case it was the city of Detroit —

> . . . in attempting to provide for an appeal from orders of the civil service commission to the circuit court, imposed nonjudicial functions upon the court, and was, therefore, unconstitutional, violating the Constitution of 1908, article IV, section 2.

Now, they go on to define why they feel it is a violation of the separation of powers provision of the constitution. There are a lot of details here, and I won't burden you with the nature of the proceedings. Testimony was taken before the civil service commission, the civil service commission made a decision on the basis of that, and the appeal was taken from it.

> Although partaking of that which is judicial, its acts are not truly of such a nature, and are therefore termed quasi judicial functions. This view may appear to be in conflict with the broad language of some of the earlier decisions of this court, which held that removal for cause was an exercise of judicial power.

And then they give the citations of the early Michigan cases.

> Moreover, we believe the rule to be more correctly expressed in Fuller vs. Attorney General [and there are

several citations] and the act of removing for cause to be primarily administrative and, although judicial in a sense, not an act of such a nature that it requires performance by the judicial branch of the government or permits an appeal thereto.

A decision of the civil service commission upon a hearing to remove for cause, not being the result of judicial action, but being at the most a quasi judicial act of an administrative tribunal, is not subject to review by the courts on appeal, and an attempt by the legislature to create a right of appeal would fail as an unconstitutional endeavor to foist nonjudicial functions upon the courts.

However, the foregoing proposition would be inapplicable in the event that the legislature did not intend a review de novo by the circuit court but contemplated a review by certiorari and thus expressed its intent by the indiscriminate use of the word "appeal".

What they are saying, in effect, is the court should have the right to review, and the court does not have the right to hear an appeal; but the court, as soon as it substitutes its discretion for the discretion of the administrative body, and substitutes its wisdom for the wisdom of the administrative body as to the substance of the facts, is crossing over the line and exercising an administrative function which is contrary to the concept that the administrative part of government should be kept separate and apart from the judicial function of the government.

Now, the court went on to sustain the right of the circuit court to hear this kind of appeal, again by a section that we are not talking about here, but under that provision which we have already reenacted which says that the courts have the general right to superintend and control inferior tribunals. On that basis our supreme court has said that the circuit court is the proper place to hear and review, and must have some sort of an appellate right, because of its general power to superintend or supervise the inferior tribunals of the state under the present Constitution of 1908, article VII, section 10. Now, we have already voted in this convention to reinstate, in substance, the language of article VII, section 10.

In a more recent exposition of this same principle, which is again a case involving a removal of a police officer — and Judge Pugsley has an intimate acquaintance with these, because this whole series of cases grew out of a series of trials that Judge Pugsley conducted — and these were people who had been convicted of crimes who had been removed as police officers, and this is their appeal after removal by the civil service commission:

The trial board shows a valid reason for its action. Such action therefore must be affirmed. We must not usurp the functions of an administrative body.

The foregoing principle is applicable to the case at bar. Even though the defendant trial board was acting in a quasi judicial capacity, it was still part of an administrative department.

So when we put the magic word "quasi judicial" in here, we are not doing much of anything because what we are trying to do by indirection is commingle the administrative and judicial functions; and if we want to do this, then we should go back to article IV, section 2 and do it there, and say that when we mean there shall be a separation of powers, there shall be a separation of powers, except; and then take over the job of the legislature and set out the exceptions.

In talking about this thing, in talking about quasi judicial powers, what we are actually asking the court to do in the future is to get some new nomenclature here and decide whether when they said quasi judicial in these cases, they meant the same thing as we mean when we are talking about quasi judicial here. I gather from what has been said by everybody advocating this section that they mean by "quasi judicial" a clear cut distinction between judicial and administrative, and that quasi judicial actually means judicial, and not something else or something less. But the supreme court has said that "quasi judicial," when you are talking about a function exercised by an administrative body, is not really a judicial function at all, but is an extension of the administrative function; and that to use the word "quasi judicial" as a method to get into the judicial function a part of the administrative function is a violation of the separation of powers. Again, in the subsequent cases, article IV, section 2, is alluded to and I think that this points out the exact problem that we are facing.

Now, if we adopt the Faxon amendment, at least we will cure some of the problems that have been created by the other amendments that were adopted yesterday. If we adopt the Faxon amendment, what we are saying — and we should understand that we are saying this — is that the legislature may, notwithstanding the language we have put in about the separation of powers, confer upon the judicial branch functions of the administrative part of government, or the executive branch, if you please. If we are going to confer administrative functions on the court, let's say so. But we are here putting into the constitution in the judiciary article a section which is going to be in conflict with what we have already said, and I'm not guessing that it is going to be in conflict. I'm citing to you examples of where the Supreme Court of the state of Michigan has said that the language we are now putting back is in conflict with such an attempt to commingle the judicial with the administrative function. And if we clearly intend to invade the administrative function by the judiciary, then we should do it by a clear exposition of that intent, and not by language that is going to leave it to the court to wonder whether we really meant that we were going to do something different than we had done in the past, and whether we really meant it when we reenacted the separation of powers section of this constitution.

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: Mr. Chairman, I move the committee do now rise.

CHAIRMAN VAN DUSEN: Mr. Danhof moves the committee do now rise. Those in favor of the motion will say aye. Those opposed will say no.

The motion prevails. The committee will now rise.

[Whereupon, the committee of the whole having risen, President Nisbet resumed the Chair.]

PRESIDENT NISBET: The Chair recognizes Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, the committee of the whole has had under consideration one proposal, of which the secretary will give a detailed report.

SECRETARY CHASE: Mr. President, the committee has had under consideration **Committee Proposal 95,** has considered one amendment thereto, and has come to no final resolution thereon. That completes the report of the committee of the whole.

PRESIDENT NISBET: Any announcements?

SECRETARY CHASE: The committee on style and drafting will meet in Room K at 8:00 o'clock this evening. William B. Cudlip, chairman.

Mr. Hoxie requests leave of absence from the afternoon session.

PRESIDENT NISBET: Without objection, he will be excused.

The Chair recognizes Judge Mosier.

MR. MOSIER: Mr. President, ladies and gentlemen of the convention, I move that we recess until 2:00 o'clock.

PRESIDENT NISBET: The question is on the motion of Judge Mosier. Those in favor will say aye. Opposed, no.

The motion prevails. We are recessed until 2:00 o'clock.

[Whereupon, at 11:40 o'clock a.m., the convention recessed; and, at 2:00 o'clock p.m., reconvened.]

The convention will please come to order.

SECRETARY CHASE: Mr. President, a quorum of the convention is present.

Mr. Sterrett has filed a request that he later on be excused from the remainder of the afternoon session.

PRESIDENT NISBET: Without objection, he will be excused.

Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, I move that the convention resolve itself into committee of the whole for the purpose of considering matters on the general orders calendar.

PRESIDENT NISBET: The question is on the motion of Mr. Van Dusen. Those in favor say aye. Those opposed, no. The motion prevails. Mr. Van Dusen

[Whereupon, Mr. Van Dusen assumed the Chair to preside as chairman of the committee of the whole.]

CHAIRMAN VAN DUSEN: The committee will be in order. When the committee last sat it was considering Committee Proposal 95, dealing with review of decisions of administrative tribunals. The question is upon an amendment to Committee Proposal 95 offered by Mr. Faxon, on which 4 speakers had sought recognition, the first of whom is Mr. Krolikowski. The Chair will recognize Mr. Krolikowski if he desires recognition at this time.

MR. KROLIKOWSKI: I yield.

CHAIRMAN VAN DUSEN: Mr. Krolikowski passes. Mr. King, do you desire to be recognized at this time?

MR. KING: Mr. Chairman, fellow delegates, one of the delegates has pointed out that if we permit this present language to stand, that we have opened the door to all sorts of mischief. I would suggest that we have opened the door to justice. I won't answer specifically the statements made by that delegate, because he was talking about the word "quasi judicial," and Mr. Faxon's amendment, which I believe is still on the floor at this time, does not touch upon that matter at all. All we have really done here is to provide for justice, and I direct your attention specifically to line 7 of this proposal, where we are talking about judicial and quasi judicial determinations.

I think it is awfully easy to be misled to think that we are going to permit review of every single administrative board hearing in the state of Michigan. Of course that is not so at all. We are only talking about — and I'll refer right to the language, "Final decisions, findings, rulings and orders of any administrative officer or body existing under the constitution or by law, which are judicial or quasi judicial. . . ." Those are the areas where we think that the judiciary has a proper and legitimate function. And I really find it hard to believe that anybody would deny the appellant the right to a judicial determination of judicial or quasi judicial matters. I don't think that any harm can come from this, and I am convinced that a great deal of good can come from it. I urge that the Faxon amendment be defeated.

CHAIRMAN VAN DUSEN: Judge Leibrand.

MR. LEIBRAND: Mr. Chairman and delegates, we discussed this general question for some 2 hours last night. The hall wasn't empty. There were, by my count, from 125 to 130 delegates here, and they heard that discussion. I have heard it said that more lawsuits were lost by asking one more question than by any other means. I'm beginning to suspect by my experience in this convention that more measures are lost by one more speech than by any other means. So I'm not going to repeat my remarks of last night. But I do want to say this. If Committee Proposal 95 last night had any merit at all, the Faxon amendment cuts the very heart out of it, in my opinion. You heard speakers here last night — people with actual experience — tell you of their experiences before these boards, bureaus and commissions, and the kind of treatment and the kind of rulings and decisions they got. Now, the Faxon amendment would leave these poor benighted souls who have business before these bureaus, boards and commissions in exactly the same position that they are now. Remember this: Committee Proposal 95 does not provide for a new trial; does not require the presentation of witnesses. The complete process of review under this proposal is simply a review on the record made before the board of review or commission below. It is a summary proceeding, and if the people of the state of Michigan who have business before these boards are going to have real justice, something in the nature of Committee Proposal 95 is necessary.

I urge the defeat, and the resounding defeat, of the Faxon amendment.

CHAIRMAN VAN DUSEN: Mr. Yeager.

MR. YEAGER: Mr. Chairman, if it will expedite the vote, I will pass.

CHAIRMAN VAN DUSEN: Mr. Shackleton.

MR. SHACKLETON: Mr. Chairman and delegates, Committee Proposal 95 is one of the most important we have in our proposed constitution. I have heard no lawyers suggest that laws not be reviewed by the courts. When bureaus or bureaucrats can issue rules and regulations which essentially have the effect of law, they too should be reviewed. There isn't a business man here, undoubtedly, who hasn't at some time or another run up against a bureau, a department, or a bureaucrat somewhere who has been autocratic, has been paradoxical, has hardly been civil at times, and this is one way that we can to some extent protect the poor businessman who is subject to the autocrat's whims and fancies as the occasion might dictate. I certainly would urge the defeat of the Faxon amendment.

CHAIRMAN VAN DUSEN: Mr. Garry Brown.

MR. G. E. BROWN: Mr. Chairman, it appears that the debate is dying down. I think that everyone has had a chance to properly survey this question. And if anyone hasn't made up his mind relative to this issue, if he wants to raise his hand and get further information on it, I would be happy to supply it. But in the event that isn't necessary, let's vote on the question.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Faxon to Committee Proposal 95 to strike the second sentence thereof. Mr. Krolikowski.

MR. KROLIKOWSKI: Mr. Chairman, I don't quite understand the posture of the committee. Has the question been moved by Mr. Brown, or are we still open for discussion on it?

CHAIRMAN VAN DUSEN: The question is before the committee for discussion, Mr. Krolikowski. Mr. Brown happened to be the last speaker who had sought recognition, and therefore the question was about to be put. If you seek recognition, you are in order.

MR. KROLIKOWSKI: Thank you, Mr. Chairman. In view of the fact that the Faxon amendment is consistent with an amendment being sponsored by Mr. Bledsoe and myself, I am constrained at this time to concur with the Faxon amendment. Now, lest the record portray me as being Janus-faced, or making a hasty departure from the initial committee position, I should like to state that I was assigned a committee task, and although the committee chairman had been apprised that my personal sentiments were at odds with the committee position, I felt incumbent to sustain the committee's position to the point where my personal views, as embodied in the Bledsoe-Krolikowski amendment, came out before the committee. By reason of the fact that the Faxon amendment concurs with the Bledsoe-Krolikowski amendment, in that the Bledsoe-Krolikowski amendment would strike Committee Proposal 95 in its entirety, and the Faxon amendment strikes only one portion of Committee Proposal 95, I should now like to address myself to the Faxon amendment.

The real purpose of the Faxon amendment, as I understand it, is to strike that portion of the committee proposal which is statutory in nature. Now, the committee proposal imposes a restraint upon the legislature with respect to the scope of review that it can impose upon its administrative agencies. I think that the position that this matter is statutory in nature is amply supported by the fact that only one other state, the state of Missouri, has deemed it necessary to incorporate similar language in its constitution. Even the Missouri proposal, however, is far less stringent than the phraseology contemplated in Committee Proposal 95. In effect, the language of the committee proposal will be an undue infringement on legislative power, in that henceforth the legislature will be

unable to impose the requisite degree of finality on administrative decisions.

From the arguments that I have heard, the only real argument to justify this radical departure was the argument advanced by Judge Leibrand. Judge Leibrand's argument was that the decisions and findings of the workmen's compensation agency are now conclusive. He painted a hypothetical case; he analyzed it; and he rendered a decision — and, as is customary for Judge Leibrand, I believe his decision was correct on the factual analysis that he presented. However, there are 2 answers to Judge Leibrand's quandary. The first is if he has any quarrel with his own decision or the decision he was compelled to render, it's a matter that can readily be corrected by the legislature. It is the Michigan state legislature that has prescribed the narrow scope of review which is presently imposed upon the workmen's compensation. Furthermore, I think that the Michigan supreme court has directly addressed itself to Judge Leibrand's problem. The Michigan supreme court has stated that if the legislature were to impose this conclusiveness on findings of fact of administrative agencies, and if these findings of fact were wrong and invaded constitutional rights, this would constitute an undue limitation on the judicial power of the state, and the courts could take remedial action. So on 2 counts I believe that Judge Leibrand's only argument can be obviated. The first is to go directly to the legislature and ask them to correct the scope of review. The second is to take direct recourse to the supreme court.

Now, I should just like to make the observation that although Judge Leibrand seems to be unhappy with the scope of review that is presently imposed upon workmen's compensation, I don't believe that this is reflective of any special affinity on the part of the legislature for workmen's compensation. There are other agencies that enjoy a similar privilege. The state board of education findings of fact are presently conclusive. I don't think this is motivated by any special regard for the nature of the findings. I think that the legislature acts upon due deliberation in imposing a standard of review. In this instance the review from workmen's compensation, as well as from the state department of education, are conclusive. I believe that there is ample justification for legislative action in this area, and that we err in trying to strip the legislature of this power to impose varying degrees of review upon administrative agencies. I'm not fully acquainted with the reasons for the finality that is attached to the findings of fact of the board of education. I can imagine that there is some desire to have a unified system of school reorganization, and that it is preferable for the state board of education instead of a circuit court judge to decide whether a school district should be organized or not organized.

Although I'm not familiar with the state board of education's internal operations, I do know that there are significant reasons why the legislature has imposed a conclusiveness on findings of fact from the workmen's compensation. I think the first fact that should be recognized is that in workmen's compensation the state of Michigan is not itself a party. The state is acting merely as an arbiter. The parties are the employer and the employee. Secondly, the scope of review within the workmen's compensation is broad and exhaustive. There are appeals within the agency itself. Third, and this is certainly a significant factor, to thrust review of workmen's compensation findings of facts upon every determination is to impose upon the person least likely or least able to absorb it at a time when he is in dire need of finances. The entire concept of administrative agencies is defeated unless swift and inexpensive review can be afforded to the individual who is dependent upon the statute which is being administered by the particular agency.

So, with respect to Judge Leibrand's argument, I don't find that it is sufficient justification to take as radical a departure as is being contemplated by Committee Proposal 95. I therefore urge you to adopt the Faxon amendment.

CHAIRMAN VAN DUSEN: Mr. Lawrence.

MR. LAWRENCE: Mr. Chairman, members of the committee, I think it's about time that we got down to basic things. I think it is a question of philosophy. Do you believe in government according to law or according to men? If you believe that we should have government according to law, then you should vote no on the Faxon amendment. If you believe that we should have government according to men, and let a small group decide the rights of other people, regardless of the law, then you should vote yes for it.

I agree with Judge Leibrand and Mr. Shackleton that this is a step forward, and it is made necessary — it is not statutory — by the autocratic power and authority that these administrative agencies have assumed throughout the years. This is a real step forward. The provision as it is now is something that you can be proud of. I urge you to vote no as to this amendment. And if the Krolikowski-Bledsoe amendment comes up, as it was explained by Mr. Krolikowski, it is even worse and I urge you to vote no as to that.

CHAIRMAN VAN DUSEN: Mr. Iverson.

MR. IVERSON: Mr. Chairman and fellow delegates, being the third member on the subcommittee of which Mr. Krolikowski was the chairman, I rise to oppose the Faxon amendment, and am rather amazed at his change of position in this respect.

I simply say this. The apparent fears which have been indicated here are absolutely without foundation. The only thing that we are attempting to do here is to grant to the citizens of this state a right of review of a determination by an administrative body. And bear in mind that we are only setting up minimum rights so far as appeals are concerned. I believe that you will find that there's no attempt to hamstring any department. If Mr. Krolikowski or anyone has any fear that workmen's compensation or anyone else is going to be bothered so far as the payment of funds is concerned, or payments from these administrative bodies, I think you only need to refer to the employment security commission, where rights of appeal are granted to the individuals or to the companies, and still the individual gets paid his unemployment compensation. So why draw the red herring across the trail with respect to that?

The legislature has plenty of authority, even under this, to make such arrangements with regard to those cases so it doesn't create any hardship; and I urge you to vote against the Faxon amendment, and I move the previous question.

CHAIRMAN VAN DUSEN: Unfortunately, Mr. Iverson, the previous question is not in order. The Chair fervently wishes it were. Mr. Hodges.

MR. HODGES: I will speak briefly. Mr. Chairman, I raised the point of workmen's compensation yesterday, and I made the remark that I had some experience on the defense side of it. And in workmen's compensation, more than in probably any place in the law, is the old phrase "justice delayed is justice denied" applicable. For those that are injured and do not have any income coming in, I believe this amendment just opens the door to capricious appeals for the purpose of forcing redemptions of claims at amounts that would be far less than the person might be entitled to, because the average injured worker has to have some kind of income, and as long as it is tied up in appeal he isn't getting it. And Mr. Iverson says that it can be taken care of by the legislature, but it hasn't in the past.

And remember this. Every time an injured worker is forced again to be on appeal, it isn't tough on a corporation which has house counsel or people on contingent fees. But, for that employee who is injured, his workmen's compensation payments are being eaten up by attorney fees, and the more you make appeals, the bigger the percentage that comes out. God knows it is difficult now to live on the inadequate amount that injured workers get, and if you allow this to go on they will be getting practically nothing. For that reason I urge you to support the Faxon amendment.

CHAIRMAN VAN DUSEN: Dr. Nord.

MR. NORD: Mr. Chairman, first of all I would like to say this. As to the general motive behind the idea of having review or some sort of civil rights, you might say, in administrative hearings, I am sympathetic to it. In fact, I was one of the movers in the emerging problems committee to have that

considered. So let no one get mixed up on the point of view that I think nothing should be done. I think something should be done. But I am very much satisfied that what we have before us is not the right thing. I believe it is a meat axe approach to a very sophisticated problem.

Now, I believe also the arguments presented in favor of the committee proposal and against the Faxon amendment have been, basically, meat axe type arguments. For example, Mr. Lawrence — one who usually doesn't engage in that kind of argument — has stated pointblank that anyone who disagrees with him doesn't believe in government according to law. Now, I take strong exception to that. I fought as hard as I could, and I believe every lawyer here and many other people too have fought all their lives, or as long as they were able, for government according to law; and I don't intend to stop now, even though I disagree with Mr. Lawrence, I do believe in government according to law.

The question is, however, whether the present committee proposal relates to that problem or to a different problem. The present system we have, without Committee Proposal 95, does guarantee government according to law, even in administrative tribunals. They cannot get away with violating the law. If they depart from the statutory authority, there can always be an appeal on that. That is one of the grounds for appeal, always has been, and always will be. Secondly, if they do something which deprives somebody of a constitutional right, that is appealable. That always has been, and that always will be. Therefore, if there is a violation of the law that is always appealable and always has been appealable; that will be without this committee proposal.

The question that we have to consider is not whether an administrative tribunal is going to break the law. They can't. But who is going to determine the facts? That is the question. Who is going to determine the facts, and how, in a particular case? It isn't correct to say that nobody in the world can ever determine facts except judges. If that were so, for example, then the constitutional convention wouldn't think that it could determine facts, especially facts about how judges should go about deciding facts.

There are many ways of deciding facts. Now, we know that traditionally it has been the American approach and the common law approach that judges do determine facts. Of course, juries have determined facts, too. Juries are not judges, but nevertheless they are governed by judges. But that has not been the only way in which facts have been interpreted. When the workmen's compensation board and a great many other administrative boards came into being, the volume of business was such — and for other reasons, as well — that it was decided a different method should be tried. Facts should be determined not necessarily by judges; facts should be determined by people who have a specific law to administer, accustomed to hearing facts of the same type, and have expertise and can make the administration of justice cheap and expeditious and accurate.

With the proposal that we have before us, Committee Proposal 95 before the Faxon amendment, it seems clear to me that we open the door for every single case, every determination by any administrative board, to be subjected to a review. Not just some cases, but every case. Because there are enough words in that last sentence to make it an easy thing for a lawyer to pick on one of them. Is the evidence reliable? That is a question of fact. That could be one way or the other. That could be reviewed. Is the evidence probative? Is it substantial? Those kinds of questions would make it an automatic appealable case in every single case. And, if we have that, we have really lost the use of administrative procedure.

You should also keep this in mind. That whatever you are providing or are purporting to provide in the sentence that Mr. Faxon has asked to cancel, that power exists in the legislature anyway. If it was thought necessary during all the time that administrative boards have come into being to use such a power to put in such provisions in the law, it could have been done. It still can be done. It can be done in the future if it becomes necessary. The legislature, as far as I know, has never seen fit to do that, not only in our state, but in other states.

What you are insisting, however, is that the legislature ought to see fit to do it; in fact, they must see fit to do it. You are telling the legislature, whether you like it or not, this is the way you should govern your business. Then you're telling the courts, whether they like it or not, this is the way they should govern their business. And the administrative boards you are telling not to govern their business. I fail to follow any of the arguments to the extent to show why any of these changes, if they are needed at all, are needed in the constitution. They are clearly legislative in nature. They are legislative in nature, and the legislature has not been interested in them. As far as I know, nobody has been interested in urging them before the legislature.

What we have, in effect, is this kind of problem. It has been stated by someone, I've forgotten who, on the floor that the Faxon amendment would cut the heart out of Committee Proposal 95. In my opinion that is an accurate statement. It would cut the heart out of Committee Proposal 95. That is why I'm in favor of it. And the reason why I'm in favor of cutting the heart out of something is this. This particular proposal is aimed at cutting the heart out of administrative law, and therefore we ought to cut the heart out of this proposal. I think we should adopt the Faxon amendment.

CHAIRMAN VAN DUSEN: The last speaker currently seeking recognition on the Faxon amendment is its author, Mr. Faxon.

MR. FAXON: Mr. Chairman, members of the committee, I fail to understand some of the points that have been raised here in objection to the deletion of the sentence that I am attempting to delete, and I just want to call this to your attention, and I'm going to quote the objections as I have heard them. Mr. Iverson stated that what the people want here is the right of citizens to review of the decisions made by administrative bodies. As I read this first sentence, it states clearly:

> All final decisions, findings, rulings and orders of any administrative officer or body existing under the constitution or by law . . . shall be subject to direct review by the courts as shall be provided by law.

This gives the kind of latitude to the legislature that we have been attempting to put in in previous articles. Just this morning we added to the article dealing with the probate court sections which gave latitude to the legislature. I thought at the time that we were proceeding on the assumption that we could trust the legislature. Now I find that we have to prescribe a minimum set of rules for the legislature. Now, if we here are in agreement that we can trust the legislature with regard to the probate courts, then I don't see why we should suddenly alter that position and say that we can't trust the legislature with regard to setting up proper procedures for review of administrative rulings.

I want to make another point here, when it comes to the question of goverment according to law. I think it is quite clear that these administrative agencies to which these people have directed their criticism are agencies that have been created by law. It is within the province of the legislature at will to make any sort of determination it likes with regard to how procedures will be followed with regard to appeals. Now, if this is already in the legislature, what are we trying to do here? Are we saying the legislature hasn't been able to meet its responsibilities? I would invite those people in the convention who are such strong proponents of the legislature having the rights and responsibilities to get up and to state whether they feel the legislature has erred in providing adequate safeguards for the appeal of administrative rulings. It seems to me — and I'm just repeating this final point — that this sentence that we are asked to delete, "This review shall include, as a minimum. . . ." is just fraught with non-constitutional language. "As a minimum." Is it necessary to tell the legislature what it must include as a minimum? The legislature must in its wisdom use discretion with regard to what these appeals shall take the form of.

It has been already pointed out, I think very clearly, by Delegate Krolikowski, that there are varying degrees of review

by different agencies. The state board of education was used as an illustration of one. Now, I would invite anyone here to comment with regard to whether the state board of education as an illustration of one. Now, I would invite anyone here to the decisions which they make, which might better be left with their rulings, rather than to be carried on to the courts. In fact, we have a former member of the state board of education who might be able to comment on it, and I would invite his comment with regard to this particular function of the state board of education. With those comments I would conclude.

CHAIRMAN VAN DUSEN: Mr. Krolikowski.

MR. KROLIKOWSKI: Mr. Chairman, from the sweeping generalization made by Delegate Lawrence, one might readily conclude that the committee recommendation is absolutely necessary because we have nothing in the state of Michigan that adequately protects the individual against administrative tyranny today.

Just to get this in the proper perspective, I should like to read a short paragraph from the administrative procedures act which was adopted in the state of Michigan in 1952. Now, this sets out the scope of review that is imposed upon all administrative agencies that are invested with rule making authority to adjudicate contested cases. I will read you the scope of review that presently exists and ask you to determine for yourself whether there is adequate protection in the state of Michigan under the present statute. I quote from Michigan Statutes Annotated, 3.560 (21.8), subsection 6 — and this is as a matter of right —

> The court may affirm the decision of the agency or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions or decisions are:
>
> (a) In violation of constitutional provisions;
> (b) In excess of the statutory authority or jurisdiction of the agency;
> (c) Made upon unlawful procedure;
> (d) Affected by other error of law;
> (e) Unsupported by competent, material, and substantial evidence in view of the entire record as submitted, or contrary to the overwhelming weight of the evidence;
> (f) Arbitrary or capricious.

If any one of these defects exists in the findings, the inferences, the conclusions or decisions of any administrative agency, the petitioner may take swift action and file an appeal as a matter of right to the circuit court. Thereafter, if he still deems himself aggrieved, he may appeal to the supreme court.

Now, there are only 4 agencies that are expressly excepted from the administrative procedures act. Those 4 agencies are the workmen's compensation commission, the employment security commission, the public service commission and the department of revenue. I believe that the legislature has exercised good and sound judgment in excepting these 4 agencies from the administrative procedures act. I feel that there's absolutely no reason whatsoever to impose the stringent standard that the constitution will impose upon the state legislature. Thank you.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Faxon to strike the second sentence of section a of Committee Proposal 95. Those in favor of the amendment —

MR. LEIBRAND: Division, please.

CHAIRMAN VAN DUSEN: Mr. Leibrand requests a division. Is the demand supported? It is supported. Those in favor of the amendment will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the adoption of the amendment offered by Mr. Faxon, the yeas are 35, the nays are 88.

CHAIRMAN VAN DUSEN: The amendment is not adopted. The secretary will read the next amendment.

SECRETARY CHASE: Mr. T. S. Brown offers the following amendment:

1. Amend page 1, line 7, after "licenses,", by inserting "and to which the state is a party in interest,"; so that the language will then read, ". . . and affect private rights, privileges or licenses, and to which the state is a party in interest, shall be subject to direct review by the courts. . . ."

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. T. S. Brown, on which the Chair will recognize Mr. Brown.

MR. T. S. BROWN: Mr. Chairman, members of the committee, because of the fact that, generally speaking, the supporters of the proposal as it now stands who just voted down the Faxon amendment have indicated that their principal intention is to protect the private individual from capricious action by state administrative bodies, I think we should therefore preclude any other meaning being attached to what I'm sure you genuinely believe in, and what I'm sure you genuinely believe is progress and a good thing, by inserting the actual meaning of the net result of the present terminology. This would be to guarantee this substantial appeal in those matters only where the state is a party in interest; where the state would not be then interfering as an arbitrator between private individuals or groups of individuals that happen to have a conflict that comes under the purview of this or that administrative body. I think therefore that the amendment is self explanatory.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Brown. Those in favor will say aye. Those opposed will say no.

The amendment is not adopted.

DELEGATES: Division.

CHAIRMAN VAN DUSEN: A division is requested. Is the demand supported? It is supported. Those in favor of the amendment offered by Mr. T. S. Brown will vote aye. Those opposed will vote no. The secretary will read the amendment.

SECRETARY CHASE: Mr. Brown's amendment is to insert after the word "licenses,", the words "and to which the state is a party in interest,".

CHAIRMAN VAN DUSEN: Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the adoption of the amendment offered by Mr. T. S. Brown, the yeas are 37, the nays are 77.

CHAIRMAN VAN DUSEN: The amendment is not adopted. The secretary will read the next amendment.

SECRETARY CHASE: Mr. T. S. Brown offers the following amendment:

1. Amend page 1, line 8, after "courts" by inserting a comma and "at the request of natural persons only,"; so that the language will then read, " . . . shall be subject to direct review by the courts at the request of natural persons only,".

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. T. S. Brown, on which the Chair will recognize Mr. Brown.

MR. T. S. BROWN: Mr. Chairman and members of the committee, generally speaking, I think it is agreed upon at this juncture that we all realize the fact that there are certain appellate rights guaranteed under our compiled laws today, and that the genesis of this particular provision was actually the fear that the poor little man would again be at the mercy of the dispassionate state agency.

I understand — and now we are coming down to the basic problem — and I actually do believe, and I hope I'm wrong, that the originators, or the original draftsmen of the terminology that we have before us, outside of my amendment, were directly motivated and employed by the manufacturer's association. Now, if this is true, then I sincerely believe that there must possibly be some motive other than what we have been discussing. And if we are attempting to protect the rights of natural persons, the little man, the poor man, and if we are going to make the progress in this convention that we've been talking of, then I suggest that we actually spell it out; that we speak of natural persons only, as opposed to corporations.

Now, it was mentioned in an earlier argument in regard to the Faxon amendment, I believe by Mr. Krolikowski, that he was concerned about the workmen's compensation provisions. My amendment of course would not affect the workmen's com-

pensation provisions in one way or another. They would remain essentially as they are today, and they would be covered in their appellate rights by our present statutes. But I would be concerned about the 80 per cent of the workmen's compensation cases that do come before the tribunals where the claimant is not represented by counsel. And if he were to be subjected to this particular provision and had to run on his record, in effect, before the courts, without having had the benefit of counsel in his previous hearings, then I think his substantial rights would have been usurped. I believe that by spelling out the terminology of the natural person that we all here want to try to protect, we will therefore make it a better proposal than it is as it presently stands.

CHAIRMAN VAN DUSEN: Mr. King.

MR. KING: Mr. Chairman, I would like to direct a question to Mr. Brown, if he would care to answer.

CHAIRMAN VAN DUSEN: If the gentleman cares to answer.

MR. KING: Is a labor union a natural person?

MR. T. S. BROWN: I don't know the answer to that question.

CHAIRMAN VAN DUSEN: Mr. King.

MR. KING: I couldn't support anything which would deny the right of a labor union to appeal its case. I will have to vote against it. (laughter)

CHAIRMAN VAN DUSEN: Mr. Brown.

MR. T. S. BROWN: Mr. King, despite your remark, any case in which a labor union per se would be involved is already adequately covered by statute, and has been explicitly laid out. I am concerned with the natural person in a specific instance. Incidentally, another gentleman asked me a question recently. A d/b/a under this provision would be construed as a natural person.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. T. S. Brown. Does any delegate desire to have it read again? Those in favor of the amendment will say aye. Those opposed will say no.

The amendment is not adopted. The secretary will read the next amendment.

SECRETARY CHASE: Mr. Nord and Mr. Norris offer the following amendment:

1. Amend page 1, line 12, after "supported by" by striking out "reliable"; so the language will then read, " . . . whether the same are clearly supported by probative, and substantial evidence on the whole record."

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Messrs. Nord and Norris. The Chair will recognize Dr. Nord.

MR. NORD: Mr. Chairman, I hope no one will think that I'm against the rule of law when I move to strike the word "reliable." The objections I made before were directed largely towards that word. I indicated that the problem was whether the court or administrative tribunal, in certain cases, when the legislature says so, should be able to determine the facts. And I indicated that it seemed to me that by using some of these words, and particularly this one, "reliable," that we open the door to an appeal in every case.

Now, it appears to me that if we cross out the word "reliable" what you will have left in the last sentence will be words which will not be nearly as objectionable as this one. The first part of the last sentence will say:

> This review shall include, as a minimum, the determination whether such final decisions, findings, rulings and orders are authorized by law, . . .

That is the present law at the present time, so that makes no difference. And then it says, crossing out the word "reliable:"

> and, in cases in which a hearing is required, whether the same are supported by probative, and substantial evidence on the whole record.

Basically, that is the law also. It is maybe not exactly the law, but it is practically the law. The main difference is the word "reliable." And that is the word, the main word, which seems to me to cause the most trouble. Therefore, I move, supported by Mr. Norris, that we ought to strike the word "reliable," and in that case we will not be inviting review in every case, but only in cases where there really is a need for review.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Messrs. Nord and Norris. Does any delegate desire to have it read again? Those in favor will say aye. Those opposed will say no.

The amendment is not adopted.

DELEGATES: Division.

CHAIRMAN VAN DUSEN: A division is requested. Is the demand supported? It is not supported.

SECRETARY CHASE: Messrs. Krolikowski and Bledsoe offer the following amendment:

1. Amend page 1, following line 4, by striking out all of lines 5 through 13, being all of section a.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Messrs. Krolikowski and Bledsoe. Those in favor will say aye. Excuse me. Mr. Ford.

MR. FORD: Mr. Chairman, I would like to ask one of the proponents of this amendment a question, if I might.

CHAIRMAN VAN DUSEN: If the gentleman cares to answer.

MR. FORD: What does "direct review" mean in this? I would like a clear definition of the kind of review that a direct review is in the contemplation of this section.

CHAIRMAN VAN DUSEN: Mr. Krolikowski.

MR. KROLIKOWSKI: Are you directing that question to me now? I'll answer it but, of course —

MR. FORD: I don't think so, Mr. Krolikowski, since you no longer seem to be an exponent of this section. Somebody here obviously feels that we need something that isn't now in the law, so I apparently don't understand what "direct review" means. I would like from one of these people who indicate that the present law is inadequate an explanation of "direct review." You can answer it if you want to.

CHAIRMAN VAN DUSEN: Judge Leibrand.

MR. LEIBRAND: There might be many kinds of direct review. I would consider that direct review would be a review of the same case and the same parties and the same questions, as distinguished from a collateral review attempted to be attained by something like injunctive relief. Now, there may be very many other patterns of collateral review, but that's an example.

MR. FORD: Does direct review mean a trial de novo?

MR. LEIBRAND: It certainly does not. It means a review of the exact record. It is a review of the exact record that was made before the administrative body.

CHAIRMAN VAN DUSEN: Mr. Marshall.

MR. MARSHALL: Mr. Chairman and fellow delegates, I had not intended to speak on this question. I had sat very patiently. But, inasmuch as Delegate King saw fit to more or less make a joke out of this, and recognizing his great concern and bleeding heart for the rights of the working man —

MR. LUNDGREN: Point of order.

CHAIRMAN VAN DUSEN: The Chair will remind Mr. Marshall of rule 22, and ask him to avoid personalities in debate.

MR. MARSHALL: I was going to answer the Chair on a previous remark that you made from the Chair, but I will not do that on the floor. I'll take it up with you out in the hall. (laughter)

CHAIRMAN VAN DUSEN: Is the gentleman suggesting that we step outside? (laughter)

MR. MARSHALL: Not exactly that, Mr. Chairman.

CHAIRMAN VAN DUSEN: You may proceed in order, Mr. Marshall.

MR. MARSHALL: Not exactly that. I'm not exactly suggesting that, because looking at your midriff and then looking at mine, I don't think that either one of us is in shape. (laughter)

CHAIRMAN VAN DUSEN: The Chair would agree, Mr. Marshall.

MR. MARSHALL: I want to support the Bledsoe amendment, and I want to make a few brief remarks concerning the

proposal. Number one is, in answer to the question that Delegate King did raise, labor unions are not, in these cases of appeal on workmen's compensation, a part of the appeal. It affects the worker, the injured worker himself, directly. The only time and the only way that the labor union is involved is in an advisory capacity, or in some cases helping to supply legal counsel. This seems to me a blatant attempt to deny rights that people now have. You can appeal a workmen's compensation case now. But you go further here, as I see it. I'm not an attorney, so I'm not going to debate the legal terminology with the delegates. But you go on to provide that the courts could change rulings of boards and commissions. You have boards and commissions that are capable, qualified and trained in a given field. You throw this all into the arena of the courts and the judiciary.

It is obvious to me that what some of our attorneys — and I hope I don't get ruled out of order again — whether they are doing this deliberately or not, are attempting to provide a guaranteed annual wage for attorneys. The legislature is now debating the question of adding 5 judges in Wayne county. If this proposal is adopted, they will have to increase that to 15, 20 or 25. You will clog the courts with all of this detail. The legislature now can enact any statutory law that it wishes to in this area. This proposal, which is a new one, is strictly statutory. It is not constitutional. And I see no reason or no purpose for incorporating this type of language into the constitution. I said that on other occasions here where the delegates to this convention have written into the constitution statutory language that could have been best left to the legislature to perform its duty. It is obvious to me what this whole proposal is intended to do, and I think it's going to be obvious, if it's passed, to a great majority of the people of the state of Michigan. I support the Bledsoe amendment.

CHAIRMAN VAN DUSEN: Mr. Binkowski.

MR. BINKOWSKI: Mr. Chairman, I would like first to ask the chairman of the judicial committee 2 questions, if I may, please.

CHAIRMAN VAN DUSEN: If the gentleman cares to answer.

MR. BINKOWSKI: Mr. Danhof, again more or less for the record, do I understand correctly that the language embodied in Committee Proposal 95 did not appear in the form of a delegate proposal? Or substantially appear?

MR. DANHOF: The exact language here I do not think came in in the form of a delegate proposal, Mr. Binkowski. We had, I think, maybe 2 or 3 delegate proposals requesting court review of administrative decisions as a general matter. I don't think anybody drafted the particular language involved in this particular case.

MR. BINKOWSKI: So the language substantially did not appear in the form of a delegate proposal for others to study beforehand, before it appeared in the journal?

MR. DANHOF: I imagine that would be right.

MR. BINKOWSKI: Secondly, Mr. Danhof, it is my understanding that a subcommittee appointed by you and also a subcommittee of legislative powers worked together with respect to the administrative agencies; is that correct?

MR. DANHOF: That is my understanding, yes.

MR. BINKOWSKI: And that they also worked with an expert named Mr. Cooper?

MR. DANHOF: Mr. Cooper was requested to appear, and I think met with them on at least 1 or 2 occasions. Mr. Leibrand, Mr. Iverson and Mr. Krolikowski can probably tell you on how many occasions.

MR. BINKOWSKI: Mr. Danhof, the question I have with respect to Mr. Cooper is whether or not you know he acted in the capacity of counsel to the —

CHAIRMAN VAN DUSEN: Mr. Binkowski —

MR. BINKOWSKI: — Michigan manufacturer's association. I am not engaging in personalities. I think this convention has the right to know.

CHAIRMAN VAN DUSEN: You are out of order, Mr. Binkowski.

MR. BINKOWSKI: Well, may I find out why I am out of order?

CHAIRMAN VAN DUSEN: Because you are violating rule 22 in directing your remarks to personalities.

MR. BINKOWSKI: You mean this convention is being prevented from finding out what is being presented to the convention, Mr. Chairman?

CHAIRMAN VAN DUSEN: Mr. Binkowski, the subject under discussion was explored at length last night. The Chair exercised wide latitude in granting speakers the opportunity to proceed into it. You may direct your remarks to the committee proposal, and you will confine your remarks to the committee proposal.

MR. BINKOWSKI: A point of personal privilege, Mr. Chairman. I think we can go back to the record, and when I spoke to this convention in reporting as one of the vice chairmen of the subcommittee on corporations, I referred to this gentleman specifically in his capacity, and quoted this into the record. This was part of the record. Now, at that time nobody raised the question that this was "personalities," and I am at a loss at this particular time, when the gentleman appeared before the subcommittee in that capacity, and now I ask this question at this time and you tell me that I am engaging in personalities.

Now, if I am wrong, I certainly want to apologize before this group; but I don't see where I'm wrong.

CHAIRMAN VAN DUSEN: You may proceed, Mr. Binkowski.

MR. BINKOWSKI: Well, may I have the answer to my question?

CHAIRMAN VAN DUSEN: Would you repeat the question?

MR. BINKOWSKI: Yes. My question is whether or not Mr. Danhof knew if Mr. Cooper appeared before and worked with the committee in his capacity as counsel to the Michigan manufacturer's association.

CHAIRMAN VAN DUSEN: If the gentleman cares to answer.

MR. DANHOF: I don't know.

MR. BINKOWSKI: Thank you, Mr. Danhof. Now, the questions that I have raised were, I think, for good purposes. In the first instance I am a member of the state bar committee of administrative agencies. I brought before that bar committee the various delegate proposals with respect to the administrative agencies because I thought this so called expert body and this body which is working in the field of administrative agencies should have every opportunity to review the work of this convention, and that if there were any proposals which affected administrative agencies and if this body wanted to make any recommendations to the constitutional convention, they certainly should be in that position. I think it is quite clear that Committee Proposal 95 did not have the opportunity of being studied by anyone. Now, whether this is good or bad I leave to the delegates of this convention. However, I would like to make the point that I failed to find out from what source either the state bar committee or any other body here felt that this amendment was a necessary part of the proposed 1962 Michigan constitution. So I raise this question of whether it is, and whether it should be a part of the constitution?

Now, a delegate asked, "How will this affect the rights of the workers?" I believe that several of the delegates have commented in detail on how it would affect the rights of the laboring man, particularly in workmen's compensation. Very briefly, I would like to inform this body that it takes approximately a year to have the injured worker's case decided before a referee. It takes an additional year to have that case appealed to the appeal board. That's 2 years. If the case were to go to the Michigan supreme court, there would be an additional 2 year period. I suggest that this has a very direct effect on the rights of all laboring men, and particularly the injured worker.

One of our delegates, Dr. Nord — and I don't think I am engaging in personalities — spoke at length upon the need of administrative agencies, the fact that they are experts in the field, and their importance in this area. I think that if this convention adopts Committee Proposal 95, it will represent a step backward in this important area of administrative

agencies. We are going to see many more administrative agencies in the future. Now, there are problems, and I don't stand before you saying that there aren't any problems. I do not believe, though, that this proposal presents the solution.

Maybe we should have some kind of administrative court which would review the work of these agencies. But I do not believe that the courts themselves should be found working with these various facts, because we found the very reason for these administrative agencies, in giving them quasi judicial powers, was that the courts were inadequate in deciding these questions, and they were not experts in this area.

I don't know, according to the answer of Mr. Danhof, what is happening in the convention. And I, certainly, as a responsible delegate, do not want to be accused of making irresponsible attacks on any organization. But I can't help wondering if particular organizations in the area of workmen's comp are so unhappy with the present state of affairs and so unsuccessful in their attempts to change the present procedures before the legislature that they are now working in the constitutional convention. I just raise that as a question. Mr. Marshall has told you the effect it will have on the rights of the working man, particularly the injured laborer. I also leave this question with you. If you vote to insert this provision in the proposed document, will you be giving every laborer in the state of Michigan the opportunity to vote against this document?

CHAIRMAN VAN DUSEN: Mr. Walker.

MR. WALKER: Mr. Chairman, members of the committee, as a businessman and as an employer, I like section 18 as it reads. I don't like the Krolikowski-Bledsoe amendment, because with section 18 I don't have to be concerned with safety regulations; I don't have to be —

CHAIRMAN VAN DUSEN: Mr. Walker, the matter under discussion is section a of Committee Proposal 95. The Chair trusts you will confine yourself to that subject.

MR. WALKER: Thank you. You've got me all off the track here, Mr. Chairman. I dare say it was intentional. However, as a human being who has a great deal of love for my fellow beings, I do favor the Krolikowski-Bledsoe amendment.

CHAIRMAN VAN DUSEN: Mr. Everett.

MR. EVERETT: Mr. Chairman and fellow delegates, I don't think all of the recent remarks which have gone into the record can lay there unchallenged. I trust nobody will object to inserting some facts, rather than simply innuendoes. I would like to give you the background of this proposal. To begin with, there were delegate proposals, and they went much further than this. Many of us who sat in the judicial committee felt a need for judicial review, but not the type of review and the extensive review that some of the delegate proposals offered. We asked Mr. Cooper to come down here and, frankly, I don't have the slightest idea of who he represents. I only know that he has tremendous stature in the field of administrative law throughout the United States. We asked that he review with us, in an effort to find a happy medium —

CHAIRMAN VAN DUSEN: Mr. Everett, the Chair doesn't like to persist in reminding delegates of rule 22, but does want to do it with an even hand.

MR. EVERETT: I stand corrected, Mr. Chairman. I oppose this amendment for this reason. We developed within the committee, and I might say — and I hope this won't embarrass Mr. Krolikowski — with very diligent, hard work by Mr. Krolikowski and others, language which we felt would hit a medium between a review which would be so extensive as to make administrative agencies' work virtually useless, and a review such as we frequently now have which makes the court review meaningless. We have hit, I think, in the opinion of every member of the judicial committee — I remember no dissents at the time it was voted upon; there may have been 1 or 2 — such a medium.

Now, what we are now being told by those who support the amendment is that they do not want any examination made to determine whether the administrative agency's finding is supported by reliable, probative, and substantial evidence. That's all. In our opinion if such a finding is not so supported, it should not stand. And it doesn't matter to us whether the individual makes the appeal or a corporation makes the appeal, or who makes the appeal. As a matter of right, he should be told in advance that the courts will look for this type of evidence to support the finding. If it's there, the finding must stand. If it's not, it must fall. And I think that that proposition is an honest one, and one which most of us can conscientiously support.

I don't think that the matters injected in behalf of the amendment really go to what the proposal does, and I submit that the amendment should be defeated.

CHAIRMAN VAN DUSEN: Mr. Marshall, the Chair will advise that there are 8 speakers seeking recognition, of which you are the seventh. The Chair will be glad to have you on your feet, if you like.

MR. MARSHALL: It gives me a chance to stretch.

CHAIRMAN VAN DUSEN: Judge Leibrand.

MR. LEIBRAND: Mr. Chairman, I ask leave to rise to answer Mr. Baginski's question, but if the question was within the purview of rule 22, it occurs to me that the answer will probably be; so I withdraw my request.

CHAIRMAN VAN DUSEN: Thank you, Judge Leibrand. Mr. Binkowski would like the record to show that it was Mr. Binkowski who put the question.

MR. BINKOWSKI: Mr. Baginski would also like that. (laughter)

MR. FAXON: Mr. Chairman, I would like to yield to Mr. Krolikowski to answer Mr. Everett, because I want to raise another question, and then I'll ask my question afterwards. I saw he was raising his hand, and I thought it was in response to that. So I will yield to him.

CHAIRMAN VAN DUSEN: Mr. Faxon yields to Mr. Krolikowski.

MR. KROLIKOWSKI: Well, I didn't intend to belabor this matter, but thank you for the opportunity, Mr. Faxon. With respect to Mr. Everett's statement, to put the matter in its proper light, I should concur with him that all of the members of the committee leaned heavily upon the recognized expertise of a certain gentleman. However, I think that in all fairness to the members of the committee it might be stated that the committee was acting under the sharp pressure of a deadline, and we were trying to reach a conclusion.

Thereafter, however, certain members embarked upon an independent investigation of the status of administrative law in the state of Michigan. Upon an independent examination, we found that the situation as delineated by the expert was more reflective of a situation that existed prior to the adoption of the administrative procedures act. Now, subsequent to the adoption of that act in 1952, much of the criticism that was directed against the state of administrative procedure in the state of Michigan has been removed. Therefore, after an independent investigation, some of us respectfully disagreed with the expert, and that is the basis for the Bledsoe-Krolikowski amendment. Thank you.

MR. FAXON: Mr. Chairman.

CHAIRMAN VAN DUSEN: Mr. Faxon, before you proceed, the Chair is reminded of a remark made by Delegate Yeager on one occasion when rising in a committee. He said he was rising for the specific purpose of belaboring the point. No offense to you, Mr. Krolikowski. Mr. Faxon.

MR. FAXON: Mr. Chairman, this is a question to Mr. Danhof, if he could clear up my thinking on this. First of all, is this provision found in any other state constitution? I have heard it alluded to in the Missouri constitution, but is this the extent of its actual involvement in constitutions?

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: To my knowledge, the state of Missouri is the only one that I have personal knowledge of. Again, perhaps some of those in the subcommittee who worked harder than I might be able to answer that.

CHAIRMAN VAN DUSEN: Mr. Danhof, do you desire to yield to Mr. Krolikowski?

MR. DANHOF: Yes, I will, or Mr. Iverson, one or the other.

CHAIRMAN VAN DUSEN: Mr. Krolikowski.

MR. KROLIKOWSKI: A similar proposal is found in only one state constitution, that of the state of Missouri. However, the standard imposed in the Missouri constitution is less stringent than the one found in the present committee proposal.

CHAIRMAN VAN DUSEN: Mr. Faxon.

MR. FAXON: Is it then, through the Chair, your feeling that this has never really been used before, and we are really opening up an area that is completely new as far as giving this provision constitutional status?

CHAIRMAN VAN DUSEN: Mr. Krolikowski.

MR. KROLIKOWSKI: Yes. The answer to that would be a categorical yes.

CHAIRMAN VAN DUSEN: Mr. Faxon.

MR. FAXON: Well, it just seems to me — I guess I'm only one of few conservatives here, and I sort of look askance upon a departure from a tradition in terms of opening up an area that has been hitherto untouched in constitutional language in other states and in our own state in our history.

I would ask of the chairman of the committee, this question, then, which is directed to the same subject, concerning the question of appeals from administrative tribunals. Mr. Danhof, did your committee give any consideration to the establishment of administrative courts as a method of solving this difficulty which seems to be present in your opinion?

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: The establishment of an administrative court? Is that your question?

MR. FAXON: Yes.

MR. DANHOF: I don't recall. I cannot at this time recall that we considered such an item in the judicial committee, Mr. Faxon. I may be wrong, but I cannot recall it.

CHAIRMAN VAN DUSEN: Mr. Faxon.

MR. FAXON: Well, just concluding, I wish to plead the cause of conservatism in asking the members of the committee to go slowly and tread carefully on grounds which have not yet been plowed up.

CHAIRMAN VAN DUSEN: Mr. King.

MR. KING: Mr. Chairman, fellow delegates, I would just like to point out to Mr. Binkowski that I introduced Delegate Proposal 1367, supported by 2 other Oakland delegates and 2 Wayne delegates, which goes as follows:

> The legislature shall enact no law which shall confer judicial or quasi judicial power on any official of any executive department or administrative agency, and all determinations and regulations of such departments and agencies shall be subject to judicial review de novo in any court of competent jurisdiction.

Now, obviously, this goes much, much, much further than what the committee decided was proper. And I'm perfectly willing to go along with what the committee of the whole has decided. It certainly is true that this is an area of great abuse. There were many other delegates besides myself who were concerned about this. I am concerned.

I don't want to deal in personalities, and I don't. But the man whose expertise has been so often referred to was the one who backed up the language of the committee to the position where it was when we considered it before my amendment. So obviously — and I thought that one of the delegates very graciously apologized and made the record correct in that manner last night. So certainly any such fears as have been expressed are unjustified and unfounded and unwarranted. This man is a very distinguished man, I understand.

As for the delegate's question, "Have we considered administrative courts?" I don't know what an administrative court is. I view all of these bodies which make quasi judicial decisions as a type of an administrative court.

The idea here is to get full, fair, honest to goodness judicial review, not de novo. My proposal was de novo, but the committee doesn't want to buy that, and I'm not pushing that point. Just a review on the record. Now, surely, no one can be opposed to that. I'm not saying it won't cause an increase in the amount of judicial work in this state, but I never maintained that justice was cheap. You have to pay for justice. There's no question about it. And certainly it is not directed at one agency, when there are hundreds of agencies in this state which are making these quasi judicial decisions every day of the week. And all of a sudden as an emotional attack it's said that somebody is directing an attack against one particular agency. Well, of course, that's not the case at all. I'm sure that the legislature and the courts are going to be most sympathetic to that kind of a problem, and will work out an equitable solution. So I certainly hope that this amendment by Mr. Bledsoe and Mr. Krolikowski will be defeated resoundingly.

MR. BLEDSOE: Mr. Chairman.

CHAIRMAN VAN DUSEN: The Chair has 8 speakers seeking recognition. State your point, Mr. Bledsoe.

MR. BLEDSOE: I would like to ask one question of Mr. King, if I may.

CHAIRMAN VAN DUSEN: Mr. King, do you desire to yield to Mr. Bledsoe for a question?

MR. KING: I would be happy to yield to Mr. Bledsoe.

CHAIRMAN VAN DUSEN: Mr. Bledsoe.

MR. BLEDSOE: Mr. King, is it your understanding that there is no provision for appeal now from the decision of a referee? You said that you wanted to be sure that there was an appeal. Is it your position that they don't have that right now?

MR. KING: No, indeed. There are many decisions which can be appealed. I don't know which ones you are referring to.

MR. BLEDSOE: Well, which one were you referring to when you said there was no appeal?

MR. KING: When I support the committee's position, I am referring to them all, and saying that there shall be appeal in every case of a judicial or quasi judicial decision. And that's what I support. Certainly there are some procedures for appeal presently provided for in the administrative procedures act.

MR. BLEDSOE: Isn't that true in Michigan now?

MR. KING: Yes.

MR. BLEDSOE: Well, just what did you have reference to when you said that nobody can object to having an appeal?

MR. KING: Nobody can object to having an appeal in all such cases.

MR. BLEDSOE: Which ones don't have appeals then?

MR. KING: I don't care to get into — as I say, there are hundreds of these boards and agencies. I don't care to get into —

MR. BLEDSOE: Name one.

MR. KING: Liquor control. That's one that comes right to mind easily. But that's not one of my favorites.

CHAIRMAN VAN DUSEN: The Chair will request that the succeeding speakers, of whom there are 7 seeking recognition, confine themselves as closely as possible to the amendment under consideration, which is the striking of section a of Committee Proposal 95. Mr. Upton.

MR. UPTON: Mr. Chairman, fellow delegates, the discussion on this amendment has, to me, seemed to take a partisan issue; and I'm very disturbed about this, for it's not a partisan issue. We are talking about the right of appeal for all the people of Michigan. And this matter was brought before the judicial committee, as Mr. King mentioned, by many delegates in this convention through delegate proposals. I happened to have a friend back in my home town who sent me a list of proposals. I looked them over, and one of them looked to me as though it might be something for us to consider, because of the tremendous growth of administrative boards in the last few years; and where is it going to go from here? How can we tell? Delegate Proposal 1702 was thus submitted, and it went much farther than what the committee has recommended. I would like to read you the language, "Every person shall be entitled to appeal —"

CHAIRMAN VAN DUSEN: Mr. Upton, the Chair is reluctant to interrupt, but will urge you to confine your remarks to the amendment to section a of Committee Proposal 95.

MR. UPTON: Well, what I'm trying to point out is that many of us wanted a stronger amendment than what was proposed by the committee. The people who endorsed this proposal at that time were from both parties. If I might, I would like to read their names. Would this be out of order?

CHAIRMAN VAN DUSEN: That would be out of order, Mr. Upton.

MR. UPTON: I was trying to answer Mr. Binkowski's question as to where this came from, Mr. Chairman.

CHAIRMAN VAN DUSEN: You see, that's the kind of problem you get into when you ask questions that are out of order in the first place. The Chair will request that you proceed in order, Mr. Upton.

MR. UPTON: I feel that the people who felt this was a good thing a month or so ago have evidently changed their minds considerably. I would like to just remind them that they thought this proposal was good at one time. Therefore, I hope they reject this amendment and vote affirmatively for the committee proposal.

CHAIRMAN VAN DUSEN: Mr. Iverson.

MR. IVERSON: Mr. Chairman, I don't expect to be called out of order, because I want to answer Mr. Binkowski, and I think I've got a right to. But, fortunately, the attention of Mr. Binkowski has been called to the fact that there was a Delegate Proposal 1367 which Mr. King referred to, and a Delegate Proposal 1702 which Mr. Upton referred to, both of which were considered by the subcommittee of the committee on judicial branch. So I want it distinctly understood by the delegates that whether Mr. Binkowski knew it or not, there were delegate proposals on this matter which were considered by the subcommittee.

Now, the other question I wanted to call the delegates' attention to is this. Mr. Binkowski calls our attention to the fact that Frank Cooper appeared. I want the delegates to know that he appeared at our request.

MR. SNYDER: Point of order.

CHAIRMAN VAN DUSEN: Mr. Snyder makes a very valid point of order, Mr. Iverson.

MR. IVERSON: Well, I am answering Mr. Binkowski, and I think I've got a right to. I think it might be interesting to the delegates to know why he was called. If they are not interested, I'll sit down. Or if the Chair rules me out of order, I'll also sit down.

CHAIRMAN VAN DUSEN: The Chair will ask you, in proceeding, Mr. Iverson, to keep in mind rule 22.

MR. IVERSON: I'll sit down.

CHAIRMAN VAN DUSEN: Judge Dehnke.

MR. DEHNKE: Mr. Chairman, ladies and gentlemen, when I originally indicated a desire to be recognized, I had a lot more material than I have now. This too was in answer to Mr. Binkowski's suggestion that the committee had grabbed this out of the clear air without basing it on any delegate proposals. In the very limited time I had at that time, I found not only the 2 which have already been mentioned, 1367 and 1702, but also 1008, which was introduced as early as October 12, 1961, by Mr. Gover, and asked for a great deal more than this proposal provides.

CHAIRMAN VAN DUSEN: Mr. Madar.

MR. MADAR: Mr. Chairman and fellow delegates, about 38 years ago I lost these fingers. And when I lost them, I should have gotten some compensation for them. They were lost in the plant. And I never in all my life saw anything that was as rotten as happened at that time, and I don't ever expect to see it again. This has to do, incidentally, if you're getting up for a point of order—

MR. BOOTHBY: Point of order.

MR. MADAR: I haven't mentioned your name. I'm sticking to rule 22, even though the Chair didn't awhile ago.

MR. BOOTHBY: Mr. Chairman, I'm not referring to rule 22. I'm referring to the rule on germaneness.

MR. MADAR: This is germane.

CHAIRMAN VAN DUSEN: Mr. Madar, the Chair trusts you will confine your remarks to section a of Committee Proposal 95—

MR. MADAR: I have been.

CHAIRMAN VAN DUSEN: —which deals with a review of the rulings of administrative tribunals.

MR. MADAR: I have been. And I'll continue to do so. Now, I don't mind saying that today I think I would have been sicker in my stomach than I was when I lost these fingers, because over the last 38 years I have seen some marvelous laws passed, statutes, and they have been able to take care of people that have been hurt. But here, in this constitution, I have been watching how not the laboring man's or the working man's interests, the little fellow's interests, are being guarded, but those who don't have a thing to worry about and are never in any position where they might get hurt, except occasionally, pocket wise.

And so I say, let's vote for the elimination of those items that Bledsoe mentions, and get something here for the working man and the little fellow. Let's stop working for the man that's got all the money.

CHAIRMAN VAN DUSEN: Mr. Marshall.

MR. MARSHALL: Mr. Chairman and fellow delegates, it is not my desire to make this a partisan issue, and I rise a second time to try to put this in its proper perspective in order that we can bring it to a vote. I have about 2 points that I want to cover, and I'll be very brief. I think maybe the impression might have been left here by some of the remarks that some of the previous speakers have made that this is a question that affected just labor unions. The committee proposal—and I'm speaking in support of the Bledsoe amendment—opens up a floodgate. It does not affect just union members. In my considered judgment it affects all working people adversely, whether or not they belong to a union, and as all of you know many, many working people do not. In opening up this floodgate, we talk about the decisions and rulings of the Michigan corporation and securities commission; we talk about the public service commission, which deals with utilities and control of utilities; we run the whole gamut.

This is strictly a legislative matter, and has no place in the constitution. If there is to be judicial review, it should be left to the discretion of the legislature, in its wisdom, to say how much judicial review, where, when and how—not pin down this type of statutory language in a constitution. In closing, and in further support of my contention that it is statutory, I would remind all of you that there is now a bill in the legislature similar to this one—maybe not verbatim, but certainly substantially the same. That is presently before the Michigan state legislature. I think that all of us, very seriously, will be making a serious mistake if we place this type of language into a constitution with nothing to go on except that it was done in the state of Missouri, and as I understand—unfortunately I haven't read that—is not nearly as encompassing as this one. And I say, let's quit legislating. Let's quit trying to write our own philosophies into a constitution, and let's write the basic law for this state and leave the legislating for the legislature. Thank you.

CHAIRMAN VAN DUSEN: Mr. Brown.

MR. G. E. BROWN: Mr. Chairman, members of the committee, I am prepared to speak for about an hour, and I thought it might be wise, in view of the debate that we have had so far, to pass; and I will do so on the condition that the man next in order to speak also passes, and the next in turn.

CHAIRMAN VAN DUSEN: There are only 2 speakers seeking recognition, Mr. Brown.

MR. G. E. BROWN: Will the next gentleman pass?

CHAIRMAN VAN DUSEN: Mr. Krolikowski.

MR. KROLIKOWSKI: No.

CHAIRMAN VAN DUSEN: Mr. Brown, you will proceed in order, and confine your remarks, please, to Committee Proposal 95, the amendment pending, which is to strike section a.

MR. G. E. BROWN: Rather than to continue for the hour that I intended to talk for, I shall pass anyway, because the matter which I intended to speak to, otherwise the Upton-Ford-Pugsley-McCauley amendment, has already been mentioned.

CHAIRMAN VAN DUSEN: Mr. Krolikowski.

MR. KROLIKOWSKI: Mr. Chairman and members of the committee, I have no intention of speaking for an hour, either. I should just like to shortly capsule the position of the sponsors of this amendment. It is our belief that much of the attack that has been waged here apparently is bent upon disregarding the fact that we have ample statutory protection to

assure review from administrative decisions and orders. Now, we referred specifically to the administrative procedures act, which guarantees appeal as a matter of right. In the event that one of the agencies fails to fall within the purview of the administrative procedures act, there is a special statute, Michigan Statutes Annotated 27.545, which again guarantees review as a matter of right from administrative decisions. And the review in this instance is a review de novo. Aside from these 2 protective measures, we have the Michigan constitution, the federal constitution, and the inherent right of the courts to superintend the work of administrative agencies. On the basis of those safeguards, it is our position that this language is utterly unnecessary in the state constitution.

I should like to correct some reference that was made here by someone — I think Mr. King or Mr. Brown — that by some mistake the liquor control commission doesn't come within the purview of any of these restrictions. I emphatically deny that, and I refer them to the Michigan Reporter 336, page 398. This was on certiorari after direct appeal.

CHAIRMAN VAN DUSEN: Mr. Norris.

MR. NORRIS: Mr. Chairman, I rise to speak on this matter with the greatest of reluctance but I am moved to do so because, first of all, I'm not sure that all of us are fully aware of the tremendous reach of the proposal which we have before us.

We are trying to draft a constitution, as we have said repeatedly, for the next 30 or 40 years. The whole history of the regulatory process has been to develop the kinds of governmental means to regulate complicated affairs between man and government and between man and man. And what we are seeking to do here seems to me to place a very severe constitutional roadblock against that kind of project in that direction or that enterprise. I know of no professor of administrative law in this state who would come here and support the proposal which is now before us. And I challenge those who are in support of this to muster the students of this problem to support their measure. There is no state in the union that has developed the kind of test which you now seek to encrust in the constitution for decades. This is a very serious matter. And I suggest that if this matter is encrusted in the constitution, there is a very strong question as to whether those who want to develop a constitution that is going to serve the needs of the people, all the people, for the decades to come, can ratify a constitution that so seriously interferes with the regulatory process.

No one is more adamant in the protection of civil and constitutional rights than I. But I submit that there is a way here of reconciling the rights of individuals before administrative tribunals and constitutional rights without the kind of test which is now being imposed. I am most sincere, Mr. Chairman, in saying to you that I am not concerned about the motivation of any particular person or group with regard to the proposal, or where it came from. I think that the group here is capable of examining any proposal on its merits, with regard to whether it serves not merely the interests of working people, not merely the interests of manufacturing associations, but the public interest.

It is the function of administrative tribunals to protect the public interest, because of the limitations of the separation of powers doctrine; because of the limitations of the judiciary in the implementation of certain legislative objectives. We have developed, nationwide and in the state of Michigan, administrative tribunals to deal with complicated problems in the rate making field, the public service corporations, in the tax field, in the liquor field, in workmen's compensation — in a whole host of agencies. And I think what we are seeking to do here is to develop a means totally disproportionate to the end sought. We are developing a means here which instead of protecting the little fellow is endangering the public interest. Instead of protecting the rights of individuals before tribunals, we are developing a kind of impedimenta to public interest organizations created by the legislature to serve public needs. It is in the interests, if you will, of the civil and constitutional rights of individuals that we developed the kinds of means to deal with these particular problems. These agencies are not created to obscure or impede the rights of individuals or the public interest. They are there for the purpose of carrying out a finding of necessity for the public interest and to serve them.

And there's no question, I'm certain, in the mind of any delegate here that the problems which these agencies are called upon to deal with are going to multiply and be more complicated as time goes on. We are in a totally different industrial age, both in this state and in the nation, and in the world. And some people want it to move backward instead of forward. They don't realize, it seems to me, that what we need is the development of the kind of governmental means to deal with these complicated problems. And the whole function of the agency is merely to regulate; and if there's a substantial or reasonable basis for the judgment to be made, the ruling to be made, then the courts will sustain it. Otherwise, with the word "reliable" in there you are going to have an inquiry by the court, constitutionally mandated and directed, to examine all of the evidence, and the court is going to be able to say, "We would not find the same judgment or ruling that this agency did, and we are going to substitute our judgment for that of the agency." And that is precisely what was sought to be avoided by the creation of such agencies. And you're going to have the courts then becoming the regulatory agency. It is going to multiply the functions and jobs and difficulties of the courts.

On the one hand you are trying to streamline justice and to create a vested exclusive power in the supreme court and its superintending power, and all the rest of it, and you are undermining it by this particular proposal. I urge that we go very slowly in this area, with more circumspection than has thus far been accorded to this history making proposal. And if we can't do anything else, I urge opposing it. But I do feel that we can deal with this matter in a different way, and I urge that we do not support this proposal. And I urge, too, that if we don't do it that way, that perhaps on second reading or third reading we can consider this matter before the final constitution is placed before the people.

I am most distressed, Mr. Chairman, that we are not giving this kind of matter the attention that I know it deserves. As a matter of fact, I am tempted, by looking at the seats here, and the kind of one sided debate, to relate the story about the lady juror who said, "I don't want to hear the evidence; I want to make up my own mind."

CHAIRMAN VAN DUSEN: Mr. Norris, the Chair would remind the committee that we are shortly to complete our fourth hour of debate on this subject. Mr. Bledsoe.

MR. BLEDSOE: Mr. Chairman, members of the committee, I'm sorry that I find it so late to come before you with this matter. It would clearly appear, according to the old statement, and in view of the climate as it exists here presently, that I find myself in the position of the so called angel rushing in. At least, that's the climate that I feel here.

There's only one thing that I want to call your attention to. It just so happens that for 2 years it was my job for the people of the state of Michigan to administer the compensation division of your state. And, if you will notice, that's the reason why I asked 2 questions here during this debate. I asked brother King—and you heard his answer—he didn't even know whether or not they had the right of appeal. And he came out with a glorious statement about the liquor control commission, and he has been straightened out on that. And that's what you have been fed. I asked Judge Leibrand yesterday if he had any experience with appeals. Do you remember what he said? He hadn't had one in 20 years.

Now, would you want a lawyer or would you want anybody representing you in a matter as important as this who had no experience with a matter of this kind in 20 years? And the other one didn't know anything about it. Now, that's the way you have been voting. I am only sharing this with you because, as Mr. Krolikowski has said, in 1913, because the people who work in industry and who work everywhere now are protected by insurance against disabilities created or rising out of and in the course of their employment, to make it easier for an

injured person to get compensation, the legislature set up these procedures by which this could be effected at minimum cost to the workman and for the best interests of society. And I want to say to you that if you look at that statute, every year, every time the legislature has met since the statute was enacted, the legislature has mothered that statute. They have amended it every session. You rarely have a statute that receives as much attention — not just 20 years, Judge, but every session, that statute has been amended. The people of this state regard the compensation law as remedial legislation. They have sought to do this thing in the most facile and easy way, and for the best interests of society.

Now, there's one question — and believe me — that will constitute an unconscionable roadblock in the path of an injured workman to get his matter heard before the workmen's compensation commission — and do you know what that roadblock is? Presently, a man gets injured, and I have checked with the department, and it is now running around 13 months before he can even get his case heard. I want to tell you something else about that. During that time an injured workman is not eligible for welfare because he has a job. He can't get workmen's compensation, because of his inability to work, because this disablement occurs out of his injury. And he can't go back to the employment security commission and get unemployment compensation, because there's no disability connected with unemployment compensation. So during that 13 months he's got to shack with his family and get money the best way he can. The breadwinner of that family loses prestige in his home.

Now, everybody has been talking about the administrative boards, but these are the things that constitute the chickens coming home to roost, by persons who have had the actual administration of this law. Not in just 20 years. It happens every day. Just go over to the department and see that group of people sitting up there, with their arms in slings, a leg off, an eye out. Go down there and look at them, waiting and trying to find out when their cases are going to be heard.

Now, here is the essential roadblock. The courts now say that an award will be sustained so long as there is competent, creditable, reasonable, substantial evidence; and unless that record is cluttered with fraud or some palpable something, the courts — and believe me, our courts are very great in their approach to this matter — just simply won't review those cases. Because our courts understand. So why this additional roadblock that is contemplated by this amendment? And listen to this, ". . . clearly supported by reliable, probative, and substantial evidence" —

MR. G. E. BROWN: Point of order.

CHAIRMAN VAN DUSEN: Mr. Bledsoe, the word "clearly" has been stricken.

MR. BLEDSOE: I'm asking to have the entire section stricken.

CHAIRMAN VAN DUSEN: The Chair would simply ask that if you are going to read the section, you read it as it presently is before the committee.

MR. BLEDSOE: I'm just trying to save some time, Mr. Chairman. This matter has been quoted. I am trying to approach this matter from an entirely different point of view. As far as I am concerned, personally, it doesn't affect me. But I have had experience with it, and I'm trying to share with my fellow colleagues the experience I have had in administering this law. That's the only thing that I'm doing, and I hope that I'm not plaguing you too much. But I felt it was my duty to do it, and I'm going to say this, and then I'm going to close. When the legislature is working every time they meet to improve the lot of the injured workman, I don't think we ought to put any additional roadblocks in the way of the injured man or woman — because a lot of women get hurt, too — and it's the children and families of the workmen who suffer. I don't think that we need to put another single roadblock in their way. Because it is not for the best interests — and I want you to get this — it is not for the best interests of society. Just forget all this talk about big people and little people and unions. It just isn't for the best interests of society, because the interests of society is paramount. I think all of us can take a stand there, and if we can't, God help us.

CHAIRMAN VAN DUSEN: Mr. Binkowski.

MR. BINKOWSKI: Mr. Chairman and fellow delegates, perhaps this should come under personal privilege, I don't know. I may have made a point which was not well taken, and if so I would like to apologize to the group. I was fully aware that Delegate Proposals 1123, 1307, 1367 and 1396 had been submitted, and they are embodied in the amendment which I have from the particular gentleman whom I have mentioned. However, I think that they were rather extreme, and no one seriously considered them as such. Now, as I said, if my point was not well taken, I apologize.

As for the gentleman himself, for the record, and since I have to work with him on the state bar committee, I would like to say that I have the greatest admiration for this gentleman. Without any doubt — and I agree with you, Mr. King — he is by far the expert in the state of Michigan. He may be the expert in the entire country. I don't know. I certainly do not impute anything to him. However, since he did appear before another committee in a certain capacity, and since a delegate mentioned — and the record can be checked as to this — a particular organization which he had represented before our committee in his capacity as legal counsel, I thought that any question as to this should be removed; and if there were any shadows of doubt, they certainly should be removed.

Again, if I was wrong in doing this, I apologize. I did not mean to raise any hornet's nest. Thank you.

CHAIRMAN VAN DUSEN: Mr. Binkowski and members of the committee, the Chair would like to suggest, perhaps in amplification of the earlier ruling, that the question of personalities, as described in rule 22 does not, of course, preclude any delegate from mentioning, in the course of debate, who advocated a particular matter before a committee; in what capacity he advocated or opposed a matter; or who may have assisted in the preparation of committee proposals. Rule 22 is designed, however, to prevent dealing in personalities in such a way as to involve the motives, the character or the attitudes of any individual, whether he be a delegate to this convention or otherwise. Last evening the question of the particular individual's participation in the draftsmanship of the proposal before the committee was raised and explored at some length and without interruption from the Chair until it began to get repetitive, at which point the Chair called to the attention of the delegates the fact that rule 22 was applicable to the discussion of personalities. For that reason, when the subject was again raised this afternoon, the Chair made the point rather emphatically. The product, of course, of raising it this afternoon was that no fewer than 6 delegates felt impelled to respond and we consumed in the course of that response some 40 minutes of debate. It seems to the Chair this is clear evidence of the desirability of complying fully with rule 22, and the Chair trusts that the delegates will do so in the future.

Dr. Nord.

MR. NORD: Mr. Chairman —

MR. YOUNG: I have a point of parliamentary inquiry.

CHAIRMAN VAN DUSEN: Mr. Young.

MR. YOUNG: I didn't quite understand your last remarks. Are you saying that when Delegate Binkowski identified the organization from which this individual came, that he was in fact in order?

CHAIRMAN VAN DUSEN: That is correct.

MR. YOUNG: I understand.

CHAIRMAN VAN DUSEN: Dr. Nord.

MR. NORD: Mr. Chairman, I realize that, as the Chair has pointed out, this has been an extremely prolonged debate; 4 hours. I also realize that this is the third time I have spoken to you on this subject. And I certainly don't do that lightly, because I realize nobody wants to hear from anybody 3 times on the same subject.

I am not going to do a Garry Brown and chicken out. If I promise to speak an hour, I will. But I am not going to promise to speak an hour. What I am going to promise to do, however, is this. I wish to call to your attention that we don't

have 4 hour debates on trivial matters. There is something big at stake.

I believe it's my duty to second the statements that were made by Professor Norris. As far as I can recall, we are the only 2 law professors here. As a law professor, I want to call to your attention that you are doing something, judging from the past votes on this subject, which you will regret. I can't force you to regret it, but you will regret it just the same. I want you to realize you are doing something dangerous. You are committing a tragic error. It can't be that this is what you wish to do. Whatever it is that you wish to do, you know, I'm sure, that you can do it in the legislature. Whatever specific thing you are concerned about, you can do it in the legislature. And if you are wrong, if it causes harm, it can be corrected next year. And you can direct it against a specific 1, 2 or 3 agencies, if you have them in mind. There's nothing to prevent you from accomplishing exactly what you wish, in the way that you wish, and in a way that you can reverse if you are wrong, as I say you are. But if you put it in the constitution, you can't get it out that easily. It will be your error, and it will be enshrined there.

Now, I say that you are committing a serious and grievous error when you do this — and it isn't just workmen's compensation. Many of us have pointed out that it would damage very seriously workmen's compensation. That is my feeling. But that is not the only matter. You are going to damage the entire subject of administrative law, and that I'm sure you couldn't possibly wish to do. You might wish to do something to one board or another, but I can't see how you could wish to damage the entire area of administrative law.

For example, just as an example, suppose your son takes the bar exam. I have had a lot of experience with this. And suppose he fails the exam. Now, the board of law examiners is an administrative office or a body. They exist under the constitution and by law. They make a decision that your boy doesn't pass. That is a quasi judicial decision because it determines the merits of his particular case. That is a quasi judicial determination. And that affects private rights, privileges or licenses — his license to practice law. Now, that boy and every other one who fails the bar exam will have the right — an absolute right — to appeal to a court. And when he appeals to a court, what will he appeal on? He will ask the board of law examiners to show by reliable, probative, and substantial evidence that he is not fit to practice law. The courts then will be just backing up the board of law examiners. But maybe you think they should back the board of law examiners. That's your prerogative.

But that is not the only board of examiners. There are a great many boards of examiners in this state. There's a board of examiners of barbers, for example. They admit people to practice barberous activities of some sort. (laughter) I don't think that we have the slightest idea how many different kinds of administrative boards and offices there are now or might be in the next 50 years.

Now, with many of these things, such as the board of law examiners, we don't want the courts to be mixed up in this. We want them to make their decision. If they have been prejudiced, or something like that, there should be an appeal to the court — and there is. But we can't have the court determining the grade of this man on the exam. The court can't go into those facts. It can't raise the question, is this decision based on reliable evidence? That is what you are setting out to do; to put the courts in to backstop every decision made by every administrative board. I really can't believe that that is what you intend. I don't believe that that's what you intend. But I know this. That is what you are doing. And you are going to do it in an irreversible way. Now, the reason I mention this to you and, as I say, the reason I take the risk of speaking to you for a third time in a lengthy debate is I just honestly can't believe that this is done with your eyes wide open. I believe that you have been rushed into this, and panicked into it.

I would like to say further that on this particular subject I didn't make up my mind on this matter on the basis that workmen's compensation will be injured. That is a factor in my mind. I didn't make it up since this committee proposal was brought on the floor. This proposal was given to me to judge, to look at, by the subcommittee of the committee on emerging problems quite a long time ago, and at that time I pointed out to the chairman of that subcommittee that this particular provision, in my mind — and I only had 10 minutes to look at it — I was boobytrapped with one problem after another. That was on the basis of 5 or 10 minutes looking at it. It is boobytrapped. It is just chock full of problems. I say to you go slow, as Mr. Faxon, the conservative, says. When you are making a big error, you can afford to go slow. I suggest that you don't make this error, and that you strike this section.

CHAIRMAN VAN DUSEN: Judge Pugsley.

MR. PUGSLEY: Mr. Chairman and fellow delegates, I did not expect to speak on this issue. I think that most of you have heard quite aplenty. It has occurred to me, however, as I have listened to these discussions that there may be some confusion concerning the real issue that is before us. I wish to speak very briefly, and I hope to the point.

The first question in my mind is whether or not there should be written into the constitution a minimum rule of required evidence in every appeal that is taken from the decision of an administrative body. This was the subject matter of discussion before the judicial committee and was the subject of the inquiry that was made of Professor Cooper when he appeared before that committee. I heard that discussion. I likewise heard a similar discussion when he appeared before the committee on emerging problems. This matter was referred to the latter committee before action was finally taken upon it by the judiciary committee. And when the committee on emerging problems was certain that the judiciary committee was about to act upon it, or was taking action, the matter was referred back to that committee. I repeat, the question is, should the constitution contain a rule of evidence? It was the thinking of the committee that the subject matter under discussion was so important and that the matter of a fair, honest review of the proceedings of the lower body should be had in a court of review, that they thought in keeping with that, its importance would justify the definition of a fair rule.

I then come to this point. Is the rule of evidence which is set forth within the proposal before you one that is fair to all parties concerned? This appeal, like every appeal from a lower court to a higher one, contains a question of law. Also, it contains in addition thereto a question of fact. So if you will turn your attention to the language contained in this proposal, the appellate court is called upon first to determine as a minimum whether the decisions, findings, and orders are authorized by law. In other words, did the tribunal make a mistake in its interpretation of the law? And then you pass to the second question. Does the record — not in part, but in its entirety — set forth errors in view of the reliable, probative, and substantial evidence? If it does disclose such errors, then it will be the duty of the appellate court to reverse the decision. If the record taken as a whole substantiates that, then it should be affirmed.

I submit to you if you believe that such a rule is a proper one to be included in the constitution, then you should support this proposal and you should defeat the amendment. I repeat, the first question is, should such a proposal be in the constitution? And, if so, you should support the committee's finding.

CHAIRMAN VAN DUSEN: Mr. Lawrence.

MR. LAWRENCE: Mr. Chairman and members of the committee, as a member of the judicial committee, I would like to say that this is one of the most important proposals that you will have to consider. I am assuming that you who are here realize that, and that you realize that if it takes us 4 hours or 4 days, it should be thoroughly discussed and should be thoroughly understood, and that the time is not being wasted.

I am somewhat pleased to have heard what Judge Pugsley said, because he has hit on the thing that to me we have got beclouded, and that's the real issue. If some of you, at least, who are here and are listening will look at Committee Proposal 95, let me very briefly analyze it for you. First, I want to say this. Do we believe in our form of government with 3 branches?

If we do, then we believe that the executive and the legislative branches should not exercise the powers of the judiciary.

Now, in the development of our society, the legislature will pass laws; and either it will create in some instances — in fact, in many instances — an agency to enforce those laws, or the executive will do it. Obviously the legislature can't handle all of these things itself. So these agencies are created to enforce the laws. And these agencies lay down rules and they make determinations. In doing so, it is inevitable that they make judicial or quasi judicial findings that affect private rights. Now, in the first sentence of section a we recognize that condition as it exists, and we say that when any of these administrative, legislative or executive agencies — that's what they are — make findings that are judicial or quasi judicial and affect private rights, that those decisions shall be subject to direct review by the courts as provided by law. We come to what I said earlier. I think we have to determine whether we are going to have a government of men or of law. Certainly no one should object to judicial rights being determined according to law.

Now we go to the second sentence. All that second sentence says is that the review that is to be exercised by the court, as a minimum, shall determine first whether the decision of that administrative tribunal is authorized by law. In other words, did it exceed the law? Did it get into a field it shouldn't have gotten into, that it wasn't authorized to get into? Certainly, if we are to have a government of law, we can't object to that. We can object to individuals running over our private rights, just on their own whim, caprice or because of the autocratic nature they have assumed. And the other thing that it says is this — and this is all it says — it says if it's such a decision that a hearing is required, then they've got to make their decision based on reliable, probative and substantial evidence on the whole record. Again we come back to the fact that if the legislative and the executive are going to exercise judicial functions, they've got to have those decisions they make supported by reliable evidence. And certainly that is not too much to expect. We don't have tyranny here. We are supposed to be governed by law.

I am glad that Dr. Nord brought up the matter of the bar exam because I happen to have a son who is going to take the next bar exam, and he happens to be one of Dr. Nord's pupils, or is taking his refresher course. So I am vitally interested in this. But let's take his analogy. Would the bar examining board's decision be reviewable? According to this, the only thing that the court can determine is, first, in the first part of that second sentence, did it have authority to do what it is doing? And, secondly, if a hearing is required, is it supported by reliable, probative, and substantial evidence? Well, I didn't know a hearing was required in a bar exam. I don't think his example is at all applicable. I think it is indicative of the type of thing we've gotten into in this, where we are losing sight of the real issue.

I think it is important, to preserve our way of life, that a proper check be made on the exercise of authority by these administrative agencies. And that proper check is simply that they act according to law; and if they make findings on hearings, that there be some evidence to back up those findings. I ask that you vote against this amendment.

CHAIRMAN VAN DUSEN: Mr. Martin.

MR. MARTIN: Mr. Chairman, I have listened to the entire debate without commenting on this, because I wanted to know what the committee thought and what those who studied the problem thought.

I am impressed, first of all, by the tremendous scope of the proposal that is being made. There is no question at all but that this is one of the most far ranging proposals for change which we are making in this entire constitution. There is also no question but what there have been abuses in this field, and this proposal is designed to correct those abuses. At the same time, I recognize — and I think others of us recognize — that we have people whose rights and interests need to be protected on both sides of the controversies that may be involved before these administrative tribunals.

It is not only the question of the person whose property may be taken by the decisions of these tribunals, but it is also a problem of seeing to it that the people who come before these tribunals with respect to workmen's compensation awards and other matters of that kind receive prompt action within reasonable time on the matters that they bring before these boards. Because it is true that they are in many cases people who cannot afford long protracted proceedings, and if they are carried through a long series of judicial reviews from one court to another there may be some serious problems for them that we have to be concerned about, too. I raised the question yesterday with regard to the introduction of the words "privileges and licenses." I understand that the change which we made in changing "erroneous" to "supported by" is a change which Mr. Cooper, who is one of the acknowledged authorities in the country, is doubtful about. Mr. Norris has spoken about the possibility of reconciling some of the language of this proposal with some of the problems which he sees.

I think we should pass the proposal; I intend to support the committee on this, but I think that in light of its importance, we can't just send it to style and drafting and then bring it back and act on it without further thought. I think it has to go to style and drafting, and in the meantime I think the committee should take another long look at it. I would like to know what Blythe Stason, for example, who is one of the great experts on administrative law in this state, thinks about it; and Mr. Cooper, as well; and some of the other people who know what the impact and import of this proposal would be. When we know that, then I think we may be in better position to determine what changes, if any, should be made, or whether it should be passed exactly as it is presented to us here.

I just want to record for the record my feeling that this is not the final look as far as I'm concerned, at least, and that all of us better take another long look at it before we make up our minds that this is the way it ought to be, finally, once and for all.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Messrs. Krolikowski and Bledsoe to strike all of section a of Committee Proposal 95. Those in favor of the amendment will say aye. Those opposed will say no.

The amendment is not adopted.

DELEGATES: Division.

CHAIRMAN VAN DUSEN: A division is requested. Is the demand supported? It is supported. Those in favor of the Krolikowski-Bledsoe amendment will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the adoption of the amendment offered by Messrs. Krolikowski and Bledsoe, the yeas are 37, the nays are 83.

CHAIRMAN VAN DUSEN: The amendment is not adopted. Are there further amendments to Committee Proposal 95?

SECRETARY CHASE: There are none on file, Mr. Chairman.

CHAIRMAN VAN DUSEN: If not, it will pass.

Committee Proposal 95, as amended, is passed. The secretary will read the next committee proposal.

SECRETARY CHASE: From the committee on judicial branch, by Mr. Danhof, chairman, **Committee Proposal 96,** A proposal pertaining to general and special provisions relative to the courts of the state. A substitute for sections 17, 19, 20 and 23 of article VII.

Following is Committee Proposal 96 as read by the secretary, and the reasons submitted in support thereof:

The committee recommends that the following be included in the constitution:

Sec. a. THE SUPREME COURT, THE COURT OF APPEALS, THE CIRCUIT COURT, THE PROBATE COURT AND OTHER COURTS DESIGNATED BY THE LEGISLATURE SHALL BE COURTS OF RECORD AND SHALL EACH HAVE A COMMON SEAL. EXCEPT AS AUTHORIZED OTHERWISE BY THIS CONSTITUTION,

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Explanation—Matter within [ ] is stricken, matter in capitals is new.

JUSTICES AND JUDGES OF THE COURTS OF THIS STATE SHALL BE LAWYERS LICENSED TO PRACTICE LAW IN THIS STATE AND SHALL NOT BE ELECTED OR APPOINTED TO A JUDICIAL OFFICE AFTER REACHING THE AGE OF 70 YEARS. NO JUDGE OR JUSTICE OF ANY COURT IN THIS STATE SHALL BE PAID FROM THE FEES OF HIS OFFICE NOR SHALL THE AMOUNT OF HIS SALARY BE MEASURED BY THE FEES OR OTHER MONEYS RECEIVED NOR BY THE AMOUNT OF JUDICIAL ACTIVITY.

Sec. b. WHENEVER A JUDGE SHALL REMOVE HIS DOMICILE BEYOND THE LIMITS OF THE TERRITORY FROM WHICH HE WAS ELECTED, HE SHALL BE DEEMED TO HAVE VACATED HIS OFFICE.

Sec. c. A JUSTICE AND A JUDGE OF A COURT OF RECORD SHALL BE INELIGIBLE TO BE NOMINATED FOR, OR ELECTED TO AN ELECTIVE OFFICE OTHER THAN A JUDICIAL OFFICE DURING THE PERIOD OF HIS SERVICE AS A JUDGE AND FOR 1 YEAR THEREAFTER.

Sec. d. WHEN A VACANCY OCCURS IN THE OFFICE OF AN ELECTED JUDGE OF ANY COURT OF RECORD, IT SHALL BE FILLED AT A GENERAL OR SPECIAL ELECTION ACCORDING TO LAW. THE SUPREME COURT IS EMPOWERED TO AUTHORIZE PERSONS WHO HAVE SERVED AS JUDGES AND HAVE VOLUNTARILY RETIRED, TO PERFORM JUDICIAL DUTIES FOR THE LIMITED PERIOD OF TIME FROM THE OCCURRENCE OF THE VACANCY UNTIL THE SUCCESSOR IS ELECTED AND QUALIFIED.

Sec. e. THERE SHALL BE PRINTED UPON THE BALLOT UNDER THE NAME OF EACH ELECTED INCUMBENT JUSTICE OR JUDGE, WHO IS A CANDIDATE FOR NOMINATION OR ELECTION TO THE SAME OFFICE, THE DESIGNATION OF THAT OFFICE.

Sec. f. ANY JUSTICE OR JUDGE SERVING AT THE TIME THIS CONSTITUTION BECOMES EFFECTIVE MAY SERVE THE REMAINDER OF THE TERM AND BE ELIGIBLE FOR REELECTION TO HIS PRESENT OFFICE REGARDLESS OF OTHER PROVISIONS IN THIS CONSTITUTION PERTAINING TO THE QUALIFICATIONS FOR THE OFFICE.

Sec. g. SALARIES OF JUSTICES OF THE SUPREME COURT, OF THE JUDGES OF THE COURT OF APPEALS, OF THE CIRCUIT JUDGES WITHIN THE COUNTY OR CIRCUIT, AND OF THE PROBATE JUDGES WITHIN A COUNTY OR DISTRICT, SHALL BE UNIFORM, AND MAY BE INCREASED BUT SHALL NOT BE DECREASED, DURING A TERM OF OFFICE EXCEPT AND ONLY TO THE EXTENT OF A GENERAL SALARY REDUCTION IN ALL OTHER BRANCHES OF GOVERNMENT.

EACH OF THE JUDGES OF THE CIRCUIT COURTS SHALL RECEIVE A SALARY PAYABLE MONTHLY. IN ADDITION TO THE SALARY PAID FROM THE STATE TREASURY, EACH CIRCUIT JUDGE MAY RECEIVE FROM ANY COUNTY IN WHICH HE REGULARLY HOLDS COURT SUCH ADDITIONAL SALARY AS MAY BE DETERMINED FROM TIME TO TIME BY THE BOARD OF SUPERVISORS OF THE COUNTY. IN ANY COUNTY WHERE SUCH ADDITIONAL SALARY IS GRANTED, IT SHALL BE PAID AT THE SAME RATE TO ALL CIRCUIT JUDGES REGULARLY HOLDING COURT THEREIN.

Sec. h. FOR REASONABLE CAUSE, WHICH SHALL NOT BE SUFFICIENT GROUND FOR IMPEACHMENT, THE GOVERNOR SHALL REMOVE ANY JUDGE ON A CONCURRENT RESOLUTION OF 2/3 OF THE MEMBERS ELECTED TO EACH HOUSE OF THE LEGISLATURE; AND THE CAUSE FOR WHICH SUCH REMOVAL IS REQUIRED SHALL BE STATED AT LENGTH IN SUCH RESOLUTION.

Sec. i. THE OFFICE OF CIRCUIT COURT COMMISSIONER AND JUSTICE OF THE PEACE SHALL CONTINUE TO HAVE, FOR A PERIOD OF NOT TO EXCEED 5 YEARS FROM THE DATE THIS CONSTITUTION BECOMES EFFECTIVE, ALL THEIR RESPECTIVE POWERS AND JURISDICTION UNTIL THE TIME WITHIN THIS PERIOD THAT THEY ARE ABOLISHED OR THEIR JURISDICTION AND POWERS ARE TRANSFERRED TO, OR INVESTED IN, OTHER COURTS THAT SHALL BE ESTABLISHED IN ACCORDANCE WITH THIS CONSTITUTION.

SPECIAL STATUTORY COURTS IN EXISTENCE AS OF THE TIME THIS CONSTITUTION BECOMES EFFECTIVE SHALL RETAIN THEIR POWERS AND JURISDICTION, EXCEPT AS PROVIDED BY LAW, UNTIL AND UNLESS THEY ARE ABOLISHED BY LAW.

Sec. j. THE PROVISIONS OF THIS CONSTITUTION REQUIRING THE ESTABLISHMENT OF STAGGERED TERMS OF OFFICES IN EXISTENCE, SHALL BE IMPLEMENTED AT THE NEXT ELECTION FOR SUCH OFFICES BY LEGISLATION PROVIDING FOR ELECTIONS FOR TERMS OF VARYING LENGTH, NONE OF WHICH SHALL BE SHORTER THAN THE BASIC TERM PROVIDED HEREIN FOR THE OFFICE.

Sec. k. EACH BRANCH OF THE LEGISLATURE AS WELL AS THE GOVERNOR SHALL HAVE THE AUTHORITY TO REQUEST THE OPINION OF THE SUPREME COURT UPON IMPORTANT QUESTIONS OF LAW AND UPON SOLEMN OCCASIONS.

Mr. Danhof, chairman of the committee on judicial branch, submits the following reasons in support of Committee Proposal 96:

Sec. a. Most of the content of this section is found in section 17 of article VII of the Constitution of 1908. The new court of appeals has been included as a court of record and the legislature is permitted to determine which of the lower courts will be so designated.

Two substantial additions have been made. One requires that all judges be lawyers. An exception is made in section f for those nonlawyers now serving as judges. In the case of justices of the peace, this exception cannot extend beyond 5 years. (See section i hereunder.)

The committee felt that a minimum requirement for judicial office should be a license to practice law. This doctrine has been recognized as to the supreme court and the circuit court through an amendment adopted by the people in 1955. We would apply it to all courts.

Abolition of the fee system would also be accomplished. The committee could find no support for paying a judge on the basis of the amount of litigation before him. Even the justices themselves would not wholeheartedly endorse what appears to the committee to be an indefensible method of payment.

Sec. b. The committee has in essence adopted the provisions of section 19 of article VII of the Constitution of 1908. Due, however, to the elimination of the justices of the peace from the proposed new article any reference to this office has been eliminated. In addition, the word "territory" has been substituted for the word "jurisdiction," inasmuch as the section refers to the physical moving of the judge from the territory from which he was elected.

Sec. c. Since 1850, circuit judges have been prohibited from holding other than a judicial office for their term and an additional year. We felt the principle of divorcing the judiciary from the political arena was valid. There seemed to be no reason to place the limitation on circuit judges alone. On the other hand, the committee felt that such a restriction should be tied to service on the bench, rather than the term to which he was elected.

Sec. d. This provision is a substitution for section 20 of article VII of the Constitution of 1908 and provides that vacancies in the office of an elected judge of any court

Explanation—Matter within [ ] is stricken, matter in capitals is new.

of record shall be filled by general or special election. This is a significant change and removes from the governor the power to appoint judges. The provision is included in order to maintain a philosophical consistency in the idea that this state should have an elected judiciary. The present system where the governor in case of a vacancy makes an appointment and there is then bestowed upon the appointee the incumbency designation, has had an overwhelming tendency in the past to insure the election of the appointee and thereby creating in effect an appointive judiciary. The proposal embodies the idea that the supreme court may fill the vacancy temporarily by utilizing the services of judges who have retired. This pool of judicial manpower will continue to grow and can be readily utilized as needed. It is recognized that perhaps certain legislation will be needed to amend the retirement program.

The committee on executive branch is unable to concur in this proposal.

Sec. e. This provision is the last paragraph of section 3 of article VII of the Constitution of 1908, with one significant change. There has been inserted in front of "incumbent" the word "elected". Hence it now provides that only judges or justices who have been elected will be eligible for the incumbency designation. This method is utilized to provide tenure for those judges who have previously qualified, gives stability to the judiciary of this state and is extremely vital in order to secure proper court administration when you have an elected judiciary. The majority of the committee were of the opinion that the incumbency designation is something which should be earned by previous election.

Sec. f. This is a "grandfather" clause to permit present nonlawyer judges to serve the remainder of their term and be eligible for reelection. As pointed out in the earlier comments, after a maximum of 5 years, this exception would no longer protect justices of the peace.

Sec. g. The provisions of this section are designed to assure uniform salaries for all judges within a certain district. It likewise removes the restriction of section 3 of article XVI which, as it now stands, prohibits the increase of salary of any supreme court justice during his term of office. We now have justices whose salaries vary as much as $7,000.00 per year. The committee believes that this discrimination should be abolished. However, due to the requirement of staggered terms for circuit judges and probate judges it became evident that some other method should be devised if a salary reduction ever became necessary. Accordingly, the proposition was adopted that a salary reduction could be obtained for the judiciary only if general salary reduction were made in each of the other branches of the government. This would eliminate the danger of the judiciary being singled out for salary reduction.

Sec. h. This section is identical with the present provisions of article IX, section 6. The matter is simply transferred to the judicial article.

Sec. i. Having determined that the offices of circuit court commissioner and justice of the peace should be abolished, the committee recognized the need to provide for a period of time for the legislature to accomplish an orderly transfer of the powers and duties of these offices to other judicial and nonjudicial offices where indicated. Five years did not seem to be an unreasonably long period of time in that the legislature may desire to reevaluate the entire system of courts of limited jurisdiction in the development of a modern lower court structure, better adapted to the needs of the people and the ends of justice.

Under the 1908 constitution, several statutory courts have been created. Among these are the recorder's court and common pleas court of Detroit, superior court of Grand Rapids, municipal courts throughout the state and the court of claims. These will continue in existence, unless action is taken by the legislature to abolish them or transfer their duties elsewhere. No new power is vested in the legislature in this regard.

Sec. j. This provision is needed to allow the legislature to fulfill the constitutional requirement of staggered terms for both circuit and probate judges.

Sec. k. This is a new section and is recommended for the purpose of empowering the supreme court to furnish advisory opinions to the governor and each house of the legislature on important questions of law and solemn occasions. An example of this would be the 4 cent sales tax which was passed and, in a short time thereafter, was declared unconstitutional. By this provision it is felt that more effective governmental operation is made possible. This is a nonadversary proceeding. Similar language appears in the Constitution of the State of Massachusetts. The matter of advisory opinion was recommended to the committee on judicial branch by Mr. Justice Black. We feel the court will provide for notice and hearing in proper cases.

Following is minority report A to Committee Proposal 96 as offered and the reasons submitted in support thereof:

Messrs. Ford, Garvin, Bledsoe, Miss McGowan, Messrs. Ostrow, Krolikowski and Barthwell, a minority of the committee on judicial branch, submit the following minority report A to Committee Proposal 96:

A minority of the committee recommends that the following be included in the constitution:

Strike all of Section d and reinsert in lieu thereof the language of article VII, section 20 of the 1908 constitution, which language reads as follows:

> When a vacancy occurs in the office of judge of any court of record, it shall be filled by appointment of the governor, and the person appointed shall hold the office until a successor is elected and qualified. When elected, such successor shall hold the office the residue of the unexpired term.

Messrs. Ford, Garvin, Bledsoe, Miss McGowan, Messrs. Ostrow, Krolikowski and Barthwell, a minority of the committee on judicial branch, submit the following reasons in support of the foregoing minority report A, which accompanied Committee Proposal 96:

The proponents of this minority report believe that the majority's recommended prohibition against the filling of vacancies by gubernatorial appointment would create a unique problem that could conceivably result in prolonged vacancies on the bench.

The majority proposes that pending the occurrence of an election to fill a judicial vacancy, the vacancy could be temporarily filled by retired former circuit judges. An examination of the number and location throughout the state of retired judges available for this service casts strong doubt on the practical value of this method to meet the problem.

It is apparent from many years of experience with the present system that judicial vacancies have been filled by the governors of this state on a careful and considerate basis. The vast majority of its judges, who have been appointed to fill a vacancy, have been elected and reelected many times over by the voters, demonstrating their confidence in the caliber of person the present system produces.

Following is minority report B to Committee Proposal 96 as offered and the reasons submitted in support thereof:

Messrs. Ford, Ostrow and Garvin, a minority of the committee on judicial branch, submit the following minority report B to Committee Proposal 96:

A minority of the committee recommends that the following be included in the constitution:

Sec. i. On page 3, of Committee Proposal 96:

1. Strike out all of lines 11 through 17, inclusive.

2. Amend line 18, by striking out "SPECIAL STATUTORY" and inserting "ALL".

3. Amend line 20, after "UNLESS" by striking out "THEY" and inserting "SUCH POWERS".

4. Amend line 20, after "ARE" by inserting "MODIFIED OR", so that section 1 will read as follows:

Sec. 1. ALL COURTS IN EXISTENCE AS OF THE TIME THIS CONSTITUTION BECOMES EFFECTIVE SHALL RETAIN THEIR POWERS AND JURISDICTION, EXCEPT AS PROVIDED BY LAW, UNTIL AND UNLESS SUCH POWERS ARE MODIFIED OR ABOLISHED BY LAW.

Messrs. Ford, Ostrow and Garvin, a minority of the committee on judicial branch, submit the following reasons in support of the foregoing minority report B, which accompanied Committee Proposal 96:

The purpose of the proposed changes of the majority report are to remove the language provided for the absolute abolition of the circuit court commissioner and justice of the peace on or before 5 years from the date of the adoption of the constitution.

It is the belief of the minority that removing the justice of the peace from the constitution provides sufficient flexibility for the legislature to abolish, modify or otherwise replace both of these courts. If this should at any time in the future be necessary and desirable on a statewide basis, it is thought that by leaving this matter completely to the legislature, it will be free to add to the present court system a system of local courts to replace the justice of the peace in parts of the state where this may be desirable. The language of the majority report would, however, abolish these courts throughout the state and does not admit of the possibility that these courts perform necessary functions in many parts of the state.

The circuit court commissioner's court in Wayne county, for example, handles a large volume of work which would of necessity be transferred to other courts already operating with overburdened dockets.

The amendment to the second paragraph of this section would make it clear that all judicial powers being exercised at the time of the adoption of this constitution would continue without the necessity of immediate legislation to replace constitutional powers being abolished or left out of this constitution.

CHAIRMAN VAN DUSEN: For an explanation of section a of Committee Proposal 96, the Chair will recognize the chairman of the committee on judicial branch, Mr. Danhof.

MR. DANHOF: Mr. Chairman and members of the committee, we now turn to the committee proposal which deals with miscellaneous provisions, which will refer to all or certain specific courts and cover certain other particular items which are applicable to all of the proposals that we have considered thus far. In order to explain the position of the committee in this regard, I should like to call upon a gentleman who served with our committee and who was long suffering in the fact that he was the only nonlawyer on the committee. I would at this time call upon the delegate from the city of Detroit, Mr. Barthwell.

CHAIRMAN VAN DUSEN: The Chair will advise the committee that at a meeting of the rules committee this noon it was suggested that Mr. Barthwell be awarded the honorary degree of L.S.L., long suffering layman. (laughter) Mr. Barthwell.

MR. BARTHWELL: Mr. Chairman, fellow delegates, I don't know if this layman has suffered as much as the convention has, because I found out that 20 lawyers can't talk as much as 57 lawyers and some laymen. (laughter) I would like to say, though, that this duty has been an enjoyable one, and I think it was nice that I was here, because when we are going to try to fix up the lay people, they are going to let a layman do the job.

Explanation—Matter within [ ] is stricken, matter in capitals is new.

[The supporting reasons for section a were read by Mr. Barthwell. For text, see above, page 1478.]

I would like to state again that the changes in this section are 2: one, all judges of all courts must be lawyers; and 2, no judges shall be paid on a fee system. I would also like to state that, personally, I, as a lay person—although it seems that I am waiving all of my opportunities to cash in on the services that I have put in on this committee—have found out that a nonlawyer could be a judge, although he couldn't practice law. When I agreed with this, though, I was following the established concept that specialization produces the best results. And I, as a lay person, when I go before a court, not only would like to feel that the judge is a lawyer, but would kind of hope that he was an experienced lawyer.

I would like to say that I urge, on behalf of the committee, that this section be adopted.

CHAIRMAN VAN DUSEN: Thank you, Mr. Barthwell. Mr. Danhof, do you have any further explanation?

MR. DANHOF: Mr. Chairman, I think it might be in order, if I can, to request that we consider this particular section sentence by sentence. In this way we can proceed, and if there are amendments, as I note there are, we might be able to take them up by sentence, in the order that they come up in the proposal.

CHAIRMAN VAN DUSEN: Without objection, we will proceed to consider section a of Committee Proposal 96, sentence by sentence. Are there any amendments to the first sentence?

SECRETARY CHASE: Messrs. Radka, Pugsley and Rajkovich offer the following amendment:

1. Amend page 1, line 8, after "designated" by inserting "as such"; so that the language will read:

The supreme court, the court of appeals, the circuit court, the probate court and other courts designated as such by the legislature shall be courts of record and shall each have a common seal.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Radka and others to the first sentence of section a. Mr. Radka.

MR. RADKA: I have nothing to offer in the way of explanation. I think that probably the amendment is clear, although I believe the words must be read in conjunction with the amendment that is offered as far as the second sentence is concerned, which involves line 10. I will defer until you pass the first sentence.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Radka and others to the first sentence of section a. Mr. Danhof.

MR. DANHOF: I might state for the committee that I think this is a matter that is clarifying rather than changing any intent. It was the particular intent of the judiciary committee that the courts named herein — that is, the supreme court, the court of appeals, the circuit court and the probate court — should by constitution become courts of record. Now, this is a very technical matter, and it has to do with the acceptability of the orders and the records of the court. We further intended that any other courts which might be created by the legislature, as provided in Commitee Proposal 90, could be, if the legislature deemed it desirable, designated as courts of record. It is my understanding that the amendment here is merely clarifying, and I see no real objection to it at this time.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Radka and others to the first sentence of section a. Mr. Higgs.

MR. HIGGS: Mr. Chairman, I have one question here. We have had, on style and drafting, certain problems, one of which is the word "such." Normally, the word "such" refers to an antecedent noun. My understanding of the intention, so that we can have that clear before us in style and drafting, is that "such" really refers to "courts of record," is that correct?

MR. RADKA: That is correct.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Radka and others to insert the words "as such" after the word "designated" in line 8, in the first sen-

tence of section a. Those in favor of the amendment will say aye. Those opposed will say no.

The amendment is adopted. Are there further amendments to the first sentence of section a? If not, the secretary will read the second sentence.

SECRETARY CHASE: The second sentence:

[The second sentence was read by the secretary. For text, see above, page 1478.]

CHAIRMAN VAN DUSEN: Are there amendments to the second sentence?

SECRETARY CHASE: Messrs. Radka, Pugsley and Rajkovich offer the following amendment:

1. Amend page 1, line 10, after "courts" by inserting "of record"; so the language will then read:

Except as authorized otherwise by this constitution, justices and judges of the courts of record of this state shall be lawyers licensed to practice law —

et cetera.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Messrs. Radka, Pugsley and Rajkovich, on which the Chair will recognize Mr. Radka.

MR. RADKA: Mr. Chairman, members of the committee, might I first offer to Mr. Higgs the suggestion that rather than "as such," that we might put in the word "so" before "designated," and it would accomplish the same thing. I don't like to have you people in style and drafting work too hard; just so long as you keep the same substantive meaning.

The purpose of the amendment to add the words "of record" is really quite a simple one, as far as we people in the sparsely populated areas of northern Michigan are concerned. We find ourselves presented with this problem. In a lot of counties there are not a whole lot of attorneys. Many counties have one attorney. And we are anticipating what is going to be done in the remaining sections of this particular proposal as far as the justice of the peace courts are concerned. It was our feeling that if at the end of 5 years the layman justice of the peace court was going to be abolished and we found ourselves with no attorneys in our county, we would have no court to serve our people. So we are here offering this amendment, hoping that it will give the legislature the flexibility — and I detest that word at this stage — to provide for a court not of record, and the justice might be a layman, not an attorney; and it is just as simple as that.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Messrs. Radka, Pugsley and Rajkovich to line 10 of section a of Committee Proposal 96. Mr. Danhof.

MR. DANHOF: Mr. Chairman and members of the committee, as Mr. Radka has pointed out very succinctly, this is the bridge that will have to be crossed. The majority of the committee voted to put in a requirement that all judges and justices of the courts of this state — and that meant all, from the top to the bottom — shall be lawyers licensed to practice law, and shall not assume judicial office after reaching the age of 70. Now, the age of 70 has been written into the constitution for some time. This was the majority view of the committee, and it should be noted here exactly what is transpiring and what will be accomplished by the acceptance of the amendment if that be the will of this committee. I think that it is something that we have to face up to, and something that the convention cannot ignore.

We have left to the legislature to provide in essence for the courts of limited jurisdiction. One of the things they would have had to include is that the judges be lawyers. If the amendment carries, it will limit it to those courts which are courts of record, which are the 4 named above, plus any others so designated by the legislature.

I should like to yield at this time to another member of the committee for some further comments in this regard, the delegate from Battle Creek, Mr. Everett.

CHAIRMAN VAN DUSEN: Mr. Everett.

MR. EVERETT: Mr. Chairman, Mr. Danhof, this matter, as pointed out by the 2 gentlemen who preceded me, is not a simple matter, and would effect quite a vital change from the committee's action. I would inquire of the committee chairman if he proposes that we extend the debate through this entire section at this time, or if he would prefer that we withhold it, and pick up tomorrow where we leave off today?

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: Well, I am willing to abide by the wishes of the committee. Mr. Radka has laid the matter out very clearly. I'm not sure how much discussion it will provoke. If it's the will that we conclude, fine. If not, why go ahead, Mr. Everett.

CHAIRMAN VAN DUSEN: You may proceed, Mr. Everett.

MR. EVERETT: How do we determine the will, Mr. Chairman?

CHAIRMAN VAN DUSEN: I would suggest, Mr. Everett, that you proceed.

MR. EVERETT: All right.

CHAIRMAN VAN DUSEN: You have been recognized.

MR. EVERETT: As Mr. Danhof suggested, the term "of record" has a technical meaning, but applied practically, this is what the effect of Mr. Radka's amendment would be: it would change an outright flat statement that all the judges of all of the courts of this state be lawyers to a simple statement that some judges be lawyers and some judges not be.

I know in this convention there are many here who sincerely believe that the justices of the peace, who are nonlawyer justices, perform a valid function for the people. Where we differ on that point, it is an honest difference of opinion, probably based on experiences which are unique to ourselves, and not available to the other side. But I have a strong feeling that within the last couple of days, in particular, there are many delegates here who are suggesting the principle which the judicial committee has set forth — that all judges of all courts should be lawyers — is a valid principle, but. . . . And then they have reasons of their own for rejecting a valid principle for what would appear to be a more expedient course. It is to these delegates that I would address myself. If this is a matter of principle — and to many of us it is — then the principle is simply this: Do we, as a constitutional body, draft a framework for the best possible judicial system in the state of Michigan, or do we not?

Let me say this. I would not suggest for a moment — and I don't think anybody here would suggest — that the framework is the total answer. Because a good system can produce bad judges, and a bad system can produce good judges. But, in the final analysis, the system if it's sound is much more likely to provide a good judiciary and a good judicial system for the people of the state than a bad one is. So to a majority on the committee — and I cannot now recall what constituted that majority, but it is now my recollection that there was not substantial disagreement in this; and if I'm wrong, I'll be corrected — the issue was very clear cut. And I'm glad that Mr. Barthwell was able to present the committee position, because I might say he was one of the most vocal spokesmen on the committee for the idea that no judicial system is sound unless it is manned by men who, as a minimum requirement, are lawyers. To us this was sound.

Now, it has been suggested by many people here that this is a matter which does not concern most of us; it concerns areas where there are not too many people. To those I would submit that the judicial structure of the state of Michigan and the administration of law and justice are vital to every person in the state of Michigan, wherever he may live. Even if you never come in contact with that court in all your existence, the fact that the people of this state are served by a good judiciary or a bad judiciary is a matter of importance, not only to us as delegates, but to every citizen of this state.

It has been suggested, too, that all lawyers do not make good judges — and nobody will quarrel with this. But what we are stating here is that as a minimum requirement this is essential. To some of us, at least, it would be absurd to suggest that in a small county you could license the barber to remove appendixes because the doctor was quite a ways away. You might say, well, he could kill the man that way.

I would remind you that there were many instances in our history in which men yielded their lives before their rights.

And, in the final analysis, the determination of whether your rights are protected or not depends on the judges who sit on the bench. To me this is not a matter of the personalities involved. It is not a matter of whether there are some good justices or some bad justices. There are some of each. It is a question of whether or not any judicial system that is founded upon anything other than a minimum of legal training could possibly serve the needs of the people.

A day or two ago, in discussing this matter with Mr. Radka, I made a facetious remark that ultimately, after this 5 years has gone by, the people might have to live with this situation. And those words have come back to haunt me. I do not accept for a moment the proposition that any part of the state of Michigan is so lacking in abilities, in manpower, that it cannot man a good judicial system.

This morning we took tremendous strides forward to improve the judicial system. It was pointed out then by several men that what we are talking about now is, as far as many people are concerned, far more important than the supreme court; because for every person whose rights are litigated or determined by the supreme court, literally thousands of people will have their rights determined in the probate and in the justice courts. And it is for them that we of the committee are speaking. Not for lawyers; not simply for judges; but for people whose final determination is going to be made there at that level. Appeals from these courts are rare. The cost of appeal is heavy. And the final decision is usually made at that level. And it is going to be made properly and in the interests of justice, or not, primarily on the basis of what type of man mans that court.

Now, this morning, in opening the door to permit the districting of probate courts and a combination of functions of the probate courts with inferior courts, we have given a partial answer to those who say this cannot be done in the small counties. We have indicated to them a clear way in which it could be done in the small counties, where by combining activities of courts in the small counties they could not only make the court attractive from a financial standpoint, but from the standpoint that they would engage the services of men who would have vital work to perform in these areas. This is one answer to it. There are others. We are not trying to write into the constitution all of the possible answers.

But to me there is one thing unanswerable. How can we leave this convention and go back home and say that we have engrafted something less than the best possible judicial system which was available to us? And that's what we are being asked to do by this amendment. If you believe in the best, if you believe the people of the state of Michigan are entitled to the best, not simply now, but in the future, then I submit you have only one recourse, and that is to vote down this amendment and to support the committee's position. If you accept the possibility, if you accept the premise that some people in this state are not entitled to the best simply because they live in small counties, or because there aren't a lot of them, or because they are not rich, if you are satisfied to saddle them with something less than the best, then you now have your opportunity to do so.

To me, to the majority of the committee, and I'm sure to many other men and women in this convention, we do not have any choice. We must produce the best if it lies within our means to do it. It does lie within our means, and I would urge you to defeat the amendment and to support the committee.

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: Mr. Chairman, I've looked around the room, and I see that absenteeism is going up again. I note further there are some amendments to consider on Committee Proposal 95. We have had the 2 basic considerations to be considered in this particular sentence ably put forth by Mr. Radka and Mr. Everett. I think the committee is tired, and at this time I recommend we not take a vote on this matter, and move that the committee do now rise.

CHAIRMAN VAN DUSEN: Mr. Danhof moves the committee do now rise. Those in favor will say aye. Those opposed will say no.

The motion prevails, and the committee will rise.

[Whereupon, the committee of the whole having risen, President Nisbet resumed the Chair.]

PRESIDENT NISBET: The Chair recognizes Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, the committee of the whole has had under consideration several matters, of which the secretary will give a detailed report.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 95, A** proposal pertaining to appeals from administrative tribunals. It reports the proposal back to the convention with 2 amendments, recommending the amendments be agreed to and the proposal as thus amended do pass.

Following are the amendments recommended by the committee of the whole:

1. Amend page 1, line 7, after "rights,", by inserting "privileges or licenses,"; so that the language will then read:

> All final decisions, findings, rulings and orders of any administrative officer or body existing under the constitution or by law, which are judicial or quasi judicial and affect private rights, privileges or licenses, shall be subject to direct review by the courts as shall be provided by law.

2. Amend page 1, line 12, by striking out "clearly"; so the language will then read:

> . . . in cases in which a hearing is required, whether the same are supported by reliable, probative, and substantial evidence on the whole record.

PRESIDENT NISBET: The question is on concurring in the amendments recommended by the committee of the whole. Those in favor will say aye. Opposed no.

The amendments are adopted.

SECRETARY CHASE: Messrs. Faxon, Austin and Nord offer the following amendment:

1. Amend page 1, line 12, by striking out "supported by" and inserting "erroneous in view of the"; so the language will then read:

> . . . in cases in which a hearing is required, whether the same are erroneous in view of the reliable, probative, and substantial evidence on the whole record.

PRESIDENT NISBET: Mr. Faxon.

MR. FAXON: Mr. President, we have discussed this. This is the original recommendation of the judicial committee, and I would yield to Mr. Danhof, the chairman of the committee, for his comments.

PRESIDENT NISBET: Mr. Danhof.

MR. DANHOF: After we have belabored this within the committee of the whole, Mr. President, I think it becomes evident that perhaps we should return to the original language as was reported out by the majority of our committee. I therefore would recommend the adoption of the amendment and returning to the original language of the committee as it had been brought forth. I will support the amendment.

PRESIDENT NISBET: The question is on agreeing to the amendment offered by Mr. Faxon.

MR. FORD: Mr. President.

PRESIDENT NISBET: Mr. Ford.

MR. FORD: I would like to move, under the rules, for a call of the convention. Only the people who are within the bar of the convention.

PRESIDENT NISBET: Mr. Ford, would you be satisfied if the bell is rung to bring everybody in here? We will ring the bell anyway, and see what happens.

MR. FORD: Mr. President, it is my understanding that on a motion for a call of the convention, if the call is had, only those persons excused from today's session are excused from attending; is that correct?

PRESIDENT NISBET: That is correct.

MR. FORD: Then anyone who has been excused is not a problem, as I understand it. There is some concern over here that you would have to take some people out of a sickbed. We

just want the people who are in the building to come in. We have been debating all day.

PRESIDENT NISBET: The Chair thinks your request, Mr. Ford, will be taken care of by the ringing of the bell. Mr. Knirk.

MR. KNIRK: Mr. President, I do not believe that the bell rings downstairs at all. So I think someone should go downstairs.

PRESIDENT NISBET: Mr. DesRocher, does the bell ring downstairs? Would you, Mr. DesRocher, as sergeant at arms, send somebody downstairs, to see if there's anyone there.

MR. KING: Mr. President.

PRESIDENT NISBET: Mr. King.

MR. KING: A point of parliamentary inquiry. It is my understanding that a call of the convention requires a vote of the majority. I don't believe such a vote has been taken.

PRESIDENT NISBET: We have not had a call of the convention. We are trying to do it informally, Mr. King. Mr. DesRocher.

SERGEANT AT ARMS DES ROCHER: All of the delegates in the building are on the floor, sir.

MR. WALKER: Mr. President.

PRESIDENT NISBET: Mr. Walker.

MR. WALKER: May I ask of Mr. Ford whether that was made in the form of a motion, or just a suggestion? I understood it to be a motion.

PRESIDENT NISBET: Mr. Ford, do you insist on a motion?

MR. FORD: It has just been called to my attention that Dr. Hannah left ill, and was not excused before he left, and I wouldn't want to be caught in a parliamentary maneuver where we would be dragging a sick man out of bed. But I think that we now understand the seriousness of getting everybody in here, even if we have to wait a few minutes to do it.

PRESIDENT NISBET: The Chair is informed by the sergeant at arms that all delegates in the building are now on the convention floor.

The question is on the adoption of Mr. Faxon's amendment. Mr. Chase, would you read the amendment.

SECRETARY CHASE: The amendment is as follows:

[The amendment was again read by the secretary. For text, see above, page 1483.]

PRESIDENT NISBET: The question is on the adoption of the amendment. Mr. Yeager.

MR. YEAGER: Mr. President, we have been through this now for quite some time and I would like to urge the defeat of this amendment, because this amendment changes the whole meaning of this particular provision. I would urge the defeat of this amendment at this time. Thank you.

PRESIDENT NISBET: The question is on the adoption of the amendment. Mr. Upton.

MR. UPTON: Can we have a roll call vote, sir.

PRESIDENT NISBET: The demand for a roll call has been made. Is it supported? There is a sufficient number up. Those in favor of the Faxon amendment will vote aye. Those opposed will vote no. Mr. Walker.

MR. WALKER: May we have the amendment read one more time?

SECRETARY CHASE: The amendment is:

[The amendment was again read by the secretary. For text, see above, page 1483.]

PRESIDENT NISBET: Have you all voted? If so, the secretary will lock the machine and record the vote.

MR. BLEDSOE: I want the record to show that my reason for not voting is that I am apprehensive that it may be understood that my vote would be in the nature of a compromise. I want the record to show that I brook no compromise in the position that I have taken on the floor here with reference to this amendment.

The roll was called and the delegates voted as follows:

Yeas—50

Austin	Goebel	Mosier
Barthwell	Greene	Nord
Beaman	Hanna, W. F.	Perlich
Bentley	Hatcher, Mrs.	Prettie
Brown, T. S.	Higgs	Rajkovich
Buback	Hodges	Richards, L. W.
Cushman, Mrs.	Hood	Romney
Dade	Iverson	Sablich
Danhof	Karn	Seyferth
Durst	Kelsey	Snyder
Elliott, Mrs. Daisy	Liberato	Suzore
Everett	Marshall	Walker
Farnsworth	Martin	Wanger
Faxon	McCauley	Wilkowski
Follo	McGowan, Miss	Young
Ford	McLogan	Youngblood
Garvin	Millard	

Nays—67

Allen	Haskill	Pugsley
Anspach	Hatch	Radka
Baginski	Howes	Richards, J. B.
Balcer	Hubbs	Rood
Batchelor	Hutchinson	Rush
Binkowski	Judd, Mrs.	Shackleton
Blandford	King	Shaffer
Bonisteel	Kirk, S.	Shanahan
Boothby	Knirk, B.	Sharpe
Brake	Koeze, Mrs.	Sieder
Brown, G. E.	Krolikowski	Stafseth
Butler, Mrs.	Kuhn	Staiger
Conklin, Mrs.	Lawrence	Stamm
Davis	Leibrand	Stevens
Dehnke	Leppien	Thomson
Dell	Lesinski	Turner
Donnelly, Miss	Lundgren	Upton
Doty, Dean	Ostrow	Van Dusen
Figy	Perras	White
Finch	Plank	Wood
Gadola	Pollock	Woolfenden
Gover	Powell	Yeager
Gust		

SECRETARY CHASE: On the amendment offered by Messrs. Faxon, Austin and Nord, the yeas are 50, the nays are 67.

PRESIDENT NISBET: The amendment is not adopted. Are there any other amendments?

SECRETARY CHASE: Messrs. Faxon, Austin and Nord offer the following amendment:

1. Amend page 1, line 12, by striking out "reliable"; so the language will read, " . . . in cases in which a hearing is required, whether the same are supported by probative, and substantial evidence on the whole record."

PRESIDENT NISBET: The question is on the adoption of the amendment.

MR. HIGGS: Mr. President, point of information.

PRESIDENT NISBET: Mr. Higgs.

MR. HIGGS: I don't think it was clear in the last vote—there seemed to be some confusion in my section of the floor at any rate—as to how that whole sentence read with and without the amendment. I'd like to know how it reads now. That is, in particular, whether the word "clearly" was involved.

SECRETARY CHASE: The word "clearly" was not involved, Mr. Higgs, because of the fact that this was an amendment adopted in the committee of the whole and which was previously approved. The word "clearly" is not in the language.

MR. HIGGS: Then the Faxon amendment was to insert the words "erroneous in view of the" without the "clearly," is that it?

SECRETARY CHASE: That is correct.

PRESIDENT NISBET: The question is on the amendment offered by Mr. Faxon.

SECRETARY CHASE: Which amendment now pending is in line 12, by striking out the word "reliable."

PRESIDENT NISBET: Mr. Van Dusen.

MR. VAN DUSEN: I ask for the yeas and nays, Mr. President.

PRESIDENT NISBET: The yeas and the nays have been demanded. Is the demand supported? There is a sufficient number up. Mr. Marshall.

MR. MARSHALL: Mr. President, I wish to abstain from casting any further votes on this entire proposal—unless there happens to be one on the desk to strike the whole section—on the basis that I feel that it is legislative in nature and has no place in the constitution.

PRESIDENT NISBET: The question is on the adoption of the amendment. Those in favor will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and record the vote.

The roll was called and the delegates voted as follows:

Yeas—31

Austin	Faxon	Liberato
Baginski	Follo	Nord
Balcer	Ford	Ostrow
Barthwell	Garvin	Perlich
Binkowski	Hatch	Sablich
Brown, T. S.	Hatcher, Mrs.	Snyder
Buback	Hodges	Suzore
Cushman, Mrs.	Hood	Walker
Dade	Kelsey	Young
Durst	Lesinski	Youngblood
Elliott, Mrs. Daisy		

Nays—87

Allen	Gust	Powell
Andrus, Miss	Hanna, W. F.	Prettie
Anspach	Haskill	Pugsley
Batchelor	Heideman	Radka
Beaman	Higgs	Rajkovich
Bentley	Howes	Richards, J. B.
Blandford	Hubbs	Richards, L. W.
Bonisteel	Hutchinson	Romney
Boothby	Iverson	Rood
Brake	Judd, Mrs.	Rush
Brown, G. E.	Karn	Seyferth
Butler, Mrs.	King	Shackleton
Conklin, Mrs.	Kirk, S.	Shaffer
Cudlip	Knirk, B.	Shanahan
Danhof	Koeze, Mrs.	Sharpe
Davis	Kuhn	Sieder
Dehnke	Lawrence	Stafseth
Dell	Leibrand	Staiger
Donnelly, Miss	Leppien	Stamm
Doty, Dean	Lundgren	Stevens
Erickson	Martin	Thomson
Everett	McCauley	Turner
Farnsworth	McGowan, Miss	Upton
Figy	McLogan	Van Dusen
Finch	Millard	Wanger
Gadola	Mosier	White
Goebel	Perras	Wood
Gover	Plank	Woolfenden
Greene	Pollock	Yeager

SECRETARY CHASE: On the adoption of this amendment to strike out of line 12 the word "reliable," the yeas are 31; the nays are 87.

PRESIDENT NISBET: The amendment is not adopted. Are there any further amendments?

SECRETARY CHASE: Mr. T. S. Brown has an amendment:

1. Amend page 1, line 7, after "licenses,", by inserting "and to which the state is a party in interest,".

PRESIDENT NISBET: Mr. Brown.

MR. T. S. BROWN: Mr. President, members of the convention, again, a synopsis of what I mentioned the first time in our committee of the whole. This amendment would have the net effect, I think, of meeting the objections of most of us who were concerned about the scope of this review, and most of us who were concerned especially about the workmen's compensation section. It would retain the essence of what is good, in the minds and hearts of all of us, I think, in the one version of this particular proposal—and we did want to protect individuals who appeared before the state and state agencies—in that it would be applicable only to those situations in which an individual or a corporation or a partnership or anyone appeared in a situation vis a vis a state agency; and would preclude this type of broad appeal in a situation where the state was only acting as an arbitrator, and where you did not have a state agency directly involved as a party. It would, therefore, not inject the state as a party in what would otherwise be a private contractual matter and a matter of private litigation. I demand the yeas and the nays.

PRESIDENT NISBET: The yeas and the nays have been demanded. Is the demand supported? There is a sufficient number up. The question is on the amendment offered by Mr. Brown. Those in favor will vote aye. Those opposed—

MR. FORD: Mr. President.

PRESIDENT NISBET: Mr. Ford.

MR. FORD: I would like to offer a motion at this time, in light of what has been said from the other side of the floor, and the possibility of settling a very controversial matter in this convention, to postpone further consideration of this matter until Thursday morning, or until we complete the rest of the judiciary article, whichever occurs first.

PRESIDENT NISBET: The question is on the motion of Mr. Ford. Mr. Ford, would you repeat your motion, please?

MR. FORD: The motion is to postpone further consideration of Committee Proposal 95 until Thursday morning, or until we complete the judiciary article, whichever occurs first.

PRESIDENT NISBET: Mr. Ford, would you make your motion definite, either one way or the other?

MR. FORD: Mr. Danhof assures me we won't be through Thursday, so I'll make it until Thursday morning.

MR. LUNDGREN: Mr. President, a point of order.

PRESIDENT NISBET: Mr. Lundgren.

MR. LUNDGREN: Hasn't the vote already been called for?

PRESIDENT NISBET: The motion is in order since the Chair had not completed calling for the vote before it was made. The motion is by Mr. Ford to postpone action until Thursday. Those in favor will say aye. Those opposed will say no.

The motion does not prevail. The question is on the amendment of Mr. Brown. Mr. Hodges.

MR. HODGES: I just want to make a last ditch plea here that all the people, especially from the rural areas, who have expressed the problems they have been faced with before administrative agencies, will not be affected by this amendment.

MR. BOOTHBY: Point of order, Mr. President. I believe the vote has been called for.

PRESIDENT NISBET: Mr. Hodges may make his remarks. The vote was not completely called for.

MR. HODGES: I just again point this out. This strictly helps to affect these areas of compensation where the state is not a party and is not oppressing the small individual, be he a farmer or small businessman. Again, I just ask and solicit the support of those from the rural areas that are not affected by this. This still meets the genuine problem that you face, without affecting and making detrimental the procedures with regard to the workingmen of this state.

PRESIDENT NISBET: The question is now on the amendment. Those in favor will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and record the vote.

The roll was called and the delegates voted as follows:

Yeas—32

Austin	Garvin	Ostrow
Baginski	Greene	Perlich
Balcer	Hatcher, Mrs.	Powell
Barthwell	Hodges	Prettie
Binkowski	Hood	Snyder
Brown, T. S.	Kelsey	Suzore
Buback	Krolikowski	Walker
Cushman, Mrs.	Liberato	Wilkowski
Dade	Mahinske	Young

Elliott, Mrs. Daisy	McCauley	Youngblood
Faxon	Nord	

Nays—83

Allen	Gust	Pugsley
Anspach	Hanna, W. F.	Radka
Batchelor	Haskill	Rajkovich
Beaman	Hatch	Richards, J. B.
Bentley	Heideman	Richards, L. W.
Blandford	Higgs	Romney
Bonisteel	Howes	Rood
Boothby	Hubbs	Rush
Brake	Hutchinson	Seyferth
Brown, G. E.	Iverson	Shackleton
Butler, Mrs.	Judd, Mrs.	Shaffer
Conklin, Mrs.	Karn	Shanahan
Cudlip	King	Sharpe
Danhof	Kirk, S.	Sleder
Davis	Knirk, B.	Stafseth
Dehnke	Koeze, Mrs.	Staiger
Dell	Kuhn	Stamm
Donnelly, Miss	Lawrence	Stevens
Doty, Dean	Leibrand	Thomson
Durst	Leppien	Turner
Erickson	Lundgren	Upton
Everett	Martin	Van Dusen
Farnsworth	McGowan, Miss	Wanger
Figy	McLogan	White
Finch	Millard	Wood
Gadola	Mosier	Woolfenden
Goebel	Perras	Yeager
Gover	Plank	

SECRETARY CHASE: On the adoption of the amendment offered by Mr. T. S. Brown, the yeas are 32, the nays are 83.

PRESIDENT NISBET: The amendment is not adopted. Are there further amendments?

SECRETARY CHASE: Messrs. Bledsoe and Krolikowski offer the following amendment:

1. Amend page 1, following line 4, by striking out all of section a, lines 5 through 13.

PRESIDENT NISBET: The question is on the amendment as offered by Mr. Bledsoe and Mr. Krolikowski.

MR. BOOTHBY: Mr. President, I call for the yeas and nays.

PRESIDENT NISBET: The yeas and the nays have been demanded. Is the demand supported? There is a sufficient number up. Mr. Ford.

MR. FORD: I hope everyone realizes that we are at a very important point of this convention in the view of a number of delegates here. Some of us are in a position where we are making a decision that could very well be determinative of much more than the importance of what appears to be the reason for this section. Now, I tried to get this deferred, in line with what Mr. Martin suggested: that we ought to get our heads together if we are seriously interested in trying to work out something. But if we're going to go ahead and be bullheaded about it and insist on voting on this, and we vote down this amendment, we had a ruling this morning that we can't get it back before this convention again. And I submit that we are about ready to take a step that is important enough so that we ought to be cautious.

Now, we are in a parliamentary position where I don't know of any other way, if we don't defer this thing, to leave the door open to work this thing out between the 2 parties. There is no doubt in anybody's mind right now that it is a partisan issue. If you want to work out this thing and you want to try to work in a spirit of compromise, let's do it. I urge you to do something at this point towards that end, and not insist on taking a vote here that is going to preclude any further consideration of the possibility of compromise in this area. It is a very vital thing to many of us here now. I don't think there can be any doubt in anyone's mind about that. One way we can accomplish the possibility of working on this would be to vote for the amendment, leaving no section in here, and then adding it in as we go through the judiciary article.

PRESIDENT NISBET: Mr. Krolikowski.

MR. KROLIKOWSKI: Mr. President, the amendment is based on the recognition that the committee proposal in its present form compels review de novo on the record of all administrative findings and decisions. Secondly, that the equating of judicial or the equating of adjudicative and legislative acts in the light of the Brown amendment will undermine the entire regulatory process of administrative agencies.

PRESIDENT NISBET: Mr. Stevens.

MR. STEVENS: Mr. President, I move the previous question.

PRESIDENT NISBET: The previous question has been demanded. Is the demand seconded? There is a sufficient number up. The question now is: shall the main question be put?

MR. NORD: Mr. President, a parliamentary inquiry. Am I correct in assuming that when the previous question is moved, that there are at that point available a number of other motions that take precedence—about 6 of them, or thereabouts—and that each one of these could be moved if we were so inclined?

PRESIDENT NISBET: Mr. Nord, the previous question has not been ordered yet.

MR. NORD: Mr. President, I would like to move that we adjourn.

PRESIDENT NISBET: The question is on adjournment. Those in favor will say aye. Those opposed, no. The Chair is in doubt. Those in favor of adjourning will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the motion to adjourn, the yeas are 48, the nays are 71.

PRESIDENT NISBET: The motion does not prevail. The question now is: shall the main question now be put? Mr. Walker.

MR. WALKER: Mr. President, in that I cannot believe that this is a sincere effort to shorten the procedure here, but merely another form of a gag rule, I ask the yeas and nays, so we might see who is who.

MR. IVERSON: Point of order, Mr. President. It is not debatable.

PRESIDENT NISBET: He is just asking for the yeas and nays, Mr. Iverson. Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, a preferential motion. I move that the debate on the pending question be limited to 15 minutes.

PRESIDENT NISBET: The question is on the motion of Mr. Van Dusen to limit debate to 15 minutes. Those in favor will say aye. Opposed, no.

The motion prevails. The debate is limited to 15 minutes. The Chair recognizes Mr. King.

MR. KING: Mr. President, fellow delegates, I'll be very brief. I just want to correct one error that Mr. Krolikowski made. He said that this provides for a review de novo. Obviously it doesn't, and I'm sure he knows that. And I would yield to him if he wishes to speak at this time.

PRESIDENT NISBET: Mr. Krolikowski.

MR. KROLIKOWSKI: Mr. President, I believe that the statement I made was that it would require, as a minimum, review de novo on the record. And I still stand firmly on that position. I say it is review de novo on the record.

MR. KING: On the record.

MR. KROLIKOWSKI: That's review de novo on the record, and in light of the words "reliable, probative, and substantial evidence on the whole record."

MR. KING: Mr. President, it does provide for a review on the record, but the words "de novo" are very misleading here. Perhaps Mr. Krolikowski could tell me what review is not review de novo on the record?

MR. KROLIKOWSKI: Well, as counterdistinguished from a trial de novo, I say there is a review de novo on the record.

MR. KING: Thank you, Mr. Krolikowski.

MR. KROLIKOWSKI: Let me reaffirm that this is the minimal requirement.

MR. KING: I understand that. Then let me again state that we are obviously not talking about de novo review as most people understand it. We are talking about a review on the record, and how the words "de novo" got in there I have no idea. But I would suggest that at this time—I don't want

to protract this debate—I think all of the pros and cons have been heard on the thing. I can't really believe that anyone would refute the right of a review, which takes away by judicial or quasi judicial hearing substantive rights of the people of the state of Michigan.

PRESIDENT NISBET: The Chair recognizes Mrs. Hatcher.

MRS. HATCHER: Mr. President and fellow delegates, I'm not sure that what I have to say at this time will mean anything to any other delegates, but it certainly does mean quite a bit to me as a citizen of this state. For many reasons, I feel moved to rise at this time and to say that this Committee Proposal 95 is a subterfuge, and certainly I support the things that Mr. Marshall said a few moments ago concerning this particular proposal. I also want to take this opportunity to compliment the proponents of this amendment for their serious forecast in setting forth this amendment to strike out the entire Committee Proposal 95. I sincerely believe that the state and the citizens would benefit by the deletion of Committee Proposal 95 of this committee's report.

PRESIDENT NISBET: Mr. Brown.

MR. G. E. BROWN: Mr. President, members of the convention, I think that we should clarify something that Mr. Ford said a moment ago. He said that, in effect, you are doing something which cannot be undone. As a practical matter, the amendment conceivably could not come up for reconsideration as it presently appears, but a nullity could be written into the present proposal, or in lieu of the present proposal, which would accomplish exactly what the present amendment wishes to do. Therefore, I think that what he has said should be considered in the light of the explanation, and if there is to be a getting together, so to speak, as he has suggested, it is no more precluded now than it would be if the amendment passed or did not pass.

PRESIDENT NISBET: The Chair recognizes Mr. Nord.

MR. NORD: Mr. President, a certain delegate has repeated on the floor 3 times today that he can't believe that anyone can be against Committee Proposal 95. Many of us here have voted against Committee Proposal 95 and against various pieces of it over and over again. Therefore, I think he should be able to believe that some of us are against it, and I say to him: believe, believe. (laughter).

PRESIDENT NISBET: The question is on the adoption of the amendment. The yeas and nays have been ordered. Those in favor of the amendment will vote aye. Those opposed will vote no.

MR. LEIBRAND: Mr. President, may I understand clearly what I am voting on?

PRESIDENT NISBET: The secretary will read the amendment.

SECRETARY CHASE: Messrs. Krolikowski and Bledsoe offer the following amendment which is now being voted upon, amend the body of Committee Proposal 95 by striking out all of section a.

PRESIDENT NISBET: Have you all voted? If so, the secretary will lock the machine and record the vote.

The roll was called and the delegates voted as follows:

Yeas—35

Austin	Follo	Marshall
Baginski	Ford	Nord
Balcer	Garvin	Ostrow
Barthwell	Greene	Perlich
Binkowski	Hatcher, Mrs.	Sablich
Bledsoe	Hodges	Snyder
Brown, T. S.	Hood	Suzore
Buback	Kelsey	Walker
Cushman, Mrs.	Krolikowski	Wilkowski
Dade	Lesinski	Young
Elliott, Mrs. Daisy	Liberato	Youngblood
Faxon	Mahinske	

Nays—85

Allen	Hanna, W. F.	Pollock
Andrus, Miss	Haskill	Powell
Anspach	Hatch	Prettie
Batchelor	Heideman	Pugsley
Beaman	Higgs	Radka
Bentley	Howes	Rajkovich
Blandford	Hubbs	Richards, J. B.
Bonisteel	Hutchinson	Romney
Boothby	Iverson	Rood
Brake	Judd, Mrs.	Rush
Brown, G. E.	Karn	Seyferth
Conklin, Mrs.	King	Shackleton
Cudlip	Kirk, S.	Shaffer
Danhof	Knirk, B.	Shanahan
Davis	Koeze, Mrs.	Sharpe
Dehnke	Kuhn	Sleder
Dell	Lawrence	Stafseth
Donnelly, Miss	Leibrand	Staiger
Doty, Dean	Leppien	Stamm
Durst	Lundgren	Stevens
Erickson	Martin	Thomson
Everett	McCauley	Turner
Farnsworth	McGowan, Miss	Upton
Figy	McLogan	Van Dusen
Finch	Millard	Wanger
Gadola	Mosier	White
Goebel	Perras	Wood
Gover	Plank	Yeager
Gust		

SECRETARY CHASE: On the adoption of the amendment offered by Messrs. Krolikowski and Bledsoe, the yeas are 35, the nays are 85.

PRESIDENT NISBET: The amendment is not adopted.

Committee Proposal 95, as amended is referred to the committee on style and drafting.

Following is Committee Proposal 95 as amended and referred to the committee on style and drafting:

The committee recommends that the following be included in the constitution:

Sec. a. All final decisions, findings, rulings and orders of any administrative officer or body existing under the constitution or by law, which are judicial or quasi judicial and affect private rights, privileges or licenses, shall be subject to direct review by the courts as shall be provided by law. This review shall include, as a minimum, the determination whether such final decisions, findings, rulings and orders are authorized by law, and, in cases in which a hearing is required, whether the same are supported by reliable, probative, and substantial evidence on the whole record.

SECRETARY CHASE: Mr. President, the committee of the whole has also had under consideration **Committee Proposal 96**, A proposal pertaining to general and special provisions relative to the courts of the state. It has adopted one amendment, has considered another amendment thereto, and has come to no final resolution thereon. This completes the report of the committee of the whole.

PRESIDENT NISBET: Announcements.

SECRETARY CHASE: The committee on legislative powers, subcommittee 1, will meet in room H today immediately following the session. The subject: the legislative auditor. Mr. Richard Kuhn, chairman of the subcommittee.

We have the following requests for leave of absence: Mr. Arthur Elliott requests leave of absence from next Monday's session to attend a church meeting which has been scheduled for several months, and Mr. Madar wishes to be excused from the sessions of March 12, 13 and 14 due to a conference in Chicago which was arranged 1½ years ago.

PRESIDENT NISBET: Without objection, they are excused.

The Chair recognizes Mr. Ostrow.

MR. OSTROW: Mr. President, I move we adjourn.

PRESIDENT NISBET: The question is on adjournment. Those in favor say aye. Opposed, no.

The motion prevails and we are adjourned until tomorrow morning at 9:30.

[Whereupon, at 5:20 o'clock p.m., the convention adjourned until 9:30 o'clock a.m., Wednesday, March 7, 1962.]

NINETY-FOURTH DAY

Wednesday, March 7, 1962, 9:30 o'clock a.m.

PROCEEDINGS

PRESIDENT NISBET: The convention will please come to order.

Our invocation this morning will be given by Dr. Paul F. Elliott, president of the Owosso College.

DR. ELLIOTT: Let us pray. Father God, into Thy presence we humbly bow this morning with a heart filled with praise and thanksgiving and gratitude to Thee from whom all blessings flow. We recognize that every good and every perfect gift cometh from Thee. And at this season of the year, the opening of Lent, Ash Wednesday, we say in the words of the Psalmist David, "Search me, O God, and know my heart; try me and know my thoughts."

We come to Thee this morning in prayer, knowing that Thou art interested in each one of us. We thank Thee, as we enter this season leading to Easter, that we are reminded again and again of Thy great love and Thy thoughtfulness for us in providing for us a Redeemer. And as we enter the season of Lent, may we do so with a heart of prayer asking for divine guidance.

As we confess to Thee our need, especially do we pray today for this assembly. And as Thou, O God, did guide that early constitutional convention in the formation of the constitution for this great nation, I pray that Thou would give divine wisdom and understanding to this faithful, devoted group of delegates that have assembled today. May they receive that understanding and wisdom that only comes from God. May Thy blessing and benediction be upon each of our lives today, for we ask it in the name of our Lord. Amen.

PRESIDENT NISBET: The roll call will be taken by the secretary. Those present please vote aye. Have you all recorded your presence? If so, the secretary will take the roll.

SECRETARY CHASE: Mr. President, a quorum of the convention is present.

Prior to today's session, the secretary received the following requests for leave:

Mr. Hood requests temporary leave. He is unavoidably detained; Mr. Lee Walker wishes to be excused from today's session; Mr. DeVries phoned in that at 6:22 a.m., a 7 pound 11 ounce baby boy arrived. (applause) This is the fourth boy. He reports mother and son doing fine.

PRESIDENT NISBET: Incidentally, he is not doing so well. (laughter) The baby was born at 6:22. He got there at 11:30. (laughter)

Without objection, the requests for leave are granted.

SECRETARY CHASE: Absent with leave: Messrs. Anspach, DeVries, Donald Doty, Hood, Murphy, Pellow, Tweedie and Walker.

Absent without leave: Mr. Norris.

PRESIDENT NISBET: Without objection, Mr. Norris is excused.

[During the proceedings, the following delegates entered the chamber and took their seats: Messrs. Donald Doty, Hood and Norris.]

Reports of standing committees.

SECRETARY CHASE: The committee on rules and resolutions, by Mr. Van Dusen, chairman, reports back to the convention **Resolution 80,** A resolution requesting that religious bodies of this state offer prayers for the success of the convention; with amendments, recommending the amendments be agreed to and that the resolution as thus amended be adopted.

The following are the amendments recommended by the committee:

1. Amend the first resolving clause, line 4, by striking out the semicolon after "convention" and inserting a period.

2. Amend the first resolving clause, line 5, by striking out "and be it further".

3. Amend the second resolving clause by striking out all of the language.

Richard C. Van Dusen, chairman.

For Resolution 80 as offered, see above, page 1325.

PRESIDENT NISBET: Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, a few brief remarks on the amendments first. The only purpose of the amendments was to strike matter which the rules committee felt was perhaps a little bit redundant. It does not in any way change the substance of the resolution, which requests organized religious groups to seek divine guidance for the work of the constitutional convention. For a further explanation of the resolution, I would yield to Mr. Bentley who, with Vice Presidents Hutchinson, Downs and Romney, are the sponsors of the resolution.

PRESIDENT NISBET: The Chair recognizes Mr. Bentley.

MR. BENTLEY: Mr. President, there have been times during the last few weeks when the actions of the constitutional convention somewhat remind me of the words of that beautiful old spiritual, Standing in the Need of Prayer.

Mr. President, I think the resolution is self obvious. I think the fact that the 3 vice presidents were kind enough to join with me in cosponsoring this resolution speaks for itself. The fact that all of us, I am sure, can appreciate the need for divine help and guidance at times indicates that this one, I am sure, would be accepted and acceptable to everybody in the convention. I do not intend to make any further remarks because I think any remarks of mine would be superfluous at this time, but I would, Mr. President, just like to read a very brief editorial regarding this particular resolution that appeared in the Detroit News on March 1, which says:

> A resolution proposed in the constitutional convention asks delegates to urge all members of organized religions in the state to "offer prayers for divine help and guidance" in their work.
>
> The delegates appear to be in need of help and guidance from whatever good source there might be.
>
> And noting that the resolution sponsors are the convention's 3 vice presidents, Edward Hutchinson, George Romney and Tom Downs, plus Delegate Alvin M. Bentley, whose idea it was, we suspect that any intervention which could help just these 4 gentlemen to reach agreement on the issues would solve most of con con's problems.

(laughter) Thank you, Mr. President.

PRESIDENT NISBET: The question is on the amendments as recommended by the committee on rules and resolutions. Those in favor will say aye. Opposed, no.

The amendments are adopted. The question is now on the resolution as amended. Those in favor will say aye. Opposed, no.

Resolution 80, as amended, is adopted.

Following is Resolution 80 as amended and adopted:

A resolution requesting that religious bodies of this state offer prayers for the success of the convention.

Whereas, The people of the state of Michigan are greatly desirous of the success of this constitutional convention; and

Whereas, The people of our state and our nation are a deeply religious people, being accustomed to seeking divine assistance in times of trial and trouble; and

Whereas, It seems appropriate to seek such assistance and intercession from almighty God through the medium of prayer on behalf of the work of the constitutional convention; now therefore be it

Resolved, That the delegates of the constitutional convention respectfully request and urge all members of organized religious bodies within the state of Michigan to offer prayers for divine help and guidance in their work and looking toward the ultimate success of the convention.

SECRETARY CHASE: That is the only standing committee report, Mr. President.

PRESIDENT NISBET: Report of select committees.

SECRETARY CHASE: None.

PRESIDENT NISBET: Communications.

SECRETARY CHASE: None.

PRESIDENT NISBET: Third reading.

SECRETARY CHASE: Nothing on that calendar.

PRESIDENT NISBET: Motions and resolutions.

SECRETARY CHASE: There are no resolutions on file.

PRESIDENT NISBET: **Unfinished business.**

SECRETARY CHASE: Under the order of unfinished business, the president lays before the convention **Resolution 72,** A resolution amending rule 57 of the rules of the convention; which was reported from the committee on rules and resolutions on Monday and under the rules laid over for 2 days.

For Resolution 72 as offered, see above, page 1067.

PRESIDENT NISBET: Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, the purpose of this rule change is to eliminate from the rules the automatic reference of committee proposals to the committee of the whole immediately prior to their consideration on third reading.

The order of consideration of committee proposals, as the delegates all know, under rule 57 is that when they are referred from the substantive committees which propose them to the convention, they are immediately placed on the order of general orders and considered in the committee of the whole. From thence, they go to the committee on style and drafting, and they come back to the convention where they are considered by the full convention in the order of second reading. They are then rereferred to the committee on style and drafting, and thence back to the full convention. Under the rules as they presently stand, at that point they would again automatically be considered in committee of the whole before being considered by the full convention on third reading.

It is the opinion of the rules committee that because our exploration of committee proposals in committee of the whole at this stage of our proceeding has been so complete and thorough, and because it has been so lengthy, and because we have frequently found it necessary to repeat the debate immediately after the committee of the whole rises, that it would be desirable to eliminate the automatic reference to the committee of the whole prior to consideration of proposals by the convention on third reading. This would not prevent, of course, any delegate from appropriately moving the convention resolve itself into the committee of the whole with respect to any article or section of the new constitution before its consideration on third reading, but it would simply eliminate the automatic reference to the committee of the whole at that point.

The committee on rules and resolutions was substantially unanimous. I believe we had one abstention in reporting this rule change to the floor. We urge its adoption.

PRESIDENT NISBET: The question is on the adoption of the resolution to change the rules. Mr. Nord.

MR. NORD: Mr. President, I would like to make it clear that the abstention was not my abstention. I voted in accordance with the resolution. I believe that we will have approximately 3 months of debate, from the looks of things on the first reading, and if we were to consider the possibility of repeating that on the third reading, it would be an absolute catastrophe.

As Mr. Van Dusen has pointed out, we can go back into the committee of the whole when the majority of the people see fit to do so, but we don't need to go automatically. And I call your attention, delegates, to the schedule that we have had put on our desks this morning. From this you will see that this looks forward to an adjournment on April 14 but if you look at the dates between that date and today, you will see that, in my opinion, it is utterly fantastic that we can meet that deadline, because there are only 2 days between the first 2 deadlines and so on. There are very, very few days between each deadline. It seems to me impossible that we can meet this much, even, and it is not a bit unlikely that it will take another month at the least, even if the resolution before us now passes. That would bring us to May 15. May 15, I understand, is the last day that delegates will be paid.

I am not in accord with those that think that the convention can appropriate money or get money in any other way, and my feeling is that there will be a great many delegates disappearing if the money should run out. I think the delegates will run out the same time as the money runs out, and I believe at that point it will be impossible to get 73 votes for anything, even for the present constitution. This would be a real catastrophe to the people of the state, not even to have the opportunity to vote on whatever our deliberations may result in. Therefore, I think it is absolutely indispensable. I see no way out. I am not enthusiastic about it, but I think we must do it and that is the only reason I voted in accordance with the committee's report.

PRESIDENT NISBET: The question is on the resolution. Mr. Faxon.

MR. FAXON: I would like to ask a question of Mr. Van Dusen through the Chair. I understood that the rules that were adopted were based upon the experience of previous constitutional conventions. Was this particular item which we are being asked to delete now a procedure that was used effectively in other constitutional conventions? Or could you just give me some basis as to why this was originally used as part of our rules.

PRESIDENT NISBET: Mr. Van Dusen.

MR. VAN DUSEN: I don't know the answer to your precise question, Mr. Faxon. However, the experience of the 1907-1908 constitutional convention in the order in which it proceeded is somewhat different than the manner in which we have been proceeding. That convention went almost directly from first consideration in committee of the whole to second reading on proposals. We are, as you know, proceeding completely through committee of the whole before we get to second reading. That, I think, is an important substantive difference and justifies the difference which we propose in our rules.

MR. FAXON: Excuse me. I just want to ask one more question. I thought that perhaps this might have been the practice in the constitutional conventions that were more recently held in the new states of Alaska, Hawaii, or perhaps in Missouri or New Jersey, that this type of procedure had been proven to some extent. Do you have any reference to that?

MR. VAN DUSEN: I would suggest, Mr. President and Mr. Faxon, that our rules are based very largely on the rules which applied in the 1907-1908 constitutional convention in the state of Michigan. We worked, in the committee on permanent organization and rules, from a draft prepared by Professor Pierce, of the University of Michigan, and he worked initially with the 1907-1908 rules and with the rules of the Michigan house of representatives.

MR. FAXON: Well, Mr. President, I just want to make one statement then. I have looked upon this area, the third reading, as the most vital portion of our proceedings when it comes to finally understanding what our work is, and at this point, when we have taken all this time, it would indeed be unfortunate if we were to attempt to expedite business to the detriment of our understanding exactly what it is that is being done. So I, for one, would prefer to see the present rule stay, in the hopes that the delegates would exercise sufficient restraint and only question those areas where there is

need to question, but at the same time we are capable of preserving the rules that we have been working under all this time. Thank you.

PRESIDENT NISBET: Mr. Marshall.

MR. MARSHALL: Mr. President and fellow delegates, I want to add to what Delegate Faxon said and speak against the resolution. A moment ago here we adopted a resolution that called upon all of the religious denominations to pray for the success of the convention, and I am wholeheartedly in favor of that. We could have added to that also that we ask them to pray for the delegates that they can lay aside their selfish, narrow interests and remove politics from this convention and get on with the task of writing the constitution. Committee of the whole on third reading is one of the most important parts of the rules. I do not want to have this convention go on any longer than any of the rest of you, but the only place where there is any lengthy debate is where there are very serious basic disagreements.

There have been many proposals on the floor of this convention which we have gone through rapidly. On legislative powers, one day here we went through 7, 8, 9 or 10 proposals in about 6 or 7 minutes. I don't want to see a situation develop where, when we come to third reading and there are 1, 2, 3 or 4 major issues where there is sincere and honest and basic disagreement among the delegates, we have the situation where we have happen what happened here yesterday, where we spent all morning, practically, debating on some minor amendment that was offered by the majority; then have someone get up and move the previous question without even giving the sponsors of the minority report an opportunity to be heard. I do not believe this is in good taste, and it has been used of recent date on several occasions. On one occasion it was used where the delegate had not been recognized by the Chair, where there were other people ahead of him seeking recognition, and he jumped up out of nowhere and moved the previous question. And I asked a question on a parliamentary inquiry on another occasion, "How do you get the floor in this convention? Do you walk up to the microphone as a gentleman, address yourself to the Chair in an orderly fashion and request recognition? Or do you do, as has happened on 1 or 2 occasions, jump up out of nowhere, or jump up on my desk and scream for recognition or 'I move the previous question'"? I don't think we do it in accordance with the last procedure.

I want to forewarn the delegates I do not wish to accuse the sponsors of this resolution of attempting to apply a gag rule. I can see their concern for wanting to conclude the convention as rapidly and as speedily as possible. But also I want to bring to your attention the 1 or 1½ weeks of haste and waste we had in writing our committee reports; that we would have been much better off there had we spent less time on public hearings and listening to political scientists tell us what was in the text books, and spent a little more of that time on our deliberations in writing the committee proposals. Had we done that, I do not believe it would have been necessary to have had some of the long and lengthy debate that we have had here on the floor of the convention, because there have been proposals that have come before this convention that the committee itself didn't even understand and couldn't explain after we had written it in the committee. That was solely because we did it, in some of these committees, in 5 days, 6 days or 7 days, and in some cases even 2 or 3.

I don't believe that I have abused my privilege in the committee of the whole. I do not intend to abuse that privilege. But I object to being put into a situation where, after we complete second reading and we are then prepared to proceed to third reading—and you would narrow these differences and disagreements down after you go through the committee of the whole on second reading. You won't have as many on third reading. But there might be 1, 2 or 3 major basic disagreements. And I feel that if there are, in the interests of a sound document, in the interests of whether or not it is going to be accepted by the people of this State, we should not adopt this resolution and make it permissible to apply a gag rule on third reading. At this time, Mr. President, I would like to move that we table the resolution.

PRESIDENT NISBET: The question on the motion of Mr. Marshall that this resolution be tabled is not debatable. Those in favor say aye. Those opposed, no.

The motion does not prevail. The Chair recognizes Mr. Wanger.

MR. WANGER: Mr. President, members of the convention, I have just 3 comments to make on this as a member of the committee who voted in favor of this resolution. First of all, to Mr. Marshall's comments, I would like to say that all good things must come to an end, including unlimited debate. The second thing I would like to say is that on third reading, if something comes up which is unusual and does require extended informal discussion, we can at any time by special motion resolve into committee of the whole for the consideration of that item. Finally, I would like to say that when I voted in favor of this resolution, I did so in the firm conviction that every delegate at this convention was here to stay here until the job was done, whether his pay kept going or not.

PRESIDENT NISBET: The Chair recognizes Mr. Downs.

MR. DOWNS: Mr. President, could I ask through the Chair a question of the chairman of the rules committee?

PRESIDENT NISBET: If he cares to answer.

MR. DOWNS: In case the convention wishes to consider dividing the document that is presented to the people—and I do not believe we can do that until we have at least gone through second reading—I wondered if the chairman of the rules committee would apprise me at what time he thinks that can best be handled, and whether it would best be handled in committee of the whole or the full convention.

PRESIDENT NISBET: Mr. Van Dusen.

MR. VAN DUSEN: Mr. President and Mr. Downs, I think Mr. Downs' question seeks an answer which it is perhaps too early to give. I would think that when a motion was presented or a resolution was presented asking the convention to consider the method of submission of the document, that at that point, with the motion or resolution before the convention, the convention would have to make a decision as to whether it should resolve itself into a committee of the whole for the purpose of considering that resolution or not. I think it is just too early to give any answer to your question, Mr. Downs.

MR. DOWNS: Could I just ask, related to that, Mr. President—and I know we are looking ahead; in a sense it is a hypothetical question—would you consider that would be in order during third reading or not until after third reading?

MR. VAN DUSEN: I would think, Mr. Downs, that at any point that a resolution was submitted, it would be in order in the ordinary course of our business. As a matter of sound handling of such a resolution, I would think that either after the completion of second reading or after the completion of third reading might be an appropriate time, because only then will we have the entire document before us, and only then could we make an intelligent appraisal of what parts might conceivably be divided.

MR. DOWNS: Thank you. Mr. President, for whatever it is worth, I agree that probably the time to do that, if the convention so desired, would be after second reading and very likely during third reading as these matters came up. For that reason, I think there would be an advantage of keeping that in the committee of the whole if we so desired, understanding that if there was no wish to present the document in separate packages, we could then dispense with committee of the whole and proceed handling the document as a unit. For those reasons, I would urge that we continue the rule with the committee of the whole, with the understanding that that could be dispensed with if the convention so desired at a future date.

PRESIDENT NISBET: The Chair recognizes Mr. Young.

MR. YOUNG: Mr. President, I believe that it is entirely premature for us to attempt at this date to forecast and to project, based on speculation, when this convention will adjourn and what time it will take us to debate matters which have not even come before us to be questioned. Certainly many parts of the constitution which we are now deliberating on and our consideration of those parts will be determined or even changed after we get a look at the shape of the final

document. I think that we are dodging the issue here. What we have to make up our minds about is, do we intend to take the necessary time to write a proper document, or shall we be plagued by deadlines?

Now, I am not worried as to whether or not the constitutional convention will be granted sufficient time, as Dr. Nord said, to complete the document. I think that the voters of Michigan have waited 50 years for a new constitution. And if it is necessary, I feel the legislature, as a body responsible to those people, will allocate the necessary time in order to complete the document. But we here should determine to take the time to write the document and not attempt to tie our hands in advance on the basis of some speculation. Certainly if we are to make any determination at all on whether or not we shall go on to third reading, that determination should best be made as we approach third reading.

And in line with the remarks that Delegate Downs made, I would like to here move that we lay on the table any consideration of this resolution until after the completion of second reading, when we will be in a better position to determine what our needs are timewise in regard to third reading.

PRESIDENT NISBET: The question is on Mr. Young's motion to postpone action on this until following second reading. Those in favor of the motion will say aye. Opposed, no.

The motion does not prevail.

DELEGATES: Division.

PRESIDENT NISBET: A division is requested. Is there support for a division? A sufficient number up. So there will be no misunderstanding, the vote is on the question of Mr. Young's motion that consideration of this resolution be postponed until after second reading. Those in favor of Mr. Young's motion will vote aye. Those opposed will vote no.

MR. GOVER: Mr. President, I do not want to vote. I want to abstain from voting.

PRESIDENT NISBET: Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the motion to postpone consideration, the yeas are 49; the nays are 82.

PRESIDENT NISBET: The motion does not prevail. The Chair recognizes Mr. Sterrett.

MR. STERRETT: Mr. President and delegates, I do not believe that I have abused my privilege either, as Mr. Marshall points out for himself. Using his words, I have not been "spenorious." I think that we have had ample time for advance study on basic constitutional material. We have had 6 months now. We have had committee proposals for a number of weeks. Everybody by now should have read thoroughly the committee proposals if they are doing their job. They should have studied them. They should have analyzed them, and they should have made up their minds by now if they felt the committee proposals were right or wrong.

There has been a great amount of repetition in debate. I think I have probably been in the observer class rather than the debating class of this convention. It has been very interesting to me to hear the different points brought to the floor, but I could see a great number of points being repeated that were absolutely unnecessary. Some people, I think, just like to hear themselves talk. If proper time is spent on the committee proposals, I am sure that all of this can be eliminated, and when I say "proper time," I mean proper time of study. And as soon as you hear your point raised on the floor, that should mean to you it is not necessary to bring it up again.

Mr. Marshall mentioned that he didn't feel that proper time was given in the committees to develop the committee proposals. I happen to be on one of the committees he is on, and I feel that we gave ample time. In fact, our committee proposal hasn't been debated on the convention floor yet, so we have had 6 months to work on our committee proposal. I don't know how much more time you need. I have also noticed that there are cliques, call them, of delegates in both parties, and they keep driving through amendment after amendment with the same meaning but just different words. This is absolutely unnecessary. They can see the first or second time that their idea isn't going to go through in the convention regardless of party or minority or majority group. This is a thing that we should observe and try not to do.

I believe that the proposed rule change can help us to proceed in a responsible orderly fashion. Therefore, I would support this change.

PRESIDENT NISBET: The Chair recognizes Mr. Allen.

MR. ALLEN: Mr. President, I think that the convention faces a situation which is more serious, in terms of the time deadline which May 15 forces on us, than we appreciate, and it is for this reason that the rules committee, of which I am a member, is bringing in this rule change at this time. Now, it isn't any desire to make the convention end sooner than May 15, though I think if this could be reasonably done, we would all be for it. It is simply that realistically looking at the situation and the calendar, we are put in a position where I don't think and the rules committee doesn't think that we can finish and go through a committee of the whole on the third reading.

Now, let's look at it in a little more detail. I expect that it will take the balance of this week to finish the judicial article, if we even finish it the balance of this week, and that will be almost 3 weeks that we have been on this article. We will then go to the problems of the executive committee. And I would say if the judiciary is any example, the problems we have on the executive committee will force us to run probably a week and a half on the executive committee proposals, and perhaps 2 weeks. That leaves us apportionment. I am sure apportionment will take about one week. It may take a week and a half. And by that time, you see, we are past April 1. Well, we still have ahead of us after April 1 then the problems of eminent domain. We still have a couple of sections, which I know are going to cause extended discussion, on civil rights. We have the problem of internal improvements, and we have all of the other sections of miscellaneous provisions. So, as a practical matter, what it means is that we will have about 3 weeks or 3½ weeks left at the best estimate we can make — unless we hurry up in committee of the whole on first reading — to go through all of our second reading and all of our third reading.

I don't see how it is possible in 3 weeks—or even if we say it is 4 weeks—to go through some 230 sections twice. And I am sure that after style and drafting reports, we are going to have on second reading some serious, well thought out amendments proposed. I think they would be proposed even if style and drafting made no style and drafting changes, but I expect that when they do make some changes, some additional questions will be raised. In other words, what we are faced with here is a very practical problem. How can we, in about 3, or at best, 4 weeks go through some 230 sections twice and do it without such haste that there isn't a lot of feeling that we have acted too quickly and some hard feelings left in the convention?

Now, I think — and the rules committee feels — that in view of this calendar situation, this time situation which is a fact that we had better recognize, it is better to make the decision now to abolish committee of the whole on third reading rather than to wait until we get right up to it, because we can do it with a little less emotion now than we can do it if we wait until the end of second reading, because whoever loses out at the end of second reading on his or her strongly favored proposals is going to feel if the rule is then imposed that it is more of a detraction to them than it would be if we do it today. In other words, I think we could do it a little more calmly and coolly today. And I think the calendar, just by necessity, dictates that we do it.

Now, it isn't any desire on the part of the rules committee to be arbitrary by any means. It is just simply the fact that we have gone a lot longer on our first reading in our committee of the whole than we ever anticipated. Therefore, I think in order to bring this convention to some orderly conclusion by the date that we have to meet, May 15, that this is something that we are going to have to do even though we may not want to do it, and therefore I hope that this recommendation of the rules committee will be agreed to.

PRESIDENT NISBET: Mr. Barthwell.

MR. BARTHWELL: Mr. President, I would just like to get the answer to a parliamentary question which I asked before. I would like to know, before you can make any motion, must you get recognized from the Chair in your turn?

PRESIDENT NISBET: I don't quite understand the question, Mr. Barthwell.

MR. BARTHWELL: Well, the question is: if it is my time, if I have the floor, can someone stand up and make a preferential motion and be recognized?

PRESIDENT NISBET: You can't be interrupted, Mr. Chase tells me, after you have been recognized, Mr. Barthwell, except for a point of information or a point of order.

MR. BARTHWELL: Thank you.

PRESIDENT NISBET: Mr. Madar.

MR. MADAR: Mr. President, in our debate this morning, I noticed that some people got rather loose with their verbiage (laughter) and I just thought that I ought to put some of them straight a little bit. To begin with, I, for one, will guarantee you that come May 15, if we are still here and there is no money to pay me on May 16, I won't be here. (laughter) I don't happen to be an attorney who lives in Lansing. I live in Detroit. I have to maintain a second home here. I am here at a cost to myself because with what I make in Detroit and for what I get here, believe me, I am losing money. If anybody can show me how they can do it any better than I am doing it, paying $60 a month for a room, which is mighty cheap, I would sure like to know how they do it.

Now, about getting up on the floor, if you haven't got anything to say, you just keep sitting there, unless you are afraid your head might rattle when you get up. (laughter)

I am not going to say that Mr. Elliott, our chairman, didn't give us time to consider things. He did—I was more fortunate than Mr. Marshall was—but I will say one thing, there was a lot of time wasted. It wasn't wasted here on the floor so much as it was in some of those committee meetings, because we didn't have to have some of those people down there talking to us for hours on end, because I don't think there is a man or a woman here who didn't know as much about politics and government as some of those who came in to talk to us. Now, you can have your own feelings about that and your own thought about that, but that is the way I feel about it.

And I just hope, too, to get some other things straightened out around here. Rule 22 says that we shall not mention names here or talk about anybody, say anything derogatory. Now I wonder, Mr. President, if it couldn't be possible for you or someone else to tell those who are sitting in their chairs at the time someone is up here speaking to keep their snotty remarks to themselves. We don't want to hear them.

PRESIDENT NISBET: Mr. Mahinske.

MR. MAHINSKE: I rise in opposition to the proposed resolution basically because under the rules that we have today, we automatically go into committee of the whole. Now, in the past in committee of the whole where we have been in agreement on items, we have gone through these things even faster than we should have in view of the fact that we were in agreement on them. The new rule as proposed would permit us to go into committee of the whole on majority vote of the delegates assembled. Now, this so far is all right.

But we have something in between here that is beginning to bother me, and with all due deference to Mr. Cudlip and all of his eager workers on his committee, we have the committee on style and drafting. Now, what is happening as I see it, is we have items that are being debated on the floor to the point of punctuation. We are sending these items to style and drafting, putting in our commas, semicolons and so forth and leaving few items up to them. This committee, as I see it, is making changes, bigger changes than a lot of us anticipated.

Now, on second reading, when they come back from style and drafting, we will not have a committee of the whole. And in fact, as I understand it, we couldn't have if we wanted one then. On third reading, as it stands now, we will automatically go into committee of the whole. If there is any disagreement about changes made in style and drafting, everyone will have an opportunity automatically to debate these items or these changes.

As it stands under the proposed change, we would need a majority vote of the people on the floor to go into committee of the whole obviously in anticipation of debating something that is coming back to us on third reading. Now, if you have a majority vote to go into committee of the whole, you are going to decide it by possibly the same majority. If you don't have a majority vote to go into the committee of the whole, you are not even going to voice your objections or have an opportunity to voice your objections. Basically, for this reason I would be opposed to this resolution.

At the same time I have a feeling that this resolution is geared toward setting a deadline on the convention here at May 15. Now, whether or not I will be here on May 16, with or without money, was decided by me a long time ago. I said from the outset that I didn't think that this convention could get its work done in 7½ months, and I didn't think that we would get paid after 7½ months. Knowing this, I volunteered to run for this position and came up here anyway with or without money after May 15.

I would like to take issue with my good friend Glenn Allen when he mentions that we have problems with eminent domain. Frankly, I don't see any problems there at all. (laughter) We have allocated 30 minutes on the schedule for this whole item. (laughter) Don Lawrence says it is 25 minutes too long, so we have saved almost a half hour there. For these reasons I would be opposed to the resolution.

PRESIDENT NISBET: The Chair recognizes Mr. Snyder.

MR. SNYDER: Thank you, Mr. President. For the past several weeks I have been sitting back and listening to other orators present their points of view because I felt that if I waited long enough, my point of view would be expressed. However, in view of the fact that there may be a limitation on third reading, I will feel compelled, if the change does go through, to get up and speak my piece while I still have the opportunity. And I would like to ask a question of the chairman of the committee if I may, Mr. President, in regard to some of the conduct I must observe if the motion is passed. I would like to ask, question 1, under our present rules, is it mandatory that we go into the third reading?

PRESIDENT NISBET: Mr. Van Dusen.

MR. VAN DUSEN: Yes.

MR. SNYDER: My second question is, then, if the convention does take action to eliminate this section, will we have, as delegates, still the matter of right to go in upon request or, having waived this question, will it be necessary for us to garner a majority of the delegates to support our request to go into committee of the whole?

MR. VAN DUSEN: It would require a majority vote.

MR. SNYDER: In other words, by an affirmative action upon this vote, we will be relinquishing the automatic right that we have in committee of the whole, and it will be necessary for us to garner a majority vote of the delegates. In so doing, I feel that we would be giving up one of the basic rights. I feel that here we have a question of personal discipline, that we ought to confine our remarks to what is relevant and germane to the subject matter on the floor.

I think it would be catastrophic, ladies and gentlemen of this convention, if we would give away one of the basic and fundamental rights that we have at this convention when we should be setting an example for the state of Michigan. It is our duty and obligation here to protect the basic right of the presentation of thoughts, and an affirmative action upon the proposition that we have would be taking away from the rights that we already have.

PRESIDENT NISBET: The question is on the resolution. Mr. Gover.

MR. GOVER: Mr. President, I want to abstain from voting.

PRESIDENT NISBET: Mr. Mahinske.

MR. MAHINSKE: Would you read it over again.

PRESIDENT NISBET: The resolution will be read by Mr. Chase.

SECRETARY CHASE: Resolution 72:

[The resolution was read by the secretary. For text, see above, page 1067.]

PRESIDENT NISBET: Mr. Marshall.

MR. MARSHALL: Mr. President, I wish to abstain from voting, and I will explain my reasons in writing for the record. Thank you.

PRESIDENT NISBET: Mr. Mahinske.

MR. MAHINSKE: Point of information, Mr. President. I notice that the resolution starts by saying that we are amending the rule, and then winds up by saying that we are striking. Is this the same as suspending?

PRESIDENT NISBET: This is striking from the rule, Mr. Mahinske.

MR. MAHINSKE: Would this be something more drastic than suspending a section of the rule, or equal?

PRESIDENT NISBET: The Chair would think it would be. This is striking from the rule completely.

MR. MAHINSKE: Well, then could I have an interpretation of the rules as to striking?

PRESIDENT NISBET: Mr. Bentley.

MR. BENTLEY: Mr. President, I would like to refer Mr. Mahinske to rule 68, which says, "The rules of the convention—"

MR. MAHINSKE: This is the one I have reference to.

MR. BENTLEY: "—may be amended by a majority vote."

MR. MAHINSKE: Right. But then it winds up by saying they may be suspended by a 2/3 vote. This is what I would like to find out, if we are in reality suspending here rather than amending.

PRESIDENT NISBET: It is the Chair's understanding that we are striking sections 9 and 10 from the rules, which is an amendment to the rules, not suspending.

MR. MAHINSKE: I thought the answer was yes to my question about suspension and striking, whether they were equivalent or one was of a higher level than the other.

PRESIDENT NISBET: Mr. Chase will make a statement.

SECRETARY CHASE: As the secretary understands the situation, Mr. Mahinske, the elimination of these 2 items from the rule will cause the rule to be permanent in regard to this particular matter. A suspension of the rule by a 2/3 vote of the delegates that are voting on the immediate question will suspend the operation of the rule for the consideration of that particular item at that particular time only.

MR. MAHINSKE: So then a simple majority vote is required at this time rather than a 2/3 vote.

PRESIDENT NISBET: That is right. Those in favor of the resolution—Mr. Powell.

MR. POWELL: Mr. President and fellow delegates, there has seemed to be in the debate some implication to the effect that on third reading people would not have an opportunity to participate in the debate or to take the matter up fully. It is my understanding that on third reading we will be permitted to debate the matter clearly and fully, but of course a person is limited in the number of times he can speak—I think it is once for a delegate who is not chairman of the committee who is reporting it out—except by unanimous consent. But I think if a person has his wits about him, he can make his statement, and everybody can express themselves and we can come to a sensible conclusion without the unlimited debate that we have been participating in in committee of the whole.

PRESIDENT NISBET: Mr. Barthwell.

MR. BARTHWELL: Mr. President, I don't think that Delegate Powell is relating a true fact, because a motion for the previous question prevails with a majority vote. So—let's face it—I don't have the same right and the same opportunity to carry a motion that the majority of the delegates have here. If we suspend this rule—let's face it—only the delegates of the majority party can prevail to go into the committee of the whole. Only they can prevail to move for the previous question. So it isn't a matter that each delegate will get the same right to speak, because I have been standing here in the convention in one instance as the next speaker, and then someone gets up and shouts that he moves the previous question, and it was put. This is why I asked my question before, you see. There are some realities about this thing. Now we should face it fairly and squarely. If we alter the rules of this convention, then we are not giving the minority delegates the same opportunities.

PRESIDENT NISBET: Mr. Radka.

MR. RADKA: Mr. President and fellow delegates, I think the most timely argument for voting for the proposed change is, just look at what has been happening this morning during the past hour.

PRESIDENT NISBET: Mr. Richards.

MR. L. W. RICHARDS: Mr. President, I would like to make a comment along the lines that my good friend Delegate Barthwell made when he referred to the majority party.

Sid, I would have to disagree a little bit along that line because, coming from the U.P., a lot of our majority party people don't see the problems that exist in the U.P. anymore than some of your fellow delegates do. I cannot have the assurance that my party that I am representing would feel the same as I would on some of the issues there.

I am a little disturbed. I feel on third reading—like a lot of other delegates, I haven't taken the time—I realize a lot of the subjects have been covered very thoroughly in discussion. I couldn't add or detract from some of them too much. Therefore, I might be definitely interested in a third reading, as much as you would or any of the minority party.

PRESIDENT NISBET: The question is on the adoption of the resolution. Those in favor will vote aye. Those opposed will vote no. Has everybody voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the adoption of the resolution, the yeas are 91; the nays are 37.

PRESIDENT NISBET: Resolution 72 is adopted.

For Resolution 72 as adopted, see above, page 1067; for rule 57 as amended, see above, page 135.

SECRETARY CHASE: That is the only item under unfinished business, Mr. President.

PRESIDENT NISBET: General orders. Mr. Van Dusen. Mr. Ford.

MR. FORD: Mr. President, I have what I think is a preferential motion to Mr. Van Dusen's motion.

PRESIDENT NISBET: Make it.

MR. FORD: I move that we reconsider the vote on amendment 3 to Committee Proposal 94 adopted by this convention yesterday, the vote by which it was adopted.

PRESIDENT NISBET: The question is on Mr. Ford's motion to reconsider the vote. Will you state that again, Mr. Ford.

MR. FORD: I think it can be found at the bottom right-hand corner of page 712 of yesterday's journal. I hope I have the right section there. That, as I understand it, was the vote on the minority report amendment to Committee Proposal 94.

PRESIDENT NISBET: Mr. Chase, can you locate that?

SECRETARY CHASE: This was amendment 3 to Committee Proposal 94, which amendment read:

3. Amend page 1, line 14, after "dependents" by striking out the comma and "except as otherwise provided by law".

PRESIDENT NISBET: The question is on the motion of Mr. Ford to reconsider the vote on this amendment. Mr. Ford.

MR. FORD: Mr. President, briefly, I would just like to call the attention of the delegates to the fact that with 135 delegates present, this vote was only 9 votes apart. In other words, it carried by 9 votes, a bare 72 carrying it, not the majority of the delegates elect. In view of the fact that we had already voted in favor of the minority report amendment in committee of the whole after 7 hours debate and yesterday morning when we came in here with a number of delegates who

had not participated in committee of the whole we proceeded in a manner that some of us considered quite summary to take this vote, I would like to have this matter brought back before the convention by this motion to reconsider.

PRESIDENT NISBET: The question is on the motion of Mr. Ford to reconsider the vote. Mr. Danhof.

MR. DANHOF: Mr. President, members of the convention, we had considerable debate in committee of the whole. We had additional debate upon the floor of this convention. We had excellent statements made both pro and con, and in particular I recall the statement which would be in favor of the original recommendation of the judicial committee made to you by Mrs. Judd. Without going into all the ramifications, I think we have debated this matter thoroughly. I think if there is a change of mind, this can be done upon the second reading by failure to concur. I think we would be wasting the time of this convention and the committee of the whole to reconsider this matter at all. I would urge that you vote against the motion for reconsideration, and we proceed with the deliberations of the remaining portion of the article.

PRESIDENT NISBET: Mr. Elliott.

MR. A. G. ELLIOTT: Point of order, Mr. President. Did not this go to style and drafting yesterday? Is it in order then to reconsider?

PRESIDENT NISBET: Mr. Elliott, it was referred to style and drafting, but a motion to reconsider the next day is in order. Mr. Mahinske.

MR. MAHINSKE: Well, as I understand it, Mr. Danhof feels that we are going to go back into debate on this, Mr. Danhof, through the Chair?

PRESIDENT NISBET: Mr. Danhof, would you care to answer?

MR. DANHOF: Do you mean go back into debate today?

MR. MAHINSKE: Yes.

MR. DANHOF: Well, I would imagine if we vote to reconsider, then the amendment again comes back before the convention, if I am not mistaken, upon concurring in the recommendations of the committee of the whole. Would that be correct, Mr. Chase?

SECRETARY CHASE: That is correct.

MR. MAHINSKE: Would this be debatable, Mr. Chase?

MR. DANHOF: In which case we would go back, and everybody would have a chance to at least speak once upon concurring or not concurring in the recommendation of the committee of the whole, and we would proceed to, I would imagine, go back over a lot of ground that we plowed before. We would not go back into committee of the whole and discuss this, but we would be back to the convention concurring or not concurring in the recommendations of the committee of the whole, upon which we voted yesterday. At least that would be my understanding of the rules. Consequently, everybody would be entitled to get up and speak at least once, and probably go back into asking questions and things like that, all of which we have covered before.

I think we had a good discussion. And so far as the vote was concerned, 135—or whatever it was—out of 144 isn't a bad average if you consider all the illness. Therefore, I would think that we would just not be spending good time in this particular session, and therefore I would oppose the motion.

MR. MAHINSKE: Well, I will stand corrected if I am wrong on this but, as I understand it, there were a number of people around here yesterday who felt that it was quite regrettable that the previous question had been moved on this committee proposal before the proponents of the minority report had had any opportunity to speak on this. And also in view of the fact that we have had a ruling from the Chair that this motion would not be in order on second reading, I would concur in the motion to reconsider here.

The only other available step on this proposition on second reading, as I can see it, is a move to strike the entire section a of Committee Proposal 94. This has been done already so this, by the same ruling, would be out of order on second reading. So I feel that now and only now is the time that we can move in this direction and give the people who have gone to the trouble of drafting up a minority report at least their day in court here. And for these reasons I would support the motion for reconsideration.

PRESIDENT NISBET: Mr. Wanger.

MR. WANGER: I think this matter, Mr. President, was fully debated in committee of the whole and thoroughly considered. I think it is obvious that the mover for reconsideration has no new arguments. He merely wishes to see if perhaps a few people may have changed their minds, and for that reason, I move the previous question.

PRESIDENT NISBET: The previous question has been called for. Is the demand seconded? Mr. Ford.

MR. FORD: Mr. President, I have just been informed by people who are vitally interested in this that there are several people off of the floor on convention business who are vitally interested in this matter. I, for that reason, would like to withdraw the motion to reconsider at this time and reoffer it this afternoon when they can be present.

PRESIDENT NISBET: The motion has been withdrawn. **General orders.** Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, I move the convention resolve itself into committee of the whole for the purpose of considering matters on the calendar of general orders.

PRESIDENT NISBET: The question is on the motion of Mr. Van Dusen. Those in favor will say aye. Opposed, no. The motion prevails.

[Whereupon, Mr. Van Dusen assumed the Chair to preside as chairman of the **committee of the whole.**]

CHAIRMAN VAN DUSEN: The committee of the whole will be in order. Dr. Pollock.

MR. POLLOCK: Mr. Chairman, could I have the pleasure of introducing a distinguished visitor from abroad who is here as the guest of the state department, Brigadier General of Police Memet, who is the director of the office of personnel affairs for the Republic of Indonesia. General Memet. (standing ovation)

CHAIRMAN VAN DUSEN: General Memet, we are pleased to have you with us, and despite the fact that Professor Pollock's introduction violated the rules of the convention, we are particularly pleased to welcome you this morning. (laughter)

The matter before the committee is **Committee Proposal 96,** A proposal pertaining to general and special provisions relative to the courts of the state. When the committee last met, we had considered the first sentence of section a and had adopted one amendment thereto. The pending business is an amendment to the second sentence of section a offered by Delegates Radka, Pugsley and Rajkovich.

For last previous action by the committee of the whole on Committee Proposal 96, see above, page 1478.

The secretary will read the pending amendment.

SECRETARY CHASE: The pending amendment is:

1. Amend page 1, line 10, after "courts" by inserting "of record"; so the language will then read:

> Except as authorized otherwise by this constitution, justices and judges of the courts of record of this state shall be lawyers licensed to practice law in this state, and shall not be elected or appointed to a judicial office after reaching the age of 70 years.

CHAIRMAN VAN DUSEN: The Chair will advise the committee that his notes as to those delegates who might have been seeking recognition on this question last night have been cleared away by an effective housecleaner, and that therefore anyone seeking recognition on the question should do so this morning. Mr. Danhof.

MR. DANHOF: Mr. Chairman, members of the committee, at the time that we arose last night from the committee of the whole, we heard from the proponents of the amendment and also from Mr. Everett, who gave the report of the majority of the committee. I should like at this time, if he has

any further remarks, to yield to the delegate from Battle Creek, Mr. Everett.

CHAIRMAN VAN DUSEN: Mr. Everett, do you have further remarks?

MR. EVERETT: No.

CHAIRMAN VAN DUSEN: Mr. Everett has no further remarks at this time, Mr. Danhof.

MR. DANHOF: In that case, we yield for questions or to any other persons who wish to speak.

CHAIRMAN VAN DUSEN: The question, Mr. Danhof and members of the committee, is on the amendment offered by Messrs. Radka and others, which the secretary will read.

SECRETARY CHASE: The amendment is:

[The amendment was again read by the secretary. For text, see above, page 1494.]

CHAIRMAN VAN DUSEN: Miss Donnelly, do you desire to be recognized on the amendment?

MISS DONNELLY: I believe at this time we might slow down a minute and consider when we insert these words "of record" where they have been offered, we are also going to have this "of record" affect the next line, the line referring to the 70 years of age. This proposition of 70 years of age is not new. It is new below the circuit court. However, to my mind and to most of the committee, the idea that after 70 years they should be retired seemed to be most important for the lower levels. If it is reasonable for the circuit court and upward, it is reasonable that there must be a time when the individual holding the position of a member of the bench should retire. Many are very effectual past that time, of course, but sometimes it is wise to cut off and allow other people to take the burden of presiding.

Another problem, I think, that is presented here is that of municipal courts, which are not courts of record. However, almost all of the charters, I think, require that an individual who will sit on the bench of a municipal court be admitted to practice in the state of Michigan. The individuals who voted this requirement in their charters seemed to feel that this level of justice and administration thereof was vital to them.

To insert this leniency, this deletion of the requirement of the membership in the bar to sit on the bench will affect them in many ways. It might endanger their feelings and make the validity of this requirement questionable.

Before we go forward and decide that we do not want attorneys administering justice from the bench, that we want laymen to do this job, I think we should anticipate the problems that come before these lower courts. Because an individual has perhaps some small monetary consideration does not mean that individual whose case is being tried doesn't feel that this is probably the most important case he has ever had. To suggest that they have a second class justice, I think, violates our basic principle. To have cheap justice, in effect, because of the amount of money involved is in many ways worse than justice delayed or justice denied, but to have an individual not have a proper presentment of his case, a proper decision on his case, renders him in the position of having to spend more money for appeal or to give up because he can't afford it.

The problem seems to be that outcounty and small areas feel that they can't afford to support a court with a lawyer. To me, this is a weak argument, because I believe that by having a lawyer administer justice from the bench, they will have a better court. We cannot delegate to the individuals in lesser populated areas a lesser degree of justice and administration, in fairness. So I think that we should go most slowly in inserting this provision in this instance in this section. It imputes many things that do not bring forth the best for all citizens in this state. Therefore, I naturally rise to oppose the amendment and ask that everybody really consider this insertion most seriously at this time.

CHAIRMAN VAN DUSEN: Mr. Ford.

MR. FORD: Mr. Chairman, members of the committee, without any attempt to insult my fellow members of the bar, I don't believe that anyone is going to argue that with a law degree or admission to the bar a person is instilled with any more compassion, human understanding or understanding of the problems of people than he had before. Now, in the part of the state that I come from, southwestern Wayne county, we have not very many nonlawyer judges left, because this is a problem that tends to solve itself.

Mr. Everett states that as a lawyer, he feels that, as a matter of principle, no one should sit as a judge unless he is a lawyer. I agree with Mr. Everett when he says no one should sit as a judge unless he is a lawyer if he means that, where possible, this should be one of the considerations in what makes a good judge. I don't think that this consideration alone wipes out all other considerations when you get down to the local level and realize the real concept of what a local judge is, whether you call him a justice of the peace or a municipal judge or whatever name he might have after this constitution is amended and the legislature acts. He is still a part of the local picture and he deals with problems of little people, and little people may be wealthy or they may be poor, but they are little people in the sense that they go direct to this court for their justice.

I think that as a matter of principle I would like to see every coroner in this state be a doctor, but we don't require that every coroner be a doctor. Many of them are not. And there is good reason why we don't. We just don't have enough of them to go around.

Now, down in Wayne county over the last 10 years, I have observed that never, when a qualified lawyer has run against a nonlawyer for a judicial post, has he failed to make the office. One by one the nonlawyer judges have gone by the wayside because the people have expressed a preference for an otherwise qualified man who has, in addition to his general qualifications, the qualification of being a member of the bar. The local bar association to which I belong and other members of this convention in the down river area, took a position in September of 1961, before this convention convened, that indicated that the 160 lawyers we were representing felt satisfied with the local court system that we had in some 15 communities with 160 lawyers represented, and a resolution adopted by something in the neighborhood of 86 lawyers present, unanimously, to continue the system we have down there, including the right to continue the existing nonlawyer judges in office. Now, as far as our part of the state is concerned, it is only a question of time until we have no nonlawyer judges for the reasons I have already stated.

But in talking to people from outstate, it is apparent that there are many parts of this state that are a long way from having an adequate supply. And Mr. Habermehl, who isn't here on the floor at the moment, when he appeared — pardon me, Mr. Habermehl; I was looking at the wrong row — made what I thought was a very telling argument in front of the judicial committee when he pointed out that in his part of the state and others of similar circumstances, what this kind of a provision might be tantamount to is saying that lawyers who do not actually practice law — they may be actually real estate men or insurance men who have the right to practice law but haven't done so for many years — or lawyers who might not otherwise meet the other standards that their peers in the community would place upon them for public office would have an advantage that might lead to putting people on the bench that the people would rather not have there, but you might be creating a situation where you say that since there is such a shortage, any fellow who wants to move in and throw his name in the hat automatically gets the job.

Now, this has happened with respect to prosecutor's jobs around the state. The people haven't had any choice of selection. Nobody is arguing that prosecutors shouldn't be attorneys. This would be an impossibility. But I think here is an example of what can happen when you have a job that requires an attorney and you have a shortage of attorneys. Although there are 9,000 attorneys in Michigan, almost 5,000 of them are down in Wayne county.

Now, Miss Donnelly indicated that this is not a problem for the municipal courts. It may not be a problem in her

municipal court, but there is one delegate here who comes from a city that has a municipal judge who very recently was returned by the people of that city to the bench by about a 4 to 1 margin, and he is not a lawyer. And I have never heard a lawyer of my acquaintance — and I have practiced quite actively in that area — complaining that that court is not a good court because the judge doesn't happen to be a lawyer.

There isn't any one of us who doesn't believe that the epitome of success would be if we had a well rounded supply of people with proper legal training available who were willing and able by other reasons to serve in these capacities to fill them. I don't think this is the case in the state of Michigan, and I think that here is a place where we can supply a little flexibility again. I think we ought to reel out the flag and say this morning we trust the legislature. I think that if we back up here a little bit and realize what we are doing, we are, for the first time in this state — and insofar as I know, we might be unique in this — saying in the constitution that judges must be lawyers. Now, it has only been a matter of some 10 or 15 years at the most since we have required circuit judges to be lawyers. I don't believe it is 10 years. We do this by statute, and we have been handling this problem for some time. I don't know why we should go beyond the courts of record in a constitutional provision and why we can't leave it to the legislature to provide the standards for holding this office below the courts of record.

When you are talking about the courts of record, there is a vast difference. It is my understanding that there are someplace in the neighborhood of 1,200 or 1,300 of these local courts throughout the state actually functioning at the present time, when you lump together the justices of the peace and the municipal courts. However, when you start counting the courts of record you find that you have a much smaller number, because we have only 42 or 43 judicial circuits at the circuit level and 1 probate judge for all of the counties except the 2 large ones. I think that this could conceivably, by constitution, create a very difficult problem for the outstate people, and this, in turn, is going to have a very direct effect on the rest of us who travel outstate and who depend on the outstate having a competent and a reliable judiciary as a part of our state judicial system.

If we leave it to the legislature, and the legislature should elect to require that all judges at all levels must be lawyers and then they discover that there are parts of the state that are deprived of a truly efficient or effective judicial system as the result of this, they can at the next session of the legislature change this or modify it. But if we freeze into the constitution a requirement at the local level, it is there for all time and there is very little that, as a practical matter, can be done about it. For that reason I urge you to support Mr. Radka's amendment, not because Mr. Radka's amendment says that for all time courts will be staffed by nonlawyers, but because Mr. Radka's amendment would make it possible for us to pass a constitution without for all time saying something that may be premature at this time and place in the development of the state of Michigan.

CHAIRMAN VAN DUSEN: Mr. Yeager.

MR. YEAGER: Mr. Chairman, I should like to direct a question to someone who has some knowledge on this question. This morning I received on my desk a copy of a list of cities with municipal judges called "special statutory courts" of which there are some 74. I would like to ask, are these courts courts of record?

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: To my knowledge, Mr. Yeager, they are not.

MR. YEAGER: In other words, if we adopt this amendment, then any of these courts in any of the cities listed here could be nonlawyers under this provision unless otherwise provided for by the legislature?

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: My answer, Mr. Yeager, would be either by the legislature or by the charter of the city. In other words, under the present constitution, the municipal court act leaves it basically to the city charter to provide whether they should be attorneys or nonattorneys. In Mr. Sleder's case in Traverse City, you recall, it said "attorney."

I would imagine that if the legislature should feel, in its wisdom, that in cities over a particular size there would be enough lawyers to make it mandatory that all municipal courts created in cities over 50,000 people, we will say, should be lawyers, they could do so. Basically, it is left to the city charter under the present constitution, and I do not think any of them are courts of record. Now, it is possible that in the future some of these courts might become courts of record if the legislature should so designate, as we have provided in the first sentence of section a.

CHAIRMAN VAN DUSEN: Mr. Yeager, not being a lawyer, would you yield further to Mr. Everett for a response?

MR. YEAGER: Yes, certainly.

MR. EVERETT: Mr. Chairman, Mr. Yeager, I am not certain that Mr. Danhof is correct. I am not saying he is incorrect, because I honestly don't know. But if this language is inserted in the constitution, I am inclined to think that the courts would then have to say that the legislature could not set any standards which were not fixed by the constitution. They could get around this by creating some of these courts as courts of record, but I am inclined to think that they could not set qualifications for the judiciary which the constitution did not set. This has always been the law. And when the legislature endeavored to set qualifications for circuit court, the supreme court struck it down, saying "You may not go beyond the constitution."

CHAIRMAN VAN DUSEN: Mr. Yeager.

MR. YEAGER: Well, further, I just wanted to ask Mr. Danhof one more question. Is this question of judges being lawyers or nonlawyers properly a subject of charters, as a general thing?

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: I had been interrupted, Mr. Yeager. Would you repeat, please?

MR. YEAGER: I said, is the question of whether judges should be lawyers or nonlawyers properly a subject for charters? Is this generally taken up in charters?

MR. DANHOF: The city charters of a number of cities provide that the municipal judge to be elected must be an attorney. I think some require he has to live within the confines of the city. Some may not, but most of them probably do.

Now, in response to Mr. Everett, after conferring, as we say, with counsel here, what Mr. Everett referred to was only the constitutional courts that have been created; in other words, the idea that the legislature could not set the qualifications of a lawyer for a circuit judge as they tried to do — and it was found to be unconstitutional and therefore required a constitutional amendment — refers to courts that are created as constitutional courts and, of course, municipal courts and the recorder's court and other courts are statutory courts and not constitutional courts. I am quoting Mr. Hutchinson, who I think was in the legislature when they tried to set the qualifications for the circuit judge, and he has advised me in this regard.

CHAIRMAN VAN DUSEN: Mr. Lawrence.

MR. LAWRENCE: Mr. Chairman, members of the committee, as a member of the judicial committee that framed the proposal, I rise to oppose this amendment.

Although there have been many nebulous claims about there not being enough attorneys to man the bench in such instances, it seems to me that this is actually the last dying attempt of the justice of the peace association to try to keep the present system, which is certainly not a credit to the people of this state. I am sure you have all heard the situation discussed. I know that without exception, at least among those I talked to during the campaign and since, the one thing that should be done is improve the quality of the administration of justice at the justice court level and make it no longer a court operated by laymen who are not familiar with the

law and who have caused the situation to exist. I ask you to oppose this amendment.

CHAIRMAN VAN DUSEN: Mr. Rajkovich.

MR. RAJKOVICH: Mr. Chairman, fellow delegates, it sounds as if the proponents of this amendment are opposed to attorneys as judges. We are not opposed to attorneys as judges. Any time we have an attorney who wants to run for a judge, he is most welcome to run for a judge. The problem is that in many areas you don't have any attorneys. We do have counties of 1, 2 or 3 attorneys. Kalkaska county, I believe, has 2 attorneys. That is all there are. Antrim county has 3; Leelanau county has 4; and if you look around the rest of the counties up in the northern part of the state, you just don't have that many attorneys. And we want justice. I am not opposed to them. I think we should have them. However, if they are not there, we still do need these judges. And furthermore, I see no reason to state in the constitution — and freeze it in here — that all of these people have to be attorneys. They don't have to be attorneys. We do not set up qualifications for anything else.

It was mentioned to us yesterday that you certainly would not want to have anybody take your appendix out who is not a doctor. However, you know as well as I do that there are cases where this is done; people who are not doctors do these things. We would rather they didn't, I will agree with you. However, sometimes we have to do things that we wouldn't normally do. And in this case, I do believe that we have to make a provision for these people to render justice where all the attorneys are not available.

Now, Miss Donnelly mentioned here the question of 70 years retirement. I am sure there was never that intent. It wasn't my intent and it was not Mr. Radka's intent that 70 years should be affected at all by this.

Now, in any county or any area where we do have an attorney running against a layman, if this attorney cannot win against the layman, he shouldn't be a judge anyway. At least that is the way I feel about it. It takes other qualifications besides merely being an attorney, and I am sure the people will make their decision where there are a lot of attorneys and where there are a lot of people. But in sparsely settled areas, there just are not enough attorneys to go around. If you have one attorney, he is going to be a prosecutor. Perhaps another one is going to be a judge of probate. Then is there anybody going to be in town who is going to practice law? And there is not a great deal of money involved here anyway, so I wish that you would support this amendment to give these people outstate an opportunity to have justice that we do have in these other heavily populated areas, because if we have to have attorneys, I am afraid we won't have them. Thank you.

CHAIRMAN VAN DUSEN: Judge Dehnke.

MR. DEHNKE: Mr. Chairman and delegates, I don't think anyone would quarrel with the notion that, other things being equal, it would be desirable to have the judges of all our courts as attorneys. Someone has said that extreme justice is injustice, and an extreme application of even a good principle can sometimes do more harm than good.

I would like to call your attention to the fact that the committee on the judiciary has recommended that even as to judges of probate, nonlawyers be permitted to be eligible so far as those who are now in office are concerned. We are here dealing with a question of judges for courts of limited jurisdiction. This argument seems to be based on the theory that every lawyer will make a better judge of a court of limited jurisdiction than any layman would make. The situation has been recorded sufficiently. Those of us who are familiar with the situation know that there are many counties where the shortage of attorneys exists, and when we go into a store to buy a suit, we prefer the store where we have some choice, and freezing this requirement into the constitution would in numerous cases result in the people being compelled to accept someone who chose to move into the community, regardless of what the reasons might be for his having left his old home or for coming into the new one. Because he is the only attorney available, they would have no choice. I think if we can, for the reasons that have been mentioned, make some exceptions on the much more important probate court, it is entirely reasonable to suggest that, for the time being, to meet these emergency situations, we might extend the same consideration to these communities we have been talking about. Thank you.

CHAIRMAN VAN DUSEN: Mr. Perras.

MR. PERRAS: Mr. Chairman, at the time that I was seeking recognition, I was afraid that the recess had been called and I hadn't heard it, and I was still sitting here. And I would like to make a suggestion when this thing happens that the secretary ring the bell and bring the delegates back in so they can hear what is going on.

CHAIRMAN VAN DUSEN: Your point is well taken, Mr. Perras. The Chair thinks that the private recess period appears to be over. Mr. Habermehl.

MR. HABERMEHL: Mr. Chairman, delegates, because the position I took before the judicial committee was mentioned, I would like to expand on it just a little bit. My aim before the judicial committee and at this convention is to set up an adequate court system, a court system that will serve the people of the area. It was my position and is my position that if we do a proper job of organizing these courts, this matter of whether or not an attorney is the judge will be taken care of by the people of the district. I feel that if the court has a broad enough jurisdiction, a high enough jurisdictional amount, that people will recognize that an attorney is needed as a judge of that court. I am not in favor of freezing in the requirement. However, I am willing to trust the good judgment of the people of the district.

As has been mentioned, until just relatively recently, there was no requirement that a circuit judge or a supreme court justice in the state be an attorney. The good sense of the people made sure that they were. To that extent, while I agree wholeheartedly that no one really should ever act as a judge of his fellow man without some training for the job, I would not care to see a requirement in the constitution that he be an attorney. This is not a matter of trying to create a closed shop for attorneys. My position is simply that I am willing to let the people judge the qualifications of the judges that they elect.

CHAIRMAN VAN DUSEN: Mr. Brake.

MR. BRAKE: Mr. Chairman, ladies and gentlemen of the committee, I wouldn't presume to take any of your time on this except for one thing, although I may mention some others since I am up. The thing that brings me to my feet is the inference that we have just had that anyone taking the position that this amendment ought to be adopted is trying to do something for the justice of the peace association. In my case that is absolutely not true. I have no connection with them. They have no influence on me. Yesterday and the day before, we had a similar inference as to probate judges, that if you were for certain amendments or against certain amendments, you were trying to protect the probate judges. There are a lot of delegates here who are making up their mind on what to do on these amendments and on these propositions on the basis of what they think will work out best, not that they are trying to protect somebody.

Now, the idea that attorneys are going to be too scarce in some of these counties is not a nebulous idea. As I said to you the other day when I was talking somewhat facetiously, this is not a problem with me. I represent 4 counties. In each of those counties we have several attorneys. I have no doubt that a competent attorney can be found in each of those 4 counties who will be willing to be judge of some inferior court such as the legislature sets up. I would hope that the legislation, when passed, will be such that a lawyer will be required in each of my 4 counties.

But there are counties much smaller than mine, and the lawyers just aren't there. It is said we can bring them in; put up a proper salary and they will come. Who will come? Somebody who is an alcoholic and trying to escape temptation? Somebody by reason of age and infirmity who is no longer a

proper person to be a judge? Some youngster just out of law school? There won't be any choice. Nine times out of 10, or maybe 19 out of 20, there will be no choice in one of those counties. If you get a lawyer to run, he will be the only one running and you will take him, whether he is qualified or whether he isn't qualified.

We are not deciding that there will be courts not requiring lawyers. We are just letting the legislature decide. Let the legislature decide what the rules shall be, where those courts may be. And certainly we are not in position to properly say to those little counties in the north "You must have a lawyer." They certainly would like one if they can get a proper one, but some of them can't do it and we know they can't do it. I think this amendment ought to be adopted.

CHAIRMAN VAN DUSEN: Dr. Nord.

MR. NORD: Mr. Chairman, I oppose the amendment. It seems to me that the amendment is either too broad or too narrow depending on what it attempts to achieve. I certainly don't think it is correct in the form that it has been presented.

First of all, I think the principle that has been mentioned in favor of the amendment is quite wrong. The principle that has been put forward is that it isn't necessary, it isn't indispensable, let us say, that in order to be a judge, you should be a lawyer. In other words, in order to be a judge, it is not indispensable that you should have a license to practice law or that you should be legally qualified and certify that you have studied the law. Now, I believe if we compare this principle with many other principles that we are quite familiar with, we will see that the principle cannot stand. There are many activities in this state which do require a license, and they are much less important than administering justice.

For example, to be a barber, it is my understanding you have to have a license. You can't cut somebody's hair, as I understand it, unless you have been examined by somebody who can say that you are qualified to cut hair. I know that in order to drive an automobile you must have a license. And they don't say there are any ifs, ands or buts about it; you just simply must have a license, because you can do harm if you don't have qualifications.

When you come to the question about whether somebody is going to administer the law, apply the law to specific cases, how can we come out with a conclusion that that person doesn't need to have any qualification whatever? He need have no qualification whatever. He need not have a license to practice law. He need not be certified so that people will know that he has ever even studied the law or had the slightest inkling of what law is. It seems to me that the principle is a very bad principle. Not only that; I don't believe that that principle can be pushed to the limit or is being pushed to the limit. If that principle were correct that it isn't necessary — it is just nice but not necessary that anyone who is a judge have a license to practice law, then why do we have in the rest of this section the requirement that he does have a license to practice law except if it is not a court of record?

It will still say in section a, if this amendment is adopted, "Except as authorized otherwise by this constitution, justices and judges of the courts of record of this state shall be lawyers licensed to practice law. . . . " We certainly don't think that we ought to leave that question wide open. We think we should leave it wide closed. In other words, we don't think that that principle that has been announced here — that it isn't important, in fact indispensable for a man who administers the law in a specific case to be licensed — is good enough. As a matter of fact, we have stated the exact reverse: that he should be a lawyer.

Now, the amendment, therefore, is too narrow if it seeks to establish a principle that a man does not need to be a lawyer to be a judge, because he does need to be a lawyer in most courts of the state under this amendment. On the other hand, the amendment is too broad if the object is to make an exception only in case of emergency or only in case of sparsely settled areas.

The amendment does not go to either one of those cases. It goes broad spread to the entire judicial system. It doesn't say in sparsely settled areas of some sort or other, or where there is no choice. It doesn't say where there is no other choice, he doesn't need to be a lawyer. I could understand that. But this applies to all courts of the state which are not courts of record, including the most densley populated parts of the state. It doesn't say only in case of emergency or only in case of sparsley settled regions. That kind of an amendment, it seems to me, could be supported. But this is too broad in that respect and too narrow in the other respect.

It has also been urged that this ought to be a question for the legislature; it ought to be a matter of flexibility. Again, it seems to me that point is not well taken. If that is your position, why do you permit the rest of the section to say, "Except as authorized otherwise by this constitution, justices and judges of the courts of record shall be lawyers licensed . . . ."? That is not flexible. Therefore, it seems to me that a lot of people in discussing this want to have their cake and eat it. They want to say that this amendment isn't too broad and it isn't too narrow, but as a matter of fact this amendment is very badly conceived, in my opinion.

I think we should start out with the principle that you cannot be a judge of any court unless you are licensed. We shouldn't lower the courts below the barbering profession or the business of driving an automobile. We should put that in as a principle. Then if we find there are reasons why some exceptions should be made, we can put those in. And I believe there could be some. Grandfather clauses, for example, would be all right, or where there is no attorney who is willing to run for office or something like that. You could put those in. But the amendment we have here is, as I say, ill conceived, can do damage to the judicial system, and I believe on that basis, unless it is changed to satisfy these problems, it ought to be defeated.

CHAIRMAN VAN DUSEN: Mrs. Koeze.

MRS. KOEZE: Mr. Chairman, I would like to say here that on the sheet you have before you is the town of Wyoming. Most of you think that I am from Grand Rapids, but I really am from Wyoming, Michigan. Now, this is really and truly south Grand Rapids, the fastest growing part of Kent county. And I just want to tell you an instance about our municipal court down there.

We established one when we became the city of Wyoming, Michigan, and we waited for months to get a lawyer for this municipal court. Believe it or not, in this 6 square miles of Wyoming, Michigan, we couldn't find a lawyer and finally had to waive a clause in regard to his residency so that we could get one from the city of Grand Rapids. So I just want to point out to you that this is not only a problem of sparsely settled areas.

CHAIRMAN VAN DUSEN: Mr. William Hanna.

MR. W. F. HANNA: Mr. Chairman, I happen to be a justice of the peace in a township, South Muskegon. But what Mr. Ford has alluded to and what some of the other men have referred to is a problem within Muskegon county. We have one of the best run municipal courts in the city of Muskegon, and we have one of the worst run municipal courts in the city of Muskegon Heights. Now, the difference between the 2 is simply that in Muskegon we have a large number of attorneys willing to run for the job. In Muskegon Heights, because it is an older city and has not expanded as the greater Muskegon area has expanded, we have a situation where the people are offered no choice when it comes to municipal judges. We now have a municipal judge who works approximately from 11:00 to 11:30 and 2:00 to 3:00, and his help does likewise.

Some of our best run courts are justice of the peace courts by laymen in the surrounding townships because they work full time at this job. Mr. Nord has referred to the situation of a barber, but at least I don't face a jurisdictional question and I am not compelled to go to a certain barber, but I may go where I feel there is a competent barber without regard to municipal lines. This is not true with the courts. I am forced to go where the legislature tells me to go. Secondly, if I try a case in justice court, I have an appeal and I can have my case retried. But it is a little difficult, if I get a poor haircut,

to immediately turn around and get another one, and there are some delegates here where a poor haircut could be quite embarrassing, because there isn't very much to cut. (laughter)

CHAIRMAN VAN DUSEN: Are you raising personalities? (laughter)

MR. W. F. HANNA: I am not referring to you, Mr. Chairman. (laughter)

CHAIRMAN VAN DUSEN: Mr. Hanna, the secretary and the Chair would both appreciate your indulgence. Some of the delegates have complained about the glare. (laughter) Mr. Garry Brown once suggested that during this article, perhaps the Chair should be provided with a robe, and the Chair thought maybe a wig would be additionally appropriate. (laughter) You may proceed, Mr. Hanna.

MR. W. F. HANNA: I, too, am joining your class very rapidly. But actually what is needed is fewer justices of the peace or fewer local courts. With regard to cities, they have their choice. They may adopt by charter a municipal court, and the legislature has said in that case he must be an attorney, and they have set the jurisdiction somewhat higher for municipal court. But a city also can have a layman judge, and the jurisdiction there is somewhat lower, at least in dollar amount.

I believe that if we are to develop an intelligent court system, of necessity we must allow the legislature the power to develop a court system of limited jurisdiction, and to require lawyers in those counts of limited jurisdiction where there are sufficient lawyers to give the people an intelligent choice.

I would equally oppose putting the township justices of the peace back in the constitution, because I am convinced that in some of the smaller townships, they should be joined together in a judicial district, and if population is sufficient or if there is a sufficient choice of lawyers, those judges should be lawyers. But when you have the situation where a man has a monopoly on the office of judge only because he is an attorney and only because he is the only attorney within that municipality, be it county, city, township or village, you have the situation where the public does not receive justice, but they have a man who is living on a semi pension, and if he is ambitious, he practices law, and if he is not ambitious, he looks for a retirement long before he is 65.

I certainly would urge the convention to allow the legislature, with regard to courts of inferior jurisdiction, to set requirements as to whether or not they should be lawyers based upon the availability of lawyers and the population of that municipality. Equally, I would urge this convention not to require every city, township, village or county to elect a justice of the peace.

CHAIRMAN VAN DUSEN: Mr. Hubbs.

MR. HUBBS: Mr. Chairman, are there a great many people lined up to talk?

CHAIRMAN VAN DUSEN: The Chair has one layman, one lay woman, and one lawyer in addition to yourself, Mr. Hubbs.

MR. HUBBS: It seems like the laity is in the majority this morning. The reason for asking that question was that I don't consider myself an orator of such persuasive character that I could persuade many people to change their minds, and if there aren't too many lined up to talk and we are going to vote pretty soon, I won't say very much and I will just keep quiet.

I find myself in strange company this morning. Generally, over in this corner I am considered so extreme that I have been accused of carrying a John Birch card. And now I find myself in sympathy with Mr. Ford, who is generally of the opposite point of view. (laughter) In general, I support the idea of training and education to provide competence, but horrible examples can be found in all fields to prove that this isn't exactly true. And I think if we consider this question of whether we have licensed attorneys for justice of the peace, we have to be a little bit practical. A lot of testimony has been heard this morning to prove that in metropolitan areas where there are lots of attorneys available, in most cases attorneys fill the judge's positions. We must be practical, because in our outstate area, this condition doesn't exist, and it doesn't make good economic sense to force something on somebody when it just isn't, in a sense, practical from an economic point of view.

Some arguments have been made this morning with regard to doctors removing appendix. "Do you want a doctor to do it rather than somebody else?" I would like to suggest if we are going to think along these lines, we require in the constitution that nobody shall be permitted to service an automobile except a licensed automobile dealer and no gas station or alley garage service, Mr. Farnsworth, because those people can do irreparable harm to an automobile, as you know, by putting it back together wrong, and it costs, lots of times, more money. An automobile is worth $3, $4, $5 thousand sometimes, and these alley garages just do a terrible job, you know, so we should have only licensed automobile dealers practicing on this valuable piece of machinery. But you know it is impractical that we force that on people because they should have a right to choose what they can afford to pay for and buy what they can afford to pay for, and this same thing, I feel, in a sense, should apply to justice. This isn't an unusual analogy to make because of the costs involved in some other fields as compared to law and justice—

CHAIRMAN VAN DUSEN: Excuse me, Mr. Hubbs. The committee will be in a little better order, please.

MR. HUBBS: The costs of machinery and things that lots of times unlicensed and untrained people work on are just as damaging to people as poor justices would be. And considering this whole justice of the peace question, I have heard a lot of static about the fee system and the high cost of justice to people in that sense, but I would like to point out the high cost of justice when you have to hire an attorney to go into court for you. And maybe it would be a good idea, since justice is such an important thing to people, and of such a fragile quality that only attorneys in some instances can handle it, that we socialize the justice system and require that all attorneys be employees of the state and work for a flat fee and that justice be available to everybody—just like education—since it is so valuable, we should get it free. And in this way, everybody would get justice. It would probably be very mediocre but we would get it and we wouldn't have to pay for it, and all attorneys would get exactly the same fee. Then I would go along with making all attorneys judges and setting up the monopoly for them under that system whereby the state took care of it.

Mr. Ford makes some very good points. The people will finally elect attorneys. And even in our area, I myself will always vote for an attorney if he is available and qualified. One thing that I would like to persuade you to with regard to this particular thing is this: the public reaction to 57 attorneys setting themselves up with a legal monopoly over the justice system and the legal business of the state is not going to be a good public reaction. And I am going to tell you right now that you are not being practical; you are being ivory tower theorists when you think you can cram that down people's throats. They won't buy it. And I am talking about intelligent, educated people who will not accept this kind of a proposition, because they would like to be practical just as I would.

Now, as far as the future of the justice of the peace system is concerned, it is my hope that when the legislature gets around to dealing with this, the evils that do exist in the justice of the peace system will be cleaned up by setting up proper educational requirements. I think that possibly a man should at least have gone through high school and that he be able to read and write (laughter) and the reason I set up these bare minimums is because there are a lot of intelligent people around who have been educated in the hard school of life who I would take a back seat to any time, even with any degree that I might possess, because they know far more than I do from hard learning, and that is why I say the minimum requirement. But I think that the legislature, when setting up this court that we hope to achieve where we will not absolutely be required to have attorneys, can say in effect that after you get elected, if you cannot demonstrate competence within 2 years to pass a test which will determine whether you have tried to be competent or not, then you will not be eligible to

run again. And I think that by legislation we can set up proper safeguards over this thing and be practical about giving us inexpensive justice in outstate Michigan. And I don't think that the metropolitan areas will be hurt in the least, and I think that in the long run if you force, arbitrarily, lawyers as judges on us, you are going to hurt the constitution.

CHAIRMAN VAN DUSEN: Mrs. Butler.

MRS. BUTLER: Mr. Chairman, members of the committee, I just wonder if any of you are aware that there are counties who don't have a lawyer in them. There is one county in the upper peninsula that doesn't have a lawyer. And I notice in section b here if a judge is removed from his domicile beyond the limits of his territory, he shall be deemed to have vacated this office. In this one county, the prosecuting attorney lives in another county. I don't know just how they would have any judge of any sort if they were depending on a lawyer. And in another county in the upper peninsula there are only 2 lawyers, and 1 is a prosecuting attorney and 1 is a probate judge.

CHAIRMAN VAN DUSEN: Mr. Beaman.

MR. BEAMAN: Your Honor and ladies and gentlemen of the jury, I rise to a point of prerogative writ (laughter) to endorse the amendment. And I would like to say to Mrs. Butler that if she has a county up there in the upper peninsula, the chamber of commerce should make some publicity of that, because I think maybe I would like to move up there after this convention. (laughter)

CHAIRMAN VAN DUSEN: Spoken with your usual economy of language, Mr. Beaman. (laughter) Mr. King.

MR. KING: Mr. Chairman, fellow delegates, I think that perhaps we are dealing with this problem somewhat out of order. As the committee reported out this proposal, it says "except as authorized otherwise by this constitution." I think perhaps at this time we ought to vote on this amendment and then consider section i, which is the J.P. section. Of course, it is related. Also section e, which requires the incumbent designation for all judicial offices. I am sympathetic to the problem of the sparsley settled areas, and I think that at that time I could certainly support some means of taking care of this question.

Mr. Hanna points out that people have a choice of barbers, which of course they do, and I am sympathetic to the statements he made, because when I get to be Mr. Chase's age, I may lose my hair. (laughter) People do, of course, have a choice of the repairmen for their cars, and they even have a choice of their doctors and lawyers. But people do not have a choice of their judges, and I think that this is something we ought to consider. Mr. Hubbs thinks that J.P.s should be able to read and write. I think where possible, they ought to be attorneys.

CHAIRMAN VAN DUSEN: Mr. McAllister.

MR. McALLISTER: Mr. Chairman, fellow delegates, I don't think Mr. Hubbs is correct in his remarks in regard to the 57 lawyers here being opposed to this amendment. I think most of the lawyers here are familiar with the problems that exist north of Bay City in many counties and realize that attorneys cannot always be obtained to fill offices to serve the people insofar as justice is concerned, and I am sure that he will find it is not true when the vote is taken.

CHAIRMAN VAN DUSEN: Mrs. Cushman.

MRS. CUSHMAN: I am not a lawyer, nor is any member of my family a lawyer. I realize, furthermore, that a law degree is not a guarantee of a good judge, but I don't think that I would have as good a chance for justice in appearing before a man who is not a lawyer as I would before a man who is a lawyer. As a layman, I think my chances are far better of hitting a good judge if he is guaranteed to be a lawyer, and for this reason I would like to support the committee proposal.

CHAIRMAN VAN DUSEN: Mr. Yeager.

MR. YEAGER: Mr. Chairman, ladies and gentlemen, I would just simply like to echo what Mr. King has said. I find that I must vote no on this amendment not because I am out of sympathy with it, but because I think this is the wrong way to tackle the problem. I think we certainly need an exception for the problem that has been demonstrated here, but I don't think the amendment that is before us now is the solution, and for that reason I must vote no.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Messrs. Radka, Pugsley, Rajkovich and others to the second sentence of Committee Proposal 96, section a. The secretary will read the amendment.

SECRETARY CHASE: The amendment reads:

[The amendment was again read by the secretary. For text, see above, page 1494.]

CHAIRMAN VAN DUSEN: Mr. Radka requests a division. Is the demand supported? It is supported. Those in favor of the amendment will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the adoption of the amendment, the yeas are 87; the nays are 31.

CHAIRMAN VAN DUSEN: The amendment is adopted. Mr. Danhof.

MR. DANHOF: Mr. Chairman, I move the committee do now rise.

CHAIRMAN VAN DUSEN: Mr. Danhof, would you withhold that briefly. Mr. Farnsworth was seeking recognition.

MR. DANHOF: I will withhold it.

MR. FARNSWORTH: Mr. Chairman, this will only take a moment. I wondered if the Chair would consider at this time advancing Delegate Hubbs to the junior class and letting Mr. Beaman take his place in the sophomore class. (laughter)

CHAIRMAN VAN DUSEN: Without objection, it is so ordered, Mr. Farnsworth. (laughter) Mr. Danhof.

MR. DANHOF: I move the committee do now rise.

CHAIRMAN VAN DUSEN: Mr. Danhof moves the committee do now rise. Those in favor of the motion will say aye. Those opposed will say no.

The motion prevails. The committee will rise.

[Whereupon, the committee of the whole having risen, President Nisbet resumed the Chair.]

PRESIDENT NISBET: The Chair recognizes Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, the committee of the whole has had under consideration several matters of which the secretary will give a detailed report.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 96,** A proposal pertaining to general and special provisions relative to the courts of the state; has adopted one amendment thereto and has come to no final resolution thereon. This completes the report of the committee of the whole, Mr. President.

PRESIDENT NISBET: Are there any announcements?

SECRETARY CHASE: We have the following note that was received this morning:

> To the delegates and staff:
>
> Your kind expression of sympathy in our recent bereavement was greatly appreciated. Please accept our grateful thanks.
>
> Sincerely, Alice and Cliff Perras.

The committee on style and drafting will meet in room K at 8:00 o'clock this evening. Mr. Cudlip chairman; and the meeting of the committee on administration which was scheduled for today has been postponed until tomorrow.

Mr. Hoxie wishes to be excused from the session of this afternoon and tomorrow afternoon; Mr. Hatch asks to be excused from tomorrow's session; and Mr. John Hannah requests leave from tomorrow's session because the council of state college presidents of the Michigan coordinating council for higher education and 2 of the important committees of the legislature will begin an all day meeting at the Kellogg Center.

PRESIDENT NISBET: Without objection, the excuses are granted.

The Chair recognizes Mr. Page.

MR. PAGE: Mr. President, I move that the convention recess until 2:00 o'clock this afternoon.

PRESIDENT NISBET: The question is on the motion of Mr. Page. Those in favor will say aye. Opposed, no.

The motion prevails. We are recessed until 2:00 o'clock.

[Whereupon, at 11:45 o'clock a.m., the convention recessed; and, at 2:00 o'clock p.m., reconvened.]

The convention will please come to order.

SECRETARY CHASE: Mr. President, a quorum of the convention is present.

PRESIDENT NISBET: The Chair recognizes Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, I move that the convention resolve itself into committee of the whole for the purpose of considering matters on the **general orders** calendar.

PRESIDENT NISBET: The question is on the motion of Mr. Van Dusen. Those in favor will say aye. Opposed, no.

The motion prevails. Mr. Van Dusen.

[Whereupon, Mr. Van Dusen assumed the Chair to preside as chairman of the **committee of the whole.**]

CHAIRMAN VAN DUSEN: The committee will be in order. When the committee last sat, we were considering **Committee Proposal 96,** A proposal pertaining to general and special provisions relative to the courts of the state. We were considering the second sentence of section a of that proposal. The secretary will read the next amendment to that sentence.

SECRETARY CHASE: Messrs. Ford and Danhof offer the following amendment:

1. Amend page 1, line 12, by striking out "shall not" and inserting "no person shall"; so the language will then read, "and no person shall be elected or appointed to a judicial office after reaching the age of 70 years."

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Messrs. Ford and Danhof. Mr. Danhof.

MR. DANHOF: Mr. Chairman, members of the committee, in view of the amendment adopted earlier by the committee of the whole inserting the words "of record" after "courts," and in line with the statement made by Mr. Rajkovich, one of the sponsors of the amendment, putting in the words "of record," in order that there would be no confusion—and as Miss Donnelly had pointed out, that the matter therein regarding the age qualification would have been limited to courts then of record—Mr. Ford, the vice chairman of my committee, and myself offer this amendment so as to make sure that the 70 year age requirement is maintained within the constitution.

Mr. Rajkovich stated it was not their intention to disturb this but simply to limit the requirement that the judges be licensed to practice law to courts of record, and in line with that, Mr. Ford and I offer this amendment to maintain this provision as the committee wrote it in the light of the amendment adopted by the committee of the whole. We urge the adoption of the amendment.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Messrs. Ford and Danhof. Does any delegate desire to have it read again? If not, those in favor will say aye. Those opposed will say no.

The amendment is adopted. The secretary will read. Are there further amendments to the second sentence, Mr. Secretary?

SECRETARY CHASE: Messrs. Sleder, Plank and Radka offer the following amendment:

1. Amend page 1, line 10, after "judges" by inserting a comma and "except probate judges,"; so the language will then read:

> Except as authorized otherwise by this constitution, justices and judges, except probate judges, of the courts of record of this state shall be lawyers licensed to practice law.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Messrs. Sleder, Plank and Radka. The Chair will recognize Mr. Sleder.

MR. SLEDER: Mr. Chairman and fellow delegates, we definitely appreciate the work of the judicial committee relative to their effort in attempting to improve the probate courts, and I fully realize that this provision that they have placed in the report of making the probate judges attorneys as a requirement of holding the office is in the hope of being able to improve the probate courts. I should like to point out, however, that in the past 60 years that we have been operating under the Constitution of 1908, which does not have this provision, it has been pointed out that there are about 1/3 of the probate judges who are nonlawyers, and about 2/3 are lawyers. We are confining our remarks to principally 30 or 35 judges.

I think we should take into consideration the fact that the work of the probate court deals in several functions. Probably the 2 large functions are the juvenile work and the probating of estates. It is, I feel, quite evident that other types of qualifications can well serve as a basis for a probate judge—such as we could consider a CPA would be very well qualified in the handling of probating of estates, or that people trained in juvenile work would be qualified in some areas as a probate judge. I do agree and admit that as to the laws which they operate under, probably an attorney is best trained.

The fact, I think, was brought out very well this morning when we were speaking about the courts of record relative to the requirements and the availability of the attorneys in the more sparsely populated counties, and of course I think we will find when we make a survey of the 35 nonlawyer judges we have that most of them are located in the northern part of Michigan, and of course we have made this provision as of yesterday where it is possible for the legislature to combine counties and with the hope, I am sure, that if the provision is put in there, then these counties could better afford an attorney if there were 2 or 3 counties combined. I should like to point out several problems, on this basis, that will evolve, and that is the fact that it will be difficult when one county is without a judge and it may adjoin a county such as Wexford county where the probate court there has a full load and they cannot join to that, the other counties surrounding it are well satisfied with their jurisdiction, and here we will have one county left without a probate court and possibly no lawyer within that county that will be willing to accept the job. This, I think, will bring about complications if this is written into the constitution.

So I come to one of my main points, and that is I feel that this provision should be a part of the work of the legislature. When the legislature combines these counties, at that time if they so wish and so see fit that these probate judges should be attorneys, I feel then they should have the right and the privilege of putting it into the statutes. I don't feel that we should put it into the constitution and hope that the plan that has been well thought out and devised by the committee will work out. I think as the time goes on and the counties are combined, as the legislature may do, they then may stipulate, if they so wish, in these areas to have attorneys.

Certainly this brings about the next point. I feel in the past and in the future we must have and should have the control and the decision by the people on the county level. Certainly the attorneys, where they are available, can run for the position. Laymen who feel they are qualified likewise can run. Let the people determine who they themselves feel should be best qualified to hold the position. Certainly in the areas of local and home rule, we have given this jurisdiction to the people to decide. I think we can do it in areas of our court structure or our court qualifications of men who are seeking the position. I feel that this decision as to who should serve in the probate court can be well testified to by the election of the people, and I think if we look back over history, as I said, we find that now 2/3 of the probate judges are attorneys. This has been decided by the people. Certainly there is only 1/3 of the judges left. I think as the population grows in the

sparsely populated areas, the people there, too, will decide and will choose attorneys for the positions, as they have in the southern part of the state, without the requirement in the constitution that they be attorneys.

And in conclusion, I should like to point out that this is not a structure change in the courts of the state of Michigan; it is only a stipulation as to the qualifications of who may serve as judge. I, therefore, would recommend that you give this amendment very serious thought and vote in favor of it. And, Mr. Chairman, I should like to relinquish to Delegate Plank.

CHAIRMAN VAN DUSEN: The Chair will recognize Delegate Plank.

MR. PLANK: Mr. Chairman, fellow delegates, contrary to some feeling, I really am in favor of the attorneys when we sponsor this amendment, mainly because I think I have more confidence in them then you do. My confidence comes in believing that the people will choose a man who is better qualified if he runs. The only thing I object to is fixing it so no one else can run, and therefore a man who perhaps had a law degree 50 years ago and could run on that today, wouldn't be nearly as qualified as a good layman. Along the same type of thinking, you might say it is necessary to be an attorney to be a probate judge. Then why not write into the constitution that you must be a teacher to be on the school board or a professor to be on the university board of regents.

If there are no appeals, then I would say that perhaps you should stipulate that we have a man schooled in law to be a probate judge, but today in all our courts if you are not really satisfied, you can take the appeal to a higher court and even more qualified individuals sitting on the bench. Therefore, I recommend that you vote for our amendment, and recommend that you not freeze into the constitution something that might be difficult to live with in some of the smaller counties in the state of Michigan. I would like to yield, Mr. Chairman, to Delegate Radka.

CHAIRMAN VAN DUSEN: Mr. Radka.

MR. RADKA: Mr. Chairman, delegates, I believe that we heard all of the arguments this morning. These arguments that related to our problem of lack of attorneys in the northern part of the state and in the upper peninsula lead to our putting in this amendment relating to probate judges. The difference is, of course, here—and we recognize it—that we have now passed a provision which will allow the creation of districts for probate courts. This, of course, makes the problem somewhat different. I recognize that. But I would like to point out that in the year 1955, a constitutional amendment was passed by the people. Prior to this time, a supreme court justice and circuit judge were not required to be attorneys, and because of a situation which arose in the state, everyone became excited. A certain probate judge decided to run for circuit judge, and he was not an attorney, and I think that this sparked the impetus for the passage of this particular amendment. It is very interesting to note that the people passed this amendment in 1955, and this amendment required that supreme court justices and circuit judges be licensed to practice law. It is interesting to realize that they did not at this time include probate judges.

I submit to you that the reasons which existed in 1955 which the legislators were aware of still exist today, and I would say that I would rather allow the people to determine the qualifications of their probate judge rather than have 144 delegates or part of 144 delegates determine the qualifications the people's probate judge should have.

CHAIRMAN VAN DUSEN: Mr. Tubbs.

MR. TUBBS: Mr. Chairman and ladies and gentlemen, I have long since given up the notion that the only qualification for a judge in the state of Michigan should be the ability to get elected. Thirty-eight of the 50 states in their constitutions put in the requirements for being judges, and the minimum requirement is that they are licensed to practice law.

I agree with the gentleman who talked about haircuts this morning that if he goes to one barber and gets a bad haircut, he can go to another one next time, but he is the only person who is concerned and the only one hurt because he got a poor haircut. But when you are representing a client before a court, you don't want to be forced to appeal to overcome the deficiencies of the judge that you are trying your case before. It is expensive business for your clients, and you would rather try your case before a person at the lowest level who has the legal ability to try it and answer the questions involved.

I have given this illustration. We dealt with justice courts this morning. I take it, however, it fits our situation now. One of the cases in Michigan which is a landmark in municipal law involved a justice court decision involving a $10 note. It was appealed to the circuit court and went to the supreme court. The justice of the peace, the circuit judge and the members of the supreme court all had the same identical question to answer. If it had been answered in the proper manner at the first instance by the justice of the peace, no appeals would have been necessary. Now, if you want probate judges who are not lawyers, I submit that you are going to have them for quite a while, because the provisions that we have written in this constitution, if they are adopted, put in a grandfather clause, and we are not going to hurt any of the present nonlawyer judges.

It happens that 38 years ago I began to work for a member of the 1908 convention who was on the judicial committee. He told me many times that they did not put in the qualifications for judges because they didn't think anybody would ever have the temerity to run for the supreme court unless he was a lawyer, nor would anybody ever have the temerity to run for a circuit judgeship unless he was a lawyer. The probate judges, he said, would take care of themselves because as the state grew and the lawyers grew in proportion, there would be lawyers running for the jobs and they would get them. We still have 33 counties in which the judges are not lawyers.

Now, you have seen the bar poll. I can assure you that the probate and trust law section has been working on this for years. The probate judges association has been working on it. And the consensus of opinion throughout the state among people who deal with the probate courts is that the probate judges—and this applies also to some of those lay judges that you are trying to protect—should all be lawyers and we would then have a fine court system. Thank you.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Messers. Sleder, Plank and Radka to the second sentence of section a of Committee Proposal 96. Mr. Ford.

MR. FORD: Mr. Chairman, I have to oppose the people I have been voting with earlier in the day on this. I don't think that the same reasoning that prevailed with respect to the statutory courts—and all of the courts below probate are going to be statutory in the future if this document is adopted—applies here.

We have to understand that the only way that a probate judge could be required to be an attorney in the future would be by a constitutional amendment, since we are talking about a constitutional court. This is not the case with respect to the courts we talked about earlier. And for that reason, I felt that we shouldn't freeze into the constitution a requirement at this time, but leave it to be handled by the legislature in such a manner as not to cause inconvenience throughout the state.

If the proponents of this measure would ask for the same kind of flexibility that we have asked for with the lower courts—in other words, to put language in here that would permit the legislature to impose upon that part of the state or all of the state at that time, when it thought wise, a requirement that judges be lawyers—then I would be constrained to support them. But when they take from the constitution any authority for the legislature to place such a requirement on the probate courts in the future, then I feel that we have to support the committee and vote against the amendment.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Messrs. Sleder, Plank and Radka. Mr. Danhof.

MR. DANHOF: Mr. Chairman and members of the committee, the requirement here that the judges of probate be attorneys is based upon the idea that we have done many things which will alleviate the present system.

First of all, if you will read ahead in Committee Proposal 96, you will find what is known as a grandfather clause in section f, which will allow nonlawyer probate judges to continue to seek reelection as often as they can convince the voters that they should be elected to their office.

I think, however, that we all agree that the time is fast approaching when, due to the complexity of the probate nature of the court, the legal questions that are therein involved concerning the administration of the states plus the fact that almost 40,000 juveniles were arrested—and, as Mr. Norris pointed out the other day, it is in this field that the civil rights are probably ignored as greatly as in any particular field—the idea of judges being lawyers is an important one.

Judge Coleman came before us, and she is an attorney. She emphasized that in her court at least, she is recommending more and more attorneys be appointed to represent juveniles, for the simple reason that they do have some rights and that it is necessary that they be protected by an attorney. Now, it is mandatory that if that be done, at least the judge be there to recognize the problem when it is approaching, and for that reason the committee recommends and urges that this amendment be defeated and that the judges of the courts of record of this state be made to at least have, as a minimum, a license to practice law.

I agree there are other qualifications which should enter in. We have allowed for the districting of counties. We allow for the grandfather clause to continue, so that this will not be an overnight change. It allows for freedom, and for the legislature to study the problem and to provide for the districting when and if judges who are not attorneys have retired or, if they do stand for election, are defeated or resign, or there is a death in the office. Therefore, the committee very strongly feels on this matter and urges that the amendment be defeated.

CHAIRMAN VAN DUSEN: Mr. Norris.

MR. NORRIS: Mr. Chairman, I want to underscore the excellent points that were raised by Mr. Danhof as chairman of the judiciary committee. I do want to stress 2 fundamental propositions, both based upon the major premise that all people have an interest to see that the judicial power is used in the advancement of justice—this is its function—and that this justice is a high value in the public interest, all of the public in all sections of the state including those areas now serviced by probate judges who are not lawyers. Now, how do we get this, not only in terms of getting people who are attorneys of quality in the community, but persons who have specific training for the job at hand?

I was quite disturbed to see Mr. Sieder, I believe it was, make the point that it is quite possible, for example, to have a CPA or some other person act as a probate judge. I don't wish to be facetious or condescending or patronizing, but ignorance is sometimes bliss, and this is one statement which conjures that up in my mind. When a probate judge deals with the administration of estates and the construction of wills involving what lawyers know as the rule in Shelley's case and the rule on perpetuities, very complicated matters with regard to the judicial construction, I venture to say that this would place quite a strain, even upon those schooled in the methods of certified public accountants, to deal with these problems.

There is no question in my mind but that this is one of the most complicated areas of law. It is a body of law which goes back to Anglosaxon law for several thousands of years and requires a person who is schooled and trained to see that the words are properly construed and that justice is served, and I don't see how this can possibly be done by a person other than one who is licensed to practice. It is one of the anomalies, too, of that same position that a person who comes before that court must be licensed to practice. The person who practices before that court must have a license. And yet the person who is to make the judgment need not have a license to practice law. This is a fundamental inconsistency, and it seems to me we ought to give that appropriate weight in our judgment with regard to this. And the third point I wish to make, Mr. Chairman, is that we have in a previous section indicated that the probate judge shall have exclusive jurisdiction over juvenile matters. The courts have upheld the idea that a person who is a juvenile does not have the benefit of the protections of the constitution of the state of Michigan or of the United States. A juvenile does not have a right to counsel. He does not have a right to have the nature of the charge given to him in detail. He does not have the right by the constitution to cross examine and to confront witnesses and to avoid many of the pitfalls of hearsay and speculation and conjecture.

Now, with the absence of those rights, you are also going to compound the felony by saying the person who is going to protect the interest of the juvenile in the community need not be a lawyer, a person who doesn't even recognize that there are certain constitutional rights which are being constitutionally denied, so that he is not moved to exercise the kind of overseeing of this matter, the kind of examination that is necessary to protect the rights of the individual and the community that is before him in a given case. And it seems to me that here we have an excellent opportunity to elevate the standards of judicial performance in this state. This is one of the needs that experience has demonstrated since 1908, and we ought to give this the kind of weight it deserves in our decision in this matter.

I am certain in my own mind that the people who have been speaking here with regard to this matter ought to reexamine their position in the light of the debate and in the light of our function here to see that in operation a constitution ought to be dedicated to raising the elevation of the performance of judicial power and not minimize. I urge that we defeat this amendment.

CHAIRMAN VAN DUSEN: Dr. Nord.

MR. NORD: Mr. Chairman, I must say that it is with stupendous regret that I have to speak on this subject at all. I feel that it is almost an uncouth subject to talk about. It is such a blow to hear anybody stand on the floor and make remarks to the effect that a layman who feels he is qualified could do a good job as a probate judge. I know there are some probate judges who are not lawyers. In fact, I have some of them as students in my class—and that doesn't reinforce my opinion that they are qualified. My opinion is they need to become qualified, but not that they are qualified.

The definition by law in this state of a person qualified to practice law is that he has passed the bar examination or otherwise been admitted to practice by reciprocity, by having been admitted in some other state. Otherwise, by law he is disqualified from practicing law. He cannot practice in a court of law unless he is licensed to do so, as has been pointed out by Mr. Norris. If he cannot practice before the court, if he is as a matter of law disqualified—may I proceed?

CHAIRMAN VAN DUSEN: You may proceed, Dr. Nord.

MR. NORD: Mr. Chairman, the matter before us is no drop in the bucket, and if people will insist on reading newspapers when this is going on, or having other private conversations, they can be expected to vote wrong on this subject.

CHAIRMAN VAN DUSEN: Your point is well taken, Dr. Nord. The committee will be in order.

MR. NORD: As the saying goes, "Ah appreciate it."

The point I was making—and I may have to start from the beginning, I believe—(laughter) the point I was making is that laymen are by law not qualified to practice in a court of law. Therefore, it follows quite clearly that they are not qualified to be the judge in that court of law. Therefore, let us not get mixed up and say that some laymen are more qualified than others. As a matter of law, none of them are, and as a matter of fact, in my experience, the same thing is true.

When a judge of the probate court gets matters before him connected with the probate of a will, this is no easy matter. He has to know the doctrines of estates and land, for example. And let me ask you, who are the laymen who feel you may be qualified, a few questions. Let me ask you whether you recognize any of these words which have to do with estates which may be in a will and which a judge of probate must understand, must know what they mean. What

is a fee simple? What is a fee simple absolute? What is a fee simple defeasible? What is a fee simple determinable? What is a fee simple subject to conditions subsequent? What is a fee simple subject to executory limitations? What is a life estate? What is a life estate pur autre vie? What is dower? What is a reversion? What is a remainder? What is a contingent remainder? Don't all answer at once. (laughter) What is the possibility of reverter?

When you get to the perpetuity rule that was pointed out by Mr. Norris, that is one of the most exciting rules—there is no doubt about it—and mathematical type rules that there are in law. My students have great difficulty in mastering that, and by good luck all the bar examiner expects the students to know is the rule, not how to apply it. It is too hard to apply—but just to know how to recite the rule.

Now, when you get to wills, the doctrines involving wills are no easy matters either. What do the laymen who say they may feel qualified think about questions like this? What is the effect of mistake in the inducement on a will? What is the effect of mistake in the execution? Can a will be partially valid? What is a holographic will? Does a will need to be published? What is meant by incorporation by reference? What does the doctrine of dependent relative revocation mean?

Mr. Chairman, I believe this matter is extremely serious. I regret very much that what we see here is a step by step attack on the whole idea that we should have justice in this state and that it is our business to make sure that we have justice in this state. First we pick a little piece here. That goes pretty well. So we say, let's pick a bigger piece. If we keep that up, we can't afford to let even the first little piece get into these texts. But that is what we have been doing, a little bite, a bigger bite—pretty soon nothing is left. I say we have gone too far. Let's not make the same mistake twice. Once in a day is sufficient. Let's defeat the amendment.

CHAIRMAN VAN DUSEN: Mr. Dell.

MR. DELL: Mr. Chairman and members of the committee, following these qualified speakers on this subject, I may be getting into foreign territory, but trying to apply it to the upper part of the state—and I being at the head of a finance department of a county, have been for many years—our judge of probate has never been an attorney and I think the office has been well taken care of during this period by qualified men. But our present judge is going to retire, and therefore this grandfather clause will take effect at once, as far as we are concerned. We have 3 attorneys in the county. One is already prosecuting attorney by default because no one else wants to run for the office. Now we are going to have to accept 1 of the other 2 for probate court and probably fill that office by default.

Now, I wonder whether it is better to fill these positions by default rather than taking someone who is not an attorney who would be qualified. Under the circumstances—they say that we can likewise consolidate counties. I don't presume that we should try to decide this by the finance—but I am certain that under the circumstances, if we consolidate, it is going to cost us more money than our present system. For these reasons I must support the amendment.

CHAIRMAN VAN DUSEN: Mr. Shanahan.

MR. SHANAHAN: Mr. Chairman, members of the committee, this is a question that comes quite close to the district I represent. There are 4 counties. Charlevoix county currently is served by a probate judge who is not a lawyer; the same applies to Benzie county and to Leelanau county. Antrim county has a lawyer as a probate judge.

Now, we have heard quite a bit about the grandfather clause as being a palliative, perhaps, or a solution or something that will take care of the interim, and insofar as the incumbent is concerned, that is so. It is not my purpose to be defending them. The constitutional convention has already made provision for them as long as they satisfactorily perform their duty and can get reelected. But what of the county—what of the area—if we go into a district, what of the district that is not able to get a lawyer who is willing to so serve?

Now, contrary to maybe some thoughts here, the lawyer who presents himself as a candidate for judge of probate because of his training has, should I say, the inside track. He has a tremendous advantage to being elected, so that it is not necessary to write into the constitution in this particular office that not only would he have the inside track, but that he would have the absolute guarantee if he is the only one who was willing to present himself for that office.

I am saying again that I am pleading for the consideration of the people in the small communities, in the small counties. If the nonlawyer is not competent, he can be voted out of office, but how difficult it does get when the field is confined to maybe one person and you want to vote him out of office and there is nobody that will be able to qualify to replace him. I am very strongly in favor of this provision being written into the constitution that will allow the small counties to exercise their rights of self government by electing the man that they think is the best qualified for the job, be he lawyer or not.

CHAIRMAN VAN DUSEN: Mr. Austin.

MR. AUSTIN: Mr. Chairman, members of the committee, I hope my remarks will be interpreted as being in opposition to the amendment. I am not in a position to talk for all experts in the state outside of the legal profession, but I do feel somewhat qualified to speak for the 3,000 certified public accountants who are licensed to practice accounting in the state of Michigan.

It is my view—and I think I can speak on behalf of the CPAs—that laymen, including certified public accountants, are not qualified to practice law or to make judicial decisions involving legal matters. Accountants do find it necessary to involve themselves in the interpretation of laws where taxation is involved, but even there they will do it to a minimum. I think that accountants generally spend more time studying the laws relating to the liability of accounting practice than they do any other type of law. CPAs do serve as members of the team involving estate and tax matters, but lawyers are members of these teams. Actuaries and investment counsellors are members also.

It is my personal view that admission to the bar should be a requirement for not only practice before a court but also certainly for presiding over a court. And I would like to say further that if it is necessary to use horrible examples of experts who might be qualified to preside over courts, I would prefer you not use the CPA. Use the plumber (laughter), the barber, notaries public or some other experts. I am opposed to the amendment.

CHAIRMAN VAN DUSEN: Mr. Farnsworth.

MR. FARNSWORTH: Mr. Chairman, members of the committee, I hadn't intended to say anything about this matter, but I cannot let the impression go by that the only place in Michigan that you have good nonlawyer probate judges is in northern Michigan, because that just isn't so. In Allegan county we have a very, very good one—at least my people think so; they vote for him quite regularly and put him back by good majorities—the fact is, without any opposition. We like him. He is doing a nice job. He happens to be a Methodist minister. Incidentally, he defeated the incumbent judge that was a lawyer.

I came to the convention definitely with my mind made up that if this kind of an amendment came up, I would vote for it. But the lawyers' arguments certainly have convinced me that we in Allegan county have indeed been fortunate that we had a layman that was that good. I don't want to take the chance in the future, even for my own county, to let it pass here without supporting the committee on the stand they have taken. I am against the amendment wholeheartedly, and I hope that you support the committee by voting the amendment down.

CHAIRMAN VAN DUSEN: Judge Mosier.

MR. MOSIER: Mr. Chairman and fellow delegates, I have been on the judicial committee, and this question of the matter of judges being qualified by at least being lawyers has had the serious consideration of the judicial committee. It is

something that we have discussed frequently and given good attention to. Some of us have been able to make a contribution to that committee by reason of our experience. Over a period of some 50 years, I have observed the probate courts in my corner of the state, and I want to speak of VanBuren county in particular.

Some 50 years ago the judge of probate in that county was in the office of the judge of probate one day a week. The rest of the time he spent elsewhere. He had one register. The 2 people ran the office. In the last 50 years the population of VanBuren county has increased about 10,000 in population, but the work of the probate court has increased materially, to the extent that there is now a personnel of some 6 or 7 in that office every day. It isn't all clerical work. The judge of probate is frequently called upon to make decisions that involve legal points, questions such as Dr. Nord has suggested, and I am convinced that a judge of probate who is a lawyer and has had legal training is in a much better position to give a correct decision than one who is not a lawyer. We have come to the conclusion that the enhancement and the building up of the virtue of our judicial system in Michigan must be bettered by insisting that persons who hold judicial offices be judges. There seems to be a demand for that throughout the entire state.

Just as an example, let me call your attention to the questionnaire that was sent out by the state bar of Michigan this winter. They asked this question, "Should probate judges be required to be lawyers?" And the answer came back: yes, 4,998; no, 54. Out of some 5,000 lawyers, it is almost unanimous that judges of probate should be lawyers.

Now, as a member of the judicial committee, we felt that it would be unfair to the 1/3 of the judges of probate of Michigan to instantly pull the rug out from under them, some of these nonlawyers serving in various counties. In fact, in my own home county we have a nonlawyer who is a judge of probate. He has done a good job. He has been reelected. But we feel that the transition period that we have provided for in our probate procedure and the election and maintenance of the office of the judge of probate is well taken care of to protect those nonlawyers who are holding the office of judge of probate in the smaller counties. Those nonlawyers can be reelected. They can hold the office as long as the people of that county want them to hold it. But if the time comes that there is no lawyer in that county who is able or is willing to be judge of probate, then we have provided, as you will note by our proposal, that the legislature could then step in and combine 2 or more probate courts into one court to be served by a judge.

In my opinion, I think that the proposals of our committee have been eminently fair, that they are far looking—and they should be far looking—into the future to see that the judicial work of Michigan is conducted by people who are qualified and certified to do that type of work. Personally, I oppose the amendment and stand by the committee's proposal.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Messrs. Sleder, Plank and Radka. Does any delegate desire to have the amendment read again? If not, those in favor of the amendment will say aye. Those opposed will say no.

The amendment is not adopted. Are there further amendments to the second sentence of section a? If not, the secretary will read the third sentence.

SECRETARY CHASE: Mr. King has an amendment to the second sentence.

CHAIRMAN VAN DUSEN: The secretary will read the amendment.

SECRETARY CHASE: The amendment reads as follows:

1. Amend page 1, line 10, after "courts" by striking out "of record"; and in line 11, after the second word "state" by inserting "except that the legislature may create courts of limited jurisdiction in counties under 25,000 population, which law may provide for the election of nonlawyer judges.".

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. King, on which the Chair will recognize Mr. King.

MR. KING: Mr. Chairman, fellow delegates, I hope that we won't get into extended debate on this, because I think everything that can be said has been said. I think that we all recognize that what Dr. Nord said was true, of course; that being a judge is more than just an honor. It requires a little more than compassion and a little more than the ability to read and write. An understanding of the law is essential. But there are situations in the state of Michigan where this just seems to be impracticable, so therefore I would like to offer, as a possible solution to this knotty problem, the idea that in those small counties the legislature can continue to provide for courts of limited jurisdiction without the requirement that the judges be lawyers, and in the rest of the state the citizens can have the best justice which can possibly be made available to them.

I think that we all realize when a lawyer talks on this subject, he is not talking for himself. I have no desire to be a JP or anything that replaces a JP, but I do have a real desire to represent my client when I go into court. I have had some sad experiences and I don't care to take your time relating them because I don't think this is the place for it, but I think that the very least that you ought to be able to hold out to your client is that his case will be heard by a man who understands the law; that he won't have to rely on the police officer and the prosecutor to tell him what the law is. I have had JPs tell me, "Well, you can always get a trial de novo if you don't like my understanding or lack of understanding of the law." Well, of course you can, but these things cost money. They mean fees for the lawyers. Every time a lawyer appeals a case, this is another fee, and maybe we should be happy about this, but frankly I am not. I would rather get justice the first time out.

I think that this proposal is reasonable. It takes into consideration the fact that there are extenuating circumstances in some of the smaller counties in the state, and it follows up the remarks that I made earlier with regard to handling the problem at this particular time.

CHAIRMAN VAN DUSEN: Mr. Madar, did you seek recognition on the King amendment?

MR. MADAR: I just wanted to say, Mr. Chairman, that this morning we discussed at great length trying to reintroduce amendments, and I hope that we won't have to listen to this one all over again like we did yesterday and the day before. I hope we get to a vote quickly.

CHAIRMAN VAN DUSEN: Mr. Lawrence.

MR. LAWRENCE: May I ask Mr. King a question?

CHAIRMAN VAN DUSEN: If the gentleman cares to answer, Mr. Lawrence.

MR. LAWRENCE: Mr. King, would you object to your amendment being amended so that it read, "except that the legislature may create courts of limited jurisdiction not of record in counties under 25,000"?

MR. KING: No, I would have no objection to that whatsoever.

MR. LAWRENCE: I wonder if it might be so considered.

CHAIRMAN VAN DUSEN: Without objection, the amendment will be so revised. I hear none.

[Following is the amendment as revised:

1. Amend page 1, line 10, after "courts" by striking out "of record"; and in line 11, after the second "state" by inserting "except that the legislature may create courts of limited jurisdiction not of record in counties under 25,000 population, which law may provide for the election of nonlawyer judges.".]

The question is on the amendment, as revised, offered by Mr. King. Mr. Danhof, do you desire recognition on the King amendment, as revised?

MR. DANHOF: Mr. Chairman and members of the committee, my own personal opinions might be in favor of supporting Mr. King, but again I am faced with this particular proposition: as I have argued before, I am not in favor,

particularly, of writing numbers into the constitution, and we took them out when it came to the probate courts. I think that we have before us a matter which could well be considered when the legislature, as we hope they will do, will establish these courts of limited jurisdiction.

As Mr. Hanna pointed out, it may well be that they will not just consider population alone, because the mere fact that you may have a number of people residing in a particular area does not necessarily mean that there are available the attorneys to staff the judiciary. It is sometimes more important to look at the lawyer population or the active lawyer population than it is the number of bodies that happen to be occupying a particular area of real estate.

I agree that we should obtain the best justice that we possibly can, but I am not sure that writing in an arbitrary figure such as we have here will do it. I favor the report of the committee. I voted that we have lawyers in all courts. But I don't like to begin to carve it up within the constitution. For the reason that I there stated, trying to put my personal feelings aside, which might be a little difficult, I admit, I shall oppose this particular amendment.

CHAIRMAN VAN DUSEN: Mr. Higgs.

MR. HIGGS: Mr. Chairman and members of the committee, while I myself had used such a figure of 25,000 in another proposal, I would not want it understood that I favor this one at this time. I feel that we should support the committee in this particular matter and leave this to the legislature. I think this is basically a legislative matter. I believe that if we maintain the articles that the committee has already adopted, we have given the legislature sufficient flexibility for the development of a court of limited jurisdiction which can serve the needs of the people throughout the state regardless of locality, and in the long run the development of such a sound court of limited jurisdiction will ultimately produce a type of court with sufficient business that these courts can be filled by legally trained people. I think that this is a legislative matter. I oppose it—although if I were in the legislature, I might support it. I think we have given the legislature, as of now, in the articles we have passed, sufficient flexibility to solve the problem.

CHAIRMAN VAN DUSEN: The question is on the amendment, as revised, offered by Mr. King. Does any delegate desire to have the amendment read again? The secretary will read the amendment.

SECRETARY CHASE: The revised amendment offered by Mr. King:

[The amendment was again read by the secretary. For text, see above, page 1505.]

CHAIRMAN VAN DUSEN: Those in favor of the amendment will say aye. Those opposed will say no.

The amendment is not adopted. Are there further amendments to the second sentence of section a? If not, the secretary will read the third sentence.

MR. FAXON: Mr. Chairman, I want to ask a question.

CHAIRMAN VAN DUSEN: Mr. Faxon.

MR. FAXON: I would like to ask a question on the second sentence. Is that all right?

CHAIRMAN VAN DUSEN: You are in order, Mr. Faxon.

MR. FAXON: Mr. Danhof, through the Chair, on this part here where it says "except as authorized otherwise by this constitution," and then in section f where you state that those people who presently serve will continue to serve, was any thought given to whether this might better be included in a proposed schedule rather than being incorporated into the constitution as such, since the matter would expire after so many years?

MR. DANHOF: Mr. Faxon, in answer to your question, we would have no objection to where it is finally placed as long as it is there. We agree that maybe this is a scheduling provision. On the other hand, we had to provide for it in this particular article. We have another provision in here that is strictly scheduling, section j. We quite agree that this might not belong in the judicial article either, but it should be in there. Wherever it may be placed is no particular problem as long as it is there and gives the protection that we intended for the sections to do. We have no preference as to where it goes.

MR. FAXON: Then the committee on style and drafting could make any such adjustment as would be necessary to comply with this and yet not include it in the specific language which you have here?

MR. DANHOF: Well, Mr. Cudlip has served on the judicial committee. He knows what we intended. He is chairman of that committee. I am sure he will put it in the right place.

CHAIRMAN VAN DUSEN: The secretary will read the third sentence of section a.

SECRETARY CHASE: Beginning in line 13:

[The third sentence of section a was read by the secretary. For text, see above, page 1478.]

CHAIRMAN VAN DUSEN: Are there any amendments to the third sentence of section a? Are there any further amendments to section a? If not, it will pass.

Section a, as amended, is passed. The secretary will read section b.

SECRETARY CHASE: Section b:

[Section b was read by the secretary. For text, see above, page 1478.]

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: Mr. Chairman, members of the committee, for the committee report in this particular section, I would like to yield to the delegate from Bad Axe, Mr. McAllister.

CHAIRMAN VAN DUSEN: Mr. McAllister.

MR. McALLISTER: Mr. Chairman and fellow delegates, I don't believe that this section needs much of an explanation. It means just what it says. If a judge moves out of the district in which he was elected, then, of course, his office is deemed vacant and he is deemed to have vacated the office. I recommend that this section be adopted.

CHAIRMAN VAN DUSEN: Are there any amendments to section b? If not, section b will pass.

Section b is passed. The secretary will read section c.

SECRETARY CHASE: Section c:

[Section c was read by the secretary. For text, see above, page 1478.]

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: The speed with which the last section passed simply amazed me, Mr. Chairman. (laughter) In regard to this particular section, I should like to call upon the delegate from Oakland, Mr. Woolfenden.

CHAIRMAN VAN DUSEN: Mr. Woolfenden.

MR. WOOLFENDEN: I hope to be able to do as well as Mr. McAllister, because I think this section likewise should not be the subject of any controversy. I can give you briefly the background of the section. In section 9 of article VII of the Constitution of 1908—and in turn that language comes from the Constitution of 1850, substantially—there is this language, interpolating so that it is intelligible: circuit judges shall be ineligible to any other than a judicial office during the term for which they are elected and for 1 year thereafter. This provision or one substantially identical is almost universal in the country. The Canons of Judicial Ethics of the American bar association, last amended August 31, 1933, has a similar provision that any incumbent judge cannot be a candidate for any other than a judicial office during his incumbency. That canon has been adopted by the Michigan supreme court for the regulation of the problem in the state of Michigan, Canons of Judicial Ethics.

Now, the language proposed in proposed section c is substantially identical with the provisions I have mentioned from the Constitution of 1908 and the Canons of Judicial Ethics

so far as objective is concerned. I should point out the distinction to you that the language in the committee report limits the office to which an incumbent judge of any court in Michigan is ineligible to an elective office other than a judicial office for the period of his service as a judge and for 1 year thereafter. That was considered fully by the committee, and it was felt that the possibility of abuse of an incumbent judge's position by his candidacy for another office would be for an elective office. It would be his campaigning for some office other than a judicial office that would be against the best public interest, so it was limited to elective office only. I would be glad to respond to any questions if there are any from any delegate.

CHAIRMAN VAN DUSEN: Are there any amendments to section c? Mr. Hutchinson.

MR. HUTCHINSON: Mr. Chairman, I would like to ask Mr. Woolfenden a question. Perhaps he did cover this. I tried to listen to him, but I was interrupted here 2 or 3 times. Did you also point out this distinction, Mr. Woolfenden, between the proposal and the present provision, in that the present provision apparently would make a judge ineligible for anything but a judicial office for the entire term for which he was elected? For instance, if he had been elected for a 6 year term, then during that entire 6 years plus 1 year thereafter, he would not be eligible for other than a judicial office, whereas in your proposal, suppose he had been elected to a 6 year term. He could resign, presumably, at the end of a year, and then wait a year and then run for another office.

CHAIRMAN VAN DUSEN: Mr. Woolfenden.

MR. WOOLFENDEN: Mr. Chairman, Mr. Hutchinson, I had not pointed that out, and I appreciate your having done so.

MR. HUTCHINSON: Thank you.

CHAIRMAN VAN DUSEN: Are there any amendments to section c? If not, section c—Mr. Wanger.

MR. WANGER: Mr. Chairman, I would like to ask Mr. Woolfenden or any other member of the committee why this change was made. It seems quite clear, the purpose of providing that a judge should not run for a public office during the term for which he was elected or appointed or for 1 year thereafter. What was the reason for removing that qualification and making it possible for the person to advance politically much more rapidly through the means of serving on a court than is the case under the present constitution?

CHAIRMAN VAN DUSEN: Mr. Woolfenden.

MR. WOOLFENDEN: Mr. Chairman and Mr. Wanger, taking the example that Mr. Hutchinson suggested where a judge, for whatever reasons appeal to him personally, resigned after 1 year of service on an 8 year elective term, the committee could see no reason why he should be debarred from consideration for other public office for a period of 8 years from his resignation. It seemed that was an unreasonable delay to debar his candidacy for any other office for the balance of the term, which would be 7 years plus 1 year thereafter, and we felt that one year after the period of his service was ample protection of the public interest.

CHAIRMAN VAN DUSEN: Mr. Wanger.

MR. WANGER: At least one effect, then, of the change which the committee proposes from the present constitution would be that it would make it easier for persons to use the judicial office as a political stepping stone than is presently the case; isn't that true?

MR. WOOLFENDEN: I would not agree that this is so, because I think that political popularity is a very volatile thing, and I think after a man had been off of the bench for a year, the fact that he had previously been a judge would not be particularly helpful to him in advancing a political candidacy.

CHAIRMAN VAN DUSEN: If there are no amendments to section c, section c will pass.

Section c is passed. The secretary will read section d.

SECRETARY CHASE: Section d:

[Section d was read by the secretary. For text, see above, page 1478.]

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: Mr. Chairman, for the committee report on this particular section, I would like to yield to the delegate from Ypsilanti, Mr. Lawrence.

CHAIRMAN VAN DUSEN: Mr. Lawrence.

MR. LAWRENCE: Mr. Chairman, members of the committee, as is pointed out in the report of the committee on section d, this is a substantial change from the former provision. The former provision was in section 20 of article VII, and it provided:

> When a vacancy occurs in the office of judge of any court of record, it shall be filled by appointment of the governor, and the person appointed shall hold the office until a successor is elected and qualified. When elected, such successor shall hold the office the residue of the unexpired term.

In other words, in effect, it provided for the filling of vacancies in the office of a judge of a court of record by appointment of the governor. That has been one of the criticisms that we have found have been leveled at the existing system. The fact that the present system allows the unresticted appointment of the judge of a court of record, when it is to fill a vacancy, by the governor without any accountability to anyone has been the subject of much talk, debate and discussion.

The present provision, in effect, retains the philosophy of an elected judiciary. Actually, the former system provided, as far as filling vacancies is concerned, the appointment system, but the committee adopted this view that the elective system was what the people of the state wanted. The effect of it would be that when a vacancy occurs, it would be temporarily filled by an appointee of the supreme court that the supreme court would choose from the list or panel of retired judges throughout the state. This retired judge would serve, if it was necessary to have the vacancy filled, until an election is held. The election would be provided by law—in other words, by the legislature—as to when it would be held and so forth. Of course, the retired judge would not be eligible to be a candidate at that election. The election would be held, the vacancy would be filled, and the new judge then would take the bench.

Now, this applies to all courts of record throughout the state, and the feeling is that this would give the people the opportunity of making the initial selection of the judge as well as the selection or the retention of the judge at a later date. The second portion, having to do with the filling of the temporary vacancy, I have already touched on. I wonder if there is any question that any of the members have in mind.

CHAIRMAN VAN DUSEN: Mr. Shackleton, the Chair believes, has a question, Mr. Lawrence. The Chair will recognize Mr. Shackleton.

MR. SHACKLETON: Mr. Chairman, a question of Mr. Lawrence, through the Chair, please.

CHAIRMAN VAN DUSEN: If the gentleman cares to answer.

MR. SHACKLETON: Would that mean that a judge who retired because of having reached compulsory retirement would be ineligible to be used? It says "voluntarily retired."

CHAIRMAN VAN DUSEN: Mr. Lawrence.

MR. LAWRENCE: I don't know that I can answer that, Mr. Shackleton. It was my understanding that it was only to eliminate those who resigned, in the sense of not, say, filling out a term or before retirement age. But it was also my understanding that any retired judge, and I think that is what the word "voluntarily" means there, whether due to age—and it would be, of course, due to age if he didn't resign—or if he refused to run again, he wouldn't be voluntarily retired, so I think it would only apply to those judges who had reached retirement age. Is that your understanding, Mr. Danhof?

CHAIRMAN VAN DUSEN: Mr. Lawrence yields to Mr. Danhof.

MR. DANHOF: Mr. Shackleton, the word "voluntarily" is correct as Mr. Lawrence uses it. We realize that maybe the

judge doesn't actually retire voluntarily when he is over 70 and his term expires. They say, "Well, we would want to go on." Perhaps you might have a compulsory voluntary. But as Mr. Lawrence pointed out, what we intended certainly was that judges who had reached retirement age, who had retired, were drawing their retirement pay, could be called back for temporary service during the time that the vacancy would occur. This would not be of a permanent nature.

We quite agree that legislation might be needed in the adjustment of the pension laws, and naturally they would only serve if they wanted to. We certainly aren't going to force anybody. There isn't even a requirement here that the supreme court has to take them. They may, in effect, decide not to do this, and if there is a vacancy, they would assign another judge from another circuit. There is nothing mandatory about it. It would simply provide that for the judges who have retired, if the call were made and if they were willing to serve a month or 2 months or 3 months to fill the vacancy, pending the election of the successor, that this judicial manpower could be utilized.

The word "voluntarily" was not meant in the sense that you have assumed here, and if there are other words that can be inserted, certainly we would welcome them. But we did not desire the judge who might have resigned for one reason or another or not completed the full time to retirement age. We only wanted judges that had completed their active service and were in a retired status.

CHAIRMAN VAN DUSEN: Mr. Shackleton.

MR. SHACKLETON: If the word "voluntarily" were removed, wouldn't that take care of it?

MR. DANHOF: It might well be. This has been suggested to us, and it probably could be removed and "those who are retired" substituted, and they probably won't be retired until they get to 65 or 70 anyway to draw their pension.

CHAIRMAN VAN DUSEN: Mr. Hatch? Mr. Hutchinson.

MR. HUTCHINSON: Mr. Chairman, I would like to ask Mr. Lawrence what the situation would be in this hypothetical situation. Let us say the probate judge in a county dies. Now then, I take it that it would be up to the supreme court to fill the vacancy. But there are no retired probate judges or any living former probate judges in the county, nor are there any retired circuit judges in the county. I take it then that there would be no alternative to the supreme court moving in a retired judge from some other part of the state in order to serve as the probate judge of that county.

If that is a true assumption of the only solution to the problem, my query is whether the committee honestly thinks it would be good public policy to move into a county to act as its probate judge someone completely unfamiliar with the county, no roots in the county, no background in the county and so on in order to perform that. Is that better public policy than to provide, somehow or other, for the temporary appointment of at least a resident of the county to act as probate judge?

CHAIRMAN VAN DUSEN: Mr. Lawrence.

MR. LAWRENCE: Mr. Hutchinson, I don't know whether it is better, but it certainly wouldn't be a tragedy. I can speak from personal experience on that. When Judge Payne, who was a probate judge in Washtenaw county, died there was a period of well over a month—I think about 6 weeks—before his successor was appointed, Judge Conlin. During that time we had a rather anomalous situation. Part of the time the circuit judge acted as probate judge which, of course, the circuit judge can do. But we brought in Judge McAvinchey for several days at a time. We brought in other probate judges from outside the county. That can be done now. As a temporary proposition, if the workload is sufficient for a man full time, I think it is as important to have a man who is familiar with the practice, even though he lives outside the county, as it is to put a person unfamiliar with the practice—let's say a lawyer who has had no judicial experience—in there for that short period of time even though he lives in the county.

You notice that the committee report does not say that these judges have to have served in the same kind of a court. In other words, as the committee proposal reads, if you had a vacancy in the supreme court and there were no retired supreme court justices available, it would not prevent the supreme court from appointing a former circuit or probate judge or of any court of record as a temporay proposition until the vacancy could be filled by an election by the people.

CHAIRMAN VAN DUSEN: Mr. Hutchinson.

MR. HUTCHINSON: One further question of Mr. Lawrence. Assuming that we will be having elections not oftener than once every 2 years in the state, it could be that such an appointee could serve for almost 2 years; is that right?

MR. LAWRENCE: That would be true if the legislature so provided, but the last part of the first sentence says, ". . . it shall be filled at a general or special election according to law." So if the legislature so provided, it could provide for a special election.

MR. HUTCHINSON: Thank you, Mr. Lawrence.

CHAIRMAN VAN DUSEN: Mr. Snyder, did you desire to direct a question to Mr. Lawrence?

MR. SNYDER: Thank you, Mr. Chairman. Mr. Hutchinson has covered the bulk of the matters that I had proposed to inquire about. Again it appears to me that the logic advanced by the committee to support section d is in complete reversal of the logic that was used by the committee members when they presented section b. I just can't help but feel that if it is wrong for a judge to vacate his office because he moves in one instance, it is certainly just as wrong to appoint a judge who is not a resident of the circuit or district to fill a vacancy. I don't think that the logic advanced by the committee members in section b and the present section is consistent.

CHAIRMAN VAN DUSEN: Mr. Lawrence.

MR. LAWRENCE: Mr. Snyder, I understand your reasoning there, but remember that Judge Pugsley was sent to Wayne county when he was an active circuit judge in his own circuit for a period, I believe, of several months, was it not, Judge Pugsley? Two years, Judge Pugsley tells me. That has been the practice, when the situation demanded it, to be able to bring outside judges in. However, Judge Pugsley still retained his judgeship and probably served on occasion in his own community to take care of matters during that period.

There is a difference between that and having the judge pull up his roots and permanently leave the community in which he is elected to serve, and I think that that, Mr. Snyder, is really the basic thing behind it.

CHAIRMAN VAN DUSEN: Mr. Everett, did you desire to participate in this discourse? The Chair recognizes Mr. Everett.

MR. EVERETT: Mr. Chairman, fellow delegates, I think we may be losing sight of the main purpose of this whole proposal, which is to fill vacancies by election. Now, we recognize that there may be situations where, in order to have proper judicial administration pending that election, it may be necessary to call somebody in temporarily to fill the vacancy. But when you talk about the supreme court filling vacancies by appointment and so forth, what we are saying is that judicial vacancies should be filled by election; if the judicial business is so great that you can't wait for that time, then a temporary expedient is used by calling upon qualified men to fill this office temporarily until the election is held. But the tenor of the proposal is that instead of having an appointive system to fill vacancies in the judiciary, we now are saying that there must be an elective system as there is, for example, in the legislative branch, and that is the heart of the proposal, the use of retired judges simply not to permit all judicial business to come to an end while we are waiting for the election.

CHAIRMAN VAN DUSEN: Mr. Lawrence.

MR. LAWRENCE: I might say that if you read the second sentence of that paragraph, it could even apply to the situation where a retired judge could, if contacted by the supreme court, say: well, I can serve for 2 weeks or a week or 3 weeks — but if the vacancy continued beyond that, they could bring in another judge. In other words, it is merely the present system, as far as that is concerned, something we

have lived with, something that has met with our approval, that we have liked for years, and that is bringing outside judges in for special situations.

CHAIRMAN VAN DUSEN: Pursuant to their minority report, Messrs. Ford, Garvin, Bledsoe, Miss McGowan, Messrs. Ostrow, Krolikowski and Barthwell have submitted an amendment which the secretary will read. Mr. Ford.

MR. FORD: Mr. Chairman, I understand that Mr. Lawrence was holding the floor for questions, and I had some questions I wanted to ask before we went into the minority report.

CHAIRMAN VAN DUSEN: You may proceed, Mr. Ford.

MR. FORD: Mr. Lawrence, for the benefit of all the delegation, could you tell us what the average retirement age of a supreme court, circuit and probate court judge is in the state of Michigan.

CHAIRMAN VAN DUSEN: Mr. Lawrence.

MR. LAWRENCE: Mr. Ford, I cannot answer that question. As I recall it, there has been some activity in that field recently, and I don't know just what the situation is now. It was 70 years, I believe, here awhile ago.

MR. FORD: That is the age at which they can retire, but did you make any inquiry at all in preparing this recommendation as to what the actual age of retirement is in the state of Michigan?

MR. LAWRENCE: I'm sorry, Mr. Ford, would you repeat that?

MR. FORD: Understanding that the present requirement is that a judge must retire at the end of the term in which he becomes 70 years of age, it is understandable that they don't all retire on their seventieth birthday. Did you make any inquiry of what the actual age of the judges retiring from our courts is?

MR. LAWRENCE: I did not. But we have, Mr. Leibrand informs me, 5 retired judges in this convention. Perhaps one of them would be able to answer Mr. Ford's question.

CHAIRMAN VAN DUSEN: The Chair sees no one who desires to answer your question, Mr. Ford.

MR. LAWRENCE: Then I don't feel badly about not being able to do it either.

CHAIRMAN VAN DUSEN: You may proceed, Mr. Ford.

MR. FORD: The second question. In investigating and preparing the material for this recommendation to us, did you make any determination of how many voluntarily retired circuit judges are now available and physically and otherwise able to serve from the supreme court, for example?

CHAIRMAN VAN DUSEN: Mr. Lawrence.

MR. LAWRENCE: No, I did not, Mr. Ford. You were on the committee and I believe you would recall as well as I would about that. I can't answer that.

MR. FORD: I never have advocated this so I didn't do this kind of research. I thought you would have — if you were going to advocate that we use these people — been able to tell us whether or not there are any available. Now, how about the probate judges? Do you have any idea how many of them are available?

MR. LAWRENCE: I don't see that it makes, Mr. Ford, any particular difference whether they are retired circuit, supreme or probate court judges. The supreme court can fill the vacancy from any of them.

MR. FORD: Is it fair then that you assume that the supreme court could take a retired probate judge and make him a supreme court judge?

MR. LAWRENCE: That is what the provision says, and it seems to be perfectly consistent with reason.

CHAIRMAN VAN DUSEN: Mr. Ford, do you have further questions?

MR. FORD: Yes. Do you have any information on the number of retired circuit judges that are available?

MR. LAWRENCE: No, I do not. I know there are 5 in this convention.

CHAIRMAN VAN DUSEN: The committee will be in better order, please. Mr. Ford.

MR. FORD: Since you have no idea now, did you make any attempt to determine how many might be available on an actuarial basis or on the basis of experience in any period 5 or 10 years from now?

MR. LAWRENCE: No, except that I understand that because of this retirement provision which has been put in, the number will increase as time goes on; that is, assuming the atomic bomb doesn't fall or something like that, it should increase.

CHAIRMAN VAN DUSEN: Mr. Ford.

MR. FORD: That is all of the questions I have.

CHAIRMAN VAN DUSEN: Mr. Downs, do you desire to propound a question to Mr. Lawrence with respect to the committee proposal?

MR. DOWNS: Yes, if I am in order, Mr. Chairman.

CHAIRMAN VAN DUSEN: You are in order.

MR. DOWNS: Mr. Lawrence, I was going to ask about the hypothetical situation where there might not be a judge available, but I won't. Instead of that, I would like to raise the question that I believe those who have advocated the appointive system of judges have argued at some length; that that meant the people would have a chance to review the work of the judge temporarily filling that position, and be able then to vote for that person or against that person.

Am I correct that this system of filling the judicial vacancy by the retired person precludes the people from having the advantage of voting for or against the person as a result of his experience in this temporary position?

CHAIRMAN VAN DUSEN: Mr. Lawrence.

MR. LAWRENCE: Well, I would say in part. And in part it would prevent the appointment of someone who they had no selection of to fill the vacancy, yes. Mr. Ford, I have been informed by our good delegate, Mr. Erickson, that there are 34 retired circuit judges in the state of Michigan.

CHAIRMAN VAN DUSEN: The Chair takes it, Mr. Erickson, it was for that purpose that you sought recognition earlier?

MR. ERICKSON: Yes.

CHAIRMAN VAN DUSEN: Mr. Ford.

MR. FORD: Lest that statistic hang in the air, my question wasn't how many are retired. How many of them are retired and physically and otherwise able to fill these vacancies?

MR. LAWRENCE: I have not made any physical or mental examination to this end. (laughter)

CHAIRMAN VAN DUSEN: Mr. Erickson.

MR. ERICKSON: I believe, from my knowledge of many of these retired judges, many of them would like to have a proposition like this and many of them would like to get back on the bench for a short time.

CHAIRMAN VAN DUSEN: The question is now upon the amendment offered by Mr. Ford and others pursuant to their minority report, which the secretary will read.

SECRETARY CHASE: The amendment reads as follows:

1. Amend page 2, line 5, after "Sec. d.", by striking out the balance of the section and reinserting the language of article VII, section 20 of the 1908 constitution, which language reads as follows:

"When a vacancy occurs in the office of judge of any court of record, it shall be filled by appointment of the governor, and the person appointed shall hold the office until a successor is elected and qualified. When elected, such successor shall hold the office the residue of the unexpired term.".

CHAIRMAN VAN DUSEN: The question is upon the amendment offered by Mr. Ford and others. Mr. Ford.

MR. FORD: For those who are interested, you can find our explanation of the minority report in the journal in the lower left hand column of page 581. The effect of this amendment is to replace in the proposed constitution the language of present section 20 of article VII. It has just been read to you by the secretary. To read briefly from our reasons:

> The proponents of this minority report believe that the majority's recommended prohibition against the filling of vacancies by gubernatorial appointment would create a unique problem that could conceivably result in prolonged vacancies on the bench.
>
> The majority proposes that pending the occurrence of an election to fill a judicial vacancy, the vacancy could be

temporarily filled by retired former circuit judges. An examination of the number and location throughout the state of retired judges available for this service casts strong doubt on the practical value of this method to meet the problem.

I might indicate that in the county of Wayne, I am informed that we have only 2 retired circuit judges who are still residents of the county, and both of them are well past 80 years of age.

It is apparent from many years of experience with the present system that judicial vacancies have been filled by the governors of this state on a careful and considerate basis.

I want to emphasize this. I don't think that we have had anyone appear before the judiciary committee who has criticized the quality of the appointments made by any governor of this state. I am sure that there are members of this convention who are not at all happy about the large number of appointments that were made during the past 10 years, but this is an unusual circumstance, and we should bear in mind that during the early '50s there came into being a mandatory retirement provision with respect to circuit judges that resulted in a large number of circuit judges retiring in a more or less simultaneous manner. In other words, during a very short period of time we had an unusually large number of judges retiring simply because this act came into effect. Now, since it is now in effect, and since many younger men have been put on the bench, it is not likely that we will have the large supply or relatively large supply of retired circuit judges in the future that we have had during the past 8 or 10 years. Some of the problems that have arisen with respect to retirement would indicate that the general cause for retirement during the past 10 years has actually been this compulsory age factor which came into effect, I am informed by Judge Dehnke to the best of his recollection, about 1952.

It is apparent to us that from the many years of experience with the present system, judicial vacancies have been filled carefully and that men of very high quality have been selected. We feel that this has been borne out of the frequency with which the people have chosen, regardless of the political affiliation of the judge before his appointment, to return the judges to the bench when they next come up for election, and this is something that you can't cut down on party lines, because this has been true of both Democratic and Republican appointments, whether they were appointing Democrats or Republicans to the bench. In the vast majority of cases the judges that have been appointed have met the approval of the bar and met the approval of the people and have been returned to the bench when they went before the people for reelection.

Now, some people would indicate that there are a lot of reasons for this percentage of people being returned after appointment in the first instance. I think that Tom Downs put his finger on the fact that those who have been advocating an appointive system all along want a method of determining whether you are going to get a chance to vote just in a straight popularity contest or get a chance to vote for someone who has had a short time on the bench and has been exposed to the judiciary to some extent so that people have an opportunity to appraise him in context with the position they are trying to elect him to or trying to prevent him from being elected to. We feel that the present system provides this additional feature, a desirable feature, in the elective process. We feel that the present system has produced a good judiciary and that statistics indicating that a large number of our judges reached the bench in the first instance by gubernatorial appointment and are retained there is evidence of the fact that good selections are made and that they have inspired confidence, and that the people do have confidence in the kind of people that have been selected.

The language of the present section 20 of article VII of the 1908 constitution is essentially the same language that was contained in the previous constitution of this state, and by tradition the governor has had the power and the authority to fill vacancies in courts of record when vacancies occur between elections until the next time that there was an election so that the people can ultimately make the selection. This tradition has served the state of Michigan very well over the years and, as I have indicated before, has produced a good judiciary. And I haven't yet heard a strong and compelling reason for abandoning it at this present time. No one has indicated to us the advantage to the judicial system of temporarily appointing people from outside of a county to come in perhaps a month or 2 months at a time and then someone else comes in for a month or 2 months, and you fill the vacancy for a year, a year and a half or 2 years by having a series of temporary appointments of nonresident judges who at great inconvenience to themselves come into a circuit and attempt to take care of the problem.

We feel that in the absence of some compelling reason for departing from this traditional method which has proven to be effective and worked to the best interests of the state of Michigan, we shouldn't abandon it for something that has nothing to recommend it except that it is different. This is truly a "change for the sake of change" proposal on the part of the majority of the committee, and there may be other reasons for wanting this in the constitution, but none of them have been stated on the floor thus far. I would like at this time to yield to one of my cosponsors on the minority report amendment, Mr. Harold Bledsoe.

CHAIRMAN VAN DUSEN: Mr. Ford yields to Mr. Bledsoe.

MR. BLEDSOE: Mr. Chairman and members of the committee, I served on the judiciary committee when this question came up. I couldn't bring myself to any reason, nor with any suggestion made, in my judgment, to furnish any valid reason for bringing back the old judges. Frankly, when a judge has served his period to retirement, I think that it is almost like double jeopardy to resentence him to the rigors of hard and laborious work and life and dedication that he undertakes when he has served 35 to 40 years on the bench. I think it is unkind.

Of course they will come back and serve. It is just like an old fire horse that some of you know about if you have lived that long. When you retire an old fire horse, when that bell rings, if you don't hold it in the stable, if you just open the door, he will follow the wagon to the fire. It has become habit. And they are men of fine responsibility and men of delicate sensitivity, and of course they are not going to decline to serve a public that they love and that they have served so many years. Bringing back old judges to serve does not offer anything advantageous to the public or to the electorate. What does it do? This is simply a device. That is all it is. It is a device to do away with the so called temporary appointive system. That is all that it does. The electorate or the public doesn't get any benefit from it as against what they get from the appointive system, because it is a temporary appointive system.

When this matter came up and was argued before the committee, we lawyers thought — I want you to get that — it was unfair to the competing candidate who might run against an appointive representative of the appointing authority and that the fellow who didn't get the appointment would suffer a certain disadvantage because, they went on to say, the majority of the lawyers, once they were appointed, seemed to get reelected by the public. So, really, the tears that were shed down in the committee among the 20 some lawyers indicated that we were in sympathy with a lawyer who didn't get the appointment and who, because he didn't get it, had run to a certain disadvantage. So in order to help that lawyer out for the race that he had to run, the idea was that they would start off at a better advantage.

Now, with that I agree. That was the argument down there. So in order to keep that out, we said "We will let them get to the mark and all start at the same time." Now, that reason that was discussed among us lawyers around the table, as against the idea of the temporary appointment, would give the lawyer who got the appointment, after he had met the qualifications that made his appointment imminent,

or temporarily, anyway, a chance to go through a period of trial and error. Now, who benefits from that? The public, not the lawyers. If the vacancy occurs for a period of a year or 2 years or less, we get a chance to see just what kind of judge that fellow is going to make. Who benefits from that? The public.

If it appears that he is going to be a good judge and that the appointing authority acted wisely in appointing him, if the public becomes so impressed after this period of trial and error, the public then has an investment in that appointment.

The lawyers begin to say around the courts — if you will pardon me for using this expression — "Gee, this fellow looks like he's going to make it; a pretty decent guy." The lawyers begin to speak about him, and immediately the rumor begins to get through the community. Who benefits from this? The public. And if he doesn't get this type of recommendation during that trial and error period, the word gets out, "Let's beat this guy. He isn't right." That gets down through the community too. And it isn't every judge who is appointed that gets reelected. Who benefits from that? The public. You get a chance to try.

I hate to use this illustration because it isn't a good comparison, but the bachelors spoke here about marriage the other day and said that you can never tell how a wife is going to work out until you actually marry her. I believe that was uttered here on the floor the other day. The same way with your judges. Let's not stop the trial period of marriage for the judge for that interim appointment, because it is the public who benefits. I believe that that interim period for the temporary appointment made by the governor gives the public a chance to look the judicial prospect over and, as a matter of fact, it gives the public a chance to see just what type of administrator or public faith and public confidence the public may expect from him.

I therefore feel that the proposed change of bringing the elder judges back and then suddenly putting in untried lawyers without any judicial experience or an opportunity to see what they might do temporarily during that interim period is certainly a benefit that the public ought to have if it were available to them, and if we don't do that, we are denying the public the benefit of the trial and error period where they will have an opportunity to see what kind of men they are going to elect for anywhere from 6 to 8 years. That is exactly what we are giving up when we bring back the older judge and setting men on the bench to be elected for the full term without having any opportunity of a trial and error period.

I am against the committee report that would recommend doing away with this procedure. I say that change for change's sake is unworthy in so important a thing as electing your judiciary.

CHAIRMAN VAN DUSEN: The Chair would state, looking about our sparsely settled chamber, that over the course of the last 2 weeks, he has empirically evolved what may come to be known as Van Dusen's law to the effect that in any unlocked chamber, the size of the audience tends to vary inversely with the length of the preceding speech. (laughter) Mr. Higgs.

MR. FORD. Mr. Chairman.

CHAIRMAN VAN DUSEN: Mr. Ford.

MR. FORD: I don't want to foreclose Mr. Higgs, but I yielded to Mr. Bledsoe.

CHAIRMAN VAN DUSEN: The Chair is in error. You retain the floor, Mr. Ford. Do you have further presentation?

MR. FORD: There are other sponsors, and I would like to yield to them if they would like to add to it. Mr. Ostrow, I believe, is next.

CHAIRMAN VAN DUSEN: Mr. Ostrow.

MR. OSTROW: Mr. Chairman, ladies and gentlemen of the committee, I will only take one minute to point this out. The present system has worked well over the last 50 years. You look back over the quality and caliber of the judges that we have had for the last 50 years, and it has been a good workable system. Now, if you look at the possibilities for the next 50 years, if we obtain the same caliber and quality of judges that we have in the past, the people of the state of Michigan should be well satisfied. From my own viewpoint, the present system justifies itself if for no other reason than it enables a man like Raymond Starr to be appointed to the Michigan supreme court bench. I am sure there will be others like him appointed.

CHAIRMAN VAN DUSEN: Mr. Ford, have you further presentation?

MR. FORD: I would like to yield to Mr. Garvin.

CHAIRMAN VAN DUSEN: Mr. Ford yields to Mr. Garvin.

MR. GARVIN: Mr. Chairman and delegates, much has been said here, even since we have been on the judiciary committee, about the various persons throughout the United States, particularly Wisconsin, Minnesota, Illinois, New York, New Jersey and representatives from the judicature society appearing before this body, and there is one thing that you have to keep remembering: that regardless of the proposals of the committee, regardless of who proposes amendments, nobody has had complaints against the judiciary of the state of Michigan.

Now, it is nice to change to be changing — it is a great thing. That is the very reason we are here, I believe some think, to change the constitution, each and every word. In fact, in the judiciary, we took out the whole article and started from the beginning. This, regardless of the fact that it is admitted that we have a good judiciary in the state of Michigan.

The "why" of it is hard to say. When you go over the committee report reasons given by Mr. Lawrence, you can't find a reason. If you will look at your reasons for the committee proposal, you can't find a good reason excepting the governor appoints them. Is that a good reason to make a change? I submit that it is not, because the record over the past 50 years says that it is not. The record over the past 50 years practically, by proof, shows that article VII, section 20 has worked well and shall continue to work well.

You know, there is one thing we forget about when we are talking about just everybody running for a judicial office. You are faced with a situation of unknown persons, of name candidates, of popularity contests to go on the judiciary — perhaps someone who has been practicing law maybe 4 or 5 years; perhaps someone who has not practiced law at all; perhaps someone whose judicial temperament has not been tested or investigated by the governor or his aides or by whomever might be assigned that job.

I submit to you that the best way that you can get a good judge after proper investigation is by appointment by the governor, just as it has been. For the 40 years or 35 years prior to this convention, there hasn't been too much criticism about the way judges were appointed, and they got a good judicial system then.

I won't read it for you unless somebody requests it, but in the December Fortune magazine there is a very detailed study of courts throughout the United States. I was rather proud when I read that the other states are following the examples of Michigan, New Jersey and California. Only 3 states were mentioned as having the type of judiciary which is honored and respected throughout the United States. I submit to you that the constitution as it stands now has given us an unblemished judiciary. And just remember that appointees do get defeated. I have witnessed it myself and you, too, have witnessed it. They can be defeated.

It is not strictly an appointive system. It is an appointive system after there has been sufficient investigation of the proposed appointee, and then if the people don't like him, they can still defeat him. I submit let's not change to be changing. Let's take this good judiciary of the state of Michigan that has been mentioned over and over again without any complaints against it. I am against the committee proposal and I am for the minority report amendment.

CHAIRMAN VAN DUSEN: Mr. Ford, the Chair believes you still retain the floor.

MR. FORD: Also sponsoring the minority report is Miss McGowan. I would like to yield to her if she has anything to add.

CHAIRMAN VAN DUSEN: Miss McGowan passes, Mr. Ford.

MR. FORD: Mr. Barthwell.

CHAIRMAN VAN DUSEN: Mr. Barthwell passes.

MR. FORD: That concludes the presentation by the sponsors of the minority report.

CHAIRMAN VAN DUSEN: The Chair will recognize Mr. Higgs. Mr. Higgs being absent from the chamber, the Chair will recognize Judge Leibrand.

MR. LEIBRAND: Mr. Chairman, delegates, I am not fully prepared to answer the oratory with which I have been recently bombarded on this question, but I do feel perhaps that I have a few answers. And I rise in support of the committee report and in opposition to the minority amendment.

For 112 years the state of Michigan has indicated its preference for the elective system of judges. I think that the preliminary votes that have been taken in this convention show beyond question that that preference for electing judges continues down to this moment. But if you are going to have an elective system, whatever system you have, as a matter of fact, should be a fair system, and I believe the people want it to be a fair system.

Now, I don't know that these opinions were expressed in the minority report or in the reasons for the suggested change, but they are reasons for my action in supporting the majority report. I feel that the present system which the minority, Mr. Ford and his associates, want to retain has worked in an unfair way. In the first place, a gubernatorial appointee to any judicial office is invariably a candidate to succeed himself at the next election. And I don't know what the experience of others may have been, but my experience has been that that appointee spends most of his time between the appointment and the next election in campaigning for himself rather than in the performance of his judicial duties. In other words, it puts the appointee in the position where he conducts his campaign at public expense while his opponents have to dig down into their own pockets. Another thing it does — and I believe that this violates the principles of fairness — I feel that when there are any candidates for public office, whatever those offices may be, those candidates should be on an equal basis. They should start from scratch. If you are going to have an elective system, let the people decide upon those candidates who do start from scratch. Now, the appointee, by virtue of the very fact that he is an appointee, has an advantage over his opposition. The very fact of incumbency gives the incumbent that advantage. And then you add to that what we have had in the past and which I presume it is the intention of my fellow committeeman Ford and his associates to return. We have had in the past the matter of the incumbency designation being granted to the appointee.

Now, my recollection is that before our committee there appeared the no less respected witness than Justice George Edwards, who gave the conservative estimate that the incubency label that went along with an appointee gave an initial advantage to the appointee of about 25 per cent in the forthcoming election, and if it gave the appointee an advantage of 25 per cent, it gave the opposition a disadvantage of 25 per cent. And, delegates of this convention, I don't feel that in any fair American contest it is fair to start one of the contenders off with hobbles of 25 per cent around his ankles.

Now, let's take something else. Let's take the matter of time. The appointee may have — and usually does have — whether that appointee be circuit judge or supreme court justice or probate judge, months and maybe time running over and above a year or more in which to campaign. Under the convention system, as it has applied to the supreme court, the nominee of the opposing party, if the judicial election is in November, has 66 days in which to organize his campaign, to raise his money, to get into 83 counties of this state. And if the election to fill the vacancy happens to come in the April election, the nominee of the opposite party has 37 days, while his opponent, the appointee, has been out beating the bushes for months and months and months and months. That, again I say to the delegates here, is not a fair election. It is a loaded election.

I think the majority proposal here providing for interim appointments, if they so desire, by the supreme court is a big step in inaugurating a truly elective system of judicial officers in Michigan. Now, it isn't mandatory. The supreme court, at least so far as circuit courts and probate courts are concerned, may still, through their court administrator, assign judges from other districts to take care of this vacancy. This is only a stopgap system to assure that the basic principles of fairness and honesty in the election of judicial officers are preserved and perpetuated and increased and enhanced in Michigan. Delegates, I strongly oppose the minority report amendment.

CHAIRMAN VAN DUSEN: Mr. Tubbs.

MR. TUBBS: Mr. Chairman, perhaps this would be in the nature of a personal report or a personal privilege communication. The papers have carried the story that in the judicial committee, when they came to a vote on an appointive system of supreme court justices, I stood alone, and I wonder where all these people who are now so strenuously arguing the merits of the appointive system were back then.

CHAIRMAN VAN DUSEN: Mr. Krolikowski.

MR. KROLIKOWSKI: Mr. Chairman, members of the committee, I think that the weakness of the majority report lies in the fact that it fails to center responsibility. No problems arise when an appointee performs nobly while in office. What happens, however, if the appointed judge is guilty of gross misconduct while in office? Whom do we blame? Do we blame justice A, B, C, D, E or through I? Or can we look more properly to the governor who appointed him?

Secondly, once we have ascertained what justice or group of justices made this gross error, must we wait 8 or 10 years to properly make them account for this error, or can we more readily look to the govenor who is required to face the public every 2 or 4 years? I believe that the failure to center responsibility is the weakness of the majority position.

CHAIRMAN VAN DUSEN: Mr. Garry Brown.

MR. G. E. BROWN: Mr. Chairman, members of the committee, I would like to address a couple of questions to Mr. Ford, if I may.

CHAIRMAN VAN DUSEN: If the gentleman cares to answer.

MR. G. E. BROWN: First of all, Mr. Ford, I would like to ask if you consider this to be an elective system with appointment to fill vacancies in connection with section e of the committee proposal which is coming up.

CHAIRMAN VAN DUSEN: Mr. Ford.

MR. FORD: I think it is just as elective as any other office that is filled either by the governor or the board of supervisors, the supreme court or anybody else. All you are doing is begging the question, Mr. Brown, when you say is it more elective if the governor appoints him than if the supreme court appoints him.

MR. G. E. BROWN: I expected a yes or no answer but I —

MR. FORD: You can't get a yes or no answer to a question like that.

MR. G. E. BROWN: Mr. Chairman, a further question to Mr. Ford. How many members of the present supreme court were elected to that office, Mr. Ford?

MR. FORD: They have all been elected except Mr. Otis Smith, as I understand it.

MR. G. E. BROWN: Originally to the office.

MR. FORD: You mean how many were appointed in the first instance?

MR. G. E. BROWN: Yes, sir.

MR. FORD: I think Mr. Kelly ran originally. I don't know how Mr. Dethmers got there the first time. Mr. Hutchinson said Mr. Dethmers was appointed in the first instance. I guess 3 of the Democrats and 2 of the Republicans were appointed in the first instance.

MR. G. E. BROWN: Mr. Chairman, a further question of Mr. Ford. Do you agree with the suggestion that was made by Judge Leibrand to the effect that the incumbency label amounts to maybe a 25 per cent advantage in running at a future date or after an appointive term?

MR. FORD: I didn't want to interrupt Judge Leibrand while he was trying to becloud this section by arguing the next one that comes up in Committee Proposal 96, but I don't think that that question or Judge Leibrand's comments in that regard are germane to the section we are here discussing.

MR. G. E. BROWN: Mr. Ford, I would —

MR. FORD: I will answer that and debate it with you, Garry, when we get to the section that covers the question of incumbency designation.

MR. G. E. BROWN: Mr. Chairman, I'm sorry. I am trying to stick to the present amendment that is under consideration here, but I think it is essential that we consider what happens when we apply a proposal such as this for the filling of vacancies.

MR. FORD: If you look at Committee Proposal 96, section e, you will see that the committee covers the question of the incumbency designation very clearly and distinctly as a separate proposition from the one here presented.

CHAIRMAN VAN DUSEN: Mr. Brown?

MR. G. E. BROWN: Mr. Ford, I was particularly interested in the tying of these 2 together due to the fact that I checked with the secretary and I don't see that you have an amendment on file to do away with section e to provide for elimination of the incumbency label.

MR. FORD: We will worry about section e when we get to it, Mr. Brown.

CHAIRMAN VAN DUSEN: Mr. Brown, the Chair will have to ask you to confine your questions to the section under discussion.

MR. G. E. BROWN: One further question, Mr. Chairman. Mr. Ford, do you believe that the amendment which you propose lends itself more to an independent judiciary or less to an independent judiciary, and more to a partisan affiliation of the judiciary or less to it?

CHAIRMAN VAN DUSEN: Mr. Ford.

MR. FORD: I think that the proposal is consistent with a system that has produced an independent and a very good judiciary for Michigan.

CHAIRMAN VAN DUSEN: Mr. Brown.

MR. G. E. BROWN: I assume then that your answer is that the present amendment does lend itself more to an independent judiciary. Is that your answer?

MR. FORD: I think the present amendment is superior in all respects to the committee proposal. (laughter)

MR. G. E. BROWN: You prefer not to answer then; is that correct?

CHAIRMAN VAN DUSEN: Mr. Brown, the Chair would appreciate it if you would conduct your cross examination through the Chair. (laughter)

MR. G. E. BROWN: I have no further questions, Mr. Chairman.

CHAIRMAN VAN DUSEN: Mr. Binkowski.

MR. BINKOWSKI: I also was going to ask a question of Judge Leibrand, but I don't intend to cross examine the judge.

CHAIRMAN VAN DUSEN: Judge Leibrand.

MR. BINKOWSKI: Perhaps this again should be saved for section e, but, Judge Leibrand, would you favor the complete elimination of any designation regardless of whether it is at the appointment or subsequent elections? It seems to me this way we would really have a competitive system.

CHAIRMAN VAN DUSEN: Judge Leibrand.

MR. LEIBRAND: I am not too set on the question, but I believe that I would go along with a designation after a judge has once won election in his own right. I would not favor it when such honors as he has attained have been forced upon him or given to him by others.

CHAIRMAN VAN DUSEN: Mr. Binkowski. The Chair will note, as he did in the case of the colloquy between Messrs. Brown and Ford —

MR. BINKOWSKI: I have no further questions of Judge Leibrand, Mr. Chairman. Thank you, Judge. The only point that I would like to make is that it seems to me that this particular advantage of 25 per cent is probably increased to 50 per cent at later dates as long as he has the incumbency designation, so I don't know if that is a particularly valid argument. As a young attorney, I certainly would be interested in this designation aspect, though.

CHAIRMAN VAN DUSEN: The Chair will ask the delegates to confine their discussion, if possible, to the question immediately at hand, which is the amendment offered by Mr. Ford and others. Dr. Nord.

MR. NORD: Mr. Chairman, I would like to speak in favor of the minority report and the amendment. First of all, I would like to discuss the comment made by one of the members of the convention who said that the present system works in an unfair way. If it works in an unfair way, I would oppose it. Therefore, it is an important thing to discuss. But I note in looking up the legislative history of this particular provision that it is not a new thing. I had the idea when the statement was made that it must be a new thing that had just been tried out and has not been very good, has worked in an unfair way. But in looking up the complete legislative history, I find that this is not a new thing. As far as I can make out, it was adopted in the 1850 constitution. Now, if I am correct about that, we have had it for about 110 years. We have had an entire constitutional convention in the meantime and a great many constitutional amendments in the meantime, and therefore it occurs to me if it had been actually unfair, somewhere along the line something would have been noticed about it during that period. And I will not ask any specific delegate a question, but I will ask this rhetorical question: if this system is unfair, when did it start to become unfair?

Now, the reason I ask that question is that I have examined a number of subjects in connection with the convention, and I found out that there have been many systems in effect for long periods of time, whether they had to do with the judicial or the executive or the legislature, that have been in effect for a long time, maybe 100 or 150 years such as this one, 100 years, and they have always been considered to be great. One constitutional convention after another has accepted them. Never has there been any thought of an amendment in any of these cases. They have worked great. But at some stage of the game, all of a sudden we hear from the Republicans — and I will say that that is the case — that the system is, all of a sudden, unfair. It is not working right. Not only that; we should turn it around and make it work in the opposite direction.

Now, when these charges are made that a system which has been in effect for a long time should be replaced because it is unfair, I think we have a right to know exactly when it became unfair, what it was that changed that made it unfair. The only unfairness that has been pointed out that I know of by a delegate was that that the contestants don't start from scratch. It seems to me I don't really give a damn whether the contestants start from scratch or not. I didn't think this was a horse race. I apologize for that word "scratch" or whatever the word was I said. (laughter) I don't care whether the contestants start from scratch because this is not a horse race. It isn't correct to take the view that we should get those 2 candidates on the mark and start them going at the same time and that that is the way we should elect our judges — who can run the fastest is the best judge. For example, we do not put handicaps on them. The first thing we do — and we have done it today — is to say they must be lawyers. There is a handicap. And we had a lot of trouble with this. Some say they shouldn't be lawyers. There is an unfair advantage to lawyers. But we also said when we adopted that provision — to the extent that we did — that that is not the only qualification for being a judge, and all of us have agreed that is one qualification. Maybe there are others. Everyone thinks there are others. And maybe somebody might consider what those other qualifications are and weigh them in connection with a certain person.

Now, that is what happens when there is an appointive system. And I say perfectly frankly that our system is basically an appointive system, that it is basically that. I don't think we should kid around. That is basically what it is. Most of the judges originally get on the bench by appointment. I would have no objection if every one of them got on by appointment. I think it would be better, in fact, than to have a horse race starting from scratch. I would like to make sure that they are lawyers and that somebody has looked them over to find out if they are a little bit more than just lawyers. Now, that somebody under the present system is the governor. The governor is elected by all the people. He is not responsive just to 1 or 2 or 3 or a committee of 6; he is responsive to all the people. If somebody has to screen him, the system that we have had for 100 years, as I say, has said, let it be a man who is representative of all of the people. Let it be the man who is governor. Now, that is a system that we had in the past. And we have had the system in addition that the term for which he can select is a short term because it is a vacancy only, and therefore in the end there will be advice and consent of the people. I will recall to you that one of the delegates to the convention said he was in favor of appointment by the governor provided there was advice and consent of the people, and I suggested at that time the way to have advice and consent of the people is to have a short term appointment followed by an election. Now that is exactly what you really do have. You have it. And you have had it for 110 years.

Someone else raised the question, where were we all when the appointive systems were discussed. How come all of a sudden we are in favor of appointments, and before this, when the appointive systems came up on the floor or wherever it was, we were against it. Now, I can't speak for everybody, but I will call to your attention that I did take the floor over and over again and stated that I did favor an appointive system. I didn't say that was the only way, and I don't think it is the only way, but it is a fair system. It is fair provided there is advice and consent of the people; in other words, provided there is a short term, such as an unexpired term, and then there is advice and consent of the people. Therefore, it seems to me that the system that we have has worked for a long time, and it appears to me that if somebody says that it is now unfair, it is their duty to state when it became unfair and what it is that is unfair about it.

CHAIRMAN VAN DUSEN: Mr. Marshall.

MR. MARSHALL: Well, Mr. Chairman, I had originally intended to speak on this question, but I think we have reached a point, after listening to all the lawyers, that I will now not speak on the question and wait until later. It just reminds me, though, of a statement that someone made here the other day about lawyers; that most of them start out life giving $500 worth of advice for $5, and they end up giving $5 worth for $500, and I think we have about reached that point, and maybe we can vote pretty soon.

CHAIRMAN VAN DUSEN: We may vote, Mr. Marshall, after we have heard from Messrs. Downs, McAllister, Perras and Wanger — the Chair hopes. (laughter) Mr. Downs.

MR. DOWNS: With that introduction from my good friend, Delegate Marshall, I hesitate to speak as long as I had planned to. (laughter) I think, very briefly, it has been pointed out by Delegates Ostrow, Garvin and others that our present system has worked. It has worked not only for 50 years, but back from 1850. And being one who usually is in the role of advocating change, I say that the burden is on those who advocate change, and I think the burden is 3 fold: first, to show what is wrong with the status quo; second, to show a preferable method; and third, to show there is a reasonable chance that the cure is not worse than the disease. I charge that none of those statements has been made to advocate a change from what we now have.

I think it is no accident that our Michigan judiciary, regardless of what person is in the office of governor, has been distinguished for integrity. I think nobody here has shown that any court has been superior to our Michigan courts, not only in integrity but in the administration of justice, whether it is the juvenile court of Wayne county or the time lag of circuit court hearings; the record is one that is enviable. Therefore, I would urge us to be very cautious in making a change.

I do agree with our distinguished circuit court Judge Leibrand that the appointive system — and we have a combination of appointive and elective — does give the individual who is appointed an advantage. But more important than that is the effect on the public at large, and the public does have a chance to review what the person has done, and does have a chance to see that he hasn't too much of an advantage because running against him is not just his record but a live candidate who has been nominated in one way or another to run against that position. I think the actual result has been one that we should be proud of in our judicial system, and I do not think that those who advocate change have supported their burden of proof of showing the need for that change. I therefore urge support of the minority report amendment.

CHAIRMAN VAN DUSEN: Mr. McAllister.

MR. McALLISTER: Mr. Chairman and fellow delegates, I have heard quite a few speaking here in behalf of the minority report amendment. It seems that I have heard the majority of those same gentlemen talk against the appointment of state officials. I am not in favor of the appointing of judges by committees, but in this instance I have changed my view because the committee of the whole in the entire community where the judge is to be elected will vote on the selection of their judge. And in conclusion I read a statement from the Declaration of Principles released by the Democratic delegates on February 17, which reads as follows:

> . . . that the people should elect those who exercise a judicial power in this state. Each judge on the supreme court should be elected by all the people of the state voting on a statewide basis.

So I say that on the viewpoint expressed by the Democratic delegates in their statement of principles, we should reject the minority report amendment.

CHAIRMAN VAN DUSEN: Mr. Perras. Mr. Perras passes. Mr. Wanger.

MR. WANGER: Mr. Chairman, members of the committee, I want to say briefly that the implications which have been raised that a purpose behind the majority report is one of a partisan nature is without foundation in fact. It has been said we have had the present system such as is advocated by the minority report amendment for filling vacancies for over 100 years, that nothing has changed, and that, therefore, there must be some partisan consideration if we want to change the system. That is incorrect. I think it is well known that the very important consideration of the incumbency label on the ballot did not appear on the political scene in Michigan until about 20 or 25 years ago.

CHAIRMAN VAN DUSEN: Mr. Faxon.

MR. FAXON: Mr. Chairman, fellow delegates, I want to get this issue straightened out, at least in my own mind, as to what this is and what this isn't. This isn't a question of an incumbency designation, nor is this the question of the election of the judges, and I think both of these issues have been raised to becloud the real thing here which is being dealt with, which is, namely, the filling of vacancies. Now, I don't know how anybody could possibly advance the idea that this position is arrived at as a result of some party considerations now. I don't know how anybody could arrive at this same position in 1908 or in 1850. And in supporting this report, I do so with the full realization that I am advocating a conservative position — a basically nineteenth century conservative position that the person who shall fill vacancies shall be the person who is elected by the people of the state.

Now, we have not as yet made the determination as to how the supereme court shall be composed, but we have had a long tradition not just in the state of Michigan but in all the states in this country. We have had a tradition that goes back to the colonial days that the governor fills the vacancies that are left. We have already acknowledged this position with regard to the filling of vacancies that may occur in the

educational boards. We have already acknowledged that the governor shall fill these vacancies. I fail to see where this represents any great departure from that tradition which we have already advocated.

I urge the delegates here once again to adhere to the conservative principles which many of them profess and to recognize and realize that this position is not a partisian position; it is one which the Republican party took a very strong position on in 1908. It is a position which has worked in Michigan for a longer period of time than anything else. It is a position which has overall served to the best interests of the state. It is not a position which is arrived at all of a sudden. It is one which we ought to look at and give very careful consideration to. I urge the support of this traditional position.

CHAIRMAN VAN DUSEN: Mr. Madar.

MR. MADAR: Mr. Chairman, fellow delegates, I wasn't going to get up at all on this particular question until I heard partisan politics brought into this. (laughter) I know, I would laugh too, and you have a right to laugh. But it has been brought up and considerably, as you know.

You know, it is rather strange that one of the things that you have been talking about isn't even up there on the wall, and that is this incumbency designation. It isn't so many years ago that the Republican party — the bar association, which was predominantly Republican — and don't tell me it wasn't so because I was a member of your party for 34 long years. And you also got the newspapers to go along with you, and you sold a gullible public —

CHAIRMAN VAN DUSEN: Mr. Madar, the Chair trusts you will return to the subject in due course.

MR. MADAR: I am through with that particular portion of it, so now I will go back to this particular amendment. Frankly, I think that you younger attorneys who I have overheard speak out in the corridor have been led down the wrong path. You are now showing very little faith in the candidate whom you have for governor, and you are afraid you won't get an appointment.

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: Mr. Chairman, members of the committee, perhaps we can try to consider this thing and get all of the points wrapped up and get a vote on it. First of all, let's consider that if you believe in a philosophy of an elected judiciary, then section d is consistent with that particular philosophy. If you wish to elect judges, then let's be able to elect all of the judges. We have no control on the appointment. We have had no control over the appointments. And if the judge is to serve a particular area, then best we have a special election, as we do to fill the office of representative or state senator or any other office that becomes vacant. This, in effect, would eliminate the old cliche that a judge in this state is a lawyer who happened to know a governor, and in that, the essence of this particular proposal lies.

And I will agree that in section e we have been consistent. A majority of the committee has limited the incumbency designation to an elected incumbent justice or judge, and we submit that we have been consistent in this regard. Now, it seems that the minority is willing to request a screening when it comes to filling a vacancy, but there is no screening when we are adding additional judges. When judges retire at the end of their term and someone must be picked in their place, we hear no advocacy of screening or of going over the particular candidate to make sure that the best man is found. And I, too, do not personally favor an appointed judiciary

The essence of this particular proposal, as Mr. Everett has said, is the filling of vacancy by election. The use of retired judges on a temporary basis is basically of a secondary nature. I might state that I have the statistics, and they were obtained from the judges retirement office. Mr. Erickson was high. There are approximately 21 right now. They range in age from 70 to the considerable age of 85 or 90, but the bulk of them are in the middle 70s as are the retired judges in this particular convention.

Mr. Wanger pointed out that in 1850 and 1908, we did not have nonpartisan elections and we did not have any type of designation upon the ballot, so when they ran upon a party, there was a particular way in which the particular candidates running to fill a vacancy could be selected. I submit to you that in essence what we are talking about right now is the probate court and the circuit court, since we have not yet determined our supreme court — and if there is any change in that, we will probably have to come back here and amend this section to make it conform, if that is needed.

I submit to you that if you believe in an elected judiciary and not one that is half elected and half appointive — and there is no appointive system which operates in this country that has the unrestricted control that we have here in Michigan where there is simply a selection by one man — then I submit that this proposal is a valid consideration, one that is good; and that if it is good to elect your judges in the beginning, then it is good that the vacancy in that particular office likewise be filled by the election of the people in the circuit or the district or the county which may be involved. Therefore, I would urge the defeat of the amendment and the acceptance of the majority report.

CHAIRMAN VAN DUSEN: The question is upon the amendment offered by Mr. Ford and others pursuant to their minority report. Does any delegate desire to hear the amendment read again? If not, those in favor of the amendment will say aye. Those opposed will say no.

The amendment is not adopted.

DELEGATES: Division.

CHAIRMAN VAN DUSEN: A division is requested. Is the demand supported? It is supported. Those in favor of the amendment offered by Mr. Ford and others pursuant to their minority report will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the adoption of the amendment offered by Mr. Ford on behalf of the minority, the yeas are 38; the nays are 78.

CHAIRMAN VAN DUSEN: The amendment is not adopted. Are there further amendments to section d?

SECRETARY CHASE: Mr. Wanger offers the following amendment:

1. Amend page 2, line 8, after "retired" by inserting "or others"; and in line 10, after "qualified" by changing the period to a semicolon and inserting "but no such appointee shall be eligible to be a candidate for election to any public office for 4 years after his incumbency.".

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Wanger to section d of Committee Proposal 96. The Chair will recognize Mr. Wanger.

MR. WANGER: Mr. Chairman, members of the committee, while not changing the basic intent of the committee report, in my opinion, this does fill a need which the committee report does not provide for.

The chairman of the committee has just pointed out that there are about 20 or 21 retired judges available to fill vacancies. Let us remember that this section applies to vacancies not only on the supreme court in Lansing but in any court of record in the entire state.

The seats of these courts where the temporary appointees would have to preside daily may be from Monroe county in the southern part of the state all the way to the Keweenaw peninsula. It may be possible that no retired judge will be available to sit daily in the particular district in which the vacancy occurs. Therefore, my first change would be to add the words "or others" after the word "retired" so that the sentence would read:

> The supreme court is empowered to authorize persons who have served as judges and have voluntarily retired, or others, to perform judicial duties for the limited period of time from the occurrence of the vacancy until the successor is elected and qualified.

Therefore, the court could appoint and recognize a distinguished senior member of the bar to fill the vacancy in the alternative to a retired judge. The last sentence which I have added is to guarantee that such appointee will not be able to use this appointment as a stepping stone to future political activity.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Wanger, on which the Chair will recognize Mr. Ford.

MR. FORD: Very briefly, I would like to ask Mr. Wanger if he honestly believes that any lawyer worth his salt would be willing to comply with the Canons of Ethics of our profession and of the judiciary, giving up entirely his practice of law to serve for a period of 6 months or perhaps a year with no hope of continuing in that office.

MR. WANGER: Absolutely. I think the answer is yes. There would be many particularly distinguished —

MR. FORD: I said any lawyer worth his salt. By that I meant somebody with a law practice that would have to make a substantial sacrifice to take the job in the first place.

MR. WANGER: Yes, I think very definitely. I think some lawyers would view it as an honor to fill such an appointment.

CHAIRMAN VAN DUSEN: Mr. Bledsoe.

MR. BLEDSOE: I am opposed to the Wanger amendment because it follows in the same line of argument that Judge Leibrand stated when the same issues came up in our committee. It appears that the lawyers want to run this thing to suit themselves. They don't seem to have any thought of what this thing means to the public, and I think we ought to think of that. I am therefore opposed to it.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Wanger to section d of Committee Proposal 96. Mr. Danhof.

MR. DANHOF: Mr. Chairman and members of the committee, partially for the reasons advanced by Mr. Ford, also for the fact that most of these vacancies will be of a very short duration, probably as long a vacancy as we have in the elective office of some representative or senator, I think that this present proposal would be too restrictive and go too far. I therefore would oppose the amendment offered by Mr. Wanger.

CHAIRMAN VAN DUSEN: Mr. Mahinske.

MR. MAHINSKE: I think we have primarily 2 distinct thoughts here. I wonder if we could divide the question.

CHAIRMAN VAN DUSEN: Mr. Mahinske requests the question be divided. It will be divided. Mr. Wanger.

MR. WANGER: This is the first time that I have heard objection made to a proposition on the basis that it would be too restrictive and at the same time go too far. The amendment quite clearly, in my opinion, Mr. Chairman, should not be divided, because to divide it would entirely separate my intent in presenting it in the first place.

CHAIRMAN VAN DUSEN: That may be the case, Mr. Wanger, but under the rules any delegate is entitled to have the question divided if the 2 portions comprehend separate propositions, which, in the opinion of the Chair, is the case.

MR. WANGER: I agree that they may so comprehend, and I would like to ask the Chair then if we are considering adding the words "or others" only at this time?

CHAIRMAN VAN DUSEN: The first question to be put will be the insertion of the words "or others" after "retired" in line 8.

MR. WANGER: I want to make the posture of this situation very clear. If you will all look at the amendment, I urge you to vote yes upon both of these, but in no event to vote yes on number 1 and then no on number 2.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Wanger. Mr. Perras.

MR. PERRAS: Mr. Chairman, I would like to ask a question of Delegate Wanger.

CHAIRMAN VAN DUSEN: If the gentleman cares to answer, Mr. Perras.

MR. PERRAS: What is your reason for wanting to stop a man who has been appointed to this judgeship from running for 4 years after? What is your reasoning for that?

CHAIRMAN VAN DUSEN: Mr. Wanger.

MR. WANGER: My reason for that is that I think there is always a temptation when vacancies in this type of office are to be filled to fill them with an eye to the political future of the appointee. I think this is particularly bad when it would apply to the judiciary, who should be, as far as possible, independent from such considerations. It is clear, of course, that no retired judge is going to consider himself to have a political future. It is also, however, clear that there may be cases when it is impossible to find a retired judge who is available for the vacancy. I think, therefore, that the addition of this language would make it possible for the supreme court to appoint a distinguished senior member of the bar when he would be available rather than a retired circuit judge, and that this would be all to the good, because it would make it possible to fill a vacancy until the next election, which vacancy might otherwise have to remain without being filled if the amendment was not adopted.

MR. PERRAS: Another question, Mr. Chairman.

CHAIRMAN VAN DUSEN: Mr. Perras.

MR. PERRAS: Then, in other words, you feel that, as you told Delegate Ford, a person taking this appointive position should do it strictly for the honor that is in it?

MR. WANGER: No, not strictly for the honor that is in it.

MR. PERRAS: What if a person was appointed who never did have any aspirations to get into politics, but after he was in it—got his feet in the trough—he liked it? (laughter)

MR. WANGER: Well, in that case, that is exactly what I am trying to prevent, you see, by adding the second line.

CHAIRMAN VAN DUSEN: Mr. Hatch.

MR. HATCH: Mr. Chairman, I wonder if it would be in order to move that the committee consider the second portion of the amendment first.

CHAIRMAN VAN DUSEN: It would be in order, Mr. Hatch.

MR. HATCH: I so move.

CHAIRMAN VAN DUSEN: Mr. Hatch moves that the second portion of the amendment be considered first. Those in favor of the motion made by Mr. Hatch will say aye. Those opposed will say no.

The motion prevails. The question is upon the second portion of Mr. Wanger's amendment, which the secretary will read.

SECRETARY CHASE: The amendment reads:

1. Amend page 1, line 10, after "qualified" by changing the period to a semicolon and inserting "but no such appointee shall be eligible to be a candidate for election to any public office for 4 years after his incumbency.".

CHAIRMAN VAN DUSEN: The question is on Mr. Wanger's amendment as so put. Mr. Mahinske.

MR. MAHINSKE: I would like to direct a question to Mr. Wanger through the Chair—

CHAIRMAN VAN DUSEN: If the gentleman cares to answer.

MR. MAHINSKE: —and ask him to define what he means by "any public office."

CHAIRMAN VAN DUSEN: Mr. Wanger.

MR. WANGER: Mr. Chairman, I do not recollect the context in which I used that term, and if Mr. Mahinske would refresh my recollection, I might be able to answer him.

MR. MAHINSKE: In your amendment on the wall up there in front of you.

CHAIRMAN VAN DUSEN: "But no such appointee shall be eligible to be a candidate for election to any public office."

MR. WANGER: I think the term speaks for itself.

MR. MAHINSKE: Well, I think it may be saying a little more than you intend it to say, then.

MR. WANGER: In what respect?

MR. MAHINSKE: Do you consider "any public office" any elected position?

MR. WANGER: Yes.

MR. MAHINSKE: Would this include precinct delegate?

CHAIRMAN VAN DUSEN: Mr. Wanger.

MR. WANGER: I do not know legally whether it includes precinct delegate or not, but if it does include precinct delegate, that would not affect my support of my amendment in any way.

MR. MAHINSKE: Then your intent would be that this person should not for 4 years run for any office, on your own

interpretation here, from precinct delegate up to possibly—I am assuming you are talking about state offices—governor of the state.

MR. WANGER: Yes, I think that is correct.

MR. MAHINSKE: And could include congressman or U. S. senator.

MR. WANGER: Yes, indeed.

MR. MAHINSKE: Thank you.

CHAIRMAN VAN DUSEN: The question is on the second portion of Mr. Wanger's amendment. Those in favor will say aye. Those opposed will say no.

The amendment is not adopted.

MR. WANGER: Mr. Chairman.

CHAIRMAN VAN DUSEN: Mr. Wanger.

MR. WANGER: I withdraw the first half of my amendment. (laughter)

CHAIRMAN VAN DUSEN: The balance of Mr. Wanger's amendment is withdrawn.

MR. MAHINSKE: Point of order, Mr. Chairman. This was offered initially as one amendment. It was divided. I don't feel that it is 2 amendments. It is the property of the committee at this time.

CHAIRMAN VAN DUSEN: The Chair will consult the secretary. (laughter) The secretary advises that the withdrawal of the amendment is in order, Mr. Mahinske, and it is withdrawn. Are there further amendments to section d?

SECRETARY CHASE: None on file, Mr. Chairman.

CHAIRMAN VAN DUSEN: If not, it will pass.

Section d is passed. Mr. Danhof.

MR. DANHOF: Mr. Chairman, section d having passed, I would move the committee do now rise.

CHAIRMAN VAN DUSEN: Mr. Danhof moves the committee do now rise. Those in favor of the motion will say aye. Those opposed will say no.

The motion prevails. The committee will rise.

[Whereupon, the committee of the whole having risen, President Nisbet resumed the Chair.]

PRESIDENT NISBET: The Chair recognizes Mr. Van Dusen

MR. VAN DUSEN: Mr. President, the committee of the whole has had under consideration one proposal, of which the secretary will give a detailed report.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 96, A** proposal pertaining to general and special provisions relative to the courts of the state; considered several amendments thereto, and has come to no final resolution thereon. This completes the report of the committee of the whole, Mr. President.

PRESIDENT NISBET: Mr. Kelsey.

MR. KELSEY: Mr. President, if I am in order, I would at this time like to move to reconsider amendment 3 to Committee Proposal 94.

PRESIDENT NISBET: Mr. Kelsey, may we announce one request before you make that motion? Thank you.

SECRETARY CHASE: Mrs. Hatcher had previously filed with the secretary a request to be excused from the balance of this afternoon's session.

PRESIDENT NISBET: The request will be granted. Now, Mr. Kelsey, your motion, please.

MR. KELSEY: Mr. President, I move that we reconsider amendment 3 to Committee Proposal 94 which was taken up yesterday.

PRESIDENT NISBET: The question is on the motion of Mr. Kelsey that reconsideration be given. Mr. Chase.

SECRETARY CHASE: Reconsider the vote by which amendment 3 from the committee of the whole to Committee Proposal 94 was agreed to on yesterday.

[The amendment was again read by the secretary. For text, see above, page 1452.]

PRESIDENT NISBET: The question is on the motion of Mr. Kelsey. Mr. Marshall.

MR. KELSEY: Mr. President.

PRESIDENT NISBET: Mr. Kelsey.

MR. KELSEY: At this time I would like to change my name to Wanger and withdraw my motion. (laughter)

PRESIDENT NISBET: The motion is withdrawn. Mr. Marshall.

MR. MARSHALL: Mr. President, I would just like to make a parliamentary inquiry. I am not too sharp on parliamentary procedure and we have gotten some rather sharp rulings the last couple of days here on 1 or 2 occasions rather arbitrarily. If an amendment is offered and someone moves that the question be divided, that does not make it 2 amendments. Then you commence to vote on the amendment. Is it permissive—and what rule governs it—to permit the withdrawal of it after you have taken a vote on one portion of it after it has been divided? Now, I could be completely and totally in error, but in my limited experience with parliamentary procedure, I don't recall any rule that permits that.

PRESIDENT NISBET: Mr. Chase, do you want to answer the question, or do you want to tell me and I will answer it? (laughter) I think it would be clearer if Mr. Chase answers the question.

SECRETARY CHASE: Frankly, Mr. Marshall, I can't say that I can put my finger on the particular authority for this. It would seem to the secretary, however, that since the amendment that was offered was in 2 separate parts and was merely presented as a composite amendment and under the rule a request was made that the amendment be divided, that by that process it became, in effect, 2 amendments. Also under our rules, the offerer of any amendment, before it is voted upon, has the right to withdraw it.

MR. MARSHALL: All right. But it had been voted upon though. That is the point. May I read rule 46?

> After a motion has been stated by the president or read by the secretary, it shall be deemed to be in the possession of the convention, but may be withdrawn at any time before being amended or put to a vote.

And my point that I raise—and again I am not trying to make too big an issue but I want to get this straight because it can happen again—the question was divided and a vote was taken. Therefore I think, Mr. President and Mr. Secretary, that it was illegal to permit Mr. Wanger to withdraw the other one after you had taken the vote.

SECRETARY CHASE: Well, the point of the matter is that it was not a motion to divide; it was a right to divide under the rule. That having been done, in the opinion of the secretary—

MR. MARSHALL: I won't take anymore time of the convention. I will discuss it with you. I won't invite you outside, like I did Mr. Van Dusen, to discuss it, because some people get the wrong impression when I do that. (laughter) I will talk to you in your office and see if we can't come to an understanding.

PRESIDENT NISBET: Thank you, Mr. Marshall.

Announcements.

SECRETARY CHASE: The meeting of the committee on administration which was scheduled tomorrow is canceled.

We have the following requests for leave of absence: Mr. DeVries called and asked to be excused from tomorrow's session; Father Dade requests leave from the session of Monday and Tuesday morning, March 13; Mr. Stamm asks to be excused from the tomorrow morning session; Mr. Durst requests to be excused from the session of tomorrow, Thursday; Mr. Bonisteel requests to be excused from Thursday's session to attend a meeting previously scheduled; Mr. McCauley asks to be excused from the session of Friday and Monday to attend meetings of the board of supervisors and to fulfill a speaking engagement; Mr. Yeager wishes to be excused from the session of next Monday; and Mr. Suzore wishes to be excused from the session of tomorrow.

PRESIDENT NISBET: Without objection, they are excused.

Mr. Ford.

MR. FORD: I would like to make a parliamentary inquiry, Mr. President. Originally I understood that if we were to have another opportunity to consider the matter that Mr. Kelsey made his motion on, we would not be able to do it on second reading because an amendment to that effect had been voted down in the convention yesterday. Unless we made a motion to reconsider at this time, we couldn't consider it at all. And we based this or predicated it upon the answer given by the Chair to a question that was asked from the other side of the room yesterday in this regard.

However, since that time, Senator Hutchinson has indicated that his view is that since what we were actually voting on yesterday in the convention was a question of concurring in the recommendation of the committee of the whole, that this would not preclude us on second reading from offering the minority report, which is amendment 3 of the committee of the whole yesterday, as an amendment on the floor of the convention, and we would like to be assured that this is true before leaving our last opportunity here to bring the matter up.

PRESIDENT NISBET: Mr. Hutchinson, would you care to comment, seeing that you have been involved in this?

MR. HUTCHINSON: Mr. President, I think that the Chair correctly ruled yesterday that when, after the committee has arisen, an amendment is offered to a proposal and the convention votes it down, that then the convention is on record as having passed upon that matter, and that the same amendment offered on second reading could be ruled out of order.

However, my recollection is, with regard to the matter that Mr. Ford is now involved in, that here was an amendment made to the proposal in the committee of the whole, and when the committee of the whole did arise, the question was upon concurring in the amendments made by the committee of the whole. The convention itself was then simply concurring at that point, and there had not been an independent offering on the convention floor of an amendment. So it seemed to me the 2 situations were different, and I suggested that possibility to Mr. Ford.

PRESIDENT NISBET: Our parliamentarian, Mr. Hutchinson, does agree with your interpretation as you gave it. Mr. Chase, that was the situation as it occurred, was it not?

SECRETARY CHASE: It was, yes, sir.

PRESIDENT NISBET: Under that interpretation, would you say then that Mr. Ford may present his amendment on second reading?

SECRETARY CHASE: I would agree.

PRESIDENT NISBET: That will be the ruling of the Chair then, Mr. Ford.

MR. FORD: Thank you.

PRESIDENT NISBET: Thank you, Mr. Hutchinson, for straightening us out.

One other announcement.

SECRETARY CHASE: Mrs. Conklin has sent her committee picture around for autographs. She would like to be sure it gets back to her desk. (laughter)

PRESIDENT NISBET: The Chair recognizes Mr. Perlich.

MR. PERLICH: I move we adjourn.

PRESIDENT NISBET: The question is on adjournment. Those in favor say aye. Opposed, no.

The motion prevails. We are adjourned until tomorrow morning at 9:30.

[Whereupon, at 5:00 o'clock p.m., Wednesday, March 7, 1962, the convention adjourned until 9:30 o'clock a.m., Thursday, March 8, 1962.]

NINETY-FIFTH DAY

Thursday, March 8, 1962, 9:30 o'clock a.m.

PROCEEDINGS

PRESIDENT NISBET: The convention will please come to order.

I am sorry that our minister has not arrived this morning. Will you please rise. We will have the invocation.

We thank Thee, our kind and gracious heavenly Father, for the opportunity that is ours to make a contribution to the welfare of our state and the welfare of its citizens. Give us guidance and strength and courage to do that which is best for us all. May we use good judgment and kind consideration in all of our dealings with each other. We ask this in Christ's name. Amen.

The roll call will be taken by the secretary. Those present please vote aye. Have you all registered your presence? If so, the secretary will lock the machine and record the attendance.

SECRETARY CHASE: Mr. President, a quorum of the convention is present.

Prior to today's session, the secretary received the following requests for leave: Messrs. Kelsey and Liberato, temporarily, from today's session; and Mrs. Hatcher, indefinitely, commencing today, for business reasons.

PRESIDENT NISBET: Without objection, the requests will be granted. They are granted.

SECRETARY CHASE: Absent with leave: Messrs. Bonisteel, DeVries, Durst, J. A. Hannah, Hatch, Mrs. Hatcher, Messrs. Kelsey, Liberato, Murphy, Pellow, Perras, Stamm, Suzore and Tweedie.

Absent without leave: Mr. Marshall.

PRESIDENT NISBET: Without objection, Mr. Marshall is excused.

[During the proceedings the following delegates entered the chamber and took their seats: Messrs. DeVries, Durst, Kelsey, Liberato, Marshall and Stamm.]

The Chair recognizes Mr. Brake.

MR. BRAKE: Mr. President, ladies and gentlemen of the convention, a matter of privilege. I would like to ask Mr. Madar not to jump out of his seat on a point of order until I finish. (laughter)

I note in the morning paper that the governor of this state has been slightly critical of one of the political parties represented in this convention. It is perfectly apparent that the governor does not read his Detroit papers with sufficient care and understanding. If he did, he would know that when anything is not done in this convention that ought to be done, or when anything is done that ought to be done, or when anything is done that ought not to be done, the blame belongs to the "courthouse gang." We don't want the Republican party or any other party, nor any governor, trying to crowd us out of our place in the sun. (laughter) I would greatly appreciate it if Mr. Ford or some other representative of the governor's party would so inform him, so that he shall not make this error again. (laughter and applause)

see also p. 1478

PRESIDENT NISBET: It is my understanding, Mr. Brake, that the "courthouse gang" was officially installed yesterday. (laughter)

Report of standing committees.

SECRETARY CHASE: No committee reports, Mr. President.

PRESIDENT NISBET: Communications.

SECRETARY CHASE: None:

PRESIDENT NISBET: Third reading.

SECRETARY CHASE: Nothing on that calendar.

PRESIDENT NISBET: Motions and resolutions.

SECRETARY CHASE: No resolutions on file.

PRESIDENT NISBET: Unfinished business.

SECRETARY CHASE: None.

PRESIDENT NISBET: Special orders.

SECRETARY CHASE: None.

PRESIDENT NISBET: Mr. Ford.

MR. FORD: Mr. President, yesterday I had the honor of presenting one of the members—and perhaps the founding member—of the "courthouse gang" with his badge of office, and if he keeps being mean to our Johnny, we're going to take it back. (laughter and applause)

PRESIDENT NISBET: Mr. Van Dusen, you are off to a good start this morning. (laughter)

MR. VAN DUSEN: Mr. President, I move that the convention resolve itself into committee of the whole for the purpose of considering matters on the **general orders** calendar.

PRESIDENT NISBET: The question is on the motion of Mr. Van Dusen. All in favor will say aye. Opposed, no.

The motion prevails. Mr. Van Dusen.

[Whereupon, Mr. Van Dusen assumed the Chair to preside as chairman of the **committee of the whole.**]

CHAIRMAN VAN DUSEN: The committee will be in order. When we concluded our business yesterday, we were considering **Committee Proposal 96,** A proposal pertaining to general and special provisions relative to the courts of the state. We had gone down through section d. The matter before the committee at this point is section e of Committee Proposal 96, which the secretary will read.

For last previous action by the committee of the whole on Committee Proposal 96, see above, page 1501.

SECRETARY CHASE: Section e.

[Section e was read by the secretary. For text, see above, page 1479.]

CHAIRMAN VAN DUSEN: For an explanation of the section, the Chair will recognize the chairman of the committee on judicial branch, Mr. Danhof.

MR. DANHOF: Mr. Chairman, members of the committee, for an explanation of this particular section, I should like to yield to the delegate from Wayne, Mr. Cudlip.

CHAIRMAN VAN DUSEN: Mr. Danhof yields to Mr. Cudlip.

MR. CUDLIP: Mr. Chairman and members of the committee, I, like the rest of you, have been inured with the judiciary. Not long ago I was reading an article in the American Bar Journal. Justice Whittaker of the United States supreme court, as you know, is a Kansas City gentleman, and he spoke before the American bar in St. Louis last summer. The subject of his address was reminiscences. He told about sitting in the supreme court chamber waiting his turn to argue a case, and one of his learned brothers was ahead of him. This lawyer kept quoting Judge Tompkins, Judge Tompkins. Finally one of the learned justices leaned over and said, "Sir, who is this Judge Tompkins?" "Oh," he said, "he's the justice of the peace up in my end of the state." (laughter) The learned justice said, "Now we've had enough of those rulings and decisions of Judge Tompkins, but you may proceed." He said, "You know, Your Honor, it's funny you mention that, because that's what he says about your court." (laughter)

Section e of Committee Proposal 96 is reported in the journal on page 474. We are talking now, of course, about elections of justices and judges. Essentially all that was done there was to provide that there be printed upon the ballot under the name of each elected justice or judge the designation of that office. That is the incumbency provision. The change is that the person who uses the word "incumbent" on the ballot must have earned his office, must have been elected. Today any judge or justice may use it, appointed or elected. Some of my lawyer friends say if you want to get your son on the Supreme Court of Michigan, you should call him "Incumbent" at birth. (laughter)

The idea when this 1939 provision was incorporated in our present constitution for elected and appointed judges was to further insure this ideal of stability of the courts, their independence, to give them some reasonable tenure, and to secure able lawyers. We felt in the committee that perhaps that was a very worthy thing because we do want an independent judiciary and we want the guardians of your liberty to be the best. But we did feel, to repeat, that perhaps a justice or judge should not have that privilege unless he had been once before the electorate. Thank you, Mr. Chairman. Thank you, ladies and gentlemen.

CHAIRMAN VAN DUSEN: Are there amendments to section e of Committee Proposal 96? Mr. Hutchinson.

MR. HUTCHINSON: May I direct a question to Mr. Cudlip?

CHAIRMAN VAN DUSEN: If the gentleman cares to answer.

MR. HUTCHINSON: Mr. Cudlip, is it the intention of the committee that this section e shall apply only to the judges of those courts recognized in the constitution, or would this, in your opinion, be broad enough to provide for incumbency designation of elected incumbent justices or judges in statutory courts?

CHAIRMAN VAN DUSEN: Mr. Cudlip.

MR. CUDLIP: Well, it is my understanding, Mr. Hutchinson, that we refer to judges of courts of record and to justices of the supreme court. And if I am wrong, I will yield to Mr. Danhof. That is my understanding.

MR. HUTCHINSON: So that this would apply to the judges of courts of record only?

MR. CUDLIP: And justices. We use the 2 words.

MR. HUTCHINSON: Justices of the supreme court—but the supreme court is a court of record also.

MR. CUDLIP: That is right. That is my understanding.

CHAIRMAN VAN DUSEN: Are there any amendments to section e of Committee Proposal 96?

SECRETARY CHASE: Mr. Downs offers the following amendment:

1. Amend page 2, line 13, after "each" by striking out "elected"; so the language will then read:

> There shall be printed upon the ballot under the name of each incumbent justice or judge, who is a candidate for nomination or election to the same office, the designation of that office.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Downs, on which the Chair will recognize Mr. Downs.

MR. DOWNS: Mr. Chairman, fellow delegates, this amendment would essentially restore the provisions of the present constitution. I think the previous speaker very properly pointed out that the recommendation would change what we now have. I think there are 2 arguments for the amendment and, frankly, this is not the most important part of the constitution we are drafting, but I think the one argument is that the status quo, to my knowledge, has proved to work satisfactorily in this field. Nobody yet has demonstrated any evil or any need for the cure.

Now, I am the first to admit that the incumbency designation does give an advantage in most cases to the incumbent; but I feel that when the governor—who is elected to represent

all the people—fills a vacancy, regardless of his political party he does have as one consideration what he thinks will meet the needs and wishes of the voters. I think when we are talking about elected judges, there is an advantage to the voter in knowing who is the incumbent and who isn't.

I think that while we have discussed almost a matter, somebody said, of a horse race as to which candidate would have an advantage, we may have overlooked the need for the voters to know whether they are voting for or against an incumbent. The fact that incumbents tend to win, in my way of thinking, is not necessarily bad. I am inclined to think that it indicates that, on the whole, the voters are satisfied with the judiciary as it is established. I do feel that we should have the protection of the individual running against the incumbent rather than just running on his record. I therefore urge the support of the amendment. It will restore the principle of the present constitution which I think has worked admirably well. Thank you.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Downs. Mr. Danhof.

MR. DANHOF: Mr. Chairman, members of the committee, in passing section d yesterday, to be consistent, section e included the word "elected" incumbent. As the arguments indicated yesterday, we felt that one who has been elected, who has been before the people is entitled to a designation for the reasons stated by Mr. Cudlip. Therefore, I would urge the defeat of the amendment.

CHAIRMAN VAN DUSEN: Mr. Binkowski, do you desire recognition on this amendment?

MR. BINKOWSKI: Yes, but if there are others, I will pass.

CHAIRMAN VAN DUSEN: Mr. Binkowski passes. Mr. Lawrence.

MR. LAWRENCE: Mr. Chairman, members of the committee, this provision that you find in section e was given rather lengthy discussion in the judicial committee. One of the difficulties that we have had in connection with the incumbency label and the use of it has been that an appointed judge could use it at the time of his first appearance before the voters. Now, the purpose of the incumbency label is to give security to judicial officers who might otherwise not be induced to run. When I say that, I say that rather broadly. It is not an effort to give an advantage, or shouldn't be an effort to give an advantage, but it should be one that a judge has earned, one that a judge has shown his ability to have. And the way for him to show that, of course, as far as an opponent is concerned, is by having earned it in an election and not because he happened to be the favorite choice of the governor, who can make his appointment without any responsibility to anyone. The result has been that because of the situation in connection with judicial elections, a person who has in no way earned that designation has been allowed to use it.

It was the feeling of the committee that if we are going to have an elective system, we should have a truly elective system. You are either for an election of these representatives or you aren't. Now, if you are for their election, certainly an advantage should not be given to one who has not earned the right to use the word "incumbent" by having been elected by the people. It seems to me that the designation is misleading in the case of an appointed judge who has not earned the right to use it by having been elected. It actually defeats the purpose that was intended in giving that right to use the word "incumbent." For that reason, I urge that you vote no as to the amendment.

CHAIRMAN VAN DUSEN: Mr. Ford.

MR. FORD: Mr. Chairman, members of the committee, you will notice that every member of the committee who gets up to justify the action of the committee is going to be very circumspect about the reasons for the change from the present language. It has been urged upon us with regard to other sections of the present constitution that since they were added to the constitution by amendment—and somewhat recent vintage—by the people, that they shouldn't be disturbed, and that is what we are talking about here. We are talking about a principle that was put into our constitution not in 1908 but very recently, and was put in by a vote of the people. It was not put in as a part of a package deal. It was not buried under anything else. It was a direct decision made by the people involving the judiciary. And the reasons for the incumbency label, if they are valid at all, are just as valid for an appointee appointed by a governor, even a Democratic governor, as they are for a person who is elected in the first instance.

Now, it has been indicated to us by people from outside of our state and people from inside of our state who have made a study of the judiciary system here that one of the strengths of our system has been the fact that we do give our judges, who we run on a nonpartisan basis, this incumbency designation. It should be noticed that the incumbency designation is relatively recent, because the nonpartisan aspect of the election of judges is relatively recent, and the incumbency designation came in with and as a result of the transfer of the judiciary outside of the party system. There are very good and sound reasons why, when you ask a man who is worthy of appointment or election to the judiciary to give up his law practice, you should give him some assurance that he is going to be able to continue in the judiciary, and you do this by giving him an advantage.

Mr. Lawrence says that on the one hand he feels that this should be given to a judge to give him security, but this should not be given to a judge to give him an advantage in an election. This to me makes very little sense. No one pretends that the incumbency designation does not give the incumbent judge an advantage, but this is the only merit that it has. You are not talking about the ordinary public office, such as a con con delegate, where we can continue to occupy whatever legal position we have and still be here. You are talking about a situation where a man is compelled to give up completely all of his contact with his profession, and whether he is appointed for a short term or whether he is elected for one term, he should have an opportunity to have presented before the people his name without the same necessity of campaigning as other public officials. If you think that a judge should spend all of the time during his period on the bench campaigning for the next election, then you should take the designation away entirely, because this brings us to another reason that is advanced by many people who are giving judges a designation.

We do not believe that it is proper for our judges—who first run as nonpartisans and second occupy a position that depends upon a certain degree of dignity that many of us hold above ordinary public office—to campaign in the same manner as other people, and the designation makes it possible for this judge to successfully carry on a restrained, if you will, campaign for reelection with enough advantage to offset the disadvantage he has by being a member of the bench. A member of the bench cannot go out and do the kind of things in a campaign that his opponents can do. He cannot participate in the kind of political rallies that his opponents may be free to participate in. And plain and simple, this gives the incumbent an opportunity to get even with the fellow who has more latitude and more freedom, who can go out and say and do just about what he pleases as a candidate for public office, while the incumbent, as a member of the bench, has to respect the dignity of his office and has to campaign in a restrained fashion.

CHAIRMAN VAN DUSEN: Mr. Garvin.

MR. GARVIN: Mr. Chairman and delegates, I rise to support the amendment to strike out "elected" for the reason that I believe, from experience and history of the judiciary over the past 100 years or more, that any judge should have the right of the designation of incumbency.

When a judge—up until now—is appointed, sometimes he has to run for office within a very few months. He should have the right of incumbency if he were appointed or whichever way this convention decides that he comes into that position. That is particularly for the reason of the similarity of names. If he did not have the designation of incumbency, anyone

could run with a similar name and the voters would be voting for other than the person that they know. They go to the polls saying, "Well, who is the judge at the present time?" If it is a similar name, they seek to find out who is the incumbent, if he has been a good judge. If he has not been a good judge, they still seek him so that they can vote against him. But it will be impossible unless the incumbency designation is thereon.

Furthermore, I notice in the supporting reasons for the committee proposal that this method is utilized to provide tenure for those judges who have previously qualified, gives stability to the judiciary. I submit that it gives no stability to the judiciary when you do not know who the incumbent judge is at the time that you go to the polls to elect a judge. It lessens any stability whatsoever if you do not know who is in office at that time. And "previously qualified;" of course, if we get back to that, we go back to section d, and I do not intend to go back to that point at this time. But I will say, in reference to the supporting reasons, that the judges who have previously qualified still mean the judges at this time, the way the constitution is now, who have been investigated and have had the opportunity of going before the people and their decisions and their action in office observed, and those people are entitled to the designation of incumbency. I am for the amendment to strike "elected."

CHAIRMAN VAN DUSEN: Mr. Downs.

MR. DOWNS: Mr. Chairman and fellow delegates, I wish to say that our good colleague Mr. Lawrence, I think, brought out a very good point, and that is that under the present constitution where the word "incumbent" is, the voter does not know if that means incumbent by virtue of appointment or incumbent by virtue of election. As I said earlier, my theory on this is that the voter should have a maximum of information. And while I don't have the exact language, if Mr. Lawrence would care to join me or perhaps later in the day or by second reading, I would be glad to submit an additional amendment which would differentiate incumbency by election or appointment. I think in doing this, the voter would still have that added information that he is entitled to.

And while it seems to me there has been some belittling of the matter of appointment by the governor, I ask us to think in terms of the office of the governor and remember that this office does represent all the people, that that person is responsible to all the voters and, as we have tried to get across, historically governors have appointed people whose competency is shown by their general reelection and by the fact that our Michigan courts have been free of taint of improper action that has been shown in other states with other methods. So perhaps Mr. Lawrence's point, I wish to say again, does have some merit, and I would be glad to try to work out an amendment for later on or by second reading. I understand one of the other delegates may have an amendment on this line which I would be glad to support.

CHAIRMAN VAN DUSEN: Mr. Yeager.

MR. YEAGER: Mr. Chairman, ladies and gentlemen of the committee, I think Mr. Downs and Mr. Garvin have both made very excellent arguments against the election of the judiciary. They have stated, in effect, that people don't know who the incumbent is when they get to the polls. Now I would like to ask: if we go to the polls and don't know who the incumbent judge is, how are we expected to make a judgment on qualifications of the judges to be voted on?

As I stated the other day, I think the ballot designation is an election gimmick to give the weight of incumbency to the incumbent judge at the disadvantage of whoever may be running in an election. My concept of an election in a democracy is that both sides have an equal start at the beginning. If we are going to have ballot designation in this constitution, then, as far as I am concerned, the committee proposal is far the best, and I urge the defeat of the Downs amendment on that proposition. Thank you.

CHAIRMAN VAN DUSEN: Mr. Follo. Mr. Follo passes. Mr. Binkowski.

MR. BINKOWSKI: Mr. Chairman, ladies and gentlemen of the committee, I rise to support the Downs amendment. The remarks of Mr. Yeager and, of course, the remarks of the distinguished jurist from Bay City yesterday really set me thinking. If I may proceed in somewhat of a jocular manner —really serious, but I have reasons for attempting to be somewhat jocular—Judge, there are a great number of us down in Wayne county who really believe in this free enterprise competition in contest business with respect to the judicial system, and I think if we go back and review very briefly the history of the rise of the designation, perhaps the judge and many of the other members here of the committee will realize why I speak in this vein. Of course, I would like to remind you that in today's Free Press, a jurist was quoted as saying that candidates should start from scratch, on an equal basis, and I think that this certainly has some merit, and I borrowed the long ballot that Mr. Lawrence has been showing to the various members of the judicial committee and others in the convention, and I don't know if he pointed this fact out to you, but this ballot was the primary election of Monday, March 4, 1935. It is the Democratic party ballot. And I think he has pointed out—if not, I will—that there were 181 candidates at that time, only 18 to be nominated. And as Mr. Danhof has already commented—and I think most of you here are old enough to realize that—this was the rise of Roosevelt and the Democrats in the early 1930s. Mr. Elliott has already quoted that famous saying of Franklin Delano Roosevelt, "You have nothing to fear but fear itself."

It seems that some of our judges in Wayne county had nothing to fear except the minority groups and the Democrats in those 1930s, because as a result of this 1935 election, although every one of the 18 incumbent Republican judges were renominated, I looked at the "red book," the secretary of state handbook of 1935 and find, as was borne out by many of the older members of the advocates club—and the advocates club of Detroit is a bar association consisting of attorneys of Polish descent—back in 1935 there were 8 Poles and 7 Irishmen nominated and on the Democratic ticket. I think it became pretty evident that the Democrats would come in. The judges at that time seemed to think that there was some reason for changing the rules of electing people and, of course, being very near it in law, I don't think they had to go very far to look to the law books. I think the reason for this was the basic law, and that was the law of self preservation. And, of course, with the change from nonpartisanship into the addition of designations, here we are today.

Now, this logic kind of escapes me, and this is the reason why I am trying to find out why all of a sudden we believe in contests and free competition and so forth and starting from scratch on one hand, but now, of course, with the designation there is no question that this gives the incumbent a head start. I for one cannot see the logic in not giving it to him in the initial instance upon appointment of a governor, but giving it to him once he is elected. Maybe there is some reason. I can't find it out. It just seems to me that some people are a little unhappy as a result of G. Mennen Williams being in office for 12 years, as there were some people who were unhappy in the 1930s when the political situation changed. I may be wrong. I don't know. I just raise a question. Maybe somebody can point this out to me. But it seems to me that once the conservatives begin losing, they want to change the rules of the game. I don't know.

The second point that I would like to raise with this incumbency designation—and please don't misconstrue my remarks. I believe in the incumbency designation. I certainly am supporting it. But we also have a distinguished representative from Muskegon who has been praised for his political fortitude in pushing a certain idea, and I certainly respect his right to do so. I would just like to pose a question for him, and he doesn't have to answer at this time. It just seems to me that this incumbency designation is the closest thing to a guaranteed annual wage. (laughter)

CHAIRMAN VAN DUSEN: Mr. Lawrence.

MR. LAWRENCE: Mr. Chairman and members of the committee, may I ask your indulgence just one minute to illustrate

the point I wish to make by a story. Apparently this is the morning for it and I assure you it will be short. In the first place, my feelings are somewhat hurt. For the last 2 days, because I happen to be on the committee and happened to have spoken, I have been referred to indirectly and directly, and certain implications have been made of the statements I have made. I got to the point where I feel much like W. C. Fields in one of his favorite scenes—I mean to show you how unjust it is. In this scene he was sitting in a diner on a stool eating, and he had before him a piece of meat that evidently was quite distasteful. And over him was standing a waitress who was just about to do him in, and he was evidently trying to explain. He said, "Madam, I didn't say anything about the quality of the meat you serve here. All I asked you was what became of that old horse you used to keep tied out in back." (laughter)

I assure you I had no such motive. All that the committee has been trying to do is to make an improvement that, if we are going to have an elective system, will make the election better. It is an effort to keep a device from being used by a nonelected judge. I urge you to vote no as to the amendment.

CHAIRMAN VAN DUSEN: Mr. Hodges.

MR. HODGES: I would just like to remind the members of the majority party that there is a slight possibility in the history of this constitution that we may have a Republican governor in the next 50 years, and quit running against the specter of G. Mennen Williams.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Downs to strike the word "elected" from line 13. Does any delegate desire to have the section further read? Mrs. Butler.

MRS. BUTLER: I would like to say to Mr. Binkowski in answer to his question whether there were a few people in the room who were unhappy about G. Mennen Williams, I think there are about 99 of us here who were unhappy. (laughter)

MR. BINKOWSKI: Thank you. (laughter)

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Downs. Those who favor will say aye. Those opposed will say no.

The amendment is not adopted. Are there further amendments to section e?

SECRETARY CHASE: Messrs. Shackleton, DeVries, Sterrett and Seyferth offer the following amendment:

1. Amend page 2, line 12, by striking out all of section e, lines 12 through 14.

CHAIRMAN VAN DUSEN: Before the Chair recognizes you, Mr. Shackleton, the Chair would note that Mr. Binkowski, with his penchant for matters of this nature, has gotten us into some discussion of personalities, which the Chair hopes that we will—

MR. BINKOWSKI: Can I get that printed in the journal? (laughter)

CHAIRMAN VAN DUSEN: —hopes we will be able to avoid during the balance of the session. Otherwise, the Chair will have to request a longer gavel. (laughter) Mr. Shackleton.

MR. SHACKLETON: Mr. Chairman, fellow delegates, there are more Monday morning quarterbacks than there are quarterbacks or all the players put together. I have not yet found any Monday morning quarterbacks suggest that the one that is winning should have 8 yards to make in 4 downs instead of 10. That would be 20 per cent. Nor have I heard anyone suggest that the winner of a ball game should have the privilege of starting the batter out from first base instead of having to go all 4.

Mr. Lawrence spoke about true elections. I believe true elections would mean free and competitive elections. Evidently practically everyone here has conceded that the designation of incumbent after an office holder's name would give him 20 or more per cent advantage toward his election. This, obviously, would not be a true, free, competitive election. It has been suggested that because a judge had performed well, he should have this advantage. There are a lot more constitutional officers holding office in this state than there are judges. They, too, think they hold their office well. Maybe they should have the same advantage—supervisors, sheriffs, clerks, township officers. To be consistent then, we should give that privilege to all office holders, not just to judges.

It has been suggested that judges give up a good deal—their practice, their career. There seems to be no evidence that they were forced to do it. No one, certainly, put a gun to their head and said "You have to run." They did it willingly, of their free accord, the same as other office holders; and other office holders give up a career oftentimes. And most other officers think they are making a career when they are elected because they rerun for office too, year after year, until they are defeated. Discrimination in favor of lawyers or judges in this respect is truly discrimination, not warranted to be considered by any sound group of people that want true, free, competitive elections.

I certainly would urge the adoption of this amendment to delete section e in the interests of fair play, of wanting free, true, competitive elections, not similar to the type of elections held in Russia. At this time I would like to yield to Mr. Sterrett.

CHAIRMAN VAN DUSEN: Mr. Shackleton yields to Mr. Sterrett.

MR. STERRETT: Mr. Chairman, members of the committee, I won't go into this point much further regarding the title of incumbent. I think it was covered very well bipartisanly on the last amendment. My feelings are completely in juxtaposition with Mr. Shackleton. However, it was always my thinking that the legal profession was against advertising, and I think this is what the title of incumbent does. I would like to read a paragraph from a letter here from a very fine circuit court judge of the state of Michigan. He states:

> Section e again reflects the specialized treatment of judges that I object to. If judges are entitled to designation on the ballot, all elected officials should have the same treatment.
>
> The advocates of this provision are among the most vehement in contending that election is the only method for selecting judges properly, and yet they seek to stack the deck in favor of the incumbent at the time of reelection.

I would like to urge you to vote for this amendment.

CHAIRMAN VAN DUSEN: Mr. Shackleton, the Chair believes you retain the floor.

MR. SHACKLETON: One of our ex judges, a delegate in this convention, Judge Dehnke, the other day reported a hearsay conversation. I thought hearsay was not permitted in court. The gist of that conversation was that men built ceilings as an arena for flies to walk on. I submit to you that flies are very dangerous because they carry disease affecting 8 million people, perhaps, and not 8,000 lawyers. Chemists have tried to develop DDT and other chemicals to destory the flies, but they have developed an immunity against it. The fly menace may get worse. It may be necessary in the next 50 years to have an official fly swatter for each county, a fly exterminator. For health reasons, that could be very important and necessary. Then we certainly should let the fly swatter have the privilege of the advantage of his office and designate him incumbent. (laughter)

CHAIRMAN VAN DUSEN: Mr. Farnsworth.

MR. FARNSWORTH: Mr. Chairman, ladies and gentlemen, I would like to support this particular amendment and recall for Delegate Lawrence another famous saying of W. C. Fields, and I think the committee must have had this particular quip of Fields' in mind when they attempted to put this in, because W. C. Fields also said, "Don't ever give a sucker an even break." (laughter) And anyone who would run against an incumbent judge with the incumbency designation on the ballot, in my opinion, would be a plain sucker. I heartily support the amendment and hope you give it full consideration.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Messrs. Shackleton, DeVries, Sterrett and Seyferth. Mr. Staiger.

MR. STAIGER: Mr. Chairman, I rise to oppose this amendment very vigorously. The reason: if we were just looking at

giving up a career or something like that, this would apply equally to other offices and other persons running for office, and I would say that they should be treated equally. But there is a very fundamental difference, in my mind, between the judge and other office holders. Basically what we want, I think, in this country and in this state are judges of integrity who are able to decide the case on its merits and not on what the public opinion is. I think this is fundamental to our system. If we are going to have political judges who have to be swayed by the popular opinion at a given time, we are not going to get justice from our courts. This is one method of isolating the judge to some extent so that when a case comes up, he is able to decide the case on its merits and not on the basis of what the popular opinion at that time is.

We wrote a bill of rights into this constitution to protect, to a great extent, minority interests and the rights of the individual. If we want these rights to be truly enforced, we are going to have to have judges who are able to stand up and support these even in the face of public opinion. To my mind, this is one of the fundamental things that is necessary if we are going to have justice in the state. One way of doing that is to give some advantage to that judge so that he knows that by making an unpopular opinion, he is not going to be swept out of office so easily at the next election.

CHAIRMAN VAN DUSEN: Mr. Seyferth.

MR. SEYFERTH: Mr. Chairman, ladies and gentlemen, I rise to support the amendment now before us. I speak as a nonlawyer. And in supporting the amendment to section e, I am directly answering Delegate Binkowski's question of a moment ago. It seems that we can all appreciate the reason for the incumbency designation for judges and justices. It has been stated that it gives a 25 per cent lead, approximately, to the incumbent judge or justice. We can fully appreciate that. I think where we separate our thought processes is why, then, does this not apply also to other elected offices of the state? By inference, I think, we are saying that the other offices of the state and officeholders are not necessarily as competent or need to be as competent as our judges and justices. I take exception to this position and mainly for this reason: we should either apply the incumbency label to all elected offices of the state or not apply it to any elected offices of the state. And because of the amendment now before us pertaining to section e, I strongly support the amendment as presented.

CHAIRMAN VAN DUSEN: Mr. Walker.

MR. WALKER: A couple of questions for Mr. Shackleton. First, in the office that he speaks of, that of fly swatter for each county, would he advocate that the office be filled on the basis of one man, one vote? In other words, that each man is created equal? And, second, would he have him elected on a partisan or nonpartisan basis?

CHAIRMAN VAN DUSEN: The questions are out of order, Mr. Walker. The Chair will recognize Mr. Norris.

MR. WALKER: Is the question any more out of order than the remark, Mr. Chairman? Why is it different for one than the other?

CHAIRMAN VAN DUSEN: Mr. Norris.

MR. NORRIS: Mr. Chairman, I am moved to ask a question of the chairman of the judicial committee, if I may, through the Chair.

CHAIRMAN VAN DUSEN: You may proceed, Mr. Norris.

MR. NORRIS: The argument has been advanced here that there are no differences in the campaigning between those who may be running for constitutional offices generally as against those who campaign for judicial office, and I just wondered, Mr. Danhof, whether or not in fact the Canons of Judicial Ethics impose certain restrictions upon the quality and quantity of the campaign engaged in by a person campaigning for a judicial office which may lend some credibility to the committee proposal in this matter.

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: Mr. Norris, members of the committee, it is my understanding that the Canons of Judicial Ethics prohibit the judge from engaging in activities of a partisan nature, and they very definitely have, since they were adopted by the supreme court in the 1940s, limited or endeavored to limit and, of course, if the judge would violate them, he would be subject to censure and perhaps disciplinary action by the violation thereof. The answer is definitely yes.

CHAIRMAN VAN DUSEN: Mr. Leppien.

MR. LEPPIEN: Mr. Chairman, fellow delegates, I have viewed over the years with a great deal of interest the elections as conducted in the state of Michigan, and one of the things that impressed me was the fact that we have—and I think wisely—taken the judiciary offices out of the partisan field and made them nonpartisan. We did that for the purpose of highlighting the fact that they were different. We separated them from the other offices in the same election. It seems to me, having done this, the idea then of going further and putting the incumbency label to that office is going way too far. I urge you to support the amendment.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Messrs. Shackleton and others. Mr. Danhof.

MR. DANHOF: Mr. Chairman, members of the committee, we have heard a number of arguments about fair play and about having elections equal for judges as everybody else, but I must take issue very vigorously here with my fellow delegate from Muskegon. There is a need in the judiciary of any state or of any country for stability, for confidence of the public. And this is arrived at in but one of two ways. In the federal system, they appoint, and they appoint for life. And those of you who have read or have heard about The 58 Lonely Men know that it was only the stability of the appointment in the southern states that gave courage to those judges.

Now, in an elective system, to achieve stability and to achieve tenure of office, we have developed a system of giving to the incumbent judge a designation, and there are good, sound reasons for this. In the first place, it is in the interest of an orderly society that we have a stable judiciary, that we have an independent judiciary. And whatever may have been the reasons at the time, we have taken them out of the field of partisan politics, and they cannot and they do not have a political party or the political machinery—at least on the surface—available to them. They have trouble raising money for a campaign. They have trouble securing workers in a campaign. When there is a partisan campaign afoot, most of the people are engaged in that particular activity. By the granting of the incumbency designation, we have eliminated the perpetual campaigning on the part of a judge.

Envision, if you would, what would happen if there was no incumbency designation. A judge as he approaches his last year in office, if he is in a circuit that has more than one judge and it is his turn to come up for election, would be endeavoring to grab ahold of and scrap for those cases which would give him publicity before the public so his name would be known. It has been 6 years since this judge has faced the voters of his circuit. A tremendous number of people may have moved in or moved out since the last time he appealed to them. And then envision, if you would, a judge who has spent 12 years upon the bench, who has done a good job, who has served adequately the people of his circuit—but judges don't usually attract a lot of publicity unless they happen to get a tremendously big case that attracts notoriety within the newspapers, and so he has gone on day by day administering justice to the people of his circuit, and now it comes time for him to face election, and in this day and age of growing population, there suddenly rises up before him a name candidate. If there are various religious or ethnic groups in the particular locality, there rises up a hotshot prosecutor who has had a case that has attracted considerable notoriety and who in the future might be judicial timber but at the time is not, and so when the election comes along, you have a man who has reached his sixtieth or sixty-first birthday who has put in 12 years of good hard service to the people of his circuit; and simply because he doesn't have the right name or because of the publicity given to an opponent, he is defeated.

Now, perhaps in the one judge circuits this would not create

a particular problem, but I submit that in those circuits that have even 2, 3 or 4 judges and more, the incumbency designation gives stability and gives tenure to the bench. This is the way, in an elective system, that you give some stability. The argument will be made that this may freeze in a bad judge. The only thing I can answer that with is that it keeps in many, many more good judges. Any judge who has done a reasonably decent job after 6 or 12 or even 18 years on the bench should have the opportunity to be retained in that office.

If you want to put your judiciary on a perpetual campaign entirely for the last year of their office where they are going to have to go out and campaign at picnics and rallies and county fairs, and if you are going to drive them back into the political arena so they have to take sides—and maybe it happens now, and I am not denying that it does to an extent, but if you want it to happen even more so, then you will vote for this particular amendment. There will be nothing that will destroy the confidence of the people, will destroy the judicial stability, will destroy the ability of the judges and will do more harm to the good name that has been developed in this state than to pass this particular amendment. Judges are not like fly catchers. They don't have a political party behind them. We have been striving for years to remove them from the political arena.

Now we have stated that we will fill by election and this, I think, is a fair, consistent philosophy. But once a judge has been elected and he has done a good job, then we should give him stability. We should make sure there is tenure in the office. And failure to do this and the striking of this particular proposal will do more harm to the judiciary and to the courts and to the administration of justice in this state than anything else that could be accomplished. For these reasons, I urge strongly the defeat of this amendment.

CHAIRMAN VAN DUSEN: Mr. Ford.

MR. FORD: I agree with Mr. Danhof in everything he said about fair play, and for that reason I urge you to vote for the amendment. If we are going to talk about fair play, let's talk about fair play. We have decided that some judges should have a ballot designation because it is good for some judges to have a ballot designation and this serves the people of the state. It is not good for other judges to have a ballot designation. No difference has been explained to me except for the manner of their selection and perhaps the person that made the appointment.

If there is any justification to this thing at all, it has been explained by several people here that when you put a man on the bench, you are asking him to forego his profession in order to take the position. You know, when a judge is appointed in Michigan to fill a vacancy, the maximum period for which he can be appointed is 2 years. Most generally it is some period less than that. So we say to a man, "Please accept this appointment and serve for something less than 2 years. Give up your law practice. And then when you run for office the next time, you are not going to run for the regular 6 year term like other circuit judges; you are going to run for the balance of the unexpired term." We ask him to run twice as often for his first 6 years as anyone else, and we ask him now, with what has been done, to run without a designation. So let's be fair and let the other judges who are going to be on the ballot with him face the same kind of a risk. I think perhaps if we vote for the amendment we may ultimately come to realize that, as has been stated before, in an attempt to roast the pig we have burned down the barn, and in a headlong attempt here to do something that perhaps has satisfied the aggressive tendencies of the members of the majority party on this question of appointment, we have taken a very strong step toward destroying one of the most important parts of our elective system.

We have been told by every expert that testified before us that the ballot designation is an integral and important part of the whole picture, and when you start taking away a little piece of this picture, it is no longer a whole picture. The system works the way it works now, well, because it is all there, but it is like an automobile: when you take one of the spark plugs out, it just doesn't function the way it did before. It may not function at all. At least it is not going to function as efficiently as it did before. We have already taken one of the spark plugs out. Perhaps if we vote yes on this amendment and take some more spark plugs out so that we stop this automobile, we will all stop and take a look at what we have done here this morning and go back and correct it and put the judiciary system in Michigan back in the condition it was in before we started tampering with it.

CHAIRMAN VAN DUSEN: Mr. Shackleton, the Chair would advise that there are 9 speakers seeking recognition, of which you are the fifth in line. Mr. Ostrow.

MR. OSTROW: I oppose this amendment. I am primarily in favor of retaining the language of the present constitution, but if we can't have that, at least I would like to have the committee proposal adopted. I don't share the view of some of the speakers that this is a question of which of the 2 candidates for a particular judicial office has an edge by reason of the designation. I think the important thing is what is better for the judicial system and for the people, and I think that the designation is better for the judicial system and for the people. At least the people know that whatever other qualifications any of the candidates have, this particular candidate at least has had some experience as a judge in that particular office.

Now, this provision in our present constitution was put there not by the lawyers but by the people. And the question has been asked, why should these judges have this security and not other people? Well, I submit to you that we have given very, very many people security in our constitution: civil service, the colleges, education, certain tax provisions. Whenever the voters have seen fit, they have put into the constitution, along with designation, certain guarantees, certain securities for various types of functions, commissions or boards, and I submit that on that basis the amendment should be defeated.

CHAIRMAN VAN DUSEN: Mr. Prettie.

MR. PRETTIE: Thank you. Mr. Chairman and fellow members of the committee, I realize that anything that any lawyer may say in connection with this matter is necessarily somewhat to be discounted on the basis of presumed selfish interest on the part of members of that profession. I do think this matter ought to be put in context. What we are speaking about is a ballot designation of incumbency.

May I submit to you that every other candidate than those running on nonpartisan tickets has a ballot designation. At the head of the ballot appears Republican or Democrat or Socialist or Farm Labor or whatever. Fundamental in our system of democracy is the existence of party systems and, with that, party support. When that party support in 1939 was taken away from our judges by the establishment—and I think very wisely—of a nonpartisan judiciary, the ballot designation theretofore existing for the members of our judiciary was taken away from them too, and in place of it the people in their wisdom said that those who were incumbent were entitled to that instead of a party label, so that when their names appear on a nonpartisan ballot, however large or however small, they have something to identify them to the voter. This is in place of and was a part of the change from one ballot designation to the other one that we are now discussing. I oppose taking this designation away, and I oppose the amendment.

CHAIRMAN VAN DUSEN: Mr. McAllister.

MR. McALLISTER: Mr. Chairman, fellow delegates, I believe that judges should be entitled to respect after they are elected to office. I have previously stated my high regard for the judiciary. I am an attorney myself; however, I do not feel that judges are entitled to preferred treatment.

I wish to support the Shackleton amendment because I believe a judge should be able to win on his record. Most of the people in his area either know the judge by name or reputation, and if he doesn't have a good enough name or a good enough reputation, then he shouldn't be reelected.

CHAIRMAN VAN DUSEN: Mr. Garvin. Mr. Garvin passes. Mr. Shackleton.

MR. SHACKLETON: Mr. Chairman, the 2 previous speakers, the chairman of the committee and Mr. Ford, would naturally infer that all of the other officers, which are greatly more numerous than the judges, would not necessarily have to be men of integrity. I maintain that any office holder should be a man of integrity, should try to protect his position, naturally. And there are more people out of our nearly 8 million in Michigan that come in contact with these other officers than ever come in contact with the lawyers or the judges or the courts in this state. And whether lawyers like it or not, and with all due respect to the 56 lawyers in this convention, from 42 years' experience in dealing with masses of people coming to you with their problems and their troubles, and you know they should consult a lawyer and you try to refer them to a lawyer and they are shy of them just as they are shy of dentists, doctors, bankers and almost any other smaller group, the main reason being because of a lack of respect. I think lawyers are held in awe, no question about it, but they are not always respected. They think that going to a lawyer is apt to get them into more trouble.

Most of you who have dealt with clients will realize that if your clients had come to you sooner, you could have kept them out of trouble instead of getting them into trouble. That is too bad. But apparently it is human nature. I maintain that the judiciary should not have any more advantage than any other office holder in the state, and that if we want free, competitive, true elections we will not have them if we give someone a 20 per cent or more advantage when they are running for office.

CHAIRMAN VAN DUSEN: Mr. Sterrett.

MR. STERRETT: Mr. Chairman and members of the committee, I believe I will adhere to my statement of yesterday and pass, but I would like to call for a division on the vote.

CHAIRMAN VAN DUSEN: Mr. Sterrett requests a division on the amendment. Is the demand supported? It is supported. Mr. Romney.

MR. ROMNEY: As an individual delegate, I don't want to prolong this discussion or this constitutional convention, but there is one matter that hasn't been mentioned that, it seems to me, bears on this proposal, and that is this: this proposal obviously is not unrelated to what we will do later with respect to the selection of the supreme court, and whether that process is to be by appointment or by election, it seems to me that one of the most important improvements we can make in the judiciary article is to free the members of the supreme court from the necessity of going back to either the governor or the party convention for renomination and the opportunity to continue their service on the bench. It seems to me that this is one of the most iniquitous aspects of the present judicial article. Now, I personally hope that when we come to that area, we will provide for the automatic right of the incumbent to renominate himself and to run on a nonpartisan basis. I am not one who believes that we should limit—this is related, Mr. Chairman (laughter)—I am not one who believes that this is unrelated to the matter we are acting on here.

CHAIRMAN VAN DUSEN: The Chair has some questions about it, though, Mr. Romney. (laughter)

MR. ROMNEY: All right. I will come to that point. (laughter) The reason being that if the incumbent is to renominate himself, in my judgment, he should not run against the record but he should rather run against opponents that either party can put up or that the citizens nominate by petition. The relationship here, Mr. Chairman, is this: if the incumbent must face one nominated with organized support as would be the case in either alternative, either if nominated by the convention or if nominated by petition, then the incumbent has to run against one who has organized support even though it is on a nonpartisan basis, and I submit that the incumbent needs the designation of incumbency to offset that handicap, and particularly where the incumbent has been the fearless type judge we need who has been capable of disregarding the considerations that might develop the type of organized support he had earlier. Therefore, I favor the retention of the proposed committee language and the defeat of this amendment.

CHAIRMAN VAN DUSEN: Mr. McLogan.

MR. McLOGAN: Mr. Chairman, in matters of justice, independence of thought and action are 2 qualities that people look for and have a right to expect. In my thinking, it would follow that anything that detracts from that precept is wrong. Certain ramifications of a hard campaign may detract from that. I think it is to be preferred that we provide this independence of thought, and I think the incumbency label would so help. I would therefore oppose the amendment and prefer the position of the committee.

CHAIRMAN VAN DUSEN: Mr. Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, I don't agree with the points of view as expressed by Mr. Danhof and others who have expressed support of the committee proposal. It seems to me that our whole concept here is one to give the people a right of free choice, and that whenever you give to any official a ballot preference you are, to a large degree, taking that freedom of choice away from them.

Mr. Danhof spoke of the problems of campaigning and that a judge would be campaigning during his last year. I would only point out that in any event, whenever you have elected officials, they must be faced at some time or another with the problem of going back to the people in a campaign technique to see whether or not the efforts that they have put forth for them are justified and worthy of support. Judges do not campaign in a vacuum and neither do their opponents, and therefore they are faced with the same campaign techniques as their opponents are. He also mentioned the problems of many judges being faced with reelection at the same time in some of the circuits. As I understand the procedures we have followed here, we will be, I hope, moving into a staggered term proposition which will reduce this and make it possible for the people to recognize those men who have served them well.

A third thing that has been said is that a designation of incumbency does give a judge a head start of 25 per cent or of some such figure, and I only wonder whether or not this means that when he does campaign, 25 per cent isn't enough. He has to get 51 per cent of the vote to win. Does he only campaign ¾ as hard, or just exactly what does he do in the way of campaigning? He must be faced with exactly the same problems as his opposition, those who are opposing him in seeking the office. And as I mentioned in my original remarks — and this is the remark which I think is most directed to this point — when any public official goes back to the people for review of his activities, they need to have an opportunity of review with freedom and without campaigning on the ballot, and I therefore support the amendment.

CHAIRMAN VAN DUSEN: Mr. Higgs.

MR. HIGGS: Mr. Chairman and fellow delegates, I will be brief. I would not like to think that we would be confused in this particular question on this particular amendment that we are concerned with lawyers as such; we are concerned with judges. It might actually be more to the benefit of lawyers who are not judges to remove the incumbency designation than it would be in other aspects. I think that this is a highly important matter. I think it is very necessary to the stability of the judicial system as it has existed in Michigan.

CHAIRMAN VAN DUSEN: Mr. Norris.

MR. NORRIS: Mr. Chairman, at the time that I spoke on this matter very briefly before in addressing to the chairman of the judiciary committee a question regarding the Canons of Judicial Ethics, I did not have in my possession the Canons of Judicial Ethics related to this matter. I now have them and I would like to bring them to the attention of this body because I think they give to the public an idea that the standards and methods of campaigning for judicial office are different from those campaigning for other offices. It seems to be the major contention here that if you provide an incumbent designation for elected judges, you ought to provide them for all or none at all, and it seems to me we have to remember that the judicial power, the honor, integrity, independence of the bench is what is necessary in the public

interest in the administration of justice, and to promote that end, the Canons of Judicial Ethics provide as follows. I will just read them very briefly with regard to the matters before us. One with regard to partisan politics, canon 28, Canons of Judicial Ethics of the American bar association:

> While entitled to entertain his personal view of political questions and while not required to surrender his rights or opinions as a citizen, it is inevitable that suspicion of being warped by political bias will attach to a judge who becomes an active promoter of the interests of one political party as against another. He should avoid making political speeches, making or soliciting payment of assessments or contributions to party funds, the public endorsement of candidates for political office and participation in party conventions.
>
> He should neither accept nor retain a place on any party committee, nor act as a party leader, nor engage generally in partisan activities. While, however, it is necessary for judges to be nominated and elected as candidates of political parties, nothing herein contained shall prevent the judge from attending or speaking at political gatherings or from making contributions to the campaign funds of the party that nominated him or seeks his election or reelection.

You have limitations, then, with regard to the partisan quality. In addition to that, in canon 30, candidacy for office, the following standards are prescribed:

> A candidate for judicial position should not make or suffer others to make for him promises of conduct in office which appeal to the cupidity or prejudices of the appointing or electing power. He should not announce in advance his conclusions of law on disputed issues to secure class support, and he should do nothing while a candidate to create the impression that if chosen he will administer his office with bias, partiality or improper discrimination. While holding a judicial position he should not become an active candidate, either at party primary or general election, for any office other than a judicial office.
>
> If a judge should decide to become a candidate for any office not judicial, he should resign in order that it cannot be said that he is using the power or prestige of his judicial position to promote his candidacy or the success of his party.

And I wish to underline the next paragraph:

> If a judge becomes a candidate for any judicial office, he should refrain from all conduct which might tend to arouse reasonable suspicion that he is using the power or prestige of his judicial position to promote his candidacy or the success of his party. He should not permit others to do anything in his behalf which would reasonably lead to such suspicion.

I think the kind of standards which the bar associations in the public interest have sought to advance for judicial positions, in my judgment, qualitatively distinguish the nature of a campaign for judicial office from other constitutional offices, without in a sense demeaning or deprecating the importance of the other offices, because of the nature of the judicial position. These standards of judicial campaigning have been set forth, and I think they justify the committee proposal, and I am against the amendment.

CHAIRMAN VAN DUSEN: Mr. Bentley.

MR. BENTLEY: Mr. Chairman and members of the committee, I rise to support the committee proposal and oppose the amendment but I would like, Mr. Chairman, if there is no objection, to speak out of order very briefly. This is the first and last time that I will rise to my feet during the consideration of the judiciary committee proposals, and I do so merely for the purpose of advising the committee of the whole that we are only a few months away from a most important anniversary. At 11:00 o'clock, on February 22, 1962, 2 weeks ago today, we began debate and discussion of the proposals from the committee on the judiciary. (laughter) At 11:00 o'clock, which will be 5 minutes from now, we will be entering the third week of the consideration of the judiciary committee proposals. I don't know what it was about Washington's birthday when we started the debate on this committee's proposals that has so inspired the floods of eloquence that we have been listening to in the past 2 weeks except perhaps an overwhelming desire to tell the truth. Unfortunately, some of us don't always agree as to what the truth is.

But I, more seriously, Mr. Chairman and members of the committee, would ask the committee to keep in mind as that magic hour of 11:00 approaches, the consideration — and perhaps I might even suggest that those who so feel inclined offer up a little silent prayer in their hearts — for the continued well being and sustenance of 2 distinguished gentlemen: one, the gentleman from Muskegon, the chairman of the committee on the judiciary; the other, the present occupant of the Chair, the gentleman from Birmingham, Mr. Van Dusen. I am sure that we should, most of us at least, agree that both of these gentlemen deserve a respite — if not immediately, at least sometime in the reasonably near future, and I hope very much indeed that all of us will cooperate in seeing that this anniversary is not repeated on March 15 (laughter) another week from today, because it sometimes puts me in mind of those famous words with which Oliver Cromwell dissolved the long parliament, and which I hope will never be said to this body, and that is "You have sat here too long for the good of any of us. Therefore, be gone."

With those few words, Mr. Chairman, I will not speak again on these proposals. But I do hope that all of us, lawyers and laymen alike, will cooperate in seeing that you and Mr. Danhof and all others who have borne this burden so ably and nobly during the past few weeks get your well deserved rest from the committee on the judiciary and we move on to equally important subjects as speedily as possible. Thank you. (applause)

CHAIRMAN VAN DUSEN: Mr. Bentley, the Chair is sure that Mr. Danhof joins in thanking you for your remarks and calling the attention of the committee to this anniversary, and the Chair would suggest that the only fitting manner in which to observe the anniversary would be with a moment of silence. (laughter) Mr. Faxon. (laughter)

MR. FAXON: Mr. Chairman, I was just thinking to myself while sitting there that I certainly would feel sorry for the next person who gets up to speak. (laughter) But I intend to speak on the amendment in full realization that the judicial article has taken time. It was 2 weeks ago today, I recall, that a memorable section was defeated also on this same day, and I think we have every reason to take time on an article of such importance as the judicial article because we are dealing with a very, very important branch of government, so I don't make any apologies for the remarks I am about to say.

I have been advocating generally a conservative point of view, and I don't intend to deviate from this in my support for this amendment which has been submitted. I have heard it said, in opposition to the amendment, that judges would make unpopular decisions; they ought not to be thrown out of office. As a Democrat — little "d" as well as big "D" — I think that judges ought to be responsive to the people when they make decisions, and I am sure that if this were 1800 or 1840 or 1850, the people of this state or the people of this country would not have seen fit to keep within their judicial branch of government judges who were making decisions that were not responsive to the people. And if judges attempt to usurp those powers, then these judges ought to face the consequences of decisions which are unpopular, and our method of doing this in this country has been by not reelecting them.

I don't believe the incumbency designation ought to be there. It wasn't there in the nineteenth century. It is something of a recent innovation. It doesn't respect the intelligence of the people. And although some people may doubt this intelligence, I think a fundamental concept in democratic government means that we ought to respect the judgment of the people. It has been alleged that the judges in the federal system have stability, and I have said once before that the judges in the federal system have in the past sometimes had too much stability and have been able to go far beyond the

mandate of their respective office in certain decisions which they have put forth.

It has been asked who will the judges have behind them when they run for office? And I suggest that the judges should have people behind them when they run for office, and the people don't have to be of any one political ilk. But certainly people may have political affiliations, and this doesn't make them any less respectable in terms of their support for or against a particular candidate.

I suggest to you, members of the committee, that we ought to go back to some of these fundamental concepts in the belief in democratic government and look upon judges as human beings. And I would, in taking away incumbency designations for judges, do the same thing for any elective official. It is up to those people who serve in office to make themselves known to the people they are serving and to reflect adequately their own feelings and the people's feelings. I see no great danger in asking judges to campaign for office. I think there is nothing more fundamental and basic to our concept of democratic government than having judges go out and campaign. Whether they go to political meetings or whether they go to church meetings or wherever it is, they ought to go and meet the people and let the people meet them. I don't believe in any of this that I have heard suggested that they should refrain from conduct to promote their candidacy. I think their conduct should be to win the support of the people, and if this means going out and campaigning, that is good. I don't think any judge should stay in his own private quarters and not meet the people on occasion. I think this is healthy. I think the incumbency designation has a tendency to make some people awfully comfortable in their positions. I think there is nothing more sacred than letting them get out, meet the people and not feeling the security of knowing that with that little old designation, they can sit back and relax for the balance of their lifetime. Let's give people a chance to make the determinations.

CHAIRMAN VAN DUSEN: Mr. Wanger.

MR. WANGER: Mr. Chairman, members of the committee, I intend no disrespect to any member of the delegation. However, I have turned on the green light on the board. That is an indiciation that I am ready to vote, and I would very much appreciate it if anyone now desiring to speak would think 3 times about whether or not he can add something new to the considerations presented. I would like to ask the rest of the delegates, if they are also of this opinion, to turn on their green light, and perhaps that will be some indication to those who are desiring to speak on the floor.

CHAIRMAN VAN DUSEN: The committee will be in order. Mr. King, do you desire recognition at this time?

MR. KING: Just very briefly. Mr. Chairman, ladies and gentlemen of the committee, I don't want to take a lot of time, but some of the remarks which have been made indicate that there is a basic lack of understanding of our judicial process. Some of these remarks were made by laymen and some of them were made by lawyers. I think the question here is do we want a bench that is making popular decisions or do we want a bench that is making right decisions?

Now, I would ask you laymen who are here, how many of you know what the doctrine of stare decisis means? It is Latin for "let the decision stand." It means that a circuit court judge when faced with a precedent making case, whether that decision be popular or unpopular, is bound to uphold the precedent. Only the supreme court of the state and of the nation really has the authority to make new law. I think that there is an old adage in judicial circles: hard cases make bad law. That means that every now and then a case comes before the bench which is fraught with unhappy circumstances for the individuals involved, and yet it is absolutely essential to the well being of our way of life that the decision in this case be consistent with decisions in other cases, and in the long run that makes for a system of justice which you can rely on and which I can rely on as a lawyer. It means a continuity which is absolutely essential.

Now, this may seem far from the point, but I don't think it is. What we are really saying is that we want our judges in a position where they can make right decisions. Naturally, if those decisions are not right, if they are way out of line, then the people will have their opportunity at the polls to reflect their wishes. But this little bit of advantage which is given to the incumbent judge is the sort of thing which keeps our judiciary above politics, and, frankly, I think that is where it ought to be. I hope that you will consider very carefully your vote in this area because it is extremely important. This is the only thing we have left. We have decided as a committee, as a group, that we don't want a pure independent judiciary, and perhaps properly so. I didn't personally agree with that decision, but maybe it is right. But for goodness' sake, let's not put in a situation where guys with the name of King will want to keep their initials but maybe change it to Kelly or Kavanagh or Kaufman or something like that just so they can get up there and do the kind of job that they think is best when in fact they perhaps are not qualified. The incumbency designation is extremely important. It is all we have left of an independent judiciary.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Messrs. Shackleton, DeVries, Sterrett and Seyferth to strike section e of Committee Proposal 96. A division has been ordered. The secretary will ring the bell. Those in favor of the amendment offered by Messrs. Shackleton, DeVries, Sterrett and Seyferth to strike section e of Committee Proposal 96 will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the amendment to strike out section e, the yeas are 36; the nays are 59.

CHAIRMAN VAN DUSEN: The amendment is not adopted. Mr. Sterrett.

MR. STERRETT: There are a number of delegates that are not on the floor and that have not been excused from this session. I would request that we ask for their vote when they return.

CHAIRMAN VAN DUSEN: It is not in order, Mr. Sterrett. Are there further amendments to section e?

SECRETARY CHASE: None on file.

CHAIRMAN VAN DUSEN: If not, it will pass.

Section e is passed. The secretary will read section f.

SECRETARY CHASE: The following is section f:

[Section f was read by the secretary. For text, see above, page 1479.]

CHAIRMAN VAN DUSEN: For an explanation of section f, the Chair will recognize the chairman of the committee, Mr. Danhof.

MR. DANHOF: Mr. Chairman and members of the committee, for an explanation of this particular section and also to explain an amendment which is on the secretary's desk, I should like to yield to the delegate from Hillsdale, Mr. Prettie.

CHAIRMAN VAN DUSEN: Mr. Prettie.

MR. PRETTIE: Thank you. Mr. Chairman and fellow members of the committee, this is a grandfather clause. There was considerable competition among the numerous grandfathers on the judicial committee (laughter) as to who should have the privilege of presenting the explanation of this particular section. Eliminated from that competition were Miss Donnelly and Miss McGowan. (laughter) But after eliminating them, we still had numerous grandfathers left, and I was the fortunate one.

As originally drafted, this section was prepared with the language of the committee proposal in section a of Committee Proposal 96 before us in which it was contemplated that both justices of the peace and probate judges would be required to be lawyers. By the amendment adopted by this committee yesterday which limited the application of the requirement for practice of law to the probate judges, the present section is now not accurate because of the reference therein to justices. So I would like to have the secretary read an amendment

submitted by Messrs. Danhof and myself on behalf of the committee to clarify this language.

CHAIRMAN VAN DUSEN: The secretary will read the amendment.

SECRETARY CHASE: The amendment offered by Messrs. Danhof and Prettie, on behalf of the committee on judicial branch:

1. Amend page 2, line 16, after "any" by striking out "justice or judge" and inserting "judge of probate"; and in line 19, after "constitution" by striking out the balance of the line and inserting "requiring him to be licensed to practice law in this state."; so that the language of section f will read:

> Any judge of probate serving at the time this constitution becomes effective may serve the remainder of the term and be eligible for reelection to his present office regardless of other provisions in this constitution requiring him to be licensed to practice law in this state.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Messrs. Danhof and Prettie. Mr. Prettie, you have the floor.

MR. PRETTIE: The purpose of this proposal now as amended is simply to protect in office for their present term and for reelection, so long as they may desire to run for reelection, judges of probate now incumbent who are not licensed to practice law in this state. The limitation with the revised language as to age limit of 70 years which is applicable to all courts of record, the qualification as to residence within the district or the county in which serving, would still be applicable. All that we are doing here is preserving the right of incumbent nonlawyer probate judges to continue to serve their term and to run for reelection until such time as they either vacate by removing their residence from the jurisdiction or attain the age of 70 years, after which they may not again be elected. Mr. Chairman, I move the adoption of the committee proposal.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Messrs. Danhof and Prettie. Those in favor will say aye. Those opposed will say no. Mr. Radka.

MR. RADKA: I would just as soon ask Mr. Prettie personally, and then if I am satisfied, I won't waste your time.

CHAIRMAN VAN DUSEN: The amendment is adopted. Mr. Danhof, has the committee further explanation of section f?

MR. DANHOF: No. I think it has been handled, Mr. Chairman, by Mr. Prettie. It is very simply a grandfather clause for the probate judges in regard to the legal qualifications for the office. I might state that as it was originally written, it was pointed out by a very eminent member of this group that there was a hole in it a mile wide regarding the age qualifications and the residence which we had to correct and which I think we have now done to conform with the intent of the committee.

CHAIRMAN VAN DUSEN: Are there any further amendments to section f? Mr. Boothby.

MR. BOOTHBY: Mr. Chairman, I would like to ask Mr. Prettie a question, please.

CHAIRMAN VAN DUSEN: If the gentleman cares to answer.

MR. BOOTHBY: Mr. Prettie, under the provision of this particular section as now amended, do I understand that the probate judges that are now presently in office are now forever protected, but the justices of the peace may be abolished by the legislature and they are not protected?

CHAIRMAN VAN DUSEN: Mr. Prettie.

MR. PRETTIE: I think that would be a fair construction of the amendment, yes. Of course, we have subsequent provisions dealing with the justices of the peace and empowering the legislature to make provision for their continuance, abolition, classification or what have you. I don't think the question is particularly germane to the problem we have here.

MR. BOOTHBY: The reason why I ask the question, Mr. Prettie, in case you have any further comment, is that under the prior provision of section f at no time could the legislature abolish the office of the justice of the peace so that the present incumbent justice of the peace would be abolished, but with this present amendment to section f, the legislature may now abolish the office and also remove or prevent the incumbent justice of the peace from being elected; is that correct?

CHAIRMAN VAN DUSEN: Mr. Prettie.

MR. PRETTIE: They may, yes.

CHAIRMAN VAN DUSEN: Mr. Prettie.

MR. PRETTIE: Mr. Radka's question which he presented to me privately was based on this hypothesis: let us assume that under proposals previously adopted we have 2 or 3 counties joined in a probate district, in one of which there is a lay probate judge and in one of which there is a probate judge who is a lawyer. Now, the question as I understand it is whether they would be eligible to run one against another.

I hadn't given this question any thought, and perhaps other members of the committee will not agree with my off the cuff personal opinion, but it would be that this provision would protect the nonlawyer probate judge in his right to run for reelection unless, of course, the legislature — in setting up the probate districts as we have empowered them to do — should otherwise provide by law.

CHAIRMAN VAN DUSEN: If there is no further discussion with respect to section f, it will pass.

Section f, as amended, is passed. The secretary will read section g.

SECRETARY CHASE: The following is section g:

[Section g was read by the secretary. For text, see above, page 1479.]

CHAIRMAN VAN DUSEN: For an explanation of section g, the Chair will recognize the chairman of the committee, Mr. Danhof.

MR. DANHOF: Mr. Chairman, members of the committee, for an explanation pertaining particularly to the first paragraph — and I would ask, if we might, Mr. Chairman, that we consider this particular section paragraph by paragraph; they are related but they also have separate problems — I should like to call upon the delegate from Detroit, Mr. Iverson.

CHAIRMAN VAN DUSEN: Mr. Iverson.

MR. IVERSON: Mr. Chairman, members of the committee, the explanation of this is found in the journal on page 474.

The provisions of this section are designed to assure uniform salaries for all judges within a certain district. It likewise removes the restrictions of section 3 of article XVI which, as it now stands, prohibits the increase of salaries of any supreme court justice during his term of office. We now have justices whose salaries vary as much as $7,000 per year. The committee believes that this discrimination should be abolished. However, due to the requirement of staggered terms for circuit judges and probate judges it became evident that some other method should be devised if a salary reduction ever became necessary. Accordingly, the proposition was adopted that a salary reduction could be obtained for the judiciary only if general salary reduction were made in each of the other branches of the government. This would eliminate the danger of the judiciary being singled out for salary reduction.

I think the proposal on the stabilization of salaries is self explanatory and I think most of the delegates are aware of the disparity in salaries of the supreme court presently, particularly with respect to a new judge who was elected getting $7,000 more than one who had perhaps served 10 or 12 years on the bench. We felt that this was not a good situation to exist, and I believe that this provision that is suggested by the committee takes care of this situation.

CHAIRMAN VAN DUSEN: In accordance with Mr. Danhof's suggestion, the section will be considered paragraph by paragraph. Are there any amendments to the first paragraph of section g?

SECRETARY CHASE: None on file, Mr. Chairman.

CHAIRMAN VAN DUSEN: Mr. Mahinske, do you have something with respect to the first paragraph?

MR. MAHINSKE: Yes. Mr. Higgs was trying to give me the answer, but possibly Mr. Danhof or Mr. Iverson have this. How are the salaries of the judges handled in the present constitution? Are they in the judicial article?

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: Mr. Mahinske, they are not.

MR. MAHINSKE: Well, this brings up this question: the committee on miscellaneous provisions and schedule in Committee Proposal 124 has taken care of this. There is an obvious conflict here. I don't know whether we should act on this at this time, or if action on this at this time will preclude action on Committee Proposal 124.

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: Mr. Chairman, Mr. Mahinske, perhaps a little history in this particular case will be illuminating to the committee. There is in the constitution at the present time — and which was assigned to the miscellaneous provisions committee — a general prohibition against increase or decrease. At the time this matter came forth I contacted Mr. Erickson, the chairman of the miscellaneous committee. He stated that this matter was within the province of a subcommittee headed by Vice President Hutchinson. I went to Mr. Hutchinson who advised that the subcommittee had considered the idea and was at that time of a mind that each branch of government should handle its own salary restrictions; that is, the executive would write in the executive article their salary restrictions; the legislative, theirs; and the judiciary, theirs. As a consequence, the judicial committee took the matter up insofar as the judiciary was concerned, and we arrived at the conclusion as pointed out by Mr. Iverson. I have now been advised that apparently the miscellaneous committee decided that a general provision was needed. And I would submit that if there is a conflict — and I will be frank to admit that I have not examined the miscellaneous provision in detail — it will probably have to be ironed out when both have been passed and referred to style and drafting.

But it was upon those instructions that the judiciary committee proceeded to handle the salary provision insofar as the judiciary was concerned, and in that regard we arrived at this particular provision to make salaries uniform, to allow them to be increased but not decreased so that we don't have the specter as we have on the supreme court where 2 judges are drawing $6,000 to $7,000 more a year than the remainder of the bench and relative to the general reduction. Now, if there is conflict, Mr. Mahinske, I don't think we should try to remove it out here on the floor, but I give you the background as to why our committee proceeded as we did.

CHAIRMAN VAN DUSEN: Mr. Mahinske yields to Mr. Hutchinson.

MR. HUTCHINSON: Mr. Chairman, first I think I should like to make it clear and apologize to any of the other members of my subcommittee who may have gotten an impression from Mr. Danhof's remark that this was the decision of the subcommittee. I am the first to say that it was not. This is simply my own idea. I noted the present Constitution of Michigan and I noticed that the proposals that are out with regard to the executive branch provide for the compensation of the governor and other officers in the executive branch; the present Constitution of Michigan provides for the legislative salary and so on in the legislative article, and the new proposals will do the same thing. If the judicial article will take care of the judiciary, then really all we have left to be concerned about is something with regard to local government, and that could just as well be taken care of in the local government article.

Since the miscellaneous provisions matter is coming up at the end after we see what the convention wants to do in all of these other fields — except local government; I concede that it hasn't been taken care of in local government yet — maybe the miscellaneous provisions matter should at that time be amended simply to take care of the local governmental picture, because there isn't any real good reason that I can see of having something in the miscellaneous article having to do with salaries when you take care of them, as I say, judicial in the judicial article, and executive in the executive article, and legislative in the legislative article. There isn't any use of having this thing in the miscellaneous section. But the only thing I can suggest is that we wait until we get there and see what has happened in these other areas, Mr. Mahinske.

CHAIRMAN VAN DUSEN: Mr. Mahinske.

MR. MAHINSKE: Mr. Chairman, my point actually was that if we act on section g—I would like a ruling on this—pertaining to salaries, and then when we get into executive, if we act on their section pertaining to salaries, whether they are amended or not on the floor, will this preclude us from going into salaries in Committee Proposal 124 with reference to the judiciary and possibly the executive branch? Because, frankly, I like our article better. (laughter)

CHAIRMAN VAN DUSEN: Mr. Mahinske, it seems you are asking for a ruling on hypothetical matter, on which the Chair is reluctant to rule.

MR. MAHINSKE: I don't think it is quite hypothetical, because we are dealing with the same topic in the same area right now that is covered in another committee proposal.

CHAIRMAN VAN DUSEN: The committee proposal which is before the committee now is in order. A later proposal dealing with substantially the same subject matter, so long as it was not couched in identical terms, would similarly be in order.

Under the resolution defining the functions of the committee on style and drafting, it is one of its functions to call to the attention of the convention, and to attempt to resolve within the scope of its authority, inconsistencies. Certainly it would be within the province of the committee of the whole, or of the full convention at the time of subsequent consideration of similar matter, to attempt to resolve inconsistencies. As long as the matter presented by a subsequent proposal is not the identical matter which is here disposed of, it could be considered in order at that time.

MR. MAHINSKE: Thank you.

CHAIRMAN VAN DUSEN: Is there anything further with respect to the first paragraph of section g? Mr. Danhof.

MR. DANHOF: I think one word of explanation might be in order for some members of this committee who may have received communications from the municipal courts. There has been received and forwarded to me the idea that municipal judges or judges of courts of limited jurisdiction should be herewith included. I should state that it was not our intention to deliberately exclude anyone. However, the courts of the municipalities and other statutory courts are creatures of the legislature. If the prohibition of the present 1908 constitution regarding increase in salary is removed, there is nothing which will prohibit the legislature in the municipal court act from adopting a statute consistent with what we have done here for the constitutionally named courts.

We were reluctant — and I have conferred with other members of the committee, not the full committee — to name herein any statutorily created court, and therefore they have been omitted, not because we are discriminating against them, but because we feel that they can be handled in the legislature. They are creatures of the legislature. And if we name them herein, we might indirectly be creating a constitutionally recognized municipal court, and this we do not want to do. And we feel that when the across the board prohibition that applies to all public officers shall be lifted — and we hope that it would — that then the legislature can amend the municipal court act or any other act that they have creating courts of limited jurisdiction and allow language such as we have "may be increased but shall not be decreased" to be included.

I know the municipal judges from my area have contacted me in this regard. This is the explanation for it. It is not to single them out for any discriminatory treatment, but because they are creatures of the legislature, we feel it can best be handled in this manner. On that basis we do not feel that an amendment to insert them or language thereto would be appropriate.

CHAIRMAN VAN DUSEN: Are there any amendments to the second paragraph of section g?

SECRETARY CHASE: Mr. McAllister offers the following amendment:

1. Amend page 2, line 27, after "receive a" by inserting "minimum"; and after "salary" by inserting "of $18,000.00 per year,"; so that the language will then read, "Each of the judges of the circuit courts shall receive a minimum salary of $18,000 per year payable monthly."

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. McAllister. Mr. Danhof.

MR. DANHOF: The explanation of the committee has not been made on this particular section as yet.

CHAIRMAN VAN DUSEN: Excuse me, Mr. Danhof. The Chair had assumed that Mr. Iverson had made his complete explanation. If not, Mr. McAllister, would you withhold your amendment until we have had the explanation?

MR. McALLISTER: Yes.

MR. DANHOF: Mr. Chairman, in view of the fact that we have an amendment, we might just as well start fresh after we have had a chance to have lunch, and therefore I would move the committee do now rise.

CHAIRMAN VAN DUSEN: Mr. Danhof moves that the committee do now rise. Those in favor of the motion will say aye. Opposed will say no.

The motion prevails. The committee will rise.

[Whereupon, the committee of the whole having risen, President Nisbet resumed the Chair.]

PRESIDENT NISBET: The Chair recognizes Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, the committee of the whole has had under consideration one proposal, of which the secretary will give a detailed report.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 96,** A proposal pertaining to general and special provisions relative to the courts of the state; has considered several amendments thereto; and has come to no final resolution thereon. This completes the report of the committee of the whole.

We have some requests for leave of absence. Mr. White wishes to be excused from the afternoon session to attend a funeral; Mr. Douglas requests leave from the afternoon session, due to a commitment made a year ago to attend a meeting in Philadelphia; Claud Erickson requests permission to be absent June 18 through June 21, inclusive; (laughter) Mr. McAllister requests leave from tomorrow's session because of an emergency matter; and Professor Pollock asks to be excused from the session of Friday in order to attend a meeting in Pittsburgh of the governmental affairs institute, of which he is a director.

PRESIDENT NISBET: Without objection, the excuses will be granted. They are granted. Mr. Higgs.

MR. HIGGS: Mr. President, I rise to a question of privilege of the convention. My question of privilege relates to this body and its members in such a manner as affects its proper functioning. Furthermore, I believe this question involves the dignity and integrity of the proceedings of this body. My understanding of the task before this body is that it is of the most solemn and serious deliberative nature.

Yesterday afternoon during a period in this convention when a motion to reconsider a portion of the judiciary article involving the jurisdiction of probate courts was in order and discussed, it is my understanding that a number of probate judges of this state appeared at convention hall and met with certain delegates to this convention to discuss the precise matter involved. I am satisfied that such judges did not come here for that specific purpose, but rather that such an appearance was coincidental. However, it is my understanding that a number of the delegates to this convention were invited from the floor by other delegates to be introduced to said judges while other business of the convention was under debate and that attempts to persuade them were made.

Aside from the rules adopted by this convention with regard to lobbying which may have been violated, it seems to me that such conduct by delegates tends to interfere with the deliberative function of this body and the dignity and integrity of its proceedings.

The proper time and place for hearings of witnesses has passed. Representative testimony from the persons involved was presented to the judiciary committee with proper opportunity and questioning and the weight of such testimony given due deliberation both by the judiciary committee and this convention as a whole. This is brought to the attention of the convention in the hope that repetition of this procedure may be avoided in the future and in the hope that delegates will exercise caution in this matter.

It is to the credit of our delegates that not sufficient minds were changed in this matter to move forward with a motion to reconsider at the time. However, I would not like to think that such an important aspect of our judicial article would be decided in this way.

PRESIDENT NISBET: Without objection, this matter will be referred to the committee on rules and resolutions in case any attention needs to be given to it.

Mr. Martin.

MR. MARTIN: Mr. Higgs rose on a matter of personal privilege. It didn't appear to me, Mr. President, that this related to personal privilege at all. But since he was permitted to make a statement along those lines, it seems to me it is also worth saying that people who appeared here yesterday were citizens of the state of Michigan; that they were certainly entitled to come to this convention hall; that if there were friends of theirs, persons who knew them, among the delegates who wished to have other delegates meet them—and I knew nothing about this matter whatsoever—there is certainly nothing improper in their doing so. It seems to me that the implications of Mr. Higgs' statement are that this was an impropriety and they had no business being here at the constitutional convention. This is a constitutional convention in which all of the people of the state can take part, and I see nothing improper whatsoever in judges or anybody else appearing in this convention hall if they wish to make known their views to the delegates.

PRESIDENT NISBET: Mr. Garvin.

MR. GARVIN: I think it is rather unfortunate that a delegate would consider attendance at this convention in such a manner as Delegate Higgs. I didn't personally know that there was anyone here until I read it in the paper and I found out that they were in Lansing for another matter not concerning the constitutional convention. And it seems to me that the delegates should be inviting people here to look at the convention and see what is going on instead of condemning people for coming here and seeing what is happening in the convention. It is very unfortunate that such statement was made about any judges or probate judges or any citizen, for that matter. As far as I know, I don't know of any rule that says that people cannot come and observe the convention and meet people that they know.

PRESIDENT NISBET: Mr. Young.

MR. YOUNG: Mr. President, if there is any merit to what Delegate Higgs just said, I think his remarks come a little late. I wonder where he was several months ago when the police department sat in on this convention during the discussion on search and seizure.

PRESIDENT NISBET: Mr. Dehnke.

MR. DEHNKE: Mr. President, delegates, I think one point at least that is justified by Mr. Higgs' remarks is that relating to delegates being invited off the floor of the convention while it was engaged in its work to communicate with these individuals. I don't understand Mr. Higgs' remarks to protest against people coming and visiting the convention in the gallery or being around the building any other place or visiting with delegates or being introduced to other delegates by those whom they already know, but I personally feel that the remarks of Mr. Higgs are justified to the extent that it related to delegates being invited off the floor of the conven-

tion for the purpose of being interviewed by those who had strong opinions about some of the pending proposals. Thank you.

PRESIDENT NISBET: Mr. Dade.

MR. DADE: Mr. President, I have noticed in past months that occasionally we become very sensitive sometimes to what is put in newspapers or sometimes what happens off the convention floor. In a few moments we will be going to our lunch and yesterday began the season of Lent. Most of us think of Lent as a time to observe fast and be careful of our eating, where our tongues might be appreciative of taste.

I wonder if we couldn't exercise during Lent another choice in our tongues, and observe our tongues in not saying things sometimes that reflect on the sensitivity of others, and when we feel that we have been touched, to refrain from saying these things and get along with the business. After all, all of this is costing the taxpayers money, and certainly it is not really germane to our business at hand.

PRESIDENT NISBET: Miss McGowan.

MISS McGOWAN: Mr. President and fellow delegates, I rise to state that I am very proud of Mr. Higgs. He is being very realistic. We are here to write a constitution for all of the people of the state of Michigan. And I was very unhappy and disturbed about what happened in the hall yesterday, and I want to commend Mr. Higgs for making his statement. Thank you.

PRESIDENT NISBET: Mr. Madar.

MR. MADAR: Mr. President, fellow delegates, I feel something like Canon Dade does in that we ought to have charity in our souls these days. I think we need it. And I think that whenever we start to criticize, let's think about what is being done otherwise too. And I have watched 2 of the speakers or 2 of the delegates so far who have watched certain things happen here. One just a moment ago was turned facing—unless he couldn't see, unless he was blind at that particular moment, he didn't see something that just transpired in the gallery. These are disturbing things. This was not convention business. This has occured on quite a few occasions.

There have been pictures taken. There have been delegates from this group who have gone over here and said, "I want you to meet so and so and I want you to meet so and so," and this during our deliberations. I didn't once get up about this, because so far as I am concerned, that is fine. But I just hope that the delegates who had the temerity and the gall to get up and criticize one or another to remember that he might criticize some of his own friends and some things that he feels about. Don't let him just criticize somebody else that did something that he didn't like.

PRESIDENT NISBET: Mr. Plank.

MR. PLANK: Mr. President, I trust this will be palatable to those in attendance. I move we recess until 2:00 o'clock this afternoon. (applause)

PRESIDENT NISBET: The question is on the motion of Mr. Plank. Those in favor will say aye. Those opposed, no.

We are recessed until 2:00 o'clock.

[Whereupon, at 11:45 o'clock a.m., the convention recessed; and, at 2:00 o'clock p.m., reconvened.]

The convention will please come to order.

SECRETARY CHASE: Mr. President, a quorum of the convention is present.

PRESIDENT NISBET: Announcements.

SECRETARY CHASE: Before we read this request for leave of absence, Father Dade and one other delegate report that his habit and a hat has disappeared. If anyone has knowledge thereof, it would be appreciated if it would be returned.

Delegate Hood asks to be excused from part of the afternoon session and all of the session for tomorrow, Friday.

PRESIDENT NISBET: Without objection, he will be excused. The Chair hears none. He is excused.

The Chair recognizes Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, I move that the convention resolve itself into committee of the whole for the purpose of considering matters on the **general orders** calendar.

PRESIDENT NISBET: The question is on the motion of Mr. Van Dusen. Those in favor will say aye. Opposed, no.

The motion prevails. Mr. Van Dusen.

[Whereupon, Mr. Van Dusen assumed the Chair to preside as chairman of the **committee of the whole.**]

CHAIRMAN VAN DUSEN: The committee will be in order. When the committee sat this morning, it was considering and is still considering **Committee Proposal 96,** dealing with general provisions relating to the courts of the state. The matter under discussion is the second paragraph of section g of Committee Proposal 96. I believe before we had proceeded to the second paragraph, Mr. William Hanna had sought recognition.

MR. W. F. HANNA: I have a question on the second paragraph.

CHAIRMAN VAN DUSEN: Mr. Hanna, you are recognized at this time.

MR. W. F. HANNA: Mr. Chairman, a question to Mr. Danhof. Throughout the local government and again in the judicial article there seems to be some confusion between referring to counties as a legal entity and the board of supervisors. My question, Mr. Danhof, is whether or not in style and drafting we have the liberty to say that the county may pay supplemental salaries rather than the board of supervisors, because it is the county who pays supplemental salary.

CHAIRMAN VAN DUSEN: Your question relates to the second paragraph, Mr. Hanna.

MR. W. F. HANNA: Are we on the second paragraph?

CHAIRMAN VAN DUSEN: The first paragraph is passed. I thought your question related to it. Mr. Danhof.

MR. DANHOF: Mr. Hanna, if the committee on style and drafting desires to be consistent, which I think would be very proper, then we have no objection, where these words have been used in the past interchangeably from "the board of supervisors" to the "county", to going to the legal entity known as "the county," I am sure, just as long as the intent has not been changed. Does that answer your question?

MR. W. F. HANNA: Yes.

CHAIRMAN VAN DUSEN: Mr. Danhof, I believe you have yielded to Mr. Iverson for explanation?

MR. DANHOF: Mr. Chairman, we had gotten through the first paragraph of section g and, as I understand it, we are now on the second paragraph regarding the counties being allowed to supplement the salaries of the particular circuit judges.

CHAIRMAN VAN DUSEN: That is correct. That is the posture of the committee, Mr. Danhof.

MR. DANHOF: At this time, if I could, I should like to call upon a delegate from Detroit to give us some words as to the reasoning of the committee in retaining this particular section in this regard, the gentleman from Detroit, Mr. Bledsoe.

CHAIRMAN VAN DUSEN: Mr. Bledsoe.

MR. BLEDSOE: Mr. Chairman and members of the committee, the action of the judicial committee when it came to discuss this matter followed the general practice that has been engaged in in permitting the supplementing of the judges' salaries by the counties and that practice, of course, it was suggested and thought, would be adhered to. However, that still leaves the question open as to possible inequalities of the judges' salaries, because it then still leaves the possibility that possibly the less rich or less wealthy counties will not equalize their contributions that would make the salaries of the judges equal. We are still left with that problem. But it is thought wise—and I think you all agree with me—that this, after all, will be better handled through legislative procedures and certainly does not come within the purview of the

constitution except possibly from a basic level because there will probably be some differences.

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: That is all we have at this time in the way of committee explanation, Mr. Chairman.

CHAIRMAN VAN DUSEN: Are there amendments to the second paragraph? Mr. Wanger.

MR. WANGER: I have a question for the chairman of the committee or for Mr. Bledsoe, Mr. Chairman.

CHAIRMAN VAN DUSEN: You may proceed, Mr. Wanger.

MR. WANGER: The question is, do I understand correctly that the second paragraph of this section is presently identical with section 12 of article VII of our present constitution?

CHAIRMAN VAN DUSEN: Mr. Bledsoe.

MR. BLEDSOE: Unless I am in error—and I assume you are looking at the same thing I am—I would say it was identical. I think you will find it on your sheet.

MR. WANGER: Well, it appears to me to be the same, but I just wanted to ask.

MR. BLEDSOE: It is identical.

MR. WANGER: My second question here is, doesn't the legislature have the power to provide for additional compensation on a county basis for circuit courts without an express constitutional provision for it?

MR. BLEDSOE: I would think so. I would think so.

MR. WANGER: Since it has been established for so long and I think most everyone agrees that it is quite proper to have it that way, is there any real need for that second paragraph to be included in the constitution then? Isn't it really more a legislative matter that we can now leave out?

CHAIRMAN VAN DUSEN: Mr. Bledsoe.

MR. BLEDSOE: I believe I would yield that question to our chairman.

CHAIRMAN VAN DUSEN: Mr. Bledsoe yields to Mr. Danhof.

MR. DANHOF: Mr. Chairman, Mr. Wanger, it is very possible that what you say is absolutely true, that the legislature could provide that the counties within the circuit could supplement the salary granted by the state, which is now $12,500. It also is true, however, that they could prohibit this. You see, it isn't a grant, if you want to put it on that basis. It is not a grant of power, because the constitution doesn't grant the legislature anything anyway, but it is a prohibition against the legislature prohibiting the contribution by counties within a circuit.

Very frankly, we struggled with this particular thing. And you range, if you want to have some information, from a high of $12,501 payable in Wayne county, to the judge who serves now in the thirty-fourth circuit, which was the circuit occupied by a delegate to this convention, Judge Shaffer, where he has 6 counties who give him nothing, according to the statistics given me. Arenac, Crawford, Gladwin, Ogemaw, Otsego and Roscommon contribute nothing. We went through this considerably within the committee concerning the cost of campaigning, economic conditions in various areas, and very frankly we did not feel we should write in a minimum salary or a maximum salary, and by the time we had considered the matter very carefully, we came back generally with this particular paragraph.

MR. WANGER: I am sure we all realize that this has been a practice since—oh, I think it was in the Constitution of 1850 and of course in our present one. I just raise the question, isn't it well enough accepted now so that merely leaving this provision out of the constitution would result in no change in the present system, but it would result in removing something from the constitution which now really is no longer needed, like our shortening of the exemptions article, for example?

MR. DANHOF: Mr. Wanger, I agree with you that the concept is pretty well accepted, but it seems to me that it was not too long ago that there was attempted to be imposed a maximum salary, if I'm not mistaken. Maybe some of the delegates from Wayne county can recall that a little better than I could, but it seems to me that it was not too many years ago that the legislature endeavored to limit what could be contributed by the counties and it was found to be unconstitutional. It came about, I think, with the grant by the county of Wayne of $1 more than the salary, when they tried to pass a statute which would prohibit any county from contributing more to the base salary than was being received by a supreme court justice. It seems to me there was some legislative enactment attempted in that regard. It was either attempted and failed because of this prohibition, or if it did pass it was found to be unconstitutional.

This gets down to strictly a matter of local payment. I suppose if the state salaries were raised to a sufficient amount, the boards of supervisors would be able to cut out the supplementation. If the state salary were raised to $25,000 maybe the county of Wayne could see fit that that would be a sufficient amount and they wouldn't contribute anymore. I am sure they probably wouldn't give them $25,001 so they could stay under the pension plan, because this would make a $50,000 a year judge, and that would be pretty high. We just struggled with the problem and we came back with the idea that the best thing we could hope for was the legislature to raise the base pay and allow this particular section to stand.

MR. WANGER: Thank you.

CHAIRMAN VAN DUSEN: Mr. Madar, did you desire to be recognized for a question with respect to the second paragraph of section g?

MR. MADAR: I want to be sure of what I understand here. Delegate Danhof, am I right in thinking that you feel that the state should set a salary here for the judges and that this be the same salary throughout the state and nothing else be given to the judges except this salary from the state? I am asking Delegate Danhof this question.

CHAIRMAN VAN DUSEN: Delegate Danhof.

MR. DANHOF: This is not the intention of the report of the committee, Mr. Madar. Quite the opposite.

MR. MADAR: I am just asking. I want to be sure.

MR. DANHOF: We only state that the county may supplement. I said we considered whether or not there should be one salary for all circuit judges, and the conclusion of the majority of the committee was that we could not set in the constitution and should not set in the constitution a set salary. We just felt that that was an improper constitutional provision, and the results of the committee were simply the opposite. Mr. Ford here states he might want to talk in this regard. I would yield to him, Mr. Chairman.

CHAIRMAN VAN DUSEN: Mr. Danhof yields to Mr. Ford.

MR. FORD: This language is essentially the same, if not identically the same, as the language of the present constitution, and it is the language that gives us the constitutional sanction for what is called supplementation of the circuit judges because you have to conceive of them as state officers rather than county officials, and although it has been indicated here that maybe this could be done by legislation, some of us feel that it should be in the constitution because it is questionable whether the legislature could set up a pay scale that was not uniform throughout the state, and there is also serious doubt as to whether or not you could supplement the salary so that a state officer serving in one part of the state gets a different salary than a state officer serving in another part of the state if the constitution didn't provide for it. I think we should support the committee recommendation.

CHAIRMAN VAN DUSEN: Mr. Hutchinson.

MR. HUTCHINSON: Mr. Chairman, I would like to inquire with regard to the first sentence of the second paragraph, lines 27 and 28, where it says that "Each of the judges of the circuit courts shall receive a salary payable monthly." I would like to inquire as to the importance of that language there. I dare say that the judges, if they receive vouchers from the state, get them more than monthly now. They probably get paid at least twice a month, so I don't suppose that this is an actual reflection even of the present

practice. But suppose that this sentence were stricken out entirely? Would anything be lost?

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: The answer from my own personal opinion is, Mr. Hutchinson, probably it would not. Now, if you say they are being paid monthly, are you implying that they are violating the constitution?

MR. HUTCHINSON: No.

MR. DANHOF: I don't either. I don't know how they are being paid.

CHAIRMAN VAN DUSEN: Mr. Danhof and Mr. Hutchinson, the Chair would advise that there is a pending amendment which would strike the words "a salary payable monthly" and insert "an annual salary as provided by law." That is an amendment offered by Messrs. Garvin and Gadola which we will reach in due course. The present business is the amendment offered by Mr. McAllister which the secretary will read.

SECRETARY CHASE: Mr. McAllister's amendment:

[The amendment was again read by the secretary. For text, see above, page 1530.]

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. McAllister. The Chair will recognize Mr. McAllister.

MR. McALLISTER: Mr. Chairman, fellow delegates, all of our circuit judges throughout Michigan perform similar services. I believe they are all of fairly equal ability and have a fairly equal work load. In Wayne county the judges receive a total of $25,100. It varies throughout the state according to the supplemental pay awarded by the board of supervisors.

It seems to me that it is very unfair to have one judge getting $25,000 and another one getting $12,500 performing the same work, and my recommendation is that the state pay to all judges the sum of $18,000 per year. It is my opinion that any lawyer competent enough to be judge would earn as much or more than this amount of money, and the legislature presently has set the salary at $12,500 and after the retirement pay is taken out and withholding, they get approximately, I think, about $800 a month. While it is a good salary for ordinary type of work, considering the qualifications of the judges and what they could earn in private practice it would seem that the minimum salary that they should receive is the amount that I recommend. Therefore, I ask the committee to adopt this amendment. It will not affect supplemental pay. If any county wishes to give supplemental pay to its judges, it can still do so. And it shouldn't affect the salaries in the Wayne county area or any other area where the judges are now getting supplemental pay that, with the state salary, amounts to more than $18,000 per year. I ask that you approve this amendment.

CHAIRMAN VAN DUSEN: On the McAllister amendment, the Chair recognizes Mr. Hutchinson.

MR. HUTCHINSON: Mr. Chairman, I am sorry that I have to get up and oppose Mr. McAllister's amendment, but I am grieved that an amendment like this would be offered because it is so obviously a matter of pure legislative policy. As Mr. McAllister mentioned, the circuit judges now receive a state salary of $12,500. This has been set by the legislature. The legislature from time to time has been increasing that salary. The last time it increased it—let the record show if it must—I introduced the bill which raised it up to its present $12,500. I don't doubt but what there is increasing demand, pressure and justification as time goes on for further legislative increasing of that salary, but I can assure you that the legislature will increase it.

What Mr. McAllister wants this committee to do right now is to raise that salary constitutionally. I see the word "minimum" there. He wants to write a floor in there, but the floor is a floor which is almost 1/3 higher than the present state ceiling. And I would remind Mr. McAllister of this problem that we always run into when we talk about the salary of circuit judges, and that is that whatever the state decides to pay them down in Wayne county, Wayne county has to match it plus one in order to keep those judges under their retirement system. So that what we would be doing would be setting a floor, practically, in Wayne county of $36,001. I don't think it is good policy to write a thing like this into the fundamental law, a very poor policy indeed.

The value of money, I guess, as a long term proposition continues to depreciate, but nevertheless we have gone through times when an $18,000 salary as a floor would be quite exorbitant in comparison with what the government could afford to pay other public officers. So I trust that the committee will not be swayed by this desire to raise the circuit judges' pay and to think that it is the legislature. Let's leave to the legislature the things that are legislative, and let us concern ourselves with things constitutional.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. McAllister. Mr. McAllister.

MR. McALLISTER: According to the information I have, the last time the circuit judges received an increase in pay was in 1953. We are all aware of the fact that the inflationary trend has existed since that time. I don't think that we are particularly concerned about whether the people of Wayne county want to raise the wages of their judges further. This is a state matter. And the thing is that it just seems to be very unfair to have men doing the same type of work with one of the groups receiving half the pay that the other does.

Now, everything has increased. The legislature hasn't seen fit to increase the circuit judges' salary in 9 years and it doesn't look as if they will. I recall when I was 12 or 13 years of age that people got $1.50 a day, and that is peanuts today, and every year it goes up a little more, so they have a constantly increasing inflation which is certainly not going to stop for any time in the foreseeable future, so that each year under the present setup the circuit judge is actually getting less dollars than he can use to pay his bills and obligations, while attorneys in private practice are earning more and more money because of the inflationary tendencies.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. McAllister. Does any delegate desire to have it read again? If not, those in favor of the amendment will say aye. Those opposed to the amendment will say no.

The amendment is not adopted. The secretary will read the next amendment.

MR. McALLISTER: Mr. Chairman, let the record show that I voted yes. (laughter)

CHAIRMAN VAN DUSEN: Thank you, Mr. McAllister. The secretary will read the next amendment.

SECRETARY CHASE: Messrs. Garvin and Gadola offer the following amendment:

1. Amend page 2, line 27, after "receive" by striking out "a salary payable monthly" and inserting "an annual salary as provided by law".

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Messrs. Garvin and Gadola, on which the Chair will recognize Mr. Garvin.

MR. GARVIN: Mr. Chairman and delegates, this is merely an amendment to change the language and not the effect. It is noticed, I believe, that circuit judges are not paid monthly as set out in the constitution, and their salary is also by the year. It is merely a statement of the way that we are setting it up. They do receive an annual salary and it is not paid monthly. I believe it is paid semimonthly at this time. So we are asking that that language read "an annual salary as provided by law," so that it may be paid monthly or semimonthly or weekly, any way that the legislature sees fit to pay it.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Messrs. Garvin and Gadola to strike out "a salary payable monthly" and insert "an annual salary as provided by law." Mr. Danhof.

MR. DANHOF: Mr. Chairman, reading the amendment, I see no objection to it.

CHAIRMAN VAN DUSEN: Those in favor of the amendment will say aye. Those opposed will say no.

The amendment is adopted. Are there further amendments to the second paragraph of section g?

SECRETARY CHASE: Messrs. Barthwell, Everett and Tubbs offer the following amendment to section g:

1. Amend page 3, line 3, after "therein.", by inserting "No judge or justice of any court of record in this state shall engage in the practice of law during his term.".

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Messrs. Barthwell, Everett and Tubbs. The Chair will recognize Mr. Barthwell.

MR. BARTHWELL: Mr. Chairman, members of the committee, I am merely following through with my deep seated philosophy that all judges should be lawyers. Further than that, I have a feeling that the judges should not have a conflict of interest, and I think that when a judge practices law on the side, he definitely has a conflict of interest. I believe that he is basically a servant of the people in all the state, so I think when he takes specific cases, that he is taking cases that conflict with his duties to the public as a whole.

Our committee mentioned this question but we did not vote on it. We thought about it, and we tried to establish a framework by which such a condition as this could be established. We provided in there that where the counties are small and they don't have sufficient work, the legislature could create districts. Further than that, I realize that this question of where the money is coming from is coming up. I am of the opinion, on the basis of the studies and testimony that has been presented to our committee, that more and more of the states are recognizing that the salary of a judge is a state responsibility. Therefore, I feel that we can enlarge the districts. We can give proper consideration to the state assuming its proper function so that we can project the constitution to serve us over the period of years that we hope it will be necessary. So I want to ask the delegates to give this very serious consideration because I think it is in the best interests of the people of the state.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Messrs. Barthwell, Everett and Tubbs. Does any delegate desire to have the amendment read again? If not, those who are in favor—Mr. Danhof.

MR. DANHOF: May I propound to the makers of the amendment this particular question: whether or not they have now made this provide that any judge or justice of any court of record—now, I assume they understand that this would include some of the probate courts which are now functioning and probably will continue to function in individual counties even for quite some time after the adoption of this particular constitution, and I submit that it may be some time before the case load or even the districting would take place to put in a judge who would have enough to do full time and which would allow the county to pay him—or even a district—a sufficient wage so that he could be attracted and devote his full time to it.

Now, I am in complete sympathy with the end that is endeavored to be obtained. We all know that our circuit judges don't practice law. They are just too busy. We know the supreme court justices don't practice law. They are too busy. We are hopeful that our court of appeals judges will likewise not practice law, and I think that it may be a matter which will, in and of itself, be handled as the work load would increase. What you are striking at here is probate courts in the less populated areas where they have a probate judge whom they pay a salary of perhaps $5,000 a year. He is a lawyer, and perhaps he spends 2 or maybe 3 days a week on the bench and this adequately, for now, handles the legal business and the court business. In the meantime he is free to engage in the practice of law so that he may supplement his judicial salary to such an extent that he can receive a decent living wage to support himself and his family as if he were engaged full time in practice.

I feel inclined to agree with the objective that is sought, but I am not sure that it is something that should be written into the constitution at this time. I therefore would feel that at this time I would oppose the amendment, simply on the grounds that we might be handicapping, for the beginning and for perhaps some period of time to come, the probate judges or judges of other courts of record if the legislature should so desire to designate any of the courts of limited jurisdiction.

CHAIRMAN VAN DUSEN: Mr. Barthwell.

MR. BARTHWELL: The only thing I wanted to say was this: I thought he asked me if it did refer to the courts of record. It does refer to courts of record. And I would like to say to my chairman I am sorry that he or Mr. Iverson couldn't have found fit to say they saw no objection to this amendment.

CHAIRMAN VAN DUSEN: Mr. Sleder.

MR. SLEDER: Mr. Chairman, fellow delegates, it is difficult for me to understand what Delegates Everett and Tubbs are attempting to do. First they were successful in requiring that all probate judges be attorneys—and we people who represent some of the counties that are sparsely populated objected very strenuously to this and put forth the problems that would be faced by the boards of supervisors in attempting to employ attorneys—and now they are compounding the problem by restricting him to only the probate work when they so ably pointed out to most of the delegates—and probably it must have been very effective—that the work in the probate court is not sufficient in some of these counties to take the full time of a judge.

Therefore, I would very, very urgently urge you not to vote in favor of this amendment, because we have already created enough problems for the probate courts in some of the areas of Michigan without compounding them more, and it will come to the point that we will definitely have to rush to Lansing for some help in order to meet the financial crisis we will find ourselves in in our probate court areas.

CHAIRMAN VAN DUSEN: Judge Dehnke.

MR. DEHNKE: Mr. Chairman, delegates, I hope the delegates realize that judges of the circuit court are now by statute barred from practicing law. I don't think there is any difference of opinion as to the supreme court, the court of appeals, if it is created, and the circuit court, because they are full time officers. But this language mentions "all courts of record," and yesterday we put in the power of the legislature to designate even municipal courts as courts of record, and we do have a real problem there. Many probate judges could not afford to serve in that office at the present time unless they had the privilege of practicing at least to a limited scale in the circuit court. I think this amendment goes too far and should therefore not be adopted.

CHAIRMAN VAN DUSEN: Mr. Everett.

MR. EVERETT: Mr. Chairman and fellow delegates, first of all I want to apologize. I had to leave the floor to answer the phone and consequently what I say may already have been said. But that doesn't usually stop many of us and won't stop me in this instance. (laughter) The purpose of this is to implement what we have been trying to do, and that is create a full time judiciary. To me, this thing cuts both ways. If you are going to say that you will attract and hold good judges and pay them adequately, then I think that they should be obligated to devote their time and attention to this function and to nothing else.

I think Mr. Sleder probably has pointed out a weakness that we recognized was there that this full time judiciary will not come about overnight and maybe this idea ought to be delayed. And possibly Judge Dehnke has given us an answer in saying that the legislature may do it, but if we are going to be consistent in suggesting that the judiciary is entitled to certain benefits, which I certainly think they are, and at the same time suggesting that people are better served by a full time judiciary, then I think we should carry this a step further and assume that those who are going to assume this role are going to devote their time and energies to it. I don't know whether this point was made before or not. This matter was discussed in this committee and it was never voted upon one way or

the other. I don't think there is any official committee position on it one way or the other. It was one of those things which kind of got lost in the shuffle of the final few days' work.

As to the comment of Judge Dehnke that this could extend to municipal courts, we recognize that it could. In that case we feel that the legislature would use discretion in designating which municipal courts would be courts of record and therefore served by full time lawyer judges who would be required to devote their time to that office alone, and which municipal courts would be perhaps part time jobs and therefore not courts of record. I think this is consistent with what we have done to try to elevate the judiciary, and I think that we are entitled to ask that you vote in favor of the amendment.

CHAIRMAN VAN DUSEN: Mr. Howes.

MR. HOWES: Mr. Chairman, we would lose many, many excellent probate judges in this state if this amendment were adopted, and therefore I urge you to oppose it.

CHAIRMAN VAN DUSEN: Mr. Ford.

MR. FORD: Mr. Chairman, I think the matter of the probate judges has been adequately covered, but in our county I believe that outside of the city of Detroit, out of some 30 municipalities there are only 3 communities that have full time municipal judges, and we have a number of very able practicing attorneys who are municipal judges on a part time basis. Most of the small cities are not in the position to pay the kind of salary that would be necessary in the first instance to attract the quality of the judges that we now have on a part time basis to a full time job. Secondly, if they were able to pay for them in many of the small cities, they couldn't keep them busy on a full time basis. So if we are talking about putting something here in the constitution with this test involved, what actually could happen is we would prevent the legislature from at any time in the future giving municipal courts powers of a court of record or any kind of powers that could be construed to make this municipal court a court of record, because we would immediately be by indirection, in giving them powers of a court of record, saddling them with the requirement of a full time judge who had to give up his law practice to take the position. I oppose the amendment.

CHAIRMAN VAN DUSEN: Mr. Spitler.

MR. SPITLER: Mr. Chairman and delegates, I would also like to oppose the amendment. In one of the counties that I represent we have an attorney who is a probate judge. When he ran in the campaign, he ran with the understanding that he would devote 2 full days to that work and that he felt that it could be done efficiently. I think the people of that county feel that it has been done and is being done efficiently. The question that I would like to ask the sponsors of this is, what would they do in this particular county?

CHAIRMAN VAN DUSEN: Does one of the sponsors of the amendment care to respond to Mr. Spitler's inquiry? Mr. Everett.

MR. EVERETT: Mr. Chairman, Mr. Spitler, we have already made provision in Committee Proposal 94 to permit either the districting or the combination of activities of that court, and our idea there was to create a full time court so that we could attract men who wanted to be occupied all the time and pay them accordingly. We are simply here saying that if that is the kind of man you want to attract—and I think all of us do—that he must not then devote part of his time to other activities.

CHAIRMAN VAN DUSEN: Mr. Spitler.

MR. SPITLER: Thank you. But in answer to that, I would say until such time as we arrive at that, we would have to be taken care of in this county.

MR. EVERETT: Maybe we just want to nudge the time ahead a little bit.

CHAIRMAN VAN DUSEN: Mr. Spitler, will you yield to Mr. Tubbs for further response?

MR. SPITLER: I will.

CHAIRMAN VAN DUSEN: Mr. Spitler yields to Mr. Tubbs.

MR. TUBBS: Mr. Chairman and ladies and gentlemen, I think I can't answer the question any more than it has been answered, except that we find the same emotional responses here from the same people who defended the 33 nonlawyer probate judges yesterday. If there are 33 nonlawyer probate judges, you already have 33 probate judges who can't practice law. I doubt very much if in the small counties there are many more probate judges who might be permitted to practice law if there were no prohibition against it, but either they are lawyers or they aren't, and if they aren't, they can't practice. I think this, Mr. Chairman, will work out. It may take a little time, and I am sure we can handle it in the long run.

CHAIRMAN VAN DUSEN: Mr. Spitler.

MR. SPITLER: Mr. Chairman, I would like to answer that. I was not one of those who supported the nonlawyers for probate judges.

CHAIRMAN VAN DUSEN: Mr. Spitler, do you desire to yield to Mr. Sleder for some comment?

MR. SPITLER: Yes.

CHAIRMAN VAN DUSEN: Mr. Sleder.

MR. SLEDER: I believe Delegate Tubbs was referring to my remarks. I was looking to the future when we did adopt the fact that all probate judges must be lawyers, and we have counties there that eventually and within the next 3, 4, 5, 6 or 7 years will have to employ as their probate judge a lawyer, and I cannot see any possible way whatsoever of getting a lawyer to assume the work of the probate court in some of those areas unless they are given the privilege of practicing law besides their probate work.

CHAIRMAN VAN DUSEN: Mr. Spitler, do you yield the floor at this time?

MR. SPITLER: Yes.

CHAIRMAN VAN DUSEN: Mr. Lawrence.

MR. LAWRENCE: Mr. Chairman, members of the committee, there are 2 evils that this amendment would tend to correct that don't seem to have been touched on. In the counties where the justices of the peace are attorneys, since they can't hear their own cases you often find the situation where one of them, the J.P. or the municipal judge, will be sitting as judge, the attorneys representing the clients are surrounding municipal judges and justices of the peace, and in the afternoon he goes over and tries, as an attorney, a case before the man or one of the men who was before him as an attorney in the morning. You have the same situation as to the probate judges. If they are going to be handling cases of people in their counties as attorneys, the adversaries who may also be before the probate judges may feel prejudiced. So I think that is one thing you should think of. This is designed to correct a real and existing evil, and I urge the adoption of the amendment.

CHAIRMAN VAN DUSEN: Mr. Austin.

MR. AUSTIN: Mr. Chairman, I think I see one evil that this amendment might create, and before I make the assertion, I better ask a question. I would like to ask one of the sponsors of the amendment if I am correct in assuming that probate judges need not be lawyers. Is this correct?

CHAIRMAN VAN DUSEN: Would one of the sponsors like to respond to that? Mr. Barthwell.

MR. BARTHWELL: I think that we adopted that probate judges of the future, except the ones that are nonlawyers now, must be lawyers.

MR. AUSTIN: There seems to be a tendency here to discriminate then between those who are nonlawyers. It would appear that a nonlawyer serving as a probate judge could carry on whatever activity he normally engages in.

MR. BARTHWELL: He is already discriminated against. He can't practice law anyway. (laughter)

CHAIRMAN VAN DUSEN: Mr. Austin.

MR. AUSTIN: Mr. Chairman, the point I was making is that a probate judge who is a nonlawyer would be able to carry on whatever his normal activity is as well as carry on as a probate judge, but if he should happen to be a lawyer, he would not be able to carry on in his field of activity.

CHAIRMAN VAN DUSEN: Mr. Barthwell.

MR. BARTHWELL: Mr. Chairman, ladies and gentlemen of the committee, I may as well bring it out in the open. Mr. Austin is my accountant. I have never been able to win an argument with him, so I certainly would like to win this argument. (laughter) But further than that, going back to what Delegate Lawrence said, when I went with the education committee in the upper peninsula, I was just standing too close to the conversation of another delegate and one of his friends who told him, "Man, I never had it so good. I'm the only lawyer in this county, and we have a justice of the peace who is not a lawyer, and whenever he gets to a case of law, he stops and says, 'Just a minute,' and asks me, 'How am I supposed to rule now?'" (laughter)

You see, one of the things that impressed me tremendously in this law committee was the fact that of all the outstanding people that were brought before this committee from the country over, including Mr. Winters—I just want to use this word too so you can find out that I learned how to say "judicature society" so I'm qualified for the law, you see (laughter)—who was the chairman of the judicature society, admitted, when I asked him a direct question if he considered that our courts were bad and if he knew of any instances where we have had any record of corruption, that we hadn't experienced such things. So I think since we are writing the constitution for the future, we have to remember that even these courts that are not courts of record are courts, and so far as I and the public are concerned, if they become corrupt and bad, then we are going to establish a reputation for our courts which I hope that we can escape, and if we do nothing more here than discuss it to the point that the legislature might sometime feel that they should take this action, I think we will have accomplished a useful purpose.

CHAIRMAN VAN DUSEN: The Chair is tempted to state that the question is on the argument between Messrs. Austin and Barthwell. (laughter) Mr. Hubbs.

MR. HUBBS: Mr. Chairman, I didn't realize you would get to me so quickly when I stood up. I have 3 objections to this. I don't believe that it should be included in the constitution because it is something that really doesn't need to be there. It is statutory, if it is even that. The second reason that I object to it is that it does interfere with the operation of the probate courts in our area, as has been stated. But the third reason, and the one that I consider most important, and the reason that I basically got up to talk about it, is this: I feel that any judge who is serving in a court of record such as the circuit court or an appeals court or the supreme court would be violating the ethics of the bar association if he were to practice law while holding one of those offices. And I have been informed that the bar association does have a strong code of ethics that they engage in policing their own activities. I know that the lawyers in this room will testify that if any judge practiced law unethically, the association would see to it that he got removed from office and was properly taken care of. I would suggest you vote against this amendment and that we also at the same time put a vote of confidence in the lawyers of this state.

CHAIRMAN VAN DUSEN: Mr. Hubbs is getting closer to graduating every minute. (laughter) Mr. Everett.

MR. EVERETT: Mr. Chairman, I would only rise to say this: while this was not the intent of the amendment, it has succeeded in bringing forth the first words of praise most of us have heard in 2 weeks, and it certainly has been one of the finest amendments which has been offered in 2 weeks. (laughter)

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Messrs. Barthwell, Everett and Tubbs. Does any delegate desire to have the amendment read again? If not, those in favor of the amendment will say aye. Those opposed will say no. The Chair is in doubt.

MR. BARTHWELL: Division.

CHAIRMAN VAN DUSEN: Division is requested. The question is on the amendment offered by Messrs. Barthwell, Everett and Tubbs. Those in favor will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the adoption of the amendment, the yeas are 37; the nays are 70.

CHAIRMAN VAN DUSEN: The amendment is not adopted. Judge Dehnke.

MR. DEHNKE: Mr. Chairman and delegates, I don't want to be accused of trespassing on Dr. Anspach's domain, but we have been talking about judges of probate who are not lawyers and we have been talking about lawyers, which reminded me of a certain judge of probate who was not a lawyer and had developed a very poor opinion of lawyers. One morning a friend came into his office and said, "Judge, Lawyer Jones died last night. He doesn't have a cent in his estate. We are taking up a collection with which to bury him and we wondered if we might strike you for a contribution of $10." And the judge said, "Ten dollars to bury a lawyer? Here's $100; go bury 10 of them." (laughter)

CHAIRMAN VAN DUSEN: Mr. Follo.

MR. FOLLO: A little more of this facetiousness. I can't top the one that the judge just told, but I am reminded by all this talk of judges about the time that Supreme Court Justice Harlan Stone was talking to Robert Maynard Hutchins when he was dean of the law school at Yale at 28 years of age. He said, "I suppose, Mr. Hutchins, you tell all your young men at Yale that all judges are fools." And Hutchins said, "No. We let them find it out for themselves." (laughter)

CHAIRMAN VAN DUSEN: Are there any further amendments—Judge Gadola.

MR. GADOLA: Mr. Chairman, I am not going to be facetious, but on behalf of the present circuit judges, I want to thank this committee for one thing in adopting section g as they did. If you read the last line of section g, you will find that these outstate judges that receive very little salary will be pleased to serve in Wayne county and help reduce the case load there.

You know, years ago the legislature passed an act that the visiting judges would receive the same pay as the local judges. The supreme court declared that unconstitutional. We have put it in this constitution, for which the present judges will be thankful.

CHAIRMAN VAN DUSEN: Are there any further amendments to the second paragraph? If not, it is agreed to as amended. Are there any further amendments to section g?

SECRETARY CHASE: None on file.

CHAIRMAN VAN DUSEN: Section g, as amended, is passed, and the secretary will read section h.

SECRETARY CHASE: Section h:

[Section h was read by the secretary. For text, see above, page 1479.]

CHAIRMAN VAN DUSEN: For an explanation of section h, the Chair will recognize the chairman of the committee, Mr. Danhof.

MR. DANHOF: Mr. Chairman, for the committee explanation on this particular section I should like to call upon the delegate from Bay City, the vice chairman of the committee, Judge Leibrand.

CHAIRMAN VAN DUSEN: Mr. Danhof yields to Judge Leibrand.

MR. LEIBRAND: Mr. Chairman and delegates, we shouldn't have any difficulty with this one. (laughter) Section h has been transported bodily from the Constitution of 1908. It appears in the old constitution as section 6 of article IX. Article IX deals primarily with impeachments. A very similar provision as we find in section h was also found in the Constitution of 1850 and in the Constitution of 1835.

Judges in Michigan have never been subject, I don't believe, to recall, that is, to removal by vote of the people. They have been subject to impeachment. However, impeachment connotes some wrongdoing or corruption in office in connection with official duties or official actions. You have another possible

situation, however, which is covered by this section h. Maybe you have several situations, but the outstanding situation which you may encounter and for which a remedy is required is a situation where a judge becomes mentally or physically incompetent during his term of office. That is particularly aggravated, because if he is mentally incompetent, he couldn't resign if he wanted to. He wouldn't have the capacity to resign and the public might be stuck with a judge for 6 or 8 years who couldn't, because of mental or physical disabilities, attend to any of the duties of his office. Section h would permit removal, by 2/3 vote of the members elected to each house, of a judge who was in such condition, or removal for some other cause which was not sufficient for impeachment. Over half of the states of the United States have similar provisions in their constitution. We have had it here, as I say, for 130 years in our constitutions and we feel it should be continued.

CHAIRMAN VAN DUSEN: Are there any amendments to section h of Committee Proposal 96?

SECRETARY CHASE: None.

CHAIRMAN VAN DUSEN: Mr. Martin.

MR. MARTIN: Mr. Chairman, we had an amendment at one point to this section which would have given the power of removal to the supreme court. However, when Mr. McAllister's amendment to section c of Committee Proposal 91 came up, at that time it included a prohibition not only against removal by the supreme court, but against suspension by the supreme court, and the committee struck out the prohibition against suspension, thereby making it clear that in the superintending power of the supreme court and its disciplinary power it had the power to suspend the judge. In view of this fact, I see no necessity for offering an amendment to section h since it has been made clear that the supreme court does have the right to maintain discipline in the judicial system through its power of suspension.

CHAIRMAN VAN DUSEN: Mr. Barthwell.

MR. BARTHWELL: Mr. Chairman, I just wanted to ask a question, I suppose of Judge Leibrand. I would just like to know on line 9 what they mean when they say "at length in such resolution".

CHAIRMAN VAN DUSEN: Judge Leibrand.

MR. LEIBRAND: This is a rather common phrase. I would say that it means that the complete nature of the charges or reasons should be set forth.

MR. BARTHWELL: Thank you.

MR. LEIBRAND: In other words, not simply the word "senile" or the words "awful sick" or anything of that sort. (laughter) The complete nature of the situation should be set forth.

MR. BARTHWELL: Thank you.

CHAIRMAN VAN DUSEN: There being nothing further with respect to section h, it will pass.

Section h is passed and the secretary will read section i.

SECRETARY CHASE: Section i:

[Section i was read by the secretary. For text, see above, page 1479.]

CHAIRMAN VAN DUSEN: For an explanation of section i, the Chair will recognize the chairman of the committee, Mr. Danhof.

MR. DANHOF: Mr. Chairman, for the explanation of the majority of the committee regarding this particular section, I yield to the delegate from Battle Creek, Mr. Everett.

CHAIRMAN VAN DUSEN: Mr. Everett.

MR. EVERETT: Mr. Chairman, fellow delegates, this is a new section. It actually incorporates 2 separate ideas in the 2 separate paragraphs. The first paragraph provides for a period of 5 years in which the legislature can adapt to the situation of creating the new courts of limited jurisdiction. We recognize that there is a need for a transition period. To make this effective on the effective date of this constitution would not permit a sufficient time for an orderly transfer of duties and functions from one court to another. Within our own committee we discussed at some length the idea of creating a county court system. We recognized that it was a difficult matter and that it was not going to be done overnight. We also recognized the question of whether municipal courts should continue or be incorporated into a new system was a matter which was going to require a good deal of discussion and debate within the legislature, so we felt that 5 years was not too long a period to permit this development of a new system of courts of limited jurisdiction.

The second paragraph. As has been pointed out in connection with other matters, there are a number of special statutory courts in existence today. All the municipal courts have been created by statute. The recorder's court and common pleas court of Detroit, the superior court of Grand Rapids, the court of claims—all of these courts were set up by the legislature and of course can be changed by the legislature as time goes along. Recognizing, again, that in some of these courts at least there was a conflict between Committee Proposal 90, which said that the legislature may create courts of limited jurisdiction, and the action already taken by the legislature preceding this constitution, we felt that we should specifically point out that we were not interfering with the statutory courts as they exist. The legislature created them, the legislature has the power to abolish them, and we are specifically indicating that they shall continue until such time as the legislature may act.

CHAIRMAN VAN DUSEN: Are there any amendments to section i?

SECRETARY CHASE: Pursuant to the minority report of Messrs. Ford, Ostrow and Garvin,

Mr. Ford offers the following amendment:

1. Amend page 3 by striking out all of lines 11 through 17; and in line 18, by striking out "special statutory" and inserting "Sec. i. All"; and in line 20, after "unless" by striking out "they" and inserting "such powers"; and after "are" by inserting "modified or"; so that section i will read, beginning in line 18:

> Sec. i. All statutory courts in existence as of the time this constitution becomes effective shall retain their powers and jurisdiction, except as provided by law, until and unless such powers are modified or abolished by law.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Messrs. Ford, Ostrow and Garvin pursuant to their minority report. The Chair will recognize Mr. Ford.

MR. FORD: The explanation of the minority report is on page 582 of the journal. Very briefly, the effect of our amendment is to take out the death penalty and leave completely in the hands of the legislature the ultimate disposition of the justice of the peace and the circuit court commissioner. It may be that in some parts of the state this court is obsolete and of no service. It may well be also—and I think we should be broad minded enough to admit as a possibility—there may be part of the state where this court serves well and may continue to serve well in the future where the people might prefer to keep it.

I can see no justification for continuing the justice of the peace as a constitutional office, because it hamstrings us; it works to the disadvantage of parts of the state where some other system might work better. The committee started out to provide ostensibly for flexibility, but actually they approached this thing from the negative point of view of how can we abolish the justice of the peace, and came to this language. They didn't want to abolish him forthwith so they said, "Well, let's do it 5 years from now."

Here is what they have actually done. If we agree that it is not right for the justice court to be frozen into the constitution and for its jurisdiction to be frozen in—and we have already agreed to the exclusion reports that will take the jurisdictional provisions with respect to justice courts out of the constitution—then why wait 5 years? What you are saying if you adopt the committee report is that we are going to leave it to the legislature, but we are not going to leave it to the

legislature to provide an alternative for this court until 5 years from now, because the first sentence says, "The office of circuit court commissioner and justice of the peace shall continue to have, for a period of not to exceed 5 years from the date this constitution becomes effective. . . ." The only way that the legislature can make a change in this within this period without affecting the entire state is if you take them out of the constitution entirely and leave to the legislature the question of whether there should be a justice court. And then by our amendment we add language that indicates that the present powers—whether they are statutory or by constitution—that these courts have will continue until the legislature does something to extinguish them.

This has, in addition to the function of continuing the court, another function, which is that if you start to look at all of the statutes that refer to the justice of the peace and his duties, you will find that it is a very exhaustive problem to try to find every one of the statutes that mentions him and make the changes necessary to replace the powers in some other court, and it is conceivable that a number of mistakes might occur. So what we are simply doing here is providing for some continuity so that we don't have a vacuum of authority and so that jurisdictional changes will actually only occur by deliberate action of the legislature rather than by the failure of the legislature to act.

I submit there is nothing magic in the 5 year term for this provision, and we have had enough experience with deadlines around here to know that when you say to the legislature that they should do this in 5 years, what you are inviting them to do is argue about this until 4 years 11 months and 20 days from the constitution's adoption and then quickly throw together some kind of a patchwork system. I think that we would do better if we allowed the legislature to forthwith provide, for example in Wayne county, that townships could have a municipal court instead of a justice court with a lawyer as a judge and with a salary, et cetera, et cetera, if the people wanted it there. We can't now have this sort of local option because of the constitutional status of the justice court. By the same token, I think we should let the people in northern Michigan or rural Michigan continue the present system just as it is if that is what they want, with the exception of the changes that we have made to kind of clean it up a little bit.

For this reason we find ourselves on the side of the angels pleading for that all wonderful thing called flexibility, by saying, "Today we ought to trust the legislature," and the Democratic minority on this particular issue is ready to go sled's length and trust them all the way. We will see whether the majority wants to trust the legislature today or not.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Messrs. Ford, Ostrow and Garvin. Mr. Everett, did you seek recognition on this amendment?

MR. EVERETT: Mr. Chairman, fellow delegates, apparently Mr. Ford and I have different ideas of what trust involves. To me, to tell them that they have 5 years in which to develop this plan and then for him to say they will do it in 10 days does not exhibit very strong trust in the legislature. I don't think that it will take any 5 years for them to act, but I recognize that it will take time. We are not telling them what they are to do in Wayne county as to townships or municipalities or any other part of the state.

He suggests that the justice of the peace has many duties beyond judicial duties, and this is certainly true and we are not interested in taking those from the justice of the peace. For that matter, if the legislature wants to leave those duties with the justice of the peace or the township supervisor or any other area, they have a perfect right to do it. We are really not talking about the nonjudicial functions of this office, although we clearly stated that all of their powers would remain until they acted. He has suggested that there would be a vacuum of authority, and it is for this very reason that we have put in the 5 years period. What he is really saying is not that there will be a vacuum of authority, not that the nonjudicial functions cannot be changed, but that the system will remain untouched.

Yesterday, without debate, without amendment, without a word being offered in its defense, we said that the fee system of paying any judges would die now, with this constitution. We in the committee recognize that even this would have to live for some period of time, and that is why we considered 5 years. But Mr. Ford is now saying that what no man would defend yesterday, today he would seek to do without telling us that he is doing it. There is no necessity for us writing in this provision at all if we don't intend to live up to what we said yesterday, that the fee system will die. If you wish to perpetuate it, then let's say so and fight it out on that line.

The amendment which they offer has no purpose for existence except to modify what we have already done. I submit that the committee proposal was fair. The vote was taken after deliberation. It was taken after examining other possible areas in which to move. It is a compromise between the extreme of saying "Tomorrow you must have something new" and saying "You need never have something new." I think it is a fair and an adequate compromise. I would wholeheartedly support the committee position and ask that you defeat the amendment.

CHAIRMAN VAN DUSEN: Mr. Ford.

MR. FORD: I would like to ask Mr. Everett a question through the Chair. Mr. Everett, what language in my amendment would vitiate the section we have already adopted abolishing the fee system?

CHAIRMAN VAN DUSEN: Mr. Everett.

MR. EVERETT: Your language would say that all courts in existence at the time this constitution becomes effective shall retain their powers and jurisdictions and so forth.

MR. FORD: Is the fee system a power or jurisdictional matter with the court?

MR. EVERETT: It is a method of paying the courts in existence.

MR. FORD: Does it have anything to do with the court's power or jurisdiction?

MR. EVERETT: Of course not.

MR. FORD: Then why were you trying to create the impression with these people that we are trying to sneak the fee system in the back door?

MR. EVERETT: Because, Mr. Ford, I had that honest impression. If you are saying to me that this will not do that, fine, let's say so on the record.

MR. FORD: Well, Mr. Everett, you and I have discussed this on numerous occasions, and you know full well what the import of this amendment is.

MR. EVERETT: Mr. Chairman, if I may address this question to Mr. Ford, if it is not your intention—and I hope that it is not, and if I have read something wrong in it, I apologize to you—to perpetuate the fee system, then a simple statement to that effect on this record would certainly set my mind at ease.

CHAIRMAN VAN DUSEN: Mr. Ford.

MR. FORD: It is my understanding that we have already abolished the fee system. It is also my understanding that the fee system could never in any way be construed as either a power of a justice court or a jurisdictional matter with the justice court. The fee system is simply the method whereby the county reimburses the justice for the services he performs as a justice of the peace. In the future I assume that he is going to be reimbursed in the form of a salary that cannot be based on the fees collected by his court.

CHAIRMAN VAN DUSEN: Mr. Everett.

MR. EVERETT: Mr. Chairman, if I still maintain the floor, inasmuch as Mr. Ford will not tell us this is the purport of his amendment, unless some of the other sponsors of the amendment are willing to say on the record that this will not be the effect of the amendment, then I shall continue to oppose it and ask that we support the committee proposal.

CHAIRMAN VAN DUSEN: Mr. Ford.

MR. FORD: I don't know how clear I can say it. We have abolished the fee system, and this does not in any way affect the fee system. I don't want it in here.

MR. EVERETT: Thank you, Mr. Ford. You have now said it clearly, which is all I was asking you to do before. (laughter)

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Messrs. Ford, Ostrow and Garvin. Mr. Danhof.

MR. DANHOF: I think, apart from the fee system, there is something else that enters into this thing. If not directly, then it does indirectly. The committee proposal provides that the 2 offices, which are now in, of the courts of limited jurisdiction shall cease to exist with their powers and jurisdictions within 5 years after the adoption of this constitution. This will eliminate from the scene, assuming the adoption of the constitution, what were previously constitutionally recognized offices. Now, the committee, in view of what transpired before relative to section a, where we inserted "courts of record," is well aware that what might transpire is the adoption by the legislature of a statute simply recreating statutorily what previously was done constitutionally. But that is exactly what this particular section wishes to accomplish. If the courts are to continue and if the legislature is to set the qualifications, then the majority of the committee is of the opinion that they should become statutory courts, no more, no less, to be changed upon the will of the legislature. The second section seeks to specifically point out that the special statutory courts such as recorder's court shall not in any way be affected.

Basically the main difference is that what the minority report amendment intends to do is to lump together the statutory courts—that is, the municipal courts and the recorder's court—with previously constitutional courts, so that what you will have are courts which derive their power from the 1908 constitution are indirectly being continued in the new constitution. I am afraid what the majority of the committee is concerned with is that you are now indirectly continuing a constitutionally recognized court of limited jurisdiction, and that the legislature will not take the necessary action which we feel they should take even if they begin to do nothing more than establish by statute what was previously constitutional. We hope, of course, they will make a considered study and that they will begin to classify, and that by the time 5 years goes on, they will have a very definite plan which will be of benefit to all areas of the state considering their location, considering their size, considering their economic condition. This is what we visualize and what we are trying to have accomplished, that something is done in 5 years, if nothing more than perhaps to combine areas, eliminate justices, give them another name if they want to or give them the same name. We feel that there should be action; that 5 years is a sufficient time to make a study; and that we should not by indirection allow all courts in existence to continue with a blanket such as that.

For the 5 year period the majority and the minority are in accord. The full question becomes whether or not you believe some action should be taken within 5 years. The majority believes that there should be. I would hope that the majority of this committee would agree, and for that reason I oppose the minority report amendment.

CHAIRMAN VAN DUSEN: Judge Pugsley.

MR. PUGSLEY: Mr. Chairman and fellow delegates, in anticipation of the adoption of the committee report, which purports to give a 5 year period of time within which a statutory court may be created to take over all of the functions of the present justice court and also the circuit court commissioners, there has been prepared and will be submitted to this convention as a supplement to the report of the committee a provision for the creation of a statutory court to take effect at the end of the 5 year period. It is not anticipated in the preparation of this proposal that the statutory courts which are in existence will be in any way disturbed. The proposal which you will subsequently receive will give an opportunity and place a duty with the legislature to fill the vacuum which otherwise might appear, on the face of it, to exist.

I think it is only fair that in considering the amendment which has been proposed, that you have the knowledge of what is within the anticipation of many of the delegates here to follow the article which is before you, so I therefore at this time rise to ask the defeat of the amendment, with the idea in mind that you later have an opportunity to supply, through the amendment which will later be proposed, a proposal which I believe will cover any vacuum that may have been created through the committee proposal.

CHAIRMAN VAN DUSEN: Mr. Heideman.

MR. HEIDEMAN: Mr. Chairman, fellow delegates, I meant to speak yesterday in connection with the justice of the peace. I refrained from doing so because I wanted to be as open minded and as flexible in my thinking as possible with a view particularly to the problems of northern Michigan. I might call this "confessions of a former justice of the peace" and also before that, for some 8 or 9 years, a professor of American government and state government at Michigan Tech. During this 10 years I had a good deal of firsthand experience with justices of the peace and the system as it operates; as a matter of fact, since then also, since going back into the practice of law in '57 in defending people.

The system, in my judgment, has reached a point where we not only should, but I think must, do something about it. Of course we have so far in that we are taking the justices of the peace as of now out of the constitution. I would like to say that perhaps some naivete or, should I say, simple mindedness is a good thing so that one can, with a straight face, aim one's sights upwards and not down in order to write a better constitution but to go forward to meet and cope with the problems of the future. And I would like to make some observations concerning the system which I think are applicable to it as a whole whether in the upper peninsula or in the northern part of the lower peninsula or downstate, the rest of the lower peninsula.

I think, of course ideally, that we should, if possible, have some such thing as a county court paid, if necessary, by the state and manned by persons trained in the law. But there again I believe in flexibility. I don't like to foist something on someone else that they feel they shouldn't have as I don't like to have things foisted on me that I, in deep conviction, think should not be foisted on me. But there are certain basic things I think, that, reach the root of the question of justice here in this lowest echelon of judgeships as well as in the higher graduations. We all think, I think ideally, of justice in terms of the famous goddess of justice holding the scales even for everyone, weighed down on either side only by the evidence or —the legal term—the weight of the evidence. And if it is beyond a reasonable doubt, we find a person guilty. If it is by a preponderance of the evidence, which is somewhat less, a plaintiff wins his case. Another thing we think in terms of is the famous expression, "to render justice without fear or favor." That is, I think, what we all would like to do. At least I hope so.

Now, as for specific comments, the justice of the peace system as it is today in effect might be said to be a loaded court, loaded in the sense of justice, not in some other sense or lack of it, rather, and it is loaded in favor or weighted in favor of the plaintiff — I think by virtue of the system of itself, this is practically a truism — in a civil case, and again of course in favor of the police in a criminal case. In the civil case, by virtue of the fact that there are many justices of the peace and you can select your forum, the bill collector or someone else — and I am not against collecting legitimate bills, the manner in which it is done and so on — if he doesn't like your operation can just make an end run and go to another J.P. court and leave you high and dry. In the case of the police — and in this respect there is an impartial attitude on their part whether by the state police or the local police or the sheriff's department — I am not speaking in any sense personally. Again I am trying to speak as the system operates. I am not being personal in any way as to the justice of the peace because many of them I know personally who are friends of mine. But if the police in criminal cases don't like the way you operate, they just go to another justice of the peace. I was even given messages to the effect that I should try to be

more reasonable if I expected to stay in business in a practical way. So that it is, in effect, a loaded court, and this is not just the case, as someone has said, of a bad apple. This is applicable to the system as a whole. So there is the opportunity for court jumping, end runs around the court. I don't think that is a very good basis upon which to operate justice.

Furthermore — and this dates back to the days not only of theoretical but practical experience over 10 years — on the question of appeals, the students of Michigan Tech used to come to me. They knew I was a member of the bar, and it seems that these police have the reputation of liking to pick on college boys, but whether that is true or not, many of them did come to me to see what could be done. Well, there was always the question of an appeal, but because it was a small matter they didn't feel that the expense was justified so that for all practical purposes, the appeal was really out the window to start with. Finally, the fee system itself: it is difficult to understand how anyone —

CHAIRMAN VAN DUSEN: Mr. Heideman, the Chair thinks the previous discourse has indicated that the fee system is not a part of the current discussion, and I will ask you to confine yourself as closely as possible to the point.

MR. HEIDEMAN: The fee system was raised quite pointedly, and that is why I wanted to say a word as to it if I may.

CHAIRMAN VAN DUSEN: The Chair thinks, Mr. Heideman, the fee system is not before us at this point, and I will ask you to confine yourself to discussion of the amendment offered by Messrs. Ford, Ostrow and Garvin.

MR. HEIDEMAN: Well then, if I have the assurance that there is no intent here on the part of either the amendment or in the other position to restore the fee system, I will be satisfied.

CHAIRMAN VAN DUSEN: Mr. Ford, do you desire to repeat your assurance? Mr. Heideman has asked the question as to whether there is any intent here to restore the fee system.

MR. FORD: Are you talking about the upper peninsula fee system or the one the rest of us use? (laughter) I noticed in the newspaper the other day apparently their fees are about twice what we charge in Wayne county. But no, it is my intention that the fee system should die and fade away with the 15 mill limitation. (laughter)

MR. HEIDEMAN: Delegate Ford and fellow delegates, that is not really germane, because whether it is an upper peninsula system or a lower peninsula system or any other system, it is the fee system that I am talking about, and it does make a big difference in the doing of justice whether it is high or low or little or big.

MR. FORD: Well, I take exception because you were quoted in the newspaper, perhaps improperly, but most certainly quoting the wrong fee for the kind of case that was handled.

MR. HEIDEMAN: Your comment, nevertheless, doesn't change the fact of the operation of the fee system. Well, I wanted to say a word as to this, but if that question comes up again, then I would like to reserve my remarks until that time.

CHAIRMAN VAN DUSEN: If the fee system comes before us, Mr. Heideman, you will be then in order.

MR. HEIDEMAN: Thank you.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Messrs. Ford, Ostrow and Garvin. Does any delegate desire to have it read again? Mr. Radka.

MR. RADKA: I think it would be proper to read the actual amendment, which is on the secretary's desk, to amplify the words that Judge Pugsley delivered to us just a few minutes ago. The proposed amendment is a new section. The substance is, "Within 5 years from the date this constitution becomes — "

CHAIRMAN VAN DUSEN: Mr. Radka, the Chair takes it that the amendment that you are now reading is not the amendment currently offered by Messrs. Ford, Ostrow and Garvin, but is the one to which Judge Pugsley earlier referred, which will be offered at a later time?

MR. RADKA: This is correct, Mr. Chairman, but I am reading the substance of it because we oppose —

CHAIRMAN VAN DUSEN: You may proceed, Mr. Radka. The Chair simply wanted to make it clear what was being read.

MR. RADKA: We oppose the amendment and ask that you vote for the committee report. And those who are supporting the committee report are doing so with full sympathy of what Mr. Ford is trying to accomplish, and the reason that we would be opposing his amendment is because we are going to offer this as another section. I think it is only proper that the other delegates and Mr. Ford know what is on the secretary's desk:

> Within 5 years from the date this constitution becomes effective, the legislature shall establish statutory courts of limited jurisdiction inferior to the circuit court with a definition of their powers and jurisdiction, the location and number of such courts, the qualifications of the judges who shall preside therein, the method of their election and tenure of office and the amount of their salary and by what governmental units the same shall be paid.

If you will recall, when I offered the amendment to section a where we added "of record" to the section, which required that all judges and justices be attorneys, I said that we were offering this amendment in anticipation of another amendment which would be brought up later in the proposal. The problem that we have in northern Michigan was recognized when we discussed section a, and we are, in proposing this new section, disposing of the problem of the establishment of an inferior court not of record which we feel will meet our problem in northern Michigan.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Messrs. Ford, Ostrow and Garvin. Judge Gadola, did you desire recognition on this question?

MR. GADOLA: Yes. If the Chair please, and members of this delegation, I am here to advance the theory, perhaps the first time openly, with their solicitation, that I have been in this position, I am representing the labor unions of the city of Flint. They have cussed me for years, but now I am here. They are part of my constituents, and they are thoroughly in favor of the abolition of the justice courts, and that just as speedily as we can do it. If you have a body malignancy, you excise it as speedily as you can.

We have today this proposition that always presents itself: the urban against the rural, the thickly populated against the sparsely populated. And that exists here in this question. The people of outstate don't realize the conditions that exist in our urban areas, in our manufacturing areas, and don't realize the abuses that arise from the courts as they are presently constituted. If you have that malignancy in your body, you immediately ask for an operation. You don't ask to wait for a month or 2 months or 5 years to do it. You say, let's do it as speedily as we possibly can. And if we have that malignancy existing in our courts today, why should we wait for 5 years to cure that malignancy? And there is your equation. I think, of course, they wouldn't be in favor of the striking out of that as proposed by this amendment, but I would say that we should figure out some way to shorten up that period. You are making statutory courts. And when you make statutory courts, to some degree you make political courts. But that is necessary. We must trust the legislature in these problems, and I am not adverse to doing that. But I say we should lower that period and get it closer down and change it more speedily than the provision as now stands asks for.

CHAIRMAN VAN DUSEN: Mr. Mahinske.

MR. MAHINSKE: I would like to direct a question to Mr. Ford through the Chair.

CHAIRMAN VAN DUSEN: If the gentleman cares to answer, Mr. Mahinske.

MR. MAHINSKE: Mr. Ford, I have been going over this, and as I understand the intent and the effect of your amendment, what we will be doing here is taking the constitutional status away from present J.P.s, putting their existence into the

legislature, and then we will have a situation — you correct me if I am wrong here — where from time to time on the local level the J.P. court system can be abolished either by the legislature or by a request of the people at that local level, and until such time it will remain in force subject to any modifications imposed by law.

CHAIRMAN VAN DUSEN: Mr. Ford.

MR. FORD: I think it is correct. And perhaps I didn't mention, Mr. Mahinske, when I was presenting it before, but if you look at the present constitution, section 15 of article VII is the one that provides that not more than 4 justices of the peace will be elected in each township, and that is exactly what creates the constitutional status in the existing constitution and requires the existence of this office. This has been excluded. We have already voted on an exclusion report to take that out. Section 16 is the one that gives them their civil and criminal jurisdiction, except that it provides that they will have such criminal jurisdiction and duties as the legislature may provide, and that has also been excluded.

The effect of my amendment would be exactly the same as the effect of the committee's proposal. There is only one difference, and the one difference is that the committee proposal presupposes the necessity for complete abolition at this time.

If you believe in complete abolition being a necessity, then you should vote for the committee proposal. If you want to leave it to the legislature to abolish them in part or over a period of time or in most parts of the state where the people want to abolish them, then you should adopt the minority report amendment, because the justice of the peace will then under no section of this constitution have constitutional status or constitutional recognition of any kind. He will cease to exist as a constitutional officer. But his duties will not be automatically terminated in 5 years. The legislature will have to deliberately terminate it. It won't just happen. And that is the only difference. The 5 year death penalty is the only difference between the 2 provisions.

CHAIRMAN VAN DUSEN: Mr. Mahinske.

MR. MAHINSKE: On the basis of these remarks and on the basis of the fact that I don't go for these 5 year stays of execution here, plus the fact that there may be areas in the state that would want to abolish their J.P. system prior to a 5 year period, plus the fact that we are taking the existing constitutional status away from J.P.s which leaves them open to abolishment by the legislature, I would be inclined to vote for the minority report amendment that we have here.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Messrs. Ford, Ostrow and Garvin. Those in favor of the amendment will say aye. Those opposed will say no.

DELEGATES: Division.

CHAIRMAN VAN DUSEN: A division is requested. Is the demanded supported? It is supported. Those who are in favor of the minority report amendment offered by Messrs. Ford, Ostrow and Garvin will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the adoption of the amendment offered by Messrs. Ford, Ostrow and Garvin, the yeas are 36; the nays are 70.

CHAIRMAN VAN DUSEN: The amendment is not adopted. Are there further amendments to section 1?

SECRETARY CHASE: None.

CHAIRMAN VAN DUSEN: If not, it will pass.

Section 1 is passed. The secretary will read section j.

SECRETARY CHASE: The following is section j:

[Section j was read by the secretary. For text, see above, page 1479.]

CHAIRMAN VAN DUSEN: For an explanation of section j, the Chair will recognize the chairman of the committee, Mr. Danhof.

MR. DANHOF: Mr. Chairman, I shall not yield on this one but explain it myself. This particular section relates only to what has previously been passed in regard to the setting up of staggered terms for circuit judges and probate judges which we passed in Committee Proposals 93 and 94. This is the scheduling provision therein. It requires that the legislature shall implement, by the time of the next election for those particular offices, terms of varying length, with this proviso: that none — and I repeat, that none — shall be shorter than the basic term provided herein for the office. The question may be raised whether or not this is a provision which should be in this particular proposal. I will submit that if it is found that this should be in the scheduling provisions, we are most willing that it be included therein. It is also possible that there will be some conflict between this and a provision put out by the committee on miscellaneous provisions and schedule. This can likewise be resolved should we find such a conflict.

The only basic provisions here are, one, that this be done by the next election for the circuit judges and the probate judges, and when they provide for the terms of varying lengths, the shortest one cannot be shorter than the basic term provided, which we have agreed shall be 6 years in the case of those offices. If there is anything that we provide in Committee Proposal 91 or 92 that needs scheduling, this would again likewise apply. Perhaps there would be some amendment or some change which would be needed depending on what we do on the supreme court. This is a scheduling provision in essence, and that is all that is contained herein, but it must be done by the next election.

CHAIRMAN VAN DUSEN: Mr. King.

MR. KING: Mr. Chairman, fellow delegates, I would like to address through the Chair a question to the chairman of the judicial committee, if I may.

CHAIRMAN VAN DUSEN: If the gentleman cares to answer.

MR. KING: Delegate Danhof, how is this thing to be implemented specifically? Could you give me an example? At the present time we have 5 circuit judges in my county whose term all expire in April — or they come up for reelection in April, 1965. Could you give me some idea what will happen at that time? Will all 5 of them run, first of all?

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: Mr. Chairman, Mr. King, in the first place, depending on whether we have an April election or not, they probably will not come up in April. But assuming they come up that fall or the fall prior to April, depending on which one we finally conclude, I would anticipate that they would run and that this provision would be set up. You have 5. I give you this as an example: 2 would be elected for 6 years, 2 for 8 years, and in the next case, maybe 1 for 10 years. When and if Oakland county gets a second circuit judge, he would fall in where you have the 1 provision.

Who would get the long term and who would get the short term? We had many varying proposals. One could be the highest number of votes. This might not necessarily be the right way, but this is the way the legislature would do it. The judge getting the largest number of votes could have his choice or get the longest term. Two, if they didn't want to do it that way, the judge elected then, certified as elected, who had the longest seniority on the bench they could provide his choice. They might do it by lot. But no one would get a shorter term than 6 years.

It was pointed out, why the seniority idea? It is possible that a judge who might be relatively close to retirement might not want the longest term. Maybe he would be perfectly happy to have just a 6 year term and leave it to the younger members of the bench to take the longest term. This is merely an example of what I envision that the legislature could do to begin to get this operation rolling. Then the next election as they would come up would be for the basic term of 6 years and, as judges were added, they could be added equally as the time went on, and you aren't going to always have this same number when you have an odd number, like

you have, with 5, but once the rotation were established, this is the way they would fall in.

This is the way it has been done, as I understand it, with the probate judges where you have more than one. They do not run together. They run every 2 years on a 4 year term. So you have one up every 2 years. And for the probate judges it would probably be easier, because in those cases where you have existing probate judges, they already are running every 2 years. They don't run together anyway. Their term would merely go up to 6. That is the only scheduling provision you would have therein. So that the next time they come up for election, instead of running for a 4 year term, they run for a 6 year term. And there might be a time when you don't elect the probate judge for 4 years and then one 2 years thereafter. That is the way it possibly could work. I assume that is what you want.

MR. KING: Well, Mr. Chairman, Mr. Danhof, just to clarify one point, I think I understood you to say that they all would run for reelection the next time up.

MR. DANHOF: I would imagine they would have to. There is no other way. Their terms expire all together. You can't run them earlier than this, so you would set it up that they would run, but the implementation would be that at the next election, they would set up the varying terms, that the following time they would not begin to run all together or in a pack, so to speak. This is the way I visualize it. Thank you.

CHAIRMAN VAN DUSEN: Mr. Shackleton, did you desire to be recognized?

MR. SHACKLETON: No.

CHAIRMAN VAN DUSEN: Are there any amendments to section j?

SECRETARY CHASE: Messrs. Ford, Garvin, Ostrow, Bledsoe, Barthwell and Miss McGowan offer the following amendment:

1. Amend page 3, line 24, after "implemented" by striking out "at the next election".

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Ford and others, on which the Chair will recognize Mr. Ford.

MR. FORD: Mr. Chairman, members of the committee, at this point, on behalf of the Wayne county delegates, I would like to plead with our colleagues from outstate to show us the same forbearance with our problem down there that we have shown you earlier today and the last couple of days with problems that you have outstate.

When we are talking about the staggering of judges' terms, we are talking really about Wayne county primarily at the present time and 2 other counties with multiple judge circuits, and all that this amendment would do would be to leave the legislature free to implement a staggering system over several elections rather than trying to do it at one election, because you can go around and around, but with the language of the committee, this is what it means for Wayne county at the next election: 18 circuit judges will come up for reelection. Actually, it is my understanding that 2 of the circuit judges will not be eligible to run again because of age, but let's assume that we take the 18 vacancies and implement this at the next election, as the language of the committee proposal would require. This means that 6 of the judges would run for 6 years, 6 for 8 years and 6 for 10 years. You could not reduce below the 6 year term, and the only way that you could get them staggered into any method at one election where you could get them staggered without reducing it would be to increase terms. One other alternative would be to take approximately ¼ of them and run them for 6 years, approximately ¼ for 8 years, approximately ¼ for 10 years and approximately ¼ for 12 years. Don't you realize when you look at this kind of a term of office what a problem it creates down there? If you go beyond breaking it into 3 groups, you are going into a 12 year term, and the committee language freezes us into that kind of a situation.

There are other possible ways that over a period of time this could be implemented in Wayne county, and one would be where the legislature could provide that each time a vacancy occurs in the future, at that time, according to a schedule that they have established, the term of office for which that vacancy has occurred would be changed, so that instead of saying that the present judges would run for terms longer than 6 years, they would say, for example, that those 2 vacancies that come up where an incumbent isn't involved could be 4 year terms. And if there are new judgeships created down there, then assuming there are 5, as the senate has passed, those 5 could be set up in the first instance on a staggered basis, and one by one as these vacancies occur, you could stagger the terms. But to do this all at one election creates exactly the situation that I have outlined for you, and there is no alternative to it because of the language of the committee proposal, and I am pleading now for Wayne county. We just are not anxious to reelect our judges at the next election for 12 year terms on the local level. We would like to have the opportunity to work with the legislature in implementing this over a period of time so as not to create this kind of a situation.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Messrs. Ford and others. Mr. Everett, do you desire to be recognized?

MR. FORD: Mr. Chairman, I am sorry. I would like to yield to Mr. Garvin, a cosponsor of the amendment.

CHAIRMAN VAN DUSEN: Mr. Ford yields to Mr. Garvin.

MR. GARVIN: Actually I suppose the committee meant this, but just to say it very short, what Mr. Ford said is that it is impossible to stagger the terms at the next election and none being shorter than the basic term provided herein, whether it be 6 or 8, unless you do have some of them elected for a period of 12 to 14 years or more, it is just an impossibility. Therefore, we are striking out "at the next election" so that the staggering can be better devised than just saying that this must be done at the next election and none shall be elected for a shorter term than the basic term. It is impossible to do suddenly.

CHAIRMAN VAN DUSEN: Mr. Everett.

MR. EVERETT: Mr. Chairman and fellow delegates, the last time Mr. Ford and I were on the opposite side of the question, I read an implication into what he said which was unfair. I was corrected about it. I apologized to Mr. Ford before personally, and I do now want it on the record that I unwisely read something in which wasn't there. In correcting what he has just said now, I do it simply by way of indicating that even the best of us can make mistakes. This does not involve a matter of 2 or 3 counties. This involves 14 counties which now have more than 1 circuit judge per county. As time goes on and counties grow, there will undoubtedly be more, so we are not talking about a very few instances.

What we have suggested in the committee is simply that we set this up on an orderly procedure. We recognize at the first election some judges will be elected to a long term. We don't feel that this is a fatal thing. Most of them get reelected over and over again anyway. So we are simply easing them off for maybe 2 or possibly 4 years. We can't extend their term to 12 years because if you do that, you come back into the old term, to the men going out again, so the most we can extend it to would be 10 or possibly 11 years if you got into a different year for election. We did this for 2 reasons. One, to prevent any judge being cut down in term so you had men running for a 2 year term, which we felt would be definitely unfair; and, secondly, because we felt if the principle of staggered terms is valid, then it ought to come into existence at the next judicial election. I would oppose the amendment and support the committee position.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Ford and others. Mr. Garvin.

MR. GARVIN: I just wanted to mention and remind the delegates and the proposers of this majority proposal that if a judge is 69, he may be 89 or 90 before his term is up.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Messrs. Ford, Garvin, Ostrow and others. Mr. Higgs.

MR. HIGGS: Mr. Chairman and members of the committee, I would like to ask a question of Delegate Ford, if I may, through the Chair.

CHAIRMAN VAN DUSEN: If the gentleman cares to answer. Mr. Ford.

MR. HIGGS: In offering this amendment, it would be my understanding that you do not intend to require the legislature to wait for a vacancy in all cases, do you?

MR. FORD: No, no, Mr. Higgs; simply we are not forcing them to do it at the next election or at one election. They might do it at the next election. They could still do it that way. But if they decided over there that they could come up with another way of doing it, it would still be available to them.

What the committee proposal does, as I see it now, is actually it dictates the exact method of rotation for the next election by saying it has to be done all at one election and at the very next election. It wouldn't matter when it was done. If you say that it all has to happen at one time and that you can't reduce below 6 years, then what you are doing is talking about 6, 8 and 10; or 6, 8, 10 and 12 year terms.

CHAIRMAN VAN DUSEN: Mr. Higgs.

MR. HIGGS: One further question then. Would it be your thought that what you actually intend is that it shall be implemented as soon as reasonably possible?

MR. FORD: Yes. I don't tamper with the language that says the legislature shall implement this thing.

MR. HIGGS: I have been listening very carefully to the argument of Delegate Ford here today and I feel that there is certainly considerable merit to the argument. I would be inclined to support the minority report amendment.

CHAIRMAN VAN DUSEN: Mr. Staiger.

MR. STAIGER: I would like to ask a question of Delegate Ford, if I could.

CHAIRMAN VAN DUSEN: If the gentleman cares to answer.

MR. STAIGER: In Committee Proposal 93 we already have set the term for circuit judges at 6 years. You mention in staggering we might go up to 12 years. Somebody else mentioned 14. I cannot conceive how you would be at 12 years in staggering, or you would be meeting the first group that ran for 6. Isn't 10 the maximum or 11 the maximum you would go to on a 6 year term?

CHAIRMAN VAN DUSEN: Mr. Ford.

MR. FORD: You would never get to an odd number like 11.

MR. STAIGER: If you ran some each year rather than each 2 years?

MR. FORD: If you assume you are going to have a judicial election of some sort every year. But it is my understanding that the present intention is every 2 years.

MR. STAIGER: All right. Assuming 2 years. Then 10 would be the maximum that any judge would be elected for if the term is 6 years and the first time around to stagger the terms. You suggested you might elect ¼ of them for 4 years—

MR. FORD: I think you are correct. What it does is dictate that the maximum breakdown you could make would be in thirds, 1/3 at a time.

MR. STAIGER: So you would be 6, 8 and 10 years, and 10 years would be the longest you would be electing any judges.

MR. FORD: That is correct.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Ford and others. Does any delegate desire to have it read again? If not, those who are in favor of the amendment will say aye. Those opposed will say no.

The amendment is not adopted.

DELEGATES: Division.

CHAIRMAN VAN DUSEN: Is the demand for the division supported? It is not supported.

The amendment is not adopted. Are there further amendments to section j?

SECRETARY CHASE: None on file, Mr. Chairman.

CHAIRMAN VAN DUSEN: If not, it will pass.

Section j is passed. The secretary will read section k.

SECRETARY CHASE: Section k:

[Section k was read by the secretary. For text, see above, page 1479.]

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: Mr. Chairman, for the explanation of section k, I would like to call upon the delegate from Detroit, Miss McGowan.

CHAIRMAN VAN DUSEN: Miss McGowan.

MISS McGOWAN: Mr. Chairman, Mr. Danhof and members of the committee, this is a new section and is recommended for the purpose of empowering the supreme court to furnish advisory opinions to the governor and each house of the legislature on important questions of law and solemn occasions. By this provision it is felt that more effective governmental operation is made possible. This is a nonadversary proceeding, or in other words, a proceeding in the nature of a hearing. We feel that the supreme court will provide for notice and hearing in proper cases. The matter of advisory opinions was brought to the attention of the committee on judicial branch by Mr. Justice Black in his testimony before the committee.

A memorandum from our research and drafting department prepared under the direction of Dr. Joiner points up the fact that the constitutions of Colorado, Maine, Massachusetts, New Hampshire and South Dakota provide that the supreme court shall give their opinion when requested upon solemn occasions. In addition, the constitutions of Florida and Rhode Island provide for high court opinions whenever requested.

By a solemn occasion the constitution means some serious and unusual urgent need. It has been held to be such urgent need when either branch of the legislature having some action in view has serious doubts as to their power and authority to take such action under the constitution or existing statutes. An example of this would be our 4 cent sales tax which was passed and in a short time thereafter was declared unconstitutional.

We feel that the adoption of this provision would facilitate the effective and efficient operation of our state government, and we therefore urge the adoption of this provision.

CHAIRMAN VAN DUSEN: Mr. Faxon.

MR. FAXON: I would like to ask a question of the proponents of this section. I understood that the definition for "solemn occasion"—or maybe that is the way I understood it from what I heard—was that a 4 cent sales tax question was considered a solemn occasion. Am I correct in my understanding here? This is through the Chair to Miss McGowan.

CHAIRMAN VAN DUSEN: Miss McGowan.

MISS McGOWAN: The definition that I gave of "solemn occasion" was some serious and unusual urgent need. It has been held to be such urgent need when either branch of the legislature having some action in view has serious doubts as to their power and authority to take such action under the constitution or existing statutes.

MR. FAXON: My feeling was that the important questions of law would cover the type of instance which you have just defined under the other. Isn't there some tendency to be redundant here? Actually I am a little bit puzzled over "solemn." It injects an atmosphere in the section which I am not quite certain of. Wouldn't "questions of law" take into account what you have just described?

CHAIRMAN VAN DUSEN: Miss McGowan.

MISS McGOWAN: Mr. Faxon, the definition I gave you was taken from a case, and the case is found at 290 Massachusetts 601. (laughter)

MR. FAXON: I don't want to get into the Massachusetts constitution, but those of you who are familiar with the Constitution of Massachusetts know that there is a very strong flavor of religious sentiment expressed in the old constitution, and I don't know that the word "solemn" has

the same connotation today as it might have had when it was first introduced in the Massachusetts constitution. I frankly fail to appreciate the additional 3 words at the end of this section.

CHAIRMAN VAN DUSEN: Mr. Martin.

MR. MARTIN: Mr. Chairman, just a question to the chairman of the committee or Miss McGowan. I understand from this that the court itself would have the right to decide whether an opinion should be rendered or not. In other words, the court would have the right to decide whether this was an important question of law or a solemn occasion and therefore to decide whether this was a situation where an opinion was proper and desirable. May I get clarification on that?

CHAIRMAN VAN DUSEN: Miss McGowan.

MISS McGOWAN: Mr. Chairman, to Mr. Martin, that is the proper interpretation.

MR. MARTIN: Thank you. Then, Mr. Chairman, I want to support the committee on this, because this privilege of asking the court for an opinion, if the court has the right to decide whether it should issue an opinion or not is a very important provision in that it gives the legislature and the governor on really important questions an opportunity to get a decision rather than to plunge ahead regardless of what the legal outcome may be.

In some cases, having to do that necessitates the passage of legislation which would involve, for example in a tax matter, the setting up of a large tax section in the revenue department and the expenditure of large amounts of money, perhaps the collection of large amounts of money which later might have to be refunded, and it enables us to settle questions of that kind in advance without the necessity for going through all the agony of setting up divisions and departments and then having to dismantle them and refund large amounts of money. I am sure it would save the public a great deal of money in the long run.

CHAIRMAN VAN DUSEN: Mr. Norris.

MR. NORRIS: Mr. Chairman, I have 2 questions that I should like to direct to the committee on this matter. First, under federal law there must be a case or controversy before the judicial power may properly be exercised. What we are having presented here is that an advisory opinion on questions of law may be rendered by the supreme court without an actual case or controversy. Does that mean that as far as this committee is concerned, they do not wish to preserve the traditional notion that there must be a case or controversy presented before the court may exercise its judicial power?

CHAIRMAN VAN DUSEN: Mr. Danhof or Miss McGowan, do you wish to respond? Miss McGowan.

MISS McGOWAN: Mr. Chairman, to Mr. Norris, the committee felt, as I said, that this would be beneficial to our state governmental operation. And also I would like to point out to you a Michigan case in this regard is the case of Connor vs. Herrick, found at 349 Michigan 201, in which 3 of the justices in that case said, "When and if the constitution authorizes issuance by this court of advisory opinions, we of course will cheerfully comply with the people's directive."

MR. NORRIS: Then there is a disposition here to depart from that proposition and get into the advisory field. Now, let's suppose that the supreme court with regard to an important question of law renders an opinion for the guidance of the executive departments. Let's suppose then that a case or controversy with regard to that matter subsequently arises. Now you have a matter that comes up before the Michigan supreme court upon which it has already rendered an opinion and there is a question of whether or not the merits of the case are already prejudged by the court itself.

CHAIRMAN VAN DUSEN: Miss McGowan.

MISS McGOWAN: Mr. Chairman, to Mr. Norris, I don't know if that is a question or a statement, but I think the thing that you should keep in mind is that the supreme court will determine what cases they will render advisory opinions in. That is the best I can answer that.

MR. NORRIS: Well, I appreciate that. I am just raising a question. I haven't fully made up my mind with regard to this. It is a matter that has been debated in judicial circles for some time. But one of the problems it has posed is the question of giving an advisory opinion and then having a case or controversy which involves an interpretation of the same opinion presented to the same tribunal. If you went to a circuit judge and asked him for his opinion with regard to a matter and then got an opinion and then acted upon it, and then you were subsequently a litigant and went before that same court, I think you would have a disposition to believe which direction the court might move, and I am not so sure that this enhances the administration of justice.

CHAIRMAN VAN DUSEN: Mr. Prettie.

MR. PRETTIE: Mr. Chairman and fellow delegates, I had some qualms about this when it first came before the committee on judicial branch. We had presented 3 delegate proposals in which the doctrine of advisory opinions was suggested: 1252 by Messrs. Austin and Barthwell; 1269 by Mr. McCauley and Miss McGowan; and 1288 by Messrs. Lawrence, Cudlip and Bonisteel.

The words "solemn occasion" bothered me a little bit as they bother Mr. Faxon, but we do have a legal doctrine that when a statute or a constitutional provision having been construed in other jurisdictions is adopted by another state, you take with it, at least in the normal case, the decisions that have construed and interpreted that language. For that reason I felt that although a solemn occasion might in my jargon be a funeral, (laughter) perhaps the language that Massachusetts and other courts have used in their constitution and have construed would be safer language in giving us guidelines as to the meaning of this.

The point that Mr. Norris has raised also bothered me, but I anticipate that the court will make very strict rules concerning the manner in which it will assume jurisdiction for advisory opinions; that it will undoubtedly request briefs amicus curiae from persons or groups that might be interested in those opinions and that it will give careful consideration even though the matter is not presented as an adversary proceeding. Should the court, after such thorough briefing by interested parties or groups after public hearing that undoubtedly would be provided for, reach a decision, and should there subsequently come before the court an actual controversy, I think the court, with its present view toward the doctrine of stare decisis, might quite reasonably upset its advisory opinion in a subsequent adversary proceeding coming before it.

In any event, I think this would be something, as Mr. Martin and others have pointed out, that would help to save money for the taxpayers of the state that would perhaps be limited in use but that would be greatly needed when on rare occasions the need arises, and that the language, being language already construed, is language that we should adopt in toto if we adopt the doctrine at all.

CHAIRMAN VAN DUSEN: Mr. Everett. Mr. Everett passes. Judge Mosier.

MR. MOSIER: Mr. Chairman and fellow delegates, Mr. Prettie has answered in a way some of the things that I had in mind of saying, but I will go just one step further, and that is to call the attention of the delegates to a procedure that we have had in Michigan for some time—it was put there by the legislature which gives the courts the power, and our supreme court has sustained it—of applying to the courts, not in a case where there is an actual litigation pending but in the case where there is a justifiable dispute between parties and in which the parties ask for the advice of the court and it results in what we call an advisory judgment, a judgment that advises the parties of their legal rights without their having reached that point where a lawsuit involving acrimony and all the things that go with a closely contested case sometimes follows. Therefore, we have had for some time in Michigan the state policy of deciding in advance a justifiable question, and I believe that for the benefit of the legislature, which would be given the right under this amendment to call upon

the supreme court for that advice, it would be most helpful, and I am in favor of the proposal.

CHAIRMAN VAN DUSEN: Judge Gadola.

MR. GADOLA: Mr. Chairman, members of the committee, I will answer Mr. Norris' question to some degree. I have quoted this before, that celebrated decision that I remember so well, "The thinking of the court hasn't changed; it is the personnel." That will answer your question on that. And then someone else said something about stare decisis. In that same opinion the court said, this opinion is so recent that it is no good as stare decisis. I would like to ask Miss McGowan one question.

CHAIRMAN VAN DUSEN: If the lady cares to answer.

MR. GADOLA: It is simply this, isn't this getting pretty close to putting legislation in the hands of the supreme court?

MISS McGOWAN: In my opinion, it is not.

MR. GADOLA: My opinion is, it is. (laughter)

CHAIRMAN VAN DUSEN: That is what makes horse races. (laughter) Mr. Faxon.

MR. FAXON: I just want to make one more point on this. It seems to me that we are differentiating the requesting of an opinion on questions of law from requesting opinions upon something other than questions of law. In viewing the Massachusetts constitution, I think we should keep in mind that this constitution to which this was referred, these few words, was written in 1790, and I think it may have had a difference at that time than we are talking about in 1962, and it seems to me that the historical concept of a supreme court is to request opinions on important questions of law.

Is this something other than questions of law? And if it is, is this something upon which the supreme court is to make the determination? My only point is that we are setting up 2 different things here, and we are handing over on the one hand law, which is agreeable to the supreme court, and on the other hand something other than something of law which is not a part of the historical function of the supreme court of this state. That is all I care to say on this.

CHAIRMAN VAN DUSEN: Mr. Wanger.

MR. WANGER: Mr. Chairman, members of the committee, I think this is a very important provision, and I would like to correct 2 errors which have been made by previous speakers speaking in support of the committee proposal. First of all, I will correct what I believe to be an error or perhaps a misstatement by Mr. Prettie when he stated that there is a legal doctrine that when you adopt a provision which is like a provision in some other state, that you thereby adopt their interpretation of that provision. That is not the case. I think the interpretations in other states would be received at most with respect by the court, but in no sense as authority. Secondly, I wish to correct an impression which may have been left by Delegate Mosier when he said that this is nothing more than our advisory judgment act, or declaratory judgment act as it is perhaps more frequently called. Under the act which provides for declaratory judgments it is true you do not have to have normal litigation, but you do have to have an actual controversy between individuals and you do have an adversary type of proceeding in most cases. This provision proposed for the constitution goes much farther, and it allows the governor or either house of the legislature to ask the court for an opinion upon any subject whatsoever.

CHAIRMAN VAN DUSEN: Are there any amendments to section k?

SECRETARY CHASE: Mr. Wanger has filed an amendment to section k:

1. Amend pages 3 and 4, by striking out all of section k, lines 28 and 29 on page 3 and line 1 on page 4.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Wanger. The Chair will recognize Mr. Wanger.

MR. WANGER: Mr. Chairman, members of the committee, I would like first of all to speak about and describe the nature of this provision. The words "advisory opinion" may be somewhat misleading because it is not merely for advice that the governor or either branch of the legislature would ask. It is rather something which would be used as a device for accelerating the judicial review of important constitutional questions or legal questions of any nature which the request might be made for to the supreme court. The attorney general or any other counsel can give advice upon these questions, but it is a matter of determining them which is before us at this time.

As a practical matter these opinions by the court are used as precedents. I quote from an article in the 1949 edition of the Indiana Law Journal, volume 24, page 216, by Professor Oliver Field, as follows:

> Advisory opinions are used as precedents by the bar, by the courts, and by the public. They are cited in briefs, in opinions by the courts, and despite the fact that they are sometimes carefully distinguished from judicial decisions, they are relied on as fully as decisions are, so far as precedent is concerned.

There may be some advantage to accelerating judicial review, accelerating the final constitutional determination, as a practical matter, of many issues. However, there are also 2 serious disadvantages. I firmly believe that these disadvantages outweigh the advantages. Here are the disadvantages.

The first one is that it adversely affects the separation of powers doctrine and is contrary to the entire judicial tradition of the United States and contrary to that of 4/5 of the states of the union. It facilitates an abdication by the legislature and the governor of their duty to make a judgment on the constitutionality of a pending statute or action independently of that made by the courts. After all, every public officer in the executive branch or elected to the legislative branch swears to uphold the constitution and to take actions only which in their own opinion are constitutional and not to pass the buck to somebody else to make that decision for them. The people are much better protected under such a development. And I quote now in support of this from a statement made in the Harvard Law Review many years ago by Felix Frankfurter, who said as follows in 37 Harvard Law Review at page 1007:

> Perhaps the most costly price of advisory opinions is the weakening of legislative and popular responsibility. It is not merely the right of the legislature to legislate; it is its duty. Let legislatures inform themselves as best they can; but the burden of decision ought not to be shifted to the tribunal whose task is the most delicate in our whole scheme of government—the power of the judiciary to set limits to legislative activity within those ultimate but vague bounds which are undefined and a priori undefinable.

It has been stated in support of the committee position that the court would only render decisions, in the opinion of the proponents, on matters which were very solemn, which were very, very important. And I would like to say that while I respect the desires of the people who said that, there is nothing in this language which would require that.

It was stated that other states have issued certain rules by judicial construction which might insure this, and yet I would point out that in the other states there is in some cases a conflict between these rules and, furthermore, my examination of the 7 constitutional provisions which allow for advisory opinions shows that none of them are identical with the provision which has been proposed by the committee. For example, the provision proposed by the committee would authorize the supreme court to answer a question which the governor would propose regarding a bill which had not even been passed by the legislature. It is possible that the legislature or either house could submit a question on a course of action contemplated by the governor, or perhaps the legislature could submit a question or the governor a question on a proposed or contemplated action by a constitutional convention. These are possibilities. The court would determine, of course, whether or not it would give an answer.

The second basic reason which I believe to be a disadvantage to adopting this into the constitution is that it

provides for the determination of constitutional issues and other vital legal questions under conditions which are poorly suited to reaching the best result. It has been admitted, of course, that these proceedings are nonadversary. That means you do not have people contesting for their rights before the court. You merely place a matter to the court and ask for their legal opinion upon the subject. I quote from volume 69 of the Harvard Law Review, pages 1302 and 1303 in 1956, which is the most recent annotation I found discussing this subject, "In rendering these opinions the justices are usually unassisted by briefs or arguments." The second reason why these conditions are far from ideal for rendering correct results is, then, that under the advisory opinion practice, judges will be deciding hypothetical cases rather than actual ones in many cases. Their opinions will be based therefore on abstract legal thinking. Under this practice the justices must form an opinion when a statute, for example, has not become operative and has not been applied to a specific fact situation.

When a court decides the constitutionality of a statute in the course of litigation, it is functioning as an agency of sober second thought which reviews, in the light of experience under the statute, the determination of policy made by the legislature and executive at a time when the effects of a statute could only be predicted. Mr. Frankfurter, who of course all of the lawyers and I think most everyone else realizes now sits on the Supreme Court of the United States, said in this article regarding the giving of advisory opinions as follows:

> The whole milieu of advisory opinions on proposed bills is inevitably different from that of litigation contesting legislation. However much provision may be made on paper for adequate arguments (and experience justifies little reliance) advisory opinions are bound to move in an unreal atmosphere. The impact of actuality and the intensities of immediacy are wanting. In the attitude of court and counsel, in the vigor of adequate representation of the facts behind legislation (lamentably inadequate even in contested litigation) there is thus a wide gulf of difference, partly rooted in psychologic factors, between opinions in advance of legislation and decisions in litigation after such proposals are embodied into law.
>
> Advisory opinions are rendered upon sterilized and mutilated issues.

Then Mr. Frankfurter goes on to discuss the practice of advisory opinions in his state of Massachusetts itself which is, of course, one of those that has had a tradition in this regard:

> Let anyone, for instance, compare the adverse opinions of the Massachusetts supreme court upon the constitutionality of municipal coal and wood yards with the opinion of the supreme court sustaining such legislation; the adverse opinions of the Massachusetts court on prohibition of trading stamps with the opinion of the supreme court sustaining such legislation; the adverse opinion of the Massachusetts court on the state's power to provide for dwelling houses with the opinion of the supreme court sustaining such legislation.

Mr. Justice Frankfurter closes his article with the words that I will use to close this presentation:

> It must be remembered that advisory opinions are not merely advisory opinions. They are ghosts that slay.

CHAIRMAN VAN DUSEN: On the amendment offered by Mr. Wanger, the Chair will recognize Mr. Ostrow.

MR. OSTROW: Mr. Chairman, ladies and gentlemen, I oppose the Wanger amendment and support the committee proposal. If this committee proposal had been part of the 1908 constitution, we might now have an opinion which would save us from sweating out the question of whether we have to meet the April 1 deadline.

I don't visualize that either branch of the legislature is going to be rushing into the supreme court every day to get advisory opinions, and even if they do do so, I can't visualize the supreme court rendering them. We have had in Michigan a declaratory judgment statute, the one that Judge Mosier referred to, for many years, over 30 to my knowledge. The same fears that were expressed regarding this provision were expressed when the declaratory judgment statute was first passed. None of those fears came to be realized. If you go through the Michigan reports, there are very few declaratory judgment actions. This provision that is contained in the committee proposal can on proper occasion do a lot of good. I can't visualize it doing any harm.

CHAIRMAN VAN DUSEN: On the Wanger amendment, the Chair will recognize Mr. Faxon.

MR. FAXON: I rise to support Mr. Wanger's amendment and I am very happy to know that I am in such illustrious company as that of a lawyer on this.

I have been looking at that language and it has been bothering me for some time. A conservative point of view, it seems to me, would indicate that we should be wary of any violation of the separation of powers. Where there is the need for an opinion as far as law is concerned, at least I thought that was the function of the attorney general's office, and we have often made use of attorney general's opinions, but not to the point that we feel that this represents the law itself.

Mr. Wanger has stated the case very clearly as far as I am concerned, and that is namely that this would be prejudging a case that ordinarily would have to go through a whole procedure. The supreme court in most cases is an appellate court. Here the supreme court would be going ahead and judging on something which hasn't even actually been put into practice, and would be making a judgment which would in some way influence, I fear, the executive and legislative branches of government. Keep the courts out until they are requested to be brought in.

This is a radical departure from our tradition of the separation of the courts here in Michigan. It would only infuse the courts with additional needs and requests at a time when this should not be the case at all. I would fear the results of what would happen if the governor were to start using the courts by going in and requesting opinions to substantiate what he would like in legislation in the legislature or the legislature doing the same thing the other way around. Let's not get the courts involved in legislative matters. Let's keep the courts in their traditional function here in Michigan. Let us give considerable thought to Mr. Wanger's amendment.

CHAIRMAN VAN DUSEN: I will ask the committee to be in a little better order, please. Judge Leibrand.

MR. LEIBRAND: Mr. Chairman and delegates, I herewith enlist in the forces of Gene Wanger and Jack Faxon. (laughter) I was a member of the committee of judicial branch, and as such I joined in the majority report which sent this section k to the floor of this convention and this committee. At the time I did so I hopefully anticipated that we would here in Michigan within a short time have a completely nonpartisan supreme court. As of this date that anticipation is dimming. We may end up with a political party dominated supreme court or one completely appointed by the governor, according to the present state of things. I cannot vote for a proposition that might give to a supreme court the power to make virtual law at the request of the governor who appointed them. I support the Wanger amendment.

CHAIRMAN VAN DUSEN: Mr. King.

MR. KING: Mr. Chairman, ladies and gentlemen of the committee, I rise to support that fighting conservative, Jack Faxon, (laughter) and that great liberal, Judge Leibrand. (laughter)

We are indeed contemplating a very serious change in what I think to be the history and the tradition of justice in this country. Mr. Wanger has pointed out the troubles that the Massachusetts supreme court got into when they allowed themselves to leave the theory of case and controversy. They have allowed themselves to enter into the legislative process by rendering decisions without knowing how the legislation is going to be applied in the world of reality. I too should like to quote from Justice Frankfurter. He has said, speaking of these justifiable contests before courts:

> The stuff of these contests are facts and judgment upon facts. Every tendency to deal with them abstractly, to formulate them in terms of sterile legal questions is bound to result in sterile conclusions unrelated to actualities. Legislation is thus deprived of its creative function. The history of modern legislation is rich in proof that facts may be established in support of measures although not previously in existence. The accidents of litigation may give time for the vindication of laws which, a priori, may run counter to deep presuppositions or speculative claims of injustice.

Now, this is a very appealing thought. Wouldn't it be wonderful if we could go out to the people of Michigan, say, and ask "If we pass this in the constitution, would you buy it or wouldn't you?" Maybe we could hire Dr. Gallup, who conducts opinion polls. But, don't you see, this would be a very dangerous thing to do. You never know how the public is going to accept this document until they have seen the whole package, until they have had a chance to think about it and read about it and hear argument pro and con, and we are actually expecting the supreme court to do the same thing.

We are going to take a sterile piece of legislation, unsurrounded by facts, unargued by proponents of one side or the other, and ask them to pass judgment on it ahead of time. I submit to you that this would be an extremely dangerous thing to do, contrary to what our beliefs are, what our understanding of the separation of powers is today, and frankly it to me would leave the door wide open to a great deal of mischief. I think we have established through the English common law and our adherence thereto a system of justice, a system of separation of powers which has proven itself, and I think we ought to be very reluctant at this time to try something new.

CHAIRMAN VAN DUSEN: Mr. Austin.

MR. AUSTIN: Mr. Chairman and members of the committee, I would like to speak against the Wanger amendment, but not because I am in total sympathy with the language of the committee's proposal. There are 2 amendments on the desk, one by Mr. Habermehl and one by myself which I think would at least introduce the kind of language which I think ought to be introduced to improve on what the committee has done.

I am intensely interested in having a provision of this sort included in the constitution because I had quite a bit of experience with the 1959 law to increase the sales tax by way of a very peculiar means, through the use tax, to 4 per cent. Subsequently it was declared unconstitutional and there was well over $20 million of moneys collected from taxpayers in small amounts that could not be refunded to them. It was collected from them unconstitutionally, but it could not be refunded to them because there were administrative problems involved. And I certainly would not like to see a recurrence of this kind of affair. I joined with Mr. Barthwell in submitting a delegate proposal which would provide for the review of tax legislation after it had been enacted into law but before the effective date of the tax law. This would do what I think needs to be done. It would first require that both houses of the legislature pass on the legislation and even the governor sign the bill so that we do have a law which the court can rule on, at least as to the constitutionality of it, but at least give the court a chance to look at it before it becomes effective and taxes are collected under the defective law. So I am hopeful that we will vote down the Wanger amendment and then see if we can't improve on the language of the committee proposal.

CHAIRMAN VAN DUSEN: Mr. Everett.

MR. EVERETT: Mr. Chairman, I want to second Mr. Austin's remarks—except for the part about the other language because I don't know exactly what it is—in voting down this amendment. I think he has clearly illustrated primarily what we were interested in in the committee and that is these situations where the constitutionality of legislation is in doubt. The issue is not decided in one case that it is constitutional because the facts were thus and so and in another case it was unconstitutional because the facts were thus and so. It is one way or the other because the court applies a principle and determines whether the legislation fits within this principle or not, and you don't have it operating on one set of facts and inoperative on another set of facts. It is that type of situation to which we are addressing ourselves.

We feel certain that the court will have good sense not to become an assistant attorney general and simply give opinions. This is not what we intended and we are certain that they are not going to take upon themselves this function. We feel that in a given case, and only in a very few instances, we the people are entitled to know,—before this operation of governmental activity goes into effect—is this proper? Is this constitutional or not? And if it is not, let's stop it now before the process begins and not after it has been in effect.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Wanger to strike section k of Committee Proposal 96. Mr. Boothby.

MR. BOOTHBY: Mr. Chairman, I urge a yes vote on the amendment to preserve the adversary system of law. I would call for the yeas and nays at this time.

CHAIRMAN VAN DUSEN: Mr. Boothby requests a division. Is the demand supported? The demand is supported. Mr. Norris.

MR. NORRIS: Point of information, Mr. Chairman. Does this mean that if the Wanger amendment prevails, further amendments to perhaps take into account some of the argument that is now contained in the amendments before the secretary would then be out of order?

CHAIRMAN VAN DUSEN: The further amendments which are pending would, in the form in which they have been submitted, be out of order, Mr. Norris. Presumably they could be altered to reinsert the thoughts embodied therein. Mr. Wanger.

MR. WANGER: Mr. Chairman, voting yes for this amendment in no way forecloses considering other language, but let's vote yes on this amendment because this committee language is clearly out of order as far as the interests of the people are concerned.

CHAIRMAN VAN DUSEN: Those who are in favor of the Wanger amendment to strike section k will vote aye. Those who are opposed will vote no. Mr. Danhof, for what purpose does the gentleman rise?

MR. DANHOF: If the vote has been called for, never mind. Go ahead.

CHAIRMAN VAN DUSEN: Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the adoption of the amendment offered by Mr. Wanger, the yeas are 39; the nays are 66.

CHAIRMAN VAN DUSEN: The amendment is not adopted. Are there further amendments to section k?

SECRETARY CHASE: There are 3 on file, Mr. Chairman. Mr. Habermehl offers the following amendment:

1. Amend page 4, line 1, after "occasions.", by inserting "Such opinions shall relate only to questions of constitutionality.".

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Habermehl, on which the Chair will recognize Mr. Habermehl.

MR. HABERMEHL: Mr. Chairman, members of the committee, the language used by the judicial branch committee here would apparently authorize either the governor or the legislature to request the opinion, just purely the opinion, of the supreme court on either one, apparently, of 2 bases: upon an important question of law or upon a solemn occasion.

If we consider that this opinion would be asked for before legislation was enacted, it would, of course, be an interference with the powers of the legislature, a violation of the separation of powers. If we consider that the opinion would be asked for after the enactment of the legislation, if the opinion is not restricted to the question of constitutionality, we would be in effect giving the supreme court a veto over matters of legislation.

I would not have too serious qualms about the supreme court simply rendering an opinion as to whether or not a pro-

posed statute or an enacted statute was constitutional. Anything beyond that I certainly would have grave doubts about. And we must remember that if we are to restrict the power of the supreme court, there is only one place that that can be done and that is in the constitution itself.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Habermehl. Mr. Austin.

MR. AUSTIN: Mr. Chairman, I would like to support the Habermehl amendment. I would like to ask one question of Mr. Habermehl, though, through the Chair, if he will answer.

CHAIRMAN VAN DUSEN: If the gentleman cares to answer.

MR. AUSTIN: Mr. Habermehl, would it be possible for us to add some language to indicate that this should be done by the supreme court only after the legislation has been enacted into law? This, of course, would simply prevent the supreme court from getting involved until the legislative process was completed and they would be working with a law rather than some bills or proposals for legislation.

CHAIRMAN VAN DUSEN: Mr. Habermehl.

MR. HABEMEHL: Mr. Chairman, Mr. Austin, you spoke to me about that, Mr. Austin, and I think it is a very excellent suggestion. I would be happy to accept your amendment as an amendment to mine.

CHAIRMAN VAN DUSEN: Mr. Austin revises, with Mr. Habermehl's consent, Mr. Habermehl's amendment. The secretary will read the amendment as so revised.

MR. AUSTIN: I am wondering if we can just find a way to add this, Mr. Chairman. Just a moment.

CHAIRMAN VAN DUSEN: The Chair thinks, Mr. Austin, having the amendments here, the 2 are not inconsistent. You would simply put your amendment in ahead of Mr. Habermehl's, Mr. Habermehl's being a separate sentence. Is this not correct, Mr. Habermehl?

MR. AUSTIN: I think that would be all right. I struck the words "on solemn occasions" but that can stay in since Mr. Habermehl refers to it.

CHAIRMAN VAN DUSEN: The Chair would advise Mr. Austin and Mr. Habermehl that Mr. Faxon has an amendment to strike the words "and upon solemn occasions." You can pick up some support if you can incorporate that (laughter) and we can dispose of this all at once. Mr. Habermehl, would you accept that further amendment?

MR. HABERMEHL: Do I understand, Mr. Chairman, that that would just strike the words "on solemn occasions"?

CHAIRMAN VAN DUSEN: The words "and upon solemn occasions"; that is correct, so that the section would then read:

> Each branch of the legislature as well as the governor shall have the authority to request the opinion of the supreme court upon important questions of law in connection with legislation after it shall have been enacted into law but before its effective date. Such opinions shall relate only to questions of constitutionality.

MR. HABEMEHL: I would accept that, yes.

MR. AUSTIN: Mr. Chairman, I will accept that change.

CHAIRMAN VAN DUSEN: Mr. Faxon, do you agree to the incorporation of your amendment?

MR. FAXON: Yes, I will accept that.

CHAIRMAN VAN DUSEN: The question is now, then, upon the amendment, as revised, offered by Messrs. Habermehl, Austin and Faxon, which the secretary will read again.

SECRETARY CHASE: The composite amendment:

1. Amend page 4, line 1, after "law" by striking out "and upon solemn occasions.", and inserting "in connection with legislation after it shall have been enacted into law but before its effective date. Such opinions shall relate only to questions of constitutionality.".

CHAIRMAN VAN DUSEN: On the Habermehl-Austin-Faxon amendment the Chair will recognize Mr. Wanger.

MR. WANGER: Mr. Chairman, I want to say 2 things. First of all, it is quite clear that my amendment was soundly defeated upon this division, and I would naturally wish to support an amendment to this which would to some degree mollify the dangers inherent in the original, and I think this proposed composite would do so but only with one execption. That is, I believe that the words "on solemn occasion" should be reinserted. I realize we have had a combination here, and I can see that some delegates realize there may be some humor in the parliamentary situation, but believe me, this is a very, very serious matter as far as the welfare of the people of Michigan is concerned. So I would urge you to support this amendment, but further, upon its adoption, to reinsert the words "upon solemn occasion" after that fact.

Secondly, I would like to say that I have noted the tendency upon a yes vote for those voting yes not to vote as loudly as they might, and I would urge everyone to clear their throat. (laughter)

CHAIRMAN VAN DUSEN: The question is upon the amendment offered jointly by Messrs. Habermehl, Austin and Faxon.

MR. HABERMEHL: Mr. Chairman, I request a division on the question.

CHAIRMAN VAN DUSEN: Mr. Habermehl requests a division. Is the demand supported? It is supported. Those in favor of the amendment offered jointly by Messrs. Habermehl, Austin and Faxon will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the adoption of the composite amendment, the yeas are 82; the nays are 23.

CHAIRMAN VAN DUSEN: The amendment is adopted. Mr. Wanger.

MR. WANGER: Mr. Chairman, members of the committee, I now move to reinsert the words "and upon solemn occasions."

SECRETARY CHASE: Mr. Wanger offers the following amendment:

1. Amend page 4, line 1, after "law" by inserting "and upon solemn occasions,".

CHAIRMAN VAN DUSEN: The question is upon Mr. Wanger's amendment. You may proceed, Mr. Wanger.

MR. WANGER: Mr. Chairman and members of the committee, these words, while they are naturally to some extent vague, are, nevertheless, most important. It has been emphasized by everyone supporting the advisory opinion practice that the courts will exercise restraint, that they will be very careful not to answer every question that is asked but merely to answer those which are of a very, very vital nature.

The other constitutions, or some of them, keep these words "on solemn occasions." It is in New Hampshire's constitution, in Massachusetts' constitution, in Maine's constitution and in Colorado's constitution. And South Dakota also has this requirement of solemn occasions.

What these words do is give the court sound legal doctrine for hanging their hat on in refusing to give an opinion. It is absolutely vital that this language be in there. That is the reason why I support this and remind you, of course, that it was in the committee's original proposal.

CHAIRMAN VAN DUSEN: The question is upon the amendment offered by Mr. Wanger to reinsert the words "and upon solemn occasions" in section k of Committee Proposal 96. Mr. King.

MR. KING: Mr. Chairman, fellow delegates, I would like to address a question to someone who might care to answer it. Is anyone of the opinion that the supreme court would have the right to refuse these requests without these words? The language as it now reads of course is quite indefinite about that. It just says: each branch may request. It doesn't say whether they have to get an answer or not. Does anyone consider this a constitutional mandate?

CHAIRMAN VAN DUSEN: Mr. Wanger, do you care to answer?

MR. WANGER: Yes, I can answer that, I think, quite clearly. The reason for it is simply this: Mr. Prettie stated that other courts had construed the language, and I mentioned the ones here in constitutions which have this requirement of

solemn occasions. In exercising restraint, their opinions construe the words "solemn occasions" to authorize their refusal or to excuse their refusal in answering these questions. Without these words it would be difficult to adopt the decisions rendered in these other states as decisions which should apply to our own state in this regard. Therefore, I think there is sound legal reason for putting these words back in.

CHAIRMAN VAN DUSEN: Mr. King.

MR. KING: Thank you. Mr. Chairman, Mr. Wanger. Well, if that is the case, then it obviously is extremely important that these words go back in there, because otherwise we have created a real Frankenstein's monster here. The governor can very easily play politics with any issue he wants by merely submitting the question to the supreme court, and of course they are not going to have the benefit of any fact situation or of any adequate argument before the court. This is an extremely dangerous thing, so by all means we should put these words back in there to give the court the right to decide for themselves whether they ought to intervene in the legislative process. At best, this is second to Mr. Wanger's amendment, but I certainly support it with the hopes that we can do as little harm as possible here.

CHAIRMAN VAN DUSEN: Mr. Faxon.

MR. FAXON: Mr. Chairman, members of the committee, in viewing the previous constitutions that have incorporated this language—and I am speaking against Mr. Wanger's amendment—we can look at New Hampshire, the constitution was written in 1784; Massachusetts' constitution was written in 1790; Maine, 1820; and the most recent of the states that I have been able to yet determine where this language was used was that in South Dakota's constitution in 1889.

I am aware of Mr. Wanger's point, but the way the language reads, I don't believe it accomplishes what he thinks it sets out to do. It says "important questions of law," thus leaving the word "important" in "and upon solemn occasions." That "and" is something else, and this is the point that I had reference to earlier. I feel that the problem we are getting into now is not one where there is a difference in meaning, but a difference in expression, and I think that we would be wise in permitting the committee on style and drafting to incorporate that language which will give meaning to what we are trying to say now, which is that the supreme court will only render decisions where there is a very important question to be solved, but it should be a question of law, and the way the wording reads, just by inserting these words you don't accomplish that purpose. So I would advise you to vote down the amendment and leave it to the committee on style and drafting to come up with the language that will take into account the meaning upon which we were all agreed earlier.

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: Mr. Chairman, may I only say that the committee inserted this language by reason of the very statements Mr. Wanger has put forth. We do not intend that the court would render an opinion upon the request. They certainly would turn it down. And it is upon those words "solemn occasion" that they have the right to turn it down and they will turn it down when they don't want to do it, which we would imagine would be most of the time, and because of that, they use that to state, no, this is not a solemn occasion, even though we might have an important question of law. It is best that this come up upon an adversary proceeding. And very definitely this does put, at least in language, an admonition to the supreme court that it is desirable that this particular power be exercised very sparingly and, just as we mean, only upon the most solemn occasions upon very important questions of law. You can hardly word it any stronger than that, and I would urge that the words be put back in.

CHAIRMAN VAN DUSEN: Mr. Austin.

MR. AUSTIN: Mr. Chairman, I am a little bit confused by Mr. Danhof's remarks. I would like to underscore something Mr. Faxon said. On page 4, line 1, I would like to call everyone's attention to the fact that the "solemn occasions" is added in this way: it says "upon important questions of law and upon solemn occasions." It does not say, these important questions of law must be solemn occasions.

The reason why we were dubious about the "solemn occasions" was because we didn't know exactly what the solemn occasions were. We knew what important questions of law were. And the reinsertion of this language would add something that has not been cleared up for me, and I think that we would best leave it out. It doesn't clear up anything. I think it tends to confuse.

CHAIRMAN VAN DUSEN: Mr. Austin, would you yield to Mr. Wanger for a response?

MR. AUSTIN: Yes, I will. Thank you.

CHAIRMAN VAN DUSEN: Mr. Wanger.

MR. WANGER: Mr. Chairman, Mr. Austin, I merely wish to point out that other constitutions which we have cited here use the words "and upon solemn occasions." Maine has it: "and upon solemn occasions." Massachusetts has it: "and upon solemn occasions." New Hampshire has it: "and upon solemn occasions." South Dakota has it: "and upon solemn occasions." We should have it: "and upon solemn occasions."

CHAIRMAN VAN DUSEN: Mr. Hutchinson.

MR. HUTCHINSON: Mr. Chairman, I think that this could be strengthened if we struck out the word "and" so we made it clear that these things should be "upon important questions of law upon solemn occasions;" that you have to have a solemn occasion in every event. I think that is what I understood Mr. Danhof to say the intent was. I rather think that is what Mr. Wanger intends, that there should always be a solemn occasion and that it must also be of an important question of law.

CHAIRMAN VAN DUSEN: Do you yield to Mr. Wanger, Mr. Hutchinson?

MR. HUTCHINSON: I yield.

MR. WANGER: Would you suggest then that perhaps we withdraw the word "and"?

MR. HUTCHINSON: That would be my suggestion, Mr. Wanger.

MR. WANGER: I will agree.

CHAIRMAN VAN DUSEN: Mr. Wanger revises his amendment by eliminating the word "and"; so the amendment now is to insert the words "upon solemn occasions." Mr. Austin.

MR. AUSTIN: I would like to support that change.

SECRETARY CHASE: Mr. Wanger's amendment now is:

1. Amend page 4, line 1, after "law" by inserting "upon solemn occasions,".

CHAIRMAN VAN DUSEN: Mr. Young.

MR. YOUNG: I want to address a question to Mr. Wanger through the Chair, if I may.

CHAIRMAN VAN DUSEN: If the gentleman cares to answer.

MR. YOUNG: I wonder if the amendment as revised is now broad enough to cover the type of occasion that Mr. Ostrow referred to, such as whether or not this convention has the authority to determine when its results shall be placed on the ballot.

CHAIRMAN VAN DUSEN: Mr. Wanger.

MR. WANGER: That would be up to the decision of the supreme court with regard to the phrase "solemn occasions." The court would have to make that determination itself. We would hope, I am sure, that the court in a future constitutional convention would construe it to deny the rendering of such an opinion regarding the work of a constitutional convention.

MR. YOUNG: Do you feel then that without the inclusion of the words "solemn occasions" the court would not have that authority?

CHAIRMAN VAN DUSEN: Mr. Wanger.

MR. WANGER: Without the words "upon solemn occasions," the court would have much less upon which to base a refusal to render an opinion which it would deem ill advised to render.

CHAIRMAN VAN DUSEN: Mr. Garry Brown.

MR. G. E. BROWN: Mr. Chairman, members of the committee, I think the question that has been posed here and most of the discussion and debate has gone to the question of the separation of powers. It seems to me that the basic problem when you look at the giving of advisory opinions by the supreme court relates to the executive and not to the legislature.

Basically we know that the court should interpret laws, should determine the constitutionality of them and other construction matters. Basically the executive should administer and enforce the laws, not project roadblocks into the enforcement or administration of that law by requesting opinions. It therefore would seem that the logical thing to do would be to limit the advisory opinion to the legislature and not to the governor.

CHAIRMAN VAN DUSEN: Mr. Brown, the Chair notes that you have an amendment pending to that effect. The Chair would hope that you might confine your remarks on this occasion to the amendment offered by Mr. Wanger which seeks to insert the words "upon solemn occasions."

MR. G. E. BROWN: Mr. Chairman, I shall attempt to abide by the ruling of the Chair, and I intended to. It seems to me, however, that the question of solemn occasions is taken care of if the matter is limited to the legislature by a concurrent resolution thereon of both houses. The necessity for a solemn occasion is met by this test, I believe, and therefore it isn't essential that the solemn occasion be put back in, because you will not have the opportunity of having the executive request these at a time to bypass or to prevent rapid and orderly enforcement and administration of the law. So I therefore would say that I don't think the solemn occasion is necessary to be put in there, and in view of the fact that an amendment limiting it to the legislature is pending, that we view this amendment in the light of the amendment which will presently come before the committee.

CHAIRMAN VAN DUSEN: Mr. Higgs.

MR. HIGGS: Mr. Chairman and fellow delegates, I would like to support the Wanger amendment and the committee position in this regard. I think it is very important that we do. But in offering this support, I would not like to be on record as concurring particularly in the interpretation of the power of the supreme court with regard to the election. I would not like the record to stand without objection as to such a construction at this time.

CHAIRMAN VAN DUSEN: Mr. Habermehl.

MR. HABERMEHL: Mr. Chairman, I believe that the deletion of the word "and" would satisfy any objection that I had to the inclusion of the words "and upon solemn occasions." It is rather surprising how much the deletion of one little word can mean, but now both of those clauses would be limitations on the power, so I would support the Wanger amendment.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Wanger to insert the words "upon solemn occasions" after "questions of law" in line 1 of page 4, section k. Mr. Boothby.

MR. BOOTHBY: I ask for the yeas and nays.

CHAIRMAN VAN DUSEN: Mr. Boothby requests a division on the question. The demand is supported. Those in favor of the Wanger amendment will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and tally the vote.

MR. HEIDEMAN: Mr. Chairman, let the record show that I didn't vote because I didn't understand it.

CHAIRMAN VAN DUSEN: That will appear in the record, Mr. Heideman.

SECRETARY CHASE: On the adoption of the amendment, the yeas are 104; the nays are 2.

CHAIRMAN VAN DUSEN: The amendment is adopted. Are there further amendments to section k of Committee Proposal 96? Mr. Anspach.

MR. ANSPACH: Point of privilege. I would like to say to Mr. Faxon, this is a solemn occasion. (laughter)

CHAIRMAN VAN DUSEN: The secretary will read the next amendment.

SECRETARY CHASE: Mr. Garry Brown offers the following amendment:

1. Amend page 3, line 28, after "Sec. k.", by striking out the balance of the line and inserting "The legislature, by concurrent resolution of both houses"; so that the language will then read, "Sec. k. The legislature, by concurrent resolution of both houses, shall have the authority to request the opinion of the supreme court."

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Garry Brown. Mr. Danhof. Mr. Brown.

MR. G. E. BROWN: Mr. Chairman, members of the committee, I would only repeat that which I said before, that I believe that the advisory opinion question is primarily created when the governor has the right to request such advisory opinions. You do have here then the right of the executive not to enforce the laws that have been passed by the legislature until he has had an opinion of the court. In order to make this effective so that there will not be the sin worked upon the people of the millions of dollars spent and so on, in order to have the law not operate and cost the taxpayers this money, there must be a suspending of the effective date while this opinion is being rendered. If this is true, the very thing you are attempting to avoid is going to be accomplished.

The executive, being obligated to administer and enforce the laws that are passed by the legislature, should not have the right to interject the judiciary into the question and thereby negate this obligation to enforce the laws at this time. If there is a question that the legislature feels is desirous to have an opinion on, the governor can request such an opinion of the legislature, and the legislature by its resolution may get the opinion from the court. I think that this way the problem of separation of powers is not made so pertinent to us and so obvious and that the legislature in turn could ask the court to interpret the law or to determine the constitutionality of the law as is the proper judicial function.

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: I would only state that I think this would be a limitation. We have provided that the law will have to be enacted and that it can only be upon the constitutionality of it. If the legislature passes it and if the governor has grave doubts about the constitutionality, I can see where he should have the right to obtain a ruling. We have limited what it will be on. He does not want to enforce an unconstitutional act, and it is possible that he will not be able to obtain a concurrent resolution of both houses. I think that with the amendments passed, this would in effect take away what might be the most desirable feature. I would urge the defeat of this particular amendment.

CHAIRMAN VAN DUSEN: Mr. King.

MR. KING: Mr. Chairman, fellow delegates, if we are not careful, we are going to put the attorney general back in business here. I support this amendment. I am only sorry that Mr. Wanger's was not last instead of first because we are getting closer all the time. But I think that it is very important that we get the governor out of what could be a very embarrassing position for him and more likely a very embarrassing position for the supreme court of the state, so I would endorse this amendment.

CHAIRMAN VAN DUSEN: Mr. Austin.

MR. AUSTIN: Mr. Chairman, I believe that the Brown amendment overlooks one very important fact, and that is that when the legislature passes this law, it provides for the effective date, and I don't believe the governor can change the effective date that has been established by the legislature. And it would appear the governor would have the right to ask for an opinion as to the constitutionality, and if he has doubt about it, it would be wise for him to do so, but I don't see how the effective date can be changed. The best he can hope for is that the supreme court will render a decision before the effective date. I would oppose this amendment.

CHAIRMAN VAN DUSEN: Mr. Yeager.

MR. YEAGER: I wanted to ask Mr. Danhof a question through the Chair, Mr. Chairman.

CHAIRMAN VAN DUSEN: If the gentleman cares to answer.

MR. YEAGER: What would happen if within the next 25 or 50 years there should develop a feud between the houses of the legislature, and they were to use this method as a means of embarrassing the other house or getting the court on one side or the other? Do you foresee any possibility in that regard?

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: I would trust the judgment of the 9 good men that they would not allow themselves to become engaged in such a conflict, Mr. Yeager.

CHAIRMAN VAN DUSEN: Mr. Garry Brown.

MR. G. E. BROWN: Mr. Chairman, members of the committee, in reply to Mr. Austin, I think it is apparent that if the opinion did not come down before the effective date of the law, that in order for the opinion to have any effect whatsoever—supposing it is going to be an unconstitutional opinion—the court is going to have to suspend the effective date of the law, or else the very evil which we are attempting to avoid by the advisory opinion will take place; that is, the law will become effective, the money will be collected, we will have the millions of dollars that we have talked about already in the hands of the government and it won't be returned to the taxpayers. Therefore, it is obvious that you must suspend the effective date of the law if you are going to have this advisory opinion if it is not going to be rendered before the effective date. So I think that this answers the Austin question.

CHAIRMAN VAN DUSEN: Mr. Martin.

MR. MARTIN: Mr. Chairman, it seems to me that if this is dependent upon concurrent resolution of both houses, you really destroy the practical effect and usefulness of this whole provision. You have very severely limited the usefulness of it by the changes which have been made, but if you further insert this language, it seems to me it will be almost completely useless. I hope that the amendment will not carry.

CHAIRMAN VAN DUSEN: Mr. Garry Brown.

MR. G. E. BROWN: Answering Mr. Martin, Mr. Chairman, it seems to me that it is apparent that for a bill to go through the legislature, it must have the concurrent resolution of both houses. This bill must have been passed by both houses. It doesn't impose any great hardship to have the legislature adopt a concurrent resolution to ask for an advisory opinion.

I would also direct my remarks to what Mr. Ostrow said a minute ago to the effect that this convention possibly could have received an advisory opinion. If this convention wanted an advisory opinion of the supreme court, it would have had to go through either the legislature or the governor. If the advisory opinion provision had been in the present constitution, we could not do it ourselves.

Now, if the governor wishes to have an advisory opinion, the governor may request the legislature to seek this opinion, and I believe that the legislature, if there is a serious question of law and if it is a solemn occasion, will pass such a concurrent resolution to get such an advisory opinion from the court. I sincerely urge the adoption of this amendment.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Garry Brown to strike the first line of section k and insert the words, "The legislature, by concurrent resolution of both houses. . . ." Those in favor of the amendment will say aye. Those opposed will say no.

The amendment is not adopted.

DELEGATES: Division.

CHAIRMAN VAN DUSEN: Division is requested. Is the demand for division supported? It is supported. Those in favor of Mr. Brown's amendment will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the adoption of the amendment, the yeas are 17; the nays are 88.

CHAIRMAN VAN DUSEN: The amendment is not adopted. Are there further amendments to section k?

SECRETARY CHASE: Mr. Wanger offers the following amendment:

1. Amend page 3, line 28, after "Sec. k.", by striking out "Each branch of"; so that the language will read, "Sec. k. The legislature as well as the governor. . . ."

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Wanger. Mr. Wanger.

MR. WANGER: Mr. Chairman, members of the committee, I think this solves the real problem which was suggested by Mr. Brown and those that supported his amendment, but it has this effect: it does not prevent the governor from asking for such opinions as his amendment would have. It is just as simple as that. I think it would be a big improvement if such a section as amended is to be put in our constitution.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Wanger. Mr. Danhof, do you desire recognition?

MR. DANHOF: No.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Wanger to strike the words "each branch of" so that the first line of section k will then read, "The legislature as well as the governor shall have the authority" and so forth. Those in favor of the amendment will say aye. Those opposed will say no. The Chair is in doubt. Those in favor will vote aye. Those opposed will vote no. Have you voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the adoption of the amendment, the yeas are 37; the nays are 68.

CHAIRMAN VAN DUSEN: The amendment is not adopted. Are there further amendments to section k?

SECRETARY CHASE: None on file, Mr. Chairman.

CHAIRMAN VAN DUSEN: If not, it will pass.

Section k, as amended, is passed. Mr. Danhof.

MR. DANHOF: Mr. Chairman, I had hoped perhaps we might have taken care of one more matter, but in view of the hour—as Dr. Anspach said, it is getting to be a solemn occasion—I move that the committee do now rise.

CHAIRMAN VAN DUSEN: Mr. Danhof moves that the committee do now rise. Those in favor of the motion will say aye. Those opposed will say no.

The motion prevails. The committee will rise.

[Whereupon, the committee of the whole having risen, President Nisbet resumed the Chair.]

PRESIDENT NISBET: Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, the committee of the whole has had under consideration one proposal, of which the secretary will give a detailed report.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 96**, has adopted several amendments thereto; and has come to no final resolution thereon. This completes the report of the committee of the whole.

PRESIDENT NISBET: Mr. Leibrand.

MR. LEIBRAND: Mr. President, may I inquire through the Chair of Mr. Danhof, the chairman of the committee on judicial branch, when he expects to bring section g of Committee Proposal 91 before the committee of the whole.

PRESIDENT NISBET: Mr. Danhof.

MR. DANHOF: Mr. President, Judge Leibrand, it was my understanding that upon action of this convention or the committee of the whole—I can't recall exactly—consideration of Committee Proposals 91 and 92 were postponed until we had finished the remaining sections of the judicial article. I may state that insofar as committee proposals are concerned, there is one additional section of 96 to consider, and I understand there is an amendment, as referred to by Mr. Radka and Judge Pugsley, to add a section. Unless there are further

amendments, this would complete 96, would complete the judicial article, except what we have covered, and we would return to Committee Proposal 91, section a or g, whichever is before the committee of the whole at that time, which involves the selection of the supreme court, and I would hope that would be sometime tomorrow morning.

MR. LEIBRAND: Mr. President, may I inquire, through the Chair, of the secretary, how many amendments, substitutes or alternates there are on file to section g of Committee Proposal 91.

SECRETARY CHASE: There are presently filed with the secretary and pending 4 amendments.

MR. LEIBRAND: I wonder, Mr. President—this is a pretty important and complicated question—if we might have copies tomorrow morning of at least the amendments or substitutes that have been filed to a and g both. Would that be possible?

SECRETARY CHASE: Judge Leibrand, you mean the amendments that are pending?

MR. LEIBRAND: Yes, anything that has been pending affecting sections a or g of Committee Proposal 91.

SECRETARY CHASE: We can provide that by tomorrow morning.

MR. LEIBRAND: Thank you very much.

PRESIDENT NISBET: Announcements.

SECRETARY CHASE: It has been suggested by Mrs. Conklin that due notice be given of the fact that Delegate DeVries has returned to the convention. (laughter and applause)

PRESIDENT NISBET: Does Delegate DeVries care to be recognized?

MR. DeVRIES: Mr. President, fellow delegates, my wife and I thought we had plan A, B and C organized to take care of the event that happened yesterday. However, our plans failed. I arrived an hour and 10 minutes late, after the baby was born. As a matter of fact, when I got there, she was eating breakfast and told me that I had another boy, the fourth one, which I can only attribute to poor administration. (laughter) This was the fourth boy; and, as my colleagues around me know, we have been discussing girls' names at this end of the convention hall for a good deal of time. Mr. Brake suggested that perhaps we ought to put it on general orders and talk about it for 2 days but he said or somebody else said that in the end it would just be rereferred to the committee on emerging problems anyway. (laughter) In any event, we have a fine boy. For some obscure reason my wife wants to name him after me, and I have no serious objections to that. In any event, we thank God for this fine boy. We thank you for your interest and your best wishes. Thank you. (applause)

PRESIDENT NISBET: She may want to name it after you, Walt, because she hopes that will be the end of the line. (laughter) Announcements.

SECRETARY CHASE: The committee on style and drafting will meet in room K at 8:00 o'clock this evening.

The following suggested announcement has been presented to the secretary: Mr. Bentley will be on TV, channel 3, at 10:30 tonight as he faces Michigan. His appearance is scheduled as chairman of the constitutional convention committee on education.

We have the following requests for leave of absence: Father Dade wishes to be excused from tomorrow's session; Mr. Norris from the session of tomorrow morning; Mr. T. S. Brown from tomorrow's session; Mr. Figy from the session of tomorrow afternoon; and Mr. Davis from the session of next Wednesday, March 14.

PRESIDENT NISBET: Without objection, they will be excused. There being no objections, they are excused.

SECRETARY CHASE: That is all the announcements and requests.

PRESIDENT NISBET: Mr. Brown.

MR. G. E. BROWN: Mr. President, I just wanted to say that probably Mrs. DeVries thinks maybe a more appropriate name would be Caboose. (laughter)

PRESIDENT NISBET: The Chair recognizes Mr. Powell.

MR. POWELL: Mr. President, I move the convention do now adjourn.

PRESIDENT NISBET: The question is on adjournment. Those in favor say aye. Opposed, no.

We are adjourned until 9:30 tomorrow morning.

[Whereupon, at 5:30 o'clock p.m., Thursday, March 8, 1962, the convention adjourned until 9:30 o'clock a.m., Friday, March 9, 1962.]

NINETY-SIXTH DAY

Friday, March 9, 1962, 9:30 o'clock a.m.

PROCEEDINGS

PRESIDENT NISBET: The convention will please **come to order.**

Our **invocation** this morning will be given by one of our own delegates, Ray Plank, of Ludington.

MR. PLANK: O God, who hast called our nation to a place of trust and responsibility throughout the world, we humbly thank Thee for all the ways in which Thou hast blessed and guided us unto this day. We confess before Thee with shame all that has been evil in our action, and all that even now makes us unworthy to be called a Christian nation. Take from us, we pray Thee, all pride and greed and injustice, and grant to us the spirit of unselfish service which alone can make us great.

Bless the delegates, protect them from vain complacency, from foolish compromise, from false enthusiasm, from loss of respect for human dignity. Give them unflinching courage to humbly and effectively translate responsibility into dedicated work, to the final accomplishment of the unfinished task which they have so nobly begun. And may the love of Christ be so truly shown forth among us, that his name may be glorified among all nations; through the same Jesus Christ, our Lord. Amen.

PRESIDENT NISBET: The **roll call** will be taken by the secretary. All present, please vote aye. If you are present, please vote aye. Have you all recorded your presence? If so, the secretary will take the roll.

SECRETARY CHASE: Mr. President, a quorum of the convention is present.

Prior to today's session, the secretary received the following requests for leave: Mr. Stamm, temporarily, from today's session; Mr. Lundgren, from today's session because of duties previously arranged; and Mr. Sterrett, from the session of today and March 12, 13 and 14 because of illness in the family.

PRESIDENT NISBET: Without objection, the requests are granted.

SECRETARY CHASE: Absent with leave: Messrs. T. S. Brown, Dade, Follo, Mrs. Hatcher, Messrs. Hood, Lundgren, McAllister, McCauley, Murphy, Norris, Pellow, Perras, Pollock, Stamm, Sterrett and Tweedie.

Absent without leave: Mr. Wood.

PRESIDENT NISBET: Without objection, Mr. Wood is excused.

[During the proceedings, the following delegates entered the chamber and took their seats: Messrs. Stamm and Wood.]

[In commemoration of the sixty-fifth birthday of Secretary Chase, all persons present in the convention hall sang "Happy Birthday" and gave him a standing ovation.]

PRESIDENT NISBET: The Chair recognizes Mrs. Conklin.

MRS. CONKLIN: Mr. Secretary, it is with deep affection that the delegates present you with a cake — temporarily — on your birthday because during the day the girls in Mr. Chase's office will have the cake in there and we all are invited in for cake and coffee. At this time I am going to make you real nervous Mr. Chase; we have invited Mrs. Chase here to watch you work today. Mrs. Chase would you stand up please? (applause)

I'd like to yield the floor at this time to Mr. Herb Turner.

PRESIDENT NISBET: Mr. Turner.

MR. TURNER: Mr. President, ladies and gentlemen, I would like to pay tribute to a man well known.

'Twas a day like this on March the ninth in 1897
That a great big bird swooped from the sky with a package sent from Heaven.
It landed at the home of Chase, at least that's what they said,
And when they found what the package was, they quickly named him Fred.
Like most all others of his day, he grew up on a farm
And to me he proves that pitching hay is a way of building charm.
'Twas in this town of Lansing after high school and vacation
That he found the job of wheeling books for the board of education.
But since he was strong, it wasn't long before his uncle — pen in hand —
Wrote: "Fred Chase, you are wanted, as a defender of this land."
He took his place amongst the rest and soon he won the pennant,
With shoulders broad and stature tall, he bore the name —Lieutenant.
He came back home to settle down and study female students,
But it wasn't long before he fell and asked for the hand of Prudence.
He soon was working for the state with a man named Dennis Alward,
And at this job he proved his worth and was known as a stalwart.
When he left the town of Mason, Ross Hilliard shed some tears.
Because he went to Washington as parliamentarian—3 full years.
He was secretary of the senate from '30 'til '33
When the Democrats took over and set our hero free.
But not for long, for in '35 they quickly got him back
They needed his wealth of knowledge to keep them on the track.
He held this job for years and years — for 29 in fact,
No one had the strength to win from a man so firmly backed.
While Fred was struggling with his work, his wife had lots to do
Because they made expansion in their family by 2.
First, there came another Fred, and very soon a girl
And in the eyes of Daddy, Elnora was a pearl.
Then after waiting 3 long years, there came a son named Don
And while Pa danced around with glee, Ma finished up with John.
Now they've recognized inflation, there's been added 15 more,
That always say "Hi Grandpa" when they enter through his door.
Fred I. Chase, the con con mainspring, who this day is 65
This man of great integrity is very much alive.

Thank you. (applause)

SECRETARY CHASE: If I might use the vernacular, why don't youse guys lay off? How do you expect me to get anything past this lump in my throat? Frankly, I don't see how any man can deserve all the encomiums you have heaped upon me, but gee, I love it.

You know, no man could accomplish the things that he does without the help that he has, at home and on the staff, and I would like this morning to pay tribute to the staff of this

convention, my own staff in particular, and to the help that you — each one of you — as delegates, have given me. This little lady at my left, Lynn Nethaway, the last week that we had proposals reported out of committee, put in 71 hours here on the job, with no complaints; and the rest of the staff put in long, long hours which you all know about. It's unswerving loyalty and devotion of this kind to a job that makes a fellow like me look good and I want to pay my tribute to them for the help that they have given me.

In addition I would like to thank you delegates, because of your cooperation, your willingness to be of help on every possible occasion. There have been so many times that you have detected some things in the journal that needed correction and I want to thank you for this. You know, together we keep the record and it's your help in this regard that helps me do the job that we do.

And so, to wind it all up, I can't help but be reminded of a statement that old Uncle Ben Franklin made on one occasion. He said, "Kindness is something that you can't give away; it always comes back to you". Well, I have tried my best on occasion here and there and now and then to give away a little smidgen of it, but gee, you don't need to wheel it back by the truck load. I want to thank you from the bottom of my heart. (applause)

PRESIDENT NISBET: Just in order that you may all be able to participate in this cake, one of the page boys may remove it now to Mr. Chase's office, where I hope you all will see it sometime during the day.

SECRETARY CHASE: I have one announcement before we go into the business this morning. On each of your desks you will find a biographical sketch blank. During the week, in your leisure moments, would you please fill that out and turn it in to our office before next Friday so that we may have all of the necessary information in order to compile the final record of the convention in the form in which we would like it to be presented.

PRESIDENT NISBET: Report of standing committees.
SECRETARY CHASE: None.
PRESIDENT NISBET: Report of select committees.
SECRETARY CHASE: None.
PRESIDENT NISBET: Communications.
SECRETARY CHASE: None.
PRESIDENT NISBET: Motions and resolutions.
SECRETARY CHASE: No resolutions on file.
PRESIDENT NISBET: Unfinished business.
SECRETARY CHASE: None.
PRESIDENT NISBET: Special orders.
SECRETARY CHASE: There are no special orders.
PRESIDENT NISBET: **General orders.** Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, I move the convention resolve itself into committee of the whole for the purpose of considering matters on the general orders calendar.

PRESIDENT NISBET: The question is on the motion of Mr. Van Dusen. Those in favor will say aye. Opposed, no.

The motion prevails. Mr. Van Dusen.

[Whereupon, Mr. Van Dusen assumed the Chair to preside as chairman of the committee of the whole.]

CHAIRMAN VAN DUSEN: The committee will be in order. The business before the committee is still **Committee Proposal 96,** A proposal pertaining to general and special provisions relative to the courts of the state. When we rose yesterday we had completed consideration of each section through k.

For last previous action by the committee of the whole on Committee Proposal 96, see above, page 1531.

I am advised that there are amendments on the secretary's desk purporting to add additional sections and the secretary will read the first such amendment.

SECRETARY CHASE: Mr. Danhof, on behalf of the committee on judicial branch, offers the following amendment:

1. Amend page 4, following line 1, by inserting a new section to read as follows:

"Sec. 1. Any justice or judge of a court of record desiring to become a candidate for election or reelection to a judicial office then held by him, may, in lieu of nomination as provided in this constitution or by law, nominate himself by affidavit filed in the office of the secretary of state not less than 90 days prior to the date of the primary election or election as the case may be, which is applicable to the office to be filled.".

Following are the reasons submitted in support of the amendment:

Mr. Danhof, chairman of the committee on judicial branch, submits the following reasons in support of the committee amendment to Committee Proposal 96:

At the present time candidates for election to the supreme court are nominated at party conventions although they run for office in nonpartisan elections. Those running for circuit and probate judgeships are nominated by petition.

Incumbent supreme court justices should not be dependent on partisan politics for nomination.

Incumbent circuit and probate judges, especially in more populous areas, have to devote too much time in getting petitions signed, or must rely on others to circulate petitions thus putting judges under some obligation, or the judges are required to pay those who circulate the petitions, which can be expensive.

While this section does not prevent an incumbent from using the other methods for nomination, it will enable an incumbent to be nominated without incurring obligations or expense and thus be able to devote his time to his duties.

Following is the minority report to the committee amendment to Committee Proposal 96 as offered and the reasons submitted in support thereof:

Messrs. Ford, Barthwell, Bledsoe and Garvin, a minority of the committee on judicial branch, submit the following minority report to the committee amendment to Committee Proposal 96:

A minority of the committee recommends that the following be included in the constitution:

All primary elections and elections of justices of the supreme court, judges of the circuit court, judges of probate courts and all county judicial officers provided for by the legislature under section 21 of article VII of the constitution shall be nonpartisan and shall be conducted as prescribed by law. All elections at which candidates for said judicial offices are nominated are designated "primary elections." Nominations for justices of the supreme court shall be made as now or hereafter provided by law; nominations for all other said judicial offices shall be made at nonpartisan primary elections. Except as in the constitution otherwise provided, all primary election and election laws, including laws pertaining to partisan primaries and elections, shall, so far as applicable, govern nominating procedures, primary elections and elections hereunder.

There shall be printed upon the ballot under the name of each incumbent judicial officer, who is a candidate for nomination or election to the same office, the designation of that office.

Messrs. Ford, Barthwell, Bledsoe and Garvin, a minority of the committee on judicial branch, submit the following reasons in support of the foregoing minority report, which accompanied the committee amendment to Committee Proposal 96:

The minority believe that the present section 23 of article VII of the 1908 constitution is preferable to the amendment to the committee proposal. The present language of section 23 now permits the legislature to specify the method of nomination for election or reelection. The committee amendment to the proposal would freeze a particular method of nomination for judicial offices into the constitution.

The present constitution leaves such details entirely to

the legislature subject only to the restriction that all elections of judges must be nonpartisan.

The proposed method of nomination of any and all justices or judges for reelection is taken from the principle features of the so called "Missouri plan" method of judicial selection, and is a rigid departure from long accepted practices in this state. The minority believe that any such radical change should be made in the form of a statute and not by a constitutional provision.

Finally, the minority believe that the more flexible provision in section 23 of article VII is more desirable than any method which might be detailed and frozen into the constitution.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Danhof on behalf of the committee on judicial branch, on which the Chair will recognize Mr. Danhof.

MR. DANHOF: Mr. Chairman and members of the commitee, this section will be found in the journal on page 579. You will therein find the text as read by Mr. Chase, together with a written committee report. For an explanation of the committee report, on behalf of the majority, I would like to yield at this time to the delegate from Ypsilanti, Mr. Lawrence.

CHAIRMAN VAN DUSEN: Mr. Danhof yields to Mr. Lawrence.

MR. LAWRENCE: Mr. Chairman, members of the committee, the purpose of this amendment is to free incumbent judges and justices of political obligation and expense, and to enable them to devote their time to their duties. I assume that you have before you the amendment or that you can read it on the board.

In the past, as far as supreme court justices are concerned, it has been necessary for an incumbent justice, when up for reelection to be nominated or renominated by a political party at a political convention. The inference from that is that when time for reelection comes up, the obligation to the political party is renewed and in fact, may be present at all times during the time the justice has been serving. And that, we feel, is not a good thing. If a man has been once selected by his party for the position of supreme court justice, he should be able, by virtue of his record, to either be successful in a campaign for reelection or not, and it should not be dependent on party politics. He runs in a nonpartisan election and the people alone should judge his fitness.

In connection with the judges in the other courts, specifically the circuit and probate courts, they have been renominated, so to speak, by petitions. In certain areas, obtaining these petitions is not too difficult. But specifically in the more populous areas it has been a real burden and a real problem for an incumbent judge to get sufficient signatures. In some instances they have been obtained by the judge personally to a large extent and through friends, acquaintances and members of the bar. It is my understanding that in Wayne county, for instance, it has become a custom to send petitions to members of the bar with a request that they obtain the necessary signatures on them. This, of course, has the inference that the judge comes under some obligation to the persons from whom he solicits assistance, and it is to avoid that that is one of the purposes behind this amendment. In other instances, signatures are obtained by, you might call them professional solicitors, who work for so much per signature, and that can amount to considerable expense. Since it is almost axiomatic that an incumbent judge, if he desires to run for reelection, will get his petition by one means or another, it is really a useless thing to require that time, effort and expense on the part of the judge when he might otherwise be spending it in the performance of his duties.

It is my recollection that not all of the people who testified before the committee, or spoke to the committee on judicial branch were asked specifically whether or not they felt that an incumbent judge or justice should be allowed to, in effect, self nominate himself. But of all those who did speak and who were asked that question that I heard, each one was in favor of it and thought it was a proper step forward and an advancement. For some reason or other — I think it was in the rush and hurry of meeting the deadline of January 31 — this was not originally included in the Committee Proposal 96 or in any other provision. It was subsequently discovered and a meeting of the committee was called. At that committee meeting, 18 of the 21 delegates were present. When the matter was called to their attention, each one of the members of the committee present voted in favor of it. It was a unanimous approval by those who were present. For that reason we urge the adoption of this amendment.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Danhof on behalf of the committee on judicial branch. Mr. Leppien.

MR. LEPPIEN: I'd like to ask Delegate Lawrence a question. If I read or heard the amendment correctly, it says the office of secretary of state. Shouldn't that also have a proviso in there "or other officers provided by law"? Because a good many of the counties are districts of themselves, and then it would be the county clerk's office.

CHAIRMAN VAN DUSEN: Mr. Lawrence.

MR. LAWRENCE: I can't answer for the entire committee but I can say that the discussion I heard was that there should be a central place somewhere, where all of the judges and justices could file and where a proper record would be kept and anyone inquiring could find out the facts regarding it. It was therefore thought that the office of the secretary of state rather than that of the various county clerks would be more advisable. The question I had heard regarding that is that it is entirely conceivable that when we get to the executive branch there might be some change in the situation regarding the secretary of state. However, it would seem to me that that would be a matter that is in the future, if it ever occurs, and could be taken care of in style and drafting without changing the intent.

CHAIRMAN VAN DUSEN: Mr. Powell.

MR. POWELL: Mr. Chairman, I'd like to ask Delegate Lawrence the question with reference to the words "election or". I think I understand the reelection part, but what is the implication of "election or"?

MR. LAWRENCE: Frankly, I don't know the answer to that. Maybe some other member of the committee does. I think, looking at it and just standing here on my feet, it obviously is the intent that any justice or judge of a court of record desiring to become a candidate for election or reelection to a judicial office then held by him necessarily implies that the party is an incumbent and it has to be for the same judicial office. My feeling on that would be that again it is a matter for style and drafting. I think the effort was to cover the waterfront completely and by putting both words in, there would be no question as to the ability to do it. Here is another thing. There is a possibility there could have been an appointed judge. Now I've got it. There could have been an appointed judge who would be up for election the first time. We don't know just how this is going to end up yet.

CHAIRMAN VAN DUSEN: Mr. Ford.

MR. FORD: I would like to ask Mr. Lawrence a couple of questions. Mr. Lawrence, there has been a little confusion in my discussion with members of the committee, some of whom voted for this. It is clearly understood that what you are saying is that for example in Wayne county, with the 18 vacancies, the 18 incumbent judges do not run in the primary election but anybody who wishes to run against them must be nominated in the primary election before he can get on the ballot at the general election?

CHAIRMAN VAN DUSEN: Mr. Lawrence.

MR. LAWRENCE: I don't know exactly whether it is clearly understood but I'll try to answer that. Let's take first — stay away from Wayne county — the case of a supreme court justice.

MR. FORD: Mr. Lawrence, I have some questions about the supreme court. I am trying to find out if this would be the

effect of this amendment of Wayne county's circuit bench or any other circuit bench, for that matter.

MR. LAWRENCE: May I proceed, Mr. Chairman?

CHAIRMAN VAN DUSEN: You may, Mr. Lawrence.

MR. LAWRENCE: Thank you. In a case of a supreme court justice —

MR. FORD: Mr. Chairman, I asked Mr. Lawrence a question specifically regarding the effect of this on the circuit court.

CHAIRMAN VAN DUSEN: Your point is well taken, Mr. Ford.

Mr. Ford has the floor and he has yielded to you for a response to a particular item, Mr. Lawrence.

MR. LAWRENCE: I understand that. I am trying to explain it. I feel that in order to do it that we should set out the situation regarding the supreme court justice because it relates to the other.

CHAIRMAN VAN DUSEN: The Chair hopes you will be able to couch your answer in terms which will satisfy Mr. Ford and the Chair that you are responding directly to his question.

MR. FORD: Mr. Lawrence, the supreme court does not now have a primary election. The circuit court does. What I'm interested in is, who runs in a primary election after this section becomes a part of the constitution?

MR. LAWRENCE: I don't know who runs in a primary election. This states what the situation is regarding the incumbent judge. How the legislature provides for others to run I don't know.

CHAIRMAN VAN DUSEN: Mr. Ford.

MR. FORD: Mr. Lawrence, with respect to the supreme court, isn't it true that the plan that you are suggesting, could now be used for nomination in the supreme court without any change from the present language of the 1908 constitution?

CHAIRMAN VAN DUSEN: Mr. Lawrence.

MR. LAWRENCE: It is my understanding that the present situation is statutory; my recollection is that there is nothing specifically on it in the constitution "except as provided by law".

MR. FORD: In a case such as this, do you think that it's wise to include in the constitution a specific manner of nomination as a constitutional matter where we have handled it in the past as a statutory matter?

MR. LAWRENCE: In this instance, I do.

MR. FORD: Is this because the legislature has been given an opportunity to pass on this method and has refused to do it?

MR. LAWRENCE: I do not know.

MR. FORD: Do you know if anybody has ever given the legislature an opportunity to implement this new experiment?

MR. LAWRENCE: Mr. Ford, I do not know. You were on the committee. You probably have as much knowledge or more than I do on that.

MR. FORD: Is it fair to assume that no matter what method — excuse me, Mr. Chairman — no matter what method is used to select candidates other than incumbents, such as a primary election now used in circuit court, for example, that the incumbents would simply file an affidavit of intention to run and then everybody else who wanted to run against them would run in a primary election to determine who was going to oppose the incumbent?

CHAIRMAN VAN DUSEN: Mr. Lawrence.

MR. LAWRENCE: Are you referring now to circuit courts alone?

MR. FORD: The circuit court and the probate court are the only ones that I know of that now have the primary election.

MR. LAWRENCE: My understanding is that this merely takes the place of a petition and that the incumbent judge would run in a primary election along with any other candidates.

MR. FORD: That's what I have been told by several members of the committee who voted for this amendment, Mr. Lawrence but as I examine this it says that he may nominate himself by filing this.

Now, when we discussed this in the committee and when we have discussed it before groups of circuit judges, these people were asked how they felt about filing a statement or a filing fee in lieu of nominating petitions. But now we have language from the committee that goes much further. It not only replaces the nominating petition as a manner or method of getting onto the ballot; it replaces the ballot and excuses the judge from facing his opponents in the primary election. That's the way this reads.

MR. LAWRENCE: Well, Mr. Chairman, I would respectfully disagree with Mr. Ford and also with his conclusion. A party who has previously taken out a petition takes out a nominating petition and when he files that petition, properly filed, he is nominated.

CHAIRMAN VAN DUSEN: Mr. Ford.

MR. FORD: I would like everybody who has the journal in front of them to take a look at the righthand column of page 579 that has the language in it and reads:

> . . . a candidate for election or reelection to a judicial office then held by him, may, in lieu of nomination as provided in this constitution or by law, nominate himself by affidavit filed in the office of the secretary of state not less than 90 days. . . .

Now, this is from the Missouri plan and this is nomination; it is not putting himself on the ballot. It is bypassing the primary election. There is no primary election in Missouri, where this language comes from. If you can find a distinction between this and the self renomination language of the Missouri plan and the ABA plan, why, then, you're going to have to do it by semantics because the intent and purpose is no different. And what you are being asked to adopt here is not a plan that bypasses any other method of nominating a judge; you are not simply being asked to excuse a judge from the responsibility of circulating petitions; you are being asked to excuse him from the responsibility of facing the voters along with his opponents in the primary election. And the language says that clearly. If you can get another meaning out of that, Mr. Lawrence, I wish you would clear it up for me because it doesn't say anything about filing a statement in lieu of nominating petitions. Its says "in lieu of nomination". It seems to me that "nomination" contemplates a lot more than filing a petition.

CHAIRMAN VAN DUSEN: Mr. Lawrence.

MR. LAWRENCE: Mr. Chairman, if the delegates do have that before them and will read the last 2 full paragraphs of the explanation — for those who don't, I will read it:

[Paragraphs 3 and 4 of the supporting reasons for the committee amendment were read by Mr. Lawrence. For text, see above, page 1554.]

Now, the only intent at any time — at least on my part, and I feel that I can speak for other members of the committee — was to have this take the place of a nominating petition. It is so expressed.

MR. FORD: Mr. Chairman, I am happy to hear Mr. Lawrence say that, and I think we ought to do something here to make it clear in the language itself and not rely entirely on an explanation which seems to be in conflict because I've examined this very carefully and discussed it with several lawyers present in this convention and the language itself is very clear on its face as an indication of this being a substitute for any other nominating procedure which would include a primary election. If we are going to say that all we are trying to do is save the judge the trouble of filing nominating petitions, I think we ought to say so. And that could be said very simply, I am sure, by saying directly what we are after. But Mr. Lawrence knows — and so do other people here who advocated the ABA and the Missouri plan — that this basic language is taken from their plan where they don't contemplate a primary election. Now it may be just coincidence because these people have been working so long with the language and I assume that that's the case. If we were only talking

about this one limited facet of it, let's pin it down to that before we leave this convention.

CHAIRMAN VAN DUSEN: Mr. Ford, do you yield to Mr. Lawrence and Mr. Everett for further comment? Mr. Lawrence.

MR. LAWRENCE: I merely want to ask Mr. Ford a question. I wonder if Mr. Ford is aware how these nominating petitions are worded. They start out, "We hereby nominate so and so for the office of judge."

CHAIRMAN VAN DUSEN: Mr. Ford, would you yield to Mr. Everett for a comment?

MR. FORD: Yes. I'm through.

CHAIRMAN VAN DUSEN: Mr. Everett.

MR. EVERETT: Mr. Chairman, Mr. Ford, I am certain that Mr. Lawrence has stated what was the intent of the committee, that we are not trying to bypass the primary. If there is any question in Mr. Ford's or anybody else's mind and it would be cleared up by substituting the words "nominating petition" in place of "nomination", then let's do it because we all have the same intent. We are simply saying that he may get into the primary — if there is one — by his own affidavit and not by petition. And of course if he has no opposition, then he very obviously gets into the final election. We are not trying to — certainly, no member of the committee wanted to — avoid a primary race for the judge if there is to be one.

MR. LAWRENCE: May I just take up 2 points, Mr. Chairman, one of which I tried to take up and was stopped?

CHAIRMAN VAN DUSEN: Mr. Lawrence.

MR. LAWRENCE: It seems to me again that if there is a question in view of the explanation which accompanies the provision, that again, style and drafting can take care of it because it would not be changing the intent. The other thing is regarding the supreme court justices. I wanted to bring it out in order to give the full picture and then in the discussion neglected to do it. Since the party conventions are held more than 90 days prior to election, and which it is contemplated they will continue to be, it would enable an incumbent judge to wait and see what happened at the party convention. If the party convention did not renominate him, he would still have time because you will notice that 90 day provision — he would still have time to self nominate himself.

CHAIRMAN VAN DUSEN: Mr. Ford.

MR. FORD: Now I do have another question. If Mr. Lawrence and the other members of the committee are now agreeing with me that the committee really only wants to provide a method for a judge who formerly ran in a primary election to avoid the necessity of filing nominating petitions to put his name on the ballot, then what is the application of this section to the supreme court, where no nominating petitions of any kind have been required in the past? And isn't it true, Mr. Lawrence, that you are providing here that a supreme court justice may in fact nominate himself without any other procedure, regardless of what the legislature might say?

CHAIRMAN VAN DUSEN: Mr. Lawrence.

MR. LAWRENCE: Yes, expressly so. As a matter of fact, there aren't any primaries now for supreme court justices.

MR. FORD: All right. If that's the conclusion we come to with respect to the supreme court — that we are talking about nominations and not nominating petitions — how in this language do you distinguish between the circuit court and the supreme court when you apply the language? There is no distinction in the language of the constitution and in an attempt to do this for the supreme court you are doing the same thing for the circuit and the probate courts because you don't make any distinction in this language.

CHAIRMAN VAN DUSEN: Mr. Lawrence.

MR. LAWRENCE: I respectfully disagree with Mr. Ford.

MR. FORD: Well, show me the distinction, please, in the language. It says, "Any justice or judge of a court of record." Period. And I assume that means everybody from a probate judge to a supreme court justice.

MR. LAWRENCE: Well, Mr. Ford, the explanation follows the amendment. I suggest that if it does not clearly state that, it is a job for style and drafting. I can't make it any clearer than that.

MR. FORD: Well, at this point, Mr. Chairman, I'd like to move to amend — I haven't had an opportunity to write this down, and I don't have the green copy, so I am reading from the journal — in the sentence that reads, ". . . a candidate for election or reelection to a judicial office then held by him, may, in lieu of nomination" strike the word "nomination" and insert "filing nominating petitions" —

CHAIRMAN VAN DUSEN: The question is on the amendment — excuse me.

MR. FORD: — so it will read, ". . . may, in lieu of filing nominating petitions as provided in this constitution or by . . ."; and where it starts off a new line, ". . . law, nominate himself by affidavit filed in the office of the secretary . . ." in place of the word "nominate", "cause his name to be printed on the primary election ballot by affidavit filed in the office of the secretary of state," making it clear that we intend to permit the judges to file this affidavit in lieu of nominating petitions.

CHAIRMAN VAN DUSEN: The question is on the amendment to the amendment offered by Mr. Ford. Mr. Lawrence.

MR. LAWRENCE: I think this is a good example of these "off the top of the head" amendments which could be taken care of by style and drafting. What Mr. Ford's amendment does, as I understand it, as I heard it — we all heard it — would mean that since you don't have any nominating petitions in the supreme court, it would eliminate the right of a supreme court justice to self nominate himself.

CHAIRMAN VAN DUSEN: Mr. Wanger, do you desire recognition on the Ford amendment?

MR. WANGER: I wish to ask Mr. Ford a question, Mr. Chairman. The question I propound is this: would not the second change accomplish his purpose entirely and wouldn't it be just as well to leave off the part of "in lieu of nominating petitions" since after all, the nomination might be by party convention and this wouldn't cover that? Wouldn't your fundamental objection be solved by your second change, which is merely to strike out "nominate himself by" and inserting "cause his name to be printed on the ballot"?

MR. FORD: It would if we were dealing with the supreme court differently than we do with the other courts as the present constitution does, Mr. Wanger. In the present constitutional amendments you will notice that they finally came to the conclusion you had to deal with the supreme court differently than the others, so we used different language. But here is this one. We lump all the courts together and talk about the same method of nomination. Now, if the district plan is passed by this convention so that there is a primary election in the district and then the election of the supreme court justice by district, this section here will then work very well because it will provide that in a district the supreme court judge files a nominating petition instead of running in the primary election with the other people running for the office. And when this was written by the people who wrote it, the same people who in some instances supported the district plan, they are contemplating its effect on the district plan because if the district plan is adopted, then the method of nomination by primary election would be the same in all of the courts in the state. That's why this language is not consistent at this point unless we assume the existence of the district plan and further assume that if you go to the district plan you want to let the incumbent judge nominate himself instead of running in the primary election. I had hoped to keep the district plan out of it but we might as well face it. This is all tied together and this is part of it and this sentence here does not say it and you can't say to style and drafting, change it; because we are not saying what Mr. Lawrence says we mean. If we're talking about nominating petitions, let's restrict it to that; but we are not doing that. We are nominating judges here and I think that the convention could conceivably be confused by this method of approaching this thing.

CHAIRMAN VAN DUSEN: Mr. Ford, the secretary has requested —

MR. MADAR: Mr. Chairman.

CHAIRMAN VAN DUSEN: Mr. Madar, would you wait until you are recognized? Mr. Ford, the secretary has requested that you send your language up in writing. It will be of great assistance to him.

MR. FORD: Do we have green copies of this? I don't seem to have one.

CHAIRMAN VAN DUSEN: The Chair would be glad to give you his copy, Mr. Ford, of the amendment as projected. Mr. Wanger.

MR. WANGER: Mr. Chairman, the language is not here but it does seem to me that Mr. Ford's amendment should be divided because —

MR. MADAR: Mr. Chairman, I'm rising for a point of information from the Chair.

CHAIRMAN VAN DUSEN: Will you kindly wait until you are recognized, Mr. Madar?

MR. MADAR: Yes, but I wanted you to know why I'm here.

CHAIRMAN VAN DUSEN: The Chair is very well aware of your presence, Mr. Madar. Mr. Wanger, the amendment will be divided when it is presented in accordance with your request.

MR. WANGER: Thank you.

CHAIRMAN VAN DUSEN: Now, Mr. Madar.

MR. MADAR: I wanted to get up so I could get this thing started off and we wouldn't be speaking for 15 or 20 minutes without knowing what we're doing. Is it possible now to move that we recess for 10 minutes until we get this amendment so that they won't be speaking from the top of their heads, as Mr. Lawrence says, so the rest of us will know what this amendment is?

CHAIRMAN VAN DUSEN: As Mr. Hutchinson will point out if the Chair does not, Mr. Madar, a recess is not in order in the committee of the whole. The secretary now has the amendment in writing. The Chair will recognize Mrs. Judd.

MRS. JUDD: Mr. Chairman, members of the committee, it seems to me that Mr. Ford was a member of this judicial committee. He must have had ample notice about this provision. He had ample time to bring in his amendments and have them in front of us. To try to consider these things, as Mr. Ford says, is very confusing and I don't think we can make an intelligent decision off of the top of our heads or off the top of his. I think Mr. Lawrence is right, that this is a matter for style and drafting. He has described the intention of the committee very well and I don't think we should be asked to vote on this kind of an amendment.

CHAIRMAN VAN DUSEN: Before proceeding further, the Chair will ask the secretary to again read the 2 amendments offered by Mr. Ford.

SECRETARY CHASE: Mr. Ford has offered the following amendments to the amendment:

1. Amend the amendment, after "in lieu of" by striking out "nomination" and inserting "filing nominating petitions".

2. Amend the amendment after "or by law,", by striking out "nominate himself" and inserting "cause his name to be printed on the primary election ballot".

CHAIRMAN VAN DUSEN: The Chair thinks it may be helpful, in considering these 2 amendments if we divide the debate on them as well as divide the putting of the question. Therefore, the Chair will recognize at this time speakers who seek recognition with respect to the first amendment offered by Mr. Ford, striking the word "nomination" and inserting the words "filing nominating petitions". Miss Donnelly, do you seek recognition on that?

MISS DONNELLY: I seek recognition on a motion that we pass over this. It seems to me that this can be done very readily with 2 redrafts, but any amendment thrown in quickly will not do it. You're going to have to remove one word and throw it in the next section. It can be done in redrafting in 5 or 10 minutes very readily. And there is no sense in arguing this thing when we can take care of Mr. Ford's point and Mr. Lawrence's and the committee's point very readily by simply a redrafting measure. If we don't want to go to style and drafting, we can do it here so I would suggest we file over — I yield to Mr. Danhof.

CHAIRMAN VAN DUSEN: Miss Donnelly yields to Mr. Danhof.

MR. DANHOF: Mr. Chairman, it appears obvious here that we have run into a question which I think cannot at this particular time be answered. It depends on what system for the election or selection of supreme court justices that we agree upon. If we agree upon a particular plan, then the language herein contained relative to supreme court justices may not be needed or if it is, we can clean it up. I would therefore move at this time that further consideration of this proposed section of Committee Proposal 96 be passed until we have completed action on Committee Proposals 91 and 92.

CHAIRMAN VAN DUSEN: The question is on the motion of Mr. Danhof to pass further consideration of the proposed amendment offered by him on behalf of the committee on judicial branch until following consideration of Committee Proposals 91 and 92 in the committee of the whole. Those in favor of the motion will say aye. Those opposed will say no.

The motion prevails and it is so deferred. Does the secretary have further amendments to Committee Proposal 96?

SECRETARY CHASE: There is an additional amendment to Committee Proposal 96, following this proposed section 1 by adding another section to be known as section m now offered by Messrs. Pugsley, Radka, Rajkovich, Prettie, McAllister, Turner, Sleder, Howes, Leslie Richards, J. Burton Richards, Plank, Farnsworth, Thomson, Boothby, Lundgren, Dell, Dehnke and Shanahan, said new section to read as follows:

"Sec. m. Within 5 years from the date this constitution becomes effective, the legislature shall establish statutory courts of limited jurisdiction inferior to the circuit court with a definition of their powers and jurisdiction, the location and number of such courts, the qualifications of the judges who shall preside therein, the method of their election and tenure of office and the amount of their salary and by what governmental units the same shall be paid.".

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Judge Pugsley and a number of other delegates, on which the Chair will recognize Judge Pugsley.

MR. PUGSLEY: Mr. Chairman and delegates of the convention, this amendment is offered for the purpose of taking recognition of the fact that the judicial article which has been submitted to you contains a provision that at the expiration of 5 years, the offices of justices of the peace and circuit court commissioners will no longer be in existence. That means that in the interim, between now and then, there will be a responsibility resting with the legislature to provide a court or courts to take the place of these 2 constitutional offices which are eliminated from the present judicial article. This is intended to take cognizance of the fact that there are many counties in the state in which without the exercise of authority by the legislature there will not be a magistrate or any court of inferior jurisidiction which is the court, as we all recognize, existing at present on the lower level.

I believe that the language of the amendment is quite self explanatory. As you all know, the present constitution contains a provision for the election of 4 justices in each township. This was later changed, I believe, to now only 2 are required to be elected. As we all know, the Constitution of 1908 was passed at a time when means of transportation by automobile was not available. In other words, it goes back to the horse and buggy days, so to speak. I think we all recognize now that the election of 2 justices of the peace or 2 courts of limited jurisdiction in each of the townships in each county of the state is quite unnecessary and quite impractical. However, I do think that we all realize that there is the necessity for a court on a lower level for matters of less consequence so far as dollars and cents are concerned but nevertheless important to the individuals who are interested to have their day in court. It is also necessary that a magistrate or someone with a magistrate's authority be located where he may be

conveniently reached if a complaint is to be made or a warrant is to be issued.

I don't think it is necessary to go on in detail. This is intended to fill a vacancy which I believe should be done. While it might not be necessary perhaps to make particular mention of it in the constitution but rather to pass it and leave it entirely to the legislature, I feel that we will find ourselves, as delegates, being criticized for having entirely omitted and failed to take any action or recognition of the importance of the court of the lower level. With that thought in mind, those of us who have sponsored this amendment submit it to you for your favorable consideration.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Judge Pugsley and others. Mr. William Hanna.

MR. W. F. HANNA: Mr. Chairman, if I may ask Mr. Pugsley 2 questions.

CHAIRMAN VAN DUSEN: If the gentleman cares to answer, Mr. Hanna.

MR. W. F. HANNA: Judge Pugsley, the first question is: would you interpret the language of your amendment to allow these local courts, so called, to be classified so that in townships or counties of certain population, a different requirement for a judge and a different monetary jurisdiction could be allowed?

CHAIRMAN VAN DUSEN: Judge Pugsley.

MR. PUGSLEY: I think that is true. That is the intent. In other words, it was intended to be flexible enough so that the legislature might make it possible for the establishment of courts of limited jurisdiction to be established wherever they are needed throughout the state of Michigan.

MR. W. F. HANNA: Mr. Chairman, my second question goes to the term "limited jurisdiction inferior to the circuit court." Now, at present, there is some overlapping jurisdiction between the present justice courts and municipal courts with the circuit court, with which I am sure the judge is familiar, and when we use the term — which is I believe new, though we lawyers quite often use it — when we say "limited jurisdiction inferior to the circuit court," can we then provide for a local court system which has concurrent jurisdiction with the circuit court as we have at present in the municipal court act and in fact, in justices of the peace in cities?

CHAIRMAN VAN DUSEN: Judge Pugsley.

MR. PUGSLEY: I think that's true. I appreciate your point. As we all know, the justice court is looked upon as a court of inferior jurisdiction at the present time. However, we do know that under the present law there is a concurrent jurisdiction existing between the justice court and the circuit court in matters in which the consideration involved is $100 or not more than $300. In some instances that has been raised to a higher amount. In other words, the whole spirit of this amendment is intended to leave flexibility, and it is intended that there will be an appeal available from the action of the court of limited jurisdiction to the circuit court or to any higher court that may be provided, depending on the language of the legislature in its attempt to meet the situation.

CHAIRMAN VAN DUSEN: Mr. Hanna.

MR. W. F. HANNA: Mr. Chairman, if I may then ask Judge Pugsley and the sponsors of this a third question. Would we not clarify the right to this concurrent jurisdiction if we struck out the term "inferior to the circuit court"? I recognize that this court would be under the supervision of the circuit court, being a local court not of record. But if we say "statutory courts of limited jurisdiction," then I believe we would clearly allow concurrent jurisdiction in certain fields, either in dollar amounts or in specialized types of action.

CHAIRMAN VAN DUSEN: Judge Pugsley.

MR. PUGSLEY: Let me answer your question by asking you one. Do you feel that the inclusion of the language as used raises a question that might be confusing to the legislature?

MR. W. F. HANNA: It does in my opinion, Judge, because I think the "inferior" goes to the "limited jurisdiction". If you will put the "inferior" over behind "statutory courts", "inferior to the circuit court with limited jurisdiction", then the phrase "inferior to the circuit court" is clearly tied with the statutory courts. But when you put it after "jurisdiction" you seem to say that the "jurisdiction" must be inferior to the circuit court.

CHAIRMAN VAN DUSEN: Judge Pugsley.

MR. PUGSLEY: I haven't any pride of authorship that would say that that could not be done. I have no objection if it doesn't destroy the purpose and intent of the amendment.

CHAIRMAN VAN DUSEN. Mr. Hutchinson. Mr. Higgs, did you seek recognition?

The question is on the amendment offered by Judge Pugsley and others. Mr. Danhof.

MR. DANHOF: Mr. Chairman, naturally, this is not a committee proposal but I can state that in view of the action that this committee has taken regarding section a of Committee Proposal 96, that is, the limitation to the requirement that attorneys only be in courts of record, together with the action that we have taken under section i, which is the 5 year provision for the justices of the peace and the circuit court commissioners, I shall support this amendment.

CHAIRMAN VAN DUSEN: Mr. Higgs.

MR. HIGGS: Mr. Chairman and members of the committee, I feel that Judge Pugsley and the other sponsors of this amendment have done a very fine job in filling the vacuum which is created by the action of the committee. I think that this is a very clear direction and will serve a useful purpose and I will support it.

From the standpoint of style and drafting, I feel that Delegate Hanna raised a very good point and that that matter can be taken care of. Further, I'd like to, along the same line for clarification here with regard to statutory courts of limited jurisdiction — in the original statement I understood Judge Pugsley to say that the legislature would have the power to establish a court or courts of limited jurisdiction. Now, in this connection it is my understanding that the intention is to create a court at the so called fifth tier, with divisions much the same as our other courts at the other tiers sitting in locations where the need may be established and further, that in locating the various divisions, we nevertheless will have an opportunity to have developed a court system at this level with some uniformity of practice, jurisdiction and procedure. This also, I understand, is not to preclude the setting by the legislature of perhaps differing qualifications for the judges sitting in those courts with regard to the possible population or area factors taken into account so that the varying needs of the state can be met and the widest range of flexibility permitted to the legislature. Would I be stating the intention more or less correctly, Judge?

CHAIRMAN VAN DUSEN: Judge Pugsley.

MR. PUGSLEY: I think so, Delegate Higgs. This matter received a great deal of consideration in our committee and we realized that if we were to take the time and try to spell out and to detail the functions of these counties and try to pick out the localities in which one court of a certain amount of jurisdiction should be provided, that a provision that we might make that might fit in counties of my district perhaps would not fit in some of the larger places. It might not even fit in the smaller ones. We tried to prepare language broad enough and flexible enough so we believe the legislature can take over where we have left off.

CHAIRMAN VAN DUSEN: Mr. Gover.

MR. GOVER: Mr. Chairman and fellow delegates, I want to say at the outset that I am in agreement that we need some sort of a court of this nature. I just have a question about conflict between Committee Proposal 90 and this section here. I wouldn't want to get this one in and have that proposal mixed up on that and I want to call attention that Committee Proposal 90 says 2/3 vote of the members of each house, and I didn't want there to be in conflict between these. It doesn't do it. It just says, "Within 5 years from the date this constitution becomes effective, the legislature shall establish. . . ." That was the question I had on that, Mr. Chairman.

CHAIRMAN VAN DUSEN: Judge Pugsley, do you care to respond to Mr. Gover's question? Mr. Gover inquired whether there is a conflict between this proposed section and the provision of Committee Proposal 90 requiring a 2/3 vote of each house of the legislature for the establishment of the court.

MR. PUGSLEY: In answer to that, I don't think that that will be a real obstacle. If it is to be construed as requiring a 2/3 vote, I can't conceive that the legislature would not do it. I'd be quite satisfied if it was only a majority.

CHAIRMAN VAN DUSEN: Mr. Wanger.

MR. WANGER: Mr. Chairman, members of the committee, I respectfully oppose this amendment to the committee proposal. In doing so, I do not do so because I disagree with the intent of those who propose it, because we obviously do need courts of limited jurisdiction which are sometimes colloquially referred to as "poor men's courts" in this state on the level of the courts which the present justice of the peace occupies. However, I oppose this amendment for other reasons. Those reasons are 4 in number.

First, this language gives the legislature no additional power whatsoever under the proposals as adopted by this committee from the committee on the judiciary. The legislature can do everything set out in this language without the authorization of the language itself. And therefore, this language would serve no useful legal purpose in the constitution.

The second reason why I oppose this amendment is because this language can be reasonably interpreted as an exception to the requirements set out in Committee Proposal 90, that such additional courts should be established by a 2/3 vote of the legislature rather than a majority vote of the legislature. Therefore, it could be reasonably interpreted to permit these courts to be established by a mere majority.

The third reason why I oppose this is because this language could be reasonably interpreted as an exception to the last sentence of section a of Committee Proposal 96 which says:

> No judge or justice of any court in this state shall be paid from the fees of his office nor shall the amount of his salary be measured by the fees or other moneys received nor by the amount of judicial activity.

In other words, it could be reasonably interpreted as allowing the legislature to establish a salary which was, for example, measured by the amount of his judicial activity.

The fourth reason why I oppose this amendment is the reason suggested by Mr. Hanna in his presentation when he suggested the language might actually act as a limitation upon the power of the legislature to prevent it from giving to this court any concurrent jurisdiction with the courts above it, and that this would certainly be an unreasonable rigidity to put into our constitution.

CHAIRMAN VAN DUSEN: Mr. Hutchinson.

MR. HUTCHINSON: Mr. Chairman, I would like to ask Judge Pugsley to apply his judicial experience in the interpretation of this language and advise me whether a fair reading of this language, couched as it is, might not be construed to give to the legislature, shall we say, a one shot power; that is, it has the power to establish these courts and to do all these things, but after it has done all these things, its power might be thereupon exhausted. Now, if we didn't say anything about it at all in the constitution, of course, the legislature could establish, it could amend, it could alter, it could abolish, it could make any kind of adjustment it wanted to, if nothing was said in the constitution. But now if we write this language into the constitution, couched in this phraseology, Judge, do you not believe that it might very likely be construed to give to the legislature this responsibility of setting up this system and then its whole power is exhausted in the field?

CHAIRMAN VAN DUSEN: Judge Pugsley.

MR. PUGSLEY: It had not so occured to me, Senator Hutchinson. Of course, you know better than I do what the legislature may do and how far it may go. We have some confidence left, I believe, in the legislature, and I believe they will make a reasonable construction of this. It is the intent of this amendment to make it possible for the — I shouldn't use that language because I don't construe this to be a grant of power; I think they have the power. But we are offering this amendment because we feel the importance of this court, which has been a part of our constitution for so many years. And I feel that the convention will leave itself open to criticism if we define a supreme court, a superior court, a circuit court and a probate court and then stop there. They'll say, "Why? Aren't these lower courts of some importance? Should they not be recognized in the constitution?" We believe they should be recognized, not necessarily as justices of peace or as circuit court commissioners. We're leaving it to the legislature to establish the courts that are necessary and with a provision that we believe is flexible enough for them to do the job to meet the needs of the entire state.

CHAIRMAN VAN DUSEN: Mr. Hutchinson.

MR. HUTCHINSON: Mr. Chairman, in answer to Judge Pugsley, I might say it was deemed competent in the Constitution of the United States not to mention any court other than the supreme court. All of the rest of the courts are created by law. Now, I go back to the basic proposition that every provision of this state constitution must be interpreted as a limitation upon the legislature. If you are going to say anything at all about a matter in the constitution, you must couch it in such phraseology as not to be unduly restrictive or to restrict the matter further than intended. If it is the intent of the sponsors here that it was not thought of at all that the legislature should be directed to set up this system and then its power be exhausted, undoubtedly in the process of writing this constitution, both in style and drafting and on second reading and so on, this section can be rephrased in order to remove any doubt in that field.

I just wanted to get the views of the sponsors as to whether they intended that the legislature should do it on a one shot proposition or whether the legislature should have continuing power. I am afraid that this language here could be construed — and I call Judge Pugsley's attention to the fact that it isn't going to be the legislature that construes this power; it's the courts that construe the power — the legislature may set up a court system under this language and then find out that the supreme court, upon an appeal from some case or other, would hold that because of the language of this section, the legislature having acted, it could not alter the system; it would require a constitutional change. I don't believe that is intended by the sponsors and I think the language should be reworked in order to remove the doubt. I am simply raising the doubt at this point. I don't have the language that I would suggest to correct it.

MR. PUGSLEY: Thank you, Senator Hutchinson. I appreciate your comments. It is not our thought to tie the hands of the legislature by language included in this amendment which would prevent them from making changes and alterations and establishing other courts in various places that might from time to time be needed. I, for one — and I think the other sponsors of the amendment will go along with me in this — want to make it flexible and elastic enough to meet conditions of the future, and I am sure we would appreciate — if you have some contributions to make that will clarify the situation or aid in the administration of justice, we'll be very happy to have you do so.

CHAIRMAN VAN DUSEN: Mr. Downs, the Chair would advise that there are 3 delegates seeking recognition; the Chair will put you in line. Mr. Ostrow.

MR. RADKA: Mr. Chairman, I believe Judge Pugsley yielded to me.

CHAIRMAN VAN DUSEN: Excuse me.

MR. RADKA: I merely wanted to point out through the Chair to Senator Hutchinson the words "the legislature shall establish statutory courts". It was our considered opinion that a statutory court, once established, would not be a one shot deal; that if they were established by law and were referred to as statutory courts, that the legislature would have continued jurisdiction to change the laws which they passed to establish statutory courts.

CHAIRMAN VAN DUSEN: Mr. Ostrow.

MR. OSTROW: I oppose this amendment for the reason that the provisions that we have already made for these lower courts will do a better job than this present provision. We've provided in Committee Proposal 90 for courts of limited jurisdiction to be established by the legislature. That provision is in the broadest general terms so that it can adequately serve the needs of the people as they may arise at any time in the future. In Committee Proposal 96, section 1, we've disposed of the justices of the peace and the circuit court commissioners and we have retained the special statutory courts. At the present time there are about 85 of these special statutory courts in every part of the state, the upper peninsula, the western part, the northern part, the eastern part. The difference between those statutory courts — and they are courts of limited jurisdiction — and this provision is that in each case of every one of these special statutory courts, it was the people of that particular community who decided they wanted that particular type of court. There are some half dozen statutory provisions which permit courts of this type. The people could pick the particular type of court if they were eligible under that provision and decide if they wanted it, what their qualifications were to be and the salaries to pay. And I submit that when you get to this level of courts that the people locally know better what their problems are than we do, and the provisions we now have are much more flexible and will do a better job for the people locally — and these are purely local courts — than this provision will.

Now, when it comes to this question of uniformity, there are some stages where uniformity is desirable. But these courts are so close to the people and are so localized in their work generally that it is more important that they serve the needs of the local community than that they be the same as a court in some other part of the state. For that reason I think we should vote against this amendment.

CHAIRMAN VAN DUSEN: Miss Donnelly.

MISS DONNELLY: I too rise to oppose this amendment in this language. I am sympathetic with the intent to a limited degree. However, I can't agree that we haven't handled the situation. In Committee Proposal 96, after having 2/3 to establish lower courts of inferior jurisdiction set up in the first part, we go on and say that we have handled this; we haven't left it, until the time within this period they are established "or their jurisdiction and powers are transferred to, or invested in, other courts that shall be established in accordance with this constitution." Then we go further to say special statutory courts in existence at the time this constitution becomes effective shall retain their powers and jurisdiction except as provided by law and until and unless they are abolished by law.

We have many, as Mr. Ostrow has pointed out, statutory courts of inferior jurisdiction. We have these municipal courts that have been set up under the county home rule provisions, city home rule provisions that they have done. The vacancy that Judge Pugsley is concerned with does not in my opinion exist. The legislature already has the power under our previous proposals to set these courts up. This amendment, I think, is unneccessary and is confusing. It has already been handled once and to spell it out now imputes that it should perhaps change everything that has been done first. And I ask, what will happen to the municipal courts already established? I don't think, if Judge Pugsley would care to answer, that this was their intent. I don't think they wished to do this. Did you, Judge?

CHAIRMAN VAN DUSEN: Judge Pugsley.

MR. PUGSLEY: It is not our plan to be destructive and I fail to see anything in there that is. I think I have a cognizance of conditions out over the state that some of the practitioners whose practice is confined to the city of Detroit fail to appreciate; and we who live out in the sticks, so to speak — as I was designated once when I was assigned to Detroit to hold court, as the "judge from the sticks" — I think that some of the people who don't live in the sticks don't appreciate some of the problems that lay out there.

CHAIRMAN VAN DUSEN: Mr. Downs. Excuse me, Miss Donnelly, the Chair takes it that you have further comment.

MISS DONNELLY: I submit that the question I asked I don't think was answered by the judge. I was talking about municipal courts and, Judge, I don't think you have ever presided in a municipal court, have you?

MR. PUGSLEY: No, I have missed that experience, Ann.

MISS DONNELLY: I'm worrying about the statutory municipal courts that we already have now and I am sure this isn't what you're trying to do.

MR. PUGSLEY: No, I don't think there's a thing in there that conflicts with them.

MISS DONNELLY: Because you have here that it "shall establish statutory courts of limited jurisdiction inferior to. . . ." This is in the future within the next 5 years. This imputes, to me, that they must do this. What they have done in the past, it seems to me they must have to change.

MR. PUGSLEY: No. We are recognizing the fact that the legislature does have power to do that which they have already done and to which you have called attention, only they've only partly done the job and we're inviting them to finish it so it will extend over the entire state of Michigan where we are leaving a vacuum at the present time which should be filled.

CHAIRMAN VAN DUSEN: Miss Donnelly.

MISS DONNELLY: If I may, through the Chair, ask the Judge one more question.

CHAIRMAN VAN DUSEN: If the gentleman cares to answer.

MISS DONNELLY: Didn't we already say, "their jurisdiction and powers are transferred to, or invested in, other courts that shall be established in accordance with this constitution."? Hasn't the vacuum been filled?

CHAIRMAN VAN DUSEN: Judge Pugsley.

MR. PUGSLEY: If it's a matter of emphasis, I'm willing to emphasize it. It is not intended to be a conflict.

MISS DONNELLY: I oppose it for these reasons. I think it is going to give us confusion and not aid. I'm sure the judge wants to give it aid but I think it's going to give confusion.

CHAIRMAN VAN DUSEN: Now, Mr. Downs. The Chair apologizes for the earlier false start.

MR. DOWNS: I'll be unusually brief, Mr. Chairman. I just wish to call attention that in Committee Proposal 90 we did make provision for other courts of limited jurisdiction to be established by a 2/3 vote similar to the present constitution. I hope when this is reworded, those working on that will consider that part. I think the point Senator Hutchinson made about the danger of setting up a one shot court system is very valid and I hope that whatever is worked out would be in conjunction with Committee Proposal 90, which I do think makes a more fluid opportunity for setting up additional courts in the future.

CHAIRMAN VAN DUSEN: Mr. Ford.

MR. FORD: Several people have emphasized the fact that this language becomes restrictive because we have already given the legislature almost unlimited power to establish courts inferior to the courts of record and now we are saying that they must do certain things in establishing the court. There is presently being discussed over in the legislature house bill 81, which is an amendment to the new judicature act and is intended to clear up some jurisdictional problems wherein Mr. Wanger's problem that he raised is brought right to the fore because the purport of this bill would be to give municipal courts countywide civil jurisdiction concurrent with the circuit court up to the monetary jurisdictional level that they establish. It seems that this language might prevent that. In addition to that, although we have adopted language that protects all of the special statutory courts presently in existence, it would seem that this might say that a city that incorporates after the effective date of this constitution would not, as it presently has, have the right to establish the exact amount of compensation, either by a city council or a city

charter, but would have to rely upon the legislature to set the amount of compensation for its municipal judge.

Everything that is in this section that the legislature shall do is something that the legislature already has the power to do and some of them are things that we think perhaps the legislature might not necessarily do. For example, there are at least 3 basic municipal court acts now that leave a number of the matters contained here to the voters of the local areas. The qualifications of the judges are usually set by city charter: the amount of salary; the length of term of office; the method of election; and all of these things are presently set by the people in our own locality to fit the pattern of what they think is best. And what we are asking the legislature here to do is create a super system — Mr. Hutchinson has called it a one shot court — that would have to be applied with some sort of uniformity throughout the state and the problems of establishing municipal courts in Wayne, Oakland and Macomb county are perhaps different — and in fact are different — than they might be in other counties throughout the state. I feel that we should leave this matter as open as it has been in the past. There has been no abuse by the legislature in establishing these lower courts in the past that has caused serious comment in this convention or been brought to the attention of the committee. And it would seem to me that we ought to let the legislature continue as they have in the past to meet this problem on an individual basis and to leave a lot of the details that are spelled out here to the people in the local communities to decide for themselves.

CHAIRMAN VAN DUSEN: Mr. Higgs.

MR. HIGGS: Mr. Chairman and members of the committee, my particular interest in speaking arises out of my participation in the committee on style and drafting. As I said before, I am sympathetic and support this provision. I feel that it is worthwhile. I so far fail to find any valid objection to the principle. I would like to call attention to the provision of section 1. The last sentence I think answers the questions raised by Delegate Donnelly and Delegate Ford, that all "courts in existence as of the time this constitution becomes effective shall retain their powers and jurisdiction, except as provided by law," et cetera. I don't see any conflict here coupled with the power of the legislature established in Committee Proposal 91, which gives the legislature the power to establish other statutory courts.

Now, with regard to the objections raised by Delegate Wanger and emphasized by Delegate Ford, I'd like to yield to Delegate Wanger for an answer to a question, if I may.

CHAIRMAN VAN DUSEN: If the gentleman cares to answer.

MR. HIGGS: Delegate Wanger, your second and third objections were based upon the possibility that this language could be interpreted as an exception to the 2/3 requirement and as an exception to Committee Proposal 96, section a. Do you have available any particular authority for the rule of construction that the court, in the face of an express provision, could reasonably construe some other provision to the contrary?

CHAIRMAN VAN DUSEN: Mr. Wanger.

MR. WANGER: Mr. Chairman, my answer to the question would be very simply this: the court, in construing language in the constitution is governed by a rule of law or a rule of construction which says that every word in the constitution is presumed to have meaning and was not presumed to be put in for anything except a particular legal purpose. Taking this language, it merely says "the legislature shall establish statutory courts," and so forth, of this nature; and that language taken alone would very clearly mean that the legislature by a majority vote would be able to do that. It further says that the legislature may fix their salary, the amount of their salary, and that language taken alone would allow the salary to be based upon the amount of judicial activity or the amount of fees received.

Now, admittedly there are 2 other places in the constitution where this has been prohibited, but nevertheless a conflict has been created between the 2 by adding this language here. The court therefore in light of the doctrine that everything has a particular legal meaning could reasonably construe the language of this section as an exception to the limitations set forth in other sections. There is very clear legal authority for this possibility.

CHAIRMAN VAN DUSEN: Mr. Higgs.

MR. HIGGS: Mr. Chairman, I think Delegate Wanger has done what he charged Delegate Danhof with doing some time before. He has not answered the question. The question was whether or not in the face of an express prohibition there is any rule of construction available to the courts that could reasonably interpret some other provision to the contrary. We have a very express prohibition in Committee Proposal 96, section a, that the salaries shall not be measured by fees or other moneys received nor by the amount of judicial activity. Inasmuch as the proponents have used the word "salary" here, there is no inconsistency whatsoever and I just fail to understand that. I fail to understand any inconsistency or any conflict or any rule of construction that would permit such an argument. I think Delegate Hutchinson raised a valid point, as did several others, that it can be handled in style and drafting and I urge you to support this amendment.

CHAIRMAN VAN DUSEN: Mr. Farnsworth.

MR. FARNSWORTH: Mr. Chairman and members of the committee, I am not going to endeavor to add anything to the legal complications of this particular paragraph but I would like to ask the committee to look at it from this particular angle. Now I am assuming that Senator Hutchinson and Delegate Wanger and the rest of you can clear up the legal implications so that we don't get into any trouble about a one shot proposition or salary or fees and so forth. But for the people in outstate Michigan who realize that they are going to lose their justice of the peace courts, I think that we need, in selling the document, something that we can put our finger on and actually show them that there is going to be another court to take its place.

Now, certainly, in this convention we all understand that if you didn't put this in that that will be done because the legislature certainly will do it. But I say to you that we do need a selling tool when we are out endeavoring to sell the work of this convention. We need it particularly in this area of lower courts in our rural sections. I don't care so much what you say in it. I hope you will clear the thing up so there is no one shot proposition, so that there are no fees involved. But I do hope that you will go along with this and leave that paragraph in there in some form so that when they say to us, "You have given the death sentence to our justice of the peace courts," that we can literally put our finger on it and show it to them, "Here it is." We need it, ladies and gentlemen, for a selling tool. And that is my appeal to you. Just give us this one selling tool, if you please.

CHAIRMAN VAN DUSEN: Mr. Wanger.

MR. WANGER: Mr. Chairman, members of the committee, in reply to the plea by Delegate Farnsworth, I would make this plea. Let the sponsors of this amendment take upon themselves — and they have very able lawyers in that group, as well as very interested laymen — let them take upon themselves the burden of correcting and improving this language so that the more substantial objections which have been raised against it will be solved and let them then present it in the proper form. Do not send to style and drafting a proposal about which so many objections have been validly raised. And do not burden the committee on style and drafting with additional material of this nature. And bear in mind that once the matter comes from style and drafting, with all of the work that they have to do, it will take more votes to change it than it does to solve the problem here and now. It will take 73 votes to change it, if my understanding of the rule is correct, when it comes back from style and drafting.

I say let's have the burden upon those people who propose it. Let them do this particular work on this section.

CHAIRMAN VAN DUSEN: Mr. Farnsworth.

MR. FARNSWORTH: Never in my life before have I been in an area where I had so much free legal talent available to

me. Now, it would be hoped that the lawyers on this floor beginning right now would attempt to amend the paragraph — Senator Hutchinson, for instance, to overcome his objection, and Mr. Wanger to overcome his objection. I have seen no reluctance in the past to freely amend these things as they are up here on the wall. It would be hoped that the legal talent would begin to do that here and now without deleting the paragraph.

CHAIRMAN VAN DUSEN: Judge Pugsley, did you desire further recognition on your amendment?

MR. PUGSLEY: I am willing to let the matter stand as is. I believe the legislature can take this and give something to the people. I am impressed by what Mr. Farnsworth has said. I believe the people of the state of Michigan are going to be very much disappointed when they read the judicial article if they don't find at least a gravestone over the head of the justices of the peace.

CHAIRMAN VAN DUSEN: Miss Donnelly.

MISS DONNELLY: Mr. Farnsworth wants a sales campaign and this is the reason he wants us to rewrite language that's here. We already have language, "their jurisdiction and powers are transferred to, or invested in, other courts that shall be established in accordance with this constitution." They are not going to be left without anybody. It is clear. This other language confuses the issue and will do more harm than they want it to do good. He's got his sales campaign right there. It seems to me everybody gets too excited on section 1 and reads the first 2 sentences and they don't read all of section 1.

CHAIRMAN VAN DUSEN: Dr. Nord, are you seeking recognition? Mr. Danhof. Excuse me. Mr. Lesinski.

MR. LESINSKI: I'd like to know if are we putting selling tools into this constitution or good language? I think that is the issue.

CHAIRMAN VAN DUSEN: To whom do you direct your inquiry, Mr. Lesinski?

MR. FARNSWORTH: Mr. Chairman, I'd be glad to answer it.

MR. LESINSKI: All the gentlemen and ladies of this convention.

MR. FARNSWORTH: I would simply remind you, Delegate Lesinski, that you are going to need some selling tools and it makes no difference what section of the state you're in, you are definitely going to need some selling ammunition when you go out on the line to sell this document and I, for one, am personally willing to sell it in my area regardless of what we come out with, but occasionally here I think we have to take into consideration that there is going to be a selling job to be done. And when you have a selling job to do, don't leave your tools at home. Take them right with you.

MR. LESINSKI: Yes, but don't put them into the constitution.

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: Mr. Chairman, at the time I sought recognition, I wanted to make the point that Mr. Farnsworth made. He has had much more experience in being a salesman that I have. I would simply concur and that that I wholeheartedly agree with him. I think that Mr. Hutchinson has brought up a valid point which according to Judge Pugsley is not the intent of the sponsors. I think that a provision such as this will give added emphasis and direction to what we have previously done. I concur with Mr. Higgs in his interpretations thereof. I think that we are straining on occasion to state that the courts would fly in the face of the direct prohibitions that have been written in here. I would hope that we could pass this amendment and move on to Committee Proposal 91.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Judge Pugsley and a number of other delegates to add a new section m. Does any delegate desire to have it read further? Mr. Howes.

MR. HOWES: Mr. Chairman, I rise in support of this amendment. It has been said that the perspective of the onlooker is determined by his background. Our judicial committee says that they have studied these issues very carefully for 4½ months. They have not just studied many of these issues for 4½ months, but have worked with them all their adult lives. I believe the judicial committee, after careful study, have brought out to the convention the best article which it is humanly possible to achieve for the best interests of the people of Michigan from an attorney's point of view. We of other professions in this convention must agree that on most issues this article as brought out is best for the people of Michigan, but we must be extra watchful for sections where the viewpoint of the committee may clash with the viewpoints of the average citizen of Michigan.

I believe that this proposal, if approved as it is written without this amendment, will clash with the views of the average citizen with a sound which will be heard from the southern boundaries of our state to the end of the Keweenaw peninsula. The average citizen wants the justice of the peace or some similar office where not all are required to be attorneys. We agree they must have more restrictions and more supervision. Possibly the fee system should be abolished. But if the committee believes that every justice court in the state of Michigan should be operated only by qualified attorneys, then I think another poll should be taken, not of the bar association of Michigan, but of the average citizens of the state of Michigan.

CHAIRMAN VAN DUSEN: The secretary advises that he now has an amendment to the amendment, which the secretary will read.

SECRETARY CHASE: Mr. Wanger offers the following amendment to the pending section:

1. Amend the amendment, after "effective,", by inserting "and subject to the limitations contained in Committee Proposal 90 and section a of Committee Proposal 96,"; so that the language will then read:

> Sec. m. Within 5 years from the date this constitution becomes effective, and subject to the limitations contained in Committee Proposal 90 and section a of Committee Proposal 96, the legislature shall establish statutory courts of limited jurisdiction . . .

and so forth.

CHAIRMAN VAN DUSEN: The question is on the amendment to the amendment offered by Mr. Wanger, on which the Chair will recognize Mr. Wanger.

MR. WANGER: Mr. Chairman, members of the committee, this amendment is offered for 2 reasons. One, because it appears that the sentiments of the delegation may be in favor of this amendment and secondly, because of Delegate Farnsworth's invitation to try to clear up a couple of these major problems which have been raised. If you vote yes on this amendment you will be expressing your views that definitely you think these courts should be established by a 2/3 vote of the legislature, as we have provided and as the intent of the proposers is, and solve that difficulty. You will also make it clear that no salary of these inferior courts is to be based on the amount of the judicial activity, which is also one of the problems which has been raised.

CHAIRMAN VAN DUSEN: The question is on the amendment to the amendment offered by Mr. Wanger. Mr. Farnsworth.

MR. FARNSWORTH: Mr. Chairman and members of the committee, I'd like to thank Delegate Wanger for his contribution. Certainly for my own part, I would say that if the courts cannot muster a 2/3 majority of the legislature, that we shouldn't have them anywhere in Michigan and the fact that they should be paid by salaries with no relation to fees, I can accept 100 per cent. Thank you very much.

CHAIRMAN VAN DUSEN: Mr. Stevens.

MR. STEVENS: Mr. Chairman I'd like to ask a question of Mr. Wanger, through the Chair.

CHAIRMAN VAN DUSEN: If the gentleman cares to answer, Mr. Stevens.

MR. STEVENS: Mr. Wanger, I assume that you anticipate that style and drafting would change that language?

CHAIRMAN VAN DUSEN: Mr. Wanger.

MR. WANGER: I beg your pardon?

MR. STEVENS: I anticipate that you intend that the committee on style and drafting would change that language after the constitution is completed?

MR. WANGER: Yes, indeed. It is contemplated that the words "committee proposal" and the section of the committee proposal are merely for identification purposes for the committee on style and drafting.

MR. STEVENS: I assumed that's what you meant. Thank you.

CHAIRMAN VAN DUSEN: The question is on the amendment to the amendment offered by Mr. Wanger. Those in favor of the amendment will say aye. Those opposed will say no. The Chair is in doubt. Those in favor of the amendment will vote aye. Those opposed will vote no. The question is on the amendment offered by Mr. Wanger to the amendment offered by Judge Pugsley and others to insert the words "and subject to the limitations contained in Committee Proposal 90 and section a of Committee Proposal 96" in the second line after the word "effective". Those in favor will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the adoption of the amendment to the amendment offered by Mr. Wanger, the yeas are 59; the nays are 36.

CHAIRMAN VAN DUSEN: The amendment is adopted. The question is now on the amendment offered by Judge Pugsley and others, as amended. Does any delegate desire to have it read again? Mr. Ford.

MR. FORD: I wish to oppose the amendment and urge the delegates to vote no.

CHAIRMAN VAN DUSEN: Those in favor of the amendment, as amended, offered by Judge Pugsley and others will say aye. Those opposed will say no.

The amendment is adopted.

DELEGATES: Division.

CHAIRMAN VAN DUSEN: A division is requested. Is the demand supported? It is supported. Those in favor of the amendment, as amended, offered by Judge Pugsley and others will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the adoption of the amendment offered by Judge Pugsley and others, as amended, the yeas are 74; the nays are 31.

CHAIRMAN VAN DUSEN: The amendment is adopted. Are there further amendments to the body of Committee Proposal 96?

SECRETARY CHASE: The pending amendment that is remaining is the amendment offered by Mr. Danhof, on behalf of the committee of judicial branch, to amend the body of the proposal following line 1 on page 4, by inserting a new section 1, which has been read and to which Mr. Ford has offered 2 amendments.

CHAIRMAN VAN DUSEN: Under the action previously taken by the committee, consideration of that amendment and the amendment thereto has been deferred until the committee of the whole has completed its consideration of Committee Proposals 91 and 92 and therefore, pursuant to that action and the prior action of the committee of the whole, we will now return to Committee Proposal 91. Mr. Higgs.

MR. HIGGS: Before returning to Committee Proposal 91 and before Committee Proposal 96 as a whole is adopted, I didn't hear you say —

CHAIRMAN VAN DUSEN: It will not be passed, Mr. Higgs, until we have completed consideration of the amendment offered by Mr. Danhof, on behalf of the committee on judicial branch, and the amendments thereto offered by Mr. Ford.

MR. HIGGS: I presume then that it would be not in order to make any statement with regard to any other section of this?

CHAIRMAN VAN DUSEN: It would be in order at this time, Mr. Higgs, if you desire to do so.

MR. HIGGS: With regard to section e, there was previously a question asked and an answer given with regard to whether or not the incumbents' designations were to apply to justices or judges solely in courts of record. Now, I am not certain what the application of this was previously in the constitution, but at the time of the committee action it was my understanding that this applied to all justices and judges. In other words, I would like to object to the interpretation placed upon that section with regard to the question and answer between Delegates Hutchinson and Cudlip. I raise that at this point because if it is the intention to so restrict it, the action should be taken by the committee of the whole because I do not believe that that was the action of the judiciary committee.

CHAIRMAN VAN DUSEN: If there is nothing further at this time with respect to Committee Proposal 96, the committee will return to consideration of **Committee Proposal 91,** A proposal pertaining to the supreme court. Every section of that proposal has previously been passed except sections a and g.

For last previous action by the committee of the whole on Committee Proposal 91, see above, page 1354.

Are there amendments to section a?

SECRETARY CHASE: Mr. Kuhn has filed with the secretary the following pending amendment:

1. Amend page 1, line 6, after "Sec. a.", by striking out the balance of the section and inserting "The supreme court shall consist of 9 justices. They shall be elected for 8 year terms, and not more than 3 justices shall go out of office at the same time.

Justices shall be nominated and elected at nonpartisan elections, conducted as provided by law. The legislature may provide for nomination and election by districts. Incumbent justices may secure their nomination by filing an affidavit of intention to run as shall be provided by law.".

CHAIRMAN VAN DUSEN: The question is on the amendment to section a of Committee Proposal 91 offered by Mr. Kuhn, on which the Chair will recognize Mr. Kuhn.

MR. KUHN: Mr. Chairman and members of the committee, to me this seems like a compromise on what the committee reported out. As we all are aware, the committee reported out that we have a district plan for the supreme court. Some people are not of the opinion that a district court is necessary and yet, I think most of us believe that we should have a nonpartisan supreme court. This would allow us to have a nonpartisan supreme court. It would also allow us that if it could not be worked on a statewide basis to the satisfaction of our legislature, that they would have the power spelled out to set up districts. In other words, this is very flexible. It seems every time we have a problem we leave it up to the legislature. As far as the last sentence goes, this has already been taken care of in another provision and there is no need to have it here. I would therefore suggest that that could be deleted where it says incumbent justices may secure their nomination by filing an affidavit of intention to run as shall be provided by law.

CHAIRMAN VAN DUSEN: Mr. Kuhn, the Chair would remind you that no action has been taken upon the amendment dealing with that subject offered earlier this morning by Mr. Danhof.

MR. KUHN: I see. That is true. It was passed over for the time being. But I think we are all in agreement that the intention is, as Don Lawrence said, you are nominated now when you get your petitions filled out. I don't think anybody wants to bypass the primary election with this type of a provision.

Actually, if you look at the results of the state bar, I think you'll find that the lawyers preferred a nonpartisan election for our supreme court justices. They also preferred that they be nominated on a statewide basis, 2,852. Therefore, I think that it is quite evident that this would be their choice. I

know there is an argument that it is too costly. I can only remind you that it would be too costly to run for governor and therefore we only have the governor for the rich. It's a question that must be decided. I personally am one that thinks that we should do away with politics in our supreme court. I ran on the proposition that it was a fraud to nominate them at a convention and run them as a nonpartisan. I don't think the people like it. I think they want this corrected. This way we could correct it.

There is also the provision that they could automatically renominate themselves in another section. I am in complete agreement with this. To me, this would clean up our supreme court. We would not have to worry, as some say, who the DAC was or solidarity house, to use the both extremes. Therefore, I offer this as a compromise.

CHAIRMAN VAN DUSEN: Judge Leibrand.

MR. LEIBRAND; Mr. Chairman and delegates, there are many good things about Delegate Kuhn's proposed amendment with which I am in sympathy. However, there are 2 things that I question very strongly. The amendment says that the legislature may provide for nomination and election by districts. Now, we all know that for the second year the legislature has been attempting to create an additional congressional district and has been unable to come to an agreement. Now, if they can't agree on 1 congressional district, how is the legislature ever going to agree upon several judicial districts? The second thing that I am worried about is the cost of this statewide nonpartisan nomination and election. Estimates before our committee were that such a statewide run costs from $30,000 to $50,000. Here we have 2 statewide runs, one in the primary and one in the general election. Now, that is absolutely beyond the financial ability of the ordinary lawyer or judge. The only way that he can campaign twice on a statewide basis is to get the support of some pressure group, and that isn't the kind of judge or justice of the supreme court that we want. This situation of nonpartisan election is not comparable. Statewide nonpartisan election is not comparable with the cost of being elected governor because governors run on a party basis and have the financial backing and the manpower of the party behind him. Here are judges all alone and forlorn trying to put on 2 statewide campaigns in 1 year at a cost of $60,000 to $100,000. I feel that it is impractical. There are good things in Mr. Kuhn's proposed amendment but I feel for the reasons stated, I could not support it.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Kuhn to section a of Committee Proposal 91. Mr. Hutchinson.

MR. HUTCHINSON: Mr. Chairman, I'd like to ask Mr. Kuhn a question if he would care to respond. Remembering what Judge Leibrand said about the task of statewide nonpartisan campaigning, suppose that an amendment were offered to your amendment to strike out the words "at nonpartisan elections" and simply say that justices shall be nominated and elected as provided by law, leaving it then to the legislature and recognizing the absolute impracticality of a statewide nonpartisan nominating system, the legislature then in effect would have to decide whether our judges are going to be nominated and/or elected partisanly or whether they are going to set this state up into districts in order to insure a nonpartisan election. In that case, we would be leaving it to the legislature and recognizing that there would be these 2 alternatives. Because I think that we'll all agree that a nonpartisan statewide election is an impracticality, at least so far as nomination is concerned and I should like to have Mr. Kuhn's reaction to that suggestion. Would he support any such amendment or would he object to it?

CHAIRMAN VAN DUSEN: Mr. Kuhn.

MR. KUHN: As I understand it, Mr. Hutchinson, you would merely leave it to the legislature to decide the method of whether it should be a partisan election — on a statewide basis we are discussing now?

MR. HUTCHINSON: That is right, Mr. Kuhn. It would be left to the legislature whether it would be partisan or nonpartisan; recognizing, however, that from a practical standpoint that if it is going to be nonpartisan, the state would have to be divided into districts and that if they're not willing to divide it into districts, that there would have to be the continuation either of nomination at party conventions, as we have it now, and a nonpartisan election, as we have it now, or to go to a straight partisan system.

MR. KUHN: I wouldn't mind leaving it to the legislature if we took the one alternative out that you lastly stated, I believe: let them be nominated on a partisan basis and then run on a nonpartisan. I think this is the greatest evil. I will concede that I would allow them to make it straight partisan because then I think we're being honest with the people. I wouldn't fight that. And then if the legislature decided to make it nonpartisan, they could set up the districts. I'd be willing to go that far. I think those are 2 good alternatives but I would not want to get into the situation we are in today, on which we are being so justly criticized, as I see it.

CHAIRMAN VAN DUSEN: Mr. Hutchinson.

MR. HUTCHINSON: Mr. Chairman, I would invite Mr. Kuhn's attention and the attention of the committee that as the present constitution now stands, the method of nomination of justices of the supreme court is now vested in the hands of the legislature and the legislature has been wrestling with this problem ever since it was handed to it for the very practical reason that a nonpartisan primary campaign statewide for the office is impractical. I don't know whether the idea, up until this convention met, ever was presented to the legislature about establishing the state in districts for the purpose of nomination, but I suppose that you can say that that wouldn't be very practical or if you're going to divide it into districts for nomination, it will have to be divided into districts for election as well.

I suggest that the fact that the legislature has not altered the system which we have so far as nomination is concerned — their problem is the same problem that has plagued this convention for the last 2 weeks. I think that a solution to the matter — we've demonstrated we haven't been able to solve it and obviously it's one that is going to take a lot of time. I think the only thing to do is to leave it to the legislature. I think your amendment would be in excellent shape, sir, if we struck out that reference here to nonpartisan elections. This would not prohibit nonpartisan elections, would not prohibit nonpartisan nominations, would not prohibit nonpartisan statewide nominations except that we know that those things are impractical.

MR. KUHN: Mr. Hutchinson, may I ask you one question? Would you agree with me that it's possible we could put a further limitation in to protect the people, and as you know and so many times have told this convention that we can only put limitations in for the legislature, that they could not provide a system where we have a partisan nomination and then run nonpartisan? In other words, it should be consistent, the method of nomination and the running for the election as far as their party goes. I'd be willing to go along with something like that.

CHAIRMAN VAN DUSEN: Mr. Hutchinson.

MR. HUTCHINSON: Mr. Chairman, as I understand, that would leave the legislature 2 alternatives — either district the state for nonpartisan purposes or provide for the partisan nomination and election of justices for all practical purposes.

MR. KUHN: I think that would be true and I don't see anything wrong with it. I think it would be a good solution.

MR. HUTCHINSON: I have no amendment prepared at the moment one way or the other. I just wanted to ask Mr. Kuhn to find out what reaction I'd get if I offered an amendment like I suggested in the first place.

CHAIRMAN VAN DUSEN: The Chair will ask that the committee be in a little better order. Judge Leibrand.

MR. LEIBRAND: Replying for a moment to Senator Hutchinson, the reason why I don't think it should be left to the legislature is the people don't want it left to the legislature. In 1939, by a vote of 376,000 to 241,000, they voted to take the

power, so far as the election process was concerned, away from the legislature, and I don't think they've changed their minds since 1939.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Kuhn to section a of Committee Proposal 91. Does any delegate desire to have the amendment read again? The secretary will read the amendment.

SECRETARY CHASE: The amendment is:

[The amendment was again read by the secretary. For text, see above, page 1564.]

CHAIRMAN VAN DUSEN: Those who are in favor of the amendment will say aye. Those opposed will say no.

The amendment is not adopted. The secretary will read the next amendment.

Mr. Higgs requests a division. Is the demand supported? It is not supported. Mr. Danhof.

MR. DANHOF: Mr. Chairman, I move the committee do now rise.

CHAIRMAN VAN DUSEN: Mr. Danhof moves the committee do now rise. Those in favor of Mr. Danhof's motion will say aye. Those opposed will say no.

The motion prevails. The committee will rise.

[Whereupon, the committee of the whole having risen, President Nisbet resumed the Chair.]

PRESIDENT NISBET: The Chair recognizes Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, the committee of the whole has had under consideration several matters, of which the secretary will give a detailed report.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 96,** A proposal pertaining to general and special provisions relative to the courts of the state; has adopted one amendment to this proposal, has placed this proposal at the foot of the calendar of proposals from the committee on judicial branch and has taken up consideration of **Committee Proposal 91,** A proposal pertaining to the supreme court; has considered an amendment thereto, and has come to no final resolution thereon. This completes the report of the committee of the whole.

PRESIDENT NISBET: Any announcements?

SECRETARY CHASE: Will the delegates please take note of this for your spouses. It is requested that you please inform your wives again of coming to the luncheon on next Tuesday at 12:15. There have been 55 reservations so far. Mrs. Tubbs would like to have other reservations as quickly as possible. You may make these reservations with her or with the president's secretary.

We have the following requests for leave: Mr. Baginski, Mr. Dehnke, Mr. Stopczynski, from the afternoon's session; Mr. Romney wishes to be excused from this afternoon's session to fill a speaking commitment to the Detroit adcraft club on the convention; Mr. Upton wishes to be excused from the Monday's session and the first part of next Tuesday's session, for a speaking engagement regarding the convention; and Mr. Heideman wishes to be excused from the sessions of next Monday and Tuesday.

PRESIDENT NISBET: Without objection, they are excused. Anything else?

SECRETARY CHASE: Those are all the items on the desk at the moment, Mr. President.

PRESIDENT NISBET: The Chair recognizes Mr. Hutchinson.

MR. HUTCHINSON: Mr. President, apparently the message didn't get in yet. I also make a request to be absent from Monday's session and the morning session on Tuesday in order to fulfill a speaking engagement.

PRESIDENT NISBET: Without objection, it is granted. Mr. Pugsley.

MR. PUGSLEY: Mr. President, I move that we recess until 2:00 o'clock.

PRESIDENT NISBET: The question is on the motion of Mr. Pugsley. Those in favor will say aye. Opposed, no.

The motion prevails. We are recessed until 2:00 o'clock.

[Whereupon, at 11:40 o'clock a.m., the convention recessed; and at 2:00 o'clock p.m., reconvened.]

The convention will come to order.

SECRETARY CHASE: Mr. President, a quorum of the convention is present.

PRESIDENT NISBET: Mr. Hutchinson.

MR. HUTCHINSON: Mr. President, recognizing that the secretary might have some announcements to make, I would like to state that immediately after the noon recess, at the rostrum at a meeting between Mr. Downs, President Nisbet and myself—let me start a little bit beyond that. Just before we recessed this noon, Mr. Downs came over and mentioned the condition of the roads and the weather forecasts and the fact that this was Friday and that everybody was getting weary and that the matter of how the supreme court was to be selected is the matter before us and it very obviously would not be concluded this afternoon anyway, and suggested the advisability of adjourning rather than recessing for an afternoon session. In the meantime the convention did recess. So as I say, we went up to the president's desk and as a result of the conference we agreed that recognizing all of these things, that as soon as the convention met at 2:00 o'clock we would adjourn.

Based upon that the word went out, at least among some delegates, that we were going to adjourn and I suppose some of them left, expecting that no action would be taken this afternoon. I therefore would move that the convention adjourn. I would recognize the right of the secretary to make some announcements before the motion is put.

PRESIDENT NISBET: Mr. Chase.

SECRETARY CHASE: I have the following requests for leave: Mr. Haskill wishes to be excused from Monday night's session to attend a business club in Lapeer; Mr. Wilkowski wishes to be excused from Monday's session; Mr. Suzore wishes to be excused from the session of Monday; Mr. Seyferth requests absence from Monday afternoon's session; Mr. White wishes to be excused from Monday afternoon's session to be absent on convention business; Mrs. Cushman requests to be excused from this afternoon's session to attend a funeral of a member of the family; Mr. Yeager wishes to be temporarily excused from Tuesday morning's session; Mr. Youngblood wishes to be excused from the sessions of Monday and Tuesday of next week; and Mr. Kelsey and Mr. Liberato wish to be excused from Monday's and Tuesday's session.

PRESIDENT NISBET: Without objection, they are excused. The question now is on the motion of Mr. Hutchinson. Mr. Tubbs.

MR. TUBBS: Mr. President, may I demand a division on this motion?

PRESIDENT NISBET: A demand for a division has been ordered. Sufficient number up. Mr. Ford.

MR. FORD: Mr. President, I have a preferential motion. I move that the convention stand adjourned until 6:00 p.m. on Monday evening.

PRESIDENT NISBET: The question is on the motion of Mr. Ford that when the convention adjourns, it stand adjourned until Monday at 6:00 o'clock. Those in favor of that motion will say aye. Those opposed, no. The Chair is in doubt. Those in favor will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the motion to fix the time to which to adjourn, the yeas are 33; the nays are 60.

PRESIDENT NISBET: The motion does not prevail. The question is now on the motion to adjourn. Those in favor will vote aye. Those opposed will vote no. Have you all

voted? If so, the secretary will lock the machine and tally the vote. Mr. Wanger.

MR. WANGER: I'm just standing here. (laughter)

SECRETARY CHASE: On the motion to adjourn, the yeas are 47; the nays are 49.

PRESIDENT NISBET: The motion does not prevail. Mr. Wanger.

MR. WANGER: There are many people who have left because of road conditions and other reasons in anticipation of adjournment. I move a reconsideration of this vote and I demand the yeas and nays.

PRESIDENT NISBET: The question is on the motion of Mr. Wanger for reconsideration of the vote for adjournment. Those in favor will vote aye. Those opposed, nay.

The motion does not prevail.

MR. WANGER: Mr. President, I demanded the yeas and nays and it seems to me that that's the question.

PRESIDENT NISBET: The question is on the demand for the yeas and nays. Sufficient number up. Those in favor of reconsideration will vote aye. Mr. Wanger.

MR. WANGER: Are we now voting by roll call vote on the question of reconsidering the previous motion?

PRESIDENT NISBET: We are voting by roll call vote on reconsidering the vote on the motion for adjournment.

MR. WANGER: Thank you.

PRESIDENT NISBET: The question is on the reconsideration of the vote. Ladies and gentlemen of the convention, in order to make this clear, we are now voting on the reconsideration of the vote on adjournment, Mr. Wanger's motion. Those in favor of reconsideration of the vote will vote aye. Those opposed to reconsideration will vote nay. Have you all voted? If so, the secretary will lock the machine and record the vote.

The roll was called and the delegates voted as follows:

Yeas—53

Bledsoe	Hubbs	Radka
Boothby	Hutchinson	Rajkovich
Brake	Karn	Shaffer
Buback	Kirk, S.	Shanahan
Butler, Mrs.	Knirk, B.	Sleder
Dell	Koeze, Mrs.	Snyder
Douglas	Krolikowski	Stafseth
Downs	Leibrand	Staiger
Elliott, Mrs. Daisy	Leppien	Stevens
Farnsworth	Lesinski	Suzore
Finch	Liberato	Thomson
Gadola	Madar	Tubbs
Gover	Mahinske	Wanger
Greene	Marshall	White
Hart, Miss	Nisbet	Wood
Hatch	Nord	Young
Heideman	Plank	Youngblood
Howes	Prettie	

Nays—47

Allen	Durst	McGowan, Miss
Austin	Elliott, A. G.	McLogan
Balcer	Erickson	Powell
Barthwell	Ford	Pugsley
Batchelor	Garvin	Richards, J. B.
Beaman	Goebel	Richards, L. W.
Bentley	Gust	Rood
Binkowski	Hannah, J. A.	Rush
Blandford	Haskill	Shackleton
Brown, G. E.	Hoxie	Sharpe
Conklin, Mrs.	Iverson	Spitler
Cudlip	Judd, Mrs.	Turner
Danhof	Kelsey	Upton
DeVries	King	Van Dusen
Doty, Dean	Kuhn	Yeager
Doty, Donald	Martin	

SECRETARY CHASE: On the motion to reconsider, the yeas are 53; the nays are 47.

PRESIDENT NISBET: The motion to reconsider prevails. The question is now on the motion to adjourn. Mr. Wanger.

MR. WANGER: Mr. President, I demand the yeas and nays.

PRESIDENT NISBET: Is the demand supported? A sufficient number up. Those in favor—Mr. Richards.

MR. L. W. RICHARDS: Mr. President, could we make a comment on this? I think Mr. Wanger did make a comment on the reason for not adjournment. I certainly appreciate—

MR. MARSHALL: Point of order, Mr. President.

PRESIDENT NISBET: A motion to adjourn is not debatable. The question is on the motion to adjourn. Those in favor will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and record the vote.

The roll was called and the delegates voted as follows:

Yeas—54

Binkowski	Hatch	Prettie
Bledsoe	Howes	Pugsley
Boothby	Hubbs	Radka
Brake	Hutchinson	Rajkovich
Buback	Karn	Shaffer
Butler, Mrs.	Kirk, S.	Sleder
Cudlip	Knirk, B.	Snyder
Danhof	Koeze, Mrs.	Stafseth
Dell	Krolikowski	Staiger
Douglas	Leibrand	Stevens
Downs	Leppien	Suzore
Elliott, Mrs. Daisy	Lesinski	Thomson
Farnsworth	Liberato	Tubbs
Finch	Madar	Wanger
Gadola	Marshall	White
Gover	Nisbet	Wood
Greene	Nord	Young
Hart, Miss	Plank	Youngblood

Nays—46

Allen	Ford	Martin
Austin	Garvin	McGowan, Miss
Balcer	Goebel	McLogan
Barthwell	Gust	Powell
Batchelor	Hannah, J. A.	Richards, J. B.
Beaman	Haskill	Richards, L. W.
Bentley	Heideman	Rood
Blandford	Higgs	Rush
Brown, G. E.	Hoxie	Shackleton
Conklin, Mrs.	Iverson	Sharpe
DeVries	Judd, Mrs.	Spitler
Doty, Dean	Kelsey	Turner
Doty, Donald	King	Upton
Durst	Kuhn	Van Dusen
Elliott, A. G.	Mahinske	Yeager
Erickson		

SECRETARY CHASE: On the motion to adjourn, the yeas are 54; the nays, 46. (applause)

PRESIDENT NISBET: The motion prevails. We are adjourned until—Mr. Marshall.

MR. MARSHALL: Mr. President, I would like, for the record, to change my vote from aye to nay and explain the reason.

MR. A.G. ELLIOTT: Mr. President—

MR. MARSHALL: I still have a right to explain my reason, Delegate Elliott. This morning there were very few people in the hall and there was considerable discussion among the delegates that because of the condition of the roads and the long distances that some had to travel, that they would adjourn early in order to permit these people an early start home. However, I note this afternoon that we do have a large group of people present in the constitution hall that were not here this morning. Therefore, I would change my vote from aye to nay and I'm willing to stay in session. (applause)

PRESIDENT NISBET: We are adjourned until 4:00 o'clock Monday afternoon.

[Whereupon, at 2:15 o'clock p.m., the convention adjourned until 4:00 o'clock p.m. Monday, March 12, 1962.]

NINETY-SEVENTH DAY

Monday, March 12, 1962, 4:00 o'clock p.m.

PROCEEDINGS

PRESIDENT NISBET: The convention will please come to order.

Our invocation today will be given by one of our own delegates, Mrs. Conklin. Will you please rise.

MRS. CONKLIN: Our heavenly Father, we turn to Thee this day with thanks for the blessings of health and strength and understanding. We thank Thee for our fellowship with one another during these past months and we ask Thy continued blessings upon us. Fill us with the confidence we need to do our work. Inspire our efforts, bless us all with a sure vision of our purpose, and guide us that we may understand Thy will and fulfill Thy purpose. May the words of our mouths and the meditations of our hearts always be acceptable in Thy sight, O Lord, our strength and our redeemer. Through Jesus Christ, our Lord. Amen.

PRESIDENT NISBET: The roll call will be taken by the secretary. Those present, please vote aye. If you are present, please vote aye. Have you all voted? If so, the secretary will record your presence.

SECRETARY CHASE: Mr. President, a quorum of the convention is present.

Prior to today's session, the secretary received the following requests for leave:

Mr. Dell will not be able to be here for the 4:00 o'clock session. He will try to make it by 8:00 o'clock this evening; Delegates Radka, Habermehl and Dehnke, Perras, Sablich, Perlich and Pellow wish to be granted temporary leave because of hazardous highway conditions en route; and Mr. Woolfenden, bad weather delayed his plane return from New York.

Judge Mosier had an auto accident Friday in Detroit. He was in the St. John hospital over the weekend; transferred to the Dowagiac hospital at 2:00 o'clock today. Dr. John Hickman reports that he walked into the hospital against orders with a broken vertebrae. He is not in traction, but will have to stay in the hospital for a few days. He requests indefinite leave.

PRESIDENT NISBET: Without objection, the requests are granted.

SECRETARY CHASE: Absent with leave: Messrs. Dade, Dehnke, Dell, A. G. Elliott, Habermehl, Haskill, Heideman, Hutchinson, Kelsey, Liberato, Madar, McCauley, Mosier, Pellow, Perlich, Perras, Radka, Sablich, Seyferth, Sterrett, Suzore, Upton, White, Wilkowski, Woolfenden, Yeager and Youngblood.

Absent without leave: Messrs. Bledsoe, Donald Doty, Douglas, Erickson and Higgs.

PRESIDENT NISBET: Without objection, the delegates are excused.

[During the proceedings the following delegates entered the chamber and took their seats: Messrs. Dehnke, Habermehl, Radka, Donald Doty, Higgs, Bledsoe, Dell, Douglas, Erickson, Pellow, Perlich, Perras, Sablich, Seyferth, White and Woolfenden.]

Reports of standing committees.

SECRETARY CHASE: The committee on style and drafting, by Mr. Cudlip, chairman, submits Report 31 of that committee, reporting back to the convention **Committee Proposal 8,** A proposal to provide that the governor may convene the legislature on extraordinary occasions;

with the recommendation that the style and form be approved.

William B. Cudlip, chairman.

For Committee Proposal 8 as reported by the committee on style and drafting, see below under date of April 24.

PRESIDENT NISBET: Referred to the order of second reading of proposals.

SECRETARY CHASE: The committee on style and drafting, by Mr. Cudlip, chairman, submits Report 32 of that committee, reporting back to the convention **Committee Proposal 9,** A proposal to provide that the governor may convene the legislature at other places when the seat of government becomes dangerous;

with the recommendation that the style and form be approved.

William B. Cudlip, chairman.

For Committee Proposal 9 as reported by the committee on style and drafting, see below under date of April 24.

PRESIDENT NISBET: Referred to the order of second reading of proposals.

SECRETARY CHASE: The committee on style and drafting, by Mr. Cudlip, chairman, submits Report 33 of that committee, reporting back to the convention **Committee Proposal 53,** A proposal to require that every tax law shall distinctly describe the tax, covering article X, section 6 of the present constitution;

with the recommendation that the style and form be approved.

William B. Cudlip, chairman.

For Committee Proposal 53 as reported by the committee on style and drafting, see below under date of April 19.

PRESIDENT NISBET: Referred to the order of second reading of proposals.

SECRETARY CHASE: The committee on style and drafting, by Mr. Cudlip, chairman, submits Report 34 of that committee, reporting back to the convention **Committee Proposal 54,** A proposal that the power of taxation shall never be surrendered, suspended, or contracted away, covering the material in article X, section 9 of the present constitution;

with the recommendation that the style and form be approved.

William B. Cudlip, chairman.

For Committee Proposal 54 as reported by the committee on style and drafting, see below under date of April 19.

PRESIDENT NISBET: Referred to the order of second reading of proposals.

SECRETARY CHASE: The committee on style and drafting, by Mr. Cudlip, chairman, submits Report 35 of that committee, reporting back to the convention **Committee Proposal 3,** A proposal to provide the governor shall be commander of the state armed forces;

with the recommendation that the style and form be approved.

William B. Cudlip, chairman.

For Committee Proposal 3 as reported by the committee on style and drafting, see below under date of April 24.

PRESIDENT NISBET: Referred to the order of second reading of proposals.

SECRETARY CHASE: The committee on style and drafting, by Mr. Cudlip, chairman, submits Report 36 of that committee, reporting back to the convention **Committee Pro-**

posal 4, A proposal to provide communication by the governor to the legislature on the condition of the state;
with the recommendation that the style and form be approved.
William B. Cudlip, chairman.

For Committee Proposal 4 as reported by the committee on style and drafting, see below under date of April 24.

PRESIDENT NISBET: Referred to the order of second reading of proposals.

SECRETARY CHASE: The committee on style and drafting, by Mr. Cudlip, chairman, submits Report 37 of that committee, reporting back to the convention **Committee Proposal 23,** A proposal to prohibit the issuance of evidences of state indebtedness, except as authorized by the constitution, to authorize state borrowing and prescribe the method therefor, to limit the use of state credit and to permit the loaning of state funds to school districts under certain conditions, and covering the general subject matter found in sections 11, 10, 12 and 28 of article X of the 1908 constitution;
with the recommendation that the style and form be approved.
William B. Cudlip, chairman.

For Committee Proposal 23 as reported by the committee on style and drafting, see below under date of April 19.

PRESIDENT NISBET: Referred to the order of second reading of proposals.

SECRETARY CHASE: That is all the committee reports, Mr. President.

PRESIDENT NISBET: Communications.

SECRETARY CHASE: None.

PRESIDENT NISBET: Motions and resolutions.

SECRETARY CHASE: There are no resolutions on file.

PRESIDENT NISBET: Unfinished business.

SECRETARY CHASE: None.

PRESIDENT NISBET: Special orders.

SECRETARY CHASE: No special orders.

PRESIDENT NISBET: **General orders.** Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, I move that the convention resolve itself into committee of the whole for the purpose of considering matters on the general orders calendar.

PRESIDENT NISBET: The question is on the motion of Mr. Van Dusen. All in favor say aye. Opposed, no.

The motion prevails. Mr. Van Dusen.

[Whereupon, Mr. Van Dusen assumed the Chair to preside as chairman of the committee of the whole.]

CHAIRMAN VAN DUSEN: The committee will come to order. When the committee of the whole last sat considering the judicial article, we had before us **Committee Proposal 91,** A proposal pertaining to the supreme court. We had considered one amendment to section a of Committee Proposal 91. There are other amendments pending. The secretary will read the first proposed amendment to section a of Committee Proposal 91.

For last previous action by the committee of the whole on Committee Proposal 91, see above, page 1564.

SECRETARY CHASE: Mr. William Hanna offers the following amendment:

1. Amend page 1, line 6, after "Sec. a.", by striking out the balance of the section and inserting "The supreme court shall consist of 9 justices to be elected for 10 year terms on a nonpartisan statewide ballot. Commencing at the first regular statewide election following the adoption of this constitution each political party at party convention may nominate 1 candidate for each position to be filled. An incumbent judge whose term is to expire may become a candidate by filing an affidavit of candidacy with the secretary of state not less than 180 days prior to the expiration of his term. Any person qualified to be a supreme court justice may also become a candidate upon the filing with the secretary of state a nominating petition signed by qualified electors in number equal to 3 per cent of the total vote cast for the office of governor at the last previous election. Vacancies shall be temporarily filled until the next statewide election by appointment of the governor until a successor is elected and qualified for the balance of the unexpired term but no such appointee shall be eligible to be a candidate for election to any office for 4 years after the temporary appointment.".

CHAIRMAN VAN DUSEN: The question is on the amendment to section a of Committee Proposal 91 offered by Mr. Hanna, on which the Chair will recognize Mr. Hanna.

MR. W. F. HANNA: Mr. Chairman, in view of our action last week I request that commencing with the word "Vacancies" in the amendment, "Vacancies shall be temporarily filled" be striken as we have covered that in the other proposal concerning vacancies, and it should not now be a part of this. So I should like to request at this time we strike that part.

CHAIRMAN VAN DUSEN: In accordance with your request, Mr. Hanna, that portion of the amendment will be withdrawn. The question is on the amendment as revised offered by Mr. Hanna. Do you wish to be recognized with respect to your amendment, Mr. Hanna?

MR. W. F. HANNA: Mr. Chairman, just a brief explanation. This would provide that incumbent judges whose terms were to expire can file an affidavit of candidacy and not be required to go back to their political parties. However, if a political party wishes to nominate an opponent, they could. They do not have to. Thirdly, if a person felt that someone who was nonpolitical, so to speak, or not able to secure the nomination of a political party, wanted to run, they could file petitions and become a candidate. This would seem to come as close to a nonpartisan election as we could get.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Hanna. Those who are in favor of the amendment, as revised, will say aye. Those opposed will say no.

The amendment, as revised, is not adopted. Are there further amendments to section a?

DELEGATES: Division.

CHAIRMAN VAN DUSEN: A division is requested on the amendment offered by Mr. Hanna. Is the request supported? It is supported. Mr. Ford.

MR. FORD: In deference to the fact that we are still trying to get organized with all this new material on the desk, I hope you can slow down a little bit because some of us who wanted to support the Hanna amendment were caught asleep at the switch.

CHAIRMAN VAN DUSEN: The Chair is afraid that your slumbers lasted too long. Mr. Hanna.

MR. W. F. HANNA: Mr. Chairman, could the amendment be read again?

CHAIRMAN VAN DUSEN: The Chair will ask the secretary to read the amendment again. Mr. Garvin.

MR. GARVIN: Mr. Chairman, do we have a copy of that amendment in all of our pile of things here?

CHAIRMAN VAN DUSEN: Yes. The amendment is on the desk of every delegate as a part of a 3 sheet item captioned, Amendments Pending to Committee Proposal 91, 3-9-62. It is the second of those amendments. The secretary will read the amendment.

MR. GARVIN: We are kind of rushed here.

SECRETARY CHASE: Mr. William Hanna has offered the following amendment as revised:

1. Amend page 1, line 6, after "Sec. a.", by striking out the balance of the section and inserting "The supreme court shall consist of 9 justices to be elected for 10 year terms on a nonpartisan statewide ballot. Commencing at the first regular statewide election following the adoption of this constitution each political party at party convention may nominate 1

candidate for each position to be filled. An incumbent judge whose term is to expire may become a candidate by filing an affidavit of candidacy with the secretary of state not less than 180 days prior to the expiration of his term. Any person qualified to be a supreme court justice may also become a candidate upon the filing with the secretary of state a nominating petition signed by qualified electors in number equal to 3 per cent of the total vote cast for the office of governor at the last previous election.".

Mr. Hanna has withdrawn the balance of that amendment.

CHAIRMAN VAN DUSEN: For what purpose does the gentleman rise, Mr. Lawrence?

MR. LAWRENCE: I think I would like to request that this amendment, as now revised, be divided into 2 questions. The first sentence being one, and the remainder of the amendment being the second part.

CHAIRMAN VAN DUSEN: Your request is in order, Mr. Lawrence. The question will be divided. Mr. Mahinske.

MR. MAHINSKE: Are you putting up for a vote now the second half that was striken by the proponent?

CHAIRMAN VAN DUSEN: No. Mr. Lawrence requested that the remaining portion of the amendment, after its revision, be divided into the first sentence, which reads "The supreme court shall consist of 9 justices to be elected for 10 year terms on a nonpartisan statewide ballot" be put first, and that the balance be put second. Is that correct, Mr. Lawrence?

MR. LAWRENCE: Yes.

CHAIRMAN VAN DUSEN: The question is on the first sentence of the Hanna amendment. Mr. Iverson.

MR. IVERSON: Mr. Chairman, may I ask Mr. Hanna a question?

CHAIRMAN VAN DUSEN: Only with unanimous consent, Mr. Iverson.

MR. BENTLEY: I object, Mr. Chairman.

CHAIRMAN VAN DUSEN: There is objection. The question is on the first sentence of the Hanna amendment, which the secretary will read.

SECRETARY CHASE: The first sentence is:

[The first sentence of the amendment was read by the secretary. For text, see above, page 1569.]

CHAIRMAN VAN DUSEN: For what purpose does the gentleman rise, Mr. Ford?

MR. FORD: It seems that we are now talking about something we spent several hours with the other day and had to leave because we couldn't come to a solution.

CHAIRMAN VAN DUSEN: Mr. Ford, debate is not in order at this time.

MR. FORD: I am not going to debate. I am going to make a motion that we reconsider this so that we can discuss this matter before we dispose of it summarily. This is the keynote of the whole judicial article.

CHAIRMAN VAN DUSEN: Is there objection to reconsidering the vote with respect to the Hanna amendment?

MR. BENTLEY: I object because there has been no vote yet.

MR. FORD: There has been a vote and a ruling by the Chair.

MR. BENTLEY: Division has been asked for.

CHAIRMAN VAN DUSEN: Division has been asked for and ordered. The secretary advises that the motion is in order. The question is on the motion of Mr. Ford. The Chair suspects no motion is actually necessary, Mr. Ford. If there is no objection—

MR. BENTLEY: I object.

CHAIRMAN VAN DUSEN: Mr. Bentley objects to debate. The motion, however, is in order. Those in favor of reconsidering the vote by which the Hanna amendment as revised was not adopted will say aye. Those opposed will say no.

The motion to reconsider prevails. The question now is on the Hanna amendment as revised. Debate is in order. Mr. Ford, do you desire to be recognized?

MR. FORD: Mr. Chairman, I am still trying to find my copy of the Hanna amendment. If somebody else has a question, I would like to defer to them.

CHAIRMAN VAN DUSEN: Mr. Iverson, I believe that you had a question.

MR. IVERSON: You mean I am safe to ask a question now, Mr. Chairman?

CHAIRMAN VAN DUSEN: It is in order now, Mr. Iverson.

MR. IVERSON: Mr. Hanna, may I ask you: in qualifying "by a candidate with petitions," would you foresee any possible difficulty with respect to holding a primary, or what was your plan on that?

MR. W. F. HANNA: Mr. Chairman, Mr. Iverson, having circulated petitions on a nonpartisan ballot, I conceive of this to be a very difficult job, and especially when statewide. Three per cent of the vote cast for governor is quite a sizable number of signatures for a self starter. I did not conceive that it would be necessary to have a primary, though it is conceivable that you could have the incumbent, 1 judge from each political party, and 1 or 2 filing by petition and have 5 men running for 1 vacancy.

MR. IVERSON: Well, then, you did not provide for the partisan conventions if they so desire to nominate a candidate in each such instance?

MR. W. F. HANNA: Yes. They may. I did not require them to. Each political party at party convention may nominate 1 candidate for each position to be filled.

MR. IVERSON: Oh, yes.

MR. W. F. HANNA: I would assume that that is where the nominees would come from.

MR. IVERSON: Then, Mr. Chairman and Mr. Hanna, as far as the man who desires to run, if he obtains 3 per cent of the total vote cast for governor, or if there were 3 or 4 who were able to obtain that many signatures, they would all be listed on the primary election ballot?

MR. W. F. HANNA: No.

MR. IVERSON: Not the primary, but the general election?

MR. W. F. HANNA: General election ballot.

CHAIRMAN VAN DUSEN: Dr. Pollock.

MR. POLLOCK: Could I ask Mr. Hanna a question?

CHAIRMAN VAN DUSEN: If the gentleman cares to answer.

MR. POLLOCK: Mr. Hanna, I notice the figure 9. Nine is just 1 more than at present. I can understand the reason for making it an odd number, but why wasn't it 7 instead of 9?

MR. W. F. HANNA: Practical politics, Mr. Pollock. I did not want to deprive any of the incumbent justices of the privilege of running, other than so that they wouldn't have to run against other incumbents.

MR. POLLOCK: Actually the needs of the situation do not require an extra justice?

MR. W. F. HANNA: No, sir. This was political expediency.

CHAIRMAN VAN DUSEN: Judge Leibrand.

MR. LEIBRAND: May I inquire of Mr. Hanna?

CHAIRMAN VAN DUSEN: If the gentleman cares to answer.

MR. LEIBRAND: As I understand it, Mr. Chairman, the question has now been divided so that we would first be considering only the first sentence, is that correct?

CHAIRMAN VAN DUSEN: That is correct, Judge Leibrand.

MR. LEIBRAND: Then, as I read the sentence, Mr. Hanna, that would continue in effect just what we have now, except that the number of justices would be increased from 8 to 9 and the terms would be increased from 8 years to 10 years. Am I wrong in this viewpoint of the first sentence of your amendment?

MR. W. F. HANNA: Mr. Chairman, Mr. Leibrand, you are correct.

MR. LEIBRAND: Thank you.

CHAIRMAN VAN DUSEN: Mr. Martin.

MR. MARTIN: Mr. Chairman, just one question to Mr. Hanna. This amendment doesn't contain anything with respect to an incumbency designation. Are you leaving that out because it is being dealt with somewhere else, or what is the situation?

CHAIRMAN VAN DUSEN: Mr. Hanna.

MR. W. F. HANNA: Mr. Chairman, Mr. Martin, I believe this was dealt with elsewhere. We have already said that any incumbent judge was entitled to the incumbency designation. This was under, as I understand it, the general provisions of Committee Proposal 96; applied to all judges and justices.

MR. MARTIN: Would this apply to a justice who had been appointed as distinguished from a justice who had been elected?

MR. W. F. HANNA: Mr. Chairman, Mr. Martin, I am assuming that no judges will be appointed as we have now proceeded, but that we are now proceeding along the line whereby vacancies which exist will be temporarily filled by the supreme court, and the vacancy permanently filled not by appointment but by election.

MR. MARTIN: So that in an election where a vacancy was being filled, there would be no one running with an incumbency designation, am I right?

MR. W. F. HANNA: Unless one of the current members of the supreme court saw fit to resign and run for a new term, and I suppose he would be entitled to an incumbency designation.

CHAIRMAN VAN DUSEN: Mr. Downs, were you seeking recognition?

MR. DOWNS: No.

CHAIRMAN VAN DUSEN: Mr. Iverson.

MR. IVERSON: Mr. Chairman, it seems to me, in reading over this first sentence, the answer Mr. Hanna gave to Judge Leibrand was not correct, because as I read the last part of the sentence it does include the right of an incumbent to qualify by filing an affidavit. Is that right?

CHAIRMAN VAN DUSEN: Mr. Iverson, Judge Leibrand's question was directed only to the first sentence.

MR. IVERSON: That is right, and that is included in the first sentence, is it not?

MR. W. F. HANNA: The first sentence stops after "statewide ballot."

MR. IVERSON: That's in 2 parts.

CHAIRMAN VAN DUSEN: The question is on the first sentence of the amendment offered by Mr. William Hanna. Mr. Ford.

MR. FORD: Mr. Chairman, we had some opportunity to look at this the other day. Although this is somewhat of a departure from the language advocated by the minority of the committee in its minority report to the committee's proposed amendment to Committee Proposal 96, there is nothing new here in this language that is too startling except the 10 year term. No one has talked about a 10 year term before now. The committee has recommended the 9 judges. Mr. Hanna was not a member of the committee when the recommendation was made, or when we discussed the reasons for it. There were reasons other than political expediency. I think the chairman of the committee gave several of them when we started to discuss section a on the day that we finally passed over it.

Although this is a departure from the present procedure, in that it permits an incumbent judge to renominate himself without reference or recommendation of any of the political parties in the state, it certainly seems preferable to any of the other proposals that have been made on the floor and elsewhere here, and I would urge support of this amendment, making it very clear that from where I stand I consider this a retreat in the form of compromise in an attempt to get something that will serve the state of Michigan, and it may not make all of the members of either of the 2 parties represented here happy, but at least we are now openly—and I am speaking for the members of the minority on the committee—making an attempt to compromise on this very important part of the judicial article, in an attempt to resolve a very knotty problem. I think that we should look at it very carefully and give it consideration with that thought in mind.

CHAIRMAN VAN DUSEN: Mr. Barthwell.

MR. BARTHWELL: Mr. Chairman, fellow delegates, before I would be in a position to support this amendment, I have very serious concern about increasing the number of justices to 9 because we have listened in the committee at the work load of the court now, and I am of the opinion that if we get an appellate court, I doubt very seriously if we would need the 9 justices, and I don't know what we are going to increase the number for.

CHAIRMAN VAN DUSEN: The question is on the first sentence of the amendment offered by Mr. William Hanna, which the secretary will read.

SECRETARY CHASE: The first sentence is:

1. Amend page 1, line 6, after "Sec. a.", by striking out the balance of the section and inserting "The supreme court shall consist of 9 justices to be elected for 10 year terms on a nonpartisan statewide ballot.".

CHAIRMAN VAN DUSEN: Division has been ordered. Those who are in favor—Mr. Norris.

MR. NORRIS: Mr. Chairman, I would like to ask a question, if I may, of Mr. Danhof, chairman of the judicial committee.

CHAIRMAN VAN DUSEN: If the gentleman cares to answer, Mr. Norris.

MR. NORRIS: I gather that serious attention was accorded the matter of the number of justices on the supreme court by your committee, and that relevant data regarding the work load was of appreciable moment to the committee. Could you help us with regard to what the thinking was of your committee and of the justices regarding the work load in the event that there would be an intermediate appellate court?

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: Mr. Chairman, Mr. Norris, let me start with this particular statement: we first agreed that we should go to an odd number. We felt that with the court of appeals, the supreme court should consist of an odd number of justices so that we wouldn't have 4 to 4 decisions, which seem to be undesirable, at least to a lot of people. Then you reach the problem of whether it should be 7 or 9. The reason that we reached 9 in the original committee proposal was because of the district system which, from a geographical and from a district setup, was ideally suited. That is, it should become 9, considering Wayne county, and if you are going to elect by districts it should be 9. As Mr. Barthwell pointed out, we had considerable discussion concerning whether we should go back to 7 or leave it at 8, or go to 9. Because of the fact that we reached the district system, we put in 9.

From a work load, it is somewhat difficult to ascertain. The present work load of the court would seem to indicate that 8 is sufficient, and they could probably do it with 7, assuming a court of appeals; that is, they could handle the work. I don't have any doubt about that. I think we get back to what Mr. Hanna points out—political expediency, acceptance by the public, and so forth. My own personal views are that I would rather increase to 9. It seems this is what we have in the U. S. supreme court. I think the people somewhat expect it, and I think that 9 would be a preferable compromise rather than 7. From the work load standpoint, the work load is not such, I do not think, that it could not be handled by 7, but we would hope that they would continue to improve the consideration that they give to cases, and my own personal recommendation would be 9.

I submit, Mr. Norris, there is nothing magical about the number. You can go either way, and I think you will get a good court, a court that can handle the business. I think the best consideration is the idea of the political expediency and the fact that the terms are so set so they will be running at regular intervals. Now, of course, with the 9 from the districts it worked out fine. Mr. Hanna's plan is 9 on a 10 year term. How would this work out? You are going to

elect some every 2 years. You would have 2 every 2 years and 3 on the one election. If you have 7, then you probably would have to reduce the term to less than 10 years.

Mr. Ford just handed me the results of the bar poll, and the question was, "How many members should the supreme court have?" For 8, 3,147; 9, 4,286; and 321 for any other number, which we will mark as 7. So it appears that the majority of the attorneys, at least, is thinking of a court of 9. I think perhaps it is just history that they think 9 more than anything else, and 5 to 4 decisions they are used to, and things like that. That is about the explanation that I can give you.

CHAIRMAN VAN DUSEN: Mr. Lawrence.

MR. LAWRENCE: In connection with that first sentence, it seems to me we ought to give a little more consideration to the increasing of the number of justices before definitely deciding. For that reason, it seems to me we should vote against the first sentence. After all, the United States supreme court—handling the work of 50 states, and I don't know how many circuit court of appeals—has 9 men. It hardly seems to me that if we provide a court of appeals for our own state, from which appeals can only be taken by leave to appeal, that it would be necessary to saddle the people with 2 extra judges; in other words, from 7 to 9, if 7 could do the work.

The problem of how to reduce the number from 8 to 7, I will be very frank with you, I think presents something for consideration, and that is why I am wondering if it might be possible to vote against this at this time and see if something couldn't be worked whereby maybe the present number could continue until such time as there was a retirement or a person who would not be running again, or an incumbent judge who did not run again, and in that way reduce the number without hurting present justices. For that reason, it seems to me that a little more time should be given before adopting this.

CHAIRMAN VAN DUSEN: Mr. Downs.

MR. DOWN: I have a point of parliamentary inquiry, Mr. Chairman. Could we divide the sentence by leaving out the figure 9 or the figure 7 so it would read, "The supreme court shall consist of justices to be elected for a 10 year term," and so forth? If that could be done, I would like to request a division of the sentence and then speak on it.

CHAIRMAN VAN DUSEN: The Chair takes it, Mr. Downs, that the purport of your request is that we will vote first on the question of the supreme court consisting of justices to be elected to a 10 year term on a nonpartisan statewide ballot, and then on the question of the number of justices.

MR. DOWNS: That is correct.

CHAIRMAN VAN DUSEN: The question is so divisible, Mr. Downs, and if you request it it will be so divided.

MR. DOWNS: I request a division accordingly, Mr. Chairman. I would like to speak briefly on it. The reason for that is I do believe that we are coming to considerable agreement on this very important judicial section, and I think Delegate Ford indicated that perhaps it is not the first choice of any delegate, but perhaps it is one that is the second choice of an overwhelming number of delegates, and I would not like to see the first sentence fall because of the difference over the number of justices. I think there is considerable merit in this. As it now stands it provides we should have an elected supreme court for a 10 year term, a nonpartisan ballot and a statewide election, and I would hope that people can support this who might differ on the number of justices, and then we could handle that question separately. I therefore urge support of the amendment as it has been divided.

CHAIRMAN VAN DUSEN: The question is upon the portion of Mr. Hanna's amendment which reads as follows:

1. Amend page 1, line 6, after "Sec. a.", by striking out the balance of the section and inserting "The supreme court shall consist of justices to be elected for 10 year terms on a nonpartisan statewide ballot.".

Mr. Danhof, do you desire to be recognized on that question?

MR. DANHOF: Well, we are referring to the number. I think that would be in order.

CHAIRMAN VAN DUSEN: The number is not before us at the moment, unless you want to discuss it generally. The question as put will not include the number.

MR. DANHOF: Whether it be 9 or 7, when we get to that I can further get some information to Mr. Norris.

CHAIRMAN VAN DUSEN: We will get to that later, Mr. Danhof. The question now is upon the Hanna amendment which reads, "The supreme court shall consist of justices to be elected for 10 year terms on a nonpartisan statewide ballot." Division has been ordered. Those who are in favor of that portion of the Hanna amendment will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the adoption of the first sentence of the Hanna amendment without the number of justices, the yeas are 56; the nays are 52.

CHAIRMAN VAN DUSEN: That part of the amendment is adopted. The question is now upon the second portion of the first sentence of Mr. Hanna's amendment, inserting the figure "9" before "justices". Mr. Ostrow.

MR. OSTROW: Mr. Chairman, ladies and gentlemen of the committee, I support Mr. Hanna's amendment to have 9 justices of the supreme court, and I am at a loss to understand this committee quibbling about the services of 2 people. The state of Michigan spends $5 million a day. We have 1 commission, the civil service commission, which has as its constitutional budget 1 per cent of the entire state payroll. We have provided for 80 people to set policy for 10 universities, when those universities are equipped with presidents, deans, assistants to the presidents, and an unlimited number of policy making people, including the highest paid state official in the state of Michigan. Under those circumstances, to quibble about the services of 2 justices is just not understandable to me.

CHAIRMAN VAN DUSEN: The Chair will ask the committee to be in a little better order, please. Mr. Danhof.

MR. DANHOF: Mr. Chairman, members of the committee, in further answer, perhaps, on this number, and to answer Mr. Norris' inquiry: Mr. Norris, from 1930 to 1957 the average case load per opinion per justice was 45.3. Now, as you have noted before, this was extremely high during the depression years, '31, '32, '33. It went down to a low of about 32.2 in 1946. In 1960, from the information we obtained from Justice Souris, the opinion load per judge was 32.8. In 1959 it was 30.1, and in 1958 it was 35.9. In 1957, by the way, it was 29.6. So it reached a low in the middle '50s, and now has been seemingly climbing back to a more substantial number. Now, if you reduce this to 7, and assuming a relatively same case load, although it could be lightened considerably by reason of the fact that we have a court of appeals, you can find the per opinion.

For the information of the committee I have here the number of members of the supreme courts over all of the states in the union. There are 5 states that have 9 members on the supreme court, to my best account. There are 23 states that have 7 members on the supreme court. Then the remainder of the states go down from 7 through 5 to 3, with the more sparsely populated states having but 3 justices; Alaska being the last to set up a court having 3 justices. Iowa set up a 5 man supreme court. The largest number of states do have 7 members in their particular supreme courts. For those of you who are interested in surrounding states, Illinois has 7, Indiana has 5, New York has 7, Pennsylvania has 7, Ohio has 7. The states with 9, for your information, are Washington, Texas, Oklahoma, Iowa, and there is one more. This is for the information of the committee as you vote upon the numbers. My own personal opinion is, I would support Mr. Ostrow.

CHAIRMAN VAN DUSEN: Mr. Wanger.

MR. WANGER: Mr. Chairman, members of the committee, I urge you to very seriously consider this matter and cast your vote in favor of the number 7 rather than in favor of the number 9. I think that other things being equal we can all see that a court of 7 can operate more efficiently and more rapidly on matters than can a court of 9. With respect to the question of expediency, I would think it would be quite expedient for the convention to demonstrate that it is possible

to reduce the number of office holders in a particular branch of government when the logical arguments would indicate that would be desirable. Therefore, I urge you to vote against the number 9 so that the number 7 may be adopted.

CHAIRMAN VAN DUSEN: Mr. Norris.

MR. NORRIS: Mr. Chairman, members of the committee, I would subscribe to the idea that there ought to be 9 justices in accordance with the original Hanna amendment for 2 reasons. First, I think we can anticipate, as a result of the provision which we have thus far adopted regarding administrative tribunals, a very sizable number of appeals which would go all the way to the Michigan supreme court. I think the kind of tests which have thus far been looked upon with favor, namely, that the tribunal ought to evaluate evidence on the basis of reliability, probativeness and substantiality will mean that the courts will be the basis for a considerable volume of increased business. I think if that is the intent of the convention, then we ought to provide for that contingency. The second reason that I subscribe to the number 9, because of an increased volume of business, is because it can reasonably be anticipated that a sizable number of criminal appeals which will go to the intermediate appellate court might also by leave be entertained by the supreme court, and if we are interested in seeing that this process be accorded all the way up, it seems to me we ought to be thinking in terms of providing the judicial means for this anticipation. I think that these 2 reasons can be amplified, Mr. Chairman, by other types of things which we are doing in this convention which will increase the work load of the courts and increase the work load of the appellate court. I would therefore urge the support of 9 as the number of Michigan supreme court justices.

CHAIRMAN VAN DUSEN: Mr. Faxon.

MR. FAXON: Point of information, Mr. Chairman. I understand there was no amendment offered to insert the number 7. I understand some people are talking about voting for 7. Is there an amendment for that?

CHAIRMAN VAN DUSEN: The question before the committee is inserting the figure "9" before the word "justices" in the first line of Mr. Hanna's amendment.

MR. FAXON: And there is no amendment?

CHAIRMAN VAN DUSEN: There is no amendment for the number 7 currently before the committee, Mr. Faxon.

MR. FAXON: Thank you.

CHAIRMAN VAN DUSEN: Mr. Garry Brown.

MR. G. E. BROWN: Parliamentary inquiry, Mr. Chairman. If the number 9 is to be used, is this an amendment? As I understand, the committee proposal presently reads 9.

CHAIRMAN VAN DUSEN: The Hanna amendment, Mr. Brown, is a complete substitute for section a.

MR. G. E. BROWN: However, the first sentence, Mr. Chairman, is the first sentence of the committee proposal in section a.

CHAIRMAN VAN DUSEN: Mr. Brown, the Hanna amendment is, as the Chair stated, a complete substitute for section a of Committee Proposal 91 as it has been divided. The committee has now adopted a sentence reading as follows, "The supreme court shall consist of justices to be elected for 10 year terms on a nonpartisan statewide ballot." The question now is inserting the figure "9" before the word "justices".

MR. G. E. BROWN: I accept the ruling of the Chair.

CHAIRMAN VAN DUSEN: Division has been ordered. Mr. Lawrence.

MR. LAWRENCE: To clear up any question on it, the proposed amendment to Committee Proposal 91 filed by Mrs. Judd, Mr. Tubbs and myself, which was, in effect, the ABA plan, and the part on section g was voted down, contained at the top a substitute for section a, which has in it that there shall be 7 justices. So there is an amendment in to that effect. That was not voted on.

CHAIRMAN VAN DUSEN: The question is on the portion of the Hanna amendment which inserts the figure "9" before the word "justices" in the first line. Division has been ordered. Mr. Faxon.

MR. FAXON: I just think it is interesting to note that at the time the federal constitution was adopted back in 1789, and they approved the number 9, the population at that time was less than 2 million people. I support 9. I should think there is reasonable division behind that number.

CHAIRMAN VAN DUSEN: Those in favor of the Hanna amendment to insert the figure "9" before the word "justices" in the first line of section a will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the adoption of the number of justices at 9, the yeas are 84; the nays are 27.

CHAIRMAN VAN DUSEN: The amendment is adopted. The question now is upon the balance of the Hanna amendment as revised, which the secretary will read.

SECRETARY CHASE: "Commencing at the first regular statewide election following the adoption of this constitution each political party at party convention may nominate 1 candidate for each position to be filled. An incumbent judge whose term is to expire may become a candidate by filing an affidavit of candidacy with the secretary of state not less than 180 days prior to the expiration of his term. Any person qualified to be a supreme court justice may also become a candidate upon the filing with the secretary of state a nominating petition signed by qualified electors in number equal to 3 per cent of the total vote cast for the office of governor at the last previous election.".

CHAIRMAN VAN DUSEN: Those who are in favor of that portion of the Hanna amendment as so read will vote aye. Those who are opposed will vote no. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the adoption of the amendment, the yeas are 52; the nays are 59.

CHAIRMAN VAN DUSEN: The amendment is not adopted. Are there further amendments to section a of Committee Proposal 91? Mr. Downs.

MR. DOWNS: Point of inquiry, Mr. Chairman.

CHAIRMAN VAN DUSEN: State your point, Mr. Downs.

MR. DOWNS: Now that we have voted on this whole section, is it in order to offer as an amendment any one sentence of that?

CHAIRMAN VAN DUSEN: You mean any one sentence of the Hanna amendment?

MR. DOWNS: For example, would it be in order to offer the second sentence, "Commencing at the first regular statewide election?" Could that be offered as an amendment now that we have voted on the 3 sentences?

CHAIRMAN VAN DUSEN: In the opinion of the Chair, Mr. Downs, that would be in order.

MR. DOWNS: Well, I will —

CHAIRMAN VAN DUSEN: There may be other pending amendments, however.

MR. DOWNS: Oh, I am sorry. If there are others — I don't have it written. I just want to know if that would be in order. Are there other pending amendments, Mr. Chairman?

CHAIRMAN VAN DUSEN: Mr. Secretary, have you further amendments to section a? Mr. Lundgren.

MR. LUNDGREN: Point of order, Mr. Chairman. It seems the other day when we had some amendments here, and they were both ruled by yourself that they were the same thing to each other, and when one was defeated the other one could not be brought on the floor. I presume this follows the same course?

CHAIRMAN VAN DUSEN: The situation is a little bit different here, Mr. Lundgren, in that had one of these sentences been offered alone and defeated, in the opinion of the Chair it would not then have been in order unless so completely combined with the other provisions as to make a new thought. Where, however, several ideas are presented at once and defeated as a package, one of those ideas which stands alone independently, and would have a different meaning if divided, would, in the opinion of the Chair, be in order.

MR. LUNDGREN: Is that the "judge's" ruling?

CHAIRMAN VAN DUSEN: That is the "judge's" ruling subject to the appeal which is always available, Mr. Lundgren. Mr. Everett.

MR. EVERETT: Parliamentary inquiry, Mr. Chairman. Have we not carried the first sentence of the Hanna amendment but none of the rest of it?

CHAIRMAN VAN DUSEN: Section a now reads, "The supreme court shall consist of 9 justices to be elected for 10 year terms on a nonpartisan statewide ballot." Are there further amendments to section a? There are no further amendments to section a, Mr. Downs.

MR. DOWNS: May I offer the amendment from the floor? What we have before us—it would be the first sentence of what we just voted on, "Commencing at the first regular statewide election following the adoption of this constitution each political party at party convention may nominate 1 candidate for each position to be filled."

SECRETARY CHASE: Mr. Downs offers the following amendment:

1. Amend page 1, line 6, after "statewide ballot.", by inserting the second sentence of Mr. Hanna's amendment which reads as follows, "Commencing at the first regular statewide election following the adoption of this constitution each political party at party convention may nominate 1 candidate for each position to be filled.".

CHAIRMAN VAN DUSEN: Mr. Hoxie.

MR. HOXIE: Mr. Chairman, point of order. The question was not divided. It is identical language. I question the amendment is in order.

CHAIRMAN VAN DUSEN: The identical point was just made by Mr. Lundgren, Mr. Hoxie, and it was the opinion of the Chair that because the language might have a different meaning if combined with the remaining sentences than it has standing alone, it is in order as a separate amendment at this time.

Those who are in favor of the amendment offered by Mr. Downs will say aye. Those opposed will say no.

The amendment is not adopted. Are there further amendments to section a? If not, the secretary will —

SECRETARY CHASE: Mr. Chairman, Mr. Ford offers the following amendment:

1. Amend page 1, line 6, after "ballot.", by inserting "Nominations for justices of the supreme court shall be made as now or hereafter provided by law.".

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Ford, on which the Chair will recognize Mr. Ford.

MR. FORD: You can find this language in the present Constitution of 1908 on page 23 of the little volume. If you want to find it quickly, it is section 23 of article VII, and it is found in about the middle of the section.

This came about as a result of the fact that in 1939, and again in 1947, and again in 1955, the people of this state adopted a series of amendments to the constitution establishing nonpartisan elections, and it was apparently determined at that time, or at those times, that the method of nomination of the supreme court could not be frozen into the constitution, become a rigid system. Now, the language that is proposed in this amendment would permit a district plan of nomination. It would permit a nomination by partisan primary or by party convention, as is now conducted, or it would permit a statewide nomination. It would permit, in other words, a nomination in any way that the legislature might see fit to establish in the future and, of course, as I indicated the other day, we felt that this might be preferable to trying here to arrive at a specific method of nominations, because if a method is arrived at by the legislature and found to be unsatisfactory, they can change it and do something else. But at least this is a step toward the direction of allowing the legislature latitude to work out the best possible system that might be used in the state of Michigan from time to time without saddling the state with a specific system which can only be changed by constitutional amendment.

CHAIRMAN VAN DUSEN: On the Ford amendment, the Chair recognizes Mr. King.

MR. KING: Mr. Chairman, fellow delegates, could I offer an amendment to Mr. Ford's amendment from the floor?

CHAIRMAN VAN DUSEN: Without objection, Mr. King, and in any event the Chair would request that you submit it in writing at the earliest opportunity.

MR. KING: What I have in mind is: in line 3 of Mr. Hanna's amendment I would follow the wording of Mr. Ford's amendment by putting in the words "however, provided that," and then line 3, "an incumbent judge whose term is to expire may become a candidate by filing an affidavit of candidacy with the secretary of state not less than 180 days prior to the expiration of his term."

CHAIRMAN VAN DUSEN: Does the secretary have the amendment?

SECRETARY CHASE: Mr. King offers the following amendment to the amendment offered by Mr. Ford:

1. Amend the amendment, at the end thereof, after "law" by changing the period to a colon and inserting "Provided however, That an incumbent judge whose term is to expire may became a candidate by filing an affidavit of candidacy with the secretary of state not less than 180 days prior to the expiration of his term.".

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. King to the amendment offered by Mr. Ford, and on the King amendment the Chair would recognize Mr. King.

MR. KING: Speaking very briefly, Mr. Chairman, I would just state that this part of Mr. Hanna's amendment, I think, appeals to a lot of us. If Mr. Ford's amendment passes, there is no reason to believe that the situation in the future will be any different than it is at the present time; which might be all right. I am not seriously objecting to that, but I do think that an incumbent judge ought to have the right to nominate himself without going back to a party convention. This I conceive to be one of the primary evils in the present system, and for that reason I would urge the support of my amendment to Mr. Ford's amendment.

CHAIRMAN VAN DUSEN: Mr. Barthwell.

MR. BARTHWELL: Mr. Chairman, I would like to ask Delegate King a question through the Chair. Then, if an incumbent judge is a member of one party, would the party have a right to nominate another candidate also?

CHAIRMAN VAN DUSEN: Mr. King.

MR. KING: I would see nothing in my amendment that would prevent that.

MR. BARTHWELL: Okay, thank you.

CHAIRMAN VAN DUSEN: Mr. Downs, do you desire to be recognized on the King amendment?

MR. DOWNS: Yes. Mr. Chairman, I wish to speak against the King amendment, and not for — well, perhaps more for the argument of consistency. I did vote for the provision of the Hanna amendment that would provide for the 3 systems of nominations; that is, by convention, by affidavit and by petition. However, since the committee did turn that down, as well as my attempt to start this piecemeal — I would have put the other pieces in, Mr. King, if the other had passed — I think that we should be consistent and either provide completely for the method of nomination or do as Mr. Ford's amendment does, leave it entirely up to the legislature. I think by leaving that up to the legislature, the legislature, if it wishes to, could include the amendments suggested by Mr. King, it could include the other systems suggested by Mr. Hanna. I, therefore, more on the basis of consistency, which I think on occasion has arguments in its favor, suggest that we vote the King amendment down to be consistent with our other section and leave it simply "as provided by law," with the first sentence already adopted.

CHAIRMAN VAN DUSEN: Mr. Lawrence.

MR. LAWRENCE: Mr. Chairman, I think this should be passed at this time. Actually this part that is being brought up now is the same thing, different wording, that we attempted in Committee Proposal 96, section 1, and which, as Miss Donnelly pointed out, should be held off until after we decided on the method of selecting supreme court justices, and it was favorably voted on by this committee. This is exactly the same

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proposition, and should be put over along with the section 1 of 96 to be considered after the supreme court method of selecting judges has been decided.

I am in favor of Mr. King's amendment, the self nomination or filing of a candidacy affidavit by an incumbent. I don't believe that it should be left to the legislature or we will have the same thing we have had in the past, which brings politics every so often back into the court. Therefore I would move that this be passed, along with section 1 of Committee Proposal 96, until after consideration of Committee Proposals 91, I believe it is, and 92, if those are the ones for the supreme court and the appellate court.

CHAIRMAN VAN DUSEN: The question is on the motion of Mr. Lawrence to defer further consideration of the King amendment until after Committee Proposal 91 has been finally acted upon. Has the Chair correctly stated your motion, Mr. Lawrence?

MR. LAWRENCE: Mr. Chairman, things have been going so fast here that — the proposal that I am referring to is the method of election of the supreme court and the method of election of the appellate court, if an appellate court is provided for. We are on Committee Proposal 91. I am not assuming we will keep an appellate court; for some reason I am assuming, maybe irrationally, we will keep a supreme court. Yes, it would be after completion of 91 and 92.

CHAIRMAN VAN DUSEN: The question is on the motion — Mr. Romney.

MR. ROMNEY: I rise to support the Lawrence motion to postpone, in line with our consideration the other day. On the other hand, if we are not going to postpone consideration of this, I think it imperative that we approve the King amendment. The most indefensible aspect is the matter that the King amendment deals with.

CHAIRMAN VAN DUSEN: The question is on the motion of Mr. Lawrence to defer further consideration of the King amendment until after the committee has dealt with Committee Proposals 91 and 92. Mr. King.

MR. KING: Mr. Chairman, I would like to speak against Mr. Lawrence's motion simply for the reason that I don't know how to vote on Mr. Ford's amendment unless I have at least this much protection against this evil which I foresee in the present system, and for which I have no reason to believe will be changed in the future by the legislature. So I would urge that you defeat the Lawrence motion and then pass the King amendment, and then do as you see fit on the Ford amendment.

CHAIRMAN VAN DUSEN: Mr. Lawrence, did you desire to correct the Chair's statement of your motion?

MR. LAWRENCE: Yes. I am tempted to defer both Mr. King's amendment and the Ford amendment.

CHAIRMAN VAN DUSEN: Mr. Lawrence's motion is to defer further consideration of the King amendment and the Ford amendment until the completion of consideration of Committee Proposals 91 and 92. Mr. Ford.

MR. FORD: Well, I think that the delegates ought to have a look at what 96 1 is that Mr. Lawrence is talking about. It is on page 579 of the journal. When I asked Mr. Lawrence the other day if it was his intention that this provision meant the nomination of a candidate for judge, he said "No, it means simply a substitute for the filing of nominating petitions." He also said — and this section 1 refers to all judicial offices, lumps the circuit court together with the supreme court and probate court — that he did not intend that the primary election provision for the circuit court or probate court now in effect would in any way be affected by this; that this would merely provide a method of getting your name on the ballot in the primary election, as distinguished from getting you nominated for the office. If that is correct, then there is no reason at this point to defer consideration of our method of nomination for the office, and for the consideration of how you will get your name on the ballot in the primary election.

Now, Mr. Lawrence, I assume that I asked the question directly and got a direct answer from you, that you did not intend, and that the committee did not intend section 1 to be a substitute for any other method of selection, but merely a substitute for nominating petitions.

CHAIRMAN VAN DUSEN: Mr. Ford, the Chair believes that the question must be confined at this point to the Lawrence motion, which was to defer further consideration of the King amendment and the Ford amendment until following action with respect to Committee Proposals 91 and 92. Mr. Lawrence.

MR. LAWRENCE: Mr. Chairman, that is exactly the point that I was making. When section 1 of Committee Proposal 96 came up and we voted to defer, it was for the purpose of meeting the objections, the points that Mr. Ford raised, and those were the points that are involved in the present Ford amendment as proposed to be amended by the King amendment. And that is why action on that should be deferred, and why I have made the motion.

CHAIRMAN VAN DUSEN: Dr. Nord.

MR. NORD: I oppose the Lawrence motion. I believe that if we keep on deferring this question until we have decided another one, and then defer that one until we have decided another one, we can fix things up so we can never end. That is about the position we are maneuvering ourselves into. We have deferred this several times. I cannot understand why anyone should argue that we should defer action on 91 until we have completed 91. This doesn't make any sense. This is Committee Proposal 91 that we are dealing with. Let's finish 91, and then when we finish 91, and if you wish to finish 92, then we can go on to whatever has been deferred. But if we defer 91, then we can never finish. Let's finish this one, then we will finish 92, then we will finish 96, and then we will finish all the rest of them and we can go home.

CHAIRMAN VAN DUSEN: Mr. Faxon.

MR. FAXON: Point of information, Mr. Chairman. What is there remaining in Committeee Proposal 91 for us to consider that we already haven't considered? I thought that we had taken care of all the other sections of 91 outside of this supreme court. Is there something else in 91?

CHAIRMAN VAN DUSEN: Mr. Secretary, have you further amendments to either section a or section g or the body of Committee Proposal 91 currently pending?

SECRETARY CHASE: We have another amendment to section g and an amendment to the body of the proposal, Mr. Chairman.

MR. FAXON: So then, what would happen is that if we passed over this, then we would go on to these amendments which are pending to section g?

CHAIRMAN VAN DUSEN: That is right, and further carrying out of the motion of Mr. Lawrence, we would then proceed to consideration of Committee Proposal 92, and would then return to the Ford amendment and the King amendment thereto.

MR. FAXON: I am against passing over this now. I don't think we have that much on this question that we already haven't discussed. We are ready to talk about it now.

CHAIRMAN VAN DUSEN: The question is on the motion of Mr. Lawrence to defer further consideration of the King amendment and the Ford amendment until after the completion of Committee Proposals 91 and 92. Mr. Everett.

MR. EVERETT: Mr. Chairman, I would agree with Dr. Nord and oppose this motion. To me, we can never get back to 96 1 until we divide the question, which we are now about to do. The difficulty when we were there before was there was confusion as to how you nominate supreme court justices and how you nominate the others. Now there is an effort being made to eliminate that confusion. If we adopt Mr. King's amendment we will have eliminated the confusion, and when we do get back to 96 we will be able to consider then only circuit judges and probate judges. Without eliminating that confusion, we will never be able to decide 96 1, and we will never be able to decide this. Furthermore, in answer to Mr. Lawrence's suggestion, if we defeat his motion to pass this over, and if we adopt these 2 amendments before us, we will have decided how to elect the supreme court. There won't be anything left to decide in that regard. We will, of course, have to consider the amendments pending, but if we agree that Mr. Hanna's

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amendment as amended is the answer, we won't have to come back to it. So I would oppose passing over it, feeling we ought to decide this issue right now.

CHAIRMAN VAN DUSEN: The question is on the motion of Mr. Lawrence to defer further consideration of the King and Ford amendments. Those who are in favor of Mr. Lawrence's motion will say aye. Those opposed will say no.

The motion does not prevail. The question is now on the King amendment to the Ford amendment, on which the Chair will recognize Mr. Romney.

For what purpose does the gentleman rise, Mr. Iverson?

MR. IVERSON: I move that the committee do now rise.

CHAIRMAN VAN DUSEN: Mr. Iverson moves that the committee do now rise. Those who are in favor of the motion will say aye. Those opposed will say no.

The motion does not prevail.

A DELEGATE: Division.

CHAIRMAN VAN DUSEN: A division is requested. Is the demand supported? It is supported. Those who are in favor of the motion that the committee do now rise will vote aye. Those who are opposed will vote no. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the motion that the committee do now rise, the yeas are 67; the nays are 45.

CHAIRMAN VAN DUSEN: The motion prevails. The committee will rise. Dr. Nord, you will be in order as soon as the president resumes the Chair.

MR. NORD: It would be too late. I was going to move we reconsider.

CHAIRMAN VAN DUSEN: The question is on the motion of Dr. Nord that we reconsider the vote on the motion that the committee do now rise.

MR. NORD: Mr. Chairman, may I address myself to that point?

CHAIRMAN VAN DUSEN: You may proceed, Dr. Nord.

MR. NORD: Mr. Chairman, on Friday we had a rather abortive session. We took up half the day in order to come here to settle this question. We came here. We are about to settle this question. Now we are going to chicken out some more. Now, we haven't had any debate on whether we should rise, but rising at ¼ past 5, obviously only after an hour or so of debate, just when we are about to finish the question, it seems to me is absolutely unjustified. We have got to end this convention some time or other, even if it isn't what we like there. As somebody said, "All good things must come to an end," and as somebody else has said, "And this too shall pass away." Either way you look at it, we must terminate this convention, and we must make decisions. I object to having such an easy afternoon of it. I think we should stay here and solve our problems.

CHAIRMAN VAN DUSEN: The question is on the motion of Dr. Nord to reconsider the vote by which the committee agreed to rise. Those in favor of Dr. Nord's motion to reconsider will say aye. Those opposed will say no.

DELEGATES: Division.

CHAIRMAN VAN DUSEN: Division is requested. Is there support? It is supported. As many as are in favor of Dr. Nord's motion to reconsider the vote by which the committee agreed to rise will vote aye, and those opposed will vote no. The secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the motion to reconsider the yeas are 47; the nays are 64.

CHAIRMAN VAN DUSEN: The motion to reconsider does not prevail. The committee will rise.

[Whereupon, the committee of the whole having risen, President Nisbet resumed the Chair.]

PRESIDENT NISBET: The Chair recognizes Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, the committee of the whole has had under consideration one proposal of which the secretary will give a detailed report.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 91**, it has adopted an amendment thereto; has considered an amendment; and has come to no final resolution thereon. This completes the report of the committee of the whole.

PRESIDENT NISBET: Are there announcements?

SECRETARY CHASE: There will be a Republican meeting immediately following this session in rooms B and C. (laughter)

The committee on administration will meet tomorrow, Tuesday, at 1:00 o'clock p.m. Walter DeVries, chairman.

PRESIDENT NISBET: The Chair recognizes Mrs. Butler.

MRS. BUTLER: Mr. President, when the secretary told about Judge Mosier's accident, I felt very sorry for several reasons; mostly, of course, because he was hurt. But a few weeks ago I had the privilege of sitting next to him at dinner, and he said he had been paying insurance, car insurance, since 1912 and his insurance company had never had to pay out a cent for him. At the same time he told about taking a trip in this beautiful Ford he had from Dowagiac to Paw Paw, and on a sand road, and on the way, halfway between, his fan belt broke, and he didn't know what he was going to do. He was a long way from anywhere, and there were no garages. So Mrs. Mosier was with him, and she got in the car and undressed and took off her corset string and made a fan belt out of it, and he got home. And I was just thinking of that today; what a cute story that was. (laughter)

PRESIDENT NISBET: Dr. Anspach.

MR. ANSPACH: Point of order. I would think that would be quite appropriate, of course, for the purpose of holding things together. (laughter)

PRESIDENT NISBET: Mr. Hoxie.

MR. HOXIE: Mr. President, I move that when we recess, we reconvene this evening at 7:30.

PRESIDENT NISBET: The question is on the motion of Mr. Hoxie that when we recess, we stand in recess until 7:30. Those in favor will say aye. Those opposed, no.

The Chair is in doubt. Those in favor will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and tally the vote. Mr. Marshall.

MR. MARSHALL: I just want to ask a question, Mr. President.

PRESIDENT NISBET: All right, Mr. Marshall, while we are doing it you ask the question.

MR. MARSHALL: Doesn't this necessitate a change in the rules we adopted when we adopted the rules to reconvene at 8:00 o'clock on Monday night, or am I incorrect?

PRESIDENT NISBET: The Chair is informed this has been done by motion right along, Mr. Marshall.

MR. MARSHALL: Of course I am incorrect.

SECRETARY CHASE: On the motion to recess until 7:30, the yeas are 43; the nays are 72.

PRESIDENT NISBET: The motion does not prevail. The Chair recognizes Mr. Prettie.

MR. PRETTIE: Mr. President, I move that we do now recess until 8:00 p.m. this evening.

PRESIDENT NISBET: The question is on the motion of Mr. Prettie. Those in favor will say aye. Those opposed, no.

The motion prevails. We are recessed until 8:00 o'clock.

[Whereupon, at 5:25 o'clock p.m. the convention recessed; and, at 8:00 o'clock p.m., reconvened.]

The convention will please come to order.

SECRETARY CHASE: Mr. President, a quorum of the convention is present.

PRESIDENT NISBET: The Chair recognizes Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, I move that the convention resolve itself into committee of the whole for the purpose of considering matters on the general orders calendar.

PRESIDENT NISBET: Those in favor of the motion please say aye. Opposed, no.

The motion prevails. Mr. Van Dusen.

[Whereupon, Mr. Van Dusen assumed the Chair to preside as chairman of the committee of the whole.]

CHAIRMAN VAN DUSEN: The committee will be in order. When the committee rose this afternoon we had been considering **Committee Proposal 91,** A proposal pertaining to the supreme court. Specifically, we had under consideration section a of that proposal, and had adopted an amendment thereto reading, "The supreme court shall consist of 9 justices to be elected for 10 year terms on a nonpartisan statewide ballot." The pending business was an amendment offered by Mr. King to an amendment offered by Mr. Ford adding certain language to section a of Committee Proposal 91 as so amended. The question is now upon the amendment offered by Mr. King. Mr. King.

MR. KING: Mr. Chairman, at this time I would like to withdraw my amendment.

CHAIRMAN VAN DUSEN: Mr. King withdraws his amendment. The question is upon the amendment offered by Mr. Ford to section a of Committee Proposal 91. It has been requested that the secretary read the amendment. The secretary will do so.

SECRETARY CHASE: Mr. King has offered the following amendment to add to the language of section a the following: "Nominations for justices of the supreme court shall be made as now or hereafter provided by law.".

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Ford which the secretary has just read. Mr. Garvin.

MR. GARVIN: Did the secretary say Mr. King?

CHAIRMAN VAN DUSEN: The secretary was in error, and the Chair hopes corrected it. You are quite right. The amendment is the amendment offered by Mr. Ford. The secretary will read the amendment again.

SECRETARY CHASE: Mr. Ford's amendment is:

[The amendment was again read by the secretary. For text, see above, page 1574.]

CHAIRMAN VAN DUSEN: Those who are in favor of the amendment so offered by Mr. Ford will say aye. Those opposed will say no.

The Chair is in doubt. Those who are in favor of the amendment offered by Mr. Ford will vote aye. Those who are opposed will vote no. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the adoption of the amendment offered by Mr. Ford the yeas are 38; the nays are 78.

CHAIRMAN VAN DUSEN: The amendment is not adopted. Are there further amendments to section a?

SECRETARY CHASE: Mr. Higgs has filed the following amendment:

1. Amend page 1, line 8, after "ballot.", by adding a new paragraph to read as follows:

"Justices of the supreme court shall be elected at statewide partisan elections. Incumbent justices of the supreme court may become candidates for reelection by filing a declaration of intention as provided by law. Other candidates may be nominated by state party conventions. No candidate shall be nominated by the convention of a party to oppose an incumbent which it originally nominated and who has filed a declaration of intention. Persons nominated at party conventions shall be listed on the ballot under the party name and label of the party nominating them. Incumbents filing a declaration of intention shall be listed on the ballot under the party name and label of the party originally nominating them. No vacancy shall be filled by appointment.".

CHAIRMAN VAN DUSEN: Mr. Higgs.

MR. HIGGS: I will withdraw that amendment.

CHAIRMAN VAN DUSEN: Mr. Higgs withdraws his amendment. Are there further amendments to section a?

SECRETARY CHASE: Messrs. Dehnke, Iverson, Hoxie, McAllister, Rood, Pugsley and Prettie offer the following amendment:

1. Amend page 1, line 6, after "Sec. a.", by striking out the balance of the section and inserting "The supreme court shall consist of 9 justices, to be elected by the electors of the state. The term of office shall be 8 years. Not more than 3 terms of office shall expire at the same time.

All primary elections and elections of justices of the supreme court shall be nonpartisan. There are hereby established 7 judicial districts, constituted as follows:

Judicial district 1, comprising Wayne county.

Judicial districts 2 to 7, inclusive, comprising all other counties of the state, shall be established by the legislature by joining together contiguous judicial circuits into a judicial district comprising as nearly as possible 1/9 of the population of the state. The districts so established may be changed from time to time by law to the end that each such district shall comprise as nearly as possible 1/9 of the population of the state. No such change shall have the effect of removing a justice from office.

There shall be nominated and elected 3 justices from judicial district 1, and 1 justice from each of the judicial districts 2 to 7, inclusive.

Except as in this constitution otherwise provided, all primary election and election laws, including laws pertaining to partisan primaries and elections, shall, so far as applicable, govern nominating procedures, primary elections, and elections hereunder.

All justices of the supreme court holding office on the date this constitution shall become effective, shall serve out the term for which they shall have heretofore been elected or appointed.

Any justice holding office on the date this constitution shall become effective, who is not otherwise disqualified for reelection, may be a candidate for reelection in any district without regard to his place of residence.

Any candidate for election as justice of the supreme court who is not holding office on the date this constitution shall become effective, may be a resident of the judicial district from which he is a candidate, or may become a candidate in any other judicial district.

Transition from the present established law for the election of justices of the supreme court to the method herein provided shall be provided by law, including the order of rotation in which elections shall be made from each of the foregoing judicial districts.".

CHAIRMAN VAN DUSEN: The question is on the amendment to section a of Committee Proposal 91 offered by Judge Dehnke, Messrs. Iverson, Hoxie, McAllister, Rood, Pugsley and Prettie.

MR. NORD: Point of order, Mr. Chairman.

CHAIRMAN VAN DUSEN: Dr. Nord, state your point.

MR. NORD: It appears to me, Mr. Chairman, that we have already determined the issue which is now being presented to us. This afternoon we voted to have a statewide ballot. We are now faced with an issue which says we should not have a statewide ballot, but a ballot broken down into districts. I also would like to point out that we reconsidered that question, and it could not be presented to us now even in the form of a motion to reconsider. Therefore I suggest, and request a ruling from the Chair, that the amendment which is now being presented is out of order.

CHAIRMAN VAN DUSEN: The Chair will rule, Dr. Nord, that the amendment is in order. It contemplates a different method of selecting supreme court justices than any which we have acted upon heretofore; though it is similar in nature to the proposal of the committee which was rejected some 2 weeks ago.

MR. NORD: Mr. Chairman, I believe I have not made my point clear. The point I make is this: that what we have adopted this afternoon is a statewide ballot. That point is decided, as far as I understand. We cannot change that at this

point. But the amendment that is now before us would present something which is not a statewide ballot, but the reverse; a ballot in districts. That being the case, I can't understand, as the saying goes, how we can have both at the same time. Is my point understood?

CHAIRMAN VAN DUSEN: Your point is understood, Dr. Nord. We could not have both at the same time. The amendment which is offered by Judge Dehnke and others would strike out the plan which was adopted this afternoon and would substitute a different plan. The merit of the plan, of course, is for the committee of the whole to determine. The Chair would rule that the amendment is in order.

MR. NORD: Mr. Chairman, I appeal the ruling of the Chair.

CHAIRMAN VAN DUSEN: Mr. Lesinski.

MR. LESINSKI: Mr. Chairman, I would like to find out the merits of the plan. Could I have a copy of the full amendment, and possibly all the other delegates, so that we can evaluate this intelligently?

CHAIRMAN VAN DUSEN: The Chair is sure, Mr. Lesinski, that the secretary will see that the delegates have a copy of it. It is being projected on the walls.

MR. LESINSKI: When it was read it sounded like 2 pages, and you have a few paragraphs there.

CHAIRMAN VAN DUSEN: The question, Mr. Lesinski, at the moment is: shall the judgment of the Chair with respect to the point of order made by Dr. Nord stand as the judgment of the committee? Those who are in favor of sustaining the decision of the Chair will say aye. Those opposed will say no.

The decision of the Chair is sustained. Now, Mr. Lesinski, the secretary will, the Chair is sure, make an effort to provide copies of the amendment which is currently before us. Mr. Lesinski, the secretary suggests that it would be possible to project one page on one side of the hall and one on the other, if that would be helpful to you.

MR. LESINSKI: I would like to see the whole story instead of half the story.

CHAIRMAN VAN DUSEN: Mr. Garvin.

MR. GARVIN: Do I understand now that the ruling of the Chair this afternoon, when it was stated, "The supreme court shall consist of 9 justices to be elected to 10 year terms on a nonpartisan statewide ballot," that was divided, and it was my understanding at the time that that was part of whatever was to come after that, because it was voted on by this committee—do I understand now that the ruling of the Chair differs from this afternoon?

CHAIRMAN VAN DUSEN: No, Mr. Garvin. The Chair believes that the ruling with respect to points of order made this afternoon and the point made this evening are consistent. The current amendment is a complete substitute for section a. The committee of the whole adopted this afternoon a substitute for section a. It is now proposed that the committee of the whole adopt a different substitute for section a. The current amendment is in order.

MR. GARVIN: Then this is a substitute for the entire section?

CHAIRMAN VAN DUSEN: For the entire section, that is correct. Mr. Lesinski, the secretary advises that there will be 100 copies available within a matter of 15 minutes. The Chair is confident the debate may take long enough so that within the period before you are called upon to vote upon it you will have it before you.

MR. LESINSKI: You say there are 100 copies. There are 144 delegates. If we are going to vote on something that no one reads, just says aye on it, how can you vote intelligently?

CHAIRMAN VAN DUSEN: Mr. Lesinski, copies will be made available, the secretary advises for all of the delegates. Mr. Barthwell.

MR. BARTHWELL: Mr. Chairman, I move that the committee recess until the copies are available.

CHAIRMAN VAN DUSEN: Mr. Barthwell, as it happens, a recess is not in order in committee of the whole; a point which Senator Hutchinson made prudently.

The Chair would suggest that the proponents of the amendment proceed to discuss it while the first page is being projected on the wall. The Chair will advise all of the delegates that the question will not be put with respect to this amendment until copies are available for all of the delegates, and all of the delegates have had an opportunity to read the amendment. Mr. Powell.

MR. POWELL: I was about to suggest that the secretary might now reread the amendment, and that the portion being read might be up here so we could watch it as the words are read. When it was read the first time I was trying to follow along in the printed material to see where these various ideas came from, and I don't know whether this was on the wall or not at that time. But it is available now, and our projection machines are working splendidly, and I thought if we could have it read as we watched it there, that then we would know quite conclusively just what the amendment is.

CHAIRMAN VAN DUSEN: Mr. Powell, the Chair thinks your suggestion is a good one, and will ask the secretary to read the amendment once more. Mr. Ford.

MR. FORD: It might simplify things, and I move that we divide the question and consider the first paragraph, which is the same. The only essential change being taking out the statewide nonpartisan aspect and the term of years from the balance of the section, and consider the first section first.

CHAIRMAN VAN DUSEN: Mr. Ford requests that the question be divided, and it will be divided. Mr. Higgs.

MR. HIGGS: Have you ruled?

CHAIRMAN VAN DUSEN: Well, any delegate, Mr. Higgs, is entitled to request a division, and a division will be ordered if the question as divided comprehends separate propositions which, in the opinion of the Chair, is the case.

MR. HIGGS: This is precisely the problem. I note in reading rule 51—and I had taken it upon myself to consult with Mr. Chase before the session this evening—that in dividing questions we must be very careful in making such a division and voting in divisions that we don't dig ourselves a pit.

I would question whether a substitute amendment such as the one we are voting upon can be divided in the way comprehended under rule 51 without running into the problem I originally raised; that we may find that we want to vote for part of it—that is, we might want to vote for the total plan without being compelled to vote individually, because it is a component whole. If you vote upon it in parts, we may find ourselves in difficulty. I had this feeling, myself. For instance—and I am raising this question—I may choose to vote in favor of a nonpartisan election, but this is conditioned that it be by districts, and I find it impossible to divide this type of a question and vote intelligently upon it.

I call this to the attention of the Chair because we have had a ruling that this amendment is in order. But if it is divided, we will have to face the same—if the question is divided, we will have to face parliamentary rulings again on each division, and inasmuch as the original ruling of the Chair was that this was in order simply because it was a totally new plan, I feel that there would be some hazard in dividing it.

CHAIRMAN VAN DUSEN: Mr. Higgs, the Chair is indebted to Mr. Bentley for calling to his attention the last sentence of rule 51, the fact that a motion to strike out and insert shall be deemed indivisible, and the current amendment is to strike out the entire section and to insert a new section. The Chair would therefore advise that the question is indivisible under rule 51. Mr. Faxon.

MR. FAXON: Point of information, Mr. Chairman. Would you advise me as to what is the status of the amendment which we adopted this afternoon, Mr. Hanna's amendment with regard to the same section? I was trying to follow along with what you were saying before, but what is the status of that as far as the committee of the whole is concerned?

CHAIRMAN VAN DUSEN: Currently, Mr. Faxon, the committee of the whole has adopted a substitute for section a of Committee Proposal 91 to the effect that the supreme court shall consist of 9 justices to be elected for 10 year terms on a

nonpartisan statewide ballot. That is the present posture of section a. It is now proposed by the amendment offered by Judge Dehnke and others to strike out that section and substitute the amendment which is projected on the wall, and which the secretary has read.

MR. FAXON: Well, wouldn't it be necessary, in order to strike it out, to have then a motion to delete that or to reconsider the vote by which that was put in?

CHAIRMAN VAN DUSEN: The amendment offered by Judge Dehnke and others is to amend page 1, line 6, after "Sec. a.", by striking out the balance of the section and inserting the language projected on the wall.

MR. FAXON: Then, we don't take any action upon what we have already acted upon this afternoon?

CHAIRMAN VAN DUSEN: Mr. Faxon, if the committee of the whole would adopt this amendment, it would substitute the proposed new language for the language which was adopted this afternoon. So that the action of the committee would necessarily affect the language which was adopted this afternoon. But no action will be taken independently with respect to that language. Mr. Mahinske.

MR. MAHINSKE: With reference to your current ruling here, the proposition that bothers me about rule 51 is, it seems that we have 2 rules in 1 here. The beginning of rule 51 states that if a motion is made to divide and there is still a substantive proposition left after division, that the question shall be divided, and then it goes on to say that in the event of a motion to strike and insert it is not divisible. I think we have a conflict within a rule here, and our procedure to date has been to divide even on all of our prior substitution and insertion amendments.

CHAIRMAN VAN DUSEN: You are quite right, Mr. Mahinske, that our procedure has been to divide whenever it has been requested, and the Chair had proceeded in that fashion until the last sentence of rule 51 was called to the Chair's attention. The Chair thinks Mr. Bentley's point to the effect that this is a motion to strike out and insert was well taken. The Chair would suggest that perhaps the discussion of this point of order has consumed enough time so that by the time we are through discussing it the entire amendment will be on everyone's desk and Mr. Ford's point will be accomplished.

MR. MAHINSKE: Then the essence of your ruling is that there are no divisions which will be properly entertained on this amendment? It is an all or nothing shot?

CHAIRMAN VAN DUSEN: That appears to be the case, Mr. Mahinske. Mr. Garvin.

MR. GARVIN: Mr. Chairman, would it not be true even under this ruling that the sentence that was adopted by the committee this afternoon, the only time that could come up again would be on second reading? Because it is something definite and concise at this moment, and the only time that that sentence could come again would not be in this first reading but would be on second reading.

CHAIRMAN VAN DUSEN: Mr. Garvin, your point is well taken.

MR. GARVIN: Thank you.

CHAIRMAN VAN DUSEN: That particular sentence could not be offered again in committee of the whole. It could be offered after the committee rises.

MR. GARVIN: I am talking about something to change that sentence.

CHAIRMAN VAN DUSEN: Well, the precise point which you make is not currently before us because the sentence is not currently before us, and the Chair is reluctant to rule on it in advance of it being presented. Mr. Ford.

MR. FORD: Mr. Chairman, I want to withdraw the request to divide the question. As you have already observed, we have probably accomplished our purpose, but I want to make it clear that I disagree with the ruling of the Chair, and I hope we get this cleared up before it occurs again. Because my concept of a motion to strike and insert contemplates striking and inserting a part of something so that you are not in fact voting on a complete substitute. If we set a precedent here that by simply offering a complete substitute for something you can force the convention always to vote on a package deal without any opportunity to divide a question when there are several subjects contained in one amendment even though it be a substitute, then I think we are placing in the hands of the convention a device that would always preclude in the future a division of these questions for intelligent discussion of their various components.

CHAIRMAN VAN DUSEN: Mr. Ford, the Chair would state that your point is well taken, and the question should be given further consideration. It is necessary, as you well know, to rule on these matters as they arise, and the ruling of the Chair was, of necessity, precipitate. But the Chair thinks it is a matter which deserves further study. The question is upon the amendment offered by Judge Dehnke and others to substitute the language which the secretary has read for the present language of section a of Committee Proposal 91. Judge Dehnke, do you desire to be recognized?

MR. DEHNKE: Mr. Chairman, I wonder if these copies have now been supplied to all the delegates.

CHAIRMAN VAN DUSEN: The Chair doesn't believe they have been yet, Judge Dehnke. If there is any portion of it you would like to have read, the secretary will be glad to read it.

MR. DEHNKE: I think I can cover it generally without going into specifics. Briefly, this proposed substitute, Mr. Chairman and delegates, proposes to elect justices of the supreme court from 7 districts, the first one of which shall be composed of Wayne county, and from which 3 justices shall be elected. The balance of the state is to be divided into 6 additional districts by the legislature from time to time, composing as nearly as possible 1/9 of the population of the state in each district. The basis of the amendment briefly is this: this convention seems to realize that the people of Michigan want the justices of the supreme court elected by popular vote, and if that is to be on a statewide basis the candidates are faced with the expense and burden of a statewide campaign.

There are 2 possible alternatives for nomination that have been suggested. One is nomination by political conventions, to which a great deal of objection has been raised. The only other alternative that seems to be in sight is a statewide primary election, and this, we all realize, presents for the average lawyer and judge who might be offered as a candidate for the supreme court an insuperable and impossible obstacle financially and otherwise. To put on a double statewide campaign is out of the question for, I suppose, 99 per cent of the attorneys and judges of the state. The only way such a candidate could maintain a double campaign would be by putting himself under unconscionable obligations to those who might be willing to supply the finances necessary to enable him to put on that kind of a campaign. So the first objection I think we must all recognize to a statewide double campaign is that it bars the door to many judges and candidates who might be considered well qualified for the position. Second, it is unfair to the public; not only unfair to the candidates because few have established a statewide reputation, but unfair to the public because it limits the opportunity of the public to become familiar with the qualified timber for supreme court positions. The other disadvantage is to the public itself, because it is difficult for any lawyer or judge to establish a reputation on a statewide basis, whereas a judge or lawyer, a circuit judge or judge of the court of appeals in any given district could depend upon having a districtwide reputation which might persuade the voters that he is qualified for advancement to the supreme court, which he would not have on a statewide basis.

Briefly, I think this plan solves the problem that is presented by a statewide election, and I think on the whole would be acceptable to the public and work well in Michigan as it has in some other states. Thank you.

CHAIRMAN VAN DUSEN: Mr. Prettie.

MR. PRETTIE: Mr. Chairman, fellow members of the committee, I first of all regret that the parliamentary situation became clouded and perhaps may affect the judgment of the

delegates on this plan which is now before you. Ten days ago Delegate Nord announced that he was going to bury the district plan, but at this season of the year our thoughts are on the glory and promise of the "resurrection."

For several days you listened to protracted debate, repeating some of the things that the committee on judicial branch heard over a period of months as to possible methods of improving the selection of supreme court justices in the state. Chairman Danhof of the judicial branch committee was quoted in the Detroit News on February 28 as saying that we are finding out what we don't want. This committee early determined that it did not want the Missouri plan by a vote of 25 to 90, or over 3½ to 1. We have also determined that we do not want the governor to appoint the justices of the supreme court with the advice and consent of the senate. This was by a vote of 30 to 95, or a little over 3 to 1. We have over the past 2 weeks determined that when vacancies occur we want merely temporary appointments of retired members of the judiciary until vacancies can be filled by election, and in its editorial of March 9, 1962, the Detroit Free Press strongly endorsed and commended the action we have taken in this matter. We have had this afternoon under consideration some other proposals which did not meet with the concurrence of the majority of the committee.

Now having determined what we do not want, I think we have arrived at the point where it is incumbent upon us to determine what we do want, and I submit that what we all want is to provide the best possible judicial caliber for the high courts, and all courts of the state. I fully respect the strongly held views of Mr. Lawrence and Mrs. Judd and others, who firmly believe that this could only be accomplished by an adoption of the Missouri plan or some adaptation of it. But their views we have rejected. I fully understand the philosophy of those who think that the governor should appoint the members of the court as well as other state officials, but at this point this committee has not agreed with that philosophy, and the appointment with advice and consent has also been rejected.

As one analyzes the votes that we have taken, it would appear that a majority of the delegates to this convention are at this point agreed on certain fundamental principles. First, that our judiciary should be elected. So should they at all levels. Second, that they should be at least elected on nonpartisan ballots, and as to the circuit court and probate court we have at this point determined that they should be nominated as well as elected on a nonpartisan basis. Third, we have determined that vacancies in judicial offices should be filled by interim appointment, and then follow an election to fill a vacancy. We have determined that the incumbency designation is to be earned only by election, and not by appointment to judicial office. And I believe we have determined that the incumbent members of the judiciary should be given the right of self nomination.

Having agreed on these multitudinal ideas, where then are we still at odds on the matter of the election of the justices of our supreme court? Actually the issue is between 3 choices: a maintenance of the status quo with its hybrid inconsistency of partisan nomination and nonpartisan election; a second choice, a provision for statewide nonpartisan primary election; or, finally, the choice that this amendment now presents to you. Our work of the past 2 weeks has reduced our choices from many diverse plans to just these 3, as I see it at this time.

I do not want to repeat the many arguments that have been made on this floor. I merely want to summarize very briefly a few points. It has been said by many of the delegates that the status quo is simply not honest. A candidate cannot be both partisan and nonpartisan. He cannot seek nomination as a member of a political party and then inconsistently present himself with any honesty as a nonpartisan candidate. Second, as Judge Dehnke just pointed out, it has been freely admitted that the expense of statewide nonpartisan primaries and statewide nonpartisan elections would prohibit the candidacy of many capable men whose service the state is thus deprived of. The nonpartisan nomination and election of our justices is consistent. It is in accord with what you have approved for the circuit court and probate court. It reduces the financial obligation of the candidate sufficiently to attract competent men who would otherwise never run in a statewide campaign, first for nomination and then for election. It would provide, I submit, an orderly and a consistent method of truly nonpartisan election in our trial courts, with advancement to the probably to be created court of appeals, and finally, if preferment is given, advancement, still nonpartisan, to the high office of justice of the supreme court.

I ask to you to look again at the journal, pages 467 to 469, and review the detailed arguments advanced in support of the plan when first proposed by the committee on judicial branch; weigh them against the arguments that have been presented during the past several days in support of any other plan. If on the weight of the evidence you cannot agree with the several proponents of this plan, you should vote against it and try to find something better. In months of study the proponents of this proposal have been, in all honesty, unable to find a better solution than the one we have presented.

It is our duty here to improve our constitution and correct such apparent defects as the one we have had under discussion in this prolonged debate. This was the avowed purpose of the league of women voters and members of the junior chamber of commerce and other groups who assisted in bringing about the calling of this convention. This is what the citizens of the state of Michigan expect of us while we are here. This amendment offers you the opportunity to carry out this mandate of the people.

Now, how does this plan differ from the one that was submitted to you in the committee report as it came before you over 2 weeks ago? In the first place, it reinserts in identical language the language of the committee report in place of the language adopted this afternoon providing for statewide nonpartisan election. So in that first paragraph it differs not at all. From that point on it differs in 2 major respects.

It does not spell out the exact counties comprising judicial districts 2 through 7, but leaves it to the legislature to establish the boundaries of these districts and to revise them as population changes may require, to the end that the population in each district, aside from district 1, shall be as nearly as possible equal, having regard to circuit court boundaries. This meets the point raised in earlier debate by Delegate Hatch, who pointed out that by tying the districts to Wayne county and having them either not less than ¼ nor more than ½ of Wayne you might have an artificial standard. That point was well taken, and so this revision has been made in the plan as originally presented to you by the committee. It should be observed in this regard that the circuit court boundaries and zones are established by statute, and so the legislature is given double flexibility. The legislature can change circuit boundaries, they can change the boundaries of the judicial district, but still conforming to circuit court boundaries so that no one circuit would have appeals to a different area. The second major change from the original plan is—and this will appear on page 2 when it is distributed to you, and if not, when it is projected—that this plan as now revised will permit any person to be a candidate from any district regardless of his place of residence. This in the original plan was extended to incumbent members of the court, and now it is extended to all.

One final word, and in this I give you my sincere pledge that it is my view. This amendment is not politically motivated. It was evolved and it was developed over many months by delegates long before they actually were delegates to this convention, and was with the one end in view of how can we best solve this hybrid inconsistency and elect the most competent men best known to the voters to the supreme court of this state. I submit, fellow delegates, that we cannot at this time know or even guess what may be the political result of this plan. This will depend upon the temper and the wisdom of the voters in this state in the years ahead, and who can know today what this may be? I ask you to put aside conjecture as to the present or possible future complexion of the

court, and to vote only your own conviction as to whether, on the basis of pure logic, the arguments, the discussion that you have heard over the weeks, whether in your sound judgment this plan will provide for the supreme court of this state men of the highest obtainable judicial caliber.

CHAIRMAN VAN DUSEN: Mr. William Hanna.

MR. W. F. HANNA: Mr. Chairman, I would like to address a question either to Judge Dehnke or to Mr. Prettie.

CHAIRMAN VAN DUSEN: If either of the gentlemen cares to answer. To which of them do you prefer to address your question?

MR. W. F. HANNA: I will address it to Mr. Prettie. Mr. Chairman, Mr. Prettie, if I read this amendment correctly, district 1 for all time would be Wayne county. Is that correct?

MR. PRETTIE: That is correct.

MR. W. F. HANNA: And district 1 would for all time elect 3 justices from district 1?

CHAIRMAN VAN DUSEN: Mr. Prettie.

MR. PRETTIE: That is correct.

MR. W. F. HANNA: This would be true even though Wayne county only comprised 18 per cent of the state population?

MR. PRETTIE: Well, I think this is a fair hypothesis, but it now has over 33 per cent. But if you anticipate a possible atomic bomb, or something of that sort, that remote contingency might arise, but I don't think we should try to look into such a dire future.

MR. W. F. HANNA: Mr. Chairman, I would object to this plan, then, on that basis, because a study of the population trends in Michigan clearly shows that Wayne county will have a smaller and smaller percentage of the total state population, and to give Wayne county 3 supreme court justices without at least 1/3 of the state population would be giving Wayne county entirely too much control of the supreme court of this state over the next 100 years, and I would therefore urge the rejection of this amendment.

CHAIRMAN VAN DUSEN: Mr. Garvin. Mr. Garvin passes. Professor Pollock.

MR. POLLOCK: Mr. Chairman and members of the committee, I deplore the necessity to discuss this matter again after it was soundly defeated once in committee, and I can't understand why it has to be brought up again and hashed over and waste our time. I thought it had been pointed out to be a thoroughly defective plan. It shows, of course, the division in the committee. The committee, being unable to agree upon a forward looking plan, regurgitated their differences to the assembly here, and we have been hiccuping ever since. But once you are beaten it doesn't mean you can't join others in a constructive improvement. Unless we can vote for something which is an improvement over what we've got, we might as well keep what we've got.

As far as I can see, and although Mr. Prettie alleges no political motivations, if the motivations aren't political, they are certainly naive; and if one considers what it means to have 1/3 of the people elect 2/3 of the judges—if that isn't political I don't know what is. In any case, it seems to me that the supreme court, like the governor and the legislature, should represent all the people, and the legislature is divided into districts for the purpose of getting representation from all of the small areas of the state. I haven't found any sound argument that said that the supreme court had to represent the different areas of the state, and represent them in the same way in which a circuit judge is supposed to represent his circuit. It seems to me the same idea which I have heard some delegates talk about—my circuit court and my circuit judges, as if I put him in there, he is to represent me—it almost seems as if the same idea is to be carried over to the supreme court. I think, therefore, ladies and gentlemen, that this plan having been proved to be defective should be voted down and voted down this time so soundly that it won't be brought up the third time.

CHAIRMAN VAN DUSEN: Mr. King.

MR. KING: Mr. Chairman, fellow delegates, my point was somewhat covered by Mr. Hanna so I won't belabor it, but just point out a few statistics. In the decade from 1940 to 1950 Macomb county enjoyed a 71.8 per cent increase in population; 1950 to 1960, 119.4. My county of Oakland during the '40s increased 45.9 per cent, and during the '50s, 74.3. During this period Wayne county was increasing during the '40s 20.8, and during the '50s 9.5 per cent. Now I don't think this thing is politically motivated by the Wayne county delegates. It doesn't appear to be the case, anyway. But certainly they would be one group which would stand to benefit by any such a device as would present in the constitution 3 supreme court justices from that county, which obviously it not growing as fast as many of the other counties in the southeastern part of the state. For that reason, I would have to be opposed to it.

CHAIRMAN VAN DUSEN: Mr. Ford.

MR. FORD: Delegates will be pleased to know that Mr. Hanna and Mr. Pollock have said almost everything I have to say. Dr. Pollock; excuse me. It is seldom that I get an opportunity to agree with both of these eminent social scientists simultaneously. However, there is one additional fact, and this is the one that Ken, Mr. Prettie, talked about, on page 2. He indicated, and I think perhaps he misspoke himself, that any person running for the supreme court can run in any district regardless of his residence, and as I read it only the present incumbents, or the incumbents at the time that the constitution takes effect would have this privilege. In examining this we also find that the judicial districts for the supreme court are tied to the judicial circuits, which indicates that circuit lines could not be broken in establishing the districts 2 through 7 in the first instance, and thereafter on a reapportionment.

I think that the one thing that members of the reapportionment committee or the committee that dealt with the reapportionment or apportionment of the legislature, did agree on, if my information is correct, it was unfair and somewhat naive to expect a body to reapportion itself. This is what Mr. Prettie's plan does by indirection, because Committee Proposal 93, section a, would have provided that the number of judges may be changed and circuits may be created, altered and discontinued by law, and the number of judges shall be changed and the circuits shall be created, altered, discontinued on the recommendation of the supreme court to reflect changes in the judicial business. So the upshot of this would be that the supreme court would be placed in the rather indelicate position of recommending to the legislature the composition of the judicial circuits which in the end would determine the composition of the supreme court districts. So we are on the one hand agreeing that it is not right to ask a body to reapportion itself, and then coming around in the judicial article and asking the supreme court in the future to recommend the manner in which the districts for the election of its judges shall be established.

CHAIRMAN VAN DUSEN: Judge Leibrand.

MR. LEIBRAND: Mr. Chairman, may I, through the Chair, direct a question or two to Dr. Pollock?

CHAIRMAN VAN DUSEN: You may if the gentleman cares to answer, Judge Leibrand.

MR. LEIBRAND: Dr. Pollock, you spoke about the district plan having been soundly defeated in this committee of the whole. Has it ever been directly presented to the committee of the whole? I have been absent on a few occasions.

MR. POLLOCK: Yes. I voted against it once. I can't remember the exact date, but it was fairly decisive.

MR. LEIBRAND: Was not your vote for the Ford amendment which would have deleted section g of the committee proposal?

MR. POLLOCK: What was the Ford amendment?

MR. LEIBRAND: That is what I believe you voted on, Doctor, in getting the district plan off the floor.

MR. POLLOCK: I beg your pardon. I didn't happen to be here to vote for the Ford plan.

MR. LEIBRAND: May I continue, Mr. Chairman?

CHAIRMAN VAN DUSEN: You may.

MR. LEIBRAND: Perhaps I am confused here.

MR. POLLOCK: I think you are.

MR. LEIBRAND: Well, I will say to this committee, I will give you my thoughts on this. To my memory, and I have been in this convention every day except 3 since it started, the district plan has never directly reached the floor of this convention for a vote. It was deleted from consideration on February 27, 1962, by an affirmative vote on the Ford amendment, which directly deleted this portion of the committee report. Dr. Pollock has stated it was soundly defeated. Even on this indirect defeat the vote was 69 for the Ford amendment and 58 against it, according to my records. A change of 6 votes would have entirely changed the status of the district plan. For the first time tonight, in my memory of this convention, we are faced directly with the merits or lack of merits of the district plan.

I further would like to direct one more question to Dr. Pollock. He stated that under the district plan 1/3 of the people would elect 2/3 of the judges. I never got very good marks in mathematics, but I can't get such a result from the language of the Dehnke amendment, and if any delegate can prove the truth of that language to me I would be very happy to accept it.

CHAIRMAN VAN DUSEN: Dr. Pollock.

MR. POLLOCK: Mr. Chairman and Judge Leibrand, I haven't had the time, of course, to figure this up in the new language which has been presented, but I made a careful analysis of the original proposal, and I shall be glad to show my analysis to the judge, if he would like to have it. I, too, am not too good at arithmetic and this was an approximation, but the point, regardless of whether it is 1/3 or what it is, it shows that the great majority of the people of the state would elect 1/3 of the judges, and the smaller minority of the state would elect 2/3 of them. The main thing is, regardless of whether it is a majority or a minority, it is having judges elected by a portion of the people instead of being elected by all of the people whom the judges are supposed to represent.

CHAIRMAN VAN DUSEN: Mr. Barthwell.

MR. BARTHWELL: Mr. Chairman, members of the committee, I have listened to this in the committee, as I have stated before, when we discussed this section in the article, and again I want to emphasize the fact that the committee never did agree as a majority committee on this plan that the committee reported out. We did compromise to bring it out, but I listened to Mr. Prettie, whom I have a great deal of respect and admiration for, very attentively in the committee. I have listened to him on the floor, and if ever he made a point that would have been inclined to have me favor this plan, I think he has contradicted it now. His strongest point so far as I have been concerned has been the fact that in the smaller area more people would know the candidates. But now when he states on page 2 in the second and third paragraphs that both incumbent and a new candidate can run in whatever district he wants to regardless of where he lives in the state, I don't see, to save my soul, how he is going to contend that this candidate is going to be better known by the people in a specific district in which he might choose to run.

So, again I don't think this plan offers any improvement over our present system, and therefore I still urge that the committee delegates vote against this plan. Thank you.

CHAIRMAN VAN DUSEN: Mr. Powell, the Chair would advise there are about 5 speakers ahead of you. Dr. Nord.

MR. NORD: Mr. Chairman, Mr. Prettie in opening the debate — not opening it, but near the beginning of the debate, said this is a district plan which I had said we should bury, and at least we had tentatively buried. If that is the case, I assume it is the same plan as was before us once before. At the same time I heard Judge Leibrand saying that it isn't. I think we should face up to the fact that it basically is the same plan. There are enough differences, apparently, to avoid the point of order which I otherwise would make, that this has been considered and defeated. It has been buried once, and I believe that it deserves a decent burial, and I resent the idea that it is turning around in its grave and walking the floors of this hall. It is a zombie, in other words. It is a dead thing which doesn't know it. I think we should make it clear that it is dead and should be buried once and for all. As to the merits of this particular subject, Mr. Bill Hanna hit one of the points on the head right at the beginning, near the beginning of the debate, when he said under this plan that should Wayne county have 18 per cent of the population, or whatever the number, they would always have 1/3 of the supreme court judges. It may be that Wayne county may have more than 33 per cent some day in the future; it may be that they may have less. On the basis of the present trend we expect they will have less. I will go on the assumption that they will have less. Within the next 50 years quite possibly they will have only 20 per cent or 18 per cent. Now, suppose that is the case; the plan that we have before us says that forever there shall be 3 supreme court judges from Wayne county, and I would like to state, as I did the last time this plan was before us, we don't want them. We don't want 3 judges from any one particular place just because there is a line on the map saying, inside this is Wayne county. If you would give us 9 out of 9 we wouldn't want it. We don't want anything. We only want justice; not justice for Wayne county, but we want justice for all the people, and if you are giving us too much, for Pete's sake take it back. I won't tell you what to do with it, but don't give it to us. We don't want more than we are entitled to, and we don't want to be measured as to exactly how many judges we are entitled to. We are not entitled to any judges. The whole people of the state are entitled to a good supreme court.

Therefore I agree 100 per cent with Mr. Bill Hanna's analysis of the apportionment feature of this plan. There are other apportionment features of this plan which cause trouble, too. One of the main troubles with this plan is this: the legislature will have to set up the districts, and it is also stated that later on it is expected that they will reapportion the districts in order to keep the population as nearly equal as it may be. I would like to call your attention to remarks made by one of the sponsors of the original districting plan, Judge Leibrand, on Friday when Mr. Kuhn's amendment was before us. Mr. Kuhn's amendment said if the legislature sees fit, it can adopt districts for the supreme court. Judge Leibrand took the floor and said that it is a bunch of nonsense. In fact, he said the legislature can't even set up one congressional district. He said that if they can't set up 1 district, how are they going to set up all of the districts? How are they going to set up all of the districts for the supreme court? He said that it's impossible. I don't know whether it is impossible or not. I believe that it is impossible. But that is the statement of one of the proponents of the original measure who has taken the floor again and urged us to do what he told us on Friday was impossible.

We have other problems with the apportionment feature of this particular provision. It says it shall be as nearly equal as possible; 1/9 as nearly as possible, and that the legislature may—it doesn't even say that they shall reapportion, but only that they may. The last plan that we had said that they shall. This one steps back a little bit because they are afraid they might not do it. These words, "as nearly as possible," are famous words in the convention. In the apportionment committee we had those words before us a number of times. We were told by the majority group on the committee that those words are meaningless; that it is impossible to provide equal population districts by saying as nearly equal as may be. They say that's meaningless. If it is meaningless there, in the apportionment of the legislature, how does it get to be meaningful here? I suggest to you, and I believe it is perfectly obvious, that the apportionment features of this plan are impossible to fulfill, and they are not expected to be fulfilled. They will not be on a population basis at any time. Not only will the Wayne county figure always be the long figure, but there will be nothing to make sure the legislature will make changes, and if the legislature should violate the provisions,

the supreme court will be required to determine whether its own districts are correct. This is certainly an untenable position for the supreme court to be in.

Mr. Prettie has argued on behalf of this plan by saying that everything else is no good; that, therefore, this is good. I don't see that that is a logical position. If everything else is no good, this could be no good, also. We can't be sure that we have eliminated enough when we stop one short of this plan. This plan should be eliminated, too. A plan that we back into by the process of elimination has not very much to recommend it. As Dr. Pollock says, this plan has been regurgitated, and it seems to me that that shows that it is an elimination type of plan.

One of the speakers on behalf of this plan said that a nonpartisan partisan plan, as this is supposed to be, this present plan, a plan that is nonpartisan and yet it is partisan, that that cannot be honest. I assume from what he said in that connection that that means that any person who is willing to go through that plan is dishonest, and that he says to the people—half the time he says he is nonpartisan and the other time he says he is partisan. If that is true, I haven't got a suspicious character, but every one of our supreme court justices is labeled dishonest by that speaker. I believe that is an improper view to take. I pointed out the last time this subject was up that there isn't anything inconsistent, whatever, in having nonpartisan ballots and a partisan campaign. The point is this: if you have a campaign and anybody helps you, anybody helps you with money or assistance of any sort, literature, setting up meetings, you can call him and the group that works with him, you can call him a party if you wish. It just hasn't got the same name. It isn't called a Democratic party, it isn't called a Republican party. It's a party. You can't have an important election without a party of some sort. It just isn't a party that has a label which you dislike. Any campaign is a party campaign of some sort. The only question is, do you know which party, do you know who it is that is behind the candidate. You can't stop important elections from being partisan. All you can do, if you wish to do it, is to take the name of the party off the ballot so that when the people vote that won't influence them. If you wish to do that, there certainly is no objection to it, but let's not kid ourselves and think that it is even possible to have an election of such an important nature to really be nonpartisan, and I see nothing inconsistent with the present system in that respect.

It has also been stated, Mr. Chairman, that this is a nonpartisan plan, but as I pointed out last time, it is basically a guaranteed annual wage for Republican judges. You can't avoid realizing, as many delegates have said, that this plan sets up a supreme court which will be permanently Republican in majority, as far as we can see. It is true that we might have atom bombs, and so on; it is true something might happen; there might be a revolution, and we don't know what, but in the foreseeable future this plan expects to set up a perpetual Republican majority of 6 to 3 or 5 to 4 in the supreme court, and this is done in the name of nonpartisanship. This could be suggested, it could be stated, it could be proven that some of the proponents of the original plan explicitly stated to people who they asked to back it that it was intended to be partisan, and that it was the only way to elect Republican judges to the supreme court. If any delegate challenges that, I would be glad to state the name, not on the floor, because that is against the rule, but off the floor. This is, in the minds of some people who have been in favor of this plan, politically motivated. I realize a lot of people who don't have political motivation have spoken on it, and I know that they don't, but you can't ignore the fact that that is the end result of this plan. It is not a nonpartisan plan, unless you want to call it a Republican nonpartisan plan.

Mr. Chairman, I ask that this amendment be defeated; that we return to the position in debate we were at before the panic bell was rung at 5:15 p.m.

CHAIRMAN VAN DUSEN: Mr. Tubbs.

MR. TUBBS: Mr. Chairman, I think for the first time I will agree with Bill Ford. He made my speech in the first 2 sentences. Then he wandered off a little bit and I kind of lost the thread of his discourse, so I am going to make one additional point and sit down. It is said that this plan is better than the one we now have. I think everybody has agreed, except 2 of the supreme court justices who testified before our committee, that the present plan is not too good, but at least when you get 2 political parties into conventions you have a condensation of the people of this state who can know better about the qualifications of the people who are seeking to be nominated as judges than the million or so voters in the state at large. Now, if you could just condense that further and get it down to a nonpartisan commission who would make the nomination to an appointive power, then you would have something.

CHAIRMAN VAN DUSEN: Mr. Higgs.

MR. HIGGS: Mr. Chairman and fellow delegates, I rise to support the Prettie amendment, although you have on your desk by this time a copy of an amendment to strike out and insert which I will offer if this fails. However, the district plan is my first choice, and I speak so that you will understand that the principal reason why I feel that we either should support the Prettie amendment or ultimately support mine is that if you believe in an elective system and you want an elective system which is truly nonpartisan, then I believe that it must be by district. Only in that way can a candidate offer himself to the electorate without becoming involved in campaign expenses that, according to testimony which was given before our committee, would involve expenditure of $50,000 at a minimum and upwards; only in that way, in running in districts, can we avoid this terrific expense of a statewide nonpartisan election. Otherwise a candidate running statewide may have support, although nonpartisan, but the support will necessarily be either out of his own pocket or out of the pockets of special interest groups. I believe that the district plan for electing supreme court judges is the only truly nonpartisan type of plan that is feasible.

CHAIRMAN VAN DUSEN: Judge Pugsley.

MR. PUGSLEY: Mr. Chairman, fellow delegates, I should feel somewhat embarrassed to appear before you after listening to the remarks of a distinguished member of the University of Michigan faculty who has advised us in very many ways during this convention, if I did not realize that I am not standing alone in the position which I am taking here at this time as 1 of 6 of the has been judges of the state of Michigan. I should also be further embarrassed if I were the only 1 of the 6 who had the nerve to stand before you as an advocate of the district plan. I regret that one of the leaders of the exjurists is in the hospital at Dowagiac today. I hold in my hand a telegram which he sent here from his sick bed. He says, "Auto accident hospitalized Dowagiac. Please tell the delegates I am very much in favor of district plan on nonpartisan nomination and election. Carl D. Mosier." I am sure that we all regret this misfortune has come to Carl, and I am sure that you all join with me in a very high regard for him. He has many friends, and is a distinguished exjurist of the state of Michigan. There are also in this hall today 5 of us, at least, who are of one mind in a belief that the district plan is the most practical and the most feasible of any and all plans that have been suggested.

It has been my pleasure during the years that I served on the circuit bench of this state to hold court throughout the state in more than half of the judicial circuits thereof, and during my experience it has been my pleasure to meet distinguished and outstanding lawyers in every one of these circuits or districts proposed under this plan, and I know from my own acquaintance and from my own experience that there is not a district here that does not have available competent material to sit on the supreme court bench, comparable with any that have occupied that bench within my memory. I say this without fear of contradiction by anyone who has a broader acquaintance among the attorneys of the state of Michigan. But these men, outstanding as they are, are not offering themselves as candidates for the supreme court for the very reasons explained by Judge Dehnke; that they cannot

spend the time, neither can they afford the money that it would take in order to put on a successful campaign without leaving behind them an obligation to someone who may have supported them in the campaign. And we have often times heard it said, and quite properly so, that if there is anyone in public office that should be independent it is the one who occupies a position of trust on any of the benches in the state of Michigan.

I believe, my friends, that this plan is practical, and I believe it will work. I do not share the suggestion that has been made that any one of these candidates, if elected, will go onto the bench with the idea that he is to serve only some part of the state of Michigan. I say that with some feeling, my friends, because I have never, to my knowledge, known of any of the several judges who have served in various parts of the state ever having been accused of serving any particular part of the state at the expense of the state at large. Supreme court justices are selected to interpret the law, and as far as I have been able to interpret it, the law in Oceana county and the law in Wayne are absolutely the same when it comes to principles of law, and I don't believe that anyone that we may select under this plan would be addicted to any other practice than to follow the customs of those who have preceded him.

It has pleased me during this convention to note the respect and satisfaction that has been pledged by fellow colleagues to the circuit judges of the state of Michigan and beyond, and which they have personally accepted for the work they have done. I join, my friends, most heartily in endorsing this plan, and request that the delegates do likewise.

CHAIRMAN VAN DUSEN: Mr. Bledsoe, there are some 5 speakers seeking recognition ahead of you. The Chair will be glad to recognize you in your turn. Mr. Higgs.

MR. HIGGS: Point of information.

CHAIRMAN VAN DUSEN: State your point, Mr. Higgs.

MR. HIGGS: I would like to ask how many alternate plans are on the desk and whether or not we might have a copy of all proposed methods of selecting supreme court justices. I have distributed the ones that I have, but while we are debating, if we could have copies and know the number of other plans available, I think it might be worthwhile.

CHAIRMAN VAN DUSEN: The Chair will ask the secretary to state how many amendments currently are pending to sections g or a.

SECRETARY CHASE: There is this pending amendment. There is one offered by Mr. Higgs and another one on file by Mr. Danhof.

CHAIRMAN VAN DUSEN: If it is possible, Mr. Secretary, will you see to it that copies are made available to all delegates?

SECRETARY CHASE: I would be glad to.

MR. HIGGS: Copies of the Higgs amendment are on the desks, and the only one I don't have a copy of is the Danhof amendment.

CHAIRMAN VAN DUSEN: Mr. Powell.

MR. POWELL: Mr. Chairman and fellow delegates, I hesitate to make this comment because to date I have been getting along very amicably with my esteemed and learned seatmate on my left, Dr. Pollock, but I feel constrained to comment on some of his remarks. He made a statement to the effect that this plan had been repudiated, regurgitated, and a lot of other things, which I didn't feel was at all justified or proven by the facts or by the experiences or by the record. But he did go on to make one statement which I think he proved quite conclusively when he said he was not a very good mathematician. He made a statement to the effect that under this plan some 1/3 of the people would elect 2/3 of the justices. Now, of course, the plan we have before us now is significantly different than the original plan, in that it leaves the districting outstate to the legislature. But if any of you really want to look at the arithmetic of the deal, right here in our journal, on page 467, there is listed what the population of the various districts would have been had the original districting as proposed therein been carried out. I want to submit that the smallest of those districts numerically speaking, district 2, would have had a population of 690,259, while the largest of the districts, district 5, would have had a population of 999,019, which is not significantly larger than the smallest district, and the average of the 3 Wayne county districts would have been 888,776.

This isn't very pertinent to the pending plan, because when we leave it to the legislature they might not follow the exact lines as laid down in the original proposal. But when someone tries to convey the idea that this is way off base and inequitable from the standpoint of the districts and their population, I think we ought to check up on that. Again if any of you want to look at those figures they are on page 467 of the journal.

CHAIRMAN VAN DUSEN: Mr. Powell, would you yield to Dr. Pollock for a response? Mr. Powell yields to Dr. Pollock.

MR. POLLOCK: Mr. Chairman, Mr. Powell, now that you are talking about figures I can use them also, and of course it doesn't bother me too much about the figures. I was giving only approximations, and I must confess to be a little bit irritated that this seems to be treated as merely a matter for lawyers and judges. It happens that the people are interested in the courts, too, but since judges have to come from lawyers, it is interesting, as I pointed out in a letter to Mr. Prettie on February 5, that out of 7,710 practicing law in the state, 4,215 reside in Wayne county. So that this plan would give 1/3 of the seats on the supreme court to approximately 55 per cent of the state's legal population. This is just another way of indicating the inequalities of this plan. Of course, another way, which isn't quite as exact as this, is to assume, as we do with congressional districts that there is one genius in every district. Now if you said a candidate could be a candidate in any district whether he resided in it or not, then, of course, it would be a little bit different. But, although I haven't yet found that in your proposal, it may be there. If you allowed a candidate from outside the district to be a candidate within the district, this would help a little bit.

CHAIRMAN VAN DUSEN: Mr. Powell.

MR. POWELL: I hardly feel that those comments deserve any reply. We aren't trying to work out an arrangement to give a certain percentage of attorneys a job here. We are talking about districts that involve people. I gave you those figures there to show how this arrangement works out. I am sure there are ample numbers of qualified attorneys in the various districts, as far as that is concerned. But again I submit that this wasn't based on any arrangement to try to farm out positions for deserving members of the bar. And when he says this is a matter that has had too much discussion by the attorneys, I am sure that those involved in it right now aren't attorneys. We are speaking on behalf of our constituents and the people generally throughout the state from the layman's point of view.

CHAIRMAN VAN DUSEN: Mr. Stevens.

MR. STEVENS: Mr. Chairman, members of the committee, as a practical matter the district plan merely gives to the people a practice that has been followed for years by the political conventions. These conventions have consistently nominated candidates for the supreme court from areas which had no justices upon the court. This is not to say that these justices are representing the areas from which they now come, nor would it any other way mean that if they were elected by the people they would be elected as representatives in the sense in which members of the legislature represent their constituents. I do not feel that you need to worry about the matter of a member of the supreme court coming from a particular district of the state. Nothing in the history of the court tends to tell us that that makes any difference.

CHAIRMAN VAN DUSEN: Mr. Hubbs.

MR. HUBBS: Mr. Chairman, fellow delegates, I have been listening to this debate for some time now, and I quite agree with Dr. Pollock that this is not a matter that we laymen should stay out of. I would like to ask, first of all, in general what are the objectives of the convention in writing the

judicial article? As far as the supreme court is concerned, we are seeking quality justices who, in the eyes of the people, should not be aligned too closely with political parties, and therefore we have a real tough problem, because in the thinking of some people we have too much politics on the supreme court. As far as I am concerned politics, to me, is not a dirty word. I don't see anything wrong with politics. I like it, and I think politics serve a basic function. I could talk about that for a long time, but I am not going to any more. But I do, however, resent the charge that the judiciary should be above politics. Politics serve a fundamental purpose, and is fundamentally the service of the people of the state.

Dr. Nord charges that this plan is politically motivated. I say that this is not so. I say that this plan is motivated by a desire of some of the people here present to get a supreme court set up that will not be tied to politics, and in their effort to do that they have come up with this district plan which, in my opinion, is not a plan which is going to guarantee representation—not representation—is going to guarantee judicial quality from which the people can understand and know who they are voting for when they vote. The district plan, in my opinion, is merely a mechanical device to get people elected on a basis where they don't have to campaign on a statewide basis, nor be financed by a political party. The district plan is a mechanical device to avoid the burdensome expense of a statewide campaign, and to make it possible for supreme court justices to be elected on a nonpartisan basis. And that is why this plan was developed, to get away from politics, I believe; to suit those people who feel that politics is bad. I think that we should support the district plan.

There is one flaw in it, and I think I know why it is there. The flaw in the district plan is that we didn't set up 9 equal areas with no regard whatever to population, and elect justices from each district and forget population entirely. Then we would have been on solid ground. Then you would say in some of those areas, one of those 9 areas there wouldn't be enough high quality lawyers. I will grant that is true. And so probably the originators of this plan came up with the idea, well, we will divide this up into districts that are equal to a degree on a population basis so that the supply of lawyers would be sufficient to provide quality justices. And I can understand their logic. From my point of view, the weakness that we admit when we did that is the people then began to think we are developing a representative plan in the supreme court, and this is not the truth. We are only trying to develop a plan which will elect quality justices on a nonpartisan basis, and the only way that this can be done is on a district basis so that we can avoid the burdensome expense of a statewide campaign.

I suggest that we support the district plan for these reasons, and very seriously consider changing the thing to cover 9 judicial districts of equal area, and forget population.

CHAIRMAN VAN DUSEN: Mrs. Butler.

MRS. BUTLER: Mr. Chairman, I would like to ask Mr. Nord a question through the Chair, if I may.

CHAIRMAN VAN DUSEN: If the gentleman cares to answer, Mrs. Butler.

MRS. BUTLER: Mr. Nord stated that this was a political move, and that it would assure the outstate judges as being Republican. I wondered just exactly which districts he was so sure were Republican. I would really like —

CHAIRMAN VAN DUSEN: The gentleman does not care to answer, Mrs. Butler.

MRS. BUTLER: Okay. (laughter)

CHAIRMAN VAN DUSEN: Mr. Norris.

MR. NORRIS: Mr. Chairman, I just want to make a few very brief observations with regard to this matter. I concur with Judge Pugsley that there is no cutover land in the state with regard to judicial timber and that there is comparable material in all sections of the state. I think that we ought to develop, therefore, a statewide approach to the election of supreme court justices.

Much talk has been made here with regard to the program of the judiciary committee. As originally stated, Mr. Prettie began his talk by inviting our attention to the report of the judiciary committee, and one of the reports says that in this district plan "Balance would be maintained in the type of men sitting on the court between all parts of the state", between the type of men. I submit that the question before us is not so much the question of the type of men, but the question of judicial philosophy. What is before us in Mr. Prettie's judgment is an apparent defect. I don't know what defect is apparent to him, but the criticism which I have found that has been assessed by some is that the general trend of decisions of the supreme court as now constituted is not to their liking; it is not to their liking because it has a judicial philosophy which is different from the judgment of others in the state. I submit that the judicial philosophy is what we select when we select judicial officers. Yes, we wish men of the highest caliber; we wish men of competence, of reverence for law, of reverence for American institutions, of government of laws and not of men, of respect of all regardless of race, color and creed. These are vital components of views and of character. But I submit what is also important if we are thinking in terms of the next 50 years is developing the kind of means by which we can select those who exert the judicial power in such a way that it reflects the need for change and make law an instrument of justice, an instrument of adjustment in the collision between men and men and group and group.

I can only recite to you, if I may, not only a judgment of my own, but a judgment of President Theodore Roosevelt in an annual message to congress in 1908, in which he gave this as his philosophy of judicial philosophy:

> The chief lawmakers in our country may be and often are the judges, because they are the final seat of authority. Every time they interpret contracts, property, vested rights, due process of law, liberty, they necessarily enact into law parts of a system of social philosophy, and as such interpretation is fundamental they give direction to all lawmaking. The decisions of the courts on economic and social questions depend upon their economic and social philosophy, and for the peaceful progress of our people during the twentieth century we shall owe most to those judges who hold to a twentieth century economic and social philosophy, and not to a long outgrown philosophy.
>
> Of course a judge's views on progressive social philosophy are entirely second in importance to his possession of a high and fine character, but it also is true that judges, like executives and legislators, should hold sound views on all the questions of public policy which are of vital interest to the people.

I submit it is this kind of philosophy which we ought to share as a criterion for the development of a judicial article in our state. And I submit, too, that the article which is now in the 1908 constitution as amended is best calculated to produce that kind of judicial philosophy. And the fact is that in the last 10 or 15 years we have been getting that kind of judicial philosophy on the court, and it has been one that has enhanced Michigan's judicial stature throughout the nation, and it has been one which has given heart and hope to our citizens.

I submit that if we are going to have balance in the type of men, what we really need is balance in the type of judicial philosophy, and this judicial philosophy can only be selected by all of the people in all sections of the state voting for all of the judges. And I submit, as that is the principle, it would mean that we have faith in the democratic processes, we have faith in the people to select their judges, the kind of judges who in character and philosophy reflect their own, and by reflecting their own reflect the will of the sovereign people in self governing process. I urge that we defeat this amendment and return to the article as we now have it in the constitution.

CHAIRMAN VAN DUSEN: Mr. Bledsoe.

MR. BLEDSOE: Mr. Chairman, members of the committee, I assure you that I shall not burden you with a long dissertation. I first, however, want to express my appreciation for the remarks made by Judge Pugsley. Those of us who have known him through the years—and there are many of us—have abiding faith both in his integrity and as a fine character both on and off the bench. Having worked with him and the other members of the judiciary committee, I want to say to you that I believe every one of us in the judiciary committee has faith that his presence and work there has been sort of a benediction.

I do want to say, however, that I don't believe that there is a person within the sound of my voice who will deny that he countenances or believes for one moment that the people from his district, that the people from this commonwealth don't have the right and the abiding desire to elect their judges, to vote for their judges. If there is anybody in here that disagrees with me on that, I certainly wish you would hold up your hand. I am going to look around and see. I don't see any hands. Oh, I see one, I believe. I see one.

CHAIRMAN VAN DUSEN: Mr. Bledsoe, the Chair hopes you will complete your sentences promptly and proceed in order.

MR. BLEDSOE: Here is what this district plan amounts to. It means simply this: you go back to your constituents and ask them to disfranchise themselves, suggest that they disfranchise themselves because we have committed ourselves up here in such a way that you will not be able to vote for your supreme court justices throughout the entire state. That is exactly what we are asking. That is the bill of goods we are taking back to our constituents. That is a tremendous inconsistency. I think it ought to be left right there, and Dr. Pollock has a complete answer to this matter. The people want to elect their judges not from the Escanaba district or any other single district, but they want to be able to vote for all of their judges on the supreme court of this state who have the final say over their life, liberty and property if it happens to get entwined into judicial processes. It is just that simple to me, and I think "Judge" Pollock has hit the nail on the head when he said we must not consider this matter just for judges and lawyers, but the people whom we represent here, and whose franchise and sovereignty we hold in the palm of our hands here in the nature of a trust are the first to be considered. And from what I have been able to gather, the people everywhere in Michigan want the right to vote for all of their supreme court judges.

CHAIRMAN VAN DUSEN: Mr. Allen.

MR. ALLEN: Mr. Chairman, I pass.

CHAIRMAN VAN DUSEN: Mr. Allen passes. Mr. Iverson.

MR. IVERSON: Mr. Chairman, members of the committee, I presume it is needless to mention the fact that the district plan has been one of my choices since the beginning of this convention, and I make no excuses for it. I think I told this committee at one time that I had some idea that at one time perhaps an appointive system was the best system. I presume, as most lawyers, I had become discouraged or disgusted with something or other in the practice before the courts, and I presume that had something to do with my feeling at the time. I think you will recall that I said that I abruptly changed my mind, and since that time I have continuously felt that the election of the judges by the people, their being responsible to the people, was the best manner of electing judges. I further felt that they should be elected, if elected at all, on a nonpartisan basis, my feeling being that the courts should be as far removed from politics as possible. And you carry that a step further, and you attempt to determine what is the best method to bring about that situation. Well, of all the plans that I have heard here, or of all the plans that have been discussed over the years, I finally come to the conclusion that the only answer, especially so far as a primary was concerned, if you are going to elect the judges on a nonpartisan basis, the only solution was a district plan, and that is the reason I am one of the sponsors of this plan, and it doesn't make any difference whether I belong to one party or another I am still interested in seeing that we produce the best judiciary that it is possible for us to do.

For a few moments I would like to bring up some of the questions that have been raised by some of the other speakers here. The question, I believe, was asked by Delegate Hanna, and I believe it was posed by someone else, too, that this would freeze into the constitution 3 justices from Wayne county forever. I call your attention to something that has been brought up on this floor before—that Illinois has had a district plan in the election of their supreme court for, I believe, 50 or 100 years, and the only information we could get was that it had worked fine. Now, the only thing that had not changed with the times was perhaps the situation of change of population. The witness before our committee indicated that for years there was 1 justice of the supreme court from Cook county, and the rest of them, 6, I believe, from outstate. They also said that the new judicial article which was being proposed at this time was leaving the supreme court number at the same 7, but proposing 3 for Cook county and the other 4 from outstate. But still they swear by the district plan. They have no idea of changing it. They said it was utterly impossible to nominate anyone—if you wanted the judges elected it was utterly impossible to nominate them on a statewide basis. Therefore they were completely sold on the district plan. The only change they are making was granting in the new article 3 to Cook county and the rest from outstate.

Now I see no insurmountable task even though we suggest in this constitution that there be 3 from Wayne county. Assume for the sake of argument, that Wayne county were blasted off the map—and I hope it doesn't happen until I move out of there—but assume for the sake of argument that it happens. How long do you think it would take a constitutional amendment to correct any injustice that may be brought about by this situation? It may even be possible, if that happened, that the 3 supreme court justices from Wayne county might be involved in the holocaust too.

Now, Delegate Pollock raises a question about—at least refers to this as being similar to apportionment of the legislature. I think Mr. Pollock knows there is no such comparison here. In fact, I see no great difficulty as far as setting up the districts on a judicial circuit basis. In fact, I see no serious problem if the population in the various districts vary from time to time. I submit that presently, and for at least 25, 30 or perhaps 40 years, there have been changes in the population of the various circuit court districts, and yet there is no redistricting as such. It hasn't become necessary. The only thing that becomes necessary is when the case load becomes such that they need to increase the number of judges. I see no problem as far as that matter is concerned. I would like to call your attention, also, to the fact that Mr. Pollock raises the question that this plan bears no relationship to the lawyer population. I hope that before we are through with this debate somebody will call his attention to the fact that his attention was called to an analysis of the lawyer population in the districts as was originally proposed, and by the time you eliminated office lawyers, corporation lawyers, those who were not actually practicing law—and, incidentally, the most of them reside in the Wayne county area or the metropolitan area—that your lawyer population on a district basis was comparatively equal. And I can't pass without saying that I don't think Wayne county or any other district has any monopoly on smart lawyers. I exclude myself from that. But we have seen over the years many lawyers who you and I have concluded should have been on the supreme court, but because of our system of election have never had the opportunity.

Now, Mr. Nord raises the question about this plan being set up—I assume he hesitated short of making the accusation that it would guarantee a Republican court. I expect that perhaps the most of the minority, I hope some of them, might see the light here tonight, but I would assume most of the minority would be opposed to this plan based on that one thought of Mr. Nord's alone, whether it came from him or somebody else, that this plan would be a definite plan to elect Republicans to the court. I submit that those who are not

interested in this plan are not particularly interested in creating a true nonpartisan bench. I submit further that that is exactly what the majority of this state want today. That is one reason, and the main reason, I am for it. I might say further that I am so firm in my conviction that we should have a nonpartisan court—and, as I have said before, I see no other way to do it except through this plan—that I wouldn't hesitate in the least to support a competent Democrat for that bench, and I think there are many lawyers around this room that would say the same thing.

Now Mr. Bledsoe made the statement that the people have an abiding desire to vote for their own judges, and that if you voted for this plan you would be in effect disenfranchising your constituents. Well, if that is what I am doing by voting for it, then I am disenfranchising the people that voted for me. But I say that my people never told me I should vote against this plan, nor did they tell me I should vote for any other plan. I think they relied on my judgment as to what I thought was best as far as setting up this bench was concerned.

I cannot go on without saying something further. Mr. Bledsoe used this argument in our committee, and I think it is rather significant. He praised Judge Pugsley, and I think rightly so, because I think Judge Pugsley, as are the other judges here sitting as delegates, are the respected members, and have been for years, of our bench, and Mr. Bledsoe stated specifically that if a judge were elected on a district basis, such as Judge Pugsley, he would have no hesitancy of saying that he would get a fair deal before Judge Pugsley, and he went on to say how he had tried a number of cases resulting from the Ferguson grand jury when Judge Pugsley sat in Detroit almost constantly for 2 years or thereabouts—a long period of time—and I don't think anybody raised a question at that time that Judge Pugsley was balkanized. And that raises another question. I am rather surprised that when this plan first was brought to the attention of this convention we were immediately accused of balkanizing the court. I wonder why we haven't heard the argument tonight. They must have decided that it was not such a good argument.

Along that line I would like to call the attention of many of the delegates to arguments that have been had on this floor with respect to what certain judges have done in the southern states—federal judges—with respect to civil rights, and it has been said here time and again that if it had not been for the fact that those men were federal judges they would not have advanced on civil rights as far as they had. I submit to you—and I am not arguing for the federal system of appointment of judges, because I am against it—the only reason for the appointment of federal judges was the simple reason given to us by Mr. Winters of the judicature society, which was that there was just no other way to do it. They couldn't elect them nationwide. But what I am trying to say is that regardless of that, will anybody in this room say that a federal judge is not appointed from his own state? Will anybody in this room say that those federal judges did not stand up to their authority, their convictions as a judge of the United States and not of that state when they passed upon some of these serious problems? I submit that if there is any basis for the accusation that there is balkanization in this district plan, then you might as well apply it to the federal court system itself.

Needless to say, I think I have answered most of the things which I wanted to, but I am very serious in this matter. I think that we have arrived at a time when, if the delegates desire very seriously to do what they know the people of this state want—that is, to place their courts strictly on a nonpartisan basis—then this is the way to do it.

CHAIRMAN VAN DUSEN: Mr. Iverson, would you yield to Mr. Ostrow for a question?

MR. IVERSON: Yes.

MR. OSTROW: Mr. Iverson, did I understand you to say that the district plan had worked successfully in Illinois?

MR. IVERSON: That is right.

MR. OSTROW: Would you then disagree with Action Journal 22 of the committee on judicial branch, December 7, 1961, which says:

> Appearing before the committee was Mr. Albert Jenner of Chicago, Illinois, and past president of the bar association, who commented on the court structure and judicial selection system of the state of Illinois. He made the following points:
>
> 1. The present court system of the state of Illinois, and in particular Cook county, is completely unworkable and has caused a breakdown in the judicial system in Cook county.

Then it goes on to say that in November, 1962, they are presenting a new judicial article which will provide for 4 judicial districts with 3 supreme court justices being elected from Cook county instead of the one that is now being elected from there.

MR. IVERSON: That is exactly what I said, Mr. Ostrow, and I agree with you entirely. He stated that the Cook county court setup was a monstrosity in effect, and that is the very thing which we have already done to prohibit any such a thing as happened there. I suggest that you have—I believe Mr. Prettie has at his fingertips—the testimony of Mr. Jenner in response, I believe, to questions asked by myself, and if you find that he said anything different than I did with respect to the supreme court I will apologize to you.

MR. OSTROW: I don't want your apology. I just want to get this straightened out. Didn't he at the same time say for years and years they were unable to get more than 1 supreme court justice provided for from Cook county because of the influence of the rural areas in the legislature?

MR. IVERSON: I think that is right, but they have got it now in this judicial article.

MR. OSTROW: You mean they are going to get it if the people approve it in November, 1962?

MR. IVERSON: I don't know why they wouldn't approve it if Cook county has 68 per cent of the population.

MR. OSTROW: Well, I mean, just for the sake of accuracy, they haven't got it. They are going to vote on it November, 1962.

MR. IVERSON: I would like the opportunity of furnishing that testimony to Mr. Ostrow, because it was as I suggest.

CHAIRMAN VAN DUSEN: Mr. Lesinski.

MR. LESINSKI: As a layman I would like to say a few words. The district plan refers to judicial circuits. Perhaps the movers of this amendment could supply charts showing the population of the judicial circuits and locations so we can see how this gerrymandering can be accomplished. Now I do have a districting plan coming up in another article to which I hope to receive the same argument in its support.

CHAIRMAN VAN DUSEN: Mr. McAllister.

MR. McALLISTER: Mr. Chairman, fellow delegates, most of the delegates of both political parties have expressed their desire to have the people elect their officials. We have passed an amendment allowing the people to fill the vacancies in judicial offices by their votes. It is my opinion this is one of the finest things that we have done, and it is very popular with the people.

The supreme court justices who appeared before our committee complained about the time required and the cost of campaigning statewide for the offices they hold. The claim of many is that the people are not acquainted with the candidates that they vote for. All complaints are solved by the district plan proposed. The cost of campaigning will be within the finances of the candidate. The people will know and have the opportunity to meet their candidate. Each area in the state will be represented on the court so that someone who has complete knowledge will be present when the case is decided in the area involved. The people in the state will have a greater knowledge of and interest in the supreme court. There will never be a possibility of having all justices from one area of the state. The court will be completely separated from political considerations. If there is not a candidate from the area acceptable to the people, any candidate running can run

in that area where there is not a suitable candidate. If the justice does not conduct himself properly he can be more easily disposed of. One third of the people will elect 2/3 of the justices, and the remaining 2/3 will elect the remainder. Anything we can do here to give the people a greater part in the government of Michigan will make our government better and more secure. I recommend the adoption of the amendment.

CHAIRMAN VAN DUSEN: Mr. Blandford.

MR. BLANDFORD: Mr. Chairman, fellow delegates, I feel that the real merit of the districting plan has not been covered this evening. In my humble judgment the district plan for the supreme court is a mere enlargement of the district plan which is now in effect for circuit courts and proposed for the appellate courts. Practically speaking, I can visualize deserving and qualified circuit judges moving up to the appellate court and finally to the supreme court. I like this movement up through the ranks. I feel that it insures qualified supreme court justices. It will insure, in my judgment, the election to the supreme court of judges who have had circuit and appellate court experience. This is not true today under our present system. In my judgment the district will assure the people of Michigan of the best qualified and experienced supreme court possible. Our supreme court for the first time will be composed of judges, not politicians. On this basis I heartily support the district plan.

CHAIRMAN VAN DUSEN: Mr. Hodges.

MR. HODGES: I don't want to disappoint Mr. Iverson, so I will make the charge that the court is being balkanized so we can get that out of the way. Mr. Iverson raised the point, which is probably not pertinent here, of the federal judiciary in the south and their courageous stand on civil rights, and the fact that if they were elected they probably couldn't have done this. However, I think Mr. Downs laid this argument to rest when he said this depends on everybody having the right to vote. Now, it seems to me that if we just take this field of civil rights for an example and relate it to Michigan, and see what would happen with a balkanized malapportioned court, it might result in the same thing we have in the state legislature, where for the past 10 years a malapportioned legislature hasn't seen fit to pass any meaningful civil rights legislation, and I think this might be projected in the views of the supreme court if—

MR. LUNDGREN: Point of order, Mr. Chairman.

CHAIRMAN VAN DUSEN: Mr. Lundgren, the Chair believes your point of order is well taken. However, the Chair has allowed considerable latitude on the part of prior speakers. Mr. Hodges, the Chair trusts you will —

MR. HODGES: Mr. Chairman, I am trying to relate the question of a court set up on districts, and the only thing we have comparable is the state legislature, and I am just pointing this out as an example in saying I think the best type of court for all kinds is where all votes count equally and can be brought to bear on the court. I think that anything less than this allows more pressure from one side or one group than another set of voters, and I think we would be remiss in our duty if we allowed the court to be subjected to minority pressure of this sort. Therefore I speak against the plan.

CHAIRMAN VAN DUSEN: Mr. Bledsoe. Mr. Bledsoe passes. Mr. Iverson.

MR. IVERSON: Mr. Chairman and fellow delegates, in answer to Mr. Ostrow I would like to just read a few excerpts from the testimony of this witness referred to:

> Question. Do you find that the election of the supreme court justices on this district basis has any tendency to polarize or balkanize those judges in their thoughts on the supreme bench?
>
> Answer. No, and I can say this after 31 years of practicing law—and I am a litigation lawyer, and I am up in that court all the time. I suspect that I have briefed and argued at least 150 cases in that Supreme Court of Illinois—it has not balkanized those judges at all. One would think it might, but what happens is this: for example, Judge Bristo in our third circuit died about 4 weeks ago, and the governor has called a convention for the selection of a judge to succeed Judge Bristo in that circuit. That circuit runs from the Wabash river across—about dead center in Illinois—all the way across to the Mississippi river, or to the other side of the state; in any event, through our state capitol, Sangamon county, and so forth.
>
> The judge from that circuit, from that district has been, I think—this will have to go back to certainly before my time—has always been from some small county in that circuit. The 2 large counties are Sangamon and Macon on the western end of the circuit, and they just have not insisted, really. They could dominate the convention pretty well, but they have always selected a fine judge, and that is a fairly evenly balanced district. Sometimes it is a Democrat and sometimes a Republican.

Now, another question:

> Question. Do you find that the election of these justices of the supreme court on a district basis has a tendency to encourage better lawyers to run for the office?
>
> Answer. Very much so. For the reasons—first, let us take campaign expenses. In this day and age, campaigning through the state of Illinois is really a tough job and, for a judge to really campaign throughout the state of Illinois for judge of the supreme court, it costs a minimum of $45,000 to $50,000, an absolute minimum. You cannot do anything in the state of Illinois in a campaign. It will run at least $50,000.
>
> Let us say that Judge House—who is now the baron House, who is the judge from Nashville county from down near the Ohio and Mississippi river—he runs. He gets up to Chicago, he gets up to the northwestern part of the state, up around Galena where General Grant was born. The people up there do not know who Judge House is from a bale of hay, and we in Cook county—except some of us lawyers who keep alert on that sort of thing—they would not know; but they know who Judge House is down in the first district, which is the southern "little Egypt;" what we call "little Egypt" in Illinois.
>
> So that has a tendency to bring out in that area, and it is a pretty good population, a good man.

That is an example of what the testimony of this man from Illinois was.

CHAIRMAN VAN DUSEN: Mr. Habermehl.

MR. HABERMEHL: Mr. Chairman, I think it must be apparent to all the delegates here that the big problem is that there isn't any good way to select a justice of the supreme court, lacking Divine intervention, anyway. However, it seems to me that the best prospect we have here is to do the same thing we do in just about every other field of human endeavor, to try to find a well qualified man who has demonstrated his competence as a judge and attempt to promote him. That is what we follow in industry, in the school system and about everything else. If we can achieve a system which does that, and can guarantee that the justices of our supreme court will have judicial experience, we will have accomplished a great deal that the people of the state can thank us for. No plan actually in existence now, other than some sort of district plan, can accomplish that. Any time an appointment is made by an executive officer, the chief executive officer, his attention must be directed to the good that it might do his candidacy or his party. We have even seen that in the federal system where 2 judges that I think all lawyers look on with reverence, Judges Augustus Hand and Learned Hand—probably recognized by all lawyers as being the oustanding judges in the country—never were appointed to the United States supreme court, and never had a chance to be appointed to the United States supreme court. They simply were not political figures.

Here in this plan, it seems to me, are the best opportunities we have for the people of these districts to recognize a competent circuit judge and to provide for his promotion first in this intermediate court of appeals and then to the supreme court, if he demonstrates his competence there.

If this were a matter of trying to represent areas of the state, as Mr. Hodges would suggest, I am afraid I would have to be against it. If anyone will take a pencil and figure out what they say in this amendment, you will find that all of Michigan north of Bay City, which is approximately 3/4 of it, would constitute 1 judicial district. Well, I am from that area, and if I didn't believe that this plan had merit in securing to us a far better judiciary than any other plan that we might come up with I couldn't possibly back the plan. I think it is far less political than any other plan that we might hope to adopt, and that it will secure the best possible judicial talent.

In answer to Mr. Hanna, I find I must disagree with him. The idea of giving away 3 justices is only borne out by historical fact. Since 1910 Wayne county's percentage of the population of this state has run as follows: in 1920, 33 per cent; in 1930, 39 per cent; in 1940, 38 per cent; in 1950, 38 per cent; and in 1960, 34 per cent. Thirty-four per cent of the people live in Wayne county, will elect 1/3 of the justices of the supreme court. We can't get any closer. Sixty-six per cent of the people, the balance of the state, will elect 2/3 of the supreme court. Again we can't possibly get any closer. The great merit of the plan, however, is not particularly this matter of population, but simply the matter of the promotion of able, qualified and competent judges. I invite your attention to the judicial experience of the present supreme court.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Messrs. Dehnke, Iverson, Hoxie, McAllister, Rood, Pugsley and Prettie. Does any delegate desire to have the amendment read again? If not, those in favor of the amendment will say aye. Those opposed will say no.

The Chair is in doubt. Those in favor of the amendment will vote aye. Those opposed will vote no. The question is on the amendment offered by Messrs. Dehnke, Iverson, Hoxie, McAllister, Rood, Pugsley and Prettie. Those in favor will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the adoption of the amendment the yeas are 62; the nays are 64.

CHAIRMAN VAN DUSEN: The amendment is not adopted. The secretary will read the next amendment.

SECRETARY CHASE: Mr. Higgs offers the following amendment:

1. Amend page 1, line 6, after "Sec. a.", by striking out the balance of the section and inserting "The supreme court shall consist of 9 justices, to be elected by the electors of the state. The term of office shall be 8 years. Not more than 3 terms of office shall expire at the same time.

Justices of the supreme court shall be elected at statewide partisan elections. Incumbent justices of the supreme court may become candidates for reelection by filing a declaration of intention as provided by law. Other candidates may be nominated by state party conventions or by petition as provided by law. No candidate shall be nominated by the convention of a party to oppose an incumbent which it originally nominated and who has filed a declaration of intention. Persons nominated at party conventions shall be listed on the ballot under the party name and label of the party nominating them. Incumbents filing a declaration of intention shall be listed on the ballot under the party name and label of the party originally nominating them. Persons nominated by petition shall be listed on the ballot under no party name or label. No vacancy shall be filled by appointment.".

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Higgs. Do you desire recognition, Mr. Higgs?

MR. HIGGS: Mr. Chairman and fellow delegates, you have a copy of this amendment on your desks, and I would like to call your attention to the 5 basic objectives that are sought to be accomplished by this amendment. First of all, it seeks to reinstate the language of the original committee proposal that the supreme court consist of 9 justices to be elected for 8 year terms. I think the amendment that we had adopted providing for 10 year terms is somewhat long, if you will bear in mind that we have an original proposal that permits a judge to run for office providing he is not 70 years of age. As the term gets longer it becomes permissible for a judge to sit on the supreme court that much longer. He could be 80 years old rather than 78. I think an 8 year term is long enough.

I would like to bring to the supreme court a truly elective system. This would be best accomplished by removing the incumbency designation and removing the appointive feature. As we all know, we do not have an elective supreme court. Of the 8 justices on the supreme court, 5 were placed there originally by appointment directly to the supreme court and a sixth began his judicial career by appointment. We have defeated a plan that I think would permit an elective system, nonpartisan by districts. We have seen objections raised as to the cost of campaigning statewide, and that if we want a truly elective system, nonpartisan, we would have to go to districts. But this has been defeated at the moment, and I believe that if we are going to have an elective system which is consistent we must go to a partisan election. And this, I think, is one of the most significant aspects of this particular amendment which is before you.

I propose that the judges be elected at statewide partisan elections. One of the greatest criticisms that we have heard through the years has been the criticism that candidates who are selected by partisan nomination are then expected to take a bath, cleanse themselves of partisan relationships and then run statewide nonpartisan. This is basically a fraud on our people. They go to the polling place, and they are expected to vote in a contest which allegedly is nonpartisan, but which we all know is truly a partisan race. Let us reconcile this inconsistency. I would like to reconcile it in favor of a nonpartisan nomination, but if we are going to have a nonpartisan election we just can't do it statewide at any reasonable kind of expense and without special interest groups financing the candidate, and unless he has a lot of money of his own. I think if we want a truly elective system we must remove the incumbency designation and, in lieu thereof, place the partisan label.

Fourth, one of the problems even in the system that we have today, which is allegedly nonpartisan, is the fact that the candidate, if he wants to be renominated, must go back to the party convention in order to run again. While he is on the bench, allegedly he is a nonpartisan. However, he must bear renomination in mind throughout his tenure—throughout the period that he sits on the bench—in making judicial decisions, many of which decisions are truly decisions which involve basic philosophy and policy, and some of which have been at least interpreted as partisan.

It has the appearance—at least in the minds of the people, I think—that judges who are sitting on the bench must keep in mind that they have got to go back to the party to run for office again. It just isn't consistent. If we can't resolve this inconsistency by making both the nomination and the election nonpartisan, then I suggest to you the only honest way to do it is to resolve the inconsistency by making both the nomination and the election partisan.

But my plan has another feature that I think is unique. While I would require that the candidate carry the partisan label, if the candidate nominated by his party is successful and is elected to office, then I would remove the partisan obligation by permitting him to renominate himself by affidavit and run again. In this way, I think we would combine the best features of the partisan type of election and the nonpartisan type. We would, I think, be requiring the candidate to run under the label of his party; we would, I think, provide a truly honest identification; but we would also permit this candidate, if elected, to be in a position where he can exercise his office with a spirit of independence; because once he is there it is only up to him to say whether or not he shall run again. I think that this has an advantage over any appointive plan in that in any appointive plan he runs simply on his record. Here he at least must face the electorate, and he must face a live candidate, and he must actively run, and I think that that is a worthwhile and sound proposition. Now, by making it a truly partisan election, this will permit candi-

dates, regardless of wealth, to run in a statewide election without becoming involved either in a tremendous personal expense—as you have heard, it could run into maybe $45,000, $50,000 and upwards. It will also permit him to be independent of any support of any special groups unidentified which might contribute to his campaign in various ways.

I would urge that you give my amendment serious consideration. This is advanced most seriously. I do not see any reason to fill the vacancies by appointment. If we have 9 justices on the supreme court and a vacancy occurs, I don't know really why that court cannot operate with 8 justices until the next election inasmuch as the court is now operating with 8 justices, and, in addition to having 8 justices, at that time they will also be assisted because they will have an intermediate court of appeals if the committee proposal is adopted. I think that you have heard most all of the arguments both ways in both of these plans. It is not an easy question for any of us to answer. There probably isn't any perfect way of doing this, but let us at least remove this hypocritical type of approach where we nominate by party and we run nonpartisan. I think that the public will accept a truly partisan election, and in a much better spirit than they will if we continue basically the same type of selective process that we now have. Thank you.

CHAIRMAN VAN DUSEN: The question is on the amendment to section a of Committee Proposal 91 offered by Mr. Higgs. Those who are in favor of the amendment will say aye. Those opposed will say no.

The amendment is not adopted. Are there further amendments to section a of Committee Proposal 91?

SECRETARY CHASE: Mr. Danhof offers the following amendment:

1. Amend page 1, line 6, after "Sec. a.", by striking out the balance of the section and inserting "The supreme court shall consist of 9 justices to be elected on a nonpartisan statewide basis. The term of office shall be for 8 years and not more than 3 terms of office shall expire at the same time. Each political party at party convention may nominate 1 candidate for election for each position to be filled. Any incumbent justice whose term is to expire may become a candidate for reelection by filing an affidavit of candidacy, in the form and manner as prescribed by law, not less than 180 days prior to the expiration of his term. Any person otherwise qualified to be a supreme court justice may become a candidate for election upon filing a nominating petition, in the form and manner prescribed by law, signed by qualified electors of this state in a number equal to 3 per cent of the total vote cast for the office of governor at the last previous election.".

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Danhof, on which the Chair will recognize Mr. Danhof.

MR. DANHOF: Mr. Chairman and members of the committee—

MR. WOOLFENDEN: Point of information, Mr. Chairman.

CHAIRMAN VAN DUSEN: State your point, Mr. Woolfenden.

MR. WOOLFENDEN: Are copies of this amendment in the hands of the delegation?

CHAIRMAN VAN DUSEN: The Chair believes they are, Mr. Woolfenden. You may proceed, Mr. Danhof.

MR. DANHOF: Mr. Chairman, members of the committee, we have had numerous votes which seem to demonstrate that we are probably not going to depart too greatly from the present procedure. I submit to you that the first 2 sentences here are basically of the committee proposal, section a. The remainder you may have viewed in essence this afternoon when we considered the amendment by Mr. Hanna. There have been some changes thereto in language and in shortening of the section. In essence it provides for 9 justices on a nonpartisan ballot. It provides that they may be nominated by party, an incumbent may file an affidavit for reelection, and any other individual who is otherwise qualified may become a candidate by filing nominating petitions with a number of 3 per cent. The form and the manner of the affidavit and of the nominating petitions are left to the legislature who will prescribe what type of petitions, where they shall be filed, and perhaps the idea that not more than such a percentage may come from any particular county.

I think that the committee of the whole and the convention have indicated a desire to elect. I take no tremendous pride in authorship. I have stolen, begged, borrowed and taken from numerous other plans. I submit that we have discussed this matter quite frequently at great length. This particular plan provides for live opponents. Nobody runs against a shadow or record. If you want live opponents, this is your opportunity. Perhaps we have had the anomaly of partisan nomination and nonpartisan election. We are opening up the primary and the nominating idea.

I would ask that we can perhaps speedily bring this matter to a conclusion for this evening, and ask for a vote on this particular matter.

CHAIRMAN VAN DUSEN: Mr. Woolfenden.

MR. WOOLFENDEN: Well, will Mr. Danhof yield for a question?

CHAIRMAN VAN DUSEN: You have the floor, Mr. Woolfenden, if Mr. Danhof cares to answer.

MR. WOOLFENDEN: Mr. Danhof, do I understand this correctly, that there is no primary election involved in this plan?

MR. DANHOF: Yes.

MR. WOOLFENDEN: There is none?

MR. DANHOF: That is correct.

MR. WOOLFENDEN: Am I correct that it would be possible for any number of candidates that wanted to—let's call them self starters—there could be a dozen or 15 candidates run, and without a primary it would be legally possible under this language for the successful candidate to be elected with, let's say, 10 per cent of the vote?

MR. DANHOF: It is possible, Mr. Woolfenden, that you would have a successful candidate with less than a majority of the vote. You are correct. I submit that it probably is not probable, but it is possible, as you well point out.

MR. WOOLFENDEN: I take it that it would be reasonable to anticipate that the candidates on a ballot would include an incumbent justice who has self nominated himself; candidates nominated by the major political parties or perhaps all political parties, and the possibility that there be some individuals who ran so that you would have nominees coming from 3 different categories of selection, is that correct?

MR. DANHOF: It is possible that you could have the incumbent nominated by affidavit, and each of the major political parties will, say, nominate a different candidate. But probably, I imagine the usual procedure would be that the incumbent nominated by the political party would be renominated by that party even if he filed an affidavit. But the other is possible, yes, Mr. Woolfenden.

MR. WOOLFENDEN: Thank you. Mr. Chairman and fellow delegates, I submit that this plan is ill considered. I think it would be inexplicable to our constituents if we went back to them and reported that the best we could come up with as a method for the selection of the justices for the highest court of this state would admit of literally a bed sheet ballot with many, many candidates on it. I think it is fantastic to contemplate such a thing, and I vigorously oppose it, and I urge the delegates to vote against this amendment.

CHAIRMAN VAN DUSEN: Mr. Davis.

MR. DAVIS: Mr. Chairman and delegates, I rise to support the Danhof amendment. I think that there is considerable unanimity of thinking among the delegates as to the ideal qualifications which would go to supply us with the type of judges which we wish. I think that sometimes a principle which can be simply stated to accomplish this is sometimes difficult. I believe that any plan in which we provide for the election of supreme court justices is confronted with some obstacles.

I would make the conclusion based upon the testimony which has been given in this committee that there is no perfect plan for selection of supreme court justices to meet all of the ideal qualifications. I think that if there had been a perfect plan, that the committee on the judiciary would have presented us with a unanimous or a near unanimous report. This is not the case. I likewise submit that any plan submitted which received serious consideration in the committee of the judiciary or which has received serious consideration on this floor is not entirely bad. In other words, I feel that the issue with which we are confronted is not one which is black or white, but it is one which we refer to as a gray area. In fact, I doubt if there is any delegate in this convention, possessed even with great knowledge as many are, that could predict with accuracy which one of these plans over a 50 year period of time would give us the best supreme court justices. I think that implementation within a plan and factors other than the mechanics itself might well be of more importance than the plan itself. I will state that I do not speak from a position of knowledge or experience, and I don't make this statement to inform the delegates of something with which they are already familiar, but to state that I am aware of this fact myself. However, in my judgment, I feel that this is a good plan.

It has been stated by Mr. Danhof that it is somewhat similar to our present plan. It does rely upon party convention for nomination. I think that it is admittedly somewhat weak at this point. But as I have listened here as an observer, I am of the opinion that some of the alternatives to this plan are less palatable than this. I think that if either political party will attempt to place in nomination people of the highest caliber—which I should think that each party would want to do—that this plan is not as weak as it sounds, and if properly implemented can supply a source of competent people for this position.

I think that we have made an improvement in the filling of vacancies. I recognize that this was not agreed to by all, but in my judgment it allowed for a stamp of approval being place upon any judge by the people of this state before he could be permanently placed in office, and I think that the people of this state will favor this as an improvement. There are other, what I would call somewhat minor, improvements which are presented in this plan, and I submit that at the time this is presented to the people of the state, that in my judgment they will more aptly compare this with our present document than they will with the Constitution of the state of Illinois or Missouri or New Jersey or any other state.

Therefore, in summary, I would say that in my judgment this plan, properly implemented, can place competent judges on the bench. It is a plan which I feel there is no need to apologize to either party for as on a partisan basis. I would feel that it is a plan that either party can accept. It does provide for statewide election of judges, and I think that the people, as I mentioned before, will place their stamp of approval upon it. Compared with our present system, and presented objectively, I feel that this plan will meet with the approval of the voters of this state.

CHAIRMAN VAN DUSEN: Mr. Garry Brown.

MR. G. E. BROWN: Mr. Chairman, I once again raise a question of parliamentary inquiry. Is this amendment now in order? I would like to direct the Chair's attention to the fact that this is the William Hanna amendment in substance; almost an exact verbatim copy of the Hanna amendment which was voted down. The only change in it is that it is 8 year terms rather than 10 year terms, which was an amendment in itself.

CHAIRMAN VAN DUSEN: Mr. Brown, the Chair would advise that he had consulted with the secretary with respect to the point that you make, and the secretary advises that the amendment is in order.

MR. G. E. BROWN: Why, may I ask? Is it not the same plan?

CHAIRMAN VAN DUSEN: The plan, while in many respects similar to the amendment offered earlier by Mr. William Hanna which was adopted in part and rejected in part, is in many respects different from the amendment offered by Mr. William Hanna which was adopted in part and rejected in part. For that reason the Chair would rule that it is in order.

MR. G. E. BROWN: May I inquire in what respect it differs?

CHAIRMAN VAN DUSEN: The language is in many respects different. The term of office is different. The Chair is not prepared to go through the 2 amendments line by line or detail by detail, but the differences are sufficiently significant to make the amendment in order at this time, Mr. Brown, in the opinion of the Chair.

MR. G. E. BROWN: I would then therefore move that the committee rise.

CHAIRMAN VAN DUSEN: Mr. Brown moves that the committee do now rise. Those in favor of Mr. Garry Brown's motion that the committee do now rise will say aye. Those opposed will say no.

MR. G. E. BROWN: Division.

CHAIRMAN VAN DUSEN: Mr. Brown requests a division. Is it supported? It is suported. Those in favor of Mr. Brown's motion that the committee do now rise will vote aye. Those opposed will vote no.

MR. NORRIS: Mr. Chairman, will you state the motion, please?

CHAIRMAN VAN DUSEN: The motion is by Mr. Garry Brown that the committee do now rise. Division has been ordered. Those in favor of the motion will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the motion that the committee rise the yeas are 31; the nays are 92.

CHAIRMAN VAN DUSEN: The motion does not prevail. On the amendment offered by Mr. Danhof, the Chair will recognize Mr. Ford.

MR. FORD: I am getting a lot of assistance over here, Mr. Chairman.

CHAIRMAN VAN DUSEN: The committee will be in order, and Mr. Ford will proceed without assistance.

MR. FORD: Mr. Chairman, I rise somewhat timorously to agree with my good friend Charlie Davis, and the only reason that I am a bit hesitant is that he is a candidate next month and I doubt if it would do him much good in his district if they knew he was agreeing with me.

However, I stated earlier this evening that we felt we had reached a stage where a compromise that may not make all of us happy, but which accomplishes substantially in the minds of many of us the best plan that we could come up with after a great deal of effort on the part of everyone who has worked at this, is better than no concrete plan at all. There are features of this plan that leave some of us with some doubts, but certainly the plan incorporates more positive good than any other alternative that has presented itself on the floor or elsewhere. For that reason I support the Danhof amendment and urge that you vote in favor of it.

CHAIRMAN VAN DUSEN: Judge Leibrand.

MR. LEIBRAND: Mr. Chairman, fellow delegates, I feel constrained to oppose the amendment, and I point out just one thing. In the last sentence—which permits the nomination of candidates by petitions of 3 per cent of the total vote for governor—I made a quick computation and, as I say, I am not good in arithmetic, but I compute that under this section which is supposed to be, I suppose, an attraction, it would require, according to my computation, 98,661 good signatures on a petition to qualify a candidate. Why not take that sentence out?

CHAIRMAN VAN DUSEN: Mr. Martin.

MR. MARTIN: Mr. Chairman, this wasn't my plan. I was for another system of selecting justices. I don't think this is the plan of those who favored the district plan, but we have gone all the way around the mulberry bush, and we are back to practically the wisdom or lack of wisdom of the 1908 con-

vention, with some improvements. It seems to me that we have devoted all the time that we profitably can to this proposal, and that the time has come to settle on the best plan that we can find to bring about some consensus in this committee. I think this is it. It proves that the 1908 convention knew more than we realized, I think, and probably went through the same struggle we have gone through and came out just about where we have. I certainly favor the amendment of Mr. Danhof, and hope the committee will adopt it with a strong bipartisan vote.

CHAIRMAN VAN DUSEN: Mr. King.

MR. KING: Mr. Chairman, fellow delegates, I have an amendment on the secretary's desk which I would like to have read at this time.

CHAIRMAN VAN DUSEN: The secretary will read the amendment offered by Mr. King.

SECRETARY CHASE: Mr. King offers the following amendment to the amendment offered by Mr. Danhof:

1. Amend the first sentence of the amendment, after "elected" by inserting "by a majority of the votes cast for the office"; so the language will then read, "The supreme court shall consist of 9 justices to be elected by a majority of the votes cast for the office on a nonpartisan statewide basis."

CHAIRMAN VAN DUSEN: The question is on the amendment to the amendment offered by Mr. King, on which the Chair will recognize Mr. King.

MR. KING: Mr. Chairman, fellow delegates, it seems to me that without this sort of an amendment, and in view of the committee chairman's response to Mr. Woolfenden's question, we are very clearly changing something which is inherent, I think, in our political way of life. I think that it is inherent in the election of any office that that man so elected be elected by a majority of the people voting on the question.

Now, I see no reason why we can't have a primary. Many times, and perhaps most of the time, there will not be more than 2 candidates. I agree with Judge Leibrand that it is pretty difficult to get 3 per cent of the people who voted in the last gubernatorial election to affix their names to a petition. I suppose that most of the time the incumbent will be assured of the support of the party which first nominated him. So perhaps only once in 50 years would the occasion ever arise whereby we would want and need a primary, but if that situation comes to pass, I think we ought to have a primary to narrow the field down to 2 candidates so that whoever we do elect as the supreme judicial officer, or 1 of the 9 supreme judicial officers of the state, will be there by virtue of the fact that he has received a majority of the votes cast for that office.

CHAIRMAN VAN DUSEN: Mr. King, will you yield to Mr. Danhof?

MR. KING: Yes.

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: Mr. King, I would like to point out that this state has in the past, and probably will in the future, elect its governor with less than a majority vote; that the man who occupies the White House at the present time got less than a majority vote; that justices of the supreme court presently sitting have gotten less than a majority vote, since we have what in effect is cumulative voting, and you may vote for 1 or 2 but you don't have to vote for both, and nobody is quite sure how many votes are cast. I agree with you that you might have more than 2 candidates. I point this out. Judge Leibrand has very pointedly pointed out the number of signatures it is going to take. This was not put in to make it easy. This was put in to make it difficult, but possible. And I submit to you that to do this would require, perhaps, a special election simply for the supreme court justices when you don't even do it for the governor of the state.

Now we at the present time have 2 political parties. Fifty years from now we might have 4 political parties, and the man who is going to get one more vote than the fellow beneath him is going to be elected governor of this state. We at one time had 3 political parties, in the 1948 election, and it is quite possible that this would happen again. We would like to have a majority vote. I submit that in the past we haven't done it; that the possibility that you point out might be only once in 50 years, because if you have an incumbent he is probably going to run way ahead, and anybody who doesn't have the party—but it is possible that somebody without party help, of a sufficient personality to draw enough votes could be elected. This could be election by a majority.

I simply point out to you that if it is not done for other offices, I don't think it is needed in this particular case, and I think you would clutter up and add to the confusion by making a primary absolutely necessary. The more candidates you have active, Mr. King, the better off the incumbent is going to be. This is proved by history.

MR. KING: Mr. Danhof, I suppose any judgment on that should be reserved to find out who the incumbent is. That might be good and it might not be good. But here you have an unlimited opportunity for candidates to jump into this race; as many as can secure the necessary signatures. Now, as far as the presidential situation is concerned, I am not sure whether you are asking me to endorse the system or the results. But I am not here to endorse either one of them. I think that anybody who holds this office ought to be elected by a majority of the people voting for the office. I feel that way about the president of the United States, but it is not within my power to change it.

CHAIRMAN VAN DUSEN: On the King amendment, Mr. William Hanna.

MR. W. F. HANNA: Mr. Chairman, Mr. King, in the past and in other elective offices, unless you want to bar completely minority parties from springing into existence and proposing to the public their platform, your amendment would effectively bar them. I don't believe that minority parties should be stopped from nominating supreme court justices any more than they are legislators or governors or anyone else. It is conceivable under the present constitution and the present statute adopted pursuant thereto that you can have 8 and 9 candidates, because each political party could nominate 1, and it would be impossible for 1 candidate to get a majority.

The second problem, raised by Judge Leibrand, 3 per cent of this total vote cast is a sizable number. If any of the delegates have had the pleasure of attempting to circulate petitions for nonpartisan office and to secure a sizable number of the total votes cast for governor, they will realize that there will be no self starters in this race for supreme court justice. This idea was not new or original with me when I first put in the amendment. This idea was originated by none other than Charles Evans Hughes, that it should be applied to all nominations and conventions to allow a dissatified person to enter the election as an appeal from the dictates of a convention bossed by a particular faction or group of people.

While this petition may never be used, it will serve 2 purposes. First, it will be a psychological sword hanging over the political party that if they nominate only political hacks the people and the bar of this state may rise up and nominate someone else. Secondly, there is no requirement that the political parties nominate. The word used in this is "may," and if some group feels that there must be opposition to the incumbent, they may circulate petitions. Three per cent is a difficult number, but to insist that you have a majority vote, whether you have 1 candidate from each political party or only 2 or 3 candidates, the minute you have more than 2 the insertion of the word majority makes impossible any elective system that we have in the United States or any of the several states.

CHAIRMAN VAN DUSEN: Mr. Ford.

MR. FORD: I wish to oppose the King amendment. It has this additional effect—I agree with everything that Bob Danhof has said about it and what it would do to the language that we have already adopted is write this kind of condition into it. Two conditions, actually—first of all, the present amendment says we elect no less than 3 judges at a time, in effect. Now, in a multiple race of this kind it is impossible to determine the number of votes cast for the office, and there is one way to do it, and that would be for the judicial

election to be held for the supreme court completely separate and apart from any other matter that might be on the voting machine at the particular time, and then to prescribe that if there are 3 vacancies the candidates would have to file for a specific vacancy and run head on head, as it's called, against a particular incumbent, for example. If you did these 2 things, then you can carry out the effect of the King language. There is no other way to implement it.

What Mr. King is asking you to vote for is a writing into the system of 2 more rigid requirements, and that is the head on head vote and the separate election which, you may well recognize, becomes a very expensive thing on a statewide basis. I urge you to defeat the amendment.

CHAIRMAN VAN DUSEN: Dr. Pollock.

MR. POLLOCK: I had a question of Mr. Martin, and not on the King amendment. Will you let me have it at that time?

CHAIRMAN VAN DUSEN: You will be recognized at the appropriate time, Dr. Pollock. The question is on the adoption of the amendment offered by Mr. King. Does any delegate desire to have it read again? If not, those in favor of the King amendment will say aye. Those opposed will say no.

The amendment is not adopted. Mr. Garry Brown has offered a substitute for the Danhof amendment, on which the Chair will recognize Mr. Brown. The secretary will read the Brown substitute.

SECRETARY CHASE: Mr. G. E. Brown offers the following substitute for the amendment offered by Mr. Danhof:

1. Amend page 1, line 6, after "Sec. a.", by striking out the balance of the section and inserting "The supreme court shall consist of 9 justices to be elected by the electors of the state. The term of office shall be 8 years. Not more than 3 terms of office shall expire at the same time.

Justices of the supreme court shall be nominated at party conventions for election on a nonpartisan statewide basis as provided by law. At the general election preceding the expiration of the term of office of any justice and every 8 years thereafter so long as he retains his office, every justice so elected shall be subject to approval or rejection by the electorate. The electorate of the entire state shall vote on the question of approval or rejection in a manner and form provided by law. Justices of the supreme court in office at the time this constitution takes effect as a result of having been elected shall be eligible to retain their office in accordance with this section.".

CHAIRMAN VAN DUSEN: On the substitute amendment offered by Mr. Brown, the Chair will recognize Mr. Garry Brown.

MR. G. E. BROWN: Mr. Chairman, members of the committee, when I made the motion to rise previously it was with the idea that the delegates and the members of this committee had not had an opportunity to have a copy of this plan before them. It did not appear it would be available here this evening, and I thought it best that each delegate have a copy of this. Since we are going to get to the plan, however, I shall start to discuss it. I would like to have each of the delegates here reflect back to the commencement of this convention and to reflect back upon what his ideas were, what her ideas were regarding the selection of the judiciary, especially the supreme court. I think if you do reflect back at that time it was the consensus that we should seek a method to obtain the best qualified jurists. Second, that we should eliminate or at least lessen partisan control or effect on that judiciary, and third, the conclusion of these two, that we should have an independent judiciary plus tenure for good jurists.

Now we have had presented to us a district plan, an appointive plan and a so called Hanna amendment which is now in the form of the Danhof amendment before you. Let us compare these 3 plans on the basis of these tenets that we accepted before we met this evening and agreed upon some time ago. First of all, how do these plans compare with respect to the opportunity to select the best qualified jurists? With the district plan, certainly there is a good opportunity to select qualified jurists, but within a limited area. The objections to the district plan in this regard have been that conceivably within a district there will not be such a qualified or the most qualified jurist. This was of course corrected to an extent by saying that the jurists did not have to live within the district. The district plan people recognized this. Then we have the appointive plan. Now certainly this would be good on this score in that it did provide for a so called blue ribbon commission to select competent people who would be presented to the governor for appointment as justices of the supreme court. The objection to this plan, of course, everyone recognizes that a blue ribbon commission is not the way that the people of the state of Michigan want to select their justices. Thirdly, we have the Hanna or the Danhof plan. Now what does this do? It requires that each of the justices of the supreme court keep his eye on his party because he must go back to his party for his nomination or he must run against the party's money, because they can nominate somebody else. This, of course, is not present in the present plan, because he doesn't have to go back for nomination. He doesn't have to run statewide every 8 years.

The second point is, does it lessen the political or partisan control? The district plan being nonpartisan both in the primary and in the general election certainly does eliminate party control, and this scores high in this respect. The appointive plan, no, it does not eliminate the partisan aspects of it because the gubernatorial appointments very likely will be partisan in nature, and you would end up with a majority of the commission having a partisan influence on the selection of your judges.

What about the Danhof plan? This certainly doesn't eliminate the justices of the supreme court from politics, because it says to the justices you must go back to your party every 8 years to get its nomination. Or if you certify yourself for nomination you may find yourself running against your own party and your own party's money and, in addition, running against another party and another party's money; and you will be campaigning statewide—having certified yourself for nomination—against both parties, their people and their money.

Now do any of these plans provide an independent judiciary and offer at least the promise of tenure for good jurists? The district plan, for the reasons we pointed out therefore, does not. Does the appointive plan? Yes, the appointive plan scores high on this point, because the appointive plan provides for the various things so far as the future term of office, as does the amendment I have put before you. What about the Danhof amendment? Does the Danhof amendment do this? It does not. For, as has been pointed out, the justice must go back to his party; he must go back to the people every 8 years and campaign statewide.

Now it has been said here as an objection to the present plan that the idea of party nomination and running statewide in the general election on a nonpartisan basis is a hybrid, that this is bad, that the status quo is therefore bad and something must be done about it. I will admit that the amendment that is presently before you perpetuates this, so to speak, but let me point out to you it perpetuates this for the initial election and that one only. It removes the jurist from the partisan aspect of partisan politics after the first election. Assuming he is a good jurist— he has done a good job—he has a record that he can stand on.

Is it necessary to have this done at party conventions? I think that it is. A nonpartisan primary statewide is not much less than ridiculous, because of the nominees that you would have at a nonpartisan statewide election. This aspect has been before the committee, too; I think in the Kuhn amendment. The appointive system, in turn, precludes the voters from ever having a voice in the selection of their jurists. It certainly would seem then that at some time in the course of the tenure of the judge that he should have had to go to the people for his initial selection. Under the appointive system, of course, he does not.

Another objection is the statewide campaign discourages or precludes the most capable jurists, attorneys, lawyers from running. This I think is a very true statement, but this is

perpetuated by the Danhof amendment. It is perpetuated by some of those that have come up before it. I would point out to you that the amendment that is presently before you would encourage the very best in the way of attorneys to run for the office of supreme court justice. He can be convinced to run for the office, and you can seek the very top people, because, in effect, you say to him that you must run statewide for this first election, but following your election you do not have to go back every 8 years. In effect, some might say that this says to the man that this is life tenure—life tenure, but once being selected by the voters.

Now, what are the advantages of the amendment that is presently before you? The people in the first place elect their jurists on a nonpartisan ballot after nomination by the party, but each of these candidates that is put up by the party will run statewide, but neither will have a headstart. There will be no incumbency label in the initial selection. The judges will run against their own ability. They will have equal chance before the voters. There will be no incumbency label. The best of the candidates are likewise encouraged to run in the first instance since they have an equal stature. They are not running against an incumbent. You have heard it said here often that to run against an incumbent is to not run at all. The promise of tenure in the office with a statewide election every 8 years will be a further threat to the jurists, since it once again depends upon going back to his party for his nomination and for its money or, if he doesn't get its nomination, to have another party put up against him. And the idea of putting a proposition on the ballot, should Justice So and so be continued in office, is an attempt to get the people to direct their attention to selecting supreme court justices according to the ability and to the judicial record of the individual rather than to the candidates in a popularity contest.

I would suggest to anyone here who has advocated obtaining the best jurists, and the attempt to get people to reflect upon the man for his ability as a jurist rather than his popularity, that you cannot in good faith adopt or support the Danhof amendment. It is a novel idea to run against a record, to have a proposition on the ballot, but is it better to ask a veteran jurist to run against another man and let popularity decide it? I have spoken too long, and I am sure that I will get much applause on this, but all I ask is that you think.

CHAIRMAN VAN DUSEN: On the amendment proposed by Mr. Garry Brown, the Chair will recognize Judge Leibrand.

MR. LEIBRAND: Mr. Chairman, I wonder if it would be possible for the secretary to provide us written copies of this by morning? I cannot carry the entire content of this amendment in my mind.

CHAIRMAN VAN DUSEN: They can be provided.

MR. LEIBRAND: In that event, Mr. Chairman, I move the committee do now rise.

CHAIRMAN VAN DUSEN: Judge Leibrand moves that the committee do now rise. Those in favor of the motion by Judge Leibrand will say aye. Those opposed will say no.

The motion does not prevail.

DELEGATES: Division.

CHAIRMAN VAN DUSEN: Division is requested. Is the demand supported? It is supported. Those in favor of the motion by Judge Leibrand that the committee do now rise will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the motion that the committee rise, the yeas are 61, the nays are 65.

CHAIRMAN VAN DUSEN: The motion does not prevail. On the Brown substitute for the Danhof amendment the Chair will recognize Mr. Bonisteel. Mr. Bonisteel passes. The question is on the substitute offered by Mr. Garry Brown for the amendment offered by Mr. Danhof on which the Chair will recognize Mr. Ford.

MR. FORD: I wish to oppose the amendment, and once again support the main amendment without such amendment, and urge you to vote no.

CHAIRMAN VAN DUSEN: The Chair will ask the secretary to read the amendment.

SECRETARY CHASE: The Garry Brown substitute for the Danhof amendment is as follows:

[The amendment was again read by the secretary. For text, see above, page 1593.]

CHAIRMAN VAN DUSEN: Those in favor of the amendment offered by Mr. Garry Brown will say aye. Those opposed will say no.

MR. G. E. BROWN: Division.

CHAIRMAN VAN DUSEN: Division is requested. Is the demand supported? The demand is not supported.

The amendment is not adopted. The question is now on the amendment offered by Mr. Danhof, on which the Chair will recognize Dr. Pollock.

MR. POLLOCK: It is a little bit late now, Mr. Chairman, but I understood Mr. Martin to say, if he would be good enough to answer this question, that the Danhof amendment got us back to the Constitution of 1908. I can't seem to recognize it in the original Constitution of 1908.

CHAIRMAN VAN DUSEN: Mr. Martin.

MR. MARTIN: It is getting pretty late to remember, but what I meant to say was it got us back practically to the system of election which we are now using, and with some important changes which I think improves it, particularly the change which allows the candidate for reelection to file an affidavit of candidacy, and the change which allows for the filing of a nominating petition with a relatively large number of signatures.

MR. POLLOCK: But Mr. Chairman, Mr. Martin, the Constitution of 1908, when you were talking about the wisdom or unwisdom of the convention you weren't talking about what transpired since. In 1908 they provided an altogether different system than the Danhof amendment provides.

MR. MARTIN: I was talking about the system which we are now using.

MR. POLLOCK: You recognize that it does vary from the original wisdom of the Convention of 1908?

MR. MARTIN: That is right.

CHAIRMAN VAN DUSEN: Mr. Habermehl.

MR. HABERMEHL: Mr. Chairman, fellow delegates, I realize that it is very easy to become discouraged over this matter and accept something that no one really wants. So far on the Danhof amendment I haven't heard anyone say anything but words of extremely faint praise.

This matter that we are on I think you all ought to recognize is the selection of judges which constitute the court of last resort in just about 999 out of 1,000 cases. After the supreme court in almost all cases there is nowhere else to go, and it doesn't make any difference whether it is your life or at least your liberty for life at stake, or whether it is $10 million or what it may be. I suggest that if we accept some plan here on the basis of getting out of here and going to bed, that we are not exactly doing the duty for which we were elected. It seeems to me that 144 delegates here ought to be able to arrive at a plan that will serve the people of this state, and it need not be something that everyone accepts with a great deal of misgiving. For that reason I would oppose any plan just for the sake of getting a plan. It seems to me if we have to take a few more days on it, the importance of the subject ought well to deserve those few more days.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Danhof. Mr. Bonisteel.

MR. BONISTEEL: Mr. Chairman and fellow committeemen, I support wholeheartedly what has just been said. We are dealing with a very important subject and one which we expect to last for a period of years. I can think of nothing that is really more serious than the plan which we adopt in this convention for the selection of supreme court justices.

I have been informed, whether rightly or wrongly, that we already have other amendments pending on the desk or are

about to be placed upon the desk, and it seems to me that just to have a sense of urgency here, which it seems to me I completely sense here in this committee, that we have just got to do something in order to get a time limit placed upon what we are trying to do on a subject which I consider as important as any that has ever come before this convention, and that is the reason I got up a little while ago; because I agreed wholeheartedly this committee should rise, and we should go home and come back tomorrow, and maybe with some clear thought we can produce the kind of thing Mr. Habermehl was talking about a moment ago.

Now, Mr. Chairman, I do move that this committee do now rise.

CHAIRMAN VAN DUSEN: The question is on the motion of Mr. Bonisteel that the committee do now rise. Those in favor of the motion will say aye. Those who are opposed will say no.

The Chair is in doubt. Those who are in favor of Mr. Bonisteel's motion that the committee do now rise will vote aye. Those opposed will vote no. For what purpose does the gentleman rise, Mr. Cudlip?

MR. CUDLIP: I would like to ask how many amendments or substitutes are on the secretary's desk in connection with this matter?

CHAIRMAN VAN DUSEN: The Chair doesn't think the question is in order at this point, Mr. Cudlip.

MR. CUDLIP: I will withdraw it.

CHAIRMAN VAN DUSEN: Have you all voted? Mr. Cudlip, the secretary has advised there are no further pending amendments. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the motion that the committee rise, the yeas are 79; the nays are 43.

CHAIRMAN VAN DUSEN: The motion prevails. The committee will rise.

[Whereupon, the committee of the whole having risen, President Nisbet resumed the Chair.]

PRESIDENT NISBET: The Chair recognizes Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, the committee of the whole has had under consideration one proposal of which the secretary will give a detailed report.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 91**, A proposal pertaining to the supreme court; has considered several amendments thereto, and has come to no final resolution thereon. This completes the report of the committee of the whole.

PRESIDENT NISBET: Mr. Faxon.

MR. FAXON: Mr. President, I just want to announce that tomorrow I intend to move in the morning that the delegates here take up the question following the completion of the judicial article of going to the article on legislative organization afterwards, and I just want to mention it to them now so they can think about it.

PRESIDENT NISBET: Announcements.

SECRETARY CHASE: Mr. Follo requests to be excused from the session of Friday, March 16. He is scheduled to speak to an organization at 7:00 o'clock and must leave here Friday morning to be there on time.

The apples today are from Mr. Rush. (applause)

PRESIDENT NISBET: Without objection, the request for leave will be granted.

The hour is late, but there is one other matter deserves our attention tonight, and I have just been informed that Mr. and Mrs. Bill Pellow are the parents of a brand new daughter. (applause) The Chair recognizes Mr. Radka.

MR. RADKA: Mr. President, it is with pleasure that I offer my plan for the convention. I move that we adjourn.

PRESIDENT NISBET: The question is on adjournment. Those in favor will say aye. Opposed, no.

The motion prevails. We are adjourned until tomorrow morning at 9:30.

[Whereupon at 11:20 o'clock p.m., the convention adjourned until 9:30 o'clock a.m., Tuesday, March 13.]

NINETY-EIGHTH DAY

Tuesday, March 13, 1962, 9:30 o'clock a.m.

PROCEEDINGS

PRESIDENT NISBET: The convention will please **come to order.**

Through the courtesy of Dr. Anspach, our **invocation** will be given this morning by the Reverend Robert C. Smith of the First Methodist Church of Mt. Pleasant. Please rise.

REVEREND SMITH: Let us pray. Almighty God, who has again brought us to the beginning of this day, defend us, we pray Thee, with Thy Holy Spirit. For this quiet moment before the pressing concerns of a new day move in upon us, wilt Thou lift us from the confusion and bafflement of these desperate times into the unhurried, healing calm of Thy presence.

Today we come for light to walk by. Save us from the futile repetition of old errors. Let not ignorance nor mean partisanship nor selfish greed block the way to a new order in our state that we might demonstrate the way of peace, of brotherhood, of increasing opportunities for all Thy children. In an hour when such vast issues are at stake may those who are here, conscious of the great importance of their calling, rise to greatness of vision and soul, as the anxious eyes of all the people of the state are upon this chamber of freedom. For these things we pray in the Spirit of Christ. Amen.

PRESIDENT NISBET: The **roll call** will be taken by the secretary. Those present will please vote aye. Have you all recorded your presence? If so, the secretary will lock the machine and record the attendance.

SECRETARY CHASE: Mr. President, a quorum of the convention is present.

Absent with leave: Messrs. Dade, Heideman, Hutchinson, Kelsey, Liberato, Madar, Mosier, Sterrett, Upton, Yeager and Youngblood.

There are no unexcused absences.

[During the proceedings the following delegates entered the chamber and took their seats: Messrs, Hutchinson, Upton and Yeager.]

PRESIDENT NISBET: Reports of standing committees.

SECRETARY CHASE: No reports.

PRESIDENT NISBET: Reports of select committees.

SECRETARY CHASE: None.

PRESIDENT NISBET: Communications from state officers.

SECRETARY CHASE: None.

PRESIDENT NISBET: Second reading of proposals.

SECRETARY CHASE: Nothing on that calendar.

PRESIDENT NISBET: Third reading of proposals.

SECRETARY CHASE: Nothing on that calendar.

PRESIDENT NISBET: Motions and resolutions.

SECRETARY CHASE: No resolutions on file.

PRESIDENT NISBET: Unfinished business.

SECRETARY CHASE: None.

PRESIDENT NISBET: **General orders.** Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, I move that the convention resolve itself into committee of the whole for the purpose of considering matters on the general orders calendar.

PRESIDENT NISBET: The question is on the motion of Mr. Van Dusen. Those in favor say aye. Those opposed, no.

The motion prevails. Mr. Van Dusen will take the Chair.

[Whereupon, Mr. Van Dusen assumed the Chair to preside as chairman of the **committee of the whole.**]

CHAIRMAN VAN DUSEN: The committee of the whole will be in order. Before we return to our consideration of matters relating to the organization of the supreme court, the Chair is advised that Dr. Anspach has a message for us which may speed us on our way. Dr. Anspach.

MR. ANSPACH: Mr. Chairman and members of the committee, we have had some difficulty finding the right side of the street as far as electing justices of the supreme court is concerned. Therefore, this is to show that other people have had difficulty finding the right side of the street, and that you eventually find it.

This inebriated gentleman walked up to a policeman and said to him, "Where is the other side of the street?" The policeman said, "Over there." "Well," he said, "that's peculiar. I was over there a while ago, and I asked the same question, and they told me it was over here." (laughter)

CHAIRMAN VAN DUSEN: Now that we know where we are, (laughter) we will return to our consideration of **Committee Proposal 91,** A proposal pertaining to the supreme court.

For last previous action by the committee of the whole on Committee Proposal 91, see above, page 1577.

The question is on the amendment offered by Mr. Danhof.

For text of amendment, see above, page 1590.

The Chair will recognize Dr. DeVries.

MR. DeVRIES: Mr. Chairman, fellow delegates, I move we reconsider the vote by which the Brown substitute amendment failed of passage yesterday, for the reason that I don't think we had adequate time to consider it. It wasn't even projected on the wall. I would like to move reconsideration, that copies be printed, and that we have a chance to look at the amendment.

CHAIRMAN VAN DUSEN: The question is on the motion of Dr. DeVries that the committee reconsider the vote by which the amendment offered by Mr. Garry Brown to the amendment offered by Mr. Danhof failed of passage. Those in favor of Dr. DeVries' motion say aye. Those opposed will say no.

The motion does not prevail. The question now—

DELEGATES: Division.

CHAIRMAN VAN DUSEN: Division is requested. Is the demand supported? It is supported. Those in favor of the motion of Dr. DeVries that the committee reconsider the vote by which the Garry Brown substitute amendment failed of passage last night will vote aye. Those opposed will vote no. For what purpose does the gentleman rise, Mr. Walker?

MR. WALKER: To ask that the voting machine be cleared before we take this vote. Everybody is voting aye to indicate their presence. I notice several around me have not been centered yet.

CHAIRMAN VAN DUSEN: The delegates will clear the machine and vote again. The machine will be cleared, please. Those in favor of the motion of Dr. DeVries to reconsider the vote by which the Garry Brown substitute amendment was not adopted will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the motion to reconsider, the yeas are 47, the nays are 79.

CHAIRMAN VAN DUSEN: The motion does not prevail. The question is now upon the amendment offered by Mr. Danhof to section a of Committee Proposal 91. Mr. Millard.

MR. MILLARD: Mr. Chairman and members of the committee, this morning I was discussing the Danhof amendment with several of the delegates, and they did not seem to know exactly what the Danhof amendment did. I would like to ask Mr. Danhof a question, if he would care to answer.

CHAIRMAN VAN DUSEN: If the gentleman cares to answer, Mr. Millard.

MR. MILLARD: Mr. Chairman, Mr. Danhof, just what is the difference between your plan and the present plan? There seems to be some confusion that your plan is identical with the way we are electing supreme court judges now. Will you kindly explain the difference?

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: Mr. Chairman, Mr. Millard, I think, as Mr. Martin pointed out, we incorporate the present system, but we do 2 additional things. One, we allow the incumbent justice to renominate himself by filing an affidavit for a declaration of candidacy. Two, we allow any other qualified person to become a nominee by obtaining the prescribed number of signatures. So, in essence, we have opened up, so to speak, the nominating procedure.

Now, perhaps — I'm not sure whether this is part of the problem — but it should be borne in mind, Mr. Millard, that having previously adopted the sections in Committee Proposal 96, we have eliminated appointment by the governor and that appointee then running for the office with the incumbency designation. You will recall that we are filling vacancies in all courts of record, including the supreme court, by election either at general or special elections, and further that the incumbency designation is given only to an elected judge or justice.

Now, those, in essence—the first 2 that I have named — are the differences in particular regarding the nominating procedure; and of course the other relates to the fact that all vacancies will be filled by election, as has been pointed out by a number of speakers.

CHAIRMAN VAN DUSEN: Mr. Millard.

MR. MILLARD: Mr. Chairman, Mr. Danhof, is there any provision to fill the vacancies until the election occurs?

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: Yes. We have authorized the supreme court to use a retired justice or judge, if they so desire, during the interim period between the time of the vacancy and the election. This does not have to be done, and if the court should decide to continue operation with just 8 justices, they could do so.

MR. MILLARD: Thank you.

CHAIRMAN VAN DUSEN: Mr. Garry Brown.

MR. G.E. BROWN: A question for Mr. Danhof, Mr. Chairman, if I may.

CHAIRMAN VAN DUSEN: If Mr. Danhof cares to answer.

MR. G. E. BROWN: Mr. Danhof, in substance, the Danhof amendment and the Brown amendment are the same, except that in one case the man runs against his record, so to speak —a proposition is put on the ballot, "Shall Justice so and so be retained?" And then in the other case the justice will every 8 years go back for reelection; is that correct?

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: I think you are correct, Mr. Brown. That is one of the main differences. The other, I think, is in the method of original nomination. I think yours restricted it just to the party, and did not allow any other qualified person. But, apart from that, that is the main difference: that in your plan they run against the record; and in this one there would be an opponent at least from the opposite party.

MR. G.E. BROWN: A further question, Mr. Danhof. Another difference is the person must go back to his party for his nomination, or he may certify himself, is that correct?

MR. DANHOF: By either choice he may be renominated.

MR. G.E. BROWN: If he certifies himself as a candidate, the parties then in their political conventions may nominate their own people, is that correct, so there may be 3 in the race, plus any that might file individually?

MR. DANHOF: That is possible.

MR. G. E. BROWN: And then, Mr. Danhof, isn't it true, from a partisan standpoint, that the Danhof amendment as contrasted to the Brown amendment gives to the parties greater control over their jurists?

MR. DANHOF: That's your conclusion, Mr. Brown.

MR. G. E. BROWN: Isn't that your conclusion, Mr. Danhof?

MR. DANHOF: You were going to ask me a question. I don't know. It's possible, I don't know.

MR. G. E. BROWN: Is your answer "I don't know"?

MR. DANHOF: If you ask if they're going to have control, I don't know if they'll have control or not. You ask me the questions, and then you draw the conclusions. I'm not sure I agree with your conclusion, but you made it.

MR. G. E. BROWN: Mr. Chairman, Mr. Danhof, I was merely asking what was your conclusion then as between the 2 plans, and the partisan aspect of the 2 plans.

MR. DANHOF: As you pointed out, Mr. Brown, the party may nominate someone other than the incumbent. And, in essence, this is probably the greatest difference between the 2 plans. And if the incumbent decides to return to the party and ask for their nomination, I imagine that they will either grant it to him or not. On the other hand, he may file, and the party may just automatically go along. Now, whether that's going to give them more or less control I don't know. It's possible, I assume. And you have pointed out very adequately the contrast between the amendment that I offered and the one which you offered.

CHAIRMAN VAN DUSEN: Judge Leibrand.

MR. LEIBRAND: Mr. Chairman, may I inquire of Mr. Danhof?

CHAIRMAN VAN DUSEN: You may, if the gentleman cares to answer, Mr. Leibrand.

MR. LEIBRAND: I note, Mr. Danhof, that your provision requires, or at least permits, an incumbent to give notice of his application for reelection not less than 180 days prior to the expiration of his term. That's 6 months that he is allowed to campaign. Am I correct in that, Mr. Danhof?

MR. DANHOF: Well, the time set upon which he would have to file his affidavit, yes.

MR. LEIBRAND: And that gives him a minimum. Now, as I recall the statutes, in the fall election the state conventions are held at least 66 days before the November election, and in the spring election at least 37 days before the spring election. That is, 66 days before the fall and 37 days before the spring. Now, if this is a convention nomination, the nominee doesn't know he is nominated until 37 days before the election in the spring or 66 days in the fall; is that correct?

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: If the statute remains the same, that could well be, Judge.

MR. LEIBRAND: Well, it would seem, then, would it not, that an incumbent is given an undue advantage in the situation. And I oppose the Danhof amendment.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Danhof to section a of Committee Proposal 91. Mr. Higgs.

MR. HIGGS: Mr. Chairman, I believe I have an amendment at the desk.

CHAIRMAN VAN DUSEN: Is this an amendment to the Danhof amendment, Mr. Higgs?

MR. HIGGS: Yes.

CHAIRMAN VAN DUSEN: The secretary will read the amendment.

SECRETARY CHASE: May the secretary inquire of Mr. Higgs, do you desire to offer it as a substitute for the Danhof amendment?

MR. HIGGS: No. I have an amendment to the Danhof amendment. I just inquired at the secretary's office, and I was advised that it had been presented. It is a sentence to be added after the word "filled."

SECRETARY CHASE: Mr. Higgs offers an amendment to the Danhof amendment:

1. Amend the amendment at the end of the third sentence after "filled" by changing the period to a comma and inserting "except no candidate shall be nominated by the convention of a party to oppose an incumbent which it originally nominated and who has filed a declaration of intention.".

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Higgs to the amendment offered by Mr. Danhof. The Chair will recognize Mr. Higgs.

MR. HIGGS: The purpose of this amendment is to fortify what I think is a merit in the Danhof amendment. And that is the proposition that an incumbent may, by nominating himself, secure a reasonable degree of judicial independence. However, this particular merit of the Danhof amendment is weakened by the fact that the party may, if this happens, nominate someone to oppose the incumbent which it originally nominated and who so filed such an intention. And I think that this defeats the purpose.

We have several things involved. First of all, it must be borne in mind that the Danhof amendment involves a statewide nonpartisan election. Consequently, an incumbent who has declared himself a candidate by filing a declaration of intention either must dig down into his own pocket for $50,000 campaign expenses, or he must rely on the party support. Now, if he is required to run against a candidate nominated by his own party, it removes all of the advantages that may be involved in the Danhof amendment with regard to relieving this particular situation. I think that it would offer a greater degree of party responsibility in the original selection of a nominee for the supreme court if that party in its original selection had in mind that if they were successful in electing this candidate to the supreme court, that they would thereafter be unable to oppose him at the election. This is something of a compromise between the situation where you have an appointee running on his record and an elective process.

I think you should bear in mind that one of the most serious criticisms of the present supreme court selective process is the fact that the incumbent justice, in order to be reelected, must first go back to the party for its nomination, and, secondly, he must rely upon that party for his campaign expenses in running for office. Consequently, I feel if we are to have the real merit of the proposition advanced by the Danhof amendment, which is to give the incumbent justice a greater degree of judicial independence by permitting him to renominate himself, in order to achieve that real merit, we must take this one step further and prohibit the party who originally nominated him from setting up an opponent to run against him. Thank you.

CHAIRMAN VAN DUSEN: Mr. Barthwell.

MR. BARTHWELL: Mr. Chairman, I would like to ask Delegate Higgs a question through the Chair.

CHAIRMAN VAN DUSEN: If the gentleman cares to answer, Mr. Barthwell.

MR. BARTHWELL: My question is, if an incumbent renominates himself, does it necessarily follow that the party will pay for his campaign expenses? I don't know much about the party conventions and party habits, so maybe Delegate Higgs could answer that for me.

CHAIRMAN VAN DUSEN: Mr. Higgs.

MR. HIGGS: Mr. Barthwell, it is my understanding that it does not necessarily follow that the party will pay for his campaign expenses. We have no control over their budget. But if the party were permitted to nominate an opponent to run against him, then I think he would lose all advantage of having been originally the nominee of that party.

CHAIRMAN VAN DUSEN: Mr. Ford.

MR. FORD: Mr. Chairman, members of the committee, Mr. Higgs' amendment would compound what I consider to be the most objectionable part of the proposal, or the principal part that leaves some of us uneasy, if we start off on the assumption that we are trying to take the judge away from improper pressure. Mr. Higgs' amendment would say that if a candidate chooses to renominate himself, that the party from whence he came originally is then foreclosed from being the sponsor of any candidate of superior qualifications that it thinks might be an improvement over the man they put on the bench before. Having now had an opportunity to see him on the bench and judge his judicial temper, the party responsible for placing him in that position would not be in the position of meeting the equal responsibility of removing him from the position by replacing him with someone better. And it seems that the party responsible for placing a bad judge or an inept judge or a judge who for any reason might better be replaced on the bench should have the primary moral responsibility for replacing him.

Now, I'm informed by a number of people with many years of experience, some of them twice my age, that in their recollection neither major political party in this state has ever failed to renominate the incumbent candidate supported by that party in the first instance when he went on the bench. Now, this being the case, this bogeyman about the terrible pressure of going back to the party for support after you're on the bench doesn't seem to me to be very serious. It certainly hasn't proven to be in the past.

There was a political scientist on a television program emanating out of Michigan State Monday evening who indicated that some delegates were bent on writing a constitution with certain people and certain specific conditions in mind. Mr. Higgs' amendment certainly aims itself at a 1 man situation. I don't direct this question directly at Mr. Higgs, but at everyone else who thinks that this self renomination is a way to remove the judge from pressure, and ask you this: if you permit a candidate to nominate himself without regard to any party support for reelection to the court, where does he then get the money that is necessary to wage a statewide campaign? To whom does he owe loyalty, if at all, after that campaign is finished? Would you prefer that he go to a few individuals and secure large sums of money to support his campaign, or would you prefer the present system, where he is supported openly and notoriously, if you please, by the 2 major parties? Everybody knows where his support is coming from. He has to account and the party has to account under the election laws for every penny that is spent in his behalf, and there are no questions about where he stands or who stands for him.

But when you say to a man, "Renominate yourself; you don't have to be endorsed by anyone," then the question that would be in my mind when this kind of a man ran, if his party decided not to support him, would be, one, in view of the long, long history of this state where the party had never repudiated an incumbent in the past, what is so serious in this man's background as a judge that would lead the party to take this position which by all tests of politics would be a bad choice? And two, if he decides, notwithstanding the lack of support by one of the major parties, to wage a statewide campaign, where is the money and the support coming from, and who is behind him? These are questions that arise when you get into this area of self nomination.

One thing that alarms me a little bit is the attitude that seems to creep into this thing that there's something immoral or improper about the major political parties in this state supporting candidates for public office. This is a basic part of the American democratic system—democratic with a small "d"—republican system, Mr. Iverson says behind me. But it is a basic part of our democracy. Now, if we start off on the assumption that it is wrong for the parties to take positions on issues and people, and to stand for something, then we should continue on down the road and make it ever increasingly difficult for the parties to support a candidate for public office, and thereby identify that candidate with a particular philosophy and platform. If we subscribe, on the other hand, to the theory that the parties are a proper exercise of the processes of democracy, then I think we should do nothing to make it more difficult for those parties to openly support candidates and let the candidate take the responsibility for the people by whom he is surrounded. Mr. Higgs' amendment should be voted down, and the Danhof amendment, without amendment, should be approved.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Higgs. Mr. Higgs.

MR. HIGGS: Mr. Chairman and fellow delegates, if Mr. Ford is alarmed, I am also somewhat alarmed to hear a great exponent of the free elective system state that the primary moral responsibility for replacing a supreme court justice lies with the party. I could hardly believe what I heard. It seems to me that the primary moral responsibility for replacing justices of the supreme court under an elective system should lie with the people. And this justice should have a certain degree of judicial independence in the exercise of his office.

In answering one further point of Delegate Ford—that he is disturbed by the idea that there is creeping into this the idea that there's something immoral in a party supporting a candidate for public office—I thought perhaps he was supporting my amendment of yesterday, because this I think is the reason why we should vote down the Danhof amendment. It has done nothing to correct the inconsistency between party nomination and nonpartisan election. If Mr. Ford is serious in being alarmed by that idea that there is something immoral in this aspect, then he should oppose the Danhof amendment; because it just does nothing to eliminate the partisan influence, and at the same time has presented to the people the false idea that the candidate is nonpartisan, when in fact he can be nothing but party supported.

CHAIRMAN VAN DUSEN: Mr. Garry Brown.

MR. G. E. BROWN: Mr. Chairman, I'd like to address a question to Mr. Ford. Mr. Ford, do you believe that a supreme court justice should espouse and promote his party philosophy?

CHAIRMAN VAN DUSEN: Does the gentleman care to answer, Mr. Ford?

MR. FORD: If you will give me an example, and then put it in context of where, when, and under what circumstances, I'll answer the question.

MR. G. E. BROWN: Well, Mr. Ford, I think this is begging the question a little bit.

MR. FORD: Not at all. I don't think that the conduct of a judge as a judge and the conduct of a judge as a fishing companion are at all the same. If he wants to debate with me party philosophy while we are fishing, or having a lemonade, that's one thing. If he wants to debate party philosophy when he is on that bench, I'm opposed to it, whether he is a Democrat or Republican.

MR. G. E. BROWN: Then your answer is that you don't believe that a supreme court justice, operating as a justice, should espouse or promote his party philosophy?

MR. FORD: Not from the bench, or in any position in which he is placed as a member of the bench, no.

MR. G. E. BROWN: A further question, Mr. Chairman. Mr. Ford, do you in turn think that other public officers are in the same position as a jurist with respect to this party activity?

CHAIRMAN VAN DUSEN: Mr. Ford.

MR. FORD: I don't think I can answer that.

MR. G. E. BROWN: Because you don't understand the question, or you don't know the answer?

CHAIRMAN VAN DUSEN: Mr. Brown, the Chair will rule that the question is not in order. The question is on the amendment offered by Mr. Higgs. Mr. William Hanna.

MR. W. F. HANNA: Mr. Chairman, fellow delegates, I would oppose the Higgs amendment for one very practical reason that I see. If we retain the balance of the Danhof amendment, we have allowed the incumbent to file by affidavit as a candidate. Assuming now that this incumbent is for some reason senile, semimentally incompetent, or otherwise, he can file, and the implication of the Higgs amendment is that the party which first nominated him would then be stuck with a candidate who might conceivably be a laughing stock as he ran. He may not be physically able to campaign. On a local level, we have elected judges who have been confined to mental hospitals. It seems to me that if a political party has an obligation, it has an obligation also to see that there are competent qualified members.

Now, a great many of us have disagreed with the political and economic philosophy of the current supreme court. I submit to you that of all courts that ought to recognize changing times—and you cannot recognize changing times without recognizing changes in economic and political circumstances—it should be the supreme court. The fact that I may disagree with the political philosophy of the supreme court or the economic philosophy of the supreme court does not mean that that supreme court should not espouse a political or economic philosophy and move along with the times. What it means is that I disagree with the economic philosophy it espouses. And to not let a political party, if it saw fit, nominate a man who recognizes the change in the times, or to force them to forego a nomination because some physically incompetent or mentally incompetent person had filed an affidavit, is to destroy the very thing that we are trying to have: competent candidates who can make an issue in an election.

I therefore oppose the Higgs amendment.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Higgs to the amendment offered by Mr. Danhof. Does any delegate desire to have the amendment read again? If not, those in favor of Mr. Higgs' amendment to the Danhof amendment say aye. Those opposed, no.

The amendment is not adopted. The question now is upon the amendment offered by Mr. Danhof to section a of Committee Proposal 91. Mr. McAllister.

MR. McALLISTER: I would like a division on this.

CHAIRMAN VAN DUSEN: Mr. McAllister requests a division. Is the demand supported? It is supported. Those who are in favor of the amendment offered by Mr. Danhof to section a of Committee Proposal 91 will vote aye. Those who are opposed will vote no. Dr. Nord.

MR. NORD: Did you say the Danhof amendment?

CHAIRMAN VAN DUSEN: The question is upon the amendment offered by Mr. Danhof. The commitee will be in order. Dr. Nord, was your question answered?

MR. NORD: This is the Danhof amendment?

CHAIRMAN VAN DUSEN: The question is upon the amendment offered by Mr. Danhof to section a of Committee Proposal 91. Those in favor will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the adoption of the amendment offered by Mr. Danhof to section a, the yeas are 82; the nays are 46.

CHAIRMAN VAN DUSEN: The admendment is adopted. Are there further amendments to section a of Committee Proposal 91? If not, the section will pass.

Section a, as amended, is passed. The secretary will read section g.

SECRETARY CHASE: Section g has been deleted.

CHAIRMAN VAN DUSEN: Section g, as amended, is passed. Are there any amendments to the body of Committee Proposal 91?

SECRETARY CHASE: Mr. Bonisteel offers the following amendment to section f:

1. Amend page 2, line 21, after "fund.", by striking out "No justice of the supreme court" and inserting "Neither the supreme court nor any justice thereof"; so that the language will then read; "Neither the supreme court nor any justice thereof shall exercise any other power of appointment to public office, except as otherwise provided herein."

CHAIRMAN VAN DUSEN: The question is upon the amendment offered by Mr. Bonisteel to section f of Committee Proposal 91, on which the Chair will recognize Mr. Danhof.

MR. DANHOF: Mr. Chairman, in looking over the amendment last night and this morning, if I properly understand it, I think it expresses the intent of the committee in other words, and I can see no objection to it at this time.

CHAIRMAN VAN DUSEN: Does any delegate desire to have the Bonisteel amendment read again?

MR. DONALD DOTY: Yes.

CHAIRMAN VAN DUSEN: The secretary will read the amendment.

SECRETARY CHASE: Mr. Bonisteel's amendment is:

[The amendment was again read by the secretary. For text, see above, page 1599.]

CHAIRMAN VAN DUSEN: Those who are in favor of the amendment offered by Mr. Bonisteel will say aye. Those opposed will say no.

The amendment is adopted. Are there further amendments to the body of Committee Proposal 91?

SECRETARY CHASE: Mr. Wanger offers the following amendment to section a:

1. Amend page 1, line 6, in the first sentence, after "consist of" by striking out "9" and inserting "7"; so that that sentence will read, "The supreme court shall consist of 7 justices, to be elected on a nonpartisan statewide basis."

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Wanger to section a, on which the Chair will recognize Mr. Wanger.

MR. WANGER: Mr. Chairman, members of the committee, I believe it has already been pointed out that there is no good reason why, in creating an odd rather than even number of justices on our supreme court, we must raise the total to 9 rather than lowering it to 7. It has been demonstrated that courts of nearby states do not need as many as 9 justices to do the work adequately and well. We know that 9 instead of 7 justices will cost a great deal more money annually; and we further know that other things being equal, a group of 7 will be able to operate more efficiently and more expeditiously than a group of 9. In closing this argument I would just reiterate the statement that has been made several times on this floor: justice delayed is sometimes justice denied. Let us have a court which can operate as expeditiously and efficiently as possible.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Wanger, on which the Chair will recognize Judge Leibrand.

MR. LEIBRAND: Mr. Chairman and delegates, I would oppose the Wanger amendment. The district plan last night was defeated by the overwhelming majority, as Delegate Pollock would say, of 64 to 62. (laughter) The figure "9" was designed to fit in with the entire district plan, for which I still have high hopes. I would therefore implore the delegates to leave the figure "9" in there, because it fits in with the district plan. Thank you.

CHAIRMAN VAN DUSEN: Mr. Prettie.

MR. PRETTIE: Mr. Chairman, fellow members of the committee, not because of any relevance to the district plan, but because of competent evidence presented before the committee on judicial branch, I most respectfully oppose Mr. Wanger's amendment.

True it is that the decided cases of our supreme court at the present time is not as high as they were during the depression years. At that time, however, the court was not exercising great supervisory power; the court administrator's office did not exist; the administration of the probate court had not been undertaken. We have, in addition to the approximately 250 annual cases, a large case load of motions, interlocutory matters, applications for writs of habeas corpus, and that sort of thing, which did not previously appear in the reports, but which by action of this convention must now be decided by written opinion. We also have provided in this convention for an appeal as of right in every criminal case, and although we are having — or, if our action so determines, we will have — a court of appeals, which will hear some of these appeals as of right from the trial courts in the first instance, it is my firm belief that in the early operations of that court we will find the court of appeals perhaps arriving at opposite decisions, which must be reconciled by the supreme court. We also have by a disputed action, but nevertheless a majority action of this convention, provided for appeals from administrative agencies, which appeals perhaps in the first instance will be going to the trial courts, but which in some instances will find their way to the court of appeals and possibly to the supreme court.

I was not impressed with the argument of practical politics yesterday. I think we could well reduce our court from 9 to 7, disregarding political factors. But I do submit to you that the evidence before the committee on judicial branch, in my opinion, as one member of that committee, clearly established the fact, coupled with the actions already taken in this convention, that we must go in the direction of an enlarged and adequate court with adequate judicial manpower, rather than a step backward into a smaller court. For that reason, and for that reason only, I oppose the Wanger amendment.

CHAIRMAN VAN DUSEN: Mr. Wanger.

MR. WANGER: Mr. Prettie has spoken of evidence presented showing we had to have a court of 9. He has not offered any evidence on the floor of this convention, nor has anyone else. All that has been offered is speculation. I submit that this speculation does not show any probability that the burden on the back of the supreme court judges will be any greater under the convention's proposed plan than it is at the present time.

As a matter of fact, with the creation of the court of appeals, the only probability that is shown is that that burden will be less. None of the rights of appeal which we have created in the judiciary article go directly up to the supreme court. We have created a court of appeals, and undoubtedly other courts or other remedies will be created in that regard. As far as the administration of the court is concerned, we have provided a staff for the court to take care of that particular problem. And so I suggest that the objections to this argument do not have as great weight, by any means, as the argument in favor of this amendment. I would further suggest that even 2 judges on the court, with the facilities and the salary which they must consume, will probably amount to upwards of $100,000 a year, and that this expense is needless. And, finally, once again, that a court of 7 can clearly operate more efficiently and more expeditiously than a court of 9.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Wanger to strike out the figure "9" before the word "justices" and insert the figure "7", so that section a will then read, "The supreme court shall consist of 7 justices. . . ." Mr. Wanger.

MR. WANGER: I request a division.

CHAIRMAN VAN DUSEN: Mr. Wanger requests a division. Is the demand supported? It is supported. The question is on the amendment offered by Mr. Wanger to reduce the number of supreme court justices from 9 to 7, as provided in section a. Those in favor will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the amendment offered by Mr. Wanger, the yeas are 35; the nays are 87.

CHAIRMAN VAN DUSEN: The amendment is not adopted. Are there further amendments to the body of Committee Proposal 91?

SECRETARY CHASE: Messrs. Cudlip and Bonisteel offer the following amendment to section a:

1. Amend page 1, line 6, at the end of the first sentence, after "basis.", by inserting "Vacancies hereafter created as the result of the death, retirement or resignation of 2 incumbent justices shall not be filled.".

CHAIRMAN VAN DUSEN: The question is on the amendment to section a offered by Messrs. Cudlip and Bonisteel, on which the Chair will recognize Mr. Cudlip.

MR. CUDLIP: Mr. Chairman, members of the committee, like Mr. Wanger and others, I feel that we will not need in the future 9 justices. We have 8 now, as you know. The testimony before our committee indicated, to a large extent, and conversations with other people that are versed in this art suggest that 7 men are enough to handle the work of our high court, especially in view of the fact that we are planning, subject to the will of this convention, for a court of appeals, an intermediate court.

You heard yesterday that 23 states, some of them much larger than Michigan — and most of which, if not all, had intermediate courts — have only 7 men serving on the high court. If we can eliminate 2, money isn't a complete factor, but it is $50,000 plus, a year. I don't think that the work load will demand 9. I like an odd number. I would rather cut it to 7. The Bonisteel-Cudlip amendment doesn't disturb the present justices. In other words, the idea here is that the change would not become effective until through death, resignation or retirement we got down to the level of 7. This is submitted to you for your consideration in view of the debate and comment on this question. Thank you, Mr. Chairman.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Messrs. Cudlip and Bonisteel, on which the Chair will recognize Mr. Bledsoe.

MR. DOWNS: I have a motion, Mr. Chairman.

MR. BLEDSOE: I wanted to ask a question.

CHAIRMAN VAN DUSEN: Would you defer your motion temporarily, Mr. Downs.

MR. DOWNS: Yes, I will.

CHAIRMAN VAN DUSEN: You may proceed, Mr. Bledsoe.

MR. BLEDSOE: Mr. Chairman, Mr. Cudlip, before you submitted that amendment, had you taken into consideration the fact that when we passed the administrative article the other day, opening up the question of appeals, that that would also make more appeals to the supreme court possible?

CHAIRMAN VAN DUSEN: Mr. Cudlip.

MR. CUDLIP: Mr. Bledsoe, we did.

MR. BLEDSOE: I mean, had you taken it into consideration before you submitted this?

MR. CUDLIP: I said we did.

MR. BLEDSOE: What was your thinking on that?

MR. CUDLIP: The review by the courts of the decisions of our administrative tribunals? The supreme court, by rule and all, will control this load that it will take under the power we have given it, under the power which it now has. The United States supreme court, as you well know, Mr. Bledsoe, — and others in this room know, too — is very choosy about what it will review. The work is going to be left largely — I imagine by court rule — to the intermediate appellate courts, if they are set up. And if they are not set up this amendment of course isn't valid.

CHAIRMAN VAN DUSEN: Mr. Bledsoe.

MR. BLEDSOE: Just one other question. Then do I take it that you feel that the opening up of the question of fact review by the courts will not increase the court load?

MR. CUDLIP: It might increase the court load at the intermediate level. I think, as I said, that the Supreme Court of Michigan, under rules it now has and rules that we have affirmed, will have the power to control what it does review. And I find in 23 states, many of them larger than Michigan, there is no question in this respect, although I'm not aware of the extent to which they review the decisions of administrative tribunals.

MR. BLEDSOE: Well, at the supreme court level, won't these questions that can be appealed as a matter of right still keep the load up?

MR. CUDLIP: That is a criminal matter — the matter of right appeal. I was referring to the administrative tribunal decisions, and there of course the court will make its own rules. It will also make its own rules with respect to this matter of criminal appeal as a matter of right. But there will be some cases that will get beyond the intermediate court of appeals when we are in the criminal area.

MR. BLEDSOE: Thank you.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Messrs. Cudlip and Bonisteel. Mr. Downs.

MR. DOWNS: Mr. Chairman, I move that we defer discussion of this until we have further consideration of Committee Proposal 96, section d. The reason for the motion, Mr. Chairman, is that that committee proposal specifically deals with the filling of vacancies. I think one reason that we handled this very involved matter today and the last few days was that we separated out the last sentence of the original Hanna amendment dealing with vacancies. I think it would be a more orderly presentation. I'm not speaking for or against the merits of this point, and I wondered if Mr. Cudlip would be willing to defer consideration until that time. The purpose of the motion is not to go into the merits, but to provide what I consider a more orderly handling of the problem.

CHAIRMAN VAN DUSEN: Mr. Downs, this may have occurred during your absence due to illness, but the committee has already considered and passed section d of Committee Proposal 96.

MR. DOWNS: I was referring to coming back on second reading, where I assume that then the amendment could be made, and I think it would be more orderly at that time than at present.

CHAIRMAN VAN DUSEN: Do you make a motion at this point, Mr. Downs?

MR. DOWNS: Yes, I made the motion.

CHAIRMAN VAN DUSEN: The question is on the motion of Mr. Downs that the Cudlip-Bonisteel amendment be, I presume, tabled, Mr. Downs? That's the only form in which your motion could accomplish the purpose which you suggest.

MR. BARTHWELL: Point of order.

MR. DOWNS: Can it not be postponed until a time certain, the time certain being when we get to Committee Proposal 96 on second reading?

CHAIRMAN VAN DUSEN: The Chair thinks not, Mr. Downs. The second reading, after all, will be by the convention, and currently we are sitting in committee of the whole, so that your motion would not be—

MR. DOWNS: Then I will phrase it that the amendment be tabled.

MR. BARTHWELL: Point of order.

CHAIRMAN VAN DUSEN: Will you state your point, Mr. Barthwell?

MR. BARTHWELL: I don't think you can table anything in committee of the whole.

CHAIRMAN VAN DUSEN: The secretary advises, Mr. Downs, that if we lay the amendment on the table, we lay the proposal on the table.

MR. DOWNS: I will withdraw the motion. I did not mean to hold up the proceedings today, Mr. Chairman. May I then be on the order to speak on the amendment in the proper turn?

CHAIRMAN VAN DUSEN: Mr. Downs, you are recognized to speak on the amendment at this time, if you so desire.

MR. DOWNS: All right. I had asked to make the motion out of order. Are there others on the list to speak?

CHAIRMAN VAN DUSEN: Mrs. Butler desires recognition, and her turn comes next, but you are in order, and you may proceed, Mr. Downs.

MR. DOWNS: I see. Mr. Chairman, I do believe that regardless of the merits of this, that this whole matter of filling vacancies is a very key question; and that if we get into this again, I'm afraid it will further confuse the good work we have done today in resolving this very difficult question. I would urge the delegates to vote the amendment down, with the knowledge that on second reading the proponents of course could present it as an amendment to Committee Proposal 96, where I feel it more properly belongs.

CHAIRMAN VAN DUSEN: Mr. Downs, your comments suggest to the Chair that perhaps the secretary should again read the amendment.

SECRETARY CHASE: The amendment reads as follows:

[The amendment was again read by the secretary. For text, see above, page 1600.]

CHAIRMAN VAN DUSEN: Mrs. Butler.

MRS. BUTLER: Mr. Chairman, I would like to ask a question of either Mr. Bonisteel or Mr. Cudlip. Throughout this discussion they have been saying 7 men, 8 men, 9 men. I wonder if this precludes the idea that there might ever be a woman on the supreme court bench? (laughter)

CHAIRMAN VAN DUSEN: Will either of the gentlemen care to answer?

MR. CUDLIP: I yield to Mr. Bonisteel. (laughter)

CHAIRMAN VAN DUSEN: Mr. Bonisteel is recognized.

MR. BONISTEEL: Mr. Chairman and fellow committeemen, I am looking forward to the day when there will be a woman on the bench.

CHAIRMAN VAN DUSEN: Mr. Wanger.

MR. WANGER: Mr. Chairman, I speak in favor of this amendment, and I have some evidence to present on the subject. The Michigan joint committee on Michigan procedural revision is the committee from whose report I am going to quote. This committee is the committee which proposed the revised judicature act, which has been adopted, and consists of members appointed by the courts, members by the bar, and members by the legislature.

In a report on Judicial Administration at the Appellate Level, Michigan, published at the law school of the University of Michigan in 1959, this committee says on page 11, under the subject, Enlarging The Court, as follows:

> There are now 8 judges on the supreme court. Would 15 help, or 12, or 11? No state has more than 9 judges on its court.
>
> Only a few states have 9; only 1, Michigan, has 8. The most common numbers are 7 and 5.
>
> While this is not controlling, it reveals a pattern of the American concept of a supreme court, a concept that involves a closely knit unit of wise men, all of whom participate in the decisions of the body. This concept should not lightly be discarded.

And then at page 47, under its recommendations, this committee does recommend an intermediate appellate court. And after having made that recommendation, the committee says:

> The size of the supreme court should be reduced to 5 judges, each serving for a 10 year term, one to be selected each 2 years.
>
> Present judges should remain in office and should be permitted to seek reelection as currently provided and for the terms currently provided.
>
> Vacancies in the court by reasons of death, resignation, or failure to run for reelection should not be filled until the court is of the size of 5.

I think these arguments clearly are applicable to reducing the court in size to 7.

I think this committee probably has heard more evidence and given more consideration to this subject and to the entire problem of judicial administration in Michigan than any other committee of its size in the state in the last 15 years, perhaps even including one of the committees at our convention, because it existed and operated for a much longer period of time. Therefore, I urge you, in the interests of efficient administration and in the interests of saving the taxpayers of Michigan at least $100,000 a year, and in the interest of showing the people that this convention is capable of taking at least one important state body and reducing it in size instead of increasing it in size, to vote in favor of this amendment.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Messrs. Cudlip and Bonisteel. Judge Leibrand.

MR. LEIBRAND: Mr. Chairman, may I inquire of Mr. Cudlip?

CHAIRMAN VAN DUSEN: If the gentleman cares to answer, Mr. Leibrand.

MR. LEIBRAND: Mr. Cudlip, reference has been made to section d of Committee Proposal 96, which was passed by the committee of the whole on March 8 that provides:

> When a vacancy occurs in the office of an elected judge of any court of record, it shall be filled at a general or special election according to law. The supreme court is empowered to authorize persons who have served as judges and have voluntarily retired, to perform judicial duties for the limited period of time from the occurrence of the vacancy until the successor is elected and qualified.

My inquiry is this: does your amendment negate or defeat the intent of section d of Committee Proposal 96?

CHAIRMAN VAN DUSEN: Mr. Cudlip.

MR. CUDLIP: Mr. Chairman, Judge Leibrand, I would simply say this: that the idea is to get this court down to 7 in the normal course of events, as described in the proposed amendment. And if section d of Committee Proposal 96 is in conflict with that — and I don't see that it is, offhand — why then there would have to be a reconcilement.

CHAIRMAN VAN DUSEN: Mr. Leibrand.

MR. LEIBRAND: Mr. Chairman, may I have the Cudlip-Bonisteel amendment read again, please?

CHAIRMAN VAN DUSEN: The secretary will read the amendment.

SECRETARY CHASE: The following is the amendment:

[The amendment was again read by the secretary. For text, see above, page 1600.]

MR. LEIBRAND: Thank you. I feel there is a decided conflict, Mr. Chairman.

CHAIRMAN VAN DUSEN: Mr. Cudlip.

MR. CUDLIP: On further reflection, may I say if that is a bothersome point, section d of Committee Proposal 96, which deals and treats with the subject that Judge Leibrand adverted to, if there is any inconsistency brought about, we can simply say at the proper time, "except as otherwise provided in this constitution," and that would exclude the amendment if it were adopted.

CHAIRMAN VAN DUSEN: Mr. Mahinske.

MR. MAHINSKE: I think Mr. Cudlip has just answered my question. He has stated that the idea of this amendment is to get the bench down to 7. I wonder, in view of that, if this amendment is even in order at this point, seeing as we just voted down a straight vote for a 7 member bench.

CHAIRMAN VAN DUSEN: The Chair will rule that while your point is not without merit, Mr. Mahinske, the amendment is in order.

MR. MAHINSKE: Then I would like to direct a question to Mr. Cudlip or Mr. Bonisteel. In view of the fact that the idea here is to reduce the bench to 7, just what is the advantage that we gain by appointing an extra man and then waiting for 2 to disqualify themselves, and then coming up with a 7 member bench, aside from all the arguments we have heard about 7 people being a closer knit family, and so forth, from the other end of the room?

CHAIRMAN VAN DUSEN: Mr. Cudlip.

MR. CUDLIP: Mr. Chairman and members of the committee, it would be entirely agreeable if someone wants to amend the 9 to 8 in the language we have already adopted. We went on the premise that it was 9, and we wanted to cut it down. We have no objection if anybody wants to change the 9 to 8 in the language already adopted, and then the language would be from 8 to 7.

CHAIRMAN VAN DUSEN: Mr. Mahinske.

MR. MAHINSKE: Then the effect of adopting this amendment would be appointing an additional man to the bench, and then waiting for 2 to eliminate themselves through one course or another?

MR. CUDLIP: Yes, Mr. Mahinske, unless someone makes another amendment.

MR. MAHINSKE: Well, I would be opposed to the amendment on this basis. It's principally a 7 member bench amendment again.

CHAIRMAN VAN DUSEN: Mr. Everett.

MR. EVERETT: Mr. Chairman, fellow delegates, I support the Cudlip-Bonisteel amendment. It has become unpopular here to admit that any of our votes have been dictated by political expediency, but I'm going to admit that I voted to raise this from 8 to 9 because I didn't see how we could put a man out of office, which is what we were going to do if we cut it to 7. I think Mr. Bonisteel and Mr. Cudlip have offered us a way out of our dilemma.

I think the facts, with an intermediate court of appeals, do not justify 9, and this is a means of getting there gradually without offending anybody and without stepping in the way of those who have already won their place by a vote of the people. I don't think we would have a right to eliminate them by a constitutional act when they have won their office through a vote of the people, and this way we are not doing it.

I think they have given us the answer, and I am certainly going to vote for it.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Messrs. Cudlip and Bonisteel. Miss Donnelly.

MISS DONNELLY: For the reasons most succinctly stated by Mr. Everett, I too would like to support the amendment. But inasmuch as I basically think it should be 7, if it's proper at this time I would like to make the amendment that Mr. Cudlip suggested, to change the numbers from 9 to 8 and from 2 to 1, and they will get it to 7 by reducing them this way.

CHAIRMAN VAN DUSEN: Miss Donnelly, the Chair would request that if you desire to make that amendment, you submit it to the secretary in writing.

MISS DONNELLY: I have a copy of the other one. It's just a substitution of the numbers.

CHAIRMAN VAN DUSEN: Your amendment, Miss Donnelly, would be to strike "9" and insert "8"?

MISS DONNELLY: Which is what we presently have, yes. This is reducing our supreme court to 7 in a very proper, dignified and considerate form.

CHAIRMAN VAN DUSEN: Miss Donnelly, would you withhold that amendment for the moment? You see, the amendment offered by Messrs. Cudlip and Bonisteel does not touch the first sentence of Committee Proposal 91, which would necessarily be amended by your amendment. Therefore, your amendment is partly to the proposal and partly to the amendment. If you will withhold it, it will be in order in due course.

MISS DONNELLY: All right. I'm sorry, I didn't see it written. I thought it was in effect.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Messrs. Cudlip and Bonisteel. Mr. Mahinske.

MR. MAHINSKE: As I understand it, the main argument that we hear from most people here for having a 7 member bench is the fact that we have created or are going to create an intermediate court of appeals which will cut the work load out from the supreme court. I think that Mr. Wanger was the loudest opponent to our permitting the supreme court to write or in fact ordering the supreme court to write their reasons for denial of an appeal. He claimed that this would overburden them, would put a lot of extra work on them, and so forth. Now, his argument would pertain to the 7 member bench. I just wonder what would happen to a 7 member bench writing all these statements of fact.

The argument has been made that the intermediate appellate court will take away a lot of the present work load of the supreme court. I don't feel that this is what is going to happen. We have given an absolute right of appeal in all criminal matters, and the presumption is that this would be to the appellate court. Now, many of these cases are going to find themselves out of the appellate court and up to the supreme court that wouldn't necessarily be there today. At the same time, we have liberalized the scope of review in the administrative tribunal area. The obvious assumption is that these appeals or reviews will go to the appellate court. For the very same reason, a lot of these reviews will find themselves out of the appellate court up into the supreme court. Fourthly, we have permitted the supreme court on solemn occasions, whatever this amounts to, to write opinions on nonjusticiable issues. Now, this is going to create more work for the supreme court, whether it be a 7 or 9 member bench.

All 4 of these items, the 3 that we have put through and the 1 that we are anticipating, as I see it, direct more work to the supreme court. We must also remember that in a lot of these criminal matters where there is an absolute right of appeal, there may be a direct certification of the record to the supreme court, bypassing the appellate court. Now, these are appeals that will go to the supreme court that would not necessarily go there today, for the simple reason that there would be no right of appeal.

For these reasons, and if you're talking about work loads, I think that the supreme court, with 9 members and with an intermediate court of appeals, will have more work under our proposed constitution than they have today. And this would, in and of itself, justify a 9 member bench, and I think possibly put our docket back with the 7 member bench. I would still be opposed to decreasing the number to 7.

CHAIRMAN VAN DUSEN: Mr. Ford.

MR. FORD: I would simply like to remind the committee of the figures that Mr. Danhof gave you the other day from the poll of the lawyers of this state. On many of the issues upon which the lawyers were polled the votes were close. There were several votes on a single issue that were within, with reference to each other, no more than 50 per cent plurality. But on this particular one, with a little over 5,000 lawyers responding to the poll, 4,286 of the members of the bar of this state said that they thought we needed a 9 member court. And 347, a very small figure next to this one, wanted to retain it at the present 8. And 321 had some other number, which would include, 5, 7, 11 or any other number. So even if we assumed a majority of the other choices were for the 7 man court, less than 321 out of over 5,000 lawyers wanted to go in the direction of the Cudlip-Bonisteel amendment at this time.

I'm a little bit surprised to hear people talking about the judicial committee making decisions of this kind on the basis of political expediency. Because I thought that this was a committee that we had agreed from the outset was of such a caliber that there was very little political expediency practiced. And it has been indicated on the floor from the very beginning that we tried to stay away from making decisions on that basis. I trust that we will continue that same spirit into the convention, and that we will not now get into a round robin of soul baring confessions about how we voted for political expediency.

CHAIRMAN VAN DUSEN: Mr. Wanger.

MR. WANGER: Mr. Chairman, I desire to direct a question to Mr. Ford.

CHAIRMAN VAN DUSEN: If the gentleman cares to answer.

MR. WANGER: With respect to this bar poll, did the members of the bar on this questionnaire have an opportunity to vote on the specific number 7, or the specific number 5?

CHAIRMAN VAN DUSEN: Mr. Ford.

MR. FORD: The specific question is, "How many members should the supreme court have?" I should say that there are several questions concerning the supreme court grouped together, "8 members; 9 members; or any other number?" My recollection of this is that on each one of them, and I guess it's true as you look at it, on every question that was asked in the poll you were given choices, but you were also given an opportunity to express something beyond the choice that was presented by the committee.

MR. WANGER: Thank you. That clarifies the situation to me. It is very clear that the members of the bar were voting really on the difference between an even numbered bench and an odd numbered bench, and the question of reducing the court in size to 7 or 5 was not directly before them; only indirectly, if at all, by the little line and the word "other," which allowed them to express other preference.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Messrs. Cudlip and Bonisteel to section a of Committee Proposal 91 to insert after the first sentence thereof the words, "Vacancies hereafter created as the result of the death, retirement or resignation of 2 incumbent justices shall not be filled." Mr. Stevens.

MR. STEVENS: Mr. Chairman, may I ask Mr. Cudlip a question, please?

CHAIRMAN VAN DUSEN: If the gentleman cares to answer, Mr. Stevens.

MR. STEVENS: Mr. Cudlip, when the proposal was read by the secretary in the beginning, I got the impression that this was a temporary thing; that we would elect 9 justices, but in case of resignation, death and so forth, the vacancy would not be filled until the end of the term. Now, from the discussion, it appears to me that that isn't the correct interpretation. Is it the idea that this would be a permanent reduction?

CHAIRMAN VAN DUSEN: Mr. Cudlip.

MR. CUDLIP: Mr. Chairman, Harold, yes, a permanent reduction.

MR. STEVENS: Thank you.

CHAIRMAN VAN DUSEN: Those who are in favor of the amendment offered by Messrs. Cudlip and Bonisteel will say aye. Those opposed will say no. The Chair is in doubt. Those in favor of the amendment offered by Mr. Cudlip and Mr. Bonisteel will vote aye. Those opposed will vote no. The question is on the amendment offered by Messrs. Cudlip and Bonisteel. Those who are in favor will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the amendment offered by Messrs. Cudlip and Bonisteel, the yeas are 46; the nays are 63.

CHAIRMAN VAN DUSEN: The amendment is not adopted. Are there further amendments to Committee Proposal 91? If not, the proposal will pass.

Committee Proposal 91, as amended, is passed. The committee will proceed to Committee Proposal 92.

SECRETARY CHASE: From the committee on judicial branch, by Mr. Danhof, chairman, **Committee Proposal 92,** A proposal pertaining to a court of appeals. Amends article VII.

Following is Committee Proposal 92 as read by the secretary, and the reasons submitted in support thereof:

The committee recommends that the following be included in the constitution:

Sec. a. THE COURT OF APPEALS SHALL CONSIST INITIALLY OF 9 JUDGES WHO SHALL BE NOMINATED AND ELECTED IN THE SAME MANNER AS THE JUSTICES OF THE SUPREME COURT. THE SUPREME COURT MAY PRESCRIBE BY RULE THAT THE COURT OF APPEALS MAY SIT IN DIVISIONS, THE TERMS OF COURT AND THE TIMES AND PLACES THEREOF. EACH SUCH DIVISION SHALL CONSIST OF NOT FEWER THAN 3 JUDGES. THE LEGISLATURE MAY BY LAW INCREASE THE NUMBER OF JUDGES COMPRISING THE COURT OF APPEALS.

Sec. b. INITIALLY, 3 JUDGES SHALL BE ELECTED FOR A TERM OF 2 YEARS, 3 JUDGES FOR A TERM OF 4 YEARS, AND 3 JUDGES FOR A TERM OF 6 YEARS. THEREAFTER, THE TERM OF OFFICE SHALL BE 6 YEARS. THE TIME OF ELECTION AND THE ORDER OF ROTATION SHALL BE PROVIDED BY LAW.

Sec. c. THE JURISDICTION OF THE COURT OF APPEALS SHALL BE PRESCRIBED BY LAW AND THE PRACTICE AND PROCEDURE THEREIN SHALL BE AS PROVIDED BY SUPREME COURT RULE.

Mr. Danhof, chairman of the committee on judicial branch, submits the following reasons in support of Committee Proposal 92:

This proposal integrates the structure of a court of appeals heretofore created into the district plan for the election of justices. It provides for the election of 9 judges of the court of appeals from the same districts as the justices of the supreme court. It is contemplated that one division of the court of appeals would serve Wayne county; one division would serve judicial districts 2, 3 and 4 comprising the southeasterly ¼ of the state; and one division would serve judicial districts 5, 6 and 7 comprising the remainder of the state including the upper peninsula.

This plan is largely adapted from a presentation made to this committee by Justice Theodore Souris. This presentation was copiously documented with a study of the case load of the supreme court for a 4 year period. The districts proposed in this plan for the appellate court contemplated one such court to serve Wayne connty; one the eastern half of the lower peninsula, and another the western half of the lower peninsula and the upper peninsula. This plan was revised to bring it more nearly into correspondence with the case load and to integrate it with the 7 judicial districts of the state established for nomination and election of the justices of the supreme court.

A study of the potential case load resulting from the granting of appeals as of right and other matters that might be expected to reach such a court indicates an estimated annual case load for each division of this court of approximately 600 cases. The proposal further provides for initial election of the judges of this court; 3 judges for 2 years; 3 for 4 years; and 3 for 6 years; and thereafter for terms of 6 years. Flexibility is provided for the legislature to determine by law the time of election and the order of rotation.

Explanation—Matter within [ ] is stricken, matter in capitals is new.

CHAIRMAN VAN DUSEN: For an explanation of section a of Committee Proposal 92, the Chair will recognize the chairman of the committee on judicial branch, Mr. Danhof.

MR. DANHOF: Mr. Chairman and members of the committee, section a provides for the manpower to operate the court of appeals. The committee has recommended the number of 9. At the time that we were considering a court of appeals, the question was brought up as to whether or not there should be an independent judiciary for the court of appeals, or whether perhaps the manpower of the supreme court and the circuit bench could be utilized. It was determined by a vast majority of the committee that if a court of appeals were to be established, it should have independent judiciary. Basically, the reason was this. We decided that if you utilized circuit judges, this would decrease the number of circuit judges available on the trial level, and would of necessity require an increase of circuit judges. Secondly, if a circuit judge were to sit for a particular period of time, he would naturally be called upon to rule upon decisions of his brethren on the bench, and perhaps some within his own circuit. When we inquired of circuit judges who appeared before us in this regard, they seemed to favor an independent judiciary.

I quite realize that at the time the committee adopted the first sentence to the section, the supreme court was to be selected by the district plan. By amendment taken in this committee of the whole to Committee Proposal 91, this is not now the case. My own personal conviction is that the first sentence of section a is still appropriate and should still be retained.

The second sentence prescribes that the supreme court by rule may designate that the court of appeals shall sit in divisions; the terms of the court; and the times and places thereof. This is procedure. It sets up the manner in which the court will operate, and provides that it may move around the state, as we anticipate, to hear various appeals. We provide that each such division shall consist of not fewer than 3 judges. This is to make 3 divisions of 3 judges each at the initial stage.

The last sentence is self explanatory. If the work load becomes such that more judges are needed, the legislature may by law increase the number of judges.

Section c, if you want to look ahead and try to anticipate questions, provides that the jurisdiction shall be as prescribed by law and the procedure as prescribed by supreme court rule. I will yield at this time for questions.

CHAIRMAN VAN DUSEN: Are there any amendments to section a of Committee Proposal 92?

SECRETARY CHASE: There are none on file, Mr. Chairman.

CHAIRMAN VAN DUSEN: If not, the section will pass.

Section a is passed. The secretary will read section b.

SECRETARY CHASE: Section b:

[Section b was read by the secretary. For text, see above.]

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: This, in essence, members of the committee and Mr. Chairman, is a scheduling provision to get the court operating. We leave to the legislature how and when the rotation shall commence, and the time of the election, and so forth. We provide for a term of 6 years. It was the considered opinion of the committee that if an 8 year term were in order for the supreme court, as we have provided, that 6 years would be sufficient for the court of appeals, as we feel there

should be some differentiation from the supreme court. So we provide that 3 judges would have a term of 2 years, 3 a term of 4 years, and 3 a term of 6 years. Perhaps they will be chosen by lot, or by the highest number of votes, as the legislature may provide, to get the court into operation. Thereafter they will come up in regular rotation. Should the legislature see fit to increase the number of judges, they could fit them into the rotation as needed.

This is basically a scheduling provision. Perhaps it does not belong in this particular section, and can be moved to the schedule by the miscellaneous provisions committee, but it had to be included at this time.

CHAIRMAN VAN DUSEN: Are there any amendments to section b of Committee Proposal 92?

SECRETARY CHASE: There are none.

CHAIRMAN VAN DUSEN: If not, it will pass.

Section b is passed. The secretary will read section c.

SECRETARY CHASE: Section c:

[Section c was read by the secretary. For text, see above, page 1604.]

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: Mr. Chairman, members of the committee, this particular section is self explanatory. The legislature shall set the jurisdiction of the court. That is, the legislature shall prescribe what cases shall be appealed, what cases may be appealed, as a matter of right. I think that we are consistent herein with what we have adopted to the circuit court and the appellate practice—we amended that to read "by law"—and it was felt that the legislature should be the one in this regard to ascertain perhaps what cases as a matter of right can be appealed to the court of appeals. By the action taken by this convention, we have set up appeals in criminal cases as a matter of right. This would be one. I would imagine that the legislature would see fit to put a dollar amount on civil cases which might be appealed as a matter of right.

We realize we are going into something new. The majority of the committee felt that the jurisdiction should be set by law, and the practice and procedure therein provided by supreme court rule, as we have actually adopted in Committee Proposal 91, wherein the supreme court provides the rules and procedure for all courts.

CHAIRMAN VAN DUSEN: Are there any amendments to section c of Committee Proposal 92? If not, it will pass.

Section c is passed. Are there any amendments to the body of the proposal? If there are no amendments to the body of the proposal—Mr. Boothby.

MR. BOOTHBY: We haven't got one written out.

CHAIRMAN VAN DUSEN: The posture of the committee is that there are no amendments presently pending to the body of the proposal, and the Chair is eager to pass it, but reluctant to deprive any delegate of his right. Mr. Barthwell.

MR. BARTHWELL: Mr. Chairman, I just wanted to rise to a point of personal privilege. I wish to point out to the committee, since there's no politics in the court, how easily we are passing a section which is new, and in which no one has a personal interest.

CHAIRMAN VAN DUSEN: Your point is well taken, Mr. Barthwell. Are there any amendments to the body of Committee Proposal 92?

SECRETARY CHASE: Miss Donnelly and Mr. Boothby offer the following amendment to section a:

1. Amend page 1, line 6, after "elected" by striking out "in the same manner as the justices of the supreme court.", and inserting "at nonpartisan elections as prescribed by law. The legislature may provide for the dividing of the state into districts for the purpose of selecting appellate court judges."; so that the sentence will then read:

> The court of appeals shall consist initially of 9 judges who shall be nominated and elected at nonpartisan elections as prescribed by law. The legislature shall provide for the dividing of the state into districts for the purpose of selecting appellate court judges.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Miss Donnelly and Mr. Boothby, on which the Chair will recognize Mr. Boothby.

MR. BOOTHBY: Mr. Chairman, as the committee is probably very much aware, this is a rather hastily drawn amendment, and it has been drawn to my attention that it might be more agreeable if we were to strike the word "shall" and insert the word "may"—that the legislature may. And if there is additional support for that striking of the word "shall" and insertion of the word "may," from the committee in particular, I would agree to that amendment. I'm wondering if Mr. Danhof has any—

CHAIRMAN VAN DUSEN: Do you make that amendment?

MR. BOOTHBY: I would like to hear Mr. Danhof's comments.

CHAIRMAN VAN DUSEN: Mr. Boothby yields to Mr. Danhof.

MR. WOOLFENDEN: Parliamentary inquiry, Mr. Chairman.

CHAIRMAN VAN DUSEN: Mr. Woolfenden.

MR. WOOLFENDEN: Are we presently in order on this amendment? I thought that we passed section a.

CHAIRMAN VAN DUSEN: This is offered as an amendment to the body of the proposal, Mr. Woolfenden. It is in order. The Chair has been somewhat indulgent with the sponsors, but the gravity of the matter would seem to dictate that degree of leniency. Mr. Stevens.

MR. STEVENS: I just want to inquire from anybody who might know: is there a reason for this amendment? Wouldn't the legislature have that power?

CHAIRMAN VAN DUSEN: Mr. Boothby, do you care to respond to Mr. Stevens' question?

MR. BOOTHBY: As I understand, the wording of the proposal as it now stands is that they shall be nominated and elected in the same manner as justices of the supreme court. Because of the change from the committee's original recommendation, it would appear that the legislature does not have this power, and that under this provision they must be elected on a statewide ballot. At least, that is my understanding.

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: If I might direct 2 or 3 questions to the movers of the amendment—I would agree with Mr. Boothby that the present section would require a statewide ballot; I mean, if we say " . . . shall be nominated and elected in the same manner as the justices of the supreme court."

Now, as I get the purport of your particular amendment, Mr. Boothby, it would in essence allow this, if I'm correct: one, that the legislature could pass a statute saying the court of appeals shall be nominated and elected in the same manner as justices of the supreme court, if they wanted to do so?

CHAIRMAN VAN DUSEN: Mr. Boothby.

MR. BOOTHBY: Well, I believe that the amendment indictates that the legislature would have the power to do it either on that basis or on a district basis.

MR. DANHOF: I was getting to that. I mean, in essence, what your amendment does is leave the nomination and election entirely to the legislature, does it not?

MR. BOOTHBY: It encourages a district plan, I think, but it does not cause that to be the exclusive plan which the legislature would follow.

MR. DANHOF: In other words, the legislature could make districts—could make 3 districts, could make 9 districts, could make no districts—whatever in its discretion it would deem advisable?

MR. BOOTHBY: I think the insertion of the word "may" would allow that.

MR. DANHOF: And if they would decide that it would be more expedient to follow the practice of having them nominated and elected in the same manner as justices of the supreme court, whatever that might be, but assuming that the action of the committee of the whole on section a of Committee Proposal 91 would be retained, this likewise would be within the province of the legislature?

MR. BOOTHBY: I think under the wording of this amendment that would be permissible.

CHAIRMAN VAN DUSEN: The secretary will read the amendment again.

SECRETARY CHASE: The amendment offered by Miss Donnelly and Mr. Boothby:

[The amendment was again read by the secretary. For text, see above, page 1605.]

CHAIRMAN VAN DUSEN: Mr. Mahinske.

MR. MAHINSKE: I would like to direct a question either to Mr. Boothby or Mr. Danhof through the Chair. In view of the amendments that we have adopted, especially the Danhof amendment, would this mean, under the present wording, exclusive of the proposed amendment, that the initial bench could be composed of people who would run on nominating petitions?

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: I think, Mr. Mahinske, that it is possible. The wording is, "who shall be nominated and elected in the same manner as the justices of the supreme court." So whatever manner is prescribed for nomination of supreme court justices would also be available for the court of appeals. I would so interpret it.

MR. MAHINSKE: So the nomination of appellate court justices would also be by party convention?

MR. DANHOF: As it now stands, I would agree with you, Mr. Mahinske. I don't know about Mr. Boothby, but this would be my interpretation. That those methods which we set up for nomination of the supreme court would be available to the court of appeals. Initially, of course, you wouldn't have any incumbents filing an affidavit to rerun, because there are no incumbents, until we get the first 2 years out of the way, assuming that that provision will stand.

MR. MAHINSKE: And then you definitely intend then to restrict these terms to the 6 years, as opposed to the 10 years for the supreme court?

MR. DANHOF: Well, the supreme court is now at 8, Mr. Mahinske. We felt that the supreme court justices should probably have a little advantage, so we give them an extra 2 years. Probably they will draw a little more salary, too, after the legislature sets it. But we felt that a 6 year term, on the rotation setup, was a reasonable length. It's either 6 or 8, and the committee felt it should be 6.

CHAIRMAN VAN DUSEN: Mr. Mahinske.

MR. MAHINSKE: I think that confuses me a little more than I was before I started here.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Miss Donnelly and Mr. Boothby to section a of Committee Proposal 92. Does any delegate desire to have the amendment read again? The secretary will read the amendment.

SECRETARY CHASE: The amendment offered by Miss Donnelly and Mr. Boothby:

[The amendment was again read by the secretary. For text, see above, page 1605.]

CHAIRMAN VAN DUSEN: Mr. Ford, do you desire recognition?

MR. FORD: Mr. Chairman, members of the committee, this is a very apparent attempt to bring the district plan back to us. I think you first have to look at the decision the committee on the judiciary had to reach before it came as far as we had come in this recommendation in the first instance. It has been the subject of great debate throughout this state for quite a long time, and there are 2 factors that had to be determined. The first one was, do we need an intermediate appellate court? Having arrived at that decision, then we had to arrive at the decision as to whether or not, as a matter of constitutional law, we should prescribe the composition of the court, or simply prescribe that there be one, and let the legislature wrestle with the question of the composition of the court.

It then became apparent to many members of the committee who had spent some time with this, and also from testimony that was presented to us, that there's nothing close to unanimous agreement amongst members of the bench of this state and other people interested in this matter who have studied it and attempted to make recommendations, on how the court should be constituted. One method would be to have 3 circuit judges sitting en banc. Another method would be to have the 9 member supreme court break itself into 3 member banks, and as a 3 member bank be the intermediate appellate court. Another method would have been to use 2 circuit judges and 1 supreme court judge. Another method would have been to use a combination of retired circuit judges with supreme court judges, or with working circuit judges. And I want to say that each one of these plans has a considerable amount of support in the state. At least, this is my impression from what we have heard. Down in our own county, for example, I believe one of the things that our bench was unable to agree upon was how the court was to be constituted.

Now, there is a factor that comes into this that becomes very important. That is whether you conceive of the idea of an intermediate appellate court as being a truly appellate court, with a statewide vision and with a recognition and a compulsion for decisions that have statewide import, or whether this appellate court is conceived in your mind to be nothing more than a review board or a stepping stone toward the ultimate decision with a statewide viewpoint that we have now built into the supreme court. It is the view of some of us that in electing 3 judges from one particular territory—and let's assume for the moment that you go back to the original plan of the district plan people and you said that Wayne county or perhaps Wayne county and one of its neighbors were to have one of the appellate districts—then you would have the same 3 judges sitting constantly in that area reviewing the opinions from a limited number of circuit judges. Over a period of time, with a small bank of 3 judges, you would have the tendency of a dominant personality to emerge, and with a small number like this it becomes fatal.

The military, in setting up the uniform code of military justice a few years ago, had the advice of experts in the field of judicial administration. They have a review board system built into military justice now that is an exact duplicate of what is contemplated here with the intermediate court of appeals. And there is one very strong rule built into that system. That is that the 3 members of any given review board cannot sit together in perpetuity, but they are revolved. They do not hear the same kind of cases, and they do not sit with the same 3 people.

Now, you can't do this with the supreme court because they make their decisions in total, the whole 9 of them. But you could very well, in the intermediate court, secure what many lawyers think would be the epitome of a revolving court, or a court with a minimum of sectional, political, economic or any other philosophy built into it, in that you would be able to revolve the judges so that the 3 man bank was not always the same sitting in Detroit, not always the same in Grand Rapids, not always the same in Lansing, or Traverse City, or wherever they might choose to sit.

Now, if you go to a district plan of electing these judges, then you preclude acceptance by the public of the idea of electing on a district and then sending the judges from another section of the state. Much has been said here about sending in visiting judges. That's one thing. But when you're talking about electing judges from a particular part of the state who might sit for the principal part of their term in office in some part of the state where no person coming before them was an elector who selected them, this is something else again. And the decision on this depends on your first deciding what your concept of an intermediate appellate court is. If it is merely a screening process to see what is ultimately going to go to the supreme court, then there is no objection to the district plan. But if you really intend to have here a court that will be the ending place, the place where litigation comes to a final conclusion, then I think that you should adopt the same philosophy that has been adopted here this morning and build into this court the same statewide view of the matters coming before it. I urge the defeat of the amendment.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Miss Donnelly and Mr. Boothby. Miss Donnelly.

MISS DONNELLY: The purpose of this amendment is to not force statewide elections. If the supreme court were to decide that these individuals would sit in districts, to make them run statewide would seem ridiculous. You would have people from one part of the country having to sit someplace else, and if they are assigned to sit there for 6 years, it gets to be more than expensive for that individual member.

This is to give more leniency to the legislature. Originally, when this first thought of the intermediate court came to us—it was not the first thought, I presume—but the most forceful argument for it came from Justice Souris, who envisioned the court sitting in divisions of 3, which divisions would be set up based on the amount of judicial business that would probably come before that court.

Now, if the supreme court does divide the state—as it says, "The supreme court may prescribe by rule that the court of appeals may sit in divisions"—if it does decide to do this, and then to rotate these judges all over the state in the sense of having to sit for 6 years in one part of the state on this bench, as opposed to allowing them to just move whenever the supreme court decided that these individual people shall be moved, then we've got them locked into a place; and to require these people to go to a party convention, if they are only going to act in one part of the state, seems ridiculous. The purpose of this amendment initially is to allow more flexibility. And I ask that the question be divided; that the amendment be divided, and that we have a division vote.

CHAIRMAN VAN DUSEN: Miss Donnelly, the Chair does not understand the manner in which you request the question to be divided.

[Whereupon, a consultation was had between Chairman Van Dusen and Miss Donnelly.]

The question will be so divided. Miss Donnelly has requested a division vote. Is the demand supported? It is supported.

MR. NORRIS: Point of information, Mr. Chairman.

CHAIRMAN VAN DUSEN: State your point, Dr. Norris.

MR. NORRIS: I wondered if we couldn't have the amendments as proposed put on the wall, the way we have been doing, at least, so we can have the complete text in front of us, so we can see what the divisions mean.

CHAIRMAN VAN DUSEN: The copies have not been prepared as yet in form for projection, but the Chair will ask the secretary to read the 2 portions of the amendment as it will be divided. The first portion, as the Chair understands it, Miss Donnelly, is the question, "as provided by law". The second portion is the permission of the legislature to district the state. The secretary will read the 2 portions of the amendment, and then the Chair will recognize you.

SECRETARY CHASE: The first portion of the amendment:

1. Amend page 1, line 6, after "elected" by striking out "in the same manner as the justices of the supreme court.", and inserting "as prescribed by law."; so that it will then read, "The court of appeals shall consist initially of 9 judges who shall be nominated and elected at nonpartisan elections as prescribed by law." The second part of the amendment would have the language, "The legislature may provide for the dividing of the state into districts for the purpose of selecting appellate court judges."

MR. MAHINSKE: Point of order, Mr. Chairman.

CHAIRMAN VAN DUSEN: State your point, Mr. Mahinske.

MR. MAHINSKE: We had a ruling on this exact point yesterday, where we had an amendment to strike and insert, and it is not divisible.

CHAIRMAN VAN DUSEN: Your point —

MR. MAHINSKE: I would favor a division here, but we might as well be consistent.

CHAIRMAN VAN DUSEN: Your point is well taken, Mr. Mahinske. However, if you withdraw your objection, the committee can proceed without objection to a division of the question.

MR. MAHINSKE: No; I'll leave my objection in.

CHAIRMAN VAN DUSEN: In that event, Mr. Mahinske, the Chair will necessarily rule that the provision of rule 51 prohibiting the division of amendments to strike out and insert will prevail, and that the question cannot be divided. Mr. Boothby.

MR. BOOTHBY: Mr. Chairman, ladies and gentlemen of the committee, I think maybe I can possibly clear up one problem which might exist in the minds of the delegates after Mr. Ford made his remarks. One of his principal objections, apparently, to this amendment was that it would, as he indicated by his statement, force 3 judges to continually sit together in one particular area of the state, and would prevent them from sitting in other areas of the state, and from being divided up. I think this point is not well taken. As we well know, the circuit judges are moved about by the supreme court, and they are moved from one area to another. I do not believe that the wording in this amendment would prohibit the supreme court from taking the appellate judges and placing them in a particular division and having them sit, regardless of where they were elected from. I don't believe that Mr. Ford's point was well taken in that respect.

CHAIRMAN VAN DUSEN: Mr. Martin.

MR. MARTIN: Mr. Chairman, it seems to me that this amendment is very much in order. The election of your appellate court judges by district is something which can very well fit into the judicial structure, even though the convention may have decided to elect the supreme court justices by a statewide election. Since the court will be divided and will be able to sit in divisions, it seems entirely in order to allow the appellate court judges to be elected by district, as was originally comtemplated in the committee proposal, which proposed that supreme court justices as well be elected by district.

I think there are some real advantages to this, in encouraging good judges to run in these districts for these appellate court positions, and in giving the public an opportunity to vote for people whom they know. I would favor the Boothby amendment.

CHAIRMAN VAN DUSEN: Mr. Lawrence.

MR. LAWRENCE: Mr. Chairman, I would like to rise in favor of the amendment, and just point out to some of the members of the committee who are not attorneys that there is a very practical problem that I think would be solved by the adoption of this amendment. When this came up in the committee, it was my hope that we would be able to provide—or at least provide the framework so that such a provision could be made—for a much less expensive type of appeal than an appeal to the supreme court is at the present time. And by adopting this amendment you would enable the state, by being divided into districts, to accomplish to some extent that hope. For instance, you may know that the United States district court in the state of Michigan sits mainly in Detroit. But the court sits at times in Bay City, and there also is another court established in Grand Rapids. Now, that is for the convenience of the people of the state, and also it enables people around the state to have their cases heard and tried at much less cost. And even the cost of traveling—say if it were one court sitting in Lansing, or in any one city—the cost of people traveling from all parts of the state to that one court would be considerable, plus having their attorneys, and the time the attorneys have to spend in traveling. If that could be avoided it would be a step in the right direction.

The second thing I would like to show, let me say to the lay men and women of this committee, is this little book that I hold in my hand. Now, that book is an appellee's brief. That is the printed brief that was filed in a case in the supreme court within the last month. That brief has 93 pages in it, and just to print it cost over $500. The record in the case consisted of 2 volumes of nearly 500 pages each, or nearly 1,000 pages of printed record, while this little brief that cost $500 only has 93 pages.

It was my hope that we could provide a means whereby maybe a much less expensive type of appeal could be made, perhaps by just typewritten briefs —

CHAIRMAN VAN DUSEN: Mr. Lawrence, the Chair is reluctant to interrupt, but the question is on the method of electing judges of the court of appeals, and the Chair will request that you return to that point by the least circuitous possible route.

MR. LAWRENCE: I will endeavor to do so. Just let me collect myself for a minute. The reason that I thought I was on that subject, I thought that the amendment stated that the state would be set up in districts, or the legislature would set up the state in districts; is that not correct?

CHAIRMAN VAN DUSEN: No. The Chair thinks the amendment deals with the method of election. The second sentence of the proposal as it presently stands states that the supreme court may prescribe by rule that the court of appeals may sit in divisions. That, however, is not before the committee at this point, Mr. Lawrence. The only question is the method of election.

MR. LAWRENCE: Then I will say this: I appreciate your forebearance. I hope you will remember what I have said, so I won't have to repeat it when the other point comes up. Thank you.

CHAIRMAN VAN DUSEN: Mr. Farnsworth.

MR. FARNSWORTH: Mr. Chairman, members of the committee, as is customary in this convention, the lawyers are divided on this question. I think this is one area where we laymen can excuse them for being so divided. This is a new area of court structure in Michigan. We have not had it before. And I would just like to make a couple of points on it.

This particular section that says—and which this would strike—that they shall be elected in the same manner as the members of the supreme court, is a pretty rigid restriction on the legislature. Now, we are going into a new area. The lawyers, the laymen—no one knows exactly how the thing is going to work. I submit to you that it's a mistake to leave that kind of a restriction in a proposed constitution.

Now, I think there is one other significant factor. You will find that one of the introducers of this particular amendment is a well known proponent of the district plan, and the other is a very well known opponent of the district plan. So this isn't a question of whether we are going to have a district plan or some other kind of a plan for the court of appeals. But we are entering into a new area and nobody knows how it is going to work. Certainly, here is an area where we should leave it to the legislature to provide the rules. I urge you strongly to support the amendment.

CHAIRMAN VAN DUSEN: Mr. Higgs.

MR. HIGGS: Mr. Chairman, I would like to direct a question to one of the sponsors of this amendment, if I may.

CHAIRMAN VAN DUSEN: If either Miss Donnelly or Mr. Boothby cares to answer.

MR. HIGGS: The question is: would this permit the possibility of a partisan nomination and a nonpartisan election, as we presently have?

CHAIRMAN VAN DUSEN: Mr. Boothby or Miss Donnelly, do you care to answer?

MISS DONNELLY: I'm sorry, I didn't hear it.

CHAIRMAN VAN DUSEN: Will you restate your question, Mr. Higgs.

MR. HIGGS: The question is whether this would permit a partisan nomination preceding the nonpartisan election.

CHAIRMAN VAN DUSEN: Miss Donnelly.

MISS DONNELLY: Well, certainly if it's not changed it would require a partisan nomination. By allowing this leniency, I think it could make it—as a matter of fact, I thought it said nonpartisan nomination and election, if the truth be known.

CHAIRMAN VAN DUSEN: The secretary will reread the amendment.

MISS DONNELLY: I thought the way I wrote it it said that.

CHAIRMAN VAN DUSEN: Write in haste, repent at leisure, Miss Donnelly.

MISS DONNELLY: Well, that's true. It is becoming very obvious.

SECRETARY CHASE: The following is the Donnelly-Boothby amendment:

[The amendment was again read by the secretary. For text, see above, page 1605.]

CHAIRMAN VAN DUSEN: Miss Donnelly.

MISS DONNELLY: Does that answer your question?

MR. HIGGS: Yes.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Miss Donnelly and Mr. Boothby to section a of Committee Proposal 92. Mr. Danhof.

MR. DANHOF: Then my initial question to Mr. Boothby is not the same as it was before. If this amendment would pass, then the legislature could not provide that the court of appeals could be nominated and elected in the same manner as the justices of the supreme court. Is that correct, Mr. Boothby and Miss Donnelly?

CHAIRMAN VAN DUSEN: Mr. Boothby.

MR. BOOTHBY: Apparently a party convention is a partisan affair. So, according to the wording, it would probably prohibit that. I would suggest that if this is giving some pause to some of the members of the committee, that the proper procedure would be that after this amendment is adopted, to consider that particular provision.

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: I just wanted to inquire of the movers whether or not they intended to restrict the method given to the legislature, or to leave it completely to the legislature. What was the intent of the amendment? As it stands now the legislature would be restricted from doing certain things. My initial thought was that we were going to give to the legislature carte blanche authority to nominate in the way they saw fit, and then to elect at a nonpartisan election. Now, that was my original idea of this. If I'm in error, it may change my thinking on this particular amendment.

CHAIRMAN VAN DUSEN: Mr. Boothby.

MR. BOOTHBY: Mr. Danhof, to specifically answer your question, my original thought was to leave it pretty much to the legislature. What actually occured was that Miss Donnelly walked up to the desk with the first part of this amendment, I walked up with the last part of the amendment, and so, necessarily, there was not complete unanimity of thought on that one particular provision. But I do suggest that the proper method of handling this problem may be to offer an amendment to that one small portion of the amendment dealing with nonpartisan elections.

MR. DANHOF: From my own standpoint, Mr. Boothby, I could well support, perhaps, personally, a provision that would leave everything to the legislature regarding nomination, including the right to set it by party or to set it by district, whatever they would deem desirable; that the election would be by nonpartisan election; and that we would in effect be leaving to the legislature the method of nomination, but election by a nonpartisan ballot, by districts or statewide, whatever they would desire. I could probably support this type of amendment. As this one is now drawn, I'm afraid it is somewhat restrictive. And if you would wish to go in that particular direction, why, my own personal opinion would be to support you.

CHAIRMAN VAN DUSEN: Mr. Boothby.

MR. BOOTHBY: Well, my only reply is that I would agree to have the word "nonpartisan" stricken. I don't know what Miss Donnelly's thinking is on it.

CHAIRMAN VAN DUSEN: Miss Donnelly.

MISS DONNELLY: It's going too fast for me. In other words, by striking "nonpartisan" and the legislature may make it partisan or nonpartisan? Is that the nature of your question, Mr. Danhof? In your opinion, that's what the draft would do?

MR. DANHOF: All I envision is, Mr. Boothby said he intended basically to leave everything to the legislature. The matter of nomination as it now stands would have to be, in effect, by nonpartisan primary. They could not be nominated

in the same manner as the supreme court justices might be, by convention. I don't think there is much doubt that perhaps the majority of this convention is for a nonpartisan ballot to elect. My only question is whether you intended at the time to restrict the manner of nomination to a nonpartisan primary, or whether the import of the amendment was to just leave it to the legislature to establish the method by which they should be nominated and in fact elected, assuming election on a nonpartisan ballot.

CHAIRMAN VAN DUSEN: Mr. Danhof and Miss Donnelly, the secretary advises that the solution to your problem may be at hand. Mr. Elliott has offered a revised amendment. The Chair recognizes Mr. Elliott.

MR. A. G. ELLIOTT: Mr. Chairman, would the secretary read the amendment and see if it's satisfactory to Mr. Boothby and Miss Donnelly.

SECRETARY CHASE: Mr. Arthur Elliott offers a revised amendment as follows:

1. Amend page 1, line 6, after "elected" by striking out "in the same manner as the justices of the supreme court.", and inserting "as prescribed by law. The legislature may provide for the dividing of the state into districts for the purpose of selecting appellate court judges.".

CHAIRMAN VAN DUSEN: Mr. Boothby? Miss Donnelly? Which of you desires recognition?

MISS DONNELLY: Mr. Boothby, I think, has answered the question, have you not? Mr. Boothby wanted it removed in the first instance, so he certainly says yes.

MR. BOOTHBY: Mr. Chairman, I would be very happy to have Mr. Elliott's name added to this amendment, if that could be done by the striking of those words which he suggested.

CHAIRMAN VAN DUSEN: Mr. Boothby accepts the revised amendment. Miss Donnelly?

MISS DONNELLY: Yes.

CHAIRMAN VAN DUSEN: Miss Donnelly accepts the revised amendment. The question is now on the amendment offered by Miss Donnelly and Mr. Boothby, as revised at the suggestion of Mr. Elliott, to insert the words "as prescribed by law. The legislature may provide for the dividing of the state into districts for the purpose of selecting appellate court judges." The question is now upon the amendment so offered. Judge Leibrand.

MR. LEIBRAND: May I inquire of the sponsors if this amendment as it now stands would permit the nomination and election of appellate court judges on partisan ballots?

CHAIRMAN VAN DUSEN: Mr. Boothby.

MR. BOOTHBY: As I understand the portent of this amendment, it leaves it completely within the discretion of the legislature.

MR. LEIBRAND: Mr. Chairman, I would then oppose the amendment. It seems to me the people of the state of Michigan have pretty well indicated they want nonpartisan election of judges. And I think that we are going a long ways in creating a new court and at the same time putting it on party ballots, or possibly at party conventions. I oppose the amendment.

CHAIRMAN VAN DUSEN: The question is on the revised amendment offered by Miss Donnelly, Mr. Boothby and Mr. Elliott. A division has been ordered. Those who are in favor of the amendment as revised will vote aye. Those who are opposed will vote no. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the adoption of the amendment offered by Miss Donnelly and Messrs. Boothby and Elliott, the yeas are 61; the nays are 63.

CHAIRMAN VAN DUSEN: The amendment is not adopted. Are there any further amendments to Committee Proposal 92? If not, the proposal will pass.

Committee Proposal 92 is passed. The secretary will read the amendment offered as section 1 to **Committee Proposal 96**, A proposal pertaining to general and special provisions relative to the courts of the state.

For last previous action by the committee of the whole on Committee Proposal 96, see above, page 1554.

SECRETARY CHASE: Mr. Danhof, on the behalf of the committee on judicial branch, has offered the following amendment:

1. Amend page 4, following line 1, by inserting a new section to read as follows:

"Sec. 1. Any justice or judge of a court of record desiring to become a candidate for election or reelection to a judicial office then held by him, may, in lieu of nomination as provided in this constitution or by law, nominate himself by affidavit filed in the office of the secretary of state not less than 90 days prior to the date of the primary election or election as the case may be, which is applicable to the office to be filled.". To which Mr. Ford has offered this amendment:

1. Amend the amendment, after "in lieu of" by striking out "nomination" and inserting "filing nominating petitions"; so that the language will then read, "may, in lieu of filing nominating petitions as provided in this constitution,"; and after "or by law,", by striking out "nominate himself" and inserting "cause his name to be printed on the primary election ballot"; so that the language will read, "cause his name to be printed on the primary election ballot by affidavit filed in the office of the secretary of state. . . ."

CHAIRMAN VAN DUSEN: The question is on the amendments offered by Mr. Ford. Mr. Ford.

MR. FORD: Mr. Chairman, I wish to withdraw those amendments. They were made the other day. There is a committee amendment that I feel should take precedence.

CHAIRMAN VAN DUSEN: Mr. Danhof, do you likewise withdraw your amendment? Mr. Ford's amendments to your amendment have been withdrawn.

MR. DANHOF: Is that the old one, or is that a new one? Yes.

CHAIRMAN VAN DUSEN: Mr. Danhof, without objection, withdraws his amendment. The secretary will read the amendment offered by Messrs. Lawrence, Danhof, Ford and others.

SECRETARY CHASE: Messrs. Lawrence, Danhof, Ford, Miss Donnelly, Messrs. Bledsoe, Krolikowski, Woolfenden, Miss McGowan, Messrs. Tubbs, Barthwell, Garvin, Everett, Cudlip, Higgs, Prettie, Pugsley, Iverson and Ostrow offer the following amendment:

1. Amend page 4, following line 1, by inserting a new section to read as follows:

"Sec. 1. Any judge of a circuit court or probate court may become a candidate in the primary election for the office of which he is then the incumbent, by filing a declaration of intention at such time and in such office as provided by law.".

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Messrs. Lawrence, Danhof and others. The Chair will recognize Mr. Danhof, and will then recognize you, Judge Leibrand.

MR. DANHOF: Mr. Chairman, members of the committee, this amendment is simply to clear up the matter raised by Mr. Ford. It is endorsed by practically all of the committee on judicial branch. Inasmuch as we have handled the incumbent renomination of the supreme court and the court of appeals, this matter is now limited to the other 2 courts of record. We have shortened the language, and I think it is not mandatory; it is only permissive. If the judge desires to be nominated as a candidate by any other means provided by law, he may do so. It does obviate the necessity in the metropolitan areas of circulating petitions and endeavoring to obtain names. I think it is a provision which would facilitate the renomination of the bench, and eliminate the necessity of trying to gather up a group to obtain names by any and various means.

CHAIRMAN VAN DUSEN: On the amendment offered by Messrs. Lawrence, Danhof, Ford and others, the Chair will recognize Judge Leibrand.

MR. LEIBRAND: Mr. Chairman, may I inquire of the secretary or Mr. Danhof if this proposed amendment is printed anywhere, either as a proposal or in the journal?

CHAIRMAN VAN DUSEN: The amendment is projected on the wall, Judge Leibrand.

MR. LEIBRAND: Thank you, Mr. Chairman.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Messrs. Lawrence, Danhof, Ford, Miss Donnelly and others. Mr. Mahinske.

MR. MAHINSKE: I noticed that the wording of the last sentence here is not mandatory. Was it the intent that this should be mandatory on the legislature?

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: I said, Mr. Mahinske, that this will allow a judge to become a candidate by filing such a declaration as shall be prescribed. It is not mandatory that this is the only means by which a judge can get his name on the ballot.

MR. MAHINSKE: You missed my point, Mr. Danhof. You have in your last line "and in such office as shall be provided by law." I would like to know, is it your intent that the legislature shall provide by law that the self nominating application shall go into effect?

MR. DANHOF: Yes.

MR. MAHINSKE: This is not self executing, as I read it, and I think possibly we should reword it so it would be self executing.

MR. DANHOF: I think, Mr. Mahinske and Mr. Chairman, the legislature has to designate the office, the clerk or the secretary of state. If there's more than one county involved, they might have to set up the form of the particular paper or the declaration. That is, the manner and the form — that it has to be under oath, or something like that. We intend this to be mandatory, and that the legislature shall designate the office, whatever it may be — the county clerk, the secretary of state, or some other office.

MR. MAHINSKE: I don't think that this is self executing as it is worded now. I don't think that it makes it mandatory upon the legislature to go through the enabling acts here and set up who is to be the filing officer, or how many days prior, and so forth. It just doesn't read that way. And I'm sure your intent was that the circuit and probate judges shall have this right, and that the legislature is going to have to act to implement this right that you are conferring on them here.

CHAIRMAN VAN DUSEN: Mr. Lawrence.

MR. LAWRENCE: I would like, with your permission, Mr. Danhof, to answer Mr. Mahinske. I think you are absolutely right, Mr. Mahinske, on the intent. There's no question but that the intent is this. A judge is not compelled to use this method, but may. But the legislature shall set the time and designate the office, and that's all. In other words, I take it that a simple way for a judge to do this would be to simply write a letter saying, "I hereby declare my intention to be a candidate at the primary on such and such a date." Where he files it and within what time ahead of the primary is to be fixed by the legislature. Now, it seems to me it covers that. If the legislature did not act, it would seem to me that the candidate would probably be without remedy, unless you can mandamus some official to require him to file it. But that certainly was the intent. If you raise any question about it, I would like to know what you would propose.

CHAIRMAN VAN DUSEN: Mr. Mahinske, do you desire to revise the last line by inserting the words "shall be" before "provided"?

MR. MAHINSKE: Between "as" and "provided". I think this may cure some of it, not all of it.

CHAIRMAN VAN DUSEN: The question is on the revision of Mr. Mahinske to insert the words "shall be" between the words "as" and "provided" in the last line of the amendment.

MR. LAWRENCE: There are 18 of the 21 members who signed this. As a minority of 1, I would have no objection to the amendment.

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: I have none. Mr. Ford nods assent. I see a lot of hands going up saying yes. We will put "shall be" in there, Mr. Mahinske.

CHAIRMAN VAN DUSEN: Without objection, the amendment is revised. The question is now upon the amendment, as revised, offered by Messrs. Lawrence, Danhof, Ford and others. The secretary will read.

SECRETARY CHASE: As revised, the Lawrence, Danhof, Ford amendment reads as follows:

1. Amend page 4, following line 1, by inserting a new section to read as follows:

"Sec. 1. Any judge of a circuit court or probate court may become a candidate in the primary election for the office of which he is then the incumbent, by filing a declaration of intention at such time and in such office as shall be provided by law.".

CHAIRMAN VAN DUSEN: Mr. Ford.

MR. FORD: When section 1 appeared the other day, presented by the majority members of the committee, we objected at that time because it might have been construed to substitute this declaration of intention for the primary election as far as an incumbent was concerned. I am not enthusiastic about the whole concept of self renomination, but recognizing that we can't have everything that we would like to have, and in the spirit of cooperation that we have all been exuding this morning, we did collaborate with Mr. Lawrence in bringing about language that was satisfactory to us on the basis that if we do have to have a form of this process in the constitution, this is its least objectionable form. And for that reason we would support the amendment that we have our names on.

CHAIRMAN VAN DUSEN: Judge Leibrand.

MR. LEIBRAND: Mr. Chairman, I would like to address a question to the sponsors of this amendment.

CHAIRMAN VAN DUSEN: There are 18, Judge Leibrand.

MR. LEIBRAND: Well, let's take Mr. Lawrence. He seems to be the head man. We have previously provided that in the event of vacancy in a court of record, the supreme court may designate a retired judge to fill that vacancy. It seems to me that this might be in conflict. Would the sponsors have any objection to inserting the word "elected" in the first line between the words "any" and "judge?"

CHAIRMAN VAN DUSEN: Mr. Lawrence.

MR. LAWRENCE: Judge Leibrand, I wish to thank you for designating me as the head man. But, frankly, with 18 on here, I would like to caucus before answering that.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Messrs. Lawrence, Danhof, Ford, Miss Donnelly, Messrs. Bledsoe, Krolikowski, Woolfenden and others who the Chair hopes may not be offended by not having their names read. Mr. Higgs.

MR. HIGGS: Did I understand that Judge Leibrand proposed to amend that, or was that merely a question?

CHAIRMAN VAN DUSEN: I believe that was merely a question, was it not, Judge Leibrand?

MR. LEIBRAND: That was all, Mr. Chairman, at the time.

MR. HIGGS: If it were an amendment, I certainly would not oppose it.

CHAIRMAN VAN DUSEN: Mr. Hutchinson.

MR. HUTCHINSON: Mr. Chairman, I can understand the wisdom of permitting a supreme court justice to file an affidavit or a declaration of intention if he wants to continue sitting on the court, for the reason, as I understand it, it is possible that under the law he might, as an incumbent justice, otherwise have to go to a party convention and convince them that he should continue to be their nominee. But in regards to a circuit court judge or a probate court judge, as I understand it these judges all are going to be nominated at nonpartisan primaries. None of them will ever have to go to any kind of a party convention with their hat in their hand and ask for support. At most, without this language in the constitution, they might have to go around and get a few petitions. But I submit that even if this language were not in the constitution, the legislature could provide for this very procedure. This is a matter that can be handled by law. I can see no reason for writing it into the constitution, and so I oppose the amendment.

CHAIRMAN VAN DUSEN: Those who are in favor of the amendment offered by Messrs. Lawrence, Danhof, Ford and others — Mr. Higgs.

MR. HIGGS: Mr. Chairman, I was in the process of preparing an amendment. Since it is so simple, perhaps it could be made orally, without objection.

CHAIRMAN VAN DUSEN: If there is no objection, Mr. Higgs.

MR. HIGGS: To insert the word "elected" before "judge" in the first line, so it would read "any elected judge." This was certainly my intention, and the intention of, I believe, a number of the sponsors, although not necessarily all.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Higgs to the first line of the amendment offered by Messrs. Lawrence and others:

1. Amend the amendment in the first line after "any" by inserting "elected"; so the language will then read: "any elected judge of a circuit court," et cetera. Mr. Lawrence.

MR. LAWRENCE: I would just like to speak, briefly, in opposition to this amendment. If I am correct, no appointed judge would be eligible to run for election to that office, as I understand the action we have taken in the past. So there is no need for the word "elected" in it. Judge Leibrand mentioned that the supreme court could appoint someone to fill a vacancy, correct. But, by its very terms, that provision says that that judge shall not be eligible to run for reelection.

CHAIRMAN VAN DUSEN: Mr. Higgs.

MR. HIGGS: Mr. Lawrence, I think if that is our intention, we should so state it. Even though that may eventually become true, it is not necessarily true as of now. And I'm certain that it was the thinking of a few of the people on the committee that this particular provision should be extended only to elected incumbents. And there will be at the time, assuming that the constitution is adopted, there will be judges sitting who were not elected.

CHAIRMAN VAN DUSEN: Those who are in favor of the amendment offered by Mr. Higgs to insert the word "elected" after the word "any" in the first line of the Lawrence amendment will say aye. Those opposed will say no. The Chair is in doubt. Those who are in favor of the Higgs amendment to the Lawrence amendment will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the adoption of the amendment offered by Mr. Higgs, the yeas are 56; the nays are 53.

CHAIRMAN VAN DUSEN: The amendment to the amendment is adopted. The question is now upon the amendment offered by Messrs. Lawrence, Danhof, Ford and others, as amended. Does any delegate desire to have the amendment read again? If not, those who are in favor of the amendment offered by Mr. Lawrence and others will say aye. Those opposed will say no.

The amendment, as amended, is adopted.

DELEGATES: Division.

CHAIRMAN VAN DUSEN: Division is requested. Is the demand supported?

It is not supported. Are there further amendments to the body of Committee Proposal 96?

SECRETARY CHASE: A minority report on file by Messrs. Ford, Barthwell, Bledsoe and Garvin offers an amendment to strike out the present section 1 and insert a new section 1 to read—

MR. DANHOF: Mr. Chairman.

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: I should like at this time to move the committee do now rise.

CHAIRMAN VAN DUSEN: Mr. Danhof moves that the committee do now rise. Those in favor of Mr. Danhof's motion will say aye. Those opposed will say no.

The motion prevails. The committee will now rise.

[Whereupon, the committee of the whole having risen, Vice President Hutchinson assumed the Chair.]

VICE PRESIDENT HUTCHINSON: The delegate from Oakland, Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, the committee of the whole has had under consideration several matters, of which the secretary will give a detailed report.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration Committee Proposal 92, A proposal pertaining to a court of appeals. It reports this proposal back to the convention without amendment, and with the recommendation that it do pass.

VICE PRESIDENT HUTCHINSON: The proposal will be referred to the committee on style and drafting.

MR. A. G. ELLIOTT: Mr. President, I think there are amendments.

SECRETARY CHASE: I'm sorry. Mr. Arthur Elliott offers the following amendment—

MR. WANGER: Mr. President.

VICE PRESIDENT HUTCHINSON: Mr. Wanger.

MR. WANGER: I move we recess until 2:00 o'clock.

VICE PRESIDENT HUTCHINSON: Mr. Wanger moves that the convention stand in recess until 2:00 p.m. All those in favor will say aye. Opposed will say no.

The motion prevails, and it is so ordered.

[Whereupon, at 12:00 o'clock noon, the convention recessed; and, at 2:00 o'clock p.m., reconvened.]

The convention will be in order.

SECRETARY CHASE: Mr. President, a quorum of the convention is present. When the convention recessed for lunch, there was pending the report on Committee Proposal 92 from the committee of the whole, to which Mr. Arthur Elliott had filed the following amendment:

1. Amend page 1, line 6, after "elected" by striking out "in the same manner as the justices of the supreme court.", and inserting "as prescribed by law."; so the first sentence will read, "The court of appeals shall consist initially of 9 judges, who shall be nominated and elected as prescribed by law."

VICE PRESIDENT HUTCHINSON: On the amendment, the Chair recognizes the gentleman from Oakland, Mr. Elliott.

MR. A. G. ELLIOTT: Mr. President, ladies and gentlemen of the convention, this amendment is an attempt to give the legislature the flexibility that I'm confident they should have, particularly in this court, which is a new court to our judicial system. I can see no reason why it wouldn't be consistent with everything that we have done to date to make it possible for the legislature in its wisdom, once this constitution has been adopted, to then draft and draw the type of statutory language that would adequately and properly set up this entire court of appeals.

[President Nisbet resumed the Chair.]

PRESIDENT NISBET: The question is on the amendment. Judge Leibrand.

MR. LEIBRAND: May I inquire of Mr. Elliott, Mr. President?

PRESIDENT NISBET: If Mr. Elliott cares to answer.

MR. LEIBRAND: Now, I presume then the meaning and intent of your amendment, Mr. Elliott, is that a state convention down in Detroit could select the appellate judges or at least the nominees for appellate judges for these outstate districts? Is that what the purpose of your amendment is?

PRESIDENT NISBET: Mr. Elliott.

MR. A. G. ELLIOTT: No, that is not the purpose.

MR. LEIBRAND: Would your amendment permit that?

MR. A. G. ELLIOTT: I think that my amendment would permit whatever the legislative branch of government established as the law under which the appellate court should be established. If you'll note, I think that what we now have in the committee proposal is a prescribed, rigid requirement that the appellate court be selected in exactly the same manner as the justices of the supreme court. What I'm trying to do is to strike that language and to make it possible for the legislature in its wisdom to establish the election and nomination of these judges in the manner which they feel is best.

MR. LEIBRAND: In your judgment, Mr. Elliott, would your amendment permit the election of these judges on a party basis? Would it permit the legislature to prescribe the nomination and election of these judges on a partisan basis?

MR. A. G. ELLIOTT: My concept of the judiciary is a nonpartisan concept, but the language as I have offered it would leave to the legislature the freedom of determining whether or not the election should be either partisan or nonpartisan. It does not prescribe that it must be partisan, but it does not prescribe that it must be nonpartisan. It gives them that degree of flexibility.

MR. LEIBRAND: Thank you, Mr. Elliott. I feel that I shall have to oppose the amendment.

PRESIDENT NISBET: The question is on the adoption of the amendment. Mr. Farnsworth.

MR. FARNSWORTH: Mr. President and members of the convention I would like again to remind you that this is very, very important. I feel strongly about it. You are sailing now on uncharted seas insofar as a court in Michigan is concerned. You do not know. Here is the place to leave that flexibility, and to leave it to the legislature.

Don't be misguided by those people who would have you believe that because you leave this open to the legislature to decide, that they will necessarily saddle you with partisan elections. They are very, very apt not to do that. The people have pretty well expressed themselves on that in Michigan. And it would be only natural to assume that the legislature would keep it on a nonpartisan basis. But you do need the flexibility, and the Elliott amendment certainly does that. I again urge you to support it.

PRESIDENT NISBET: The Chair recognizes Mr. Tubbs.

MR. TUBBS: Mr. President, I would also like to ask Mr. Elliott a question.

PRESIDENT NISBET: If Mr. Elliott cares to answer.

MR. TUBBS: Do you think your amendment would permit the legislature to set up a system of appointing circuit judges to the court of appeals?

PRESIDENT NISBET: Mr. Elliott.

MR. A. G. ELLIOTT: No, I don't. Because I have not struck the word "elected." I merely struck the language after the word "elected" and added "as prescribed by law." And "elected" I think would mean just that.

MR. TUBBS: I agree with Mr. Farnsworth, Mr. President, that we need flexibility at this point. This is something new, and we may have to experiment. There is one state not far away where the judges of this court are appointed from the lower courts, and then those lower court vacancies are filled by their regular system of appointment or election. And we might try that here. I would like to see this provision flexible enough to do it.

PRESIDENT NISBET: The question is on the adoption of the Elliott amendment. Those in favor will say aye. Those opposed, no.

The amendment is adopted. Are there any further amendments?

SECRETARY CHASE: Miss Donnelly has filed the following amendment:

1. Amend page 1, line 6, after "nominated" by striking out the remainder of the sentence and inserting "as provided by law and elected on a nonpartisan ballot."; so the sentence will read, "The court of appeals shall consist initially of 9 judges who shall be nominated as provided by law and elected on a nonpartisan ballot."

PRESIDENT NISBET: The question is on the Donnelly amendment. Does Miss Donnelly care to be recognized? Miss Donnelly, do you care to speak on your amendment?

MISS DONNELLY: You'll have to excuse me. I was with the ladies. I gather that Mr. Elliott's amendment —

PRESIDENT NISBET: The Chair might say, Miss Donnelly, in order for you to catch your breath — and the Chair was fortunate to arrive a little ahead of you — that Mr. Elliott's amendment has been adopted. Now we are voting on the amendment as suggested by yourself. Have you got your wind back?

MISS DONNELLY: This isn't the amendment that I placed on the secretary's desk before I left.

SECRETARY CHASE: It is.

MISS DONNELLY: I'm sorry, maybe I should — I'm not going to lunch again with the girls. The one I placed on the secretary's desk had inserted "who shall be nominated as provided by law and elected on a nonpartisan basis." That isn't what we just flashed. To me there is only one nuance of difference from Mr. Elliott's, and that's "nominated as prescribed by law." I'm not sure. If I could have a moment to see them both as written, I'll be able to make better sense of it.

PRESIDENT NISBET: Will the people in charge of projecting the amendments on the wall please see that Miss Donnelly's amendment is put on the wall. Miss Donnelly, can you proceed while they are getting the piece cut for the machine?

MISS DONNELLY: Yes. The only difference is, I have, in addition, "nominated and elected on a nonpartisan ballot." The only nuance of difference is the ending. And mine requires that it be elected on a nonpartisan ballot, whereas his just says "as prescribed by law." Mr. Hutchinson just asked me a leading question, and if I said yes it might be easier. All right, I will withdraw it.

PRESIDENT NISBET: The amendment is withdrawn. Are there any further amendments, Mr. Chase?

SECRETARY CHASE: Messrs. Boothby, Dehnke and Pugsley offer the following amendment:

1. Amend page 1, line 6, after "nominated" by inserting "as provided by law" and after "elected" by striking out "in the same manner as the justices of the supreme court.", and inserting "at nonpartisan elections as provided by law. The legislature may provide for the dividing of the state into districts for the purpose of selecting appellate court judges."; so that the language will then read:

> The court of appeals shall consist initially of 9 judges who shall be nominated as provided by law and elected at nonpartisan elections as provided by law. The legislature may provide for the dividing of the state into districts for the purpose of selecting appellate court judges.

PRESIDENT NISBET: The Chair recognizes Mr. Boothby.

MR. BOOTHBY: Mr. President, I hate to bring down confusion. Nevertheless, there is on the secretary's desk another amendment which we had desired to have presented first. I am wondering if the secretary could read that.

SECRETARY CHASE: The other amendment that Mr. Boothby has filed is:

1. Amend page 1, line 5, after "Sec. a.", by striking out the balance of the line, all of line 6 and through the first "court.", in line 7, and inserting "The court of appeals shall consist initially of 9 judges who shall be nominated and elected on a nonpartisan basis from districts of the state as established from time to time by the legislature.".

PRESIDENT NISBET: The Chair recognizes Mr. Boothby.

MR. BOOTHBY: Mr. President, ladies and gentlemen of the convention, the names of Judge Dehnke and Judge Pugsley should be added to this amendment. They are cosponsors of this amendment.

The amendment which is now before you makes no question as to the method of selection of appellate court judges which is sought. We feel that for the selection of appellate court judges the most feasible method of selecting these individuals would be on a district basis. This does not leave to the legislature the method by which to select these particular judges. It should be noted for those people who have some hesitation about the question of nonpartisan versus partisan election that this amendment calls for not only a nonpartisan election, but a nonpartisan nomination. I know of no other way to have a truly nonpartisan nomination than by a district basis. And this would allow for that to take place. It would also allow for a truly nonpartisan election. In other words, an election not dictated by a party or by any particular organization. Now, this has, I feel, a great deal of merit.

There has been some opposition, as we have seen, to a district basis for the selection of supreme court judges, and it was reasoned by some that the supreme court should not be placed on a district basis because the supreme court is hearing cases from all parts of the state, and that those people who

preside over those cases should be elected by all the people of the state.

I would like to call to the attention of the convention that, as I understand, the intention of the committee on judicial branch which considered the creation of this particular intermediate appellate court was to create a court which would allow for divisions to sit in separate parts of the state. So it does contemplate a regional situation. Therefore, it would tie in with a district selection of judges for this particular intermediate appellate court. I would like to point out that we're going to have a great many problems if we have a situation occurring where both the intermediate appellate court and the supreme court justices would possibly be elected on a statewide ballot. We will have our hands full getting information out to the people of the state regarding the supreme court judges. But when we come down to the intermediate appellate court, I submit to you that it would be most difficult to acquaint the people of the state with the qualifications and backgrounds of the people running for the intermediate appellate court, which is essentially a regional court.

I think it should be further pointed out that we might very well have reluctant candidates for this office. Because I could conceive that the pay for the judge of the intermediate appellate court would be somewhat less than the pay for a supreme court judge. Nevertheless, if you had him run on a statewide basis, the cost of election would be at least as great and maybe greater than the candidate for the supreme court. I think that the district court basis has a great deal of merit for the selection of judges for the intermediate appellate court, regardless of what your feeling is on the selection of judges for the supreme court. I actually think it is 2 separate issues. And I would urge your support for this amendment, which would actually require the selection of intermediate appellate court judges on a district basis.

You will note that this amendment leaves to the legislature the determination on what these districts shall be. It is my own personal conviction that these districts should be created on 2 bases: one, on a population basis, and another, consideration should be given to a work load basis. Because, as we know, population may not be the only consideration which should be given; because the work load in certain areas of the state may be much greater than in another area, regardless of population. But this whole question would be left to the legislature.

The amendment is simple in nature. It would require that initially there would be 9 judges elected. And this falls into line with the committee's original recommendation. But, as you will note, the word is "initially," and the makeup of the court could be enlarged or lessened according to the decision of the legislative body. At this time I would yield to Judge Dehnke, if he has any comments on this amendment.

PRESIDENT NISBET: Judge Dehnke.

MR. DEHNKE: Mr. President and fellow delegates, I think Mr. Boothby has covered the field pretty well. I might add a few words, but I have no new ideas. Thank you.

PRESIDENT NISBET: The Chair recognizes Mr. Ford.

MR. FORD: I would like to ask Mr. Boothby a question through the Chair, if I may.

PRESIDENT NISBET: Would you care to answer, Mr. Boothby?

MR. FORD: Mr. Boothby, do you contemplate any amendments to section b of this proposal? Section b provides that 3 judges will be elected initially for 2 years, 3 for 4 years, and 3 for 6 years.

PRESIDENT NISBET: Mr. Boothby.

MR. BOOTHBY: I frankly hadn't given any thought to that.

MR. FORD: Isn't it true that when you take section b into consideration, since we are creating a new court here and we are and we are freezing into the constitution the requirement that the districts be established at the time that the court is established, that when we at the same time provide for the staggered terms, we are freezing the districts for all time? Because you would never have a situation where all 9 judges left office at once, and it seems inconceivable—perhaps you can tell us how—that you would ever be able to change a district after you once got this snowball started downhill.

MR. BOOTHBY: In other words, you are questioning the word "initially" there? Whether that could be changed?

MR. FORD: No. I'm questioning whether you could ever change the district. You have language in there that seems to contemplate that there would be reapportionment of the judicial districts on the basis of population and work load, as you indicated. But isn't it true that when read in context with the other section, you would never to able to do it with the staggered terms without interfering with the term of office of people in office?

MR. BOOTHBY: In other words, you might have some suggestion that the incumbent judge, even though he didn't remain in that district, would continue to serve?

MR. FORD: Yes. Suppose, for example, that they determined to add Oakland county to Wayne county as a district, but the judges in Oakland county and the judges in Wayne county would not all be going out of office at the same time. How would you accomplish this without actually transferring territory of a judge who wasn't elected by the people? Your argument is that a judge should be elected by the people in the territory in which he serves.

MR. BOOTHBY: Mr. Ford, we have taken care of this same problem at least 1 other time, I think 2 other times, by allowing that an incumbent judge may continue to serve even though his district has been taken away from him. In other words, he would not immediately be thrown out of office because his district was changed. The legislative organization committee has come upon this same type of thinking, when they suggested that if, on annexation, a representative district is changed so as to leave the representative in another district, it would provide that he could continue to serve in the legislature. He would not be disqualified. I think that the problem that you raise could be handled in the same way, by an amendment to the other section.

MR. FORD: Thank you. Mr. President, I would like to oppose the proposed amendment. Mr. Elliott has offered to us an opportunity to provide a clear, open field for experimentation, if necessary, with various ways of selecting this court by the legislature until a system that is in fact satisfactory is arrived at. The effect of this amendment would be to freeze in, for perhaps the next 50 years, a requirement not only of primary elections, but the district plan itself, which would preclude any other method of nomination and preclude any other method that the people of the state through the legislative body might think would be an improvement, short of a constitutional amendment.

I feel that everything that is sought to be accomplished here could in fact be accomplished by the language that we have already adopted, by adopting Mr. Elliott's language amending the committee proposal, because the legislature could in fact establish this method. But if it did establish this method and then discovered that there were reasons in the next 20 or 50 years why this was no longer a workable system, they could change it very readily to meet the changing times and needs of the state. For this reason I urge that you defeat the amendment.

PRESIDENT NISBET: The Chair recognizes Mr. Mahinske.

MR. MAHINSKE: I was called out of the room for a minute here. Possibly this question has been answered. I would direct this to either of the proponents of the amendment. As I read the amendment, you talk about their being selected and elected from districts. Now, will they also serve in these districts? In other words, is this an appellate court based on districts?

PRESIDENT NISBET: Judge Dehnke, do you care to answer the question? Mr. Boothby was called from the room.

[Mrs. Butler and Mrs. Koeze entered the chamber wearing hats depicting Miss Mackinac Bridge and Miss 1908. (applause and laughter)]

The Chair imagines that our delegates, Mrs. Butler and Mrs. Koeze, had the winning hats.

MRS. KOEZE: No, I'm just Miss 1908. (laughter)

PRESIDENT NISBET: If so, Heaven help us. (laughter) I was just looking at the cost factor.

MRS. BUTLER: I just want everybody to know that I'm Miss Mackinac Bridge. (laughter)

PRESIDENT NISBET: Are you sure, Mrs. Butler, this isn't undue pressure on the convention? (laughter)

MRS. BUTLER: I swear it is not.

PRESIDENT NISBET: Judge Dehnke.

MR. DEHNKE: Mr. President, I was going to suggest 2 thoughts, 1 in answer to Mr. Ford's question, and 1 in answer to Mr. Mahinske's question. This paragraph will continue to provide:

> The supreme court may prescribe by rule that the court of appeals may sit in divisions, the terms of court and the times and places thereof. Each such division shall consist of not fewer than 3 judges.

I think that clearly makes it proper for the supreme court to assign the judges as in their judgment seems best.

I observe that one of the handicaps of a good lawyer, Mr. President, is that he has such a lively imagination that if he took into account all of the possibilities of trouble that he can think of, he would never be in a position to tell his client what is safe and what is not safe for him to do. Mr. Ford is a good lawyer, and he suffers under that handicap. (laughter) I think the legislature could handle that matter very easily by determining in the statute from time to time when changes in the district should take effect. They could make those changes effective in accordance with the expiration of the terms then in office. Thank you.

PRESIDENT NISBET: Mr. Mahinske.

MR. MAHINSKE: Then I would like to direct a further question to Mr. Danhof. In the language of the committee proposal, did they anticipate that the phraseology with reference to the court sitting in different divisions referred to a district plan, or just setting up divisions of the appellate court, and possibly 3 members would sit in a division, although they would actually be a statewide circuit?

PRESIDENT NISBET: Mr. Danhof.

MR. DANHOF: Mr. Mahinske, the question that you propound I think can be answered this way. Regardless of when or how the judges were elected, it was our opinion that the supreme court should be left the authority to prescribe the divisions, the terms of the court, and the times and the places thereof. For the reason that this is basically procedure. We did not necessarily envision that judges elected from a particular district or division would necessarily always sit in that division. We think it would be well perhaps if the personnel might change from time to time. This is why we left it particularly flexible. If you elected them statewide, they can be assigned into divisions in such way as the supreme court would see fit.

If the legislature—as we now have adopted it, "as prescribed by law"—should see fit to make elections by districts, and 3 judges would be elected from a particular district, I feel certain that the supreme court would provide that the court shall sit in the division, and probably those judges elected from a particular district or division would stay there. But we did not feel that we should make this mandatory. There may be times when they have to be moved around, for the best efficiency of the court. Occasionally a change of personnel is good. And it should not always be the same 3 sitting in a particular division. But I think if you elected by divisions, that the supreme court would certainly for the majority of the time assign 3 particular judges from that division to sit somewhere in that division. But not mandatorily.

MR. MAHINSKE: Then, as I understand it, the only difference between the committee's section a and the new proposed section a is that you also call for a district plan, although you choose to call it divisions, which is optional, and the amendment makes it mandatory?

MR. DANHOF: The amendment makes the nomination and election from such districts mandatory. I don't think that the amendment has anything to do with the fact that the court might not necessarily take the same 3 from a district and assign them to the same division if the language would stand.

MR. MAHINSKE: But I mean, it would be possible under the committee proposal for these to be statewide selections rather than district selections?

MR. DANHOF: Well, as the committee has amended it, this is the way it stands. This is the latest amendment, and it has been adopted. If the legislature should determine it will be by statewide election, then it will become statewide.

MR. MAHINSKE: And the amendment would make it mandatory that it will not be statewide?

MR. DANHOF: That you had better get from one of the proponents of the new amendment rather than myself, Mr. Mahinske.

MR. MAHINSKE: That's what I'm trying to get cleared up—whether or not the district plan is mandatory under the proposed amendment.

PRESIDENT NISBET: Do you direct your question to Judge Dehnke?

MR. MAHINSKE: Yes.

PRESIDENT NISBET: Judge Dehnke.

MR. DEHNKE: I think that's true, Mr. President.

MR. MAHINSKE: Thank you, Judge.

PRESIDENT NISBET: The Chair recognizes Mr. Everett.

MR. EVERETT: Mr. President, fellow delegates, I rise to support the amendment. I opposed the district plan for the supreme court. To me this is an entirely different matter. The problem in the districting of the supreme court, to me, at least—and I know that others differ for different reasons—was that we had a statewide court which was to be elected from districts. This problem does not occur, however, in this intermediate court of appeals because its function is to apply the law which, in the final analysis, will be determined by the supreme court. So that if there are differences, I doubt very much if they would be differences because of region. There probably will be differences, because judges differ. These differences will ultimately be resolved by the supreme court, which will be a statewide court, and then will be applied in the same manner in every part of the state.

Before the judicial branch committee perhaps the most vocal spokesman for an intermediate court of appeals was Justice Souris, and he advocated that we write into the constitution a provision that there be at least 3 divisions to this court established by the legislature. We are not going that far. We are not saying how many divisions there should be. But we are saying there should be districts or divisions. Justice Souris was not too explicit as to whether they should be elected from these divisions, but he felt that it was imperative that they sit in divisions for speed of appeal, for reducing the cost of appeal, for reducing the cost of travel, and so forth. But he did say that the structure of the court should be left to the legislature. Now, basically we are doing that, with one modification. We are requiring the election from the districts. And I think Mr. Boothby's reasons are strong enough to compel us to support the position that they should not only serve within these divisions, whether it be 3 or more, but they should also be elected from them.

And I would remind you that the present provision, as it came out of committee, in effect said that there would be 7 districts, because we said they would be elected in the same manner as the supreme court, and at that time we said the supreme court would be elected from 7 districts. So it was not a novel idea to the judicial branch committee that they would not only serve in areas, but would be elected from areas.

Now, of course, the action of the committee of the whole has changed that, and we either must go along with keeping the 2 together, or go back to the idea—and it is going back to the idea—that they should be elected from a smaller portion of the state. I think that the amendment adequately takes care of that, and still leaves to the legislature the determination of how many districts or divisions there shall be, and where they shall be. I support the amendment.

PRESIDENT NISBET: The Chair recognizes Mr. Norris.

MR. NORRIS: Mr. President, I would like to address 1 or 2 questions to the sponsors of this amendment, and then perhaps make a comment. My first question is: does not this particular amendment establish as a condition precedent to having an intermediate appellate court the establishment of districts by the state legislature? In other words, unless the legislature does establish these districts we do not then have an intermediate appellate court?

PRESIDENT NISBET: Judge Dehnke.

MR. DEHNKE: I think, Mr. President, and Dr. Norris, that's probably true. There are no districts unless we set them up, and that would have to be done by the legislature initially.

MR. NORRIS: Now, the second question is: under this contemplated amendment, there would be election by district, but service throughout the entire state. Is that the contemplation?

MR. DEHNKE: I think that would be within the power of the supreme court to determine.

MR. NORRIS: I would like to make this comment with regard to it. We have gone to great lengths at this convention thus far to establish in our bill of rights section, in the rights of accused, a right of appeal as a constitutional right in a criminal case. The general theory behind that was that we would make possible a review by a high court of the trial court procedure with regard to a fair trial, and with regard to all the other accouterments of a just treatment.

I think we depreciate the status and function of an intermediate appellate court if we think of it on a district basis. For many people this appellate court would be the court of last resort. It ought to be accorded in the constitution a statewide conception. And I think this idea of having an intermediate appellate court elected on a district basis does not comport with that perspective.

In addition, I think there is this proposition. It is inconsistent to say they shall be elected from districts and serve in various parts of the state when you think in terms of the point I tried to establish before this convention yesterday that what is important with regard to the judiciary is the judicial philosophy of those in whose hands is the exercise of the judicial power. What is important is that all people in all sections of the state have a right to choose in the exercise of their sovereign will those people who will be the court of last resort. And for most people in most cases this intermediate court will be the court of last resort. I think the district plan is inconsistent with the provisions which we have for right of appeal in a criminal case. I think also that it tends to minimize what we have thus far accomplished.

I would also suggest that the idea of saying to the legislature that you shall establish the districts then puts politics in the court in a way that some of the people who are trying to keep the courts nonpartisan might not foresee. I think that there are implications to this that we ought to recognize. In the legislature there will be the questions arising out of apportionment and reapportionment of districts, the considerations of electoral possibilities will be engendered, and these will have an effect upon those who are running for office. It seems to me that what will happen here is that we will throw in the kind of political considerations in the selection of the judiciary that we wanted to avoid; and yet we would not get into the selection of the judiciary the kind of considerations we want to get in; namely, the consideration of qualifications and the consideration of judicial philosophy, which is, after all, the determining consideration here. I would oppose this amendment, Mr. President.

PRESIDENT NISBET: The Chair recognizes Mr. Tubbs.

MR. TUBBS: Mr. President, I don't know whether we all want to put the power in the legislature to set up a court of appeals or not. I will say this: that for more than 100 years the legislature has had that power. They have not seen fit to set up a court of appeals, because no one in this state has proven the need of it.

Three members of the supreme court made some reference to a court of appeals, and thought it would be nice to have one. Nobody has said that we should have 9 judges on a court of appeals who has said it with any authority or with any experience with courts of appeals.

Here we are setting up a court with more judges than we have on the supreme court. And you want to have the people elect them. The people are going to be so confused by trying to elect judges to the supreme court and the court of appeals and the circuit court and the probate court and other courts that they won't know whether they are electing a dog catcher or something else.

Now, I suggest, Mr. President, that we should not be made the tool of those who want the legislature to do things which they won't do. And I don't think there has been pressure enough put on us nor the legislature to set up a system of a court of appeals. I think the feeling among the leading lawyers and judges of the state is that this is an experiment. And if it is an experiment, we ought to go pretty slowly when we attempt to write into the constitution the details of this court of appeals. I submit this whole section should be deleted.

PRESIDENT NISBET: The Chair recognizes Dr. Nord.

MR. NORD: Mr. President, I would like to support some of the statements made by Professor Norris in opposing this amendment. I would say first of all I believe that the actions we are taking this afternoon are by no means equally deliberative with the ones we took in arriving at the positions in the committee. In the committee of the whole we deliberated at great length about what we should do, and then we debated some more about what we should do with the court of appeals, and then we came out onto the floor of the convention after lunch, and then I believe we began to adopt things without thinking.

It's just gradually dawning on us that some of the votes we have just given may not be right. We don't know whether they are right or wrong, really. For example, I believe that everybody here, or nearly everyone, is in favor of an intermediate court of appeals. And I believe we are in favor of it to the extent that we insist it be self executing; that nobody can stop it. Now, I notice that, as Mr. Norris has pointed out, there is a way for the legislature to prevent any court of appeals from existing. All they have to do is refrain or become incapable of setting up these districts.

I would remind you of what Judge Leibrand said last Friday on the exact same subject about setting up districts. These were districts for the supreme court, but anyway the point is, he said in view of the fact that the state legislature is unable even to set up 1 district for an extra congressional seat, that we certainly are relying on a weak reed when we ask them to set up all of the districts for any court system. And that is exactly what we are doing here. We are asking the legislature to set up districts. Based on our past experience, we know that they are not likely to be able to do it. Certainly we can't be sure that they will be able to do it. That means we throw into jeopardy—and I know we don't intend to, but it seems to me by accident we are walking into these booby traps; that we are going to set up an appellate court on paper, but no place else. We are going to have rights of appeal, and so on, but we won't be sure that there is an appellate court. I might add further that it occurred to me after Mr. Norris spoke that I believe we are in the same boat with Mr. Elliott's amendment, which we already adopted. It is not before us, but it seems to me we have the same problem there. If they don't provide for any means of election, there won't be any election of appellate judges.

Another point with respect to the amendment before us is this. It seems to me that if we want to set up a court system, we want it to be independent of the legislature as much as we can make it. We would like to have flexibility, probably, because we don't know all the answers. And yet we don't want the legislature to be the prime mover in the court system. We ought to keep the legislature out of the act, except when it is found that they are indispensable. The least we should do, it seems to me, is make up our mind how to set up the court initially. We should set it up initially. Then, if we want flexibility, we should put a provision in that says, "Provided however, the legislature can make the following

change if they see fit." That will give you flexibility. At the same time it will give you a guaranteed court.

On the basis of this, there are 2 comments I would like to make. One of them is: although I can appreciate that there are merits to the amendment, and I'm not positive that I'm opposed to the principle at all, I do feel that it would be a mistake for us to adopt it as it is now presented. I think it ought to be presented later on second reading after we have all had a chance to think about it. But as it stands now it is full of booby traps, and should be opposed. And I would also like to give notice that for the reasons I have stated, as soon as this issue is disposed of, or as soon as I can get the floor, I'm going to move to reconsider Mr. Elliott's amendment, because I think we fall into a booby trap there, too.

PRESIDENT NISBET: The Chair recognizes Judge Dehnke.

MR. DEHNKE: Mr. President and fellow delegates, I am willing to add Mr. Tubbs, Dr. Norris and Dr. Nord to the list of good lawyers, because they too have a lively imagination. I would like to point out that if the legislature is going to stand deliberately in the way of the creation of the court, they can do it just as well under the provision as it now stands as they would have it in their power to do if this amendment is adopted.

Now, with reference to the comment that has been made about district courts, this situation will be very much similar to the setup of the federal courts. We have district courts of appeal between the federal district courts and the supreme court. And those courts are made up of judges picked from the residents of that district, of that circuit, and those circuits were created by congress, the same as we are expecting the legislature to create these districts. Thank you.

PRESIDENT NISBET: The Chair recognizes Mr. Stevens.

MR. STEVENS: Mr. President and delegates, I merely want to point out, with reference to Professor Norris' remarks, that the committee on rights, suffrage and elections did not consider the manner in which any court would be elected in connection with our provision that everyone should have an appeal in a criminal case as a matter of right. We did recognize that this might be an added inducement to adding a court of appeals, but it was the general sense of the committee, I believe—in fact, at least it was pointed out—that our job was simply to provide that there should be such an appeal, and leave the matter of the courts to the judiciary committee. Therefore, I don't feel that that has any bearing on the way in which this court might be selected or in which the judges of the courts should be selected by the people. Thank you.

PRESIDENT NISBET: The Chair recognizes Judge Leibrand.

MR. LEIBRAND: Mr. President and delegates, answering for a moment Dr. Nord, I do not recall exactly what I said last Friday about the legislature, but this is Tuesday, and on Tuesdays I'm willing to trust the legislature. I am particularly willing to trust them on this subject, in view of what the committee on rights, suffrage and elections, of which the good doctor was a member, has done in the bill of rights. They have provided an absolute right of appeal in all criminal cases. And I apprehend that there will be such a flood of appeals, particularly from the free riders who are appealing at public expense, that the legislature is just going to have to do something to set up this court. I favor the Boothby amendment.

PRESIDENT NISBET: The question is on the Boothby amendment. The secretary will read the amendment.

SECRETARY CHASE: Messrs. Boothby, Dehnke and Pugsley have offered the following amendment:

[The amendment was again read by the secretary. For text, see above, page 1612.]

PRESIDENT NISBET: The Chair recognizes Mr. Yeager.

MR. YEAGER: I request a recorded roll call vote, Mr. President, please.

PRESIDENT NISBET: A demand for a roll call vote has been made. Is the demand seconded? It is supported. The question is on the Boothby amendment. Those in favor will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and record the vote.

The roll was called and the delegates voted as follows:

Yeas—71

Allen	Gust	Nisbet
Anspach	Habermehl	Page
Batchelor	Hanna, W. F.	Plank
Beaman	Hannah, J. A.	Powell
Bentley	Haskill	Prettie
Blandford	Hatch	Pugsley
Boothby	Higgs	Radka
Brake	Howes	Rajkovich
Brown, G. E.	Hoxie	Richards, J. B.
Butler, Mrs.	Hubbs	Richards, L. W.
Conklin, Mrs.	Hutchinson	Rood
Davis	Iverson	Rush
Dehnke	Judd, Mrs.	Seyferth
DeVries	King	Shaffer
Doty, Dean	Kirk, S.	Shanahan
Doty, Donald	Knirk, B.	Sharpe
Durst	Koeze, Mrs.	Sleder
Erickson	Krolikowski	Spitler
Everett	Kuhn	Stevens
Figy	Leibrand	Turner
Finch	Leppien	Tweedie
Gadola	Lundgren	Van Dusen
Goebel	Martin	White
Gover	McAllister	

Nays—56

Andrus, Miss	Follo	Ostrow
Austin	Ford	Pellow
Baginski	Garvin	Perlich
Balcer	Greene	Perras
Barthwell	Hart, Miss	Romney
Binkowski	Hodges	Shackleton
Bledsoe	Hood	Staiger
Bonisteel	Karn	Stopczynski
Buback	Lawrence	Suzore
Cudlip	Lesinski	Thomson
Cushman, Mrs.	Mahinske	Tubbs
Danhof	Marshall	Upton
Donnelly, Miss	McCauley	Wanger
Douglas	McGowan, Miss	Wilkowski
Downs	McLogan	Wood
Elliott, A. G.	Millard	Woolfenden
Elliott, Mrs. Daisy	Murphy	Yeager
Farnsworth	Nord	Young
Faxon	Norris	

SECRETARY CHASE: On the adoption of the amendment offered by Messrs. Boothby, Dehnke and Pugsley, the yeas are 71, the nays are 56.

PRESIDENT NISBET: The amendment is adopted. Are there further amendments?

SECRETARY CHASE: There are no further amendments to Committee Proposal 92.

PRESIDENT NISBET: **Committee Proposal 92, as amended,** is referred to the committee on style and drafting.

Following is Committee Proposal 92 as amended and referred to the committee on style and drafting:

The committee recommends that the following be included in the constitution:

Sec. a. The court of appeals shall consist initially of 9 judges who shall be nominated and elected on a nonpartisan basis from districts of the state as established from time to time by the legislature. The supreme court may prescribe by rule that the court of appeals may sit in divisions, the terms of court and the times and places thereof. Each such division shall consist of not fewer than 3 judges. The legislature may by law increase the number of judges comprising the court of appeals.

Sec. b. Initially, 3 judges shall be elected for a term of 2 years, 3 judges for a term of 4 years, and 3 judges for a term of 6 years. Thereafter, the term of office shall be 6 years. The time of election and the order of rotation shall be provided by law.

Sec. c. The jurisdiction of the court of appeals shall be prescribed by law and the practice and procedure therein shall be as provided by supreme court rule.

SECRETARY CHASE: Mr. President, the committee of the whole has also had under consideration **Committee Proposal 91,** A proposal pertaining to the supreme court. The committee of the whole reports the proposal back to the convention with several amendments thereto, recommending that the amendments be agreed to and the proposal as thus amended be adopted.

[Following are the amendments recommended by the committee of the whole:

1. Amend page 1, line 6, after "Sec. a.", by striking out the balance of the section and inserting "The supreme court shall consist of 9 justices to be elected on a nonpartisan statewide basis. The term of office shall be for 8 years and not more than 3 terms of office shall expire at the same time. Each political party at party convention may nominate 1 candidate for election for each position to be filled. Any incumbent justice whose term is to expire may become a candidate for reelection by filing an affidavit of candidacy, in the form and manner as prescribed by law, not less than 180 days prior to the expiration of his term. Any person otherwise qualified to be a supreme court justice may become a candidate for election upon filing a nominating petition, in the form and manner prescribed by law, signed by qualified electors of this state in a number equal to 3 per cent of the total vote cast for the office of governor at the last previous election.".

2. Amend page 1, line 14, after "assistants" by inserting "of the supreme court".

3. Amend page 1, line 16, after "shall" by striking out the balance of the section and inserting "perform such administrative duties as may be assigned by the court.".

4. Amend page 2, line 3, after "rule" by changing the period to a comma and inserting "it being provided that the supreme court shall not have the power to remove a judge.".

5. Amend page 2, line 11, after "decision" by inserting "and reasons for each denial of leave to appeal".

6. Amend page 2, line 15, after "control of" by inserting "the preparation of its budget recommendations and".

7. Amend page 2, line 21, after "fund.", by striking out "No justice of the supreme court" and inserting "Neither the supreme court nor any justice thereof".

8. Amend page 2, line 25, by striking out all of section g.]

The first amendment is the amendment offered by Mr. Danhof:

[The amendment was read by the secretary. For text, see above.]

PRESIDENT NISBET: The question is on the amendment of Mr. Danhof. Mr. Boothby.

MR. BOOTHBY: Mr. President, ladies and gentlemen of the convention, I would like to move that this question be divided, and that section a and section g each be voted on separately.

PRESIDENT NISBET: Mr. Boothby, the Chair is informed that's going to be done anyway the way they are being read to the convention. The question is on the Danhof amendment.

DELEGATES: Division.

PRESIDENT NISBET: A division has been asked for. Is the demand seconded? There is a sufficient number up. Those in favor of the Danhof amendment—Mr. Habermehl.

MR. HABERMEHL: Mr. President, I believe that I must rise to oppose the Danhof amendment. I believe that what has happened is just what I spoke to last night. I believe if we adopt this amendment that we really will have something to explain to our constituents.

Prior to the convening of this convention I'm sure each one of us was aware of the criticism that was directed toward the present method of selection of the supreme court. Every organization, every group, the press, practically unanimously, ridiculed the fiction of maintaining a partisan nomination and a nonpartisan election of supreme court justices. All of the argument that we heard from any of the organizations particularly interested in the convening of this convention was directed to this matter. So we maintain the partisan nomination of supreme court justices. All of the argument that we heard directed here on the floor to the statewide campaign that a supreme court justice must make, the expensive campaign, the obligation that that candidate may incur which may affect his judicial decisions, because of the necessity of getting support from organized groups in order to hope to be elected, apparently is to no avail. We maintain a statewide nonpartisan election of justices.

We have added a few interesting complications. We now would permit the incumbent justice, regardless of what his politics might be or how he was originally elected, to nominate himself; and he would bear the designation on the ballot of supreme court justice. Both parties could then nominate another candidate—and this is not at all inconceivable, contrary to what Mr. Danhof says. I can think of one instance right now where it could happen. We would have at least 3 candidates then—not for nomination, but for election. In addition to that, any lawyer that might want to brag at some time that he was a candidate for supreme court justice could arrange to nominate himself by circulating petitions. The vote that the people of the state would have then on the election of this justice would be 1 vote only, the final election. If we had more than 2 candidates, a minority of the people of the state would elect the supreme court justice. That minority could in some instances be as low as 25 per cent of the people of the state who would elect the justice.

Now, what sort of effect would that have upon the incumbent justice? His party, by threatening to withhold the party nomination, could certainly affect his decisions while he was on the bench. It would be a most effective threat.

If we aren't going to pay any attention to the public opinion that has been expressed upon this question, I would direct the attention of every delegate to a preconvention poll that each one of you filled out and sent back in. At least, a majority of you did so. In that, by a great majority, these same criticisms were voiced by you as individual delegates. So now are we going to reverse our own thinking, even if we pay no attention to public opinion?

If you cannot buy this present amendment, if you do not believe that this is the proper method of selection of supreme court justices, regardless of what plan you might favor, you would in all conscience be compelled to vote against concurrence in this amendment. For if you concur in this amendment, you have locked it in so far as this reading is concerned and the matter will be referred to style and drafting. If you are not convinced then that this is the best method of selecting supreme court justices, I strongly urge you vote no on concurrence with this amendment.

PRESIDENT NISBET: The Chair recognizes Mr. Wanger.

MR. WANGER: Mr. President, members of the convention, we are asked here to vote against what the committee adopted, but we are not given something better to put in its place. It seems apparent that this is designed to get us back by nonconcurrence with the amendments of the committee of the whole to the district plan. I urge you to vote for the committee of the whole's amendment, and I demand the yeas and nays.

PRESIDENT NISBET: The yeas and nays are demanded. Is the demand seconded? There is a sufficient number up. Judge Leibrand.

MR. LEIBRAND: Mr. President, a parliamentary inquiry. If we do not concur in the recommendation of the committee of the whole by voting nay, then as I understand it we are left with section a of the original committee report, is that correct?

PRESIDENT NISBET: That is correct. Mr. Brown.

MR. G. E. BROWN: Mr. President, I would merely join the others that have spoken and urge nonconcurrence in the committee report and a nay vote on this proposition.

PRESIDENT NISBET: The question is on the amendment. Mr. Danhof.

MR. DANHOF: Mr. President, members of the convention, I think again the issue is squarely before us. Mr. Wanger has stated it very succinctly, very quickly, and so will I. I am not sure that the amendment we adopted in the committee of the whole is the ultimate answer. But a vote of nonconcurrence will in effect leave you basically with nothing, unless you go back to the district plan in section g. We have heard all of the arguments pro and con for not 1 day, but at least 4. We know everything about all plans—appointive, elected, by any means or methods whatsoever. I would urge that we vote concurrence in the report of the committee of the whole.

PRESIDENT NISBET: The Chair recognizes Mr. Young.

MR. YOUNG: I have a point of parliamentary inquiry. Judge Leibrand says that a vote nay on the present question would take us back to section a. I would like to know if section a as proposed by the committee is in fact the district plan.

DELEGATES: No. No.

MR. YOUNG: Well, what is it?

PRESIDENT NISBET: Section a is Committee Proposal 91, Mr. Young. The Chair recognizes Mr. Powell.

MR. POWELL: Mr. President and fellow delegates, I would urge a no vote, for about the same reason as Delegate Wanger urged a yes vote. That is, he said if we throw this out we are right back to what the committee reported, which I think is where the majority of us want to be. Because if we have section a, then we set the stage for section g, which is the district plan. Now, on every vote that has been taken there have been more of us that wanted the district plan—and when I say "us," I say that advisedly, reading between the lines—than on any other plan that has been offered. And yet we have come short of getting it into actual operation. I think the very simple thing now is to vote no on the amendments that were made to section a and to section g, and then we will have what the majority of us have wanted, which is the district plan. I certainly would urge that we vote no on the pending amendment to section a.

PRESIDENT NISBET: Mr. Ford.

MR. FORD: Mr. President, members of the convention, I have been brought somewhat reluctantly around to the position where it would leave no doubt in anyone's mind. I would urge wholeheartedly that we vote in favor of the committee of the whole's recommendation, affirming its action. I have already stated my fears and doubt before, but I feel that this is the best alternative that has been offered and the best way to resolve the problem.

PRESIDENT NISBET: Mr. Habermehl.

MR. HABERMEHL: Mr. President, 2 parliamentary inquiries. One, section a provides simply for a supreme court. Is that correct? A vote of nonconcurrence would leave section a as reported by the committee intact?

PRESIDENT NISBET: That is correct.

MR. HABERMEHL: The second question, if this amendment is not concurred in, is the committee proposal subject to further amendments?

PRESIDENT NISBET: Surely.

MR. HABERMEHL: Then this could not possibly have the effect that Mr. Wanger said.

PRESIDENT NISBET: Mr. Wanger?

MR. WANGER: Mr. President, I don't wish to abuse the privilege of speaking before the convention, which is only once, so I will pass.

PRESIDENT NISBET: Miss Donnelly.

MISS DONNELLY: I would like to support and urge that all support the committee proposal, section a, as amended by Mr. Danhof, after many hours of great work. To say that we do not concur will leave section a as it is, and then will get us eventually to section g as it is, which again will put you back to the district plan. Now, the issue is: do you want the district plan, more or less? And section a as written by this compromise under Mr. Danhof's name, with the support of numerous people in helping him draft it, is the best compromise that this committee has been able to reach. I therefore urge that we support the committee of the whole, and I move the previous question.

MR. MAHINSKE: A parliamentary inquiry, Mr. President.

PRESIDENT NISBET: Mr. Mahinske.

MR. MAHINSKE: There has been much talk here that if there is a no vote adopted on the recommendations of the committee of the whole, we will be back to section a as submitted by the committee. I don't know that this is exactly true, because certain amendments were adopted to section a as supported by the committee, and then the Danhof amendment was adopted as a substitute for section a, as amended. Now, if the vote, in essence, is against the Danhof amendment here, are we going back to section a as submitted by the committee, or as amended as submitted by the committee?

PRESIDENT NISBET: We are going back to the proposed section a as submitted by the committee on the green sheet. The previous question has been demanded. Mr. Farnsworth.

MR. FARNSWORTH: Point of information, Mr. President. I am somewhat confused. Isn't it true, Mr. Secretary, that it was the Ford amendment, which we will get to eventually, that kicked out section g, and isn't there confusion that exists here at the moment, and there are people on this floor perhaps that think by nonconcurrence in the committee report they will automatically have the district plan back in?

SECRETARY CHASE: The situation, as the secretary understands it, at present is this. We are voting now only upon the question of concurring in the recommendation of the committee of the whole to adopt the amendment which was adopted in committee of the whole this morning by a vote of 82 to 46. The question on concurring in the recommendation of the committee of the whole as to section g will come up later.

PRESIDENT NISBET: The previous question has been demanded. Is that demand seconded? There is a sufficient number up. The question now is: shall the previous question be put? Those in favor say aye. Those opposed, no.

The previous question is ordered. The question is now on the Danhof amendment. Those in favor will vote aye. Those opposed will vote nay. Have you all voted? If so, the secretary will lock the machine and record the vote.

The roll was called and the delegates voted as follows:

Yeas—72

Allen	Farnsworth	McLogan
Andrus, Miss	Faxon	Millard
Austin	Follo	Murphy
Baginski	Ford	Nisbet
Balcer	Garvin	Nord
Barthwell	Greene	Norris
Bentley	Gust	Ostrow
Binkowski	Hanna, W. F.	Page
Bledsoe	Hart, Miss	Perlich
Bonisteel	Hatch	Pollock
Brown, T. S.	Hatcher, Mrs.	Rajkovich
Buback	Hodges	Romney
Cudlip	Hood	Sablich
Cushman, Mrs.	Judd, Mrs.	Seyferth
Danhof	King	Snyder
Davis	Krolikowski	Staiger
Donnelly, Miss	Kuhn	Stamm
Doty, Dean	Lawrence	Stopczynski
Douglas	Lesinski	Suzore
Downs	Mahinske	Van Dusen
Durst	Marshall	Wanger
Elliott, A. G.	Martin	Wilkowski
Elliott, Mrs. Daisy	McCauley	Yeager
Everett	McGowan, Miss	Young

Nays—61

Anspach	Howes	Richards, J. B.
Batchelor	Hoxie	Richards, L. W.
Beaman	Hubbs	Rood
Blandford	Hutchinson	Rush
Boothby	Iverson	Shackleton
Brake	Karn	Shaffer
Brown, G. E.	Kirk, S.	Shanahan
Butler, Mrs.	Knirk, B.	Sharpe
Conklin, Mrs.	Koeze, Mrs.	Sleder
Dehnke	Leibrand	Spitler

Dell	Leppien	Stafseth
DeVries	Lundgren	Stevens
Erickson	McAllister	Thomson
Figy	Pellow	Tubbs
Finch	Perras	Turner
Gadola	Plank	Tweedie
Goebel	Powell	Upton
Gover	Prettie	White
Habermehl	Pugsley	Wood
Haskill	Radka	Woolfenden
Higgs		

SECRETARY CHASE: On the question of concurring in the amendment to section a, as recommended by the committee of the whole, the yeas are 72; the nays are 61.

PRESIDENT NISBET: The amendment is adopted. The next amendment.

SECRETARY CHASE: The next amendment recommended by the committee of the whole:

2. Amend page 1, line 14, after "assistants" by inserting "of the supreme court"; so the language will there read, "The supreme court shall appoint an administrator of the courts and other judicial assistants of the supreme court as shall be deemed necessary...."

PRESIDENT NISBET: The question is on the amendment as recommended by the committee of the whole. Those in favor will say aye. Those opposed, no.

The amendment is adopted. The next amendment.

SECRETARY CHASE: The next amendment recommended by the committee of the whole:

3. Amend page 1, line 16, after "shall" by striking out the balance of the section and inserting "perform such administrative duties as may be assigned by the court."; so that the language will then read, "The administrator shall perform such administrative duties as may be assigned by the court."

PRESIDENT NISBET: The question is on the adoption of the amendment as reported by the committee of the whole. Those in favor will say aye. Those opposed, no.

The amendment is adopted. The next amendment.

SECRETARY CHASE: The next amendment:

4. Amend page 2, line 3, after "rule" by changing the period to a comma and inserting "it being provided that the supreme court shall not have the power to remove a judge.".

PRESIDENT NISBET: The question is on concurring in the amendment. Mr. Everett.

MR. EVERETT: Mr. President, fellow delegates, I voted for this amendment in committee of the whole, and I intend to vote for it here. But at the time of the debate there were comments made by at least one of the proponents of the amendment which I think should not go unchallenged. If you will recall, we had before us a proposed amendment which said that the supreme court could not suspend or remove other judges. By amendment within committee of the whole, we struck out the word "suspend," which I think most of us recognize as an implication that the supreme court could suspend but could not remove. The comment was made to the effect that this meant that the supreme court could not conduct a hearing before arriving at this decision. Now, to me at least, there's nothing in this language which implies that there could not be a hearing. As a matter of fact, I would find it unthinkable that the supreme court would suspend a judge or advocate his removal without a hearing. I simply want the record to show that in supporting this amendment and voting for it, I do not do so for the reasons advanced by at least one of its sponsors.

PRESIDENT NISBET: The question is on the adoption of the amendment. Those in favor will say aye. Those opposed, no.

The amendment is adopted. The next amendment.

SECRETARY CHASE: The next amendment:

5. Amend page 2, line 11, after "decision" by inserting "and reasons for each denial of leave to appeal"; so that the language will there read:

> Decisions of the supreme court, including all decisions on prerogative writs, shall be in writing and shall contain a concise statement of the facts and reasons for each decision and reasons for each denial of leave to appeal.

PRESIDENT NISBET: The question is on the adoption of the amendment. Those in favor will say aye. Those opposed, no.

The amendment is adopted.

SECRETARY CHASE: The next amendment:

6. Amend page 2, line 15, after "control of" by inserting "the preparation of its budget recommendations and"; so that the language will there read:

> The supreme court may appoint and remove its staff and shall have general supervision of the staff of the court and control of the preparation of its budget recommendations and the expenditure of the funds appropriated for any purpose . . .

PRESIDENT NISBET: The question is on concurring in the amendment. Those in favor will say aye. Opposed, no.

The amendment is adopted.

SECRETARY CHASE: The next amendment:

7. Amend page 2, line 21, after "fund.", by striking out "No justice of the supreme court" and inserting "Neither the supreme court nor any justice thereof"; so that that sentence will read, "Neither the supreme court nor any justice thereof shall exercise any other power of appointment to public office, except as otherwise provided herein."

PRESIDENT NISBET: The question is on concurring in the amendment. Those in favor will say aye. Those opposed, no.

The amendment is adopted.

SECRETARY CHASE: The next amendment:

8. Amend page 2, line 25, by striking out all of section g.

PRESIDENT NISBET: The question is on concurring in the amendment. Mr. Leibrand.

MR. LEIBRAND: I feel that I cannot concur with the report of the committee of the whole, and accordingly I shall vote nay.

PRESIDENT NISBET: The question is on concurring in the amendment. Those in favor will say aye. Those opposed, no.

MR. LEIBRAND: I would ask for a roll call vote.

PRESIDENT NISBET: A roll call vote has been requested. Is the demand seconded? There is a sufficient number up. Those in favor of the amendment will vote aye. Those opposed will vote no. This is a roll call vote. Mr. King.

MR. KING: Mr. President, would you restate the question? This is somewhat confusing. I think it would be worthwhile if you would restate the question for the benefit of the delegates.

PRESIDENT NISBET: The question is on concurring in the amendment. Do you want the amendment read, Mr. King?

MR. KING: Just in capsule form. The amendment is to strike.

SECRETARY CHASE: The amendment as proposed by the committee of the whole is to strike out all of section g.

MR. BLEDSOE: Would you have it read, Mr. President?

MR. FARNSWORTH: Point of information, Mr. President.

PRESIDENT NISBET: Mr. Farnsworth.

MR. FARNSWORTH: Mr. President, again I'm somewhat confused. We are being asked now to concur or not to concur with the committee report, which was the Ford amendment to strike out section g. Now, am I right in assuming that if we do not concur, we will then have a judicial article with 2 means of selecting a supreme court?

PRESIDENT NISBET: Is that right, Mr. Chase?

SECRETARY CHASE: The convention has agreed, on a roll call vote, to the adoption of the amendment to section a which provides for the selection of justices; and presently the question is on concurring in the recommendation of the committee of the whole that section g be stricken from the proposal.

PRESIDENT NISBET: Have you all voted? If so, the secretary will lock the machine and record the vote.

The roll was called and the delegates voted as follows:

Yeas—82

Allen	Farnsworth	Norris
Andrus, Miss	Faxon	Ostrow
Austin	Follo	Page
Baginski	Ford	Pellow
Balcer	Garvin	Perlich

Barthwell	Greene	Perras
Beaman	Hanna, W. F.	Pollock
Bentley	Hart, Miss	Rajkovich
Binkowski	Hatch	Romney
Bledsoe	Hatcher, Mrs.	Sablich
Bonisteel	Hood	Seyferth
Brown, T. S.	Judd, Mrs.	Snyder
Buback	King	Staiger
Butler, Mrs.	Krolikowski	Stamm
Conklin, Mrs.	Lawrence	Stopczynski
Cudlip	Leppien	Suzore
Cushman, Mrs.	Lesinski	Thomson
Danhof	Mahinske	Tubbs
Davis	Marshall	Tweedie
DeVries	Martin	Upton
Donnelly, Miss	McCauley	Van Dusen
Doty, Dean	McGowan, Miss	Walker
Douglas	McLogan	Wanger
Downs	Millard	Wilkowski
Durst	Murphy	Woolfenden
Elliott, A. G.	Nisbet	Yeager
Elliott, Mrs. Daisy	Nord	Young
Everett		

Nays—50

Anspach	Haskill	Radka
Batchelor	Higgs	Richards, J. B.
Blandford	Howes	Richards, L. W.
Boothby	Hoxie	Rood
Brake	Hutchinson	Rush
Brown, G. E.	Iverson	Shackleton
Dehnke	Karn	Shaffer
Dell	Kirk, S.	Shanahan
Doty, Donald	Koeze, Mrs	Sharpe
Erickson	Kuhn	Sleder
Figy	Leibrand	Spitler
Finch	Lundgren	Stafseth
Gadola	McAllister	Stevens
Goebel	Plank	Turner
Gover	Powell	White
Gust	Prettie	Wood
Habermehl	Pugsley	

SECRETARY CHASE: On the question of agreeing to the recommendation of the committee of the whole to strike out section g, the yeas are 82; the nays are 50.

PRESIDENT NISBET: The amendment is adopted.

SECRETARY CHASE: Miss Donnelly, Messrs. Leibrand and McAllister offer the following amendment:

1. Amend page 2, line 3, in the amendment, after "remove" by inserting "or suspend".

PRESIDENT NISBET: The question is on the amendment. Those in favor will say aye. Those opposed will say no. The amendment is not adopted. The next amendment.

SECRETARY CHASE: That's all of the amendments on file, Mr. President.

PRESIDENT NISBET: If there are no further amendments, **Committee Proposal 91,** as amended, is referred to the committee on style and drafting. (applause)

Following is Committee Proposal 91 as amended and referred to the committee on style and drafting:

The committee recommends that the following be included in the constitution:

Sec. a. The supreme court shall consist of 9 justices to be elected on a nonpartisan statewide basis. The term of office shall be for 8 years and not more than 3 terms of office shall expire at the same time. Each political party at party convention may nominate 1 candidate for election for each position to be filled. Any incumbent justice whose term is to expire may become a candidate for reelection by filing an affidavit of candidacy, in the form and manner as prescribed by law, not less than 180 days prior to the expiration of his term. Any person otherwise qualified to be a supreme court justice may become a candidate for election upon filing a nominating petition, in the form and manner prescribed by law, signed by qualified electors of this state in a number equal to 3 per cent of the total vote cast for the office of governor at the last previous election.

Sec. b. One justice of the supreme court shall be selected by the court as its chief justice in the manner and for the term provided by the rules of the court. He shall perform such other duties as may be required by the court. The supreme court shall appoint an administrator of the courts and other judicial assistants of the supreme court as shall be deemed necessary to aid in the administration of the courts in the state. The administrator shall perform such administrative duties as may be assigned by the court.

Sec. c. The supreme court shall have: a general superintending control over all courts; power to issue, hear, and determine prerogative and remedial writs; appellate jurisdiction as provided by supreme court rule, it being provided that the supreme court shall not have the power to remove a judge.

Sec. d. The supreme court shall by general rules establish, modify, amend and simplify the practice and procedure in all courts in the state. The distinctions between law and equity proceeding shall, as far as practicable, be abolished. The office of master in chancery is prohibited.

Sec. e. Decisions of the supreme court, including all decisions on prerogative writs, shall be in writing and shall contain a concise statement of the facts and reasons for each decision and reasons for each denial of leave to appeal. When a judge dissents in whole or in part he shall give in writing the reasons for his dissent.

Sec. f. The supreme court may appoint and remove its staff and shall have general supervision of the staff of the court and control of the preparation of its budget recommendations and the expenditure of the funds appropriated for any purpose pertaining to the operation of the court or the performance of activities of its staff, except that the salaries of the justices of the supreme court shall be established by law. All fees, perquisites and income collected by the clerk shall be turned over by him to the state treasury and credited to the general fund. Neither the supreme court nor any justice thereof shall exercise any other power of appointment to public office, except as otherwise provided herein.

SECRETARY CHASE: The committee of the whole, Mr. President, has also had under consideration **Committee Proposal 96,** A proposal pertaining to general and special provisions relative to the courts of the state. It has considered several amendments thereto, and has come to no final resolution thereon. This completes the report of the committee of the whole.

PRESIDENT NISBET: The Chair recognizes Mr. Hoxie.

MR. HOXIE: Mr. President, a point of personal privilege.

PRESIDENT NISBET: Will you state it.

MR. HOXIE: This is an Ode to the District Plan.

When things go wrong, as they sometimes will,
When the road you're trudging seems all uphill,
When the funds are low and the debts are high,
And you want to smile, but you have to sigh,
When care is pressing you down a bit,
Rest if you must, but never quit.

Life is queer with its twists and turns,
As every one of us sometimes learns,
And many a failure turns about
When you might have won had you stuck it out.
Don't give up though the pace seems slow,
You may succeed with another blow.

Often the goal is nearer than
It seems to a faint, faltering man.
Often the straggler has given up
When he might have captured the victor's cup.
And he learned too late when the night slipped down
How close he was to the golden crown.

Success is failure turned inside out
The silver tint of the cloud of doubt.
And you may never tell how close you are
It may be nearer when it seems afar.
So stick to the fight when you're hardest hit
It's when things seem worst that you mustn't quit. (applause)

PRESIDENT NISBET: The Chair recognizes Mr. Faxon.

MR. FAXON: Mr. President, may I have consent to offer the motion which I indicated I was going to offer today but was unable to this morning? I would ask the secretary to read it.

SECRETARY CHASE: Mr. Faxon offers the following motion: I move that following the conclusion of the proposals on the judicial branch, we move next to the report of the committee on legislative organization, and then to the executive branch, and then to the regular schedule.

MR. VAN DUSEN: Mr. President, a point of order. Is Mr. Faxon's motion not out of order at this point? We had passed the order of motions and resolutions on the calendar this morning.

PRESIDENT NISBET: Mr. Van Dusen, your point is well taken. Mr. Faxon did ask yesterday for this privilege. He was not here this morning when the order of business came up. With unanimous consent Mr. Faxon can make his motion. Is there unanimous consent?

A DELEGATE: No. I object.

PRESIDENT NISBET: Mr. Ford.

MR. FORD: On the advice of our parliamentarian, I move that we return to the order of motions and resolutions.

PRESIDENT NISBET: Mr. Ford, the Chair is informed that it will be necessary for you to move that the rules be suspended to return to the order of motions and resolutions. Is that your motion?

MR. FORD: Yes. Thank you for the correction.

PRESIDENT NISBET: The motion by Mr. Ford is that the rules be suspended and we return to the order of motions and resolutions. Those in favor of that motion will say aye. Opposed will say no.

The Chair is in doubt. Those in favor of that motion will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the motion to suspend the rules, the yeas are 62; the nays are 66.

PRESIDENT NISBET: Two-thirds of the delegates not having voted in favor, the rules are not suspended. The Chair recognizes Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, I move that the convention resolve itself into committee of the whole for the purpose of considering matters on the general orders calendar.

PRESIDENT NISBET: The question is on the motion of Mr. Van Dusen. All those in favor say aye. Those opposed, no.

The motion prevails. Mr. Van Dusen.

[Whereupon, Mr. Van Dusen assumed the Chair to preside as chairman of the **committee of the whole.**]

CHAIRMAN VAN DUSEN: The committee will be in order. When the committee rose this morning we had under consideration **Committee Proposal 96.** We had disposed of all of the sections of that proposal as presented by the committee, and had disposed of several amendments to the body of the proposal. Are there any further amendments to the body of the proposal?

SECRETARY CHASE: Mr. Ford, in accordance with the minority report of Messrs. Ford, Barthwell, Bledsoe and Garvin—

CHAIRMAN VAN DUSEN: Mr. Ford.

MR. FORD: In view of the action previously taken by the committee, unless one of the cosponsors of the minority report to the committee amendment to Committee Proposal 96 objects, I would like to withdraw our minority report and motion at this time.

For the minority report to the committee amendment, see above, page 1554.

CHAIRMAN VAN DUSEN: Mr. Ford withdraws his minority report amendment. Does Mr. Barthwell concur?

MR. BARTHWELL: Yes.

CHAIRMAN VAN DUSEN: Mr. Bledsoe?

MR. BLEDSOE: I concur.

CHAIRMAN VAN DUSEN: Mr. Garvin?

MR. GARVIN: Yes.

CHAIRMAN VAN DUSEN: With the consent of his cosponsors, the amendment is withdrawn by Mr. Ford. Are there further amendments to the body of Committee Proposal 96?

SECRETARY CHASE: There are none on file, Mr. Chairman.

CHAIRMAN VAN DUSEN: If not, the proposal will pass.

Committee Proposal 96, as amended, is passed. The secretary will read the first exclusion report.

SECRETARY CHASE: From the committee on judicial branch, by Mr. Danhof, chairman, **Exclusion Report 2042,** A report recommending the exclusion of article VII, sections 15, 16 and 21.

Following is Exclusion Report 2042 as read by the secretary, and the reasons submitted in support thereof:

The committee on judicial branch recommends that article VII, sections 15, 16 and 21 of the present constitution be excluded from the new constitution.

Mr. Danhof, chairman of the committee on judicial branch, submits the following reasons in support of Exclusion Report 2042:

The committee has determined that the constitutional status of justices of the peace and circuit court commissioners make the inclusion of these sections no longer necessary. The reasons for the committee's determination are more fully set forth in connection with Committee Proposals 90 and 96.

CHAIRMAN VAN DUSEN: The question is on the exclusion report. Mr. Danhof.

MR. DANHOF: Mr. Chairman and members of the committee, this eliminates the references to the justices of the peace, their jurisdiction, and the circuit court commissioners. In view of the action previously taken by this convention regarding those officers and the provisions made for them, this exclusion report would seem to be in order, and I urge acceptance.

CHAIRMAN VAN DUSEN: Are there any amendments to the exclusion report? Mr. Downs.

MR. DOWNS: A parliamentary inquiry. Would you please read again the sections that are excluded?

CHAIRMAN VAN DUSEN: The secretary will read.

SECRETARY CHASE: As they are printed in the exclusion report, sections 15, 16 and 21 of article VII.

CHAIRMAN VAN DUSEN: Are there any amendments to the exclusion report? Mr. Ford.

MR. FORD: Mr. Chairman, members of the committee, I would like to support the committee on judicial branch, and urge a yes vote. I want to point out one word of caution, however, and that is that you should bear in mind in voting for the exclusion report—and I'm going to vote for it, and hope you do, too—that you are taking the last reference to a guarantee of a local court at the township level out of the constitution, and this should be borne in mind when we reach the other sections.

CHAIRMAN VAN DUSEN: Are there any amendments to the exclusion report? Mr. Mahinske.

MR. MAHINSKE: Is this divisible?

CHAIRMAN VAN DUSEN: It is not divisible unless an amendment is offered, Mr. Mahinske. No amendment has been offered. There being no amendments, the report will pass.

Exclusion Report 2042 is passed. The secretary will read the next exclusion report.

SECRETARY CHASE: From the committee on judicial branch, by Mr. Danhof, chairman, **Exclusion Report 2043,** A report recommending the exclusion of article VII, sections 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 17, 19, 20 and 23.

Following is Exclusion Report 2043 as read by the secretary, and the reasons submitted in support thereof:

The committee on judicial branch recommends that article VII, sections 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 17, 19, 20 and 23 of the present constitution be excluded from the new constitution.

Mr. Danhof, chairman of the committee on judicial branch, submits the following reason in support of Exclusion Report 2043:

The above sections are to be excluded from the new constitution for the reason that the subject matter of said sections is being included in a new judicial article.

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: Mr. Chairman, members of the committee, this is simply a matter of form. We presented our article basically as a new article. In order to conform with the rules of this convention, we were advised it was necessary to file an exclusion report for everything else. The new article having been adopted, this is now an academic matter. I urge the acceptance of the exclusion report.

CHAIRMAN VAN DUSEN: Are there any amendments to the exclusion report? Mr. Downs.

MR. DOWNS: Mr. Chairman, I ask that section 20 be divided.

CHAIRMAN VAN DUSEN: Section 20, Mr. Downs?

MR. DOWNS: Yes.

CHAIRMAN VAN DUSEN: Mr. Downs moves to strike section 20 from the exclusion report. The question is on the motion of Mr. Downs. Mr. Danhof.

MR. DANHOF: Is the motion now to exclude it?

CHAIRMAN VAN DUSEN: The posture of the committee at the moment, Mr. Danhof, is that if Mr. Downs' amendment to strike section 20 from the exclusion report were adopted, the substance of section 20 of article VII of the present constitution would be incorporated in the new constitution, as a proposal of the committee of the whole. Is the Chair correct in that, Mr. Secretary?

MR. DANHOF: The vice president behind me thinks he does not concur, and I will yield to him for his comments.

CHAIRMAN VAN DUSEN: Mr. Hutchinson.

MR. HUTCHINSON: Mr. Chairman, I would simply, by way of argument, make this point: that by amending an exclusion report, which is a kind of anomalous thing anyway, I don't think that by that act we reinsert any part of the present constitution. It simply means that the committee of the whole, by failing to exclude, indicates that something of a substantive nature ought to be included in the new constitution. But I don't see how we can, simply by amending this exclusion report, by that act alone reinsert something into the new constitution.

CHAIRMAN VAN DUSEN: Mr. Hutchinson, the Chair believes your point is well taken and believes if section 20 were stricken from the exclusion report, it would then be in order for Mr. Downs to move to insert the substance of section 20 of article VII, and action would have to be taken on that motion. The Chair was in error in its earlier statement. Mr. Ford.

MR. FORD: Mr. Chairman, there is a minority report and an amendment pending to take care of the subject matter of section 20 when we get to Committee Proposal 96, section d.

CHAIRMAN VAN DUSEN: Mr. Downs.

MR. DOWNS: Mr. Chairman, I have read the minority report to Committee Proposal 96, which includes reinserting section 20, and will therefore withdraw my motion. However, in doing that, I do not want that to imply that I am not in support of the minority report, which I believe will be up in committee of the whole today.

CHAIRMAN VAN DUSEN: Mr. Downs withdraws his motion. Are there any amendments to Exclusion Report 2043? If not, it will pass.

Exclusion Report 2043 is passed. The secretary will read. Does that complete the section on the judiciary?

Mr. Downs, the Chair would advise that Committee Proposal 96 has been passed, as Mr. Ford no doubt was aware, and the Chair presumes Mr. Ford intends to offer his report after the committee rises. Is that correct?

MR. FORD: Yes.

CHAIRMAN VAN DUSEN: The Chair's assumption was correct.

MR. DANHOF: Mr. Chairman.

CHAIRMAN VAN DUSEN: Mr. Danhof, would you defer your motion momentarily?

The Chair would like to advise the committee that we have now completed, at long last, the work of the committee of the whole relating to the judicial branch of government. The Chair heaves an inaudible sign of relief, and suggests that perhaps Mr. Danhof and the Chair have earned the designation of incumbent in whatever positions we currently occupy.

There is a little bit of unfinished business. The Chair would like to extend his authority to confer upon Mr. Hubbs the degree of honorary barrister, the one he would share with Mr. Farnsworth.

The Chair would like to thank the committee on administration for providing for his comfort during the last 2½ weeks, and in particular for the stimulating refreshments occasionally provided. (laughter)

The Chair has some suggestions for the committee on administration which he wishes Dr. DeVries were here to listen to. Ah, here he is. The Chair thinks as we proceed forward with our work, the chairman of the committee of the whole might well be provided, as indicated earlier, with a longer handled gavel, with a stool with a back on it, and the Chair thinks it might also be in order for the committee on administration to consider equipping the seats of the delegates with seat belts. (laughter)

After achieving a degree of identification with the judicial branch perhaps unrivaled in this convention, the Chair would suggest that perhaps it might be in order for Mr. Danhof and the Chair, under the doctrine of the separation of powers, to be excused from the consideration of the executive branch and the legislative branch proposals.

Finally, and in seriousness, the Chair would like to thank the committee for its patience and forbearance in the last 2½ weeks, and Mr. Danhof's motion is now in order.

MR. DANHOF: Mr. Chairman, I hope for what may be the last time that I do it, I move that the committee do now rise.

CHAIRMAN VAN DUSEN: Mr. Danhof moves that the committee do now rise. Those in favor of Mr. Danhof's motion will say aye. Those opposed will say no.

The motion prevails. The committee will rise.

[Whereupon, the committee of the whole having risen, Vice President Hutchinson assumed the Chair.]

VICE PRESIDENT HUTCHINSON: The Chair recognizes the delegate from Oakland, Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, the committee of the whole has had under consideration several matters, of which the secretary will give a detailed report.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 96,** A proposal pertaining to general and special provisions relative to the courts of the state; and reports the same back to the convention with several amendments thereto, recommend-

ing the amendments be agreed to, and that the proposal as thus amended do pass.

[Following are the amendments recommended by the committee of the whole:

1. Amend page 1, line 8, after "designated" by inserting "as such".

2. Amend page 1, line 10, after "courts" by inserting "of record".

3. Amend page 1, line 12, by striking out "shall not" and inserting "no person shall".

4. Amend page 2, line 16, after "any" by striking out "justice or judge" and inserting "judge of probate"; and in line 19, after "constitution" by striking out the balance of the line and inserting "requiring him to be licensed to practice law in this state.".

5. Amend page 2, line 27, after "receive" by striking out "a salary payable monthly" and inserting "an annual salary as provided by law".

6. Amend page 4, line 1, after "law" by striking out "and"; and after "occasions" by changing the period to a comma and inserting "in connection with legislation after it shall have been enacted into law but before its effective date. Such opinions shall relate only to questions of constitutionality.".

7. Amend page 4, following line 1, by inserting a new section to read as follows:

"Sec. 1. Any elected judge of a circuit court or probate court may become a candidate in the primary election for the office of which he is then the incumbent, by filing a declaration of intention at such time and in such office as shall be provided by law.".

8. Amend page 4, following section 1, by inserting a new section to read as follows:

"Sec. m. Within 5 years from the date this constitution becomes effective, and subject to the limitations contained in Committee Proposal 90 and section a of Committee Proposal 96, the legislature shall establish statutory courts of limited jurisdiction inferior to the circuit court with a definition of their powers and jurisdiction, the location and number of such courts, the qualifications of the judges who shall preside therein, the method of their election and tenure of office and the amount of their salary and by what governmental units the same shall be paid.".]

The first amendment:

1. Amend page 1, line 8, after "designated" by inserting "as such"; so the language will then read:

> The supreme court, the court of appeals, the circuit court, the probate court and other courts designated as such by the legislature shall be courts of record and shall each have a common seal.

VICE PRESIDENT HUTCHINSON: The question is upon concurring in the amendment made by the committee of the whole. All those in favor will say aye. Opposed will say no.

The amendment is concurred in.

SECRETARY CHASE: The next amendment:

2. Amend page 1, line 10, after "courts" by inserting "of record"; so that the language will there read:

> Except as authorized otherwise by this constitution, justices and judges of the courts of record of this state shall be lawyers licensed to practice law in this state and shall not be elected or appointed to a judicial office after reaching the age of 70 years.

VICE PRESIDENT HUTCHINSON: The question is upon concurring in amendment 2 made by the committee of the whole. All those in favor will say aye. Opposed will say no.

The amendment is concurred in.

SECRETARY CHASE: The next amendment:

3. Amend page 1, line 12, by striking out "shall not" and inserting "no person shall"; so the language will there read, ". . . no person shall be elected or appointed to a judicial office after reaching the age of 70 years."

VICE PRESIDENT HUTCHINSON: On amendment 3, all those in favor will say aye. Opposed will say no.

The amendment is concurred in.

SECRETARY CHASE: The next amendment is:

4. Amend page 2, line 16, after "any" by striking out "justice or judge" and inserting "judge of probate"; and in line 19, after "constitution" by striking out the balance of the line and inserting "requiring him to be licensed to practice law in this state."; so the language will there read:

> Any judge of probate serving at the time this constitution becomes effective may serve the remainder of the term and be eligible for reelection to his present office regardless of other provisions in this constitution requiring him to be licensed to practice law in this state.

VICE PRESIDENT HUTCHINSON: On amendment 4, all those in favor will say aye. Opposed will say no.

The amendment is concurred in.

SECRETARY CHASE: The next amendment:

5. Amend page 2, line 27, after "receive" by striking out "a salary payable monthly" and inserting "an annual salary as provided by law"; so the language will then read, "Each of the judges of the circuit court shall receive an annual salary as provided by law."

VICE PRESIDENT HUTCHINSON: On concurring in amendment 5 made by the committee of the whole, those in favor will say aye. Opposed will say no.

The amendment is concurred in.

SECRETARY CHASE: The next amendment:

6. Amend page 4, line 1, after "law" by striking out "and"; and after "occasions" by changing the period to a comma and inserting "in connection with legislation after it shall have been enacted into law but before its effective date. Such opinions shall relate only to questions of constitutionality."; so the language would then read:

> . . . upon important questions of law upon solemn occasions, in connection with legislation after it shall have been enacted into law but before its effective date. Such opinions shall relate only to questions of constitutionality.

VICE PRESIDENT HUTCHINSON: The question is upon concurring in amendment 6 made by the committee of the whole. All those in favor will say aye. Opposed, no.

The amendment is concurred in.

SECRETARY CHASE: The following is the seventh amendment:

[Amendment 7 was read by the secretary. For text, see above.]

VICE PRESIDENT HUTCHINSON: The question is upon concurring in amendment 7 made by the committee of the whole. All those in favor will say aye. Opposed will say no.

The amendment is concurred in.

SECRETARY CHASE: The next amendment is to add a section:

[Amendment 8 was read by the secretary. For text, see above.]

VICE PRESIDENT HUTCHINSON: The question is upon concurring in amendment 8 made by the committee of the whole. All those in favor will say aye. Mr. Ford.

MR. FORD: Mr. President, I wish to oppose this amendment, for the reasons that were stated when we debated it on the floor. The principal objection I have is to that portion of the language which says that the legislature will not only determine where local courts will be located, but it will determine the amount of their compensation. I think this is a matter for the local communities to handle on their own, and a matter that should clearly be left to them. We shouldn't direct the legislature to make this decision for them. I urge that you vote no on this section.

VICE PRESIDENT HUTCHINSON: Mr. Farnsworth.

MR. FARNSWORTH: Mr. President and members of the convention, I cannot agree with Delegate Ford that the

legislature necessarily will tell the local people exactly where and how they are going to have their courts. They will set up the framework, to be sure, Delegate Ford, but they aren't going to say that you're going to have to put them in X village or city. There's going to be a certain amount of discretion, I'm sure. We are now trusting the legislature to do this. Members of the convention will recall that this is the particular provision that I specifically asked you to support in committee of the whole when this matter of salesmanship became injected into the convention. For the same reasons that I gave you the other day, we still need to retain it, and I would urge you to concur in the committee's recommendation. I ask for a recorded vote.

VICE PRESIDENT HUTCHINSON: Mr. Farnsworth demands the yeas and nays on the adoption of amendment 8. Is the demand supported? The demand is supported. The yeas and nays are ordered. Mr. Faxon.

MR. FAXON: Mr. President, I just want to reiterate one point. I didn't speak on this when it was in committee of the whole, but I do think when you look at the language you realize how clearly statutory it is. There's nothing there that the legislature can't do already. To spell out this kind of detail is not meaningful for a constitution. I would urge you not to support the recommendation.

VICE PRESIDENT HUTCHINSON: Mr. Mahinske.

MR. MAHINSKE: I would like to direct a question to one of the proponents. As I read this, it would be possible for the legislature to establish this court with the existing powers of the probate court. Is this correct or incorrect?

VICE PRESIDENT HUTCHINSON: To whom do you desire to direct your question?

MR. MAHINSKE: Any of the proponents — Pugsley, Rajkovich, Prettie, and so forth.

VICE PRESIDENT HUTCHINSON: Well, the Chair doesn't notice any one of them seeking recognition to answer your question.

MR. MAHINSKE: On that basis, among others, I would be opposed to this amendment. Because, as I read it, this court is a court of inferior jurisdiction to the circuit court. The probate court today is inferior to the circuit court. And this new court amounts, as I see it, to nothing but a countywide court of limited jurisdiction, which we have voted down already. I would urge you to vote no on this amendment.

VICE PRESIDENT HUTCHINSON: Mr. Yeager.

MR. YEAGER: Mr. President, before the vote is called, would you please ask the secretary to restate the question, please.

VICE PRESIDENT HUTCHINSON: The secretary will again read the amendment.

SECRETARY CHASE: The amendment recommended by the committee of the whole is:

[The amendment was again read by the secretary. For text, see above, page 1623.]

VICE PRESIDENT HUTCHINSON: Mr. Perras.

MR. PERRAS: A point of information, Mr. President. Does this mean that the legislature, if they wish to, could replace the J.P. system?

VICE PRESIDENT HUTCHINSON: Is that inquiry directed to the Chair?

MR. PERRAS: No, I was asking Mr. Danhof, or whoever wishes to answer.

VICE PRESIDENT HUTCHINSON: If Mr. Danhof wishes to answer the question.

MR. DANHOF: Mr. Perras, I'm not one of the proponents of the amendment, but it would be my opinion, from reading this, that the legislature shall have the right to establish statutory courts of limited jurisdiction, and whether they call them justices of the peace, or magistrate courts, or township courts, or county courts or city courts would be entirely up to them. Yes, they could change it; they could modify it; they could amend it — and I think this is the general import of the amendment. If I'm wrong, one of the sponsors can correct me.

MR. PERRAS: Thank you.

VICE PRESIDENT HUTCHINSON: Mr. Perras yields the floor. Mr. Danhof.

MR. DANHOF: Mr. President, members of the convention, we debated this matter quite at length in the committee. I think all the reasons were put forth at that time. I would concur with the gentleman from Allegan and urge an affirmative vote on this question.

VICE PRESIDENT HUTCHINSON: The question is upon concurring in amendment 8, which the secretary has read. Does anyone desire to have it again read? All those in favor of concurring will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and record the vote.

The roll was called and the delegates voted as follows:

Yeas—84

Andrus, Miss	Gust	Radka
Anspach	Habermehl	Rajkovich
Batchelor	Hannah, J. A.	Richards, J. B.
Beaman	Haskill	Richards, L. W.
Bentley	Hatch	Romney
Blandford	Higgs	Rood
Bonisteel	Howes	Rush
Brake	Hoxie	Sablich
Brown, G. E.	Iverson	Seyferth
Butler, Mrs.	Judd, Mrs.	Shackleton
Conklin, Mrs.	Karn	Shaffer
Cudlip	Kirk, S.	Shanahan
Danhof	Koeze, Mrs.	Sharpe
Davis	Kuhn	Sleder
Dehnke	Lawrence	Spitler
Dell	Leibrand	Stafseth
DeVries	Leppien	Staiger
Doty, Dean	Lundgren	Stamm
Doty, Donald	Martin	Stevens
Durst	McAllister	Thomson
Erickson	McLogan	Tubbs
Farnsworth	Millard	Turner
Figy	Page	Tweedie
Finch	Perras	Upton
Gadola	Plank	Van Dusen
Goebel	Powell	Wood
Gover	Prettie	Woolfenden
Greene	Pugsley	Yeager

Nays—37

Austin	Everett	Marshall
Baginski	Faxon	McCauley
Balcer	Ford	Murphy
Barthwell	Garvin	Nord
Binkowski	Hart, Miss	Ostrow
Brown, T. S.	Hatcher, Mrs.	Perlich
Buback	Hodges	Stopczynski
Cushman, Mrs.	Hood	Suzore
Donnelly, Miss	King	Walker
Douglas	Krolikowski	Wanger
Downs	Lesinski	Wilkowski
Elliott, A. G.	Mahinske	Young
Elliott, Mrs. Daisy		

SECRETARY CHASE: The yeas are 84; the nays are 37.

VICE PRESIDENT HUTCHINSON: The amendment is concurred in.

SECRETARY CHASE: Messrs. Shackleton, DeVries, Sterrett and Seyferth offer the following amendment to Committee Proposal 96:

1. Amend page 2, line 12, by striking out all of section e, which reads:

"Sec. e. There shall be printed upon the ballot under the name of each elected incumbent justice or judge, who is a candidate for nomination or election to the same office, the designation of that office."

VICE PRESIDENT HUTCHINSON: The question is upon the amendment. The Chair recognizes Mr. Shackleton.

MR. SHACKLETON: Mr. President and fellow delegates, Lord Macauley is reported to have made the statement that

many an army has prospered under a bad commander, but no army has ever prospered under a debating society. I have no desire of continuing the debating society. I certainly do not want to be as verbose as some of my colleagues, and certainly not as sickeningly repetitive as some of my colleagues. However, on the vote on this the other day there were less than 100 delegates voting. I still cannot see a horse race where one horse starts at the quarter mile post. And when this "incumbent" designation is used, there is an advantage of at least 20 per cent or more that is given to any incumbent running for this office. Also, inasmuch as one of the proponents of this amendment was not present the other day, I would like, Mr. President, to ask for a roll call vote, and yield to Dr. DeVries.

VICE PRESIDENT HUTCHINSON: Mr. Shackleton demands the yeas and nays on the pending amendment. Is the demand supported? The demand is supported, and the yeas and nays are ordered.

The Chair recognizes the delegate from Kent, Mr. DeVries.

MR. DeVRIES: Mr. President and fellow delegates, I have supported the appointive system for the supreme court judges, and still do. But I'm going to use the rationale of those in favor of electing judges to support this amendment to remove the incumbency designation. I think this is the way the rationale goes: people have been saying for days that elected judges as compared with appointed judges are closer to the people. Now, let's assume this is true. The second premise in the election of judges is that: people know their judges, and can evaluate their performance on the bench. Now, if these 2 premises are true, then I conclude that there is no need for the incumbency designation, because judges who are elected are therefore by definition well known and are doing a good job. Furthermore, the incumbency designation for any other purpose than differentiating similar names on the ballot is undemocratic. It seems to me the officeholder, by definition, has enough advantages over the challengers in any election.

In addition, it seems to me that we have killed the only rational way to select the supreme court, and that's by appointment; and that while we have made some good reforms, it seems we have created in this article a bonanza for the attorneys and judges and future attorneys and judges of this state. That's what we have done. We have created a new court and more judges. We require all judges to be lawyers. We've increased the size of the supreme court for more judges. We have brought more business to the courts and for the attorneys, with the passage of Committee Proposal 95. We have increased the attorneys' business, I think, by the language of this constitution. We have provided that judges can renominate themselves with the greatest of ease, while laymen of this state must work for their nominations to public office. Now we are asked to approve the incumbency designation for judges, and that's too much — at least for me.

I oppose the incumbency designation because it's not rational. I don't think it is democratic or in a spirit of fair play. It denies equal access to those who desire to run for public office, and this is contrary to everything in the American tradition. I urge the adoption of the amendment.

VICE PRESIDENT HUTCHINSON: The Chair recognizes the gentleman from Allegan, Mr. Farnsworth.

MR. FARNSWORTH: Mr. President and members of the convention, you will recall that several days ago when this came up in the committee of the whole I spoke in favor of it. Now I'm going to urge you to vote against the amendment today. And for this simple reason. That since it was up before, we now have provided a means of selecting supreme court justices. We have provided that the man may renominate himself. We have also provided that the party can nominate a man against him. We have further provided that the third or the fourth or the fifth man can go out and circulate nominating petitions and run against him. I think that now he needs that incumbency designation more than he ever did before. I urge you to vote down the amendment.

VICE PRESIDENT HUTCHINSON: The gentleman from Wayne, Mr. Gust.

MR. GUST: As one of the attorneys, and apparently we haven't been heard from on this, I want to concur in what Dr. DeVries said. I think we have more than adequately taken care of the judicial needs of the state by the increase in the courts and the number of judges and their means of securing nomination.

I did have a delegate proposal in front of Mr. Danhof's committee substantially to this effect, which apparently must have been discussed by the committee; and I rise for 2 points, Mr. President. One, to state that I concur with Dr. DeVries, and urge you to vote yes. Two, I would like to know, as a point of information, if Mr. Danhof cares to answer, what treatment my delegate proposal did get when it was discussed in front of his committee, as I assume that it was.

VICE PRESIDENT HUTCHINSON: The Chair recognizes the gentleman from Muskegon, Mr. Danhof.

MR. DANHOF: Mr. Gust, I can't say exactly what the treatment was, but by reason of the proposal put forth by the committee, you can see it was not favorably adopted. My friends over here, including Dr. DeVries, are making motions as if it went into the circular file. This is not necessarily true. But, as long as I am standing here, I would like to speak a few moments on this particular amendment.

We talked about this in committee of the whole. Our committee came out with a vast majority that we put the designation under the name of an elected incumbent. Now, we debated this in committee of the whole. Dr. DeVries was absent that day on more important business. But as I stated then and as I will state now, nothing will serve to destroy the independence, the stability of the judiciary of this state, faster than this particular amendment. If there is one thing that the people demand, it is stability and tenure of office insofar as the judiciary is concerned.

It has been stated that other people go out and have to earn their nomination, and I will say this. That in the county where Dr. DeVries comes from, if you're fortunate enough to get nominated on one ticket, you've got a designation. And that designation will guarantee you almost for every election 52 or 53 or 56 per cent of the vote. And if you go into another county and you are nominated under the other ticket, practically regardless of your name you are guaranteed 58 or 60 per cent of the vote.

Now, when you run partisan you do have a designation. It is Republican or it is Democrat. And, at a minimum, it has been pointed out that 45 per cent or more of the vote goes with this designation. And, basically, all we are concerned with is less than 10 per cent of the so called swing vote. So I submit that when you take a judge off a partisan ticket, you have to give him a designation such as this. And nothing would disturb or create greater havoc in the judiciary, especially as our metropolitan areas develop, than to remove this particular designation. I would urge that the amendment be defeated.

VICE PRESIDENT HUTCHINSON: The gentleman from Ingham, Mr. Wanger.

MR. WANGER: Mr. President, members of the convention, this matter was thoroughly debated before. I agree with Mr. Danhof and Mr. Farnsworth, and I move the previous question.

VICE PRESIDENT HUTCHINSON: Mr. Wanger demands the previous question. Is the demand supported? The demand is supported. The question now is: shall the main question be put? All those in favor will say aye. Those opposed will say no.

The Chair is in doubt. All those in favor will vote aye. Those opposed will vote no. Have you all voted? For what purpose does the gentleman rise, Mr. Perras?

MR. PERRAS: A point of information.

VICE PRESIDENT HUTCHINSON: The convention will be in order please. What is your question, Mr. Perras?

MR. PERRAS: Are we voting now for the DeVries amendment?

VICE PRESIDENT HUTCHINSON: We are simply voting now on a division here. The Chair is in doubt as to whether the previous question was ordered. All those in favor of the previous question will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and tally the total.

SECRETARY CHASE: On the vote on ordering the previous question, the yeas are 83; the nays are 37.

VICE PRESIDENT HUTCHINSON: The previous question is ordered.

For what purpose does the gentleman rise, Mr. Ford?

MR. FORD: A parliamentary inquiry, Mr. President.

VICE PRESIDENT HUTCHINSON: What is the inquiry?

MR. FORD: I think this is the appropriate time to make the inquiry, because I had no feelings one way or another on that vote, but I have had them on similar votes. That is to the parliamentary propriety of a person getting up and speaking for or against a proposition, making a lengthy exposition of his views, and then finishing his speech by a motion to move the previous question. Is that sort of a tactic in order?

VICE PRESIDENT HUTCHINSON: The Chair would say that the tactic is in order, although sometimes, in some circumstances, some delegates might think it wasn't very ethical. But it is in order.

The yeas and nays have been ordered. The question is upon the amendment offered by Mr. Shackleton and others, which the secretary will again read, so that everyone will understand what it is.

SECRETARY CHASE: The amendment offered by Messrs. Shackleton, DeVries, Sterrett and Seyferth:

[The amendment was again read by the secretary. For text, see above, page 1624.]

VICE PRESIDENT HUTCHINSON: All those in favor of the amendment offered by Mr. Shackleton and others will vote aye. Those opposed will vote no. Have you all voted? If so the secretary will lock the machine and record the vote.

The roll was called and the delegates voted as follows:

Yeas—41

Blandford	Haskill	Richards, J. B.
Brown, G. E.	Hoxie	Richards, L. W.
Conklin, Mrs.	Kirk, S.	Sablich
Cushman, Mrs.	Knirk, B.	Seyferth
Dell	Koeze, Mrs.	Shackleton
DeVries	Leibrand	Shanahan
Doty, Donald	Leppien	Stamm
Faxon	Lundgren	Suzore
Finch	McAllister	Thomson
Goebel	Perlich	Tubbs
Gover	Perras	Turner
Gust	Plank	Wood
Habermehl	Radka	Yeager
Hannah, J. A.	Rajkovich	

Nays—85

Allen	Farnsworth	McLogan
Andrus, Miss	Figy	Millard
Anspach	Follo	Murphy
Austin	Ford	Nord
Baginski	Gadola	Norris
Balcer	Garvin	Ostrow
Barthwell	Greene	Page
Batchelor	Hanna, W. F.	Prettie
Beaman	Hart, Miss	Pugsley
Bentley	Hatch	Romney
Bledsoe	Hatcher, Mrs.	Rood
Bonisteel	Higgs	Rush
Boothby	Hodges	Shaffer
Brake	Hood	Sharpe
Brown, T. S.	Howes	Sleder
Buback	Iverson	Spitler
Butler, Mrs.	Judd, Mrs.	Stafseth
Cudlip	Karn	Staiger
Danhof	King	Stevens
Davis	Krolikowski	Stopczynski
Dehnke	Kuhn	Tweedie
Donnelly, Miss	Lawrence	Upton
Doty, Dean	Lesinski	Van Dusen
Douglas	Mahinske	Walker
Downs	Marshall	Wanger
Durst	Martin	Wilkowski
Elliott, Mrs. Daisy	McCauley	Woolfenden
Erickson	McGowan, Miss	Young
Everett		

SECRETARY CHASE: On the adoption of the amendment to strike out all of section e, the yeas are 41; the nays are 85.

VICE PRESIDENT HUTCHINSON: The amendment is not adopted.

SECRETARY CHASE: Mr. Ford offers the following amendment:

1. Amend page 2, line 5, after "Sec. d.", by striking out the balance of the section and reinserting the language of article VII, section 20 of the 1908 constitution, which language reads as follows, "When a vacancy occurs in the office of judge of any court of record, it shall be filled by appointment of the governor, and the person appointed shall hold the office until a successor is elected and qualified. When elected, such successor shall hold the office the residue of the unexpired term.".

VICE PRESIDENT HUTCHINSON: On the amendment, the Chair recognizes Mr. Ford.

MR. FORD: We have debated this matter at great length in committee of the whole. It is not a new subject to the members of this convention. It is one of the few places that I feel that there is an overriding political consideration that nobody is willing to face, and I think that we are here demonstrating — and we have demonstrated it in the action taken by the committee of the whole — what was said by a political scientist last Monday night on television in reporting on the activities of this convention, that too many of us are making our decisions and attempting to write a constitution with our own views and our own posture in the political picture of the state of Michigan at the present time guiding our actions. No one on the judicial committee wants to admit it, and no one in this convention thus far has admitted it, but I am constantly compelled to the idea that if we had not had some 80 appointments to the bench in the last 12 years made by one political party as a result of having the governor, that we wouldn't be tampering with this section of the constitution. Now, we haven't had a Democratic governor of the state for very many years, and when compared with the total history of this state, a very small part of the life of the constitution and its predecessors from which this language was originally taken has been under this party.

It's my firm belief, and I state this as an individual delegate to the convention — I speak for no one but myself, and I hope that if I'm wrong my friends that I have made here amongst the Republican party will, after searching their consciences, attempt to convince me without too much force that this action in removing the power of the governor to appoint to fill vacancies is not politically motivated. There are a lot of reasons advanced for it, and there are a lot of people who advance the theory that the substitute that we have here — by asking retired judges if they are available to serve in these vacancies, or by leaving the vacancies empty — will serve the purpose. It has even been suggested that we might call special elections. I wonder if you folks realize what you are imposing on a county the size of Wayne county when you ask to call a special election to fill a vacancy for one judge on our bench down there. I also wonder if you realize what you are doing to us with our terribly overcrowded court docket when you ask us to wait as much as 2 years with a vacancy or perhaps more than one vacancy on that bench. There have been 11 judicial vacancies, I am informed, just in the short time that the present governor has occupied that seat. And I wonder if you honestly believe that at that rate of replacement we have a supply of people to fill these vacancies in the manner that the committee has proposed.

I don't suppose that anyone's vote is going to be changed by this approach to this matter, but I feel that I have exercised about as much restraint as I could in this regard in the committee and on this floor. As far as I'm concerned, this change in the constitution is motivated by pure politics and by pure reaction to a condition that has existed for a number of years as a result of the vote of the people of the state of Michigan, and I can't view it in any other light.

VICE PRESIDENT HUTCHINSON: The Chair recognizes Mr. Nord.

MR. NORD: Mr. President, I support the statement just made by Mr. Ford, and I support the amendment offered. The question was raised by Mr. Ford whether this is in fact a political question. We naturally are reluctant to admit in any case that we are motivated by political ideas rather than considering the best interests of the state.

I suggest that this is a political question and has been handled as a political question, and in proof of that assertion I will state to you that there can't be any question about it, because 2 Detroit newspapers have said so. This is rather miraculous. One of them blasted the Democrats for being political about this, and the other one blasted the Republicans for being political about it. Therefore, I'm quite certain that everyone around here is being political on this subject. I don't believe both papers could be right as to which party is wrong, but it is a political question, I'm quite certain of that.

We had the horse race theory before us a few minutes ago, and we were able to consider that and turn it down. Now we have the out in pasture theory of judges — judges who are out to pasture should be brought back into useful activities in society. It seems to me that's a rather backward approach to the problem. The problem isn't what to do with retired judges. The problem is how to get good judges in office.

One further statement to show why I state on the floor that this is a political question. I have stated to many people around the state — and I state to the delegates here — that there is a certain tendency among Republicans, and I want you to know that I think so, to cure problems after the disease has run its course. After you have seen something you don't like, and the situation possibly is about to reverse, you still, as they say, fight the last war. But, what's worse than that, you have a system here which has been in effect for 100 years. We have heard no complaints during that 100 year period from either Democrats or Republicans that the system was a bad system. It wasn't a bad system so long as nearly every judge in the state was a Republican judge. That is what seems to be the consensus. Neither side was opposed to it. But when the Democrats began to get into the act, and a certain number of judges became Democrats, the Republicans became horrified at the thought: how can a system be any good if Democrats can participate in it? That seems to be the thought. Therefore, you are changing the rules.

Now, I don't say that the rule you are changing to is a horrible system. I simply call to your attention that this is one of a number of changes you are making just for the same reason. You have a system that goes for 100 years or 150 years, whatever branch of government it is. You never make any complaints. Neither does the other party. But as soon as the system begins to work equitably, so that there is a chance for the public to kick one party out and put the other one in, and keep on doing that, then you begin to think some other system — any other system in fact — must be better.

You have to face up to the fact that you're going to be charged with that when you make changes of that type — changes which are the result only of the fact that the Democrats are participating in the act. I therefore charge that this change is not warranted, it is not necessary, and that it is politically motivated, and we should support the amendment.

MR. WANGER: Point of order.

VICE PRESIDENT HUTCHINSON: What is the point, Mr. Wanger?

MR. WANGER: The point of order is that the 2 previous speakers upon occasion in their remarks have reflected upon the motives of other delegates in the convention. Now, they may talk about matters being political issues, but when they speak of the motivations of other delegates they attack those delegates in their representative capacity.

VICE PRESIDENT HUTCHINSON: Well, the Chair has not heard any delegate referred to, Mr. Wanger. The Chair next recognizes Mr. Gust.

MR. GUST: I just want to make 2 or 3 very short points. One, I would like to say — and I think this has been pointed out in previous debate — that there is a great deal of feeling among the delegates here, and I think among some delegates of the minority party, that perhaps the appointive discretion which now lies in the governor has been abused at some times in the recent past. Two, and probably more important, it makes in effect an appointive judicial system out of what we intended to be an elective judicial system. And 3, for the record, so there won't be any misunderstanding, I confess, Mr. Ford, that I am motivated about 95 per cent politically in my opinions here.

VICE PRESIDENT HUTCHINSON: The Chair recognizes Mr. Walker.

MR. WALKER: I, too, must agree with Mr. Gust. It is a rare occasion, I'm afraid. But in view of Mr. Ford's and Mr. Wanger's statements that none of the delegates will admit political motivation, I must say in this connection and in the last record roll call vote that I was partially motivated in changing my yes vote to a no vote by looking up on the board and seeing what my esteemed senatorial delegate had done. He voted no right along with me, and I had to change to agree with him. And I believe, whether you would want to call this politics or not, brother George is right sometimes.

VICE PRESIDENT HUTCHINSON: The Chair recognizes Mr. Tubbs.

MR. TUBBS: Mr. President, Mr. Ford didn't have to ask me to be in his corner on this one. He knew that I am the only member of the judicial committee who has been for the appointive system from the beginning, and I'm still sticking to it.

VICE PRESIDENT HUTCHINSON: Mr. Farnsworth.

MR. FARNSWORTH: Mr. President, members of the convention, I only want to clear up a couple of impressions that might have been left by Delegate Ford when he said, "Are you going to leave Wayne county with vacancies for a couple of years or so?" No one here, Mr. Ford, would leave you with a vacancy. Section d, which you are trying to replace, very definitely states that the appointment will be made immediately from a retired judge to fill that vacancy. The second impression which your talk might have left was when you said, "Are you going to require us to have special elections?" It clearly states in section d that it can be a general or special election. I just wanted to clear up those impressions.

Now, section d is part of a package that this convention has formulated to insure for all time henceforth our judges will be elected, and as just part of that package, we should not under any consideration delete it. I urge you to vote no on the Ford amendment.

VICE PRESIDENT HUTCHINSON: Mr. Marshall.

MR. MARSHALL: Mr. President and fellow delegates, I rise to speak on behalf of the Ford amendment, and to speak against the majority report. At the outset, it seems to me, unless I have read the majority proposal incorrectly, that there seems to be a conflict between section a of Committee Proposal 96 and section d of Committee Proposal 96. Section a provides that a judge shall not be elected or appointed to a judicial office after reaching the age of 70 years. In Wayne county we only have at the present time, unless I am incorrect — and I don't believe that I am — 2 retired judges, both past 80 years of age.

I think we should examine also just when did this particular problem that we are discussing here today arise? Now, for 100 years or more the present system has been in effect and has been working. All of us know that there has been no great hue and cry for any change in this system until recent years. Unfortunately, I feel that we are living here or debating this

topic with the ghost of G. Mennen Williams because he was popular enough to be elected governor of this state for 12 years, and as such made more judicial appointments than any other governor in the history of the state of Michigan. I would also caution you and advise that it's too late — too late — to run against G. Mennen Williams now by enacting this proposal.

I would have to agree partially with what my good friend Rocky Gust had to say about being politically motivated. I would also have to concede to you that some of my remarks are politically motivated, and I think they are pertinent and to the point. To adopt a system where you are going to call back a retired judge who has completed his career and his service to his state and to the people of the state and to place this additional burden upon him in my considered and humble opinion is sheer nonsense. And I'm sure that any industrialist will agree, who has been charged with the responsibility of running a manufacturing plant, that he would not want to call back a retired worker who had reached the age of 70, 74 or 75 and whose reflexes were not as good as they were when he was of a younger age and place him on a piece of highly technical automated equipment, where one slip or one lapse of memory could cost him literally thousands of dollars. And I agree with that. I think that when a worker has reached retirement age he has served his employer and is entitled to retirement. I believe the same is likewise true of a judge. And it seems to me that one of the big problems that you have — those of you in the majority who are living with this ghost that has been referred to in this convention — is that you are afflicted with "judgitis." And "judgitis" is that you happened to have had a governor of the opposite party for 12 years who made more appointments to the judicial spots. Now, I ask the question before I close: what is wrong in having a judge appointed to the bench, having him serve in the full glare of the public eye, where all of his judicial decisions are open to public review, and then have the people make the choice of whether they want him to continue to serve as a judge? Let them give the consent and advice.

We have a situation in Wayne county, for example, where under the proposal that you are adopting, where every Tom, Dick and Harry could run for supreme court justice — and I agree it would be hard to get the required number of signatures on a petition, but it could be done — and you could conceivably elect name candidates. Now, the situation that happens in Wayne county would not be as apt to happen on the state level, but it could in some of the lower courts. But we have a bartender who makes a practice or hobby out of running name candidates, and many of the times they are successful.

As I stated in the beginning, this is your decision to make — those of you in the majority. I would hope, however, that you bear in mind that when a judge retires, it means just that. He deserves his years of retirement. He deserves to live out the rest of his life in retirement and enjoy it. And no judge is going to refuse to come back and serve if he is asked to do so, even though his better judgment might tell him not to.

In closing, this will have to rest with you and your conscience. But do not let your affliction with the ghost of a former governor and your affliction with "judgitis" cloud your thinking in this issue. As I say, it rests with your conscience. And remember that no ear can hear or tongue can tell the tortures of that inward hell.

VICE PRESIDENT HUTCHINSON: Mrs. Judd.

MRS. JUDD: Mr. President, members of the convention, it seems to me that on this subject of selection of judges we kind of find a reverse English. As Mr. Gust pointed out, the 1908 constitution provides in name an elective system, but in fact an appointive system, the way it has worked out.

I favored every proposal that came up for an appointive system — the ABA plan, and the federal plan, and all the various modifications thereof — all of them being efforts to keep the appointive system, but to improve it and strengthen it. Now the tables seem to be turned. Those who opposed all of the various appointive plans up to this one are now very heatedly for appointment. And I and many of my fellow Republicans who were for appointment are now trying to be consistent with what we look upon as a bipartisan compromise and make the system truly elective. Now, I for one am going to try to stick by this compromise, and vote against this amendment.

VICE PRESIDENT HUTCHINSON: Mr. Binkowski.

MR. BINKOWSKI: Mr. President and ladies and gentlemen of the convention, so that I shall not be accused of indulging in personalities, in the first instance all I'm going to do is read an editorial from the Detroit News which was printed March 9, 1962. It's entitled Judgeship Stupidity:

> Republicans who voted to strike from any new constitution the governor's authority to fill judicial vacancies displayed a keener interest in petty politics than in the quality of Michigan justice. We hail the one Republican delegate, Robert S. Tubbs, who had the courage to oppose such blindness.
>
> The Republican plan is to let the supreme court appoint a temporary judge who could not run to succeed himself in the election. It is clearly another involvement of the high court in politics. Voters, without any previous measure of the candidates, would have to choose judges from herds of job hungry nominees.
>
> The record shows that in the absence of any qualified screening system for judicial candidates, those launched in careers on the bench by governors' appointments measure up well. Political primaries often are won by popular names rather than merit. A governor must base a judicial appointment on merit or hear from the voters.
>
> The system which permits governors, in the absence of a true merit plan, to appoint judges applies equally to Republican and Democratic governors. The citizenry now will be saying that Republicans feel inadequate to winning at the polls the right to name judges so they want to destroy the system.
>
> One way for the Republicans to overcome that feeling of inferiority would be to accomplish something for Michigan, like a judicial system based on merit appointment, and then lick the opposition on their record.

The point which has not been made, and the point that I would like to make about this present provision, is that regardless of the intention of the delegates, the result is that this present provision, if enacted and if adopted by the people in the new constitution, would result in discrimination against the minority groups, particularly those in Wayne county. It's unfortunate that many of you here are not familiar with the situation, particularly as it exists in Wayne county. And regardless of whether we talk about democracy and we talk about the elimination of prejudice and bigotry, we know that it exists. In spite of the fact, for example, that the negroes have had qualified attorneys for the last 50 years, there has been no negro elected in the first instance to the circuit court in Wayne county. I submit that if the governor is not given the right to appoint, with the subsequent designation on the ballot, that this situation will continue to occur in Wayne county.

Now, this situation as it pertains to negroes pertains not only to them. It pertains to other minority groups, such as the Poles, the Lebanese and the Greeks. This system of appointment by the governor has been a method which has given the governor the opportunity to appoint qualified individuals in particular minority groups who have been unsuccessful in attempting to serve the people on the bench. And I submit to you, again, that regardless of the intention, the result will be the same. This will result in discrimination against minority groups.

VICE PRESIDENT HUTCHINSON: Mr. Higgs.

MR. HIGGS: Mr. President and delegates, while I do not take the credit for this particular proposal, I do feel I have some responsibility in this connection, inasmuch as Delegate Stan Everett and myself introduced a delegate proposal along this particular line.

I am deeply disturbed by many of the things that have been said here, many of the cliches that have been thrown out of a political nature. I believe that the overriding political con-

sideration that one delegate charged no one was willing to face, either in the committee or on the floor, and failed to face himself, is a consideration we did face. And that is the simple fact that where appointments to the judiciary are available to a governor or a president, as the case may be, or any other political incumbent, the tendency is to make the appointments entirely from persons of his own political party, and load the bench, so to speak, with partisans of his own political faith. Now, this isn't a ghost from the past. This is experience from the present. And if this were of a selfish political motivation today, I think I would be on the other side of the fence. I think that there is certainly a good possibility that the tables will be turned in Michigan.

But this was not our motivation. We have nothing to gain, either the committee or this convention, politically, by adopting the committee proposal and defeating this present amendment. We have nothing to gain because we will truly let the people make the decision as to the incumbent. No one who has spoke charging politics or political motivation has faced that issue, but I think the committee did; and I urge you to support the original committee proposal.

VICE PRESIDENT HUTCHINSON: The Chair recognizes Mr. Iverson.

MR. IVERSON: I move the previous question, Mr. President.

VICE PRESIDENT HUTCHINSON: Mr. Iverson moves the previous question. Is the demand supported? The demand is supported. Mr. Faxon.

MR. FAXON: I would like to move to limit debate to 15 minutes, so that those people who have not yet had a chance to speak may have a chance to do so.

VICE PRESIDENT HUTCHINSON: The question is upon the motion made by Mr. Faxon that debate upon this amendment be limited to 15 minutes. All those in favor of limiting debate will say aye. Opposed will say no.

The motion does not prevail. The question reverts to the motion by Mr. Iverson for the previous question. The demand has been supported. The question now is: shall the main question be put? All those in favor will say aye. Opposed will say no.

The previous question is ordered. All those in favor of the — Mr. Ford, for what purpose does the gentleman rise?

MR. FORD: Mr. President, I request a roll call vote.

VICE PRESIDENT HUTCHINSON: Mr. Ford demands the yeas and nays upon his amendment. Is the demand supported? The demand is supported, and the yeas and nays are ordered. For what purpose does the lady rise, Mrs. Hatcher?

MRS. HATCHER: Mr. President, I would like to have the secretary read the amendment again.

VICE PRESIDENT HUTCHINSON: The secretary will read the amendment.

SECRETARY CHASE: Mr. Ford has offered the following amendment:

[The amendment was again read by the secretary. For text, see above, page 1626.]

VICE PRESIDENT HUTCHINSON: The question is upon the amendment offered by Mr. Ford, upon which the yeas and nays have been ordered. And the previous question has been ordered. For what purpose does the gentleman rise, Mr. Marshall?

MR. MARSHALL: I thought Mr. Ford demanded the yeas and nays on ordering the previous question.

VICE PRESIDENT HUTCHINSON: No, he ordered them on his amendment. All those in favor of the amendment offered by Mr. Ford will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and record the vote.

The roll was called and the delegates voted as follows:

Yeas — 39

Austin	Faxon	McGowan, Miss
Baginski	Follo	Murphy
Balcer	Ford	Nord
Barthwell	Garvin	Ostrow
Binkowski	Greene	Perlich
Bledsoe	Hart, Miss	Sablich
Brown, T. S.	Hatcher, Mrs.	Snyder
Buback	Hodges	Stopczynski
Cushman, Mrs.	Hood	Suzore
Dade	Krolikowski	Tubbs
Douglas	Lesinski	Walker
Downs	Marshall	Wilkowski
Elliott, Mrs. Daisy	McCauley	Young

Nays — 86

Allen	Goebel	Powell
Andrus, Miss	Gover	Prettie
Anspach	Gust	Pugsley
Batchelor	Habermehl	Radka
Beaman	Hanna, W. F.	Rajkovich
Bentley	Hannah, J. A.	Richards, J. B.
Blandford	Haskill	Richards, L. W.
Bonisteel	Hatch	Romney
Boothby	Higgs	Rood
Brake	Howes	Rush
Brown, G. E.	Hoxie	Seyferth
Butler, Mrs.	Iverson	Shackleton
Conklin, Mrs.	Judd, Mrs.	Shaffer
Cudlip	Karn	Shanahan
Danhof	King	Sharpe
Davis	Kirk, S.	Sleder
Dehnke	Koeze, Mrs.	Spitler
Dell	Kuhn	Stafseth
DeVries	Lawrence	Staiger
Donnelly, Miss	Leibrand	Stamm
Doty, Dean	Leppien	Stevens
Doty, Donald	Lundgren	Turner
Durst	Martin	Upton
Erickson	McAllister	Van Dusen
Everett	McLogan	Wanger
Farnsworth	Millard	Wood
Figy	Page	Woolfenden
Finch	Perras	Yeager
Gadola	Plank	

SECRETARY CHASE: On the adoption of the amendment offered by Mr. Ford, the yeas are 39; the nays are 86.

VICE PRESIDENT HUTCHINSON: The amendment is not adopted.

SECRETARY CHASE: Mr. Ford offers the following amendment:

1. Amend page 2, line 13, after "each" by striking out "elected"; so that section e will read:

> There shall be printed upon the ballot under the name of each incumbent justice or judge, who is a candidate for nomination or election to the same office, the designation of that office.

VICE PRESIDENT HUTCHINSON: The question is upon the amendment offered by Mr. Ford. The Chair recognizes the delegate from Wayne, Mr. Ford.

MR. FORD: Mr. President and members of the convention, at first glance it might appear that this amendment has no effect, in view of the fact that we had the vote that just took place. However, we don't know yet when the constitution will become effective, if ever. And in the event that this constitution is approved by the people, there will undoubtedly be at that time a number of judges — perhaps only one — who reached the bench by appointment.

As was stated here the other day, when you ask a man to take the bench in a court of record in this state, you ask him to lay aside all of his connection with the practice of law. And you do this whether you appoint him or whether you elect him. The difference is that when you appoint him you never appoint him for more than 2 years. He has to run for election sometime within the ensuing 2 years. So he must make a choice of whether or not to accept this appointment in the first instance on the basis of what he thinks his chances of being elected are. And if he doesn't feel pretty strongly that he has an opportunity to win the election to the office after being appointed, he certainly, if he is a lawyer of the caliber that we would like to see on our bench, he is not going to give up his

practice to take the appointment. If he has given up his practice to take this appointment, then I think it is only fair to allow him to run under the circumstances that obtained at the time that he made the choice and accepted the appointment. And whether we continue with the language that was just adopted or not, if we are going to be fair and if we are going to be consistent about all of the reasons that were advanced by the committee for the designation in the first place, I believe that we should afford the designation to all those judges who happen to be on the bench at the time this constitution is adopted.

VICE PRESIDENT HUTCHINSON: Mr. Higgs.

MR. HIGGS: Mr. President and fellow delegates, this is just another attempt to preserve an appointive type of system. If you would like to have a truly elective system, I urge that you vote no on the Ford amendment.

VICE PRESIDENT HUTCHINSON: The question is upon the amendment offered by Mr. Ford. The secretary will read it once again.

SECRETARY CHASE: The amendment is:

[The amendment was again read by the secretary. For text, see above, page 1629.]

MR. FORD: Mr. President, I ask for a roll call vote.

VICE PRESIDENT HUTCHINSON: Mr. Ford demands the yeas and nays on his amendment. Is the demand supported? The demand is supported. All those in favor of the amendment offered by Mr. Ford will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and record the vote.

The roll was called and the delegates voted as follows:

Yeas — 35

Baginski	Garvin	Murphy
Balcer	Greene	Nord
Barthwell	Hart, Miss	Ostrow
Buback	Hatcher, Mrs.	Perlich
Cushman, Mrs.	Hodges	Snyder
Dade	Hood	Stopczynski
Douglas	King	Suzore
Downs	Lesinski	Tubbs
Elliott, Mrs. Daisy	Mahinske	Walker
Faxon	Marshall	Woolfenden
Follo	McCauley	Young
Ford	McGowan, Miss	

Nays — 86

Allen	Gover	Powell
Andrus, Miss	Gust	Prettie
Anspach	Habermehl	Pugsley
Batchelor	Hanna, W. F.	Radka
Beaman	Hannah, J. A.	Rajkovich
Bentley	Haskill	Richards, J. B.
Blandford	Hatch	Richards, L. W.
Bonisteel	Higgs	Romney
Boothby	Howes	Rood
Brake	Hoxie	Rush
Brown, G. E.	Iverson	Seyferth
Butler, Mrs.	Judd, Mrs.	Shackleton
Conklin, Mrs.	Karn	Shaffer
Danhof	Kirk, S.	Shanahan
Davis	Knirk, B.	Sharpe
Dehnke	Koeze, Mrs.	Sleder
Dell	Krolikowski	Spitler
DeVries	Kuhn	Stafseth
Donnelly, Miss	Lawrence	Staiger
Doty, Dean	Leibrand	Stamm
Doty, Donald	Leppien	Stevens
Durst	Lundgren	Thomson
Erickson	Martin	Turner
Everett	McAllister	Upton
Farnsworth	McLogan	Van Dusen
Figy	Millard	Wanger
Finch	Page	Wood
Gadola	Perras	Yeager
Goebel	Plank	

SECRETARY CHASE: On the adoption of the amendment offered by Mr. Ford, the yeas are 35; the nays are 86.

VICE PRESIDENT HUTCHINSON: The amendment is not adopted.

SECRETARY CHASE: Mr. Ford offers the following amendment:

1. Amend page 3 by striking out all of lines 11 through 17; and in line 18, by striking out "special statutory" and inserting "Sec. i. All"; and in line 20, after "unless" by striking out "they" and inserting "such powers"; and after "are" by inserting "modified or"; so the section will then read:

Sec. i. All courts in existence as of the time this constitution becomes effective shall retain their powers and jurisdiction, except as provided by law, until and unless such powers are modified or abolished by law.

VICE PRESIDENT HUTCHINSON: On the amendment, Mr. Ford.

MR. FORD: This has been debated. Basically, this is a provision which would take back out the 5 year death penalty, self executing, that has been passed by the committee of the whole with regard to the justice of the peace and the circuit court commissioner, leaving the matter of their complete abolition or modification entirely in the hands of the legislature, with no strings attached. This is about as flexible as you can get. And all of the reasons that I might give are contained on pages 581 and 582 of the journal.

VICE PRESIDENT HUTCHINSON: The question is upon the amendment offered by Mr. Ford. All those in favor will say aye. Opposed will say no.

The amendment is not adopted.

MR. FORD: Mr. President, I ask for the yeas and nays.

VICE PRESIDENT HUTCHINSON: Mr. Ford demands the yeas and nays. Is the demand supported? The demand is supported. All those in favor —

MR. BENTLEY: Mr. President, I will ask that the board be cleared.

VICE PRESIDENT HUTCHINSON: Will the board first be cleared. Please clear the board. All those in favor will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and record the vote.

The roll was called and the delegates voted as follows:

Yeas — 41

Baginski	Hatcher, Mrs.	Plank
Balcer	Hodges	Sablich
Boothby	Hoxie	Shanahan
Brown, T. S.	Knirk, B.	Sleder
Buback	Koeze, Mrs.	Snyder
Doty, Dean	Mahinske	Spitler
Doty, Donald	Marshall	Stafseth
Downs	McAllister	Stopczynski
Elliott, Mrs. Daisy	McCauley	Suzore
Finch	Murphy	Walker
Ford	Ostrow	Wilkowski
Garvin	Pellow	Wood
Gover	Perlich	Young
Greene	Perras	

Nays — 79

Allen	Faxon	Millard
Andrus, Miss	Figy	Nord
Anspach	Gadola	Page
Barthwell	Goebel	Powell
Batchelor	Gust	Prettie
Beaman	Hanna, W. F.	Pugsley
Bentley	Hannah, J. A.	Rajkovich
Binkowski	Hart, Miss	Richards, J. B.
Blandford	Haskill	Richards, L. W.
Bledsoe	Hatch	Romney
Bonisteel	Higgs	Rood
Brake	Hood	Rush
Brown, G. E.	Howes	Seyferth
Butler, Mrs.	Iverson	Shackleton
Conklin, Mrs.	Judd, Mrs.	Shaffer
Cushman, Mrs.	Karn	Staiger
Dade	Kirk, S.	Stamm
Danhof	Krolikowski	Stevens
Davis	Kuhn	Thomson
Dehnke	Lawrence	Tubbs

Dell	Leibrand	Turner
DeVries	Leppien	Upton
Donnelly, Miss	Lesinski	Van Dusen
Durst	Lundgren	Wanger
Erickson	Martin	Woolfenden
Everett	McGowan, Miss	Yeager
Farnsworth		

SECRETARY CHASE: On the adoption of the amendment offered by Mr. Ford, the yeas are 41; the nays are 79.

VICE PRESIDENT HUTCHINSON: The amendment is not adopted.

SECRETARY CHASE: Mr. Mahinske offers the following amendment:

1. Amend page 3, line 11, after "of" by striking out "circuit court commissioner and"; so that the first sentence of section 1 will read:

> The office of justice of the peace shall continue to have, for a period of not to exceed 5 years from the date this constitution becomes effective, all their respective powers and jurisdiction. . . .

and so forth.

VICE PRESIDENT HUTCHINSON: On the amendment, the Chair recognizes Mr. Mahinske.

MR. MAHINSKE: Mr. President, members of the convention, I offer this amendment to strike the office of circuit court commissioner from the automatic death penalty clause here basically because of the tremendous work load that the circuit court commissioners carry. Now, there are 110 circuit court commissioners in the state — at least one in every circuit court. In Wayne county we have more than one because of the work load. I would like to point out what we would be doing if we abolish circuit court commissioners in Wayne county, and I think to a great extent this would hold true for Oakland, Macomb, Washtenaw, Genesee, possibly Bay and Ingham counties.

For the past 5 years the docket or the work load of the circuit court commissioners in Wayne county has been approximately 20,000 cases a year, plus something in addition to 4,000 writs that are heard, plus over 500 petitions that are heard, plus the handling of all chancery sales, plus all the circuit court referral work, which is all done on a current basis so that there's no backlog there, plus the fact that all of the above matters may be subject to jury trials, depending on whether or not the parties seek a jury trial here. Also in Wayne county you will be abolishing the circuit court commissioners bench, which is sustained on a salary basis by the county of Wayne itself. In other words, this amounts to a supplemental bench that we have in Wayne county that we pay for ourselves. There are no state funds involved here. As far as the outstate counties are concerned, I have no idea whether they are all contributed to by the state itself or if any of them are completely supported by their individual counties.

For these reasons, plus the fact that we have not provided for what is going to happen to this 23,000 or 24,000 cases a year by abolishing this court — we are going to throw them, as I see it, back onto the circuit court docket, which is some 24 months behind now in Wayne county, and up to 18 in most other counties — for these reasons I would strike the reference to the circuit court commissioners in section 1.

VICE PRESIDENT HUTCHINSON: Mr. Danhof.

MR. DANHOF: Mr. President, members of the convention, Mr. Mahinske's objectives may be laudable, but I submit that what he is doing is that he isn't even giving the circuit court commissioners 5 years. If he takes them out of this provision, since we have nowhere else provided for them, immediately upon the adoption of this constitution they shall perish, because they have no basis in law or in the constitution. Unless the legislature would see fit in the interim between the time of the adoption of the constitution and its effective date to recreate them as a statutory office, they would cease to exist as of the date this constitution became effective.

Now, by this provision there is at least a 5 year time period during which the legislature, in its wisdom, may study the matter and make provision for this, even if it's nothing more, Mr. Mahinske, than to reenact either under the present name or some other name, as a statutory court, the circuit court commissioner or somebody or other to take their place. But I submit to you that if you strike them, then you have given them the death penalty not in 5 years, but immediately.

MR. MAHINSKE: I would like to point out, just to save further debate here —

VICE PRESIDENT HUTCHINSON: Mr. Mahinske asks unanimous consent to speak again on his amendment. There is no objection. You may proceed.

MR. MAHINSKE: I think a proponent has more than one opportunity anyway.

VICE PRESIDENT HUTCHINSON: You're right; you have 2. The Chair stands corrected.

MR. MAHINSKE: I have an amendment which I have not submitted yet which would exclude all reference to section 21 of the article with reference to the exclusion report, and I think this would take care of the objections Mr. Danhof would have. In the event that this would pass, the amendment to amend the exclusion report would put the existing language back in the constitution.

VICE PRESIDENT HUTCHINSON: Mr. Bledsoe.

MR. BLEDSOE: Mr. President and fellow delegates, in view of the fact of the tremendous work load that we have in Wayne county, and which the courts have come before the judiciary time and again and complained of, and in view of the fact that under our present regulation that we'll be under, under the ruling of the circuit courts, which will have control, managerial and otherwise, over all of the courts of the circuit and other jurisdictions, I think unquestionably that Mr. Danhof is correct that there is some question as to whether or not they are carrying the work load that they should.

Certainly, under the probabilities of having a reorganization, and under the direction that they will be under, under the present contemplated system, it would simply be a matter of organization to harness them and get them into line and get work that will certainly be for the best interests of the people who have litigation coming up in those courts. And as Chairman Danhof has said, if we eliminate them now we foreclose that possibility.

VICE PRESIDENT HUTCHINSON: The question is upon the amendment offered by Mr. Mahinske.

MR. MAHINSKE: I would like to call for the yeas and the nays.

VICE PRESIDENT HUTCHINSON: Mr. Mahinske demands the yeas and nays on his amendment. Is the demand supported? The demand is supported. The Chair recognizes Mr. Binkowski.

MR. BINKOWSKI: Mr. President, I would like to ask Mr. Danhof a question to try to clarify the point that he made. Mr. Danhof, it seems to me that every one of the present constitutional provisions are implemented by statute, and even if the office of circuit court commissioner were removed from the constitution, the existing statutes would still be in full force and effect until the legislature did something very positively about them; isn't that correct?

MR. DANHOF: Mr. Binkowski, it is my understanding that the statutes do not create the office. They may set forth the jurisdiction of the office, but they do not necessarily create the office. The office is created in the constitution. And as we have provided, there shall be a 5 year time during which these — and I use the word advisedly — inferior court offices will remain effective; and in view of the language adopted under section m, during this time there shall be established these courts of limited jurisdiction to take over these particular duties and the powers therein.

I'm not familiar with all of the statutes, Mr. Binkowski, but I would venture an opinion that they do not create the office, and I still think there is sufficient time, ample time, to handle the particular problem without excepting the circuit court commissioner from this particular section.

MR. BINKOWSKI: Mr. President, I think that this point is very important, and I think it should be clarified. In other

words, it is my understanding that every one of the provisions are implemented by statute, and I don't see how the statutes would be affected at all in the event that this convention recommended the deletion of the office of circuit court commissioner. It seems to me the legislature would have to do something very positive about it, in a very positive way. I think that this point is rather important on this question.

VICE PRESIDENT HUTCHINSON: The question is upon the amendment offered by Mr. Mahinske, on which the yeas and nays have been demanded. All those in favor of the amendment will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and record the vote.

The roll was called and the delegates voted as follows:

Yeas — 28

Baginski	Garvin	McAllister
Balcer	Greene	McCauley
Binkowski	Hatcher, Mrs.	Murphy
Boothby	Hodges	Ostrow
Buback	Hood	Pellow
Dade	Krolikowski	Perlich
Doty, Donald	Kuhn	Snyder
Erickson	Mahinske	Walker
Follo	Marshall	Wilkowski
Ford		

Nays — 89

Andrus, Miss	Finch	Pugsley
Anspach	Gadola	Radka
Austin	Goebel	Rajkovich
Batchelor	Gover	Richards, J. B.
Beaman	Hart, Miss	Richards, L. W.
Bentley	Haskill	Romney
Blandford	Hatch	Rood
Bledsoe	Higgs	Rush
Bonisteel	Howes	Sablich
Brake	Hoxie	Seyferth
Brown, G. E.	Iverson	Shackleton
Butler, Mrs.	Judd, Mrs.	Shaffer
Conklin, Mrs.	Karn	Sieder
Cudlip	King	Spitler
Cushman, Mrs.	Kirk, S.	Stafseth
Danhof	Knirk, B.	Staiger
Davis	Koeze, Mrs.	Stamm
Dehnke	Lawrence	Stevens
Dell	Leibrand	Stopczynski
DeVries	Leppien	Suzore
Donnelly, Miss	Lesinski	Thomson
Doty, Dean	Martin	Tubbs
Downs	McGowan, Miss	Turner
Durst	Millard	Upton
Elliott, A. G.	Nord	Van Dusen
Elliott, Mrs. Daisy	Page	Wood
Everett	Perras	Woolfenden
Farnsworth	Plank	Yeager
Faxon	Powell	Young
Figy	Prettie	

SECRETARY CHASE: On the adoption of the amendment offered by Mr. Mahinske, the yeas are 28; the nays are 89.

VICE PRESIDENT HUTCHINSON: The amendment is not adopted.

SECRETARY CHASE: That is the last amendment on the desk, Mr. President.

VICE PRESIDENT HUTCHINSON: **Committee Proposal 96**, as amended, is referred to the committee on style and drafting.

Following is Committee Proposal 96 as amended and referred to the committee on style and drafting:

The committee recommends that the following be included in the constitution:

Sec. a. The supreme court, the court of appeals, the circuit court, the probate court and other courts designated as such by the legislature shall be courts of record and shall each have a common seal. Except as authorized otherwise by this constitution, justices and judges of the courts of record of this state shall be lawyers licensed to practice law in this state and no person shall be elected or appointed to a judicial office after reaching the age of 70 years. No judge or justice of any court in this state shall be paid from the fees of his office nor shall the amount of his salary be measured by the fees or other moneys received nor by the amount of judicial activity.

Sec. b. Whenever a judge shall remove his domicile beyond the limits of the territory from which he was elected, he shall be deemed to have vacated his office.

Sec. c. A justice and a judge of a court of record shall be ineligible to be nominated for, or elected to an elective office other than a judicial office during the period of his service as a judge and for 1 year thereafter.

Sec. d. When a vacancy occurs in the office of an elected judge of any court of record, it shall be filled at a general or special election according to law. The supreme court is empowered to authorize persons who have served as judges and have voluntarily retired, to perform judicial duties for the limited period of time from the occurrence of the vacancy until the successor is elected and qualified.

Sec. e. There shall be printed upon the ballot under the name of each elected incumbent justice or judge, who is a candidate for nomination or election to the same office, the designation of that office.

Sec. f. Any judge of probate serving at the time this constitution becomes effective may serve the remainder of the term and be eligible for reelection to his present office regardless of other provisions in this constitution requiring him to be licensed to practice law in this state.

Sec. g. Salaries of justices of the supreme court, of the judges of the court of appeals, of the circuit judges within the county or circuit, and of the probate judges within a county or district, shall be uniform, and may be increased but shall not be decreased, during a term of office except and only to the extent of a general salary reduction in all other branches of government.

Each of the judges of the circuit courts shall receive an annual salary as provided by law. In addition to the salary paid from the state treasury, each circuit judge may receive from any county in which he regularly holds court such additional salary as may be determined from time to time by the board of supervisors of the county. In any county where such additional salary is granted, it shall be paid at the same rate to all circuit judges regularly holding court therein.

Sec. h. For reasonable cause, which shall not be sufficient ground for impeachment, the governor shall remove any judge on a concurrent resolution of 2/3 of the members elected to each house of the legislature; and the cause for which such removal is required shall be stated at length in such resolution.

Sec. i. The office of circuit court commissioner and justice of the peace shall continue to have, for a period of not to exceed 5 years from the date this constitution becomes effective, all their respective powers and jurisdiction until the time within this period that they are abolished or their jurisdiction and powers are transferred to, or invested in, other courts that shall be established in accordance with this constitution.

Special statutory courts in existence as of the time this constitution becomes effective shall retain their powers and jurisdiction, except as provided by law, until and unless they are abolished by law.

Sec. j. The provisions of this constitution requiring the establishment of staggered terms of offices in existence, shall be implemented at the next election for such offices by legislation providing for elections for terms of varying length, none of which shall be shorter than the basic term provided herein for the office.

Sec. k. Each branch of the legislature as well as the governor shall have the authority to request the opinion of the supreme court upon important questions of law upon solemn occasions, in connection with legislation after it shall have been enacted into law but before its effective

date. Such opinions shall relate only to questions of constitutionality.

Sec. l. Any elected judge of a circuit court or probate court may become a candidate in the primary election for the office of which he is then the incumbent, by filing a declaration of intention at such time and in such office as shall be provided by law.

Sec. m. Within 5 years from the date this constitution becomes effective, and subject to the limitations contained in Committee Proposal 90 and section a of Committee Proposal 96, the legislature shall establish statutory courts of limited jurisdiction inferior to the circuit court with a definition of their powers and jurisdiction, the location and number of such courts, the qualifications of the judges who shall preside therein, the method of their election and tenure of office and the amount of their salary and by what governmental units the same shall be paid.

SECRETARY CHASE: Mr. President, the committee of the whole has also had under consideration **Exclusion Report 2042**, A report recommending the exclusion of article VII, sections 15, 16 and 21. It reports this back to the convention without amendment and with the recommendation that it be adopted.

VICE PRESIDENT HUTCHINSON: The question is upon adopting the exclusion report. All those in favor will say aye. Opposed will say no.

Exclusion Report 2042 is adopted and referred to the committee on style and drafting.

For Exclusion Report 2042 as referred to the committee on style and drafting, see above, page 1621.

SECRETARY CHASE: Mr. President, the committee of the whole has also had under consideration **Exclusion Report 2043,** A report recommending the exclusion of article VII, sections 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 17, 19, 20 and 23. It reports this back to the convention without amendment, and with the recommendation that it be adopted.

VICE PRESIDENT HUTCHINSON: The question is upon adopting the exclusion report. All those in favor will say aye. Opposed will say no.

Exclusion Report 2043 is adopted and is referred to the committee on style and drafting.

For Exclusion Report 2043 as referred to the committee on style and drafting, see above, page 1622.

SECRETARY CHASE: This completes the report of the committee of the whole, Mr. President.

VICE PRESIDENT HUTCHINSON: Mr. King.

MR. KING: Mr. President, it seems to me there's one thing that we still have left to handle under the judicial section. Now that Delegates Farnsworth and Hubbs have been duly installed as honorary barristers, I should like to nominate that long suffering Delegate Barthwell to this same rank of honorary barrister. I should also like to move at this time that we bestow upon the 20 lawyers who served on the judicial committee — and I had a hard time finding a suitable rank, but I looked through an old Naval Journal, and the ancient and distinguished naval rank of pharmacist's mate second class seems appropriate. (laughter)

MR. NORD: Point of order, Mr. President. Are motions in order at this time, Mr. President?

VICE PRESIDENT HUTCHINSON: Motions as such are not in order, Mr. Nord.

MR. NORD: Then I gather that Mr. King's motion is not in order, am I correct?

VICE PRESIDENT HUTCHINSON: The Chair didn't accept it as a motion. The Chair took it as a rhetorical motion. Mrs. Butler.

MRS. BUTLER: I rise to a point of personal privilege, Mr. President.

VICE PRESIDENT HUTCHINSON: What is the point?

MRS. BUTLER: I would like to speak on the disrespect for our retired judges shown this afternoon.

VICE PRESIDENT HUTCHINSON: The lady may proceed, without objection.

MRS. BUTLER: I feel, with the political overtones this afternoon, that I really should start out by saying that I demand equal time. But I am appalled at the disrespect for our retired judges. We have here in the convention a number of brilliant retired judges, and I don't like to hear them spoken of as out to pasture, and other terms. For the people who so glibly talk about jealousy because of the 6 terms of Governor Williams and the insulting jackpot of the latest political maneuver of another Democratic governor, I would say that we are jealous, that's all right. But as far as the political overtones in wanting retired judges to serve, I would like to ask, what would you do with Eleanor Roosevelt? (laughter)

VICE PRESIDENT HUTCHINSON: The Chair recognizes the lady from Wayne, Miss McGowan.

MISS McGOWAN: Mr. President, I rise to ask permission to speak.

VICE PRESIDENT HUTCHINSON: Miss McGowan asks unanimous consent to make a statement. Is there objection? The Chair hears no objection. You may proceed.

MISS McGOWAN: Mr. President and fellow delegates, my statement deals with a fellow delegate — a fellow lawyer — whose party affiliation differs from my party affiliation. To use a trite expression, life has been good to me, and it has been my privilege, as I am sure it has been your privilege, to meet persons of integrity, inpartiality, professional competence, humility and Christian charity. Of the persons I have had the honor of knowing who fall in this category, it is my opinion that Mr. Robert Danhof, the chairman of the committee on judicial branch of this constitutional convention, takes his place high among these top echelon individuals. I feel that I would be remiss if I did not reflect upon the truth at this time.

You entrusted Mr. Danhof with a high honor and privilege — the chairmanship of the committee on judicial branch. I feel sure he can give an excellent accounting of his stewardship. He brought to the committee on judicial branch superior legal knowledge, professional competence and skill; yet, he exhibited complete understanding for each member of the committee and for every person who appeared before the committee. He exerted an incalculable influence for good. He not only has a great intellect, but a great heart. Mr. Danhof, a member of the majority party serving as chairman of the committee on judicial branch, was completely unbiased, and sought to and did utilize the abilities and talents of each member of his committee with the thought in mind of the greatest good for the greatest number, and that thought alone. He conducted the committee meetings and deliberations so as to encourage each member of the committee to search for judicial truth and judicial truth alone in order that we could recommend to the convention a judicial system which we felt could adequately and efficiently serve and protect all of the people of the state of Michigan. Searching for judicial truth with 20 lawyers and one nonlawyer at times became laborious; yet Mr. Danhof never lost his sense of humor or balance or love for his brother.

As you know, Mr. Danhof is a young man. I was tremendously encouraged, inspired, and impressed by the marked respect he showed for all of the members of his committee and especially the respect he showed to the members of the committee who had lived longer than he and achieved greater experience. It is heart warming to reflect upon the respect he showed to and for the retired circuit judges who are members of the committee — Judge Mosier, Judge Pugsley and Judge Leibrand.

I could go on acclaiming his excellence. In closing I would just like to say to you, thank you for giving us Mr. Danhof as chairman of the committee on judicial branch. He served well. We would wish for Mr. Danhof fair winds and smooth sailing. We would pray that almighty God would love him and grant him an even greater increase of the virtues of wisdom, justice, prudence and understanding. Thank you. (applause)

VICE PRESIDENT HUTCHINSON: The Chair recognizes the delegate from the twenty-third district, Mr. Danhof.

MR. DANHOF: Mr. President, fellow delegates, as Dr. Nord said at one time, this, too, will pass away. I appreciate the kind words offered by Miss McGowan.

We have completed the judicial article. The committee did work long and hard. To the laymen of this convention, I apologize for the members of my profession occupying too much of your time. To my fellow lawyers, I thank you for the education that I have been given in this last 2½ weeks. To Mr. Van Dusen, I thank you for your kind indulgence. And to Mr. Bentley I can say only that we did not at least reach a third anniversary, for which I am most grateful. And now I can only say that I pass the mantle on to Mr. Martin, and he may assume this role. Thank you very much. (applause)

VICE PRESIDENT HUTCHINSON: Judge Gadola.

MR. GADOLA: I desire to thank Mrs. Butler for her kindness, but I will remind her that I do not resent the remark about the pasture at all, because the scriptures say something about lying down in green pastures. And, you know, as I have listened to the debate in this organization here, I don't know where I could find them much greener. (laughter and applause)

VICE PRESIDENT HUTCHINSON: The next order of business is announcements.

SECRETARY CHASE: The committee on emerging problems will meet Wednesday, March 14, in committee room I on the third floor at 7:30 p.m. Mr. Frank Millard, chairman.

The committee on administration will meet Thursday, March 15, at 1:15 p.m. Walter DeVries, chairman.

We have the following requests for leaves of absence: Mr. Stamm requests to be excused from tomorrow morning's session to attend a funeral; Mr. Ostrow requests a leave from the sessions of Thursday and Friday because of urgent business which cannot be postponed; Mr. Rood requests to be excused from the session of Thursday. A previous commitment for a speaking engagement on the constitutional convention makes this necessary; and Mr. Bonisteel asks to be excused from tomorrow's session.

VICE PRESIDENT HUTCHINSON: Without objection, the several requests will be granted. The Chair hears none, and they are so granted.

What is the pleasure of the convention? The Chair recognizes the delegate from Berrien, Mr. Richards.

MR. J. B. RICHARDS: Mr. President, I move that we adjourn.

VICE PRESIDENT HUTCHINSON: The delegate moves that the convention adjourn. All those in favor will say aye. Opposed will say no.

The motion prevails. The convention stands adjourned until tomorrow at 9:30 a.m.

[Whereupon, at 5:10 o'clock p.m., the convention adjourned until 9:30 o'clock a.m., Wednesday, March 14, 1962.]

NINETY-NINTH DAY

Wednesday, March 14, 1962, 9:30 o'clock a.m.

PROCEEDINGS

VICE PRESIDENT HUTCHINSON: The convention will come to order.

The invocation will be delivered by Mr. Milton Gates, Jr., a former Reader of First Church of Christ, Scientist, Lansing.

MR. GATES: We will first observe a moment of silent prayer, after which I shall read appropriate verses from the Bible.

Hear my prayer, O Lord, give ear to my supplications: in Thy faithfulness answer me, and in Thy righteousness.

Cause me to hear Thy loving kindness in the morning; for in Thee do I trust: cause me to know the way wherein I should walk; for I lift up my soul unto Thee.

Teach me to do Thy will; for Thou art my God: Thy spirit is good; lead me into the land of uprightness. Amen.

VICE PRESIDENT HUTCHINSON: The roll call will be taken by the secretary. All those present will vote aye. Have you all voted? The secretary will lock the machine and record the attendance.

SECRETARY CHASE: Mr. President, a quorum of the convention is present.

Prior to today's session, the secretary received the following requests for leave:

Messrs. Garvin, Habermehl and Nisbet, from today's session; Mr. Page wishes to be excused from today's session because of illness; and Mr. Walker wishes to be excused today for the purpose of giving a speech.

VICE PRESIDENT HUTCHINSON: Without objection, the several requests will be granted. The Chair hears no objection and they are granted.

SECRETARY CHASE: Absent with leave: Messrs. Bonisteel, Davis, Garvin, Habermehl, Madar, Mosier, Nisbet, Page, Stamm, Sterrett and Walker.

Absent without leave: Messrs. Barthwell, Bledsoe, King, Norris and Pellow.

VICE PRESIDENT HUTCHINSON: Without objection, the delegates absent without leave will be temporarily excused. The Chair hears no objection and it is so granted.

[During the proceedings, the following delegates entered the chamber and took their seats: Messrs. Barthwell, Bledsoe, King, Pellow, Norris and Stamm.]

Reports of standing committees.

SECRETARY CHASE: No committee reports, Mr. President.

VICE PRESIDENT HUTCHINSON: Communications from state officers.

SECRETARY CHASE: None.

VICE PRESIDENT HUTCHINSON: Second reading of proposals.

SECRETARY CHASE: Nothing on that calendar for today.

VICE PRESIDENT HUTCHINSON: Third reading of proposals.

SECRETARY CHASE: Nothing on that calendar.

VICE PRESIDENT HUTCHINSON: Motions and resolutions. The Chair recognizes Mr. Faxon.

MR. FAXON: Mr. President, I would like to offer a motion. The secretary has a copy, if he would read it. Does he have a copy?

SECRETARY CHASE: We did not bring the copy to the desk, Mr. Faxon.

MR. FAXON: Well, I will read it. I move that on the order of general orders following the conclusion of the proposals on the judicial branch, we next move to report of the

committee on legislative organization, and then to the executive branch in the regular schedule.

I mentioned Monday night, and tried to bring this up yesterday, and the reason that I am introducing this motion is primarily because we haven't yet settled on a legislature, and here we are going to be dealing with problems which will be very pertinent to our considerations on the executive branch. It would seem in a proper, logical order that the legislative organization, once settled, would make possible more expeditious handling of the other committee proposals, and I would therefore urge your consideration of moving to legislative organization proposals so as to alleviate some unnecessary discussion with regard to the executive branch proposals. That is all I care to say on this, Mr. President.

VICE PRESIDENT HUTCHINSON: The question is upon the motion by Mr. Faxon that the agreed orders in committee of the whole be changed, and that the committee of the whole next consider the legislative organization proposals instead of the executive branch proposals as previously ordered. All those in favor of the motion will say aye. Opposed will say no.

The motion does not prevail.

DELEGATES: Division.

VICE PRESIDENT HUTCHINSON: A division is called for. Is the division supported? It is supported. All those in favor of Mr. Faxon's motion will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and total the vote.

SECRETARY CHASE: The vote on Mr. Faxon's motion to change the order of consideration in committee of the whole, the yeas are 43; the nays are 83.

VICE PRESIDENT HUTCHINSON: The motion does not prevail. Are there any further motions or resolutions?

SECRETARY CHASE: None on file, Mr. President.

VICE PRESIDENT HUTCHINSON: Unfinished business.

SECRETARY CHASE: None.

VICE PRESIDENT HUTCHINSON: Special orders of the day.

SECRETARY CHASE: No special orders.

VICE PRESIDENT HUTCHINSON: **General orders of the day.** The gentleman from Genesee, Mr. Millard.

MR. MILLARD: Mr. President, I move that the convention resolve itself into committee of the whole for the purpose of considering matters on the general orders calendar.

VICE PRESIDENT HUTCHINSON: The question is upon the motion to resolve into committee of the whole. All those in favor will say aye. Opposed will say no.

The motion prevails. The committee will convene and Mr. Millard will preside.

[Whereupon, Mr. Millard assumed the Chair to preside as chairman of the **committee of the whole.**]

CHAIRMAN MILLARD: The committee will be in order. Is there anything on the calendar, Mr. Secretary?

SECRETARY CHASE: Item 1 on the calendar, from the committee on executive branch, by Mr. Martin, chairman, **Committee Proposal 46,** A proposal pertaining to the executive budget and item veto. Amends article VI.

Following is Committee Proposal 46 as read by the secretary, and the reasons submitted in support thereof:

The committee recommends that the following be included in the constitution:

Sec. a. THE GOVERNOR SHALL SUBMIT TO THE LEGISLATURE, NOT LATER THAN 21 CALENDAR DAYS AFTER THE CONVENING OF EACH REGULAR SESSION, OR AT A TIME FIXED BY LAW, A BUDGET FOR THE ENSUING FISCAL PERIOD SETTING FORTH IN DETAIL ALL PROPOSED EXPENDITURES AND ESTIMATED REVENUE OF THE STATE. PROPOSED EXPENDITURES SHALL NOT EXCEED ESTIMATED REVENUE. ON THE SAME DATE, THE GOVERNOR SHALL CAUSE TO BE SUBMITTED TO EACH HOUSE OF THE LEGISLATURE GENERAL APPROPRIATION BILLS TO EMBODY THE PROPOSED EXPENDITURES AND ANY NECESSARY BILL OR BILLS FOR NEW OR ADDITIONAL REVENUES TO MEET PROPOSED EXPENDITURES. THE AMOUNT OF ANY GENERAL FUND SURPLUS CREATED OR DEFICIT INCURRED DURING THE LAST PRECEDING FISCAL PERIOD SHALL BE APPROPRIATELY ENTERED AS AN ITEM IN THE BUDGET AND IN THE APPROPRIATION BILLS. THE GOVERNOR, PRIOR TO FINAL ACTION OF THE LEGISLATURE THEREON, MAY CAUSE TO BE SUBMITTED TO THE LEGISLATURE ANY AMENDMENTS TO THE GENERAL APPROPRIATION BILLS, AND SHALL CAUSE TO BE SUBMITTED ANY BILLS TO MEET DEFICIENCIES IN CURRENT APPROPRIATIONS.

Sec. b. GENERAL APPROPRIATION BILLS FOR THE SUCCEEDING FISCAL PERIOD SHALL BE ACTED UPON BEFORE EITHER HOUSE OF THE LEGISLATURE SHALL PASS ANY OTHER APPROPRIATION BILL, EXCEPT BILLS SUPPLEMENTING APPROPRIATIONS FOR THE CURRENT YEAR'S OPERATION. ANY BILL WHICH WILL REQUIRE AN APPROPRIATION TO CARRY OUT ITS PURPOSE SHALL BE CONSIDERED AN APPROPRIATION BILL. ONE OF THE GENERAL APPROPRIATION BILLS AS ENACTED BY THE LEGISLATURE SHALL CONTAIN AN ITEMIZED STATEMENT OF ESTIMATED REVENUE BY MAJOR SOURCE, THE TOTAL OF WHICH SHALL NOT BE LESS THAN THE TOTAL OF ALL APPROPRIATIONS PROPOSED IN THE GENERAL APPROPRIATION BILLS.

Sec. c. The governor shall have power to disapprove of any item or items of any bill making appropriations of money embracing distinct items; and the part or parts approved shall be the law; and the item or items disapproved shall be void, unless repassed according to the rules and limitations prescribed for the passage of other bills over the executive veto.

Sec. d. NO APPROPRIATION SHALL BE DEEMED A MANDATE TO SPEND. THE GOVERNOR SHALL REDUCE EXPENDITURES OF EXECUTIVE AGENCIES WHENEVER IT APPEARS THAT ACTUAL REVENUES FOR A FISCAL PERIOD WILL FALL BELOW THE REVENUE ESTIMATES ON WHICH APPROPRIATIONS FOR THAT PERIOD WERE BASED, SUCH REDUCTIONS IN EXPENDITURES TO BE MADE IN ACCORDANCE WITH PROCEDURES ESTABLISHED BY LAW. THE GOVERNOR'S POWER TO REDUCE EXPENDITURES SHALL NOT APPLY TO THE LEGISLATIVE AND JUDICIAL BRANCHES OR TO THOSE SERVICES FOR WHICH FUNDS ARE MANDATED BY THIS CONSTITUTION.

Mr. Martin, chairman of the committee on executive branch, submits the following reasons in support of Committee Proposal 46:

The purpose and intent of this proposal are to establish a constitutional executive budget process for the orderly management of the state's fiscal affairs. The executive budget system is common to 41 states, by statutory or constitutional provisions. Michigan has had some features of this type of system by statute since 1919. The responsibility of the executive for formulating, presenting, and eventually administering a periodic budget is recognized as a part of good management in public business. Executive budget provisions similar to those proposed herein are included in 3 of the 4 most recently adopted state constitutions (Missouri, Alaska, Hawaii) and are a key feature of the model state constitution. The 4 sections here proposed are deemed by this committee to embody minimum and basic essentials of an executive budget:

Explanation—Matter within [ ] is stricken, matter in capitals is new.

1) executive preparation and submission of the budget to the legislature;
2) embodiment of the executive budget in bill form for legislative consideration;
3) legislative action on the appropriation bills and enactment of fiscal policy, subject to executive veto, including the item veto; and
4) executive administration of appropriations and expenditures in accordance with legislative directives.

The present constitution does not clearly and completely embody the essential principles of an executive budget system. Provisions in the newer state constitutions, the emphasis on the executive budget in the majority of states, and the thinking among students of governmental finance have combined with the fundamental importance of budgeting in the conduct of responsible government to impel this committee to propose these 4 provisions for inclusion in the state constitution.

Sec. a. The first sentence of the proposal establishes that the governor shall prepare and present to the legislature a budget for the ensuing fiscal period. Twenty-one calendar days, or 3 weeks, give adequate time for preparation, and if sessions are to start as now on the second Wednesday in January, would mean (a) time for reappraisal of forecasts for the new year's conditions and (b) budget submission sometime between January 29 and February 4. This 21 day period also gives time for getting out of the way the normal organizational aspects of the legislature. Budget submission may be changed to "a time fixed by law", if it should appear at some future time that this was desirable, or that a different timing was more appropriate in the case, for example, of a governor elect. It is further required that the budget set forth proposed expenditures and revenue in detail, and that proposed expenditures not exceed estimated revenue, whether from existing or proposed new revenue sources.

To be a true executive budget, the proposed expenditures and estimated revenue must also be presented to the legislature in bill form for legislative action. This is the reason for the requirement that on the same date, bills embodying the budget plan and any proposed new revenues be introduced. Introduction in each house will allow a subsequent joint or concurrent consideration by the appropriate committees of each bill or its component parts, as may be determined by the legislature.

Provision is then made that the surplus created or deficit incurred during the previous fiscal period be included in the budget and appropriation bills for the next year. The words, "appropriately entered as an item" are used to avoid excess language while conveying the meaning that any surplus of the preceding fiscal year shall be a credit to estimated revenues, while any deficit of the preceding fiscal year would be a corresponding initial charge against expenditures.

The next requirement of the section does 2 things: (a) it allows the introduction of executive amendments to general appropriation bills prior to final action of the legislature (final passage by both houses) to cover contingencies such as omissions, oversights or emergency situations that may arise; (b) it requires the executive to cause bills for deficiencies expected to occur in current appropriations to be submitted. The further intent of both provisions is to emphasize initial executive responsibility for all matters relating to budget preparation and submission in bill form for legislative consideration.

Sec. b. The second provision is intended to accomplish 2 major points: (a) to focus legislative attention on the general appropriation bill or bills to the exclusion of any other appropriation bills, except those supplementing appropriations for the current year's operation; (b) to require the legislature (as well as the governor, by section a) to set forth by major item its own best estimates of revenue. The legislature frequently differs from executive revenue estimates. It seems only proper to require that such differences as exist be specifically set forth for public understanding and future judgment as to the validity of each.

Sec. c. This provision repeats verbatim the existing provision for the so called item veto, article V, section 37. It is deemed to be an integral part of an executive budget process.

Sec. d. The last provision contains a statement of policy in its first sentence that is in line with commonly accepted thinking in the field of governmental finance. It would also cover situations in which unforeseen efficiencies and economies might become possible. The second sentence requires executive control of expenditures in accordance with statutory directives "whenever it appears that actual revenues for a fiscal period will fall below the revenue estimates on which appropriations for that period were based."

Legislative directives for expenditure reductions in the past few years have not been adopted by the executive office because they were believed to be unconstitutional. The legislature, as the initiator of fiscal policy, should be able constitutionally to direct that expenditure reductions shall be made under specified conditions. This provision would remove any question as to the constitutionality of legislative control over general fiscal policy of the state, and would require current action to minimize impending year end deficits.

The final sentence protects the separation of powers doctrine by preventing executive reduction of expenditures for the coordinate legislative and judicial branches. In actual fact, expenditures for these 2 branches account for less than 1 per cent of the general fund, general purpose spending, the vast bulk of which is in the area of the executive branch. It would also prohibit the governor from making reductions in funds dedicated by the constitution for specific purposes.

Following is the minority report to Committee Proposal 46 as offered and the reasons submitted in support thereof:

Mr. Marshall, Miss Hart and Mrs. Daisy Elliott, a minority of the committee on executive branch, submit the following minority report to Committee Proposal 46:

A minority of the committee recommends that the following be included in the constitution:

Sec. a. THE GOVERNOR SHALL SUBMIT TO THE LEGISLATURE, AT A TIME FIXED BY LAW, A BUDGET FOR THE ENSUING FISCAL PERIOD SETTING FORTH IN DETAIL ALL PROPOSED EXPENDITURES AND ESTIMATED REVENUE OF THE STATE. THE GOVERNOR SHALL ALSO CAUSE TO BE SUBMITTED TO EACH HOUSE OF THE LEGISLATURE GENERAL APPROPRIATION BILLS TO EMBODY THE PROPOSED EXPENDITURES AND ANY NECESSARY BILL OR BILLS FOR NEW OR ADDITIONAL REVENUES TO MEET PROPOSED EXPENDITURES.

Sec. b. Strike all of section b of the committee proposal.

Sec. c. LEAVE AS IS IN THE COMMITTEE PROPOSAL.

Sec. d. Strike all of section d of the committee proposal.

Mr. Marshall, Miss Hart and Mrs. Daisy Elliott, a minority of the committee on executive branch, submit the following reasons in support of the foregoing minority report, which accompanied Committee Proposal 46:

One of the driving forces, if not the primary reason behind Michigan citizens calling a constitutional convention was the need to rid the state's constitution of the adminstrative detail that is limiting the discretion of the legislature and governor to such an extent that they cannot adjust and meet the needs of a changing society. Thus, it was hoped that steps would be taken to rid the new con-

Explanation—Matter within [ ] is stricken, matter in capitals is new.

stitution of this detail, but the majority report will constitutionally freeze several matters that might better be left to legislative discretion. The inclusion of statutory items in the proposed constitution is a serious weakness in itself, but the majority report goes farther and in effect destroys the traditional separation of powers doctrine.

Following is a discussion of the majority report by section which points out the several instances of statutory detail in this report, and the clear violation of the long accepted separation of powers doctrine.

Sec. a. There is no need to make reference to a submission date of 21 days after the legislature convenes. It would be better to leave sole responsibility for fixing a submission date to the legislature.

The same criticism can be made of the requirement that the governor submit on the same date, general appropriation bills to embody the proposed expenditures and new or additional revenues to meet proposed expenditures. There is no logical reason to include this requirement, and in fact this could cause procedural problems. Although the budget and revenue programs are developed concurrently, the physical job of readying the budget for the printer, drafting and printing appropriation bills, and writing special messages covering these matters cannot be coordinated so that they all are completed on the same day. Yet it would appear that in order to meet the proposed constitutional requirement this would have to be done. The existing method of the budget, appropriation bills, and revenue programs being submitted over a 1 or 2 week period makes more sense from an administrative point of view.

The requirement that the general fund surplus or deficit of the last preceding fiscal year be the first item of consideration is unsatisfactory in several respects. It apparently assumes that there are no surpluses or deficits in the other funds such as the school aid, aeronautics, trunkline funds, etc., or if there are surpluses or deficits, there is no need to be concerned with them. Secondly, the financing of the deficit or spending of any surplus would always be one year behind, and thus would be less than meaningful. For instance the 1962-63 budget which is currently being considered, can reflect the 1960-61 deficit, but can give no consideration to 1961-62 expenditures and their effect on the deficit. In other words, the previous year end surplus or deficit may have to be drastically modified to have any real significance, but no consideration is given to this necessity. The proposal assumes all the surplus or deficit is consumed or financed in one year. There is no discretion left to the legislature, even though situations could arise that would indicate it is in the public interest to take contrary action. For example, adverse economic conditions might warrant the incurring of a manageable deficit until it could be liquidated under more favorable economic conditions, but under this proposal any increase in state expenditures might have to be financed by additional taxes even though this may adversely affect economic recovery.

Sec. b. Traditionally, the legislature appropriates the remaining salary of a deceased legislator to the widow, but this would be impossible until all general appropriation bills had been acted upon under this proposal. It is difficult to understand what is accomplished by delaying appropriation bills such as the one described above, until general appropriation bills are enacted into law. Certainly such a prohibition does not belong in the constitution.

Throughout all of these proposals the emphasis always seems to be on the fact that revenues fell short of appropriations. Actually the state's current problems arise from the fact that appropriations have been in excess of estimated revenues. The control must be on appropriations. To accomplish what seems to be the goal in section b, there should also be a prohibition against any appropriations, outside action on the governor's budget, either by the legislature alone or in response to a special session call unless each such appropriation is accompanied by its own revenue measure.

Sec. c. The minority agrees to the desirability of including this section in the proposed constitution.

Sec. d. It is this final section that is the most objectionable. Assuming the aforementioned criticisms could be eliminated, the proposal would still be wholly unacceptable because of its sharp departure from the basic concepts of American constitutional government.

The first sentence is wholly unnecessary, and the implication that state administrations, past and present, spend for the sake of spending is contrary to existing evidence, and is, in fact, an insult to their integrity. As a matter of fact, the criticism is often voiced that departments do not spend what is appropriated, but instead lapse large amounts back to the general fund and consequently are not meeting the needs of the state's citizens.

The balance of the section would turn the American system of constitutional government upside down. In the United States traditionally the executive proposes and the legislature disposes, but the majority proposal would eliminate the legislature as an effective partner in this relationship.

Assume for a moment that revenues were in fact falling below original estimates. Should the governor decide whether mental health, welfare, education or corrections appropriations are to be reduced? There is no basis in our American history for assuming the governor is the proper instrumentality for making such decisions. The legislature should make these broad policy decisions, and it cannot be argued that they would not be in session when a decision to reduce appropriations would have to be made. Certainly, the earliest one could expect a pattern evident enough to justify such action as reducing appropriations would be January, and the legislature is in session at that time.

Allowing the governor the discretion of determining whether collections are commensurate with revenue estimates is placing power in the hands of the governor that again is unfounded in our history. Could this authority not be used to eliminate programs and even whole agencies that the governor finds objectionable for political or other reasons? In other words, one of the checks of the American system would be abolished.

Adoption of section d would worsen the present constitution. It is a step backwards. It is destructive of responsibility in government. The authority and the power to make appropriations and to tax are legislative and, inescapably, should be assigned to the legislature. Section 2 of article X of the present constitution recognizes this basic truth. It reads as follows:

> Sec. 2. The legislature shall provide by law for an annual tax sufficient with other resources to pay the estimated expenses of the state government, the interest on any state debt and such deficiency as may occur in the resources.

Here, authority and responsibility are joined together. The legislature is directed to provide taxes to finance the estimated expenses (the appropriations) of the government. On the other hand, section d, in its most simple terms, says "let's promote irresponsibility; let's enshrine the virtues of buckpassing." Section d would permit the legislature to make appropriations far above any realistic revenue estimates, knowing full well that revenues would be greatly less than appropriations. Section d has an escape hatch. The legislature can then direct the governor to reduce appropriations so that appropriations and revenues presumably will be in some kind of a balance. In short, the legislature can please the groups and agencies that want and need adequate appropriations and then give the governor the responsibility of reducing these appropriations.

The majority report fallaciously assumes that prohibiting the governor from cutting the appropriations of the legislative and judicial branches maintains the separation of powers doctrine. One of the basic tests of whether

the separation of powers doctrine is being maintained is to take an inventory of the powers exercised by the 3 branches to ascertain if in effect each branch has the powers historically associated with that branch. The majority proposal will severely limit the control over appropriations, which is one of the fundamental powers of any legislative body. In other words, the guarantee that appropriations for the legislative branch will not be cut is only one factor in guaranteeing the traditional separation of powers doctrine, and certainly not the most important one at that. Yet, the majority report assumes that prohibiting the governor from cutting the legislature's own approprations ipso facto maintains a true separation of powers, and no concern is given to the fact the legislature will be stripped of one of its basic powers.

This last section of the proposal, in addition to the limitations previously discussed, can lead to the worst kind of legislative irresponsibility. One of the well established principles of business and public administration is, authority should be commensurate with responsibility, but this principle is also violated. Presumably the legislature will retain the taxing power, but will they be motivated to use it, even though revenues will not be equal to appropriations, when they can appropriate, knowing full well that it is the governor who will have to make the reductions in appropriations? It does no good requiring the legislature to itemize their sources of revenue, because it is nigh on to impossible to disprove revenue estimates for a fiscal period that will end some 18 months from the time the estimates are made, and that are based to a large extent on economic forecasts. Thus, an irresponsible legislature could further abdicate their responsibility and transfer any adverse political repercussions to the governor by refusing to provide necessary revenue, and leaving to the governor the onus of reducing or eliminating programs.

In summary the proposed section d would upset the American system of the governor proposing and the legislature disposing, undermine the separation of powers doctrine with the concentration of unwarranted power in the hands of the chief executive, and encourage legislative irresponsibility in certain political situations.

CHAIRMAN MILLARD: The Chair will recognize the gentleman from Grand Rapids, chairman of the committee on executive branch, Mr. Martin.

MR. MARTIN: Mr. Chairman, members of the committee, we are commencing this morning the consideration of the proposals of the committee on executive branch. The first 3 proposals will be as outlined on your final calendar. We will take up the Committee Proposal 46 first, which is the executive budget and item veto proposal, and then we will move to Committee Proposal 78, which is the legislative auditor, auditor general, and then to Committee Proposal 71, which has to do with the powers of the governor and a reorganization of the executive branch.

You will find Committee Proposal 46, if you want to consult your journal, at page 400. In line with the past procedure, we will consider these sections one by one. There is a minority report which deals with each of these sections, and after we have made a presentation on the first section of this, my suggestion is that we then consider the minority report, insofar as it proposes to amend that section. I think that way we will get a better consideration of the proposal if we do it section by section, in that way, instead of the minority amendments as they relate to each section.

The general purpose and intent of this proposal is to establish a constitutional executive budget process for the orderly management of the state's fiscal affairs. The executive budget system is common to about 48 states by either statutory or constitutional provisions, and while we have some features of this system and have had by statute since 1919, it has never been a part of our constitution; but its importance has increased as the financial problems of the state have become more and more complex and the problems of administration have become more and more complex. For that reason, the committee reached the conclusion that it was important to include the provisions with respect to an executive budget in the constitution. The proposal deals with the responsibility of the executive—that is the governor—for, first, formulating the budget, second, presenting it to the legislature and, finally, carrying out the responsibilities that fall upon the executive as a result of the appropriations made by the 2 houses of the legislature.

Generally speaking, I think it is fair to say that every student of government recognizes the need for good management in public business, and this proposal is designed to effect that kind of close management. I should add that there are executive budget provisions similar to those which are proposed here in 3 of the 4 most recently adopted state constitutions, those of Missouri, Alaska and Hawaii, and these are a key feature of the model state constitution.

Very briefly, the 4 sections which are proposed here embody the minimum essentials of an executive budget, and they are, first, the executive preparation and submission of the budget to the legislature; second, the embodiment of the budget in bill form for legislative consideration because the legislature cannot act on a budget, it has to act on bills; third, the subject of legislative action on those bills, insofar as it has any constitutional bearing, and the use of the executive veto, the item veto which is a part of the present constitution; and, finally, the administration by the governor of appropriations and expenditures in accordance with legislative directives.

The present constitution, as I have said, does not spell these matters out, and the purpose of the proposal is to do just that. The proposal was also submitted for concurrence to the committee on finance and taxation, and generally, with respect to the item veto, was submitted for concurrence to the committee on legislative powers. When we reach the question of the item veto, I want to yield to the chiarman of the committee on legislative powers, but at the present time I would like to yield to Mr. Brake for any statement which he may care to make on this general subject.

CHAIRMAN MILLARD: The delegate from Stanton, Mr. Brake.

MR. BRAKE: Mr. Chairman, ladies and gentlemen of the committee, this proposal with reference to budgeting took a lot of negotiation and a good many changes before all 3 committees were finally satisfied that it was what we want. In the form in which it is presented to the convention and to this committee, I think it is good. We have had the statutory provisions in the past. They have been, quite largely, disregarded perhaps by the legislature, and certainly by a succession of governors. Perhaps with constitutional provisions a little more attention will be paid to the directions. It does require, certainly if they follow the constitution, much more responsibility on the part of the governor and on the part of the legislature.

When a governor recommends expenditures in excess of his estimated income, he must specify how he proposes that the money shall be raised. That is good. He ought to take that responsibility. When the legislature appropriates more than it expects will come in, it has got to say what its estimate of revenue is, and of course the appropriations, and they are required to be balanced. That is good. I think it fixes responsibility on both the governor and the legislature and that should be a very good influence in the matter of state financing. Certainly, if it is followed, it will prevent the passing of the buck back and forth between the legislature and the governor as to who is to blame and who isn't to blame.

The other items, I think, are also good. The item veto is retained, as we have had it in the past. I think you understand that our practice there differs from the constitutional and national practice, where the president might have the power of item veto. I think the governor should have it. It is not used extensively by most governors, but from time to time it has been used. I think it is a very proper item to have in the constitution. The matter of reducing expenditures when the

revenues fail to come up to expectations is placed in here subject to statute. In other words, the legislature shall provide how it shall be used. I think that is very proper. As long as that is there, it does not bring the governor into the legislative field so that he is, in fact, legislating. As a matter of fact, the legislature has been using similar language in the appropriation statutes now for several years.

Taking it all together, I think we have here a very definite improvement in the fiscal management of our state government.

CHAIRMAN MILLARD: Mr. Martin.

MR. MARTIN: Mr. Chairman, I would like to yield now to Mr. Karn to discuss the details of the first section.

MR. MARSHALL: Point of order, Mr. Chairman.

CHAIRMAN MILLARD: State the point of order, please.

MR. MARSHALL: The point of order is, am I lead to believe that the committee chairman is going to now get into an explanation of the entire majority proposal, or are we going to take up the minority report?

CHAIRMAN MILLARD: As the Chair understands, Mr. Marshall, we are on the first paragraph, section a, at this time, and as the Chair understands it, Mr. Martin has yielded to Mr. Karn to explain that particular section, after which the minority report will come up. Mr. Martin.

MR. MARTIN: Mr. Chairman, may I? I think Mr. Marshall had not come in at the moment when I made my first statement, and he will be handling the minority report. I wanted him to understand that I was proposing to have the minority report discussed section by section as we go along, but in order to do it in orderly fashion we need to have an explanation of what the majority position is on each of these sections.

CHAIRMAN MILLARD: The Chair recognizes Mr. Karn.

MR. KARN: Mr. Chairman, members of the committee, in order that we might have in mind, for discussion purposes, the thoughts and reasoning that was in the minds of the committee members when this was drafted, I would like to read the comments on section a, which are found in the journal on page 401.

[The reasons in support of section a were read by Mr. Karn. For text, see above, page 1636.]

CHAIRMAN MILLARD: Mr. Martin.

MR. MARTIN: Mr. Karn, do you desire to yield to anyone further on that?

MR. KARN: I would like to yield at this time, if I may, to Mr. Rajkovich who will make some comments on section a.

CHAIRMAN MILLARD: The Chair will recognize Delegate Rajkovich.

MR. RAJKOVICH: Mr. Chairman, fellow delegates, Mr. Karn has already pointed out many of the things in section a that we are concerned with. In general I would like to say that over the last 50 years, maybe a little more than that, the states have adopted executive budgets in order to promote efficiency in government and to promote economy in government. That budgetary system has been one of the major government reforms, and in this system is an implicit recognition that the governor has positive responsibilities to perform and that he intends to perform these responsibilities.

The budgeting system that we propose in this section does clarify the responsibilities in government, whether the range of this government shall be wide or whether it shall be narrow. It makes those provisions. Also, we set up in this section very sound budgeting procedures, I believe, which state that the budget should be prepared by the executive and that he shall present this program of work for the fiscal period, whatever that might be. Also, it should include all estimated receipts and expenditures. This means all. This is very important. Not just part of the receipts or expenditures should be included.

Further, we propose that the expenditures should not exceed estimated revenues. This is a must in any good budget; the 2 should balance. We believe that the expenditures should be classified in the budget by various funds involved or specific services to be performed or the nature of things to be purchased. Finally, we believe that the executive should exercise large measure of control over the execution of the budget after it has been approved by the legislature. As a result of the feeling of this, I urge you to support the committee report.

CHAIRMAN MILLARD: Mr. Martin.

MR. MARTIN: Mr. Chairman, if Mr. Marshall wishes to have the minority report introduced now, then we can have that amendment on the first section in front of us.

CHAIRMAN MILLARD: Are you yielding the floor to Mr. Marshall?

MR. MARTIN: Yes.

CHAIRMAN MILLARD: The Chair will recognize the delegate from Detroit, Mr. Marshall. Mr. Marshall, would you like to have your amendment read by the secretary?

MR. MARSHALL: Yes.

SECRETARY CHASE: Pursuant to the minority report of Mr. Marshall, Miss Hart and Mrs. Daisy Elliott,

Mr. Marshall offers the following amendment:

1. Amend page 1, line 6, after "Sec. a.", by striking out the balance of the section and inserting "The governor shall submit to the legislature, at a time fixed by law, a budget for the ensuing fiscal period setting forth in detail all proposed expenditures and estimated revenue of the state. The governor shall also cause to be submitted to each house of the legislature general appropriation bills to embody the proposed expenditures and any necessary bill or bills for new or additional revenues to meet proposed expenditures.".

CHAIRMAN MILLARD: The Chair recognizes Mr. Marshall for discussion of the minority report.

MR. MARSHALL: Mr. Chairman and fellow delegates, in the beginning, I regret the action that was taken this morning on the Faxon motion because many of the issues that we will be discussing in the report of the committee on executive branch, as well as legislative powers and others will be directly related to apportionment. I, for one, have felt all along that that should be brought up as early as possible on the calendar and disposed of, but since the majority has not seen fit to do that, we will move on now to the minority report and cover section a.

Again, we are attempting here to legislate rather than to write the basic law of the state. The majority on the committee has submitted a 2 page proposal that is statutory and legislative in nature, taking away much of the discretion of the legislature and the governor to act in this area. One of the driving forces, if not the primary reason behind Michigan's citizens calling a constitutional convention was the need to rid the state's constitution of the administrative detail that is limiting the discretion of the legislature and governor to such an extent that they cannot adjust and meet the needs of a changing society. Thus it was hoped that steps would be taken to rid the new constitution of this detail, but the majority report will constitutionally freeze several matters that might better be left to legislative discretion.

The inclusion of statutory items in the proposed constitution is a serious weakness in itself; but the majority report, ladies and gentlemen, goes farther, and, in effect, destroys the traditional separation of powers doctrine.

In dealing with section a, there is no need to make reference to a submission date of 21 days after the legislature convenes. It would be far better to leave sole responsibility for fixing a submission date to the legislature. The same criticism can be made of the requirement that the governor submit on the same date general appropriation bills to embody the proposed expenditures and new or additional revenues to meet proposed expenditures. There is simply no logical reason to include this requirement and, in fact, this could cause procedural problems. Although the budget and revenue programs are developed concurrently, the physical job of readying the budget for the printer, drafting and printing appropriation

bills, and writing special messages covering these matters could not be coordinated so that they are all completed on the same day. Yet, it would appear that in order to meet the proposed constitutional requirement, this would have to be done. The existing method of the budget, the appropriation bills and revenue programs being submitted over a 1 or 2 week period makes more sense from an administrative viewpoint.

The requirement that the general fund surplus or deficit of the last preceding fiscal year be the first item of consideration is unsatisfactory in several respects. I do not know at this time whether you are talking about the deficit for the previous year or whether you are talking about the accumulative deficit. It apparently assumes that there are no surpluses or deficits in the other funds, such as school aid, aeronautics, trunkline funds, et cetera, or if there are surpluses or deficits, there is no need to be concerned with them. Secondly, the financing of the deficit or spending of any surplus would always be one year behind, and thus would be less than meaningful.

For instance, the 1962-63 budget, which is currently being considered, can reflect the 1960-61 deficit, but it absolutely can give no consideration to the 1961-62 expenditures and their effect on the deficit. In other words, the previous year's end surplus or deficit may have to be drastically modified to have any real significance. But no consideration is given to this necessity by the majority report. The majority proposal assumes all the surplus or deficit is consumed or financed in one year. There is no discretion whatsoever left to the legislature, even though situations could arise that would indicate it is in the public interest to take contrary action. For example, adverse economic conditions might warrant the incurring of a manageable deficit until it could be liquidated under more favorable economic conditions. But under this proposal or the committee proposal, any increase in state expenditures might have to be financed by additional taxes, even though this may adversely affect economic recovery. I therefore ask the delegates to support the minority report amendment and vote against the majority report.

CHAIRMAN MILLARD: You yield the floor then, Mr. Marshall?

MR. MARSHALL: I am sorry. I intended to yield to Delegate Austin for any remarks he might have, if you will permit me. I am sorry, Mr. Chairman.

CHAIRMAN MILLARD: The Chair will recognize Delegate Austin.

MR. AUSTIN: Thank you, Mr. Chairman and Mr. Marshall. Mr. Chairman and members of the committee, I am certainly inclined to support the minority report amendment because I too am a little worried about the amount of legislative detail that we are writing into our constitution, or attempting to write into our constitution in connection with this executive budget. There are a number of problems that I see here that worry me, and I would just like to ask some questions of the proponents of the majority report, just to illustrate my concern. I am wondering if, through the Chair, I could ask—I suppose I should direct my questions to Mr. Karn.

CHAIRMAN MILLARD: If Mr. Karn wishes to answer.

MR. AUSTIN: Thank you, Mr. Chairman. First of all, Mr. Karn, I am concerned about the language on line 1, "not later than 21 calendar days after the convening of each regular session, or at a time fixed by law,". If we are going to permit the legislature to fix a time, why do we need write "21 calendar days" into the constitution? Just to elaborate a little further, let's consider the hypothetical situation that the legislature might decide that 18 days is a better time than 21 calendar days. What would then be the significance of the 21 days written into the constitution?

MR. KARN: The thinking of the committee, Mr. Chairman, and Mr. Austin—and this was based on discussions with some of the legislators—was that the 21 days was an adequate time for the final preparation and clearance of the budget. The preparation of the budget, of course, starts as early as July before the convening of the legislature in January. The thinking here is that the 3 weeks, approximately, would give the legislature time to get some of their procedural and organizational matters behind them, and with the submission of the budget, then they could devote more time to it, and the 21 days was considered reasonable for this.

The clause, "at a time fixed by law," was inserted here so that if anything unusual might arise in any given year, this date could be changed. For instance, one thing that the committee had in mind was the thought that a governor just elected in the fall might like more time than this to become familiar with the budget and some of the things that were before him, and there he might request, and they might set a new date for such purposes. Normally, however, it was the thinking of the committee that the 21 days would prevail.

MR. AUSTIN: Mr. Chairman, Mr. Karn, we do have legislation now which governs the submitting of the executive budget. Is that not correct?

MR. KARN: Yes. There is nothing too certain about it as far as dates are concerned.

MR. AUSTIN: Mr. Chairman, is there any reason to believe that the legislature would not fix a time if we left the 21 calendar days out of the constitution, to leave it flexible for the legislature to examine this matter from time to time and make the determination based on experience?

MR. KARN: Well, that might be true, Mr. Austin, but let me give you another reason I don't think that should be done: it is history, I believe—and the gentlemen in our committee who have been in the legislature, I think, will support the statement—that unless you have some definite procedure for the filing of the budget, you will find that a good part of it will continue through the session and come up in the last week or two for consideration, when not too much thought can be given to it. The committee thought that the setting of a date certain when the budget should be submitted would mean that it would be in early, and the provision of this section which would implement the consideration of it at an early date, rather than to let it go until the end of the session when other important things were to be considered.

MR. AUSTIN: Further, Mr. Chairman, if the governor should find that 21 days are actually not sufficient under certain circumstances—I am assuming that under normal circumstances 21 days may be all right, but under some circumstances he may find that he needs more time than 21 days. If the legislature does not act, he would then be compelled, under any circumstances, to get the budget in within the 21 days. Is that correct?

MR. KARN: I think that is correct, and I think that the budget would be prepared. They work under a schedule and, generally speaking, the budget is prepared and ready for the governor's perusal of it at the first of the year, in cases where you have a new governor coming in, or a governor that has been in office.

MR. AUSTIN: Mr. Chairman, if I may, I would like to move down a little further to line 10 where we state that, "Proposed expenditures shall not exceed estimated revenue." Is it the intention of the majority proponents or the proponents of the majority point of view that the legislature should, in some way, indicate how these revenues are to be estimated, whose estimates are to be used here? I don't believe that it is clear when we say, "Proposed expenditures shall not exceed estimated revenue," without indicating, in some way, whose estimates. Are these to be the governor's estimates? The estimates coming from the legislature or—I am just not clear as to what is intended here.

CHAIRMAN MILLARD: Are you directing your question to Mr. Karn?

MR. AUSTIN: Yes, I am.

CHAIRMAN MILLARD: Mr. Karn.

MR. KARN: I think that is reasonably clear in the proposal. However, let me say this in the beginning. This statement in here on the subject, that "Proposed expenditures shall

not exceed estimated revenues," is a balanced budget proposal. I think I am safe and fair in saying that we have not operated on what might be truly called a balanced budget proposal. Coming to your—and I think there is general feeling that a balanced budget in a state is just as desirable as a balanced budget in a business today, and most businesses operate on a balanced budget, as Mr. Austin, I believe, realizes. We think that that is a perfectly fair position to take for the state of Michigan.

Coming to your question on the estimate, the estimated expenditures and estimated revenue will appear in the budget and it is made by the budget group. We also have, in this proposal, a statement to the effect that if the legislature finds that in their opinion our estimated revenue will differ from that in the budget, then they must indicate why the difference and designate the major source of revenue which will cause a differential between that and the governor's budget. In the past we have had no definite information of this sort. We have attempted to find some records or history of the past few years on what has happened in the way of estimates, estimated revenues. We know—and I think only a year ago, the legislature had an estimated revenue of some $6 million or $7 million less than the governor's budget indicated, but there was no indication as to how the legislature arrived at that estimate. We think that it is important, if an estimate of revenue is changed, that it be indicated how and why they think it should be changed, and that is one of the responsibilities that we assign to the legislature in this proposal.

MR. AUSTIN: Mr. Chairman, one of the reasons I asked that question was just to show how involved the situation can become when we attempt to explain exactly what we mean by requiring that the proposed expenditures shall not exceed estimated revenues. We get into any number of questions as to what, first of all, we mean by "proposed expenditures", and secondly, what we mean by "estimated revenues"; whether the governor can use his own estimates, whether they must be accurate to within some reasonable percentage of the actual income, or whether he should consult with the legislature and agree on some estimated revenue. But, the main point is that it seems as though this matter might be better left to the legislature rather than included in the constitution.

Moving on we get to the matter of the same date. I think the minority argument there is quite sound, about attempting to require the governor to submit these appropriation bills on the same day. Just to illustrate, Mr. Karn, if I may, how simple this could be if we did not attempt to write so much detail into our constitution, on line 10, you say:

> On the same date, the governor shall cause to be submitted to each house of the legislature general appropriation bills to embody the proposed expenditures and any necessary bill or bills for new or additional revenues to meet proposed expenditures.

Then down below on line 17:

> The governor, prior to final action of the legislature thereon, may cause to be submitted to the legislature any amendments to the general appropriation bills, and shall cause to be submitted any bills to meet deficiencies in current appropriations.

The whole matter could be handled so much simpler if we just said, "The governor shall cause appropriation bills to be submitted," without specifying a time, because then you would embody or embrace the requirement that he submit, first of all, his appropriation bills, and later on any adjustments that have to be made. But when you begin to spell it out, you may be causing some difficulty when he finds that he can't fit into this pattern, and you have left no freedom for the legislature to make any changes; and this is the problem.

We are attempting here to write into the constitution procedures, and procedures don't always work under all circumstances, and you are providing no flexibility for the legislature to make corrections, if it should be found that these procedures will not work. It just doesn't seem advisable to write procedures into the constitution. Another question, of course, that bothers me, and I would like to direct this—

MR. KARN: Mr. Austin, may I make a comment before you go on, please?

MR. AUSTIN: Certainly.

MR. KARN: Mr. Chairman, if I may, please?

CHAIRMAN MILLARD: Mr. Karn.

MR. KARN: To file the bills on the same date—I would like to comment on that—it is your understanding that in the past the budget has been submitted and then, from time to time and over a period of time the appropriation bills were not submitted to the legislature, but I believe it has been the habit for the bills to be handed to various individual legislators who, in turn, will put them into the mill, and that means that the bills implementing the appropriations are scattered over a period of time, all of which creates delay in the consideration of these bills. We think the committee thought that it was quite important to have the bills accompany the appropriations, and this is not unusual. This is followed in other states. It has been rather effective where it is handled, and you have something certain in the way of a program before you at the beginning of the legislature. If this is not done, it is our opinion that there will be delays as there have been in the past, which we do not believe is in the best interest of the legislature.

The next item that you mention has to do with submitting amendments to the budget. Again, I think you realize, Mr. Austin—and I am quite sure that the delegates do—that when the preparation of a budget is started, let's say, the first of July in a given year, it is completed in January of the second year or early February, there may be, at times, quite serious changes in the budget from its original preparation. There may be things that are urgent that were not considered and included in the budget in the beginning. There are other items that may not be considered as the same necessity as they were considered in the preparation of the budget, so that there must be adjustments made in the budget. This gives the governor the right and the power to make such changes as are deemed necessary, and again, we believe that it is important. There is perhaps quite a bit of verbiage in this proposal, but knowing some of the methods that have been followed, it is the thought of the committee that this should be spelled out in quite a bit of detail in order that it may be implemented.

CHAIRMAN MILLARD: Mr. Austin.

MR. AUSTIN: Well, Mr. Karn, wouldn't it be better to leave it to the legislature to spell out this detail, so that if it is discovered that these procedures won't work, adjustments could be made and new procedures instituted, rather than attempting to do this now in the constitution with no opportunity to change if it should be found unworkable?

MR. KARN: Mr. Chairman and Mr. Austin, the majority of the committee did not agree with your statement.

MR. AUSTIN: Thank you. May I continue, Mr. Chairman?

CHAIRMAN MILLARD: Continue, Mr. Austin.

MR. AUSTIN: Now we move down to line 16. I should read that whole sentence:

> The amount of any general fund surplus created or deficit incurred during the last preceding fiscal period shall be appropriately entered as an item in the budget and in the appropriation bills.

The language there at the end of that sentence bothers me considerably, when we say, "and in the appropriation bills." In other words, we are asking that we include in the appropriation bills—am I to understand—an additional appropriation bill for a deficit? If I understand the procedures for appropriating moneys by the legislature, the legislature appropriates expenditures and if these appropriations should happen to exceed the revenues, we will have a deficit. But those items will already have been appropriated. I am just wondering what is meant there about including among the appropriation bills a bill for any deficit.

CHAIRMAN MILLARD: Are you directing a question?

MR. AUSTIN: Yes, I am, to Mr. Karn. I am still addressing my questions to Mr. Karn, Mr. Chairman.

CHAIRMAN MILLARD: Mr. Karn, you may answer.

MR. KARN: Mr. Chairman, Mr. Austin, the situation here

is that—I think I am correct in making this statement—the state of Michigan has not paid too much attention to deficits. As a matter of fact, I think at any particular time it is difficult to find out what our deficit might be, because our accounting is not quite that tight. The committee believed that it is important to do something about the deficit in the state of Michigan and its financing, and at the same time, if you have a surplus in any given fiscal period, that surplus should be dealt with. So our suggestion here is that when you come to the end of a fiscal period and the new budget is being prepared for the new fiscal period ahead, then any deficit that exists at that time will be included in the budget for the coming fiscal period and will be eliminated by raising sufficient funds to pay it off, and if there is any surplus, that also comes into the budget and is revenue that can be used for other purposes.

MR. AUSTIN: Mr. Chairman, Mr. Karn, I do understand including the deficit in the budget, although I don't agree, necessarily, with this procedure. But what I don't understand is why we are requiring, in the constitution, that an appropriation bill be included for the deficit. This is the confusing part of it. The appropriations have already been made. That is the only reason why we have a deficit, because appropriations in the preceding period exceeded revenue, so we have already appropriated the revenue. Why do we now want to include another appropriation bill?

MR. KARN: To raise money to eliminate the deficit.

MR. AUSTIN: I want to confess, Mr. Chairman and Mr. Karn, that that is still a little bit confusing to me. I want to ask another question, again in connection with this same sentence. How is the surplus to be determined? Since we are including the surplus in the constitution, I am just wondering if we should not, at the same time, indicate how it is to be defined. I realize that it is very difficult to define surplus and I would not want the job of defining it, but again it points up the difficulty of attempting to write legislation into the constitution. My question, of course, is: should not the surplus be defined since we are stating that surplus should be included in the budget and also in the appropriation bills?

MR. KARN: Mr. Chairman, Mr. Austin, Mr. Austin is an accountant and I think perhaps he can answer his question better than I can, but as I understand the meaning of surplus, it is the surplus of revenues at the end of a period, in this instance, over the expenditures.

MR. AUSTIN: Accumulated or just for the year?

MR. KARN: Yes, for the year. I am talking about the year only. This deficit and surplus is for this fiscal period only. It is not accumulative.

MR. AUSTIN: Very well. Thank you very much, Mr. Karn. I think that these are perhaps all of the questions—I have some other questions but it seems to me that we do have some detail here that we could get along better without, and it would seem to me that if you will read the draft submitted by the minority, which sets up in general language what we would like to have done here, it would be better to have that in the constitution rather than this detail which I think will lead to a lot of problems. I would certainly suggest that we support the minority amendment on this.

CHAIRMAN MILLARD: The Chair recognizes Mr. Brake.

MR. BRAKE: Mr. Chairman, ladies and gentlemen, there are some things that have been said about which I wish to—

MR. MARSHALL: Mr. Chairman, does Delegate Brake rise to ask a question? I still have the floor. I yielded to Delegate Austin.

CHAIRMAN MILLARD: All right.

MR. MARSHALL: I am sorry, Delegate Brake. At this time, Mr. Chairman, I would like to yield to Delegate Snyder.

CHAIRMAN MILLARD: Delegate Snyder.

MR. SNYDER: Thank you very much. Mr. Chairman and fellow delegates, I want to thank Mr. Austin for laying the foundation for the committee to act upon the minority report amendment. I think it is very obvious that the tone of the questions and answers have developed that we do have here an area where the matter is not delineated as clearly as it should be, and rather than to resolve the problems as we should be doing at the present time, we are opening up a field of unknowns that will come back to plague us in the future.

I am very much concerned, fellow delegates, by what I feel is the jeopardy which we are putting the separation of powers into by this move. Of course, it is quite academic to all of us that we must maintain the legislature as a separate unit and the executive branch as a separate unit and the judicial, and I hesitate to even mention the word "judicial" this morning after 3 weeks, but I do say this: we do have a definite responsibility here to preserve this separation and when we set up a series of circumstances, as we have in the majority proposal—and the minority will attempt to correct the circumstances—we have a situation here in which the governor must act upon his messages with a pistol at his head. He must act with the full realization that somewhere down the line a magic number of 21 days has been picked out, and at the conclusion of 21 days he must come up with a final proposal. If he does not come up with a final proposal, then he must appear before another branch of government and ask that they, in their wisdom, give him the consideration so that he can have the appropriate extension. I think that this is basically wrong. I do not know how the majority of the committee did come up with the magic number of 21 days, but I submit to you that this will create a very serious problem to the person attempting to come up with an adequate proposal. Of course, the option is given to the governor that he can make subsequent submissions, but I think you are all familiar with legislative procedure, that there are certain times set in which you can no longer put in new appropriations. These then must come as riders to the original bills.

Recently at the convention here we had some discussion on a committee that would handle our post convention work. During the committee on administration meeting, I posed a question of whether or not we had been timely in this submission, and it was pointed out to me that the deadline date had passed. However, the legislature could add onto this bill. It was pointed out to us that the appropriation could be tacked on to a mental health or some other issue of this sort. Again, I submit to you, if we must take additional appropriations and tie them in with other deserving requests, then we are putting both units in jeopardy. For this reason I feel it would be a most unfair restriction to put the 21 day limitation in. Those of us who are active in government back home know this, that budget items are not a year to year item. Any of us who are concerned in the handling of public funds know that in order to utilize these funds at their optimum benefits, we must have long range planning. You do not work from a year to year basis. You work sometimes on capital improvement programs for 10, 15, and even 20 years. This way you can get the optimum use of your money. You can combine sums at a time and use them from year to year in the area where they are needed the greatest.

It is my understanding of the proposal submitted by the majority committee and the errors that the minority will try to remove, that you have an annual accounting, that prior to any action being taken you must dispose of the surpluses of the previous year. This would be wrong. This would take away any inducement that the departments or any other groups would have to combine their money and use them over a 5 year period. To illustrate the point, here we may have a line item on a question of fuel, and if we had a mild winter and did not use the fuel appropriation, fine; we would have a surplus and this surplus would be absorbed. However, the following year we would have a cold year in some of the departments and then we would not have enough money and this would create a situation where we would have to go back and ask for additional money. This I say to you would add immeasurably to the work. Rather than streamline the government as is our obligation at this convention, we would be creating additional work for the legislature and the governor.

I say this, that on the surface this is a very innocuous

looking proposal, but it is new language and it is something that would change entirely the concept that we have at the present time. We have had advanced before us at several times this proposition: if it is going to be new, it is going to be untried and unproven, and if there is area for error in this language, then this should not become a constitutional matter. This is properly a statutory matter, so that the legislature, at their annual sessions, can tailor, correct, and amend the language as the errors become apparent. I would heartily encourage the support of the minority report amendment because I feel that this would accomplish the objectives that the majority report is trying to accomplish, but at the same time does not open up the area of confusion and error that we would have to come back and correct, I am certain, before the 50 year limitation for the constitutional convention is over with. Thank you.

CHAIRMAN MILLARD: Mr. Marshall.

MR. MARSHALL: Mr. Chairman, that concludes the report of the minority, and again, I urge the delegates to give serious consideration to the statutory nature of the majority proposal and also the restrictions and limitations placed therein. We believe that the minority report amendment, which says that the governor shall submit to the legislature at a time fixed by law, leaves it to the discretion of the legislature to fix the time by submitting his budget through this medium; and leaving it to the discretion of the governor and the legislature will work better in the years to come and will be in the best interests of all concerned. Thank you.

CHAIRMAN MILLARD: The Chair recognizes the chairman of the committee, Mr. Martin.

MR. MARTIN: Mr. Chairman, members of the committee, just a brief comment on 2 or 3 of the things which have been said. It has been said that this is legislation or this is legislative language. The committee feels that this is not too much language to achieve the very real objective which we have. The objective is to get some order and some force into the idea of a budget submitted on time and appropriation bills submitted on time, so that the legislature doesn't lie around here waiting for weeks and weeks for the governor to get his proposed bills in. We see no reasonable chance of harm from the limitations or the deadlines that have been provided. So far as the date of submission of the budget is concerned, the legislature is free to change that if for any reason the 21 days does not prove to be entirely satisfactory.

As far as the surplus and deficit items are concerned, this has nothing to do with the accumulated deficit. The accumulated deficit will be up to the legislature to dispose of, and we hope they will dispose of it. This simply relates to whatever deficit has accumulated in the last preceding fiscal period, and that we want the governor to take a look at and to include in his budget for the next year, so that we don't go on doing what we have been doing in the state of Michigan, and that is accumulating deficits year after year after year. This is the real heart of the objection of the minority. They don't want to have to take a look at this deficit and clean it up by good fiscal responsibility. They want to let it ride along through and worry about it sometime in the future, and this is wrong fiscal procedure. It is the kind of way you shouldn't run a government any more than you should run a business that way, and we believe that this procedure will prevent that.

As far as the question of Mr. Austin's comments about expenditures, that proposed expenditures should not exceed estimated revenue, and his question about the meaning of these terms, we are talking about only the best estimates of the governor and the best estimates of the legislature. We realize those cannot be absolutely precise, but we want to know, we want the people to know what the governor thinks the expenditures are going to be, and we want the people to know what measures for raising revenue he proposes, if he proposes to expend more than he estimates will be taken in. Similarly we want, and it is provided later on, to know what the legislature thinks about those 2 things, so that in the future we can get some estimate as to who is right and who is wrong on some of these guesses, on some of these estimates.

The general purpose of the whole section and of the whole proposal is to get some order into this situation and to get some sense of fiscal responsibility into it so that we can operate as we ought to be operating instead of operating with $100 million deficit in the state of Michigan. Until we do that, the record of the state of Michigan—its fiscal record—will not be good, and we will suffer from year to year in the high interest cost of bonds, which every municipal corporation and the state of Michigan has to sell. We are trying to get the state back onto a sensible fiscal basis and this is the reason for this whole executive budget proposal.

CHAIRMAN MILLARD: The Chair will recognize the gentleman from Port Huron, Delegate Staiger.

MR. STAIGER: Mr. Chairman, members of the committee, I would just like to take a minute to stress again what I believe the importance of this section is. As a member of the finance and taxation committee, we heard a good deal of testimony on the fiscal problems of the state, the earmarking situation, and many others. We were looking for ways of solving this problem. In some of our minds on the committee—many of them, I might say—this executive budget will go a long ways in that direction.

I would like to read, just for a second, a short section from a booklet we received, Constitutional Aspects of State Financial Administration, by Mr. Byrd. He states as follows:

> The state of Oklahoma placed budget balancing provisions in its constitution of 1941 that make assiduous use of both control of and appropriations and the execution of the budget. The before and after financial situation of the state shows that drastic action was needed and that the action taken has been effective.
>
> In the 12 years, 1930 through 1941, balanced fiscal operations were achieved in only 2.

That is in 12 years, 2 years they had a balanced budget.

> In the other 10 years, deficits aggregated some 60 million, 57.7 million of which was cleared by a series of deficit funding bonds.
>
> Since 1941—

when they again passed the executive budget procedure,

> —the state has maintained its operations consistently on a balanced budget, a record that certainly cannot be attributed solely to better economic conditions.

Take a look now at the state of Michigan. Starting with 1957, we had an accumulated surplus of $6 million, '58 we went to a $21 million deficit; '59, we went to a $95 million deficit; '60, we went back to a $64 million accumulated deficit; but this was, as the footnote shows on this chart, the year of the sale of the Veterans' Trust Fund totaling $40 million. The following year, '61, we were right back up to $71 million again, and you have read in the papers the estimates for this year, that again there is going to be an additional deficit. I think this clearly indicates that Michigan, too, is ready for some somewhat drastic action in this area. All this does—there is no way of forcing a balanced budget, but this goes a long way to center the responsibility so that the people can see for themselves if we are overestimating our revenues and if so, by whom, and at least they can have the facts before them to make up their minds on where the responsibility should lie for any deficit that is accumulated during any year.

I think that the section, as proposed by the majority, is the section that should be adopted. At one time I had drafted a section for our finance and taxation section, when we had concurrent jurisdiction on this. I personally would have had more of the so called details in it than this. I think, though, that the proposal as submitted by the majority is an excellent step in this direction, and I urge you to support the report.

CHAIRMAN MILLARD: The Chair recognizes the lady from Detroit, Delegate Hart.

MISS HART: Mr. Chairman, I should like to make sure from the chairman of the committee whether or not—obviously, this morning we are going to trust the legislature—we are not going to trust the legislature. This afternoon I am sure that we are all going to be asked to put implicit faith in the

legislature, and it would seem to me that perhaps the committee should have a sign over the seal over here so that the delegates will not be completely confused.

CHAIRMAN MILLARD: The Chair recognizes the gentleman from Detroit, Delegate Downs.

MR. DOWNS: Mr. Chairman, could I ask, through the Chair, a question of the chairman of the committee?

CHAIRMAN MILLARD: If he cares to answer.

MR. DOWNS: This, perhaps, is not major, but I would like a little clarification. In the committee proposal on line 11, it refers to the fact that the governor shall cause to be submitted to each house—then on line 19, you have the same phraseology, then on line 18 it says "may cause". Our present constitution on legislation, article V, section 19—I will just read the one sentence—says, "All legislation by the legislature shall be by bill and may originate in either house of the legislature." The question I would like to ask the chairman is, would this section, if adopted, the committee proposal, permit a new form of introduction of bills, namely by the governor rather than a member of the legislature?

CHAIRMAN MILLARD: The Chair recognizes the chairman of the committee, Mr. Martin.

MR. MARTIN: Mr. Chairman and Mr. Downs, the answer to that is that it will not permit and is not intended to do so. This is the reason why the words "cause to be submitted" are used. If you will notice in line 6, we provide that, "The governor shall submit to the legislature . . . a budget," and this, of course, it is his direct responsibility to do. However, to avoid any question about violation of the separation of powers doctrine, bills have to be submitted by members of the legislature. So that we are not proposing that the governor shall become a legislator, in the sense of being able to submit bills as any legislator. He has got to submit those through members of the legislature.

MR. DOWNS: This would assume that the governor would have at least one friend in the legislature that would submit the bill he requested.

MR. MARTIN: That is right. It assumes he's got one friend. If the governor hasn't got that many, why, he will be in trouble.

MR. DOWNS: I see. Well, that answers my question. Thank you. I did think the committee should be clear, when we are making language we often say "may" or "shall". I assume from the answer there is really no way to enforce it, but it is really a directive to the governor to direct a member of the legislature or request him to do something which could not be forced.

The other comment—and I had not planned to speak on it—was the matter of a deficit and the current one. I had assumed that we had disposed of the discussion, at least, if not the deficit, in the report from the finance and taxation committee, but apparently this has raised its head again. Again I would just like to point out to the committee that looking at the past and even at the future, our convention has not so far raised 1 cent of revenue. We are simply trying to create a framework in which to establish that and establish budgeting.

If my memory is correct, past governors—and of both political parties—have, in their messages, submitted estimates and means to balance income with outgo. Whether or not this should be done on a yearly basis or a long range basis is not before us. I just submit again to the delegates that it is the legislature which finally passes every tax measure and which passes every appropriation measure. I do not like to see the chief executive be made the whipping boy of any deficit. I think we do want a sound fiscal policy. I have favored our principles of short range borrowing, and if necessary, long range borrowing, but I do not think it is a sound approach on the committee floor to intimate that the governor is solely responsible for revenue income and outgo. If we want, really, to place that responsibility solely in the governor's hands—and I am not for it—I say it can be done. We can simply say if at the end of any year there is a deficit, the governor shall be empowered and required to make a tax provision that will take care of that deficit for the next year, and pin the responsibility clearly on him. I want to make it clear that I do not recommend that, but if delegates keep talking about the responsibility of the governor to balance the budget, well, then, let's give him that responsibility, even though it violates principles of sound government of having this done by legislation. If on the other hand we continue to have tax bills and appropriations the responsibility of the legislature, let's clearly state that that is their constitutional responsibility.

CHAIRMAN MILLARD: The Chair will recognize the gentleman from Owosso, Delegate Bentley.

MR. BENTLEY: Mr. Chairman, a comparison between the majority and the minority proposals would seem to indicate that there are 5 specific portions of the majority proposal to which the minority is objecting. Those are specifically the setting of the 21 calendar days deadline for the submission of the budget, as contained in line 7; the requirement that expenditures and revenues must balance, in line 10; the requirement in lines 10 and 11, that the appropriation bills have to be submitted on the same date as the budget itself; the rest of the section, beginning at line 14 with the requirement that the amount of a surplus or deficit in the general fund be included as an item in both the budget and the appropriation bills; and, finally, the authorization to the governor to submit amendments to the appropriation bills prior to the final action of the legislature thereon. Those are the specific portions of the majority proposal which the minority would propose to eliminate. Those other portions, Mr. Chairman, have been covered and may be further covered in discussion.

I submit that there is one, I think, rather important point that, as far as I am concerned, represents the essential difference between the majority and the minority positions, and that is the requirement in line 10, that proposed expenditures shall not exceed estimated revenues. I think we have already heard from members of the minority their feelings in this particular matter. They claim that they are not necessarily opposed to a balanced budget, but instead of requiring that this budget be balanced on an annual basis, they are willing to have it balanced over a so called cycle period, or a long term, be it 2 years or 5 years or whatever it may be. This attitude on their part, Mr. Chairman, is borne out by the last sentence of the minority supporting reasons on page 541 of the journal, which state, and I quote:

> For example, adverse economic conditions might warrant the incurring of a manageable deficit until it could be liquidated under more favorable economic conditions, but under this proposal any increase in state expenditures might have to be financed by additional taxes even though this may adversely affect economic recovery.

I think, Mr. Chairman and members of the committee, that perhaps this, very simply, is the matter before us in the consideration of this first section.

Do you feel, and I am speaking now collectively to the members of the committee of the whole, do you feel that when we have a deficit, be it manageable or unmanageable—and that, again, might cause some question of definition—that it should thereby be taken care of by increased revenues or increased taxes or are you willing to look 5 or 10 years into the future and say we must balance this over a cycle period? We can accept deficits in certain years; we can hope for surpluses in future years when business conditions are better, and therefore we can live with deficits, we can use our surpluses in the future if they should occur, to make them up. I happen to have been exposed first hand, Mr. Chairman, to that kind of a theory on the national level for some years, the so called theory of balancing a budget over a cycle, and I think we have right here, at the present time, the conflict between the so called cycle theory of balancing the budget and the idea which I personally subscribe to, as a member of the majority of the committee, that whenever and wherever possible budgets should be balanced on an annual basis; if the final result of one fiscal year shows a deficit, we have thereby got to take care of that deficit in the next year and not hope for wishful

and perhaps impossible surpluses in the future to take care of that situation. I think that is the situation before us; and I think of all the parts of the majority proposal to which the minority, perhaps, most strongly objects is this specific requirement in line 10, that proposed expenditures shall not exceed estimated revenue, and that, according to the majority, is to be done on an annual, not on a cycle basis.

CHAIRMAN MILLARD: The Chair recognizes the gentleman from Stanton, Mr. Brake.

MR. BRAKE: Mr. Chairman and ladies and gentlemen, 2 or 3 comments on things that have been said. In the first place, this matter of the 21 days. I think we should keep this in mind, and it is fundamental here. The work upon and the final passage of the appropriation bills determines the length of each legislative session. Everything else can be done within the time that it takes the finance committees to complete their work. It costs money to keep the legislature in session, just the same as it costs money to keep us in session here, so the quicker they get started at it, so much the better for the taxpayers and so much the better for the legislators. If I were drafting this I would have said, on the opening day of the session the budget and the bills should be ready. There is no more reason why the head man in the state cannot be on time than anybody else, with the one exception of a new governor coming in. And, as things look now, that will only be once in 4 years, at the very fastest, and probably much less than that. The governor can just as well be ready at one time as another. The statute has called for 10 days after the session opens. That has been habitually disregarded or regarded only in form and not in substance. This says "21 days or as otherwise fixed by law". The governor has plenty of help. There is no reason why he can't be on time so the legislature can get to work and get its work done.

The matter of separation of powers has been emphasized by Mr. Snyder. That was in this picture under the first drafting of this proposal. That was one of the problems we had to work out among the 3 committees, and it has been completely worked out. The governor's authority stops when the budget and the bills get to the legislature. From there on, it is their responsibility. His influence doesn't stop. We know that. We expect the governor to go on and get his ideas enacted into law, if he can do so, and that is proper. But his legal authority stops when the legislature gets control of the budget and of the bills.

I want to talk to you about what I think is the real problem we are trying to meet here, and as has already been said, the detail we have in this proposal is detail that is required by Michigan experience, and what I am about to say also is based on Michigan experience. We might be confused by trying to fit other state experience into this part of the picture, because we have not had, here in Michigan, the same kind of a picture in this fiscal matter that generally prevails and in recent years we have not had, in Michigan, the same kind of picture that has usually prevailed in Michigan. Ordinarily in all states and in the long range view in Michigan you have a legislature trying to spend and a governor trying to hold them down. That has been reversed for years in Michigan. The thing that has had more to do with the deficit that we are running, and that we regret, than all the earmarking we have been talking about here, for years past, is that the governor makes an estimate of what the revenues are going to be. That is an official estimate.

The legislature, or at least the legislative finance committees, make an estimate of what the revenues are going to be. The governor's estimate has been almost always, almost always higher, and much higher than the legislative estimates. Not only that, but very consistently—I am talking about not the governors of just one party or any one governor—almost consistently, the governor's estimate of income has been higher than experience has carried out. In other words, the estimates have almost always been overestimates. Legislators are human, the same as governors. I am not going to say why the governors overestimate the income. Let's just be charitable and say they see the need, they want money, they estimate high, hoping that the expenditures will be made. All right. The legislators, being human, have all too frequently taken the easy way out. While they have not thought that the revenues would be as high as the governor has estimated, they have said, "Well, the governor says we are going to have this much money, the pressure is on for the spending, let's spend it," blaming the governor if the thing doesn't hold up. That isn't right. It doesn't work out financially, but that is the kind of thing that has been going on. While their own estimates were lower, they have relied on the higher estimates of the governor, and resulting deficits.

Let me say this, maybe it's got nothing in particular to do with the issue, but nobody comes down to see the legislature saying, "Don't spend money." Everybody comes down to the legislature saying, "Spend, spend, spend." All the time it is more expenditures. They yield to it, relying on the governor's estimate rather than on their own, more conservative estimate. This proposal is going about as far as you can go in language to prevent that kind of thing. The governor will be required to make his statement of revenues just as he has in the past, but also the legislature is required to say, "Our estimate is so much." That they have not done officially. You just found it out, unofficially, in the past. We think this is going to balance things up and get things under control in a much better way.

CHAIRMAN MILLARD: The gentleman from Detroit, Delegate Downs.

MR. DOWNS: Mr. Chairman, I hesitate to make predictions for the next 50 years, particularly when the chairman of our committee on emerging problems is in the Chair, but I would just make 1 or 2. The first is that the tone of this language is that each year the budget shall be balanced. I think that there may be tendencies—the previous speaker to the contrary notwithstanding—when a legislative body in a good year might wish to set aside a surplus for the lean year. I think, psychologically this tends to discourage it. But the prediction I will make, and will make very clearly, is that if in no year the state of Michigan can provide, on a reasonable basis, for a reasonable deficit for conditions beyond its control, that once within the next 50 years there will be some sudden shift in defense production where there is immediately economic hardship in Michigan that is not the cause of labor, management, Democrats, Republicans, but just something shifting in our national economy, and that local communities, whose revenues will go down, will go to the state, and the then governor, whoever he may be, will be approached by local officials and he will wring his hands and say, "Gentlemen, I would like to help you but the constitution precludes it," and the committee seeing him will then ask he join them and they go down to Washington and Washington be asked to solve the problems. If this convention wants to shift more and more of our economic responsibility onto Washington, go ahead and do it, but I for one want to see that the state, so far as possible, meets our problems. When we can't, we work with the federal government to meet them. But I feel this will have a negative impact upon those, on a short range basis, who want to meet state emergency problems.

CHAIRMAN MILLARD: Delegate Austin, you were out. Would you wish to be recognized now?

MR. AUSTIN: Yes, I do, Mr. Chairman. Thank you. I had a long distance call that I had to take. I am sorry that I had to absent myself at that time. Mr. Chairman and members of the committee, I would like to just summarize my own views on this matter, and before doing so, I would like to make a political reference—this is the first I have ever made on this floor and I feel somewhat apologetic in doing so. It just happens that those who have spoken in opposition to the committee position and in favor of the minority position have been Democrats, and I am sincerely hopeful that the members of the committee will not get the impression that this is intended as a political matter. It certainly is not my position. I feel very firmly that what we are discussing here is just a question of whether to include in the constitution legislative detail that may not work.

In regard to the 5 points raised by Mr. Bentley, I would like to make it clear that I am not necessarily in opposition to the

points. It is just a question of whether they ought to be included in the constitution. We haven't necessarily argued the merits of these points. This is something that I think would better be argued on the floor of the legislature, as to whether we should include 21 days in the constitution; it is certainly my feeling that we should not include a figure of 21 days in the constitution. We ought to leave it to the legislature, and especially if the legislature is concerned about when the governor ought to submit his budget. Let the legislature decide when it wants the budget. It has that power in the constitution now, and it ought to retain that power.

I certainly don't see how we can include in the constitution the requirement that expenditures shall not exceed estimated revenue. It is possible that the legislature may, from time to time, decide that it would like to have the revenues equal the expenditures, but there may be occasions when the legislature may be satisfied with a budget that is nearly balanced, because of economic circumstances. I don't mind telling you that it is my feeling that the position on whether the budget should be balanced will be governed somewhat by economic conditions.

Another problem that we have is that we are insisting, in the majority proposal, that the deficit be included as an item of the budget. If the deficit is included—that is, the deficit from a preceding period—in the budget, then would this contribute to the deficit for the current year? Let me be a little more explicit. Let's assume that our expenditures for a given year—I am talking about the general fund now—would be $650 million, and our revenues are going to be $700 million. We have a deficit from the preceding year of $100 million. What we are proposing is that we add the $100 million to the $650 million of expenditures, so that total expenditures, presumably, will be $750 million. The result will be a deficit of $50 million. Is this to be the definition of deficit or would that year actually have a surplus? I give this example merely to show that to use the term "surplus" and "deficit" without in some way indicating how it is to be defined, we are merely confusing those who will be required to interpret these provisions in the constitution. I certainly feel that we ought to eliminate that reference to a double appropriation. I think I made that very clear when Mr. Karn and I had our little colloquy on the floor.

It is my firm conviction that the language offered in the minority report amendment is just about all that we ought to include in this section a to make it workable, practical. I think if we add any additional language we are merely going to create problems for both the governor and the legislature, and I certainly hope that you will vote in favor of the minority report amendment.

CHAIRMAN MILLARD: Delegate Marshall.

MR. MARSHALL: I had not intended to speak again on this, Mr. Chairman. I want to echo the remarks made by Delegate Austin and at the same time point out that while we are dealing with section a, all of these sections are related one to another, and Mr. Bentley's remarks actually went to a, b, c and d, in effect. No one could quarrel, I guess, with the intent of the remarks made by Delegate Bentley, but I would like to point out a few facts. The majority report, of course, contemplates a balanced budget, but no more than balanced from the present into the future. This would be accomplished, of course, by requiring that the deficit and surplus reported for the previous fiscal year be the first item, respectively, on the appropriations or revenue side of the new year's budget. The fact that this procedure is actually impossible, if interpreted literally, is ignored in the discussion here on the floor. Assuming this is correct, then there can be no gradual liquidation of a deficit or consumption of a surplus over a period of years under the committee proposal.

Taking the fiscal facts as they actually exist, presently the application of the proposal to the budgetary process for the fiscal year 1962-63 would produce the following results: the general fund deficit, at July 1, 1961 was $71.7 million. This will be augmented by June 30, 1960, because of the gap between revenue and obligations during 1961 and '62, by $25 million. The amount of revenue in 1962-63 which must be set aside before making any operating appropriations, in order to be in balance at the beginning of the fiscal year 1962-63, is $96.7 million. Before proposing any change in revenue or expenditure patterns in 1962-63, we must also anticipate the same gap between revenue and expenditures for 1962-63 as occurred in 1961-62.

There are some activities which produce increased requirements within themselves, without any increase in scope—such as veterans' homestead exemptions, retirement, O.A.S.I.—so use the hypothetical figure of $10 million. This is the amount of new revenue to be provided, or the measure of the reduction in existing appropriations just to stand still under the proposal. It would require $131.7 million. Even if the existing accumulated deficit of $71.7 million is ignored, the appropriation revenue gap going into 1962-63 would be $60 million, all of which must be covered in the single year 1962-63 under the committee proposal.

If, as has been the case, the legislature ignored the gap and under another proposal required the governor to reduce appropriations to match revenues, his choices are indicated as follows: the total general fund expenditures, from both general purposes and restricted revenues, was $672.7 million. We have exempted by constitution or pledge to the courts, legislative debt service, $23.5 million; revenue producing agencies, such as liquor merchandising, regulatory revenue, and any reduction in expenditure which also reduce revenues, $17.6 million; other priorities, civil service, retirement, workmen's comp and other fringe benefits, $13.9 million; constitutional grants to primary schools, sales tax to local units, $112.4 million; federal-state matching grants, vocational education, vocational rehabilitation, health, T.B., crippled children, old age dependents, blind, disabled, conservation, all of these, $119 million; other statutory grants presently, intangibles, racing, drivers' training, junior colleges, operator and liquor licenses, direct relief, veterans' homestead, agricultural, aeronautics, waterways, highways, schools, et cetera, $100.1 million; institutions, the University of Michigan, Michigan State University, Wayne, and other educational institutions, $208.4 million; all other, the administrative costs of all state services including the governor, treasurer, general department of administration, secretary of state, state police and military, $63.2 million.

Actually, therefore, the governor has only $63.2 million available to plug a gap of $60 million. And to do this, he would have to terminate—mind you, to do this, he would have to terminate every state activity in the executive branch except the institutions, obviously he cannot open and close the institutions overnight depending on the productivity of an established revenue base. He cannot—we all should recognize it—cut back in the other areas unless he ignores the constitution or suspends the laws. The further the budget moves into the fiscal year, the less of the $63.2 million he has left to make any adjustments.

Again, we have spent considerable time on this and I don't want to take any more of your time, ladies and gentlemen, but give serious consideration to the statutory nature of the majority proposal. Give serious consideration to the obvious attempt to write into the constitution a balanced budget—even though it is desirable by all of us—when it won't work under the committee proposal. Give consideration to taking away, as you are, under this proposal, the discretion of the legislature and the governor to work these problems out. Again, I strongly urge you to use your own minds in this one and your own thinking, and ignore the suggestions of the leaders of your caucus. Thank you.

CHAIRMAN MILLARD: The question is on the minority report amendment. Do you desire to have it read? Mr. Faxon.

MR. FAXON: Mr. Chairman, fellow delegates, I have been just, the last hour and a half, going through one constitution after another in an effort to find some reference to this material which is being presented to us today, and I have only gotten as far as the state of Ohio. But in doing so, I have found only one state which spells out any detail on the

submission of a budget in all the detail that we have before us, and that is the state of California which, as many of you know, has one of the longest constitutions of all 50 states, which goes to considerable length in every area of government.

We are here to write a constitution that is going to provide a flexible framework for the future operations of state government. We are not here to write a constitution which is based upon the last 5 years of Michigan's experience. I ask you to take into account the experience of all the other states. All of them, with the exception of a few, leave out of their constitutions details regarding the submission of the budget and the request for future appropriations, and they do this because in the wisdom of these other states and in the wisdom of the whole United States, it has been found that things of this sort change in time, and to fix them into the constitution will date our document more than anything else will in 40, 50 or 60 years. We cannot write a constitution that is based upon a bad picture that may be in Michigan this year, last year, 5 years ago; a bad picture that was not in Michigan 10 or 20 or 30 years ago; a good picture in Michigan that may be 10 or 20 or 30 years hence. This is not a valid means of correcting a situation. As I have heard the arguments advanced, we are attempting to solve the problems which are not constitutional in nature. The problem of balanced budgets and expenditures, as far as this particular area is concerned, has been traditionally left with the legislature in Michigan. I think we ought to feel sufficient confidence in the legislature to leave it to their discretion again. There may be changes made. They may need to change some of these items.

In support of the minority report amendment, it isn't something that the Democrats have just pulled out of thin air. This is something which is totally new in our constitution. We ought to be very careful as to what we spell out. The model state constitution uses similar language, but even less restrictive than this. All we are asking here — and I hope that many of you have not yet determined your position — is that you consider the changing nature of our society, consider how times have changed just within the last 50 years, and realize that our responsibility to posterity is to provide something that they can look to in 50 years and feel confidence in, too. We can't do that when we spell out details, no matter how wise these details may appear in the light of today's world. In the light of today's state, we can't do it either.

A conservative position would be one that would say, tread very lightly on new grounds; and this is something new in the constitution. It has not been in Michigan's constitution of 1908, 1850 or 1835. This is something new. Let's go very easy on it. Let's not provide restrictive details. Let's give a — if we want to give this recognition, give it recognition, but let's not act as the legislature and fix into the constitution something that will not be able to be changed in years to come. I urge you to give your attention to the minority report amendment in the light of these arguments and to vote in favor of it.

CHAIRMAN MILLARD: The Chair recognizes the gentleman from Jackson, Delegate Karn.

MR. KARN: Mr. Chairman and members of the committee, just one brief statement. Mr. Marshall had quite a detailed accounting report. I understood, however, that in dealing with the deficit he was taking the entire deficit that would exist at the end of this fiscal year into next year's accounting. However, on line 14 it says, "The amount of any general fund surplus created or deficit incurred during the last preceding fiscal period shall be appropriately entered. . . ." We did give thought at one time to specifying the number of years over which an accumulated and accrued budget could be retired, but we gave that up, and that is in the hands of the legislature. The thing that is to be considered here is only the current fiscal period deficit.

CHAIRMAN MILLARD: The Chair will recognize Delegate Howes.

MR. HOWES: Mr. Chairman, fellow delegates, I rise to support the majority proposal and to oppose the minority report amendment. I believe an overall statement of sound fiscal policy and procedure should by all means be set forth in our constitution as a definite guideline in the financial operation of our state government. As our individual businesses have definite guidelines as to good business procedure, so our state government should have definite guidelines pertaining to good government procedure. I believe the majority proposal sets these guidelines in clear, concise language, and I urge the delegates to support the majority proposal and to oppose the minority report amendment.

CHAIRMAN MILLARD: The Chair recognizes the chairman of the committee, Delegate Martin.

MR. MARTIN: Mr. Chairman, I think we have presented the points of view on both sides. I would like to see if we can dispose of this particular matter before the committee rises. If we are ready to vote, I suggest we go forward with that and then we will rise.

CHAIRMAN MILLARD: The question is on the amendment of the minority. Delegate Young.

MR. YOUNG: Mr. Chairman, I would like to address a question, through the Chair, to Delegate Karn, if I may.

CHAIRMAN MILLARD: If he cares to answer.

MR. YOUNG: The provision here calls for the inclusion of the deficit from the preceding fiscal year in the budget for the ensuing fiscal year. I would like to know if the budget is to be presented 21 days after the house convenes or the legislature convenes and that will be presumably in January, and will deal with a fiscal year, in terms of today, '62-63, the only way you can determine the deficit of the preceding fiscal year, which is this fiscal year, would be as of the end of that fiscal year in June. So how can the governor, except on the basis of an estimate, include in his budget an estimate or a definition of the deficit for the current fiscal year when he makes his report in January?

CHAIRMAN MILLARD: Delegate Karn.

MR. KARN: Mr. Chairman and Mr. Young, the fiscal period, of course, starts with July 1, and the next budget to be submitted to the legislature by the governor will be the budget for the fiscal period starting July 1, 1962, and running through June of 1963. It is true that at that time the amount of the deficit would be an estimated item, as are many others, but this can be changed from time to time and could be included in the next budget, I am sure.

MR. YOUNG: And then I am to assume the language should read, "an estimated deficit", since it is obviously impossible to give a defined deficit in advance of a determination?

CHAIRMAN MILLARD: Delegate Karn.

MR. KARN: Well, at a time during the year it might be an estimate, yes, but it certainly could be corrected as time goes on, as other items of expense and revenues are corrected.

MR. YOUNG: Well, brother Chairman, I feel that one of the major weaknesses of the majority report here—and I think that on the whole, although this is new language, that an advance has been made in attempting to set forth an executive budget—but one of the basic weaknesses is the attempt to equate a government operation with a business operation, and I don't think that the government of the state of Michigan is a business. The government of the state of Michigan is not founded for the purpose of making a profit. The government exists, presumably, to render services and to offer governmental functions to the people of Michigan. Those governmental functions are not like a business. In times of low income, the services remain fairly static. We cannot do what the operator of an automobile plant might do. When the income is low he will curtail his operation. He might lay off half of his workers. He might even close down. We certainly cannot close down the operation of the state of Michigan in bad times.

Since we are required to take a deficit from the preceding year into the current year—and I assume that the major reason for this deficit would be a falling off in income—and if we are required, then, to carry a steady amount or fairly steady amount of services into the next year, then we must

assume that at a time when the tax revenue is at its lowest point we will have to increase the tax revenue for the ensuing period. The only alternative to that is to cut expenditures to the level of income. For instance, we are approaching a deficit of $100 million for this current fiscal year, as I understand it. As I understand it, the general fund totals approximately ½ billion dollars, or $500 million. What that means is that 20 per cent of the needed income will not be available if we add this deficit. How are we to make up —assuming we will not raise taxes—for that 20 per cent?

An automobile manufacturer could lay off 20 per cent of his workers. Are we to lay off 20 per cent of the school children or shall we release 20 per cent of the prisoners, or maybe we should curtail 20 per cent of the building of our roads. What I am saying is what might be a practical, sound solution to a business operation might prove to be a highly impractical position for the state of Michigan. So I think that, in our eagerness to specify and to delineate the requirements of an executive budget, we have fallen into the trap of confusing our state budget with a business operation, which it definitely is not.

CHAIRMAN MILLARD: The Chair will recognize the gentleman from Kalamazoo, Delegate Allen.

MR. ALLEN: Mr. Chairman, I have a question directed to Mr. Martin, or perhaps to Mr. Karn.

CHAIRMAN MILLARD: Which one, Mr. Allen?

MR. ALLEN: Mr. Martin.

CHAIRMAN MILLARD: If Mr. Martin cares to answer.

MR. ALLEN: The words "the last preceding fiscal period" in relation to, let's say, a deficit, as I would read those words, I would read them as the last preceding the governor's message. That would be a date certain. In other words, if this constitution were in effect and he gives his message the last part of January, he would have a specific deficit he could refer to. Would that be the preceding July to July? If that is so, it wouldn't be a guess. It wouldn't be last preceding the new budget. Am I correct?

MR. MARTIN: That is correct, Mr. Allen. It would be a fixed and definite figure, because the budget would be being prepared from June on and they would have the deficit as of the end of June to work into the budget for the succeeding period.

MR. ALLEN: So, actually, then, your deficit refers to a year back?

MR. MARTIN: It refers to the last preceding fiscal period in which the deficit has been established, yes.

MR. ALLEN: Yes, Thank you.

CHAIRMAN MILLARD: The Chair recognizes the delegate from Muskegon, Mr. Hanna.

MR. W. F. HANNA: Mr. Chairman, fellow delegates, I was not a member of the taxation committee, but I certainly want to support the majority report from the executive committee, as concerns the executive budget. This language is substantially the language that has been developed over the years by the national municipal league concerning governmental budgeting at city and county levels, and it arose out of the irresponsible financial picture that cities and counties found themselves in during the last depression. If we are to have a responsible legislature, then this type of budget is a must, and history has shown that those cities which have adopted substantially the model cash budget law, and counties that have adopted substantially the model cash budget law, have had good financial stability.

Mr. Young says that thereby you are going to cut down and discharge 20 per cent of the school children or 20 per cent of the prisoners. There are 2 facets to this problem. The first is that your tax structure or system must be so designed to have a maximum stability of revenues. This is your first problem. And our tax structure does not vary in its receipts by 20 per cent. The second problem is that the deficit which has to be incurred is, according to Mr. Martin's answer, and as I read this, the last completed fiscal period, which, by the time the budget is adopted and the taxes are to be levied, some 12 to 18 months in the past. This would not require, as Mr. Marshall implied, a complete funding of the deficit existing at the time of this constitution, but will say to the executive branch and to the legislature, which is equally important, that the financial problems that Michigan has will not be perpetuated ad infinitum, but that we will begin to live as we require cities and counties throughout the country to live, on a basis that your budget must be balanced insofar as possible. In every budget there are some items which can be delayed from one fiscal year to another, and it is those items that history has shown that city managers or mayors or county managers or county administrators are able to delay until the next fiscal year.

We are complicating this to the extent that we retain earmarked funds, because you can't cut in on an earmarked area and use that money someplace else. But to the extent that we avoid earmarking, this gives good financial solvency to the state of Michigan, without any harm to the services rendered by the government because of a temporary recession. All of us know that in studying economics since 1900, in our modern economy, serious curtailment of government revenues from a recession in the economic structure of the state seldom lasts more than one fiscal year.

CHAIRMAN MILLARD: The question is on the minority report amendment. Will you ring the bell. All those in favor of the minority report amendment will say aye. Opposed, no.

DELEGATES: Division.

CHAIRMAN MILLARD: A division is called for. Is there support? Sufficient number is up. Ring the bell. All those in favor of the minority report amendment will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the adoption of the amendment proposed by the minority, as offered by Mr. Marshall, the yeas are 41; the nays are 82.

CHAIRMAN MILLARD: The minority report amendment is not adopted. The Chair recognizes Mr. Martin.

MR. MARTIN: Mr. Chairman, I move that the committee do now rise.

CHAIRMAN MILLARD: Mr. Martin moves that the committee do now rise. All in favor say aye. Opposed, no.

The motion prevails. The committee will rise.

[Whereupon, the committee of the whole having risen, Vice President Hutchinson resumed the Chair.]

VICE PRESIDENT HUTCHINSON: The delegate from Genesee, Mr. Millard.

MR. MILLARD: Mr. President, the committee of the whole has had under consideration Committee Proposal 46, on which the secretary will make a detailed report.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 46,** A proposal pertaining to the executive budget and item veto; has considered an amendment thereto; has come to no final resolution thereon. This completes the report of the committee of the whole.

VICE PRESIDENT HUTCHINSON: What is the pleasure of the convention? The Chair recognizes the delegate from Grand Traverse, Mr. Rajkovich.

MR. RAJKOVICH: Mr. President, I move we recess until 2:00 o'clock this afternoon.

VICE PRESIDENT HUTCHINSON: All those in favor of recessing will say aye. Opposed will say no.

The motion prevails and the convention stands in recess until 2:00 o'clock p.m.

[Whereupon, at 11:45 o'clock a.m., the convention recessed; and, at 2:00 o'clock p.m., reconvened.]

The convention will be in order.

SECRETARY CHASE: Mr. President, a quorum of the convention is present.

VICE PRESIDENT HUTCHINSON: **General orders of the day.** The Chair recognizes the delegate from Genesee, Mr. Millard.

MR. MILLARD: Mr. President, I move that the convention resolve itself into committee of the whole for the purpose of considering matters on the general orders calendar.

VICE PRESIDENT HUTCHINSON: The question is upon the motion of the delegate from Genesee. All those in favor will say aye. Opposed will say no.

The motion prevails. The committee will convene and Mr. Millard will preside.

[Whereupon, Mr. Millard assumed the Chair to preside as chairman of the **committee of the whole.**]

CHAIRMAN MILLARD: The committee will be in order. At the conclusion of the morning session we had voted upon the minority report amendment to section a of **Committee Proposal 46.** Mr. Secretary, are there any amendments to section a?

SECRETARY CHASE: Messrs. Faxon and Austin offer the following amendment to section a of Committee Proposal 46:

1. Amend page 1, line 6, after "legislature" by striking out the comma and "not later than 21 calendar days after the convening of each regular session, or"; so that the language will then read:

> The governor shall submit to the legislature at a time fixed by law, a budget for the ensuing fiscal period setting forth in detail all proposed expenditures and estimated revenue of the state.

CHAIRMAN MILLARD: The Chair will recognize the delegate from Detroit, Mr. Faxon.

MR. FAXON: Mr. Chairman and fellow delegates, this morning we discussed the question of whether it was wise to fix into the constitution a definite time for the submitting of the budget. I suggest that you look at this language and see if, in your mind, this giving to the legislature the fixing of the time wouldn't provide the kind of confidence and flexibility which you have permitted in many, many other areas. I don't doubt that it is necessary that some time be allowed, and I am certain that no one disagrees with this idea. The question is simply one of whether it is in the best interests of the state and of the executive budget that a specified time be put into the constitution. In so many other areas, fellow delegates, we have taken out detail like so many days or so many months or such trivia that we had in the old constitution. This is clearly giving to the legislature the right to prescribe whatever time is best and—let's face it—times may change and conditions may change where we need this needed flexibility. I urge you to support this amendment and would at this time yield to Mr. Austin, my cosponsor, for any further comments.

CHAIRMAN MILLARD: The Chair will recognize Mr. Austin.

MR. AUSTIN: Mr. Chairman, I don't believe it is necessary to belabor this point any further. I think we talked on it at length this morning. I agree with Mr. Faxon. It does not seem necessary to include this language in the constitution, especially since we have at the same time given the legislature the right to fix the date. In fact, it might even lead to some confusion. So I would urge the support of this amendment.

CHAIRMAN MILLARD: Mr. Faxon, the floor is yours.

MR. FAXON: I have nothing.

CHAIRMAN MILLARD: You yield the floor?

MR. FAXON: Yes.

CHAIRMAN MILLARD: The Chair will recognize, then, the chairman of the committee, Mr. Martin.

MR. MARTIN: Mr. Chairman, fellow delegates, this is simply a part of the amendment which was offered this morning in the minority report amendment, and I think your reasons for feeling that there ought to be a specific time subject to the right of the legislature to change that time is desirable in this proposal. I hope that you will defeat the amendment.

CHAIRMAN MILLARD: Mr. Marshall.

MR. MARSHALL: Mr. Chairman and fellow delegates, I rise to support the amendment. I think that this is a question that should be left flexible and left to the legislature. I don't know whether this afternoon we are trusting the legislature or not. Our distinguished committee chairman says that the legislature can change this. This is true only to the extent that they can change it downward, less than 21 days. If some occasion should arise—and I realize that it has not been too much of a problem at this point—that they needed more than 21 days, it could not be done. Therefore, I urge that you support the amendment.

CHAIRMAN MILLARD: Mr. Martin.

MR. MARTIN: Mr. Chairman, there is nothing to prevent the legislature from changing in either direction, either up or down.

CHAIRMAN MILLARD: The question is on the Faxon amendment. Mr. Faxon.

MR. FAXON: Mr. Chairman, this is the very point that I was trying to make. There is nothing to prevent the legislature from changing it, so then why put it in in the first place? This is the whole question. If it says, as you read that statement, "or at a time fixed by law", this means that the legislature can change it, so what possible value is there in inserting into that first sentence a specified time when you say in the same sentence that they can go ahead and change it either way? There is no sense here in trying to clutter up the constitution with matter that can be and would be dealt with by the legislature. The legislature could change it a year after the constitution is adopted. Then what have we left? People will read the constitution and see "21 days," and find out that the statutes say something else. Let's try to keep the constitution a basic document of law and not give that detail.

CHAIRMAN MILLARD: The Chair recognizes Mr. Marshall.

MR. MARSHALL: I stand corrected on one statement I made. You do have the language, "or at a time fixed by law", but you also say in the beginning, "not later than 21 calendar days after the convening of each regular session". I am not an attorney. I am one of these—I hold like Delegate Barthwell, an L.S.L., Long Suffering Layman, after going through the judiciary—I think you could get into some arguments over whether or not you could go beyond the 21 days. But, again, I think it is language that is unnecessary and there have been several occasions where we clouded the constitution, we loaded it down with articles that are statutory. In other words, if what Delegate Martin says is true, that the legislature can change this date at any time, then it seems to me that if that is the case the minority report amendment would suffice because it says "at a time fixed by law".

CHAIRMAN MILLARD: The Chair recognizes Delegate Stevens.

MR. STEVENS: Mr. Chairman and members of the committee, I would merely remind the delegates it is common in the United States constitution, to which you so often look for example, to make such a provision and then the phrase, "or as provided by law."

CHAIRMAN MILLARD: The question is on the Faxon amendment. Are you ready for the question? All those in favor of the Faxon amendment will say aye. Opposed, no.

DELEGATES: Division.

CHAIRMAN MILLARD: A division is called for. Is there support? Sufficient number is up. All those in favor of the Faxon and Austin amendment will vote aye and those opposed will vote nay. Have you all voted? If so, the machine will be locked and the secretary will tally the vote.

SECRETARY CHASE: On the adoption of the amendment by Messrs. Faxon and Austin, the yeas are 40; the nays are 71.

CHAIRMAN MILLARD: The amendment is not adopted. Are there any further amendments?

SECRETARY CHASE: Mr. Faxon offers the following amendment:

1. Amend page 1, line 11, after "shall" by striking out "cause to be submitted" and inserting "submit"; and in line 18, after "may" by striking out "cause to be submitted" and inserting "submit"; so that the language in each case will read, page 1, line 11, "The governor shall submit to each house of the legislature general appropriation bills to embody appropriate expenditures," and in line 18, "The governor, prior to final action of the legislature thereon, may submit to the legislature any amendments to the general appropriation bills,".

CHAIRMAN MILLARD: The Chair recognizes the author of the amendment, Mr. Faxon.

MR. FAXON: Mr. Chairman, fellow delegates, I don't mean to take up much time on this. Some of this was discussed this morning. The question is, how does the governor "cause to submit" something. I am aware of the fact that there is some feeling that there would not be a clear delineation of authority between the governor and the legislature, as far as checks and balances are concerned, in not wanting to have the word "cause" to be there.

In the model state constitution it reads:

> The governor shall submit to the legislature, at a time fixed by law, a budget for the next fiscal year setting forth all proposed expenditures and anticipated income of all departments and agencies of the state, as well as the general appropriation bills.

So that they do here say that the governor shall submit a general appropriation bill. We say in the first sentence of the section, "The governor shall submit to the legislature the budget." It is possible—I don't say that this might happen, but it is possible—that the governor may not be able to get somebody to submit, or may not want to have somebody submit his bill, his appropriation bill. Maybe he would rather not have a person take the ball for him. It might be an identification he wouldn't want to have. But, under this provision, he has to cause something to be. This kind of language is very reminiscent of monarchical states where the king causes something to be, and I suggest it might clear it up if we put in "shall", as it is in the California constitution with regard to similar matter.

CHAIRMAN MILLARD: The Chair will recognize Judge Dehnke.

MR. DEHNKE: In all kindness, Mr. Chairman, I want to point out again to all the delegates, this is a matter of language and this really isn't any reason to take up the time of the committee with something that the committee on style and drafting clearly has jurisdiction of and no doubt will take care of.

CHAIRMAN MILLARD: The Chair recognizes the chairman of the committee, Mr. Martin.

MR. MARTIN: Mr. Chairman, this was considered this morning. It was thoroughly considered in the committee. The word "cause" was put in there deliberately so that we would not involve the governor in introducing bills into the legislature as a legislator. I urge your negative vote on the amendment.

CHAIRMAN MILLARD: The question is on the Faxon amendment. All in favor will say aye. Opposed, no.

The amendment is not adopted. Any further amendments?

SECRETARY CHASE: Mr. Austin offers the following amendment:

1. Amend page 1, line 15, after "period" by inserting a comma and "as defined by law,"; so the sentence will then read:

> The amount of any general fund surplus created or deficit incurred during the last preceding fiscal period, as defined by law, shall be appropriately entered as an item in the budget and in the appropriation bills.

CHAIRMAN MILLARD: The Chair recognizes Mr. Austin.

MR. AUSTIN: Mr. Chairman, members of the committee, I don't believe that this is just a language change. I believe it is a substantive change.

I just attended a hearing over at the legislature during the noon hour at which there was a hearing on house bill 508, which seeks to amend the corporation franchise tax bill. The substance of the bill is to change the definition of earned surplus or surplus for the determination of the franchise tax. The item of surplus has been giving practitioners and the corporation and securities commission a great deal of difficulty in arriving at the tax liability of corporations.

This may not seem pertinent, but I merely want to illustrate how difficult it is to define surplus in such a way that it will satisfy all of the people who have to interpret it over a period of years. When the term "surplus" was defined by the public acts of 1921 for corporations it seemed to work well, but there have been developments in the structure of corporations to the point now where the definition at that time no longer is satisfactory, and the legislature at this point is seeking to change it.

What we are seeking to do now is to write into the constitution—not an act—we are seeking to write into the constitution language which would indicate that the amount of surplus has to be included in the budget each year, with no indication as to how the term "surplus" is to be defined. The least we can do is to leave it to the legislature to define surplus from time to time. So I suggest that we include the language, "surplus or deficit as defined by law." That is my argument, Mr. Chairman.

CHAIRMAN MILLARD: The Chair recognizes the gentleman from Stanton, Mr. Brake.

MR. BRAKE: Mr. Chairman and ladies and gentlemen of the committee, Mr. Austin and I spent hours, many hours, I think, at the beginning of this convention in the finance committee trying to work out a definition of surplus. I think at one time, Mr. Austin, we thought we had accomplished what we were trying to do, but we got the fiscal officers of the state in to review what we had said. They knocked it all to pieces and practically told us that the concept changes from time to time, in accordance with accounting procedures, and what kind of accounting procedures you use, and advised us eventually not to attempt any such thing. Our conclusion was, I believe, that we would not attempt such a thing. Now you are proposing to impose upon the legislature what you and I failed to do in committee on finance and taxation. May I suggest that we leave it to the accounting department of state government to struggle along the best it can as it has in the past.

CHAIRMAN MILLARD: The Chair will recognize the gentleman from Kalamazoo, Delegate Allen.

MR. ALLEN: Mr. Chairman, Mr. Austin, I think even if there were merit in what you suggest, I am afraid that by the way you word it what you are doing here is defining "fiscal period as defined by law" rather than "surplus as defined by law." In other words, what are you defining by law by putting the comma after "period"? You are defining, as I would interpret it, "fiscal period as defined by law," rather than surplus or "deficit as defined by law."

MR. AUSTIN: Mr. Chairman, I am very sorry for not addressing my remarks to you.

CHAIRMAN MILLARD: The Chair recognizes you, Mr. Austin.

MR. AUSTIN: Thank you. What I had in mind was the definition of surplus created or deficit incurred. I included the language "during the last fiscal period" because I think that that also will have to be included in the definition, because I think there may be some confusion as to what surplus or deficit during the last fiscal period will mean. If you feel, perhaps, that the insertion ought to be after "deficit", that would be all right with me, but all we are interested in doing is defining general fund surplus created or deficit incurred during the last preceding fiscal period. That is what we want to define.

CHAIRMAN MILLARD: Mr. Allen.

MR. ALLEN: In case your amendment should pass then, Mr. Austin, what you are intending is a definition both of surplus, deficit, and fiscal period?

CHAIRMAN MILLARD: The Chair recognizes the vice president, Mr. Hutchinson.

MR. HUTCHINSON: Mr. Chairman, I would like to ask Mr. Austin a question.

CHAIRMAN MILLARD: If Mr. Austin cares to answer.

MR. HUTCHINSON: Mr. Austin, now then, suppose that we did not include this phrase "as defined by law" in here. These terms, in order to mean anything, will have to be defined somehow and it stands to reason that they will have to be defined by law. You don't have to say so in here, do you? A surplus and a deficit will be the surplus and the deficit which is reflected by the accounting practices of the state, will it not?

MR. AUSTIN: Mr. Chairman, Mr. Hutchinson, if you want to say "as defined by accounting practices of the state", I think that will be satisfactory. My only point is that there ought to be some indication as to how the definition is to be arrived at, because you may have the legislature using one definition and the governor using another, and there ought to be some way of defining it so that all are using the same definition. This is my only point.

MR. HUTCHINSON: Well, Mr. Chairman, I think I see the point but I don't seem to be as disturbed about it as Mr. Austin, for the reason that it seems so obvious to me that when we talk about a surplus or a deficit in government, those are items which are reflected by the accounting procedures, and the accounting procedures are established by law, and that is the only source of information, really, the governor is going to have, as well as the legislature. Whatever those accounting procedures and practices reflect, that is going to be the surplus or the deficit, and the same information will be given to both of them by an agency which is charged with carrying out accounting practices in accordance with the law.

MR. AUSTIN: Mr. Chairman, could I ask Mr. Hutchinson a question now?

CHAIRMAN MILLARD: If he wants to answer.

MR. AUSTIN: I would like to know, Mr. Hutchinson, if you interpret this language to mean that the definition of surplus at the end of a given year will be arrived at after taking into account the surplus or deficit from the preceding year, or will it apply only to the transactions for the year in question?

MR. HUTCHINSON: Well, offhand, not having made the study of that matter, Mr. Chairman, I wouldn't know. But Mr. Austin and the rest of the members of the committee certainly will be quick to recognize that constitutional words and constitutional phrases have different meanings at different times in history, and how that word might now be interpreted. Maybe, in 25 years, it would be interpreted differently, and each one of them would be constitutional, because there is a certain amount of flexibility in that regard simply because constitutional terms do change in their interpretation. Neither one of them would be violating the constitution. It depends on how you interpret it.

MR. AUSTIN: Mr. Chairman, I don't see any basic disagreement between the belief that I have on this subject and that of Mr. Hutchinson. I think our difference is merely as to whether this constitution should indicate, in some way, how these terms are to be defined, and I submit that I believe that in writing the legislative language into the constitution we should at the same time complete it by simply saying that these terms are to be defined as determined by law.

CHAIRMAN MILLARD: Mr. Martin.

MR. MARTIN: Mr. Chairman, at the end of each fiscal year the department of administration makes a determination as to what the general fund surplus or deficit may be. That is all we are talking about and it seems unnecessary. I don't think that is defined by law now and there is no difficulty about knowing what it is at the end of each year. That is all we are putting in here. It seems to me unnecessary to add this additional provision for a legislative definition of that. I think the committee considered the language and the language is adequate to cover what our object was.

CHAIRMAN MILLARD: The Chair will recognize the delegate from Detroit, Mr. Norris.

MR. NORRIS: Mr. Chairman, I don't pretend any competence in this particular area except that I was somewhat moved by Delegate Hutchinson's observations that the meaning of these technical terms may change in a period of some 25 years, and that is precisely what I believe to be the intent of the amendment, namely to recognize that there would be a changing specificity of meaning during the course of time and therefore the legislative wisdom ought to be invoked with regard to avoiding litigation by defining, by law, these terms.

It is, after all, an axiom of constitutional construction that you would be construing terms that had meaning at the time the constitution was adopted, so that that would be the point of beginning. But it may be, as time goes on with changing accounting concepts, that you may want to depart from the meaning that was extant at the time the constitution was ratified. So it seems to me that there ought to be some flexibility here, especially in these kind of terms, and I would support the flexibility and the kind of approach that the sponsor of the amendment intends here.

CHAIRMAN MILLARD: The question is on the Austin amendment. All in favor will say aye. All opposed, no.

The amendment is not adopted. Are there any further amendments to section a?

SECRETARY CHASE: We have another amendment, Mr. Chairman, but before that is offered, may the secretary call to the attention of each delegate that there is a corrected page 2 for this proposal and if you do not have one, the corrected page 2 has section c printed in lower case type. If you do not have one, please signal on the board and the pages will bring you one.

Mr. Austin offers the following amendment:

1. Amend page 1, line 16, after "budget" by inserting a period and striking out "and in the appropriation bills."; so that the sentence will read, "The amount of any general fund surplus created or deficit incurred during the last preceding fiscal period shall be appropriately entered as an item in the budget."

CHAIRMAN MILLARD: The Chair will recognize the proposer of the amendment, Mr. Austin.

MR. AUSTIN: Mr. Chairman and members of the committee, I will confess that this is primarily a language matter which might be handled by the committee on style and drafting, and I will not belabor it. I will simply explain, as I did earlier, that this language is, from my point of view, unnecessary and could lead to confusion because it indicates that we are expecting the legislature, or at least the governor, to include appropriation bills for items that have already been appropriated when we add this language "and in the appropriation bills". We are simply inferring that in addition to the appropriation bills for the current year, he must also include a new appropriation bill for the deficit of the preceding year. That deficit, I submit, arose out of the appropriations for the preceding year, so I don't see the necessity for an additional appropriation.

CHAIRMAN MILLARD: Mr. Martin.

MR. MARTIN: Mr. Chairman, the proposal doesn't call for a separate appropriation bill. The sole purpose of including the words "and in the appropriation bills" in addition to the words "in the budget" is so that both the bills and the budget will reflect the fact that we are taking account of a preceding surplus or deficit. There is no specific appropriation required for this item. It simply has to be figured into either the expenditures that are figured or the revenues that are figured, depending upon whether you are dealing with a surplus or a deficit. That is the only reason for having both in there, and they are both necessary if you are to show in the appropriation bills the evidence of what you are proposing in the budget. We think they are necessary and that they should both be there.

CHAIRMAN MILLARD: The question is on the Austin amendment. All in favor will say aye. Opposed, no.

The amendment is not adopted. Any further amendments?

DELEGATES: Division.

CHAIRMAN MILLARD: A division has been called for. Is there support? There is sufficient number up to have a division. All those in favor of the Austin amendment will vote aye. Those opposed will vote nay. Have you all voted? If so, the machine will be locked and the secretary will tally the vote.

SECRETARY CHASE: On the adoption of the amendment offered by Mr. Austin, the yeas are 34; the nays are 74.

CHAIRMAN MILLARD: The amendment is not adopted. Any further amendments?

SECRETARY CHASE: Mr. Young offers the following amendment to section a:

1. Amend page 1, line 14, after "expenditures.", by striking out "The amount of any general fund surplus created or deficit incurred during the last preceding fiscal period shall be appropriately entered as an item in the budget and in the appropriation bills.".

CHAIRMAN MILLARD: The Chair will recognize the sponsor of the amendment, Mr. Young.

MR. YOUNG: Mr. Chairman, I offered this amendment because I don't think it adds anything to section a that is not already covered in various other sentences of section a, in the first place. And, in the second place, it presents a requirement to the governor and/or the legislature that would be impossible to carry out in times of economic crises, and therefore, might place either the governor or the legislature or both in a position of violating the constitution of the state. If the purpose of this language—that is, the carrying over the surplus or the deficit into the next budget—is to insure that no more money will be spent in a given period or a given fiscal year than is raised, well, I submit that that has already been covered. The first sentence requires that the governor shall present a new budget with an estimated revenue of the state and the proposed expenditures shall not exceed this estimated revenue. Then further on, starting in line 17, the final sentence of section a says:

> The governor, prior to final action of the legislature thereon, may cause to be submitted to the legislature any amendments to the general appropriation bills, and shall cause to be submitted any bills to meet deficiencies in current appropriations.

So we have here the requirement in the event the budget runs into problems, for the governor to make the request for additional moneys. We have already directed that no more expenditures shall be called for than there are revenues provided for.

When we say that we must carry over a deficit as a part of a budget from one fiscal year to another, we seem to be implying that economic declines will conveniently fit themselves into fiscal year divisions. I don't think we are in a position to make that prediction for the next 50 years. We seem to be saying that in a period of economic decline where the revenues of this state have dropped substantially, and where it will be a great problem in the current year to raise the minimum revenues necessary to meet minimum state services, that over and above this we should place an additional burden of a previous deficit on the back of the legislature for that given period. To me, it would seem to be far more preferable to carry over a surplus, if one existed, from year to year, and thus be in a position to take care of a deficit later on, if one should occur. Or, if a deficit should occur during a period of economic decline when revenues were at a minimum, to pass that deficit on to such succeeding fiscal year as the state shall have the ability to liquidate the debt. It seems to me to do otherwise would be to place our governor and our legislature in a position of potentially violating a constitution which we now seek to write.

CHAIRMAN MILLARD: The question is on the Young amendment. Mr. Martin.

MR. MARTIN: Mr. Chairman, this is another part of the same proposal which we voted on this morning, and the reasons for approving that proposal this morning have not changed. I hope you will defeat the amendment.

CHAIRMAN MILLARD: The question is on the Young amendment. All in favor will say aye. Opposed, no.

DELEGATES: Division.

CHAIRMAN MILLARD: A division has been called for. Is there support? There is a sufficient number up. The question is on the Young amendment. All in favor of the Young amendment will vote aye and all opposed will vote nay. Have you all voted? If so, the machine will be locked and the secretary will tally the vote.

SECRETARY CHASE: On the Young amendment, the yeas are 30; nays are 75.

CHAIRMAN MILLARD: The amendment is not adopted. Are there any further amendments to section a?

SECRETARY CHASE: I have none on file, Mr. Chairman.

CHAIRMAN MILLARD: If not, it will pass.

Section a is passed. The secretary will read section b.

SECRETARY CHASE: Section b:

[Section b was read by the secretary. For text, see above, page 1635.]

CHAIRMAN MILLARD: The Chair will recognize the chairman of the committee, Mr. Martin.

MR. MARTIN: Mr. Chairman, I yield to Mr. Karn for an explanation of the details of this section.

CHAIRMAN MILLARD: The Chair will recognize the gentleman from Jackson, Delegate Karn.

MR. KARN: Mr. Chairman, members of the committee, I would like to read for our mutual benefit the comments on section b on page 401 of the journal, if you are interested in following it.

[The supporting reasons for section b were read by Mr. Karn. For text, see above, page 1636.]

I would like to yield to Delegate Stamm, please.

CHAIRMAN MILLARD: Delegate Karn yields to Delegate Stamm.

MR. STAMM: Mr. Chairman and members of the committee, this provision requires that the legislature must act on general appropriation bills for the next fiscal period before they may act on any other appropriation bill. This will focus the attention of the legislature on the operation of state government and possibly will avoid the panic and haste of trying to pass a budget in the closing minutes of the session. An exception is made for bills to supplement current operations, and the only purpose is to focus attention on the major task of each legislative session. Another factor in this provision is that the legislature will be required to set forth their estimates of proposed revenues for use of the public and for the use of the legislature in comparison to what the executive's budget is estimating the revenues will be. This provision will also provide that the revenues must match the proposed spending, and I feel that this is a step in the right direction for orderly financing of state government.

CHAIRMAN MILLARD: Mr. Martin, do you yield the floor?

MR. MARTIN: Yes, we yield the floor, Mr. Chairman.

CHAIRMAN MILLARD: There is a minority report. Will the secretary read it.

SECRETARY CHASE: Pursuant to the minority report of Mr. Marshall, Miss Hart and Mrs. Daisy Elliott,

Mr. Marshall offers the following amendment:

1. Amend page 1, line 21, by striking out all of section b.

CHAIRMAN MILLARD: The Chair will recognize the delegate from Detroit, Mr. Marshall.

MR. MARSHALL: First of all, I would like to ask for a point of information, or maybe a parliamentary inquiry, but I still don't understand it. I attempted to ask it this morning. That is that under our rules the minority report is taken up

first. It still appears to me that in explaining the majority report, the speakers are, instead of the chairman getting up and reading and explaining it, he is yielding to other people and in a sense it seems that they are talking on the majority proposal, thereby crystallizing the views. I come along with a mop and pail and make my little spiel and then they come along and tear it apart again. The question I want to ask is, does the minority report come up first? That is number one. Number two, if it does, should not the majority proposal only be read, or should it be thoroughly explained and discussed prior to hearing the minority report? Now, I would like a ruling on that.

CHAIRMAN MILLARD: Mr. Marshall, the convention, in committee of the whole, has followed the procedure that the majority report will be discussed first and then the minority report will be taken up afterwards. We have divided this proposal. There are 4 sections to it and we take up each section at a time. The majority report is discussed and then you go directly to the minority report for that section.

MR. MARSHALL: Well, this morning, is it discussed or just explained? There is a difference, I think, in discussing and explaining. In other words, reading the majority report and briefly explaining it is one thing; discussing it is another.

CHAIRMAN MILLARD: You have to discuss a report in order to get the meat of it. The Chair can't see any other way that you can get the substance of the report before the committee.

MR. MARSHALL: I guess I am confused, and I admit that I am dense. I would at this time yield the floor to Delegate Elliott, one of the cosponsors of the minority report.

CHAIRMAN MILLARD: Mr. Marshall yields the floor to Mrs. Elliott.

MRS. DAISY ELLIOTT: Mr. Chairman, fellow delegates, I am very deeply disturbed about section b.

[The supporting reasons for the minority report for section b were read by Mrs. Daisy Elliott. For text, see above, page 1637.]

Therefore, I would urge that you support the minority report.

CHAIRMAN MILLARD: Mr. Marshall.

MR. MARSHALL: I have nothing further to say on this section.

CHAIRMAN MILLARD: The Chair recognizes the chairman of the committee, Mr. Martin.

MR. MARTIN: Mr. Chairman, just one additional word of explanation. The fundamental purpose of this section is to get the attention of the legislature to the main business of appropriations, that is, the general appropriation bills before it acts on so called special bills for this, that, or the other thing, which are thrown in by individual legislators and which do not come from a consideration of the total needs of the state government and the total revenue. This seems to be the only way and the best way to do it, and it is certainly the orderly way to get these matters considered. We think it is an integral part of this whole proposal and makes extremely good sense in getting the legislature to consider the main problems first and then, if it is desired, to add additional appropriations. This does not prevent it. This does not prevent any special bill from being acted upon. It simply says, act on the main bills first.

CHAIRMAN MILLARD: The question is on the minority report amendment to strike out section b of Committee Proposal 46. Are you ready for the question? All those in favor will say aye. Opposed, no.

The amendment is not adopted. Are there any further amendments to section b?

SECRETARY CHASE: None have been submitted, Mr. Chairman.

CHAIRMAN MILLARD: If there are no further amendments to section b, it will pass.

Section b is passed. The secretary will read.

SECRETARY CHASE: Section c:

[Section c was read by the secretary. For text, see above, page 1635.]

CHAIRMAN MILLARD: The Chair recognizes Mr. Martin.

MR. MARTIN: Mr. Chairman, this is the same provision as is now in article V, section 37 of the constitution, and the committee on legislative powers had the responsibility with respect to this section. I want to call on the chairman of the committee on legislative powers, Mr. Hoxie, if he or a member of his committee wishes to make a statement.

CHAIRMAN MILLARD: The Chair will recognize the chairman of the legislative powers committee, Mr. Hoxie.

MR. HOXIE: Mr. Chairman and fellow delegates, as explained by Mr. Martin, Committee Proposal 46 was the primary responsibility of the executive department and the finance and taxation and legislative powers committees had concurrent jurisdiction of this proposal. Our particular section c, which is now under discussion, was section 37 of article V dealing with the subject of veto. We had a coordinating committee composed of our chairman of this committee, along with Mr. Downs, Mrs. Koeze and Mr. Wanger. At this time I yield to Mrs. Koeze for an explanation.

CHAIRMAN MILLARD: The Chair will recognize the delegate from Grand Rapids, Mrs. Koeze.

MRS. KOEZE: Mr. Chairman, Mr. Hoxie, I would refer this committee to the journal, page 401, section c.

[The supporting reasons for section c were read by Mrs. Koeze. For text, see above, page 1636.]

For the committee of the whole, the item veto originated in the confederate constitution. This section of the executive article in the Michigan constitution originated in the 1907-08 constitution. In the debate on the item veto, some fear was expressed at that time that it was a very dangerous power to give the governor. However, those supporting the item veto pointed out it would prevent log rolling, and allow the governor to strike out unwarranted items without having to veto the entire appropriation bill.

In 1911, Governor Osborn started the practice of reducing appropriation items in addition to vetoing entire items. At that time a Pennsylvania court decision had interpreted a similar provision in the Pennsylvania constitution as authorizing the governor to reduce as well as to strike out items subject to legislative override. Later, courts in 5 other states denied this power to reduce items in the absence of specific constitutional authority to do so. During the administration of Governor Brucker—that is, in 1931—the Supreme Court of Michigan denied the governor of Michigan the power to reduce items in appropriation bills after this interpretation had been held for 20 years.

The procedure for the item veto in Michigan, as specified in article V, section 37, is not detailed. In 1951, the governor of Michigan signed and filed with the then secretary of state an appropriation bill with disapproved items indicated on the bill. Although the language of this section of the constitution might infer that this method of item vetoing, as used by the governor at this time and also used in some 41 other states was proper, an attorney general's opinion held that the veto of those items was not, and that the entire bill should have been returned to the legislature for its action on the items.

Forty-one states have, or provide for the governor to veto in appropriation bills. Alaska's constitution, one of the newer constitutions, is unique in that it requires 3/4 of its members elected to both houses, in joint session, to override the veto of an appropriation bill or items of an appropriation bill. The model constitution provides for an item veto in its finance article in connection with budget procedure. The United States constitution does not provide for an item veto.

CHAIRMAN MILLARD: Mr. Hoxie.

MR. HOXIE: Mr. Chairman, are there any amendments on the desk?

CHAIRMAN MILLARD: There are.

MR. HOXIE: I believe Delegate Hutchinson has an amendment there, has he not? I yield to Mr. Hutchinson.

SECRETARY CHASE: Mr. Hutchinson offers the following—

MR. MARSHALL: Mr. Chairman, are we still on section c?

CHAIRMAN MILLARD: Yes, we are on c. Do you have an amendment?

MR. MARSHALL: I don't have a minority report. I just wanted to make a statement. I thought it might help expedite things to state that the minority agrees to the desirability of having this section in the provision.

CHAIRMAN MILLARD: Thank you, Mr. Marshall. The secretary will read.

SECRETARY CHASE: Mr. Hutchinson offers the following amendment:

1. Amend page 2, line 12, after "veto.", by inserting "The governor may reduce any item or items in any bill making appropriations of money embracing distinct items, and the item or items reduced shall be valid only to the lesser amount, unless repassed by the majorities in each house required for original passage of the bill.".

CHAIRMAN MILLARD: The Chair will recognize the sponsor of the amendment, Delegate Hutchinson.

MR. HUTCHINSON: Mr. Chairman, Mrs. Koeze mentioned in her remarks that when the item veto was first written into the Constitution of Michigan in 1908, that it was apparently intended and certainly was interpreted for 20 years as including the right of the governor to reduce items as well as to strike them out entirely. She mentioned that it was not until 1931, in Governor Brucker's administration, that the supreme court interpreted this language very strictly and said that this power of item veto was the power to strike out completely but not the power to reduce. So that what had been supposed to be the law—that is, the meaning of the doctrine when it was first written into the constitution—and what was supposed to be its meaning for all the time between 1911, at least, when Governor Osborn first used it, and 1931, when Governor Brucker first tried to reduce these items, it was construed to be constitutional.

Now, I offer this amendment in the belief that this constitutional convention should again, at least, discuss and determine whether really the right to reduce items of appropriations is something that ought to be conferred upon the governor. I happen to believe that it is a good thing to provide him with the right to reduce items as well as to veto them completely. I feel that way because I am sure that there is a goodly percentage of the people of Michigan who are very earnestly desirous of what they call economy in government, and one way to effectuate economy is to let the governor have power to reduce, if he dares, the appropriations of the legislature.

The wording of this amendment is that if he sees fit to reduce an item, then he has to return that bill, together with that reduced item, back to the legislature, and then the legislature has the right to repass it. The legislature will have a right to repass it by the same majority required for original passage. In connection with overriding this reduction, we will not require a 2/3 vote. We will simply require the same majority as was required in the first instance. In most appropriation bills, the only majority required is what is known as a constitutional majority. That is a majority of the members elect and serving. In some bills, a 2/3 vote originally is required for an appropriation. For instance, when the legislature makes appropriations for the service activities of the several veterans' organizations in Michigan, that is construed to be a grant for private purposes, so it is necessary that a 2/3 vote of the members of each house be obtained in order to pass the bill originally. Well, if it was this kind of an item that the governor reduced, why then, of course, the legislature would be required to remove the reduction and lift it up to its original figure by a 2/3 vote, in that kind of an instance. But, by and large, it would require a simple majority vote of the members elect in order to say to the governor: well, you think we are appropriating too much but we don't think we are. The effect of this provision in the constitution would be to provide a method for the spotlight of public attention to be turned upon some appropriations which, in the opinion of the governor, might be a little bit more generous than necessary, and, as I say, this power, though probably sparingly used, would be a good thing, in my opinion, to vest in the governor, in the interest of economy in government.

CHAIRMAN MILLARD: The Chair will recognize the delegate from Detroit, Mr. Marshall.

MR. MARSHALL: May I ask a question of Delegate Hutchinson; 1 or 2, please?

CHAIRMAN MILLARD: If the delegate cares to answer.

MR. MARSHALL: Mr. Hutchinson, can you tell me if there are any other states, and if so, how many, that grant to the governor the right to reduce rather than veto outright?

MR. HUTCHINSON: Thank you, Mr. Marshall. I can, from this source material which was delivered to us at the beginning of the session. As a matter of fact, I brought this book up here to read it and then promptly forgot it.

MR. MARSHALL: I suspected that you could, and I wanted to give you the chance to explain it.

MR. HUTCHINSON: It says—and I quote—

> Several state constitutions have specific provisions authorizing the governor to reduce items by the veto procedure in addition to vetoing the whole item. Alaska, California, Hawaii, Massachusetts and Tennessee and the model state constitution have specific provisions for reduction of items. New Jersey and Missouri have provisions that operate with the same effect. While not specifically provided for in the constitutions of Pennsylvania and New York, the governor's power to reduce items appears to have been established in those 2 states of Pennsylvania and New York by precedent.

Does that answer it?

MR. MARSHALL: Then you would say that the overwhelming majority of the states do not have it, right?

MR. HUTCHINSON: I would have to concede that since it is only mentioned with regard to half a dozen states, I don't know about the others.

MR. MARSHALL: Then will you agree that just because a handful of states have it, that does not necessarily make it a good provision? I have one other question, and that is all.

MR. HUTCHINSON: Well, I don't know that I would just let that last statement go unchallenged, Mr. Marshall. I would reply to you this way, sir: I think that it is immaterial as to really what other states do.

MR. MARSHALL: I agree.

MR. HUTCHINSON: Whether it is good or not, it is, in our judgment, good for Michigan, yes.

MR. MARSHALL: Would this, in your opinion—supposing that you had a governor—and I can conceive of this happening—who might be antagonistic toward a given department or towards the universities. He could use this, under the amendment that you offer, to reduce the budget of the universities, for an example, if he so desired.

MR. HUTCHINSON: Well, Mr. Chairman, in answer to that, yes, he could, Mr. Marshall; but he would do it in the midst of a political arena whereby, number one, if he did it, probably all of the alumni association of that university would be right down on him. And, number two, it would go back to the legislature and the legislature might not sustain him.

MR. MARSHALL: Well, I would desire then to speak against the Hutchinson amendment, taking into consideration, of course, the statements made by Delegate Hutchinson, that he would do it in the limelight of the political arena and would be subject to answering to the people for it, and I do not believe the amendment is necessary. I can conceive that

we would—I can see where a governor would be reluctant, probably, to do this, but I also cannot forget the situation that developed in the—when you talk about the alumni of the university being down on him and so forth, we could conceivably, some day, in this state have a governor similar to the one that the state of Louisiana had recently, where the only alumni were the people on Burbon street, and I would not want to see us get into the position of giving the governor the authority to reduce these appropriations for these institutions. So, I would urge you vote against the amendment.

CHAIRMAN MILLARD: Mr. McCauley.

MR. McCAULEY: Mr. Chairman, through the Chair I would like to ask Mr. Hutchinson a question, if he cares to answer.

CHAIRMAN MILLARD: If he cares to answer.

MR. McCAULEY: It has been my understanding—and I am sure you can correct me if I am wrong—that most of these budgets and bills are submitted as line items. I am wondering about the practicability as to how this works out. When you are going to veto various items, are you using the word "item" synonymous with a line item that is submitted?

MR. HUTCHINSON: Mr. Chairman, are we talking, Mr. McCauley, about a veto or about a reduction?

MR. McCAULEY: About a reduction.

MR. HUTCHINSON: Every appropriation bill, Mr. McCauley, has a good many lines in it, line items. They have it because, in Michigan, at least, we don't simply say there is hereby appropriated $290 million to be distributed among the several departments of state government as the governor may provide. We appropriate so much money for salaries and wages; so much money for supplies and materials; so much money for equipment; sometimes some additional line items to each and every department, and sometimes to divisions within departments. The general appropriation bills, of necessity, are like that, so there will be line items. They might not be as detailed as some people would like to see them. One time the legislature attempted even to specify what particular civil service rating each and every employee should have. Well, the courts told them—at least, the attorney general told them they couldn't go that far. So, it is impossible for the legislature to be too detailed, and, on the other hand, I think the items referred to in this language are clearly understood in Michigan governmental practice.

MR. McCAULEY: Thank you.

CHAIRMAN MILLARD: The Chair recognizes Mr. Hanna.

MR. W. F. HANNA: Mr. Chairman and ladies and gentlemen of the committee, this is not a sudden brainstorm, I am sure, of Mr. Hutchinson. The right to make reductions has a long history in government, and, interestingly enough, it is not a political issue. On the national level, the presidents of recent years—starting with President Roosevelt, including President Truman and including President Eisenhower—have asked Congress to give the president this power in budgetary control. It was also advocated by the little Hoover commission as a means of budgetary control. It was recommended that congress enact it. It is part of the little Hoover recommendations which were not enacted. It, for years, has been recommended by the national municipal league and others, as they draw model budgetary laws for cities and counties. It has been recommended by the best financial authorities and incorporated in each issue of the model state constitution since the early '30s. It has a long history and originally Michigan was the forerunner when we put in the item veto and allowed it to be interpreted as the power to reduce. This would first be carrying out its use as it existed for a good many years in Michigan. It is also, by all known writers on this subject, considered to be an essential budgetary tool of the executive in controlling the legislature or controlling his duty to administer the finances of the state.

Certainly, if it is appropriate and recommended by the federal government for federal adoption, and if you will notice the states given by Mr. Hutchinson, it has been incorporated in several of the recent constitutions, because all authorities agree that this is an essential tool to effective financial management by the executive department. The reason why it has not been given to the president, notwithstanding the majority of the congress being of the same party as the president, boils down to jealousy, primarily, within the ways and means committee of each house of the federal legislature. Such abuses are the problem of a constitutional convention, and certainly, I heartily recommend that this convention adopt and give to the governor of Michigan a very essential budgetary tool.

CHAIRMAN MILLARD: The Chair recognizes Mr. Hatch.

MR. HATCH: Mr. Chairman, I would like to direct a question to Mr. Hutchinson, if I may.

CHAIRMAN MILLARD: If Mr. Hutchinson cares to answer.

MR. HATCH: Mr. Hutchinson, you stated that approximately a half dozen states do allow the governor to reduce items in appropriation bills. Can you tell us how many states in their constitutions provide that the legislature may override this reduction by a majority of each house in the legislature?

MR. HUTCHINSON: I don't know that I can from the information here, Mr. Hatch, I am sorry to say. Somewhere I got the impression that in some of them or somewhere or other it was provided that sometimes they didn't require anything more than a majority. Maybe I got that impression from talking with Mr. William Hanna relative to a model constitution or something.

MR. HATCH: Thank you, Mr. Hutchinson. I would oppose the amendment for 2 basic reasons: 1, I feel that it is unnecessary; and 2, I think it is undesirable. First of all, I think it is undesirable in the sense that if the legislature passes an appropriation bill with a given item in it by a majority of both houses, they certainly will pass the legislation in light of the recommendations of the governor as to how much that item should contain. To me, it seems useless, when the legislature well knows that the governor may not agree with what a given item should be, for them to pass it and then to have him reduce it and then have them pass it again. Secondly, I believe it is unnecessary because if the delegates will read ahead to section d of Committee Proposal 46, they will see that the governor is directed to reduce expenditures in the event revenues do not come up to expectations.

In other words, if revenues do not meet expectations, once the budget is in operation for a given fiscal year, the governor has the authority and is directed to reduce expenditures. I think this power is undesirable for the reason that once it is determined that an item is to be included in an appropriation, to my mind, the amount to be spent for such an item is a legislative function rather than an executive function, and that the only consideration should be, once the budget is in operation, whether revenues are sufficient to meet this appropriation. I feel that that has been covered in section d. Therefore, I respectfully oppose the amendment.

MR. HUTCHINSON: Mr. Chairman, I would like to answer Mr. Hatch, if I might.

CHAIRMAN MILLARD: Go ahead, Mr. Hutchinson.

MR. HUTCHINSON: I would like to invite Mr. Hatch's attention to this fact: the records are replete with instances where the legislature has passed bills by a 2/3 vote and the governor has vetoed those bills and then the legislature has declined to pass the bill over his veto. There are members of the legislature who—while they might be for a bill in the first instance—if the governor vetoes it, perhaps are convinced by the merits of his argument and so on, and they don't vote to override him. That has been true of governors of both parties. It is not purely a Democratic-Republican split or anything. This has happened over the years, and I say the same thing conceivably could happen with regard to these appropriations, where an appropriation might be made at a particular level and then, after having the governor reduce, with his reasons and so on, only to come back and find out that perhaps not even a majority of the house or the senate, as the case may be, would want to go

against the decisions of the governor, being convinced by the later information that he brings forth. Therefore, I don't think that your argument about it being a useless thing is valid. I think that you have to keep in mind that legislators are, to a certain extent, influenced by later information and arguments and so on, and also, sometimes, by the pure prestige and weight of the governor's office. If that can be exercised in the interest of economy, well and good.

You also made the second point, Mr. Hatch, that you conceived that it was the responsibility of the legislature to say what shall be spent. Well, on the other hand, I see another sentence along here somewhere that says that an appropriation shall not be construed to be a mandate to spend. An appropriation is a policy upper limit of expenditure, and therefore, at least, the philosophy of this amendment, as it stands, is that when the legislature appropriates money, it is not to be construed as a determination and a mandate by the legislature to go out and spend that amount. The mandate is that you shall not spend more than that amount. And so, I disagree with you on that point, too, I am sorry, Mr. Hatch.

CHAIRMAN MILLARD: The Chair will recognize Delegate Allen.

MR. ALLEN: Mr. Chairman, I would like to speak in favor of the Hutchinson amendment and give an illustration of where I think it could be helpful. This illustration doesn't apply on the state level. I take it from the federal level, but I think the same thing could apply equally well in the state. Some years ago, about 6 years ago, a number of municipalities throughout the United States wanted appropriations from congress in connection with flood control. All of the projects which were proposed—before they could be enacted into law and translated into an appropriation—first had to be approved by the United States corps of engineers; at least this was the practice at that time. In the city of Kalamazoo, and a number of other cities in Michigan, the corps of engineers came in, made an investigation and determined that the project was fiscally sound. When it came time for congress to finally pass the legislation, a number of congressmen, without securing the approval of the corps of engineers, added on flood control projects of their own. Many of these projects were included without any investigation at all by the corps of engineers. On others, there had been a partial determination by the corps of engineers and a flat figure recommended. But, the congressional appropriation bill substantially increased the appropriation. So, the bill was finally enacted by congress. It went to the president who, at that time, was President Eisenhower. He looked the thing over and he was in a dilemma. He had a good number of municipalities which had secured the approval of the corps of engineers and the budget and the expenditures had been found to be sound. He had another set of communities where nothing had been done at all, and so he didn't know at all, and then he had a third set of areas—this would be the one involved in this kind of case—where there had been an investigation by the corps of engineers and a figure determined, but the congressional appropriation was substantially higher. Now, what was the president to do? He didn't have the power of a line item veto, as we give. He didn't have the power, as the Hutchinson amendment proposes, of reducing the figures which were too high down to a figure which had been estimated to be right by the corps of engineers. So what the president did was to veto—it is the only thing he could do— the whole thing. Now, when he vetoed the whole thing, he prejudiced the cities which had an approval, and that happened to include my own city of Kalamazoo. He put in doubt those communities which had secured an approval, but for a lower amount, and he threw out entirely where there was no approval at all.

I submit to you that if the President of the United States had had the power which the Hutchinson amendment proposes and which the majority proposal, as far as the line item veto, recommends, which we have had before, then those cities which had an amount which was determined to be correct could have gone ahead with their projects. Those other communities which had had an approval but for a lower amount could have gone ahead. And, therefore, I think that the amendment offered by Mr. Hutchinson can be of value in those cases where a governor would feel, based upon some sort of reliable fiscal evidence, which I am sure he would need—where the governor would be put in the position of either throwing the whole thing out and giving to the institution nothing at all, or giving it a reduced amount. I think this is the kind of flexibility which the Hutchinson amendment is designed to take care of. Therefore, I would favor it.

CHAIRMAN MILLARD: The Chair will recognize the gentleman from St. Louis, Delegate Hoxie.

MR. HOXIE: Mr. Chairman and fellow delegates, I question the wisdom of adopting the proposed amendment. I am a firm believer in our 3 divisions of government. I believe that the legislature should assume their responsibilities, as well as the governor being the chief executive of the state, who is endowed with the power to carry out all the laws that are enacted.

I would like to call your attention to the fact that it is the responsibility of the executive to present to the legislature a recommended budget. It is also his responsibility to present to the legislature a tax program necessary to meet the recommended appropriations. On the other hand, it is the responsibility of the legislature to appropriate the moneys which, in their judgment, they feel are necessary for the operation of the state. It is also exclusively their authority to tax the people of the state of Michigan to meet those appropriations.

When we consider, if we may, the distinction between an item veto and the right to reduce items, those are completely 2 different subjects. Now, for many years—I don't know whether it was in our preceding constitution, but we know it was in the 1908 constitution—the matter of item veto was considered a wise provision in the constitution. We can refer to other constitutions that do have such an amendment as proposed here, but do we know about the method of operation in those particular states? It is difficult to read a document with the limited information and draw any reasonable conclusions. I say that the item veto, as we have it in our present constitution, has met the test. I question the wisdom, as I said before, of making any change, and I can see considerable danger involved by granting this authority to the governor.

Mr. Hutchinson said we will put the spotlight on the governor. I don't think the spotlight belongs there. It belongs on the legislature, the people that are elected by us back home to determine what the various agencies in state government should receive in the way of appropriations. I can visualize where, if a governor saw fit to believe that some of our educational institutions were receiving more funds than they should receive in comparison to some other educational institutions, he could use that reduction and it might not be wise, because your appropriating committees listen to all the arguments, all the discussion, the programs of our various schools of higher learning, and who is better able to determine the needs of those institutions? I say to you, be careful in adopting this amendment.

CHAIRMAN MILLARD: Mr. Hutchinson.

MR. HUTCHINSON: Mr. Chairman, I would like to reply to Mr. Hoxie in one statement. I think he misquoted me. I did not say that we would be turning the spotlight on the governor. I said we would be turning the spotlight on the appropriation which, in the opinion of the governor, was too high.

CHAIRMAN MILLARD: The Chair will recognize the gentleman from East Lansing, Dr. Hannah.

MR. J. A. HANNAH: Mr. Chairman and members of the committee, Mr. Hoxie has made part of the speech I intended to make, for which I am grateful. I recognize that what this committee is trying to do, I believe, is to give the governor a good deal of control over the fiscal policies and procedures of the state, and with that I am in full sympathy. I have no objection to the item veto. I am very much disturbed by the potential that Mr. Hutchinson's amendment places in the

hands of the governor. It makes it possible for the governor, if he wishes, to determine, within a program of the university, what is not entitled to the degree of support that the legislature has determined it may be entitled to.

Many long years ago, Michigan had a very strong governor. We have had his biography distributed here. He decided after the legislature had made an appropriation for the cooperative extension service of this state, that the money would not be released for that purpose. The board of control of our university found it necessary to take the governor to the supreme court, and the supreme court ruled that this was outside the province of the governor and that the appropriation should be made available for the purposes for which it was made. Now, I recognize that this is not likely to happen very often, but there is the potential there.

I am very much concerned about some of the words in the next section which we will come to a little bit later. I would like to ask Mr. Hutchinson this question, through the Chair, if he thinks it is appropriate to give the governor the opportunity to reduce the appropriation, and if this is in the direction of giving the governor control of the fiscal policy of the state, would he also be willing to give the governor the opportunity to increase appropriations made by the legislature, provided the original recommendation was in his budget, as he presented it, and with the understanding that this increase would have to go back to the legislature in the same way as he provides in this amendment?

Now, it is very well to talk about the Constitution of the United States and the desires of the President of the United States, and the budget bureau of the United States to give the president control and say that this isn't a political issue because it has been demanded by Republican presidents and Democratic presidents and not granted to them, or to say that this is good fiscal policy at the township or county or city level; but we are talking about a constitution for the state of Michigan, to work here. If you watch how appropriations are made across the street in the state capitol, with the committee system as it operates in our state legislature, it is practically impossible for the governor to have included in the budget approved by the legislature any item that meets with the disapproval of the ways and means committee, or of the appropriations committee—ways and means of the house or the appropriations committee of the senate. Someone may say, any member of the legislature can rise on the floor and make an amendment to an appropriation measure. But the fact of the matter is that with the committee system as it operates, it is practically impossible to change, by a single dollar, an appropriation figure as it is voted out by the ways and means committee or by the appropriations committee.

So, if we are going to be consistent and if we are going to give the governor fiscal responsibility, I will go along with Mr. Hutchinson on his amendment if he will take the next step and permit the governor to add or increase an item with the understanding that this, too, becomes effective only when it is approved by the legislature. Without that I am opposed to the amendment. In any event, I think the members of this committee want to think very seriously before they place in the hands of the governor what I see they may be placing in his hands through the adoption of this amendment.

CHAIRMAN MILLARD: Dr. Hannah, did you direct a question to Mr. Hutchinson?

MR. J. A. HANNAH: Yes.

CHAIRMAN MILLARD: Do you want him to answer it?

MR. J. A. HANNAH: If he will.

MR. HUTCHINSON: Mr. Chairman, as Mr. Hannah well knows, the price of his support is too high. I would not agree to that kind of an arrangement, as well he knew when he asked the question. I would also like to testify here, so that those of you who haven't been in the legislature will not carry forth any false impressions, that I can think of numerous times when, at least in the senate—now, it has been a long time since I have been in the house, and my memory is fading as to that—but numerous times during my experience in the senate when appropriations have been increased on the floor of the senate, Dr. Hannah, over the recommendations of the appropriations committee of the senate.

CHAIRMAN MILLARD: The Chair will recognize the delegate from Detroit, Mr. Downs.

MR. DOWNS: Delegate Hoxie and Delegate Hannah more adequately said what I had planned to say. I think that it was brought out that by logic, if this were done one way it should be a 2 way street. I do feel that there is the danger that a university appropriation could be made and then the governor try to carve out a department of that university budget, even though the legislature and the regents or governing body of that constitutional body had approved it. I would therefore oppose the amendment.

CHAIRMAN MILLARD: The Chair will recognize the delegate from Pontiac, Mr. Kuhn.

MR. KUHN: Mr. Chairman, members of the committee, I rise in opposition to the amendment. I think we are going to go too far in trying to give the governor this much power. I am one that believes in a separation of powers, and in reply to Mr. Allen I would say that the problem that President Eisenhower faced can be solved by the item veto which the federal government does not provide the President of the United States. Since we do have this item veto, this problem would not arise in the state of Michigan and therefore, I am opposed to this amendment.

CHAIRMAN MILLARD: Mr. Martin.

MR. MARTIN: Mr. Chairman, I don't want to divert the discussion, but I have a piece of incidental intelligence. Mr. Batchelor returned from the men's rest room not too long ago, where a group of small boys were discussing the proceedings on the convention floor after the long series of amendments which we had, and he tells me that one of them said, "Say," he said, "you know that fellow with the gray hair, he must be a communist. He's against everything that anybody wants to do." (laughter) I just want you to know that I am not a communist and I am not against everything that everybody wants to do, except when they want to amend my committee report.

Commenting on Mr. Hutchinson's amendment, I can't express an opinion for the committee because the committee has not met. I have talked with a number of members of the committee and I find some diversity of point of view, so I can only express my personal opinion. I think the amendment is not harmful, as some of the delegates have suggested. However, in its present form, so that a reduction can be repassed by the same majority which originally passed the bill, it seems to me that it adds very little to the present situation, and in view of the fact that the committee did consider this, and did put into section d of the committee proposal certain provisions with respect to the reduction of expenditures, I think those matters have been taken care of and I doubt that there is a real and burning necessity for this amendment. For that reason, I shall vote against the amendment, but I don't think it contains the elements of harm that some delegates have seen.

CHAIRMAN MILLARD: The question is on the Hutchinson amendment. A division has been called for. Is there support? Sufficient number is up. All those who are in favor of the Hutchinson amendment will vote aye. Those opposed will vote nay. Have you all voted? If so, the machine will be locked and the secretary will tally the vote.

SECRETARY CHASE: On the adoption of the amendment offered by Mr. Hutchinson, the yeas are 49; the nays are 56.

CHAIRMAN MILLARD: The amendment is not adopted. Are there any further amendments to section c?

SECRETARY CHASE: None on file, Mr. Chairman.

CHAIRMAN MILLARD: Are there any further amendments to section c? If not, it will be passed.

Section c is passed. The secretary will read.

SECRETARY CHASE: Section d.

[Section d was read by the secretary. For text, see above, page 1635.]

CHAIRMAN MILLARD: The Chair will recognize the chairman of the committee, Mr. Martin.

MR. MARTIN: Mr. Chairman, I yield to Mr. Karn for an explanation.

CHAIRMAN MILLARD: The chairman yields to Mr. Karn.

MR. KARN: Mr. Chairman, members of the committee:

[The supporting reasons for section d were read by Mr. Karn. For text, see above, page 1636.]

I would like to yield to Delegate Shackleton, please, for comments on this section.

CHAIRMAN MILLARD: The Chair recognizes Mr. Shackleton of Saginaw.

MR. SHACKLETON: Mr. Chairman, Mr. Karn, delegates, the first sentence, "No appropriation shall be deemed a mandate to spend" coincides with the commonly accepted thinking in the field of government finance. It conveys the idea later expressed that there should be authority to reduce or eliminate expenditures if unforeseen efficiencies or economies can be accomplished or in the case of emergencies after the budget has been approved by the legislature. An example would be emergency committees or commissions which were set up during the war. The war having terminated, the governor would have the right to terminate by means of reducing the expenditures rather than saying that those commissions had to spend out for the year. Our auditor general, in his financial report, part 1, for some years has included a statement which in his opinion merited repetition, which points out from his experience why this sentence should be incorporated: "Appropriations for operating costs are generally construed to be permissive rather than mandatory as to the amount appropriated."

The second sentence:

> The governor shall reduce expenditures of executive agencies whenever it appears that actual revenues for a fiscal period will fall below the revenue estimates on which appropriations for that period were based, such reductions in expenditures to be made in accordance with procedures established by law.

If actual revenues fall short of anticipated revenues, obviously budget estimates will be out of balance. To prevent repeated deficits, it is necessary to (a) obtain additional funds from taxes, or (b) reduce expenditures even though the legislature has made appropriations. There is a distinction between appropriations and expenditures. Obviously it is too late to obtain additional taxes when experience in any one current year shows that revenues will be short of appropriations. It is the duty of the governor to carry out the laws passed by the legislature which, among others, includes the laws regarding taxes or the obtaining of funds for operating expenses. It is also his duty to see that the various phases of the state's operations are carried out and paid for in accordance to the appropriations bill or bills. Thus the governor is charged with administering the budget after the budget is adopted by the legislature. If the income in the current year is insufficient to meet all the appropriations, obviously the governor would be one of the first to know and appreciate that there might be an impending deficit. Under the provision of this sentence, he may then adjust expenditures, not appropriations which have formerly been determined by the legislature. Adjusting expenditures would be permissible then to (a) take care of efficiency or economy changes and emergencies, and (b) try to assure the balancing of the budget. In the last few years, the legislature has directed in their appropriations bills that the governor do just this, but their direction has not been carried out because of the possibility that to do so would be in violation of and not within his power under the 1908 constitution.

The last sentence of section d, "The governor's power to reduce expenditures shall not apply to the legislative and judicial branches or to those services for which funds are mandated by this constitution." This provision protects the separation of powers doctrine by prohibiting the governor from reducing the expenditures for the legislative or judicial branches of government. This section d thus brings the proposed constitution up to date by conforming to the practice of 41 states, 16 of which thus provide in their constitutions. The last 3 state constitutions to be adopted, Alaska, Hawaii and Missouri, have included this provision.

It has often occurred where agencies that might have a surplus at the end of a fiscal year deliberately plan not to let any of their funds revert to a general fund for fear their budget requests for the ensuing year might be reduced. A provision in this section would make that procedure more difficult in a year when it would seem apparent that the budget might not be balanced. This proposal provides for the governor to be a true executive in carrying out the mandates of the legislature in keeping with sound, financial practice. Remember, we are not giving the governor control over appropriations, only expenditures under emergency conditions. This section is one more step in helping to make a strong governor, making him responsible and giving him one of the tools toward this end. Another section proposes control of balanced budgets and this section is an aid not only to assist in that control but also an aid toward sound business administration. These proposals have been concurred in by the committee on finance and taxation and the committee on legislative powers.

CHAIRMAN MILLARD: Mr. Martin.

MR. MARTIN: That is all we have to present at this point, Mr. Chairman.

CHAIRMAN MILLARD: The Chair will now recognize one of the sponsors of the minority report, Mr. Marshall, of Detroit.

MR. MARSHALL: Mr. Chairman and fellow delegates:

[The supporting reasons for the minority report to section d were read by Mr. Marshall. For text, see above, page 1637.]

My friends and fellow delegates, I urge you—I urge you, very sincerely—to take a close look, take a close look at the majority proposal; study it, analyze it. I believe that if you do you will have to come to the conclusion of supporting the minority report. At this time, Mr. Chairman, I would like to yield the floor to Delegate Austin.

CHAIRMAN MILLARD: Delegate Austin.

MR. AUSTIN: Mr. Chairman and members of the committee, I was worried about section a of this proposal. I don't mind admitting that I am even more worried about section d. I agree with practically all of the comments that were made by Mr. Marshall, and I am somewhat disturbed that we are promoting legislative irresponsibility. I think more than any other issue it was the problem of revenue shortage in the state of Michigan that prompted the people of the state of Michigan to order this constitutional convention. The people were somewhat concerned that the legislature either did not have the power or refused to exercise the power to raise sufficient revenues to pay the cost of government. I am not contending that the revenue shortage problem is the most important problem that we face at this convention, but I think we will all agree that it was the one which got the people of Michigan interested in revising the basic document. Now what we are seeking to do is to provide an escape hatch for the legislature by putting the onus, as Delegate Marshall has indicated, on the governor to reduce expenditures where the legislature has failed to provide sufficient tax revenue. I am worried about this because we are again attempting to write into the constitution some new ideas and procedures that I don't think should be in the constitution, and I would again like to ask a few questions about this language, if for no other reason than to clear the record.

There were 3 proponents of the majority proposal who spoke on this and I don't know which to address my questions. I will ask the first question and then any of the 3, Mr. Martin, Mr. Karn or Mr. Shackleton, may answer if they desire to do so, Mr. Chairman.

CHAIRMAN MILLARD: You better designate one of them so we will know who you want.

MR. AUSTIN: Well, Mr. Chairman, you should not give me that prerogative. I might pick the one that I would rather debate with.

CHAIRMAN MILLARD: He has a right to refuse to answer, you know.

MR. AUSTIN: Mr. Chairman, my first question is, is it the intent of the proponents of the majority proposal that the legislature shall set down in some precise detail how expenditures are to be reduced? Shall I address the question—

CHAIRMAN MILLARD: Is that your first question?

MR. AUSTIN: That is my first question.

CHAIRMAN MILLARD: We will refer it to the chairman of the committee then, Mr. Martin.

MR. MARTIN: Mr. Chairman, Mr. Austin, this is exactly what is proposed, and that is made clear by the language in lines 16 and 17, that "such reductions in expenditures to be made in accordance with procedures established by law." It is intended that the legislature should exercise a supervisory responsibility over any reductions that the governor might make and just specify how he should make such reductions.

MR. AUSTIN: Mr. Chairman, Mr. Martin, I think I interpreted the language in the same way. My next question is, I don't see any indication of the legislature in any way designating, according to the language here, what expenditures are to be reduced. Is it the intention of the committee that the legislature shall spell out in some precise detail what expenditures shall be reduced, or is this left entirely up to the governor?

MR. MARTIN: That same authority is given to the legislature. They can specify what appropriations may be reduced as well as how they may be reduced.

MR. AUSTIN: Well, Mr. Chairman, Mr. Martin, as I read the language, it does not say anything about what expenditures. It refers only to what procedures shall be followed in making these reductions.

MR. MARTIN: The word "procedures" is a broad word, Mr. Austin. It is intended to give the legislature broad authority, since it is the appropriating body, to determine to what extent, how much, how fast and in exactly what way these reductions may be made. They can determine that broadly or they can determine that narrowly, but it is in the hands of the legislature.

MR. AUSTIN: All right, Mr. Chairman, Mr. Martin, my next question is, who, under this provision, determines whether there is a deficit, that is, whether there is an impending deficit, and that it is therefore necessary to reduce expenditures?

MR. MARTIN: The governor is given that responsibility, Mr. Austin.

MR. AUSTIN: Not the legislature?

MR. MARTIN: Not the legislature, no.

MR. AUSTIN: The governor will make the determination that revenues are to be reduced and we do not expect the legislature to make this determination?

MR. MARTIN: The legislature is not really in a position to make the determination because the legislature has gone home. The legislature is not in session, presumably, and the governor is, on the other hand, entirely cognizant of the expenditures that are being made and the revenues that are flowing in. The governor is a part and head, of course, of the executive branch, and that is his responsibility as the chief administrator of that branch. The legislature is not geared, or staffed, or set up to deal with that kind of a question.

MR. AUSTIN: Mr. Chairman, we are going to then expect the governor to make the decision that certain expenditures must be reduced because revenues are not adequate, and it is up to the legislature to lay the ground rules, is that correct?

MR. MARTIN: That is correct.

MR. AUSTIN: The governor will not be able to provide any ground rules for making these determinations, that is to be left to the legislature?

MR. MARTIN: Mr. Chairman, Mr. Austin, that is correct.

MR. AUSTIN: Well, Mr. Chairman and Mr. Martin, what about raising additional tax revenues? Is there no indication here that the governor would have the right, at any point here, to indicate that the legislature ought to provide additional revenue instead of reducing expenditures?

MR. MARTIN: Mr. Chairman, Mr. Austin, certainly. The contemplation is that the governor has 2 avenues to pursue: one is to reduce expenditures in the manner prescribed by the legislature if revenues are not flowing in as estimated, but the governor has the responsibility and always has that responsibility if he decides that a better course would be to increase revenues, to call the legislature back into session by special message and ask them for additional tax legislation.

MR. AUSTIN: Well, Mr. Chairman and Mr. Martin, I would like to read this language just to let you see what I see as a danger in what we have before us.

> The governor shall reduce expenditures of executive agencies whenever it appears that actual revenues for a fiscal period will fall below the revenue estimates on which appropriations for that period were based, such reductions in expenditures to be made in accordance with procedures established by law.

There is nothing said here at all about the governor having the prerogative to request additional revenue. I asked this question, Mr. Martin, for a specific reason. We are apparently by this—and you can correct me if I am wrong—directing the governor now to reduce expenditures when it appears as though there is not going to be sufficient revenue, and there is no suggestion to him that he may seek additional revenue. Am I correct?

MR. MARTIN: Well, Mr. Austin, it seems to me implicit in the governor's powers that he has the alternative to request the legislature to raise additional revenue which would make it unnecessary for him to reduce expenditures.

MR. AUSTIN: Except here we say he shall reduce expenditures. Mr. Chairman, I think those are all of the questions that I have on this, but I certainly would like to reiterate that it is my view that we are getting into serious difficulty by including this language in the constitution. I don't know how it can be interpreted otherwise, except that the governor now has the onus of responsibility to reduce expenditures whenever it appears that actual revenues for a fiscal period will fall below estimates, and whether he makes any effort whatever to get the legislature to increase revenues, he still has this responsibility to reduce expenditures, and it would appear to me that this is a very definite escape hatch for the legislature. I certainly would oppose section d as it was submitted by the committee, and support the minority report that this language be stricken from the proposal.

CHAIRMAN MILLARD: Mr. Marshall.

MR. MARSHALL: I yield to Delegate Snyder, Mr. Chairman.

CHAIRMAN MILLARD: Mr. Marshall yields to Delegate Snyder.

MR. SNYDER: Thank you, Mr. Chairman. I rise in support of the minority report and I would like to refresh the memories of the delegates as to a remark that was made this morning by the proponents of the majority report to the effect that the action taken and the overall effects of this proposal would serve as a basis for some subsequent decisions that could be made by the committee on finance and taxation. This obviously would bring us in the area of earmarking funds, and the various other limitations prescribed. So I say to you that when you make your final decision, bear in mind the remarks that were made.

I also would like to say that it is my opinion that the minority report also has in consideration the good financial management aspects. They are also interested in the sound fiscal policies that have been expounded by the other speakers here.

I sincerely hope that the section, as presented by the majority of the committee, and as proposed to be amended by

the minority of the committee, does not pass. I feel that if the minority report amendment does not pass, the committee on style and drafting will have to take a look at the proposition that we will have before us, and I feel here that they will be in a quandry, indeed, because their committee must deal with the extraneous language and that language which is not consistent with the balance of the proposal and the reports submitted by this committee. I feel that the language, to a large degree, is repugnant. It does not reflect the confidence that we should have in our elected officials. I have with me a record that was submitted recently through one of the local newspapers, and I submit that if we look at the record and if we observe it closely, the record will show that good, elected public officials do stand up to their responsibilities in times of emergency. Secondly, the existing statutes already provide for the authority we are being asked to put into the constitution. Three, there is a sound rationale to support keeping the budget items on a cycle rather than on an annual phase. Fourth and last, but not least, there must be a statutory flexibility rather than constitutional restrictions in order to assure that the long range planning and the optimum benefits of the tax moneys we receive can be fully utilized.

This is a record that I have reference to, and I think it is very interesting to note that in one small current event item that many of the delegates may have missed, it carries an important message. It ties up, in a few short paragraphs, many of the problems that we have had presented to us today, and it certainly gives firsthand the manner in which the legislature and the executive branch do operate when they are removed from the curtilage of the constitutional convention. I have specific reference to a newspaper article that appeared as recently as January 6 in the Detroit News. The subject matter was the unspent mental health funds, and the legislative position.

> Governor Swainson faced a mental health battle today over $4,695,000 in unspent money that the administrators say they were barred by law from using. Criticism from 2 Republican lawmakers about the money came as Swainson prepared to ask for more millions to meet Michigan's mental health needs.

The article goes on to point out that the money was not being used. Certainly this is diametrically opposed to the effect that the present majority committee proposal would try to point out. And I think this is a very good demonstration of what we have confronting us here.

> In answer to this, Charles F. Wagg, the state mental health director, explained that the unused dollars that were allowed to lapse since 1956 and 1957 were due primarily to the fact that these moneys could not be used. "We couldn't," reported Wagg. "Until 1958 and '59, the mental health budget was line itemed into 176 separate accounts. Funds were not transferable and an excess in a salary fund could not be used to supplement a depleted food fund." Wagg said surpluses often appeared in fuel accounts during light winters and some money was accumulated when positions were vacant. Budgets in all agencies are prepared 18 months before they go into effect. "Long range cost planning of new buildings," he said, "is often thrown out of kilter by prices when construction starts and ends."

I think we should emphasize this:

> "About $1 million of Pears' lapsed money figure," he said, "came during the 1959 cash crisis when Governor Williams and the department of administration ordered economies regardless of appropriations available."

Here, I say to you delegates, brother and sister delegates, we have graphic and firsthand proof that when you do have emergencies, that when you have elected officials who are willing to step up to their responsibility, they meet the challenges before us, and this is a matter of documentation.

Now, Delegate Marshall and Delegate Austin have covered my points on some of the other matters contained in section d. But I would like, in closing, to just touch briefly on the item contained in lines 12 and 13. This, I feel, is class legislation, and it is personified to its optimum. Here we have a situation where the judicial and the legislature are completely excluded from the controls set up in this, and the only valid argument that was presented by the proponents of the majority of the committee were that they did not agree that this was wrong; their only defense was, this was such a small item it only amounted to 1 per cent. Because of the smallness of this item, we could agree to go along, but we could not overlook it. I submit to you that regardless of the size of the wrong, it is still wrong.

In the material contained in lines 14 and 17 of the proposal—in which it would be mandatory to reduce the expenditures regardless of public interest—I think it has been very well pointed out to us, who are we and who are they to say that when it comes to public interest we must put the economy ahead of the needs of the people? I feel that we have a very vital need here, and it is my opinion that section d, as it is presented at the present time, would do an irreparable harm to the people of Michigan and certainly, in view of the arguments established very eloquently by Delegates Marshall and Austin, I would urge the defeat of the majority proposal and support of the minority report.

CHAIRMAN MILLARD: Mr. Marshall.

MR. MARSHALL: In conclusion, Mr. Chairman, I want to again urge all of the delegates to give serious consideration to the minority report. I think that we should be flexible. I am weary of seeing this constitutional convention continue, time and time again, to legislate in the constitution. If we want to be legislators—those of you that do—then run for the legislature. Support our minority report. Do not undermine the separation of powers doctrine. Do not encourage legislative irresponsibility in political situations by adopting the majority report. In conclusion, I would like to just quote from Alexander Hamilton, "Constitutions should consist only of general provisions. The reason is that they must necessarily be permanent and they cannot calculate for the possible change of things."

Thank you for your patience in listening to the minority report. I again urge your serious and sincere consideration.

CHAIRMAN MILLARD: The Chair will recognize the delegate from Owosso, Mr. Bentley.

MR. BENTLEY: Mr. Chairman, I am delighted to hear members of the minority party start quoting from Alexander Hamilton. This is the first time I have ever had that privilege, I believe.

Mr. Chairman, for the benefit of those people who may have either read the supporting reasons of the minority on pages 542 and 3 of the journal, or who had heard it read so eloquently by my good friend from Taylor township, Mr. Marshall, I would like to point out that I have noticed in there a rather serious and recurring inconsistency. I started to count, Mr. Chairman, the number of times that the minority report speaks of cutting appropriations, and I counted up to 7 times and I lost count. I would suggest to my friend from Taylor township that he examine with care section d of the committee report and he will find, I am sure, that nowhere in the committee report does it talk about cutting appropriations. It does talk about reducing expenditures which, I submit, as was borne out previously by the gentleman from Saginaw, Mr. Shackleton, is a completely different item from an appropriation.

An appropriation is something that is submitted by the governor, as we have provided for in section a, or in a private bill by one of the members of the legislature. It is passed in the legislature and signed by the governor into law, and then it becomes in effect. Then, once the appropriation becomes a matter of law, the question of the rate of expenditure is entirely in the hands of the executive branch of the government and the chief executive. This is his prerogative. I submit, as I say to my friend, even though he is engrossed at the moment in a serious conversation, there is a vast difference between an appropriation and an expenditure, and I hope that he does realize that difference because I do not believe

that when he drafted this minority report he appeared to be fully aware of that distinction.

All we are asking in section d of the committee proposal, Mr. Chairman, is that during the course of the fiscal year for which an appropriation or appropriations have been made, that the governor, as he should be doing in any event, should be making a careful survey of revenues. If it should appear, during the course of that fiscal year, that revenues will fall below prior estimates, and that, of course, can be readily foreseen when tax collections come in, that he then endeavor to reduce his spending program accordingly. In other words, that if he has notice that revenues are not up to his original estimates, that he will then not go ahead and conform to his original estimates of spending; if he knows or has reason to believe the revenues will fall below the estimates which he originally set forth, that he thereby endeavor to reduce his spending accordingly. There is no mandate, as we have said in this original sentence of the section, that every penny that is appropriated by the legislature and signed into law by the governor has got to be spent in the present fiscal or the current fiscal year.

I respectfully submit, Mr. Chairman, that it is not a question, necessarily, of eliminating this expenditure or that program; it is a matter which has been practiced before and can be practiced again very easily, of the so called "stretch out." In other words, for example, if a building program is involved, it is very possible to spread that building program from one fiscal year into the next fiscal year and thereby endeavor to make the expenditures conform more closely to the revenues. That is all we are suggesting. That is all we are trying to require the chief executive to do. That is all we are proposing here in section d of the committee proposal; that when the chief executive knows or has reason to believe that his original estimates of tax revenues were overestimated, and he sees, during the course of the fiscal year, that revenues are not coming in at the rate that he originally believed them to be and presented those beliefs to the legislature, that he then reduce the expenditures or stretch his expenditures out to conform to the reduced tax revenues.

Of course, he does have the option, as was stated by the chairman of the committee, Mr. Martin, that if there is a serious gap between revenues and proposed expenditures, he then, of course, has the option of calling a special session of the legislature and requesting additional revenues or during the next regular session of the legislature of setting up a supplemental appropriation bill which we have provided for in section b. That is all this proposal is intended to do. It is not intended to upset the balance of power, the constitutional separation of the executive and the legislative, because it does maintain in the governor his traditional right to control the rates of expenditures. But what we are asking is that he do endeavor to limit and control those rates of expenditures to revenues as he sees the revenues coming in over the course of the fiscal year. Thank you.

CHAIRMAN MILLARD: The Chair will recognize Delegate Karn.

MR. KARN: Mr. Chairman, members of the committee, I would like to point out that one of the benefits of section d is for use during emergencies. Everyone realizes that we have emergencies which may cause a reduction in income. We may have emergencies which may cause an increase in expenditures, but whatever an emergency might be, where it is evident that the revenues seem to be less than those that were originally estimated to such an extent that something should be done, it gives the governor the power to step in and take control of the situation. The governor is surrounded by a staff that certainly has the ability to estimate revenues and keep in touch with the situation, and I don't think we need to worry too much about how the estimates might be made.

There has been throughout the minority report, some indication that the legislature may be, to some extent, bypassed. I have here, to show that the legislature is very much in sympathy with the second sentence in section d, a bill which is enrolled house bill 208 of the regular session of 1961, State of Michigan, seventy-first legislature, and here is a sentence that I want to read which I have been told has appeared in most bills of this nature during the past 3 years. I must say there hasn't been too much attention paid to it because I didn't think there was any constitutional right. It is a sentence that is very much like the second sentence in section d, and it reads as follows:

> The governor is hereby authorized and directed to make such reductions and allotments as he deems necessary to keep the total expenditures for any fiscal year within the total revenues available for such fiscal year.

That is very similar to the statement that we have used in our second sentence. It gives the governor the power to step in when there are emergencies that warrant his attention. To me, the comments made by the minority report go far beyond the section d which you have had read to you.

CHAIRMAN MILLARD: The Chair will recognize Delegate Marshall.

MR. MARSHALL: Just a brief answer to Delegate Bentley. As they would say in Brooklyn, I didn't quite get the "pernt" that he was talking to. However, Delegate Bentley, we are, in this section, in the way you want to refer to it—I appreciate your explaining to me the difference between appropriations and expenditures, and I am quite sure that some of the other delegates that didn't understand it either might also appreciate it—but we are still talking about money, and a rose by any other name smells the same to me. (laughter)

CHAIRMAN MILLARD: The Chair will recognize Delegate Downs.

MR. DOWNS: Mr. Chairman and fellow delegates, I too wish to make it clear that I appreciate the explanation made by the chairman of our education committee, a distinguished delegate that pointed out the difference between expenditures and appropriations, and I want him to know that I am perfectly satisfied with that explanation and I am sure that when the universities get their cuts, that the professors and particularly the economics professors will be perfectly satisfied and understand that when they get no check, or a reduction, that is simply because the appropriation was there but not the expenditure.

But what I am concerned about, Mr. Chairman, is when Dr. Hannah has to reduce the feed for the cows. How are you going to get across to the cows that they got the appropriations but not the expenditure? (laughter) In fact, if I could refer to Dr. Anspach, this reminds me of a story. (laughter) A funny thing happened to me on the way to the convention. I was talking to a friend of mine and he talked about a farmer and his cow, and I want to assure the delegates that this was not a Michigan cow. The farmer was not a delegate to this convention and was not a citizen of Michigan. The farmer was having trouble, not so much with his appropriations, but his expenditures. So, what he did was give the cow some sawdust with the grain, and it wasn't working out very well, and I guess it was some—I am sure not from the extension service—and another farmer, outside of Michigan, said, "Well, the trouble was you didn't put the green glasses on the cow. That's what I did to mine. And the first day I mixed about 5 per cent sawdust with the grain; it worked out fine. The second day, about 10 per cent sawdust and I kept increasing the sawdust but kept the green glasses on the cow." The other farmer asked, "How did it work out?" and he said, "Just fine. There was just one little flaw." The first farmer asked, "What's that?" He said, "Well, after 30 days, the cow died." (laughter)

CHAIRMAN MILLARD: The question is on the minority report. The secretary will read.

SECRETARY CHASE: Pursuant to the minority report of Mr. Marshall, Miss Hart and Mrs. Daisy Elliott.

Mr. Marshall offers the following amendment:

1. Amend page 2, line 13, by striking out all of section d.

CHAIRMAN MILLARD: Mr. Faxon.

MR. FAXON: Everybody has been dealing with the fact that the legislature could pass the buck here, but I am concerned, as some conservatives might be, with the power that this gives to the chief executive of the state. It says that the governor shall reduce, whenever it appears—now, this is the language. When it says "it appears", when it appears to him that there is a need to reduce, and I suggest to you that our history—and I don't speak simply of our American history, but our English heritage as well—that the idea of leaving to the prerogative of the chief executive, whether it be the governor or the king, the right to make judgments which are not inherent in his office, but which are delegated to him are not in our best interests, and I want to call your attention to the fact that during the reign of Charles I, it appeared to him that there was an emergency and ship money was collected, and there were many people throughout the countryside of England that objected violently when they said there was no emergency. But who was to question the royal will of the king when he says there is an emergency? And so, I have heard it said here today that one of the benefits of this proposal is that it has the benefit of use during emergencies. Emergencies to be determined by whom? To be determined by the chief executive.

Here you are giving to the chief executive of the state the right to determine something which he, alone, will be responsible for. I suggest to you that this is an unwarranted grant of power on the part of this convention; that this is an unwarranted grant of power to any chief executive; that the people of England in 1641 to 1649 rebelled against this unwarranted grant of power, and many people fled to this country in the ensuing years. Our heritage has been one of limiting the rights of the governors whether it be the colonial governor or later the governor set up by state constitutions. Let us not revert back to the days of the Stuarts in this grant of royal power. (applause)

CHAIRMAN MILLARD: The question is on the adoption of the minority report amendment, which is to strike out section d of Committee Proposal 46.

MR. HODGES: A division.

CHAIRMAN MILLARD: A division has been called for. Is there support? Sufficient number up. All those who are in favor of the minority report amendment which is to strike out section d of Committee Proposal 46 will vote aye, and those opposed will vote nay. Have you all voted? If so, the machine will be locked and the secretary will tally the vote.

SECRETARY CHASE: On the adoption of the minority report amendment to strike out all of section d, the yeas are 35; the nays are 80.

CHAIRMAN MILLARD: The amendment is not adopted. For what purpose does the gentleman rise, Mr. Hubbs?

MR. HUBBS: I rise to a personal privilege, Mr. Chairman.

CHAIRMAN MILLARD: State it.

MR. HUBBS: As a former citizen of New York state, I resent the language which Mr. Marshall incorrectly attributes to Brooklyn. "Pernt" is down east, and down east is way down on Cape Cod. In Brooklyn the people say, "See the boids sitting on the coib stones eating squoimy woims." (laughter)

CHAIRMAN MILLARD: For what purpose does the gentleman from Detroit rise?

MR. HODGES: I have a question to ask the committee chairman, if he desires to answer.

CHAIRMAN MILLARD: What does it pertain to?

MR. HODGES: Section d. I was just wondering what power or grant of power restriction or what possible use is the first sentence in section d?

CHAIRMAN MILLARD: Mr. Martin.

MR. MARTIN: I am sorry, Mr. Chairman. I did not understand the question.

MR. HODGES: The first sentence, "No appropriation shall be deemed a mandate to spend." I am just wondering what power this gives or restriction.

MR. MARTIN: This does not grant any power, Mr. Hodges. This is simply a statement of policy, and it does not apply to any particular governor. It is not intended as a reflection upon any of our recent past governors, as the minority report seems to imply. It is simply a statement of policy and intended to apply to the situation generally, without reference to any particular person or individual.

MR. HODGES: Well, Mr. Chairman, I submit that any language in the constitution should have a purpose and I fail to see the purpose here. At best this is merely useless and, at worse, it is sort of a gratuitous insult. I would say that if we were to engage in this type of petty cliches, the minority might put in a sentence, "The legislature should remember to be penny wise and pound foolish" or something of that sort. It seems to me that we could well do without this. I appreciate Mr. Martin's comment, that this is not to be offered as an insult to any of the previous governors or executives, but I think it is something that we can well do without. I am sure every governor, anyone who attains the office of governor in this state, be he Republican or Democrat or of any other party, realizes this, and we are just putting excess verbiage in. Therefore, I would move at this time to strike the first sentence.

CHAIRMAN MILLARD: Will the delegate put his amendment in writing? We have 2 other amendments ahead of that, Mr. Hodges.

CHAIRMAN MILLARD: Mr. Martin.

MR. MARTIN: Mr. Chairman, we have 2 other amendments and Mr. Hodges' amendment, and it doesn't look as though we can finish in the immediate future. I move the committee do now rise.

CHAIRMAN MILLARD: The chairman of the committee has moved that the committee of the whole do now rise. All in favor will say aye. Opposed, no.

The motion prevails.

[Whereupon, the committee of the whole having risen, Vice President Hutchinson resumed the Chair.]

VICE PRESIDENT HUTCHINSON: The delegate from Genesee, Mr. Millard.

MR. MILLARD: Mr. President, the committee of the whole has had under consideration a proposal of which the secretary will give a detailed report.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 46,** A proposal pertaining to the executive budget and item veto; has considered several amendments thereto, and has come to no final resolution thereon. This completes the report of the committee of the whole.

VICE PRESIDENT HUTCHINSON: Announcements.

SECRETARY CHASE: The committee on emerging problems will meet this evening, March 14, in committee room I, third floor, at 7:30 p.m. Mr. Frank Millard, chairman.

We have the following requests for leave. Mr. Higgs wishes to be excused from the afternoon session of Thursday and all day Friday and the session of Monday, March 19, because of his participation in federal court trials; and Mr. Everett wishes to be excused from the sessions of Friday, Monday and Tuesday.

VICE PRESIDENT HUTCHINSON: Without objection, the requests will be granted. The Chair hears no objection and the requests are granted. Mr. Ford.

MR. FORD: I would like to make inquiry at this time, through the Chair, to the secretary or whoever else would consider such a matter, to see if a method couldn't be devised so that we could more readily have available to us the language of the proposals as they are finally amended and submitted to the committee on style and drafting for ready comparison with the language that comes back from style and drafting at the time that we go into the second reading, so that as we go through these sections we can see what changes were made in the committee on style and drafting, in view of the fact that not all of us have complete notes on the amendments that were made.

VICE PRESIDENT HUTCHINSON: The delegate is informed that each proposal is printed in the journal in the precise form in which it goes to style and drafting, and so it is available to you at that point.

MR. FORD: I understand this. However, the journals are spread out now for several months going back to the first one that was referred by the education committee, and in order to facilitate this, if we could have them reprinted in some form so that they can be readily compared, perhaps we could have an analysis made with a directory that we could use at our desk as we proceed.

VICE PRESIDENT HUTCHINSON: The Chair is informed that each delegate is now furnished a status of committee proposals, and your status would reflect to you where those that have been referred to style and drafting—where that reference was made.

MR. FORD: Thank you.

VICE PRESIDENT HUTCHINSON: Mr. Downs.

MR. DOWNS: Mr. President, I have received in the new file book—and I believe I just got this the last day—the title with the second reading, which I understand does show the differences, which does facilitate showing what style and drafting has done. Is that correct?

VICE PRESIDENT HUTCHINSON: That is correct, Mr. Downs.

SECRETARY CHASE: Mr. Wood wishes to be excused from Friday's session to keep a speaking engagement in Detroit.

VICE PRESIDENT HUTCHINSON: Is there objection to the request of the delegate from Huron? The Chair hears none and it is so granted. Mr. Faxon.

MR. FAXON: Mr. President, I notice that Mr. Lawrence was very successful in getting a stand here for use, and I was informed a week ago that all the microphones here would have one. I wonder what has happened with regard to that matter.

VICE PRESIDENT HUTCHINSON: Mr. Faxon, will you suggest to Mr. Apol that he take the stand that is in the far corner over there by Mr. Hubbs at a microphone that is never used, and he can transfer it over to you.

What is the pleasure of the convention? The Chair recognizes the delegate from Marquette, Mr. Richards.

MR. L. W. RICHARDS: Mr. President—

VICE PRESIDENT HUTCHINSON: Just a minute Mr. Richards. Mr. Hubbs, did you wish to speak?

MR. HUBBS: Mr. President, I might add that I am happy to have the stand go because I do so little talking. (laughter)

MR. L. W. RICHARDS: Mr. President, after having experienced a day of noncontroversial items, I move we adjourn.

VICE PRESIDENT HUTCHINSON: The gentleman from Marquette, Mr. Richards, moves that the convention do now adjourn. All those in favor will say aye. Opposed will say no.

The motion prevails and the convention stands adjourned until tomorrow morning at 9:30 a.m.

[Whereupon, at 4:55 o'clock p.m., the convention adjourned until 9:30 o'clock a.m., Thursday, March 15, 1962.]

ONE HUNDREDTH DAY

Thursday, March 15, 1962, 9:30 o'clock a.m.

PROCEEDINGS

PRESIDENT NISBET: The convention will please **come to order.**

Our **invocation** this morning will be given by the pastor of the church of one of our delegates, Mr. Davis, the Reverend Veder Bass of the Aurelius Baptist Church. Will you please rise.

REVEREND BASS: Shall we pray. Almighty God, we thank Thee this morning for this privilege that You have given us that we may come before Thee beseeching that You might answer our prayers and that Thy will be done in each and every one of our lives. We thank Thee, O God, this morning for these delegates from the various districts and various walks of life which You have called together, our Father, that they may chart the course of this great state.

O God, this morning we pray that You may cast from our minds individualism and, our Father, we pray Thy blessing that these activities, and the things that are accomplished, might be for Thy glory. So, our Father, we pray for Thy richest blessings upon these sessions, not only for today but in the days to come, that Thy will might be accomplished. We ask these things in Jesus' name and for His sake. Amen.

PRESIDENT NISBET: The **roll call** will be taken by the secretary. Will those present please vote aye.

Have you all recorded your presence? If so, the secretary will lock the machine and record the attendance.

SECRETARY CHASE: Mr. President, a quorum of the convention is present.

Prior to today's session, the secretary received the following requests for leave: Mr. Mahinske asked to be temporarily excused; Messrs. Garvin, Lundgren and Tweedie wish to be excused from the sessions of today and tomorrow; and Mr. Page is still ill and wishes to be excused from today's session.

PRESIDENT NISBET: Without objection, the requests are granted.

SECRETARY CHASE: Absent with leave: Messrs. Garvin, Lundgren, Mahinske, Mosier, Ostrow, Page, Rood and Tweedie.

Absent without leave: Mrs. Butler, Messrs. DeVries and Hodges.

PRESIDENT NISBET: Without objection, the delegates are excused.

[During the proceedings the following delegates entered the chamber and took their seats: Mrs. Butler, Messrs. DeVries, Mahinske, Hodges and Rood.]

SECRETARY CHASE: The secretary would like to make the following announcement on behalf of Mr. Karn: he had a manila folder with considerable information with regard to Committee Proposal 74 which has been mislaid. If anyone locates it, please return it to him.

PRESIDENT NISBET: Reports of standing committees.

SECRETARY CHASE: None.

PRESIDENT NISBET: Select committees.

SECRETARY CHASE: None.

PRESIDENT NISBET: The convention will please be in order. Communications.

SECRETARY CHASE: No communications.

PRESIDENT NISBET: Third reading.

SECRETARY CHASE: Nothing on that calendar.

PRESIDENT NISBET: **Motions and resolutions.**

SECRETARY CHASE: Messrs. Madar and Stevens offer

Resolution 82, A resolution to provide for a recess, without pay, for the Memorial day period.

Following is Resolution 82 as offered:

Whereas, It is anticipated that delegates will need an opportunity for rest, and some time to take care of personal affairs; and

Whereas, Many delegates may wish to open up cottages for the use of their families and possible weekend retreats for themselves during the hot summer months; and

Whereas, Many veterans consider Memorial day a solemn occasion; now therefore be it

Resolved, That this convention recess from the time of adjournment on Thursday, May 24, until 4:00 p.m., Monday, June 4; and be it further

Resolved, That such recess shall be without pay or compensation to the delegates of this convention.

PRESIDENT NISBET: It will be referred to the committee on rules and resolutions.

SECRETARY CHASE: Mr. Leppien and 68 other delegates offer

Resolution 83, A resolution relative to sessions on Friday.

Following is Resolution 83 as offered:

Resolved, That we, the undersigned delegates to the Michigan Constitutional Convention of 1961-1962, hereby resolve that upon the adoption of this resolution, each Friday session shall begin at 9:00 a.m., with a recess at 11:00 a.m. until 12:00 noon, at which time the convention shall reconvene and remain in session until 2:00 p.m., when it shall adjourn for the weekend, unless otherwise ordered by this convention.

William J. Leppien
Roscoe O. Bonisteel
Weldon O. Yeager
Claude L. Wood
Coleman A. Young
Robert S. Tubbs
Herbert M. Turner
S. Martin Tweedie, III
Nick J. Rajkovich
Elmer L. Radka
Earl C. Pugsley
Herman D. Dehnke
Kenneth G. Prettie
Paul G. Goebel
Charles L. Anspach
Robert H. Blandford
Raymond L. King
Karl K. Leibrand
John A. Hannah
Raymond A. Plank
Clifford E. Perras
Anthony Stamm
Ray Krolikowski
Katherine M. Cushman
Morris W. Hood
Charles L. Follo
Lillian Hatcher
Robert G. Hodges
Jack Faxon
William D. Ford
Paul R. Mahinske
Joseph M. Snyder
William G. Suzore
Anthony J. Wilkowski
H. Carl Spitler
G. Keyes Page
Frank G. Millard
Paul V. Gadola
Richard D. Kuhn
J. Don Lawrence
H. V. Hatch
Ervin J. Haskill
Stanley M. Powell
J. Harold Stevens
Blaque Knirk
Clyne W. Durst, Jr.
James M. Shackleton
Wynne C. Garvin
Sidney Barthwell
Don Binkowski
Lee Walker
Raymond M. Murphy
Edward L. Douglas
Adelaide J. Hart
Melvin Nord
Harold Norris
Stephen Stopczynski
William C. Marshall
Martin W. Baginski
Theodore S. Brown
Frank A. Balcer, Jr.
Peter L. Buback
John E. McCauley
Daisy Elliott
William P. Pellow
Samuel B. Ostrow
Tom Downs
William O. Greene
Harold E. Bledsoe

PRESIDENT NISBET: Referred to the committee on rules and resolutions.

SECRETARY CHASE: That is all the resolutions on file.

PRESIDENT NISBET: Mr. Martin.

MR. MARTIN: Mr. President, at this time I would like to move that when the convention has considered Committee Proposal 78 dealing with the legislative auditor general that we then proceed to consider the following committee proposals: Committee Proposal 70; Committee Proposal 75; Committee Proposal 72; Committee Proposal 48; Exclusion Report 2027; Committee Proposal 74; Committee Proposal 77; and Committee Proposal 76.

PRESIDENT NISBET: The question is on the motion of Mr. Martin for consideration of proposals.

MR. MARSHALL: Mr. President.

PRESIDENT NISBET: Just a minute, Mr. Marshall. Mr. Chase, would you read this again? Then the Chair will recognize you, Mr. Marshall.

SECRETARY CHASE: Mr. Martin has proposed —

MR. LEIBRAND: Mr. President, I did not hear the first reading of Mr. Martin's motion.

PRESIDENT NISBET: Would you repeat, Mr. Martin? Would you care to give a further explanation?

MR. MARTIN: Yes. Yes, of course. What I am proposing, Mr. Leibrand, is that after we consider the next proposal on the final calendar, which is the proposal with respect to the legislative auditor general, that we then pass to the consideration of the numbered proposals which are the veto power of the governor; compensation of state officers; compensation of the acting governor; dual office holding; an exclusion report that deals with that; the board of fund commissioners, state auditors and escheats; governor's residence; and local civil service; the remainder of the calendar then to follow in that order now on the final calendar.

PRESIDENT NISBET: The Chair recognizes Mr. Marshall.

MR. MARSHALL: Mr. President, I am at a complete loss to understand the maneuver by our honorable committee chairman. I had discussed the order of business on the executive branch with the chairman. He had advised me that we would follow the order as set forth on general orders in the calendar. It is obvious to me — I see no reason and I am speaking against the motion made by Mr. Martin. We are well prepared to proceed with the debate on the issues as they appear on the general orders — it is becoming rather obvious to me, Mr. Martin, that you fellows do not know from one day to the next what you are going to take up, and if it is being decided in the majority caucus from time to time and from day to day as to how you are going to maneuver and manipulate within this convention, then it would seem to me that maybe the majority of us should join the Republican party for the duration of the convention in order to have a voice in the drafting of this constitution. I am opposed to the recommendation. We should proceed to general orders.

MR. MARTIN: Mr. President and Mr. Marshall, we would be glad to have the minority join with the Republican party for the balance of the convention if they would be good enough to do so.

This seems to be a more logical order of consideration.

PRESIDENT NISBET: Mr. Leibrand.

MR. LEIBRAND: Mr. President, I stayed up until after 12:00 o'clock last night preparing myself on Committee Proposal 71 in reliance upon the calendar. I do not think that the chairman of the executive branch committee has given sufficient reason — as a matter of fact he has given no reason at all — for switching this calendar to take up something next with which I may not be acquainted at all. I cannot join with Delegate Marshall in everything he said, but I will join him in his ultimate position that we should follow the regular order of the calendar. I will oppose Mr. Martin's motion.

PRESIDENT NISBET: Mr. Bentley.

MR. BENTLEY: Mr. President, I did not hear Committee Proposal 71 read in the motion. Does the motion provide for 71 to follow all the other proposals?

PRESIDENT NISBET: Mr. Martin.

MR. MARTIN: Committee Proposals 71, 59 and 60 would follow the other proposals then.

PRESIDENT NISBET: Mr. Brake.

MR. BRAKE: Mr. President, ladies and gentlemen of the convention, the chairman of the committee has quite a lot of responsibility in the presentation that he makes to this

convention and to the committee of the whole. I have not had time, of course, to go back and check over just what has happened since the convention convened, but I cannot remember a time when the chairman of the committee was not allowed to present the material coming from his committee in the order in which he thought it ought to be presented. I know definitely that when the finance article was here I asked you to change the order in which the sections were taken up, and there wasn't any question about it. It seems to me that in the judicial article that we have just finished that Mr. Danhof asked to move some of those sections around in their order and it was granted. It seems to me that when the chairman thinks that there should be a different order of presentation that we ought to give some credence and grant him some discretion in how the presentation is made. I shall certainly go along with Mr. Martin's motion.

PRESIDENT NISBET: Mr. Marshall.

MR. MARSHALL: Well, I agree with Delegate Brake that the chairman of the committee has a great deal of responsibility, but I would also remind Delegate Brake that the chairman of the committee also has an office and a private secretary. He also has the research department of this convention at his disposal. Those of us in the minority have had to labor many hours on our own in order to prepare for the debate on the floor of this convention, and I think some consideration should be given to that. And if there is to be a change in general orders, particularly after the committee chairman has informed the vice chairman of the committee — who happens to be in the minority — how we were going to proceed and we prepared to proceed that way, I think in all honesty that the chairman should give us some good, logical reason.

PRESIDENT NISBET: The question is on the adoption of the motion. Mr. Secretary, will you read that order so that there will be no question in the delegates' minds.

SECRETARY CHASE: Mr. Martin's motion is that the order of consideration of the proposals from the committee on the executive branch following the disposition of Committee Proposals 46 and 78 shall be as follows: next, Committee Proposal 70, the veto power of the governor; then 75, which is compensation of state officers; then 72, compensation of the acting governor; then 48, dual office holding; then the Exclusion Report 2027, which deals with sections 14 and 15 of article VI; then Committee Proposal 74, the board of fund commissioners, state auditors and escheats; then Committee Proposal 77, the governor's residence; then Committee Proposal 76, local civil service; after which the remaining items on the calendar will be taken in the order printed therein.

PRESIDENT NISBET: Mr. Nord.

MR. NORD: Mr. President, I would like to address, through the Chair, a question to Mr. Martin, if I may.

PRESIDENT NISBET: Do you care to answer, Mr. Martin?

MR. NORD: Mr. Martin and delegates to the convention, this is not a question of the chairman, as I understand it, just changing the calendar. If he had the power to do so he would do so without our being required to vote, but we are being required to vote and I need information in order to know how to vote. I want to get this from Mr. Martin, if I may. Mr. Martin, can you tell us what reason there is why the calendar that we have before us was the logical calendar yesterday and the calendar that you propose now is the logical calendar today? I would like to know what has happened in the meantime to change the logic.

PRESIDENT NISBET: Mr. Martin.

MR. MARTIN: Mr. President and Mr. Nord, the answer is for the same reason that Mr. Brake at one time wished to change his order of business, and Mr. Danhof: to give the delegates a more adequate time to consider the various proposals or sections of the proposals in the order that seems to me to be a somewhat more logical order of consideration.

PRESIDENT NISBET: The question is on the motion of Mr. Martin. Those in favor will say aye. Those opposed, no. The Chair is in doubt. Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, I ask the yeas and nays.

PRESIDENT NISBET: The yeas and nays have been demanded. Is the demand seconded? A sufficient number up. Those in favor of the motion will vote aye. Those opposed will vote nay. Have you all voted? Mr. Sharpe.

MR. SHARPE: Point of information, Mr. President. Is the next order of business Committee Proposal 78?

PRESIDENT NISBET: That is correct.

MR. SHARPE: And this is under the motion that Mr. Martin has made that we take up Committee Proposal 78 next?

PRESIDENT NISBET: We have finished Committee Proposal 78, as I understand it. Mr. Marshall.

MR. MARSHALL: I believe that is incorrect, Mr. President.

MR. SHARPE: Let me get this clear.

MR. MARSHALL: I believe under Chairman Martin's motion that it is to take up all of the other stuff the same as we have done all throughout the convention; it is to avoid the real issues until the last — and he is sidestepping 78 and 71 —

MR. MARTIN: No, Mr. President, 78 remains exactly as it is on the present calendar.

MR. MARSHALL: I am sorry.

PRESIDENT NISBET: Have you all voted? Mr. Sharpe.

MR. SHARPE: Mr. President, delegates, let me ask one more question. Where does 71 come in on the list?

PRESIDENT NISBET: After 76. Mr. Martin.

MR. MARTIN: Committee Proposal 71 will be considered after some of these other matters are considered, Mr. Sharpe.

PRESIDENT NISBET: Have you all voted? If so, the secretary will lock the machine and record the vote.

The roll was called and the delegates voted as follows:

Yeas—71

Allen	Gadola	Rajkovich
Andrus, Miss	Goebel	Richards, J. B.
Anspach	Habermehl	Richards, L. W.
Batchelor	Hatch	Romney
Beaman	Heideman	Sablich
Bentley	Howes	Seyferth
Blandford	Hubbs	Shackleton
Bonisteel	Hutchinson	Shaffer
Brake	Iverson	Sleder
Brown, G. E.	Karn	Spitler
Conklin, Mrs.	King	Stafseth
Cudlip	Kirk, S.	Staiger
Danhof	Knirk, B.	Stamm
Davis	Koeze, Mrs.	Sterrett
Dehnke	Kuhn	Stevens
Dell	Lawrence	Thomson
Donnelly, Miss	Leppien	Tubbs
Doty, Dean	Martin	Turner
Durst	McLogan	Upton
Elliott, A. G.	Millard	Van Dusen
Everett	Nisbet	Wanger
Farnsworth	Plank	White
Figy	Pollock	Yeager
Finch	Radka	

Nays—59

Austin	Greene	Norris
Baginski	Hart, Miss	Pellow
Balcer	Haskill	Perlich
Barthwell	Hatcher, Mrs.	Perras
Binkowski	Higgs	Powell
Bledsoe	Hood	Prettie
Boothby	Hoxie	Pugsley
Brown, T. S.	Judd, Mrs.	Rush
Buback	Kelsey	Shanahan
Cushman, Mrs.	Krolikowski	Sharpe
Dade	Leibrand	Snyder
Doty, Donald	Lesinski	Stopczynski
Douglas	Liberato	Suzore
Downs	Madar	Walker
Elliott, Mrs. Daisy	Marshall	Wilkowski
Erickson	McAllister	Wood
Faxon	McCauley	Woolfenden
Follo	McGowan, Miss	Young
Ford	Murphy	Youngblood
Gover	Nord	

SECRETARY CHASE: On the motion to rearrange the

schedule for the consideration of the committee proposals from the committee on executive branch, the yeas are 71 and the nays are 59.

PRESIDENT NISBET: The motion prevails. Unfinished business.

SECRETARY CHASE: None.

PRESIDENT NISBET: Special orders.

SECRETARY CHASE: None.

PRESIDENT NISBET: **General orders.** The Chair recognizes Mr. Millard.

MR. MILLARD: Mr. President, I move that the convention resolve itself into committee of the whole for the consideration of certain matters on the general orders calendar.

PRESIDENT NISBET: The question is on the motion of Mr. Millard. Those in favor will say aye. Opposed, no.

The motion prevails.

[Whereupon, Mr. Millard assumed the Chair to preside as chairman of the **committee of the whole.**]

CHAIRMAN MILLARD: The committee will be in order. We are considering section d of **Committee Proposal 46.** We had disposed of the minority report at the conclusion of the session yesterday.

The secretary will read.

For last previous action by the committee of the whole on Committee Proposal 46, see above, page 1649.

SECRETARY CHASE: Mr. Faxon now offers the following amendment to section d:

1. Amend page 2, line 14, after "governor" by striking out "shall" and inserting "may"; so that the language will then read:

> No appropriation shall be deemed a mandate to spend. The governor may reduce expenditures of executive agencies whenever it appears that actual revenues for a fiscal period will fall below the revenue estimates on which appropriations for that period were based. . . .

CHAIRMAN MILLARD: The Chair will recognize Mr. Faxon.

MR. FAXON: Mr. Chairman and members of the committee, this change in the word from "shall" to "may" simply gives some discretion to the governor as to what in his wisdom he deems necessary in order to act in this particular area. Although I am not exactly pleased with the content, I think that the least we can do is to permit some degree of flexibility insofar as the operation of this particular section may come about. I would urge your consideration of changing the word to "may" there, so that the governor would have that flexibility insofar as his operations and functions are concerned.

CHAIRMAN MILLARD: The Chair recognizes Mr. Hatch, the delegate from Marshall.

MR. HATCH: Mr. Chairman, I am surprised that Mr. Faxon — who yesterday was so opposed to having this flexibility and discretion in the governor when he referred to the words "it appears" — now wants to give the governor even more discretion. I oppose the amendment.

CHAIRMAN MILLARD: The Chair recognizes the chairman of the committee, Mr. Martin.

MR. MARTIN: Mr. Chairman, the purpose of the committee in using the word "shall" was exactly that it desired that the governor would be directed to do this and not that he "may" do it if he happens to think that it is a good thing to do or that he happens to not want to do it. We want the governor to do it. That is the import of the committee's use of the word "shall". For that reason, I oppose Mr. Faxon's amendment.

CHAIRMAN MILLARD: The question is on the Faxon amendment. All those in favor will say aye. Opposed, no.

The amendment is not adopted. The secretary will read.

SECRETARY CHASE: Mr. Faxon offers the following amendment:

1. Amend page 2, line 19, after "branches" by inserting "or to those funds appropriated for public educational purposes and institutions"; so that the last sentence will read:

> The governor's power to reduce expenditures shall not apply to the legislative and judicial branches or to those funds appropriated for public educational purposes and institutions or to those services for which funds are mandated by this constitution.

CHAIRMAN MILLARD: The Chair will recognize the delegate from Detroit, Mr. Faxon.

MR. FAXON: Mr. Chairman and fellow delegates, we have here in this section given the governor power to reduce expenditures for all those areas except the other branches of government and those funds that are mandated. We recognize the judicial branch and we recognize the legislative branch, but we do not give recognition to the status of our constitutional universities, an action which we took some weeks ago. The power to reduce expenditures is the power to coerce and interfere with the educational programs of our state. This power should not be lodged with a single individual. If we mean what we say when we give constitutional status to our universities, then we ought not to give to the governor, a single individual, the power to reduce the expenditures. Education, like these other branches of government, cannot exist unhampered with this type of power vested in the governor. You cannot reduce the appropriations to a university without seriously curtailing its instructional program and the effectiveness of its whole operation.

I recommend to you, fellow delegates, that we look very carefully here to see whether we might not in our wisdom see fit to implement that decision that we made earlier with regard to the giving of constitutional status and at this point protect those appropriations made by the legislature from the caprice of a single individual. The legislature is appropriating the money. They are the ones that are responsive and responsible to the people. The governor should not be able, as a single individual, to reduce these appropriations or expenditures — by whatever word you prefer to call them. This is simply keeping in line with the idea that has been long prevalent in this state over the independence of our constitutional universities. Let's keep them independent from the actions of a single governor if he so desires to reduce those particular appropriations.

CHAIRMAN MILLARD: The Chair recognizes Mr. Martin.

MR. MARTIN: Mr. Chairman, I believe the secretary has a substitute amendment on his desk. I wonder if he would read that?

SECRETARY CHASE: Well, the secretary is at a loss, Mr. Martin, because this amendment of Mr. Faxon's is to line 19, and the amendment that was sent up was to line 13.

MR. MARTIN: I believe the substitute amendment would strike Mr. Faxon's amendment and substitute the language on line 14.

SECRETARY CHASE: Mr. Faxon's present amendment is as follows:

[The amendment was again read by the secretary. For text, see above.]

The previous amendment that Mr. Faxon had offered to line 14 after the word "governor" by striking out "shall" and inserting "may" has been defeated and is no longer before the committee.

MR. MARTIN: I will examine the amendments on the secretary's desk, Mr. Chairman.

MR. WALKER: A point of information, Mr. Chairman.

MR. MARTIN: Mr. Chairman, the secretary advises me that the amendment to which I referred is not a proper substitute and must be considered in order. For that reason, I address myself now to Mr. Faxon's amendment. The amendment referred to will be proposed subsequently.

With respect to Mr. Faxon's amendment, I would have to say this: that if we are going to insert a particular group of agencies into this picture and exempt them from the power

of the governor to reduce expenditures, we would also have to insert a large number of other agencies and institutions, and before we got through we would have to insert all — out of fairness, all — of the institutions and agencies and departments of the state, and this would completely defeat the purpose of the section. For that reason, I oppose Mr. Faxon's amendment, since it would discriminate in favor of one group of agencies against all of the other agencies, departments and institutions of the state. I hope you will defeat the amendment.

CHAIRMAN MILLARD: The Chair will recognize Delegate Walker.

MR. WALKER: Mr. Chairman, would it be possible for the delegates on this side of the room to see what the amendment is? We do not have it here. Or is it the opinion that Mr. Faxon's first amendment was not there either? (laughter)

CHAIRMAN MILLARD: The sergeant at arms will see that the amendment is put on this side of the room.

Mr. Faxon, do you want to be recognized?

MR. FAXON: No, I want Mr. Hannah recognized.

CHAIRMAN MILLARD: Delegate Walker, would you like to have the amendment read again?

MR. WALKER: No, sir, it is an amendment of some length and I don't feel — particularly on an amendment of this length — that I can keep it all in my mind. It is a little early in the morning for that, you know. (laughter)

CHAIRMAN MILLARD: The Chair will now recognize the delegate from East Lansing, Dr. Hannah.

MR. J. A. HANNAH: Mr. Chairman and members of the committee, of course, as the administrator of a university, I am sympathetic to the objective that Mr. Faxon has in mind. But in view of the very large percentage of all state expenditures that go for education, I cannot believe that in a time of real emergency if the state finds itself without sufficient revenues to take care of all of the costs of operation, I cannot believe that education should necessarily be a sacred cow that shouldn't be susceptible to reexamination of its expenditures too. My objection to the language of this section is not to the failure of it to give preferred status to education but to the fact that you place in the hands of the governor the sole and exclusive opportunity to determine how expenditures shall be made to come in line with available revenues. I think this is a most unwise procedure.

I have spoken to the chairman of the committee and I assume that the amendment that he is going to introduce later may take care of my objection, but if it does not I introduce the motion at this time that it is a mistake to give the governor the opportunity, in the event that revenues are not going to equal expenditures by a certain number of millions of dollars, and make it possible for the governor on some sort of a whimsical basis to completely eliminate functions or services of the state that to him may seem unimportant or less important than others. My feeling is that if we are going to accomplish the objectives that the framers of this section had in mind, there must be an appeal from the action taken by the governor or some shared responsibility for these decisions resting in the hands of the legislature that made the appropriations in the first place.

I am not speaking in favor of Mr. Faxon's amendment because I think it would be a very unpopular position for education to take; that education alone must be exempt from rescrutinizing any of its expenditures in times of real emergency. If we have another way of taking care of my objection I am not in favor of Mr. Faxon's amendment.

CHAIRMAN MILLARD: The Chair will recognize Mr. Martin.

MR. MARTIN: Mr. Chairman, just to somewhat clarify the situation, I would appreciate it if the secretary would read the amendment, which he has on his desk, which I understand Mr. Staiger is offering, so that the point which Dr. Hannah has raised might be somewhat clarified.

SECRETARY CHASE: Mr. Staiger has filed an amendment to page 2, line 14, after "governor" by inserting a comma and the language ". . . with the approval of the appropriating committees of the house and senate,"; so that the language would then read, beginning on line 14:

> The governor, with the approval of the appropriating committees of the house and senate, shall reduce expenditures of executive agencies whenever it appears that actual revenues for a fiscal period will fall below the revenue estimates. . . .

MR. MARTIN: Mr. Chairman, I don't want to speak out of order on that amendment, but I did want the delegates to know that it was on the desk and that I think it will take care of the question which Dr. Hannah has raised in saying that he thought the responsibility for such reductions ought to be shared with some other portion of state government.

MR. POLLOCK: Mr. Chairman.

CHAIRMAN MILLARD: Just a moment. Because of the interjection of a new amendment here, we had better have the secretary read the Faxon amendment and find out what we are talking about.

SECRETARY CHASE: Mr. Faxon's amendment which is immediately pending is:

[The amendment was again read by the secretary. For text, see above, page 1666.]

CHAIRMAN MILLARD: The Chair will recognize Mr. Faxon, who is the next on the list. You will be next, Dr. Pollock.

MR. FAXON: It has been said by others that this is a giving of certain privileged status to institutions, agencies and departments. I suggest that the status which has been given to education has already been given in the form of constitutional status. As many of you know, in the early part of this century one of the universities was considered by the courts to be a fourth branch of government. Now we give status to our legislative and judicial branches in those areas which cannot be tampered with by the governor alone. This is simply following through with the same type of treatment to the question of the universities and education.

I feel that if a real emergency comes up in this state the legislature ought to be called into session to deal concurrently with these problems. This should not be dealt with alone. As far as meeting the appropriations if the revenues are insufficient, this is a responsibility which should be shared by the representatives of the people of the state and not dealt with alone. Now, I don't know — Mr. Martin brought up his amendment and I guess I should reserve my comments to that when it is pending — but I still feel that we have a certain responsibility here and that, although there may be some efforts to change the second sentence, we still ought to give careful consideration to the implications that are inherent in this kind of a situation where the educational appropriations could be dealt with by a person or by a select group of people who are not representatives of all the people.

CHAIRMAN MILLARD: The Chair will recognize the delegate from Ann Arbor, Dr. Pollock.

MR. POLLOCK: Mr. Chairman, could I ask, through the Chair, a question of the chairman of the committee? I think it says in line 13, Mr. Martin — line 14, I beg your pardon — ". . . shall reduce expenditures of executive agencies. . . ." Now, would you interpret the term "executive agencies" to include constitutional universities? If so, it is a strange interpretation that I have never heard.

MR. MARTIN: I think, Mr. Chairman, Dr. Pollock, that "executive agencies" does cover, although we have not used all of the different descriptive terms to cover other — I mean, to make certain that we have included everything. I think that it probably does cover the constitutional agencies as well as those which are not constitutional. I believe that it does.

CHAIRMAN MILLARD: The question is on the Faxon amendment. All in favor of the Faxon amendment will say aye. Opposed, no.

The amendment is not adopted.

DELEGATES: Division.

CHAIRMAN MILLARD: A division has been called for. Is there a sufficient number up?

SECRETARY CHASE: A sufficient number.

CHAIRMAN MILLARD: A sufficient number. All those in favor of the Faxon amendment will vote aye. Those opposed will vote nay. Have you all voted? The vote is on the Faxon amendment. All in favor of the Faxon amendment will vote aye. Those opposed will vote nay. Have you all voted? If so, the secretary will lock the machine and total the vote.

SECRETARY CHASE: On the amendment offered by Mr. Faxon, the yeas are 27; the nays are 82.

CHAIRMAN MILLARD: The amendment is not adopted. The secretary will read.

SECRETARY CHASE: Messrs. Mahinske and Hodges offer the following amendment:

1. Amend page 2, line 13, after "Sec. d.", by striking out the balance of the line, "No appropriation shall be deemed a mandate to spend."

CHAIRMAN MILLARD: The Chair will recognize the proposer of the amendment, the delegate from Detroit, Mr. Mahinske.

MR. MAHINSKE: This is the amendment that was attempted to be offered from the floor yesterday, orally. As Mr. Martin said, these few words here actually add nothing to the constitution. They are just a statement of policy. And for these reasons and for the reason that we felt that it was inappropriate to put this language in the constitution, we made the motion to strike the first sentence of section d of the committee proposal.

CHAIRMAN MILLARD: Mr. Martin.

MR. MARTIN: Mr. Chairman, I only want to repeat what I said yesterday, and that is that this proposal is an important statement of policy; but I want to remove any question in the minds of the minority that this is intended as a reflection upon any individual or any party with respect to this particular matter. The sentence is general in character and I think they have misapprehended its import in implying that this is directed against a past governor or an action of any particular party.

CHAIRMAN MILLARD: Mr. Mahinske.

MR. MAHINSKE: At this point, Mr. Chairman, there is no misapprehension on my part. I don't think this was meant to be derogatory or so forth, but I think that at best it is a statement of policy and I don't believe that it does belong in the constitution. For that reason I offered the amendment to strike the language and I would urge you to vote to delete this language from the constitution.

CHAIRMAN MILLARD: The question is on the Mahinske and Hodges amendment. All those in favor of the amendment will say aye. Opposed, no. The Chair is in doubt. All those in favor of the Mahinske amendment will vote aye, and those opposed will vote nay. Have you all voted? Have you all voted? If so, the machine will be locked and the secretary will tally the vote.

SECRETARY CHASE: On the amendment offered by Messrs. Mahinske and Hodges, the yeas are 40; the nays are 64.

CHAIRMAN MILLARD: The amendment is not adopted. The secretary will read.

SECRETARY CHASE: Mr. Staiger offers the following amendment:

1. Amend page 2, line 14, after "governor" by inserting a comma and "with the approval of the appropriating committees of the house and senate,"; so that the language will then read:

> The governor, with the approval of the appropriating committees of the house and senate, shall reduce expenditures of executive agencies whenever it appears that actual revenues for a fiscal period will fall below the revenue estimates. . . .

CHAIRMAN MILLARD: The Chair will recognize the proposer of the amendment, the delegate from Port Huron, Mr. Staiger.

MR. STAIGER: Mr. Chairman and members of the committee, I share with Dr. Hannah some of the concern for leaving this power completely to the governor. I also think Mr. Mahinske mentioned when he talked before that there is something that should be done in this area to, in some way, have a followup on the appropriations to see that they are in line with the incoming revenue, and this cannot be done completely by the legislature because the legislature is not in session. This suggestion of allowing the governor, with the approval of the appropriations committees of both houses, is not a novel approach to something like this. New York, as I understand it, has a select committee made up of certain members of both of their houses which, when the legislature is not in session, is empowered to make certain emergency appropriations upon the recommendation of the governor. This approach would leave the power with the governor to cut expenditures when he sees that the revenues are not meeting expectations but only with the approval of the appropriating committees of the 2 houses of the legislature, so that there is some check on the power. I recommend the adoption of this amendment.

CHAIRMAN MILLARD: The Chair will recognize Mr. Faxon.

MR. FAXON: I would first like to ask a question of Mr. Staiger. In the case of the state of New York, Mr. Staiger, is this spelled out in the constitution?

MR. STAIGER: I believe it is by constitutional provision. I am not completely certain on it, but that is my understanding. We had the administrative head on the executive department from New York here. I am not on that committee but I heard the testimony and that was my understanding.

MR. FAXON: I can check that, I guess, but I just wanted to say that I think it is somewhat irregular to give constitutional status to a committee, one committee of the house or the senate, in this case the appropriations committee. I don't know that we have given this status to the other standing committees of the house and senate, and I think that this might be a departure from the tradition of not naming the legislative committees.

I would want to say one thing further with regard to this amendment: I do not think it goes far enough. I think that the idea of having a check upon the governor is a fine one, but the traditional check is a legislative check and not of a select committee of the legislature. Now if I could see language there in other parts of the constitution where the governor shall, with approval of the senate or the house, or both, reduce expenditures, then I would at least know that the whole legislature is involved in this important process.

As I said before, when there is a cash crisis, where there is a problem, this is the time that the governor has the power to call the legislature back and to deal with this problem with them. And I don't see that the selection of a single committee of the house and senate is adequate protection for the people of the state who elect a total legislature to represent them. In this case we give a specified committee of the house and senate this particular prerogative. I would oppose this amendment and hope that in its defeat we could come up with giving this back to the legislature so that the governor shall, with the approval of the legislature, reduce expenditures. In this way we would be maintaining a proper relationship between the 2 branches of government.

CHAIRMAN MILLARD: The Chair will recognize the lady from Grand Rapids, Mrs. Judd.

MRS. JUDD: Mr. Chairman and members of the committee, I wonder if we could have clarified a little more the application of this phrase. I am not quite satisfied as to whether we have included the institutions of higher learning. It seems to me that we have not excluded them from lines 19 and 20, and I cannot feel quite sure yet that the term "executive agencies" in the upper part of the paragraph includes institutions of higher learning. Could we have some further legal interpretation on this point?

CHAIRMAN MILLARD: Does the chairman wish to answer the lady's question? Mr. Martin.

MR. MARTIN: Mr. Chairman, Mrs. Judd, the term "executive agencies" is a broad one. It covers everything which is not a part of the legislative or judicial branches, and it was the view of the committee that it was completely com-

prehensive in this regard; that it covers not only statutory agencies and institutions but that it covers constitutional agencies and institutions, and that it would apply to institutions and agencies which are constitutional in character. It was not felt necessary to insert a whole series of words here showing that these other institutions were covered. We think that the language is broad enough to cover them. I mean—if I might continue my comment here, Mr. Chairman—the purpose of this amendment, as I understand it, is to make sure that the reduction of expenditures—and we are not talking about appropriations—is not done, to use Dr. Hannah's phrase or word, at the whim of a single individual. We realize that this is a serious matter, but there is at the present time no means in government by which reasonable adjustments can be made where revenues are falling below estimates.

Now it is also true that we have what is called a "little legislature" which is composed, I believe, of the members of the appropriating committees, which is given authority by the legislature to make appropriations from a contingency fund for emergency matters when the legislature is out of session. This is a body which, on the governor's recommendation, may add to the funds which these agencies have if there is a temporary shortage which they need to have made up. And this is the converse of that. It would permit the governor—it puts the responsibility on the governor to take the initiative. And this, we think, is very important because he is the head of the executive branch; he is closely familiar with what is happening to revenues as well as expenditures and the initiative is properly with him. But it seems to many of us that this provides a safeguard in that he must have approval of the appropriating committees which—of the entire body of the legislature—are also most familiar with these financial and fiscal problems. He must have their approval to make these reductions. We think that this meets the objection and while this is not a committee amendment, those delegates whom I have talked with—and I have talked to quite a number—seem to feel that this does provide an adequate safeguard. I hope that the committee will approve the amendment.

CHAIRMAN MILLARD: The Chair recognizes the delegate from Detroit, Mr. Young.

MR. YOUNG: Mr. Chairman, in further comment on Mrs. Judd's question, I am not sure whether section d, in fact the whole article as it is written, covers higher education, but I am very sure that it covers lower education. It certainly provides that in time of cash crisis there can be a serious curtailment of the amount of money available to adequately run our school system.

Now, insofar as the amendment is concerned, I sympathize with the laudable motive of Delegate Staiger's amendment. It seems to clarify and perhaps to loosen the severe bind that this whole proposal places on fiscal policy, but I do not think it goes far enough, because the real solution would be to strike the whole section. In terms of the committee's own reasoning, Mr. Karn said yesterday, I believe, that one of the purposes of this language was to enable the governor, under procedures set down by the legislature, to take action in the absence of the legislature. Now it would seem to me, following the logic of the committee, that procedures approved by the whole legislature would certainly be more representative and more democratic than any decision reached by a small committee of either body. So for that reason I will have to oppose the amendment.

CHAIRMAN MILLARD: The Chair will recognize the delegate from Saginaw, Mr. Shackleton.

MR. SHACKLETON: Mr. Chairman and delegates, if you include this amendment, you have 2 checks; it is not left willy-nilly to the whims of the governor. The first check would be the committees of the house and the senate and the second check would be the rules, the laws, set up by the legislature itself as to procedure and method. I don't know how many more checks you could get short of calling the legislature back and rewriting the whole appropriation bill.

CHAIRMAN MILLARD: The question is on the amendment. Mr. Yeager.

MR. YEAGER: Mr. Chairman, I would like to ask Mr. Staiger a question, if I may.

CHAIRMAN MILLARD: If Mr. Staiger cares to answer.

MR. YEAGER: Something that I would like to know about is how this would actually be implemented; you say, "the approval of the appropriating committees of the house and senate." Now, would these committees act jointly or individually in such action?

MR. STAIGER: I assume that you would have to have the majority of both to get the approval.

MR. YEAGER: Approval of each? Each or both jointly?

MR. STAIGER: Each, would be the — a committee as such acts through a majority of its members so, if you have to get a majority of the appropriating committees of the house and the senate, that means a majority in each voting separately.

MR. YEAGER: If one committee wanted to go along and the other one didn't, there would be no action taken?

MR. STAIGER: That's right.

MR. YEAGER: Thank you.

CHAIRMAN MILLARD: The Chair understands there is an amendment to the amendment. The secretary will read.

SECRETARY CHASE: Mr. Faxon offers the following amendment:

1. Amend the amendment, after "approval of" by striking out "the appropriating committees" and inserting "a majority"; so that the language would then read, ". . . with the approval of a majority of the house and senate. . . ."

CHAIRMAN MILLARD: The Chair will recognize Mr. Faxon.

MR. FAXON: This is in line, fellow delegates, with all the other practice that we have in the constitution with regard to checking the power of the governor or checking the power of the judiciary or checking any power. You never lodge the check within a select group of the body; you lodge it with the body itself. As I said before, this would be giving constitutional status to one of the select committees of the senate and house. Let us lodge the responsibility where it belongs. It belongs with the total legislature. All the legislature should participate in a decision affecting and of such importance to the whole state. Let us not select just a small group of people who sit on a specific committee. The responsibility is with all of them. Let the house and senate have their traditional role of checking upon the governor's power. Delete those words and support this amendment.

CHAIRMAN MILLARD: The Chair recognizes Mr. Staiger.

MR. STAIGER: I think it is obvious to everyone that the Faxon amendment would completely destroy the purpose of the whole section. If there is a need — and I certainly believe, as the committee did, that there is a need — in this area to allow somebody to follow up on the expenditures to see that they don't get out of line from revenue, the whole house and the whole senate just isn't the type of body that can do this during the year. They are not in session the whole year. This gives the governor, with some check on it by the 2 committees, the right to follow up. I would oppose the amendment and state once more that this whole subject is not a novel subject at all and many constitutions have it. Hawaii has this type of expenditure revision during the fiscal year. The model constitution contains a provision of this type. We are not talking about something completely new here, and I think it is a valid and a good provision to have in our constitution. I would urge the defeat of the Faxon amendment to the present amendment on the board.

CHAIRMAN MILLARD: The Chair will recognize Mr. Stevens.

MR. STEVENS: Mr. Chairman and members of the committee, I think it might be a little bit helpful to remind the delegates the status of committees in the legislature seems to be quite different from what it is in the constitutional convention. I don't think there is any question, as a practical matter, but what the 2 committees of the legislature would well represent the thinking of the legislature and would in practice amount to the same thing as an expensive convening of the legislature in special session so far as all practical

results are concerned. Committees in the legislature seem to have a standing and status which we do not seem to recognize here. I think we should think about that. Thank you.

CHAIRMAN MILLARD: The question is on the Faxon amendment to the Staiger amendment. All in favor will say aye. Opposed, no.

The amendment is not adopted. Mr. Martin.

MR. MARTIN: Mr. Chairman, may I have a division on that?

CHAIRMAN MILLARD: The Faxon amendment to the Staiger amendment was defeated.

MR. MARTIN: Oh, I am sorry.

CHAIRMAN MILLARD: The question now is on the Staiger amendment. All in favor of the Staiger amendment will say aye. Opposed, no.

The ayes have it. The amendment is adopted. The secretary will read.

SECRETARY CHASE: Mr. Cudlip offers the following amendment:

1. Amend page 2, line 14, after "expenditures of" by striking out "executive agencies" and inserting "all bodies receiving appropriations"; so that the language will then read:

> The governor shall, with the approval of the appropriating committees of the house and senate, reduce expenditures of all bodies receiving appropriations whenever it appears that actual revenues. . . .

CHAIRMAN MILLARD: The Chair will recognize the proposer of the amendment, Mr Cudlip.

MR. CUDLIP: Mr. Chairman and members of the committee, I think that Mrs. Judd and Dr. Pollock asked questions about this. I am not satisfied that "executive agencies" includes anything but executive agencies. Unless there are words in this proposed constitution that define "executive agencies" — and I know not where they exist — to include such things as universities, et cetera, we need some different language here. I don't think Mr. Faxon needed to make his amendment. I think under this language we are only talking about executive agencies, and the other bodies would be in a class by themselves.

Justice Holmes said that "words are just skins for thoughts." Perhaps the language I suggested is not the best language. It is difficult to do these things on the spur of the moment but we could make a better change, perhaps, on second reading. I am convinced that "executive agencies" does not include all of the bodies of government for which appropriations are made, as a matter of law; they are not words of art, and I would suggest that we change this at this time because it is of vital importance if the whole idea of the section d is to prevail.

CHAIRMAN MILLARD: The Chair recognizes Delegate Durst.

MR. DURST: Mr. Chairman and members of the committee, as a member of the executive branch committee it was my understanding — and I believe it was the understanding of some others — that when we used the term "executive agencies" we meant just that and did not include the educational institutions but, since it has been interpreted that way here and most people seem to feel that it is desirable that it do so, I think Mr. Cudlip's amendment is a good one and I will support it.

CHAIRMAN MILLARD: The Chair will recognize the delegate from Birmingham, Mr. Van Dusen.

MR. VAN DUSEN: Mr. Chairman, a question for Mr. Cudlip, if he would care to answer.

CHAIRMAN MILLARD: If he cares to answer.

MR. VAN DUSEN: I take it, Mr. Cudlip, that it is not the intention of your amendment that the governor would have to make across the board reductions in expenditures to comply with your amendment but that he could select one or more bodies receiving appropriations and apply the reduction to them in line with the authority conferred by this section and the Staiger amendment. Is that correct?

MR. CUDLIP: Yes, I was simply trying to bring before the body the idea that if this reduction is to be effective — it is confined here to "executive agencies" and I believe those words leave out a lot of other bodies of government. I thought that the idea of the proposal was to give the governor this power with respect to all people receiving appropriations.

MR. VAN DUSEN: Mr. Chairman, but not necessarily on an across the board basis?

MR. CUDLIP: No, I understand that the legislature will have rules applying to this section that will take care of that matter.

MR. VAN DUSEN: Thank you, Mr. Cudlip.

CHAIRMAN MILLARD: Mr. Martin.

MR. MARTIN: Mr. Chairman, I wonder if Mr. Cudlip would consider changing the word "all" to "any". The implication of the word "all" is the implication that I think brought about Mr. Van Dusen's question.

MR. CUDLIP: I would indeed do so.

MR. MARTIN: I believe that if he would accept the word "any", I would see no objection to the amendment.

MR. CUDLIP: I accede.

CHAIRMAN MILLARD: The amendment has been revised as follows:

1. Amend page 2, line 14, after "expenditures of" by striking out "executive agencies" and inserting "any bodies receiving appropriations".

CHAIRMAN MILLARD: The Chair will recognize Delegate Hoxie.

MR. HOXIE: Mr. Chairman, I wonder if I might ask Mr. Cudlip a question.

CHAIRMAN MILLARD: If he cares to answer.

MR. HOXIE: Mr. Cudlip, is it your intent that under this provision of reducing appropriations, it would apply to your schools of higher learning?

MR. CUDLIP: Yes, it is my understanding that the intention of the committee is to have this apply to all units, if you please, of government that are receiving appropriations. Member Durst said that he didn't have that notion as a member of the committee but that was, I think, our general understanding.

I am simply trying to provide some wording that doesn't confine the action of the chief executive to "executive agencies", because I think those words are highly restrictive. I think that what we are talking about here when we say "bodies receiving appropriations" means any unit of government, any body, any university receiving appropriations from the legislature. I assume that is the committee intent; I mean, the basic committee intent.

MR. HOXIE: Well, Mr. Chairman, I would like to speak in opposition to the amendment. There are areas perhaps where reductions can be made because of conditions or times that exist. There are other agencies that have set up a schedule — for instance, our schools of higher learning. They have their enrollment there and they have to have the funds available to carry on the activity for instruction.

I don't know how Mr. Cudlip could justify that Mt. Pleasant or any other school could be reduced in the course of the year unless they dismissed from their school students that were already enrolled and thereby reduced the expenditures of the institution to come under this provision. And I certainly don't believe that the membership of this body wants to put our schools of higher learning in that position.

CHAIRMAN MILLARD: The Chair recognizes Mr. Downs.

MR. DOWNS: Mr. Chairman and fellow delegates, I thought there was a longer list and I would have more time to prepare what I was going to say, and since I have not had as much time to prepare — you know, you can talk longer when you have less time to prepare; when you have more time, presumably it is shorter.

I do want to point out to the delegates that I think we are making a very serious mistake in this whole section, that I think what we are trying to do is expect government to operate like business and yet not quite let it operate like business. Now I say that if this is proposed, it is trying to get government to operate like a business. Then we should also

give the govenor the same power that a business would have, to borrow; namely, to put up the roads and the schools and the state parks as security and be able to mortgage them to tide over in periods of economic emergency just as a business has the right to borrow in time of need and carry over to better times.

I do not propose that, because I do not think it is a sound way to operate government. I think that we should point out again the real difference between a business operation and a government. Normally, when businesses are prospering revenues are coming in and state expenditures are down; so the normal pattern is that in good times government's revenues go up because of general community prosperity and certain costs such as welfare are down. When businesses because of necessity must reduce their expenses, then, generally speaking, the expenses of government go up. They tend to be the opposite of the business community.

Now I am afraid that the whole approach of this is to say that the legislature shall establish certain needs but then they shall be mechanically, arbitrarily and in a straitjacket reduced regardless of what the legislature said. We have not recommended the other side of the coin, namely, that if revenues should increase beyond estimates that the governor should be able to spend those with or without legislative approval. I would not recommend that.

I am very concerned that we are going to end up in a position where the governor is forced, with or without legislative consultation — depending on which amendment is adopted — to arbitrarily reduce expenditures in these areas that are not mandated, or even if they are mandated, will still be placed in a very unsound approach. I hope that in reviewing this, the delegates will not only consider the amendments but their effect on the whole section and, in taking a second look, see the unwisdom of what we are doing.

CHAIRMAN MILLARD: The Chair recognizes Delegate Shackleton.

MR. SHACKLETON: Mr. Chairman, a question of Mr. Hoxie, if I may.

CHAIRMAN MILLARD: Mr. Hoxie, would you care to answer?

MR. SHACKLETON: As I understand it, in the preparation of the budget all departments introduce their schedules. Would you just as soon enlighten me as to what departments do not have schedules?

MR. HOXIE: The budget — I might start back — I think that perhaps some of the members aren't aware of the procedure that is followed in the legislature. It is the duty of the governor and the responsibility of the governor to first consider requests from all of the agencies in state government including your institutions of higher learning. Then the governor through his agency prepares a recommendation to the legislature. The legislature in turn reviews the requests of the agencies, conducts public hearings and, as a result, makes a determination of what appropriations should be made for the conduct of that particular agency, the business of that agency.

Now there are areas in which there possibly can be reductions made in the course of the year in the event of undue conditions. There are certain other agencies that it is practically impossible to make reductions. We considered many times in the legislature a program of a straight percentage cut across the board to reduce appropriations. It is not a very judicious manner in which to accomplish that purpose. In other words, there are agencies in which you materially affect an operation that is considered to be of value to the people of the state. One of them, in my belief, is the schools of higher learning. I think it is impossible, after a program is set up, for a school of higher learning during that fiscal year for which the appropriation is made to materially reduce it. Now you may hold up, say, some of the building program or something of that nature, which has been done; but as far as the operations of those institutions, I don't think that you can possibly reduce that in the course of that term. I do not know whether that answers your question, Mr. Shackleton.

MR. SHACKLETON: No, Mr. Chairman. I was trying to find out what agencies do not work upon schedules.

MR. HOXIE: Well, I think practically all of them work on a schedule, but you do have agencies in state government — for instance, in the field of the contractual service, in the field of personnel, where they have vacancies, where it is not absolutely essential that they fill those vacancies if the financial situation doesn't warrant it. There is the matter of contractual services on which the governor presently and has in the past requested the agencies not to expend that money, not to fill those vacancies, whereby it does reduce the expenditures of state government. But I think there are certain agencies, and particularly I am thinking of the schools of higher learning, where this is not a practical way in which we can operate government.

MR. SHACKLETON: Mr. Chairman, I was not asking about the practicality. He made the statement that the schools could not change their schedules, inferring that there were agencies that did not have schedules, and now I am trying to find out what agencies there might be in the state that do not have schedules.

MR. HOXIE: Well, I do not know that we could properly use the word "schedules." I was referring to the word "schedules" in relationship to the schools of higher learning. In other words, they have their teaching staff hired, they have so much of their money appropriated for contractual service, for the fuel and all those items, and they have their enrollment. In my opinion it would materially affect those institutions to take a reduction or a flat cut against their operation. Now, as I have explained, all agencies carry on certain functions or operations which are considered for the benefit of the people, but there are within those agencies opportunities such as mentioned — such as personnel vacancies, such as contractual service — where it can be reduced without materially affecting the service that they are rendering to the people.

MR. SHACKLETON: But yes or no, you know of no agencies that do not have schedules?

MR. HOXIE: I don't consider agencies in state government outside of our schools of higher learning that have what you and I might consider schedules, as such. They have programs.

CHAIRMAN MILLARD: The Chair will recognize Delegate Judd.

MRS. JUDD: Mr. Chairman and fellow delegates, I just wanted to address myself to Delegate Hoxie's fear that this was going to affect the universities. I would support Mr. Cudlip's amendment changing the words "executive agencies" to "all bodies receiving appropriations" only in the light of Mr. Staiger's amendment which modifies the governor's power to include approval of the appropriation committees of the legislature. It was my thought that this was one way to protect the institutions of higher learning against the power of the single individual in cutting their appropriations.

It occurs to me, Mr. Chairman, that perhaps this whole matter is one for style and drafting; that if the convention can agree as a consensus that we do not want the governor alone to have the power to cut the appropriations of the institutions of higher learning, perhaps we could leave it to that committee to decide whether to put it in the first part of the paragraph or the last part of the paragraph.

CHAIRMAN MILLARD: The question is on the Cudlip amendment. Judge Dehnke.

MR. DEHNKE: Mr. Chairman and members of the committee, sometimes it seems that each one of us has his individual sacred cows, and in that connection a horrible thought has just occurred to me and to Judge Gadola: do you suppose under this paragraph the government would have the right to reduce our retirement paychecks? (laughter)

CHAIRMAN MILLARD: Does anyone desire to answer that question? (laughter) Mr. Martin.

MR. MARTIN: I am sure that comes within the category of mandated funds and there would be no possibility of that whatever. I do not want Judge Dehnke to be worrying about that when he votes on this. (laughter)

Mr. Chairman, may I only add this — I just want to refer back to Dr. Hannah's position that he did not want to see educational institutions put in some different class than any other department of government in this respect.

With respect to Mr. Hoxie's comments, he brought out exactly the areas where delay in expenditure could occur and that would be, perhaps, on the expenditures for capital outlay and so on. And that is the purpose of adding the appropriating bodies to this picture; so that they can give reason and justice and care to any changes that might be made. I hope that Mr. Cudlip's amendment will be approved and then the matter can go to style and drafting. If there is any further improvement in the wording that can be made there, of course we would be glad to see that done.

CHAIRMAN MILLARD: The Chair will recognize Delegate Karn.

MR. KARN: Members of the committee, it seems to me that if we would go back to the original thinking of the subcommittee in the preparation of this statement, it might put some verbiage in here that would clear up the situation. Yesterday I made the statement to the committee that the original thinking of the subcommittee on section d was that this section would be effective in emergency conditions or when there seemed to be an impending imbalance in the fiscal policy in the state. This was not originally designed to be a day in and day out affair at all.

Now, various individuals will have their individual agencies that they are worried about. I think if we look at this as an emergency, when the state is in trouble, it is an entirely different situation, and perhaps a couple of words of that sort in here would clear up the matter and would ease the tension of those who are sponsoring some individual agencies and institutions.

CHAIRMAN MILLARD: The question is on the Cudlip amendment as revised. All in favor will say aye. Opposed, no.

The ayes have it. The amendment is adopted. Are there any further amendments on your desk, Mr. Secretary?

SECRETARY CHASE: That was the last amendment on file, Mr. Chairman.

CHAIRMAN MILLARD: If not, it will pass.

Section d, as amended, is passed. Are there any amendments to the body of Committee Proposal 46? If not, it will pass.

Committee Proposal 46, as amended, is passed. The secretary will read.

SECRETARY CHASE: Item 2 on the calendar, from the committees on legislative powers and executive branch, by Messrs. Hoxie and Martin, chairmen, **Committee Proposal 78,** A proposal to provide for the office of legislative auditor general. Adds a new section to article V.

Following is Committee Proposal 78 as read by the secretary, and the reasons submitted in support thereof:

The committees recommend that the following be included in the constitution:

Sec. a. THE LEGISLATURE, BY A MAJORITY VOTE OF THE MEMBERS ELECT OF EACH HOUSE, SHALL APPOINT A LEGISLATIVE AUDITOR GENERAL TO SERVE FOR A TERM OF 8 YEARS, WHO MAY BE REAPPOINTED FOR ONE ADDITIONAL TERM ONLY. HE SHALL BE REMOVABLE FOR CAUSE AT ANY TIME BY A 2/3 VOTE OF THE MEMBERS ELECT OF EACH HOUSE OF THE LEGISLATURE. THE LEGISLATIVE AUDITOR GENERAL SHALL CONDUCT COMPREHENSIVE FISCAL POSTAUDITS OF ALL TRANSACTIONS AND ACCOUNTS KEPT BY OR FOR ALL DEPARTMENTS, OFFICES AND AGENCIES OF THE STATE GOVERNMENT AND PERFORMANCE POSTAUDITS. HE MAY MAKE INVESTIGATIONS PERTINENT TO THE CONDUCT OF SUCH AUDITS. HE SHALL BE ASSIGNED NO DUTIES OTHER THAN THOSE HEREIN SPECIFIED. HE SHALL REPORT ANNUALLY AND AT SUCH OTHER TIMES AS HE DEEMS NECESSARY OR AS REQUIRED BY THE LEGISLATURE TO THE LEGISLATURE AND THE GOVERNOR.

Messrs. Hoxie and Martin, chairmen of the committees on legislative powers and executive branch, submit the following reasons in support of Committee Proposal 78:

There has been in the last quarter century a marked increase in the cost and complexity of services of state government. State operating expenditures have increased from less than $13 million in 1910 to nearly $1,200,000,000 in 1961, and the last 25 years have seen the creation of at least 30 executive agencies.

There has been no parallel emphasis on the improvement or creation of legislative tools to balance the trend in the executive area. If any semblance of balance between the legislature and the executive-administrative area is to be retained, the Michigan legislature must be greatly strengthened in its power to oversee the conduct of executive operations. Giving the legislature the oversight of the audit function both as it respects dollars and cents and as it respects the performance and efficiency of the conduct of services, would be one large step in this direction. The legislature, in effect, now lacks any effective means of its own for determining whether or not the intent of the policy decisions it makes is being honestly and effectively translated into action.

The present independent elected office of auditor general does not, and probably cannot, provide the legislature with the adequate and timely tools it needs, certainly not those tools which are subject to its own oversight and control. A legislative auditor general offers an effective solution to a serious problem of maintaining a desirable, if not actually necessary, balance of power between these 2 major coordinate branches of government.

The first sentence of the proposal calls for the appointment of a legislative auditor general by a majority vote of the members elect of each house of the legislature for a term of 8 years, and provides that the legislative auditor general may be reappointed for one additional term only, or a maximum consecutive service of 16 years. It was felt that a specified term of something more than ordinary length was essential for 3 basic reasons: 1) to attract high caliber persons; 2) to provide for a substantial degree of freedom from extraneous influences in the performance of his duties; and 3) to provide for a reasonable degree of job security. Precedent for a limitation on length of term is provided in the case of the U.S. comptroller general (15 years) and the Detroit auditor general (10 years).

If appointed as an officer of the legislature, there is little room for argument that this officer should be removable by that body. However, removal would be for cause, by which is meant misfeasance, malfeasance, or nonfeasance in office rather than for political or personal reasons, and it would require a 2/3 vote. This extraordinary vote on removal again stresses that such an action, while by no means to be prevented, should not be undertaken lightly or without concurrence of more than a simple majority vote, which might easily represent mere partisan bias.

The duties of the legislative auditor general are to conduct comprehensive fiscal postaudits and performance postaudits and to make investigations pertinent to the conduct of such audits. A performance postaudit is an examination of the effectiveness of administration, its efficiency and its adequacy in terms of the program of the departments or agencies as previously approved by the legislature. The prohibition against assigning other substantive duties to the officer focuses attention on the primary duties and prevents his being placed in the anomalous position of having to audit his own administrative activities. Nonauditing duties of the present office (such as county auditing, examination and approval of plats, and duties relative to the sale of lands delinquent for taxes) should be assigned by law to other existing executive agencies.

Explanation—Matter within [ ] is stricken, matter in capitals is new.

While the investigatory powers of the legislative auditor general are necessarily broad, they are strictly limited and confined to the postaudit area. All preaudit functions remain exclusively in the executive branch where they properly belong. Thus the legislative auditor general has absolutely no power to intervene in or in any way interfere with the exercise by the executive branch of its judgment in carrying out approved programs or its day to day function and discretion in the execution of appropriations.

Reports from the legislative auditor general would be required annually and as he deems necessary to the efficient performance of his duties or as otherwise required by the legislature.

Following is minority report A as offered and the reasons submitted in support thereof:

Messrs. Wanger, Wood, Perras, Hubbs, Powell and Mrs. Koeze, a minority of the committee on legislative powers, submit the following minority report to Committee Proposal 78:

A minority of the committee recommends that the following be included in the constitution:

Insert the following just before the last sentence of the committee proposal:

HE MAY CONTRACT FOR LEGAL COUNSEL OF HIS CHOICE AND MAY AFTER PUBLIC HEARING ESTABLISH MINIMUM STANDARDS FOR ANNUAL REPORTS TO BE ISSUED BY ANY AND ALL DEPARTMENTS, OFFICES AND AGENCIES OF THE STATE GOVERNMENT.

Messrs. Wanger, Wood, Perras, Hubbs, Powell and Mrs. Koeze, a minority of the committee on legislative powers, submit the following reasons in support of the foregoing minority report, which accompanied Committee Proposal 78:

While the minority agrees with the committee proposal, it firmly believes that its purpose can be best attained only if the above language is added. This language in no way weakens the office, but rather strengthens it in 2 important and necessary ways.

First, the power to CONTRACT FOR LEGAL COUNSEL OF HIS CHOICE is essential to the legislative auditor general's independence of the executive branch. Otherwise the attorney general could directly impose a restrictive interpretation upon the office's all important powers of postaudit and investigation. The whole purpose of placing this officer under the legislative branch requires that it not be subject to the influence or control of the executive.

Second, the power to AFTER PUBLIC HEARING ESTABLISH MINIMUM STANDARDS FOR ANNUAL REPORTS TO BE ISSUED BY ANY AND ALL DEPARTMENTS, OFFICES AND AGENCIES OF THE STATE GOVERNMENT, is most desirable (1) as an economical means of obtaining facts which would not otherwise be reasonably available, and (2) in promoting proper uniformity and detail in reports which would otherwise be lacking. Since such standards could only be minimums, no department, office or agency would in any way be prevented or discouraged from including additional information or analysis. The requirement of a public hearing guarantees that any department, office or agency affected will have the fullest opportunity to be heard before its minimum standards are established.

Following is minority report B as offered and the reasons submitted in support thereof:

Messrs. Downs, Lesinski and Murphy, a minority of the committee on legislative powers, submit the following minority report to Committee Proposal 78:

Explanation—Matter within [ ] is stricken, matter in capitals is new.

A minority of the committee recommends that Committee Proposal 78 be not adopted.

Messrs. Downs, Lesinski and Murphy, a minority of the committee on legislative powers, submit the following reasons in support of the foregoing minority report which accompanied Committee Proposal 78:

We object to the inclusion of this new section for the following reasons:

1. It would limit the right of the people to elect their own auditor by indirectly providing for a legislative auditor in place of an auditor elected by and responsible to the people of Michigan. Michigan has been uniquely fortunate in dollar honesty in state government under all administrations and part of this is because of an auditor elected by the people and responsible to the people.

2. The legislature can now provide for legislative review and audit and study by appropriation committees and investigation by special committees. This provision would, in reality, limit the legislature's present rights by specifying the details of establishing a legislative auditor. The fact that the legislature should or should not do more in this field should be decided by the legislature itself.

3. An over zealous auditor might assert that his constitutional status gave him the right to investigate all operations and details of agencies at any and all times. This could result in the "tail wagging the dog" and violate the concept of separation of powers. This language is so broad that it might permit such an auditor to interfere with the academic operations of constitutionally established universities beyond mere dollar auditing. A performance audit could include a review of the entire academic operation of what, to date, has been Michigan's constitutionally independent system of higher education.

CHAIRMAN MILLARD: The Chair will recognize the chairman — there are 2 chairmen of the committees. Which chairman desires to be recognized first? The chairman of the executive branch committee, Mr. Martin.

MR. MARTIN: Well, Mr. Chairman, I would like to make a brief statement on this proposal and then yield the floor to Mr. Hoxie whose committee was also responsible for this proposal since it is a joint committee proposal.

Very briefly, the committees propose that we transfer the function of the auditor general from the executive branch to the legislative branch. We feel that in so doing the auditor general should have a reasonably long term of years comparable to that of the head of the general accounting office in Washington and other auditors of similar character. The proposal comprehends that the auditor general would not — and I want to emphasize this — would not get into the business of preauditing. Preauditing is the kind of thing which the department of administration through its accounting division does now. It is the kind of work which the internal accounting department and the controller in a business does during the year. They check the payments that are going out to make sure that they are proper and that they are not being used for improper purposes or purposes which the legislature has not provided. Now when you finish the year, then the postaudit process occurs, and this is the function of the auditor general — and it is the function of the auditor general at the present time — to then review the operations to determine whether they have in fact been conducted according to law and in the manner in which the legislature directed. The business analogy is similar. You have your internal accounting and afterward you have a complete audit by an independent auditing firm.

In the present situation in state government, you have the preaudit being conducted by the executive branch and then you have the executive branch again doing a postaudit. Now this change puts the thing in a much more logical frame. It permits internal accounting controls to operate through the controller of the department of administration and his accounting division. Then it permits a postaudit by an independent body, namely, the legislative auditor.

The proposal also comprehends that these postaudits will be fiscal in nature. It also provides that there may be performance postaudits. The meaning of "performance postaudit" is a look to see whether the agency has performed in the manner in which it presented its proposals to the legislature. It is not designed to direct the body or the agency to do any particular thing; it is simply to see and to report to the legislature whether the agency has performed as it stated to the legislature it would perform. The proposal also permits the employment by the legislative auditor, if authorized by the legislature, of independent accounting firms or of legal counsel for special work. This is common now, so far as independent accounting firms are concerned, in the auditor general's office. He does use them for certain special types of audit and that practice should continue to be possible. Where reference to legislative counsel is put in, since it transfers it from one branch to another, it no longer being in the executive branch, there might be a question as to whether the legislature could authorize legal counsel to assist if that were necessary.

The proposal further limits the duties to the work of state auditing so that the legislative auditor will not be assigned numerous unrelated duties and provides for his annual report and other reports from time to time as may be necessary both to the legislature and the governor. It gives the legislature the power to prescribe uniform accounting systems and for the auditing of units or agencies of local government. At the present time the auditor general audits counties and occasionally townships, not usually school districts unless there is some very serious problem. But he has provided uniform accounting systems and uniform accounting requirements with respect to these local units. This, of course, should not be interfered with.

Finally, after the committee considered the question of whether the staff of the auditor general should have civil service status as they now do, it felt that some independence by virtue of tenure should exist in the staff as is now the case, because they have the difficult job of making reports on agencies of government and we want them to make honest reports based upon their best judgment as to what the facts and figures show. And so the committee has recommended in its proposal that the members of the staff — aside from the legislative auditor general, his deputy, and one other member of his staff — shall be exempt from civil service; that those 3 shall be exempt, and that other members of his staff shall have civil service status.

MR. BENTLEY: Mr. Chairman, a point of order.

CHAIRMAN MILLARD: Will you state it, Mr. Bentley.

MR. BENTLEY: I understand that the chairman of the committee, Mr. Chairman, has been discussing the substitute proposal and I do not believe that has yet been offered. Am I correct?

CHAIRMAN MILLARD: That is correct, Mr. Bentley. The chairman of the executive branch committee has been discussing a substitute proposal and he should offer it if he is going to want to discuss it.

MR. MARTIN: I apologize, Mr. Chairman —

MR. DOWNS: I have a point of order, Mr. Chairman.

CHAIRMAN MILLARD: Mr. Downs, state your point.

MR. DOWNS: I want to say that I have a minority report joined in by 2 other Democrats. Now we don't mind too much the majority report being presented, discussed and debated on one side, then we get around to the minority report, but I get a little tired of the rules being changed in the middle of the game. Now to bring in a "ringer" substitute — I just wonder when we get to present our minority report?

MR. MARTIN: Mr. Chairman, as a matter of procedure, I should have permitted the reading, the presentation, of the substitute on which I have been talking and then, after simply a statement of what it contains, we expect to have the minority present its minority report and carry on the argument from there on the basis of the ruling of the Chair yesterday. If it is possible, I would request that the substitute be offered at this time.

CHAIRMAN MILLARD: That is in order. The secretary will read the substitute proposal.

SECRETARY CHASE: Messrs. Martin and Hoxie, on behalf of the committees on executive branch and legislative powers, offer the following substitute for Committee Proposal 78:

A proposal to provide for the office of legislative auditor general. Adds a new section to article V.

The committees recommend that the following be included in the constitution:

Sec. a. The legislature by a majority vote of the members elect of each house, shall appoint a legislative auditor general to serve for a term of 8 years, who may be reappointed for one additional term only. He shall be removable for cause at any time by a 2/3 vote of the members elect of each house of the legislature. The legislative auditor general shall conduct comprehensive fiscal postaudits of all transactions and accounts kept by or for all branches, departments, offices, boards, commissions, agencies, authorities and institutions of the state, whether established by this constitution or by law, and performance postaudits thereof. For these purposes, in addition to his staff, he may employ such independent accounting firms or legal counsel, as the legislature by resolution may direct and may make investigations pertinent to the conduct of such audits. The legislative auditor general shall be assigned no duties other than those herein specified and shall report annually and at such other times as he deems necessary or as required by the legislature to the legislature and the governor.

The legislature shall provide by law with respect to the maintenance of uniform accounting systems and the auditing of units or agencies of local government.

The legislative auditor general, his deputy and one other member of his staff shall be exempt from civil service. All other members of his staff shall have civil service status.

CHAIRMAN MILLARD: The Chair will recognize Mr. Martin.

MR. MARTIN: Mr. Chairman, I would like to yield to Mr. Hoxie.

MR. LESINSKI: Mr. Chairman.

CHAIRMAN MILLARD: Mr. Lesinski, for what purpose does the gentleman rise?

MR. LESINSKI: Perhaps the secretary can ring the bell so the delegates can be present and take the benefit of this debate. At times here there wasn't even a quorum.

CHAIRMAN MILLARD: The secretary will ring the bell. The Chair will recognize the chairman of the legislative powers committee, Delegate Hoxie.

MR. HOXIE: Mr. Chairman, I am not sure whether the substitute proposal is now before the committee or whether it is necessary to make a motion on this matter. Is the substitute officially before the committee now or is it necessary to make a motion?

CHAIRMAN MILLARD: The committees have offered a substitute proposal which is now before the committee of the whole.

MR. HOXIE: Under the former ruling of the Chair, it is my understanding that after the initial explanation of the proposal — it being all in one section — that it is in order for a minority report to be discussed at this time. I yield to Mr. Downs.

CHAIRMAN MILLARD: Mr. Hoxie, is this on the majority report? Is this on the original report of the committee or on the substitute?

MR. HOXIE: The minority report, I assume, would apply the same to the substitute as it did to the original, which was striking the entire proposal.

CHAIRMAN MILLARD: The procedure, Mr. Hoxie, is that we will hear the proponents of the committee proposal first. If this is on the minority report, the Chair will declare you out of order.

Mr. Martin.

MR. MARTIN: If I might speak — I yielded to Mr. Hoxie because I thought perhaps he wished to have one of the members of his committee amplify the statement with respect to the substitute proposal after which we would yield the floor to Mr. Downs or anyone else to discuss his minority report. If he would be willing to proceed in that order, I would appreciate it.

MR. HOXIE: Mr. Chairman, apparently I was in error. It was my understanding that after the initial explanation, we then considered the minority report.

CHAIRMAN MILLARD: Well, Mr. Hoxie —

MR. HOXIE: If I am in error, then at this time I would like to yield to Delegate Kuhn, who was the subcommittee chairman of the legislative powers committee that worked with the subcommittee of the executive branch. I yield to Mr. Kuhn.

CHAIRMAN MILLARD: The Chair will recognize Delegate Kuhn.

MR. KUHN: Mr. Chairman and members of the committee, for those who might be interested in reading the committee report, you can find it in journal 70 on page 433.

Mr. Chairman, the traditional American concept of separation of powers among the executive, legislative and judicial branches with appropriate checks and balances would seem to suggest that the postaudit function be vested in the legislative branch. The postaudit function is an after the fact check on the expenditure of public funds. As such, responsibility for the postaudit function should be separate and distinct from the responsibility for the actual spending of public funds which is vested in the executive branch. The legislative postaudit is the job of the legislature, the branch of government responsible for appropriating funds, an independent check on the executive branch in its expenditure of the funds that are appropriated.

Mr. Chairman, some 15 states have a legislative auditor. Eleven of these states have it according to statute; 4 states have it by constitutional status. The last 3 states which revised their constitutions and adopted constitutions — those being New Jersey, Hawaii, Alaska — have put it in their constitutions. Also, the state of Virginia has it in their constitution.

I think it is important for us to remember that we had several plans introduced in this convention on a legislative auditor. Some suggested that we appoint a legislative auditor at the pleasure of the legislature. I would like to state to you at this time that 3 of the last 4 states which have adopted a legislative auditor have given him a definite term. The little Hoover commission of the state of Michigan in 1951 recommended that we have a legislative auditor, and I believe they recommended a term of 10 years — that is correct, 10 years. Our committee thought 8 years would be adequate and we thought we would be able to get a higher caliber person to take this job. I think this is a significant step forward. It will give the legislature a chance to see whether or not its intentions are being carried out when they appropriate money. I would now like to turn the floor back to Chairman Hoxie.

CHAIRMAN MILLARD: Mr. Hoxie.

MR. HOXIE: Mr. Chairman and fellow delegates, another member of the legislative powers committee that worked hard and long on this proposal is Delegate Wanger. At this time I would like to yield the floor to Delegate Wanger.

CHAIRMAN MILLARD: The Chair will recognize the delegate from Lansing, Mr. Wanger.

MR. WANGER: Mr. Chairman, Mr. Hoxie and fellow delegates, it seems to me that this is one area of our constitution where we can make another significant advance in the field of promoting and continuing sound financial administration of our state government, and I respectfully urge your favorable consideration and action upon substitute Committee Proposal 78, which would establish an auditor general appointed by the legislature and who, though completely responsible to that body, would be reasonably insulated from the political and extraneous pressures which such an office would otherwise be bound to attract.

The immense cost of modern state government demands the very best means of financial management and accounting which can be devised. As you will note from the majority report in the convention journal:

> There has been in the last quarter century a marked increase in the cost and complexity of services of state government. State operating expenditures have increased from less than $13 million in 1910 to nearly $1,200,000,000 in 1961, and the last 25 years have seen the creation of at least 30 executive agencies.

The goal of accurate, efficient and honest government operation can be most completely achieved only when the responsibilities for that management and accounting are firmly and clearly fixed in state officers whose position in our government structure will realistically enable them to do the best possible job.

The financial management and accounting I just spoke of are more exactly described as the preaudit and the postaudit functions. The former includes direct internal supervision of expenditures, budget control and the preparation of an executive budget. This, obviously, is a function of the executive branch and should reside there. The latter or postaudit function is that of determining that all expenditures have been made accurately, efficiently, honestly and in accordance with established statutory policy. This "watchdog" function appropriately resides and can best be performed in the legislative branch for the following 3 reasons: first, because the legislature bears the burden of raising and appropriating the public revenues and is thus most directly concerned in seeing that they are properly spent; second, because those performing this "watchdog" function should not be responsible to the executive branch whose activities they must continually investigate and check; and third, because the legislative branch must be strengthened within its proper constitutional limits as a check and balance to an executive branch whose power and complexity have greatly increased in recent decades. Under Committee Proposal 78 it is this postaudit function which an auditor general appointed by the legislature would perform.

Now, as the committees who dealt with this problem are well aware and as many delegates are aware, there has been a great deal of support voiced in this state favoring the appointment of the auditor general by the legislature. Its proponents include the present governor, 4 former governors and a former auditor general of our state. They also include such public spirited citizens groups as the league of women voters of Michigan and the Michigan municipal league. They also include the little Hoover commission, the so called Michigan little Hoover commission in 1951, and the more recent governor's citizens' advisory committee which met prior to the constitutional convention. And, as Delegate Kuhn has pointed out, 15 other states have adopted the idea of the legislative auditor; and New Jersey, Alaska and Hawaii, with other recent constitutional revisions, have done so as well, the other state being Virginia. It has been pointed out that the legislative auditor is confined by the committee substitute to the postaudit area. He has the power to make fiscal postaudits and performance postaudits. However, as pointed out in the committee report, all of the preaudit functions are left with the executive branch, as provided by law, where they certainly belong. And thus decisions made by executive officers in the exercise of their discretion pursuant to value judgments which they alone by application of expertise are capable of making are not proper objects of the legislative auditor general's scrutiny, and he may not conduct investigations the purpose of which is to criticize such decisions. The wisdom of such a discretionary policy decision may — if at all — be called into question by the legislature alone.

As you will note in reading the substitute with which we have all been supplied, the most important aspect of the legislative auditor general's function is his power and his duty. This coupled with the power to investigate pertinent to the conduct of such postaudits is the backbone of the office itself. It is set out with some detail and necessarily so, because unless this power is spelled out in the constitution, it will undoubtedly

be legally challenged in many areas as a violation of the doctrine of separation of powers. This has been a serious problem with the United States controller general and, therefore, it is something which we in Michigan should avoid and forestall.

You will note that the legislative auditor general is to be chosen by a joint vote of the legislature — that is to say, a majority of the members elected to each house. Hawaii's constitution and New Jersey's constitution have the same majority requirements. A vote in each house is desirable in Michigan, first, because either house may initiate tax legislation and, second, to best assure that a nonpartisan choice will be made.

You will also note that the legislative auditor is given a definite term of office rather than being merely at the pleasure of the legislature. It is deemed desirable to give him a fixed term to insulate the position from the pressures, sometimes venal pressures, which such an office held at the pleasure of the legislature might otherwise attract or invite and, second, to attract the most highly qualified candidates for the office. The Michigan municipal league in its last convention has recommended that he have a definite term. The Hawaiian constitution provides for an 8 year term and the comptroller general of the United States has a 15 year term and the auditor general of Detroit has a 10 year term. It is thought that by giving him an 8 year term this will make it possible to get qualified people into the job and, at the same time, face up to the fact that first of all it will take considerable time for an officeholder to become thoroughly acquainted with the position, and also because the administrative direction of the position should not be frequently interrupted and, finally, because the incumbent may only be subject to reappointment once. I therefore respectfully urge your support for this proposal as the means of making Michigan's financial organization thoroughly sound and of promoting future soundness and continued progress on the basis of sound accounting, sound performance and efficiency in the state government. Thank you.

CHAIRMAN MILLARD: Chairman Hoxie.

MR. HOXIE: Mr. Chairman, at this time I would like to yield the floor back to Mr. Martin, chairman of the executive branch committee.

CHAIRMAN MILLARD: Mr. Martin.

MR. MARTIN: Mr. Chairman, I would like to call on Mr. Karn, if he desires to make a statement on this at this time.

CHAIRMAN MILLARD: The Chair will recognize Delegate Karn.

MR. KARN: I will pass at this time.

MR. MARTIN: Then, Mr. Chairman, unless the minority wishes to commence the presentation of their report, I will move that the committee do now rise.

CHAIRMAN MILLARD: Chairman Martin has made a motion that the committee of the whole do now rise. All in favor will say aye. Opposed, no.

The motion prevails.

[Whereupon, the committee of the whole having risen, President Nisbet resumed the Chair.]

PRESIDENT NISBET: The Chair recognizes Mr. Millard.

MR. MILLARD: Mr. President, the committee of the whole has been in session and has taken under consideration several — 2 — committee proposals of which the secretary will give a detailed report.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 46,** A proposal pertaining to the executive budget and item veto. It reports this proposal back to the convention with 2 amendments, recommending the amendments be agreed to and the committee proposal as thus amended do pass.

Following are the amendments:

1. Amend page 2, line 14, after "governor" by inserting a comma and "with the approval of the appropriating committees of the house and senate,".

2. Amend page 2, line 14, after "expenditures of" by striking out "executive agencies" and inserting "any bodies receiving appropriations".

PRESIDENT NISBET: The question is on concurring in the first amendment. Mr. Snyder.

MR. SNYDER: Mr. President, may I ask who submitted the proposal?

PRESIDENT NISBET: Mr. Snyder, I don't think that — I was working; I didn't hear your question.

MR. SNYDER: Is this an amendment, you say, or the committee proposal?

PRESIDENT NISBET: This is an amendment to the committee proposal. It was acted on in the committee of the whole.

The question is on concurring with the amendment. Those in favor will say aye. Opposed, no.

The amendment is adopted.

SECRETARY CHASE: Amendment 2 recommended by the committee of the whole:

[The amendment was again read by the secretary. For text, see above.]

PRESIDENT NISBET: The question is on concurring with the amendment. Those in favor will say aye. Opposed, no.

The amendment is adopted.

SECRETARY CHASE: Now there are filed with the secretary the following amendments —

MR. MARTIN: Mr. President, preferential motion. I move that the convention do now recess until 2:00 o'clock.

PRESIDENT NISBET: The question is on the motion of Mr. Martin that we recess until 2:00 o'clock. Those in favor will say aye. Opposed, no.

We are recessed until 2:00 o'clock.

[Whereupon, at 11:30 o'clock a.m., the convention recessed; and, at 2:00 o'clock p.m., reconvened.]

The convention will please come to order.

SECRETARY CHASE: Mr. President, a quorum of the convention is present.

PRESIDENT NISBET: The Chair recognizes Mr. Pugsley.

MR. PUGSLEY: Mr. President and fellow delegates, during the noon recess I talked over long distance telephone with Delegate Carl Mosier. He is confined in the Dowagiac Memorial hospital. He suffered an injury to his vertebrae in the accident which he had last weekend. He reported to me that he had been in considerable pain but was feeling better today. He told me that a cast was being arranged for and I hold in my hand a telegram which was received, a part of which I read, as follows:

> The fracture was confirmed by x-ray examination. Judge Mosier is a Republican constitutional convention delegate from the Cass-St. Joseph county district. He suffered the injury last Friday in a car truck accident on the Ford expressway. Spokesman reported him in good condition but in considerable pain when he walked under his own power into the hospital after a drive with his son from Detroit.

Carl wished me to express his regards to all of the delegates. He is optimistic as usual and hopes soon to be back again. May I suggest that I think it would be a fine thing for us to send cards to him addressed at the Dowagiac Memorial hospital. Thank you.

PRESIDENT NISBET: Thank you, Judge Pugsley. I might say we had one other message during the noon hour. You might have noticed that Martin Tweedie is absent. He called to announce the arrival, after a family of 2 girls, of an 8 pound, 15 ounce baby boy. (applause) Incidentally, I might say this is getting to be a little bit serious for me because early in the convention I had talked to one of the fathers of a new baby and said that any father that had a baby during the convention I would see that he got some baby food. This is going a

little bit too far. (laughter) I don't know what my boss is going to say to me.

We will proceed on the report of the committee of the whole. Mr. Chase.

SECRETARY CHASE: When the convention recessed for lunch, the immediately pending business was the consideration of amendments to **Committee Proposal 46,** A proposal pertaining to the executive budget and item veto. The amendments proposed in committee of the whole had been concurred in.

Mr. Marshall now offers the following amendment:

1. Amend page 1, line 6, after "Sec. a.", by striking out the balance of the section and inserting "The governor shall submit to the legislature, at a time fixed by law, a budget for the ensuing fiscal period setting forth in detail all proposed expenditures and estimated revenue of the state. The governor shall also cause to be submitted to each house of the legislature general appropriation bills to embody the proposed expenditures and any necessary bill or bills for new or additional revenues to meet proposed expenditures.".

PRESIDENT NISBET: The question is on the amendment. Mr. Marshall, do you seek recognition?

MR. MARSHALL: Mr. President and fellow delegates, I gave all the reasons yesterday in debate here on the floor on this amendment. The amendment, of course, is identical with the minority report amendment that was presented yesterday. I offer this amendment in hopes that some of the delegates have had a chance to give some thought to this amendment, to analyze it, to compare it with the majority proposal, to take into consideration the remarks you heard yesterday from both sides on this issue. Make up your minds according to what you honestly believe to be the best plan, what you believe to be in the best interests of the state as a whole.

I could get up and make another 20 minute or half an hour talk on it as I did yesterday, but to do so would be to only repeat those facts that I gave to you yesterday. I do not believe at this time that I could add any more to it. I do hope that you will consider this, that you will give consideration to it and reverse the action that was taken in the committee of the whole. Thank you. I ask for a division, Mr. President.

PRESIDENT NISBET: The question is on the amendment. Mr. Martin.

MR. MARTIN: Mr. President, as Mr. Marshall said, this whole matter was debated at length. I do not think there is any more that either side can say on it, and I hope that the amendment will be defeated.

PRESIDENT NISBET: Mr. Marshall asks for a division — for the yeas and nays. Is there support? A sufficient number up. Mr. Ford.

MR. FORD: I want to ask for a record roll call vote.

PRESIDENT NISBET: That has been ordered, Mr. Ford. Mr. Martin.

MR. MARTIN: Mr. President, this, I understand, is on the approval of this amendment? Am I correct?

PRESIDENT NISBET: The vote is on the amendment as presented by Mr. Marshall.

MR. MARTIN: Those who are in favor will vote yes. Those who are opposed will vote no.

PRESIDENT NISBET: Those who are in favor of the Marshall amendment as presented will vote aye. Those opposed to that amendment will vote no.

MR. MILLARD: Would you clear the board, Mr. President?

PRESIDENT NISBET: Will the delegates please clear the board. Those in favor of Mr. Marshall's amendment will vote aye. Those opposed to it will vote no. Have you all voted? If so, the secretary will lock the machine and record the vote.

The roll was called and the delegates voted as follows:

Yeas—41

Austin	Greene	McGowan, Miss
Baginski	Hart, Miss	Murphy
Balcer	Hatcher, Mrs.	Nord
Barthwell	Hodges	Norris
Brown, T. S.	Hood	Pellow
Buback	Kelsey	Perlich
Cushman, Mrs.	Krolikowski	Sablich
Dade	Lesinski	Snyder
Douglas	Liberato	Stopczynski
Downs	Madar	Suzore
Elliott, Mrs. Daisy	Mahinske	Walker
Faxon	Marshall	Young
Follo	McAllister	Youngblood
Ford	McCauley	

Nays—85

Allen	Gover	Powell
Anspach	Habermehl	Prettie
Batchelor	Hanna, W. F.	Pugsley
Beaman	Hannah, J. A.	Radka
Bentley	Haskill	Rajkovich
Blandford	Hatch	Richards, J. B.
Bonisteel	Heideman	Richards, L. W.
Boothby	Howes	Romney
Brake	Hoxie	Rush
Brown, G. E.	Hubbs	Seyferth
Butler, Mrs.	Hutchinson	Shackleton
Conklin, Mrs.	Iverson	Shaffer
Cudlip	Judd, Mrs.	Shanahan
Danhof	Karn	Sharpe
Davis	King	Spitler
Dehnke	Kirk, S.	Stafseth
Dell	Knirk, B.	Staiger
DeVries	Koeze, Mrs.	Stamm
Doty, Dean	Kuhn	Sterrett
Doty, Donald	Lawrence	Stevens
Durst	Leibrand	Thomson
Elliott, A. G.	Leppien	Turner
Erickson	Martin	Van Dusen
Everett	McLogan	Wanger
Farnsworth	Millard	White
Figy	Perras	Wood
Finch	Plank	Woolfenden
Gadola	Pollock	Yeager
Goebel		

SECRETARY CHASE: On the adoption of the amendment by Mr. Marshall to section a of Committee Proposal 46, the yeas are 41; the nays are 85.

PRESIDENT NISBET: The amendment is not adopted.

SECRETARY CHASE: Mr. Marshall offers the following amendment:

1. Amend page 1, line 21, by striking out all of section b. That is lines 21 through 24 on page 1, and lines 1 through 6 on page 2.

PRESIDENT NISBET: The question is on the amendment. Mr. Marshall, do you care to speak?

MR. MARSHALL: I think that the same statement that applied to the previous amendment would likewise apply to this one. I would only add that throughout all the discussion on this particular topic the emphasis always seems to be on the fact that revenues fall short of appropriations, but actually the state's current problems arise from the fact that appropriations have been in excess of estimated revenues. The control must be on appropriations to accomplish what seems to be the goal in section b. There would also have to be a prohibition against any appropriations outside action on the governor's budget either by the legislature alone or in response to a special session call unless each such appropriation is accompanied by its own revenue measure.

We simply — we in the minority — simply believe that this is an unnecessary provision, that it is preferable that it be deleted in order to have flexibility, and leave it up to the legislature and the executive to operate in this area. And I might add that the minority report, in particular the amendment that was just defeated, pretty closely resembles that that is included in the model constitution. We urge adoption of the amendment.

PRESIDENT NISBET: The question is on the adoption of the amendment. Mr. Martin.

MR. MARTIN: Mr. President, this is the same amendment that we had yesterday. The same reasons for voting no on it are appropriate now as were appropriate yesterday. I don't understand, really, why these amendments are all being reoffered one after another. The minority can get a record vote

if they want to by taking a vote on the whole thing instead of taking our time here to go through each one of these things one by one.

PRESIDENT NISBET: Mr. Marshall.

MR. MARSHALL: I demand a recorded roll call vote on this. And in answer to Delegate Martin, I do not necessarily feel that he has to understand. I did not understand his maneuver this morning either. (laughter)

PRESIDENT NISBET: A roll call vote has been demanded. Is the demand seconded? A sufficient number up. Mr. Nord, do you seek the floor?

MR. NORD: I would just like to make a comment somewhat similar to what Mr. Marshall said in anticipation of mine, and that is this: I am rather surprised to find out that what was logical yesterday is logical today. That is what Mr. Martin seems to be saying now; whereas, this morning he said that what was logical yesterday is illogical today. Something is wrong with the logic here somewhere.

PRESIDENT NISBET: The question is on the amendment of Mr. Marshall. Those in favor will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and record the vote.

The roll was called and the delegates voted as follows:

Yeas—40

Austin	Greene	McGowan, Miss
Baginski	Hart, Miss	Murphy
Balcer	Hatcher, Mrs.	Nord
Barthwell	Hodges	Norris
Brown, T. S.	Hood	Pellow
Buback	Kelsey	Perlich
Cushman, Mrs.	Krolikowski	Sablich
Dade	Lesinski	Snyder
Douglas	Liberato	Stopczynski
Downs	Madar	Suzore
Elliott, Mrs. Daisy	Mahinske	Walker
Faxon	Marshall	Young
Follo	McCauley	Youngblood
Ford		

Nays—90

Allen	Goebel	Pollock
Andrus, Miss	Gover	Powell
Anspach	Gust	Prettie
Batchelor	Habermehl	Pugsley
Beaman	Hanna, W. F.	Radka
Bentley	Hannah, J. A.	Rajkovich
Blandford	Haskill	Richards, J. B.
Bonisteel	Hatch	Richards, L. W.
Boothby	Heideman	Romney
Brake	Howes	Rush
Brown, G. E.	Hoxie	Seyferth
Butler, Mrs.	Hubbs	Shackleton
Conklin, Mrs.	Hutchinson	Shaffer
Cudlip	Iverson	Shanahan
Danhof	Judd, Mrs.	Sharpe
Davis	Karn	Spitler
Dehnke	King	Stafseth
Dell	Kirk, S.	Staiger
DeVries	Knirk, B.	Stamm
Donnelly, Miss	Koeze, Mrs.	Sterrett
Doty, Dean	Kuhn	Stevens
Doty, Donald	Lawrence	Thomson
Durst	Leibrand	Turner
Elliott, A. G.	Leppien	Upton
Erickson	Martin	Van Dusen
Everett	McAllister	Wanger
Farnsworth	McLogan	White
Figy	Millard	Wood
Finch	Perras	Woolfenden
Gadola	Plank	Yeager

SECRETARY CHASE: On the adoption of the amendment by Mr. Marshall to strike out all of section b, the yeas are 40; the nays are 90.

PRESIDENT NISBET: The amendment is not adopted. Will you please clear the board after the votes.

SECRETARY CHASE: Mr. Marshall offers the following amendment to Committee Proposal 46:

1. Amend page 2, line 13, by striking out all of section d, lines 13 to 20, inclusive.

PRESIDENT NISBET: Mr. Marshall.

MR. MARSHALL: Mr. President and fellow delegates, the same thing goes for this as for the previous amendments. You have the minority report before you; I am sure you have had ample opportunity to go through it and you listened to the debate yesterday. As I stated on yesterday, it is this final section that is the most objectionable of all. Assuming that the aforementioned criticisms could be eliminated, the proposal would still be wholly unacceptable because of its sharp departure from the basic concepts of American constitutional government. I am not going to have further statements to make, but I demand a recorded roll call vote.

PRESIDENT NISBET: A roll call vote has been demanded. Is it seconded? A sufficient number up. The Chair recognizes Mr. Martin.

MR. MARTIN: I would just have to say the same thing I did after the last amendment. I hope that the delegates will vote no on this.

PRESIDENT NISBET: The Chair recognizes Mr. Downs.

MR. DOWNS: I rise in support of the amendment. I would just like to point out that in the final form, as I understand this, we have either adopted too much or too little. Our mandated funds now are approximately 2/3 and with the addition of the judicial and executive branch it is more than that. So it means if there were, say, a 10 percent reduction in state revenue due to causes beyond the control of any individual or the state, then the reduction in the unmandated area would have to — if my arithmetic is right — be at least 3 times the reduction on the percentage basis, or a 30 per cent reduction. And I just hope when we delegates vote on this, we will ask ourselves if it means the prisons or the universities or welfare or mental health or state police or conservation — just where those cuts are going to be made. With the final amendatory language, as I understand the action of this morning, it means the governor makes these cuts in conjunction with the legislative committees. I fear this will result in an economic whipsaw between the governor and certain members of the legislative committees which will not be good government.

I point out again that most of the people who have studied government are against the idea of each year necessarily a balanced state budget but, rather, recognize there are years there should be a surplus and years where there may be a deficit. I think this is an unsound approach to government and hope the amendment is adopted.

PRESIDENT NISBET: The Chair recognizes Mr. Gover.

MR. GOVER: Mr. President, fellow delegates, it seems that this is the place in the constitution where we may be able to save some money for the state of Michigan, and I think this part of the proposal should be left in the constitution.

PRESIDENT NISBET: The question is on the amendment of Mr. Marshall. Mr. Austin.

MR. AUSTIN: Mr. President and members of the convention, it is my feeling that the point should be made here that in voting for this amendment, we are not voting against the executive budget. We are merely trying to determine whether this language which places a straitjacket on the legislature belongs in the constitution. I think that the debate that we had this morning, which illustrated the problems that will arise when we attempt to insert procedures into the constitution, ought to be illustrative of the problems that we are going to encounter. I sincerely hope that we decide not to include this legislative detail in the constitution.

PRESIDENT NISBET: The question is on the amendment. A roll call has been demanded. Those in favor of Mr. Marshall's amendment will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and record the vote.

The roll was called and the delegates voted as follows:

Yeas—46

Austin	Greene	Nord
Baginski	Hart, Miss	Norris

Balcer	Hatcher, Mrs.	Pellow
Barthwell	Hodges	Perlich
Bledsoe	Hood	Pollock
Brown, G. E.	Kelsey	Sablich
Brown, T. S.	Krolikowski	Snyder
Buback	Lesinski	Stopczynski
Cushman, Mrs.	Liberato	Suzore
Dade	Madar	Walker
Douglas	Mahinske	Wilkowski
Downs	Marshall	Wood
Elliott, Mrs. Daisy	McCauley	Woolfenden
Faxon	McGowan, Miss	Young
Follo	Murphy	Youngblood
Ford		

Nays—83

Allen	Goebel	Plank
Andrus, Miss	Gover	Powell
Batchelor	Habermehl	Prettie
Beaman	Hanna, W. F.	Pugsley
Bentley	Hannah, J. A.	Radka
Blandford	Haskill	Rajkovich
Bonisteel	Hatch	Richards, J. B.
Boothby	Heideman	Richards, L. W.
Brake	Howes	Romney
Butler, Mrs.	Hoxie	Rush
Conklin, Mrs.	Hubbs	Seyferth
Cudlip	Hutchinson	Shackleton
Danhof	Iverson	Shaffer
Davis	Judd, Mrs.	Shanahan
Dehnke	Karn	Spitler
Dell	King	Stafseth
DeVries	Kirk, S.	Staiger
Donnelly, Miss	Knirk, B.	Stamm
Doty, Dean	Koeze, Mrs.	Sterrett
Doty, Donald	Kuhn	Stevens
Durst	Lawrence	Thomson
Elliott, A. G.	Leibrand	Turner
Erickson	Leppien	Upton
Everett	Martin	Van Dusen
Farnsworth	McAllister	Wanger
Figy	McLogan	White
Finch	Millard	Yeager
Gadola	Perras	

SECRETARY CHASE: On the amendment of Mr. Marshall to strike out all of section d, the yeas are 46; the nays are 83.

PRESIDENT NISBET: The amendment is not adopted.

SECRETARY CHASE: Mr. Faxon offers the following amendment:

1. Amend page 2, line 14, after "appropriations" by inserting a comma and "except those institutions of higher education established in this constitution or by law,".

PRESIDENT NISBET: The Chair recognizes Mr. Faxon.

MR. FAXON: This morning when we discussed this particular section, an interesting thing came out with regard to what definition was being attached to the words "executive agencies". The chairman of the committee interpreted it to mean the inclusion of the constitutional universities. The other members of the committee were not sure that that was the meaning at all or the intent of those words. Now, during the process, Mr. Cudlip in his effort to clear up language and to say what we do mean introduced an amendment which we have since accepted which clearly stated all agencies that receive appropriations.

Now I ask you to return to what I thought to be the original intent of the committee and what I wanted to see more carefully spelled out — to recognize the coordinate branch of government here, the universities with constitutional status, and to give them the same protection as we give to mandated funds in the constitution, as we give to the branches of government which will not be affected by this provision. And I urge your support for this agency. Remember that today is that fateful day when 1996 years ago, on the Ides of March, a knife was plunged into the back of the leader. Let's not injure our universities. Let's vote yes.

PRESIDENT NISBET: May we have a little better order. Mr. Martin.

MR. MARTIN: Mr. President, I don't know who is going to get that knife, but I hope it's not the leader of the committee (laughter). Mr. Faxon has submitted this amendment this morning. As you know, the proposal was further amended by a provision with respect to the adding of the appropriating committees to this picture in determining these questions of any such cuts, and it seems to me that this obviated completely the necessity for this language. So I hope you will vote no on this amendment as you did this morning.

PRESIDENT NISBET: Mr. Marshall.

MR. MARSHALL: I would like to rise to support the Faxon amendment. I do not agree with all of the statements made by Delegate Martin. I think everyone knows what the committee proposal does and what it proposes to do in the area of permitting the governor and the appropriations committees of the house and senate to reduce budgets. I think in this space age when Michigan is lagging far behind in the training of scientists, when we are losing to the east coast and to the west coast where we have failed to provide the necessary facilities for training and education, that we definitely need to take this step in order that we positively protect the universities of this state. I urge support of the amendment.

PRESIDENT NISBET: Mr. Faxon.

MR. FAXON: Mr. President, I would like to correct the record. Caesar was assassinated in 44 B.C. The year is 2,006 years ago.

I would like to call for the yeas and nays.

PRESIDENT NISBET: The question is on the amendment of Mr. Faxon. The yeas and nays have been demanded. Is that demand seconded? A sufficient number up. Those in favor of the amendment by Mr. Faxon will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and record the vote.

The roll was called and the delegates voted as follows:

Yeas—41

Austin	Greene	Murphy
Balcer	Hanna, W. F.	Nord
Barthwell	Hart, Miss	Norris
Bledsoe	Hatcher, Mrs.	Pellow
Brown, T. S.	Hodges	Perlich
Buback	Hood	Sablich
Cushman, Mrs.	Hoxie	Snyder
Dade	Kelsey	Stopczynski
Douglas	Liberato	Suzore
Downs	Madar	Walker
Elliott, Mrs. Daisy	Mahinske	Wilkowski
Faxon	Marshall	Young
Follo	McCauley	Youngblood
Ford	McGowan, Miss	

Nays—84

Allen	Gadola	Pollock
Baginski	Goebel	Powell
Batchelor	Gover	Prettie
Beaman	Gust	Pugsley
Bentley	Habermehl	Radka
Blandford	Hannah, J. A.	Rajkovich
Bonisteel	Haskill	Richards, J. B.
Boothby	Hatch	Richards, L. W.
Brake	Heideman	Rush
Brown, G. E.	Howes	Seyferth
Butler, Mrs.	Hubbs	Shackleton
Conklin, Mrs.	Hutchinson	Shaffer
Cudlip	Iverson	Shanahan
Danhof	Judd, Mrs.	Spitler
Davis	Karn	Stafseth
Dehnke	King	Staiger
Dell	Kirk, S.	Stamm
DeVries	Koeze, Mrs.	Sterrett
Donnelly, Miss	Krolikowski	Stevens
Doty, Dean	Kuhn	Thomson
Doty, Donald	Lawrence	Turner
Durst	Leibrand	Upton
Elliott, A. G.	Leppien	Van Dusen
Erickson	Martin	Wanger
Everett	McLogan	White
Farnsworth	Millard	Wood
Figy	Perras	Woolfenden
Finch	Plank	Yeager

SECRETARY CHASE: On Mr. Faxon's amendment, the yeas are 41; the nays are 84.

PRESIDENT NISBET: The amendment is not adopted. Are there further amendments to the body of the proposal?

SECRETARY CHASE: No further amendments, Mr. President.

PRESIDENT NISBET: If not, **Committee Proposal 46**, as amended is referred to the committee on style and drafting.

Following is Committee Proposal 46 as amended and referred to the committee on style and drafting:

The committee recommends that the following be included in the constitution:

Sec. a. The governor shall submit to the legislature, not later than 21 calendar days after the convening of each regular session, or at a time fixed by law, a budget for the ensuing fiscal period setting forth in detail all proposed expenditures and estimated revenue of the state. Proposed expenditures shall not exceed estimated revenue. On the same date, the governor shall cause to be submitted to each house of the legislature general appropriation bills to embody the proposed expenditures and any necessary bill or bills for new or additional revenues to meet proposed expenditures. The amount of any general fund surplus created or deficit incurred during the last preceding fiscal period shall be appropriately entered as an item in the budget and in the appropriation bills. The governor, prior to final action of the legislation thereon, may cause to be submitted to the legislature any amendments to the general appropriation bills, and shall cause to be submitted any bills to meet deficiencies in current appropriations.

Sec. b. General appropriation bills for the succeeding fiscal period shall be acted upon before either house of the legislature shall pass any other appropriation bill, except bills supplementing appropriations for the current year's operation. Any bill which will require an appropriation to carry out its purpose shall be considered an appropriation bill. One of the general appropriation bills as enacted by the legislature shall contain an itemized statement of estimated revenue by major source, the total of which shall not be less than the total of all appropriations proposed in the general appropriation bills.

Sec. c. The governor shall have power to disapprove of any item or items of any bill making appropriations of money embracing distinct items; and the part or parts approved shall be the law; and the item or items disapproved shall be void, unless repassed according to the rules and limitations prescribed for the passage of other bills over the executive veto.

Sec. d. No appropriation shall be deemed a mandate to spend. The governor, with the approval of the appropriating committees of the house and senate, shall reduce expenditures of any bodies receiving appropriations whenever it appears that actual revenues for a fiscal period will fall below the revenue estimates on which appropriations for that period were based, such reductions in expenditures to be made in accordance with procedures established by law. The governor's power to reduce expenditures shall not apply to the legislative and judicial branches or to those services for which funds are mandated by this constitution.

SECRETARY CHASE: Mr. President, the committee of the whole has also had under consideration **Committee Proposal 78**, has considered several amendments thereto, and has come to no final resolution thereon. This completes the report of the committee of the whole.

PRESIDENT NISBET: The Chair will recognize Mr. Millard.

MR. MILLARD: Mr. President, I move that the convention resolve itself into committee of the whole for the purpose of taking up matters on the **general orders** calendar.

PRESIDENT NISBET: The question is on the motion of Mr. Millard. Those in favor will say aye. Opposed, no.

The motion prevails. Mr. Millard.

[Whereupon, Mr. Millard assumed the Chair to preside as chairman of the **committee of the whole.**]

CHAIRMAN MILLARD: The committee will be in order. The secretary will read.

SECRETARY CHASE: Under consideration is **Committee Proposal 78**, A proposal to provide for the office of legislative auditor general; to which the committees on executive branch and legislative powers have offered a substitute, which substitute is as follows:

[The substitute was again read by the secretary. For text, see above, page 1674.]

CHAIRMAN MILLARD: The proponents of this substitute proposal were heard this morning. The question is on the adoption of the substitute for the proposal. All in favor will say aye. Opposed, no.

The substitute is adopted. The Chair will now recognize the delegate from Detroit, Mr. Downs, who will speak on the minority report amendment which reads as follows:

1. Amend page 1, line 6, by striking out all of the committee proposal.

MR. DOWNS: Mr. Chairman and fellow delegates, rather than read the minority report which has been included in our journal of official proceedings, I think we could progress faster if I were allowed to ask the chairman of the executive branch committee a few questions and then I intend to yield to 2 other delegates to speak on this.

CHAIRMAN MILLARD: If Mr. Martin desires to answer.

MR. MARTIN: Yes.

MR. DOWNS: All right; thank you, sir. Through the Chair I would like to ask the chairman of the committee first of all, can the legislature now establish a legislative auditor or comptroller without any additional constitutional action?

MR. MARTIN: Well, Mr. Downs, the legislature can establish someone whom it calls a legislative auditor. There is, however, very grave doubt as to whether that legislative auditor would have the authority to operate within the executive branch and to do what an auditor general or a legislative auditor established by the constitution can do. This, of course, is the reason for placing the provision in the constitution, because there would certainly be doubts about the powers of a statutory legislative auditor.

MR. DOWNS: Could I ask, through the Chair, has the legislature currently established a comptroller or a legislative auditor?

MR. MARTIN: My understanding, Mr. Downs, is that the legislature has someone whom it hopes to use to make some studies of what is going on in some of the agencies. What his authority will be in dealing with those agencies is another matter, and I think if it were to set up an auditor to go in and audit those agencies in detail, there would be considerable question about the violation of the separation of powers doctrine unless the legislative auditor had the constitutional authority which we propose to give him in this proposal.

MR. DOWNS: Has, to your knowledge, the present legislative auditor or comptroller ever been refused any information from any agency he has requested information from?

MR. MARTIN: Well, until most recently the extent of auditing was nil. The legislature has requested certain information from the agencies in connection with budget preparation and so on, and the agencies have furnished it. This, of course, is a very different thing from going into the agency and making an audit of its books and records, as the auditor general now has the authority to do. And for that reason it is not possible to go into past history with the question as to whether he has ever been refused or not. The general requests for information, so far as I know, have not been refused; but,

as far as conducting audits are concerned, the answer is, it has not been done.

MR. DOWNS: Would the proposed 8 year term for the legislative auditor be a limitation on the legislature in the sense that that could be rescinded only by a 2/3 vote?

MR. MARTIN: Yes, I think the answer to that is, it would be a limitation on the legislature. It would give the legislative auditor a term that would give him job security for 8 years unless he were removed under the provision which we have contained in the present proposal for removal.

MR. DOWNS: Could I ask then through the Chair, on lines 16 and 17, what does the term "institutions of the state, whether established by this constitution or by law" include?

MR. MARTIN: This means everything, Mr. Downs. When we first drafted the proposal, it was obviously defective because it did not include the right to audit all of the various parts of state government. Among other things the word "branches" was added so that it was clear that the legislative auditor could audit the 2 other branches. The word "authorities" was added to make clear that he could audit such things as the mackinac bridge authority. The word "institutions" was added to make sure that this covered all kinds of institutions. And the phrase "whether established by this constitution or by law" was added to make sure that constitutionally established bodies were not excluded.

MR. DOWNS: Thank you. And Mr. Chairman, may I ask: what does the term "performance postaudits" in lines 17 and 18 mean?

MR. MARTIN: If you will refer to our statement of supporting reasons, Mr. Downs, the term "performance postaudit" is defined there as "an examination of the effectiveness of administration, its efficiency and its adequacy in terms of the program of the departments or agencies as previously approved by the legislature." In other words, the department or agency goes before the legislature and presents its program and says, "This is what we are proposing to do." The auditor may make a fiscal audit, as is provided, which is to determine whether the money which is expended by the agency — appropriated to and then expended by the agency — is spent properly and for proper subjects within the scope of the bill. And, secondly, he may take a look to determine whether the agency has carried out its commitments to the legislature which were made when the agency appeared before the legislature to ask for its budget or its appropriation in the last preceding year.

MR. DOWNS: Would this language permit the legislative auditor on his own initiative to review course materials of university professors and of local school boards?

MR. MARTIN: Absolutely not, Mr. Downs. There is no such intention. And the committee was perfectly clear on this that it did not include any authority to the legislative auditor to dictate or determine in any way, shape or manner, the curriculum — what is taught or how it is taught or anything of that kind.

MR. DOWNS: Well, Mr. Chairman, I get a little confused. I understand that on the definition of institutions of the state that everything was included, which I would assume means universities. "Performance postaudit" means a review of how the moneys were spent and if those answers — as I believe I understood correctly — are so, why does it not logically follow that this auditor could review in detail the academic activities not only universities but of local school boards receiving state money?

MR. MARTIN: Well, Mr. Downs, the question has been raised by some of the people connected with the universities. I believe Mr. Bonisteel has an amendment which he has submitted — I do not know whether it is on the secretary's desk yet or not — which I think will deal with this particular problem.

MR. DOWNS: The next question is: has Michigan government been dollar honest?

MR. MARTIN: Has it been dollar honest?

MR. DOWNS: Yes.

MR. MARTIN: If you are asking me whether it has been as honest as one might expect, I think the answer is yes. I have often said when I was auditor general that there is no more dishonesty in government than there is in private business or in any other sector of the economy. There are occasions when there is dishonesty and this, of course, is the purpose of an audit. And we found a number of cases of that kind. The difference, of course, is that when you find something of that kind in a public body, you are acting in the public eye and it tends to seem as though perhaps there is more in government than there is in private industry, because it is sometimes hushed up or brushed under the table or dealt with in some other way if it simply involves a private company. But the direct answer to your question is: there is about the same amount of honesty and there is about the same amount of dishonesty as you might expect in any other situation outside of government.

MR. DOWNS: To your knowledge has any other state had more dollar honest government than has Michigan?

MR. MARTIN: Mr. Chairman, Mr. Downs, I cannot answer that because we never attempted to compare Michigan with other states on this score. I think that you can say that we have had very good auditor generals, of course, (laughter) and they have been very careful to see to it that nobody got away with anything they should not. However, I cannot make any comparison with other states. I think we are as good — I think perhaps we are a little better than most other states.

MR. DOWNS: All right. Well, thank you. I have 2 other questions. Is the intent of this committee proposal to eliminate the present constitutional auditor elected by the people?

MR. MARTIN: I am sorry, I didn't quite get that question.

MR. DOWNS: Is the intent of this committee proposal for a legislative auditor to include the elimination of the present constitutional auditor?

MR. MARTIN: Yes. Yes, of course. We don't want to create a duplicating function here. We don't want a legislative auditor general and an executive auditor general both doing the same job.

MR. DOWNS: And I have a final question, which may be subjective and if you would care not to answer it, of course, I would not press it. This is: when you were Auditor General of the state of Michigan, did you feel that your primary loyalty was to the governor, the convention that nominated you, or the people that elected you?

MR. MARTIN: Well, that is sort of a 4 pronged question, and I won't try to answer all its prongs. I will only say that I felt that I ought to do the best kind of a job for the state of Michigan that was possible without regard to whether I was elected or appointed or without regard to whether I was in the executive branch or might have been in the legislative branch.

I think if you have the right person on this job and he has some reasonable tenure and his staff has some reasonable tenure, you can expect to have a competent, thorough and honest job done.

MR. DOWNS: Thank you very much. I would like to yield, Mr. Chairman, to Mr. Austin for a question.

CHAIRMAN MILLARD: The Chair will recognize Mr. Austin.

MR. AUSTIN: Mr. Chairman — thank you, Mr. Downs — I would like to ask one question of Mr. Martin, too, in regard to the elimination of the auditor general, whom, I presume, will be replaced by the legislative auditor. We have indicated on page 1, line 12, of the substitute proposal that

> The legislative auditor general shall conduct comprehensive fiscal postaudits of all transactions and accounts kept by or for all branches, departments, offices, boards, commissions, agencies, authorities and institutions of the state . . . .

Now am I to assume this would exclude local units of government, Mr. Martin?

MR. MARTIN: Yes, Mr. Austin, that is correct. It is not intended that the legislative auditor general should do anything more than handle state agencies, departments and institutions. These other units would, of course, continue to be subject to such audit as the legislature required. At the present time

the counties are audited. The townships are not audited, generally, unless there are special problems. The school districts are not audited except that the legislature requires that they themselves have an independent audit made. So there are different provisions and it is to be presumed that the legislature would make such provision for them. They would not be audited by the legislative auditor general.

MR. AUSTIN: Mr. Chairman, Mr. Martin, on line 8 of page 2, you have provided that

> The legislature shall provide by law with respect to the maintenance of uniform accounting systems and the auditing of units or agencies of local government.

MR. MARTIN: That is correct.

MR. AUSTIN: Now, if you are eliminating the present auditor general and if the legislative auditor general is to have no other duties than those specifically assigned to him in this proposal — which would, of course, exclude local units of government — what do you envision will be the auditing agency for these local units of government?

MR. MARTIN: Well, we would leave that entirely to the legislature, Mr. Austin, to place that where it appeared to be most desirable. As you know, we do propose that there be some reconsolidation of some of the departments. If that is approved it would be placed by the legislature in one of those departments, presumably —

MR. AUSTIN: Mr. Chairman —

MR. MARTIN: — or might be made a separate department, depending upon what the legislature saw fit to do.

MR. AUSTIN: Mr. Chairman, Mr. Martin, then what you do envision is another auditing agency in addition to the legislative auditor within the structure of the state government somewhere?

MR. MARTIN: We envision another auditing agency, Mr. Austin, but we don't envision another auditing agency for state government and for state institutions. At the present time the work is completely divided and completely divisible in the office of the auditor general. He has 2 staffs which do not cross over. One of them works on state audits and the other works on county audits.

MR. AUSTIN: Thank you, Mr. Chairman. I will yield the floor back to Mr. Downs.

CHAIRMAN MILLARD: Mr. Downs.

MR. DOWNS: Mr. Chairman, I would like to yield to Mr. Brown.

CHAIRMAN MILLARD: The Chair recognizes Mr. Brown.

MR. T. S. BROWN: Mr. Chairman, I apologize for standing up here at this juncture and standing facing the delegates, but for what I am about to say, at least for the next few moments, I think it is essential that you see what I am doing. I am not going to get into histrionics at this juncture, but I do have some general remarks about the topic that we are involved in right now.

Of course, the legislative auditor general problem is only part and parcel of a much larger problem, the problem of whether or not we are going to have appointive or elective state officials. Now it is argued generally and also specifically in regard to the legislative auditor general that the reason we must have appointive state officials is so that you can more easily pinpoint responsibility. In this particular case you would pinpoint responsibility, I assume, either to the legislature or to the governor because in most cases the governor and the legislature, were they of the same party, in regard to the legislative auditor general would have the same man in mind. I think this point of responsibility can be best illustrated by a little skit that I happened to see a year or so ago which was done by a group of strolling players that you will see sometimes in New York city and Chicago in the improvisation field. These players do bits in pantomime, generally at the suggestion of anyone in the audience, and they are usually quite effective in illustrating certain social points. This particular illustration — and I warn you in advance it is not humorous; as a matter of fact, it is tragic — concerns a rising young corporation executive. And you see the first gentleman in pantomime come out on the stage, and the announcer offstage begins to talk about the corporation executive and how he is doing all the right things and how he is trying to get ahead and trying to get into a position of power within the corporation. And he soon naturally gathers about him a staff. Enter the second player on the stage, who is obviously acting in the capacity of an administrative assistant. So that the rising young corporation executive — as the moderator goes on — is issuing orders and making decisions, and the executive assistant is carrying them out. He is scurrying about and so on implementing the orders. The executive is conducting press conferences and otherwise acting in a grand public relations capacity while the administrative assistant constantly is doing his bidding. Eventually the corporation executive rises — according to the moderator — to the position of president of the corporation. And here he is in a very grand posture doing things on the very grandest scale. Again the administrative assistant is scurrying about shining the shoes, brushing the clothes, issuing the orders, hiring and firing. Finally the corporation gets into trouble and there is an antitrust suit involved with the government. And they lose this antitrust suit after several lawyers go on stage and argue grandly, et cetera. Ultimately, the responsible party is taken off to jail. And enter the policeman in the uniform who grabs the struggling and kicking administrative assistant and hauls him off to jail while the executive keeps on with his press conference.

I think this is an illustration of something that we are all aware of. And that is that when you have an executive who has, either in government or in business, an ultimate responsibility that in most cases in a practical way he does not have that ultimate responsibility. Now I don't think that the 5-percenters in the Truman administration, for instance, reflected adversely on the president himself, and I don't think that Sherman Adams in the Eisenhower administration reflected adversely upon the president himself. And I don't think either that the president of General Electric in the price fixing cases was adversely reflected upon, although the vice presidents went to jail. Now I do think that this idea of responsibility is therefore fatuous and that your appointive, relatively minor, state officials are not really reflective upon the integrity and efficiency of the chief executive of the state.

And I want to say something else, also, because this comes part and parcel with the responsibility argument when we are considering elective or appointive state officials. That is the concept of efficiency. Now we have heard a lot in this constitutional convention about efficient government and effective government, but those people, generally speaking, who talk about efficient government and effective government do not at the same time talk about the philosophical bases and philosophical consequences of their efficiency and their effectiveness. Those people who adhere to the normal conservative philosophy, I think, have quite amply demonstrated the philosophical orientation that they have and I think that the liberal end of this convention has also done likewise. Now the real nub, I think, of the central problem concerning elective or appointive state officials is again — and I have alluded to this many times on the floor previously — is whether or not there is a reasonable philosophical basis for this idea of efficiency in government. I think it is a relatively novel idea. It arose in this country at the turn of the century. It is being fostered and developed by, generally speaking, the political scientists and the so called nonpartisan groups. But I think this is erroneous because, in a larger sense and in an ultimate sense, in this country we are in grave danger of being inundated by the efficiency experts. Now, in that regard, I think it behooves us to elect as many people as we can as long as we can and spread the base of governmental participation as far as we can down into the ranks of the people in order to protect our ultimate best interests.

Now, specifically, in regard to the auditor general — as Tom Downs has indicated already in his questions and as the following speakers will no doubt indicate — our principal reason for wanting to maintain the elective and independent status of the Auditor General of the state of Michigan is really quite

simple. We feel that the auditor general is responsible for fiscal integrity of the state and he should therefore be elected by the people. Now the classic mechanism is that the governor proposes; the legislature disposes; and then an independent outside authority beholden to neither the governor nor the legislature makes sure that this position is at least financially carried out with integrity. Now, we would violate — as has been already indicated — the normal separation of powers doctrine if we were to have a legislative auditor general in the state of Michigan. We would in effect and in practice end up with the auditor general having 144 bosses, each of whom would have some particular say in indicating what phase of government he wanted to have investigated and possibly even harassed.

It has been mentioned before that under the present statutes — and I don't think this can be denied — the present elected auditor general has all the power that all of the advocates of the legislative auditor general would want him to have. And the only reason our present auditor general has at times not been able to perform his functions is, of course, that he has not been granted the funds. I do not think there has been an illustration in Michigan history of an auditor general refusing to do something that the legislature asked him to do. They have simply not granted him the funds in the past and I do not see why they would change their stripes and begin to grant him funds in the future. In general, again, we are talking about — in our constitution, hopefully — strengthening the position of the executive branch of government. In that regard the legislative auditor general would be a regressive measure rather than a strengthening measure for the executive, because it would involve a harassment of the executive branch.

Now, specifically, I am going to read from a book I have before me, which does not quite read like a novel. It happens to be the Senate Journal of 1953 of the state of Michigan, on page 406. What happened historically was that the legislature set up a joint committee to study the proposition — this is back in 1952 — of whether or not we should have a legislative auditor general in the state of Michigan, and I want to read to you verbatim the report of that committee.

Senate Journal '53, page 406 of this journal, reports of select committees. Mr. Porter submitted the following report:

> State senate concurrent resolution 19 of the 1952 regular session created a select committee to study and report on the values to be realized by realigning the present functions of the auditor general including the creation of a division of state government concerned with all relationships of local governments, the proper role and concern of the legislature in the postaudit of governmental activities, and the need of the legislature in having its own sources of information so it could fulfill its responsibilities more effectively, and the need for appraising the conduct of state programs as well as auditing the accuracies of their financial transactions. The committee has completed its work and recommends:
>
> 1. That the auditor general remain an elective state official independent of the legislature and of the executive;
>
> 2. That the proper function of the auditor general should be that of postaudit for the purpose of ferreting out violations of the law including failures of compliance with the accounting and appropriation laws of the state. The committee is of the opinion that the auditor general should also point out those cases where appropriated funds are used in a manner contrary to clear legislative intent and that such cases should be reported to the legislature.
>
> 3. That the legislature should strengthen the office of the legislative comptroller, that the office of legislative comptroller should be established by statute, that the staff of the office should be increased so far as necessary to properly provide the legislature with technical services in the field of governmental costs and appropriations and to assist the legislature in appraising the value of special governmental services.
>
> Respectfully submitted, Elmer R. Porter, chairman; Frank D. Beadle, Edward Hutchinson, Arnell Engstrom, Richard L. Thomson, Carl G. Lindquist.

At the conclusion of my remarks, I should very much appreciate it, if he cares to answer, an explanation from Vice President Hutchinson as to why he has changed his position relative to the legislative auditor general.

Now, I have one more item which is a communication from the Alaska legislative council, which is a joint group in the Alaska legislature, submitted to the then Auditor General of the state of Michigan, Mr. Otis M. Smith, in a letter of December 22, 1961, and which reads as follows:

> Dear Mr. Smith:
>
> At the request of the legislative audit committee, the Alaska council is making inquiry about auditing practices and problems in the several states.
>
> In Alaska postauditing of all agencies is a legislative function.

As indicated previously, I believe by Mr. Kuhn, they have the legislative auditor general setup there.

> The audit committee is composed of the finance chairmen of both houses and the presiding officers of both houses and one additional member appointed by them. The 6 member committee nominates a CPA who, when approved by the legislature, serves as legislative auditor at its pleasure.
>
> The legislative auditor directs the activities of the staff agency, the division of legislative audit. Its goal is an annual postaudit of each state agency, a goal which it has found impossible to attain even with an expanded staff.
>
> While the executive branch provides a preaudit, there is no arrangement for internal audits by the agencies themselves and it is felt that the absence of internal audits makes effective annual postaudit of every agency impossible.
>
> I am enclosing a questionnaire covering types of audits, interaudit agency relationships and audit procedures. We would very much appreciate your assisting us by completing the questionnaire and adding any comments or suggestions you think would be helpful in eliminating our auditing bottleneck.
>
> Sincerely, John C. Doyle, executive director.

Now I think this illustrates that in a new state whose problems, I think, are relatively uncomplicated as compared with ours and who has the system of the legislative auditor general, that they are already at this early date running into problems and they find they are unable to accomplish their program.

I think this is illustrative of the fact that we in Michigan in our system have been doing quite well, even though in a recent conversation I understand from our present auditor general, Mr. Farnum, that when his staff gets into the area of county audits that it requires, when they do Wayne county, the bulk of their staff approximately 14 months to do a year's audit in Wayne county alone, and that when they get into the other counties of the state it requires approximately 11 months to handle them on a lump sum basis. So that in effect we are not able to have an annual audit in every county.

I should like at this time — and I have the greatest respect for Vice President Hutchinson — I should like, if he cares to answer, an explanation for his change of heart, if any, concerning the legislative auditor general principles.

CHAIRMAN MILLARD: The gentleman does not care to answer. The Chair will recognize Mr. Downs.

MR. DOWNS: I would like to yield to Delegate Perlich.

CHAIRMAN MILLARD: Mr. Perlich.

MR. PERLICH: Mr. Chairman and fellow delegates, the office of the auditor general has about 100 men and women and it is the watchdog of state and county money. They do one thing — this is important — they make sure that none of this money is stolen, wasted or spent without proper authorization. For as long as there has been such an office, the job of auditor general has been without the direct control of any branch of government. This is because he is elected directly by the people. The present auditor general, Billie S. Farnum, says, "I have always felt that is is essential that the man responsible for integrity in government should be directly responsible to and elected by the people."

All constitutions including those of states and federal governments separate the powers of government into 3 arms; executive, legislative and judicial. If Michigan's new constitution puts the auditor general under the legislature, it will be breaking down this separation. The auditor general's job is part of the executive department. It is not a part of the legislative work. The auditor general does administrative work and not legislative. He has many important chores. He sets up plans for uniform accounting in all counties, and he improves the efficiency and economy of spending in state government and in schools and townships and units that get state money. In some of these, the audits are performed at state or taxpayers' request.

An auditor general who has to work for the legislature is going to have 144 bosses. This is a prospect to curl your hair and break your back all in one; with 144 bosses the auditor general would have at least 144 pet projects or fishing expeditions to worry about. Many of the legislators would have 2, 3, or 10 projects mostly aimed at embarrassing the executive office. The result would be a real malfunction in accounting of money at all levels of government. When the state does audits because of political grudges or whims of individual legislators it is asking for trouble, not improving or increasing confidence in the state or its government. The most important point — and nobody seems to be saying it in this fuss about putting the auditor general under the legislature — is that the legislature does not need any new authority to get whatever fiscal or money information it needs for its work. If the people themselves keep the right to elect the auditor general, they can be sure he will be responsible only to them, and their rights and needs and interests will be protected. Thank you. (applause)

CHAIRMAN MILLARD: Mr. Downs.

MR. DOWNS: Mr. Chairman, I want to say that this was Delegate Perlich's first speech, and I am sure we are all appreciative of the applause. We assume, of course, that the votes go with the applause. (laughter)

I want to say that this does complete the presentation. We appreciate the time the delegates gave to consider this. I would just like to add a very brief summary. I feel that, first of all, our historical elective system of auditor general has in Michigan, in one simple word, "worked." Nobody has shown that it has not worked satisfactorily, particularly when it is demonstrated that the legislature has to our knowledge never been denied information it has requested. Now I feel, as so often happens, that in this case the proposal does not provide too little or too much; it provides both too little and too much. Delegate Austin brought out very well the vacuum that will be created when some of the present auditing functions would be eliminated and simply would be supplanted by the one sentence saying, "The legislature shall provide by law . . . uniform accounting," et cetera. I think that much of the present auditing system that has worked would be discontinued; so in that sense this proposal does too little. Now where it does too much is twofold. First of all, and the answers from the distinguished chairman of the committee to the contrary notwithstanding, I for one feel that this broad definition of performance audit or postaudit would permit a legislative auditor, if he were so inclined, to interfere with academic freedom. I feel this is particularly a danger because the auditor is elected for 8 years, and if I were flip I would say: who will audit the auditor? I do feel, though, there is a danger of the "tail wagging the dog."

At the present time the auditor of the state must return to the people for election and represent them. I think this should be expanded to a 4-year term and the legislature have its opportunity to audit and the governor have his executive power to require reports of any and all agencies of the executive branch that he so desires. So, in summary, I will simply say that our present system has proved satisfactory. We have had checks financially, by the governor and by the legislature and by the people, to an auditor general elected by and directly responsible to the people. I therefore urge support of the minority report amendment and the deletion of this section. Thank you.

CHAIRMAN MILLARD: Then you are yielding the floor, Mr. Downs?

MR. DOWNS: Yes.

CHAIRMAN MILLARD: The Chair will recognize Delegate Wood.

MR. WOOD: Mr. Chairman, I would like to ask Mr. Martin a question through the Chair. Mr. Martin, do you consider the county treasurer a state office?

MR. MARTIN: The county treasurer is a state office, yes, Mr. Wood.

MR. WOOD: And the county road commissioner is a state office? They get their funds from the state?

MR. MARTIN: Yes, that's right.

MR. WOOD: Have you ever thought of the possibility — and I think I know of a case or two where it happens — that we have 144 men in the legislature and they are in various businesses and at various times they do business with these state agencies, and that puts them in the position of hiring an auditor under your proposal? — and that these same legislators could fire him if they did not like his report when he audits their transactions?

MR. MARTIN: That is why we expand his term and why we give him a reasonable length of term and why we give his staff civil service status, Mr. Wood. That is important and it was important when he was an auditor serving as part of the administrative branch.

MR. WOOD: Well, supposing something was found in the account of one of these legislators who was doing business with the state; do you think it probable that that auditor would make a report derogatory to the man that hired him?

MR. MARTIN: I certainly do if the legislature had done a decent job in picking the man. I cannot imagine — you have this same situation with the general accounting office. The comptroller general of the United States is in exactly the same position with respect to the congress as the legislative auditor would be with respect to the legislature, and nobody has cast any reflections on the comptroller general of the United States. He hands out even justice and his reports are accepted as being absolutely correct and honest.

MR. WOOD: It doesn't seem to me that this auditor should be placed in the position of auditing accounts of the men who hired him. Thank you.

CHAIRMAN MILLARD: The Chair will recognize Delegate DeVries.

MR. DeVRIES: Mr. Chairman and members of the committee, I was one of the original sponsors of this delegate proposal along with Delegate Wanger. I would like to make some observations based on my 5 years on the legislature staff. The observation is basically this: that we desperately need this auditor general because the present system is inadequate. At present we have a legislative controller who is the head of the legislative service bureau. He does all the postaudit plus the operation of the budget under the direction of the ways and means, and appropriations committees. His department is grossly understaffed and he lacks the independence necessary to do an effective job in checking the various state agencies to see if they have spent moneys and followed the legislative intent correctly. The present system can be compared, I think, to trying to run a billion dollar corporation out of a cigar box. The net result of this is that the legislature must for all practical purposes rely on the executive branch to prepare the budget, to preaudit the budget, and then report to the legislature whether it — the executive branch — has carried out the legislative intent in the appropriation act. There is no way for the legislature to conduct its own postaudit, practically speaking. Now the legislature has partially recognized this problem by hiring an additional person this year.

Another evidence of the need for a legislative auditor is the fact that the legislature shifts periodically from line item to lump sum budgets. When appropriating lump sums, the legislature feels insecure, because they do not have the information as to whether the agencies are spending the money in accordance with legislative policy. When they shift to line item budgets, which they are doing this year in some

areas, they become burdened with administrative detail and in effect become administrators and not policymakers. The legislative auditor general could ease the minds of the legislators in this respect.

The cost of a legislative auditor is definitely not a factor in this situation, for a good, competent legislative auditor and a competent staff would save more than the cost of the salaries involved in the first year of operation. For these and many other reasons already stated, I think it is imperative that the legislature have an independent, qualified auditor and an adequate, competent staff. I urge you to defeat the minority report amendment and support the committee proposal.

CHAIRMAN MILLARD: The Chair will recognize the gentleman from Lansing, Mr. Wanger.

MR. WANGER: Mr. Chairman and members of the committee, in urging you to vote no on this minority report amendment, I would like to call your attention to the fact that the following are among the people who testified before the committee of the convention to have the auditor general appointed by the legislature: Governor Swainson, former Governors Brucker, Kelly, Williams and Van Wagoner. They were all in agreement on the desirability of this point. I would also like to call your attention to a report rendered by the citizens' advisory committee, which was appointed by the governor to study constitutional issues. You all have a copy of this report. Page 7 of the report, the top half of that page, double spaced, reads as follows:

> As for the auditor general, the committee recommends that he be selected by the legislature. The joint committee staff also recommended legislative selection of the auditor general.

In its final report the staff commented:

> The legislature now lacks any effective means of its own for determining whether or not the intent of the policy decisions it makes is being honestly and efficiently translated into action. A legislative auditor general would give the legislature, as the policy determining body, the means for checking on the executive administration of its policy.

And then the citizens' advisory committee continues:

> We would add that the auditor general performs a rather technical function. The electorate is unqualified to pass judgment upon a candidate's capabilities for the job.

I note that in the chairman's letter on this report on, I believe, the third leaf of the report from the chairman of this committee, it says:

> We have achieved considerable consensus. In the sole case where committee members have expressed substantial disagreement with the recommendation in the report, their dissent is noted.

I note there is no dissent noted at all regarding the auditor general, and I further note that the members of the committee which made this report include the Honorable Murray D. Van Wagoner; Mrs. Irwin Whitaker; Mr. Ferrell Heady, chairman; Joseph Woodka; Honorable Clark J. Adams; William J. Brake and William Marshall. (laughter) If Mr. Marshall would care to express his opinion upon the subject briefly, I would not be averse to yielding to him for a brief comment at this time.

CHAIRMAN MILLARD: Mr. Marshall.

MR. MARSHALL: I don't believe I understood the question. I was carrying on a conversation. Would you repeat it?

MR. WANGER: No, I asked you no question. I said if you cared to make any comment regarding the legislative auditor, briefly, that I would not be averse to yielding to you for that purpose. I did not request that you answer a question.

CHAIRMAN MILLARD: Mr. Wanger, there are several on the list here and if you have a question to ask Mr. Marshall, that is all right, but the Chair will not open the floor to him to make a speech at this time because there are several ahead of him.

MR. MARSHALL: If you have a question, Delegate Wanger, shoot.

MR. WANGER: Are you in favor of having the auditor general appointed by the legislature?

MR. MARSHALL: I am not. I am in favor of having him appointed by the people.

MR. WANGER: Thank you.

MR. MARSHALL: Well, now, were you referring to the — someone mentions the report here. Did you mention something about a report of the citizens' committee?

MR. WANGER: Yes.

MR. MARSHALL: I would advise you, and Dr. Heady who headed that committee can also advise you, that I did not sign the report. I was not present at its final adoption, and at the meetings that I was present I talked in terms of elective officials. So I want to set the record straight. There has been discussion heretofore in our committee on this question. I did not sign the report; I want to make that clear. And I am in favor of continuing to have the state officials elected with the consent and advice of the people by casting their ballots.

MR. WANGER: Mr. Chairman, to continue, the points which have been raised in opposition to the legislative auditor general are, of course, obviously contrary to the testimony which we have had presented that was made before the committee of the convention dealing with this subject. But a question has been raised regarding 3 items, the first of which deals with the subject of performance postaudits, and I would quote to describe to the convention this well accepted term from the little Hoover commission staff report 11, page 5, which, as you know, was drafted in 1951. I quote:

> Because the appropriations process involves the determination of policy, it is necessary that the legislature hold the executive responsible not only for the honest expenditure of all funds but also for the efficient use of public money in accordance with policies prescribed by law. This is known as an operational audit or a performance audit, and it too should be undertaken by a staff responsible to the legislature.

So we see that not only is the term reasonably accepted but it deals not only with the subject of dollar honesty, as Mr. Downs pointed out, it also deals with the subject of efficiency, which is always a problem in any big organization — business or governmental — and also deals with the problem of whether or not expenditures have been made in accordance with lawful statutory policy which has been established.

I suggest that the third question which has been raised is a question without any substantial merit in it. That is the question of academic freedom. There is clearly no power here where the legislative auditor could interfere with academic freedom. Remember, his powers, as put out in the committee substitute before us, are only of a fact finding nature. He can only do the postaudits, not preaudits; only postaudits, and postaudit investigations only with respect to matters which the legislature itself has the power to control. This gives the legislature no power whatsoever. It has been legally long accepted in this state that the universities have the control of academic freedom and so there is no danger whatsoever, as has been pointed out by several previous speakers, that this matter would in any way threaten the principle of academic freedom known to our state.

One final point has been raised by Mr. Wood, who suggested that there might be an occasion where one of the members of the legislature or a number of them would be embarrassed or at least would be angered by some action which this legislative auditor might take. I would suggest, first of all — as has been previously pointed out — that the position of the office and its staff insulates him from that type of pressure. I would, secondly, suggest that if a legislator was interested in dealings with the state to that extent he would clearly have a conflict of interest which would disqualify him from serving in the legislature of the state of Michigan. I believe one of the proposals which will subsequently be presented by the committee on legislative powers will provide that any person in the legislature shall not enter into such dealings in his own business which would create a substantial conflict of interest.

CHAIRMAN MILLARD: The Chair will recognize the gentleman from Marshall, Mr. Hatch.

MR. HATCH: Mr. Chairman, after sitting here patiently and listening to Delegate Brown's story about the corporation executive — I am sorry to see that he is not in the chamber right now — I fail to see the relevance of the particular story to the matter that we have under discussion, but I think if we add a few facts to that story we might see that it is most relevant.

Let us assume that that corporation executive also was a member of the board of directors of that corporation and that not only was he a member of the board of directors but he also conducted the audit of that corporation. Now I don't think that if Mr. Brown were a stockholder in that corporation he would want a member of the board of directors to be conducting the audits of the corporation's activities. And I think this is analogous to the situation we have today in state government where the auditor general is a member of the executive team and sits on the administrative board. I therefore oppose the amendment and support the committee report.

CHAIRMAN MILLARD: The Chair will recognize the delegate from Detroit, Dr. Norris.

MR. NORRIS: Mr. Chairman, I understand that what we have before us is under the aegis of the committee on the executive branch and the minority report thereto. I understood, too, that what we were discussing was the question of the ways and means of strengthening the executive power and strengthening the power of the governor and the executive branch of government in order that we might give proper sway to leadership and responsibility.

I am somewhat disturbed by the tenor of the proposals, including the proposal to which we have a minority report amendment in front of us, because they seem to have in their combined impact not so much a strengthening of the powers of the governor and the executive branch but a diminution of it and a weakening of it both by direct means and indirect means. Thus far in this convention we have taken one step in my judgment which weakens the executive authority by depriving the governor of the right to select members of the judiciary, a very important power in my judgment. When the record of Mr. Williams' administration will go down, one of the major accomplishments of it was the caliber and quality of the people he selected there, and we have removed that. And I think that is an oblique if not a direct attack upon the power of the governor.

Second, we have before us a proposal which talks in terms of the legislature selecting a person to exercise the auditing function under the committee on the executive branch, and I submit that what we are having before us is also a weakening of the executive branch of government. It does not strengthen the power of the governor. He does not have by this proposal an auditor general elected by the people — and who is a member of the state administrative board — as part of his team to exercise a certain amount of independent judgment as an elected separate official, but is still part of the team and part of the executive branch giving the governor the kind of cabinet, organization and orientation that he needs. Here we have a proposal which, if you will, undermines the executive branch by saying and making a judgment constitutionally that we may not trust what is happening and we want to exercise a "watchdog" function — not merely a watchdog function; you almost have here someone who acts in the capacity of the Inspector General of the United States Army, who is responsible to no one but the commanding general and for none of the line functions. And it seems to me this also is a diminution of the executive power and authority.

I understand, too, contemplated in the series of proposals that we are going to have before us from the executive branch is appointment of state officials perhaps with advice and consent and that also means that we transfer powers from the executive branch — the governor having a team, an administrative board, that he has some selection over at party conventions — to a selection which will be influenced by the legislature, and, if as indicated, an unrepresentative legislature.

I think in these 3 very important areas — the question of the selection of the judges, this auditor general selected by the legislature, the advice and consent over power of appointment — we are not strengthening the power of the executive; we are not enhancing the power of the executive to exercise leadership in the community and state. I think we are qualifying it and distracting it and decimating it, and I am quite apprehensive, Mr. Chairman, that one of the things that was advertised as a reason for calling this convention — to give the governor the power to exercise leadership, to do the things that are necessary in the next 50 years — is not actually taking place. We are obliquely and indirectly hammering away at the executive power and giving more and more power to certain segments of the legislature, the legislature which is thus far, in my humble judgment, unrepresentative, and I am quite disturbed — I wish sometimes that on our lever we had an amber button as well as a red and green one, because I am not so sure which way to move on some of these — but I have a disposition because of the general trend thus far in this report to vote for the minority amendment and I urge others to do so.

CHAIRMAN MILLARD: Dr. Norris, the Chair wishes to inform you that this proposal was offered by both the executive branch and the legislative powers committee together. The Chair will recognize the delegate from Detroit, Dr. Nord.

MR. NORD: Mr. Chairman, first of all I would like to make it clear that unlike the remarks of another delegate, this is not my first speech. It is also not my last speech.

With regard to the question of the auditor general, I believe that the evidence we have before us makes one thing crystal clear, and that is that reasonable men may differ on this subject. It appears as though reasonable men have differed even with themselves on this subject from time to time or, at least, they certainly have wavered in their minds. As a reasonable man myself, I certainly would like to confess the same thing: I have wavered in my mind. In fact I do not know that my mind has 100 per cent finished reasoning on this subject, and I would like to take the opportunity with you to reason. Reasonable men may differ, so let us reason. Everything else has been tried and has not succeeded, so let us reason.

The first point I noticed in reading the proposal — I have not had available the substitute — but in reading the proposal I noticed it begins: "The legislature . . . shall appoint a legislative auditor general." Now this is not the first time we have had the words "The legislature shall" before us. Every time that we have those words before us, so far as I can recall, someone has taken the floor and objected to those words and this time it is my turn to do it. When it says "The legislature shall" we always get the question in the back of our minds: what happens if they don't? What happens if it says, "The legislature shall select an auditor general" and they just don't manage to get around to it? The time for adjournment comes and they have not agreed on which one of those candidates shall be the man and there isn't any auditor general.

Now, it may seem that this is far fetched. Judge Dehnke is always saying that we have a lively imagination and these things never happen. It is true that some of us do have lively imaginations; all lawyers do, no doubt. But it has been known that the legislature has failed to do something that it ought to do. I believe I could present a list of at least 2 or 3 things like that where they have failed — like balancing the budget, for example; they have not done that. And reapportionment. When they had a duty to do that, for 20 or 30 years they didn't do that. And there are probably 1 or 2 other things they may not have done, as well.

Now if the constitution says there shall be an auditor general, period; says how he shall be elected or appointed, whichever it may be, especially elected, then we know there will be one. But if the proposal says the legislature of 144 people shall get together and agree on a certain man — this reminds me of the situation in which some of my clients have put me in the past. They say, let us make up an agreement that, while we do not know what the terms of it are now, let us write down that we will agree to agree in the future. And I always tell them that that makes no sense as well as having no legal significance. You cannot agree to agree. And here you are expecting,

you are requiring, the legislature to agree and when the legislature is required to agree on a certain, single individual, both houses must agree. It is not even enough if a majority of all the legislators should agree.

So, point one on my doubts — and I hope that everyone else will take this into account as one of the factors to be considered in reasoning — is this: you do not have a self executing auditor general provision if you adopt this provision. You only have a hope that there will be an auditor general, and it seems to me that that is not quite good enough. When it comes to tracing the people's money, I would like to have something a little bit better than a hope that somebody will be selected to do it. I would like to be certain.

Now I am sympathetic with the source from whence this sprung, this idea of the model constitution of the national municipal league. I have noted it there myself and that is one of the reasons I am wavering about this, because I have a great respect for that constitution and I notice that many of the states which have recently had constitutional conventions also have had respect for it and have done the same thing with the legislative auditor. But I would like to point out the difference between that constitution and the one that we are proposing. That constitution is radically different on crucial points, namely, what the legislature shall be. We are talking about "The legislature shall" do something or other, shall keep tab of the money of the people. Well, who is the legislature under the national municipal league's constitution and who is the legislature under our constitution? Under theirs it is a unicameral legislature based strictly on population not even adhering to county lines. In other words, it is a standard political scientist's dream of a perfect legislature. Now with a perfect legislature certainly a much stronger argument no doubt can be made in favor of a legislative auditor, in fact a very strong one. The main one against it, then, is you don't know whether they will act, whether the 144 will agree; but we do not have that kind of a proposal before us, which we will be reaching in probably a week or so, as to what the legislature shall be like. Ours, according to the majority proposal — and there is a possibility that it might pass; you never can tell — suppose that did happen, the worst should happen, that the majority proposal for the legislature should pass, should be adopted. Then we would have a malapportioned legislature instead of a "Mel" apportioned legislature. We would have a legislature which is not responsive to the people.

Another one of the factors that causes me difficulty with this particular problem has to do with the argument that we want to have a strong governor. And there is a great deal of movement afoot — and I am basically in sympathy with the idea — that we should have a strong governor. I don't like to have a weak government of any sort and I don't see why we should have a weak governor. We should have a strong governor. Now if we are to have a strong governor, he is spending a great deal of money. It would be a nice thing for him to be sure that he knows where that money is going. More than a nice thing. You would think that would be his duty. And if you think it would be his duty, you would think he would have some means to make sure that he can do that. He has the duty to know where all the money is going, but under the proposal before us he has no power to find out. The only one that would have the power to find out is the legislature, provided they do manage to appoint an auditor general. If no auditor general is appointed, nobody will find out. And if an auditor general is appointed who is responsible to — that is, appointed by — the legislature, while it is true he has the duty to report to the governor, he is still responsible to the legislature and not to the governor. A strong governor should have the tools. This makes the governor a weak governor.

Let us state this in a different way. Looking at this from the political scientific type of approach, the spending of the money is an executive function and to find out whether the money has been spent where it should be, and so forth, is part of the executive responsibility. It belongs to the executive branch of the government. Some place in the executive branch of the government there must be an absolute power to find out where the money goes and I would like to make this point in this connection. Suppose you do have a legislative auditor. I have no objection to it. I think it is a great idea in and of itself. Why not? If they want to find out where the money is going, they should be able to get the facts, but what in the world has that got to do with whether or not there is an auditor general of the state, for all of the state, and not just for the information of the legislature? There is no inconsistency between the 2 of them.

The main argument I have heard in favor of the legislative auditor is that there should be a check and a balance, that the legislature appropriates this money and the governor spends it and the legislature should find out where it went. Again, nobody could say that that is a bad argument, but if it is a good argument — and I think it is a good argument — what is wrong with the reverse of that argument, or the converse of that argument? If it is a good idea for the legislature to find out how the executive branch is working out, is it a bad idea to do the opposite and have the executive branch have a way to find out how the legislature is working out? Is it a bad idea, for example, for the attorney general of the state to have subpoena power to get information just like the auditor general has, subpoena power to get information about the legislative branch of government? It has been pointed out that it is against morals and ethics and it may become against the constitution pretty soon for a legislator to have a conflict of interest — Mr. Chairman, I believe I may have walked into the wrong room; it sounds like Grand Central terminal, and I had an idea that it was a different place. May we have order?

CHAIRMAN MILLARD: All right, we will give attention to the delegate.

MR. NORD: I regret to say that my train of thought has been interrupted. Probably the best way to get back to where I started from is to start over again; then I am sure I will be back on the right track. (laughter) But I will take the next to the best course and continue.

If it is correct that the legislature should have some overseeing power over the executive — and I believe it is — it is just as true that the reverse should be so. The executive branch should be able to check on the legislature. I put in such a proposal too, as a delegate proposal. It was one of those 20,000 or 30,000 delegate proposals. However, it has not as yet seen the light of day. But I would say this: if we are insistent upon the legislature having this supervisory check and balance over the executive, let us be consistent; let us do it the other way, too.

I hope that the Chair will not be upset when I point out that all the attorney generals in, I believe, the last 20 years favored that, including Mr. Millard. It is something that is generally thought of — at least by attorney generals — as being a nifty idea; that they should have subpoena power over the people of the state so that they can see that provisions such as the one Mr. Wanger mentioned — that there shall be no conflict of interest of legislators — that something can be done about it. For example, Mr. Wanger points out that it will say right in the constitution there shall be no conflict of interest of legislators. That is what it will say. The only thing that worries me is how will we know whether there is any? We know what it says, but will we know whether there is any conflict? How are we going to find out? We are not going to find out — as pointed out by Mr. Wood — we cannot find out whether there is any conflict of interest by having somebody hire a man and say; now find out whether I have a conflict of interest. He might not find out. So, therefore, if there is validity, as I say, to one branch of government checking the other, let us go both ways.

It has also been pointed out that the idea of a legislative auditor is not something which is inconsistent with an auditor general of the entire state. The legislative auditor if he is to find out information for the legislature can do so. He can have a rather narrow function. An auditor general has a bigger function. There is no need, as I understand it, for any

provision in the constitution which says that there shall be a legislative auditor. It can be done by statute, but if we desired to have it in there, I don't see any objection to it, provided it does not take away the power of the executive branch to do what it must do.

When we get down to the final analysis of what we are dealing with, the question really is this: who should the auditor — if there is to be only one — who should the auditor of the state be responsible to? Ultimately, who should he be responsible to? One theory is the one that we had before us in the majority report. He should be responsible to the legislature. Another theory is that the best way to find out who he should be responsible to is to find out whose money it is that he is spending or, rather, whose money it is that he is checking, that he is tracing. Whose money is it? If it is the legislature's money, they should have the power to find out where it went, and only they. And if it is the people's money, they should have the power to find out where the money went. Now without a great deal of analysis, I think it could be demonstrated that the money that is involved does not belong to the legislature; it is the people's money. The people have a right to know. The people have a right to demand that somebody keep track. Now, under the present system, they have a man on whom they can place the responsibility. He is called the auditor general. They elect him. If he does not do what he is supposed to do, they can boot him out. It is the people's money. They should be the ones who have the right to keep tabs on it. I think that the deduction that you draw from that, if you follow me that it is the people's money, is, therefore, that they should have somebody who at least has the power to find out where it goes, is this: It would not be good enough, really; actually, it would not be good enough for him to be appointed by anybody, because he will be responsible basically to them. He really should be elected, because the people are the ones whose money is involved.

There are 3 different possibilities, as I see it, if you insist upon having only one auditor. One of them is to have a man responsible to the legislature, to be appointed by the legislature, another to be appointed by the governor, another one to be elected by the people. And of the 3, it seems to me perfectly clear that if we have the auditor appointed by the legislature — and the legislature is less responsive to the people than the governor is; under almost any apportionment scheme, that is so — then you have the least responsive person in the auditor. The most responsive person will be the one who is elected by the people. He will respond directly to the people whose money is involved. The next to the most responsive situation would be if he is appointed by the governor. In that case, at least, the governor is elected by all the people. But if he is appointed by the legislature, you have the question of apportionment brought right back in again. The legislature never really can be absolutely responsive to the people and under the apportionment scheme proposed by the majority would be quite unresponsive. So of the 3 methods, either of the 2 that have been considered likely in the past are better. Elected by the people is the most responsive; appointed by the governor is the next to the most responsive; and appointed by the legislature is the least.

Mr. Chairman, for the foregoing reasons I state and I conclude that the case has not been made out to substitute the present auditor general for a legislative auditor. The most that can be said, in my opinion, is this: that there might be a good reason for having a legislative auditor. If so, let us have him, but let us not take him away from the executive branch. We must have one in the executive branch. For this reason I cannot go along with the committee proposal, and I will follow the minority report amendment.

CHAIRMAN MILLARD: The Chair will recognize the gentleman from Muskegon, Mr. Hanna.

MR. FAXON: Parliamentary inquiry.

CHAIRMAN MILLARD: All right, Mr. Faxon; state your question.

MR. FAXON: Mr. Chairman, is it your intention that we will continue to go on without having any afternoon break at all? Is this going to mean 4:30 or 5:00? Then we rise about 4:30? Is that the idea, that we will continue on this way? I think we would have better attention if the people knew we would have a break.

CHAIRMAN MILLARD: Mr. Faxon, the Chair thinks that is up to the chairman of the committee. Mr. Martin is in control of the machinery for recess or adjournment.

MR. FAXON: I thought it was up to you.

CHAIRMAN MILLARD: That has been taken out of the Chair's hands since I was up here before.

CHAIRMAN MILLARD: Mr. Hanna.

MR. W. F. HANNA: Mr. Chairman and fellow delegates, I was going to ask Mr. Downs a question as one of the proponents of the minority report amendment, but I would like to point out 2 things in his absence. One, in the past we have elected an auditor general, and the legislature over the many years has given him many functions not auditing in nature. But it has always perturbed me, as we have developed the science of auditing, that we at least have not required that the auditor general be a certified public accountant with experience in municipal accounting. My question to the minority is whether or not, if we were to elect the auditor general, would they provide that he and his staff insofar as necessary be required to be certified public accountants with experience in public accounting? Two, would they — in order to give him independence which they are perturbed about — provide for his nonpartisan election as we do the courts so that he would be truly responsible to the people? Three, — and I did not intend to make this comment until I listened to Dr. Nord. I am amazed at Dr. Nord's statement — the functions of the auditor general are statutory, and within the executive department there is the department of budget, the department of administration; there is the office of the treasurer; there are a number of financial management departments or functions within the executive department which give to the executive all the financial information and management that he needs. The weakness in our government in the past has been need of a competent postaudit by a competent person, and certainly this necessity must be answered. The balance of the executive branch article allows the creation of a financial department — call it what you want — and in the finance and taxation they said that audits would be made by competent state authority. Thus this audit function would be assigned to the auditor general insofar as postaudit. If there is a necessity for preaudits, the department of administration or the department of finance can perform the necessary audits. Dr. Nord is assuming that by electing the auditor general you are freezing for all time his functions. He raised the point that the people should discover through their elected auditor whether there is a conflict of interest. I take it from Dr. Nord's statement that he is of the opinion that the auditor general himself makes all these audits and that he runs up to Muskegon county and audits the treasurer's books or the clerk's books or the probate court books, and at the same time he runs down to Wayne county and while he is in Wayne county he goes up to Keweenaw. Actually, it is all handled by his staff.

Now then, to say that if the auditor general is not doing his job the people can change it is to ignore our extensive civil service procedure in Michigan. When we change the auditor general, we can change the auditor and 1 or 2 positions at the top, but his entire staff is kept on by civil service so that you cannot say that by changing the auditor general you will immediately give pep pills to the staff or discharge the staff or hire a new staff. It may be desirable to remove the auditor general's staff from civil service if we elect him, but the fallacy in Dr. Nord's statement is the assumption that the auditor general does all of the auditing himself.

It seems that our problem is this: it is true he made a correct statement that there are 3 ways to select an auditor general. One is to provide that the people elect him but then to provide for a measure of his competence so that the

auditor general is a C.P.A., has experience in municipal accounting and is qualified. Two, is to take it out of the realm of popular election and allow the governor to appoint him and write the same standard for him. But the problem is that the governor already has his financial staff through a department of finance and a department of budget. What is needed is an independent auditor — independent of the executive branch — to make sure that once the legislature appropriates the public's money that it is spent according to the directions of the public representatives. And the solution that has been adopted in the federal government and has been recommended by students of this and adopted by most of the recent state constitutions is the legislative auditor. This may not necessarily be the most perfect but it is certainly the least evil of all 3 plans. I request the rejection of the minority amendment.

MR. DOWNS: I wonder if Mr. Hanna wanted to yield for answers to his questions.

CHAIRMAN MILLARD: Mr. Hanna, did you want —

MR. W. F. HANNA: I asked him a question.

CHAIRMAN MILLARD: All right, will you repeat it so we will all know what the question is?

MR. DOWNS: I believe the first question was whether I would favor having an elected auditor be a C.P.A. I would hesitate to put this in the constitution. I think that the conventions in nominating people will aspire to get qualified people. Certainly everything else being equal, a C.P.A. would have an advantage and I assume the electorate would show that. I think, though, that the auditor general is more than a technician. I think that our Michigan history has shown that perhaps an attorney with a Rhodes scholar background was as well qualified if not better than a C.P.A. I think the electorate can handle that very adequately.

Now on the second question — and I want to see if I can get it right about a nonpartisan election — I am inclined to think that nonpartisanship for state officers does not necessarily get the most responsible operation of government. My own feeling is — and I know that this is another place where there is honest disagreement not only among delegates but the citizenry in general — is that our present system of party nomination with the voter making the decision does strengthen our 2 party system, and it puts a responsibility on both the party and the individual to see that the right person is selected for the job and the voters make the final decision. If the individual turns sour — I am certainly not suggesting that has happened — it is not only the individual that suffers but to an extent the party that nominated him. And I think that our system of party nomination in Michigan has brought about responsible candidates from both political parties.

Now the third question — and this was a little bit longer, but I got the feeling that there was kind of an either-or attitude on auditing. I certainly yield to no delegate in wanting efficiency in government. I do feel that auditing is not an either-or but a both-and, and our present system provides that the legislature can do the auditing. I think that Delegate DeVries and I agree completely when he said that there should be a more adequate staff. I am not quite as critical, perhaps, as he is but I think that this is the decision: that the legislature, if it desires, can have additional auditing staff, and I think they should have that freedom too, and that staff should be responsible to the legislature to remove if it so wants. That is a check through the legislative branch regardless of the apportionment. I think a second check is the governor who, as chief executive, has the right to know from agencies what happens and can require written information from them. And the third check — and I think the most vital — is through the people in an auditor general, and if in this area of auditing it ends up that we have the legislative and the executive auditing with the power of the judicial to get in the act if there is found illegal activity, and then the people auditing, I think it strengthens our government rather than weakens it.

This morning we were talking about the differences between private business and government, and I think here too is one: that to a large extent a profit and loss sheet does measure the ultimate success of a business from a business viewpoint but, again, government by its nature, being a monopoly, cannot be measured in a profit and loss statement as to how well it does perform it. For that reason I think — if anything — there should be more systems of independent auditing within governmental agencies than within private businesses, and I think our present system so provides. Thank you, Delegate Hanna, and I hope I have answered those questions satisfactorily.

CHAIRMAN MILLARD: The Chair will recognize the gentleman form Traverse City, Mr. Rajkovich.

MR. RAJKOVICH: Mr. Chairman and fellow delegates, for the last 2 hours or longer we have been debating: where does the postaudit belong? This has been quite a question. We do have separation of powers. We do have checks and balances. Yesterday we did adopt the executive budget idea and, from what we have learned of that, the executive budget is divided between the executive and the legislative branches of government. We have decided pretty well that the budget is to be prepared by the executive. The legislature may review this and modify it through its appropriation power, and then in a third step we have decided that the governor or the executive shall be assigned the job of administration and control.

Now the question that we are debating is: who should appraise the results of this budget? Who shall determine whether the program and financing were carried out by the executive as directed by the legislature? Whose job is it? This is the issue. Now who should do this? Looking back at our constitution again, we can look at the executive, we can look at the legislative or we can look at the judicial or we may look at some outside agency to do this.

Now if the executive branch does the auditing — and, by the way, this is done in some states — we have a rather illogical situation. It is contrary to good fiscal principles to have an agency auditing its own books and records. If we give it to the courts to do it, then this is again against the traditional role. This leaves only one agency to do it, and this is the legislative branch as the proper branch to do the auditing. Now the postaudit, certainly, has been outside of any one of the 3 branches of government. However, good government demands and requires that all of these things be placed in one of the 3 branches and, if any branch should have it, it certainly belongs in the legislative branch. We have to have a balance between the 3 branches of government; there is no doubt about that, and we have to prevent concentration of power in any one branch. By placing the auditor in the legislature, you are going to get this balance.

Furthermore, the postaudit itself is not usually confined to the financial transactions but it should cover performance both in quantity and quality. And here is where we need some performance auditing. Further, the auditor himself must see to it that the will of the legislature is complied with, and if performance financing or rulemaking are deviating from the legislative intent. This is the procedure as followed in sound business practice and we can follow a similar procedure in our government. I urge you to defeat the minority report amendment and support the committee. Thank you.

CHAIRMAN MILLARD: The Chair will recognize the vice president, Mr. Hutchinson.

MR. HUTCHINSON: Mr. Chairman, first I would like to make an observation in response to something that Mr. Nord was arguing about. He ran up an alarm that perhaps the legislature would be unable to appoint an auditor general by a majority vote of each house of the legislature and then what would happen. Well, for many, many, many years, for almost — well, for the first 75 years, I guess, of the state's history, it was the responsibility of the legislature to elect United States senators. They elected United States senators. They didn't fail in that responsibility. And certainly an official who is going to perform an auditing function, a function that the legislature is very keenly interested in and concerned about — I do not think that there is any reason

to be alarmed about the theoretical possibility that they couldn't even get a majority of the legislature to do something. I might say from observation that it is apparently much easier to get a majority of either house of the legislature to act than it is sometimes to get a majority of this constitutional convention together.

I would also like to say that my attention has been called to the remarks of the delegate from Wayne, Mr. T. S. Brown, in which he dug out of the legislative journals of 1953, the report of a select committee which I signed in which the committee said that in its opinion the auditor general should remain an elective state official independent of the legislature and of the executive. Now I would also like to call attention simply to the fact that the present constitution says that with regard to the privileges of members of the legislature that they shall not be questioned in any other place for any speech in either house, but I waive that immunity (laughter).

I would like to say that as the years have gone by I have from time to time changed my position upon things. I would invite your attention to the fact that this report which I signed — and which has been thrown in my face here today — emphasized that it was my position in that report that the auditor general should be independent of the executive as well as independent of the legislature, and I will say that either in 1953 or '54 or '55, one of those years — '53 or '54 probably — there was a proposed constitutional amendment before the senate which would provide for the removal of the auditor general, that is, the abolishment of him as a popularly elected official and the creation of an auditor general to be appointed by the legislature — much as this proposal here now would entail. As my recollection goes, if I had voted for that, why, the matter would have gone on the ballot. In other words, the matter fell short by one vote in the senate and I did not vote for it. And I did not vote for it because in those days I honestly believed, and maybe naively so, that the auditor general should be independent of the executive and he should be independent of the legislature, or, to put it the other way, that I did not think he should be answerable to the legislature but neither did I think he should be answerable to the executive. I conceived of him as an official apart from all of these influences and a man who without fear or favor in his official capacity would do the job of really ferreting out waste and incompetence and malperformance.

Well, as time has gone by, the ideal is still there but the practicality of reaching it is impossible for the reason that every auditor general in the past, at the present, and I suppose in the future, even though he is popularly elected — if he is popularly elected as part of the state ticket and he sits as part of an executive team, that is, a team of officers in the executive branch of the government — why, he is going to be loyal to that team. So you get down to the point of trying to assess which is better: to have a man loyal to the executive team or to have him loyal to the legislature in connection with this matter of postaudit and, certainly, in state government as I view it now — and I would say that this change in my position is nothing that has been brought about in recent days or in even recent months — in my later years in the legislature, I would have supported a constitutional amendment which, although, as I say, I voted against it in 1954 or '53, I presume along about 1958 or '59, I would have been found on the other side of the question, because as I get older and as I view things differently, why, my positions change. And that is one thing about politicians, you know: consistency is not a virtue.

Now I honestly think that under the circumstances, as we find state government today and as we have found it in the last number of years, as the size of the government increases in dollars, as the tax burdens become so unbearable, as the responsibility of the legislature for the wise appropriation of public money and the responsibility of raising it increases, that the legislature must have available, and I think responsible to it, the postaudit function.

Now, in this earlier report, the position stated was that the legislature should create a legislative auditor by statute, that we should enlarge his staff, that he should perform this service of informing the legislature. I am happy to point with some pride to the fact that I think the legislature has made some considerable strides in that area. But as has been pointed out here earlier today, a legislative auditor or legislative comptroller or whatever you want to call him is simply — in this context here, with another auditor general in the government — this comptroller is largely a staff assistant.

I am of the opinion now and have been for the last several years that we would have a better governmental system so far as the postaudit function is concerned, so far as the performance of the government is concerned, so far as informing the legislature is concerned, if this activity were in the legislative branch of government.

So if this amounts to an admission by me that I have changed my position, I have changed it; and I know an awful lot of people in public life who have changed their positions from time to time. I do not think that we have to go back very far. It seems to me as though perhaps my good friend, the governor, changed his position on a matter even during the course of this convention, maybe even during the weekend. So I say that consistency is not a virtue, and if by changing our position we can improve and see the light, why, so much the better. (applause)

CHAIRMAN MILLARD: The Chair will recognize the gentleman from Taylor, Delegate Marshall.

MR. MARSHALL: Mr. Chairman, it was about 2 hours ago when I asked for the floor and I don't even know where I am now. I am quite sure that anything that I could say has been said. Thank you.

CHAIRMAN MILLARD: The Chair will recognize Delegate King.

MR. KING: Mr. Chairman, I, too, asked for the floor some time ago and I find that everything that I wanted to say has been said except one thing — and I hope that this one thing will be repeated time and time again as the afternoon wears on — and that is: I pass.

CHAIRMAN MILLARD: The Chair will recognize Delegate Sterrett.

MR. STERRETT: Mr. Chairman and delegates, I would just like to make a brief remark about the appointment of the auditor general by the legislature. We have heard that this should be left to the people. Well, I have a letter from one of these voters, and I have several others that I have received, and the third point in this letter that this person brings out is, "The auditor general should be appointed by the legislature and responsible to that body for the funds it authorizes."

MR. BLEDSOE: Point of information, Mr. Chairman.

CHAIRMAN MILLARD: The gentleman will state his point of information.

MR. BLEDSOE: How many on the list?

CHAIRMAN MILLARD: We have 3 on the list. Delegate Durst.

MR. DURST: Mr. Chairman and members of the committee, I know that most members of the committee are beyond listening by this time, but I would like to read into the record, as long as we are discussing who stands for what, the opinions of 2 very eminent members — either present or former members of the state government of Michigan on this question. We were privileged to have former Governor Williams appear before us and he made a very detailed statement of what he thought should be done in the state government. He listed an 8 point program which he said was essential to strengthen the legislature. Point 8 was: "The legislature should have the right to select the auditor general and thereby control the postaudit." By like reason the executive should have complete control of the preaudit which, as I understand it, is exactly the system which we have proposed in this committee proposal.

Now we also had another gentleman who is very experienced in finance in this state, Mr. Ira Polley, appear before our committee on November 22, 1961. And he said in part in discussing an executive budget:

> As a parenthetical observation, let me add that it is my belief that the legislature should appoint the state auditor who would conduct the postaudit to determine the accuracy, legality and propriety with which the budget has been executed.

To my knowledge these gentlemen have not changed their minds yet.

CHAIRMAN MILLARD: The Chair recognizes the lady from Grand Rapids, Mrs. Judd.

MRS. JUDD: Mr. Chairman and members of the committee, we have heard many times on this floor this afternoon the importance of having the auditor general responsive to the people. Often when I hear this, I wonder just how responsive the people are to the auditor general. And just as an experiment, I would like to see a show of hands in this committee as to how many of us before running for con con regularly had read the reports of the auditor general. This is a remarkably select group, and I think if we were to go home and ask our friends, we would find there are very few who could read them and understand them and interpret them and make use of them. I think that when somebody is responsible to everybody, it amounts almost to being responsible to nobody, and this change would make the auditor general responsible to the legislature.

It has been said that the legislature is not responsible to the people. I heard that statement this afternoon, which surprises me. However, when the legislators understand the auditor general's report, you and I can talk with our legislator any weekend and get some understanding of the relationship of the auditor general's studies to the appropriations being made by the legislature. It seems to me this is a much more effective way in which the people can understand and check on our state finances.

CHAIRMAN MILLARD: Delegate Ford of Taylor.

MR. FORD: I am sorry that Senator Hutchinson left us after his little presentation because I — oh, he is back — disagree with what he said about consistency. I think that Senator Hutchinson exemplifies, typifies, and has demonstrated by his little analysis of the change that has taken place in his approach to this subject, a form of consistency which I have been convinced of recent date in this convention his party has practiced for a number of years in Michigan. And he seems to be one of the foremost exponents of it. Glancing at the state directory, I see that from 1836 to 1850, we appointed the auditors general in this state. And from 1851 to 1955 we seem to have elected them for some reason, predominantly from 1 of the 2 major political parties. And then at about the same time — purely by coincidence I am sure — Mr. Hutchinson did what he calls an act of inconsistency and what I view as an act of consistency — and that is, changed his mind about whether they ought to be elected or appointed. I see Democratic names starting to show up in the office, and I submit that Senator Hutchinson is being completely consistent. I won't argue with him about whether it is a virtue or not, but this is following the rule of his party that when the Democrats start to win we change the rules, and if we cannot find a different way to select him we abolish him.

CHAIRMAN MILLARD: The Chair will recognize Delegate Bledsoe.

MR. BLEDSOE: Mr. Chairman, fellow conferees, since time and history find us very happily assembled here with 2 Mr. Hutchinsons, I am happy to say that I am going to join the ancient Mr. Hutchinson because I think he was good then and I think he is still good. Frankly, if I were to cast my vote today for the most helpful person in helping this convention to get off parliamentarily on the right foot — aside from our illustrious secretary — I would vote number 1 for Mr. Hutchinson. I think he was good. I still think so. And I think he actually gave the only reason he could give here today on the floor for this change. I still think we ought to stand by the people in electing our public officials.

CHAIRMAN MILLARD: Delegate Downs.

MR. DOWNS: Mr. Chairman, since this seems to be our afternoon for eulogizing, I would like to eulogize my good seatmate and companion, Delegate Durst, for his eulogizing the eighth point of Governor Williams. I do hope that when we get to the subject of legislative organization, he will continue to show that respect for our great governor and read the other points that he supported as a condition precedent to the acceptance of point 8. Thank you. (laughter)

CHAIRMAN MILLARD: The Chair will recognize Delegate Madar.

MR. MADAR: All I have been doing is waiting and hoping and praying that maybe you were going to get tired, but it seems that after I did give you 3 days of rest, you learned nothing. (laughter) You know I like to hear Mr. Hutchinson talk about it being a good thing to change your mind occasionally. Well, you know, I have mentioned this on several occasions about having been a Republican for a long number of years. (laughter) They were a long number of years, too, because it just seemed that they could never learn and I am sincere about this; I am not trying to make you laugh. You lost elections in this state because your leaders did not have sense enough to give the people what they wanted.

When I ran for state representative in the first district on the Republican ticket, I did say we ought to have a strong governor. He ought to be responsible, not just in name only because he is the governor and supposed to be the administrator but because he had the right to appoint his ad board. And in those days because the Republican party was electing the ad board and could do as they wished, they would go along with even appointing him but not under the advice and consent. And then just as Mr. Ford puts it, the Democrats started to elect the ad board. Then they came along and said we have got to do something about it. Oh, I was in on many a conclave. It used to make me sick. I don't mind telling you that was why I left the party; I got sick and tired of running down the state —

MR. GOVER: Point of order.

CHAIRMAN MILLARD: All right, state the point.

MR. MADAR: Let's get 2 points of order —

MR. MARTIN: Point of order.

CHAIRMAN MILLARD: Just a minute. Who is it?

MR. MADAR: I am trying to get something here for the people of the state —

CHAIRMAN MILLARD: Just a moment, now. Point of order has been raised. What is it, Mr. Martin?

MR. MARTIN: The point of order, Mr. Chairman, is simply on the question of whether Mr. Madar is discussing the subject before the —

MR. MADAR: I am.

MR. MARTIN: — committee or whether he is discussing his political career. (laughter)

CHAIRMAN MILLARD: Mr. Madar, you will confine yourself to the question, which is on the minority report amendment, please.

MR. MADAR: Well, you may rest assured that I didn't lose my trend of thought due to the rudeness of the interruption. I am hoping that maybe here instead of just having a caucus and saying it is Republican or Democrat, that you will start to use your own heads in making up your minds as to whether it is right to appoint or elect. I do not believe that it is right to appoint even with advice and consent, because then the governor is not appointing —

MR. EVERETT: Point of order, Mr. Chairman.

MR. MADAR: — and I believe that they should be elected.

CHAIRMAN MILLARD: Now, just a moment. State your point, Mr. Everett.

MR. EVERETT: There is nothing in this proposal about appointment with advice and consent, and I think he is off the subject.

CHAIRMAN MILLARD: Mr. Madar, will you please confine yourself to the matter being discussed.

MR. MADAR: That's right. It is by the legislature, appointment by the legislature. And I wanted to get that in too. (laughter)

CHAIRMAN MILLARD: The committee will be in order.

MR. MADAR: Mr. Chairman and fellow delegates, you have been asked all during the campaign how you felt about these things. I believe that you meant that the people should have something to say about our government. You aren't giving them a chance to say anything about it. Frankly, I think you are trying to defeat a constitution. I tell you right now that if you are going to try to get anything done, you will go ahead and put in this constitution that you will elect your auditor, let the people elect him, and then you will be doing some good.

CHAIRMAN MILLARD: The question is on the minority report amendment. The secretary will read it. Mr. Martin.

MR. MARTIN: Do you have any more speakers listed?

CHAIRMAN MILLARD: No, sir.

MR. MARTIN: If I might add —

CHAIRMAN MILLARD: Mr. McAllister just raised his hand. The Chair will recognize Mr. McAllister.

MR. McALLISTER: Mr. Chairman and fellow delegates, I do not belong to the minority party; however, the people of my area have instructed me to not vote for any appointed officer. Accordingly, I will have to support the minority report amendment.

CHAIRMAN MILLARD: Mr. Martin.

MR. MARTIN: Mr. Chairman, I believe we have covered the subject thoroughly. I don't think there is anything more to be added on either side. I did, however, want to pick up just 1 or 2 quick points to this effect: the report of the committee is based squarely, among other things, upon the report of the little Hoover commission, the Michigan joint legislative committee on reorganization of state government, which was the most extensive study ever done in Michigan of state government, and I think it is interesting that the membership of that committee contained some of the most distinguished members of the legislature including some of the very well known members of the minority party. I note here Representative Michael O'Brien, Representative Leo Doyle, Senator Garland Lane, who is still in the senate, and Representative William Romano. It also included some of our more distinguished Republican legislators: Senator Bonine, Representative Conlin, Representative Montgomery, Senator Perry Greene, who is still there, Senator Frank Heath, our own delegate, Representative Jefferson Hoxie, the Speaker of the House Victor Knox, and Senator Leo Roy; and, representing the governor, Clark Adams, who served on the supreme court and was at that time representing the governor. And the comment of the little Hoover commission was just this. I read it only because it is so squarely in point. It is under the recommendations, number 4:

> Strengthening the legislature's means for effective control, particularly through establishment of a legislative auditor general to be appointed by and responsible to the legislature to undertake performance as well as fiscal audits of all state agencies. This will equip the legislature with its own means to hold the executive branch responsible for the execution of the program prescribed by the legislature.

The point has been made over and over again here this afternoon that we ought to keep this office close to the people by electing him.

All I can say is that any one of you or all of you ought to search back in your recollections as to who these auditors general were. Perhaps you know that I was one of them because I have mentioned it here, but these people are not known to the people who elect them. They are not known when they are elected, they aren't known when they are in office, and they aren't known when they leave office. And I might say myself that after 4 years in the office I still couldn't go out to make a speech without being introduced as the attorney general instead of the auditor general, although I did my best to become known to the voters of the state. I am sure the attorneys general had the same experience. There is absolutely no validity whatsoever to the argument that this business of electing an auditor general keeps him close to the people. If you want to select a highly qualified man who knows something about the job, the way to do it is to do it through the committee proposal, and the legislature will be in position to get the best and most qualified person that can be found in the country. We are not only interested in strengthening the executive power; we are interested in strengthening the legislative arm as well, because we want 2 strong branches of government; we want 3 in fact. Of course we want strong courts, but we want a strong governor and we want a strong legislature. And with that kind of a division between the branches we will get a good government.

I think that probably covers all the points that can be made on the subject. I hope we are ready to vote, Mr. Chairman.

CHAIRMAN MILLARD: The question is on the minority report amendment. The secretary will read.

SECRETARY CHASE: Pursuant to their minority report, Messrs. Downs, Lesinski and Murphy offer the following amendment:

1. Amend page 1, line 6, by striking out all of the committee proposal.

CHAIRMAN MILLARD: Are you ready for the question? All in favor of the amendment will say aye. Opposed, no.

A DELEGATE: Division.

CHAIRMAN MILLARD: Division is called for. Is there support?

SECRETARY CHASE: Sufficient number.

CHAIRMAN MILLARD: There is support. All those in favor will vote aye and those opposed will vote nay. For those coming in, this is the vote on the minority amendment to strike out all of the proposal. Have you all voted? If so, the machine will be locked and the secretary will tally the vote.

SECRETARY CHASE: On the adoption of the minority report amendment to strike out all of section a, the yeas are 39; the nays are 85.

CHAIRMAN MILLARD: The amendment is not adopted. The secretary will read.

SECRETARY CHASE: Pursuant to the minority report of Messrs. Wanger, Wood, Perras, Hubbs, Powell and Mrs. Koeze, Mr. Wanger offers the following amendment:

1. Amend page 1, line 18, after "thereof" by changing the period to a comma and inserting "and may after public hearing establish minimum standards for annual reports to be issued thereby.".

CHAIRMAN MILLARD: The Chair will recognize the first proponent of this amendment, Delegate Wanger.

MR. WANGER: Mr. Chairman and members of the committee, the purpose of this minority amendment which is offered by members of the legislative powers committee is, as you can see, in no way designed to weaken the office of the legislative auditor general. Its sole purpose, and I think all will agree its sole effect, is to strengthen that office. It is the position of us in offering this amendment that to do so is most desirable; to give the legislative auditor general the power, after public hearing, to establish minimum standards for annual reports to be issued by those agencies of which it is his job to do fiscal and performance postaudits. I want to emphasize the fact that the legislative auditor general's power relates only to the finding out and determining of facts, facts about the fiscal and facts about the efficiency of the operation of the executive branch of our government.

Now, we believe that there are 2 important reasons why it would be desirable to strengthen the office as this amendment proposes. The first reason is that it will save money by enabling the legislative auditor to get the facts economically — in many cases without having to go to the expense of a comprehensive investigation at all. It will also promote reasonable uniformity in the reports to be rendered, as they should be

rendered, by all of the important agencies, departments and institutions of the state.

As you can very well realize, when you come into an agency at the end of an operation or at the end of a period and try to find out what happened during the preceding period, it takes a great deal of effort and sometimes a great deal of time to find out the facts when the agency has not had its records set up in a manner so that those facts will be readily available. This provision allows the legislative auditor to set these minimum standards so that the facts will be available without the unnecessary cost and perhaps in some cases unnecessary embarrassment of the investigatory process coming into effect. Since such standards could only be minimum, no department, office or agency would in any way be prevented or discouraged from including additional information for analysis.

Now the requirement of public hearing guarantees that any department, office or agency affected will have the fullest opportunity to be heard before its minimum standards are established, and this will guard against any abuse. It has been suggested that experts in charge of agencies may oftentimes be so intimately concerned in serving the people of the state in their area that they do not have time and sometimes do not have the mental attitude required to take a larger and more broad view and to realize that the legislature in making appropriations should have as much uniformity among the reports of the agencies as can be obtained.

The Detroit News on page 4A of the issue of Tuesday, June 27, 1961, pointed out that

> As of June 27 of that year the presidents of Michigan's 9 tax supported colleges and universities have adopted rules for the uniform reporting of student enrollments and faculty members . . .

and goes on to point out that up until that time there had not been a uniformity in some cases in this regard. This is perfectly understandable because the various institutions involved can and should be concerned with their own operations and do not always have the time and the inclination to consider the broad scope as far as the uniformity in their reports is concerned. This applies with even more force and vigor to other agencies of a more specialized nature than educational institutions.

Now there have been 2 objections raised, Mr. Chairman, to this proposal. The objections which have been called to my attention are, first, that this language is unnecessary and, secondly, that in some way which I do not myself understand, it would give the legislative auditor general too much power. And in order to, I hope, conserve time, I would like to briefly comment upon those 2 objections. First of all, I believe that if we want to accomplish the goals of uniformity and economy this provision is necessary, because I think it is quite clear that without this constitutional authority the legislature could not authorize the legislative auditor or anybody else to set such minimum standards for constitutional agencies in many cases. I would also like to point out that there is no other place in the constitution which authorizes the legislature to establish such standards except with respect perhaps to the limited financial aspect of accounting alone. The second to last paragraph of the present substitute does authorize the legislature to provide uniform accounting for units or agencies of local government, but that, of course, applies just to the local government area. And section c of Committee Proposal 37 does not apply to any state agency beyond the dollar and cents accounting.

Now, with respect to the second objection which has to do with the power of the office, I would like to emphasize once again that the legislative auditor only has power to gather and discover facts and report those facts. He is not a policymaker in any sense and cannot interfere even to the extent of getting into the preaudit area through the operations of any of these agencies. Only facts are what he is to discover. Secondly, these again are only minimum standards which he could set. Third, a public hearing would be required. This hearing is authorized only with respect to the setting of these standards, so that any abuse would be fully guarded against. And fourth, I would like to point out that if any power of the legislative auditor would be abused, he is fully subject to the process of removal from his job by the legislature.

So in conclusion I would like to reemphasize that adding this phrase to the constitution, our amendment here, in the opinion of this minority of the committee — which includes 2 members of the subcommittee which had the topic under its direct jurisdiction — first of all would save the state a great deal of money in the fact finding process and, secondly, would promote reasonable uniformity of content in reports to be rendered by the agency which, after all, he is empowered to investigate and check.

CHAIRMAN MILLARD: The Chair will recognize Delegate Kuhn.

MR. KUHN: Mr. Chairman and members of the committee, I think Delegate Wanger made my speech. This was defeated by the committee on legislative powers. It was brought up before the joint subcommittee on legislative powers in the executive branch and defeated again as not being necessary, totally unrealistic and might cause powers in this legislative auditor general which we would not want. Therefore, we urge you to defeat this amendment.

CHAIRMAN MILLARD: The question is on the Wanger amendment. Delegate Karn.

MR. KARN: I agree with Delegate Kuhn in taking a position in opposition to this amendment. It is wholly unnecessary in my opinion.

CHAIRMAN MILLARD: The question is on the Wanger amendment. All in favor will say aye. Opposed, no.

The amendment is not adopted. The secretary will read.

DELEGATES: Division.

CHAIRMAN MILLARD: Did somebody ask for division? Is the demand for a division seconded? A sufficient number. All those in favor will vote aye. Those opposed will vote no. The secretary will read the amendment.

SECRETARY CHASE: The amendment offered by Mr. Wanger is:

[The amendment was again read by the secretary. For text, see above, page 1692.]

CHAIRMAN MILLARD: The question is on that amendment just read. All in favor will vote aye. Those opposed, no. Have you all voted? If so, the machine will be locked and the secretary will tally the vote.

SECRETARY CHASE: On the adoption of the amendment offered by Mr. Wanger on behalf of the minority, the yeas are 27 and the nays are 79.

CHAIRMAN MILLARD: The amendment is not adopted. The secretary will read.

SECRETARY CHASE: Mr. Hutchinson offers the following amendment:

1. Amend page 1, line 7, after "appoint" by striking out "a legislative" and inserting "an"; and line 12, after "The" by striking out "legislative"; and on page 2, line 2, after the second "The" by striking out "legislative"; and line 12, after "The" by striking out "legislative".

CHAIRMAN MILLARD: The Chair will recognize the proponent of the amendment, Mr. Hutchinson.

MR. HUTCHINSON: Mr. Chairman, I think that the amendment is perhaps self explanatory. My desire is to change the apparent constitutional name of the office and reinstate the office as we have known it for so long. I do not myself think much of having a constitutional officer called "legislative auditor general." I think he should be called "auditor general." The word "legislative" is an adjective. If you are referring to a legislative auditor general, why, you are saying a lawmaking auditor general. That is not what he is. I think we would do better to call him "auditor general." This will not change the meat of the proposal at all. The legislature will still appoint an "auditor general." I hope that you can go along with this minor amendment. I suppose I could have offered this in style and drafting, but I was afraid somebody might claim this was a substantive change.

CHAIRMAN MILLARD: The Chair will recognize Mr. Martin.

MR. MARTIN: Mr. Chairman, I can see no objection to Mr. Hutchinson's amendment. I think perhaps I can speak for the committee in saying that the committee would see no objection to it.

CHAIRMAN MILLARD: The Chair will recognize the delegate from Taylor, Mr. Marshall.

MR. MARSHALL: Mr. Chairman, I rise to speak against the amendment, because in effect he is a legislative auditor; he is no longer the "auditor general." I think the majority proposal insofar as the terminology is correct and, therefore, I would oppose the amendment. If Delegate Hutchinson would like to add that he be elected by the people, then I would support his amendment.

CHAIRMAN MILLARD: The question is on the Hutchinson amendment. Do you want it read again? Mr. Austin.

MR. AUSTIN: I wonder if I could ask Mr. Hutchinson a question through the Chair.

CHAIRMAN MILLARD: If Mr. Hutchinson cares to answer.

MR. AUSTIN: Mr. Hutchinson, inasmuch as there is this one area of, let's say, auditing work that has not been covered in our constitution by this proposed legislative auditor — and I am relating now particularly to the work of auditing the counties and any other local units of government that may be required — I was wondering if we were not going to need some other type of auditor and who may have a title somewhat similar to "auditor general" and it might be better to let it be clear that this is the one who has responsibility to the legislature by way of his title.

MR. HUTCHINSON: Mr. Chairman, in answer to Mr. Austin I would say this: that I suppose that the county auditing function under this proposal might very likely be placed in the department of administration perhaps and that it would be known as the "county auditing division." And I think in all fairness that the state officer that is hereby being created is the successor to the officer that we know as the "auditor general" and he is the "auditor general." This word "legislative" is not descriptive of his powers at all. He is the postauditor of the state government. His department, while I understand it is the intent of the committee that the department should be described as being within the legislative branch — although I do not see that that is written out clearly in this proposal as it stands — nevertheless, it is also clear that the employees of his branch are under civil service just as they are in the executive branch in the government. I think that really this officer is the "auditor general" and while the legislature appoints him and while he reports to them, you will notice he also reports to the governor. And I don't think that there will be any confusion here at all. In fact, I think there will be much more confusion if we leave that word "legislative" in here.

CHAIRMAN MILLARD: The Chair recognizes Delegate Young.

MR. YOUNG: Mr. Chairman, I rise to oppose the amendment primarily because I think the whole amendment makes it very clear exactly what we are doing in terms of strengthening the executive. And I heard a lot of talk before the convention about the necessity of strengthening the executive office. Several days ago we strengthened the governor by taking away from him the right to make judicial appointments, and so now we are proposing to further strengthen that office by removing yet another responsibility from the executive. I would hate to see this convention contrive consciously to weaken the executive if this is the way we strengthen him.

CHAIRMAN MILLARD: The question is on the Hutchinson amendment. All in favor will say aye. Opposed, no.

The amendment is adopted. The secretary will read.

SECRETARY CHASE: Mr. Boothby offers the following amendment:

1. Amend page 1, line 8, after "to serve" by striking out "for a term of 8 years, who may be reappointed for one additional term only. He shall be removable for cause at any time by a 2/3 vote of the members elect of each house of the legislature.", and inserting "at the pleasure of the legislature."; so that the sentence will read; "The legislature by a majority vote of the members elect of each house, shall appoint an auditor general to serve at the pleasure of the legislature."

CHAIRMAN MILLARD: The Chair will recognize Delegate Boothby.

MR. BOOTHBY: Mr. Chairman and ladies and gentlemen of the committee, Mr. Kuhn has pointed out that there is some disagreement as to whether the auditor general, if appointed by the legislature, should serve at the pleasure of the legislature or whether he should serve for a relatively long, fixed term of years. Those favoring the long term claim this would attract a professional man and would remove him from ordinary political pressures of the legislature, thus making him independent. Mr. Kuhn did mention, however — he stated that the last 3 states that have adopted a legislative auditor have done it for a fixed term of years. I would like to point out that that statement is not completely correct. The state of Alaska has provided for a legislative auditor and that particular state has provided that the legislature shall appoint an auditor to serve at its pleasure; so the state of Alaska has provided that rather than having a fixed term of years provided, instead, they would indicate that the auditor general or the legislative auditor would only serve at the pleasure of the legislature; in other words, not for a fixed term of years.

I would also like to point out that for once — and I think probably this may be the first time I am in complete agreement with the model constitution put out by the national municipal league — I wish Mr. Allen was here — the national municipal league in its constitution makes the recommendation as follows: "Postaudit. The legislature shall appoint an auditor to serve at its pleasure." So the national municipal league also makes this same recommendation which was also included in the Alaskan constitution.

I personally feel that to make the auditor truly an arm of the legislature, that body must have the power to hire and fire the auditor at its will. An official appointed for a long term might feel so independent that he would refuse to provide the legislature with the information they desired, especially — I wonder if I could have some order, please.

CHAIRMAN MILLARD: The committee will be in order.

MR. BOOTHBY: — especially if the legislature was of a political complexion different from the auditor and particularly if the auditor was of the same party affiliation as the executive. A long, fixed term of years would allow an auditor to set up his own bureaucratic kingdom, I fear.

Now, there were certain statements made in the committee's recommendation as to why they wanted the long, fixed term of years. They listed 3. The first one they have indicated was to attract high caliber persons. I would refute that by saying that the office of auditor general certainly is an office of high prestige, and I feel that any person in this state would feel it an honor and a matter of prestige to serve in that capacity and would take that position whether it was for a fixed term of years or whether it was offered at the pleasure of the legislature.

The committee has also indicated that their reason for placing a long, fixed term of 8 years is to provide for a substantial degree of freedom from extraneous influence in the performance of his duties. Now the members of the legislature should certainly not be considered an extraneous influence. The purpose is to make the auditor of postaudits an arm of the legislature. They would not be an extraneous influence; they would actually be the proper body to have the influence. They should hold direct control of the constitutional means by which the legislature may have a check upon the executive and his subordinates in financial matters. I would say this: that the extraneous influence — the extraneous influence — would be the executive. This is what you want to keep him away from, but you want to have the legislature have control of this particular individual.

Now the third point that the committee has raised is that they want a long, fixed term of years to provide a

reasonable degree of job security. Now I submit that the auditor is something more than an employee of state government. He sits in a professional category such as a doctor, a lawyer or a C.P.A. The relationship between the legislature and the auditing arm of the government requires a high degree of confidence. Article X, section 2 of the Michigan constitution now requires that the legislature should provide moneys for estimated expenses of state government. Article X, section 18, requires the legislature to provide for the supervision and audits of accounts of public officials. In addition, it has traditionally been considered the power of the purse strings should remain in the legislative branch. The legislature — the legislature — has the obligation to provide for the paying of necessary expenses of state government, but in the appropriations of the taxpayers' money it must make sure that these funds are not being illegally used, mishandled, or wasted. I say that this responsibility which the legislature has to the people requires that they have a great deal of confidence in the auditing arm of state government, and so in this degree of confidence they must have a situation occurring where they can appoint or fire that person such as an individual would have over a person serving as his lawyer or his C.P.A. The real purpose of the legislative auditor should be to give the legislature maximum control over the determination of the accuracy, legality and integrity with which the executive has carried out the legislatively enacted budget plans.

Now, a statement was made in some prior debate that the auditor should be responsive to the people, and I do believe that there should be a degree of responsibility in this category of auditing the books of the executive arm in the postaudit function. And I would say that the auditor can be responsive to the people through the traditional watchdog of the public purse strings, and the traditional watchdog of the public purse strings has been the legislature. And I say if you want to continue that idea that the legislature shall be the watchdog, then you must give them a high degree of control over the auditing arm, and the only way I know how to do it is to make that particular arm serve at the pleasure of the legislature. It is my own personal feeling that an 8 year term would not cause this particular official to be responsive. I think he would be nonresponsive to the people through their elected representatives if he served for a long fixed term of years. And I ask you and I plead with you to consider this fact: if you want the legislature to have control of the purse strings and to be able to supervise and look over to see whether the executive is spending the money the way that the legislature has provided it, let them have control — and direct control — and let them have confidence in the official which they provide to cover this.

To further placate some of the members of this convention, I would like to indicate that when I was before the committee that was considering this provision and particularly my proposal which required that the auditor general serve at the pleasure of the legislature, Lieutenant Governor Lesinski indicated that he agreed with this proposal, and I am also informed that Governor Williams indicated to a reporter that he also agreed with this proposal. I urge the adoption of this amendment which would remove a long, fixed term of years and insert a provision which would allow responsibility of the auditor general to the legislature.

CHAIRMAN MILLARD: The Chair will recognize Delegate Binkowski.

MR. BINKOWSKI: Mr. Chairman, I would like to ask Mr. Martin, the chairman of this committee, 2 questions before I speak against the Boothby amendment.

CHAIRMAN MILLARD: If he cares to answer.

MR. BINKOWSKI: Mr. Martin, there has been discussion that the individual to be selected for this office is to have some professional status. I notice that there are no qualifications written into the committee proposal so, of course, he does not have to be an accountant or a C.P.A. or anyone of any professional background whatsoever. Is this not true?

MR. MARTIN: We haven't written in the qualifications, Mr. Binkowski, because we thought that this was a proper function of the legislature. We do want, I might say, and we do hope and expect that the legislature will select a person of the very highest qualifications, the kind of person who is hard to get because he already has a very good job and is being well paid. And in order to get that kind of person, you have to have some incentive other than a sort of day to day basis.

MR. BINKOWSKI: Well now, Mr. Martin — however, this job could very well be an administrative one and the individual would not necessarily have to be a C.P.A. in order to qualify for the job. Is that not true?

MR. MARTIN: Yes. Let me say it is both. It is administrative, but it is highly desirable that the auditor have some accounting background. If he does not have some accounting background, it is very difficult for him to do the job, because it is difficult for him to properly instruct his auditors and to know where to look — that is, under what rug he will find the bugs that he is looking for. So it is desirable that he have those qualifications and we expect that the legislature will take those things into consideration.

MR. BINKOWSKI: Mr. Martin, how do you feel about the Boothby amendment?

MR. MARTIN: Well, I am going to speak on it in a moment, but I would rather take it up at one time and let the other comments be made first.

MR. BINKOWSKI: Well, thank you, Mr. Martin. Ladies and gentlemen of the committee, I oppose the Boothby amendment, because I am very fearful that if this provision were inserted in the constitution that the legislative auditor could very well be a one man grand juror for the state of Michigan. Whenever you are involved in investigations there is attendant publicity, and I am very fearful that if he would have to serve at the pleasure of the legislature no matter in whose control or what party would be controlling it, he would be an arm of the politics of that particular party. I think if we are going to have a legislative auditor that you would certainly want him as independent as possible and certainly independent from party politics. I think this is the purpose of having the term stated right in the constitution. I would oppose any type of amendment of this sort. I also have an amendment in, myself, to try to eliminate him from as much politics as possible.

CHAIRMAN MILLARD: The Chair will recognize the delegate from Detroit, Delegate Mahinske.

MR. MAHINSKE: I would yield the floor to committee chairman Martin at this time to explain his stand on whether he is for or against this amendment before I would make my remarks.

CHAIRMAN MILLARD: Mr. Martin said he would like to talk later.

MR. MAHINSKE: Well, then I will make them now. I am also opposed to this amendment. I think that this is certainly not going to remove this man from politics. By the same token, by inserting the new language, we are making this man strictly accountable to the legislature, and as to his holding the job at the pleasure of the legislature, he may be removed even without cause, as I read this. I feel that this is certainly not going to draw the type of man into this job that Mr. Martin just remarked about. We are going to have to have a man with a good substantial background who is going to be leaving a well paying job and he is going to be coming to a job that is going to be on a day to day basis, and when you are working for anyone at their pleasure you are working on a day to day basis. I do not think that the job with these stipulations will attract this type of man, and I would be opposed to the amendment.

CHAIRMAN MILLARD: The Chair will recognize Delegate Hodges.

MR. HODGES: Mr. Chairman, I believe this amendment bears out many of the fears most of us from my party have had on this very thing. It would seem all we are doing here is transferring, under the guise that we are going to get expertise in a particular field, from the people under a one man, one vote theory and now turning it into a legislative theory where that faction of our population which is a minority can control that individual. Now, if we are going to do this —

because under the guise of expertise he is going to need some freedom from that legislative body and perhaps the 8 year term gives it to him — if we are to adopt this amendment, all it means is that we can expect an auditor general who can harass the administration at the will of a legislative body which is not representative of the people of this state.

CHAIRMAN MILLARD: Delegate Marshall.

MR. MARSHALL: What I was going to say has already been said, but I would like to ask a question. How many more amendments does the secretary have on his desk, please?

SECRETARY CHASE: There are 5 additional amendments on the desk, Mr. Marshall.

MR. MARSHALL: Well, inasmuch as we have been here since 2:00 o'clock and we did not have a recess, I would like to at this time move that the committee rise, Mr. Chairman. It is after 5:00 o'clock.

MR. MARTIN: Mr. Chairman.

CHAIRMAN MILLARD: Mr. Martin.

MR. MARTIN: We have carried on here and we have made a lot of progress this afternoon. I had in mind moving —

A DELEGATE: Point of order.

CHAIRMAN MILLARD: It is not debatable, Mr. Martin.

MR. MARSHALL: Mr. Chairman, I don't mind Mr. Martin running the convention through the Republican caucus, but I do resent — I do resent —

CHAIRMAN MILLARD: The Chair has ruled that Mr. Martin is out of order, Mr. Marshall. The question is upon your motion. The question is on whether the committee will now rise. All in favor say aye. Opposed, no. The Chair is in doubt. All in favor that the committee do now rise will vote aye. Those opposed will vote nay. Have you all voted? If so, the machine will be locked and the secretary will tally the vote.

SECRETARY CHASE: On the motion that the committee rise, the yeas are 61; the nays are 52.

CHAIRMAN MILLARD: The committee will now rise.

[Whereupon, the committee of the whole having risen, President Nisbet resumed the Chair.]

PRESIDENT NISBET: The Chair recognizes Mr. Millard.

MR. MILLARD: Mr. President, the committee of the whole has had under consideration a committee proposal of which the secretary will make a detailed report.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 78**, A proposal to provide for the office of legislative auditor general; has considered several amendments thereto and has come to no final resolution thereon.

This completes the report of the committee of the whole.

PRESIDENT NISBET: Any announcements?

Without objection, we will return to the order of **communications from state officers.** Hearing none —

MR. MAHINSKE: Mr. President, is a motion out of order at this time?

PRESIDENT NISBET: Let us take this up first, Mr. Mahinske, and then we will return to you. This is a message from the governor. Mr. Chase will read.

SECRETARY CHASE: Office of the Governor, Lansing March 15,

The Honorable Stephen S. Nisbet, President, Michigan Constitutional Convention,
Civic Center, Constitution Hall,
Lansing, Michigan

Dear Mr. President:

Transmitted to you with this letter is my message to the fifth Michigan constitutional convention on the subject of executive appointments.

Sincerely yours,
John B. Swainson, Governor.

Following is the message:

Ladies and gentlemen of the convention:

The convention is now considering provisions concerning the executive branch of government to be incorporated in a proposed new constitution for this state. I take this opportunity of calling to your attention one facet of executive authority which I am convinced should be modified from its form in our existing constitution. I make reference to the provisions of section 10, article VI of the Constitution of 1908, which provides that vacancies in state office shall be filled by the governor with the advice and consent of the senate.

The proviso in question derives from the Constitution of the United States, and was placed in that document following strong debate on the proposition of whether absolute power in the matter of appointments should be placed in the hands of the executive, or whether this authority should reside solely in the hands of the legislative body. Convincing arguments were presented on each side of this question and, as a compromise, the "advice and consent" proviso was adopted by those who framed our federal constitution. This has been a part of each Michigan constitution.

In the early years of our federal and state governments, the words "advice and consent" were literally observed in the matter of executive appointments. The senate was a numerically small body and executive appointments were only a fraction of the number they are today. Under these circumstances, the senate could truly advise the executive and comprehensively examine each prospective appointee. However, the vast increase in the number of executive appointments, as well as the increase in the membership of the senate, has made it impractical for the "advice and consent" proviso to operate in its traditional manner, and its use as originally conceived has, for all practical purposes, been abandoned.

In Michigan, the power to advise and consent has in modern days been used strictly as a right of veto by the legislative body. An executive appointee receives in most cases a perfunctory hearing before a committee of the senate which votes him in or out of office on the committee recommendation.

In some instances, the appointee occupies office without any action by the senate, simply by assuming the position during legislative recess and holding it during months and even years of senate inaction. In the case of rejection of an appointee by the senate, no reason therefor is communicated to the executive.

The foregoing situation may, to a great extent, be blamed upon the fact that the large number of agencies, boards and commissions require the executive and senate to submit and pass upon hundreds of appointees. Inasmuch as the convention has already taken commendable action to drastically reduce the number of state agencies, boards and commissions, it appears to be an opportune time to reinstitute and restore the provision for "advice and consent" to its historical place in our government, and assure its operation as our founding fathers intended.

Therefore, I urge that you give serious consideration to adopting provisos which will guarantee an appointee a prompt and full hearing before the pertinent legislative committee, together with the right to be confronted by and cross examine all witnesses who may have been presented to the committee in opposition to his candidacy.

The appointee should also be afforded the right to counsel, the right to examine and rebut all documents which may have been viewed by or presented to the committee in opposition to his confirmation, as well as the right of subpoena to assist him in gathering evidence to prove or disprove contentions which have been raised in the matter of his fitness and qualifications for public office.

A proviso requiring the legislative body to report to the executive the specific reasons for rejecting an appointee should most certainly be adopted.

I further recommend that a provision be incorporated in the new constitution which will automatically confirm an appointee in his position unless he is rejected by the legislature within 60 days after that body convenes its first session following the appointment.

Proceedings in accordance with the foregoing would assure that legislative rejection of an appointee would not

be capricious or improperly motivated, and provide the executive with a guide and counsel in the matter of selecting persons to hold public office.

It is my firm belief that the adoption of the foregoing suggestions will be a great step forward in this vital area of government and assure that both the executive and the legislature will play their proper and intended roles in the matter of selecting state officers. It will also guarantee that prospective state officers will have every right safeguarded when being heard upon their candidacies.

PRESIDENT NISBET: The communication will be received and printed in the journal.

Mr. Mahinske.

MR. MAHINSKE: Mr. President, at this time I would like to make a motion to reconsider the vote that was taken this morning the result of which was to change the order of business in the committee of the whole on the proposals now pending.

MR. MARTIN: Mr. President, I object.

MR. MAHINSKE: I don't think an objection is proper, Mr. President. He can either vote yes or no.

PRESIDENT NISBET: The question is on the motion of Mr. Mahinske to change the rules.

MR. MARTIN: Mr. President, a point of order.

PRESIDENT NISBET: Mr. Martin.

MR. MARTIN: The point is the question of whether it is in order at this time to return to motions and resolutions in committee of the whole — no, we are not in committee of the whole — in the general body of the convention.

PRESIDENT NISBET: Rule 53 states, Mr. Martin:

A motion to reconsider shall take precedence of all other questions, except a motion to fix the time to which to adjourn, a motion to adjourn and a motion to recess. No motion to reconsider shall be renewed on the same day.

The Chair rules that the motion is in order to suspend the rules. The motion is in order, Mr. Martin.

MR. MAHINSKE: The motion is also debatable, and I would like to speak to the motion. The vote was very close this morning. There were people off the floor. There were some people who have indicated that they thought they were voting for one thing and wound up voting for another and didn't see fit to change their vote at the time. For these reasons, I would move the adoption of this motion.

PRESIDENT NISBET: The question is on the motion of Mr. — Mr. Martin.

MR. MARTIN: Mr. President, if I may speak on the motion of Mr. Mahinske, the decision reached by the convention this morning was based on general discussion as to the reasons for the change. Those reasons haven't changed any, and it appears to me, as the chairman of the committee, that we can have a more informed discussion if we can settle some of these other questions which are before us and come back to the proposals which have been passed by the action of the convention to this point. I certainly hope that the convention will follow the practice of supporting the action of the committee chairman in trying to arrive at a logical and sensible order of consideration of the matters coming before the convention. Therefore, I hope that you will vote no on Mr. Mahinske's motion.

PRESIDENT NISBET: Mr. Marshall.

MR. MARSHALL: May I ask a couple of questions of Mr. Martin through the Chair?

PRESIDENT NISBET: You may if Mr. Martin cares to answer.

MR. MARSHALL: Mr. Martin, number 1 is: you say that the decision this morning was arrived at after discussion on the need for it and determining the need for it, et cetera. Could you tell me where that discussion and how it was arrived at — where this was done?

MR. MARTIN: You were here, Mr. Marshall.

MRS. KOEZE: Mr. President, preferential motion —

MR. MARSHALL: Can you answer one — I have one other question —

MRS. KOEZE: — I move we adjourn.

PRESIDENT NISBET: Mr. Marshall may continue.

MR. MARSHALL: I am inclined to speak for quite awhile, but I want to continue my question: can you tell me why, Mr. Martin, that yesterday the general orders calendar was logical but today it is not logical to have the order as we had it yesterday?

MR. MARTIN: Well, to the committee — in looking over the business of the committee, the work of the committee, it appeared that we could cover these matters better by taking up the items which are of noncontroversial character and coming to the more controversial matters at the end of our consideration. I am sure this is the same reason which other committee chairmen had for suggesting that the order be changed as they went along.

PRESIDENT NISBET: The Chair now recognizes Mrs. Koeze.

MRS. KOEZE: Mr. President, I move we adjourn.

PRESIDENT NISBET: The question is on adjournment. Those in favor will say aye. Opposed, no.

We are adjourned to 9:30 tomorrow morning.

DELEGATES: Division.

PRESIDENT NISBET: Those in favor of the motion will vote aye. Those opposed will vote no. In the meantime, Mr. Chase has an announcement.

SECRETARY CHASE: Mr. Cudlip gives notice of a meeting of the committee on style and drafting this evening, March 15, at 8:00 o'clock p.m., in room K.

PRESIDENT NISBET: Have you all voted? If so, the secretary will lock the machine and tally the vote. Mr. Yeager.

MR. YEAGER: Mr. President, would it be in order to make an announcement while waiting for the vote to be called?

PRESIDENT NISBET: You may make your announcement.

MR. YEAGER: It might be of interest to the convention to note that in addition to being the Ides of March, we have just completed the first 100 days of this convention.

PRESIDENT NISBET: Mr. Faxon, you had an announcement that you wanted to make, too?

MR. FAXON: In line with the fact that delegates here are commemorating the birthdays of some of their distinguished members, I have the honor to announce to you the birthday of a former teacher, lawyer, legislator, state representative, former mayor, friend of the court, a man who serves as the distinguished chairman of the committee on legislative powers, Mr. Thomas Jefferson Hoxie. (applause)

PRESIDENT NISBET: Mr. Snyder.

MR. SNYDER: Mr. President, before the vote is announced, I would like to be excused for Monday, and, not knowing with any degree of certainty what the hours of the convention are going to be, I would like to ask for excuse now because I don't know when we will be here and when we will not be here anymore.

PRESIDENT NISBET: Without objection, excuse will be granted.

SECRETARY CHASE: We have the following requests for leave: Mr. Norris wants to be excused from the session of Friday morning; Glenn Allen wishes to be excused from this Friday's session to attend a probate court hearing in St. Joseph county: Mr. Barthwell wishes to be excused from tomorrow's session; Father Dade wishes to be excused from the sessions of Monday and Tuesday mornings; Mr. Austin asks to be excused from the session of tomorrow afternoon to address the training institute of the municipal finance officers association in Ann Arbor; President Nisbet wishes to be excused from tomorrow's sessi n; Mr. Goebel wishes to be excused from Friday's session to attend a meeting of the regents of the University of Michigan; and Mr. Snyder wishes to be excused from Monday's session.

PRESIDENT NISBET: Without objection, the excuses will be granted.

SECRETARY CHASE: On the motion to adjourn, the yeas are 74; the nays are 40.

PRESIDENT NISBET: The motion prevails. We are adjourned until 9:30 tomorrow morning.

[Whereupon, at 5:30 o'clock p.m., the convention adjourned until 9:30 o'clock a.m. Friday, March 16, 1962.]

ONE HUNDRED FIRST DAY

PROCEEDINGS

Friday, March 16, 1962, 9:30 o'clock a.m.

VICE PRESIDENT ROMNEY: The convention will come to order.

The invocation this morning will be offered by Rabbi Harry Essrig of Temple Emanuel Church, Grand Rapids. Rabbi Essrig.

RABBI ESSRIG: Our heavenly Father, favor us with knowledge and instruct us in the proper use of Thy divine gift of understanding. Help us fashion that instrument of political maturity which will best advance the welfare of all those who inhabit our beautiful state. Teach us how to reconcile our differences for the common good to the end that we may further unity and harmony and cultivate material well being and spiritual fulfillment in our midst. May we rise above petty discord and partisan interest and harness all our physical and moral resources for the enhancement of the lot of the common citizen. May we sow wisely in order to reap abundant harvest and may we labor so effectively that future generations will rise up and call us blessed.

In the words of an ancient Hebrew prayer, "May the pleasure of the Lord our God be with us this day and may He firmly establish the work of our hands." Amen.

VICE PRESIDENT ROMNEY: Thank you, Rabbi Essrig.

The roll call will be taken by the secretary. Will those present please vote aye. Have you all voted? If so, the secretary will lock the machine.

SECRETARY CHASE: Mr. President, a quorum of the convention is present.

Prior to today's session, the secretary received the following requests for leave: Mr. Ford, temporarily, from today's session; and Mr. Page, on orders from his doctor to go back home and stay in bed a few days, wishes to be excused indefinitely.

VICE PRESIDENT ROMNEY: Without objection, the requests are granted.

SECRETARY CHASE: Absent with leave: Messrs. Allen, Barthwell, Everett, Follo, Ford, Garvin, Goebel, Higgs, Lundgren, Mosier, Nisbet, Norris, Ostrow, Page, Tweedie and Wood.

Absent without leave: Messrs. T. S. Brown and Lawrence.

VICE PRESIDENT ROMNEY: Without objection, the delegates are excused.

[During the proceedings the following delegates entered the chamber and took their seats: Messrs. T. S. Brown, Ford and Lawrence.]

The Chair has had one request for recognition. Before recognizing the delegate who made that request, may the Chair remind you that tomorrow is St. Patrick's day. And the Chair doesn't know whether you have noticed it or not, but somebody supplies the presiding officer with a flower each day, and this one is a green carnation. As I walked up here, Delegate Erickson handed to me some genuine shamrock. He received this from Paddy Boyd in Ireland who sent it to him to avoid green painted carnations on St. Patrick's day. Anyone interested in seeing some genuine shamrock can check in with Claud Erickson. (laughter)

Delegate Brake.

MR. BRAKE: Mr. President, may I speak from the secretary's desk?

VICE PRESIDENT ROMNEY: Do you object, Mr. Secretary?

SECRETARY CHASE: Not at all.

VICE PRESIDENT ROMNEY: No objection.

[Whereupon, Mr. Brake approached the rostrum.]

MR. BRAKE: Mr. President, ladies and gentlemen of the convention, as I read the Free Press this morning, I am appalled. I have apparently embarrassed you in a way in which I wouldn't want to embarrass any man—by trading you out of your pants. I am contrite, humble; and I want to do anything that I can to make amends. The only thing that I know of that I can do is what I'm going to do.

[Whereupon, Mr. Brake presented a pair of trousers to Vice President Romney.]

I'm sorry they are not better. (laughter and applause)

VICE PRESIDENT ROMNEY: May the Chair state, Mr. Brake, that he has never been concerned about being reduced to pajamas, and has always felt that we should have 2 pants suits. Thank you very much. (applause)

Delegate Downs.

MR. DOWNS: Mr. President, I have a preferential motion. I move the convention recess for one hour.

VICE PRESIDENT ROMNEY: You have heard the motion. The motion is not subject to debate. Those in favor say aye. Those opposed.

The motion prevails. We will recess for one hour.

[Whereupon, at 9:40 o'clock a.m., the convention recessed; and, at 11:00 o'clock a.m., reconvened.]

Ladies and gentlemen, the convention will please come to order. The Chair will recognize Delegate Downs.

MR. DOWNS: Mr. President, fellow delegates, I have a brief statement to make, and then a motion to make. If there is no objection, I shall read it now. It is with great shock and sorrow that we read in this morning's paper that there has been a deal made by the majority delegates to write a constitution without participation by all the delegates. We deeply regret that the concept of an open convention has been replaced with the concept of more decisions being made off the floor of the convention than on the floor by the majority party. We shall continue to vote for those things best for the people and oppose those things not in the best interests of the people. We shall continue to vote on each issue on its individual merits, and never on the basis of a deal for political expediency.

In view of the dramatic developments that have taken place, we believe there should be a cooling off period over the weekend for all delegates to reconsider any alleged deals, and see if we can return on Monday to the concept of an open convention with decisions openly arrived at by a vote on the floor of this convention. I therefore move we stand adjourned until Monday.

MR. BRAKE: I ask for a roll call vote, Mr. President.

VICE PRESIDENT ROMNEY: A demand for the yeas and nays has been made. Is it supported? It is supported. Those in favor of adjourning until Monday please vote aye, and those opposed please vote no. There is no debate possible on a motion to adjourn. Has everyone voted? If so, the secretary will lock the machine and record the votes.

The roll was called and the delegates voted as follows:

Yeas—36

Austin	Faxon	Marshall
Baginski	Ford	McCauley
Balcer	Greene	McGowan, Miss
Binkowski	Hart, Miss	Murphy
Bledsoe	Hatcher, Mrs.	Nord
Brown, T. S.	Hodges	Snyder

Buback	Hood	Stopczynski
Cushman, Mrs.	Kelsey	Suzore
Dade	Krolikowski	Walker
Douglas	Lesinski	Wilkowski
Downs	Madar	Young
Elliott, Mrs. Daisy	Mahinske	Youngblood

Nays—84

Andrus, Miss	Habermehl	Prettie
Anspach	Hannah, J. A.	Pugsley
Batchelor	Haskill	Radka
Beaman	Hatch	Rajkovich
Bentley	Heideman	Richards, J. B.
Blandford	Howes	Rood
Bonisteel	Hoxie	Rush
Boothby	Hubbs	Seyferth
Brake	Hutchinson	Shackleton
Brown, G. E.	Iverson	Shaffer
Butler, Mrs.	Judd, Mrs.	Shanahan
Conklin, Mrs.	Karn	Sharpe
Cudlip	King	Sleder
Dade	Kirk, S.	Spitler
Dehnke	Knirk, B.	Stafseth
Dell	Koeze, Mrs.	Staiger
DeVries	Kuhn	Stamm
Donnelly, Miss	Lawrence	Sterrett
Doty, Dean	Leibrand	Stevens
Doty, Donald	Leppien	Thomson
Elliott, A. G.	Martin	Tubbs
Erickson	McAllister	Turner
Farnsworth	McLogan	Upton
Figy	Millard	Van Dusen
Finch	Perras	Wanger
Gadola	Plank	White
Gover	Pollock	Woolfenden
Gust	Powell	Yeager

SECRETARY CHASE: On the motion to adjourn, the yeas are 36; the nays are 84.

VICE PRESIDENT ROMNEY: The motion does not prevail. Mr. Marshall.

MR. MARSHALL: Mr. President and fellow delegates, I desire to make a statement under the point of personal privilege. During the recess a statement was made by one of the delegates on the floor, for the benefit of the gallery, to the extent that it was a disgrace that the one hour recess was asked for. We do not feel that way. We are faced with a very serious and dramatic problem here. I also want to remind the delegates here in the convention that on a previous occasion here, when Mr. Art Iverson, I believe, the chairman of the Republican caucus, asked for a recess to discuss a problem that he had become involved in on the floor, the recess was granted; and no one got up on the floor from the minority party and accused the Republican party of being disgraceful in doing that. We felt that it was all right. Here on last Friday, when the gallery was packed and the halls were packed, there was a motion to adjourn, and the motion did carry over my protest, Mr. President. I just wanted that for the record.

VICE PRESIDENT ROMNEY: Mr. Marshall, the Chair might state that as all delegates know, the original recess was for 1 hour, and when the 20 minute extension was indicated, during that period we undertook to entertain the gallery as best we could.

MR. MARSHALL: That's fine, Mr. President. I think you did an excellent job. But I do think that probably, in view of the fact that when the Republican majority had a recess on a previous occasion in the convention no objection was made; I do think the remark was out of order.

VICE PRESIDENT ROMNEY: The Chair made no comment on that, Mr. Marshall.

Mr. Downs.

MR. DOWNS: Mr. President, I ask that the Democratically elected delegates be excused for the rest of today's session.

VICE PRESIDENT ROMNEY: Mr. Martin.

MR. MARTIN: Mr. President, I wonder if Mr. Downs would reconsider his suggestion. We have some very serious business, and the convention has a long way to go. It will not be helpful to the consideration of the matters at hand to have the minority depart; and it would seem in the interests of the work of the convention and the people of the state of Michigan that we carry on with the responsibility of deciding these questions and deciding on the various amendments which have been offered to the committee proposal with respect to the legislative auditor general. We ought to get these matters dealt with, and as rapidly as we possibly can.

VICE PRESIDENT ROMNEY: Mr. Downs.

MR. DOWNS: Mr. President, I had asked in the motion for adjournment for a cooling off period, hoping that none of us would say things we would later on regret. And I hope I am not at the moment proving the wisdom of the motion that was defeated.

If the decisions have been made, I think it would facilitate the convention if the minority members left the floor for the majority to make the decisions. I had hoped that we would have the weekend for all of us to reconsider our activities, so that we could come back Monday with a fresh start, and hope that the delegates who had been caucusing secretly would be in a position to reconsider their activities, and we could get off to a good start. I do not withdraw the request.

VICE PRESIDENT ROMNEY: The Chair recognizes Delegate Sterrett.

MR. STERRETT: Mr. President and delegates, I have heard the statement now several times this morning that the majority has reached decisions. I'm not aware of any unanimity of a decision. And, fortunately for the majority party, it's a 2 way street. That's probably the reason why we received a little press from one of the urban newspapers pointing out that we were trying to work together. I think we've all been trying to work together.

As far as the adjourning or being excused from this convention, I believe that the people in the minority party and the majority party are big enough and sensible enough to ignore this little situation—and I call it a little situation, because it is not nearly as important as the work we have yet to do. I believe that they could ignore this and rise above it today and act in a responsible manner to finish the business we have on hand. (applause)

VICE PRESIDENT ROMNEY: Delegate Plank.

MR. PLANK: I would just like to call to the attention of Delegate Downs that he is violating almost immediately a statement he made before this convention just a matter of 3 or 4 minutes ago when he said the group was going to stay here and vote their convictions. Now he is asking them to leave and let us go on with our work without them. It seems to me, in the sense of being consistent, he would either do one or the other, and do it now.

VICE PRESIDENT ROMNEY: Delegate Hoxie.

MR. HOXIE: Mr. President, fellow delegates, as a member of the majority party, I regret if there were any statements made by any member of my party in regard to the request of the minority party to recess for the purpose of calling a caucus. I consider that very unfair. We have done it in the past. And I would further like to urge my fellow Republican delegates that if it is their desire, after deliberation, that they be excused, that we honor that request.

VICE PRESIDENT ROMNEY: Delegate Binkowski.

MR. BINKOWSKI: Mr. President, I just raise a point of order. It seems to me that this was not a motion, but just simply a request, and in the past the Chair has ruled upon it immediately without any debate. And if Mr. Downs' request for the entire delegation is out of order, I as a delegate would hereby request to be excused for the balance of today.

VICE PRESIDENT ROMNEY: Is there objection to the request of Mr. Downs—

MR. HUTCHINSON: Mr. President, I object.

VICE PRESIDENT ROMNEY: Objection has been heard. Delegate Howes.

MR. HOWES: I am a politician. To many the name does not sound good. To me the good of my county, my state and my country comes first. The good of my party comes second. What is good for my country will be good for my party. Our

2 major political parties are here and were developed as services to our country. He who serves his country best serves his party best.

To men such as Lincoln, Roosevelt and Wilson their fame came not from what they did for their party, but from what they did for their country. But their parties benefited in proportion to their service to their country. To these men it was: my country first, my party second. He who does less than this, be he Republican or Democrat, is not worthy of the name. (applause)

VICE PRESIDENT ROMNEY: Delegate Stevens.

MR. STEVENS: Mr. President, members of the convention, particularly the delegates from Wayne county, I might state that I was not much less surprised at what I read in the paper this morning than some of the Democrats from Wayne county. I would think that by this time you wouldn't take too seriously everything you read in the papers.

VICE PRESIDENT ROMNEY: Delegate Binkowski has asked to be excused. Is there objection?

MR. HUTCHINSON: I object, Mr. President.

VICE PRESIDENT ROMNEY: Mr. Hutchinson objects.

Delegate Mahinske.

MR. MAHINSKE: I request an excuse from the balance of the day.

VICE PRESIDENT ROMNEY: Delegate Mahinske requests an excuse. Delegate Cudlip.

MR. CUDLIP: I object.

VICE PRESIDENT ROMNEY: Delegate Hodges.

MR. HODGES: I request an excuse from the remainder of today's session.

MR. FARNSWORTH: I object.

VICE PRESIDENT ROMNEY: Delegate Farnsworth objects.

Delegate Marshall.

MR. MARSHALL: Mr. President, how can this convention and you as the President, after you have already excused other delegates from today's session, be this narrow minded to take the position that we cannot be excused? And at this time I would like to ask to be excused from today's session.

VICE PRESIDENT ROMNEY: Mr. Marshall, the Chair should be permitted to point out that the Chair is simply complying with rules of the convention, and has not injected anything other than the proper procedure into the handling of these matters. Now, Delegate Marshall has asked permission to be excused. Is there objection? There is objection.

Delegate Madar.

MR. MADAR: Mr. President, I never got much chance before to beat Mr. Martin to the punch. He was always recognized before me. Thank you, Mr. Romney.

Mr. President, I now ask that I be excused for the rest of the session today.

A DELEGATE: Don't anybody object. (laughter)

VICE PRESIDENT ROMNEY: Is there objection to Mr. Madar being excused?

MISS DONNELLY: I object.

VICE PRESIDENT ROMNEY: Delegate Martin.

MR. MARTIN: Mr. President, it is not necessary for us to go through all of this. If there are objections to individual requests for an excuse, I suggest that someone make a motion that the delegates be excused, and I think that it's their privilege. If they want to leave the convention, they should be permitted to do so. I don't think that we should try to hold people here against their will. If they want to leave the convention and don't want to take part in the business of the convention, this certainly should be their privilege. I think it is unwise, I think it is undesirable; but this is their decision.

VICE PRESIDENT ROMNEY: The Chair has been completely unable to keep track of the order in which everyone has risen, because there are so many on the floor; but is going to recognize Mrs. Hatcher next, because the Chair believes she was the next one.

MRS. HATCHER: Thank you, Mr. President. Fellow delegates, I have such a full feeling within me at this moment that I can barely speak as I would like to. So if I pause between my words at times, it will be because I feel that so many things have happened here within the last 48 hours that I can't quite understand as a citizen and as an elected delegate from the fourth senatorial district in the city of Detroit.

Of course, I feel that if decisions have been made off the floor of this convention to the point that it has crystallized the contents of the constitution and the constitution has been wrapped up, then the minority of this convention is certainly taking a very rough sledding at this particular time. Despite whether we remain in this convention today or any other day, it seems as if we are outvoted. We understood, in the very beginning when we came to the convention, that there were 45 Democrats and 99 Republicans. We were very willing to sit in the convention and in committee meetings and to take our chances and to express our points of view. And, fortunately enough, I may say, on the lighter side of the ledger, we have met very many fine Republicans in this convention. We have discussed many salient points in this convention, and we have found unanimity of opinion; we have found very reasonable objectives, which many of us have agreed with.

Unfortunately, this story has appeared in the newspaper, and it would appear to me if I were at home today that whatever efforts are being set forth in this convention today are certainly without any avail whatsoever; that the constitution has already been agreed upon in privacy. This I take extreme exception to, because I believe that the 45 Democrats here represent people back home the same as the 99 Republicans do. Each weekend I have had the problem of attempting to defend some of the things that have been going on down here in this convention. For that reason, and because of my feelings being so scarred at this moment, Mr. President, I ask to be excused.

VICE PRESIDENT ROMNEY: You have heard Delegate Hatcher's request. Is there objection? Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, I will advise right now that I propose to object to any further requests for excuse. I believe it is high time this convention got down to the business for which we were elected. We have much before us. We had unfinished business pending at the end of yesterday's session. We have a great deal of business before us, including the entire matter of the executive branch. I believe the secretary had on his desk half a dozen amendments when we adjourned yesterday. I think the best thing we can do at this point is to get down to business, and for that reason I will object to any further requests for excuse. And I move, Mr. President, we proceed with the order of business.

VICE PRESIDENT ROMNEY: You have heard the motion.

MR. KUHN: Mr. President, a preferential motion.

VICE PRESIDENT ROMNEY: A preferential motion by Delegate Kuhn.

MR. KUHN: Mr. President, to me this is turning into a circus. We have never once turned down a request to be excused. I can only see retaliation in the worst form. I therefore move that we adjourn, or otherwise let them go if they want to. It's their right. We should not change the rules at this stage of the game.

VICE PRESIDENT ROMNEY: The question is on the motion to adjourn. Those in favor will vote aye. Those opposed will vote no. Well, the Chair is going to rule that he is in doubt, so that no one can say that the Chair made the decision on the vote. Those in favor of adjourning will vote aye, and those who are opposed will vote no.

MR. NORD: Mr. President.

VICE PRESIDENT ROMNEY: The Chair doesn't believe, Delegate Nord, that there is any debate on a motion to adjourn.

MR. NORD: I have a point of convention privilege in the event that the motion does not carry.

VICE PRESIDENT ROMNEY: The Chair will recognize you as soon as the vote is announced. Has everyone voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the motion to adjourn, the yeas are 39; the nays are 77.

VICE PRESIDENT ROMNEY: The motion does not prevail. Delegate Nord, will you restate the request you made, because there were other delegates who asked to be heard ahead of you.

MR. NORD: Mr. President, it is a matter of convention privilege.

VICE PRESIDENT ROMNEY: The gentleman will state it.

MR. NORD: Mr. President, we have really seen a circus here this morning, and I'm sure that nobody planned it. And nobody enjoys it. I think that we ought to be a little more dignified and specific in what is really going on in this convention, and why these requests are being made—what it's all about. This is a crucial matter to me, to my mind, in the convention. Otherwise we would not have asked to recess; we would not have asked to adjourn; we would not have asked to be excused.

But in view of the fact that you have seen fit not to excuse us, or to adjourn, it is necessary, in my mind, that we explain, or at least that I explain why I have taken the same position as these other delegates. This is a matter that relates to the entire convention as a convention.

When a friend of mine called me on the phone and asked me whether I would like to be a constitutional convention delegate, there is where I made my first mistake. I said yes. And the reason that that was a mistake is this. I had been reading in the newspapers at that time that we were going to have the highest quality of delegates to the convention and that there would be no caucuses of any sort and that it would not be a political matter. That's the only reason I came here. I had never been involved in politics deeply. I am a member of a party, but I have never been highly active in it. And when I was asked the question before I came here, before I ran, whether I would agree to the policies of a Democratic caucus, I said no. I was asked that by the Democrats. That was the answer I gave.

I was rather naive at that time, like a lot of us. And when I found in the newspapers shortly thereafter that the Republicans had caucused before the convention even, and that every delegate, even those Republicans who said that they would never go to a caucus, was present at the caucus and voting, then I asked the Democrats to form a caucus as well. And I did this with regret. I did it for this reason. I told the Democratic delegates I didn't wish to come here to be a paid spectator with a reserved seat. I didn't think the convention would be that exciting that I should be a spectator for 6 or 7 months. However, we've been here for all of this time, struggling, and until recently I think there was always a chance that we would not be just paid spectators with reserved seats.

Now, in reading the paper this morning, I think you must all realize we just can't ignore what we see; and we certainly cannot ignore it when we see Mr. Brake, who I believe is the greatest speaker at the convention, make the speech that he made today, or the actions that he made today, which in essence ratified or affirmed what the paper said. We certainly can't believe that the paper was inaccurate in view of his statement. If I'm wrong, of course, you can contradict me; but in view of that fact, and in view of one other fact which I would like to lay before you, I think you must realize that I take an extremely serious view of what is going on here. Not what's coming off, not pants; but what's going on.

Now, I am going to read, Mr. President, a letter which was misdelivered by one of the delegates to the convention to another delegate. I have the envelope in which it was delivered. And without saying the names of the persons involved, it had the first name of one delegate and the last name of another, and that's the reason it was misdelivered. It was delivered to the person whose last name is on the envelope. He is a Democrat. The man whose first name is on it is a Republican. And that's the reason a letter addressed to a Republican ended up in a Democrat's box. And this is the letter:

> To Republican members
> Committee on Legislative Organization,

Incidentally, this is dated March 13, 1962. This week. A few days ago.

> Unfortunately, tonight is winter term commencement at Michigan State University. As host to a dinner at the president's house at 6:00 prior to commencement exercises, I have no alternative but to leave the convention hall shortly after 5:00. This means I may miss all of the joint meeting—

and I emphasize those words "joint meeting" because they are rather stunning. Continuing:

> —This means I may miss all of the joint meeting and will certainly miss most of it. My personal feeling is that a real Republican compromise—

and I will halt again to depart to point out and emphasize those words, a Republican compromise, not a bipartisan; and I'll return to the letter:

> My personal feeling is that a real Republican compromise on the 3 items to be discussed is very important, practically essential if we are to have a sound constitution. I hope we will make an all out effort for positions that at least 73 Republicans will agree to adhere to.

I will depart from the letter again to point out that that is what is required for this compromise: 73 Republicans and zero Democrats. I will return to the letter:

> If this involves the moving to 111 house seats on a population basis adhering to county lines, as a third part of a 3 way compromise, I would be willing to accept it if this is the caucus position. Unless this is agreed to as a part of a total package, agreed to by 73 or more Republicans—

I depart again from the letter to point out again: 73 or more Republicans, and no Democrats. To return to the letter—

> I am prepared to go all the way to defend and sell our committee report as now submitted. I want my position to be understood. I am willing to compromise—

and I depart again from the letter to point out that word "compromise"—to return:

> but lacking a firm commitment all the way around, I will stand with the committee report.
>
> Sincerely, John A. Hannah.

I regret that I had to read the name, because it is not what I would wish to do. I do not intend this to be a reflection on Dr. Hannah. I believe that he is one of the finest men at the convention, and this letter doesn't change my opinion. But I read it for a different reason, and I hope he will not take offense; but if he does I cannot help it.

When I received this letter 2 days ago by accident, before I had heard of any of these rumors about a deal, I was fit to be tied. Because here I am at a convention, thinking that I'm a delegate, thinking that I can participate in the making of a decision, of any decision, and here I am faced with the realities—and I know that Dr. Hannah hasn't forced these realities to exist, and maybe no one person has. But this is the fact. The fact is that it doesn't make any difference whether any Democrat says this, that or the other; the convention is not being run on that basis.

Now, early in the convention, when I had a fear that that might develop, I was quoted in the newspapers as saying that if this convention ever turned out to be nothing but a Republican caucus, I could see no role for me to play, and I would have to leave. I was quoted in the papers as saying I would resign at that point. That is no light matter to do. I have been considering it all week—whether I should resign. I think I really should resign. But it isn't so simple to resign when you're under fire, and when what you do reflects on many other people. I am not proposing to resign at this point, and neither is any other delegate. Neither is any other delegate proposing to leave the convention permanently, irrevocably, or anything like that.

But what we are saying—and I think you should pay

attention—is that this puts an entirely different light on the convention, and we do have to reconsider. We certainly do have to reconsider what our role should be. Should we be here in the face of this, where it is clear that it makes no difference what we do? Should we be here or should we not? We need to know the answer to that question, and that is going to take a little time. What we have asked for is time. Now, it seems to me that we are going to have to make a determination, and I wish it would not be just by the Democratic delegates. I wish that delegates from both parties could make this determination once and for all. Are we going to have the people in convention assembled, or are we going to have a Republican caucus?

Now, if it's going to be a Republican caucus and it's going to be irrevocable, then it's clear that we have no role here. We don't wish to be excluded from the convention, but if you make it impossible for us to have any effective function, it's very difficult for me to know what our function will be. We need to know the answer to that question. It would be very helpful if, over the weekend, the Democratic delegates could discuss this matter with each other, and preferably if they could discuss it with Republican delegates as well. If you are going to go ahead as if nothing had happened, you are going to make a mockery of this whole idea of a convention where we are going to have the people in convention assembled.

Mr. President, I move that we reconsider the vote on the last motion which was put, which was that we adjourn, on the basis of these remarks.

VICE PRESIDENT ROMNEY: The Chair understands from the secretary, Delegate Nord, that you do not make a motion to reconsider a vote on adjournment.

MR. NORD: Mr. President, would you ask the secretary what you do when you wish to adjourn?

VICE PRESIDENT ROMNEY: You make the straight out motion, Mr. Nord.

MR. NORD: Mr. President, then I make the motion that we adjourn in view of the foregoing remarks.

VICE PRESIDENT ROMNEY: The question is on the motion. Those in favor vote aye.

MR. HOXIE: Mr. President, I believe I have a preferential motion.

VICE PRESIDENT ROMNEY: Would you please state it.

MR. HOXIE: I believe that a motion to honor the request made by Mr. Downs is in order.

VICE PRESIDENT ROMNEY: Delegate Hoxie, the Chair is advised by the secretary that the motion to adjourn takes preference over any other motion, except a motion to fix the time of adjournment.

MR. HOXIE: This is an amendment to the motion to adjourn, for the purpose of excusing—

VICE PRESIDENT ROMNEY: The secretary advises me there is no amendment to a motion to adjourn.

MR. HOXIE: Then I'll request the floor as soon as this action is taken.

VICE PRESIDENT ROMNEY: The question is on the motion to adjourn. Those in favor vote aye. Those opposed vote no. Has everyone voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the motion to adjourn, the yeas are 43; the nays are 72.

VICE PRESIDENT ROMNEY: The motion does not prevail. Delegate Hoxie.

MR. HOXIE: Mr. President, it is my understanding—I may be in error, but I would like to be corrected if I am—that the request of Mr. Downs was not in the nature of a motion. Is that correct?

VICE PRESIDENT ROMNEY: That is correct.

MR. HOXIE: We had a request made by Mr. Downs, one of the minority leaders, and at this time I would like to make a motion that we honor the request of Mr. Downs; and that we have a record roll call vote on my motion.

VICE PRESIDET ROMNEY: Is the demand for a roll call supported on the motion to excuse the minority delegates from the balance of the day's session? There is a sufficient number. Delegate Hannah.

MR. J. A. HANNAH: Mr. President, I would rise to a point of personal privilege. A letter from me, written on business of this convention, to be delivered in a mail box of this convention, evidently reaching the hands of a person to whom it was not addressed, has just been read on the floor of this convention.

I acknowledge the letter. I make no apologies for it. Its content was appropriate. It was in the best interests of the work of this convention, and I believe the people of this state. I raise the question, however, of the ethics or propriety of anyone receiving a letter obviously not intended for him; as soon as he ascertained that it was not for him, to proceed to read it in the first place, to me, would be a violation of common decency. To deliver it to another for the purpose that it was used here this morning is totally indefensible. I conclude with a statement made in the beginning. There are no apologies for the letter. I just question the ethics of the people that have used it, in spite of the admiration I have for many of them as individuals.

And I should only remind them that by sitting where I happen to sit, directly behind a vice president of this convention, representing their party, and adjacent to their caucus leader, and listening now for 5 months to much of their conversation—which I tried not to hear—and knowing the subject of the conversations taking place yesterday afternoon, I will match their ethics by some of my own, by making the statement that I doubt if there is much relationship between the story in the morning's Free Press and the action that has been taken in the last hour and a half in this convention.

VICE PRESIDENT ROMNEY: The Chair believes he still retains his delegate rights, and raises the question of personal privilege and asks to be heard on that; and asks Vice President Hutchinson to kindly take the Chair for the purpose of my making a statement of personal privilege.

[Whereupon, Vice President Hutchinson assumed the Chair.]

VICE PRESIDENT HUTCHINSON: The Chair recognizes the delegate from the twelfth district, Mr. Romney.

MR. FORD: Mr. President, by what new rule now do we start recognizing Mr. Romney in preference of those of us who have been standing on the floor for 10 minutes trying to get the floor? Mr. Romney assumes a lot of prerogatives in this hall, but not the prerogative of taking the floor after the rest of us have been waiting. At least that much has been left to us.

VICE PRESIDENT HUTCHINSON: The Chair recognizes Mr. Romney.

MR. FORD: You may proceed without me.

MR. ROMNEY: May I say, for the benefit of Delegate Ford, that familiar as he is with the procedures of this convention, he will know that I just recognized Delegate Hannah ahead of other delegates because he raised a question of personal privilege, and, as he knows, the question of personal privilege does take precedence.

Now, a number of the remarks made relate to a story in which I believe I was the principal character dealt with. I think it is important, in the interests of the future of this convention, that there be no misunderstanding on some of the alleged events that have transpired. May I say that the story is very incomplete. It is not an adequate coverage, and I don't see how it could be an adequate coverage, because as far as I can tell it has been pieced together from fragments acquired from a number of delegates, including certain questions that were put to me. But on many points in the story I was not asked to comment, and it does seem to me that, considering the importance of some of the conclusions drawn, I was at least entitled to the right of being asked as to the conclusions being drawn by the author.

Now, this is only the second talk that I have made to this convention since we started our deliberation on proposals. I have made one or 2 comments, but other than that I have not abused the privilege of this floor. I have not responded

to previous attacks that entitled me to the right of personal privilege. I didn't do so because I didn't think they were worthy of it.

A great deal has been made by Delegate Nord about compromise. May I read from Profiles in Courage, by President John F. Kennedy, on the question of compromise in a free society. He says:

> It is compromise that prevents each set of reformers — the wets and the dries, the one worlders and the isolationists, the vivisectionists and the antivivisectionists — from crushing the group on the extreme opposite end of the political spectrum.
>
> The fanatics and extremists, even those conscientiously devoted to hard and fast principles, are always disappointed at the failure of their government to rush to implement all of their principles and to denounce those of their opponents.
>
> But the legislator —

and I insert here constitutional convention delegate because I think there is a high degree of comparability —

> has some responsibility to conciliate those opposing forces within his state and party and to represent them in the larger clash of interests on the national level; and he alone knows that there are few if any issues where all the truth and all the right and all the angels are on one side.
>
> Some of my colleagues who are criticized today for lack of forthright principles — or who are looked upon with scornful eyes as compromising politicians — are simply engaged in the fine art of conciliating, balancing and interpreting the forces and factions of public opinion, an art essential to keeping our nation united and enabling our government to function.
>
> Their consciences may direct them from time to time to take a more rigid stand for principle — but their intellects tell them that a fair or poor bill is better than no bill at all, and that only through the give and take of compromise will any bill receive the successive approval of the senate, the house, and the president of the nation.

And this, too, applies to what we are dealing with:

> But the question is how we will compromise and with whom. For it is easy to seize upon unnecessary concessions, not as means of legitimately resolving conflicts but as methods of "going along."

Now, my hopes for this convention were as high as Dr. Nord's or any other delegate to this convention. I came to this convention imbued with the general objectives of those citizens who collaborated in bringing about this convention. I could enumerate those citizen goals. I talked about them to the extent I could through this state. I stated at the start of this convention that this nation desperately needs a state constitution to match our federal constitution. I subscribed to the objectives stated for this constitutional convention by Dr. Pollock. Now, the key question that's raised here is, really this: do the Republicans, as delegates to this convention, have the right to meet as delegates to this convention for the purpose of composing to the extent possible their viewpoints on matters before this convention; and does this process help or hurt the results of this convention?

Now, first, let me deal with this question of Republican caucuses. It's important that this state understand this point, because this point will be misrepresented and will mislead people unless it is understood. During my battle to bring about this convention, I stated that I would not participate in any binding caucuses. I have not violated that commitment, and I do not expect to violate that commitment, and I have not been requested to violate that commitment.

One of the things made clear at the first Republican caucus we held was that no Republican caucus is ever a binding caucus. And no action that has been taken by the Republican delegates in their meetings has been binding on any Republican delegate. Every Republican delegate has come onto this floor—and this is as true today as it has been throughout the course of this convention—to vote on the basis of what he thinks is in the best interests of this state and in the best interest of writing the best constitution that we can write. Now, I think that this is an important distinction. This term "caucus" has a kind of a ring to it that people don't like, because it carries the implication of binding people to a course of action. I would prefer to call these meetings "meetings" rather than "caucuses." But I think this point should be clear.

Now, the key question is: has the Republican caucus been used to bind delegates and for narrow partisan purposes, or has it been used to further the writing of the best possible constitution that we are capable of writing? I say "we are capable of writing" because the results achieved by those who had the highest aims for this convention can only fairly be judged on the basis of the composition of this body.

A constitutional convention is a very unique thing. There is nothing else quite like it in a free society. In a legislature, if you don't like what happens one session, you can go to work to change it in the next session. A governor can make an appeal directly to the people to help him prevail. As a delegate to this convention, you have to deal with the realities of the viewpoints of the people that constitute this convention. There is no way to go outside the halls of this convention effectively and adequately to secure public support for what may occur here.

Now, this body consisted at the start of a majority of Republican delegates who came from districts who opposed the calling of a constitutional convention. Only 5 counties voted the majority for this convention.

Now, the second big issue that was dealt with at the preconvention meetings of the Republican delegates was whether the convention was going to be organized along partisan or bipartisan lines. The bipartisan decision to organize this convention on a bipartisan basis saved this convention. And it is still proceeding on a basically bipartisan basis. Since then the Republican caucus has been used to exchange information so that delegates could vote on this floor on an informed basis, with 2 exceptions. And I wish every Democratic delegate would get up here and say honestly how many occasions there have been when they have taken positions that they were then expected to follow, or at least the caucus hoped they would follow. In the entire history of the meetings of the Republican delegates to this convention, there have been but 2 occasions when we have arrived at positions that it was hoped that most Republican delegates would follow, with no one bound to follow those positions.

Those 2 exceptions were county home rule, and the present preliminary general understanding on 3 limited phases—and let me emphasize "limited phases" because there are many other aspects to these 3 articles—3 limited phases of the revenue, executive and apportionment articles.

Will these 2 limited and general Republican delegate understandings produce the writing and adoption of the best possible document this convention is capable of producing? Let's look at both, and the alternate indicated results. The first understanding was on the single issue in the local government article of home rule for counties. The now renowned and appropriately recognized "courthouse gang"—and I'm sorry Mr. Ford isn't here, because he was the one that recognized them—had prevailed in the committee in recommending a proposal that circumscribed and restricted home rule for counties. It was neither genuine nor mandatory. The first Republican caucus understanding broke up the county courthouse gang alliance and brought about the adoption of a genuine county home rule provision—not mandatory, but approximately equal to the home rule for cities written into the 1908 constitution which some authorities have said was the biggest single improvement made in that rewriting of the constitution.

Now, the "mandatory" advocates, of which I was one, were disappointed. Some thought they could have won. But based on what happened on the floor and what happened before, it was perfectly clear they could not. They had no chance of winning. Now, the only other Republican delegate understanding is one based on general principles relating to limited aspects of taxation, administrative board appointment or election, and some major aspects of apportionment. Will this general understanding, to which there are some Republican dele-

gates who disagree, result in more or less improvement? I think that's the central question here.

The net improvement—and I consider this an improvement—will be the appointment of 2 more members of the administrative board than would have been the case otherwise, and more delegates will leave this convention prepared to sell this document because of improvements that already vastly exceed the importance of the cost and time that we have devoted here. In addition, the revenue article was improved. The 15 mill limitation was loosened and made more flexible, but retained. Five taxes were to be eliminated from earmarking; more flexibility in the highway and the sales tax proposals.

The cost was house apportionment based on the committee proposal. And may I say here and now that the responsibility for this committee proposal missing practically a straight population basis by a hairline—by 2 representatives from the northern half of the state—clearly rests on the Democratic members of the legislative organization committee—of whom Mr. Nord was one of the leaders—because there were Republican delegates who were prepared and did offer to vote with the Democratic members of that committee to have the house apportioned on a straight population basis, and when that vote was taken the Democratic members of that committee abstained. Now, that's the hard, cold record of what happened to house apportionment on a population basis. Now, the committee proposal is within a hairline of being on a pure population basis.

Now, may I conclude with these observations: 1, I have sat in this convention and I have had Democratic delegates in this convention tell me that they had been called to the governor's office and they had been told how to vote in this convention; and 2, since this convention started, the Democratic party has shifted its attitude with respect to major proposals before this convention, and their own leaders came here and testified on proposals before our committees that they now repudiate, and they were engaged in the process of an alliance with Republican delegates to scuttle certain basic committee proposals that were coming before this convention.

I want to say that I feel proud to have been able to reach understandings that prevented a combination of Republican and Democratic delegates from completely scuttling certain sound proposals that were to come before this convention; and I want to say to you that I know that what has been done is in the interests of securing a better constitution to present to the people of this state than would have been possible otherwise. I know there is no binding commitment on the part of any Republican delegate. I know they come onto the floor of this convention free to vote in any way that they want to vote.

I know we have already written into this constitution provisions that do not occur in any other state constitution in the land. It does not live up to my highest expectations when I came to this convention. But it lives up to over 75 per cent of them and I can take them and list them and mark up the score card. I say to you that within the limits of the realities that President Kennedy has so well outlined, and considering the opposition at the start in this convention to the convention in the first place and the subsequent opposition that has developed in the process of this convention, that this is a marvelous accomplishment that is being achieved here.

I think we should proceed, and certainly we have never objected to Democratic meetings to develop whatever viewpoints they wanted to develop; and this is really all that is involved in this situation. I believe we are going to wind up with the best constitution that any state has in this country. The apportionment issue is particularly at issue with relationship to the house. The proposed basis of apportioning the house in this state is the best in the nation. There is no other state that even approaches the population basis on which we are proposing to apportion the house. Thank you very much. (applause)

MR. G. E. BROWN: Mr. President, a preferential motion.

VICE PRESIDENT HUTCHINSON: Mr. Brown.

MR. G. E. BROWN: Mr. President, I move that we recess until 2:00 o'clock.

VICE PRESIDENT HUTCHINSON: The question is on the motion to recess, which is not debatable. All those in favor will say aye. Those opposed say no.

The motion prevails. The convention stands in recess until 2:00 p.m.

[Whereupon, at 12:05 o'clock p.m., the convention recessed; and, at 2:00 o'clock p.m., reconvened.]

VICE PRESIDENT ROMNEY: Ladies and gentlemen, the convention will come to order.

SECRETARY CHASE: Mr. President, a quorum of the convention is present.

VICE PRESIDENT ROMNEY: The Chair will recognize Delegate Hoxie, whose motion was pending when we recessed.

MR. HOXIE: Mr. President and fellow delegates, this morning I made a motion to honor the request of Vice President Tom Downs to excuse the Democrat members of this convention. I would like to withdraw that motion. However, it is my hope that if any member of this convention desires an excuse for the balance of the day, that that excuse be honored.

VICE PRESIDENT ROMNEY: Delegate Brake.

MR. BRAKE: Mr. President, ladies and gentlemen of the convention, this is the last session of the last day when one of those with whom we have worked since the third day of October can be with us. Charlie Davis is running for the house in the legislature to fill a vacancy. The election is Monday. One cannot be both a delegate to this convention and a member of the legislature, for the double reason that it would be illegal, and the second reason that he couldn't stand it. (laughter) He is therefore resigning. I know it's a matter of regret to us.

Inasmuch as he is running on a partisan ballot, and inasmuch as we belong to 2 parties, of course I can't ask you all to join with me and wish him success on Monday. But I'm sure that for 143 besides Mr. Davis we can express our regret that he is leaving us and wish him well in whatever his field of endeavor may be.

Knowing the kind of service he has given here, we know the kind of service he will give in the legislature in the event that the people see fit on Monday to send him there. And I'm sure that everybody can join in wishing him a tenure there that is as pleasant as tenure in the legislature could be, and long. He is the kind of public servant who ought to be kept in public office. Nearly all public officers are honest. Let's pat ourselves on the back and say that on the average the intelligence among public officers is a little above the average. We hope so, anyway. If there is a qualification in which we who are public officers are sometimes weak, it's a matter of not having quite enough courage—the courage to do what we know ought to be done; the courage that makes one stand up when he comes to the time that good public service points in one direction and personal advancement in another. Charlie Davis has that courage in an unusual degree. When he gets over in the legislature—if the people send him there—and some lobbyist starts to work on him, he is going to find that Charlie can say no just as fast as he can say yes; and when he says no, he means no. Some of us have found that out here when we tried to get him to change his mind. You can't push him around. He is a good public servant.

I'm sure that all of us wish him well in whatever his career may be and hope that from time to time, if he is in the legislature or if he is not in the legislature, that he comes back and pays us a visit while we are still here. Thank you, Mr. President.

[Whereupon, Mr. Davis was given a standing ovation.]

VICE PRESIDENT ROMNEY: Judge Dehnke.

MR. DEHNKE: One of the disadvantages of our working in so large a hall is that our best opportunities to become acquainted with fellow delegates are afforded by those who sit in the same part of the hall. I consider it one of the best privileges and the greatest benefits that I have had as a

member of this convention to have been so situated, by reason of the fact that both our names begin with D, that Mr. Davis has been my closest neighbor on my left. I want to add my words to what Mr. Brake has said, in this part of the hall especially, for myself and the others here, for the privilege that we have had in having Mr. Davis as a member, and to join on behalf of all the others here located in the good wishes that Mr. Brake has expressed. Thank you. (applause)

VICE PRESIDENT ROMNEY: Delegate Marshall.

MR. MARSHALL: Mr. President, I respectfully again request that I be excused for the remainder of the session today for personal reasons.

VICE PRESIDENT ROMNEY: Is there objection? The Chair hears none. You are excused.

Delegate Hodges.

MR. HODGES: Mr. President, I also request leave to be excused.

VICE PRESIDENT ROMNEY: Is there objection? There is no objection. You are excused.

Delegate Davis.

MR. DAVIS: For the remarks which have just been made from 2 gentlemen whom we all respect, I am indeed grateful. I didn't happen to know that the fact of my leaving today was going to be mentioned. I had even addressed a letter to Mr. Nisbet expressing a statement which I had hoped he might read after I left here. With your permission, I would like to say this: as an individual, I think that we sometimes are called upon to make decisions which contain certain regrettable factors. In numerous ways I regret resigning as a delegate to the constitutional convention.

For 5½ months I have been a part of as fine a group of ladies and gentlemen as it has ever been my good fortune to be associated with. The personal qualities of character, diligence, sincerity of purpose and capability have been amply demonstrated by individuals on both sides of the political aisle. After the completion of the new constitution, like the other delegates, I shall put my shoulder to the task of explaining the new document, truthfully and objectively, to the best of my ability.

In parting, I wish to extend personally to each of the officers, delegates and employees of this convention best wishes and God speed for your future well being, both in and out of this convention. (applause)

VICE PRESIDENT ROMNEY: The secretary has a request.

SECRETARY CHASE: Earlier today Mr. L. W. Richards filed a request asking for excuse from the afternoon session.

VICE PRESIDENT ROMNEY: Without objection, it is so ordered.

The Chair will recognize Delegate Millard.

MR. MILLARD: Mr. President, I move that the convention now resolve itself into committee of the whole for the purpose of taking up matters upon the general orders calendar.

VICE PRESIDENT ROMNEY: Excuse me, Mr. Millard. In light of the many things that happened this morning, we didn't go through the regular order of business. Consequently, the next thing in order is the reports of standing committees.

SECRETARY CHASE: We have some other requests ahead of that, Mr. President. Mr. Baginski, Mr. Walker, Miss Hart, Mr. Buback and Mr. Downs filed requests to be excused from the afternoon session.

VICE PRESIDENT ROMNEY: Is there objection? The Chair hears none; it is so ordered.

Delegate Walker.

MR. WALKER: I think I have partially resolved my problems of this morning, and I wish to withdraw my request. (applause)

VICE PRESIDENT ROMNEY: Delegate Madar.

MR. MADAR: Mr. President, seeing as we are in so gracious a mood this afternoon, I would like to renew my request to be excused from this afternoon's session.

VICE PRESIDENT ROMNEY: Is there objection? The Chair hears none; it is so ordered.

Mrs. Hatcher.

MRS. HATCHER: Mr. President, I would like to be excused for the balance of the afternoon.

VICE PRESIDENT ROMNEY: Is there objection? The Chair hears none; it is so ordered.

Delegate Murphy.

MR. MURPHY: Mr. President, I would like to be excused for the afternoon.

VICE PRESIDENT ROMNEY: Is there objection? The Chair hears none; it is so ordered.

Reports of standing committees.

SECRETARY CHASE: There are no standing committee reports on file, Mr. President.

VICE PRESIDENT ROMNEY: Reports of select committees.

SECRETARY CHASE: None.

VICE PRESIDENT ROMNEY: Delegate Lawrence.

MR. LAWRENCE: Mr. President, early this morning I filed a request to be excused from the latter portion of today's meeting. I have a medical appointment in Ann Arbor, and I have to be there by 4:30. I also have one on Monday that may make me late. I would like to be excused from the remainder of this afternoon's session, and from the first session on Monday.

VICE PRESIDENT ROMNEY: Without objection, it is so ordered.

Delegate Kelsey.

MR. KELSEY: Mr. President, in view of the circumstances, I would put forth a preferential motion to adjourn until Monday.

VICE PRESIDENT ROMNEY: You have heard the motion. Those in favor say aye. Opposed?

The motion does not prevail.

Communications from state officers.

SECRETARY CHASE: None.

VICE PRESIDENT ROMNEY: Second reading of proposals.

SECRETARY CHASE: Nothing on that calendar.

VICE PRESIDENT ROMNEY: Third reading of proposals.

SECRETARY CHASE: Nothing on that calendar.

VICE PRESIDENT ROMNEY: Motions and resolutions.

SECRETARY CHASE: There are no resolutions on file.

VICE PRESIDENT ROMNEY: **Unfinished business.**

SECRETARY CHASE: Under the order of unfinished business, the president lays before the convention the motion made on yesterday to reconsider the vote by which the order was set up for consideration of proposals on the executive branch.

VICE PRESIDENT ROMNEY: The question is on that motion. Those in favor say aye. Opposed?

The motion does not prevail.

Special orders of the day.

SECRETARY CHASE: None.

VICE PRESIDENT ROMNEY: Delegate Millard.

MR. MILLARD: I will now make my motion, Mr. President, that the convention resolve itself into committee of the whole for the purpose of taking up matters on the **general orders** calendar.

VICE PRESIDENT ROMNEY: You have heard the motion. Those in favor say aye. Opposed?

The motion prevails. Delegate Millard will preside.

[Whereupon, Mr. Millard assumed the Chair to preside as chairman of the **committee of the whole.**]

CHAIRMAN MILLARD: The committee will be in order. The secretary will read.

SECRETARY CHASE: The matter presently under consideration is **Committee Proposal 78,** A proposal to provide for the office of legislative auditor general.

For last previous action by the committee of the whole on Committee Proposal 78, see above, page 1680.

The substitute offered by the committee on executive branch and legislative powers has been adopted, and presently pending is an amendment offered by Mr. Boothby:

[The amendment was again read by the secretary. For text, see above, page 1694.]

CHAIRMAN MILLARD: At the close of the session yesterday the Chair had exhausted the list of those who wanted to speak on this amendment. So, Delegate Kuhn.

MR. KUHN: Mr. Chairman and members of the committee, I just wanted to straighten Mr. Boothby out, because he thought that I misinformed the committee that Alaska did not have in its constitution the provision that the legislative auditor general should serve at the pleasure of the legislature. In the statement I made yesterday, I said out of the 4 constitutions that provided for a legislative auditor general, 3 provide for a definite term, and the only one that does not is Alaska. I just wanted to make the record straight, and say to you that the joint committees of legislative powers and executive branch had taken this question up, and we are opposed to the Boothby amendment.

CHAIRMAN MILLARD: Delegate Brown, from Detroit.

MR. T. S. BROWN: I'm sorry, Mr. Chairman, are we on the Boothby amendment now.

CHAIRMAN MILLARD: We are on the Boothby amendment.

MR. T. S. BROWN: I was absent for the last hour or so of yesterday's session. But during the early part of the session I made a speech concerning this particular topic, and I should like to oppose the Boothby amendment for the specific reasons which I enumerated yesterday. I believe the principal objection to the legislative auditor general setup is that it would allow fishing expeditions at the whim and caprice of not only the legislature, but individual legislators through the office of the auditor general, and thus attempt to obfuscate or embarrass or otherwise second guess some very autonomous functions of government, and I would imagine that in my absence yesterday certainly the universities were mentioned in that regard. I think this is the principal objection.

CHAIRMAN MILLARD: Mr. Martin.

MR. MARTIN: Mr. Chairman, I did comment on this yesterday, in response to a question from Mr. Binkowski, but I wanted to add 1 or 2 points on behalf of the committee. The committee considered this question very carefully. We considered the idea of having the legislative auditor general employed only at the pleasure of the legislature. We also considered the possibility of providing for a much longer term, a term of 15 years, as I believe the comptroller general of the United States is employed.

It appeared to us that neither of these answers was a proper one; that to provide the longest term was longer than necessary. But it also appeared to us that to provide no tenure whatsoever would be harmful to the work of the auditor general, and that it would create 2 major difficulties. One is the problem of getting the kind of man that you have to have—and I adverted to this in my answer to Mr. Binkowski's question. It simply is not possible to get the caliber of man you need to fill this kind of a job unless you can offer him some tenure. The man you need for this kind of a job is one of the most qualified men in the country so far as governmental accounting is concerned. He has a good job now; he can't be lured away from it on the proposition that he may be out of a job tomorrow. And he can't be lured away from it without paying him a good salary. So we felt that it was necessary to have a term, and we felt that the term of 8 years was not too long—that this offered reasonable security, unless he did something which justified his dismissal—and for that reason we put into the proposal the rest of the sentence which this amendment would strike out, that he shall be removable for cause at any time by a 2/3 vote of the members elect of each house of the legislature. We don't want him to be removable at the mere whim of an individual senator, or even necessarily at the whim of a party, but if he has clearly failed in his responsibilities, then he should be removable, and it is possible to do so on this basis. So I hope that you will go along with the committee proposal—it has had careful consideration—and will not vote for the amendment.

CHAIRMAN MILLARD: The Chair will recognize the proposer of the amendment, Delegate Boothby.

MR. BOOTHBY: Mr. Chairman and ladies and gentlemen of the committee, no doubt, after all the time that has passed since last night, my remarks are little remembered. This, too, shall pass away. And I will not take the time of this committee to repeat them. However, I would comment on some of the remarks that have been made after my initial comments regarding this amendment.

The purposes of a postaudit—and that is the function which the legislative auditor or the auditor general appointed by the legislature is responsible for and is concerned with— are 3 in nature. The 3 points which a legislative auditor is looking towards are, 1, the systematic check and review of the administration's financial accounts, records, methods and practice; 2, a determination of accuracy, legality and integrity with which the budget plans have been carried out; and 3, a report of the findings to the proper officials.

Now, when you investigate the 3 purposes which are connected with the postaudit, you find that these are the responsibilities which the legislature has been traditionally charged with. They have the responsibility of controlling the purse strings. They have the responsibility to determine whether the executive has carried out that budget in a legal manner and whether it has been carried out accurately. In other words, this is simply a check upon the function of the executive branch of government. Now, if this is the case, I would think and I would feel that there should be a high degree of control by the legislature over this particular function. And I fear the situation which may develop if you create a wholly new and separate independent body in addition to the legislature to carry out this function. I think that the responsibility of controlling this particular phase, the postaudit phase, should be with one body and not separated with 2. When you create a legislative auditor or an auditor general who has a great deal of independence from the legislative body, I'm afraid that you're dividing the function of the watchdog of the people's dollar as spent by the executive branch of government.

Now, I would like to comment regarding the question of whether you would be able to get a person of high caliber if you didn't offer him the security of a long term. Last night I had occasion to go over to the legislature, and there I talked with several members of the legislature concerning this problem. And those people I talked to expressed their hope that the amendment would be adopted so as to allow control by the legislature of this particular function. I asked one of the members there whether there was an analogy presently existing in the state legislature to allow a person to serve only at its pleasure and, if so, whether they had any difficulty in finding people of high caliber to fill these jobs. Immediately one of the members of the legislature made reference to the legislative service bureau, and he informed me that that particular bureau, and the head of it, and all the members connected with it, who have been doing outstanding work for the legislature, are serving only at the pleasure of the legislature. I was also informed that there are only 3 people that are elected for terms by the legislature: the clerk, the secretary and the postmaster. These 3 people are elected for terms which are consistent and coincide with the legislative term. All the other employees of the legislature are serving at the pleasure. And I think I have found, from my discussions, that the people who are members of the legislature are well satisfied with the high degree of competence that these people have in the carrying out of their purpose.

I would urge the adoption of this amendment, which would strike from the committee proposal the term of 8 years for legislative auditor—or the auditor general, as the office has been named—and that inserted in its place would be the provision which is urged in the model constitution, and which has been adopted in the Alaskan constitution, to have him serve at the pleasure of the legislature.

CHAIRMAN MILLARD: Mr. Martin.

MR. MARTIN: Mr. Chairman, only with respect to one of Mr. Boothby's comments, I say this knowing whereof I speak.

The job of the head of the legislative reference service has no comparability to the job of a legislative auditor general. The pressure on the former are nothing compared to the pressures which are on a person holding the job of auditor general and it's highly important that he have the maximum independence of judgment in making his reports. If he does not, his reports will not be of the kind that they should be. So I only say that I speak from experience on this, and that there is no comparability between any job held in the legislature at the present time and this kind of responsibility.

This of course is not derogatory in any sense of the persons who are now employed over there, who are of very high caliber and whom I know and respect very much; but this is a different kind of responsibility, and the pressures are entirely different. It is desirable that the holder of the job have some job tenure, and that the legislature be able to work with him on that basis. In any event, they have the maximum control in that they control his salary.

CHAIRMAN MILLARD: The Chair recognizes the gentleman from Lansing, Delegate Wanger.

MR. WANGER: Mr. Chairman and members of the committee, just to correct an impression which might be with you regarding the model constitution of the national municipal league, which Mr. Boothby uses as support for his amendment, I would like to call your attention also to the fact that the Michigan municipal league, which is concerned with Michigan, has recommended in their constitutional recommendations to this group, and I quote from recommendation 4 regarding this, "The Michigan municipal league recommends that the auditor general be appointed by the legislature for a definite term."

CHAIRMAN MILLARD: The question is on the Boothby amendment. All in favor will say aye. Opposed, no.

The amendment is not adopted. The secretary will read.

SECRETARY CHASE: Mr. Brake offers the following amendment:

1. Amend page 1, line 8, after "term of" by striking out "8" and inserting "4"; so that the language will read, ". . . shall appoint an auditor general to serve for a term of 4 years."

CHAIRMAN MILLARD: Mr. Brake.

MR. BRAKE: Mr. Chairman, ladies and gentlemen, the fact that 4 is halfway between the 2 extremes puts it in a good compromising position, but that's not the reason for the 4. I listened to Mr. Brown's speech yesterday and found myself in agreement with a considerable part of it. The matter of having a legislative auditor is a fashion at the present time, and I think he is correct in his inference, at least, that it is a fashion fostered very largely by political scientists. Strangely enough, it's a fashion with which I agree.

It seems, however, to me, that what we are handing out with one hand we are taking back with the other. We are saying to the legislature: you can have your own watchdog to see that the birds to whom you apportion the money spend it the way you direct them to spend it; but we are going on and saying to them, but you can't put any chain on this dog. And if he goes to pointing rabbits instead of pheasants, there isn't anything you can do about it for 8 years. It doesn't seem to me logical to have him appointed by the legislature and then say to the legislature, you can't do anything about it. And I don't think there is any possible justification in Michigan's background for the assumption that if the legislature has the power to do it, it will handle him by means of whim and caprice.

In reaching a judgment, I always like not to put it purely on theory, and we don't have to put it on theory here. Let me call your attention to the fact that there are some of us here who can remember when a skillful and experienced clerk of the house of representatives was carried through the term when the parties changed, so that he was a member of the opposite party from a very high majority of the members of the house. The very distinguished gentleman whom we enticed to come here and steer us through the maze that we are in has been secretary of the senate continuously since 1935, until we got him away, and during that time the senate was not always under the control of the same party. The legislative comptroller —Mr. Martin says this has no reference—but it does have a bearing on what I'm arguing. The legislative comptroller, who has been there continuously since 1949, is not a member of the party that has been in control of the senate for that entire time. I think there is no basis for thinking that it will be a matter of whim and caprice.

Now, it's conceivable that some time in the more remote future the majority control of our legislature will change hands. It's not probable, of course, but just possible. If that misfortune should happen, (laughter) I think that the legislature that comes in under a new party should have the right to say whether this is the man they want. I don't think we can assume that they would change on account of party, but I think they should have the right to say whether they wish to continue or whether they wish somebody of their own.

In the meantime, before we change parties, as I understand it, if and when we ever get to it, we are going to establish 4 year terms for the senate and 2 year terms for the house. That means a new legislature every 4 years—not all new legislators, but a new legislature. I think every incoming legislature should have a right to pass judgment on whether or not they wish to continue the person who is there or whether they want somebody else. Now, if that's not true, I don't know who we are fooling by having him appointed by the legislature. They have no control over him. Now, that is the reason that I am suggesting a 4 year term—so that his tenure will be coterminous with that of each legislature. I'm sure they won't change unless there is a real reason, because the experienced man in that position is simply invaluable, but I think they should have the right to change if they wish.

CHAIRMAN MILLARD: Mr. Wanger.

MR. WANGER: Mr. Chairman, members of the committee, in opposing this amendment, I would call your attention to the fact, first, of the experience in other states, where Hawaii has a 8 year term, for example, for this office. Also, right here in Michigan, where since 1937 the city of Detroit has had an auditor general who has a definite term for 10 years. And of course as we know the comptroller general of the United States has a definite term of 15 years.

Largely, I think, due to the reasons which have been so well outlined by Mr. Martin about the type of an office and the type of an individual who should fill it, the office is clearly a nonpartisan, non policymaking position. Its holder would thus be able to work equally well with the legislature regardless of which party is in power there. Therefore, no justifiable reason exists for providing for his dismissal at a time when the political complexion of that body may change.

The fixed term of office—and I think it's been quite well accepted by this committee on the basis of the last vote—has been set at 8 years rather than at half that time for 3 or 4 reasons, which I will briefly state. First of all, it will take considerable time for an office holder to become thoroughly acquainted with the position of auditor general; secondly, the administrative direction of the position should not be frequently interrupted; third, remember that the incumbent here may only be appointed for one additional term; and fourth, remember, as has been stated here, that this is a career type of appointment. In limiting it to 4 years, it would be very much more difficult to get the type of man for this position which it so definitely requires.

With respect to the aspect of control over the office, the legislature clearly has control over it, because any time that the man in this position is not faithfully performing his duities for any reason, that will be cause for removal.

CHAIRMAN MILLARD: The Chair will recognize the gentleman from Detroit, Delegate Yeager.

MR. YEAGER: Mr. Chairman, I would like to ask through the Chair a couple of questions of Mr. Brake, if he would care to answer. Under this amendment, reducing from 8 to 4 years, we continue with the next sentence "who may be reappointed for one additional term only." In other words, this would be a limitation of 8 years?

MR. BRAKE: If this amendment of mine prevails, I will offer an amendment to strike that out. Whether it is a 4 year

term or an 8 year term, if they've got a man who is doing the job, why in the world shouldn't they keep him as long as they want him?

MR. YEAGER: Well, that's the point I wanted to make.

CHAIRMAN MILLARD: Will you ask your questions through the Chair, Mr. Yeager, so we can follow it, please.

MR. YEAGER: I'm sorry, Mr. Chairman. I have no further questions of Mr. Brake. I simply want to state that if that next sentence is stricken out, I could vote for the amendment. Thank you.

CHAIRMAN MILLARD: The Chair recognizes the gentleman from Jackson, Delegate Karn.

MR. KARN: Mr. Chairman, members of the committee, some of the things I say here may be repetitious, but I would like to say that the 2 committees, the committee on executive branch and the committee on legislative powers, gave this question a great deal of thought, measured in time, in order to attempt to get what was considered the best solution to this particular point.

It has been said that we started with 15 years tenure. We are down to 8 years. But our conclusion was that it was our belief that we could get a higher type of man if we had an 8 year term instead of a 4 year term, because if you go out and get an extremely capable individual, which the committees are in hopes would happen in this case, you have to have something that will attract him besides salary. He is looking to some continuity of service. The other thing is that we discussed at some length—and we believe it has merit—that if a person is appointed for a shorter term, 4 years instead of 8, there is more likelihood that he may be thinking of things that he should do to curry favor with his bosses that would permit him to continue his employment after the 4 years is up. If he has an 8 year appointment he is more likely to do the things that in his best judgment should be done and not be thinking about his future employment.

It seems to us that this is entirely in order. We believe we could get a better man, and attract better people for this particular position, if he is appointed for an 8 year term rather than a 4 year term. Another thing that we discussed was the question of more than two 8 year terms. We discussed that this might work a hardship in the other way; that he might so conduct himself that he would establish an empire which would make it rather difficult for him to be released. So we think that this is a good compromise, arrived at with both committees being present and discussing it, and I support the committee proposal in opposition to the amendment.

CHAIRMAN MILLARD: The Chair will recognize the delegate from Parma, Mr. Beaman.

MR. BEAMAN: Mr. Chairman, Mr. Yeager asked my question, and it was answered by Mr. Brake. Thank you.

CHAIRMAN MILLARD: Delegate Dell from St. Ignace.

MR. DELL: Mr. Chairman, Mr. Yeager likewise asked my question, but there is another thought that I had. Because of the fact that this man will be appointed nonpartisan, or at least he can be nonpartisan in appointment, we must take into consideration that after all he is not going to be faced with the expense of campaigns for election, and so on, which I think would be quite a factor in your being able to go out and get a qualified man. For that reason, I could go for either the 4 or the 8 year term.

CHAIRMAN MILLARD: The Chair recognizes the chairman of the committee, Mr. Martin.

MR. MARTIN: Mr. Chairman, this is the kind of amendment where you could probably take 4, 6, 8 or 10 and make some argument for it. I don't think there is any magic number. The 2 committees have tried to use their very best judgment on this. The report was unanimous from both committees, and I hope that the delegates will support the joint committee recommendation.

CHAIRMAN MILLARD: The question is on the Brake amendment. All in favor will say aye. Opposed, no. The Chair is in doubt. The question is on the Brake amendment. All in favor will vote aye. All those opposed will vote nay. Have you all voted? If so, the machine will be locked and the secretary will tally the vote.

SECRETARY CHASE: On the amendment offered by Mr. Brake to reduce the term from 8 years to 4, the yeas are 34; the nays are 58.

CHAIRMAN MILLARD: The amendment is not adopted. The secretary will read.

SECRETARY CHASE: Mr. Austin has filed an amendment. He is not present.

Mr. Binkowski offers the following amendment:

1. Amend page 1, line 9—

CHAIRMAN MILLARD: Is Mr. Binkowski here? Proceed with the next amendment then.

SECRETARY CHASE: Messrs. Bonisteel, J. A. Hannah, Anspach and Goebel offer the following amendment:

1. Amend page 1, line 18, after "audits thereof.", by inserting "Nothing in this section shall be construed in any way to infringe the responsibility and constitutional authority of the governing boards of the universities and colleges to be solely responsible for the control and direction of all expenditures from the institutions' funds.".

CHAIRMAN MILLARD: The Chair will recognize the proposer of the amendment, Delegate Bonisteel.

MR. BONISTEEL: Mr. Chairman and fellow members of the committee, the language of this amendment is plain. It is the purpose of the sponsors to put in writing the interpretations heretofore made by the sponsors of Committee Proposal 78. This amendment to Committee Proposal 78 has been heretofore submitted to the committee, and it does not seem to require any amendment, and I wish to ask, Mr. Chairman, through the Chair, if Chairman Martin will confirm my impression of the statement which he made that there is no objection from the committee to the proposed amendment as submitted here.

CHAIRMAN MILLARD: If Chairman Martin wishes to answer.

MR. MARTIN: Mr. Chairman, Mr. Bonisteel and fellow delegates, Mr. Bonisteel did show this amendment to me. The purpose of the committee, I'm sure, was not to interfere with the responsibilities of the universities as outlined in his amendment for the control and expenditure of their funds. The sole function of the auditor general, of course, is a postaudit function, and he is not directed or permitted to get involved in the operation or direction or determinations of that kind. I have not shown this to all the members of the committee, but I believe it is the sense of the committee that this amendment does no harm to the committee proposal, and I would favor it.

MR. BONISTEEL: Mr. Chairman, that being the case, I—will sit down. (laughter)

CHAIRMAN MILLARD: The Chair will recognize Delegate Wanger.

MR. WANGER: Mr. Chairman, members of the committee, I know that we all on the legislative powers committee also realize that this amendment would in no way be contrary to our intent, nor to the operation of the substitute, or even of the original as it was proposed, but I would like to suggest that this amendment adds language which is legally unnecessary. There is nothing in this proposal which gives the legislative auditor general any authority over the control and direction of expenditures from the institutions' funds. Will you please look at the substitute, and I can show you very completely and exactly what powers he has: first, to conduct fiscal postaudits; second, to conduct performance postaudits; third, to make investigations pertinent to the conduct of such audits; and, finally, it's expressly stated that the legislative auditor general shall be assigned no duties other than those herein specified. So you see there is absolutely nothing in the original that could empower the legislative auditor general to interfere with the boards of the universities and colleges to be solely responsible for the control and direction of all expenditures from the institutions' funds. This language therefore is unnecessary. It adds language to the constitution which does not have any legal effect. It says, in other words, that the legislative auditor shall not be able to do something which he doesn't have any excuse for a power to do anyway. So I oppose the amendment, but solely on that basis.

And I would like to hear — and perhaps my mind would be changed — any reason why the sponsors of this amendment believe that this amendment is necessary to clear up any ambiguity in the language of the committee proposal, or any interference which the committee proposal would permit the legislative auditor general to make with the governing boards' authority and control over the direction of all expenditures of those institutions.

CHAIRMAN MILLARD: The Chair will recognize the second sponsor of the amendment, Dr. Hannah.

MR. J. A. HANNAH: Mr. Chairman, members of the committee, I didn't intend to speak, but in view of Mr. Wanger's questions and comments, I feel constrained to.

The strength of public higher education in this state is very largely due to the fact that back in 1840, after the University of Michigan had been subjected to a series of inquisitions by individual members of the Michigan legislature, the legislature caused to have a committee appointed to make a study of the appropriate relationship between legislatures, state governments and universities. And had we the time, or was it necessary, I would like to read to this committee this rather long statement of 1840 known as house document 51 of 1840, filed by the chairman of the select committee who was then a representative in the legislature from Mackinac county. I'm not going to read it, because it would take too much of your time, but I would be glad to make copies of it available to those who would like to read it. It points out the great weakness of public universities of that day, due to the fact that individual members of the legislature felt that because these universities were publicly supported, that it was desirable and necessary for legislators and others politically inclined to examine into all of their operations. It is a very interesting statement in which, among other things, Mr. Turner compares a university or a college to a plant, and indicates what happens when one legislator or politician finds it is necessary to pull up the plant to look at its roots to see if the roots are strong enough to support the top, and then deciding that the top is too large for the roots, they lop off a part of the top. It is a very interesting and humorous anecdote that he describes.

Well, subsequent to that the founding fathers of this state decided that partisan politics and higher education have little in common; that universities should not be more concerned with the problems of policies of one party than with another. And so they moved in the direction of giving first the University of Michigan, and then what is now Michigan State University, and later Wayne University—and in the educational provisions that have already been approved by this convention, to all of our public universities and colleges—constitutional status and protection in their educational integrity.

Now, I would only answer Mr. Wanger by referring him to some of the incidents that were reported in the press just a few months ago when individual members of our legislature became very much concerned and interested in the content being taught in certain courses and departments and programs on our own campus. The constitutional status of our institution made it possible for the institution's board of trustees and president to say that the board and president are perfectly willing to be subject to scrutiny, to answer questions, to appear before such inquiries as you may want to conduct, but when you move in the direction of actually examining course content or demanding of individual instructors explanations of what they teach and why they teach, this is improper.

Now, why we want this language written in here—and I've made it clear in the comments I made a couple of days ago that there's no feeling on the part of most of us in education that education should be a sacred cow; that we are perfectly willing that these institutions and boards and operations shall be subject to the same scrutiny with reference to the procedures they use in the expenditure of their money, that they be made to be accountable, and make certain that they do follow prudent and defensible procedures—is that there is always the fear that this thing you call the legislative auditor, or auditor general, may become the tool of a group or even an individual or a committee of members of the legislature and be used for the purpose, not intended, of inquiring into what is taught and why it is taught. It takes nothing away from this provision. It doesn't make it impossible or undesirable or in any way impede attaining the objectives that the committee had in mind when they wrote the provision. It does give the colleges and the universities the protection that they should have if they are to serve you and the people of this state now and in the future as they should.

I recognize that I am biased, but I believe with great conviction that there is nothing more important to the future of Michigan, more important to the people of this nation or the role this nation is going to play in world affairs, than the availability of educational opportunity, the basic philosophy of that education, the availability to all people. I think we should do everything that needs to be done to be certain that we maintain this great strength that we have had in Michigan that has been widely copied more recently by other states in keeping our educational institutions completely free from partisan political influences just as nearly as that can be done.

CHAIRMAN MILLARD: Delegate Wanger.

MR WANGER: Mr. Chairman, members of the committee, I'm sure we are all in agreement with the sentiments expressed by Dr. Hannah. But there's nothing in the words here of the amendment which relate to course content, curricula or academic freedom. I suggest that the legislative auditor has no power to get into this area at all. I do not understand how this language then would give any additional protection in that way.

CHAIRMAN MILLARD: Dr. Hannah.

MR. J. A. HANNAH: Mr. Chairman, I don't want to become involved in a debate with Mr. Wanger. For 28 years I have dealt with the Michigan legislature, either as the secretary or the president of a university only 3 miles away from it; and I recognize that there is nothing in the language, without this protection, that gives this specific authority to a legislative auditor. I also have full knowledge of how legislators sometimes operate, and there is nothing in the language that would prevent a member or a committee of the legislature from using the legislative auditor to do, at least until he was stopped, the thing I am concerned about. And so if Mr. Wanger only says it shouldn't be there because no authority is given, let's leave it there to make certain that in the future this isn't abused.

CHAIRMAN MILLARD: Do you wish to be recognized again, Mr. Wanger?

MR. WANGER: Well, I would be in complete agreement on the score that the legislative auditor should not have this power to go into any aspect of curricula, course content or things of that type. But, legally, looking over this, all I can say is that there is no power given here, as nearly as I can see, for him to do anything other than make postaudits and investigations pursuant thereto, and the language says that he shall be assigned no duties other than those.

CHAIRMAN MILLARD: The chairman of the committee, Mr. Martin.

MR. MARTIN: Mr. Chairman, the reason behind my supporting the amendment was simply that I think the universities have had some experience which give them some cause for concern that this might be claimed to provide a right to do things which the committee has no intention should be done. I think that it's fair to include language which will quiet any such fears, now or for the future.

CHAIRMAN MILLARD: The Chair will recognize the gentleman from Hancock, Delegate Heideman.

MR. HEIDEMAN: Mr. Chairman, ladies and gentlemen of the committee, the very fact that a question has been raised as to the need of this amendment by people who have dedicated so many years of their lives in the service of these great institutions in Michigan to me is an argument for the amendment. I favor the amendment wholeheartedly so that we can in every possible way strengthen the autonomy of Michigan's institutions of education.

CHAIRMAN MILLARD: Delegate Bonisteel.

MR. BONISTEEL: Mr. Chairman and members of the committee, I don't think that anything I might say will add too much. I just call your attention to the fact that if we are talking about what should be and what should not be in the constitution, most of the matters that are already in this particular section, in my judgment, are properly matters of legislation. But I am not raising that question. I am merely pointing out that we are trying to clarify something so that we know that we are going to be adequately and fully protected. There can be honest differences of opinion, you know, as to legal interpretations. I hope that the members of this committee will support the proposed amendment.

CHAIRMAN MILLARD: Delegate Wanger.

MR. WANGER: May I ask a question through the Chair of Mr. Bonisteel?

CHAIRMAN MILLARD: If he cares to answer.

MR. WANGER: Mr. Bonisteel, I know the major concern here is with regard to politics in the field of what is being taught and done in an academic way in the universities and colleges. Now, I just want to ask: is it the intention of this amendment to mean that the legislative auditor, then, as I understand it, shall be prohibited from getting into that area of the educational institutions?

CHAIRMAN MILLARD: Dr. Hannah, do you want to answer that question?

MR. J. A. HANNAH: I have already answered it, Mr. Wanger. There is no desire on the part of the universities or the colleges to be immune from examinations of their books, their fiscal records, and all that sort of thing. There has been a mistaken notion created in the minds of the people of this state that in recent years there has been some unwillingness on the part of universities and colleges to make available to the legislators and others complete information with reference to their fiscal practices, and that just is not true.

No one has any objection at all to granting to the auditor general what he always has had—an opportunity to make full and complete audits of the fiscal affairs of the universities if he wants to. He used to do that. Twenty years ago they stopped because they didn't have money enough to do it. In recent years the principal universities at least have had annual audits conducted by Ernst and Ernst, or Price Waterhouse, or some of the great auditing firms, because of course the boards of trustees need to have some protection to make certain their own officers are carrying on their business affairs in an honest and an appropriate manner. So in recent years the auditor generals have accepted these commercial audits conducted at the expense of the institutions in lieu of their own auditing. But there is no objection on the part of the institution that I am the president of, and as chairman of the council of state college presidents, I think I can state for all of our institutions that there is no unwillingness to be scrutinized in the same manner as other operations so far as the handling of our financial affairs is concerned. We just want to be sure that in looking into finances, this doesn't become a device by which you look into what is taught in the economics department, and why, and you do it on the handle that it is necessary to satisfy some legislator to find out how many professors there are, and what are they teaching, and are they Keynesians, or are they subscribing to other types of economic philosophies, and is it appropriate? This is the type of thing we want to protect ourselves against.

MR. WANGER: Does this language—

CHAIRMAN MILLARD: Are you asking another question?

MR. WANGER: Yes.

CHAIRMAN MILLARD: Please ask it through the Chair.

MR. WANGER: Mr. Chairman, this language speaks of control and direction of all expenditures from the institutions' funds. However, I take it—and I'm sure Dr. Hannah has already pointed this out—that it's not the intent of it to mean that the legislative auditor would not have constitutional power to make audits in that regard, and with that assurance I would see no reason for not stating again that the amendment will not materially or in any way weaken the legislative powers committee's intent and purpose, nor the executive committee's, as I have been informed of its intent and purpose, but I still think it is legally unnecessary.

CHAIRMAN MILLARD: Dr. Hannah.

MR. J. A. HANNAH: This is my final comment on this one. I would like to read to the members of the committee the sentence that is in the educational section that has already been approved by this convention, when we are talking about these universities and colleges and their boards — and this is the exact quote —

> The respective boards shall have the general supervision of their respective institutions and the control and direction of all expenditures from the institution's funds . . . .

And those are the words that Mr. Bonisteel has included in this amendment, in which I and others concur. It is an exact restatement of the words that you have already approved.

CHAIRMAN MILLARD: The question is on the Bonisteel amendment. All in favor will say aye. Opposed, no.

DELEGATES: Division.

CHAIRMAN MILLARD: There is a call for a division. Is the demand supported? There's enough up. The question is on the Bonisteel amendment. All in favor will vote aye. Those opposed will vote nay. Have you all voted? If so, the machine will be locked and the secretary will tally the vote.

SECRETARY CHASE: On the adoption of the amendment offered by Mr. Bonisteel and others, the yeas are 66; the nays are 25.

CHAIRMAN MILLARD: The amendment is adopted. Are there any further amendments to the proposal?

SECRETARY CHASE: Miss Donnelly and Messrs. Lawrence and W. F. Hanna offer the following amendment:

1. Amend page 1, line 8, after "8 years,", by inserting "who shall be a certified public accountant duly licensed to practice in this state and"; so that the sentence will then read:

> The legislature by a majority vote of the members elect of each house, shall appoint an auditor general to serve for a term of 8 years, who shall be a certified public accountant duly licensed to practice in this state and who may be reappointed for one additional term only.

CHAIRMAN MILLARD: The Chair will recognize the proposer of the amendment, Miss Donnelly.

MISS DONNELLY: In view of the fact that Mr. Lawrence has to leave, I will be happy to yield to him at the moment.

CHAIRMAN MILLARD: Miss Donnelly yields to Delegate Lawrence.

MR. LAWRENCE: The purpose of this proposed amendment of course is to assure the people of the state of Michigan that the auditor general or the auditor will be a competent, qualified person. The requirement of the certified public accountant is similar of course to that of judges being attorneys. The qualifications, the examinations, the training that is required to obtain a license as a certified public accountant — as far as ability and as far as background, of course — is desirable and necessary. The head of the department, in other words, should be qualified. We feel that it would be to the best interests of the people of the state of Michigan if this proposed amendment was adopted.

CHAIRMAN MILLARD: Delegate Hanna.

MR. W. F. HANNA: Mr. Chairman and fellow delegates, there is another reason for my joining in this amendment, and that is that I am worried about a practice which occasionally creeps into this office and creeps into other offices that legislative bodies sometimes appoint. And that is to appoint to this office some legislator who may have in the past served very well in the legislature — perhaps as a member of the ways and means or finance or taxation committee, or of other committees — and then, because he lost his office through election, and this vacancy being appointive, you will have with the old club tie the temptation to appoint one of the club to this office.

Now, there is a second reason. The second reason is that when you require this man to be a certified public accountant, you have 2 lines or 2 groups watching his competency. The first of course is the legislature. The second is: a certified

public accountant must meet certain professional and ethical standards of his group. This is comparable to the attorney. Not only does he face, when he is a judge, the governor's right to remove him or the supreme court's right to suspend him, but he faces the fact that if he conducts himself unethically in office the bar association of which he is a member may also discipline him for reasons of unethical conduct.

Certainly no person who is not a qualified public accountant should hold this office. And the only test that we have in this country today is the test of whether or not he is a certified public accountant. Not all certified public accountants are competent to audit public books and records. But all certified public accountants must pass an exam in governmental accounting. And governmental accounting is considerably different than private accounting, especially when you get into performance accounting. But this requirement protects the people of Michigan in guaranteeing that the legislature will not use this except to hire the most competent person by an independent and outside test; and I strongly urge the adoption of this amendment.

CHAIRMAN MILLARD: The Chair recognizes Judge Dehnke.

MR. DEHNKE: I have a question, Mr. Chairman, to address to Mr. Hanna.

CHAIRMAN MILLARD: If Delegate Hanna cares to answer.

MR. DEHNKE: It is the purpose of the proposers of this amendment to confine the candidates to those who have been previously certified as public accountants in the state of Michigan?

MR. W. F. HANNA: Judge, the certified public accountant exam now is a universal exam across the country. Michigan some years back had a separate public accounting exam that was different from the national C.P.A. exam. We have now shifted and are using the national C.P.A. exam. I believe that a certified public accountant is required. I did not consider whether or not he should be a qualified elector or resident of Michigan. I would assume, however, that if I were in the legislature and the state of Alaska had a certified public accountant who was qualified and who had some experience, and I wanted to hire him, I would hate to be bound by the requirement that he be a Michigan resident.

MR. DEHNKE: I'm wondering whether that isn't the effect of the language. You require him to be a public accountant duly licensed to practice in this state.

MR. W. F. HANNA: With this language, a stranger can move to be admitted if he has 5 years practice as a C.P.A. in another state, much the same as an attorney.

MR. DEHNKE: Then you expect him to be qualified under the Michigan rules before he takes office, but not before he is appointed?

MR. W. F. HANNA: That's right. He would have to qualify under the Michigan rules. And I think this becomes important, Judge, if we ever go back in Michigan to having a more restrictive C.P.A. exam than the national exam.

MR. DEHNKE: Thank you, Mr. Chairman and Mr. Hanna.

CHAIRMAN MILLARD: The Chair recognizes Delegate Karn.

MR. KARN: Mr. Chairman, members of the committee, in commenting on this amendment, again, I want to say that there was lengthy discussion on the part of the 2 committees regarding this individual. And the final decision was that he should not necessarily be a certified public accountant. This particular individual, as we viewed it in the committee discussions, should have experience in accounting, yes, because this is an accounting matter. But we look upon this individual as being more of the administrative and executive type — one who is fully qualified to be in charge of a group of individuals who are making the accounting audits.

This restricts the legislature in seeking a top flight man that could operate this job. Again, I want to say that he should have accounting experience and auditing experience, but he should not be restricted to someone of this sort. Because the administration of the office is very important. Neither should they be restricted in having to employ only someone who is a resident of Michigan. Again, it would be the hope, I know, of the convention that for jobs like this they would get an outstanding individual; and to do that there might not be anyone available at the moment in Michigan, and they might see fit to go across state lines. I would vote in opposition to this amendment.

CHAIRMAN MILLARD: The Chair will recognize the gentleman from Lansing, Delegate Erickson.

MR. ERICKSON: I was wondering to what number we were restricting this in limiting it to C.P.A.s of Michigan, although Mr. Hanna has indicated you might go outside. But it might be well to know the number of C.P.A.s in Michigan.

CHAIRMAN MILLARD: Do you know the answer?

MR. W. F. HANNA: I do not.

CHAIRMAN MILLARD: Mr. Hanna does not know the answer. Chairman Martin.

MR. MARTIN: Mr. Chairman, I'm out of position here. Mr. Karn has said much of what I would say. The committee felt that the legislature should have the latitude to decide on what kind of employee it wanted. And very likely it would decide on a certified public accountant. But it is not absolutely necessary. The job is both administrative and requiring accounting knowledge, so that the legislature we felt should have this wide discretion in making its selection of a man to do this job.

CHAIRMAN MILLARD: The Chair recognizes the lady from Grand Rapids, Delegate Koeze.

MRS. KOEZE: Mr. Chairman, as a member of the legislative powers committee, I'm sure you are well aware of my position in regard to the auditor general being a C.P.A. The C.P.A. certificate is a mark of professional competency relied upon by businessmen, bankers, government officials and others who are concerned with financial reports. Now, I happen to do all of my husband's bookkeeping. It is a peanut business, (laughter) but nevertheless I do his bookkeeping. I wouldn't consider anything else but a C.P.A. when it comes time for my husband to have to file any kind of government report, income tax, or anything else. I think it is good business procedure. I think it would enhance the position of this auditor general to be a C.P.A. I want to go on record as feeling that this is almost a must for the man, as well as having administrative ability. I think he should be part of the C.P.A. organization.

CHAIRMAN MILLARD: Delegate Hanna.

MR. W. F. HANNA: I would like to add a couple of things. It seems to me the committee is rather inconsistent with some of the practices and procedures. If my township is required by statute to be audited by a C.P.A., and if my school district is required to be audited by a C.P.A., since when is the state to be subject to a looser standard than the others? Secondly, he says that he shall be an administrator. Would you hire a school teacher to run the highway department, or would you hire an engineer? Would you hire a qualified deep sea diver to run the state board of education, or would you hire an educator? It seems to me that in both cases you measure the competency of that person by his professional attainment, and you measure a teacher by the fact that he has a teacher's certificate or a degree in education that shows some professional competency. If you hire an engineer, and you have written in that he should be an engineer, he should be a certified civil engineer; because you cannot administer something that you don't know.

Once you take away the certified public accountant, then you let human nature judge his competency. Who is to say that I am a qualified accountant because I spent 2 years as a cost accountant with a corporation? Am I a qualified accountant because I have kept county books as a county controller, without being a C.P.A.?

I say that the only test and the only public assurance that the public has in any audit is a requirement of a certified public accountant's audit. And certified public accountants are very able administrators. In fact, they are probably as

able administrators as attorneys. And yet we have said that the attorneys shall administer the court system. If we are not requiring attorneys on the supreme court to administer the court system, maybe we should hire an engineer — an efficiency engineer — to administer the court system. But I dare say he would know little about legal practice. When we get into the accounting field, let's make sure that the administrator knows whereof he talks and about what he talks, and that he is measured by a certificate that tests his competency, and not his political attributes.

I urge the adoption of this amendment so that the state of Michigan will be subject to the same professional competency that my township board or my school board is required to meet at the present time.

CHAIRMAN MILLARD: The Chair recognizes Delegate Kuhn.

MR. KUHN: Mr. Chairman and members of the committee, as Dan Karn pointed out, we had this matter in discussion in our committee. I was one that was in favor of a C.P.A. for the legislative auditor; but after listening to Dan Karn's arguments and those of others, I agreed to eliminate it as a minimum requirement. I then took a glance at the other 4 state constitutions which provide for a legislative auditor, and I found that 3 of the 4 do not require that he be a certified public accountant. So taking that into consideration, as well as the arguments by Dan Karn, I thought it would be best not to put this minimum requirement in our constitution, and therefore I agree with the committee report — and that is the committee on legislative powers and the committee on executive branch — that this minimum requirement should not be in our constitution.

CHAIRMAN MILLARD: The Chair recognizes the gentleman from Flint, Delegate McLogan.

MR. McLOGAN: The recent auditor general of the state of Michigan and current supreme court justice, Otis M. Smith, indicated to me last October that his first recommendation for the office of auditor general would be that that person be so qualified to bear the designation, certified public accountant. Incidentally, attorney Smith is not a C.P.A. But that was his firm recommendation.

CHAIRMAN MILLARD: Delegate DeVries.

MR. DeVRIES: Mr. Chairman, members of the committee, I would like to ask Mr. Hanna a question. Delegate Hanna, would you give constitutional status and recognition and require that the state treasurer be a C.P.A., or make the superintendent of public instruction an educator, or the highway commissioner an engineer, or somebody on the liquor control commission a bartender, make a psychiatrist the head of the department of health, a union leader as head of the department of labor, and so on, and require that we put all of these things in the constitution?

CHAIRMAN WILLARD: The Chair thinks that question is out of order, Dr. DeVries.

MR. W. F. HANNA: I would love to answer it.

MR. DeVRIES: I think it is to the point, Mr. Chairman.

CHAIRMAN MILLARD: If you want to answer it, go ahead.

MR. W. F. HANNA: Would I require a bartender to be a member of the liquor control commission? He would be the last man I would want on the liquor control commission, I think.

MR. DeVRIES: Don't take the worst of my analogies.

MR. W. F. HANNA: Mr. Chairman, I'll answer those that I would require. Would I require that the superintendent of public instruction be an educator? Yes.

MR. DeVRIES: In the constitution?

MR. W. F. HANNA: Preferably a man who had a PhD, or a PhE, or something in education and education administration. But I know of no public test which can be applied in that field except the educational degrees. Would I require the highway commissioner to be a qualified civil engineer? Yes. Would I require the state treasurer to be a C.P.A.? No, because he is not an auditor. But I do require in the constitution that he be an honest man. And we put in that he can hold no other offices, and we tie his hands very completely with other restrictions. Now, when we get to the liquor control commission, or the janitor of the courthouse, and so forth, I might even write in that a janitor had to have 2 arms so he could push a broom. But I believe here that you have a test of competency that is the same as testing the competency of an attorney, and I do believe it is important, Mr. DeVries.

MR. DeVRIES: Mr. Chairman, if I may, one more question. In other words, Mr. Hanna, for the major departments in state government you would require that these people be professionals in the particular field that they supervise and administer?

MR. W. F. HANNA: If there is a public test that determines their competency, I would be glad to use that test.

MR. DeVRIES: You would give it constitutional status?

MR. W. F. HANNA: Yes, sir.

CHAIRMAN MILLARD. The Chair recognizes the proposer of the amendment, Miss Donnelly.

MISS DONNELLY: I believe that some of these questions have gotten a little far afield, and I want to try to answer some that were posed earlier. I understand that there are presently 68,000 C.P.A.s; 9,000 within the last year or 2 years. Now, you just multiply that along and I think you will find that there are more than adequate numbers to choose from.

On the next question, should they have administrative ability, I should think that the legislature, acting, should be able to make this determination. We are giving a great deal of latitude to the legislature. We are hoping to get a very adequate handling of our problem.

To require that the minimum standard that we have set up in our state for people handling individual books and holding themselves out to be qualified to make these analyses should be met in this manner, I think is perfectly logical, perfectly reasonable and eminently proper. To say that we don't have enough within this state I don't think is valid. There is no requirement initially that I can see that they are residents of this state, except for the fact that they must be admitted to practice. This means that they must meet the minimum requirement that we set forth in this state.

Now, we are not talking about a momentary job. We are talking about someone that we are going to have for 8 years on good behavior, with a requirement of a 2/3 vote to remove. To require that this individual be more than competent I think is a minimum aspect. The legislature, in viewing and screening their individual applicants, may establish whether they have enough judgment, if they have enough administrative ability — and I'm sure that there are numerous candidates that will meet this. This is one job we are talking about. And to have in our state the highest requirement that we know of at this moment to fill this job is only reasonable in my opinion.

CHAIRMAN MILLARD: The Chair recognizes Delegate Stafseth.

MR. STAFSETH: Mr. Chairman and members of this committee, I wholeheartedly endorse this amendment. I think this is like the same example that I gave when I was talking about the probate judges. The legislature in their wisdom in the 1951 act that governs all the control of moneys for state highways, county highways and city funds for roads said that they would not give this to us unless we had a system that subsidized engineers at the county level and insured that they were used properly. I think this is a step in the right direction. I had the pleasure when I was at Lenawee county to set up an accounting system, and this accounting system, with the help of the highway department, emanated all the way up to the auditor general's office, and now is one of the best accounting systems for highway programs in the United States. And one of these men helped us do it, and I think that these men are well qualified and will do us a tremendous job.

CHAIRMAN MILLARD: Delegate Karn.

MR. KARN: One short statement. There seems to be some feeling that because there is no requirement in this proposal

that the auditor general be a C.P.A., that there might not be C.P.A.s in the department. I think it is certainly necessary to have C.P.A.s in the department — men who are actually making the audits. I don't see this individual as devoting a major part of his time, perhaps, on detailed auditing. There should be — and no doubt would be — C.P.A.s in the department, however.

CHAIRMAN MILLARD: Mr. Martin.

MR. MARTIN: I just want to say that Mr. Karn is entirely correct, at least if the staff were composed as it is now. There are a number of C.P.A.s on the auditor general's staff. And that's highly desirable, of course. They are not all C.P.A.s. There are some very fine auditors who do not have a C.P.A. certificate. But they are doing sort of in service training, so to speak, and some of them will get their C.P.A. certificates in due course.

I hope that the delegates will accept the committee's suggestion, however. If the best man found is a C.P.A., that's fine. But it is possible to do a thoroughly good job as auditor general — and I'm not referring to any present company — without a C.P.A. certificate. It is desirable to have some accounting background, but the certificate is not an absolute necessity to finding a highly qualified man.

CHAIRMAN MILLARD: The question is on the Donnelly amendment. All in favor will say aye. Opposed, no. The Chair is in doubt.

MISS DONNELLY: Division.

CHAIRMAN MILLARD: A division is demanded. Is there support? There is a sufficient number up. The question is on the Donnelly amendment. All in favor will vote aye. Those opposed will vote nay. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the amendment offered by Miss Donnelly and others, the yeas are 42; the nays are 47.

CHAIRMAN MILLARD: The amendment is not adopted. The secretary will read.

SECRETARY CHASE: Mr. Faxon offers the following amendment:

1. Amend page 1, line 12, after "conduct" by striking out "comprehensive fiscal postaudits of all transactions and accounts kept by or for" and inserting "postaudits according to standards prescribed by law or fiscal reports and records of"; so that the language will then read:

> The auditor general shall conduct postaudits according to standards prescribed by law of fiscal reports and records of all branches, departments, offices, boards, commissions, agencies, authorities and institutions of the state. . . .

CHAIRMAN MILLARD: The Chair will recognize Delegate Faxon.

MR. FAXON: Mr. Chairman and fellow delegates, this is the amendment which Mr. Austin had prepared, and I see that he isn't here to submit it, so I am submitting it on his behalf. As I examine the language, I can point out to you, I hope, 2 points that his amendment covers that aren't to be found in the present language on lines 12 and 13.

The question that we have here is that of dealing with "The auditor general shall conduct comprehensive fiscal postaudits. . . ." Now, who is to determine what the comprehensive fiscal postaudits could be? This could be determined either by the auditor general himself or, possibly, by the legislature. But in the absence of any specific delegation of responsibility here, it would seem to me that we should state specifically who shall prescribe the standards involving the conducting of the postaudit. In this case we ask that the legislature prescribe those standards. This not only serves to eliminate any confusion, but it also provides some degree of flexibility in the determination of what shall be a comprehensive fiscal postaudit. It would seem that in keeping with the writing of a document that would have some flexibility for the future, the legislature ought to be able to prescribe those standards that shall make up the postaudit.

I urge your consideration of this amendment.

CHAIRMAN MILLARD: The Chair will recognize Delegate King.

MR. KING: Mr. Chairman, fellow delegates, once again I find myself in agreement with that conservative, Mr. Faxon. I think that certainly we ought to have in the language some means of prescribing the standards by which the auditor general is to work. I also think that the logical place for these rules to be promulgated would be with the legislature. So I think this is an excellent addition to the very fine language that the committee has already presented, and I would urge support of it.

CHAIRMAN MILLARD: The Chair recognizes Delegate Wanger.

MR. WANGER: Mr. Chairman, I urge you to vote against this amendment. I think it would seriously endanger or weaken the office. In the first place, the legislative auditor, according to our entire discussion, is supposed to be a man well qualified in the field of accounting and in these areas — and should set his own standards and follow the clear language of comprehensive fiscal postaudits. That means a complete audit investigation. If you allow the legislature to set standards, you imply that it may be less than a complete fiscal or performance examination. Further, by using the words "as prescribed by law," you make these standards subject to the veto power of the governor. The whole purpose of placing this man in this office in responsibility to the legislature is to provide that his basic powers will not be subject to pressure, influence, or veto from the executive branch, which is he continually called upon to investigate and check, pursuant to his constitutional postaudit duties.

CHAIRMAN MILLARD: The Chair will recognize the chairman of the committee, Mr. Martin.

MR. MARTIN: Mr. Chairman, it is quite clear that the legislature has the authority to prescribe the standards which Mr. Faxon's amendment would provide for. So I feel that the additional language is entirely unneeded. The committee did consider this problem when it was preparing its report and its proposal. I hope that the amendment will be defeated.

CHAIRMAN MILLARD: Delegate Faxon.

MR. FAXON: Mr. Chairman, I don't see in that sentence the degree of flexibility and the interpretation that the legislature has the authority with regard to what shall make up a fiscal postaudit, as the chairman of the committee indicates. I would invite the delegates to examine the language, and if they can find standards prescribed by law, or any prescription by law as to what shall compose a fiscal postaudit, then I would be most willing to withdraw this amendment.

But I do think it is necessary to comment briefly upon the major objection that was raised by the speaker previous to the chairman of the committee, who indicated to us that we are to permit an individual to set his own standards. We have already taken the office of the auditor general away from the people through the direct election process. Now I see a further attempt to remove the auditor from his duties by attempting to permit him to establish his own standards, and not to permit the representatives of the people in the legislature to have some say as to what those standards might be.

I suggest that if it's a question of who runs the government, I would prefer to see the government in the hands of those representatives of the people, rather than in the hands of experts who have long appointments to office and who are not in a position to be reflective and responsive to the people themselves. I think in the tradition of sound government and sound, effective control by the people, the standards ought to be set by the legislature. And if this attempts to clear up in any way the language as to who sets the standards, then it ought to be accepted.

CHAIRMAN MILLARD: Delegate Wanger.

MR. WANGER: Mr. Chairman, there is confusion here. I'm sure Mr. Faxon is operating under confusion of the postaudit power of the auditor general and the standard for accounting and for preaudits. Now, it is very clear that this does not remove the power from the legislature to establish the standards for the accounting system and for the preaudits. In fact, Committee Proposal 37, which was passed by the

committee of the whole on February 2, in section c says, "The legislature shall provide by law for the annual accounting for all public moneys, state and local, and may also provide by law for interim accounting." They can set the accounting standards. They can set the preaudit standards. But what we are dealing with here is the postaudit power of the auditor general. This is not just a matter of standards. If you pass the amendment you will seriously endanger and weaken that power and make it, to the full effect of the veto power, another executive influence subject to control by the executive branch and the whole purpose of placing it underneath the legislative body would thereby be weakened and defeated.

CHAIRMAN MILLARD: Delegate King.

MR. KING: Mr. Chairman and fellow delegates, I would like to address a question, if I might, to Mr. Martin through the Chair. I believe that I was thinking of the earlier draft. There is a substitute draft dated March 7 which was not called to my attention until after I spoke before. I would like to ask Mr. Martin what his interpretation of the language on line 17 is.

CHAIRMAN MILLARD: Mr. Martin, do you care to answer?

MR. MARTIN: Mr. Chairman, I am looking at the language in line 17, but I don't know which language you mean there, Mr. King.

MR. KING: Well, the whole sentence is:

> The auditor general shall conduct comprehensive fiscal postaudits of all transactions and accounts kept by or for all branches, departments, offices, boards, commissions, agencies, authorities and institutions of the state, whether established by this constitution or by law. . . .

Now, the part that concerns me is the language "whether established by this constitution or by law." Does this refer to the boards and commissions, or does it refer—

MR. MARTIN: That's right, it does.

MR. KING: It does not refer, you feel, to the comprehensive fiscal postaudits?

MR. MARTIN: No, it refers to the various boards and commissions and agencies and so on which are mentioned there.

MR. KING: I would now, Mr. Chairman, direct Mr. Martin's attention to the second page, line 8, reading, "The legislature shall provide by law with respect to the maintenance of uniform accounting systems and the auditing of units or agencies of local government." Does this language refer only to the auditing of units or agencies of local government?

MR. MARTIN: That's right. It refers to local government.

MR. KING: This language again does not refer to providing by law with respect to maintenance of uniform accounting systems, except as they relate to local units?

MR. MARTIN: No, it does not, because it's the feeling of the committee that the legislature has this inherent power to provide for proper accounting systems implicit in its power to conduct these audits. In order to conduct an audit—I mean, to take an extreme case, if an agency were to say we are not going to keep any accounts, and therefore you can't audit us, clearly the legislature would have authority to say: look, you keep those accounts, because we have authority to audit you, and they shall be such and such accounts. I use an extreme example. There's no question but what the legislature can require that certain standard types of accounting systems be established and exist in state departments and agencies and institutions, and so on.

MR. KING: Mr. Chairman, Mr. Martin, would it be your opinion that you would be in disagreement with Mr. Wanger in that he feels that this gives power which does not exist to the legislature, but rather that you feel that the language is somewhat superfluous and not necessary. Is that a fair statement?

MR. MARTIN: Yes. I feel that the language is superfluous and unnecessary. I'm not worried about there being any danger from it. I just think it is not needed, and it is provided for by the language we already have.

MR. KING: Thank you.

CHAIRMAN MILLARD: The question is on the Faxon amendment. All in favor will say aye.

DELEGATES: Division.

CHAIRMAN MILLARD: Division has been called for. Is there support? There is a sufficient number up. The question is on the Faxon amendment. All those in favor will vote aye, and those opposed will vote nay. Have you all voted? If so, the machine will be locked and the secretary will tally the vote.

SECRETARY CHASE: On the adoption of the amendment offered by Mr. Faxon, the yeas are 17; the nays are 61.

CHAIRMAN MILLARD: The amendment is not adopted. The secretary will read.

MR. MARTIN: Mr. Chairman.

CHAIRMAN MILLARD: Mr. Martin.

MR. MARTIN: One or 2 delegates have asked me when we propose to rise. I would appreciate the secretary letting us know how many amendments there are on the desk. I believe there's only one, is that correct?

SECRETARY CHASE: There is one additional amendment, offered by Mr. Hutchinson.

MR. MARTIN: I would like to work through until 4:00 o'clock if we can, and if we can possibly dispose of that amendment then we will have completed one good piece of work.

SECRETARY CHASE: Mr. Hutchinson offers the following amendment:

1. Amend page 1, line 8, after "years" by changing the comma to a period and striking out all of line 9, which reads as follows: "who may be reappointed for one additional term only.".

CHAIRMAN MILLARD: The Chair will recognize the proposer of the amendment, Vice President Hutchinson.

MR. HUTCHINSON: Mr. Chairman, had time permitted, before I offered this amendment I would have liked to have asked the committee for the rationale for this language in the first place. I have been listening to the debate, and somehow or other I haven't noted any real point being made about this "who may be reappointed for one additional term only." I'm thinking about the situation where a man is to be appointed the first time, and I suppose that the likelihood is that he wouldn't be in his 20s. He might be in his early 30s, let's say 35, when the legislature would first appoint him. Under the present arrangement, he would only be able to serve 16 years. That would get him out of office when he was about 50 or 51. And then what would the situation be? I presume he would be just a little bit too old to go out and start in to build up another career. At the same time, he wouldn't have been in state government long enough to qualify for retirement under the retirement systems. Offhand I can't see the wisdom of limiting him to only 16 years. If he is doing a good job, and if he has 16 years of experience, by that time he certainly will know this state government thoroughly. And if the legislature in its wisdom would say let him stay on for another term, an 8 year term or whatever their pleasure is, thereby have the advantage of his experience and his knowledge and his wisdom, because he will have obtained great wisdom in state government through that tenure, why shouldn't they be able to do so? What was the thinking for knocking him out after 16 years? I offer this amendment to remove that restriction, because I can't see it.

CHAIRMAN MILLARD: Are you asking the question—

MR. HUTCHINSON: I would direct the question to Mr. Martin, Mr. Chairman.

CHAIRMAN MILLARD: Mr. Martin, do you care to answer it?

MR. MARTIN: Yes, Mr. Chairman. Mr. Hutchinson, the reasoning of the committee was simply that we wanted to be as sure as we could that the auditor general would not be making decisions for the purpose or with the view in mind of indefinite extension of his tenure. We are giving him tenure, and we didn't want him to feel that he had to make decisions which would keep him in office indefinitely. The wisdom of this is a matter of judgment. The committee felt that it was

desirable. And I believe that this same type of provision occurs in several other constitutions. That is the rationale of it, Mr. Hutchinson.

MR. HUTCHINSON: Well, Mr. Chairman, I don't know that I am particularly convinced with the rationale, because if it was to dissuade him from making decisions which might lead to an extension of his tenure, the thing to do would be to give him one term of considerable length and make him ineligible for reappointment. Now, since you are going to let him be reappointed once, then, in the worst situation that I can think of, toward the end of his first 8 year term he would tend to fall away from his ideal in order to satisfy some people in order that he might get reelected for another 8 year term. Thereafter he would be secure for 8 years. He wouldn't know whether the men were going to be around in 8 years. In other words, this would come up only toward the end of every 8 year term. It wouldn't be a regular thing. Certainly when a man would start out in the beginning he wouldn't be too concerned, because public memory and even personal memory is short. Human relationships tend to adjust themselves. And while he might make an unpopular although a very right decision in, say, the first 6 years of his term, that wouldn't disturb him much. I mean, he would do that. He wouldn't be thinking about what he was going to get in his third or fourth term at that time. So I say that the rationale of the argument you make, Mr. Martin, seems weak to me the minute that you realize that he is subject to reappointment at all.

MR. MARTIN: Mr. Hutchinson, I think I would subscribe really to the proposition that he might well be given a much longer term. Some of the members of the committee felt, however, that there were some reasons for not extending it too far. And this was a compromise provision, if you want to call it that, to effect the purpose that I have stated.

MR. HUTCHINSON: Well, Mr. Chairman, it is unfortunate, I would think, in view of the fact that it is likely that a man first appointed will be in his 30s, that you are going to turn him out to pasture when he is just past 50, at a time when from the standpoint of his service to the state he is in his prime, but also at a period in his life when it is unlikely that he would be able to go out and build a new career. For that reason I think that it would be a better decision not to deny him—at least, not constitutionally—the opportunity for further service in a career for the state of Michigan if the appointing authorities saw fit. For that reason I hope that my amendment can be adopted.

CHAIRMAN MILLARD: Delegate Wanger.

MR. WANGER: Mr. Chairman, members of the committee, the type of individual that the office of legislative auditor general should attract will be the type which at the end of his term of office will find a number of careers ready and waiting for him because of the experience which he has gained.

Now, the committees were torn to some extent between a long term with no reappointment at all and a shorter term, and this 8 year term was finally reached—a comparatively short term—with a limitation on the number of times that he could hold the office. This proposal provides that the legislative auditor general shall be eligible for reappointment only once, as you know. Limitations on reappointment are also contained in the statute providing for the United States comptroller general, and also in the charter provision providing for the auditor general of the city of Detroit. Let us remember that the state revenues or state finances at this time amount to about 1 billion, 200 million a year. And it is certainly necessary to provide this limitation with respect to the office in order to insulate the office from the improper pressures which the office would otherwise be bound to invite.

CHAIRMAN MILLARD: The question is on the Hutchinson amendment. All in favor will say aye. Opposed, no.

The ayes have it.

DELEGATES: Division.

CHAIRMAN MILLARD: A division is demanded. Is there support? There is support.

The question is on the Hutchinson amendment. All in favor will vote aye. Those opposed will vote nay. Have you all voted? If so, the machine will be locked and the secretary will tally the vote.

SECRETARY CHASE: On the amendment offered by Mr. Hutchinson, the yeas are 72; the nays are 19.

CHAIRMAN MILLARD: The amendment is adopted. Are there any further amendments?

SECRETARY CHASE: This is the last amendment on the desk, Mr. Chairman.

CHAIRMAN MILLARD: Are there any amendments to the body of the proposal? If not, the proposal will pass.

Committee Proposal 78, as amended, is passed. Mr. Martin.

MR. MARTIN: I move that the committee do now rise.

CHAIRMAN MILLARD: The question is on the motion made by Mr. Martin that the committee do now rise. All in favor say aye. Opposed, no.

The motion prevails.

[Whereupon, the committee of the whole having risen, Vice President Romney resumed the Chair.]

VICE PRESIDENT ROMNEY: Delegate Millard.

MR. MILLARD: Mr. President, the committee of the whole has had before it a proposal on which the secretary will make a detailed report.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 78,** A proposal to provide for the office of legislative auditor general. It reports this proposal back to the convention with an amended substitute therefor, recommending that the substitute be agreed to, and that the proposal as thus substituted do pass.

For substitute, see below.

VICE PRESIDENT ROMNEY: The question is on agreeing to the substitute. Those in favor say aye. Opposed, no.

The substitute is adopted.

The proposal, as substituted, will be referred to style and drafting. Mr. Wanger.

MR. WANGER: Mr. President, there were a number of amendments adopted to this, and our previous practice has been to make reference to those. I was wondering—perhaps I had missed something, or do not understand the procedure properly.

SECRETARY CHASE: May the secretary point out to Mr. Wanger that the substitute offered by the 2 committees was amended. The only question coming before the convention at this time was agreeing to the amended substitute, which has been adopted.

MR. WANGER: I would desire to have a separate vote upon the last amendment, because I think it is of great importance, and I think it should be tested upon the floor of this convention.

VICE PRESIDENT ROMNEY: The Chair is advised by the secretary that in order to do that, Delegate Wanger, you will have to offer a separate amendment in writing.

MR. WANGER: I will prepare the amendment.

VICE PRESIDENT ROMNEY: In the meantime, **Committee Proposal 78,** as substituted, is referred to the committee on style and drafting.

Following is Committee Proposal 78 as substituted and referred to the committee on style and drafting:

The committee recommends that the following be included in the constitution:

Sec. a. The legislature by a majority vote of the members elect of each house, shall appoint an auditor general to serve for a term of 8 years. He shall be removable for cause at any time by a 2/3 vote of the members elect of each house of the legislature. The auditor general shall conduct comprehensive fiscal post-

audits of all transactions and accounts kept by or for all branches, departments, offices, boards, commissions, agencies, authorities and institutions of the state, whether established by this constitution or by law, and performance postaudits thereof. Nothing in this section shall be construed in any way to infringe the responsibility and constitutional authority of the governing boards of the universities and colleges to be solely responsible for the control and direction of all expenditures from the institutions' funds. For these purposes, in addition to his staff, he may employ such independent accounting firms or legal counsel, as the legislature by resolution may direct and may make investigations pertinent to the conduct of such audits. The auditor general shall be assigned no duties other than those herein specified and shall report annually and at such other times as he deems necessary or as required by the legislature to the legislature and the governor.

The legislature shall provide by law with respect to the maintenance of uniform accounting systems and the auditing of units or agencies of local government.

The auditor general, his deputy and one other member of his staff shall be exempt from civil service. All other members of his staff shall have civil service status.

VICE PRESIDENT ROMNEY (continuing): Announcements, Mr. Secretary.

SECRETARY CHASE: We have the following requests for leave: Mr. Hoxie wishes to be excused from Monday to attend a meeting which has been previously arranged; Mrs. Conklin wishes to be excused from Monday's session to make an address; Mr. Thomson wishes to be excused from Monday afternoon's session; Mr. Rush wishes to be excused from Monday's session, possibly from the Tuesday session, for business reasons; and Mr. Suzore wishes to be excused from Monday's session.

VICE PRESIDENT ROMNEY: Without objection, it is so ordered. Are there any further announcements? Mr. Kelsey.

MR. KELSEY: Mr. President, I would like, before the convention adjourns, to have the privilege of speaking on a point of personal privilege. I would acquiesce until you give me that right, sir.

VICE PRESIDENT ROMNEY: Delegate Kelsey, the Chair thinks we are ready to adjourn, and therefore if you want to be recognized, this is the time.

MR. KELSEY: Thank you very kindly, Mr. President. As much as I dislike using names—I don't like to deal in personalities—however, Mr. President, you being in the Chair, I have reference to what was said as of this morning.

A fine gentleman many years ago in our history appraised human value and the dignity of an individual's name. In my opinion, sir, you were on the floor this morning and indicted the entire minority party, which I have been associated with for 20 years. I would like to invite you, sir, at any time at your convenience, to cross the avenue, go over to "the hill", and go before the state supreme court, before the attorney general, and I will swear, affirm upon oath, that I as an individual member of the Democratic party have never been talked to by any members of my delegation, any members of the governor's staff or governor's office, or anyone in the Democratic party.

It was not my opinion, when we debated section 10, article II on search and seizure, when I supported the Prettie amendment, that it was a political issue. My name did not appear on the bulletin board that I was one of the people that voted with the so called Republicans, as on the Ford amendment there was a list of Republicans who were listed on the bulletin board that said these are the people that voted for the Ford amendment, and so on and so forth.

I take offense, Mr. President, at you, Mr. Romney, because I profess to be a man of high standards. I think my reputation will bear that out. In the years that I have served in public life in the city of Warren, which is the fifth largest city in the state, we had a grand jury and we also had an auditor general's investigation. And by virtue of the offices I held at those times, I was subjected to subpoena to make statements before a grand jury, and I was subjected to indictment. Now, I don't know if this will add any truth or veracity or any credence to what I say, and I cast no reflection on those public servants who in that area at that time were called before the grand jury and were indicted, but I say with pride, Mr. President, that I was not called, nor was I indicted, in any of these investigations. And when you indict the entire Democratic party, sir, you indict me.

I would at your convenience be happy to swear and affirm under oath before the attorney general, and subject myself to cross examination at any length, to the fact that I have discussed matters with members of both delegations as to how they felt on a particular issue; I have never told anyone how to vote, and no one has asked or told me how to vote. Thank you very kindly, Mr. President.

VICE PRESIDENT ROMNEY: Thank you, Delegate Kelsey. May the Chair just say that he would be very happy to see you make such a statement to the attorney general. The Chair made no statement of the character you have indicated with respect to you, and certainly thinks you would be entirely within your rights to make such a statement.

Is there any other matter to come before the convention?

SECRETARY CHASE: There is nothing on the desk, Mr. President.

VICE PRESIDENT ROMNEY: The Chair will recognize Mr. James Rood.

MR. ROOD: Mr. President, I move that the convention do now adjourn.

VICE PRESIDENT ROMNEY: You have heard the motion. Those in favor say aye. Those opposed?

We stand adjourned until 4:00 o'clock Monday afternoon.

[Whereupon, at 4:10 o'clock p.m., the convention adjourned until 4:00 o'clock p.m., Monday, March 19, 1962.]

ONE HUNDRED SECOND DAY

Monday, March 19, 1962, 4:00 o'clock p.m.

PROCEEDINGS

PRESIDENT NISBET: The convention will please **come to order.**

Our **invocation** today will be given by the pastor of Dave Upton's church, the Reverend Dr. Edward W. W. Lewis of the First Congregational Church of St. Joseph. Reverend Lewis.

REVEREND LEWIS: Let us bow our heads in prayer. Eternal God, who didst lead our fathers to bring forth in this land a new nation conceived in liberty and dedicated to the thought and practice of justice and dignity for all, give Thy grace to us, their children, that we may be ever mindful of Thee without whom no law can prevail, no people prosper or dwell secure.

Forgive us for seeking to enrich and to exalt ourselves and for striving for personal and selfish preferences at great strain and cost to others. O God of our fathers, turn us to Thee in hearty repentance and true humility and teach us Thy will, which is the only good and lasting constitution for people everywhere.

We praise and bless Thee for the liberty, freedom and good will which now prevail in this land we love. We thank Thee that Thou hast inspired devoted men and women on the local, state and national level to work for progress in free enterprise; to help promote public education; to stand firmly and nobly against cruel and humiliating discriminations and to serve faithfully the government and people of this greatest republic the world has ever known.

Give us wisdom; give us devotion; give us conviction that we may overcome the threat of atheistic communism — overcome defensively by complete military preparedness and scientific advance — overcome offensively by seeking first Thy kingdom and Thy righteousness.

Therefore, our Father God, as constitutional convention leaders seeking Thy guidance and as Americans dedicated to Thy cause, we pledge anew our allegiance to this land, where our fathers made freedom ring and, like them, we would reaffirm our hallowed promise that "in God We Trust" and know that the star spangled banner shall always wave "o'er the land of the free and the home of the brave," for in Christ's name we pray. Amen.

PRESIDENT NISBET: The **roll call** will be taken by the secretary. Those present, please vote aye. If you are present, please vote aye. Have you all recorded your presence? If so, the secretary will lock the machine and record the attendance.

SECRETARY CHASE: Mr. President, a quorum of the convention is present.

Prior to today's session, the secretary received the following requests for leave: Messrs. Baginski, Haskill and McAllister, who is having car trouble, wish to be excused temporarily; Mr. Ford, for personal business reasons; Mr. Dean Doty, who is not feeling too well, and Messrs. McCauley and Tweedie wish to be excused from today's session; Mr. Follo wishes to be excused from the sessions of today and tomorrow; Mr. Page wishes to be excused from today's session because of a directors' meeting, and from the sessions of Tuesday and Wednesday to fill con con speaking engagements; and Mrs. Koeze, indefinitely, because of illness.

PRESIDENT NISBET: Without objection, the requests are granted.

SECRETARY CHASE: Absent with leave: Mr. Baginski, Mrs. Conklin, Messrs. Dade, Dean Doty, Everett, Follo, Ford, Garvin, Haskill, Higgs, Hoxie, Mrs. Koeze, Messrs. Lawrence, McAllister, McCauley, Mosier, Page, Rush, Snyder, Suzore and Tweedie.

Absent without leave: Messrs. Bledsoe, Boothby, T. S. Brown, Donald Doty, Mrs. Daisy Elliott, Messrs. Heideman, Krolikowski, Seyferth, Stamm and Young.

PRESIDENT NISBET: Without objection, the delegates are excused.

[During the proceedings the following delegates entered the chamber and took their seats: Mrs. Daisy Elliott, Messrs. Baginski, Bledsoe, Boothby, Donald Doty, Everett, Garvin, Haskill, Krolikowski, Lawrence, McAllister, Seyferth, Stamm and Young.]

Reports of standing committees.

SECRETARY CHASE: No committee reports, Mr. President.

PRESIDENT NISBET: Communications.

SECRETARY CHASE: No communications.

PRESIDENT NISBET: Second reading. The Chair recognizes Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, I move that the order of second reading be passed for the week.

PRESIDENT NISBET: The question is on the motion of Mr. Van Dusen. Those in favor will say aye. Opposed, no.

The motion prevails.

Third reading.

SECRETARY CHASE: Nothing on that calendar.

PRESIDENT NISBET: Motions and resolutions.

SECRETARY CHASE: Nothing on that calendar.

PRESIDENT NISBET: Unfinished business.

SECRETARY CHASE: None.

PRESIDENT NISBET: **General orders.** The Chair recognizes Mr. Millard.

MR. MILLARD: Mr. President, I move that the convention resolve itself into committee of the whole for the purpose of taking up matters on the general orders calendar.

PRESIDENT NISBET: The question is on the motion of Mr. Millard. Those in favor will say aye. Opposed, no.

The motion prevails. Mr. Millard.

[Whereupon, Mr. Millard assumed the Chair to preside as chairman of the **committee of the whole.**]

CHAIRMAN MILLARD: The committee will be in order and the secretary will read.

SECRETARY CHASE: Item 3 on the calendar, from the committees on executive branch and legislative powers, by Messrs. Martin and Hoxie, chairmen, **Committee Proposal 70,** A proposal to revise provisions of section 36 of article V regarding the veto power of the governor.

Following is Committee Proposal 70 as read by the secretary, and the reasons submitted in support thereof:

The committees recommend that the following be included in the constitution:

Sec. a. Every bill passed by the legislature shall be presented to the governor before it becomes a law; [. If he approve, he shall sign it; if not, he shall return it with his objections to the house in which it originated, which shall enter the objections at large upon its journal and reconsider it. On such reconsideration, if 2/3 of the members elected agree to pass the bill, it shall be sent with the objections to the other house, by which it shall be reconsidered. If approved by 2/3 of the members elected to that house, it shall become a law. In such case the vote of both houses shall be determined by yeas and nays and the names of the members voting for and against the bill

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Explanation—Matter within [ ] is stricken, matter in capitals is new.

shall be entered on the journals of each house, respectively. If any bill be not returned by the governor within 10 days, Sundays excepted, after it has been presented to him, it shall become a law in like manner as if he had signed it, unless the legislature, by adjournment, prevents its return, in which case it shall not become a law. The governor may approve, sign and file in the office of the secretary of state within 5 days, Sundays excepted, after the adjournment of the legislature any bill passed during the last 5 days of the session, and the same shall become a law.] AND THE GOVERNOR SHALL HAVE 14 DAYS MEASURED IN HOURS AND MINUTES FROM THE TIME OF PRESENTATION IN WHICH TO CONSIDER IT.

IF HE APPROVES, HE SHALL WITHIN THAT TIME SIGN AND FILE IT WITH THE SECRETARY OF STATE AND IT SHALL BECOME A LAW.

IF HE DOES NOT APPROVE, AND THE LEGISLATURE HAS WITHIN THAT TIME FINALLY ADJOURNED ITS SESSION AT WHICH THE BILL WAS PASSED, IT SHALL NOT BECOME A LAW.

IF HE DOES NOT APPROVE, AND THE LEGISLATURE CONTINUES ITS SESSION AT WHICH THE BILL WAS PASSED, HE SHALL RETURN IT WITHIN SUCH 14 DAY PERIOD, TOGETHER WITH HIS OBJECTIONS, TO THE HOUSE IN WHICH IT ORIGINATED, WHICH HOUSE SHALL ENTER THE OBJECTIONS AT LARGE UPON ITS JOURNAL AND RECONSIDER IT. IF 2/3 OF THE MEMBERS ELECTED AND SERVING IN THAT HOUSE AGREE TO PASS THE BILL NOTWITHSTANDING THE OBJECTIONS OF THE GOVERNOR, IT SHALL BE SENT WITH THE OBJECTIONS TO THE OTHER HOUSE BY WHICH IT SHALL BE RECONSIDERED. IF APPROVED BY 2/3 OF THE MEMBERS ELECTED AND SERVING IN THAT HOUSE IT SHALL BECOME A LAW. THE VOTE OF EACH HOUSE SHALL BE DETERMINED BY YEAS AND NAYS AND THE NAMES OF THE MEMBERS VOTING FOR AND AGAINST THE BILL SHALL BE ENTERED UPON THE JOURNAL. IF ANY BILL BE NOT RETURNED BY THE GOVERNOR WITHIN SUCH 14 DAY PERIOD, THE LEGISLATURE CONTINUING IN SESSION, IT SHALL BECOME A LAW IN LIKE MANNER AS IF HE HAD SIGNED IT.

Messrs. Hoxie and Martin, chairmen of the committees on legislative powers and executive branch, submit the following reasons in support of Committee Proposal 70:

The committee proposal is intended to clarify the method of computing the 14 days which would be given to the governor to consider whether he shall approve or veto bills passed by the legislature. Until 1961 the practice had been to compute that time by hours and minutes from the time the bill was presented to the governor. In 1961 the attorney general ruled that the time was to be computed as at the common law; i.e., the day could not be divided, the day of presentation is not included. The committee proposal would reinstate the traditional method.

In examining the present veto provision in the constitution, it is apparent that everything is not spelled out in the language. Nothing seems to limit the period of time during which a governor might positively approve a bill although this is now understood to be 10 days. The last sentence, which says that the governor may approve within 5 days after the end of a session any bill passed during the last 5 days of the session, does not take into account that the period of the governor's consideration is usually measured from the time of an enrolled bill's presentation to him rather than from the time of passage by the legislature.

The present proposal is intended to make clear what happens in every case.

(1) The governor shall have 14 days in which to consider a bill; and his 14 day period for consideration and approval will not be affected by whether or not the legislature adjourns its session.

(2) If during that period he signs the bill, it becomes a law.

(3) If during that period he does not sign the bill, and the legislature has adjourned its session, the bill does not become a law.

(4) If during that period he does not approve, he must send it back to the house of origin, if the legislature is still in session for consideration of his veto.

(5) If during that period he neither approves nor returns the bill with a veto message, the legislature continuing in session, it becomes a law as if he had signed it.

The time for consideration by the governor has been extended from 10 to 14 days in accordance with testimony by former governors that some additional time is desirable.

Following is the minority report to Committee Proposal 70 as offered and the reasons submitted in support thereof:

Messrs. Downs, Lesinski and Murphy, a minority of the committee on legislative powers, submit the following minority report to Committee Proposal 70:

A minority of the committee recommends that the following be included in the constitution:

On line 15, "IT. IF 2/3 OF THE MEMBERS ELECTED [AND SERVING] IN THAT HOUSE".

On line 19, "BY 2/3 OF THE MEMBERS ELECTED [AND SERVING] IN THAT HOUSE IT".

Messrs. Downs, Lesinski and Murphy, a minority of the committee on legislative powers, submit the following reasons in support of the foregoing minority report, which accompanied Committee Proposal 70:

This will restore the original language and be consistent with other parts of the constitution.

CHAIRMAN MILLARD: The Chair will recognize the chairman of the committee, the delegate from Grand Rapids, Mr. Martin.

MR. MARTIN: Mr. Chairman and fellow delegates, the committee on executive branch has submitted Committee Proposal 70 in conjunction with the committee on legislative powers. The proposal has to do with the executive veto and the committees have proposed that we extend slightly the time for the veto from 10 to 14 days and that we make it clear that the executive have 14 days in which to approve or veto, regardless of whether the legislature adjourns in the meantime or not. I want to call on Mr. Hutchinson to discuss the proposal but since the committee on legislative powers also shared in this — Mr. Hoxie is not here — Mr. Kuhn, do you have a statement you'd like to make at this time? I yield to Mr. Kuhn, Mr. Chairman.

CHAIRMAN MILLARD: The Chair will recognize Delegate Kuhn.

MR. KUHN: Mr. Chairman and members of the committee, I had nothing to do with this section. I think Stanley Powell, if he was here — Mr. Powell is not here, I would think our committee would pass.

MR. MARTIN: In that event, I will yield to Mr. Hutchinson to discuss the details of the proposal.

CHAIRMAN MILLARD: The Chair recognizes the vice president, Delegate Hutchinson.

MR. HUTCHINSON: Mr. Chairman, the only substantive change intended in this proposal as compared with the present constitution, is largely what Mr. Martin mentioned. The idea is to give the governor 14 days instead of the 10 days, Sundays excepted, which he now has, in which to consider every bill.

The next point in this proposal, which is not clear in the present constitution, is the measurement of the time which the governor may have for the consideration of each bill. The constitution has always said that the governor shall have 10 days, Sundays excepted. This language was taken from the Constitution of the United States, "10 days, Sundays excepted." The federal practice and the practice in the state of Michigan

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Explanation—Matter within [ ] is stricken, matter in capitals is new.

up until a year ago was that this 10 day period, Sundays excepted, was to be measured in hours and minutes from the time that the bill was presented to him for approval or disapproval. A year ago the attorney general advised the governor that that 10 day period was, in the attorney general's opinion, to be measured in the manner of the common law. Now, in the common law, you cannot divide days. A day is indivisible and so in the common law, since you can't divide days, the day of presentation was not to be counted and the tenth day, Sundays excepted, following the day of presentation was an indivisible day, so that if the governor approved a bill at any time during that day, presumably before midnight of that day, it was a law. This opinion of the attorney general flew in the face of what had been the time honored practice both in Michigan and, as I understand it, in the federal system — actually to measure this time by hours and minutes. So the second point of change in this proposal as compared with the present constitutional provision is merely an attempt at clarification, to make it clear that this time for consideration by the governor will be measured by hours and minutes, as it has been traditionally in the past.

Now, this language in this proposal is intended to spell out clearly what actually does take place. The traditional language, as has been found in every constitution in Michigan and is the language of the Constitution of the United States, doesn't spell out everything. This proposal here before you does. It doesn't introduce anything new because the governor always has had a pocket veto and he always has had 10 days, Sundays excepted, in which to approve a bill. And it always has been the constitutional provision that if he didn't approve it within that period and the legislature was in session, he had to return it to them. But there were 2 or 3 other combinations of circumstances that were not spelled out in that traditional language, that had been resolved by practice. As the thing actually worked, there was no confusion about it but as a student in a school would read that language in the traditional form, or anyone who would undertake to analyze that language which is in the traditional form, there were some things that weren't spelled out. This proposal does spell it out.

Keep in mind that the time for consideration by the governor is not to be measured from the time that the bill passes the legislature. Instead, it is to be measured by the time from presentment. What happens is this: let us assume that we have a senate bill, a bill originally introduced into the senate. It passes the senate and it passes the house and presumably in a different form. Then the 2 houses have to agree to it in a conference, but it finally is adopted by both houses in a particular form. Then, it being a senate bill, it becomes the duty of the secretary of the senate to print that bill in the form in which it was finally adopted and it is the duty of the secretary of the senate, since it was a senate bill, to present that bill to the governor. Sometimes a bill can be speedily printed, sometimes it takes 2 or 3 weeks to get a bill printed, if it's a great big thick bill and there's an awful lot of other bills also to be printed. So the time for measurement of the governor's consideration is to be measured from the time of its presentment and it is presented by the secretary of the senate in the case of a senate bill, or by the clerk of the house in the case of a house bill. Then this proposal spells it out clearly that the governor shall have 14 days measured in hours and minutes from the time of presentation during which time he may consider. And then if he approves that bill, he must approve it within that 14 day time and he shall sign it and he files it with the secretary of state and it becomes a law.

I might parenthetically mention that by spelling it out in the constitution here that the approved acts of the governor shall be filed with the secretary of state, here you are in effect vesting in the secretary of state a constitutional power, because the secretary of state then constitutionally will be the officer which must receive it. Now, if the governor does not approve, and within that 14 day time the legislature has finally adjourned its session, then the bill does not become a law. That is a pocket veto. We have a pocket veto under the present system. We will continue to have a pocket veto under the new system.

I might say that the legislature of Michigan many, many, many years ago devised a procedure whereby the likelihood of pocket vetoes are largely nonexistent in Michigan because the legislature, in order to avoid the possibility of pocket vetoes, instead of adjourning finally its session — adjourning sine die — the legislature by its rules usually takes what it calls a short adjournment. That adjournment under its present rules I believe is 34 days. After the work of all of the session is completed, the legislature adjourns for 34 days. During that 34 day period, the secretary of the senate and the clerk of the house are able to submit to the governor in a fashion that to some extent I suppose is for the accommodation of the governor in his work load. That is, they don't present all of these bills all at once. They feed them in to the governor in a kind of a work load state so that the governor won't feel unnecessarily swamped. And over this 34 day period the governor has this constitutional time in which to consider these bills. Then the governor will have approved or he will have vetoed all the bills. The legislature then comes back to consider his vetoes, after which they adjourn the session sine die, — without day — and finally adjourns. So in that kind of an arrangement, the legislature has worked itself around and figured a way around the possibility of pocket vetoes. Nevertheless, constitutionally, just as the president of the United States has the right of a pocket veto, thus does the governor of Michigan now have the right of a pocket veto. This new proposal will permit the governor to have a pocket veto if the legislature has adjourned before the time has expired during which the governor may consider any bill.

Then this proposal goes on to say what the governor shall do if he does not approve a bill and the legislature continues in session. You've got to send the bill back and then the legislature has an opportunity to pass it over his veto. The machinery of the legislature's passing bills over the governor's veto is not changed here at all except in one respect, and I understand that there is a minority report with regard to this one respect. The proposal would permit the members of the legislature by a 2/3 vote in each house of the members elected and serving to pass a bill over the veto; elected and serving. The present language says simply "elected". This idea of introducing this "and serving" in here is in order to permit 2/3 of the actual membership of the legislature to act. If you say that there must be 2/3 of 34 senators to concur to override a veto, when as a matter of fact there are only 32 senators, then you have 2 dead men who are voting, you see. The same thing is true in the house. Consequently, this "and serving" is introduced in here in order to permit actual memberships to perform and not to let a vacancy have any count one way or the other in arriving at the outcome of the decision. I believe that that explains this matter. I don't think that there is anything else in here that is different from what the present constitution provides.

I might make this one observation in closing. The veto power of the governor is not strictly an executive function. It is strictly a legislative function. What I mean to say is that by giving to the governor a veto, you permit him to enter into the legislative branch of the government. And this is as it should be because it is one of our great checks and balances in our system. By this means we give the executive an opportunity to check the legislative branch. On the other hand, the legislative branch in our system has fashioned into it other checks upon the executive, such as the matter of advice and consent, such as the matter of impeachment and so on. So this is one of those great traditional checks which we place in a branch of government other than the one which, if you were thinking about it purely as a pure matter, it wouldn't be there at all because the veto function is part of the law making function. It is legislative in character but it is a part of the legislative function which we have traditionally vested in the governor and which we will continue to do under the new constitution.

CHAIRMAN MILLARD: Mr. Martin.

MR. MARTIN: Mr. Chairman, only one other comment. The 14 day period permits the legislature to submit the bill on a working day and because of the 14 days, the period in which the governor must take action would always come to an end on a working day.

CHAIRMAN MILLARD: The Chair recognizes Dr. Nord, a delegate from Detroit.

MR. NORD: Mr. Chairman, I would like to ask Mr. Hutchinson some questions, if I may.

CHAIRMAN MILLARD: If Mr. Hutchinson cares to answer them.

MR. NORD: I have 2 groups of questions. One of them is a single question. The other one has 3 parts to it. The first question has to do with the language as it presently is in the constitution and which will be retained in the first sentence. It says "Every bill passed by the legislature shall be presented to the governor before it becomes a law." The question I had in mind is this: am I correct in recalling that in the case of initiative that a proposal originating by initiative later on can be adopted by the legislature and it does not require the approval of the governor? Am I correct as to that? Do you recall that particular point?

MR. HUTCHINSON: Yes, Mr. Nord, I think you are correct, but I also point out to you that that is not treated as a bill. The legislature in its one experience under the initiative legislation provision of the constitution declared on its records that that was not a bill.

MR. NORD: Okay. Therefore there is no problem of inconsistency in your opinion?

MR. HUTCHINSON: No.

MR. NORD: The other group of questions has to do with the effect of changing to the business of measuring in hours and minutes. What I was concerned about was whether that might have been due to some problems as to when a certain event occurs, which might not otherwise be a problem. For example, these are the 3 questions that occurred to me in reading this: one, in line 2 of the second page it refers to the time of presentation. I would like to ask you whether you think it's clear exactly what time that would be. Is there any problem about when the time of presentation might be?

MR. HUTCHINSON: Mr. Nord, I do not see any problem there, perhaps because I know so intimately how this matter actually works procedurally. The secretary of the senate or the clerk of the house, as the case may be, delivers to the governor's office this enrolled bill and accepts a receipt from the governor's office, in which the time expressed in hours of the time of the day is set forth.

MR. NORD: The question I had in mind is: would it be when the governor himself receives it or when it is received in his office?

MR. HUTCHINSON: It would be from the time of presentation in his office. You might direct the question to the secretary of the convention. He is the man here who from actual experience knows precisely how he has delivered it or whether he actually delivered it to the governor in person or not, but I don't think he did.

MR. NORD: I won't do that as long as you feel there is no ambiguity on that point. Now, the next point relating to when a certain thing occurs has to do with line 5 on page 2 where it says, "If he approves, he shall within that time sign and file it. . . ." "Sign and file it. . . ." Would you say that he must file it with the secretary of state within that time or only sign it, or what do you think? Is there any problem there?

MR. HUTCHINSON: I think that if he signs it within that time, that there wouldn't be any problem about whether he actually got it into the secretary of state's hands within that time. If he actually signed it within that time, then the filing with the secretary of state is just perfunctory. There is no reason to believe that it would not actually be filed with the secretary of state's office the same day.

MR. NORD: The same day, of course, won't be good enough under the measuring in hours and minutes.

MR. HUTCHINSON: We are talking about measuring in hours and minutes of the time during which the governor may sign it. If he signs it within that time, what he will do — at least, I've seen bills signed by the president of the United States in which he puts the hour of the day at which he signs it. This could be handled the same way, "Approved such and such a date, 10:22 a.m."

MR. NORD: I assume, Mr. Hutchinson, if I may say so —

CHAIRMAN MILLARD: Will you address your questions through the Chair so that the rest of the delegates can follow this discussion.

MR. NORD: I will, Mr. Chairman. Then, Mr. Hutchinson, through Mr. Chairman, am I correct in assuming then that if there is any problem about this, style and drafting could take care of it, assuming there is any problem on that point?

MR. HUTCHINSON: Mr. Chairman, if there is a problem along that point, if in the judgment of style and drafting this isn't precisely clear, I can assure Mr. Nord that as a member of that committee, I shall make every effort to clarify it. It didn't occur to me that it was unclear. I don't think it to be but I will bow to the judgment of other minds as well as my own on it.

MR. NORD: Mr. Chairman, the final question along this same line has to do with line 11 on page 2, which says," . . . he shall return it. . . ." Again, Mr. Chairman and Mr. Hutchinson, I would simply like to be sure that there is no problem about when it is that he returns it. Is there any difficulty as to that?

MR. HUTCHINSON: Mr. Chairman, it says that "he shall return it within such 14 day period," that is to say, measured in hours and minutes, "together with his objections to the house in which it originated. . . ." The way that he actually returns it is that in case of a senate bill he addresses his communications to the president of the senate but actually delivers it to the secretary and the secretary reads in the veto message to the next session of the senate.

MR. NORD: Mr. Chairman, Mr. Hutchinson, I assume then that there are no serious problems here, and I will thank Mr. Chairman and Mr. Hutchinson for the answers.

MR. HUTCHINSON: Thank you, Mr. Nord.

CHAIRMAN MILLARD: The Chair thinks we will have the minority report now, if there is no one else to speak.

[Following is the minority report amendment:

1. Amend page 2, line 15, after "elected" by striking out "and serving"; and in line 19, after "elected" by striking out "and serving".]

The Chair will recognize one of the proponents of the minority report amendment, Mr. Lesinski.

MR. LESINSKI: Mr. Chairman, at this time the minority withdraws the minority report. We made a protest because of the inconsistency of the language with other sections. I have received the assurance that the words "and serving" will be used in other sections for consistency. Thank you.

CHAIRMAN MILLARD: Without objection, it is withdrawn. Are there any other amendments on the desk, Mr. Secretary?

SECRETARY CHASE: None on file, Mr. Chairman.

CHAIRMAN MILLARD: If not, this proposal will be passed.

Committee Proposal 70 is passed. The secretary will read.

SECRETARY CHASE: Item 4 on the calendar, from the committee on executive branch, by Mr. Martin, chairman, **Committee Proposal 75,** A proposal to provide for compensation of state officers. Amends article VI, section 21.

Following is Committee Proposal 75 as read by the secretary, and the reasons submitted in support thereof:

The committee recommends that the following be included in the constitution:

Sec. a. The governor, LIEUTENANT GOVERNOR, secretary of state, state treasurer, [auditor general,] and attorney general shall each receive such compensation as

Explanation—Matter within [ ] is stricken, matter in capitals is new.

shall be prescribed by law which shall be in full for all services performed and expenses incurred during his term of office: Provided, That the same shall not be changed during the term of office for which elected[.] EXCEPT AS OTHERWISE PROVIDED IN THIS CONSTITUTION.

Mr. Martin, chairman of the committee on executive branch, submits the following reasons in support of Committee Proposal 75:

Article VI, section 21, relating to salaries and expenses of state officers has been amended to include the lieutenant governor and to eliminate the auditor general. The words, "EXCEPT AS OTHERWISE PROVIDED IN THIS CONSTITUTION," are added at the end of the section to eliminate any possible conflict with the provision which permits the payment of the same compensation as the governor shall receive to those state officers who have the powers and duties of the office of governor devolve upon them as provided in the constitution.

The elimination of a reference to an auditor general is required by the decision of the committee to eliminate this office from the executive branch.

With the exception of the changes noted above, this language came into the Constitution of 1908 by way of amendment in 1948.

CHAIRMAN MILLARD: The Chair will recognize the chairman of the committee, Mr. Martin.

MR. MARTIN: Mr. Chairman, Mr. King was chairman of the subcommittee which handled this matter. I will call on him for a statement at this time.

CHAIRMAN MILLARD: The gentleman from Pontiac, Mr. King.

MR. KING: Mr. Chairman, I'd like to ask Jim Sterrett, one of the members of this subcommittee, to explain this section.

CHAIRMAN MILLARD: The Chair will recognize Delegate Sterrett.

MR. STERRETT: Mr. Chairman, members of the committee, this proposal is essentially the same as that contained in the 1908 constitution which was put in by way of an amendment in 1948. This pertains to article VI, section 21, relating to the salaries and expenses of state officers and has been amended to include the lieutenant governor. We have added the words "except as otherwise provided in this constitution" because there is other mention in Committee Proposal 72 for compensation of the lieutenant governor and other officers. I believe there is no more to be said about this and I will pass at this time.

CHAIRMAN MILLARD: Are there any amendments to the proposal on the desk?

SECRETARY CHASE: None on file, Mr. Chairman.

CHAIRMAN MILLARD: If not, it will be passed.

Committee Proposal 75 is passed. The secretary will read.

SECRETARY CHASE: Item 5 on the calendar, from the committee on executive branch, by Mr. Martin, chairman, **Committee Proposal 72,** A proposal to provide for compensation of acting governor. Retains section 18 of article VI.

Following is Committee Proposal 72 as read by the secretary, and the reasons submitted in support thereof:

The committee recommends that the following be included in the constitution:

Sec. a. The lieutenant governor or other state officer in the line of succession, while performing the duties of governor, shall receive the same compensation as the governor.

Mr. Martin, chairman of the committee on executive branch, submits the following reasons in support of Committee Proposal 72:

The committee recommends no change in this section. The unanimous opinion of the committee is that any state officer acting in the capacity of governor should receive the compensation of that office. No difficulty has been encountered under the present provision.

CHAIRMAN MILLARD: The Chair recognizes Mr. Martin.

MR. MARTIN: I will yield to Mr. King, Mr. Chairman.

CHAIRMAN MILLARD: The Chair will recognize Delegate King.

MR. KING: Mr. Chairman, fellow delegates, this wording is precisely the same wording which was in the 1908 constitution. It provides that the lieutenant governor or other state officer in line of succession will receive the same compensation as the governor when he is serving in that capacity. And that is why, as Mr. Sterrett pointed out, we added the last few words in Committee Proposal 75, "except as otherwise provided in this constitution." We made no change. If there are any questions, I'd be glad to answer them.

CHAIRMAN MILLARD: The Chair will recognize Delegate Hutchinson.

MR. HUTCHINSON: Mr. Chairman, I'd like to ask Mr. King whether the committee did any research into whether this particular provision has ever caused any controversy in state government.

MR. KING: We could not find any indication of that. It is our understanding when the governor is out of the state, he is not acting as governor and in those events, the lieutenant governor is allowed to step into that capacity and be compensated accordingly.

MR. HUTCHINSON: Mr. Chairman, I'd like to then, for the enlightenment of the membership of the committee of the whole, simply relate that because of an experience that did arise out of this matter, I think in the year of 1937, to my knowledge, no acting governor has ever even claimed any additional compensation while the governor was out of the state.

I don't know of any lieutenant governor that ever got the compensation of the governor during the time that he was acting as governor. My recollection is that back in 1937 — I believe it was when Mr. Nowicki was lieutenant governor — Governor Murphy left the state for about a month and the lieutenant governor, acting as governor for that month, claimed to get the pay of the governor for that month. Well, apparently, you see, the legislature had appropriated only so much money for the compensation of the governor. The question arose, I suppose, as to whether the lieutenant governor was to get the pay that the real governor, who had been not acting during that month, whether he was also entitled to pay or whether he wasn't. And so they just kind of backed away from it and they never did settle it. I submit to you, sir, that this language here for all practical purposes is a nonentity. It means nothing. If this constitutional convention wants to make it mean something, it will have to do something different than write these words back in here.

MR. KING: Mr. Chairman, could I ask Mr. Hutchinson a question?

CHAIRMAN MILLARD: If he cares to answer.

MR. KING: Was it the Legislature of the state of Michigan that decided this constitutional issue or was it tested in the court?

MR. HUTCHINSON: I'm sorry, Mr. Chairman, I don't know how far it got; but I think it is generally known around state government that Mr. Nowicki didn't get the money, even though I presume he was entitled to it.

MR. KING: Well, we can't mandamus the legislature. I think we've all agreed to that.

MR. HUTCHINSON: No, but Mr. Chairman, I could suppose they could have mandamused the state treasurer and directed him to pay out so much money based upon this. They didn't do it.

MR. KING: Mr. Chairman, may I ask —

MR. HUTCHINSON: I would be very happy, Mr. Chairman, if Mr. King would be so kind as to have Mr. Brake speak upon it. He is a former state treasurer. Maybe he knows more about this than I do.

MR. KING: Fine.

CHAIRMAN MILLARD: Do you yield to Mr. Brake?

Explanation—Matter within [ ] is stricken, matter in capitals is new.

MR. KING: Yes, indeed.

CHAIRMAN MILLARD: The Chair will recognize Delegate Brake.

MR. BRAKE: Mr. Chairman, if the senator is looking for evidence, I can add a little. In 1952 at the time of the presidential inauguration, all of my superiors went to Washington and it got clear down to me and I was acting governor for 3 days and they never paid me a penny. (laughter) That I don't mind at all. But Governor Williams' staff saw to it that I didn't get even the chance to appoint a notary public and I wanted a chance to kind of flex my muscles a little bit, you know. (laughter)

MR. KING: Mr. Chairman, I think the wording here goes a little bit further in any event than might have been indicated. It seems to me this wording states that whoever acts in the stead of the governor shall receive the same compensation as the governor. Now the question arises, interpreting the present language in the constitution, as to whether or not one becomes governor upon the succession to the office of governor in the event of the absence of the governor. It is my understanding that they don't fill the vacancy of lieutenant governor nor does anyone else move up behind it. So this language, as I understood it, was meant to cover those situations, one, where the governor actually is removed from office or dies; and secondly, because we felt this was the intent of the language and had no idea that it was not the way it had been carried out in the past, we felt that the lieutenant governor should also receive the compensation of the governor when acting in that capacity.

CHAIRMAN MILLARD: Mr. Hutchinson.

MR. HUTCHINSON: I would like to ask Mr. King a question, if I may. Mr. King, let us assume then, as I understand you now, that the intent of this language is to assure that whoever succeeds to the governorship in the case of a vacancy shall be entitled to the same pay as the governor receives. In that case, Mr. King, would not the person who succeeds thereupon become the governor? My recollection is that when Governor Fitzgerald died, that Lieutenant Governor Dickinson took the oath of office and thereupon became governor. Now, I know that, way back in the history of our state, when some earlier governors resigned or at least maybe they just left the state to become members of the president's cabinet, that the lieutenant governor acted as governor and they called themselves "acting governors". But in recent times, the concept is that if there is an actual vacancy in the office of governor, the line of succession would make the officer who succeeds, the governor himself and there would be no problem then about the compensation, would there, Mr. King?

MR. KING: Mr. Hutchinson, I refer you to the present constitution, section 17 of the executive article, wherein it says — I'll read the whole thing:

> After the lieutenant governor, the line of succession and order of precedence of state officers, who shall act as governor, shall be secretary of state, attorney general, state treasurer and auditor general, and during a vacany in the office of governor, if the lieutenant governor or any state officer or officers in this line of succession die, resign, be impeached, displaced, be incapable of performing the duties of office, or be absent from the state, leaving no state officer prior in the line of succession to fill the office of governor, the state officer next in line of succession shall act as governor during the residue of his term or until the absence or disability giving rise to the succession ceases.

I don't know how the legislature interprets this word "act" but I interpret it to mean act.

MR. HUTCHINSON: Mr. Chairman, I would simply like to observe that it seems to me as though this constitutional convention should clarify the language which Mr. King has just read, for it seems to me that there are 2 different situations here. One is the situation where, in the absence of the governor — because of absence from the state primarily — someone else must act as governor, stay in the state and act as governor. That's one problem. There isn't any real vacancy in the office of governor there. The other problem is when the office of governor becomes vacant. In that case, the man who succeeds should thereupon be governor, it would seem to me — I'm sure that that's my feeling anyway, just as Mr. Dickinson became governor on the death of the governor — so if there is an actual vacancy in the office of governor in the future, the man who succeeds would thereupon be governor, just as the vice president becomes president.

I think that there are 2 different situations here that we must distinguish between and I am frank to say that your suggestion that this language we are now debating here in Committee Proposal 72 was perhaps intended only to apply to situations where there is an actual vacancy in the office of governor, that while I hadn't ever supposed it was intended to be so, now if that's all it means, I submit that the matter could better be handled by rearranging the language having to do with succession to the governorship than to have this thing in here. Because as I say, this would simply cause confusion.

MR. KING: Mr. Chairman, I don't want to get into section 17 at this time because we haven't discussed it and we made some rather major changes in that area. If senator Hutchinson has some suggestions, I'd be glad to hear them out. Perhaps this is a matter he would like to take care of in style and drafting. I don't know. (laughter) But I'd appreciate any amendments if he has them at this time.

MR. MARTIN: Mr. Chairman.

CHAIRMAN MILLARD: The chairman of the committee still has the floor. Mr. Martin.

MR. MARTIN: Mr. Chairman, the wording was left as it is because there is a wide difference of opinion among the states as to whether one who succeeds to the office of governor becomes the governor or whether he remains the acting governor. This language was intended, I'm sure, originally, and since then to make it clear that if he does succeed to those responsibilities he draws the pay of the governor. There are some other complications. If he officially becomes governor, as Mr. Hutchinson would suggest, you have the problem as to a governor with respect to whom a disability has been determined so that he is found unable to function as governor. We have made some provision for that in another section but if the man who succeeds becomes governor instead of acting governor, then you have a problem as to what happens if the disability ceases and whether the governor then can take back his responsibilities or not when someone else has in the meantime become governor on the theory that Mr. Hutchinson proposes. So that it seemed to us better to leave the language in this form. It may be that we can clarify it further and we are certainly open to suggestion on that point. But that's the reasoning behind the committee proposal. I suggest that it be passed unless there are amendments and we will be happy to work with the committee on style and drafting on this point.

CHAIRMAN MILLARD: Do you yield the floor, Mr. Martin?

MR. MARTIN: Yes, I yield the floor.

CHAIRMAN MILLARD: The Chair recognizes the delegate from Detroit, Mr. Stevens.

MR. STEVENS: Mr. Chairman and members of the committee, I merely want to point out, I can remember when Mr. Nowicki asked for a month's pay and presumably never got it. It seemed at that time, looking literally at the constitution, that he was entitled to it. The only thing would be for the legislature to provide, possibly by a deficiency appropriation, for it.

In the matter of the time of the death of Governor Fitzgerald, I remember the attorney general issued an opinion, in which he says yes and no. The lieutenant governor was governor. It was all right to call him governor and he would get the pay of the governor. Apparently, this has not been too clear. The difficulty seems to be: how are you going to clarify it?

CHAIRMAN MILLARD: The Chair will recognize Delegate Garry Brown.

MR. G. E. BROWN: I pass.

CHAIRMAN MILLARD: There is an amendment on the secretary's desk. The secretary will read.

SECRETARY CHASE: Mr. Yeager offers the following amendment:

1. Amend page 1, line 5, by striking out all of the proposal.

CHAIRMAN MILLARD: The Chair will recognize the proponent of the amendment, Delegate Yeager.

MR. YEAGER: Mr. Chairman, ladies and gentlemen of the committee, it seems to me that this might be a solution to the problem here. If a permanent vacancy occurs by reason of death or some other major situation, that you will have a lieutenant governor taking over and the succession will be proper and there will be no administrative problem. If on the other hand there is a vacancy occurring of a temporary nature due to the absence of the governor or somebody in succession taking over, it seems to me that this should be part of their duty and additional compensation in this area, at least to me, is not indicated. I would suggest that we strike this section as being really a little archaic and unnecessary. Thank you.

CHAIRMAN MILLARD: Delegate King.

MR. KING: Mr. Chairman, Mr. Yeager, I don't want to discuss Committee Proposal 59 at this time because I wouldn't be in order if I did, but yet I can't answer this question or this suggested amendment without at least touching upon Committee Proposal 59. The governor can be unable to fulfill his obligations for a variety of reasons. In there, we provide for impeachment and conviction thereon, removal from office, death, inability, resignation or absence from the state. In all of these cases, the power shall devolve upon the lieutenant governor and so on down the line of succession. Now, this problem of inability has been a major problem in this country and it has never been solved, so far as we can determine, to any degree of satisfaction by any of the 50 states or of the federal government which you delegates will recall, I am sure. President Eisenhower, at 3 different times during his presidency, was confronted with serious illnesses and there was no provision — and there is none today — to provide for a method of determining when the vice president shall step in and take over the duties of that office.

Let's say that the lieutenant governor is forced to assume the duties of the governor for a period of time — not permanently, but perhaps temporarily — as a result of some sort of protracted illness. In those cases, we feel that the lieutenant governor ought to get the pay of the governor. As far as to whether he goes down to Toledo, Ohio, for the day or something like that, I'm not too concerned, and if the legislature can work this out within the present wording of the constitution, as apparently they have to their satisfaction in the past, that's wonderful. But I think this provides a lot to be in here for those more serious contingencies which we can foresee and we have provided for in Committee Proposal 59. So for that reason, I would definitely oppose the amendment.

CHAIRMAN MILLARD: Mr. Yeager.

MR. YEAGER: Mr. Chairman, I'd like to answer Mr. King in this way: it seems to me from what has been said here that the legislature has to act, whether this particular provision is in the constitution or not. And it would also seem to me that if it is removed and you had this inability to act situation, that the legislature could still appropriate sufficient money if it saw fit to do so. Does it require basic constitutional authority for the legislature to pay the lieutenant governor an additional sum under a special act or does it require part of the constitution?

MR. KING: Mr. Chairman, Mr. Yeager, I assume that the legislature could appropriate money. I assume that we could start off our constitution by saying, "There shall be a constitution as shall be provided by law," and we could all go home tonight. But I don't think that this necessarily answers all the problems. I think it ought to be in here; it definitely ought to be in here.

CHAIRMAN MILLARD: Mr. Martin.

MR. MARTIN: The amendment also ignores the problem that we may get into if it is presented to the court and the court holds that this man does not become governor no matter how well he is performing the duties. We want to make it clear that he does have that right to additional compensation. If you strike this out, then you get into the problem of the legislature raising the salary of a man who is already in office, which is generally frowned upon. So that it seems to me much better to continue this language until or unless we can find some better way of dealing with this problem than by trying to strike this out, which just creates additional problems that we will have to solve. I hope you will not vote for the amendment but give us additional time for consideration of this.

CHAIRMAN MILLARD: The Chair will recognize the gentleman from Lansing, Delegate Wanger.

MR. WANGER: Mr. Chairman, I desire to ask Mr. Martin a question through the Chair.

CHAIRMAN MILLARD: Mr. Martin, do you care to answer?

MR. WANGER: Mr. Martin, if a person must perform the duties of the governor for a period of several months, as could happen, might it not be that his personal expenses would be somewhat increased if he was to properly carry out his duties?

MR. MARTIN: That's unquestionably true. He would have all the ceremonial responsibilities of the governor and assume such responsibilities for entertainment and so on as the governor now pays for out of his own pocket. There is no question but what if he were to perform these duties over a long period of time, over an extended period of time, that he ought to be compensated on the same basis as the governor is compensated, and this should not depend entirely upon his actually succeeding to the office. The governor might be ill enough to prevent his performing his duties for a period of 4 or 5 months, and whoever handles his duties during that time should receive his compensation and that is covered by this.

CHAIRMAN MILLARD: The Chair recognizes Delegate Garry Brown.

MR. G. E. BROWN: Mr. Chairman, Mr. Martin, am I to understand that the language that you have in this proposal then relates only to those cases, or you contemplate that it would relate only to those cases where you have a person acting as governor when the governor is either out of the state or suffering from a disability for which he may be removed, or anything of that nature?

MR. MARTIN: It is intended to cover long periods of disability when the governor may not perhaps have been declared disabled but when he is not able to perform his duties and it is also intended to cover periods in which he actually succeeds to the responsibilities of the governor, that is, the governor has resigned, for example, or he dies, or something of that kind. So there are 2 possibilities there, in either of which event the person who succeeds, whether it is the lieutenant governor or someone else in the line of succession, ought to be compensated on the same basis as the governor is compensated.

MR. G. E. BROWN: Mr. Chairman, Mr. Martin, this could conceivably involve setting a time limit as to when compensation would start in that capacity.

MR. MARTIN: Yes, but setting a time limit doesn't solve the problem very well because we don't know exactly what the extent of those duties would be, if you say 2 weeks or 4 weeks or something like that. With this language, if it feels that the burden is unduly great, the legislature can appropriate additional money to take care of the salary of the person who is performing the governor's duties. It is very clear that it could do that under this language. If you strike the language out, however, you have the question immediately about increasing the salary of someone who is already serving the government.

MR. G. E. BROWN: Mr. Chairman, Mr. Martin, in view of the questions, apparently Mr. Martin isn't entirely satisfied with this language. In view of the matter of whether or not a time should be provided, whether or not the legislature shall provide by law as to when this compensation shall be paid, I will move that we pass over this proposal.

CHAIRMAN MILLARD: Motion has been made by Mr. Brown that we pass over this proposal. Until when?

MR. G. E. BROWN: As I understand it, the time certain is not set. That it be passed over until the next meeting of the committee of the whole. Is that not correct, Mr. Hutchinson?

Mr. Chairman, I would then direct a question to Mr. Martin. Does he feel that this language could be improved, that it could be improved by tomorrow, say, and have different committee language?

MR. MARTIN: Mr. Brown, if you want to move to pass this until we have considered Committee Proposal 60, which is the end of the chain of proposals for the executive branch. I have no objection. We will endeavor to see whether we can meet some of the questions that have been raised here.

MR. G. E. BROWN: Mr. Chairman, I would so move.

CHAIRMAN MILLARD: That means that you want to put it to the foot of the calendar? Is that it, Mr. Brown?

MR. G. E. BROWN: That's right.

MR. MARTIN: That is my understanding, Mr. Chairman.

CHAIRMAN MILLARD: Mr. Faxon, do you want to talk to this motion?

MR. FAXON: I was going to make the same suggestion.

CHAIRMAN MILLARD: Do you want to talk to this motion, Mr. King?

MR. KING: Yes, Mr. Chairman, indirectly.

CHAIRMAN MILLARD: Directly, the Chair wants it. (laughter)

MR. KING: I'll be very direct. I do not oppose the motion to pass at any time after Committee Proposal 59. Committee Proposal 60 comes after 59. We changed this batting order a little and as a result of that it's hard to argue for this without getting into another proposal which apparently is not completely germane. Committee Proposal 60 is the last one?

MR. MARTIN: That's right.

MR. KING: I have no objection to that. I can't conceive of any change in language which is going to make it any different; but I think perhaps the delegates might better understand it after we have discussed 59.

CHAIRMAN MILLARD: The question is on the motion to put Committee Proposal 72 at the foot of the calendar as far as the executive branch calendar is concerned. All in favor will say aye. Opposed, no.

The motion prevails. The secretary will read.

SECRETARY CHASE: Item 6 on the calendar, from the committee on executive branch, by Mr. Martin, chairman, **Committee Proposal 48,** A provision pertaining to ineligibility to hold office. A substitute for article VI, sections 14 and 15.

Following is Committee Proposal 48 as read by the secretary, and the reasons submitted in support thereof:

The committee recommends that the following be included in the constitution:

Sec. a. NO MEMBER OF THE EXECUTIVE BRANCH OF THE STATE SHALL HOLD ANY OTHER OFFICE OR POSITION FOR COMPENSATION UNDER THE UNITED STATES, THIS STATE, OR ANY POLITICAL SUBDIVISION OR AGENCY THEREOF.

Mr. Martin, chairman of the committee on executive branch, submits the following reasons in support of Committee Proposal 48:

This section replaces sections 14 and 15 in article VI. The purpose of this section is to prohibit dual officeholding by members of the executive branch of this state. Some flexibility is achieved by the addition of the qualifying phrase "for compensation." This allows members of the executive branch to hold positions on interstate commissions, school boards, and other such similar positions as long as they do not receive compensation. The committee does not feel that this provision would preclude a person serving in such a noncompensable position from receiving actual expenses or per diem compensation in lieu of expenses.

Explanation—Matter within [ ] is stricken, matter in capitals is new.

CHAIRMAN MILLARD: The Chair will recognize the chairman of the committee, Mr. Martin.

MR. MARTIN: Mr. Chairman, I will yield to Mr. Durst on this proposal.

CHAIRMAN MILLARD: The Chair will recognize Delegate Durst.

MR. DURST: Mr. Chairman, members of the committee, the proposal we have here is meant to replace sections 14 and 15 of article VI of the present constitution. Now, it actually was the judgment of our committee that we could do away with 14 and 15 without replacing it with anything because we thought that the proposition presented in those 2 sections were unlikely at this time. However, after due reflection by our committee we felt it was desirable to establish some general overall provision against dual officeholding. I would indicate that there is similar provision in sections 6 and 7 of article V dealing with the legislature and it may be possible for style and drafting to perhaps combine these 2 if they feel it desirable in their wisdom. I also understand that the committee on emerging problems has done some work on this. Whether they are coming out with a proposal, I don't know. I feel it is desirable to proceed with this section at this time and if there are further thoughts on the matter, they can be taken up at a later date.

What we have done here is prohibit any member of the executive branch from holding any other office or position. We have tried to create some flexibility by providing the words "for compensation." It is a problem both in this state and several states in this day and age when we have people serving on interstate commissions and so forth and advisory commissions, great lakes commissions and others of allowing people who are experienced in our state government of using their wisdom in these largely advisory capacities. Under this section, we think it would be possible for members of the executive branch, the governor or other members of the executive agency to serve in this type of capacity, and the only limitation we make is that they receive no compensation. This prevents a double interest here.

As the committee report points out, this would allow them to serve, for instance, on school boards, interstate commissions and other positions of that type. We have specifically stated in our committee report — we wish to emphasize this — that when we use the words "for compensation" we do not mean to prevent the receipt by the individual of his actual expenses or, in lieu of expenses, per diem compensation. We realize this perhaps could be an opening for some abuse of this provision, but in the total, if you are going to have some state officer traveling, we'll say to Ohio or New York to serve in an advisory capacity, it would be desirable that the state be able to compensate him for his actual expenses. I would say that the germ of this idea is taken from the Alaska constitution, where they have a provision pretty much the same, which prevents a member of their state government from serving in any other capacity for profit. We have changed the "for profit" to "compensation".

CHAIRMAN MILLARD: Mr. Martin, we're back to you.

MR. MARTIN: Mr. Chairman, I yield to anyone for any other questions, if there are any.

CHAIRMAN MILLARD: Mr. Hutchinson, do you want to ask a question of Mr. Martin?

MR. HUTCHINSON: I would be happy to ask it of Mr. Martin or Mr. Durst. I would like to ask Mr. Martin to elucidate further upon what is intended by the word "member" of the executive branch. Do you mean state officer in the executive branch or do you mean any employee or what do you mean by the word "member"? This is a new concept.

MR. MARTIN: The word "member," Mr. Hutchinson, is simply intended to mean an employee of the executive branch. It does not just relate to officers.

MR. HUTCHINSON: Mr. Chairman, does that include any person holding a position under the state civil service?

MR. MARTIN: It would include any person who holds a job for compensation under the state civil service, yes. It would not include, for example, the members of boards and

commissions who serve without compensation but who receive a per diem or who receive actual expenses. As you know, there are many people in that category in state government at the present time.

MR. HUTCHINSON: Mr. Chairman, I would then observe that while the members of the civil service commission would not be prohibited by this language, any employee in the system would be — unless they are nonsalaried.

MR. MARTIN: That's correct. I think that any person who was performing a full time responsibility for salary, for compensation would be covered by this but persons who were simply serving on a voluntary basis without compensation would not be.

CHAIRMAN MILLARD: The Chair will recognize Mr. Garry Brown.

MR. G. E. BROWN: Mr. Chairman, I'd like to direct a question to either Mr. Durst or Mr. Martin.

CHAIRMAN MILLARD: Which one?

MR. G. E. BROWN: Either. Mr. Durst, since he handled the presentation.

CHAIRMAN MILLARD: Mr. Durst, do you care to answer?

MR. G. E. BROWN: Mr. Durst, do you contemplate that the language that you have set forth in this proposal would preclude one serving as a notary public and receiving compensation therefor or as a member of the armed services reserve or anyone in that capacity?

CHAIRMAN MILLARD: Delegate Durst.

MR. DURST: First of all, Mr. Brown, it was not our feeling that a notary public was receiving any compensation from the United States or this state or any political subdivision. If he receives any compensation, it is for the service he renders as a notary public to some other individual.

Now, as far as concerns a person serving in the armed services reserves, frankly, this had not occurred to us. I don't suppose we would interpret this to be a position or an office under the United States, this state or any political subdivision. For the purpose of interpretation, I am sure it was the committee's position that this would not include people serving in some type of armed forces reserve. We are speaking of people holding governmental positions. In other words, in the previous section, we would not say that a person could be a member of the executive branch and at the same time, serve in the United States senate or serve in some capacity in the United States government as a paid employee of the United States government and at the same time, serve as an employee of the state of Michigan. We feel there is a conflict in this type of dual officeholding and this is what we are seeking to prevent.

CHAIRMAN MILLARD: Delegate Brown.

MR. G. E. BROWN: Mr. Chairman, Mr. Durst, with respect to this question, it was raised in the committee on legislative organization relative to eligibility of legislators, and I would quote for you some of the language of section 7 of article V, which reads as follows:

> No person elected a member of the legislature shall receive any civil appointment within this state or to the senate of the United States from the governor, except notaries public, or from the governor and senate, from the legislature, or any other state authority, during the term for which he is elected.

This is a comparable provision which is in the constitution and specifically mentions notaries public. I know in our committee report, we have dealt with members of the armed services. I merely question as to whether or not it would be better to define and clarify that which you intend in this proposal.

CHAIRMAN MILLARD: The Chair will recognize Delegate Hanna. Was that a question that you asked, Mr. Brown?

MR. G. E. BROWN: No.

MR. DURST: Mr. Chairman, members of the committee, I don't see that it is necessary for us to include the words "notary public" here as they may have done in the legislative powers committee since we use the words "for compensation," which eliminates the problem. I will admit that in the area of the armed forces Mr. Brown has raised a point which perhaps needs further clarification. Just thinking on my feet, I am not sure whether it does or not, whether we are not able to define our terms specifically to eliminate that particular problem.

CHAIRMAN MILLARD: Delegate Hanna.

MR. W. F. HANNA: Mr. Chairman, a question to Mr. Durst: in some parts of the state, it has been a common practice that the branch license manager for the secretary of state has been some other officer. He may be a county clerk, a register of deeds or such other township official. Do you intend that this dual capacity could no longer serve under this language?

CHAIRMAN MILLARD: Whom is the question to?

MR. W. F. HANNA: Mr. Durst.

CHAIRMAN MILLARD: Do you care to answer, Mr. Durst?

MR. DURST: As I read the provision, Mr. Hanna, I don't believe it would.

MR. W. F. HANNA: A second question, Mr. Durst. At the time you had this under consideration, did you also consider the language in Committee Proposal 88 which says, in part, notwithstanding the provisions of this constitution, members of the executive department may serve in any of the new governmental cooperative corporations or new governmental units established, which appears at the bottom of 88 and which seems to except your language to all these new forms of government? Did you consider this exception that local government put in their metropolitan government affair?

MR. DURST: If I am not mistaken, Mr. Hanna, doesn't this provision just apply to local governments as such, where our provision merely applies to members of the state executive branch?

MR. W. F. HANNA: This applies to the state as well as local.

MR. DURST: It applies to officer, employee —

CHAIRMAN MILLARD: Will you kindly put your questions through the Chair so that this discussion will be available to all the delegates. It sounds like you have a little closed corporation down there. (laughter)

MR. DURST: We have, Mr. Chairman, you'll have to admit. The language reads, ". . . an officer or employee of any of said units of government or subdivision or agency thereof." Without my having had a chance to read real quickly the whole provision, Mr. Hanna, doesn't this apply to the local areas of government?

MR. W. F. HANNA: Mr. Chairman, Mr. Durst, we were informed in style and drafting that this meant if the attorney general was to be a member of this, it should so read.

CHAIRMAN MILLARD: Is that all, gentlemen?

MR. DURST: Mr. Chairman, the only thing I would answer is what Mr. Brown just said: if he wishes to be a member, he would serve without compensation in an advisory capacity. He cannot receive 2 salaries.

CHAIRMAN MILLARD: The Chair will recognize Delegate Faxon.

MR. FAXON: Mr. Chairman, I have an amendment on the secretary's desk. If he would read it, I would speak to that.

SECRETARY CHASE: Mr. Faxon offers the following amendment:

1. Amend page 1, line 6, after "No" by striking out "member" and inserting "elected official or department head"; so the language will then read:

> No elected official or department head of the executive branch of the state shall hold any other office or position for compensation under the United States, this state, or any political subdivision or agency thereof.

MR. FAXON: Mr. Chairman, members of the committee, I think we're beginning to see the trouble that we get into when we use such an encompassing term such as the word "member" here, which has been defined to mean any employee. I, for one, would not want to see any group of people in our state disenfranchised from any kind of participation in the political civic life of their community or state. Just because

a person works for the state government shouldn't mean that they can't serve on school boards; it shouldn't mean they can't participate in their local government, in their local communities. I think we are opening up a vast area here where the real intent is to prevent a kind of conflict of interest which would occur at the top echelons of state government. By inserting "elected official or department head" we are eliminating that area of conflict of interest but we ought not to be extending this type of conflict to people who happen to work for the state and happen also to be interested citizens in their community. I think this is making lame ducks out of a lot of people who live in areas, work for the state and would find themselves unable to participate, that is, to actually involve themselves in the political civic life of their community. Therefore, I would urge we would define "member" more clearly and keep more in line with giving people an opportunity to take part in their government.

MR. MARTIN: Mr. Chairman.

CHAIRMAN MILLARD: Just a moment. The Chair has several on the list. The next on the list is Delegate Allen. Do you want to talk to the Faxon amendment?

MR. ALLEN: No.

CHAIRMAN MILLARD: All right. Mr. Durst, do you want to talk to the Faxon amendment?

MR. DURST: I pass.

CHAIRMAN MILLARD: Mr. Marshall on the Faxon amendment.

MR. MARSHALL: Mr. Chairman, I think that Delegate Faxon covered most of what I was going to say. As a member of the committee — and I recall some discussion on this — but unless I am incorrect, it seems to me that we were talking in terms of precluding or prohibiting the executive officials and I didn't understand that it was to be this encompassing. Maybe I am incorrect, and if I am, I stand corrected at this time.

CHAIRMAN MILLARD: Is this on the Faxon amendment?

MR. MARSHALL: It can be on the Faxon amendment because the Faxon amendment and the remarks made by Delegate Faxon I agree with. That was the point on which I asked for the floor.

CHAIRMAN MILLARD: Let's confine ourselves right now to the Faxon amendment and then we'll come back to the original proposal.

MR. MARSHALL: I asked the question that I asked on the the Faxon amendment.

CHAIRMAN MILLARD: All right. Mr. Martin.

MR. MARTIN: Mr. Chairman, Mr. Marshall, Mr. Faxon, the general objective here was to prevent persons who were receiving a salary from the state government from holding 2 paid jobs. We don't think that we should encourage moonlighting and that if they hold a full time paid job with the state government, they ought not to be holding paid jobs with the United States government or with other political subdivisions of the state. This is the purpose of this. Mr. Faxon mentioned school boards. This doesn't prevent anybody from serving on a school board.

MR. FAXON: Just in response to school boards —

CHAIRMAN MILLARD: Just a moment, Mr. Faxon. Mr. Marshall has the floor.

MR. MARTIN: I simply say we are not endeavoring to prevent anybody from serving the state government and serving in some other unpaid capacity. But we don't think that they should serve 2 paid jobs, one of them in state government and one of them somewhere else.

MR. MARSHALL: I will yield to Delegate Faxon.

CHAIRMAN MILLARD: Mr. Faxon.

MR. FAXON: Mr. Chairman, Mr. Martin, there are school boards in the state of Michigan that do pay the members of the board. This also, under the present terminology of that proposal, would not only exclude people who serve on school boards but, it seems to me, there are other commissions and agencies where people receive a per diem for serving. Now, it seems to me that the intent here may be one we're all agreed with. But there are school board people who do get paid and this would exclude them from participation upon their boards.

MR. MARSHALL: Believe it or not, I agree with our committee chairman on the intent, but I'm afraid that the language goes too far. For example, supposing a person was serving on a board or commission — and I want to ask this in the form of a question — supposing he was serving on a board or commission that met quarterly that was under the executive branch, under this language, and he received, let's say a $50 per diem, which is compensation, would that then prohibit him from serving as sewer commissioner of Taylor township on a $25 per diem?

MR. MARTIN: Mr. Chairman, in explaining the proposal Mr. Durst pointed out that the committee does not feel that the provision would preclude a person serving in a noncompensable position from receiving actual expenses or a per diem in lieu of expenses from the state. In other words, if you were getting a per diem from the state, or expenses, this would not prevent you from serving in some other capacity on the sewer board or whatever organization that is.

MR. MARSHALL: I'm not going to be on the sewer board much longer anyway, so let's get off of that and go to this one — and I am not trying to take up time, but I am disturbed about this language. In many of your townships, you have trustees who earn anywhere fom $600 a year and up — in my township, $1,500 a year — as a salary. Now, supposing that this trustee was serving on one of the state commissions that was a part time position — and I can't think of one at this moment but I am sure I could dig up a concrete example — but suppose he served on a state board and received for that, let's say $1,200 a year for attending meetings. Would this then prohibit him from serving as trustee of the township at a salary of $1,500 a year? I believe it would.

MR. MARTIN: Mr. Chairman, Mr. Marshall, the answer to that is that if his $1,200 a year received from the state was more than his expenses or more than a reasonable per diem, then he would be prevented from serving in this other capacity. If this represented a large number of trips to Lansing so that it was simply reimbursement for expenses, or a reasonable per diem, it would not.

MR. MARSHALL: Okay. I will just close by saying this — and this certainly cannot be taken as any party position or party issue because this is one of those things that is going to affect people, period — I just want to make sure that we are clear and that we know what we are doing and that we not get language in here that is going to create a lot of problems and trouble in the future. I did not understand it to mean that it had gone as far as it has when we discussed it. I thought we were only talking about elected executive officials and department heads who were on full time salary. For that reason, I support the Faxon amendment. I believe it is clear and spells it out. The Faxon amendment, as I understand it, says,

> No elected official or department head of the executive branch of the state shall hold any other office or position for compensation under the United States, this state, or any political subdivision or agency thereof.

CHAIRMAN MILLARD: The Chair will recognize Delegate Mahinske just on the Faxon amendment.

MR. MAHINSKE: I notice in the original language of sections 14 and 15 of the executive article that these 2 sections only take into consideration the governor or lieutenant governor. Is it the intent of the maker of the amendment and the committee itself to expand this thought here beyond the lieutenant governor and governor themselves, these 2 offices? I direct that question to anyone who feels they have the answer.

CHAIRMAN MILLARD: Will you direct your question to a particular person, please.

MR. MAHINSKE: Well, I'll start with the maker of the amendment, Mr. Faxon.

CHAIRMAN MILLARD: Mr. Faxon, do you care to answer?

MR. MAHINSKE: The original language of the executive article dealing with dual officeholding deals with the people who

are holding the office of governor and lieutenant governor only. Is it your intent by your amendment to expand this concept to other people beyond the governor and lieutenant governor only?

MR. FAXON: Yes. This would, I believe, Mr. Chairman and Mr. Mahinske —

MR. MAHINSKE: Is it your intent to expand this?

MR. FAXON: This would expand it to those people who are elected officials of the state government, plus those officials who are heads of departments. I am saying this in line with the other part of the executive committee report dealing with the organization of state departments, thinking that there are going to be so many departments, and there would be heads of departments.

MR. MAHINSKE: There is one additional point that comes into play here, either under your amendment or the committee proposal. The original language of the 1908 constitution precludes these people from even being considered for these offices because any votes cast for that will be void. Now, under your language, which goes in line with the committee proposed language, these people, even the ones that you are excluding, could run for these offices and then take their choice of the office that they are holding or the office that they have just won. Do you want these people to be in that kind of a position, where they can run for dual offices and then make a selection as to which office they will sit in?

MR. FAXON: Mr. Chairman, Mr. Mahinske, I can't at this point give a definite statement as to what are the implications of the section that they have under consideration here because I wasn't thoroughly pleased with the whole thing. But it is my opinion that the conflict which you raise might be taken care of in the form of either an amendment or some instructions to the committee on style and drafting to incorporate that thought. I don't know that it is in there right now. I didn't have an amendment to cover that. I am just trying to cover those people who are heads of departments and elected officials. But I don't believe this type of language should extend itself to all levels of the state government and agencies thereof.

MR. MAHINSKE: Well, then I would withhold this question until we get back to the body of the committee proposal.

MR. MARTIN: Mr. Chairman, Delegate Durst has put in a purported substitute amendment. Will you explain why this is a substitute amendment to be considered at this time?

MR. DURST: Mr. Chairman, it is a substitute amendment put in by myself and Mr. Downs. I must say he has read Mason's Manual far more than I have and he says we can do it. (laughter)

CHAIRMAN MILLARD: The Chair will recognize Delegate Downs to explain this proposed substitute amendment.

MR. DOWNS: Mr. Chairman and fellow delegates, I would like to say that my good friend and seat mate, Delegate Durst, convinced me on the substance and apparently I convinced him on the procedure. I hope my advice on the procedure equals his advice on the substance.

The intent of this amendment was to get what is apparently the consensus of the committee, that is, that this would apply to a full time member of the executive branch who does not receive any other full time office, which would prevent the dual officeholding. It would permit, for example, a member of a university faculty who was full time to be a part time advisor, commissioner or a member of some other state employment to be on a part time or nominal commission with the nominal expense of per diem, either the federal government, the state or a local subdivision. This could mean, for example, a local community might want a special tax study commission, and some official may be a comptroller or treasurer or some other full time official to serve on it. I believe that while I talked, the amendment has been drawn up. Could I ask that it be read, Mr. Chairman.

CHAIRMAN MILLARD: Is it on the wall? The Chair can't see. Will the secretary read the amendment.

SECRETARY CHASE: Messrs. Downs and Durst offer the following substitute amendment for the amendment of Mr. Faxon:

1. Amend page 1, line 6, after "No" by inserting "full time"; and in line 7, after "other" by inserting "full time"; so the language would then read:

No full time member of the executive branch of the state shall hold any other full time office or position for compensation under the United States, this state, or any political subdivision or agency thereof.

CHAIRMAN MILLARD: You know what the Faxon amendment is, Mr. Downs?

MR. DOWNS: Yes. I think this is clearer than the Faxon amendment. I think that probably both aim at the same thing and I think, though, that this is properly a substitute because it covers the same subject matter. I think it is a little clearer than Delegate Faxon's amendment and does achieve the same objective in a little clearer language.

CHAIRMAN MILLARD: Mr. Faxon, do you want to accept that?

MR. FAXON: I'd like to ask Mr. Downs a question through the Chair.

CHAIRMAN MILLARD: All right.

MR. FAXON: Is it the intent of this amendment to leave to the legislature a definition as to what a full time employee is, or is there some way of knowing that what is full time today will be full time 10 years or 20 years or 50 years from today?

MR. DOWNS: I suppose that the answer as a rule of reason is, certainly if the legislature wished to make a reasonable construction of that, it certainly would be consistent. The intent would be to permit a full time teacher, state official or professor to serve on a part time or temporary commission or on a school board without needing to give up the position.

MR. FAXON: Yes. Now through the Chair, would a person who, say, serves on a school board — they are a school board member full time, they're not a school board member just when they are sitting as a school board, they are a school board member at all times. Now, would this in any way involve a definition, a court decision of "full time"? That is, is full time just if you are getting paid for a 40 hour week — a 40 hour week I can understand — but in the case of where you hold a position and you are paid so much per week, even though you are in that position all throughout the week, your meetings may vary, or say in the case where you are on a commission, you are always a commissioner. In a sense you are as full time a commissioner as anybody else is a full time commissioner. Do you see the problem I am getting at?

MR. DOWNS: Of course — I'm sorry. Were you through with the question, Mr. Faxon?

MR. FAXON: Yes.

MR. DOWNS: Mr. Chairman, I think the question is very well taken. The intent here — I believe I am speaking for Delegate Durst and myself — was that "full time" referred to the individual's full time activity and not to the fact that somebody might be on a school board that met once a month maybe 10 months a year. While he was a permanent member of that board, the functions of that board were temporary from a time nature. So I think that the term "full time" — the intent was to think of a full time occupation so that the one individual would not be, as one of the other delegates said, moonlighting and having 2 full time jobs. Perhaps we could say if there is any further question, this could be worked on at second reading. But I do feel this is a clarification consistent with the intent of the expression of the delegates this afternoon.

CHAIRMAN MILLARD: Mr. Faxon, do you accept that as a substitute?

MR. FAXON: Well, I just want to respond this way, Mr. Chairman: it seems to me that we are getting into a problem as to the definition of "full time". I understand Mr. Downs' position in saying that a person who is engaged full time in a job, but at the same time, I am thinking of where situations may change. Some people manage to get in an awful lot in their time. They may get in a 16 hour day, working at not necessarily 2 full jobs but their concept of time — what is to them a full time devotion to a job — may be different. I

don't know that the use of the words "full time" is a constitutional definitive statement of intent. My amendment, it seems to me, would restrict this specifically to certain people where this tends to get into many gray areas of commissions, agencies, boards of supervisors, various areas of local government where there may be some conflict insofar as interpretation is concerned as to what constitutes a full time employee or not a full time employee. This is what I was attempting to eliminate by putting in the amendment that I did. So I would like to see them both voted upon.

CHAIRMAN MILLARD: Then you do not accept this substitute amendment?

MR. FAXON: No, I don't.

MR. MARTIN: Mr. Chairman.

CHAIRMAN MILLARD: Just a moment. You are way down on the list, Mr. Martin. (laughter) The Chair will recognize Mr. Iverson.

MR. IVERSON: Mr. Chairman, I want to pursue further, in opposition to the amendment and the committee report, what Mr. Mahinske raised. It seems to me by the elimination of these 2 sections, 14 and 15 especially, in the constitution, whether by the original committee report or by the Faxon amendment, would open the door to something which I don't think we want to open the door to and I don't think the committee intended. I submit that by doing this, by passing this proposal, you would permit a governor to be a nonpaid mayor of a city. That has been passed upon by the supreme court and they held that the 2 offices were incompatible. Now, if that is what is intended by the committee and by Mr. Faxon in his amendment to the committee report, then I question whether it is advisable for us to go that far. I only call your attention to the fact that the governor has the constitutional authority to remove from office a mayor of a city or many other officials. I think it would be a very dangerous practice.

I think here is another situation where perhaps this matter ought to be deferred. I will not offer the amendment but I would suggest that it may be well to do this because I don't think it is good practice on our part to eliminate sections 14 and 15 of the present constitution unless you intend to make certain offices compatible which have heretofore been incompatible.

CHAIRMAN MILLARD: The question, of course, is on the substitute amendment. The Chair will recognize Dr. Pollock. Is the substitute amendment up on the wall or not? Can we get it up there?

MR. POLLOCK: Mr. Chairman, I asked for recognition on the committee proposal and there have been several things intervene in between. I have nothing to say on this amendment. I'd like to be recognized, though, on the committee proposal.

CHAIRMAN MILLARD: Yes, sir. Mr. Iverson.

MR. IVERSON: Mr. Chairman, as I understood it, Mr. Faxon did not agree to the substitute. I am wondering therefore, if the Faxon amendment is not now before us.

CHAIRMAN MILLARD: The question before us is on the substitute. We vote on the substitute and then we vote on the Faxon amendment. The Chair thought if we could get them combined, it would relieve a vote but we couldn't get them combined. The Chair will recognize Delegate Wanger. Is this on the substitute amendment?

MR. WANGER: Yes, Mr. Chairman. Mr. Martin was seeking recognition, I believe, on this point. If he desires to speak on it, I would yield to him at this time.

CHAIRMAN MILLARD: Mr. Martin.

MR. MARTIN: Mr. Chairman, on Mr. Iverson's point, sections 14 and 15 don't do anything to prevent the governor from also being the unpaid mayor of a city, as far as I can determine. They don't apply to that particular situation. So that I don't think the raising of that question is a basis for voting no on the committee proposal and voting not to exclude these 2 sections.

The principal objection which we have to Mr. Faxon's amendment is that it is altogether too broad, and the substitute which has been offered by Mr. Durst and Mr. Downs, modifies the committee proposal in a form which I think would be acceptable to the committee in that it clarifies the character of the 2 types of jobs which we want to prevent people from holding. But we don't want to limit this just to elected officials or heads of departments. We want it to apply to all full time state employees who might otherwise, without this provision, hold full time paid jobs somewhere else. We don't think that that is in any way desirable or proper. So I would favor the substitute amendment. I would not favor Mr. Faxon's original amendment. Mr. Wanger.

MR. WANGER: Mr. Chairman, may I answer?

CHAIRMAN MILLARD: You may answer.

MR. IVERSON: Mr. Chairman.

CHAIRMAN MILLARD: Let's get this thing in order here. There are several people here. You didn't ask any question, did you?

MR. MARTIN: No, Mr. Chairman.

CHAIRMAN MILLARD: You wait and the Chair will put you down on the list.

MR. IVERSON: Just don't forget me.

CHAIRMAN MILLARD: Mr. Wanger, you waived to the chairman.

MR. WANGER: I yielded to him.

CHAIRMAN MILLARD: He was on the list and you took him out of order. The Chair will put you down after Mr. Iverson. (laughter)

The Chair will recognize Delegate Madar.

MR. WANGER: May I make point of inquiry as to procedure then, Mr. Chairman? A parliamentary inquiry?

CHAIRMAN MILLARD: All right. What is it?

MR. WANGER: What form of words should one use when one wants to make it clear that he is yielding to a person but does not wish to give up his right to the floor?

CHAIRMAN MILLARD: Mr. Wanger, Mr. Martin was on the list. The Chair told you he was way down on the list. So you waived your position on the list and you go down to where Mr. Martin was.

MR. WANGER: I won't object to that. I only wanted to know — what I intended to do was —

CHAIRMAN MILLARD: The Chair will recognize Mr. Madar.

MR. MADAR: Mr. Chairman, we are now on the substitute amendment but I wanted to speak to the original proposal by the commiteee. So I would like to be placed on the list for that.

CHAIRMAN MILLARD: All right. The Chair will recognize Delegate Stevens.

MR. STEVENS: Mr. Chairman and members of the committee, may I ask Mr. Martin a question?

CHAIRMAN MILLARD: Is this on the substitute amendment?

MR. STEVENS: It's on the whole thing.

CHAIRMAN MILLARD: Can you confine it to the substitute amendment?

MR. STEVENS: Well, I can't vote on the substitute or amendment if I don't know what the —

CHAIRMAN MILLARD: State your question.

MR. STEVENS: The question is quite simple: does this intend, by implication or otherwise, to affect the present law of incompatibility of office? It would seem to me that they are concerned only with moonlighting, not with incompatibility. Is that a proper question?

MR. MARTIN: Mr. Chairman, in answer to Mr. Stevens' question, I think the general law with respect to incompatibility of positions would not be affected by this at all. That is, if the courts were to hold that a governor who was also trying to hold a mayor's job which was unpaid, I think the court would certainly be able to hold that those 2 positions were incompatible, regardless of this provision. This provision relates to people holding full time jobs for compensation.

MR. STEVENS: Thank you, Mr. Martin. You answered my question.

MR. MARTIN: I appreciate that question because I think it clarifies the point. There are 2 different situations here, one where someone is holding 2 jobs which are incompatible with

each other as the law has defined it. The other, where they are holding 2 jobs for pay. We want to say you can't hold a full time state job for pay and a full time job for some other organization in government.

MR. STEVENS: This is not then, as I take it, intended by implication to affect the present rule of incompatibility?

MR. MARTIN: That's correct, Mr. Stevens. It does not.

MR. STEVENS: Thank you.

CHAIRMAN MILLARD: The Chair will recognize Delegate William Hanna. Delegate Mahinske.

MR. MAHINSKE: I would like to direct this question through the Chair to either Mr. Downs, Durst or Martin.

CHAIRMAN MILLARD: Which one?

MR. MAHINSKE: Preferably Mr. Durst.

CHAIRMAN MILLARD: All right, Mr. Durst, if he cares to answer.

MR. MAHINSKE: In this order, it seems to me we are broadening the whole area here as set down in sections 14 and 15. Now, my specific question is, why? Are there any kinds of examples that you had in mind why you want to cut dual officeholding in the executive branch beyond the 2 top executive officers of the state?

MR. DURST: Mr. Chairman, Mr. Mahinske, I don't believe that it came to the attention of the committee that we had any specific abuses in mind when we drafted this. It just seems to be good constitutional practice to provide that members working for the state executive branch do not hold other jobs for compensation with other agencies and therefore, have a conflict of interest in their jobs. You are correct that we have broadened in the original committee proposal the concept contained in sections 14 and 15. However, I think that the addition of the words "full time" in both places in the committee proposal sufficiently limits that we'll have no trouble with the provision in the future and it will prevent the most flagrant cases where a person is holding 2 full time jobs.

MR. MAHINSKE: Now, this brings to mind one other question that I would like to ask with reference to full time. Would a school teacher be precluded from serving on a commission which is a short lived commission during the summer on a full time basis?

CHAIRMAN MILLARD: Mr. Durst.

MR. DURST: Mr. Chairman, Mr. Mahinske, of course, any term you use in the constitution is subject to interpretation at a later date. It would not be my understanding, and I am sure it is not Mr. Downs' that you interpret "full time" in this way. When we use the term "full time" we mean 2 jobs that are full time simultaneously and, therefore, conflicting with one another.

MR. MAHINSKE: Well, a school teacher's job — by way of explanation here, as I understand it — is a full time job. Maybe Miss Hart could straighten me out on this. On a contract basis, a teacher is employed on a full time basis. But during the summer, from June to September, when they are not serving in their school teacher capacity, would it be possible, even though they are still under contract, still receiving their pay checks, depending on their option as to how they receive their pay, would it be possible for a school teacher during this interim period to serve on a full time basis on any executive commission?

CHAIRMAN MILLARD: Are you addressing your question to somebody?

MR. MAHINSKE: Anyone that cares to answer it.

CHAIRMAN MILLARD: Address it through the Chair and name whom you want to answer it and the Chair will see that they have a chance. Mr. Lundgren.

MR. LUNDGREN: Mr. Chairman, point of information. I wonder if we're wandering quite afar when we're talking about school teachers, when the whole provision states the executive branch of the government. I don't know how school teachers got into this.

MR. MAHINSKE: Well, by way of explanation through the Chair here, I think this sentence means as much when you read it backwards as when you read it forward. (laughter) A school teacher could be an employee of a political subdivision of the state. Now, what are we talking about? The school teacher that starts off as a full time member of the executive department or a full time member of the subdivision of the state? I just wonder if this works in reverse here or if we're starting from the top and working down.

CHAIRMAN MILLARD: Confine yourself to the amendment and direct your question to a specific delegate.

MR. MAHINSKE: Either Mr. Downs, Durst or Marshall.

CHAIRMAN MILLARD: Which one, so we'll know.

MR. MAHINSKE: Start with Durst again. (laughter)

CHAIRMAN MILLARD: Mr. Durst.

MR. DURST: You must think I give the worst answers. (laughter) The only thing I can say, Mr. Mahinske, is the same thing. It would be my understanding that we are referring to 2 simultaneous jobs that are in conflict and I would not think that the teacher who works 9 months out of the year would be prohibited from working for the state for the 3 months during the summer at a full time job.

MR. MAHINSKE: I have no further questions.

CHAIRMAN MILLARD: The Chair will recognize Delegate Iverson. Delegate Wanger.

MR. WANGER: Pass.

CHAIRMAN MILLARD: Delegate Perras.

MR. PERRAS: I would like to address this question to Mr. Durst or anyone who would like to answer it. Mr. Mahinske brought out a point on school teachers. Now, some school teachers work only 9 months a year but they draw their salary for 12. It's spread over 12 months. Now, if it is spread over 12 months, they are being paid 12 full months. Now where are we?

MR. DURST: Mr. Downs suggests we say "full time as defined by law."

MR. STEVENS: Mr. Chairman, do you want me to answer that question?

MR. DURST: I yield to Mr. Stevens. (laughter)

MR. STEVENS: The usual customary practice in Michigan is that school teachers are hired for 9 or 10 school months, 40 weeks. They do not get paid during the summer as some people think. In some systems, instead of paying them each school month, they cut down the amount into 1/12 of the annual salary, and spread it over the year. But they are still not being paid for the summer months when they are not teaching. That is a matter of fact. That's what they do. You don't need any attorney general's opinion. (laughter)

CHAIRMAN MILLARD: The question is on the substitute amendment. Will the secretary read.

SECRETARY CHASE: The substitute amendment offered by Messrs. Downs and Durst is as follows:

[The amendment was again read by the secretary. For full text, see above, page 1727.]

CHAIRMAN MILLARD: Miss Donnelly.

MISS DONNELLY: I'll pick on Mr. Durst, like everybody else. A question through the Chair, if I may.

CHAIRMAN MILLARD: Mr. Durst, if you care to answer.

MISS DONNELLY: The problem seems to me that right now this amendment is going after the term "for compensation." In an attempt to define this you are going into the money argument, not compatibility of office argument. Is that not true?

MR. DURST: Mr. Chairman, Miss Donnelly, I think essentially that is true.

MISS DONNELLY: May I ask you this question then through the Chair? Do you feel the compatibility of office is not important?

MR. DURST: Mr. Chairman, it may be important, but I don't feel that we intended to cover the problem with this section.

MISS DONNELLY: Through the Chair again, may I ask another question? If you weren't going to handle it through this section, where were you going to handle it — as a member of the committee, I mean.

MR. DURST: Mr. Chairman, Miss Donnelly, I don't know as we did necessarily handle it but on the point I will yield to Mr. Martin, if he wants to fill us in. (laughter)

MR. MARTIN: This proposal doesn't deal with incompatibility and we didn't try to propose a section that would. It is my understanding that the doctrine of incompatibility is essentially a common law doctrine and that where 2 offices are clearly in conflict, the courts have traditionally held that they couldn't be held by the same person at the same time. Now, if someone wants to—

MISS DONNELLY: I'm sorry. I can hardly hear you. I can't hear you.

MR. MARTIN: I don't want to complicate anything further but if someone wants to add something about incompatibility, I don't think we would object. But this did not propose to deal with the problem of incompatibility, which I think is a matter of common law definition, that is, where 2 offices clearly conflict, the courts have traditionally held that a person cannot hold both of them at the same time. I don't think we need to deal with it in the constitution.

MISS DONNELLY: Through the Chair again, this is your conclusion or the conclusion of your committee, that compatibility should not be dealt with in the constitution?

MR. MARTIN: I say the committee didn't consider a proposal with respect to incompatibility. There was slight discussion of it but we did not consider that it was necessary.

MISS DONNELLY: Through the Chair again, you mean where it says "shall hold any other office" does not deal with compatibility in section 15?

MR. MARTIN: Mr. Chairman, Miss Donnelly, if we are getting into section 15, some further definition or explanation is necessary because we had intended to deal with that on the exclusion report. I will only say that that section was primarily designed to prevent the governor or lieutenant governor from being appointed United States senator. That was the principal purpose of that and that purpose has disappeared because United States senators have to be popularly elected today. That's the reason why we think that section 15 has no real bearing today and is not needed.

MISS DONNELLY: I believe that compatibility is a vital thing for us to cover in this constitution, particularly since earlier we struck out the retention of the words "common law" in our constitution. Therefore, on the basis of that and the fact that none of these amendments are going to that aspect; they are just going to the monetary, which I do not believe is broad enough, I would be opposed to all of the amendments and to the committee proposal too.

CHAIRMAN MILLARD: The Chair will recognize Delegate Leppien.

MR. LEPPIEN: Mr. Chairman and fellow delegates, I am sure from the discussion we have had on the proposal before us, it is very evident to most of us that attempting to bring this to a resolve cannot be accomplished on this floor at this time. I therefore move that this proposal be placed at the end of the calendar on executive branch and the committee might come up with some language that should be clear.

CHAIRMAN MILLARD: The question is on the motion to put this Committee Proposal 48 at the foot of the executive branch calendar. Any discussion? If not, all in favor will say aye. Opposed, no.

The motion prevails.

CHAIRMAN MILLARD: Mr. Marshall.

MR. MARSHALL: Mr. Chairman, at this time, if the chairman of the committee would wish to make a motion that the committee arise, I'd be happy to yield to him. (laughter)

CHAIRMAN MILLARD: Mr. Martin.

MR. MARTIN: Mr. Chairman, that is what I am proposing to do. I move that the committee do now rise.

CHAIRMAN MILLARD: The question is on the motion that the committee rise. All in favor will say aye. Opposed, no.

The motion prevails.

[Whereupon, the committee of the whole having risen, President Nisbet resumed the Chair.]

PRESIDENT NISBET: The Chair recognizes Mr. Millard.

MR. MILLARD: Mr. President, the committee of the whole has had under consideration several proposals, of which the secretary will give a detailed report.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 70,** A proposal to revise provisions of section 36 of article V regarding the veto power of the governor; and **Committee Proposal 75,** A proposal to provide for compensation of state officers; reports these 2 proposals back to the convention without amendment and with the recommendation that they do pass.

PRESIDENT NISBET: **Committee Proposals 70** and **75** are referred to the committee on style and drafting.

For Committee Proposal 70 as referred to the committee on style and drafting, see above, page 1717.

For Committee Proposal 75 as referred to the committee on style and drafting, see above, page 1720.

SECRETARY CHASE: The committee of the whole, Mr. President, has also had under consideration **Committee Proposal 72** and **Committee Proposal 48** and the committee has placed these 2 committee proposals at the foot of the general orders calendar of the committee on executive branch. This completes the report of the committee of the whole, Mr. President.

PRESIDENT NISBET: Announcements.

SECRETARY CHASE: Mr. DeVries wishes to be excused from the evening session to attend a meeting in Ann Arbor this evening.

PRESIDENT NISBET: Without objection he will be excused. The Chair recognizes Mr. Madar.

MR. MADAR: Mr. President, I move we recess until 8:00 o'clock.

PRESIDENT NISBET: The question is on the motion that we recess. Those in favor will say aye. Opposed, no.

We are recessed until 8:00 o'clock.

[Whereupon, at 6:05 o'clock p.m., the convention recessed; and, at 8:00 o'clock p.m., reconvened.]

The convention will come to order.

SECRETARY CHASE: Mr. President, a quorum of the convention is present.

Mr. Habermehl has filed with the secretary a request to be excused from the remainder of today's session.

PRESIDENT NISBET: Without objection, he will be excused.

The Chair recognizes Mr. Millard.

MR. MILLARD: Mr. President, I move that the convention resolve itself into committee of the whole for the purpose of taking up matters upon the **general orders** calendar.

PRESIDENT NISBET: The question is on the motion of Mr. Millard. Those in favor will say aye. Opposed, no.

The motion prevails. Mr. Millard.

[Whereupon, Mr. Millard assumed the Chair to preside as chairman of the **committee of the whole.**]

CHAIRMAN MILLARD: The committee will be in order. The secretary will read.

SECRETARY CHASE: The next item on the general orders calendar from the committee on executive branch, by Mr. Martin, chairman, **Exclusion Report 2027,** A report recommending the exclusion of article VI, sections 14 and 15.

Following is Exclusion Report 2027 as read by the secretary, and the reasons submitted in support thereof:

The committee on executive branch recommends that article VI, sections 14 and 15 of the present constitution be excluded from the new constitution.

Mr. Martin, chairman of the committee on executive branch, submits the following reasons in support of Exclusion Report 2027:

Sections 14 and 15 of article VI were amalgamated in Committee Proposal 48.

This exclusion report is a substitute for Exclusion Reports 2001 and 2002.

CHAIRMAN MILLARD: Mr. Martin.

MR. MARTIN: This exclusion report relates to the 2 sections which are tied into the matter we were discussing last and which we moved to the end of the calendar. Since this is intimately related to that, I believe this should also be moved to the end of this executive branch calendar so it can be considered when the item that precedes it, Committee Proposal 48, is considered. I would so move, Mr. Chairman.

CHAIRMAN MILLARD: Motion has been made by Mr. Martin that the Exclusion Report 2027 be moved to the foot of the executive branch calendar. All in favor will say aye. Opposed, no.

The motion prevails. The secretary will read.

SECRETARY CHASE: Item 8 on the calendar, from the committee on executive branch, by Mr. Martin, chairman, **Committee Proposal 74**, A proposal to provide by law for the administration of claims against the state, escheats and escheated property, and the investment of state funds. Revises article VI, section 20.

Following is Committee Proposal 74 as read by the secretary, and the reasons submitted in support thereof:

The committee recommends that the following be included in the constitution:

Sec. a. EXAMINATION AND ADJUSTMENT OF CLAIMS AGAINST THE STATE, PROCEDURES RELATING TO ESCHEATS AND TO THE CUSTODY AND DISPOSITION OF ESCHEATED PROPERTY, AND THE INVESTMENT OF STATE FUNDS SHALL BE AS PROVIDED FOR BY LAW.

Mr. Martin, chairman of the committee on executive branch, submits the following reasons in support of Committee Proposal 74:

The existence of an ex officio board of elected state officials (secretary of state, state treasurer, and by law, the superintendent of public instruction) was not deemed necessary for the execution of the functions required to be performed by the current provisions of article VI, section 20.

The officials no longer meet as a board of state auditors, these functions having been imposed by law on the state administrative board and on the department of administration. The same is true of the board of fund commissioners, the investment of state funds now being controlled in detail by statute and administered by the investment division of the state treasurer's office. Similarly, statutes exist governing the examination and adjustment of claims against the state. The major remaining duty to act as a board of escheats does not appear essential to the effective administration of law controlling escheats and the custody and disposition of escheated property.

The committee proposal deals with the 3 major functions:

1) Claims against the state;

2) Escheats and escheated property; and

3) Investment of state funds — by which is meant the long or short term investments of state treasury moneys, or of pension, retirement and other like funds of a trust or custodial nature, but which is not intended to include investment of university funds.

The proposal would leave the legal details and administration of these 3 functions in the hands of the legislature, and in effect abolishes the ex officio board of state elected officials now required by article VI, section 20.

Explanation—Matter within [ ] is stricken, matter in capitals is new.

CHAIRMAN MILLARD: The Chair will recognize the chairman of the committee, Mr. Martin.

MR. MARTIN: Mr. Chairman, I yield on this to Mr. Karn to discuss the details of this proposal.

CHAIRMAN MILLARD: The Chair recognizes Mr. Karn.

MR. KARN: Mr. Chairman, members of the committee, we would like to bring to your attention some of the reasons in support of the Committee Proposal 74.

[The reasons were read by Mr. Karn. For text, see above.]

I yield to Mr. Martin.

CHAIRMAN MILLARD: Mr. Martin.

MR. MARTIN: We have no other comments on this, Mr. Chairman unless there are amendments. In substance, the proposal is to modify the present provisions of the constitution in line with our present practice and all of these various functions either are no longer being dealt with by the boards which are established in the constitution or can be dealt with as in the case of escheats by other portions of the state government more efficiently.

CHAIRMAN MILLARD: The Chair will recognize Delegate Nord.

MR. NORD: Mr. Chairman, through the Chair I would like to ask Mr. Karn a question, if I may.

CHAIRMAN MILLARD: Mr. Karn, do you care to answer?

MR. NORD: Mr. Chairman and Mr. Karn, could you explain the different effect between having this provision in the constitution and having it out in view of the fact that, as I gather, all it says is that these things shall be as provided by law. I assume that it could be that way without the constitution.

MR. KARN: Well, Mr. Nord, you're an attorney. You probably can answer that question better than I can as a layman. It was felt, however, that it should be in the constitution in order that these 3 items that we cover here would certainly be covered. This section does improve some of the items that are no longer in use. They have passed out of existence and there is no need for a continuation. But it was thought by the committee that we should leave this section as it is in the hands of the legislature just so that there is an assurance that they will be covered. You might be right, however.

MR. NORD: Thank you, Mr. Chairman, Mr. Karn.

CHAIRMAN MILLARD: The Chair recognizes Mr. Martin.

MR. MARTIN: I have nothing further, Mr. Chairman.

CHAIRMAN MILLARD: Mr. Ostrow.

MR. OSTROW: I have a question.

CHAIRMAN MILLARD: Mr. Karn, if you care to answer.

MR. OSTROW: Mr. Karn, I am directing your attention to the last line, ". . . the investment of state funds shall be as provided for by law," under which, I take it, any way the legislature provides for investing of funds will be constitutional. Is that correct?

MR. KARN: Constitutional in that the provision is made here for them to be provided by the legislature or by law.

MR. OSTROW: In Committee Proposal 37 of the finance and taxation committee, there are certain restrictions on the investment of state funds. This would seem to be in conflict with Committee Proposal 37. Committee Proposal 37 provides that the state cannot subscribe to nor be interested in the stock of any company, association or corporation. That was intended, I think, to prohibit the investment in ordinary corporations. It also provides that endowment funds created for charitable or educational purposes may be invested as provided by law governing the investment of funds held in trust by trustees, which is less than a full power. How do you propose to reconcile these 2?

MR. KARN: Well, I'm not sure that I can reconcile them, as far as that's concerned, Mr. Ostrow. It is my understanding that the type of funds are different as dealt with here than as dealt with in the article that you suggest. In

these funds, true, there is some state treasury money, there are pension or retirement funds, but they are moneys and funds that have been operative in the past under section 20 of article VI, which is a board of state auditors, escheats and fund commissioners. I think there is — and I can't tell you, Mr. Ostrow, the exact difference — but I think there is a difference between the funds that are involved here.

MR. OSTROW: Well, then shouldn't this specify that this is limited to escheated funds or whatever limited funds that you had in mind?

MR. KARN: These are not only escheated funds.

MR. OSTROW: Then is this going to supercede Committee Proposal 37?

MR. KARN: Not as far as I know. Perhaps Mr. Martin can cover that better than I can because I am not familiar at the moment with Committee Proposal 37.

MR. MARTIN: Mr. Chairman.

CHAIRMAN MILLARD: Mr. Martin.

MR. MARTIN: If I might attempt to answer Mr. Ostrow's question, the section 20, article VI, for which this is a substitute, simply provides for a board of fund commissioners and provides that they shall perform such other duties as may be prescribed by law. There is nothing specified there and the legislature set up all of the responsibilities of the board of fund commissioners who had at that point the responsibility for investment of state funds. They provide for that by law. So all we have done is to say the same thing in effect, that the legislature shall provide by law for the investment of state funds without specific reference or without inclusion of a board of fund commissioners. We haven't enlarged the responsibility any. If you are concerned about this, however, I think the committee would have no objection to adding after "as provided for by law" the words "and by this constitution."

MR. OSTROW: I would feel happier if you did.

MR. MARTIN: Well, Mr. Chairman, is it possible for us to add this by oral amendment here?

CHAIRMAN MILLARD: There is no objection to that that I can see.

MR. MARTIN: It would then read; ". . . the investment of state funds shall be as provided for by law and by this constitution," which would cover the other constitutional provision. I believe there is no conflict.

MR. CUDLIP: Mr. Chairman.

CHAIRMAN MILLARD: What are you arguing on?

MR. CUDLIP: I want to be recognized, Mr. Chairman, when my turn comes.

CHAIRMAN MILLARD: All right, the Chair put you down. The Chair will recognize Mr. Austin at this time.

MR. AUSTIN: Mr. Chairman, I should probably thank Mr. Cudlip for yielding the floor as easily as he did. I think I have a feeling as to what he was going to comment on.

I agree with Mr. Martin that if we are going to have this provision in the constitution, we should add after "as provided by law" the words "and by this constitution" or "subject to the restrictions in this constitution" because of the language we have in section d of Committee Proposal 37. Section d reads, "The state shall not subscribe to, nor be interested in the stock of any company, association or corporation. . . ." Then, of course, it goes on to list some exceptions. My personal feeling is, though, that it would be better to just leave this last part out of the constitution. I don't think we need it. I don't think we need to say "and the investment of state funds shall be as provided for by law or by this constitution" because it has already provided for the investment of state funds. If it is going to be left in, it would be better to add "and by this constitution" and we could just as easily leave it out.

CHAIRMAN MILLARD: The Chair will recognize Delegate Hanna.

MR. W. F. HANNA: I wanted to make the same point, that it should be left out.

CHAIRMAN MILLARD: Mr. Garry Brown.

MR. G. E. BROWN: The same point.

CHAIRMAN MILLARD: The secretary requires a written amendment, so if you will prepare it. Mr. Cudlip, you're up now.

MR. CUDLIP: Mr. Chairman and members, I want to apologize for taking the microphone as I did. I am not aware of this system whereby people get on the list by just raising your hand. I can't follow that, especially in the rear. I just want to say that I agree with Mr. Austin and I am not sure that the amendment which Mr. Martin suggests is proper because then we are just double tracking. Either this section should be confined to escheated funds and we're talking about that and nothing else, or it should be left out. The section that it replaces does not talk at all about the investment of any state funds by any body. I think this is very important to avoid this lack of harmony. It seems to me, as I said, it should be confined to these funds; the legislature can do as they please with these funds, the investment thereof, or leave it out, because there is a conflict today, as has been pointed out by the preceding speaker. And I don't think, to repeat, that putting language in, "except as otherwise provided in this constitution" does anything to the constitutional language. I know in the style and drafting committee that is what we are concerned with and we just have to do something about it if you want good, clear language. Thank you, Mr. Chairman. Thank you, ladies and gentlemen.

CHAIRMAN MILLARD: Mr. Martin.

MR. MARTIN: Mr. Chairman, the problem is that this investment of state funds with which the board of fund commissioners was entrusted is much broader than escheated funds. It doesn't relate just to escheated funds. It relates to other funds which they had the responsibility for. I think that we are talking about something here that is essentially a problem for style and drafting. These are 2 sections which are going to need some correlation and it seems to me if this is amended to make clear the purpose of the committee and the convention by adding the words "by this constitution" and then this passes on to style and drafting, if it is necessary to bring these 2 together, they can do that. But I think we are spending unnecessary time here in trying to argue over these differences.

CHAIRMAN MILLARD: Mr. Secretary, are there any amendments on the desk to this committee proposal?

SECRETARY CHASE: Messrs. G. E. Brown, Brake and Austin offer the following amendment:

1. Amend page 1, line 8, after "property" by striking out the comma and "and the investment of state funds"; so that the language would then read:

> Examination and adjustment of claims against the state, procedures relating to escheats and to the custody and disposition of escheated property shall be as provided for by law.

CHAIRMAN MILLARD: The Chair will recognize the first proposer, Mr. Garry Brown.

MR. G. E. BROWN: Mr. Chairman, members of the committee, with all that has been said here, I think the amendment speaks for itself.

CHAIRMAN MILLARD: Mr. Martin.

MR. MARTIN: Mr. Chairman, would the secretary read that again. Did it read "the disposition of escheated funds" or "disposition of escheated property?"

SECRETARY CHASE: The amendment is:

[The amendment was again read by the secretary. For text, see above.]

MR. MARTIN: If Mr. Brake will assure me that his section fully covers the problem of investment of state funds, I am perfectly willing to go along with this amendment. Otherwise, I think it should be in here.

CHAIRMAN MILLARD: The Chair will recognize Mr. Brake to answer Mr. Martin's question.

MR. BRAKE: Mr. Chairman, Mr. Martin, section d of Committee Proposal 37 tells you what you may not do in the way of investing state funds. I think that is all that is necessary.

Beyond that, the legislature has all the power that there is and you are not giving them any more power with this clause that you have in and I think that it is confusing to have the investment referred to in 2 different places.

MR. MARTIN: In the light of that explanation, Mr. Chairman, I think the committee would be willing to go along with this last amendment.

CHAIRMAN MILLARD: Will the secretary read the amendment.

SECRETARY CHASE: The amendment is:

[The amendment was again read by the secretary. For text, see above, page 1732.]

CHAIRMAN MILLARD: The question is on the Brown amendment. All in favor will say aye. Opposed, no.

The amendment is adopted. Are there any further amendments, Mr. Secretary?

SECRETARY CHASE: There is only one on the desk.

Miss Donnelly offers the following amendment to Committee Proposal 74:

1. Amend page 1, line 6, by striking out all of the proposal.

CHAIRMAN MILLARD: The Chair will recognize Miss Donnelly, the proposer of this amendment.

MISS DONNELLY: As I have listened to the argument of the proposers of this committee proposal, to me the language does nothing for us except give us some extra words in the constitution. If the constitution is silent on the subject, obviously the legislature will have it. This proposal sets forth that these things shall be as provided by law. If the constitution is silent on the subject, that is how they will be. The constitution will restrict the legislature.

Again we go back to our original rule when we got here—what does the constitution do? This language does nothing. It may have historical interest about what they did with the group who sat on this board but they'll find that in reading the message to the people as we put it forth for the constitution to be adopted. This language gives the legislature no power it hasn't got. It doesn't restrict the legislature in any way. It is just words for no effectual purpose. It is mere surplusage to the whole proposal. I can see that when they took section 20 out and they changed it, they wanted to do something, which in effect by leaving it silent, they've done the same thing as they are by saying what they did. Therefore, I think there is no need for extra words to the constitution. I recommend that the entire section be deleted.

CHAIRMAN MILLARD: Mr. Martin.

MR. MARTIN: Mr. Chairman, there are a lot of things that we have put into the constitution that the legislature probably can do if we say nothing about it. But we were taking out a rather important provision with respect to the board of state auditors and with respect to the board of escheats and the board of fund commissioners and we felt that it was important for those who might have claims against the state and for those who had matters relating to escheats, to know where the jurisdiction had gone to and what disposition had been made with it. And that is the purpose of this section. It doesn't give additional authority to the legislature but it does clearly indicate what has happened to this provision of the constitution and we thought that was better than to simply strike the provision and leave the matter in the air as to matter of escheats and claims against the state. For that reason, I oppose the amendment. I hope that the delegates will go along with the committee on it.

CHAIRMAN MILLARD: Miss Donnelly.

MISS DONNELLY: If Mr. Martin would answer a few questions through the Chair, I would like to ask him: if they want the people to know where it went to, don't you feel the message to the people will tell them where it went to? Or don't you feel the problem of those in between will be handled in the schedule? And this is in for a historical point, as far as I can see, Mr. Martin, and not to accomplish a purpose. From all your argument, I don't see what you are going to accomplish except for historical interest to people. Isn't this true?

MR. MARTIN: It isn't purely a matter of historical interest. It is a matter of what do people do and what are their rights in relation to both escheats, which goes far, far back into our history, and many of which have been pending for long periods of time and the same thing with respect to claims on a shorter time basis. All I can say is it was the belief of the committee that it was better to make a statement on the subject than to simply leave it in the air. Now, this is a matter of judgment and the committee's judgment was that it was desirable to do that. I can't give you any further explanation than that.

MISS DONNELLY: May I ask him another question through the Chair, if he is interested? You said escheats goes far back into history. I believe there's a lot of statutory language as to who will handle it and how it is handled, how much publication you have to do, how you get it back. But it is all statutory.

MR. MARTIN: I mean by that, Miss Donnelly, that many questions of escheats are long pending matters to the extent that the escheat isn't final for a substantial period of time and even then I believe if the person whose property is escheated shows up, he can be reimbursed or repaid. There are some complicated legal questions here. It seemed better to clarify them in this way than to simply strike the provision and leave the people whose rights are involved to wonder what happened or to some uncertainty about what had happened here.

MISS DONNELLY: Through the Chair again, Mr. Martin, aren't you going back to the statute on escheats then? You are arguing the statutory methods. I'll agree with you, they are very well set up, the people can always get it back, it will never be as firmly escheated. But you are preserving constitutional language for statutory.

MR. MARTIN: Mr. Chairman, Miss Donnelly, there is no question but what it goes back to the statute on escheats and it also goes back to the constitutional provision on the board of escheats. You can strike it if you want to, but it leaves people in further doubt about what has happened to their rights and we are trying to give them a bridge here so they will know what happened to their rights.

MISS DONNELLY: Well, for the reason that I believe we can tell them what happened to their rights by a message to the people and anything in between would be handled in the schedule, I would suggest that we strike the whole language as unnecessary at this time for the constitution, if we want it to last for 50 years.

CHAIRMAN MILLARD: The Chair will recognize the gentleman from Detroit, Dr. Nord.

MR. NORD: Mr. Chairman, I would like to state that I support the amendment offered by Miss Donnelly. This, of course, goes right back to the question I asked before and the answer that was given leaves me at the same point as it left Miss Donnelly, that there is no useful purpose to the language here and I would say that that is especially true now that we have stricken the words "and the investment of state funds." When those words, "and the investment of state funds," were in here, apparently then there was a difference between removing entirely the section 20 of article VI on the one hand and putting this one in, and the difference was that this section before us related to the investment of state funds. Therefore, the section before us, as it was originally written, would not be equivalent let's say to an exclusion report relating to section 20 of article VI of the present constitution. But with those words stricken, "and the investment of state funds," which we have now done, now what we have is language which serves no purpose, as has been pointed out. It does nothing more than what an exclusion report would do. It simply says that whatever was in section 20 before about escheats is no longer in there. Therefore, we have a standard procedure for informing the public of why we have taken something out of the constitution, and that

is not just by the report to the people, but also by exclusion reports which were printed in the journal.

I also would like to point out that as I see the section as it now stands before us, it has no effect unless the legislature does something because it says it "shall be as provided for by law." If the legislature doesn't do anything, then this section won't come into effect; it is inoperative. If the legislature does do something, then the person who wants to know about escheats will have to look to the statute. Therefore, in any event, the only place he can ever look to find the answer to the question about escheats will be in the statute. So there will be no answer provided in the constitution. In any event, while this, of course, is not a very important point one way or another, it seems to me on the whole that there is no point in putting something in the constitution which has no legal effect but simply confuses people and slows down anyone reading the constitution to the point where they are not quite clear as to what everything means. Therefore, I support the amendment.

CHAIRMAN MILLARD: The Chair will recognize the gentleman from Detroit, Mr. Iverson.

MR. IVERSON: Mr. Chairman, I think we are on the amendment but this might also apply to the committee proposal. If you strike the language as provided by the amendment or adopt the committee proposal, I'd like to ask this question: is it intended to also strike the language or the right of an individual citizen of the state under this language, "they shall examine and adjust all claims against the state not otherwise provided for by general law?" I presume this question ought to be directed to Mr. Martin. Is it intended that no claim shall be presented against the state except those authorized by general law?

CHAIRMAN MILLARD: Mr. Martin, if you care to answer.

MR. MARTIN: That in general is true, Mr. Iverson. In the adjustment of claims against the state, as you know, the state has a certain immunity to suits and the legislature has made some provision with respect to claims against the state, including setting up a court of claims and the provision that the state administrative board shall have certain responsibilities with respect to the settlement of small claims. I am not sure that I am answering your question but maybe if you will state it again, I'll —

MR. IVERSON: Mr. Chairman, I'm not sure that you are either. But if you adopt the language of the committee report, aren't you in effect saying that if the legislature desired to provide that no claim shall be filed against the state, nor passed on by the board of auditors or the administrative board, they'd have a perfect right to do it under this provision?

MR. MARTIN: Yes, sir, that's right. I think they have the authority to determine what immunity shall be waived there.

MR. IVERSON: So it was the intention of the committee to eliminate the language which I referred to in the present section 20?

MR. MARTIN: Yes, that's right.

CHAIRMAN MILLARD: The Chair will recognize Mr. Garry Brown.

MR. G. E. BROWN: Mr. Chairman, members of the committee, I'd like to address a question through the Chair to Miss Donnelly.

CHAIRMAN MILLARD: Miss Donnelly, if you care to answer.

MR. G. E. BROWN: I would like to ask Miss Donnelly, Mr. Chairman, as to what the fundamental basis is for the idea of escheats, if this power should be in the legislature in the absence of such a provision as this. As I recall the idea, the concept of escheats was a concept and a privilege of the crown, as it developed in our common law. Now then, if we don't have this provision, what would preclude that from being the case?

MISS DONNELLY: I'm sorry, but I don't think your question is very succinct. Could you rephrase it? If you want to know what my thought of escheats is, if we want to go into that, that's one question. The next question is what the provision has to say about escheats and the right of the sovereign and the crown — could you give me a more specific —

MR. G. E. BROWN: Mr. Chairman, Miss Donnelly, why wouldn't the executive have this authority?

MISS DONNELLY: Why would the executive have this authority?

MR. G. E. BROWN: Why wouldn't the executive have this authority without this provision?

MISS DONNELLY: I don't believe this gives permission to the legislature to escheat the property forever to the state either. In my opinion, this doesn't give them anything specifically except everything. In other words, it doesn't say they can put it to the crown or not to the crown. This doesn't say that it will go back to the people, then after 7 years it will go from the people to them; it doesn't say that after due notice and what have you, all the things one goes through statutorily to get back your property that has been escheated, this doesn't cover that either. So I don't know how your question relates to where this should or shouldn't be. This doesn't say the property shall eventually escheat and never come back. And that is what I think you want, something to say.

MR. G. E. BROWN: Mr. Chairman, Miss Donnelly, all that I attempted to point out is that this section provides for the procedures relating to escheats and to the custody and disposition of escheated property. This says the legislature shall provide; otherwise, the authority is in the legislature to provide by law as to how escheated property shall be handled. And the procedure is relating to escheats. In the absence of this, what would be the law? Where would you stop the executive from treating echeated property as it cared to?

MISS DONNELLY: What would prevent it, in the absence of this, would be a legislature's enactment.

MR. G. E. BROWN: Miss Donnelly —

MISS DONNELLY: If I may ask you a question through the Chair: what now prevents it?

MR. G. E. BROWN: I don't know. That's why I think this is a good section. That's why I think it should not be stricken, Miss Donnelly.

Mr. Chairman, another question of Miss Donnelly: what about the examination and adjustment of claims against the state? Do you think there isn't any necessity for constitutional provision that this shall be as provided by law?

MISS DONNELLY: In answering you, I would say that Mr. Iverson's comment was the most important on this, and that hasn't been answered: those that have not been enacted by the legislature. This section merely says it shall be as provided by law. All it does, it gives these things to the legislature. If there was no constitutional statement, it would rest with the legislature to enact law. If I may ask through the Chair this question: in your opinion, where does the power to enact laws lie?

MR. G. E. BROWN: I assume it's in the legislature, Miss Donnelly.

MISS DONNELLY: May I ask you this next question —

MR. G. E. BROWN: Mr. Chairman, Miss Donnelly —

CHAIRMAN MILLARD: Miss Donnelly, Mr. Brown is asking you questions. (laughter) Will you please answer them?

MR. G. E. BROWN: Mr. Chairman, Miss Donnelly, if I may further answer your question, as I posed at the original discussion of this question, I said that at common law the idea of escheats, the concept of it — escheat was originally a privilege of the crown. Now, if this is not true, then I'd like to be so advised. If it is true, then I think that we need something to provide that the legislature shall have authority to do something that otherwise it would not have to do, based upon the common law. I will conclude, Mr. Chairman —

MISS DONNELLY: Point of order. I haven't heard the question.

MR. G. E. BROWN: You asked me the question, Miss Donnelly. (laughter) Mr. Chairman, this is not a question. I would also suggest to the members of the committee that, rather than as Miss Donnelly has suggested, possibly it's better to put in the constitution that which we'd like the people to refer to rather than in the address to the people because I'm

not too sure that the address to the people will be around as long as the constitution is. I would urge a no vote on the amendment.

CHAIRMAN MILLARD: The Chair recognizes Delegate Brake.

MR. BRAKE: Mr. Chairman, ladies and gentlemen, Mr. Iverson and Mr. Martin together have me confused now. Leaving out the matter of escheats, this now reads, "Examination and adjustment of claims against the state . . . shall be as provided for by law." I understood that, Mr. Martin, to be purely a matter of procedure. In case you've got a claim against the state, the legislature shall say how you shall get that adjudicated or determined. Now, in the conversation between you and Mr. Iverson, you seemed to me to be talking about who shall have a claim against the state and the legislature may decide what claims may be brought against the state. Now, which is it, or is it both?

MR. MARTIN: Mr. Chairman, Mr. Brake, certainly the legislature should have the power and does have it, under this proposal, to determine what procedure should be used in connection with claims against the state. As far as whether you have the right to a claim against the state or not, there may be constitutional limitations to what the legislature can do in that regard in so determining, but clearly the legislature, I think, does have some responsibility in that connection insofar as it can waive the immunity which the state has for certain types of claims. So the legislature has an authority there which is somewhat flexible. It may be extended a long way or not at all. Therefore, it does have that authority with respect to what claims can be brought against the state. You can't determine whether a claim exists but you can determine whether it can be enforced or not in certain instances.

MR. BRAKE: Mr. Chairman, Mr. Martin, there is no question at all but that the legislature has the power to say what claims are good against the state but it seems to me this language ought to be one way or the other or clearly both, instead of hazy, as it seems to me it is now.

CHAIRMAN MILLARD: Do you have any further answer, Mr. Martin?

MR. MARTIN: No, I don't have any further answer.

CHAIRMAN MILLARD: The Chair will recognize Delegate Hanna.

MR. W. F. HANNA: Mr. Chairman, I'd like to ask Mr. Martin a couple of questions, if I may.

CHAIRMAN MILLARD: Mr. Martin, if you care to answer.

MR. W. F. HANNA: Mr. Martin, this section first is simply a revision of article VI, section 20 of the 1908 constitution; is that correct?

MR. MARTIN: That's correct, Mr. Hanna.

MR. W. F. HANNA: Mr. Martin, was this placed in the executive article in the prior constitution because it did set up a board and give it constitutional status, to wit, the board of auditors and, to wit, the board of escheats. Is that correct?

MR. MARTIN: I think that's probably correct, yes. It set up 3 different boards, you see.

MR. W. F. HANNA: Mr. Martin, section 20 of the 1908 constitution did not pass on the question of whether or not claims could be placed against the state, did it?

MR. MARTIN: Not in this section, no. It doesn't pass on the question of whether a claim can be brought against the state. It simply says that this board shall examine and adjust all claims against the state which are not otherwise provided for by general law.

MR. W. F. HANNA: With regard to escheats, the old section then of 1908 did not specifically define or create the power of escheats?

MR. MARTIN: That's correct.

MR. W. F. HANNA: Mr. Chairman, Mr. Martin, is the power of escheats inherent in government itself?

MR. MARTIN: I think Mr. Brown has put his finger clearly on the problem as far as escheats are concerned. I think the power of escheats was at one time a power of the crown and in that respect would be a power of the executive. At least under our system of procedure, escheats has been made an authority of the legislature, and with that authority, the legislature apparently set up the board of escheats.

MR. W. F. HANNA: Mr. Chairman, another question. Mr. Martin, can the executive exercise any powers not provided in this constitution or by law?

MR. MARTIN: I don't suppose it can, Mr. Hanna.

MR. W. F. HANNA: Mr. Chairman, a question to Mr. Martin: then if this power of claims against the state and the power of escheats can be exercised only by an executive arm of the government to the extent that the legislature gives them that power, is this section at all necessary?

MR. MARTIN: I think when you ask what kind of power does the executive have, the executive, I believe, can have some power from the common law as well as from statutory or constitutional provision, and in this case, I think that is probably true.

MR. W. F. HANNA: Mr. Chairman, Mr. Martin, does this section, as you redrafted it, belong in legislative powers or does it belong in the executive branch?

MR. MARTIN: Well, we left that to the committee on style and drafting, Mr. Hanna. We are not concerned with which section it goes into.

MR. W. F. HANNA: Mr. Chairman and members of this committee, it seems to me that inherent in our system of republican government, the powers vested in this government are vested in the legislature except as restricted by this constitution. This is a fundamental concept. Now, the whole article attempted to create an administrative agency that would adjust claims and would dispose of escheats and handle the custody and so forth. Now, if we proceed on this theory and we recognize that the legislature has the power to do those things except as restricted by this constitution, then claims against the state are within the province of the legislature without any constitutional recognition that there may be claims against the state. The same applies to escheats. The power to provide for escheated property is within the legislature and unless we say that the escheated property cannot be disposed of or passed upon or provided for by the legislature, they have that power, and therefore, this section, once the committee decides to take away the ex officio nature of the secretary of state, treasurer and other state officers, we need no further power, and they are recognizing a power here which did not exist prior to this time and which has not been necessary up to this time and once they take away the ex officio nature, they can place all of this section 20 of article VI in an exclusion report; and I therefore support the Donnelly amendment.

CHAIRMAN MILLARD: The Chair recognizes Dr. Norris.

MR. NORRIS: Mr. Chairman, I rise to oppose the Donnelly amendment. I believe that the intention of the committee is to provide for a constitutional mandate to the legislature to develop a procedure for the examination and adjustment of claims, escheats and disposition of escheated property. But I do think there is an infirmity in the present language and I believe Mr. Chase has an amendment there, sponsored by Mr. Shackleton and myself, which changes the words from "shall be as provided for by law" to "shall be provided for by law" because I don't think the language here carries forward the intent. As I understand the intent — and I may be wrong; if I am, Mr. Martin can correct me — the legislature shall provide by law for these various contingencies. But the present language is subject to being construed as not being mandatory or directive, but permissive only, and if the legislature does not act, as it may not act with constitutional authority under words such as, "shall be as provided for by law", I think this infirmity would be corrected by making the language just as has been suggested in that amendment. But in order that we might reach that amendment, I think we'd have to vote down the Donnelly amendment.

I don't think that in a matter of this kind, examination and adjustment of claims and escheats, that we ought to leave the matter without direction in the constitution. I think the subject matter calls for that direction. I invite your attention to section 20 of the 1908 constitution as amended, where it is

stated that the law shall constitute a board of state auditors. "Shall" is a directive quality to the entire section 20 and I think we ought to carry that forward in this constitution because I think leaving it blank would mean that first of all, the legislature may not provide for them and second, it provides a hiatus in the law which would not be in the public interest. Therefore, I would oppose the Donnelly amendment and ask that we consider favorably the amendment which is now on the desk of the secretary.

CHAIRMAN MILLARD: Mr. Shackleton.

MR. SHACKLETON: Mr. Chairman and delegates, without doubt, as Miss Donnelly said, the legislature could do it but supposing they should repeal the present laws that are on the books. Then the state of Michigan would be left right up in the air. I oppose the Donnelly amendment and support the amendment that Dr. Norris has put in.

CHAIRMAN MILLARD: The question is on the Donnelly amendment. Do you wish to be recognized, Miss Donnelly?

MISS DONNELLY: I would just like to point to the fact that now again we can't make up our minds here if we're going to trust the legislature or not trust the legislature on the last 2 points and arguments by the movers of the other amendment. One says we shall tell them to do it because they might not, and the other one says they might not do it and we'll be up in the air if we don't have this. Neither one will cure the problem that they are directing your attention to. Neither in the committee proposal nor any other place is it handled for those not provided by law as the 1908 constitution did.

Now, I submit if we want to preserve things that are not provided by law, we've got to go back to some of the language of the 1908 constitution and the new language doesn't take care of anything or provide for anything in the future. And you can't make the legislature act — we've heard this argument a hundred times — and once again, we're just telling them to do something which they can do. So I oppose the committee proposal and the amendment against mine, and support deleting the whole thing.

CHAIRMAN MILLARD: Mr. Mahinske.

MR. MAHINSKE: Would you read the amendment again?

CHAIRMAN MILLARD: The Chair was going to say that the amendments are not on the wall, so will ask the secretary to read the Donnelly amendment.

SECRETARY CHASE: The amendment is:

[The amendment was again read by the secretary. For text, see above, page 1733.]

CHAIRMAN MILLARD: The question is on the Donnelly amendment. Mr. Mahinske.

MR. MAHINSKE: I would like to direct a question to Miss Donnelly through the Chair.

CHAIRMAN MILLARD: Miss Donnelly, if you care to answer.

MR. MAHINSKE: If your amendment would succeed, what do you propose to put in its place?

MISS DONNELLY: That's a good question, but it's a dirty one. At this moment, I don't have any amendment to take care of it. (laughter) To me, the deletion does nothing except neat up the constitution by deleting some words that do nothing. The committee proposal does nothing and neither aspect handles the problem that this board wants handled, which was to take care of claims, "They shall examine and adjust all claims against the state not otherwise provided for by general law." Now, they once had the function. Now we've gotten rid of the function. Now we are also going to get rid of — if the other thing passes — we are going to cut these down to 20 different boards. So at this stage of the game, the nature of your question I think is almost to say: how do I rewrite the rest of the article to take care of it? I am not prepared to answer that. I'm just saying this proposal doesn't take care of the problem that I think exists. All my language and all my amendment to strike does is remove some surplusage that gives us nothing. I don't know if that answers your question or not.

MR. MAHINSKE: Mr. Chairman and delegates, I think the striking of the committee proposal here would leave us up in the air in that under section 20 of the existing article VI the language is to the effect that all claims not otherwise provided for by law shall be handled by the state board of auditors. Now, the court of claims act of 1939 has given most of the jurisdiction to the court of claims but has left the balance of the jurisdiction to the state board of auditors. One of their functions is to respond in garnishee cases where the state is the garnishee defendant. If we strike this and we don't go further and replace the function that the state board of auditors had, I'm afraid that we're going to have areas that are not covered at all with reference to claims against the state. And until we come up with some language that would fill this gap, I would have to be opposed to the amendment.

MISS DONNELLY: May I ask him a question through the Chair? Mr. Mahinske, how does the committee proposal take care of that gap? It just says the legislature shall provide. Isn't that true?

MR. MAHINSKE: Mr. Chairman, the last phrase here "shall be as provided for by law," I think would be interpreted to the extent that all provisions or all statutes on the books as of the adoption of the new constitution or as of today would remain in force. Now, with the function that we have that's left over to the state board of canvassers, I think it is covered — or not canvassers; that's another board that was created here — in the original language of 1908, the state board of canvassers was provided for here and we shifted it over to article V — but the state board of auditors, their function which they have left would be transferred over to actually the legislative department here, if they could provide for this. I believe that striking this whole provision here would strike possibly the court of claims act.

MISS DONNELLY: Mr. Mahinske, through the Chair, I don't see your logic.

MR. MAHINSKE: The court of claims' sole basis for existence is in the present section 20, article VI. Now, if we strike out section 20, article VI, and this proposal, then I don't think there is any constitutional basis for the court of claims act.

MISS DONNELLY: May I ask him a question through the Chair? Does not this language as proposed by the committee look forward, not backward? Does it not look to the future? Now, you're trying to have this language look backward, if I understand your question correctly, to pick up this hiatus. Am I not correct?

CHAIRMAN MILLARD: Miss Donnelly, the Chair thinks we're getting this turned around. The question is on your amendment to strike and you are asking Mr. Mahinske questions. The Chair thinks you should answer his questions.

MR. MAHINSKE: I would volunteer an answer.

CHAIRMAN MILLARD: All right, if you want to.

MR. MAHINSKE: I feel that this looks to the present situation and the future to cover the gap. I think the deletion of this language as proposed by your amendment may conceivably be interpreted — in the absence of something to replace it with better words than this — I think may be interpreted to abolish the present court of claims that is established under the existing section 20.

MISS DONNELLY: Point of order. I gather I am not allowed to ask him a question. It is improper. Is that right? I mean, I'd be happy not to.

CHAIRMAN MILLARD: If it is material to your amendment and he cares to answer, the Chair will let you go ahead. (laughter)

MISS DONNELLY: I was just going to say I think his premise is erroneous.

MR. MAHINSKE: In response, if we go back to the original language of section 20 of article VI of the 1908 constitution, it calls for a multiplicity of offices; state board of canvassers, state board of auditors, a state land commissioner, and in the event the office of state land commissioner is abolished, it should be replaced and so forth, and I think and I am quite sure that even in your survey study here, you will find that the existence for the present court of claims is based on sec-

tion 20 of article VI of the existing constitution, wherein it recites that the state board of auditors shall retain those duties that are not designated by the legislature to some other function or other office which has been designated to the court of claims and the balance was left over to the state board of auditors here and I am afraid by striking out the whole language, we may just topple the claims court. For these reasons, in the absence of something to replace this language, I would be opposed to the striking of the language itself.

CHAIRMAN MILLARD: The question is on the Donnelly amendment. All in favor will say aye. Opposed, no. The Chair is in doubt. The question is on the Donnelly amendment. All those in favor will vote aye and those opposed will vote nay. Have you all voted? If so, the machine will be locked and the secretary will tally the vote.

SECRETARY CHASE: On the adoption of the amendment offered by Miss Donnelly, the yeas are 31; the nays are 78.

CHAIRMAN MILLARD: The amendment is not adopted. Are there any more amendments?

SECRETARY CHASE: Messrs. Norris and Shackleton offer the following amendment:

1. Amend page 1, line 8, after "shall be" by striking out "as"; so the language will then read, ". . . shall be provided for by law."

CHAIRMAN MILLARD: The Chair will recognize Dr. Norris.

MR. NORRIS: Mr. Chairman, Mr. Shackleton and I have already advanced the reasons in support of this amendment. The main idea is that the language simply be directory and mandatory even though it may not be enforced by mandamus and that it would not leave it open, as well it might be under the present language, for the legislature not to provide by law for these contingencies. Accordingly, we respectfully ask for a favorable vote on this amendment.

CHAIRMAN MILLARD: The Chair recognizes the gentleman from Detroit, Mr. Iverson.

MR. IVERSON: May I ask Mr. Norris a question?

CHAIRMAN MILLARD: If Dr. Norris cares to answer.

MR. IVERSON: Mr. Norris, do you feel that with your amendment, the provision in section 20 of the present constitution, namely, "They shall examine and adjust all claims against the state not otherwise provided for by general law," would require the legislature to set up some means by which the citizens of the state could have their claims heard against the state which might otherwise not have been provided for by the legislature?

CHAIRMAN MILLARD: Mr. Norris.

MR. NORRIS: Mr. Chairman, I think that perhaps Mr. Martin might well contribute to an answer to this question; but I would envision that an appropriate body might be set up either by way of a court of claims or some kind of procedure to process these claims in the matter of escheated property. It would have to be some entity to which claims might be directed for a prompt adjudication.

MR. IVERSON: Mr. Chairman, Mr. Norris, I believe presently it is well known that the court of claims act limits the claims which can be heard by them; that presently I believe the administrative board passes upon other claims which are not authorized by the legislature. Would you say — or Mr. Martin say — that those claims that are presently passed upon by the state administrative board could not under this language then be passed upon by anybody?

MR. NORRIS: I am not certain that I have the precise knowledge with which to answer the question. All that the import of this amendment suggests is that the legislature shall proceed, take appropriate steps to deal with this matter in view of the fact that section 20 would be eliminated.

CHAIRMAN MILLARD: The Chair recognizes Mr. Martin.

MR. MARTIN: Mr. Chairman, I see no objection to this amendment. It makes it a little more clear that the legislature should act and fill whatever gap is created by the abolition of these 3 boards. I think that is desirable.

CHAIRMAN MILLARD: The Chair recognizes the gentleman from Detroit, Mr. Ostrow.

MR. OSTROW: Mr. Martin says he sees no objection to this. I see a necessity for this, from having read the supreme court cases which will remind most lawyers of principles that, especially in this convention, we have forgotten. Without language such as this, there is no way to enforce a claim against the state. In this particular case, Missouri Tile and Lumber vs. Sullivan, 275 Michigan 29, there is a statute that permits the state to be garnisheed as a garnishee defendant. In this particular case, the state failed to make a disclosure and a judgment and garnishment was rendered against the state of Michigan. The court then points out that although you have a judgment against the state of Michigan, all that amounts to is a liquidation of the claim. You cannot get an execution against the state of Michigan; you cannot garnishee any of the state funds; and unless you have either a board of auditors or any administrative board or court of claims to which you can then present that judgment as a claim, there is no way of getting it paid by the state. Now, this is an old case. I haven't had time to check it in the citator. It may be changed since then. But the law is still the same. You need some sort of procedure for auditing and allowing these claims.

CHAIRMAN MILLARD: The question is on the Norris amendment. All in favor will say aye. Opposed, no.

The amendment is adopted. The secretary will read.

SECRETARY CHASE: Mr. Brake offers the following amendment to Committee Proposal 74:

1. Amend page 1, line 6, after "Sec. a.", by inserting "The procedure for the"; and after "state" by striking out the comma and inserting "and"; so that the language will then read:

> The procedure for the examination and adjustment of claims against the state and procedures relating to escheats and to the custody and disposition of escheated property shall be provided for by law.

CHAIRMAN MILLARD: The Chair recognizes the proposer of the amendment, Mr. Brake.

MR. BRAKE: Mr. Chairman, all this does is make it perfectly clear that we are talking about procedures and not substantive rights.

CHAIRMAN MILLARD: Mr. Martin.

MR. MARTIN: Mr. Chairman, I see no objection to this. I think it would clarify the wording of the proposal.

CHAIRMAN MILLARD: Dr. Nord.

MR. NORD: Could it be read again, please?

CHAIRMAN MILLARD: The secretary will read.

SECRETARY CHASE: The amendment is:

[The amendment was again read by the secretary. For text, see above.]

CHAIRMAN MILLARD: The question is on the Brake amendment. All in favor will say aye. Opposed, no.

The amendment is adopted. Are there any further amendments, Mr. Secretary?

SECRETARY CHASE: Mr. Nord offers the following amendment:

1. Amend page 1, line 9, after "by law.", by inserting "There shall be a court of claims which shall examine and adjust all claims against the state not otherwise provided for by law.".

CHAIRMAN MILLARD: The Chair recognizes Dr. Nord.

MR. NORD: Mr. Chairman, in view of many of the remarks made by a number of delegates that the real solution to the problem would be to provide some self executing provision which states point blank that there shall be and is a procedure for examining and adjusting claims, it occurred to me to offer an amendment of this type which would state there is somebody or other — in this case, the court of claims — and then use language very similar to the language in the present constitution. This language would go further than the language we now have before us because this does not say that the legislature merely shall do something but it says also what happens in case the legislature doesn't do something, that there shall be a system anyway for doing so. I don't know whether the language which has been drafted rather rapidly is as good

as it could be, but it seems to me some provision of this type, making the adjustment of claims self executing, as it always has been, ought to be incorporated.

CHAIRMAN MILLARD: The Chair will recognize Delegate Danhof.

MR. DANHOF: Mr. Chairman and members of the committee, we now provide for a court of claims by statute and I submit that that is where it should remain. With this particular proposal, you are making an additional constitutional court. This I would oppose. I think it could very well be that in the future — it is possible that the circuit court might begin to handle some of the claims against the state rather than this special court of claims. We used to have a federal court of claims in the federal system and now the district courts are taking more and more of the claims against the United States government. This particular procedure has worked very well. It makes the court more available to the people. It does not force them to go to Lansing, which they have to do for a court of claims, and it would appear to be no good reason, if the legislature should see fit, to pass the claims against the state to the circuit court. I would oppose the idea of freezing into the constitution any additional courts of any kind other than we have provided for in the judicial article. We made an exception for the court of claims in the article by proclaiming that the special statutory courts will remain until changed by law. I would hope that this is where it would remain. I would therefore oppose the amendment.

CHAIRMAN MILLARD: The Chair will recognize Judge Dehnke.

MR. DEHNKE: Mr. Chairman and delegates, I have an additional reason for being wary of the amendment that is before the body now. Unless we intend to lay down a blanket immunity waiver of the state, I think it would be dangerous to adopt this amendment. The substance of it is that there shall be a court of claims to pass upon all other claims against the state, and it could at least be argued that that would permit anything to make a claim to be heard before the court of claims. Thank you.

CHAIRMAN MILLARD: The Chair recognizes Garry Brown.

MR. G. E. BROWN: Mr. Chairman, members of the committee, I would only endorse what Mr. Danhof has said. I think that the proposal as adopted with the Brake amendment provides for the procedure, it gives the legislature the authority to establish such a court, and under the judicial article we adopted we should not have a court of claims written into the constitution. I would suggest that you vote no on this amendment.

CHAIRMAN MILLARD: Dr. Nord.

MR. NORD: Mr. Chairman, I still say that first the amendment by Mr. Brake which we just adopted now states that only certain procedures shall be put into effect. It says nothing about substantive matter. I believe that was pointed out by Mr. Brake. Therefore, it no longer is mandatory, nor was it intended to be when the Norris-Shackleton amendment was adopted a few minutes before. As I see it now, there is nothing mandatory in the provision before us to state that there shall be some adjustment of claims. It seems to me we agreed a few minutes before that there should be something mandatory and now we don't have it and therefore we have more need for this amendment now than we had before.

The second point I'd like to make is this: with reference to the statement made by Judge Dehnke, it occurred to me in selecting this language the same thing as occurred to Judge Dehnke, but I know that the language that we have before us now is substantially the identical language that is in section 20 except that it now will refer to court of claims instead of a different board. I'll read the language from the present section 20: "They shall examine and adjust all claims against the state not otherwise provided for by general law." Now, that is substantially the identical language we have before us. Therefore, I don't believe that will work any change in the substantive law as to which claims are allowable and which ones are subject to immunity. I don't believe that that is really a serious problem although it did occur to me at first that it might be.

For those 2 reasons, then, that the language that we have before us basically is identical with what we have now in the constitution except that the board has been abolished and I've just put it into the hands of some other existing body; and 2, that we should have some substantive guarantee that in the event the legislature doesn't provide otherwise, the claims against the state will be handled.

CHAIRMAN MILLARD: The question is on the Nord amendment. Mr. Martin.

MR. MARTIN: Mr. Chairman, I believe this goes far beyond what the committee intended by its proposal. We did not intend to specify what the legislature should do in this connection and I think that the proposal as it now stands, as it is now amended, goes as far as the committee was prepared to go. I would therefore oppose the amendment.

CHAIRMAN MILLARD: Delegate Ostrow.

MR. OSTROW: I want to raise one further objection to this amendment. This amendment provides that the court of claims shall examine and adjust all claims, which would mean many claims which are now settled administratively. You claim the state owes you $100. You write a letter or file a petition and many times the attorney general will recommend that it be paid. Now, each of these claims will have to be a formal matter before the court of claims. It is much better to handle these as they are presently handled on an administrative basis, and then when you can't get relief there, go into the court of claims. I would oppose putting this provision in the constitution.

CHAIRMAN MILLARD: The question is on the Nord amendment. The secretary will read the whole section so we will understand it.

SECRETARY CHASE: The amendment offered by Dr. Nord is:

1. Amend page 1, line 9, after "by law.", by inserting "There shall be a court of claims which shall examine and adjust all claims against the state not otherwise provided for by law.".

As the section now stands, with the several amendments that have been adopted, the language would read:

> The procedure for the examination and adjustment of claims against the state, and procedures relating to escheats and to the custody and disposition of escheated property shall be provided for by law.

Dr. Nord proposes to add at the end thereof these words, "There shall be a court of claims which shall examine and adjust all claims against the state not otherwise provided for by law."

CHAIRMAN MILLARD: The question is on the Nord amendment. All that are in favor will say aye. Opposed, no.

The amendment is not adopted. Are there any further amendments, Mr. Secretary?

SECRETARY CHASE: No further amendments on file, Mr. Chairman.

CHAIRMAN MILLARD: Are there any amendments to the body of the proposal? If not, it will pass.

Committee Proposal 74, as amended, is passed. The secretary will read.

SECRETARY CHASE: Item 9 on the calendar, from the committee on executive branch, by Mr. Martin, chairman, **Committee Proposal 77,** A proposal to provide a suitable residence for the governor and to authorize an allowance for maintenance. Amends article VI.

Following is Committee Proposal 77 as read by the secretary, and the reasons submitted in support thereof:

The committee recommends that the following be included in the constitution:

Sec. a. THERE SHALL BE PROVIDED FOR THE GOVERNOR'S USE A SUITABLE EXECUTIVE RESIDENCE WITH FIXTURES AND FURNITURE AND

Explanation—Matter within [ ] is stricken, matter in capitals is new.

HE SHALL RECEIVE AN ALLOWANCE FOR MAINTENANCE OF THE RESIDENCE AS SHALL BE PRESCRIBED BY LAW.

Mr. Martin, chairman of the committee on executive branch, submits the following reasons in support of Committee Proposal 77:

The committee believes that a suitable residence for the governor, properly furnished and with an adequate maintenance allowance, should be provided. This matter has been debated here in Michigan since 1879. Eleven governors of both parties have recommended that such a residence be built. Of the 50 states, 41 now provide a residence for the governor and all the midwestern states except Minnesota have such a residence. The committee feels that this action has been much too long delayed and that the present situation places the governor in an undignified position which reflects unfavorably upon the state of Michigan and its elected head. All details of construction and related matters are left to determination of the legislature.

CHAIRMAN MILLARD: The Chair recognizes the chairman of the committee, Mr. Martin.

MR. MARTIN: Mr. Chairman, as you have heard, this provides that the legislature shall provide an executive residence for the governor with suitable furnishings and an allowance for maintenance. I want to call on one of the committee members to discuss the matter in more detail. I can only say that this proposal has been before the people of Michigan since 1879 and that 11 governors of both parties have recommended that such a residence should be built. It seemed to the committee that we have waited long enough for some action to be taken by the legislature and that while this is legislative in character, it is time that we moved ahead and that if no action is going to be taken, it should be specified in the constitution. I should like to yield to Mr. Marshall to discuss this.

CHAIRMAN MILLARD: The Chair will recognize the gentleman from Taylor, Mr. Marshall.

MR. MARSHALL: Mr. Chairman and members of the committee of the whole, I am happy to make a few remarks on this committee report. I might say in the beginning that this was unanimous in the committee on executive branch to recommend this proposal to the committee of the whole. I am happy also, inasmuch as I was one of the cosponsors along with Mrs. Koeze, Messrs. Anspach and Faxon.

In discussing this in the committee, we came to the conclusion that a suitable residence for the governor properly furnished and with an adequate maintenance allowance, should be provided. This matter has been debated here in Michigan since 1879 and, as Delegate Martin, the chairman of our committee, pointed out, 11 governors of both parties have recommended that such a residence be built. Of the 50 states in the union, 41 now provide executive residences for their governors and all of the midwestern states, except Minnesota, have such residences for their governors. After discussing this, it was the opinion of the committee that this action has been much too long delayed and that the present situation that exists places the governor in an undignified position which reflects unfavorably upon the state of Michigan and its elected head.

As Delegate Martin pointed out, we recognize that this possibly is of statutory nature; but I would point out that we leave it to the legislature under this proposal. All we do is give constitutional status to the providing of the executive residence and we leave it to the discretion of the legislature to work out all the details of construction and related matters. So I would urge all of the delegates, in view of the fact that we have debated this in Michigan since 1879, and in view of the fact that there have been numerous bills before the legislature to create an executive residence and one has not been created, that you give favorable consideration to the committee proposal. Thank you.

Explanation—Matter within [ ] is stricken, matter in capitals is new.

CHAIRMAN MILLARD: The Chair recognizes the vice president, Delegate Hutchinson.

MR. HUTCHINSON: Mr. Chairman, I would like to raise this question as to whether this provision as it stands right now already has been complied with in the state of Michigan. As I understand it, we have already provided for the governor's use a — I don't know how suitable it is, but it is an executive residence on Mackinac Island and there isn't anything here that says it has to be at the seat of government. Now, since you admit this is purely a statutory matter, it seems to me as though we better go further and say where this residence is to be located.

CHAIRMAN MILLARD: The Chair will recognize the gentleman from the upper peninsula, Delegate Lundgren.

MR. MARSHALL: I thought Delegate Hutchinson asked a question.

CHAIRMAN MILLARD: He didn't ask any through the Chair. (laughter) Delegate Lundgren has the floor.

MR. LUNDGREN: I just rise in support of Mr. Marshall's position on this. I think it's a longtime need for Michigan to provide a suitable residence for our governor. I think Mr. Hutchinson has a very good point. We don't want to keep the governor living on Mackinac Island when he should be down here doing his duties in Lansing. I'd also like to say when this residence and the furniture and everything have been provided for, perhaps we could put this in the schedule part of the constitution and when this house is completed, and everything is topsyturvy, or rosydaisy, or whatever you want to call it, (laughter) why, then, we can drop this thing out of the constitution and we won't have to deal with it 50 years from now, for those few who might still be around. So I rise in support of the proposal.

CHAIRMAN MILLARD: Now we will recognize Mr. Marshall.

MR. MARSHALL: I am not quite sure, but I believe Delegate Hutchinson probably did raise a valid point. The only thing is that it is my understanding that the providing of the residence on Mackinac Island by statutory language by the legislature is that it is provided as his summer home. It was never intended to be the executive residence as such.

I have several suggestions and I don't dare make any. Somebody suggested that we ought to build in Wayne county and someone else suggested Bloomfield Hills, and I don't dare make either one. (laughter) I would yield at this time, however, to our committee chairman for a reply to this as to his thinking as to whether it is necessary to say "at the seat of government". We did not take this under consideration in the committee.

CHAIRMAN MILLARD: Mr. Martin.

MR. MARTIN: Mr. Marshall and Mr. Hutchinson, I think the point is well taken and I notice that one of the delegates, Mr. Hubbs, has an amendment in to add the words "at the seat of government" after the word "provided". I think that is probably a desirable thing to do and I think the committee should have no objection to that.

CHAIRMAN MILLARD: Mrs. Cushman.

MRS. CUSHMAN: I believe I have an amendment in on the secretary's desk.

CHAIRMAN MILLARD: Mrs. Cushman, there is an amendment to change the wording of the section which we think should be put before yours to strike the whole thing. We'll perfect the section and then we'll go to your amendment. The Chair recognizes Mrs. Butler.

MRS. BUTLER: Mr. Chairman, I'd like to question the wording here "and he shall receive an allowance." Are we ever going to have a woman governor? (laughter)

CHAIRMAN MILLARD: That's a good question. Does anyone want to answer it?

MR. MARTIN: Mr. Chairman.

CHAIRMAN MILLARD: Mr. Martin.

MR. MARTIN: I think we should amend this to say, "and he or she shall . . ."

SECRETARY CHASE: Messrs. Hubbs and Faxon offer the following amendment:

1. Amend page 1, line 6, after "provided" by inserting a comma and "at the seat of government,"; so that the language will then read, "There shall be provided, at the seat of government, for the governor's use a suitable executive residence with fixtures and furniture . . ." and so forth.

CHAIRMAN MILLARD: The Chair will recognize Delegate Hubbs.

MR. HUBBS: Mr. Chairman, I think with regard to Mrs. Butler's problem, we should use the word "governess" occasionally in here. (laughter) However, on this subject, I think everything has been said that needs to be said and I will now yield to Delegate Faxon. (laughter)

CHAIRMAN MILLARD: Delegate Faxon.

MR. FAXON: I agree with Delegate Hubbs and I yield the floor. (laughter and applause)

CHAIRMAN MILLARD: The question is on the Hubbs-Faxon amendment. All in favor will say aye. Opposed, no.

The amendment is adopted. The secretary will read the next amendment.

SECRETARY CHASE: Mrs. Cushman offers the following amendment:

1. Amend page 1, line 6, by striking out all of the proposal. (laughter)

CHAIRMAN MILLARD: The Chair will recognize Mrs. Cushman.

MRS. CUSHMAN: I want to make it plain that I am in complete sympathy with the purpose of the section. There is no doubt about the fact that Michigan needs and has needed for a long time an executive mansion. I don't think, however, that this is the way to meet this problem. It is adding a section in the constitution to take care of something that everybody admits the legislature has complete authority to take care of. There is no question about it. They have had bills before the legislature. The only reason we are putting this in here is because the legislature has failed to take appropriate action and I don't believe that it is necessary to add a section to the constitution just because the legislature overlooked its duty. For that reason, I propose that we delete the section.

CHAIRMAN MILLARD: The Chair recognizes Delegate Yeager.

MR. YEAGER: Mr. Cushman, ladies and gentlemen of the committee, I disagree with Mrs. Cushman. I don't believe the legislature will do this and in fact, I don't think they can do it by its very nature. There always seems to be a greater need for money for other things than for something as plainly needed as a residence for the governor. I think it is a disgrace the way we have treated our governors in this respect in this state for many, many years — in fact, since the inception of the state. I urge a no vote on the Cushman amendment, and support the committee proposal.

CHAIRMAN MILLARD: The Chair recognizes Delegate Marshall.

MR. MARSHALL: I would only want to add to what Delegate Yeager said and I think many of the former governors would also agree with him, that it was a disgrace the way they have been treated. I don't think they'd only talk about his residence. (laughter) But I would want to speak against the Cushman amendment and again ask that you support the committee proposal, and point out again, there have been many editorials in the daily newspapers throughout the state, many in recent weeks and months since this convention has commenced, calling for and pointing out the need for an executive residence. An executive residence can be the meeting place for the governor with the legislators, to entertain visiting dignitaries, many other functions and usages without going into all of them, and I think it is absolutely essential and it is vital, and it is long overdue in this state.

We went no further than we had to. And I might mention that there are other states in the union that have language spelled out in their state constitutions similar to the language that we use here. And all we do is to provide for the executive residence and leave the authority in the hands of the legislature as to what type of residence, how it is going to be built, how it is going to be maintained, and so forth. Again, I ask you to defeat the Cushman amendment and support the committee proposal. Thank you.

CHAIRMAN MILLARD: Delegate Wanger.

MR. WANGER: Mr. Chairman, members of the committee, I agree and urge you to vote yes on this amendment. It seems to me quite clear that — from what has been said, I believe — there is no other constitution which contains such a provision. I call your attention to the fact that this is non self executing. The legislature still has to appropriate the money for it. I suggest there is perhaps little chance that they would be more likely to appropriate the money merely because this admittedly mandatory language is in the constitution. Finally, I suggest to you that, if there is need for government buildings in the state at this time, certainly others are needed far more than a special mansion for the governor — a new supreme court building; a house and senate office building; perhaps even a new capitol might take the head of the list in this regard.

CHAIRMAN MILLARD: Delegate Brake.

MR. BRAKE: Mr. Chairman, ladies and gentlemen of the committee, Mrs. Cushman is right in theory and I join her in being somewhat critical of the legislature for not having taken care of this. But back of the legislature and largely to blame for the fact that it hasn't been done are the people of the state, including newspapers, newspaper editors. Every time the legislature has made an attempt to get this job done, we hear just exactly what we heard from Mr. Wanger right now — we need hospital beds; we need school classrooms; we need everything more than we need a governor's mansion. And in spite of the fact that it doesn't involve a lot of money in a state that is spending a billion a year, we get it up and go on without it. And what we have done is disgraceful, I agree.

We got awfully close one time. In the second Kelly administration, the legislature finally appropriated $75,000 for a governor's mansion; and we had one of the finest architects in the state of Michigan. There is no question about it at all. But he made a psychological mistake that cost us the governor's mansion. He put in it a fish pond (laughter) — half inside the house and half outside the house. The model was placed in the basement of the capitol and people started laughing and they laughed us right out of that $75,000. (laughter)

CHAIRMAN MILLARD: Delegate Gover.

MR. GOVER: Mr. Chairman and fellow delegates, I am in sympathy also with Mrs. Cushman's remarks that this doesn't need to be in the constitution. I'd like to know what the word "suitable" means — whether it means $50,000, $100,000 or $500,000? I'm kind of interested in the money end of it for some reason or other and would kind of like to know something about it. But anyway, it seems that the legislature has passed the buck on this for 125 years. We ought to be able to pass the buck here for just a little while. Thank you.

CHAIRMAN MILLARD: Mr. Marshall.

MR. MARSHALL: I am not going to take too much time, Mr. Chairman, but in answer to Delegate Wanger and also at the same time, Mrs. Cushman, about the statutory language — as I say, it is only half statutory — but I would also remind all of the delegates that none of us disagree that civil service is statutory language and it is, but because over the years the legislature failed to act, it was put into the constitution.

Now, in answer to Delegate Wanger concerning the governor's residence, that a supreme court building is needed as are other state buildings, I would only point out that we are not providing an executive residence solely for the use of the governor. The governor's house most of the time — not all of the time, but most of the time — is like metropolitan airport prior to a holiday — legislators going and

coming, various meetings being held, visiting dignitaries to entertain. And it is essential to this state and the dignity of the state that we provide a residence for the use of the chief executive. This is the last time I intend to speak on this. I again ask you to defeat the Cushman amendment and support the committee proposal. Thank you.

CHAIRMAN MILLARD: Delegate Lundgren.

MR. LUNDGREN: I rise in opposition to Mrs. Cushman's amendment and support the idea that we now provide a mansion for our governor. Again, I say we can put this in the schedule part of the constitution. Style and drafting can take care of it. And when the house is built and the furniture is in, and the rugs are down, then we can drop it out of the constitution and it won't be in there, for those who might have the objection to writing this into the constitution. In reflection, I have one thing I'd like to comment on. When Mr. Marshall says we shall leave it up to the legislature, I say, amen.

CHAIRMAN MILLARD: Delegate Anspach.

MR. ANSPACH: Mr. Chairman and members of the committee, I rise in support of the committee proposal and in opposition to Mrs. Cushman's amendment. I was in favor of constructing a governor's mansion and I signed a delegate proposal and I am in favor of it now. I take the words of Judge Dehnke the other day, which are very wise words: I cannot add any more ideas. All I would be doing is adding words. Except I do want to get our central part of Michigan into the picture because reference has been made to the governor's summer mansion at Mackinac Island and the proposed mansion here. You perhaps read in the papers that in case of emergency, the capitol of the state of Michigan will be at Mt. Pleasant on the campus of Central Michigan University. (laughter)

CHAIRMAN MILLARD: Delegate Lesinski.

MR. LESINSKI: Mr. Chairman, I wish to speak against Mrs. Cushman's amendment. I believe there should be an expression in the constitution, expression of the people, that an executive mansion shall be provided for the governor. I may not be in agreement with the present committee proposal, but I have an expression on the desk that you will possibly favor in the near future.

CHAIRMAN MILLARD: Delegate Young.

MR. YOUNG: Mr. Chairman, I also oppose the Cushman amendment. But I think that what has been raised here is something that is pretty important in regard to the responsibility of this constitutional convention or any constitutional convention. I want to reemphasize the point that Delegate Marshall made, that this convention, faced with a clear need on the part of the people of the state and the unwillingness or the inability of the legislature to act in response to that need, then has the responsibility to enact statutory language, if you please, in order to meet the need. For that reason I support the committee proposal and oppose the amendment.

CHAIRMAN MILLARD: Dr. Nord.

MR. NORD: Mr. Chairman, I rise to support the amendment offered by Mrs. Cushman. First of all, I'd like to point out that this section as it has been offered to us, does not do anything that we desire to be done. Mr. Chairman, as I said, this section does not provide for a suitable residence for the governor. If it did provide for a suitable residence for the governor, I think all of us would probably stand up and give 3 cheers at least — if it did provide that; but it does not. As I see it, it doesn't provide; it requests the legislature to do it. In other words, what it does basically is this: it memorializes the legislature to do a certain thing. Now that is what it does. I think we should memorialize the legislature but I don't see why a letter that we send to the legislature should be included in the constitution. We might put quite a few letters like that in the constitution, but I don't see that they need to be in.

We should keep this in mind — I think this is the purpose of the Cushman amendment — that this constitution should be so good that it would be meaningful for the ages; that every word in this should be a gem; every word should be needed and it should be just as useful 50 years from now as it is now. This language that we have here is for the moment, really. It is something that should be done now. And once it is done, it won't need to be in the constitution any more. It isn't just that it is legislative detail. I realize that we have a great deal of legislative detail. But the difference between this and legislative detail is this: if it was legislative detail, we would be enacting something, and when we got finished enacting it, it would be so. In this case, we are not. We are only pleading with the legislature that they should enact something. Therefore, we are only memorializing the legislature.

I think that the correct approach is therefore to strike the language from the constitution and have a resolution later on at the appropriate time to memorialize the legislature to do this and I believe quite a few other things that we would like to express our intentions about, but shouldn't be in the document. I realize this is not a great issue but, nevertheless, it seems to me in the interest of a clean, sound document for the ages, it would be better to separate this and put it in a different document.

CHAIRMAN MILLARD: Delegate Sterrett.

MR. STERRETT: Mr. Chairman and members of the committee, I would like to oppose the amendment at this time and support the committee proposal. Also, I'd like to point out to Mr. Wanger that the New York state constitution does have this in it and as far as the funds go, I believe this could be taken from the general fund. Mr. Brake has already proved to us that the legislature will act on a governor's residence because they have in the past, and this would give them the initiative to do so.

CHAIRMAN MILLARD: Delegate King.

MR. KING: Mr. Chairman, fellow members of the committee, I think it is extremely important that we put this kind of a provision in the constitution. Dr. Nord points out that this doesn't do anything that we desire to have done. Well, it does. One, it indicates to the legislature that we want this. Secondly, it relieves them of a rather onerous burden that they now have. Naturally, it is difficult for the legislature, as Mr. Brake has pointed out, to expend sums of money in this way, even though it may be a very, very small percentage of the state's revenue, when there are other things which might at first seem to be more important. And yet, I think we do realize — all of us — and I'm sure the legislature does too — if they were to be placed in a position where they could look at this thing without any degree of passion — impassionately, perhaps I should say — it does indicate that we in the state of Michigan are proud of our state, proud of our heritage, that we would like a residence which would be an attraction for visitors from all around.

My brother in law was recently here from the state of Maine and he witnessed our activities here in con con and he went over across the road and saw the senate and the house in action, and he asked about the executive mansion because, of course, they have one in the state of Maine. And I told him that we don't have an executive mansion here. Well, he had been through the Blaine house, which is the executive mansion in Maine, and had seen the period furniture and the art exhibits and he was quite impressed and he thought it surely would be something to see here in this great state of Michigan, and I am sure it would be if we had one.

Recently, I understand — I think it was the president of Finland was here, and I understand — I don't know this to be a fact — but I understand there are more people of Finnish extraction in the state of Michigan than in any other of the 50 states. I think it would have been nice if the governor could have entertained this visiting dignitary, and I suppose he could — he could have rented a room over at the Jack Tar, or something like that — but I don't think this is what we wanted him to do, and probably for that very reason, he didn't do it.

I think that here we have an opportunity to relieve the legislature in this state of a burden which naturally they must bear when they spend money for such purposes as this.

And yet I am sure that we want our governor to ride in a suitable automobile, and we want him to live, I think, in a suitable home. This is our opportunity to do it. There is precedent for it. As Mr. Sterrett pointed out, the New York constitution provides for this. And I think it would be a very significant step for the state of Michigan to take at this time.

CHAIRMAN MILLARD: Miss Donnelly.

MISS DONNELLY: I rise to support the Cushman amendment for the reasons that I have heard that it is going to give us dignity; we're going to relieve the legislature; we're going to make a much better impression and we're going to do all sorts of interesting things. But I don't think that the constitution is the place to do them. I don't think that the legislature has ever shown that it is unwilling to do this. In fact, I am afraid that they have shown that they have an inability to do this act.

In writing this document, we have already pointed out to the legislature that they shall increase the supreme court by 1; they shall set up 9 appellate judges. This will probably take 3 more courts. We are helping the legislature spend money in the most fantastic manner I have ever seen but I don't think we have helped them get any money in. We're telling them they've got to do this, they should do this, they should do this. This is another situation — it isn't perhaps as much as the salary for the judges that will go on and on, but we are telling them to do this act which they have been willing to do in the past and they didn't have the money to do.

Next, the question of "suitable". What is suitable to me, I don't know would be suitable to another citizen or to another citizen and I don't think any 2 architects would agree what is suitable. I think we are attempting to do something perfectly reasonable if we were in the legislature and we had the money to do it. But we are the constitutional convention. Our job is not to dig up the money at the moment; our job is to do something for 50 years, we hope, and I don't think this is doing the job.

CHAIRMAN MILLARD: Mr. Marshall.

MR. MARSHALL: I said I wasn't going to speak on the proposal again and I shall not. I will not attempt to answer Miss Donnelly because I think all of the statements that she made have been answered heretofore. I do rise, though, to point out — which might help some of you to make up your minds — that I just received a news flash a moment ago. One of our fellow delegates and colleagues, who had some very kind things said about him on the floor here Friday is rapidly approaching the governor's chair. Brother Charlie Davis is leading by over 1800 votes to 300. Of course, I contend that all the Democratic precincts haven't been heard from yet. (laughter and applause)

CHAIRMAN MILLARD: Delegate Plank.

MR. PLANK: Mr. Chairman, Delegate Marshall beat me to the punch. I was going to give that report, but I thought I would throw this little point in: I don't believe we are going to have to worry about the governor's mansion at least for the next term because I think he's going to be sleeping in a Rambler. (laughter)

CHAIRMAN MILLARD: Delegate Yeager.

MR. YEAGER: Mr. Chairman, while I have a chance, I request a division.

CHAIRMAN MILLARD: Delegate Tubbs is ahead of you, Mr. Marshall.

MR. MARSHALL: I don't want to debate. I want to make a brief statement.

MR. TUBBS: Mr. Chairman, I rise to oppose the amendment of Mrs. Cushman, and while I am doing it, I would like to answer one of the arguments of Delegate Nord. If we are afraid of putting something in the constitution that may be good for 2 or 3 years and then forever forgotten, I think we can have the answer. We can say the state shall provide and maintain forever a residence at the seat of government. You see, if the present legislature, who might be asked by resolution to build a residence should build it, and next year it should burn, there would be no resolution to present to the legislature following that.

CHAIRMAN MILLARD: Dr. Hannah.

MR. J. A. HANNAH: Mr. Chairman and ladies and gentlemen of the committee, I think we've had plenty of conversation on this topic. I should only like to add to the point made by Miss Donnelly that if we do what I hope we are going to do — make provision in this constitution for the building and maintenance of a home for the governor — it will not be unique in Michigan. The Constitution of 1850 provided that the institution that I have the honor to preside over be created by the legislature at the earliest practical moment. It is not unique to write into the Michigan constitution directives that will eventually result in a desirable outcome. I urge the defeat of the Cushman amendment and the approval of the committee proposal.

CHAIRMAN MILLARD: Mr. Marshall.

MR. MARSHALL: I just want to make a brief reply to my good friend Delegate Plank, to the remark that he made a moment ago. And I might tell him that I was discussing it with some of my colleagues, and we would be happy to have the Democratic governor ride in a Rambler providing he can get a special built machine comparable to the present Chrysler we are using. (laughter)

CHAIRMAN MILLARD: The question is on the Cushman amendment. There has been a request for division. Is the demand supported? There are enough up. All those in favor of the Cushman amendment will vote aye. Those opposed will vote nay. Have you all voted? If so, the machine will be locked and the secretary will tally the vote.

SECRETARY CHASE: On the amendment by Mrs. Cushman to strike out all of Committee Proposal 77, the yeas are 18; the nays are 92.

CHAIRMAN MILLARD: The amendment is not adopted. Mr. Boothby.

MR. BOOTHBY: Mr. Chairman, I have been very confused by this vote. I thought my seat mate was the foreman of a wrecking crew and here I see that he is ready to construct a governor's mansion. (laughter)

CHAIRMAN MILLARD: The secretary will read.

SECRETARY CHASE: Mr. Lesinski has offered the following amendment:

1. Amend page 1, line 6, after "Sec. a.", by striking out the balance of the section and inserting "An executive residence shall be provided for the governor at the seat of government.".

CHAIRMAN MILLARD: The Chair will recognize the proposer of the amendment, Mr. Lesinski.

MR. LESINSKI: Mr. Chairman, this amendment provides a simple expression of the people. The whole constitution is an expression of the people and we leave the details up to the legislature.

CHAIRMAN MILLARD: Mr. Martin.

MR. MARTIN: Mr. Chairman, the existence of a residence without an adequate allowance to operate it is entirely impractical and the 2 really have to go together. If we are going to put the 1 in, if we are going to require the residence, it is just almost mandatory that you have some provision for a maintenance allowance or the governor will find it impossible to operate it on his salary. I would oppose the present amendment.

CHAIRMAN MILLARD: The question is on the Lesinski amendment. Mr. Lesinski.

MR. LESINSKI: Mr. Martin's remarks are directed to the legislature. We're only concerned here with an expression of the people. People are expressing themselves that an executive mansion be built; and I believe that is all we should be concerned with in this constitution and not the details. Of course, we put a lot of detail in this constitution that I personally believe should not be in. And that's what we're doing right along, putting in details.

CHAIRMAN MILLARD: Mr. Marshall.

MR. MARSHALL: Mr. Chairman and fellow delegates, I rise to oppose the Lesinski amendment. I agree with the

remarks made by our committee chairman, Mr. Martin, that the 2 have to go together. Right now in this state, in order to entertain visiting dignitaries and carry on the many functions that the governor has to do in a social way, he has to depend upon fund raising affairs, birthday dinners and what have you. I think that in itself is a disgrace and I think if we are to have a chief executive, let's make him a chief executive and let's give him the tools to do the job that the people of the state of Michigan want him to do.

CHAIRMAN MILLARD: Mr. Wanger.

MR. WANGER: Mr. Chairman, members of the committee, I urge you to support this amendment. It will in every way have the effect of the original upon the legislature and yet it will be shorter and it will contain the expression of popular will required to get the job done, without including fixtures, furniture and allowance for maintenance. These things are clearly statutory details, just as much statutory detail as the language of section 25 of article V of our present constitution which provides that fuel, stationery, blanks, printing and binding for the use of the state shall be furnished under contract or contracts with the lowest bidder, et cetera, et cetera. It is a natural thing which, upon reflection, the people will realize to be more legislative detail of the least desirable kind.

CHAIRMAN MILLARD: Mr. King.

MR. KING: Mr. Chairman and fellow members of the committee, it seems to me, as Mr. Martin has pointed out, and as I would reiterate, it is extremely important that we provide an allowance and furniture for this place. Now, conceivably the legislature could provide for a mansion, a very expensive to maintain mansion, and then because of a fallout with the governor, which has been known to happen, they might cut this allowance right off. It seems to me that the next governor or after the next one might not be in a position to maintain such a home and I think by all means we should defeat the amendment.

CHAIRMAN MILLARD: The question is on the Lesinski amendment. All in favor will say aye. Opposed, no.

The amendment is not adopted.

DELEGATES: Division.

CHAIRMAN MILLARD: Division has been called for. Is there support? Sufficient number up. All those in favor of the Lesinski amendment will vote aye. Those opposed will vote nay. Have you all voted? If so, the machine will be locked and the secretary will tally the vote.

SECRETARY CHASE: On the amendment offered by Mr. Lesinski, the yeas are 18; the nays are 85.

CHAIRMAN MILLARD: The amendment is not adopted. The secretary will read.

SECRETARY CHASE: Mr. Norris offers the following amendment:

1. Amend page 1, line 7, after "and" by striking out "he" and inserting "the governor"; so the language will then read, "The governor shall receive an allowance for maintenance of the residence as shall be prescribed by law." (laughter)

CHAIRMAN MILLARD: The Chair will recognize Dr. Norris.

MR. NORRIS: Mr. Chairman, I think Delegate Butler has made a point here which I hope will some day be a footnote to history and I hope that this amendment engenders the possibility that there will be a lady governor. (laughter) I think we ought to recognize that there has been considerable change in a number of respects with regard to the status of women since the 1908 constitution. We have recognized it in a number of provisions thus far adopted. I think also that this is not a matter which we can aproach as lightly as it has thus far been approached. I think it does recognize a change in the status of women and we ought to recognize it in this particular proposition.

CHAIRMAN MILLARD: The question is on the Norris amendment. Delegate Stevens.

MR. STEVENS: Mr. Chairman and members of the committee, it seems to me we have forgotten our early English lessons and we don't know that the word "he" includes women when used in this sense. Postmasters who are women are not called postmistresses. There is no such official term as "congresswomen". Those are things which people have used. We've had no trouble having women postmasters all through the state and the United States. We have women in congress and in the legislature. It hasn't been necessary to change the constitution in order to get these things. I'd like to oppose the amendment.

CHAIRMAN MILLARD: Delegate Sterrett.

MR. STERRETT: Mr. Chairman and members of the committee, I thoroughly agree with Delegate Stevens' English lesson. However, I would support this amendment for the particular reason of being consistent. Throughout the executive article, we have used the words "the governor" in most instances.

CHAIRMAN MILLARD: The question is on the Norris amendment. All in favor will say aye. Opposed, no.

The amendment is adopted.

DELEGATES: Division.

CHAIRMAN MILLARD: Are you serious? Is there support? No, there is not a sufficient number up. (laughter) Mrs. Butler.

MRS. BUTLER: Mr. Chairman, I just want to say, "Thank you, brother Norris." (laughter)

CHAIRMAN MILLARD: Are there any further amendments, Mr. Secretary?

SECRETARY CHASE: No other amendments on the desk, Mr. Chairman.

CHAIRMAN MILLARD: Are there any amendments to the body of the proposal? If not, it will pass.

Committee Proposal 77, as amended, is passed. The secretary will read.

SECRETARY CHASE: Item 10 on the calendar, from the committee on executive branch, by Mr. Martin, chairman, **Committee Proposal 76,** A proposal pertaining to the passage of permissive legislation to allow civil divisions of the state to establish local civil service systems and to receive assistance from the state civil service system. Amends article VI.

Following is Committee Proposal 76 as read by the secretary, and the reasons submitted in support thereof:

The committee recommends that the following be included in the constitution:

Sec. a. THE LEGISLATURE SHALL BY LAW ESTABLISH A SYSTEM UNDER WHICH THE CIVIL DIVISIONS OF THE STATE, INCLUDING CITIES AND VILLAGES, MAY CHOOSE TO PROVIDE FOR THE MERIT PRINCIPLE IN EMPLOYMENT. IN SUCH CIVIL DIVISIONS, APPOINTMENTS AND PROMOTIONS IN THE CIVIL SERVICE SHALL BE MADE ACCORDING TO MERIT AND FITNESS TO BE ASCERTAINED, AS FAR AS PRACTICABLE, BY EXAMINATION WHICH, AS FAR AS PRACTICABLE, SHALL BE COMPETITIVE. THE STATE CIVIL SERVICE COMMISSION, WHEN AUTHORIZED BY LAW, SHALL ASSIST ON A REIMBURSABLE BASIS, THE CIVIL DIVISIONS OF THE STATE IN THE ESTABLISHMENT AND MAINTENANCE OF THEIR PERSONNEL SYSTEMS.

Mr. Martin, chairman of the committee on executive branch, submits the following reasons in support of Committee Proposal 76:

This proposal in its present form requires the legislature to establish a system under which civil subdivisions may choose to provide for the merit principle in employment. The provision does not impose any obligation upon such subdivisions to come under the merit system, but it is intended to encourage and assist them in doing so. A mandatory requirement that appointments and promotions in the civil service of civil divisions of the state shall be made according to merit and fitness was considered but this optional provision seemed preferable.

Explanation—Matter within [ ] is stricken, matter in capitals is new.

The constitution, if this provision is included in it, would make it obligatory on the legislature to establish by statute a system which civil divisions, including cities and villages, could choose to come under. In local units which exercise their option to enter the system, the provision specifies that appointments and promotions in the civil service shall be made according to merit and fitness to be ascertained by competitive examination, as far as practicable. The legislature is given discretion to legislate as to the details for conforming to these standards.

The provision also gives recognition to assistance on a reimbursable basis by the state civil service commission, when authorized by law, to the local units in installing and maintaining their personnel systems.

The intent of this proposal is to encourage local governmental units in adopting the merit principle, and to facilitate them by making assistance available from the state personnel agency, without making it a constitutional requirement that all civil divisions conform to the merit principle in civil service appointments and promotions.

It should be added that both New York and Ohio have had somewhat similar constitutional provisions for many years.

The committee on local government was asked for its opinion though no jurisdiction was specifically assigned on this matter. A majority of that committee are of the view that the subject matter of the proposal is legislative in character and not necessary in the constitution.

CHAIRMAN MILLARD: The Chair will recognize the chairman of the committee, Mr. Martin.

MR. MARTIN: Mr. Chairman, before commenting on the proposal, 2 or 3 of the delegates have asked me when I was planning to move that the committee rise. I indicated that I thought we could work through until 10:30. I don't think we will cover this proposal, but at 10:30, I will make that motion if it is agreeable to the delegates.

The present proposal is one which would make it possible on an optional basis for local units of government to establish the local civil service system. There is nothing mandatory in the proposal except to require the legislature to set up such an optional system and its adoption would entirely depend upon the action of the local unit in determining if they wanted the merit system. The details of the proposal, I am going to refer to Dr. Pollock. For that purpose, I yield the floor to him at this time.

CHAIRMAN MILLARD: The Chair will recognize the delegate from Ann Arbor, Professor Pollock.

MR. POLLOCK: Mr. Chairman and members of the committee, this proposal is explained in Journal 70 on pages 432, 433. As the chairman of the committee has already indicated, it is a permissive proposal. The committee decided to put it on the permissive rather than the mandatory basis. But the intent of the proposal is to encourage local government to adopt the merit principle and then to facilitate them by giving them assistance, if assistance is desirable.

I believe we are here in part as delegates in this convention to do what we can to strengthen state and local government. It is obvious that the functions of modern government, both at the state and local level, have become so technical and so difficult at times that they require trained personnel. We decided this 20 years ago at the state level and when we passed section 22, which is the basis for our present civil service system, I was pleased to find, as I listened to all the delegates over the hall, not one person was opposed to the principle of civil service. I am looking around this evening to see if there is anybody who wants to contend that civil service is not a good standing principle. That being the case, I think it applies equally to local government as it does to state government. And just by way of illustration of the importance of having good personnel standards to improve the efficiency of local service, I wonder if you realize that in the recent census of government we have something like 100,000 employees — compared to about 32,000 employees at the state level — over 100,000 at the local level. This doesn't count, of course, school districts, counties, municipalities and townships. We have, according to that census of government, some 25,000 county employees, some 68,000 municipal employees, some 16,000 township employees. And since Mr. Gover and others are interested in the financial side, I think it is very interesting to find too that the expenditures of local government are of course higher than the expenditures of state government, the direct expenditures, the direct general expenditures, so that the need from the point of view of both dollars and cents and from the point of view of efficient service is greater at the local level and I think is much more needed in many cases than it is at the state level. However, the committee did not feel like making this mandatory but rather, as I have indicated, our intent was to encourage local governments to improve their local personnel systems, as of course many of them have already done.

The city of Detroit has one of the outstanding municipal civil service systems in the country. We have the same thing true, I believe, with Wayne county. However, rather widely over the state we have policemen and firemen organized on a merit basis, but many other employees are not. I am sure that especially in the metropolitan counties, metropolitan cities, and a good many of the urban townships, there is a crying need for something today. The purpose, as I say, is to encourage improvement along this line and to facilitate them if they need the assistance of the state civil service commission on a reimbursable basis to provide for it. I urge the support of this proposal, and I would like to yield the floor, Mr. Chairman, if I may, to Mrs. Judd.

CHAIRMAN MILLARD: The Chair will recognize Mrs. Judd.

MRS. JUDD: Mr. Chairman, fellow delegates, I am particularly interested in this proposal because of some rather vivid personal experiences I have had in this field. The proposal, as you see, is intended to provide the smaller units of government that could not afford and undoubtedly could not even secure a personnel technician or the technical help that is needed to do a good job. I had the experience a number of years ago in the city of Grand Rapids where the commission refused to put up money to secure technical help in writing rules for the Grand Rapids civil service commission — a rather ridiculous situation for a layman to be in. I had a further experience with the juvenile court in Kent county where the citizens had finally persuaded the judge to secure qualified people for his staff in helping to set up a job analysis and classification plan because there were no funds for technical help. So that I am well aware of the various ways in which technical help could be used, particularly in situations where a permanent technician would not be essential; where the services could be, for instance, assistance in the drafting of rules or in job analysis, setting up a classification and compensation plan, and also giving examinations. This is the kind of service that the Michigan municipal league renders more or less at cost to the smaller cities of the state that do not wish to employ permanent personnel technicians. So this coming from the state service might be particularly helpful to counties and to townships.

I'd like to point out that this would in no way give the state civil service department policymaking power over any local units of government. The proposal, as you see in the second sentence, does set up minimum standards provided the local unit desires to have a civil service system for its employees. And this, I think, is a protection to our state civil service department. We would not wish them to be wasting their time in local government service on a standard that was not adequate. However, the extent of the civil service in the local unit, the number of employees that would come under it, the level of the pay plan and so on would all be policies that would be made locally and this would simply be a service which would be rendered under contract. And lastly, I want to point out that it would not

cost the state any more money because the local government units would pay the cost of it.

MR. POLLOCK: Mr. Chairman.

CHAIRMAN MILLARD: Mr. Pollock.

MR. POLLOCK: I should now like to yield the floor to Mr. Downs.

CHAIRMAN MILLARD: The Chair will recognize Mr. Downs.

MR. DOWNS: Mr. Chairman, I would like to speak very much in favor of the principle of civil service. I see that as this is drawn it is optional. I, for one, think maybe at times we should have more teeth in it.

There are 2 points I would like to make. As I read this, where there is a satisfactory civil service established, that community or county would not need to avail itself of the facilities of the state civil service commission, though it could. Where there is a community that is planning to use civil service, it could get the advice or advantage of a long established system. The one point that I would like to raise — I feel somewhat as the end man in asking the question of Dr. Pollock — is to what extent, if a community participated in this plan, will it then hand over any control of its operations to the state civil service commission or would that be primarily an advice or technical facility for the community if it so desired? I think that point may be raised and I would appreciate Dr. Pollock's answer, if I may direct it through the Chair.

CHAIRMAN MILLARD: Dr. Pollock may answer if he wishes to.

MR. POLLOCK: Mr. Chairman and Mr. Downs, yes, very clearly the control remains with the locality, and the purpose is merely to provide a framework law within the terms of which localities may, if they see fit, set up their system. The control remains, of course, locally. There is no provision, as I believe there is in the New York constitution, for some kind of financial assistance, even of some kind of financial supervision over local civil service systems. This could be done. But it is not provided in this amendment.

CHAIRMAN MILLARD: If the chairman of the committee would yield the floor now so the Chair could —

MR. MARTIN: I yield, Mr. Chairman.

CHAIRMAN MILLARD: The Chair will now recognize Delegate Woolfenden.

MR. WOOLFENDEN: Mr. Chairman, I'd like to direct a question through the Chair to Dr. Pollock, if I may.

CHAIRMAN MILLARD: Dr. Pollock. He may answer if he wishes to.

MR. WOOLFENDEN: Dr. Pollock, within the contemplation of this language, are counties and townships civil divisions of the state?

MR. POLLOCK: They are so considered, yes.

MR. WOOLFENDEN: I am a little perplexed as to the clause "civil divisions of the state, including cities and villages" but saying nothing about counties and townships.

MR. POLLOCK: This language is somewhat a duplicate of the language in the New York constitution, where the matter has been litigated quite a bit, and where they do not have home rule in the same way as we do in Michigan. The idea is to avoid any possible conflict with the home rule act.

CHAIRMAN MILLARD: The Chair will recognize Delegate Madar.

MR. MADAR: Mr. Chairman, I just wish to ask a question of Dr. Pollock through you.

CHAIRMAN MILLARD: Dr. Pollock, you may answer if you wish to.

MR. MADAR: I just want to make sure that we get on record this one thought: as I understand it, this will in no way affect the city of Detroit's civil service or the county of Wayne's civil service?

MR. POLLOCK: Correct.

MR. MADAR: Thank you very much. I certainly am for this proposal.

CHAIRMAN MILLARD: The Chair will recognize Mr. William Hanna.

MR. W. F. HANNA: Mr. Chairman, a question to Dr. Pollock or Mrs. Judd.

CHAIRMAN MILLARD: Which one?

MR. W. F. HANNA: Dr. Pollock.

CHAIRMAN MILLARD: Dr. Pollock, you may answer if you wish to.

MR. W. F. HANNA: In line 10, you refer to "in such civil divisions of the state" — it goes back to line 9. Now, is it intended to say civil divisions adopting the merit principle or in all civil divisions, whether they adopt civil service or not, that appointments and promotions shall be according to the merit system?

MR. POLLOCK: The civil divisions which may choose to provide for the merit system.

CHAIRMAN MILLARD: The Chair will recognize Delegate Wanger.

MR. WANGER: Mr. Chairman, I desire to ask Dr. Pollock a question.

CHAIRMAN MILLARD: Dr. Pollock, if you care to answer.

MR. WANGER: Mr. Chairman, Dr. Pollock, the question is this: you say that the New York state constitution contains a somewhat similar provision; I merely wish to ask, is this necessarily a good comparison or a good model for us to use? Is not the New York constitution considered to be, among state constitutions, unnecessarily long, prolix and detailed?

MR. POLLOCK: I think in general, you are correct about the New York state constitution. I was trying to indicate that there are already similar systems and similar constitutional arrangements working. I mentioned New York as one example. I could equally well mention Ohio. I merely wanted to indicate that this is not unprecedented and we therefore have a lot of practical experience knowing exactly how these arrangements work.

MR. WANGER: The second question I should like to ask: I would like to ask if my understanding about the legal effect of this is correct, namely, that the legal effect of this section is exactly the same as the one providing for a governor's mansion. It merely sets out a goal to be achieved and places the legislature under a moral mandate to achieve it but it in fact is in no way self executing. Is that a correct understanding of it?

MR. POLLOCK: Yes, Mr. Chairman, we say the legislature shall. Of course, there is no way, as we have indicated a good many times, to force the legislature to do this.

MR. WANGER: My last question is this: we did this in the case of the governor's mansion because the legislature has evidently for a century and a quarter failed to act, although many people have desired the governor's mansion be built. Now, I understand that we do have local civil service systems. I wish to ask: is there any parallel problem here — a parallel? Does the legislature refuse to act in allowing local units of goverment to set up the merit system for the basis of this employment?

MR. POLLOCK: No. That's true, because we are principally concerned with large cities which usually have the means to do this. Now we have reached the point where we have a lot of smaller divisions, but with a great many employees unable to assist themselves in providing for a proper personnel system.

MR. WANGER: Then do I understand that many of these divisions of the state do not at present have the legal power to establish a merit system?

MR. POLLOCK: No, no. They do have the legal power but they haven't the financial means usually to do this. And also they haven't the knowhow or the framework within which to develop a modern personnel system. The idea here, of course, is to try to develop personnel systems rather universally and to develop them within a sound framework.

MR. WANGER: Mr. Chairman and Dr. Pollock, it would seem that the basic question then is one of financing the system and providing perhaps a uniform or suitable ideal framework for these units of government to adopt.

MR. POLLOCK: It's partly financial but it's also partly technical.

MR. WANGER: Is there an indication that the legislature has refused to step into this area and to help solve the situation or is there any history of difficulty?

MR. POLLOCK: There is a history of inaction. It is a history of failing to recognize that this serious problem exists.

MR. WANGER: Mr. Chairman and Dr. Pollock, my last question would be this then: do you think that the problem of inaction, from a practical political standpoint is so serious that it requires the insertion in the constitution of language of such length which has admittedly no legal effect whatsoever?

MR. POLLOCK: Yes. If the committee had not thought so, we wouldn't have gone to the trouble of framing this proposal. (laughter)

CHAIRMAN MILLARD: The Chair will recognize the delegate from Kalamazoo, Mr. Allen.

MR. ALLEN: Mr. Chairman, I'd like to ask a question of Dr. Pollock and I think he may know what I am going to ask. It seems to me, Dr. Pollock, that if we put the "proper interpretation" — that's in quotations — we don't have anything to worry about. But I would like to be sure we have a proper connotation in understanding. Let me give you an example. We have in existence today certain laws under which a city or a home rule village may adopt firemen and police pension retirement plans. Now, after these are passed, maybe 10 cities and some villages will adopt them, and this is all right. Then a few years later, one of the 10 cities wants some sort of an amendment, and because these are set up under a general act, the amendment has to come under a general act also. Now, one of the cities of the 10 wants a general amendment. So the legislature passes the amendment. It pleases 1 city. There are 10 cities already under the system. Nine cities are dissatisfied and they can't do anything about it.

Now, let us apply it in the case of what we are talking about here. The first sentence says, the legislature shall by law establish a system under which the local units of government, cities and villages, may choose to come under the merit principle. Now, let's say 10 of them choose to come in under a system. Now let us say later an amendment is made to the system. My question is: may any of the 10 cities which are already under the system, as soon as an amendment is made, pull out if the city wishes to do so, or are they all bound?

MR. POLLOCK: Mr. Chairman, Mr. Allen, that's a legal question beyond my competence but I would hazard a guess that the cities would be under the system in the first place and would continue under any general system which the legislature would provide, either by amendment or otherwise.

MR. ALLEN: Mr. Chairman, if I may continue on then. I'm wondering, Dr. Pollock, if this is really the right way to go about it. If a city wanted to come under it and had the liberty to pull out, I can see value, especially — and perhaps I ought to say primarily for the small city or the village or the small county, if a county wanted to come under it —

MR. POLLOCK: Or the large county.

MR. ALLEN: — or even a large county, if they did not wish to have a personnel system of their own. But I think we get away from the home rule principle if we get a whole number of diverse units — some large cities, some medium, some small, some large counties, small counties — all under a general act. And then if they are still bound, and the legislature changes the act, then aren't we really going back to what we thought we got away from in 1907, when it was Lansing and the state legislature that was setting the policy for cities and for villages? In other words, if a city is going to be bound under this, then isn't this an evil because we no longer really have home rule. If we could understand this constitutional amendment in terms of not being bound but the ability to pull out at any time and sort of an advisory technical assistance, I think that might be valuable. But to say that they have to be bound by it, then I think that we get into the obvious difficulty of a determination made by the legislature which will not fit all of them together, which they may not all want, and we no longer have our home rule. In other words, I think with the interpretation which I understand you may be putting on it, we aren't strengthening home rule; we may be weakening it.

MR. POLLOCK: Mr. Chairman, Mr. Allen, I appreciate the point that you are raising and I yield to you or to no one in my respect and devotion for the principle of municipal home rule. But I really think you are raising a "boogeyman" when there is no reason to do so. The legislature, in the first place, is to set this up, as the amendment indicates, on a permissive basis. I am sure that when this matter is before the legislature, there will be plenty of people who will raise that point you are raising, to be sure that nothing in that framework law violates our tenets of municipal home rule. I think therefore that your objection is not a very good one.

CHAIRMAN MILLARD: Delegate Ostrow.

MR. OSTROW: I have a question or two of Dr. Pollock.

CHAIRMAN MILLARD: You may answer, if you care to, Dr. Pollock.

MR. OSTROW: In your first line you say "The legislature shall establish a system. . . ." I take it from that — and then it's permissive — that either the municipality chooses to adopt that system or they can adopt no other.

MR. POLLOCK: They can adopt any under their existing powers, of course.

MR. OSTROW: Well, that isn't what this language indicates to me.

MR. POLLOCK: The idea of adopting a framework law, Mr. Chairman, Mr. Ostrow, is to encourage civil subdivisions to do something within a modern framework as the framework law was laid down.

MR. OSTROW: Yes. But under the present situation before this proposal, any municipality could adopt any type of civil service.

MR. POLLOCK: Yes, consonant with the existing general law.

MR. OSTROW: Yes. Under this, the legislature is to establish a system under which the civil divisions of the state may choose to provide —

MR. POLLOCK: Yes. Not necessarily a system. There can be alternatives.

MR. OSTROW: Yes. But you say "a system".

MR. POLLOCK: Yes. There are various alternatives, Mr. Chairman.

CHAIRMAN MILLARD: Just a minute. This little set to here — will you speak through the Chair so that the rest of the committee can understand what is going on.

MR. OSTROW: You say "a system", which I read to mean a system which the municipality may choose. It says nothing about any other alternative. That's what is bothering me. At the moment, they can have a 100 per cent system or 75 per cent system or a system has this feature or that. If the legislature establishes a system, as I read this language, you either choose that system or nothing.

MR. POLLOCK: That would not be my interpretation. I suppose you would like the word "optional" put in, an "optional system."

MR. OSTROW: I would like something.

MR. POLLOCK: An "optional system" or "optional systems". This is probably what you are getting at.

MR. OSTROW: My second question. I am not familiar with your New York provision of civil divisions of the state. To me, there are civil divisions, criminal divisions. How broad is this definition of "civil division"?

MR. POLLOCK: It includes all the principal units of government under the state.

MR. OSTROW: Would that include university school districts?

MR. POLLOCK: No.

MR. OSTROW: What is the definition of "civil"? I know of no definition. I don't mean that there aren't any. I would like to know what your definition is.

MR. POLLOCK: Counties, cities, townships and villages.

MR. OSTROW: Just limited to those?

MR. POLLOCK: To those. That's the way I would interpret it. Not school districts.

MR. OSTROW: Or school boards?

MR. POLLOCK: School boards are obviously operated on a different financial and organizational basis.

MR. OSTROW: What I am talking about is the definition. When we get into the courts, if we do — and we are bound to with all of these things — the question will be: what is a civil division of the state? A moment ago, you said anything less than the state.

MR. POLLOCK: Yes. The civil subdivisions set up by the state for the carrying out of its general functions.

MR. OSTROW: Well, is there some standard of reference for the word "civil"?

MR. POLLOCK: Again, I say I use this as an accepted term under the New York provision, where there has been no difficulty in interpreting what it means.

MR. OSTROW: How broadly have they interpreted it?

MR. POLLOCK: Just as I —

CHAIRMAN MILLARD: Gentlemen, again, can you direct the questions through the Chair? And not this talk that is going back and forth, which nobody seems to understand. Direct your questions to the Chair and then to Dr. Pollock.

MR. OSTROW: Mr. Chairman, for the benefit of those who didn't hear or those who didn't understand, the 2 points that I wanted clarified were, first, that these civil divisions, whatever they may be, will not be limited to a system set up by the legislature, but may adopt any other system that they choose; and second, some standard of reference as far as definition of "civil divisions of the state" is concerned so that there could be no question about how broad or how narrow that definition is.

MR. MARTIN: Mr. Chairman.

CHAIRMAN MILLARD: Mr. Martin.

MR. MARTIN: There are at least 2 amendments and it is after 10:30. I move that the committee do now rise.

CHAIRMAN MILLARD: The question is, shall the committee rise. All in favor say aye. Opposed, no.

The motion prevails.

[Whereupon, the committee of the whole having risen, President Nisbet resumed the Chair.]

PRESIDENT NISBET: The Chair recognizes Mr. Millard.

MR. MILLARD: Mr. President, the committee of the whole has had under consideration several proposals, of which the secretary will give a detailed report.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 74,** A proposal to provide by law for the administration of claims against the state, escheats and escheated property, and the investment of state funds; reports this proposal back to the convention with 3 amendments thereto, recommending that the amendments be agreed to and that the proposal as thus amended be passed.

[The following are the amendments recommended by the committee of the whole:

1. Amend page 1, line 6, after "Sec. a.", by inserting "The procedure for the"; and after "state" by striking out the comma and inserting "and".

2. Amend page 1, line 8, after "property" by striking out the comma and "and the investment of state funds".

3. Amend page 1, line 8, after "be" by striking out "as".]

PRESIDENT NISBET: The question is on concurring in the amendments as adopted by the committee of the whole. Those in favor of concurring in the amendments will vote aye. Those opposed, no.

The amendments are adopted and **Committee Proposal 74,** as amended, is referred to the committee on style and drafting.

Following is Committee Proposal 74 as amended and referred to the committee on style and drafting:

The committee recommends that the following be included in the constitution:

Sec. a. The procedure for the examination and adjustment of claims against the state and procedures relating to escheats and to the custody and disposition of escheated property shall be provided for by law.

SECRETARY CHASE: The committee of the whole has also had under consideration **Committee Proposal 77,** A proposal to provide a suitable residence for the governor and to authorize an allowance for maintenance; reports this proposal back to the convention with 2 amendments, recommending the amendments be agreed to and the proposal as thus amended be passed.

[The following are the amendments recommended by the committee of the whole:

1. Amend page 1, line 6, after "provided" by inserting a comma and "at the seat of government,".

2. Amend page 1, line 7, after "and" by striking out "he" and inserting "the governor".]

PRESIDENT NISBET: The question is on concurring in the amendments of the committee of the whole. Those in favor will say aye. Opposed, no.

The amendments are adopted and **Committee Proposal 77,** as amended, is referred to the committee on style and drafting.

Following is Committee Proposal 77 as amended and referred to the committee on style and drafting:

The committee recommends that the following be included in the constitution:

Sec. a. There shall be provided, at the seat of government, for the governor's use a suitable executive residence with fixtures and furniture and the governor shall receive an allowance for maintenance of the residence as shall be prescribed by law.

SECRETARY CHASE: The committee of the whole, Mr. President, has also placed **Exclusion Report 2027** at the foot of the general orders calendar for the committee on executive branch; and also had under consideration **Committee Proposal 76,** A proposal pertaining to the passage of permissive legislation to allow civil divisions of the state to establish local civil service systems and to receive assistance from the state civil service system; and has come to no final resolution thereon. This completes the report of the committee of the whole, Mr. President.

PRESIDENT NISBET: Announcements. Mr. Danhof.

MR. DANHOF: Mr. President, fellow delegates, for the information of those who are interested, the latest election returns at 10:30, 28 out of 47 precincts reporting: Mr. Davis, 1872; Mr. Andrews, 371.

PRESIDENT NISBET: Announcements. Mr. Beaman.

MR. BEAMAN: I'd just like to call the attention of the delegates to another solemn occasion. You will recall that last year in setting up the budget, the administrative committee had to make certain estimates, and one in regard to the verbatim reporting was based on the fact that 1 million words of debate were used in the 1908 constitution. In arriving at our estimate for this convention, we felt that 2,500,000 words would be handled. I'd like to say that 40 minutes ago, we reached that 2,500,000 words. (laughter) From now on — and I hope it will have some effect on the delegates — we are deficit debating. (laughter)

PRESIDENT NISBET: Mr. Chase.

SECRETARY CHASE: I have the following announcements:

The committee on public information will meet Wednesday,

March 21, 7:30 p.m., in the committee room directly across the corridor from the convention hall.

There will be a meeting of the committee on administration tomorrow, Tuesday, at 1:15 p.m. Walter DeVries, chairman.

There will be a meeting of the committee on emerging problems, Tuesday, March 20, in committee room I on the third floor at 11:30 a.m. or immediately after the morning session. Frank G. Millard, chairman.

The apples today are from Mr. Turner. (applause)

We have the following requests for leave: during the sitting of the committee of the whole, Mr. Heideman called. Because of the very bad weather, he couldn't get a plane and wishes to be excused from the sessions of tonight and tomorrow morning; also, Mr. Knirk wishes to be excused from tomorrow morning's session for business reasons; and Mr. McAllister asks leave from the morning sessions of Tuesday and Wednesday, March 20 and 21.

PRESIDENT NISBET: Without objection, they will be excused. Is that all you have?

SECRETARY CHASE: That's all of the announcements, Mr. President.

PRESIDENT NISBET: The Chair recognizes Mr. Sablich.

MR. SABLICH: Mr. President, I move we adjourn.

PRESIDENT NISBET: The question is on adjournment. Those in favor will say aye. Opposed, no.

We are adjourned until 9:30 tomorrow morning.

[Whereupon, at 10:40 o'clock p.m., the convention adjourned until 9:30 o'clock a.m., Tuesday, March 20, 1962.]

ONE HUNDRED THIRD DAY

Tuesday, March 20, 1962, 9:30 o'clock a.m.

PROCEEDINGS

PRESIDENT NISBET: The convention will please **come to order.**

This morning, to give our **invocation,** through the courtesy of Dr. Anspach, we are happy to have the Reverend J. Kenneth Cutler, pastor of the First Presbyterian Church of Mt. Pleasant.

REVEREND CUTLER: Let us pray. Almighty God, our Father, we humbly acknowledge Thy sovereign rule over all the affairs of men. We own that Thy will and purpose over arches the business of government and reaches into the very halls and committee rooms of this convention. Without Thy guidance and inspiration, a constitution which is worthy of the highest and best in our American heritage cannot be written. As the fathers of our nation who wrote the constitution of our great land fervently implored Thy aid, so do we. For without Thy helping hand, we will surely fail. With it, we cannot but succeed. We pray that to know Thy will shall be our supreme concern and our unremitting search until this constitution is completed.

We confess to Thee, O God, our human weaknesses and frailties. We are prone to anger, quick in temper, often selfish and parochial in outlook. This we confess to our shame. The human nature in us wants to condemn, to strike back, to get even. In such times we need to listen to the calm, clear counsel of the Man of Galilee who said, "Judge not . . . . Turn the other cheek . . . . Go the second mile . . . . Love your enemies . . . . Pray for them which despitefully use you." What confidence in one another these teachings, O Christ, can restore in us if we will only practice them. Give us the grace to do it. If there is anything our faith has taught us, O eternal One, it is that no situation is ever hopeless if the light of Thy truth is brought to bear upon it and if men are willing to cooperate with one another.

Give to these men and women of this convention enthusiasm for their tasks and divine strength to bear the weight of their heavy responsibilities. Guide them aright in the making of the momentous decisions affecting the lives of the millions of people. When they are tired and weary, refresh their bodies and spirits. When they lack understanding, give them Thy wisdom. When their faith wavers, fill them with hope. When they make mistakes and errors, help them to acknowledge them and correct them. Save this convention, O Lord, from the destructive power of selfish interests and mere political expediency. Turn us from divisive loyalties and party cries to the unity of men who know themselves to be children of the one true God and brothers, one of another. May the gracious charity of Christ, our Lord, be with your spirits. Amen.

PRESIDENT NISBET: Thank you very much. The **roll call** will be taken by the secretary. Those present, please vote aye. Those present, please record your attendance by voting aye. Have you all done so? If so, the secretary will lock the machine and record the attendance.

SECRETARY CHASE: Mr. President, a quorum of the convention is present.

Prior to today's session, the secretary received the following requests for leave: Mr. T. S. Brown who has urgent business in Detroit, Mr. Higgs who is still busy in a federal court trial, and Mr. Douglas whose mother in law had a heart attack, wish to be excused from today's session; Mr. Spitler, from this afternoon's session to attend a funeral; and Messrs. Greene and Wood, from this afternoon's session and tomorrow morning's session.

PRESIDENT NISBET: Without objection, the requests are granted.

SECRETARY CHASE: Absent with leave: Messrs. T. S. Brown, Dade, Douglas, Everett, Follo, Heideman, Higgs, Knirk, Mrs. Koeze, Messrs. McAllister, Mosier, Page and Rush.

Absent without leave: none.

[During the proceedings the following delegates entered the chamber and took their seats: Messrs. Dade, Knirk, McAllister and Rush.]

PRESIDENT NISBET: Reports of standing committees.

SECRETARY CHASE: There are no standing committee reports.

PRESIDENT NISBET: Communications.

SECRETARY CHASE: None.

PRESIDENT NISBET: Third reading.

SECRETARY CHASE: Nothing on that calendar.

PRESIDENT NISBET: Motions and resolutions.

SECRETARY CHASE: There are no resolutions on file.

PRESIDENT NISBET: **General orders.** The Chair recognizes Mr. Millard.

MR. MILLARD: Mr. President, I move that the convention resolve itself into committee of the whole for the purpose of taking up matters upon the general orders calendar.

PRESIDENT NISBET: The question is on the motion of Mr. Millard. Those in favor will say aye. Opposed, no.

The motion prevails. Mr. Millard.

[Whereupon, Mr. Millard assumed the Chair to preside as chairman of the **committee of the whole.**]

CHAIRMAN MILLARD: The committee will be in order. At last night's close, we were on Committee Proposal 76. The secretary will read so you will be advised what it is.

SECRETARY CHASE: Item 10 on the general orders calendar, from the committee on executive branch, by Mr. Martin, chairman, **Committee Proposal 76,** A proposal pertaining to the passage of permissive legislation to allow civil divisions of the state to establish local civil service systems and to receive assistance from the state civil service system. The committee proposal has been read.

For last previous action by the committee of the whole on Committee Proposal 76, see above, page 1743.

CHAIRMAN MILLARD: At the close, the Chair had 5 names on the list: Delegates Faxon, G. E. Brown, Norris, Judd and Lesinski. At this time, the Chair will recognize Delegate Faxon.

MR. FAXON: Mr. Chairman, I'd like to ask one question through the Chair to Dr. Pollock with regard to the —

CHAIRMAN MILLARD: Dr. Pollock, if you care to answer.

MR. FAXON: In the last sentence where it states "The state civil service commission, when authorized by law. . . ." The question is whether this is necessary or whether the legislature could do this without constitutional authorization, that is, to authorize a civil service commission, or is the fact that the civil service commission is a constitutional creation that requires some additional spelling out here.

MR. POLLOCK: I think the language was put in for several reasons. In the first place, the civil service commission is not reaching out for more power and authority. Obviously, this is one state, and if it could be helpful to local government, as well to the state service, it ought to be clear that it has that power. Therefore, we put it in and we also said, of course, on a reimbursable basis.

MR. FAXON: I'd like to yield to Delegate Martin for purposes of making some comments.

CHAIRMAN MILLARD: Delegate Martin.

MR. MARTIN: Mr. Chairman, when we adjourned last night, several questions had been raised with regard to this proposal and subsequent to that time, several of the delegates who had raised those questions worked on a possible amendment which I believe Mr. Hanna is offering. I wonder if it would be possible to have that read and then it may be that some of the other amendments which are pending would not be necessary.

CHAIRMAN MILLARD: The secretary will read the amendment.

SECRETARY CHASE: Mr. W. F. Hanna has filed the following amendment:

1. Amend page 1, line 8, after "Sec. a.", by striking out the remainder of the section and inserting "Each city, village, township, county, school district and metropolitan government may, by a majority vote of the electors voting thereon, establish a merit system for its employees. The state civil service commission may furnish technical services on a reimbursable basis to any city, village, township, county, school district or metropolitan government requesting the same.".

CHAIRMAN MILLARD: This evidently is a substitute for the proposal. The Chair will recognize Mr. Martin as chairman of the committee.

MR. MARTIN: Mr. Chairman, this provides the self executing provision with respect to local civil service which would avoid the problem that Mr. Allen presented last night whereby if a general statute with respect to local civil service were set up, it would have to be changed every time any one unit wanted to make some change in its system and this would then affect everybody, whether they wanted that change or not. This is a self executing provision and it is protected by the proviso that the local community may authorize it by a majority vote of their electors. It contains the very essential provision also that the state civil service commission may furnish technical services on a reimbursable basis in order to help such local units work up or work out the problem of a local civil service system. The provision is also broadened to make reference to other local units and cities and villages. Of course, if a city or village has a home rule charter, this would take precedence. The home rule charter will control in the event that there is a home rule charter and it makes either provision for civil service or provision for establishing a civil service system. Where there is no such provision, this would make it possible for them to establish such a local system with approval of the voters. It seems to me the amendment is a good amendment and takes account of the questions which were raised. I think that the committee would be happy to accept it. I would ask Dr. Pollock if he would want to comment on this at this time.

CHAIRMAN MILLARD: Just a moment. We have some other people that are talking to the original proposal. Your amendment will come up in order. The Chair recognizes Garry Brown.

MR. G. E. BROWN: Mr. Chairman and members of the committee, I find myself in a strange position of being more of a constitutional purist than Dr. Pollock. We have, in Committee Proposal 81, already adopted a provision much like this with respect to in counties of a million and over, where it is self executing. Counties under a million may adopt a similar provision for a merit program as provided for by law, the provision says. It seems to me with respect to counties we are providing a duplication here. I don't think there is any question but what the legislature may do that which we are now writing into the constitution. I would be opposed to any self implementing provision as has been suggested by the amendment and I think without the self implementing provision, this language is purely statutory and could just as well be left out of the constitution and, as I say, being a constitutional purist, I am forced to oppose the committee proposal and any amendments that would write it into the constitution.

CHAIRMAN MILLARD: The Chair will recognize the gentleman from Detroit, Dr. Norris. This is on the original proposal.

MR. NORRIS: Mr. Chairman, I had originally sought to ask some questions regarding this terminology of civil division. There were several questions of Dr. Pollock yesterday with regard to it. I notice, however, in the contemplated amendment that there is a spelling out of the governmental units that are involved in this particular situation. I think I would pass because apparently the problem is taken care of in the amendment.

CHAIRMAN MILLARD: The Chair will recognize the lady from Grand Rapids, Delegate Judd.

MRS. JUDD: Was this from yesterday's list?

CHAIRMAN MILLARD: That's right.

MRS. JUDD: Because I would like to speak to Bill Hanna's amendment when the time comes, I will pass at this point.

CHAIRMAN MILLARD: The Chair will recognize Delegate Lesinski.

MR. LESINSKI: Pass.

CHAIRMAN MILLARD: Delegate Brake.

MR. BRAKE: Mr. Chairman, ladies and gentlemen, I'd like to ask the chairman of the committee, Mr. Martin, a question, if I may.

CHAIRMAN MILLARD: Mr. Martin, do you care to answer?

MR. BRAKE: Mr. Martin, was there in your committee any demand from the cities for this proposal?

MR. MARTIN: Mr. Brake, I think I'd have to say there was no direct demand for it. The committee was conscious of the fact that in many areas there may well be, in the future, a desire to establish a civil service system and the purpose of this is simply to make that possible. This is a matter of a good many years ahead, of course. The civil service program has worked well generally and some local units have adopted it or have provided it under their home rule provision, which felt that we should have a flexible provision which would enable local units to adopt such a system with the approval of their electors if they felt it was desirable.

MR. BRAKE: You didn't hear from any townships or counties, I take it?

MR. MARTIN: I don't think we had any specific request that this be provided for, no.

MR. BRAKE: Mr. Chairman, the legislature without any possible question has the power to take care of everything that is here except possibly the matter of the aid from the state civil service system. And as Mr. Martin has just confirmed, and as far as I have ever heard, there is no demand from cities, counties, townships for this service whatsoever.

CHAIRMAN MILLARD: The Chair will recognize Delegate Boothby.

MR. BOOTHBY: Mr. Chairman, we have an amendment coming up and I'd like to reserve my time for that amendment.

CHAIRMAN MILLARD: Is there anyone else to speak on the proposal? Dr. Pollock. Is this on the proposal?

MR. POLLOCK: Mr. Chairman, it is in reply to Mr. Brake's comment. I can't recall that anybody in the state legislature or in the state government wanted civil service at the state level either. But it proved to be a very necessary thing and I think with the growing population and the growing complexities of the problems of government at the state level, it will become just as necessary there as it was at the state level.

While I am on my feet, I would like to add my comment to that of the chairman of the committee, that this substitute that Mr. Hanna has brought together is a good example of the deliberative process at work. They were able to come forth with language which I think is a distinct improvement over what we brought forward from the committee and clarifies some of the questions that were raised with me yesterday. I therefore hope that that amendment can pass. The only question I have heard about it is with regard to school districts. There may be some question of including school districts in the list.

CHAIRMAN MILLARD: The secretary will read the first amendment.

SECRETARY CHASE: Mr. Faxon has offered the following amendment to Committee Proposal 76:

1. Amend page 1, line 10, after "employment.", by striking out the balance of the section; leaving the section to stand as the first sentence only, to read:

Sec. a. The legislature shall by law establish a system under which the civil divisions of the state, including cities and villages, may choose to provide for the merit principle in employment.

CHAIRMAN MILLARD: The Chair will recognize Delegate Faxon.

MR. FAXON: Mr. Chairman, what happened to the Hanna amendment?

CHAIRMAN MILLARD: It will be offered in its order.

MR. FAXON: Well, I put this in yesterday before the discussion began because I felt that the first sentence took care of the merit principle in terms of spelling out what the legislature shall do and that the balance of the 2 sentences dealt more with details as to how it was to be carried out. I don't know that I care to say anything more about it because I am not quite certain whether I want to keep it in, in view of the new amendment that Mr. Hanna has offered. I wonder if Mr. Hanna would care to comment on it.

MR. W. F. HANNA: Mr. Chairman, point of inquiry. If I offer my amendment as a substitute for the committee proposal and amendments thereto, will it take precedence with the Chair?

CHAIRMAN MILLARD: The answer is, no. The ruling is that we perfect this proposal by any amendments that are on file before we take up the substitute.

MR. W. F. HANNA: May I ask Mr. Faxon if he will take my amendment as a substitute for his amendment?

MR. FAXON: Mr. Chairman, can I withdraw my amendment pending action upon Mr. Hanna's amendment?

CHAIRMAN MILLARD: You can withdraw your amendment.

MR. FAXON: So that we may act upon his?

CHAIRMAN MILLARD: Mr. Secretary, are there any amendments ahead of the Hanna amendment?

SECRETARY CHASE: There are 2 other amendments on file ahead of Mr. Hanna's amendment.

CHAIRMAN MILLARD: We will have to take those up. Will you withdraw your amendment?

MR. FAXON: This one here, yes.

CHAIRMAN MILLARD: Mr. Faxon withdraws his amendment. The secretary will read.

SECRETARY CHASE: Messrs. Shackleton, Seyferth, G. E. Brown, Brake and Boothby offer the following amendment:

1. Amend page 1, line 8, by striking out all of section a.

CHAIRMAN MILLARD: The Chair will recognize the delegate from Saginaw, Mr. Shackleton.

MR. SHACKLETON: Mr. Chairman, members of the committee, the reason for this amendment, or the reasons — there are several — this idealistic, innocent executive committee proposal may not be as innocuous as it might first appear. It says that the legislature "shall" pass a law which "may" make possible, for a fee, for the state's more than 1500 political subdivisions to use the state civil service commission's services to assist them in a supposed need for improvement in the employment and use of their public servants. Before hurriedly or lightly voting on this — we are led to believe — harmless proposal, some consideration should be given to some facts as to where resulting action could and might lead.

First, the background of what the convention has approved thus far: one, we have created an appointed commission of 4 members, not more than 2 of which shall be of the same party. If more than 2 parties are represented, the 2 of the same party can control the commission. If 2 are from one major party and the other 2 from the other major party, a deadlock would result. Staggered terms do not overcome such a possibility. Two, the acts of the commission are untouchable by the legislature, the governor or the administrative head of government. Thus we have, three, an unrecognized all powerful fourth branch of government in addition to the 3 recognized gubernatorial, legislative and judicial branches. Four, there are no effective checks on this unrecognized branch of government, whereas we do have checks on the 3 recognized branches. Five, the employed, the civil service commission, has more authority than the employer, the state of Michigan. Six, the allegiance of state employees, except for infinitesimal number of exempt positions, is to a bureaucracy and not to those who must carry out the work as provided by the legislature, the governor, the department heads, those responsible for getting the work done. Attempted interference by those whose duties are to direct the work puts those people on trial to carry the defense against inefficiency, shortcomings, refusal to carry out instructions, rather than the accused employee who can hide behind the civil service. Seven, the constitution has usurped a legislative function and duty. This has been conceded by one of the authors of the present section 22, article VI.

Some of the requirements to make the proposed section effective are, one, the legislature "shall" enact a law to make permissive certain so called beneficial objectives. Two, the law could not be sufficient in detail to take care of all contingencies for 1500 separate political subdivisions. On this floor, we have heard the statement that "laws could not meet our individual needs" as coming from, I believe, the director of either the Detroit or the Wayne civil service, and it was necessary to have spelled out something separate from them, which we have done. The civil service commission could not service even a small percentage of our political subdivisions, at any rate, for a reasonable fee, unless the provisions were sufficiently broad to establish a pattern for all, to fit into mass routine and the handling of a potential of 220,000 political subdivision employees. Incidentally, this figure does not coincide with the figure that was mentioned on the floor yesterday but it is a figure obtained from the librarian. To treat each township, village, city, town or county on an indi-

vidual basis would be essentially an impossible task. To obtain efficiency, it could well be that the present pattern used for the state would have to be used. Three, any such law would make permissive the surrender by a local government of a local governmental function, in the one area at least, to an all powerful, over powerful bureau or commission in Lansing. Four, it could be an opening wedge for state government to encroach further upon local governmental functions and control, making it ever easier to get away from home rule or from our grass roots control which should be preserved. Five, without specific prohibitions, wage scales, fringe benefits, working conditions and standards would no longer be established locally. This would result in the increasing of local taxes at a time when they do not have enough taxes. Based on past civil service actions, as far as raises and fringe benefits are concerned, they could become effective after local units had adopted their budgets. Six, much has been said about preserving rights in this convention. The rights of the government should be preserved and not surrendered to a commission or bureau.

Some of the possible results if this should become enacted: 1, the evils of present interim appointments could become statewide. This would be an extension of the present underground patronage system; 2, local government's employees would become subservient to a bureau in Lansing with its umbrella coverage to the fourth unrecognized branch of government and not to the local government from which their pay checks would come; 3, the civil service commission claims it needs 1 per cent of the total state payroll for operations. Unless the state expects to indirectly subsidize political subdivisions, all local payrolls would have to go up to meet the fee to be charged to the local units. There is no experience to judge how much the charge would have to be before such a large increase of work load. Present facilities would be grossly inadequate. Unless these services would be on a specific contract basis, again the local units might find their charges adjusted without notice and after budgets were approved; 4, it is the history of bureaus and commissions, when once given authority, that they exercise it on an ever expanding basis. Not being accountable to the legislature or to the governor for expenditures, it would be only human for the civil service commission to use funds to propogandize and bring pressure on local units of government in order to use this "permissive" service so that the commission would build its empire ever larger and seemingly more important. Many, particularly smaller political subdivisions, find it easier to submit to a higher form of government than to resist. That is why in the federal government and at the state level more and more political subdivisions rely on outside assistance rather than solve their own problems. That is why local state's rights have been surrendered to a more centralized government. Local rights, as well as state's rights, as President Eisenhower warned, should be recaptured and not surrendered; 5, such a law could readily be accepted by some local officials that they might escape local pressure for the responsibility of making salary adjustments. This could become a beautiful buck passing scheme, even though surrendering rights just to escape one of the disagreeable responsibilities for which they were elected by the people; 6, the civil service commissioners would be less than human if they did not try to achieve control over all public employees, other than federal, if the groundwork is laid; 7, there is no reason to believe that the commission would not ultimately try to get school employees under their empire and jurisdiction; 8, the following figures were given to me by our librarian: the number of employed persons in the state, September 1961, 2,723,300; state employees, approximately 34,000; all political subdivision employees, 220,000. As I said, this does not coincide with the figure given yesterday. Total state and political subdivision employees, if they were all to come under it, 254,000.

The civil service commission — not responsible to the legislature, not responsible to the governor, not responsible to the people or voters — now controls, without any checks, the employment and wages of 1.6 per cent of the total employed in Michigan. If the state employees, plus political subdivision employees are included, their control would be 7.2 per cent of the employed population of the state. It would mean a 460 per cent increase in the number of employees serviced or controlled. There does not appear, as Mr. Brake brought out, to be any evidence of a demand recorded or suggested that the counties, townships, cities or villages are clamoring for this provision.

This does not mean that I am opposed to merit systems, either state or locally. I am not opposed to sound merit systems. Who ever dreamed in 1941 that the present section 22 would become an uncontrolled behemoth? You may think the imagination is running loose, imagining impossible results if this proposed section is adopted. There are about 10,000 more state employees now than in 1950. How many more state and local employees will there be by 1970? To build an empire takes an imagination. We are derelict in our duty if we do not try, in all our sections, to imagine what might happen the next 25 to 50 years. We should certainly try to imagine where our present oligarchy, the civil service commission, in its present framework of our constitution, may go unchecked if we permit their enlarged authority.

We have already adopted section m in Committee Proposal 81, which provides that all other counties may establish merit systems as established by law. We certainly don't need to spell out for a third time in the proposed constitution this section, along with 2 other sections on civil service. The committee on local government views this as a statutory provision. Mr. Ostrow and Mr. Allen pointed out very effectively some of the things here yesterday. Therefore, I suggest that you think well before you create an untouchable, uncontrollable, possible Frankenstein and urge the adoption of this amendment.

CHAIRMAN MILLARD: The Chair will recognize the gentleman from Kalamazoo, Delegate Allen.

MR. ALLEN: Mr. Chairman, I think that the remarks made by Mr. Shackleton and the Shackleton amendment would, if the choice before this convention were simply whether or not to take the committee proposal or to have nothing at all, be very much in point. In other words, if the choice before us today were to take the committee proposal or to take the Schackleton amendment, which would strike it out, then I certainly, personally, would favor the Shackleon amendment. However, if this Shackleton amendment should fail, we have coming up the Hanna amendment. And the Hanna amendment provides that any city, county or village which wishes to do so — and this is purely voluntary — may have its own civil service system. It then provides that if it wishes to do so, it may secure technical assistance from the state. So it is voluntary in both ways. Now, my feeling is that the Hanna amendment cures the defects which I mentioned last night, which Mr. Ostrow mentioned, and which Mr. Shackleton mentioned this morning, and that the real choice before us therefore is not whether we have nothing at all under the Shackleton amendment, if it passes, but the choice is whether we have a purely permissive basis which the Hanna amendment would permit. And, therefore, while last night I would have favored striking the whole thing, I think that the Hanna amendment, if we get to it, cures all the defects and I personally feel that the Hanna amendment would be a better thing to do since it allows the system of civil service on a purely voluntary basis, does not make the state come into it, establishes no state system. Therefore, because I feel that from a parliamentary point of view, that if the Shackleton amendment passes, there is nothing that the Hanna amendment can be substituted for, that it would be better to vote no on the Shackleton amendment with the intention of voting yes on the Hanna amendment which comes up next.

CHAIRMAN MILLARD: The Chair will recognize Delegate McCauley.

MR. McCAULEY: Mr. Chairman, if it is permissible, I'd like to direct a question to Mr. Allen.

CHAIRMAN MILLARD: Mr. Allen, if you care to answer.

MR. ALLEN: Yes, sir.

MR. McCAULEY: Glenn, I would like to know — you were speaking against the Shackleton amendment — don't you feel this whole field is purely legislative in nature? Why does it have to be put into the constitution? It is my feeling that if the legislature wants to provide for local units of government to avail themselves of state service, they'll have that right by an act of the legislature. I don't see why it is necessary that we get embroiled in the constitution with this type of language.

MR. ALLEN: Mr. McCauley, if we took out everything that we have written so far that is legislative and could be put in by the legislature, I think we would reduce the work that we already have passed by at least 50 per cent. In other words, we aren't doing anything different in this than we have done in many other sections. I suppose the other answer is that the legislature hasn't passed such an act across the board. A city doesn't have to take advantage of it. This simply says a city may do it. So I see no harm.

CHAIRMAN MILLARD: The Chair will recognize Mrs. Judd.

MRS. JUDD: I'd like to attempt to reply to Mr. McCauley and also to Mr. Brown on the question as to whether this belongs in the constitution. It seems to me that the way the present committee proposal is worded, most all of it is statutory with the exception of the last sentence. I am not a lawyer but I think the question might be raised as to whether the state civil service commission would have power to render these services under contract to local government unless this were put in the constitution, in view of the fact that the entire workings of the civil service commission are in the constitution.

On the question of the relation of this proposal to the possibility of local government having civil service, I would like to refer you to the section m in the local government article, which refers to civil service in counties. Counties over a million, the provision says, shall have the power. In other words, this is a self executing provision to a county and it would not have been possible by statute. If we wish to give similar power to counties under a million, we would, I think, also have to put it in the constitution. Now, it is true the legislature has the power to permit local units of government to have civil service if they want to. But what has happened through the years is that they have classified counties by population and for a long time, there was an act on the books which permitted counties of 300,000 or more to have the merit system. But what happened was that when Kent county and Genesee county reached that level, the legislature changed the law to raise it to 500,000. So obviously, the legislature is not very sympathetic to this sort of thing and consequently, we are proposing that it be made self executing in the constitution and this would be constitutional rather than statutory.

CHAIRMAN MILLARD: The Chair will recognize Mr. Garry Brown.

MR. G. E. BROWN: Mr. Chairman, members of the committee, in inverse order to which they were presented, I first would like to answer Mrs. Judd. That is, of course, that Committee Proposal 81 as amended by this committee does provide that all other counties may establish such merit systems as provided by law. So there is constitutional provision now for other counties to do it in accordance with whatever legislative enactment may be made by the legislature.

And I would answer to my good friend from Kalamazoo, Mr. Allen: it seems to me that in the past when we have put things into the constitution, which we thought to be in all honesty legislative detail, it was done because there had been a great hue and cry to the legislature to do something in this field and nothing had been done. The question was raised with respect to practically every one of these provisions, that the legislature has failed to do it, they need some direction, it needs to be mandatory; so, therefore, we have put in this legislative detail due to the fact the legislature has not acted. I have yet to hear testimony before this committee that there has been such a great hue and cry to the legislature to do something in this field with respect to local units of government. If that is the case and it is presented here, I may change my view; but until that time, I think this is statutory detail that should not be in the constitution and that there is no real need for it. I would once again support the amendment to strike the whole language.

CHAIRMAN MILLARD: The Chair will recognize the delegate from Muskegon, William Hanna.

MR. W. F. HANNA: Mr. Chairman and fellow delegates, when we were discussing Committee Proposal 81 regarding the county home rule and county civil service, one of the problems raised by the delegate from Wayne county was the fact that the legislature from time to time by act tampered with the civil service provisions and that Wayne county could not run its own civil service program by its own legislative body and be subject to the right of referendum by its own people. Now, if we proceed to strike this out — Mr. Brake and others have argued that this is legislative power, that the legislature could do this, and I think this is true. But let me show you the danger to this. This means that the legislature could pass an act saying that all townships having a population of between 5,000 and 25,000 will be under civil service, and these are the provisions. And all townships would be under it, whether they liked it or not, and whether it applied specifically to their local unit or not. In my township, for instance, with a volunteer fire department, there seems to be little need for civil service as applied to fire departments. But supposing the legislature in its wisdom said that all townships had to place their fire departments under civil service. Now, if the legislature has the power to enact civil service, they have the power to enact a uniform statute, and under our language, we say they must act by general law whenever it is possible. Therefore, we are saying to the legislature, if civil service is required, you will act and then all these political subdivisions find themselves under a general law; and this has caused the problem today with cities; it has interfered with their effective home rule; it would interfere with township home rule, county home rule; and interfere with the people's rights within a given political subdivision to determine for themselves whether or not they want civil service.

Now, Mr. Brown raises the question: has there been legislative enactment? I'll give you a concrete example, Mr. Garry Brown. There was proposed by both the Democratic and Republican legislators from my county a proposal to place the sheriff's department in counties of our population under civil service. This was advocated by both Democrats and Republicans in Muskegon county, but because we had to classify counties by population, we obviously were stepping on the toes of Berrien county, or other counties falling within the population of approximately 150,000. Now, this provision, if stricken out, forces the legislature to adopt a uniform statute applied to sheriff's departments falling within the category of 150,000. Berrien county may not want it; Muskegon county may want it. If we defeat the Shackleton amendment, the amendment which I provide simply says that the people of Muskegon county could, if they wanted to, adopt, by a majority vote, the merit system — and they could apply it to the sheriff's department — it would apply only to Muskegon county. Berrien county could copy it or not copy it, as it saw fit, and we increase the home rule. Now, to the extent that we increase home rule, we are strengthening local government. To the extent that we strengthen local government, we keep the state out of our local affairs. And so I recommend that if it is the power of the legislature, which Mr. Shackleton and those who oppose the amendment admit, then we are creating a dangerous monster because the legislature could enact a uniform statute, in the terms of the committee proposal, to which we all object. The provision which I put in this amendment prevents the legislature from passing this civil service by a special amendment or special law, but says to each local unit: you may or may not, as you desire, by a vote of your people, have civil service, and you can have civil service

and tailor it to your local problem. It then goes on and says that if you are able to have good technical services, you may contract with the state civil service for technical service. It does not mean that state civil service can operate this system but they may furnish technical advice. All that we have heard about local, county, city and so forth civil service seems to indicate that the best civil service is that which is locally controlled, and this will guarantee it to the political subdivisions if we vote down the Shackleton amendment and adopt my amendment.

MR. WANGER: Point of information.

CHAIRMAN MILLARD: State your point.

MR. WANGER: If the Shackleton amendment passes, does that mean that we cannot consider the Hanna amendment?

CHAIRMAN MILLARD: The ruling is that the Hanna amendment could be offered as a new section if the Shackleton amendment carries. The Chair recognizes Mr. Shackleton.

MR. SHACKLETON: Mr. Chairman, Mrs. Judd did not read the last sentence of section m, which says, "All other counties may establish such merit systems as provided by law."

CHAIRMAN MILLARD: Mr. Seyferth, the delegate from Muskegon.

MR. SEYFERTH: Mr. Chairman, delegates, this is a rather confusing discussion. My notes are prepared to talk against the committee proposal. We have had so many amendments before us since then it somewhat confuses the issue. However, I think the basic premise is still there. First of all, I am one of those individuals who feels that civil service is a necessary evil. At its very best, it's not good. So starting from that premise and as a commissioner and a supervisor of Muskegon county, I have some potentially, I think, realistic boogeyman envisionments. I feel that as the committee proposal has been presented, that certain exceptions could be taken not in the intent — the intent I respect and admire and the objectives that they're trying to do — I take exception to the method of implementation. Due to the very nature of the question, some boogeyman questions come to my mind, and they simply are these — and I am not asking for answers because I don't think that they can be logically answered.

First of all, in adopting a proposal such as this we are taking another step towards, shall we say, statehouse centralization. Now, bear in mind that at the moment I am speaking against the committee proposal and in favor of the Shackleton amendment. This proposal is permissive now. Would it at a later date be mandatory on the local units? Would the next step after merit principle implementation at the local level be a control in the form of suggested wages and salaries to fit the now suggested established classifications? These are just questions that come to my mind that I think could be very real. This entire subject is a function to be enjoyed by local units of government, for them to handle as they see fit.

I noticed on the bottom of the page of the journal that the committee on local government felt also by majority opinion that this matter was legislative and not constitutional. However, I am speaking now and adding further to the confusion, if I am in order, Mr. Chairman, on the Hanna amendment and some statements that Mr. Hanna just made. I wholeheartedly agree with the privilege of local units of government voting on whether or not they will entertain the merit system of civil service. But I object wholeheartedly to any tie in with the state civil service in any manner whatsoever. I feel that that is a control that the local units of government should entirely abandon and never allow to come under their sections of domain. If the local units of government desire to have civil service in this instance and they vote for it, then make it a part of the provision that they finance and pay and obtain counsel not in conjunction with the state civil service act. I move to support the Shackleton amendment.

CHAIRMAN MILLARD: The Chair will recognize the gentleman from Bay City, Judge Leibrand.

MR. LEIBRAND: Mr. Chairman and delegates, it would appear to me that under the original committee proposal and the Hanna amendment, we are being asked to put something into this constitution that not one of the 1500 affected political units in the state wants badly enough to have asked this convention for. That being the case, I feel obliged to vote for the Shackleton amendment.

CHAIRMAN MILLARD: Mr. Wanger. Not here? Delegate Boothby.

MR. BOOTHBY: Mr. Chairman and ladies and gentlemen of the committee, some seem to believe that all you have to do is mention the words "merit system," especially if those words are drafted in the constitution, and then magically, all civil service positions are taken out of the political plum classification. Now let us read from the suggested provision which has come out as the committee recommendation, to see how effective it would be — and I call to your attention the wording beginning with line 10. It says:

> In such civil divisions, appointments and promotions in the civil service shall be made according to merit and fitness to be ascertained, as far as practicable, by examination which, as far as practicable, shall be competitive.

Now, I want you to watch those words "as far as practicable" because they are surely words which dilute the intention of the previous statement.

I think maybe we should read or take note of a newspaper report which appeared in one of my local county newspapers as late as March 16, 1962, last Friday. This appeared in the St. Joseph Herald Press. It is a report of an executive committee meeting of a major party in my county of which I am not a member. And it reads as follows — it mentions this particular party and it says:

> . . . who have been arguing for months over patronage, now has a special committee to screen applicants for endorsement by the county committee. The executive committee at a meeting in February had approved the patronage committee, to serve as a screening board, for applicants for postal and other governmental jobs under civil service regulation. But there was some question over whether executive committee members also should serve on the patronage group. Questionnaires will be sent to each local committee which wants to recommend someone for a civil service job. Each city and township will be entitled to a 5 man committee to screen local applicants. Those will be forwarded to the county patronage committee, where they will be rated on the basis of 60 per cent for job qualifications, 20 per cent for local party activity, and 20 per cent pure patronage. (laughter)

Now what I want to know is under this committee report, when it starts talking about "as far as practicable," as far as fitness and merit is concerned, any examination "as far as practicable," does that mean that 20 per cent can go to party patronage, party activity and 20 per cent to pure patronage? Is that what those words mean?

It seems that the provision suggested is a sleeping pill approach. We don't cure the problem but we put the people to sleep so they don't know what the bad things are that are going on. I would not delude the people into thinking that this provision would take government jobs out of politics. I do not oppose the laudible objectives; in fact, I applaud them. But it would seem to me that we cannot remove this evil by worshipping at the shrine of the merit system and ignoring what actually is now taking place in my county and other counties of the state. I do oppose invisible politics which is now taking place and which is now existing in civil service.

CHAIRMAN MILLARD: Mrs. Judd.

MRS. JUDD: It appears to me that this debate is mostly centered against the principle of the merit system in civil service. And I would remind the committee that we have long ago settled this problem when we voted by good majority to adopt the state civil service system. And the question before us is simply whether we shall make the services of that department available to local government when and if they should want that kind of service. It strikes me that the proponents of this deletion are raising up a lot of

ghosts. I think that the very objections that have offered demonstrate how little and how slowly the merit principle would be adopted by local units of government and that it would indeed be the millenium when 1500 local units of government rush up on the state civil service department for help.

Secondly, I spoke a moment ago about the fact that the legislature had increased the minimum population basis for counties to have a merit system and Delegate Hutchinson informs me that this was done at the request of the supervisors of the 2 counties involved. This ties in with Mr. Brake's point that there has not been any great demand on this convention on the part of the people to give local units of government this opportunity. This same situation was reflected in our experience in the local government committee, where almost all of the demands for any kind of provisions came from the various 10 or 15 associations of county officers and we heard from only one citizens' organization in the state. Indeed if we had weighed the evidence by the ton, there would be no county home rule provision proposed for our constitution today.

I think that what we must ask ourselves in this question is: for whom are we writing the constitution and for when? Is it for the present or past? Is it for the future? Is it for the officers or is it for the people?

CHAIRMAN MILLARD: Does Delegate Bentley wish to be recognized? Apparently not. The question is on the Shackleton amendment. Mr. Martin.

MR. MARTIN: There have been several references to the idea that the state civil service commission would somehow in some manner dominate these local systems or be involved in them. The wording of the committee proposal and the subsequent amendments that have been offered, I think, are quite clear. They are only authorized to furnish technical services on a reimbursable basis. I don't think there is the slightest likelihood that the state civil service commission can be involved in any way in determining the policies or programs of these local units. It seems to me that it is desirable to defeat the present amendment and then to consider the Hanna amendment. I hope that the committee will vote in that manner.

CHAIRMAN MILLARD: The question is on the Shackleton amendment. A division has been asked for. Is the demand seconded? Enough up. All those in favor of the Shackleton amendment will vote aye. Those opposed will vote nay. Have you all voted? The secretary will lock the machine and tally the vote. Mrs. Judd.

MRS. JUDD: I was voting for the deletion on the assumption that the Hanna amendment may still be proposed. Am I correct in that?

CHAIRMAN MILLARD: You are correct. Mr. Madar.

MR. MADAR: I'd just like to suggest that it would be a good idea if we turned it all off, now that they're all in here, and take another vote so that we're sure that some haven't voted twice. (laughter)

CHAIRMAN MILLARD: The secretary says that's agreeable to him. He is kind of confused too. We are voting on the Shackleton amendment. Clear the machine, everybody. Will you please clear the machine, everybody. The question is on the Shackleton amendment. All in favor will vote aye. Those opposed will vote nay. Have you all voted? If so, the machine will be locked and the secretary will tally the vote. Will the sergeant at arms check the bell? It is stated that the bell is not ringing downstairs. Will you please check it?

SECRETARY CHASE: On the adoption of the amendment offered by Mr. Shackleton and others, the yeas are 56; the nays are 59.

CHAIRMAN MILLARD: The amendment is not adopted. The secretary will read.

SECRETARY CHASE: Mr. Faxon has filed an amendment —

CHAIRMAN MILLARD: Is Mr. Faxon here? If not, his amendment will be passed.

SECRETARY CHASE: Mr. W. F. Hanna offers the following amendment:

1. Amend page 1, line 8, after "Sec. a.", by striking out the balance of the section and inserting "Each city, village, township, county, school district and metropolitan government may, by a majority vote of the electors voting thereon, establish a merit system for its employees. The state civil service commission may furnish technical services on a reimbursable basis to any city, village, township, county, school district or metropolitan government requesting the same.".

CHAIRMAN MILLARD: The Chair recognizes Delegate Hanna.

MR. W. F. HANNA: Mr. Chairman and fellow delegates, I already explained this in answer to Mr. Shackleton's amendment and do not propose to go into it further. There is a minor typographical error on the second from the last line. There should be a comma between "county" and "school district" so that it is not "county school district" but it is "county" as distinguished from "school district."

[Correction made, see above.]

Now, a question has been raised as to why school districts? The committee proposal referred to civil subdivisions and I believe a school district is a civil subdivision of the state. The question then raised is: is it necessary for school districts in view of the possibility of school districts coming under the school tenure act? It is my understanding, and I would be glad to be corrected if wrong, that the tenure act only applies to educational staff, to wit, the teachers. It does not apply to the janitors, the secretaries or the other administrative personnel that are connected with the school districts. That is the reason for my leaving "school district" in. First it was a civil subdivision, and secondly, there are members, as I understand it, not covered by the tenure act. And it seems to me that if the people in the city of Detroit or in my school district wish to establish by their vote a merit principle with regard to the janitors in their school district, that they should have that privilege. But because some question has been raised with regard to school districts, I request at this time that when the vote is taken, that we divide this question and vote first upon the inclusion or noninclusion of school districts in the third line and in the second from the last line, and then vote on the amendment as I have submitted it, either without or with the words "school district" included, so that the persons perturbed about the inclusion of school districts shall have an opportunity to express their vote separate and distinct, if that is permissible. Mr. Chairman, may the question be divided so that we vote on school districts first and then the balance of the amendment?

CHAIRMAN MILLARD: You have a right to divide the question.

MR. W. F. HANNA: I so request, that the question be divided so that we vote first upon the school districts, and then subsequently on the balance of the amendment.

CHAIRMAN MILLARD: Mr. Allen requested to talk on this amendment some time ago. Do you wish to —

MR. ALLEN: I pass.

CHAIRMAN MILLARD: The Chair recognizes Delegate Danhof.

MR. DANHOF: Mr. Chairman, a question to Mr. Hanna. Mr. Hanna, is there anything in your amendment that the legislature could not do tomorrow if it so desired?

CHAIRMAN MILLARD: Do you have a point of order, Mr. Barthwell?

MR. BARTHWELL: Yes, Mr. Chairman, I think we got a ruling previously that to strike and insert was not a divisible question and I'd like the Chair's ruling on that.

CHAIRMAN MILLARD: The Chair thinks, Mr. Hanna, we have it straight now. Mr. Barthwell is right. You can offer an amendment to your amendment. That is the way it would have to be handled.

MR. W. F. HANNA: Mr. Chairman, I don't wish to argue with the Chair. It was my understanding that an amendment

to strike and insert was not divisible, but a request to divide the proposition was permissible.

CHAIRMAN MILLARD: An amendment to strike out and insert is not divisible under our rules but you may offer an amendment.

MR. W. F. HANNA: I'll leave it alone. In answer to Mr. Danhof: could the legislature do this now?

MR. DANHOF: Yes.

MR. W. F. HANNA: Yes, they could. They could go much further, and that is what worries me. I would like to prevent the legislature from passing a general act and blanketing all these people under a state system of civil service. This is the very thing I don't want to happen and this is the reason for this amendment.

MR. DANHOF: Thank you. Mr. Chairman, I favor home rule as much as anyone else and the right for a particular subdivision to determine their own fate, but I beg of the members of this committee that they look at this particular amendment and see what type of a Frankenstein they might be creating 50 years from now. We have in this state 1500 artificially made political subdivisions, all of which have been created under and by the authority of the legislature. There is no sanctity to school districts or to cities or to townships except as we make them. And what you are going to do is make it available for 1500 different types of civil service to exist in this state without any possibility of the legislature in the future having any type of control. You don't do it for city home rule. You haven't done it for county home rule. But you are now going to freeze into this constitution an absolute prohibition against the legislature ever trying to correct any of the evils or trying to make any sense out of a civil service jungle which is going to be created between town and town, between township and township, between county and county.

Now, the problem hasn't been that the legislature has gone too far. And I submit that this particular act is probably what the legislature would enact if the counties and the cities and the townships wanted it. But envision, if you will, 40 or 50 years from now, when perhaps there reside in this state 11 million people and you have numerous counties of over a half a million or approaching a million people, and each of them live side by side with a different type of merit system. There is no particular sanctity about school districts. If the legislature would desire, it could make the state of Michigan one school district, they are all creatures of the state. Sure, we allow home rule and we are going to have county home rule. But it is going to be under the supervision and the direction of the legislature.

We passed in this convention a type of home rule which the legislature would set up for the various counties. Now what you are going to do is tie one hamstring in it and state that when it comes to civil service, everybody can jump on their own horse and ride off in a 360 degree fashion. I repeat I am for home rule. I think again, we are getting into legislative detail. I think that you will be creating something which, if it proves unworkable, if it proves to become too complex, you have absolutely no way of getting any type or semblance of order out of the chaos which might develop. It is far better that we either grant or direct the legislature to pass whatever acts it deems necessary for civil service, or that we would have adopted the Shackleton amendment which in effect would have left it to the legislature also. If you adopt this particular type of amendment, I submit that you are creating and sowing the seeds for discord and discontent and a great deal of confusion — not today, not tomorrow, but 20, 30, 40 or 50 years from now, when you have counties which have become so entrenched and their systems are so different that, because of local pride, they won't change and yet you have a confused situation. Far better we leave it to the legislature under the committee proposal than to adopt this type of self executing, mandatory prohibition against the legislature from ever doing anything in the field of civil service. I will admit they may have tampered with it in the past. The problem lies then in our legislators. Now we're trying to write this particular type of a provision into our constitution. For that reason, I cannot support the amendment and I would urge its defeat.

CHAIRMAN MILLARD: The Chair recognizes the gentleman from Taylor, Mr. Marshall.

MR. MARSHALL: The point that I was going to make was already taken care of by Delegate Barthwell. I would like to ask Delegate Hanna, though, if he can give me the reasoning behind his wanting to separate or divide the school districts.

CHAIRMAN MILLARD: Delegate Hanna, do you care to answer?

MR. W. F. HANNA: Mr. Chairman, Mr. Marshall, I made the statement, I thought, clearly; it is because some people raised the question whether this would conflict with the teacher tenure act. It is my feeling that it would, but that was the reason why I wanted to divide it.

CHAIRMAN MILLARD: Delegate Barthwell, do you wish to be recognized?

MR. BARTHWELL: No.

CHAIRMAN MILLARD: The Chair would like to make a comment. The Chair thinks Delegate Barthwell has now passed the second course toward his degree. (laughter)

The Chair recognizes the gentleman from Owosso, Delegate Bentley.

MR. BENTLEY: Mr. Chairman, since I feel that the Hanna amendment more clearly spells out the intent of the original proposal as coming from the committee on executive branch, I move to support it. I do not feel, Mr. Chairman, that Mr. Hanna needs to be too concerned about this matter of employees of school districts being included on a permissive basis. I think that since it is pretty clearly understood that this would not conflict with the teachers' tenure act, this would only apply to so called nonteaching employees in an administrative or custodial capacity, I think there is hardly any need myself to offer a separate amendment in this connection unless of course, he feels inclined to do so. As chairman of the education committee, I would have no hesitation in voting for the amendment as it stands, including these nonteaching employees of the school district, if so desired by the electors of that district.

CHAIRMAN MILLARD: Mr. Martin.

MR. MARTIN: Mr. Chairman, only with respect to Mr. Danhof's comment, if you are dealing with something like powers of taxation, something of that sort, of course, it is essential that specific limits be put on what kind of taxation the local units may use and employ. When you are dealing with civil service, you are dealing with an essentially local problem which doesn't require that there be uniformity. In fact, each local unit may want to establish a system that is somewhat different from some other local unit. And there is no reason why they shouldn't. And the Hanna amendment recognizes this and permits them to use their judgment. Some may want to have very extensive civil service systems. Some may not want any at all. Or some may want a very modest system applying only to a portion of their employees. It is the very flexibility that is needed in this particular field and it will not do any harm to have different local units using different civil service programs. In fact, it is desirable that the people be able to establish the kind of system in each particular unit which the people want. That's the purpose of the amendment, I am sure.

CHAIRMAN MILLARD: The Chair will recognize Delegate Downs.

MR. DOWNS: May I pass for a moment, Mr. Chairman?

CHAIRMAN MILLARD: Delegate Wanger.

MR. WANGER: Mr. Chairman, a question through the Chair to Delegate Hanna. The amendment states that the majority vote of the electors voting thereon is necessary to establish this merit system by the very reasoning that I would presume that any change in it would also have to be submitted to that electorate and any amendments would have to be submitted to that electorate and be adopted by it as well. Now, my question is this: do you think there is sufficient

flexibility under your amendment so that rules could be made by an appropriate body or agency of this established merit system which would not have to be voted upon by the people? As I read it, it says the merit system itself certainly would have to, in any case where a change is necessary, be submitted once again to the people for their adoption or rejection.

CHAIRMAN MILLARD: Do you care to answer, Mr. Hanna?

MR. W. F. HANNA: Mr. Chairman, Mr. Wanger, this is not what the amendment says. Your premise is not correct. Once the people voted to establish a merit system, the legislative body would establish such merit system, the details of which would be established by ordinance. Under our present law, all ordinances are subject to referendum, and I would assume that we are preserving that right so that minor amendments and so forth — changes that are necessary in the ordinance — would be taken care of, just as an ordinance that establishes the fire department in a given township or the police department, such ordinances are subject to referendum. It is true that to establish and to start and determine whether or not the employees shall be under a merit system or whether they should be under a personnel board or whether they should be simply political patronage pure and simple is the voice given to the people by my amendment.

MR. WANGER: Mr. Chairman, Delegate Hanna, it says the system shall be established by a vote of the people. I take it then that any part of the system could then be changed without going back to the people. Is that my understanding of your interpretation of the language?

MR. W. F. HANNA: Mr. Chairman, Mr. Wanger, this is just like the constitution says, that the legislature shall levy taxes. We don't say that it will levy a specific tax on a phone call that I make to Muskegon. We leave this to the legislature to implement by statute. The statute, however, is subject to referendum.

MR. WANGER: Well, you'd have to have a referendum then whenever there was any change in your system.

MR. W. F. HANNA: That is not correct.

MR. WANGER: In other words, the people could establish it and the local governing body could repeal it for all practical purposes?

MR. W. F. HANNA: Mr. Chairman, would Mr. Wanger repeat his last question?

CHAIRMAN MILLARD: Will you repeat your question, Mr. Wanger?

MR. WANGER: Mr. Chairman, Mr. Hanna, then I understand that the people could vote to establish a system and then following that at some time the legislative body of the division of government could repeal it or modify it to the extent as to operate as a repeal?

MR. W. F. HANNA: I would assume so, Mr. Wanger, and if the legislative body so circumscribed the merit system by ordinance that it did not in fact exist, that ordinance would be subject to referendum and those members of that board would be subject to retirement by a vote of the people at the next election or sooner if they desired, by recall.

MR. WANGER: Is there legal precedent for this proposition that when the constitution states that the voters may establish something, then the legislative body may repeal it? It seems to me to follow inexorably, from your language here, that any change in the system itself would have to be submitted to a popular vote before it becomes effective. I wonder if there is a precedent here.

MR. W. F. HANNA: Mr. Chairman, Mr. Wanger, I only point to the 1908 constitution concerning city home rule. It says that the legislature shall provide for city home rule. We didn't say how; we didn't give them the number of the charter commission; we didn't say if it was a majority vote of the property owners or the voters. We didn't say that each city that adopted home rule had to have a city clerk, an assessor, a legislative body, a mayor, an executive, a board of review. We did not spell it out in the constitution. There is considerable legal precedent for stating a principle in the constitution and leaving it to the implementation of the legislative body or the people.

MR. WANGER: Do you recall the number of the section in the local government article?

CHAIRMAN MILLARD: Are you directing a question, Mr. Wanger?

MR. WANGER: Yes, Mr. Chairman.

CHAIRMAN MILLARD: To whom?

MR. WANGER: To Delegate Hanna, Mr. Chairman. (laughter) Mr. Chairman, Delegate Hanna, do you recall the section in the local government article establishing city home rule? I am looking for it now and I —

MR. W. F. HANNA: Mr. Wanger, I have never made it a practice to either memorize the constitution or the Bible by verse and chapter. I am sure it is in there.

CHAIRMAN MILLARD: Any further comments, Mr. Wanger?

MR. WANGER: Yes, Mr. Chairman, merely that the analogy which is drawn between the legal effect of this section and the legal effect of the city home rule section, as I recall that section, is not valid inasmuch as the language is not clearly the same.

CHAIRMAN MILLARD: Are you arising to speak on this amendment, Mr. Faxon?

MR. FAXON: Yes. I have an amendment to the amendment.

CHAIRMAN MILLARD: We are not to that yet. The Chair will recognize the delegate from Detroit, Dr. Norris.

MR. NORRIS: Mr. Chairman, a question to Delegate Hanna.

CHAIRMAN MILLARD: Delegate Hanna, if you desire to answer.

MR. NORRIS: Getting back to the matter with regard to the teachers' tenure act, as I understand the teachers' tenure act, it permits on an optional basis a community to come within the provisions of the state tenure act. Would this mean then that in those communities where you do not have a teacher tenure act then that if the words "school district" are incorporated in your amendment, then the teachers would then come within the comprehension of the language you propose?

MR. W. F. HANNA: Mr. Chairman, Dr. Norris, I would assume that if the merit system were to be applied to the teachers and the voters approved this, this could be done.

MR. NORRIS: Mr. Chairman, Mr. Hanna, it may then operate to encourage those communities that may not have a teacher tenure act to pass one in order that the merit system might apply to nonteacher personnel in the school districts and the teacher tenure act would apply to the teachers. Would that be a logical conclusion from that?

MR. W. F. HANNA: Mr. Chairman, Dr. Norris, in those districts that have adopted the teacher tenure act and felt the necessity to apply civil service to its other employees and I would assume desirable, this would allow them to do so. Those districts which have not adopted the teacher tenure act and wish to include their teachers as well as their nonteaching staff under civil service, and a majority of the people voted therefor, this would be permissible.

MR. NORRIS: It would be the intent of your amendment, Mr. Chairman, Delegate Hanna, to give priority to the teacher tenure act? In other words, if this amendment went through and a community did pass a teacher tenure act, that means the teacher tenure act would take care of the teachers and the rest of the personnel would be governed by whatever act was enacted pursuant to this provision of the constitution?

MR. W. F. HANNA: Mr. Chairman, Dr. Norris, I would assume that this is true.

MR. NORRIS: I just have one comment while I am on my feet. I appreciate Delegate Danhof's concern with regard to what might happen, but I think we ought to begin with where we are with regard to the principles of the merit system and the various units of government. The simple irrefragable fact is that the legislature has not acted and if we are going to plot a trajectory into the future on the basis of what the legislature has not done, it is reasonable to assume that it

will not do in the future that which it is asked by this amendment that it might do. It is only permissive and as I understand it the operative impact of this amendment would be simply this: that those that are interested in the merit system and good government in various communities throughout the state would have an argument to exercise moral suasion upon the city fathers to proceed here to make the request for assistance and to get on the ballot such provisions as may be necessary for the merit system. I would support the Hanna amendment.

CHAIRMAN MILLARD: Judge Leibrand.

MR. LEIBRAND: Mr. Chairman, I pass.

CHAIRMAN MILLARD: Mr. Faxon.

SECRETARY CHASE: Mr. Faxon offers the following amendment to the Hanna amendment:

1. Amend the amendment, first sentence, after "county" by striking out the comma and "school district"; and in the second sentence, after "county" by striking out the comma and "school district"; so that the language in each case would read:

> Each city, village, township, county and metropolitan government may, by a majority vote of the electors voting thereon, establish a merit system for its employees. The state civil service commission may furnish technical services on a reimbursable basis to any city, village, township, county or metropolitan government requesting the same.

CHAIRMAN MILLARD: The Chair will recognize Mr. Faxon.

MR. FAXON: Mr. Chairman, members of the committee, I appreciate the concern which is being shown over the employees of the school district, but as has just been alluded to, the teacher tenure act takes care of the problems with regard to teaching personnel. The teacher tenure act is a permissive act which allows members in the school districts in the community to adopt tenure. So that this doesn't give anything new as far as teaching personnel is concerned. This doesn't add anything to what they already have and that has already been provided for by the legislature. As a matter of fact, I think that it has a serious setback by including the words "school district" here because of some other interpretation that could possibly be given to the use of the words "merit system". Now, I don't think I want to get into a lengthy argument on what interpretations might be attached to teaching personnel in a school district when you use the words "merit system," but I think you are opening up an avenue which was not intended by this amendment. The amendment was intended primarily to deal with the employees of cities, counties, townships and villages. As I understood it yesterday when Dr. Pollock was asked, with regard to what he meant by civil divisions, he answered cities, counties, townships and villages. This was the intent that he had alluded to, which was the intent of the committee in proposing its original draft. Therefore, I feel the inclusion of the words "school district" here adds a new dimension to it, one which was not originally intended by the committee, one which is not really necessary in terms of present protections already permitted by the legislature in the teacher tenure act, and one which would seriously hurt the intent of the whole amendment. I would urge your favorable consideration of the deletion of the words "school district" for these reasons and ask that you take action on it soon.

CHAIRMAN MILLARD: Delegate Wanger.

MR. WANGER: Mr. Chairman, members of the committee, I would appreciate it if any member of the committee could enlighten us very generally on the percentage of school district employees who are teaching personnel and the percentage of school district employees who are not teaching personnel. It would be quite clear that this teacher tenure act, of course, would apply only to the teachers.

CHAIRMAN MILLARD: To whom is your question directed, Mr. Wanger?

MR. WANGER: It was not a question. It was a statement that I would appreciate—and I am sure the other members here would appreciate—if any member with that experience in education might be able to offer a statement of what the facts in this regard would be.

CHAIRMAN MILLARD: The Chair will recognize Delegate Madar.

MR. MADAR: Mr. Chairman, we've been listening now for quite some time. I was in hopes that no one would be putting in any more amendments. This one that was just given to the secretary by Delegate Faxon certainly just shows us that we've got to do something here because now we find that one of the teachers doesn't want to give the other employees of the school boards the opportunity to come under a merit system. I still think we ought to go ahead and keep the school districts in and vote down this amendment and vote for the amendment by Mr. Hanna.

CHAIRMAN MILLARD: Delegate Tubbs.

MR. TUBBS: Mr. Chairman, I am not sure that I can answer accurately Mr. Wanger's question. All I can tell you is that in the Grand Rapids school district, which is a second class school district—there are only 2 of them in the state—we have about 1/3 fewer nonteaching employees than we have teaching employees. In other words, there are about 1200 teaching employees and roughly 900 nonteaching employees in the Grand Rapids school district.

I do not share some of the lugubrious predictions by my former chairman, Mr. Danhof, nor do I quite share the enthusiasm of Mr. Bentley for the inclusion of school districts in this proposed amendment. I am inclined to believe that the school districts would be few in number that would take advantage of it because of the conditions generally existing in the smaller districts that there are many more teaching employees than other employees. Teachers are under contract. It would be difficult, I think, to put them under civil service if you insist that the boards of education make written contracts with their teachers in order to employ them. The qualifications for teaching in this state are all determined by the state department of education so that the local units can hire only those people who are qualified. A school district, as Mr. Danhof has said, is a peculiar animal. They can all be abolished this week or next by the legislature. I agree that this is legislative in nature, but so was the whole civil service amendment in 1940. It was voted in favorably by people of this state, all of whom live in school districts, towns, villages, counties and these other places that seem to be entirely on the brink of extinction if this goes through.

CHAIRMAN MILLARD: The question is on the Faxon amendment to the Hanna amendment which the secretary will read so that we will all know.

SECRETARY CHASE: Mr. Faxon's amendment is:

[The amendment was again read by the secretary. For text, see above.]

CHAIRMAN MILLARD: Mr. Faxon.

MR. FAXON: Mr. Chairman, members of the committee, everybody has been running up here in anxiety over the fact that I am trying to disinherit janitors, clerks, et cetera, in the schools. I am looking at this and I invite your looking at the words too, because I think this is a question where the words may mean different things to people. I am looking at the words "merit system" and the words "merit system" may have a very definite meaning when you talk with regard to civil employees of cities, townships, counties and villages. But it has a different connotation when you discuss it in terms of schools and teachers. Now, if the intent of this is not to include teachers, then you would have to put in nonteaching personnel in school districts and I would have no objection to such an addition. But if the language is going to be as encompassing as "school districts," then I would certainly ask that it be deleted. Mr. Hanna, if you care to comment on this, I would like to hear you.

CHAIRMAN MILLARD: The Chair will recognize Mr. Hanna.

MR. W. F. HANNA: Mr. Chairman, Mr. Faxon, my only question to you after listening to your comments: would you

hire or establish a procedure for employing teachers without regard to merit? I take it from your statement that you object to applying a merit system to teachers. I would assume that we should apply a merit system to teachers—and this is what the tenure act attempts to do, by saying that if you are a good teacher, they cannot retire you from that system by a capricious method. From listening to your argument, I am perturbed that we are going to apply a higher standard to the janitor of the school system than we do to the teacher.

CHAIRMAN MILLARD: Mr. Faxon, do you care to answer?

MR. FAXON: Mr. Hanna, I have already stated that the present teacher tenure act gives satisfactory protection for teaching employees in the school district and it is not my intent to see that the teachers are treated less well than the employees. They are already protected in the school district for those who choose to adopt the tenure in their district. My only worry is not in the teachers as far as the security of their job is concerned, but in the introduction of another idea which is that of a merit pay system. Now, I don't want to get into the whole merits of this, but it just seems to me that the use of the words here tends to give the impression that this is something that could be done just as one would adopt teacher tenure, or something of that sort. I, for one, choose not to get involved in that particular conflict.

MR. W. F. HANNA: Mr. Faxon, if I thought that I could slip into this constitution a provision for merit pay for teachers, I certainly would do it; but I am sure that a merit system merely means a classification based upon the job held and the length of time in grade and the qualification for that grade. And we have never applied the bonus or the piecework system to the janitor or to the top executive in any civil service. I think your worries that "merit system" may go to the argument in the school system concerning merit pay are unreasonable.

CHAIRMAN MILLARD: The Chair will recognize Mr. Madar.

MR. MADAR: I just wanted to say this: if I were worried, for instance, about the city of Detroit's merit system, like Delegate Faxon is worried about the teacher tenure, I'd be fighting here against this. Frankly, I feel like Delegate Norris, after the explanation from Delegate Hanna, that it doesn't bother these teachers—the tenure act—and where they haven't got it, if they wish to put it in, they'll be able to do so. However, where they don't want the tenure act, certainly the civil service system could be voted in there too if they wished to. I believe that Delegates Hanna and Norris were right in their opinions.

CHAIRMAN MILLARD: Delegate Judd.

MRS. JUDD: Mr. Chairman, I don't think that those of us who were interested in this amendment originally had any intentions of including the educational system and we're getting way off the subject. Let's vote in favor of Mr. Faxon's amendment and get back to the main subject.

CHAIRMAN MILLARD: The question is on the Faxon amendment to the Hanna amendment. All in favor of the Faxon amendment will say aye. Opposed, no.

The amendment is not adopted.

DELEGATES: Division.

CHAIRMAN MILLARD: Division has been called for. Is there support? Sufficient number up. Will the sergeant at arms check the bells in the basement to see if they are ringing all right? The question is on the Faxon amendment to the Hanna amendment. All in favor of the Faxon amendment will vote aye. Those opposed will vote nay. Have you all voted? If so, the machine will be locked and the secretary will tally the vote.

SECRETARY CHASE: On the Faxon amendment to strike out of the Hanna amendment the reference to school districts, the yeas are 32; the nays are 85.

CHAIRMAN MILLARD: The amendment is not adopted. The Chair understands there are 3 more amendments to the Hanna amendment. The secretary will read.

SECRETARY CHASE: Mr. Ostrow offers the following amendment to the Hanna amendment:

1. Amend the amendment, first sentence, after "establish" by inserting a comma and "modify or discontinue"; so that the language will then read:

Each city, village, township, county, school district and metropolitan government may, by a majority vote of the electors voting thereon, establish, modify or discontinue a merit system for its employees.

CHAIRMAN MILLARD: The Chair recognizes Mr. Ostrow.

MR. OSTROW: Mr. Chairman and delegates, the amendment is self explanatory. All it means is that they may establish, modify and discontinue.

CHAIRMAN MILLARD: Mr. Hanna.

MR. W. F. HANNA: Mr. Chairman, I have no objection to this amendment. I had assumed if you could establish, you could take away. I have no objection to spelling out that you can do it.

CHAIRMAN MILLARD: The question is on the Ostrow amendment to the Hanna amendment. Mr. Martin.

MR. MARTIN: Mr. Chairman, I think the committee would see no objection to this amendment. It seems to carry out the general purpose and clarify it.

CHAIRMAN MILLARD: The question is on the Ostrow amendment to the Hanna amendment. All in favor will say aye. Opposed, no.

The amendment is adopted. The secretary will read.

SECRETARY CHASE: Messrs. Downs and Danhof offer the following amendment to the Hanna amendment:

1. Amend the amendment, first sentence, after "employees" by inserting "unless otherwise provided by law"; so the language will then read, ". . . establish, modify or discontinue a merit system for its employees unless otherwise provided by law. . . ."

CHAIRMAN MILLARD: The Chair will recognize Delegate Downs.

MR. DOWNS: Mr. Chairman, my legal adviser, the chairman of the judiciary committee, consulted with me and I'd certainly be glad to yield to him to supplement the comments. The purpose of this is to continue the self executing part of the Hanna amendment, which I think we agree has a good value. Yet, Delegate Danhof brought up the concern that 20 or 30 years from now there might be an attempt to establish some more consistent principles, and this would permit that to be done. I think particularly it assures that the state has a right to set maximum hours for firemen and so on. Personally, if we follow Dr. Pollock's definition of the merit system, I think the matter is taken care of. But since there has been the concern on this, I do feel that this language will permit the self executing to start with and yet permit that legislative flexibility for the future. I'd be glad to yield to Mr. Danhof if he wants to supplement it.

CHAIRMAN MILLARD: The Chair recognizes Mr. Danhof.

MR. DANHOF: Mr. Chairman and members of the committee, I think this would take care of what Dr. Norris referred to. We have it; the counties will have it. If the legislature continues on the trajectory that he charted, then nothing will happen. On the other hand, I think that this would, as Mr. Downs states, give a provision to bring some order out of chaos if it would ever be needed. It is not as if you are granting it solely to the legislature because you are granting a self executing provision to the various local units of government. We used to talk about the 3 branches of government, then we got to 4 with the civil service, and we got 5 with the education; and we now have 6. Now, we have the local units who will be—if you adopt this amendment as it is—more powerful than the arm of government which in fact created them: the state. I submit that this would allow the legislature to make the necessary revisions if they are ever needed. It will be something that the legislature will have to take away from these local units of government and whenever you try to take anything away, you're going to run into a hue and cry. A buzz saw, as Mr. Karn says. But it will allow it to be done. I urge the adoption of the amendment.

CHAIRMAN MILLARD: Delegate William F. Hanna.

MR. W. F. HANNA: Mr. Chairman, a couple of questions to my friend, as of yesterday, from Muskegon. (laughter)

CHAIRMAN MILLARD: Mr. Danhof, if you desire to answer.

MR. W. F. HANNA: Mr. Danhof, would your amendment allow the continuation of the legislature to prescribe a specific civil service act in detail for counties of 1 million or more?

MR. DANHOF: I would imagine that it might allow that, yes, Mr. Hanna. I would envision that.

MR. W. F. HANNA: Mr. Danhof, would it allow the legislature by specific act to provide a specific act governing volunteer firemen as occurs in your township and mine?

MR. DANHOF: Certainly. This is what I want.

MR. W. F. HANNA: In other words, Mr. Danhof, this is a sly way of accomplishing the striking out of the provision, as you first advocated. (laughter)

MR. DANHOF: No, because it is going to be there, Mr. Hanna, and you and I both know that the legislature doesn't act unless it is really pushed, and I think there is a great difference between the legislature having to grant something and take it away. But I do think that we need something along this line or you are in fact setting up these local units of government superior to the state, with no other provision. No other place in the constitution do you have anything like this, not even under home rule, where at least there are guidelines laid down for the charters. But here you are giving a total complete grant of authority. The legislature—as I read this and as I think any court will—once a city has adopted it, the state, if it endeavors to set any minimum standards—you talk about a merit system—it may be necessary to set minimum standards. You are going to have cities right next to each other. The standards will vary up and down and around as to what is needed for a fireman or what is needed for a policeman. I hope that they will cooperate. If they do, it will never be necessary for the legislature to act. But I do feel that no unit of local government should in any way, except where absolutely necessary—and I don't think it's been necessary here—be made superior to the state of Michigan. And I submit that if you pass this amendment as it is, you are putting in these little kingdoms and perpetuating them ad infinitum.

MR. W. F. HANNA: Mr. Chairman, fellow delegates, we have had 50 years of experience under home rule for cities. The home rule act provides that a city may adopt a civil service provision in their charters. We have allowed cities to do this without little kingdoms except as civil service within the state or within the city creates a little kingdom. But I submit to you that even the best authorities recognize that providing for statewide standards is a dangerous practice. I submit to Mr. Danhof and the other delegates, the well worded provision of the recommended city charter under the national municipal league auspices, which clearly calls attention to a detailed chapter dealing with the merit system for city employees, and then in its comments provides that cities of a given size may wish to adopt only the first section of that chapter and the first section of that chapter merely says that employees shall be employed, promoted, discharged and transferred on a merit principle. Other cities go on and provide for detailed civil service management. Others merely take a second step and provide for a personnel board which may review any discharge or employment or set up general standards of employment even after an employee is discharged. The provisions vary. They provide that he appeal to the personnel board and they recommend to the city manager or city council as to the disciplinary action to be taken. Others give this personnel board final say and they are independent of the legislative or administrative body of a city. I submit to you, for the legislature to establish a statewide system or a statewide standard for civil service, is to make it impossible to have civil service based upon the local people. As between who we trust at this point, I prefer to trust my neighbors and not become involved in trying to establish a merit system or not establish a merit system in my township, city or county. I will trust my local voters and not get involved in the crossfire that you receive when you come to the legislature and try to impose a standard on all townships or counties of a given size. I certainly feel that the Danhof amendment also perpetuates all the objections we heard on this floor concerning the legislative interference with Wayne county civil service.

CHAIRMAN MILLARD: The Chair will recognize Mr. Marshall.

MR. MARSHALL: Mr. Chairman and fellow delegates, Delegate Hanna said most of what I had intended to say and he also asked questions of Mr. Danhof that I had intended to ask. I am not an attorney. Delegate Danhof is. But he hasn't convinced me that the Downs-Danhof amendment would not make it possible for the legislature to do away with civil service in Wayne county. Delegate Danhof talks about trying to make it impossible—he is opposed to any local unit of government setting itself up superior to the state. I cannot see the rationale of that statement. If my neighbors in my community and I desire, by a majority vote of the citizens in my community, to grant civil service status to our employees, I think we should have that right. In having that right, I do not believe that it sets us up superior to the state.

The other statement that I would like to comment on is the statement made by Delegate Danhof about trying to prohibit the perpetuation of little kingdoms. Now, I would submit that when township employees, village employees and city employees hold their jobs, whether he be the garbage truck driver, the street cleaner, the fellow that works down the road, the grass cutter, the janitor in the township hall, when he holds his job at the mercy of the powers to be in control of the political strings in a community, that we do not get the best employees. I further submit to you that when you have a change in administration in a community where you do not have a civil service status for your employees, you have a mass housecleaning of employees of loyal service, who sacrifice their jobs upon the altar of political expendiency. In many, many communities township employees, city employees, village employees, where there is not civil service status, are compelled to campaign for candidates that they otherwise would not campaign for. I think this is another great injustice. And I do not agree that this perpetuates the little kingdoms. I think that if we have civil service status and if the communities are permitted to do this by a majority vote of the people of that community, that we stop in a large sense, perpetuation of little kingdoms.

As far as concerns the Downs-Danhof amendment, if this amendment were adopted, we might as well strike the entire section because it would mean absolutely nothing, in my considered judgment. Therefore, I oppose the amendment and ask the delegates to do likewise.

CHAIRMAN MILLARD: The Chair will recognize the gentleman from Ann Arbor, Professor Pollock.

MR. POLLOCK: Mr. Chairman, I do not desire to talk on this amendment.

CHAIRMAN MILLARD: Mr. Garry Brown.

MR. G. E. BROWN: Mr. Chairman and members of the committee, I think that we should at the outset correct what I believe to be inaccuracies that have been stated on the floor with respect to what may be done and what may not be done under provisions of this nature.

In the first place, Mr. Hanna sometime in the past said that anything that the local unit of government might do would be subject to referendum. There is no provision, to my knowledge, in townships, at least—and I think in other units of government, counties, for instance—that make any of their enactments subject to a referendum automatically. Those statutes that provide for referendums specifically do so. For instance, zoning provides for a referendum. So this is one thing I think we should keep clear in our minds. Another thing we should keep in mind is that a provision which is self executing in the constitution is to be interpreted that way and will be interpreted that way by the courts. Any legislative enactment which would tend to establish standards that in any way limit and provide uniformity, as Mr. Danhof has suggested is necessary, I am sure would be determined by the

courts to be unconstitutional. Where a right is granted in the broad language that would be granted under the Hanna amendment, this language could not be impaired or encroached upon by the legislature. And in respect to this, I cite the recall section of the constitution that has been interpreted by the courts, where this very language is used. The case, if Mr. Hanna would like to refer to it, is Wallace versus Tripp and Stamm.

I would certainly agree with Mr. Danhof that his amendment does tend to eliminate or seriously impair the effectiveness of the original amendment. And I think this is good. Whether it's sly or not sly, it is good, and I'll be frank to say so. It could abolish in effect the very thing that we put in the constitution. We recognize the legislature can do this for local units of government now and provide a self determination type of civil service if the local units of government desire to do so. Putting into the constitution a provision such as the Hanna amendment certainly should be limited, as a matter of principle, by the Danhof amendment. If we put the Danhof amendment into the constitution with the Hanna amendment, we end up where we would be if we had adopted the Seyferth-Shackleton amendment. And I propose before the day is over to move a reconsideration of that amendment.

CHAIRMAN MILLARD: Mrs. Judd.

MRS. JUDD: I've talked too much this morning but these fellows say too many things. I think that the Danhof-Downs amendment confuses the question of the power doctrine of local government. I would agree with them on the questions of substantive power, that is, if this related to the question, for example, of whether a local unit of government could provide fire protection or health service, then I think definitely the legislature should be in on the decision. But this is a question of how they are going to administer something and it is good home rule doctrine to leave completely in the hands of the local units what methods of administration they might wish to use. Therefore, I think it is proper here and I would oppose the Danhof-Downs amendment.

CHAIRMAN MILLARD: The Chair will recognize the delegate from Bessemer, Mr. Pellow.

MR. PELLOW: Ladies and gentlemen of the committee, I didn't really intend to talk on this one but since everyone has been wandering on it, the only thing that I can't understand about not only the amendment but about the whole proposal, is why the taxpayers, after they have paid to hire the state civil service, then go back again to the local units of government and again request them to pay additional tax moneys. For myself, I think that it's time that we leave in this constitution a little of "To the victors go the spoils." And I would oppose this whole proposal. (laughter)

CHAIRMAN MILLARD: The question is on the Danhof amendment to the Hanna amendment. All in favor will say aye. Opposed, no.

The amendment is not adopted.

DELEGATES: Division.

CHAIRMAN MILLARD: Division has been called for. Is there support? There is not sufficient support.

Mr. Martin.

MR. MARTIN: I move that the committee do now rise.

CHAIRMAN MILLARD: The motion is on the question that the committee do now rise. All in favor say aye. Opposed, no.

The motion prevails.

[Whereupon, the committee of the whole having risen, President Nisbet resumed the Chair.]

PRESIDENT NISBET: The Chair recognizes Mr. Millard.

MR. MILLARD: Mr. President, the committee of the whole has had under consideration a proposal, of which the secretary will give a detailed report.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 76,** a proposal pertaining to the passage of permissive legislation to allow civil divisions of the state to establish local civil service, considered several amendments thereto, has come to no final resolution thereon. This completes the report of the committee of the whole.

PRESIDENT NISBET: Are there announcements?

SERCETARY CHASE: The committee on administration will meet at 1:15 today. Mr. Walter DeVries, chairman.

The committee on style and drafting will meet at 8:00 o'clock this evening in room K. Mr. William B. Cudlip, chairman.

The committee on rules and resolutions will meet in room I today immediately following this afternoon's session. R. C. Van Dusen, chairman.

The committee on emerging problems will meet today in committee room I, on the third floor, at 11:30 or immediately after the morning session. Frank G. Millard, chairman. P.S. We'll eat while we meet.

We have the following requests for leave: Mr. Romney requests to be excused from the session of this afternoon and tomorrow because of long time commitments in New York city and Detroit; and Miss McGowan wishes to be excused from the afternoon's session to attend a meeting of the Wayne county medical society and the Detroit bar association in Detroit.

PRESIDENT NISBET: Without objection, those excuses will be granted. The Chair recognizes Mr. Perras.

MR. PERRAS: Mr. President, at this time I move that we recess until 2:00 o'clock this afternoon.

PRESIDENT NISBET: The question is on the motion to recess. All those in favor will say aye. Opposed, no.

We are recessed until 2:00 o'clock.

[Whereupon, at 11:40 o'clock a.m., the convention recessed; and at 2:00 o'clock p.m., reconvened.]

The convention will please come to order.

SECRETARY CHASE: Mr. President, a quorum of the convention is present.

During the recess there were filed with the secretary the following requests for leave: Mr. Kuhn requests leave of absence from the afternoon session; Mr. Madar requests leave from the afternoon session, he had to return to Detroit on personal business; and Mrs. Heideman called. Mr. Heideman has a very bad sore throat. The doctor has put him to bed. He wishes to be excused.

PRESIDENT NISBET: Without objection, those requests will be granted. The Chair recognizes Mr. Brake.

MR. BRAKE: Mr. President, ladies and gentlemen of the convention, before we settle into the afternoon's work, there is an item of important business that I think should be taken care of. The secretary has a list of distinguished members of this convention. If, as the secretary reads that list, those members will please very promptly come and line themselves up in front of the secretary's desk, we can get on with this matter. Mr. Secretary.

SECRETARY CHASE: Mr. Raymond Lawrence King; Mr. Hazen van den Berg Hatch; Mr. Clyne Ward Durst, Jr.; Mr. James Hoyt Sterrett; Mr. Frank Owen Staiger, Jr.; Mr. David Frederick Upton; Mr. Edward Austin McLogan; Mr. Walter Daniel DeVries; Mr. Sanford Martin Tweedie, III; Mr. Eugene Gilkison Wanger; Mr. Garry Eldridge Brown.

[Whereupon, the named delegates assembled before the rostrum.]

MR. BRAKE: Mr. President, I propose to confer upon these distinguished gentlemen a degree. It is all right for this convention to confer the degree because we are certainly an educational organization. No one can sit here hour after hour and day after day and week after week without learning something —if he can keep awake. Of course, quite a lot of what he learns would be wrong. (laughter) But that never keeps anyone from getting a degree. (laughter) This idea I did not originate. I was requested by these gentlemen to help them and I don't know why I was requested to do so. With a con-

vention that is full of university presidents, ex presidents and assorted college professors—

MR. BOOTHBY: Mr. Brake, did you say "sordid" college professors? (laughter)

MR. BRAKE: I did not say "sordid" college professors. I said "assorted." Now, that means about the same as miscellaneous or heterogeneous. I love college professors when I'm not one of their students and have to polish any apples. But as I was trying to say before the conservative's interruption here, (laughter) I don't know why an ultra liberal like myself should be chosen for this when they could have had a real conservative like Mrs. Judd, for instance. (laughter) At any rate, I was.

Now, the degree that we are going to confer upon these gentlemen is the degree of Doctor of Radical Republicanism. (laughter) That is not an honorary degree. They have earned it. (laughter) Actually, they are not so radical. They are just young. (laughter) Give them 30 or 40 more years of experience and they'll be all right. I think we can use them in the "courthouse gang" by that time. (laughter) They're smart. As a matter of fact, they're too smart. (laughter) They're so smart that nobody but George Romney or Dr. Pollock or the Democrats can get any votes out of them. (laughter) The only way that I can get a vote out of any one of the 10 or 11 of them is to get Bill Ford or Jack Faxon over there to introduce my idea for me. (laughter)

Seriously for just a minute, it's well that we have in this convention a fine sprinkling of young people so that we can get all of the viewpoints. If this convention all agreed with me, we would not draw a good constitution.

MR. DEAN DOTY: Thank the good Lord for that. (laughter)

MR. BRAKE: Now it's the moderate senator talking. (laughter)

While the people of Michigan have all the viewpoints that are in the books, we have all the viewpoints that they have and some that nobody ever heard of here in the convention, and that's good.

Now, gentlemen, in the matter of conferring these degrees upon you, I am sure it will add to the pleasure of the occasion for you and your memories if we have the insignia pinned on you by some very charming young ladies—both Democrats. Girls, will you help us out?

Now, listen, Wanger, I know you're a bachelor but this is not a wedding. No kissing. (laughter)

I realize that we are setting a dangerous precedent here. We confer these degrees on these liberal Republicans. Somebody is going to come up with the idea of conferring degrees on conservative Democrats, and the competition for that honor would be tremendous. (laughter)

If from where you sit you can't read these signs, each one reads, "Young Radical Republican". They picked that title for themselves.

[Whereupon, badges were pinned upon the named delegates by Arlene Groh and Patricia Gorski, members of the stenographic pool. Upon approaching Mr. Wanger, both ladies kissed him on the cheek.]

Girls! Girls! What will people think? Democrats kissing Republicans! (laughter)

Gentlemen, you are now full fledged Doctors of Radical Republicanism. I salute you. (applause)

MR. KING: Mr. President, it seems as though one of us ought to respond to this wonderful tribute which has been paid to us. And so I have composed a few lines of verse. It goes like this:

Thank you, Professor Brake,
For letting us in.
We own no farms,
But that's no sin.
We grow no food,
With a subsidy.
But we trade like the devil,
At the A & P.

From the cities we come,
Green at best.
But is that pile of milk bottles
Really a cow's nest?
You're our professor
And you're quite a jewel.
But will the legislature really
Give us "home rule"?

Supreme court decisions
We read with a passion,
But is the Mapp case
Really but a fashion?
Our vote is erratic,
Take the 15 mill.
But when Goldwater is gone,
We'll be here still.

With the passage of time,
As we get gray,
Our devotion to progress
May not hold sway.
We may live to recall
When the convention sang
The first 3 verses of
"That Old Court House Gang.'

We've lost our shirts,
Our pants if you please,
But we'll be back to fight,
In our BVDs.
Time is on our side,
We shout with glee.
Then we look beside you,
And see Boothby.

We've been told where to go,
But we're not to blame
If there's a Michigan town
With the very same name.
We want to talk,
It's something we feel.
Your gentle response?
SHUT UP AND DEAL!

But, to play upon words,
Our respect for Hale is hearty
And when the chips are down,
We're with the Grand Old Party. (applause)

PRESIDENT NISBET: Mr. Hodges.

MR. HODGES: Mr. President, I just have a question to ask Mr. Brake. I'm sort of worried. If these are liberals, what does that make us? (laughter)

PRESIDENT NISBET: Mr. Binkowski.

MR. BINKOWSKI: Mr. President, I move that Mr. King's poem be printed in the journal.

PRESIDENT NISBET: Without objection, it will be done.

Now that we're all set, we'll take care of civil service. The Chair recognizes Mr. Millard.

MR. WALKER: Mr. President.

PRESIDENT NISBET: Mr. Walker.

MR. WALKER: I note with interest that the awards and one thing and another took approximately 10 minutes. At $40 a minute, this comes to $400, about $50 per badge. I do believe, however, that the time was probably better spent than some of the time we spent here this morning. Thank you.

PRESIDENT NISBET: Mr. Millard.

MR. MILLARD: Mr. President, I'll get down to mundane things. I move that the convention resolve itself into committee of the whole for the purpose of taking up matters on the general orders calendar.

PRESIDENT NISBET: The question is on the motion of Mr. Millard. Those in favor will say aye. Opposed, no.

The motion prevails. Mr. Millard.

[Whereupon, Mr. Millard assumed the Chair to preside as chairman of the committee of the whole.]

CHAIRMAN MILLARD: The committee will be in order. The secretary will read.

SECRETARY CHASE: The presently pending business before the committee is **Committee Proposal 76** from the committee on executive branch, item 10 on the calendar, to which Mr. Hanna has offered an amendment. An amendment to that amendment has been adopted.

There is presently filed an additional amendment thereto by Messrs. Brake, Boothby, Finch and Seyferth:

1. Amend the Hanna amendment after "employees.", by striking out all of the second sentence, which reads, "The state civil service commission may furnish technical services on a reimbursable basis to any city, village, township, county, school district or metropolitan government requesting the same."

CHAIRMAN MILLARD: The Chair will recognize the first proposer, Delegate Brake.

MR. BRAKE: This simply takes the state out of the picture and leaves the constitutional provision for the local units of government. I yield to Mr. Seyferth.

CHAIRMAN MILLARD: Mr. Seyferth.

MR. SEYFERTH: Thank you, Mr. Chairman. I think we have pretty well covered the reasoning for deleting the last sentence in this amendment in our discussion this morning. Adding to Delegate Brake's comment, removing the state from the local element of civil service, which we do incidentally very much support, we had the feeling that in allowing, or permitting the state, as it is spelled out in this provision, to—even if reimbursed—supply the local units of government with rules and regulations under which they can set up their individual civil service requirements, in itself is forming a pattern of classifications and examinations that makes it very easy then at a later date—as my fears were expressed this morning—to write then also wage and salary requirements for these classifications at the state level. This, I feel is a very definite invasion of local political rights, local units' political rights. And for this reason, I feel that this amendment as presented would, by striking out the last sentence, carry greater import and do more good for the local units of government. I strongly support the amendment before us.

CHAIRMAN MILLARD: Do any of the other proposers wish to talk on this? If not, the Chair will recognize Delegate Downs.

MR. DOWNS: Mr. Chairman, fellow delegates, I rise in opposition to this amendment. I think if we read the second sentence, we see the word "may" there; "The state civil service commission may", which means there is nothing mandatory about that. And in the final 2 lines it says unit of government "requesting the same". In order for this advice to be given, first of all, the local unit of government would need to request it, and secondly, the state civil service commission would need to agree to it. Now, when we discussed this last night, I believe our good friend, Dr. Pollock, yielded to me and I expressed on the original proposal the question, not how far it went but perhaps it didn't go far enough.

I feel that from a very practical viewpoint, this sentence should remain. I'll just give one example. The state civil service commission recently inaugurated a system of insurance for state employees. Now, this was not done in a cavalier fashion. It was done after weeks and I believe months of intensive study of various plans of insurance for state employees. I would assume that if a local unit of government, with the civil service commission, were considering having an insurance program for its employees, that the most logical thing to do would be to call in the state civil service commission for a preliminary report on what they had done, so that the other unit of government would not need to re-research what had already been done by the state agency. I just cite that as one very practical example where a local unit of government could, with the aid of the state civil service commission, save much time and money. The fact that it is on a reimbursable basis would mean the state would neither lose nor make money but provide this service on a quality basis in much less time and really save the local units money because they would be passing on the work that had already been done. Thank you.

CHAIRMAN MILLARD: The Chair recognizes the gentleman from Kalamazoo, Mr. Allen.

MR. ALLEN: Mr. Chairman, I would like to ask Mr. Brake a question, if I may.

CHAIRMAN MILLARD: Mr. Brake, if you care to answer.

MR. ALLEN: Mr. Brake, for purposes of clarification mostly, I am wondering, because the civil service commission is established primarily by constitutional action, let us assume that the second sentence is dropped as proposed in your amendment, and then local units of government would want to use the services of the civil service commission in a way that is originally provided. In your opinion, would the legislature have the power to authorize this?

MR. BRAKE: I would think not. I haven't researched it very carefully as a legal point but since all power and all limitations upon the civil service commission of the state are expressed in the constitution, I doubt if the legislature could make any change at all.

MR. ALLEN: Mr. Chairman, it would seem to me that if the legislature cannot do it—and I wasn't sure, but I am inclined to agree with Mr. Brake and feel that that probably is what would happen—then if we did have a demand develop by local units to use the services of the civil service commission, the legislature would be unable to respond to it inasmuch as this is "may" only. It is entirely permissive on the part of the local unit of government to ask for the services and the civil service commission "may" respond to it. I feel that it might be useful for those smaller units of government which might not have the funds otherwise to set up their own systems, to take advantage of this system. Therefore, I personally believe it would be better to leave the second sentence in.

CHAIRMAN MILLARD: The Chair will recognize the gentleman from Taylor, Mr. Ford.

MR. FORD: Mr. Chairman, I wanted to ask some questions concerning the Hanna amendment itself. I don't believe that the questions touch on this specific amendment. I'd like to pass until we get back to it.

CHAIRMAN MILLARD: Mr. Martin.

MR. MARTIN: Mr. Chairman, this last sentence is clearly—in the light of Mr. Brake's answer, with which I completely agree—a necessary thing if the local units of government, in setting up their systems, are to be able to obtain advice and assistance from a fully qualified and expertly developed civil service system. What they will have to do, if you don't let them do this, is to go outside the state and bring in outside experts, either from state commissions outside or from organizations of one kind or another which are familiar with civil service procedures. They'll have to go outside to get that kind of expert help. And all this does is to make it possible for the local unit, if its people vote to set up a civil service system of whatever kind, to obtain the help and advice if any kind is required, assistance upon a reimbursable basis in setting up a proper civil service system. It does not bring the state civil service commission into the thing for any other purpose than to enable them to have this kind of technical advice, and the civil service system does require some technical knowledge in getting it into operation and making it effective. This is an important part of this section and it will be almost useless to the local units if it is not included. I hope that the amendment will be defeated.

CHAIRMAN MILLARD: The question is on the Brake amendment to the Hanna amendment. All in favor will say aye; opposed, no.

The amendment is not adopted. The secretary will read.

SECRETARY CHASE: Mr. Faxon and Miss Hart offer the following amendment to the amendment:

1. Amend the amendment, first sentence, after "discontinue a" by striking out "merit" and inserting "civil service"; so that the first sentence will then read:

> Each city, village, township, county, school district and metropolitan government may, by a majority vote of the

electors voting thereon, establish, modify or discontinue a civil service system for its employees.

CHAIRMAN MILLARD: The Chair will recognize Mr. Faxon.

MR. FAXON: I will yield to Miss Hart for the purpose of making a presentation on this amendment.

CHAIRMAN MILLARD: Miss Hart.

MISS HART: Mr. Chairman, fellow delegates, this isn't just a change in terminology. I think the term "merit" has a particular meaning to teachers, not only teachers in the state of Michigan, but this is a national issue. We will serve the same purpose by substituting "civil service" system for "merit" and avoid the difficulty that would come, I think, from use of the term "merit". I can think of nothing that is more disruptive or would be more disruptive in relationship to the schoolroom than establishment of the so called merit system. It is an issue on which I think all classroom teachers are pretty well united. I think all of us would like to have the opportunity for school employees, if the local communities so desired — that is, non-contract employees—to be placed under a merit system, but I am sure that I speak for the teachers of the state of Michigan when I ask that the term "merit" be changed to "civil service" system to avoid the problem that I am sure we would meet.

CHAIRMAN MILLARD: Mr. Martin.

MR. MARTIN: Mr. Chairman, I would think that the committee would have no objection to this change because what we were talking about when we talked in the committee sessions in preparing this proposal, was a civil service system. The word "merit" is interchangeable in most situations but it's not interchangeable in the school situation and, personally, I think the members of the committee would have no objection to this change.

CHAIRMAN MILLARD: Mrs. Judd.

MRS. JUDD: First a question, Mr. Chairman, and then I'd like to make a remark. Didn't we this morning delete the words "school district" from the Hanna amendment?

CHAIRMAN MILLARD: That was voted down.

MRS. JUDD: So it is still there?

CHAIRMAN MILLARD: That's right.

MRS. JUDD: This is why the concern of Miss Hart; is that it? I'm personally sorry it's there. It complicates matters, I think. I am not on Mr. Martin's committee, so I don't have to agree with him on this point, but I feel it just plain isn't good English to speak of a civil service system. It doesn't say what we want it to say. The civil service is the body of public employees who are not in the military service. So if we speak of establishing a civil service system, all we are saying is establishing an employment system, and we are not saying what kind of a system we want. I think the word "merit" is essential to indicate the type of employment system that we do want. I am sorry it is confused with the school district problem, but there must be some better way to handle that.

CHAIRMAN MILLARD: Mr. Martin.

MR. MARTIN: Mr. Chairman, I wonder if I might ask Miss Hart a question.

CHAIRMAN MILLARD: Miss Hart, do you care to answer it?

MISS HART: I'd be glad if we had a synonym for the word "merit." I do object to the word "merit." I don't care whether we use "civil service" system. If anybody can think of a better term, I would be delighted. It is the term "merit" I object to.

CHAIRMAN MILLARD: Mr. Martin hasn't asked his questions yet.

MISS HART: I beg your pardon.

MR. MARTIN: I just wondered if we said "a civil service merit system" if it would meet your problem.

MISS HART: I don't think it would, Mr. Martin. I would just prefer that that word "merit" be left out if we are talking about schools.

MR. MARTIN: I think the term "civil service" is clear and I say again I think we have no objection to the change.

CHAIRMAN MILLARD: The Chair recognizes Delegate Stevens.

MR. STEVENS: Mr. Chairman, along that line, as a member of the style and drafting committee, I would suggest that if you are going to change it, you make it "classified civil service." That is what we will probably do with the rest of the civil service. Mrs. Judd is correct. The term "civil service" applies to all employees in the government who are not in the military service. We will try to correct that—at least I anticipate we will—in style and drafting for the state civil service commission and call it "classified civil service" so it will mean something.

CHAIRMAN MILLARD: Delegate Hanna.

MR. W. F. HANNA: Mr. Chairman, to answer the objection of Miss Hart and Mr. Faxon, to put the issue squarely before us, civil service is all civilian employees, whether classified or not, and there are some people obviously that you don't want to classify. May I suggest that you withdraw your amendment and after the word "employees" put "except teachers under contract or tenure" so that it is clear that the civil service within school districts does not extend to teachers under contract or tenure.

CHAIRMAN MILLARD: Mr. Faxon.

MR. FAXON: Mr. Chairman, members of the committee, I would be very willing to withdraw the amendment and insert the language "except teachers under contract or tenure".

CHAIRMAN MILLARD: Will you prepare your amendment in writing and submit it to the secretary?

MR. FAXON: I'll do that right now.

CHAIRMAN MILLARD: You withdraw your amendment now?

MR. FAXON: So that we may take up this particular amendment.

CHAIRMAN MILLARD: The Faxon-Hart amendment is withdrawn. The secretary will read.

SECRETARY CHASE: The amendment now offered by Mr. Faxon and Miss Hart is:

1. Amend the amendment, first sentence, after "employees" by inserting "except teachers under contract or tenure"; so that the sentence will then read:

Each city, village, township, county, school district and metropolitan government may, by a majority vote of the electors voting thereon, establish, modify or discontinue a merit system for its employees except teachers under contract or tenure.

CHAIRMAN MILLARD: Mr. Faxon.

MR. FAXON: I think we have already gone over the arguments here. It seems clear that the intent of the amendment was not to encompass school teachers and the additional words here would take this into account. Of course, I hoped earlier today that we would just delete the whole subject of school districts entirely but the feeling for those people who were nonteaching personnel was strong, so that if you want to give them this opportunity, then I think we could keep this meaning by adopting this amendment.

CHAIRMAN MILLARD: Mr. Hatch.

MR. HATCH: Mr. Chairman, I would like to ask Mr. Hanna a question, if I may.

CHAIRMAN MILLARD: Mr. Hanna, do you desire to answer?

MR. HATCH: It is somewhat tied in with this particular amendment. Is it the intent of the amendment, where it refers to "employees," to include the superintendent of the school, the principal of the school, the city manager of a city, or its city attorney, officers of this sort, who are not elected?

MR. W. F. HANNA: Mr. Chairman and Delegate Hatch, you have answered your own question. Those gentlemen are officers as applied to municipal government. City managers, their deputies and so forth, are spelled out. Those are officers. The township clerk or his deputy would be an officer and not an employee. Now, with regard to the superintendents or principals, they are teachers under contract or tenure.

MR. HATCH: Mr. Chairman, my only thought would be that when we get into excepting only teachers from this provision, and with the possibility that for instance, say, a city

manager may be considered an employee of the city, that we may be thereby including all these other persons by the specific exemption of teachers alone.

MR. W. F. HANNA: Mr. Chairman, if I might add one remark to Mr. Hatch's: also, Mr. Hatch, you see, this requires a system to be voted on by the people and certainly, the people would never vote for a civil service that encompassed the policymaking officers that you have envisioned; so that you have a double safeguard — the word "employees" and the right of the people to vote approval.

CHAIRMAN MILLARD: The question is on this Faxon-Hart amendment to the Hanna amendment. All those in favor will say aye. Opposed, no. The Chair is in doubt. The secretary will read the amendment.

SECRETARY CHASE: The amendment immediately under consideration is an amendment by Mr. Faxon and Miss Hart, an amendment to the Hanna amendment:

[The amendment was again read by the secretary. For text, see above, page 1763.]

CHAIRMAN MILLARD: All those in favor of the Faxon-Hart amendment to the Hanna amendment, which has just been read, will vote aye. Those opposed will vote nay. Have you all voted? If so, the machine will be locked and the secretary will tally the vote.

SECRETARY CHASE: On the Faxon-Hart amendment to the Hanna amendment, the yeas are 62; the nays are 49.

CHAIRMAN MILLARD: The amendment is adopted. The secretary will read.

SECRETARY CHASE: There are no further amendments to the Hanna amendment.

CHAIRMAN MILLARD: The question now is on the Hanna amendment as amended. Mr. Ford.

MR. FORD: I'd like to direct some questions to Mr. Hanna, with the possibility that we can work out a couple of small adjustments on the floor.

CHAIRMAN MILLARD: If he cares to answer.

MR. FORD: One of the questions, Bill, that comes to mind is when you say "each city, village, township," et cetera, do you mean this in its literal sense so that it might be construed not to apply to joint activities where we have 2 townships or 3, for example, operating special service operations, such as police and fire protection?

MR. W. F. HANNA: You are talking about those townships that jointly operate a police or fire department under the statute?

MR. FORD: Yes.

MR. W. F. HANNA: I would assume that under local government we have provided generally, Mr. Ford, that any power that a township may exercise singly may be exercised jointly.

MR. FORD: I think I am correct in saying that this only applies to metropolitan authorities.

MR. W. F. HANNA: We are still struggling with this term in style and drafting, Mr. Ford. I used "metropolitan government" here in the technical phrase that it has been loosely used before and not necessarily the joint government. Style and drafting will have to get this language consistent as we go through all of these local government units.

MR. FORD: Is it your intention that these joint functions would be covered?

MR. W. F. HANNA: Yes, sir. If a township were doing it jointly, then the 2 townships could establish a merit system by concurrent vote.

MR. FORD: Then also if you list several types of municipal corporations — and one of the dangers with listing specifics is that it might be construed to exclude those not mentioned — I wonder if your use of the phrase "metropolitan government" is broad enough to include such things as these park authorities, water authorities, sewage authorities, incinerators, the various authorities that may have substantial numbers of employees, but are actually separate municipal corporations apart from the municipal corporations that own them.

MR. W. F. HANNA: Mr. Chairman, Mr. Ford, under the present constitution and statute, I am sure it would be inclusive because they are generally incorporated under one or more of the metropolitan authority acts. Generally, it is the general metropolitan authority act, or in case of the Huron-Clinton, by special act, but it does refer to them by the loose term "metropolitan authority".

MR. FORD: But we don't here extend to this type of municipal corporation the ability to have civil service?

MR. W. F. HANNA: We do under my language. That was my intent. This is a problem we have been struggling with in style and drafting, Mr. Ford. I assure you that it was my intent to include all these special forms of government that may be created pursuant to our new constitution or pursuant to the old metropolitan authority granted under the Constitution of 1908.

MR. FORD: Bill, this is where the problem is. You see, when you are talking about metropolitan government, as Glenn Allen's committee talked about it, you are talking about a governmental unit. But I am talking about a municipal corporation, which is merely a special service authority. I am not talking about a governmental unit at all. I am talking about a special service public corporation, municipal corporation, if you will, that doesn't perform governmental functions, it performs a specified set of functions without being a governmental entity as such.

MR. W. F. HANNA: Mr. Chairman, Mr. Ford —

MR. FORD: It has no boundaries or borders —

CHAIRMAN MILLARD: Will you kindly direct your questions through the Chair. You are having a little argument here amongst yourselves and the rest of the delegates here would like to know what it is all about.

MR. W. F. HANNA: Mr. Chairman, Mr. Ford, they do perform a governmental function. They do have boundaries. It is true that ordinarily many of them are set up as cooperative corporations and not as govermental units in the sense that they elect their own legislative or administrative bodies and so forth. If you will take my word for it, I mean to include not only the true metropolitan government but the metropolitan cooperative corporation — and believe me, it is giving us a great deal of concern in style and drafting as to whether we can use the term "body corporate" without cutting across the colleges and universities. We will have to try and get this term "metropolitan government" in line with the other provisions of local government and cover both the true metropolitan government and authority in the intergovernmental cooperative corporation. This is a struggle we are facing in style and drafting.

MR. FORD: One more question, Mr. Chairman. Again, this is something probably you can correct in style and drafting, but in most municipalities, they find it desirable to have more than 1 merit system, 1 covering the police and fire, for example, and 1 covering general governmental employees, because many of the philosophies are different in the 2, the trial board procedure and so on, and you wouldn't want this language to restrict the municipality to having a single overall merit system, would you?

MR. W. F. HANNA: Mr. Chairman, Mr. Ford, I do not interpret this language to require that. You can have a merit system only for police, only for fire or 1 merit system for police and 1 for fire. I do not believe that this requires that all employees be covered under the same merit system.

MR. FORD: Well, could we change "establish a merit system" to "establish merit systems?"

MR. W. F. HANNA: I have no objection.

MR. FORD: This is what you intended?

MR. W. F. HANNA: I have no objection. If this will clarify it for township attorneys, I'll be glad to cooperate.

MR. FORD: One final question, Mr. Chairman, and that is this: in the first sentence it reads, ". . . school district, . . . and metropolitan government may, by a majority vote of the electors. . . ." Now, is this intended to mean that upon approval by a majority vote the municipality will set this up, or does it mean that you actually have to present to the

electors the specific merit system and have them vote on it, and when you want to make an amendment, you submit that specific amendment to the voters, or does it mean that you ask the voters to approve the broad concept, within limits, of the merit system?

MR. W. F. HANNA: Mr. Chairman, Mr. Ford, I assume that the question to be submitted to the voters is much the same type of question that you submit if you are amending a charter to provide for a merit system. You would not go into the ordinance itself or the rules and regulations itself but ask, shall we have a merit system with a board applying to our policemen or our firemen? Much the same question, Mr. Ford, is provided when you decide within a township: do you want a personnel board for your police or your firemen under the statute? I mean, the details are left to ordinance. I certainly wouldn't want the whole civil service ordinance and all the rules and regulations subject to a vote every time you wanted to adjust it. I think the broad principle is what you submit.

MR. FORD: Thank you.

CHAIRMAN MILLARD: Mr. Ford, were you offering an amendment?

MR. FORD: No. I am satisfied that Mr. Hanna is going to take care of it in Mr. Cudlip's committee.

CHAIRMAN MILLARD: Mr. Garry Brown.

MR. G. E. BROWN: Mr. Chairman, parliamentary inquiry. While this amendment is pending, would a motion to reconsider a prior amendment be in order?

CHAIRMAN MILLARD: The Chair thinks that we should dispose of this amendment before we take up any other business.

MR. G. E. BROWN: I am interested in knowing what the Chair thinks, but is that the ruling of the Chair?

CHAIRMAN MILLARD: That is the ruling of the Chair.

MR. G. E. BROWN: Thank you.

CHAIRMAN MILLARD: Mr. Martin.

MR. MARTIN: Mr. Chairman, I think we are about ready to vote on this Hanna amendment but I want to say what I said to a group of students this noon, that I think this is the first good example of the way in which a constitutional convention, working hard and conscientiously, can hammer out material improvements to the original committee proposal and come up with a balanced proposal which meets the objections of various delegates and still accomplishes the broad objective of the committee. It seems to me that this is a good job and I hope that as a result we will have a good, resounding, favorable vote; that is, that we can clearly establish this general principle as part of our constitution.

CHAIRMAN MILLARD: The question is on the Hanna amendment. All in favor will say aye. Opposed, no.

The amendment is adopted.

DELEGATES: Division.

CHAIRMAN MILLARD: A division is called for. Is there support? There is support. All of those who are in favor will vote aye and those who are opposed will vote nay. The question is on the Hanna amendment. Have you all voted? If so, the machine will be locked and the secretary will tally the vote.

SECRETARY CHASE: On the adoption of the Hanna amendment as amended, the yeas are 83; the nays are 26.

CHAIRMAN MILLARD: The amendment, as amended, is adopted. The Chair will recognize Mr. Garry Brown.

MR. G. E. BROWN: Mr. Chairman, I move to reconsider the vote upon which the Shackleton, Seyferth, Brake, et al, amendment failed.

CHAIRMAN MILLARD: The secretary will read the Shackleton-Seyferth amendment.

SECRETARY CHASE: The amendment offered by Messrs. Shackleton, Seyferth, G. E. Brown, Brake and Boothby was:

1. Amend page 1, line 8, by striking out all of the proposal.

CHAIRMAN MILLARD: Mr. Martin.

MR. MARTIN: Mr. Chairman, this is the question we just finished voting on. If you voted for the Hanna amendment, as you have, with a rather strong vote, you wouldn't want to vote to reconsider the Shackleton amendment because that would exactly reverse your vote. So I hope that this motion to reconsider will be defeated.

MR. G. E. BROWN: Mr. Chairman, I would only suggest to Mr. Martin that it is entirely conceivable that many felt if they had to have something, they'd rather have the Hanna amendment but would prefer to have nothing at all. I would therefore urge a yes vote on the motion to reconsider.

CHAIRMAN MILLARD: The question is on the motion to reconsider the Shackleton-Seyferth amendment. All in favor will say aye. Opposed, no.

DELEGATES: Division.

CHAIRMAN MILLARD: Division has been called for. Is there support? There is sufficient number up.

MR. POLLOCK: Parliamentary inquiry, Mr. Chairman.

CHAIRMAN MILLARD: Dr. Pollock.

MR. POLLOCK: Would you explain the parliamentary effect of this motion, please. As I recall the Shackleton amendment, it was to strike the original committee proposal. The original committee proposal now has had substituted for it Mr. Hanna's amendment which has been adopted by a large majority. I can't understand the purpose or the effect of this reconsideration.

CHAIRMAN MILLARD: The effect will be if you vote to reconsider, you then will vote upon the original Shackleton-Seyferth amendment, which is to strike section a in its present form.

MR. POLLOCK: In its present form?

CHAIRMAN MILLARD: That's right.

MR. POLLOCK: The Shackleton amendment was made, was it not, before the Hanna amendment was adopted?

MR. G. E. BROWN: Mr. Chairman, may I speak on this?

CHAIRMAN MILLARD: Just a moment. The Chair wants to answer Dr. Pollock. Section a has been amended so that the Shackleton-Seyferth amendment would go to the amended section a.

MR. POLLOCK: I understood, Mr. Chairman, that the Shackleton amendment was presented before the Hanna amendment and substituted.

MR. FAXON: Point of order, Mr. Chairman.

CHAIRMAN MILLARD: State your point.

MR. FAXON: Didn't the Hanna amendment strike out all of section a and insert this new language?

CHAIRMAN MILLARD: That's right.

MR. FAXON: Now we are moving to reconsider a striking out which has just been accomplished by the committee in an affirmative way with the insertion of the Hanna amendment. I thought there was something in the rules about having one item of intervening business between an action to strike out or something that has already been accomplished. We just voted to strike out all of section a and insert the Hanna amendment.

MR. G. E. BROWN: Mr. Chairman.

CHAIRMAN MILLARD: Just a moment. The motion to reconsider is in order. Mr. Brown.

MR. G. E. BROWN: I was going to say, Mr. Chairman, your ruling is entirely correct because the Shackleton amendment says strike all of section a. Now, whether that was as it was in the committee proposal or as it is now, it still is to strike all of section a, whether it was amended once, twice or a dozen times. So it is in order, I'm sure.

CHAIRMAN MILLARD: Mr. Cudlip.

MR. CUDLIP: Mr. Chairman and members of the committee, I'd like to ask a point of information. Can one make such a motion if he hasn't voted on the prevailing side?

CHAIRMAN MILLARD: There is no limit in our rules on that point.

MR. CUDLIP: Thank you.

CHAIRMAN MILLARD: Mr. Sterrett.

MR. STERRETT: Mr. Chairman, I believe that the Shackleton amendment has already in effect been acted upon by striking section a under the Hanna amendment and the Hanna amendment substituted therefor.

CHAIRMAN MILLARD: The question is on the reconsideration of the Shackleton-Seyferth amendment. Division

has been ordered. Those who are in favor of reconsideration will vote aye. Those who are opposed will vote nay. Have you all voted? If so, the machine will be locked and the secretary will tally the vote.

SECRETARY CHASE: On the motion to reconsider, the yeas are 50; the nays are 59.

CHAIRMAN MILLARD: The motion does not prevail. Are there any further amendments to section a?

SECRETARY CHASE: That is all of the amendments on the desk, Mr. Chairman.

CHAIRMAN MILLARD: Is there any further amendment to the body of Committee Proposal 76? If not, it will pass. Committee Proposal 76, as amended, is passed. The secretary will read.

SECRETARY CHASE: Item 11 on the calendar, from the committee on executive branch, by Mr. Martin, chairman, **Committee Proposal 71,** A proposal to provide for the election, term and duties of state officers, allocation of departments, administrative reorganization, appointment and removal of department heads, supervision of departments, appointments to fill vacancies, provisional appointments, and removal or suspension from office by the governor. Contains new language and amends or replaces article VI, sections 1, 3, 10 and 19, and article IX, sections 5 and 7.

Following is Committee Proposal 71 as read by the secretary, and the reasons submitted in support thereof:

The committee recommends that the following be included in the constitution:

Sec. a. [There shall be elected at each general biennial election a governor, a lieutenant governor, a secretary of state, a state treasurer, a commissioner of the state land office, an auditor general and an attorney general, for the term of 2 years.]

THE GOVERNOR AND THE LIEUTENANT GOVERNOR SHALL BE ELECTED AT THE GENERAL BIENNIAL ELECTION IN 1964 AND IN EACH ALTERNATE EVEN NUMBERED YEAR BEGINNING IN 1966. THEY SHALL, AFTER 1966, SERVE FOR TERMS OF 4 YEARS BEGINNING ON THE FIRST DAY OF JANUARY NEXT SUCCEEDING THEIR ELECTION.

THE LIEUTENANT GOVERNOR SHALL BE NOMINATED BY PARTY CONVENTION IN A MANNER PROVIDED BY LAW. IN THE GENERAL ELECTION THE VOTES CAST FOR A CANDIDATE FOR GOVERNOR SHALL BE CONSIDERED AS CAST ALSO FOR THE CANDIDATE FOR LIEUTENANT GOVERNOR RUNNING JOINTLY WITH HIM. THE CANDIDATE WHOSE NAME APPEARS ON THE BALLOT JOINTLY WITH THAT OF THE SUCCESSFUL CANDIDATE FOR GOVERNOR SHALL BE ELECTED LIEUTENANT GOVERNOR.

Sec. b. The lieutenant governor shall be president of the senate, but shall have no vote EXCEPT IN CASE OF EQUAL DIVISION. HE SHALL PERFORM SUCH ADDITIONAL DUTIES AS MAY BE DELEGATED TO HIM BY THE GOVERNOR.

ALL EXECUTIVE AND ADMINISTRATIVE OFFICES, AGENCIES AND INSTRUMENTALITIES OF THE STATE GOVERNMENT AND THEIR RESPECTIVE FUNCTIONS, POWERS AND DUTIES, EXCEPT FOR THE OFFICES OF GOVERNOR AND LIEUTENANT GOVERNOR AND THE GOVERNING BODIES OF INSTITUTIONS OF HIGHER EDUCATION PROVIDED FOR IN THIS CONSTITUTION, SHALL BE ALLOCATED BY LAW AMONG AND WITHIN NOT MORE THAN 20 PRINCIPAL DEPARTMENTS, SO AS TO GROUP THEM AS FAR AS PRACTICABLE ACCORDING TO MAJOR PURPOSES. TEMPORARY COMMISSIONS OR AGENCIES FOR SPECIAL PURPOSES AND WITH A LIFE OF NO MORE THAN 2 YEARS MAY BE ESTABLISHED BY LAW AND NEED NOT BE ALLOCATED WITHIN A PRINCIPAL DEPARTMENT.

THE ALLOCATION OF DEPARTMENTS BY LAW PURSUANT TO THIS SECTION SHALL BE COMPLETED WITHIN 2 YEARS AFTER THE EFFECTIVE DATE OF THIS CONSTITUTION. IF SUCH ALLOCATION SHALL NOT HAVE BEEN COMPLETED WITHIN SUCH PERIOD, THE GOVERNOR, WITHIN ONE YEAR THEREAFTER, BY EXECUTIVE ORDER, SHALL MAKE SUCH ALLOCATION.

SUBSEQUENT TO SUCH ALLOCATION, THE GOVERNOR MAY MAKE CHANGES IN THE ORGANIZATION OF THE EXECUTIVE BRANCH OR IN THE ASSIGNMENT OF FUNCTIONS AMONG ITS UNITS WHICH HE CONSIDERS NECESSARY FOR EFFICIENT ADMINISTRATION. WHERE THESE CHANGES REQUIRE THE FORCE OF LAW, THEY SHALL BE SET FORTH IN EXECUTIVE ORDERS. THE LEGISLATURE SHALL HAVE 60 DAYS OF A REGULAR SESSION, OR A FULL SESSION IF OF SHORTER DURATION, TO DISAPPROVE THESE EXECUTIVE ORDERS. UNLESS DISAPPROVED IN BOTH HOUSES BY A RESOLUTION CONCURRED IN BY A MAJORITY OF THE MEMBERS ELECT OF EACH HOUSE, THESE ORDERS SHALL BECOME EFFECTIVE AT A DATE THEREAFTER TO BE DESIGNATED BY THE GOVERNOR.

THE HEAD OF EACH PRINCIPAL DEPARTMENT SHALL BE A SINGLE EXECUTIVE UNLESS OTHERWISE PROVIDED IN THIS CONSTITUTION OR BY LAW. THE SINGLE EXECUTIVES HEADING PRINCIPAL DEPARTMENTS SHALL INCLUDE A SECRETARY OF STATE, A STATE TREASURER, AND AN ATTORNEY GENERAL. AT THE CONCLUSION OF THE TERM OF OFFICE OF ALL STATE OFFICERS ELECTED UNDER THE CONSTITUTION OF 1908, AS AMENDED, WHEN A SINGLE EXECUTIVE IS THE HEAD OF A PRINCIPAL DEPARTMENT, HE SHALL BE NOMINATED AND, BY AND WITH THE ADVICE AND CONSENT OF THE SENATE, APPOINTED BY THE GOVERNOR AND HE SHALL SERVE AT THE PLEASURE OF THE GOVERNOR.

WHEN A BOARD OR COMMISSION IS AT THE HEAD OF A PRINCIPAL DEPARTMENT, THE MEMBERS THEREOF SHALL BE NOMINATED AND, BY AND WITH THE ADVICE AND CONSENT OF THE SENATE, APPOINTED BY THE GOVERNOR. THE TERM OF OFFICE AND REMOVAL OF SUCH MEMBERS SHALL BE AS PRESCRIBED IN THIS CONSTITUTION OR BY LAW. WHEN A CHIEF EXECUTIVE OFFICER OF A BOARD OR COMMISSION HEADING A PRINCIPAL DEPARTMENT IS APPOINTED BY SUCH BOARD OR COMMISSION AS PRESCRIBED BY LAW, HIS APPOINTMENT SHALL BE SUBJECT TO THE APPROVAL OF THE GOVERNOR EXCEPT AS OTHERWISE PROVIDED IN THIS CONSTITUTION.

Sec. c. [They shall keep their offices at the seat of government, superintend them in person and perform such duties as may be prescribed by law. The office of commissioner of the state land office may be abolished by law.] SINGLE EXECUTIVES HEADING PRINCIPAL DEPARTMENTS AND THE CHIEF EXECUTIVE OFFICERS OF PRINCIPAL DEPARTMENTS HEADED BY BOARDS OR COMMISSIONS SHALL KEEP THEIR OFFICES AT THE SEAT OF GOVERNMENT, EXCEPT AS OTHERWISE PROVIDED BY LAW, SUPERINTEND THEM IN PERSON AND PERFORM SUCH DUTIES AS MAY BE PRESCRIBED BY LAW.

Sec. d. EACH PRINCIPAL DEPARTMENT SHALL BE UNDER THE SUPERVISION OF THE GOVERNOR. The governor shall take care that the laws be faithfully executed; shall transact all necessary business with the officers of government; and may require information in writing from all executive and administrative state officers,

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Explanation—Matter within [ ] is stricken, matter in capitals is new.

elective and appointive, upon any subject relating to the duties of their respective offices.

THE GOVERNOR MAY, BY APPROPRIATE COURT ACTION OR PROCEEDING BROUGHT IN THE NAME OF THE STATE, ENFORCE COMPLIANCE WITH ANY CONSTITUTIONAL OR LEGISLATIVE MANDATE, OR RESTRAIN VIOLATIONS OF ANY CONSTITUTIONAL OR LEGISLATIVE POWER, DUTY, OR RIGHT BY ANY OFFICER, DEPARTMENT, OR AGENCY OF THE STATE OR ANY OF ITS POLITICAL SUBDIVISIONS. THIS AUTHORITY SHALL NOT BE CONSTRUED TO AUTHORIZE ANY ACTION OR PROCEEDING AGAINST THE LEGISLATURE.

Sec. e. [Whenever a vacancy shall occur in any of the state offices, the governor shall fill the same by appointment, by and with the advice and consent of the senate, if in session.]

WHEN THE SENATE IS NOT IN SESSION AND A VACANCY OCCURS IN ANY OFFICE, APPOINTMENT TO WHICH REQUIRES ADVICE AND CONSENT OF THE SENATE, THE GOVERNOR SHALL FILL THE SAME BY APPOINTMENT. SUCH AN INTERIM APPOINTMENT MAY BE DISAPPROVED BY THE SENATE AS WITH OTHER APPOINTMENTS REQUIRING SUCH ADVICE AND CONSENT. A PERSON SO APPOINTED SHALL NOT BE ELIGIBLE FOR ANOTHER INTERIM APPOINTMENT TO SUCH OFFICE IF THE APPOINTMENT SHALL HAVE BEEN DISAPPROVED BY THE SENATE.

Sec. f. The governor may make a provisional appointment to fill a vacancy occasioned by the suspension of an officer UNDER IMPEACHMENT, until he shall be acquitted or until after the election and qualification of a successor.

Sec. g. The governor shall have power and it shall be his duty, [except at such time as the legislature may be in session,] to examine into the condition and administration of any public office and the acts of any public officer, elective or appointive; to remove OR SUSPEND from office for gross neglect of duty or for corrupt conduct in office, or any other misfeasance or malfeasance therein, any elective or appointive state officer, except legislative or judicial, and report the causes of such removal OR SUSPENSION to the legislature IF IN SESSION OR OTHERWISE at its next session.

APPOINTMENT BY AND WITH THE ADVICE AND CONSENT OF THE SENATE WHEN USED IN THIS CONSTITUTION OR IN STATUTES IN EFFECT OR HEREAFTER ENACTED SHALL MEAN APPOINTMENT SUBJECT TO DISAPPROVAL BY A MAJORITY VOTE OF THE MEMBERS ELECT OF THE SENATE IF SUCH ACTION IS TAKEN WITHIN 60 LEGISLATIVE DAYS AFTER THE DATE OF SUCH APPOINTMENT.

Mr. Martin, chairman of the committee on executive branch, submits the following reasons in support of Committee Proposal 71:

This proposal contains the major recommendations of the committee on executive branch for strengthening and improving the constitutional provisions for the executive branch in Michigan state government. The members of the committee are agreed that significant modifications are needed in the executive article of the constitution. Most of the recommendations in this proposal have the unanimous support of members of the committee.

The committee is unanimous in recommending a 4 year term for governor and lieutenant governor, with the election in even numbered nonpresidential election years. The governor now serves a 4 year term in 35 states. Several states have shifted to a 4 year term in recent years, and all of the states with recently framed or revised constitutions are in this group. In 25 of these states, the governor is not elected at the time of the presidential election. The committee believes that this arrangement as to length of term and time of election is the best combination.

The committee also unanimously approved the nomination of the lieutenant governor by party convention and his running with the governor as part of a team, with votes for the governor to be also cast for the lieutenant governor in the same manner as with the president and vice president of the United States. The committee also favors retaining the lieutenant governor as presiding officer of the senate, and it proposes that he be given a vote to break a tie. Additional duties can be delegated to him by the governor, but are not constitutionally assigned.

The committee considered carefully and extensively the question of election versus appointment of other state officers who are now elected. The recommendation of the committee, based on the majority view of its members, is that executive branch officials other than the governor and lieutenant governor should be appointed rather than elected.

The committee's action is based upon the feeling that the election of these officials does not bring government closer to the people, but on the contrary, divides authority in state government among numerous officials who have no real allegiance or responsibility to the governor and who are necessarily concerned in a major degree with furthering their own political ambitions. The majority on the committee felt that this continuing struggle for power at the top of the state government does not serve the people well and that since the people hold the governor responsible for what happens in state government, he should be permitted to appoint his principal officers subject to review by the senate. In this way the governor is made fully accountable for the actions of the executive branch of government for which the people hold him responsible.

The committee proposal assumes that the committee on legislative powers will submit with the committee on executive branch a joint committee proposal establishing the post of legislative auditor to replace the auditor general, and that the committee on education will recommend that the superintendent of public instruction be made an appointive rather than elective official. The majority of the committee on executive branch supports both of these suggestions.

The proposal suggests new language concerning the allocation of departments, procedure for administrative reorganization, the appointment and removal of department heads, and the supervision of departments by the governor. It incorporates language from sections 1 and 3 of article VI concerning duties of state officers, and the powers of the governor to take care that the laws be faithfully executed and to require information from state officers. It adds a new provision expressly authorizing the governor to resort to the courts in enforcing constitutional or legislative mandates. The proposal also recommends language which would replace section 10 of article VI on vacancies in state office, and sections 5 and 7 of article IX on provisional appointments and on removal and suspension of state officers by the governor.

The objective of the recommendation to place a limit of 20 on the number of principal departments is to reduce the number of agencies under the direct supervision of the governor to manageable proportions, and to bring about a more effective grouping of departments according to major purposes. Eight states now have comparable provisions in their constitutions. The usual constitutional maximum on the number of departments is 20. States with such a limitation include New York, New Jersey, Massachusetts, Hawaii and Alaska. The model state constitution also recommends such a restriction.

The committee proposal excepts from the limitation the offices of governor and lieutenant governor, and the governing bodies of institutions of higher education provided for in the constitution. It also authorizes the creation of temporary commissions or agencies for special purpose

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with a life of not more than 2 years. The committee has unanimously approved the recommendation, and it believes that inclusion in the new constitution of a constitutional maximum on the number of departments as proposed will bring about a much needed administrative reorganization, while providing sufficient flexibility for adjustments to meet future needs. The committee has been impressed by testimony given to it that states of comparable size, such as New York, New Jersey and Missouri, have found such limitations feasible and desirable. Adoption of this provision would retain in the hands of the legislature and the governor considerable discretion as to internal organization within the principal departments. For example, it would not prohibit the creation, for purposes of professional regulation, of professional or quasi professional licensing boards, made up in whole or in part of members of the profession, in a department of professional standards or of licensing such as now exist in several states. Under the proposal, a 2 year period would be provided for statutory allocation of departments. If not done during that time, the governor would have one year in which to make the allocation by executive order.

Another recommendation in the proposal gives constitutional status to the approach to administrative reorganization contained in Michigan public act 125 of 1958. This gives initiative in administrative reorganization to the governor with opportunity for rejection by the legislature of the governor's plans for reorganization. Alaska has included such a provision in its constitution. Several other states have granted such reorganization authority to the governor by statute. This device has been used successfully by the federal government over a period of many years. The committee believes that this procedure offers the best prospect of continuous reappraisal and adjustment of the state's administrative structure, following the initial reallocation of departments.

In choosing among several possible alternatives as to the requirement for legislative rejection of a reorganization plan, the committee favored a provision for rejection by a majority of the members elect of both houses of the legislature. The Michigan statute requires a majority of the members elect in either house to reject. The recommendation of the committee makes legislative disapproval of a proposal for reorganization somewhat more difficult than it now is under the statute, reflecting the view of a sizeable majority of committee members that reorganization plans submitted by the governor should become effective unless both houses of the legislature find them unacceptable and each house registers its disapproval. The governor is in the best position to have knowledge of the structural problems and needs that exist in the executive branch. His recommendations for administrative adjustments should be given considerable weight.

The proposal provides that the head of each principal department shall be a single executive unless otherwise provided by the constitution or by statute. Three officials are given constitutional status as single executives appointed as heads of principal executive departments. These are the secretary of state, the state treasurer and the attorney general.

The legislature would have the choice under the proposed language of providing that principal departments be headed either by a single executive who is appointed or by an appointed board or commission. It would not be possible to provide by statute for an elected department head, as is now the case with the state highway commissioner.

The proposal retains a requirement for senate review of gubernatorial appointments, both for single executives who are department heads and for members of boards or commissions. The committee has accepted the procedure suggested in Delegate Proposal 1716 concerning the nature of senatorial review. Such an appointment would be subject to disapproval by a majority vote of the members elect of the senate, provided the senate acts to disapprove within 60 legislative days after the appointment is submitted to it. If fewer than 60 legislative days remain for consideration after a submission of an appointment, the time available for possible disapproval would be extended into the next regular or special session for the balance of the specified period of 60 legislative or working days. The committee recommends this procedure as providing ample opportunity for the senate to render a negative judgment on gubernatorial appointees. At the same time, it permits the appointment to become effective unless the senate is willing to go on record as rejecting the appointee, and prevents withholding of confirmation simply by failure to act on an appointment.

In setting forth tenure and removal provisions, the proposal distinguishes between departments with single heads appointed by the governor and those headed by boards or commissions. A single executive appointed as the head of a department is to serve at the pleasure of the governor, but terms of office and conditions for removal of board and commission members may be set by law or specified in the constitution itself, as in the case of the civil service commission. When a board or commission at the head of a principal department appoints a chief executive officer as prescribed by law, the appointment must be approved by the governor except as provided elsewhere in this constitution. This recognizes the fact that such an official carries important policymaking responsibilities.

Language has been adapted from section 1 of article VI concerning the obligation of executive officials to superintend their offices in person, and perform duties as prescribed by law.

A provision, similar to that in several other recent state constitutions, states that each principal department shall be under the supervision of the governor. The proposal retains the wording of article VI, section 3, which provides that the governor shall take care that the laws be faithfully executed, and authorizes him to require information in writing from state officers. It adds a provision expressly authorizing the governor to resort to the courts to enforce compliance with any constitutional or legislative mandate, with the proviso that this authority shall not be construed to authorize any action or proceeding against the legislature. This provision is patterned after the Alaska constitution. The Hawaii constitution and the model state constitution contain similar provisions.

The recommendation concerning interim appointments is intended to clarify the power of the governor to make such appointments, and to specify that such an appointment will continue in effect unless disapproved by the senate within 60 legislative days after the beginning of its next session. In the event of disapproval, the same person is not eligible for another interim appointment to the same office.

The section concerning provisional appointments to fill vacancies caused by suspension of officers under impeachment has been transferred from article IX, where it appears as section 5.

The committee recommends retention, with one important change, of the language now in section 7 of article IX concerning the general removal power of the governor, and transfer of this provision to the executive article. The change is that the phrase in the present constitution withholding this power on the part of the governor when the legislature is not in session, has been deleted. This authorization was originally intended as a substitute for the impeachment process during times when the legislature is not in session. The committee has accepted the suggestion in Delegate Proposal 1102 that this authority should be placed in the hands of the governor at all times and should be considered supplemental to the impeachment process rather than a substitute for it. In addition, the proposal gives the governor power to suspend as well as to remove officials for the reasons set forth in the provision. These modifications have required a slight change in the wording

of the last sentence in this section, concerning the governor's duty of reporting to the legislature as to the causes of removal or suspension.

The committee proposal requires that the governor and lieutenant governor be elected in 1964 for a 2 year term and that the first 4 year term will begin after the election in 1966. State officers who are elected under the Constitution of 1908 will fill out the term for which they are elected and will thereafter be subject to appointment by the governor then holding office, with the advice and consent of the senate.

The committee on executive branch urges favorable action on these related provisions, in the expectation that their adoption will greatly strengthen the executive branch and the administrative structure of Michigan state government, while retaining proper and important controls to be exercised by the legislature.

Following is minority report A to Committee Proposal 71 as offered and the reasons submitted in support thereof:

Messrs. Bentley, Hatch, Durst, Shackleton, King, Karn and Gust, a minority of the committee on executive branch, submit the following minority report to Committee Proposal 71:

A minority of the committee recommends that the following be included in the constitution:

(Immediately following paragraph one ". . . next succeeding their election.")

NO PERSON WHO HAS BEEN ELECTED GOVERNOR FOR 2 FULL SUCCESSIVE TERMS SHALL BE AGAIN ELIGIBLE TO HOLD THAT OFFICE UNTIL ONE FULL TERM HAS INTERVENED.

Messrs. Bentley, Hatch, Durst, Shackleton, King, Karn and Gust, a minority of the committee on executive branch, submit the following reasons in support of the foregoing minority report, which accompanied Committee Proposal 71:

The minority strongly believe that the constitution should set a limit of 2 full successive terms for the governor. In justifying this departure from the present constitution, the undersigned believe that some restriction is justified in view of the fact that the term of office is to be lengthened from 2 to 4 years. Our proposed limitation would permit a governor who has served 2 terms to be elected again after a full term has intervened.

Following is minority report B to Committee Proposal 71 as offered and the reasons submitted in support thereof:

Messrs. Bentley, Hatch, Shackleton, King, Karn, Shaffer and Dean Doty, a minority of the committee on executive branch, submit the following minority report to Committee Proposal 71:

A minority of the committee recommends that the following be included in the constitution:

(Page 3, line 5)

IN EITHER HOUSE BY A RESOLUTION CONCURRED IN BY A MAJORITY

(To replace, in the committee proposal)

IN BOTH HOUSES BY A RESOLUTION CONCURRED IN BY A MAJORITY

Messrs. Bentley, Hatch, Shackleton, King, Karn, Shaffer and Dean Doty, a minority of the committee on executive branch, submit the following reasons in support of the foregoing minority report, which accompanied Committee Proposal 71:

The minority believe that legislative rejection of a reorganization plan should be permitted by a majority of the members elect in either house. This is in accordance with the present statute, Michigan public act 125 of 1958. Our proposal would still permit administrative reorganization with the governor retaining this initiative and ample opportunity for legislative rejection. But we feel strongly that in view of the fact that this represents a considerable precedent in the constitution (only adopted by one state until now) legislative disapproval of a proposal for reorganization should not be more difficult than it now is under the statute, as under the committee proposal.

Following is minority report C to Committee Proposal 71 as offered and the reasons submitted in support thereof:

Messrs. Marshall, Greene, Kelsey, Perlich, Wilkowski, Miss Hart and Mrs. Daisy Elliott, a minority of the committee on executive branch, submit the following minority report to Committee Proposal 71:

A minority of the committee recommends that the following be included in the constitution:

Sec. a. THE GOVERNOR, LIEUTENANT GOVERNOR, SECRETARY OF STATE, STATE TREASURER, AUDITOR GENERAL, ATTORNEY GENERAL, HIGHWAY COMMISSIONER, AND SUPERINTENDENT OF PUBLIC INSTRUCTION SHALL BE ELECTED AT THE GENERAL BIENNIAL ELECTION IN 1964 AND IN EACH ALTERNATE EVEN NUMBERED YEAR BEGINNING IN 1966. THEY SHALL, AFTER 1966, SERVE FOR TERMS OF 4 YEARS BEGINNING ON THE FIRST DAY OF JANUARY NEXT SUCCEEDING THEIR ELECTION.

THE LIEUTENANT GOVERNOR SHALL BE NOMINATED BY PARTY CONVENTION IN A MANNER PROVIDED BY LAW. IN THE GENERAL ELECTION THE VOTES CAST FOR A CANDIDATE FOR GOVERNOR SHALL BE CONSIDERED AS CAST ALSO FOR THE CANDIDATE FOR LIEUTENANT GOVERNOR RUNNING JOINTLY WITH HIM. THE CANDIDATE WHOSE NAME APPEARS ON THE BALLOT JOINTLY WITH THAT OF THE SUCCESSFUL CANDIDATE FOR GOVERNOR SHALL BE ELECTED LIEUTENANT GOVERNOR.

Sec. b. The lieutenant governor shall be president of the senate, but shall have no vote EXCEPT IN CASE OF EQUAL DIVISION. HE SHALL PERFORM SUCH ADDITIONAL DUTIES AS MAY BE DELEGATED TO HIM BY THE GOVERNOR.

ALL EXECUTIVE AND ADMINISTRATIVE OFFICES, AGENCIES AND INSTRUMENTALITIES OF THE STATE GOVERNMENT AND THEIR RESPECTIVE FUNCTIONS, POWERS AND DUTIES, EXCEPT AS OTHERWISE PROVIDED BY THIS CONSTITUTION, INCLUDING THE GOVERNING BODIES OF INSTITUTIONS OF HIGHER EDUCATION PROVIDED FOR IN THIS CONSTITUTION, SHALL BE ALLOCATED BY LAW AMONG AND WITHIN NOT MORE THAN 20 PRINCIPAL DEPARTMENTS, SO AS TO GROUP THEM AS FAR AS PRACTICABLE ACCORDING TO MAJOR PURPOSES. TEMPORARY COMMISSIONS OR AGENCIES FOR SPECIAL PURPOSES AND WITH A LIFE OF NO MORE THAN 2 YEARS MAY BE ESTABLISHED BY LAW AND NEED NOT BE ALLOCATED WITHIN A PRINCIPAL DEPARTMENT.

THE ALLOCATION OF DEPARTMENTS BY LAW PURSUANT TO THIS SECTION SHALL BE COMPLETED WITHIN 2 YEARS AFTER THE EFFECTIVE DATE OF THIS CONSTITUTION. IF SUCH ALLOCATION SHALL NOT HAVE BEEN COMPLETED WITHIN SUCH PERIOD, THE GOVERNOR WITHIN ONE YEAR THEREAFTER, BY EXECUTIVE ORDER, SHALL MAKE SUCH ALLOCATION.

SUBSEQUENT TO SUCH ALLOCATION, THE GOVERNOR MAY MAKE CHANGES IN THE ORGANIZATION OF THE EXECUTIVE BRANCH OR IN THE ASSIGNMENT OF FUNCTIONS AMONG ITS UNITS WHICH HE CONSIDERS NECESSARY FOR EFFICIENT ADMINISTRATION. WHERE THESE CHANGES

Explanation—Matter within [ ] is stricken, matter in capitals is new.

REQUIRE THE FORCE OF LAW, THEY SHALL BE SET FORTH IN EXECUTIVE ORDERS. THE LEGISLATURE SHALL HAVE 60 DAYS OF A REGULAR SESSION, OR A FULL SESSION IF OF SHORTER DURATION, TO DISAPPROVE THESE EXECUTIVE ORDERS. UNLESS DISAPPROVED IN BOTH HOUSES BY A RESOLUTION CONCURRED IN BY A 2/3 MAJORITY OF THE MEMBERS ELECT OF EACH HOUSE, THESE ORDERS SHALL BECOME EFFECTIVE AT A DATE THEREAFTER TO BE DESIGNATED BY THE GOVERNOR.

THE HEAD OF EACH PRINCIPAL DEPARTMENT SHALL BE A SINGLE EXECUTIVE UNLESS OTHERWISE PROVIDED IN THIS CONSTITUTION OR BY LAW.

WHEN A BOARD OR COMMISSION IS AT THE HEAD OF A PRINCIPAL DEPARTMENT, THE MEMBERS THEREOF SHALL BE APPOINTED BY THE GOVERNOR. THE TERM OF OFFICE AND THE REMOVAL OF SUCH MEMBERS SHALL BE AS PRESCRIBED IN THIS CONSTITUTION OR BY LAW. WHEN A CHIEF EXECUTIVE OFFICER OF A BOARD OR COMMISSION HEADING A PRINCIPAL DEPARTMENT IS APPOINTED BY SUCH BOARD OR COMMISSION AS PRESCRIBED BY LAW, HIS APPOINTMENT SHALL BE SUBJECT TO THE APPROVAL OF THE GOVERNOR EXCEPT AS OTHERWISE PROVIDED IN THIS CONSTITUTION.

Sec. c. SINGLE EXECUTIVES HEADING PRINCIPAL DEPARTMENTS AND THE CHIEF EXECUTIVE OFFICERS OF PRINCIPAL DEPARTMENTS HEADED BY BOARDS OR COMMISSIONS SHALL KEEP THEIR OFFICES AT THE SEAT OF GOVERNMENT, EXCEPT AS OTHERWISE PROVIDED BY LAW, SUPERINTEND THEM IN PERSON AND PERFORM SUCH DUTIES AS MAY BE PRESCRIBED BY LAW.

Sec. d. EACH PRINCIPAL DEPARTMENT SHALL BE UNDER THE SUPERVISION OF THE GOVERNOR, UNLESS OTHERWISE PROVIDED BY THE CONSTITUTION. The governor shall take care that the laws be faithfully executed; shall transact all necessary business with the officers of government; and may require information in writing from all executive and administrative state officers, elective and appointive, upon any subject relating to the duties of their respective offices.

THE GOVERNOR MAY, BY APPROPRIATE COURT ACTION OR PROCEEDING BROUGHT IN THE NAME OF THE STATE, ENFORCE COMPLIANCE WITH ANY CONSTITUTIONAL OR LEGISLATIVE MANDATE, OR RESTRAIN VIOLATIONS OF ANY CONSTITUTIONAL OR LEGISLATIVE POWER, DUTY, OR RIGHT BY ANY OFFICER, DEPARTMENT, OR AGENCY OF THE STATE OR ANY OF ITS POLITICAL SUBDIVISIONS. THIS AUTHORITY SHALL NOT BE CONSTRUED TO AUTHORIZE ANY ACTION OR PROCEEDING AGAINST THE LEGISLATURE.

Sec. e. Whenever a vacancy shall occur in any of the state offices, the governor shall fill the same by appointment.

Sec. f. The governor may make a provisional appointment to fill a vacancy occasioned by the suspension of an officer, until he shall be acquitted or until after the election and qualification of a successor.

Sec. g. The governor shall have power and it shall be his duty, except at such time as the legislature may be in session, to examine into the condition and administration of any public office and the acts of any public officer, elective or appointive; to remove from office for gross neglect of duty or for corrupt conduct in office, or any other misfeasance or malfeasance therein, any elective or appointive state officer, except legislative or judicial, and report the causes of such removal to the legislature at its next session.

Explanation—Matter within [ ] is stricken, matter in capitals is new.

Messrs. Marshall, Greene, Kelsey, Perlich, Wilkowski, Miss Hart and Mrs. Daisy Elliott, a minority of the committee on executive branch, submit the following reasons in support of the foregoing minority report, which accompanied Committee Proposal 71:

We believe strongly in the popular election of members of the administrative board. These include the lieutenant governor, secretary of state, highway commissioner, attorney general, state treasurer, auditor general and superintendent of public instruction.

We can point to the historical success of this system. We can point out that it provides for responsible citizen participation in government, and contains safeguards against gubernatorial abuse of the appointive powers.

But few things exist independent of other factors. If the house and senate were apportioned on an equitable population basis—a vote for each person—then there would, of course, be guarantees that the governor would get the sort of administrative board he needed to implement his policies. With the present terminology of advice and consent, we have to refer to that old army saying, "when in doubt—don't." A house and senate antagonistic to the governor can readily block his appointments. We have a formidable list of precedents of such gubernatorial rebuke during the Williams and Swainson administrations as you all well know.

There is no evidence that the public wants this provision for election of their state officials to be changed. Certainly the events which brought the constitutional convention into being—the unjust apportionment of the legislature, the financial crisis, the new problems of metropolitan areas in the face of an immense population explosion—are not related to the election or appointment of state officials.

Therefore, we strongly advocate first, election of a secretary of state by the people. Inasmuch as he bears much responsibility for assuring honesty in elections, we want him to be independently and directly answerable to the people.

We favor election of the highway commissioner, a device which has assured the state a highway system which its citizens can point to with pride. As Commissioner Mackie pointed out in previous testimony, an elected highway commissioner can pinpoint responsibility for highway administration. Under the appointive system the pressure on a governor to "trade roads" for other parts of his program would be enormous. Further, election of a highway commissioner helps promote continuity of policy, so essential to the development of long range highway plans and programs for the state, city and county.

We favor election of the attorney general, the chief law enforcement officer of the state. In a representative government, appointment of the chief law enforcement officer would place him in a position of obligation which would make his duties more difficult. If the attorney general were appointed, he could be subjected to the influences of the appointing authority. Presently, he is able to make an independent legal judgment which might differ from the political decisions of other members of the executive branch.

We also want to emphasize that those offices concerned with handling the people's money—the treasurer and the auditor general—should be directly answerable to the people. The people should have an auditor who is elected by them and directly responsible to them. Michigan's history of dollar honesty in state government, regardless of party in power, has resulted partly from the high character of our citizens and partly from our form of government, with divided constitutional authority among law enforcement officials, financial officials, and other executive officials.

We want a school superintendent elected by the people and accountable to them for the decisions he makes concerning their youngsters. An elected superintendent will have the constitutional status and responsibility to support

the needs of education in meetings of the administrative board and throughout his public activities.

Another reason for opposing the majority report is the veto power by the senate over appointments, a form of "advice and consent". A legislative body that is not truly representative of the electorate is not interested in implementing the powers or assuring the effectiveness of the chief executive. The advice and consent (or veto) concept can only mean that a minority of the people electing a majority of the senators would be able to block the wishes of a governor elected by the majority. Advice and consent forces a governor elected by a majority into an impossible struggle against a form of state government that cannot be representative of the people because of its very structure.

The minority report will result in responsible constitutional government. The governor's power will be sufficiently limited to prevent any undue usurpation of power by him, but at the same time, he will have sufficient flexibility to permit him to carry out his constitutional responsibilities. If power corrupts and absolute power corrupts absolutely, we have found in this report the realistic balance between responsible government and citizen participation.

[Section a was read by the secretary. For text, see above, page 1766.]

CHAIRMAN MILLARD: The Chair will recognize the chairman of the committee, Mr. Martin. Excuse me. Mr. Marshall.

MR. MARSHALL: Yes. I was on the floor seeking recognition. I wish to make a brief statement and then I have a motion to make. I trust that the delegates take this in the same vein that it is given. On Thursday and Friday of last week, there was much talk on the floor of the convention and in the daily press about an alleged deal that had been consummated between factions within the convention. One of our very esteemed and distinguished delegates saw fit to take the floor and make a half hour or 45 minute speech explaining the alleged deal. Later a press conference was held, at which time the alleged deal was explained to the press, and all of you read that in the daily press. Now, because of the involvement—at least the stories in the press—by the explanation on the floor of this distinguished delegate and colleague of ours and in fairness to him and at the same time in fairness to all of the delegates here, that we might have his advice and counsel as we consider what I believe to be one of the most important issues before this convention, and inasmuch as the article that we are now about to take up is directly involved in the alleged deal, I would at this time, Mr. Chairman, move that we pass over Committee Proposal 71 until Friday morning, until the return of this very distinguished delegate, in order that we might have his advice and counsel in the debate, and I urge its adoption. Thank you.

CHAIRMAN MILLARD: Mr. Martin.

MR. MARTIN: Mr. Chairman, we reached this in the order of business here and it seems to me we are prepared to go ahead on the matter. I see no reason why we shouldn't get it under way right now. It seems to me that all the questions that are likely to need consideration can come up and we will be discussing this for a long time. I am afraid we are going to be discussing it for several days and there will be plenty of time for everybody to be heard.

CHAIRMAN MILLARD: Mr. Marshall.

MR. MARSHALL: I yield to Delegate Ford, Mr. Chairman.

CHAIRMAN MILLARD: Mr. Ford.

MR. FORD: Mr. Chairman, Mr. Martin's concern today with staying with the calendar is certainly not in keeping with what he expressed to us the other day when this was passed over. It was at the head of the calendar and was shoved down here on Thursday. We didn't know why on Friday. Some of us left here thinking we knew why. Some of us left here rather unhappy, thinking that Mr. Martin participated in setting the stage for what was done Thursday night. I think now that Mr. Marshall is raising a valid point here.

As far as the constituents in my area are concerned, they have been informed through the press and other means that a man who is supposedly a leader in this convention has answered this problem for us by bringing together divergent forces and "preventing the radical Democrats from Wayne county from getting together with the Hale Brake Republicans." This being the case, I don't think that we should proceed without having the benefit of his counsel, since he seems to be the man with the principal and most intimate knowledge of the details of what we are going to adopt here and probably we could save a lot of debate if we had the benefit of it at the beginning. I think that the reason for passing now is far more valid than the reasons given last Thursday when we passed over this thing in order to start taking up the ad board one item at a time. I support Mr. Marshall's motion.

CHAIRMAN MILLARD: Mr. Marshall.

MR. MARSHALL: I have nothing further to say. Only that I urge its adoption.

CHAIRMAN MILLARD: Mr. Martin.

MR. MARTIN: I think we are fully ready to take the matter up and all the delegates will have an opportunity to express themselves in due course on this. I would move that the motion be defeated.

CHAIRMAN MILLARD: Mr. Brown, were you seeking recognition?

MR. G. E. BROWN: I'll pass.

CHAIRMAN MILLARD: Mr. Marshall.

MR. MARSHALL: I would just like to point out to our honorable committee chairman that we also were ready to proceed with Committee Proposal 71 the other day when the general orders were changed on us without any advance notice by a motion on the floor coming from the committee chairman. I think that at least we are playing the rules clean and the game according to the rules. I feel that inasmuch as there was considerable publicity, speeches on the floor of this convention, press conferences held, people throughout the state having read these, I think that the delegates to this convention and the people are entitled to have one of the moving parties —at least apparently from the papers—in this alleged deal present when this issue is debated on the floor. I do not believe that my motion to pass over this until Friday morning and proceed with the other orders of business is unreasonable. Thank you.

CHAIRMAN MILLARD: The Chair recognizes Mr. Walker.

MR. WALKER: A question of Mr. Martin through the Chair, please.

CHAIRMAN MILLARD: If Mr. Martin cares to answer.

MR. WALKER: Mr. Martin, only to save the time of this committee, from your insistence that you are ready to go ahead today, are we to interpret that as meaning that a deal has been consummated? If so, we can eliminate any debate and get on with the voting.

MR. MARTIN: Mr. Chairman, Mr. Walker, you are not to put any words in my mouth and you are not to draw any conclusions of that kind or any other kind of that nature. We have reached this in the normal course here. We have delayed it to give people a chance to discuss this matter. Both sides have had an opportunity to review it. And this is the next order of business. I suggest that we go ahead with the order, Mr. Chairman.

CHAIRMAN MILLARD: Do you have anything further on the question, Mr. Walker?

MR. WALKER: I have no further questions of Mr. Martin. May I make one more remark, please, sir?

CHAIRMAN MILLARD: Go right ahead, Mr. Walker.

MR. WALKER: It would appear to me that Mr. Marshall's remarks today and reasons were more cogent than any that we could find for Mr. Martin's the other day. And therefore, I would suggest that we adopt Mr. Marshall's motion.

CHAIRMAN MILLARD: Mr. Stamm.

MR. STAMM: I think this is a very reasonable request. I would like to see this committee grant it with the one condition that they also have Governor Swainson at the session Friday so that he may also speak on this article because I am sure it would be of much interest to both political parties, certainly

to all the delegates in this convention, if he could repeat the testimony which he gave before the committee on executive branch. And I'd like to go along with Mr. Marshall with the extra proviso that we have the governor here also, because he is the one man interested in what is going on in the executive branch. (laughter)

MISS HART: Mr. Chairman.

CHAIRMAN MILLARD: Miss Hart, Mr. Sterrett is next.

MISS HART: I beg your pardon.

CHAIRMAN MILLARD: The Chair will recognize you—

MR. STERRETT: I'll yield to Miss Hart.

CHAIRMAN MILLARD: All right, Miss Hart.

MISS HART: I sincerely hope that Mr. Stamm is sincere in that recommendation and I would certainly hope that we would invite Governor Swainson to appear before this committee on Friday. I think he would gladly come.

CHAIRMAN MILLARD: The question is on the motion to pass Committee Proposal 71 until Friday. Mr. Wanger.

MR. WANGER: Mr. Chairman, the remaining items upon the executive committee calendar, with the exception of Committee Proposal 71, will clearly not take up the time between now and Friday. Therefore, if we pass this, we are going to leave ourselves with either a day or perhaps a little more where we have nothing to do or we will have to go on to the consideration of some other matter. I think either one of these would be wrong because we should consider the work of each committee all at one time insofar as possible. Therefore, I urge you to vote against this motion.

CHAIRMAN MILLARD: The question is on the Marshall motion. Mr. Marshall.

MR. MARSHALL: I would just like to point out to Delegate Wanger that we passed over 2 articles this morning, 2 proposals, which I am sure would take the rest of today and possibly all day tomorrow.

CHAIRMAN MILLARD: The question is on the Marshall motion to pass over until Friday. A division has been called for. Is there sufficient number up? There is. All those who are in favor of the Marshall motion to pass Committee Proposal 71 until Friday will vote aye. Those opposed will vote nay. Have you all voted? If so, the machine will be locked and the secretary will tally the vote.

SECRETARY CHASE: On the motion to postpone consideration of Committee Proposal 71 until Friday, the yeas are 39; the nays are 71.

CHAIRMAN MILLARD: The motion does not prevail.

Section a of Committee Proposal 71 has been read by the secretary. The Chair will recognize the chairman of the committee, Mr. Martin.

MR. MARTIN: Mr. Chairman, members of the committee, the provisions are a little complicated here. I would suggest that for purposes of following the discussion, you not only turn to your copy of Committee Proposal 71 on the green sheet, but to your committee minority report which will be minority report C, I believe, the yellow sheet, since that will be coming up shortly, and that you get from your desk—I hope you still have it—the series of sheets which are printed the length of the paper, which is headed, Comparative Analytical Presentation of the Majority and Minority Reports, Committee Proposal 71 on the executive branch. This in 2 columns compares the 2 reports and in the third column, indicates the differences. If you do not have this series of sheets, we have had some more copies printed and if you will hold up your hands, the pages will distribute them. Or you can put your light on if you want one. Have you all received a copy of that if you didn't have your original distributed copy? Now, I would like to suggest, Mr. Chairman, that we divide section a into 2 parts and that we consider the first paragraph on that which would be, on your green sheet, lines 10 through 19.

CHAIRMAN MILLARD: If there is no objection, that will be done.

MR. MARTIN: That paragraph is separate from the second paragraph which relates to the lieutenant governor. The portion of the section which we are considering, then, simply reads:

[Paragraph 1 of section a was read by Mr. Martin. For text, see above, page 1766.]

That paragraph provides, in effect, for the election of the governor and lieutenant governor for 4 year terms beginning in 1966. The election in 1962 and in 1964 will be for a 2 year term. The 4 year term would not begin until 1966. Now, the committee proposal eliminates from the present wording of the constitution the reference to a secretary of state, state treasurer, commissioner of state land office, an auditor general and an attorney general. It changes the term from 2 years to 4 years.

Very simply, Mr. Chairman, I would like to discuss for just a moment the committee's reasons for making this proposal which eliminates from election certain of the state officers. The reasons behind the committee's action are based upon the studies which have been made in Michigan over numbers of years in the past, particularly the little Hoover commission study, and these studies point out that the power and authority in Michigan at the top of its state government is dispersed and divided and redivided in a manner which classifies us as one of the states having the most completely fractionated government at its head of any state in the union. Not only do we have most of our principal departments headed by boards and commissions, but the top board of all, the administrative board, is so set up that 5 members can override the governor's veto or directives and, as a matter of fact, regularly did so when I was a member of that state administrative board. The people, I think, in general and throughout the state, don't fully understand this situation. In general, I think the people think that the governor has authority to govern and in fact, of course, this is not so. Instead of really orderly government, we have government by a multiple sort of executive, with no clear lines of responsibility at the top and some 7 men who may have no direct allegiance to the governor and no real feeling of loyalty toward him, who have their own political responsibilities and ambitions, and some of whom are considerably more powerful than the governor himself. This seems to the members of the committee who prepared this report to be not organization but disorganization.

One or two words with respect to some of the arguments that are used in this connection. One argument is that appointing these people provides too much power to the governor. The argument is that we don't want a dictator in Michigan. It seemed to me—and I think it seemed to the committee—that this was erecting a straw man; that no governor, whether he has a right to appoint his cabinet or not, is going to be a dictator in Michigan as long as we have a legislature as strong as the present legislature is, particularly if it is strengthed with a legislative auditor general, and as long as we have strong courts, and the legislature holds the pursestrings. As a matter of fact, we have far more power in the federal government in the president, who appoints his cabinet, and no one argues that there is any dictatorship there because of course congress won't permit it any more than the legislature in Michigan would permit it.

Another argument is that government wasn't meant to be efficient; that this is an attempt to impose efficiency on the people. Mr. Theodore Brown the other day said—I made a note of it—that government has in it a gross inefficiency to safeguard the rights of the people; that it wasn't meant to be efficient. I don't think any of us, or at least most of us, accept that proposition, and if we do we probably ought to give up our hopes for democracy, because certainly the state ought to be trying to be efficient if it possibly can.

One other argument is that there ought to be a balance of power in this picture. I think this completely misunderstands the balance of power doctrine or the separation of powers doctrine because while we do want a separation of powers, a balance of powers between the branches—

MR. MARSHALL: Point of order, Mr. Chairman.

CHAIRMAN MILLARD: All right, Mr. Marshall, what is your point?

MR. MARSHALL: I have raised this question on the floor of this convention time and time and time and time again as

to whether or not where there are minority reports filed, that the committee chairman should proceed debating the issues pro and con on the majority proposal without hearing the minority report.

Now, it's been ruled and explained to me on more than one occasion that the chairman of the committee has a right to present the majority report and explain it, and I have accepted that on more than one occasion, reluctantly. But, I submit that I do not believe—and I think, in all fairness, that the delegates to this convention will agree with me—that the committee chairman does not have the right at the same time he is presenting the majority proposal, to express his own personal opinions and start expressing the opinions of others that have appeared before this committee. And I would ask the Chair to respectfully ask the committee chairman to restrict himself to presenting the majority proposal and explaining it in order that we might get onto the minority report. Thank you. I make that as a point of order, Mr. Chairman.

MR. MARTIN: Mr. Chairman, may I comment on the point before your ruling?

CHAIRMAN MILLARD: Just a moment. Mr. Marshall, the chairman of the committee, in presenting the proposal for the first time on the floor, has a right to present the expression of the committee which passed the proposal.

MR. MARSHALL: In other words, are you ruling, Mr. Chairman, that the chairman of the committee can get up and present the committee proposal and in doing it, submit the viewpoints of the majority of the committee as to why they adopted this report and at the same time go into all of these other statements which I am not going to repeat. I wrote some of them down if you want me to start repeating them. I say that the chairman is going beyond that which he is entitled to under the rules.

CHAIRMAN MILLARD: The Chair thinks that the chairman of the committee has the right to present the proposal of the committee to this committee of the whole in its detail so it will know what the proposal is about and why the committee arrived at that decision.

MR. MARSHALL: Again—and I did this once before—I want to again read rule 33 of the rules as adopted by this convention:

> A majority of the members appointed to a committee shall be necessary to report a proposal out of committee. The report of a minority of at least 3 of the members of any committee shall be received, printed in the same manner as the majority report, and treated as an amendment or substitute offered to or for the report of the committee if offered as such on the floor. All proposals reported by a committee to the convention shall be referred to the committee of the whole.

I call to the attention of the chairman and the secretary that the minority report, as revised, presented by myself, Miss Hart, Mrs. Elliott and others was presented and is so labeled as a substitute for the committee report.

MR. MARTIN: Mr. Chairman.

CHAIRMAN MILLARD: The Chair can't read in here that you get priority until the majority has submitted its proposal.

MR. MARSHALL: If I offer a substitute for the committee proposal, I still don't get priority?

CHAIRMAN MILLARD: The Chair doesn't think you do. You do not, the Chair will rule.

MR. MARSHALL: So you rule I do not?

CHAIRMAN MILLARD: The Chair rules that the committee proposal should be presented first.

MR. PELLOW: Point of order, Mr. Chairman.

CHAIRMAN MILLARD: Mr. Pellow.

MR. PELLOW: I would request a ruling as to whether or not an amendment takes precedence over the main body of the proposal. It is my understanding as a member of the rules committee that the original intent of the rules was to allow an amendment to be explained before any main proposal is debated if such an amendment is offered. I also have been advised that minority reports take precedence and, therefore, I assume that Mr. Marshall is offering this minority report as an amendment to the main proposal.

MR. MARSHALL: Mr. Chairman.

CHAIRMAN MILLARD: Wait a minute.

MR. MARSHALL: I am not going to object.

CHAIRMAN MILLARD: The Chair is going to answer Mr. Pellow.

MR. MARSHALL: Alright.

CHAIRMAN MILLARD: There is nothing in here that says that the minority report shall be received on the floor before the committee proposal is received. The Chair is ruling that the committee proposal will be received first.

MR. PELLOW: Well, you still haven't answered my question, Mr. Chairman. I raise a further point of order as to whether or not a minority report, if it is offered as an amendment, shall be received first.

CHAIRMAN MILLARD: You don't vote on an amendment until you have discussed the proposal.

MR. PELLOW: You don't discuss an amendment to a proposal first ?

CHAIRMAN MILLARD: That is the Chair's ruling.

MR. PELLOW: Thank you.

CHAIRMAN MILLARD: Mr. Marshall.

MR. MARSHALL: I agree with you on your ruling on the amendment. I offered the minority report as a substitute for the majority proposal. But I will go one step further with you. I will not quarrel with the right of the committee chairman to make the report and present the majority proposal to this committee. But I am getting sick and tired day in and day out on this convention floor of having decisions—as was done here last week—made off the floor, then have the committee chairman, in effect, serve as president of the convention from way over in the corner someplace. And I call a point of order on this one thing alone. And in presenting the majority proposal to this committee, does any chairman have the right to debate the issue at the same time he is presenting the proposal? That is my only point of order, Mr. Chairman, at this time.

CHAIRMAN MILLARD: Mr. Marshall, if you think the chairman or anybody is getting out of line, you have a right to object. And we'll proceed now.

MR. MARSHALL: I just did. I asked for a point of order.

CHAIRMAN MILLARD: You are asking for me to rule in advance of what Mr. Martin says.

MR. MARSHALL: On what he has already said; not what he is going to say. I'll ask you to rule on—

CHAIRMAN MILLARD: You want it stricken from the record? Is that what you want?

MR. MARSHALL: I want a ruling, Mr. Chairman, and I don't want to take up your time, but my patience is getting awful thin—

CHAIRMAN MILLARD: So is the Chair's.

MR. MARSHALL: —with the type of parliamentary procedure that we have had here. I merely want a ruling of the Chair, that in presenting the majority proposal, does the committee chairman have the right, while he is presenting it to this committee, to at the same time debate the issues without hearing the substitute presented.

CHAIRMAN MILLARD: He has a right to explain the committee proposal to the committee of the whole and he will proceed to do that. If you think he gets out of line, you have the right to raise a point of order.

MR. MARSHALL: Thank you, Mr. Chairman. I think if he gets out of line again, I'll raise a point of order.

CHAIRMAN MILLARD: Mr. Martin.

MR. MARTIN: Mr. Chairman, let me say that we are not trying to take advantage of the minority in any way, shape or manner. We are only trying to proceed in a logical fashion. And it is logical that the committee of the whole know what the majority report is and what the committee's reasons for it were. In due course, we are going to have the minority report and it will be an amendment to the proposal and they will have a chance to present their views fully and we will not interrupt or object or raise difficulties about their presentation. It seems to me this is the only logical fashion in which the delegates can be fully apprised as to what is in both reports. We are not trying to take advantage of them and I want to make that very clear.

I want to continue very briefly here with the thoughts I was expressing, particularly the argument which has been presented which is made that we need a balance of power or a separation of powers within a branch here and that therefore you should divide authority within the executive branch among all of these elected officials. The committee believes that we have a responsibility to do something effective and constructive here; that we should not fractionate our government at the top; that we should not try to divide it up so that no one knows where the authority is, although the people hold the governor responsible for carrying out a program. And it seems to the committee we ought to take whatever steps we can—and we may not be able to go the whole way—but we ought to be able to take whatever steps we can to insure that we do not continue with a completely disintegrated, fractionated, multiple headed, irresponsible government in which there is no real allegiance to the governor and in which each man who is separately elected may proceed to do his best to realize his own political ambitions. We think this is not the way to make government work well and that no other kind of organization could survive with this kind of structure; that it is not the way to run a railroad or a business or a government.

With that, Mr. Chairman, we are ready for the minority to present its portion of the minority report with respect to this paragraph.

CHAIRMAN MILLARD: The Chair will recognize the first gentleman on the minority report, Mr. Marshall, to present his views in regard to the first paragraph of section a as presented in the committee report.

MR. MARSHALL: Mr. Chairman—

MR. BENTLEY: Mr. Chairman, parliamentary inquiry. Has the minority report been read as an amendment?

CHAIRMAN MILLARD: It has not. The secretary will read it.

SECRETARY CHASE: Pursuant to minority report C of Messrs. Marshall, Greene, Kelsey, Perlich, Wilkowski, Miss Hart and Mrs. Daisy Elliott,

Mr. Marshall offers the following amendment:

1. Amend page 1, line 10, after "Sec. a.", by striking out the balance of the first paragraph and inserting "The governor, lieutenant governor, secretary of state, state treasurer, auditor general, attorney general, highway commissioner, and superintendent of public instruction shall be elected at the general biennial election in 1964 and in each alternate even numbered year beginning in 1966. They shall, after 1966, serve for terms of 4 years beginning on the first day of January next succeeding their election.".

MR. BENTLEY: Point of order, Mr. Chairman.

CHAIRMAN MILLARD: Mr. Bentley.

MR. BENTLEY: Mr. Chairman, I make the point of order against the reference in the amendment to the superintendent of public instruction since that office has already been decided upon by the committee of the whole on first reading.

CHAIRMAN MILLARD: Mr. Marshall.

MR. MARSHALL: We suspected this would be raised and I think the question was asked somewhere along the line in the committee in particular what happened. We are talking about a section here which deals with whether we are going to have elective or appointive state officials. Even though you took action in the committee on education dealing with the superintendent of public instruction, I still believe it belongs in this report and it is in there because we are dealing here with the proposals of the committee on executive branch.

CHAIRMAN MILLARD: You may proceed, Mr. Marshall.

MR. BENTLEY: Is the Chair ruling me out of order?

CHAIRMAN MILLARD: Yes. It is in the minority report and he has a right to discuss it.

MR. MARSHALL: Mr. Chairman, ladies and gentlemen of this committee, we have reached what I consider to be one of the key issues and one of the most crucial points in this convention. In accordance with the rules of the convention, we are taking this opportunity to submit a minority report on Committee Proposal 71 reported by the committee on executive branch. Our distinguished committee chairman, Mr. Martin, has presented to this committee a glowing majority report designed to give this committee the impression that most of the recommendations in this proposal have the unanimous support of members of the committee. If Mr. Martin was speaking of commas and sentence structure, his statement was entirely accurate. If Mr. Martin was speaking of political philosophy, then, ladies and gentlemen, his statement was grossly inaccurate.

The signers of this minority report totally reject the concept of an appointed administrative board as recommended in the majority report. We totally reject the language—and I quote:

> . . . that the election of these officials does not bring government closer to the people, but on the contrary, divides authority in state government among numerous officials who have no real allegiance or responsibility to the governor and who are necessarily concerned in a major degree with furthering their own political ambitions.

We in the minority believe that the election process does bring government closer to the people; that it does work and we as delegates here would be undermining the very principles of our American form of government if we in any way diminished the rights of people to say who shall govern them.

More than a full century ago, a constitutional convention was held in the state of Michigan which determined that the power of government shall be vested in the people; that the people should predominate in the election of the officials in this state. This conformed, of course, with the philosophy of Thomas Jefferson, who said, and I quote:

> I know of no safe depository of the ultimate powers of society but the people themselves; and if we think them not enlightened enough to exercise their control with a wholesome discretion, the remedy is not to take it from them but to inform their discretion by education.

Ironically, this quotation of Jefferson's is a favored one for many people, including many of the delegates to this convention. But its meaning is being distorted and perverted in every sense by the proposal which is being made by the majority in this convention.

Now, my friends, the system of the election of our state administrative officials was considered to be the epitome of impeccability for more than 100 years and bore no criticism until a little more than 12 years ago with the advent of a change in the political complexion of this state. Since 1948, with the election of G. Mennen Williams, and the ensuing consistent election victories at the polls by the Democratic party, with the change of almost a century of domination by Republicans of our state supreme court, our state administrative officials, our educational institutions, and other statewide officials, there have been ever increasing demands for changing the system of election of not only the state administrative board under discussion here, but the membership of the state supreme court as well. We simply cannot separate these issues because many of the same people who desire a change in the selection of the justices of the court want the changes made in the selection of our state administrative board. This also involves the whole question of the democratic process of government wherein one man's vote equals that of another.

It so happens that members of the state administrative board under discussion, as well as those elected to the supreme court, are elected on the basis of one man's vote equaling that of any other man's vote. And there has been a concerted effort by the members of the Republican majority in this convention to change the rules, to change this equality of voting power on the part of the electorate in every area of our state government. Change the rules, my friends, like a group of little boys playing baseball: one side is losing, instead of having 3 strikes, they want 5. The system of election of these state administrative officials was not subjected to criticism until Democrats were elected. Since that time, however, there have been consistent and constant attacks on the system wherein the majority of the people of the state would have a voice in the selection of these state officials. There has been no occasion where the quality and competency, the ability, the integrity of any of the officials elected under this system have been subject to valid criticism. Nor

has there been any valid criticism of the manner in which they have officiated. As a matter of fact, there has been a grudging admission that these officials have served their state and served it well. Nevertheless, the manner in which they have been selected is found by the party organization which has been defeated to be unsatisfactory. In no instance, as an illustration, has the administration of Lynn Bartlett, superintendent of public instruction, been subjected to criticism for the manner in which he has administered that office, or, for that matter, any other state elected official. There has been nothing but praise for James Hare, secretary of state. And no one has been bold enough to even suggest a criticism of our highway commissioner. Under the prevailing basis of selection of our highway commissioner, the state of Michigan has built the best highway system of any state in this nation. Yes, my friends, we have not had any corruption and malfeasance or misfeasance in our highway system. And I refer you to such goings on in some of the other states where you have appointed highway commissioners. I only have to refer you to a recent article in a Detroit newspaper, Parade, a supplement magazine, which documented much of the graft and corruption that is going on in other states under appointed highway commissioners not answerable to the people. It would be highly improbable that Mackie could be defeated in an election, and everyone in this convention obviously recognizes this, due to the fact that he has established such an outstanding record of achievement that it is quite apparent that he would be elected as long as he continued to lead the nation in road building, as he has done in the past 5 years. So the only manner in which John Mackie can be displaced is by changing the rules under which he holds this state administrative post.

Now, I am certain, ladies and gentlemen, that the most courageous exponent of the changing of the rules would not dare to suggest any real criticism of Mackie, just as I am sure that everyone recognizes that the only real basic purpose of changing this rule is not one of concern for a continuation of good roads in Michigan, but can only be inspired by cheap political motivations to displace an outstanding highway builder with a political hack. Listen to this: to replace an outstanding road builder with nothing but a political hack. Avarice and voracious designs, with a greed unprecedented to again feed the patronage hungry Republicans for jobs so that they can again revert to the strips and bits of highway construction which lead absolutely nowhere. In plain words: to hell with highways. The people —

MR. WANGER: Point of order.

MR. MARSHALL: — the hope of patronage and control —

CHAIRMAN MILLARD: Mr. Wanger, what is your point?

MR. MARSHALL: — is more important than good administration.

CHAIRMAN MILLARD: Just a moment. Mr. Wanger, what is your point?

MR. WANGER: The speaker has just used language which is entirely and completely nonparliamentary and out of order in this convention. (laughter)

CHAIRMAN MILLARD: Mr. Marshall, please confine your —

MR. MARSHALL: Yes. In this enlightened day and time, I didn't think "hell" was too bad. But I will apologize to the committee if it is offended. I'll say in plain words, blank.

The hope of patronage and control is more important than good administration. This is the noble purpose of changing the rules. It is unfortunate that it is necessary to reveal these unsavory truths to this committee. It is unfortunate that this kind of gutter politics should have to be injected into the convention, rather than adopting resolutions lauding a system of election of administrative officials who have achievements unparalleled by any other state in this nation. It is extremely regrettable, however, that this convention was obviously denuded of those wholesome objectives and that in its place political avarice reigns supreme. The objectives on the part of the majority is only one of control — changing the rules — a new device. Anything which will put the Republican party, as the handmaidens of big business, back into control of government in the state of Michigan.

In my opinion, this constitutes the despicable objective of relegating the state of Michigan to the ugly situation which it has endured for years now under the politics played by the Republican senators where politics always takes precedence over progress for the state. By the process of violating their oath of office, those senators have achieved outright theft of equality of citizenship from the people of the state. This then again, this proposal, is an outright attempt to wrest from the people their inalienable right to a voice in government. It restricts and contracts these fundamental and basic rights. If this philosophy is carried out to its ultimate conclusion, there is no reason for the people to continue to exercise their franchise in the election of a governor. If the philosophy reflected in the thinking of these people who would disenfranchise the electorate further should be carried to its logical conclusion, we should elect a president of the United States and consign the electorate's privileges to a vote of the president. Let him then appoint our state, county and municipal officials. Naturally, this would be as asinine as the proposal under discussion here. But a deal has been made, and the people will get a card or 2 from the bottom of the deck. The atrocities perpetrated on the people by this convention thus far will be further enhanced, my friends, by the adoption of the committee proposal.

I personally believe that if we continue on the same path that we have been going, I do not believe that this proposal presented by the majority will get the advice and consent of the people. I urge you to support the minority report amendment and help stop any further erosion of the people's democratic rights. Thank you.

CHAIRMAN MILLARD: The Chair will recognize —

MR. MARSHALL: At this time, I'd like to yield to Miss Hart.

CHAIRMAN MILLARD: The Chair will recognize Miss Hart.

MISS HART: Mr. Chairman, fellow delegates, the minority of the executive committee agrees with the majority that Michigan should reorganize the structure of state government. We agree on 4 year terms for state officials. We agree that the governor and lieutenant governor should be elected as a team. We part company on the question of constitutionally elected state officials versus an entire government of appointed department heads. The majority insists upon a so called strong governor, although it also insists upon tying his hands with the advice and consent of an unrepresentative senate. The theory, according to the majority, would establish a one man rule which could operate peacefully, efficiently and responsibly for the benefit of state government. The majority implies that this use of the executive appointment power parallels that of the federal government, but this analogy is misleading and unfair. It is a distortion of the facts, as you well know. Although presidential appointments to the cabinet are indeed subject to senate approval, presidential appointees almost never have been queried by the senate nor have they had to subject themselves to the humiliation of hearings.

The proposal of the majority would — and let's call a spade a spade — give a conservative Republican governor the team he wants, but any other governor, Republican or Democratic, would be subject to the rebuke of a hostile legislature. A strong executive — and this is what we all want — can only be so if he is elected as a team member with a team which he has a large hand in selecting during the process of the party convention.

But who with practical experience has ever said that a democracy is the most efficient, the most economical, or the least controversial form of government? Who says that all officials must see eye to eye, must be "yes" men, must get along? Most skillful practitioners of the democratic arts will readily assert that our system of government is clumsy, timeconsuming, frustrating and cantankerous, as witness the agonies of this convention. But with all of its faults, all of its inefficiencies, and all of its quarrelsome weakness, democracy has proved to be the best insurance man has yet devised to protect his rights and accomplish his purpose of self government. And the system that Democrats and Republicans alike

embrace will endure and grow strong only if every citizen we can attract to the business of government keeps a watchful eye on the road, a strong hand on the reins, and a whip to snap when officialdom grows lax and the public good seems to be forgotten. Can we accomplish this end without strong political parties? And can political parties remain strong with great responsibility for government removed and only routine chores left to do? I think not.

Today in this state, we have 2 great political parties. They are fairly equal in numbers. They are respected as energetic and dedicated to their separate principles. They are busy. There is much to do. They need additional hands to help. They are forced to work day and night to recruit, to interest the uninterested in the business of government. Most of us who have worked for years on this aspect of political activity know the value of good candidates, of elected officials, of the human touch in fact, that attracts the uninitiated to examine the issues in government so important to the welfare of our state. People must be reached at their own level of experience. They must be persuaded to an interest in and understanding of their government. Many of them, when they have attained this background, must learn what they can do to achieve their will in the business of the state.

Michigan is a huge state. It is long and wide and populous. Its 83 counties are diversified in interest and kind. Partnership with the people served in the state is a tremendous challenge to the administration. It is a challenge to the opposition as well. How are people to decide who is to serve them? By reading the newspapers? Few in this convention would want to depend wholly on this source to plead their cause. Television or radio? Only rich men can afford to adopt this method often enough to serve good purpose. And heaven help the candidate or official who replaces Ed Sullivan or Gunsmoke. Then, too, shouldn't the public be afforded the opportunity to ask questions? To talk back?

Are we going to ask 2 men to bear the entire responsibility of taking issues of the party to the people? How thoroughly can they do it? It is an impossible task.

It is disturbing to me to hear delegates to this convention suggest that the people of our state are too disinterested to know their officials, to be aware of opposing candidates or their points of view, to be willing to hear and consider the issues of government described in a campaign. If it were true — and I do not admit it — the shame would then be on political parties, too unimaginative, too smug, too noninclusive to reach out and attract the citizenry to political activity.

Anyone who has ever scheduled political candidates in a campaign knows the eagerness with which local communities welcome men and women who have been selected by the parties and who can bring to them a personal interpretation of what goes on in government. Given a number of candidates for each party, the state may be reasonably covered and people throughout its length and breadth may have personal communication with those seeking to serve them. No greater stimulation can be given to citizen involvement in government than this personal review of campaign issues.

That it is helpful to a governor to have friendly associates, I would agree. If he is strong enough to be a governor, he will have little difficulty in the convention to secure able men and women of his own choosing to join his team. The danger of an administrative board composed of representatives of opposing parties can be settled with the exercise of some ingenuity without taking away the rights of the people to select their officers. I heard my fellow delegate from the tenth legislative district say that no one told him in the campaign that they wanted to vote for judges. Perhaps he didn't ask his constituency. I did as I went up and down the streets in my radio trailer and interviewed our constituency personally. The many citizens with whom I talked made it very plain to me that they not only wanted to vote for their judges, but they also wanted to vote for the executives of the state. The message was very clear.

If education of the people is needed in matters of government — and I'm sure it is — then, let us take the responsibility for educating them. Let us not be contemptuous of the citizenry because it may not be able to name every official within state government at any hour of the day, and then decide that they are hopeless. Let us accept it rather as a challenge to political parties to devise better means of persuading our citizens to participation in government, to interest in programs, and to the business of seeking solutions to the problems we face. I urge the support of the minority report amendment.

CHAIRMAN MILLARD: Mr. Marshall.

MR. MARSHALL: At this time, I'd like to yield to Delegate Daisy Elliott for a brief statement.

CHAIRMAN MILLARD: The Chair will recognize Mrs. Elliott.

MRS. DAISY ELLIOTT: Mr. Chairman and delegates, I would like at this time to take the opportunity to support and urge your consideration of the election of the attorney general. There is considerable difference of opinion about the proper status of the attorney general. The attorney general is involved in more than merely giving legal advice and representing the state in litigation. He performs government functions which clothe the office with special roles of public interest. This office may serve as a watchdog to guard against administrative excesses in the governor's office. To elect the attorney general exemplifies the concept that forms the basis of the philosophy of government that accords the people the indiscriminate right to select, through the media of the direct vote qualified by the personal evaluation of the electors.

It is the inherent right of the people to select, in a government of the people, by the people and for the people. It is the only fair and honest media available. In 42 of our states, the attorney general is elected by the people.

CHAIRMAN MILLARD: Mr. Marshall.

MR. MARSHALL: I yield to Delegate Binkowski, Mr. Chairman.

CHAIRMAN MILLARD: The Chair will recognize Delegate Binkowski.

MR. BINKOWSKI: Mr. Chairman, I would like to yield to Delegate Pellow, if he would desire to speak at this time.

CHAIRMAN MILLARD: The Chair will recognize Delegate Pellow.

MR. PELLOW: Mr. Chairman, ladies and gentlemen of the committee, men are naturally divided into 2 parties, the Republican party that fears and distrusts the people and wishes to draw all powers from them into the hands of the higher classes, and the Democratic party that identifies itself with the people and has confidence in them as the most honest and safe depository of the public interests. I take it to be a necessity of politics and of public business to open them wide to public view; to make them accessible to every force that moves, every opinion that prevails in the thought of the people; to give the people command of their own economic life again, by the writing of a just and democratic constitution.

Appointment of the administrative board would consist too much of private conferences and secret understandings, of the control of legislation by men who were not legislators, but who stood outside and dictated, controlling oftentimes by very questionable means which they would not have dreamed of allowing to become public. This whole process must be forbidden. We must never allow the selection of candidates for the ad board to be controlled by the hands of small groups of men, by the hands of machines working behind closed doors, and leave it to the people to decide to elect their chosen representatives themselves. The very fact that so much in politics is done in the dark, behind closed doors, promotes suspicion. Everybody knows that corruption thrives in secret places and avoids public places. The Democratic party believes it a fair presumption that secrecy means impropriety, so the rich corporations owe it to their reputations to bring their activities and politics out into the open.

This state is aware that the Republicans have certain very definite connections with men who are engaged in business on a large scale. And the suspicion which attaches to the machine itself has begun to attach also to business enterprises just because these connections are known to exist. If these connections were open and avowed, if everybody knew just what

they involved and just what purported use was to be made of them, there would be no difficulty in keeping an eye upon affairs and in controlling them by public opinion, but unfortunately, the whole process of lawmaking in the state of Michigan is a very obscure one. There is no highway of legislation, but there are many byways. Parties are not organized in such a way as are legislators —

MR. PLANK: Point of order, Mr. Chairman. I fail to see what this has to do with the item before us. It seems to me this gentleman is a long way afield.

MR. PELLOW: I will connect it up, Mr. Chairman, with the elective process and the appointive process if I am allowed —

CHAIRMAN MILLARD: With that assurance, you may proceed.

MR. PELLOW: Thank you, Mr. Chairman. The whole process of discussion, if any discussion at all takes place, is private and shut away from the public scrutiny and knowledge. There are so many circles within circles, there are so many indirect and private ways of getting at legislative action that our community is constantly uneasy during the legislative sessions. It is this confusion and obscurity and privacy of the appointive method that gives the vested machine its opportunity. It would therefore be possible for this outside force to nominate members of the administrative board to assume the role of control. The vested interests who desire something done in the way of changing the law under which they were acting or who wish to prevent legislation which seemed to them to threaten their own interests, have known that there was this definite body of interests to resort to, and they have made terms with them.

There are 2 kinds of corruption: the obvious sort, and the crude sort; the sort which is known as direct bribery, and the much subtler, more dangerous sort which consists in corruption of the will. I take it to be a necessity of this constitutional convention to open up all the processes of politics, all the elections that may be had by the various suffrages granted to the people by this constitution and the Constitution of the United States. Incidentally, I understand we also passed the freedom of speech at this very convention. Every opinion that prevails in the thought of the people, to give society command of its own economic life again, not by revolutionary measures, but by steady application of the principle that the people have a right to elect officials to cut all privileges and patronage and private enjoyment and secret advantage out of the legislative and the executive branches.

Every man has a right to live, and this means that he also has the right to vote. We have no actual famine or dearth. Our industrial mechanism can produce enough and to spare. Our government — formal and informal, political and economic — owes to everyone an avenue to possess itself of that portion of that plenty sufficient for his needs through his own work. In our days, these economic truths have become accepted as self evident. We have accepted, so to speak, a second bill of rights under which a new basis of security and prosperity can be established for all, regardless of station, race or creed.

The upper peninsula's own rightful place in the state of Michigan — and at one time the upper peninsula was a proud and glorious part of this state until it was rigged by the eastern millionaires and all the mineral wealth is gone, and now we have a difficult time in attempting to even obtain industrial development of the upper peninsula by this very selection through the so called democratic process. The corporations, which should be carefully restrained creatures of the law and the servants of the people, are fast becoming the people's masters of the upper peninsula. The vested interests have entered into an agreement with the government for free trade, and unfortunately, the masses of our people are burdened beyond any useful public purpose and for the benefit of a favored few, to the injury of a vast majority of our people. This is not equality before the law. The arrogance of this assumption is unconcealed. It appears in the sordid disregard of all but personal interests in the refusal to abate, for the benefit of others, one iota of selfish advantage by appointing officials to perpetuate these advantages through efforts to control legislation and improperly influence the suffrage of our people.

Our people, in spite of misrepresentations — and at this time I would ask the Chair to call this committee to order — I don't mind competing with static, as Mr. Nord has pointed out —

CHAIRMAN MILLARD: If you would confine yourself to the subject, you would get a little more attention. (laughter)

MR. PELLOW: If the Republican party would like to carry their secret caucus on down below, that's all right with me. (laughter)

Now — in spite of misrepresentations and misleading fallacies concerning appointments, our people will not be denied the right to vote.

It would be well here to refer to Franklin Delano Roosevelt's observation with regard to liberalism in America. In 1938 he wrote:

> Generally speaking, in a representative form of government, there are usually 2 general schools of political belief — liberal and conservative. The system of party responsibility in America requires that one of its parties be the liberal party and the other be the conservative party. This has been the division by which the major parties in American history have identified themselves whenever crises have been developed which required definite choice of direction. In Jefferson's day, in Jackson's day, and in Lincoln's and Theodore Roosevelt's and Wilson's day, one group emerged clearly as liberals opposed to the other, the conservatives.
>
> One great difference which has characterized this division has been that the liberal party — no matter what its particular name was at the time — believed in the wisdom and efficacy of the will of the great majority of the people, as distinguished from the judgment of a small minority of either education or wealth. The liberal group has always believed that control by a few — political control or economic control — if exercised for a long period of time, would be destructive of a sound representative democracy. For this reason, for example, it has always advocated the extension of the right of suffrage to as many people as possible, trusting the combined judgment of all the people in political matters rather than the judgment of a small minority.

The Democratic party believes strongly in the popular election of members of the administrative board. These include the lieutenant governor, secretary of state, highway commissioner, attorney general, state treasurer, auditor general and superintendent of public instruction.

At this time, I am quoting from the minority report because most of this constitutional convention has already been decided in secret to the exclusion of the minority, and perhaps you have not even read the minority report. So therefore, I am calling it to your attention just for the record.

[Paragraphs 2, 3, 4, 5 and 6 of the reasons supporting minority report C were read by Mr. Pellow. For text, see above, page 1770.]

Incidentally, I read in the paper the other day where the upper peninsula was blessed finally with another stretch of U.S. 2, completing the last gravel road of U.S. 2 in the upper peninsula. That in itself is indeed an accomplishment.

[Paragraphs 7, 8 and 9 of the reasons supporting minority report C were read by Mr. Pellow. For text, see above, page 1770.]

In closing, ladies and gentlemen of this committee, I am certainly happy to know that the results are a foregone conclusion, that regardless of any debate to be held at this particular session of the constitutional convention, that all these issues are cut and dried, and actually if this convention were honest, it would come in tomorrow with a completed document and save the taxpayers of the state of Michigan at least $144,000. Thank you.

CHAIRMAN MILLARD: Mr. Marshall, are you waiving? Mr. Binkowski.

MR. BINKOWSKI: Mr. Chairman, ladies and gentlemen of the committee, my remarks will be brief at this particular time because as I understand it, a so called compromise or a deal has been made with respect to the office of the attorney general and while I'd like to speak at length on the reasons favoring the continued election of the attorney general, I don't think that it would be worthwhile taking your time. But very briefly, while I was a former assistant attorney general, I think there are those here who are more qualified than I am to speak on the reasons for electing the attorney general. Your chairman is a former attorney general. Of course, we have 2 delegates who are former deputy attorney generals.

Mr. Pellow has already commented that the attorney general is the chief law enforcement officer in the state of Michigan. I think that a great number of people, including the delegates here, perhaps are not aware of the multitude of functions that the office has and the effect it has on state government. I'd like your indulgence to quote 3 brief paragraphs from the General Management of Michigan State Government. It is a staff report regarding the reorganization of state government in November of 1951. This will give you an idea of the breadth of the office of the attorney general. It says:

> The activities of the attorney general's office range over the entire breadth of state government. His scope of interest is as great as that of the governor. The attorney general has an important role in judicial procedures. By the constitution, he is, with one exception, the only attorney permitted to represent the state in court. Also, the attorney general has the power to intervene in any case, public or private, whenever the state's interests are affected and to supercede a county prosecutor in any action in which he deems the prosecutor is not functioning in the best interests of the state.

Parenthetically, I think you have seen an example of this in Wayne county. I don't know who was right, the Wayne county prosecutor or our present attorney general. But I submit to you that by continuing the elective feature of both of these offices, we will give the people the opportunity to decide who was right and who was wrong. Continuing with the quote:

> His activities in the administrative branch of state government are quite varied. Short of the courts, the formal opinions of the attorney general are the most authoritative statements of the meaning of the laws. Statutes direct the attorney general to give his opinion on any questions of law upon the request of any state official.
>
> The attorney general gives opinions to more than just state officers. In the field of opinion writing, the attorney general's office is utilized more by the administrative agencies of the state that are under the direction of the governor than by any other class of governmental units.

I think that this gives you a bird's eye view of the functions of the office of the attorney general. This is by far the most important administrative official. By his decisions, he can stop many of the actions within administrative agencies. Of course, I think we have seen in recent history an attorney general who in some cases has stopped the program of the governor. Yet, he is accountable to the people. I think that the will of the people can best be served by an elected attorney general who is primarily responsible to them.

Now, Mr. Pellow has commented to you, and I think that you are well aware that the governor has to make many decisions. Many of them are political decisions. I don't think that the best interests of the state can be served if the attorney general is appointed so that he must confirm the political decision of the governor. I think that the people of the state of Michigan have a right to the service of an attorney general who can say no, when the law and the interpetation of law demands that he say no. Therefore, I favor the election of an attorney general and if I find out in the course of the proceedings with respect to Committee Proposal 71, that it is the feeling of the group that he should not be elected, I would of course speak at greater length. I would like to turn this back to Mr. Marshall.

CHAIRMAN MILLARD: Mr. Marshall.

MR. MARSHALL: Mr. Chairman, we have several other speakers but I believe that to call on them at this point, would be repetitious on the arguments that we have presented. I think practically all of the points have been covered, so I have talked to the other speakers and they have graciously consented not to make a statement at this time and ask that I try and summarize with a few brief remarks — and I will be very brief because I do not want to repeat myself.

The majority report would have you believe that the elective administrative board system is a conglomerate of conniving public officials plotting to overthrow the chief executive. The majority report would have you believe that the chief executive is a political unit whose power is manipulated by a greedy satellite. I submit that nothing is further from the truth and I would submit further that no one knows this better than our honorable committee chairman. One fact is that in our political system the man running for governor has a personal and firm hand in choosing members of his cabinet, and that goes for both parties. Another fact is that under our present system, elected state officials are responsible to the governor and subject to removal if they abuse their constitutional or legal authority.

The majority report contends that these elected officials are "necessarily concerned in a major degree with furthering their own political ambitions." We in the minority — and we believe that you in the majority — should ask: who says so and where is the proof?

Let us examine the majority report as we proceed in our deliberations on its recommendations to strengthen the chief executive. We are asked to accept the proposition that one way to give this political unit power is to let him appoint his administrative board subject to review by the senate. And I emphasize "subject to review by the senate". Can any delegate or anyone within hearing distance of my voice explain to me or to any other delegate or to the people of this state how you go about strengthening the chief executive by giving a senate veto power over his appointees — a senate that is representative of the minority of the people, a majority in the senate who was elected by a minority of the votes cast? Can anyone convince me how you strengthen the chief executive by giving veto power — a Gromyko type veto, if you please — over the gubernatorial appointees by a malapportioned senate? And I don't think there is much question in anyone's mind when this convention is over that it will still be malapportioned.

So, in closing, I plead with the delegates, even though an alleged deal has been made, to reconsider the alleged deal and give serious consideration to the minority report amendment, help us to leave in the hands of the people of this state the right to elect their administrative officials rather than placing it in the hands of a small group of senators over on "the hill" who hold a Gromyko type veto over gubernatorial appointees. Thank you, Mr. Chairman and fellow delegates.

CHAIRMAN MILLARD: We have heard from the committee on the proposal and we have heard from the proponents of the minority report amendment. We are now open to individual delegates and Mr. Sterrett asked for recognition some time ago.

MR. STERRETT: Mr. Chairman, members of the committee, I am sure that some of our great orators here on the minority report amendment would put Senator Dirksen to shame. I have heard quite a bit of political screaming here. I was not going to speak on this subject, but I can't help it. I'd like to set the record straight.

First, I'd like to point out to Mr. Marshall, I do not believe it was all the Republicans' motivation. I recall some organizations, the league of woman voters, citizens for Michigan, citizens for a sound constitution, junior chamber of commerce. Also, Mr. Marshall, you spoke of political patronage by an appointive ad board. I believe that you voted for passing the civil service section. There are a number of exempt positions in the governor's office; there are a number of exempt positions in each department.

I heard Miss Hart say that when she was campaigning, she

asked about the election of judges. I recall one evening when we were campaigning, I was among a group and she was among the same group and we spoke to some people. I asked the group if they could tell me who their judges were. Not one could. Also Miss Hart mentioned: do you want a "yes" man? Is the U. S. attorney general a "yes" man?

The governor has appointed people to the ad board for quite a while now, in the case of vacancies. If the people have been against this, why haven't they called for a special election to fill those vacancies?

I would like to quote to you from William Graham Sumner:

> The forgotten man is delving away in patient industry, supporting his family, paying his taxes, casting his vote, supporting the church and the school, reading his newspaper, and cheering for the politician of his admiration, but he is the only one for whom there is no provision in the great scramble and the big divide. He works. Generally he prays—but always he pays. Yes, above all, he pays. He keeps production going on. He is strongly patriotic. He gives no trouble. He excites no admiration. He is not in any way a hero nor a problem, nor notorious, nor an object of sentiment, nor a burden, nor the object of a job, nor one over whom sentimental economists and statesmen can parade their fine sentiments. Therefore, he is forgotten.

This is from an essay called The Forgotten Man. Candidate Roosevelt used it in a speech at the depth of the depression in 1932. It elicited a warm response and made his appeal understandable over the nation. Regrettably, a few years later, politics resumed its old habit of specific appeals to many minority groups. The forgotten man was once again forgotten. I would like to point out that in the past year it is very interesting how strongly the minority feels at the moment about electing the state ad board. In the past year, they switched their position completely. Maybe they realize the forgotten man should be looked at again.

Another thing that was mentioned was that we should have government of the people, for the people and by the people. I agree with this. If the people would elect a governor and permit the governor to appoint his administrative board, this would be for the people. It would be by the people because they had elected the governor. And it would also be of the people. By appointing the ad board, the people would still have control over the ad board with the election of the governor. He would then, for the first time, be held responsible and accountable. Thank you.

CHAIRMAN MILLARD: Mr. Martin.

MR. MARTIN: Mr. Chairman, I just want to make a few comments on one or two of the things which have been said by some of the prior speakers, particularly with respect to this argument which both Mr. Marshall and Miss Hart used, that somehow this process of electing people who are unknown to the voters brings these elected officials closer to the people. In that regard—and there have been other studies on it—I think it is interesting to note the paragraph in the little Hoover commission report in which they say—and this is supported by an appendix:

> The voters' lack of knowledge concerning the incumbents in these offices is staggering. Very few voters can even name the statewide elected officials. A study made in one county of voters' knowledge with regard to the elected state officials, discloses that these officials are not well known. Voters interviewed were asked to select from a list of 9 state officers the one they knew most about. In identifying the incumbent of the office chosen as the one they knew most about, 73 per cent of those who chose the secretary of state could not name the incumbent, although he was then campaigning for the governorship. Seventy-five per cent could not name the highway commissioner, 77 per cent could not name the superintendent of public instruction, 81 per cent could not name the attorney general and 96 per cent could not name the treasurer who had been in office the longest of those on the list.

So it is perfectly clear, Mr. Chairman, that the voters are buying a complete pig in a poke when they vote for most of these officials after they have been in office for a period of time, particularly if their office lends itself to advertising and some of these offices do lend themselves to advertising. The secretary of state's office is one and the highway commissioner's office is another. The voters acquire a certain name familiarity with the individuals involved.

Mr. Marshall has devoted himself to a question with regard to the various officers now holding these positions. I don't want to criticize them individually as individuals, but since he has addressed himself to the particular jobholders, saying that no one could possibly criticize Mr. Bartlett and no one could have anything but praise for Mr. Hare, and that no one has questioned the highway commissioner, Mr. Mackie, the only question seems to me there would be this: would it be possible for the governor to fill these positions with people who were more qualified, who had more background in the field in which they were expected to perform? And I think it is fair to say that both in the case of the superintendent of public instruction, and in the case of the highway commissioner, at the time they were elected to office, there is no question whatever but that if we had searched the state or throughout the United States for the best man we could possibly have for these offices for purposes of appointment, we could have found someone who had better qualifications than either of those persons for the jobs to which they were elected.

I think it is rather interesting too that in spite of the vigorous arguments of the minority that all these people should be elected, that the man who had most experience with some of these jobs, particularly with the job of highway commissioner, Governor Williams, who held this office for a long time, longer than some of us would have liked, specifically recommended that the highway commissioner be appointed. Obviously, this was based on a long time judgment, I assume, since he made the recommendation after a Democratic highway commissioner had been elected; he was not deciding it solely on the question of whether there had been a Republican highway commissioner in office while he was governor. I assume he made the decision on the basis of the fact that in his judgment, after many years of experience which he had in the governor's office, it was his conclusion that an appointed highway commissioner would be a better highway commissioner, that he would perform the job better if he would be a more qualified individual, and that he would have background which would entitle him to hold that job and do an expert job in that field. So it seems to me, Mr. Chairman, that the arguments of the minority are in a large measure conditioned by the fact that at the present time, some of the members of their own party hold these offices. I don't question their motives. It is possible that if we were in the reverse position, some of us would be urging this. But this is a short range political argument and it has nothing to do with the broad question, the forward looking question for the next 50 years as to what is desirable to do with respect to election or appointment. The question of who holds these jobs is not important. The question of how you can get the best people to hold them is very important.

Mr. Chairman, I should like at this time to yield to Mr. Gust for a statement.

CHAIRMAN MILLARD: The Chair will recognize the gentleman from Grosse Pointe Farms, Mr. Gust.

MR. GUST: Mr. Chairman and members of the committee of the whole, I am just going to make a few brief remarks as to what transpired in our committee with reference to the drafting of this proposal and specifically the philosophy behind the first paragraph. This proposal has been submitted to the convention by the committee on executive branch with the objective of strengthening the executive branch of Michigan government. The committee's recommendations are based upon the conclusion that the present Michigan constitution needs some significant improvements in the provisions dealing with the executive branch. The committee agrees with the report of the commission on intergovernmental relations appointed by President Eisenhower that "The American system of separation of powers works best when all branches of government are strong, energetic and responsible." The commission concluded

that few states today have an adequate executive branch and that although state constitutions provide in principle for 3 equal branches of government, "most of these constitutions and numerous laws based on them include provisions that tend to undermine this principle." Michigan, like many other states, is restricted in achieving a strong executive branch because of a short term of office, a multiplicity of elected officers, lack of a rational administrative structure, and other features of the present system. The commission on intergovernmental relations found that while "there is no unanimous agreement on a precise pattern of administrative organization applicable to all states, there is substantial agreement on certain arrangements which, if generally applied, would greatly strengthen state administration."

Committee Proposal 71 recommends changes in the executive article which correspond to recommendations of the commission on intergovernmental relations and to changes which have been made by a number of other states in recent revisions of their own constitutions. Support of these recommendations does not imply any hope that there is a magic formula which will solve all the problems of state administration, or that there is any scientific proof that a given set of constitutional provisions will assure more effective operation of the executive branch. Nevertheless, these proposals, taken together, offer our best prospect for accomplishing what the voters of the state expected from us at this convention in working toward modernization of the executive article of our constitution. The committee on executive branch, like most other committees, did not come out with a unanimous recommendation as to exactly what needs to be done. There were a number of divisions in this committee, and on some issues the committee was almost evenly split. Naturally, most attention will be given in the debate on the floor to those issues on which there is the closest division both among members of the committee and among the delegates to the convention as a whole.

In view of this, it is important to emphasize and underline the fact that the executive branch committee was unanimous in submitting some of its most important recommendations. For example, there was no dissent from the recommendation that the term of office of the governor and other elected executive officers should be for 4 years rather than 2. There was full agreement also that the election should take place in nonpresidential election years. The committee also unanimously approved the proposal to nominate the lieutenant governor by party convention and to have him run with the governor in a package arrangement, with votes for the governor to be also cast for the lieutenant governor in the same manner as with the president and vice president of the United States. There is no difference of opinion as to the value of a new constitutional provision which will place a limit of 20 on the number of principal departments and provide a method for accomplishing this within a reasonable period after the constitution goes into effect, either by statutory action or by executive order if the legislature fails to act within a designated time. Likewise, there is no dissent from the recommendation to give constitutional status to the approach to administrative reorganization which has already been adopted in Michigan public act 125 of 1958.

The only difference of opinion within the committee had to do with the requirement for disapproval of administrative reorganization plans proposed by the governor. Some committee members thought it should be more difficult and some thought it should be less difficult for the legislature to reject reorganization plans than is provided in the committee recommendation that a majority of the members elect of both houses of the legislature must be required for rejection.

Now, on these very significant and forward looking major recommendations, as well as on a number of less important matters, the committee on executive branch was able to reach substantial agreement. In contrast to this, the committee was divided on the issue of election versus appointment of executive officials other than the governor and lieutenant governor, and on the closely related question of whether or not there should be senate confirmation of appointments and if so, what form it should take. In all cases, a majority of the members of the committee favored appointment of these officials, although the vote was closer with respect to some of these offices than others.

As we all know, the Michigan constitution now provides for the election of the governor, lieutenant governor, secretary of state, attorney general, state treasurer, auditor general and superintendent of public instruction. A highway commissioner is elected under statutory authority. Michigan elects a larger number of officials than is the case in most other states. Only 9 states elect a larger number than the 8 elected in Michigan. Our own arrangements have not always been the same. The 1835 Michigan constitution provided for the election by the voters of only the governor and lieutenant governor. The secretary of state, attorney general, and auditor general were appointed by the governor with senatorial consent. The state treasurer was appointed by the legislature and the superintendent of public instruction was appointed by the governor with the consent of the legislature in a joint vote. The 1850 constitution provided for direct popular election of a larger number of officials, and this was carried over into the Constitution of 1908. As probably many of you know, in 1850 there was a large, sweeping so called Jacksonian movement in this country and our state was caught up in it, as were a number of others.

The executive branch committee has recommended that only the governor and the lieutenant governor continue to be popularly elected. It has proposed that the auditor general be replaced by a legislative auditor—which is now, by virtue of Mr. Hutchinson's amendment, returned to the title of auditor general—selected by the legislature, and that the superintendent of public instruction also be made an appointive rather than an elective official. The committee proposal gives constitutional status to the secretary of state, state treasurer and attorney general, but they would be appointed by the governor rather than elected, and their appointment would be subject to disapproval by a majority vote of the members elect of the senate if such action is taken within 60 legislative days after the date of appointment. The language of the committee proposal would leave an option to the legislature to have principal departments not mentioned in the constitution headed either by a single executive who is appointed or by an appointed board or commission. It would not permit statutory provision for an elected department head, as is now the case for the highway commisioner.

There are 2 main advantages to be gained by reducing the number of elected officials below the present total of 8. One is that it reduces the number of offices on which the voter must inform himself and exercise a choice and hence contributes to a shorter ballot. There is no necessary correlation between the number of offices filled by popular election and the effectiveness of popular participation in government. We have not found it necessary to elect members of the president's cabinet in order to preserve democratic participation in national government and there is no more reason to think that this is necessary at the state level.

There is plenty of evidence to show that the voter frequently cannot name the incumbents of most of the state elective offices and it is doubtful whether most voters are in a position to judge the relative competence of candidates for specialized offices such as state treasurer or state attorney general. Election statistics show that there is a sharp falling off in the number of voters who cast ballots for minor state offices. If the spring election is eliminated, the problem of "voter fatigue" at the fall election will be even more serious, unless some effort is made to shorten the ballot. A second and more important reason for appointment rather than election is that this would lead toward a more unified executive branch. As set forth in the supporting statement for Committee Proposal 71:

> The committee's action is based upon the feeling that the election of these officials does not bring government closer to the people, but on the contrary, divides authority in state government among numerous officials who have no real allegiance or responsibility to the governor and who

are necessarily concerned in a major degree with furthering their own political ambitions.

Appointment by the governor would permit the people to hold the governor directly responsible. Direct election of a number of executive officials leads to confusion of responsibility and buck passing.

It should also be pointed out that if the objective were to permit the voters to elect directly the most important executive officers, then there is not much logic in having those officials be the ones that have traditionally been popularly elected. In some cases, they are no longer the most important officials in terms of the size of their programs, money expended, or the importance of their work to the public safety and welfare. If we were to attempt to continue to elect at least the same number of officials and to select them so as to reduce the governor's control over the executive branch, then logically, there would be a different list of elected officials than the one we now have.

It must be conceded, of course, that the issue of senate confirmation has a bearing upon whether or not appointment rather than election will actually permit the governor to exercise a more effective choice in filling these offices. If the power of senate confirmation is exercised in a partisan and irresponsible fashion, the governor may have less freedom of choice as a matter of actual practice than when these officials are nominated in party convention and elected by popular vote. The change in the nature of senate confirmation which has been recommended by the committee majority is intended to make it possible for the senate to render a negative judgment on an appointee of the governor, but to make it more difficult than it is at present, and to make it impossible to withhold confirmation simply by failure to act on the appointment.

Opposition to appointment rather than election of these officials often takes the form not of a preference for election over appointment as a general principle, but of exceptions in favor of particular offices. An argument is made in specific terms in favor of continued election of the secretary of state, the state treasurer, the attorney general, or other particular officials. In the executive branch committee, the strongest claims were made on behalf of the attorney general, and the highway commissioner. In the case of the attorney general, it is felt that his position as the chief legal officer in the executive branch calls for an independent status and for his direct selection by the electorate. The claim is made that this office involves more than giving legal advice and representing the state in litigation, since the attorney general must represent the public interest and serves in a watchdog capacity which may bring him into conflict with the governor if that official should abuse his office. On the other hand, those who favor appointment stress that the primary function of the attorney general is to give legal advice to the governor, that his legal opinions are subject to judicial review and scrutiny which provides protection against undue subservience to the governor, and that there are other procedures including the impeachment process for dealing with a governor whose behavior calls for denunciation.

The supporters for continued election of the highway commissioner and for possibly requiring this by constitutional provision, usually rest their case on 2 grounds. First is the importance of the highway function in terms of number of employees, cost of the program, and its susceptibility to political pressures and corruption; and secondly, on the excellent record of performance of the Michigan highway department, which is often attributed to the fact that Michigan has an elected highway commissioner. If the first point is a valid one, it would lead to the conclusion, as has already been pointed out, that in addition to the highway commissioner, the superintendent of public instruction, the head of the Michigan employment security agency, the head of the conservation department, the head of the corrections department, and a number of other major department heads should also be elected. On the second point, little is offered in addition to the twin statements that we have an elected highway commissioner and that we have an excellent highway department. Only one other state has an elected highway commissioner, and that state is Mississippi. It probably would not be claimed that Mississippi's relatively poor record on highways should be attributed to its practice of electing the chief highway official. Likewise, it is hard to claim that no states with appointive highway department heads have managed to provide good highway systems. What needs to be kept in mind here is that there are probably other much more important considerations in explaining whether a state does or does not have an adequate system of highways than the fact of election or appointment of the highway commissioner.

Committee Proposal 71 advocates that only the governor and the lieutenant governor should continue to be elected and a change to appointment rather than election of the other officials is certainly one of the most salient features of this Committee Proposal 71. Let me say this: this proposal started out in our committee to be—and this probably will shock you—a noncontroversial proposal. For political or other reasons, the tide suddenly changed. Much has been made recently on this floor of a so called deal with reference to this proposal. All I can say to the minority party is that all of the testimony in favor of Committee Proposal 71 given on the floor today has been given by the majority party. If any of you want to cut off any deal that you think is already solidified, I can assure you that all you have to do is turn your green light on when this proposal comes up for a vote, and mine will be on with it.

I heard a story that Dr. Anspach told some time ago, and maybe it will relate here because much accusation has been made against Mr. Brake and his "courthouse gang." But the story is that 2 of his young radicals, early in their career, decided that thievery was the only way to promote their best interests. So as young lads, 2 of them went to rob a house in outstate Michigan. One of them acted as a lookout and the other went inside. He spent about an hour or an hour and a half rummaging around and when he came back out, the lookout said, "Did you get any money?" And the fellow that had gone inside said, "Why, no. Don't you know that's D. Hale Brake's house?" The lookout said, "Oh, my God, did you lose any money?" (laughter) Thank you, Mr. Chairman.

CHAIRMAN MILLARD: The Chair will recognize Delegate Hanna.

MR. W. F. HANNA: Mr. Chairman and fellow delegates, some years ago, it was my privilege to be a member of the so called little Hoover commission which studied the administrative departments of the state. At that time, we had good honest differences of opinion concerning the election or appointment of the governor's administrative board. This split both parties at that time very decidedly. But it does perturb me as I listen to Mr. Marshall's speech and some of the others criticizing the committee's report for fear that the audience, and particularly the high school students, will gather that we are criticizing the federal constitution and saying that the federal constitution was designed by men not interested in the people or that the party in power is not interested in the people in that they have not advocated that the president's cabinet be elected by some method. I urge that as we discuss this, we avoid political insinuations and that we confine our discussion to good honest discussion of what is best for the people of Michigan, without criticizing; that we not leave with the audience and with the high school students of this state an implication that the federal constitution for some reason has deceived the people for some 100 years or more.

CHAIRMAN MILLARD: Mr. Martin.

MR. MARTIN: I yield to Mr. Van Dusen for a statement.

CHAIRMAN MILLARD: The Chair will recognize Delegate Van Dusen.

MR. VAN DUSEN: Mr. Chairman and members of the committee, my statement is going to be brief. I have 3 points, the first of which to some degree violates the admonition just given us by Mr. Hanna, but I think it is desirable to call, as Miss Hart earlier said, a spade a spade. Mr. Marshall in his opening remarks made quite a point of the fact that the proposed change from the elective method of selecting administrative board members to the appointive method was motivated by political considerations. I'd like to suggest in the first place, as many

of the speakers have indicated already, this change to an appointive method has been advocated for years by impartial study groups. The commission appointed by Governor Van Wagoner back in 1942, the little Hoover commission, the citizens research council, citizens for Michigan, league of women voters, all have been advocating the appointive method for years. When this convention convened, a substantial number of the delegates of both parties represented here, advocated the appointive method as distinguished from the elective method. As a matter of fact some of the signers of the minority report who now urge election, came here advocating appointment and submitted delegate proposals to that effect.

The only recent change of position with respect to the appointive method or the elective method came within the last few months when the state central committee of the Democratic party met and urged the election of all the administrative board officials. They were followed immediately by the governor, who had testified before the committee favoring appointment, and changed his position to favor election, and were then followed by a very substantial number of the delegates representing the minority party here who signed a statement of principle to that effect. If there has been a change of position for political purposes, I think it is clear where that change has been made.

Now, my second point is this: Miss Hart pointed out in her comments that the governor needs a strong team. And I completely agree with this. When I entered state government as a member of the house of representatives in 1954, nothing could have been farther from the strong team concept than the situation which then prevailed. The governor was a member of one party, the lieutenant governor, the secretary of state, the attorney general, the auditor general, the treasurer, the highway commissioner and the superintendent of public instruction were all members of the opposite party. There was no team concept, there was no cooperation, there was no responsibility which could be focused in the governor's office because he had only to point to the fact that 2 of the members of his administrative board, members of the opposite party, were out seeking the Republican nomination for governor to oppose him in the next election. As a matter of fact, that didn't bother him very much because he spent most of his time running against the Republican highway commissioner—very successfully, I might add—so that if there is to be a team concept, it can only be achieved by giving the governor the right to appoint these key officials.

Now finally, we get to the question of the responsibility of the governor for the conduct of the affairs of the executive branch. Currently, as we can see easily, the administrative board officials about whom we are talking are not responsible to the governor because they are elected directly by the people. I submit, on the basis of my experience campaigning in this state for election to the office of attorney general, that it is very hard to point to any degree of responsibility which these elected officials have to the people because the people simply don't know who they are. Time after time in meetings sponsored by my own party, I was introduced as the candidate for auditor general, or as the candidate for secretary of state, sometimes even as the candidate for state treasurer. The fact of the matter is that if these knowledgeable people, active in political affairs, didn't know the office for which I was running, I am confident that the great majority of the voters who were called upon to assess my qualifications for that office didn't know who I was or what I was running for either. So as a consequence, we have elected officials who are not responsible to the governor. And because they are not known to the people, they are not responsible to the people either. And they are therefore not responsible to anyone. And I think this is a very bad state of affairs and should be corrected.

I will conclude with a very short quotation by a man who has long experience in political affairs, who stated to this convention on January 18 of this year, ". . .I submit that to hold the governor responsible for the sound administration of government, he should have the power to make these key appointments. . . ." I am quoting from a transcript of the argument made by Delegate Tom Downs to this convention on January 18, 1962.

CHAIRMAN MILLARD: The Chair will recognize Delegate Walker.

MR. WALKER: Mr. Chairman, this is all very cute and amusing, but let's get it over with and let's vote.

CHAIRMAN MILLARD: Mr. Marshall is next.

MR. MARSHALL: Well, I don't know who to answer first but I think I'll start off with Mr. Gust, and give him a little publicity since the announcement on Monday. Mr. Gust points out the state of Mississippi and its sordid record in road building as an example of what happens in the only other state that has an elected highway commissioner. I would like to correct Mr. Gust—at least, I think I'm in a position to correct him; I hope that I have the right information; I believe that I do—Mississippi does not have an elected highway director or commissioner. They have a board or commission, similar to the one that came out of the alleged deal the other day, which represents various sections of the state and they in turn appoint the highway director. Now, I would agree, Mr. Gust, before you get your blood pressure up, that they do elect these commissioners—I believe it's 3; I'm not sure—and they are balkanized. They represent sections of the state where all kinds of pressure can be applied to build roads across the pasture when it should be going to New Orleans. And this has not been good under this type of a system where you have a highway commission comprised of 3, 4 or any number that you want to select. And as you point out—and the only correction I want to make is that Michigan is the only state in this union of ours that elects its highway commissioner. I think we are unique in this. We should be proud of it. We are also the only state in this union that has a toll free, limited access highway from one border to the other. I thought that the little comparison should be made and I thought that it should be pointed out—the situation in the state of Mississippi—where you have a highway commission that appoints the director, the director is constantly under pressure from the so called commissioners to do certain things in certain sections of the state.

Now, when we talk about a strong executive—and I think Delegate Gust tried to compare the appointive system of the president of the United States to that on the state level. I may be incorrect, Delegate Gust, but I believe you made the statement that no one has suggested that the president's cabinet be elected. I point out, though, that examining the appointive power at the federal level as opposed to that in Michigan and comparing it with the consent and advice of the senate, it is obvious that the present situation here in Michigan does not aid sound government under the appointive system by rejecting an executive appointment. Now, let's take for an example any appointee of the governor—who is elected by the majority of the people—who might be the best qualified and the most capable man that you could find anywhere in the state, who might have incurred senatorial displeasure, is quite likely to find himself rejected by the senate—and we have a long history of this here in Michigan. While the federal appointees must also rely on senatorial approval, there is never any large group of unconfirmed appointees and never under the federal system do the appointees of the president to his cabinet have to toe the line so as not to incur senatorial displeasure. They must instead act so as not to incur presidential disapproval. It is true that the doctrine of senatorial courtesy does limit the executive somewhat but the approval that must be rendered by the senators of the same state as the appointee acts more as a negative check on the appointive power than a positive one.

I would also like to read a brief statement from a book which we all were presented with on the floor, in which a former governor was eulogized when it was presented. I too happen to think that this man was a great governor. The only knowledge I have of Governor Groesbeck was what I had read and I have read extensively into the background and the record of Governor Groesbeck, how he established the ad board, et cetera, et cetera; and he says—and I quote—"I do not believe in commissions of any kind, judiciary or otherwise. I believe

them to be the last word in inefficiency." This is the clincher, "I am just as strongly opposed to them as I am to bureaucracy made up of irresponsible appointees who owe no allegiance whatsoever directly to the people."

Now, no one has denied the alleged deal yet, and I want to talk about that a moment. We are talking about how we are going to make a strong executive by giving him the authority to appoint all of the state officials and take the right away from the people to have a voice in this matter. Now just who will the governor appoint under the alleged deal? And I sat in on one of the gentleman's press conferences who was involved in this, when he explained it. All that you do under this alleged deal is that you leave the governor the appointment of the treasurer only. You would elect the attorney general and the secretary of state. You would have a bipartisan commission and all of us, I think—I see Mr. Brake looking at me and I am sure that he wants to laugh when we talk about bipartisan commissions—but nevertheless, some bipartisan commission would come along and appoint the highway director. Then we have a board of education who would appoint the superintendent of public instruction. Now, if anybody can convince me that this hodgepodge will strengthen the governor, if you can convince me where the governor is appointing his state ad board, when all you give him the right to appoint is the treasurer—the auditor general is going to be selected by the legislature and, unless we can make progress in apportionment, I assume that the auditor general will be selected by a minority of the people. Now, this is sheer hypocrisy to stand on the floor of this committee and talk about strengthening the governor by taking away the right of the people to a voice at the ballot box over who is going to be their chief law enforcement officer, who is going to insure honest elections, who is going to be the keeper of the till.

Now, let's just explore this. I didn't intend to make another speech, Delegate Van Dusen, so get off the fiddle, but I got up here primarily to answer Delegate Gust and I'd also like to reply briefly to Delegate Martin when he said that because members of the Democratic party now hold the state administrative posts, that some of the delegates are insisting that we continue the elective system rather than to go to the alleged deal. I don't think anyone has a hold on the governor's chair and I think it has been proven over the years here in the state that times change, people's viewpoints change, their thinking changes, even political parties cease to exist—and have—and new ones have been formed. So it is not, Delegate Martin, because the Democrats happen to be serving in these positions now, because I don't know—and you don't either—who will be serving in the next 10 years, 20 years or the next 4 or 5 decades. No one else in this convention can answer. But I am concerned by an attempt to set up a constitutional monarchy in the state of Michigan with 4 or 5 different factions being able to still hold the governor in a stranglehold, and in doing it, hold the progress of the state.

No one can deny the battle that went on when G. Mennen Williams was governor of this state with a malapportioned senate. It was a constant battle, and I would be the first to admit it. But you would have to convince me how you are going to strengthen the governor and have a strong executive by giving the legislature the right to select the auditor general, giving the board of education the right to select the superintendent of public instruction, giving some bipartisan commission—God knows what it will be made of—the right to select a highway commissioner who is going to spend many millions of dollars allocated to the highway department and then have the governor appoint the treasurer. There just simply is no rationale to this. You either believe in appointment of state officials or you believe in the elective system. And I don't believe that you can go halfway by dividing this thing the way that the deal has obviously been cut.

MR. GUST: I'd like to raise a point of order, Mr. Chairman. There is no such deal as Mr. Marshall speaks of before this committee for consideration, that I know of. It is only Committee Proposal 71 and his amendment thereto. There is no 3 headed highway commission or split deal or half appointed or half elected. His are all elected and mine are all appointed.

CHAIRMAN MILLARD: The Chair thinks that's correct, Mr. Marshall.

MR. MARSHALL: I think that is half correct. I know there was a speech made on the floor of the convention the other day by a very distinguished and prominent delegate, explaining what the deal was. I sat in the press conference and heard it explained. Now, the deal hasn't come out yet, but if I don't speak while this report is before this committee, I darn well won't have the chance after this deal has been acted upon. Thank you, Mr. Chairman.

CHAIRMAN MILLARD: Mr. Martin.

MR. MARTIN: I think we've been in session a little over 3 hours and probably long enough. I move the committee do now rise.

MR. DOWNS: Mr. Chairman, may I rise on a point of personal privilege?

CHAIRMAN MILLARD: Mr. Downs, state your point.

MR. DOWNS: Delegate Van Dusen had mentioned a quote from me. I would like to speak very briefly on it so that our record will show that I did answer this today. I do not consider it normally personal privilege since I did not consider it an attack but rather not a complete quotation. Could I ask Mr. Martin if he would delay his motion?

CHAIRMAN MILLARD: If there is no objection, you may do so.

MR. MARTIN: No objection, Mr .Chairman.

MR. DOWNS: It is late in the day and I shall be just as brief as I can. You know, my good friend, Delegate Van Dusen, quoted part of a statement I made earlier. It reminds me a little of the story of the fellow that got on the bus and the bus driver said, "Congratulations." The fellow said, "What for?" The driver said, "I just heard you went to New York, were at the horse races and won $1,000." The fellow said, "Well, that's fine except you didn't get it quite right. It wasn't New York; it was Florida. It wasn't the horse races; it was the dog races. And I didn't win it; I lost it." (laughter)

Now, the quotation referred to is when we were discussing civil service at the committee hearing. From a paragraph and a half up from the part referred to, I quoted Mr. King, who was saying, "Because of an ambiguity in the constitution, the civil service commission classified the chief administrative officers of 9 boards or commissions at the request of these boards or commissions." I was talking about the necessity for changing the constitution so that the head of the statutory agencies would be appointed by the governor and not put under civil service. I said that the governor should be held responsible for the administration of these agencies and he would do that by being given the power to appoint, and I was very critical of the advice and consent concept. In fact, one sentence later on, I said that "the governor would have the responsibility for making that appointment, and that that power of the governor could not be taken away by the legislative branch" of government. And I referred in this to the discussion about these officers—speaking about these 9 boards or commissions that had been put under civil service. I want to make that clear. I believe what the minority report amendment does—and it was certainly my thinking then and is now—is that where the governor is responsible for the administration of an agency, he should have the power to appoint them, but that his power should be limited to the constitutional area that is not inconsistent with the constitutional selection of other areas of government which I hope to go into more at a later date of the convention when we discuss it.

I did want to clear up that my discussion was relating to the civil service commission and I was critical of having civil service take away the power of the governor to appoint the heads of agencies, not about the constitutional officers. Thank you.

MR. KING: Mr. Chairman.

CHAIRMAN MILLARD: For what purposes does the delegate rise?

MR. KING: Mr. Chairman, I would like to speak to a point of personal privilege too. I was delighted to hear that our

good friend, Delgate Marshall is a fan of Alex J. Groesbeck. I too am, and I think had he been here today, he would have perhaps picked up one of these badges that I am wearing. But I don't want to see his thoughts and ideas misconstrued and, for the benefit of Mr. Marshall, who may have not gotten as far as page 258, I would like to quote as follows:

"When the administrative board act was passed," he declared —

we're talking about Groesbeck now —

"a new era in the business administration of Michigan's affairs was ushered in. . . . It was to be expected," Groesbeck explained, "that any such departure in government would engender strong opposition, to say nothing of hatreds and animosities. The protagonists of this opposition have been most sedulous in the broadcasting of inexcusable untruths regarding not only the principles and purposes of the establishment of the board, but of the numerous beneficial results its operation has achieved for the public as well. . . . Instead of being weakened," he warned, "the administrative board should be strengthened." He suggested that could be accomplished through adoption of the short ballot, by which executive posts would be made appointive instead of elective, thus giving the governor a real cabinet.

There is one of the spokesmen that was around —

CHAIRMAN MILLARD: The question is on the motion to rise. All in favor will say aye. All opposed?

The motion prevails.

[Whereupon, the committee of the whole having risen, Vice President Hutchinson assumed the Chair.]

VICE PRESIDENT HUTCHINSON: The Chair recognizes the delegate from Genesee, Mr. Millard.

MR. MILLARD: Mr. President, the committee of the whole has had under consideration certain proposals, of which the secretary will give a detailed report.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 76,** A proposal pertaining to the passage of permissive legislation to allow civil divisions of the state to establish local civil service systems and to receive assistance from the state civil service system. The committee of the whole reports this back to the convention with the following amendment:

1. Amend page 1, line 8, after "Sec. a.", by striking out the balance of the section and inserting "Each city, village, township, county, school district and metropolitan government may, by a majority vote of the electors voting thereon, establish, modify or discontinue a merit system for its employees except teachers under contract or tenure. The state civil service commission may furnish technical services on a reimbursable basis to any city, village, township, county, school district or metropolitan government requesting the same.".

The committee recommends the amendment be agreed to and the proposal as thus amended be passed.

VICE PRESIDENT HUTCHINSON: The question is upon concurring in the amendment made by the committee of the whole to Committee Proposal 76. All those in favor will say aye. Opposed will say no.

The amendment is adopted and **Committee Proposal 76,** as amended, is referred to the committee on style and drafting.

Following is Committee Proposal 76 as amended and referred to the committee on style and drafting:

The committee recommends that the following be included in the constitution:

Sec. a. Each city, village, township, county, school district and metropolitan government may, by a majority vote of the electors voting thereon, establish, modify or discontinue a merit system for its employees except teachers under contract or tenure. The state civil service commission may furnish technical services on a reimbursable basis to any city, village, township, county, school district or metropolitan government requesting the same.

SECRETARY CHASE: The committee of the whole, Mr. President, has also had under consideration **Committee Proposal 71** relative to the election, term and duties and so forth of state officers and has come to no final resolution thereon. This completes the report of the committee of the whole.

VICE PRESIDENT HUTCHINSON: Announcements.

SECRETARY CHASE: Mr. John Hannah announces a meeting of the committee on legislative organization in room D tomorrow, Wednesday, after the session.

The secretary has the following requests for leave: Mr. Bledsoe requests an excuse for Wednesday to take care of a court matter committed prior to the convention; Mr. Bonisteel requests leave for Wednesday to attend to legal matters; and Mr. Mahinske asks leave from the sessions of March 21, 22 and 23 to appear in court on matters that have been pending over 2 years.

VICE PRESIDENT HUTCHINSON: Without objection, the several requests will be granted. The Chair hears no objection and the requests are granted.

The Chair recognizes the delegate from Oakland, Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, I'd just like to remind the members of the rules committee of a brief meeting immediately following the session in room I.

VICE PRESIDENT HUTCHINSON: Any further announcements?

SECRETARY CHASE: None, Mr. President.

VICE PRESIDENT HUTCHINSON: What is the pleasure of the convention? The Chair recognizes the delegate from Muskegon, Mr. Seyferth.

MR. SEYFERTH: Mr. President, I move we adjourn.

VICE PRESIDENT HUTCHINSON: The question is on the motion to adjourn. All those in favor will say aye. Opposed will say no.

The motion prevails. The convention stands adjourned until tomorrow morning at 9:30 a.m.

[Whereupon, at 5:20 o'clock p.m., the convention adjourned until 9:30 o'clock a.m., Wednesday, March 21, 1962.]

Volume 2

MICHIGAN STATE LAW LIBRARY

ONE HUNDRED FOURTH DAY

Wednesday, March 21, 1962, 9:30 o'clock a.m.

PROCEEDINGS

PRESIDENT NISBET: The convention will please come to order.

Our invocation this morning will be given by the Reverend P. T. Calvin Johnson of the All Saints Evangelical Lutheran Church of East Detroit.

REVEREND JOHNSON: Lord God, today as representatives of the people of our state, remind us that we are first of all the representatives of Thy truth known within our highest and best.

Because we cannot speak but what we have received, keep us open to receive wisdom and insight by whatever channels they come to us. Give us humility to listen as well as courage to speak. Help us to state our differences with integrity and honor yet with alertness to see that the fullness of truth is not the monopoly of any one person or party. In debate and conversation filter our speech from the words that only becloud and do not clarify, and when our words are done, move us to act as fearlessly as we have tried to speak honestly.

Now having bowed our heads, enable us to bow our minds and wills to today's demands in the name and spirit of Him who came, not to be served but to serve and to give Himself for those in every need. Amen.

PRESIDENT NISBET: The roll call will be taken by the secretary. Those present, please vote aye. Those present, please record your attendance by voting aye. Have you all recorded your attendance? If so, the secretary will lock the machine and record your attendance.

SECRETARY CHASE: Mr. President, a quorum of the convention is present.

Prior to today's session, the secretary received the following requests for leaves: Mr. Anspach, from today's session, as he is ill with a cold; Mr. Higgs, from today's session, as he is still tied up in federal court; and Mr. Douglas, indefinitely, because of illness in the family.

PRESIDENT NISBET: Without objection, the requests are granted.

SECRETARY CHASE: Absent with leave: Messrs. Anspach, Bledsoe, Bonisteel, Douglas, Greene, Higgs, Hood, Mahinske, McAllister, Mosier and Page.

Absent without leave: Messrs. T. S. Brown, Hodges, Krolikowski and Norris.

PRESIDENT NISBET: Without objection, the delegates are excused.

[During the proceedings the following delegates entered the chamber and took their seats: Messrs. Krolikowski, Hodges, Douglas, Greene, Hood, McAllister, Page, Bledsoe, T. S. Brown and Norris.]

The president is in receipt of the following communications from the governor:

March 19, 1962

The Honorable Stephen S. Nisbet, president
Michigan constitutional convention
Constitution hall
Lansing, Michigan

Dear Mr. Nisbet:

Thank you for transmitting to me the resignation of Mr. Charles J. Davis as a delegate to the constitutional convention from the second legislative district of Ingham county, effective March 16, 1962.

I have accepted the resignation of Mr. Davis according to its terms, and notified the secretary of state that a vacancy exists in this office.

Sincerely yours,
John B. Swainson,
Governor.

March 20, 1962

Stephen S. Nisbet, president
Michigan constitutional convention
Constitution hall
Lansing, Michigan

Dear Mr. Nisbet:

Please be advised of the appointment of Mr. Howard L. Jones as a delegate to the Michigan constitutional convention representing the Ingham county second district, succeeding Mr. Charles J. Davis, resigned.

With best wishes.

Sincerely yours,
John B. Swainson,
Governor.

Will Dr. Hannah, delegate from the fourteenth senatorial district, and Mr. Downs, vice president of the convention, please escort Mr. Jones to the rostrum.

[Whereupon, Messrs. J. A. Hannah and Downs escorted Mr. Jones to the rostrum.]

Mr. Jones, will you raise your right hand, please?

Do you solemnly swear that you will support the Constitution of the United States and the constitution of this state, and that you will faithfully discharge the duties of the office of delegate to the Michigan constitutional convention to the best of your ability?

MR. JONES: I do.

PRESIDENT NISBET: Will you please sign the oath?

Mr. Jones, we are very happy to welcome you as a delegate to the convention. (applause)

Reports of standing committees.

SECRETARY CHASE: Mr. Millard, for the committee on emerging problems, introduces

Committee Proposal 125, A proposed constitutional provision with respect to the conservation of the state's paramount interest in the air, waters and other natural resources of the state;

with the recommendation that it pass.

Frank G. Millard, chairman.

For Committee Proposal 125 and the reasons submitted in support thereof, see below, under date of April 18.

PRESIDENT NISBET: Referred to committee of the whole and placed on the general orders calendar.

SECRETARY CHASE: The committee on rules and resolutions, by Mr. Van Dusen, chairman, reports back to the convention **Resolution 83,** A resolution relative to sessions on Friday; with 2 amendments, recommending that the amendments be agreed to and that the resolution, as thus amended, be adopted.

The following are the amendments recommended by the committee on rules and resolutions:

1. Amend the resolving clause, after the word "That" by striking out the following language: "we, the undersigned delegates to the Michigan Constitutional Convention of 1961-1962, hereby resolve that upon the adoption of this resolution,".